

H.R. 3652, the “Protecting Employees and Retirees in Business Bankruptcies Act of 2007” Section-by-Section Explanation

Sec. 1. Short Title. Section 1 sets forth the short title of the bill as the “Protecting Employees and Retirees in Business Bankruptcies Act of 2007.”

Sec. 2. Findings. Section 2 sets forth various findings in support of this legislation.

Sec. 3. Increased Wage Priority. Bankruptcy Code section 507 accords priority in payment status for certain types of claims, i.e., these priority claims must be paid in full in the order of priority before general unsecured claims may be paid. Section 507(a)(4) accords a fourth level priority to unsecured claims for wages, salaries, or commissions (including vacation, severance, and sick leave) owed to an individual up to \$10,000¹ if earned within 180 days before the date of the filing of the bankruptcy petition or the date of the cessation of the debtor’s business, whichever occurs first.

Subsection (1) of section 3 amends section 507(a)(4) in two respects. It increases the amount of the priority to \$20,000. In addition, it eliminates the requirement that the claim be earned within 180 days before the date of the filing of the bankruptcy petition or the date of the cessation of the debtor’s business.

Bankruptcy Code section 507(a)(5) provides that unsecured claims for contributions to an employee benefit plan arising from services rendered within 180 days before the date of the filing of the bankruptcy petition or the date of the cessation of the debtor’s business (whichever occurs first) is entitled to priority up to \$10,000, less the aggregate amount paid to such employee pursuant to section 507(a)(4) and the aggregate amount paid by the estate on behalf of such employee to any other employee benefit plan.

Subsection (2) of section 3 amends Bankruptcy Code section 507(a)(5)(A) to eliminate the requirement that the claim be earned within 180 days before the date of the filing of the bankruptcy petition or the date of the cessation of the debtor’s business. Subsection (3) amends section 507(a)(5)(B) to increase the priority amount to \$20,000 and to eliminate the offset provisions.

Sec. 4. Priority for Stock Value Losses in Defined Contribution Plans. Subsection (a) of section 4 amends the Code’s definition of a claim to include a right or interest in equity securities of the debtor (or an affiliate of the debtor) held in a defined contribution plan (within the meaning of 29 U.S.C. § 1002(34)) for the benefit of an individual who is neither an insider of

¹Pursuant to 11 U.S.C. § 104, which automatically adjusts certain dollar amounts in the Bankruptcy Code, this amount will increase to \$10,950 as of April 1, 2007.

the debtor nor one of the ten most highly compensated employees of the debtor (if one or more are not insiders). The definition applies to securities attributable to employer contributions by the debtor (or an affiliate of the debtor), other than elective deferrals and any earnings thereon. It also includes elective deferrals and any earnings thereon.

Subsection (b) establishes a new priority for the loss of the value of equity securities of the debtor (or an affiliate of the debtor) that are held in a defined contribution plan (within the meaning of 29 U.S.C. § 1002(34)). The value is measured by the market value of the stock at the time of contribution to, or purchase by, the plan and the value as of the commencement of the bankruptcy case if the debtor committed fraud with respect to such plan or has otherwise breached a duty to the participant that has proximately caused the loss of value. The priority status applies without regard to when services resulting in the contribution of stock to the plan were rendered.

Sec. 5. Priority for Severance Pay. Bankruptcy Code section 503(b) establishes an administrative expense priority for certain types of unsecured claims. Among all types of unsecured claims, administrative expenses are accorded the highest payment priority, i.e., they must be paid in full before priority and general unsecured claims may be paid. The policy behind giving these claims such a high payment priority is that they typically encompass expenses necessarily incurred to preserve the bankruptcy estate, such as compensation of professionals retained by the debtor in the course of the bankruptcy case.

Section 5 adds a new category of administrative expenses for severance pay owed to the debtor's employees (other than an insider, senior management, or a consultant retained to provide services to the debtor) under a plan, program or policy generally applicable to the debtor's employees or owed pursuant to a collective bargaining agreement for termination or layoff on or after the date the bankruptcy case was filed. Such pay is deemed earned in full upon such termination or layoff. It does not apply to an individual contract of employment.

Sec. 6. Executive Compensation Upon Exit From Bankruptcy. Bankruptcy Code section 1129 sets out the criteria for confirmation of a Chapter 11 plan. Section 1129(a)(5), for example, requires the plan proponent to make certain disclosures regarding the debtor's officers and others, such as the identity of any insider and such insider's compensation.

