

110TH CONGRESS  
1ST SESSION

# H. R. 3652

To amend title 11, United States Code, to improve protections for employees and retirees in business bankruptcies.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 25, 2007

Mr. CONYERS (for himself, Ms. LINDA T. SÁNCHEZ of California, Mr. NADLER, Mr. COHEN, Ms. SUTTON, Ms. ZOE LOFGREN of California, and Mr. JOHNSON of Georgia) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 11, United States Code, to improve protections for employees and retirees in business bankruptcies.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protecting Employees  
5 and Retirees in Business Bankruptcies Act of 2007”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

8 (1) Recent corporate restructurings have ex-  
9 acted a devastating toll on workers through deep

1 cuts in wages and benefits, termination of defined  
2 benefit pension plans, and the transfer of productive  
3 assets to lower wage economies outside the United  
4 States. Retirees have suffered deep cutbacks in ben-  
5 efits when companies in bankruptcy renege on their  
6 retiree health obligations and terminate pension  
7 plans.

8 (2) Congress enacted chapter 11 of title 11,  
9 United States Code, to protect jobs and enhance en-  
10 terprise value for all stakeholders and not to be used  
11 as a strategic weapon to eliminate good paying jobs,  
12 strip employees and their families of a lifetime's  
13 worth of earned benefits and hinder their ability to  
14 participate in a prosperous and sustainable economy.  
15 Specific laws designed to treat workers and retirees  
16 fairly and keep companies operating are instead  
17 causing the burdens of bankruptcy to fall dispropor-  
18 tionately and overwhelmingly on employees and re-  
19 tirees, those least able to absorb the losses.

20 (3) At the same time that working families and  
21 retirees are forced to make substantial economic sac-  
22 rifices, executive pay enhancements continue to  
23 flourish in business bankruptcies, despite recent con-  
24 gressional enactments designed to curb lavish pay  
25 packages for those in charge of failing enterprises.

1 Bankruptcy should not be a haven for the excesses  
2 of executive pay.

3 (4) Employees and retirees, unlike other credi-  
4 tors, have no way to diversify the risk of their em-  
5 ployer’s bankruptcy.

6 (5) Comprehensive reform is essential in order  
7 to remedy these fundamental inequities in the bank-  
8 ruptcy process and to recognize the unique firm-spe-  
9 cific investment by employees and retirees in their  
10 employers’ business through their labor.

11 **SEC. 3. INCREASED WAGE PRIORITY.**

12 Section 507(a) of title 11, United States Code, is  
13 amended—

14 (1) in paragraph (4)—

15 (A) by striking “\$10,000” and inserting  
16 “\$20,000”;

17 (B) by striking “within 180 days”; and

18 (C) by striking “or the date of the ces-  
19 sation of the debtor’s business, whichever oc-  
20 curs first,”;

21 (2) in paragraph (5)(A), by striking—

22 (A) “within 180 days”; and

23 (B) “or the date of the cessation of the  
24 debtor’s business, whichever occurs first”; and

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

3                   “(B) for each such plan, to the extent of  
4           the number of employees covered by each such  
5           plan, multiplied by \$20,000.”.

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

8           (a) Section 101(5) of title 11, United States Code,  
9 is amended—

10           (1) in subparagraph (A), by striking “or” at  
11           the end;

12           (2) in subparagraph (B), by inserting “or”  
13           after the semicolon; and

14           (3) by adding at the end the following:

15                   “(C) right or interest in equity securities  
16           of the debtor, or an affiliate of the debtor, held  
17           in a defined contribution plan (within the mean-  
18           ing of section 3(34) of the Employee Retirement  
19           Income Security Act of 1974 (29 U.S.C.  
20           1002(34)) for the benefit of an individual who  
21           is not an insider or 1 of the 10 most highly  
22           compensated employees of the debtor (if 1 or  
23           more are not insiders), if such securities were  
24           attributable to—

1           “(i) employer contributions by the  
2           debtor or an affiliate of the debtor, other  
3           than elective deferrals (within the meaning  
4           of section 402(g) of the Internal Revenue  
5           Code of 1986), and any earnings thereon;  
6           or

7           “(ii) elective deferrals and any earn-  
8           ings thereon.”.

