Stop Looting American Pensions (SLAP) Act

Problem:

Every paycheck, 10.6 million hardworking men and women put a portion of their paycheck into a pension account with the expectation that it will be there when they retire in the future. However, for the last few decades, numerous investment firms have manipulated sections of the bankruptcy code to maximize profits by cutting wages, reducing health benefits and slashing pensions. The financial engineering used for this type of manipulation has been used time and time again following the same steps.

The scheme starts when an investment firm, or group of firms, loads up debt, as opposed to using cash or stock, on the company they purchased. At that point, much of the company's cash flow will be used to pay down the debt it was forcefully given when it was purchased. To guarantee a return on their investment, the investment firm will sell the company's most valuable assets and continually collect exorbitant management and consultant fees throughout its ownership. If the company isn't profitable or it can't keep up with debt payments, the investment firm will push the company through bankruptcy. In bankruptcy, all of the company's remaining assets can be sold free and clear of all claims leaving the employers' wage and pension obligations unpaid. In the end, the investment firm walks away with a profit and a shell of the bankrupt company remains with unfunded pension obligations.

The same type of financial engineering occurred at Sears over the past several years. After a merger with Kmart, Eddie Lampert and his hedge fund, ESL Investments, transferred 235 parcels of Sears' most valuable real estate to an investment trust led by Lampert himself, then leased the properties back to Sears. In 2017, Sears paid the investment trust, owned by Lampert, $117 million in rent for the use of its former property. Under Lampert and ESL, Sears closed over 3,500 stores, slashed roughly 250,000 jobs and saw its share price fall from $193 a share in 2007 to less than a dollar. After filing bankruptcy in 2018, Sears no longer possessed enough assets to pay off its creditors, including its 100,000 retired employees that were still receiving pension benefits.

Solution:

Congress can no longer allow investment firms to continue this exploitation of the bankruptcy code to maximize profits and skirt their obligations to the company's employees. The Stop Looting American Pensions' (SLAP) Act will:

- Increase priority for wages in bankruptcy.
- Allow the Pension Benefits Guaranty Corporation (PBGC) to perfect liens in bankruptcy.
- Prohibit the sale of all the debtor's assets within 60 days of filing bankruptcy.
- Mandate that a company must continue to make its minimum funding contributions towards its pension plan regardless of declaring bankruptcy.
- Increases lookback period to 6 years for fraudulent conveyances.
- Expands restrictions on executive pay during bankruptcy.
- Require more notice to creditors when asset sales take place after filing bankruptcy.