S. Hrg. 111–103

OVERSIGHT OF TARP ASSISTANCE TO THE AUTOMOBILE INDUSTRY

FIELD HEARING

CONGRESSIONAL OVERSIGHT PANEL

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

HEARING HELD IN DETROIT, MICHIGAN, JULY 27, 2009

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CONGRESSIONAL OVERSIGHT PANEL

PANEL MEMBERS

ELIZABETH WARREN, *Chair*

REPRESENTATIVE JEB HENSARLING

PAUL ATKINS

RICHARD H. NEIMAN

DAMON SILVERS

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FIELD HEARING ON OVERSIGHT OF TARP ASSISTANCE TO THE AUTOMOBILE INDUSTRY

MONDAY, JULY 27, 2009

U.S. CONGRESS,
CONGRESSIONAL OVERSIGHT PANEL,
Detroit, Michigan.

The Panel met, pursuant to notice, at 10:01 a.m., in the Spencer M. Partrich Auditorium, Wayne State University Law School, Elizabeth Warren, Chairman of the Panel, presiding.

Present: Elizabeth Warren and Jeb Hensarling.

Index: Elizabeth Warren and Jeb Hensarling.

OPENING STATEMENT OF ELIZABETH WARREN, CHAIR, CONGRESSIONAL OVERSIGHT PANEL

Chair WARREN. This is Elizabeth Warren. I am calling to order the July 27th, 2009 field hearing on TARP assistance in the auto industry.

I would like to begin by thanking Wayne State University for their hospitality in making these facilities available to us and making it possible for us to have this hearing in Detroit.

I would like to begin by recognizing President Jay Noren and asking him for a few opening remarks. Mr. President?

STATEMENT OF DR. JAY NOREN, PRESIDENT, WAYNE STATE UNIVERSITY, DETROIT, MICHIGAN

Dr. NOREN. Well, thank you very much. We are most pleased to host the Congressional Oversight Panel, Chair Elizabeth Warren, who is the Leo Gottlieb Professor at Harvard Law School, and Congressman Jeb Hensarling, who is from Texas and actually from Texas A&M, a place where I spent some time. It is a real pleasure. It is a real privilege to host the panel.

Of course, we all know in Michigan, as much as anywhere, how critically important the automobile industry is and where it goes in the future, and because of that, this is a most appropriate place to host this among, I know, many of your hearings around the country to explore the process and the results of aid to the auto industry and beyond from TARP.

Wayne State's role, particularly in collaboration with our new consortium formed about three years ago with the University of Michigan and Michigan State as the University Research Corridor, is particularly important to the future of the auto industry and to Michigan's economy. We, the three research institutions here, are principal producers of managers and engineers in the auto industry and many other of the workforce, as well as many of the innovations ahead of us in the auto industry in terms of alternative energy and hybrid vehicles and a number of other things in our engineering schools. So we are a partner with the auto industry. We are a partner with Michigan's economy, and therefore, we are a partner with this oversight panel and its objectives.

So we are very anxious to spend the day listening and we are very anxious for the outcome of your reviews around the country and what we expect will be a real boost to the economy and what you find out and what you recommend. So thank you very much for being here.

Chair WARREN. Thank you, President Noren.

I also want to thank Congresswoman Kilpatrick and Senator Levin and their staffs for their assistance with today's hearing. I understand Congresswoman Kilpatrick is with us and we would like to thank her especially and recognize her for some opening remarks.

STATEMENT OF HON. CAROLYN C. KILPATRICK, U.S. REPRESENTATIVE FROM MICHIGAN

Ms. KILPATRICK. Madam Co-Chair, Madam Warren, my colleague, Congressman, how are you this morning?

I just want to thank Mr. McGreevy for your fine work and work with my staff and my district director, Duron Marshall—would you please stand for a moment—as they coordinated efforts to have this event here. I think this is the first that you have had.

This panel was created by legislation of the Congress, adopted as a part of our TARP package, and I think you are doing a fine job.

This is my district. This is a perfect place to be this morning. Here in Michigan, we are the epicenter of the manufacturing that is kind of eroding itself in America. We are happy that you are here.

The Congressman is an active participant in Congress, and I know that as we rebuild America and rebuild our Chrysler Corporation, our General Motors Corporation, and the thousands and hundreds of thousands of jobs that will be affected, your job will be one of most significance.

Thank you for coming to Michigan's 13th Congressional District. My staff is available and willing and ready to work with you. Thank you very much; We give you all our respect and love. Thank you.

Chair WARREN. Thank you, Congresswoman Kilpatrick.

I also want to recognize Congressman Conyers who has also been very active in economic issues and we appreciate the support that he has given us on the oversight panel and in inviting us here to Detroit. Congressman Conyers, can I call on you for a few remarks?

STATEMENT OF HON. JOHN CONYERS, U.S. REPRESENTATIVE FROM MICHIGAN

Mr. CONYERS. Overcoming my usual reluctance to come before a committee other than mine, I am happy to be here and to welcome you all for several reasons.

This is the university that taught me everything I did not know before I got here, and I am very happy to see the President here who is doing a great job.

I want my colleague in the Congress to know that we are privileged to use this part of the law school quite frequently for our own hearings and town hall meetings and activities. So we are glad you are all here.

This is a difficult period of time that we are going through and in the automobile industry particularly. Now, the big question is how we can make this automobile bailout—and I know that is probably not a good term of art in a congressional hearing, but how can we help these companies to a maximum degree and yet not disempower hundreds and hundreds of automobile dealers? Some 700–800 Chrysler dealers gone out of business. General Motors, I think it is in the 1,700 range. And the question is, how did that happen and is there anything we can do about it?

The House has already tried to do something about it only last week. One of the chairmen in the Senate committee—I just found out that he has asked for a review of this as well. So to me this is a very, very important part of our business. Minority auto dealers kind of have been even more disadvantaged by this.

I should particularly thank Ron Bloom for being here. Lord knows how many hearings he has been in. He has been before us. We have had three hearings in Judiciary already on this matter.

But I hope that we will be thinking together about whether the auto task force diminished the rights of secured creditors and investors while giving preferential treatment to the United Automobile Workers. There has been a lot of talk about that in Washington. I do not think it is accurate, but I want to get it out there in advance.

Then we have had the issue of whether there is—I do not think it will be raised, but whether the administration, whether the President is trying to start a government takeover of the private sector. I do not think that we should spend a lot of time on that today. Just remember it was the two leaders of the two automobile manufacturers that came to us to ask us for their help.

So I am happy to be back here at my school. I am happy to have everybody here with me.

We might want to consider an honorary degree for my colleague in the Congress, depending on his deportment and behavior today. But I welcome you here and I thank you very, very much.

[The written statement of Representative John D. Dingell follows:]

Statement of
Representative John D. Dingell
Congressional Oversight Panel
Hearing on "TARP Assistance to the Automobile Industry"

July 27, 2009

Thank you, Chairwoman Warren, and members of the Congressional Oversight Panel for allowing me the opportunity to submit testimony today. I commend your efforts to promote transparency in the Troubled Asset Relief Program (TARP), especially in relation to federal assistance to the domestic automotive industry.

As you are well aware, Congress created TARP in October 2008 as a means by which to address nearly unprecedented national economic turmoil. Although initially intended to be a tool for the Treasury to stabilize primarily financial markets, TARP funds were also made available to General Motors (GM) and Chrysler, a use of federal money that was both proper and imperative at the time. Prior to the financial crisis that erupted late last year, both GM and Chrysler were in the midst of restructuring themselves to become more competitive companies. The severe impact of the crisis on the global economy included sharply decreased consumer demand for new vehicles and a virtual evaporation of credit available via the private sector, both of which combined to create what might be aptly described as a "perfect storm" for both companies, threatening to derail their restructuring efforts and, at worst, cause their liquidation.

The domestic automotive manufacturers have traditionally had an undeniably significant influence on the greater national economy. Automakers, automotive suppliers, dealers, and related businesses employ millions of Americans, and their sales together constitute a substantial portion of the U.S. gross domestic product. Simply allowing the collapse of GM and Chrysler, along with ancillary segments of the manufacturing and service sectors, would have had a devastating effect on the U.S. economy and impeded our country's ability to recover from the greatest economic downturn in recent memory. Indeed, the loss in tax revenue alone would have exceeded the sum invested by the federal government in GM and Chrysler by nearly twofold, according to estimates by the Center for Automotive Research.

In wise recognition of this wholly plausible scenario, the federal government chose to provide TARP assistance to GM and Chrysler to sustain their operations and finance their respective turnaround plans. I would note that this desperately needed infusion of capital did not come without condition, but was rather predicated upon each company's presenting and enacting realistic and transparent viability plans. These plans required painful sacrifices on the part of workers and creditors, and I am pleased to say that the result of these difficult compromises was an expedient bankruptcy process for both GM and Chrysler, both of which have now become leaner companies, capable of offering the higher quality, more fuel-efficient vehicles desired by consumers.

As a representative from a state historically tied to the health of the automotive industry, I am particularly grateful to the Administration for its willingness to sustain GM and Chrysler in their hour of great need. I fear that without intervention, Michigan's rate of unemployment, now at over 15 percent, would be far worse. I believe that both companies will once again return to profitability, and the steps each has taken to accomplish this goal demonstrate a clear commitment to upholding the taxpayers' trust. In short, I consider the federal government's investment in GM and Chrysler one of tremendous sagacity and am confident that both companies will prove worthy of the taxpayer funds they have received.

In closing, I would note that while the federal government has been extraordinarily helpful to automakers, I believe more should be done to stabilize the exceedingly fragile automotive supplier network. Despite the $5 billion in TARP funds provided for supplier support, many small- and medium-sized suppliers still find themselves chronically short on working capital. I would encourage the Administration to consider initiatives, such as those put forward by the Michigan Economic Development Corporation (MEDC), that offer a lifeline to ailing suppliers via public-private lending partnerships, which have the potential to generate healthy rates of return on prudent federal investment.

Again, thank you for your courtesy, and please feel free to contact me with any questions you may have.

Chair WARREN. Thank you very much, Congressman.

STATEMENT OF ELIZABETH WARREN, CHAIR, CONGRESSIONAL OVERSIGHT PANEL

Chair WARREN. Last October, Congress established our panel as part of the Emergency Economic Stabilization Act (EESA) to oversee the expenditure of funds from the Troubled Asset Relief Program, commonly referred to as TARP. It is our duty to investigate and issue monthly oversight reports that analyze and evaluate the Treasury Department's administration of this program and its efforts to stabilize our economy.

Congress also authorized this panel to hold hearings. Over the past eight months, we have traveled to locations as diverse as Nevada, Maryland, Wisconsin, New York, and Colorado in order to learn how the financial crisis is affecting people across the country. We believe that this is the best way to develop yet another perspective on the impact of the financial crisis.

Today, we are here in Detroit, Michigan to examine the Treasury's use of TARP funds to support the automotive industry. As home to the three largest automakers in North America, Detroit offers a unique opportunity for our panel to better understand the benefits and the challenges posed by the Government's intervention in the auto sector.

A symbol of American strength and ingenuity, few industries are as deeply embedded in our national identity. For generations, the health of the auto industry has been a mirror for the health of our Nation. As you know all too well, this reflection has dimmed over the past few years, as both the auto industry and our country have faced the worst economic downturn since the Great Depression. Treasury has stated that the failure of the American auto sector poses a systemic risk to our economy. Such a failure would threaten hundreds of thousands of jobs, ranging from the auto industry itself to suppliers, dealers, and small businesses that depend on the industry for their livelihoods.

On December 19th, 2008, Treasury offered domestic automobile companies eligibility for government assistance under TARP. Treasury's decision to invest in the auto industry through the Automobile Industry Financing Program provided General Motors and Chrysler with approximately $80 billion in financial assistance on the condition that they provide viable business plans demonstrating how this assistance would allow them to restructure and to return to profitability.

For our September oversight report, we will focus on Treasury's use of funds to support the American automotive industry as authorized by the EESA. It is our hope that today's hearing will enhance that report.

We hope to explore the impact of TARP funds and to better understand the specific role that Treasury has played. We also want to examine the longer-term implications of Treasury's involvement here.

For today's hearing, we have invited the head of the President's Automotive Task Force, officials from GM and Chrysler, a creditor affected by the bankruptcy and reorganization of Chrysler and GM, and independent experts on the automotive industry and the bankruptcy process. We thank you all for joining us today and we look forward to your testimony.

Before I turn to Congressman Hensarling for his opening statement, I want to note the absence of Damon Silvers. This is the first hearing of the Congressional Oversight Panel that he has missed. Mr. Silvers has recused himself on all matters relating to the auto industry before the panel. All of us who serve on the panel serve on a part-time basis as Special Government Employees, and in his day job, Mr. Silvers is Associate General Counsel to the AFL–CIO. The AFL–CIO has taken a position advocating for TARP funding for the health care plans of AFL–CIO affiliate union members and retirees at GM and Chrysler. For that reason, Mr. Silvers did not feel it was appropriate for him to be involved in our oversight of Treasury's assistance to the auto industry. We miss his good counsel, but we understand that he is working to protect the integrity of the process.

I also should note the absence of yet another of our panel members and that is Richard Neiman, Superintendent of Banking for the State of New York. Mr. Neiman spent several hours in an airport in New York last night, only to learn at the end of the evening that his plane had been canceled and he was not able to come to Detroit and could not get on a plane early enough this morning in order to make the hearing. So I am afraid weather has conspired against him. We shall miss him as well.

I now yield to Congressman Hensarling for any remarks he would like to make.

[The prepared statements of Chair Warren and Mr. Neiman follow:]

ELIZABETH WARREN, CHAIR
SEN. JOHN E. SUNUNU
REP. JEB HENSARLING
RICHARD H. NEIMAN
DAMON SILVERS

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Congress of the United States

CONGRESSIONAL OVERSIGHT PANEL

Opening Statement of Elizabeth Warren

Congressional Oversight Panel Auto Industry Field Hearing

July 27, 2009

Good morning. My name is Elizabeth Warren, and I am the Chair of the Congressional Oversight Panel.

Last October, Congress established our Panel as part of the Emergency Economic Stabilization Act to oversee the expenditure of funds from the Troubled Asset Relief Program, commonly referred to as TARP. It is our duty to investigate and issue monthly oversight reports that analyze and evaluate the Treasury Department's administration of this program and their efforts to stabilize our economy.

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A symbol of American strength and ingenuity, few industries are as deeply embedded in our national identity. For generations, the health of the auto industry has been a mirror for the health of our nation. As you all know too well, this reflection has dimmed over the past few years as both the auto industry and our country have faced the worst economic downturn since the Great Depression. Treasury has stated that failure of the American auto sector poses a systemic risk to our economy. Such a failure would threaten hundreds of thousands of jobs, ranging from the auto industry itself to suppliers, dealers and small businesses that depend on the industry to earn their livelihoods.

On December 19, 2008, Treasury offered domestic automobile companies eligibility for government assistance under TARP. Treasury's decision to invest in the auto industry, through the Automobile Industry Financial Program, provided General Motors and Chrysler with approximately 80 billion dollars in financial assistance, on the condition that they provide viable business plans demonstrating how this assistance would allow them to restructure and return to profitability.

For our September oversight report, we will focus on Treasury's use of funds to support the American automotive industry, as authorized by the Emergency Economic Stabilization Act. It is our hope that today's hearing will enhance that report.

Congressional Oversight Panel

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For today's hearing we have invited the head of the President's Automotive Task Force, officials from GM and Chrysler, a creditor affected by the bankruptcy and reorganization of Chrysler and GM, and independent experts on the automotive industry and the bankruptcy process. We thank you for joining us today and we look forward to your testimony.

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Congress of the United States

CONGRESSIONAL OVERSIGHT PANEL

Opening Statement of Richard Neiman

Congressional Oversight Panel Auto Industry Field Hearing

July 27, 2009

Good morning. Thank you all for appearing at this hearing of the Congressional Oversight Panel on the automotive industry and financial stability efforts taken through the Troubled Asset Relief Program (TARP).

The financial crisis and credit contraction that has occurred over the last two years has had a very severe impact upon the real economy. The consequences for U.S. auto manufacturers in particular have been devastating, greatly exacerbating the long-standing challenges facing the auto industry.

A downturn in auto sales was already underway when the financial crisis exploded last fall, and conditions for the auto industry have continued to deteriorate. Auto sales in 2008 were at their lowest point in a quarter-century, and have fallen even further in 2009. Treasury acted to avert a more systemic economic impact from a collapse of auto manufacturers and suppliers by using TARP resources to address resulting shortfalls at two of the most severely affected auto companies, GM and Chrysler. We are glad to be here in Detroit today to take a more in-depth look at important policy and implementation issues involved in the use of more than $80 billion in TARP funds.

While there may be ample justification for two Administrations to have used the TARP to address the crisis in the U.S. auto industry, such targeted assistance to one particular economic sector involving two major corporations --- three if we include GMAC --- and their suppliers raises important public policy issues.

- How much involvement in the day to day operations of those companies should Federal officials have?
- Should the government take advantage of its dominant ownership positions to influence key decisions about the future direction of those companies, their product lines and their competitive positions?
- What exactly should be the roles of the government appointed directors of the successor companies and how can the government and the American people best obtain the information they need to effectively monitor their investments?

The impact of the rapidly declining auto industry upon the economies of the states in the Midwest has also been severe, and is another key reason why government assistance in this instance may have been uniquely justified. Unemployment in Michigan is now the highest in the country. This, in turn, has aggravated the home foreclose problem in this region, with Michigan having the seventh highest rate of foreclosures in the country during the first half of this year. Other states in the region close behind. I have been particularly concerned about the lingering mortgage foreclosure crisis in this country and its impact upon millions of American families. I hope that the stabilization and restoration of the American auto industry can bring needed relief to those families here in Michigan and elsewhere.

There is much to discuss this morning. I look forward to hearing from the panels of witnesses and to participating in a lively and constructive dialogue with each of you.

STATEMENT OF HON. JEB HENSARLING, MEMBER, CONGRESSIONAL OVERSIGHT PANEL, U.S. REPRESENTATIVE FROM TEXAS

Mr. HENSARLING. Thank you, Madam Chair.

First, let me also add my voice of thanks and gratitude for Wayne State to host us today. I had originally advocated that we hold this hearing in the Nation's capital, but having been here just a little bit of time, I can certainly say that the hospitality of Wayne State far exceeds that of my colleagues and other Members of Congress. So we are happy to be here, Mr. President. Happy to be here.

I do actually want to thank my colleagues for being here today, and although we come from different parties and different philosophies, Congresswoman Kilpatrick and Chairman Conyers are very, very able advocates for their constituents. They are very distinguished and respected leaders within the United States House. It is an honor to have them here with us today.

Unfortunately, I sense that Chairman Conyers is going to be in charge of the committee that decides whether or not I receive that honorary degree, I suspect I will not have to go to Michael's and buy the frame later this afternoon.

I look forward to hearing from the various panel members today. I think there are a number of serious questions that we have to ask. It is important that we understand exactly how TARP funds have been used in the unprecedented restructuring of our U.S. automakers, Chrysler and GM, and the specific roles played by the administration and others in the negotiations.

As many know, the TARP program has never been quite as advertised. What was supposed to be a toxic asset purchase program somehow overnight morphed into a capital purchase program under the previous administration. What was a program that was ostensibly designed for financial firms is clearly now being used to rescue auto manufacturers. This raises a number of serious questions and for many Americans a program that was originally intended to stabilize markets during a time of economic crisis with taxpayer protection paramount, disappointingly now appears to be nothing more than a $700 billion revolving bailout fund used to promote the administration's political, social, and economic goals.

Clearly, one of the more questionable uses of taxpayers' money under TARP has been the administration's handling of the bankruptcies of GM and Chrysler which now has involved the commitment of at least $80 billion of taxpayer money. In the case of Chrysler, bondholders with the most senior claims saw their claims reduced substantially while junior creditors like the UAW Retiree Benefits Trust were given far more preferential treatment. UAW, as we know now, effectively owns Chrysler with its trust fund ending up with a 55 percent stake. The UAW claims are clearly an integral part of the bankruptcy negotiations and will remain an integral part of Chrysler in the future.

So it is most unfortunate that, as I look at the witness list today, there is no representative of the UAW scheduled to testify to help shed light on how this ownership stake came to be. Somewhat in their defense, I am informed that the invitation from our Congressional Oversight Panel went out just last week, although it was in discussion for many weeks.

Having said that, I am still disappointed. As a Member of Congress, I know that Mr. Gettelfinger, who heads the UAW, appeared on numerous occasions in front of numerous committees, including my own, asking for taxpayer assistance. Clearly, he was able to rearrange his schedule to come ask for the TARP money, but now that he has received it, it appears that neither he nor his representatives can be found to help account for these funds.

Another troublesome aspect of the Chrysler restructuring deal is the alleged pressuring by Treasury officials of senior secured bondholders to abandon their fiduciary responsibilities to investors, which included teachers, school endowments, and major pension and retirement plans of working Americans, to accept less than what they would typically be entitled under bankruptcy law.

Even more disturbing is that there seemed to be a clear contrast between the reluctance of several non-TARP recipient creditors to accept less than what many viewed as their historic fair share and the acquiescence of TARP recipient credits to consent to Treasury's proposed deal which gave them 29 cents on the dollar.

In the case of GM, the UAW was again given preferential treatment over bondholders with similar claims. Their bondholders exchanged $27 billion in unsecured debt for what will likely remain a 10 percent common equity interest while the UAW exchanged $20 billion in claims for a 17.5 percent common equity interest, plus billions in preferred shares.

I fear that this rather unorthodox reordering of rights is not only unfair, but may have chilling and far-reaching consequences on our capital and bond markets. Investors, fearful of entering into contracts that may later be abrogated, will surely price this risk into the premiums they require. Ironically, TARP was put in place to help make credit flow again, and instead, it may have exactly the opposite effect by creating disincentives to participate in markets. At a time when our Nation's unemployment rate has hit a 26-year high, this is unacceptable.

As TARP programs continue to create market distortions and discourage private sector support, they enhance what is proving to be an enduring role of Government in business. The United States Government and the taxpayers now own almost 61 percent of GM.

Now, I am glad that Mr. Bloom from the President's Auto Task Force has agreed to join us today. The Congressional Oversight Panel has responsibility to find out how and when the administration plans to unwind its ownership of GM and return the money to the hands of the taxpayer where it belongs.

I remain fearful, though, that the decisions Treasury has made will become part of our national heritage and, unfortunately, may enshrine us as a bailout Nation, help politicize our economy, and hinder our economic recovery.

I am confident, though, that the panel will carry out its oversight duty to thoroughly investigate the dealings of all parties involved in the Chrysler and GM bankruptcies, and I look forward to hearing from the witnesses.

Chair WARREN. Thank you, Congressman Hensarling.

We have seven witnesses testifying before us today, and we hope this will give us a full opportunity to get answers to all of our questions. We reached out to a number of individuals and organizations who could not be with us today, including the UAW, J.P. Morgan Chase, and the lead attorneys for the dissatisfied creditors. We look forward to hearing from the witnesses who are with us today.

I would like to call our first witness, Ron Bloom, if you could join us. Mr. Bloom is Senior Advisor to the Secretary of the Treasury and the head of the President's Auto Task Force. Mr. Bloom, if you could, I will ask you to hold your remarks to five minutes, but your entire written statement will become part of the record. Mr. Bloom, whenever you are ready.

STATEMENT OF RON BLOOM, SENIOR ADVISOR, U.S. DEPARTMENT OF THE TREASURY

Mr. BLOOM. Thank you. Good morning, Chairperson Warren, Representative Hensarling. Thank you for the opportunity to testify before you today.

On behalf of the Obama administration and its Auto Task Force, I am here to report on the restructurings of General Motors and Chrysler.

As you know, the new GM and the new Chrysler have recently emerged from bankruptcy and are now operating as independent companies. While this process has been very difficult, it has resulted in two great American companies being given a new lease on life and has kept hundreds of thousands of Americans working. During the bankruptcy proceedings, every affected stakeholder had a full opportunity to have his or her claim heard and every creditor will almost certainly receive more than they would have had the Government not stepped in.

I want to make clear from the outset that this is a situation that neither the President nor his administration invited. Only a few months ago, both of these companies came to the Government in a state of complete insolvency, facing almost certain liquidation without further Government support. Despite this, President Obama decided that he could only justify providing additional taxpayer dollars if the companies fundamentally restructured their businesses, which meant real and painful sacrifices from all their stakeholders, from workers and retirees to dealers, suppliers, and communities.

In addition, the President gave his Auto Task Force the clear directive to take a commercial approach to these restructurings and refrain from intervening in the day-to-day decisions of the companies. He did this because the long-term viability of these companies and their ability to repay the Government's investment would be seriously undermined if the Government became involved in individual business decisions.

In only a few months, both companies have achieved a degree of restructuring that many thought impossible. After proceeding through open bankruptcy processes, they have now emerged stronger and more capable of competing as global companies. The companies are now being run by their management teams under the direction of new independent, world-class boards of directors. As is appropriate given these developments, the task force will be shifting its focus largely to monitoring the taxpayers' investment as we move forward.

Whenever a company as large and interconnected as GM or Chrysler is fundamentally restructured, the costs in economic and human terms are substantial. However, completely avoiding these costs would have required an unacceptably large commitment of taxpayer resources. Therefore, for both companies, this meant substantial sacrifices for all stakeholders, sizable reductions in their workforces, plant footprints, and dealer networks, substantial reductions in the claims of secured and unsecured creditors, significant reductions in compensation and benefits for active employees and health care benefits for retirees, leaving behind a variety of unsecured claims, including on product liability and workers compensation, a decision the companies made on a commercial basis.

I also want to emphasize the importance that our team has placed on transparency and accountability. The task force has conducted broad outreach over the past several months to affected stakeholders, industry experts, and other constituencies that have requested such meetings to ensure that we have been as inclusive as possible. And because the investments made by both the prior and current administrations to support the auto companies have come from the TARP, the task force and its staff activities have been subject to the full range of disclosure and reporting requirements under the EESA statute.

In addition to reporting to this committee, this includes oversight by the GAO, EESA's financial stability oversight board, the Special Inspector General for TARP, or SIG TARP, as well as required reporting to multiple House and Senate committees.

Also, to date, I have testified before the Senate Banking Committee and the House Judiciary Committee. We have had dozens of meetings with Members of Congress and their staff, as well as almost constant telephonic communication with them. The Auto Task Force will continue to be as responsive as possible to the requests of these entities to ensure thorough transparency and accountability for our actions.

Finally, the administration has articulated principles that will govern its approach to managing ownership interests in the automotive companies and protect taxpayer dollars.

First, the Government has no desire to own equity in companies any longer than necessary, and it will seek to dispose of its ownership interest as soon as practicable.

Second, the Government will protect the taxpayers' investment by managing its ownership stake in a hands-off commercial manner.

And finally, as a common shareholder, the Government will only vote on core governance issues, including the selection of a company's board of directors and major corporate events or transactions.

Together these principles will help maximize the return taxpayers receive on their funds.

