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IN THE  
**Court of Appeals of Maryland**

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OCTOBER TERM, 1947

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No. 108

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WILSON C. WARREN, et al.,  
*Appellants,*

vs.

E. ROY FITZGERALD, et al.,  
*Appellees.*

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APPEAL FROM THE CIRCUIT COURT OF BALTIMORE CITY  
(TUCKER, J.)

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**BRIEF AND APPENDIX FOR APPELLANTS.**

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**BRIEF FOR APPELLANTS.**

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**STATEMENT OF CASE.**

This is a stockholders' suit in which a writ of injunction is sought to restrain the directors of The Baltimore Transit Company from performing certain acts beyond their powers or beyond the powers of the corporation itself. The necessary consequence of granting this writ is that the Transit Company would have to seek the approval of the stockholders before pursuing their proposed action.

The directors of the Transit Company have determined and are about to put into operation a plan of so called "conversion" from electric railway service to motor bus

service in Baltimore City. This plan involves the abandonment of a major portion of the street railway equipment and franchises, having a book value of about \$24,000,000. The plan entails certain other fundamental changes, including the transfer of valuable property and rights to a subsidiary corporation. All of these acts, the Appellants maintain, are either beyond the powers of the directors to perform or beyond the powers of the corporation itself, and that in either case all of such plans should be first submitted to the stockholders of the Company for their approval.

It is appropriate to state here that in order to accommodate the Appellees, it was agreed to have this case set down for trial immediately before the Chancellor, and had the Appellants availed themselves of the prerogative of pre trial practice under the rules, certain allegations in the bill as to bad faith on the part of the directors in promoting this plan might have been abandoned. However, in argument of the case below, the charge of bad faith against the local gentlemen on the board was abandoned by the Appellants. The Appellants maintained, however, that three of the other directors, who were also three of the five members of the executive committee, controlled that committee and in turn controlled the board of directors, and that it was they who were really promoting this plan for the benefit of adverse interests which they represented. In this respect, His Honor, Judge Tucker, found from the evidence that it was reasonable to suppose that these three members dominated the executive committee and the board, but that not withstanding this, there was no bad faith on their part. The Chancellor further found that this conversion plan and the other acts of the directors in pursu-

ance thereof were within the powers of the Corporation and that these powers could be exercised by the directors without the approval of the stockholders, and thereupon dismissed the bill.

### **QUESTIONS INVOLVED.**

1. Can the directors of The Baltimore Transit Company abandon about \$24,000,000 of assets devoted to its charter purpose of operating a street railway, and in lieu thereof purchase about \$12,000,000 worth of free wheel motor buses and equipment, on its credit, and take title to these new assets in a wholly owned subsidiary corporation, thus removing direct control of them from the stockholders of the Transit Company, without submitting this extraordinary action to the stockholders of that Company?

2. At Common Law all the stockholders would have to approve such a fundamental change. Probably under the Maryland statute law the consent of only two-thirds of the stockholders is necessary.

3. Our main contention is as to the powers of directors to do these acts without consulting the stockholders. Incidental to this issue is the question of whether or not the Transit Company has the power of devoting its assets to the purchase of and operation of motor buses, when its charter power is limited to the operation of a street railway.

### **STATEMENT OF FACTS.**

The Appellants have for many years been the owners of both preferred and common stock of The Baltimore Transit Company and its predecessor, The United Railways and Electric Company.



The Baltimore Transit Company is engaged in the business of furnishing mass transportation service in Baltimore City and its environs by means of electric trolley cars. The Baltimore Coach Company, a wholly owned subsidiary of the Transit Company, is engaged in the business of furnishing mass transportation in said City and its environs by means of free wheel motor buses.

By Articles of Consolidation, dated March 4, 1899, The United Railways and Electric Company of Baltimore was formed, it being a consolidation of eleven street railway companies. These eleven companies in turn had been formed as the result of many former consolidations and mergers from time to time. There was no statement of the purpose for which the United Railways was formed in the Consolidation Agreement of 1899, but this agreement did state that the newly formed company would have all the rights, franchises, etc. of each of the consolidating companies (A. p. 17). Each of the charters of this myriad of corporations authorizes the construction of street railways and the laying of either single or double tracks between certain points in the streets of Baltimore City. The earliest of these numerous charters was dated about 1859, and they all provide for the operation, over their rails, of cars or carriages propelled by any modern motive power, except steam.

The operation of motor buses in Baltimore City began about the year 1915. In the annual report to the stockholders of the United Railways for that year, it was stated that for the purpose of ascertaining whether or not this method of transportation was a desirable supplement to electric transportation, as well as bringing its operation directly under the control of The United, the

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stocks of two newly organized bus companies were acquired by the Railway Company (A. p. 29). Since that time the bus operations in Baltimore City have been merely supplementary or auxiliary to the street railway operations and presently represent but a small fraction (between 8 and 10 per cent.) of the combined trolley car and bus operations in the City.

Upon a reorganization of the United Railways in 1935, its name was changed to The Baltimore Transit Company.

The Baltimore Transit Company voluntarily applied to the Public Service Commission of Maryland in the Summer of 1946, for authority to remove certain of its rail lines and surrender and abandon electric railway service and franchises over these lines, upon inaugurating motor bus service by The Baltimore Coach Company in substitution for said railway service, and the Commission thereupon on October 9, 1946, authorized this proposed conversion. The Commission further directed the Transit Company to submit *promptly* to it detailed recommendations with respect to making appropriate adjustments in its capital, surplus, depreciation and other reserve accounts, and such other changes in its accounting procedure as may be appropriate in order to provide for losses to be sustained in the abandonment which will result from the conversion of its street railway lines to motor bus operation. To this date no recommendations have been submitted to the Commission in compliance with this order.

The proposed conversion plan will require the expenditure of approximately \$9,000,000 for 600 new buses, and also another approximate \$2,000,000 for erection of

new garages and other buildings necessary to maintain the bus equipment.

By this plan, approximately 46.20% of the street railway operation, including its franchises over certain streets, and other equipment of the Transit Company, all valued at approximately \$24,000,000, is to be abandoned and written off at a loss. All of this equipment and trackage to be abandoned is now in use and part of a going business, producing a profit.

The franchises for the proposed new bus operation will issue to The Baltimore Coach Company, and title to all of the 600 new buses and other equipment will be taken in the name of The Baltimore Coach Company. No definite plan for financing these new buses had been determined by the directors although written and binding contracts had been executed for the purchase of this new equipment. They testified, however, that they thought the financing would probably be done in the "usual way" by equipment trust notes, through the Mercantile Trust Company of Baltimore, but that no definite arrangements had been made as to the major portion of this \$9,000,000 investment. Under a former collateral trust note agreement between The Baltimore Transit Company and the Mercantile Trust Company, extending credit to the extent of \$2,600,000, which agreement expired on July 1, 1947, it was provided among other things that the Trust Company would loan 80% of the purchase price of the buses to be secured by 2% collateral notes and that the Transit Company deliver to the Trustee, chattel mortgages covering the motor coaches described in their certificates of title and duly executed by the owner thereof; *that no mortgage would be accepted by the Trustees if the owner and mortgagor is other than*

*the Company's subsidiary, The Baltimore Coach Company, or if the mortgagee is other than the Transit Company. These mortgages were assigned by the Transit Company to the Trustee with recourse against the Transit Company.*

Neither the question of abandonment of almost one-half of the Transit Company's operations nor that of the transfer of valuable property and rights to another corporation nor any phase of this so called "conversion" plan has ever been submitted to the stockholders of the Transit Company for their approval. The stockholders of the Transit Company have never been advised by the directors that this conversion plan would entail the abandonment of approximately \$24,000,000 worth of their company's assets and franchises, and the testimony shows that even some of the directors were not aware of the exact amount of this abandonment loss. As a matter of fact they admit in their answer to the bill that the abandonment losses under this plan will be about \$21,000,000, but within the week after their answer was filed and a day or so before the hearing below, this estimate was increased by the Company's auditors to approximately \$24,000,000.

The directors testified that they did not think it was necessary to submit these matters and plans to the stockholders for their approval (A. pp. 33, 34 and 36).

Approximately 30 per cent. of the outstanding voting rights of the Transit Company are owned by National City Lines, Inc., a holding company, with offices in Chicago. These rights were acquired by virtue of authority granted by the Public Service Commission of Maryland in 1944.

The findings of fact in Judge Tucker's opinion, as to the interlocking relation of this holding company and certain manufacturing suppliers, and The Baltimore Transit Company, are adopted here, with certain exceptions, for the sake of brevity.

The Chancellor found that under certain contracts between National City Lines and particular manufacturing corporations, that National is obligated to exert its efforts to have its affiliates (corporations in which National owns as much as 25% stock interest in a local operating company) purchase *all* of their requirements of certain products from said manufacturers, and that this indicated to the Court an intent that National City Lines, in buying substantially of the stock of a transportation company, would do what it could to have such a company deal with those particular manufacturers in purchasing said products. The Chancellor found further that a substantial amount of the stock of National City Lines was owned by these particular manufacturers, which include General Motors Corporation, Firestone Tire & Rubber Co., and others.

His Honor, Judge Tucker, determined, however, that other papers in the form of "letters *from* the equipment and supply companies *to* National City Lines, have been offered in evidence, and the effect of them is that the contracts which I have just mentioned are not applicable to the Baltimore Transit Company" (A. p. 3).

Through inadvertence, the Chancellor has stated that these contracts obligate National to require its affiliates to purchase *all* of their requirements of certain products from said manufacturers, whereas, the contracts specifically state that the affiliated companies need only pur-

chase 42½% of their requirements from these concerns. The Baltimore Transit Company has purchased 66⅔% of its requirements of buses from General Motors and all of its requirements of tires and tubes from Firestone, and thus the objects of these contracts were, for all practical purposes, accomplished as to Baltimore Transit. Furthermore, the letters which Judge Tucker refers to, were written by National City Lines to the manufacturers asking them to waive the provisions of these contracts as to Baltimore Transit, and these letters were endorsed by the Assistant Secretaries of the manufacturers and marked "Approved". The Appellants maintain that these letters could not and did not amount to waivers, but even if they did, the objects of the contracts were accomplished as to Baltimore Transit, and these alleged "waivers" were but a sham.

While we agree substantially with the Chancellor's statement of the facts, his conclusions thereon are based on a mistaken premise that these requirements contracts between certain manufacturers and the National City Lines, do not apply to the Baltimore Company. The view we take is that whether or not they do apply here, they have been performed for all practical purposes and their objects accomplished, and that because of the relation of the interlocking directors, Equity will scrutinize any contracts or agreements entered into between companies having such directors in common. This has long been the rule in Maryland.

Booth v. Robinson, 55 Md. 419;  
 MacGill v. MacGill, 135 Md. at 394;  
 Pa. Ry. Co. v. Minnis, 120 Md. 461.

While counsel for the Appellants were attempting to obtain information about the propriety of certain trans-

actions of the Appellees, which required contacting sources in both Los Angeles, California and Washington, D. C., the Transit Company was making ready to put their conversion plans into operation. Thereupon, each of the Appellees were requested in good faith by the Appellants to halt their plans and comply with the requirements of the law. This they refused to do and it was therefore necessary for the Appellants to seek injunctive relief.

### ARGUMENT.

#### 1.

CAN THE DIRECTORS OF THE BALTIMORE TRANSIT COMPANY ABANDON ABOUT \$24,000,000 OF ASSETS DEVOTED TO THE CHARTER PURPOSE OF OPERATING A STREET RAILWAY, AND IN LIEU THEREOF PURCHASE ABOUT \$12,000,000 WORTH OF FREE WHEEL MOTOR BUSES AND EQUIPMENT, ON ITS CREDIT, AND TAKE TITLE TO THESE NEW ASSETS IN A WHOLLY OWNED SUBSIDIARY CORPORATION, THUS REMOVING DIRECT CONTROL OF THEM FROM THE STOCKHOLDERS OF THE TRANSIT COMPANY, WITHOUT SUBMITTING THIS EXTRAORDINARY ACTION TO THE STOCKHOLDERS OF THAT COMPANY?

#### A. Directors' Powers Defined.

The directors of a corporation are the managing agents of the *ordinary* business affairs of their company. They stand in a fiduciary relationship with the stockholders and are the trustees of their property.

Article 23, sec. 12 of the 1939 Maryland Code, stating the general scope of the powers of corporate directors, provides as follows:

“The board of directors may exercise all the powers of the corporation, except such as are *by law* or by the charter or by the by-laws conferred upon or reserved to the stockholders or members. \* \* \*.”

The charter of The Baltimore Transit Company states merely that there shall be a board of twelve directors, without further reservation or explanation.

The by-laws of the Transit Company (A. p. 26) at Article VIII provide as follows:

“The board shall have supervision and control of the management and affairs of the Company, and shall appoint such officers as it shall deem proper for the conduct of the business of the Company, \* \* \*.”

Although neither the charter nor the by-laws of the Transit Company expressly reserves any of the corporate powers to the stockholders, the Maryland statute above referred to expressly deprives the directors of all powers which “are by law” conferred upon or reserved to the stockholders. What are these powers which the general law reserves to the stockholders?

The directors have no power to make fundamental or organic changes in the corporation itself. Mr. France in his text on Corporations at p. 76, sec. 45, 2nd paragraph, defines the powers of corporate directors as follows:

“The directors or managers as the case may be, when duly assembled in board meeting, are the administrative agents of the corporation—that is to say, they direct its policy and, directly or by delegation, exercise its *ordinary* powers. But they can not exercise its extra-ordinary or constituent powers—those which relate to *fundamental acts and organic changes*. These are usually reserved to the corporation at large by the creating statute; but where the statute is silent, the result is the same.”



Also in Fletcher on Corporations, Vol. 2, sec. 540, the following language well expresses this point:

“The powers and authority of the directors or trustees are restricted to the management of the *regular* business affairs of the corporation, unless more extensive power is expressly conferred. Their authority does not extend to changes in the character or organization of the corporation, or to a winding up of the corporation, etc., unless by express provision, since such matters do not relate to the *ordinary* business of the corporation. Moreover, a general provision in the charter of a corporation or a general corporation law, that ‘all the corporate powers shall be vested in and exercised by a board of directors, and such officers and agents as said board shall appoint’, refers merely to the *ordinary* business transactions of the corporation, and does not extend to other acts which are ordinarily within the powers of the directors, but are done or authorized by the stockholders only—as the reconstruction of and *fundamental changes* in the corporate body, increase of the capital stock, etc.”

The weight of authority is in accord with the principles just stated.

14 Corpus Juris, p. 852, sec. 1293;

14A Corpus Juris, p. 81;

Machen on Corporations, Vol. 2, secs. 1435 and 1438;

Spellman on Corporate Directors, p. 413;

Harvey on Rights of the Minority Stockholder and of the Railway Security Holder, (1929), Ch. IX, p. 111;

Rollins v. Clay, 33 Me. 132;

Baker's Appeal, 109 Pa. St. 461;

Chicago City Railway v. Allerton, 18 Wall 233, 21 L. Ed. 902.

We thus observe that the function of directors of a corporation is that of management of the *ordinary* routine business affairs of the corporation. They may sell the products of the business, but they may not sell or in anywise dispose of the property of the corporation itself. The directors have no power to make fundamental changes in the corporate structure. The powers of the directors of the Transit Company are so limited.

Now, then, is the abandonment of valuable franchises and other assets of the Transit Company, currently in use in a going business, and having a book value of almost \$24,000,000, and the purchase on the credit of the Transit Company of about \$12,000,000 worth of new motor buses and other equipment and buildings, title to which is to be taken in the name of its wholly owned subsidiary, and the transfer of other assets and a major portion of its business to its subsidiary, without submitting any of this plan of action to the Transit Company stockholders, such an ordinary routine matter as is within the sole power and discretion of the directors?

The directors of the Transit Company propose to abandon valuable assets, including street railway franchises, having an estimated book value of \$23,988,000 (A. p. 22). This represents 38.67 per cent. of the entire electric railway system which has a total estimated un-depreciated book value of \$62,026,740. Against this total of the entire electric system there is a reserve for depreciation and retirement of \$14,689,974.31, and also a reserve for obsolete property of \$2,021,034.14. The total of these reserves is \$16,711,008.45 (A. p. 23). If 38.67 per cent. of this depreciation reserve is deducted from the value of the property proposed to be abandoned, its value then, after depreciation, is over \$18,000,000. All of this

property is now in use and part of a going business. The net profit from this enterprise after taxes and after deduction of interest paid on debentures, for the year 1946, was \$1,578,228.40 (A. p. 25).

Many of the street railway franchises included in this proposed abandonment, are perpetual franchises, granted before the year 1900, and if they cease to be used they may never again be reclaimed by this Company.

The Appellants maintain that the abandonment of this property in itself, is such a fundamental act, in the life of the corporation, as to be entirely beyond the powers of the board of directors. It could only be argued in jest, by the Appellees, that such an action was one of the ordinary routine functions of the directors. The abandonment of almost 40 per cent. of a corporation's property is certainly not one of the managerial duties of its directors. They could not possibly abandon 40 per cent. of its property once in every week. Such a fundamental change as this must be determined by the stockholders of the company.

But now the Appellees propose in addition to this abandonment, to purchase about \$12,000,000 worth of new motor buses and new garage buildings on the credit of the Transit Company, and cause the title to these new assets to be taken in the name of a wholly owned subsidiary corporation, The Baltimore Coach Company. By this transfer of assets and a major portion of its business to its subsidiary, the stockholders of the Transit Company are thereby deprived of the immediate and direct control over their property. In effect, they become stockholders in substantially a holding company instead of an operating company. The stockholders of

the Transit Company do not elect the directors of the Coach Company, and in fact have no direct control over the Coach Company whatsoever. The directors of the Coach Company are not the same as those of the Transit Company (A. p. 27). The Appellees argued below that because the directors of the Coach Company are elected by the directors of the Transit Company, who in turn are elected by the stockholders of the Transit Company, that there can be no objection to their proposed plan.

It is not disputed, that a corporation in Maryland has the power to hold stock in another corporation, in the absence of any restriction in its character to the contrary. There is no restriction in the charter of the Transit Company in this respect. However, it is one thing for an operating company to own stock in another corporation, but it is an entirely different matter when that operating company abandons a major portion of its property and franchises, and causes substantially all new assets and a substantial portion of its business to be conducted by its subsidiary corporation, even though it may own all of the stock of such subsidiary. The distinction is obvious. If an operating company could be so easily converted into a holding company, the stockholders of the operating concern would be afforded little protection. The business and plant and function of an operating company is certainly diverse from that of a holding company. If the mere ownership of stock in a subsidiary, by an operating company, implies the right to abandon the plant of the operating concern and retain only the stock of the subsidiary, then indeed, a man who invests his capital in good faith in a particular enterprise would have no assurance into what channels his investment might be diverted.

It is submitted that such an implication would be grossly unjust and contrary to the meaning of that provision of the law, authorizing the ownership, by one corporation, of the stock of another corporation.

*Williams v. Johnson*, 208 Mass. 544; 95 N. E. 90.

The Baltimore Coach Company is a separate legal entity. In 4 *Cook on Corporations* (8th Ed.), p. 2917, note 2, the following observation of the corporate entity theory is made:

“A railroad company owning all the stock and bonds of another company does not own the property of the latter, and cannot sue on a cause of action belonging to the latter, and ordinarily is not liable for its debts.”

Also in *Noyes on Intercorporate Relations* (2nd Ed.), p. 516, sec. 284, is found the following:

“The lawful acquisition by one corporation of stock in another—even to the extent of holding all its shares—in no way affects the legal entity of the two corporations, as between themselves, and each continues its separate existence. \* \* \*.”

There would be nothing to prevent the directors of the Coach Company from disposing of the property of that company or dealing with it in any way they so chose. It could hardly be said that it was within the powers of corporate directors, to make such a transfer of and so alienate their company's property, without submitting such a fundamental matter to its stockholders. A case directly in point is that of *Cass v. Manchester Iron & Steel Co. &c.*, 9 Fed. 640, wherein the Court, through McKennan, C.J., said:

“The primary question is, has the corporation the power, under its charter, to make the proposed lease,

and if so, ought it to be exercised by the directors without reference to or against the judgment of the stockholders? A charter ought to be liberally construed to effectuate the object of the creation of the body corporate, but it cannot be regarded as possessing any power which is not conferred upon it by express grant or clear implication. \* \* \*

We are of opinion, then, that the charter contemplates and authorizes the prosecution of the business described in it, by the corporation itself, by the direct agency and under the supervision, management, and administration of the corporate officers whom the stockholders may select for that purpose; and that a contract which involves relinquishment of this faculty, or a transfer of it to others, is beyond the scope of the power of the corporation.

But if this construction is the result of too strict a construction, of the charter, we are of opinion that the power in question is not exercisable independently of the judgment of the stockholders. The directors and officers of a corporation are its exclusive executive agents, and, as it can only act by and through them, the powers vested in the corporation are deemed to be conferred upon its representatives; but they are, nevertheless, trustees for the stockholders. The law recognizes the stockholders as the ultimately controlling power in the corporation, because they may, at each authorized election, entirely change its organization, and may, at any time, keep their trustees within the line of faithful administration by an appeal to a court of equity. Hence, it has been held that the directors of a corporation cannot alone increase its capital stock, where such increase was authorized by its charter, 'at the pleasure of said corporation', and where it was provided 'that all the powers of said corporation shall be vested in and exercised by a board of directors', etc.; and this for the reason that 'the general power to perform

all corporate acts refers to the ordinary business transactions of the corporation,' and not to a change so fundamental and organic. 18 Wall 234.

The change proposed here is not organic, it is true, but it is thorough and fundamental, as it affects the administration of the company's affairs. It involves a withdrawal from the control and management of the stockholders of the entire property of the corporation for a period of at least five years, it will preclude for a like period the exercise annually by the stockholders of their judgment as to the particular character and method of conducting the business affairs of the corporation; and it denies to the stockholders any right of suggestion or disapproval of the conditions upon which a relinquishment of important corporate facilities may be conceded. Surely a power which will be attended with such consequence does not relate 'to the ordinary business transactions' nor 'to the orderly and proper administration of the affairs,' of the company, and hence cannot be exercised by the directors without express authority to them."

As exemplary of how far the Courts have gone in defining and limiting the powers of directors, the very recent case of Securities and Exchange Commission v. Transamerica Corporation, in the United States Circuit Court of Appeals for the Third Circuit, Nos. 9240 and 9259, wherein the opinion of the Court was filed on September 15, 1947, and is not yet reported, the Court there through Biggs, Circuit Judge, said in part:

"\* \* \* Transamerica contends, as we have indicated, that since Article XIII of Transamerica's charter vests in the Board of Directors all powers of corporate management, not prohibited to them by the law of Delaware, this comprehensive grant renders the question of auditors not a proper subject

for action by Transamerica's stockholders. The Court below took the view, in our opinion, fully supportable, that the stockholders as the beneficial owners of the enterprise may prefer to consider the selection of independent auditors to review 'what is no more than the trust relationship which exists between the directors and the stockholders.' See 67 F. Supp. at p. 334. Assuredly, it is no less than this. It is necessary to go no further in order to sustain the Commission's contention that the auditing of the books of a corporation is a proper subject for stockholders consideration and action. Surely the audit of a corporation's books may not be considered to be peculiarly within the discretion of the directors. A corporation is run for the benefit of its stockholders and not for that of its managers.

Stockholders are entitled to employ watchmen to eye the guardians of their enterprise, the directors \* \* \*. Setting to one side the notice provision of By-Law 47, to be dealt with hereinafter, the employment of independent auditors to be selected by the stockholders beyond any question is a proper subject for action by the stockholders."

Another question presented in this same case was that of the complaining stockholder's demand that the directors submit to the security holders at large his proposal which requires a report of the proceedings of the annual meeting to be sent to all stockholders. The Court stated that they could perceive no logical basis for concluding that this was not a proper subject for action by the security holders.

The proposed action of the Appellees is tantamount to a discontinuance of a major portion of the business for which the Transit Company was organized. It certainly could not seriously be argued by the Appellees that the



board of directors alone had the power to determine such a very vital matter.

The gross annual income from the trolley car operation of the Transit Company represents about ninety to ninety-two per cent. of the total revenue from the mass transportation system in Baltimore (including both trolleys and buses).

If the trolley car business is no longer profitable, and this is not admitted, (see net profits for the last two years, A. p. 25) then it is the *duty* of the directors to so advise the stockholders and recommend to them that they either dissolve their company and surrender their street franchises to some other interest or discontinue this part of their business. But in such matters as these, the directors can only make recommendations to the stockholders, and it is the stockholders who must decide whether or not they will continue in their business venture. This proposition is supported by the weight of authority.

Geddes et al. v. Anaconda Copper Mining Co.,  
254 U. S. 580;

Thompson on Corporations (3rd Ed.), Vol. 4,  
sec. 2501.

The situation is, of course, somewhat different where the business is operating at a loss and bankruptcy is inevitable. The Transit Company is not operating at a loss. It has continuously earned and increased its net profits since the year 1935.

In another case in which the directors of a lithographing company determined to discontinue and sell out their company's "calendar department", which department

represented about 1/14 of its entire business, but for a valuable consideration, without submitting the matter to the security holders, the Court said in part:

“\* \* \* On the other hand the stockholders must be consulted before there can be a sale of such assets of the business as will result in the discontinuance of one of the departments conducted by the enterprise, for such a sale would amount to a pro tanto surrender of corporate authority.”

Matter of Timmis, 200 N. Y. 177 at 183.

The Appellee directors have undertaken to promote this so called conversion plan without knowing definitely of its ultimate consequences. Among some of the extraordinary statements made by the Appellees in their testimony, was that they did not know whether or not the present bus operation of The Baltimore Coach Company was profitable, but that they thought it had made a profit in the last few years during the war. When asked to name any one year in which it made a profit they could not do so (A. pp. 37, 39, 42). Here we have a situation in which directors of a corporation, declare that their proposed conversion to mass motor bus operation is our only salvation, and is sure to be profitable, but they know not or care not to tell us whether the present motor bus operation is profitable. Not even the treasurer or auditor and statistician of the Company had this information (A. pp. 38, 39 and 40). They were not asked nor expected to recall from memory the profit or loss of the bus operation in dollars and cents, but merely to state whether or not it was profitable and if so in which years it was profitable.

Another extraordinary statement of the Appellee directors was that they had ordered \$9,000,000 worth of

these new buses to put their plans in effect, but that they had not made any specific plans for financing the bulk of these orders. They testified that they thought it would be done in the usual way. Now it may be a prudent thing to assume that a single bus or two will be financed in the "usual way", but here we are dealing with 600 buses to cost about \$9,000,000, and the directors do not know definitely how they are going to pay for them (A. pp. 34, 35).

Another reason why the stockholders have reason to be concerned in this matter is that the Appellees admitted in their answer to the bill of complaint that the estimated abandonment losses would be approximately \$21,000,000 and to this the directors personally testified. However, a day or so prior to the hearing below, upon our request, the Appellees had their auditing and research department bring this schedule of abandonment losses up to date and therein disclosed that the abandonment would amount to \$23,988,000 (A. p. 22). Apparently this approximate \$3,000,000 increase in these losses was not known to the directors prior to the hearing.

The stockholders of the Transit Company were never advised or informed as to these abandonment losses. It was not until the last annual meeting of stockholders, on April 9, 1947, when there was some query about these plans, that the Appellants were apprised of this fact. Upon receiving this shocking information the Appellants immediately engaged counsel to investigate the propriety and legality of the proposed plans of the directors. Nae a word was ever mentioned of this, almost \$24,000,000 abandonment, or the other vital details of this conversion, in any of the annual reports of the Company.

Although the Chancellor, for obvious reasons, refused to hear any argument by the Appellees on the question of laches, it should be noted, that even to this day the stockholders have never been officially notified of these changes, (with all their details), which are to take place in their company. The Appellees have tried to emphasize that much newspaper publicity has been given to their plans, and that this amounted to legal notice to the stockholders. The Chancellor properly refused to assume this and held for the purpose of this case that such was not notice to the security owners (Transcript p. 153). Furthermore, the Appellants had no reason to anticipate that the Appellees would commit any wrong or violate any law. On the contrary they expected the Appellees to comply with the law and properly submit all of the vital details of their plans to the owners of the Company.

The order of the Public Service Commission, dated October 9, 1946, wherein the Appellees were authorized to make the conversion from trolley car service to motor bus service, provided further that they were to submit promptly a plan of recapitalization or reorganization in order to make the necessary adjustments resulting from the abandonment losses. To date no such plan has been submitted to the Commission.

It is obvious that the Appellees desire to put this plan of conversion into operation first, and after they abandon all these many millions of dollars worth of trolley car equipment, to then propose some plan of reorganization to the stockholders. At such a time the stockholders would have no choice in the matter, for their trolley car equipment would be gone, and they would have to accept almost any plan proposed to them in order to save what they *might* have left.

The Appellants maintain, that if this proposed plan of conversion and all the vital changes necessary in the corporate structure incidental thereto, is a good plan, then why should the directors even hesitate to tell the stockholders all the facts and submit it to them for their approval? The stockholders are not fools. If this plan is for their best interest, they would undoubtedly adopt it. But the whole transaction carries with it much mystification, and many unexplained important details. The Appellees have offered no justification whatsoever for their a la Stalin methods in this matter. Why are they afraid to submit such a *wonderful* plan and *all* of its details to the owners of their company?

**B. Authority from the Public Service Commission.**

The Appellees, in a feeble attempt to justify their actions, argued below, that the Public Service Commission of Maryland *ordered* them to put this conversion plan into effect, and that the Company really had no choice in the matter. Also the City of Baltimore demanded their action in this matter. In spite of the fact that the Appellees voluntarily applied to the Commission in the Summer of 1946 for permission to make this conversion, they now argue that the Commission *ordered* them to do it. The Public Service Commission could not *order* them and did not *order* them to make the proposed conversion, but merely authorized them to do so. Furthermore, the Public Service Commission has no authority or jurisdiction over internal affairs of the corporation. It certainly does not supersede the rights of individual stockholders in their property.

P. S. C. v. Consolidated Gas & Electric, 148 Md. 90;

P. S. C. v. Crisfield, 183 Md. 179 at 198.

The Public Service Commission is only a rate making body and interests itself in the adequacy of service rendered to the public. It can not and does not concern itself with private disputes between the management and owners of a corporation.

### **C. Intervention of the Mayor and City Council.**

Over the objection of the Appellants, the Mayor and City Council of Baltimore intervened in this cause as parties defendant. They claim that a great civic improvement is being delayed unnecessarily by this suit. The City also claims that it has a contract with the Appellees relative to the use of the streets of the municipality for the operation of these new motor buses, and that under this agreement the Appellees paid the City \$2,500,000 as an adjustment of certain differences between them. It was stated in our opening below, that it was not the purpose of this suit to have the Court determine which type of vehicle or method of transportation was best for the people of Baltimore, and the Chancellor properly refused to go into this question. Notwithstanding this, the Appellees, including the Mayor and City Council, offered much evidence as to the advantages and desirability of free wheel transit and relative matters. This question is not before the Court. A much more vital and fundamental question is before the Court. We are dealing here with the protection of the property rights of individuals. The protection of these rights is guaranteed by the Federal and State constitutions. No matter what the public convenience may require, our system of government still guards the rights and property of individuals, and prevents the confiscation of these rights without due process of law.

The stockholders of the Transit Company have invested their capital in good faith in an enterprise devoted to the public convenience, and oddly enough have not received a return on their investment in many, many years. Surely the City cannot argue, that these people who made this public transit system possible, at great financial sacrifice to themselves, should not be consulted in such an extraordinary action as is proposed. These long neglected security holders have in fact relieved the people of the City of Baltimore of the burden of millions of dollars in taxes, which would necessarily follow if their capital was withdrawn or wiped out and the City had to operate the transit system. These stockholders do not want this to happen, but they do want to be given an opportunity to know what is going to happen to their investment and to decide for themselves what action to take.

There is not the slightest intent on the part of the Appellants to delay any public *improvement*. It is certainly open to argument, however, as to whether or not this proposed conversion plan is an improvement. Because the Mayor and City Council say it is an improvement does not make it so. The fact is that there has been great public opposition to the operation of motor buses. But we repeat, the Court is not called upon to determine the merits of this plan.

With reference to the question of delay, it should be borne in mind that we have been using trolley cars in Baltimore City since about 1859, and it would seem that their use for a few months more, could make little difference, especially when valuable rights in private property are involved. In America we guard these rights jeal-

ously. Whether some of the citizens like it or not, we still live in a capitalistic state.

## 2.

**AT COMMON LAW ALL THE STOCKHOLDERS WOULD HAVE TO APPROVE SUCH A FUNDAMENTAL CHANGE. PROBABLY UNDER THE MARYLAND STATUTE LAW THE CONSENT OF ONLY TWO-THIRDS OF THE STOCKHOLDERS IS NECESSARY.**

In many jurisdictions today and at common law the consent of all of the stockholders of a corporation is necessary to dissolve the company or to sell or lease or transfer its assets or to make any fundamental changes in its corporate structure.

Kean v. Johnson, 9 N. J. Eq. 401;  
Geddes v. Anaconda Copper, 254 U. S. 590;  
Thompson on Corporations (3rd Ed.), Vol. 4,  
sec. 2501.

The law is based on the sound principle which implies a contractual relationship among the stockholders and requires the express consent of all parties to that contract to terminate it or alter it in any way.

Not even the will of a majority of the members of a going and profitable business may dissolve that business or in anywise dispose of or alienate its property. In fact, any act which tends to destroy the contractual relation of the stockholders must have the unanimous approval of such stockholders.

In the case at bar the directors propose to abandon a substantial portion of the assets of the Transit Company, which assets are now being used for the purpose for which the company was organized. Also the Appellees propose to transfer certain other rights, franchises and



assets to another corporation and thus alienate the same from the stockholders of the Transit Company.

However, by virtue of Article 23, sec. 38 of the 1939 Maryland Code, the manner of making a sale, lease, exchange or transfer of all, or substantially all, of a corporation's property and assets, including its good will and franchises, is particularly set forth. Under this statute a vote of two-thirds of the stockholders is required. The Appellants maintain that the proposed action of the Appellees may properly fall within the scope of the Maryland statute.

### 3.

**OUR MAIN CONTENTION IS AS TO THE POWERS OF DIRECTORS TO DO THESE ACTS WITHOUT CONSULTING THE STOCKHOLDERS. INCIDENTAL TO THIS ISSUE IS THE QUESTION OF WHETHER OR NOT THE TRANSIT COMPANY HAS THE POWER OF DEVOTING ITS ASSETS TO THE PURCHASE OF AND OPERATION OF MOTOR BUSES, WHEN ITS CHARTER POWER IS LIMITED TO THE OPERATION OF A STREET RAILWAY.**

The corporate pedigree and history and certain provisions of the charters of The Baltimore Transit Company and The Baltimore Coach Company have been stipulated between the parties to this cause (A. p. 16).

The Transit Company was formed by Articles of Agreement of Consolidation, dated March 4, 1899, and was known as The United Railways and Electric Company of Baltimore, it being a consolidation of eleven street railway corporations. After a reorganization in the Federal Court in 1935, its name was changed to The Baltimore Transit Company. The Articles of Consolidation of 1899 contain no provision with respect to the

corporate purposes of The United Railways, except that they do provide that all the rights, franchises, interests, etc. of the several consolidating companies shall be vested in the newly formed corporation.

An examination of the numerous charters through which these companies emerged, most of them being "legislative charters", reveals that they were uniformly authorized to construct and maintain a street railway with double or single tracks, and with the necessary mechanical devices to operate an electric railway, and to run thereon cars drawn or propelled by electric or other motive power except steam. For typical illustrations of this general proviso, see:

Baltimore & Loreley Ry. Co., L. 1894, Ch. 227;  
 Baltimore & Yorktown Turnpike Co., L. 1890,  
 ch. 225;  
 Maryland Traction Co., L. 1896, ch. 360.

Each of the sixty odd companies involved, was authorized to operate *over their rails*, cars or carriages propelled by any modern motive power except steam.

The earliest of these old railway charters is dated about 1859. At the time of the granting of these charters by the legislature, the invention of the modern gasoline motor bus was not even dreamed of. The first street railways operated under these old charters used horses for motive power. Later the cable car was invented, and even more recently the use of the electric trolley car was inaugurated. All three of these methods of locomotion were used by cars operating on rails. All of these original companies and their successor, the present Transit Company, were incorporated as street railways.

Now just what is a street railway? In the case of *Petilio v. State*, 47 S. W. 2nd 847 (1932), the Texas Appellate Court there made the following distinction:

“In common language a train, street car, or interurban car is understood to be one which serves the public in conveying passengers or freight, or both, and which runs upon fixed tracks. ‘Bus’ is a contraction of the word ‘omnibus’, and it is well understood to be a vehicle which serves the passenger public but which does not operate upon fixed tracks. It certainly is not a ‘train’, nor an ‘interurban car’, and no one would understand in common language that, when a street car was mentioned, it had reference to a ‘bus’. \* \* \*”

It is true, that here the Court was construing a criminal statute, and such statutes are ordinarily strictly construed; but the language of the Court is certainly clear as to what is commonly understood by these terms, and under the rules of statutory construction the legislature must have been aware of their ordinary meaning.

A street railway is an enterprise created and operated to carry on a fixed track, passengers and freight, or passengers or freight, for rates or tolls, without discrimination as to those who demand transportation.

*Bradley v. Degnon*, 224 N. Y. 60, 120 N. E. 89.

A company incorporated as a street passenger railway cannot build an elevated street railway.

*Commonwealth v. Northeastern Elect. Ry. Co.*, 161 Pa. 409, 29 Atl. 112.

It was argued below by the Appellees, that, because they have a street railway charter they are, in effect,

really in the business of mass transportation and can, therefore, operate any type of vehicle or conveyance used in mass transportation. If such a construction were placed upon the Transit Company's charter, it would follow that they would have the right to operate taxi cabs, steam ships, and, oh yes, the latest method of mass transportation, the helicopter. All of these instrumentalities are used in mass transportation. We submit, however, that The Baltimore Transit Company does not have the power to operate any of these methods of conveyance.

No authority can be found by us anywhere which empowers directors of a corporation to change the nature and character of a man's investment in an enterprise without his express consent. He invests his money with a knowledge of the purpose for which the corporation is organized, and with a view to the probable gain, and a thought of the possible loss, that may result from the business of the corporation. He does not invest in any other kind of enterprise than that which is within the authority conferred upon the corporation, and his protection requires that the company be confined strictly to the business and functions for which it was organized. The investor would be without compass or rudder in making his investment, if the managing officers or a majority of the stockholders, could use the corporate property in a business other than that for which the corporation was organized.

Williams v. Johnson, *supra*;

Kean v. Johnson, *supra*;

Thompson on Corporations, (3rd Ed.), Vol. 4,  
sec. 2505.

The New Jersey Court in the *Kean v. Johnson* case, said in part:

“\* \* \* I cannot divert my mind from the conclusion that a sale of their road, and the employment of the capital they invested in it to other uses, does affect the right of every stockholder in a railroad company. As stockholders they own the road in common, to be employed in specified uses. Each owns a share in the whole, and is to have a proportionate share in its profits. They have invested a portion of their capital in it, and in it alone. They have a right in the road, and in every dollar it earns. The directors are their trustees to employ the joint capital in the management of the road, and the road only, to the end that from the investment the stockholders have chosen they may reap the contemplated profits. And this is the agreement of the stockholders among themselves. They each contract with the other that their money shall be so employed. What the majority determine within the scope of this mutual contract, they each agree to abide by, but there their mutual contract ends, and no majority, however large, has a right to divert one cent of the joint capital to any purpose not consistent with and growing out of this original fundamental joint intention. To sell the road, to abandon the contemplated investment and embark in another scheme, whether entirely different, or only more extensive than the original contemplation as apparent on the face of the charter, is it seems to me, clearly contrary to the rights of the individual stockholder. \* \* \*.”

It is ventured, that even the Appellees will concede the different hazards of these several means of mass transportation. If a man desires to invest in airline stock, an enterprise engaged in mass transportation, he cannot have his investment converted to a street railway

stock, also a business engaged in mass transportation. Theoretically, at least, one knows of the hazards or risks of the form of investment he chooses.

A canal company does not have the right to abandon the canal and operate a railroad. Nor does a steamship company have the power to construct or operate a canal, even in order to extend its route.

Abbott v. Baltimore & Rappahannock Steam  
Packet Co., 1 Md. Ch. 542;  
Baltimore v. B. & O. Ry. Co., 21 Md. 50.

Although the Appellees now argue that they have the corporate power to operate motor buses by The Baltimore Transit Company in substitution for its street railway lines, the obvious, and unexplained, fact is that they have never, and do not now propose to operate these buses in the name of that corporation. If they had heretofore recognized this power in that company, then it is difficult to understand their present position. But, of course, their present position has never been explained to the stockholders. It has never been explained to the stockholders why, under their proposed conversion plan, about \$12,000,000 worth of new equipment and buildings are to be owned by The Baltimore Coach Company, its subsidiary, but which are to be paid for, and payment is guaranteed for, by their corporation, the Transit Company. The control of this new property is being placed beyond their reach in the name of another corporation. But yet the Appellees maintain that they do not have to do this, for they could operate these buses in the name of the Transit Company. In the absence of an explanation, the stockholders of the Transit Company have good reason to be suspicious of such a dubious transaction.

**CONCLUSION.**

It is respectfully submitted that the directors of The Baltimore Transit Company are not vested with the power to abandon about \$24,000,000 of assets devoted to the charter purposes of operating a street electric railway, and in lieu thereof, to purchase about \$12,000,000 worth of free wheel motor buses and equipment on its credit, and take title to those assets in a wholly owned subsidiary corporation, thus removing direct control of them from the stockholders of the Transit Company, without submitting this extraordinary action and fundamental change to the stockholders of that company for their consideration.

Of course, the consequences of establishing such a principle are that all contracts and agreements made by the directors of the Transit Company in excess of their authority can be declared to be illegal and void. It seems to us, however, that the Transit Company could avoid these necessarily drastic consequences by complying with section 38 of Article 23 of the Maryland Code and submit this entire plan to the security holders for their approval and afford any dissenting stockholders the rights established by this statute.

We therefore earnestly request that the decree of the Chancellor be reversed, and remanded with directions to issue the writ of injunction as prayed, and with costs allowed to the Appellants.

Respectfully submitted,

HERBERT E. WITZ,  
J. MORFIT MULLEN,  
Attorneys for Appellants.

**APPENDIX TO APPELLANTS' BRIEF NO. 108.**

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**DECREE.**

This cause coming on to be heard on Bill and Answer and testimony having been taken and counsel having been heard and the Court having announced its opinion, it is this 10th day of July, 1947, by the Circuit Court of Baltimore City, ORDERED that the Bill of Complaint in the above entitled cause be and it is hereby dismissed.

(Signed) JOHN T. TUCKER,  
Judge.

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**OPINION.**

TUCKER, J. (Oral):

Gentlemen, I have paid close attention to the evidence that has been presented in this case, and have listened attentively to interesting and able arguments by counsel on both sides of the case. Feeling prepared to make a decision, I think it wise to render an oral opinion from the Bench immediately, while the facts of the case and the law are fresh upon my mind, rather than render a written opinion at a later date. The same reasons which have made an early hearing of this case advisable make an early decision of it also advisable.

Although, in the bill of complaint filed by the plaintiffs, all of the directors of The Baltimore Transit Company, being twelve in number, are charged in most scathing language with fraud in the performance of their duties as directors, counsel in argument have abandoned that charge specifically as to the local members of that Board, being eight in number. The reason for such abandonment is quite obvious, for the record does not disclose a scintilla of evidence of fraud on the part of



these gentlemen, referring to the local directors; and at the outset, the Court may say that it finds no evidence of fraud of the other four directors either.

What is the basis of the charge of fraud? The word "fraud" perhaps should not be used because of its elimination by concession of counsel and also by ruling of the Court. But, what is the basis of the charge of domination of the Board of Directors which caused them to concur in the so-called conversion from transportation by street cars to transportation by buses? What is the basis of what is called in the bill of complaint a gigantic scheme to defraud the rights of stockholders of this company? Manifestly the charges were based upon the fact that National City Lines, Incorporated, purchased a substantial block of stock of the Baltimore Transit Company and its representatives, namely, Mr. Fitzgerald, Mr. Reavis and Mr. Gray, became members of the Board of Directors of The Baltimore Transit Company. The plaintiffs contend that the dominating influence of these gentlemen over the other members of the Board caused the Board's decision to convert to buses which was not to the advantage of the stockholders but for the benefit of certain equipment and supply corporations which are holders of large amounts of stock in National City Lines.

These equipment and supply companies do, according to the evidence, hold all the outstanding preferred stock of National City Lines, amounting to several millions of dollars. They also hold some of the common stock, but the proportion of that is relatively small. So the charge made by the plaintiffs is that the real purpose of converting to buses is to use a vehicle or instrumentality of transportation which is manufactured, sold and supplied by these equipment and supply companies. Some of those companies are General Motors Corporation, Firestone Tire and Rubber Company, Phillips Petroleum Corporation, and others. So far as the record discloses, Phillips Petroleum Corporation has not sold any of its products to The Baltimore Transit Company,

the evidence indicating that oils are purchased from the Sherwood Company of Baltimore and gasoline from the Texas Company.

There is evidence that since the advent of the National City Lines, the Baltimore Transit has purchased 400 buses from General Motors Corporation, and there is an existing contract under which Baltimore Transit will lease all tires used by it for a period of five years from Firestone Tire and Rubber Company. In this connection, there has been offered in evidence certain contracts between General Motors Corporation and National City Lines, and Firestone Tire and Rubber Company and National City Lines, the general effect of which is that National City Lines will cause all of its subsidiaries to purchase from those corporations all products furnished by them and used by such subsidiaries. Furthermore, under those contracts, National City Lines is obligated to exert its efforts to have its affiliates (corporations in which National City Lines owns as much as 25% stock interest) purchase all of such products from said corporations; and this indicates to the Court an intent that National City Lines, in buying substantially of the stock of a transportation company, would do what it could to have such a company deal with General Motors and Firestone exclusively in purchasing said products. Before leaving this subject, I might say that other papers, being in the form of letters from the equipment and supply companies to National City Lines, have been offered in evidence, and the effect of them is that the contracts which I have just mentioned are not applicable to The Baltimore Transit Company.

Counsel for the plaintiffs contend, however, that the equipment and supply companies could not waive any rights under those contracts. And, in respect to the one between General Motors Corporation and National City Lines—it having been assigned to the former by Yellow Truck and Coach Manufacturing Company—they refer to section 22 of that contract, where it is said:

"It is expressly understood and agreed that any failure on the part of either party to insist upon strict performance of any covenant, term, provision, or condition of this agreement shall not be construed or constitute a waiver of such covenant, term, provision or condition, and shall not preclude such party from thereafter insisting upon the strict performance of any such covenant, term, provision or condition." In the opinion of the Court, that section of the contract does not prevent the General Motors Corporation from waiving any provision of the contract which it may see fit to waive, and the Court finds as a fact that the contract has been waived in its entirety as to the Baltimore Transit Company. The facts of the case corroborate that finding, because the evidence shows that buses of other manufacturers have actually been purchased by the Baltimore Transit Company since the advent of National City Lines.

As to the contract between the Firestone Company and National City Lines, counsel points to paragraph 5, which reads:

"This contract shall become effective as of January 1st, 1939, and shall remain in full force and effect until such time as Firestone shall have disposed of all of such preference stock by sale or by the exercise of the conversion privilege set forth in certificates of preference stock where such share shall have been called for redemption, pursuant to Article 4, and the redemption price therefor deposited; but the contract shall remain in full force and effect until November 1st, 1950."

There, too, the Court finds that this provision of the contract does not prevent a waiver of the contract by Firestone.

