Testimony of

Harvey R. Miller [1]

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for Hearing on

"Treasury's Role in the Decision for GM to Provide Pension Payments to Delphi Employees"

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[1] Senior Partner, Weil, Gotshal & Manges LLP, New York, New York. The views expressed in this testimony are expressed solely on behalf of myself and not on behalf of any other person or entity.

I greatly appreciate the opportunity to testify in these oversight hearings as to the role of the United States Department of the Treasury (the "U.S. Treasury") and the Presidential Task Force on the Auto Industry appointed by President Barack Obama in February 2009 (the "Auto Team") in the decision and actions taken by General Motors Corporation ("GM") in connection with its reorganization pursuant to chapter 11 of the United States Bankruptcy Code in 2008/2009 and its relationship to its former subsidiary and major parts supplier, Delphi Corporation ("Delphi").

I am a practicing attorney and senior member of the international law firm of Weil, Gotshal & Manges LLP ("Weil") that maintains its principal office in New York, New York. For the past 50 years, I have specialized in matters relating to debtor-creditor relationships with an emphasis on restructuring, rehabilitating, and reorganizing distressed business entities. I created the Business Finance and Restructuring group at Weil. Over the course of my professional career, I have represented debtors, secured and unsecured creditors, trustees, and creditors' committees and have served as a trustee in bankruptcy cases and under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa *et seq.*).[2]

I am currently an Adjunct Professor of Law at the New York University School of Law, where I have taught a seminar on chapter 11 bankruptcy and reorganization law since 1975. I also am an Adjunct Lecturer in Law at Columbia Law School, Columbia University, where I have taught a course on Corporate Reorganization and Bankruptcy Law for the past 13 years.

I served as lead restructuring counsel to GM in connection with its historic chapter 11 case. In addition, during the period of September 1, 2002 to March, 2007, I was a Vice Chairman and Managing Director of Greenhill & Co., LLC ("Greenhill"), an investment

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[2] Since approximately 1973, I have been a conferee and member of the National Bankruptcy Conference and I also am a fellow of the American College of Bankruptcy.

banking firm located in New York, New York. During that time, Greenhill was engaged to advise GM in connection with the chapter 11 cases initiated by Delphi and its affiliates. I was the Greenhill team leader relative to that engagement.

It is my understanding that the Subcommittee is desirous of understanding the circumstances concerning GM's relationships with the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the "UAW"), the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers-Communication Workers of America (the "IUE-CWA") and the United Steel Workers (the "USW"), the agreements made with those collective bargaining agents as part of the reorganization of GM that provided for certain pension benefits for Delphi hourly employees, and the U.S. Treasury's role in that process. A review of the economic realities and circumstances that precipitated the commencement of GM's chapter 11 cases and GM's reorganization pursuant to a sale of substantially all of its economically viable assets to an entity sponsored and financed by the U.S. Treasury and Export Development Canada ("EDC") pursuant to section 363(b) of the Bankruptcy Code will demonstrate that GM's actions with respect to the unionized hourly employees and pensioners and the role of the U.S. Treasury and Auto Team and EDC were all motivated by the mutual desire to successfully reorganize and rehabilitate GM so that it would be economically viable and continue to be a major commercial and manufacturing business for the U.S. and Canada employing many thousands of persons, as well as enabling the preservation of the domestic automotive supply business. This was accomplished in the most dire of economic circumstances. The fiscal crisis of 2008 had resulted in virtual cessation of ordinary commercial transactions. Essentially, credit markets had closed down as the world faced the real probability of a depression that might exceed the Great Depression of the 1930s.

The Epic Saga of the Reorganization and Rehabilitation of GM

The events that led to the commencement of chapter 11 cases by GM and the prosecution of the chapter 11 cases are set forth in detail in the attached paper that I presented in various legal conferences.[3] The paper describes the circumstances that precipitated the financial distress of GM, as well as its efforts to avoid resorting to the protections afforded by chapter 11. It also sets out the evolution of the rehabilitation negotiations and the pursuit of a credible plan that would save the American automotive industry.

The Chapter 11 Process and the 363 Transaction

The essence of restructuring is to preserve going concern values and create a viable economic unit. This process typically involves the contraction of the overall business enterprise of a chapter 11 debtor to its core business and the concomitant elimination of costs, operations, facilities, executory contracts, and unexpired leases that provide no benefit or contribution to ongoing future viability. This is the normal process that occurs in the restructuring and reorganizing of a chapter 11 debtor.

GM's chapter 11 cases were more complex and difficult given the size and nature of GM's business and its dependency on adequate financing and consumers. Essentially, it was concluded that a traditional or classic chapter 11 case would not be successful as consumers would be resistant and ultimately not purchase vehicles from a company in chapter 11. To preserve going concern value and instill confidence on the part of consumers, speed was of the essence. The only source of financing for a reorganization was the U.S. Treasury and EDC, as described in the attachment.

[3] General Motors Corporation, *et al.* – The Epic That Preserved Large Segments of the U.S. Automotive Industry

As noted in the attached, the purchaser of assets pursuant to a section 363(b) sale typically plays a dominant role in the development of the planned sale. The purchaser is intent on purchasing a viable business and desirous of protecting its investment and return. Typically the purchaser determines which assets it will purchase and which liabilities it will assume that are necessary to assure the future success of the business to be created. Section 363(b) sales are the daily grist of bankruptcy courts. In today's economic environment, secured creditors dominate the sale process as, generally, they provide the financing to achieve the completion of the transaction. The U.S. Treasury, as GM's largest secured creditor as well as GM's post-chapter 11 financier to the extent of $33.3 billion, acted in the same manner as other secured creditors would act in selecting the assets it would purchase and liabilities it would assume, and the terms and conditions under which it would purchase the assets. In the case of GM, the U.S. Treasury and EDC were motivated by the desire to preserve the going concern but yet protect the taxpayers' money by requiring a feasible plan post the section 363 sale. In connection with an ongoing commercial enterprise, it is necessary that the purchaser be assured that the business be able to operate with the appropriate workforce.

As of March 31, 2009, GM employed approximately 235,000 employees worldwide, of whom 163,000 (69%) were hourly employees and 72,000 (31%) were salaried. Approximately 68% of GM's total of approximately 91,000 U.S.-based employees were represented by unions as of March 31, 2009. The UAW represented the largest portion of the unionized employees. In addition, the UAW was also GM's largest unsecured creditor because of the prior restructuring of GM's healthcare obligations through the use of voluntary employee beneficiary associations under section 501(c)(9) of the Internal Revenue Code of 1986. The claim totaled approximately $20.6 billion.

In order to successfully reorganize GM's business and operations, the UAW's collective bargaining agreement and GM's retiree benefit plans needed to be restructured; plants needed to be closed; and the UAW needed to share in the sacrifice. But, GM and the Auto Team had to balance these objectives against the reality that without a continuing experienced labor force, the objective of the purchase could not be achieved. In that perspective, the organized labor representatives had a degree of leverage in the negotiations.

