In the

Supreme Court of the United States

MORTIMER M. CAPLIN, etc.,

Petitioner,

v.

THE MARINE MIDLAND GRACE TRUST COMPANY OF NEW YORK,

Respondent.

No. 70-220

Washington, D.C.
March 28, 1972

Pages 1 thru 51

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THE MARINE MIDLAND GRACE TRUST COMPANY OF NEW YORK,

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Tuesday, March 28, 1972.

The above-entitled matter came on for argument at 1:00 o'clock, p.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM O. DOUGLAS, Associate Justice
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice

APPEARANCES:

CHARLES H. MILLER, ESQ., 430 Park Avenue, New York, New York 10022; for the Petitioner.

DAVID FERBER, ESQ., Solicitor, Securities and Exchange Commission, Washington, D. C. 20549; for SEC.

JOHN W. DICKEY, ESQ., 48 Wall Street, New York, New York 10005; for the Respondent.

C O N T E N T S

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We'll hear arguments next in No. 70-220, Caplin against The Marine Midland Grace Trust Company of New York.

Mr. Miller, you may proceed whenever you're ready.

ORAL ARGUMENT OF CHARLES H. MILLER, ESQ.,

ON BEHALF OF THE PETITIONER

MR. MILLER: Mr. Chief Justice, and may it please the Court:

Mr. David Ferber, Solicitor of the Securities and Exchange Commission, and I have divided our time, so that I will take the first 30 minutes and Mr. Ferber 15 minutes with respect to the argument. Mr. Ferber is similarly arguing for reversal of the order of the Court of Appeals of the Second Circuit.

This case is before this Court on writ of certiorari to the United States Court of Appeals for the Second Circuit. The case involves the standing of a bankruptcy reorganization trustee, a Chapter X trustee, to prosecute a claim in the reorganization proceedings. I will discuss that claim as I spell out for the Court the facts with respect to this matter.

The courts below dismissed the trustee's complaint and dismissed the other claims sought to be prosecuted by the trustee by way of counterclaim on the ground that the trustee had no standing to bring the claims which are in question here.

The petitioner in this matter is Mortimer M. Caplin. Mr. Caplin was named in May of 1965 by the United States District Court for the Southern District of New York as the reorganization trustee under Chapter X of Webb & Knapp, Inc. At one time before its troubles, which led Webb & Knapp into the reorganization court, that company was one of the largest real estate companies in the United States.

The defendant in this case is the Marine Midland Grace Trust Company of New York. Marine Midland was the trustee under a trust indenture with respect to an issue of 5 percent debentures of the debtor. There are still approximately $4,200,000 of these debentures outstanding.

In the trust indenture, a copy of which has been lodged with this Court, there were certain covenants which were made by the debtor for the benefit of the debenture holders. But the single most important covenant, for the purposes of this case, was the covenant that the debtor would not incur any indebtedness or purchase any real property unless its tangible assets were twice its liabilities. That is in Section 3.6 of the trust indenture, and that provision, which we call the asset to liability ratio provision, is at the heart of this case.

There were certifications required by the debtor to Marine Midland, the indenture trustee, year after year, to the effect that the debtor was not in default in connection with these debentures.

Now, Marine Midland requested appraisals with respect to the value of the real property here, because the principal assets of this corporation was real estate, and from year to year, starting in about 1957, at least, the debtor's offices furnished to Marine Midland appraisals as to their opinion as to the value of the real property. This was all for purposes of this asset to liability ratio, and insuring that the debtor would not purchase more real property or incur more indebtedness unless the asset to liability ratio were indeed 2 to 1, as the covenant provided.

Now, these certificates and these appraisals were accepted year after year by Marine Midland, without any question being raised at all.

After Mr. Caplin was named as reorganization trustee, he commenced his statutory investigation of the debtor's affairs under Chapter X of the Chandler Act, and he found that the appraisals and that the certificates submitted annually by the debtor's directors and officers were in fact false and fraudulent on their face; and that Marine Midland knew or should have known that these appraisals were inflated.

He further found that Marine Midland wilfully disregarded these appraisals and these certificates and were grossly negligent in failing to recognize how false they were. In fact, the trustee in reorganization, Mr. Caplin, found that at no time during the period between 1957 and 1965 had the

required 2 to 1 tangible asset to liability ratio been maintained.

We have, in the petitioner's main brief at page 4, an indication of one example of the kind of appraisals about which we are talking. There's a certain parcel of real property in Bronx County in New York. That real property, with a net book value of $2,800,000 had been appraised by the debtor's officers at $15 million in 1957; 27.5 million in 1958; one year later, in 1959, at more than double that amount, $64 million; the same in 1960. And by 1963, the same parcel, without any significant improvements on it, had been appraised by the debtor's officers at -- 80 percent of it had been appraised at $91 million. So that the whole parcel had to be appraised at more than 100 million.

This is just one example of the kind of appraisals that were involved.

Now, as a result of his investigation, the reorganization trustee determined that it was the gross negligence or wilful misconduct -- not simple negligence, but gross or wilful misconduct by Marine Midland, which had permitted the debtor to continue this course of activity of buying more real estate and entering into transactions involving tens of millions of dollars, and incurring more indebtedness, and that this would inexorably lead to the reorganization court, where Webb & Knapp found itself in 1965.

Indeed, it was charged by the reorganization trustee, Mr. Caplin, in the complaint, which is in question here and which we're seeking to have reinstated, that it was the bank's failure to enforce this 2 to 1 asset to liability ratio, and the failure by having received and accepted without question the appraisals and these certificates which were clearly false on their face, which caused the net worth of this company to be reduced from $25 million in December 1958 to a negative net worth, a deficit figure of $38.5 million at the time that the reorganization proceeding commenced.

Q Mr. Miller, is it your contention that the obligation in the indenture ran to the benefit of the debtor or you?

MR. MILLER: No, we're saying it ran for the benefit of the debenture holders, if the Court please. And this action is sought to be maintained by the reorganization trustee on behalf of the debenture holders. That is the question before this Court.

Q So the estate can pay claims of the debenture holders?

MR. MILLER: That is correct, and we say --

Q The estate was insolvent, wasn't it?

MR. MILLER: The estate was insolvent, yes.

Q So the only remaining people in interest were creditors, secured or unsecured?

