DRAFT

In the wake of the Supreme Court's recent decision in NLRB v. Bildisco & Bildisco, No. 82-818 (decided February 22, 1984), various proposals have been introduced in both Houses of Congress as potential legislative solutions to the issues raised by that decision. We are keenly aware of, and sensitive to, the legitimate concerns expressed by both labor and management on the issue of abrogation of collective bargaining agreements in the context of Chapter 11 reorganization. The House of Representatives has passed legislation addressing this issue. We strongly believe that this complex and sensitive issue must be carefully analyzed before final Congressional action is taken.

The purpose of this letter is to reaffirm this _____'s commitment to the collective bargaining process unencumbered by governmental interference, and to suggest means for removing the specter that has arisen since the Bildisco decision of possible subversion of the collective bargaining process by either labor or management. In our view, any legislative solution must take account of fears that some businesses might try to use the Supreme Court's ruling to extricate themselves from duly-negotiated collective bargaining agreements. Likewise, any new legislation should recognize the apprehension in the business community that some unions might attempt to delay negotiating legitimate changes

to a collective bargaining agreement, even when such delay might prevent a successful Chapter 11 reorganization and result in the loss of many jobs. Any legislative solution must attempt to balance these concerns.

We believe that, to ensure the continued vitality of the collective bargaining process, any such legislation must also provide a mechanism that precludes the federal government -- be it through the judicial or executive branch -- from intruding into that process unless absolutely necessary. The process of negotiation by labor and management must be encouraged to take its course to the maximum feasible extent. To this end, we recommend a legislative requirement that the debtor provide the employees' representative with advance notice of its intent to file an application for rejection of the collective bargaining agreement. This, we believe, would increase the likelihood that the parties to the agreement would engage in productive collective bargaining without governmental interference.

Finally, we believe that any legislation should ensure that the resolution of this issue by the bankruptcy court, should it become necessary, is expedited, so that employees' and employers' interests will be protected both under the Bankruptcy Code and the applicable federal labor laws and policies.

"§ 1113. REJECTION OF COLLECTIVE BARGAINING AGREEMENTS

(a) For purposes of this section, 'collective bargaining agreement' means a collective bargaining agreement which is covered by title II of the Railway Labor Act or the National Labor Relations Act.

(b) The debtor in possession, or trustee if one has been appointed under the provisions of this chapter, may reject or assume a collective bargaining agreement under this title only if and after the court approves the rejection or assumption of such agreement.

(c) The court, upon application for rejection of a collective bargaining agreement may approve such rejection in accordance with the procedures set forth in subsection (d) of this section if, after due consideration of the equities of the case, it finds that such equities weigh in favor of rejection of the collective bargaining agreement.

(d)(1) Upon the filing of an application for rejection, the court shall schedule a hearing, to be held not later than fourteen days after the filing of such application, at which all interested shall appear and be heard. Adequate notice shall be provided to such parties at least ten days in advance of the date for such hearing.

(2) The court shall rule upon such application for rejection within thirty days of the date of its filing with the court. In the event that the court shall fail to rule upon such application within such time, the application shall be deemed to have been approved. The court may extend such time for a period not exceeding fifteen days where the circumstances of the case require such extension in the interests of justice, or for such additional period of time as the parties may consent to.

(3) All financial information of the debtor which is necessary to a fair evaluation of the application for rejection shall be disclosed to the authorized

reqresentatives of the debtor's employees at least seven days prior to the hearing upon such application. The court may enter such protective orders as may be necessary to prevent public disclosure of information in the possession of the debt the disclosure of which may compromise the position of the debtor with respect

to its competitors in the industry in which it is engaged. Upon motion of the debtor showing just cause, the court shall examine confidential information of the debtor that may be submitted to the court in connection with the application for rejection in camera.

(4) Prior to ruling upon the application for rejection, the court shall determine that the trustee, or the debtor prior to filing the petition, has made a good faith proposal to the authorized representativesof the debtor's employees that would provide reasonable protection of the employees benefits under the collective bargaining agreement ~~to the extent feasible,~~ with due consideration of the totality of circumstances facing the debtor and other creditors, while permitting a successful reorganization,and such proposal has not been accepted.

(e) An order of the court denying or approving an application for rejection shall be appealable to the district court for the district in which the bankruptcy court exercises jurisdiction. Notice of such appeal shall be filed within seven days after the adjudication of the motion, or after the expiration of the time permitted under this section for such adjudication if the court fails to act upon such application. A hearing upon such appeal, and judgment thereon, shall be rendered within thirty days of the filing of the notice of appeal. The mandate of the district court shall issue immediately upon the determination of such appeal and shall take effect notwithstanding the prosecution, by any party, of any further appeal; provided, that such mandate may be stayed in accordance with the provisions of Rule 8(a) of the Federal Rules of Appellate Procedure.

(f) No provision of this title shall be construed to permit a debtor in possessio or trustee to unilaterally terminate or alter any provision of a collective bargaining agreement.

Hatch
Teamsters
3/24/30

§ 1113. REJECTION OF COLLECTIVE BARGAINING AGREEMENTS

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

(b)(1) Prior to filing an application for the rejection of a collective bargaining agreement, the debtor shall make a proposal to the authorized representatives of the employees covered by the agreement providing such minimal modifications in the employees' benefits and protections in order to promote the reasonable likelihood of a successful rehabilitation of the debtor, by taking into account all of the circumstances facing the debtor and by balanciing the interests of the debtor, the creditors and other employees of the debtor; which balancing shall include the good faith efforts of the debtor to seek appropriate participation of such creditors and employees. The debtor shall provide the representatives information necessary to a fair evaluation of the proposal.

(2) During the period from the making of a proposal provided for in paragraph (1) of this subsection until the hearing provided for in subsection (d)(1) of this section, the debtor shall offer to meet at reasonable times and confer in good faith with the authorized representatives of the debtor's employees in an effort to reach mutually satisfactory modifications to the agreement.

(c) The court shall approve an application for rejection of a collective bargaining agreement only if the court finds that the debtor has complied with the requirements of subsection (b) of this section and that, on balance, the equities weigh more heavily in favor of rejection of the collective bargaining agreement.

(d)(1) Upon the filing of an application for rejection, the court shall schedule a hearing, to be held not later than twenty-one days after the filing of such application, at which other interested parties may appear and be heard. Reasonable notice of such hearing shall be provided to such parties at least ten days in advance of the date set for the hearing. The court may extend such time for a period not exceeding seven days where the circumstances of the case require such extension in the interests of justice, or for such additional period of time as the parties may agree to.

(2) The court shall rule upon such application for rejection within thirty days of the date of the commencement of the hearing, or within such additional period of time that the parties may agree to. If the court has not issued its ruling within the time limits prescribed in this section, upon application by any party an appropriate reviewing court an automatic mandate shall issue from such reviewing court requiring the court below to issue its ruling within five days or face contempt of the order of the reviewing court. Any appeal from a ruling on an application for rejection shall be filed with the appropriate reviewing court within five days from the issuance of such ruling and the reviewing court shall rule upon such appeal within fifteen days of the time such appeal is filed. Such requirements shall apply to any and all successive appeals which may be filed at whatever stage.

(3) The court may enter such protective orders on such terms as are consistent with the authorized representative's need to evaluate the debtor's proposal for modifying the collective bargaining agreement and the debtor's application for rejection and as may be necessary to prevent public disclosure of information in the possession of the debtor, the disclosure of which may compromise the position of the debtor with respect to its competitors in the industry in which it is engaged. Upon motion of the debtor showing just cause, the court shall examine confidential information of the debtor that may be submitted to the court in connection with the application for rejection in camera. If the court finds, upon such examination, that such information is relevant to a fair evaluation of the application for rejection, it shall order the disclosure of such materials to the representative of the debtor's employees.

(e) No provision of this title shall be construed to permit a debtor in possession or trustee to unilaterally terminate or alter any provisions of a collective bargaining agreement except in accordance with the provisions of this section.

SEC. _____. Section _____ shall be effective upon date of enactment.

DRAFT

SUBJECT: NLRB v. Bildisco & Bildisco and Legislative Activity

INTRODUCTION

The Supreme Court's recent decision in NLRB v. Bildisco & Bildisco, brought into focus the intersection of important national policies under the bankruptcy laws and the labor laws. This intersection involves the circumstances under which an employer facing financial difficulties may repudiate or force modification of costly collective bargaining agreements. The issue has also been arising in a variety of situations in and out of the courts, such as in the Continental Airlines and Manville Corporation attempts at financial reorganization. The purpose of this memorandum is to brief you on the status of this issue as it is manifesting itself in the industry and the courts, and to apprise you of options available to you and the Administration in formulating national labor policy.