Delphi

A significant aspect of GM's reorganization in 2009 was the resolution of GM's relationship with Delphi and GM's related purchase of certain Delphi assets used primarily to manufacture parts for GM in order to stabilize and secure the supply of essential parts for New GM (the "Delphi Transaction"). GM and Delphi had a long and complex history arising from their interdependent relationship. Delphi originally consisted of divisions and subsidiaries of GM until GM's spin-off of Delphi in 1999. The objective of the spin-off was to reduce the interdependence of both entities and enable Delphi to attract business from other equipment manufactures. As part of the spin-off, GM continued to be responsible for certain obligations to unionized employees that were transferred to Delphi. The process was not completed by 2006 and Delphi continued to be one of GM's largest component parts supplier and Delphi's largest customer. In 2008, Delphi accounted for approximately 11.3% of GM's North American purchases and 9.6% of GM's global purchases. Indeed, Delphi was a sole-source, just-in-time supplier of many critical parts to GM, including parts used in essentially every GM product line in North America.

Consistent with industry practice, GM operated on a "just-in-time" inventory delivery system, under which component parts from suppliers are typically assembled onto vehicles by GM within a few hours of the delivery of the parts to the vehicle assembly facility. Under the "just-in-time" system, GM generally maintained little or no inventory of parts on site; instead, it relied upon frequent and regular shipments of parts from its suppliers, such as Delphi. Most parts that Delphi manufactured for GM were not readily available from an alternate source due to, among other things, capacity issues within the automotive parts supply industry, the length of time needed to validate and obtain safety regulatory approval of a new supplier's parts, and lead time to develop and build tools for manufacture. If Delphi ever ceased shipping even a small fraction of production parts to GM, the GM plants relying on such shipments may have run out of inventory of such parts and, thus, shut down production. The shutdown of GM plants as a result of termination of deliveries of automotive parts from Delphi would have endangered the recovery by the purchaser, i.e., the U.S. Treasury and EDC. Accordingly, in the same fashion as private secured lenders and purchasers participate in the development of the sale process to achieve the desired objective, the Auto Team was a participant.

At the time of the Delphi Transaction, Delphi itself was struggling in its own complicated and contentious chapter 11 cases that had been pending for four years. GM was an active participant in the Delphi cases. Because of the symbiotic relationship, GM was anxious to see the reorganization of Delphi be successful. Nonetheless, the relationship was adversarial, as Delphi attempted to extract concessions and financing from GM.

It is important to note that in connection with any chapter 11 reorganization of a unionized commercial enterprise, organized labor occupies a position of economic leverage. Without the unionized employees continuing to work, the reorganization as a going concern will fail. That leverage, and the principles of the national labor laws, make unions and their pensions a critical force in the reorganization process. Salaried employees do not have the same protection or leverage. Their claims will simply fall into the class of general unsecured creditors. In most cases, they are easily replaceable. During Delphi's chapter 11 cases, GM did expend billions of dollars and incurred additional liabilities in connection with Delphi's unionized employees to protect its supply base. For example, GM made several critical contributions to facilitate Delphi's implementation of new agreements with its unions in 2006, 2007 and 2009, including the transfer of significant pension and post-retirement health care obligations to GM, and also provided liquidity to Delphi by committing to extend financing to Delphi of up to $500 million and accelerating the payment of $300 million in trade payables to Delphi. However, GM's efforts were insufficient to restore Delphi's capital position and stabilize its operations, as the economy began its decline in 2007 and into the financial crisis of 2008/2009.

To ensure the continued and uninterrupted supply of its auto parts, pursuant to the Delphi Transaction, New GM purchased Delphi's global steering business and Delphi's U.S. plants that supplied parts primarily to GM. At the time of the Delphi Transaction, Delphi's hourly and salaried pension plans were significantly underfunded (by $3.2 billion with respect to the hourly plan and $2.1 billion with respect to the salaried plan). The PBGC had asserted liens against the assets of Delphi's non-debtor affiliates, including those that were being sold to GM, to attempt to secure certain of the PBGC's pension-related claims against Delphi's ERISA control group. GM was not willing to purchase the assets while they were subject to the threat of the PBGC liens and required the removal of the PBGC's alleged liens as a condition to closing the Delphi Transaction.

To resolve the PBGC's asserted liens, GM, Delphi, the PBGC and the Auto Team engaged in internal negotiations regarding an agreement to satisfy the PBGC's asserted liens. As part of that agreement, GM could make a cash payment to the PBGC and/or assume all or some portion of the net underfunded liability of Delphi's hourly pension plan if such contributions were necessary to enable the Delphi Transaction (or an acceptable alternative) to proceed and the contributions were outweighed by the benefits New GM would receive from the Delphi Transaction. As noted in the Report of the Special Inspector General for the Troubled Asset Relief Program, New GM agreed to honor the IUE's and USW's agreements with Delphi concerning the pension protections in order to complete the Delphi Transaction, which was critical to GM's rehabilitation and the protection of the investments and financings to be made by the U.S. Treasury and EDC.

Conclusion

Chapter 11 is complex and stressful process. It results in losses and hardships to many constituencies. But, as Congress recognized when it enacted the United States Bankruptcy Code, it is in the best interests of the nation to provide a process for distressed businesses to preserve and protect going concern values and enable restructured businesses to go on as economically viable and able to compete in its marketplace. The decisions made in dealing with the pension plans of the Delphi employees represented by the UAW, IUE and the USW were necessary to protect taxpayer money and achieve the objective of preserving an American manufacturing base that would continue to provide employment opportunities and serve the communities in which the business operated. Unfortunately, salaried employees and other constituencies did not possess the same bargaining power and leverage as organized labor/pensioners. The U.S. Treasury and EDC acted with the objective of protecting their investment in the same manner as private investors and lenders in New GM. The objectives of the section 363 GM sale and the Delphi Transaction have been largely achieved. An industry was rescued and is more stable and contributing to the welfare of the nation. It was a worthwhile solution and achievement.

Thank you, again, for the opportunity to testify at this important Hearing.

ATTACHMENT 1

General Motors Corporation, *et al.*
The Epic That Preserved Large Segments of the U.S. Automotive Industry

Harvey R. Miller
Senior Partner
Weil Gotshal & Manges LLP
Presented at the William J. O'Neill Regional Bankruptcy Institute
June 6, 2013

General Motors Corporation, *et al.* – The Epic That Preserved Large Segments of the U.S. Automotive Industry

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Memorandum

September 10, 2012

To
Distribution

From
Harvey R. Miller

Re General Motors Corporation, *et al.* – The Epic That Preserved Large Segments of the U.S. Automotive Industry

This memorandum sets forth the circumstances that resulted in the rehabilitation and reorganization of General Motors Corporation and its subsidiaries and affiliates ("**GM**") that preserved significant portions of the American automotive industry and helped alleviate a global financial crisis. GM was rehabilitated through the traditional use of chapter 11 of title 11 of the United States Code ("**Bankruptcy Code**"). The GM chapter 11 cases followed established procedures under the Bankruptcy Code to resuscitate a distressed business entity and thereby preserve employment opportunities and sustain the interests of communities in which the entity operated and maintained its businesses. Because of the economic chaos resulting from the subprime mortgage crisis and the failure of Lehman Brothers Holdings Inc. on September 15, 2008, which caused the collapse of global financial markets, and given the size of GM, GM had no access to financing other than from the United States. Thus, in order to save the U.S. automotive industry, including hundreds of automotive parts suppliers and the hundreds of thousands of jobs involved, the United States Government, initially under President George W. Bush and, thereafter, under President Barack Obama, together with the Canadian EDC, became the financiers of GM and, ultimately, the purchasers of GM's core assets. These actions enabled the rehabilitation and reorganization of GM as an ongoing viable business.

