

BANKRUPTCY PROTECTION: What Would It Mean for the Auto Industry?

Introduction

The global financial crisis and the resulting recession are causing havoc for the world auto industry. Auto sales have collapsed by as much as 40-50 per cent – starting in the U.S., but now the slump has spread to Canada, Europe, and Asia. Automakers around the world are in trouble – and governments around the world are rushing to support their respective auto industries.

GM and Chrysler ran out of operating money last December, and asked for emergency government help. Ford has not yet requested emergency aid – but it is burning through its cash reserves very quickly as well.

Obama's Bombshell

On March 30, U.S. President Barack Obama rejected the restructuring plans that Chrysler and GM had submitted. He gave Chrysler 30 more days to submit a new plan (based on a merger with Fiat) and gave GM 60 days to submit a new plan. He demanded that both companies cut back their operations (and their labour costs) even more. Even Ford is being hammered by the crisis, burning through cash quickly.

If GM and Chrysler don't get government approval, they will be forced into bankruptcy protection. In fact, Obama actually suggested that this might be a good thing.

We disagree. Bankruptcy protection will cause tremendous harm to workers, retirees and consumers alike. But no matter what we think, it is clear that bankruptcy protection is a possibility. We need to understand what it means, and we need to prepare ourselves to defend our interests if it happens.

This handout provides some answers to basic questions about bankruptcy protection. The CAW is doing everything possible to help keep the auto companies working in Canada, while still protecting the integrity of our collective agreement and our retiree benefits.

Please read this information, and stay tuned for more information from your union as the crisis unfolds. Above all, be ready to join your brothers and sisters as we collectively show both the company, and the governments, that autoworkers did not cause this crisis, and the rights of our active workers and our retirees must be respected.

What is bankruptcy protection?

Bankruptcy protection is a legal process that allows troubled companies to keep operating for a while, even though they can't pay all of their bills. It is designed to give companies some time to reorganize their operations, and then begin life again with a better chance of survival.

Is bankruptcy protection the same as bankruptcy?

No. A company in bankruptcy protection is not bankrupt. It continues its operations, and its workers remain employed.

But it is temporarily shielded from some of its debts, while it tries to reorganize its business so it can survive.

What laws govern bankruptcy protection?

In the U.S., the bankruptcy protection law is known as *Chapter 11*. In Canada, it is called the *Companies' Creditors Arrangement Act* (or CCAA). The laws are similar in the two countries, although there are some important differences.

What caused this crisis? Not the autoworkers!

- Irresponsible lending and speculation by hedge funds and sub-prime financiers.
- Collapse of over-extended investment banks.
- Failure of governments to regulate the financial system.
- Failure of governments to manage international trade so we have a fair share of good jobs in sectors like the auto industry.

If a multinational company enters Chapter 11 in the U.S., does it automatically enter CCAA in Canada?

No. A company can be in bankruptcy protection (Chapter 11) in the U.S., yet still pay its bills and operate normally in Canada. On the other hand, the Canadian subsidiary might enter CCAA protection in Canada as a way of escaping some of its debts in this country. It depends on the company's debts in Canada, and on its corporate strategy.

Will I lose my job if the company goes into bankruptcy protection?

No. There is no immediate change in employment when a company enters bankruptcy protection. The whole idea of CCAA is to allow the company to keep operating while it reorganizes its business. As the CCAA process unfolds, or when a company "exits" from CCAA protection, the company may close or sell certain operations – but the companies are still governed by existing laws and contractual commitments, and the CAW will keep fighting to protect Canadian jobs and plants.

What if bankruptcy protection fails?

If the company cannot, while protected by Chapter 11 or CCAA rules, develop a reorganization plan that is approved by the bankruptcy judge and key stakeholders (including banks, bondholders, and unions), then it may be forced to liquidate. That is when a company becomes truly bankrupt: its operations cease, its remaining assets are sold off, and its pension funds are wound up. The process of liquidation is governed by a separate Canadian law called the *Bankruptcy and Insolvency Act*.

