Testimony of Robert Roach, Jr.

General Vice President of Transportation

International Association of Machinists

and Aerospace Workers

Before The

House Committee on the Judiciary

Subcommittee on Commercial and Administrative Law

"Protecting Employees and Retirees

in Business Bankruptcies"

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Thank you, Chairman Conyers, Subcommittee Chairman Cohen, Ranking Member Franks and members of this Committee for the opportunity to speak to you today. My name is Robert Roach, Jr., General Vice President of Transportation for the International Association of Machinists and Aerospace Workers (IAM). I am appearing at the request of International President R. Thomas Buffenbarger. The IAM is among the nation's largest industrial trade unions, representing nearly 700,000 active and retired members under more than 5,000 contracts in transportation, aerospace, shipbuilding, manufacturing and defense-related industries.

I am speaking to you today as both a union representative with extensive bankruptcy experience and a retired airline employee who has personally felt the effects of airline bankruptcies. I have witnessed the destruction of tens of thousands of lives through the Chapter 11 process. The Machinists Union membership strongly supports the passage of H.R. 4677 to protect employees in business bankruptcies.

While Chapter 11 bankruptcy can provide struggling companies an opportunity to regroup and avoid liquidation, it is increasingly abused as a means to get a leg-up on the competition. The Machinists Union has an enormous interest in seeing a floundering company survive because, simply put, if the company doesn't survive neither do our members' jobs. But company's are increasingly using bankruptcy as a means to take what they can from employees outside of the normal collective bargaining process, not just what is needed for a corporation to survive.

In 1984, Congress created Section 1113 of the bankruptcy code in response to companies using bankruptcy as a weapon to eliminate employee collective bargaining agreements. Frank Lorenzo famously manipulated the system in just such a way. In the last decade, that same exploitation of the courts re-appeared, largely in the same industry Lorenzo was expelled from, air transportation.

Under current bankruptcy law, if a company seeks to modify labor agreements and a union does not comply, the company can ask a judge to reject their contracts, and employees have no recourse. Under this unfair corporate advantage, employees have suffered greatly, and changes are needed.

Section 1113 of the current law has deteriorated the collective bargaining process, not enhanced it. It does not offer the employee protections Congress envisioned in 1984. Section 1113 only provides a checklist of perfunctory steps that must be followed before a judge can reject a labor contract. It does nothing to encourage good-faith bargaining.

In fact, recent court decisions actually incentivize employers not to reach an agreement with their unions. Some courts suggest that workers do not have the right to engage in self-help if the bankruptcy court rejects their collective bargaining agreement. Good-faith bargaining can only be achieved when there is a level playing field and both parties have something to gain – or lose – at the bargain table. Today, there is no downside for employers failing to reach an agreement. They just follow Section 1113 as a roadmap that ends either in contract rejection or employees accepting a disproportionate share of the bankruptcy pain. The right to self-help ensures that both bargaining parties understand the consequences of failing to reach a negotiated agreement, and must be guaranteed.

The current, inequitable bargaining process has dramatic consequences.

Immediately after its Chapter 11 filing, United Airlines asked a bankruptcy judge to impose 14% “emergency” pay cuts on IAM members. The judge complied. More long-term cuts in pay and benefits cost IAM members $460 million a year (or $2.644 billion over the life of the agreement). United then took steps to cut health benefits for existing retirees and filed a motion in court to ask a judge to impose cuts if agreements could not be reached with the retirees' representatives. This merciless move cost fixed-income retirees $50 million a year.

In the summer of 2004 United ceased funding its pension plans, the first in a series of steps which ultimately led to their termination by the Pension Benefit Guaranty Corporation (PBGC).

In January 2005, United once again sought and received "emergency" pay cuts from the bankruptcy court - this time it was 11%. Six months later IAM members gave up another $176 million a year to save United. Savings attributable to the termination of IAM member's pensions saved United an additional $217 million a year.

In total, IAM members were forced to sacrifice more than <u>$4.6 billion</u> for United Airlines.

In US Airways' first bankruptcy in 2002, IAM members agreed to two rounds of contract concessions totaling $276 million per year, or $1.8 billion over 6 1/2 years. Pay was cut by an average of 7.5%. Employees also experienced drastic increases in their contributions for healthcare coverage, which had the effect of reducing take-home pay even further.

Immediately after filing for bankruptcy for the second time in as many years, US Airways management petitioned the court to impose "emergency" pay cuts of

23% for all union-represented employees. The bankruptcy court reduced the amount to a still-staggering 21% cut in pay. Eventually, US Airways' mechanics saw their pay cut by an average of 15%. Management and salaried employees' pay was reduced by only 5% to 10%.

Our Northwest Airlines members saw their pension plans frozen, and took 11.5% pay cuts as a result of management's bankruptcy. This story has been repeated throughout the airline industry.