The facts and circumstances that led to and resulted in the GM reorganization were:

I. The GM Business Prior to the Commencement of the Chapter 11 Reorganization Case on June 1, 2009

A. For over one hundred years, GM, inclusive of its approximately 463 direct and indirect wholly-owned subsidiaries, was a major component of the U.S. manufacturing and industrial base, as well as the market leader in the automotive industry. Its brands were the standard bearer in the development of the American automotive industry. Over many years, GM supplied one in every five vehicles sold in the United States. It was the largest original equipment manufacturer ("**OEM**") in the country and the second largest in the world.

B. In 2007 GM's global revenues were approximately $181 billion. Global revenues recorded for fiscal year 2008 aggregated approximately $150 billion. As of March 31, 2009, GM had consolidated global recorded assets and liabilities of approximately $82.29 billion and $172.81 billion, respectively.

C. GM over 100 years grew into a worldwide leader in products and services related to the development, manufacture, and marketing of cars and trucks under various brands, including Buick, Cadillac, Chevrolet, GMC, Daewoo, Holden, HUMMER, Opel, Pontiac, Saab, Saturn, Vauxhall, and Wuling. It produced nearly 450 million vehicles globally and operated in virtually every country in the world.

1. GM's automotive operations included four automotive segments – GM North America, GM Europe, GM Latin America/Africa/Mid-East, and GM Asia Pacific – each of which functioned as independent business units with coordinated product development and functional support.

2. Substantially all of GM's worldwide car and truck deliveries (totaling 8.4 million in 2008) were marketed through retail dealers in North America and distributors and dealers outside North America, most of whom were independently owned.

3. In addition to products sold to dealers for consumer retail sales, GM sold cars and trucks to fleet customers, including rental car companies, commercial fleet companies, leasing companies, and governmental units.

D. GM's Dealer Network

1. GM used an extensive dealer network. Substantially all retail sales occurred through its network of independent retail dealers and distributors.

2. As of April 30, 2009, there were 6,099 GM vehicle dealers throughout the United States. The dealers made the primary sales and service interface with consumers of GM products. Dealers not only sold new cars, but also provided service and parts for vehicle maintenance and a market for trade-ins of used vehicles in connection with new vehicle purchases.

3. GM and dealers provided extensive warranties in connection with vehicle sales that extended over long periods and were critical elements in the sales.

E. GM's Vendors and Suppliers

1. GM and its vendors and suppliers had a symbiotic relationship, with each depending on the other for survival.

2. As the nation's largest automobile OEM, GM used the services of thousands of vendors and suppliers, resulting in approximately $50 billion in annual supplier payments.

   a. In North America, GM used a network of approximately 11,500 suppliers. There were over 600 suppliers whose sales to GM represented over 30% of their annual revenues.

   b. Many automotive suppliers depended, in whole or in part, on GM for survival.

3. GM relied on its vendors and suppliers for continuity in operations.

   a. Approximately 75% to 85% of every GM automobile consisted of components made by entities other than GM. Any interruption in the flow of such components, even a temporary one, would be disruptive and costly.

   b. Consistent with industry practice, GM operated on a "just-in-time" parts and inventory delivery system. Component parts from numerous vendors and suppliers typically were assembled onto vehicles within a few hours of the delivery of the parts and components to GM assembly facilities. Consequently, even if one supplier ceased shipping production parts and components, the GM plants relying on such shipments would be materially and adversely affected and could be forced to shut down.

   c. Most parts that a given vendor or supplier manufactured for GM were not readily available from alternate sources because of, among other things, (i) capacity constraints within the automotive parts supply industry (including the practice of "sole source suppliers" of many parts and components), (ii) the significant length of time (up to 36 months) required to validate safety and environmental regulatory compliance of a new supplier's parts, and (iii) the lead time required to develop and build tools for manufacture of particular parts and components.

      (i) For example, Delphi Corporation, which had been struggling as a chapter 11 debtor in possession since October 2005, had provided over 60% of GM's North American steering columns – almost 3 million per year. That volume simply could not be replaced quickly as there was not enough excess capacity to accommodate GM's needs or time to validate the parts. The Delphi situation confirmed the critical implications to GM of a shutdown of a major supplier.

F. GM's Employees

1. As of March 31, 2009, GM employed approximately 235,000 employees worldwide, of whom 163,000 (69%) were hourly employees and 72,000 (31%) were salaried employees.

2. Approximately 68% of GM's total of approximately 91,000 U.S.-based employees were represented by unions as of March 31, 2009.

3. The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America ("**UAW**") represented the largest portion of U.S. unionized employees. The UAW also was GM's largest unsecured creditor because of the prior restructuring of GM's healthcare obligations through the use of voluntary employee beneficiary associations ("**VEBAs**") under section 501(c)(9) of the Internal Revenue Code of 1986. The claim totaled approximately $20.6 billion.

II. Significant Factors Leading Up to the Financial Distress and Lack of Liquidity at GM and the Commencement of the Chapter 11 Reorganization

A. Worldwide Financial Crisis; Increased Fuel Prices; International Competition

1. The global economic collapse and deterioration of the financial markets abetted a liquidity crisis at GM that began to surface during the end of 2007 and exploded in 2008. It materially affected the automotive sector as vehicle sales declined and foreign carmakers intensified competitive efforts.

2. GM's financial distress was exacerbated by substantial increases in the price of crude oil to nearly $150 per barrel during 2008. This precipitated a sharp downturn in driving and sales in the large vehicle segments of the automobile market in which GM was dominant and most profitable.

3. The negative business aspects were further exacerbated by a sharp decline in the global economy, including substantial increases in unemployment and a freeze-up of consumer and business lending.

4. The resulting drop in new vehicle sales led to a steep erosion in GM revenues and, in turn, significant operating losses.

5. As a result, between early May and the middle of June 2008, GM's common stock price declined from over $23 per share to under $15 per share and its long-term bonds traded down from the mid-70s to the high 60s.

B. Instability in Financial Markets

1. Even as fuel prices stabilized and moderated to some degree during the fall of 2008, GM faced sharply deteriorating U.S. economic conditions during the second half of 2008 and the first quarter of 2009, constituting the worst economic downturn and credit market environment since the Great Depression of the 1930s.

2. The continuing economic contraction and the crisis in the financial markets as 2008 proceeded severely affected consumers, as both income and financing for buyers and lessees of automobiles evaporated. Access to credit significantly contracted or became nonexistent.

3. The contraction in vehicle sales and purchase orders from OEMs began to cause the bankruptcies of major auto parts suppliers, including Delphi Corporation, Dana Corporation, Collins & Aikman Corporation, Tower Automotive, Inc., and Dura Automotive Systems, Inc., among others.

