

Detroit Free Press: Talking Is Good For Financially Troubled Companies

Auto news

Talking is good at Delphi, others

Bankruptcy decisions delayed for negotiations

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BY JASON ROBERSON and JUSTIN HYDE

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Profiles of bankruptcy judge

At Delphi Corp.'s bankruptcy hearing earlier this month, a group of 200 men and women congested in a courtroom the size of a small convenience store sat shoulder to shoulder on wooden pews and leaned against coat racks and windowsills, with their eyes fixed on bankruptcy Judge Robert Drain.

They scrutinized his facial expressions, trying to gauge whether Drain, at some point in the future, will give Delphi permission to cancel labor contracts with the UAW and impose severe cuts in wages and benefits. Such a ruling might lead to massive strikes that would ripple through the industry and possibly endanger General Motors Corp., the world's largest automaker.

Following the tense opening day of testimony that saw a shouting match nearly break out between attorneys for Delphi and the UAW, Drain urged the two sides to work out their differences outside of court. The unions and Delphi agreed to extend the hearings to this Wednesday and Friday. Drain isn't expected to rule on Delphi's request until late June at the earliest.

Judges presiding over bankruptcies involving Northwest Airlines Inc., its commuter carrier Mesaba Airlines and auto supplier Tower Automotive Inc. similarly have delayed ruling for one side or the other, opting for the companies and unions to work out their differences rather than risk setting off a chain reaction that cripples the automotive industry or parts of the airline industry.

Jim McTevia, a managing member of turnaround consulting firm McTevia & Associates LLC in Bingham Farms, said Drain knows a damaging strike is almost certain if Delphi has permission to cancel contracts.

"This judge, believe me, does not want to go down in history as the judge who adjudicated the termination of the Delphi union contract and brought down General Motors," McTevia said.

A system of threats

The bankruptcy process often uses threats to reach an agreement. In short, a company threatens to cancel union contracts and the unions threaten to strike if the company follows through. Both vocalize those threats to gain leverage at the bargaining table.

But judges often aim to calm the discussions so a solution can be found without either side going to the extremes threatened.

While the judge has the power to pick a winner, the very threat of that power can force the companies and unions to do it themselves, said Douglas Duchek, of Bloomfield Hills-based law firm Duchek Buckley.

"Typically a judge will use the deadline of his decision as a tipping point to get both sides back to the table," Duchek said.

Only twice in this decade has a bankruptcy judge tossed out a labor contract, according to BNA Inc., a Washington, D.C.-based publisher and research company: last year, when a judge voided labor contracts for approximately 9,000 employees of U.S. Airways, and in 2004, when Horizon Natural Resources Co., a coal producer in Ashland, Ky., was allowed to cancel contracts covering about 800 active workers and 2,300 retirees.

If recent bankruptcy cases serve as a model, Drain can be expected to delay ruling in hopes of avoiding a strike:

Mesaba Airlines: On Thursday, U.S. Bankruptcy Judge Gregory Kishel ordered Mesaba Airlines and its unions back to the bargaining table, denying the company's request to cancel union contracts for 1,400 pilots, flight attendants and mechanics. "Clearly the parties can -- and should -- continue efforts toward a consensual resolution," Kishel said in his 98-page ruling.

Tower Automotive Inc.: Last week, U.S. Bankruptcy Judge Allan Gropper for the second time delayed ruling on Tower's request to drop its worker contracts after the auto-parts maker and its unions agreed to continue settlement negotiations.

Northwest Airlines: Gropper twice delayed rulings in March on contracts for Northwest's pilots and flight attendants, giving the players two extra weeks to negotiate. That was enough time for both groups to reach tentative deals with the carrier.

Similar story playing out

With Delphi, Drain is facing a similar case to what Gropper faced with Northwest. Both cases mix knotty issues of bankruptcy law with the emotions of thousands of workers and retirees facing deep cuts in their personal incomes. The Northwest hearings that were scheduled for a few days stretched into a few weeks, as all sides tried to pump as much information as possible onto the record.

Gropper took pains to keep each side civil and often questioned whether the unions and the corporation could reach agreements if they spent as much energy in talks as they did in the courtroom.

And as long as they kept talking, he kept resetting deadlines, even as he raised the possibility of issuing his own solution at times.

The Delphi case appears ready to follow suit.

Drain has urged both sides to negotiate but also warned lawyers who were "trying my patience" with arguments on legal issues he had already rejected.

Samuel Gerdano, executive director for the American Bankruptcy Institute, said Drain may take his time making a decision. But it isn't because he is worried about the auto industry. He is there to look closely at all the facts and to ensure the company is restructured with equitable sacrifices made by all parties.

Said Gerdano: "Bankruptcy judges, by and large, don't decide cases based on their legacy."