



## About Corporate Bankruptcy

There are two primary types of bankruptcy for corporations: "Chapter 7" liquidation and "Chapter 11" reorganization. The names refer to sections of the Federal Bankruptcy Code.

If a business chooses Chapter 7 bankruptcy, or is involuntarily placed in it, all the company's assets are sold, and the proceeds are used to pay creditors in a priority also defined by law. Filing Chapter 7 results in the company being dissolved.

Under Chapter 11, the company presents a reorganization plan and is not dissolved. Such a plan also may be filed by the company's creditors or other interested parties, and the company may be forced into involuntary bankruptcy under Chapter 11. The plan includes a timetable for repayment to creditors. During the reorganization time, the company is allowed to continue to operate. The amount of debt that the company is required to pay off is based on the value of the business at the time of filing, the business's ability to pay, and the willingness of creditors to accept delayed payment with the expectation that the company will return to being profitable.

## What is Chapter 11 Bankruptcy?

Chapter 11 is one of four sections of the Federal Bankruptcy Code.

Chapter 11 was designed to help businesses in financial trouble restructure their organization and finances so they may continue to operate, rather than be liquidated.

In a Chapter 11 proceeding, a reorganization plan is filed, either by the debtor (in this case Aloha Airlines), the creditors, or both. After the plan is submitted, it must be approved, or "confirmed" by the court. Once that occurs, the debtor and creditors must go by the terms spelled out in the plan. During the bankruptcy proceedings, the individual or business may continue doing business as usual, as long as regular operating reports are provided.

## Advantages and disadvantages of Chapter 11

Chapter 11 is designed to help a business recover from financial distress. It allows the company to reorganize operations and continue to function while under supervision of the bankruptcy court. Congress enacted Chapter 11 because it believed that a rehabilitated business is better for the economy than the unemployment and waste of assets that occur when a business goes under.

While in Chapter 11 reorganization, creditors must obey a court-ordered stay and refrain from taking action against the business. Unlike other forms of bankruptcy, under Chapter 11, the creditors also have a right to file a plan of reorganization, and creditor interests and other claims are represented by committees. It's assumed under the law that most business failures result from unavoidable market changes, rather than from incompetent management or fraud, so a debtor is usually allowed to remain in control of the business during reorganization, unless the court finds just cause or other reason to have a trustee run it. Of course, filing Chapter 11 will affect the business's credit rating, as well as impact its employees and shareholders.

## Bankruptcy and Our Contract

### **What happens to the AFA Contract after Aloha files for bankruptcy?**

A company files for bankruptcy (under Chapter 11 of the U.S. Bankruptcy laws) because its debts exceed its assets, and the company can't keep paying its bills in a timely manner.

Once a company files for bankruptcy, all debts are put on hold and the court assigns a trustee to oversee the bankruptcy process. The company then submits a business plan to the trustee, laying out all of its debts and its plan to pay them off. The trustee oversees this process and ensures an orderly payment of debts so the company can start anew.

*Under the Bankruptcy Code, when a carrier files for bankruptcy, collective bargaining agreements with the company's work groups remain in full force and effect, and any changes are supposed to be negotiated.*

If a company wants to alter a collective bargaining agreement, or have it voided, even during bankruptcy, it must first negotiate with AFA.

Here's how the process is supposed to work: If Aloha wanted to change our Contract as a result of filing for bankruptcy, the company would first make a contract proposal to the trustee that demonstrates the necessity of the proposed changes and shows that the proposal treats all of the affected parties "fairly and equitably".

The trustee is then supposed to negotiate in good faith with AFA in an attempt to reach a mutual agreement on any changes the Company wants to make to the Contract. If an agreement is reached and the changes are approved by the members, then the approved changes to the Contract would go into effect.

If the parties do not reach an agreement on the changes, the court decides. Bankruptcy law says that for the court to alter or reject our Contract during bankruptcy, the company must prove all of the following to the court:

1. the changes are fair and equitable to all parties;
2. the company provided all of the relevant information necessary to evaluate the proposal;
3. AFA rejected the contract proposal without good cause; and
4. the balance of the equities clearly favors the changes being proposed.