Now, getting down to greater detail, what has actually happened within the affairs of corporate management

of the Baltimore Transit Company in dealings between that company and General Motors and Firestone. The Board of Directors of Baltimore Transit consists of twelve members, as I said before, and eight of them are local men, well known and respected in the business, professional and civic affairs of this City. Another one, Mr. Gray, who is president of The Baltimore Transit Company, is at present a resident of Baltimore, although he came from another city—Detroit, I believe, I am not sure of that—when he was made president of the Transit Company, and he had been connected with a transportation company in another city in which National City Lines was interested. Two of the other directors, Mr. Fitzgerald and Mr. Reavis, are non-residents of Baltimore and they are closely identified with National City Lines. Mr. A. W. Smith, who was not even mentioned in the testimony of witnesses, I am told by counsel is a resident of Boston, Massachusetts, and represents the holders of large stock interests. The main attack of the plaintiffs centers upon Messrs. Fitzgerald, Reavis, and Gray because of their connection with National City Lines, which, in turn, has connections with these equipment and supply companies; and the plaintiffs say that the Baltimore Transit Company is dominated by these gentlemen. There is some basis for that allegation. The Court agrees with the contention of the plaintiffs, that the executive committee of The Baltimore Transit Company, under its by-laws, has been given the authority exercisable by the Board of Directors of that company between meetings of the directors. Until a week or ten days ago, three of the five members of that committee were the gentlemen connected with National City Lines, that is, Mr. Fitzgerald, Mr. Reavis and Mr. Gray. Since that time, that is a week or ten days ago, only two of these gentlemen have remained on the executive committee, Mr. Fitzgerald having resigned from the committee and Mr. Page Nelson having been elected in his place. The aforesaid provisions of the by-laws relating to powers of the executive com-

mittee are not unusual ones. Thereunder, the power and responsibility of the Board of Directors are not eliminated. The executive committee cannot perform the duties which are by statute assigned to the Board of Directors, and, as a matter of practice, actions taken by the executive committee between meetings of the Board are subsequently submitted to the Board for their approval or disapproval. It is natural, however, that an executive committee of a corporation is influential, and should be influential, with the Board of Directors in matters that are submitted to the Board by the committee.

In relation to these contracts with General Motors and Firestone, the Board of Directors of the Baltimore Transit Company acted. But, on the general subject of domination, it is not unreasonable to say that an executive committee which is dominated, in numbers at least, by having a majority on that committee, and not necessarily in the sense that the other members would be influenced against their will to do what the majority wanted, would be controlled by such majority and in turn, that control might well be reflected in the action of the Board of Directors. I have said that the executive committee would naturally be influential with the members of the Board of Directors in such recommendations and advice as the committee might deem proper. Naturally the president of a corporation is looked to for advice. The members of the committee are more of the working branch of the board of directors—and this is said without any reflection on the other directors, of course, because I think the evidence shows their complete sincerity, conscientiousness, and good faith; but the members of the executive committee did, according to one of the exhibits in evidence, receive salaries for their services and other members of the Board did not, although the latter received fees for attending meetings. Anyway, the Board of Directors would be expected to be guided substantially by the advice of its executive committee.

The function of the Court in this case is not to philosophize or deal in generalities as to what constitutes illegal domination and what does not, but to determine what happened in this particular case. Does the evidence show that the three members of the executive committee who I have mentioned, Mr. Fitzgerald, Mr. Reavis and Mr. Gray, acted for the purpose and with the result that these equipment and supply companies should and did profit at the expense of the Baltimore Transit stockholders? It can hardly be said that Mr. Gray acted for such purpose. As a matter of fact, it was he who recommended and was largely instrumental, no doubt, in the purchase in January of the present year of 200 buses, being one-third of all that have been purchased, not from the General Motors Corporation but from the A. C. F. Brill Motors Company, which has no connection, directly or indirectly, with National City Lines. Orders for 400 other buses were given to General Motor Corporation, but there is not a word of evidence in the record to indicate either that buses could have been obtained from other manufacturers or, if obtainable, could have been gotten for any less price than was paid to General Motors.

The Court will not comment extensively, favorably or unfavorably, on the contracts between National City Lines and those equipment and supply companies. It may be to the benefit of the National City Lines and companies in which it owns interests to have such contracts, since the equipment and supply companies agreed to furnish the needs of the purchasing companies which might be advantageous to the latter at a time when equipment is undoubtedly hard to get; and, furthermore, those contracts provide that the purchase price of the equipment shall be the lowest price at which the supplying companies are then selling to retailers. But, many arguments could be made to show the disadvantage of such contracts to the purchasing companies. For one thing, they, or one of them, excuse the manufacturer

from selling to National City Lines, its subsidiaries and affiliates at the same price it sells to a number of large users of its products, and also the contracts stifle competition by preventing the purchasers from buying in a free and open market. The Court finds it unnecessary however, to decide between the merits and demerits of the contracts between the National City Lines and the equipment and supply companies, because the evidence shows that the National City Lines is not bound by such contracts in so far as the Baltimore Transit Company is concerned, and also because the evidence contradicts any inference that the contracts between Baltimore Transit and the equipment and supply companies resulted from friendliness and favoritism of National City Lines with and for the latter rather than from economic considerations.

It is true that to be dominated does not mean that the person who is dominated is a participant in any mischievous conduct. One might be submissive or docile and, therefore, led unwittingly into doing things without any improper intent. The argument of the plaintiffs is that that is about what happened to the local directors; that the real persons at fault and who have taken advantage of the situation are those who are closely connected and identified with National City Lines, and the other directors were led unwittingly to voting for something which was contrary to the best interests of the company's stockholders and really for the interests of outsiders, meaning the equipment and supply companies. The Court finds that this argument is not supported by the evidence.

It appears that the members of the Board of Directors, excluding Messrs. Fitzgerald, Reavis and Gray, had no knowledge of the contracts between National City Lines and the equipment and supply companies until this suit was instituted; and, although those companies had exempted the Baltimore Transit Company from the operation of the contracts before the Public Service

Commission approved the purchase by National City Lines of approximately 30% of the issued stock of Baltimore Transit Company, it would have been desirable for all the directors of Baltimore Transit to have been fully informed on the subject, because it seems that the friendly, if not obligatory, relationship of National City Lines with the equipment and supply companies would have necessitated a most cautious approach to any dealing with the latter to make sure that it was favorable to the best interests of the Baltimore Transit Company. Of course, if these equipment and supply companies were able to furnish the specified requirements of the Baltimore Transit Company at a lower price than their competitors, the directors of the Baltimore Transit should not have refused to purchase from them simply because of their close relationship with National City Lines; but the directors should not have authorized or approved any such purchase without the most careful consideration of the circumstances. As to all directors of the Baltimore Transit Company, it may be said that there is no evidence that the equipment purchased from the equipment and supply companies could have been obtained from any other source for a lower price than was actually paid. As to the directors of Baltimore Transit who are also connected with National City Lines it may be said that there is no evidence that they deliberately withheld any information from their co-directors or otherwise acted improperly. And as to the directors who are not connected with National City Lines, it may be said that they have shown considerable alertness and knowledge of the affairs of the Baltimore Transit Company; and the Court finds that when they voted in favor of this conversion from street cars to buses and the execution of contracts for tires and buses, they did so of their own free will and accord, and without persuasion or dictation from anyone. So that in so far as the question of fraud or domination is concerned, the Court finds nothing in the evidence which entitles the plaintiffs to relief.



Now, the plaintiffs pass from the allegations of fraud and say that even though the directors acted in entirely good faith they made a mistake which was prejudicial to the vested interests of the stockholders. The mistake to which they refer is more than one in management, for even if the directors exercised erroneous judgment in the performance of their duties, such error would not entitle the stockholders to relief because the Court may not substitute its judgment for that of the directors. The charge of mistake is based upon the contention that the directors did something which was beyond the powers of the corporation itself. The argument is that this present entity which is made up of consolidations and mergers of a myriad of corporations throughout the many years of the existence of the company, was organized and empowered to operate a street railway, and not buses. They say that its vehicles must operate on rails and cannot be free wheel vehicles.

In construing any instrument, the Court must always look to all of the provisions therein contained. The Court cannot construe the meaning of even a single word without taking into consideration all words of that particular instrument. That is elementary. So what was meant by the words used? In argument, counsel referred to the general wording of the various charters of the consolidated corporations. Many of the charters were granted by Acts of the Legislature, and were at times when gasoline motor vehicles were not even dreamed of. But certainly, the main purpose that the company was to perform was mass transportation in the City of Baltimore. It seems to the Court that the nature of the vehicle used for this purpose should be determined in the light of conditions that exist from time to time. This must have been the intent of the incorporators and the legislative bodies which gave the grants, and it would be the natural understanding of persons who have bought stock of the corporation from time to time. To so strictly construe the provisions of the funda-

mental powers of this corporation as to say that it must either operate its vehicles on fixed rails or not operate them at all would, in the opinion of the Court, amount to a failure to use common sense. Trackless trolleys have been used in Baltimore by this company for years; and I daresay that no one has thought for a moment that because trackless trolleys do not run down the streets on rails, the company was acting beyond its powers granted by its charter. Such a construction would mean that if the company wanted to use gasoline motor buses they would have to take off wheels with tires on them and put on wheels similar to those of a trolley car in order to run on rails. So I say that the interests of the stockholders would be defeated rather than advanced by such a construction which would require the company to change the wheels on its buses for no purpose at all except to comply with the strict wording of its charter, and even though such change, according to the evidence in this case, would be detrimental to the stockholders' interests.

In this report which I have before me, 177 S. E. Reporter, 541 at 549, the Supreme Court of South Carolina, in 1934, was dealing with a case not involving the rights of stockholders, it is true, but with powers of the Public Service Commission of that State; that is, whether the Public Service Commission could authorize the use of buses by a transportation company when the express purpose of the company was to give street railway service. In that opinion, the Supreme Court of South Carolina said this:

“The Attorney General further suggests that if the substitution of buses proceeds to the point where the transportation system consists entirely of the bus service and has no street care service, the utility will not then be furnishing any street railway service and would not come within the statute. This seems a strained construction of the statute. The utilities are merely changing the instrumentalities used in

performing their charter duties to furnish transportation. The language of the statute should be construed from a modern viewpoint, and not to prohibit progress in the public interest. The substance, and not the form, should control."

As I said before, that case involved the powers of the Public Service Commission and did not involve the rights of stockholders of a corporation, but the principle announced there, it seems to me, applies to this case also, and is in line, I think, with what I said before, namely, that the natural construction, the reasonable and common sense construction, would be that the provisions as to the nature of the transportation were used secondarily in connection with the primary and overall purpose of the corporation. Also, it is elementary that the substance of an instrument is the important thing, and not the form. So that the conclusion of the Court is that The Baltimore Transit Company does have the corporate power to use buses instead of street cars.

Now, the plaintiffs say that even though the Company has the power, it should not be exercised without submitting the matter to the stockholders. I have been unable to learn from plaintiffs the exact basis upon which they make that contention except their statement that the action of the Board of Directors affects a vested interest of the stockholders, and the corporation, acting through its Board, has not the constitutional right to interfere with such vested rights. Certainly the plaintiffs are correct in saying that if this action disturbs a vested right of the stockholders, the Board of directors are without any authority whatever to deal with it. But, in the opinion of the Court, the action does not affect a vested right. Changes in the amount of the authorized or issued stock of the corporation, and other such matters clearly affect vested rights of a stockholder. But, in the opinion of the court, the question as to whether the instrumentalities of transportation used by

the company shall be changed from street cars to buses is one that is purely economic and managerial. This is a question that requires prudent management involving extensive studies and calculations. Manifestly the stockholders are not qualified to deal with it, and the law does not permit them to do so. The responsibility of stockholders is not the same as that of directors, in spite of the fact that the stockholders are indeed, the owners of the corporation. Directors are given a heavy responsibility due to their legal relationship, which is really a trusteeship, to all the stockholders. A stockholder, in voting for any plan, may do so for many and various reasons. He may have personal reasons which may be good for himself, but very harmful for the company as a whole.

There is no statutory requirement that a matter of this kind should be submitted to the stockholders. The statute covers specifically cases wherein the board of directors act first and then make recommendations to the stockholders who may approve the recommendations upon either a majority or two-thirds vote of each class of stock. The board of directors is the responsible body which must act after study of a proposed project; and, according to the evidence, in this case, numerous studies have been made, not only in the last year but in the last ten or fifteen years on this very subject. So I say, it is for the board of directors to determine whether there is necessity for a change from street cars to buses, which has been virtually demanded by the city authorities. While it is true that the interest of the city cannot supersede the interest of the stockholders, nevertheless the company is guided, from realistic and practical standpoint, by the wishes of the City to a great extent. It is dependent upon the will of the Mayor and City Council in obtaining franchises, and subject to taxation by the City. Also, it is subject to supervision, under the statutes of the State, by the Public Service Commission. So the public attitude is one of the many things

that must be considered in determining the policy that the company should pursue. If the City insist upon a change in the transportation system of the Baltimore Transit Company for the purpose of improving traffic conditions generally, the Board of Directors would naturally give serious consideration to such change, for a failure to make it might result in the operation of a transportation system under public ownership, as is done in some other large cities.

Substantial evidence in the case indicates quite clearly to the Court that a continuation of the fixed rail system of transportation is most likely to result in losses rather than profits, and there is strong evidence indicating that the prospects of profit by operation of the buses are good. The plaintiffs have dwelt upon the loss of \$24,000,000 by the conversion. The Court is unable to say whether this is a real loss, whether it is a book loss, or just what it represents. All that the Court can do is to say that regardless of this amount, actual amount or fictitious amount, if by retaining the property the company is going to lose in the end, certainly the directors cannot be criticized for making the abandonment for the purpose of operating in a way that should be profitable. So the Court finds that the question of conversion was not one which the directors should have submitted to the stockholders.

I believe the last point that the Court should, perhaps, mention is the purchase of equipment and operations in the name of The Baltimore Coach Company instead of The Baltimore Transit Company. In the first place, the Board of Directors of The Baltimore Coach is made up of men connected with The Baltimore Transit Company, and The Baltimore Transit Company holds all of the outstanding stock of The Baltimore Coach Company, making the latter a wholly owned subsidiary of the former.

Under the statutes of the State, a corporation is authorized to purchase stock of other corporations; although, as stated by the plaintiffs, The Baltimore Transit Company would not have the right to purchase stock of another corporation which was in an entirely different kind of business. But that is not the case here, for the two companies are engaged in the same kind of business, that is, public transportation over the streets of Baltimore City and vicinity, unless there is a material distinction between the operation of street cars and buses. And, in the opinion of the Court, such a distinction is not material. In addition to the statutory right to purchase stock in another company, there is in the charter of one of the consolidated companies, The Baltimore Traction Company of Baltimore City, incorporated under the Acts of 1888, Chapter 431, an express right to "subscribe for, purchase, own, hold or sell stocks, bonds and securities of other corporations and to buy, sell, own, deal in real or personal property necessary for the operation of its business and the proper management thereof." So that, in the opinion of the Court, The Baltimore Transit Company had the right to purchase the stock of The Baltimore Coach Company, and the wisdom of such purchase was a matter for determination by the former Company's board of directors.

The final conclusion of the Court is that the allegations of fraud in the bill of complaint have not been proven. On the other hand, there is affirmative evidence of the absence of fraud. It is further concluded that The Baltimore Transit Company has the corporate power to make this conversion from street cars to buses without submitting the matter to its stockholders. And, finally, the plaintiffs have not presented a case which will entitle them to relief under the law, and the bill of complaint must be dismissed.

## JOINT EXHIBIT A.

STIPULATION AS TO CHARTER OF THE  
BALTIMORE TRANSIT COMPANY.

The parties hereto by their respective counsel stipulate and agree as follows:

1. That *United Railway and Electric Company of Baltimore* was formed by the consolidation of *The Baltimore City Passenger Railway Company* and *The Baltimore and Northern Electric Railway Company* by Articles of Agreement of Consolidation, dated March 2, 1899.

2. That *United Railway and Electric Company of Baltimore* by Articles of Agreement of Consolidation, dated March 4, 1899, consolidated with ten other corporations to form THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE.

3. That by Articles of Amendment and Reduction, dated and filed with the State Tax Commission of Maryland on July 9, 1935, the name of *The United Railways and Electric Company of Baltimore* was changed to THE BALTIMORE TRANSIT COMPANY, which latter is one of the Defendant corporations in this cause.

4. That neither the aforesaid Articles of Agreement of Consolidation, dated March 2, 1899, nor the aforesaid Articles of Agreement of Consolidation, dated March 4, 1899, contains any provision with respect to the corporate purposes of *United Railway and Electric Company of Baltimore* or *The United Railways and Electric Company of Baltimore*, respectively, except as set forth in Paragraph 5 of this Stipulation. Various amendments were made to the charter of *The United Railways and Electric Company of Baltimore* subsequent to the aforesaid Articles of Agreement of Consolidation, dated March 4, 1899, to and including the aforesaid Articles of Amendment and Reduction, dated July 9, 1935. None of such

amendments contains any provisions with respect to corporate purposes. Various amendments have been made to the corporate charter since the aforesaid amendment of July 9, 1935, which, among other things, changed the corporate name to The Baltimore Transit Company. None of such amendments contains any provisions with respect to corporate purposes.

5. That Article V of the Articles of Agreement of Consolidation dated March 2, 1899, under which articles the United Railway and Electric Company of Baltimore was formed, reads in full as follows:

#### ARTICLE V.

“Upon, from and after the execution of these articles of agreement of consolidation all and singular the rights, privileges, franchises and immunities of each of the said corporations parties hereto, and all their monies, choses in action and property, real, personal and mixed, shall be taken and deemed transferred to and vested in the said United Railway and Electric Company of Baltimore, the corporation hereby established, without further act or deed; and all property, rights of way, and all and every other interest, and all and every the stocks and bonds of other companies owned or controlled by the parties hereto shall be as effectually the property of the new corporation as they were of the former corporation parties to these presents; and all rights of creditors and all liens upon the property created by either of the said corporations shall be preserved until paid unimpaired notwithstanding said merger and consolidation, and all debts, liabilities and dues of either of the said corporations so merged shall thenceforth attach to the said new corporation and be enforced against it to the same extent and in the same manner as if such debts, liabilities or dues



had been incurred by it. And the said corporations parties hereto shall execute under their corporate seals grants or conveyances unto the said United Railway and Electric Company of Baltimore of the property, rights, privileges, franchises, immunities, stocks, bonds and assets of every description of said corporations if the same shall be requested or required by the said Company.”

That Article V of the Articles of Agreement of Consolidation dated March 4, 1899, whereby The United Railways and Electric Company of Baltimore was formed, reads in full as follows:

#### ARTICLE V.

“Upon, from and after the execution of these Articles of Agreement, all and singular, the rights, privileges, franchises and immunities, of each of the said corporations, parties hereto, and all their moneys, choses in action and property, real, personal and mixed, shall be taken and deemed transferred to, and vested in the said The United Railways and Electric Company of Baltimore, the corporation hereby established, without further act or deed; and all property, rights of way, and all and every other interest, and all and every the stocks and bonds of other companies, owned or controlled by the parties hereto, shall be as effectually the property of the new corporation, as they were of the former corporations, parties to these presents; and all rights, of creditors, and all liens upon the property, created by either of the said corporations, shall be preserved until paid, unimpaired, notwithstanding said merger and consolidation; and all debts, liabilities and dues of any of the said corporations so consolidated, shall thenceforth attach to the said new corporation, and be enforced against it, to the same

extent and in the same manner, as if such debts, liabilities or dues had been incurred by it. And the said corporations parties hereto, shall execute, under their corporate seals, grants or conveyances, unto the said The United Railways and Electric Company of Baltimore of the property, rights, privileges, franchises, immunities, stocks, bonds and assets of every description, of said corporations, if the same shall be requested or required by the said new company."

6. That the attached Appendix A, entitled "Corporate Pedigree", and the attached Appendix B, entitled "The United Railways and Electric Company of Baltimore—Underlying Corporations", together contain a correct statement of the corporate parties to the aforesaid Articles of Agreement of Consolidation of March 2, 1899, and March 4, 1899, respectively, and of the various corporations from which such corporate parties evolved (except that certain corporate names set forth in Appendix B appear in abbreviated form in Appendix A).

7. That The Baltimore Coach Company, one of the Corporate Defendants in this cause, is a Maryland corporation formed by an Agreement of Consolidation, dated December 28, 1926, by and between The Baltimore Transit Company, The City Motor Company, East Fayette Street Bus Company, Incorporated, and The Baltimore Bus Company. The said Agreement of Consolidation contains the following provision:

"1. That the said Corporation shall be consolidated upon the following terms and conditions, to wit: The consolidation shall be effective as of midnight, December thirty-first, 1926, and the corporate powers of the now Corporation shall be those of the said Consolidating Corporations, except that the new Corporation shall not engage in the public transportation of freight or express matter, and the new

Corporation shall acquire and possess all other properties, powers, rights, franchises and privileges of the consolidating Corporation.”

That among the charter powers so acquired by The Baltimore Coach Company (subject to the aforesaid limitation as to freight and express matter) are the following, included in the charter of The Baltimore Transit Company, party to the aforesaid Agreement of Consolidation, dated December 28, 1926, to wit:

“The purpose for which the said corporation is formed and the business or objects to be carried on and promoted by it are to buy, sell, own, operate, trade and exchange automobiles, motor cars and trucks, to transport passengers and freight by automobiles, motor cars or trucks on or over the streets, avenues, alleys and highways of Baltimore City and the roads adjacent thereto, and to receive fares and charges for such transportation services, to hire, let and lease such automobiles, motor cars and trucks, to acquire and hold real estate by purchase or lease, and to erect garages or other buildings thereon, to receive on storage in such garages automobiles, motor cars and trucks, and to let space for the storage of automobiles, motor cars and trucks in said garages, to maintain machine shops for the rebuilding and repair of automobiles, motor cars and trucks.”

8. That The Baltimore Coach Company, one of the Corporate Defendants in this cause, is, and since its incorporation on December 28, 1926, has been, the wholly owned subsidiary of The Baltimore Transit Company, the other Corporate Defendant in this cause.

9. That this Stipulation is made with the understanding that either party shall have the right to call attention to, and introduce evidence in order to correct, any errors in this Stipulation or in Appendix A or Appendix B

hereto attached, including the right to make corrections of any errors discovered after trial for the purpose of the record on appeal.

HERBERT E. WITZ,

Solicitor for Complainants.

VENABLE, BAETJER AND HOWARD,

Solicitors for Defendants.

July 5, 1947.

(Italics denote underscoring in original paper.)

**PLAINTIFFS' EXHIBIT NO. 8**  
**THE BALTIMORE TRANSIT COMPANY**

Statement of miles of track estimated to be abandoned, estimated undepreciated book value of property (including overheads) to be retired and percentage of total Transit Company revenues affected by such abandonment.

Projects #1 & #5 as approved by Public Service Commission and the Remainder of the Plan.

Project Number	Proposed Date of Abandonment	Estimated Miles of Track to be Abandoned		Car Lines Affected	Estimated Retirement Value		Estimated % of Revenues to be Transferred
		Miles	%		Amount	%	
1	June 22, 1947	19.81		#1-11 (east end), #17 & #29 .....	\$ 2,869,905		6.96
5	July 13, "	19.96		#6 Curtis Bay .....	3,382,543		6.40
5	Aug. 3, "	19.50		#20, #15 (west end), #16, #19 (south end), #5 (east end) .....	2,893,565		5.27
5	Sept. 1, "	5.57		#1 (west end) .....	808,685		0.00 (A)
5	Oct. "	12.61		#2, #13 (Wolfe Street)	1,845,024		4.24
Total approved..		77.45	24.84		11,799,722	19.02	22.87
Remainder .....		66.55	21.36		12,188,278	19.65	14.53
Total .....		144.00	46.20		\$23,988,000	38.67	37.40
Total Elec. System .....		311.68	100.00		\$62,026,740	100.00	

(A) Plan comprehends conversion from rail to trackless trolley. Revenues would remain in Transit Company.

Supplement to statement of June 25th, 1947.  
 Auditing Department.

## PLAINTIFFS' EXHIBIT NO. 9

## THE BALTIMORE TRANSIT COMPANY

and The Baltimore Coach Company, a wholly-owned subsidiary

## CONSOLIDATED BALANCE SHEET—DECEMBER 31, 1946

## ASSETS

## CURRENT ASSETS:

Cash .....	\$ 3,768,412.48	
United States Government securities (less portion of Treasury tax notes applied in reduction of the liability for taxes)—at cost, plus accrued interest on tax notes .....	1,283,716.82	
Accounts receivable (less reserve of \$2,583.57) .....	51,241.83	
Materials and supplies—at approximate cost.....	834,563.48	
Interest receivable and accrued.....	4,890.98	
	<hr/>	
TOTAL CURRENT ASSETS.....		\$ 5,942,825.59

## INVESTMENTS AND FUNDS:

Investments in subsidiary companies not consolidated (less reserve of \$70,000.00).....	\$ 89,719.16	
Other investments (less reserves of \$579.00).....	78,000.00	
Sinking fund for debentures—cash deposited with trustee .....	159,905.94	
Deferred maintenance fund — United States Government securities, at cost (see Note E).....	1,718,955.00	
	<hr/>	
TOTAL INVESTED AND FUNDS.....		2,046,580.10

## ROAD AND EQUIPMENT, INCLUDING INTANGIBLES (see Note B)

## Less reserves:

Depreciation and retirements.....	\$14,689,974.31	
Obsolete property .....	2,021,034.14	16,711,008.45
	<hr/>	

ROAD AND EQUIPMENT, LESS RESERVES..... 48,568,118.53

## DEFERRED CHARGES AND UNADJUSTED DEBITS:

Prepaid insurance and taxes.....	\$ 63,950.79	
Temporary emergency construction (see contra).....	68,302.15	
Other deferred charges and unadjusted debits.....	41,873.32	
	<hr/>	

TOTAL DEFERRED CHARGES AND UNADJUSTED DEBITS 174,126.26

TOTAL ..... \$56,731,850.48

**THE BALTIMORE TRANSIT COMPANY**  
and The Baltimore Coach Company, a wholly-owned subsidiary  
**CONSOLIDATED BALANCE SHEET—DECEMBER 31, 1946**

**LIABILITIES**

**CURRENT LIABILITIES:**

Accounts payable .....	\$ 454,260.82
Wages payable and accrued.....	82,465.54
Federal income and excess profits taxes (see Note C).....	\$652,047.18
Less United States Treasury tax notes (at cost, plus accrued interest) to be applied in payment.....	652,047.18
Other taxes payable and accrued.....	430,099.35
Portion of collateral trust notes due within one year..	157,278.00
Other current liabilities.....	24,371.72
<b>TOTAL CURRENT LIABILITIES.....</b>	<b>\$ 1,148,475.43</b>

**FUNDED DEBT:**

Series A Debentures of The Baltimore Transit Company, due July 1, 1975 (interest payable currently if earned and declared; cumulative if not so paid and unconditionally payable when the principal of the debentures becomes due—paid to December 31, 1946):

First 4% debentures—authorized, \$17,000,000.00; retired, \$4,000.00; held in sinking fund, \$5,443, 069.57; held by public.....	\$11,192,753.62
First 5% debentures — authorized, \$6,000,000.00; retired, \$2,000.00; held in sinking fund, \$2,030, 900.00; held by public.....	3,486,200.00
Collateral trust 2% notes payable—\$52,426.00 payable quarterly—(exclusive of \$157,278.00 due within one year, included under current liabilities).....	733,964.00
<b>TOTAL FUNDED DEBT.....</b>	<b>15,412,917.62</b>

**DEFERRED INCOME AND UNADJUSTED CREDITS:**

Tickets and tokens outstanding.....	\$ 152,742.00
Contributions for temporary emergency construction (see contra) .....	68,302.15
Other deferred income and unadjusted credits.....	9,291.00
<b>TOTAL DEFERRED INCOME AND UNADJUSTED CREDITS</b>	<b>230,335.15</b>

**RESERVES:**

Injuries and damages.....	\$ 508,291.74
Deferred maintenance (see Note E).....	3,311,178.85
Special war (see Note F).....	1,700,000.00
Contingencies (see Note G).....	776,000.00
Other reserve .....	19,100.00
<b>TOTAL RESERVES .....</b>	<b>6,314,570.59</b>

**CAPITAL STOCK AND SURPLUS (see Note H):**

Capital stock of The Baltimore Transit Company:	
First 5% preferred stock (partly cumulative after July 1, 1937)—authorized 250,000 shares of \$100.00 par value each: outstanding, 233,427.2325 shares..	\$23,342,723.25
Common stock—authorized, 200,000 shares without par value: outstanding, 169,142.61 shares.....	3,996,688.20
Surplus, per Consolidated Statement of Surplus:	
Capital surplus .....	1,301,308.75
Surplus arising from purchase of debentures for sink- ing fund .....	1,162,616.63
Profit and loss surplus since July 1, 1935.....	3,822,014.86
<b>TOTAL CAPITAL STOCK AND SURPLUS.....</b>	<b>33,625,351.69</b>

**TOTAL .....**

**\$56,731,650.48**

**THE BALTIMORE TRANSIT COMPANY**  
and The Baltimore Coach Company, a wholly-owned subsidiary  
**CONSOLIDATED STATEMENT OF INCOME FOR THE YEARS 1946 AND 1945**

	1946	1945
<b>OPERATING REVENUE:</b>		
Passenger revenue .....	\$23,970,334.90	\$24,132,759.33
Special car and bus revenue.....	47,577.05	32,430.50
Other transportation revenue.....	1,506.32	2,833.43
Total revenue from transportation.....	<u>\$24,019,418.27</u>	<u>\$24,168,023.26</u>
Revenue from other operations.....	173,078.16	155,336.79
<b>TOTAL</b> .....	<u>\$24,192,496.43</u>	<u>\$24,323,360.05</u>
<b>OPERATING EXPENSES:</b>		
Maintenance of way and structures.....	\$ 1,059,182.12	\$ 1,490,235.64
Maintenance of equipment.....	1,994,475.37	2,205,415.09
Maintenance of power.....	30,859.50	52,703.66
Provision for deferred maintenance.....		480,000.00
Total maintenance (see Note E).....	<u>\$ 3,084,516.99</u>	<u>\$ 4,228,354.39</u>
Provision for depreciation and retirements.....	1,914,744.90	1,812,735.71
Total maintenance and provisions for depreciation and retirements .....	<u>\$ 4,999,261.89</u>	<u>\$ 6,041,090.10</u>
Power service, including gasoline and fuel oil for buses	1,841,017.03	1,851,903.43
Conducting transportation .....	8,169,553.94	7,735,741.83
Traffic .....	111,702.05	112,061.19
General and miscellaneous.....	3,151,186.21	3,026,495.56
Transportation for investment-credit.....	*2,966.01	*6,142.02
<b>TOTAL</b> .....	<u>\$18,269,755.11</u>	<u>\$18,761,150.09</u>
<b>TAXES, LICENSES, ETC.:</b>		
Current year:		
Federal income taxes (1945 includes \$135,505.12 for excess profits tax)—(see Note C).....	\$ 528,283.36	\$ 1,273,313.50
State of Maryland income tax.....	19,763.99	44,242.68
Other taxes, licenses, etc.....	1,642,909.46	1,771,756.26
Compromise settlements and net adjustments in the current year which relate entirely or largely to taxes of preceding years (see Note I).....	<u>781,134.84</u>	<u>123,787.34</u>
<b>TOTAL</b> (including compromise settlements and net adjustments entirely or largely applicable to taxes of preceding years)...	<u>\$ 2,972,091.65</u>	<u>\$ 3,213,099.78</u>
<b>TOTAL OPERATING EXPENSES, TAXES, LICENSES, ETC.</b> .....	<u>\$21,241,846.76</u>	<u>\$21,974,249.87</u>
<b>OPERATING INCOME</b> .....	<u>\$ 2,950,649.67</u>	<u>\$ 2,349,110.18</u>
<b>NON-OPERATING INCOME</b> .....	70,583.22	95,461.49
<b>GROSS INCOME</b> .....	<u>\$ 3,021,232.89</u>	<u>\$ 2,444,571.67</u>
<b>INCOME DEDUCTIONS:</b>		
Interest:		
Series A first 4% and 5% debentures.....	\$ 636,546.93	\$ 839,854.42
Series B first 5% debentures (this series was called for redemption during the year 1946).....	15,485.10	46,450.00
Collateral trust 2% notes.....	14,944.73	
Provision for contingencies (see Note G).....	776,000.00	
Other .....	27.73	
<b>TOTAL</b> .....	<u>\$ 1,443,004.49</u>	<u>\$ 886,304.42</u>
<b>NET INCOME, transferred to Profit and Loss Surplus (see Note J)</b> .....	<u>\$ 1,578,228.40</u>	<u>\$ 1,558,267.25</u>
<b>Ratio to Total Operating Revenue:</b>		
Total maintenance .....	12.75%	17.38%
Total maintenance and provision for depreciation and retirements .....	20.66%	24.84%
Total operating expenses.....	75.52%	77.13%
Total operating expenses, taxes, licenses, etc.....	87.80%	90.34%
* Denotes red figures.		



## PLAINTIFFS' EXHIBIT NO. 10

By-Laws of The Baltimore Transit Company:

## ARTICLE VIII.

## Powers and Duties of the Directors.

The Board shall have supervision and control of the management and affairs of the Company, and shall appoint such officers as it shall deem proper for the conduct of the business of the Company, determine their duties and responsibility, fix their compensation, and by a majority vote may remove any officers; in case of removal the salary of such officer shall cease unless otherwise provided by special contract duly authorized by the Board.

## ARTICLE XX.

## Executive and Other Committees.

The Board of Directors shall elect an Executive Committee which shall consist of five Directors or such other number as the Board may from time to time determine to serve during the term of the Board so electing them. Vacancies in the Executive Committee shall be filled by the Board but, during the temporary absence of a member of the Executive Committee, the remaining members may appoint a member of the Board to act in his place. The Chairman of the Executive Committee may be selected from and by the Executive Committee, or the Chairman of the Board of Directors or the President of the Company may be invited to preside at the meetings of the Executive Committee, without, however, having the power to vote unless members thereof.

During the intervals between the meetings of the Board, the Executive Committee shall possess and may exercise all the powers of the Board in such manner as the Executive Committee shall deem best for the interests of the Company in all cases in which specific directions shall not have been given by the Board.

The Executive Committee shall have power to authorize the Treasurer to borrow money from time to time for the uses of the corporation upon its promissory note or notes, but no promissory notes or similar obligations of the corporation shall be issued, nor shall be valid unless signed, countersigned and approved as provided in Article XVI.

The Executive Committee may fix its own rules of procedure and may meet when and as provided by such rules or by resolutions of the Board of Directors; but in every case, the presence of three shall be necessary to constitute a quorum.

Each member of the Executive Committee shall receive compensation at the rate determined by the Board of Directors.

From time to time the Board may appoint any other committee or committees for any purpose or purposes, who shall have such powers as shall be specified in the resolution of appointment.

---

PLAINTIFFS' EXHIBIT NO. 13

THE BALTIMORE TRANSIT COMPANY

Baltimore, Md.

Chas. J. Kuhlmann

Secretary

BALTIMORE COACH COMPANY

The following gentlemen comprise the Board of Directors of the Baltimore Coach Company:

C. M. Gray, J. L. Swope, H. M. Grafton, Charles K. Lord, Adrian Hughes and Chas. J. Kuhlmann.

(Signed) C. J. KUHLMANN,

Secretary.

PLAINTIFF'S EXHIBIT NO. 15.  
 THE BALTIMORE TRANSIT COMPANY  
 Baltimore 2, Maryland

AVERAGE MAX. NUMBER OF VEHICLES OPERATED  
 WEEKDAYS ONLY

	CARS	TRACKLESS TR.	BUSES	TOTAL
1942	825	98	221	1,144
1943	869	115	168	1,152
1944	842	101	142	1,085
1945	798	128	149	1,075
1946	812	101	181	1,094

REVENUE PASSENGERS

1942	162,465,059	25,698,415	35,308,356	223,471,830
1943	203,730,619	32,407,981	31,431,327	267,569,927
1944	199,911,128	32,524,716	30,479,462	262,915,306
1945	195,391,343	32,719,872	31,345,498	259,456,713
1946	185,841,211	33,557,819	37,270,449	256,669,479

TOTAL PASSENGERS

1942	235,903,528	40,068,210	53,523,829	329,495,567
1943	291,441,103	50,136,505	48,164,531	389,742,139
1944	283,711,689	49,904,590	45,952,957	379,569,236
1945	275,091,958	49,306,524	46,649,226	371,047,706
1946	263,482,124	50,079,489	55,451,987	369,013,600

Research Dept. July 2, 1947.

## PLAINTIFFS' EXHIBIT NO. 16

1915 Annual Report of The United Railways and  
Electric Company

(excerpts from pages 12 and 13)

**JITNEY COMPETITION**—The idea of utilizing automobiles for the transportation of passengers for a five-cent fare originated in Los Angeles, California, on July 1, 1914.

The hope of large profits from small investments was so alluring to many individuals that the "craze," as it might be designated, spread rapidly to all sections of the country, with the result that, in a short time, there were thousands of "jitneys" in operation.

\* \* \* \* \*

It would appear that the jitney craze is gradually dying out in other cities as well as in Baltimore. Seventy-one per cent., or 124 of the 175 cities in which they have been in operation have passed ordinances designed to regulate and control this form of transportation. In 62 of the cities where such ordinances were adopted jitneys have declined in numbers ranging from 100 per cent. in 22 cities to 15 per cent. in one other.

Aided by your Company, the City Motor Company and Baltimore Transit Company were organized, which began operations on July 21st and July 25th, respectively—the Motor Company with a line of jitneys over three routes, and the Transit Company with a line of specially designed buses over two routes. For the purpose of ascertaining whether or not this character of transportation was a desirable supplement to electric transportation, as well as bringing the operation of these Companies directly under the control of your Company and thus effecting economy, the stocks of both the Motor Company and Transit Company were acquired by your Company.

(Tr. p. 43):

TESTIMONY

JOSEPH P. HEALY

3700 North Charles Street

a witness of lawful age, produced on behalf of the plaintiffs, having been duly sworn according to law, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Witz:

Q. Mr. Healy, you are a director of The Baltimore Transit Company, are you not? A. Yes, sir.

\* \* \* \* \*

(Tr. p. 52):

Q. Going back to the question of the abandonment losses today, how do you conclude or why do you conclude that it will not affect the stockholders? A. I think because of the prudence of management, I think that during that ten years they were men of vision.

Q. I am not disagreeing with you that the past ten years, the company was operating in a prudent manner, but now we come to a time when you propose to abandon between 40 and 50% of the assets. I want to know why you have concluded that does not affect the stockholders. A. We had plenty of time during that period to build up reserves and adjust ourselves to what was coming ahead. I think every prudent business man does that. We anticipated that there would be a change in the system. We saw it coming along. Most of us saw it come along in Chicago, New York, and other large cities. We saw Baltimore growing and we got a substantial reserve there. We laid aside some cash for it instead of—

Q. Will these reserves offset the loss? A. I think in a special reserve in the reorganization there were some \$13,000,000 plus some other cash reserves.

Q. By "reorganization" what do you mean? A. The reorganization in the courts of July, 1935.

Q. Is it your judgment, then, that a reorganization or recapitalization will be necessary at this time? A. I think that has to be studied. I think it is being studied. I don't think we have reached the stage that I can see now any more than I will be glad to listen to the advise and guidance of others and make a decision on what I consider my own personal judgment.

Q. Mr. Healy, do these losses include the street or trolley car franchises? A. Well, by agreement with the City, those that are affected, naturally there is no need of having the franchises.

Q. Then they are abandoned? A I would say so.

Q. Did you know at the time you voted for this conversion plan what the effect of it would be on the corporate structure or capital structure of the company? A. Oh, unquestionably.

Q. You knew at that time the extent of the losses and so on? A. That was a matter of long discussion. It had been discussed for ten years, anticipating how much it would be and how we would meet it.

Q. Then you, of course, knew that the new franchises and about \$12,000,000 of this new equipment is to be taken in the name of The Baltimore Coach Company? A. Yes, I knew that and steps were taken to probably take care of that. We were not successful at the time being, but a wholly owned subsidiary, in my business experience and others—

(The Court) Mr. Healy, I cannot hear you. If you will keep your head straight, I can hear you.

A. What is the question, sir?

(The Court) I think you have answered it.

Q. Yes, you have answered it. What is the reason for taking this new equipment in the name of The Baltimore Coach Company? A. Well, my memory is that when we started out we took some equipment in the name of the old—we inherited it from the United and some of that equipment was not railway equipment or that had to do with trackless trolleys and other things, some of it was in one company and some was in the other, and to me at least it has always been best to have a clarity of system accounting, and so forth, and as a matter of policy, it was determined, and I rather insisted on part of it because I wanted to see the operations separated as much as they could be because up to then I did not know whether or not the security owners would be best protected on the economic side by buses or otherwise, and I wanted to see the thing all put in one place for further study, and we were advised by very able lawyers that it would not be harmful or affect the franchise. I know nothing about law, sir, but from a business standpoint I have seen it done all my life and worked out successfully.

Q. Going back to the question of losses, I want to ask you this. Have you determined on a new accounting system at this time for the new operation? A. We have talked of that, sir. That is a matter that will come to us through our auditors and with the approval of the Public Service Commission.

Q. But you have not yet formulated any plan? A. It has not been definitely decided; no, sir, it is being considered and delayed because of the importance of not making any mistakes.

\* \* \* \* \*

(Tr. p. 70):

Q. Did you ever suggest to the board, Mr. Healy, this entire plan of conversion and abandonment of perhaps 50% of the street railway property should be proposed

to the stockholders? A. No, I did not. I know that we considered it long over a period of eight or ten years anticipation.

Q. Did you feel that the stockholders were not to be concerned in the matter? A. Oh, greatly concerned. I had a great interest in them.

Q. But you did not feel they should be asked to decide the question themselves? A. No, sir, I did not.

\* \* \* \* \*

(Tr. p. 73):

Q. Now, then, Mr. Healy, under the by-laws of the company which you are familiar with, the executive committee met in the interval between the board meetings, is that correct? A. That's right.

Q. And they determined the policies and management of the company during those intervals, is that right? A. With restrictions.

Q. And they in turn act in the place and stead of the board when the board is not in session? A. Oh, I think that is customary.

Q. It is customary, that is right? A. Yes, they do that; but when they want advice and counsel and further confirmation, they call extra meetings.

\* \* \* \* \*

#### REDIRECT EXAMINATION

(Tr. p. 101):

By Mr. Witz:

Q. Mr. Healy, you failed to tell us why you disposed of your stock in the company? A. Well, I thought as though, and it may be just a personal position or a whim of mine, I felt I could serve very much better if I was not financially interested in it to the extent that I was. I suffered greatly by it.



WALTER F. PERKINS,

114 St. Dunstans Road,

a witness of lawful age, produced on behalf of the plaintiffs, having been first duly sworn according to law, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Witz:

\* \* \* \* \*

(Tr. p. 117):

Q. Mr. Perkins, did you ever suggest to the Board that perhaps this matter of abandonment of almost 50% of the property of the company should be submitted to the stockholders? A. I did not.

Q. Why are the new franchises and new equipment, as you testified before, being taken in the name of The Baltimore Coach Company? A. Under advice of counsel.

Q. What counsel is that? A. Mr. Baetjer.

Q. Was there any reason given for that to satisfy your own judgment in the matter? A. Not that I recall.

\* \* \* \* \*

RE-DIRECT EXAMINATION.

(Tr. p. 150):

Q. Mr. Perkins, how are these \$9,000,000 worth of buses going to be paid for? A. They are going to be paid for by an equipment trust, in which the company pays 20% cash and the rest paid by a syndicate of banks and a refund made to them annually, I think on a ten-year basis by the company, plus interest.

Q. Who is financing them? A. The syndicate of banks.

Q. Who are they? A. The syndicate was headed by the Mercantile Trust Company. I can't tell you who the rest are but I think all of the Baltimore banks.

Q. You are not referring, are you, to a trust agreement that the Mercantile Trust entered into in 1946, are you?  
A. I may or may not be, I don't know.

Q. When was this agreement made with Mercantile?  
A. In 1946.

Q. Are you aware of the fact that that agreement expired on July 1, 1947? A. No, I am not.

Q. This is a copy of the agreement. Is that what you are referring to? A. Yes, I think it is.

Q. That provides that the Mercantile will finance them to the extent of \$2,600,000? A. That's right.

(Mr. Witz) We would like to offer that.

(Paper referred to offered and received in evidence as Plaintiffs' Exhibit 11.)

Q. Now, then, if that agreement expired on July 1st, how are they going to finance the buses from here on in?  
A. I haven't any idea.

Q. That agreement provided for the financing to the extent of \$2,600,000, and you said before that the cost of these buses is going to be \$9,000,000. You don't know how the rest of them are going to be paid for? A. I would assume the same way, on the same basis.

Q. You assume on the same basis? A. Yes. it is very good paper. Plenty banks would like to have it.

Q. Who is putting up the 20% payment on account?  
A. The company.

Q. Which company? A. Transit Company.

Q. The Baltimore Transit Company is putting up the money? A. Yes.

Q. And the buses are being taken in the name of The Baltimore Coach Company? A. I am not sure, Mr. Witz. I can't answer the details of this arrangement.

(Mr. Witz) All right. That is all. Thank you.

---

S. PAGE NELSON,

3901 North Charles Street,

a witness of lawful age, produced on behalf of the plaintiffs, having been first duly sworn according to law, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Witz:

\* \* \* \* \*

(Tr. p. 167):

Q. Mr. Nelson, did you feel at the time the conversion plan was discussed and in view of the fundamental and basic changes to take place in the company, by reason of that plan, that the plan should be submitted to the stockholders? A. The idea never occurred to me.

\* \* \* \* \*

---

C. FRANK REAVIS,

20 Pine Street, New York City, N. Y.,

a witness of lawful age, produced on behalf of the plaintiffs, having been first duly sworn according to law, was examined and testified as follows:

DIRECT EXAMINATION.

(Tr. p. 179):

By Mr. Witz:

Q. Mr. Reavis, you are a practicing attorney of New York City, are you? A. That right.

Q. You are a director of the Baltimore Transit Company, are you not? A. Yes, sir.

\* \* \* \* \*

RE-DIRECT EXAMINATION.

(Tr. p. 237):

By Mr. Witz:

Q. You testified in detail as to the earnings of the Baltimore Transit Company from 1935 on to date and the relationship of the bus operations to the street car operations. Will you please tell us what the net profits of the bus operations were for those years? A. I haven't the figures here.

Q. Did the bus operations for those six years operate at a profit or loss? A. It had operated at a profit more recently. I don't remember anything more than that.

Q. What do you mean by "more recently"? A. Well, in the last five or six years. All I can do is to remember generally. I think I remember a profitable operation of the bus company.

\* \* \* \* \*

---

JOHN L. SWOPE,

110 Longwood Road,

a witness of lawful age, produced on behalf of the plaintiffs, having been first duly sworn according to law, was examined and testified as follows:

RE-DIRECT EXAMINATION.

By Mr. Witz:

(Tr. p. 260):

Q. Mr. Reavis, did not have the figures, and I assume you, as vice-president and treasurer, do have, as to the

bus operation of The Baltimore Transit Company. Can you tell the Court what the net profits of that operation have been for the past ten years? A. I cannot. I haven't those figures.

Q. Can you tell us whether it has been profitable?

A. The bus company is now operating at a profit. Over the past years, some years ago, some years at a profit and some years at a deficit, but I have no figures.

Q. In the last five years has it operated at a profit?

A. I would not like to say that, Mr. Witz, unless I had the figures. It is now operating at a profit.

Q. Do you know the extent of that profit? A. I would not like to make a statement in that respect without consulting the books.