Section 6 amends section 1129(a)(5) to require court approval of such compensation. The court may approve such compensation if it is: (1) reasonable when compared with persons holding comparable positions at comparable companies in the same industry; and (2) not disproportionate in light of economic concessions by the debtor's non-management workforce during the case.

Sec. 7. Limitations on Executive Compensation Enhancements. In essence, Bankruptcy Code Section 503(c)(1) prohibits a debtor from making any payment to an insider for the purpose of inducing such person to remain with the debtor's business, absent certain findings by the court.

Subsection (1) of section 7 amends section 503(c)(1) to prohibit the payment of performance or incentive compensation, a bonus of any kind, or other financial returns designed to replace or enhance incentive, stock, or other compensation in effect prior to the commencement of the case.

Section 503(c)(3) prohibits other transfers or obligations that are outside the ordinary course of business and not justified by the facts and circumstances of the case, including transfers made and obligations incurred for the benefit of the debtor's officers, managers or consultants hired postpetition.

Subsection (2) of section 7 replaces section 503(c)(3) with a provision that prohibits payments to or for the benefit of officers, managers, or consultants retained either before or after the debtor filed for bankruptcy relief, under certain circumstances. The payments may be made only after the court finds, based on evidence in the record (but without deference to the debtor's request for authorization to make such payments), that such payments are essential to the survival of the debtor's business or essential to the orderly liquidation of the debtor's business and maximization of the debtor's assets. The services for which compensation is sought must be essential in nature. In addition, the payments must be reasonable compared to persons holding comparable positions at comparable companies in the same industry and not disproportionate in light of economic concessions by the debtor's nonmanagement workforce during the case.

Sec. 8. Rejection of Collective Bargaining Agreements. Bankruptcy Code section 1113 sets forth the requirements by which a collective bargaining agreement may be rejected. Subsection (1) of section 8 amends section 1113 several respects. First, it amends section 1113(a) to clarify that a Chapter 11 debtor may reject a collective bargaining agreement only in accordance with section 1113.

Second, it amends Bankruptcy Code section 1113(b), which requires a Chapter 11 debtor must make a proposal modifying a collective bargaining agreement to the union's authorized representative before the debtor may apply to reject such agreement. The provision specifies various requirements for such proposal.

As amended, section 1113(b)(1) requires the debtor to file a motion to seek rejection of a collective bargaining agreement. The motion, however, may not be filed until the debtor has first met with the authorized representative at reasonable times and for a reasonable period in light of the complexity of the case for the purpose of conferring in good faith in an attempt to reach a mutually acceptable modification of such agreement. The proposal must: (1) be designed to achieve a total aggregate financial contribution for the affected labor group for a period of up to two years after the effective date of the plan; (2) be no more than the minimal savings necessary to permit the debtor to exit bankruptcy such that the confirmation is not likely to be followed by the debtor's liquidation; and (3) not overly burden the affected labor group in either the amount of savings sought from each group or the nature of the modifications, when compared to other constituent groups expected to maintain ongoing relationships with the debtor,

including management personnel. In addition, the proposal must be based on the most complete and reliable information available. Information that is relevant for the negotiations must be provided to the authorized representative.

Subsection (1) also amends section 1113(c), which specifies the requirements pursuant to which a court may approve the rejection of a collective bargaining agreement. As amended, section 1113(c) provides that a debtor may file a motion seeking to reject a collective bargaining agreement if, after a period of negotiations, the debtor and the authorized representative have not reached agreement over mutually satisfactory modifications and the parties are at an impasse. The provision further provides that a court may grant such motion only if the court finds that: (1) the debtor complied with the requirements of section 1113(b) (pertaining to the proposal for modification of the agreement); (2) the debtor has conferred in good faith with the authorized representative regarding such proposal and the parties were at an impasse; (3) the court has considered alternative proposals by the authorized representative and has determined that such proposals do not meet the requirements of section 1113(b)(1)(A) and (B); and (4) further negotiations are not likely to produce a mutually satisfactory agreement. In addition, the court must have considered: (1) the effect of the proposed financial relief on the affected labor group; (2) the debtor's ability to retain an experienced and qualified workforce; and (3) the effect of a strike in the event that the collective bargaining agreement is rejected.

