II.

THE SPECIAL COURT CREATED UNDER SECTION 209 IS AN ARTICLE III AND NOT AN ARTICLE I COURT

It is clear that Congress intended the special court to be an "inferior court" under Article III of the Constitution. Section 309(b) of the Act specifies that the court shall be a "three-judge district court of the United States." It shall be "composed of three Federal judges." It is authorized to exercise "the powers of a district judge in any judicial district . . . and such power shall include those of a reorganization court." This intent must be given weight. Glidden Company v. Zdanok, 370 U.S. 530, 541-43 (1962).

Assuming arguendo that the Act purports to give the special court non-judicial or legislative or administrative functions and authority, this does not transform the court into a non-Article III court. At most it means that at some point the courts may hold that, as an Article III court, it may not exercise such functions. Thus, in Glidden Company v. Zdanok, supra, the Court of Claims and the Court of Customs and Patent Appeals were held to be Article III courts notwithstanding previous Supreme Court cases to the contrary, and notwithstanding the fact that each court had some non-Article III jurisdiction: the Court of Claims to report on

a bill referred to it by either House of Congress and the Court of Customs and Patent Appeals to review Tariff Commission findings of unfair practices in import trade ultimately reviewable by the President. The objection to such jurisdiction was that it subjected the courts' decisions to "an extra judicial revisory authority incompatible with the limitations upon judicial power this Court has drawn from Article III." The Supreme Court stated that whether this was so could not be decided in a vacuum apart from the setting of particular cases, but in any event the questionable jurisdiction represented only an insignificant portion of the business of the two courts and that, "if necessary, the particular offensive jurisdiction, and not the courts, would fall." 370 U.S. at 582-83.

Furthermore, in National Mutual Insurance Co. v. Tidewater Transfer Co., 337 U.S. 582 (1949), Justice Jackson, supported by Justices Black and Burton, took the position that Congress may vest in Article III courts jurisdiction not embraced by Article III, exercising its authority under any of the clauses of Section 8 of Article I, including the bankruptcy power in clause 4 and the exercise of jurisdiction over the District of Columbia in clause 17. 337 U.S. at 590-96.

In any event, nothing in the line of cases distinguishing between Article III courts and Article I courts supports the conclusion that the jurisdiction given to the special court under the Act is non-judicial.

Hayburn's Case, 2 U.S. (Dall.) 409 (1792), involved an Act of Congress vesting jurisdiction in the federal courts, which they refused to accept because the decisions would be subject to review by the Secretary of War and Congress itself. In American Insurance Co. v. Cantor, 26 U.S. (1 Pet.) 511 (1828), it was held that Congress could, under Article I, constitute courts in the territories which, although handling cases and controversies falling under Article III, could have other jurisdiction and have judges of limited tenure. United States v. Ferriera, 54 U.S. (13 How.) 39 (1852) concerned an Act authorizing a district judge to adjudicate claims for losses under a treaty with Spain; because the claims were subject to review by the Secretary of the Treasury, the Supreme Court had no jurisdiction. Similarly, in Gordon v. United States, 117 U.S. 697 (1964), Chief Justice Taney held that the Supreme Court could not be required to hear an appeal from the Court of Claims where the payment of any claim was subject to further action by the Secretary of the Treasury. In Muskrat v. United States, 219 U.S. 346 (1911), the Supreme Court refused

to hear an appeal from a decision in the Court of Claims under an Act which in effect created a case or controversy by authorizing that court to make and the Supreme Court to review a determination as to the validity of certain Indian statutes. In Keller v. Potomac Electric Power Co., 261 U.S. 428 (1923), it was held that, although Congress could under Article I give the District of Columbia courts jurisdiction to review a Public Utility Commission valuation order by considering the full record and making the order which the Commission should have made, such jurisdiction on review could not be conferred on the Supreme Court because it was legislative or administrative in character. Postum Cereal Co. v. California Fig Nut Co., 272 U.S. 693 (1927) held that, although Congress could give to the District of Columbia Court of Appeals jurisdiction to review a decision of the Commissioner of Patents regarding registration of a trademark, no appeal could lie to the Supreme Court because the law did not make the judgment of the Court of Appeals binding. Ex parte Bakelite Corporation, 279 U.S. 438 (1929) held that the Supreme Court could not review a decision of the Court of Customs Appeals as to unfair trade practices of an importer when the decision ultimately was that of the President. Williams v. United States, 289 U.S. 553 (1933) held that the salary of a judge

