GS&C/OLS Form 2 (Rev. 10/86)

CONGRESSIONAL RECORD
PROCEEDINGS AND DEBATES OF THE 100TH CONGRESS

. HOUSE

BILL	DATE	PAGE(S)
H.R. 4657	May 23,1988	H3491-92

ACTION:

INTRODUCED BY MR. EDWARDS

Mr. FEIGHAN. Mr. Speaker, I would like to voice my strong support for H.R. 2969, the Retiree Benefits Protection Act of 1987. Under current law, retirees of bankrupt corporations often find their legitimate expectations of long-term health and life insurance coverage shattered—by the very company for whom they worked all their lives. Those who build a company deserve better. They have earned the right to be treated fairly and compassionately. I commend Chairman RODINO for his vigorous support of this important legislation, which would clarify the Bankruptcy Cope to end the current unfairness.

As I understand it, this revised bill is identical to the bill which passed the House last fall, with one exception: a provision has been added clarifying the status of the so-called pipeline claims in pending cases. With respect to pending bankruptcies, the legislation would protect LTVB retirees against the financial anguish of having to pay these claims. It would require LTV to pay the pending claims if Blue Cross of Ohio has the right to send these claims back to the hospitals involved in the event of nonpayment by LTV. Moreover, I understand that if these claims are returned to the hospitals—which I do not expect to occur—the hospitals would be paid directly by LTV, this avoiding the imposition of these claims on the retirees involved.

Mr. Speaker, H.R. 2969 will go a long way toward helping retirees enforce their rights. I urge my colleagues to support this bill so that the human tragedy of losing retiree benefits will not be visited on other retirees.

□ 1330

Mr. EDWARDS of California. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. FISH. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California [Mr. EDWARDS] that the House suspend the rules and concur in the House amendment to the Senate amendment to the bill, H.R. 2969.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the House amendment to the Senate amendment was concurred in.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. EDWARDS of California. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the House amendment to the Senate amendment to H.R. 2969, just concurred in.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

INTELLECTUAL PROPERTY AND BANKRUPTCY BILL

(Mr. EDWARDS of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. EDWARDS of California. Mr. Speaker, I am introducing a bill to amend title II of the United States Code with respect to the rejection of executory contracts licensing rights to intellectual property. This bill is designed to remove the threat that is posed to our Nation's technological development under current bankruptcy law.

Companies in all industries license intellectual property from each other. Such a licensing system is a central business practice permitting and facilitating a constant flow of technology from entrepreneurs to corporations, among corporations, and between universities and corporations.

For example, a personal computer may be designed around hundreds of parts, rights to which are obtained through licensing arrangements; a local bank may license many different software programs to run a daily computer operation; a drug company may have several process patents it has licensed to manufacture a single drug.

Licensing arrangements have proven to be a most efficient and effective way to develop and commercialize new technology-based products, as well as new technologies. As a principal means of technology transfer, it is crucial that intellectual property licensing remain a safe and predictable business practice.

But, recent court decisions have put this practice in jeopardy by holding that intellectual property distribution licenses can be executory contracts, rejectable by a trustee in bankruptcy. Such rejection extinguishes the licensee's rights to the licensor's intellectual property.

The insurmountable difficulty created by this is that intellectual property is available from only one source—the company that owns it. The licensee of intellectual property generally does not have alternative sources from which to obtain it. Thus, upon rejection of the license, businesses that have been built around rights to irreplaceable intellectual property no longer have access to it.

The continued validity of an intellectual property license in a bankruptcy situation has become a critical factor in deciding whether and how to proceed in a business transaction. Because of the court decisions, outright purchase has become the only certain option available to those who need to acquire technology. This, of course, is an option very disadvantageous, not only to both the purchaser and the seller, but to society as a whole.

Developers of technology understandably are reluctant to give up their inventions and lose control over future product development. At the same time, outright purchase often is too expensive for the vast amount of technology necessary for today's products. Further, purchase arrangements have a chilling effect on the free flow of technology in the marketplace. In terms of international competitiveness, the free flow of technology is critical if we are to compete effectively. The system of licensing arrangements is essential to achieve this.

Companies spend a great deal of money and resources to develop products based upon the intellectual property obtained through such licensing arrangements. They must be assured that they will be able to retain their essential rights under these licenses.

