GM bankruptcy should move smoothly McTevia explains to Automotive News

Experts see quick exit for GM
Agreements, U.S. funds grease wheels for court's OK

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AUTOMOTIVE NEWS
JUNE 22, 2009 - 6:00 AM ET

DETROIT— Although General Motors is much larger than Chrysler, the company is likely to emerge quickly from U.S. Bankruptcy Court, lawyers and restructuring experts say.

Much of the hard work already is completed:

-- GM has a new concessionary contract with the UAW workers union.

-- Ninety-eight percent of the 1,323 dealerships being terminated by GM have signed wind-down agreements.

-- A majority of GM's bondholders with $27 billion in unsecured debt have agreed to accept 10 percent of the equity in a new GM. That makes it more difficult for disgruntled bondholders to block the deal in court.

Last week, GM CEO Fritz Henderson said the company might leave Chapter 11 sooner than the 60- to 90-day window originally envisioned. GM filed Chapter 11 on June 1.

GM wants to emerge from bankruptcy as soon as possible to restore confidence of potential auto buyers and get dealer orders flowing again. Parts suppliers are starving for revenue as GM operates its plants on and off during bankruptcy.

On June 30, a hearing is scheduled in Bankruptcy Court in New York on a motion for the so-called Section 363 sale of GM's healthy assets to a group headed by the U.S. government.

Greased by Uncle Sam

Companies can languish in bankruptcy court for years because they lack the financing to emerge. In other cases, stakeholders conduct protracted legal battles to recover their loans or investments.

That's exactly what happened to Delphi Corp., which remains in Chapter 11 bankruptcy after four years of legal battles with creditors and the UAW. Delphi was unable to emerge from bankruptcy in part because it could not line up enough financial support.

But financing is not a problem for GM. The U.S. Treasury is bankrolling GM's restructuring with $30 billion in debtor-in-possession financing.

That's in addition to the $19.4 billion GM received to fund operations since late December.

"Nobody is going to stop this train because the engineer driving is the U.S. government," says Detroit turnaround consultant Jim McTevia. He has worked as a U.S. bankruptcy trustee, a federal appointee who acts as an advocate for stakeholders in bankruptcy cases.

McTevia notes that no other party is willing to fund GM's operations, which should make its case very persuasive to a bankruptcy judge.

Under the government's plan, the $30 billion will give the government a 60 percent stake in a reorganized GM. The governments of Ontario and Canada will provide another $9.5 billion for a 12.5 percent stake in the new GM.

The UAW's retiree health care trust will hold 17.5 percent of GM's equity, and current unsecured bondholders will hold the remaining 10 percent, with warrants for another 15 percent.

Same as Chrysler?

Since the bondholders would receive only stock in the new GM for their debt, some are balking.

Unhappy creditors were unable to prevent Chrysler's quick emergence from bankruptcy, but GM bondholders say their situation is different.

General Motors is not under the same time crunch to complete its bankruptcy as Chrysler, says Michael Richman, a New York lawyer representing opposing bondholders. He is chair of the bankruptcy and restructuring practice of Patton Boggs LLP.

In the case of Chrysler, Fiat set a June 15 deadline to complete the sale, Richman says. A delay past that date could have led to Chrysler's liquidation.

By contrast, GM is under no such time pressure. The proposed Section 363 sale is being dictated by the government "merely as a device to transfer assets" that could be handled instead through a traditional bankruptcy process, Richman says.

A traditional bankruptcy would allow a more deliberate process to determine how creditors would share in the ownership of a reorganized GM, Richman says.

Those bondholders have asked the court to be recognized as an official committee in the bankruptcy, entitling them to have their fees paid by GM.

GM has won the support of creditors who hold 54 percent of GM's unsecured debt. But that doesn't mean GM is immune to a challenge.

In the Chrysler bankruptcy, two Indiana pension funds holding just $42 million of Chrysler's $9 billion secured debt took their objections all the way to the U.S. Supreme Court.

The debt holders ultimately lost when the high court let Chrysler's bankruptcy judge proceed with the sale of Chrysler's assets to a group led by Fiat S.p.A.

A similar challenge to the GM case could derail the automaker's timetable to exit bankruptcy. But the odds are against an intervention by the U.S. Supreme Court, says Ray Reynolds Graves of the Graves Group LLC, a retired bankruptcy judge from Michigan who owns a Detroit mediation and consulting firm.

"Any disgruntled or disappointed creditor could bring a similar suit, but it looks like the Supreme Court has already said that this prepackaged deal will be allowed to go through," Graves says.

Now the hard part

Several state attorneys general were planning to challenge the termination of dealers on the grounds that they are protected by state franchise laws.

GM spokeswoman Susan Garontakos says the company is offering the dealers financial assistance as part of their wind-down agreements. All but 2 percent of dealerships chosen for termination have signed the agreements

That aid, which is tailored for each affected dealer, could include the repurchase of new vehicles and parts, she said. Garontakos declined to comment on the attorney generals' assertions.

At the moment, it looks like GM will emerge from bankruptcy without a hitch. But the hard part is yet to come: rebuilding sales and profits in a still-depressed market.