

carrier barge line operating on the Atlantic Coastal Canal. I appear here today as Chairman of the Executive Committee of the Water Transport Association, a national association of the leading certificated water carriers in the coastwise, intercoastal, Great Lakes and inland waterway trades.

The water carrier industry has in the past, and will most certainly in the future, be faced with problems of equipment obsolescence and the resulting need for capital improvements as the industry continues to modernize its fleet for service to the public. Of course, this problem is not peculiar to water carriers. The nation's railroads and airlines have been involved in similar modernization programs.

Obviously, a substantial portion of the funds for these capital improvements must be obtained from financial institutions rather than from working capital. Because a great deal of a water carrier's total assets is represented by floating equipment, the logical and only available security for financing is the towboats and barges being purchased by the carrier. This, I understand, is also generally true of the airlines, and I also understand that most of the railroad equipment modernization is via the medium of equipment trust certificates.

At the present time, under virtually all financing arrangements available to the water carrier industry, the trustee in a reorganization under Chapter 10 of the Bankruptcy Act may elect to keep any and all equipment of the bankrupt to the exclusion of security creditors, if, in the trustee's opinion, the equipment is beneficial to the continued operation of the bankrupt. The net effect of this is that even though a creditor retains title to equipment as security for the debt, he is unable to repossess in the event of default if the trustee finds the equipment is necessary for the operation of the bankrupt's business.

The only procedure for obtaining possession of the equipment is a petition for reclamation which must be filed with the Federal district court, and the court's action upon this petition is entirely discretionary with the result that more times than not, the creditor, even though he holds undisputed title, is unable to obtain the property for satisfaction of the defaulted debt. Because the trustee normally does not make payments upon the debt as required by the promissory note or other debt instrument, the creditor finds himself, as a practical matter, in somewhat the same position as an unsecured creditor.

Obviously, administrative costs and bankruptcy possibilities are considered by financial institutions in evaluating applications for loans upon marine equipment and in determining how much of the cost of such equipment will be financed and at what interest rates. It is our belief that lenders look more favorably upon the security offered by equipment trust certificate type of financing than upon traditional security arrangements and that, as a result, they are less concerned with debt-equity ratios, thus permitting a greater degree with debt financing as compared to more costly equity financing.

Both the railroads and the airlines presently have available to them equipment trust certificate type of financing which is somewhat exempt from the provisions of the Bankruptcy Act in that a lender's title in financed equipment, and his concurrent right to repossess that equipment, may not be restricted, limited or hindered by the trustee in a reorganization of a railroad or of an airline.

Legislation was enacted for the benefit of the railroads many years ago when Congress enacted Section 77(j) of the Bankruptcy Act (11 U.S.C. 205 j) pertaining to the reorganization of railroads. That section protects the interest of the lender by providing in part:

"* * * The title of any owner, whether as trustee or otherwise, to rolling-stock equipment leased or conditionally sold to the debtor, and any right of such owner to take possession of such property in compliance with the provisions of any such lease or conditional sale contract, shall not be affected by the provisions of this section."

Under existing procedure railroad equipment trust certificates must be recorded with the Interstate Commerce Commission under Section 20(c) of Part I of the Interstate Commerce Act (49 U.S.C. 20 c), which recordation constitutes notice to all persons including subsequent purchasers and trustees in bankruptcy.

In 1957, in recognition of the favorable effects of Section 77(j) of the Bankruptcy Act upon railroad financing, the Congress enacted similar type legislation to help the nation's certificated airlines in the financing of aircraft, aircraft engines and related parts. Section 116 of the Bankruptcy Act (11 U.S.C. 516) was amended by adding Subsection (5) which provides that the title holder under a title retention type security agreement could repossess or take physical possession of the equipment even though the debtor is in Chapter 10 reorganiza-