[fol. 130] EXHIBIT A TO AFFIDAVIT OF WILBUR L. LOHRENTZ

Chronology of Labor Dispute Between the United States Steel Company and the United Steelworkers of America and of the Government's Intervention Therein

November 1, 1951: Pursuant to the provisions of the Labor-Management Relations Act, 1947, the president of the Union sent to plaintiff letter of notification of termination on December 31, 1951, according to its terms [1] of the existing collective bargaining agreement between the United States Steel Company and the Union and requested the Company to meet with it for the purpose of negotiating terms and conditions of a new collective bargaining agreement.

November 27, 1951: First bargaining conference between the Company and the Union. At this meeting the Union presented 22 demands in broad and general terms.

November 28-30, 1951, December 4-6, 1951: Bargaining conferences were held on each day.

December 10, 1951: The Union presented its demands in contract form in the course of a bargaining conference. These demands were later described by the Union's general counsel as encompassing "literally 100 contract proposals." [2]

[fol. 131] December 11-14, 1951: Bargaining conferences were held on each day. The parties made little progress toward a settlement of the dispute.

December 18, 1951: In the course of a bargaining conference, the Union notified the Company of its intention to strike on December 31, 1951 at midnight.

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[1] The agreement between the Company and the Union provided that the parties should meet "no less than 30 days and no more than 60 days prior to January 1, 1952" for the purposes of negotiating the terms and conditions of a new agreement.

[2] Transcript of Proceedings Before Panel of Wage Stabilization Board, p. 82.

December 20, 1951: Representatives of the Company and the Union met in joint conference in Washington with officers of the Federal Mediation and Conciliation Service.

December 21, 1951: Representatives of the Company met with officers of the Federal Mediation and Conciliation Service.

December 22, 1951: The President of the United States referred the dispute to the Wage Stabilization Board and asked that the Board investigate and inquire into the issues in dispute and report to him its recommendations as to fair and equitable terms of settlement. At the same time the President called upon the Company and the Union to maintain normal work and production schedules while the matter was before the Board. On receipt of the President's letter, the Chairman of the Board by letter requested the parties to cooperate fully in the Board's proceedings. The Company agreed to do so.

[fol. 132] December 27, 1951: The Union deferred the strike to January 3, 1952.

January 3, 1952: The Board appointed a tripartite panel consisting of two representatives each of industry, labor, and the public to hear evidence and arguments in the dispute and to make such report thereon as the Board might direct. The Union deferred the strike to February 24, 1952.

January 7, 1952: The Wage Stabilization Board met with the parties in a procedural meeting.

January 10-12, 1952, February 1-16, 1952: The tripartite steel panel held public hearings at which the parties were afforded an opportunity to present evidence and arguments on the issues in dispute.

February 21, 1952: The Union deferred the strike to March 23, 1952.

March 13, 1952: The tripartite panel submitted a report, dated March 13, 1952, outlining the issues in dispute and summarizing the position of the parties. In accordance with instructions of the Board, the panel did not deal with the Union's request for a union shop and a guaranteed annual wage.

[fol. 133] March 15, 1952: The Chairman of the Wage Stabilization Board requested the parties to continue production to permit consideration of the report of the panel by the Board, on the understanding that if by April 4 a mutually satisfactory agreement had not been reached, the Union would give 96 hours' prior written notice of any intention to strike.

March 20, 1952: The Wage Stabilization Board issued its report and recommendations for the settlement of the dispute. The Board recommended a general wage increase of 12½¢ per hour effective January 1, 1952, a further increase of 2½¢ per hour effective July 1, 1952, and an additional increase of 2½¢ per hour effective January 1, 1953. The Board also recommended a reduction in geographical differentials, an increase in shift differentials, provision for six holidays with pay, increased vacation benefits and premium pay for Sunday work. The Board further recommended that the parties include a union shop provision in the new contract.

[fol. 134] March 21, 1952: The Union indicated that it would accept the recommendations of the Wage Stabilization Board.

March 26, 1952: The Company and the Union held a bargaining conference.

April 3, 1952: The Company, together with five other steel companies (hereinafter referred to as the "six companies"), held a joint bargaining conference with the Union. The Union issued a strike call for 12:01 a. m., April 9, 1952.

April 4-5, 1952: The six companies met with the Chairman of the Wage Stabilization Board, who came to New York to assist the parties in the settlement of the dispute.

April 6, 1952: The six companies and the Union met jointly with the Chairman of the Wage Stabilization Board in a bargaining conference in New York.

April 7-8, 1952: Representatives of the six companies met with the Chairman of the Wage Stabilization Board in New York.

April 8, 1952: The President seized plaintiff's properties, and directed Charles Sawyer, Secretary of Commerce, to take possession of them and among other things to deter-

mine and prescribe terms and conditions of employment under which the plant, facilities and other seized properties shall be operated.

[fol. 135] April 9-14, 1952: The six companies met in Washington with various Government officials, including the Chairman of the Wage Stabilization Board and Mr. John R. Steelman, Acting Director of Defense Mobilization, under the auspices of Mr. Steelman. Several of such meetings were held jointly with the Union.

April 15, 1952: Mr. Steelman terminated the negotiations as conducted under his auspices.

[fol. 136] EXHIBIT B

UNITED STEELWORKERS OF AMERICA 5081 (5085)

November 1, 1951.

Registered mail.

Re Production and Maintenance Employees.

Mr. B. F. Fairless, President, United States Steel Company, Formerly Carnegie-Illinois Steel Corporation, 525 William Penn Place, Pittsburgh 30, Pennsylvania.

DEAR SIR:

Pursuant to the provisions of the Labor Management Relations Act of 1947, you are hereby notified that the collective bargaining agreement dated April 22, 1947, as amended July 16, 1948, November 11, 1949, and November 30, 1950, now in effect between the companies and the union, shall terminate in accordance with its provisions as of midnight December 31, 1951, except those portions of the agreement dated November 11, 1949, which, under the terms of that agreement, are not terminable as of December 31, 1951, but remain in full force and effect.

The union hereby requests the company to meet with it at such early time and suitable place as may be mutually convenient for the purpose of negotiating the terms and conditions of a new collective bargaining agreement.

We await your suggestion as to time and place of meeting.

Very truly yours, United Steelworkers of America,
(S.) Philip Murray, President.

[fol. 137] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT—Filed April 24, 1952

DISTRICT OF COLUMBIA, ss:

Lewis M. Parsons, being duly sworn, deposes and says:

1. I am a Vice President of United States Steel Company.

2. I have been associated with companies engaged in the manufacture and sale of steel products since 1919 and have been an officer of the plaintiff or predecessor companies since 1945.

3. The properties of the plaintiff seized by the defendant under purported authority of Executive Order No. 10340 are located in Pennsylvania, Indiana, Illinois, Alabama, Utah and California.

The principal products of plaintiff's basic steel produc-
[fol. 138] ing divisions are by-product coke, iron, steel ingots, semi-finished steel products, plates, structural shapes and piling, rails and accessories, wheels, axles, bars, concrete reinforcing bars, hot and cold rolled sheets and strip.

4. Other properties of plaintiff seized pursuant to purported authority of Executive Order No. 10340 are engaged in manufacturing and fabricating steel items from basic steel. Such products include large diameter pipe, fabricated structural work, fabricated plate work, oil field machinery and equipment, drums, pails, steel strapping machines, and miscellaneous steel products.

5. The necessity for absolute freedom of discretion on my part and on the part of my colleagues, if the properties of the plaintiff are to be managed with the greatest possible effectiveness, is apparent to me from my experience with the plaintiff and other steel companies. The plain-

tiff's operating manager is now subject to orders from the defendant, a person without previous experience in the management of the steel industry. Under the purported authority of Executive Order No. 10340, the defendant can establish an elaborate organization within the Department of Commerce to assist him in the operation of the steel industry. As an officer of the plaintiff, I must consider that all decisions reached by management may be subject to review and revision by the defendant, with the [fol. 139] result that I and other officers of plaintiff can no longer formulate plans and reach business decisions on our own responsibility. The importance of this impairment of freedom of management is far greater than the importance of any particular matter which may be considered by us. The losses to the plaintiff from an affirmative interference by the defendant in its operation and control as by the imposition of changes in terms and conditions of employment, or any other act which interfers with the over-all balance maintained by its management, would be incalculable.

6. Each of the basic steel producing divisions of the plaintiff reduces iron ore to pig iron in blast furnaces, which in turn is converted into steel in open-hearth, Bessemer or electric furnaces. The steel so produced is in turn formed into blooms and billets and other steel products by rolling, drawing, and forging. Interruptions and modifications which may be necessary to accommodate the plaintiff's operations to the requirements of the defendant would impose large and continuing costs on the plaintiff through impairment of operating efficiency, which extra costs might well continue long after the termination of the defendant's possession and control.

7. During the six years 1946-1951, the plaintiff, in the course of a major program of property improvement, re- [fol. 140] placement and modernization, made capital expenditures of many millions of dollars. The program of property improvement is still in progress. The most important new construction is that of the Fairless Works Plant at Morrisville, Pennsylvania. The attainment of this and other new building objectives will depend upon the orderly maintenance of operations throughout the company. Any marked deterioration in the profitability of the plain-

tiff's operations will require plaintiff to reappraise its plans for capital expenditures and to make adjustments as required. The damage to the plaintiff from revisions in its program of capital expenditure resulting from cost increases imposed on the plaintiff by the defendant would be immeasurable.

8. The Fairless Works, mentioned above, when completed will be a large integrated steel plant, capable of the production of many varieties of steel products. It was approximately 35% physically completed as of January 1, 1952, and unless its construction is interfered with, is expected to be substantially completed by the end of 1952. The adverse effect of defendant's seizure of the plaintiff's properties on progress toward completion of this plant may be irreparable.

9. The plaintiff sells steel products to many different types of customers located throughout the United States. Such customers include steel converters and processors, automobile manufacturers and parts producers, makers of tin cans and other containers, railroads, and car build- [fol. 141] ers, manufacturers of machinery and industrial equipment (including electrical machinery), manufacturers of agricultural implements, manufacturers of electrical appliances and other domestic and commercial equipment, companies engaged in drilling oil and gas wells or producing or transporting from such wells, manufacturers of many types of military equipment, shipbuilders, steel fabricators, contractors and builders, public utilities, and jobbers, dealers and distributors. Whereas a relatively small proportion of the total production of the plaintiff enters into the production of war materials on orders from the Department of Defense or the Atomic Energy Commission, by far the greater proportion of its production is currently being sold for uses unrelated to the defense effort of the United States.

10. The cost to plaintiff of any disruption to its operations as a fully functioning organization for the production of steel products is difficult to appraise. Thus, action to increase wages of plaintiff's production and maintenance employees would require modification of wage and salary rates throughout plaintiff's organization and may well require revision of investment and plant replacement and im-

provement plans to reflect changes in profit estimates resulting therefrom. Dependant's purported authority as derived from Executive Order No. 10340 would permit substantial interference with the proper and experienced management of the plaintiff's property. The pecuniary loss to plaintiff which would result from any such interference is immeasurable.

[fol. 142] 11. Control of plaintiff's properties by the defendant is oppressive and burdensome. The nature of the orders which the defendant may issue cannot be anticipated. Any such orders, be they to make reports, to increase wage rates, to grant longer vacations, to institute premium pay for Sunday work, to require all employees to join the Union, or to do whatever else may in the opinion of the defendant appear to him proper, would impose on the plaintiff costs and obligations and would disturb the effectiveness of the plaintiff's operations as a fully functioning organization to its irreparable damage.

Lewis M. Parsons.

Sworn to and subscribed before me this 23d day of April, 1952. Margaret MacPherson, Notary Public. My Commission expires March 14, 1957. (Seal.)

[File endorsement omitted.]

[fol. 143] In the United States District Court

[Title omitted]

Affidavit—Filed April 24, 1952

District of Columbia, ss:

John A. Stephens, being duly sworn, deposes and says:

1. I am Vice President of Industrial Relations of plaintiff.

2. As of 12:00 midnight, April 8, 1952, defendant seized plaintiff's properties under alleged authority contained in Executive Order No. 10340 issued by the President of the

United States on April 8, 1952, and directed plaintiff's President to act as Operating Manager of plaintiff's properties on behalf of the United States.

3. Plaintiff's President replied to defendant as follows:

[fol. 144] "Honorable Charles Sawyer, Department of Commerce, Washington, D. C.

I acknowledge receipt of your telegram of April 9, 1952, advising that you have appointed me as operating manager on behalf of the United States of the properties of the United States Steel Company referred to in your telegram. Although under protest I shall act in that capacity I must advise you that the United States Steel Company has been advised by counsel and believes that neither you nor the President of the United States has any authority under the Constitution or the laws to take possession of any of its properties. And on behalf of that company and myself I hereby protest against the seizure as unconstitutional and unlawful and inform you that neither the company nor myself is acquiescing in this seizure in any respect whatever and we intend promptly to vindicate our rights in court.

Benjamin F. Fairless."

4. Coincident with directing plaintiff's president to act as Operating Manager, defendant, on April 8, 1952, promulgated Order No. 1 in which he formally seized the properties of plaintiff and directed plaintiff's president to operate the plants, facilities and other properties "in accordance with such regulations and orders as are promulgated by me or pursuant to authority delegated by me." On April 11, 1952, defendant issued Department of Commerce Order No. 140 in which he established the following organization to assist him "in the operation of the steel industry":

"1. The *Comptroller* for steel industry operations shall establish such systems of financial reporting and analyses as are needed in connection with the responsibilities of the Secretary in carrying out the above executive order and shall see that the affected com-

panies maintain such records and make such reports as these systems and analyses require;

[fol. 145] 2. The *Production Division* shall review and analyze reports from the operating managers in order to keep the Secretary informed as to the quantity and kind of steel being produced for national defense; supply information relative to the terms and conditions of employment under which the facilities are being operated; and furnish the Secretary with data necessary for him to report to the President on the actions he is taking, and the results of these actions in connection with the authority given him by Executive Order 10340;

3. The *Compliance Division* shall audit compliance with all orders and regulations issued by the Secretary in connection with steel industry operations; make such investigations and inspections as are necessary to the accomplishment of this objective; and formulate and recommend, in cooperation with the Solicitor, such corrective enforcement measures as are necessary and which are, in the opinion of the Attorney General, within the powers vested in the Secretary;

4. The *Solicitor* of the Department of Commerce shall serve as chief legal officer for steel industry operations, and shall furnish legal advice and assistance on actions taken in connection with the Government's operation of the steel industry; prepare necessary public orders and regulations for the approval of the Secretary and provide for their issuance and legal implementation; and assist in the preparation, review, and processing of communications relating to steel industry operations; and

5. The *Operating Managers' Liaison Officer* shall advise and assist the Secretary with respect to his transactions with the plant managers.

Aside from the above organization, the Secretary will utilize the existing staff and facilities of the Department of Commerce in the fulfillment of his responsibilities in connection with the operation of the steel industry.''

On April 12, 1952, defendant announced that he had—

> "no intention of considering or taking any action on the matter of terms or conditions of employment provided in the Executive Order of the President until after Mr. Steelman has reported that the pending negotiations between the management and labor representatives have been terminated" (Department of Commerce Release G-250, April 12, 1952).

[fol. 146] 5. Since defendant's seizure of plaintiff's plants and properties, plaintiff and the Union have continued negotiations under the offices of Mr. John R. Steelman, Acting Director of Defense Mobilization. These negotiations failed to result in an agreement. On April 15, 1952, Mr. Steelman terminated the negotiations as conducted through his offices. Shortly thereafter, on April 15, 1952, defendant issued the following statement:

> "Inasmuch as the negotiations which had been going on between industry and labor have ended, I shall proceed, promptly but not precipitately, to consider the terms and conditions of employment as I was instructed to do in Paragraph 3 of the President's Executive Order. I have nothing further to say on the subject at this time" (Department of Commerce Release, G-251).

On April 18, 1952, defendant met with the steel operators, including plaintiff and the Union. Thereafter, late in the afternoon of April 18, 1952, defendant issued the following statement:

> "Representatives of the operators and the Union each met with me today at my request. My purpose was to suggest to each of them that one final joint meet- to be held of representatives capable of giving a final answer in an effort to get the government out of the steel business. Each side agreed to meet and the operators asked only that they be permitted some opportunity to clear questions with reference to what price allowances might be permitted in the event of a settlement.

"This question proving to be impossible of solution in the time remaining today, I suggested to each side that the meeting be postponed until a later date. Meantime I feel that I should, under the President's directive, begin consideration of an action upon the terms and conditions of employment mentioned therein. After consultation with the President and with the Attorney General I propose to undertake to do this on Monday or Tuesday of next week."

[fol. 147] On Sunday, April 20, 1952, defendant appeared in a television broadcast "Meet the Press" in the course of which he stated categorically "There will certainly be some wage increases granted."

6. Defendant is ready to continue negotiations with the Union in order to settle its differences with the Union over terms and conditions of employment. I am informed and believe, however, that defendant, in accordance with his announcement set forth in paragraph 5 above, is about to act to put into effect certain wage increases and other benefits to be paid and provided by plaintiff to its employees, either by entering into an agreement with the Union or by directing plaintiff to put into effect such changes. Any such change will irreparably alter the bargaining position of the parties and will require plaintiff to disburse private funds to carry out such order of defendant, to its immediate and irreparable damage.

7. Press dispatches, which I believe to be reliable, state that defendant will deal only with the wage and fringe benefits involved in the dispute. These matters comprise six of the more than 100 issues involved in the dispute. In acting with respect to these issues, defendant would leave unresolved the many other issues, including issues of such extreme importance to the orderly and efficient operation of plaintiff's business as:

(a) whether or not plaintiff may adequately direct [fol. 148] the working forces in the interest of maintaining and improving the efficiency and safety of its operation, and

(b) whether or not plaintiff shall suffer loss of production and increased wage costs because of inability

> to proceed with its program for installation of incentives as provided for in its agreement of May 8, 1946, with the Union, which agreement is still in full force and effect.

These other issues must be resolved before any agreement with the Union can be achieved. Defendant's threatened action will alter to the irreparable damage of plaintiff the bargaining position of the parties. Such action would also leave unresolved the demand of the Union for a Union Shop provision. Such a provision would affect the thousands of present employees who are not members of the Union, and such new employees as do not choose to joint the Union, would impair the efficiency of plaintiff's entire operation, and would defeat plaintiff's traditional insistence upon freedom for its employees to choose whether or not to become Union members.

8. I have represented plaintiff and its predecessors in negotiations with the Union since 1942. I have never made an offer to settle any single issue except on condition that all the issues under negotiation be resolved. In my experience, the process of collective bargaining involves a weighing of all issues and a matter of trading concessions in one area for demands in another. It is not possible to [fol. 149] reach an over-all agreement by attempting to settle one issue at a time because these issues are interrelated and the importance of different issues is of vastly different weight to the Company and to the Union, respectively. The process of collective bargaining is the process of the settling of all issues as a "package." This is a principle of collective bargaining that cannot be violated. The placing into effect by defendant of increased wages and other benefits demanded by the Union would deprive plaintiff permanently of the use of concessions in these matters as a means of settling other issues in dispute.

9. By placing into effect new terms and conditions of employment, defendant would seriously impair plaintiff's statutory right to bargain collectively with the Union. This right is guaranteed to plaintiff by the National Labor Relations Act, as amended by the Labor-Management Relations Act of 1947, wherein Congress provided for the settlement

of labor disputes through the process of collective bargaining. Congress therein declared in Section 1 (b):

> "It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, . . . and to protect the rights of the public in connection with labor disputes affecting commerce."

