

## THE FUTURE OF LABOR THROUGH THE PRISM OF BANKRUPTCY

### INTRODUCTION

On Friday, September 28, 2008, St. John's University School of Law was very honored to host "The Future of Labor Through the Prism of Bankruptcy" Symposium. St. John's Institute of Bankruptcy Policy, the *American Bankruptcy Institute Law Review*, and the Labor Relations and Employment Society at the School of Law co-sponsored this landmark symposium.

Many of the structural changes in contemporary labor-management relationships emanate from the intersections of labor law and bankruptcy law. Many of the nation's major "legacy" industries—including, but not limited to, the unionized auto makers and many airlines—are compelling case studies. Indeed, only a few days before the symposium, General Motors and the United Autoworkers Union announced a sweeping new labor contract negotiated under the storm clouds of otherwise seemingly inexorable bankruptcy.

Organized labor, unionized employers, and all workers are in the center of the storm; together we all must face great challenges and opportunities. This symposium brought together leading thinkers and scholars, practitioners and advocates, to explore these dramatic dynamics, and to reflect upon their meaning and consequences.

William T. Bodoh, a federal bankruptcy judge for almost twenty years, including service as Chief Judge for the Northern District of Ohio, and preeminent for his expertise as the bankruptcy judge in the salient cases in the steel industry, provided a panoramic and historical perspective at the outset of the symposium. Babette Ceccotti, a partner at the leading labor union-side law firm, Cohen, Weiss and Simon in New York City, discussed important bankruptcy reform legislation that she was instrumental in drafting and moving to the attention of the Democratic leadership in Congress. Having represented major labor unions in several leading bankruptcy cases in the airline industry, she offered powerful examples of troubling lacunae in the law that simply fail to properly protect worker interests. Harvey R. Miller, a senior partner in the New York City office of the Weil, Gotshal & Manges law firm, created and developed his firm's Business Finance & Restructuring department. Some of his major representative cases in the airline industry include Continental and Delta Air Lines, thus intersecting with Ms. Ceccotti's union clients. Mr. Miller was also an advisor for General Motors with respect to the restructuring of Delphi, the major General Motors parts supplier. Mr. Miller argued in favor of the current bankruptcy law's ability to adjust collective bargained labor agreements.

Daniel Keating, Vice Dean and Professor at the Washington University Law School, and the nation's leading scholar of the intersections of pension and benefits law and bankruptcy law, reflected on the predicament of retirees of troubled enterprises. He reminded everyone that, in many instances, retirees suddenly lose medical insurance, and, not old enough to qualify for medicare, are, meanwhile,

unable to purchase prohibitively expensive insurance. And, as the auto labor negotiations have powerfully emphasized, there are many industries, and many employers, where retirees and dependents far outnumber the current employees. Jack Getman, the Earl E. Sheffield Regents Chair Professor at the University of Texas Law School, served as the panel moderator. He quickly brought to bear five decades of teaching, and his preeminent empirical labor law scholarship, asking each panelist to respond to his challenging questions. He suggested that the common ground for all of the panelists was their shared respect for, and implicit emphases on, the imperative of pro-active labor management relations. If the institutional parties are anticipatory and preventative in their daily interactions, employers and unions can creatively deal with problems that may otherwise become overwhelming. The structural buy-outs of employees successfully negotiated by General Motors, Ford, and Chrysler in the mid-term of their labor contracts substantially depressurized and successfully contoured what may otherwise have been addressed by massive involuntary layoffs.

At the close of the panel discussion, as each speaker reflected upon the global dynamics of the intersections of labor and bankruptcy, Harvey Miller reminded everyone that, unless and until the wages and benefits of most workers in developing countries substantially increase, the economic law of capitalism inexorably dictates that the wages and benefits of many workers in the United States must continue to decline for the foreseeable future.

Micheline (Micki) Maynard, the Detroit Bureau Chief for the New York Times and author of the eerily prescient "The End of Detroit," was the keynote speaker. She reflected on her extensive journalistic experiences, observing the proceedings in many of the leading bankruptcy cases in the auto and airline industries.

She presented a synopsis of the key features of the tentative new labor contract achieved by General Motors and the United Autoworkers Union earlier in that week, and she invited a very lively dialogue with the audience of almost one hundred persons to close the symposium. Many lawyers joined law students and faculty for a very thoughtful, challenging, and provocative symposium. The papers that follow present state-of-the-art scholarship, and the *American Bankruptcy Institute Law Review* is proud to publish these very important proceedings.

*G. Ray Warner\* and David L. Gregory\*\**  
*Conference Co-Chairs*

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