The Motor City "Bankruptcies" vs. the U.S. Constitution

On April 30th President Obama announced that my former employer was being forced into bankruptcy by a group of minor investment firms who 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."*

Prior to this announcement, the White House and the media emphasized an alleged effort to avoid bankruptcy. So why did it happen anyway? Did these minor firms serve another purpose?

April 30th was the arbitrary deadline for major stakeholders to offer concessions which justified that billions of taxpayer dollars be transferred from their U.S. Treasury to Chrysler. These "sacrifices" were broadly proclaimed as the basis for avoiding bankruptcy. By April 30th all major stakeholders were seated at the table; the Canadian Auto Workers, the United Auto Workers, the suppliers, dealers and retirees of Chrysler, the major investors, Fiat, and the American taxpayer. But if these major players agreed to avoid bankruptcy, what truly motivated the Obama bankruptcy announcement? Who benefits? And who will be the biggest losers?

Within minutes of the Obama announcement, plaintiffs all over America received a document entitled, "Notice of Suggestion of Bankruptcy." This frantic distribution by Chrysler lawyers occurred before New York Judge Arthur "Enron" Gonzalez had read Chrysler's 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 (i.e. lawsuit) may be commenced or prosecuted against Chrysler." On April 30, bankruptcy law was deployed to deny the American taxpayer their Constitutional right of due process. But taxpayers *per se* are not the biggest losers. The biggest losers are those who lost everything, and few seem to care.

Leading up to his announcement, the president 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. If your wiper blades wear out he will stand with you. However, if your wife 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."*

Are we to believe that Obama concurs 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? Are we to believe that the president, a Harvard Law School graduate, knew "nothing about the issue of liability lawsuits"?

Here the use of bankruptcy law is an abuse of justice. In truth we are no longer grappling with a bankruptcy issue. We are now dealing with a Constitutional issue. At no time has a taxpayer-funded bailout ever been administered as "bankruptcy". I have repeatedly asked experts and media types alike to offer an historical rebuttal on this specific point; all have failed to do so. On May 21, 2009 Congressman John Conyers (D-MI), Chairman of the House Judiciary Committee,

convened a meeting for "Ramifications of Auto Industry Bankruptcies." Testifying before the Committee was Mr. Bruce Fein of the Litchfield Group:

> *"If Congress fails to act, the reorganization decision will fall to politically unaccountable bankruptcy judges appointed to serve a 14 year terms by federal appellate courts. The Constitution does not contemplate the regulation of interstate commerce by Platonic Guardians standing over the commanding heights of the economy. The legislative power was assigned to Congress for a reason: self - government is a farce unless major decisions are made by political actors representing the collective voice of the people."*

A pure bailout, ala the *trillions* recently transferred to the corrupt bankers, has no provision or precedent for Section 362. And if this Chrysler thing is truly pure bankruptcy, then why is the taxpayer footing the bill? The president cannot have it both ways.

Can we believe that Obama, the former editor of the Harvard Law Review, cannot comprehend the implications for U.S. jurisprudence when, for the first time in history, taxpayers and litigants (which are also taxpayers) are funding their own Constitutional demise via this "bankruptcy," defrauded under the intentional abuse of Section 362? There is no precedent for this blatant abuse of the unsuspecting taxpayer who had no say, no vote, and no representation.

Obama's last minute April 30th announcement of bankruptcy was deliberate, and it concealed a crucial fact: The very taxpayers (and litigants) that bailed out Chrysler were left uninformed about the simultaneous loss of their Constitutional right to a trial-by-jury. This is not limited to safety defect litigation. Workman's Compensation has also been "stayed" under Section 362. The average taxpayer may be asleep at the moment regarding this not so esoteric fact, but watch what happens when these same taxpayers are the future victims of a safety defect in a Chrysler product and, at that point, discover for the first time that they have no legal wherewithal or source for compensation, and that they had previously paid for this injustice circa April 30, 2009!

Chrysler brand vehicle owners are not the only future victims of the White House rush to a taxpayer funded bankruptcy. On May 3rd the New York Times reported, "Fresh from pushing Chrysler into bankruptcy, President Obama and his economic team are hoping that the hard line they took last week gives them leverage to force huge changes in General Motors." Do these changes include deployment of Section 362 against GM brand litigants?

Judge Gonzalez appreciated being picked to adjudicate the Chrysler "bankruptcy." According to Professor Lynn LoPucki of the UCLA Law School, bankruptcy courts and lawyers are in competition for the Chrysler bailout made lucrative by the generous U.S. taxpayer. The notion that justice for the common person is the priority of the "Enron judge" is questioned by many. But what cannot be questioned is the fact that the bankruptcy lawyers that are parading themselves in front of Judge Gonzalez will reap billions in taxpayer-funded fees when Chrysler is used as precedent in the next taxpayer-funded "bankruptcy" at General Motors. The Obama plan to "force huge changes in General Motors" was thoroughly welcomed by those in the bankruptcy business.

