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American Workers in Crisis: Does the Chapter 11 Business Bankruptcy Law Treat Employees and Retirees Fairly?

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Good morning, and thank you Chairwoman Sanchez for holding this important hearing. We are truly fortunate to have someone like yourself and Chairman Conyers in the position to help shape a reform of corporate bankruptcy laws so that what I and many other workers around this country have faced the past several years does not happen again. My name is Greg Davidowitch and I am the Master Executive Council President of the Association of Flight Attendants-CWA, AFL-CIO at United Airlines. I am here today on behalf of AFA-CWA's 55,000 members at 20 airlines around the country.

In a way, it is unfortunate that as a flight attendant and airline worker in the U.S. aviation industry, I am qualified to testify on the subject of today's hearing. The lives of so many airline workers and retirees have been devastated by the exploitation of corporate bankruptcy. I spent 38 months of my life, day in and day out, battling unfettered corporate greed as management used the bankruptcy laws like a weapon to obliterate pay, pensions, healthcare and the jobs of hard-working Americans. The depth of my experience and the devastation experience by the workers I represent will only be summarized in this testimony; there is simply too much to tell. Something must be done to help level the playing field so that bankruptcy is no longer a "business strategy" that simply transfers money to executives' pockets and leaves the rank-and-file employees with nothing more than slashed pay, diminished health care, destroyed retirement security, bitterness, mounting debts and the prospect of personal bankruptcy.

Before I address the impact the bankruptcy process has had on AFA-CWA flight attendants, let me take the Committee back to the fall of 2002. This Committee needs to understand how my airline wound up in bankruptcy in the first place.

United Airlines was driven into bankruptcy by the Bush Administration. The decision of the Air Transportation Stabilization Board (ATSB) to reject United Airlines' request for \$1.8 billion in loan guarantees was the opening salvo by the White House in an unprecedented attack on not just United Airlines employees, but also on the jobs, wages and working conditions of workers throughout the airline industry.

The ATSB was established by Congress to provide assistance to the airline industry as it attempted to recover from the economic impact of the historic terrorist attacks of September 11th. As one of the two airlines whose planes were hijacked for use in that devastating attack – attacks that included the horrible murder of flight attendants, pilots and passengers – United Airlines was in a unique position to need the assistance that the ATSB was created to provide. In fact, United's situation was a clear example of what Congress intended when it voted to create the ATSB with strong bipartisan support.

When it met to give final consideration to United's application for this vital economic assistance to recover from the attacks of 9/11, the three-member ATSB, with representatives appointed by the White House from the Federal Reserve, the Treasury Department and the Department of Transportation, rejected the application as inadequate. This was despite the fact that the employee groups at United had already agreed to concessions to keep the airline out of bankruptcy. These agreements with AFA-CWA and the other unions at the airline would have generated \$5.8 billion in labor cost savings over 5 and a half years – part of a package of cost cuts that United management believed were sufficient to save the airline and return it to profitability. But the ATSB demanded even greater cuts, and decided that bankruptcy was the preferred option despite agreement by all of United's decisions makers – at that time – that deeper cuts were not necessary.

The White House realized that it could use the ATSB as a tool for re-engineering the airline industry, particularly airline labor costs. As one of the only industries remaining with a majority of union jobs, the Bush Administration seized the opportunity to exploit bankruptcy as a business strategy for social engineering. It was an opportunity to destroy the voice of the hard-working people of the middle class by

cutting union jobs and obliterating the protections and benefits negotiated and earned by union members. The ATSB was created by Congress to administer loan guarantees designed to save the airlines from liquidation in the aftermath of September 11. But the White House decided to use the denial of the loan guarantees to force an economic reshaping of the airline industry. As far back as the Reagan Administration, Republican-appointed Secretaries of Transportation had complained that the only thing wrong with the airline industry was that airline workers are paid too much. Forcing United into bankruptcy was the Administration's way of pushing costs far lower than would have been possible or necessary in any other scenario. They knew the economics of this competitive industry would do the rest – forcing similar cost cutting at all the major airlines. Their strategy – unfortunately for airline workers – was devastatingly effective. United's bankruptcy and drastic slashing of employee wages and benefits created a cascade of similar actions throughout the industry. Airline employee wages, benefits and work rules across the industry were soon slashed to levels not seen in decades.