\* \* \* \* \*

---

ADRIAN HUGHES,

a witness of lawful age, produced on behalf of the defendants, having been first duly sworn according to law, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Baetjer:

(Tr. p. 385):

Q. What is your occupation, Mr. Hughes? A. At the present time I am assistant to the president of The Baltimore Transit Company.

Q. What are your duties? A. My duties are to carry out any work that is assigned to me by the president in connection with the general operations of the company.

Q. How long have you been with the Transit Company? A. I have been with the Transit Company since 1914.

\* \* \* \* \*

## RE-CROSS EXAMINATION.

My Mr. Witz:

(Tr. p. 411):

Q. Are you familiar with the revenue on these various lines? A. The revenue received from the various lines?

Q. Yes? A. Yes, I pay attention to it.

Q. Can you state whether the bus operation has been profitable for the past five years? A. I can't say that without refreshing my memory, but you cannot say that any line or any portion of the system is profitable or unprofitable. The system has to operate as a whole. We have some losing lines and some paying lines. We don't discontinue the lines on which we lose and retain those which make a profit. Under the regulations of the Public Service Commission, we have to give service to serve the community as a whole. So there is no significance in whether a given line or given vehicle is profitable or not.

Q. My question was, was the entire bus operation profitable? A. I could not say that without refreshing my memory on it.

Q. Do you have any records here which would show that? A. I think the annual reports would show that.

(Mr. Baetjer) They are all consolidated, are they not, the annual reports?

(The Witness) I think so.

(Mr. Baetjer) Is there an interchange and transfer between buses and street cars just as there is between street cars?

(The Witness) Yes, there is.

Q. (By Mr. Witz) In your opinion as a general matter, can you state whether the bus operation has been profit-

able or not? A. I can't tell you from memory whether the bus operation, taken alone, has been profitable or whether it has not. I don't remember that.

### CROSS-EXAMINATION.

By Mr. Witz:

(Tr. p. 434):

Q. Mr. Hughes, what is the status of the contract of The Baltimore Transit Company with the Consolidated Gas, Electric Light Company as to supplying electricity for the trolley lines, as affected by this abandonment?

A. It has no effect on the contract with the Gas and Electric Company.

Q. Is that a long term contract? A. That was a long term contract, yes.

Q. Is the company relieved under that contract by reason of the abandonment of these lines? A. It buys the power that it needs under that contract.

Q. It does not have to buy a certain amount of power? A. No. The price is based on the amount of power it gets. The entry charge is five mills up to a certain amount, and four mills all over that amount.

Q. Can you stop it altogether? A. There is provision for a minimum demand thereon, 15,000 kilowatts.

Q. For how many years does that run? A. That runs from the date of the contract, which I believe was 1921, for fifty years.

Q. So if the Transit Company should abandon all its railway lines it would still have to pay the Gas Company for electric power? A. It would have to pay a token charge, just a portion of the power. There is a question whether it would have to pay that or not. It might have to pay that minimum charge.

Q. What is that minimum charge? A. I don't recall the figure. I think it is about \$1 per kilowatt per month, I think.

Q. In round figures what would that amount to per year? A. Well, I think if that provision holds of 15,000 kilowatts at \$1 a month, it would be 15,000 times 12.

Q. Does The Baltimore Transit Company have contracts with any other company besides Consolidated?  
A. For electric power?

Q. For electric power? A. No.

Q. That is the sole source of the power then? A. Yes.

---

R. GILMAN SMITH

a witness of lawful age, produced on behalf of the defendants, having been first duly sworn according to law, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Baetjer:

(Tr. p. 414):

Q. What is your occupation, Mr. Smith? A. I am at present partner of the firm of W. C. Gilman and Company, engineers.

Q. How long have you been a partner in that firm?  
A. Since April 1, 1944.

Q. What business is that firm in? A. The firm is a firm of engineers engaged primarily in the making of reports of various types in connection with transit operations, other types of utility operations, that is, electric and gas, and in certain cases for industrial operations, for various purposes; such as independent examinations in connection with refinancing or recapitalization plans



or conditions of property operations and rates for service. In fact, all matters relating to the conduct of businesses of that type.

\* \* \* \* \*

(Tr. p. 417):

Q. \* \* \* Mr. Smith. Were you employed in the spring of 1945 to cooperate with the engineers of The Baltimore Transit Company in making a survey of the property and recommendation to the Board of Directors with respect thereto? A. Yes. Early in the spring of 1944, the firm of W. C. Gilman and Company was employed by The Baltimore Transit Company to review the modernization program which had been under way in Baltimore for several years, for the purpose of securing our recommendations as to the plans which the company had for carrying out further sections of that program.

\* \* \* \* \*

#### CROSS EXAMINATION

By Mr. Witz.

(Tr. p. 431):

\* \* \* \* \*

Q. Mr. Smith, did you study The Baltimore Transit situation from the standpoint of its financial aspect as well as traffic conditions? A. We did.

Q. Now, then, did you determine what the bus operation of Baltimore Transit Company, through The Baltimore Coach Company has been in the past five or ten years? A. I am generally aware of what that has been. We knew in detail or we have known in detail as to that for the past years; yes.

Q. Did you determine or do you know whether that operation has been profitable or not? A. May it please your Honor, the answer to that question cannot be a straight yes or no. The Baltimore Coach Company has operated at a profit during certain of the recent years.

I don't feel that that is at all indicative of what would be the financial results of operation of any of the existing rail lines of the company, if they were converted to motor bus operation.

Q. I did not ask you that. I asked in which years it was profitable and which years it was not, if you know.

A. I cannot recall in detail, but I do know that over the period since 1935, as I recall, The Baltimore Coach Company has had a net income over the entire period.

\* \* \* \* \*

(Tr. p. 432):

Q. Since the year 1935? A. I think that is correct. I do know that it has earned a net income in certain of those years.

Q. How many of those years? A. I cannot say definitely.

(Mr. Witz) Thank you, Mr. Smith.

WILSON C. WARREN and  
ADELAIDE W. WARREN, his wife,  
Appellants,

vs.

E. ROY FITZGERALD,  
C. FRANK REAVIS,  
CLAUDE M. GRAY,  
A. W. SMITH,  
HARRY N. BAETJER,  
J. COOKMAN BOYD, JR.,  
JOHN S. GIBBS, JR.,  
JOSEPH P. HEALY,  
S. PAGE NELSON,  
WALTER F. PERKINS,  
A. H. S. POST,  
JOHN L. SWOPE,  
Being and Constituting the Board  
of Directors of The Baltimore  
Transit Company, and  
THE BALTIMORE TRANSIT  
COMPANY,  
a Maryland Corporation, and  
THE BALTIMORE COACH  
COMPANY,  
a Maryland Corporation, and  
THE MAYOR AND CITY COUNCIL  
OF BALTIMORE,  
Appellees.

IN THE  
**Court of Appeals**

OF MARYLAND

October Term, 1947

No. 108

**Brief and Appendix for The Baltimore Transit  
Company, The Baltimore Coach Company  
and All of the Individual Appellees.**

Respectfully submitted,

VENABLE, BAETJER & HOWARD,

*Solicitors for all Appellees except  
the Mayor and City Council  
of Baltimore.*

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WILSON C. WARREN and  
ADELAIDE W. WARREN, his wife,  
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E. ROY FITZGERALD, et al.,  
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of Directors of The Baltimore  
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IN THE  
**Court of Appeals**

OF MARYLAND

October Term, 1947

No. 108

---

**Brief for The Baltimore Transit Company, The  
Baltimore Coach Company and All of  
the Individual Appellees.**

---

**STATEMENT OF THE CASE**

This appeal is from a decree of the Circuit Court of Baltimore City—Tucker, Judge—passed on the 10th day of July, 1947, dismissing the Bill of Complaint brought by two stockholders of The Baltimore Transit Company against that Company, the members of its Board of Directors and The Baltimore Coach Company, a wholly owned subsidiary of the Transit Company. The relief sought and which is pressed on this appeal was a decree,

- (a) “restraining the said The Baltimore Transit Company and each and all of its said Officers and Directors, agents and employees from pursuing the aforesaid illegal and fraudulent plans of ‘conversion’, whereby the property and assets

of said Company are being transferred to The Baltimore Coach Company, another Maryland Corporation, and many millions of dollars worth of trolley car equipment is to be abandoned."

- (b) "restraining the said The Baltimore Transit Company and each and all of its said Officers and Directors from changing the corporate function of said Company, from that of a local operating street electric railway company to a mere holding company, or substantially a holding company, without having first obtained the authority or approval of the stockholders of said Company, as by law required."

The Complaint recites that upon its application to the Public Service Commission—

"The Baltimore Transit Company was authorized to surrender and abandon electric railway service as operated over certain street railway lines, upon inaugurating motor bus service by The Baltimore Coach Company in substitution for said electric railway service, said abandonments to take place from time to time only as and when said motor bus service in substitution therefor is actually put into operation." (App. pp. 1, 2.)

## POINTS INVOLVED

### I.

The Directors have "without any authority or consent of the stockholders, as required by law, determined to change and 'convert' the corporate function of The Baltimore Transit Company from a local operating street railway company to a mere holding company, holding stock in the said The Baltimore Coach Company," and that such action is beyond their powers.

### II.

" \* \* \* the Directors have acted illegally \* \* \* by attempting to promote the aforesaid 'conversion' and without first calling a meeting of the stockholders of The Baltimore Transit Company, as required by law, where a transfer or exchange of a substantial portion of a corporation's assets is contemplated, or where a change in the corporate function or purpose is contemplated, and for the approval or disapproval of said stockholders." (App. p. 3.)

## STATEMENT OF THE FACTS

### Historical Development of the Bus Operation

The United Railways and Electric Company of Baltimore was organized by certain Articles of Agreement of Consolidation dated March 4, 1899. (App. p. 5.) In 1932, Receivers were appointed for its properties; the receivership was followed by reorganization in the District Court of the United States for the District of Maryland, which terminated in July 1935 (App. p. 55); incident to the reorganization, the name of the



Company was changed by appropriate charter amendment, to The Baltimore Transit Company.

Prior to 1927, The United Railways and Electric Company of Baltimore had acquired all of the capital stock of The Baltimore Coach Company and through this subsidiary, it had become the owner of practically all of the buses operating within Baltimore City and the suburbs (App. pp. 57, 58, 59; Public Service Commission orders—8914 Vol. XVI p. 80; 11209 Vol. XVII p. 291).

The Agreement of Consolidation, dated December 28, 1926, by which The Baltimore Coach Company was formed, provided that the corporate powers of the new corporation should be those of the consolidating corporations, viz: The Baltimore Transit Company, The City Motor Company, East Fayette Street Bus Company, Incorporated, and The Baltimore Bus Company, except that it should not engage in the public transportation of freight or express matter; among the charter powers so acquired by The Baltimore Coach Company were the following:

“The purpose for which the said Corporation is formed and the business or objects to be carried on and promoted by it are to buy, sell, own, operate, trade, and exchange automobiles, motor cars, and trucks, transport passengers and freight by automobiles, motor cars, and trucks on or over the streets, avenues, alleys, and highways of Baltimore City and the roads adjacent thereto, to receive fares and charges for such transportation and services, to hire, let, and lease such automobiles, motor cars, and trucks, to acquire and hold real estate for purchase or lease, and to erect garages or other buildings thereon, to receive on storage in such garages automobiles, motor cars, and trucks, and to let space for the storage of automobiles, motor cars, and trucks in said ga-

rages, and maintain machine shops for the rebuilding of automobiles, motor cars, and trucks.”

From the date of its organization and continuing until the present day, The Baltimore Coach Company has been a wholly owned subsidiary of The United Railway and Electric Company of Baltimore by change of name, The Baltimore Transit Company, one of the defendants in the instant proceeding; and since that date, the date of its organization, viz, December 28, 1926, all bus operations have been conducted exclusively by The Baltimore Coach Company; the operation of trackless trolleys, however, has continued in the parent company and is now being conducted by it.

Prior to 1915, The United Railways and Electric Company of Baltimore, now The Baltimore Transit Company, operated an electric railway system with trolley cars exclusively; in 1915, it commenced the operation of buses. From 1900 to 1920 the number of passengers carried had been increasing about 5% a year; commencing in 1920, there was a recession each year; the Company became alarmed and added bus service in 1922 and 1923 and in 1924 and 1925 and continued so to do until 1932, in which year, in addition to inaugurating new service by bus, two rail lines were converted to bus operation—part of the Reisters-town Road Line and the line running along Eastern Avenue to Back and Middle River. (App. p. 128.) The bus development was suspended during the receivership and subsequent reorganization of The United Railways and Electric Company of Baltimore which extended from January, 1931 to July, 1935, except that the Receivers in 1934 discontinued electric railway service on one line in East Baltimore and substituted motor bus service in lieu thereof.

The District Court engaged the services of a traffic

expert (Charles W. Chase) to advise it in connection with the reorganization. Pertinent extracts from the report of this engineer are incorporated in the Appendix, pages 18 to 31. In its opinion, confirming the Plan, reported in 11 Fed. Supp. page 717, the District Court stated its belief—

“that the plan which the special master embodies in the report indicates a very feasible manner, if not indeed the most feasible manner, in which the imperative rehabilitation and modernization of the company’s service can be accomplished, \* \* \*” and

“most seriously recommends that this plan be adopted by the new company within the time, and in the manner set forth by the special master”

and called attention to the fact that in the report—

“it is proposed that rail operation be restricted as far as possible to the heaviest traffic lines and to those portions of such lines where the traffic is most dense, thereby avoiding initial expenditures in any possible needed extension of the present rail routes, or cost of replacement of their lighter traffic portions; and that, where practicable in the future, trackless trolley or bus service be substituted for all outlying portions of rail routes.”

This report, the testimony shows, was studied by the Directors and the staff in formulating their decisions with respect to the conversion. (App. pp. 75, 76, 77, 132.)

After the termination of the receivership and reorganization, the change to bus operation was renewed; in 1936 additional bus lines were inaugurated to replace the electric line to Halethorpe and to re-

place portions of two other lines; in 1939 the rail line to Westport was discontinued and buses substituted; in 1938 and 1939, two lines were converted from electric cars to trackless trolleys and in 1940 the lines running along Howard Street and the extension thereof were abandoned and trackless trolleys substituted. In all, from the date of the reorganization until 1940, six rail lines were abandoned entirely and portions of four or five other lines were converted to trackless trolley and bus operation. (App. pp. 128, 129.)

In addition, new lines were established around the periphery of the City; these were of necessity, bus lines it being impracticable to extend tracks and overhead structures in the more newly developed suburbs both residential and industrial, for example, the bus line running from Liberty Heights Avenue across 40th Street and over 33rd Street to Erdman Avenue and down Edison Highway to Highlandtown, the lines serving the territory adjacent to the Loch Raven Boulevard, the line running along the Alameda, the lines into the Baltimore Highlands in southwest Baltimore, the line serving Homeland and the developments to the north of Homeland and west of the York Road, the line over the Bath Street Viaduct, and continuing on Fayette Street to the Philadelphia Road and the lines along the Broening Highway and into the industrial development adjacent to Camp Holabird, the plant of the Western Electric Company and the Municipal Airport.

The development of the bus operation is reported at length in the annual reports of the Company for the years 1915, 1923, 1924, 1925, 1926, 1927, 1928, 1929, 1930, 1931, 1937, and again after the conversion was resumed, in the reports for the years 1945 and 1946. (App. pp. 8, 58-68.) In the 1925 report the

Company calls attention to the fact that it owns "all the important bus lines in Baltimore" and that "With the approval of the Public Service Commission of Maryland, the Baltimore Transit Company, (now The Baltimore Coach Company), one of your Company's subsidiaries acquired during the year all of the Buses, property, rights, privileges, franchises, etc., of the East Fayette Street Bus Company, including the Gray Line Sight-seeing franchise." (App. p. 57.)

In the 1926 report, the statement is made that there are only eight single buses still operating in Baltimore which are not controlled by the Company and that they are being operated under old franchises granted before the Public Service Commission ruled that it was to the interest of the public that the transportation system of the City, including electric lines and buses, should be coordinated under one management; (App. p. 59) the Management reported in its 1927 report that "Your Company's bus operating subsidiary, the Baltimore Coach Company, has continued operations during the year on the basis of a co-ordinated system that would best fit the general transportation requirements of the Community. The Baltimore Coach Company now owns 108 buses and 3 Trackless Trolleys". (App. pp. 59, 60.)

In the 1928 report, the statement is made "The Baltimore Coach Company, all of whose capital stock is owned by your Company, now operates one hundred and eight buses and three trackless trolley. \* \* \* The Baltimore Coach Company owns all of the buses operating on regular schedule in Baltimore City with the exception of but eight buses licensed in the early days of bus operation. \* \* \* Plans have been completed for a new garage and a lot on the west side of Taylor Avenue south of Twenty-fifth Street, has

been purchased and graded. This garage will take care of the storage and operation of one hundred and seventy-five (175) buses". (App. pp. 60, 61.)

And in the 1929 report—"The bus service conducted through your subsidiary, the Baltimore Coach Company, has been increased by the addition of three new routes during the past year. Those on Reisters-town Road and Middle River are extensions of car service". (App. p. 62.)

And in the 1937 report—"Mayor Jackson in March, 1934, appointed a traffic commission to make recommendations as to methods of better handling of traffic in the City. This commission after making a detailed and careful study has formulated a comprehensive plan for Baltimore. The City desires to remove the tracks from Howard Street between Madison and Linden Avenues to facilitate traffic when the Howard Street Bridge is opened." It then goes on to report that the Company will replace the service on Howard Street and Linden Avenue with a trackless trolley line and if that turns out to be successful, will convert the Roland Park Line, and then follows the final sentence—"This seems to be the best plan available if we are to comply with the City's request". (App. pp. 63, 64.)

From the date of the termination of the reorganization until the end of 1941, when further conversion of buses was stopped by orders of the Federal Office of Defense Transportation, the number of cars in use had declined from 829 in 1936 to 736 in 1941; the number of buses had increased from 126 to 208 and the number of trackless trolleys from none to 84. More significant, however, was the distribution of passengers carried as between the three types of vehicles; in 1936 there were carried on the cars 111,-

989,474 which increased by the end of 1941 to only 117,898,732, while the number of passengers carried on buses increased from 12,444,494 in 1936 to 23,898,271 in 1941 and during the same period, the number of passengers carried on the trackless trolleys increased from none to 18,253,903. (App. p. 40.)

The conversions were temporarily halted in 1941 on orders of the Office of Defense Transportation passed in the interest of conserving oil and rubber for the war effort. The restrictions were removed in the spring of 1945 (App. pp. 130, 131); the Management resumed its studies of the conversion problem. At that time, April 1, 1945, the Company was operating over 122,193 feet of track, the franchises on which had expired; this track was in a number of locations and the franchises covering it had been granted under 22 separate ordinances; it aggregated approximately 15% of all the track covered by franchises under which the Company was operating and the expired franchises included as those most important, one covering the operation on St. Paul Street from 33rd Street to University Parkway and on University Parkway to Roland Avenue which constitutes a substantial part of the lines the conversion of which was proceeded with on the 22nd of June, 1947; the expired franchises also included one on Garrison Avenue and on Gorsuch Avenue, several on Redwood Street at Howard, Hanover, Sharp and South Streets and a franchise over the Hanover Street Bridge over which the Company operated into the shipbuilding, oil and fertilizer plants in the large industrial area in Fairfield. There were no renewal rights for these franchises so that as to the stretches of track covered by the same, further operation would have depended entirely upon the willingness of the City to extend

or renew the same; refusal by the Company to cooperate with the City officials in their plans for the establishment of one-way streets to relieve the traffic problems of the municipality would have influenced the decision by the City with respect to the renewal of expired franchises. (App. pp. 120-124.)

While the studies were being made, the Chief Engineer of the City in May of 1945, filed his analysis of the traffic conditions and highway requirements with the City; in this report in line with the suggestions that had been made in the Jackson Committee Report, he recommended that—

“Fixed wheel transit lines within the central business district be restricted to a limited number of thoroughfares and such lines, where possible, be limited to operation in one direction on the designated streets”;

that—

“Free wheel traffic on streets within this central zone be directed to streets on which no fixed wheel traffic is carried, and that its movement be restricted to one direction wherever possible”;

and that—

“Fixed wheel traffic on arterial routes be replaced where feasible by bus or trackless trolley operation, or combined with other lines to free more streets for automobile traffic.” (App. p. 35.)

And likewise, while the studies were being made, the Mayor and City Council of Baltimore passed its Resolution No. 481, introduced October 1, 1945, in which it was resolved—



“That The Baltimore Transit Company is urgently requested to study the feasibility and practicality of replacing street cars or fixed wheel traffic with free wheel transportation completely on either Fayette Street or Baltimore Street, for the purpose of facilitating the movement of traffic through the Downtown section.” (App. p. 43.)

The Company's plans were coordinated with the suggestions made in the report of the Chief Engineer and to meet the provisions of said resolution; they were completed and the plan for conversion was finally presented to the Board of Directors at a meeting held November 1, 1945, at which time it was approved and the Management was directed to make the requisite report of the same to the Mayor and City Council of Baltimore and to apply to the Public Service Commission of Maryland for approval and authority to put the plan into effect. (App. pp. 37, 80, 81.)

The development which has been given in outline above, is set out at length in the testimony of the Chief Engineer of the Company. (App. pp. 124-134.)

When the plan was filed with the Public Service Commission, objection was made to the approval of the same, by the Mayor and City Council of Baltimore on the ground that the conversion to bus operation would relieve the Company from certain obligations with respect to paving and maintenance of paving, in consideration of which relief the municipal authorities demanded that some settlement should be made with the City (App. p. 80); also at the same time, the Mayor and City Council of Baltimore under the power granted to it to levy emergency taxes for the years 1946 and 1947, passed an ordinance in December 1945, increasing the tax obligations of the Transit Company (App. p. 80); negotiations were had with the

City with respect to the tax liability and with respect to what changes might be made in its obligations by virtue of the conversion; as a result of the negotiations, a contract was entered into by the Mayor and City Council of Baltimore and the Transit Company under date the 29 day of May, 1946, after the same had been approved and authorized by the Mayor and City Council of Baltimore by Ordinance approved May 16, 1946 (App. p. 46), under the terms of which agreement, the Company was relieved of certain tax and other obligations past and prospective and it agreed that it would prosecute before the Public Service Commission appropriate application for authority to abandon certain car operations and substitute free wheel operations as set forth in the conversion plan presented to the Commission; the City expressed itself as being in favor of the adoption of the program in substance and agreed to support it before the Public Service Commission; in accordance with that contract, the Transit Company paid the City \$2,500,000 and the City agreed that of that amount it would spend \$2,000,000 for the sole purpose of repaving, restoring, maintaining and resurfacing the streets that were involved in the Company's program. (App. pp. 46.) When that contract had been signed, the conversion program was again presented to the Public Service Commission, it having been withdrawn during the pendency of the negotiation with the City, and it was finally approved by order dated October 9th, 1946. (App. p. 139.)

The equipment was contracted for and contracts were let for the remodeling of one of the existing garages and for the erection of two additional garages on land owned by the Company except as to a small additional tract that was bought for one of them. All this was proceeded with in the fall and

winter of 1946. In the meantime, the Mayor and City Council of Baltimore by ordinance approved July 11, 1946, provided that St. Paul Street from Center Street to University Parkway, Charles Street from 29th Street to Fayette Street, Liberty Street from Fayette Street to Saratoga Street and Cathedral Street from Saratoga Street to Mt. Royal Avenue, should be one-way streets. (App. pp. 43, 44.) Before the war, the Transit Company had agreed with the City, on a program with respect to these streets and had expressed its willingness to cooperate by the removal of its cars as soon as war conditions permitted. (App. p. 127.)

The municipality determined to make effective the one-way street program with respect to Calvert Street and St. Paul Street on the 22nd of June, 1947 and arrangements were made by the Transit Company to operate in accordance with these municipal changes. On the 12th of June the instant case was filed; the injunction prayed for was not granted and on the 22nd of June the Transit Company discontinued the operation of cars on those streets and substituted buses in order that the program of the City with respect to St. Paul Street and Calvert Street could be carried forward as planned. No other change was made and all other conversions were halted except that the completion of the garages was proceeded with in accordance with the contracts made in the fall of 1946.

On the 10th of July, 1947, the Bill was dismissed and on the 7th of August the appeal was noticed.

## ARGUMENT

It is submitted that—

There has been no fraud or breach of trust by the Directors and no domination of the Board of Directors by members thereof who are or have been identified with National City Lines, Inc.

The corporate function of the Transit Company is not being converted from an operating company to a holding company; the function of Transit is and remains the mass transportation of passengers.

The Transit Company is not being converted to a holding company. The system is not to be converted from electricity to trackless trolleys and bus. The conversion is to be in part only, in order to establish an integrated system to serve both the City and its environs, which contemplates the use of street cars, buses and trackless trolleys. The conversion constitutes an extension of the change-over which was commenced in 1915, was accelerated after the reorganization in 1936 and has continued steadily since that date except for the interruption due to the wartime restrictions against the use of gasoline and rubber. The electric car operations and trackless trolley operations which will be continued by the Transit Company involve more than half of the total system as to miles, approximately 62% of property values and about 62% of revenues. The Baltimore Coach Company has been since 1926 and is today, a wholly owned subsidiary of the Transit Company; since its organization, it has conducted all of the bus operations; its charter expressly confers the right to operate buses.

The Transit Company has the charter right to operate buses, directly or through its wholly owned subsidiary, The Baltimore Coach Company, by action of its Directors alone. Unless Transit can operate buses, directly or through the Coach Company, it cannot comply with municipal requirements with respect to one-way streets, etc. and will not be able to renew its franchises and it cannot make extensions into new residential and industrial areas to meet the demands of those areas; unless such requirements and demands are met and supplied, the Company cannot continue to function and carry out the purpose for which it was formed.

**The Approval of the Conversion by the Directors Was  
Not Given as the Result of Influence or Domination  
but it Expressed Their Independent Informed  
Judgment**

The record contains no word to support the charges of domination.

Although the allegations of collusion, bad faith and breach of trust made in the Bill of Complaint against the Directors, were abandoned, and although they are entirely without basis and although no effort was made to support these allegations, the Directors are unwilling that they should remain unanswered.

The Directors of the Company who were in office on November 1, 1945, the date on which the meeting was had at which the conversion plan was approved and adopted were: J. Cookman Boyd, Jr., John B. Duvall, E. Roy Fitzgerald, John S. Gibbs, Jr., Joseph P. Healy, S. Page Nelson, Fred A. Nolan, Walter F. Perkins, A. H. S. Post, C. Frank Reavis, A. W. Smith and John L. Swope. All of them, except John B. Duvall, who resigned on January 1, 1945, and Fred A.

Nolan who died on December 12, 1946, have continued to be directors of the Company and they constitute the present board with the addition of Claude M. Gray, the President of the Company, who was elected a Director on November 19, 1946 and Harry N. Baetjer, who was elected a director on April 9, 1947, and except that John L. Swope was not a member of the Board of Directors between November 19, 1946 and February 27, 1947. (App. p. 42.) The plaintiffs called as witnesses, all of the Directors who were such at the time of the hearing in the Lower Court, other than Harry N. Baetjer who did not become a director until eighteen months after the plan of conversion was adopted by the Board of Directors and except John S. Gibbs, Jr. who was ill at the time of the hearing, and A. W. Smith, a resident of Boston, Massachusetts, and except J. Cookman Boyd, Jr., who was called by the defendants; plaintiffs had no other witnesses and sought to prove the allegations of the bill as to fraud, collusion, breach of trust and domination of the Directors solely by the Directors who were so called to testify.

Each Director denied the charges and each of them (except Mr. Gray who became a director subsequent to the adoption of the plan) testified that he approved the plan of conversion and the adoption of the same by the Company and that his vote in favor thereof represented his informed, uncontrolled judgment that it was to the best interest of Transit Company, and each of said directors testified further that no effort had been made to influence his vote with respect to the adoption of the plan or with respect to any other matter concerning the affairs of the Transit Company. (App. pp. 74, 75, 81, 82, 83, 84, 86-89.)

It is to be particularly noted that Mr. Perkins, one of the members of the Executive Committee consisting of himself and Messrs. Post, Reavis, Gray and

Fitzgerald, the last named having been succeeded shortly before the complaint was filed, by Mr. Nelson, President of the Savings Bank of Baltimore, testified that during his term as a member of the Executive Committee, that Committee had never "committed the Company with respect to anything without referring it to the Board."

Three of the Directors, Messrs. Healy, Nelson and Perkins testified at greater length than the others; their testimony is that the plan of conversion represented but a continuation of the conversion that had been recommended at the time of the reorganization of The United Railways and Electric Company in 1935, by the expert employed by the District Court to advise it, that the installation of new or additional service by buses and the substitution of buses and trackless trolleys for electric cars had progressed steadily from the time of the reorganization in 1935, that relevant studies were made during the Spring and Summer of 1945 and that from April, 1945, until the plan was adopted in November, 1945, the changes, substitutions and conversions were discussed at every meeting of the Board of Directors; that the reports made to the Directors advised that if no change were made in the operations and if the rail lines were continued, the Company faced an operating deficit after the war; that if appropriate changes were made to convert to free-wheel operations, such of the lines as in the opinion of the experts could be best operated with that type of vehicle, it was estimated there would be a substantial operating profit each year; they testified further of the negotiations with the City Officials in an effort to collaborate with them in establishing one-way streets and thereby and by the removal of a part of the rail operation from other streets, assist in the solution of the pressing traffic

problems of the City: finally that the proposed conversion did not represent a change of operating policy but a continuation of what had been done steadily from the date of the reorganization until it was suspended during the war, although it was greater in degree than it had been during any other like period; and finally, they testified that it was not proposed to convert the system as an entirety but to change the operation only in part, to free-wheel vehicles. (App. pp. 75-80, 86-89.)

No testimony was introduced by the Plaintiffs with respect to the domination of the Board of Directors except the testimony of the Directors. There was no evidence upon which to base the charges of domination of the members of the Board, by representatives of the National City Lines and no evidence was introduced from which a suggestion could be made that the approval of the conversion program by the Directors did not represent the exercise by them of their free will and did not represent their judgment that it was to the interest of The Transit Company as well as to the interest of the City that the conversion be made; there was no attempt made to prove the allegations impugning the integrity and the capacity of the Directors.

Not only did all of the testimony, of all the witnesses, deny that there has been any domination or attempted domination of the Directors by the representatives of National City Lines, but the testimony and the documentary evidence introduced does not support the conclusions drawn by the plaintiffs from the facts therein stated and on which the charges of collusion, domination and fraud are based; these allegations are:

that National City Lines owns 29.14% of the Preferred Stock and 21.02% of the Common Stock of the



Transit Company, E. Roy Fitzgerald and C. Frank Reavis are Directors of National City Lines, the former being its President and the latter one of its counsel, and Claude M. Gray was for some years before his connection with the Transit Company, in the employ of what are referred to as the Fitzgerald interests; they constituted three of five members of the Executive Committee of the Board of Directors of the Transit Company until Mr. Fitzgerald was succeeded by Mr. S. Page Nelson shortly before the hearing in the Circuit Court, and they constitute three of the twelve members of that Board;

that "it is the policy of National City Lines, Inc. to have the operating companies provide local transportation service by motor buses wherever possible";

that National City Lines, Inc. was furnished capital by General Motors Corporation, Firestone Tire and Rubber Company, Phillips Petroleum Company, Mack Manufacturing Corporation, Standard Oil Company of California and Federal Engineering Corporation, and agreed with them that it and its subsidiaries would purchase and cause their operating companies to purchase substantially all of their requirements of tires, tubes, petroleum products and buses from said supplier corporations "and that the capital made available by the said supplier corporations had been utilized by National City Lines, Inc. to secure the control of or a financial interest in local transit systems when the securing of such control or interest in said local transit systems would furnish an additional market for the products of these supplier corporations and further the sale of their products";

that National City Lines, Inc. and its local operating companies, including The Transit Company will not buy supplies and equipment except from said supplier corporations; and finally that the relations be-

tween National City Lines, Inc. and said supplier corporations is under attack by the Federal Government as being violative of the Sherman Anti-Trust Act.

The record shows the following to be the fact:

All of the contracts between National City Lines, Inc. and said supplier corporations were submitted at the hearing, Plaintiffs introduced only two of them, viz, the contract with Firestone Tire and Rubber Company and the contract with General Motors Corporation (Yellow Truck and Coach Manufacturing Division).

The testimony which is uncontradicted, shows that when application was made to the Public Service Commission of Maryland for authority to purchase stock of The Transit Company, copies of the so-called supplier contracts were filed with it; that the contracts with Phillips Petroleum Company, Standard Oil Company of California (Federal Engineering Corporation) are not applicable to Baltimore, by their terms; and that the contracts with General Motors Corporation, Firestone Tire and Rubber Company and Mack Manufacturing Company, it was expressly agreed, should not be applicable to Baltimore, these agreements were filed with the Public Service Commission and copies were filed in the instant proceeding as Defendants' Exhibits No. 4 and 5. (App. pp. 32, 33, 34, 110, 111.)

The Record further shows that of the above-named Companies, Transit has made contracts only with Firestone Tire and Rubber Company and at a price less than the price which was being currently paid to a competitor and with General Motors Corporation (Yellow Truck and Coach Manufacturing Company); that since the purchase of the stock of Transit by National City Lines, the Transit Company has bought buses from Ford Motor Company, from the General Motors Corporation and from the A. C. F. Brill Company and

that the cost of the buses purchased from the last named Company, A. C. F. Brill Company, was in excess of the price paid for the buses purchased from General Motors and that it purchases its requirements of oil and gasoline from Sherwood Bros. and The Texas Company; that neither the Ford Motor Company, Sherwood Bros., The Texas Company or the A. C. F. Brill Company has any connection with any of the said supplier corporations. (App. pp. 97, 103, 104, 106.)

Finally in answer to the statement that it was the policy of National City Lines to have operating companies owned or controlled by it provide local transportation service by motor buses wherever possible, the testimony is this:

Mr. Fitzgerald confirming the statement in his answer: that it is the policy of National City Lines, Inc, "to cause certain of its operating companies in cities of smaller population to convert entirely to bus operations and in larger cities in which the National City Lines has an interest in the transit systems, it is its policy to have a diversified operation of some trolley cars, some buses and some trolley buses", that the "smaller cities" "are cities of gross business under \$2,000,000, those cities are all bus operation except one"; that since National City Lines had bought its interest in the St. Louis property that company had received about 1,000 street cars and about 500 buses. (App. pp. 108-111.)

There were eleven directors of Transit on November 1, 1945, on which date the Plan of Conversion that has been objected to was unanimously adopted after full and repeated consideration by its directors (App. pp. 75, 76, 103). Fitzgerald was not present at that meeting (App. p. 108) one of the Directors, Duvall, resigned on January 1, 1946 and one of the Directors,

Nolan died in December of 1945 and was succeeded by Gray.

Finally, domination if not wrongfully applied or applied to induce a wrongful act, does not imply impropriety and all of the evidence is to the effect that the conversion proposed will be beneficial to the Company. Moreover, the domination is charged to Fitzgerald and Reavis—Gray did not become a Director until after the conversion plan had been adopted.

Fitzgerald and his family own approximately 22% of the common stock of National City Lines; Reavis owns 3,000 shares of the common stock of that Company. Fitzgerald and Reavis, are Directors of National City Lines, Inc.; National City Lines, Inc., owns 29.14% of the preferred stock and 21.02% of the common stock of Transit, being much the largest stockholder of the Company. (App. p. 89.) A successful operation by Transit must be of concern to them; nevertheless, they are charged with having dominated the other eight Directors to a course of action which it is alleged did not represent the judgment of those other Directors and which it is alleged, was not an expression of their free-will and it is charged that this course of action was influenced by Fitzgerald and Reavis in order that Transit might become a customer for the so-called supplier corporations; in short, that Fitzgerald and Reavis influenced a course of action by Transit that in their judgment and in the judgment of the other Directors was not in the best interests of Transit, notwithstanding the personal interest of Fitzgerald and Reavis in National City Lines and National City's large interest in Transit; the charge is fantastic.

**The corporate function of the Transit Company, the mass transportation of passengers, is not being changed.**

The business of the Transit Company is the mass transportation of passengers on the streets and highways in the City of Baltimore and its environs. When the original charters of the constituent companies were granted, out of which the charter powers of the Transit Company evolved, the method used to transport passengers was horse drawn vehicles operated on tracks. When horses as the means of power became outmoded, first cables were used and subsequently electric power, that is, first the motive power was changed and now in order to keep abreast of the art, the remaining component parts by which the original operation was carried on, namely, the car to a degree and the track, must be abandoned or the operation must be given up, the business for which the Company was incorporated must be turned over to others and its property including cars, tracks, overhead structures and in effect its franchises, must be disposed of for what can be only scrap value.

In order that the transportation of passengers can be carried on, the method of operation must conform to municipal requirements and to the demands of the public upon which the Company depends for the continuance of its business. Manifestly, as the periphery of the City is extended, new industrial and residential areas come into being; tracks and overhead construction cannot be extended into such areas both because they are unsightly and because as the density of population and industrial development decreases as it does in the growth of a modern city, the cost of such extensions by reason of the disproportionate increase in track and overhead structures to the population of the locality to be served, would be prohibitive.

However, the business must be operated as an integrated system; it is not feasible to carry on an electrical railroad operation in the city proper by one company and a bus operation in the environs of the city, by another; duplication of costs and service would be prohibitive; there must be universality of transfers as has existed in the case of the transportation facilities in the City of Baltimore and its environs since 1935 when the universal transfer system between buses, trackless trolleys and cars was established, and there must be a minimum of transfers and a maximum of through routes: this can be accomplished only when the mass transportation of passengers in the city and its environs is conducted by a single company; manifestly, transportation in the environs cannot be by electric cars.

If transportation by trolley with its track and overhead structures cannot be extended to meet the changing conditions of the demand, then unless the Transit Company can augment and amplify its electric trolley car transportation system, with bus service where trolley service is not practicable, it can no longer carry on the business for which it was organized. No artificial limitation on the method of carrying on its business can prevail if such limitation will destroy its ability to carry on the business for which it was incorporated and result in the disintegration of the system. Plaintiffs insist that the proposed conversion involves a change in corporate powers requiring an amendment of the charter; if this were true, a change, which is essential to the continued existence of the Company which it is submitted is involved in the conversion now proposed, could be prevented by the holders of one share more than one-third of either class of stock. Inherent powers or powers the exercise of

which are necessary to the continued existence of the Company, cannot be so denied.

By a proper construction of its charter powers as those charter powers have been used and construed since 1915, Transit has the right to operate buses and tractless trolleys either in its own name or in the name of the Coach Company.

**Transit Company is not being converted to a holding company; the electric car operations and trackless trolley operations will be continued by the Transit Company; these involve more than half of the total system as to miles, approximately 62% of property values and about 62% of the revenues.**

The entire conversion proposed involves the substitution of free-wheel vehicles for electric trolley cars on lines the revenues of which aggregate 37.40% of all of the revenues of Transit from all types of operations, and the abandonment of property having an undepreciated book value of \$23,988,000 which is 38.67% of the undepreciated book value (\$62,026,740) of the entire property (Appellants App. pp. 22, 41, 131, 132) including overheads of about \$9,000,000. For Federal income tax purposes, this value has been depreciated from year to year by the amount of depreciation that has been taken to reduce income subject to tax and now has a value for Federal tax purposes of approximately \$4,000,000 only, and it is obsolete and must be replaced, to a large extent (App. pp. 78, 95, 96, 99, 100, 103).

However, the conversion which the Public Service Commission has approved, provides for the substitution of buses for electric cars on lines having an aggregate mileage of 24.84% of the total mileage, of its system, and the aggregate revenues of which

are only 22.87% of the total revenues of Transit and the properties to be abandoned in accordance with the conversion approved by the Commission, have an aggregate undepreciated book value including overheads, of \$11,799,722 which is 19.02% of the undepreciated book value of all of the Transit properties (App. pp. 41, 131, 132); moreover, after the conversion plan was approved, it was determined, upon further study, to substitute trackless trolleys for buses on two of the lines to be converted; all trackless trolleys are operated by the Transit Company and not by the Coach Company so that with this change, the amount of property to be abandoned and the percentage of revenues now attributable to electric railway operation, which will be converted to bus operations, will be correspondingly lessened. The changes in those two lines to trackless trolleys instead of buses has been but recently determined upon, in the case of one of them the permission to make the change was still pending before the Commission at the time of the hearing in the Lower Court and the studies had not at that time been completed showing how much less property will be abandoned by reason of the conversion of these lines to trackless trolley rather than to bus operation and how much revenue is involved. With these changes, however, the percentage of book value of the property to be retired, to the undepreciated book value of all of the property including overheads and the percentage of revenue to be converted from transit to bus will be decreased below the amounts stated above and shown in Plaintiffs' Exhibit No. 8 and Defendants' Exhibit No. 12. Appellants' App. p. 22 and App. pp. 41, 131, 132, 134.)



Of the total abandonment, Transit had no choice as to a great deal of it, for instance, the transfer of the Calvert and St. Paul Street lines was made because of the establishment of those two thoroughfares as one-way streets; this required the abandonment of operation over them and these lines represented 6.96% of the total maximum transfer of 37.40% of revenues involved; likewise the abandonment of the Madison Avenue, the Druid Hill Avenue and the Reisterstown Road lines are to be made because of the establishment of McCulloh Street and Druid Hill Avenue as one-way streets and it is reasonable to assume that with the establishment of the express ways now in contemplation and the changes now proposed to be made in the handling of traffic on Lombard Street and Pratt Street according to the daily press, other changes in operation by the Transit Company requiring the elimination of rail lines, will be imperatively demanded by the municipal authorities and these demands will have to be met. Operation of buses through the Coach Company reflects only the recognition of the fact that electrical railroad transportation cannot be carried on, if at all, in the light of existing traffic conditions unless it be supplemented or coordinated with operation by buses and thereby an integrated system be maintained.

**Transit has the charter right to operate buses directly or through its wholly owned subsidiary, The Baltimore Coach Company.**

The Baltimore Transit Company was formed by consolidation in 1899; at that time neither gasoline propelled buses nor trolley coaches had been used as vehicles for the operation of a transportation system; no reference is made in the charter of the Transit

Company or in the charters of its constituent or predecessor companies, to the use of either such type of vehicle in carrying on their businesses. Subsequent to the period when omnibuses were in use and at the time the charters of the predecessor companies were granted, highways were so constructed that conveyances for the transport of large numbers of people could not be operated over them without tracks and it was for that reason, it is submitted, that many of the charters expressly accord the right to lay tracks, single and double and thus preempt a part of the highway. The grant was not a restriction requiring the operation over tracks but an additional express grant to lay tracks in the public streets, which might not be necessarily implied in the grant of a right to operate a railway. To this grant of express power to lay tracks, there was also added in many of the charters, the right to use such motive power as might be found most advantageous and in many of the charters there was a general power to do whatever might be necessary to the full exercise of the granted powers, for example—

(1) The Baltimore and Northern Electric Railway Company, one of the parties to the consolidation agreement of March 2, 1899, was incorporated under the name "Electric Light and Railway Company of Baltimore County", by Chapter 477 of the Acts of 1892; by Section 6 thereof, it was empowered to establish and operate "lines of electric railway" in Baltimore City. By Section 2 it was given the power—

"generally to do and perform all such acts and make such agreements and contracts as may be necessary for the purposes of its business."

By Chapter 337 of the Acts of 1896, the corporate name was changed to "The Baltimore and Northern

Electric Railway Company” and it was granted the power to operate its railway—

“with the right to use as a means of traction for its said cars, electricity, cable, compressed air or other improved motive power (excepting steam).”

(2) Another party to the agreement of consolidation of March 2, 1899, was The Baltimore City Passenger Railway Company which was incorporated by Chapter 71 of the Acts of 1861 for the purpose (Section 3) of operating “passenger railways” in the streets of Baltimore City; by Section 1 of that Act, it was authorized—

“in general to have and exercise all such other corporate powers and facilities as may be necessary and proper to effectuate the purpose of this Act.”

The charter of this Company (The Baltimore City Passenger Railway Company) was amended by Chapter 271 of the Acts of 1890, and the amendment empowered the Company—

“to use upon all or any of its railway tracks in the City of Baltimore and upon any suburban railways of the said company, any cable system or other system of propulsion by means of stationary engines, any pneumatic motors, stored electricity motors and any motive power and means of traction which the Mayor and City Council of Baltimore may sanction, or which shall be authorized to be made use of in the City of Baltimore by any other corporation exercising street railway franchises therein.”

The charters of some of the companies expressly

authorize the conduct of the street railway business and any other business that might be connected therewith or the conduct of which might enure to the well-being of the corporation, for example, the charter of The Baltimore Traction Company which was incorporated by Chapter 431 of the Acts of 1888, authorized it to—

“own and operate cable or other street railways and deal generally in such railways and rolling stock,”

and to

“transact any and all business of whatever nature that may be connected therewith or incidental thereto.”

and it was given express authority by Section 9 of the charter—

“to subscribe for, purchase, own, hold and sell stocks, bonds and securities of other corporations, and to buy, sell, own and deal in any real or personal property necessary for the proper promotion of its business and the proper management thereof.”

To the same effect is the charter of the Baltimore, Calverton and Powhatan Railroad Company, one of the predecessor companies, incorporated by Chapter 469 of the Laws of 1870, which was given the right to—

“generally do all and singular, the matters and things and exercise all the rights, powers and privileges which may properly appertain for the well-being, and ordering of said corporation.”

All of the powers and rights of the predecessor corporations or constituent companies, of course, passed

to the consolidated company (Acts of 1888, Chapter 431).

It is significant that in the earlier charters, the right was to operate by "horse power" as in the case of the charter of the Baltimore and Hall's Springs Railway Company (Acts of 1870, Chapter 444) and the charter of the Baltimore, Hampden and Lake Roland Railroad Company (Acts of 1872, Chapter 284) and that in many of the earlier acts, the motive power to be used was not specified as in the case of the charters of the Baltimore City Passenger Railway Company (Acts of 1861, Chapter 71) and of the Baltimore Union Passenger Railway Company (Acts of 1882, Chapter 47), the Citizens Railway Company of Baltimore City (Acts of 1874, Chapter 38) and that of the Baltimore & Yorktown Turnpike Road Company (Acts of 1862, Chapter 39).

The intent of the charters was to grant the right to operate a public conveyance to transport passengers on streets and if necessary to install rails to that end and to use whatever motive power might from time to time be most appropriate for the carrying on of the chartered business. It is submitted that such intent persists as the art advances.

**Right reserved to amend and the exercise of that right.**

If it be conceded, arguendo, that the charter powers of the Transit Company do not accord in terms the right to operate buses as a part of its system, either in its name or through its wholly owned subsidiary, The Baltimore Coach Company, the right so to do is—

(a) found in the reserved right of the State to amend its charter and the exercise of that right through the Public Service Commission;

(b) is implied as essential to the exercise of the express powers granted.

The right of the State to amend charters is reserved in the Constitution, Article III, Section 48, which provides that—

“All charters granted or adopted in pursuance of this section, and all charters heretofore granted and created subject to repeal or modification, may be altered from time to time, or be repealed, \* \* \*”.

and by Article 23, Section 135 of the Code which provides that—

“Every corporation formed under the provisions of this Article shall be subject to any and all provisions and regulations which may hereafter, by any change in or amendments of the laws of this State, be made applicable to such corporation.”

The provisions of the Public Service Commission law implementing the reserved powers are Article 23, Sections 381, 389, 394.

Section 381 provides—

“If, in the judgment of the Commission, repairs or improvements to or changes in any tracks, switches, terminals or terminal facilities, stations, motive power, or any other property, construction apparatus, equipment, facilities or device used by any common carrier railroad corporation or street railroad corporation in or in connection with the transportation of passengers, freight or property, ought reasonably to be made, \* \* \*, in order to secure adequate service or facilities for the transportation of passengers, \* \* \*, the Commission shall, \* \* \* make \* \* \* an order directing such repairs, improvements, changes or additions

to be made \* \* \* and every common carrier, or other such corporation subject to the provisions of this sub-title, is hereby required and directed to make all repairs, improvements, changes and additions required of it by any order of the Commission served upon it.”