The bankruptcy laws were drastically changed in 2005 by the Bush Administration allowing corporate executives to detail the "restructuring." Unannounced by the Obama Administration, this "restructuring" motivated a recent Chrysler motion before Judge Gonzalez that eliminates what is commonly called pass-through. Plaintiff Attorney Angel Defilippo explains:

> *"The liabilities to be assumed by New Chrysler are identified in their Purchase Agreement and summarized in paragraph 58 of the motion. Notably, New Chrysler does not intend to assume product liability claims arising out of vehicles sold pre-closing under the Purchase Agreement. Thus, Plaintiff's claims against Old Chrysler will have nothing to recover from, since the $2 billion cash payment will be exhausted paying the claims of First Lien debt holders, and others whose rights are senior to all plaintiffs. It is the intent of Old Chrysler and New Chrysler that New Chrysler obtain an Order of the Bankruptcy Court absolving it from liability for Old Chrysler's claims which it has not expressly agreed to assume."*

In other words, Chrysler and Fiat executives are asking Judge Gonzalez to grant their motion which denies lawsuit pass-through to the new owners of Chrysler, which will be Fiat and the U.S. Treasury. In prior history, there would be no legal rebuttal to this motion; it's standard bankruptcy law. But in this situation, for the first time in history, Obama is demanding that safety defect death victims pay to have their own lawsuits dismissed! Is this what the Constitution intended?

According to current bankruptcy law, which is blatantly fashioned to serve private corporate priorities, two broad classes of financial claims exist: secured and unsecured. For example suppliers of auto components to Chrysler are classified as secured. In the May 16, 2009 Ithaca Journal, Northeastern University Professor Harlan Platt touts this situation regarding the $5,500,000.00 owed to driveline supplier BorgWarner:

> *"To begin with, at Chrysler there are suppliers whose invoices are now guaranteed by the Department of the Treasury, and they're guaranteed at 98 percent of the invoice amount."*

This is just one example of where the taxpayer is unwittingly compelled to fund private interests without representation. In other words, I know of no common-sense taxpayer that believes that justice is served when a supplier comparatively loses nothing in a so-called bankruptcy, but safety defect victim taxpayers lose everything, including their right to a jury trial, because their claim had previously been fashioned by private corporate interests as "unsecured." Is this consistent with the intent of the Constitution?

The plaintiff's are not without further cause of action. Most civilized states enforce the Uniform Commercial Code. The UCC applies to all constituents involved in, for example, the sale and servicing of Jeeps. The duty of any attorney is to zealously advocate for their client. In the current situation, Chrysler lawyers have deployed Section 362 to protect their clients, New Chrysler and Fiat. In response, the plaintiffs are now zealously advocating litigation against the next UCC constituent: the Chrysler dealers. Unlike safety defect victims, the Chrysler dealers that survive are being handed millions in taxpayer dollars in this so-called "bankruptcy." If all goes according to Obama's plan, the GM dealers will be next. I am already receiving requests from the plaintiff's to assist them with lawsuits that are now solely targeting the Chrysler dealers, an upcoming activity that will serve as a very rude awakening to the neighborhood dealer.

In a May 14, 2009 Wall Street Journal opinion by Professor Todd Zywicki entitled, "Chrysler and the Rule of Law" he complains:

> *"The rule of law, not of men . . . is the animating principle of the American experiment. While the rest of the world in 1787 was governed by the whims of kings and dukes, the U.S. Constitution was established to circumscribe arbitrary government power. It would do so by establishing clear rules, equally applied to the powerful and the weak . . . The Obama administration's behavior in the Chrysler bankruptcy is a profound challenge to the rule of law . . . The value of the rule of law is not merely a matter of economic efficiency. It also provides a bulwark against arbitrary governmental action taken at the behest of politically influential interests at the expense of the politically unpopular . . . The government's threats and bare-knuckle tactics set an ominous precedent for the treatment of those considered insufficiently responsive to its desires."*

Professor Zywicki is soliciting concern at the Constitutional level in behalf of *"holdout Chrysler creditors."* He agreed that a similar concern in behalf of those victimized by Chrysler vehicle safety defects needs review. Professor Zywicki would probably agree that product liability lawsuits are part of the "politically unpopular" with the whimsical barons of Wall Street; the barons that funded the election of President Barack Obama.

The May 8, 2009 Automotive News ran an internet opinion poll on its editorial page entitled, "Of These Groups Which Will be the Biggest Losers in the Chrysler Bankruptcy?" The following choices were listed by the Crain Publishing editors, "Suppliers, Dealers, Retirees, Current UAW Workers, Creditors, Taxpayers." I telephoned the Editorial Director Peter Brown to confirm that he had never once considered the plight of the Chrysler safety defect death litigants. Brown confirmed that he/they had never given it a moment's thought, blurting "We'll look into it." Will President Obama offer the same heart-felt concern as Brown?

Is this "Change we can believe in"? Can we stand with the president if he does *not* stand with product defect litigants who lost everything, but stands with taxpayer funded stakeholders who by-comparison lost nothing? Can we stand with his Auto Task Force as they oversea taxpayer dollars illegally used to lavishly fund the so-called bankruptcy lawyers who have demanded that their fees be paid before everyone else?! Can we stand with Obama if he demands that taxpayers bankroll a Chrysler "bankruptcy" that accommodates golden parachutes and warranty claims, but not the Constitutional right of due process? 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 unsuspecting taxpayers who never knew that their right to a jury trial was subverted by his "surgical bankruptcy"? Once informed of this unprecedented, abusive deployment of Section 362 (to a bailout), I know of no intelligent and ethical taxpayer that disagrees with a request to uphold fairness and justice.

The Chrysler safety defect death litigants are *thee* biggest losers in this so-called bankruptcy, and the General Motors litigants will be next. These plaintiffs are merely asking the president, and the Constitution, for their day in court, nothing more.

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