U.S. House of Representatives
Committee on the Judiciary

Written Testimony Presented On Behalf Of United Steelworkers

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Hearing Before the U.S. House Judiciary Committee

Subcommittee on Commercial & Administrative Law

"American Workers in Crisis: Does the Chapter 11 Business Bankruptcy Law Treat Employees and Retirees Fairly?"

Washington, D.C. – September 6, 2007

I am Fred Redmond, International Vice President (Human Affairs) of the United Steelworkers (USW). The USW has 850,000 members in the United States and Canada. Our members are found in nearly every manufacturing industry, not only steel, but paper, forestry, rubber, energy, mining, automotive parts, and chemicals, as well as health care, service and public employment. On behalf of the USW, and filling in for International President Leo Gerard, who is unable to appear today, I thank the Sub-Committee for the invitation to appear today.

Our union is all too familiar with the Chapter 11 process. And for me, one corporate bankruptcy hit especially close to home. The aluminum plant I worked in for 25 years in McCook Illinois, near Chicago, went through bankruptcy in the McCook Metals case. The company ultimately liquidated, and that meant the termination of a defined benefit pension and a retiree insurance program. Men and women with whom I had worked for years, including family members, lost almost everything in the McCook bankruptcy. I cannot forget their losses, nor those suffered by Steelworkers in other cases, and that's one reason why I appear before you today.

Looking at steel cases alone for just a minute, more than 40 steelmakers earlier this decade filed bankruptcy cases, and that was the result of great overcapacity in the world steel industry followed by unfair imports from America's trading partners. The human dimensions were vast. Many of our largest steel industry employers were affected – Bethlehem Steel, LTV Steel, National Steel, Wheeling-Pittsburgh Steel, WCI Steel, and Republic Technologies. More than 55,000 Steelworkers were laid off in that period. The Pension Benefit Guaranty Corporation terminated pension plans covered nearly 240,000 steelworkers and retirees. And, nearly 200,000 retirees and surviving spouses lost retiree health insurance coverage.

The steel industry recovered substantially, as a result of both the tariffs imposed in March 2002 and the sacrifices made by our members to restructure the industry. Over these years our union has also led an effort for steel industry consolidation, which did not come without a price, but which has helped to create a stronger industry that even now faces still more real and threatened increases in foreign imports.

Beyond steel, in such industries as aluminum, iron ore, glass, paper, and automotive parts, USW members and retirees have also faced devastating corporate bankruptcies. Our bargainers have had to wrestle with enormous challenges and do so within a system that is stacked against the interests of workers and retirees. In light of our experience, I ask the Sub-Committee today to lead a reform of the Bankruptcy Code aimed at treating American workers and retirees more fairly.

The last major reforms to the Bankruptcy Code that focused on worker and retiree interests were enacted in the 1980s, and the United Steelworkers was central in those deliberations. Insofar as the ability of a reorganizing company to reject a negotiated labor agreement is concerned, legislation in the 1980's sought to balance collective bargaining rights against the need of an employer with proven distress to obtain necessary and limited relief. We believe Congress always intended this balance to allow a reorganizing company to reject a labor agreement only as a last resort, that is, only after full and earnest bargaining had failed and, even then, only when necessary to avoid liquidation.

But the experience of the last 20 years illustrates that this balance has been upset. The courts have interpreted the bankruptcy law in such a way as to regularly grant employer requests for relief under a more lax standard than we believe Congress had intended. Employers now push aggressively for changes to labor and pension and retiree insurance agreements, often as a first shot rather than a last resort. In light of this experience, there are numerous ways in which Congress can and should reform the bankruptcy laws to treat worker and retiree interests more fairly.

First, Congress should seek to recapture the balance I referred to, giving stronger recognition to the important role of collective bargaining and limiting the right of employers to violate labor agreements,

which is after all what rejection really amounts to. This would include defining more narrowly the meaning of the term "necessary to reorganization" so as to force employers to clear a higher bar and placing meaningful limits on the length of proposed concessions. Honoring the collective bargaining process also would protect the fundamental right to strike, which has been a particular concern to our brothers and sisters in the airline industry.

Second, reform should assign higher priority to the payment of employee and retiree obligations, allowing them to be paid before the claims of other creditors who are typically more able to absorb losses than is an individual worker and his or her family. Among the other creditors with greater financial reserves are highly-compensated lawyers and investment bankers.

Third, reform should enshrine the principle of shared sacrifice and do it with specificity, meaning that executives should not be allowed to improve their own salaries and benefits while workers and retirees are forced to sacrifice their quality of life. Before exposing workers and retirees to cuts, the courts should simply ask whether executives and managers have first made sacrifices themselves.

On this subject – controlling executive compensation in bankruptcy – Congress in 2005 limited the ability of companies to ask for retention bonuses to be paid to executives of bankrupt companies simply for remaining with the company. In fact, it was a Steelworkers leader from Ohio who first pointed out the abuses of executive retention schemes in testimony to the Senate Judiciary Committee in early 2005. Employers, however, have found loopholes in the current law and now simply recast and re-name these retention schemes as so-called "incentive programs." This is semantics. As one judge in a recent USW case said in considering one of these so-called "incentive" programs: "if it walks like a duck, and quacks like a duck, it's a duck." Congress must close this loophole.

Fourth, bankruptcy reform also must take into account the impact of sales and liquidations upon workers and retirees. For example, Congress should clarify that a bankruptcy judge may, in supervising the sale or auction of a company's assets, give preferential consideration to a purchaser who plans to retain jobs and benefits in the community as compared to the buyer who would simply liquidate assets. Congress also should take steps to extend protection to retiree health benefits in sale situations. Even where a seller in bankruptcy meets an exacting standard for modifying retiree benefits, Congress should require the buyer as well to set aside monies to restore some of the devastating, and oftentimes, life-threatening losses of health care benefits suffered by retirees. That will ensure that retirees are not left by the side of the road as a profitable buyer moves forward.

We at the USW know that a different bankruptcy process is possible. We represent approximately 280,000 members in Canada. Our Canadian employers have not been immune from many of the same problems that have afflicted our U.S. employers, though Canadian employers have not been hamstrung by the gross inefficiencies of the U.S. health care system. In the Canadian insolvency process, we are not aware of any judge who has used the legal process to void a collective bargaining agreement, and our union was instrumental in 2005 in leading the Canadian House of Commons to pass legislation that confirmed that collective bargaining agreements are beyond the authority of the courts (though that law is now under attack by the current government). Our experience in Canada proves that worker interests need not be subordinated in the bankruptcy process.

Madame Chairperson, we recognize that reforming the U.S. Bankruptcy Code will not, by itself, solve all of the problems of American industry. We do not confuse prevention with cure. And on the prevention side are vital questions about our trade and tax policies, our lack of international health care competitiveness, the need for a pro-manufacturing agenda, and other policies that stop the hemorrhaging of jobs in American industry. At the same time, the bankruptcy laws should work in tandem with manufacturing-friendly measures and, at the very least, not exacerbate the problems being faced by so many American workers and retirees. The lives of far too many American workers and retirees have been crushed by corporate reorganizations. Congress can begin to set things right by reforming the bankruptcy laws. Thank you very much Madame Chairperson.