In a better world, the choice to intervene would not have had to occur, but amidst the worst economic crisis in three-quarters of a century, the administration's actions avoided a devastating liquidation and put a stop to the long practice of kicking hard problems down the road. While difficult for all stakeholders involved, these transactions provide new GM and new Chrysler with an extraordinary second chance and a very real opportunity to succeed and prosper in the years ahead.

Thank you and I look forward to your questions. [The prepared statement of Mr. Bloom follows:]

Statement by Ron Bloom
Senior Advisor at the U.S. Treasury Department
Before the Congressional Oversight Panel
Regarding Treasury's Automotive Industry Financing Program (AIFP)
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Good morning.

Chair Warren, Representative Hensarling and Mr. Nieman, thank you for the opportunity to testify before you today.

On behalf of the Obama Administration and the Auto Task Force, I am here to report on the developments regarding General Motors and Chrysler and the broader state of the American automobile industry.

As you know, the New GM and the New Chrysler have recently completed the purchase of assets through bankruptcy processes and are now operating as independent companies. During the bankruptcy proceedings, every affected stakeholder had a full opportunity to have his or her claim heard and every creditor will almost certainly receive more than they would have had the government not stepped in. While this has been exceedingly difficult and painful, it has resulted in two great American companies being given a new lease on life and has kept literally hundreds of thousands of Americans working.

I. Goals of the Auto Task Force

Since January, the Obama Administration has been working to manage an historic crisis in the American auto industry. President Obama inherited an auto industry that had lost 50% of its sales volume and over 400,000 jobs in the year before he took office. Two companies – GM and Chrysler – had received substantial loans from the prior Administration and were requesting substantial additional assistance.

Without additional assistance, both companies faced liquidation bankruptcies that would have caused substantial job loss and a ripple effect throughout our entire economy. However, President Obama was unwilling to put additional tax dollars on the line unless these companies and their stakeholders were willing to fundamentally restructure, address prior bad business decisions, and chart a path toward long-term financial viability without ongoing government assistance.

In order to justify an investment of additional taxpayer dollars, the President made two decisions. First, he gave both GM and Chrysler a limited window to work with their stakeholders to secure the sacrifices necessary to make them stronger, leaner, and more competitive. Second, he directed his Auto Task Force to take a commercial approach and refrain from intervening in the day-to-day decisions of these companies. He did this because the companies' long-term viability and ability to repay the taxpayer dollars they were receiving would be seriously undermined if the government became involved in day-to-day business decisions.

In only a few months, both General Motors and Chrysler – working with their stakeholders and the President's Auto Task Force – have achieved things that many thought impossible. The New Chrysler and the New GM have emerged as stronger global companies after proceeding through fair and open bankruptcy processes.

This process required deep and painful sacrifices from all stakeholders – including workers, retirees, suppliers, dealers, creditors, and the countless communities that rely on a vibrant American auto industry. Anytime a company as large and interconnected as GM or Chrysler becomes insolvent, the collateral damage is enormous. However, the steps that the President took not only avoided a potentially catastrophic collapse and brought needed stability to the entire auto industry, but kept hundreds of thousands of Americans working and gave the New GM and New Chrysler have a chance to become viable, competitive American businesses with bright futures.

II. Chrysler

The New Chrysler completed its purchase of assets through the bankruptcy process on June 10, 2009. The Company is now run by its management, under the strong direction of its new Board of Directors, which is composed of a group of nine distinguished, independent and accomplished individuals. The Board is led by Chairman C. Robert Kidder.

This achievement was the culmination of a series of steps that began with Chrysler submitting a detailed business plan to the U.S. Treasury on February 17, 2009, which the President announced was not viable on March 30th.[1].

However, the President also determined that Chrysler could achieve viability through a partnership with a successful international automobile manufacturer if it was able to meet a set of objectives that the Administration laid out. On April 30th, after Chrysler and its stakeholders made important and meaningful sacrifices that satisfied these tests, the President determined that Chrysler had made sufficient progress to justify an additional investment of U.S. taxpayer resources. In order to effectuate the international partnership and implement the stakeholder concessions , on April 30th Chrysler filed for bankruptcy. Just over one month later on June 10, after a court process that gave all creditors a chance to raise their concerns, the bankruptcy court approved the sale of substantially all of Chrysler's assets to the new Chrysler-Fiat Alliance.

In approving the sale motion, Judge Gonzalez held that the bankruptcy proceedings had been fair and open, "that all relevant standards [had] been established to grant the relief requested" and that "the assets in the Sale Transaction [were] sold free and clear of liens, claims, interests, and encumbrances pursuant to section 363(f)" of the Bankruptcy Code. *In re Chrysler LLC*, 405 B.R. 84, 113 (Bankr. S.D.N.Y. 2009).

While this proceeding received an understandably large amount of public scrutiny, neither the speed nor the substance of the court process was exceptional. As Judge Gonzalez explained,

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[1] The U.S. Treasury Department released an analysis on the Chrysler plan detailing its viability determination, which is available online at: http://www.financialstability.gov/docs/AIFP/autoFactSheet.pdf.

"[t]he sale transaction…is similar to that presented in other cases in which exigent circumstances warrant an expeditious sale of assets prior to confirmation of a plan. The fact that the U.S. government is the primary source of funding does not alter the analysis under bankruptcy law." *In re Chrysler LLC*, 405 B.R. 84, 87 (Bankr. S.D.N.Y. 2009).

On June 5th, this judgment was affirmed unanimously by a three-judge panel of the Second Circuit Court of Appeals. *In re Chrysler LLC,* No. 09-2311 (2d Cir. June 5, 2009). On Tuesday, June 9th the U.S. Supreme Court denied an application to stay the closing of the sales transaction leading to the successful emergence of New Chrysler. *Indiana State Police Pension Trust v. Chrysler LLC*, No. 08A1096, 129 S. Ct. 2275 (June 9, 2009).

Stakeholder participation

Reaching this historic alliance was only possible because of unprecedented sacrifices from Chrysler and all of its key stakeholders:

- *The UAW made important concessions on wages, benefits, and retiree health care.* These concessions brought New Chrysler's compensation in line with that of Toyota and other foreign automotive manufacturers at their US operations. In addition, the UAW retirees exchanged an almost $8 billion fixed obligation to the Voluntary Employees' Beneficiary Association (VEBA) retiree health trust for a $4.6 billion unsecured note and stock in New Chrysler. This arrangement shifts substantial risk onto the retiree health care trust and will likely result in meaningful reductions in health care benefits for New Chrysler's 150,000 retirees. The Trust, which is managed by an independent committee of legally bound fiduciaries, will, other than a single seat on the Company's Board of Directors, will have no role in the governance of the Company. However, the ability of the Trust to provide decent benefits over the long-term will require that the Company's stock become valuable, thus significantly aligning the interests of the Company and the VEBA as a key stakeholder.

- *Creditors representing 99% of the Company's $6.9 billion in secured debt agreed to exchange their claim for $2 billion in cash.* The Court determined that the $2 billion was well in excess of the liquidation value of Chrysler[2] and thus found the treatment of secured creditors in the bankruptcy process to be quite normal and conventional. In addition, it was always made clear to the secured lenders that no one contested their right and they were therefore free to take their collateral and do with it as they pleased, including either liquidating the company or operating it. Instead, they made a commercial choice to take their recovery in cash.

- *New Chrysler determined that meaningful actions were required to reduce the overcapacity in both the Company's plant footprint and dealer network. Therefore New Chrysler's business plan included reductions in plants and dealers across the United States.* These decisions, while difficult, are absolutely critical to making New Chrysler competitive and ensuring the success of the Company in the future. Importantly, New Chrysler retained the <u>overwhelming majority</u> of dealers from the old company – 87 percent of dealers by volume.

[2] $800 million is on the high end of the range. See *In re Chrysler LLC*, 405 B.R. 84, 97-98 (Bankr. S.D.N.Y. 2009).

- *Product liability and some workers compensation claimants will not be permitted to carry their claims forward to New Chrysler.* This was a difficult decision, which New Chrysler made on a commercial basis. While everyone involved is certainly sympathetic to the hardships faced by these claimants, the company made a commercial decision quite similar to that of hundreds of other companies going through bankruptcies.

To effectuate this transaction, substantial taxpayer dollars were utilized. The commitment made was for a total of $8.2 billion in debtor-in-possession and exit financing. Because of the accelerated time frame of the bankruptcy, the proportion of the funding through debtor-in-possession funding was smaller and the exit financing was larger than initially expected. Ultimately, $1.9 billion of funding was provided in debtor-in-possession loans and $6.3 billion was provided in exit financing. Added to the exit financing was a $350 million commitment related to a loss sharing agreement with GMAC that is not expected to be utilized. Also, the governments of Canada and Ontario funded more than $2.0 billion in debtor-in-possession and exit financing.

The Company's successful emergence, in conjunction with financial support from the U.S. and Canada, has put New Chrysler on a solid footing to succeed and generate jobs well into the 21st century.

III. General Motors

The New General Motors completed its purchase of assets through the bankruptcy process on July 10, 2009. This process also included President Obama's rejection of GM's February 17th business plan. As part of that rejection, on March 30th the President outlined a framework for General Motors to achieve financial viability. After two months of significant work by the company's management and engagement with its stakeholders, GM developed a more robust operating plan. As a result, the President deemed GM's plan viable and on June 1, 2009 committed approximately $30.1 billion of additional federal assistance from the Troubled Asset Relief Program (TARP) to support the company's restructuring.[3] To effectuate its plan, General Motors filed for bankruptcy protection and, like Chrysler, utilized Section 363 of the bankruptcy code to conduct a sale of certain of its assets to New GM.

As with New Chrysler, New GM is now being run by its management, under the direction of its new Board of Directors, which is led by Chairman Edward E. Whitacre, Jr.

Stakeholder participation

As with Chrysler, every one of the company's stakeholders made substantial sacrifices. These include:

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[3] In exchange for the total $49.5 billion of funding ($30.1 billion to effectuate the bankruptcy process and $19.4 billion that was provided before the bankruptcy filing), the U.S. Treasury received $8.8 billion in debt and preferred securities as well as a 60.8% equity stake in New GM (The U.S. Treasury's equity stake is about 50% on a fully diluted basis). The Governments of Canada and Ontario invested $9.5 billion and received a proportional share of each of these securities.

- *The UAW made significant concessions on compensation that will result in New GM also having wage rates comparable to foreign competitors.* In addition, the GM VEBA retiree health trust exchanged a $20 billion fixed obligation for a $2.5 billion note and stock in New GM, in the form of $6.5 billion in preferred stock, 17.5% in common equity of New GM and warrants to purchase an additional 2.5% in common equity at a $75 billion strike price. As with New Chrysler, this arrangement shifts substantial risk onto the retiree health care trust and will likely result in meaningful reductions in retiree health care benefits for New GM's approximately 560,000 retirees.

- *Unsecured creditors will receive 10% of the equity of New GM, plus warrants for an additional 15% of the new company.* This settlement makes it highly likely that unsecured creditors will recover far more than they would have if GM had liquidated. As Judge Gerber explained, "the only alternative to an immediate sale [was] liquidation—a disastrous result for GM's creditors, its employees, the suppliers who depend on GM for their own existence, and the communities in which GM operates." *In re General Motors Corp.*, 2009 WL 1959233, at 2 (Bankr. S.D.N.Y. July 5, 2009). And "[i]n the event of a liquidation, creditors now trying to increase their incremental recoveries would get *nothing*." *Id.* (emphasis added). This includes pre-petition product liability claim holders, who will receive their pro-rata share of the disposition of the unsecured creditors' consideration.

- *New GM's plan includes reductions in its workforce – both hourly and salaried – and in its plant footprint.* These steps are part of the company's broad effort to right-size the business to reflect current and expected levels of demand. The resulting New GM is now operating with a dramatically improved cost structure. Its breakeven point has been lowered to a 10 million annual unit environment compared to a prior breakeven point of more than 16 million. Because of its reduced debt-load and the elimination of other post-retirement benefit obligations, New GM has credit statistics consistent with its well capitalized peers.

- *New GM is maintaining franchise agreements with the substantial majority of the old company's dealers, and providing a wind-down process for dealers not moving forward.*

IV. Stabilizing the Auto Finance Market

A viable auto industry requires automotive financing for dealers and consumers. The vast majority of automobile purchases in the United States are financed, including an estimated 80%-90% of consumer purchases and substantially all dealer inventory purchases. Given the importance of the availability of financing, a total of $13.4 billion of TARP funding has been committed to GMAC, $7.5 billion of which has been funded under the oversight of the Auto Task Force. Also, $4 billion of this funding is being used by GMAC to support New Chrysler dealers and New Chrysler customers as Chrysler Financial will no longer fulfill that role. Together, these fundings will allow GMAC to meet the needs of a substantial number of dealers and customers for both Chrysler and GM.

Also, the Treasury Department, in conjunction with the Federal Reserve, has continued to expand the Term Asset-Backed Securities Loan Facility (TALF) program to support lending broadly and auto lending in particular. This program has helped automotive finance companies raise over $26.5 billion through July 2009 to support consumer purchases of vehicles[4]. And, Chrysler Financial recently successfully completed a TALF offering allowing it to repay the $1.5 billion loan that it previously borrowed from the Treasury Department. With the resolution of the fate of Chrysler and GM and the improvement in the capital markets, the availability of credit to dealers and customers across the automotive industry should continue to improve. Also, as of July 1st, auto, RV and other dealerships can apply for SBA-guaranteed floor plan financing, which will make it easier for these small businesses to borrow against their inventory and increase their cash flow.

V. Stabilizing the Auto Supply Base

Because of the credit crisis and the rapid decline in auto sales, many of the nation's auto parts suppliers have struggled to access credit and have faced uncertainty about the prospects for their businesses. Suppliers that ship parts to auto companies generally receive payment approximately 45-60 days after shipment. In a normal credit environment, suppliers can either sell or borrow against those commitments—so-called "receivables"—in the interim period to pay their workers and fund their ongoing operations. However, due to the uncertainty about the ability of the auto companies to honor their obligations, banks had been unwilling and are still somewhat reluctant to extend credit against these receivables.

On March 19, 2009 the U.S. Treasury announced a $5 billion Automotive Supplier Support Program to help address this problem.[5] Any eligible domestic auto company may participate. This program has contributed to the stability of the supplier base and the Original Equipment Manufacturers (OEMs) at a critical time. In addition, based on commercial decisions by GM and Chrysler to pay their suppliers through their bankruptcy filings, the supplier industry was provided financial support beyond what occurs in many bankruptcies. This action was taken based on the commercial necessity of ensuring continuity of supply for the manufacturers.

Now with the emergence of New GM and New Chrysler and with the threat of liquidation greatly reduced, there has been some modest opening in credit market access for suppliers. Nonetheless, the Task Force is mindful of the continuing challenges facing auto suppliers and is continuing to actively monitor the health and state of the supply base during this period of industry restructuring.

VI. Auto Warranty Commitment Program

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[4] Figure includes Auto Loan, Auto Lease, and Motorcycle ABS issuance as noted in a report produced by the Markets Group at the Federal Reserve Bank of New York on July 8, 2009.

[5] The Program is implemented through a special purpose vehicle ("SPV") and functions as follows: The OEMs initially identify critical suppliers to participate in the Program. Once included, the OEM submits receivables of the Suppliers eligible for the Program. For those receivables, a participating supplier is entitled to be paid directly from the SPV. Suppliers have the option of receiving payment immediately, in which case they pay a 3% discount, or receiving payment under the supply contract's normal payment terms (usually 45-60 days), in which case the supplier pays a 2% discount. In either scenario, since the supplier receives payment from the SPV, the payment is certain. When the OEM's payment is due to the supplier under the terms of their contract, the OEM makes the payment to the SPV. The SPV thus bears the risk of the OEM's non-payment, and the supplier is secure. Also, New GM and New Chrysler made determinations to reduce their allocated commitments thereby shrinking the size of the program to $3.5 billion, which they are confident is sufficient to address the needs of the supply base.

On March 30th, the Auto Task Force implemented a Warranty Program to give confidence to GM's and Chrysler's customers during a period of substantial uncertainty regarding the outlook for the companies. With the successful emergence of the new companies, consumers can now feel assured that the companies have the financial wherewithal to meet their warranty commitments on a continuing basis. As such, the Auto Task Force determined that it was appropriate to end the Warranty Program. I am happy to report that $641 million invested in the program has been returned to United States Government along with interest payments on the program from New Chrysler. This achievement represented a prudent short-term use of taxpayer funds.

VII. **Auto Task Force's Role in Bankruptcy Proceedings**

On February 15, 2009 the President appointed an Auto Task Force to oversee his Administration's efforts regarding the industry. The Task Force is co-chaired by Treasury Secretary Timothy Geithner and National Economic Council Director Lawrence Summers, includes representatives from across the executive branch[6], and is staffed by a joint Treasury-NEC team, of which I am now the senior member. This team reports to the Task Force and its co-chairs, who report up to the President.

From the beginning of this process, the President gave the Auto Task Force two clear directions regarding its approach to the auto restructurings. The first was to behave in a commercial manner by ensuring that all stakeholders were treated fairly and received neither more nor less than they would have simply because the government was involved. The second was to refrain from intervening in the day-to-day management of these companies.

As with the funds provided to the auto industry by the prior administration, the funding provided by the Obama Administration was allocated from the TARP as authorized under the Emergency Economic Stabilization Act of 2008 ("EESA").[7] The terms of the debtor-in-possession (DIP) financing were consistent with EESA requirements and protected the American taxpayer.

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[6] The other members of the Task Force are the secretaries of Transportation, Commerce, Labor, and Energy, along with the Chair of the President's Council of Economic Advisers, the Director of the Office of Management and Budget, the EPA Administrator, the Director of the White House Office of Energy and Climate Change and the Chief Economist for the President's Economic Recovery Advisory Board.

[7] As the United States explained at the outset of GM's bankruptcy,

> [EESA] created the Troubled Asset Relief Program ("TARP"), which generally authorizes the purchase by the United States of "troubled assets from any financial institution." 12 U.S.C. § 5211. "Troubled assets" are defined to include, among other things, "any . . . financial instrument that the Secretary [of the Treasury], after consultation with the Chairman of the Board of Governors of the Federal Reserve System, determines the purchase of which is necessary to promote financial market stability, but only upon transmittal of such determination, in writing, to the appropriate committees of Congress." 12 U.S.C. § 5202(9)(B). "Financial institution" is broadly defined to include "any institution . . . established and regulated under the laws of the United States or any State, territory, or possession of the United States . . . and having significant operations in the United States . . . ." 12 U.S.C. § 5202(5).
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> The express purposes of EESA are, among other things, to "restore liquidity and stability to the financial system of the United States," and to ensure that expenditure of taxpayer funds "protects home values, college funds, retirement accounts, and life savings," "preserves homeownership and promotes jobs

Transparency and Accountability

Because the investments made by both the prior and current Administrations to support the auto companies have come from the TARP, the Task Force and its staff's activities have been subject to the full range of disclosure and reporting requirements under the EESA statute. In addition to reporting to this committee, this includes oversight by the GAO, EESA's Financial Stability Oversight Board, the Special Inspector General for TARP or "SIGTARP," and multiple House and Senate committees. Most recently, GAO published a report in June of this year (http://www.gao.gov/new.items/d09658.pdf) and the SIGTARP published a report this month (http://www.sigtarp.gov/reports/congress/2009/July2009_Quarterly_Report_to_Congress.pdf). In addition, to date, I have testified before the Senate Banking Committee and the House Judiciary committee as well as held dozens of meetings with Members of Congress and their staff and almost constant telephonic communication. The Auto Task Force will continue to be as responsive as possible to the requests of these entities to ensure thorough transparency and accountability for our actions.

In addition, the Task Force has conducted broad outreach over the past several months to affected stakeholders, industry experts and other constituencies that have requested such meetings.

> and economic growth," and "maximizes overall returns to the taxpayers of the United States." 12 U.S.C. § 5201.
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> Consistent with these purposes, and pursuant to section 101(d) of EESA, 12 U.S.C. § 5211(d), the Secretary of the Treasury has promulgated guidelines for allocating resources under TARP to "prevent a significant disruption of the American automotive industry that poses a systemic risk to financial market stability and will have a negative effect on the real economy of the United States." *See* Guidelines for Automotive Industry Financing Program.
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> Furthermore, on December 19, 2008, the Secretary of the Treasury issued a written determination, in consultation with the Chairman of the Board of Governors of the Federal Reserve System, that certain holding companies engaged in the manufacturing of automotive vehicles are eligible for funding under the TARP Significant Failing Institutions Program. *See* Determination of the Secretary of the Treasury, Dec. 19, 2008. By letters dated December 23, 2008, to "the appropriate committees of Congress" – the Senate Committees on Finance; the Budget; Banking, Housing and Urban Affairs; and Appropriations; and the House Committees on Appropriations; the Budget; Financial Services; and Ways and Means – then-Secretary of the Treasury Henry M. Paulson, Jr. delivered a written notification of that determination pursuant to section 3(9)(B) of EESA, 12 U.S.C. § 5202(9)(B). True and correct copies of the Secretary's determination and letters to Congress are attached as Exhibit A.
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> On April 29, 2009, the Secretary of the Treasury issued a written determination reaffirming that automotive manufacturers are eligible for TARP funding under Treasury's Automotive Industry Financing Program. *See* Determination of the Secretary of the Treasury, Apr. 29, 2009 (attached hereto as Exhibit B). The April 29th determination has the effect of providing notice that the postpetition financing to be provided by Treasury to GM satisfies the requirements of EESA for use of TARP funds.
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> There is therefore no legitimate question that Treasury had, and has, ample statutory authority to use TARP funds to provide financial assistance to GM – funds which, as noted above, have already saved GM from an all but certain and calamitous liquidation . . . .

Statement of the U.S. upon the Commencement of General Motor Corp. Ch. 11 Case, No. 09-50026, at 9-11, ¶17-22 (Bankr. S.D.N.Y. June 1, 2009) (with Troubled Asset Determinations attached).

Role of the Task Force Going Forward

From the beginning of this process, the President clearly directed the Auto Task Force to refrain from intervening in the day-to-day management of GM and Chrysler. Our role has been to act as a potential investor of taxpayer resources, and as such we have not become involved in specific business decisions like where to open a new plant or which dealers to close. This is the job of management and while we have been engaged in dialogue and discussion about their approach, we have not substituted our judgment about specific decisions for theirs. Our goal is to promote strong and viable companies, which can be profitable and contribute to economic growth and jobs without Government support as quickly as possible. Using GM or Chrysler as an instrument of broader government policy is inconsistent with these goals.

Given the emergence of the New GM and the New Chrysler, the involvement of the Auto Task Force with the companies will now change. The companies are being run as commercial enterprises by their management teams, and they will report to new, independent Boards of Directors. The task force was involved in recruiting many of these directors, and I am proud to report that both Boards are filled by men and women of extraordinary distinction, independence and commitment to the obligations that they have accepted. In acting as a lender and investor in New Chrysler and New GM, the Auto Task Force will closely monitor the loans and investments made in both companies going forward.

Safeguarding and Exiting the Taxpayers' Investment

As the President has made clear, The Obama Administration is a reluctant shareholder in New General Motors as well as New Chrysler. We inherited a situation in which GM needed substantial capital. At the same time, GM had been hobbled for years by an unsustainable debt burden. In this context, piling on irresponsible amounts of new debt on top of the new GM would have simply repeated the mistakes of the past. Likewise, giving away the equity stake to which taxpayers were rightly entitled would have been irresponsible.

Therefore, the Administration made the decision to take the equity that taxpayers are entitled to, alongside a firm conviction to manage that investment commercially and exit our position as quickly as is practicable. The Administration has articulated a set of four principles that will govern its approach to managing ownership interests in financial and automotive companies that will apply directly to the government's approach to New Chrysler and New GM:

- *The government has no desire to own equity stakes in companies any longer than necessary, and will seek to dispose of its ownership interests as soon as practicable.* Our goal is to establish strong and viable companies that can quickly be profitable and contribute to economic growth and jobs without government involvement.

- *In exceptional cases where the U.S. government feels it is necessary to respond to a company's request for substantial assistance, the government will reserve the right to set upfront conditions to protect taxpayers, promote financial stability and establish the foundation for future growth.* When necessary, these conditions may include new business plans similar to those now underway at New Chrysler and New GM as well as changes to ensure a strong board of directors that selects management with a sound long-term vision to restore their companies to profitability and to end the need for government support as quickly as possible.

- *After any up-front conditions are in place, the government will protect the taxpayers' investment by managing its ownership stake in a hands-off, commercial manner.* The government will not interfere with or exert control over day-to-day company operations. No government employees will serve on the boards or be employed by these companies.
- *As a common shareholder, the government will only vote on core governance issues, including the selection of a company's board of directors and major corporate events or transactions.* While protecting taxpayer resources, the government intends to be extremely disciplined as to how it intends to use even these limited rights.

Conclusion

In a better world, the choice to intervene would not have had to be made. But amid the worst economic crisis in three-quarters of a century, the Administration's decisions avoided a devastating liquidation and put a stop to the long practice in the auto industry of kicking hard problems down the road. The Auto Task Force worked quickly to assist GM and Chrysler and did so in a fair and open way. While difficult for all stakeholders involved, these transactions provide New GM and New Chrysler with a new lease on life and with a real chance to succeed.

Chair WARREN. Thank you, Mr. Bloom. We appreciate your being here today.

You started your remarks by noting that sacrifices have been required of all the stakeholders in this effort to reorganize the automobile industry. And I would like to start my questions along the same line.

As I understand it, in order to receive taxpayer assistance, the two automobile companies have had to come up with a new business plan. They have had to replace at least some senior management. They have forced creditors to take losses, and they have largely wiped out their shareholders.

As I also understand it, in order to receive TARP funds, none of those same requirements have been made of the financial institutions, even though the amount of money at stake is about two and a half times more.

So I wonder if we could begin this process with some explanation of why these restrictions were demanded of the auto industry and not of the banking industry.

Mr. BLOOM. Well, Madam Chairman, I really cannot speak about the determinations that were made relative to the banking institutions. My responsibility has been to work with the President's Auto Task Force. I think the situations facing the banks are quite different. But honestly, our sole focus over the past 4 or 5 months has been on the auto companies, and so I am happy to try to give you as much understanding as I can about how we approached that matter. But in terms of comparing it to what was done with the banks, that is really not something I am in the position to do.

Chair WARREN. So no sense of how the two industries either are different from each other or the role of insisting on some reorganization in order to protect taxpayer investments?

Mr. BLOOM. I have had my hands full trying to wrestle with two very large, troubled auto companies, and that takes up 21 hours of the day, and the rest I reserve to myself.

Chair WARREN. Well, in that case, I will ask you more about what you have said about your efforts with the auto industry.

I want to understand two phrases that seem to be somewhat in tension with each other. I hear you and others discuss many times the need for a "change in culture" in the auto industry, and at the same time, I hear you and heard you in your testimony today describing your role as "hands-off." So I am curious how it is, if you see "change in culture" as a central ingredient for reviving the industry and protecting the taxpayer investment—how you see that as consistent with a "hands-off" approach to managing the Government's investment.