AFA would also present our case to the court, detailing why the changes were rejected by the Flight Attendants. If the court finds that the changes meet all of the criteria outlined above, it can change our Contract without Flight Attendant approval.

History has shown that sometimes the workers' contract gets upheld, and sometimes the court orders changes. Just like any other legal proceeding, the judge and the appointed trustee overseeing the bankruptcy have the most influence on the outcome. Sometimes you get a judge sympathetic to the rights of workers, and sometimes you get one that sides with corporations.

If Aloha decided to satisfy its debts by selling off the pieces of its assets, any and all successors must recognize the AFA Aloha Flight Attendant Contract.

The standard National Mediation Board certification, which covers AFA representation at Aloha, applies to the carrier and its successors.

Absent unusual circumstances, any successor employer would have to recognize AFA as the bargaining agent for the Flight Attendants and would have to honor the AFA Aloha Contract.

There has been a substantial amount of change in ownership of airlines in the past twenty years. And in every case involving our Union, every successor employer has recognized AFA certification.

AFA will continue to monitor the situation closely and will provide you with updates as we receive more information.

# Bankruptcy Questions & Answers

## **1. What is a bankruptcy?**

A bankruptcy is a legal proceeding with a special set of rules and standards governing a company's rights and obligations after the company files a bankruptcy petition. A bankruptcy also determines the rights and obligations of creditors and other parties. A creditor is an individual or business that has a claim against the bankrupt company (known as the debtor) that usually arises prior to the bankruptcy being filed.

The laws governing a bankruptcy are contained in the U.S. Bankruptcy Code. Bankruptcy proceedings are supervised by the U.S. Bankruptcy Courts, which are a division of the U.S. District Courts.

## **2. What are the differences between a Chapter 7 and a Chapter 11 bankruptcy?**

A Chapter 7 filing is a liquidation proceeding where a company terminates operations. A trustee liquidates assets and pays out available funds to various classes of creditors pursuant to rules provided in the Bankruptcy Code.

A Chapter 11 filing is a reorganization proceeding that is intended to give a company an opportunity to restructure its operations and finances and emerge from bankruptcy pursuant to a plan of reorganization. In airline and other Chapter 11 bankruptcies, companies seek a seamless transition in operations upon a filing, so customers do not recognize a break or difference in service. In a Chapter 11 bankruptcy proceeding, a company may attempt to reorganize its operations in a "stand-alone" reorganization or sell some or most of its assets as a going concern.

A Chapter 11 filing does not guarantee that a company will obtain the new funding that is often necessary for a company to continue operating. Though this kind of bankruptcy filing is structured to prevent liquidation, liquidation can occur in a Chapter 11 proceeding if attempts to reorganize fail.

## **3. What are the rights a Company obtains when it files for Chapter 11?**

A company filing for Chapter 11 obtains the right to seek court authority to reject otherwise binding Contracts. Pursuant to the automatic stay, which becomes effective immediately upon a bankruptcy filing, there is a suspension of most creditors' debt collection efforts and most litigation.

Debts become what are called bankruptcy “claims,” which are usually dealt with in a plan of reorganization.

The purpose of the automatic stay is to ensure that virtually all cases that could be filed or has already been filed are dealt with in one place – the bankruptcy court.

#### **4. What are exceptions to the automatic stay?**

Exceptions to an automatic stay include certain “First Day Orders,” which, if appropriate motions are filed and approved, may authorize the company to pay various bankruptcy claims as they come due. These claims might include certain employee wages and benefits, as well as claims by key vendors, foreign creditors, and, in the case of transportation companies, ticket holders. While most litigation is stayed, grievance and arbitration proceedings under a labor Contract may go forward, although any monetary damages may be dealt with in the bankruptcy process.

#### **5. What happens in the Chapter 11 bankruptcy process?**

When a company files a petition for Chapter 11, the automatic stay takes effect and the company immediately comes under the supervision of the bankruptcy court. The debtor may ask the court for the authority to reject or assume Contracts.