4. As the general economy continued to deteriorate, GM explored programs to conserve and raise cash through various capital markets actions, such as

    a. Anticipating a liquidity crunch, in the summer of 2008, GM explored raising as much as $3 billion through a public offering of common and mandatory convertible preferred stock. Because of the rapidly and severely contracting financial and public markets, the prospects for such equity offerings faded by June 2008.

    b. GM's Treasury Office engaged independent financial advisors to assist in exploring a variety of alternative strategies, including a liquidity preservation plan and the possible issuance of secured debt.

    c. GM's financial advisors indicated that the market capacity for such a financing as of July 2008 was approximately $2 to $4 billion. However, GM's ability to raise additional secured borrowing was constrained by its existing secured loans and restrictive provisions in various public bond indentures. Nevertheless, GM attempted to pursue secured financing until early September 2008, when the global financial markets totally collapsed.

5. During the early part of September 2008, the U.S. Treasury announced the conservatorships of Fannie Mae and Freddie Mac. It caused further financial turmoil.

6. On September 15, 2008, Lehman Brothers Holdings Inc., the fourth largest U.S. investment bank, commenced a chapter 11 reorganization case. In the weeks that

followed, it became clear that there were no prospects for GM to launch any debt offering, even on a secured basis.

7. GM also had explored selling a variety of core and noncore assets. Such transactions were not able to be consummated on reasonable terms given the contracting credit markets, the expanding recession, and increasing concerns as to the financial viability of GM.

8. The combination of the sharp run-up of gasoline prices with its direct impact on GM's most profitable vehicle segments, rapid declines in the housing/mortgage/credit sectors, the freeze-up of equity and debt capital markets, and the lowest levels of consumer confidence in nearly thirty years, had an unprecedented effect on the automotive industry generally, and GM in particular.

9. During 2008 new vehicle sales fell to their lowest per capita levels in half a century, putting automakers under enormous financial stress. Sales of GM's products dropped as its market share in the largest single market for its products, the United States, steadily declined. The automobile market was flooded with imports from foreign OEMs with far lower cost structures and dramatically lower legacy benefit obligations.

10. GM's U.S. market share had steadily declined from 45% in 1980 to 22% in 2008.

11. GM's sales were materially affected by the overall decline in domestic automobile sales, which continued unabated given the deteriorating economy and financial markets. The Seasonally Adjusted Annual Rate ("**SAAR**") of automobile sales for the United States industry declined from 15.6 million units in January 2008 to 9.8 million units in January 2009, which was the lowest level since 1982. This affected all domestic OEMs, but GM in particular, as well as automotive parts suppliers. For the fourth quarter of 2008, GM's domestic automobile sales were down 36% compared to the corresponding period in 2007.

12. The extraordinary conditions and exogenous events of 2008 and 2009 caused GM's liquidity to rapidly erode to a level below what was necessary to operate its business. GM was compelled to reach out to the U.S. Government for financial assistance to sustain its operations.

III. U.S. Government Financial Assistance

A. The administration of President George W. Bush and its Secretary of the Treasury, Henry M. Paulson, recognized the draconian consequences of a GM failure, e.g., the loss of hundreds of thousands of jobs and the sequential shutdown of hundreds of ancillary and related businesses.

B. Viability Plan I

1. On November 21, 2008, the Speaker of the House of Representatives, Nancy Pelosi, and the Senate Majority Leader, Harry Reid, released a letter to the chief executive officers of GM, Chrysler LLC ("**Chrysler**"), and Ford Motor Company outlining a framework for the domestic OEMs to request government loans, which required, among other things, submission of additional information demonstrating future economic viability of the particular OEM.

2. In response, on December 2, 2008, GM submitted to the Senate Banking Committee and the House of Representatives Financial Services Committee a proposed viability plan ("**Viability Plan I**"), pursuant to which GM committed to using proposed government financing exclusively to sustain and restructure its operations in the United States and aggressively retool its products.

   a. Viability Plan I also requested that the Bush Administration provide an immediate loan of $4 billion to insure minimum liquidity through the end of 2008, a second $4 billion draw in January 2009, a third $2 billion draw in February 2009, and a fourth $2 billion draw, at an unstated date in 2009, for a total secured term loan of $12 billion.

   b. GM also requested access to an incremental $6 billion secured line of credit, for a total of $18 billion in projected government loans.

3. Congress elected not to enact enabling legislation.

4. GM then was compelled to seek immediate direct financial support from the U.S. Treasury or confront suspension of operations.

C. U.S. Treasury Facility and Viability Plan II

1. On December 19, 2008, President George W. Bush, recognizing the potential consequences of GM ceasing operations, announced that the U.S. Treasury would make short-term, emergency funding available to GM and Chrysler under the Troubled Asset Relief Program ("**TARP**") to prevent both companies from failing and closing.

2. On December 31, 2008, GM and the U.S. Treasury entered into an agreement (the "**U.S. Treasury Loan Agreement**") that provided GM with emergency financing of up to an initial $13.4 billion pursuant to a secured term loan facility (the "**U.S. Treasury Facility**").

3. GM borrowed $4 billion from the U.S. Treasury on December 31, 2008 and an additional $5.4 billion on January 21, 2009. The remaining $4 billion was borrowed on February 17, 2009.

4. A number of GM's domestic subsidiaries guaranteed GM's obligations under the U.S. Treasury Facility. The U.S. Treasury Facility also was secured by a lien on substantially all the unencumbered assets of GM and the guarantors, as well as a junior lien on encumbered assets, subject to certain exceptions. The U.S. Treasury Facility was also secured by a pledge of the equity interests held by GM and the guarantors in certain foreign subsidiaries, subject to certain exceptions.

5. In consideration for the loans provided under the U.S. Treasury Loan Agreement, GM also issued to the U.S. Treasury (i) a warrant to purchase up to 133,035,597 shares of GM common stock (subject to adjustment) and (ii) a related promissory note in the principal amount of approximately $749 million, due on December 30, 2011 (together with other similar notes, the "**Warrant Notes**").

6. The U.S. Treasury Facility required that GM develop a business plan proposal to demonstrate future viability. Subsequent to December 2, 2008, when GM submitted Viability Plan I, however, economic conditions had continued to erode globally, which, combined with increased public speculation about GM's future and survival, negatively affected GM's sales, volume, revenues, and cash flow.

7. After the national election, in February 2009 President Barack Obama appointed the Presidential Task Force on the Auto Industry, which included cabinet level officials, to evaluate available options (the "**Presidential Task Force**").

    a. The members of the Presidential Task Force were: the Secretary of the U.S. Department of the Treasury, Timothy F. Geithner; the Director of the National Economic Council, Lawrence H. Summers, the Secretaries of Transportation, Commerce, Labor, and Energy; the Chair of the President's Council of Economic Advisers; the Director of the Office of Management and Budget; the Environmental Protection Agency Administrator; and the Director of the White House Office of Energy and Climate Change.

    b. The Presidential Task Force advisors (Team Auto) included Ron Bloom, Senior Advisor to the U.S. Treasury; Steven L. Rattner, Counselor to the U.S. Treasury; Harry Wilson, an investment banker; and Matthew A. Feldman, a restructuring attorney.