The 1978 amendments to the Bankruptcy Code significantly increased the availability of the benefits of that law to companies, especially large companies with union-organized workforces, facing financial problems. Before Congress amended the bankruptcy laws in 1978, a company could file for reorganization only if it were insolvent. Under the current laws, however, insolvency is not a prerequisite to reorganization. As a result, the number of businesses seeking to reorganize under protection of Chapter 11 of the Bankruptcy Code has risen sharply in recent years, and the reasons for filing those reorganization petitions have changed drastically. Several of the new justifications concern businesses' relationships with labor. For example, a business that files a reorganization petition may attempt to secure contract concessions from its employees or reject a collective bargaining agreement it views as undesirable.

As a general matter, under Chapter 11, a debtor-in-posession (the company seeking reorganization) may reject any executory contract if it makes good business sense to do so. Because the labor laws also regulate contracts between employers and unions, however, significant legal and policy questions have arisen concerning whether and when it is proper for an employer debtor-in-possession to repudiate or threaten to repudiate in order to secure concessions from a union regarding a collective bargaining agreement. The obvious concern of the "new" employer is economic; to make the reorganized company profitable,he claims, costly terms

of collective bargaining agreements (wages, benefits etc.) must be sacrificed. The concern of the affected union is that companies are "using" the bankruptcy laws as a sword against unfavorable terms of collective bargaining agreements that were bargained for and should, in the union's view, be observed.

On February 22, 1984, the Supreme Court decided NLRB v. Bildisco & Bildisco, a case involving the rejection of a collective bargaining agreement by a debtor-in-possession under the Bankruptcy Code ("the Code") and the National Labor Relations Act ("NLRA"). As explained more fully below, the Court unanimously held that a collective bargaining agreement is an "executory contract," which the Code permits an employer to reject, and that the bankruptcy court should permit rejection of such an agreement if the debtor can show that the agreement burdens the estate and that the equities favor rejection. A majority of the Court also held that the debtor does not commit an unfair labor practice under the NLRA when it unilaterally rejects or modifies a collective bargaining agreement before the bankruptcy court approves the rejection.

The Supreme Court's decision

In the Bildisco case, the Supreme Court considered two questions: (1) under what conditions may a bankruptcy court permit a debtor-in-possession to reject a collective bargaining agreement? and (2) may the Board find a debtor-in-possession guilty of an unfair labor practice for unilaterally terminating or modifying a collective bargaining agreement before the bankruptcy court has approved rejection of that agreement?

The ~~Administration,~~ Solicitor General took a the position that, under Chapter 11, a bankruptcy court may not authorize rejection of a collective bargaining agreement unless the debtor can make a threshold showing that the business is "likely to fail" absent rejection. That was also the position advocated by the unions in the case, the petitioner Teamsters and various amici unions. The employer, supported by the business community (Chamber of Commerce), asserted that rejection should be permitted on a lesser showing, using essentially a case-by-case equity test.

In its briefs to the Court, the NLRB argued that the standard for rejection of a collective bargaining agreement by a debtor-in-possession in a bankruptcy proceeding established by the court of appeals does not constitute an adequate accommodation of the policies of the labor and bankruptcy laws, since it seriously undermines the collective bargaining and employee interests protected by the national labor policy. A proper accomodation of the two competing statutory

policies, the Board contended, requires that a bankruptcy court not authorize rejection of a collective bargaining agreement unless the debtor-in-possession can make a threshold showing that the business is likely to fail absent rejection. Bildisco, argued that the balancing of the equities test formulated by the court below successfully accommodates the competing statutory policies and that an order of the bankruptcy court permitting rejection forecloses the Board from finding the unilateral changing of terms and conditions of employment an unfair labor practice. The Chamber of Commerce filed a friend-of-the-Court brief supporting the company's position.

With respect to the first question, the Supreme Court concluded that a collective bargaining agreement is subject to the Code's provision for rejection of executory contracts, because Congress failed to exclude such agreements, as it had done with other contracts. In light of "the special nature of a collective-bargaining contract, and the consequent 'law of the shop' it creates," the Court held that the traditional "business judgment" standard for authorizing rejection of the ordinary executory contract -- whether rejection benefits the estate -- does not apply to labor agreements. The Court was unwilling, however, to embrace the position of the Board and the union that rejection should be permitted only if the business would otherwise fail. That standard, the Court held, "is fundamentally at odds with the policies of flexibility and equity built into Chapter 11 of the Bankruptcy Code," because it will interfere with the reorganization process.

Instead, the Court ruled that the bankruptcy court should permit rejection "if the debtor can show that the collective bargaining agreement burdens the estate, and that after careful scrutiny, the equities balance in favor of rejecting the labor contract." The Court identified those equities as including "the likelihood and consequences of liquidation for the debtor absent rejection, the reduced value of the creditors' claims that would follow from affirmance and the hardship that would impose on them, and the impact of rejection on the employees." It held, however, that before approving rejection, the bankruptcy court should be persuaded that reasonable efforts to negotiate a voluntary modification have been made and are not likely to produce a prompt and satisfactory solution. The court further required the bankruptcy court to make a reasoned finding on the record to justify approval of a rejection.

Turning to the second question, the Court concluded that the Board may not find a debtor-in-possession guilty of an unfair labor practice for unilaterally rejecting or modifying a collective-bargaining agreement before formal approval of the rejection by the bankruptcy court. The

Court concluded that from the filing of a petition in bankruptcy until formal acceptance by the debtor, the collective bargaining agreement is not an enforceable contract, and the debtor need not comply with the NLRA procedures for unilaterally modifying the terms and conditions of the agreement. Accordingly, the Court held that while the debtor remains obligated to bargain in good faith over a possible new contract, there can be no unfair labor practice for failing to follow the statutory procedures for modifying the old contract.

III. What questions Bildisco resolves

As has been pointed out above, there were two key issues before the Supreme Court in Bildisco, first, "under what conditions may the bankruptcy court permit a debtor-in-possession to reject a collective bargaining agreement (CBA)?" This question was resolved in favor of the "balancing the equities" test, in other words, a court may permit rejection if it is shown that the CBA burdens the estate and, after careful scrutiny, the equities balance in favor of rejection. The court also stated, among other things, that the bankruptcy court should be pursuaded that reasonable efforts to negotiate a voluntary modification were undertaken.

The second key issue resolved in Bildisco was whether the NLRB could find that a debtor-in-possession commits an unfair labor practice when they cancel a CBA prior to approval by the Court. The Supreme Court ruled, 5 to 4, that the NLRB could not find that this constituted an unfair labor practice because the debtor-in-possession was not bound by the agreement after filing under Chapter 11. There is, therefore, no obligation to follow the NLRA procedures for mid-term modification of a CBA once the debtor-in-possession files for reorganization.

The Bildisco decision also resolves the question of whether there are limitations on the bankruptcy judges authority to deal with the issues outside of a strictly economic area. The decision may be seen as an indication that the Supreme Court favors an expansive role for the bankruptcy judges . For example, bankruptcy judge's can now clearly deal with what are traditionally labor-management issues regarding modifications of collective bargaining agreements. This may indicate support for the judges to deal with non-bankruptcy matters such as tort-liability, as in the Manville case where the reason given for filing under Chapter 11 was to avoid asbestos-related lawsuits. In the Revere Copper and Brass Company case, the judge dismissed an environmental suit because of the company having filed under Chapter 11. In the case of Whiting Pools Inc., the IRS was ordered by the bankruptcy judge to return swimming pools seized for unpaid taxes after the company filed under Chapter 11. The judge there ruled that the pools were part ofthe company's assets to be divided among the creditors.

The Bildisco decision may also be seen as favoring a wider range of things that a company may do while under reorganization. As discussed further below, companies can stay in business and have a great deal of control over their assets after filing under Chapter 11. Bildisco removed any doubt about whether there were prohibitions on a company terminating labor contracts after filing under Chapter 11. In another case, despite substantial assets, the bankruptcy judge allowed Manville to file under Chapter 11 to avoid costly lawsuits. In the case of Eagle Cloths, the company, while under Chapter 11, took over April-Marcus, Inc., a profitable company, which resulted in 94 million dollars in sales and a 5 million dollar profit. It can be expected that companies will continue to undertake activities that, prior to the 1978 Reform Act, would never have been allowed of a bankrupt company.

IV. What questions Bildisco leaves unanswered

The Supreme Court's requirement that a debtor show that "equities balance in favor of rejecting the labor contract" in order to secure Bankruptcy Court approval of the rejection of the agreement leaves a number of unanswered questions to be resolved by bankruptcy judges on a case-by-case basis. Although the Court listed specific factors to be considered, it gave no indication of the relative weight to be assigned to each, other than the general direction to "focus on ultimate goal of Chapter 11" --this is, to permit successful rehabilitation of debtors. In addition, the Court's inclusion of the interests of creditors in the balancing process sheds some doubt on the previously unquestioned special status of employees, who may be continuing to provide services to the debtor, as opposed to creditors who interest is in collecting prior debts.

