

STATEMENT OF BRUCE FEIN

BEFORE THE HOUSE JUDICIARY COMMITTEE

RE: CHRYSLER AND GENERAL MOTORS BANKRUPTCIES

MAY 21, 2002

Dear Mr. Chairman and Members of the Committee:

I am pleased to share views on the impending bankruptcy reorganizations of Chrysler and General Motors. I strongly believe the Congress of the United States should enact laws to stipulate the terms of any reorganization of these twin motor companies because of their enormous affect on interstate commerce. If Congress fails to act, the reorganization decision will fall to politically unaccountable bankruptcy judges appointed to serve a 14 year terms by federal appellate courts. The Constitution does not contemplate the regulation of interstate commerce by Platonic Guardians standing over the commanding heights of the economy. The legislative power was assigned to Congress for a reason: self-government is a farce unless major decisions are made by political actors representing the collective voice of the people.

General Motors and Chrysler employ tens of thousands. Even a greater number of retirees depend on the companies for various benefits. They also support dealer networks. Vehicle sales are in the millions. The Constitution entrusts the legislative power to regulate interstate commerce to Congress. When the railroad industry was reorganized in the 1970s, Congress played a pivotal role. It enacted the National Railroad Passenger Corporation Act of 1970 to form Amtrak to operate a passenger railroad system. Congress later enacted the Regional Rail Reorganization Act of 1973 to authorize the creation of Conrail to operate a railroad freight system. Conrail was later privatized at the direction of Congress with the Conrail Privatization Act of 1986.

There is no sound reason based on precepts of democracy and the Constitution for Congress to play a lesser instrumental role in reorganizing major auto companies. Their impact

on the economy is comparable. Bankruptcies entail the revision or voiding of executory contracts, which is in tension with the Contracts Clause and the due process clause of the Fifth Amendment. Further, the vast discretionary authority enjoyed by bankruptcy judges to readjust economic relations and contracts with toothless legislative guidance is in tension with the non-delegation doctrine of separation of powers.

Members of Congress are elected to make significant economic decisions because they are closest to the people whose lives and livelihoods will be significantly affected. Members should decide on the economic destinies of General Motors and Chrysler. They would be neglecting their constitutional obligations by shuffling off the decisions to appointed bankruptcy judges shielded from the American people.