MR. MILLER: In effect, as things have turned out, the only remaining people of interest were general creditors, after secured creditors had been --

Q Yes. And so, once the plan provides for secured creditors, just unsecured creditors are left, including debenture holders?

MR. MILLER: Unsecured creditors and debenture holders who are classed as general creditors.

Q Yes.

MR. MILLER: Yes.

Now, the reorganization trustee, Mr. Caplin, petitioned in the district court, in the reorganization court, for the right to start a plenary action against Marine Midland for the benefit of debenture holders, and the court granted permission for Mr. Caplin to do so, and then, on the motion of Marine Midland, the court dismissed the complaint on the ground that under Second Circuit decision in Clarke v. Chase National Bank in 1943, the reorganization trustee had no standing, and was not the real party in interest; and had no standing to prosecute a personal claim on behalf of debenture holders.

The district court held that it was bound by the Clarke decision, that the property involved was a claim personal to the debenture holders and did not involve property of the estate, and it also held that it was not affect the plan of reorganization.

Under Clarke, the reorganization trustee has the authority and has standing to sue on behalf of debenture holders if either property of the debtor is involved or the matter would affect the plan of reorganization.

The district court held that it would not.

We then went to the Second Circuit Court of Appeals, and there was argument had before three judges, two of the three judges would have overruled the Clarke decision and held that the trustee had standing, the reorganization trustee had standing; but the Second Circuit, in accordance with its time-honored rule, then submitted the matter en banc to the full Second Circuit without further argument on the briefs already submitted; and held, 5 to 2, that there was no standing on behalf of the reorganization trustee. The Second Circuit, in an opoinion by Judge Friendly, held that the reorganization trustee had no standing, that Clarke was a proper rule, and that there was no reason for this action to be brought by the reorganization trustee.

There was a vigorous dissent by Judges Irving Kaufman, Paul Hays to the effect that there was no reason for the Clarke rule, and the somewhat artificial distinctions with respect to property that were involved in that rule, and that the action should have been permitted to be brought; that the reorganization trustee is indeed the proper party to bring the action, he's authorized under statute to do so, and he should

have been permitted to do so.

Now, we have set forth in our brief four principal reasons why we, for the reorganization trustee, assert that there is standing for the reorganization trustee to prosecute this action against Marine Midland on behalf of the debenture holders.

Now, the first reason is that the congressional scheme for reorganization, which is evidenced by two significant statutory amendments in the late 1930's, two significant statutory enactments, the Chandler Act which sets up Chapter X, and the Trust Indenture Act, specifically provide for a reorganization process in which the reorganization trustee is the focal point, and he's taking the interests not just of the debtor, not just of the general creditors, but of investors, stockholders, debt investors, any kind of investors; and he's the focal point for all of this. He investigates and he tries to find out what happened that led the debtor into the reorganization court.

He is then the proper party under the statute to prosecute any claims which may exist against third parties or against anybody else, because without his intercession it is quite likely that in many instances, at least, the debenture holders will not prosecute their individual claims; because many of them may in certain instances have small face amounts of debentures, and they will not undergo the expense of

prosecuting their own claims.

We say that in addition to that, secondly, there is specific statutory authority under the bankruptcy laws, under Chapter X, for reorganization trustee to sue an indenture trustee on the kind of claim involved here, and we point to Section 587 of Title 11, which we set forth in our brief at page 14, which specifically holds that an equity receiver, that a reorganization trustee has all the powers of an equity receiver.

Now, an equity receiver, under this Court's decision in the McCandless case in 1935, opinion by Mr. Justice Cardozo, held that an equity receiver could sue third parties to, in effect, return funds or have funds restored to the estate on behalf of investors.

Q Mr. Miller, would you concede that an ordinary trustee in bankruptcy wouldn't have standing to bring an action such as you're seeking to bring here?

MR. MILLER: Yes, sir. We are focusing, Mr. Justice Rehnquist, only on the power of the Chapter X reorganization trustee.

Now, we say, third, that as a practical matter the reorganization trustee is the best person to bring this action. He's the best person because he has, under the authority, indeed under his duty, made a total investigation of all of the facts and circumstances leading to the debtor's

demise. He's the person before the reorganization court. He has found these facts; in many instances he has to prosecute a claim against others, directors and officers of the debtor, which involve the same facts and the same circumstances, and this action is not brought -- either it may not be bringable at all, or it will involve redundancy of fact-finding, as Judge Kaufman held below.

And, finally, we say that the holding of the court below in which a kind of hypertechnical property distinction or property holding has been superimposed on the reorganization laws is just plain wrong; there's no need for that decision under Clarke, there is a decision in the Third Circuit, Solar Electric, under which this action, this type of action was, in effect, permitted to be brought as a counterclaim by the trustee to the proof of claim and the accounting filed by the indenture trustee.

We tried, in this case, to do it under all three methods; that is, a plenary action, a counterclaim to a proof of claim filed by the indenture trustee, and also we sought to have the indenture trustee file an accounting so that we could then counterclaim; and all three of our rights to do so were denied by the courts below.

We are allowed, however, under the ruling of all the courts below to set up as an affirmative defense to the indenture trustee's proof of claim this affirmative defense

that the indenture trustee was guilty of gross negligence or wilful misconduct.

So we have to find the same facts on why we can't bring it affirmatively, is one of the questions that is here before this Court.

Now, there are two arguments which are raised by Marine Midland in this case, which I would like to address my attention to very briefly.

In the first argument Marine Midland tells the Court about three individual cases which have been brought on behalf of debenture holders, two in the State court in New York and one in the Federal court in New York; and he says, in effect: You see, the debenture holders were represented in this case and there's no need for this case. What the trustee is attempting to do is to preempt the debenture holders.

Now, the facts are, as we set out in our reply brief, that each of these actions was commenced after the trustee, the reorganization trustee had filed a petition seeking leave to bring this action, after he had ascertained all the facts, and after Marine Midland had indeed interposed an objection.

In fact, nothing has happened in any of those actions because they are all sort of sitting there waiting for the result of this Court in this action, and because Marine has moved to dismiss them on the grounds that there is no class

action as a matter of right under New York law for debenture holders, a holding of the Appellate Division of the First Department in New York, which appears to still be the law, although the question is now on appeal.

Q Wouldn't -- in the Federal court wouldn't Rule 23 govern it? In that it's a class action?