Not only does the Court's decision require bankruptcy judges to engage in extensive speculation regarding the affects of rejection, it also requires the Bankruptcy Court to make a preliminary determination that the parties have tried to negotiate a voluntary modification of their agreement and are not likely to succeed. The only standard to be applied in assessing the efforts of the parties in this regard is one of reasonableness. Perhaps more importantly, the Court's decision does not indicate the time frame within which negotiations should occur or at what stage of the bankruptcy proceedings the court should attempt to determine whether it is appropriate to act on the petition to reject the agreement. Moreover, since the filing of a petition in bankruptcy renders the collective bargaining agreement unenforceable and any claim arising from the breach of that agreement must be administered through bankruptcy with the priority provided general unsecured creditors,

the debtor has little incentive to engage in meaningful bargaining with the Union. Nevertheless, the Court also held that "a debtor-in-possession remains obligated to bargain in good faith under NLRA § 8(a)(5) over the terms and condition of a possible new contract." Thus, the National Labor Relations Board apparently continues to have jurisdiction to determine whether the employer has failed or refused to bargain in good faith, both before and after the filing of a petition in bankruptcy. However, several questions remain regarding the extent of the Board's authority over related issues and regarding the remedies available. It is unclear whether the Court's holding permits the debtor to make unilateral changes in terms and conditions of employment which cannot be measured in monetary terms. Can a debtor refuse to follow established grievance procedures, refuse to allow a union representative access to employees at the workplace, or unilaterally institute new work rules for employees without running afoul of the NLRA? Moreover, while a debtor need not bargain to impasse before seeking rejection, presumedly he would be required to do so before locking out employees. On the other hand, the Court's opinion does not suggest any restraint on the union's right to strike to enforce its agreement, at least after an actual breach by the debtor-employer. Accordingly, the union may be required by §8(b)(3) to bargain to impasse regarding a new term or condition at the same time it is free to strike with respect to the employer's failure to abide by an existing provision with regard to the same term or condition of employment.

Finally, the Supreme Court's decision does not indicate whether the pendency of the bankruptcy proceeding affects the employer's duty to provide relevant information to the union necessary to enable the employees' representative to bargain intelligently. Assuming there is such a duty and that failure to comply is an unfair labor practice, the Board may retain jurisdiction over this aspect of the relationship. However, because of the length of time required to obtain a remedy from the Board, it is doubtful that seeking such a remedy would provide the union with the information in time to use it in the negotiations that the court found should precede the Bankruptcy Court's action or petition to modify or reject the agreement. Indeed, a claim that such information is necessary to permit reasonable bargaining might, in effect, delay the Bankruptcy Court's ruling -- a result the union is not likely to risk if the contract has already been abrogated.

IV. Increase in bankruptcy proceedings: reasons and effects

There are several factors that have contributed to the current rise in the use of bankruptcy to get out from under difficult or costly contractual obligations. Most important is the passage

of the 1978 Bankruptcy Reform Act. Among other things, the Act removed certain restrictions on what companies had to prove to file under Chapter 11, and on what they could do after filing.

Prior to enactment of the 1978 Act, companies could file under Chapter 11 only if they were insolvent, and a judge had to approve or deny the filing of a company's petition for bankruptcy. The 1978 Act allowed companies to reorganize without necessarily being insolvent and thereby stay in business. In addition, companies now are presumed to file under Chapter 11 in good faith, and therefore fewer cases are dismissed.

The Reform Act also made significant procedural changes, gave bankruptcy judges greater power regarding relating issues, including potentially damaging lawsuits, and permitted tort actions to be liquidated in bankruptcy. Further, under the old law, courts had to appoint a trustee to run every company with a debt of more than $250,000. Now, no trustees have to be appointed and, unless the court finds them incompetent, managers can retain their jobs and negotiate with creditors.

These changes have allowed companies greater freedom than they had before. A company that files for reorganization under Chapter 11, can stay in business, free itself from costly contracts, sell off assets without the approval of creditors, and break CBA's with the approval of the court. In addition, the debtor-in-possession can reject executory contracts prior to formal approval by the Bankruptcy Court. However, it should also be noted that filing a petition for reorganization also entails significant risks which detract from its appeal. A debtor that is unable to come up with a reorganization plan that satisfies a majority of the creditors involved may well end up being liquidated.

VI. Specific instances involving issues similar to those presented in Bildisco

A. The Airline Industry

Much of the publicity regarding companies filing for bankruptcy and thereafter breaking CBA's has focused on the airline industry. Several factors have contributed to this situation and have given rise to some dramatic steps by different airline companies. These factors include: the Airline Deregulation Act; increased competition between non-union and unionized airlines; price wars for newly opened routes.

Prior to the Airline Deregulation Act, airlines would simply pass on increased costs to the consumer. However, after the Act, new non-union airlines entered the field. Since many of the costs for different airlines are similar, (i.e. for fuel, planes, equipment,) the real variable was in labor costs. (i.e. 33-37% for union airlines, versus 19 to 27% for non-union airlines.) Because of this, non-union airlines could charge less for tickets. This led many of the union airlines to seek concessions from their employees as a way of saving costs. Many airline employees, especially pilots, had received steady increases in salaries which, prior to the deregulation, were passed on to the consumers. As profits dropped and competition increased, many airlines found it extremely difficult to maintain the same level of salary increases as prior to deregulation. The unions prefer not to have salaries drop for their members and often may resist efforts by management to achieve salary and benefit reductions. This clash of interests has led to some of the situations described below. One airline has filed a petition for reorganization and several others have indicated they may do so in order to cut labor costs.

Continental Airlines, filed for bank-ruptcy under Chapter 11 and thereafter laid off 65% of its workforce, halved pay for those employees remaining, shortened vacations, suspended the pension plan, and tightened work rules. On Janurary 17, 1984, a Motion to Dismiss filed by the union chal-lenging the appropriateness of having Continental file for bankruptcy under Chapter 11 was denied by the judge. In January the company asked the bankruptcy judge to approve the cancellation of its union contracts as "onerous and burdensome" on the debtor. As of March 20, 1984, the Bankruptcy Court had not yet ruled.

Eastern Airlines, threatened filing for bankruptcy under Chapter 11 unless its workforce accepted a 15% pay cut. This came while some of its workers were on strike. The airline and the union have since resolved some of their differences and the company has indicated that they will not file for bankruptcy.

Trans World Airways, similarly has threatened publicly filing under Chapter 11 unless the workforce accepts a paycut.

Pan Am, Republic, and Western Airlines have also recently been publicly mentioned as having financial problems because of recent losses in revenue and as potentially in he same situation as Continental.

B. There are companies in other industries that have filed under Chapter 11 and thereby avoided or sought to

avoid labor contracts as well as other legal obligations. It should be noted, however, that filing under Chapter 11 solely to escape labor contracts has been regarded by many an inappropriate use of the bankruptcy laws. In testimony before two subcommittees of the House Committee on Education and Labor, Professor Vern Countryman, an expert on bankruptcy law, has stated that a company is improperly using Chapter 11 if its sole purpose for filing is to void its collective bargaining agreement. In one case discussed below, the bankruptcy judge rejected a company's petition under Chapter 11 when it found that the sole reason for filing was to avoid its labor contract. In October 1983, the Airline Pilots Association submitted an affidavit to the House Subcommittee on Labor-Relations from Continental Airlines' Executive Vice-President stating that the sole reason for filing under Chapter 11 was to abrogate their CBA. As stated above, the judge has not yet ruled on Continental's request to approve rejection of the CBA. The following companies have filed under Chapter 11 to avoid onerous financial burdens including labor contracts:

Manville Corporation, which has been able to stay 16,000 asbestos-related lawsuits by filing under Chapter 11. In January the bankruptcy judge refused to dismiss the Manville bankruptcy petition stating that the company was in dire need of reorganization because of the asbestos-related law-suits.

Wilson Foods, which abrogated CBA's immediately after filing under Chapter 11 citing high labor costs as the reason. The workers went on strike but later signed a contract settling their dispute. A challenge to the company's right to file under Chapter 11 was rejected by the Bankruptcy Court and a plan for reorganization will be voted on.

HRT Industries, which filed under Chapter 11 in 1982, although its assets exceeded liabilities by $50 million.

UNR, Industries Inc., filed for protection under Chapter 11 in 1982 rather than face 20,000 health-related lawsuits over its production of materials containing asbestos. They filed under Chapter 11 just a few weeksprior to Manville's filing under Chapter 11.

Tinta Corporation of Wisconson sought to file under Chapter 11 solely to avoid labor contracts but the bankruptcy judge rejected the petition. The company then became liable for damages sought by its workers.

