McTevia warns GM/Chrysler not out of woods yet.

GM, Chrysler bankruptcies may influence route of other large companies

by Sven Gustafson | Michigan Business Review
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The quick pace of General Motors' ride so far through bankruptcy court, coupled with Chrysler's emergence last month, could change the way large companies approach Chapter 11 bankruptcy.

But bankruptcy experts suggest the cases thus far of the two automakers feature key differences that wouldn't apply to suppliers or other companies teetering toward bankruptcy.

The speedy bankruptcy cases of Chrysler and GM, which could see the sale of its "good" assets to a new company completed as early as July 9, confounded many who dismissed the idea that such large, complex companies with so many creditors could quickly restructure in bankruptcy court.

"It's hard to be surprised when something has happened driven by circumstances that have never before existed in the history of our country," said Jim McTevia, a corporate turnaround specialist. "I don't remember ever the federal government stepping in and funding a reorganization plan behind Chapter 11."

By pledging up to $50 billion to GM, the U.S. Treasury Department essentially filled a void, since it was highly unlikely that any commercial lender would have stepped in to provide that amount of debtor-in-possession financing, McTevia said. And none would have had the political clout and negotiating power to keep the various parties and interests in check.

The government's automotive task force pressured Chrysler and GM to follow a "pre-packaged" route to work out much of their restructuring plans ahead of filing bankruptcy.

The considerable government financing also allowed both automakers to be thoroughly vetted and to anticipate complaints by objectors and address weaknesses in their own restructuring cases.

"It's a very well organized but also very frenetic bankruptcy at the same time," said John Pottow, a University of Michigan bankruptcy law professor.

The success of Chrysler and GM in following so-called Section 363 bankruptcy sales, in which performing assets are sold off to a new entity and non-performing assets are left to liquidate, may mean more large companies pondering bankruptcy follow suit, Pottow said. Because it avoids holding votes of creditors and sending out ballots, the process is much faster than traditional Chapter 11 reorganizations.

But experts note that the many auto suppliers expected to file for bankruptcy protection won't have the benefits of financing from the federal government.

"They'll file for Chapter 11, they'll try to come up with a plan to sell their assets or shed some debt, but some of those I would expect to convert into a liquidation," Pottow said.

Suppliers that choose to follow 363 sales will have to seek financing from sources including existing lenders, existing equity, sub-debt lenders or customers.

"It may make it more challenging, but it's not inconceivable that other cases could be processed with similar speed," said Bob Gordon, head of the corporate restructuring and bankruptcy practice for Clark Hill PLC in Birmingham.

"It really depends on the ability of a supplier to be able to put all the significant pieces of the puzzle in place before the bankruptcy is filed.

"But there are 363 sales and conversions of debt to equity transactions that do occur quite quickly in these situations."

For both GM and Chrysler, much difficult work lay ahead. Consumers are likely to remain wary of big-ticket purchases as unemployment rises.

"You can have a company with no debt lose money like crazy," McTevia said. "I've always said that I thought these companies should have stayed under protection of Chapter 11 longer than they did until the economy improved significantly, and that's not happened.

"The economy has not recovered in my opinion enough to allow these companies to operate profitably."