The company ultimately negotiates a Plan of Reorganization (POR) with creditors and other involved parties in the bankruptcy. The POR is a legal document that provides how the company will pay creditors and how it will be governed following emergence from bankruptcy.

#### **6. How is the Plan of Reorganization (‘POR’) approved?**

The company’s management has the exclusive right to file a POR for the first 120 days after filing the petition, although the bankruptcy court may shorten or extend that “exclusive” time period. Before a POR may take effect, it must be approved by the bankruptcy court and gain the required positive vote of various classes of creditors. There are usually prolonged negotiations over the POR between the company and various groups involved in the bankruptcy, as the approval of the POR is usually towards the end of a bankruptcy proceeding.

#### **7. How is a company financed under Chapter 11?**

A company filing for Chapter 11, now called the debtor-in-possession (DIP) because the debtor is still in possession of the business, usually seeks new financing. This is called debtor-in-possession financing and is

used to pay for the operating needs of the company. As noted, the filing of a bankruptcy petition is not a guarantee that funding will be available.

## **8. What is the role of the bankruptcy judge?**

The judge oversees the process and must review the debtor's "non-ordinary course" decisions, which includes any requests for rejecting labor Contracts or selling substantial assets. The judge will defer to the debtor's business judgment on many decisions. Many bankruptcy judges strongly encourage parties to settle legal disputes.

## **9. Who else is involved in a Company's bankruptcy filing?**

The creditors have a formal role in a Chapter 11 bankruptcy. An official body called the Unsecured Creditors' Committee, usually consisting of the seven largest unsecured creditors, is appointed by the United States Trustee, a government official, to represent the interests of unsecured creditors. Unions who have substantial bankruptcy claims are entitled to appointment to such committees.

An "unsecured creditor" is an individual or business whose claim against the debtor is not protected or secured by any collateral. A "secured" creditor is an individual or business that has secured collateral from the bankrupt company (usually before the bankruptcy was filed) that protects the creditor in case the bankrupt company cannot pay the money it owes.

Each member of the Unsecured Creditors Committee receives one vote. This committee can hire professionals, often including lawyers and accountants or investment bankers, to monitor the company's actions. The debtor pays for this cost.

Any party can appear on any matter before the bankruptcy court, and the court tends to pay special attention to the views of the committee.

## **10. What can happen to our Contract since Aloha filed for Chapter 11?**

Under Section 1113 of the Bankruptcy Code, the debtor may ask the bankruptcy court for authority to reject labor Contracts, and it can thereby seek to modify any provision in a labor Contract, including scope.

The debtor must go through a negotiation and litigation process before it can obtain rejection of a labor Contract. First, a proposal must be provided to the relevant Union prior to the company's filing the motion to reject in court. Among the statutory requirements, the proposal must provide only for "necessary" modifications that are "necessary" to permit reorganization and assure "fair" and "equitable" treatment of all parties. The company must also provide the Union with such relevant information as is necessary to evaluate the proposal. Then, within 2-3 weeks of filing this motion, during which negotiations take place, a full-scale bankruptcy court hearing is held

where all interested parties can be heard. Negotiations often continue during the hearing. If no settlement is reached, the court's decision on rejection of Contracts will be made within 40-51 days of the filing of the motion unless the debtor agrees to extend this period.

If the rejection of a labor Contract is approved, it leads to the debtor's implementation of its last offer to the Union. The Union then has the right to strike.

Under Section 1113 (e) of the Bankruptcy Code, emergency short-term relief may be granted on an expedited basis without a full negotiating process if the court finds that the relief is "essential" to the continuation of business or to avoid "irreparable harm" to the bankruptcy estate.

### **11. What happens to our retirement health and life insurance benefits under Chapter 11 bankruptcy?**

Section 1114 covers Union and non-Union retiree health and life insurance benefits. The procedures are similar to Section 1113. Pension issues are reviewed in questions 13 through 17.