In testimony given to the House subcommittee on Education and Labor on October 5, 1983, the Teamsters, one of the

parties in the Bildisco case, stated that the problem of Chapter 11 companies breaking labor contracts was also very seroius in the trucking industry. In addition, the passage of the Motor Carrier Act of 1980 was citied as contributing to an increase in the number of carriers that have filed for bankruptcy. The following carrier companies were listed as having filed for bankruptcy since 1980:

Date of Bankruptcy	Company	Status
05/18/82	Alkers-Central Motor Lines, Inc.	Liquidating
03/19/82	Boss-Linco Lines, Inc.	Liquidating
08/01/80	Brada Miller Freight System	Liquidating
01/25/83	Briggs Transportation Company	Operation
10/07/81	Chief Freight Linbes	Liquidating
12/28/81	Cooper-Jarrett, Inc.	Liquidating
08/21/81	Courier-Newsom Express, Inc.	Liquidated
08/12/81	Fowler and Williams, Inc.	Liquidated
01/31/83	General Highway Express	Operation
02/09/83	Gordons Transport, Inc.	Liquidating
07/28/82	Hemingway Transport	Operating*
07/15/83	IML Freight Operating	Operating
07/08/83	Maislin Transport Inc.	Liquidating
03/02/82	Mid-American Lines, Inc.	Liquidated
01/04/83	Midwest Emery Freight System	Operating
10/14/82	Motor Frieght Express, Inc.	Liquidating
04/26/82	Specter-Red Ball	Liquidating
11/26/82	Superior Forwarding Co., Inc.	Operating
07/23/80	Wilson Freight	Liquidated

*Operating at a minimal level while liquidating most of assets.

Current Legislative Activity

On March 21, 1984, the House of Representatives passed a bill introduced by Congressman Rodino (H.R. 5174) which would effectively reverse the Supreme Court's decision in Bildisco with respect to both the debtor's right to unilaterally reject a collective bargaining agreement upon filing a petition for reorganization and with respect to the test to be used by the bankruptcy court in determining whether to approve the rejection. This bill was part of legislation that restructured the bankruptcy courts in response to the Supreme Court's holding, in Northern Pipeline Construction Co. v. Marathon Pipe Line Co. 458 U.S. 50 (1982), that the broad grant of power to bankruptcy

judges in the 1978 Bankruptcy Reform Act was unconstitutional.*/ An amendment made on the floor by congressman Kastenmeier and passed by the House conformed H.R. 5174 to an earlier Senate bill (S. 1013) insofar as it provided that bankruptcy judges would serve pursuant to Article 1, rather than Article 3, of the Constitution and thus be subject to the overall supervision of the federal district courts. While there are some differences between H.R. 5174, as amended, and S. 1013, the main issue separating the Houses of Congress appears to be the question whether to include a provision regarding the Bildisco issue and what such a provision should say. While several drafts of proposed legislation have been attempted, the only bill currently pending that addresses this issue is H.R. 5174. A joint hearing of the Senate Judiciary and Labor and Human Resource Committees will be held on April 10, 1984, to discuss the Bildisco issue.

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* Since the Court's decision, the bankruptcy courts have continued to operate, but under the supervision of fereral district courts, pursuant to an arrangement which was to expire on March 31, 1984, requiring Congress to enact corrective legislation by that date. Since Congress was unable to agree upon the necessary legislation by that date, both Houses passed a 30-day extension.

AMENDMENT NO. 3083

Pending
S.L.C.

By THURMOND

Bill/Res. No. HR 5174

Calendar No. 722

120 pages

IN THE SENATE OF THE UNITED STATES--98th Cong., 2d Sess.

H.R. 5174

To provide for the appointment of United States bankruptcy judges under article III of the Constitution, to amend title 11 of the United States Code for the purpose of making certain changes in the personal bankruptcy law, of making certain changes regarding grain storage facilities, and of clarifying the circumstance under which collective-bargaining agreements may be rejected in cases under chapter 11, and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

Amendment In the Nature of a Substitute intended to be proposed by Mr. Thurmond (~~for himself and Mr. Heflin~~) with an amendment to the title

Viz:

Strike out all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the ''Bankruptcy Court and Federal Judgeship Act of 1984''.

TITLE I--BANKRUPTCY JURISDICTION AND PROCEDURE

Sec. 101. (a) Section 1334 of title 28, United States Code, is amended to read as follows:

''$ 1334. Bankruptcy cases and proceedings

''(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

''(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

''(c)(1) Nothing in this section prevents a district court in the interest of justice, or in the interest of

comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11. Such decision to abstain or to not abstain is not reviewable by appeal or otherwise.

''(2) In a proceeding involving the debtor which is based upon a State law claim or cause of action neither arising under title 11 nor arising in a case under title 11, which could not otherwise have been brought in Federal court absent jurisdiction under this section, the court shall, upon proper motion, abstain from adjudicating such claim in the bankruptcy proceeding where an action to adjudicate such claim has been or will be timely instituted and prosecuted in a State forum of appropriate jurisdiction: Provided, That this paragraph shall be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, only to the extent necessary to permit adjudication but not the execution of such claim by the State forum. Such abstention is not reviewable by appeal or otherwise.

''(3) A motion to abstain pursuant to this subsection shall be filed with the initial pleading.

''(d) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction of all of the property, wherever located, of the debtor, or of the estate, as of the commencement of such case.''.

(b) The table of sections for chapter 85 of title 28, United States Code, is amended by amending the item relating to section 1334 to read as follows:

''1334. Bankruptcy cases and proceedings.''.

Sec. 102. (a) Chapter 87 of title 28, United States Code, is amended by adding at the end thereof the following new sections:

''§ 1408. Venue of cases under title 11

''Except as provided in section 1410 of this title, a case under title 11 may be commenced in the district court for the district--

''(1) in which the domicile, residence, principal place of business in the United States, or principal assets in the United States, of the person or entity that is the subject of such case have been located for the one hundred and eighty days immediately preceding such commencement, or for a longer portion of such one-hundred-and-eighty-day period than the domicile, residence, or principal place of business, in the United States, or principal assets in the United States, of such person were located in any other district; or

''(2) in which there is pending a case under title 11 concerning such person's affiliate, general partner, or partnership.

''§ 1409. Venue of proceedings arising under title 11 or arising in or related to cases under title 11

''(a) Except as otherwise provided in subsections (b) and (d), a proceeding arising under title 11 or arising in or related to a case under title 11 may be commenced in the district court in which such case is pending.

''(b) Except as provided in subsection (d) of this section, a trustee in a case under title 11 may commence a proceeding arising in or related to such case to recover a money judgment of or property worth less than $1,000 or a consumer debt of less than $5,000 only in the district court for the district in which the defendant resides.

''(c) Except as provided in subsection (b) of this section, a trustee in a case under title 11 may commence a proceeding arising in or related to such case as statutory successor to the debtor or creditors under section 541 or 544(b) of title 11 in the district court for the district where the State or Federal court sits in which, under

	Senate Staff	AFL (3/27)	AFL (3/28)
1. Coverage	Title II of RLA (Air Carriers) + NLRA	Everything but Title I of RLA + Subch. 4 of Ch. 11 (Railroad reorgs.)	Same
2. Unilateral term or alteration of C.B.A.	Not permitted; ct. approval required	Same	Same - Adds lang-: rejection only in accordance w/this section; deletes language regarding assumption.
3. Info. provided to employees' rep.	All financial info. "necessary to a fair evaluation of the application for rejection, at least 7 days before hrg. on application."	The info. "necessary to evaluate the proposal" for modifying the agreement; apparently must be provided prior to filing of applic.	Silent, apparently inadvertently, in light of (d)(3) (described below)
4. Protective order re: disclosure of info. [problem: possible request for disclosure of "trade secrets" by union (3M case)]	Ct. may prevent public disclosure if info. would compromise debtor's position vis a vis competitors. Provides for in camera inspection.	Ct. must accommodate union's need to see info. to evaluate the proposal and debtor's need to prevent disclosure because of competitors.	Sames as 3/27 version but 1. adds Senate's "in camera" language 2. requires disclosure if info. is "relevant to a fair evaluation of the application" [NB: Inconsistent with disclosure for purpose of evaluating proposal]

		Senate Staff	AFL (3/27)	AFL (3/28)
5.	Proposal	Trustee must make proposal before ct. rules on applic. Must be a good faith proposal that would provide "reasonable protection" of employees' benefits under C.B.A. "with due consideration of totality of circumstances," while permitting successful reorg.	Must make proposal before filing applic. - reduces benefits "only to the extent required to permit a successful reorganization."	Timing same as 3/27 version, but only for "minimal modifications in the emp. benefits and protections that meet the debtor's demonstrated financial needs. [in the reorg. after taking into account the proper contrib. of all classes of creditors and other affected parties]"
6.	Requirement to Bargain	None -- but Bildisco says NLRA requirement still enforceable (although not in bankruptcy court), to recourse is to NLRB.	"Meet at reasonable times and confer in good faith," between proposal & hearing (enforceable in bank. ct. possible overlay of NLRA law on Chap. 11 proceedings re duty to bargain).	Same as 3/27 proposal, except that debtor must "offer to meet ...."
7.	Std. for Rejection of C.B.A.	Ct. may approve if "after due consideration of the equities," it finds that "equities weigh in favor of rejection."	Ct. shall approve "only if" debtor has made a proposal, bargained in good faith, and "balance of equities is clearly in favor of rejection." (e.g. 60-40 ratio).	Same requirement for proposal & bargaining, but ct. shall approve if "on balance, the equities weigh more heavily in favor of rejection." (e.g. 50.1-49.9 ratio).
8.	Timing	a. 14 days from applic. to hrg.	a. 21 days (may extend for 7 days).	a. Same as 3/27 proposal.
		b. 10 days' notice of hrg.	b. Same.	b. Same as 3/27 -- but change "all interested parties" to "other interested parties."

