

In direct answer to that question, my guess is we had 45 to 55 people in the first instance. As we completed the field investigation we kept letting the men go and depleting our staff.

Senator TOWNSEND. You can furnish for the committee the number of people and the cost?

Mr. SCHENKER. Yes, sir.

Senator TAFT. Will you do that?

Mr. SCHENKER. Yes, sir. In that connection, if I may make this observation, I think you have got to study that figure with two or three things in mind. May I take a second on that.

Senator TOWNSEND. Yes. I was only trying to find out for the information of the committee.

Mr. SCHENKER. It was during the course of our investigation that the use of Bahamas Corporation for avoidance of income tax was uncovered. In the second place, because of our investigation, in my opinion—and I was never more serious—we have saved the investor many millions. Let me give you an example. You asked me why I did not get it finished before, and maybe this will explain it to you.

Our jurisdiction in connection with investment trusts was limited to the investigation and making reports to Congress. In the early part of 1938, after the Continental Securities clean-out, a person who controls an investment trust came to me and said, "I am going to sell control of this investment trust to Mr. So-and-so."

You would think, when he said, "I am going to sell control of this investment trust to Mr. So-and-so," that he owned that investment trust. What he had was some of this tricky management stock, which had been issued in the first instance to the management. The fact of the matter is his stock had absolutely no asset value and all of the assets really belonged to the senior security holders. Yet he was going to sell the trust.

I said, "To whom are you going to sell the trust?"

He said, "Mr. So-and-so."

I said, "What are you getting for your stock?"

He said, "Well, we are going to get \$2,000,000," which was a \$2,000,000 premium on the stock, Senator, because my recollection is that the total assets would have to come back approximately \$2,200,000—before his stock was worth nothing, you see.

I said, "How is he going to pay you for that stock?" I said, "Anybody who will pay you a million dollars or two million dollars for stock that is under water 50 dollars a share must have some fancy ideas. The only way he could get his money back is either to put his hand on the cash register and take the money or he has some crackpot theories that he can run the trust in such a manner as to get his money back."

He said, "He is going to buy the control block of stock. Simultaneously I am going to turn over the board of directors to him. He then expects to liquidate the blue-chip portfolio, pay me for the control block; then in order to reimburse the investment trust he is going to"—

Senator TAFT (interposing). Is it fair to ask who the party was?

Mr. SCHENKER. Yes, it is fair. The prospective purchaser of the trust was an individual by the name of McDermott, and I do not

hesitate to mention his name at the present time because he is under indictment.

I said to him, "You just saw what happened in the *Continental case*. This is the same razzle-dazzle they are trying to work.

He said, "I have my control stock and any safeguard you suggest I will interpose."

I said, "Why don't you tell your stockholders that they are going to sell the blue chips to somebody and are going to substitute real estate mortgages? Why don't you wait until the annual meeting, so they know what is going on and they can protect themselves?"

Evidently he shied clear of the transaction. What happened? If you read the newspaper, Mr. McDermott is the one who a couple of months ago bought control of an investment company with assets of approximately \$100,000, started the printing press rolling, and then printed bonds and real estate mortgages. Those were the bonds and mortgages he sold to that investment trust.

I will give you other illustrations. We will bring letters where the people said they were going to commit similar acts. It is my opinion that had not the study fortuitously been proceeding as it was, you would have had many more clean-outs.

Senator TOWNSEND. What happened to the first transaction?

Mr. SCHENKER. They didn't go through with it.

Senator WAGNER (chairman of the subcommittee). Do you care to present anything else now?

Mr. SCHENKER. No, sir. If you care to take another witness, in order to give the committee some background on this subject we may have one of the members of the staff tell the story of what happened to the biggest investment trust that existed in this country. It will give you some idea—

Mr. HEALY. Perhaps you would rather hear that tomorrow morning?

Senator WAGNER. Perhaps we can do that tomorrow morning. I understood Mr. Cook will be here.

Mr. SCHENKER. He is the trustee for the Continental Securities Co. He is going to tell you about the *Continental case*.

Senator WAGNER. That is the case to which you referred a moment ago?

Mr. SCHENKER. Yes.

Senator WAGNER. How large a sum did that involve?

Mr. SCHENKER. Continental Securities, about \$5,000,000.

Senator WAGNER. Very well, then. The committee will recess until tomorrow morning at 10:30.

(Thereupon at 12:10 p. m. an adjournment was taken until tomorrow, April 3, 1940, at 10:30 a. m.)