Why does President Obama seem to favour bankruptcy protection for the auto companies?

We don't know why, but the fact that he specifically mentioned it, and argued for its merits, indicates that it is a strong possibility. Bankruptcy protection might help GM and Chrysler win more concessions from the banks and bondholders. It might also be a bargaining chip in the companies' negotiations with the UAW.

Are collective agreements vulnerable during bankruptcy protection?

In the U.S., Chapter 11 specifically allows the bankruptcy judge to unilaterally rewrite labour agreements (including cutting or eliminating retiree benefits). In Canada, luckily, the judge does not have that power. However, the judge can order the company and its unions to negotiate over wages, pensions and benefits – all under the threat of ultimate liquidation. But the judge cannot dictate any particular outcome to those negotiations. The CAW will use its full power to protect our contract, our incomes, and our retiree benefits during any CCAA process.

Are our pensions at risk during bankruptcy protection?

Whatever funds are currently in the pension fund are kept safe from any claims from a company's creditors during the CCAA process. The union will fight to force the company to keep making its contributions to the plan while the CCAA process continues. And the bankruptcy judge cannot unilaterally change the terms of the pension plan.

The biggest risk to our pensions comes from the potential liquidation of the company (in the event that the CCAA process fails). In that case, the pension plan would be wound up, and pensioners (both current and future) would receive proportional cutbacks in benefits (based on the degree to which the pension fund was under-funded at the time of liquidation).

That's why our top priority is to keep GM and Chrysler in business. That's the best way to protect our pensions moving forward.

Are pensions protected by the government?

The Ontario government has a Pension Benefit Guarantee Fund (PBGF). The PBGF was designed to protect the first \$1,000 per month of pension incomes from workplace pension funds affected by corporate bankruptcy. That would offset a portion of the income losses resulting in the event of final bankruptcy.

However, the PBGF is currently in a deficit situation, and the Ontario government has signaled recently that it may not live up to its commitments under the PBGF. For the sake of all pensioners, it is essential that Ontarians tell the provincial government to fulfill its responsibility to backstop private pensions in cases of corporate bankruptcy. This is an urgent political priority for anyone concerned with justice for pensioners.

Are severance and restructuring benefits protected?

Severance, VTEP and restructuring payments that are funded from general revenues (rather than from the pension plan) could be affected or reduced during bankruptcy protection.

Are retiree health benefits protected?

Under CCAA there are cases where the court has allowed the employer the discretion not to make the necessary payments to ensure retiree benefits.

Worse yet, if the bankruptcy protection process fails and the company liquidates, then retiree health benefits are lost completely (since, unlike pensions, there is no separate fund to pay for those benefits). That's why our priority is keeping GM and Chrysler in business for decades to come.

How long does bankruptcy protection last?

The Chapter 11 or CCAA process can last for a few weeks (if a reorganization plan can be quickly developed and agreed on). Or it can last for several years (in more complex or controversial cases). President Obama is imagining a quick, "surgical" process. But that may backfire, if bondholders or other vested interests fight back with legal challenges and other delaying tactics.

Sticking Together to Defend Our Interests

These are incredible, frightening times for autoworkers. We are victims of a global financial crisis, and lopsided free trade deals, that we did not create.

Whether GM or Chrysler go into bankruptcy protection is completely beyond our control. It has nothing to do with our wages and benefits. We could work for free, and it might extend the life of these companies by a week. Remember labour makes up only 7 per cent of the total cost of making and selling vehicles.

Bankruptcy protection is all about the collapse of auto sales, the brinksmanship of the bondholders and other financial interests, and the failure of governments to do what's needed to truly rebuild a viable North American industry.

We are doing everything possible to keep all three companies operating (GM, Chrysler and Ford). The CAW has been part of the solution. And if one or both companies enters bankruptcy protection, your union will keep fighting for your interests. With our legal resources, with our collective bargaining strength, and above all with the support of our rank-and-file members, we will fight for and win the best deal possible for our active members and our retirees.

Please stand by for more information and be ready to support your union. Thank you for your continuing support and solidarity!