In Sections 8 (a) (5) and 8 (b) (3) of this Act, Congress declared it an unfair labor practice for either an employer or a labor organization to refuse to bargain collectively, and [fol. 150] in Section 8 (d) thereof declared that to bargain collectively was "the mutual obligation" of both the employer and the representative of its employees. Defendant, by imposing on plaintiff increased wage rates and other benefits without its consent, would deprive plaintiff of the rights guaranteed by this Act.

10. I am informed and believe that defendant is considering placing in effect the recommendations of the Wage Stabilization Board as to the terms and conditions of employment referred to in plaintiff's complaint herein, or some modification thereof, the precise nature of which I do not and necessarily cannot know. The increase in wage rates and other benefits recommended by the Wage Stabilization Board which defendant is considering ordering into effect, quite apart from their irreparable effect on plaintiff's future bargaining position, would impose on plaintiff tremendous out-of-pocket money costs. I have caused an examination to be made of the effect on plaintiff in added costs of operation of these changes in terms and conditions of employment, and have determined that added employment costs alone would exceed $100,000,000 annually.

11. Plaintiff employs at its seized properties approximately 169,000 hourly rated production and maintenance employees represented by the Union. In addition to these employees directly affected by defendant's action with respect to terms and conditions of employment, plaintiff employs at its seized properties about 58,000 employees (here-

inafter termed "other employees"), some of whom are in other bargaining units represented by the Union, whose [fol. 151] terms and conditions of employment will, as a practical matter, be determined by defendant's action. During the past ten years, a large period of which was, as now, under Government controls, wage increases and other benefits granted to plaintiff's hourly rated production and maintenance employees have set the pattern for this group of other employees.

12. The Wage Stabilization Board recommended increased wage rates of 12½¢ per hour as of January 1, 1952, 2½¢ per hour as of July 1, 1952, and a further 2½¢ per hour as of January 1, 1953. Such increases in wage rates would result in still greater increases in direct employment costs as a result of the compounding effects of other factors. The annual cost to plaintiff of increases directed by defendant and the resulting compounding effect of four of these factors, namely, overtime premium, vacation costs, payroll taxes and pensions for plaintiff's production and maintenance employees alone would total $54,900,000 in 1952 and at rates effective January 1, 1953, $69,800,000 in 1953. Comparable increases in employment costs for plaintiff's other employees would increase the total annual cost of the increased wage rates put into effect by defendant to $79,-700,000 in 1952 and at rates effective January 1, 1953, $101,-400,000 in 1953. Increases in employment costs which would inevitably result at plaintiff's other properties and at the properties of affiliated companies, would add more millions of dollars to the employment costs of plaintiff and its affiliates.

13. The Wage Stabilization Board recommended that 3-week paid vacations be granted to employees of 15 years' [fol. 152] standing instead of the present requirement of 25 years' employment for such vacations. These vacations for plaintiff's production and maintenance employees would result in increased employment costs of $2,700,000 per year. The cost of comparable vacations for plaintiff's other employees will increase this annual cost to $3,200,000.

14. The Wage Stabilization Board recommended that employees be granted six paid holidays per year and that employees who work on such holidays be paid double time

for time worked. At present, plaintiff grants no paid holidays but pays employees who work on six designated holidays time-and-one-half for time worked on such days. The cost of such increases would increase as the increases in wages contemplated by defendant become effective. At wage rates effective as of January 1, 1952, such paid holidays for plaintiff's production and maintenance employees would cost plaintiff $11,400,000 annually and at rates which become effective January 1, 1953, such paid holidays would involve an annual cost of $11,700,000. Comparable benefits for plaintiff's other employees would increase the total annual cost of these benefits to $12,900,000 and $13,200,000, respectively.

15. The Wage Stabilization Board recommended that plaintiff increase its shift differential of 4¢ for the second shift to 6¢ per hour and the differential of 6¢ for the third shift to 9¢ per hour. Such increased shift differentials would cost plaintiff $4,800,000 annually for production and maintenance employees, or $5,700,000 including other employees.

[fol. 153] 16. The Wage Stabilization Board recommended that, effective January 1, 1953, plaintiff pay time-and-one-quarter for work performed on Sundays. Sunday work is now compensated at the same rates as for other days of the week. This increase would increase plaintiff's employment costs annually $13,200,000 beginning January 1, 1953. Including plaintiff's other employees, the annual cost of this benefit would total $14,900,000.

17. The Tennessee Coal and Iron Division of plaintiff conducts an integrated operation for the production of steel products in the vicinity of Birmingham, Alabama. The wage scale at this southern operation is 10¢ per hour less than the wage scale in effect at other operations of the Company. The Wage Stabilization Board recommended that plaintiff reduce this southern differential to 5¢ per hour, a change which will result in increased employment costs for plaintiff's production and maintenance employees of $1,800,000 annually. Including plaintiff's other employees, the annual cost of this benefit will total $2,600,000.

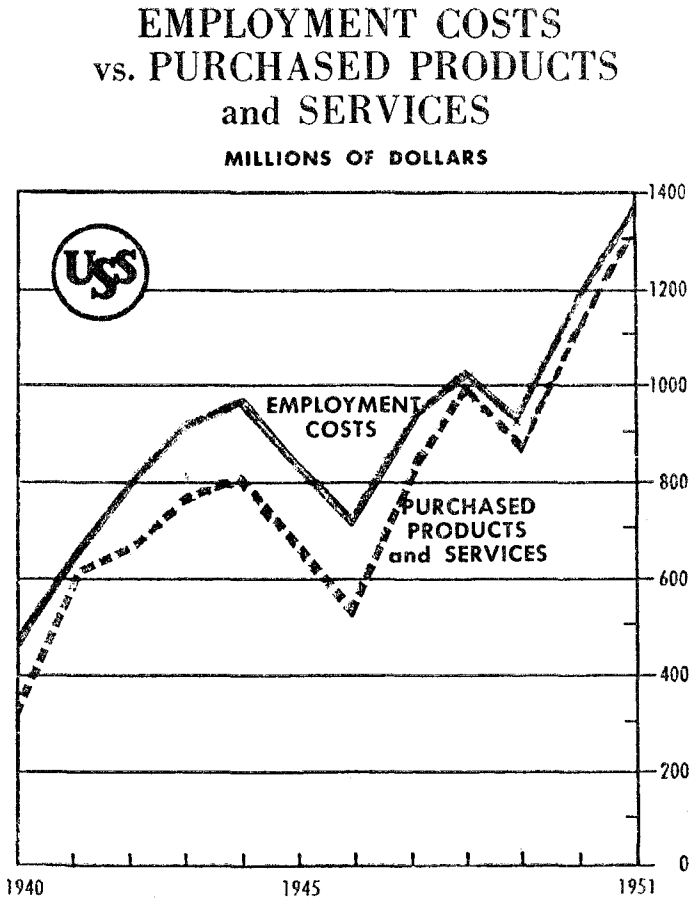
18. The annual cost to plaintiff of the changes in terms of employment set forth in paragraphs 12 to 17 herein which

defendant arbitrarily and without right threatens to impose on plaintiff, would increase plaintiff's employment costs $72,500,000 in 1952 and, at rates effective January 1, 1953, $104,000,000 in 1953. Including plaintiff's other employees, the annual costs of these changes would total $100,400,000 in 1952 and $141,000,000 in 1953. In 1953, the added employment costs which defendant threatens to impose on plaintiff would average 29.8¢ per employee hour. [fol. 154] A detailed summary of these costs is attached as Exhibit A.

19. The ratios of costs of materials, supplies, and other products and services purchased by plaintiff and affiliated companies during the years 1947 to 1951, inclusive, have been as follows:

Date	Total Employment costs ($ millions)	Products and Services Bought ($ millions)	Ratio of Purchased Products and Services to Employment Costs
1947	$903.6	$839.4	93
1948	1,035.7	1,008.9	97
1949	945.9	885.7	94
1950	1,179.4	1,118.8	95
1951	1,374.5	1,327.9	97

Employment costs and costs of purchased products and services together represent approximately 80% of all costs of plaintiff. When wages are increased in the steel industry, they have always been similarly increased in other industries whose products the steel industry must buy, with the result that plaintiff's costs of products and services have advanced about the same dollar amount. It is an historical fact that these two great costs of plaintiff and affiliated companies move together, as illustrated in the chart opposite page:



Plaintiff's costs of purchased products and services will increase in proportion to its wage cost increase. Therefore, based on past experience, the ultimate increases in costs to plaintiff resulting from defendant's action, will be on the order of double the increases in employment costs set forth in paragraph 18 herein.

[fol. 156] 20. Plaintiff in all of its integrated operations expends an average of 20 man hours of labor to produce each ton of steel products. Thus for every one cent of increase in average employment costs, production costs per ton of steel would increase by 20¢. The threatened action of defendant in increasing plaintiff's direct employment costs by 29.8¢ per employee hour will therefore increase

the average cost of steel products shipped by about $6.00 per ton for such employment costs alone. The additional increase in costs of purchased products and services, as set forth in paragraph 16 herein, would result in a total increase in the average cost of steel products shipped of approximately $12.00 per ton.

21. Plaintiff's products are subject to price regulations imposed by the United States. On April 16, 1952, Ellis Arnall, Director of Price Stabilization, testifying before the Senate Labor and Public Welfare Committee, reasserted his position that even if the wage increases recommended by the Wage Stabilization Board were put into effect, he would not approve a price increase for steel products based upon the increased wages and other additional costs resulting from granting the benefits in issue.

[fol. 157] 22. Defendant would impose on plaintiff a damaging cost-price squeeze which would impair the profitability of its operation: would make it difficult for plaintiff to meet its commitments in plant replacements and neces--ary improvements; and would diminish funds available for dividends and for reinvestment in the business.

23. Disbursements of plaintiff's funds would commence shortly after the effective date of defendant's order to place into effect new terms and conditions of employment. If defendant's order is effective immediately, changes in wage rates and other benefits would be required to be placed into operation by plaintiff for the next pay period commencing thereafter, or if only one or two days of the current pay period have elapsed, with the current pay period.

24. I am advised by counsel that defendant's seizure of plaintiff's properties and defendant's threatened action to place in effect changes in terms and conditions of employment above set forth are without basis in law. Once such increased benefits are granted to plaintiff's employees, as a practical matter they cannot be taken away. A com-

[fol. 158] pany conducting a business as extensive and comprehensive as that of this plaintiff, with its employees represented by a large and powerful union, could obtain a general reduction of wages, except under changed economic conditions, only at the expense of either permanent dissatisfaction of the great body of its employees or a

strike. During the past 15 years there has not been a single general reduction in the wage scale of plaintiff's employees or in fringe benefits. The placing into effect, in accordance with orders of defendant, of new terms and conditions of employment determined by defendant will result in immediate and irreparable injury to plaintiff.

John A. Stephens.

Sworn to and subscribed before me this 23rd day of April, 1952. Margaret MacPherson, Notary Public. My Commission expire- March 14, 1957. [Seal.]

[File endorsement omitted.]

[fol. 159] EXHIBIT A TO AFFIDAVIT OF JOHN A. STEPHENS

Estimated Additions to Employment Costs of Wage and Fringe Adjustments Recommended by the Wage Stabilization Board Which Defendant Threatens To Impose on Plaintiff*

Operations of United States Steel Company and General Operating Divisions Seized by Defendant

Period and item	Year 1952 Production and maintenance employees		All employees	
	Per Man-hour	Total ($ millions)	Per Man-hour	Total ($ millions)
January 1, 1952–March 31, 1952:				
Wage increase, 12½¢ (Par. 12)	14.5¢	$12.5	15.3¢	$18.1
Vacations (Par. 13)	.7	.6	.7	.8
Southern Differential (Par. 17)	.5	.4	.6	.6
Subtotal	15.7	13.5	16.6	19.5
April 1, 1952–June 30, 1952:				
Wage increase, 12½¢	14.5	12.5	15.3	18.1
Vacations	.7	.6	.7	.8
Southern Differential	.5	.4	.6	.6
Holiday Pay (Par. 14)	2.2	1.9	1.8	2.1
Shift Differential (Par. 15)	1.4	1.2	1.2	1.4
Subtotal	19.3	16.6	19.6	23.0
July 1, 1952–December 31, 1952:				
Wage increase, 15¢	17.3	29.9	18.3	43.5
Vacations	.7	1.4	.7	1.5
Southern Differential	.5	1.0	.6	1.4
Holiday Pay	4.5	7.7	3.7	8.7
Shift Differentials	1.4	2.4	1.2	2.8
Subtotal	24.4¢	$42.4	24.5¢	$57.9
Total, Year 1952	20.9¢	$72.5	21.2¢	$100.4
Summary—Year 1952:				
Wage Increase (Av. 13¾¢)	15.9¢	$54.9	16.8¢	$79.7
Vacations	.7	2.6	.7	3.1
Southern Differential	.5	1.8	.66	2.6
Holiday Pay	2.8	9.6	2.2	10.8
Shift Differentials	1.0	3.6	.9	4.2
Total	20.9¢	$72.5	21.2¢	$100.4
Year 1953 (At rates effective January 1, 1953)				
Wage Increase, 17½	20.2¢	$69.8	21.4¢	$101.4
Vacations	.8	2.7	.7	3.2
Southern Differential	.5	1.8	.6	2.6
Holiday Pay	3.4	11.7	2.8	13.2
Shift Differentials	1.4	4.8	1.2	5.7
Premium for Sunday Work (Par. 16)	3.8	13.2	3.1	14.9
Total	30.1¢	$104.0	29.8¢	$141.0

* For purposes of this table, the effective date for holiday pay (see par. 14) and the increased shift differential (see par. 15) is assumed to be April 1, 1952.

[fol. 160] UNITED STATES DISTRICT COURT

[Title omitted]

DEFENDANT'S OPPOSITION TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION—Filed April 25, 1952

Defendant opposes the granting of a preliminary injunction on the following grounds, viz:

1. The breakdown of collective bargaining negotiations in the steel industry, resulting in the action of the steel companies in cooling off their furnaces in anticipation of suspension of manufacture and the action of the union in calling a strike to begin at 12:01 a.m. on April 9, 1952, created an immediately impending national emergency because interruption of steel manufacture for even a brief period would seriously endanger the well-being and safety of the United States in a critical situation.

2. The President of the United States of America has inherent power in such a situation to take possession of the steel companies in the manner and to the extent which he did by his Executive Order of April 8, 1952. This power is supported by the Constitution, by historical precedent, and by court decisions.

3. The courts are without power to negate executive action of the President of the United States of America by enjoining it and by enforcing their injunctions by imprisonment or other process against the President.

[fol. 161] 4. The granting of a preliminary injunction is never a matter of right. The courts, even as between private parties, will not interfere in advance of a full hearing on the merits except upon a showing that the damage to flow from a refusal of a temporary injunction is irreparable and outweights the harm which would result from a (denial) ? of the temporary injunction. When, as in the present case, the interest of the public is involved, the courts are particularly hesitant to interfere.

5. Since the management of the steel companies is left in control under the arrangements which existed as of the time of taking, and since the right of the companies to recover all damages resulting from the taking has been rec-

ognized by Supreme Court decisions, there is no showing that the companies' legal remedy is inadequate or that their injury is irreparable, and hence the companies have not met the conventi-al conditions precedent to the granting of the kind of order they request.

This opposition is based on the affidavits of Robert A. Lovett, Secretary of Defense, Gordon Dean, Chairman of the United States Atomic Energy Commission, Manley Fleischman, Administrator of the Defense Production Administration, Henry H. Fowler, Administrator of the National Production Authority, Oscar L. Chapman, Secretary of the Interior, Jess Larson, Administrator of General Services, Homer C. King, Acting Administrator of the Defense Transportation Administration, Charles Sawyer, Secretary of Commerce, Harry Weiss, Executive Director of the Wage Stabilization Board and Nathan P. Feinsinger, Chairman of the Wage Stabilization Board filed herewith, [fol. 162] and on the defendant's memorandum of points and authorities filed herewith, all of which are by reference made a part hereof.

A. Holmes Baldridge, Per M. C. T., Assistant Attorney General; Marvin C. Taylor, J. Gregory Bruce, Per M. C. T., Attorneys, Department of Justice.

[File endorsement omitted.]

[fol. 163] Executive Order

[Omitted. Printed side page 8 ante.]

[fol. 173] Telegram

[Omitted. Printed side page 38 ante.]

[fol. 175] Order No. 1

[Omitted. Printed side page 40 ante.]

[fol. 181] Affidavits

[Omitted. Printed side page 46 et seq. ante.]

[fol. 226] [Proof of service omitted in printing.]

[fol. 229] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO WITHDRAW VERBAL AMENDMENT AND TO PROCEED ON THE BASIS OF MOTION FOR PRELIMINARY INJUNCTION FILED APRIL 18, 1952—Filed April 29, 1952

Plaintiff, United States Steel Company, hereby moves the Court to withdraw its verbal amendment as to relief sought on preliminary motion and to proceed on the basis of its original motion for preliminary injunction filed April 18, 1952.

This motion is filed pursuant to the opinion of this Court in this matter filed this date.

Howard C. Westwood, Attorney for Plaintiff, 701 Union Trust Bldg., Washington, D. C.

[Penned notation:] Same granted.—Pine.

[fol. 869] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

Civil Action No. 1549-'52

BETHLEHEM STEEL COMPANY (Pa.), 701 E. 3rd St., Bethlehem, Pa.; Bethlehem Steel Company (Del.), 100 W. 10th St., Wilmington, Del.; Bethlehem Pacific Coast Steel Corporation, 701 E. 3rd St., Bethlehem, Pa.; Buffalo Tank Corporation, 153 Lincoln St., Lackawanna, N. Y.; Bethlehem Supply Company, 100 W. 10th St., Wilmington, Del.; Bethlehem Supply Company of California, San Francisco County, Calif.; Bethlehem Cornwall Corporation, 701 E. 3rd St., Bethlehem, Pa.; Bethlehem Quarry Company, State Highway No. 91, Village of Barrackville, W. Va.; and The Dundalk Company, Shipping Place, Dundalk, Md., Plaintiffs,

against

CHARLES SAWYER, Individually and as Secretary of Commerce of the United States of America, Washington, D. C., Defendant

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF—Filed April 9, 1952

The plaintiffs, for their complaint herein, allege:

1. This is an action for a declaratory judgment and for a permanent injunction and other relief, brought pursuant to the provisions of the Act of June 25, 1948, c. 646, 62 Stat. 964, as amended by the Act of May 24, 1949, c. 139, § 111, 63 Stat. 105 (28 U. S. C. A. §§ 2201 and 2202). There is now existing between the parties an actual controversy, justiciable in character, in respect of which the plaintiffs need a declaration of their rights by this Court.

2. The plaintiffs herein are as follows:

[fol. 870] (a) Bethlehem Steel Company (Pa.) is a corporation organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, with an office and post office address at 701 East Third Street, Bethlehem, Pennsylvania.

(b) Bethlehem Steel Company (Del.) is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with an office and post office address at 100 West Tenth Street, Wilmington, Delaware.

(c) Bethlehem Pacific Coast Steel Corporation is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with an office and post office address at 701 East Third Street, Bethlehem, Pennsylvania.

(d) Buffalo Tank Corporation is a corporation organized and existing under and by virtue of the laws of the State of New York, with an office and post office address at 153 Lincoln Street, Lackawanna, New York.

(e) Bethlehem Supply Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with an office and post office address at 100 West Tenth Street, Wilmington, Delaware.

(f) Bethlehem Supply Company of California is a corporation organized and existing under and by virtue of the laws of the State of California, with an office in and post office address at San Francisco County, California.

(g) Bethlehem Cornwall Corporation is a corporation organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, with an office and post office address at 701 East Third Street, Bethlehem, Penn- [fol. 871] sylvania.