of the Court of Claims could be reduced because it was an Article I rather than an Article III court, a decision that was overruled in Glidden Co. v. Zdanok, supra. National Mutual Insurance Co. v. Tidewater Transfer Co., supra, held that Congress could authorize diversity suits in the federal district courts brought by District of Columbia plaintiffs, with three of the Justices holding that Article III courts may be given such authority on the basis of Congress' Article I powers.

As stated in Chicago and Southern Air Lines v. Waterman Steamship Corp., 338 U.S. 103, 113-114 (1948), the major thrust of the Article III v. Article I line of cases is that the Supreme Court and the "inferior" Article III courts are, by virtue of the case or controversy requirements of Article III (as well as by the separation-of-powers principles underlying the Constitution), not required or authorized to give advisory opinions, or render judgments that are not binding and conclusive on the parties or that are subject to later review or alteration by administrative action or that are the equivalent of de novo determinations of matters initially delegated by Congress to administrative agencies. See Federal Radio Commission v. General Electric Co., 281 U.S. 464, 469 (1930).

The challenged authority considered in the Article III v. Article I line of cases was in each case different from the authority given to the special court in the Act. Simply to characterize the special court's authority as "legislative" or "administrative" does not make it so nor make the line of cases applicable. But even if in one respect or more the authority of the special court were, in a particular case, ruled to be legislative or administrative and therefore not properly vested in an Article III court, the special court would not thereby automatically become a non-Article III court. At most, it would be held, as an Article III court, to be disqualified from exercising the particular challenged authority.

The Article III v. Article I line of cases holding that Congress may not impose non-judicial duties upon Article III courts does not mean that some matters of an administrative or quasi-legislative character may not be embraced by the strict "case or controversy" requirements of Article III. The federal district courts handle for example, naturalization proceedings, see Tuton v. United States, 270 U.S. 568 (1926), and the registration and expulsion of aliens, Fong Yue Ting v. United States, 149 U.S. 698 (1893). Moreover, it is the Article III federal district courts that have jurisdiction of bankruptcy and reorganization proceedings, many of the attributes of which are administrative and legislative to an extent comparable to the responsibilities

given to the special court under the Act. In bankruptcy and reorganization proceedings, it is clear that special jurisdictional considerations, based on the bankruptcy clause in Article I, are applicable. Thus, in Schumacher v. Beeler, 298 U.S. 367 (1934) and Williams v. Austrian, 331 U.S. 642 (1947), the Supreme Court upheld, on the basis of the bankruptcy clause in Article I, the vesting in federal district courts of jurisdiction over suits by bankruptcy or reorganization trustees notwithstanding lack of the jurisdictional requirements including diversity set forth in Article III.

The confluence of Article I and Article III in bankruptcy and reorganization proceedings is suggested by Burco, Inc. v. Whitworth, 81 F.2d 721 (4th Cir. 1936), modifying In Re American States Public Service Co., 12 F. Supp. 667 (D. Md. 1935), cert. denied, 297 U.S. 724 (1930). There the Public Utility Holding Company Act was held invalid insofar as it related to a holding company that was in reorganization under Section 77B. The case was initiated by a petition of the trustees for instructions as to whether they should register under and otherwise comply with the Holding Company Act, which they had been advised was unconstitutional but which, if valid, would block the reorganization for which the trustees were responsible. The district court had held that the reorganization proceedings under Section 77B themselves constituted the "case" required by Article III, and that a federal court which thus has jurisdiction of a proceeding "also has jurisdiction of another proceeding which is a continuation of, or ancillary to, the first proceeding,

although it might not have jurisdiction of the second one, if it were an original action." 12 F. Supp. at 678. The Court of Appeals agreed that the proceeding for the reorganization represented the necessary case or controversy, that the trustees were entitled to ask for instructions and the district court to give them, and that such a court may instruct its officers, acting in an administrative rather than a judicial capacity. 681 F.2d at 727-28. In short, a federal district court, whether it is a one-judge court or a three-judge court, does not lose its Article III character because, in bankruptcy or reorganization proceedings, it acts in an administrative capacity or approves plans, nor is it barred from exercising jurisdiction over administrative matters or reorganization plans on the ground that by themselves, if viewed independently of the proceeding as a whole, they might not have the characteristics of case or controversy.

