NRLN
NATIONAL RETIREE
LEGISLATIVE NETWORK
601 Pennsylvania Avenue, N.W.
Suite 900, South Building
Washington, D.C. 20004-2601
Tel: 202-220-3172 Toll-Free: 1-866-360-7197
Email: nrlnmessage@msn.com Website: www.nrln.org

July 26, 2013

The Honorable Carl Levin
United States Senate
269 Russell Senate Office Building
Washington, DC 20510-2202

Dear Senator Levin,

The news about the Detroit bankruptcy placing the pensions and benefits of retirees in jeopardy is another reason why Congress needs to pass legislation to protect retirees in the bankruptcy process. The National Retiree Legislative Network (NRLN) represents the interests of more than 2 million retirees from 135 companies and public entities and has produced a whitepaper, ***Protecting Retiree Benefits in Bankruptcy***, presenting proposals that should be enacted into law.

During their decades of work, retirees earned these benefits as part of their "total compensation package." Workers and retirees have typically planned their retirement security on the continuation of these benefits. Even though pension, health care, disability and life insurance benefits are critical for basic health and well-being, bankruptcy courts too often treat them as expendable.

Unlike certain other creditors, retirees are not seen as necessary for a business or public entity going forward. And unlike suppliers, lenders, and active employees, who can diversify their risk or make an adjustment in a bankruptcy and are able to survive financial bumps in the road, retirees typically suffer permanent losses.

Reforms are needed to level the playing field and protect the reliance of millions of retirees on vested benefits earned over a lifetime of work. In its whitepaper the NRLN recommends a number of specific legislative amendments that can provide protections for retirees. Here are the reforms that would benefit retirees when a company, a city or other public entity files for bankruptcy:

- Congress should revise Section 1114 of the Bankruptcy Code to clarify that the protections of retiree health and welfare benefits extend to "any plan, fund, or program" providing those benefits (as Congress intended, but some courts have ignored), not only those benefits a debtor failed to reserve the right to modify outside bankruptcy.
- The statute should be amended to require prompt appointment of a Section 1114 committee to represent retirees in large bankruptcy cases within 60 days and give bankruptcy court judges additional flexibility to expand the power of a retiree committee to (1) represent retirees on modification of their collectively-bargained benefits when their union has elected not to represent them on those issues, and to (2) negotiate over claims for termination of non-qualified pension benefits in appropriate cases.

(More)

- In addition, Congress should amend Section 1114 to ensure that at least the largest of the established retiree organizations representing a substantial number of the non-union-represented retirees is appointed to the Committee.
- Congress should generally require the continued minimum funding of defined benefit pension plans during a bankruptcy and explicitly provide that if those minimum contributions are not made, that claims by the pension trust or by the government shall receive priority as an administrative expense under Bankruptcy Code Section 503(b).
- Congress should amend Section 1408 of the Bankruptcy Code to require corporations to file Chapter 11 reorganization cases in the judicial district where they have their principal place of business, or principal assets, rather than in a distant district where they have few employees, retirees, assets or connections to the community.
- Congress should provide that qualified pension plans for rank-and-file workers, managers and retirees may not be terminated in bankruptcy unless the debtor's current and recent senior executive officers also give up any priority status claim for their accrued non-qualified pensions and deferred compensation plan benefits (which would remain unsecured claims).
- Parallel to the protections for small business creditors that Congress has already added in Bankruptcy Code Section 1102(a)(4), to ensure a representative creditors committee, Congress should give bankruptcy courts the flexibility to allow a retiree representative on the creditors committee, particularly where unions have specifically declined to represent their retirees in negotiating over benefits.

The problems now facing Detroit's retirees mirror those that corporate retirees have been experiencing for more than a decade with Congress' only action to help retirees being in the Pension Protection Act of 2006 which is sorely in need of revisions, along with changes necessary in the Employee Retirement Income Security Act (ERISA) and Pension Benefit Guaranty Corporation (PBGC) rules and policies.

Detroit is just another case where politicians implemented policies that provided opportunities for funding holidays on a permanent basis so they could spend elsewhere. There are corporations that have the cash today yet are funding at or below the Minimum Contribution Requirement for their pension plans. Pension plan sponsors are begging for the days when higher interest rates will help them instead of funding now while they have the cash. They are reinstating or increasing dividend payments while they fund plans at or under the minimum requirements. We don't believe that you and your colleagues intended to give companies funding relief so they might avoid funding obligations under ERISA when times turn good and cash is available.

Members of Congress have known that single private employer pension plans, multi-employer plans and now government plans are having trouble meeting obligations. This is true for a plethora of reasons, but the bottom line is laws do not sufficiently protect pensions.

The NRLN and its Associations on behalf of the tens of thousands of our Michigan retiree members would welcome the opportunity to share our bankruptcy whitepaper with you and to discuss our proposals for the proper funding and protection of retiree pension plans. Please ask a member of your staff to contact me or Marta Bascom, NRLN Executive Director, at 703-863-9611 or marta@bascomstrategies.com .

Sincerely,

Bill Kadereit

Bill Kadereit, President
National Retiree Legislative Network
Ph: 972-722-5928 Email: bkad@sbcglobal.net

Jay Kuhnie, President
National Chrysler Retirement Organization
Ph: 248-760-6904 Email: jaykuhnie@yahoo.com

Jim Shepherd

Jim Sheperd. President
General Motors Retiree Association
Ph: 480-515-2765 Email: shepherdretired@aol.com

Robert Tompkins

Robert Tompkins, President
Detroit Edison Alliance of Retirees
Ph: 248-685-1581 Email: tompkins@comcast.net