INVESTMENT TRUSTS AND INVESTMENT COMPANIES

WEDNESDAY, APRIL 3, 1940

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

The subcommittee met, pursuant to adjournment on yesterday, at 10:30 a. m., in room 301, Senate Office Building, Senator Robert F. Wagner presiding.

Present: Senators Wagner (chairman of the subcommittee), Glass, Maloney, Hughes, Herring, Miller, Downey, and Frazier.

Senator WAGNER. The subcommittee will come to order. Mr. Alfred A. Cook, will you take the third chair on this left side of the table over here?

Mr. COOK. Certainly, Mr. Chairman.

Senator WAGNER. I think I have the right to say that Mr. Cook is one of our distinguished citizens and one of our outstanding lawyers in New York. He is counsel to the trustee for the Continental Securities Co., and has been invited here by the subcommittee because of his experience with that company. I am sure he can enlighten us.

STATEMENT OF ALFRED A. COOK, TRUSTEE FOR THE CONTINENTAL SECURITIES CORPORATION, NEW YORK CITY

Senator WAGNER (chairman of the subcommittee). Mr. Cook, you have had an opportunity to read the bill, S. 3580, now before this subcommittee, I take it?

Mr. COOK. A part of it carefully and a part of it hastily. I gave my particular thought and attention to those phases of the bill which, as I saw it, would prevent such happenings as those that characterized the existence of the Continental Securities Corporation in its last phases.

Senator WAGNER. Perhaps we had better permit you to proceed with your statement to the subcommittee. We are very anxious to have it.

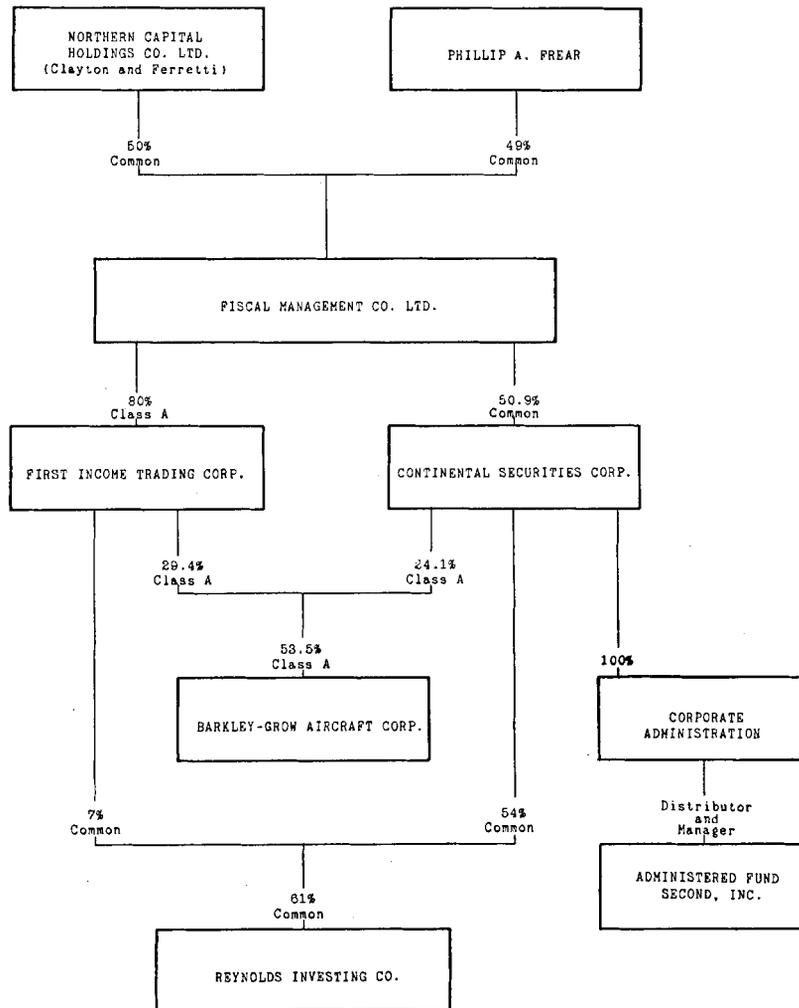
Mr. COOK. May I say this: I can appreciate that with the exception of the members of the bar on your committee, lawyers generally like to talk, and if in my exposition I am too lengthy and express views that you or your associates do not want, merely correct me.

Senator WAGNER. I do not think that will be necessary.

