

# Bankruptcy Code Revamped To Wreck Industry, Labor

Reorganization of a distressed company under Chapter 11 of the U.S. Bankruptcy Code—once an instrument for the protection of the General Welfare—has become perverted in recent years into a tool by which “vulture capitalists” and foreign financiers such as Felix Rohatyn’s Lazard Frères, can take over industrial firms, dump their pensions and health-care programs, tear up union contracts, and then sell off the assets at a handsome profit.

The modern form of corporate reorganization under Chapter 11 came into being as part of New Deal legislation under Franklin Roosevelt. The intention was to provide an equitable mechanism, by which the dead weight of old debt could be put aside, allowing an otherwise-viable firm to continue in business and to keep its employees working—for the benefit of the common good. The priority was put on keeping the factory’s doors open and its workers employed, if the company was viable but for the burden of past debt.<sup>1</sup>

Today, as the case of Delphi shows, this has been turned on its head. The 1978 Bankruptcy Reform Act allows the management to continue operating a company

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1. “A Short History of Chapter 11: Model for a Bankrupt Economy,” *EIR*, Jan. 25, 2002.

as a “debtor-in-possession” (DIP), rather than having a court-appointed trustee run the firm, and its gives an almost absolute priority for repayment, to interim loans made to a company in Chapter 11 reorganization, over all other creditors, including employees. Today, any big firm going into Chapter 11 reorganization already has new financing from major banks lined up at the point of filing its Chapter 11 petition.

Utilizing these changes in the law, Wall Street law firms and investment banks have taken over bankruptcy proceedings involving large industrial corporations. By using “debtor-in-possession financing,” and/or by buying up claims, they are scooping up manufacturing firms at the heart of the U.S. economy, trashing union contracts, dumping health-care and pension plans, and then stripping their assets and selling them off to the highest bidder.

In an interview last year with *EIR*,<sup>2</sup> professor and author Mark Reutter described how this looting process emerged. “This began in 2001 in the steel industry, and resulted in major changes in that industry, and then has spread to the airline industry—where today, four of the seven major U.S. carriers are in Chapter 11—and is now spreading, in recent weeks, to the auto-parts industry,” Reutter said. “And the people who are involved in the voluntary bankruptcy of auto-parts maker Delphi Corp., are the very same people who profitted enormously from the Chapter 11 bankruptcies of the steel industry three

years ago.”

Reutter spoke of “a new breed of corporate manager,” personified by Steve Miller, now the head of Delphi, who “makes his living taking large companies in and out of bankruptcy.” Reutter noted that Miller had previously put Bethlehem Steel in and out of bankruptcy, and that he was also instrumental in putting Eastern Airlines into bankruptcy.

And on the “receiving end” of the bankruptcy, Reutter pointed out, are “vulture capitalists” such as Rothschild’s Wilbur Ross, “a billionaire, who made well in excess of \$500 million buying Bethlehem Steel from Steve Miller, and then selling it, several months ago, to the Mittal Steel Corp. in the Netherlands.”

“Delphi has millions of dollars of cash flow coming through its system every week,” Reutter said. “These vulture capitalists want to get that flow directed to them.”

In the accompanying article, we cite the case of the bankruptcy of Hawaiian Airlines, run by Joshua Gotbaum, where the *sole purpose* of the bankruptcy was to break existing leases and contracts; creditors got paid in full, stockholders saw their shares *increase* in value, and Gotbaum and other parasites running the reorganization walked away with millions in their own pockets.

But there is more than mere greed at play here.

In the case of Lazard’s Rohatyn, and Rothschild’s Wilbur Ross, we are looking at evil operatives who are literally agents of a foreign power: the Synarchist financial oligarchy which is strategically committed to destroying the United States as an industrial power.

—Edward Spannaus

2. “The Delphi Case and the Misuse of Bankruptcy Law,” Interview with Prof. Mark Reutter, *EIR*, Nov. 11, 2005. An expanded version of the *EIR* interview is posted on Prof. Reutter’s website: [www.makingsteel.com](http://www.makingsteel.com).