News from Senator

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FOR IMMEDIATE RELEASE:
WEDNESDAY, NOVEMBER 10, 1982

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SENATE JUDICIARY SUBCOMMITTEE ON COURTS

WEDNESDAY, NOVEMBER 10, 1982

OPENING STATEMENT OF SENATOR ROBERT DOLE

Today the Subcommittee on Courts convenes to conduct oversight hearings on the recent bankruptcy filing by the Manville Corporation, and to receive further testimony on the Supreme Court's recent Northern Pipeline decision.

Last August, front page headlines were made when the Manville Corporation, the Nation's largest asbestos producer and one of the 30 industrials on the Dow-Jones Index, filed for reorganization under Chapter 11 of the Bankruptcy Act of 1978. The filing prompted startled responses from the business community, congressional leaders, as well as the public at large. Manville was in no immediate financial distress. In fact, it had a net worth of 1.1 billion dollars, plenty of cash on hand, and despite the recession, its operations continued to be strong and viable. Why, then, had one of the Nation's largest corporations filed for bankruptcy?

As acknowledged by Manville's newspaper advertisements to its stockholders, the filing was prompted by increasingly serious projections of liabilities that Manville might have to absorb in the future from a flood of asbestos-related litigation. According to the bankruptcy petition, Johns-Manville Corporation and various subsidiaries were, as of June 30, the defendants or codefendants in approximately 16,500 asbestos lawsuits. The current average cost of disposing of each claim had risen to $40,000. Outside consultants commissioned by Manville projected that 32,000 additional suits would be filed in the future. If these projections held accurate, Manville's total price tag for all asbestos litigation would be in excess of 2 billion dollars.

The Manville Corporation is not, of course, the only corporation to seek protection in the bankruptcy courts for potential products liability. Other businesses seeking such protection include UNR Industries and the Amatex Corporation, which are also asbestos-producers, as well as the White Motor Company and the State Farm Bureau Co-op. But what made the Manville filing unique was the relative strength of its current financial situation and the fact that it relied on projections extending some 20 years in the future on which to base its claim that assets, eventually, would be insufficient to cover liabilities. Thus it is no surprise that the filing was challenged as a fraud, undertaken by Manville solely to avoid paying the just claims of asbestos victims.

My immediate response in a press release issued the day after the filing also questioned the propriety of the Manville filing. The fact that Manville, with assets exceeding 2 billion dollars and hundreds of millions of dollars in insurance coverage, was seeking a Chapter 11

reorganization, seemed dubious and unusual at best. In addition, because of the recent rash of personal bankruptcy filings, our bankruptcy courts are already facing an unprecedented workload. As a consequence, I questioned whether the system could afford the additional strains placed upon it by Manville-type cases, where other remedies, both legal and congressional might be more appropriate.

I continue to firmly believe that our bankruptcy courts cannot be used as an escape route for every otherwise solvent corporation which feels threatened by the possibility of a deluge of products liability lawsuits. Both from a legal and practical standpoint, our bankruptcy system should not become the common forum for the resolution of complex and massive tort litigation, whether it emanates from asbestos disease, plane crashes, or contaminated feed grain.

However, after closer analysis, I have come to realize that the use of Chapter 11, at least in Manville's case, could have certain significant advantages, not only to Manville, but also to asbestos victims. In particular, I read with great interest an article which appeared in the Wall Street Journal last week which concluded that the Chapter 11 route chose by Manville could, in fact, benefit asbestos victims as a class, by preserving assets for the benefit of future claimants -- those who do not yet know they have asbestos disease -- though this would be at the expense of current claimants who would receive a reduced share. The article also noted that Chapter 11 would enable Manville to continue its operations, and, in this time of high unemployment, help protect the jobs of its 15,000 American employees.

The pros and cons of the use of Chapter 11 in a Manville-type situation is something I hope we can begin to explore today. To be sure, the Manville case raises a number of significant and complex issues. First, should our bankruptcy courts be used at all by financially sound businesses threatened by potentially enormous contingent liabilities? If we are to permit this use of our bankruptcy courts, under what circumstances and how can we guard against abuse? With regard to asbestos claims specifically, though Chapter 11 may offer some advantages, would it be better for Congress to enact legislation so that these cases could be handled in a manner similar to workmen's compensation claims?

A final point which must be considered relates to the second topic of today's hearings: legislation to address the Northern Pipeline case.

In Northern Pipeline, the Supreme Court held the current bankruptcy system unconstitutional because Congress delegated Article I bankruptcy judges overly broad jurisdiction over ancillary issues. But if we are to permit Manville-type Chapter 11 filings, it is fairly obvious that we must maintain the bankruptcy courts' jurisdiction over such issues. Under Northern Pipeline, it appears that a way to do this constitutionally would be to give bankruptcy judges Article III status.

Two legislative alternatives have been proposed which would do just that. One, H.R. 6978, proposed by Representative Rodino, would create a "fourth tier" to our judicial system, by mandating the establishment of 94 new courts of general jurisdiction, consisting of 227 Article III judges, to handle all bankruptcy matters and ancillary issues. The other, less drastic proposal, sponsored by myself and Congressman Butler, would create a "Bankruptcy Division" in each federal district, composed of Article III judges who would adjudicate all bankruptcy and ancillary matters, but who would also be permitted to hear non-bankruptcy cases should their dockets permit.

The proposal to create "Bankruptcy Divisions" in each district court was developed after this Subcommittee received extensive testimony on the Northern Pipeline case in July. The initial draft was proposed by the Department of Justice, and its key author, Jonathan Rose is here with us to testify today. It is our belief that by creating a bankruptcy division, instead of an additional fourth tier, we can limit disruption to the judicial system, promote judicial economy, and avoid the excessive costs connected with the fourth tier proposal. Indeed, the Judicial Conference has estimated that the "fourth tier" proposal would cost an additional 33 million dollars in the first year and 26 million dollars each year thereafter, and has proposed that instead, Bankruptcy Judges retain their Article I status and become adjuncts of the district court. This is basically how the courts were structured prior to the 1978 Act.

We have a number of excellent witnesses here today and to all I say "welcome". To assist us in resolving the myriad of complex issues raised by the Manville filing, we have representatives from Manville itself, as well as from other asbestos manufactures, asbestos victims, and the insurance industry. With regard to the Northern Pipeline legislation, as previously mentioned, Jonathan Rose of the Justice Department will be testifying. Judge Richard Merrick and Judge Joe Lee of the National Conference of Bankruptcy Judges will also be giving us the benefit of their views.

Our first witness will be Earl Parker, Senior Vice President of the Manville Corporation. Mr. Parker.