Mr. BLOOM. Well, that is a fair question. Let me try to answer it.

I think we tried to do three separate things as we approached our work.

The first was we tried to facilitate and effectuate a financial restructuring, a reordering of the balance sheet to help the company relieve itself of liabilities that its current profit potential were simply unable to bear.

The second thing we did is, working with the management, we insisted that there be an operational restructuring so that the companies were able to make profit at a lower level of sales and make more profit at higher levels of sales than they historically had. And that was an insistence that the President has made that I spoke about, that was a condition to advancing the additional Government funds.

In terms of the third leg of the stool, the cultural change, which I absolutely agree with you is central to effectuating a turnaround, I think what we did there largely was to bring in, in the case of Chrysler, an entirely new and, in the case of GM, a significantly new board of directors of people of extraordinary accomplishment in the private sector; people who have had experience effectuating turnarounds and we have tasked them with the responsibility of overseeing the management so that this culture change, which you referred to and which we would agree is very important, is in fact effectuated.

I would also note that in the case of Chrysler, the entire management team is new, and in the case of General Motors, many of the senior managers are no longer with the company and the management team is certainly a lot smaller than it was. And we are very hopeful that the new management team at Chrysler will be committed to the culture change that you spoke of, and we are confident it will. We are very hopeful at General Motors as well, but we have a lot of faith that the new board of directors that has been put in place will be very vigilant in pursuing that objective.

Chair WARREN. Thank you, Mr. Bloom. My time is up.

Congressman Hensarling.

Mr. HENSARLING. Thank you, Madam Chair.

Mr. Bloom, I could barely see you there.

Mr. BLOOM. Yes, this is better. We can look at each other.

Mr. HENSARLING. Mr. Bloom, the first question I have, the first tranche of assistance to the automakers came from the previous administration, but knowing how often this administration has broken with the policies of the previous administration, what is the legal authority that you cite for the continued infusions of TARP money that took place prior to the Chapter 11 reorganizations?

Mr. BLOOM. I do not think this administration breaks with the prior administration just to do it. I think it does it where it believes that change is appropriate. And on this particular matter, we think the finding that the prior administration, made that under the statute these companies are eligible, is a finding that this administration concurs with and made as well.

Mr. HENSARLING. Refresh my recollection. That specific finding—is that a finding by whom? Is this something——

Mr. BLOOM. By the Secretary—I am sorry.

Mr. HENSARLING [continuing]. The Justice Department? So it is an interpretation by the Secretary of——

Mr. BLOOM. By the Secretary of the Treasury in consultation with——

Mr. HENSARLING. Okay. That is the legal authority you all rely upon.

Mr. BLOOM. Well, under the statute, yes.

Mr. HENSARLING. Given that the taxpayer has become an involuntary investor in Chrysler and GM, is it the intent of the Government and your Auto Task Force to ensure that they receive the same disclosure of any public company, that they as shareholders would receive all proper disclosures?

Mr. BLOOM. Neither of these companies today are public companies in the traditional use of the word, meaning their stock is traded on a recognized exchange.

Mr. HENSARLING. But will the taxpayers——

Mr. BLOOM. No. I am going to answer your question.

On the other hand, we have insisted—and the companies have both agreed—that they will be making periodic reports to shareholders, if you will, but to the Government these will be publicly available on a quarterly basis. They will be filing as voluntary filers under the SEC, not immediately but shortly. But immediately and quarterly, they will be making regular reports, yes.

I am sorry. Just to clarify to be clear, as you know, the old General Motors is still a public company, but I was speaking about the new GM.

Mr. HENSARLING. Correct, correct.

For a lot of observers, clearly again, TARP crossed a threshold when funds were invested into what many would view as a nonfinancial firm. The New York Times recently wrote, I believe just a few days ago, on the 25th—and the New York Times is not known for being a bastion of conservative thought—quote, "Why, after all, should the automakers receive the equivalent of a technicolor dream coat giving them favorite son status when other industries like airlines and retailers also have suffered from the national recession." Unquote.

I come from Dallas, Texas. Two of the Nation's leading airlines, American Airlines and Southwest Airlines, are headquartered in our greater Dallas-Forth Worth Metroplex. So it does beg a question. I know of very few firms, industries, sectors that are not hurting in this economy. So once you got out of the financial realm into the automakers, would the administration come to the rescue of American Airlines and Southwest Airlines if they fell upon economic hard times?

Mr. BLOOM. I cannot answer a hypothetical about what might happen. I can answer only that the administration and the prior administration believe that the centrality of the automobile industry to the broader economy justified this intervention. What would happen down the road is, I think, something that would have to be evaluated when, as, and if it happened.

Mr. HENSARLING. What would be that criteria? Or in your position at the Auto Task Force, you would not necessarily be privy to that information.

Mr. BLOOM. Again, my responsibility is for autos. So I guess it is possible someone would ask my opinion about airlines, but I do not anticipate it.

Mr. HENSARLING. As part of the restructuring of Chrysler—I believe I have my facts right—I believe that Fiat has the opportunity to increase their equity stake. I believe it is from 20 to 35 percent for, among other things, producing a domestic car that can achieve 40 miles per gallon. I think I have my facts right.

And if so, Mr. Bloom, what does that have to do with financial stability? Why does that not instead speak to the President's global warming initiatives, which is an interesting debate to have? But I am curious, what does it have to do with financial stability in our markets?

Mr. BLOOM. Just a very minor correction. You are essentially correct. Fiat has 20. They can move to 35. There are three different metrics. The one you cite is one of them. It would get them an additional 5 percent. But you are essentially right.

And let me answer your question. The judgment was made that producing a high-mileage car would be helpful to the company's long-term viability. And Fiat—one of the things they, if you will, bring to the party is very advanced technology particularly in the area of small cars. So what we were trying to do is build an incentive for Fiat to bring—or Chrysler to avail itself of that technology as quickly as possible—the judgment being that in order for Chrysler to be successful in the long term, a fully balanced product portfolio, including high-mileage cars, was critical to its long-term success. So the reason was based on a judgment about what Chrysler needed to be long-term successful company and trying to align their interests with Fiat's.

Mr. HENSARLING. Thank you. I see I am way past my time limit.

Chair WARREN. Yes, you are. I had lost track. I was interested in the question.

Mr. Bloom, you pointed out that an essential tool for change in the culture is not only the new management team, but the new board of directors. And I just want to ask a few questions about the role of the members.

For the directors appointed by the Government, are there any restrictions on the role that these directors will play? Do they play a role just like any other director?

I raise this because of the special relationship that we must probe between the Government and the ongoing management of the company.

Mr. BLOOM. Let me try to be responsive, and if I am missing something, maybe you can help me. But let me say that our expectation is that these people will act as directors must act, which is to say fiduciaries for the shareholders, unrestricted in their ability to do that. There is no checking with Government. There is no look-back. There is no special reporting. They are there to do the job of every other director in any company that a director serves on.

Chair WARREN. All right. That is what it was that I just wanted to clarify. If the question was unartful, the answer was, nonetheless, responsive.

But that means then it takes me to another part of the corporate governance structure, and that is the notion that ultimately boards of directors are responsive to shareholders. And, as I understand it, both VEBA and the Government intend to be hands-off here.

Does that mean, to the extent there is shareholder influence in the operation of this business, that it will be essentially representing about 10 percent of the equity of General Motors in its influence over the major decisions to be taken?

Mr. BLOOM. Let me take the GM case and see if I can be responsive.

As you correctly suggest, the bondholders will have 10 percent, although they do have warrants to purchase an additional 15, could grow to 25, but still a small number. The VEBA has 17.5, could grow to 20 with a very, very highly priced option as well. The U.S. Government, 60.8, and the Canadian Government, the balance.

It is our intention, as the Government, that we will vote those shares on the reelection of the board of directors. So if for whatever reason there is an issue with the board, the Government would be able to exercise its influence there. But the shareholder right, if you will, is quite narrowly circumscribed only to the election of the directors, and that will be the full extent of it.

So I think while that is not 100 percent traditional in terms of how one might think of a large shareholder, the decision that was made was that while—on the one hand, there is obviously an expectation that there is a huge amount of taxpayer resources at stake here and they need to be protected. On the other hand, we are very eager to dispose of these shares as soon as is practicable and to provide these companies with access to private capital markets. And so balancing all those things, the judgments were made to exercise our governance rights as we are.

Chair WARREN. So if I am understanding this, then you are telling me that having appointed a certain number of directors, that the Government in effect will now recede from the field until the next time that the directors are up for election, and then it will make, in effect, the binary decision, yes/no, on these directors or replacing them with directors that the Government is more comfortable with.

Mr. BLOOM. Yes.

Chair WARREN. Is that the process?

Mr. BLOOM. I think that is a fair description of it, yes.

Chair WARREN. Good. I think that is good.

Instead of opening up another line of questions, I will just go to you, Congressman Hensarling.

Mr. HENSARLING. Mr. Bloom, I am still trying to make sense, I guess economic sense more than bankruptcy law sense—our chair certainly has far greater expertise as a professor in the area than I do. But on a before-and-after basis, again, how is it possible that the UAW VEBA unsecured creditors receive a greater distribution of proceeds than Chrysler senior secured creditors or the GM bondholders? Regardless of whether it was legal, I think it is certainly unprecedented, and I continue to be curious about the matter.

Mr. BLOOM. Okay. As you acknowledge, it is perfectly legal. The courts have scrutinized this extensively, and no one has found any problem with it.

In terms of precedential quality, let me refer you to the bankruptcies of the steel companies in the turn of the prior decade, which is something I happen to have been quite involved in. In that case as well, there was a huge difference in the recovery that the VEBAs were able to receive versus the creditors. Likewise, I would point you in Chrysler to the recovery received by the suppliers and the recovery received by the warranty holders.

And it all stems from the same basic fact, which is that the new buyer of these assets made a commercial decision that to enter into contracts with its suppliers, to assume the warranty claims of past warranty holders, in those two cases, it made a commercial judgment that in order to be a successful business enterprise, to not provide a recovery to warranty holders, who are for most companies the most logical buyers of the next vehicle, would be an illogical commercial judgment.

Likewise, the suppliers—it is difficult to make cars if you do not have steering wheels—decided that providing essentially ordinary course payment to its supply base through the entirety of the bankruptcy proceeding and therefore leaving them essentially unimpaired was a wise commercial decision, which the Government agreed with.

Likewise with the UAW, the company engaged in a very difficult, arm's-length bargain with its labor union, and as part of that bargain, the union decided that its active workers would take reductions in their pay and benefits. There were a variety of other changes made in work rules and other areas, but through that hard-fought bargain, the UAW also said that we want new Chrysler to have a VEBA to take care of the people who used to work for old Chrysler. And new Chrysler made a commercial decision that without a skilled workforce, it would be very difficult for the company to operate. And so they got the UAW to take as small of an amount, as they could, in that process. And that was the commercial judgment that the company made, which——

Mr. HENSARLING. Mr. Bloom, when you talk about new Chrysler, new GM, I mean, we are still talking the Federal Government and the UAW substantially. Correct?

Mr. BLOOM. I am sorry. The last part of your sentence?

Mr. HENSARLING. When you are talking about new GM and new Chrysler, the management made this decision.

Mr. BLOOM. Yes.

Mr. HENSARLING. Two observations. Number one, they are representing the Federal Government and they are representing the UAW. So to some extent, the old becomes the new, number one.

And number two, I am not convinced that somebody using their own money would have made this same deal as opposed to using the taxpayer money.

Mr. BLOOM. I am not sure I understand. You mean they were representing the UAW. They were adverse to the UAW in the proceeding. I mean, there was an arm's-length bargain between the management and the UAW. So I do not think they were representing——

Mr. HENSARLING. And that is how they ended up with 55 percent.

Mr. BLOOM. That is how they represented, number one.

Number two, in terms of whether a private sector individual would do it, that is a matter of speculation. But again, I would recommend you to the steel bankruptcies where private sector individuals did come in and put their own private sector money at risk. In fact, the relative amount that the VEBAs received in the steel bankruptcies was more like 40 and 50 times what the unsecured creditors received. So I do not find it at all out of line. But I have been doing a lot of bankruptcies over a lot of years, and I think most of the participants of the bankruptcy did not find it out of line, but perhaps others would.

Mr. HENSARLING. Thank you.

Chair WARREN. Thank you.

Could we turn for just a minute to GMAC? How has GMAC performed as a reliable source of credit for GM and Chrysler dealers and consumers so far?

Mr. BLOOM. Well, obviously, the entire sector is troubled, and obviously, people in general are not buying as many cars. But I think we are satisfied that GMAC has done as good a job as it could under the circumstances. There was, obviously, this very large and complex transfer of the Chrysler dealers to GMAC, which we believe was handled largely—you know, there is a hiccup here and there, but I think was largely well. Certainly there are individual dealers and individual consumers who have complaints about the company, which would be true of any financial institution. But I think we feel, by and large, that GMAC, while facing its own challenges, is doing a good job of providing credit to both consumers and dealers.

Chair WARREN. Do you know? Is GMAC still the preferred financing option for most purchasers? Has its percentage shifted during 2009?

Mr. BLOOM. There certainly were periods—not relative to GMAC. There were periods with Chrysler financial where there was some movement away from it, but I am not aware—and I can get back to you with more detail or maybe we can direct those questions directly to GM. But to my knowledge, the percentage of consumer purchases that GMAC is doing both before and after is not very different.

The only area where you might see a decline in GMAC was in the leasing business. It has gone out of the leasing business. And there is a percentage of buyers of cars who are sort of lease-specific, and those guys therefore, obviously, are not getting their financing from GMAC.

But other than that, I think the straight purchases, to my knowledge, are roughly the same, but I can certainly get you more detail on that.

Chair WARREN. Insofar as you know, the rates are still competitive that GM is asking for. I am just trying to get a sense of——

Mr. BLOOM. Yes, versus the private markets. We are not aware of any rate discrepancy versus the banks or others who might be providing auto credit.

Chair WARREN. Do you have any concerns about the interconnectedness between GMAC and the two auto companies in the sense of a sort of double exposure here of one industry that is trying to make and sell cars, another that is having to rely on the credit of households that are facing their own difficulties with rising rates of unemployment and other financial stress?

I just want to focus for a minute on whether it is. Having approached it from one angle, and that is, is GMAC adequately supportive of the two car companies, it is really from the other direction. Does it bring added risk to the table for the long-term success of the overall enterprise?

Mr. BLOOM. I mean, there is no question that GMAC's future is importantly dependent on the existence of a healthy car industry, but likewise, the dilemma is the car industry's future is dependent on their being a reliable and healthy GMAC. So whether we like it or not, the two are integrally committed.

Chair WARREN. Can I actually press on that, though, just a bit, Mr. Bloom? Because I really do want to understand this. Is it that the auto industry relies on the availability of credit in general and consumers who can afford to buy cars and ultimately then to pay off their loans? Or is it that it relies specifically on GMAC? And if it is the latter, can you just fill that in a bit on why that would be so?

Mr. BLOOM. No, that is a fair question. Certainly the first part of your question is correct. Roughly 80 to 90 percent of car purchases are financed. So that is undeniably true.

GMAC just has very, very large market share. I mean, obviously, remember not too many years ago GMAC was a wholly subsidiary of General Motors, and then it was spun off to be a minority and then, obviously, in the course of these additional capital injections, General Motors' interest has declined. It will continue to decline.

But nevertheless, GMAC has a very high percentage of the overall market, if you will, for purchasers of GM cars. And so the dilemma would be, while it is theoretically possible that all those consumers could find their way to alternative financing sources, I think in any reasonable period of time, that would not have happened. All the other car companies—Ford, as well as the transplants—also have their own, and they have their own fully captive finance companies.

So certainly there are big banks who are in the business of providing consumers with financing to buy cars and providing dealers. Credit unions do it. But collectively all of them do not equal what GMAC provides to GM. So I think the decision was that if you took that away all at once, you would have an enormously disruptive impact on the company's ability to sell cars and a dealer's ability to buy cars, which is obviously critical.

Chair WARREN. If I might just follow up with one more question, even though I am beyond my time, but it is the appropriate moment to ask, if I can.

Then let me ask the question just at one more turn of this analysis, and that is, is GMAC then really an integrated part of the two auto industries? You rightly point out for many, many decades, it was merely the financing operations so that the industry could sell on credit. And when it became very profitable, it was spun off into its own separate entity. And I am just really asking functionally is it now truly part of the two companies that we are trying to revive here, an internal part of them?

Mr. BLOOM. Well, I would argue it is less a part of them than it used to be.

Chair WARREN. In what sense economically? I understand the point legally.

Mr. BLOOM. Economically in the ownership.

Chair WARREN. I understand the legal distinction, but I am asking the economic——

Mr. BLOOM. No, because the shareholders get the economic upside and now there is a 100 percent—I mean, there was always an arm's-length dealing between the companies and the people who loaned money. The finance companies insisted on that. But now there is also the economic incentive of a completely different shareholder group.

Chair WARREN. And is that good or bad? That is the evaluation I am asking you for. You are running the whole show here.

Mr. BLOOM. Right. Well, we are not running the show.

But I think that remains to be written. Our belief is that separate entities, obviously, connected by the nexus they have, but separate companies can be successful. I mean, the car companies have a lot of suppliers who are integral to their future and their life who are not owned by the car companies. They are key suppliers who provide them steering wheels and all kinds of things they do not own. So we do not feel that it is essential that GMAC be owned, but obviously, the two companies are connected. No question about that.

Chair WARREN. Thank you, Mr. Bloom.

I thank you for your indulgence. Congressman Hensarling.

Mr. HENSARLING. Mr. Bloom, on the way in from the airport last evening, the first auto facility that I saw on my way to the hotel I stayed at was a Ford facility. You brought them up in your earlier answer. Chrysler and GM sought TARP funds. They received TARP funds. Ford has not. Ford has, I assume, a very significant debt service that they have to handle.

How is it wise economic policy to have a subsidized GM and a subsidized Chrysler compete with a non-subsidized Ford, and if another catastrophe occurs and Ford's financial fortunes turn south, is the administration going to come in and rescue them with TARP funds?

Mr. BLOOM. Well, obviously, it does pose a dilemma. The administration did make clear to all three of the companies in the course of this process that if they came forward, their requests for assistance would be evaluated. Two companies came forward and requested it. Ford did not come forward and request it.

I think Ford is going to have to determine what its best future is and whether or not they feel they can compete. I think at least reading the public media, that Ford believes that the decision to provide assistance to GM and Chrysler was a good one. I think they have been supportive of it. So I take it that they know how to represent their own interests, and so this does not seem to be something that they think should not have been done.

As to what the future may hold, again, I do not have a crystal ball, and what the facts and circumstances are at the time will determine, I think, how a request from Ford would be evaluated. So, again, I cannot speculate on that. Obviously, right now, Ford believes—they have stated it publicly, so I am only simply restating their public statements—that they believe they can make it through without any Government assistance, and we obviously——

Mr. HENSARLING. One could argue—and I do not pretend to be an expert in the automobile industry, but one could argue, could they not, that the Federal Government has subsidized two failing business models and is thus harming a competitor that has a successful business model? Arguably, had Chrysler and GM been allowed to go through, let us say, a more natural Chapter 11 process, perhaps Ford would gain even more market share. And I am wondering if the Federal Government might actually contribute to the economic demise of Ford.

Mr. BLOOM. Well, it is obviously possible that if these companies went into uncontrolled bankruptcies and the likely liquidation that would have followed, Ford would have done better on that versus what has happened. Again, I cannot speculate about what might have been.

As I said, I do know that Ford felt like—has stated publicly that—the assistance given was a good idea. I think they were deeply concerned about the integrity of the supply base and sending many, many suppliers into bankruptcy, which the liquidation of GM and Chrysler most assuredly would have done, in addition would have caused bankruptcies that would have affected the transplants as well. Again, it is possible that a different future could have been written differently.

There is no question that GM and Chrysler were failing companies. I think that is absolutely true, and the Government offered the smallest amount of assistance that it could consistent with giving these companies a second chance, believing that the overall impact on the economy of an uncontrolled bankruptcy and a liquidation which would have followed was far, far worse for the overall economy. That is a judgment that was made.

Mr. HENSARLING. Mr. Bloom, let me ask you another question on how we arrived here. Did you or do you have knowledge of any member of the Auto Task Force encouraging a TARP recipient or other creditor to support Chrysler and GM's section 363 sales?

Mr. BLOOM. If the question is whether an approach was made to a TARP recipient suggested that because they are TARP recipients, they ought to do one thing or the other, the answer is absolutely not.

Mr. HENSARLING. So you are speaking on behalf of yourself, and are you also speaking on behalf of the administration when you assert that?

Mr. BLOOM. Yes. This is a matter that I was asked about in deposition, and so in preparation for my deposition, I did extensive questioning of all the people who were involved in this matter on behalf of——

Mr. HENSARLING. And that includes Mr. Rattner who has now departed?

Mr. BLOOM. It absolutely includes Mr. Rattner.

Mr. HENSARLING. I see my time is up.

Chair WARREN. I would like to ask some questions about exit, Mr. Bloom. Milestones, so that we can see that we are making progress toward exit. Let me start there rather than with the exit itself.

When can we expect to see some timelines and actually just the articulation of what the milestones are and when we expect to hit those milestones as we go forward in this reorganization process?

Mr. BLOOM. Well, two things. On General Motors, I think we have publicly said and our expectation is, subject to an enormous change in our view of what the markets are like and where the company is, that GM will be able to undertake an initial public offering, an IPO, sometime in 2010. So at that point, the stock will then again trade on an exchange. I would think as part of that IPO, it is certainly possible the Government will be selling some of their shares into that IPO. It is possible there will be primary shares too, but that will be determined at the time. So there you will see and be able to sort of get a first look at the new GM in the public markets.

In terms of the articulation of a specific timeline following that, at this time the decision has been made to not articulate a specific timeline, either a back end or milestones. And the reason was, again, these are all balancing acts. We have articulated the principle of "as soon as is practicable." The judgment was made that to put out a more specific timeline would create an overhang in the market that would be deleterious to receiving the best price. So the idea will be that working with the company, market opportunities will be taken, consistent with the principle I articulated of "as soon as practicable." But to state a certain number of months or how much in any given month, the feeling was this would create an overhang that would actually make it more difficult for the company's stock to trade well and, obviously, therefore for the American taxpayers to get value for their investment.

Chair WARREN. Actually I got a little lost in the last part of the description. Between now and the IPO, will there be any milestones or markers so that we know we are on target to get our money back to head toward that IPO?

Mr. BLOOM. No. The answer is at this point there is no intention to put out specific milestones either now or in the future. Now, again, that might change. But the current judgment is that the best way to get out as quickly as possible is not to commit to a defined schedule. So, for instance, if the markets open up more in 2010 than we hope, we would obviously try to sell more in 2010 than what we might otherwise. But it is going to be based on the situation as it evolves.

Chair WARREN. Well, I understand your point about wanting to take advantage of the markets if the markets open up more than you had otherwise anticipated. But does that mean that it is not possible to identify, for example, some kind of operational markers or signs we will see if the company is reviving?

Mr. BLOOM. Oh, I am sorry.

Chair WARREN. These are the indications that good things are happening. Or will it simply be a black box until the moment we announce an IPO?

Mr. BLOOM. Well, as I responded earlier to the Congressman, the company will be reporting. So there will be a visibility quickly on a quarterly basis as to how the company is doing. So the traditional sort of financial metrics of visibility will be available I think relatively soon. So we are not going to wait for the IPO to give people a peak as to how the company is doing. The company understands, because there are taxpayer dollars at stake, that giving the American people a periodic quarterly report card is proper and appropriate and they will be doing that.

Chair WARREN. I am sorry. Before you go to the next point, I just want to be clear. You will be giving the same report card that any other company would be giving under the circumstances, any publicly traded company in America?

Mr. BLOOM. I want to clarify that. In the absolute near future, there will not be a fully SEC-style report, but there will be a report. And obviously, after there is an IPO, of, there will be SEC-style reporting.

Chair WARREN. And you expect it not to be full SEC-style reporting. Can you just give us an idea of in what ways it will be more constricted than an ordinary SEC report?

Mr. BLOOM. I think that there are a whole variety of accounting issues that probably the company is best able to speak about, which prevent the company from immediately being able to be fully compliant. But it is the intention to be fully compliant as quickly as is possible and to provide as much information as the company can responsibly provide on a quarterly basis.

Chair WARREN. So if I understand you, it may be that the first quarterly report would not be a full SEC-style report, but by the second or third, it might——

Mr. BLOOM. Again, I do not want to give you a false impression. I cannot today tell you whether it will be the second or the third, but clearly we have articulated, and the company has agreed, that as quickly as possible we expect them to be SEC-compliant.

Chair WARREN. Will it be possible to give us some idea of what kinds of metrics are to be in the reports? I understand that you say that it will not be a full SEC-style report, but what items will be covered so that we know what to anticipate?

Mr. BLOOM. Yes. Without giving you an exhaustive list, I think you can expect to see traditional measures of revenue and profitability that a normal investor would want to know about.

Chair WARREN. If I can, let me ask the question then if we roll the clock out a bit farther. I think I am past time. Do you mind if I ask one more question? Thank you, Jeb.

After the IPO and the Government has, hopefully, receded from the field here, how will we know if the taxpayers' investment was a success? What are the appropriate measures of ultimate success for this extraordinary investment?

Mr. BLOOM. Well, let me just be sure I did not mislead you. We would not expect to sell the entire stake in the IPO. So I just want to clarify that point.

But nevertheless, you——

Chair WARREN. But I presume——

Mr. BLOOM. No, no.

Chair WARREN [continuing]. Ultimately we hope to sell the entire stake.

Mr. BLOOM. Not we hope to. We will.

Chair WARREN. So I am saying in addition to the fact that it will be a successful day when our share is gone and out of Government hands. I am really asking a different question. For this extraordinary investment, how will we measure success?

Mr. BLOOM. Well, I think success will be measured in the way that one as a taxpayer would expect it to be measured, and that is to say the taxpayers put a lot of money up and they want their money back. So the greater percentage of the money that we invested that we get back, the greater success. That is clearly the primary measure. This was taxpayer money, and it needs to be gotten back: in the case of the debt, paid back; in the case of the stock, gotten back by virtue of the sale. And obviously also over time, whether these companies have addressed the long-term problems that we identified, which is to say, you know, a declining market share, a poor profitability profile, not growing in terms of their ability to provide good, stable jobs, so keeping the promises they make to their stakeholders. So I think all those things which you would always judge a company on we would expect to, but first and foremost, the taxpayers want their money back.

Chair WARREN. Thank you, Mr. Bloom.

Congressman.

Mr. HENSARLING. Mr. Bloom, you mentioned the term "stakeholder" in your answer there, and I believe in your testimony you spoke about how every stakeholder in the GM and Chrysler reorganizations were hurt. I want to have our panel here—from a few of them now—these are letters, correspondence, statements that I received in my office, some dating back a month or 2 ago, or maybe 2 or 3 months ago from GM bondholders.