MR. MILLER: Yes, I think Rule 23 would govern, Mr. Justice Stewart. But I think that the question is not, as Marine Midland has attempted to frame it, whether the trustee is preempting the individual rights of debenture holders. There has been no such claim here by the trustee or, as I understand it, by the Securities and Exchange Commission.

And the argument I was addressing myself to was the one of exclusivity or preemption. We're not saying that if a debenture holder wants to bring his own action he may not do so. The matters may then be consolidated before the district court, or they may not be.

What I'm talking about, and what this case is about, is the pure issue of standing, whether the reorganization trustee can bring the case.

Q Would the only basis of federal jurisdiction in an individual debenture, over his action, be diversity? Would that be the only way he could get into federal court?

MR. MILLER: Yes, I believe it would.

No --

Q I believe that goes to the question of --

MR. MILLER: -- as was brought out, Mr. Justice Rehnquist, there is a --

Q Under the Trust Indenture Act of 1939, couldn't he?

MR. MILLER: Trust Indenture Act of 1939, Section 215, which Judge Friendly in the Second Circuit alluded to in a footnote in his opinion, saying, Yes, there is a private right of action under 315.

Now, what we are saying, however, is that as a practical matter and as a matter of the statutory purpose, there was a feeling in Congress that denture holders would not have the wherewithal or the ability to bring this kind of action, and the reorganization trustee is the proper party to do it.

Now, one other argument that has been raised by Marine Midland, to which I would like to address myself, is the Marine Midland argument that you go down the statute, Chapter X, and you read it line by line by line and nowhere do you see any specific authority for reorganization trustee to sue an indenture trustee on behalf of debenture holders.

Now, Marine Midland would have this Court look at a reorganization trustee, and I think that this, Mr. Justice Rehnquist, is in part answer to your question, not as Marine Midland would have us look to a reorganization trustee as a

liquidator of assets, somebody who goes out, looks at the statute as though it's a checklist and goes out and gets whatever property is involved there and brings what suits are specifically set forth there. That is not, we say, what a reorganization trustee is all about.

And I think that Judge Irving Kaufman in the Court of Appeals for the Second Circuit has said it better than I'm able to say it. He said that the process of reorganizing -- and I'm reading now from the dissent in the Court of Appeals at pages 99a through 100a of the Appendix in this case: "The process of reorganizing is not performed merely by a nice, sharp, precise and mathematical apportionment of a debtor's estate according to fixed formulas. Rather, the objective is carried out through a process of negotiation, and some give-and-take, in an attempt to adjust equitably and with sensitivity to the nuances of the individual case the rights of competing interested parties."

And then Judge Kaufman pointed to the language which was a little more terse, as it usually was, of Judge Learned Hand in the Second Circuit, in his quite vigorous dissent in the Clarke case, with which we are in wholehearted agreement. Judge Learned Hand said the reorganization court has jurisdiction because it has an obligation to "adjust the mutual rights of the debtor's creditors as between themselves."

Now, we think that the efforts of Marine Midland

to superimpose this State law property concept over what Congress has enacted as the policy in reorganization, and should be the policy in reorganization, is one which this Court should not countenance.

We say further that if you're looking to the statute for specific statutory authority, that a reorganization trustee has all of the powers of a receiver in equity.

Q Mr. Miller.

MR. MILLER: Yes, sir.

Q You referred earlier in your argument and in your brief to 11 U.S.C. 587, which in turn, as I understand it, refers to Section 44 of the Bankruptcy Act, and Section 44 of the Bankruptcy Act provides for the appointment of a trustee in an ordinary bankruptcy proceeding; and as I read 587 it says the trustee under this Act shall have the same power as a trustee under the Bankruptcy Act.

Now, if a trustee under the Bankruptcy Act couldn't bring this action, won't you have to go to some other statutory authority to show that your reorganization trustee can do it?

MR. MILLER: Well, what we are saying, Mr. Justice Rehnquist, is that the second injunctive portion of that Section 587 --

Q Where is this in the documents before us?

MR. MILLER: This is at page 35 of our main brief,

at Appendix A.

Q Thank you.

MR. MILLER: That's the language that reads: "and, if authorized by the judge, shall have and may exercise such additional rights and powers as a receiver in equity would have if appointed by a court of the United States for the property of the debtor."

And we say that a receiver in equity, with the McCandless case, could have brought this action, and that we can, too, because we have the same powers as a receiver in equity.

Q But that provision talks about the powers over the property of the debtor. And I take it you don't think you should have to prove that this promise of Marine Midland was property of the debtor?

MR.MILLER: No, I believe that the property concept, Mr. Justice White, does not have a place here. I think that in --

Q But that's what the statute says, though, isn't it?

MR. MILLER: Well, before this statute was enacted, this Court, in the McCandless case, gave a receiver the power, an equity receiver the power to go after assets from a third party, which had not been property of the debtor, but in fact was a diminution in the value of the debtor caused by wrongdoing

on the part of the -- of insiders. It was, in effect, the equivalent of an insider wrongdoing.

And I say that the property concept is not a concept which should control in this Court.

Nor should the concept of whether or not there happens to be a class action that was brought here. We're not talking about this case alone, before this Court, we're talking about the general powers and the general authority and the general standing of a reorganization trustee. We know there are limits upon that. The limits upon that are that the matter must have a significant relationship to the reorganization proceeding, and we think it clearly does here.

Thank you.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Miller.

Mr. Ferber.

ORAL ARGUMENT OF DAVID FERBER, ESQ.,

ON BEHALF OF SECURITIES & EXCHANGE COMMISSION

MR. FERBER: Mr. Chief Justice; if the Court please:

Chapter X of the Bankruptcy Act is one of the series of securities laws passed during and right after the Great Depression, to protect the investing public.

The Commission's study which led to it and to the Trust Indenture Act showed that in earlier reorganizations, generally in equity receiverships, the investors' interests were often sacrificed to the interests of the insiders.

Throughout and after the reorganization, it was the insiders who were usually in control and stayed in control, and the persons who may have been responsible for the difficulties that were encountered were rarely if ever sued.

The SEC concluded its study with the recommendation to curb, and I quote, "the exploitation of investors which has occurred, either at the hands of the indenture trustee itself, or at the hands of the reorganization and management groups with the knowledge, consent, or acquiescence of a complacent and inactive trustee, indenture trustee."