8. On February 17, 2009, GM submitted to the Presidential Task Force its revised business plan to achieve and sustain GM's long-term viability, international competitiveness, and energy efficiency ("**Viability Plan II**"). It was intended to comprehensively address GM's revenues, costs, and balance sheet for its U.S. and

foreign operations, as well as GM's plan to reduce petroleum dependency and greenhouse gas emissions.

9. After review of Viability Plan II by Team Auto, on March 30, 2009, President Obama announced that Viability Plan II was not satisfactory and did not justify a substantial new investment of taxpayer dollars. The President outlined a series of actions that GM needed to take to receive additional federal assistance, including reaching an agreement with the UAW and GM's bondholders regarding debt reduction and the submission of a revised business plan that was more realistic and aggressive in terms of scope and timing.

10. President Obama indicated that the U.S. Treasury, as the largest secured creditor of GM, would extend additional limited working capital loans to sustain GM for another sixty days to enable GM to continue operations and develop and implement a more aggressive and comprehensive viability plan satisfactory to the U.S. Government that would include a model to not only survive, but also succeed in the competitive, global markets and repay its obligations.

11. The U.S. Government set a deadline of June 1, 2009 for GM to demonstrate that its viability plan would fundamentally transform GM into a profitable and competitive OEM.

12. On April 22, 2009, the U.S. Treasury Loan Agreement was amended to increase the U.S. Treasury Facility by $2 billion to $15.4 billion. GM borrowed the additional $2 billion of secured working capital loans on April 24, 2009.

13. On May 8, 2009, GM announced its first quarter 2009 results. Its total net revenues had decreased by $20 billion (or 47.1%) in the first three months of 2009. Operating losses increased by $5.1 billion from the prior quarter. During this same period, GM had negative cash usage of $9.4 billion and available liquidity deteriorated by $2.6 billion due, in large part, to lower sales volumes. Sales by GM's dealers in the United States fell to approximately 413,000 vehicles in the three months ended March 31, 2009, a decline of approximately 49% compared to the corresponding period in 2008.

14. To protect its claims against GM and avoid the cessation of operations with attendant consequences to the global economy, on May 20, 2009, the U.S. Treasury Loan Agreement was amended to increase the U.S. Treasury Facility by $4 billion. GM borrowed the additional $4 billion of secured working capital loans on May 22, 2009.

15. On April 27, 2009, as part of the continued effort to achieve long-term viability and avoid bankruptcy, GM launched a public exchange offer for the approximately $27 billion of its outstanding unsecured bonds (the "**Exchange Offer**").

a. GM viewed the Exchange Offer as a means to continue operations and avoid the precipitous decline in revenues that would result from a prolonged bankruptcy case.

b. At the time the Exchange Offer was announced, GM disclosed that, if it did not receive enough tenders to consummate the Exchange Offer, it would expect to commence a chapter 11 case to preserve the going concern value of the business.

c. The terms of the Exchange Offer were the subject of extensive negotiations between GM and the U.S. Treasury, as consummation of the Exchange Offer required the satisfaction or waiver of several conditions imposed by the U.S. Treasury as the largest secured creditor and potential contributor to GM's deleveraging.

(i) Among such conditions, the results of the Exchange Offer had to be acceptable to the U.S. Treasury, including the overall level of participation by bondholders in the Exchange Offer.

(ii) Consummation of the Exchange Offer was also conditioned on, among other things, the conversion to equity of (a) at least 50% of GM's outstanding U.S. Treasury debt at June 1, 2009 (approximately $10 billion) and (b) at least 50% (approximately $10 billion) of GM's future financial obligations to a new VEBA, for a total projected additional debt reduction of approximately $20 billion.

16. The Exchange Offer expired on May 26, 2009 without achieving the threshold of required tendered acceptances from GM bondholders.

17. No other private or public financing was available to GM. Access to credit was nonexistent.

IV. The Onset of the Chapter 11 Reorganization Case and the 363 Transaction

A. It became clear in the Spring of 2009 that an out-of-court restructuring was not possible. The only alternative to preserving going concern values and provide a means to save jobs and repay the U.S. Treasury was the reorganization process under the Bankruptcy Code.

B. In that context, it became obvious that the only feasible source of financing of a reorganization case was the U.S. Treasury. The parties entered into intensive negotiations that resulted in agreement to implement a transaction under which substantially all the major core assets of GM would be purchased by a U.S. Treasury-sponsored purchaser (subject to any higher or better offer) in an expedited process under section 363 of the Bankruptcy Code (the "**363 Transaction**").

C. Under this scenario, the purchaser would create a "New GM" that would purchase assets selected by it. Those purchased assets would constitute the new reorganized GM. New GM would then immediately operate free of the liabilities of the bankrupt Old GM and, thereby, preserve the going concern values, avoid systemic failure, provide employment, protect the many communities dependent on the continuation of the business, and restore consumer confidence, as well as provide for potential recovery by the U.S. Treasury of its claims.

D. The chapter 11 process selected and pursued in providing for a sale under section 363 of the Bankruptcy Code was consistent with generally-accepted practices and procedures followed in bankruptcy and chapter 11 cases to preserve going concern values and businesses through expeditious sales. In such proceedings the purchaser would be privately financed and, pending the implementation of the sale, the secured creditor of the debtor would provide debtor-in-possession (DIP) financing to bridge the sale. Because of the size of GM and the outstanding secured indebtedness held by the U.S. Treasury, as well as the severe economic conditions that prevailed in 2009, there existed no available financing from any nongovernmental source. The process developed complied with the accepted practice for such sales that had been approved and effected during the years preceding the GM chapter 11 cases. The U.S. Treasury, as the secured creditor, agreed that it would provide DIP financing through the chapter 11 process – but only if the sale occurred on an expedited basis.

E. Both the Government of Canada and the Government of Ontario, through Export Development Canada ("**EDC**"), Canada's export trading agency, agreed to participate in the DIP financing (discussed below) to assure the long-term viability of GM's North American enterprise and to (i) preserve value of the business, restore consumer confidence, and mitigate the devastating damage that GM and the industry would suffer if GM's major business operations were to remain in bankruptcy for any extended period and (ii) avoid the enormous costs of financing a lengthy chapter 11 case. The U.S. Treasury also agreed that it would provide New GM with adequate postacquisition financing that would further its long-term viability.

F. The 363 Transaction was embodied in a Master Sale and Purchase Agreement among GM and its debtor subsidiaries (the "**Sellers**" or the "**Debtors**") and Vehicle Acquisition Holdings LLC, a purchaser sponsored by the U.S. Treasury (the "**Purchaser**"), dated as of June 1, 2009 (the "**MSPA**").

G. The 363 Transaction was a material element of the U.S. Treasury program to revitalize the domestic automotive industry. It contemplated that substantially all of GM's core operating assets, which were essential for New GM to be a profitable and competitive operating entity (including the capital stock of the majority of its subsidiaries), would be sold and transferred to the Purchaser, which would immediately begin operations.

H. A fundamental premise of the U.S. Treasury program was to revive consumer confidence in GM products and services for the benefit of GM's employees, its extended vendor and supplier and dealer network, and the families and communities that depend on GM operations.

