

case under this chapter, but may not appeal from any judgment, order, or decree entered in the case.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2641; Pub. L. 104-88, title III, §302(2), Dec. 29, 1995, 109 Stat. 943.)

#### HISTORICAL AND REVISION NOTES

##### LEGISLATIVE STATEMENTS

Section 1164 of the Senate amendment is deleted as a matter to be left to the Rules of Bankruptcy Procedure. It is anticipated that the rules will require a petition in a railroad reorganization to be filed with the Interstate Commerce Commission and the Secretary of Transportation in a case concerning an interstate railroad.

Section 1164 of the House amendment is derived from section 1163 of the House bill. The section makes clear that the Interstate Commerce Commission, the Department of Transportation, and any State or local commission having regulatory jurisdiction over the debtor may raise and appear and be heard on any issue in a case under subchapter IV of chapter 11, but may not appeal from any judgment, order, or decree in the case. As under section 1109 of title 11, such intervening parties are not parties in interest.

##### HOUSE REPORT NO. 95-595

[Section 1163] This section [enacted as section 1164] gives the same right to raise, and appear and be heard on, any issue in a railroad reorganization case to the Interstate Commerce Commission, the Department of Transportation, and any State or local commission having regulatory jurisdiction over the debtor as is given to the SEC and indenture trustees under section 1109 in ordinary reorganization cases. The right of appeal is denied the ICC, the Department of Transportation, and State and local regulatory agencies, the same as it is denied the SEC.

##### AMENDMENTS

1995—Pub. L. 104-88 substituted “Board” for “Commission”.

##### EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-88 effective Jan. 1, 1996, see section 2 of Pub. L. 104-88, set out as an Effective Date note under section 701 of Title 49, Transportation.

#### § 1165. Protection of the public interest

In applying sections 1166, 1167, 1169, 1170, 1171, 1172, 1173, and 1174 of this title, the court and the trustee shall consider the public interest in addition to the interests of the debtor, creditors, and equity security holders.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2641.)

#### HISTORICAL AND REVISION NOTES

##### LEGISLATIVE STATEMENTS

Section 1165 of the House amendment represents a modification of sections 1165 and 1167 of the Senate amendment requiring the court and the trustee to consider the broad, general public interest in addition to the interests of the debtor, creditors, and equity security holders in applying specific sections of the subchapter.

##### SENATE REPORT NO. 95-989

Section 1165 requires the court, in consideration of the relief to be granted upon the filing of an involuntary petition, to take into account the “public interest” in the preservation of the debtor’s rail service. This is an important factor in railroad reorganization, which distinguishes them from other business reorga-

nizations. Hence, this section modifies the provisions in sections 303 and 305 that govern generally when the business of a debtor may continue to operate, when relief under the Act sought should be granted, and when the petition should be dismissed.

Section 1167 [enacted as section 1165] imposes on the trustee the obligations, in addition to his other duties and responsibilities, to take into account the “public interest” in the preservation of the debtor’s rail service.

#### § 1166. Effect of subtitle IV of title 49 and of Federal, State, or local regulations

Except with respect to abandonment under section 1170 of this title, or merger, modification of the financial structure of the debtor, or issuance or sale of securities under a plan, the trustee and the debtor are subject to the provisions of subtitle IV of title 49 that are applicable to railroads, and the trustee is subject to orders of any Federal, State, or local regulatory body to the same extent as the debtor would be if a petition commencing the case under this chapter had not been filed, but—

(1) any such order that would require the expenditure, or the incurring of an obligation for the expenditure, of money from the estate is not effective unless approved by the court; and

(2) the provisions of this chapter are subject to section 601(b) of the Regional Rail Reorganization Act of 1973.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2642; Pub. L. 97-449, §5(a)(2), Jan. 12, 1983, 96 Stat. 2442; Pub. L. 98-353, title III, §518, July 10, 1984, 98 Stat. 388; Pub. L. 103-394, title V, §501(d)(34), Oct. 22, 1994, 108 Stat. 4146.)

#### HISTORICAL AND REVISION NOTES

##### LEGISLATIVE STATEMENTS

Section 1166 of the House amendment is derived from sections 1164 and 1165 of the House bill. An alternative proposal contained in section 1168(1) of the Senate bill is rejected as violative of the principle of equal treatment of all creditors under title 11.

##### SENATE REPORT NO. 95-989

Section 1168 [enacted as section 1166] makes the trustee subject to the Interstate Commerce Act [49 U.S.C. 10101 et seq.] and to lawful orders of the Interstate Commerce Commission, the U.S. Department of Transportation, and State and regulatory bodies. The approval of the court is required, however, if the order requires the expenditure of money or the incurring of an expenditure other than the payment of certain interline accounts. The limitation of “lawful orders” of State commissions to those involving “safety, location of tracks, and terminal facilities,” which is contained in present section 77(c)(2) [section 205(c)(2) of former title 11], is eliminated.

Subsection (1) further provides that the debtor must pay in cash all amounts owed other carriers for current balances owed for interline freight, passenger and per diem, including incentive per diem, for periods both prior and subsequent to the filing of the petition, without the necessity of court approval.

Subsection (2) makes the provisions of the chapter subject to section 601(b) of the Regional Rail Reorganization Act [45 U.S.C. 791(b)], which excludes the Interstate Commerce Commission from any participation in the reorganization of certain northeast railroads that have transferred their rail properties to Consolidated Rail Corporation (Conrail).

