

By Mr. DURBIN (for himself, Mr. **KENNEDY**, Mr. **FEINGOLD**, and Mr. **OBAMA**):

S. 2092. A bill to amend title 11, United States Code, to improve protections for employees and retirees in business bankruptcies; to the Committee on the Judiciary.

Mr. DURBIN. Mr. President, I rise today to support this Nation's workers, who deserve better treatment than they currently experience when their employers fail them.

We all remember what happened with Enron. Thousands of workers toiled over decades to slowly build up good, solid companies of which they could be proud. Then, in just a few short years, these companies were bought up by a conglomerate and run into the ground.

Enron went bankrupt and, just like that, the workers and retirees who spent their lives building something lost their jobs, their benefits, and most of their pensions. Our bankruptcy system helped facilitate that loss.

It is not just Enron. Workers and retirees are always near the back of the line when their companies go into bankruptcy. Some firms have gone into bankruptcy at least in part because companies can walk away forever from some of their obligations to their employees.

Today I am introducing the Protecting Employees and Retirees in Business Bankruptcies Act, along with Senators **KENNEDY** and **FEINGOLD**. I am pleased that Chairman **CONYERS** of the House Judiciary Committee will be introducing the House companion.

The Protecting Employees and Retirees in Business Bankruptcies Act will increase the value of worker claims in bankruptcy. The bill doubles the maximum value of wage claims for each worker to \$20,000; allows a second claim of up to \$20,000 for benefits earned; eliminates the requirement that employees earn wage and benefit claims within 180 days of the bankruptcy filing; creates a new priority claim for the loss in value of workers' pensions; and establishes a new priority administrative expense for workers' collective severance pay.

The bill also will reduce the loss of wages and benefits. It protects the value of collective bargaining agreements by limiting the situations in which they can be rejected and by tightening the criteria by which they can be amended. It also protects retiree benefits and ensures that bidders for assets of the bankrupt company that promise to honor back wages, vacation time, and other benefits are considered favorably.

Finally, the bill will increase the parity of worker and executive claims. For example, the bill prohibits deferred executive compensation in situations where employee compensation plans have been terminated in bankruptcy.

No longer will executives and insiders be able to pay themselves huge bonuses in the midst of slashing payroll and benefit costs.

No longer will consultants receive huge fees while retirees are losing most of their pensions.

No longer will companies be able to sell off all of the assets that make the company worthwhile, and yet refuse to use those proceeds to support the workers who have lost their livelihoods.

I am proud to introduce this legislation with Senators **KENNEDY** and **FEINGOLD**, and I thank the AFL-CIO and all of its workers for their wholehearted support.

Mr. President, I ask unanimous consent that the text of the bill be printed in the **RECORD**.

There being no objection, the text of the bill was ordered to be printed in the **RECORD**, as follows:

S. 2092

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Protecting Employees and Retirees in Business Bankruptcies Act of 2007".

SEC. 2. FINDINGS.

The Congress finds the following:

(1) Recent corporate restructurings have exacted a devastating toll on workers through deep cuts in wages and benefits, termination of defined benefit pension plans, and the transfer of productive assets to

lower wage economies outside the United States. Retirees have suffered deep cutbacks in benefits when companies in bankruptcy renege on their retiree health obligations and terminate pension plans.

(2) Congress enacted chapter 11 of title 11, United States Code, to protect jobs and enhance enterprise value for all stakeholders and not to be used as a strategic weapon to eliminate good paying jobs, strip employees and their families of a lifetime's worth of earned benefits and hinder their ability to participate in a prosperous and sustainable economy. Specific laws designed to treat workers and retirees fairly and keep companies operating are instead causing the burdens of

bankruptcy to fall disproportionately and overwhelmingly on employees and retirees, those least able to absorb the losses.

(3) At the same time that working families and retirees are forced to make substantial economic sacrifices, executive pay enhancements continue to flourish in business bankruptcies, despite recent congressional enactments designed to curb lavish pay packages for those in charge of failing enterprises. Bankruptcy should not be a haven for the excesses of executive pay.

(4) Employees and retirees, unlike other creditors, have no way to diversify the risk of their employer's bankruptcy.

(5) Comprehensive reform is essential in order to remedy these fundamental inequities in the bankruptcy process and to recognize the unique firm-specific investment by employees and retirees in their employers' business through their labor.