And, as this Court has pointed out with respect to others of the securities laws, we submit that Chapter X too should be construed in the language of this Court not technically and restrictively but rather flexibly, to effectuate its remedial purpose.

Now, what was the remedial purpose of Chapter X? Essentially it was to provide a means for corporate rehabilitation that would insure that investor's losses would be kept to a minimum, and that the insiders, if responsible, would be prosecuted and investors would be treated fairly.

The disinterested trustee, the court's own officer, was basic to the statutory design. The House Report pointed out that his functions, and I quote, "in the larger cases are difficult to overemphasize."

Under Section 167 of the Act, he is to conduct

an investigation to determine whether going-concern values can be preserved by a reorganization, and to determine what caused the difficulties, and whether new management should be required, and what causes of action are available to the estate.

Now, the respondent's brief makes quite a bit of this, that its cause of action is available to the estate in Section 167.

I'd like to point out that this is not as clear a word as the respondent suggests. It doesn't say what causes of action are available to the debtor, which is defined in the Act, but uses the fairly vague word to the estate; and we suggest that this word can encompass the investors who are interested in the debtor.

The legislative history makes clear that a Chapter X debtor was to be viewed not just as a corporate entity but as a collection of the interests of security holders.

In a sense, the Chapter X trustee represents all of these security holders, even when there is classes of them having somewhat conflicting interests. When he works out a reorganization plan that is to be fair to all, obviously, what one group might consider fair to it another group might consider it less than fair to it, because there is only so much normally to go around.

When he brings an action on behalf of the estate,

meaning strictly the debtor, it may help one class at possible expense to the other.

One of the landmark cases is Committee v. Kent in the Central States reorganization, where the Chapter X trustee wanted to -- determined that while there was a cause of action against some of the promoters, he felt the statute of limitations had run and therefore recommended that an action not be brought. On appeal it was determined that an action should be brought despite the fact that the senior creditors opposed it, because, as they said, you're going to use some of what would otherwise go to us to gamble for the benefit of juniors.

But the Court of Appeals for the Fourth Circuit, in Committee v. Kent, said that this is the basic duty of the Chapter X trustee where it's a comparatively small amount of money as against what might be recovered to collect these assets and determine that the lawsuit should be brought.

Similarly, as was made clear to this Court a couple of years ago in the TMT case, Protective Committee v. Anderson, there were settlements involved of large claims. And these settlements were of such a nature that, in effect, they were wiping out the junior class; whereas -- and this Court reversed partly because of that, I believe, that there had not been an ample determination on the fairness of these settlements which, if settled at the substantial prices the debtor was allowing

them, would have pretty much wiped out the stockholders.

Now, there are various safeguards in Chapter X for all of the investors; creditors and stockholders are entitled to be heard at every stage of the proceeding. They could have come in, I don't know whether they did or not, in this case when the trustee asked leave to sue.

But certainly there was no reason why any creditor, any debenture holder, who felt that the trustee should not be suing on his behalf could not have come in and raised that question. They are represented by committees in many cases, and also in many cases by the indenture trustee.

Chapter X court has very specific powers over these security holders' representatives. It may enforce an accounting under a trust indenture, or with respect to security holders' committee. It allows compensation for services performed during the proceeding by indenture trustees, and by committees.

And to us it seems that it makes a great deal of sense to have the Chapter X trustee, who has investigated and found out the facts indicating that the indenture trustee might be liable, and who would use those facts as a defense against the indenture trustee's claim for services, against the debtor, for him to bring the proceeding on behalf of the debenture holders.

Q Well, if the trustee were allowed to sue and

recovered the full face amount of the debentures from Midland, would -- and assume, for the moment, that that entire recovery would go to the debenture holders, would other creditors then get more than they would get now?

MR. FERBER: Well, Judge Friendly states that Marine Midland would then be subrogated --

Q If they were not subrogated, well, obviously, they would get more?

MR. FERBER: Without question.

But if there were subrogation, presumably it would not directly benefit the other creditors, but there might be the indirect consequences of working out an over-all reorganization, that were mentioned.

Q Well, now, let's go back a step. Why is it that a recovery against Marine Midland would necessarily go to the debenture holders exclusively?

MR. FERBER: Well, I think that basically the contract was between the indenture trustee, or the debtor was a party to the contract, but it was for the benefit of the debenture holders. The convenants that Marine Midland is alleged to have violated were for the benefit of the people who were buying the debentures.

Q And for that you say solely, that's for their sole benefit?

MR. FERBER: I think without question that that was

the purpose of them. Now, when you get to -- and I'm not suggesting that anyone else would have a claim against Marine Midland, but from the standpoint of subrogation, which is an equitable remedy, I can see where there could be circumstances perhaps where other people might say, We relied upon Marine Midland not to let these assets get out of 2 to 1 ratio, and therefore it's not fair that they be to share with us with what's left in a matter of subrogation.

I'm not urging that, I'm saying there is a question.

Q That's not the claim here -- this case is submitted on the assumption that any recovery against Marine Midland would go exclusively to the debenture holders?

MR. FERBER: Yes.

Q Mr. Ferber, in the McCandless case, which you as well as the petitioner rely on, there had actually been a depletion of the assets of the debtor, as that was the conduct sued on there, had there?

MR. FERBER: Well, if you look at it in a very broad sense, perhaps. As I understand the facts in that case, the promoters sold property to the debtor at a great deal less -- I mean at a great deal more than it was probably worth. They had what appears to be a phony assessment, and the promoters received these bonds, which they in turn sold to the public; but the money coming to the bonds, I don't believe directly

ever went to the debtor. So I think, while Judge Cardozo loosely spoke of it as property of the debtor; as a practical matter it was the profits of these promters in the sale of bonds that they had taken for their sale of property to the debtor.

Now, I may be oversimplifying, but I read it again last night, the facts are not easy, but this is the way I believe what is really involved, that the promoters would have urged it was their property, and not property of the debtor.

And there, of course, the Court did hold that the creditors -- that the receiver could sue on behalf of the creditors. And in that connection, Justice White, I think that in the statutory language you read a bit ago, I believe there were only identifying the person.

In other words, I don't think the language of the property of the debtor was intended in any way to be restrictive of --

Q You hope; yes.

MR. FERBER: This is the way I read it.

Q Yes.

MR. FERBER: And I think it's a very logical way to read it, I mean this is what the trustee was identified as, or receiver was identified as.