9           (b) Section 507(a) of title 11, United States Code,  
10 is amended—

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

13           (2) by inserting after paragraph (5) the fol-  
14           lowing:

15           “(6) Sixth, loss of the value of equity securities  
16           of the debtor or affiliate of the debtor that are held  
17           in a defined contribution plan (within the meaning  
18           of section 3(34) of the Employee Retirement Income  
19           Security Act of 1974 (29 U.S.C. 1002(34)), without  
20           regard to when services resulting in the contribution  
21           of stock to the plan were rendered, measured by the  
22           market value of the stock at the time of contribution  
23           to, or purchase by, the plan and the value as of the  
24           commencement of the case where an employer or  
25           plan sponsor that has commenced a case under this

1 title has committed fraud with respect to such plan  
2 or has otherwise breached a duty to the participant  
3 that has proximately caused the loss of value.”;

4 (3) in paragraph (7), as redesignated, by strik-  
5 ing “Sixth” and inserting “Seventh”;

6 (4) in paragraph (8), as redesignated, by strik-  
7 ing “Seventh” and inserting “Eighth”;

8 (5) in paragraph (9), as redesignated, by strik-  
9 ing “Eighth” and inserting “Ninth”;

10 (6) in paragraph (10), as redesignated, by  
11 striking “Ninth” and inserting “Tenth”; and

12 (7) in paragraph (11), as redesignated, by  
13 striking “Tenth” and inserting “Eleventh”.

14 **SEC. 5. PRIORITY FOR SEVERANCE PAY.**

15 Section 503(b) of title 11, United States Code, is  
16 amended—

17 (1) in paragraph (8) by striking “and” at the  
18 end;

19 (2) in paragraph (9) by striking the period and  
20 inserting “; and”; and

21 (3) by adding at the end the following:

22 “(10) severance pay owed to employees of the  
23 debtor (other than to an insider, other senior man-  
24 agement, or a consultant retained to provide services  
25 to the debtor), under a plan, program, or policy gen-

1 erally applicable to employees of the debtor, or owed  
2 pursuant to a collective bargaining agreement, but  
3 not under an individual contract of employment, for  
4 termination or layoff on or after the date of the fil-  
5 ing of the petition, which pay shall be deemed  
6 earned in full upon such layoff or termination of em-  
7 ployment.”.

8 **SEC. 6. EXECUTIVE COMPENSATION UPON EXIT FROM**  
9 **BANKRUPTCY.**

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

12 (1) in subparagraph (A)(ii), by striking “and”  
13 at the end; and

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

16 “(C) the compensation disclosed pursuant  
17 to subparagraph (B) has been approved by, or  
18 is subject to the approval of, the court, as rea-  
19 sonable when compared to persons holding com-  
20 parable positions at comparable companies in  
21 the same industry and not disproportionate in  
22 light of economic concessions by the debtor’s  
23 nonmanagement workforce during the case.”.

1 **SEC. 7. LIMITATIONS ON EXECUTIVE COMPENSATION EN-**  
2 **HANCEMENTS.**

3 Section 503(e) of title 11, United States Code, is  
4 amended—

5 (1) in paragraph (1), by inserting “or for the  
6 payment of performance or incentive compensation,  
7 or a bonus of any kind, or other financial returns  
8 designed to replace or enhance incentive, stock, or  
9 other compensation in effect prior to the date of the  
10 commencement of the case,” after “remain with the  
11 debtor’s business,”; and

12 (2) by amending paragraph (3) to read as fol-  
13 lows:

