

Ronald Reagan Presidential Library

Digital Library Collections

This is a PDF of a folder from our textual collections.

Collection: Kabel Robert J.: Files
Folder Title: Bankruptcy / BILDISCO (3 of 7)
Box: 2

To see more digitized collections visit:

<https://www.reaganlibrary.gov/archives/digitized-textual-material>

To see all Ronald Reagan Presidential Library inventories visit:

<https://www.reaganlibrary.gov/archives/white-house-inventories>

Contact a reference archivist at: **reagan.library@nara.gov**

Citation Guidelines: <https://reaganlibrary.gov/archives/research-support/citation-guide>

National Archives Catalogue: <https://catalog.archives.gov/>



U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

May 25, 1984

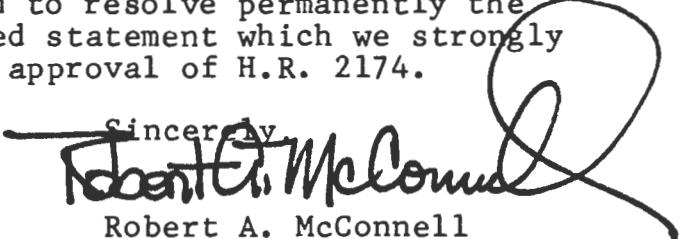
Honorable David A. Stockman
Director
Office of Management and Budget
Washington, D.C.

Dear Mr. Stockman:

Pending Executive approval is H.R. 2174, a bill which, as amended, would extend the termination date of the transition provisions of the Bankruptcy Reform Act of 1978 to June 20, 1984. The Department of Justice recommends Executive approval of H.R. 2174.

This is the third extension passed by the Congress. Repeated extensions of the Act's transition provisions are not a satisfactory solution to the bankruptcy court problem. We believe that it is appropriate for the Administration to state publicly its disappointment over these continued extensions and the urgent need to resolve permanently the matter. Enclosed is a proposed statement which we strongly recommend accompany Executive approval of H.R. 2174.

Sincerely,


Robert A. McConnell
Assistant Attorney General

cc: Fred Fielding
M.B. Oglesby

5-28
Label
What think ye?
Risque

The Congress has presented for my approval H.R. 2174, a bill which extends the termination date of the transition provisions of the Bankruptcy Reform Act of 1978 from May 26, 1984 to June 20, 1984. In the absence of legislation to restructure permanently our bankruptcy courts, this extension is necessary to prevent our current system of bankruptcy adjudication from expiring. I am disappointed over the failure of Congress to provide the permanent solution that is needed. We cannot allow, however, a major element of our federal judicial system to cease operations. Therefore, it is with some reluctance that I sign H.R. 2174.

The Bankruptcy Reform Act of 1978 provided that its transition provisions would expire this year and that the permanent bankruptcy court system contemplated therein would take effect. However, nearly two years ago, the Supreme Court held that section 241(a) of the Reform Act violated Article III of the Constitution by granting excessive authority to independent, untenured bankruptcy judges.

This constitutional infirmity in the bankruptcy law can be resolved permanently only by Congressional enactment. Congress has had repeated opportunities to pass the needed legislation, but has failed to do so. The Supreme Court stayed the effective date of its decision, issued on June 28, 1982, until October 4 of that year, but Congress did not act. The Court again stayed its decision to December 24, 1982, to

no avail. The Judicial Branch was able to keep the bankruptcy courts operational after the Supreme Court allowed this second stay to expire by relying on the authority granted by the Reform Act's transition provisions. However, the transition provisions were set to expire on March 21, 1984, and the continued ability of the Judicial Branch to operate the bankruptcy courts after the transition provisions expire is subject to considerable doubt. Although faced with a clear deadline of March 31, 1984, Congress was unable to resolve this matter, so it extended the transition provisions for another month, to April 30, 1984, and then again to May 26, 1984. Nothing has been accomplished during these additional periods of time, and Congress has again presented a bill providing for a further extension of the deadline.

Repeated extensions of the Reform Act's transition provisions do not constitute a satisfactory solution to the problems faced by the bankruptcy courts. Debtors, creditors, employees and shareholders of debtor companies, and the public at large are entitled to be able to rely on the existence of a valid system of bankruptcy adjudication from one month to the next. The bankruptcy court system cannot function with the necessary efficiency when bankruptcy judges, clerks and attorneys are uncertain as to the continued availability of a forum for such cases. Our bankruptcy court system has deteriorated needlessly over the last two years due to the

uncertainty resulting from this situation. The most able bankruptcy judges have resigned and the parties have incurred increased costs and numerous unnecessary delays.

The bill I have signed provides the Congress with another 25 days to resolve the bankruptcy courts crisis. I urge the Members of Congress to rise to the task and use this time wisely. I think it would be an embarrassment to Congress and to the Government as a whole for this pressing problem, which should have been resolved long ago, to be postponed any further. The Executive Branch remains ready to provide the Congress with such assistance as the Congress may find helpful as it undertakes the further consideration of legislation to restructure the bankruptcy courts.

WHITE HOUSE STAFFING MEMORANDUM

DATE: 5/7/84 ACTION/CONCURRENCE/COMMENT DUE BY: 10:00 A.M. 5/8/84

SUBJECT: PROPOSED PRESIDENTIAL STATEMENT REGARDING BANKRUPTCY LEGISLATION

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	☐	☐	McFARLANE	☐	☐
MEESE	☐	☒	McMANUS	☒	☐
BAKER	☐	☒	MURPHY	☐	☐
DEAVER	☐	☒	OGLESBY	☒	☐
STOCKMAN	☒	☐	ROGERS	☐	☐
DARMAN	☐ P	☒ SS	SPEAKES	☐	☒
FELDSTEIN	☐	☐	SVAHN	☒	☐
FIELDING	☐	☐	VERSTANDIG	☐	☐
FULLER	☒	☐	WHITTLESEY	☐	☐
HERRINGTON	☐	☐	_____	☐	☐
HICKEY	☐	☐	_____	☐	☐
JENKINS	☐	☐	_____	☐	☐

REMARKS:

May we have your edits/comments on the attached proposed statement by 10:00 a.m. tomorrow. Thank you.

RESPONSE:

Richard G. Darman
Assistant to the President
Ext. 2702

THE WHITE HOUSE

WASHINGTON

May 4, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT AND
DEPUTY TO THE CHIEF OF STAFF

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Proposed Presidential Statement
Regarding Bankruptcy Legislation

Lowell Jensen has recommended that a Presidential statement urging Congress to act quickly on the bankruptcy legislation be issued as soon as possible, and has submitted a proposed Presidential statement to us for clearance. I have reviewed the proposed DOJ statement and edited it for clarity.