Q In addition to the Clarke case, in the Second Circuit, there is the Manhattan Company v. Kelby --

MR. FERBER: Yes.

Q -- a couple of years later; decided unanimously with Judge Jerome Frank writing the opinion.

MR. FERBER: Yes, sir.

Q That, too, is against you, isn't it?

MR. FERBER: No. I believe that case -- well, there may have been some language that made it clear that in that case they felt they were collecting the res, but, as I recall, that case did -- did not turn down any action on the part of the indenture trustee.

Q However, we --

MR. FERBER: I may be wrong, but that's my recollection. While even Learned Hand in the later cases, I mean to persuade his brethren perhaps, always attempted to find a res, even though he had said in the earlier case it wasn't necessary.

But I --

Q But he didn't carry the day in Prudence-Bonds, that it was the res.

MR. FERBER: In the Prudence case --

Q And those were bonds, they were not debentures.

MR. FERBER: That's right.

Q That's the difference in bonds or property pledged or secured; in debentures all you have is covenants. That's the difference between the two.

MR. FERBER: But, as a practical matter, in the Solar case, for example, among certain of the property that got away, as it were, was when the Chicago plant of Solar had been sold, and the indenture trustee took the money and then put it into the debtor's general account, and let the debtor get rid of it.

Now, getting back this money was, it seems to me, no different in essence than the funds, the assets that got away here, because the indenture trustee did not enforce its covenant.

Q Well, but did any assets get away here? I mean, isn't your claim against the indenture trustee just that he didn't recognize the fraudulent representations of the debtor when they were made?

MR. FERBER: Well, the claim is made in the complaint that by reason of this, the debtor's assets ultimately were dissipated, and that this is what forced the debtor into receivership.

Q But the debtor's assets were dissipated by the debtor.

MR. FERBER: Just as in the Solar case, Your Honor. The debtor's assets were dissipated by the debtor when the Marine Midland -- the same defendant, by the way -- let the debtor have the use of them.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Ferber.

MR. FERBER: Thank you.

MR. CHIEF JUSTICE BURGER: Mr. Dickey.

ORAL ARGUMENT OF JOHN W. DICKEY, ESQ.,

ON BEHALF OF THE RESPONDENT

MR. DICKEY: Mr. Chief Justice, and may it please the Court:

I'd like to clear away at the outset one or two questions that I think are left open by what's gone before. First, it is said that Mr. Caplin found about Marine Midland's performance that it had been grossly negligent, wilfully guilty of misconduct. What is being said simply is that Mr. Caplin is alleging that in the complaint; nothing has been proved, no evidence has been taken, no discovery has been commenced. There has been no answer in this case. We are here purely and simply on the question of whether the trustee has standing to allege the claims that are set forth in his complaint here.

There is no claim made on behalf of the estate, nothing recovered, admittedly, by the commission admittedly, by the petitioner admittedly, will accrue to the benefit of the estate of Webb & Knapp.

There is no claim made here under the Trust Indenture Act. It is not mentioned in the complaint, and there is no reliance upon it, and jurisdiction is not invoked on that basis.

This is purely and simply a damage suit alleging

negligence against Marine Midland under State law concepts of negligence, claiming that we should have recognized the falsity of certificates duly filed with us, pursuant to the provisions of the indenture and relied on them, as we were entitled to do under the terms of the indenture which, in turn, was a qualified indenture under the Trust Indenture Act.

Q Well, I understand that it's conceded, at least, here that the trust indenture qualified -- that this trust indenture qualified the 1938-39 Act, --

MR. DICKEY: Yes, Your Honor; that's correct.

Q -- and that's your point. But are you further saying that the bondholders themselves could not rely on the Trust Indenture Act --

MR. DICKEY: I'm not saying --

Q -- for federal jurisdiction?

MR. DICKEY: No, Your Honor, I'm not saying that. Indeed, the fact of the matter is that the Lewis action, portions of the complaint of which are set forth in the Appendix to our brief, is an action which not only is based on, or purports to be based on the Trust Indenture Act, that an issue that is presently before the district court in the Southern District of New York on a motion by that plaintiff in behalf of his class of debenture holders, to assert a claim under the Trust Indenture Act by amending his complaint to include such a claim.

Thus frar federal jurisdiction has been invoked by that plaintiff and by that class of denture holders which includes all past and present holders and purchasers, a broader class than we're talking about here; the jurisdiction in the Federal court there is invoked under the Securities Exchange Act of 1934, alleging violations of 10b-5.

Q I thought somewhere in the course of Judge Friendly's opinion in this case he suggested, by way of perhaps casual dictum, that debenture holders could rely on the --

MR. DICKEY: He does suggest, Your Honor, in a footnote in his opinion; he states that under Section 315 of the Trust Indenture Act it conceivably may be that a claim will lie in behalf of debenture holders; but that's at page 90 -- I beg your pardon?

Q But he specifically refrains from deciding it?

MR. DICKEY: That is correct, Your Honor. That's at page 92 of the Joint Appendix, Your Honor.

Now, there's one other point before looking at the statute which, in the end, is the text upon which I suggest this case might be decided.

It has been said that the answer to one of the questions was that the creditors might get more if there were a recovery here, if the doctrine of subrogation were not applicable.

Now, Judge Friendly expounds the doctrine of subrogation, and we think he's correct in his analysis, and we have set forth additional support for that basis, for that position in our brief. But the actual fact in this case is that the question is altogether moot, nobody is going to benefit, other than the debenture holders, in this particular case, because, as this case stands, a plan of reorganization has already been proposed, has been approved by the SEC, has been submitted to Judge McLean in the Southern District of New York. And in that plan of reorganization there is provision for the debenture holder to share equally as part of the same class with the general unsecured creditors, share and share alike.

And the Securities Exchange Commission, in their comments upon the plan of reorganization which was submitted to them for their consideration, had only minor modifications to suggest; and here is the modification: that in the interest of full disclosure to all the interested parties in this reorganization proceeding, the plan of reorganization should make absolutely clear that unlike the other claims and causes of action, which the trustee is reserving and may prosecute hereafter, any fund that may be recovered by the trustee in the Caplin and Marine Midland litigation will inure solely to the benefit of the debenture holders.

That's conceded; that's the end of it, so far as any

further benefit, we suggest, to the estate of the debtor or to anyone who may have any share or claim in it.