Section 389 provides that street railroad corporations shall not abandon any franchise without the approval of the Commission, and Section 394 is an express requirement that corporations subject to its jurisdiction, shall observe and comply with every order made by the Commission.

The requirement of Section 381, that action by the Commission be taken after a hearing “either on its own motion or after complaint” does not qualify any finding that it may make after hearing although had upon the initiative of the carrier; the finding expresses the conclusions of the Commission.

Beginning in 1922, the Commission has repeatedly authorized the abandonment of rail service and the substitution for the same, of service by motor bus and trolley bus and has recognized, approved and authorized the acquisition and holding by Transit of the capital stock of companies chartered so to do and which were at the time of such authorization, engaged exclusively in the transportation of passengers by bus, viz:

Order 6986, June 30, 1922 (Vol. XIII, p. 167)—On petition of The United Railways and Electric Company of Baltimore, The Baltimore Transit Company, a subsidiary of The United Railways and Electric Company of Baltimore, was authorized to operate motor vehicles for the transportation of passengers at certain locations.

Order 7479, February 12, 1923 (Vol. XIV, p. 41)—Accorded to The United Railways and Electric Com-

pany of Baltimore the right to operate trackless trolleys from the corporate limits of Baltimore City along the Liberty Road to a terminus in Baltimore County.

Order 8914, March 31, 1925 (Vol. XVI, p. 80)—After holding that it was—

“the opinion and finding of the Commission, after due hearing, that the acquisition by the said The United Railways and Electric Company of Baltimore of the outstanding capital stock of the said East Fayette Street Bus Company, Incorporated, \* \* \*, will be lawful and proper,”

approved the application of The United Railways and Electric Company of Baltimore to purchase the stock of the East Fayette Street Bus Company, Incorporated, for \$200,000.

Order 11209, December 28, 1926 (Vol. XVII, p. 291)—Approved the consolidation of The Baltimore Transit Company, The City Motor Company and two other bus companies to form The Baltimore Coach Company and the transfer to the consolidated company (The Baltimore Coach Company) of all the franchises, rights and privileges of the several constituent companies; and approved the sale by The Baltimore Coach Company of all of its capital stock to and the purchase of the same by The United Railways and Electric Company of Baltimore.

Order 25159, May 2, 1934 (Vol. XXV, p. 118)—Authorized the Receivers of The United Railways and Electric Company of Baltimore to discontinue certain electric railway service and to establish in lieu thereof, motor bus service.

Orders 33425, September 28, 1938 (Vol. XXIX, p. 158), and 34831, October 26, 1939 (Vol. XXX, p. 211), both of which authorized certain substitutions by The Baltimore Transit Company, the existing company, of trolley bus service for electric rail service.



Order 42685, October 9, 1946 (Not Reported—App. p. 140), pursuant to which the projected conversion is proposed to be made; this order—

(1) authorized the Transit Company to abandon electric railway service over certain lines upon the inauguration of motor bus service by The Baltimore Coach Company in substitution for the same; and

(2) granted the application of the Transit Company for a permit to its subsidiary, The Baltimore Coach Company, to operate motor vehicles in substitution for electric railway service on certain streets and highways.

It is true that this Order 42685 recites that the Company had applied for authority to convert and in many places the order merely “authorizes” the steps incident thereto; but it contains the Commission’s finding —

“that the present and future public convenience and necessity permit the surrender and abandonment of the electric service franchises, easements and rights of way \* \* \*, and that the public welfare and convenience require the granting of a permit to The Baltimore Coach Company for the operation of motor vehicles for use in the public transportation of passengers for hire \* \* \*;”

in the manner contemplated by the plan, and finally it orders—

“That The Baltimore Transit Company be, and it is hereby, authorized to surrender and abandon electric railway service, franchises, easements and rights of way, as and when service by motor buses has been substituted therefor in accordance with the provisions of this Order,”

over the streets therein designated and it grants the application of the Transit Company for a permit to its subsidiary according to it—

“the right to operate motor vheicles for use in the public transportation of passengers for hire on the streets and highways listed”

in the order.

If the Commission's order cannot be said to direct the conversion, nevertheless the Commission's finding that “the public welfare and convenience require”, a permit to operate the new bus lines is in substance the finding which under Article 23, Section 381, makes it mandatory on the Commission to direct the conversion. The Commission's failure to use the word “direct” throughout the order should not defeat the statute.

If the Commission has directed the conversion, then the State, through the Commission, has exercised not only its police power to regulate public utility operations, but also its reserved power to amend or construe the Transit Company charter powers to include bus operation.

Although Section 381 operates only upon a specified finding by the Public Service Commission, it is mandatory. The purpose of Section 381 to require adequate public utility service is defeated unless it is construed to be in part an exercise of the State's reserved power, completely effected without stockholders' action when the Commission, as in the instant case, makes the finding prescribed by statute.

*Denny v. Brady*, 163 N. E. 489 (Ind. 1928)—In this case a new statute passed under the State's reserved power to amend charters, extended the corporate power of street railways to include bus operations;

the Court held the amendment effective to authorize the added purpose, without any charter amendment by stockholders and in the opinion said as to the new statute, that it—

“actually construes the powers already granted to all such companies to include that purpose. Such added power does not change or affect the fundamental purpose of the corporation, but it is auxiliary thereto.”

A change in corporate powers to promote public interest should be held within the State’s reserved power. In *State v. Northern Central Railway*, 44 Md. 131 (1876), the Court upheld the repeal of a tax exemption contained in a railroad’s charter. The Court said as to the State’s reserved power (see p. 164):

“The object of this provision in the Constitution of 1850, was to preserve to the State, control over its contracts with corporations, and to prevent the grant of corporate powers beyond the interference of the Legislature, should the public interests at any time require such interference. It constituted therefore a condition upon which every charter was granted and held, and qualified to that extent, the contract between the State and the corporators.”

And in *Miller v. Tennessee Electric Power Co.*, 34 PUR (NS) 409, the Commission, in approving the City of Nashville bus conversion, recognized the State’s right, under its reserved power, to amend all street railway charters to authorize bus operations.

In *Re International Railway Co.*, 275 N. Y. S. 5, 8 (1934), involving the conversion of lines in Buffalo, N. Y., although the principal question was whether a new franchise was necessary to operate the buses,

the Court pointed out that, like Maryland Sec. 381, Sec. 50-a of the New York Public Service Law (see p. 8)—

“empowers the Public Service Commission, if convinced that public interest will be served, upon the application of any street railroad corporation, to authorize the substitution of motor busses for cars upon tracks and the operation of motor busses supplemental thereto. \* \* \*”

Apparently no charter power question was raised in this case.

The reserved power might not support an amendment reducing fundamental powers or rights of a corporation or its stockholders but in the instant case, if the right to operate buses was not originally expressed in or properly to be implied from the provisions of the charters of the predecessor companies, the amendment is certainly not fundamental (see 13 Fletcher, Corporations (1932) 73-6).

In *Miller v. Tennessee Electric Power Co.* (cited supra), 34 PUR (NS) 409 (Tenn. P. Ut. C. 1940), the Commission reviewed the cases of *Columbia v. Pearman*, 185 S. E. 747 (S. C. 1936), on the Columbia, S. C., conversion, and *International Railroad* (cited supra), 275 N. Y. S. 5 (1934) on the Buffalo conversion, and concluded (see p. 420)—

“Thus it will be seen that while the transition from street car operation to motor bus operation has been attended by difficulty in other parts of the country, the tendency has clearly been for the courts of last resort to sweep aside the impediments which would prevent a necessary program of modernization, even though this means in effect the reforming of regulatory statutes, solemn charters granted by the State, and franchises in so many words applicable to the situation. \* \* \*”

In the *International* case on the Buffalo conversion, the Court held the conversion involved no new franchise, but (see p. 8)—

“rather a modification of the old franchise permitting a change in the method of operation \* \* \* the supplemental lines are incidental to the present system, making the entire plan a single project. All cities in the State have the same problem as Buffalo concerning the change from cars on tracks to buses. \* \* \*”

In *Columbia v. Tatum*, 177 S. E. 541 (S. C. 1934), the Lower Court’s “Decree”, which was adopted by the Supreme Court of South Carolina, said (see p. 549)—

“This seems a strained construction of the statute. The utilities are merely changing the instrumentalities used in performing their charter duties to furnish transportation. The language of the statute should be construed from a modern viewpoint, and not to prohibit progress in the public interest. The substance, and not the form, should control.”

In *Columbia v. Pearman*, 185 S. E. 747 (S. C. 1936), the Lower Court’s “Decree”, which the Supreme Court of South Carolina ordered published with its opinion, said (see p. 750):

“What has already been said shows that the Supreme Court in the Street Car Case considered that the power company would continue to be rendering ‘street railway service’, within the meaning of Sections 8252-8255, although it might use buses as a means or instrumentalities therefor. The use of buses would not change the character of the company, its public duty, or the character of its transportation service.”

**Implied right to operate buses.**

A corporation has, at common law, by implication, all powers appropriate to the accomplishment of its express powers.

Section 8 (9) of Article 23 of the Code makes such implied powers express according to corporations the power to "do every other act or thing \* \* \* which may be appropriate to promote and attain the objects and purposes set forth in its charter," and the charter of some of the predecessor corporations emphasizes the implication to be drawn from the statement of express powers, viz., Charters of the Baltimore and Northern Electric Railway Company, of the Baltimore City Passenger Railway Company, the Baltimore Traction Company and of the Baltimore, Calverton & Powhatan Railroad Company (ante, pp. 31, 32, 33).

**CONCLUSION**

The record shows that in the judgment of the Board of Directors and of the Technical Staff of the Company, in the opinion of experts in transit operation employed for the purpose of advising the Board of Directors, all of which the record shows, is confirmed by experience in electrical railway operation throughout the country—

(a) electric railways cannot be extended into newly developed residential or industrial areas because of high cost of construction and maintenance of rail lines to serve areas in which residences and plants are scattered, as distinguished from serving congested urban centers with high density of population to be served per mile of railway and because of municipal prohibition against cars, tracks and overhead structures as noisy and unsightly;

(b) a transportation system to be successful must reach the periphery of the City and extend to some extent into adjoining counties and must be operated as an integrated unit with direct routes, minimum changes of vehicles, and free transfers and that this can be accomplished only by the use of buses for the operation of at least a part of the system;

(c) such a system must be so organized as to its operation, as to be capable of extension as the city and its industries grow; it must be so designed as to be susceptible of change as changes occur in the art;

and, of course, the operation must be such as is financially feasible; there is no evidence to the contrary.

If the transportation system must serve both the city and its environs and if such system must be a single integrated system and if such a system cannot be conducted in the outlying sections of the city by electric cars, then certainly there must be the implied right to the Company to use such facilities as will supplement and thus make possible, the continued use of the existing plant and property.

It is respectfully submitted that unless the system of the Transit Company encompasses the mass transportation requirements of the city, it cannot be operated; that electric transportation cannot be operated in the newer industrial and residential sections of the city and that unless such sections can be served by the existing company by supplementing its electric rail lines with buses, it will not be feasible to establish a system to serve those sections and the transportation facilities of the city must fail. The decree of the Lower Court should be affirmed.

Respectfully submitted,

VENABLE, BAETJER & HOWARD,  
*Solicitors for all Appellees except  
 The Mayor and City Council  
 of Baltimore.*

**APPENDIX TO APPELLEES' BRIEF.**

**EXTRACTS (verbatim) FROM BILL OF COMPLAINT.**

“1. That the Complainant, Wilson C. Warren, is the individual owner and holder of one thousand two hundred and forty-six (1246) shares of the Common stock and one hundred (100) shares of the Preferred stock of The Baltimore Transit Company, and the Complainants, Wilson C. Warren and Adelaide W. Warren, his wife, are the joint owners of an additional twenty-nine (29) shares of the Common stock of said Company.

“2 That The Baltimore Transit Company (hereinafter called the Transit Company) is engaged in the business of furnishing mass transportation service in Baltimore City and its environs by means of electric trolley cars and trackless trolleys. That The Baltimore Coach Company (hereinafter called the Coach Company) which is a wholly and directly owned subsidiary of the Transit Company, is engaged in the business of furnishing mass transportation service in said City and its environs by means of motor buses. That the said Transit Company, operating under its present name, has been engaged in said business since July 1, 1935, the date of the consummation of its reorganization as directed by the United States District Court for the District of Maryland under Section 77B of the Federal Bankruptcy Act.”

“17. That by another Order of the Public Service Commission of Maryland (No. 42685), a copy of which is filed herewith and marked Complainant's Exhibit 'D' and prayed to be taken as a part hereof, dated October 9, 1946 'In the Matter of the Application of The Baltimore Transit Company for approval



(App. 2)

to Convert Certain of its rail lines to Free Wheel Operation And To Reroute Certain Of Its Rail Lines', The Baltimore Transit Company was authorized to surrender and abandon electric railway service as operated over certain street railway lines, upon inaugurating motor bus service by The Baltimore Coach Company in substitution for said electric railway service, said abandonments to take place from time to time only as and when said motor bus service in substitution therefor is actually put into operation. It was further directed: That The Baltimore Transit Company promptly submit to the Commission detailed recommendations with respect to making, as of December 31, 1945, appropriate adjustments in its capital, surplus, depreciation and other reserve accounts, and such other changes in its accounting procedure as may be appropriate in order to provide for losses to be sustained in the abandonment which will result from the conversion of its street railway lines to motor bus operation. . . . ' "

"20. That the Defendants herein and Directors of the said The Baltimore Transit Company have been under the domination and influence of the said National City Lines, Inc., through its representatives, E. Roy Fitzgerald, C. Frank Reavis and Claude M. Gray and others, and by virtue of the aforesaid commitments and agreements heretofore entered into by the said National City Lines, Inc., which company is in fact an agent of said manufacturing supplier corporations, have not exercised their free will and judgment in promoting the aforesaid conversion from electric railway service to motor bus operation \* \* \*. That said Defendant Directors have acted collusively, and in bad faith and indeed, fraudulently, by promoting this gigantic scheme to 'convert' the Baltimore Transit Company, an electric railway company, into a holding company, or substantially a holding company, holding stock only in a motor bus

company, The Baltimore Coach Company. In furtherance of their fraudulent and illegal acts, said Defendant Directors have without any authority or consent of the stockholders, as required by law, determined to change and 'convert' the corporate function of The Baltimore Transit Company from a local operating street railway company to a mere holding company, holding stock in the said The Baltimore Coach Company.

"21. That the Complainants are advised and therefore aver that the Defendant Directors have acted illegally and fraudulently and in bad faith and have breached the trust placed in them as such Directors by attempting to promote the aforesaid 'conversion' and without first calling a meeting of the stockholders of The Baltimore Transit Company, as required by law, where a transfer or exchange of a substantial portion of a corporations assets is contemplated, or where a change in the corporate function or purpose is contemplated, and for the approval or disapproval of said stockholders. That under the Defendant Director's scheme to 'convert' to motor bus operation in Baltimore City, all the new franchises are to be issued to The Baltimore Coach Company, and in fact that Company will ultimately be the owner of all, or substantially all, of the real assets of The Baltimore Transit Company, all to the great loss and injury of the stockholders of the said The Baltimore Transit Company."

"TO THE END THEREFORE:

"(a) That this Honorable Court may issue its Writ of Injunction restraining the said The Baltimore Transit Company and each and all of its said Officers and Directors, agents and employees from pursuing the aforesaid illegal and fraudulent plans of 'conversion,' whereby the property and assets of said Com-

(App. 4)

pany are being transferred to The Baltimore Coach Company, another Maryland Corporation, and many millions of dollars worth of trolley car equipment is to be abandoned.

“(b) That this Honorable Court may issue its Writ of Injunction, further restraining the said The Baltimore Transit Company and each and all of its said Officers and Directors from changing the corporate function of said Company, from that of a local operating street electric railway company to a mere holding company, or substantially a holding company, without having first obtained the authority or approval of the stockholders of said Company, as by law required.”

STIPULATION — EXHIBIT A

APPENDIX A

CORPORATE PEDIGREE

*United Railway and Electric Company of Baltimore* was formed by the consolidation of *The Baltimore City Passenger Railway Company* and *The Baltimore and Northern Electric Railway Company* by Articles of Agreement of Consolidation dated March 2, 1899. The consolidating companies themselves had absorbed other companies as shown in Item I below.

*United Railway and Electric Company of Baltimore* by Articles of Agreement of Consolidation dated March 4, 1899, consolidated with ten other companies, thereby forming *The United Railways and Electric Company of Baltimore*. The corporate parties to this agreement with their respective underlying companies are set out below under Items I to XI, inclusive.

I. *United Railway and Electric Co. of Balto.*

- |   |  |                                  |   |
|---|--|----------------------------------|---|
| (a) City Park Railway Co.                                 | } Property and franchises deeded to  | } Balto. City Passenger Rwy. Co. | } (Consolidation) United Rwy. & Elec. Co. |
| (b) Baltimore and Hall's Springs Rwy.                     |  |                                  |   |
| (a) Falls Rd. Elec. Rwy. Co. (inc. as "Md. Traction Co.") | } (Consolidation) Balto. & Northern Elec. Rwy. Co. (inc. as "Electric Light and Rwy Co") |                                  |   |
| (b) Pikesville, Reisterstown & Emory Grove Rwy. Co.       |  |                                  |   |

II. *Baltimore Consol. Railway Co.*

- |  |   |   |   |  |
|--|---|---|---|--|
| (a) Balto. Union Passenger Rwy. Co. (acquired rights of Balto. & Yorktown Turnpike Co. See 78 Md. 294).                  | } | (Consolidation)<br>City and Suburban Rwy. Co. | } | (Consolidation)<br>Balto. Consol. Rwy. Co. |
| (b) Balto. & Hampden Pass. Rwy. Co.  |   |   |   |  |
| (c) Highlandtown & Point Breeze Rwy. Co. (acquired property of Monumental City Rwy. Co. by deed).                        |   |   |   |  |
| (a) Citizens Rwy. Co. of Balto. City.  | } | Purchased by<br>The Balto.<br>Traction Co.    |   |  |
| (b) North Balto. Passenger Rwy. Co. (inc. as "Balto., Peabody Heights & Waverly Passenger Rwy. Co.")                     |   |   |   |  |
| (c) Balto. & Powhatan Rwy. Co. of Balto. City (acquired by deed all rights etc. of Balto. Calverton & Powhatan Rwy. Co.) |   |   |   |  |
| (d) Peoples Rwy. Co. (acquired by deed all franchises, etc., of Peoples Passenger Rwy. Co.)                              |   |   |   |  |
| (a) North Ave. Rwy. Co.  | } | (Consolidation)<br>Lake Roland Elec. Rwy. Co. |   |  |
| (b) Balto. Hampden & Lake Roland R. R. Co.   |   |   |   |  |

III. *The Central Railway Co.*

IV. *The Baltimore, Gardenville and Bel Air Rwy. Co.*

(inc. as "Baltimore and Loreley Elec. Rwy. Co.")

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V. *The Baltimore Catonsville and Ellicott's Mills Passenger Railroad Co.*

(acquired at Court Sale property, etc. of Balto., Catonsville and Ellicott's Mills Passenger Rwy. Co.)

VI. *The Maryland Traction Co.*

(a) Columbia and Maryland Rwy.

(b) Edmondson Ave., Catonsville & Ellicott City Elec. Ry.

(c) Maryland and Wash. Rwy. Co.

(d) Balto. & Wash. Turnpike & Tramway Co.

(Consolidation)  
Columbia & Md. Rwy.  
prop. and franchises of  
which were acquired by  
The Md. Traction Co.

VII. *The Balto. and Curtis Bay Rwy. Co.*

(Inc. as "Balto., South Balto. & Curtis Bay Rwy. Co.")

VIII. *The Gwynn's Falls Rwy. Co. of Balto. City*

IX. *The Pimlico and Pikesville Railroad Co.*

(acquired by deed all rights, etc. of Balto., Pimlico & Pikesville Railroad Co.)

X. *The Shore Line Elec. Rwy. Co.*

XI. *The Walbrook, Gwynn Oak and Powhatan R. R. Co.*

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- 1876, Ch. 118, Ch. 242 (gen'l law for inc. of railroad companies)  
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PLAINTIFFS' EXHIBIT NO. 9 — EXTRACT  
FROM ANNUAL REPORT OF THE BALTI-  
MORE TRANSIT COMPANY FOR THE YEAR  
ENDED DECEMBER 31, 1946.

PROGRESS IN PUBLIC TRANSIT IS IN THE PUBLIC INTEREST

*A Message from the President of the Baltimore  
Transit Company*

To the Stockholders:

Substantial progress was made in 1946 toward the chief objectives described in previous reports of our Company. These included agreement with the public authorities on a program for traffic and transit improvement for the City of Baltimore. Agreement was reached during the year ended December 31, 1946.

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Immediate steps were taken toward putting the program into effect. Orders were placed with manufacturers for 600 modern motor buses. Preparation was begun of plans for a new building program to include three modern plants for overhauling, rebuilding, repairing and maintaining buses and for repairing and maintaining street cars and remodeling of Carroll Park buildings owned by the Company to serve as Operating and Executive Offices. These steps will be more fully commented upon later in this report.

Also as expected the year 1946 saw a continuance of the recession of the Company's business from the high war-time peak. This recession commenced in 1945 soon after V-J Day. As predicted it continued into 1946, resulting in a decrease from 1945 figures of 1.07 percent in riders and approximately one-half of one percent in revenue, while net income increased 1.28 percent.

*Further Decrease in Revenue Expected as War  
Conditions Recede*

These decreases in your Company's business do not appear large at the present time. Yet it seems wise to repeat that we have not yet felt the full effect of peacetime reconversion. This effect will grow more apparent as automobile production and distribution increase. Pre-war automobile production and use were greatly in excess of present figures while pre-war street car and bus rides were substantially below present figures. Our war-time business was abnormal. We can expect our normal business to be much less than during the war and immediate post-war periods. Some observers forget this and speak of the Company's "sudden prosperity" as justifying higher taxes and other new burdens. It would be a serious mistake not to recognize the truth about this condition, namely that this "prosperity" was temporary



and due entirely to the abnormal situation produced by the war.

We continue to hope and strive for improvement in our business. Our hope is that modernization can increase the attractiveness of our service so that the trends toward pre-war normalcy in city travel can be halted and traffic conditions improved. This can be accomplished if the public can be persuaded in city travel to use automobiles less and public transit more.

In your Company's situation nothing is more important than this increased attractiveness of service which must be achieved in the face of constantly rising costs. In other industries rising costs are being absorbed in increased rates. This is not being done by The Baltimore Transit Company.

*Too Many Automobiles Chief Cause of Traffic Congestion*

The chief cause of traffic congestion in Baltimore is the same as in virtually every other city, namely, too many automobiles for the capacity of the streets. The question is asked, "Why is greater use of public transit considered a remedy for this condition?"

The answer is that public transit uses street space more economically than the automobile. When street space is scarce economical use of it is in the public interest. Street space in Baltimore is scarce in proportion to the population. Much of it is wasted when automobiles congest it.

Streets are primarily for moving people, not for moving vehicles. Many times more people can use existing downtown street space for travel if they travel by public transit vehicles than if they travel by automobile. To illustrate:

Many traffic checks made by competent traffic engineers have shown that the average number of persons per automobile in city traffic is 1.7. This being true, a single lane of automobiles on a surface street subject to street intersections moves a maximum of 1,575

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passengers per hour, whereas a lane of public transit vehicles will move up to 13,500 passengers per hour.

Or consider one bus carrying forty-five passengers. On the basis of traffic checks showing the average number of persons in automobiles in city traffic, the same forty-five persons would require 26 automobiles.

One bus moving at the rate of 10 miles per hour takes up 50 feet of an average city block 376 feet in length.

Twenty-six automobiles moving at the same rate take up 858 feet or 2.3 average city blocks.

Thus public transit is 17 times more economical in the use of street space than private transportation.

It would seem to follow that greater use of public transit and less use of private transportation in the downtown section is in the public interest because it can (a), remedy traffic congestion; (b), halt the trend toward decentralization; (c), save and preserve downtown property values; (d), halt the decay and deterioration of downtown business and shopping centers.

Thus our modernization plans to attract more automobile users to public transit are also in the public interest and may easily affect not only the future business of your Company but also all other business in the city.

It is generally recognized that street traffic congestion is costly. Recent estimates put the cost to merchants of traffic paralysis in New York City at One Million Dollars a day. In downtown Detroit real estate values are said to have declined One Billion Dollars since 1934, and a major share of the blame is placed on traffic congestion. Every metropolitan center of population in the United States carries a staggering burden of cost in time and money because there are more automobiles trying to use the streets than the cities can handle.

There was thus public satisfaction in the announce-

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ment in May, 1946, that agreement had been reached between the City authorities and the Company in respect to the City-Company one-way-street and bus conversion plan for traffic and transit improvement. This agreement was ratified by the Baltimore City Council.

*Public Service Commission Approval Given  
in October*

Widespread public approval included endorsement of the program in principle by the Executive Committee of the Baltimore Association of Commerce. The plan for conversion of a number of street car lines to buses was resubmitted to the Public Service Commission for approval on June 6, 1946. Public hearings were held at which city officials, civic groups and individuals testified in favor of the program, a substantial proportion of which was officially approved by the Commission in an order passed October 9, 1946, authorizing the Company to make the changes proposed.

As promptly as possible orders were placed for 600 modern public transit-type buses. One hundred of these were promised for delivery in May, 1947, and one hundred in June or July, 1947; fifty in August, twenty-five in September and twenty-five in October, with delivery of the fourth group of 100 buses to start late in 1947 or early in 1948. The remaining 200 buses are scheduled for 1948 delivery.

Actual commencement of the conversion plan as approved October 9, by the Public Service Commission awaits the arrival of the first of these new buses. Although new buses were received in 1946, many of them had to be used immediately for replacement of old buses on existing lines for restoration of service eliminated by O. D. T. order during the war and for new service as hereinafter described. A group of one hundred 45-passenger buses ordered in October,

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1944, arrived in 1946; and in addition, out of one hundred 27-passenger Ford buses ordered in February, 1946, more than half had been received by the end of the year.

Completion of the improvements sanctioned by the Public Service Commission of Maryland will accomplish the following:

Service now rendered by fifteen street car lines will be replaced with modern bus service.

More than 50 miles of street will be freed from street car operation, and flexible bus operation will be substituted.

Fewer street cars will enter downtown Baltimore.

Both left-hand and right-hand turns by public transit vehicles downtown will be materially reduced.

Outlying portions of the City now served by shuttle bus lines will be served instead by through bus service.

Transit lines now and for many years routed circuitously will be routed more directly.

Express service for quicker trips downtown will be instituted on some of the new bus lines.

We hope to be able to make a beginning with these improvements during 1947, and to continue carrying out the program as fast as the new buses arrive.

#### *Improvement Program Launched in 1946*

Unable to launch the major portion of the modernization plan in 1946, we nevertheless began our improvement program and carried it as far as possible. We installed a new northern East-West bus line; established a "perimeter parking lot" at the edge of the downtown district with a five-cent shuttle bus line; started the first "express" service with buses on the Middle River bus line; experimented with a

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“home-to-work” bus service for workers in an industrial plant; introduced a new two-way radio system of street supervision by means of a fleet of radio-equipped automobiles; experimented with “walkie-talkie” apparatus for greater speed and efficiency in service supervision; established through service from Homeland to downtown; started a new bus line to Curtis Bay industrial plants and the United States Coast Guard Station; started a new bus line out Bellona Avenue to Rogers Forge, Pinehurst and Armagh, and instituted a bus line to serve school children in the Armistead Gardens section. We also announced just before the end of the year that plans had been completed and work scheduled to begin on a new building program for modernization of maintenance and repair shop facilities and for provision of better and more economical offices, in a building long owned by the Company.

General public approval was indicated of these beginnings of a service betterment program. A parade on July 6, with “dedication ceremonies” in the heart of the communities served, helped to start the new East-West North Baltimore bus line. The program of speeches and music was entirely arranged by groups of North Baltimore citizens. This line began operations July 7. Its one-way route is 4.97 miles starting in Northeast Baltimore at Cedella Avenue and running to Homeland, connecting with the Number 15, 19 and 8 car lines and the “A” bus line.

*“Perimeter Parking” Idea Put into Practical Operation*

A public ceremonial under the auspices of the Better Baltimore Committee also accompanied the official opening of the perimeter parking lot at Howard and Preston Streets, with radio-broadcast addresses by the Mayor of Baltimore, Chairman of the Commis-

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sion on City Plan and leaders of several civic and business groups. The ceremonies were held at the parking lot on Saturday, August 24, followed by a parade along the route of the five-cent bus line, and operations were officially commenced Monday, August 26. The Company leased this property from the city and established the parking lot and bus line to demonstrate the practicability and wisdom of this method of keeping automobiles out of the downtown congestion while providing a safe and convenient combination parking-and-riding service for motorists.

Your Company believes that this perimeter parking lot method is superior to the downtown or midtown parking lot or garage as a remedy for mid-city traffic congestion, because the latter method invites cars into the downtown section, increasing congestion, while the "perimeter" parking lot with the five-cent shuttle bus relieves congestion.

In his address at the official opening the Chairman of the Commission on City Plan expressed the hope that more of these lots and bus lines would be established. This project of your Company's has been the subject of many inquiries from all over the United States, and of news stories and editorials in newspapers in other cities, including the New York Times, and the New York Herald-Tribune.

The Company's first introduction of express service with buses took place on the "P" Middle River line on November 25. This line runs between Middle River and Pratt and Grundy Streets, a one-way distance of seven and one-third miles. The buses marked "Express" run non-stop between Back River Bridge and Haven Street, a distance of four and one-third miles. Local buses running in addition to the express buses make all local stops. The express service is in effect west bound in the morning and east bound in the evening. Complete information was

given to the public through community newspapers in the form of advertisements showing a map of the route with express area clearly indicated and giving a schedule of all express buses. This new service has been favorably received by the public.

Your Company's new building program was announced to the public through the newspapers on Christmas Eve, 1946, as a far-range plan for making certain that modernization of maintenance plant keeps pace with modernization of service. The program calls for new bus repair shops at Carroll Park, at Kirk Avenue and at Eastern Avenue and Ponca Street, and also for moving the Company's offices from rented quarters in the Equitable Building to the Company's own property at Carroll Park. It will be the first time in half a century that all transit company administrative offices in Baltimore have been established on Company property. Under the plan Carroll Park will house (a), Company offices; (b), Operating Base and repair and maintenance shops for all bus lines in the west and southwest section of the city; (c), a complete bus overhauling and rebuilding plant for the entire bus fleet of the system and (d), modernized street car repair shops. Also the most modern maintenance systems, tools and machinery will be installed in the new specially designed buildings to be erected at Kirk Avenue and at Eastern Avenue and Ponca Street for all bus lines in those sections.

*Saving in Operating Costs Is One Purpose  
Of Expenditures*

While the new building program is estimated to cost \$2,000,000., and the 600 new buses will doubtless cost more than \$15,000, each, it is believed that savings will be realized to justify these expenditures. In fact the saving of operating costs is an important

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factor in planning for these expenditures. As the production of new automobiles increases we shall be forced to (1), improve our service and thus try to hold our customers and (2), decrease operating costs. Doing these two things at once is difficult but they must be done and successfully done to avoid even more serious difficulties. Moreover they must be done in the face of increased payroll cost.

By the end of 1946, virtually all service which had been ordered discontinued during the war by the United States Office of Defense Transportation, had been restored. Among these was the "A" Charles Street bus line and the "B" Mount Royal Avenue line which went back into service on May 12, 1946, with a ceremony in "SUN SQUARE" sponsored by the Charles Street Merchants Association, including radio broadcast, band music, speeches and a parade of buses over the Charles Street route headed by the last of the old double-deckers to be retired. A crowd of about 2,000 persons attended these ceremonies.

Pre-war service was restored on the "Q" Halthorpe line June 16; the "U" Mannasota Avenue line in May; the "S" Crosstown line, October 18, 1946, and the "D" Bentalou Street line October 27.



DEFENDANTS' EXHIBIT NO. 1—CHASE REPORT, DATED JULY 10, 1935, BEING A SURVEY MADE TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND BY CHARLES CHASE AN INDEPENDENT ENGINEER SELECTED BY THE COURT AND FILED AS A PART OF THE REORGANIZATION PROCEEDINGS OF THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE (extracts in accordance with Stipulation).

*Coordinated Rail, Trackless Trolley  
and Motor Coach Program.*

If it is neither justifiable nor advantageous to maintain all of the present rail operation and a conversion to other types of modern transportation will serve the public needs as well or better, then the greater investment of capital and expenditure necessary to fully continue the present rail operation will be to a considerable extent avoided by the substitution of trackless trolley and motor coach operation for a substantial portion of the present rail operation.

Experience of the last few years has abundantly demonstrated that local transportation in American cities of upwards of 150,000 population can be more economically furnished, the public more satisfactorily served, and the enterprise itself afforded a better opportunity to meet the intensive automotive competition, and even recapture some of its lost traffic, by the adoption of a plan of coordinated transportation, including the use of: (a) rail cars on lines and routes of heavy density of traffic, (b) trackless trolley cars on the lighter duty lines which do not have a heavy density of traffic nor require units of largest capacity, and (c) gasoline motor coaches on light traffic lines, feeder and crosstown lines and for pioneering and development work.

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By adoption of such a plan for the solution of its problem the United Railways would avoid a much larger immediate (and far greater future) capital investment for the replacement of worn out track structure and rail cars by the smaller expenditure required for trackless trolley overhead installation and for the purpose of trackless trolley cars, gasoline motor coaches and a considerably smaller number of rail cars. The heavy expenditures necessary for continued maintenance of the track structures abandoned would also be avoided to the fullest practicable extent, the public would be better served and satisfied through the elimination of noise by the substitution of rubber tired vehicles for rail cars, and of a considerable accident hazard by the curb pick-up and delivery of passengers, except in the congested down town area. A speedier and more efficient transportation service would also thereby be given to the people of Baltimore.

The electric rail car and the gasoline motor coach have certain inherent characteristics and advantages one over the other. They are, in the case of the rail car, its greater carrying capacity, unlimited power, smooth operation and rapid acceleration and deceleration, its cleanliness, electric lighting and heating and freedom from gas and fumes. In the case of the gasoline motor coach they are the avoidance of heavy fixed investment in track, overhead and power facilities, the flexibility of service in detour, in picking up and discharging passengers at the curb and out of danger, in avoiding obstacles and interruptions to service in the street, and in a certain quietude and attraction arising from the operation on rubber tires.

#### *Trackless Trolley Cars.*

The trackless trolley car combines the best characteristics and advantages of both of the other types of vehicles without the disadvantages of either, but with the exception that, like the gas motor coach, its carry-

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ing capacity is limited by the requirements of its maneuverability. It has unlimited power, smooth and rapid acceleration and deceleration, the speed of the electric rail car and is much lighter in weight. It is free from gas and odors and also combines the flexibility of operation in the street of the gas motor coach with its curb pick-up and delivery of passengers and its ability to dodge and work around obstacles and avoid interruption of service due to street conditions. The trackless trolley car is practically noiseless, has a longer operating life than the gas vehicle, and in the end is cheaper to operate and maintain than either of the other types of vehicle. It is an ideal transportation unit for operation in cities, except on lines of the greatest traffic density where the revenue is sufficient to justify the investment in and expense of maintenance of the necessary track structures.

The modern efficient and light-weight trackless trolley car has been a development of the last few years and has been successfully used under such a variety of conditions in a number of American cities and to such an extent that its efficiency, economy and reliability have been proven. More and more street railway properties are providing for the conversion of some of their rail lines to such type of service. Chicago has the largest installation with 114 trackless trolley cars now in service; Indianapolis is second with 95 in service and 50 more to be ordered; Portland, Oregon, is planning to install 125 and Cleveland has determined to make an installation there in lieu of some of its present rail service. In England there were in March, 1935, over eleven hundred trackless trolleys in operation, including 183 in London and that city is now reported to be placing orders for 500 additional trackless trolleys for its metropolitan operation in replacement of a number of its rail cars. All conditions in Baltimore are favorable for the securing of the benefits and advantages demonstrated by trackless trolley car operation in other cities.

There are inserted following this page a number of pictures of trackless trolley cars in operation in the city of Indianapolis under varying conditions, showing the character and flexibility of their operation; also a list of cities in the United States showing the number of trackless trolleys in operation therein and an indication of the increased revenue received in several of them from the substitution of trackless trolleys for rail operation.

*Coordinated Transportation Plan Recommended.*

As a result of this general appraisal and study of the problem presented by the United Railways a plan of rehabilitation and modernization of its property and service is herewith recommended, which will include the necessary reconstruction and improvement of permanent rail lines and the acquisition of modern rail equipment therefor, the conversion to trackless trolley operation of a number of present rail lines and the purchase of trackless trolley cars therefor, and the conversion of other rail lines to gas bus operation with new and modern motor coach equipment necessary.

Such plan of coordinated transportation, rehabilitation and modernization will require estimated expenditure of approximately \$11,900,000, being approximately \$3,500,00 less expenditure than required for a continued full rail operation program. The earnings of the enterprise will, of course, more easily provide for the coordinated transportation program expenditures than those of continued full rail operation.

\* \* \* \* \*

*Substitution of Coach Service.*

3. Substitution of motor coach service for present rail operation is recommended on the following lines:

- (a) On the present No. 34 car line (Highlandtown-

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Canton Short Line), consolidating such coach line with the one proposed by the Railways to be operated over Eastern Avenue from Middle River to Lombard and Haven Streets, but eliminating the portion of such last named route from Eastern Avenue to Lombard Street on Haven Street. This will make a consolidated through motor coach line from Middle River over Eastern Avenue and Conkling Street to Highland and Toone Streets. This substitution effects the elimination of No. 34 car line and creates one coach line instead of two separate lines resulting in an annual saving in present operating expense of approximately \$8,000, as well as avoiding substantial impending rehabilitation expense on track structure estimated at approximately \$42,500.

(b) On the present No. 35 car line from Walbrook Junction to Lorraine Cemetery over available paved roads. This substitution effects an annual saving of approximately \$5,000 in present operating expense and also avoids heavy open track rehabilitation expense now impending and estimated at approximately \$52,300.

(c) On the present No. 25A car line (Key Avenue Short Line) and on present No. 25 car line from Mt. Washington Station to Park Heights Avenue, turning No. 25 cars back at Mt. Washington Station with a wye installation, and routing one service of the motor coach line from Mt. Washington Station over Sulgrave Avenue, Cross-Country Boulevard, Kenoak Avenue, Pimlico Road and Belvedere Avenue to Park Heights Avenue and the other service from Cheswolde via Green Spring Avenue, Sulgrave Avenue, Cross-Country Boulevard, Kenoak Avenue, Pimlico Road and Belvedere Avenue to Park Heights Avenue. This substitution effects an annual saving of approximately \$10,700 in operating expense as well as a saving in open track maintenance and rehabilitation impending expenditure estimated at approximately at \$1,500.

(d) On car line No. 6A (Fairfield) from the present

rail operation connecting with car line No. 6 (Curtis Bay) and terminating at or near Chesapeake Avenue and Tate Street in Fairfield. This substitution effects an estimated annual saving in present operating expense of approximately \$4,100 as well as avoiding further open track rehabilitation expense impending and estimated at approximately \$3,600.

(e) On car line No. 19A (Carney) from Taylor Avenue to Joppa Road. This substitution is now being applied for by the United Railways and will effect an estimated annual saving in operating expense of approximately \$5,700 as well as impending heavy rehabilitation expense estimated at approximately \$62,100.

(f) On car line No. 24 (Lakeside) and on car line No. 10 from 36th Street to Roland Park Terminal with a consolidated motor coach operation from Lake Avenue on Roland Avenue, 36th Street, Falls Road, Fortieth Street and Woodberry Avenue to Park Circle. This absorbs the motor coach operation proposed by the United Railways from 36th Street and Roland Avenue to Park Circle. This substitution and extension of motor coach service to Park Circle with the abandonment of that portion of car line No. 24 north of Lake Avenue and of the Union Avenue Short Line, but providing for a "turn-back service" at Union Avenue and Falls Road for No. 10 car line now terminating at Roland Park Terminal effects a combined estimated annual saving in present operating expense of approximately \$8,500 besides avoiding an impending track rehabilitation expense of approximately \$5,000.

(g) On car line No. 9 from North Bend Road to Ellicott City over Edmondson Avenue, Old Frederick Road and New Frederick Road. This substitution effects an estimated annual saving in present operating expense of approximately \$11,000, besides avoiding a track rehabilitation expense of approximately \$10,000.

The present rail operation to Ellicott City makes a close parallel service from Nunnery Lane to Catonsville Junction in a sparsely settled territory with a costly two-man operation and light revenue. The investment in this track operation is out of all proportion to present or future earning power of the track proposed to be abandoned.

In general of the above proposed motor coach substitution for rail operation it can be said that the revenues of the lines affected, the condition of track structure, the character of the territory served and density of traffic all indicate a decided economy and more efficient operation by the substitution of motor coaches with its attendant avoidance of track rehabilitation and maintenance expense.

To accomplish these substitutions will require the purchase of fifteen additional 18 or 21 passenger motor coaches costing approximately \$75,000 with total estimated annual savings in present operating expense of approximately \$53,000 together with an avoidance of track rehabilitation expense estimated at a total of approximately \$177,000.

\* \* \* \* \*

#### *Trackless Trolley Routes.*

On the routes and lines which have a lesser density of traffic, and require less frequent headway and transportation units of lesser capacity, it has been determined that their operation will permit of and call for the use of the trackless trolley car in lieu of the present rail car operation. These lines with their 1934 revenues, cars scheduled and miles operated are the following:

No.	Name	Revenue	Number of	
			Cars	Car Miles
1-11	Gilmor-Guilford .....	\$ 421,675	28	1,057,147
2	Carey St.-Ft. McHenry.	328,683	18	810,334
3	Linden-Halethorpe .....	365,508	28	1,233,789
4	*Edmondson-Monument St.	302,919	17	659,990
6	Curtis Bay .....	408,505	25	1,305,012
10	Roland Park .....	506,868	28	1,373,008
12	Westport-John St. ....	155,446	10	466,830
15	*W. Baltimore-Gay St....	258,647	16	637,978
16	Madison Avenue .....	225,588	11	502,104
17	St. Paul St.....	244,954	22	588,754
18	Pennsylvania Ave. ....	237,698	16	709,254
21	Caroline-Preston .....	179,573	13	678,687
25	Mt. Washington .....	245,412	19	950,419
27	Federal Street .....	406,402	26	1,018,512
29	Boulevard .....	219,308	16	596,535
30	Fremont Avenue .....	165,580	11	484,453
Total.....		\$4,672,766	304	13,072,806

\*Estimated Proportion of 1934  
Operation Which Will Be  
Served With Trackless Trolley Cars

No.	Name	Revenue	Cars	
			Cars	Car Miles
4	Monument St. Only ....	45%	45%	45%
15	W. Baltimore St. Only..	35%	30%	30%

#### *Gas Motor Coach Lines.*

The remaining routes and lines should be operated by gas motor coaches of varying capacity to meet the traffic loading and schedule requirements of the particular route. In so allocating the different types of operation to the present routes of the United Railways certain changes of route are suggested to add to the greater efficiency of the operation and the service to the public. Some small abandonments of short stretches of track are provided for where there would be little inconvenience to the public and a general betterment of service resulting therefrom.



By this readjustment and conversion of the service of the United Railways the rail operation of the enterprise would be reduced from 366 revenue miles to approximately 189 revenue miles of single track rail operation. There will then be approximately 83 revenue miles of trackless trolley operation and approximately 89 revenue route miles of gas motor coach operation.

A map showing the proposed operation of rail, trackless trolley and motor coach lines together with individual maps indicating proposed changes in individual lines is herewith presented as "Exhibit H".

*Reasons for Conversion to  
Trackless Trolley in Baltimore.*

The reason for the conversion of the considerable mileage of rail lines to trackless trolley operation is as indicated before in the interests of increased revenue, the improvement of the service and of economy in investment and operating expense. All but 150 of the present rail cars of the United Railways are old and obsolete in type, more or less uncomfortable in riding quality and have little ability to either retain or attract traffic and patronage against the continually increasing allurements of the automobile. Therefore this old and obsolete equipment should be replaced as rapidly as possible with new and modern units offering maximum characteristics of speed, comfort and safety.

Not only does the trackless trolley car have these characteristics to a marked degree but it also permits of the modernization of equipment and service with a comparatively small expense of rehabilitation and with no replacement of tracks and paving which a continued rail operation on such lines would require.

The experience of other properties in the United States operating the modern trackless trolley cars during the past few years has abundantly demonstrat-

ed that no vehicle has been put in service in local transportation during the past generation which has so generally attracted as many new riders at the same rate of fare and frequency of service or recaptured as many old patrons and has held such increased patronage, as the trackless trolley car. Almost without exception the experience of the properties adopting the trackless trolley car operation has been the same. The utter quietude of the operation of the vehicle, its cleanliness and freedom from fumes and gas, its flexibility of operation over the width of the ordinary street and from curb to curb insuring safety in boarding and alighting and lessened hazard of collision, its rapid and smooth acceleration, high running speed and quick deceleration, the certain attraction of operation on rubber tires and its unlimited power has brought instant and sustained approval from the riding public as well as those of the public who do not use local mass transportation service except occasionally for their convenience.

The trackless trolley car is economical of operation. In the City of Indianapolis, having the second largest installation in the United States with 95 trackless trolley cars and 50 more to be ordered shortly, the operating expenses per seat mile of the trackless trolley car is practically that of the rail car and approximately 15% less than that of the gas motor coach.

It is these considerations, as well as practical operating experience with the trackless trolley car during the last few years, that suggest the prompt adoption and installation of this type of electrical transportation in the City of Baltimore, as a part of a co-ordinated general system of mass transportation. The trackless trolley car is peculiarly adapted to service in Baltimore because of the narrow streets this local transportation operation includes, and the considerable congestion of traffic in the business area. The

trackless trolley car with its range of flexible operation over almost the entire street pavement can pursue its course where the ordinary rail car would be stopped in its operation by its inability to maneuver around an obstacle in its path. The ability to swing a few inches or feet around an obstacle may mean the difference between waiting in the rail car until the obstacle is removed and instantaneously maneuvering around it in the trackless trolley car and leaving it behind. Also if the trackless trolley car becomes inoperative for any reason its trolley poles may be pulled down and the car shunted to the curb out of the way of traffic, thereby reducing congestion, permitting continuous service operation, and avoiding traffic delays.

\* \* \* \* \*

### *Motor Coach*

#### *Operation Development.*

In proposing the comprehensive program of coordinated transportation and rehabilitation and modernization herein set forth, the development of motor coach transportation in other cities such as New York, Detroit, San Antonio, Trenton and others, and possible development of Diesel engine operation are not overlooked. In New York City coach operation is unique in that it has the benefit of a tremendous turnover of traffic due to the short distances passengers ride, averaging only about 2,000 feet per passenger. This produces high earnings per coach mile, but also an extremely slow and tedious operation and unlike that of almost any other in the country. New York City, like Washington, cannot avail itself of the advantages of trackless trolley car operation because of the required underground type of power supply which is impracticable for trackless trolley car operation.

In Detroit there has recently been a growing use

of small speedy motor coaches in substitution for old and larger units, thereby giving a more frequent service with substantial increases in revenue on some lines, although such claimed increases are generally not as great as those experienced almost universally with the installation of the trackless trolley operation. The small coach gives a service inferior in comfort and is not capable of handling peak load traffic without adding considerably to the number of units operated and to the general traffic congestion, as well as the expense of operation. It is questionable whether a large increase in the number of transportation units in concentrated, congested areas and narrow streets, such as the City of Baltimore has, would be either a tolerable or a practicable operation. Moreover the full permanent success of such an operation has to be established and no claim of substitution for rail service is yet made.