(h) Bethlehem Quarry Company is a corporation organized and existing under and by virtue of the laws of the State of West Virginia, with an office and post office address at State Highway No. 91, Village of Barrackville, West Virginia.

(i) The Dundalk Company is a corporation organized and existing under and by virtue of the laws of the State of Maryland, with an office and post office address at Dundalk Shipping Place, Dundalk, Maryland.

3. The defendant Charles Sawyer is Secretary of Commerce of the United States of America and is a resident of the District of Columbia.

4. The action arises out of the promulgation by the President of the United States of Executive Order No. purporting to seize certain steel-producing properties of the plain-

tiffs, which order of seizure is violative of The Constitution of the United States and without authority in any law or statute of the United States presently in force and effect. The amount in controversy exceeds, exclusive of interests and costs, the sum of $3,000.

5. Each of the plaintiffs is an operating company, with business consisting chiefly of managing and operating various iron and steel producing and manufacturing plants, structural fabricating works and quarries located in various States of the United States. The properties of each of the plaintiffs are as follows:

(a) The iron and steel producing and manufacturing plants operated by Bethlehem Steel Company (Pa.) are the Bethlehem Plant (located at Bethlehem, Pennsylvania), the Johnstown Plant (located at Johnstown, Pennsylvania), the Sparrows Point Plant (located at Sparrows Point, [fol. 872] Maryland), the Lackawanna Plant (located at Lackawanna, New York), the Steelton Plant (located at Steelton, Pennsylvania), the Lebanon Plant (located at Lebanon, Pennsylvania) and the Williamsport Plant (located at Williamsport, Pennsylvania). The structural fabricating works operated by Bethlehem Steel Company (Pa.) are located at Bethlehem, Johnstown, Steelton, Pottstown, Rankin and Leetsdale, Pennsylvania, and at Buffalo, New York. Bethlehem Steel Company (Pa.) also operates the Bethlehem Quarry (located at Bethlehem, Pennsylvania).

(b) The structural fabricating works operated by Bethlehem Steel Company (Del.) are located at Chicago, Illinois. Bethlehem Steel Company (Del.) also operates the Boston Warehouse (located at Boston, Massachusetts) and the Chicago Warehouse (located at Chicago, Illinois).

(c) The iron and steel producing and manufacturing plants operated by Bethlehem Pacific Coast Steel Corporation are the Los Angeles Plant (located at Vernon, California), the Seattle Plant (located at Seattle, Washington) and the South San Francisco Plant (located at South San Francisco, California). The structural fabricating works operated by Bethlehem Pacific Coast Steel Corporation are located at Alameda, Los Angeles and South San Francisco, California, and at Seattle, Washington.

(d) The manufacturing plants operated by Buffalo Tank Corporation are the Buffalo Plant (located at Buffalo, New York), the Charlotte Plant (located at Charlotte, North Carolina), and the Dunellen Plant (located at Dunellen, New Jersey).

(e) The manufacturing plants operated by Bethlehem [fol. 873] Supply Company are the Corsicana Plant (located at Corsicana, Texas) and the Tulsa Plant (located at Tulsa, Oklahoma).

(f) The properties operated by Bethlehem Supply Company of California are located at Los Angeles, California.

(g) The properties operated by Bethlehem Cornwall Corporation are located at Cornwall Borough, Pennsylvania, and at Lebanon, Pennsylvania.

(h) The properties operated by Bethlehem Quarry Company are located at Hanover, Naginey and Steelton, Pennsylvania.

(i) The properties operated by The Dundalk Company are located at Dundalk and Sparrows Point, Maryland.

6. Not any of the plaintiffs has received from the President of the United States, from the Atomic Energy Commission or from any Government agency any order for materials placed pursuant to the provisions of Section 468(a) of the Universal Military Training and Service Act of 1951 (50 U. S. C. A. App. § 468).

7. At each of the iron and steel producing and manufacturing plants, structural fabricating works and quarries operated by the plaintiffs and referred to in par. 5 hereof, there are employees represented by the Union Steelworkers of America (hereinafter called the Union) for purposes of collective bargaining.

8. At all relevant times prior to April 9, 1952, the plaintiffs had enjoyed peaceful posession and the exclusive operation of the properties referred to in par. 5 hereof and had operated the same in all respects consistent with applicable laws of the United States and of the various States of the United States having jurisdiction therof.

[fol. 874] 9. On December 31, 1951, the several contracts which had theretofore been in effect between the plaintiffs and the Union covering, among other things, wages and terms and conditions of employment, expired. Prior to

that date negotiations between the plaintiffs and the Union looking toward the execution of further such contracts had been commenced.

10. Continued negotiations between the plaintiffs and the Union having been unproductive, the president of the Union issued an ultimatum stating that at 12:01 A.M. on April 9, 1952, all employees represented by the Union and working at the iron and steel producing and manufacturing plants, structural fabricating works and quarries of the plaintiffs would be ordered to, and would, discontinue their work for the plaintiffs and would thereafter engage in an organized strike against the plaintiffs.

11. On April 9, 1952, the President of the United States promulgated Executive Order No. , a copy of which is annexed hereto as Exhibit A, directing the seizure by the defendant of the properties of the plaintiffs referred to in par. 5 hereof.

12. The Congress has provided in the Labor Management Relations Act of 1947 specific and adequate machinery for the adjustment of the proposed strike and has specifically rejected the device of seizure as a means of settling the same.

13. Executive Order No. and the actions of the defendant herein taken or to be taken in pursuance thereof are without authority under any presently existing statute of, [fol. 875] or any provision of The Constitution of, the United States and are invalid, unlawful and without effect.

14. The actions of the defendant taken or to be taken in pursuance of said Executive Order have already affected, and will continue adversely and irreparably to affect, the business of the plaintiffs in that

(a) said seizure will result in the disruption of normal customer relationships between the plaintiffs and their customers, the great majority of whom have pending orders with the plaintiffs for steel and steel products usable and to be used in the civilian economy of the United States having no relation to any war effort of the United States;

(b) said seizure will give to the defendant access to confidential information and trade secrets in the files of the plaintiffs with regard to the business of

the plaintiffs and their many customers in the United States;

(c) said seizure, being unlawful, will deprive the plaintiffs of their properties without due process of law and the plaintiffs will have no adequate remedy at law;

(d) said seizure will deprive the plaintiffs of their rights to bargain collectively with their employees and will constitute an unlawful interference therewith, for which there is no adequate remedy at law; and

(e) said seizure will threaten the plaintiffs and their directors, officers, agents and employees with criminal penalties in relation to any action taken by them to resist said unlawful seizure.

[fol. 876] Wherefore, the plaintiffs pray:

(a) that this Court decree that Executive Order No. is without authority under any law of the United States or under The Constitution of the United States and is, therefore, invalid and void;

(b) that this Court decree that all action taken by the defendant pursuant to said Executive Order is invalid, unlawful and without effect;

(c) that this Court, pending final hearing and determination of this action, enter an order granting an interlocutory injunction restraining the defendant, and his successor or successors in office, his assistants, employees, agents and other persons acting under his control and authority, (i) from taking any steps whatsoever to effectuate and carry out the provisions of Executive Order No. promulgated by the President of the United States in so far as said Executive Order is intended to apply to the plaintiffs herein, their officers, agents and the managements of their properties, (ii) from molesting or interfering with or doing any act or thing which would prevent or tend to prevent the plaintiffs, their officers, agents and employees, from operating the plaintiffs' properties for their own account, (iii) from in any respect changing the wages or other terms or conditions of employment in effect at the properties of the plaintiffs at the time of promulgation of said Executive Order and (iv) from interfering in any other way with the

plaintiffs' contractual relations with others or with the plaintiffs' rights of ownership of their businesses and properties;

(d) that this Court, upon final hearing and determination [fol. 877] of this action, enter a decree permanently enjoining the defendant, and his successor or successors in office, his assistants, employees, agents and other persons acting under his control and authority, (i) from taking any steps whatsoever to effectuate and carry out the provisions of Executive Order No. promulgated by the President of the United States in so far as said Executive Order is intended to apply to the plaintiffs herein, their officers, agents and the managements of their properties, (ii) from molesting or interfering with or doing any act or thing which would prevent or tend to prevent the plaintiffs, their officers, agents and employees, from operating the plaintiffs' properties for their own account, (iii) from in any respect changing the wages or other terms or conditions of employment in effect at the properties of the plaintiffs at the time of promulgation of said Executive Order and (iv) from interfering in any other way with the plaintiffs' contractual relations with others or with the plaintiffs' rights or ownership of their businesses and properties; and

(e) that the plaintiffs have such other and further relief as to the Court may seem just and proper.

April 9, 1952.

Cravath, Swaine & Moore, by Bruce Bromley, a Member of said Firm, 15 Broad Street, New York 5, N. Y.; Wilmer & Broun, by E. Fontaine Broun, a Member of said Firm, 616-623 Transportation Bldg., Washington 6, D. C., Attorneys for the Plaintiffs.

[fols. 878-878a] *Duly sworn to by Arthur Hiltebrant. Jurat omitted in printing.*

[fol. 879] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT—Filed April 9, 1952

STATE OF NEW YORK,

County of New York, ss.:

R. E. McMATH, being duly sworn, deposes and says:

1. I am a Vice-President of each of the corporations which are named above as plaintiffs in this action, except The Dundalk Company, of which I am President.

2. This affidavit is made in support of the application of the plaintiffs for an interlocutory injunction restraining and enjoining the operation and enforcement of Executive Order , made by the President of the United States on April 9, 1952, which is the basis of this action, and the application of the plaintiffs for a temporary restraining order pending decision upon the aforesaid application. The statements hereinafter set forth are true to the best of my knowledge, information and belief.

3. The plaintiffs are engaged in the steel business or in [fol. 880] businesses ancillary to the steel business. Plaintiff Bethlehem Steel Company (Pa.) owns and operates steel plants or manufacturing plants at Bethlehem, Johnstown, Lebanon, Steelton and Williamsport, Pennsylvania, Sparrows Point, Maryland, and Lackawanna, New York, and fabricating works at Bethlehem, Johnstown, Leetsdale, Pottstown, Rankin and Steelton, Pennsylvania, and Buffalo, New York, and operates a limestone quarry at Bethlehem, Pennsylvania, which is owned by an affiliated company. Plaintiff Bethlehem Steel Company (Del.) owns and operates a fabricating works at Chicago, Illinois, and warehouses at Boston, Massachusetts, and Chicago, Illinois. Plaintiff Bethlehem Pacific Coast Steel Corporation owns and operates steel plants at South San Francisco and Vernon, California, and Seattle, Washington, and fabricating works at Alameda, Los Angeles and South San Francisco, California, and Seattle, Washington. Plaintiff Buf-

falo Tank Corporation owns and operates manufacturing units at Buffalo, New York, Charlotte, North Carolina, and Dunellen, New Jersey. Plaintiff Bethlehem Supply Company owns and operates manufacturing units at Corsicana, Texas, and Tulsa, Oklahoma. Plaintiff Bethlehem Supply Company of California operates properties at Los Angeles, California. Plaintiff Bethlehem Cornwall Corporation operates iron ore properties in Cornwall Borough, Pennsylvania, and an iron ore concentrating and sintering plant at Lebanon, Pennsylvania, which are owned by an affiliated company. Plaintiff Bethelehem Quarry Company operates quarries at Hanover, Naginey and Steelton, Pennsylvania, which are owned by an affiliated company. Plaintiff The Dundalk Company operates properties at Dundalk and Sparrows Point, Maryland, which are owned by an [fol. 881] affiliated company.

4. All of said plants, fabricating works, manufacturing units, warehouses, quarries and properties have been or are about to be seized under the provisions of the Executive Order aforesaid, and plaintiffs thereby have been or will be deprived of the possession, control, and use of said properties to the detriment of the plaintiffs.

5. I have caused an examination to be made of the relations between the plaintiffs and the Government of the United States in respect of the obligation and duties of the plaintiffs, whether arising by contract or otherwise, to furnish articles or materials to that Government. As a result of such examination I find that neither the President of the United States nor any person acting under his authority has placed under the provisions of Section 18 of the Selective Service Act of 1948, as amended (62 Stat. 604, 625, 50 U.S.C.A. App. § 468) any order for any articles or materials for the use of the Armed Forces of the United States or for the use of the Atomic Energy Commission.

6. Said seizure is predicated solely upon the situation arising out of a labor dispute between the plaintiffs and United Steelworkers of America (hereinafter called the Union), which represents substantially all the production and maintenance employees of the plaintiffs for purposes of collective bargaining in respect of rates of pay, wages, hours of employment and other conditions of employment. On December 22, 1951, the President of the United States

referred said dispute to the Wage Stabilization Board, an executive agency created by Executive Order 10233 (16 F.R. 3503). Extensive hearings were held, in which the [fol. 882] plaintiffs voluntarily participated, and on March 20, 1952, the Wage Stabilization Board submitted to the President of the United States its report and recommendations. Said recommendations include increases in wage rates of 12½ cents per hour as of January 1, 1952, 2½ cents per hour as of July 1, 1952, and 2½ cents per hour as of January 1, 1953, various so-called "fringe" benefits and the inclusion of a union-shop provision in the new collective bargaining agreements between the plaintiffs and the Union. The officials of the plaintiffs estimate that, if such recommendations shall be put into or continued in effect, the increases in wage rates and the "fringe" benefits recommended would increase the direct employment costs of the plaintiffs by about 30 cents per employee-hour and, based upon the experience of the plaintiffs in the past, would increase total costs by about 60 cents per employee-hour and would increase by $12 the total costs of each ton of steel products shipped. The plaintiffs, therefore, cannot afford to agree to such recommendations.

7. I am advised by counsel for the plaintiffs that said recommendations of the Wage Stabilization Board are not of any legal effect and cannot in any way be construed as binding upon the plaintiffs. Nevertheless, because of the failure of the plaintiffs to agree to accept such recommendations without compensating price increases, the President of the United States has now seized or is about to seize the plants and other facilities and properties used by the plaintiffs in the operation of their businesses and threatens, over the protests of the plaintiffs, to put such recommendations into effect and continue them in effect [fol. 883] and thereby yield to the Union increases in wage rates and other benefits which the plaintiffs refused to grant even in the face of a strike. The plaintiffs are thereby threatened with irreparable injury.

8. If said recommendations shall be put into or continued in effect, irreparable injury will result and continue to result even after their properties shall have been returned to them. That is clear, because as a practical matter it would be impossible for the plaintiffs, upon the return of

their properties to them, to recede from the increased wage rates and other "fringe" benefits and to cancel the union-shop provisions which will be put into effect by the acceptance of said recommendations. It is idle to argue otherwise, and the plaintiffs will be saddled with wage rates and employment conditions from which they will be unable to retreat and which they have found it impossible to grant. Moreover, they will also be saddled with the union shop which is not only unnecessary, but, as the plaintiffs believe, undemocratic. Such injury will be directly attributable to the action of the Government against which the plaintiffs will not have any adequate legal recourse.

9. The carrying into effect of said Executive Order is closely comparable to the action which the Government took in the bituminous coal industry in 1946, of which I have personal knowledge as a Vice-President of a coal-mining corporation whose properties the Government seized. By Executive Order No. 9728 (11 F. R. 5593) President Truman seized the coal mines on May 21, 1946, under the provisions of the War Labor Disputes Act (57 Stat. [fol. 884] 163), and seven days later the Secretary of the Interior made an agreement with the United Mine Workers (the so-called Krug-Lewis Agreement) which the owners of the seized mines were forced to assume as a condition to the return of their properties to them.

10. The seizure of the properties of the plaintiffs will cause the plaintiffs irreparable injury in many other respects, of which the following are examples:

(a) The steel industry is a highly competitive business and the plaintiffs have many trade secrets and methods of doing business which are confidential and which the plaintiffs would not under any circumstances be willing to have revealed to their competitors. The agents of the Government in control of the properties of the plaintiffs will have access to such secrets and methods and there is grave danger that they may be revealed to the competitors of the plaintiffs and to others who will not have any right to information regarding them.

(b) The plaintiffs over the years have built up substantial relationships with their customers and during the current national defense effort have done their best

to maintain such relationships in a way consistent with the requirements of the national defense effort. During any period of Government seizure, the business of the plaintiffs will be subject to the control of Government agents who will not have any particular reason for protecting such relationships and there is grave danger that such relationships will be impaired to the irreparable detriment of the plaintiffs.

[fols. 885-900] (c) The business of the plaintiffs is highly integrated and requires the constant attendance of persons who are thoroughly experienced in the operation of the business. During any period of Government control, the operation of the business will be subject to the orders of Government agents, many of whom, doubtless, will not have any experience whatsoever in the operation of steel plants and related facilities. There is grave danger that the seized plants and other facilities of the plaintiffs will be irreparably harmed by the orders of such agents.

11. A previous application has not been made for the relief herein requested or for similar relief.

R. E. McMath.

Subscribed and sworn to before me this 9th day of April, 1952. Joseph W. Marlow, Notary Public.

[fol. 901] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR A TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE—Filed April 9, 1952

Now come the plaintiffs by their counsel and respectfully move this Honorable Court, pursuant to Rule 65(a) and (b) of the Federal Rules of Civil Procedure, for a temporary restraining order and order to show cause, based upon the annexed complaint, verified on April 9, 1952, and upon the

annexed affidavit of R. E. McMath, sworn to on April 9, [fol. 902] 1952, and the facts therein set forth, and upon the statement of points and authorities submitted herewith.

April 9, 1952.

Cravath, Swaine & Moore, by Bruce Bromley, a Member of Said Firm, 15 Broad Street, New York 5, N. Y.; Wilmer & Broun, by E. Fontaine Broun, a Member of Said Firm, 616-623 Transportation Bldg., Washington 6, D. C., Attorneys for the Plaintiffs.

Proof of service (omitted in printing).

[fols. 903-904] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER—Filed April 10, 1952

This cause came on to be heard on April 9, 1952, and the Court after hearing the arguments of counsel for the parties and being of the opinion that plaintiff's application for a temporary restraining order should be denied, it is hereby

Ordered that plaintiff's application for a temporary restraining order be, and the same hereby is, denied.

Alexander Holtzoff, United States District Judge.

Dated this, the 10th day of April, 1952.

[fol. 905] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR PRELIMINARY INJUNCTION—Filed April 18, 1952

Now come the plaintiffs by their counsel, and upon the affidavit of R. E. McMath, sworn to on April 9, 1952, and

the verified complaint, each filed herein, and the facts set forth in each thereof, and upon the statement of points and authorities submitted herewith, respectfully apply to this Honorable Court, pursuant to Rule 65 of the Federal Rules of Civil Procedure, for a preliminary injunction, enjoining and restraining the defendant herein, and his successor or successors in office, his officers, agents, assistants, servants, employees, and attorneys, and other persons acting under his control or authority, and those persons in active concert or participation with any of them, (i) from taking any steps whatsoever to effectuate and carry out the provisions of Executive Order No. 10340 promulgated by the President of the United States in so far as said Executive Order is intended to apply to the plaintiffs herein, their officers, agents and the managements of their properties, (ii) from molesting or interfering with or doing any act or [fols. 906-908] thing which would prevent or tend to prevent the plaintiffs, their officers, agents and employees, from operating the plaintiffs' properties for their own account, (iii) from in any respect changing the rates of pay or other terms or conditions of employment of employees of the plaintiffs in effect at the properties of the plaintiffs at the time of the promulgation by the President of the United States on April 8, 1952, of said Executive Order and (iv) from interfering in any other way with the plaintiffs' contractual relations with others or with the plaintiffs' rights of ownership of their businesses and properties.

April 18, 1952.