Q Well, let's assume that the payoff to the debenture holders of unsecured credit is ten cents on the dollar, and the claim against Midland produces 100 percent. Or are you suggesting that no more could be recovered from Midland than 90 percent?

MR. DICKEY: That is what I am suggesting, Your Honor.

Q Unless -- that would be true only if you're right on the subrogation point?

MR. DICKEY: No, it would not be true only if we're right on the subrogation point, Your Honor. The fact of the matter is that I suggest damages cannot be measured in behalf of the debenture holders. Their claim against Marine Midland cannot be measured and the limits of it established until they have received a distribution within the plan of reorganization.

This has been suggested, this is not brand new. Augustus Hand, in the majority opinion in Clarke vs. Chase, which is the basic case, points this out, and it's followed by the Second Circuit in this case.

Q I suppose it depends on where you start the cause of action, even though it might inure to the debenture holders, the cause of action is viewed as the cause of action of the estate for being deprived of the ability to pay its

debts, and you come out in a different way.

MR. DICKEY: But, Your Honor, there's no claim asserted to that end in this complaint. I suggest there could not be, for that matter.

Now, let's look at the statute --

Q If there were such a claim, would they be limited to the amount of the debentures necessarily?

MR. DICKEY: Your Honor, I think we wouldn't be here if a claim had been asserted in behalf of Webb & Knapp, claiming that Marine Midland was, and by its alleged derelictions, was in a causal relationship with the insolvency of Webb & Knapp. We would not be here on a standing point, at least. We might very well be here eventually on the question of whether any such cause of action will lie, whether there was any duty owed by Marine Midland, the indenture trustee, to the debtor which deceived it along with the debenture holders. I think we would be here with the Court's permission on that point. But not on standing; no, Your Honor.

Now, the statute, if the Court please, because that is the basis of the trustee's power.

Q But, are you suggesting that in a plan of reorganization if -- let's assume for the moment that before the plan became final 100 cents on the dollar had been recovered from Marine Midland.

MR. DICKEY: I don't think it could have been

recovered from Marine Midland, because there would be no measure of damages.

Q But you don't -- you think that the reorganization court would have no power to say that the debenture holders must, as long as they could, recover 100 cents on the dollar from Marine Midland, so that other creditors would?

MR. DICKEY: I think that that is absolutely correct, Your Honor. Now, the fact of the matter is that these are unsecured debentures. The debenture holders bought these, looking to the credit of Webb & Knapp. There's no security, no mortgages, no anything that we hold can be --

Q That's secured in the bond, isn't it?

MR. DICKEY: That's what it is, Your Honor, a debenture, and therefore --

Q An unsecured indebtedness, secured only by covenants.

MR. DICKEY: Yes, Your Honor. And they look to the credit of Webb & Knapp, and the value, any value that these debentures may have is a value measured by the ability of Webb & Knapp to pay them off when the time comes to pay them off.

Now, let's assume this, Your Honor: let's suppose that in the reorganization we're lucky and it's determined that the distribution is not going to be ten cents on the dollar, as Mr. Justice White hypothesizes, but 100 percent

on the dollar. Let's suppose there's enough recovered to take care of all the general unsecured creditors, including the debenture holders, no damages have been sustained by the debenture holders, no claim would lie against Marine Midland, notwithstanding a proved claim if it eventually were proved that there had been a dereliction of a duty.

Q Now, here there has been a plan, hasn't there?

MR. DICKEY: That is correct, Your Honor. It has not been approved by the court yet, but it is before the court, after having been submitted to --

Q Before the court for four cents on the dollar?

MR. DICKEY: That is correct, Your Honor. Thus I suggest that the measure of damages that can be asserted against Marine Midland is 96 cents on the dollar.

Q And whether or not Marine Midland would be subrogated is not an issue in this case?

MR.DICKEY: Not an issue, I suggest. I think it's a secondary point. I think it can be made, and I think it's correct; but we don't rely on it. We rely on the measure of damages point.

Now, if Your Honor please -- the Court please --

Q Is that the approach to the court below?

MR. DICKEY: I beg your pardon, Your Honor?

Q Is that the rationale of the court below?

MR. DICKEY: Your Honor, it is. Both points are

made. The subrogation point that Judge Friendly goes on to say --

Q That isn't your point?

MR. DICKEY: That is correct. The subrogation point is made there, and, in addition, Judge Friendly goes on and says: even more importantly, we do not see the answer to the statement made by Judge Augustus Hand in Clarke v. Chase; in which he made the argument that I have just made to the Court.

We think, if the Court please, that the fundamental and dispositive fact here is that there is no power granted under the Chandler Act of the kind claimed here by the Chapter X trustee. There is no provision in the Chandler Act, we suggest, upon which any implication can be fairly based, that the Congress intended any such power.

The trustee is the creature of the statute. The statute is meticulously drawn; meticulously drawn with respect to the rights and the powers and the duties, and specifically with respect to the powers and duties of a Chapter X trustee in enforcing and prosecuting causes of action.

Under the statute the trustee succeeds to the title of the debtor's estate, and by Section 70 of the Bankruptcy Act having taken title of the debtor to quote property of the debtor, the section goes on to define in fine detail what property means, and specifically to define in fine detail what

property means in the context of causes of action to which the trustee falls, under which he takes title.

And in Section 70 of the Bankruptcy Act this is how it's defined with respect to causes of action: he takes title to rights of action "which prior to the filing of the petition the debtor could by any means have transferred or which might have been levied upon and sold under judicial process against him, or otherwise seized, impounded, or sequestered", and in the following subparagraph, "rights of action arising upon contracts, or usury,or the unlawful taking or detention of or injury to the debtor's property"; everything is focused on property.

Section 167 empowers the trustee to investigate the acts and the conduct and the property and the liabilities and the financial condition of, quote, "the debtor" in the desirability of continuing the business. And any other matter relevant to the reorganization proceeding, or to the formulation of a plan. And then he's empowered to report that, directed, indeed, to report that to the judge.

With respect to causes of action, he is directed to "report to the judge any facts ascertained by him pertaining to causes of action available to the estate". Now, these provisions are clear and unambiguous.

Q Assume there's an appraiser that appraises some property for the debtor and negligently or for some other

reason, some strange reason, intentionally inflates the value unknown to the debtor, and the debtor is permitted or goes ahead and issues twice as many debentures as they would have if the right value had been assigned to it?