And how did the executives who steered their airlines into bankruptcy fare in the process? They were rewarded for failure.

US Airways CEO David Siegel was rewarded with $1.45 million the year his airline exited its first bankruptcy and another $9 million in 2003, the year in between the airline's two bankruptcies. Siegel's successor, Bruce Lakefield, orchestrated massive pay, benefit and job cuts for front-line employees during the airline's second bankruptcy - but he refused to accept a wage cut for himself.

Northwest CEO Doug Steenland was granted $26.6 million in stock upon the carrier's 2007 exit from bankruptcy, plus a cash salary that year of over $500,000.

In 2006, on the day after emerging from the longest bankruptcy in airline history, United Airlines CEO Glenn Tilton was rewarded with $20 million in stock and options. During the first month out of bankruptcy he was granted additional stock and options valued at $18 million. Tilton also had a base salary of $687,000 and bonuses totaling $839,000 that year. Finally, he had $210,000 worth of "other compensation" including a car & driver and reimbursement of taxes. Tilton’s total compensation in the first year after United’s bankruptcy was $39.7 million.

In these major airline bankruptcies, much of the financial sacrifices employees made to save their company were diverted into the pockets of the people responsible for the company’s failure. It shouldn’t be surprising that since these bankruptcy cases focused more on what could be extracted from employees than developing a new business plan, the airlines are still struggling and now looking for mergers to save them.

Because airlines such as Delta, United, Northwest, US Airways and others successfully manipulated the bankruptcy process to extract billions from employees, carriers such as American and Continental threatened employees with bankruptcy if they too did not accept contract concessions. Their threatened bankruptcies were not to avoid liquidation, but those airlines claimed bankruptcy may be necessary to lower labor costs to remain competitive in the industry’s race to the bottom. The current bankruptcy laws were used as a bargaining weapon, not because of a legitimate need to restructure or as an alternative to liquidation.

While airline employees have been hard-hit by the impacts of bankruptcy, they are certainly not alone. Auto, steel, banking, newspaper, cable television, and trucking companies are among the more than 100 publicly-traded companies that seek Chapter 11 bankruptcy protection each year.

IAM members at auto parts supplier Dana Corporation saw their company eliminate retiree medical benefits in bankruptcy. Other IAM members at Kaiser Aluminum felt the stinging effects of bankruptcy when the PBGC took over administration of their terminated company-sponsored defined benefit pension plan. Current and future retirees lost value in their promised benefits as well as supplemental disability benefits the PBGC does not guarantee.

Bankruptcy law should be amended to ensure employers engage in good-faith bargaining when seeking contract modifications. Companies should no longer be able to use the bankruptcy code to eliminate decades of collective bargaining gains when there is no justifiable reason - other than corporate greed.

If employees are called upon to sacrifice in order to resurrect their bankrupt employer, bankruptcy law must require that everyone from the break room to the board room shares the pain. Executive bonuses, stock grants, and other compensation enhancements proposed during a bankruptcy must be strictly limited. Bonuses paid to executives after emerging from bankruptcy must be reviewed by the court and take into account the amount of pain inflicted upon employees during and following bankruptcy. Employees cannot be asked to sacrifice wages, pensions, healthcare and jobs in order to line the pockets of the same people who bankrupted the company in the first place.

The IAM believes companies should be required to pay into pension funds as benefits are earned. An employee accepts lower immediate wages based on an employers' promise of a pension. Employers should not be allowed to abuse bankruptcy laws to break the pension promises workers count on to live in retirement with dignity. Additionally, the PBGC should have the financial resources available to guarantee all of the vested benefits promised in a pension plan without reduction or maximums.

The pension troubles in the airline and steel industries were caused by employers taking advantage of loose pension funding requirements and using equity in pension plans to defer actual cash contribution on behalf of employees. When the stock market tanked, so did the pension plans. Pension defaults in the steel, airline and other industries helped the PBGC move from a surplus of $7.7 billion at the end of fiscal year 2001 to a deficit of more than $20 billion today.

Currently, the PBGC has no power in bankruptcy to force companies to make required pension contributions. A company can simply refuse to pay and force the PBGC to initiate a pension termination to prevent a plan from accruing further pension liabilities. Congress must make bankruptcy a less attractive mechanism to dump pension obligations on the PBGC. The PBGC also needs to have the ability to enforce pension funding rules on a level basis – whether or not a plan sponsor is in bankruptcy.

Comprehensive bankruptcy reform should also increase the priority claim limits for wages, provide employees and retirees with the ability to recover pension losses, and direct judges to consider how reorganization plans will impact jobs, collective bargain agreements, pensions and retiree benefits when approving plans.

The Machinists Union strongly supports the comprehensive bankruptcy reform contained in H.R. 4677 that will protect our nation's workers and require shared sacrifice among all stakeholders.

Thank you again for the invitation. I look forward to your questions.