

## **Bankruptcy Preparation**

It is critically important that we be prepared to respond promptly and aggressively to a bankruptcy filing. If we do not fight actively for the interests of our members, then their concerns will be downplayed or ignored during the bankruptcy process.

Once a bankruptcy petition has been filed, creditors (and employees are creditors) must pursue their claims – a right of payment – through the bankruptcy court. A right of payment is presented in a proof of claim. Proofs of claim should be filed for all money owed to employees:

- Payments for time worked
- Payments for accrued paid time off
- Lump-sums, bonuses, gain sharing based on work already performed
- Payroll deductions for dues, donations, and benefit plans for which the employer has not transferred payment
- Payment for union time owed to stewards and other union officials
- Contributions to savings plans that have not already been transferred
- Severance and other benefits owed workers on layoff
- Retiree health benefits for current and future retirees
- Reimbursements owed for business expenses – travel, hotel, meals, etc.
- Settlements (including potential settlements) for existing grievances, arbitrations, and lawsuits against the Company

A Creditors' Committee is appointed within days after the bankruptcy filing and will play an important role throughout the bankruptcy process. It consists of creditors holding the largest unsecured claims. The Committee can play a significant role in the Company's reorganization: it can investigate assets, liabilities, conduct; it can play a role in the final reorganization plan; it can hire experts – lawyers, accountants, etc. – to advise them. If the Company owes money to members, retirees, or local unions, but no one contracts the court with claims, then they may not get representation on the Committee. Therefore, it is critical to begin collecting information as soon as there is a sense the Company is heading toward bankruptcy.

### To Do List (pre-petition)

1. Go through the collective bargaining to gain an estimate of what employees are owed on a weekly basis (wages and benefits)
2. List all grievances arbitrations and estimate their total economic value
3. Pay attention to warning signs that bankruptcy is impending
  - a. Top level executive position unfilled
  - b. Dramatic loss in share price (if company is public)
  - c. Major cutbacks in critical areas – customer service, maintenance, quality
  - d. Large drop in sales or production
  - e. Company fails to do necessary maintenance
  - f. Suppliers are demanding cash in advance
  - g. Company late in making payments
  - h. Company suffering losses without a realistic turnaround strategy
  - i. Work site visited by banks, competitors

### To Do List (post-petition)

1. Go through the collective bargaining agreement line-by-line and calculate what the employer owes and might owe to workers and the union.
  - a. Review all benefit plans – pension, savings, health, disability, etc
  - b. Determine which of these claims are “pre-petition” and which are “post-petition” (i.e., before or after filing for bankruptcy)
2. Make a list of all outstanding grievances and upcoming arbitrations. Estimate the amount of back pay and other amounts that are owed or may be owed.
  - a. Determine which of these claims are “pre-petition” and “post-petition”
3. Submit a written information request immediately requesting:
  - a. Financial statements – Income, Balance Sheet, Cash Flow, etc.
  - b. Business plans, studies, and reviews
    - i. Economic viability of facility
    - ii. Expected performance
    - iii. Restructuring
    - iv. Justification of any proposed changes in the CBA
    - v. Details of any changes in wages or benefits
    - vi. Details of any sacrifices made by shareholders, bondholders, vendors
4. Meet with employer to collect information and to protect CBA
5. Meet with members and ensure communications structures are effectively maintained
6. Keep good records