

'Quick rinse' bankruptcy for GM: a pipe dream?

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Firm hosts media conference call at 11:45 a.m. today to discuss bankruptcy issues
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BLOOMFIELD HILLS, Mich., April 20, 2009 – Conventional wisdom has General Motors Corp. filing for Chapter 11 bankruptcy in late spring or early summer, emerging from court supervision as a smaller but viable company in as little as two weeks, or two to four months at the outside. Both of these scenarios are exceedingly optimistic, according to bankruptcy experts at the law firm of Plunkett Cooney.

“Bankruptcy may indeed be the last, best option to restructure General Motors because of the multitude of challenges the company faces and its deeply entrenched stakeholders,” said Doug Bernstein, head of Plunkett Cooney’s Banking, Bankruptcy and Creditors’ Rights practice group. “But it’s unrealistic to expect that the process will go smoothly and quickly. The company is massive, its operations are complex, and it has thousands of potential claimants and interested parties. The bankruptcy court will require time to make sure everyone’s due process rights are respected, even if they have to make painful sacrifices.

“Time is not GM’s friend in or out of court,” he added. “But the rights and potentially the livelihoods of employees, dealers, pensioners, suppliers and investors are at stake. It will take time for stakeholder groups to form, lawyers to prepare pleadings, a judge to review them and then make decisions. Rushing the process raises the risks that corners will be cut, due process brushed aside and mistakes made. You don’t want to get sidetracked by litigation or see GM’s ‘quick rinse’ become a ‘rinse and repeat’ bankruptcy.”

Bernstein noted that in the first two weeks of the Delphi Corp. bankruptcy, nearly 300 individual pleadings were filed with the court. Each one had to be prepared, filed and settled, or argued and adjudicated.

Here’s a sample of possible issues:

- Under the bankruptcy code, a judge may set aside collective bargaining agreements. However, there must first be good faith negotiations on a modified contract that have stalled before a company can

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petition a judge to reject the original agreement.

- Similarly, GM can move to void dealer franchise agreements with court approval. However, it has more than 6,000 dealers who operate under 50 different sets of state franchise laws. Further complicating the matter, many of the dealers' stores carry multiple GM brands, some of which may end up in the rumored "good" GM and others in the "bad" GM whose assets will be liquidated through Section 363 sales.
- Any person with standing has a right to be heard on any issue before the court. That would include GM's 377,000 hourly retirees who would almost certainly object to any effort to curtail their contractual benefits.
- Investment funds that hold GM bonds have a fiduciary responsibility to put the needs of their shareholders first. As has been seen, they won't easily accept terms they believe undervalue their claims.
- GM's foreign subsidiaries will act to protect their own interests, especially in the anticipated division of GM assets.
- The court-granted automatic stay, which prevents suppliers from trying to collect receivables, will be followed by critical vendor motions. In addition, GM almost certainly will file preference claims to recover certain payments made to suppliers and vendors during the 90 days prior to the bankruptcy filing. All of these will take time to sort.
- Notice must be given to stakeholders when urgent decisions are before the court so they can have time to respond. It's not uncommon for overnight express letters to be sent, and in GM's case, thousands of FedEx and UPS letters might be required each week.
- A Chrysler bankruptcy filing and liquidation, which is a distinct possibility, could further complicate GM's ability to restructure because of the stress it would place on the supplier base, consumer confidence and the overall economy.

"In many districts, bankruptcy courts are at or near their physical capacity to handle their case load and all of the associated filings and claims," Bernstein notes. "A bankruptcy courthouse may be a huge building, but a bankruptcy court – even in Manhattan – typically includes only a judge, secretary, law clerk and possibly a docket clerk. There is no army of judges and clerks that can be mobilized, unless the code is changed and the courts reorganized."

Those who hope for a short stay in bankruptcy for General Motors are assuming that many of the major issues can be pre-negotiated, Bernstein said.

"Even if substantial progress is made between now and the government's June 1 deadline, enough of the pieces probably won't be in place to allow a judge to approve a plan in two weeks," Bernstein said. "If everything goes perfectly, and it rarely does, two to four months is doable. But GM's stay in bankruptcy probably will be longer and more costly than many expect. That's okay if you end up with a

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better plan and a truly viable company.”

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Established in 1913, Plunkett Cooney is one of Michigan's largest full-service law firms with more than 150 attorneys in nine Michigan cities and Columbus, Ohio. The firm has achieved the highest rating (AV) awarded by Martindale-Hubbell, a leading, international directory of law firms.

Questions regarding the conference call can be directed to Douglas C. Bernstein, who serves as Plunkett Cooney's Banking, Bankruptcy & Creditors' Rights Practice Group Leader.