

Mr. STUCKEY. Will the gentleman yield?

Mr. COHEN. Whereas if this was direct relationship of someone providing the service, I mean it would be very difficult for them not to concede that they weren't in fact trustees, but they are not prepared to accept that, although they do admit they are fiduciaries.

Mr. KEITH. Mr. Stuckey has a question. I yield.

Mr. STUCKEY. We are talking about corporate structure and we talked about the investment advisory fees. If it is in fact a corporate structure, then if the majority voted against renewing the contract then it would not be renewed; is that right?

Mr. COHEN. It has never happened, sir.

Mr. STUCKEY. But in fact they could vote not to renew it, is that correct?

Mr. COHEN. That is right, Mr. Stuckey, it could happen; yes, sir. May I finish the answer though?

Mr. STUCKEY. I think you just did.

Mr. COHEN. I don't think I have.

Mr. STUCKEY. You just said that they could vote not to renew it.

Mr. COHEN. Theoretically, yes, sir.

Mr. STUCKEY. So then it would be in a sense a corporate structure. Now what would be the difference between that say that I owned 51 percent of a company and I could vote all the directors that I wanted to own there. Would that be a conflict of interest?

Mr. COHEN. Would you have a conflict of interest? If you engaged in a transaction with your company there would be a conflict of interest and the law might hold you to account.

Mr. STUCKEY. In other words, if I had a contract with the corporation.

Mr. COHEN. That is exactly right.

Mr. STUCKEY. There would be a conflict of interest.

Mr. COHEN. There would be a conflict of interest and the courts and the law have recognized this situation for many years. And if someone wanted to question the reasonableness, the fairness of that transaction, he could do so.

Mr. STUCKEY. Sure, that is right, a minority stockholder could question it. So they could also do the same thing through the courts.

Mr. COHEN. No, they can't, sir.

Mr. STUCKEY. If a majority voted in favor of renewal which is disclosed in the proxy statement then there is full disclosure. If they wanted to vote not to renew it then they could also do that.

Mr. COHEN. Let me answer that. I think you had the testimony of a prominent judge here, who indicated that were it not for these provisions in the statute, which the Congress put in in 1940 as a protection to investors, that is to say stockholder ratification and unaffiliated director approval, that these things could be put into account. But because of those facts, the courts have construed the situation as not making it possible for them to test the arrangement, the contract, on the basis of reasonableness, but to use his language, the plaintiff has to prove that it is excessively excessive or unreasonably unreasonable.

Now that is the difference between the ordinary corporate structure and this one.

Mr. Moss. The Chairman has correctly used the statement of the judge, excessively excessive would be the burden of proof which would be put on anyone in this connection.