	Senate Staff	AFL (3/27)	AFL (3/28)
8. Cont.	c. Ruling must be 30 days from filing -- may be extended 15 days (more if parties consent).	c. Ruling within 30 days of start of hrg. -- may extend for 15 days (more with consent).	c. Deletes 15-day extension, but parties can still agree to extend.
	d. If ct. doesn't rule in this time, applic. deemed approved.	d. If ct. doesn't rule in this time, must enter an interim order putting debtor's final proposal into effect.	d. If ct. doesn't rule or has approved rejection but not filed an order, debtor's final proposal put into effect.
9. Appeals	- Decision on applic. appealable to dist. ct. within 7 days.	- Silent.	- Silent.
	- Hrg. & judgment in dist. ct. within 30 days of filing notice of appeal.	- Silent.	- Silent.
	- Mandate issues immed., may be stayed under FRAP 8(a).	- Silent.	- Silent.

Note: Other lang. changes w/no apparent signif. - e.g. agree/consent.

applicable nonbankruptcy venue provisions, the debtor or creditors, as the case may be, may have commenced an action on which such proceeding is based if the case under title 11 had not been commenced.

''(d) A trustee may commence a proceeding arising under title 11 or arising in or related to a case under title 11 based on a claim arising after the commencement of such case from the operation of the business of the debtor only in the district court for the district where a State or Federal court sits in which, under applicable nonbankruptcy venue provisions, an action on such claim may have been brought.

''(e) A proceeding arising under title 11 or arising in or related to a case under title 11, based on a claim arising after the commencement of such case from the operation of the business of the debtor, may be commenced against the representative of the estate in such case in the district court for the district where the State or Federal court sits in which the party commencing such proceeding may, under applicable nonbankruptcy venue provisions, have brought an action on such claim, or in the district court in which such case is pending.

''§ 1410. Venue of cases ancillary to foreign proceedings

''(a) A case under section 304 of title 11 to enjoin the commencement or continuation of an action or proceeding in a State or Federal court, or the enforcement of a judgment, may be commenced only in the district court for the district where the State or Federal court sits in which is pending the action or proceeding against which the injunction is sought.

''(b) A case under section 304 of title 11 to enjoin the enforcement of a lien against a property, or to require the turnover of property of an estate, may be commenced only in the district court for the district in which such property is found.

''(c) A case under section 304 of title 11, other than a

case specified in subsection (a) or (b) of this section, may be commenced only in the district court for the district in which is located the principal place of business in the United States, or the principal assets in the United States, of the estate that is the subject of such case.

''§ 1411. Jury trials

''(a) Except as provided in subsection (b) of this section, this chapter and title 11 do not affect any right to trial by jury.

''(b) The district court may order the issues arising under section 303 of title 11 to be tried without a jury.

''§ 1412. Change of venue

''A district court may transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties.''.

(b) The table of sections of chapter 87 of title 28, United States Code, is amended by adding at the end thereof the following new items:

''1408. Venue of cases under title 11.
''1409. Venue of proceedings arising under title 11 or arising in or related to cases under title 11.
''1410. Venue of cases ancillary to foreign proceedings.
''1411. Jury trials.
''1412. Change of venue.''.

Sec. 103. (a) Chapter 89 of title 28, United States Code, is amended by inserting at the end thereof the following new section:

''§ 1452. Removal of claims related to bankruptcy cases

''(a) A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.

''(b) The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground. An order entered under this subsection remanding a claim or cause of action, or a decision to not remand, is not reviewable by appeal or otherwise.''.

(b) The table of sections of chapter 89 of title 28, United States Code, is amended by adding at the end thereof the following new item:

''1452. Removal of claims related to bankruptcy cases.''.

Sec. 104. (a) Title 28 of the United States Code is amended by inserting after chapter 5 the following new chapter:

''CHAPTER 6--BANKRUPTCY JUDGES

''§ 151. Designation of bankruptcy courts

''In each judicial district, the bankruptcy judges in regular active service shall constitute a unit of the district court to be known as the bankruptcy court for that district. Each bankruptcy judge is a judicial officer of the district court, and except as otherwise provided by law, rule, or order of the district court, may exercise the authority conferred under this chapter with respect to any action, suit, or proceeding and may preside alone and hold a regular or special session of the court.

''§ 152. Appointment of bankruptcy judges

''(a) (1) The United States court of appeals for the circuit shall appoint bankruptcy judges for the judicial districts established in paragraph (2) in such numbers as are established in such paragraph. Such appointments shall be made after considering the recommendations of the Judicial

Conference submitted pursuant to subsection (b). Each bankruptcy judge shall be appointed for a term of fourteen years, subject to the provisions of subsection (e). Bankruptcy judges shall serve as judicial officers of the United States district court established under Article III of the Constitution.

''(2) The bankruptcy judges appointed pursuant to this section shall be appointed for the several judicial districts as follows:

''Districts	Judges
Alabama:	
Northern	5
Middle	2
Southern	2
Alaska	1
Arizona	4
Arkansas:	
Eastern and Western	2
California:	
Northern	7
Eastern	4
Central	12
Southern	3
Colorado	4
Connecticut	2
Delaware	1
District of Columbia	1
Florida:	
Northern	1
Middle	2
Southern	3
Georgia:	
Northern	4
Middle	2
Southern	1
Hawaii	1
Idaho	1
Illinois:	
Northern	8
Central	2
Southern	1
Indiana:	
Northern	2
Southern	4
Iowa:	
Northern	1
Southern	1
Kansas	3
Kentucky:	
Eastern	1
Western	2
Louisiana:	
Eastern	2
Middle	1
Western	2
Maine	2
Maryland	2
Massachusetts	4
Michigan:	

Eastern	4
Western	2
Minnesota	4
Mississippi:	
Northern	1
Southern	2
Missouri:	
Eastern	3
Western	3
Montana	1
Nebraska	1
Nevada	2
New Hampshire	1
New Jersey	5
New Mexico	2
New York:	
Northern	2
Southern	7
Eastern	6
Western	3
North Carolina:	
Eastern	2
Middle	2
Western	1
North Dakota	1
Ohio:	
Northern	8
Southern	7
Oklahoma:	
Northern	1
Eastern	1
Western	2
Oregon	4
Pennsylvania:	
Eastern	3
Middle	2
Western	3
Puerto Rico	2
Rhode Island	1
South Carolina	1
South Dakota	1
Tennessee:	
Eastern	2
Middle	2
Western	2
Texas:	
Northern	4
Eastern	1
Southern	3
Western	2
Utah	2
Vermont	1
Virginia:	
Eastern	3
Western	3
Washington:	
Eastern	1
Western	4
West Virginia:	
Northern	1
Southern	1
Wisconsin:	
Eastern	3
Western	2
Wyoming	1.''.

''(3) Whenever a majority of the judges of any court of

appeals cannot agree upon the appointment of a bankruptcy judge, the chief judge of such court shall make such appointment.

''(4) The judges of the district courts for the territories shall serve as the bankruptcy judges for such courts. The United States court of appeals for the circuit within which such a territorial district court is located may appoint bankruptcy judges under this chapter for such district if authorized to do so by the Congress of the United States under this section.

''(b) (1) The Judicial Conference of the United States shall, from time to time, and after considering the recommendations submitted by the Director of the Administrative Office of the United States Courts after such Director has consulted with the judicial council of the circuit involved, determine the official duty stations of bankruptcy judges and places of holding court.

''(2) The Judicial Conference shall, from time to time, submit recommendations to the Congress regarding the number of bankruptcy judges needed and the districts in which such judges are needed.

''(c) Each bankruptcy judge may hold court at such places within the judicial district, in addition to the official duty station of such judge, as the business of the court may require.