Mr. COOK. In March of 1938 Judge Patterson of the Federal Court, Southern District of New York, appointed Mr. Arthur A. Ballantine temporary trustee of the Continental Securities Corporation—application for its adjudication in a bankruptcy proceeding being before Judge Patterson.

I had the privilege of being asked whether that firm and I would act as counsel for the temporary trustee, and I accepted. We went into the affairs of the Continental Securities Corporation I think with very great care, went through its affairs in all its aspects.

(Chart submitted by Mr. Cook is as follows:)



Mr. Cook. I think as a matter of fairness I ought to state that we were very much helped in our inquiry by what I regard as the very efficient and vigorous examination undertaken in New York by Mr. Schenker in behalf of the Securities and Exchange Commission.

The temporary trustee and his counsel had a job to do because in October of 1937, just 5 months prior to the appointment of Mr. Ballantine as trustee, we found that the portfolio of the Continental Securities Corporation was worth, at an estimated market value of the securities in the portfolio, \$3,300,000. That is it approximately,

although I might be a few thousands of dollars out of the way, but nothing material.

At the time of the appointment of Mr. Ballantine as trustee there was in the portfolio about—well, at the outside, \$50,000. If I may be pardoned for using a colloquial expression, Mother Hubbard's cupboard was quite bare.

The problem presenting itself to the trustee and to the firm and myself was this: How was it that in the short space of time of five months \$3,300,000 of worthwhile securities were gone, except to the extent of about \$50,000.

We tried to find out. That was our duty. And if I may be forgiven for going over the course of our inquiry in my own way, always subject to correction by the Chair, we found out the following: In October of 1937, at a time when the portfolio was, as I have stated \$3,300,000, the banking firm that had been the managers of the Continental Securities Corporation, an investment trust which was organized in 1924, and one of the first of the investment trusts that I recall organized in this country; they approached the managers of the trust and offered them, for the majority of the shares of the Continental Securities Corporation, \$20 a share.

The corporation at that time had outstanding approximately \$2,800,000 of debentures, approximately \$1,400,000 of cumulative preferred stock, with dividend accumulations unpaid of \$33 a share; and 50,000-odd shares of common stock.

The common stock alone had the vote. The value of the common stock at that time, in October, after you allow for the debentures, the payment of the par of the preferred stock and its accumulated dividends, which was of course prior to the common stock—the common stock from the viewpoint of representation and assets was not only worthless as we saw it but was sunk to the extent of something like \$22 a share. In other words, there was a minus of \$22 a share for the common stock.

The offer was made of \$20 a share for the stock of the kind and description of which I have spoken. Those that made the offer insisted, and it is so set forth in the agreement for the sale of the majority of the shares of the Continental Securities Corporation—and the number of shares that were to be sold was 29,000 which represented more than 50 percent of the 57,000 shares outstanding.

Senator HUGHES. Do I understand that this offer was for the common stock?

Mr. Cook. Yes, sir.

Senator HUGHES. Which common stock had the voting power in the corporation?

Mr. Cook. Yes, sir. In other words there were about 57,000 shares of common stock, and the offer was for 29,000 shares of that common stock, at \$20 a share, aggregating \$580,000. I emphasize the figure of \$580,000 because it will be of some importance as I go along.

The agreement provided that the managers contemporaneously with the payment to be made by the purchasers, through the management as a condition precedent to the payment, would see to it that the then directors of Continental Securities Corporation would tender their resignations; and, following the method adopted from time to time of rotation in office, they were to see to it, before the payment was made, that those persons selected by the purchasers

to sit as directors in their place and stead, would be put into office.

Therefore there was the position for an entirely new—I was going to say deal but I will say new deck of cards, concerning which those that had been in the picture before, would be out. That transaction was carried through. The \$580,000 was paid. The management contract ended at that very meeting, when the payment was made, and there were gradually elected to office, upon resignation one by one of the then directors, the nominees of the purchasers.

Now, we gave some thought to the question as to who were the nominees. We felt impressed with the idea that an investment trust, appealing to the public or investors, by reason of the confidence one might have in the management—and I do want to stop to say that the management of the Continental Securities Corporation up to that time was represented by houses of standing and houses that were held in high regard, and in my opinion, if I may be forgiven for going that far, deservedly so.

We found out that the nominees suggested by the purchasers were out of employment, either customers' men in brokerage houses, or clerks. I think one of them is now the manager of—well, I suppose he has to make a living, but of a saloon at night.