San Antonio, Trenton and some of the other small cities of the country have entirely substituted motor coach for railway operation, but there is no proof that such substitution has been or can be permanently and financially successful, nor have there been such resulting increases in traffic and revenue as has almost invariably been experienced by the cities which have commenced the use of the trackless trolley car.

\* \* \* \* \*

#### MORE RAPID TRANSIT

Even though subways may be out of the question in Baltimore, nevertheless efforts could be made to provide more rapid transit by surface lines from the residential areas to the central business district of Baltimore. This might possibly be accomplished in one or more ways:

1. By restricting rail car service to the heaviest traffic portions of the rail lines, that is, the portions

lying within a distance of some two to four miles from the business center, abandoning the rail service on the portions of such lines extending beyond this restricted operation and serving such outlying zones along the rail lines with express motor coach service. This coach service would run along the abandoned portion of the rail line until it reached the restricted rail operation, when it would divert to go into express service over some near high speed traffic artery to the business center, thereby materially shortening the travel time now consumed by the outlying patrons in the present through rail trip.

An illustration of such a possibility would be to operate the Towson, or No. 8 car line, with coaches from Towson to a point beyond Govanstown and then divert them into express service over and in on St. Paul Street, Charles Street, North and St. Paul Streets to the business center. The rail cars would take care of the heavy service to Govanstown. By this operation up to ten to twelve minutes in each direction should be saved to patrons from their time now consumed in the present operation of full rail service.

In this way the outer areas could be brought materially closer in transit time to the business center. Outer zone property values would be enhanced and such areas would be opened up for more intensive residential development. This would also make more economical operation for the Railways in that the expense of maintenance and replacement of the outer portion of the rail line would be saved and a more balanced operation in proportion to the traffic requirements would be had, in that the heavy large capacity rail cars would not be operating out into a territory where the traffic requirements were comparatively light and could be better and more economically served by the express coaches.

2. By diverting to express rail service the inner,

or down--town portions, of certain heavy long rail routes. Examples of this would be the Linden and Druid Hill Avenues rail lines from North Avenue into the business center. This type of operation would convert into express rail service unnecessary, parallel and competitive local service rail lines through areas which it is proposed to adequately serve with trackless trolleys.

There is also the possibility of utilizing to some extent the Guilford Avenue car line and viaduct as an express line from North Avenue and Preston Street into Fayette Street and the business center. This possibility should be further studied.

The skip-stop method of operation has already been tried for some years in Baltimore and abandoned. Its efficacy as a means of more rapid transit has been fully established by operation in many cities and it is unfortunate that the tremendous saving in time to the patrons of the Railways and in expense to the enterprise cannot be availed of in Baltimore, especially where every resource of the reorganized Railways will be needed to the utmost in the development of a comprehensive rehabilitation and modernization program. By the staggering of stops, inbound and outbound, any inconvenience to patrons would be cut in half as at least on one trip the patron would board or alight at the point most convenient to the destination. Undoubtedly the jitney operation of low-rate taxi-cabs would be somewhat encouraged, but with the cooperation of the City and State in the working out of the general program such a hazard should be susceptible of entire control and the Railways protected therein.

It is believed the adoption of one or more of these so-called "rapid transit" methods would serve to stimulate and build up riding within the outer areas and induce more people to leave their automobiles at home and ride the cars or express coaches.

(App. 32)

DEFENDANTS' EXHIBITS NOS. 3, 4 AND 5—  
LETTERS FROM NATIONAL CITY LINES,  
INC. TO FIRESTONE TIRE & RUBBER CO.  
AND GENERAL MOTORS CORPORATION AND  
LETTER FROM MACK TRUCKS, INC. TO NA-  
TIONAL CITY LINES, INC.

NATIONAL CITY LINES  
Telephone Franklin 0280  
20 N. Wacker Drive  
Chicago 6

September 5, 1944.

The Firestone Tire & Rubber Company  
Akron, Ohio

Attention: Mr. Russell Firestone

Dear Sirs:

We have informed you that American City Lines, Inc. proposes to acquire an interest in The Baltimore Transit Company to an extent not yet definitely determined.

Will you kindly confirm that all understandings and agreements which you may have with us, with respect to our requirements of tires, etc., and the requirements of our subsidiaries will not relate in any way to The Baltimore Transit Company.

Yours very truly,

NATIONAL CITY LINES, INC.

By/s/G. Roy Fitzgerald

President

Confirmed:

THE FIRESTONE TIRE & RUBBER COMPANY

By/s/L. R. Jackson

(App. 33)

NATIONAL CITY LINES  
Telephone Franklin 0280  
20 N. Wacker Drive  
Chicago 6

September 5, 1944.

General Motors Corporation  
Detroit, Michigan

Attention: Mr. I. B. Babcock

Dear Sirs:

We have informed you that American City Lines, Inc. proposes to acquire an interest in The Baltimore Transit Company to an extent not yet definitely determined.

Will you kindly confirm that all understandings and agreements which you may have with us, with respect to our requirements of buses, etc., and the requirements of our subsidiaries will not relate in any way to The Baltimore Transit Company.

Yours very truly,

NATIONAL CITY LINES, INC.  
By/s/G. Roy Fitzgerald  
President

Confirmed:

GENERAL MOTORS CORPORATION  
By/s/Nile Grossman  
Assistant Secretary



(App. 34)

MACK TRUCKS, INC.  
General Offices  
Empire State Building  
Fifth Avenue at Thirty-Fourth Street  
New York 1, N. Y.  
Telephone Wisconsin 7-0250

September 11, 1944.

National City Lines, Inc.,  
20 North Wacker Drive  
Chicago, Illinois

Dear Sirs:

We are informed that you, or one of your subsidiaries, proposes to acquire an interest in certain securities of The Baltimore Transit Company.

In connection with the acquisition of such securities we wish to confirm that if there are any commitments on your part, or on the part of any of your subsidiaries to purchase equipment from us, they do not and shall not apply to The Baltimore Transit Company,

Very truly yours,

/s/F. F. Staniford

F. F. Staniford, Vice-President

FFS:JMR

DEFENDANTS' EXHIBIT NO. 6—ANALYSIS OF  
TRAFFIC CONDITIONS AND PRESENT AND  
POST-WAR HIGHWAY REQUIREMENTS BY  
NATHAN L. SMITH, CITY ENGINEER (Ex-  
tracts in accordance with Stipulation).

RECOMMENDATIONS

In order to provide increased freedom of movement for both through and local free wheel traffic, as well as for fixed wheel and other public transportation, it is recommended that:

(a) Off-street parking facilities be provided along or adjacent to the boundaries of the central business district,

(b) Fixed wheel transit lines within the central business district be restricted to a limited number of thoroughfares and such lines, where possible, be limited to operation in one direction on the designated streets,

(c) Free wheel traffic on streets within this central zone be directed to streets on which no fixed wheel traffic is carried, and that its movement be restricted to one direction wherever possible,

(d) Left turn movements by both fixed and free wheel vehicles be reduced to a minimum,

(e) Distribution arteries be designed and constructed around the four sides of the central business district to expedite the flow of traffic into and out of this congested area. Egress and ingress from and to these distributors to conform to the use and directional restrictions be established,

(f) A pattern for future expressway construction be established between the distribution streets around the central business district and the major highways crossing the City boundary,

(g) Surveys be made and plans prepared for the construction of these arteries so that work on them may be undertaken when funds are available.

(h) Fixed wheel traffic on arterial routes be replaced where feasible by bus or trackless trolley operation, or combined with other lines to free more streets for automobile traffic.

#### ONE-WAY STREETS

The benefits which have been derived from the removal of car tracks from Franklin Street, the construction of the Orleans Street Viaduct, the improvements to the surfacing of Franklin and Mulberry Streets, and their designation as one-way streets have demonstrated that such changes will go a long way toward expediting vehicular movement.

Studies have already been made along these lines on existing north-south arteries, with the result that it is proposed to remove the car tracks of the No. 17 and No. 29 lines of the Baltimore Transit Company from Calvert Street, Read Street, and Charles Street, south of North Avenue, and to restrict Calvert Street and Charles Street to southbound free wheel movement, and St. Paul Street and Cathedral Street to northbound. Public transportation will be provided by busses or trackless trolleys on portions of each of these thoroughfares.

The Commission on City Plan is making similar studies to determine the feasibility of one-way street development to the northwest. This problem is more difficult, due to the operation of important car lines on Pennsylvania Avenue, Madison Avenue and Druid Hill Avenue. There are now street car routes traversing these three streets, all of which connect the general vicinity of the Park Terminal with the western part of the central business district. If these lines can be combined on Pennsylvania Avenue and Madison Avenue, Druid Hill Avenue may be used in combination with McCulloh Street for alternate one-way traffic.

McCulloh Street is now designated as a through highway, but at its northern terminus it is quite inaccessible. By carrying both McCulloh Street and

Druid Hill Avenue across the corner of Druid Hill Park into Auchentoroly Terrace and widening that thoroughfare, excellent connection can be made with Gwynns Falls Parkway, Liberty Heights Avenue and Reisterstown Road. If, by reason of the operation of these transit lines out of the Park Terminal, Druid Hill Avenue could not be freed of street car tracks, it would then be desirable to use Madison Avenue for this purpose, transferring the lines operating thereon to Druid Hill Avenue and directing traffic northbound upon it, and southbound on McCulloh Street.

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DEFENDANTS' EXHIBIT NO. 7—LETTER  
FROM THE BALTIMORE TRANSIT COMPANY  
TO THE CITY COUNCIL OF BALTIMORE,  
DATED NOVEMBER 1, 1945.

THE BALTIMORE TRANSIT COMPANY  
524 Equitable Building  
Baltimore-2, Md.

Fred A. Nolan  
President

November 1, 1945.

Honorable  
The President and Members of  
The City Council of Baltimore  
City Hall  
Baltimore, Maryland

Gentlemen:

On October 1, 1945, your Honorable Body passed Resolution No. 481, requesting this Company to study the feasibility of removing fixed wheel vehicles from either Fayette Street or Baltimore Street for the purpose of facilitating the movement of traffic in the business section of the City.

At the time, the Company, at the request of Mr. Nathan Smith, Chief Engineer of Baltimore City, was making a study to accomplish the pre-war proposal

for the removal of tracks from Charles Street, Saint Paul Street, Calvert Street and Read Street as well as the proposals of Mr. Smith asking for the following changes, viz:

(a) The removal of tracks from Druid Hill Avenue so that Druid Hill Avenue and McCulloh Street could be made one-way streets. Dependent on this plan, Mr. Smith later asked us to provide for the removal of tracks from Park Heights Avenue.

(b) The removal of tracks from Fremont Avenue.

(c) The re-adjustment of operations so that Camden Street and Redwood Street west of Hanover Street could be made one-way streets.

Since that time, Mr. Smith has further requested the Company to provide for the removal of tracks from Fulton Avenue, and, re-arrange our tracks on Saratoga and Lexington Streets so that Saratoga Street could be made a one-way street from Greene Street to Charles Street. This necessitates the relocation of a westbound track on Lexington Street from Park Avenue to Greene Street.

The Management of the Company has considered your request and the request of Mr. Smith fully aware that it is its duty to cooperate in all reasonable plans for the facilitation of traffic. The Management is further aware that whatever can be done to facilitate traffic movement will assist it in its task of moving its riders expeditiously and safely.

The Company is happy to report that it can accomplish both the requests of the Council and of Mr. Smith and is forwarding you, herewith, copy of its report which has been submitted to Mr. Smith and The City Plan Commission.

The plan contained in the report is ambitious and necessitates the eventual abandonment of more than half the rail operation in Baltimore City. Under it, some new and needed bus lines are to be installed particularly in the Loch Raven Drive area where three additional schools and a new hospital will soon be erected.

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Upon the accomplishment of the plan, the remaining rail lines will be serviced by modern rail vehicles only and new free-wheeled vehicles will be procured to augment the present small free-wheel fleet of the Company. The Company believes that when the plan is completed the transit facilities in Baltimore will be the most completely modern of any city in the Country.

It is the purpose of the Company, wherever practical, to establish express service so that the travel time of the users of its facilities will be reduced to a minimum. By this and by furnishing quick and frequent service, the Company hopes to avoid a rapid decline in revenue which is seriously anticipated in the industry.

The Company believes that nothing will contribute more to the welfare of the City than excellent mass transportation furnished by a prosperous company. It is the belief of the Company that under the proposed plan excellence of transportation and prosperity can both be attained.

It has been brought to my attention that some fear has been expressed that the Company's objective was to reduce its out-of-pocket tax costs. The Company has no such objective and it is willing to cooperate with the City in procuring such legislation as will continue such costs. However, the Company does not feel that because of its cooperation in the City's plans its total tax costs should be increased.

This is the writer's first official contact with your Honorable Body. I am glad that the Company is able to cooperate and to accomplish the suggestion contained in your Resolution.

I trust that in the future all our relations may be equally pleasant and ask your cooperation and assistance in helping the Company give Baltimore an unexcelled transportation system.

Respectfully yours,

/s/Fred A. Nolan

President

(App. 40)

DEFENDANTS' EXHIBIT NO. 9—STATEMENT OF  
AVERAGE MAXIMUM NUMBER OF VEHICLES  
OPERATED, REVENUE PASSENGERS AND TOTAL  
PASSENGERS FOR THE YEARS 1936 TO 1941,  
INCLUSIVE.

(Note: Like information for the years 1942 to 1946  
(Plaintiffs' Exhibit No. 15) is incorporated  
in Appendix to Plaintiffs' Brief.)

The Baltimore Transit Company  
Baltimore 2, Maryland

AVERAGE MAX. NUMBER OF VEHICLES OPERATED  
WEEKDAYS ONLY

	Cars	Trackless Tr.	Buses	Total
1936.....	829	...	126	955
1937.....	811	...	145	956
1938.....	733	21	157	911
1939.....	684	47	172	903
1940.....	684	79	191	954
1941.....	736	84	208	1,028

REVENUE PASSENGERS

1936.....	111,989,474	.....	12,444,494	124,433,968
1937.....	114,689,082	.....	15,372,601	130,061,683
1938.....	106,949,892	2,754,768	16,697,257	126,401,917
1939.....	102,443,966	8,484,343	18,351,222	129,279,531
1940.....	104,153,868	13,666,657	20,525,855	138,346,380
1941.....	117,898,732	18,253,903	23,898,271	160,050,906

TOTAL PASSENGERS

1936.....	172,548,993	.....	17,330,838	189,879,831
1937.....	174,813,883	.....	21,682,737	196,496,620
1938.....	163,565,856	4,517,720	24,708,242	192,791,818
1939.....	154,929,052	13,446,501	27,476,702	195,852,255
1940.....	155,492,609	21,349,626	30,917,906	207,760,141
1941.....	173,867,360	28,380,053	36,655,522	238,902,935

Research Dept., June 25, 1947

**DEFENDANTS' EXHIBIT No. 12 — STATEMENT OF MILES OF TRACK ESTIMATED TO BE ABANDONED, ESTIMATED UNDEPRECIATED BOOK VALUE OF PROPERTY TO BE RETIRED AND PERCENTAGE OF TRANSIT COMPANY REVENUES AFFECTED BY CONVERSION, TO THE EXTENT APPROVED BY THE PUBLIC SERVICE COMMISSION.**

(NOTE: Plaintiffs printed as an appendix to their brief (Plaintiffs' Exhibit No. 8) a schedule giving the same information shown by this statement but adding to it a compilation of the estimated miles of track to be abandoned, the estimated retirement value thereof and the estimated percentage of revenues to be transferred, if in addition to the abandonments approved by the Commission, the entire conversion plan is approved and effected.)

**THE BALTIMORE TRANSIT COMPANY**

**Statement of miles of track estimated to be abandoned, estimated undepreciated book value of property (including overheads) to be retired and percentage of total Transit Company revenues affected by such abandonment.**

Project No.	Proposed Date of Abandonment	Estimated Miles of Track to be Abandoned	Car Lines Affected	Estimated Retirement Undepreciated Book Value Including Overheads	Estimated Percent of Transit Co. Revenues to be Transferred to Coach Co.
1	June 22, 1947	19.81	Nos. 1 and 11 Gilmore St., No. 17 St. Paul St. and No. 29 Roland Park.....	\$2,869,905	6.96
5	July 13, 1947	19.96	No. 6 Curtis Bay.....	3,382,543	6.40
5	Aug. 3, 1947	19.50	No. 20 Point Breeze, No. 15 Baltimore St. (between Gay St. and west end), No. 16 Madison Ave., No. 19 Harford Ave. (south end) and Nos. 5 and 33 West Arlington (east end).....	2,893,565	5.27
5	Sept. 1, 1947	5.57	No. 1 Gilmore St. (west end).....	808,685	(A) 0.00
5	Oct. 1947	12.61	No. 2 Carey St. & No. 13 Wolfe St. branch	1,845,024	4.24
		<u>77.45</u>		<u>\$11,799,722*</u>	<u>22.87</u>

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\*The total undepreciated book value of road and equipment is \$62,026,740.00; the amount of that to be abandoned, therefore, is 19.02% of the total.

(A) Plan comprehends conversion from rail to trackless trolley. Revenues would remain in Transit Co. Auditing Dept., June 25, 1947.



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DEFENDANTS' EXHIBIT No. 13—LIST OF DIRECTORS OF THE BALTIMORE TRANSIT COMPANY FROM 1944 TO DATE.

Name	From	To
Edwin G. Baetjer.....	July 9, 1935	April 24, 1945
Harry N. Baetjer .....	April 9, 1947	Now in office
J. Cookman Boyd, Jr.....	April 25, 1945	Now in office
George C. Cutler.....	Feb. 25, 1936	Mar. 13, 1945
John B. Duvall .....	Mar. 14, 1943	Jan. 1, 1946
E. Roy Fitzgerald.....	April 25, 1945	Now in office
John S. Gibbs, Jr.....	July 9, 1935	Now in office
Claude M. Gray.....	Nov. 19, 1946	Now in office
Joseph P. Healy.....	July 9, 1935	Now in office
Bancroft Hill .....	April 8, 1936	July 1, 1945
Austin McLanahan .....	July 9, 1935	Dec. 31, 1944
S. Page Nelson .....	April 25, 1945	Now in office
Fred A. Nolan.....	July 25, 1945	Dec. 12, 1946
Walter F. Perkins .....	June 20, 1944	Now in office
A. H. S. Post.....	July 9, 1935	Now in office
C. Frank Reavis.....	Feb. 27, 1945	Now in office
A. W. Smith.....	April 25, 1945	Now in office
Arthur D. Stebbins.....	July 9, 1935	July 25, 1945
John L. Swope .....	July 9, 1935	Nov. 19, 1946
John L. Swope .....	Feb. 27, 1947	Now in office

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DEFENDANTS' EXHIBIT NO. 14 — RESOLUTION NO. 481 ADOPTED BY THE CITY COUNCIL OF BALTIMORE ON OCTOBER 1, 1945 (extracts only in accordance with the Stipulation).

*Be it Resolved by the City Council of Baltimore,* That The Baltimore Transit Company is urgently requested to study the feasibility and practicability of replacing street cars or fixed wheel traffic with free wheel transportation completely on either Fayette Street or Baltimore Street, for the purpose of facilitating the movement of traffic through the Downtown section; and be it further

*Resolved,* That a copy of this Resolution be forwarded to the proper officers of The Baltimore Transit Company.

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DEFENDANTS' EXHIBIT NO. 16—ORDINANCE NO. 515 OF THE MAYOR AND CITY COUNCIL OF BALTIMORE APPROVED JULY 11, 1946 (Extracts only in accordance with Stipulation).

SECTION 1. *Be it ordained by the Mayor and City Council of Baltimore,* That Calvert Street, from University Parkway to Lexington Street, be and it is hereby declared to be a one-way street for vehicular traffic, and to be used by said traffic in a southerly direction only.

St. Paul Street, from Center Street to University Parkway, is hereby declared to be a one-way street for vehicular traffic, and shall be used by said traffic in a northerly direction only.

Charles Street, from Twenty-ninth Street to Fayette Street, is hereby declared to be a one-way street for vehicular traffic, and shall be used by said traffic in a southerly direction only.

(App. 44)

Liberty Street, from Fayette Street to Saratoga Street, is hereby declared to be a one-way street for vehicular traffic, and shall be used by said traffic in a northerly direction only.

Cathedral Street, from Saratoga Street to Mt. Royal Avenue, is hereby declared to be a one-way street for vehicular traffic, and shall be used by said traffic in a northerly direction only.

\* \* \* \* \*

SEC. 5. *And be it further ordained*, That this ordinance shall become effective upon the abandonment of rail or fixed-wheel traffic on Calvert Street, between Read Street and Lexington Street, on St. Paul Street, between North Avenue and University Parkway, and on Charles Street, between North Avenue and Read Street—except for one block south bound between North Avenue and Lafayette Avenue.

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DEFENDANTS' EXHIBIT NO. 17—ORDINANCE  
NO. 921 OF THE MAYOR AND CITY COUNCIL  
OF BALTIMORE APPROVED May 20, 1947  
(Extracts only in accordance with Stipulation).

SECTION 1. *Be it ordained by the Mayor and City Council of Baltimore*, That Ordinance No. 515, approved July 11, 1946, be and it is hereby repealed and reordained, with amendments, to read as follows:

1. Calvert Street, from University Parkway to Redwood Street, is hereby declared to be a one-way street for vehicular traffic, and shall be used by said traffic in a southerly direction only.

St. Paul Street, from Centre Street to Thirty-first Street, is hereby declared to be a one-way street for vehicular traffic, and shall be used by said traffic in a northerly direction only.

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Charles Street, from Twenty-ninth Street to Fayette Street, is hereby declared to be a one-way Street for vehicular traffic, and shall be used by said traffic in a southerly direction only.

Liberty Street, from Fayette Street to Saratoga Street, is hereby declared to be a one-way street for vehicular traffic, and shall be used by said traffic in a northerly direction only.

Cathedral Street, from Saratoga Street to Chase Street, is hereby declared to be a one-way street for vehicular traffic, and shall be used by said traffic in a northerly direction only.

\* \* \* \* \*

5. The provisions of this ordinance relating to Calvert Street and St. Paul Street shall become effective upon the abandonment of rail or fixed-wheel traffic on Calvert Street, between Read Street and Redwood Street, on St. Paul Street, between North Avenue and University Parkway, and the provisions of this ordinance relating to Charles Street and Cathedral Street shall become effective upon the abandonment of rail or fixed-wheel traffic on Maryland Avenue, between Twenty-fifth Street and Biddle Street, except for one block northbound between Lafayette Avenue and North Avenue; and on Charles Street, between North Avenue and Read Street, except for one block southbound between North Avenue and Lafayette Avenue.

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DEFENDANTS' EXHIBIT NO. 15—ORDINANCE  
NO. 393 OF THE MAYOR AND CITY COUNCIL  
OF BALTIMORE, APPROVED MAY 16, 1944  
(Extracts only in accordance with Stipulation).

ORDINANCE

No. ....

An ordinance approving, and directing the Mayor to execute a certain contract between the Mayor and City Council of Baltimore and The Baltimore Transit Company and The Baltimore Coach Company, relating to the use of the City's streets by said companies, the conversion of a portion of the street car operations in Baltimore City to buses, and providing for the settlement or arbitration of certain claims arising out of the use of said streets by said companies and an adjustment of certain taxes with said companies, all as contained in said contract, which contract is set out in this ordinance.

SECTION 1. *Be it ordained by the Mayor and City Council of Baltimore,* That the following contract between the Mayor and City Council of Baltimore, as party of the first part, and The Baltimore Transit Company and The Baltimore Coach Company, as parties of the second part, be and the same is hereby approved, and the Mayor of Baltimore be, and hereby is authorized, empowered and directed to execute and deliver the same on behalf of the Mayor and City Council of Baltimore as its contract:

THIS AGREEMENT, Made this ..... day of May, 1946, upon the mutual considerations hereinafter set forth, by and between the Mayor and City Council of Baltimore, a municipal corporation (hereinafter usually termed "City"), party of the first part, and The Baltimore Transit Company and The Baltimore

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Coach Company, both corporations of the State of Maryland (hereinafter usually termed respectively "the Company" and "Baltimore Coach Company"), parties of the second part,

WITNESSETH :

(1) Within thirty days after the passage of an ordinance approving this contract, the Company will pay the City the sum of \$2,500,000.

(2) During the years 1946 and 1947 the Company will pay the City the same taxes and charges on operations by street car and trolley coach which were payable under all laws, ordinances and agreements in force prior to the passage of Ordinance No. 276, approved December 17, 1945, except that, for the purpose of avoiding disputes as to the deductibility of certain expenses of the Company in computing any net income tax for the years 1946 and 1947 payable under Ordinance No. 281, approved September 1, 1932, it is agreed that the Company's net income tax payment under said ordinance for the year 1946 shall be \$100,000 and for the year 1947 shall be \$50,000. Such amounts shall be payable on the respective due dates of any income tax for said years under said ordinance.

(3) In addition, during the years 1946 and 1947, the Company and Baltimore Coach Company will pay the City in equal quarterly instalments in the same manner as the Park Tax is now payable a tax equal to 2% of the respective gross revenue derived by them from transportation by motor coach in the City of Baltimore.

Unless modified by agreement, ordinance or statute, the same rate of taxes on such gross receipts from motor coach operations shall be paid in years subsequent to 1947. Such 2% tax shall be a minimum City bus tax, independent of any present or future license, property or other tax imposed by the State or any

present or future division of any State tax between the State and City and shall continue to be payable to the City whether or not additional taxing powers with respect to motor coach operations are hereafter granted by the Legislature to the City. Neither the Company nor the Baltimore Coach Company shall seek legislation in any way reducing or restricting such 2% tax nor contest in litigation or otherwise the right of the City to collect and retain such tax in any future year. However, as provided in paragraph 5 below, the City may seek authority to impose and the Company and Baltimore Coach Company may oppose additional or increased taxes above such 2% tax.

(4) The payment provided to be made in paragraph 1 above and the other obligations herein assumed by the Company and Baltimore Coach Company shall be in complete discharge of the following obligations and liabilities of the Company and Baltimore Coach Company to the City:

(a) All obligations and liabilities, if any, of the Company (i) to restore paving on, or pave or repave at any future time, any section of any street where the Company has abandoned street railway operations pursuant to its Conversion Program hereinafter referred to, or, except as provided in paragraph 9, to remove track structures from such sections upon such abandonment, and (ii) to maintain or repair any of such sections of such streets after such abandonment. Track on which street car operations have ceased, but reserved for emergency operations, shall not be deemed to have been abandoned for the purposes of this paragraph. Prior to the actual abandonment of any section of any street included in the Conversion Program, the Company shall continue to maintain and repair paving in the track area in the same manner as now required under existing franchises, agreements and ordinances. However, the obligations, if any, of the Company to pave or repave any such section prior to its actual abandonment

shall be limited to cases where the City has given at least nine months written notice to the Company, requiring it to pay a portion of the costs of such paving or repaving and where such section shall not be actually abandoned within such nine-months period.

(b) All obligations and liabilities of the Company and Baltimore Coach Company to the City accruing for all periods prior to December 31, 1945, for or with respect to the following: The Park Tax; all franchise charges; all obligations to maintain and repair paving; all obligations to pave or repave streets (except with respect to paving, if any, contracted for prior to December 31, 1945, and not yet completed or paid for); all obligations for the use of streets under expired franchises; all obligations for taxes or other charges with respect to operations by motor coach; all license fees; all use charges; all easement taxes; and all capital stock taxes. The Company shall not, however, be relieved of any obligation or liabilities accruing after December 31, 1945 whether for taxes (except as provided in Sub-section (c) of Paragraph 4 and in Paragraph 5 hereof), street paving, street repaving or paving maintenance with respect to its street railway operations on any street upon which its cars continue to operate.

(c) All claims of every nature of the City against the Company or Baltimore Coach Company for taxes on bus operations or increase in the Park Tax for the year 1946 under Ordinance No. 276, approved December 17, 1945.

(5) The City will not impose upon the Company or Baltimore Coach Company any additional taxes or franchise charges of any nature whatsoever or charges for use of streets under expired franchises, for or applicable to the years 1946 and 1947, except as additional charges for taxes for year 1947 may result from agreement or arbitration of the matters described in paragraph 11 below, but this restriction upon the City shall not be construed to affect its right



to receive and retain any portion of State taxes allocated for any year to the City by existing or future legislation. The City reserves the right to apply to the Legislature for additional taxing powers applicable to the properties and operations of the Company and Baltimore Coach Company for the year 1948 and subsequent years. Nothing herein contained shall prejudice any rights, claims or defenses of either the City or the Company with respect to the power of the City to impose taxes or other charges upon the Company or the Baltimore Coach Company, their properties and operations for the year 1948 and subsequent years or to seek additional powers so to do or additional rates of tax.

(6) The Company will with reasonable diligence and as reasonably soon as necessary equipment can be obtained therefor proceed to carry into effect its Conversion Program substantially as set forth in its plan dated November 1, 1945, providing for the conversion from street car operations to free-wheel operation of approximately 58% of the Company's single track street car mileage. To this end the Company will with reasonable promptness make and prosecute before the Public Service Commission of Maryland appropriate application or applications for authority to abandon street car operations and substitute free-wheeling operations as set forth in its plan. The City represents that it is in favor of the adoption of the Company's Conversion Program in substance and in principle and agrees to support in substance and in principle before the Public Service Commission such program or a program of substantially equivalent scope and involving substantially equivalent mileage. When and as the Conversion Program or portions thereof are put into effect, the City will take appropriate action by ordinance or ordinances to establish one-way streets substantially as contemplated in such program, and to grant the Company, at the presently established standard rate of charges, such franchises

for new trackage as may be required to put in effect such Conversion Program as may be approved by the Public Service Commission.

(7) The City will set aside and from time to time in its discretion will spend the sum of \$2,000,000, from the funds received from the Company pursuant to paragraph 1 above, for the sole purpose of repaving, restoring, maintaining or resurfacing the streets involved in the Company's Conversion Program.

(8) In case, after application made to the Public Service Commission as above provided, the Commission shall finally refuse to permit the Company to carry out the entire Conversion Program or any substantially equivalent program so that such entire program cannot become effective, the Company shall be entitled to a credit with respect to \$1,750,000 of the \$2,000,000 fund referred to in paragraph 7, in the proportion which the mileage of the Conversion Program disapproved by the Commission bears to the total mileage involved in the Company's Conversion Program. Such credit shall be applied by the Company and Baltimore Coach Company to any taxes thereafter accruing and owing to the City until such credit is fully applied. In such case, the City's obligation under paragraph 7 above to devote the cash funds to paving shall be proportionately reduced.

(9) The Company reserves and shall retain title to all poles, wires and overhead structures wherever located, and all rail, ties and loading platforms in unpaved areas, and all rails in the paved areas, included in the Conversion Program. Upon abandonment of street railway operations in any street or portion thereof, the Company will with reasonable diligence and at its expense remove all such poles, wires and overhead structures in the streets or portions thereof so abandoned and, upon abandonment of street car operations in any street or portion thereof which is unpaved, the Company will also similarly remove all rails, ties and loading platforms in such unpaved

areas, thereafter smoothing the surface so as not to disturb the existing drainage in such areas. In connection with removing any poles the Company will repair any damage to the pavement caused by such removal. Whenever at any time in the future the City shall decide to repave any street, or portion thereof, in which there is track abandoned under the Conversion Program, the City will give the Company written notice thereof. Within thirty days thereafter the Company shall notify the City in writing either (a) that the Company does not desire to pay any cost of removal of rail in such street or portion thereof, in which case the Company shall thereupon convey to the City all its interest in such rail and have no further claim with respect thereto, or (b) that the Company agrees to pay the City the sum of \$1,000 per mile of single track (consisting of two rails), in which case the City shall break the paving in such manner as to expose the rails to the top of the tie, and the Company shall promptly thereafter at its expense remove the rails so exposed. Pending the determination of the City to repave any such street, or portion thereof, the City may in its discretion resurface the street over the track without modifying the respective rights of the Company and the City with respect to the ultimate removal of the rails as above provided.

(10) Promptly after the Company shall abandon street car operation on any street or way under the Conversion Program, the Company will convey to the City all the Company's right, title and interest in and to the street or way in which such abandonment occurs, reserving only title to the rails, ties, loading platforms, poles, wires and overhead structures, and as above provided. Easement taxes, if any, on any property so conveyed shall be adjusted to the date of such conveyance.

(11) In order to promote future cooperation between the City and the Company by eliminating the subject matter of recurring controversies, the Com-

pany and the City will endeavor promptly to agree upon the following matters:

(a) The City's claims, applicable to the year 1947 and subsequent years, that the gross receipts Park Tax should be applied to portions of the Company's trackage upon which easement taxes have instead been paid, and that the allocation of gross revenues based on mileage in the City and in the adjoining counties, does not fairly reflect the proper distribution of such revenues.

(b) The proper method of fairly allocating bus revenues between operations in the City and the adjoining counties for the purpose of computing bus taxes on gross revenues from motor coach operations in the City.

If the parties shall not reach agreement as to any of the foregoing matters, any such unsettled dispute between them shall be finally determined by arbitration by three arbitrators, one selected by each party and the third selected by these two. The cost of such arbitration shall be equally divided unless the arbitrators shall otherwise determine.

(12) The suit in equity now pending in the Circuit Court of Baltimore City between the parties shall promptly be disposed of in accordance with a stipulation of the parties in conformity herewith. The terms of this settlement shall inure to the benefit of and be binding upon the Company, Baltimore Coach Company, and any other company which may operate a transportation business in the City of Baltimore and which shall be either controlled by, or under common control with, the Company, and their respective successors and assigns.

IN TESTIMONY WHEREOF, the parties hereto have caused these presents to be duly executed on their respective behalfs, with their corporate seal attached;

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its execution on behalf of the City having been authorized by Ordinance, and on behalf of second parties by their respective Boards of Directors.

MAYOR AND CITY COUNCIL OF BALTIMORE,

By.....  
Mayor.

Test:

.....

THE BALTIMORE TRANSIT COMPANY,

By.....  
President.

Test:

.....

THE BALTIMORE COACH COMPANY,

By.....  
President.

Test:

.....

Approved as to form and legal sufficiency.

.....  
City Solicitor.

.....  
Assistant City Solicitor.

DEFENDANTS' EXHIBIT NO. 19 — ORDER OF THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND DATED June 14, 1935, CONFIRMING PLAN OF REORGANIZATION OF THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE, et al.

IN RE PROCEEDINGS FOR THE RE- ORGANIZATION OF THE UNITED RAILWAYS AND ELECTRIC COM- PANY OF BALTIMORE.	}	In the District Court of the United States For the District of Maryland
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\* \* \* \* \*

This cause coming on to be heard upon the application for the confirmation of the Plan of Reorganization of the United Railways and Electric Company of Baltimore, The Maryland Electric Railways Company and the Baltimore, Sparrows Point and Chesapeake Railway Company, dated February 19, 1935, and the modification thereof dated April 12, 1935, heretofore filed in these proceedings, and due notice having been given to all parties entitled thereto and schedules having been filed and testimony taken sufficient to disclose the affairs of the debtor and the fairness of the Plan, and due opportunity afforded to all parties in interest to object thereto, and all objections having been heard, the Court finds—

(a) That such Plan is fair and equitable and does not discriminate unfairly in favor of any class of creditors or stockholders, and is feasible.

(b) That said plan has been accepted in writing by creditors holding more than two-thirds in amount of all claims of each class of creditors of each of said

debtors, and by stockholders holding a majority of the stock of each of said debtors.

(c) That said plan has been duly approved by the Public Service Commission of Maryland.

(d) That all the requirements for and provisions with respect to the confirmation of such plan prescribed by clause (f) and other relevant clauses of Section 77-B of the Acts of Congress Relating to Bankruptcy have been complied with.

*It is, therefore, this 14th day of June, 1935, Ordered by the District Court of the United States for the District of Maryland—*

*First—*That the Plan of Reorganization of the United Railways and Electric Company of Baltimore, The Maryland Electric Railways Company and Baltimore, Sparrows Point and Chesapeake Railway Company, dated February 19, 1935, and the modification thereof dated April 12, 1935, filed in these proceedings, be and the same is hereby confirmed.

*Second—*That the Maryland Electric Railways Company and Baltimore, Sparrows Point and Chesapeake Railway Company shall each assign, transfer and convey to The United Railways and Electric Company of Baltimore (under said or any changed name) all of its property, real, personal and mixed, and wheresoever situate. That The United Railways and Electric Company of Baltimore and said other debtor corporations shall proceed to put into effect and carry out said plan and the orders of the court relative thereto under and subject to the supervision and control of the Court.

*Third—*The Court reserves for further determination any questions or issues arising in these proceedings and not disposed of by this decree, including the question of the priority of the claims of the Con-

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solidated Gas Electric Light & Power Company of Baltimore, State Roads Commission of Maryland, Alexander Brown & Sons, now pending in these proceedings, and the affirmation or rejection of executory contracts and unexpired leases mentioned in the schedules heretofore filed in these proceedings.

WILLIAM C. COLEMAN

U. S. District Judge.

United States of America

District of Maryland, to wit:

I, CHARLES W. ZIMMERMAN, Clerk of the District Court of the United States for the District of Maryland, do hereby certify that the foregoing is a true copy of the Order of Court Confirming Plan of Reorganization, which was entered and filed on the 14th day of June, 1935, in the therein entitled case of In re: Proceedings for the reorganization of the United Railways and Electric Company of Baltimore, No. 8204 Bankruptcy Docket in said District Court.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the seal of the said District Court this 3rd day of July, 1947.

Chas. W. Zimmerman

Clerk of the said District Court.



DEFENDANTS' EXHIBIT NO. 20—ANNUAL REPORTS OF THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE FOR THE YEARS 1923 THROUGH 1934 AND ANNUAL REPORTS OF THE BALTIMORE TRANSIT COMPANY FOR THE YEARS 1935 THROUGH 1946 (Extracts only in accordance with Stipulation).

Annual Report for the year ending December 31, 1925:

Your Company owns all of the important bus lines in Baltimore and there seems to be satisfactory evidence that the number of private automobiles that can be conveniently used for business transportation is rapidly reaching a maximum.

There is evidence of a return to the street cars as the cheaper and more convenient mode of transportation. If this continues, then in the absence of special factors, the Company may look forward to increasing gross receipts to give it a fairer return than it is now earning. Should this prove to be a disappointment, and the next few months should determine this, the investor still may have entire confidence, as back of his bonds and stock, there is now a proven and accepted value on which the Commission and the Courts will grant a fair return.

East Fayette Street Bus Company: With the approval of the Public Service Commission of Maryland, The Baltimore Transit Company, one of your Company's subsidiaries, acquired during the year all of the buses, property, rights, privileges, franchises, etc., of the East Fayette Street Bus Company, including the Gray Line Sight-Seeing franchise. The Baltimore Transit Company now operates bus service on Charles Street, Mt. Royal Avenue, Bentalou Street, Chester Street, the Alameda and Monroe Street. It also operates trackless trolley service from Gwynn Oak Junction to Randallstown. Bus service on East Fayette Street is operated by the East Fayette Street Bus Company.

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Annual Report for the year ending December 31, 1926 :

Bus Service :

Your Company through its subsidiary, the Baltimore Coach Company, now owns or controls practically all the busses operating within Baltimore City and suburban territory. In addition, the Baltimore Coach Company owns what is known as "The Gray Line," which operates sight-seeing tours. There are only eight single busses still operating in Baltimore not controlled by your Company. These are operated by owners under old franchises granted before the Public Service Commission ruled that it was to the interest of the public that the transportation system of the City, including electric lines and busses, should be co-ordinated under one management, provided that management responded to reasonable public requests.

Your Company has never been placed in the position where it has been necessary to refuse a request approved by the Public Service Commission.

Some of the bus lines are beginning to show a reasonable profit others do not. It should be remembered, however, that in a sense the bus lines are competitive with the street railway lines. To this extent it is difficult to measure their value as separate units. As supplementary to the railways system they are of a great value, some of the bus lines in addition to their own operating income acting as valuable feeders to the street railways.

The Baltimore Coach Company, your Company's subsidiary, now owns 81 busses and 3 trackless trolleys, and operates a total route mileage of 48.8 miles and gave service to the extent of 1,159,887 miles during the year 1926.

Annual Report for the year ending December 31, 1927 :

Bus Service :

Your Company's bus operating subsidiary, The Baltimore Coach Company, has continued operations

during the year on the basis of a co-ordinated system that would best fit the general transportation requirements of the Community.

The Baltimore Coach Company now owns 108 buses and 3 Trackless Trolleys and operates a total mileage of 45.22 miles.

The total operation for the year 1927 including the Randallstown Trackless Trolley line, was 2,113,819 bus miles, an increase of 541,566 miles at a total expense of \$732,298.43, a decrease of \$12,118.29. The total revenue was \$788,808.95, an increase of \$75,516.44 and the net income was \$56,510.52 against a deficit of \$31,024.21 in 1926.

The revenue from the special bus operation, under the Gray Line Association Membership, amounted to \$129,776.51, an increase of \$21,123.58 with a net income over and above all expenses both direct and indirect of \$20,082.14 (included in above net income), an increase of \$8,769.67.

There have been some interesting developments in bus designs and in the application of buses to city transportation. Your company is studying the possibilities of these developments so as to take advantage of any improvement that might better its position and reduce operating expenses.

Three bus lines, the Rosedale line, the Druid Hill Park line and the Gibbs Building line, totaling 7.89 miles, were abandoned during the year. Tracks and cars were substituted for the latter line. Two bus lines totaling 4.80 miles were added. The Lansdowne line operating as a feeder from the end of the Washington Boulevard car line was acquired. The Lakeland line, operated as a feeder from the end of the Westport car line, was taken over at the request of the Public Service Commission.

Annual Report for the year ending December 31, 1928:

Bus Service:

The Baltimore Coach Company, all of whose capital stock is owned by your Company, now operates one

hundred and eight buses and three trackless trolleys over permanent routes totaling 45.22 miles. Several types of coaches were tried out during the year in order to obtain a practical demonstration of the advantages to be derived from their use, however, no additional equipment was added and no new equipment was purchased.

The total operation for the year 1928, including the Randallstown Trackless trolley line, was 2,257,320 bus miles, an increase of 143,501 miles.

Total gross receipts for bus lines operated by Baltimore Coach Company aggregate \$840,536.28, operating expenses and depreciation \$785,823.47—net profit \$54,712.81—a decrease of \$1,797.71 as compared with 1927.

The Baltimore Coach Company owns all of the buses operating on regular schedule in Baltimore City with the exception of but eight buses licensed in the early days of bus operation.

Your Company also owns what is known as the Gray Line—a company operating special trips to local and nearby points of interest and offering buses for hire.

Plans have been completed for a new garage and a lot on the west side of Taylor Avenue, south of Twenty-fifth Street, has been purchased and graded. This garage will take care of the storage and operation of one hundred and seventy-five (175) buses and of the maintenance and repair of these buses and all of the Railway Company's automotive equipment. It will replace the two existing garages.

Annual Report for the year ending December 31, 1929:

Street Traffic—During the past year, the first City ordinance relating to street congestion caused by automobile parking, was passed, and as a result material improvement has been accomplished in the speed of all vehicles through certain congested areas.

At the request of public authorities your Company has furnished engineering and traffic assistance to the

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Police Department in devising plans for the installation and operation of automatic traffic signals. In the downtown district a study was made of several different methods of operating the traffic signals to determine that which would give the best result for all users of the streets. Through this application of scientific methods to traffic signaling improvement in the speed of traffic in the signal controlled area has resulted and delays due to traffic signals have been reduced.

One of the practical results of traffic studies has been the speeding up of street cars in the downtown district. Reductions of 12 to 17 per cent. in scheduled running times have been effected on a number of lines. This faster speed of street cars has permitted more rapid and more orderly movement of all traffic.

Bus Service—The bus service conducted through your subsidiary company, the Baltimore Coach Company, has been increased by the addition of three new routes during the past year. Those on Reisterstown Road and Middle River are extensions of car service and a de luxe service coach line operated into the Roland Park district. At the present time there are 122 units in operation over 61 miles of permanent route, operating 2,435,000 bus miles per year.

Annual Report for the year ending December 31, 1930:

Track Work. During the year 13 miles of track were reconstructed; a portion of this work was carried out in co-operation with the State Roads Commission in its program for the improvement of York, Reisterstown and Frederick Roads.

An item of major improvement has been undertaken in co-operation with the city in the relocation of tracks through the Eastern Avenue Underpass, which when completed will make possible an improved service to the southeastern district, freed from the delays and hazards incident to the present nine crossings of steam railroad tracks at grade.

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Six loops and wyes were constructed at various points upon those lines equipped with new cars.

Car Shops. Shop organization has devoted considerable attention to the details of construction of the new cars, and to breaking in of cars as received from the manufacturers in order that they might actually perform, under service conditions, up to the high standards set for this new type of equipment.

Arrangements have been made whereby the maintenance and overhaul of the busses operated by the Baltimore Coach Company (a subsidiary of your Company) can be taken care of in the various shops under the supervision of the Superintendent of Rolling Stock and Shops.

Bus Service. Your subsidiary, the Baltimore Coach Company, also entered upon a program of betterment of service. During the year, the Company purchased new double-decked busses of the very latest type in substitution for the old type units assigned to the Charles Street route. The improvement in speed of operation and comfort to the passenger has met with a gratifying increase in the patronage along this route.

Annual Report for the year ending December 31, 1931 :

Bus Service. In continuation of the program for service betterment, your wholly owned subsidiary, the Baltimore Coach Company, purchased 50 of the latest type of busses to be used in substitution for the old type units upon the more important routes in various parts of the City. It has been necessary to pay for the new busses and incidental capital expenditures out of its income, through delayed payments or temporary bank loans, on which your Company is guarantor.

Annual Report for the year ending December 31, 1937 :

Traffic Plans. Mayor Jackson in March, 1934, appointed a traffic commission to make recommendations as to methods for better handling of traffic in the City.

This commission after making a detailed and careful study has formulated a comprehensive plan for Baltimore. Your Company is actively cooperating with the Commission, in carrying out this plan.

The City desires to remove the tracks from Howard Street between Madison and Linden Avenues to facilitate traffic when the Howard Street bridge is opened. To cooperate, we have offered to abandon rail service on Linden Avenue, most of Howard Street and Sharp Street and to replace this service with a Trackless Trolley line; if this is successful, to convert the twenty-seven or Federal Street line to Trackless Trolley, and, if these steps are successful, to convert the ten or Roland Park line to Trackless Trolley by way of the new Howard Street bridge.

The thirty-two or Howard Park line would be diverted to Madison Avenue and Eutaw Street. The ten or Roland Park line would be diverted to Park Avenue as long as it remained a rail line. This seems to be the best plan available if we are to comply with the City's request. The plan is now in the hands of the Traffic Commission which is to hold public hearings on it.

Cross Town Line. In August of 1937, we opened the Cross-town bus line from Edison Highway and Erdman Avenue on the East, to Liberty Heights Avenue and Druid Park Drive on the West. It was not expected that this line would pay and it has not paid. In fact, it operates at a loss, but, it is undoubtedly a public convenience and we hope to be able to continue it.

Diesel Buses. Your Company has now in service eighteen large diesel-electric drive buses. They are much more economical of fuel than the gasoline engine and so far have given no more mechanical trouble than the gasoline engine.

Future Policy. The policy of your Management is to develop all three types where each seems best fitted—gasoline and diesel buses for light, trackless trolley

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for medium, and modern rail cars for heavy service. No one can fortell what may happen in the future but we know of no large city "going to gas buses" entirely.