''(d) With the approval of the Conference and of each of the judicial councils involved, a bankruptcy judge may be designated to serve in any district adjacent to or near the district for which such bankruptcy judge was appointed.

''(e) A bankruptcy judge may be removed during the term for which such bankruptcy judge is appointed, only for incompetence, misconduct, neglect of duty, or physical or mental disability and only by the judicial council of the circuit in which the judge's official duty station is

located. Removal may not occur unless a majority of all of the judges of such council concur in the order of removal. Before any order of removal may be entered, a full specification of charges shall be furnished to such bankruptcy judge who shall be accorded an opportunity to be heard on such charges.

''§ 153. Salaries; character of service

''(a) Each bankruptcy judge shall serve on a full-time basis and shall receive as full compensation for his services a salary at an annual rate of $66,100. Notwithstanding any other provision of law, such salaries shall remain at such rate unless a higher rate is authorized by a law specifically increasing the rate of pay for bankruptcy judges.

''(b) A bankruptcy judge may not engage in the practice of law and may not engage in any other practice, business, occupation, or employment inconsistent with the expeditious, proper, and impartial performance of such bankruptcy judge's duties as a judicial officer. The Conference may promulgate appropriate rules and regulations to implement this subsection.

''(c) Each individual appointed under this chapter shall take the oath or affirmation prescribed by section 453 of this title before performing the duties of the office of bankruptcy judge.

''§ 154. Division of businesses; chief judge

''(a) Each bankruptcy court for a district having more than one bankruptcy judge shall by majority vote promulgate rules for the division of business among the bankruptcy judges to the extent that the division of business is not otherwise provided for by the rules of the district court.

''(b) In each district court having more than one bankruptcy judge the district court shall designate one judge to serve as chief judge of such bankruptcy court. Whenever a majority of the judges of such district court cannot agree

upon the designation as chief judge, the chief judge of such district court shall make such designation. The chief judge of the bankruptcy court shall ensure that the rules of the bankruptcy court and of the district court are observed and that the business of the bankruptcy court is handled effectively and expeditiously.

''§ 155. Temporary transfer of bankruptcy judges

''(a) A bankruptcy judge may be transferred to serve temporarily as a bankruptcy judge in any judicial district other than the judicial district for which such bankruptcy judge was appointed upon the approval of the judicial council of each of the circuits involved.

''(b) A bankruptcy judge who has retired may, upon consent, be recalled to serve as a bankruptcy judge in any judicial district by the judicial council of the circuit within which such district is located. Upon recall, a bankruptcy judge may receive a salary for such service in accordance with regulations promulgated by the Judicial Conference of the United States, subject to the restrictions on the payment of an annuity in subchapter III of chapter 83 of title 5.

''§ 156. Staff; expenses

''(a) Each bankruptcy judge may appoint a secretary, a law clerk, and such additional assistants as the Director of the Administrative Office of the United States Courts determines to be necessary.

''(b) Upon certification to the judicial council of the circuit involved and to the Director of the Administrative Office of the United States Courts that the number of cases and proceedings pending within the jurisdiction under section 1334 of this title within a judicial district so warrants, the bankruptcy judges for such district may appoint an individual to serve as clerk of such bankruptcy court. The clerk may appoint, with the approval of such bankruptcy

judges, and in such number as may be approved by the Director, necessary deputies, and may remove such deputies with the approval of such bankruptcy judges.

''(c) Any court may utilize facilities or services, either on or off the court's premises, which pertain to the provision of notices, dockets, calendars, and other administrative information to parties in cases filed under the provisions of title 11, United States Code, where the costs of such facilities or services are paid for out of the assets of the estate and are not charged to the United States. The utilization of such facilities or services shall be subject ~~only~~ to such conditions and limitations as the pertinent circuit council may prescribe.

''§ 157. Procedures

''(a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

''(b)(1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

''(2) Core proceedings include, but are not limited to--

''(A) matters concerning the administration of the estate;

''(B) allowance or disallowance of claims against the estate or exemptions from property of the estate, but not the liquidation or estimation of contingent or unliquidated claims against the estate;

''(C) counterclaims by the estate against persons filing claims against the estate;

''(D) orders in respect to obtaining credit;

''(E) orders to turn over property of the estate;

''(F) proceedings to determine or set aside preferences;

''(G) motions to lift or modify the automatic stay;

''(H) proceedings to set aside fraudulent conveyances;

''(I) determinations as to the dischargeability of particular debts;

''(J) objections to discharges;

''(K) determinations of the validity, extent, or priority of liens;

''(L) confirmations of plans; and

''(M) orders approving the sale of property not resulting from claims brought by the estate against persons who have not filed claims against the estate.

''(3) The bankruptcy judge shall determine, on the judge's own motion or on timely motion of a party, whether a proceeding is a core proceeding under this subsection or is a proceeding that is otherwise related to a case under title 11. A determination that a proceeding is not a core proceeding shall not be made solely on the basis that its resolution may be affected by State law.

''(c) (1) A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.

''(2) Notwithstanding the provisions of paragraph (1) of this subsection, the district court, with the consent of all the parties to the proceeding, may refer a proceeding related

to a case under title 11 to a bankruptcy judge to hear and determine and to enter appropriate orders and judgments, subject to review under section 158 of this title.

''(d) The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

''§ 158. Appeals

''(a) The district courts of the United States shall have jurisdiction to hear appeals from final judgments, orders, and decrees, and, with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title. An appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving.

''(b) (1) The judicial council of a circuit may establish a bankruptcy appellate panel, comprised of bankruptcy judges from districts within the circuit, to hear and determine, upon the consent of all the parties, appeals under subsection (a) of this section.

''(2) No appeal may be referred to a panel under this subsection unless the district judges for the district, by majority vote, authorize such referral of appeals originating within the district.

''(3) A bankruptcy judge may not hear an appeal originating within a district for which the judge is appointed or designated under section 152 of this title.

''(c) An appeal to a district court under subsections (a) and (b) of this section shall be taken in the same manner as

appeals in civil proceedings generally are taken to the courts of appeals from the district courts.

''(d) The courts of appeals shall have jurisdiction of appeals from all final decisions, judgments, orders, and decrees of the district courts entered under subsections (a) and (b) of this section.''.

(b) The table of chapters of part I of title 28, United States Code, is amended by inserting after the item relating to chapter 5, the following new item:

''6. Bankruptcy judges..... 151.''.

Sec. 105. The salary of a bankruptcy judge in effect immediately before the date of enactment of this Act shall remain in effect until changed as a result of an adjustment made pursuant to section 153 (a) of title 28, United States Code, as added by this Act.

Sec. 106. (a) Notwithstanding section 152 of title 28, United States Code, as added by this Act, the term of office of a bankruptcy judge who is serving on the date of enactment of this Act is extended to and expires on October 1, 1985, or when his successor takes office, whichever is earlier.

(b) Notwithstanding section 153 (a) of title 28, United States Code, as added by this Act, and notwithstanding subsection (a) of this section, a bankruptcy judge serving on a part-time basis on the date of enactment of this Act may continue to serve on such basis until October 1, 1985.

Sec. 107. Section 372(c)(6)(B)(vii) of title 28, United States Code, is amended by striking out ''section 153'' and inserting in lieu thereof ''section 152''.

Sec. 108. (a) Section 634 (a) of title 28, United States Code, is amended by striking out ''the rates now or hereafter provided for full-time or part-time referees in bankruptcy, respectively, referred to in section 40a of the Bankruptcy Act (11 U.S.C. 68 (a)), as amended,'' and inserting in lieu thereof ''$66,100''.

(b) Notwithstanding any other provision of law, a magistrate's annual rate of pay shall not exceed $66,100 unless a higher rate is authorized by a law specifically increasing the rates of pay of such magistrates.

(c) Section 225(f)(C) of the Federal Salary Act of 1967 (2 U.S.C. 356 (c)) is amended by striking out ''and magistrates'', and inserting in lieu thereof '', except bankruptcy judges''.

(d) Section 548 of title 28, United States Code, is amended to read as follows:

''$ 548. Salaries

''Subject to sections 5315 through 5317 of title 5, the Attorney General of the United States shall fix the annual salaries of United States Attorneys, Assistant United States Attorneys General, and attorneys appointed under section 543 of this title at rates of compensation not in excess of the rate of basic compensation provided for Executive Level IV of the Executive Schedule set forth in section 5315 of title 5.''.

Sec. 109. Section 957 of title 28, United States Code, is amended by striking out ''district''.

Sec. 110. Section 1360 of title 28, United States Code, is amended--

(1) by striking out ''or Territories'';

(2) by striking out ''or Territory'' each place it appears; and

(3) by striking out ''within the Territory'' and inserting in lieu thereof ''within the State''.

Sec. 111. (a) Section 1930 of title 28, United States Code, is amended by striking out ''clerk of the bankruptcy court'' each place it appears and inserting in lieu thereof ''clerk of the court''.