14 “(3) other transfers or obligations, to or for the  
15 benefit of officers, of managers, or of consultants re-  
16 tained to provide services to the debtor, before or  
17 after the date of filing of the petition, in the absence  
18 of a finding by the court based upon evidence in the  
19 record, and without deference to the debtor’s request  
20 for such payments, that such transfers or obligations  
21 are essential to the survival of the debtor’s business  
22 or (in the case of a liquidation of some or all of the  
23 debtor’s assets) essential to the orderly liquidation  
24 and maximization of value of the assets of the debt-  
25 or, in either case, because of the essential nature of  
26 the services provided, and then only to the extent



1 that the court finds such transfers or obligations are  
2 reasonable compared to individuals holding com-  
3 parable positions at comparable companies in the  
4 same industry and not disproportionate in light of  
5 economic concessions by the debtor’s nonmanage-  
6 ment workforce during the case.”.

7 **SEC. 8. REJECTION OF COLLECTIVE BARGAINING AGREE-**  
8 **MENTS.**

9 Section 1113 of title 11, United States Code, is  
10 amended—

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

13 “(a) The debtor in possession, or the trustee if one  
14 has been appointed under this chapter, other than a trust-  
15 ee in a case covered by subchapter IV of this chapter and  
16 by title I of the Railway Labor Act, may reject a collective  
17 bargaining agreement only in accordance with the provi-  
18 sions of this section.

19 “(b)(1) Where a debtor in possession or trustee (here-  
20 inafter in this section referred to collectively as a ‘trustee’)  
21 seeks rejection of a collective bargaining agreement, a mo-  
22 tion seeking rejection shall not be filed unless the trustee  
23 has first met with the authorized representative (at rea-  
24 sonable times and for a reasonable period in light of the  
25 complexity of the case) to confer in good faith in attempt-

1 ing to reach mutually acceptable modifications of such  
2 agreement. Proposals by the trustee to modify the agree-  
3 ment shall be limited to modifications to the agreement  
4 that—

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

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

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

20           “(2) Proposals by the trustee under paragraph (1)  
21 shall be based upon the most complete and reliable infor-  
22 mation available. Information that is relevant for the ne-  
23 gotiations shall be provided to the authorized representa-  
24 tive.

1       “(c)(1) If, after a period of negotiations, the debtor  
2 and the authorized representative have not reached agree-  
3 ment over mutually satisfactory modifications and the par-  
4 ties are at an impasse, the debtor may file a motion seek-  
5 ing rejection of the collective bargaining agreement after  
6 notice and a hearing held pursuant to subsection (d). The  
7 court may grant a motion to reject a collective bargaining  
8 agreement only if the court finds that—

9           “(A) the debtor has, prior to such hearing,  
10 complied with the requirements of subsection (b)  
11 and has conferred in good faith with the authorized  
12 representative regarding such proposed modifica-  
13 tions, and the parties were at an impasse;

14           “(B) the court has considered alternative pro-  
15 posals by the authorized representative and has de-  
16 termined that such proposals do not meet the re-  
17 quirements of subparagraphs (A) and (B) of sub-  
18 section (b)(1);

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

21           “(D) the court has considered—

22               “(i) the effect of the proposed financial re-  
23 lief on the affected labor group;

24               “(ii) the ability of the debtor to retain an  
25 experienced and qualified workforce; and

1           “(iii) the effect of a strike in the event of  
2           rejection of the collective bargaining agreement.

3           “(2) In reaching a decision under this subsection re-  
4           garding whether modifications proposed by the debtor and  
5           the total aggregate savings meet the requirements of sub-  
6           section (b), the court shall take into account—

7           “(A) the ongoing impact on the debtor of the  
8           debtor’s relationship with all subsidiaries and affili-  
9           ates, regardless of whether any such subsidiary or  
10          affiliate is domestic or nondomestic, or whether any  
11          such subsidiary or affiliate is a debtor entity; and

12          “(B) whether the authorized representative  
13          agreed to provide financial relief to the debtor within  
14          the 24-month period prior to the date of the com-  
15          mencement of the case, and if so, shall consider the  
16          total value of such relief in evaluating the debtor’s  
17          proposed modifications.