Attached is the DOJ memorandum recommending issuance of a Presidential statement on bankruptcy and the edited version of the DOJ proposed statement. Please circulate these materials for comment as soon as possible. Thank you.

Attachment

U.S. Department of Justice
Office of the Deputy Attorney General

Deputy Attorney General

Washington, D.C. 20530

May 3, 1984

MEMORANDUM

TO: Fred F. Fielding
Counsel to the President

FROM: *[Signature]*
D. Lowell Jensen
Acting Deputy Attorney General

SUBJECT: Presidential Statement on Bankruptcy

Attached is a draft statement on the bankruptcy courts situation, which the Department of Justice believes should be issued by the President. Originally drafted as a signing statement to accompany the President's recent signature of S. 2570, which extended the transition provisions of the Bankruptcy Reform Act of 1978 from April 30, 1984 to May 25, 1984, it has been modified so that it could be issued upon the President's return from the Far East or early next week.

If we are to obtain a bill to restructure the bankruptcy courts and create the needed additional circuit and district judgeships, Congress must understand that repeated extensions of the Reform Act's transition provisions do not represent a viable option. In debate on S. 2570 last week, a number of House Republicans stated that they would not support another extension, and Chairman Thurmond has indicated he would not favor that course of action either. The attached statement would add the President's voice to theirs, and remind Congress of the need to resolve the remaining differences promptly.

The attached statement does not mention the issue that is currently preventing action: organized labor's effort to overturn the Supreme Court's recent Bildisco decision approving of the unilateral rejection of collective bargaining agreements by companies that have filed for bankruptcy. While the Department of Justice has no objection to the President raising that issue in this statement, we would defer to the White House on how that should be handled.

I recommend that we circulate the attached statement to those responsible for reviewing such matters, so that it could be issued no later than the middle of next week. Please call me if you have any questions or thoughts on this matter.

Attachment

At the end of last month, the Congress presented for my approval or disapproval S. 2570, a bill to extend the termination date of the transition provisions of the Bankruptcy Reform Act of 1978 from April 30, 1984 through May 25, 1984. In the absence of legislation to restructure permanently our bankruptcy courts, this extension was necessary to prevent our current system of bankruptcy adjudication from expiring at the end of April. While I was most disappointed over the failure of Congress to provide the permanent legislative solution that is so sorely needed in this area, I did not believe that we should allow a major element of our Federal judicial system to cease operations. Therefore, it was with some reluctance that I signed S. 2570.

The Bankruptcy Reform Act of 1978 provided that its transition provisions would expire this year and that the permanent bankruptcy court system contemplated therein would take effect. However, nearly two years ago, the Supreme Court held that section 241(a) of the Reform Act violated Article III of the Constitution by granting excessive authority to bankruptcy judges who lack life tenure and are independent of the district courts.

This constitutional infirmity in the bankruptcy law can be resolved permanently only by Congressional action. Congress has had repeated opportunities to pass the needed legislation, but has failed to do so.

The Supreme Court stayed the effective date of its decision, issued on June 28, 1982, until October 4 of that year, but Congress did not act. In response to the Justice Department's motion for an additional stay, the Court again stayed its decision to December 24, 1982, but to no avail. At the specific request of Congress, the Justice Department moved for another stay, but this was denied by the Court.

After the Court's decision took effect, the Judicial Branch was able to keep the bankruptcy courts operational by promulgating a temporary, emergency rule based on the Reform Act's transition provisions. However, the transition provisions were set to expire on March 31, 1984, and the continued ability of the Judicial Branch to operate the bankruptcy courts after the transition provisions expire was and remains subject to considerable doubt.

Faced with a clear deadline of March 31, 1984, Congress still did not resolve this matter. Although the Senate acted by passing a bill over a year ago, the House did not ^{act on} ~~consider~~ the issue until ten days before the deadline. ^{The Senate and House bills agree on} ~~The two Houses were~~ ^{unable to reach agreement in the short time that remained, and} ~~instead~~ extended the transition provisions for another month, to April 30, 1984. As nothing was accomplished during this additional period of time, Congress presented me with a bill providing for a further extension of the deadline.

on which ~~that~~ ^{the basic resolution of the bankruptcy court situation. They differ on auxiliary issues} ~~there were~~ ^{the bankruptcy court situation. They differ on auxiliary issues} ~~disagreements on these auxiliary issues.~~ ^{the bankruptcy court situation. They differ on auxiliary issues}

Repeated extensions of the Reform Act's transition provisions do not constitute a satisfactory solution to the problems faced by the bankruptcy courts. Debtors, creditors, employees and shareholders of debtor companies, and the public at large are entitled to be able to rely on the existence of a valid system of bankruptcy adjudication from one month to the next. The bankruptcy court system cannot function with the necessary efficiency when its judges, clerks and the attorneys practicing before it are uncertain as to its continued existence. The Federal bankruptcy court system has deteriorated needlessly over the last two years due to the uncertainty resulting from this situation. Many of the most able bankruptcy judges have resigned and the parties in bankruptcy cases have incurred increased costs and numerous unnecessary delays.

The bill I signed provided the Congress with another 25 days to resolve the bankruptcy courts crisis. That deadline is now less than 20 days away. I urge the members of Congress to rise to the task for which they were elected and use this time wisely. I believe it would be an embarrassment to Congress and to the Government as a whole for this pressing problem, which should have been resolved long ago, to be postponed any further. The Executive Branch remains ready to provide the Congress with such assistance as the Congress may find helpful as it undertakes the further consideration of legislation to restructure the bankruptcy courts.

This constitutional infirmity in the bankruptcy law can be resolved permanently only by Congressional enactment. Congress has had repeated opportunities to pass the needed legislation but has failed to do so. The Senate passed appropriate legislation on April 27, 1983. The House of Representatives, however, deferred action beyond that date for almost a year. On March 21 of this year the House passed a bankruptcy package which addressed not only the bankruptcy court issue but several auxiliary issues as well. Included in this package was a provision which modifies the holding in the Supreme Court case decided earlier this year of NLRB v. Bildisco and Bildisco which concerned the rejection of a collective bargaining agreement in the bankruptcy process. Since March 21 efforts have been made to reach a compromise on the Bildisco language which would be acceptable to both houses of Congress as well as the business community and organized labor.

This is an extremely important issue which concerns the collective bargaining process in this country. That this is a difficult issue should not, however, prevent the resolution of it and, therefore, final action on the larger bankruptcy package. The Congress as well as the business community and organized labor have a responsibility to resolve this issue as quickly as possible so that the deadline of May 25 is not passed without final resolution of the bankruptcy court issue.