(b) The heading for section 1930 of title 28, United States Code, is amended to read as follows:

''$ 1930. Bankruptcy fees.''.

(c) The table of sections for chapter 125 of title 28, United States Code, is amended by striking out ''Bankruptcy courts'' and inserting in lieu thereof ''Bankruptcy fees''.

Sec. 112. Subsections (f), (j), (k), (l), and (m) of section 8339, subsections (b)(1) and (d) of section 8341, and section 8344(a)(A) of title 5, United States Code, are each amended by striking out ''and (o)'' and inserting in lieu thereof ''and (n)''.

Sec. 113. Section 402(b) of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2682), is amended by striking out ''shall take effect on April 1, 1984'' and inserting in lieu thereof ''shall not take effect''.

Sec. 114. Sections 404, 405(a), 405(b), 405(c), 406, 407, and 409 of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2683), are repealed.

Sec. 115. (a) On the date of the enactment of this Act the appropriate district court of the United States shall have jurisdiction of--

(1) cases, and matters and proceedings in cases, under the Bankruptcy Act that are pending immediately before such date in the bankruptcy courts continued by section 404(a) of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2687), and

(2) cases under title 11 of the United States Code, and proceedings arising under title 11 of the United States Code or arising in or related to cases under title 11 of the United States Code, that are pending immediately before such date in the bankruptcy courts continued by section 404(a) of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2687).

(b) On the date of the enactment of this Act, there shall be transferred to the appropriate district court of the United States appeals from final judgments, orders, and

decrees of the bankruptcy courts pending immediately before such date in the bankruptcy appellate panels appointed under section 405(c) of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2685).

Sec. 116. (a) Section 8331(22) of title 5, United States Code, is amended--

(1) by striking out ''adding this paragraph'' and inserting in lieu thereof ''of November 6, 1978 (Public Law 95-598; 92 Stat. 2549)'';

(2) by striking out subparagraph (A) and inserting in lieu thereof the following new subparagraph:

''(A) who is serving as a United States bankruptcy judge on the date of the enactment of the Bankruptcy Court and Federal Judgeship Act of 1984, and continues to serve as a bankruptcy judge after such date until either the date on which a successor for such judge is appointed, or October 1, 1985, whichever date is earlier, and who has agreed by filing a notice of such agreement with the Court of Appeals and the Director of the Administrative Office of the United States Courts, to accept an appointment as a judge of the United States bankruptcy court established by the Bankruptcy Court and Federal Judgeship Act of 1984, but who is not appointed as a judge of such court''.;

(3) in subparagraph (B)--

(A) by striking out ''transition period'' and inserting in lieu thereof ''period beginning on October 1, 1979, and ending on the date of enactment of the Bankruptcy Court and Federal Judgeship Act of 1984'';

(B) by striking out the period at the end thereof and inserting in lieu thereof ''; or'', and

(4) by adding at the end thereof the following new

subparagraph:

''(C) who is appointed as a bankruptcy judge under section 152 of title 28.''.

(b)(1) The first sentence of section 8334(a)(1) of title 5, United States Code, is amended by inserting ''and a bankruptcy judge'' before the period.

(2) The matter relating to bankruptcy judges in the table set out in section 8334(c) of title 5, United States Code, is amended--

(A) by striking out the following item:

''7..... After January 1, 1970.''.

and

(B) by inserting in lieu of the item stricken by subparagraph (A) the following new items:

''7..... January 1, 1970, to December 31, 1983.
''8..... After December 31, 1983.''.

(c) Section 8336 of title 5, United States Code, is amended--

(1) by redesignating subsection (k) as subsection (l), and

(2) by inserting after subsection (j) the following new subsection:

''(k) A bankruptcy judge who is separated from service, except by removal, after becoming sixty-two years of age and completing ten years of service as a bankruptcy judge is entitled to an annuity.''.

(d) Section 8339 of title 5, United States Code, is amended by--

(1) inserting ''or (n)'' after ''(c)'' in subsection (g) (2);

(2) striking out ''or (c)'' each place it appears in subsection (g) and inserting in lieu thereof ''(c), or (n)''; and

(3) striking out ''March 31, 1979, and before May 25,

serve in the Federal judiciary.

(2) It is the sense of the Congress that the courts of appeals should consider for appointment under section 152 of title 28, United States Code, to the first vacancy which arises after the date of the enactment of this Act in the office of each bankruptcy judge, the bankruptcy judge who holds such office immediately before such vacancy arises, if such bankruptcy judge requests to be considered for such appointment.

(b) The judicial council of the circuit involved shall assist the court of appeals by evaluating potential nominees and by recommending to such court for consideration for appointment to each vacancy on the bankruptcy court persons who are qualified to be bankruptcy judges under regulations prescribed by the Judicial Conference of the United States.

(c) Before transmitting to the court of appeals the names of the persons the judicial council for the circuit deems best qualified to fill any existing vacancy, the judicial council shall have determined that--

(1) public notice of such vacancy has been given and an effort has been made, in the case of each such vacancy, to identify qualified candidates, without regard to race, color, sex, religion, or national origin,

(2) such persons are members in good standing of at least one State bar, or the District of Columbia bar, and members in good standing of every other bar of which they are members,

(3) such persons possess, and have a reputation for, integrity and good character,

(4) such persons are of sound physical and mental health,

(5) such persons possess and have demonstrated commitment to equal justice under law,

(6) such persons possess and have demonstrated

1984,'' in subsection (n) and inserting in lieu thereof ''as a referee in bankruptcy and''.

(e) The amendments made by this section shall take effect on the date of enactment and shall apply to bankruptcy judges who retire on or after such date.

Sec. 117. The adjustments in the retirement provisions made by this Act shall not be construed to be a ''new government retirement system'' for purposes of the Federal Employees Retirement Contribution Temporary Adjustment Act of 1983 (Public Law 98-168).

Sec. 118. Section 105 of title 11, United States Code, is amended--

(1) by deleting the word ''bankruptcy'' wherever it appears therein; and

(2) by adding at the end thereof the following new subsection:

''(c) The ability of any district judge or other officer or employee of a district court to exercise any of the authority or responsibilities conferred upon the court under this title shall be determined by reference to the provisions relating to such judge, officer, or employee set forth in title 28. This subsection shall not be interpreted to exclude bankruptcy judges and other officers or employees appointed pursuant to chapter 6 of title 28 from its operation.''.

Sec. 119. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act, or the application of that provision to persons or circumstances other than those as to which it is held invalid, is not affected thereby.

Sec. 120. (a)(1) Whenever a court of appeals is authorized to fill a vacancy that occurs on a bankruptcy court of the United States, such court of appeals shall appoint to fill that vacancy a person whose character, experience, ability, and impartiality qualify such person to

outstanding legal ability and competence, as evidenced by substantial legal experience, ability to deal with complex legal problems, aptitude for legal scholarship and writing, and familiarity with courts and court processes, and

(7) such persons demeanor, character, and personality indicate that they would exhibit judicial temperament if appointed to the position of United States bankruptcy judge.

Sec. 121. Section 636 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

''(h) (1) In any case or proceeding brought under section 1334 of this title, a magistrate may be designated to exercise the powers granted magistrates pursuant to this section over any such case or proceeding.

''(2) Any bankruptcy judge appointed pursuant to section 152 of this title may act as a magistrate with all of the powers granted to a magistrate pursuant to paragraph (1) of this subsection if such designation will not adversely affect the administration of cases in the district in which such judge was appointed.''.

Sec. 122. This title and the amendments made by this title shall take effect on the date of the enactment of this Act.

TITLE II--JUDGESHIPS

Sec. 201. (a) The President shall appoint, by and with the advice and consent of the Senate, two additional circuit judges for the first circuit court of appeals, two additional circuit judges for the second circuit court of appeals, two additional circuit judges for the third circuit court of appeals, one additional circuit judge for the fourth circuit court of appeals, two additional circuit judges for the fifth circuit court of appeals, four additional circuit judges for the sixth circuit court of appeals, two additional circuit judges for the seventh circuit court of appeals, one additional circuit judge for the eighth circuit court of appeals, five additional circuit judges for the ninth circuit court of appeals, two additional circuit judges for the tenth circuit court of appeals, and one additional circuit judge for the District of Columbia circuit court of appeals.

(b) In order that the table contained in section 44(a) of title 28, United States Code, will, with respect to each judicial circuit, reflect the changes in the total number of permanent circuit judgeships authorized as a result of subsection (a) of this section, such table is amended to read as follows:

''Circuits	Number of Judges
District of Columbia	12
First	6
Second	13
Third	12
Fourth	11
Fifth	16
Sixth	15
Seventh	11
Eighth	10
Ninth	28
Tenth	10
Eleventh	12
Federal	12.''.