1. Knowing that GM's business would exist and be supported in the form of New GM, consumers would have confidence that if they purchased a GM vehicle, there would be a dealer network and U.S. Government support to assure parts, warranty service, and a market for future used GM vehicle trade-ins and vehicle recovery.

2. A viable company would help preserve and support jobs and benefits, not only for GM's employees, but also for the employees of GM's suppliers and dealers, all of which would help support the market for GM vehicles with attendant benefit to the economy as a whole.

I. The purchase price paid by the Purchaser was equal to the sum of

1. a credit bid by the Purchaser in an amount equal to the amount of indebtedness owed to the Purchaser as of the closing pursuant to the UST Credit Facilities (as defined in the MSPA) and the DIP Facility, less approximately $7.7 billion of indebtedness under the DIP Facility (estimated to be $48.7 billion at July 31, 2009);

2. the Warrant Notes previously issued by GM to the U.S. Treasury;

3. the issuance by the Purchaser to the Debtors of 10% of the common stock of the Purchaser as of the closing;

4. the issuance by the Purchaser to the Debtors of New GM Warrants to purchase up to 15% of the shares of common stock of the Purchaser on a fully-diluted basis, with the initial exercise prices for equal amounts of the New GM Warrants based on $15 billion and $30 billion equity values of the Purchaser; the warrants would be exercisable through the seventh and tenth anniversaries of issuance, respectively, and the Debtors could elect partial and cashless exercises; and

5. the assumption by the Purchaser of the Assumed Liabilities (as defined in the MSPA).

J. In addition, it was provided that if the Bankruptcy Court determined that the estimated amount of allowed general unsecured claims and allowed asbestos personal injury claims collectively exceeded $35 billion, then the Purchaser would issue up to an additional 2% of the outstanding common stock of the Purchaser as of the closing of the 363 Transaction.

K. The assets excluded from the 363 Transaction, as well as the proceeds of the sale, were to be administered in the continuing chapter 11 cases to support the liquidation of such assets, wind-down, or other disposition of the chapter 11 cases and to provide distributions to holders of allowed claims against the Debtors.

L. The proposed 363 Transaction addressed GM's debt obligations and significantly restructured GM's future legacy obligations to its employees through a settlement with the UAW. Under the UAW Retiree Settlement Agreement, the Purchaser, from the assets it acquired, agreed to provide to the UAW VEBA, among other things,

1. shares of common stock of the Purchaser representing 17.5% of the Purchaser's total outstanding common stock;

2. a note of the Purchaser in the principal amount of $2.5 billion;

3. shares of cumulative perpetual preferred stock of the Purchaser in the amount of $6.5 billion;

4. warrants to acquire 2.5% of the Purchaser's equity; and

5. the assets held in the GM VEBA to be transferred to the Purchaser as part of the 363 Transaction.

M. Resolution of the legacy retirement benefit issues and work rules for a refocused employer was a gating issue.

1. Concessions were necessary to ensure future viability. Because the Bankruptcy Code contains provisions that limit a debtor's ability to modify retiree benefits and collective bargaining agreements without protracted negotiations and possible litigation that, in GM's case, would have jeopardized an expeditious exit from bankruptcy for the operating assets, the consensual arrangement with the UAW was critical to the preservation of going concern values and the creation of an entity that could repay the U.S. Government financing. Without a continuing experienced labor force, the value of the acquired assets would have equated to liquidation values.

2. Team Auto actively participated in negotiating the amended collective bargaining agreement with the UAW that was essential to make New GM a viable investment for the Purchaser.

N. Team Auto, with input from the U.S. Treasury, the Presidential Task Force, and the Canadian EDC, fully negotiated the MSPA and completed its due diligence as to the assets to be acquired and contracts to be assigned to the Purchaser.

O. In sum, under the 363 Transaction, the equity of the Purchaser, i.e., New GM, was distributed initially as follows:

1. U.S. Treasury received 60.8% of New GM Common Stock and $2.1 billion of Series A Preferred Stock;

2. Canadian EDC received 11.7% of New GM Common Stock and $400 billion of Series A Preferred Stock;

3. UAW's new VEBA received 17.5% of the Purchaser's New Common Stock, $6.5 billion of Series A Preferred Stock, and 6-year warrants to acquire 2.5% of New GM Common Stock with an exercise price based on $75 billion total equity value; and

4. The Debtors (Old GM) received 10% of New GM Common Stock plus up to an additional 2% of New GM Common Stock if general unsecured claims exceed $35 billion and two sets of warrants, each to acquire 7.5% of outstanding New GM Common Stock with exercise prices of $15 billion and $30 billion total equity value.

P. The 363 Transaction had the following benefits:

1. preserved the value of GM core assets and businesses as an operating enterprise (i.e., going concern value, not liquidation value);

2. avoided the domino effect upon other OEMs and Tier I suppliers that would have followed a GM liquidation;

3. continued employment for hundreds of thousands of persons at GM as well as employees of those entities that relied upon GM as their source of business and revenues;

4. protected the many communities dependent on the continuation of the business;

5. restored consumer confidence in GM and its products and dealers;

6. established an automotive manufacturing business that would be viable, competitive, and reliable, as well as a standard bearer and bellweather industry considered essential for the United States; and

7. avoided exacerbating the economic recession that engulfed the United States in 2009.

V. The General Motors Chapter 11 Case

A. GM commenced the chapter 11 case on June 1, 2009 in the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**").

B. Implementing the 363 Transaction

1. Concurrently with the filing of its voluntary chapter 11 petitions, GM filed a motion with the Bankruptcy Court seeking approval of the 363 Transaction, under which the Debtors would sell their core operating assets to the U.S.-sponsored Purchaser in exchange for a package of cash and noncash consideration valued at over $90 billion, subject to higher or better offers.

2. On June 2, 2009, the Bankruptcy Court, after notice and a hearing, approved the notice and related procedures and set June 19, 2009 as the deadline for parties to object to the 363 Transaction; June 22, 2009 as the deadline to submit any higher or better bids; and June 30, 2009 as the date for a hearing to consider approval of the 363 Transaction.

3. Although hundreds of objections to the 363 Transaction were filed, GM did not receive any meaningful bids nor any alternative proposals to the 363 Transaction. No objector argued that the 363 Transaction was not in the best interests of GM and its economic stakeholders.

4. In connection with certain objections, the parties in interest engaged in ten days of expedited discovery. GM produced several hundred thousand pages of documents, responded to extensive interrogatories, and submitted its CEO and others to depositions. A three-day evidentiary hearing was held before the Bankruptcy Court from June 30 to July 2, 2009, during which five witnesses testified and affidavits and declarations were submitted and considered.

5. The evidentiary record was undisputed and established that the 363 Transaction was a sound exercise of GM's business judgment and was the only viable alternative to a liquidation that would severely diminish values and, further, that the sale would avoid cataclysmic ramifications to the national economy. It also found that the U.S. Treasury, with the support of the Canadian EDC, was the only entity prepared to finance the chapter 11 case and such financing was conditioned on the satisfaction of certain milestones for completion of the sale transaction.