SEC. 3. INCREASED WAGE PRIORITY.

Section 507(a) of title 11, United States Code, is amended--

(1) in paragraph (4)--

(A) by striking "\$10,000" and inserting "\$20,000";

(B) by striking "within 180 days"; and

(C) by striking "or the date of the cessation of the debtor's business, whichever occurs first,";

(2) in paragraph (5)(A), by striking--

(A) "within 180 days"; and

(B) "or the date of the cessation of the debtor's business, whichever occurs first"; and

(3) in paragraph (5), by striking subparagraph (B) and inserting the following:

"(B) for each such plan, to the extent of the number of employees covered by each such plan, multiplied by \$20,000."

SEC. 4. PRIORITY FOR STOCK VALUE LOSSES IN DEFINED CONTRIBUTION PLANS.

(a) Section 101(5) of title 11, United States Code, is amended--

(1) in subparagraph (A), by striking ``or" at the end;

(2) in subparagraph (B), by inserting ``or" after the semicolon; and

(3) by adding at the end the following:

``(C) right or interest in equity securities of the debtor, or an affiliate of the debtor, held in a defined contribution plan (within the meaning of section 3(34) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(34)) for the benefit of an individual who is not an insider or 1 of the 10 most highly compensated employees of the debtor (if 1 or more are not insiders), if such securities were attributable to--

``(i) employer contributions by the debtor or an affiliate of the debtor, other than elective deferrals (within the meaning of section 402(g) of the Internal Revenue Code of 1986), and any earnings thereon; or

``(ii) elective deferrals and any earnings thereon.".

(b) Section 507(a) of title 11, United States Code, is amended--

(1) by redesignating paragraphs (6) through (10) as paragraphs (7) through (11), respectively;

(2) by inserting after paragraph (5) the following:

``(6) Sixth, loss of the value of equity securities of the debtor or affiliate of the debtor that are held in a defined contribution plan (within the meaning of section 3(34) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(34)), without regard to when services resulting in the contribution of stock to the plan were rendered, measured by the market value of the stock at the time of contribution to, or purchase by, the plan and the value as of the commencement of the case where an employer or plan sponsor that has commenced a case under this title has committed fraud with respect to such plan or has otherwise breached a duty to the participant that has proximately caused the loss of value.";

(3) in paragraph (7), as redesignated, by striking ``Sixth" and inserting ``Seventh";

(4) in paragraph (8), as redesignated, by striking ``Seventh" and inserting ``Eighth";

(5) in paragraph (9), as redesignated, by striking ``Eighth" and inserting ``Ninth";

(6) in paragraph (10), as redesignated, by striking ``Ninth" and inserting ``Tenth"; and

(7) in paragraph (11), as redesignated, by striking ``Tenth'' and inserting ``Eleventh''.

SEC. 5. PRIORITY FOR SEVERANCE PAY.

Section 503(b) of title 11, United States Code, is amended--

(1) in paragraph (8) by striking ``and'' at the end;

(2) in paragraph (9) by striking the period and inserting ``; and''; and

(3) by adding at the end the following:

``(10) severance pay owed to employees of the debtor (other than to an insider, other senior management, or a consultant retained to provide services to the debtor), under a plan, program, or policy generally applicable to employees of the debtor, or owed pursuant to a collective bargaining agreement, but not under an individual contract of employment, for termination or layoff on or after the date of the filing of the petition, which pay shall be deemed earned in full upon such layoff or termination of employment.''.

SEC. 6. EXECUTIVE COMPENSATION UPON EXIT FROM BANKRUPTCY.

Section 1129(a)(5) of title 11, United States Code, is amended--

(1) in subparagraph (A)(ii), by striking ``and'' at the end; and

(2) in subparagraph (B), by striking the period at the end and inserting the following: ``; and

``(C) the compensation disclosed pursuant to subparagraph (B) has been approved by, or is subject to the approval of, the court, as reasonable when compared to persons holding comparable positions at comparable companies in the same industry and not disproportionate in light of economic concessions by the debtor's nonmanagement workforce during the case.''.

SEC. 7. LIMITATIONS ON EXECUTIVE COMPENSATION ENHANCEMENTS.