18          “(3) In reaching a decision under this subsection,  
19          where a debtor has implemented a program of incentive  
20          pay, bonuses, or other financial returns for insiders or sen-  
21          ior management personnel during the bankruptcy, or has  
22          implemented such a program within 180 days before the  
23          date of the commencement of the case, the court shall pre-  
24          sume that the debtor has failed to satisfy the requirements  
25          of subsection (b)(1)(C).”;

1 (2) in subsection (d)—

2 (A) by striking “(d)” and all that follows  
3 through paragraph (2) and inserting the fol-  
4 lowing:

5 “(d)(1) Upon the filing of a motion for rejection of  
6 a collective bargaining agreement, the court shall schedule  
7 a hearing to be held on not less than 21 days notice (un-  
8 less the debtor and the authorized representative agree to  
9 a shorter time). Only the debtor and the authorized rep-  
10 resentative may appear and be heard at such hearing.”;  
11 and

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

14 (3) in subsection (f), by adding at the end the  
15 following: “Any payment required to be made under  
16 this section before the date on which a plan con-  
17 firmed under section 1129 is effective has the status  
18 of an allowed administrative expense, as provided in  
19 section 503.”; and

20 (4) by adding at the end the following:

21 “(g) The rejection of a collective bargaining agree-  
22 ment constitutes a breach of such contract with the same  
23 effect as rejection of an executory contract pursuant to  
24 section 365(g). No claim for rejection damages shall be  
25 limited by section 502(b)(7). Economic self-help by an au-

1 thORIZED representative shall be permitted upon a court  
2 order granting a motion to reject a collective bargaining  
3 agreement under subsection (c) or court-authorized in-  
4 terim changes under subsection (e), and no provision of  
5 this title or of any other Federal or State law shall be  
6 construed to the contrary.

7       “(h) At any time after the date on which an order  
8 is entered authorizing rejection, or where an agreement  
9 providing mutually satisfactory modifications has been en-  
10 tered into between the debtor and the authorized rep-  
11 resentative, at any time after such agreement has been  
12 entered into, the authorized representative may apply to  
13 the court for an order seeking an increase in the level of  
14 wages or benefits, or relief from working conditions, based  
15 upon changed circumstances. The court shall grant the re-  
16 quest so long as the increase or other relief is consistent  
17 with the standard set forth in subsection (b)(1)(B).

18       “(i) Upon request by the authorized representative,  
19 and where the court finds that the prospects for reaching  
20 a mutually satisfactory agreement would be aided by  
21 granting the request, the court may direct that a dispute  
22 under subsection (c) be heard and determined by a neutral  
23 panel of experienced labor arbitrators in lieu of a court  
24 proceeding under subsection (d). The decision of such  
25 panel shall have the same effect as a decision by the court.

1 The court’s decision directing the appointment of a neu-  
2 tral panel is not subject to appeal.

3 “(j) Upon request by the authorized representative,  
4 the debtor shall provide for the reasonable fees and costs  
5 incurred by the authorized representative under this sec-  
6 tion, after notice and a hearing.

7 “(k) If a plan to be confirmed under section 1129  
8 provides for the liquidation of the debtor, whether by sale  
9 or cessation of all or part of the business, the trustee and  
10 the authorized representative shall confer regarding the ef-  
11 fects of such liquidation on the affected labor group, in  
12 accordance with applicable nonbankruptcy law, and shall  
13 provide for the payment of all accrued obligations not as-  
14 sumed as part of a sale transaction, and for such other  
15 terms as may be agreed upon, in order to ensure an or-  
16 derly transfer of assets or cessation of the business. Any  
17 such payments shall have the status of allowed administra-  
18 tive expenses under section 503.

19 “(l) A collective bargaining agreement that is as-  
20 sumed shall be assumed in accordance with section 365.”.