Sec. 202. (a) The President shall appoint, by and with the advice and consent of the Senate, one additional district judge for the southern district of Alabama, one additional district judge for the district of Alaska, five additional

district judges for the central district of California, one additional district judge for the district of Colorado, one additional district judge for the district of Connecticut, one additional district judge for the district of Delaware, three additional district judges for the southern district of Florida, one additional district judge for the middle district of Georgia, one additional district judge for the district of Hawaii, four additional district judges for the northern district of Illinois, one additional district judge for the southern district of Illinois, one additional district judge for the western district of Kentucky, one additional district judge for the western district of Louisiana, one additional district judge for the district of Maryland, one additional district judge for the district of Massachusetts, two additional district judges for the eastern district of Michigan, one additional district judge for the district of Minnesota, one additional district judge for the northern district of Mississippi, two additional district judges for the southern district of Mississippi, one additional district judge for the eastern district of Missouri, one additional district judge for the district of Montana, one additional district judge for the district of Nevada, three additional district judges for the district of New Jersey, one additional district judge for the northern district of New York, two additional district judges for the eastern district of New York, one additional district judge for the southern district of Ohio, one additional district judge for the western district of Oklahoma, one additional district judge for the district of Rhode Island, one additional district judge for the eastern district of Tennessee, one additional district judge for the western district of Tennessee, one additional district judge for the northern district of Texas, two additional district judges for the eastern district of Texas, one additional district

judge for the western district of Texas, one additional district judge for the district of Utah, one additional district judge for the eastern district of Virginia, one additional district judge for the eastern district of Washington, one additional district judge for the western district of Washington, and one additional district judge for the district of Wyoming.

(b) The President shall appoint, by and with the advice and consent of the Senate, one additional district judge for the western district of Arkansas, one additional district judge for the northern district of Illinois, one additional district judge for the northern district of Indiana, one additional district judge for the district of Massachusetts, one additional district judge for the western district of New York, one additional district judge for the eastern district of North Carolina, one additional district judge for the northern district of Ohio, and one additional district judge for the western district of Washington. The first vacancy in each of the offices of district judge authorized by this subsection, occurring five years or more after the effective date of this Act, shall not be filled.

(c) The existing district judgeship for the district of Minnesota and the existing district judgeship for the northern district of Ohio, heretofore authorized by section 2 of the Act of October 20, 1978 (Public Law 95-486, 92 Stat. 1631), shall, as of the effective date of this Act, be authorized under section 133 of title 28, United States Code, and the incumbents of those offices shall henceforth hold their offices under section 133, as amended by this Act.

(d) In order that the table contained in section 133 of title 28, United States Code, will, with respect to each judicial district, reflect the changes in the total number of permanent district judgeships authorized as a result of subsections (a) and (c) of this section, such table is

amended to read as follows:

''Districts	Judges
Alabama:	
Northern	7
Middle	3
Southern	3
Alaska	3
Arizona	8
Arkansas:	
Eastern	3
Western	1
Eastern and Western	2
California:	
Northern	12
Eastern	6
Central	22
Southern	7
Colorado	7
Connecticut	6
Delaware	4
District of Columbia	15
Florida:	
Northern	3
Middle	9
Southern	15
Georgia:	
Northern	11
Middle	3
Southern	3
Hawaii	3
Idaho	2
Illinois:	
Northern	20
Central	3
Southern	3
Indiana:	
Northern	4
Southern	5
Iowa:	
Northern	1
Southern	2
Northern and Southern	1
Kansas	5
Kentucky:	
Eastern	4
Western	4
Eastern and Western	1
Louisiana:	
Eastern	13
Middle	2
Western	6
Maine	2
Maryland	10
Massachusetts	11
Michigan:	
Eastern	15
Western	4
Minnesota	7
Mississippi:	
Northern	3
Southern	5
Missouri:	
Eastern	5
Western	5
Eastern and Western	2
Montana	3
Nebraska	3

Nevada	4
New Hampshire	2
New Jersey	14
New Mexico	4
New York:	
Northern	4
Southern	27
Eastern	12
Western	3
North Carolina:	
Eastern	3
Middle	3
Western	3
North Dakota	2
Ohio:	
Northern	10
Southern	7
Oklahoma:	
Northern	2
Eastern	1
Western	4
Northern, Eastern, and Western	2
Oregon	5
Pennsylvania:	
Eastern	19
Middle	5
Western	10
Puerto Rico	7
Rhode Island	3
South Carolina	8
South Dakota	3
Tennessee:	
Eastern	4
Middle	3
Western	4
Texas:	
Northern	10
Eastern	6
Southern	13
Western	7
Utah	4
Vermont	2
Virginia:	
Eastern	9
Western	4
Washington:	
Eastern	3
Western	6
West Virginia:	
Northern	2
Southern	4
Wisconsin:	
Eastern	4
Western	2
Wyoming	2.''.

Sec. 203. (a) Section 131 of title 28, United States Code, is amended in the second paragraph thereof by inserting ''Jackson,'' after ''Lander,''.

(b) Section 98 (a) of title 28, United States Code, is amended by inserting '', and Houma'' after ''New Orleans''.

Sec. 204. (a) Section 371 of title 28, United States

Code, is amended to read as follows:

''§ 371. Retirement on salary; retirement in senior status

''(a) Any justice or judge of the United States appointed to hold office during good behavior may retire from the office after attaining the age and meeting the service requirements, whether continuous or otherwise, of subsection (c) and shall, during the remainder of his lifetime, receive an annuity equal to the salary he was receiving at the time he retired.

''(b) Any justice or judge of the United States appointed to hold office during good behavior may retain the office but retire from regular active service after attaining the age and meeting the service requirements, whether continuous or otherwise, of subsection (c) of this section and shall, during the remainder of his lifetime, continue to receive the salary of the office.

''(c) The age and service requirements for retirement under this section are as follows:

''Attained age:	Years of service:
65	15
66	14
67	13
68	12
69	11
70	10

''(d) The President shall appoint, by and with the advice and consent of the Senate, a successor to a justice or judge who retires under this section.''.

(b) The item relating to section 371 in the table of sections of chapter 17 of title 28 is amended to read as follows:

''371. Retirement on salary; retirement in senior status.''.

(c) The amendments made by this section shall apply with respect to any justice or judge of the United States appointed to hold office during good behavior who retires on or after the date of enactment of this Act.

Sec. 205. Section 8701(a) of title 5, United States Code,

is amended by redesignating paragraphs (5) through (8) as paragraphs (6) through (9), respectively, and by adding a new paragraph (5) as follows:

''(5) a justice or judge of the United States appointed to hold office during good behavior (i) who is in regular active judicial service, or (ii) who is retired from regular active service under section 371(b) or 372(a) of title 28, United States Code, or (iii) who has resigned the judicial office under section 371(a) of title 28 with the continued right during the remainder of his lifetime to receive the salary of the office at the time of his resignation;''.

Sec. 206. Section 8714a(c) of title 5, United States Code, is amended by adding a new paragraph (3) as follows:

''(3) Notwithstanding paragraph (c)(1) of this section, a justice or judge of the United States as defined by section 8701(a)(5) of this title who resigns his office without meeting the requirements of section 371(a) of title 28, United States Code, for continuation of the judicial salary shall have the right to convert regular optional life insurance coverage issued under this section during his judicial service to an individual policy of life insurance under the same conditions approved by the Office governing conversion of basic life insurance coverage for employees eligible as provided in section 8706(a) of this title.''.

Sec. 207. Section 8714b(c) of title 5, United States Code, is amended by adding to paragraph (1) at the end thereof the following: ''A justice or judge of the United States as defined by section 8701(a)(5) of this title who resigns his office without meeting the requirements of section 371(a) of title 28, United States Code, for continuation of the judicial salary shall have the right to convert additional optional life insurance coverage issued under this section during his judicial service to an

individual policy of life insurance under the same conditions approved by the Office governing conversion of basic life insurance coverage for employees eligible as provided in section 8706(a) of this title.''.

Sec. 208. (a) Section 8706 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

''(f) Under regulations prescribed by the Office, each policy purchase under this chapter shall provide that an insured Federal judge may make an irrevocable assignment of the judge's incidents of ownership in the policy.''.

(b) The heading for section 8706 of title 5, United States Code, and the item relating to section 8706 in the analysis for chapter 87 of such title are each amended by inserting ''; assignment of ownership'' after ''insurance''.

Sec. 209. (a) Except as provided in subsection (b), the amendments made by this Act to section 8706 of title 5, United States Code, shall apply to policies purchased by judges after the date of enactment of this Act.

(b) If a company which issued a policy which is in effect on the date of the enactment of this Act agrees, the amendments made by this Act shall apply to such policy.

Sec. 210. Section 634(c) of title 28, United States Code, is amended by striking out ''subsection III'' and inserting in lieu thereof ''subchapter III''.