LRC 21 Fd.

The Act provides for a special kind of reorganization proceeding to be administered by a special kind of reorganization court. The premise of the Act is that certain railroads now in reorganization either cannot be reorganized on an income basis or cannot be so reorganized in a manner consistent with the public interest in rail transportation. The second premise of the Act is that some rail properties of those railroads can, by transfers and by consolidations into an income generating new company, produce value for security holders and rail service for the nation.

The special court will function as a reorganization court in this multi-railroad reorganization, and for this purpose it is given the powers of a reorganization court. Section 209(b). The special court is not required to perform one of two major functions of reorganization court -- overseeing the operation of the debtor railroad during the proceedings, but it is charged with the other major function of a reorganization court: receiving a plan of reorganization, hearing objections to the plan from security holders, determining whether it is fair and equitable, and implementing the approved plan. Specifically, the duties of the special court and of the reorganization court can be compared as follows:

(a) Under the Act, the Association prepares a final system plan, which must first be approved by Congress with ICC advice and then submitted to the special court. Sections 207(c); 207(d); 208; 209(c). Under the Bankruptcy Act, the debtor files a plan of reorganization, which must be approved by the ICC and then submitted to the reorganization court. Bankruptcy Act, Section 77(d) and (e).

(b) The special court, like a reorganization court, is authorized to conduct proceedings to review the final system plan. The special court will first hear and determine challenges to the value of property to be conveyed in the plan and the value of the consideration therefor. Section 209(a). After transfers have occurred the court is required to determine whether the terms of transfer "are in the public interest and are fair and equitable to the estate of each railroad in reorganization in accordance with the standard of fairness and equity applicable to the approval of a plan of reorganization . . . under section 77." Section 303(c)(1)(A). Similarly, a reorganization court is required to "hear all parties in interest in support of, and in opposition to, such objections to the plan [of reorganization] and such claims for equitable treatment [as have been filed with the court]." Bankruptcy Act § 77(e). The term "parties in interest" in section 77

includes stockholders, creditors, and the ICC as representative of the public interest.

(c) Both the judgments of the special court and the judgments of a reorganization court upon the challenge to a reorganization plan are "final" in the constitutionally significant sense: they decide the controversy. There is no provision for legislative or administrative review, either of the special court's decision or of the decisions of a reorganization court.

(d) Both the special court and a reorganization court can determine that a plan is "fair and equitable" over the objection of persons affected. Section 77 provides for votes by classes of shareholders and creditors but specifically permits the court to confirm the plan over a negative vote if it is "fair and equitable." Subsection (e). The Act incorporates this standard in Section 303(c).

(e) When a plan has been approved, the special court, like a reorganization court, can order the transfer of rail properties pursuant to the plan free and clear of all prior liens and claims. Compare Section 303(b)(2) with Section 77(f) of the Bankruptcy Act ("free and clear of all claims of the debtor, its stockholders and creditors").

(f) Both under Section 77 and under the Act, the clear intention is that existing security holders whose

claims are determined to have value be compensated, in order of priority, by receiving securities of the new or reorganized corporation.*/ The new securities need not be of the same class as the extinguished securities and need not be secured by the same property, or secured at all. See generally Section 77(b).

(g) Most generally, the purpose of the Act, like Section 77, is to preserve going concern values where possible, through (among other things) the forced exchange of securities in an overburdened corporation for securities in a new or reorganized corporation with a workable capital structure. Congress determined that today's needs demand coordinated consideration of the going concern values of several railroads, and provided for this consideration under the supervision of the special court. The special court, however, is fundamentally a reorganization court.

---

*/ Section 77 contemplates transfer of properties to a new corporation as one form of reorganization.