As amended, section 1113(c) further requires the court to presume that the debtor failed to satisfy section 1113(b)(1)(C) (whether the proposed modifications would overly burden the affected labor group) if the debtor implemented a program of incentive pay, bonuses, or financial returns for insiders or the debtor's senior management during the pendency of the case or within 180 days before the filing of the case.

Subsection (2) amends Bankruptcy Code section 1113(d), which sets out the procedural requirements for a motion to reject a collective bargaining agreement. As amended, section 1113(d)(1) requires the court to schedule a hearing on such motion on not less than 21 days notice, unless the parties agree to a shorter period. The provision also specifies that only the debtor and the authorized representative to appear and be heard at the hearing. Subsection (2) also deletes section 1113(d)(2), which requires the court to rule on such motion within 30 days.

Subsection (3) amends section 1113(f) to add a provision specifying that any payment required to be made under section 1113 before the date on which a confirmed plan becomes effective has the status of an allowed administrative expense pursuant to Bankruptcy Code section 503.

Subsection (4) adds six provisions to Bankruptcy Code section 1113. New section 1113(g) provides that the rejection of a collective bargaining agreement constitutes a breach of such agreement and has the same effect as rejection of an executory contract pursuant to Bankruptcy Code section 365(g). It further provides that no claim for rejection damages may be limited by section 502(b)(7). It authorizes economic self help by an authorized representative if the court grants a motion rejecting a collective bargaining agreement or the court authorizes

interim changes pursuant to section 1113(e). It further provides that no provision of the Bankruptcy Code or of any Federal or State law may be construed to the contrary.

New section 1113(h) provides that an authorized representative, at any time after the court enters an order authorizing rejection or where an agreement providing mutually satisfactory modifications has been entered into between the debtor and the authorized representative, may apply to the court for an order increasing wages or benefits or providing relief from working conditions, based on changed circumstances. The court must grant such request as long as the increase or other relief is consistent with standard set forth in section 1113(b)(1)(B), pertaining to the minimal savings necessary to permit the debtor to exit bankruptcy.

New section 1113(i) provides that if a court, upon request by the authorized representative, finds that the prospects for reaching a mutually satisfactory agreement would be aided by granting the request, the court may direct that a dispute under section 1113(c) be heard by a neutral panel of experienced labor arbitrators in lieu of a court proceeding under section 1113(d). The panel's decision has the same effect as a decision by the court. The court's order directing the appointment of a neutral panel is not subject to appeal.

New section 1113(j) provides that upon request of an authorized representative, the debtor must pay the reasonable fees and costs incurred by such representative under section 1113 after notice and a hearing.

New section 1113(k) provides that if the plan confirmed under section 1129 provides for liquidation of the debtor (whether by sale or cessation of all or part of the debtor's business), the debtor and the authorized representative must confer regarding the effect of such liquidation on the affected labor group in accordance with applicable nonbankruptcy law. The plan must provide for the payment of all accrued obligations not assumed as part of a sale transaction and for such other terms as may be agreed upon to ensure an orderly transfer of assets or cessation of the business. Such payments are deemed to be allowed administrative expenses pursuant to section 503.

New section 1113(l) provides that a collective bargaining agreement that is assumed must be assumed in accordance with section 365.

Sec. 9. Payment of Insurance Benefits to Retired Employees. Bankruptcy Code section 1114 sets out criteria pursuant to which a debtor may modify retiree benefits, among other matters. Retiree benefits include payments to retired employees, their spouses, and dependents for medical, surgical, and hospital care benefits. It also includes benefits in the event of sickness, accident, disability, or death.

Subsection (1) amends section 1114(a), which defines "retiree benefits," to specify that the term applies whether or not the debtor asserts a right to unilaterally modify such benefits under the plan, fund or program.

Subsection (2) amends Bankruptcy Code section 1114(c)(1), which states that labor organization shall be the authorized representative of retiree beneficiaries, under certain conditions. The amendment adds a provision specifying that where a labor organization elects to serve as the authorized representative, the debtor must pay the representative's reasonable fees and costs incurred under section 1114, after notice and a hearing.