I suppose there would be a cause of action by the debtor against the appraiser?

MR. DICKEY: Only if damage could be shown to have accrued against the debtor.

Q Well, he says, "We issued too many debentures, and now we're broke."

MR. DICKEY: I think there would be a cause of action, but it would be a cause of action in behalf of the estate, and for the recovery of damages which would accrue to the benefit of the estate, and therefore be available to be shared among debenture holders, general unsecured creditors, and everybody else. The stockholders, indeed, also.

Q They're no more broke after they issue too many debentures than they were before they issued them, were they?

MR. DICKEY: It would be a damage suit, Your Honor. They would have to show some kind of damage. I don't know the measure of damages would be the amount of the debentures that they had issued, no.

Q Well, would that be any wrong to the issuer at all?

It would be unreasonable, wouldn't it?

MR. DICKEY: I think Your Honor's right.

Q But it gets money for the debenture.

MR. DICKEY: I beg your pardon?

Q It gets money -- it got money for the debenture.

MR. DICKEY: It really didn't get money for the debenture holders, the debenture holders simply are left holding debentures which are unsupported by property.

Q That's right; that's right.

But the debtor isn't hurt.

MR. DICKEY: Right, Your Honor.

Q In my brother White's hypothetical case, you could show a situation where the debtor was hurt, if they got a negligent appraisal and then made some sort of a corporate decision based -- clearly based on that appraisal, that --

MR. DICKEY: Yes, Your Honor.

Q -- could cause damages. If they could prove that, there would be a cause of action, by the corporation and therefore by the trustee under Chapter X.

MR. DICKEY: Correct, Your Honor.

Q It would be a matter of proving damages.

MR. DICKEY: I think that's right.

And the proceeds of that action would be available to the estate, would accrue to the estate.

Q Right.

MR. DICKEY: And it's a cause of action which, in the terms of the statute, could be transferred to be levied upon, et cetera.

Much reliance is placed here upon legislative history or, I should say, purported legislative history. But I suggest to the Court that in the first place the statute is clear and there is no occasion to look to it; and in the second place, on its face the legislative history which is cited in the briefs for the petitioner and for the Commission here, shows that all of the talk about the intention of the Congress to effect protection of public investors and to bring about the appointment of an independent trustee for the purpose of the protection of public investors, everything that went into the eventual recommendations which led to the Chandler Act are all pointed toward the participation of the independent trustee within the reorganization proceedings, not at any point is there any testimony by any witness, nothing in any report of either House of Congress or any committee; nothing in any of the sources which pass for legislative history here, in which there is any suggestion that anyone even urged the power which is sought here today.

I pass that at that point. I think in summary the Chandler Act was intended to provide protection for public investors, and to that end the Act created the office of the independent trustee, and the trustee's function is to protect

them within the context and within the parameters of the proceedings. He's obliged to collect the property of the debtor, to preserve it, if possible to attempt to rehabilitate the corporation. In this case that has been determined to be impossible, and the plan of reorganization here is nothing more than a plan for orderly liquidation on a relatively modest scale.

Q The trustee's alleged conduct here resulted in the release of a surety or of a guarantor of debentures, could the trustee sue?

MR. DICKEY: I think in those circumstances, if this were a guarantee of a third party, Judge Learned Hand, in one of the Prudence-Bonds cases, reached the conclusion that that was property;he approached it on the basis of analyzing it as property of the debtor, but he could --

Q And yet it's just a -- yet all it is is a promise -- a promise to pay the debentures.

MR. DICKEY: But it's a promise of a third party, Your Honor, which, if drawn upon and used to pay the debentures, to that extent enlarges the estate of the debtor, and that is precisely the distinction he drew in the Prudence-Bonds trust case.

Q But it doesn't enlarge the estate of the debtor, it just permits --

MR. DICKEY: Itbears a drain, if you will, Your Honor.

Q -- it permits the debentures to be paid.

MR. DICKEY: It permits the debentures to be paid and --

Q If it's a guarantor, he wouldn't be guaranteeing any more than what is left after the assets of the estate are depleted.

MR. DICKEY: Well, if Your Honor please, no. The distinction drawn in that case, and I suggest a proper distinction, is this: that the two issues before the Court as to standing in that case were the right or standing of the trustee to state a claim against the indenture trustee for letting a third party guarantee go, and in that case it was determined that there was standing because had that security in effect not been released, then the debentures would have been paid from that and there would have been no claim by the debenture holders against the debtor's estate.

In contrast --

Q At least that was the theory of that case?

MR. DICKEY: At least that was the theory of that case.

Q Well, the debtor's estate would have been correspondingly larger?

MR. DICKEY: Enlarged, or at least prevented from being drained, Mr. Justice.

On the other hand, in the other side of that case,

where the question was standing to sue because of the release by the indenture trustee, not of a third party's guarantee but of a guarantee of the debtor itself, a distinction was drawn. And it was found that there would be no effect on the debtor's estate, and therefore standing would not lie within the terms of the Chandler Act.

Now, Your Honor, I will not go through the Second Circuit cases, they've been discussed, they are fully briefed. They have to be read.

I would like to move on to what I think is the real vice that's inherent in the position that's advanced here by the petitioner and by the Commission. Because they are not asking this Court simply to imply that the Chandler Act should be interpreted in such a way as to permit a modest extension of power on the part of the trustee, to assert this single claim against Marine Midland in this particular case.

What they are asking the Court to do, because they can't rest on that simple point, is to imply numerous decisions or conclusions as to numerous questions involving other statutes and other rules in the class action in the securities law field.

That is to say, that to sustain their position, this Court or possibly the district court, maybe we have an agenda for years of litigation before us here, if this position is sustained; either this Court or the district court and then

the courts of appeal and then we may be back here, are going to have to make decisions, of necessity, of this kind.

They're going to have to imply the answer to the question whether or not the power claimed by the trustee is exclusive or not exclusive. I understand they do not claim that it's exclusive, they claim that it's preferred that the trustee have this power.

They also say that as a practical matter, if they're granted this power, they will in fact sweep the field clean, because other debenture holders, suing in their private capacity, would not be inclined to risk the money and the time for what in the end prove to be a futile action if the trustee's action in fact is permitted to be preferred and go forward.