Section 503(c) of title 11, United States Code, is amended--

(1) in paragraph (1), by inserting ``or for the payment of performance or incentive compensation, or a bonus of any kind, or other financial returns designed to replace or enhance incentive, stock, or other compensation in effect prior to the date of the commencement of the case,'' after ``remain with the debtor's business,``; and

(2) by amending paragraph (3) to read as follows:

`` (3) other transfers or obligations, to or for the benefit of officers, of managers, or of consultants retained to provide services to the debtor, before or after the date of filing of the petition, in the absence of a finding by the court based upon evidence in the record, and without deference to the debtor's request for such payments, that such transfers or obligations are essential to the survival of the debtor's business or (in the case of a liquidation of some or all of the debtor's assets) essential to the orderly liquidation and maximization of value of the assets of the debtor, in either case, because of the essential nature of the services provided, and then only to the extent that the court finds such transfers or obligations are reasonable compared to individuals holding comparable positions at comparable companies in the same industry and not disproportionate in light of economic concessions by the debtor's nonmanagement workforce during the case.".

SEC. 8. REJECTION OF COLLECTIVE BARGAINING AGREEMENTS.

Section 1113 of title 11, United States Code, is amended--

(1) by striking subsections (a) through (c) and inserting the following:

`` (a) The debtor in possession, or the trustee if one has been appointed under this chapter, other than a trustee in a case covered by subchapter IV of this chapter and by title I of the Railway Labor Act, may reject a collective bargaining agreement only in accordance with the provisions of this section.

`` (b)(1) Where a debtor in possession or trustee (hereinafter in this section referred to collectively as a `trustee') seeks rejection of a collective bargaining agreement, a motion seeking rejection shall not be filed unless the trustee has first met with the authorized representative (at reasonable times and for a reasonable period in light of the complexity of the case) to confer in good faith in attempting to reach mutually acceptable modifications of such agreement. Proposals by the trustee to modify the agreement shall be limited to modifications to the agreement that--

`` (A) are designed to achieve a total aggregate financial contribution for the affected labor group for a period not to exceed 2 years after the effective date of the plan;

`` (B) shall be no more than the minimal savings necessary to permit the debtor to exit bankruptcy, such that confirmation of such plan is not likely to be followed by the liquidation of the debtor or any successor to the debtor; and

`` (C) shall not overly burden the affected labor group, either in the amount of the savings sought from such group or the nature of the modifications, when compared to other constituent groups expected to maintain ongoing relationships with the debtor, including management personnel.

`` (2) Proposals by the trustee under paragraph (1) shall be based upon the most complete and reliable information available. Information that is relevant for the negotiations shall be provided to the authorized representative.

`` (c)(1) If, after a period of negotiations, the debtor and the authorized representative have not reached agreement over mutually satisfactory modifications and the parties are at an impasse, the debtor may file a motion seeking rejection of the collective bargaining agreement after notice and a hearing held pursuant to subsection (d). The court may grant a motion to reject a collective bargaining agreement only if the court finds that--

`` (A) the debtor has, prior to such hearing, complied with the requirements of subsection (b) and has conferred in good faith with the authorized representative regarding such proposed modifications, and the parties were at an impasse;

`` (B) the court has considered alternative proposals by the authorized representative and has determined that such proposals do not meet the requirements of subparagraphs (A) and (B) of subsection (b)(1);

`` (C) further negotiations are not likely to produce a mutually satisfactory agreement; and

`` (D) the court has considered--

`` (i) the effect of the proposed financial relief on the affected labor group;

`` (ii) the ability of the debtor to retain an experienced and qualified workforce; and

`` (iii) the effect of a strike in the event of rejection of the collective bargaining agreement.

`` (2) In reaching a decision under this subsection regarding whether modifications proposed by the debtor and the total aggregate savings meet the requirements of subsection (b), the court shall take into account--

`` (A) the ongoing impact on the debtor of the debtor's relationship with all subsidiaries and affiliates, regardless of whether any such subsidiary or affiliate is domestic or nondomestic, or whether any such subsidiary or affiliate is a debtor entity; and

`` (B) whether the authorized representative agreed to provide financial relief to the debtor within the 24-month period prior to the date of the commencement of the case, and if so, shall consider the total value of such relief in evaluating the debtor's proposed modifications.