I might say that a great deal of this was also covered by Mr. Schenker in his examination, and is in the records of the S. E. C. I take it, and may be now with this subcommittee. But if I may be forgiven for expressing my own opinion, and I do not think anybody will question it, those selected were entirely unfit to occupy the positions they occupied. They were entirely irresponsible, and as I see it entirely at the beck and call of the purchasers, and whom before the court in New York and in our pleadings in the case that was brought, were referred to as "looters."

Now, it was interesting to determine how the \$580,000 was paid, and where it was obtained. A check for \$580,000 was given to a lawyer—and I am sorry, Mr. Chairman, to feel that a member of the legal profession was not what he should be—who represented to the banking house in Boston that as against the \$580,000 there would be deposited with them ample collateral. In fact they were advised that the collateral to be deposited would have a market value of something like two and a half million dollars.

Senator WAGNER. I did not get that quite clear. Did you say "a check for \$580,000"?

Mr. COOK. Yes, a check for \$580,000.

Senator WAGNER. Why did that need collateral, if the check was good?

Mr. COOK. The \$580,000 check was given by a banking house to the lawyer, and in those days, and I suppose in these, when one advances \$580,000 one wants collateral.

Senator WAGNER. I thought it was against the deposit.

Mr. COOK. Oh, no. This transaction was closed on the 25th of October, and this banking house as I understand it and think the record will show, learned of this for the first time 2 or 3 days before the 25th of October.

If I may be personal for a minute, Senator Glass, whom I have the great privilege of knowing, just sits there and looks at me. Well, Senator Glass, I do not blame you. And, Mr. Chairman, we found out in this matter that truth can be stranger than fiction, and what I am stating is the truth of this transaction strange as it may seem.

That \$580,000 was taken by the lawyer to Jersey City, where this transaction was closed. Upon payment over of the \$580,000, as mentioned before, there was a new board of directors. The old board retired. The 29,000 shares of common stock were paid for, and the destiny of the Continental Securities Corporation therefore was in the hands of the purchasers, whom I have referred to as "looters," and I stand by that statement.

What happened? The entire portfolio was in their hands now. So they sent to the banking house that loaned the \$580,000, ostensibly against collateral; they sent the two and a half million dollars of collateral to the banking house, with instructions to sell securities up to \$700,000. That was done. In fact, eight-hundred-and-some-odd-thousand dollars of securities were sold. The \$800,000 of securities segregated from the two and one-half million dollars, were put into an account in the name of the lawyer or his associate. The difference between the two and one-half million dollars and the \$800,000, was kept in a separate account, known as Continental Securities #75.

We are interested in the account with the lawyer. The banking house sold about \$800,000 of those securities. It paid itself back, and properly, for the \$580,000 loaned, and the usual brokerage commissions. And then, pursuant to resolutions and directions from the new contingent, paid over to the lawyer, gave him various checks, in the aggregate amount of \$106,000, which \$106,000 was divided by the lawyer with various others of his associates; and we find that the 29,000 shares of common stock, for \$580,000, were purchased, not with outside money, but with the securities of the Continental Securities Corporation.

Senator WAGNER. In other words, they were taken right out of its portfolio?

Mr. COOK. Perhaps I have felt this situation too strongly, Mr. Chairman, but stolen. There is no question about that. So that at that time, if nothing else had happened, the portfolio had been depleted to the extent of \$700,000, with nothing to show for it.

Now, of course something had to be done so far as the books of the Continental Securities Corporation were concerned, to show that this \$700,000 was not stolen; that there should be some asset of some kind as against it.

Well, that was not found very difficult because those whom I have referred to as the "looters" and in our complaint filed with the Federal court were referred to as "conspirators", had organized in Canada a company known as the Fiscal Management Co., Ltd. It had really no assets. The new board of directors, however, agreed that they would buy \$700,000 of the preferred stock of the Fiscal Management Co., Ltd., and then, for the 29,000 shares of common stock, paid for out of the portfolio of Continental Securities Corporation, there comes into Continental Securities Corporation \$700,000 of shares of Fiscal Management Co. preferred stock, which was worthless; and the Fiscal Management Co. gets these 29,000 shares of Continental Securities Corporation, which as I have said before were likewise worthless. The books of Continental Securities Corporation show that the stealing of this, what I have referred to as collateral, in part of the portfolio, is offset by this bookkeeping figure of \$700,000 of preferred stock of Fiscal Management Co., Ltd.