Subsection (3) replaces Bankruptcy Code section 1114(f), which requires a debtor to make a proposal to the authorized representative before seeking modification of retiree benefits. As amended, section 1114(f)(1) specifies that where a debtor seeks to modify retiree benefits, the motion for such relief may not be filed unless the debtor has first met with the authorized representative (at reasonable times and for a reasonable period in light of the case's complexity) to confer in good faith in attempting to reach mutually satisfactory modifications. Such proposal must be limited to modifications that: (1) are designed to achieve a total aggregate financial contribution for the affected retiree group for a period not to exceed two years after the effective date of the plan; (2) shall be no more than the minimal savings necessary to permit the debtor to exit bankruptcy such that confirmation of the plan is not likely to be followed by the debtor's liquidation (or the liquidation of any successor of the debtor); and (3) does not overly burden the affected retirees, either in the amount of the savings sought or the nature of the modifications, when compared to other constituent groups expected to maintain ongoing relationships with the debtor, including management personnel. Such proposal must be based on the most complete and reliable information available. Information that is relevant and necessary for the evaluation of the proposal must be provided to the authorized representative.

Subsection (4) replaces Bankruptcy Code section 1114(g), which sets out the criteria pursuant to which a court may modify retiree benefits. As amended, section 1114(g) provides that if, after a period of negotiations, the debtor and the authorized representative have not reached agreement over mutually satisfactory modifications and the parties are at an impasse, then the debtor may apply to the court to modify retiree benefits after notice and a hearing held pursuant to section 1114(k). The court grant such motion only if: (1) the debtor has, prior to the hearing, complied with section 1114(f); (2) conferred in good faith with the authorized representative regarding such proposed modifications; (3) the parties are at an impasse; (4) the court has considered alternative proposals by the authorized representative and has determined that such proposals do not meet the requirements of section 1114(f)(1)(A) and (B) (concerning the aggregate financial contribution for the affected group and minimal savings necessary to permit the debtor to exit bankruptcy); and (5) further negotiations are not likely to produce a mutually satisfactory agreement. In addition, the court must consider: (1) the effect of the proposed modifications on the affected retirees; and (2) the effect of a strike in the event of a modification of retiree benefits, where the representative is a labor organization.

Subsection (5) amends Bankruptcy Code section 1114(k)(1) in two respects. First, it provides that a court may not schedule a hearing on an application to modify retiree benefits not later than 21 days after such application is filed. Second, it revises section 1114(k)(1) to permit only the debtor and the authorized representative to appear and be heard at such hearing.

Subsection 5 also strikes paragraph two of section 1114(k)(1), which sets forth a deadline by which the court must render a decision on such application.

Subsection (6) adds a new subsection to Bankruptcy Code section 1114 requiring the court, in determining whether the proposed modifications comply with section 1114(f)(1)(A), to take into account the ongoing impact on the debtor of the debtor's relationship with all subsidiaries and affiliates, regardless of whether such subsidiary or affiliate is domestic or nondomestic or a debtor entity. It also provides that no plan, fund, program or contract to provide retiree benefits for insiders or senior management may be assumed by the debtor if the debtor has obtained relief: (1) under section 1114(g) or (h) for reductions in retiree benefits; or (2) under section 1113(c) or (e) for reductions in the health benefits of active employees after the case was commenced or reduced or eliminated active or retiree benefits within 180 days before the case was commenced.

Sec. 10. Protection of Employee Benefits in a Sale of Assets. Subsection (1) amends Bankruptcy Code section 363(b), which authorizes a debtor to sell or use property of the estate other than in the ordinary course of business (under certain circumstances), to add a new requirement. As amended, the court must consider the extent to which a bidder has: (1) offered to maintain existing jobs; (2) preserved retiree health benefits; and (3) assumed the obligations of any defined benefit pension plan in determining whether an offer constitutes the highest or best offer for such property.

Subsection (2) adds a new subsection to section 363. New subsection (q) provides that, if as a result of a sale approved under section 363, retiree health benefits are modified or eliminated pursuant to section 1114(e)(1) or (h), or otherwise, then a charge of \$20,000 per retiree must be made against the sale proceeds or be paid by the buyer as part of the sales price, unless otherwise provided pursuant to an agreement with the retirees' authorized representative. The purpose of this charge is to either: (1) provide funding for 12 months of health coverage following the termination or modification of such coverage through a plan, fund, or program made available by the buyer, debtor or third party; or (2) provide the means by which affected retirees may obtain replacement coverage on their own. The selection of either option must be on the authorized representative's consent pursuant to section 1114(b). Any claim for modification or elimination of retiree health benefits pursuant to section 1114(I) must be offset by the amount paid under section 363(q).