### **12. What happened to the Flight Attendant Contracts in the Continental Airlines and TWA bankruptcies?**

Continental Airlines filed for bankruptcy protection in 1983 and 1991. In the first bankruptcy, Continental eliminated the Collective Bargaining Agreement and replaced it with unilaterally created work rules. Wages were cut by 60%, and vacation, sick and other benefits also were drastically reduced. These actions were taken before Section 1113 was added to the bankruptcy code when there were no special procedures in place relating to a debtor's rejection of a labor Contract. A year after the second bankruptcy filing, the Flight Attendants were able to negotiate their first Collective Bargaining Agreement in nine years. That Contract, however, primarily incorporated most of the then existing work rules which management had imposed. Wages were increased but remained at 50% of what they were in 1983, before the first bankruptcy filing. Under that Agreement, the highest wage rate in the Contract's first year was \$14.00, vacation peaked at 21 days after 10 years and there were no trip or duty rigs.

Prior to its purchase by American Airlines, TWA had undergone three bankruptcies – in 1992, 1995 and 2001. At the time of the first bankruptcy, the Flight Attendants had not negotiated a Contract since their strike in 1986. In August 1992 the Flight Attendants reached an Agreement with management that deferred wage increases until 1995. However, by August 1994, it had become clear that because of the carrier's financial condition it would not be able to pay for the scheduled wage increases. Instead, Flight Attendants along with the other labor groups negotiated a second concessionary Contract that remained in place until 1999. One and half years later, in January 2001 TWA again sought bankruptcy protection. As part of the transaction with American, the Unions agreed that their Contracts

could be changed so as to mirror the equivalent provisions in the American labor Agreements. Also American demanded that the scope and successorship provisions in the TWA Collective Bargaining Agreements be eliminated.

**13. How are retiree medical benefits affected by a bankruptcy?**

A filing does not have an immediate impact on retiree medical benefits. They are not guaranteed by a governmental agency. However, they are part of the Flight Attendant Collective Bargaining Agreement. A Company may not modify benefits unless AFA agrees to such modification or unless the court specifically authorizes modification. Similar to the requirements that must be met to modify any Collective Bargaining Agreements, the bankruptcy code sets certain procedures to obtain permanent modifications to these benefits.

**14. Would we continue to get paid when the airline is in bankruptcy?**

Yes, things like wages, salaries, and sick leave are considered as normal administrative expenses while in bankruptcy. The bankruptcy laws assure that employees will continue to be paid for their services during the reorganization.

**15. Can someone make an offer for Aloha Airlines in bankruptcy?**

Yes. If Aloha Airlines decides to sell its assets, another airline or interested party can make an offer for Aloha as a whole or only for certain assets it deems valuable. The judge would have to approve any sale and, if there were more than one competing offer, would determine which competing bid to approve.

# Role of the Creditors' Committee

Source: Bankruptcy Creditors' Service, Inc.

Official creditors' committees, constituted under 11 U.S.C. Sec. 1102, ordinarily consist of the seven largest creditors who are willing to serve on a committee. In Kmart's chapter 11 case, the U.S. Trustee was persuaded to appoint two creditors' committees -- one to represent the interests of trade creditors and one to represent the interests of institutional creditors. In the National Steel and Comdisco reorganizations, one committee represents each of those debtors' unsecured creditor constituencies.

Official creditors' committees have the right to employ legal and accounting professionals and financial advisors, at the Debtors' expense. They may investigate the Debtors' business and financial affairs. Importantly, official committees serve as fiduciaries to the general population of creditors they represent. Those committees will also attempt to negotiate the terms of a consensual chapter 11 plan -- almost always subject to the terms of strict confidentiality agreements with the Debtors and other core parties-in-interest. If negotiations break down, the Committee may ask the Bankruptcy Court to replace management with an independent trustee. If the Committee concludes reorganization of the Debtors is impossible, the Committee will urge the Bankruptcy Court to convert the Chapter 11 cases to a liquidation proceeding.

Immediately following the U.S. Trustee's determinations about how many official committees will be appointed and who will be appointed to each committee, the newly formed committees convene their initial meeting. The first order of business is to listen to the U.S. Trustee explain the powers and duties of the committee as a whole and members' individual responsibilities. The Committee will generally elect a chairman.