21 **SEC. 9. PAYMENT OF INSURANCE BENEFITS TO RETIRED**  
22 **EMPLOYEES.**

23 Section 1114 of title 11, United States Code, is  
24 amended—

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

5           (2) in subsection (c)(1), by adding at the end  
6           the following: “Where a labor organization elects to  
7           serve as the authorized representative, the debtor  
8           shall provide for the reasonable fees and costs in-  
9           curred by the authorized representative under this  
10          section after notice and a hearing.”;

11          (3) in subsection (f), by striking “(f)” and all  
12          that follows through paragraph (2) and inserting the  
13          following:

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

23                  “(A) are designed to achieve a total aggregate  
24          financial contribution for the affected retiree group



1 for a period not to exceed 2 years after the effective  
2 date of the plan;

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

8 “(C) shall not overly burden the affected retir-  
9 ees, either in the amount of the savings sought or  
10 the nature of the modifications, when compared to  
11 other constituent groups expected to maintain ongo-  
12 ing relationships with the debtor, including manage-  
13 ment personnel.

14 “(2) Proposals by the trustee under paragraph (1)  
15 shall be based upon the most complete and reliable infor-  
16 mation available. Information that is relevant for the ne-  
17 gotiations shall be provided to the authorized representa-  
18 tive.”;

19 (4) in subsection (g), by striking “(g)” and all  
20 that follows through the semicolon at the end of  
21 paragraph (3) and inserting the following:

22 “(g) If, after a period of negotiations, the debtor and  
23 the authorized representative have not reached agreement  
24 over mutually satisfactory modifications and the parties  
25 are at an impasse, the debtor may apply to the court for

1 modifications in the payment of retiree benefits after no-  
2 tice and a hearing held pursuant to subsection (k). The  
3 court may grant a motion to modify the payment of retiree  
4 benefits only if the court finds that—

5           “(1) the debtor has, prior to the hearing, com-  
6 plied with the requirements of subsection (f) and has  
7 conferred in good faith with the authorized rep-  
8 resentative regarding such proposed modifications  
9 and the parties were at an impasse;

10           “(2) the court has considered alternative pro-  
11 posals by the authorized representative and has de-  
12 termined that such proposals do not meet the re-  
13 quirements of subparagraphs (A) and (B) of sub-  
14 section (f)(1);

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

17           “(4) the court has considered—

18                   “(A) the effect of the proposed modifica-  
19 tions on the affected retirees; and

20                   “(B) where the authorized representative is  
21 a labor organization, the effect of a strike in  
22 the event of modification of retiree health bene-  
23 fits;”;

24           “(5) in subsection (k)—

25                   (A) in paragraph (1)—

1 (i) in the first sentence, by striking  
2 “fourteen” and inserting “21”; and

3 (ii) by striking the second and third  
4 sentences, and inserting the following:  
5 “Only the debtor and the authorized rep-  
6 resentative may appear and be heard at  
7 such hearing.”;

8 (B) by striking paragraph (2); and

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

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

14 “(l) In determining whether the proposed modifica-  
15 tions comply with subsection (f)(1)(A), the court shall take  
16 into account the ongoing impact on the debtor of the debt-  
17 or’s relationship with all subsidiaries and affiliates, re-  
18 gardless of whether any such subsidiary or affiliate is do-  
19 mestic or nondomestic, or whether any such subsidiary or  
20 affiliate is a debtor entity.

21 “(m) No plan, fund, program, or contract to provide  
22 retiree benefits for insiders or senior management shall  
23 be assumed by the debtor if the debtor has obtained relief  
24 under subsection (g) or (h) for reductions in retiree bene-  
25 fits or under subsection (c) or (e) of section 1113 for re-

1 ductions in the health benefits of active employees of the  
2 debtor on or after the commencement of the case or re-  
3 duced or eliminated active or retiree benefits within 180  
4 days prior to the date of the commencement of the case.”.

