

Securing Labor Savings In Chapter 11 Cases

Michael
Gregory
Kirkland

November 14, 2019

Steven
Centerview

WHY CAN'T LABOR
AND MANAGEMENT
REALIZE THEY'RE
IN THIS TOGETHER,
JUST LIKE US!
IMAGINE! A
WORLD WITHOUT
TWINKIES!



DON'T WORRY,
AS LONG AS NO
ONE EATS US,
WE'LL OUTLIVE THE
COCKROACHES!

HORSEY
©2002
LOS ANGELES TIMES

Things to Discuss Today

- 11 U.S.C. §1113
- 11 U.S.C. §1114
- Withdrawal from Multi-Employer Pension Plans (MEPPs) in Chapter 11 cases
- Distress Termination of Single-Employer Pension Plans in Chapter 11 cases

Section 1113 is Unique In The Bankruptcy Code

- In bankruptcy, most contracts can be assumed or rejected at a debtor's discretion
- CBAs are treated differently; they are protected in Chapter 11 cases
- In Chapter 11 cases, CBAs must be assumed unless they are: (1) voluntarily modified agreement; or (2) "rejected" after a detailed process mandated by Section 1113 of the Bankruptcy Code.
- Thus, because of Section 1113, reducing unionized labor costs during a bankruptcy case is a hybrid between a typical collective bargaining process and a court-supervised litigation process.
- The rules encourage consensus, and provide opportunities for a consensual deal throughout process, but ultimately permit the Court to authorize rejection if the Debtor satisfies the statutory standards.
- Even post-rejection you still need to keep negotiating because all rejection does is put parties in a situation governed by economic leverage: unionized employees can generally strike if a debtor rejects a CBA and imposes terms

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Securing Labor Savings In Chapter 11 Cases

Also available as part of the eCourse

[2019 Jay L. Westbrook Bankruptcy eConference](#)

First appeared as part of the conference materials for the 38th Annual Jay L. Westbrook Bankruptcy Conference session "Modifying Labor and Retirement Obligations in Bankruptcy"