Today, I am introducing an amendment to the bankruptcy law which will restore that certainty to the marketplace, striking a balance between the bankrupt licensor's needs and those of the licensee.

Obviously, the licensee needs to retain rights to the intellectual property it licensed. Thus, under this bill, the bankrupt licensor will no longer the able to deny licensees those rights. At the same time, the bankrupt debtor's ability to reorganize may depend upon the continued payment of royalties called for under the licensing contract, free of offset or administration claims which could defeat the right to those payments, The bill accomplishes this as well.

I believe the balance struck in the bill is a fair one, and I urge our colleagues to join me in supporting it.

The text of the bill follows:

H.R. 4567

A bill to amend title 11 of the United States Code with respect to the rejection of executory contracts licensing rights to intellectual property

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AMENDMENTS TO TITLE 11 OF THE UNITED STATES CODE.

(a) DEFINITION.—Section 101 of title 11, United States Code, is amended—

(1) in paragraph (51) by striking the period at the end and inserting a semicolon, and

(2) by adding at the end and inserting a semicolon, and

(3) by adding at the end the following:

"(52) 'intellectual property' means—

"(A) trade secret;

"(B) invention, process, design, or plant variety;

"(C) work of authorship; or

"(D) mask work subject to protection under chapter 9 of title 17;

to the extent protected by applicable nonbankruptcy law; and

"(53) 'mask work' has the meaning given it in section 901(a)(2) of title 17."

(b) EXECUTORY CONTRACTS LICENSING RIGHTS TO INTELLECTUAL PROPERTY.—Section 365 of title 11, United States Code, is amended by adding at the end the following:

"(n)(1) If the trustee rejects an executory contract under which the debtor is a licensor of a right to intellectual property, the licensee under such contract may elect—

"(A) to treat such contract as terminated by such rejection if such rejection by the trustee amounts to such a breach as would entitle the licensee to treat such contract as terminated by virtue of its own terms, applicable nonbankruptcy law, or an agreement made by the licensee with another entity; or

"(B) to retain its rights (other than a right under applicable nonbankruptcy law to specific performance of such contract) under such contract, and any agreement supplementary to such contract, to such intellectual property (including any embodiment of such intellectual property to the extent protected by applicable nonbankruptcy law), as such rights existed immediately before the case commenced, for—

"(i) the duration of such contract; and

"(ii) any period for which such contract may be extended by the licensee as of right under applicable nonbankruptcy law.

"(2) if the licensee elects to retain its rights, as described in paragraph (1)(B) of this subsection, under such contract—

"(A) the trustee shall allow the licensee to exercise such rights;

"(B) the licensee shall make all payments due under such contract for the duration of such contract and for any period described in paragraph (1)(B) of this subsection for which the licensee extends such contract; and

"(C) the licensee shall be deemed to waive—

"(i) any right of setoff it may have with respect to such contract under this title or applicable nonbankruptcy law; and

"(ii) any claim allowable under section 503(b) of this title arising from the performance of such contract.

"(3) If the licensee elects to retain its rights, as described in paragraph (1)(B) of this subsection, then on the written request of the licensee the trustee shall—

"(A) to the extend provided in such contract, or any agreement supplementary to such contract, or any agreement supplementary to such contract, provide to the licensee any intellectual property (including such embodiment) held by the trustee; and

"(B) not interfere with the rights of the licensee as provided in such contract, or any agreement supplementary to such contract, to such intellectual property (including such embodiment), including any right to obtain such intellectual property (or such embodiment) from another entity.

"(4) Unless and until the trustee rejects such contract, on the written request of the licensee the trustee shall—

"(A) to the extent provided in such contract or any agreement supplementary to such contract—

"(i) perform such contract; or

"(ii) provide to the licensee such intellectual property (including any embodiment of such intellectual properity to the extent protected by applicable nonbankruptcy law) held by the trustee; and

"(B) not interfere with the rights of the licensee as provided in such contract, or any agreement supplementary to such contract, to such intellectual property (including such embodiment), including any right to obtain such intellectual property (or such embodiment) from a third entity.".

SEC. 2. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect on the date of the enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—The amendments made by this Act shall not apply with respect to any case commenced under title 11 of the United States Code before the date of the enactment of this Act.