THE WHITE HOUSE
WASHINGTON

April 25, 1984

March 21

MEMORANDUM FOR WILLIAM A. NISKANEN
MICHAEL J. HOROWITZ
FRANCIS X. LILLEY
MICHAEL M. UHLMANN
DOUGLAS RIGGS
ROBERT KABEL
LEHMANN K. LI

FROM: ROGER B. PORTER *RBP*

SUBJECT: Draft Signing Statement - S. 2570

As requested at our last Bildisco Working Group meeting, Dennis Mullins has prepared the attached draft signing statement incorporating comments from his colleagues at Justice.

I would appreciate you forwarding any comments or suggested revisions you have to my office by Noon on Friday, April 27, 1984.

Thank you very much.

Attachment



Deputy Assistant Attorney General

Washington, D.C. 20530

MEMORANDUM

April 24, 1984

TO: Roger B. Porter
Deputy Assistant to the President
for Policy Development

FROM: *DFM* Dennis F. Mullins
DA Deputy Assistant Attorney General

Attached is the revised signing statement, incorporating comments from the Department of Justice components.

Attachment

The Congress has presented for my approval or disapproval S. 2570, a bill to extend the termination date of the transition provisions of the Bankruptcy Reform Act of 1978 from April 30, 1984 to May 25, 1984. In the absence of legislation to restructure permanently our bankruptcy courts, this extension is necessary to prevent our current system of bankruptcy adjudication from expiring at the end of this month. While I am most disappointed over the failure of Congress to provide the permanent solution that is needed, we cannot allow a major element of our Federal judicial system to cease operations. Therefore, it is with some reluctance that I have signed S. 2570.

The Bankruptcy Reform Act of 1978 provided that its transition provisions would expire this year and that the permanent bankruptcy court system contemplated therein would take effect. However, nearly two years ago, the Supreme Court held that section 241(a) of the Reform Act violated Article III of the Constitution by granting excessive authority to bankruptcy judges who lack life tenure and are independent of the district courts.

White
This constitutional infirmity in the bankruptcy law can be resolved permanently only by Congressional enactment. Congress has had repeated opportunities to pass the needed legislation, but has failed to do so. *The Senate acted Apr 27, 1983*
~~The Supreme Court stayed the effective date of its decision, issued on June 28, 1982, until October 4 of that year, but Congress did not act. In response to the Justice Department's motion, the Court again stayed its~~
the Supreme Court stayed the effective date of its decision, issued on June 28, 1982, until October 4 of that year, but Congress did not act. In response to the Justice Department's motion, the Court again stayed its

decision to December 24, 1982, but to no avail. At the specific request of Congress, the Justice Department moved for another stay, but this was denied by the Court. After the Court's decision took effect, the Judicial Branch was able to keep the bankruptcy courts operational by promulgating a temporary, emergency rule based on the Reform Act's transition provisions. However, the transition provisions were set to expire on March 31, 1984, and the continued ability of the Judicial Branch to operate the bankruptcy courts after the transition provisions expire was and remains subject to considerable doubt. Although faced with a clear deadline of March 31, 1984, Congress still did not resolve this matter, instead extending the transition provisions for another month, to April 30, 1984. Nothing was accomplished during this additional period of time either, and so Congress has presented me with a bill providing for a further extension of the deadline.

Repeated extensions of the Reform Act's transition provisions ^{have} ~~would~~ not constitute a satisfactory solution to the problems faced by the bankruptcy courts. Debtors, creditors, employees and shareholders of debtor companies, and the public at large are entitled to be able to rely on the existence of a valid system of bankruptcy adjudication from one month to the next. The bankruptcy court system cannot function with the necessary efficiency when bankruptcy judges, clerks and attorneys are uncertain as to the continued availability of a forum for such cases. Our bankruptcy court system has deteriorated needlessly

over the last two years due to the uncertainty resulting from this situation. Many of the most able bankruptcy judges have resigned and the parties have incurred increased costs and numerous unnecessary delays.

The bill I have signed provides the Congress with another 25 days to resolve the bankruptcy courts crisis. I urge the members of Congress to rise to the task for which they were elected and use this time wisely. I think it would be an embarrassment to Congress and to the Government as a whole for this pressing problem, which should have been resolved long ago, to be postponed any further. The Executive Branch remains ready to provide the Congress with such assistance as the Congress may find helpful as it undertakes the further consideration of legislation to restructure the bankruptcy courts.



2. Nancy
EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON D.C. 20503

March 13, 1984

MEMORANDUM FOR MARLIN FITZWATER

FROM : Peter Madigan *P.M.*

SUBJECT: Attached Outline of Bankruptcy Legislation

Please find attached a general outline of H.R. 3/ S. 445/ S.1031 Bankruptcy Reform Bills. It is my understanding that at present Fred Fielding's Office is reviewing the merits of sending any sort of position to the Hill (House) on this legislation.

H.R. 3 is expected to be taken up before House Rules Committee on Thursday, March 15th, and moved for floor action the following week (Wednesday or Thursday).

If you are in need of additional information, please contact me.

Attachments : 1

cc: Unten
Risque

Purpose of Legislation.

There are two principal components of pending bankruptcy reform bills. The first restricts the situations in which ordinary consumers may declare bankruptcy. The second is intended to overcome certain constitutional infirmities of the bankruptcy courts system.

Major Provisions of the Legislation.

--Consumer Credit

As passed by the Senate, S. 445 and S. 1013 respond to concerns of the consumer credit industry and would tighten up the 1978 Bankruptcy Code to make it somewhat more difficult for consumers to declare bankruptcy. In particular, a bankruptcy judge would be authorized to dismiss a bankruptcy case if he or she determined that allowing a debtor to cancel all of his or her debts would amount to a "substantial abuse" of the bankruptcy code. A debtor would be permitted to appeal any such determination.

Other reforms contained in the pending legislation include expediting bankruptcy proceedings for the disposition of grain assets (a concern of farmers whose grain occasionally gets "stuck" in grain elevators after an elevator operator has gone bankrupt); protecting the financial interests of shopping center owners and tenants when a tenant goes bankrupt; barring a person from discharging debts or other liabilities incurred as a result of drunk driving; and placing limitations on fees that certain bankrupt estates are required to pay into the now-defunct Referees Salary and Expense Fund. (The President vetoed this latter provision when it was passed as a separate bill in 1981. It is highly discriminatory private relief-type legislation that would result in a revenue loss in excess of \$20 million.)