This one comes from Jim Graves, former GM employee, currently an independent software developer in Florida. Quote. "I have worked for General Motors and Ford Motor Company and am currently an independent software developer. I am speaking out on behalf of my mother, an 80-year-old retired GM employee and small bondholder. Both my mother and I have over $100,000 in GM bonds. My mother uses the interest from the bonds for retirement income, and I plan to do the same when I retire. We are here to urge the Obama administration to listen to our concerns and treat us fairly in the GM restructuring. Bondholders, especially small bondholders, are being ignored in negotiations and singled out to bear the lion's share of the cost of restructuring in GM."

Chris Crow, an electrician and home inspector in Denver. Quote. "I am a retired electrician from Denver, Colorado. I am not rich and I am not a Wall Street bank. These bonds finance my son's college tuition and my retirement. I am actually very concerned about not getting a check on May 15th from my bonds because I need this money to pay my property taxes. When the administration refuses to meet with the bondholders or chooses to wipe them out, they are wiping me out and lots of others like me. We are Main Street not Wall Street. Who is looking out for our interests? Mr. President, please protect us."

And I have got probably 20 more on my BlackBerry that I could read from there.

I guess the question is, Mr. Bloom, why would not one reasonably conclude that if you are a hard-working American and your retirement got invested in GM bonds, but you did not have a special relationship with the UAW, you fared worse than the UAW?

Mr. BLOOM. Well, first thing, let me say that I have received a number of those letters as well. And there is, obviously, no easy way to speak to anybody who had a promise broken by General Motors. Lots and lots of people had promises broken. The company was insolvent. That is fundamental to the facts.

Mr. HENSARLING. But some promises got broken more than other promises.

Mr. BLOOM. No. I think all the promises were dealt with on a commercial basis, which is to say that the company—and obviously the task force was involved in this—looked at each of the stakeholders and made a judgment about what was the minimum required of taxpayer dollars that had to be provided in order to reorganize General Motors. And the bondholders, obviously, did better than they would have had the Government not stepped in but did worse than they would have had the company not become insolvent. And that is true for every single stakeholder.

And our judgment was—and obviously, people can question it—that all of these stakeholders were treated in a commercial way, not a nice story. A terrible story. And there are many, many more like that, but the alternative was either we liquidate the company—and I think the devastation would have been multiples of that—or all promises get met, in which case the taxpayer investment would have been multiples of——

Mr. HENSARLING. And Mr. Bloom, why do you conclude that liquidation was the only alternative?

Mr. BLOOM. To what was done?

Mr. HENSARLING. Yes, the leveraging of TARP funds in this particular Chapter 11. Why was a Chapter 11 reorganization without the use of TARP funds not possible?

Mr. BLOOM. Our analysis was there would have been no debtor-in-possession financing, and so if the company had had to go into bankruptcy without debtor-in-possession financing, the case would have been quickly converted to a Chapter 7——

Mr. HENSARLING. So it was the administration's analysis that that would not have taken place.

Mr. BLOOM. It was our analysis that there was no DIP financing available of the size required to reorganize and support General Motors.

Mr. HENSARLING. Let me speak about another group of creditors, bondholders. Thomas Lauria, who is the global practice head of the Financial Restructuring and Insolvency Group at White & Case LLP, represented a group of senior secured creditors, including the Perella Weinberg Xerion Fund, during the Chrysler proceedings. You are probably familiar with this matter. On May 3rd, the New York Times reported, quote, "In an interview with the Detroit radio host, Frank Beckmann, Mr. Lauria said that Perella Weinberg was directly threatened by the White House and, in essence, compelled to withdraw its opposition to the deal under threat that the full force of the White House press corps would destroy its reputation if it continued to fight."

In a follow-up interview with ABC News, Jake Tapper, he identified Mr. Steve Rattner, the head of the Auto Task Force, as having told a Perella Weinberg official that the White House would embarrass the firm.

Mr. Rattner is not here today. You are. Have you spoken to Mr. Rattner about this matter? And if so, do you know if Mr. Rattner represented to you that he denies the ABC story?

Mr. BLOOM. I have spoken to Mr. Rattner about the matter, as I said earlier. This was a subject on which I was deposed. I spoke to him extensively about it. He categorically denies Mr. Lauria's allegation.

Mr. HENSARLING. Might someone else in the White House have had similar conversations? Who else did you speak to besides Mr. Rattner?

Mr. BLOOM. I spoke to all the people in the administration who were directly involved in the matter. I did not speak to every employee in the White House. Mr. Lauria's allegation is that Mr. Rattner said it. And Mr. Lauria is wrong. He is free to make allegations, but he happens, in this case, to be wrong.

Mr. HENSARLING. I see I am out of time.

Chair WARREN. Thank you very much. Thank you, Mr. Bloom. I appreciate your being here. The witness is excused.

Mr. BLOOM. Thank you.

Chair WARREN. If we could call the second panel please.

The second panel is Jan Bertsch, Vice President and Treasurer of Chrysler; Walter Borst, Treasurer of General Motors; and Dr. Sean McAlinden, Executive Vice President for Research and Chief Economist for the Center for Automotive Research in Ann Arbor.

Welcome to all three of you. I will ask you, as we did with Mr. Bloom—we would be grateful if you could hold your oral remarks to five minutes. Your entire statement will become part of the record.

If I could start with you, Ms. Bertsch.

STATEMENT OF JAN BERTSCH, SENIOR VICE PRESIDENT AND TREASURER, CHRYSLER

Ms. BERTSCH. Thank you. Members of the panel, thank you for the opportunity to discuss the financial assistance provided to the domestic automotive industry.

Chair WARREN. You may want to pull that a little bit closer, Ms. Bertsch.

Ms. BERTSCH. Thank you.

And specifically to Chrysler LLC and Chrysler Group LLC under the automotive industry finance program component of the TARP.

My name is Jan Bertsch. I am Senior Vice President-Treasurer for Chrysler Group LLC, a new company that purchased the principal operating assets of Chrysler LLC on June 10th, 2009, in a sale that was authorized by the United States Bankruptcy Court of the Southern District of New York.

I would like to place my comments in context by describing a series of events that culminated in the United States Department of the Treasury providing a secured loan to the Chrysler Group LLC of approximately $7 billion in connection with the closing of that sale.

In the fall of 2008, the economic downturn and global credit crisis hit the auto industry with full force. On December 2nd, 2008, Chrysler LLC, now known as Old Carco LLC, submitted a request to Congress for a $7 billion working capital bridge loan.

On January 2nd, 2009, Old Carco received a $4 billion bridge loan from the United States Department of the Treasury, with a requirement that the company submit a restructuring plan to achieve its long-term viability, international competitiveness, and energy efficiency.

Old Carco submitted its restructuring plan on February 17th, 2009 based on achieving viability on a standalone basis, but noting that it had signed a nonbinding letter of intent for a strategic alliance with Fiat that would greatly improve its long-term viability.

The alternative to either a standalone plan or a strategic alliance was liquidation, which would result in tens of thousands of jobs lost at our company and its dealers across the country and would jeopardize the entire domestic auto industry due to the dependence of OEMs on common suppliers.

On March 30th, 2009, the President's Auto Task Force concluded that Old Carco needed a partner such as Fiat to succeed in the global automotive industry. Over the next 30 days, Old Carco worked to avoid bankruptcy by securing stakeholder concessions and reaching agreement on the terms of a strategic alliance that would enable the company to preserve U.S. jobs, develop more fuel-efficient vehicles, and expand its sales in international markets.

Unfortunately, some of Old Carco's secured lenders did not agree to provide the required concessions, and Old Carco filed for bankruptcy on April 30th, 2009.

Fortunately, concessions were achieved with other key stakeholders that enabled Old Carco, Fiat, and Chrysler Group LLC, a newly formed subsidiary of Fiat, to enter into a master transaction agreement on April 30th, 2009. The agreement called for Old Carco to transfer substantially all of its operating assets to Chrysler Group, for Chrysler Group to assume certain liabilities, and pay Old Carco $2 billion in cash, and for Fiat to contribute to Chrysler Group access to competitive fuel-efficient vehicle platforms, certain technology, distribution capabilities in key growth markets, and substantial cost-saving opportunities. With court approval, the transaction closed on June 10th, 2009.

Throughout this process, members of the task force and personnel from U.S. Treasury played a key role in facilitating negotiations between all parties, primarily Old Carco, Fiat, the UAW, the CAW, and the VEBA, Cerberus and Daimler AG as owners and second lienholders, and the first lien lenders. It is my view that U.S. Treasury and the task force's limited and targeted expenditure of taxpayer dollars in connection with Old Carco and Chrysler Group avoided a significant and potentially more costly disruption to the U.S. automotive industry and the U.S. economy. This limited and targeted approach is reflected also in the U.S. Treasury programs that benefit automotive suppliers, the receivables factoring program, and consumers, the warranty protection program.

The U.S. Government is now a shareholder, or member in limited liability jargon, in Chrysler Group LLC. The LLC operating agreement provides the members with certain rights, including the right to designate individuals to serve on a nine-member board of directors. Fiat designates three directors, one of whom must be independent. Canada designates one independent director. VEBA designates one director, and the U.S. Treasury designates three directors, at least two of whom must be independent, who then designate a fourth independent director.

Major decisions require a majority vote of the board, including at least one Fiat director. Further, Chrysler Group is subject to extensive financial information reporting obligations to its members, which will allow the U.S. Treasury to monitor the development, implementation, and modification of the company's business plan——

Chair WARREN. Ms. Bertsch, if I could just stop you there.

Ms. BERTSCH. Yes.

Chair WARREN. We will have your written testimony.

Ms. BERTSCH. Okay.

Chair WARREN. So that we will be able to get to the questions, which is what we mostly do here, I am going to ask, if you do not mind, if we could go to our next person.

Ms. BERTSCH. Okay. Thank you for the invitation to appear before you today, and I look forward to your questions.

[The prepared statement of Ms. Bertsch follows:]

Statement by
Jan A. Bertsch
Senior Vice President and Treasurer
Chrysler Group LLC
before the
Congressional Oversight Panel for the Troubled Asset Relief Program
Field Hearing on the Automotive Industry Financing Program
Detroit, Michigan
July 27, 2009

Members of the Panel, thank you for giving me the opportunity to discuss with you the financial assistance provided to the domestic auto industry, specifically to Chrysler LLC and to Chrysler Group LLC, under the Automotive Industry Finance Program (AIFP) component of the Troubled Asset Relief Program (TARP). My name is Jan Bertsch, and I am Senior Vice President and Treasurer of Chrysler Group LLC, a new company that purchased the principal operating assets of Chrysler LLC on June 10, 2009 in a sale authorized by the United States Bankruptcy Court of the Southern District of New York.

I would like to place my comments in context for the Panel by describing the series of events that culminated in the United States Department of the Treasury providing a secured loan to Chrysler Group LLC of approximately $7 billion on June 10, 2009 in connection with the closing of that sale.

<u>Chrysler LLC (now, Old Carco LLC)</u>

In the fall of 2008, the global credit crisis hit the domestic auto industry with full force. In effect, the credit markets stopped functioning normally and the availability of loans to both dealers and consumers became severely restricted. On December 2, 2008, Chrysler LLC (now known as "Old Carco LLC") submitted a viability plan to Congress as part of its request for a $7 billion working capital bridge loan from the U.S. government. At that time, Old Carco indicated in its Congressional testimony that the availability of credit to automotive consumers and dealers was the single most important element of its viability.

On January 2, 2009, Old Carco received a $4 billion bridge loan from the United States Department of the Treasury.[1] The terms of the loan required the company to submit a restructuring plan to achieve and sustain long-term viability, international competitiveness and energy efficiency. Old Carco submitted its restructuring plan on February 17, 2009 in the midst of continued credit market turmoil that had resulted in rejection of consumer loan applications and lost sales to dealers, which in turn led to reduced wholesale orders for vehicles and further vehicle production cuts. This chain of events had created a rapidly declining seasonally adjusted annual selling rate (SAAR) trend which directly and immediately reduced cash inflow in a manner that could not be addressed adequately through even the most aggressive restructuring actions. These market conditions led directly to a dramatic industry-wide decline in automotive sales.

Old Carco noted in its restructuring plan that although it believed that it could achieve viability on a standalone basis, it had signed a non-binding letter of intent for a strategic alliance with Fiat S.p.A. in January 2009, which alliance would greatly improve its long-term viability. The alliance was conditioned upon Old Carco meeting all restructuring targets set forth in its U.S. Treasury loan agreement, including achieving concessions from its key constituents (unions, lenders, dealers, suppliers and owners). The restructuring plan also noted that the alternative to either a standalone plan or a strategic alliance was liquidation, which at a minimum would result in tens of thousands of jobs lost at the company and its dealers across the country. The entire domestic auto industry was also at risk of collapsing, due to the already weak economy and the dependence of OEMs on common suppliers, which collapse would have burdened the country with enormous social and economic costs.[2]

[1] General Motors Corporation had entered into a loan agreement for up to $13.4 billion with U.S. Treasury dated as of December 31, 2008.

[2] The restructuring plan (p.U162) referenced risk of 2-3 million jobs lost nationwide; $65 billion of personal income taxes lost over first 3 years; and $55 billion of social security receipts lost over first 3 years.

The President's Auto Task Force (the "Task Force"), which was formed on February 20, 2009, participated in discussions with Old Carco, its advisors and key stakeholders – in particular with the UAW, the agent banks for the secured lenders, its majority owner, Cerberus, as well as with Fiat. Those discussions focused on achieving the concessions necessary for the long term viability of the company, consistent with the restructuring targets set forth in the UST loan agreement. On March 30, 2009, the Task Force concluded that Old Carco's plan would not likely lead to viability on a standalone basis and that it needed a partner to be successful in the global automotive industry. It noted, however, that an alliance with Fiat could be the basis of a path to viability in that Fiat was prepared to transfer valuable technology to Old Carco and, after extensive consultation with the Obama Administration, had committed to building new fuel efficient cars and engines in U.S. factories. The Administration indicated that it would provide Old Carco with working capital for 30 days to conclude a definitive agreement with Fiat and secure the support of stakeholders, and, if successful, would provide a secured loan to fund the restructuring plan in order to help the alliance succeed as outlined in a revised term sheet between Old Carco and Fiat dated as of March 29, 2009.

Over the next 30 days the parties continued to work around the clock to avoid bankruptcy by securing stakeholder concessions and reaching agreement on the terms of a strategic alliance that would enable the company to preserve U.S. jobs[3], develop more fuel efficient vehicles and expand its sales in international markets. Since concessions by all key stakeholders could not be assured, the Task Force, Old Carco, the UAW, the VEBA, Cerberus and Fiat, and their respective legal and financial advisors also considered a bankruptcy alternative, what the lawyers refer to as a "363 sale" under the Bankruptcy Code.

Unfortunately, Old Carco's secured lenders under its First Lien Credit Agreement did not agree

[3] The company's Canadian subsidiary, Chrysler Canada, Inc., had also secured funding (USD equivalent $967 million) from Export Development Canada, an agency of the Canadian Government, that would help continue operations and preserve jobs at its facilities in Canada.

to provide the requested concessions and Old Carco filed for bankruptcy on April 30, 2009.[4] Fortunately, however, concessions were achieved with other key stakeholders that enabled Old Carco, Fiat, and Chrysler Group LLC (a newly formed subsidiary of Fiat) to enter into a Master Transaction Agreement dated as of April 30, 2009 (the "MTA"). The MTA called for Old Carco to transfer substantially all of its operating assets to Chrysler Group, for Chrysler Group to assume certain liabilities and pay Old Carco $2 billion in cash, and for Fiat to contribute to Chrysler Group access to competitive fuel-efficient vehicle platforms, certain technology, distribution capabilities in key growth markets and substantial cost saving opportunities. The MTA was conditioned upon, among other things, Bankruptcy Court approval, the U.S. Treasury providing a $7 billion credit facility, and GMAC providing financing to dealers and consumers. Those conditions were ultimately satisfied and the transaction closed on June 10, 2009.

The Panel has asked about the role of the U.S. Treasury and the Task Force in the process leading to the successful closing of the sale transaction. Throughout this process, members of the Task Force and personnel from U.S. Treasury and their external legal and financial advisors played a key role in facilitating negotiations between all parties, primarily, Old Carco, Fiat, the UAW, the CAW, and the VEBA, Cerberus and Daimler AG (as owners and second lien lenders), and the first lien lenders. It is my view that U.S. Treasury and the Task Force's limited and targeted expenditure of taxpayer dollars in connection with Old Carco and Chrysler Group avoided a significant, and potentially more costly, disruption to the U.S. automotive industry and the U.S. economy. This limited and targeted approach is reflected not only in the structure and size of the bridge loan to Old Carco and the so-called "exit financing" provided to Chrysler Group, but also in the programs sponsored by U.S. Treasury for the benefit of automotive suppliers (receivables factoring program) and for the benefit of

[4] Old Carco LLC and 24 of its subsidiaries filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court of the Southern District of New York. The U.S. Treasury and Export Development Canada agreed to provide limited debtor-in-possession financing of up to $4.1 billion to facilitate a sale of certain assets under Section 363 of the Bankruptcy Code and the subsequent liquidation of Old Carco's remaining assets.

consumers (warranty protection program) earlier this year.

Chrysler Group LLC (formerly, New CarCo Acquisition LLC)

The Panel has also asked about the role of the U.S. Government as shareholder (or "Member" in limited liability company jargon) in Chrysler Group LLC. That role is established by the corporate governance provisions of Chrysler Group LLC's Limited Liability Company Operating Agreement. The LLC Operating Agreement provides the Members[5] with certain rights, including the right to designate individuals to serve on a nine member Board of Directors. A majority of the Board must be "independent" under NYSE rules. Fiat designates three Directors (one of whom must be independent), Canada designates one independent Director, VEBA designates one Director, and the U.S. Treasury designates three Directors (at least two of whom must be independent) who then designate a fourth independent Director. The Chairman is elected by the Board. The members of the Board have been designated and, as a matter of fact, are meeting this week in an extended session.

Each Director is entitled to one vote with respect to matters brought before the Board. Major Decisions require a majority vote of the Board, including at least one Fiat Director. Major Decisions include, among other things: a Chrysler Group IPO; a merger, business combination, consolidation, reorganization or transaction constituting a change of control; a sale, transfer or other disposition of a substantial portion of the assets of Chrysler Chrysler Group and its subsidiaries, taken as a whole; the opening or reopening of a major production facility; and a capital expenditure, investment or commitment in excess of $250 million.

In addition, certain actions require the affirmative vote of a majority of outstanding Membership Interests, such as repurchasing any Membership Interest from a Member; authorizing any new class of Membership Interests; increasing the size of any Class of Membership Interests or issuing any new Membership Interests, other than as authorized under the LLC Operating Agreement; and

[5] The Members of Chrysler Group LLC and their respective current ownership interests are: Fiat North America LLC (20%), U.S. Treasury (9.846%), VEBA (67.692%), and Canada (2.462%).

changing Chrysler's independent auditors or materially change Chrysler's accounting policies.

Further, Chrysler Group is subject to extensive financial information reporting obligations to its Members, which will allow the U.S. Treasury to monitor the development, implementation, and modification of the company's business plan, its monthly performance against annual budget and financial projections for the remainder of the year, and its overall results of operations and financial condition on a quarterly and annual basis.

Finally, it is worth noting that both the company's LLC Operating Agreement and its First Lien Credit Agreement with the U.S. Treasury are geared toward measurable performance that will benefit the U.S. economy and therefore the U.S. taxpayer. For example, under the LLC Operating Agreement, Fiat can increase its ownership interest from 20% to 35% (by 5% increments for an aggregate increase of 15%) by achieving specified performance goals relating to technology, ecology and distribution designed to promote improved fuel efficiency, revenue growth from foreign sales, and U.S. based production.[6] In addition, the First Lien Credit Agreement with U.S. Treasury requires that at least 40% of the company's sales volumes each year be manufactured in the United States and that the production volume of its U.S. manufacturing plants each year be equal to at least 90% of the production volume of Old Carco's plants in 2008.[7]

With a significantly reduced cost structure and improved access to fuel efficient technology and international distribution channels, Chrysler Group will be in position to make good on the public's investment as the economy begins to recover and financing becomes available to dealers and consumers.

Thank you for the invitation to appear before you today. I look forward to your questions.

[6] Technology: (1) Regulatory approvals for production of an engine based on Fiat's Fully Integrated Robotised Engine (FIRE) family to be manufactured in the U.S. and (2) an irrevocable commitment to begin commercial production; Distribution: (1) Chrysler records cumulative revenues of $1.5 billion or more for sales outside of NAFTA and (2) Chrysler executes franchise agreements covering at least 90% of Fiat dealers in Latin America; and Ecological: (1) Receipt of regulatory approval for a car based on Fiat platform with at least 40 mpg rating and (2) an irrevocable commitment to begin commercial assembly in a U.S. production facility.

[7] See Section 7.2(a) of the First Lien Credit Agreement dated as of June 10, 2009.

Chair WARREN. And we appreciate your being here.
Mr. Borst.

STATEMENT OF WALTER BORST, TREASURER, GENERAL MOTORS COMPANY

Mr. BORST. Good morning, Chairwoman Warren and Representative Hensarling. I am Walter Borst, Treasurer of General Motors Company, and I would like to thank you for the opportunity to testify about how GM is reinventing our company and how a new GM will repay our Nation's investment.

Emerging from bankruptcy, we are a new company with less debt, a stronger balance sheet, with the right-sized manufacturing, product, and dealer network to match today's market realities. GM can now direct its full energy and resources to where it should be: on customers, cars, and culture.

We are grateful for our Nation's support. Without it, we would not have this second chance. Equally important are the many who have been called on to sacrifice in order to create a new GM. We recognize the unprecedented level of Government support and the pain caused by the bankruptcy process. For this reason, both the Obama and Bush administrations made it quite clear that they were reluctant investors. We were equally reluctant recipients. I can assure you, as GM corporate Treasurer, that we pursued every possible alternative to raise funding and liquidity for General Motors and every possible alternative to restructure the General Motors balance sheet out of court. However, a Government-funded Chapter 11 bankruptcy was the last best option to avoid the devastating economic consequences to our country if GM collapsed.

Although GM was out of time and money, to protect the taxpayers' interests, we had to deliver a plan to ensure we would never find ourselves in this position again. The direction we received from the President's Automotive Task Force was clear and to the point, to receive Government funding and remain viable, GM had to complete a dramatic, fast restructuring across all parts of our business. We agreed.

Over the last several months, we worked closely with the Automotive Task Force to revise our operating plan and identify and agree to the broad targets and overall components needed to create a viable GM. The Automotive Task Force did not tell us how to run our business or dictate the specific details of our plan. Rather, they exercised the due diligence, as any purchaser of a business would. They questioned us and challenged us to ensure we had a robust and viable plan for GM.

Created from the old GM's strongest operations in an asset sale approved by the U.S. Bankruptcy Court, the new GM will focus on four core brands in the U.S.—Chevrolet, Cadillac, Buick, and GMC—with fewer nameplates and more competitive level of marketing support for each brand, we can concentrate all of our talent and resources on vehicles that do not merely compete, but lead their respective segments.

The new GM will effectively close the competitive gap in active worker labor costs compared with transplant manufacturers.

The new GM will more efficiently utilize U.S. capacity while increasing the percentage of U.S. sales manufactured domestically.

The new GM will feature lower structural costs, enabling our North American region to break even on an adjusted EBIT basis at a U.S. total industry volume of approximately 10 million vehicles.

The new GM will also achieve lower structural costs by further reducing 2009 salaried employment in North America from its year-end total of 35,000 to approximately 27,000, cutting executive ranks by 35 percent.

The new GM will provide a higher level of customer service through a more focused U.S. network of approximately 3,600 dealers.

The new GM will continue and increase GM's investment and leadership in fuel economy and advanced propulsion technologies. For example, GM will launch the Chevy Volt extended range electric vehicle in 2010 and will assemble advanced batteries in the United States.

As a new company, we expect the regular interaction with the Automotive Task Force will now shift to a world-class board of directors under the leadership of Ed Whitacre. Mr. Whitacre and the board are committed to setting a standard of excellence for corporate governance, and we expect them to hold us fully accountable to deliver results. We want to be the best, most transparent private company and will regularly report our results, issue 8–K's and provide information to the Government and the public to measure our progress.

In closing, as Fritz Henderson, our President and CEO, has indicated, business as usual at GM is over. The last 100 days or so have shown everyone, including ourselves, that a company not known for quick action can, in fact, move very fast. We want to take the intensity, the decisiveness, and the speed of the last few weeks and transfer it to the day-to-day operation of the new company. This will be the new norm at General Motors.

We must be accountable to perform and deliver winning results. Again, from this point on, our efforts are dedicated to customers, cars, culture, and paying back the taxpayers, both the loans and in creating value for shareholders.

Through the taxpayers' support and sacrifice of many, GM will be great once again. We owe it to them to move forward deliberately. We owe it to them to succeed.

Thank you very much, and I look forward to answering your questions.

[The prepared statement of Mr. Borst follows:]

Statement by Walter Borst, GM Treasurer To the Congressional Oversight Panel on Federal Government Assistance to the Auto Industry

Field hearing at Wayne State University, Detroit, Mich. July 27, 2009

Good morning Chairwoman Warren and members of the Oversight Panel. Thank you for the opportunity to testify before you today.

On behalf of the new General Motors Company, I am here to provide details on our restructuring initiatives; what led us to where we are today and our vision for a stronger, more competitive GM in the future.

We fully appreciate your role and the unique responsibility we have to the U.S. taxpayer. As such, we promise to be transparent in the actions we are undertaking to reinvent GM.

Without our nation's support we would not have this precious, second chance. Also, there are many who have been called upon to sacrifice. Behind each action we are taking to create a new GM there is a human story. As those familiar with bankruptcy law know all too well—this is a painful process that spares no particular group.

However, this collective sacrifice was necessary to put GM on a brighter path to long-term viability and success: To de-lever and reduce debt; to operate under competitive labor agreements; to have the manufacturing capacity and dealer network that matches today's market realities; and most importantly, to continue to design and build winning cars and trucks with leading technology.

The temporary government funding necessary to see us through this transformation is indeed unprecedented. For this reason--and the level of sacrifice that a bankruptcy process extracts from many--both the Obama and Bush Administrations made it quite clear that they were reluctant investors. We were equally reluctant recipients.

However, a government-funded structured bankruptcy was the last, best option. It was the only remaining course to avoid untold economic devastation to a country already wracked by the global financial crisis.

The economic footprint of the auto industry within the nation's overall economy must be taken into consideration. The automotive industry has been the backbone of U.S. manufacturing and a leading investor in research and development for nearly a century. It is a significant factor in the U.S. economy, employing 1 in 10 workers and a major purchaser of U.S.-made steel, aluminum, iron, glass, plastics and electronics. It is an industry undergoing massive change, and one that can be key to both transforming the U.S. economy and creating high-tech, —green jobs that support a healthy and growing middle class.