Cravath, Swaine & Moore, by Bruce Bromley, a Member of said Firm, 15 Broad Street, New York 5, N. Y.; Wilmer & Broun, by E. Fontaine Broun, a Member of said Firm, 616-623 Transportation Bldg., Washington 6, D. C., Attorneys for the Plaintiffs.

[fol. 909] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT—Filed April 23, 1952

DISTRICT OF COLUMBIA, ss:

Bruce Bromley, being duly sworn, deposes and says:

1. I am a counsel for each of the corporations named as the plaintiffs in this action.

2. This affidavit is made by me in support of the motion of the plaintiffs for a preliminary injunction filed herein on April 18, 1952. The statements hereinafter set forth are true to the best of my knowledge, information and belief.

3. On April 9, 1952, R. E. McMath executed an affidavit in support of an application of the plaintiffs for a temporary restraining order in respect of the operation and enforcement of Executive Order No. 10340. That affidavit was filed with this Court on April 9, 1952, and reference is hereby respectfully made, in the interest of brevity, to the statements sworn to in that affidavit as if set forth in full herein as a part of this affidavit.

4. I am advised that the defendant threatens to enter into a contract with the United Steel Workers of America or issue an order by which rates of pay and other terms and [fol. 910] conditions of employment of employees in effect at the properties of the plaintiffs at the time of promulgation by the President of the United States of said Executive Order are to be changed to conform with certain of the various recommendations made by the Wage Stabilization Board, which recommendations are not in any way otherwise binding upon the plaintiffs.

5. My information with regard to such threatened changes in rates of pay and other terms or conditions of employment of said employees is the same as that which is set forth in detail in an affidavit in the Civil Action now pending in this Court, *United States Steel Company* v. *Sawyer*, No. 1625-52, sworn to on April 23, 1952, of John A. Stephens, Vice President—Industrial Relations, United States Steel Company,

who was Chairman of a committee authorized by numerous steel companies, including Bethlehem Steel Company, to coordinate and expedite presentations on their behalf before a special panel of the Wage Stabilization Board and later Chairman of a committee representing Bethlehem Steel Company, among others, in negotiations with United Steel Workers of America. Reference is hereby respectfully made in the interest of brevity to the statements with respect to such threatened changes which are made in said affidavit and which are hereby incorporated by reference herein as if fully set forth herein as a part of this affidavit.

6. Action of the defendant in putting into effect the recommendations of the Wage Stabilization Board would immediately and immeasurably increase the cost of manufacturing the steel products which are produced at the properties of the plaintiffs. Such recommendations include a recommendation that, retroactive to January 1, 1952, a general increase of 12½¢ per hour be made effective in the rates of pay of employees at the properties of the plaintiffs. It is estimated that the direct cost of such increase to the plaintiffs would me 13.9¢ per employee hour. In addition, should the defendant direct the putting into effect at said [fol. 911] properties of certain fringe benefits, including paid holidays, increased vacation benefits and increased shift differentials, the estimated direct cost thereof would be 5.7¢ per employee hour. Thus, the action of the defendant could result in an immediate direct increase in employment costs of nearly 20¢ per employee hour. Furthermore, based upon the experience of the plaintiffs in the past, a general wage increase in the steel industry is usually followed by corresponding wage increases in other industries, including those which furnish materials, supplies and services to the steel industry. Consequently it is estimated that the plaintiffs will incur substantial increases in costs in addition to the estimated direct cost of giving effect to the recommendations of the Wage Stabilization Board. The Government has not, however, allowed any compensating increases in the prices of the steel products that are manufactured at the plants of the plaintiffs and which are subject to price controls imposed by the Government under the provisions of the Defense Production Act of 1950, as amended. The Director of the Office of Price Stabilization,

which is charged with the administration of such controls, stated on April 2, 1952, that the plaintiffs are entitled only to a price increase of between $2 and $3 per ton under the provisions of the so-called Capehart amendment to the Defense Production Act (50 U. S. C. A. App. § 2102 (d) (4)) and that the application of pricing standards employed by the Office of Price Stabilization would not result in any increase in the price of the steel products manufactured by the plaintiffs in addition to that which is allowable, and to which the plaintiffs are entitled, under the so-called Capehart amendment, and he reiterated that position on April 16, 1952. During the calendar year 1951 the plaintiffs shipped 12,138,732 net tons of rolled steel and other finished products and produced 16,405,677 net tons of steel ingots [fol. 912] and castings. It is probable that the amount of such shipments and production will be increased during the current year. Moreover, the recommendations of the Wage Stabilization Board provide for further increases in wage rates of 2½¢ per hour effective July 1, 1952, and January 1, 1953. It is thus apparent that the putting into effect of recommendations of the Wage Stabilization Board by the defendant would result in a real and immeasurable increase of many millions of dollars in the cost of producing and shipping the products of the plaintiffs with respect to which the Office of Price Stabilization has refused to allow price increases which would permit the plaintiffs to recoup such increased costs.

7. If the Court shall ultimately determine in this action, as I feel it must, that the defendant is without authority to seize the properties of the plaintiffs and, consequently, without authority to put into effect the recommendations of the Wage Stabilization Board, the plaintiffs are threatened with irreparable injury because it is obvious that defendant as an individual would not be financially able to pay judgments to cover the increased costs of the plaintiffs with respect to which they would not be allowed any compensating price increases. In any event, plaintiffs do not have any assurance that they will recover full and adequate compensation in that regard from the United States and they will be forced to resort to innumerable actions at law over an indefinite period of time to assert whatever legal rights they may have to recover such compensation.

8. As a practical matter it will be impossible for the plaintiffs, when their properties shall be returned to them, to recede from the increased wage scale and other "fringe" benefits and any other terms and conditions of employment which the defendant threatens to order them to put into effect.

9. The taking by the defendant of any action changing [fol. 913] rates of pay or other terms or conditions of employment of the employees of the plaintiffs in effect at their properties at the time of the promulgation by the President of the United States of said Executive Order will interfere with and destroy the right of the plaintiffs to bargain collectively with their employees and the bargaining position of the plaintiffs in connection therewith and thus irreparably damage the plaintiffs. In that regard, reference is hereby respectfully made, in the interest of brevity, to the statements with respect to the interference with, and destruction of, the right to bargain collectively, and the bargaining position in connection therewith, of United States Steel Company resulting from any such change, which statements are made in the above-mentioned affidavit of said John A. Stephens. The results of any such change with respect to the plaintiffs herein would be the same in substance as is alleged in those statements to be applicable with respect to United States Steel Company.

10. The plaintiffs will for each and all of the reasons stated above suffer irreparable injury with respect to which they will not have any adequate legal recourse. Among other things, in addition to the extreme difficulty, if not impossibility, of determining the extent of damages in money value as a result of changes in the rates of pay or other terms and conditions of employment of their employees in effect at their properties at the time of the promulgation by the President of the United States of said Executive Order, the changing of such rates of pay and other terms and conditions of employment would have a permanent effect, which once made could not be eliminated, upon the wage structure and other terms and conditions of employment applicable at such properties and the bargaining rights of the plaintiffs.

11. No previous application for a preliminary injunction [fols. 914-946] covering the relief sought herein has here-

tofore been made, although an application for a temporary restraining order was heard and denied by this Court on April 9, 1952.

Bruce Bromley.

Subscribed and sworn to before me this 23rd day of April, 1952. Louise Norris, Notary Public, D. C. My Commission Expires Dec. 14, 1955. (Seal.)

[fol. 940] Defendants opposition to Plaintiffs motion for preliminary injunction (omitted in printing).

[fol. 827] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

Civil Action No. 1581-'52

JONES & LAUGHLIN STEEL CORPORATION, a Pennsylvania Corporation with Principal Offices in Jones & Laughlin Building, Pittsburgh, Pennsylvania, Plaintiff

vs.

CHARLES SAWYER, Westchester Apartments, Washington, D. C., Defendant

ACTION FOR INJUNCTION, DECLARATORY JUDGMENT AND OTHER RELIEF

COMPLAINT—Filed April 9, 1952

For its complaint in this civil action the Plaintiff avers:

First: Plaintiff is a corporation duly organized and existing under the laws of Pennsylvania. Its principal offices are situate in the Jones & Laughlin Building, corner of 3rd Avenue and Ross Street, Pittsburgh, Pennsylvania.

Second: Defendant is a resident of the Westchester Apartments, in Washington, District of Columbia. He holds the office of Secretary of Commerce, of the United States.

Third: This is a civil action arising under the Constitution and the laws of the United States and between citizens of different States, in which the amount actually in

controversy, exclusive of interest and costs, is greatly in excess of the sum or value of Three Thousand Dollars.

Fourth: Plaintiff's principal business is that of manufacturing steel and a variety of steel products. In the pursuit of that business it now owns and operates, and it has for many years owned and operated, large basic steel works located at Pittsburgh and Aliquippa, Pennsylvania, and Cleveland, Ohio, and other, smaller manufacturing plants, warehouses, and other related facilities and prop- [fol. 828] erties. The Plaintiff's properties aforesaid have an aggregate value of many millions of dollars.

Fifth: At all times since the end of the year 1951 the Plaintiff has been, and it still is, engaged in a controversy with the United Steelworkers of America, an unincorporated labor union (sometimes hereinafter referred to as the "Union") which has for years been legally qualified as the representative, among others, of the production and maintenance employees employed in Plaintiff's basic steel works and in many of Plaintiff's other manufacturing plants and related facilities and properties.

Sixth: Said controversy between Plaintiff and the Union has resulted principally from demands, made by the Union and not wholly agreed to by Plaintiff, that the wages of Plaintiff's said employees should be greatly increased as of January 1, 1952; demands made by the Union and rejected by the Plaintiff, that Plaintiff agree to establish and maintain a "Union Shop", and thereby to require that all of its eligible employees be members of the Union; and demands made by the Union and rejected by the Plaintiff that Plaintiff agree to substantial restrictions upon its past rights to control and direct the work of its employees, and to control and direct the normal operations of its steel works and other operations.

Seventh: On or about March 20, 1952, the Wage Stabilization Board, having previously consodered the matter as one certified to it by the President under Executive Order No. 10233, published certain written recommendations, formulated and joined in by certain of its members, by which said Board recommended that Plaintiff should agree with the Union to grant large wage increases as of January 1, 1952, to establish a "Union Shop" in all of its steel works and other properties aforesaid, and to accede

to some or all of the proposed restrictions of its past rights to control and direct the work of its employees and the conduct of its operations.

[fol. 829] *Eighth:* Said recommendations of the Wage Stabilization Board are by law advisory only, and can have no binding force. Nevertheless, the Union, to whose interests the recommendations are almost wholly favorable, has since insisted that Plaintiff must accept them without qualification; and the President of the United States has, in public statements made on and prior to April 8, 1952, declared the belief that Plaintiff and other steel manufacturers should accept them as a means of terminating its said controversy with the Union.

Ninth: Plaintiff has nevertheless refused and still refuses to accept said recommendations, except with certain important qualifications, because it cannot, with proper regard for its own future and for the interests of its stockholders, afford either to pay the large wage increases recommended by the Wage Stabilization Board or to surrender its rights of management as recommended by said Board; and because it cannot, with proper regard for its own convictions concerning principles of Government, agree to the recommendation of a "Union Shop".

Tenth: As a result of Plaintiff's aforesaid refusal to accept said recommendations of the Wage Stabilization Board, without qualification, the Union called a strike in all of Plaintiff's basic steel works aforesaid and many of Plaintiff's other manufacturing and related plants and facilities, as of 12:01 A.M. on April 9, 1952. As a result Plaintiff's basic steel works and said other manufacturing and related plants and facilities ceased their normal operations, largely or wholly, at or about that time.

Eleventh: On April 8, 1952 the President of the United States published Executive Order No. 10340, of which a copy is attached hereto marked "Exhibit A", and made a part hereof. By said Executive Order, the President directed the Defendant, as Secretary of Commerce, to take possession of the steel plants and other property of a number of steel manufacturing corporations, to operate and manage them at his discretion, to "determine and prescribe the terms and conditions of employment under which" such plants shall be operated; and to return pos-

session of them to their owners when (and only when) he shall judge it to be expedient in the national interest.

[fol. 830] *Twelfth:* On April 8, 1952, the Defendant accepted the powers and directions given him by said Executive Order and issued a written "Order No. 1" of which a copy is attached hereto, marked "Exhibit B" and made a part hereof, by which he assumed, and declared his intention to exercise, all of the powers purportedly conferred upon him by said Executive Order.

Thirteenth: On April 9, 1952, the Defendant signed and caused to be delivered to Plaintiff's President, a telegram of which a copy is attached hereto, marked "Exhibit C", and made a part hereof, by which Defendant declared his purpose forthwith to take possession, under said Executive Order, of all of Plaintiff's business offices, basic steel works and other manufacturing plants, and to operate and manage them in the manner contemplated by said Executive Order and by Defendant's "Order No. 1".

Fourteenth: Plaintiff is advised by its counsel and believes and therefore avers that Defendant has and can have no legal right or warrant, in all the premises, to seize or take possession of the Plaintiff's offices, steelworks and other properties aforesaid, or of any of the Plaintiff's property, and that the authority purportedly or pretendedly conferred upon or vested in the Defendant by the aforesaid Executive Order is without validity under the law for the following reasons, to-wit:

1. That, at the time said Executive Order (Exhibit A hereto attached) was made, the President of the United States did not have and he does not now have, under the Constitution of the United States or any statute of the United States, any legal authority to seize or take possession of any property of the Plaintiff, in the manner contemplated by said Executive Order, or to cause or authorize any such property to be seized or taken into possession by the Defendant or any other individual, as an officer or agent of the United States or otherwise;

2. That Defendant has no authority, either by virtue of the Executive Order aforesaid or by virtue of the Constitution or any statute or law of the United

States, to seize or take possession of any of the prop-
[fol. 831] erty of the Plaintiff, or to cause or authorize any such seizure or taking into possession by any other individual, as an officer or agent of the United States or otherwise; and

3. That, as results, the seizure or attempted seizure of the Plaintiff's property, intended by the aforesaid Executive Order, is or would be an act of trespass for which Defendant and his agent or agents have and can have no legal warrant, which is or would be in violation of the rights of the Plaintiff to the continued and peaceable possession and enjoyment of its property and business, which would deprive the Plaintiff of its property without due process of law in violation of the Fifth Amendment to the Constitution and which would constitute an unreasonable seizure of such property under the Fourth Amendment to the Constitution.

Fifteenth: Nevertheless, Plaintiff is advised and fears that, unless its rights to the continued and peaceable possession and enjoyment of its property and business be protected by this Court, the Defendant or others acting in concert with the Defendant and under his directions, will enforce or attempt to enforce the seizure of the Plaintiff's offices, steelworks and other manufacturing plants and properties as aforesaid by force of arms, and will thereupon exclude the Plaintiff's officers and employees from their regular and customary management, control and use of the offices and properties aforesaid and from the regular and customary discharge of their duties as agents and employees of Plaintiff, and will proceed to possess, operate, control and manage Plaintiff's offices, steelworks, plants and business aforesaid, against the will of the Plaintiff.

Sixteenth: The said conduct of the Defendant, or others acting in concert with the Defendant and under his directions, will result in immediate and irreparable injury, loss and damage to the Plaintiff even before notice of this proceeding can be served and hearing had thereon, in that Plaintiff will be unlawfully ousted of the possession and control of its aforesaid property and deprived of the use

[fol. 832] thereof, and (as Plaintiff is advised and fears) in that the Defendant, or others operating in concert with the Defendant or under the Defendant's directions, will operate or attempt to operate Plaintiff's business in a manner which will result in serious and costly damage to its plants, equipment, contract rights and business, and which will prevent Plaintiff from pursuing its business in a manner necessary to secure the safe, efficient and economical conduct thereof.

Seventeenth: Plaintiff fears also that, unless he be forbidden from so doing by order of this Court, the Defendant will, pursuant to the authority purportedly conferred upon him by said Executive Order "to determine and prescribe terms and conditions of employment" (and in accordance with the declarations of the President of the United States described in paragraph Eighth of this Complaint) enter into a new contract or purported contract with the Union which will put into effect the aforesaid recommendations of the Wage Stabilization Board, and having done so will waste and destroy Plaintiff's steel works and other properties and resources in efforts to operate said steel works and Plaintiff's other manufacturing and related plants and properties under such a new contract, and will continue to withhold possession of said steel works and other properties and refuse to return them to the Plaintiff unless and until he shall be assured that Plaintiff's subsequent operations of such steel works and properties shall be conducted under or in accord with the terms of such new contract.

Eighteenth: Plaintiff has no adequate remedy at law.

Wherefore, Plaintiff respectfully prays that your honorable Court shall grant it relief by making Orders and Decrees as follows:

1. A Decree awarding a temporary restraining order and a Decree of Injunction, preliminary until final hearing and thenceforth perpetual, enjoining and forbidding the Defendant, or any other person acting in concert with or under the direction of the Defendant, from seizing or taking possession or making or continuing any effort to seize or take possession of the Plaintiff's business offices or of the Plaintiff's steel works and manufacturing properties, or of any other

[fol. 833] property of the Plaintiff, or in any other manner interfering with the continued and peaceable possession, control and enjoyment by the Plaintiff, or its officers, agents and employees, of any of the Plaintiff's properties, and of the Plaintiff's business.

2. A Declaratory Judgment, determining the nature and extent of plaintiff's rights to the continued possession of its business offices and records, and of its steel works and other properties, and the nature and extent of its obligations and those of its officers to it and to the Defendant, under all of the premises aforesaid.

3. Such other and further relief as the exigencies of the case may require, and as your honorable Court shall deem meet and just under the law.

Sturgis Warner, Jones, Day, Cockley & Reavis, 1135 Tower Building, Washington 5, D. C.; H. Parker Sharp, Jones & Laughlin Building, Pittsburgh, Pennsylvania; John C. Bane, Jr., Walter T. McGough, Reed, Smith, Shaw & McClay, 747 Union Trust Building, Pittsburgh, Pennsylvania.

[fol. 856] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF WILLIAM R. ELLIOT IN SUPPORT OF APPLICATION FOR TEMPORARY RESTRAINING ORDER AND FOR PRELIMINARY INJUNCTION—Filed April 24, 1952

DISTRICT OF COLUMBIA, ss:

William R. Elliot, being duly sworn according to law, deposes and says:

1. I am Vice President in charge of Employee and Public Relations of the plaintiff Jones & Laughlin Steel Corporation.

2. Affiant makes this affidavit to support the application of plaintiff for a temporary restraining order and/or preliminary injunction against the defendant.

3. The defendant, having seized and now holding the steel plants and properties of the plaintiff against its will, has in effect threatened, declared, announced and asserted that in the immediate future he will order and direct an increase in the wage rates of the employees of plaintiff's business.

4. Affiant believes (based on statements made by Ellis Arnall, Administrator, Office of Price Stabilization) that such wage increase will not be accompanied by authorization for a price increase for the products manufactured by the plaintiff, which price increase will reflect such increased wage rates, and that unless the defendant is restrained and [fol. 857] enjoined immediately, he will put such increased wage rates into effect and will compel plaintiff to pay the same out of its funds.

5. The wage rate increases involved in the foregoing will cost the plaintiff annually large sums of money believed to be in the millions of dollars and payment thereof by the plaintiff under the coercion and force of the defendant without an adequate corresponding price increase will dissipate a substantial portion of the assets of the plaintiff which cannot properly be absorbed under the present circumstances, nor can the cost thereof be justified according to sound business methods and considerations, and it will be impossible to recover from their employees said sums so paid.

6. Plaintiff and this affiant believe that such funds so disbursed and dissipated could not be recovered from the defendant himself because the sum is so great that he lacks sufficient wealth with which to pay a judgment therefor.