* The Administration has not taken a formal position on the consumer credit provisions of the Senate bill, although a Justice Department bill report is pending clearance in OMB. The Administration had no major objection to similar legislation considered during the 97th Congress.

--Bankruptcy Courts

In June 1982, the Supreme Court held that the bankruptcy courts system created by the Bankruptcy Reform Act of 1978 was unconstitutional, because the courts that the 1978 Act created

2

were given overly-broad authority and insufficient independence from the other branches of the Federal Government. Since that time, bankruptcy proceedings have been administered by United States District Courts operating under interim emergency rules.

The Administration generally supports S. 1013. As passed by the Senate, S. 1013:

- o Retains the basic structure of the 1978 Bankruptcy Reform Act but gives U.S. District Courts far greater control over the disposition of bankruptcy cases;
- o Allows a bankruptcy case to be "recalled" from a bankruptcy court to a District Court in a number of instances (e.g., where a particular claim involves an issue outside the Bankruptcy Code);
- o Authorizes the appointment of 232 bankruptcy judges for 14-year terms; and
- o Authorizes the appointment of 61 new U.S. District Court and 24 new U.S. Circuit Court of Appeals judgeships.

The House approach, embodied in H.R. 3, is to create an entirely new bankruptcy courts system, with 227 judges appointed for life. The House bill does not provide for appointment by the President of additional District Court and Court of Appeals judges. The Administration strongly supports the authority to appoint these additional judges.

Status.

S. 445 and S. 1013 (which incorporates S. 445) passed the Senate by voice vote on April 27, 1983. H.R. 3 was reported by the House Judiciary Committee on February 23, 1983.

THE WHITE HOUSE

WASHINGTON

April 6, 1984

MEMORANDUM FOR WILLIAM A. NISKANEN
MICHAEL J. HOROWITZ
FRANK LILLY
DOUGLAS RIGGS
~~ROBERT KABEL~~
LEHMANN LI

FROM: ROGER B. PORTER *RBP*
SUBJECT: Bildisco and H.R. 5174

Following our meeting earlier this week the Office of Legal Policy at the Department of Justice prepared the attached memorandum with their analysis of legislative proposals regarding rejection of union contracts in bankruptcy cases. A copy of this memorandum is attached.

It focuses on the labor provisions in H.R. 5174 and should prove helpful as we refine our position on legislation in this area.

Attachment

Deputy Assistant Attorney General

Washington, D.C. 20530

MEMORANDUM

April 5, 1984

TO: Roger B. Porter
Deputy Assistant to the President
and Director of Policy Development

FROM: Dennis F. Mullins *DFM*
Deputy Assistant Attorney General

SUBJECT: Legislative Proposals Regarding Rejection
of Union Contracts in Bankruptcy Cases

On February 22, 1984, in the case of NLRB v. Bildisco & Bildisco, No. 82-818, the Supreme Court held that a debtor that has filed for chapter 11 reorganization can reject a collective bargaining agreement prior to receiving court approval and that the court shall approve the rejection if the contract burdens the estate of the debtor and the equities favor rejection. In response, the House has passed its bankruptcy bill, H.R. 5174, a portion of which would overturn both aspects of Bildisco and establish detailed procedures and criteria for the rejection of union contracts. The Senate Judiciary and Labor Committees have scheduled a joint hearing on this matter early next week.

In response to your request for our views on the labor provisions of H.R. 5174, this memorandum discusses the state of the law in light of Bildisco, the substance of H.R. 5174 and some suggestions in light of the Administration's position on this issue.

A. Current Law; Bildisco

The Bankruptcy Code, enacted as part of the Bankruptcy Reform Act of 1978, Pub. L. 95-598, generally permits a trustee or debtor-in-possession ^{1/} to assume or reject executory contracts at any time until the plan of reorganization is confirmed by the bankruptcy court, if in the trustee's "business judgment"

^{1/} For the sake of clarity, the individual with authority to act on behalf of the debtor is referred to in this memorandum as the trustee, whether he is part of the debtor's management or an independent third party. Bildisco involved a debtor-in-possession, but the policies discussed in the case are equally applicable to trustees.

such action would be in the best interests of the estate. Assumption or rejection may occur prior to court approval, which must be obtained. The court makes its own determination as to whether the trustee's decision was justified, although in practice some deference is generally accorded the trustee. There has been little dispute that collective bargaining agreements are executory contracts and that collective bargaining agreements, because of the strong public policy favoring them, can be rejected only if a standard stricter than the usual "business judgment" standard is met. Bildisco presented two issues: (1) how strict of a standard must a trustee meet in order to obtain court approval for his rejection of a collective bargaining agreement? and (2) if the trustee rejects a collective bargaining agreement without either obtaining the prior approval of the bankruptcy court or complying with the procedures of the National Labor Relations Act ("NLRA") and obtaining the consent of the union, can the debtor be found guilty of an unfair labor practice under the NLRA? Of course, if a collective bargaining agreement can be rejected only after receiving the approval of a court, then such rejection cannot violate the NLRA.

In Parts I and II of the Bildisco opinion, the Court held (9-0) that the bankruptcy court may approve the rejection of a collective bargaining agreement by the trustee upon a showing that the agreement "burdens the estate" and that "the equities balance in favor of rejecting the labor contract." Slip op. at 11. In Part III, the majority (5-4) held that it is not an unfair labor practice for a trustee unilaterally to reject a union contract before formal rejection is considered by the court.

In Bildisco, the union and the NLRB urged adoption of a very strict standard, i.e., that unless rejection were permitted, debtor's reorganization would fail. The Supreme Court rejected this, adopting instead the less stringent standard described above. While most collective bargaining agreements burden the employer to some degree since they generally call for above-market wage rates and/or inefficient work rules, the Bildisco standard cannot be viewed as a blank check for business. The Court qualified its standard in two important respects.

First, the bankruptcy court must "be persuaded that reasonable efforts to negotiate a voluntary modification have been made and are not likely to produce a prompt and satisfactory solution." Slip op. at 11. The Court did not require that NLRA procedures be followed or that any technical, labor law standard such as "bargained to impasse" be met. However, the NLRA's policy of negotiating differences must be honored, and the bankruptcy court should intervene only after "reasonable efforts to reach agreement have been made." Slip op. at 12, 17-19.

Second, the bankruptcy court must find that "the policy of chapter 11 . . . to permit successful rehabilitation of debtors . . . would be served by [rejection]." Balancing the

equities does not mean a "free-wheeling consideration of every conceivable equity, but rather only how the equities relate to the success of the reorganization." Among the factors to be considered by the bankruptcy courts are "the likelihood and consequences of liquidation for the debtor absent rejection, the reduced value of the creditors' claims that would follow from [continuation of the union contract] and the hardship that would impose on them, and the impact of rejection on the employees . . . the degree of hardship faced by each party [and] any qualitative differences between the types of hardship each may face." Slip op. at 12.