Annual Report for the year ending December 31, 1945:

#### TRAFFIC PROBLEM GROWS—EFFICIENT TRANSIT NEEDED

Traffic paralysis or near-paralysis, irregular, slow and unattractive transit service, streets congested because of narrowness and inadequacy, insufficient parking facilities—all are facets of the same problem. There seems to be agreement in Baltimore that this problem exists and that it urgently requires solution.

There is also agreement amongst planning authorities that efficient public transit is one of the important answers to the traffic congestion problem. It is now well understood that a City street capable of carrying 2000 persons per hour by individual transportation alone (the private automobile), can, if a public transit line be added, carry 12,000 persons per hour. Thus it takes six streets to carry by private transportation alone the number of persons which can be carried on one street equipped with a public transit line.

The principle is now well established that the most efficient use of street space for traffic calls for methods which permits its use by the greatest number of people. Practical realization of the benefits of this principle means that transit lines must attain a maximum degree of attractiveness to the general public and streets must offer a maximum of capacity for carrying people with a minimum of delays and hindrances.

#### PLANS FOR IMPROVEMENT LAUNCHED IN 1945

Plans embodying these requirements were completed and made public during the past year, but were made impossible of adoption in 1945.



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City authorities were first to launch these plans. Under date of May 21, 1945, the Chief Engineer of Baltimore City sent to the Mayor a comprehensive program for one-way streets and substitution of free-wheel for fixed-wheel public transit lines on a number of important arteries. In his report to the Mayor introducing his description of this program, the Chief Engineer wrote:

“The benefits which have been derived from the removal of car tracks from Franklin Street, the construction of the Orleans Street Viaduct, the improvements to the surfacing of Franklin and Mulberry Streets and their designation as one-way streets have demonstrated that such changes will go a long way toward expediting vehicular movement.”

In October, 1945, the City Council of Baltimore, by resolution, asked your Company to study the feasibility of removing fixed-wheel vehicles from either Fayette Street or Baltimore Street and substituting free-wheeling.

The Chief Engineer's plan was agreed to by your Company which set to work arranging routings and substitutions of free-wheel for fixed-wheel vehicles in accordance with the recommendations of the Chief Engineer of Baltimore, the resolution of the Baltimore City Council, and the program of the City Plan Commission. Throughout this planning period we kept in close touch with the Chief Engineer, the Commission on City Plan, and other City authorities. Before public announcement of the plan the Public Service Commission was consulted and informed on all details. The completed plan was announced and published November 1, 1945, and submitted to the Public Service Commission for approval of the first of the seven "Projects", or groups of changes.

However, while the completed plan met the requirements of the City authorities, other City officials

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declared your Company should pay more in taxes and paving charges if the program were adopted. Your Company's position on this had been set forth in a letter from the President of the Company to the City Council, dated November 1, 1945, wherein he said:

"It has been brought to my attention that some fear has been expressed that the Company's objective was to reduce its out-of-pocket tax costs. The Company has no such objective and it is willing to cooperate with the City in procuring such legislation as will continue such costs. However, the Company does not feel that because of its cooperation in the City's plans its total tax costs should be increased."

Negotiations ensued, but came to an end when the City Council enacted and the Mayor signed ordinances imposing a gross receipts tax of fifteen percent on all of the Company's bus operations and raising the gross receipts tax on trolley operations from three percent to nine percent.

Thereupon your Company withdrew the transit improvement plan from consideration by the Public Service Commission of Maryland, and instituted proceedings to test the legality of the ordinances.

Your Company hopes that the tax questions will be settled satisfactorily and that the plan can be resubmitted. A brief summary of this plan is in order. Certain important general principles and objectives have been pursued, namely:

1. That the overall travelling time of public transit passengers should be reduced to a minimum.
2. That public transit lines should be located so as to provide the most convenient access to all parts of the area and still make economically frequent intervals on each route.
3. The planned transit system should furnish service with the particular type of vehicle which will

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provide the highest quality of service at lowest cost.

These factors were considered by the Chief Engineer of Baltimore when he recommended his one-way-street plan and substitution of free-wheel for fixed-wheel vehicles on a number of streets. Your Company, as previously stated, coordinated its program with the Chief Engineer's and with the programs of The City Plan Commission and the City Council.

Eleven street car routes would remain, all operated with modern street cars mostly of the PCC (the green, streamlined) type.

More than 60 miles of street would be freed from street car operation which should materially reduce street traffic congestion. These streets would include those earmarked by the Chief Engineer for one-way traffic and free-wheeling.

Fewer street cars would enter downtown Baltimore with fewer turning movements.

Outlying portions of the City now served by shuttle bus lines would in some cases be served instead by through bus service.

Lines now and for many years routed circuitously would be routed more directly.

Express service for quicker trips downtown would be instituted on some of the new bus lines.

#### LONG STEP TOWARD RELIEF

When and if completed, this program for modern planned public transit will cost in excess of \$7,500,000, for modern vehicles and operating facilities. It should be possible to complete it in two years. While comprehensive the program is still subject to change. It is believed, if adopted, the plan would mark a long step toward relief from traffic congestion in Baltimore and put this city in the first rank of large American cities which are attacking their traffic problems with modern methods.

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INTERVENOR'S EXHIBIT—REPORT TO THE HONORABLE HOWARD W. JACKSON, MAYOR, BY THE TRAFFIC COMMITTEE (Preston D. Callum, Chairman), NOT DATED BUT SUBMITTED IN 1935 (Extracts only in accordance with Stipulation).

#### BATH-ORLEANS STREET

Provides for the elimination of all street-car operation on Orleans Street from the intersection of Orleans Street and Wolfe Street to the intersection of Orleans Street and Aisquith Street.

All street-car operation on West Franklin Street from the intersection of West Franklin Street and Park Avenue to the intersection of West Franklin Street and Fremont Avenue.

This provides a new through east-west traffic thoroughfare from the eastern boundary of the City to Fulton Avenue—Monroe Street, and by use of those streets to connect with streets leading out of Baltimore City on the south-west.

This new thoroughfare for free-wheel traffic provides a route for the operation of motor-bus mass transportation vehicles from the eastern and western sections of the City to and from the central sections of the City. The reasonably possible routes that such mass transportation service might utilize are numerous and no attempt is made here to present them in detail.

#### CALVERT STREET

Elimination of all street-car operation on Calvert Street over its entire length, from the intersection of Calvert Street and East Pratt Street on the south, to the termination of North Calvert Street on the north.

This provides a new north-south free-wheel traffic thoroughfare for the City.

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At the northern terminus of Calvert Street, radiating thoroughfares, free of fixed-wheel traffic, are available in several directions to the northern City line.

This new free-wheel route would be available for the operation of motor-bus mass transportation vehicles if desired.

#### CHARLES STREET

Elimination of all street-car operation on Charles Street from the intersection of North Charles Street and Preston Street on the north, and Conway Street on the south.

Operation of Street-Car Routes No. 17 and No. 29 will continue on North Charles Street between Preston Street and North Avenue.

After the removal of street-car operation, Charles Street would become available as a thoroughfare over which could be operated motor-bus mass transportation vehicles. This operation lends itself to connecting services or turning services to utilize the new through east-west route available across Franklin Street—Bath-Orleans Street Viaduct; Lexington Street; or north-south operation as far as may be usefully developed.

#### FAYETTE STREET

Elimination of the present street-car operation on East Fayette Street between Caroline Street and Patterson Park Avenue clears East Fayette Street of all street-car traffic from the intersection of East Fayette Street and Gay Street to the eastern boundary of Baltimore City.

This provides for the more expeditious movement of free-wheel east-west traffic over an extensively used City thoroughfare which is also a route of interstate traffic, being part of Federal Road Route No. 40.

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#### FREMONT AVENUE—HAMBURG STREET

Adoption of Recommendation No. 8 to convert the present Street-Car Route No. 30 into a Trackless Trolley Route will permit removal of street-car tracks from all of Fremont Avenue (except between Edmondson Avenue and West Saratoga Street) and all of Hamburg Street.

#### HANOVER STREET

Elimination of street-car operation on Hanover Street from Heath Street on the south, to West Fayette Street on the north allowing this thoroughfare to be utilized solely for free-wheel traffic, thereby expediting the movement of such traffic to the Hanover Street Bridge and southern Maryland.

#### LEXINGTON STREET

Elimination of all street-car operation on East Lexington Street from the intersection of East Lexington Street and Caroline Street to the intersection of East Lexington Street and Gay Street.

Elimination of street-car operation on West Lexington Street from the intersection of West Lexington Street and North Charles Street to West Lexington Street and North Howard Street.

This will provide an additional cross-town free-wheel traffic thoroughfare from Caroline Street on the east to at least Eutaw Street on the west.

#### McMECHEN STREET

Adoption of Recommendation No. 8 to convert the present Street-Car Route No. 30 into a Trackless Trolley Route will permit removal of street-car tracks from McMechen Street between Division Street and West North Avenue.

When this is done, street-car operation over McMechen Street will be eliminated over its entire route.

MONROE STREET

Elimination of all street-car operation on Monroe Street is accomplished by re-routing Street-Car Route No. 9 and Street-Car Route No. 14 over Edmondson Avenue between the intersection of Edmondson Avenue and Monroe Street and Edmondson Avenue and Gilmore Street.

Recommendation No. 7—Street-Car Route No. 12—John Street—Westport. Motor-Bus Route No. B—Mt. Royal Avenue—Charles Street.

A. That the present Street-Car Route No. 12 be entirely discontinued.

B. That the present Motor-Bus Route No. B be enlarged, rerouted and operated from its present northern terminus at Cloverdale Road and Madison Avenue, via:

A branch of Motor-Bus Route No. B be established to operate from:

(a) Terminal at Camden Station, via Camden Street to Paca Street; thence on Fremont Avenue to Ridgely Street; thence via Ridgely Street to Annapolis Road; and thence to terminus on Fish House Road, Westport, returning over the same route.

This Recommendation will:

10. (a) The flexibility of motor-bus operation will permit operation changes in the Motor-Bus Route No. B as recommended, as may, from time to time, be decided by careful study to be for the improvement of service and for the comfort and convenience of the public.

(b) Motor-bus operation does not involve the use of steel rails, in the street surface, over-head trolley wires, or under ground third-rails for supply of electric power over fixed transmission lines, with all of their auxiliary equipment; which represents a heavy first cost in capital outlay, together with the attendant high cost of repair, maintenance and adherence to a fixed route. Therefore, changes in route may be

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effective as soon as determined by proper authority and involve merely a change in route. Such flexibility has many advantages in meeting the changing conditions within a city.

Recommendation No. 8—Street-Car Route No. 30—Fremont Avenue.

A. That the operation of street-cars over the entire present Street-Car Route No. 30 be discontinued;

B. That Trackless Trolley vehicles be substituted for street-cars over the entire present Street-Car Route No. 30.

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TRANSCRIPT OF STENOGRAPHIC RECORD  
(Extracts only)

JOSEPH P. HEALY.

Q. Mr. Healy, you are a director of The Baltimore Transit Company, are you not? A. Yes, sir.

Q. Mr. Healy, how long have you been a director of the Transit Company uninterruptedly? A. Since July 1st, 1935.

Q. Are you familiar with the purchase by the board of the motor cars or motor buses from manufacturers other than those named in these two paragraphs? A. Yes, sir.

Q. The manufacturers whom I have just read to you? A. Yes, sir.

Q. What purchases were made? A. From Ford on equipment and Brill on buses.

Q. The contract with Brill is one of those which have been put in evidence, is it not, and also a contract for the purchase of buses from General Motors?

A. That is right.



Q. Again in paragraph 12 of the complaint, this allegation is made against you and your fellow directors: "That the National City Lines, Inc., has in fact complete working or operating control and dominates the policies and management of The Baltimore Transit Company." And, finally in paragraph 20: "That the defendants herein and directors of the said The Baltimore Transit Company have been under the domination and influence of the said National City Lines, Inc., through its representatives, E. Roy Fitzgerald, C. Frank Reavis and Claude M. Gray and others, and by virtue of the aforesaid commitments and agreements heretofore entered into by the said National City Lines, Inc., which company is in fact an agent of said manufacturing supplier corporations have not exercised their free will and judgment in promoting the aforesaid conversion from electric railway service to motor bus operation and placing orders for 600 new buses which are to be substituted for and in place of electric trolley car equipment which is to be abandoned and written off the books at the aforesaid net loss to the stockholders of The Baltimore Transit Company of \$20,800,000.00. That said defendant directors have acted collusively, and in bad faith and indeed, fraudulently, by promoting this gigantic scheme to convert the Baltimore Transit Company and Electric Railway Company into a holding company, or substantially a holding company, holding stock only in a motor bus company, The Baltimore Coach Company. In furtherance of their fraudulent and illegal acts, said defendant directors have without any authority or consent of the stockholders, as required by law, determined to change and convert the corporate function of The Baltimore Transit Company from a local operating street railway company to a mere holding company, holding stock in the said The Baltimore Coach Company." Have you ever been approached by Mr Reavis or Mr. Fitzgerald or Mr. Gray and asked to subordinate your judgment

with respect to any matter having to do with the operation of The Transit Company, and to do what they asked you to do? A. I never have and I think a charge of that kind on one in Baltimore who pleads to being civic minded, I think is a reflection on my honor and my intelligence, and I would like, as far as I can, to make it a matter of record, a matter of resentment.

Q. I ask you categorically as to each of these allegations I have read to you, are they true or are they false? A. They are false without any question about it, as far as I am concerned.

Q. Does or does not your action with respect to the conversion that is proposed represent your independent judgment that it is to the best interest of the transit company? A. It does, and I believe that judgment goes back over a long enough period to be of value to both the company and the city.

Q. Has your vote as a director of the transit company ever been solicited by Mr. Reavis or Mr. Fitzgerald or Mr. Gray, or Mr. Nolan or by anybody, on behalf of the National City Lines, with respect to any matter you have acted on? A. Never.

Q. Have you been a regular attendant at the meetings of the Board of Directors? A. I suppose in twelve years I have not missed over two meetings.

Q. You said in your testimony that the conversion had been recommended and proposed by Mr. Chase in his report to the District Court at the time of the reorganization; is that correct? A. That is right.

Q. From the time of the reorganization and continuing until such date as you may name, what had been the attitude of the Board of Directors with respect to converting part of the electric line to motor buses? A. They discussed it regularly and always anticipated going nearly up to the Chase report when the best interests of the stockholders and the City necessitated it.

Q. Who presented the conversion plan to the board of directors in detail? A. Well, it covered a long period. There came a time when, after we had our bout with the City and the City Council and so forth, my memory is that eventually it was brought to us by Mr. Nolan.

Q. Do you remember the technical advice that was given you with respect to the plan and who gave it?

A. Well, there was a firm in New York by the name of Gilman, I think was the name. They made a very complete study and after that, Mr. Hughes, our local official, checked it and rechecked it.

Q. Mr. Hughes had been with the company, to your knowledge, since the reorganization? A. And considerably before that.

Q. What was his position with the company? A. Well, at that time he was an engineer—

(The Court): Who is that you are referring to?

(Mr. Baetjer): Mr. Hughes.

A. (Continuing) He was an engineer over a long period and previous to Mr. Hill leaving, he brought him in to advise him on special matters that required a lot of research and survey, and because of his long experience with the company he was considered by the board as a good technical adviser.

Q. I will ask you if you can identify what I am handing you.

(Mr. Witz): I am going to object to that, sir.

A. Am I to answer?

Q. I ask you to identify it, that is all for the moment.

(The Court): You are asked to identify the book. Can you identify it, or can't you? Mr. Healy? A. I can, sir, and do.

Q. What is it? A. It is the Chase report of the Baltimore situation.

Q. That is the report you referred to and which you say recommended conversion, and it was on the basis of that report that you continued your work

after you became a director subsequent to the reorganization? A. That's right.

Q. Tell us briefly what the conditions were and what the effect was which you anticipated by this plan? A. Well, Baltimore was far behind other cities. I went to Philadelphia a good deal along one way streets, and in many cases narrow streets, and we felt as though progress in many ways necessitated Baltimore, as its population grew during the war and which it has held considerably, and we observed this traffic was frightful and we felt as though we would eventually have to, whether we wanted to or not, cooperate with the City, and you are familiar how we analyzed that and went along with the City to make sure we arrived at the proper conclusions. But after that time we further studied with the City, we concluded it was a proper plan and that had much influence on my vote.

Q. In a word you felt that the conversion plan which you, as a director, favored would improve traffic conditions of Baltimore City? A. Yes, sir, very definitely.

#### WALTER F. PERKINS

Q. You are a director of The Baltimore Transit Company, are you not? A. Yes, sir.

Q. Mr. Perkins, the provision of the by-laws providing for the executive committee reads as follows, Article 10, page 11, of the by-laws: "During the intervals between the meetings of the board, the executive committee shall possess and exercise all the powers of the board in such manner as the executive committee shall deem best for the interest of the company, in all cases in which special directions shall not have been given by the board." That is your understanding of it, is it not? A. Yes. That is the provision of the by-laws.

Q. Mr. Perkins, you say you are an industrialist. Will you tell his Honor just what your present positions are? A. I am vice-president of the Koppers Company and General Manager of the Bartlett-Hayward Division in Baltimore; I am also Chairman of the executive committee of the Maryland Drydock Company.

Q. There was read to you by Mr. Witz an extract from the by-laws of the company having to do with the powers of the executive committee. During your term as a member of the executive committee has that committee committed the company with respect to anything without first referring it to the board? A. Never.

Q. Did that committee consider independently, in the first instance, the conversion plan before it was submitted to the board? A. Yes.

Q. And when it was submitted to the board, was it submitted with or without a recommendation? A. Recommending its approval.

Q. In the bill of complaint, paragraph 18, this statement is made: "That your complainants are further advised and do therefore aver that the proposed 'conversion' from trolley cars to motor buses, in accordance with the plan approved by the Public Service Commission of Maryland, \* \* \* if effected will require the abandonment of property having a book value of approximately \$21,000,000." Do you consider that a loss? A. No, sir; I don't consider it a loss. I consider it obsolete equipment that is already gone. It isn't worth anything today.

Q. Mr. Perkins, were you a member of the Board of Directors and a member of the executive committee at the time in 1944 when it has been testified that the National City Lines bought into the transit company? A. Yes, sir.

Q. And you have been a director and member of

the executive committee continuously since about that time? A. That's right.

Q. Are you familiar with the conversion plan that was approved by the Public Service Commission by its order passed in October of 1946? A. I am.

Q. Will you tell us to what extent you were familiar with it and how you became familiar with it, and as far as you recall it, the period of time it was under consideration? A. When I became a director in 1944, it became perfectly apparent to me that come the end of the war a drop in gross receipts would seem inevitable and would result in a very changed picture in the operation of the transit company. Something had to be done. The City of Baltimore was changing. Suburbs were moving further out. Blighted areas were taking place in the downtown section and the war riders would disappear and we would have to depend for our existence upon normal riding. It seemed that it called for an intelligent engineering study. The suggestions were made that the firm of Gilman and Company of New York, who are recognized authorities in this sort of work, be engaged to study the operation of the transit company and make a recommendation to the board of directors as to what should be done. This firm was engaged and completed their report in the spring of 1945. The essence of that report was in the post war period if operations were continued as of that time, under those circumstances the company would unquestionably suffer a loss in operation. On the other hand, if changes were made in certain routes, certain lines from fixed wheel operation to free wheel operation, an estimated profit of a million and a half dollars annually could be obtained. This report was discussed in great detail by the members of the executive committee and by the members of the board and it was the basis of that report that caused the company's own engineering staff, headed by Mr. Adrian

Hughes, to submit to the board of directors on the 1st of November, 1945, a comprehensive reconversion plan which would re-route most of the lines operated by the company and involved the changing over from fixed wheel transportation to free wheel transportation, about half of the operations of the company.

Q. Then at the meeting in November, 1945, did you vote in favor of the plan and in favor of the submission of the plan to the Public Service Commission?

A. I did.

Q. For its approval? A. I did, and also to submit the plan to the Baltimore City Council at the same time.

Q. After that plan had been submitted it was withdrawn, was it not? A. Yes, sir.

Q. Will you tell the Court why it was withdrawn and as far as you can remember when, and what was the subsequent history of it? A. The plan was withdrawn because the City officials became convinced—I cannot speak entirely for Mr. Sobeloff—I think they became convinced that the transit company would profit unduly by this plan. An ordinance was introduced in the City Council increasing the park tax from 3% to 9% and imposing twelve and one-half per cent. tax on motor bus operation.

Q. Wouldn't you say it was 15% to be correct? A. 15% that's right, 15%. The directors became convinced that such a tax would be so burdensome that it would be impossible to proceed with the conversion plan and, consequently, withdrew the application which was then before the Public Service Commission.

Q. This action by the City was in the fall of 1945? A. 1945.

Q. And what was your gross in 1945 approximately? A. About \$25,000,000, \$24,000,000 or \$25,000,000.

Q. How much of that was electrical operation approximately? A. \$21,000,000.

Q. So the increase proposed was 6% on \$21,000,000 practically? A. That's right.

Q. You have testified what was the bus operation that year, you said what? A. \$3,000,000.

Q. And the proposed tax on that was 15% was it not? A. That's right.

Q. After that legislation was passed by the City Council, what was done with respect to the plan? A. Well, the application was withdrawn that was before the Public Service Commission.

Q. Then was it subsequently filed again or refiled? A. It was subsequently refiled.

Q. The application as it was filed was substantially or exactly the same as the board had approved it at the meeting of November, 1945? A. Substantially the same.

Q. And there has been no substantial change since then? A. No, sir.

Q. I will read to you from three sections of the bill of complaint and just ask you questions based on the allegations made in those three sections. The first one is paragraph 12 of the complaint, in which the allegation or statement is made that the National City Lines has in fact complete working or operating control and dominates the policies and management of The Baltimore Transit Company. I ask you categorically, is that true or not? A. It is untrue.

Q. I would like to ask you one more question. That is, as to allegations of paragraphs 20 and 21. Paragraph 20 is: "That the defendants herein and directors of the said The Baltimore Transit Company have been under the domination and influence of the said National City Lines, Inc., through its representatives, E. Roy Fitzgerald, C. Frank Reavis and Claude M. Gray and others, and by virtue of the aforesaid commitments and agreements heretofore entered into by the said National City Lines, Inc., which company is in fact an agent of said manufacturing supplier corporations, have not exercised their free will and judgment in promoting the aforesaid conversion from electric railway service to motor bus operation and placing



orders for 600 new buses which are to be substituted for and in the place of electric trolley car equipment which is to be abandoned and written off the books at the aforesaid net loss to the stockholders of The Baltimore Transit Company of \$20,800,000. That said defendant directors have acted collusively, and in bad faith and, indeed, fraudulently by promoting this gigantic scheme to 'convert' The Baltimore Transit Company, an electric railway company, into a holding company, or substantially a holding company, holding stock only in a motor bus company, The Baltimore Coach Company. In furtherance of their fraudulent and illegal acts, said defendant directors have without any authority or consent of the stockholders, as required by law, determined to change and 'convert' the corporate function of The Baltimore Transit Company from a local operating street railway company to a mere holding company, holding stock in The Baltimore Coach Company. Paragraph 21: That the complainants are advised and therefore aver that the defendant directors have acted illegally and fraudulently and in bad faith and have breached the trust placed in them as such directors by attempting to promote the aforesaid 'conversion' and without first calling a meeting of the stockholders of The Baltimore Transit Company, as required by law, where a transfer or exchange of a substantial portion of a corporation's assets is contemplated, or where a change in the corporate function or purpose is contemplated, and for the approval or disapproval of said stockholders. That under the defendant directors' scheme to 'convert' to motor bus operation in Baltimore City, all of the new franchises are to be issued to The Baltimore Coach Company, and in fact that company will ultimately be the owner of all, or substantially all, of the real assets of The Baltimore Transit Company, all to the great loss and injury of the stockholders of the said The Baltimore Transit Company." I ask you

whether the statements in those paragraphs are true or false? A. Absolutely false allegations.

Q. Has any effort ever been made by Mr. Reavis or Mr. Fitzgerald, or Mr. Gray, or by Mr. Gray's predecessor, Mr. Nolan, or anybody else to influence your judgment as a director with respect to what action the transit company should or should not take, especially with respect to the conversion plan? A. Never.

Q. Did you ever discuss the matter with them except on a board meeting? A. Never.

Q. At the meeting of the board in which the conversion was authorized, as far as you know, was the action taken unanimous? A. It was unanimous.

Q. Does the conversion represent your best and informed independent judgment that it is to the best interests of the transit company and its stockholders? A. It does.

Q. What has been the attitude of Mr. Reavis and Mr. Fitzgerald and Mr. Gray and Mr. Gray's predecessor with respect to the conduct of the transit company and its affairs, so far as your contact with them is concerned as a director? A. Their attitude has been of the very highest. They have always been most respectful of the opinion of the other members of the committee and board and they have never insisted that anything be done. They have made suggestions, and some very good suggestions. I think at times they have made some suggestions that were not so good and they have not been accepted. All the actions which have ever been taken with Mr. Reavis and Mr. Gray or Mr. Nolan sitting in the board, have been on the basis of complete discussion, and in most cases unanimous.

Q. Who presented the conversion plan to the board of directors at the meeting at which it was adopted and ordered filed? A. Mr. Adrian Hughes.

Q. Who was Mr. Hughes? A. He was at that time the director of research of the company.

Q. Will you state briefly what was the situation that you found before this conversion plan was adopted and what, if anything, you hoped to accomplish in that direction through the conversion plans?

(Question objected to: objection overruled.)

A. I think I can best answer the question by referring to a little booklet that was submitted to the members of the City Council on November 1st, 1945, in which I think Mr. Sobeloff's question is answered.

Q. In which what? A. In which I think your question is answered. I would like to read from that book.

(Mr. Witz): What is this book? Who published this book?

(The witness): The Baltimore Transit Company.

(The Court): Do you object to the admission of the book?

(Mr. Witz): Yes, sir.

(The Court): Sustained.

Q. Isn't this a document that was presented by your company to the City Council? A. Yes, sir.

Q. What was the subject under consideration by the City Council at that time? A. This conversion plan.

Q. The conversion plan and the traffic conditions? A. Yes, sir.

Q. And this was the company's contribution to the discussion? A. Yes, sir.

Q. And it represents your views then and now? A. Yes, sir.

(Mr. Sobeloff): It seems to me, your Honor, it is proper to consider it.

(The Court): I will sustain the objection. I think Mr. Perkins can answer the question without the book very well.

Q. Mr. Perkins, are you sufficiently familiar with the subject matter to present your views and the company's views on this subject, particularly the directors' views without reference to this booklet?

(Question objected to; objection overruled.)

A. I think so; yes, sir. I can't do nearly as well without the document but I will try.

Q. Laying aside all modesty, suppose you try to answer it? A. At the time this plan was proposed to the City Council and the Public Service Commission, it was of public knowledge that traffic conditions in Baltimore were terrible. There were great delays on all traffic lines in the down town section. This was causing great dissatisfaction on the part of the customers of The Baltimore Transit Company, and one of the impelling reasons in going to free wheel transportation in place of fixed wheel transportation was to enable the introduction of one way streets that had been suggested by the Chief Engineer of the City. It was impossible to comply with his plans of one way operation without the removal of the street car lines from those particular streets and the substitution of buses thereon. We felt that by doing what the Chief Engineer and the administration of Baltimore had asked us to do, we would not only be assisting in the solution of the traffic problems of Baltimore, but, at the same time, would be improving the service to our riders, and thereby hoped to save some of them for public transportation instead of private transportation, when it became available in the post-war period.

Q. And was it your hope through the solution of that problem or making a step toward the solution of that problem to benefit your company? A. Unquestionably.

(Mr. Sobeloff): Now, your Honor, I would like to offer that booklet for identification so that the basis of the original question and the objection will be in the record.

(The Court): All right.

Q. Can you separate that, Mr. Perkins? A. I can, yes. I have some notes on the back I would like to keep.

(Mr. Baetjer): I will furnish one.

(The Court): Why not mark it for identification

and let a substitution be made by agreement of counsel without prejudice?

(The Witness): If you will let me take the back page off, you can have this.

(Mr. Sobeloff): Mr. Goetz, will you mark this for identification, the booklet referred to by Mr. Perkins in his testimony?

(Booklet referred to marked Defendant's Exhibit A for identification).

### S. PAGE NELSON

Q. Mr. Nelson, you are president of the Savings Bank of Baltimore, are you not? A. Yes.

Q. And you are also a director of The Baltimore Transit Company? A. Yes.

Q. Mr. Nelson, you are familiar with this plan of conversion to buses, are you not? A. Yes.

Q. Did you, as a director of The Baltimore Transit Company, vote for the plan to convert? A. Yes.

Q. Mr. Nelson, you were sitting in Court this morning were you not? A. Yes.

Q. During the entire hearing? A. Yes.

Q. Did you hear the sections of the bill of complaint which I read to Mr. Healy and read a second time to Mr. Perkins, and I mean particularly paragraphs 12, 20 and 21? A. Yes.

Q. And you heard the question I asked them as to whether or not the statements made in those sections were correct or incorrect, and I ask you the same question. Are they correct or are they not? A. Mr. Baetjer, I will have to have my recollection refreshed as to what the questions are. I am sorry.

Q. The statements that were made, if I may paraphrase them, in paragraph 12, the statement is made that the National City Lines has complete working or operating control and dominates the policies and management of The Baltimore Transit Company. Is that true or not true? A. That is not true.

Q. In paragraphs 20 and 21, these very serious

charges are made against you and your fellow directors: "That the defendants herein and directors of the said The Baltimore Transit Company have been under the domination and influence of the said National City Lines, Inc., through its representatives, E. Roy Fitzgerald, C. Frank Reavis and Claude M. Gray and others, and by virtue of the aforesaid commitments and agreements heretofore entered into by the said National City Lines, Inc., which company is in fact an agent of said manufacturing supplier corporations, have not exercised their free will and judgment in promoting the aforesaid conversion, electric railway service to motor bus operations and placing orders for 600 new buses which are to be substituted for and in place of electric trolley car equipment which is to be abandoned and written off the books at the aforesaid net loss to the stockholders of The Baltimore Transit Company of \$20,800,000; that said defendant directors have acted collusively, and in bad faith and fraudulently by promoting this gigantic scheme to convert The Baltimore Transit Company, an electric railway company into a holding company." Now, I ask if there was any collusion involved in your determination or vote in favor of the adoption of this conversion plan? A. Never at any time.

Q. Was there anybody on behalf, whether Fitzgerald, Reavis, Gray, Nolan, or anybody on behalf of National City Lines, who asked you to vote for the conversion plan? A. No.

Did you ever discuss the conversion plan with any of them except in a board meeting? A. No.

Q. After the National City Lines was authorized to buy into the transit company in the fall of 1945, were you present at a meeting at which it was determined to submit the plan of conversion? A. Yes.

Q. Before that meeting of November, 1945, what had been the discussion, if any, among the board members as to the advisability of a conversion and what had been done looking to a conversion. A, I came on the board in April and at every meeting subsequent

to that, conversion was the topic of lengthy discussion.

Q. What influenced you, as far as you can remember it, in favoring a conversion into free wheel operations to the extent that that was involved in the plan?

A. Many, many reasons. The major ones were complaints with the City's plan for relieving the traffic congestion in Baltimore and flow of traffic through one way streets, the impossibility of the company ever realigning its street car lines to meet that situation, and the speeding of traffic, the convenience of customers and the maintenance of the company's earnings to a point where it could operate successfully.

Q. Did you familiarize yourself with the details of the plan when it was presented to the directors?

A. Yes.

Q. Who presented it to the directors? A. Mr. Adrian Hughes.

Q. And was it gone into in detail at that time? A. Yes, a long and thorough presentation.

Q. Did you vote for approval of the plan and direct its submission to the City Council and Public Service Commission? A. Yes.

Q. After it was submitted to the Public Service Commission, do you recall whether or not it was recalled? A. I recall it was recalled.

Q. Do you know why? A. Yes.

Q. Why? A. The tax question was up before the City Council. The tax question between the City and the company came up; with the possibility of burdensome taxation staring us in the face, the conversion program was recalled.

Q. Then after the matter with the City was settled, what happened to the conversion program, if you recall? A. It was resubmitted.

Q. I ask you again, Mr. Nelson, in conclusion whether during the term you have been a member of the Board of Directors of the Transit Company,

your action has always been controlled by your own independent judgment? A. Yes.

Q. And that is true as to the conversion plan?  
A. Yes.

C. FRANK REAVIS

Q. Who are the other principal stockholders in National City Lines? A. The Fitzgerald family own, if I remember rightly, about 22% of the common stock of National City Lines. That family was made up of five brothers and their families, and each of the five brothers is an officer of National City Lines.

Q. When was National City Lines incorporated?  
A. 1936.

Q. In Delaware. A. In Delaware.

Q. And their principal office is in Chicago, is that correct? A. That's right.

Q. Do you own any stock of National? A. Yes, I own about—I think approximately 3,000 shares.

Q. Are you aware of the fact that The Baltimore Transit Company does have a requirements contract with Firestone? A. Yes, sir.

Q. And it is in evidence in this case. A. Yes, sir.

Q. That contract was made right after National City Lines acquired their stock in The Baltimore Transit Company? A. What was the date of the contract?

Q. September 1st, 1945. A. Yes. That came about in this way. There had been a contract between The Baltimore Transit Company and the U. S. Rubber Company. Mr. Nolan had become president of The Baltimore Transit Company in May, 1945, and he came in to a meeting of The Baltimore Transit Company, in September, of 1945 and stated that the results of the U. S. Rubber contract were not good, that there were many vehicles being laid up because of the fact that the tires were not properly maintained.



Breakdowns were more numerous than he had seen them in almost any other city and he was dissatisfied with the situation, and he did talk with Firestone Tire and Rubber people about whether or not the Firestone could make a contract to supplant the U. S. Rubber and found that it could, and it would save substantial sums of money over the present contract with the U. S. Rubber and the service would be infinitely better. The Board of Directors discussed it and considered the amounts that he said would be saved and the service that he said would be rendered, and authorized it to make contracts with Firestone and he did. I have not seen the contract, but I understand it was for five years. Mr. Baetjer, have you a copy of these Firestone figures? There has been prepared by the company a schedule as to the results of the operations (handing paper to Court).

(The Court): Is this offered as an exhibit?

(Mr. Witz): No, I am not offering it.

(The Court): If there is no objection, he can refer to the paper in giving his testimony. Go ahead.

A. (Continuing) After the contract had been in effect since January 1, or at least these figures are from January 1, 1945, you will see, your Honor, at the top statement of tire service from January 1, 1945, to May 1st, 1947 and comparisons—in May, 1945, the U. S. Rubber Co., Contract was still in effect up to the end of, I think, October, you will see on the lefthand side. The result of the operations, I think ten months under U. S. Rubber contract, is shown down on the righthand side. It cost the company \$104,195.39, which was paid to U. S. Rubber Company, and that was at the rate of .01253 cents a mile, that is a penny a quarter mile approximately. The results of the Firestone Tire and Rubber contract are shown from January, 1946 to May, 1947, during which period it paid Firestone \$156,262.20, or .00907 cents a mile, or a saving of .00346 cents a mile. That,

stated in terms of dollars at the bottom of the sheet there, the saving under the Firestone contract and what would have been paid under the U. S. Rubber contract for the period January 1, 1946, to May, 1947, has been \$59,584.47. So that Mr. Nolan's presentation to the board of the reasons for making this contract have been entirely borne out.

Q. Who does Baltimore Transit Company buy their oil from and gasoline? A. I think from the Sherwood Company of Baltimore.

Q. Entirely? A. Entirely.

Q. Mr. Reavis, I think your answer states this substantially. It is the policy of the National City Lines to convert local transit company systems which they control and operate to bus operation wherever possible; is that correct? A. I can state what the policy is. I am not an operating man, you understand, Mr. Witz, but as I understand the policy, and we have talked about it from time to time, the National City Lines buys interests in the securities of transit companies in the hope that by assistance from the management of the company, by suggestions or otherwise, the company can be made profitable. If they are made profitable, it hopes in turn it will make some money on the securities by way of dividends or other payments to it. In order to do this, it is the constant desire of the National City Lines to assist in such way as it can in having the transit companies in which it has an interest use the equipment it is best designed for the purpose and to make the largest return, make the largest amount of money for the company whose securities it owns and, hence, give it the largest return in turn. I may say in that connection that the St. Louis Company, your Honor, is just receiving 1,000 street cars, the Los Angeles Company is just receiving 40 street cars and 80 trackless buses, or whatever you call them, and that I understand Mr. Gray has ordered for Baltimore in lieu of

a certain number of buses which would otherwise be used, 23 trackless trolleys, because he has found that is the best vehicle to use on some of these new routes.

Q. What percentage of those street cars ordered in St. Louis is that of the entire operation? A. What percentage does the 1,000 street cars bear to the other street cars?

Q. How many vehicles in operation in St. Louis? A. I don't know. Substantially more than a thousand, of course.

Q. I assume, Mr. Reavis, that you as a director and member of the executive committee of The Baltimore Transit Company, voted to approve the conversion plan, did you not? A. I did.

Q. Do you know what the abandonment losses of the company will be at this time? A. At one time the auditing officers of the company said that the property values which would be written off on the 46% conversion would be about \$21,000,000. You see, your Honor, these property values aren't as simple as they sound. Back in 1935, when the company came out of trusteeship, it made an amendment or agreement or reached a conclusion with the Public Service Commission that the company could carry on its books \$53,000,000 of tangible property, to which they added \$12,000,000 of what was called overhead, which was just intangible addition for costs during construction, and things of that kind, or a total of \$65,000,000. That \$53,000,000 was the result of valuations made in conjunction with the Public Service Commission and it was somewhat arbitrary and it contained all of these myriad items concerning which the original cost was and is now entirely unknown because, until 1924, the company did not have any records as to cost of property. They simply put companies together and then put on their own books the outstanding preferred or common stock as being the property value. Between 1935 and 1947 those

tangible properties remained on the books at approximately \$53,000,000. These overheads had been reduced from \$12,000,000 to approximately \$9,000,000. So that the theoretical property values in this more or less arbitrary manner on the books of the company is approximately \$62,000,000.

Now, the auditors say if you convert 46% of your mileage to buses, it is going to be necessary to take off your books \$21,000,000 of those \$62,000,000. From where it came they did not know at the time. They had good estimates but they were not sure. They did not know the exact cost of a piece of track or the exact cost of a sub-station or the exact figures on the books excepting in general categories. But it was for an estimate quite close. That is, 46% would result in \$21,000,000 reduction in these assets on the books. It isn't a loss. It is a substitution of new property for old that you are giving up. You are going to give up \$24,000,000 of property and you are going to put back \$11,000,000 or \$12,000,000 of new property; just as if the B. & O. Railroad gave up an old engine which was out worn and put a Diesel motor in its place. They did not lose it. It is supplanted with modern equipment.

Q. But it could not be supplanted with any proceeds from the abandoned property? A. Oh, no, that is right. Now, the auditing staff, after a special investigation for many months, have said that this 46% is \$24,000,000 instead of \$21,000,000. I think the \$24,000,000 and \$21,000,000 are both fictions, as can be readily seen when you recognize the fact that that same property, for income tax purposes is accepted at a value of only about \$4,000,000. That is, the depreciated value to the government of that property is \$4,000,000. The undepreciated cost on the books reached by this conglomerate, arbitrary method over a period of time is \$24,000,000, and that is now set by the auditing staff on the property, which will be written off the books, \$24,000,000 will come out of your \$62,000,000. What

part comes out of the \$9,000,000 overhead, what part cost of the depreciation reserve, is a complicated bunch of factors that these auditors and accountants will have to figure in the first case, then put on the books with the consent of the board of directors. That is where the \$21,000,000 was gotten and where the \$24,000,000 were gotten. But, I repeat, the depreciated value of that property is about \$4,000,000.

Q. Of course, that includes the abandonment of franchises of the various street car lines, does it not?  
A. Yes. The franchises are given up as the operation stops. But new franchises are gotten in turn.

Q. And those new franchises are taken in the name of The Baltimore Coach Company? A. Yes.

Q. Has the executive committee ever taken any steps to commit the transit company with respect to any matter without first taking the matter up with the board of directors? A. The executive committee has never undertaken nor do I think it would undertake to make any decisions binding the company with respect to any matter of policy. It has acted as an advisory committee to consider problems of the management that should be considered in the interim between the board of directors meetings, and to formulate suggestions to the board of directors and things of that nature.

Q. Mr. Reavis, referring to the bill and not reading again in full as I did to the other witnesses, the allegations of fraud, collusion and bad faith made against the directors, I would like to ask you this. In the bill of complaint the statement is made that National City Lines has complete working or operating control and dominate the policies and management of The Baltimore Transit Company. Is that true or not?  
A. No, sir, it is not true.

Q. Again, in paragraph thirteen, the statement is made that National City Lines owns or has substantial financial interests in local transportation companies which are located throughout the United States, which

are engaged in the business of providing local transportation service in more than forty-two cities, and it is the policy of the National City Lines, to have the operating companies provide local transportation service by motor buses wherever possible. As far as The Baltimore Transit Company is concerned, have you, as a director, ever insisted upon any particular type of vehicle being used by the transit company?

A. No, sir.

Q. Do you know, as a matter of fact, whether they are using all three types, the electric car, the trackless trolley, and the bus? A. Yes. I know as a fact that the company is using all three types.

Q. Does the conversion plan contemplate the continued use of all three types? A. Yes, sir.

Q. Have there been differences in the board as to policies with respect to the conversion? A. Well, I think the vote for the conversion plan was unanimous, but there have been many discussions on individual points respecting the conversion plan.

Q. In the next paragraph number 21, which is a repetition of the charge of fraud and collusion, you voted for the conversion plan, did you not? A. Yes, sir.

Q. What induced you to do it? A. Well, the Baltimore Transit Company had a gross, in 1936, a gross income of \$11,701,000. I am reading from figures, Mr. Witz, prepared by the auditor of the company and with your permission, perhaps, I can hand this to Judge Tucker (handing paper to the Court). Of that gross, approximately \$1,000,000, that is \$1,080,000 was the result of bus operations. In 1941 the company had a gross of \$14,663,000, made up of \$12,554,000 street cars, and \$2,108,000, the result of operations of the buses. In 1946, it had reached a gross of \$23,970,000 as the result of war time traffic, made up of \$20,568,000 by street car operations, and \$3,401,000 operation of buses. Your Honor will see that the bus operation trebled in gross between 1936 and 1946. At

the same time—the figures are not on that sheet, your Honor—the net income of 1936 was only \$102,000, the net income in 1941 was only \$324,000, whereas the net income in 1946 was \$1,578,000. Now, it is very obvious to anybody who knows anything about transit companies that this gross has to go down from \$23,970,000 in 1946 to some lower figure. Nobody knows, unless you are a soothsayer, as to where it will level off. Experience tells us it will level off to the 1941 figure of \$14,663,000. It is most earnestly hoped by most of us that it will level off at a very much higher figure. But certain it is that no responsible man will say that any transit company when your private automobile comes back in full and when this large amount of activity developed by the war is diminished, sir, can possibly stay where it was in 1946. Indeed, that factor has already started to operate, and the gross in the first five months in 1947 has run, I think, about five or six per cent less than it did in 1946, and the net income of the company for the first five months of 1947 is sizeably less than it was in 1946. Something had to be done, particularly in view of the fact that costs were rising very rapidly.

To induce people to stay on the vehicle of the transit company, to get more people to go on and to keep your gross up to some place at which you would have a good operating profit left, your cost condition is reflected in the fact that in 1944, when National City Lines made an application to buy stock of this company—and I speak from memory—platform labor was paid of ninety-six cents an hour and is now paid about \$1.20 an hour, that is, twenty-four cents an hour for platform labor higher than in 1944. Roughly speaking, I have heard it said excepting for economies and efficient operations introduced by management, due only to increased labor costs, it costs the company \$100,000 a year. So that labor costs alone between 1944 and 1947 the company has paid \$2,600,000 more costs than it had in 1944. When it is realized that in

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1941 you only made \$324,000, it is obvious your company cannot stay the way it is and make any money in the future. There would have to be something done to its operation. What, depends on engineering advice and realization of facts and the decision of management.

It was then, Mr. Batjer, as I understand it, early in 1935, the company employed Gilman and Company of New York to make an analysis, and as a result of all of these factors your Honor has heard discussed here, speeding up traffic, the city's attitude, flexibility of operation, cost of operation, Gilman and Company recommended to the management and the management and directors approved of the plan, that in order to keep this company alive, not in gentle philosophical discussion, but to keep the company alive and operating with a profit, there has to be a conversion to free wheel vehicles, some to overhead trolley coaches but principally to buses. That was the consensus of opinion of the engineers and the management. They thought that by doing that an operating profit could be maintained with lower gross income, but if you don't do it, the company at best would be in straightened financial circumstances, and at worst it might have very serious financial difficulties.

Having made the recommendations to the management and developing them as to what ought to be done, of course, the cost of doing it was a very sizeable factor. As I understand the relative theories of cost, the 600 buses will cost about \$9,000,000 of which 80% will be borrowed and 20% paid by the company. I think that is the figure used throughout. Garages and things of that kind, will cost \$2,000,000 or a total of between \$11,000,000 and \$12,000,000. It won't do to say this is the cost which you could escape if you don't put these buses in. The facts, as I understand them, are entirely to the contrary.

Mr. Smith, of Gilman and Company, is here to testify. He is the depository of all of the detail of this



information. But, as I understand it, over a reasonable period of time if you continue to operate as you have today, you would have to put at least \$3,000,000 into tracks alone. The old tracks would have to be replaced or refurbished or reconditioned, and when you are done with it you simply have old tracks in a new condition. You would have to buy 500 street cars, because the company cannot keep people riding in the street cars on the tracks today indefinitely, and that would cost \$5,500,000. But you would have to recondition your overhead and do something to your sub-stations, and by the time you are done with those things, you have the choice of two things; either free wheel or street cars. After you were done with it, if you continue the present method of operation, you would have a relative obsolete system and you would have spent many, many millions of dollars more than is going to be spent on the bus program and for overhead trolleys. We have set out these facts before them, it was the engineers' advice, and the management, after careful consideration of it agreed that you must go to free wheel vehicles to be able to make a profit, and that the cost of doing that was less than if you tried to put on all street cars, and, therefore, the management and directors had but one choice. They simply had to do this to keep this company in condition to operate at a profit.

I may say in my own opinion, if the directors had not done this, they could have then been charged with seriously not doing what was best for the company and best for the stockholders. Those were the things in general that were considered by everybody, considered by me as a director, as the result of the engineering studies, and as a result of the advice to the management of the company.

Q. Were you present at the meeting where the conversion plan was presented in detail? A. I was.

Q. Who presented that, Mr. Reavis? A. Mr. Hughes.

Q. Were you present at a subsequent meeting when the details were presented to the board with respect to the changes of the Carroll Park shops and the building of new garages in order to take care of the increase in number of free wheel vehicles? A. I was.

Q. Was the action of the board at those two meetings unanimous? A. Yes, sir.

Q. When the plan was presented by Mr. Hughes, or possibly before the plan was presented by Mr. Hughes, were you made acquainted by the management of the company with negotiations they were having with the city officials with respect to one way streets? A. Yes, sir.

Q. And insistence by the City that there should be one way streets? A. Yes, sir.

Q. Was that explained to you, was it explained to you that one way streets would make it necessary to take the street cars off? A. Yes, sir. If you have tracks running both ways of the streets you cannot leave the cars and the tracks there and have the one way streets. You have to have free wheel vehicles.

Q. Were you advised at that time that the transit company had committed itself with respect to the one way streets some time before the war? A. If I remember correctly, the Calvert Street conversion which took place on June 22nd is approximately the same thing which was agreed upon before the war started and delayed because of the war.

(Mr. Witz): How do you remember that?

(The Witness): Oh, there were conversations about it, reports to the board of directors about it.

(Mr. Witz): You were not a director before the war started.