Recognizing our significant economic footprint, General Motors had been pursuing for most of this decade a major transformation of its business—all the while trying to minimize the disruption to the many stakeholders who depend on us. We were working to improve the consumer appeal, quality, safety, and fuel efficiency of our cars and trucks; to achieve cost competitiveness or advantage in labor, manufacturing, product development, procurement and staff functions; and to address the Company's huge legacy cost burden. And, we made significant progress in all of these areas and, even after rising oil prices and a slowing economy in mid-2008 cut automotive volumes by more than 20%, GM was confident in its ability to self-fund its continuing transformation.

Unfortunately, during the last six months of 2008, housing price declines accelerated, foreclosures rose, credit markets froze, job losses skyrocketed, and consumer confidence tumbled. As the economic crisis intensified, automotive sales fell to their lowest per-capita levels in half a century, putting automakers under enormous financial stress. All automotive manufacturers had been severely affected, with most reporting significant losses in 2008.

For example, in 2008, GM reported losses of nearly $31 billion, Ford $15 billion, Toyota $4.4 billion, and Nissan $2.7 billion. Losses through the first quarter of 2009 remain just as troubling with all of the domestic automakers reporting losses in the billions and Asian stalwarts Toyota and Honda reporting losses of nearly $8 billion and $2 billion, respectively. And, just last week, Toyota's new president acknowledged that the company is not profitable in North America.

Under these extraordinary conditions, GM's liquidity fell rapidly to levels below those needed to operate the Company, and GM was compelled to turn to the U.S. Government for assistance.

Without this assistance, GM would have faced an uncontrolled bankruptcy and almost certain liquidation, which would have caused substantial job loss with a ripple effect throughout our entire economy.

If GM were liquidated, the risk of systemic economic failure was great. All auto manufacturers with facilities in the U.S., regardless of national origin, and their top suppliers would be threatened if GM failed. The Center for Auto Research estimated the damage at 3 million direct and indirect jobs lost within the first year. The loss in U.S. personal income within the first year would be over $150 billion, rising to nearly $400 billion within three years. The total tax loss to the U.S. government over three years would be over $156 billion.

Considering the stakes at hand, on December 31, 2008, the U.S. Treasury and General Motors reached an agreement that would provide up to $13.4 billion in 3-year term loans to sustain operations through the 1st Quarter of 2009, giving us the necessary liquidity support while the Company finalized its Restructuring Plan. In consideration for this temporary loan facility, General Motors was required to submit to the Treasury Department a detailed restructuring plan for the period 2009-2014 that would demonstrate long-term viability.

GM submitted its Viability Plan to the Treasury on February 17. Shortly thereafter, the President formed his Task Force on Autos. Encompassing a broad selection of cabinet officials and Departments, the Task Force's direction was to take a coordinated approach toward policies and decisions that would sustain and improve the auto industry's prospects for long term viability and competitiveness. As investors, the Task Force took a hard, commercial look at GM's plans to ensure that they provided a clear path to viability and the best chance that our nation would recover its investment.

As the global financial crisis continued unabated it became even more clear that we no longer had the luxury of time or money to continue pursuing the evolutionary, incremental approach we were taking. The direction we received from the Automotive Task Force was clear and to the point: a dramatic restructuring was required, done with speed, across all parts of our business, if GM was to remain viable. Simply put, our Viability Plan had to go further, faster and deeper. We agreed.

To cite specifically from the Auto Task Force's assessment:

> *"In short, while the Company has made meaningful progress in its turnaround plan over the last few years, the progress has been far too slow, allowing the Company to continue to lag the best-in-class competitors. As a result, the President's Designee has found that General Motors' plan is not viable as it is currently structured. However, because of GM's scale, franchise and progress to date, we believe that there could be a viable business within GM if the Company and its stakeholders engage in a substantially more aggressive restructuring plan."*

Working closely with the Task Force, GM revised its plan with a more aggressive, faster restructuring that included U.S. brand and nameplate rationalization, U.S. dealer reduction and a revised distribution channel strategy, U.S. hourly employee reduction, hourly labor cost reduction, salaried employee reduction and a global capital investment strategy.

Our preference from the start was to accomplish our restructuring outside of a court process. However, to accomplish our goals it became necessary for GM to voluntary petition for relief under chapter 11 of the Bankruptcy Code and the sale of its best, most desirable assets under a section 363 process.

Throughout this period—from revising our viability plan, through the completion of the bankruptcy proceeding—we worked closely with the Auto Task Force on multiple levels on identifying and agreeing to broad targets and overall components of a successful restructuring. The Auto Task Force performed the due diligence as any purchaser of a business would. The Task Force did not tell us which plants to close, what brands to cut, what cars to build, or which dealers to wind down. They asked tough questions at times that would lead us to reconsider our assumptions and develop better solutions. As it was true then and is true now: in word and deed, the Auto Task Force never exhibited a desire to "run our business."

On July 10, The New General Motors completed its purchase of assets through the bankruptcy process.

Created from the old GM's strongest operations in an asset sale approved by the bankruptcy court, the new GM is built on:

- Four core brands in the U.S. and the largest, strongest dealer network in the country,
- A fresh lineup of Chevrolet, Cadillac, Buick and GMC cars, trucks and crossovers, each with leading-edge designs and technologies that matter to both consumers and the environment,
- A competitive cost structure, a cleaner balance sheet, and a stronger liquidity position that will enable GM to invest in new products, key technologies, and its future,
- A winning company exclusively focused on customers, cars and an organizational culture built to move fast and succeed.

As our CEO and President Fritz Henderson said on the first day of a new GM: "Business as usual is over."

The last 100 days has shown everyone, including ourselves, that a company not known for quick action can, in fact and indeed, move very fast. We want to take that intensity, the decisiveness and the speed of these last few weeks and transfer it to the day-to-day operation of the new company. *This will be the new norm at General Motors.*

To the taxpayer, we are committed to repaying their investment as quickly as we can. Here's how we plan to do this...

A successful turnaround must focus on both the cost and revenue sides of the business. To win, we need to stabilize and, in fact, grow our business around the globe and particularly here in the U.S. That means building more of the gorgeous, high quality, fuel efficient cars trucks and crossovers that consumers want and getting them to the market faster than ever before.

We plan to launch an additional 10 vehicles in the U.S. and 17 in other global markets in the next 17 months. At GM, we have dropped the word "competitive" and going forward our objective is to create products that consumers can judge as best in class. Anything less is simply not acceptable. Designing, building and selling the best vehicles in the world is something that GM was known for many years ago and something we need to reestablish.

One way we'll achieve this goal is by focusing on four core U.S. brands, Chevrolet, Cadillac, Buick and GMC. Four core brands enable us to devote more resources, creative talent and marketing on each model. We want all of GM's new products to follow the lead of current award-winning and segment-leading vehicles such as the Chevrolet Malibu, Cadillac CTS, and our family of crossover vehicles like the Chevy Traverse and Buick Enclave. We believe strongly that a number of upcoming new cars and trucks including the new Chevy Volt with groundbreaking technology, the Buick LaCrosse, the Chevrolet Camaro and Equinox, the GMC Terrain and the Cadillac SRX, amongst others, will hit this high mark.

We also announced a new small car last month to be built in Michigan. Let me be clear: this was a business decision. This car will add to our growing portfolio of U.S. built, highly fuel efficient vehicles. This decision was all about producing fantastic, beautiful, small cars and earning a return on it with highly competitive manufacturing facilities and labor agreements.

On the technology front, we're moving full speed ahead on battery development. We've already made a number of important announcements and you can expect more soon as we continue this critical work that will help reassert GM and America's technological leadership. In short, these are the cars, trucks, crossovers, and technologies that will put us back on the consumer shopping list and on the road to profitability and success.

As a new company executing its plan, we expect the regular interaction between the Auto Task Force during our bankruptcy period to now shift to a world class Board of Directors under the leadership of Ed Whitacre. Mr. Whitacre and the Board are committed to setting a standard of excellence for corporate governance and we expect them to hold us fully accountable to deliver results. We want to be the best "public" private company and to regularly report our results, issue 8Ks, and to provide information to the government and the public to measure our progress.

In closing, let me summarize what is the new GM and why our nation should have the confidence to recover their investment.

We have great cars and trucks and crossovers. We have a product line brimming with new and exciting entries.

We have reshaped the important parts of our business from brands, to labor, to manufacturing to make General Motors great again.

Our dealer network is outstanding, and will be in an even better position on a right-sized basis with great opportunities going forward to be profitable and provide a superior customer retail experience.

Compared to the old GM, we have a significantly stronger balance sheet and a much stronger cash situation. In terms of debt, our U.S. debt is about $11 billion in addition to about $9 billion in preferred stock. Going forward, we pledge to be transparent in our financial and other reporting. And, we expect the company will be taken public as soon as practical, perhaps next year.

While we are required to pay off our government loans by 2015, our goal is to repay those loans much sooner. At GM, we take these loans very personally and we take paying them off as a key financial goal. These loans represent an enormous obligation to our fellow taxpayers and we will move quickly to pay them off.

From executives to line employees, all of us at GM share a deep conviction that we have what it takes to excel, but with no interest in making excuses nor in debating the past. We must be accountable to perform and deliver winning results. From this point on, our efforts are dedicated to customers, cars, culture, and paying back the taxpayers--both the loans and in creating real value for shareholders.

This is a truly defining moment for the company. It is a difficult period. It is a challenging period. We also recognize this is a very painful period for our dealers, our suppliers, our people and many communities. Through the taxpayers support and the sacrifice of many, GM will be great once again. We owe it to them to succeed.

Thank you and I look forward to your questions.

Chair WARREN. Thank you, Mr. Borst.
Dr. McAlinden.

STATEMENT OF DR. SEAN McALINDEN, EXECUTIVE VICE PRESIDENT AND CHIEF ECONOMIST, CENTER FOR AUTOMOTIVE RESEARCH

Dr. MCALINDEN. Good morning, Dr. Warren and distinguished panel. My name is Sean McAlinden. I am the Executive Vice President for Research and Chief Economist at the Center for Automotive Research, known as CAR, a nonprofit research organization located in Ann Arbor, Michigan, and I welcome the opportunity to speak with you today on the subject of the U.S. Treasury Department's automobile industry financing program.

I should point out that our actual submitted testimony was not printed this morning with just my oral remarks, but I have provided it to the panel and it is located on our Web site, cargroup.org.

The automotive industry has long been, and continues to be, one of the most important sectors in the U.S. economy, employing 585,000 motor vehicle and parts manufacturing employees directly as of May 2009.

In addition, the auto industry has one of the largest economic multipliers, if not the largest, of any industry or sector in the U.S. economy and is sufficiently large that its growth or contraction can directly cause measurable changes in gross domestic product.

Twice in the last nine months, CAR has estimated the potential impact of significant contractions in automotive employment and production as a result of the economic crisis in the United States. In November, CAR published a research memorandum that estimated that 2.5 million to 3 million jobs would be lost in a major contraction of the Detroit three automakers.

Of course, as you know, by May 2009, many of those jobs at the automakers were, indeed, gone and the suppliers. About 145,000 direct U.S. motor vehicle and parts jobs were lost between November 2008 and May 2009. And obviously, many more jobs on top of those were lost in other sectors of the economy that directly supply the auto industry.

In May, just this past May, CAR examined the impact on the U.S. economy of successful versus unsuccessful automaker bankruptcies here in Detroit, and even under the best case scenario, in the case of a planned, orderly, and well-executed bankruptcy, we estimate that 63,000 jobs will be lost by the end of this year and that total will rise to 179,000 by the end of 2010 under planned restructuring.

However, we have appeared to have avoided the worst case scenario, which was an unsuccessful bankruptcy process resulting in liquidation, as described by my colleagues here, fellow panelists. This would have resulted by the end of this year, we estimate, in a loss of 1.3 million U.S. jobs. This total, as the rest of the industry would adapt to the crisis and recover, would have fallen to roughly 447,000 by the end of 2010.

CAR's estimates of State job loss found that impacts were geographically concentrated. About half the employment impact in the best case scenario, for example, occurred in just five States: Michigan, Tennessee, Ohio, Missouri, and Indiana. And these States, already hit hard by recession, would have suffered even more disastrous outcomes had the bankruptcies not gone so quickly and smoothly.

Also, we believe, and many other economists believe, that a struggling U.S. economy might not have withstood the psychological impact of a complete collapse of GM and Chrysler, that the sudden and total loss of GM and Chrysler could have caused an economy-wide loss of confidence or even a panic at an inopportune time this fall in the Nation's path to economic recovery. It certainly would have resulted in a crisis in U.S. manufacturing similar to the effect on the financial sector caused by the collapse of the Lehman Brothers investment bank. In fact, we call it an industrial Lehman Brothers outcome.

CAR estimates that the Government intervention resulting in successful bankruptcies at GM and Chrysler avoided a $114 billion loss in additional personal income, Government transfer payment increases, foregone Social Security and personal income tax receipts in just the first 2 years and more in succeeding years beyond that $114 billion. A simple cost-benefit analysis shows the 2-year public costs far outweigh the current public investment in these companies, even if the companies never repay the loans which, of course, I believe they will.

I can find no grounds, and my office can find no grounds, for criticism for the actions taken by the members of President Obama's Automotive Task Force, only grounds for the highest praise. Government, in the case of Chrysler and General Motors, was not the lender of last resort. It was the only resort. No other financing was available and no process other than bankruptcy could have led to such dramatic reductions in fixed costs that had crippled these companies for so long. Since March, the planning and actions of the Automotive Task Force and also the Chrysler and GM management teams can be labeled only as masterful and unprecedented by any fair industry observer.

The considerable concessions made by all parties were those that would have had the greatest impact on lowering levels of fixed costs, a major cause of the companies' economic woes. In the case of GM, fixed costs are expected to drop in the next three to four years by $3,000 to $5,000 per vehicle, a remarkable achievement in a very short amount of time.

And it is also worth noting, since this has come up, that while the relative sacrifices of debt holders in the UAW VEBA trust we think are comparable, in the 67 to 79 percent range, that the UAW made a far greater contribution in absolute dollar terms to the debt reduction in Chrysler and General Motors. At Chrysler, the UAW's $12.8 billion cut is three and a half times the size of the secured debt holders' contribution, and at General Motors, the UAW's $43.8 billion sacrifice since 2005 is nearly twice that of the unsecured bondholders.

Chair WARREN. Dr. McAlinden, I am going to have to stop you there just so that we can make sure we stay on track here, although I appreciate this. And I understand we do have a copy now of your remarks, and they will become part of the written record.

[The prepared statement of Dr. McAlinden follows:]

Testimony of Sean P. McAlinden, Ph.D.

Executive Vice President for Research and Chief Economist

Center for Automotive Research

Congressional Oversight Panel

Hearing on TARP/Automobile Industry Financing Program (AIFP)

Detroit, MI

July 27, 2009

Good morning, Dr. Warren and distinguished panel. My name is Sean McAlinden. I am the Executive Vice President for Research and Chief Economist at the Center for Automotive Research (CAR), a 501(c)3 non-profit research organization located in Ann Arbor, Michigan. I welcome the opportunity to speak with you today on the subject of the U.S. Treasury Department's Automobile Industry Financing Program (AIFP).

The automotive industry has long been, and continues to be, one of the most important sectors in the U.S. economy. As of May 2009, the motor vehicle and parts manufacturing industries directly employed 547,500[1] workers in the United States; the domestic automakers employed 202,800[2] U.S. hourly and salary workers, as of February 2009. In January 2009, the international automakers employed 107,500 U.S.

[1] United States Department of Labor, Bureau of Labor Statistics, Current Employment Survey, Not Seasonally Adjusted, http://www.bls.gov/ces (retrieved July 20, 2009).
[2] CAR proprietary data provided by Chrysler, Ford and General Motors; excludes GMAC employees.

workers.[3] The auto industry has one of the largest economic multipliers of any sector of the U.S. economy, and is sufficiently large that its growth or contraction can be detected by changes in the U.S. Gross Domestic Product. In many states, employment in automotive and automotive parts manufacturing ranks among the top three manufacturing industries.[4]

The Center for Automotive Research has carried out the majority of national-level automotive economic contribution studies completed in the United States since 1992.[5] For detailed information on the model and methodologies CAR employs to estimate the economic impact of the automotive industry, I refer you to the studies themselves.

Twice in the past nine months, CAR has estimated the potential impacts of significant contractions in automotive employment and production as a result of the economic crisis in the United States. In November, CAR published a research memorandum entitled, "The Impact on the U.S. Economy of a Major Contraction of the Detroit Three Automakers." [6] In this report, we estimated that a full contraction of Detroit

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[3] The following international firms reported beginning of year employment to CAR: BMW, Honda, Hyundai, Kia, Mazda, Mercedes, Mitsubishi, Nissan, Subaru, Suzuki, Toyota and Volkswagen.

[4] Hill, Kim, Maranger Menk, D., Szakaly, S, **Contribution of the Motor Vehicle Supplier Sector to the Economies of the United States and its 50 States,** January 2007.

[5] These studies include: The Center for Automotive Research. **Contribution of the Motor Vehicle Supplier Sector to the Economies of the United States and its 50 States**. Prepared for the Motor & Equipment Manufacturers Association, Ann Arbor, January, 2007. The Center for Automotive Research. **Contribution of Toyota to the Economies of Fourteen States and the United States in 2003.** Prepared for Toyota Motor North America, Inc., Ann Arbor, June, 2005. Institute of Labor and Industrial Relations, University of Michigan and the Center for Automotive Research. **Contribution of the U.S. Motor Vehicle Industry to the Economies of the United States, California, New York, and New Jersey in 2003**. Prepared for the Alliance of Automobile Manufacturers, Inc., Ann Arbor, May, 2004. Institute of Labor and Industrial Relations and the Office for the Study of Automotive Transportation, University of Michigan and the Center for Automotive Research. **Contribution of the Automotive Industry to the U.S. Economy in 1998: The Nation and Its Fifty States.** A Study Prepared for the Alliance of Automobile Manufacturers, Inc. and the Association of International Automobile Manufacturers, Inc. Ann Arbor, Winter 2001. The Office for the Study of Automotive Transportation, Transportation Research Institute, and the Institute of Labor and Industrial Relations, University of Michigan. **The Contribution of the International Auto Sector to the U.S. Economy**. A study prepared for the Association of International Automobile Manufacturers, Inc., Ann Arbor, March, 1998. McAlinden, Sean P., et. al., **Economic Contribution of the Automotive Industry to the U.S. Economy – An Update – A Study Prepared for the Alliance of Automobile Manufacturers**, Center for Automotive Research. Ann Arbor, Fall 2003. Office for the Study of automotive Transportation, Competitive **survival: Private Initiatives, Public Policy and the North American Automotive Industry** – Prepared for the U.S.-Canada automotive Select Panel. University of Michigan Transportation Research Institute, Ann Arbor, June, 1992. Most of these reports can be downloaded from http://www.cargroup.org/publications . The research staff of the Center for Automotive Research performed a number of these studies when located at the University of Michigan's Office for the Study of Automotive Transportation; these papers can be downloaded from http://deepblue.lib.umich.edu

[6] McAlinden, S. P., Dziczek, K, Maranger Menk, D., **CAR Research Memorandum: The Impact on the U.S. Economy of a Major Contraction of the Detroit Three Automakers.** Center for Automotive Research, Ann Arbor, MI, November 4, 2008.

Three production[7] could reduce U.S. employment by 3 million jobs within a year, and a partial contraction of Detroit Three production[8] could result in a loss of 2.5 million jobs in the first year.[9]

By May 2009, many of the jobs we estimated would be lost were indeed gone—over 144,700 direct jobs were lost in the U.S. motor vehicle assembly and parts industries between November 2008 and May 2009.[10] The total employment impact was actually much higher, as additional job losses in other sectors can be attributed to both the indirect and expenditure-induced impacts of these declines in direct automotive employment.

In May, CAR produced a second research memorandum on the subject of automotive contraction, entitled, "The Impact on the U.S. Economy of Successful versus Unsuccessful Automaker Bankruptcies." [11] At the time, Chrysler was in the midst of its bankruptcy case (which had begun on April 30, 2009) and General Motors was preparing to file its case on June 1, 2009. CAR examined what would be the short-term, economic cost of unsuccessful vs. successful bankruptcies of the two firms, compared to the public cost of generating a successful outcome for these companies.

The successful bankruptcy scenario included an assumption that the bankruptcy filings and settlements with debtors would be concluded in 60 to 90 days, as indeed, they were. It was also assumed that the court would approve a re-emergence plan with

[7] "Full contraction" is defined as a short-term shock resulting in total collapse of the domestic automakers and a year where the international automakers were only able to operate at half capacity due parts shortages caused by a major wave of supplier bankruptcies.
[8] "Partial contraction" is defined as a short-term shock from which all producers recover, with the domestic automakers returning to just half of their pre-shock production and employment levels.
[9] McAlinden, Dziczek, Maranger Menk, *op.cit.*
[10] United States Department of Labor, Bureau of Labor Statistics, *op.cit.* Since the BLS publishes data by NAICS code, and not by company (each company has employment in both 31336100 and 31336300), it is not possible to compare this job loss figure to CAR's estimate of nearly 240,000 direct jobs that could have been lost in a full collapse of the U.S. automotive industry.
[11] McAlinden, S. P., Maranger Menk, D., Cooper, A, **CAR Research Memorandum: The Impact on the U.S. Economy of Successful versus Unsuccessful Automaker Bankruptcies.** Center for Automotive Research, Ann Arbor, MI, May 26, 2008.

sufficient funding to create the new companies (in part, at least), with a new ownership structure, and that declines in employment and production would occur according to planned plant closures, as indicated in the filed corporate restructuring plans for each company.[12] In this "best case" scenario, it was assumed that the companies would enter and re-emerge from bankruptcy in a manner that would avoid escalating market share declines, and that sufficient financing would be available—not only for buyers of Chrysler and General Motors vehicles, but also for surviving dealerships to finance current and future inventory. Finally, we included an assumption that residual values for existing Chrysler and General Motors vehicles would not decline dramatically.[13]

In the case of unsuccessful bankruptcies of either Chrysler or General Motors (or both), employment and production was assumed to fall to 10 percent of pre-bankruptcy levels, overall U.S. automotive production would contract sharply as widespread disturbances of non-OEM parts suppliers took hold, market share would plummet and the residual values of existing Chrysler and General Motors vehicles would fall dramatically.[14]

The table below presents the estimated employment impacts under the two scenarios described above:

Table 1: U.S. Employment Impacts of Successful v. Unsuccessful Bankruptcies of Chrysler and GM

Employment	Scenario 1: Best Case		Scenario 2: Worst Case	
	End of 2009	**End of 2010**	**End of 2009**	**End of 2010**
Direct	9,700	29,000	203,800	82,700
Intermediate (Supplier[15])	24,000	69,600	480,700	160,100
Expenditure-Induced	29,500	80,800	659,500	203,900
TOTAL	63,200	179,400	1,344,000	446,700

[12] General Motors plan filed using SEC form S4 on April 27, 2009 and the Chrysler restructuring plan filed with the U.S. Bankruptcy Court for the Southern District of New York on April 30, 2009.
[13] McAlinden, Maranger Menk, Cooper, *op.cit.*
[14] *Ibid.*
[15] Intermediate (Supplier) impacts include those for manufacturing and non-manufacturing firms.

Source: Center for Automotive Research

Even under the "best case," which we are (arguably) currently experiencing with the rapid emergence of both companies from bankruptcy, CAR estimates the total employment impact of such planned, orderly and well executed bankruptcies would result in a loss of 63,200 total jobs in the U.S. economy by the end of this year. In 2010, the employment outlook remains negative in this scenario with 179,400 total jobs lost as plant closures continue to take hold across the country. The "worst case" scenario, which we appear to have avoided (hopefully), would have resulted in a loss of 1.3 million total jobs in the U.S. by the end of 2009, and nearly 447,000 total jobs by the end of the following year.[16]

The economic impact on personal income and tax revenues of the consolidation of Chrysler and General Motors through successful or unsuccessful bankruptcies is presented in the table below:

Table 2: U.S. Revenue Impacts of Successful v. Unsuccessful Bankruptcies of Chrysler and GM

Revenue Impact (billions)	Scenario 1: Best Case		Scenario 2: Worst Case	
	End of 2009	**End of 2010**	**End of 2009**	**End of 2010**
Personal Income	-3.4	-9.9	-68.7	-26.4
Increase in Transfer Payments	0.3	0.9	6.6	2.3
Social Security Receipts	-0.5	-1.3	-9.5	-2.5
Personal Income Taxes	-0.5	-1.6	-11.0	-4.2

Source: Center for Automotive Research

In the best case scenario, U.S. personal income falls by $3.4 billion in the first year (2009). Given the assumption of a linear contraction, first year losses mount in the second year, leading to an additional loss of $9.9 billion. In total, quick and successful bankruptcies by Chrysler and General Motors were projected to reduce U.S. personal

[16] *Ibid.*

income by $13.3 billion. By comparison, under the worst case scenario, personal income losses would total $95.1 billion over two years, with the majority of this decline—$68.7 billion—coming in the first year alone. The difference between these two outcomes represents an estimated $81.8 billion in personal income loss avoided by a successful bankruptcy process for Chrysler and General Motors.

Though not reported in the personal income figure, additional losses to employees' supplemental earnings (including contributions to employees' pension and insurance funds) should be taken into account when considering the effects of a disruptive bankruptcy. Additionally, hospital and health systems could be negatively impacted as people lose their jobs and their employer-provided health insurance benefits.

Lost personal income affects local, state, and federal tax revenues and creates additional social program obligations. In CAR's model, transfer payments from government to individuals were projected to increase, and social security receipts and personal income taxes paid were expected to decline. The net impact of these three elements on the government balance sheet was projected to be $5.1 billion over two years in the case of successful bankruptcies, and $37.1 billion over the same time period had the Chrysler and General Motors bankruptcies failed—a difference of $32 billion.[17]

Since workers in the automotive industry produce far higher output per hour, are generally paid higher wages, and possess higher healthcare benefits than workers in many other industrial sectors (such as textile or wood products) the rapid collapse of the

[17] *Ibid.*

auto sector will have more serious and far-reaching effects than the collapse of other smaller, or less productive industries.

The operations of the domestic automotive industry and its supply base are heavily concentrated in the industrial Midwest states. In the May 2009 memorandum, CAR produced estimates of job loss by state for the successful and failed bankruptcy scenarios, and found that about half of the employment decline would occur in just five states. In the best case scenario, those states are Michigan, Tennessee, Ohio, Missouri and Indiana, which when combined represent an estimated 129,600 jobs lost, or 53.4 percent of the total U.S. employment decline. In the worst case scenario, the top five states are Michigan, Ohio, Indiana, Illinois and Texas, which when combined, represent an estimated 852,700 jobs lost, or 47.6 percent of the total U.S. employment decline.

The long-term benefits of a domestically owned automotive industry were not examined in CAR's two most recent memorandums on the economic significance of the industry. Such long-term benefits of a domestic U.S.-owned automotive sector include the maintenance of a viable, highly productive U.S. manufacturing sector; a price-competitive automotive market for consumers; the economic security of having an industry capable of developing and producing high technology/high fuel economy vehicles; and the many strategic national security considerations supported by the existence of a large domestic automotive industry.

