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NRLN is a coalition of 30 Retiree Associations advocating the rights of more than 2 million American retirees from...

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September 22, 2010

The Honorable Sheldon Whitehouse
United States Senate
502 Hart Senate Building
Washington, DC 20510-3904

Dear Senator Whitehouse:

I am writing to thank you on behalf of the 19 members of the National Retiree Legislative Network (NRLN) who participated in the September 14th meeting with Josh Karetny of your staff to discuss the standing of retirees in bankruptcy proceedings. As you may know, the group included Retiree Association leaders who represent the interests of retirees from AT&T, Chrysler, General Motors, Delta Air Lines, Detroit Edison, Kodak and Lucent.

Mr. Karetny was generous with his time and was interested in our concern that when corporations enter bankruptcy there are no clear-cut rules to ensure that retirees—especially salaried retirees—receive equal treatment with that afforded to secured creditors. In bankruptcy court, retirees regularly lose their company-sponsored health care coverage, life insurance and other benefits. Often their pensions must be taken over by the PBGC. When this happens, many retirees lose 20, 30 or 40 percent of their pension income, and even more in extreme cases. While secured creditors often recover from their losses after a bankruptcy, retirees seldom recover anything.

During our discussion with Mr. Karetny, he indicated there might be a hearing conducted in the future by your Subcommittee on Administrative Oversight and the Courts on the issue of bankruptcy reform, and that the NRLN might explore the possibility of testifying. I hope you will invite the NRLN to serve as a witness so that retiree interests can be represented at the hearing. The NRLN would be pleased to provide a knowledgeable witness from among our more than 2 million retirees from 125 companies and public entities.

I have attached to this letter the two-page Executive Summary from a whitepaper that an NRLN task force has researched and written on how bankruptcy courts stymie retirees from organizing to defend what they have earned through decades of service to their former employer. Marta Bascom, NRLN's Executive Director, will provide a copy of the whitepaper in its entirety to your staff.

Thank you very much for your dedication and interest in these issues of such great importance to America's retirees.

Sincerely,

Bill Kadereit, President, National Retiree Legislative Network

Attachment:



Proposal for Bankruptcy Law Reform

Protecting Retiree Benefits in Bankruptcy

Executive Summary

Tens of millions of U.S. retirees—especially those forced into early retirement by down-sizing—are dependent on their former employers for critical pension, healthcare, prescription drug, disability, survivorship, and life insurance benefits. Unfortunately, these benefits are at great risk when an employer files for bankruptcy: Even though these benefits are earned and critical for basic health and well-being, the retirees are seen as already having made their contribution. Unlike the other creditor constituencies of suppliers, lenders and active employees, retirees are not seen as necessary for the business going forward.

And unlike suppliers, lenders, and active employees, who can diversify their risk or make an adjustment as a company descends into bankruptcy, or who can recoup a portion of their losses out of future dealings with the restructured company, retirees who lose benefits in a bankruptcy typically lose those benefits forever, and they have no option to take back their four-decade investment in their employers' fortunes.

In view of that, Congress has already legislated special procedural and substantive protections for retirees' benefits in bankruptcy, because of the need to protect critical health and welfare benefits in a bankruptcy process that would otherwise result in retirees bearing an unfair share of the burden of cuts (losing everything before others give up anything). Unfortunately, recent large bankruptcy cases have highlighted (or even created) tragic shortcomings or loopholes in those protections in Bankruptcy Code Section 1114, thus pointing out the urgent need for legislative reform.

The National Retiree Legislative Network (NRLN) urges Congress to pass the most critical of these reforms as soon as possible:

- Congress should clarify Section 1114 of the Bankruptcy Code to reiterate that the protections of the statutorily-defined health and welfare retiree benefits extend to “any plan, fund, or program” providing those benefits (as the statutory language provides, but some courts have ignored), not just those benefits a debtor failed to reserve the right to modify outside bankruptcy. At the same time, the statute should require prompt appointment of a Section 1114 retiree committee in large bankruptcy cases and give bankruptcy judges additional flexibility to expand the power of a retiree committee (1) to represent retirees on modification of their collectively-bargained benefits when their union has chosen not to represent them on those issues and (2) to negotiate over claims for termination of non-qualified pension benefits in appropriate cases.
- Congress should provide that more broadly available pensions for workers and retirees may not be terminated in bankruptcy unless the debtor's executives also give up their richer (non-qualified) pensions and deferred compensation plans.

(More)

- Congress should generally require the continued minimum funding of defined benefit pension plans during a bankruptcy and provide an administrative claim for the pension fund if those minimum contributions are not made.
- Similar to the protections Congress has already added in Bankruptcy Code Section 1102(a)(4) for small business creditors, to ensure a representative creditors committee, Congress should add flexibility to allow a retiree representative on the creditors committee, particularly where unions have specifically declined to represent the interests of their retirees in negotiating over benefits.

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