The story that unfolded at United and other airlines in bankruptcy would have been difficult to imagine only five to ten years ago. Like most major carriers, United racked up record profits during the late 1990s, having expanded domestically and internationally. It grew its fleet by more than one-third, to a total of over 600 aircraft. Flight attendant ranks swelled from 15,000 in 1990 to nearly 27,000 by 2000. However, with the collapse of the US airline industry in late 2001, United Airlines found itself losing more than \$9 million a day; not simply because of September 11, but also because of the reckless spending, poor planning and other failures of airline management. For example, one failed management business maneuver included an ill-conceived merger with U.S. Airways that cost the airline hundreds of millions of dollars and yielded a personal profit of \$50 million for just one executive even though the merger was never approved.

By mid-2002, United was headed toward a record annual loss of over \$3 billion, and management began hurried negotiations with the unions that represented the various employee groups. Labor groups ratified a concession package valued at \$5.8 billion over five years, including a \$412 million cut by United Flight Attendants to help the airline avoid filing for bankruptcy protection. Apparently it was not enough; at least not enough for the White House.

As this Committee looks into whether the current bankruptcy system is fair to workers, I think you will agree that there was nothing fair about this process from the perspective of the workers. The White House apparently had no concern with fairness.

The devastation we see today for airline workers is the aftermath of the decision by the White House not to help stabilize United Airlines. It only took the destabilization of one major carrier to trigger a domino effect of labor cuts throughout the industry. One hundred forty thousand airline workers have lost their jobs. Workers who were not forced out have lost our pensions. We have seen our wages cut by as much as 20 to 40 percent. Management has forced changes in work rules that cause us to work many more hours at reduced pay, and to be away from our homes and our families for more days every month. Management has slashed our medical benefits, even cutting retiree medical benefits – a move authorized by the law but until now was largely taboo.

Many of our flight attendants – and many other airline workers – have had their lives destroyed by these bankruptcies, and by management's use of the law to force devastating cuts on the employees. There have been over 150 airline bankruptcies since the industry was deregulated in 1978, with at least twenty-one in just the six years since September 11.

These most recent rounds of bankruptcy have been especially devastating. One needs to look no further than the numbers. At several of the airlines represented by AFA-CWA, which have gone through bankruptcy, the slashing of union jobs has been dramatic. At ATA Airlines when the company entered bankruptcy on October 26th, 2004 the company had 1,946 active flight attendants and as of April 16, 2007 there were 877 actively employed flight attendants. When Mesaba Airlines entered bankruptcy on October 13, 2005 there were 611 flight attendants on the Mesaba payroll. On April 16, the total number of flight attendants on the payroll had been reduced to just 336. Aloha Airlines had 440 employed flight attendants on December 1, 2004. As of April 16, 2007 there were 386 flight attendants employed by Aloha. USAirways had 7,790 active flight attendants when they entered bankruptcy and almost five years later, their number of active flight attendants was down to 4,770. The nearly 12,000 flight attendant jobs cut at United Airlines is another chilling example. At the same time, there are more passengers traveling today than there were in the year 2001 prior to these cuts, resulting in an unprecedented productivity increase – an increase which, to date, has largely only gone to enrich executives and shareholders.

The total annual flight attendant cost cuts have been dramatic at carriers throughout the industry. Over a five year period between 2002 and 2006, annual flight attendant costs at ATA were reduced from \$62 million a year to \$38 million. At Northwest the costs went from \$631 million to \$533 million. US Airways went from \$623 million to \$267 million. At United the annual costs went from \$1.4 billion to \$945 million, and prior to the cuts the 27,000 flight attendants only comprised 7.1% of the total labor cost at our airline.