(The Witness): I know, but I can still hear things even though I wasn't here. They had it in many of the reports and recommendations.

Q. And these reports were the reports that were made to you by the management of the company in

explaining to you this plan for conversion? A. That is right.

Q. And the necessity for the free wheel operation?

A. That is right.

Q. Were you furnished with copies of those reports of either Mayor Jackson's traffic commission or the reports made by Nathan Smith, the City Engineer?

A. In am not sure about the Mayor Jackson commission, but I do remember the report made by Mr. Smith.

Q. And that report concerns itself also in part with the conversion to the one-way street program? A. Yes, sir.

Q. Was any objection made to you, as a director, by anyone with respect to the carrying out of the conversion program?

(Question objected to.)

A. No, sir.

(The Court): I will sustain the objection and strike out the answer.

Q. Do you recall whether the settlement of these traffic problems was involved with the settlement that was made with the City of the litigation between the City and the transit company, with respect to the taxing ordinances that were passed in December, 1945?

A. Yes. Suit was brought by the company to enjoin the application of the taxes on the company, and as a result of that, the presiding judge indicated that the City and the company should get together and settle these various differences, not only the tax problem but the whole periphery of the differences on streets and conversion, and that sort of thing, and as a result of which an overall settlement was made with the City after some months of negotiations, I believe, in May or June of 1946.

Q. Were you familiar with the report that was made to the City Council by Mr. Sobeloff, the City Solicitor, in its negotiations with the transit company

concerning this conversion plan and tax suits, and related matters? A. Yes, sir.

A. H. S. POST

Q. Mr. Post, you are a director of the Mercantile Trust Company? A. A director in the Mercantile Trust Company; yes, sir.

Q. And a director of The Baltimore Transit Company? A. Yes, sir.

Q. Mr. Post, you are familiar with the plan of conversion to buses, are you not? A. Yes, sir.

Q. Did you, as director of The Baltimore Transit Company, vote for that plan? A. I did, sir.

Q. What will the abandonment losses be to The Baltimore Transit Company as the result of that conversion? A. Well, that is difficult to establish. The loss as indicated is simply undepreciation value of equipment and plant. Those are obsolescent and no longer can be used except at an operating loss.

Q. Did you vote for the adoption of the conversion plan? A. I did.

Q. Did that represent your uncontrolled, best judgment as to what was best for the transit company? A. My own individual judgment, uninfluenced by anybody else.

Q. Have you been dominated or controlled in any sense, as a director of the transit company or member of the executive committee, by National City Lines or by its president, Mr. E. Roy Fitzgerald, or by Mr. Reavis or Mr. Gray or anyone else? A. There was never any effort or attempt to dominate me.

Q. Have you been in collusion with the National City Lines with respect to the affairs of the transit company? A. No, I have not.

JOHN L. SWOPE

Q. Mr. Swope, you are the vice-president, treasurer and director of The Baltimore Transit Company? A. I am.

Q. How long have you been so engaged? A. Since January 15th, 1926.

Q. Are you familiar with the conversion plan so called? A. I am.

Q. Did you, as a director, vote for that plan? A. I did.

Q. As an officer or director of The Baltimore Transit Company, have you been dominated by the National City Lines or by Mr. Reavis or by Mr. Fitzgerald, Mr. Nolan, Mr. Gray, or by anybody else? A. I have not.

Q. Have you been in collusion with them with respect to any matter affecting The Baltimore Transit Company? A. I have not.

Q. Does your vote in favor of the adoption of the conversion plan represent your independent judgment? A. It does.

Q. That it is to the best interests of the company? A. It does.

(The Court): One question, Mr. Swope. I want to ask you the names of the gentlemen who comprise the board of directors of The Baltimore Coach Company, whether they are Mr. Gray, yourself, Mr. Swope, Mr. Grafton, Mr. Lord, Mr. Hughes and Mr. Kuhlmann. I think the record in this case shows who Mr. Gray, Mr. Swope, yourself are, and your connection with The Baltimore Transit Company. Who are the other gentlemen named? Are they connected with The Baltimore Transit Company? A. Mr. Hughes is assistant to the president; Mr. Grafton is the auditor; Mr. Kuhlmann is secretary of the company.

(The Court): How about Mr. Lord?

(The Witness): Mr. Lord was at that time director of personnel.

(The Court): They are all connected with The Baltimore Transit Company?

(The Witness): I think Mr. Kuhlmann, the operating manager, has taken the place of Mr. Lord, although I am not sure of that.

(The Court): I just want the record to show who these men are.

(The Witness): Mr. Lord was director of personnel.

CLAUDE M. GRAY

Q. Mr. Gray, you are the president and chairman of the board of The Baltimore Transit Company? A. I am president of The Baltimore Transit Company and ex-officio chairman of the board.

Q. Mr. Gray, you stated in your answer that heretofore you were engaged by the St. Louis Public Service Corporation? A. Yes, sir; St. Louis Public Service Company.

Q. And you were engaged with that company since when? A. January 1st, 1929. I went with them at that time as Superintendent of Shops.

Q. And you were with them with the exception of one year, I believe, is that right? A. Part of the year in 1943 and 1944, when I was general superintendent of the Chicago Surface Lines.

Q. Then you went back with them after that? A. Went back with the St. Louis Public Service Company and vice-president and operating manager.

Q. Since about 1940, National City Lines have been interested in that company, have they not? A. It has.

Q. Financially? A. It is the only interest I would know it would have.

Q. From whom does The Baltimore Transit Company buy their oil and gas? A. They buy their lubricating oil and deisel fuel from Sherwood Brothers. They buy their gasoline from the Texas Company.

Q. You don't buy anything from Standard Oil? A. No.

Q. As manager of the operating company, have you any restrictions imposed upon you with respect to whom you should buy your supplies from? A. I have not.

Q. Have you made purchases of motor buses from concerns other than General Motors? A. I have.

Q. What other concerns? A. From the A. C. F. Brill Company this year. Last year the prior manager purchased from the Ford Company.

Q. The purchase from the Brill Company is evidenced by the contract which was put in evidence yesterday? A. That is right.

Q. Is the Brill Company connected with General Motors? A. It has no connection, to my knowledge.

Q. Did you make a contract with the Firestone Company? A. I did not.

Q. Are you familiar with the terms of it? A. Fairly so. I have read it.

Q. In your judgment, is it an acceptable and advisable contract for The Baltimore Transit Company to have made? A. Yes. It is a general type of contract that was made with tire companies. All the major tire companies make similar contracts with large bus operators on a mileage basis and I have had experience with other companies as well as Firestone.

Q. Are those contracts usually made on an annual basis? A. They are seldom made on an annual basis because the tire companies themselves don't want them on an annual basis. That is because the tire companies have contract tires manufactured at what might be termed their off-peak business season and it gives them a balance load in their factories, so they don't like a short term contract. When I was with the St. Louis Company and during the receivership I negotiated a five year contract or helped to negotiate it with the Goodyear and Goodrich Company.

Q. One more question. You are, of course, familiar with the conversion plan? A. Yes.

Q. Although you did not vote for it? A. I did not vote for it, but I am familiar with it.

Q. Has it your unqualified approval as being for the best interests of the transit company? A. It has.

Q. Finally in this bill of complaint that has been filed is the statement that National City Lines, through you and Mr. Fitzgerald and Mr. Reavis, have controlled the directors of the transit company and have acted in collusion with them and in bad faith, in promoting this plan. Is that true or not true? A. That is not true.

Q. Have you ever been asked by Mr. Reavis or Mr. Fitzgerald or anybody in connection with the National City Lines, to try to influence the directors to the contrary of what might be their best judgment? A. I have not been asked, sir.

Q. Have you been asked by them at any time to take any particular position with respect to the affairs of the transit company? A. I have not, sir.

Q. (By Mr. Witz): Mr. Gray, I still have another question. There is another contract with the General Motors Company which has been testified to by everybody, which seems to have been testified to by everybody, but I have not seen it. You don't have it with you today, have you? A. No, I have not.

(Mr. Witz): I want to get it in the record, if your Honor pleases, if there is another order outstanding.

Q. Is there an executed contract? A. I don't know just what you have reference to.

Q. We have in the record a contract for 200 buses with General Motors and 200 with Brill. Now, I understand there are 400 ordered from General Motors and I would like to have the contract for the other 200? A. There is a contract—it was, rather, an understanding or agreement—of some buses that are to be furnished us next year, in 1948. That covers a total of 400 buses.

Q. I would like to see that contract if you have it? A. As we go into a plan such as this is, we are not able to determine just how many buses will be needed because we could not determine the extent to which we would get approval of this conversion, and in order to protect ourselves and get delivery of equip-



ment, we placed equipment orders in advance of the anticipated delivery. All companies do that. The deliveries of equipment at the present time are some two years from now. That is, I am trying to say if you place an order today, it will be about two years before you can get delivery.

Q. All I want to know is if you have outstanding contracts with General Motors. I don't care when delivery is to be made. I would like to have those contracts, if you have them.

(The Court): You can ask Mr. Baetjer about that. You have not asked them to produce them, as I understand it. Why not ask Mr. Baetjer, who represents the company, if he has those agreements?

(Mr. Witz): I requested all contracts.

(Mr. Baetjer): This is an open contract, if there is one.

(The Witness): This is just an agreement, it isn't a contract that has been submitted to the Board of Directors as such. It is not a formal contract.

Q. Do you have any letters to that effect? A. No.

Q. There is no written order for these buses then, at this time? A. It is a written order, but, as I say, it is more in the terms of an agreement rather than a firm contract. It has not been presented to the board of directors nor do we know it will be necessary to present it. We don't know whether we will have need for it. It is a cancelable contract.

#### RE-CROSS EXAMINATION.

By Mr. Baetjer:

Q. It is a cancelable contract? A. Yes, it is cancelable because on all contracts of this kind, ninety days before the manufacturers start to producing equipment, he firms up the contract with the buyer as to price and terms of delivery, and so forth.

Q. There is no price in this arrangement so far?

A. There is a tentative price.

Q. What is it? A. I don't recall, sir.

Q. Would you be a little more specific? A. What is the arrangement you have for the purchase of 400 buses as to which you just testified? A. That was an arrangement or contract or agreement, whichever you want to call it, that was negotiated by Mr. F. A. Nolan, my predecessor, last August I believe, and it was more an agreement to accept a bid or priority of getting equipment than anything else, and it has not been formally executed yet, and we don't know to what extent we will need it.

(The Court): Mr. Gray, are you referring to 400 buses or 200 buses?

(The Witness): I am referring to 400, sir

Q. Does your work require you to keep in touch with the development of transportation systems throughout the country? A. It does, sir.

Q. Will you tell the Court the benefit of your observation as to what extent buses have taken the place of street cars at this time in the larger cities of the United States?

(Question objected to; objection overruled.)

A. I think, I am sure that the larger cities of the United States are all going from street cars to buses. One of the last large cities was the City of Chicago. A few years ago they felt that the bus, because it was a large city, they felt that the bus did not have a very prominent place in their transportation plans. They felt the bus was only a feature transportation vehicle. Now, they have placed orders with suppliers for several hundred buses and it is going to play a very prominent part in their system.

Q. Do you know anything about the situation in the District of Columbia, in Washington? A. Washington has in the neighborhood of 1200 buses and some 700 street cars. I suspect the division of revenue is probably nearly 50-50.

Q. How about Detroit and Cleveland, if you know? A. Detroit is one. Being a motor city, they have gone

more quickly than any other large city to buses, and there are several thousand buses operating in Detroit.

Q. What was the attitude of the St. Louis Public Service Company with respect to the purchase of cars and buses subsequent to 1941 when the National City Lines bought into that situation? A. Subsequent to 1941, they had already changed several street car lines to bus operation and they were very definitely proceeding along that line before National City became interested.

Q. Just one more thing. Who are the directors of The Baltimore Coach Company, Mr. Gray? A. They are employees of the Company. Rather than give you this from memory, I would rather give you a list of those, if it is agreeable to the court.

#### E. ROY FITZGERALD

Q. It has been said you resigned last week. Do you mind telling the court what your reason for resigning was? A. My reason for resigning was that I have not had time to attend very many of their meetings and I felt that there were several matters coming up that probably needed people who could be here.

Q. You have served on that committee from 1945 through last week. A. Yes, sir.

Q. You, as a director, are familiar with the proposed plan of conversion from street car operation into buses, are you not? A. Yes.

Q. You voted for that as a director of the company, did you? A. I wasn't at the meeting when the directors voted on it.

Q. Mr. Fitzgerald, in your answer you state it is the policy of National City Lines to cause certain of its operating companies in cities of smaller populations, to convert entirely to bus operation and in larger cities in which National City Lines have an in-

terest in the transit systems, it is your policy to have a diversified operation of some trolley cars, some buses and some trolley buses? A. I think that is right.

Q. What is meant by "smaller cities" in here? There was no statement of population figures. A. I think that refers to cities operated by the National City Lines with a gross business—in the cities we operate all motor buses, are cities of gross business under \$2,000,000. Those cities are all bus operation except one. We have two in El Paso, Texas, that still has two car lines. The reason for operating the car lines is that the track and equipment is probably good for some time. In all the other cities in which the National City Lines bought, the equipment and tracks and so forth, were all in bad condition. They needed replacement of equipment. It is our opinion the replacement should be with motor buses. It is much cheaper to operate, smaller size vehicles give better service and so forth. A street car to operate costs at least 33 1/3% more to operate than a motor bus. Where the revenue is low on lines or small on lines, it is necessary to operate a lower priced vehicle. And in small cities the street car operating costs, in most cities I am familiar with, will not warrant the cost of operating street cars.

Q. What is the population figure that you are referring to as compared—A. Well, we don't pay particular attention—I am sorry, I cannot answer that. We don't pay too much attention to the population. We usually go by the gross revenue operation.

Q. Does the length of the lines have anything to do with it? A. I don't think so.

Q. In other words, in a city that is spread out, we will say—A. The whole thing that has to do with it, as I see it, is the revenue per mile on the different lines. Some long distance operations, there may be enough revenue per mile, enough people riding the

vehicles, to warrant the continuance of street cars. Other long lines may be lean lines, where the revenue would not support the cost of operating a street car line out there. For that reason, until studies of cities are made it is pretty hard to tell what should be done. The entire problem is a matter of the business available and the revenue available in the operation. The same thing is true of motor buses. We operate motor buses in small cities from 20 passengers to 44 passengers. The size of the vehicle is operated on the lines that can support that size because the operating costs of a larger bus is much more than the operating costs of a small bus.

Q. It is still not clear to me what you mean by "smaller cities". Are you speaking of population or the size of the area?

(The Court): He said he was not talking of population. He said that very distinctly.

Q. Mr. Fitzgerald, as a member of the board of director of the transit company, have you made any effort to influence the judgment of the board with respect to the adoption of this conversion plan?

A. No, sir.

Q. Did you ever talk to any of them except in a meeting with respect to it? A. No, sir.

Q. Was the conversion plan presented to you by Mr. Nolan originally? A. Yes, sir; Mr. Nolan and Mr. Gilman Smith.

Q. I have here three letters addressed to the National City Lines. One is addressed to the National City Lines and signed by the vice president of Mack Truck, the other one is a letter addressed to the Firestone Tire and Rubber Company and it is marked at the bottom, "confirmed" by Firestone Rubber Company, and the third one is a letter addressed to the General Motors Corporation, marked at the bottom, "Confirmed" by General Motors Corporation. The two letters, one addressed to General Motors and

one addressed to Firestone, purport to be signed by you. I ask you if they are copies of letters which you sent to them? A. Yes, sir, they are.

Q. This is the letter addressed to the National City Lines by Mack Trucks. I ask you if the National City Lines received that letter? A. Yes, sir, we did.

Q. Is the Standard Oil contract applicable to Baltimore? A. No, sir.

Q. Inapplicable by its terms to Baltimore or applicable to Baltimore by its terms? A. It does not apply. We bought trolley cars by the hundred in St. Louis lately. Two hundred when we first bought an interest in the company. There are no trolley buses. Well, we have probably bought as many street cars for the amount of business we have in the last couple of years as any other companies. For instance, in Chicago under the suggested plan of the operation, the City expects to take over. They are talking about an operation of 1500 buses. As I remember, there are 300 street cars and around 200 trolley buses.

Q. That is an operation not in any way controlled by your company or in which your company is interested? A. No interest in it at all.

Q. It has been testified that you bought into this company in the fall of 1944, is that correct? A. That's right.

Q. I hand you three letters that you had a few minutes ago; one addressed by you to the General Motors Corporation and one addressed by you to the Firestone Tire and Rubber Company, and they confirm the statement you make at the bottom of those letters, and the third is a letter written to you by Mack Trucks, Incorporated; all of them having to do with the applicability of the contracts with the National City Lines, to the Baltimore area. I ask you why did you get those letters? A. We got those letters before we had the hearing before the Public Service Commission on the purchase of stock.

Q. Did you present copies of those letters to the Public Service Commission at the time of that hearing? A. I think we did. At least we testified to them.

(The Court): Do you have anything else, Mr. Witz? Does that close your case with the exception of what you might want to offer tomorrow in regards to the contracts?

(Mr. Witz): Yes, sir.

(Mr. Baetjer): Before we send the contracts back, we would like the record to show, if the Court please, and it is acceptable to Mr. Witz and Mr. Mullen, that the five contracts that are referred to in paragraph 16 of the bill of complaint were all produced in court and with the consent of the plaintiffs in this case, the rest will be taken back. But there will be left in court for such use as they care to make of them, the General Motors contract and the Firestone Tire and Rubber Company contract. If that is acceptable, we will keep those and let Mr. Fitzgerald take the others back with him?

(Mr. Witz): That is all right.

### CLAUDE M. GRAY

#### DIRECT EXAMINATION (Continued)

Q. (By Mr. Witz): Mr. Gray, this is a contract for 400 buses to the General Motors, is it not? A. It is.

(Mr. Witz): I offer that in evidence.

(Paper referred to offered and received in evidence as Plaintiffs' Exhibit 14.)

Q. Mr. Gray, this contract was entered into prior to your becoming president; is that right? A. It was.

Q. This contract is binding on the company, is it not? A. It is not. It has not been submitted to the Board of Directors and this contract is not binding on the company because it is a trade practice that to firm up a contract ninety days before delivery of equipment, and it will be firmed up if needed. This was an

order that was placed by Mr. Nolan in order to get a priority of delivery. He did not know what his requirements would be or where he would be able to get equipment, and so it was placed as a protective measure against future requirements of the company. Now, then, when I came with the company and became president in December, in reviewing our situation and needs for equipment for this conversion, to complete the conversion that we were obligated for, I saw this contract, which was for 400 buses, and in making inquiry with the General Motors Company and their representatives, Mr. Davis, Mr. W. R. Davis, I found that these buses, none of them could be delivered until 1948. It was most necessary for us to make this conversion as rapidly as possible, both from the point of view of bettering traffic conditions in Baltimore and for getting our operation on a suitably efficient and economic basis. With that in mind, I inquired from other suppliers to find whether or not I could get any manufacturer to furnish us 200 buses in 1947. I talked with the president of A. C. F. Brill Company, Mr. Monroe, and found that he had two things that had happened in their company that put them in a more favorable delivery situation. One was that they were starting or planned to start manufacture of buses in the airplane plant of the Aviation Corporation in Nashville, Tennessee. They were going to manufacture 44 or 45 passenger buses at that plant. Also that they had had a cancellation of some buses, 50 buses for August, 1947, and that he felt by working some overtime they could squeeze through an additional 25 buses for us in September and another 25 in October of this year, and he could start on the second 100 in September, 1947, and complete delivery the first month of 1948. This is a much better delivery program than we could get from the General Motors or any other manufacturer, so I presented this to our board of directors and they authorized me to negotiate a contract with A. C. F. Brill for 200 buses. We now



have received and have on order a total of 600 buses, which will be sufficient to complete our program of conversion now before us.

Q. Mr Gray, is there any other correspondence in connection with this contract? A. There is no other correspondence, to my knowledge.

Q. Has General Motors accepted this contract? A. It has been filed with them. They have not firmed it up or asked our board of directors for a confirmation of it.

Q. Are these buses made to order? Is there any reason why they would have to have a sufficient length of time to do it in, or do they deliver the same type of buses to any company? A. That is the common practice in the industry, that the orders are cancelable—are firmed up and are cancelable ninety days before production. They notify you when they are going to start production and at that time they ask for a resolution of the board of directors firming up the order. But this would not be done until 1948 sometime and if the A. C. F. Brill Company are able to deliver the buses now on order, we think we will not require any of these buses.

Q. Was this contract mailed to the General Motors? A. I presume it was. It may have been mailed to them or given to their representative, Mr. W. R. Davis. I could not say what was done by my predecessor.

Q. Do you have any letter in your file acknowledging this order? A. No, we do not. We don't consider this as a contract. It is an order establishing priority of delivery. You see, at the time these orders were placed managements of various transportation properties had to figure their needs two years in advance. That was very difficult to do. So there were many orders that were placed on a rather blanket basis and it was necessary later to firm up or cancel as the operator requires.

(App. 115)

Q. Do you have any correspondence of any kind referring to this contract? A. No, we do not. Not to my knowledge. I could not find any.

(Mr. Witz): That is all, Mr. Gray.

### CROSS-EXAMINATION.

By Mr Baetjer:

Q. The A. C. F. Brill contract that you referred to, was that the contract which was introduced in evidence yesterday, made under date of January 28th, 1947? A. It is.

Q. Have you ever had from the General Motors Corporation any statement of the price that is to be put on the coaches that are covered by this order, or whatever it may be called, that you introduced this morning? A. No. There is no statement of prices, only the tentative price that is on the order.

(Mr. Baetjer): That is all.

### MR. J. COOKMAN BOYD, JR.

Q. Are you familiar with the conversion plan that the company is now in process of putting into effect and which it is sought to prevent, in effect of which this suit is brought to prevent? A. I think I am familiar with it.

Q. Were you present at the meeting of the board of directors on November 1, 1945? A. If it was November 1; yes, sir, I was present when the plan was considered.

Q. Did you vote for it and vote to have it presented to the Public Service Commission? A. Yes, I did.

Q. Was the action of the board unanimous at that meeting? A. Yes, sir. I think it was.

Q. Was your vote influenced or dominated in any sense by Mr. Reavis or Mr. Gray, Mr. Nolan or Mr. Fitzgerald, or any representative of the National City Lines, or did it express your independent, uncontrolled judgment that it was for the best interests

of the company? A. It expressed my independent and uncontrolled judgment. Certainly the gentlemen you have named contributed to the discussion and I was very glad to have their judgment. But it is not in any sense affect or control my vote.

Q. Mr. Boyd, you have had an opportunity to familiarize yourself over quite a number of years with the traffic problems in Baltimore, have you not? A. I believe I have, sir.

Q. In what capacity has it been necessary or advisable for you to make studies of the problem? A. I am not too sure of the date, but about 1937, as a member of the Junior Association of Commerce, I was head of its traffic and safety committee, and these matters came before our committee at that time. I mean by that matters of traffic and safety conditions throughout the city. Then I became a member of The Baltimore Safety Council in—may I refer to a paper—

Q. Maybe you gave it to me. A. I have it here, sir. In 1937 I became a member of the Baltimore Safety Council, and in 1938 and 1939 I was on its traffic committee. In 1940 I was on its executive committee. In 1941 and 1942, I was Chairman of its street traffic committee. In 1943 and 1944 I was its president. In 1945 and 1946, Chairman of its executive committee. I think it is well known that the interest that the Baltimore Safety Council takes in all matters having to do with traffic in the City of Baltimore. In addition to that I was also a member of Mayor McKeldin's Harbor and Freeway Committee in 1944.

By Mr. Sobeloff:

Q. Mr. Boyd, in the course of your interest in the traffic problem over a long period of years, did you become familiar with the literature that has been produced on that subject? A. Yes, sir. I have some of it with me that I have kept.

Q. Will you indicate in a general way the scope of that literature? A. Well, it consists of a large file of newspaper clippings which were of interest to me,

and obviously having to do with traffic and safety conditions; the report of Mr. Smith of May, 1945, Mr. Nathan Smith, the Chief Engineer. Following the discussion before the board that Mr. Hughes gave in explanation of the conversion plan, there was prepared somewhere, I have forgotten now, a brochure entitled "Coordinated Planning for Traffic Improvement in Baltimore", which outlines the plan very clearly, with maps, schedules, and things like that. In addition to that, earlier in my interest in these civic affairs I had occasion to consider the report of Mayor Jackson's committee, of which Mr. Preston D. Callum was Chairman.

Q. Did that also recommend the conversion? A. Well, in certain respects, Mr. Sobeloff. I would not undertake to remember all of those details, but it had to do with eliminating the turns in downtown Baltimore and trying to straighten out the street car routes because they were so obstructive of traffic. I am reasonably sure it had to do with the four one way street programs because I remember taking that up with Judge Stanton, who was police commissioner at that time.

Q. In connection with the establishment of one way streets, was it recommended in the Jackson report that buses should be substituted in certain places over street cars? A. I think that is so. If my memory serves me right, the Calvert Street conversion at one time was contemplated as a trackless trolley matter, but that met with great opposition from the residents of Roland Park and it died during the war. Nothing took place during the war.

Q. Did you have all of those reports in mind in coming to a conclusion as to the desirability of this conversion plan? A. Yes, sir. I don't think I went back and studied each one of them, but the cumulative effect of ten years of study certainly had the same effect.

Q. So that the idea in its essence was not original in 1946? A. No, sir. I think you will find some of the suggestions that are now attempted to be put into effect originated twenty years ago.

Q. And it long antedates the National City Lines entry into Baltimore? A. Yes, sir.

(Mr. Sobeloff): That is all. Your Honor, I think in view of Mr. Boyd's testimony, I would like to renew the offer of the Jackson report. I don't have it physically in the court room right now. There is only one copy available and I have returned it to Doctor Flack's library. If the Court will reconsider the ruling made yesterday in view of Mr. Boyd's testimony, I would like to offer it.

(The Court): Is there any objection, gentlemen?

(Mr. Witz): No objection.

(Mr. Sobeloff): Then I will produce it later.

Q. Mr. Boyd, I am holding what purports to be the stenographic report of the hearing before the Public Service Commission on the application of National City Lines for authority to buy stock in the Transit Company, the hearing purporting to have been held on Thursday, September 14th, 1944, and listing among those present, J. Cookman Boyd, Jr., counsel for Dorothy K. Brown, one of the stockholders of The Baltimore Transit Company. Does that refresh your recollection that you were present and confirm that you were present at that hearing? A. Yes, sir; the date I will accept it, and I certainly was present there representing Mrs. Brown.

Q. In this stenographic record, on pages 31 and 32, is this statement by Mr. Reavis: "I mentioned the fact that these four companies, General Motors, General American Aerocoach Company, Phillips Petroleum and Firestone Tire and Rubber own all of the preferred stock of American City Lines and have agreed to take further amounts of preferred. That preferred is non-voting, unless, I think, six

dividends are passed, in which event there are the usual preferred provisions of the right to elect a minority of board of directors. These companies, none of them, have ever had any control in the management of National City Lines nor in American City Lines. They haven't desired it and have never attempted to exercise it. American City Lines and National City Lines are both operated and controlled by their own boards of directors and own officers. At one time, these four companies, with the addition of Mack Truck Company, owned one-half of preferred stock of National City Lines. The other one-half was in the hands of the public. Those are approximate figures. There were then about 75,000 shares of preferred of National City Lines outstanding. All of that stock was redeemed or purchased on the first of August of this year, either on the first of August or in a temporary period before the first of August, so that suppliers have no stock interest, these four companies having preferred stock of American City Lines. The interest they acquired in National City Lines, was gotten, as I remember it, in the years 1938 and 1939. In about 1939 National City Lines made an agreement with General Motors, Phillips Petroleum, Firestone Tire and Rubber, and the Mack Truck Company under the terms of which, so far as bus equipment was concerned, National City Lines and its subsidiaries would buy 85% of the bus equipment for the companies it then owned from General Motors, and as to the future it would buy 42½% of its buses for companies newly acquired in the future, and 42½% from Mack; that is 42½% from General Motors and 42½% from Mack Truck Company. At the same time it agreed with Phillips Petroleum within a defined area which does not cover the eastern seaboard and not Baltimore, that it would buy oil and oil products from Phillips Petroleum. It made agreement to buy tires and tire equipment from Fire-

stone. All of those contracts were on the lowest competing price, that is, as far as buses were concerned to sell to no one on a competitive basis cheaper than to National City Lines. Oil was on a tank car published basis, plus freight. Tires were on a complicated formula, so much of a charge per mile of operation. However, none of those contracts could in any case apply to Baltimore. When we purchased an interest in St. Louis, letters were gotten from the companies with which we had contracts stating that none of the terms of those contracts could apply to the St. Louis situation and they haven't. Like letters have been gotten respecting acquisition of stock in the Baltimore Company. So far as its acquisition of any stock in Baltimore is concerned, under no circumstances could any of the agreements between these companies and National City Lines apply to or control in any way in the Baltimore situation." Do you remember that testimony being given by Mr. Reavis at that time? A. That refreshes my recollection, sir.

J. STANISLAUS COOK

a witness of lawful age, produced on behalf of the defendants, having been first duly sworn according to law, was examined and testified as follows:

#### DIRECT EXAMINATION

By Mr. Baetjer:

Q. Mr. Cook, you are senior counsel of The Baltimore Transit Company at this time and have been connected with it for how many years? A. Thirty-six or thirty-seven.

Q. During your term of service with the Transit Company have you or have you not had charge of or been the director in the matter of the franchises of the company that were procured from time to time and

were abandoned or given up? A. Yes, sir; for many years I have had exclusive charge of that.

Q. Have you had occasion to make an examination and to get up a schedule of expired franchises of the street railway operations of the transit company, over the entire system so far as it is still being operated?

A. As of 1945, I think it was, Mr. Baetjer, April 9th, 1945, I prepared the list that you have in your hands. There may be a few short stretches since then.

Q. I hand you a list marked "expired franchises," and so forth, and ask you if that is the list that you refer to? A. Yes, sir.

Q. Will you tell us to what extent the franchises have expired and which have not been renewed, as shown by your list and as supplemented by any other information which you may have appearing later than that list deals with? A. I think I have a later paper in my file, Mr. Baetjer. I have the figures in this paper. As of April 9th, 1945, there were 122,193 feet of expired franchises. They cover numerous locations that were granted under 22 separate ordinances, 5 county orders, which are franchises in the New Annex of Baltimore City, and one straight road franchise granted on a State road in Baltimore City, while it was still under the jurisdiction of the State Roads but afterwards was turned over and became a city street.

Q. Are you still operating over some of that footage covered by the expired franchises? A. At this time it was all being operated over; yes.

(The Court): You mean as to the 122,193 feet.

(The Witness): That was all being operated over. If we were operating, I did not touch it.

(The Court): Do you know what the total franchises amounted to in feet, Mr. Cook?

(The Witness): Well, I think this is about 15%. That is my recollection, something like 15% of the total franchises.



Q. I don't want you to go over each one, but can you give us the more important ones so far as the lines are concerned? A. If you want me to touch on some main ones, for instance, the franchise of the 29 line was expired from 31st and St. Paul Street, up St. Paul Street to University Parkway and over University Parkway to Roland Avenue. That was an expired franchise, having expired about 1931 I think. I can pick out some stretches for you. The Garrison Avenue franchise, 7900 feet, is an expired franchise. The Gorsuch Avenue franchise of 12,745 feet is an expired franchise. There is an expired franchise on Redwood Street.

Q. Can you tell us just why that is and what lines are affected by that trackage? A. Well, now, the Redwood Street was double track on Redwood Street from Charles to Howard. There were double track curves on the north side around Howard and Redwood; and single track curves at the south side of Sharp and Redwood Street; single track curves at the southeast and southwest corners of Hanover and Redwood Streets. That amounted to 3,901 feet of single track. Then we had a single track at the southwest corner of Redwood and South, a double track at the southeast corner of Baltimore and South, which were all in the same ordinance which was passed in 1906. The ordinance expired in 1919. It was a 15 year ordinance and was renewable for 15 years, so that the renewable period would have expired in 1934. Then another franchise that expired was the franchise over the Hanover Street Bridge. That was acquired in 1916 for a 25 year period.

Q. The Hanover Street Bridge is traversed by the 26 line into Fairfield, is it not? A. Yes, sir.

Q. That line was to be converted under the program of June 22nd, was it not? A. That is correct.

Q. And that has been held up? A. Yes, sir. That was 15,448 feet of expired franchise. Only that por-

tion over the bridge. Of course, there is more than that in the total line.

(Mr. Witz): That goes all the way down to Curtis Bay, doesn't it?

Q. Are there any expired franchises on that line, No. 5 and No. 33 lines? A. We have no franchise out there. There is no city grant for Park Heights Avenue. We have always contended we have a private right of way on Park Heights Avenue, and I am willing to defend it. But the city has always contended we are an interloper. There is no expired franchise. We have either got a right of way or we are a trespasser.

Q. That line goes down Druid Hill Avenue and down town that way? A. No. 5 and 33 goes down Park Heights Avenue and goes on Reisterstown Road, where we have turnpike rights which are perpetual. At present it comes down and it goes over Fulton Avenue. We have some expired franchise in front of the Fulton Avenue carbarn, and we go on to Druid Hill Avenue, and we have a perpetual franchise on Druid Hill Avenue.

Q. What about the No. 1 and No. 11 line? A. No. 1 and 11 lines ran over, I think, in the western section—there is nothing material. They are also on that expired franchise in front of the Fulton Avenue carbarn—

Q. How about the track from Bedford Square—  
A. Let me finish this.

Q. Excuse me. Go ahead. A. I think from there down through this section of the City and up over the viaduct and up to St. Paul and 25th Street, there are no expired franchises. St. Paul and 31st Street. From St. Paul and 31st Street up to University Parkway, we have an expired franchise. When we get to Guilford we have another legal contention with the City. The City says that the Roland Park Company did not have the right to grant us a perpetual franchise through Guilford. They were limited by statutory

provision to granting us a 25 year right. We contended that we had an absolute right there, but that was a question which could not be determined by litigation. If I am right, our right is absolute. If the city is right, we have an expired right there. That is St. Paul Street north of University Parkway.

Q. Can you state in miles how many miles of the abandoned track the franchises have expired on? A. It would be the difference.

Q. In other words, the difference between 33,000 and 122,000? A. I would say something like 87,000 feet. Mr. Witz, that is my recollection.

Q. I understand, it is a general statement. A. But a very substantial portion of the long stretch of expired franchises were included in the plan. For instance, the long stretch on Hanover Street, the long stretch on University Parkway, and the stretch along Garrison Avenue, I think is in the plan eventually.

Q. What is the city's position as to your operating on the expired franchises? A. We are trying to adjust that now and trying to effect the renewal of the franchises where necessary. There is no question about the fact that that is an active matter between us and the City now and we have actually made certain annual payments in connection with the franchises that we have been operating on that had expired. And, of course, we don't want to pay a renewal charge on a franchise that is going to expire. So that is the reason we have been carrying it along on an annual basis.

#### ADRIAN HUGHES

By Mr. Baetjer:

Q. What is your occupation, Mr. Hughes? A. At the present time I am assistant to the president of The Baltimore Transit Company.

Q. What are your duties? A. My duties are to carry out any work that is assigned to me by the presi-

dent in connection with the general operations of the company.

Q. How long have you been with the transit company? A. I have been with the transit company since 1914.

Q. What have been your duties over that period of years generally? A. I first came with the company as an engineer in the power department, dealing particularly with power distribution problems, in 1914; then about 1918 I was made what was called mechanical assistant in charge of the power plants; we then owned some power generating stations; and in 1920 I became superintendent of the power department having charge of all of the electrical work in that department, and generally the purchase of power, the operation of sub-stations, the underground cables and overhead features, trolley wires, signals, and everything connected with that department.

Q. What is your education? A. Do you want me to give it all the way through?

Q. Yes. A. About 1925 the then General Manager, Mr. Palmer, asked me if I would take over the bus operation job started in 1915 and had sort of grown up without any particular department having charge of it, he asked me if I would take over the bus operations and make a department out of it. So I assumed the position of Superintendent of Bus Transportation, in charge of the operation and maintenance of the buses that were operated at that time. After holding that job five or six years, in 1931 I was made Director of Research, in which position I had charge of studying the operations of the company, make the analyses of the operations, of the costs, of traffic conditions, studying conditions in other cities, serving on committees of the American Transit Association in connection with the problems of the Association, and trying to determine the cause of the change in our position, the effects of economic conditions or the automobile or anything that might affect us, comparing the

relative efficiency and economy of different types of vehicles, of different makes of vehicles, and trying to devise more efficient ways of operating them and matters of that kind. In 1946 I was made Operating Manager and in 1947 Assistant to the President.

Q. What are your educational qualifications for the work you have been doing? A. I am a graduate engineer from Cornell University, Electrical Engineering, and also I am a qualified Engineer under the Maryland Laws for Professional Engineering.

Q. Do you know who prepared the conversion plan for the Baltimore Transit Company that was approved in part by the Public Service Commission in June, 1946? A. Well, that plan was developed over a long period of time. It started way back actually before the reorganization, and after the war—

(The Court): Do you mean in 1935?

(The Witness): Yes. It started before 1935, and during that time, as a plan for modernization and increasing the efficiency of the service, we carried out certain steps up to the time the war put a stop to such work. Then during the war or toward the middle of the war, when everybody was talking post-war planning, we of course knew we should do some post-war planning, so we took up the study again to bring the conditions up to date, whatever changes might have occurred in the art since that time, and we started working actively again in 1944 and 1945 on a plan we could put into effect when the war was over and the equipment would be available. In the early part of 1945 the company decided they would like to have some outside consultants to check on what we were doing and have the benefit of studies of other cities and what they were doing from the outside point of view. So the Gilman Company was engaged and they started working with us in February, 1945. So they went over ours, we were working on ours, and they got data from our operations and they made their own studies independently first from us, then when they

introduced their independent study, we compared notes and worked out the plans together, and we were doing that during the spring of 1945 when Mr. Smith, the Chief Engineer, published his report.

(The Court): Chief Engineer of the City, you mean?

(The Witness): Chief Engineer of the City published his report in May, 1945, on my suggestion for traffic improvements in the City as a whole, and when we saw that report we realized that we should coordinate their report with ours. In the meantime, he called on us and specifically requested that we do certain things that would permit the carrying out of some of the recommendations of his report for one way streets, for instance, of course—from Calvert to St. Paul and Charles and Cathedral the company had already agreed in 1942, but he recommended also Druid Hill Avenue and McCulloh Street as one way streets. He recommended taking our tracks off Spring Avenue, and certain other things, and naturally we wanted to coordinate our plans with his. It is a most important thing to coordinate the plans of transit and service. You cannot have speed and rapid transit without improving traffic generally, and you cannot improve traffic generally without improving the transit system. Therefore, we coordinated our work with Mr. Smith's work, also with the Traffic Engineer of the Police Department. In developing this plan our final work was in the fall of 1945.

Q. Did you present the plan to the Board of Directors of the transit company at a meeting held November 1, 1946? A. It was before November, 1946. It was earlier than that. I don't remember the date.

Q. Was it in the fall of 1946? A. It was before the report was finally printed. I described the plan to the board in the fall of 1945, before we finally wrote it in its final form. We wanted to see whether it was acceptable to the board first, and I was invited by Mr. Nolan to describe the plan to the board, and I did

that in considerable detail with maps and charts, and so forth, to show what the plan was.

Q. And you presented the plan, on behalf of the transit company to the Public Service Commission, did you not? A. Yes, sir; in the summer of 1946.

Q. You say it was a continuation of the work you had done prior to the receivership and subsequent to the receivership. Have you any figures to show the extent of the conversion which had taken place subsequent to the receivership, until, say, 1941, or whenever you suspended it? A. Yes. As I said before we started bus operations in 1915. It was not until after 1920 when we suddenly found a change in the trend of our patronage. From 1900 to 1920, our riding had been increasing about 5% a year. In 1920 it started to go down. In the first or second year we thought it was maybe a temporary change, but when it continued on through those prosperous '20s we became alarmed about it and tried to figure what we could do to improve our service. We then added some bus service in 1922 and 1923 and 1924 and 1925, and through the '20s we began adding bus lines. In 1932 we made several conversions. We converted the end of the 35 line at Reisterstown Road to bus operation because it was more economical and also more attractive. We decreased the running time from Pikesville to Emory Grove, as I recall, to twenty-five minutes from the original forty minutes by street car. Then we also converted 23 line, which ran from up town here out to Eastern Avenue to Back and Middle River, we converted that to a bus line in 1932. Then, in 1936 we put on what is called the Q bus line. Do you want me to go into the details of the lines?

Q. Yes. A. In 1936 we put on the Q bus line, the Halethorpe line, which replaced the Halethorpe end of the No. 3 car line, and also replaced the east end of the No. 4 car line and a portion of the No. 6 car

line. In 1939 we abandoned the No. 12 car line, which ran from Callow avenue above North avenue down to Westport, and we rerouted and augmented what was then known as the B bus line, which took over the No. 12 car line. In 1938 we changed the No. 21 line and abandoned that as a rail line and converted it to trackless trolley. In 1939 we converted the No. 27 line to a trackless trolley. In April 1940, we converted No. 10 line to a trackless trolley in connection with the extension of Howard street. Those are most of the changes.

Q. Do you know how much of the system was abandoned as the result of the giving up of those lines? A. Yes. Some six lines were entirely abandoned, some six rail lines, and portions of four or five were abandoned as rail lines, and about 70 miles of track were abandoned between 1936 and 1940. I don't recall how much before that but from the time of the reorganization to the beginning of the war, when the war put a stop to further conversions, seventy miles of track had been abandoned by the transit company.

Q. Have you a schedule or memorandum which shows from the date of the reorganization until 1941, the effect of those changes as to the number of cars and number of buses and number of trackless trolleys operated and the number of passengers carried on the three types of vehicles that is supplementary to the one Mr. Witz put in, which deals from the period from 1941 to 1947? A. This statement shows from 1936 to 1941, and also another statement which goes from 1942 to 1946.

(Mr. Witz): I did not put it in.

(Mr. Baetjer): You want it in, do you not?

(Mr. Witz): Yes.

Q. If you will take the one I handed you first, Mr. Witz can interrogate you about his, from 1936 to



1941. I don't think you need read each of them. Suppose you take 1936 and 1941.

(The Court): It might be offered in evidence, the schedule or statement. There is no use to read all of it.

(Mr. Baetjer): I think if he reads the first and last, that would be sufficient.

(The Court): All right.

Q. In 1936 there were 829 cars, the maximum number of vehicles operated on week days; in 1941, 736 cars. In 1936 there were no trackless trolleys; in 1941 there were 84. In 1936, there were 126 buses, and in 1941 they increased to 208. The revenue passengers carried on the cars in 1936 were about 112,000,000, and in 1941, about 118,000,000. On trackless trolleys there were none carried in 1936, and 18,000,000 carried in 1941. On the buses in 1936 there were carried about 12,500,000 and in 1941 about 24,000,000. Similar figures are here for total passengers which would show about the same proportions.

(The Court): Are you going to offer this, Mr. Baetjer?

(Mr. Baetjer): I will offer this in evidence.

(Paper referred to offered and received in evidence as Defendants' Exhibit 9.)

Q. What happened with respect to the operation of the bus lines in 1941? I am referring, of course, to the ODT with respect to the buses? A. That was in 1942. At the end of 1942, the Office of Defense Transportation, in order to conserve gasoline and tires, ordered us to very much reduce our bus operations and discontinue certain lines entirely and to curtail the service on others which, as I recall, reduced our service by bus some twenty-five or thirty percent.

Q. When was that order of the ODT revoked, if it was revoked? A. I don't remember the date but it was revoked about a year or more ago.

Q. I hand you what purports to be a copy of the order signed by the Director of the Office of Defense Transportation and ask you if that refreshes your recollection of the date on which the order was revoked? A. Yes.

Q. What was the date? A. Fifth day of September, 1945.

Q. I hand you what purports to be an order of the ODT, the order you have just referred to, and ask you if that is the paper that you referred to? A. That is correct. It became effective in December, 1942.

(Mr. Baetjer): We offer the order restricting the use of buses and the order removing that restriction.

(Papers referred to offered and received in evidence as Defendants' Exhibit 10, and Defendants' Exhibit 11, respectively.)

Q. Mr. Hughes, Mr. Witz yesterday introduced a statement of miles of track estimated to be abandoned and estimated undepreciated book value of property to be retired. I hand you a copy of it and ask you if that was prepared by you? A. It was prepared under my direction by the auditing department and the engineers of the company.

Q. There was filed with the answer of the defendants a statement giving the same information but not as inclusive with respect to time, and I ask you if you had this statement prepared under your direction? A. Yes, I did.

(Mr. Baetjer): This statement we offer in evidence.

(Paper referred to offered and received in evidence as Defendants' Exhibit 12.)

Q. The statement that Mr. Witz introduced shows that the total approved abandonment as to miles is 77.45 and the remainder of the proposed abandonment is 66.55, and the memorandum which I just introduced, a copy of which is filed as an exhibit with the answer, shows that the total estimated miles of

track abandoned is 77.45, and I ask you what is the difference between those two totals? A. The 77.45 is the miles covered in the lines that were approved by the Public Service Commission at the hearing last year, last July. The remainder of the lines in our plan is described in the Riders' Digest on Traffic Plans, which was directly acted on by the Commission. They were approved, the changes were approved in principle but not specifically.

Q. In those lines last referred to do you include the Belair Road Line and the Sparrows Point Line which the Commission said for the time being should not be converted? A. No, they are not included.

Q. When you were working on these plans for conversion, did you have before you the Chase Report that was made to the District Court at the time of the reorganization proceedings, and were you familiar with the recommendation made therein and approved by the Court? A. Yes, I did. I made a study of the Chase Report for the purpose of finding out whether or not there were some recommendations there we might follow to our advantage, and it was as the result of studying that report in 1935, as I recall it, the suggestion of our vice president at that time that we began developing a plan for modernizing our system, and at that time we had plans for changing all except about—converting from rail to free wheel all but about ten of our present lines. Then, during the period from 1936 to 1940 we were working along that line generally and making certain changes, then when we started developing our plans in 1945, we built up from that. We included in the new plan the conversion of some additional lines to what we thought of in 1936; due to the change in time but due primarily to the request of the city for certain changes to improve traffic conditions generally, which we thought would aid us in giving better service as well as more economical service.

Q. Since Mr. Gray came here and assumed the position of president, have you made some changes in some of the lines to be converted and was it to substitute trackless trolleys for buses? A. Yes. We have made some changes in these lines as we go along and put them into effect. We found some we could improve and also had from the Police Department some suggestions. In addition to that, since Mr. Gray came here it has been decided one or several of the lines that were included for conversion because they are of a certain type of line, relatively short, in the wholly downtown section and such that they cannot very well be extended, that they shall be trackless trolleys.

Q. Did you have the approval of the Commission within the last week or two of the conversion and use of trackless trolleys instead of buses on two lines that are quite long lines? A. On one line, the so-called No. 1, which will operate from Park Terminal down to Baltimore and Sharp Streets and then down Sharp Street over what is now the southend of the No. 19 line.

Q. Have you pending before the Commission an application to make a change with respect to the Fremont Street line? A. Not at the present time.

Q. What is the other line you say you are changing over? A. The No. 30 line has been discussed with the Commission but since we haven't the necessary franchise, and so forth, we have not made a formal application.

Q. How long is that line? A. That line is also a relatively short line. It runs down in the same vicinity, to the lower end of the No. 2 line, up to North Avenue and Charles Street at the present time. I can give you the length of the line if you would like to have it.

Q. In your judgment, is the continued success of the transit company dependent upon conversion such as is proposed or substantially such as is proposed?