7. Prior to January 1, 1952, negotiations in the nature of collective bargaining were conducted between plaintiff on the one hand, and the United Steelworkers of America (C. I. O.), representing employees of plaintiff, on the other, regarding wages, hours and working conditions of said employees beginning January 1, 1952.

8. The negotiations referred to in Paragraph 7 related to the demands of the Union for increased wages and certain so-called "fringe" benefits, such as vacation and holiday pay, and for a union shop and for a number of other items, such, for example, as management rights, incentives, local

working conditions, Saturday and Sunday premium pay, seniority and duration of contract.

9. The parties have been unable to reach an agreement regarding the matters referred to in Paragraph 8.

10. Any increase in wages ordered by the defendant would satisfy all or a portion of the aforesaid demand of the said Union but will impair and destroy the lawful, proper [fols. 858-868] and effective bargaining position of the plaintiff with said Union, in that the plaintiff's employees will have secured an increase in wages without at the same time abandoning or modifying any of their demands, and without disturbing or impairing the Union's bargaining position for greater increases, for a union shop, and for the other items aforesaid.

11. The damage which plaintiff is about to suffer and sustain in connection with the foregoing is not capable of being compensated for in money and is otherwise irreparable; in addition to the foregoing, and based upon previous conduct of the Government in relation to the coal industry, affiant believes that defendant will require plaintiff, as a condition for the return of its seized properties, to adopt, accept and subscribe to such wage increases and/or working conditions, and affiant adds that, whether or not such condition is imposed, it will be impossible as a practical matter to return to the wage rates which existed prior to such increases.

12. By reason of the foregoing, immediate and irreparable injury, loss and damage will result to the plaintiff for which it has no adequate remedy except by temporary restraining order immediately issued.

William R. Elliot.

Subscribed and sworn to before me this 23rd day of April, 1952. Kathleen M. Ryan, Notary Public, D. C. My Commission Expires June 15, 1956. (Seal.)

[fol. 868a] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR PRELIMINARY INJUNCTION

Now comes the plaintiff Jones & Laughlin Steel Corporation and respectfully moves the Court, upon the grounds set forth in its Complaint in this case, for an order granting a preliminary injunction enjoining and forbidding the defendant Charles Sawyer or any other person acting in concert with or under the direction of the defendant, until the final hearing of this action and until the further order of this Court, from seizing or taking possession, or making or continuing any effort to seize or take possession, of the plaintiff's business offices or of the plaintiff's steelworks and manufacturing properties, or of any other property of the plaintiff, or in any other manner interfering with the continued and peaceable possession, control and enjoyment by the plaintiff, its officers, agents and employees, of any of the plaintiff's properties and of the plaintiff's business.

(S.) Sturgis Warner, Jones, Day, Cockley & Reavis, 1135 Tower Building, Washington 5, D. C. H. Parker Sharp, Jones & Laughlin Building, Pittsburgh, Pennsylvania. John C. Bane, Jr., Walter T. McGough, Reed, Smith, Shaw & McClay, 747 Union Trust Building, Pittsburgh, Pennsylvania.

[fol. 859] Defendant's Opposition to Plaintiff's Motion for Preliminary Injunction (omitted in printing).

[fol. 950] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

Civil No. 1700-52

ARMCO STEEL CORPORATION, 703 Curtis Street, Middletown, Ohio and Sheffield Steel Corporation, Sheffield Station, Kansas City, Missouri, Plaintiffs,

against

CHARLES SAWYER, Individually and as Secretary of Commerce of the United States of America, Defendant

COMPLAINT FOR DECLARATORY JUDGMENT, PERMANENT INJUNCTION AND OTHER RELIEF—Filed April 17, 1952

Armco Steel Corporation and Sheffield Steel Corporation, by their attorneys, Breed, Abbott & Morgan, for their complaint herein allege:

1. This is an action for a declaratory judgment, for a permanent injunction and for other relief pursuant, among other things, to the provisions of the Act of June 25, 1948, c. 646, 62 Stat. 944, 964, as amended by the Act of May 24, 1949, c. 139, Secs. 90, 111, 63 Stat. 102, 105 (28 U. S. C. A., Secs. 1651, 2201 and 2202).

2. Plaintiffs are corporations organized and existing under and by virtue of the laws of the State of Ohio.

They are engaged in the production and sale in interstate commerce of steel products and own and operate steel producing plants in several of the States of the United States, employing many thousands of persons in such operation and having an investment of many million dollars in such [fol. 951] plants and steel producing facilities. The great majority of plaintiffs' customers have pending orders with plaintiffs for steel products usable and to be used in the civilian economy of the United States having no relation to the defense effort of the United States.

3. The defendant, Charles Sawyer, is Secretary of Commerce of the United States, and is a resident of the District of Columbia.

4. This action involves questions arising under the Constitution and laws of the United States. The matter in

controversy exceeds, exclusive of interest and costs, the sum of $3,000. There exists between the parties herein an actual justiciable controversy in respect of which plaintiffs require declaration of their rights by this Court.

5. On April 9, 1952, plaintiffs received from defendant a telegram and on April 11, 1952, an order designated Order No. 1 and dated April 8, 1952, by which telegram and order defendant purported to seize and take, and seized and took possession unlawfully of all real and personal properties of plaintiffs, except railroads and coal and metal mines. The telegram and order, which are annexed hereto as Exhibits A and B, respectively, purport to have been issued by defendant pursuant to authority vested in defendant by Executive Order No. 10340 issued by the President of the United States on April 8, 1952. Such Executive Order is annexed hereto as Exhibit C.

6. Prior to April 9, 1952, plaintiffs had enjoyed peaceful possession and the exclusive operation of such properties, all of which are owned by them, and had operated the same in all respects consistent with applicable laws of the United [fol. 952] States and of the various states of the United States having jurisdiction thereof.

7. The steel plants operated by plaintiff Armco Steel Corporation are the Middletown, Ohio, Plant; the Ashland Kentucky, Plant; the Butler, Pennsylvania, Plant; the Zanesville, Ohio, Plant; the Hamilton Plant, New Miami, Ohio; the Piqua Plant, Piqua, Ohio, and the Rustless Plant at Baltimore, Maryland. The steel plants operated by plaintiff Sheffield Steel Corporation are the Kansas City, Missouri, Plant; the Houston, Texas, Plant; and the Sand Springs, Oklahoma, Plant.

8. At all of the steel plants operated by plaintiff Sheffield Steel Corporation and at the steel plants operated by plaintiff Armco Steel Corporation at Ashland, Kentucky, and at Baltimore, Maryland, the United Steelworkers of America (hereinafter called the Union) represents certain employees for collective bargaining purposes.

9. On April 10, 1952, plaintiff Armco Steel Corporation received from defendant a telegram modifying his said Order No. 1 and his said telegram dated April 9, 1952, to exclude from plants, facilities and other properties of plain-

tiff Armco Steel Corporation, possession of which had been taken by defendant as aforesaid, all plants, facilities and properties other than those at Ashland, Kentucky and Baltimore, Maryland.

10. Since on or about November 27, 1951, plaintiffs have been engaged in good faith in collective bargaining negotiations with the Union concerning wages and other conditions of employment. On December 22, 1951, the President of the United States referred the matter to the Wage [fol. 953] Stabilization Board for consideration and recommendation. Plaintiffs did not agree to be bound by or to accept any recommendations by the Wage Stabilization Board. On December 31, 1951, the labor agreements which had theretofore been in effect between plaintiffs and the Union at the plants at which the Union represents certain employees expired. On March 20, 1952, the Wage Stabilization Board made certain recommendations with respect to the employment conditions under negotiation. Plaintiffs have not accepted the recommendations of the Wage Stabilization Board. A strike of the employees of plaintiffs at such plants and of the employees of most other producers of steel products was called by the Union for 12:01 a.m., April 9, 1952.

11. On April 8, 1952, the President of the United States issued said Executive Order No. 10340 purporting to authorize and direct defendant to take possession of all or such of the plants, facilities and other property, or any part thereof, of listed companies, including plaintiffs, as he may deem necessary in the interest of national defense; and to operate or to arrange for the operation thereof and to do all things necessary for, or incidental to, such operation. The Executive Order recites the fact that a strike had been called, states that the Executive Order is issued to assure the continued availability of steel and steel products, and directs defendant, among other things, to determine and prescribe terms and conditions of employment under which the plants, facilities, and other properties, possession of which is taken pursuant to that Order, shall be operated.

[fol. 954] 12. Defendant's Order No. 1, as modified by defendant's telegram received on April 10, 1952, provides, among other things, that plaintiffs' plants, facilities and

other real and personal properties seized and retained by defendant are to be operated in accordance with such regulations and orders as are promulgated by defendant and recites that the management, officers and employees of plaintiffs' plants are serving the Government of the United States.

13. The Labor Management Relations Act of 1947 (29 U.S.C.A. App. § 141) provides specific, adequate and appropriate machinery for dealing with threatened or actual strikes which affect an entire industry or a substantial part thereof and which in the opinion of the President imperil the national health or safety. In the course of its deliberations on this Act, Congress considered and specifically rejected the device of seizure as a means of dealing with such a strike. The President has not invoked the provisions of this Act in connection with the labor dispute between plaintiffs and the Union, and has publicly disclaimed any purpose to invoke it or any part of it.

14. Plaintiffs have received no orders for materials placed pursuant to the provisions of the Universal Military Training and Service Act (50 U.S.C.A. App., Sec. 468); and the President has made no determination pursuant to the Defense Production Act (50 U.S.C.A. App., Sec. 2081) with respect to any property of plaintiffs nor has he taken any action to acquire any such property in accordance therewith. [fol. 955] 15. Executive Order No. 10340 and the actions of defendant taken or to be taken in pursuance thereof are unlawful, void and without effect in that:

(a) They are without authority or support under any statute of the United States, and specifically are outside of, inconsistent with and violative of the authority and procedures provided under the Labor Management Relations Act of 1947, the Universal Military Training and Service Act, and the Defense Production Act of 1950, as amended.

(b) They are without authority under any provision of, and violative of, the Constitution of the United States and specifically are beyond, and violative of, the powers and duties conferred upon the President by Article II of the Constitution. They constitute a usurpation of naked power by the President and the

defendant, and a usurpation by them of the powers placed by the Constitution exclusively in the Congress of the United States.

(c) They are unconstitutional in that they deprive the plaintiffs of liberty, occupation and property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

(d) They are unconstitutional in that they constitute an unlawful and tortious taking and withholding from the plaintiffs of their private property, and an unlawful use thereof, without just compensation in violation of the Fifth Amendment to the Constitution of the United States.

[fol. 956] (e) They are unconstitutional in that they constitute an unreasonable and wrongful seizure of the property, papers and effects of plaintiffs and a denial and disparagement of the rights of plaintiffs in violation of the Fourth and Ninth Amendments to the Constitution of the United States.

(f) They are unconstitutional in that they violate and invade the powers vested exclusively in the Congress under Section 1 and under Section 8, of Article I, and Section 3 of Article IV, of the Constitution of the United States.

(g) They are unconstitutional in that they violate and invade the rights reserved to the States or to the people under the Tenth Amendment to the Constitution of the United States.

16. Defendant's unlawful seizure of, and wrongful and continuing trespass upon, plaintiff's properties have been effected tortiously and without the consent of plaintiffs and over their protests and constitute a cloud on plaintiff's properties and their titles thereto. Plaintiffs are without any means, save by this suit, to protect and to assert their rights in their properties.

17. The actions of defendant taken or to be taken pursuant to Executive Order No. 10340 substantially and irreparably injure plaintiffs and will continue to do so, in the respects, among others, hereinafter set forth. For such

injuries plaintiffs have no adequate and effective remedy at law.

(a) Said unlawful seizure and wrongful continuing trespass by defendant unlawfully deprive plaintiffs of [fol. 957] their right to bargain collectively with their employees. Under defendant's Order No. 1 plaintiffs' managements are directed to act, in their relations with their employees, in accordance with the instructions of defendant. This unlawful interference with, and denial of, plaintiffs' rights freely to bargain collectively, imposed at a critical stage of plaintiffs' negotiations with the Union, does and will unlawfully and irreparably alter, to plaintiffs' injury, the status of the bargaining between plaintiffs and the Union, particularly in connection with the current labor dispute.

(b) In view of the provision of Executive Order No. 10340 that defendant shall determine and prescribe terms and conditions of employment in plaintiffs' plants, the necessary effect of the seizure if permitted to continue is to enable defendant unlawfully to concede, and, unless restrained by this Court, defendant may concede, to the Union and place in effect the recommendations of the Wage Stabilization Board, including an increased wage scale, the union shop, and other concessions to the Union. Plaintiffs are subject to illegal coercion by defendant as to the future conditions of employment of their employees. That plaintiffs are presently threatened with the imminent danger of such concessions being made is shown by the fact that defendant has already announced that he intends to proceed promptly to consider terms and conditions of employment as directed by said Executive Order No. 10340.

[fol. 958] (c) The placing into effect of and the coerced compliance by plaintiffs with the recommendations of the Wage Stabilization Board would result in greatly increased cost of production of plaintiff's products, and would constitute an act equivalent to an act of waste upon defendant's part and an unlawful dissipation and diversion of plaintiffs' funds. These products are subject to price regulations imposed by the

United States and the governmental agency regulating such prices has failed and refuses to permit increases in the prices of such products so as to enable plaintiffs to attempt to recoup such increased costs.

(d) Said unlawful seizure and continuing trespass by the defendant will result in the disruption of normal customer relationships between the plaintiffs and their customers, the great majority of whom have pending orders with the plaintiffs for steel and steel products usable and to be used in the civilian economy of the United States having no relation to any war effort of the United States, and such unlawful seizure and wrongful continuing trespass constitute a cloud on the titles to plaintiffs' properties.

(e) Said unlawful seizure and continuing trespass will give to the defendant access to confidential information and trade secrets in the files of the plaintiffs with regard to the business of the plaintiffs and their many customers in the United States.

(f) Said unlawful seizure and continuing trespass will threaten plaintiffs and their directors, officers, [fol. 959] agents and employees with criminal penalties in relation to any action taken by them to resist said unlawful seizure.

(g) Said unlawful seizure has resulted and will continue to result in the usurpation and impairment of the rights of the stockholders of plaintiffs, of whom there are many thousands, and the destruction of their rights to the management of the properties of plaintiffs by their duly elected and selected directors, officers, and agents, depriving them of the opportunity of realization of profitable operations through agencies of their own choosing, and reducing the realizable value of their holdings.

(h) Under the terms of defendant's Order No. 1 transferring plants, facilities and businesses from plaintiffs to defendant for an indefinite period of time plaintiffs are deprived of their right freely to operate their properties, to program their future business, to expand their facilities, and to protect their investments. Even though the present management personnel of plaintiffs remain in their respec-

tive positions and even though defendant does not immediately issue any order designed to alter plaintiffs' normal course of business, plaintiffs' managements and directors cannot fully and freely exercise managerial judgment since they cannot know how long defendant's control will continue, when or in what respects defendant will veto or otherwise affect a given management decision, what are and will be their legal rights and obligations under contracts entered into prior to defendant's seizure, or what will be the legal [fol. 960] consequences of any contracts entered into during the period of defendant's seizure of plaintiffs' properties. They know only that they are now directed to serve defendant, purportedly in the name of the United States.

(i) The goodwill of the nationwide business of plaintiffs in going concerns which have been built up during many years with tremendous and continuous effort and at enormous expense is threatened with adverse and permanent impairment by defendant's seizure of their properties.

(j) Plaintiffs' loss of freedom of collective bargaining, of maintenance of normal relationships in their businesses, of the benefit of private management and initiative in the control of their large and complicated properties, the injury to their goodwill and other elements of damage specified herein cannot possibly be adequately measured in monetary terms or be remedied in an action at law. Plaintiffs necessarily face the prospect of being forced to resort to successive, numerous, burdensome and protracted actions at law to recover for such measurable damage to them as may occur from time to time during the indefinite period of, and because of, defendant's illegal seizure of plaintiffs' properties. It is plaintiffs' information and belief that defendant would not be financially able to pay judgments, which might run into many hundreds of thousands of dollars, growing out of action taken with respect to the large and complicated properties of plaintiffs. Plaintiffs have no assurance that they will, or can, recover full and adequate compensation, if

[fol. 961] any, from the United States by any action or proceeding at law or otherwise for damage to their properties and businesses arising from defendant's unlawful action herein set forth.

Therefore the injunctive, declaratory and other relief prayed for herein is the only means available to plaintiffs for the protection of their rights.

Wherefore, for the reasons and on the grounds above set forth, it is prayed that:

A. Defendant be declared by the judgment of this Court to have no right to seize, possess, hold, operate or retain plaintiffs' properties under the purported authority of Executive Order No. 10340, or to require compliance by plaintiffs with defendant's Order No. 1 or other orders of a supplementary or similar nature; that this Court decree that such Executive Order and such other Order or orders of defendant are wrongful, invalid and void as without authority under any law of the United States and contrary to, and violative of, the Constitution of the United States and the rights of plaintiffs thereunder and otherwise; that such seizure, possession, holding, operating and retention of plaintiffs' properties are unlawful; and that the defendant be directed forthwith and unconditionally to return said properties to plaintiffs.

B. Defendant and all persons acting as his agents or under his direction or authority be temporarily enjoined, pending a final determination of this cause, from taking any action whatsoever under the purported authority of Executive Order No. 10340 or otherwise which in any way would affect, impair, or restrict plaintiffs' ownership, [fol. 962] rights, possession, control and management of any of their properties, or their contractual relations with others, or which would alter or affect the terms and conditions of employment or the relationships of plaintiffs with their employees in effect at the properties of plaintiffs at the time of the promulgation of said Executive Order.

C. Upon a final hearing, the aforesaid temporary injunction be made permanent.

D. Plaintiff be granted such other or further relief as may seem appropriate in the premises.

April 17, 1952.

Breed, Abbott & Morgan. By Joseph P. Tumulty, Jr., a Member of said Firm, Attorneys for Plaintiffs, 1317 F Street, N. W., Washington 4, D. C.

[fols. 963-1005] *Duly sworn to by Joseph P. Tumulty, Jr. Jurat omitted in printing.*

[fol. 1476a] In the United States District Court

[Title omitted]

Motion for Preliminary Injunction

Come now the plaintiffs, Armco Steel Corporation and Sheffield Steel Corporation, by their attorneys below named, and move the Court for a preliminary injunction, restraining and enjoining the defendant, Charles Sawyer, his agents, representatives, associates, subordinates, attorneys, privies, and all persons in active concert or participation with him or any of them, pending the final hearing and determination of this cause:

(a) From taking any action or continuing to take any action whatsoever to effectuate and carry out the provisions of Executive Order 10340 issued April 8, 1952, by the President of the United States insofar as said Executive Order is intended to apply to the plaintiffs herein, their officers, agents, and control and management of their properties.

(b) From molesting or interfering with plaintiffs or doing any act or thing which would prevent or tend to prevent the plaintiffs, their officers, agents and employees from operating the plaintiffs' said properties for their own account.

[fol. 1476b] (c) From in any respect changing the wages or other terms or conditions of employment in effect at the properties of the plaintiffs at the time of issuance of said Executive Order.

(d) From interfering in any other way with the plaintiffs' rights of ownership and control of their business and properties.

Breed, Abbott & Morgan, By (S.) Joseph P. Tumulty, Jr., 1317 F Street, N.W., Washington 4, D. C.

Charles H. Tuttle, Winfred K. Petigrue, Stoddard B. Colby, Joseph P. Tumulty, Jr., of Counsel.

