present often novel legal theories—theories that influence these judges, of various degrees of competence, to make these rulings. And that has been increasingly shifting, so that as long as management comes before a judge and says, "Look, we don't have any money"—even though, as I've described, they actually do have money—"We can't afford to pay these costs and successfully reorganize." In almost every case now, the judge says, "Okay, that's fine."The case of Bethlehem Steel is, again, the template of how the airline industry is moving, and is probably what will happen with Delphi, if it's not stopped. Steve Miller found Wilbur Ross, and Wilbur Ross gave him a low offer intentionally. It was hinged on the fact that Wilbur Ross, who had incorporated a new company called International Steel Group (ISG)—that ISG would not buy Bethlehem Steel until Bethlehem Steel went to the judge and said that they didn't have the money to pay employee health-care benefits.

EIR: So, again, in what you just described at Bethlehem, we're confronting a situation where it appears that the originator of the debtor-in-possession financing exercised predominant clout over the whole process of how it went through bankruptcy, very much like what we used to call "leveraged buyouts," in which you had external funds which had a plan, and imposed their plan on a big company through the markets. But in these cases, you're saying now they're imposing this plan from the outside through the bankruptcy court.

Was debtor-in-possession financing, with this degree of clout, was that an innovation of the 1978 "reform"?

Reutter: It opened up the possibility. But a lot of it has to do less with the law itself, than with how it has been interpreted and expanded by judges; and how Wall Street and Wilbur Ross types seized upon this opportunity to profit. Here's what they thought: "We have the steel, auto-parts, airline industries, that are 'troubled,' but have a huge cash flow. And here's a way for us, through the bankruptcy courts, to shed all these employee costs [they're really not costs, of course, they're IOUs]. In the case of the steel industry alone, about 150,000 retirees have lost their promised benefits since 2002.

EIR: We have discussed the case, in Ottawa, of the big Canadian steel company Stelco, in which the bankruptcy judge—who I think is the chief bankruptcy judge of the province of Ontario—has said to that company in bankruptcy, and to its creditors, "You will not shed these pension costs. You will pay these pension costs, or I won't let you out of bankruptcy." Do you know of any major cases in the United States, in which a bankruptcy court has acted that way?

Reutter: No. Once an employer goes into bankruptcy, in the United States, they can tear up their contracts with employees.

Canada Bankruptcy Court Preserves Pensions

A bankruptcy court decision in Ottawa Oct. 6, on the plan of the privatized national steel company, Stelco, to emerge from 20 months' bankruptcy, occurred in the midst of a bitter fight between Wall St./hedge fund demands, and Canada's and Ontario's legislative intent to protect production and labor costs. The court's decision, still being bitterly opposed by a big Stelco bondholders' group, is in contrast to the American bankruptcy courts' increasingly prompt and cheerful "OK" to companies wanting to eliminate their employees' union contracts and retiree benefits overnight. The American practice is becoming what Lyndon LaRouche on Oct. 5 called a potentially criminal conspiracy to use the bankruptcy law to ruin workers' living standards, while lining the pockets of executive-shareholders.

On Oct. 6, Ontario bankruptcy court judge James Farley ordered Stelco—in order to be protected for two more months, and then emerge from bankruptcy—to accept $100 million in aid from Ontario province, and a $450 million financing deal with Tricap Management (part of Brascan Corp.). Together, the package funds—and the judge enforces—an immediate $400 million pension-plan contribution by Stelco.

The company, using a loophole in Ontario law, had not made any contributions to its pension funds since 1995, creating a $1.3 billion pension deficit, and thus causing its own bankruptcy. The Ontario provincial government closed the anti-pension loophole this year, specifically with an eye to Stelco's case. Judge Farley ruled accordingly.

The bondholders—evidently preferring an activist judge to "legislate from the bench"—are bitterly fighting Farley's ruling and "vigorously contest the validity and enforceability of any steps taken pursuant to those agreements." The bondholders are led by Citicorp and a group of hedge funds, including Wexford Credit Opportunities Fund, and Cerberus Capital Management. Shareholders, who are to receive 66 cents on the dollar of their shares, may vote to approve the package on Nov. 15.

Tricap Management, on the other hand, was brought to the deal which Judge Farley has approved and ordered, by the United Steelworkers Union's five locals which represent Stelco's 12,000 workers.

—Paul Gallagher