A. We have thought for a long time that it is absolutely essential that we change to free wheels for two reasons. First, as I said before, we cannot improve the speed of our operation unless we improve the speed of all traffic; and, secondly, some of these lines were not heavy before the war and probably won't be sufficiently heavy after the war to support the investment in rail, if it has to be constructed.

Q. Did you so advise the Board of Directors that that was your judgment? A. I did.

Q. These various so-called conversions from time to time amounted to relatively small portions of the operation, is that correct? A. Well, the conversion from 1936 to 1940 was 70 miles out of some 315 or 320 miles. So that is a pretty good proportion.

Q. Nothing like 170 miles at any one time? A. You must remember we were in the midst of making these conversions and we were suddenly stopped by the war and such things were not available. Instead of 170 miles to be converted today we would probably already would have converted perhaps half of it.

(Mr. Baetjer): We have only one more witness, but we would like, if it is admitted and I think it will be admitted, that until July 1, 1945, and starting with the date of reorganization, all of the stock of the transit company, preferred and common was in the name of voting Trustees and was so stated in our Voting Trust Certificates, that all of the trustees from the time of the reorganization, were directors of the transit company and they constituted all the directors of the transit company except two officers.

(Mr. Witz): That is admitted.

(The Court): All right. It expired on July 1st, 1945.

(Mr. Baetjer): 1945. It was a ten year Voting Trust.

R. GILMAN SMITH

Q. What is your occupation, Mr. Smith? A. I am at present partner of the firm of W. C. Gilman and Company, engineers.

Q. How long have you been a partner in that firm? A. Since April 1, 1944.

Q. What business is that firm in? A. The firm is a firm of engineers engaged primarily in the making of reports of various types in connection with transit operations, other types of utility operations, that is, electric and gas, and in certain cases for industrial operations, for various purposes; such as independent examinations in connection with refinancing or re-capitalization plans or conditions of property operations and rates for service. In fact, all matters relating to the conduct of businesses of that type.

Q. Mr. Smith. Were you employed in the spring of 1945 to cooperate with the engineers of The Baltimore Transit Company in making a survey of the property and recommendation to the Board of Directors with respect thereto? A. Yes. Early in the spring of 1944, the firm of W. C. Gilman and Company was employed by The Baltimore Transit Company to review the modernization program which had been under way in Baltimore for several years, for the purpose of securing our recommendations as to the plans which the company had for carrying out further sections of that program.

Q. How many of your men worked on that plan in Baltimore? A. I spent a great deal of time in Baltimore during the summer of 1945, one of our other engineers was down here with me for most of that time, and certain of our people in New York also participated in the work.

Q. You are, of course, familiar with the conversion plan as it was presented to the Public Service Commission and as it was approved, with some exceptions, in September, 1946, are you not? A. I am.

Q. Was the conversion plan as presented to the Public Service Commission approved by you? A. Yes. As Mr. Hughes stated in his testimony, after we had completed our study of the local situation in Baltimore, we developed independently a plan for the Baltimore Transit Company, including not only changes in the type of vehicle, but also changes in routing and certain other aspects of operation. After we had formulated our own ideas on that basis, we sat down and had a round table discussion with the officials of The Baltimore Transit Company, and as a result of these discussions our ideas were merged and the resulting plan met not only with our approval but with the approval of the company.

Q. Are you familiar with the conversions from fixed wheel to free wheel operation throughout the country generally? A. Yes, we are. Our firm has just completed a comprehensive report on the Chicago Surface Lines and Chicago Rapid Transit Company in Chicago, for a group of investment bankers in connection with the contemplated purchase of the properties of those two companies by the Chicago Transit Authority. We are currently working on a similar report for the Cleveland transit system in Cleveland which is municipally owned. Earlier this year we made a similar report for the Detroit Street Railways, which is a municipally owned transportation system in Detroit, in connection with some financing which they had earlier this year. We made similar studies in Minneapolis, in Cincinnati and in Houston, Texas, which is a one hundred per cent bus operation in a city of about 500,000 population, where we developed a complete rerouting plan for the entire system. We also made a report on the transportation property in Los Angeles in connection with refinancing which took place at the time National City Lines acquired an interest in that property.

Q. Who did you make that report for? A. We

made it at the request of a group of investment bankers.

Q. What has been the extent of the conversion in the bigger cities of the United States from fixed wheel to free wheel vehicles, so far as you know?

A. In Detroit, which I say is municipally owned, the financing which was accomplished earlier this year, was for the purpose of providing funds for the purchase of a sufficient number of motor buses to permit the abandonment or the conversion, I would say, of all of the present street car lines in the city of Detroit except five, with a further program that by the end of 1948, four out of those five lines will be converted to motor bus, and the fifth line, the Woodward Avenue line, the heaviest car line in the city, was scheduled to be converted to motor bus at the end of an approximate ten year period.

Q. Have you another city you can give us as to the extent of the conversion? A. In Chicago, the Chicago Surface Lines several years ago, I would say three or four years ago, developed a modernization program which contemplated a rather extensive use of motor buses and trolley buses. That program has been under way during that period and several street car lines have been converted to motor bus. The Chicago Transit Authority in connection with its plans for the operation of these systems, if they are successful in acquiring them, has amplified its modernization plans to the extent that by the end of 1957 all of the street car lines in the City of Chicago, except eleven will be converted either to motor bus or trolley bus.

In Cleveland, which is municipally owned, the current financing which is now pending, is in part for the purchase of free wheeling equipment which would permit the conversion to motor buses or trolley buses of all except some five street railway lines in the City of Cleveland. There it may be that some parts of



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those lines will be converted as a rapid transit system, although that is not entirely definite.

New York City, the Manhattan Transit Company which operates a substantial amount of street car service of the upper part of Manhattan Island and the Bronx, started about a year ago on a program to convert its entire rail operation to motor buses. As a matter of fact, the plan was developed some time prior and an order placed for the equipment. The equipment is now being received. Practically all of the lines on Manhattan Island have been converted and they expect to complete the entire program some time next year. Incidentally, in that connection, it might be interesting to note that the entire fleet of buses, some three or four hundred, they have purchased and are now receiving are General Motor Diesel buses.

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*State of Maryland*

PUBLIC SERVICE COMMISSION

*Baltimore*

ORDER No. 42685

IN THE MATTER OF THE APPLI-  
CATION OF THE BALTIMORE  
TRANSIT COMPANY FOR AP-  
PROVAL TO CONVERT CER-  
TAIN OF ITS RAIL LINES TO  
FREE-WHEEL OPERATION  
AND TO REROUTE CERTAIN  
OF ITS RAIL LINES.

Before the  
Public Service Commission  
of Maryland  
Case No. 4789

WHEREAS, The Baltimore Transit Company, a Com-  
pany engaged in furnishing mass transportation serv-  
ice in Baltimore City and its environs by means of elec-  
tric trolley cars and trackless trolleys and service by  
motor buses through its wholly and directly owned  
subsidiary, The Baltimore Coach Company, has made  
application to this Commission for approval to convert  
certain of its lines to operation by free-wheel vehicles  
and for authority to surrender and abandon electric  
railway and trackless trolley service, franchises, ease-  
ments and rights of way on certain streets, highways,  
and rights of way hereinafter mentioned, and for a  
permit to the said The Baltimore Coach Company to  
operate service by motor buses in substitution for the  
service now being furnished over the street car lines  
to be abandoned; and

WHEREAS, the application having come on to be heard  
after due notice published pursuant to the Commis-  
sioner's Order No. 42301, entered June 19, 1946, and  
it being the opinion and finding of the Commission,  
after due hearing, that the application be presently  
disapproved as to the Petitioner's proposal with re-  
spect to the No. 26, Sparrows Point Line, and as to  
that part of the No. 15, Gay Street Line lying north  
of Fayette and Gay Streets, except as to reroutings  
hereinafter set out; and it being the further opinion

and finding of the Commission that the present and future public convenience and necessity permit the surrender and abandonment of the electric railway service, franchises, easements and rights of way as hereinafter more particularly set forth, and that the public welfare and convenience require the granting of a permit to The Baltimore Coach Company for the operation of motor vehicles for use in the public transportation of passengers for hire over the routes hereinafter listed,

IT IS, THEREFORE, this 9th day of October, in the year Nineteen Hundred and Forty-six, by the Public Service Commission of Maryland,

ORDERED: That The Baltimore Transit Company be, and it is hereby, authorized to surrender and abandon electric railway service as operated over the following street railway lines, upon inauguration of motor bus service by The Baltimore Coach Company in substitution for said electric railway service, said abandonments to take place from time to time only as and when said motor bus service in substitution therefor is actually put into operation:

*Electric Railway Operations to be Abandoned*

No. 1-11 Line—from terminus at Park Terminal to terminus at Bedford Square and terminus at Greenmount Avenue and 25th Street.

No. 2 Line—Carey Street Line—from terminus at Park Terminal to terminus at Fort McHenry.

No. 5-33 Line—Pimlico-Patterson Park line—that portion of line from terminus at Patterson Park to South Street, and that portion of line from terminus at Gwynn Oak Junction to Belvedere car house.

No. 6 Line—Curtis Bay, Fairfield-Monument Street Line — from terminus at Monument and Kresson Streets to terminus at Fairfield and at Curtis Bay.

No. 13 Line—North Avenue Line—that portion of

the line from the terminus at Wolfe and Aliceanna Streets to North Avenue.

No. 15 Line—Baltimore Street-Belair Road Line—that portion of line from terminus at West Baltimore Street Loop to Fayette and Gay Streets.

No. 16 Line—Madison Avenue Line—from terminus at Madison Avenue car house to terminus at foot of Broadway.

No. 17 Line—St. Paul Street-Westport Line—from terminus at Abbottston Street near Harford Road to terminus at Annapolis Road near Waterview Avenue.

No. 19 Line—Harford Road Line—from terminus at Ostend Street to Aisquith and Monument Streets.

No. 20 Line—Point Breeze-City Hall Line—from terminus at City Hall to terminus at Point Breeze.

No. 24 Line—Lakeside Line—from terminus of line at Lakeside to terminus of line at Roland Avenue south of University Parkway.

No. 25 Line—Mt. Washington Line—from the terminus at Camden Street to the terminus at Belvedere car house.

No. 25 A Line—Key Avenue Line—from terminus at Mt. Washington to terminus at Cheswolde Avenue.

Union Avenue Line—from terminus at Union Avenue to terminus at 36th Street and Roland Avenue.

No. 29 Line—Roland Park-Calvert Street Line—from terminus at Roland Park to terminus at South and Pratt Streets.

No. 34 Line—Canton Line—from terminus at Oldham and Eastern Avenue to terminus at North Avenue.

*Motor Bus Lines to be Operated in Substitution  
Therefor*

*“A”—Charles Street Bus Line*

From the present terminus at Belvedere Avenue in Homeland via its present route to Charles Street and Baltimore Street, to Liberty Street, to Cathedral Street, to Chase Street, to Maryland Avenue, to 29th

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Street, to Charles Street, then via its present route to present terminus in Homeland. A branch of this bus line to be operated over 33rd Street to Greenmount Avenue and then over the route of the "T" bus line to the present terminus of the "T" bus line at Pentridge Road. And said Company is further authorized to extend said bus line in a northerly direction over a route to be submitted to and approved by the Commission so as to serve the Cedarcroft, Pinehurst, Rodgers Forge and Armagh Sections.

*"B"—Mount Royal Avenue Bus Line*

From the present terminus on Madison Avenue to Whitelock Street, to Callow Avenue, to Reservoir Street, to Park Avenue, to Madison Street, to Charles Street, to Redwood Street, to Howard Street, to Pratt Street, to Paca Street, to Fremont Avenue, to Ridgely Street, to Bush Street, to Annapolis Road, to present terminus at Westport, returning by the same route to Paca and Camden, then on Camden to Howard Street, to Liberty Street, to Cathedral Street, to Read Street, to Park Avenue, to Reservoir Street, to Callow Avenue, to Whitelock Street, to Eutaw Place, to Cloverdale Road, to Madison Avenue, to the terminus on Madison Avenue.

Branches of this bus line to operate over the present routes of "K"—Lakeland bus line and the "K-A" Cherry Hill bus line.

*"C"—Alameda Bus Line*

To be replaced by a bus line operating from the loop on Argonne Drive to Wilsby Avenue, to Wyanoke Avenue, to Lowndes Avenue, to Argonne Drive, to Ellerslie Avenue, to 36th Street, to the Alameda, to Kirk Avenue, to Homewood Avenue, to Greenmout Avenue, to Forrest Street, to Hillen Street, to Holliday Street, to Gay Street, to Fayette Street, to Holliday Street, returning over the same route to the Alameda.

*“D”—Monroe Street-Bentalou Street Bus Line*

Over its present route from terminus at Washington Boulevard to Windsor Avenue and Smallwood Street, and then on Windsor Avenue, Pulaski Street, Gwynns Falls Parkway, Monroe Street, Bryant Street, Pulaski Street to Windsor Avenue, to Bentalou Street, to present southern terminus.

*“N”—West Baltimore Street Bus Line*

From present termini in West Baltimore over existing routes to Baltimore Street, to Ellwood Street, to Lombard Street, to Ponca Street, to Holabird Avenue, to Broening Highway, to present terminus of No. 20—Point Breeze-City Hall street car line west of Colgate Creek, with a branch of the line operating by bridge over Colgate Creek to the Municipal Airport.

*“P”—Highlandtown-Middle River Bus Line*

From its present terminus at Middle River on Eastern Avenue to Conkling Street, to Toone Street, to Clinton Avenue, to loop at Newgate Avenue.

*“Q”—Viaduct-Halethorpe Bus Line*

From present terminus and over present route from Halethorpe to Gilmor and Lombard Streets, on Gilmor Street, to Baltimore Street, to Liberty Street, to Cathedral Street, to Mulberry Street, to Orleans Street, to Broadway, to Monument Street, to Patterson Park Avenue, to present terminus at North Avenue, returning by the same route to Orleans Street, to Franklin Street, to Howard Street, to Baltimore Street, and then over the same route to Halethorpe terminus.

*“S”—Crosstown Bus Line*

Between present termini with buses rerouted between Thirty-third Street and Ednor Avenue and

Thirty-ninth Street and University Parkway by way of Thirty-third Street and University Parkway.

*New Bus Lines to be Established*

(1) From the present terminus of the No. 24 street car line at Lakeside over a private right of way to Roland Avenue, to University Parkway, to Calvert Street, to Pratt Street, to Light Street, to St. Paul Street, to University Parkway, to Roland Avenue, to Lakeside terminus.

(2) From Gorsuch Avenue and Old York Road to Thirty-third Street, to Frisby Street, to Gorsuch Avenue, to Harford Road, to Broadway, to North Avenue, to Wolfe Street, to Aliceanna Street, to Ann Street, to Fleet Street, to Wolfe Street, and returning by the same route to Gorsuch Avenue terminus.

(3) From Carey and Presstman Streets, on Presstman Street, to Division Street, to Baker Street, to Druid Hill Avenue, to Presstman Street, to Carey Street, to Baltimore Street, to Charles Street, to Fort Avenue, to Fort McHenry, returning on Fort Avenue to Charles Street, to Lee Street, to Hanover Street, to Baltimore Street and then over same route to northern terminus.

(4) From Fulton Avenue and Druid Hill Avenue on Fulton Avenue to Lanvale Street to Gilmore Street, to Baltimore Street, to Sharp Street, to West Street, to Leadenhall Street, to Ostend Street, to Sharp Street, to Lee Street, to Hanover Street, to Baltimore Street and over same route to Fulton and Druid Hill Avenues.

(5) From Curtis Bay at the present terminus of the No. 6 Line on Pennington Avenue to Patapsco Avenue, to Hanover Street, to Barney Street, to Light Street, to St. Paul Street, to St. Paul Place to a point south of Center Street with branches of this line extending in the Fairfield Section on Chesapeake Avenue, Weedon Street, Carbon Street and Sun Street and from the northern terminus by way of Orleans Street, Ensor

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Street, Monument Street to Armistead Gardens, returning over the same route except the operation between Light Street and Hanover Street shall be by way of Heath Street.

(6) From a loop at Howard and Redwood Streets via Redwood Street, Eutaw Street, Lombard Street and Howard Street on Howard Street to Twenty-seventh Street, to Remington Avenue, to Thirty-third Street, to Chestnut Avenue, to Thirty-sixth Street, to Falls Road, to Kelly Avenue, to Cross Country Boulevard, to Kenoak Road, to Old Pimlico Road, to Belvedere Avenue, to Reisterstown Road, to Garrison Avenue, to Belvieu Avenue, to Laredo Avenue, to Woodbine Avenue, to Haddon Avenue, to Gwynn Oak Avenue, to Liberty Heights Avenue, to Woodbine Avenue and return. A branch of this line will be operated from Cross Country Boulevard and Kelly Avenue over Cross Country Boulevard and Greenspring Avenue to Cheswolde Avenue.

AND IT IS FURTHER ORDERED: That The Baltimore Transit Company make prompt application to the Mayor and City Council of Baltimore, pursuant to the contract entered into by the said Company and the Mayor and City Council under date of May 29, 1946, for all franchises necessary to reroute its electric railway and trackless trolley service in the following manner:

*Electric Railway and Trackless Trolley Lines to be Rerouted*

No. 5 Line—Pimlico-Patterson Park—following the present route from the termini at Belvedere Car House and Manhattan Loop by Park Heights Avenue and Pennsylvania Avenue to Fulton Avenue, then by a new route continuing on Pennsylvania Avenue to North Avenue, to Madison Avenue, to Eutaw Street, to Lombard Street, to South Street, to Pratt Street, to Calvert Street, to Lombard Street, returning over same route.



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No. 8 Line—York Road—over present route except between North Avenue and Greenmount Avenue and Gilmore Street and Lombard Street, where the following route will be established from Greenmount Avenue and North Avenue, on North Avenue to Guilford Avenue, on Guilford Avenue and Guilford Avenue Viaduct to Fayette Street, to Paca Street, to Lombard Street, to Gilmore Street, returning by same route except between Fayette and Lombard Streets where operation will be by way of Eutaw Street.

No. 10 Line—Roland Park-Highlandtown Trackless Trolley—over present route from Roland Avenue to Pratt and High Streets, then by new route on High Street to Eastern Avenue, to Broadway where it rejoins present route, to Highlandtown and westbound over present route to Eastern Avenue and Broadway, then on Eastern Avenue to Albemarle Street, to Pratt Street where it rejoins its present route. A portion of this line will also operate on a new route from Eastern Avenue and Broadway on Broadway to the present terminus of the No. 16 street car line.

No. 15 Line—Belair Road—over present route from terminus at Overlea to Fayette Street and Gay Street, then on Fayette Street, to South Street, to Lombard Street, to Hanover Street, to Redwood Street, to South Street, to Fayette Street and return over same route.

No. 18 Line—Pennsylvania Avenue—from northern terminus over its present route to Fayette Street and Greene Street, on Fayette Street to Paca Street, on Paca Street to Lombard Street, and then over its present route to eastern terminus of line.

No. 19 Line—Harford Road—over present route from Terminus at Parkville to Aisquith and Monument Streets, on Monument Street to Hillen Street, to Holliday Street, to Fayette Street, to a loop by way of Greene Street, Saratoga Street and Paca Street.

No. 26 Line—Sparrows Point—from terminus at Sparrows Point over present route to Fairmount Avenue and Wolfe Street, on Wolfe Street to Pratt Street,

to Exeter and High Streets, to Lombard Street, to Paca Street, to Fayette Street, to Eutaw Street, to Lombard Street, and returning over same route.

No. 32 Line—Woodlawn Line—following present route from terminus at Woodlawn by way of Gwynn Oak Avenue, Liberty Heights Avenue, and Pennsylvania Avenue to Pennsylvania Avenue and Fulton Avenue, then by new route continuing on Pennsylvania Avenue to North Avenue, to Linden Avenue, to Park Avenue, to Sharp Street, to Redwood Street, to Liberty Street, to Park Avenue, returning to Woodlawn over the same route.

AND IT IS FURTHER ORDERED: That The Baltimore Transit Company be, and it is hereby, authorized to surrender and abandon electric railway service, franchises, easements and rights of way, as and when service by motor buses has been substituted therefor in accordance with the provisions of this Order, over the following street railway lines, and to remove from the streets, highways and rights of way over which said lines are operating its rails, ties, loading platforms, poles, wires and overhead structures, pursuant to the provisions of the said contract of May 29, 1946, between The Mayor and City Council of Baltimore and The Baltimore Transit Company:

- ( 1 ) Roland Avenue—from Lake Avenue to Crossover south of University Parkway.
- ( 2 ) University Parkway—from Roland Avenue to St. Paul Street.
- ( 3 ) St. Paul Street—from University Parkway to North Avenue.
- ( 4 ) Charles Street—from North Avenue to Read Street, except the southbound single track from North Avenue to Lafayette Avenue.
- ( 5 ) Read Street—from Charles Street to Calvert Street.
- ( 6 ) Calvert Street—from Read Street to Redwood Street.

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- ( 7 ) St. Paul Street—from Bedford Square to University Parkway.
- ( 8 ) Thirty-first Street—from St. Paul Street to Greenmount Avenue.
- ( 9 ) Paca Street—from Camden Street to Fremont Avenue.
- (10) Ridgeley Street—from Fremont Avenue to private right of way near Bush Street and on said private right of way to Annapolis Road.
- (11) Annapolis Road—from said private right of way to and including the loop near Waterview Avenue.
- (12) Washington Street—from North Avenue to Chase Street.
- (13) Chase Street—from Washington Street to Wolfe Street.
- (14) Wolfe Street—from Chase Street to Fairmount Avenue.
- (15) Wolfe Street—from Pratt Street to Aliceanna Street.
- (16) Aliceanna Street—from Wolfe Street to Ann Street.
- (17) Ann Street—from Aliceanna Street to Eastern Avenue.
- (18) Cumberland Street—from Pennsylvania Avenue to Carey Street.
- (19) Carey Street—from Cumberland Street to Fayette Street.
- (20) Mosher Street—from Carey Street to Carrollton Avenue.
- (21) Carrollton Avenue—from Mosher Street to Baltimore Street.
- (22) Charles Street—from Lexington Street to Hamburg Street.
- (23) Fort Avenue—from Charles Street to Fort McHenry.
- (24) Light Street—from Baltimore Street to Barney Street.

- (25) Heath Street—from Charles Street to Hanover Street.
- (26) Heath Street—from Light Street to Patapsco Street.
- (27) Barney Street—from Light Street to Patapsco Street.
- (28) Barney Street—from Charles Street to Hanover Street.
- (29) Hanover Street—from Heath Street to Patapsco Avenue.
- (30) Patapsco Avenue—from Hanover Street to Curtis Avenue.
- (31) Curtis Avenue—south of Patapsco Avenue including the loop at Alder Street.
- (32) All trackage around the Fairfield Loop beginning at Patapsco and Curtis Avenues and running through the Fairfield district.
- (33) Monument Street—east of Aisquith Street.
- (34) Aisquith Street—from Monument Street to Baltimore Street.
- (35) Gay Street—from Fayette Street to Baltimore Street.
- (36) Baltimore Street—from West Baltimore Street Loop to Patterson Park Avenue, except north or westbound from Greene Street to Pearl Street, but including the West Baltimore Street Loop and tracks leading to and in the West Baltimore Street carbarn and storage yards.
- (37) Patterson Park Avenue—from Baltimore Street to Pratt Street.
- (38) Pratt Street—from Patterson Park Avenue to Wolfe Street.
- (39) Broadway—from Baltimore Street to Gough Street.
- (40) Hanover Street—from Lee Street to Lombard Street.
- (41) Hanover Street—from Redwood Street to Baltimore Street.

(App. 150)

- (42) Sharp Street—from Baltimore Street to Ostend Street, including loop around Ostend Street, Leadenhall Street and West Street.
- (43) Fayette Street—from Gilmor Street to Greene Street.
- (44) Fulton Avenue—from Pennsylvania Avenue to Lanvale Street.
- (45) Lanvale Street—from Fulton Avenue to Gilmor Street.
- (46) Gilmor Street—from Lanvale Street to Lombard Street.
- (47) Madison Avenue—from Cloverdale Road to North Avenue, including all trackage at the loop and car barn at the Company's Madison Avenue terminus.
- (48) Point Breeze Extension—from crossover on Oldham Street south of Eastern Avenue to and including the loop at Western Electric Company's plant.
- (49) Lee Street—from Sharp Street to Hanover Street.
- (50) Pleasant Street—from Calvert Street to Guilford Avenue.
- (51) Howard Street—from Baltimore Street to Liberty Street.

AND IT IS FURTHER ORDERED: That The Baltimore Transit Company promptly submit to this Commission detailed recommendations with respect to making, as of December 31, 1945, appropriate adjustments in its capital, surplus, depreciation and other reserve accounts, and such other changes in its accounting procedure as may be appropriate in order to provide for losses to be sustained in the abandonments which will result from the conversion of its street railway lines to motor bus operation, as authorized by this Order.

AND IT IS FURTHER ORDERED: That the application of The Baltimore Transit Company for a permit grant-

(App. 151)

ing its said subsidiary, The Baltimore Coach Company, its successors and assigns, the right to operate motor vehicles for use in the public transportation of passengers for hire on the streets and highways listed above in this Order, under the heading "*Motor Bus Lines to be Operated in Substitution Therefor,*" be, and the same is hereby, granted; and that the permit applied for be issued under the provisions and subject to the conditions of Section 304 of Article 56 of the Annotated Code of Public General Laws of Maryland, the rights therein granted to be held, exercised and enjoyed for the period of twenty-five (25) years, with the right to the grantee, its successors and assigns, to renew the same for the further period of twenty-five (25) years.

CHARLES B. BOSLEY  
ARTHUR H. BRICE  
THOMAS ELMO JONES  
Commissioners.

FILED DEC 1 1947

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IN THE  
**Court of Appeals of Maryland**

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OCTOBER TERM, 1947

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No. 108

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WILSON C. WARREN, et al.,  
*Appellants,*

vs.

E. ROY FITZGERALD, et al.,  
*Appellees.*

---

APPEAL FROM THE CIRCUIT COURT OF BALTIMORE CITY  
(TUCKER, J.)

---

**BRIEF FOR THE MAYOR AND CITY COUNCIL  
OF BALTIMORE, APPELLEE.**

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SIMON E. SOBELOFF,  
City Solicitor.

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IN THE  
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APPEAL FROM THE CIRCUIT COURT OF BALTIMORE CITY  
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**BRIEF FOR THE MAYOR AND CITY COUNCIL  
OF BALTIMORE, APPELLEE.**

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**STATEMENT OF THE CASE.**

This appeal is by stockholders who sought unsuccessfully in the lower Court (Tucker, J.) an injunction against the execution by The Baltimore Transit Company of its plan to convert a portion of its system from rail to bus operations. This plan was approved not only by the directors, but also by the Public Service Commission of Maryland, and is embodied in a binding contract between the Transit Company and the Mayor and City Council.

**QUESTIONS INVOLVED.**

1. Did the directors of the Transit Company act beyond their powers in embarking upon the "conversion plan"?
2. Should an injunction issue in any event at the instance of stockholders who remained silent over a period of years while the plan was to their knowledge under public discussion and under consideration by the directors; especially as the stockholders raise objection for the first time now, after the City, acting in good faith, has moved to carry out its part of the contract with the Company?
3. The claimed "abandonment of millions of dollars of assets" is a fiction.

**ARGUMENT.****I.**

Plaintiffs' argument, however plausible, is based on mere verbalism. The argument is that the Company was organized to operate a street railway system and its directors are, therefore, precluded from converting to buses, regardless of public need, regardless of corporate necessity, regardless of progress in the art of mass transportation in a large city. The Company's directors must, so the argument runs, stick to rails though the heavens fall.

Preliminarily, it is submitted that where the present charter or the charters of the component companies use the word "railways" they use in conjunction with it the word "street," so that the phrase is "street railways," and sometimes even more specifically, "passenger street railways." The words "passenger" and "street"

are not to be ignored, and attention should not be focused on the single word "railways."

The word "railways" may initially, as a matter of etymology, have referred to vehicular traffic on rails; but this is not the first instance in which a word, narrow in its original concept, has assumed a broader significance with changed conditions. To take a simple example: the word "manufacture" is derived from two Latin words—"manus" and "facere," that is, "to make by hand." The Bethlehem Steel Company is a manufacturer, and no one would have the temerity to suggest that it has departed from its proper corporate sphere because metal ingots and sheet metal are no longer made by hand, but by heavy machinery. Again, the words "to sail" originally meant to travel in a boat operated by sails. We read today of the sailing date of the "QUEEN ELIZABETH." No one lifts an eyebrow at the use of the word "sail" in connection with this vessel, which has no sails but is propelled by steam, Diesel or electric engines. Again and again, lawyers and laymen have observed changes in the meaning of familiar words, due to the broadening concept that comes with new developments.

The word "railways" no longer means, necessarily, "transportation on rails." Even in the beginning the phrase "street railway" denoted not merely the use of rails, but the operation of vehicles (a) for public use; (b) over a fixed route; (c) in public streets; and (d) on wheels. If by reason of mechanical advances wheels are now surmounted by rubber tires, and it has become feasible to operate more flexibly and more economically on the highway itself without being restricted to rails, the essential attributes of the street railway remain.

We cite another and final illustration of the changed significance of a word in this very field—the word “bus,” which is a contraction of the word “omnibus.” It is a Latin word for “all” or “everything.” Some centuries ago an omnibus was a stage coach. Webster defines the word “omnibus” as synonymous with “bus,” and says it is:

“A heavy four-wheeled public vehicle designed to carry a comparatively large number of passengers; especially such a vehicle entered from the rear and having inside a long bench-like seat on each side with or without seats on top and drawn by two or more horses.”

Later, as Webster indicates, the word included such a vehicle “even if self-propelled.” Would anyone in this century argue that a statute regulating buses or omnibuses would not apply to a modern motor coach, because, forsooth, it did not have “a long bench-like seat on each side” or because it was not “drawn by two or more horses” or because it “did not have seats on top”? Obviously, the concept of “bus” has been altered by the passage of time; and so it is not unreasonable to suggest, as we most respectfully do to this Court, that a street railway system is non-the-less just that, if it operates on the streets of the city over fixed routes to serve the public by carrying passengers for hire, even though the India rubber tires make steel rails obsolete.

The appellants’ narrow interpretation is based on a type of legal fundamentalism that should not appeal to any modern Court.

But it is not necessary in this case to rely on etymological speculations. There is an Act of the Legislature which reflects precisely this point of view, and

which in terms deals with the possibility that a street railway company may wish to substitute buses for electric trolley cars.

Indeed, the statute describes, almost in terms, the entire situation we have before us now. Section 304 of Article 56 of Flack's Code reads:

"It shall be the duty of the Public Service Commission of Maryland, upon the application of any motor vehicle owner for a permit to operate any motor vehicle for the public transportation of passengers over any specified route, to investigate the expediency of granting said permit; the number of motor vehicles to be used, and the rate to be charged, and if, in the judgment of the Public Service Commission, it is deemed best for public welfare and convenience that said permit should be granted, said Public Service Commission is hereby empowered and authorized to grant such permit subject to such reasonable conditions and terms, and for such duration of time, not exceeding the period of twenty years, as it may deem advisable, provided, however, that permits to operate over the streets of the City of Baltimore shall not be granted for periods in excess of one year, except as hereinafter provided; and provided further, that if the applicant is directly, or is a subsidiary of a company, engaged in furnishing mass transportation in any incorporated municipality in the State of Maryland, by means of electric trolley cars, and operates or desires to operate motor vehicles, other than taxicabs, in connection with or as a service supplementary to a service by trolley cars, the Public Service Commission may grant such permits for a period not exceeding twenty-five years, except that a permit may be granted for a longer period where application is made for a permit to operate a motor vehicle or motor vehicles in substitution for the whole or any

part of an electric trolley car franchise, easement or right-of-way originally granted by local authority or otherwise acquired for a duration longer than twenty-five years, in which event, upon the abandonment or surrender of the whole or any part of such franchise, easement or right-of-way for the operation of electric trolley cars, the Public Service Commission is authorized and empowered to grant the permit or permits so applied for for the same duration as the franchise, easement or right-of-way which, or any part of which, is so abandoned or surrendered; provided, however, that whenever a permit or permits are so granted for a period or periods longer than one year, the service rendered under such permit or permits may not be discontinued without the consent of the Public Service Commission. But if said Public Service Commission deems the granting of such permit prejudicial to the welfare and convenience of the public, then the said Public Service Commission is hereby empowered and authorized to refuse the granting of the same. The said Public Service Commission of Maryland is further empowered and authorized to make such rules and regulations as it may deem necessary to govern the control and operation of same, and enforce the same by such penalties or forfeitures as it may prescribe, including the revocation of the permit granted under the provisions of this sub-title."

It is clear, therefore, that a street railway company, according to the notion of the Legislature, could properly enter upon a conversion program such as is here contemplated without violating the law or its charter.

But the appellants argue that that still requires the sanction of the stockholders, on the ground that the statute itself does not directly amend the Charter. In

this connection, it should be remembered that we are dealing here not with a purely private corporation, but with a public utility whose investments are dedicated to public use. Therefore, as public need changes and public demand requires changes in the type of service, the law does not forbid it, but expressly sanctions it. It becomes the duty of directors to meet changed conditions from time to time as the public demand may require. It is axiomatic in public utility law that the dedication of a utility's property to public use subjects it to a very high degree of public control.

The investor in a public utility is presumed to know this. He invests with the knowledge that, in the exercise of its public powers, the Legislature or its creatures, the Public Service Commission or the municipality, may regulate it, not only as to fares and schedules, but also as to the service it will be required to supply, the conveniences it will afford the public, and the methods and the means it will employ. The directors are chosen to select the means. Certainly, there is no prohibition in the Charter against change. Is it to be presumed that the statute meant less than it said, and that a company operating trolley cars must still seek an amendment of its charter before it can obtain a permit to operate buses? On the contrary, the statute points to the very device resorted to here, namely, the use of a controlled subsidiary. It is no departure from the original corporate purpose to substitute buses for street cars.

Especially is this true when the public officials and the Company's directors are in accord as to the necessity for modernizing the system. The system originally was one for mass transportation by one means, and remains a system for mass transportation by more mod-

ern means over the same streets, of the same city, to serve the same public, to retain the revenues that would otherwise be lost. To hold otherwise would be to say that having once invested in a mass transportation business employing a particular means, the directors are not authorized to protect their stockholders against the effects of obsolescence and decline in business; they must not move to retain business or recapture lost business or to meet competition, but must sit idly by while the public suffers and the company is destroyed. The corporate function is in reality not being changed; the means of executing the function are merely being brought into line with modern conditions. The selection of the means is essentially the function of the directors, subject to the dominant interest and control of the public.

In this case, it happens that the traffic needs of the City and the prosperity of the Company coincide in indicating the necessity for the change.

The City's interest is to have good transportation for Baltimore—transportation that will move masses of people speedily from place to place; that will not obstruct other traffic; by a company that is sufficiently prosperous to furnish good service, by acquiring the newest and best facilities available from time to time.

The Mayor and City Council believes that the conversion plan arrived at after long study is a step in this direction. It has entered into a contract, in good faith, with the Company. Relying upon this contract, the City has expended considerable sums in preparing certain streets for the new buses, and has committed itself to further expenditures. The public interest is a factor not to be overlooked. Our interest here is to prevent a



decree based on narrower considerations that may deprive the City of the benefit of this contract after we have gone to heavy expense to give it effect. We think that, from a long-range view, the stockholders' interest lies in the same direction as that of the general public. This is abundantly proven by all the witnesses and challenged by none.

## II.

Among the defenses of the City raised below is "laches." This defense has, we believe, been fully established; and while the Court may easily rest its decision on the lack of substance and merit in the plaintiff's case, we respectfully submit that the plaintiffs' delay would alone justify dismissal of their Bill.

If ever there was a case in which plaintiffs have by delay and inaction disintitiled themselves to relief, this is such a case. Not only the public press, but the annual reports of the Company over a long period of years, which were regularly mailed to the stockholders, are replete with discussions of the impending conversion from street cars to buses. To induce conversion the City surrendered important tax claims, granted certain franchises and agreed to relieve the Company of onerous paving obligations. For plaintiffs to wait until the plan has been partly executed at great cost to the Company and the City before raising their voices in protest presents a typical case of laches. This defense was raised by the City at the trial below and has, to our minds, been fully established.

## III.

It remains to say a final word about the alleged "*abandonment* of \$24,000,000 of assets."

Mr. Walter F. Perkins, a director of the Transit Company, called to the stand by the plaintiff, sententiously disposed of this claim. He said, "I don't consider it a loss. I consider it obsolete equipment that has already gone. It isn't worth anything today." (App. to Transit Co. Brief 78).

Mr. C. Frank Reavis, a director of the Company, and counsel for the National City Lines, which owns a controlling interest in the Company, and who individually owns approximately 3,000 shares, elaborated on this point. He declared on the stand, "I think the \$24,000,000 and the \$21,000,000 are both fictions, as can be readily seen when you recognize the fact that the same property, for income tax purposes, is accepted at a value of only about \$4,000,000. That is, the depreciated value to the Government of that property is \$4,000,000. The undepreciated cost on the books reached by this conglomerate arbitrary method over a period of time [employed for rate-making purposes only] is \$24,000,000. \* \* \* In order to keep this Company alive, not in a gentle philosophical discussion, but to keep the Company alive and operating with a profit, it has to be a conversion to free wheel vehicles, some to overhead coaches, but principally to buses. That was the consensus of opinion of the engineers and the management."

Mr. Reavis added significantly: "It won't do to say this is the cost which you would escape if you don't put these buses in. \* \* \* Over a reasonable period of time, if you continue to operate as you have today, you would have to put at least \$3,000,000 into tracks alone. The old tracks would have to be replaced or refurbished or reconditioned, and when you are done with it you simply have old tracks, not a new condition. You would have to

buy five hundred street cars, because the Company cannot keep people riding in the street cars on the tracks today, indefinitely, and that would cost \$5,500,000. But you would have to recondition your overhead and do something to your sub-stations, and by the time you are done with those things you have the choice of two things: either free wheel or street cars. After you were done with it, if you continue the present method of operation, you would have a relatively obsolete system and you would have spent many, many millions of dollars more than is going to be spent on the bus program and for overhead trolleys. \* \* \* They simply had to do this to keep this Company in condition to operate at a profit. I may say in my own opinion if the directors had not done this they could have then been charged with seriously not doing what was best for the Company and best for the stockholders." (App. to Transit Company's Brief, pp. 92-98).

### CONCLUSION.

When one adds to the conclusions so clearly and convincingly expressed by Mr. Perkins and Mr. Reavis the fact that the City was desirous of cooperating in the conversion in order to establish one-way streets (because "it is impossible to leave the cars and the tracks and have one-way streets"), the directors were faced with a situation which compelled action on their part. They could have taken no other course than the one adopted. They acted in line with the recommendations made repeatedly by every official, every public body, every committee of citizens, every transportation expert who studied the subject over a period of more than a decade. To speak of "millions of dollars of abandoned assets"

under these circumstances is to divorce oneself from reality.

The process of conversion began with the first bus put on the streets by the United Railways & Electric Company in 1915. It has continued steadily. The directors have not by the present conversion plan made a new departure. They are only doing on a larger scale what they have been doing continuously for thirty years. The volume of conversion necessary at this time is greater only because of the accelerated aggravation of the traffic problem and the delay in the conversion process occasioned by the war. Their action was also made necessary by the contract of May, 1946, made in good faith (App. to Transit Company's Brief, p. 46), which settled tax claims of the City and attempted to bring some measure of order out of the chaotic traffic snarl which afflicts Baltimore City.

This constructive step should not be enjoined, and the decree of Judge Tucker should be affirmed.

Respectfully submitted,

SIMON E. SOBELOFF,  
City Solicitor.

FILED NOV 19 1947

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IN THE  
**Court of Appeals of Maryland**

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OCTOBER TERM, 1947

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No. 108

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WILSON C. WARREN, et al.,  
*Appellants,*

vs.

E. ROY FITZGERALD, et al.,  
*Appellees.*

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APPEAL FROM THE CIRCUIT COURT OF BALTIMORE CITY  
(TUCKER, J.)

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**APPELLANTS' REPLY BRIEF.**

---

HERBERT E. WITZ,  
J. MORFIT MULLEN,  
Solicitors for Appellants.

IN THE  
**Court of Appeals of Maryland**

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**APPELLANTS' REPLY BRIEF.**

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After reading Appellees' brief we feel that some further thought should be brought to the attention of this Court. The Appellees do not attempt to argue the single issue involved in this case, it being that of the right of the directors of the Transit Company to make the proposed conversion and abandon about \$24,000,000 worth of their Company's assets which are in use and helping to produce a substantial net profit, and their power to transfer other assets and valuable rights to another corporation. If the directors have this power then there is nothing to prevent them from abandoning the remainder of the assets of the Transit Company,

and causing all future operations to be owned and conducted by its subsidiary corporation. We have submitted that none of these acts can be done without the consent of the owners of the Company, the stockholders.

### I.

As clearly appears from our original brief the sole claim we make in this case is the right of stockholders to have a say before fundamental or organic changes, of the kind here sought to be made, are made effective in their corporation. In support of our proposition that, directors of the Transit Company have no power to make the changes here contemplated without the consent of the stockholders, we cited a long list of authorities on pp. 11 to 19 of our original brief. In addition to those authorities we have recently located another decision of the Supreme Court of the United States, which, together with the cases therein referred to, we deem it advisable to bring to this Court's attention in addition to those heretofore cited because of the high authority which makes this decision. The case referred to is that of *Commercial National Bank v. Weinhard*, 192 U. S. 243 at 248-249, wherein the question of assessment of shareholders of a national bank by the Comptroller under a U. S. Statute was dealt with. The statute provided that if the assessment was not approved within a certain time the bank would have to liquidate. The directors attempted to make the assessment and certain stockholders refused to pay the same. The Supreme Court in construing the statute and defining the powers of the directors stated in part:

“Thus the directors are given authority to transact the usual and ordinary business of national banks. Obviously, the power conferred may be exercised

in all usual transactions through the executive officers of the bank without consulting with the stockholders. In the present case the question to be dealt with is vital to the continuance of the life of the association, as only by complying with the requirements of the Comptroller in assessing a sum sufficient to make up the impaired capital of the bank can its business be continued. The stockholders, by their contracts of subscription have agreed to pay in the amount of capital stock subscribed and to discharge the additional liability imposed by the statute. They have not contracted to meet assessments at the will of the directors to perpetuate the business of a possibly losing concern. It would be going far beyond the usual powers conferred upon directors to permit them to thus control the corporation. Corporate powers conferred upon a board of directors usually refer to the ordinary business transactions of the corporation. *Railway Co. v. Allerton*, 18 Wall 233. \* \* \*.

\* \* \* The question is who shall exercise this privilege and determine the future of the association—is it the directors or the stockholders who have this right of decision? The origin and continuation of the association would seem to be matters in which the owners and not the managers of the bank are primarily interested. \* \* \* If this were not so then the decision of a question of such vital importance is left to the directors, who may or may not be large holders of stock. \* \* \*.”

In connection with the stock ownership of the directors, it is singular that eight of the twelve directors of the Transit Company own not a share of its stock. One of the directors testified that he sold his stock after he became a member of the board.



While we can not say that the Appellees concede this proposition of law, although this principle claim was made strongly below by us, Appellees have not a word in their brief which in anyway disputes this claim.

*We therefore say that it is universal law in Maryland and elsewhere that directors of a corporation of this kind have no power whatsoever to make fundamental or organic changes as are here proposed without the consent of the stockholders and that any action looking to this end is null and void.*

## II.

Appellees seek to meet the issue in this case by a distortion of the meaning and effect of the order of the Public Service Commission which *authorized* (App. A. p. 140), but did not and could not direct this conversion to be made because it is clearly established in this State and everywhere else that a Commission regulating public service corporations can do no act except to protect the public interest. The relation between the stockholders and the directors is a matter entirely beyond the control of such a commission.

In *Havre de Grace Bridge Co. v. P. S. C.*, 132 Md. 16, one of the points involved was the right of the Commission to direct the Bridge Company to maintain a depreciation reserve account, p. 21, and this Court held that such an act was beyond the power of the Commission and in the opinion by Judge Stockbridge on pp. 22 and 23 the following appears:

“In the earlier case of the *D. & H. Co. v. Stevens*, 197 N. Y. 1, the Court had said: ‘We do not think the legislation alluded to was designed to make the Commission the financial managers of the corpora-

tion, or that it empowered them to substitute their judgment for that of the directors or stockholders of the corporation.' ”

Also in the case *P. S. C. v. P. B. & W. R. R. Co.*, 155 Md. 104 at 115, this Court through Judge Offutt said:

“\* \* \* the legislature \* \* \*, under the guise of regulation and control cannot authorize the destruction or confiscation of vested rights, or, in the absence of any unlawful act or breach of duty, without just compensation completely take over the operation and management of the corporation, nor can it delegate strictly legislative or judicial powers and functions to such an agency. \* \* \*.”

The Commission has no jurisdiction over matters of internal management.

*Koons v. Glenwood Teleph. Co.*, (1925), 17 Ann. Rep. Neb. S. R. C. 128;  
 Re: *Shore Gas Co.*, PUR 1931-C 155;  
*Graff v. Williamsport Water Co.*, PUR 1929-D 135.

The authorities cited by the Appellees are equally clear on this point. In the case of *Columbia v. Tatum*, 177 S. E. 541, cited ( App. brief p. 40, and which is the only authority of any kind referred to by Judge Tucker in his opinion below, after stating the excerpt quoted by the Appellees on p. 50, recited on p. 550; “The Commission is the duly constituted agency to determine the *public* interest.”

In the case of *Miller v. Tennessee*, 34 PUR (NS) 409, quoted by Appellees on p. 39 of their brief, great reliance is placed upon a decision by Judge Lurton, later a Justice of the United States Supreme Court. In the

Tennessee case just referred to Judge Lurton on p. 507 of 77 Fed. said the following:

“In Tennessee two things seem essential to the legal maintenance and operation of a street railroad—a corporate organization whereby the franchise essential to its operation of a street railroad for tolls is to be obtained; and the right to enter upon particular streets and occupy them with the necessary tracks and other equipment for the operation of a street railroad. *The first requisite can be obtained only from the State by organization under the general incorporation law provided for those wishing such a franchise. \* \* \*.*”

Also in 3 Pond on Public Utilities, 4th Ed. sec. 912 on p. 1837 is found the following quotation from the case of Chippewa Power Co. v. Railroad Comm. of Wisc., 188 Wisc. 246:

“\* \* \* A public utility in the performance of its functions has a dual aspect. The interests of the public are guarded by the Commission. The interests of the stockholders are primarily represented by the officers and directors of the corporation. Notwithstanding the regulation involved in the Public Utility Act, the company itself is a concern not organized for public, but for private, profit, which means the profits of the stockholders. \* \* \*.”

None of the authorities quoted by the Appellees nor any other authority dissents from the proposition which we have just stated.

It is the undoubted law everywhere that the relation between stockholders and directors and their corporation, which is the only issue involved in this case, is a matter for the civil courts only. The Public Service Commission has no authority of any kind in this con-

nection. The Appellees' statement on p. 32 of their brief that the Public Service Commission may exercise the power reserved to the State to amend corporate charters is fantastic.

### **CONCLUSION.**

We therefore say that there is nothing in this case which dissents from the proposition that the conversion plan herein involved is organic and fundamental and that the directors of The Baltimore Transit Company have no power to put it into effect without the consent of the stockholders. It is further submitted that the directors of this Company have no power to abandon \$24,000,000 worth of assets in use in a going concern, making a substantial net profit, and to purchase about \$12,000,000 worth of new equipment on the credit of their Company and cause title to these new assets to be taken in the name of another corporation and thus alienate the assets and business of the Transit Company from its stockholders.

Respectfully submitted,

HERBERT E. WITZ,

J. MORFIT MULLEN,

Solicitors for Appellants.