The psychological impact of a complete collapse of Chrysler and General Motors on a struggling U.S. economy cannot be discounted by any serious economist. The sudden and total loss of these companies could cause an economy-wide loss of confidence or even panic, and would certainly result in a crisis in U.S. manufacturing similar to the effect on the financial sector caused by the Lehman Brothers collapse. These "non-linear impacts" are beyond the forecast capabilities of the econometric model used by CAR.

In total, CAR estimates that the government intervention resulting in successful bankruptcies at Chrysler and General Motors avoided $113.8 billion in additional personal income loss, government transfer payments and forgone social security and personal income tax receipts in the first two years, and more in succeeding years. Unsuccessful bankruptcies would have cost the U.S. economy far more than the $113.8 billion figure in succeeding years.

The future viability of these companies following bankruptcy and reorganization will depend upon:

- Economic conditions overall and a significant, if not full, recovery of the automotive market, and additionally;
- A functioning financial sector that can provide adequate credit to automakers, suppliers, and the automotive consumer;
- Stability in the automotive supplier sector;
- The speed at which the companies are able to bring new product plans to market; and
- The final response of consumers to Chrysler's and General Motors' use of the bankruptcy process.

The federal government has successfully shepherded Chrysler and General Motors, GMAC, Chrysler Financial and countless suppliers and key lenders through a historic decline in the U.S. economy and in the automotive industry. I can find no grounds for criticism for the actions taken by members of President Obama's Automotive Task Force—only grounds for the highest praise. Government, in the case of Chrysler and General Motors, was not the "lender of last resort," it was the only resort. No other financing was available and no process other than bankruptcy could have led to such dramatic reductions in fixed costs that had crippled these companies for so long. Since the companies still had to pay the bondholders and the active and retired worker costs until the Section 363 sale was complete, the speed in which these court actions were executed was absolutely justified. A lingering or failed bankruptcy, as discussed earlier in this testimony, would have bled the companies to death by maintaining existing fixed costs and eroding their market value. Since March, the planning and actions of the automotive task force and the Chrysler and General Motors management teams can be labeled only as masterful and unprecedented by any fair industry observer.

The sacrifices that were made (and there were considerable concessions by all parties) were those that would have the greatest impact on lowering fixed costs. [A recent CITI Investment Research and Analysis publication estimated that the General Motors Company should reduce its North American fixed costs from $10,363/unit in 2009 to $5,419/unit in 2014—a $5,000 savings per vehicle produced, and produce a positive EBIT as early as 2010].[18]

There has been a great deal of attention in the press on whether or not there was equity in the sacrifices of key stakeholders in the Chrysler and General Motors

[18] Michaeli, Itay, **U.S. Autos & Auto Parts, Citi Auto Call Series – Focus on General Motors,** Citi Investment Research & Analysis, July 16, 2009.

bankruptcies. Equitable or not, I believe the sacrifices made were precisely the correct ones to achieve lower fixed costs for the companies.

In the case of Chrysler, the secured bondholders received $2 billion cash on their $6.9 billion stake, a 71 percent discount.[19] Unsecured creditors received no stake in the restructured company; any recovery for this group of stakeholders must come from the sale of assets of the Old Chrysler.

Chrysler carried over $18.3 billion in UAW retiree health care liabilities on its books in 2007. The UAW-Chrysler National Agreement signed in that year reduced the total liability to $11.0 billion through the creation of a Voluntary Employee Beneficiary Association (VEBA) for retiree health care (among other concessions).[20] In the 2009 modifications to the VEBA for Chrysler workers, the UAW accepted 55 percent of the stock in the restructured Chrysler in lieu of half of the cash necessary to establish the trust.[21] On the unsecured retiree health care liability alone, one might argue that the UAW received cash for just 30 percent of the original retiree health liability, a 70 percent hit even before one considers the plant closings and job cuts, second tier wage agreement, suspension of cost-of-living allowances, job security programs, or modifications to active health care, supplemental unemployment benefits, overtime and holidays which were agreed to in 2007 and 2009 negotiations.[22]

At General Motors, bondholder claims amount to nearly 86 percent of total claims on the $6.9 billion in calculated value of equity and warrants sold to the Old General Motors, for a total of $5.9 billion. With total bond claims amounting to $28.3 billion, the

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[19] **Supreme Court Order Delays Chrysler Sale to Fiat**, National Public Radio, July 21, 2009.
[20] **UAW Chrysler National Agreement**, October 29, 2007.
[21] **UAW Chrysler Modifications to 2007 Agreement and Addendum to VEBA Agreement**, April 2009.
[22] *Ibid.* and UAW-Chrysler National Agreement, *op.cit.*

expected bond recovery rate with the stake in the restructured General Motors will be 21 percent, representing a 79 percent discount.[23]

The 2005 UAW VEBA at General Motors reduced the overall $60 billion hourly retiree health care liability by 25 percent.[24] In 2007, the parties agreed to total VEBA funding of $31.9 billion, which represents a further 32 percent discount on the remaining liabilities of $46.7 billion.[25] With the 2009 modifications to the UAW-General Motors agreement, the UAW agreed to accept a 17.5 percent stake in the restructured company in lieu of half of the cash pledged to fund the VEBA.[26] At General Motors, the UAW VEBA received just 27 percent in cash on their total 2005 hourly health care claims of $60 billion, representing a 73 percent discount in this area. As is the case with Chrysler, the UAW also accepted significant additional concessions for active members and new hires which would bring the union's total sacrifice to a much higher total.

It is worth noting that, while the relative sacrifices of the debt holders and the UAW's VEBA trusts are comparable in the 67 to 79 percent range, the UAW made a far greater contribution in absolute dollar terms to the debt reduction at Chrysler and General Motors. At Chrysler, the UAW's $12.8 billion cut is three and a half times the size of the secured debt holders' contribution, and at General Motors, the UAW's $43.8 billion sacrifice is nearly twice that of the bond holders.

As the federal government moves into a role of oversight and guardianship of the federal investment in Chrysler and General Motors, it is appropriate to set broad targets for various business outcomes, such as financial and operational performance metrics and the share of global capital expenditures allocated to North American investments. It

[23] Bansal, Chetan, **GM Bond Recovery: Owning pre-IPO equity in Newco,** CITI Investment Research & Analysis, July 16, 2009.
[24] **UAW-General Motors Report**, October 2005.
[25] **UAW-General Motors National Agreement**, September 26, 2007.
[26] **UAW General Motors Modifications to 2007 Agreement and Addendum to VEBA Agreement**, May 2009.

should be expected that the directors appointed to the Chrysler and General Motors boards by the government will work towards setting these targets, in the interests of U.S. and Canadian taxpayers.

However, there are four broad areas of the automotive business in which the government should refrain from getting involved: product selection and timing; supplier selection; the selection of research and development initiatives and investment; and the general area of detailed management oversight and attempts to initiate so-called "cultural change." Government intervention in these domains will restrict management flexibility to respond to market and, at the very least, slow the decision process so necessary to the operation of successful automotive firms.

It is impossible to know, with complete certainty, what the counterfactual outcome would have been had the government not extended its use of TARP funding to the automotive industry. I believe that, absent this critical lifeline from the federal government, there would be no domestic automotive industry to speak of going forward, and that this would have catastrophic results for the overall U.S. economy. In addition, the geographical concentration of much of the domestic industry in primarily one region of the country, the industrial Midwest, would concentrate much of the impact in areas already hardest hit by the economic downturn

The new Chrysler and General Motors face three significant future challenges. First, an economic recovery must take hold quickly in order for the vehicle market to rebound and for Chrysler and General Motors to begin their move back toward profitability and independence from government involvement. The timing of the recovery is essential, as automotive sales must increase while the two companies still have sufficient operating cash. A double-dip recession could derail efforts underway to rebuild these companies in many areas. Second, if these companies struggle or falter in their recoveries, this will heighten the risk exposure of the union and the bondholders who took equity stakes in exchange for their liabilities in the old companies. In the case of the UAW, it could impact the level of benefits offered to retirees through the VEBA trust, and have wider impacts on the health sector in the industrial Midwest—and potentially, for government-backed health programs more broadly. Third, it remains to be seen if consumers can and will forgive Chrysler and General Motors for their trip through bankruptcy and restructuring and return to the vehicle showrooms in sufficient numbers to restore confidence in the brands and products offered.

Chair WARREN. Thank you very much.

I actually want to start not with the questions I prepared but where this conversation has gone and with the question raised by Congressman Hensarling. Perhaps I could start with you on this, Mr. Borst.

If there had not been Government funding here, could you have reorganized in Chapter 11?

Mr. BORST. We do not believe so, ma'am. We did take a look to see if there would be other sources of debtor-in-possession financing, and there was nothing available in the Private sector that was anything close to what we would have needed to reorganize in Chapter 11.

Chair WARREN. You are saying the money just simply was not there or was not there at the price you wanted to pay?

Mr. BORST. It was not there, period. And surely nowhere close to the size that was required. We did talk to some large institutions in this regard where this is their business, but given the size of our company and our needs, it was unavailable at any price.

Chair WARREN. And you looked hard.

Mr. BORST. We looked very hard. We not only looked hard for that, but we looked hard to avoid Chapter 11 in the first place by trying to find additional financing outside of the bankruptcy, looked at asset sales outside of the bankruptcy, looked at various partnership opportunities outside the bankruptcy. So we were very active in that regard, both before and in anticipation of the filing, but to no avail.

Chair WARREN. Ms. Bertsch, could I ask the same question about Chrysler, please?

Ms. BERTSCH. I would say we were much in the same situation. We could see the deterioration in the industry. We started out in 2008 with a SAAR of over 15.5 million units. By the second half of 2008, that had dramatically dropped.

At that time, we went out looking for other sources of funding for both our dealers and our consumers, and we went and talked to some of the strongest banks. At that time, it was very difficult to secure any sort of financing for that. That, obviously, led to a great deterioration in our revenue, which resulted in us utilizing our cash resources to continue to operate the business. It was very clear to us and to the outside independent bankruptcy consultants who we hired to work with us that there was no funding available and that liquidation was the only other alternative.

Chair WARREN. Thank you.

Dr. McAlinden, could I ask you to comment on this please?

Dr. MCALINDEN. I think until recently with the current reorganization of Leer, it might be the first large automotive firm to receive some sort of outside DIP money, I think on the order of $500 million to $600 million. I would have to guess with some grounds of credibility that the only reason they received—they are the only firm in the last 6 months to see the light of this kind of money was because banks like J.P. Morgan saw that GM was reemerging successfully, their largest customer. So in a way, we already have a positive spinoff. The fact that GM has reemerged with Government assistance has allowed Leer to reorganize with private DIP.

Chair WARREN. If I could ask you, this is part of what you were covering in your testimony, and I would, if I could, just ask for a very short summary. I believe you were aiming toward a comparison of what would happen if there were no funding available, and therefore in the estimation of the treasurers of the company and your own estimation, a likely liquidation, versus a reorganization. I think you made a comparison on jobs where I believe your comparison showed that there would have been about 10 times more jobs lost. Is that right? About 10 to 20 more times. I was trying to write down the numbers as you went through.

Dr. MCALINDEN. I think by the end of this year, we will see about another 63,000 in jobs lost in the U.S. economy because of these reorganizations as opposed to a 1.3 million job loss. So, obviously, that is 20 to 1.

Chair WARREN. About a 20 to 1. I had thought there was a range here. So I wanted to go into next year.

And then you talked about the dollar loss difference. I think you identified about $115 billion loss if there had been——

Dr. MCALINDEN. $38 billion in the case of an unsuccessful bankruptcy, which we unfortunately call the Corvette-Wrangler scenario, and 90 percent loss of production at GM and Chrysler in employment. It would have been a loss of about $38 billion in personal taxes and increases in transfer payments in the next 2 years and an $81 billion loss of personal income in the United States.

Chair WARREN. Compared with an investment.

Dr. MCALINDEN. Correct. And a much, much smaller amount under the successful reorganizations.

Chair WARREN. Any other comparisons that we can just do quickly? I am about to run out of time here.

Dr. MCALINDEN. Not really.

Chair WARREN. So these are the key ones.

Dr. MCALINDEN. These are very key.

Chair WARREN. All right. Thank you very much. I appreciate it.

Congressman Hensarling.

Mr. HENSARLING. Well, first, let me issue my welcome to all the panel members. I will say to Mr. Borst and Ms. Bertsch that as happy as I am to see you, I might have even been happier to see the chairman or the CEO. At least you all bothered to send representatives, but I know, again, when your companies were seeking funding from the taxpayers, we saw them frequently. Now that it is time to account for the money, we do not seem to see them here today.

I will accept at face value your opinions that liquidation was the only option for the companies. I have no reason to challenge your particular opinion or expertise.

But today in the American economy, a majority of people work for small business. Roughly three out of four new jobs in America are created by small business. Every single day, there is some barbecue stand that goes out of business, some florist that goes out of business, some die cast machine shop that goes out of business. But we do not know their names and they cannot afford lobbyists in Washington, D.C.

So when I hear the number of jobs you talk about, I become concerned again that although the program has gotten off to somewhat of a lukewarm response—I think the administration announced it in March, but I think it was only five days ago that I believe they actually rolled out the first funding. I think they are putting in $15 billion to buy loans from the SBA ostensibly to assist small business. Yet again, Chrysler and GM are looking at $80 billion.

So I guess, Dr. McAlinden, maybe the first question is for you. Now, I know your expertise is not in the general economy, but in the auto industry. But can a case not be made that on a macro economic level, we might have been better off investing $80 billion in small business?

Dr. MCALINDEN. Well, as you can see, I am sort of a neo-Keynesian.

Mr. HENSARLING. I am not.

Dr. MCALINDEN. I know. I could tell.

Many small businesses, I believe, would have gone, tens of thousands, out of business if these companies to my right had collapsed, including RV franchises, repair shops, retail establishments of all kinds and they already have. I think the record is clear all around Wayne State, if you look right out the window.

What can I say? These companies had the largest job multiplier of any industry in the United States. It once was as high as eight and a half jobs for every job at the big three. It is now lowered to six.

Mr. HENSARLING. I am sorry. That multiplier—is that from your research or where does that citation come from?

Dr. MCALINDEN. We have performed, both at the University of Michigan and our independent office, almost all of the economic contribution studies or economic impact studies of the auto industry in the U.S. economy that have been published since 1992.

Mr. HENSARLING. I understand and appreciate the answer.

I would also say to Mr. Borst and Ms. Bertsch, again, you may be right, but we recently, as a Member of Congress, heard from CIT that if they did not receive taxpayer funds that they would have to go into liquidation. Apparently they got the answer no, they would not receive taxpayer funds, and lo and behold, private funds show up through the market. So, again, your analysis may be correct. Maybe it is not correct. I do not know.

The next question I have—clearly for a lot of folks who sit where I sit, I am curious about the decision process on cutting loose the individual dealers. What process did each of your companies go through? To what extent was the administration involved in decisions to terminate those dealership relationships? As you might well imagine, we are hearing from lots of those folks. Ms. Bertsch, how about you first?

Ms. BERTSCH. Our company went through a very consistent analysis of each one of our roughly 3,200 dealers. What we had found was that the sales have deteriorated so much in the company based on the lack of financing available and the concern amongst our consumers on just customer confidence, that sales were down.

As a result of that, it was very clear that the profitability and the healthiness of all of our dealer body was suffering. It was very clear that in an environment where we believe and hope that the industry will improve—but we do not believe that it will improve as quickly as it deteriorated—that it would not be possible for our dealers to have the profitability they needed to invest in their businesses and to treat our customers the way that they needed to be treated.

So the company went through a consistent analysis of each of the dealers, looked at their performance metrics—we have a very significant amount of metrics that we look at on a regular basis with our dealers—and determined that the roughly 800 dealers would not be appropriate to contain in the new company.

That decision was made at Chrysler. It was not a decision made by the Government, and we felt that that was the right way to proceed.

While we will admit that bankruptcy is not necessarily fair or good for anyone, we felt that by not taking these measures, it would even be more dramatic and would ultimately put us into bankruptcy and ultimate liquidation.

Mr. HENSARLING. Mr. Borst.

Mr. BORST. Yes. At General Motors, we also used what we believe to be very objective criteria to make those evaluations. We looked at the company's sales. We looked at consumer satisfaction indexes. We looked at capitalization of the companies. We looked at the profitability of the companies and came to the decisions that we came to.

We took those decisions on our own. Individual decisions were made by us. They were not influenced by others.

Mr. HENSARLING. I am sorry. I am way over my time. Maybe this should be known and I do not know it. But you spoke about the objective criteria employed by GM.

Mr. BORST. Yes.

Mr. HENSARLING. Has that objective criteria been shared with the Automotive Task Force? Has it been shared with Members of Congress, and if not, are you willing to share it?

Mr. BORST. I believe it has been shared, and if it has not, we are surely prepared to share it.

Mr. HENSARLING. Thank you.

And the same to you, Ms. Bertsch.

Ms. BERTSCH. I agree. I believe the concepts have been discussed, but we are certainly willing to share that information.

Mr. HENSARLING. Okay. Thank you.

Chair WARREN. Thank you.

I want to ask about your relationship with the Treasury Department that gets us to this moment and ask the question whether or not Treasury has made its expectations and objectives clear going forward, what it is they have asked of you. Perhaps I could start with you, Ms. Bertsch.

Ms. BERTSCH. Yes, certainly. We have quite a few expectations that are outlined very clearly in our credit agreements with the Government. So we have certain compliance certificate requirements. We have financial reporting requirements that are due on a regular basis. That may mean monthly, quarterly, semiannually, or annually depending on what that requirement is.

In addition, we have a plan to, and will, report on a monthly basis a series of financial and other metrics with all of our shareholders, with our board, including the Government. And that would include things such as our sales performance, our financial performance, income statements, balance sheets, as well as the other requirements that we are obligated to do based on our agreements.

We have agreed with the Government on what those are going forward and will share that information not only with the U.S. Treasury but also the Canadian Government, the VEBA, all of our shareholders.

Chair WARREN. So these will be publicly available—these reports?

Ms. BERTSCH. Well, this will be available to our board and to all of our—you know, people that invested in our company. I am not certain on the public nature of that actually going forward.

Chair WARREN. But it will be available to the Treasury Department.

Ms. BERTSCH. Yes, it will be.

Chair WARREN. Mr. Borst.

Mr. BORST. Yes. The Treasury has made it very clear what they expect of us, similar to what was just mentioned, for the new Chrysler. We will have regular reporting responsibilities to the U.S. Treasury on things like cash flow, liquidity, and annual plans.

We also, as I mentioned in my opening remarks, plan to be a very transparent, private company until such time that we can get off an IPO. As Mr. Bloom testified, it is the expectation of us that we try to take the company public in 2010. The debt that we have received from the U.S. Government, as well as from the Government of Canada, has a repayment date of six years. We would hope to repay it faster.

So we have reporting requirements. Publicly we will also be providing information initially on a managerial basis, and as we complete our, what is called, fresh start accounting, on more of a GAAP basis.

Chair WARREN. I want to ask one other question about the relationship with Treasury. Congressman Hensarling has asked specifically about any advice or interference from Treasury in the question of selection of the dealerships that will be closed or that will remain open. I want to ask about anything else related to day-today operations.

Has Treasury in any way offered its advice, good counsel, warnings, or otherwise made suggestions about the day-to-day operations of your companies? Ms. Bertsch?

Ms. BERTSCH. No. The day-to-day running of our business is left up to our company, albeit brand new now and with a new ninemember board that is actually meeting today for the first time for an extended board meeting this week. But the running of the business is up to Chrysler Group LLC, and we are being extremely transparent with our reporting with them on an ongoing basis, as I previously mentioned.

Chair WARREN. And so your relationship is largely anchored around the axis of the kind of reporting one ordinarily does with a creditor of great magnitude.

Ms. BERTSCH. Exactly the same as what I would expect for any secured lender of our company.

Chair WARREN. Mr. Borst.

Mr. BORST. In our case, as part of the 363 sale process, we had extensive due diligence from the Automotive Task Force. They asked a lot of questions, gave advice in terms of things that they think that we should consider. Asked a lot of questions again. And ultimately the decisions were ours in terms of exactly what the plans would be. We got no guidance that I am aware of in terms of any specific actions that we should undertake.

But I would compare the process that we had in the 363 sale process to the acquirer of any company in terms of the type of questioning that we got. They had an assignment, to make sure that if taxpayer dollars were going to be appropriated and used for these companies in a particular—in my case, for General Motors, that we have a plan that would allow General Motors to be viable coming out of the bankruptcy. And that is where their focus has been.

Chair WARREN. So you would say neither more nor less intrusive than one would ordinarily see for an investor of this——

Mr. BORST. I have seen more intrusiveness in other instances where I have been involved with sales.

Chair WARREN. Thank you.

Congressman.

Mr. HENSARLING. I would like to continue to flesh out this line of questioning from Professor Warren. I still do not have a good sense on the frequency of communication between the Auto Task Force and your companies, who is communicating with whom about what. So in specific, who is the point of contact for Mr. Bloom at each of your companies? Or is there a point of contact? Does he speak to you? Does he speak to the CEO? Does he speak to——

Ms. BERTSCH. From the Chrysler perspective, Mr. Rattner or Mr. Bloom have had ongoing dialogue with our prior CEO from Old Carco vantage point, or our current CEO, Mr. Marchionne.

In my office, which is the Treasury function, we have consistent and frequent dialogue with the staff of Mr. Bloom, which I have their names, if you are interested. But we have consistent dialogue from that vantage point.

We as well had a recent visit from Mr. Rattner and Mr. Bloom meeting the entire management team at Chrysler in a recent review, which I would really look at as very consistent again with prior experiences that I have had with significant lenders——

Mr. HENSARLING. But just out of curiosity, how frequent is the communication? Daily, weekly, hourly?

Ms. BERTSCH. Well, I think it largely depends on what event we are talking about. For example, when we were setting up the supplier factoring receivables program, we had a minimum of one, maybe multiple calls per day, until we got that up and running very quickly. That impacted GM and Chrysler, and we were on joint calls and setting those up.

Mr. HENSARLING. Mr. Borst, your answer to the question to who is the point of contact, how often is the communication.

Mr. BORST. Yes, sure. The communication is frequent, and during the period leading up to the bankruptcy, it was definitely daily. The interactions were with all of the task force and would have started with our CEO, Fritz Henderson. His contact, I think, was principally with Mr. Rattner. Mr. Bloom and the rest of the task force really split up the different things that we needed to get done. So within their team, which I thought was a very wise move, they took principal responsibility for certain topics. So I had the pleasure of interacting with Mr. Bloom, for example, on a couple of those topics.

Mr. HENSARLING. We know as part of the Chrysler reorganization the Fiat incentive to produce the domestic-made car achieving 40 miles per gallon. Has the Automotive Task Force otherwise suggested automobiles for your companies to produce. Mr. Borst?

Mr. BORST. Not that I am aware of.

Mr. HENSARLING. Not to your knowledge.

Mr. BORST. Not to my knowledge.

Mr. HENSARLING. But there could have been conversations with the CEO that you may not have been privy to.

Mr. BORST. I am surely not privy to everything.

Mr. HENSARLING. Ms. Bertsch?

Ms. BERTSCH. The same with Chrysler. Certainly not at all to my knowledge, which is one of the reasons that our interest in an affiliation with a company such as Fiat was very positive so that we could continue to produce and look into further more fuel-efficient smaller vehicles.

Mr. HENSARLING. Clearly we know that there is more to our Government than the executive branch. There is the legislative branch as well. It was not long ago—I believe the article appeared in the Wall Street Journal, but I do not have the citation in front of me. The headline is "GM Plant in Norton Safe from Closing for Now. Barney Frank Appeals to GM CEO, Gains 14-Month Reprieve," referring to Chairman Barney Frank, who I have the privilege of serving with on the House Financial Services Committee. I assume it is an accurate article since there is a press release from Chairman Frank. The articles says, "The General Motors parts distribution plant received a 14-month reprieve from GM officials, thanks to U.S. Congressman Barney Frank who appealed to GM's CEO, Fritz Henderson, this week on behalf of Norton workers." The rest of the article claims it was one of the three Norton plants to be shut down.

So, again, I have not spoken to Chairman Frank about this. Apparently the article has a release from him. So at this point, I would assume it to be accurate.

You have described your interaction with the administration. How often are you hearing from Members of Congress and would the CEO of GM take my call?

Mr. BORST. I am sure the CEO of GM will take your call. He has been very communicative not only with people of your stature, but others.

In that particular instance that you reference, I am not familiar with the details. However, we have had many, many calls and many e-mails and others from a variety of constituencies because this has been a very painful process for many.

Mr. HENSARLING. So when you say "constituencies," am I to assume then there have been many calls from Members of Congress?

Mr. BORST. Again, I personally have not gotten any calls from Members of Congress, but I am sure there has been to other parts of the company. But my point is that we are getting calls from pensioners and dealers and a variety of constituencies.

Mr. HENSARLING. Right now, I am just interested in—and I see I am beyond my time yet again. But, Ms. Bertsch, are you aware of calls from other Members of Congress to your company? Or in your specific position, you would not necessarily be aware of those calls or that influence coming to bear on decision-making at your company?

Ms. BERTSCH. Well, I have not received any, and I am not aware of specific instances. I mean, I do truly believe that there has been—people have been very vocal throughout this whole event for the last 6 months on whether or not they were supportive or not supportive——

Mr. HENSARLING. No. I was just asking specifically about Members of Congress.

Ms. BERTSCH. I cannot give you an instance, no.

Mr. HENSARLING. Thank you. I am way over my time.

Chair WARREN. So can you give me an idea, Mr. Borst, about your estimate of capital needs in the near and medium term and how you plan to deal with them?

Mr. BORST. Could you define how you are using the word "capital" because that means different things for different people?

Chair WARREN. I am just asking about additional financing. You have, obviously, received a huge infusion of cash. But I just want to know what the near and medium term—I realize no one knows the long term at this point. But do you have capital needs and plans for how you are going to meet those away from the Government?

Mr. BORST. Yes. As we put together our plans in terms of DIP financing and the exit financing that we requested, we believe that will really take us to the low point or our peak cash needs which we estimated at the time would be in the early part of 2010. So the funds that we have received should get us through that period of time, and we would not necessarily expect a need for significant financing beyond that, if we are able to meet our plans and if the economy recovers the way we had projected and we are able to participate in that recovery as we believe the auto industry and General Motors will.

So we have not built in significant additional funding needs. We do have applications in for section 136 funding, for example. We would expect that with us being a viable company now, that those will be looked at. We do have regular rollover of maturities in our foreign jurisdictions. We would anticipate, now being out of bankruptcy, that we would be able to roll over those lines. But with the capital markets the way they have been, we did not rely on a lot of additional external financing.

Chair WARREN. Right.

Mr. BORST. That said, we would like to get back to that kind of business as soon as possible, and preferably, we would like to be positively cash-flowing as soon as possible so that that would not even be required.