The painful cuts absorbed by the employees were repeated, numerous and stretched out over several devastating years of uncertainty. US Airways, where AFA has represented the flight attendants for decades, went through bankruptcy twice, with multiple rounds of concessionary bargaining each time. At my carrier, United, management dragged the employees through two rounds of full-blown Section 1113 negotiations, while holding bankruptcy court rejection of our entire collective bargaining agreement like a gun to our head each time.

In between rounds of Section 1113 negotiations in 2003 and 2005 United management launched an attack on our retiree medical benefits under Section 1114 of the Bankruptcy Code in January of 2004. Once again they used the law and the threat that all benefits would be cut off as a hammer to beat drastic cuts out of the workers who had invested their entire working lives in the airline. United management added an especially devious twist to this attack on their employees. For months before they actually filed their Section 1114 motion they pretended that they had no intention of filing such a motion. They even enticed workers to retire early before July of 2003 in order to "preserve" their retiree medical benefits. After getting thousands of United flight attendants to agree to leave the company in exchange for "guaranteed" retiree health benefits, they then went to the court to file their Section 1114 motion, demanding immediate increases of costs for individual retirees that were 10 times the cost of premiums with no cap on future healthcare costs. A coalition of unions and retiree representatives negotiated a lower premium increase with a cap on future costs for retirees, but sadly, retirees were forced to shoulder \$300 million in health program cuts that were approved by the court in June of 2004. Tens of thousands of retirees were devastated that their health benefits had been slashed through the rarely used section of the bankruptcy code.

The twist in this bankruptcy approved process came just shortly after thousands of United employees, most with many decades of commitment to United Airlines, fell victim to management's deceit. Just after they voluntarily left their careers and income in the hopes of preserving their medical benefits, United management filed its Section 1114 motion seeking permission to slash those promised benefits. This bankruptcy court-approved move is one of the most outrageous examples of unfairness for the workers.

That maneuver prompted the bankruptcy court to appoint a special examiner shortly after the section 1114 motion was filed. While the examiner questioned the tactics of United management, the bottom line was that the law allowed management to do what they did. The bankruptcy court gave its blessing for this bait and switch – which devastated thousands of flight attendants – and blessed this underhanded tactic by management. A law designed to give extra protection to retiree medical benefits had been turned on its head, and was now another weapon in management's arsenal.

As if the cuts in wages, work rules and medical benefits were not enough, United management also destroyed our pensions, as did other carriers in bankruptcy. Still other major carriers struggled to protect their pension promises with help from Congress, but management at United and US Airways walked away from their promises and used the bankruptcy process to destroy pensions. AFA-CWA fought to save those pensions, using every legal avenue at our disposal. Unfortunately, in the end, tens of thousands of flight attendants found themselves facing an uncertain retirement as the bankruptcy court approved a legal maneuver by management that made an end run on the pension protections in the law.

In meetings with the Pension Benefit Guarantee Corporation (PBGC), in an effort to save the flight attendants' pensions, we were told that the agency thought the United flight attendants' pension plan could and should be saved. We worked in good faith with the PBGC toward that end, and negotiated with United management. Management, however, refused to reach a consensual agreement and turned instead to the bankruptcy court to terminate our pension plan. We were in the courtroom on April 22, 2005 with AFA-CWA and PBGC attorneys ready to oppose United's motion, when principals from United and the PBGC entered the courtroom and announced that a deal had been struck: the PBGC was to receive one and a half billion dollars in consideration of its bankruptcy claim and the pension plans of over one hundred thousand United employees and retirees would be terminated.