If the conclusion is that the power is not exclusive, and if the conclusion is that it is presumptively to be preferred that the trustee prosecute this action, then I ask what rule are we looking to, from what do we imply this kind of a conclusion, what rule or statute is involved here?

And if the trustee's power is implied not to be exclusive and not even to be presumably and presumptively preferred, but is just to run parallel with private actions brought by class claimants, private debenture holders suing in their own behalf, then where does that leave us with respect to Rule 23 in the federal courts? Where does it leave us with respect to the confusion that would be caused

in delicate State-Federal relations, with respect to parallel class action provisions under State law?

Think of the questions that have to be answered once we get into that area. Who is to go forward first? How are we to determine the priorities between the competing suitors, the private litigants on the one hand, which we had to in this case, and the trustee on the other hand? There's mechanics for making that decision under Rule 23.

In the Southern District of New York there is practice of staying a federal action in favor of a State action, often to let it run its course and see how it will come out.

But these are things that are worked out and have been, over the past 30 years, of class action litigation under the securities laws and otherwise, and under Rule 23, but which suddenly are going to be thrown into chaos when the trustee steps into the water and lends his weight here to this kind of a claim.

What will we do with that collateral estoppel? What happens? Is it a race to judgment amongst these people, and the first one gets there binds the others? If the debenture holders get the judgment first, does that bind the trustee, and is the trustee's action out; in contrast, does the trustee's action take precedence?

Is the trustee's action subject to Rule 23? There's a suggestion in the brief that there is no reason to suppose

that rules similar to Rule 23 will not be invoked here to govern this action. But which parts of that rule, I mean, in the first place, Rule 23 can't apply to the trustee, he doesn't meet the first condition precedent, he's not a member of the class. And to apply Rule 23 to him, this Court would have to decide that the framers of Rule 23, this Court in effect, had intended that it read not that a member of the class may sue representatively, but a member of the class, parenthesis, and a Chapter X trustee if he so pleases, may assert such an action representing --

Q What do you do about collateral estoppel with respect to -- as among individual debenture holders who do not bring class action?

MR. DICKEY: Well, as the individual debenture holders, they would not be collaterally estopped, I suggest, Your Honor, under the operation of Rule 23, because of the opted out provision of Rule 23.

Q How about --

MR. DICKEY: Excuse me.

Q Just as among, let's say, the individual plaintiff who doesn't purport to bring a class action?

MR. DICKEY: We have such in this case.

Q And he loses, there's no collateral estoppel, is there?

MR. DICKEY: No, there's no --

Q Or with respect to any other --

MR. DICKEY: No, no collateral estoppel in that case. But here we have a trustee who purports to sue in behalf of the whole class, or a very large part of it, at least; his action is not as broad as the other two are.

Q According to the argument, he's suing as kind of an ombudsman as in charge of all the confreres of interest in the corporate reorganization. That's my understanding of it.

MR. DICKEY: That's right. And I suggest, Your Honor, that his action is redundant, that it's unnecessary, that in this case he's looking to an impoverished estate to finance a litigation which need not be brought because the debenture holders are in both the STate court and the Federal court asserting their claims vigorously. Discovery has been had in one of those cases. The case is further along than this one. And the only reason it's not further is that the district court, knowing of the grant of certiorari in this case, has stayed the federal action to see what conclusions are reached here.

I suggest, Your Honor, in conclusion, if the Court please, in conclusion, that we're opening Pandora's box once we cross the initial bridge of accepting the argument that's made here and the claim of standing.

Because we have no answers to give to all the complex of questions which then face us procedurally with respect to

collateral estoppel, with respect to res judicata, with respect to priorities of claim, with respect to delicate relations between the state governments and the federal government and their respective rulings.

Thank you, Your Honor.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Dickey.

You have about four minutes left, Mr. Miller.

REBUTTAL ARGUMENT OF CHARLES H. MILLER, ESQ.,

ON BEHALF OF THE PETITIONER

MR. MILLER: Thank you.

Mr. Chief Justice, and may it please the Court:

I suggest that the parade of horribles that Marine Midland has suggested that would be unleashed if the trustee were given standing in this case just doesn't exist, and it doesn't exist for one reason, and it's a reason that we assert is one of the significant reasons why the trustee should have standing in this case.

Everything in the reorganization is under the supervision and the umbrella and the aegis of a reorganization court. It's under the aegis of the reorganization court which has the Securities and Exchange Commission before it every step in the proceeding, before any action can be started the reorganization court gives permission to the starting of the action. Before any action can be settled, the reorganization court determines whether the settlement is fair and

equitable, and the reorganization court which makes that determination does it on the basis of a long-standing knowledge of all the facts and circumstances of the debtor's estate, of the debenture holders, of all the various packages of creditors' rights which are involved here.

Q You're not suggesting that the individual holder of the indenture has to sue in the reorganization court? He has to sue --

MR. MILLER: No, I am not. No, I am not.

Now, in addition to that --

Q In the Prudence case the individual securities holders could have sued the indenture trustee?

MR. MILLER: If what, Mr. Justice White? I'm sorry.

Q In the one Prudence case that held the trustee could sue for release of the surety, --

MR. MILLER: Yes, that was --

Q -- the individual holders could have sued too, couldn't they?

MR. MILLER: Yes, I believe that they could have.

Q All right.

MR. MILLER: What you had in that case in furtherance of your question to Mr. Dickey, or in further answer to it, I think was nothing more than a chosen action, and I think you have the same thing in this case, perhaps a different kind of chosen action, but no different.

Q But belonging to someone else; that's the problem.

MR. MILLER: Well, no, it's belonging to the debenture holders, and I think, if I may, Mr. Justice Stewart, that's not the problem. That's what this case is all about. The focus in this case has come to be directed toward the estate, and what is happening with the estate. We are talking now about the debenture holders, and the debenture holders alone, and whether they are entitled to this relief; and we are seeking, the reorganization trustee is seeking to sue on behalf of the debenture holders.

In the Solar case and in the Clarke case and i-Prudence-Bonds, all of these cases which are the only ones which have decided this question, for the most part: There was recovery to the debenture holders on certain of the claims allowed, either whether there was a trust lease involved or certain property involved. There was no question there about standing or effect on the estate or subrogation or whether there would be any of these other matters in the parade of horribles which have been asserted before you.

Thank you.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Miller.

Thank you, gentlemen.

The case is submitted.

[Whereupon, at 2:14 p.m., the case was submitted.]