Sec. 11. Union Proof of Claim. Section 11 amends Bankruptcy Code section 501(a) to permit a labor union, in addition to a creditor or indenture trustee, to file a proof of claim.

Sec. 12. Claim for Loss of Pension Benefits. Section 12 adds a new subsection to Bankruptcy Code section 502, which pertains to the allowance of claims and interests. New subsection (l) requires the court to allow a claim by an active or retired participant in a defined benefit pension plan terminated under section 4041 or 4042 of the Employee Retirement Income Security Act of 1974 (ERISA) for any shortfall in pension benefits accrued as of the effective date of the pension plan's termination as a result of such termination and limitations upon the

payment of benefits imposed pursuant to section 4042 of such Act, notwithstanding any claim asserted and collected by the Pension Benefit Guaranty Corporation with respect to such termination.

Sec. 13. Payments by Secured Lender. Bankruptcy Code section 506(c) authorizes the debtor to recover from property securing an allowed secured claim the reasonable and necessary expenses incurred to preserve or dispose of such property to the extent the secured creditor benefits from such expenditures. Section 13 amends section 506(c) to add a new provision. As amended, section 506(c) deems unpaid wages, accrued vacation, severance or other benefits owed pursuant to a collective bargaining agreement for services rendered on and after commencement of the case to be necessary costs and expenses of preserving or disposing of property securing an allowed secured claim. Such monies must be recovered even if the trustee has otherwise waived the provisions of section 506(c) pursuant to an agreement with the holder of the allowed secured claim or successor or predecessor in interest.

Sec. 14. Preservation of Jobs and Benefits. Subsection (1) of section 14 adds a statement of purpose to Bankruptcy Code with respect to Chapter 11 cases. It specifies that that a Chapter 11 debtor shall have as its purpose the reorganization of its business and to, the greatest extent possible, maintain or enhance the productive use of its assets to preserve jobs.

Subsection (2) amends Bankruptcy Code section 1129(a), which sets out the criteria for confirming a plan, to add a new requirement. New section 1129(a)(17) requires the debtor to demonstrate that every reasonable effort has been made to maintain existing jobs and mitigate losses to employees and retirees.

Section 1129(c) deals with competing Chapter 11 plans. Subsection (3) amends section 1129(c), which requires the court to consider the preferences of creditors and equity security holders in determining which plan to confirm. Section 1129(c), as amended, instead requires the court to consider: (1) the extent to which each plan would maintain existing jobs, preserve retiree health benefits, and maintain existing defined benefit pension plans; and (2) the preferences of creditors and equity security holders. It mandates that the court must confirm the plan that better serves the interests of employees and retirees.

Sec. 15. Assumption of Executive Retirement Plans. Section 15 amends Bankruptcy Code section 365, which sets forth the criteria pursuant to which executory contracts and unexpired leases may be assumed and rejected. Subsection (1) amends section 365(a) to include a reference to new subsection (q). New subsection (q) provides that no deferred compensation arrangement for the benefit of a debtor's insiders or senior management may be assumed if a defined benefit pension plan for the debtor's employees has been terminated pursuant to section 4041 or 4042 of ERISA on or after the commencement of the case or within 180 days prior to the commencement of the case.

Sec. 16. Recovery of Executive Compensation. Section 16 adds a new provision to the Bankruptcy Code. New section 563(a) provides that if a debtor reduces its contractual

obligations under a collective bargaining agreement pursuant to section 1113(c) or (e), or retiree benefits pursuant to section 1114(g) or (h), then the court, as part of the order granting such relief, must make certain determinations. The court must determine the percentage of diminution in the value of the obligations as a result of such relief. In making this determination, the court must include any reduction in benefits as a result of the termination pursuant to section 4041 or 4042 of ERISA of a defined benefit plan administered by the debtor, or for which the debtor is a contributing employer, effective at any time within 180 days prior to the commencement of the case. The court may not take into consideration pension benefits paid or payable under title IV of ERISA as a result of such termination.