Flight attendants never had the opportunity to defend our pension plan according to the provisions within the Employee Retirement Income Security Act (ERISA) and the Bankruptcy Code. They dressed up this sell-out in legal sheep's clothing, sufficient to withstand the scrutiny of the courts under the current law. But no one was fooled – the PBGC reversed course and set off on the path of terminating our pensions precisely because United management agreed to pay the agency over a billion dollars. So, the agency that was created by Congress to protect the interests of workers' pensions instead had a hand in destroying our retirement security for a short-sited gain of 1.5 billion dollars while putting the country's entire pension system billions of dollars closer to total collapse. Instead of saving airline employee pensions, it made a deal with United management that dumped billions of dollars of liability for our pensions onto the taxpayers. Is that fair? Does that even make sense as a matter of public policy? Despite what management, the PBGC and the courts might have said, Congress could never have envisioned that the law would be twisted into results like this.

The claims of United management, like the executives at other airlines, that the impact of the pension termination may be mitigated assumes that United flight attendants will now have to work an extra nine years to recover the benefit levels they had in their defined benefit plan. Their analysis disregards the present value of money and also makes a number of highly unlikely financial assumptions. Especially ridiculous is their formula assumption that flight attendants would receive a four percent annual wage increase every year between the date of termination and the date of retirement, at the same time that wages were being cut an additional 9.5% in a second round of Section 1113 labor contract cuts. That simple statement, obviously misleading, is designed to confuse and mislead flight attendants and others as to the impact on our Members. Nevertheless, the self-serving statement is typical of the assertions United management makes on this specific issue as well as numerous others.

Is there any fairness in the current law regarding termination of pension plans in bankruptcy? One other event at United should answer that question for this Committee. One pension plan survived the United bankruptcy. Or, more accurately, one *person's* pension plan survived. CEO, Glenn Tilton, was careful to shield his own pension from termination. Prior to the bankruptcy he executed a legal maneuver, putting his \$4.5 million pension into a trust that successfully insulated it from the bankruptcy. Is it fair that the law

allows this drastic disparity of treatment between employees of a bankruptcy company? Obviously not.

It is difficult to describe the sheer scope and the magnitude of the devastation. Billions of dollars have been extracted from the compensation of airline workers. When our good friend Representative George Miller of California conducted the first ever E-hearing during the United bankruptcy, the testimony submitted by our members was nothing short of heart-wrenching. United flight attendants told of losing their homes because of management's cuts. Others have told us they have had to move back in with their parents, sell their car, cancel college classes, or lose custody of a child. Personal bankruptcies have become commonplace among airline workers and with good reason – how could anyone be expected to survive when their earnings are slashed 20, 30 even 40 percent? At Mesaba Airlines, management's demands for cuts in wages would have reduced some flight attendant's pay to less than \$10,000 per year **before** taxes. That is nothing short of corporate-induced poverty, shifting responsibility for a living wage from the company to the taxpayers.

Finally, no consideration of the fairness of the current bankruptcy process would be complete without mention of the issue of management bonuses and compensation. If the current system had any element of fairness it would not allow massive bonuses and incredible compensation packages for the very executives who took these companies into bankruptcy in the first place, and who then inflicted massive pay cuts on the workers under color of law.

But, that is exactly what happens. A huge bonus for executives of a bankrupt corporation is simply wrong in light of the enormous sacrifices made by the workers during the course of the bankruptcy. They often give lip service to the concept of pay for performance, but the reality is much different: huge bonuses while workers take cuts. Management typically demands that the workers' concessions be locked in for four, five or even six years. But for management employees they steadfastly refuse to make any long-term commitment to such cuts, while making very modest upfront cuts to give the appearance of fairness.

Mesaba President and COO John Spanjers was asked under oath in a Section 1113 hearing in bankruptcy court to provide some assurance that management cuts would stay in place for the same length of time as those of the employees. Spanjers flatly refused to agree that he and his management team would live under the sacrifice he was asking the employees to make. He is not alone. His colleagues at other airlines have taken bonuses and quickly renegotiated contracts or shifted titles to increase pay during bankruptcy and in the months immediately following bankruptcy while workers continue to suffer the effects years after Chapter 11 is closed.