5 **SEC. 10. PROTECTION OF EMPLOYEE BENEFITS IN A SALE**  
6 **OF ASSETS.**

7 Section 363 of title 11, United States Code, is  
8 amended—

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

11 “(3) In approving a sale under this subsection, the  
12 court shall consider the extent to which a bidder has of-  
13 fered to maintain existing jobs, has preserved retiree  
14 health benefits, and has assumed the obligations of any  
15 defined benefit plan, in determining whether an offer con-  
16 stitutes the highest or best offer for such property.”; and

17 (2) by adding at the end the following:

18 “(q) If, as a result of a sale approved under this sec-  
19 tion, retiree benefits, as defined under section 1114(a), are  
20 modified or eliminated pursuant to the provisions of sub-  
21 section (e)(1) or (h) of section 1114 or otherwise, then,  
22 except as otherwise provided in an agreement with the au-  
23 thorized representative of such retirees, a charge of  
24 \$20,000 per retiree shall be made against the proceeds

1 of such sale (or paid by the buyer as part of the sale)  
2 for the purpose of—

3 “(1) funding 12 months of health coverage fol-  
4 lowing the termination or modification of such cov-  
5 erage through a plan, fund, or program made avail-  
6 able by the buyer, by the debtor, or by a third party;  
7 or

8 “(2) providing the means by which affected re-  
9 tirees may obtain replacement coverage on their  
10 own,

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

17 **SEC. 11. UNION PROOF OF CLAIM.**

18 Section 501(a) of title 11, United States Code, is  
19 amended by inserting “, including a labor organization,”  
20 after “A creditor”.

21 **SEC. 12. CLAIM FOR LOSS OF PENSION BENEFITS.**

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

24 “(l) The court shall allow a claim asserted by an ac-  
25 tive or retired participant in a defined benefit plan termi-

1 nated under section 4041 or 4042 of the Employee Retirement  
2 ment Income Security Act of 1974, for any shortfall in  
3 pension benefits accrued as of the effective date of the ter-  
4 mination of such pension plan as a result of the termi-  
5 nation of the plan and limitations upon the payment of  
6 benefits imposed pursuant to section 4022 of such Act,  
7 notwithstanding any claim asserted and collected by the  
8 Pension Benefit Guaranty Corporation with respect to  
9 such termination.”.

10 **SEC. 13. PAYMENTS BY SECURED LENDER.**

11 Section 506(e) of title 11, United States Code, is  
12 amended by adding at the end the following: “Where em-  
13 ployees have not received wages, accrued vacation, sever-  
14 ance, or other benefits owed pursuant to the terms of a  
15 collective bargaining agreement for services rendered on  
16 and after the date of the commencement of the case, such  
17 unpaid obligations shall be deemed necessary costs and ex-  
18 penses of preserving, or disposing of, property securing an  
19 allowed secured claim and shall be recovered even if the  
20 trustee has otherwise waived the provisions of this sub-  
21 section under an agreement with the holder of the allowed  
22 secured claim or successor or predecessor in interest.”.

23 **SEC. 14. PRESERVATION OF JOBS AND BENEFITS.**

24 Title 11, United States Code, is amended—

1           (1) by inserting before section 1101 the fol-  
2           lowing:

3   **“SEC. 1100. STATEMENT OF PURPOSE.**

4           “A debtor commencing a case under this chapter  
5 shall have as its purpose the reorganization of its business  
6 and, to the greatest extent possible, maintaining or en-  
7 hancing the productive use of its assets, so as to preserve  
8 jobs.”;

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

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

14           (3) in section 1129(c), by striking the last sen-  
15 tence and inserting the following: “If the require-  
16 ments of subsections (a) and (b) are met with re-  
17 spect to more than 1 plan, the court shall, in deter-  
18 mining which plan to confirm, consider—

19           “(1) the extent to which each plan would main-  
20 tain existing jobs, has preserved retiree health bene-  
21 fits, and has maintained any existing defined benefit  
22 plans; and

23           “(2) the preferences of creditors and equity se-  
24 curity holders, and shall confirm the plan that better  
25 serves the interests of employees and retirees.”; and

1           (4) in the table of sections in chapter 11, by in-  
2           serting the following before the item relating to sec-  
3           tion 1101:

“1100. Statement of purpose.”.