Where a defined benefit pension plan administered by the debtor, or for which the debtor is a contributing employer, is terminated pursuant to section 4041 or 4042 of ERISA, effective at any time within 180 days prior to the commencement of the case, and the debtor has not obtained relief under section 1113(c) or (e), or section 1114(g) or (h), new section 563(b) requires the court, on motion of a party in interest, to determine the percentage in diminution in the value of benefit obligations when compared to the total benefit liabilities prior to such termination. The court may not take into account pension benefits paid or payable pursuant to title IV of ERISA as a result of such termination.

After such percentage diminution in value is determined, new section 563(c) provides that the estate has a claim for the return of the same percentage of the compensation paid, directly or indirectly (including any transfer to a self-settled trust or similar device, or to a nonqualified deferred compensation plan under section 409A(d)(1) of the Internal Revenue Code of 1986) to certain individuals. These individuals include: (1) any officer of the debtor serving as a member of the debtor's board of directors within the year before the filing of the case; and (2) any individual serving as chairman or as lead director of the board of directors at the time when relief under section 1113 or section 1114 is granted, or if no such relief has been granted, then the termination of the defined benefit plan.

New section 563(d) provides that a trustee or committee appointed pursuant to section 1102 may commence an action to recover such claims. If neither commences such action by the date of the hearing on confirmation under section 1129, any party in interest may apply to the court for authority to recover such claims for the benefit of the estate. The costs of recovery must be borne by the estate.

New section 563(e) prohibits the court from awarding postpetition compensation under section 503(c) or otherwise to any person subject to the provisions of section 563(c) if there is a reasonable likelihood that such compensation is intended to reimburse or replace compensation recovered by the estate pursuant to section 563.

Sec. 17. Exception from Automatic Stay. Section 17 amends Bankruptcy Code section 362(b) to create an additional exception to the automatic stay with respect to the commencement or continuation of a grievance, arbitration or similar dispute resolution proceeding established by

a collective bargaining agreement that was or could have been commenced against the debtor before the filing of the bankruptcy case. The exception also applies to the payment or enforcement of awards or settlements of such proceeding.

Sec. 18. Preferential Compensation Transfer. Bankruptcy Code section 547 authorizes preferential transfers to be avoided. Section 18 adds a new subsection to section 547. New section 547(j) permit the avoidance of a transfer to or for the benefit of an insider (including an obligation incurred for the benefit of an insider under an employment contract) made in anticipation of bankruptcy. The provision also permits the avoidance of a transfer made in anticipation of a bankruptcy to a consultant who is formerly an insider and who is retained to provide services to an entity that becomes a debtor, including an obligation under a contract to provide services to such entity or to a debtor made or incurred within one year before the filing of the petition. In addition, section 547(j) provides that no provision of section 547(c) (specifying certain exceptions to section 547) may be utilized as a defense. Further, section 547(j) permits the trustee or a committee to commence such transfer. If neither do so by the date of the confirmation hearing pursuant to section 1129, the provision authorizes any party in interest to apply to the court for authority to recover the claims for the benefit of the estate. The costs of recovery are to be borne by the estate.

Sec. 19. Financial Returns for Employees and Retirees. Bankruptcy Code section 1129(a) specifies various criteria that must be satisfied before a chapter 11 plan of reorganization may be confirmed. Section 19 amends section 1129(a) to add a further requirement. In a case where the debtor initiated proceedings under Bankruptcy Code section 1113, the plan must provide for the recovery of rejection damages if the debtor obtained relief under either subsection (c) or (e) of section 1113 prior to confirmation or for other financial returns as negotiated by the debtor and the authorized representative to the extent such returns are paid under, rather than outside of a plan.

Section 19 also replaces Bankruptcy Code section 1129(a)(13), which pertains to the payment of retiree benefits under section 1114. As revised, section 1129(a)(13) requires that a plan provide, with respect to retiree benefits, for the continuation after the plan's effective date of payment of all retiree benefits at the level established under either section 1114(e)(1)(B) or (g) at any time prior to confirmation of the plan, for the duration of the period for which the debtor has obligated itself to provide such benefits. If no modifications are made prior to confirmation of the plan, the plan must provide for the continuation of all retiree benefits maintained or established in whole or in part by the debtor prior to the petition filing date.

Section 19 further amends section 1129(a)(13) to require that the plan, with respect to retiree benefits, provides for allowed claims for modification of such benefits or for other financial returns, as negotiated by the debtor and the authorized representative, to the extent such returns are paid under, rather than outside of, a plan.