##### HOUSE REPORT NO. 95-595

Section 1164 [enacted as section 1166] makes the debtor railroad subject to the provisions of the Interstate

Commerce Act [49 U.S.C. 10101 et seq.] that are applicable to railroads, and the trustee subject to the orders of the Interstate Commerce Commission to the same extent as the debtor would have been if the case had not been commenced. There are several exceptions. The section does not apply with respect to abandonment of rail lines, which is provided for under section 1169, or with respect to merger under a plan, modification of the financial structure of the debtor by reason of the plan, or the issuance or sale of securities under a plan. Further, the orders of the ICC are not effective if the order would require the expenditure or the incurring of an obligation for the expenditure of money from the estate, unless approved by the court, and the provisions of this chapter are subject to section 601(b) of the Regional Rail Reorganization Act of 1973 [45 U.S.C. 791(b)].

[Section 1165 (enacted as section 1166)] The same rules apply with respect to Federal, State, or local regulations. The trustee is subject to the orders of a Federal, State, or local regulatory body to the same extent as the debtor would be if the case had not been commenced. However, any order that would require the expenditure, or the incurring of an obligation for the expenditure, of money is not effective under [until] approved by the court.

#### REFERENCES IN TEXT

Section 601(b) of the Regional Rail Reorganization Act of 1973, referred to in par. (2), is classified to section 791(b) of Title 45, Railroads.

#### AMENDMENTS

1994—Par. (2). Pub. L. 103-394 struck out “(45 U.S.C. 791(b))” after “Act of 1973”.

1984—Pub. L. 98-353 directed substitution of “subtitle IV of title 49” for “the Interstate Commerce Act (49 U.S.C. 1 et seq.)”, which substitution had previously been made by Pub. L. 97-449.

1983—Pub. L. 97-449 substituted “subtitle IV of title 49” for “Interstate Commerce Act” in section catchline, and “subtitle IV of title 49” for “the Interstate Commerce Act (49 U.S.C. 1 et seq.)” in text.

#### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103-394, set out as a note under section 101 of this title.

### § 1167. Collective bargaining agreements

Notwithstanding section 365 of this title, neither the court nor the trustee may change the wages or working conditions of employees of the debtor established by a collective bargaining agreement that is subject to the Railway Labor Act except in accordance with section 6 of such Act.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2642; Pub. L. 103-394, title V, § 501(d)(35), Oct. 22, 1994, 108 Stat. 4146.)

#### HISTORICAL AND REVISION NOTES

##### SENATE REPORT NO. 95-989

Section 1176 [enacted as section 1167] is derived from present section 77(n) [section 205(n) of former title 11]. It provides that notwithstanding the general section governing the rejection of executory contracts (section 365), neither the court nor the trustee may change the wages or working conditions of employees of the debtor established by a collective bargaining agreement that is subject to the Railway Labor Act [45 U.S.C. 151 et seq.], except in accordance with section 6 of that Act [45 U.S.C. 156]. As reported by the subcommittee this section provided that wages and salaries of rail employees could not be affected by the trustee, but that work

rules could be rejected by the trustee. The reorganization court was given the authority to review the trustee's decisions and to settle any disputes arising from the rejection. This provision was withdrawn by the full committee, and hearings will be conducted next year by the Human Resources Committee in the area of rail labor contracts and the trustee's ability to reject them in a bankruptcy situation.

#### HOUSE REPORT NO. 95-595

Section 1167 is derived from present section 77(n) [section 205(n) of former title 11]. It provides that notwithstanding the general section governing the rejection of executory contracts (section 365), neither the court nor the trustee may change the wages or working conditions of employees of the debtor established by a collective bargaining agreement that is subject to the Railway Labor Act [45 U.S.C. 151 et seq.], except in accordance with section 6 of that Act [45 U.S.C. 156]. The subject of railway labor is too delicate and has too long a history for this code to upset established relationships. The balance has been struck over the years. This provision continues that balance unchanged.

#### REFERENCES IN TEXT

The Railway Labor Act, referred to in text, is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8 (§ 151 et seq.) of Title 45, Railroads. Section 6 of the Act is classified to section 156 of Title 45. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables.

#### AMENDMENTS

1994—Pub. L. 103-394 struck out “(45 U.S.C. 151 et seq.)” after “Railway Labor Act” and “(45 U.S.C. 156)” after “such Act”.

#### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103-394, set out as a note under section 101 of this title.

### § 1168. Rolling stock equipment

(a)(1) The right of a secured party with a security interest in or of a lessor or conditional vendor of equipment described in paragraph (2) to take possession of such equipment in compliance with an equipment security agreement, lease, or conditional sale contract, and to enforce any of its other rights or remedies under such security agreement, lease, or conditional sale contract, to sell, lease, or otherwise retain or dispose of such equipment, is not limited or otherwise affected by any other provision of this title or by any power of the court, except that right to take possession and enforce those other rights and remedies shall be subject to section 362, if—

(A) before the date that is 60 days after the date of commencement of a case under this chapter, the trustee, subject to the court's approval, agrees to perform all obligations of the debtor under such security agreement, lease, or conditional sale contract; and

(B) any default, other than a default of a kind described in section 365(b)(2), under such security agreement, lease, or conditional sale contract—

(i) that occurs before the date of commencement of the case and is an event of default therewith is cured before the expiration of such 60-day period;

(ii) that occurs or becomes an event of default after the date of commencement of the