

GM Use of Surgical Bankruptcy to Survive Will Encounter Delay

By Linda Sandler

April 2 (Bloomberg) -- General Motors Corp.'s plan to use a quick "surgical" bankruptcy as the most likely means to become a viable business is fraught with dangers of intransigence from bickering stakeholders and delay, reorganization experts said.

President Barack Obama believes such a bankruptcy is the most likely way for GM to become a competitive automaker, people familiar with the matter said. To get needed U.S. aid without court protection, GM still has two months to come up with deeper cost and debt reductions than the biggest U.S. automaker proposed in a bailout plan last month.

More likely, the Detroit-based automaker will pursue a pre-arranged reorganization with the backing of enough workers, creditors, suppliers and dealers to smooth the way, advisers to the company and the U.S. auto task force said. This plan to control what is often an unpredictable, lengthy process may encounter surprise obstacles, bankruptcy lawyers said.

"Surgical bankruptcy is a made-up term to give people comfort," said James Shein, a Northwestern University Kellogg School of Management professor and a turnaround expert. "Unless the court makes some really gutsy moves, we've got the odds of it bracketed somewhere between slim and none. Conceptually it's a good idea, but practically it's going to be tough."

To give the company a "quick rinse" in a negotiated bankruptcy may not work, said Van Conway, managing partner of Conway MacKenzie, a restructuring consulting firm in Birmingham, Michigan, that works with partsmakers. "You're talking about stuff that's never been done before in one of the biggest, most complicated bankruptcies ever."

\$13.4 Billion

GM, which once had half the U.S. car market, needs a lender to finance court-supervised reorganization at a time when few troubled companies have been able to find one amid the financial crisis. The U.S. government, which has already lent GM \$13.4 billion and is willing to provide more to finance a viable business plan, has said it is the likely candidate.

The Obama administration, as lender, will aim to keep control of the bankruptcy under the so-called golden rule: he who has the gold makes the rules, said one of the advisers, who declined to be named because the plan is still confidential.

Once GM files a bankruptcy petition, it becomes the prime mover and is likely, following past practice, to have the exclusive right to present a reorganization plan for court approval without initial interference from creditors.

Randomly Assigned Judge

The randomly assigned judge, who will control the company's fate as it seeks to shed debt and other obligations to become viable, will try to balance the goal of getting GM back in business while taking into account claims by its creditors.

How the case unfolds "will depend partly on who the judge is," said Andrew Rahl, co-leader of Reed Smith LLP's bankruptcy group. "Doubtless there'll be a political spotlight, and judges are human beings like everybody else."

To help the judge to move forward, the company hopes to have in hand enough concessions from key stakeholders to limit debate about who wins or loses in dividing up GM assets.

The Obama administration felt it couldn't afford to let GM languish too long in court like Delphi Corp., the auto-parts maker that began a Chapter 11 reorganization in 2005, said the adviser to the auto task force.

Potential Delays

"I don't believe bankruptcies are ever as quick and smooth as people might lead the public to believe," Jeanne Darcey, a bankruptcy lawyer with the firm Edwards Angell Palmer & Dodge LLP in Boston, said in an interview. "They're always subject to potential objections and delays."

Neither GM nor the Obama administration presented a new offer to the committee representing creditors, a person familiar with the panel's activities said. Creditors have not been invited to a GM bailout meeting tomorrow involving interested parties, the person said.

At stake is bond debt of \$27.5 billion and \$20.4 billion owed to a union-run health care fund, plus money owed suppliers. The carmaker had been asking bondholders to swap more than three-quarters of their debt for equity and tried to reach a similar agreement with retirees, the GM and task-force advisers said. A total swap of bonds for equity should be the new goal, the government adviser said. The fund might get some cash as part of a reduced payoff, the GM adviser said.

Central to this plan is putting GM's best assets, such as its Cadillac and Chevrolet divisions and valuable foreign operations, into a stripped-down entity that would not be burdened by debt or uncompetitive wages. Unprofitable brands, such as Hummer, surplus

dealers and financial obligations would be hived off in bankruptcy court, said one of the advisers.

‘Perfectly Natural’

“The bankruptcy code was envisioned for manufacturing companies,” lawyer Rahl said. “It’s a perfectly natural approach to addressing balance sheet issues.”

Vital to sustaining the new business would be a government plan to back warranties for the new entity’s cars and trucks to lure customers otherwise unwilling to buy vehicles from a bankrupt company. It will be up to GM to make sure customers focus on the new company, not on the mess of a bankruptcy.

“The benefit of bankruptcy that also makes it more difficult to manage is that all parties of interest have a right to be heard on every issue,” said David Feldman, partner at Gibson, Dunn & Crutcher LLP and co-chair of the firm’s restructuring practice. “Every creditor or shareholder can stand up and object, and that makes the bankruptcy process that much less predictable” than out-of-court restructurings, he said.

Suppliers

GM also needs to ensure that suppliers stay in business to provide needed parts and services to produce the vehicles. The government has promised \$5 billion in aid for the suppliers.

The new company, which may be sold later, could be created in the first 30 days, allowing GM’s best lines to operate without interruption. The bankruptcy, focused on bad assets, might go on much longer, said the GM adviser. Marketing and selling the new company could take six months or more because buyers are scarce and creditors want the best price, he said.

GM would need to create a liquidating trust for its bad assets and sort out all claims, including secured, unsecured, inter-company and benefit ones, the adviser said.

Stakes of any dissident creditors, including bondholders, would be “crammed down” or forcibly reduced in a bankruptcy, said the advisers.

“GM will take whatever steps are necessary to successfully restructure our company,” GM spokeswoman Renee Rashid-Merem said. “During the next 60 days, we will work aggressively on restructuring our financial obligations with bondholders, unions and other stakeholders outside of court. We recognize the challenges of an in-court restructuring and would work with the administration to expedite an in-court process should it be necessary.”

GM fell 1 cent to \$1.93 at yesterday in New York Stock Exchange composite trading.

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