

GM May Put Obama Auto-Rescue Plan a Month Ahead of Schedule

By Christopher Scinta



June 30 (Bloomberg) -- General Motors Corp. is poised to follow rival Chrysler LLC's path and win approval to sell most of its assets at a hearing set to start today, putting President Barack Obama's administration almost a month ahead of schedule in its plan to reshape the U.S. auto industry.

GM, based in Detroit, will ask U.S. Bankruptcy Judge Robert Gerber in Manhattan to approve the sale to the Treasury-funded Vehicle Acquisition Holdings LLC, which it says is the only potential purchaser. The administration set a goal of completing the sale 60 to 90 days from GM's June 1 bankruptcy.

The hearing is to include testimony from GM Chief Executive Officer Fritz Henderson and Harry Wilson, an auto task force adviser. It may take several days. Court approval would leave GM and the Treasury ready to close the deal in little more than a month from the filing date. GM is operating in bankruptcy with \$33.3 billion in loans from the U.S. and Canada.

“The way it's being done in GM, and was done in Chrysler, is very time efficient,” Van Conway, president of the turnaround advisory firm Conway MacKenzie Inc., said yesterday in a phone interview. “The future could be extremely bright. They'll be hiring and building new plants some day, though not in the near future. I think it will prove to be a good use of taxpayer money.”

The proposed sale has drawn about 750 objections. Both GM and the government said Gerber should overrule them, citing rulings by Arthur Gonzalez, the Chrysler bankruptcy judge. Gonzalez on May 31 approved Chrysler's sale to the U.S. and Canadian governments, a United Auto Workers benefit trust and Italian automaker Fiat SpA.

'Rehash' of Arguments

“These objectors do little more than rehash the same argument rejected by Judge Gonzalez in Chrysler’s bankruptcy,” assistant U.S. attorneys including Matthew Schwartz wrote in a June 26 brief. “The government fully supports the 363 transaction, which, if consummated, will facilitate a rebirth of the American automobile industry.”

A 363 sale is named for the U.S. bankruptcy code section on asset sales.

The government conceded Treasury’s role as lender and sponsor of the purchase is “extraordinary,” saying it’s also “squarely permitted by well-settled precedent.”

An appeal of Gonzalez’s decision in Chrysler was rejected June 9 by the U.S. Supreme Court.

“These are extraordinary events for extraordinary times,” said Ken Klee, a law professor at the University of California at Los Angeles. “There’s a large political component to what’s being done here.”

Copying Held Unlikely

Klee said it was unlikely the speedy sale of the automakers’ best assets would weaken the bankruptcy process because judges in other cases won’t allow the regular requirements of proposing a reorganization plan and soliciting creditor votes to be skipped in other cases.

“It’s a one-off event,” he said.

GM said objections, including ones from unionized retirees, tort claimants and individual bondholders, should be rejected as the sale to the Treasury is the only option and the objectors aren’t seeking to block it, only to get a better payout from the transaction.

“Notably, the minority bondholder objectors simply ignore the unassailable legal analysis and substantive findings in Chrysler,” GM lawyers from Weil Gotshal & Manges led by Harvey Miller wrote in response to the objections.

Individual GM bondholders have said the company is improperly using the bankruptcy asset-sale process and the company should take more time and propose a complete Chapter 11 reorganization plan on which creditors could vote.

Creditors’ Needs

Nancy Rapoport, a law professor at the University of Nevada at Las Vegas, agreed, saying many creditors don’t have the sophistication or money to protect their rights in a sale.

“They don’t want the expense and the time of doing a plan,” she said. “I think it’s ridiculous.”

In a move that could smooth the sale's approval, GM changed course and said June 26 in court papers the so-called New GM will take on future product liability and "lemon law" claims for cars made before the sale closes, which "should significantly alleviate" concerns of many objectors.

"GM initially sought to strip consumers of the right to sue its successor for defective vehicles already on the road, an unacceptable and unfair sacrifice," Connecticut Attorney General Richard Blumenthal said yesterday in a statement praising the company's decision to accept tort claims. "Consumers killed or crippled in a crash caused by a defective vehicle must retain the ability to hold the new GM responsible."

Existing Claims

Existing tort law claims against GM will still be funneled to the bankruptcy estate, according to an attorney for the tort claimants.

About 300 tort claimants with an estimated \$1.25 billion in claims against GM withdrew a request for official committee status in the case before a June 25 hearing on the motion. Gerber refused to appoint a "tort czar" to address product-liability and asbestos claims in the GM case.

The company will leave behind 12 plants and associated real estate in Delaware, Ohio, New York, Indiana, Pennsylvania, Virginia and Michigan, as well as \$950 million in cash to fund a wind down of "Old GM."

Amy Caton, a lawyer for the unsecured creditors committee, told Gerber June 25 the committee is concerned about whether there will be enough money left to wind down the GM operations that aren't being bought.

The committee objected to the sale, saying that while the deal with Treasury was the only option for GM, it shouldn't be approved unless the company shows the creditors won't be stuck with the bill for dealing with the leftovers.

GM disputed that. The \$950 million in cash that Treasury agreed to leave behind is sufficient, the company said.

The case is *In re General Motors Corp.*, 09-50026, U.S. Bankruptcy Court, Southern District, New York (Manhattan).

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