6. On July 5, 2009, the Bankruptcy Court entered an order (the "**Sale Order**") overruling all remaining objections and authorizing the 363 Transaction. The Bankruptcy Court issued an 87-page written decision in support of the Sale Order, *In re General Motors Corp.*, 407 B.R. 463 (Bankr. S.D.N.Y. 2009). The Sale Order was affirmed by the United States District Court for the Southern District of New York in two decisions, *Campbell v. Motors Liquidation Co. (In re Motors Liquidation Co.)*, 428 B.R. 43 (S.D.N.Y. 2010) and *Parker v. Motors Liquidation Co. (In re Motors Liquidation Co.)*, 430 B.R. 65 (S.D.N.Y. 2010).

7. The sale of GM's continuing businesses and related core assets closed on July 10, 2009. On the closing date, the Purchaser took on the name General Motors Company, i.e., New GM, and the entity formerly known as General Motors Corporation changed its name to Motors Liquidation Company ("**MLC**").

8. Less than eighteen months later, in November 2010, New GM conducted an initial public offering of shares of common stock acquired by the U.S. Treasury and Canadian EDC and returned as a listed corporation on the New York Stock Exchange. The U.S. Treasury and the Canadian EDC recovered approximately $11.7 billion and $1.2 billion, respectively, from the sales proceeds. Currently, the U.S. Treasury and the Canadian EDC only holds 500,065,254 and 140,084,746 shares of New GM Common Stock, respectively, with the U.S. Treasury holding 30% and the Canadian EDC holding 8.4% of New GM Common Stock.

9. MLC prosecuted the chapter 11 cases following the sale to manage the liquidation and wind-down of the noncore assets as well as the resolution of all claims against it (i.e., those liabilities not assumed by New GM), including environmental issues and disposition of closed plants.

10. On December 8, 2010, MLC proposed its chapter 11 plan, which provided for the establishment of four trusts whose primary objective was to liquidate the noncore assets over time and resolve the outstanding liabilities transferred to the respective trusts. The chapter 11 plan was overwhelmingly accepted by MLC's creditors (97% of creditors entitled to vote in number and 85% in dollar amount of claims) and became effective on March 31, 2011.

11. MLC's chapter 11 plan provided for the distribution of the proceeds of the 363 Transaction, i.e., 150 million shares of New GM Common Stock; warrants to acquire 136,363,635 newly issued shares of New GM Common Stock, with an exercise price set at $10.00 per share; and warrants to acquire 136,363,635 newly issued shares of New GM Common Stock with an exercise price of $18.33 per share.

12. Today, the chapter 11 plan has been fully consummated as the shares issued by New GM have been distributed to the Motors Liquidation Company General Unsecured Claims (GUC) Trust to hold, administer, and direct the distribution of such shares for the benefit of holders of allowed general unsecured claims against MLC. The Motors Liquidation Company GUC Trust itself has distributed over 120 million shares of New GM Common Stock, and over 220 million shares of New GM Common Stock in connection with the New GM Warrants, to the holders of allowed general unsecured claims against MLC. Because creditors who received distributions were free to sell their shares or hold them, the precise recovery for MLC's creditors is difficult to ascertain. However, depending on the

price of New GM Common Stock, creditor recovery has ranged from approximately 12% to 20%.

VI. Addressing Criticisms of GM as a "Bailout"

A. The GM "bailout" has been the subject of many criticisms, including

1. Government ownership of a commercial business is improper and could not be successful;

2. Certain creditors, namely the UAW, received preferential treatment in the chapter 11 cases and as part of the 363 Transaction; and

3. President Obama and his administration abused their power and constitutional obligations by sponsoring the reorganization of GM.

B. The Structure of the GM Reorganization

1. <u>Criticisms</u>

a. During the planning stages of the "bailout," it was argued that the U.S. Government could not take effective control of GM without becoming a failed political exercise.

b. The reorganization would be used by President Obama to achieve parochial political objectives to control not only whether GM and Chrysler could reorganize, but also to dictate how a reorganization or liquidation would occur (e.g., which plants to close, which vendor and supplier contracts to assume, which brand names to retire) to the prejudice of certain creditors and other parties.

2. <u>Responses</u>

a. GM's restructuring was unaffected by political objectives other than a universal desire to prevent the shutdown of the U.S. automotive manufacturing sector and the systemic failures that would result.

b. Presidential Task Force and Team Auto

(i) The organization and utilization of the Presidential Task Force and Team Auto separated the negotiation of the actual terms of the 363 Transaction from the political arena.

(ii) Team Auto was not the product of partisan politics, and its members and workforce covered the political spectrum. They were recruited largely from the financial community and Wall

Street law firms. They were persons of outstanding expertise enlisted without regard to political affiliation. They understood distressed investing restructuring and managed the process as if it was a nongovernmental restructuring and reorganization.

(iii) The Presidential Task Force mandated that Team Auto conduct due diligence, make reasonable business judgments, and assist in designing a transaction directed to saving the industry and maximizing value of the reorganized enterprise rather than satisfying noneconomic objectives.

(iv) The momentum and speed of the 363 Transaction and the identity of the negotiators enabled the restructuring process to stay on track.

(v) The Presidential Task Force required New GM to objectively project a business plan to succeed in the competitive global automotive market by creating accountability to generate positive cash flow and maintain a competitive balance with other OEMs.

(vi) The MSPA did not contain any conditions favoring specific constituencies. The MSPA was free of political influences. The guiding principle included the development of a feasible, performable business plan that would produce a viable OEM capable of competing in the marketplace and provide the basis to repay the government loans and investments.

c. Need for Speed

(i) The speed of GM's bankruptcy case was necessary to meet business concerns and was not designed to squelch opposition.

(ii) GM had completed negotiating the 363 Transaction with the U.S. Treasury by the time it commenced its chapter 11 case on June 1, 2009. GM, with the oversight of Team Auto, reached agreements with an ad hoc group of bondholders and the UAW that assured New GM of the ability to immediately and in a seamless fashion reenter the automotive market as a viable, competitive OEM.

(iii) The Bankruptcy Court approved the 363 Transaction, and the sale was consummated, 39 days after the commencement of the chapter 11 case, a process that implemented the objectives of preventing systemic failures that would have aggravated the depressed economy.

d. Liquidation would have eliminated the possibility that unsecured creditors would receive any distributions and could have exacted a greater toll on taxpayers through a substantial loss on the existing loans to GM, as well as lost jobs, decreased tax revenues, and increased expenditures for unemployment assistance, healthcare, and environmental remediation.

C. Preferential Treatment of the UAW

1. Criticism

a. The UAW obtained preferential treatment in the 363 Transaction over other creditors pursuant to an allegedly sweetheart transaction and for political reasons.

2. Response

a. The settlement agreement between New GM and the UAW is an example of the realistic economic approach taken in all 363 transactions, i.e., labor always presents a crucial issue if a work force is necessary to the success of the purchased business. The provisions of the National Labor Relations Act and the Bankruptcy Code gave the UAW significant leverage.

(i) The sale of the core assets of GM only made sense if the business could continue and going concern values were maintained. To attain that objective, the Purchaser must be assured that it has the requisite workforce. The NLRA requires a purchaser of a unionized business to negotiate in good faith a successor agreement with an existing union. Given the precarious nature of GM at the time, it is unlikely that GM could have survived a protracted renegotiation.