`` (3) In reaching a decision under this subsection, where a debtor has implemented a program of incentive pay, bonuses, or other financial returns for insiders or senior management personnel during the bankruptcy, or has implemented such a program within 180 days before the date of the commencement of the case, the court shall presume that the debtor has failed to satisfy the requirements of subsection (b)(1)(C).";

(2) in subsection (d)--

(A) by striking `` (d)" and all that follows through paragraph (2) and inserting the following:

`` (d)(1) Upon the filing of a motion for rejection of a collective bargaining agreement, the court shall schedule a hearing to be held on not less than 21 days notice (unless the debtor and the authorized representative agree to a shorter time). Only the debtor and the authorized representative may appear and be heard at such hearing."; and

(B) by redesignating paragraph (3) as paragraph (2);

(3) in subsection (f), by adding at the end the following: `` Any payment required to be made under this section before the date on which a plan confirmed under section 1129 is effective has the status of an allowed administrative expense, as provided in section 503."; and

(4) by adding at the end the following:

`` (g) The rejection of a collective bargaining agreement constitutes a breach of such contract with the same effect as rejection of an executory contract pursuant to section 365(g). No claim for rejection damages shall be limited by section 502(b)(7). Economic self-help by an authorized representative shall be permitted upon a court order granting a motion to reject a collective bargaining agreement under subsection (c) or court-authorized interim changes under subsection (e), and no provision of this title or of any other Federal or State law shall be construed to the contrary.

`` (h) At any time after the date on which an order is entered authorizing rejection, or where an agreement providing mutually satisfactory modifications has been entered into between the debtor and the authorized representative, at any time after such agreement has been entered into, the authorized representative may apply to the court for an order seeking an increase in the level of wages or benefits, or relief from working conditions, based upon changed circumstances. The court shall grant the request so long as the increase or other relief is consistent with the standard set forth in subsection (b)(1)(B).

`` (i) Upon request by the authorized representative, and where the court finds that the prospects for reaching a mutually satisfactory agreement would be aided by granting the request, the court may direct that a dispute under subsection (c) be

heard and determined by a neutral panel of experienced labor arbitrators in lieu of a court proceeding under subsection (d). The decision of such panel shall have the same effect as a decision by the court. The court's decision directing the appointment of a neutral panel is not subject to appeal.

``(j) Upon request by the authorized representative, the debtor shall provide for the reasonable fees and costs incurred by the authorized representative under this section, after notice and a hearing.

``(k) If a plan to be confirmed under section 1129 provides for the liquidation of the debtor, whether by sale or cessation of all or part of the business, the trustee and the authorized representative shall confer regarding the effects of such liquidation on the affected labor group, in accordance with applicable nonbankruptcy law, and shall provide for the payment of all accrued obligations not assumed as part of a sale transaction, and for such other terms as may be agreed upon, in order to ensure an orderly transfer of assets or cessation of the business. Any such payments shall have the status of allowed administrative expenses under section 503.

``(l) A collective bargaining agreement that is assumed shall be assumed in accordance with section 365.".

SEC. 9. PAYMENT OF INSURANCE BENEFITS TO RETIRED EMPLOYEES.

Section 1114 of title 11, United States Code, is amended--

(1) in subsection (a), by inserting `` , whether or not the debtor asserts a right to unilaterally modify such payments under such plan, fund, or program" before the period at the end;

(2) in subsection (c)(1), by adding at the end the following: `` Where a labor organization elects to serve as the authorized representative, the debtor shall provide for the reasonable fees and costs incurred by the authorized representative under this section after notice and a hearing.";

(3) in subsection (f), by striking ``(f)" and all that follows through paragraph (2) and inserting the following:

``(f)(1) Where a trustee seeks modification of retiree benefits, a motion seeking modification of such benefits shall not be filed, unless the trustee has first met with the authorized representative (at reasonable times and for a reasonable period in light of the complexity of the case) to confer in good faith in attempting to reach mutually satisfactory modifications. Proposals by the trustee to modify retiree benefits shall be limited to modifications in retiree benefits that--

`` (A) are designed to achieve a total aggregate financial contribution for the affected retiree group for a period not to exceed 2 years after the effective date of the plan;

`` (B) shall be no more than the minimal savings necessary to permit the debtor to exit bankruptcy, such that confirmation of such plan is not likely to be followed by the liquidation of the debtor or any successor to the debtor; and

`` (C) shall not overly burden the affected retirees, either in the amount of the savings sought or the nature of the modifications, when compared to other constituent groups expected to maintain ongoing relationships with the debtor, including management personnel.