Addressing the unfair labor practices issues, the Court stated that an action against the trustee for unfair labor practices is actually one to require the trustee to abide by the collective bargaining agreement. However, the latter is not an enforceable contract from the time the bankruptcy petition is filed until the agreement is assumed by the trustee, if that ever occurs. Basically, the Court determined that it is not an unfair labor practice to breach an unenforceable agreement.

B. The House Bill

The relevant provisions are contained in Title II (Subtitle C) of H.R. 5174 (Attached). They render §365(a) of the Bankruptcy Code (11 U.S.C. §101 et seq.), the provision which allows trustees (subject to court approval) to reject executory contracts, inapplicable to collective bargaining agreements. ^{2/} The bill creates a new section in the business reorganization chapter of title 11, §1113, as the exclusive vehicle for the rejection of such agreements and expands the definition of administrative expenses, which are paid before all other claims, to maintain union employees' salaries at the full contract rate until rejection ultimately is approved. The House bill would change current law in the following ways:

(1) Prior to moving for rejection, a trustee must follow new procedures set forth in §1113(d). The trustee must (a) "meet and confer in good faith with the authorized representative of the [union] employees" and provide the representative with "relevant" financial and other information; (b) propose modifications to the contract deemed necessary to successful reorganization and preservation of the union jobs; (c) have considered, but rejected as inadequate, alternate modifications proposed by the authorized representative; and (d) be ready to prove that a prompt hearing is necessary to successful financial

^{2/} Collective bargaining agreements are defined in §1113(a) as those agreements which are covered by Title II of the Railway Labor Act or the National Labor Relations Act.

reorganization. No definition for any of these terms is provided. No time limits are set.

(2) A trustee cannot act unilaterally; a collective bargaining agreement can be rejected only after court approval. Furthermore, only after the pre-filing procedures have been completed may the trustee, under §1113(b), file a motion requesting that the district court approve rejection. The court must hold a hearing within 7 to 14 days after the filing of the debtor's motion unless the court, within the 14 days, extends the time for cause, §1113(e). During this time, or such time as the court allows, and subject to conditions set by the court under §1113(f), the authorized representative again is to be allowed access to "relevant financial information." The hearing itself is to be completed within 14 days of its start, but again, the court may extend the time limit for cause and no deadline is set for a decision by the court. This amounts to no time limit at all.

(3) The court may not approve rejection unless the strictest possible standard short of a union veto is met, i.e., that, absent rejection, the union jobs will be lost and any financial reorganization of the debtor will fail. ^{3/} Additionally, §1113(g) provides that rejection may not be authorized if the debtor has failed to comply with any of the pre-filing procedures. In order to carry its burden in the hearing, the trustee must have considered even undesirable forms of reorganization in order to show that no feasible way to reorganize without rejecting the contract exists. ^{4/}

(4) The trustee must pay union employees the wages and salaries provided in the collective bargaining agreement even after a court authorizes rejection and until all appeals are exhausted. This will result in potentially large costs that a troubled company must be prepared to bear for an indefinite period. Rejection of the contract is

^{3/} Chairman Rodino indicated on the floor that this language -- that the union jobs will be lost -- is not intended to expand the REA Express test.

^{4/} On the other hand, this strict interpretation may not obtain. The courts may hold that the union must show that the plan of reorganization envisioned by the debtor is not the only conceivable reorganization plan. Indeed, the union might be required to proffer its own viable plan featuring retention of the collective bargaining agreement in order to prevail. However, the result may be the same as the burden is likely to shift back and forth during the hearing.

deemed to occur immediately prior to the filing of the bankruptcy petition under current law. As a result, the trustee can immediately lower the wages and, if rejection is approved, the employees claims are relegated to the lowest status.

C. Policy Considerations

An important need of a company that files under chapter 11 is to reduce its expenses immediately. If unions had the ability to prevent rejection or modification of a contract for a lengthy period they often would have an effective veto power over the proposed reorganization. On the other hand, unilateral rejection provides an unfair advantage to the company and lessens the union's ability to bargain effectively for its members. As long as unilateral rejection is prohibited and a fair hearing and final decision can be provided in a short period of time, neither side acquires undue bargaining power. H.R. 5174 attempts to provide this by requiring the hearing to begin 7-14 days after the trustee's motion, but fails.

Such ambiguous terms as "relevant financial and other information" and "financial reorganization" and terms of art such as "good faith" and "meet and confer" are certain to prolong and generate disagreement during the negotiating process and engender litigation. The requirement that the trustee provide financial and other information needed to determine whether a collective bargaining agreement should be rejected is potentially unlimited in scope. 5/ An expansive reading of this section would permit the labor union access not only to all sorts of information regarding the debtor, but could include all information regarding related debtors, including parent and sister companies and subsidiaries. 6/ As there is no time constraint on the authorized representative's counter-proposals for modification, these procedures are potentially interminable. Moreover, if the bankruptcy court fails to act within the deadlines, the trustee's only recourse is to appeal -- the trustee may reject a union contract only after the court has approved such an action under

5/ During the debate on H.R. 5174, Chairman Rodino indicated that he did not intend to expand normal discovery with this provision. However, it is important to note that, with the exception of statements made on the House floor yesterday, the only legislative history for any of the provisions of this bill will be provided by the Senate and the conference committee, if any.

6/ We also note that only the union representative is entitled to this discovery. Other creditors should be afforded access to this information as well.

§1113(b). Rejection will only be effective upon exhaustion of all appeals. Between the enormous potential for delaying tactics by the authorized representative during the pre-filing negotiating procedures and the potential extensions of time before the district court finally acts, the time elapsed between a decision to reject and a final court decision on the motion could be considerable. Limitations on the scope of discovery and provision for immediate interim rejection or for an expedited appeal process are essential.

This bill fails to provide even the likelihood of timely or meaningful financial relief. We believe a sizeable majority of union companies would have to liquidate unless they collude with their bank and trade creditors to operate short-term under chapter 7, in order to reject the contract (thereby avoiding §1113 which only applies to chapter 11 cases), and then convert to a chapter 11 case.