4 **SEC. 15. ASSUMPTION OF EXECUTIVE RETIREMENT PLANS.**

5           Section 365 of title 11, United States Code, is  
6           amended—

7           (1) in subsection (a), by striking “and (d)” and  
8           inserting “(d), and (q)”; and

9           (2) by adding at the end the following:

10          “(q) No deferred compensation arrangement for the  
11          benefit of insiders or senior management of the debtor  
12          shall be assumed if a defined benefit plan for employees  
13          of the debtor has been terminated pursuant to section  
14          4041 or 4042 of the Employee Retirement Income Secu-  
15          rity Act of 1974, on or after the date of the commence-  
16          ment of the case or within 180 days prior to the date of  
17          the commencement of the case.”.

18 **SEC. 16. RECOVERY OF EXECUTIVE COMPENSATION.**

19          Title 11, United States Code, is amended by inserting  
20          after section 562 the following:

21 **“§ 563. Recovery of executive compensation**

22          “(a) If a debtor has obtained relief under subsection  
23          (c) or (e) of section 1113, or subsection (g) or (h) of sec-  
24          tion 1114, by which the debtor reduces its contractual ob-  
25          ligations under a collective bargaining agreement or re-



1    three benefits plan, the court, as part of the entry of such  
2    order granting relief, shall determine the percentage dimi-  
3    nution, as a result of the relief granted under section 1113  
4    or 1114, in the value of the obligations when compared  
5    to the debtor's obligations under the collective bargaining  
6    agreement or with respect to retiree benefits, as of the  
7    date of the commencement of the case under this title.  
8    In making its determination, the court shall include reduc-  
9    tions in benefits, if any, as a result of the termination pur-  
10   suant to section 4041 or 4042 of the Employee Retirement  
11   Income Security Act of 1974, of a defined benefit plan  
12   administered by the debtor, or for which the debtor is a  
13   contributing employer, effective at any time on or after  
14   180 days before the date of the commencement of a case  
15   under this title. The court shall not take into account pen-  
16   sion benefits paid or payable under the provisions of title  
17   IV of such Act as a result of any such termination.

18       “(b) Where a defined benefit plan administered by  
19   the debtor, or for which the debtor is a contributing em-  
20   ployer, has been terminated pursuant to section 4041 or  
21   4042 of the Employee Retirement Income Security Act of  
22   1974, effective at any time on or after 180 days before  
23   the date of the commencement of a case under this title,  
24   but a debtor has not obtained relief under subsection (c)  
25   or (e) of section 1113, or subsection (g) or (h) of section

1 1114 of this title, the court, upon motion of a party in  
2 interest, shall determine the percentage diminution in the  
3 value of benefit obligations when compared to the total  
4 benefit liabilities prior to such termination. The court shall  
5 not take into account pension benefits paid or payable  
6 under the provisions of title IV of the Employee Retire-  
7 ment Income Security Act of 1974 as a result of any such  
8 termination.

9       “(c) Upon the determination of the percentage dimi-  
10 nution in value under subsection (a) or (b), the estate shall  
11 have a claim for the return of the same percentage of the  
12 compensation paid, directly or indirectly (including any  
13 transfer to a self-settled trust or similar device, or to a  
14 nonqualified deferred compensation plan under section  
15 409A(d)(1) of the Internal Revenue Code of 1986) to any  
16 officer of the debtor serving as member of the board of  
17 directors of the debtor within the year before the date of  
18 the commencement of the case, and any individual serving  
19 as chairman and any individual serving as lead director  
20 of the board of directors at the time of the granting of  
21 relief under section 1113 or 1114 of this title or, if no  
22 such relief has been granted, the termination of the de-  
23 fined benefit plan.