`` (2) Proposals by the trustee under paragraph (1) shall be based upon the most complete and reliable information available. Information that is relevant for the negotiations shall be provided to the authorized representative.";

(4) in subsection (g), by striking `` (g)" and all that follows through the semicolon at the end of paragraph (3) and inserting the following:

`` (g) If, after a period of negotiations, the debtor and the authorized representative have not reached agreement over mutually satisfactory modifications and the parties are at an impasse, the debtor may apply to the court for modifications in the payment of retiree benefits after notice and a hearing held pursuant to subsection (k). The court may grant a motion to modify the payment of retiree benefits only if the court finds that--

`` (1) the debtor has, prior to the hearing, complied with the requirements of subsection (f) and has conferred in good faith with the authorized representative regarding such proposed modifications and the parties were at an impasse;

`` (2) the court has considered alternative proposals by the authorized representative and has determined that such proposals do not meet the requirements of subparagraphs (A) and (B) of subsection (f)(1);

`` (3) further negotiations are not likely to produce a mutually satisfactory agreement; and

`` (4) the court has considered--

`` (A) the effect of the proposed modifications on the affected retirees; and

`` (B) where the authorized representative is a labor organization, the effect of a strike in the event of modification of retiree health benefits;";

(5) in subsection (k)--

(A) in paragraph (1)--

(i) in the first sentence, by striking "fourteen" and inserting "21"; and

(ii) by striking the second and third sentences, and inserting the following:
"Only the debtor and the authorized representative may appear and be heard at such hearing.";

(B) by striking paragraph (2); and

(C) by redesignating paragraph (3) as paragraph (2); and

(6) by redesignating subsections (l) and (m) as subsections (n) and (o), respectively, and inserting the following:

(l) In determining whether the proposed modifications comply with subsection (f)(1)(A), the court shall take into account the ongoing impact on the debtor of the debtor's relationship with all subsidiaries and affiliates, regardless of whether any such subsidiary or affiliate is domestic or nondomestic, or whether any such subsidiary or affiliate is a debtor entity.

(m) No plan, fund, program, or contract to provide retiree benefits for insiders or senior management shall be assumed by the debtor if the debtor has obtained relief under subsection (g) or (h) for reductions in retiree benefits or under subsection (c) or (e) of section 1113 for reductions in the health benefits of active employees of the debtor on or after the commencement of the case or reduced or eliminated active or retiree benefits within 180 days prior to the date of the commencement of the case."

SEC. 10. PROTECTION OF EMPLOYEE BENEFITS IN A SALE OF ASSETS.

Section 363 of title 11, United States Code, is amended--

(1) in subsection (b), by adding at the end the following:

(3) In approving a sale under this subsection, the court shall consider the extent to which a bidder has offered to maintain existing jobs, has preserved retiree health benefits, and has assumed the obligations of any defined benefit plan, in determining whether an offer constitutes the highest or best offer for such property."; and

(2) by adding at the end the following:

(q) If, as a result of a sale approved under this section, retiree benefits, as defined under section 1114(a), are modified or eliminated pursuant to the provisions of subsection (e)(1) or (h) of section 1114 or otherwise, then, except as otherwise provided in an agreement with the authorized representative of such

retirees, a charge of \$20,000 per retiree shall be made against the proceeds of such sale (or paid by the buyer as part of the sale) for the purpose of--

((1) funding 12 months of health coverage following the termination or modification of such coverage through a plan, fund, or program made available by the buyer, by the debtor, or by a third party; or

((2) providing the means by which affected retirees may obtain replacement coverage on their own,

except that the selection of either paragraph (1) or (2) shall be upon the consent of the authorized representative, within the meaning of section 1114(b), if any. Any claim for modification or elimination of retiree benefits pursuant to section 1114(i) shall be offset by the amounts paid under this subsection."

SEC. 11. UNION PROOF OF CLAIM.

Section 501(a) of title 11, United States Code, is amended by inserting ((, including a labor organization," after ((A creditor".

