

May 29, 2009

Major flaw in Detroit bankruptcies

Deals weaken safety-defect liability protection for consumers

By Paul V. Sheridan

On April 30, President Obama announced that Chrysler was being forced into bankruptcy by a group of minor investment firms that had "decided to hold out for an unjustified taxpayer-funded bailout." Flanked by his Auto Task Force, Obama complained, "They were hoping that everybody else would make sacrifices, and they would have to make none. I do not stand with them." The White House promoted for public consumption an alleged effort to avoid bankruptcy. Did these minor firms serve as a convenient excuse for another purpose?

April 30 was the arbitrary deadline for major stakeholders to offer huge financial concessions as the basis for avoiding bankruptcy. The Canadian Auto Workers, the United Auto Workers, the suppliers, dealers and retirees of Chrysler, the major investors, and Fiat all offered their due. We were then told that this cooperation justified the transfer of billions of taxpayer dollars from the U.S. Treasury to Chrysler. But if these major players have all agreed, what truly motivates the so-called bankruptcy? Who benefits? And most importantly, who loses?

(Another major deadline looms Monday regarding General Motors and possible bankruptcy.)

Within minutes of the Obama announcement regarding Chrysler, though, plaintiff attorneys received a document entitled, "Notice of Suggestion of Bankruptcy." This frantic distribution by Chrysler lawyers occurred before New York Judge Arthur Gonzalez had read the Chrysler Chapter 11 filing. The primary motivation for bankruptcy is confirmed by the Notice, "In accordance with the automatic stay imposed by Section 362 of the bankruptcy code no cause of action (lawsuit) may be commenced or prosecuted against Chrysler." Ironically, Section 362 was not demanded by the new managers from Fiat; they had originally intended to honor the lawsuits.

The president had declared that Chrysler vehicle owners could rely on the government to back repairs covered under warranty. If your transmission fails, he will stand with you.

However, if your spouse burned to death due to a fuel system defect, and you are actively seeking redress through product litigation, Obama does not stand with you because of Section 362. Clarence Ditlow, director at the Center for Auto safety explains, "We met with the Auto Task Force, and they claim to know nothing about the issue of liability lawsuits except to say that everyone including consumers had to share the pain."

Does Obama concur that the "pain" imposed on Chrysler stakeholders, who have been bailed out by our tax dollars, is equivalent to the pain inflicted on a family whose mother was horribly burned to death due to a safety defect? Can we believe that the president, a Harvard Law School graduate and former editor of the Harvard Law Review, knows nothing about liability lawsuits?

The bankruptcy laws were drastically changed in 2005 by the Bush administration to allow corporate executives to detail the "restructuring." Chrysler is now asking Judge Gonzalez to deny lawsuit pass-through to the new owners of Chrysler. Previously, there would be no legal rebuttal; it's standard bankruptcy law. But in this situation the new owner is the U.S. taxpayer.

Here, deployment of bankruptcy law is a ruse. In truth, we are not grappling with a bankruptcy issue; we are dealing with a constitutional issue. For the first time in history, a taxpayer-funded bailout is being administered as "bankruptcy" in order to deploy Section 362. A pure bailout has no such provision. And if this is truly bankruptcy, then why is the taxpayer footing the bill?

There is no precedent for this blatant abuse of the unsuspecting taxpayer who had no say and no representation. Essentially, Obama is demanding that Chrysler safety-defect victims pay to have their own lawsuits dismissed. Is this vicious fleecing allowed by the Constitution?

Is this "change we can believe in"? Can we stand with the president if he does not stand with safety-defect litigants who lost everything, but stands with taxpayer-funded stakeholders who lost nothing? Can we stand with Obama if he demands that taxpayers bankroll a so-called Chrysler "bankruptcy" that accommodates golden parachutes and dealership closures, but not the Constitution?

Can we stand with Obama if he allows the safety defects of old Chrysler vehicles to remain on-the-road, uncorrected and in-use by generous taxpayers who were never honestly told that their right to a jury trial was subverted by his "surgical bankruptcy"? Current and future plaintiffs - the taxpayers, for example - are merely asking the president for their day in court, nothing more.