24       “(d) The trustee or a committee appointed pursuant  
25 to section 1102 may commence an action to recover such

1 claims, except that if neither the trustee nor such com-  
2 mittee commences an action to recover such claim by the  
3 first date set for the hearing on the confirmation of plan  
4 under section 1129, any party in interest may apply to  
5 the court for authority to recover such claim for the ben-  
6 efit of the estate. The costs of recovery shall be borne by  
7 the estate.

8 “(e) The court shall not award postpetition com-  
9 pensation under section 503(c) or otherwise to any person  
10 subject to the provisions of subsection (c) if there is a rea-  
11 sonable likelihood that such compensation is intended to  
12 reimburse or replace compensation recovered by the estate  
13 under this section.”.

14 **SEC. 17. EXCEPTION FROM AUTOMATIC STAY.**

15 Section 362(b) of title 11, United States Code, is  
16 amended—

17 (1) in paragraph (27), by striking “and” at the  
18 end;

19 (2) in paragraph (28), by striking the period at  
20 the end and inserting “; and” and

21 (3) by adding at the end the following:

22 “(29) of the commencement or continuation of  
23 a grievance, arbitration, or similar dispute resolution  
24 proceeding established by a collective bargaining  
25 agreement that was or could have been commenced

1       against the debtor before the filing of a case under  
2       this title, or the payment or enforcement of an  
3       award or settlement under such proceeding.”.

4       **SEC. 18. PREFERENTIAL COMPENSATION TRANSFER.**

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

7       “(j) The trustee may avoid a transfer to or for the  
8       benefit of an insider (including an obligation incurred for  
9       the benefit of an insider under an employment contract)  
10      made in anticipation of bankruptcy, or a transfer made  
11      in anticipation of bankruptcy to a consultant who is for-  
12      merly an insider and who is retained to provide services  
13      to an entity that becomes a debtor (including an obligation  
14      under a contract to provide services to such entity or to  
15      a debtor) made or incurred on or within 1 year before the  
16      filing of the petition. No provision of subsection (c) shall  
17      constitute a defense against the recovery of such transfer.  
18      The trustee or a committee appointed pursuant to section  
19      1102 may commence an action to recover such transfer,  
20      except that, if neither the trustee nor such committee com-  
21      mences an action to recover such transfer by the time of  
22      the commencement of a hearing on the confirmation of  
23      a plan under section 1129, any party in interest may apply  
24      to the court for authority to recover the claims for the

1 benefit of the estate. The costs of recovery shall be borne  
2 by the estate.”.

3 **SEC. 19. FINANCIAL RETURNS FOR EMPLOYEES AND RETIR-**  
4 **EES.**

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

7 (1) by adding at the end the following:

8 “(18) In a case in which the debtor initiated  
9 proceedings under section 1113, the plan provides  
10 for recovery of rejection damages (where the debtor  
11 obtained relief under subsection (c) or (e) of section  
12 1113 prior to confirmation of the plan) or for other  
13 financial returns, as negotiated by the debtor and  
14 the authorized representative (to the extent that  
15 such returns are paid under, rather than outside of,  
16 a plan).”; and

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

19 “(13) With respect to retiree benefits, as that  
20 term is defined in section 1114, the plan—

21 “(A) provides for the continuation after its  
22 effective date of payment of all retiree benefits  
23 at the level established pursuant to subsection  
24 (e)(1)(B) or (g) of section 1114 at any time  
25 prior to the date of confirmation of the plan,

1           for the duration of the period for which the  
2           debtor has obligated itself to provide such bene-  
3           fits, or, if no modifications are made prior to  
4           confirmation of the plan, the continuation of all  
5           such retiree benefits maintained or established  
6           in whole or in part by the debtor prior to the  
7           date of the filing of the petition; and

8           “(B) provides for allowed claims for modi-  
9           fication of retiree benefits or for other financial  
10          returns, as negotiated by the debtor and the au-  
11          thorized representative, to the extent that such  
12          returns are paid under, rather than outside of,  
13          a plan).”.

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