While airline employees have shouldered the heavy financial burden of the bankruptcy process, airline management has suffered incredibly little – if any at all – sacrifice. While the front line employees have seen their numbers slashed, pay drastically reduced, benefits eliminated and work rules destroyed, the management level employees reap unearned rewards.

Our experience with management compensation at United illustrates that management compensation in the bankruptcy process is simply out of control. Although every other United employee is obligated to work under four additional years of concessions following the date of exit from bankruptcy, there is no evidence that United's top executives have agreed to make any sacrifices during the next four years. To the contrary, 400 members of management stand to cash in on an excess of \$400 million. After destroying our contract and career, United's CEO alone reaped over \$40 million in 2006, 2000 times the pay of a first year flight attendant. The bonuses were awarded regardless of their past or future performance. When the judge ruled on this cash reward for management following objection by the unions he acknowledged our concern, but essentially said there was nothing he could do about it because the law did not give him the authority to second guess management compensation, or a standard by which to determine "how much is too much." The same judge had already approved millions of dollars in Key Employee Retention Program (KERP) bonuses, several times over, during the course of the bankruptcy.

In a report prepared to defend their additional bonuses, United management argued that the Management Equity Incentive Plan (MEIP) was intended to align the interests of management and other stakeholders. If one were to accept this premise, then the executives of this company do not deserve one penny more than what they are currently compensated. If the executives interests were to be aligned with those of the workers they too would need to experience the grief associated with losing their home, losing their jobs, or not being able to make ends meet. At some point, the greed exhibited by corporate executives must be stopped. That time is now.

Such equity bonuses clearly do not reflect either sound business judgment or good faith, much less respect for the enormous sacrifices of flight attendants and other workers. If there is so much equity available to enrich management, that equity rightfully belongs to those who have sacrificed the most to ensure our company's survival.

All too often management focuses its efforts not on the success of the corporation, but on their own personal gain. This profiteering comes predictably at the expense of the dedicated workers who strive daily to ensure our airlines' viability and success. The prospect of a select group of executives rewarding themselves at the expense of flight attendants and other employees adds fuel to a simmering fury and to a relationship void of trust. Companies with overly-generous salaries, KERPs and very lucrative management profit sharing programs – far above any reasonable measure for a company in bankruptcy – simply cannot pass the test of fairness in using the current law to force billions of dollars in annual concessions from employees.

In the beginning of its bankruptcy, United claimed a successful reorganization depended upon "the fair

treatment of employees." Management promised to "equitably share the pain of United's restructuring." Unfortunately, the record reflects an entirely different reality, at United and at most of the other airlines that have been through bankruptcy. In every instance, employees have been forced to make life-changing sacrifices while executives are richly rewarded. In light of the sacrifices made by the dedicated front-line workers whose commitment has been critical to the success of these airlines, these snatch-and-grab schemes by management not only evidence poor judgment, but also reflect downright avarice.

To the Committee's question of fairness I can only respond with my own question: how could any of this be considered "fair?" Any conversation about terminated pensions, reduced healthcare, slashed wages, destroyed careers and lives in shambles could never be measured with fairness.

I would implore you, on behalf of thousands of AFA-CWA members, and tens of thousands of workers in the airline industry, and many more hundreds of thousands of workers in other industries: fix the bankruptcy law before there is any more devastation. Put an end to management abuses and their use of the bankruptcy laws as just another business tactic to cut costs and line their own pockets. Level the playing field for the workers we represent. Enact a law that provides the protection of restructuring a company for the good of the long-term dedicated workers who are committed to the success of their companies.

Again, thank you Chairwoman Sanchez for the opportunity to testify today. I look forward to answering any questions that you or any members of this Committee may have.