The provisions according an administrative priority to contract scale wages for union employees until rejection of a collective bargaining agreement give the union and its employees powerful leverage in dealing with the trustee and other creditors. ^{7/} Such salaries could be very substantial and, since the Code requires payment in full as a condition of confirmation in chapter 11 [11 U.S.C. §1129(a)(9)(A)], labor unions could possess a virtual veto power over reorganization plans. As a practical matter, these salaries will be paid throughout the case, at least until rejection, thus preventing any reduction in expenses for wages. Indeed, if a company can meet the standard for rejection it might be unable to have its plan confirmed because it could not generate sufficient cash to pay these first priority claims either during the course of the case or at confirmation. In effect, the interests of unionized employees are paramount to those of all other employees, creditors and the stockholders.

^{7/} Employees are already protected to some extent under the priority provisions. Section 507(a)(3) provides a third priority for wages, salaries, or commissions, including vacation, severance, and sick leave pay, earned within the 90 days prior to the cessation of the business or the filing of the petition, up to a total amount of \$2,000. Section 407(a)(4) provides a fourth priority for contributions to employee benefit plans. H.R. 5174 affords union employees additional and superior protection. In addition, to the extent that this bill creates a first priority for union contract level wages, it might jeopardize the priority interests of non-union employees holding third and fourth priority claims and the interests of the United States as a creditor.

We believe the strict standard for rejection in the House bill, if changed to require likelihood rather than certainty that the reorganization will fail, and to clarify that the "jobs" language is merely hortatory, would not be unacceptable. However, a codification of the Bildisco standard, with its balancing factors, is preferable. At a minimum, the detailed preconditions to the trustees' right to move for rejection must be eliminated, prompt court action must be guaranteed, provision for immediate relief or expedited appeals must be made, and wages must be reducible upon at least preliminary district court approval of rejection.

D. Conclusion

What features should prevail in a compromise? Labor has three primary concerns: no unilateral rejection, access to information to rebut the trustee's allegations concerning the need for rejection, and a standard that will ensure that rejection is allowed only when it is clearly necessary. Business requires expeditious and final action, certainty that discovery is not intrusive or prolonged, and a reasonable standard for rejection of agreements. These positions are not as far apart as they appear at first blush.

Accordingly, the following elements would seem to be necessary to form the basis of any generally acceptable compromise: (1) a statutory definition of the standard that must be met, which we hope would be a codification of Bildisco, with all of its qualifiers, but which may be as stringent as "likelihood that the reorganization will fail"; (2) allowance of rejection only upon approval of the court, but with provision for expeditious court procedures ^{8/}, such as (a) short, enforceable time limits, or a preliminary hearing on rejection, similar to a TRO, with a full hearing later, and (b) a right (with limits) of the union and other creditors to obtain information necessary to evaluate whether the debtor meets the statutory standard; (3) authority for the debtor to lower its wages once a court approves rejection, even if appeals can be taken or a full hearing by the trial court has yet to occur (if rejection is later held invalid, then the union can have a priority for wages that should have been paid, but were not); and (4) elimination of the procedures that must be followed before a trustee can move

^{8/} One such proposal that has been considered by the Senate, however, raises serious separation of powers concerns by attempting to require a reviewing court to hold in contempt a lower court that does not act quickly enough. Any provision specifying short time limits for court action should be drafted on the assumption that the courts will act with due diligence on a matter about which Congress has expressed so much concern.

for the rejection of a contract, although the requirement of Bildisco -- that there have been attempts at negotiation (albeit without technical labor law requirements) -- is acceptable. Finally, we would suggest that any bill make clear that it is not applicable to cases where a motion to reject has already been filed. This is consistent with general fairness and the agreement reached in the House between legislative leaders and the lobbyists for Continental Airlines.

Attachment

cc: Michael M. Uhlmann
Special Assistant to the President and
Assistant Director Legal Policy

Michael J. Horowitz
Counsel to the Director
Office of Management & Budget

1 constitute prima facie evidence of the validity and amount
2 of a claim of ownership of a quantity of grain.''.
3

4 Subtitle C--Amendments Relating to Rejection of Collective
5 Bargaining Agreements in Bankruptcy

6 Sec. 275. Section 355(a) of title 11, United States
7 Code, is amended by striking out ''and 766'' and inserting
8 in lieu thereof '', 766, and 1113''.

9 Sec. 276. Section 503(b)(1)(A) of title 11, United
10 States Code, is amended by inserting before the semicolon at
11 the end thereof the following: '', except that such wages or
12 salaries covered by a collective bargaining agreement to
13 which section 1113 of this title applies shall only be
14 measured at the rate prescribed for such services in such
15 agreement''.

16 Sec. 277. (a) Title 11 of the United States Code is
17 amended by inserting after section 1112 the following new
18 section:

19 ''§1113. Rejection of collective bargaining agreements

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

24 ''(b) The trustee may reject or assume a collective
25 bargaining agreement under this title only if and after the
26 court approves the rejection or assumption of such

1 agreement.

2 “(c) The court, only on the motion of the trustee, may
3 approve the rejection of a collective bargaining agreement
4 under this title only after notice to all parties in
5 interest and a hearing.

6 “(d)(1) The trustee shall--

7 “(A) meet and confer in good faith with the
8 authorized representative of the employees who are
9 subject to a collective bargaining agreement; and

10 “(B) provide such authorized representative with
11 the relevant financial and other information.

12 “(2) The trustee may file a motion for the rejection of
13 a collective bargaining agreement under this title if--

14 “(A) the trustee has proposed modifications in such
15 agreement to such authorized representative deemed
16 necessary by the trustee for successful financial
17 reorganization of the debtor and preservation of the
18 jobs covered by such agreement;

19 “(P) the trustee has considered but rejected as
20 inadequate for successful financial reorganization of
21 the debtor and preservation of the jobs covered by such
22 agreement alternative proposals for modifying such
23 agreement made by such authorized representatives; and

24 “(C) a prompt hearing on rejection is necessary to
25 successful financial reorganization of the debtor.

1 “(e) The court, upon motion of the trustee to reject a
2 collective bargaining agreement, shall hold an expedited
3 hearing to determine whether such agreement may be rejected
4 under this title, not less than 7 days and not more than 14
5 days after the filing of such motion, or within such
6 additional time as the court, for cause, within such 14-day
7 period fixes. Such hearing shall be completed no later than
8 14 days after the commencement of such hearing, or within
9 such additional time as the court, for cause, within such 14-
10 day period fixes.

11 “(f) The financial information relevant to determining
12 whether a collective bargaining agreement may be rejected
13 under this title shall be made available, under such
14 conditions and within such time as the court may specify, to
15 the authorized representative of the employees who are
16 subject to such agreement.