SEC. 12. CLAIM FOR LOSS OF PENSION BENEFITS.

Section 502 of title 11, United States Code, is amended by adding at the end the following:

((l) The court shall allow a claim asserted by an active or retired participant in a defined benefit plan terminated under section 4041 or 4042 of the Employee Retirement Income Security Act of 1974, for any shortfall in pension benefits accrued as of the effective date of the termination of such pension plan as a result of the termination of the plan and limitations upon the payment of benefits imposed pursuant to section 4022 of such Act, notwithstanding any claim asserted and collected by the Pension Benefit Guaranty Corporation with respect to such termination."

SEC. 13. PAYMENTS BY SECURED LENDER.

Section 506(c) of title 11, United States Code, is amended by adding at the end the following: ((Where employees have not received wages, accrued vacation, severance, or other benefits owed pursuant to the terms of a collective bargaining agreement for services rendered on and after the date of the commencement of the case, such unpaid obligations shall be deemed necessary costs and expenses of preserving, or disposing of, property securing an allowed secured claim and shall be recovered even if the trustee has otherwise waived the provisions of this subsection under an agreement with the holder of the allowed secured claim or successor or predecessor in interest."

SEC. 14. PRESERVATION OF JOBS AND BENEFITS.

Title 11, United States Code, is amended--

(1) by inserting before section 1101 the following:

SEC. 1100. STATEMENT OF PURPOSE.

A debtor commencing a case under this chapter shall have as its purpose the reorganization of its business and, to the greatest extent possible, maintaining or enhancing the productive use of its assets, so as to preserve jobs.";

(2) in section 1129(a), by adding at the end the following:

(17) The debtor has demonstrated that every reasonable effort has been made to maintain existing jobs and mitigate losses to employees and retirees.";

(3) in section 1129(c), by striking the last sentence and inserting the following:

If the requirements of subsections (a) and (b) are met with respect to more than 1 plan, the court shall, in determining which plan to confirm, consider--

(1) the extent to which each plan would maintain existing jobs, has preserved retiree health benefits, and has maintained any existing defined benefit plans; and

(2) the preferences of creditors and equity security holders, and shall confirm the plan that better serves the interests of employees and retirees."; and

(4) in the table of sections in chapter 11, by inserting the following before the item relating to section 1101:

1100. Statement of purpose."

SEC. 15. ASSUMPTION OF EXECUTIVE RETIREMENT PLANS.

Section 365 of title 11, United States Code, is amended--

(1) in subsection (a), by striking "and (d)" and inserting "(d), and (q)"; and

(2) by adding at the end the following:

(q) No deferred compensation arrangement for the benefit of insiders or senior management of the debtor shall be assumed if a defined benefit plan for employees of the debtor has been terminated pursuant to section 4041 or 4042 of the Employee Retirement Income Security Act of 1974, on or after the date of the commencement of the case or within 180 days prior to the date of the commencement of the case."

SEC. 16. RECOVERY OF EXECUTIVE COMPENSATION.

Title 11, United States Code, is amended by inserting after section 562 the following: `` §563. Recovery of executive compensation

`` (a) If a debtor has obtained relief under subsection (c) or (e) of section 1113, or subsection (g) or (h) of section 1114, by which the debtor reduces its contractual obligations under a collective bargaining agreement or retiree benefits plan, the court, as part of the entry of such order granting relief, shall determine the percentage diminution, as a result of the relief granted under section 1113 or 1114, in the value of the obligations when compared to the debtor's obligations under the collective bargaining agreement or with respect to retiree benefits, as of the date of the commencement of the case under this title. In making its determination, the court shall include reductions in benefits, if any, as a result of the termination pursuant to section 4041 or 4042 of the Employee Retirement Income Security Act of 1974, of a defined benefit plan administered by the debtor, or for which the debtor is a contributing employer, effective at any time on or after 180 days before the date of the commencement of a case under this title. The court shall not take into account pension benefits paid or payable under the provisions of title IV of such Act as a result of any such termination.