Chair WARREN. And Ms. Bertsch.

Ms. BERTSCH. Similar to General Motors, we had outlined in our 363 filing with the Government what we thought our expectation was going to be for capital needs for the near mid-term. And we are satisfied at this point that we will be able to service all of our debt, as outlined in our agreements with our lenders. Except for the same section 136, which is the Department of Energy funding that they have available to automotive companies and suppliers for improvement of their engineering and power trains and fuel efficiency, we likewise have an application in and have had an application in to the Government for the past year and expect that we will be borrowing under that, as outlined in our plan.

Chair WARREN. So other than as you have noted, you are really saying you have taken care of your short-term and mid-term capital needs, not just in your exit financing provided by the Government, but you feel pretty well lined up on that.

That leads me to the last question I want to ask, and that is, I understand that to make the decision about an IPO has a lot to do with other market conditions and that you will make those decisions based on what you see at the time. But I want to ask the question internally to the company as you are going forward. What do you see as needing to happen within the company before you are in a position for a successful IPO? Mr. Borst.

Mr. BORST. Well, I think the following. First of all, I think we need to execute on our plan because there are currently just plans—and we are well on our way, but we need to execute on those plans. I believe the external community will in particular be looking at our revenue line and, coming out of the bankruptcy now as things stabilize, how the industry will perform and how we will perform within the industry. So that will be a key criterion to watch.

Then it will be a function of whether we are meeting our financial metrics, as we go forward. Surely, it is easier to do an IPO if you are positively cash-flowing than if you are not. Surely, it will be easier to do an IPO if we are exceeding the targets that we had set out than if we are not.

And internally, we have taken significant steps to restructure the company. We have significantly downsized the company. We have taken significant bureaucracy out of the company as we have reorganized. We have flattened the company. We are increasing the speed of the decision-making, and those will be critical elements, I believe, as we go on the road for an IPO next year that we will want to convey to potential new investors in the company beyond the shareholders that we currently have.

Chair WARREN. Ms. Bertsch, anything you want to add to that?

Ms. BERTSCH. No. Very similar.

Chair WARREN. Actually, I know I am over, but let me ask. Dr. McAlinden, anything you want to add to that?

Dr. MCALINDEN. No. I think their plans look very good on paper. It does depend on the economy. It does depend on consumers in the market forgiving them for passing through the bankruptcy process. I hope this time around we have all kinds of scenarios in the planning, not just optimism. It is a second chance that we are very grateful for here in Detroit.

Chair WARREN. Thank you.

Congressman.

Mr. HENSARLING. If the new plans for the new GM and the new Chrysler are, indeed, successful, when might the taxpayer be made whole? Ms. Bertsch, you first.

Ms. BERTSCH. Our debt to the U.S. Treasury is due in several different tranches. One would be in 2011, again in 2016, and 2017. Our goal would definitely be, if possible, to pay that back early. Part of the reason is the interest cost to the company is not immaterial, and so based on the interest rates that we are paying, I think that it would be one of our definite goals to pay that back early. But we see no issue in paying it back on time, certainly.

Mr. BORST. And for GM, as I mentioned earlier, we have a six-year term on the loan that we have. We are going to work very hard to repay that early. Our plans, if we deliver on them, will allow us to do that. But additionally, we have significant equity investment from the U.S. Government.

Mr. HENSARLING. Yes.

Mr. BORST. And the key there is to get the IPO off next year. It is our goal to create a liquid market in the stock and then work together with the Government to allow it to sell down the balance of its interest. It is a very large stake. So I would not want to mislead you that it might take some time, but that will be a function of how well we perform and how well the capital markets perform.

Mr. HENSARLING. Well, and again, I know there are many variables in the equation, as you pointed out with the capital markets. We do not necessarily know how consumers are going to respond to your new products, but again, you do have a plan. Do we even have a range of when the taxpayers might be made whole if your assumptions are correct and if your plan works?

Mr. BORST. Yes. At General Motors, we have not included that specifically in our plan because that is, obviously, a function of what the Government would like to do as well.

Mr. HENSARLING. Ms. Bertsch, did you have anything to add to that?

Ms. BERTSCH. No. I think it is largely dependent, too, on what the industry does. We have included a—I am hesitant to say somewhat conservative, but our ramp-up of industry volume, as outlined in our 363 filing, was not very aggressive. So we are hoping that we will be able to meet that.

Mr. HENSARLING. Let me go back to an earlier line of questioning where you were speaking of somewhat the frequency of communication between your companies and the administration. I guess both parties, the Automotive Task Force, your companies, seem to go to great length to say that the Federal Government is not involved in the day-to-day management of the companies.

So I guess the question is, what do you seek or for which questions, for which issues, do you see the approval of the administration, if it is not "day-to-day management"?

Ms. BERTSCH. I would not really define it as seeking approval. Most of our conversation with the Government——

Mr. HENSARLING. Where do you feel a need to counsel with them?

Ms. BERTSCH. Because they are a stakeholder in the company, they are also represented on our board. We will be having regular dialogue with them related to how we are progressing along on our business plan. So once we get our new business plan in place for the new company, we will be sharing that with the Treasury——

Mr. HENSARLING. I am trying to figure out are there specific issues which you feel a need to receive either the input or the approval of the administration. I would assume, for example, you do not need their counsel or input on whether or not you offer white sidewalls on some new Jeep product, but at some level, I would assume, you feel a need to receive at least their input, if not approval. I am trying to get some specificity on what those issues are.

Ms. BERTSCH. And I would say most of those would relate to a typical relationship with your board of directors. So, for example, as we are going through and defining what level of approvals we would need from our board versus from our CEO in the company, those are the kinds of things that we would go and seek approval from the Treasury, as they relate to board members. And then there is, of course, all the other things that normal automotive companies may be interested in talking about with the Government related to standard energy practices and things like that. But from running the company, it will be largely through our board of directors.

Mr. HENSARLING. Do you wish to add to that, Mr. Borst?

Mr. BORST. Yes. In GM's case, I guess I like the analogy to the board of directors. I think that is probably an apt one. In our case, during this whole period, we needed to get approval for additional funds for certain expenditures, and so we would need to go back to the U.S. Treasury to get those funds. As part of those discussions, as you might have with a board, they queried us what we were going to be using those funds for.

We also had specific topics that we need to address. GMAC was mentioned earlier in the hearing. That is an entity that the U.S. Treasury has also had interaction with during this period of time. We gave them, for example, information about what our needs were there and enlisted their support to help in that instance. We have our largest supplier, Delphi, that is in bankruptcy. We have enlisted their support as part of the funding to also help us get that entity out of bankruptcy, which is important to our future viability, those types of things.

Mr. HENSARLING. Thank you.

Chair WARREN. Thank you all very much. We appreciate your being here. This panel is excused. Thank you.

We now call our third panel. The witnesses on our third and final panel will address the issues raised in the bankruptcy cases of General Motors and Chrysler. They include Richard Mourdock, the Indiana State Treasurer; Professor Stephen Lubben of Seton Hall University School of Law; and Professor Barry Adler from New York University School of Law. Welcome.

As before, I will ask each of you to hold your oral remarks to five minutes or less. Your written statement will, of course, be made part of the permanent record.

Mr. Mourdock, could we start with you, please?

STATEMENT OF RICHARD MOURDOCK, INDIANA STATE TREASURER

Mr. MOURDOCK. Well, first of all, thank you for the invitation to give you testimony today. Last Wednesday, I gave testimony to the Judiciary Subcommittee on Administrative and Commercial Law.

As I said at that time, I never imagined I would be in a position to give testimony to a congressional committee. As I said at that time, I have great reverence for the process and, again, wish to express that and would start out by saying I have been very appreciative and admire the sense of fairness and balance in the questions that you all have offered.

I should also start out by saying what I am not, which is I am not an attorney. If I may sound like one at times through this brief bit of testimony, it will only be because I have been exposed to so many attorneys in the last 6 to 8 weeks.

I became involved with this issue when, as the trustee for two funds in Indiana and ultimately as a representative for a third fund, we purchased—invested some $17 million of Indiana retirees' money into the secured debt of Chrysler Corporation. As everyone in this room now knows, subsequent to that—that took place in July of 2008, and about 6 weeks later, when Lehman Brothers went down and the subsequent shock wave went through the economy, all of this cycle that we are dealing with today began.

As a trustee with fiduciary responsibilities that I take very seriously, I was shocked to see, as all of you are aware, the secured creditors in the Chrysler case were, in an unprecedented manner, relegated not to the traditional position of being first in line but to being something subsequent to that.

We subsequently discussed at length in our office how we should proceed. We thought, quite frankly, we might be part of a class action suit of other pension funds, but ultimately found through this process that we were, effectively, the only group that was willing to come forward and take this case to the bankruptcy court and ask that the 29 cents on a dollar that we were being offered be reviewed to look for some better return.

I should also add at this point the real summation of our lawsuit, and I will be very, very brief with it.

But point number one was that Article I, Section 8 of the United States Constitution says it is the congressional mandate to set a uniform bankruptcy code. That has been done since 1789, but in this case the executive, by doing away with the traditional rights of secured creditors in this area, we think totally threw that bit of congressional balance out the window. So we see a balance issue.

Secondly, we have what we call the sub rosa argument. For all the attorneys in the room, obviously, that does not need to be explained any further other than here to say simply that we see that the United States Government was on both sides of this deal simultaneously, setting values, setting all terms of what the sale would be, only to be the only bidder in the auction for the assets. That is totally unprincipled and we think absolutely un-American.

To the point that gathers us here today, however, we argued in our lawsuit that the Troubled Asset Recovery Program monies were and are being used illegally to fund the car companies. Again, I am not an attorney, but I can state it very simply.

In late September and in October of 2008, the Congress debated the Troubled Asset Recovery Program. At that time, Secretary of the Treasury Paulson testified to congressional committees saying this is not a bailout for the automobile companies. In the 169 pages of TARP, the word "automobile" appears twice as an adjective before "batteries," "automobile batteries." It was intended solely to aid the ailing financial industry. That is clear in its intent.

Subsequently, 2 months later, Congress tried to pass an automobile bailout bill and it failed, but it begs the obvious question. If the same Congress that had voted on TARP 2 months before had taken the testimony that it was not an automobile bailout, if they thought it was, why did they come back in December and try to pass a separate automobile bailout bill? It is because clearly they knew that was not their intent in October and thus they tried in December and it failed.

The Bush administration—and I happen to be a Republican, by the way—then acted illegally in a desperate search for funds. Mr. Paulson then suddenly seemed to change his mind despite his own testimony and tried to write an opinion to say, well, this is justified. So the money was pulled out. Subsequently, obviously, the Obama administration has continued to do that.

The entire process, we believe, has been flawed. From the valuation of the assets that took us from something, we believe, far better than 29 cents down to 29 cents, it is just wrought with error. We see valuations that were done in what we believe was an unethical fashion where the consultant who was setting the values was offered a $10 million bonus if in fact the valuation were accepted at that low level. There were 41 product lines of Chrysler. Only two of them were given value, which we think was just absolutely unheard of. Just months before, the company had been valued at some $29 billion.

And one last thing I will say just very briefly. The comment was made here today that the courts have all ruled on the points of law. When our case reached the United States Supreme Court, in the order that let the sale go forward, it says—and I quote—"The denial of a stay is not a decision on the underlying legal merits." These laws have not been reviewed and we hope to live to see that day come.

Thank you.

[The prepared statement of Mr. Mourdock follows:]

The Congressional Oversight Panel

Monday, July 27, 2009

"Financial Assistance Given to the Domestic Automobile Industry Via Treasury's Automotive Industry Financing Program."

The Honorable Richard E. Mourdock

Indiana State Treasurer

Madam Chairwoman and distinguished members of the Congressional Oversight Panel, I would first of all like to thank you for allowing me the opportunity to participate in today's hearing. I am Richard Mourdock, Treasurer of the State of Indiana.

In providing testimony to you, please note that I am not an attorney though it is clearly the issues of law that cause me to be before you today. I come today as the elected official with strict fiduciary duties on behalf of all Hoosiers. More specifically, I come as the fiduciary of two specific funds in Indiana, the Major Moves Construction Fund and the Indiana State Police Pension Trust, and as a representative of the Teachers' Retirement Fund of Indiana.

As a result of the recent Chrysler filing, I was placed in the difficult position of asking the Southern Bankruptcy Court of New York to stop the proceedings on behalf of the funds that I represent. Simultaneously, Chrysler and the Obama administration were arguing that if the bankruptcy did not occur in a prompt manner all of the Chrysler jobs would be lost. Specifically, it was said that Fiat SpA, the company interested in "purchasing" twenty percent of the assets, would walk away from the deal causing the company to collapse if all aspects of the bankruptcy were not completed by June 15, 2009.

Please note, Chrysler is a major employer in Indiana with some 6,000 jobs in the Kokomo area. Chrysler had recently contracted with a German firm, Getrag, to expand its operations in nearby Tipton County. In short, taking a position that was perceived to be against the company and their worker was not convenient, but it was the right thing to do.

I'm frequently asked why I decided to take on the administration and risk possibly losing thousands of Hoosier jobs. The answer to that is as simple as my oath of office. Like all elected officials, I pledged to "uphold the Constitution of the United States." As a fiduciary of public funds AND as an official who has taken a solemn oath to serve, I could not NOT act in a circumstance when I saw our beneficiaries losing value as a result of the law being violated.

I'm also often asked if I sought to stop the bankruptcy: 1) as a result of the monetary loss to the Hoosier funds or, 2) as a result of the violation of the law or, 3) as a protest in general principle of what was occurring. My answer is simply "yes." When viewed in the context of American law, fairness and propriety, these three issues are indivisible in the Chrysler case.

The legal points of contention will be discussed subsequently in my testimony. The fundamental chronology of events that causes me to be before the panel today is as follows:

- In July of 2008, acting on behalf of the three Indiana funds, Reams Asset Management, (a private sector money-manager working for the state), purchased 'secured' debt of Chrysler with a face value of $42 million dollars for approximately $17 million dollars, $0.43 on the dollar. The essence of their valuation is based on collateral claimed by Chrysler to be in excess of $29 billion in the prior year. Also, as a most conservative approach, they valued Jeep's brand and revenues ALONE to be worth more than $3 billion dollars. Indiana was pleased to make the investment as Chrysler's footprint in Indiana is a large one. We hoped to be a party to their success and certainly never imagined at the time we would have long-held, established investor rights ripped away from us.

- In September, 2008, the collapse of Lehman Brothers began a steep slide in the stock market and sent a serious shock wave through the economy. As a result, for the first time in fifty-six years of record keeping, the Federal Reserve noted a decrease in average American household indebtedness and the purchasing of "big ticket" items decreased dramatically. Heavily leveraged automakers, (Chrysler and General Motors), were devastated.

- In October, 2008, the Congress debated and subsequently passed the Troubled Asset Relief Program (TARP) a part of the Emergency Economic Stabilization Act (ESSA) to "aid the ailing financial industry."

- In early December, 2008, Congress debated the "Automobile Bailout Bill" that failed to pass.
- On December 19, 2008, the U.S. Treasury announced plans to make billions of dollars available in emergency loans from the TARP funds from the ESSA, through the newly created Automotive Industry Financing Program (AIFP), to Chrysler, LLC and General Motors. As documented in the U.S. Department of the Treasury Section 105(a) TARP report to Congress from the period December 1, 2008, to December 31, 2008, the U.S. Treasury cited Title I, section 115(a) of the ESSA as the legal authority to purchase the troubled assets of General Motors and Chrysler, LLC.
- In early 2009, it had become apparent that funds from TARP would not be enough to save Chrysler and discussions between company executives and officials of the U.S. Treasury Department began to place Chrysler, LLC into a Chapter 11, Section 363 bankruptcy procedure, which would ultimately result in an auction of the assets.
- Details of the bankruptcy were unprecedented. For the first time in American history and totally counter to all established laws of bankruptcy, secured creditors would receive less than non-secured creditors. A majority of the secured debt was held by JP Morgan, Citigroup, Goldman Sachs Group, Inc. and. Morgan Stanley which, in the prior six months, had received a total of $90 billion in TARP proceeds. They were owed ***in total*** some $6.3 billion.
- Officials of the U.S. Treasury convinced secured creditors of JP Morgan, Citigroup, Goldman Sachs Group, Inc., and Morgan Stanley to accept $0.29 on the dollar for their investments instead of seeking just compensation through traditional bankruptcy proceedings despite the fact that they had previously all made loans to Chrysler based on claims of as much as $29 billion in collateral the prior year.

- Private equity funds and pension funds held approximately $300 million of secured Chrysler debt. Upon hearing of the unprecedented nature of the "settlement," several private equity funds filed objections in the bankruptcy proceeding arguing the assets were being undervalued and that secured creditors rights were being grossly violated.

- President Obama in a press conference said those who would file objections to stop the sale were "unpatriotic," "hedge funds," "greedy speculators," and "unwilling to sacrifice." The case was stated to be, "One of the most complex bankruptcies in American history."

- As widely reported, executives from the funds that filed the court cases began to receive threats and within three days withdrew their lawsuits and petitioned the court that the records be sealed to protect their identities.

- Bankruptcy documents identified that a number of states and localities had pension fund investments in Chrysler secured debt including funds representing public employees in California, Michigan and Indiana.

- At 10:00 am, on Monday, May 18, 2009, the United States Bankruptcy Court for the Southern District of New York notified the Indiana Treasurer of States' Office by first class mail that in this, "... one of the most complex bankruptcies in American history" Indiana's funds had thirty hours or until Tuesday, May 19, 2009, at 4:00 p.m. to file objections or claims.

- On Tuesday, May 19, 2009, an objection was filed on behalf of Indiana's Major Moves Construction Fund, The Indiana State Police Pension Fund and the Indiana State Teachers' Retirement Fund.

Indiana's legal filings in the Chrysler, LLC bankruptcy sale made three essential points: First, the bankruptcy laws which have been in place protecting the rights of secured creditors cannot be arbitrarily overthrown by an act of the Executive. This is a violation of Article I, Section 8 of the U.S. Constitution in that Congress is solely assigned the role to determine uniform bankruptcy law. Neither the Courts nor the Executive can do this arbitrarily. Our funds suffered a "taking" in violation of the Fifth Amendment in that there was no "due process of law". There was, and is in all financial arrangements between debtor and creditor, a contractual relationship, which is here being rendered null and void. If allowed to stand, this violation of two party contracts undermines a basic and essential tenet of debt financing in the capital markets.

Second, funds provided under Title 1, Section 115(a) of the Emergency Economic Stabilization Act (ESSA), TARP funds, through the U.S. Treasury's Automotive Industry Financing Program (AIFP), to Chrysler, LLC were clearly illegally and against Congress' intent of the EESA and the use of TARP funds. Nowhere in Title 1, Section 115(a) of the EESA does it state or imply that TARP funds can be used for the automobile industry or any government plan and/or program, like AIFP, to purchase the debts of Chrysler, LLC or General Motors.

To reinforce the point that TARP funds were not to be used for the U.S. automobile industry, we need to look no further than former U.S. Treasury Secretary Henry Paulson and current U.S. Treasury Secretary Timothy Geithner: When the TARP wording in the ESSA was being debated, former Treasury Secretary Henry Paulson testified that bailout funds were not for automobile companies. Current US Secretary Timothy Geithner on May 21, 2009, when testifying in front of the House Appropriations Financial Services Subcommittee stated, "We do not believe that TARP as current legislation provides a viable solution to this specific challenge, [Using TARP Money to stabilize state bond ratings]. ...We are restricted to giving to financial institutions." www.reuters.com/article/asiaRegulatoryNews/idUSN2052531520090521. If TARP funds were restricted to financial institutions on May 21, 2009, how were the funds provided to Chrysler, LLC and General Motors before then? Congress' true intent of trying to provide funds to the U.S. automobile industry ended with the failure of legislation that died in the US Senate in December of 2008. We believe both the Bush and the Obama administration have acted illegally in this use of TARP funds.

Third, we argue that a ***sub rosa*** or "under-the-table-arrangement" between the Treasury and Chrysler prevented a fair valuation of the assets. In a legitimate auction sale, no potential bidder would be allowed to set the value of the assets being auctioned. But that is precisely what happened in this case as the U.S. Treasury was assigning values to creditors, determining which assets would be liquidated, what new parties, (i.e., Fiat SpA), would be brought into the deal, and how a new dealership network would be defined, etc. It was known from the outset that when the Chapter 11, Section 363 sale of the assets would occur, there would be only one bidder: the U.S. Treasury. Secured creditors could not have their rights protected or fairly valued in such an arrangement. Such an "insider-deal" reeks of impropriety.

Indiana's legal case began at the Southern Bankruptcy Court of New York where we participated vigorously in the hearing in order to raise our objections in the hopes that the plan might be rejected and a structured bankruptcy sale might occur pursuant to precedent. The bankruptcy court judge seemed interested only in ratifying the government's preferred plan as quickly as possible and failed to even address the merits of many of the legal issues we raised. Following his ruling, Judge Gonzales shortened the usual 10 day stay period typically granted in bankruptcy cases. The District Court for the Southern District of New York had previously declined to take up the case but noted from the bench that the points of law raised in our petition had merit.

Officials of the U.S. Treasury then asked that the case be certified for immediate appeal to the United States Court of Appeals for the Second Circuit. We were pleased with this potential opportunity to have the merits of our case heard. During the hearing before the three judge panel, one of the judges commented from the bench to our attorney, "Don't you think the United States Supreme Court should be taking a swing at this?" Perhaps reflecting that sentiment, on Friday, June 12, 2009, the Second District Court of Appeals issued a perfunctory order ratifying the bankruptcy court's decision and issuing a stay until 4:00 pm the following Monday to allow for the United States Supreme Court review.

Indiana requested that the United States Supreme Court issue a stay to prevent the sale so that the points of law that we raised be reviewed in full context. Justice Ginsburg granted the stay on Monday, June 15. At approximately 7:00pm on Tuesday June 16, 2009, The Supreme Court issued an order ***per curiam*** removing the stay and allowing the sale to proceed. The order stated that Indiana had failed to meet all the conditions required to stop the sale but did add: **"A denial of stay is not a decision on the merits of the underlying legal issues."**

The sale of Chrysler to the U.S. government occurred within forty-eight hours and the assets were promptly divided among the selected field of creditors and newly chosen stakeholders. Indiana is currently weighing its options for further legal action to establish the wrongfulness of the precedent set in the Chrysler case.

My purpose in providing testimony is not to re-state all of the intricacies of the case. I have included as an addendum to my testimony the filing of our legal brief for that purpose. I believe my presence before you today is best served by asking the questions, via this panel, that Congress, and only Congress, can address in light of all that has happened in the Chrysler case. Indeed, while I am available to answer any of your to the best of my ability, the most significant questions that linger I cannot answer.

Questions and issues regarding the Chrysler bankruptcy are specific:

- Were the assets of Chrysler, LLC valued correctly for the purposes of the bankruptcy? Some questions had been raised by various groups that certain assets or automobile lines of Chrysler, LLC were intentionally undervalued. For example, the Jeep product accounts for more than $500,000,000 in annual revenue from licensing arrangements for the use of its name. An appraisal not long before the auction had the value of Jeep at $6 billion yet the total auction for all of the Chrysler assets resulted in a value of just over $2 billion. Why should secured creditors feel they received anything close to fair value given these facts?

- Also, it has been reported that one existing, experienced, savvy, automotive investor group had negotiated with Chrysler in late February '09 for the purchase of the Dodge Viper brand for $35 million. And yet, Chrysler executives told the bankruptcy court less than sixty days later the brand could only be assigned a value of $5 million. How can a good-faith purchaser be told "no" when he offers $35 million only to see the same product valued for $5 million weeks later in a government auction?

- The crisis mentality that drove the process was totally undermined by the President of Fiat. Prior to the bankruptcy sale in each court, the federal government argued that if the sale didn't close by June 15th, the deal with Fiat would fall apart. I argued throughout the several weeks of Indiana's involvement that this made no sense whatsoever as Fiat was not required to expend a single penny to acquire the 20% stake in Chrysler. Said differently, if someone is offered a $400,000,000 asset at no cost and told that it wouldn't be available until next week, I'm betting they'd return one week later. Or one month later. $400,000,000 for zero expenditure is too good a deal to walk away from. Sure enough, on the day of the sale Fiat's president said exactly this and indicated he was unsure where the June 15th date had originated. Clearly, it came from the Treasury in its rush to close the deal in haste which was again, greatly to the detriment of the investors.

For a detailed analysis of the legal consequences of this case see the attached article *Assessing the Chrysler Bankruptcy*.

Broader and greater questions related to the precedents set if the actions of the Congress continue to be ignored by the Executive and if the rules of law no longer have application:

- If the term "secured creditor" no longer have meaning, what other terms of art in the world of finance no longer have meaning? The long-standing rights of secured creditors have been so well understood that during the War of 1812 the U.S. government continued to pay principal and interest to British citizens even as we were at war with their nation! Our government realized then that if you default to "secured creditors" regardless of the circumstance, you have begun to destroy your own credit rating. Recent discussions by Russia and China to seek a new international reserve currency are not unrelated to the message of the Chrysler bankruptcy. Change the rules and the players will change. If foreign investors in U.S. Treasury debt sense that "good faith and credit of the United States government" can be swept away with an arbitrary act to deal with a momentary crisis, we will have a problem far, far greater than Chrysler in scope and impact.

- If investors no longer feel the law is uniform, predictable, and based on precedent, why would they continue to invest in American markets? I could not agree more with the Obama administration's belief that the American manufacturing sector must be revitalized if we are to again become globally competitive. But the Chrysler precedent of stripping value and rights from secured bond holders flies in the face of maintaining a sound investment environment. It is easy to predict that hundreds of billions of dollars will begin to be invested in foreign markets as a result of this decision.

I realize that most who testify before congressional panels and committees typically come to demand some change or some new set of laws or regulations. They come to revise a set of laws that may no longer apply to modern circumstances but I do not.

I appreciate the opportunity to come before the panel today and encourage you to help persuade Congress to act pursuant to Article I, Section 8 that mandates that they, not the Executive, not the Judicial, make a uniform set of bankruptcy laws. It is the job of Congress but they have already done it. They need not do it again. Congress does not need to revise what they have already done. They only need to argue what has been put in place has worked for almost two hundred years. And what is the evidence of that success? The strongest, most vibrant economy on the planet over that period. Investors seek stability in the market place and that's what our laws have provided. It is also why investment houses often use in their advertising words that paint mental images of stability. They include the image of rocks or bluffs, cliffs, or mountains. Never do they send a message of shifting sands. Yet that is what today's investors see when secured investors' rights are thrown away in the name of momentary economic crisis or perceived threat. It is a dangerous message to send. The members of this panel need to encourage Congress to stand firm on what the investing community has long held in violate: sound, consistent, and stable bankruptcy laws. If Congress does that, investment will flow back into American corporations. If they fail to do so, it, like so many American jobs, more American capital will flow overseas as investors will want to put their money in more stable markets where the rules don't change with the moment.