[fol. 999] Defendant's Opposition to Plaintiffs' Motion for Preliminary Injunction (omitted in printing).

[fol. 684] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

Civil Action No. 1647—'52

REPUBLIC STEEL CORPORATION, a New Jersey Corporation With Principal Offices in Republic Building, Cleveland, Ohio, Plaintiff,

vs.

CHARLES SAWYER, Secretary of Commerce, Department of Commerce, Washington, D. C., Defendant

COMPLAINT

ACTION FOR INJUNCTION, DECLARATORY JUDGMENT AND OTHER RELIEF—Filed April 14, 1952

The plaintiff avers:

1. Republic Steel Corporation (hereafter called Republic) is a corporation duly organized and existing under the laws of the State of New Jersey with its principal office at Cleveland, Ohio, and it is principally engaged in the business of the production, manufacture and sale of steel and steel products, and owns, maintains and operates plants and facilities, including real estate, and other property used

in and appurtenant to its principal business in a number of States of the Union, including Ohio, New York, Connecticut, Illinois, California and Alabama in each of which it is qualified to do business.

2. The defendant, Charles Sawyer, is the duly appointed and acting Secretary of Commerce, and maintains his residence in the City of Washington, District of Columbia.

3. There is an actual controversy within the jurisdiction of this Court, and this case is a civil action wherein the matter in controversy exceeds the sum or value of Three Thou- [fol. 685] sand Dollars ($3,000.00), exclusive of interest and costs, and arises under the Constitution and laws of the United States by reason of the purported seizure by the defendant of certain facilities and properties of the plaintiff pursuant to the direction of the President of the United States.

4. Prior to seizure by the defendant of the plants and facilities of the plaintiff, as hereafter described, the plaintiff has had exclusive operation and possession of its properties and plants and has operated them in a manner consistent with the Constitution and laws of the United States, and of the States in which the plaintiff has been qualified to do business.

5. During the months of November and December, 1951, there were negotiations between the plaintiff and the United Steelworkers of America, C. I. O., a labor organization which had been certified by the National Labor Relations Board as the appropriate collective bargaining agent of the production and maintenance employees in certain of Republic's plants, concerning wages, hourly rates, and other conditions of employment, and leading up to a new contract to succeed a contract expiring December 31, 1951; on December 22, 1951, the President of the United States, deeming a controversy to have arisen, referred said controversy to the Wage Stabilization Board (an advisory agency constituted by Presidential Executive Order and reconstituted by an amending Executive Order No. 10233, issued April 21, 1951). Said Wage Stabilization Board, after consideration, issued a certain report and recommendations. The recommendations of the majority of said Board were that Republic enter into the agreement with the United Steelworkers of

America, C. I. O., extending to June 30, 1953, and containing provisions covering wages, hourly rates and other conditions of employment. The recommended increases in wages and hourly rates would, if incorporated in any such agreement, increase Republic's manufacturing costs by many millions of dollars.

6. Subsequent negotiations between Republic and said [fol. 686] United Steelworkers of America, C. I. O., having failed to result in agreement, Republic was notified in writing on April 4, 1952, by the President of the United Steelworkers of America, C. I. O., that a strike had been called at the plants of Republic, effective 12:01 A. M., April 9, 1952.

7. On April 8, 1952, the President of the United States issued an Executive Order No. —, by the terms of which he authorized and directed the defendant herein to take possession and control and to operate substantially all of the facilities and plants of Republic, thereby divesting Republic of possession and control of its own properties, and displacing the Board of Directors, and officers from their functions, duties, and responsibilities in the possession, control, and management of Republic's properties and assets.

8. Purporting to act pursuant to said Executive Order so issued by the President, the defendant notified Republic that the plants, facilities, assets, and other property of Republic used or useful to it in its business were seized and taken possession of by the defendant, pursuant to said Executive Order, without the acquiescence and over the protest of Republic.

9. There has been no exercise of the machinery and provisions afforded by the Labor Management Relations Act of 1947, commonly called the Taft-Hartley Act.

10. No orders for materials or supplies nor any requirements to make available percentages of its steel production have been tendered or given to Republic by the President of the United States or by any person acting under his authority pursuant to the provisions of the Selective Service Act of 1948, as amended and now entitled Universal Military Training and Selective Service Act (U. S. C. A. Title 50, Appendix, Sec. 468, 62 Statutes at Large 625), for any ma-

terials or supplies for use of the Armed Forces of the [fol. 687] United States or for use of the Atomic Energy Commission, and Republic has not rejected or refused, nor failed to fulfill, nor is it failing to fulfill, any and all orders placed with it required by the Controlled Materials Plan Regulations issued by the National Production Authority pursuant to power delegated to it by the Defense Production Act of 1950.

11. Plaintiff says that the purported seizures of Republic's plants, facilities, assets, and other property, as well as any further acts of seizure, possession and control, and whether by constructive or by physical and actual entry by this defendant, his agents and servants, are and will be without warrant in law, wrongful, illegal and unlawful, and has deprived and will deprive Republic of its property without due process of law, all in violation of the provisions of the Constitution of the United States, and especially the Fourth and Fifth Amendments thereof.

12. The action of the defendant, above described, has affected and will continue to affect adversely and irreparably, rights, property, and business of plaintiff in the following respects, among others:

(a) Seizure of Republic's properties by this defendant has deprived, and unless restrained by this Court, will continue to deprive Republic of its properties, of its control and right to control therein, has displaced and will displace its right of possession and its right of contract with respect to said properties, and its right to operate and control the properties in the ordinary course of its business.

(b) Its right to negotiate and bargain with its employees or their duly authorized representatives have been terminated and destroyed.

(c) Republic is imminently exposed to the possibility, created by the unlawful seizure made by this defendant, that a contract will be made with its employees by the defendant [fol. 688] himself or under the name of Republic with the said employees, incorporating any or all of the recommendations of said Wage Stabilization Board, or other terms, conditions, and rates of pay determined solely by the defendant, and independent of the exercise by the duly elected officers of Republic of their discretion and decision.

(d) The seizure has interfered with, impaired, endangered and will, unless terminated by this Court, destroy the relations and relationships which Republic over many years past, in the course of its extensive business, has established with many customers and purchasers, and will also interfere with current contracts, commitments, and quotations for contracts with said customers for products and materials for use in the civilian economy, and said seizure will expose Republic to loss of good will as well as civil liability for any impairment and interference with its contractual commitments.

(e) Said seizure has endangered and exposed to destruction trade secrets, secret methods, confidential information, and accounting information which Republic has acquired, developed, and used in the conduct of its business for many years all of which, if not maintained as such and if disclosed and revealed to the public and especially to Republic's competitors, would lose much or all of its value.

(f) Said seizure has resulted in the usurpation and impairment of the rights of the stockholders of Republic, of whom there are more than sixty thousand (60,000), and the destruction of their rights to the management of the properties of Republic by their duly elected and selected directors, officers, and agents, depriving them of the opportunity of realization of profitable operations through agencies of their own choosing, and reducing the realizable value of their holdings.

WHEREFORE, the plaintiff prays:

1. That this Court decree that the seizure of the plaintiff's property, as above described, is unlawful and illegal, [fol. 689] and unwarranted in law and, therefore, invalid and void from its outset.

2. That pending final hearing of this action this Court enter an order granting an interlocutory injunction restraining the defendant, his agents and employees, and all other persons acting under his control and authority, from interfering with, or doing any act or thing which would prevent or tend to prevent the plaintiff, its officers, agents, and employees from operating the plaintiff's properties for the account of Republic, and from in any respect changing the wages or other terms or conditions of employment now

in effect at the properties of the plaintiff, and from interfering in any other way with the plaintiff's contractual relations or with the plaintiff's right of ownership, operation, and possession of its business and property.

3. That upon final hearing this Court enter a decree permanently enjoining the defendant, his agents, employees, and other persons acting under his control and authority, from interfering with, or doing any act or thing which would prevent or tend to prevent the plaintiff, its officers, agents, and employees from operating the plaintiff's properties for the account of Republic, and from in any respect changing the wages or other terms or conditions of employment now in effect at the properties of the plaintiff, and from interfering in any other way with the plaintiff's contractual relations or with the plaintiff's right of ownership, operation, and possession of its business and property.

4. That the plaintiff have such other and further relief as to the Court may seem just and proper, including costs herein.

Hogan & Hartson, by Edmund T. Jones, Howard Boyd, 810 Colorado Building, Washington, D. C.; Gall, Lane and Howe, by John C. Gall, 401 Commonwealth Building, Washington, D. C.; Jones, [fols. 690-691] Day, Cockley and Reavis, by Luther Day, 1135 Tower Building, Washington, D. C.

Thomas F. Patton, General Counsel of Republic Steel Corporation.

[fol. 692] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

AFFIDAVIT—Filed April 24, 1952

DISTRICT OF COLUMBIA, ss:

Eugene Magee, being first duly sworn, on oath deposes and states:

That as Director of Industrial Relations of Republic Steel Corporation, plaintiff herein, and by virtue of such capacity, he has knowledge of the matters herein stated;

that he makes this affidavit in support of an application by plaintiff for a preliminary injunction against the defendant.

That on December 22, 1951, the President of the United States, in accordance with the terms of Executive Order 10,233, referred the labor dispute existing between certain steel companies, including plaintiff, and the United Steel Workers of America (CIO), to the Wage Stabilization Board for its report and recommendations; that on March 20, 1952, the Wage Stabilization Board submitted to the President its report on the matter, together with its recommendations for settlement, a copy of which report is set forth in full in Exhibit I to the Defendant's Opposition to Plaintiff's Motion for a Preliminary Injunction.

That since the seizure of plaintiff's plants and facilities on April 9, 1952, the defendant, his representatives and [fol. 693] agents, have publicly threatened and declared that in the immediate future defendant will increase the wages of plaintiff's employees represented by the United Steel Workers of America (CIO); that unless restrained by this Court, defendant through his agents will consummate the aforesaid threat and put into effect the said wage increase with the following consequences, among others, to plaintiff:

(a) As indicated in the aforesaid report and recommendations of the Wage Stabilization Board, wages are only one of approximately one hundred issues involved in the labor dispute. Plaintiff, as required by law, has been negotiating with the aforesaid Union not only in regard to wages but also respecting management rights, so-called local working conditions, seniority rights, incentive plans of compensation, a union shop and other important items of contract negotiation identified in the aforesaid report of the Wage Stabilization Board. The proper resolution of these matters is of immeasurable importance to plaintiff not only because of their immediate economic effect but primarily because of their relation to orderly and efficient operation of plaintiff's business. Your affiant, from his experience as Director of Industrial Relations for the plaintiff and in work of similar nature, believes and avers that it is not possible to reach a satisfactory over-all agreement in a labor dispute of the character here involved by attempting

to settle one issue at a time, because such issues are inseparably interrelated, and the same issues are of vastly different importance to the company and to the Union, respectively. Your affiant further believes and avers that the process of successful collective bargaining is dependent upon a settlement of all issues as a "package", and that this principle cannot be violated without serious, irreparable and incalculable prejudicial consequences to the plaintiff. By carrying out the aforesaid threat to immediately increase the compensation of plaintiffs' employees, without obtaining any corresponding concession from the aforesaid Union, defendant will permanently deprive plaintiff of the use of such increase as a means of obtaining favorable settlement of other vital issues in dispute, and thereby plaintiff's bargaining position will be permanently lost, proper resolution of such matters will be made extremely difficult, if not im- [fol. 694] possible, and relations between plaintiff and said Union will deteriorate further rather than improve.

(b) Your affiant verily believes and therefore avers that plaintiff will be forced to continue to pay any increased rate of compensation which defendant is permitted to establish, even after plaintiff regains possession of its properties and will not be able to reestablish the wage scale altered by defendant without resulting turmoil, strife, deterioration of labor relations and probable strikes.

(c) That your affiant further avers that defendant's action in imposing such wage increases upon plaintiff deprives plaintiff of its legal right to bargain collectively with regard to such wages.

(d) That the prices of plaintiff's products are subject to Government control and regulation and no increase in the price of its products can be put into effect without prior approval of the Office of Price Stabilization. The Director of said Office of Price Stabilization has publicly announced that no price increase will be granted to plaintiff to compensate for the increase in wages now threatened, thus imposing great loss upon the plaintiff.

(e) Plaintiff in all of its integrated operations expends an average of not less than twenty man hours of labor to produce each ton of steel products. Thus, for every one cent increase in average employment costs, production

costs per ton of steel would increase by not less than twenty cents. Should the defendant put into effect the full wage increase and fringe benefits recommended by the Wage Stabilization Board the average cost of steel products shipped by the plaintiff would be increased by at least Six Dollars per ton for such employment costs alone. Other increases in costs of purchased products and services would result in a total increase in the average cost of steel products shipped by the plaintiff of at least Twelve Dollars per ton.

(f) That increased wages will subject plaintiff to immediate additional payroll expense in large amounts, the payment of which will result in permanent and irreparable loss to plaintiff.

[fol. 695] That, by reason of the foregoing, immediate, incalculable, irreparable injury, loss and damage will result to plaintiff for which it has no adequate remedy except through relief granted by this Court.

Eugene Magee.

Subscribed and sworn to before me this 23rd day of April, 1952. Carmel M. Motta, Notary Public. (Seal.)

A copy of the foregoing affidavit was this 23rd day of April, 1952, personally served upon Attorneys for Defendant.

Hogan & Hartson, By Edmund T. Jones, Attorneys for Plaintiff.

[fol. 696] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF JOHN M. SCHLENDORF—Filed April 24, 1952

STATE OF OHIO,
County of Cuyahoga, ss:

John M. Schlendorf being first duly sworn says that he is vice president of the plaintiff company, Republic Steel Corporation (hereinafter called "Republic") and

1. That the President of the United States under date of April 8, 1952, issued an Executive Order by the terms of which generally he authorized the Defendant to seize, possess and operate the properties and facilities of various steel companies throughout the United States including those of the Plaintiff herein, Republic. A copy of said Executive Order is hereto attached and made a part hereof. In compliance with said Executive Order the Defendant has seized, taken possession of, and now operates said properties and facilities of the Plaintiff.

2. The Plaintiff, Republic organized and existing under the laws of the State of New Jersey with principal offices at Cleveland, Ohio, is principally engaged in the business of [fol. 697] the production, manufacture and sale of steel and steel products and owns and operates steel plants and facilities including real estate and other property used in and appurtenant to its principal business in the States of Ohio, New York, Connecticut, Illinois, California and Alabama; that among said properties, or all of them, are properties seizure of which is authorized by said Executive Order and contemplated by the Defendant pursuant to said order.

3. That no orders for materials or supplies, nor any requirements to make available percentages of the steel production have been tendered or given to Republic by the President of the United States or any person acting under his authority pursuant to the provisions of the Selective Service Act of 1948 (as amended and now entitled Universal Military Training and Selective Service Act USCA Title 50,

Appendix Sec. 468; 62 Stat. at Large 625) for any materials or supplies for use of the Armed Forces of the United States or for use of the Atomic Energy Commission and that Republic has not rejected or refused nor failed to fulfill, nor is it failing to fulfill, any and all orders placed with it required by the Controlled Materials Plan Regulations issued by the National Production Authority pursuant to power delegated to it by the Defense Production Act of 1950.

4. In and during the last two months of 1951 a controversy arose between Republic and the United Steelworkers of America, CIO, a labor organization which had been certified by the National Labor Relations Board as the appropriate collective bargaining agent of the production and maintenance employees of Republic in certain of its plants, concerning wages, hourly rates and other conditions of employment; that on December 22, 1951, the President of the United States referred such controversy to the Wage Stabilization Board, an agency constituted by Presidential Executive Order No. 10161 and reconstituted by Executive [fol. 698] Order No. 10233, issued April 21, 1951, and said Wage Stabilization Board, after consideration, issued certain reports and also certain recommendations of the majority of the Board to the effect that Republic enter into an agreement extending to June 30, 1953, with the United Steelworkers of America, CIO, containing provisions covering wages and other conditions of employment; among them a provision including increases in wage rates of 12½ cents per hour to July 1, 1952 but retroactive to January 1, 1952 and for the last half of the year 1952 an additional 2½ cents per hour and for the first 6 months of 1953 still an additional 2½ cents per hour; further — among them the inclusion of a union shop provision and other costly changes in conditions of employment and fringe benefits.

5. Although affiant is advised that the recommendations of the Wage Stabilization Board are purely advisory and have no binding effect upon it; yet if the recommendations of the Wage Stabilization Board were accepted as so recommended the production costs of Republic would be increased by many millions of dollars and such costs could not be recovered by Republic save by an increase in the

selling prices of its products over and beyond price increases which are now or may be authorized by the Office of Price Stabilization pursuant to the provisions of the Defense Production Act of 1950, USCA Title 50 Sec. 2101 et seq.

6. Seizure of Republic's properties by this Defendant has deprived and unless restrained by this Court will continue to deprive Republic of control and possession of its properties and has displaced and will continue to displace Republic in the operation of said properties in the ordinary course of its business and said seizure in addition to the deprivation of the aforesaid property rights has exposed and will continue to expose Republic to further incalculable and [fol. 699] irreparable damages in the following respects:

(a) Its right to negotiate and bargain with its own employees and their duly authorized bargaining representative has been seized and terminated.

(b) Republic by such seizure is exposed to the imminent possibility that a contract will be made by the Defendant himself or in the name of Republic with certain of its employees incorporating any or all of the recommendations of said Wage Stabilization Board or other rates of pay and conditions of employment determined solely by the Defendant and independent of the exercise by the duly elected officers of Republic of their discretion and decision.

(c) The relations and relationships which Republic over many years past and in the course of its extensive business has established with many purchasers and customers throughout the United States and its current contracts, commitments and quotations for contracts with its customers for products for use in the civilian economy have been interfered with, impaired and endangered and Republic has been threatened with loss of good will as well as civil liability for such impairment and interference with its contractual commitments.

(d) Certain trade secrets, secret methods, confidential information and accounting information which Republic has acquired, developed and used in the conduct of its business for many years may be inter-

fered with and disclosed and revealed to the public and especially to Republic's competitors thereby destroying substantially all of the value thereof and

(e) The rights of the stockholders of Republic, of whom there are more than 60,000, including the right to [fols. 700-700a] management of the properties by their duly elected and selected directors, officers and agents and the right to the realization of profits from the operations through agencies of their own choosing have been usurped, endangered and impaired and the realizable value of their holdings has been reduced.

John M. Schlendorf.

Subscribed in my presence and sworn to before me this 14th day of April, 1952. William B. Belden, Notary Public, Cuyahoga County, Ohio. My commission expires January 3, 1954.

[fol. 725] [File endorsement omitted]

UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR PRELIMINARY INJUNCTION

Comes now the plaintiff, Republic Steel Corporation, by its attorneys below named, and moves the Court for a preliminary injunction, restraining and enjoining the defendant, Charles Sawyer, his agents, representatives, associates, subordinates, attorneys, privies, and all persons in active concert or participation with him or any of them, pending the final hearing and determination of this cause:

(a) From taking any steps or continuing to take any steps whatsoever to effectuate and carry out the provisions of the Executive Order issued April 8, 1952, by the President of the United States insofar as said Executive Order is intended to apply to the plaintiff herein, its officers, agents, and the control and management of its properties.

(b) From molesting or interfering with plaintiff or doing any act or thing which would prevent or tend to prevent

the plaintiff, its officers, agents and employees from operating the plaintiff's said properties for its own account.

(c) From in any respect changing the wages or other terms or conditions of employment in effect at the proper- [fol. 726] ties of the plaintiff at the time of issuance of said Executive Order.

(d) From interfering in any other way with the plaintiff's rights of ownership and control of its business and properties.