17 “(g) The court may not approve the rejection of a
18 collective bargaining agreement under this title unless--

19 “(1) the trustee has complied with subsection (d)
20 of this section; and

21 “(2) absent rejection of such agreement, the jobs
22 covered by such agreement will be lost and any financial
23 reorganization of the debtor will fail.

24 “(h) No provision of this title shall be construed to
25 permit the trustee unilaterally to terminate or alter any of

1 the wages, hours, terms and conditions established by a
2 collective bargaining agreement.''.
3

4 (b) The table of sections of chapter 11 of title 11,
5 United States Code, is amended by inserting after the item
6 relating to section 1112 the following new item:

7 ''1113. Rejection of collective bargaining agreements.''.
8

9 Subtitle D--Effective Date of Title

10 Sec. 299. (a) Except as provided in subsection (b), this
11 title and the amendments made by this title shall take
12 effect on the date of the enactment of this Act.

13 (b) The amendments made by this title shall not apply
14 with respect to cases under title 11 of the United States
15 Code commenced before the date of the enactment of this Act.

LABOR POLICY ASSOCIATION, INC.

A NON-PROFIT ASSOCIATION ORGANIZED UNDER THE LAWS OF THE DISTRICT OF COLUMBIA

1015 FIFTEENTH STREET, N. W.
WASHINGTON, D. C. 20005

202 789-8670

April 5, 1984

SPECIAL MEMORANDUM: XII-5

RE: What's Behind the Dispute Over Bildisco?

As you know, organized labor has decided to hold hostage the badly needed reforms in the nation's bankruptcy laws until Congress agrees to reverse the Supreme Court's unanimous decision in Bildisco.

In the House, labor's insistence on passage of an anti-Bildisco amendment prompted the Democratic leadership at the eleventh hour to insert one in the bankruptcy package without the benefit of public hearings or serious committee consideration. The same demands were brought to bear in the Senate last week with the result that collapse of the bankruptcy system was averted only by approval of a thirty-day extension of existing law. During this period, Congressional leaders hope to come up with some means of meeting labor demands.

Since last Friday, more people have begun to question why organized labor has poured so much effort into this issue and why labor has made it their priority in the 98th Congress. Proponents of a labor amendment argue that companies must be prevented from using the bankruptcy system to rid themselves of unions. When this argument is given a careful look, however, two key points emerge, and it becomes clear that the limited potential for abuse in the present law does not justify organized labor's massive effort to disrupt Congressional reform of the bankruptcy system.

First, using bankruptcy to get out from under a union contract is not a typical labor relations practice in the United States today. Petitioning for reorganization under the bankruptcy laws essentially means that a company turns control of its business over to a bankruptcy judge. Such a step is never taken lightly. A company forced to take this drastic step immediately tarnishes its image. Its potential customers, suppliers and creditors on whom the company depends are likely to question the soundness of continuing to do business with the firm. During the past year, there have been a few proceedings which received extensive publicity suggesting that the predominant reason for the petitions was avoidance of union contracts. The facts in those specific cases, of course, deserve a fair examination. But, whatever the outcome, those few cases cannot be made the basis for generalizations about the motives of the more than 25,200 other companies which filed for reorganization last year without generating labor controversies.

Second, regardless of the motives of any particular company filing for reorganization, existing law is clear that such a petition does not rid a company of its relationship with its unions. Moreover, modification of a collective bargaining agreement during the reorganization process does not mean that an employer can escape its contract obligations. The union retains its full panoply of rights, including the right to shut the company down with a strike, if it disagrees with modification. Further, the debtor-employer is required by law to seek court approval of any rejection or modification of a bargaining agreement. If the modification was improper, the employer owes the employees back

pay. In addition, even if the court rules that the rejection was proper, the company remains obligated to bargain in good faith with the union.

These two points serve to highlight the real issue. If it is both unlikely and impractical for companies to file for bankruptcy reorganization simply to modify the terms of a collective bargaining agreement, why the intense pressure on Congress to overturn Bildisco? The reason for labor's interest is the same as for most major issues in the long history of labor-management confrontations in Congress. Very simply, the changes sought in the bankruptcy laws by organized labor would be extremely effective organizing tools.

In Bildisco, the Supreme Court examined three possible tests that could be applied to petitions to reject collective bargaining agreements. The justices agreed, 9-0, that labor agreements should be given more protection than other contracts, but not so much special protection that they would interfere with the flexibility and equitable considerations built into the reorganization procedure which is designed to give a severely troubled business an opportunity to get back on its feet. The Court, therefore, adopted a middle ground, fashioning a "balancing of the equities" test which is to be used to judge a debtor's petition for modifications in a collective bargaining agreement. Such a balancing test is not new, and in fact was adopted in the past by most other federal courts which considered this issue. */

If, however, the Supreme Court had ruled as organized labor had argued it should, labor agreements would be given far more protection than they now enjoy under Bildisco. The labor amendment in the House bankruptcy bill (H.R. 5174), for example, would in effect require that a company's creditors and nonunion workers bear the most significant burden in any cutbacks necessitated by financial difficulties. The company could seek modifications in the labor agreement only as a last resort. If these enhanced protections for organized workers were built into law, labor unions could use them as very attractive reasons for workers in any financially troubled company to unionize.

Of even more importance, the changes would also be an effective organizing tool against employers who were not in fact financially troubled themselves, but who could be painted as such by the union or who happen to be part of a troubled industry. The promise that unionized workers would be protected while nonunion workers would be forced to take cuts in pay and benefits would be an appealing campaign slogan. Clearly, it is this opportunity for renewed organizing efforts, rather than fear of abuses by financially struggling companies, that has prompted labor to seize on bankruptcy reform as the labor issue of 1984.

Jeffrey C. McGuiness
Vice President and
General Counsel

Lorence L. Kessler
Counsel to Labor Policy
Association

* See, e.g., In re Brada Miller Freight System, Inc., 702 F.2d 929 (11th Cir. 1983); NLRB v. Bildisco, 682 F.2d 72 (3d Cir. 1982); and Shopmen's Local Union v. Kevin Steel Products, Inc., 519 F.2d 698 (2d Cir. 1975).

STATEMENT OF
SUBMITTED TO THE COMMITTEE ON THE JUDICIARY AND
THE COMMITTEE ON LABOR AND HUMAN RESOURCES
UNITED STATES SENATE

April 10, 1984

Chairman Thurmond, Chairman Hatch, and Members of the Committees:

Thank you for allowing me the opportunity to submit for the record this statement which will discuss the implications of the recent decision by the U.S. Supreme Court in National Labor Relations Board v. Bildisco & Bildisco. In that case the Court held that an employer who had filed a petition for reorganization in bankruptcy could unilaterally abrogate a collective bargaining agreement. When this occurs, the employees would be able to pursue in the bankruptcy courts claims resulting from rejection of the contract. However, in the interim, the employer would legally be able to pay less than the agreed-upon wages and discontinue benefits and take other actions which could be contrary to the negotiated agreement. Legislative proposals have been introduced to address the effects of this decision. Therefore, I also today want to set out the guidelines the Administration believes should be considered as the Congress considers such legislation.