`` (b) Where a defined benefit plan administered by the debtor, or for which the debtor is a contributing employer, has been terminated pursuant to section 4041 or 4042 of the Employee Retirement Income Security Act of 1974, effective at any time on or after 180 days before the date of the commencement of a case under this title, but a debtor has not obtained relief under subsection (c) or (e) of section 1113, or subsection (g) or (h) of section 1114 of this title, the court, upon motion of a party in interest, shall determine the percentage diminution in the value of benefit obligations when compared to the total benefit liabilities prior to such termination. The court shall not take into account pension benefits paid or payable under the provisions of title IV of the Employee Retirement Income Security Act of 1974 as a result of any such termination.

`` (c) Upon the determination of the percentage diminution in value under subsection (a) or (b), the estate shall have a claim for the return of the same percentage of the compensation paid, directly or indirectly (including any transfer to a self-settled trust or similar device, or to a nonqualified deferred compensation plan under section 409A(d)(1) of the Internal Revenue Code of 1986) to any officer of the debtor serving as member of the board of directors of the debtor within the year before the date of the commencement of the case, and any individual serving as chairman and any individual serving as lead director of the board of directors at the time of the granting of relief under section 1113 or 1114 of this title or, if no such relief has been granted, the termination of the defined benefit plan.

`` (d) The trustee or a committee appointed pursuant to section 1102 may commence an action to recover such claims, except that if neither the trustee nor such committee commences an action to recover such claim by the first date set for the hearing on the confirmation of plan under section 1129, any party in interest may apply to the court for authority to recover such claim for the benefit of the estate. The costs of recovery shall be borne by the estate.

`` (e) The court shall not award postpetition compensation under section 503(c) or otherwise to any person subject to the provisions of subsection (c) if there is a reasonable likelihood that such compensation is intended to reimburse or replace compensation recovered by the estate under this section."

SEC. 17. EXCEPTION FROM AUTOMATIC STAY.

Section 362(b) of title 11, United States Code, is amended--

(1) in paragraph (27), by striking `` and" at the end;

(2) in paragraph (28), by striking the period at the end and inserting ``; and"
and

(3) by adding at the end the following:

`` (29) of the commencement or continuation of a grievance, arbitration, or similar dispute resolution proceeding established by a collective bargaining agreement that was or could have been commenced against the debtor before the filing of a case under this title, or the payment or enforcement of an award or settlement under such proceeding."

SEC. 18. PREFERENTIAL COMPENSATION TRANSFER.

Section 547 of title 11, United States Code, is amended by adding at the end the following:

`` (j) The trustee may avoid a transfer to or for the benefit of an insider (including an obligation incurred for the benefit of an insider under an employment contract) made in anticipation of bankruptcy, or a transfer made in anticipation of bankruptcy to a consultant who is formerly an insider and who is retained to provide services to an entity that becomes a debtor (including an obligation under a contract to provide services to such entity or to a debtor) made or incurred on or within 1 year before the filing of the petition. No provision of subsection (c) shall constitute a defense against the recovery of such transfer. The trustee or a committee appointed pursuant to section 1102 may commence an action to recover such transfer, except that, if neither the trustee nor such committee commences an action to recover such transfer by the time of the commencement of a hearing on the confirmation of a plan under section 1129, any party in interest may apply to the court for authority to recover the claims for the benefit of the estate. The costs of recovery shall be borne by the estate."

SEC. 19. FINANCIAL RETURNS FOR EMPLOYEES AND RETIREES.

Section 1129(a) of title 11, United States Code, is amended--

(1) by adding at the end the following:

`` (18) In a case in which the debtor initiated proceedings under section 1113, the plan provides for recovery of rejection damages (where the debtor obtained relief under subsection (c) or (e) of section 1113 prior to confirmation of the plan) or for other financial returns, as negotiated by the debtor and the authorized representative (to the extent that such returns are paid under, rather than outside of, a plan)."; and

(2) by striking paragraph (13) and inserting the following:

`` (13) With respect to retiree benefits, as that term is defined in section 1114, the plan--

`` (A) provides for the continuation after its effective date of payment of all retiree benefits at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 at any time prior to the date of confirmation of the plan, for the duration of the period for which the debtor has obligated itself to provide such benefits, or, if no modifications are made prior to confirmation of the plan, the continuation of all such retiree benefits maintained or established in whole or in part by the debtor prior to the date of the filing of the petition; and

`` (B) provides for allowed claims for modification of retiree benefits or for other financial returns, as negotiated by the debtor and the authorized representative, to the extent that such returns are paid under, rather than outside of, a plan).".