Hogan & Hartson, by Edmund L. Jones, Howard Boyd. Gall, Lane and Howe, by John C. Gall. Jones, Day, Cockley and Reavis, by Luther Day.

Thomas F. Patton, General Counsel of Republic Steel Corporation.

[fol. 701] Defendant's Opposition to Plaintiffs' Motion for Preliminary Injunction (omitted in printing).

[fol. 1011] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

Civil Action No. 1732-'52

E. J. LAVINO AND COMPANY, a Delaware Corporation, 1528 Walnut Street, Philadelphia 2, Pennsylvania, Plaintiff,

against

CHARLES SAWYER, Individually and as Secretary of Commerce of the United States of America, Washington, District of Columbia

COMPLAINT

(Action for Declaratory Judgment and Injunction Relief)— Filed April 18, 1952

1. Plaintiff is a corporation duly organized and existing under the laws of the State of Delaware, with its principal executive office at 1528 Walnut Street, Philadelphia, Pennsylvania. It is principally engaged in the business of the

manufacture and sale of basic refractories and ferro manganese.

2. The defendant, Charles Sawyer, is Secretary of Commerce of the United States of America and is a resident of the District of Columbia.

3. The matter in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars ($3,000.00).

4. There is an actual existing controversy within the jurisdiction of this Court between the parties in respect of which the plaintiff needs a declaration of its rights by this Court.

5. This action is brought pursuant to the provisions of 28 U.S.C. Sections 2201 and 2202, and Sections 11-301, 11-305 and 11-306 of the District of Columbia Code (1940 Edition).

[fol. 1012] 6. This action arises under the Constitution and laws of the United States by reason of the purported seizure by the defendant of certain plants and property of the plaintiff purportedly pursuant to the direction of the President of the United States as hereinafter set forth.

7. (a) Prior to the purported seizure by the defendant of said plants and property, hereinafter described, the plaintiff had exclusive possession of all its plants and property and was in exclusive control of the operation thereof and operated them in accordance with the Constitution and laws of the United States and of the States in which the plaintiff has been qualified to do business.

(b) At all the times hereinafter set forth the plaintiff's plants and property included the following: a plant at Plymouth Meeting, Pennsylvania, at which the plaintiff manufactured and now manufactures basic refractories; a plant at Sheridan, Pennsylvania, at which the plaintiff manufactured and now manufactures ferro manganese; and a plant at Lynchburg, Virginia, at which the plaintiff manufactured and now manufactures ferro manganese. The products of all of said plants are standard products and are not made to meet the specifications of particular customers. A large part of the products of said plants is sold to customers who are not steel producers.

(c) Said plants comprise tracts of land on which are located manufacturing works, fixtures, machinery, equipment, incidental facilities and other property.

(d) At none of the times hereinafter set forth did the plaintiff produce, manufacture or fabricate, nor does it now produce, manufacture or fabricate, steel or steel products. [fol. 1013] 8. The plaintiff has not received from the President of the United States, from the Atomic Energy Commission, or from any Government Agency, any order for materials placed pursuant to the provisions of Title I, Section 18 of the Universal Military Training Act of 1948 (62 Stat. 625; 50 U.S.C. App. 468).

9. On April 8, 1952, the President of the United States issued Executive Order 10340 "Directing the Secretary of Commerce to take possession of and operate the plants and facilities of certain steel companies". There was attached to, and made a part of, said Executive Order a list of companies. A copy of said Executive Order, and attached list, is hereto attached, marked "Exhibit A". Said list, among other things, contained the following text:

> "E. J. Lavino and Company, 1528 Walnut Street, Philadelphia, Pennsylvania."

10. On April 8, 1952, the defendant, Charles Sawyer, purporting to act pursuant to the terms of said Executive Order 10340, issued Order No. 1, a copy whereof was received by the plaintiff on April 10, 1952, by the terms whereof the defendant purported to take possession of the plants, facilities and other properties of the companies named in a list attached to said Order No. 1, effective at twelve o'clock midnight, Eastern Standard Time, April 8, 1952, and to designate the President of each company named in said last-mentioned list Operating Manager for the United States for his respective company until further notice. A copy of said Order No. 1, with the accompanying list, is hereto attached and marked "Exhibit B". Said last-mentioned list, among other things, contained the following text:

> "Mr. E. M. Lavino, President, E. J. Lavino & Company, 1528 Walnut Street, Philadelphia, Pa."

[fol. 1014] 11. Said copy of Order No. 1 of the defendant was accompanied by a paper entitled, "Notice of Taking of Possession by United States of America (Insert Name of Company)" dated April 8, 1952, and with the typewritten text, "Charles Sawyer Secretary of Commerce" at the end thereof. A copy of said Notice of Taking Possession is hereto attached, marked "Exhibit C".

12. On April 10, 1952, the plaintiff received a confirmation copy of a telegram from the defendant addressed to "President —— —— Steel Company", contained in an envelope addressed to "Mr. E. M. Lavino, President, E. J. Lavino & Company, 1528 Walnut Street, Philadelphia, Pa." Said telegram was not dated but appears to have been transmitted to Western Union April 9, 1952. In said telegram, the original whereof was never received by the plaintiff, or by any one on its behalf, the defendant, among other things, requested each president to acknowledge by return wire his receipt of his appointment as Operating Manager on behalf of the United States of the properties of the Company. A copy of said confirmation copy received by plaintiff as aforesaid is hereto attached and marked "Exhibit D".

13. On April 10, 1952, Edwin M. Lavino, President of the plaintiff, sent a letter to the defendant acknowledging receipt of his appointment as Operating Manager on behalf of the United States of the plaintiff's plants at Plymouth Meeting and Sheridan, Pennsylvania, and Lynchburg, Virginia, a copy of which letter, marked "Exhibit E", is hereto attached and made a part hereof. Among other things, said last-mentioned letter stated that said three plants were the only plants of plaintiff where the collective bargaining agent was the United Steelworkers of America, C.I.O., and further stated that the plaintiff's compliance was without prejudice to its right as they might be ultimately determined judicially.

[fol. 1015] 14. On April 12, 1952, the defendant sent Edwin M. Lavino, President of the plaintiff a telegram stating that his Order No. 1 and his telegram of April 9, 1952, referred to in Paragraph 12 of this Complaint, were modified to exclude plants, facilities and properties other than the Plymouth Meeting plant and Sheridan plant in Pennsylvania and the Lynchburg plant in Virginia. A copy of

said last-mentioned telegram, marked "Exhibit F" is hereto attached and made a part hereof.

15. Executive Order 10340 by its terms was based upon a controversy which had arisen between certain companies in the United States producing and fabricating steel and certain of their workers represented by the United Steelworkers of America, C.I.O., regarding terms and conditions of employment, and upon the further circumstance that said controversy had not been settled through the processes of collective bargaining or through the efforts of the Government, including those of the Wage Stabilization Board to which the controversy was referred on December 22, 1951, pursuant to Executive Order No. 10233.

16. The plaintiff was not a party to the controversy which was referred by the President of the United States to the Wage Stabilization Board on December 22, 1951.

17. For the purposes of collective bargaining negotiations under the National Labor Relations Act the plaintiff has never in the past participated, and is not now participating, in bargaining negotiations carried on by the representatives of the steel companies and the Steelworkers. As the plaintiff is not engaged in the production or fabrication of steel it has never had occasion to participate in the nationwide negotiations between the steel industry and the Steelworkers. The practice of the plaintiff and the Steelworkers has been to make separate collective bargain- [fol. 1016] ing agreements which expire after the terms of the collective bargaining agreements negotiated between the steel companies and the Steelworkers.

18. The present three collective bargaining agreements between the plaintiff and the Steelworkers,—each of which covers employees in one of the above mentioned plants of plaintiff,—all expire on January 31, 1952, which is thirty days after the expiration of the collective bargaining agreements between the steel companies and the Steelworkers. No collective bargaining negotiations have taken place between the plaintiff and any representatives of the Steelworkers regarding terms and conditions of employment under a new collective bargaining agreement.

19. It was not until March 21, 1952, that plaintiff was notified by Philip Murray, President of the United Steelworkers of America, C.I.O., by telegram, that the Steel-

workers were ready to "resume" negotiations with the plaintiff on the basis of the Wage Stabilization Board's recommendations made on March 20, 1952, and that the Chairman of the Steelworkers' Negotiating Committee would contact plaintiff's representative immediately to begin negotiations March 24, 1952. Neither the Chairman of the Steelworkers' Negotiating Committee, nor any other person acting on the Steelworkers' behalf, contacted any representative of the plaintiff, and no collective bargaining negotiations were pending between the plaintiff and the Steelworkers at the time of the issuance of Executive Order 10340 on April 8, 1952.

20. On April 4, 1952, William G. Mowery, President, Local #3216, posted at the Plymouth Meeting plant of the plaintiff a notice, the text of which follows. "Contract negotiations between E. J. Lavino and Company and Local [fol. 1017] Union #3216 will commence Tuesday or Wednesday of next week. In the event a strike takes place in the Basic Steel Industry on April 8th, employees of E. J. Lavino and Company will not be involved."

21. Three days later (on April 7, 1952) plaintiff received from Philip Murray, President of the Steelworkers, three identical letters, dated April 4, 1952, stating that a strike had been called at plaintiff's plants at Plymouth Meeting, Sheridan and Lynchburg, effective 12:01 A.M. April 9, 1952.

22. As hereinbefore set forth neither the Chairman of the Steelworkers' Negotiating Committee, nor anyone acting on behalf of the Steelworkers had ever contacted plaintiff with respect to the negotiations proposed by Philip Murray on March 21, 1952. Plaintiff has never refused to participate in such collective bargaining negotiations with the Steelworkers.

23. No agreement which may be reached between steel companies and the Steelworkers on the terms of a new collective bargaining agreement can be determinative of many important terms of collective bargaining agreements between the plaintiff and the Steelworkers.

24. The plant at Plymouth Meeting, Pennsylvania, which produces basic refractories, of necessity, has labor classifications and other methods of doing business which follow the practice of the refractories industry. These classifica-

tions and methods differ to such an extent from those prevailing in the steel producing industry that few of the wage rates and job classifications of steel producers apply to the plaintiff's refractories plant at Plymouth Meeting.

25. The plants at Sheridan, Pennsylvania, and Lynchburg, Virginia, which make ferro manganese, have classifications similar to some of the classifications used by steel [fol. 1018] producers, but this is true only of blast furnace operations. In so far as concerns the production of ferro manganese, these plants are in no way comparable as to hourly rates and job classifications with those which prevail in the plants which produce or fabricate steel.

26. The methods of doing business in each of the plaintiff's three plants at Sheridan, Plymouth Meeting and Lynchburg necessarily conform closely to conditions which prevail in plants of competitors who do not have collective bargaining agreements with the Steelworkers.

27. While the Government has contended that price relief is not immediately involved in the controversy between the steel companies and the Steelworkers, no fair and equitable agreement can be arrived at between the companies, whose plants have been seized by the defendant, and the Steelworkers without the Government affording relief to the companies with respect to prices. In the case of the plaintiff, an additional ground for price relief arises out of the fact that one of the critical elements in the production of ferro manganese is manganese ore, which is imported from foreign countries, which is not subject to price controls imposed by the laws of the United States. Likewise one of the critical elements in the production of basic refractories is chrome ore, which is also imported from foreign countries, and which is not subject to price controls imposed by the laws of the United States. Consequently in the event that the present controversy between the steel companies and the Steelworkers should be settled by a plan which involves price relief, such relief would not be applicable to plaintiff, which would need special price relief adapted to the conditions of its own business.

28. On April 14, 1952, Edwin M. Lavino, President of the plaintiff, sent the defendant a telegram requesting that the defendant terminate its purported possession of the plaintiff's plants, and that he simultaneously terminate

[fol. 1019] Edwin M. Lavino's appointment as Operating Manager on behalf of the United States. A copy of said telegram, marked Exhibit G, is hereto attached and made a part hereof. Said last mentioned telegram stated that the plaintiff's application for termination of possession was without prejudice to the plaintiff's legal rights and remedies, including its position that the seizure of its plants was unwarranted by law and was not effective. By the terms of said last mentioned telegram the defendant was requested to act on the plaintiff's application for termination of possession forthwith.

29. The plaintiff has received no answer to its telegram sent to the defendant on April 14, 1952, referred to in the next preceding paragraph hereof.

30. The Congress has provided in the Labor Management Relations Act of 1947 specific and adequate machinery for the adjustment of the proposed strike and has specifically rejected the device of seizure as a means of settling the same. The President of the United States did not use the methods of adjustment provided in the Labor Management Relations Act of 1947 in connection with the proposed strike by the Steelworkers against the steel companies.

31. Executive Order 10340, issued April 8, 1952, and the actions of the defendant purportedly taken or to be taken thereunder are without authority of any presently existing statute of, or any provisions of, the Constitution of the United States, and are invalid, unlawful and without effect.

32. Executive Order 10340, issued April 8, 1952, and the actions of the defendant purportedly taken or to be taken thereunder, violate the Fourth Amendment of the Constitution of the United States.

[fol. 1020] 33. Executive Order 10340, issued April 8, 1952 and the actions of the defendant purportedly taken or to be taken thereunder, violate the Fifth Amendment to the Constitution of the United States.

34. Executive Order 10340, issued April 8, 1952, and the actions of the defendant purportedly taken or to be taken thereunder, violate the Tenth Amendment to the Constitution of the United States.

35. Executive Order 10340, issued April 8, 1952, and the

actions of the defendant purportedly taken or to be taken thereunder, are invalid, unlawful and without effect as to the plaintiff by reasons of the facts hereinbefore set forth.

36. Executive Order 10340, issued April 8, 1952, and the actions of the defendant purportedly taken or to be taken thereunder, are as to the plaintiff, violations of the Fourth, Fifth and Tenth Amendments to the Constitution of the United States.

37. The defendant was not authorized by the Executive Order 10340, issued April 8, 1952, to take possession of any of the properties of the plaintiff by reason of the facts hereinbefore set forth.

38. The actions of the defendant taken or to be taken under Executive Order 10340, issued April 8, 1952, have affected, and will continue adversely and irreparably to affect, the business and property of the plaintiff in that

(a) The basic refractories and ferro manganese indus*tir*es are highly competitive and the plaintiff has many trade secrets and methods of doing business which are confidential and which the plaintiff would not under any circumstances be willing to have revealed to its competitors. The agents of the defendant in control of the properties of the plaintiff [fol. 1021] will have access to such secrets and methods and there is grave danger that they may be revealed to the competitors of the plaintiff and to others who do not have any right to information regarding them.

(b) The plaintiff over the years has built up substantial relationships with its customers and during the current national defense effort has done its best to maintain such relationships in a way consistent with the requirements of the national defense effort. During any period of seizure by the defendant, the business of the plaintiff will be subject to the control of defendant and his agents who do not have any particular reason for protecting such relationships and there is grave danger that such relationships will be impaired to the irreparable detriment of the plaintiff.

(c) The operation of the business of the plaintiff is highly technical and requires the constant attendance of persons who are thoroughly experienced therein. During any period of defendant's control, the operation of the business will be subject to the orders of defendant and his agents, many of

whom, doubtless, will not have any experience whatsoever in the operation of basic refractories and ferro manganese plants and related facilities. There is grave danger that the seized plants and other facilities of the plaintiff will be irreparably harmed by the orders of defendant and his agents.

(d) The defendant has stated publicly that he would proceed promptly to consider making wage increases to the employees of the plants seized by him. Such threatened [fol. 1022] unilateral wage increase would superesde the plaintiff's control over its labor relations and result in irreparable injury to it.

Wherefore, the plaintiff prays:

(a) That the defendant return to the plaintiff possession of its plants at Sheridan, Pennsylvania; Lynchburg, Virginia; and Plymouth Meeting, Pennsylvania; and that the defendant simultaneously terminate the appointment of Edwin M. Lavino, President of the plaintiff, as Operating Manager of said plants on behalf of the United States.

(b) That this Court decree that Executive Order 10340 is without authority under any law of the United States or under the Constitution of the United States and is, therefore, invalid and void;

(c) That this Court decree that all action taken by the defendant pursuant to said Executive Order is invalid, unlawful and without effect;

(d) That this Court, pending final hearing and determination of this action, issue a preliminary injunction enjoining the defendant, and his successor or successors in office, his assistants, employees, agents and other persons acting under his control and authority, (i) from taking any steps whatsoever to effectuate and carry out the provisions of Executive Order 10340 promulgated by the President of the United States in so far as said Executive Order is intended to apply to the plaintiff herein, its officers, agents and the management of its properties, (ii) from molesting or interfering with or doing any act or thing which would prevent or tend to prevent the plaintiff, its officers, agents and employees, from operating the plaintiff's properties for its own account, (iii) from in any respect changing the wages

or other terms or conditions of employment in effect at the [fol. 1023] properties of the plaintiff at the time of promulgation of said Executive Order, and (iv) from interfering in any other way with the plaintiff's contractual relations with others or with the plaintiff's rights of ownership of its businesses and properties and the operation thereof;

(e) That this Court, upon final hearing and determination of this action, enter a decree permanently enjoining the defendant, and his successor or successors in office, his assistants, employees, agents and other persons acting under his control and authority, (i) from taking any steps whatsoever to effectuate and carry out the provisions of Executive Order 10340 promulgated by the President of the United States in so far as said Executive Order is intended to apply to the plaintiff herein, its officers, agents and the managements of its properties, (ii) from molesting or interfering with or doing any act or thing which would prevent or tend to prevent the plaintiff, its officers, agents and employees, from operating the plaintiff's properties for its own account, (iii) from in any respect changing the wages or other terms or conditions of employment in effect at the properties of the plaintiff at the time of promulgation of said Executive Order, and (iv) from interfering in any other way with the plaintiff's contractual relations with others or with the plaintiff's rights of ownership of its businesses and properties and the operation thereof; and

(f) That the plaintiff have such other and further relief as to the Court may seem just and proper.

April 18, 1952.

James Craig Peacock, 817 Munsey Building, Washington 4, D. C. Randolph W. Childs, Room 1100, [fol. 1024] 1528 Walnut Street, Philadelphia 2, Pennsylvania. Edgar S. McKaig, Room 1100, 1528 Walnut Street, Philadelphia 2, Pennsylvania, Attorneys for Plaintiff.

Adams, Childs, McKaig and Lukens; Williams, Myers and Quiggle, Of Counsel.

[fols. 1025-1025a] *Duly sworn to by I. Andrew Leith. Jurat omitted in printing.*

[fol. 1025b] EXHIBITS A AND B TO COMPLAINT

(Omitted in printing)

[fols. 1025c-1025d] EXHIBIT C TO COMPLAINT

Notice of Taking of Possession by United States of America

(Insert Name of Company)

By an Executive Order dated April 8, 1952, "Directing The Secretary of Commerce to take possession of and operate the plants and facilities of certain steel companies," the President of the United States authorized and directed the Secretary of Commerce to take possession of all or such of the plants, facilities, and other properties of certain companies as he may deem necessary in the interests of national defense, including the above named company, and to operate or to arrange for the operation thereof and to do all things necessary for, or incidental to, such operation.

In accordance with said order possession is hereby taken of the plants, facilities and other properties of the above named company, to the extent stated in Order No. 1 of April 8, 1952, issued under said Executive Order.

Charles Sawyer, Secretary of Commerce.

April 8, 1952.

[fol. 1025e] EXHIBIT D TO COMPLAINT

(Omitted in printing)

[fol. 1026] EXHIBIT E TO COMPLAINT

April 10, 1952.

Honorable Charles Sawyer,
Secretary of Commerce,
Department of Commerce,
Washington 25, D. C.