It is important that this discussion be placed in the overall context of furthering a healthy collective bargaining

STET system. In passing the National Labor Relations Act in 1935, the Congress provided a ~~legal framework for labor~~ ^{discretionary & harmonious labor & industrial relations} and industrial peace. Embodied in this framework is a

system of free collective bargaining which enables workers to decide whether or not they wish to be represented by organized labor. In addition, both labor and management were given important tools that allow them to negotiate over benefits, job rights, and other matters of vital importance to both sides. ~~The picture of labor-management relations~~

has changed from one typified by violence, worker abuse, and strife into one which, although not always totally peaceful, has furthered our Nation's economic well-being, given workers an important voice in determining their terms and conditions of employment, and provided employers with important protections which give them the flexibility needed to operate productively.

And this is a point that must be emphasized. Our labor laws strike an essential balance between the needs and rights of workers and the needs and rights of employers. The Congress realized this balance was not achievable given the environment which existed before 1935. Employees had few legal rights and no real legal power to fight for their best interests. The enactment of the NLRA created an artificial balance by imposing statutory requirements relating to

labor-management relations. The result has been a generally healthy system of collective bargaining through which labor and management can exchange ideas and achieve results acceptable to both.

This Administration firmly believes that ~~the continuation~~
~~of the collective bargaining process~~ ^{the continued health of the} collective bargaining process is imperative for the continued well-being of this country. We will oppose any action that impedes that process which is otherwise unnecessary to protect the national interest. And it is with these considerations in mind that we address the issues raised by the Bildisco decision.

Let me briefly review the Supreme Court's decision. The 1978 Amendments to the Bankruptcy Code relaxed the conditions under which a company can file for Chapter 11 reorganization. Having filed for reorganization, the company may reject any executory contract if it makes good business sense to do so. In the Bildisco case, the employer, a building supplies distributor, filed a voluntary petition for reorganization under Chapter 11 and was authorized by the Bankruptcy Court to operate as a debtor-in-possession. While operating as such, the company requested permission from the Bankruptcy Court to reject an outstanding collective-bargaining agreement it had with the Teamsters and unilaterally changed certain terms of that agreement.

in the absence of a ^{an} agreement between

- 4 -

The Supreme Court held that the failure of the employer in reorganization to comply with the provisions of the NERA regarding modification and termination of a collective bargaining agreement is not an unfair labor practice.

employees
and
unions

The Court also 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."

Legitimate concerns have been raised by both labor and management following the issuance of the Supreme Court's decision. I am sure you are aware of these concerns. No doubt you have been inundated with views on the subject. To address the uncertainties resulting from the decision, various legislative proposals have been considered. And indeed, as you know, the House of Representatives has passed legislation which would impose certain restrictions on a company's ability to reject a collective bargaining agreement.

The matter is now before you. The Administration believes you should be guided by two principles in your considerations. First, the delicate balance which has been so important to our system of collective bargaining must be preserved;

~~there is no question that that balance has been upset by Bildisco and the Court realized this. Justice Rehnquist, speaking for the majority stated, "Our determination. . .~~

accordingly, we support legislation that removes from employers and places in the hands of the bankruptcy court the power to abrogate union contracts

following the bill of a Chapter 11
petition.

~~does undermine the policy of the NLRB, for that policy,~~
as we have noted, is to protect the ~~process of labor negoti-~~
~~ations, not to impose particular results on the parties.~~

We believe it is important that the policy be maintained
and the collective bargaining system be allowed to continue--no,
be encouraged to continue--in a manner which restores a
carefully crafted balance.

The second guideline we believe you should follow is
that any legislative response to the decision should result
in the preservation of jobs. Businesses facing severe
economic problems should be encouraged to assess their
futures and take actions necessary to keep them in business
and their workers working. As the Supreme Court noted,
"(T)he fundamental purpose of reorganization is to prevent
a debtor from going into liquidation, with an attendant
loss of jobs. . ."

In this regard,

In furtherance of these principles, the Administration
believes any legislation passed by the Congress should
specifically address the following three concerns.

First, an employer should not be allowed to unilaterally
reject a collective bargaining agreement without a reasonable
attempt to negotiate a voluntary modification and without
the prior approval of the Bankruptcy Court.

-6-

we support the basic

~~second, we do not agree with the general standard~~
the Supreme Court set out for rejection of an agreement
~~which I just mentioned, however, we believe the Congress~~
~~should provide some specific guidance to the Bankruptcy~~
~~Courts and set forth specifically what factors should~~
~~be considered and what weight should be given them in order~~
~~to arrive at an equitable balance.~~

~~Third~~ the legislation should establish a process which
imposes timeframes and deadlines. An unnecessarily lengthy
process is not in the best interests of either management
or labor. A

TO
OVER

In conclusion, let me reiterate this Administration's
absolute support for the continued vitality of the collective
bargaining process. Perhaps it is not perfect, but it
is fundamental to this Nation's economy. We must not,
and we will not, compromise our commitment to an unencumbered
system. Rather, any action taken by the Congress should
further it. To do any any less will work to the disadvantage
of both organized labor and management and the American
people as a whole. This should be avoided at all costs.

and within that framework
would support language
achieving this purpose.
In addition, we strongly
believe that the

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

April 3, 1984

TO: M.B. Oglesby
THRU: Pam Turner *PK*
FROM: Bob Kabel *BK*
SUBJECT: Update on Bankruptcy Legislation/Bildisco

As a result of the meeting today chaired by Roger Porter, the majority concensus was that an Administration witness (Secretary Donovan or his designee) should testify at the April 10 Judiciary/Labor Committees hearing on the Bildisco issue. The witness, preferably, should appear first and make the following three points:

1. There should be no unilateral abrogation of labor contracts.
2. The standard for abrogation in bankruptcy established by the Supreme Court in Bildisco should be the standard enunciated in any legislation.
3. The legislation should clarify a time certain for a final decision on abrogation of the labor contract.

The Department of Labor Solicitor, Frank Lilly, felt that testifying was not a good idea. In light of the majority decision, however, his office would draft a statement. Roger Porter intends to bring this recommendation to the attention of LSG for a decision.