

Live Bait & Ammo #168: An Inside Job

The Stealth Transfer of Labor's Accumulated Wealth

I get tired of kicking that dead horse we old soldiers of solidarity call the UAW but as soon as I turn my back the carcass puts the hooves to me with a vengeance reserved for divorcees. What did I do? I'm retired. I can't even vote, let alone, sue for breach of contract.

In 2005 the UAW trotted out a couple of stalking horses—retirees chosen for their blinders—in order to engage GM in a phony lawsuit. I say phony because there wasn't a conflict. The two parties, GM and the UAW, had already agreed that UAW-GM retirees would pay through the nose.

The purpose of the stalking horses was to gain recognition for the UAW as the legal representative of retirees. Up until then, the union did not have any legal right to negotiate takeaways from retirees, since retirees don't pay dues, can't vote on contracts, and aren't employees.

Ever since that landmark case, the UAW has had the legal right to negotiate reductions in the accrued vested benefits of retirees.

Federal courts have repeatedly protected the accrued vested benefits of retirees under a union contract.¹ In layman's terms, the contract you retired under is good for life. Unless your union reps have been recognized in court as your legal representatives, in which case, as Lenny Bruce once said, "Everybody's ass is up for grabs."

False representation is the first leg of my dead horse metaphor. The second leg is VEBA.

In 2005 the UAW negotiated a "partial" VEBA (Voluntary Employee Benefits Association) which is essentially a health care trust for retirees. In 2007 the UAW made the VEBAs permanent, and thereby institutionalized the transformation of an earned vested benefit into a depreciating return on a risky investment with a dishonest broker.

Why do I claim the broker is dishonest?

The companies charged customers for the increased cost of health care for future retirees as those benefits were negotiated. They blamed increased costs on greedy unions. Rather than set aside the cash gained from price increases in a trust for benefits promised to retirees, they used the cash for dividends, bonuses, and investments overseas. When it came time to pay the promise, they claimed the deferred compensation was an unjust entitlement, and besides, they were broke.

¹ "To avoid the quicksand of extrinsic evidence, employers must be vigilant about how and where they make retiree medical benefit promises. All statements made about these benefits should be reviewed for clarity and consistency. Populating enrollment forms, summary plan descriptions, plan documents, and *collective bargaining agreements with a reservation of the right to amend*, modify, or terminate the plan is clearly the best medicine." [emphasis added] *Retiree Medical Litigation's Dirty Little Secret: "Location, Location, Location!"* Jones Day Commentary <http://www.jonesday.com/retiree-medical-litigations-dirty-little-secret-location-location-location-08-04-2009/>

Broke in one pocket and flush in the other—foreign investments.

The UAW Concession Caucus went along with this scam and blamed “foreign competition,” an allegation that ignored the fact that American auto companies were multinational corporations, aka, “foreign competition.”

The UAW VEBAs with the Detroit Three automakers were worth about 50 percent of the projected liability. Post bankruptcy the situation is dicier in terms of both financing and conflict of interest since the VEBAs are funded with company stock.

To further augment the companies’ competitiveness the UAW negotiated buyouts to entice workers into early retirement. This didn’t puzzle the business press but I couldn’t help but wonder how the purported problem—legacy costs—could also be the solution. I’m not a math wizard, but I couldn’t comprehend how adding to the legacy cost would subtract from the problem of too much legacy cost.

In order to further fuzz the math the UAW allowed the companies to use the pension funds for cash incentive buyouts to reduce the active workforce. The companies complained that there weren’t enough active workers to support the retirees, just like the Social Security canard, so they bought them out, thereby, further teetering the totter.

The UAW also allowed the companies to use the pension fund to pay for retirement benefits that were not a part of the pension plan per se, but add on benefits negotiated from contract to contract. For example, cost of living bonuses, legal services, and the Social Security Age Creep Patch which is compensation for the early retirement penalty imposed on social security benefits.

Let’s see, the first leg was false representation; the second leg was the health care trust; the third leg is draining the pension fund.

In 2011 the UAW agreed to eliminate the cost of living adjustment bonus which over the years had come to be called the “Christmas Bonus,” legal services, and the Social Security Age Creep Patch because the pension was underfunded and hence was “at risk.”

The fourth and final leg of the dead horse metaphor is a letter in the 2011 UAW-GM National Contract which states in part: “. . . the parties agreed that the national parties may mutually agree during the term of this agreement *to amend the plan* to add retirement options for some or all existing retirees to help GM reduce the volatility and risk related to the plan and benefit existing retirees by providing an additional voluntary option.” [emphasis added, see footnote]

Will all volunteers, please, line up against the wall?

Who knows what the motion to amend may foreshadow for the parties who don’t get to vote let alone mutually agree to party on somebody else’s dime? But it appears the old metaphor isn’t dead despite its blank stare and wooden headed unresponsiveness.

There’s something moving around inside.

sos, GreggShotwell@aol.com