DEAR SIR:

Answering confirmation copy of your wire received today, original of which was not received, addressed to "President, —— Steel Company," I acknowledge receipt of appointment as Operating Manager on behalf of the United States of E. J. Lavino and Company's Plymouth Meeting Plant, its Sheridan Plant both located in Pennsylvania and its Lynchburg Plant, located in Virginia, the only plants where the employees are members of the United Steel Workers of America, C. I. O. At these plants, no labor dispute exists and no contract negotiations are in progress, although the notice of a strike of the members of this labor organization was received from National headquarters of the Union. The flag is being flown and the notice posted pursuant to Order No. 1 of the Secretary of Commerce. E. J. Lavino and Company does not produce and fabricate steel but in the plants listed above does produce products which go into the production of certain types of steel. The Executive order of the President uses the word "elements" wtihout defining what is meant thereby. Assuming but not admitting that this is intended to embrace the plants above mentioned, our compliance is without prejudice to our rights, as they may be ultimately determined judicially.

Respectfully, E. J. Lavino and Company, Edwin M. Lavino. President.

EML/EMO.

[fol. 1027] EXHIBIT F TO COMPLAINT

Telegram

P. WAO38 TONG GOVT NL PD—Washington DC 12

Edwin M. Lavino, President,
E. J. Lavino and Co., 1528 Walnut St., Phila.

Receipt if acknowledged of your letter of April 10, 1952. My order Number One of April 8, 1952 and telegram of April 9, 1952 are modified to exclude from plants facilities and other properties possession of which was taken thereby all plant facilities and properties other than the Plymouth Meeting Plant and Sheridan Plant in Pennsylvania and the Lynchburg Plant of Lynchburg, Virginia of The E. J. Lavino and Company.

Charles Sawyer, Secretary of Commerce.

10 1952 8 1952 9 1952

Order reads Msgs and Radios from ships after closed . . . no orders on personal messages. Phone in Order.

J. E. O'Connor, Lincoln 7-7533.

W. J. Keogh, DA4-5018.
G. J. Raiser Jr., Ardmore 4326.
W. T. Devitt, Wayne 2582.

[fol. 1028] EXHIBIT G TO COMPLAINT

Day Letter to be sent by Western Union.

April 14, 1952.

Honorable Charles Sawyer,
Secretary of Commerce of United States,
Washington, D. C.

E. J. Lavino and Company, referred to below as "Lavino", hereby requests that you return to Lavino possession of its plants at Sheridan, Pennsylvania; Lynchburg, Virginia; and Plymouth Meeting, Pennsylvania.

Reference is made to the Executive Order of the President of the United States, your Order No. 1, Notice of Tak-

ing of Possession by the United States of America, and copy (received April 10, 1952) of telegram addressed to "President —— Steel Company" contained in an envelope addressed to me as President of E. J. Lavino and Company appointing me operating manager for the United States of the properties of Lavino. In your telegram dated April 12, 1952, mailed by Western Union at Philadelphia April 13, and received by me today, you state that all properties of Lavino are excluded from the operation of the seizure order except Lavino's Plymouth Meeting Plant and Sheridan Plant in Pennsylvania and its Lynchburg Plant in Virginia.

This application is made pursuant to the President's Executive Order and your Order No. 1 above referred to.

The Executive Order of the President above referred to was by its terms based upon a controversy which had arisen between certain companies in the United States producing and fabricating steel and certain of their workers represented by the United Steelworkers of America, C. I. O., referred to below as "Steelworkers" regarding terms and conditions of employment and upon the further circumstance that said controversy had not been settled through the processes of collective bargaining or through the efforts of the Government including those of the Wage Stabilization Board to which the controversy was referred on December 22, 1951 pursuant to Executive Order No. 10233. [fol. 1029] Lavino was not a party to the controversy referred to in the Executive Order of April 8, 1952 and no controversy to which Lavino was a party was referred to any agency of the Government, including the Wage Stabilization Board. Specifically, no controversy existed between Lavino and the Steelworkers which was referred by the President of the United States to the Wage Stabilization Board on December 22, 1951. Lavino is not and has not been engaged in the production or fabrication of steel. Its plants at Sheridan, Pennsylvania and Lynchburg, Virginia, manufacture ferro manganese and its plant at Plymouth Meeting, Pennsylvania, manufactures basic refractories.

For the purposes of collective bargaining negotiations under the National Labor Relations Act, Lavino has never in the past participated, and is not now participating, in

collective bargaining negotiations carried on by representatives of the Steel Companies and the Steelworkers.

The practice of Lavino and the Steelworkers has been to make collective bargaining agreements which expire after the terms of the collective bargaining agreements negotiated by the Steel Companies with the Steelworkers. Moreover the practice has been for collective bargaining negotiations between Lavino and Steelworkers to be postponed until after the pattern of new collective bargaining agreements has been set as a result of collective bargaining negotiations between the Steel Companies and the Steelworkers.

The present three collective bargaining agreements between Lavino and the Steelworkers all expire on January 31, 1952, which is 30 days after the expiration of the contracts between the Steel Companies and the Steelworkers. No collective bargaining negotiations have taken place between Lavino and any representatives of the Steelworkers regarding terms and conditions of employment under a new collective bargaining agreement. As stated above, the usual course would be that such collective bargaining negotiations would be undertaken after the Steel [fol. 1030] Companies and the Steelworkers had arrived at the basic terms of a new collective bargaining agreement.

On April 4, 1952, Philip Murray, President of United Steelworkers of America wrote Lavino letters stating that a strike has been called at its Sheridan, Lynchburg, and Plymouth Meeting Plants, effective 12:01 A.M., April 9, 1952. However, no controversy regarding terms and conditions of employment then existed between Lavino and the Steelworkers and no collective bargaining negotiations had been undertaken. As stated above, Lavino has never been a party to negotiations between the Steel Companies and the Steelworkers regarding terms and conditions of employment and Lavino was not a party to the controversy which was referred to the Wage Stabilization Board by the President of the United States on December 22, 1951.

Any agreement which may be reached by the Steel Company and the Steelworkers on terms of a new collective bargaining agreement cannot be determinative of many important terms of collective bargaining agreements Lavino and the Steelworkers.

The plant at Plymouth Meeting, which produces basic refractories, of necessity, has labor classifications and other methods of doing business which follow the practice of the refractories industry. These classifications and methods differ to such an extent from those prevailing in the steel producing industry that few of the wage rates and job classifications of steel producers apply to Lavino's refractories plant.

The plants at Sheridan, Pennsylvania, and Lynchburg, Virginia, which make ferro manganese, have classifications similar to some of the classifications used by steel producers, but this is true only of blast furnace operations. In so far as concerns the production of ferro manganese, these plants are in no way comparable as to hourly rates and job classifications with those which prevail in the plants which produce or fabricate steel.

The methods of doing business in each of Lavino's three [fol. 1031] plants necessarily conform closely to conditions which prevail in plants of competitors who do not have collective bargaining agreements with the Steelworkers.

While we realize that the Government contends that price relief is not immediately involved in the controversy between the Steel Companies and the Steelworkers, we submit that no fair and equitable agreement can be arrived at between the companies whose plants have been seized and the Steelworkers without the Government affording price relief to the companies with respect to prices. In the case of Lavino, an additional ground for price relief arises out of the fact that one of the critical elements in the production of ferro manganese is manganese which is imported from foreign countries which are not subject to price controls imposed by the laws of the United States. Consequently, in the event that the present controversy between the Steel Companies and the Steelworkers should be settled by a plan which involves price relief, such relief would not be applicable to Lavino which would need special price relief adapted to the conditions of its own business.

Under all the facts, I request that you not only terminate your possession of all of Lavino's plants but that you simultaneously terminate my appointment as Operating Manager on behalf of the United States.

This telegram of necessity has been prepared in has-

and Lavino reserves its right to amplify its statement of the grounds on which your possession of its plants should be terminated.

This application is made without prejudice to Lavino's legal rights and remedies, including its position that the seizure of its plants was unwarranted by law and was ineffective. You are respectfully requested to act on this application forthwith as Lavino desires to promptly protect its rights by appropriate action.

Edwin M. Lavino, President E. J. Lavino and Company.

[fol. 1032] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR PRELIMINARY INJUNCTION—Filed April 18, 1952

Comes now the plaintiff, by its undersigned attorneys, and moves the Court, upon the basis of the verified complaint and affidavit of Andrew Leith filed herein, for a preliminary injunction on notice to the defendant, because it clearly appears from specific facts shown by said complaint and affidavit that immediate and irreparable injury, loss and damage will result to plaintiff from the unlawful acts of the defendant before a final hearing on the complaint.

The acts complained of, against which a restraining order is desired, are set forth in the verified complaint.

James Craig Peacock, 817 Munsey Building, Washington 4, D. C.; Randolph W. Childs, Room 1100, 1528 Walnut Street, Philadelphia 2, Penna.; Edgar S. McKaig, Room 1100, 1528 Walnut Street, Philadelphia 2, Penna., Attorneys for Plaintiff.

[fol. 1033] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION—Filed April 18, 1952

The purpose of this action is (a) to obtain a declaration by this Court that the President's Executive Order 10340 is invalid or, if not held invalid in toto, then that as to this plaintiff it is both invalid and inapplicable, and that in any event all action taken by the defendant with respect to this plaintiff and pursuant to said Executive Order is correspondingly invalid, and (b) to obtain a permanent injunction forbidding the defendant from taking or continuing as to plaintiff any action under the provisions of said Executive Order. In addition, plaintiff asks that, pending final determination, this Court forthwith issue a preliminary injunction in order to prevent frustration of the relief ultimately sought.

Only the questions of law discussed in Points I and II are at all common to any of the questions in Civil Actions Nos. 1539-52, 1549-52, and 1550-52. Plaintiff is not engaged in either producing or fabricating steel, and the matters presented in Points III and IV are wholly peculiar to the present case.

Points

I. *If justified on the merits, the relief sought may properly be granted against the defendant Secretary of Commerce.*

This is not a suit against the United States. *Larson v. D. & F. Corp.*, 337 U.S. 682, 689-690, citing *Philadelphia Co. v. Stimson*, 223 U.S. 605, 620, where it was squarely held that

> "in case of an injury threatened by his illegal action, the officer [there the Secretary of War] cannot claim immunity from injunction process."

and that exemption of the United States from suit does not protect its officers from liability "to persons whose rights of property they have wrongfully invaded."

Neither is this action barred by the President's presumable immunity to suit. Congress admittedly enjoys the same degree of immunity. It is familiar law, however, that an officer may be enjoined from proceeding under an invalid Act of Congress. *Philadelphia Co. v. Stimson,* supra, *Santa Fee Pacific Co.* v. *Lane,* 244 U.S. 492. By the same token an invalid Order of the President can confer upon such an officer no greater protection.

Nor can it be contended that the present suit must fail because the President although unavailable is nevertheless an indispensable party. A superior officer is an indispensable party only "if the decree granting the relief sought will require him [here the President] to take action," and not "if the decree which is entered will effectively grant the relief desired by expending itself upon the subordinate official who is before the court [here the Secretary of Commerce]," *Williams v. Fanning,* 332 U.S. 490, 493, 494, *Hynes v. Grimes,* 337 U.S. 86, 89. The case at bar is therefore not even indirectly a suit against the President.

II. *Executive Order 10340 is ultra vires and therefore invalid.*

The seizure of plaintiff's plants was without authority under any existing statute or any provision of Constitution of the United States, and was in violation of plaintiff's rights under the Constitution.

Executive Order 10340, asserts that it is issued by virtue of the authority vested in the President by the Constitution and laws of the United States and Commander-in-Chief of the Armed Forces of the United States, but—

(a)

No Act of Congress gives the President the power to seize the plaintiff's plants.

Executive Order 10340, unlike the usual type of Executive Order,* recites no Act of Congress. None could be cited for none exist.

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* Note. The very generality of the "Now, Therefore" clause is suspect in itself. Its failure to follow in a matter of such major importance the very general precedent in

Section 189 of the Selective Service Act of 1948 (50 U.S.C. App. Sec. 468) is inapplicable. Incidentally, the plaintiff's affidavit on this application for a preliminary [fol. 1035] injunction states that no order for materials of the type referred to in the Act has been placed with the plaintiff.

The President has not proceeded under Section 201 of Title II of the Defense Production Act of 1950, as amended (50 U.S.C. App. Sec. 2081). As to real estate, the President would have to institute condemnation proceedings.

(b)

Absent an Act of Congress,—the President is without power to seize the plaintiff's plants.

Under the Constitution of the United States (Article II):

> The executive power is vested in the President (Section 1),
>
> The President is the Commander-in-Chief of the Army and Navy (Section 2), and
>
> The President "shall take care that the laws be faithfully enforced" (Section 3)
>
> "Aside from these express powers, and those necessarily implied in them, *the President has no authority to act.*" (Italics supplied). Willoughby, Constitutional Law of the United States, Second Edition, Sec. 953, page 1473.

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such Orders of citing the statute particularly relied upon is tantamount to an admission that neither the President nor his advisors could find any Act of Congress on which he could rely. For example, on August 29, 1950, when he seized the railroads he was careful to cite in Executive Order 10155 the Act of August 29, 1916, 39 Stat. 619, 645. And on February 6, 1950, when he created a Board of Inquiry for the bituminous coal industry he was equally careful to cite in Executive Order 10106, Section 206 of the Labor Management Relations Act, 1947 (Public Law 101, 80th Congress). And so on.

As well stated in *Toledo, Peoria & Western R.R. v. Stover,* 60 F. Supp. 587, 593, S.D. Ill., 1945, (reversed on other grounds at 321, U.S. 50)—

> ". . . The executive department of our Government cannot exceed the powers granted to it by the Constitution, and if it does exercise a power not granted to it, or attempts to exercise a power in a manner not authorized by statutory enactment, such executive act is of no legal effect."

To the same effect see 16 C.J.S. 509 (Const. Law § 167)—

> "In the United States, the executive power in the Federal branch is vested in the President. However, except as other powers are vested in him by Congress, the President has only such powers as are conferred upon him by the Constitution."

Any contention that the Executive Order can be sustained on the ground that the United States was at war with Japan on April 8, 1952, is specious. The Senate on March 20, 1952, (98 Cong. Rec. 2635) gave its advice and consent to the ratification of the treaty of peace with Japan which was signed at San Francisco in September, 1951. Certainly it would be frivolous to argue that the seizure of the plaintiff's plants was justified as a means of prosecuting a war against Japan.

Nor can the seizure be supported on the theory that the United States is at war in Korea. The question as to whether a state of war exists is a political question which can be determined only by the Congress,—which is the [fol. 1036] only branch of the Government which has the power to make war. Congress has made no such determination.

This Court will realize that the fundamental issue in this case is whether the President of the United States has the power to take any action, including the seizure of private property, which he deems necessary for the welfare or defense of the United States. Voices of expediency insist,

in ever increasing number and volume, that the President needs, and therefore has, such power. They say, with Pope

> "For forms of Government
> Let fools contest,
> That which is best
> Administered is best."

In reality this school of thought would (1) convert the Federal Government from one of powers limited by the Constitution (including the Tenth Amendment) to one of unlimited sovereign powers, and (2) substitute a rule of men, and indeed of a single man, for a rule of law.

These arguments of expediency are "in direct conflict with the doctrine that this is a government of enumerated powers" and that the Tenth Amendment forbids "the National Government under the pressure of a supposed general welfare [to] attempt to exercise powers which had not been granted". (*Kansas v. Colorado,* 206 U.S. 46, 89, 90).

This is not the first occasion on which the forces of action-at-any-cost have asserted that the national government, or one of its branches, has unlimited power "in the light of * * * grave national crisis". As was said by Mr. Chief Justice Hughes, speaking for a unanimous court, in *Schechter Corp. v. United States,* 295 U.S. 495, 528, holding unconstitutional the National Industrial Recovery Act:

> "Extraordinary conditions may call for extraordinary remedies. But the argument necessarily stops short of an attempt to justify action which lies outside the sphere of constitutional authority. Extraordinary conditions do not create or enlarge constitutional power. The Constitution established a national government with powers deemed to be adequate, as they have proved to be both in war and peace, but these powers of the national government are limited by the constitutional grants. Those who act under these grants are not at liberty to transcend the imposed limits because they believe that more or different power is necessary. Such assertions of extra-constitutional authority were anticipated and precluded by the explicit terms of the Tenth Amendment."

III. *Irrespective of its validity or invalidity with respect to the steel industry generally, Executive Order 10340 is* [fol. 1037] *not by its terms applicable to plaintiff, and if construed as so applicable it is invalid at least to that extent.*

Plaintiff itself neither produces nor fabricates steel. One of the seized plants manufacturers basic refractories which are an item of furnace equipment rather than an element of steel or any other product. The other two manufacture ferro-manganese. At all three plants the entire production is standard and not designed to meet special needs of any particular industry or customers. A large part of the production of the plaintiff's plants—sold to purchasers who are not engaged in producing or fabricating steel.

Furthermore, plaintiff's principal competitors are not subject to collective bargaining with the Steelworkers. And its own plants have labor classifications which to only a limited extent are similar to those of the steel industry. It is only as to this limited group of classifications that wage rates agreed upon between the steel companies and the Steelworkers have any bearing upon plaintiff's collec-lective bargaining negotiations with the Steelworkers. Even in this restricted area,—bargaining, with the acquiescence of the Steelworkers, has always been conducted separately from the negotiations of the Steelworkers with the steel industry. In fact, it was not until as recently as March 21, 1952, that the Steelworkers themselves advised plaintiff that they were ready to start current negotiations, and as recently as April 4, 1952, they posted a notice at one of the plaintiff's plants that such negotiations "will commence Tuesday or Wednesday of next week", i.e. April 8 or 9. Plaintiff thus was not in fact, and could not possibly have been, a party to the "controversy" which in Executive Order 10340, *signed by the President on April 8, 1952,* was referred to as already having a long drawn out history.

Executive Order 10340 is not applicable to plaintiff. That Order is expressly premised on the continuance of a thrice-mentioned "controversy" between "certain companies" and the representatives of their workers. Plaintiff is not one of "the said companies" so referred to and has never

been a party to that "controversy" or to the negotiations which have been unsuccessful. The inclusion of its name in the list attached to the Order makes the several parts of the composite whole inconsistent with each other. The preamble of the Order is, on the one hand, clear and unambiguous in its declaration of the scope, purpose and intent of the Order. Paragraph "1" of the directive provisions, on the other hand, is not mandatory upon defendant to seize [fol. 1038] all of the plants of all of the listees. (For example, in plaintiff's case he seized only three of its several plants.) It is therefore a fair and proper construction of the Order that it is limited, and intended to be limited, to plants with respect to which the owner "companies" are parties to the "controversies", and that in carrying out the Order the defendant is to be guided by its declaratory provisions.

The Order therefore does not apply to any of plaintiff's plants.

If, however, it is construed as applicable, then for the reasons already developed under Point II augmented by the factors set out in this Point, it is clearly invalid at least to the extent of such application to plaintiff.

IV. *Granting of a preliminary injunction is justified to prevent irreparable injury to plaintiff.*

For reasons more fully developed in paragraph 38 of the Complaint and paragraph 23 of the supporting affidavit of Andrew Leith, even the temporary continuance of the occupation of its plants by defendant would work irreparable injury to plaintiff.

Aside from any other fact, the defendant's public announcement that he is considering granting wage increases, —without the consent and against the protests of the owners of the seized plants,—constitutes a threat that the defendant will displace and supersede the owner's management of their labor relations. The resulting harm to the owners would be disastrous, far reaching and utterly beyond repair.

Respectfully, James Craig Peacock, Randolph W. Childs, Edgar S. McKaig, Attorneys for Plaintiff.