(ii) Section 1113 of the Bankruptcy Code enables rejection of a collective bargaining agreement a lengthy, difficult statutory process. Compliance with section 1113 would have been impossible in the time frame that was available with respect to the 363 Transaction. Section 1114 of the Bankruptcy Code similarly makes modifications of retiree benefits a lengthy, difficult process. Even if successfully prosecuted, the Bankruptcy Court cannot compel union members to return to work. After rejection pursuant to the NLRA, the parties must resume negotiations in good faith and unions may resort to self-help, i.e., strike.

b. The U.S. Government at the outset conditioned any funding of GM on the resolution of legacy obligations to employees and a streamlining of production to reduce costs. The UAW's collective bargaining agreement and GM's retiree benefit plans needed to be restructured; plants needed to be closed; and the UAW needed to share in the sacrifice.

c. In connection with the 363 Transaction, the UAW made significant concessions, including reductions in overtime pay, bonuses, and benefits to induce the Purchaser to go forward. The revised collective bargaining agreement with New GM created greater competitive flexibility to increase and decrease production capacity as necessary by permitting temporary flex employees, suspending the job security program, and creating new special attrition plans to reduce head count. Also, a number of retiree benefits were reduced or eliminated.

D. Need for Speed

1. <u>Criticism</u>

a. The speed of the 363 Transaction was unnecessary and potentially sacrificed the rights of creditors.

b. The 363 Transaction constituted a sub rosa plan of reorganization that proceeded without the protections of plan development, confirmation, and consummation under the Bankruptcy Code.

2. <u>Response</u>

a. The timing of the 363 Transaction was dictated by numerous factors, including the lack of financing, the concern over erosion in value, and, most critically, the almost universal conclusion that the operations could not be sustained during a protracted chapter 11 process. The timing was in line with other expedited sales under section 363(b) of the Bankruptcy Code, such as in the chapter 11 case of Lehman Brothers Holdings Inc.

b. No other realistic alternatives were available. No credible party expressed an interest in funding an alternative transaction. There were no merger partners, acquirers, or investors willing and able to purchase GM's assets and businesses. The U.S. Treasury and Canadian EDC were the only lenders willing and able to finance continued operations. No debtor in possession financing was available from private sources. The U.S. Treasury was the only entity that had the wherewithal and the inclination to provide such financing and, then, only on the premise that going concern value would be preserved. The only means of reasonably accomplishing that objective was the expedited sale process pursuant section 363 of the Bankruptcy Code.

c. Surveys taken prior to the GM chapter 11 reflected that consumers needed to have confidence in GM's products, i.e., that a GM would exist in the future to stand behind its products. GM and the U.S. Treasury were aware that consumers would not purchase vehicles from an OEM in a bankruptcy case.

d. The 363 Transaction enabled objectors to voice their opposition in a meaningful way. The Bankruptcy Court held extended hearings over three days to consider all objections and GM's affirmative case. Over 850 objections and responses were filed.

e. The 363 Transaction did not dictate the terms of a plan of reorganization, as determined by the judicial decisions. MLC subsequently did propose a chapter 11 plan that was accepted by claimants and confirmed by the Bankruptcy Court on March 29, 2011 and, thereafter, consummated on March 31, 2011.

E. Failure of Due Process

1. <u>Criticism</u>

a. The speed of the 363 Transaction and of the chapter 11 case deprived creditors of due process.

2. <u>Response</u>

a. All aspects of GM's chapter 11 case, including the 363 Transaction, were fully transparent and subject to notice and an opportunity to be heard by a neutral third party tribunal—the Bankruptcy Court.

b. The substantial discovery that was made on an expedited basis was made available to all opponents of the 363 Transaction.

VII. Accomplishments of the 363 Transaction

A. The 363 Transaction prevented the collapse of manufacturing in the Midwest, with New GM positioning itself again as a strong contender in the automotive manufacturing sector.

1. Today, the Big Three (i.e.., Chrysler, GM, and Ford) are all profitable for the first time in seven years, adding shifts and facilities across the United States.

2. Before commencing its chapter 11 case, GM had lost its position as the world's top-selling automaker to Japanese rival Toyota. Three years after its chapter 11 case, New GM regained its title as top-selling automaker.

3. New GM has posted a net profit for the past ten straight quarters, posting its largest-ever annual profit in 2011.

4. New GM's strongest global region in terms of finances and vehicles sold is North America, where it has remained the market leader.

5. GM and Chrysler sold 3.8 million vehicles in the United States in 2011, up 14% and 26% respectively from 2010.

6. New GM is a public reporting company under Section 12(b) of the Securities and Exchange Act of 1934. Its shares of common stock, par value $0.01, are publicly traded under the symbol "GM" on the New York Stock Exchange. As of June 30, 2012, there were 1,565,941,048 shares of common stock outstanding. New GM's current market recapitalization is approximately $36.6 billion, and the average daily volume of shares traded is approximately 7.8 million. As of June 20, 2012, New GM had consolidated reported global assets and liabilities of approximately $151,987,000,000 and $110,377,000,000, respectively.

B. The 363 Transaction preserved jobs and income

1. Direct job losses that would have resulted from a disorderly bankruptcy and closing of GM would have been tremendous. *See* "A Look Back at GM, Chrysler and the American Auto Industry," Executive Office of the President of the United States, Apr. 21, 2010 (explaining that, according to certain studies, the direct and indirect jobs at risk were estimated to be up to 3.3 million, yet recognizing that none of the studies accounted for jobs that would have been created at other companies, like Ford or Toyota, had GM and Chrysler no longer been competing in the marketplace). Between March 2008 and March 2009, the automobile industry shed 410,000 jobs. Analysts have estimated that at least one million jobs could have been lost had GM and Chrysler liquidated.

2. Since the consummation of the 363 Transaction, the automobile industry has added approximately 230,000 jobs – the most growth in a decade. The industry expects to add 167,000 jobs by 2015.

3. In addition to saving more than 1 million jobs, the 363 Transaction prevented the loss of over $96 billion in personal income.

4. New GM has added shifts at several U.S. facilities since the fall of 2009 to meet growing demand, adding several thousands of direct jobs and reopening at least one plant.

C. The 363 Transaction allowed a substantial majority of GM dealerships to continue operations while providing a compassionate wind-down period for terminated and discontinued dealers.

D. The 363 Transaction helped stabilize the U.S. and global economies.

1. Absent the 363 Transaction, a GM liquidation would have had a catastrophic impact on the U.S. economy.

    a. Hundreds of thousands of persons would have been thrown out of work, along with the termination of health benefits and retirement benefits for current and former employees and their families, adding to the burden of the federal, state, and local governments to provide relief to such persons.

    b. There would have been a worldwide shutdown of GM's suppliers and dealers with similar consequences.

2. The failure of GM might have resulted in the failure of Chrysler or Ford because of shared single-source suppliers that would have failed without volume purchases from one of the big three. This would have triggered a further cascade of failures throughout the auto manufacturing industry among part suppliers.