NORTH RIVER COMMISSION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois [Mr. ANNUNZIO] is recognized for 5 minutes

Mr. ANNUNZIO. Mr. Speaker, I rise to call to the attention of my colleagues the 27th anniversary of a hard working organization in Chicago, the North River Commission, which has served our community with true commitment and dedication for 27 years.

The great success of the commission is due largely to the efforts of those faithful people who worked steadily to accomplish its goals. Last week new officers were installed for the North River Commission and the new slate is headed by Zenos Hawkinson. Not only is Zenos a resident of the 11th Congressional District of Illinois, which I am privileged to represent, but the commission itself maintains its office in my 11th District.

I want to take this opportunity to congratulate Zenos as he assumes the challenge and responsibility of leading the North River Commission and to wish him and the other newly-elected officers of the North River Commission every success as they strive to formulate innovative solutions to the problems which confront our community.

An excerpt from Zenos Hawkinson's statement of purpose, as well as a list of the newly elected officers from our area, follow:

STATEMENT OF PURPOSE

* * * Our passion has always been inclusive: to attrack the widest possible popular participation to the work of the Commission, to discover as accurately as possible what the people and the institutions of our community think and what they want done, to hammer out of these sometimes divergent views a policy which best represents the interests of the entire community, and then to represent this policy effectively in every appropriate public forum.

The Commission has never involved itself or its people in partisan political campaigns, nor will it offer itself as a power base for those who have ambitions to hold public office. Our desire is to work amicably with official government at every level in the service of the public interest. But make no mistake: we are opposed to privilege in all its forms, on the good democratic grounds that the law must be available to all persons on fair and equal terms. President Woodrow Wilson complained in 1913 that every special interest had its advocate, but that no one spoke for the public as a whole. We intend to continue to speak for this community as a whole, as fairly and as effectively as we can. * * *

NORTH RIVER COMMISSION CONGRESS, MAY 11, 1988

President: Zenos Hawkinson, Co-chair of Albany Park Planning Committee.

First Vice Pres.: Dale Bolling, Past President of North Mayfair Improvement Association.

V.P. Comm. Org.: Mary Marubio, President of Hollywood North Park Improvement Association.

V.P. Econ. Devel.: Scott Berman, President of LADCOR.

V.P. Admin.: Bill Fredrickson, Chairman of Development Committee.

Secretary: Leeann Ripes, Past President of North Park Village Apartment Resident Org.

Vice Sec.: Wendy Jo Harmston, President of Old Irving Park Association.

Finance Sec.: Earl Weinstein, Board Member of North River Housing Development Corp.

Treasurer: Andy Jones, Board Member, Albany Manor Improvement Association.

Asst. Treas.: Terry Schuster, President of Peterson Park Improvement Association.

VICE PRESIDENTS

Frank Albanese, Director of Albany Park Community Center.

Allan Anderson, V.P. Covenant Benevolent Association.

Otto Barone, Member, LADCOR.

Michael Choi, Member, LADCOR.

Geoffrey Cooper Stanton, V.P. Albany Bank & Trust.

Robert Dwyer, Dist. Supt. Commonwealth Edison.

Robert Eversull, Pastor, Mayfair Presbyterian Church.

Bud Helmer, Manager, Senate Apartments.

John Henderson, Member, North River Housing Development.

Barbara Iverson, President, North Mayfair Improvement Assoc.

Jay Kim, V.P. LADCOR.

John Lamotte, Co-chair Albany Park Planning Committee.

Jack Litzenberger, Member, Albany Park Chamber of Commerce.

Juan Muniz, President, Albany Park Chamber of Commerce.

Sylvester Quartana, Past Pres., North Mayfair Improvement Assoc.

Sheila Rotman, Member, North Park Village Advisory Council.

James White, President of Sauganash Park Improvement Assoc.

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Maryland [Mrs. BENTLEY] is recognized for 60 minutes.

[Mrs. BENTLEY addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Iowa [Mr. LEACH] is recognized for 60 minutes.

[Mr. LEACH of Iowa addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Member (at the request of Mr. RAHALL) to revise and extend his remarks and include extraneous material:)

Mr. ANNUNZIO, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. COMBEST) and to include extraneous matter:)

Miss SCHNEIDER.

Mr. RITTER.

Mr. GUNDERSON.

Mr. SCHUETTE.

(The following Members at the request of Mr. RAHALL) and to include extraneous matter:)