Madam Chairwoman and distinguished members of the Congressional Oversight Panel, I would like to thank you for allowing me to testify at this hearing today and to express my views and concerns about the use of TARP funds, current bankruptcy laws, and unintentional consequences that could affect the financial markets in the future.

Chair WARREN. Thank you, Mr. Mourdock.
Professor Adler.

STATEMENT OF BARRY ADLER, CHARLES SELIGSON PROFESSOR OF LAW, NEW YORK UNIVERSITY SCHOOL OF LAW

Mr. ADLER. Thank you, Chair Warren, Congressman Hensarling. I appreciate the opportunity to testify here today.

I want to start by saying I am not opposed in principle to the rescue of the auto industry. I have no expertise on whether that was a good idea or not. Although as a taxpayer, I wonder about the Government funding the UAW retirement funds when other retirees who were also suffering but received no such funding. Again, I have no expertise on that, and I am not here to testify about that either.

What I do want to comment on what I have studied is the way the bankruptcy process was, in my view, distorted in order to accomplish the rescue of the auto industry and the funding of the UAW funds. Therein, from my perspective, given my expertise, whatever that is, lies the problem.

At the risk of oversimplification, I think a plausible characterization of what happened in both the GM and the Chrysler bankruptcies is the Government bought the companies and transferred them to the UAW. That is controversial I know, but I think that is a plausible characterization.

That would have been fine from the perspective of the creditors so long as the price was fair, so long as what the Government paid for the assets that it then transferred to the UAW was the correct value of the assets thus leaving the creditors the fair value of their assets as the proceeds of the sale.

The problem was there is no assurance, given the way the bankruptcies were conducted, that the price was the right price, the fair price for the assets. In particular, the sales process approved by the courts in both cases limited the bidders who could bid and limited the characteristics of the bidders who could bid in such a way that a liquidation or breakup bid for the company was not to be permitted. Thus, if Chrysler, in particular, were worth more than $2 billion in liquidation, as might have been the case, that bid would not have been obtained and the creditors, as just represented, might have been left with less than their just deserts.

Given that there was not a robust and contested auction for the assets, one might have recharacterized the transactions as what is referred to sometimes as a sub rosa reorganization plan, in other words, just a reorganization plan without the formality of the Chapter 11 process. But denying the formality of the Chapter 11 process, combined with a failure of a robust and contested auction, left creditors without the procedural protections that Congress granted in the Chapter 11 process.

And this is a reason that the creditors in each case, the secured creditors in Chrysler and the unsecured creditors in GM, had reason to complain in my view. Did they receive less than they deserved? I do not know. I am not a market maker. I do not have the ability to say what the true value of those assets were, but the process was flawed. And thus, the creditors might have been disadvantaged in a way that the law would not permit.

And this is problematic, particularly in an environment where raising capital is a problem for companies, where we want to encourage economic development. If creditors' rights are not respected, that economic development will be thwarted in a way that I think is not in the country's interest.

What I would do, again turning back to the bankruptcy process, to prevent what I see as a mistake in the procedures that were approved, would be to pass or adopt new legislation that would restrict the procedures that are used in the sale of a going concern of a large company so that Government influence or not, the mistake, as I see it here, could not be repeated.

Beyond that, I will leave it and I would be happy to answer questions, of course.

[The prepared statement of Mr. Adler follows:]

WRITTEN STATEMENT

TO: Congressional Oversight Panel
FROM: Barry E. Adler
the Charles Seligson Professor
New York University School of Law

SUBJECT: AIFP Hearing (Revised Statement)

DATE: August 5, 2009

The following is a summary of my perspective on the recent Chrysler and General Motors bankruptcies. The summary includes a description of how I believe the government influenced the process. I also suggest legislation that would address what I perceive as faults in the case procedures.

The recent bankruptcy cases of Chrysler and General Motors were successful in that they quickly removed assets from the burden of unmanageable debt, but the price of this achievement was unnecessarily high because the cases established a precedent for the disregard of creditor rights. As a result, the automaker bankruptcies may usher in a period where the specter of insolvency will increase the cost of capital in an economy where affordable credit is sorely needed.

After brief analysis of the Chrysler and GM cases, below, I offer a proposal for an amendment to the Bankruptcy Code. The proposal is designed to ensure that future bankruptcy courts honor the entitlement for which creditors contract and without which one cannot expect them to lend on favorable terms.

The Chrysler Bankruptcy

The rapid disposition of Chrysler in Chapter 11 was formally structured as a sale under §363 of the Bankruptcy Code.[1] While that provision does, under some conditions, permit the sale of a debtor's assets, free and clear of any interest in them, the sale in Chrysler was irregular and inconsistent with the principles that undergird the Code.

The most notable irregularity of the Chrysler sale was that the assets were *not* sold free and clear, but rather the purchaser, "New Chrysler"—an affiliation of Fiat, the U.S. and Canadian governments, and the United Auto Workers ("UAW")—took the assets subject to specified liabilities and interests. Notably, New Chrysler assumed about $4.5 billion of Chrysler's obligations to, and distributed 55% of its equity to, the UAW's voluntary beneficiary employee association ("VEBA") in satisfaction, perhaps full satisfaction, of old Chrysler's approximately $10 billion unsecured obligation to the VEBA (which is a retired workers benefit fund).[2] So long as New Chrysler remains solvent, this means that at least half of its obligation to the VEBA will be paid. This, while Chrysler's secured bondholders are to receive only $2 billion in satisfaction of about $7 billion in claims, about 30 cents on the dollar. That is, money that might have been available to repay these secured creditors was withheld by the purchaser to satisfy unsecured obligations owed the UAW. Thus, the sale of Chrysler's assets was not *merely* a sale, but also a distribution of the sale proceeds seemingly inconsistent with contractual priority among the creditors.

To be sure, the situation is more complicated than may first appear. The purchaser in this case was funded primarily by the U.S. government, which had previously advanced $4 billion in TARP funds and, along with the Canadian government, agreed to loan the new enterprise billions more. The government had political reasons to assure continuation of auto production and toward that end may have been willing to pay more for the assets

[1] The Bankruptcy Code appears in Title 11 of the United States Code.

[2] Although there is a legal distinction between the UAW and its VEBA fund for retired union workers, for simplicity of exposition, the distinction is generally ignored in this statement, which sometimes treats as interchangeable payments to the UAW on account of its claims in bankruptcy and transfers to the VEBA.

than they were worth. For purposes of bankruptcy law, then, the question is not whether the government paid the UAW (or holders of other assumed obligations) too much, but whether the process deprived the secured bondholders of a return to which the law entitles them. Some of these bondholders, albeit a minority, objected to the sale because they believed they should have received more and would have but for the orchestration of the sale by the U.S. Treasury and automotive task force.

Proponents of the Chrysler sale argue that the sale was proper despite the protests. They contend that the secured bondholders who objected to the sale were a minority of such creditors and as a minority lacked standing to complain, a point to which I return below. More fundamentally to the bankruptcy analysis, the proponents of the transaction insist that the company's assets would have been worth little in liquidation and so the secured bondholders should have been satisfied with the return the bankruptcy sale provided them. But there was no market test of this proposition because Judge Gonzalez, who presided over the Chrysler case, permitted only days for a competitive bid to challenge the proposed sale and restricted bids to those that were willing to have the bidder assume specified liabilities, including Chrysler's obligation to the VEBA.[3] (There was an exception to this restriction for specially approved bids, but by the court's order, the UAW had to be consulted before a noncompliant bid would be approved.)

Given the constraint on bids, it is conceivable that the liquidation value of Chrysler's assets exceeded the company's going-concern value but that no liquidation bidder came forward because the assumed liabilities—combined with the government's determination to have the company stay in business—made a challenge to the favored sale unprofitable, particularly in the short time frame afforded. It is also possible that, but for the restrictions, there might have been a higher bid for the company as a going concern, perhaps in anticipation of striking a better deal with workers.[4] Thus, the approved sale may not have fetched the best price for the Chrysler assets. That is, the diversion of sales proceeds to the assumed liabilities may have been greater than the government's subsidy of the transaction, if any, in which case the secured creditors would have suffered a loss of priority for their claims. There is nothing in the Bankruptcy Code that allows a sale for less than fair value simply because the circumstances benefit a favored group of creditors.

Against this criticism, the sale is defended on the ground that quick action was required to preserve the company's going concern value, but it is not certain that company's going concern value exceeded its liquidation value. Moreover, restrictions placed on the bidding process do not appear to be sensible even given a time constraint. The sale served the government's desire to assure continuation of the company and to protect the union's interest, but it is not apparent that the sale was designed to maximize the return to the bankruptcy estate and there seems no legitimate reason to have restricted

[3] The bankruptcy court opinion in Chrysler appears at 405 B.R. 84 (Bankr. S.D.N.Y. 2009).

[4] Note that these restrictions would have prevented credit bidding even if the secured bondholders had collectively desired to make such a bid because the required assumption of liabilities effectively eliminated the secured lender priority that is necessary for a credit bid.

bids based on the bidders' willingness to assume favored liabilities. The approved sale, therefore, ran afoul of the Supreme Court's admonition, in the analogous case of *North LaSalle Street*, that a court should not settle a valuation dispute among parties with a determination "untested by competitive choice."[5]

Viewed another way, the approved transaction was not a sale at all, but a disguised reorganization plan, complete with distribution to preferred creditors. In this light, the secured bondholders who objected to the sale and distribution did not necessarily have a complaint with the amount paid (by the government) for the assets. Indeed the objecting creditors may well concede that the amount paid *to the UAW* was quite high; they objected to the distribution, which favored others at their expense. That is, the objection was to the fact that the approved transaction distributed assets inconsistently with the priorities established under the Bankruptcy Code.

Analysis must turn next, then, to whether the objecting secured bondholders could have blocked the transaction had the distributions in the case been subject to the rules prescribed by Chapter 11 rather than as part of a §363 sale. One who would defend the approved transaction would say "no," relying again on the contention that the liquidation value of Chrysler was so small that the secured creditors received at least their due from the sale, an amount that the judge deemed satisfactory. What this argument overlooks, however, is that Chapter 11 contains rules designed precisely to protect creditors from a judicial determination with which the creditors disagree. When Judge Gonzalez approved the Chrysler sale, he stripped these protections from the secured creditors.

More specifically, the Chapter 11 rules that shield creditors from judicial error are called "fair and equitable" and "no unfair discrimination" provisions, which appear in §1129(b) of the Code and govern the confirmation of reorganization plans. The requirement that a reorganization plan be fair and equitable means that if a class of claims objects to the distribution under the plan, the plan may not be confirmed if the objecting class is not paid in full while a lower-priority class receives anything under the plan. The requirement that a plan not discriminate unfairly means that if a class of claims objects to the distribution under the plan, the plan may not be confirmed if a class of equal priority receives a higher rateable return under the plan. When applicable, these provisions prevent confirmation *even if* a judge is convinced that the claims in the dissenting class are receiving at least what they would receive in liquidation. Whether the dissenting class believes that the judge is mistaken as to the true liquidation value of the firm or merely demands its share of what it believes to be a firm's going concern surplus over liquidation value, the class can decide for itself whether to accept the plan.

In Chrysler, the dissenting secured bondholders attempted to invoke the protection against unfair discrimination. Whatever the judge might deem to be the liquidation value of their collateral, §506 of the Bankruptcy Code bifurcates an undersecured claim—a claim that exceeds the value of its collateral—into a secured portion and an unsecured

[5] Bank of America v. 203 North LaSalle Street Partnership, 526 US 434, 458 (1999).

portion. The secured portion is equal to the judicially determined value of the collateral; the unsecured portion is equal to the deficiency claim. The secured creditor objectors to the Chrysler sale based a legal challenge on the treatment of their deficiency claims. A deficiency claim, like the UAW claims, is a general unsecured obligation and these claims have the same priority. Yet while the sale and distribution approved in Chrysler paid the deficiency claims nothing, it paid the UAW claims with billions of dollars. This, the objectors argued, is an unfair discrimination that would have rendered unconfirmable a formal reorganization plan and should have rendered illegitimate what they saw as a de facto reorganization embodied in the sale and distribution.

There is merit in the dissenters' argument.[6] To be sure, proponents of the pro-UAW distribution can argue that the right to veto a plan on the basis of unfair discrimination is a class-based right—not available to individual dissenters within an accepting class of claims—and that a large majority of the secured bondholders accepted the distribution.[7] But the accepting secured creditors were largely recipients of government TARP funds and thus arguably beholden to the government, which engineered the distribution to the UAW. Therefore, under §1122 of the Bankruptcy Code and relevant precedent, in a formal reorganization, the judge might have been obliged to classify the TARP lenders separately from the non-TARP bondholders, thereby giving the dissenters control over their own class and, perhaps, the right to veto the UAW distribution as unfairly discriminatory. Against this unfair discrimination contention, plan proponents can argue further that the payment to the VEBA not as a distribution on account of an unsecured claim at all, but rather as prospective expense that assured the company a needed supply of UAW workers, with the union thus portrayed as a critical vendor of labor. However, even if one assumed that the automaker's value was greater as a going concern than in liquidation, one wonders whether so large a transfer to its labor force would have been necessary in this depressed economy. In any case, because the court characterized the transfer of assets from Chrysler to New Chrysler as a sale rather than as reorganization, it didn't need to reach the classification issue or the critical vendor issue. Consequently, this characterization improperly denied the dissenters the chance at the full protections of the Bankruptcy Code.

The foregoing assumes that the dissenting secured creditors had standing to object to the proposed, and ultimately approved, sale of Chrysler's assets. As noted above, proponents of the sale argued that the dissenters, as a minority of the secured creditors, lacked such standing. The proponents pointed to a provision of the secured bondholders' credit agreement that arguably granted an agent of the bondholders the right to sell their collateral on behalf of the group. According to this argument, because the bondholders'

[6] Many courts agree that a de facto reorganization plan is improper. See, e.g., In re Westpoint Stevens Inc., 333 B.R. 30 (S.D.N.Y.2005); Pension Benefit Guar. Corp. v. Braniff Airways, Inc., 700 F.2d 935 (5th Cir. 1983). There is significant disagreement, however, over what constitutes a de facto reorganization plan. De facto reorganizations are further discussed below.

[7] Section 1126 of the Bankruptcy Code provides that a class of claims accepts a plan if a majority of claim holders, holding at least two-thirds of claims by amount, accepts the plan.

agent was obliged to represent the bondholder majority that favored the sale, the agent properly consented to the transaction on behalf of all bondholders. Judge Gonzalez agreed and approved the sale, despite the lack of a true auction, in part because, in his opinion, given the agent's consent, there was no objection. The judge rejected the dissenters' claim, among others, that the influence of the TARP lenders among the bondholders tainted the agent's authority.

Whether Judge Gonzalez was correct to rule that the secured creditor dissenters should be deemed to have consented to the sale of their collateral is a matter of state contract law rather than bankruptcy law. But even if the judge correctly interpreted state law, Chrysler remains an unsettling bankruptcy precedent because approval of a sale of assets under §363 is not limited to a case where the affected parties consent. Some courts permit a sale free and clear of liens despite the objection of a secured creditor who will not be fully repaid by the proceeds.[8] Moreover, a §363 sale of a debtor's assets may occur over the objection of an unsecured class of claims, one that disputes the efficacy of a sale because the creditors believe they would, despite their lack of priority, receive a better distribution if the sale is disallowed. (Indeed, in Chrysler itself, there were unsecured creditors—tort claimants, e.g.—who objected to the sale on other grounds and may have had a valid argument, as a class, on this ground as well.) Thus, given the holding in Chrysler, if a sale of a firm's assets is to occur without a market test, there remains the opportunity for courts to approve a de facto reorganization plan that fails to protect creditor entitlements even over the objection of the disadvantaged creditors.

There are at least two negative consequences from the disregard of creditor rights. First, at the time of the deviation from contractual entitlement, there is an inequitable distribution of assets. Take the Chrysler case itself, where the approved transaction well-treated the retirement funds of the UAW. If such treatment deprived the secured creditors of their due, one might well wonder why the UAW funds should be favored over other retirement funds, those that invested in Chrysler secured bonds. Second, and at least as importantly, when the bankruptcy process deprives a creditor of its promised return, the prospect of a debtor's failure looms larger in the eyes of future lenders to future firms. As a result, given the holding in Chrysler, one might expect future firms to face a higher cost of capital, thus dampening economic development at a time when the country can least well afford impediments to growth.

General Motors

Chrysler was a blueprint for the General Motors bankruptcy, which, like that of Chrysler, included a sale of the debtor's valuable assets to an entity that assumed unsecured obligations owed its workers or former workers. In the case of GM, the purchaser, "New GM," owned largely by the United States Treasury, agreed to satisfy General Motors' approximately $20 billion pre-bankruptcy obligation to the VEBA with

[8] See In re PW, LLC, 391 B.R. 25 (9th Cir. BAP 2008), which describes the varying judicial approaches to this question.

a new $2.5 billion note as well as $6.5 billion of the new entity's preferred stock, 17.5% of its common stock, and a warrant to purchase up to an additional 2.5% of the equity; depending on the success of New GM, the VEBA claim could be paid in full. As in the Chrysler case, the sale procedures required that, absent special exemption, any competing bidder was to assume liabilities to the UAW as a condition of the purchase. Therefore, once again, there was no true market test for the sale.

The primary difference between the cases, other than much larger size of General Motors, is that in GM there were no objections to the sale by holders of senior-secured claims, which were held by the United States or Canadian governments or were to be assumed by the purchaser. Rather, in the case of General Motors, the United States and, to a lesser extent, Canadian governments were both the sponsors of the asset purchase that favored the UAW and the senior lenders from whose pockets any consequent diversion of value likely came. In particular, the United States Treasury, under TARP authority, lent GM about $50 billion in a combination of pre- and post-petition secured transactions; the governments assigned these obligations to New GM, which then credit bid for the assets. Some unsecured creditors objected to the transaction. But while the unsecured claims are substantial—including about $27 billion in unsecured bonds alone—the GM bankruptcy estate will receive between 10% and 12% of the shares of New GM plus warrants for additional shares. The value of these shares and warrants, plus that of other assets not tendered to New GM, may well exceed any plausible bid—net of the secured claims—that GM could have received from anyone else for the GM assets.

Still, just as in the case of Chrysler, the approval of a restricted bid process establishes a dangerous precedent, one that went unnoticed, or at least unnoted, by the court. In his opinion approving the GM sale, Judge Gerber addresses the objections of some unsecured creditors and makes the following observation:

> A 363 sale may ... be objectionable as a [disguised reorganization] plan if the sale itself seeks to allocate or dictate the distribution of sale proceeds among different classes of creditors. But none of those factors is present here. The MPA does not dictate the terms of a plan of reorganization, as it does not attempt to dictate or restructure the rights of the creditors of this estate. It merely brings in value. Creditors will thereafter share in that value pursuant to a chapter 11 plan subject to confirmation by the Court.[9]

In this passage, however, Judge Gerber ignores the sales procedure, which, like that in Chrysler, strictly limited the time for competing bids and restricted bidders to those willing to assume significant UAW liabilities. The process thus precluded a potentially higher bid by a prospective purchaser who was unwilling to make the same concessions to the UAW that the government-sponsored purchaser was willing to endure. Thus, there remained the theoretical possibility that the process impermissibly transferred asset value from the company's other creditors to the UAW. This is merely a theoretical

[9] In re General Motors, Corp. 2009 WL 1959233 (Bankr. S.D.N.Y.)

possibility. As noted above, it may well be that no creditor other than the government secured lenders suffered a loss of priority from the transaction. But the case stands as precedent that might cause later lenders to doubt whether future debtors will be forced in bankruptcy to live up to their obligations. And as also noted above, wary lenders are inhospitable to economic development.

Proposed Reform

The Chrysler and GM bankruptcy cases are problematic because they include a sale of virtually all of the debtors assets under §363 of the Bankruptcy Code without a market test for the value of those assets. In Chrysler and in GM, had the price paid for the assets been undeniably fair, dissenting creditors would have had no basis for complaint so long as they received a ratable share of the sale proceeds consistent with their levels of priority. In neither case, however, was the price undeniably fair. It is objectionable that in each case the process favored some creditors over others through the assumption of some claims and the consequent relegation of others to receive perhaps inadequate sales proceeds.

A response to this problem could be a ban on the use of §363 to sell all or substantially all of the assets of a debtor in bankruptcy. Without a sale as a tool for de facto reorganization, a court would be forced to follow the Bankruptcy Code's procedural provisions in an actual reorganization of a debtor and could not easily deprive creditors of the Code's protections. This response would be excessive, however. So long as a sale of a firm's assets is subject to a true market test, a sale may be the best and most efficient way to dispose of an insolvent debtor. Indeed, bankruptcy courts have increasingly, and usefully, conducted all-asset sales. The key is to ensure a *true* market test.

State courts have significant experience in deciding whether a proposed sale of a firm is likely to achieve the best price for investors. Under a line of cases that comprise what is referred to as the *Revlon* doctrine, the Delaware courts have imposed a standard that directors must meet when a corporation is up for sale. While this standard does not require any particular process in every case, the courts have suggested that there is a general obligation for the directors of the firm to hold an auction or conduct some other form of market test if there is a doubt about the true value of the firm.[10] Congress would do well to establish as a minimum procedural safeguard state law requirements for §363 sales of all or substantially all of a debtor's assets, at least where the debtor is large enough to justify the administrative expense of such a process.

In addition, as described above, the requirement that a bidder assume some of a debtor's liabilities dictates the distribution of sale proceeds, and cannot enhance the amount of those proceeds. Therefore, a condition of liability assumption is not a proper part of any sale, and should not be permitted, regardless of applicable state law.

[10] The recent Delaware Supreme Court case of Lyondell Chemical Co. v. Ryan, 970 A.2d 235 (Del. 2009) summarizes the current state of the *Revlon* doctrine (though the holding of *Lyondell* addresses only a narrow issue of director liability).

To accomplish these ends, Congress could add to the Bankruptcy Code a new subsection of *§363*, one that would provide:

> *The trustee may sell property under subsection (b) or (c) of this section only if—*
>
> *(1)(A) where the debtor is not a small business debtor, the sale of all or substantially all of the debtor's assets complies with the requirements that would be imposed on the debtor by applicable nonbankruptcy law if the debtor were a corporation that was not a debtor and if such corporation's equity interest were publicly traded and subject to a bid for control; and (B) the process for the sale of such property imposes no condition, whether or not subject to exception, that an offeror agree to assume or pay some but not all claims; or*
>
> *(2) no holder of a claim, except a claim that will receive on account of such claim cash equal to the allowed amount of such claim upon distribution of the property of the estate or as of the effective date of the debtor's confirmed plan, objects to the sale.*

This provision, if adopted, would not apply to a small business debtor,[11] which cannot be expected to absorb the expense of auctioning its assets, and would have no effect on a debtor that, while too large to qualify as a small business debtor under the Bankruptcy Code, is still small enough that applicable state law would not impose a market test. For large debtors such as Chrysler or GM, however, whether or not publicly traded,[12] the provision would grant any creditor with a claim that will not be paid in full a right to insist on the sort of process that state law would provide shareholders of a solvent firm. This would include, where appropriate, the right to insist on an openly contested auction with ample time for potential bidders to assess the assets on which they may bid. Reliance on applicable state law—a common feature elsewhere in the Bankruptcy Code—would provide a debtor with the flexibility to opt out of an auction or other market test if exigent and unusual circumstances would allow a firm to opt out outside of bankruptcy. Yet, the provision would advantageously prevent a debtor from concluding a sale pursuant to a process that state law would disallow even if a bankruptcy judge believed, perhaps mistakenly, that the sale would be in the interest of the bankruptcy estate. That is, for a large firm, the bankruptcy sale process could not be more permissive than that required by applicable state law. And under no circumstance could the sale of a debtor's assets be conditioned on a bidder's willingness to assume some but not all of the

[11] This term is defined by §101(51D) of the Bankruptcy Code.

[12] The proposed provision is designed to apply and to protect creditors in large, privately held firms just as it would apply to a publicly traded firm. The reference in the proposed provision to a "publicly traded" controlling interest is designed as a hypothetical test that would trigger the applicability of the provision; such tests are common in the Bankruptcy Code. A related provision might be desirable to define "publicly traded" for these purposes, though this term might be plain enough for courts to interpret in context.

debtor's liabilities, as this practice is illegitimate, and was the crux of the problem in the Chrysler and GM cases.

Chair WARREN. Thank you, Professor Adler.

Professor Lubben.

STATEMENT OF STEPHEN LUBBEN, DANIEL J. MOORE PROFESSOR OF LAW, SETON HALL UNIVERSITY SCHOOL OF LAW

Mr. LUBBEN. Thank you, Chair Warren, Congressman.

I am here, I guess, to present an alternate view on the bankruptcy law part of this.

The reality is, in the last decade or so, Chapter 11 has become a highly sale-driven process. The 363 sales are the whole game in Chapter 11, at least in big Chapter 11 cases. This is a result of secured lenders who have control over all the company's cash. If they have control over all the company's cash, they can dictate what happens to the company, and quite frequently in recent cases, they have dictated a quick sale so that the cases involve a sale followed by just basically distribution of the proceeds. Recent examples of this, outside the cases we are talking about today, include Vlasic Foods, TWA in its last Chapter 11 case, the First Polaroid bankruptcy, Bethlehem Steel. I have got a whole big, long exhibit attached to my written testimony about all the cases that involved 363 sales.

So given that context, I really do not think that the GM or Chrysler Chapter 11 cases were all that unusual. The basic structure of the case, in fact, seems to be quite ordinary.

Now, it is true, as Professor Adler has indicated, that there are limits on what you can do in a 363 sale. This is the so-called rule against sub rosa plans. This is, I guess, an example of us lawyers using Latin for clarity here. It does not seem to add a lot. Basically what we mean is a covert plan of reorganization. But in this case, we were selling the assets. The proceeds of the sale goes to the debtor and the debtor distributes those assets at some future time. I do not see how that is a sub rosa plan.

In addition, the press has generally speculated, and I think fairly accurately, about who is going to get what in these Chapter 11 cases. That is true. But it still does not make it a sub rosa plan. That is just an application of the absolute priority rule.

Now, it is true, as we have been talking about on all these panels today, the UAW is getting better treatment than other similarly situated unsecured creditors. Of course, a lot of that depends on how you define "similarly situated."

In addition, I think it is important to point out that that better treatment is not coming from the debtor, and that is where it would be a bankruptcy problem. The better treatment is coming from the Government through these purchasing entities. Now, we can debate whether or not it is a good idea for the Government to be bailing out the UAW, but it is not really a bankruptcy issue given the structure that we have got here.

There is also really little beyond rhetoric to support the idea that any of these cases impair investor rights. I mean, GM had $27 billion in secured debt, an estimated liquidation value of $9.7 billion. If you do the math, right there you can see that absent this structure, the bondholders in General Motors would have been entirely out of the money if there had been a liquidation in General Motors.

The same idea in Chrysler. I think it is entirely rational that the Chrysler secured lenders decided that taking a risk-free $2 billion was a better option. I mean, typically commentators often talk about liquidation as though it was a cost-free endeavor, but it would have cost millions, probably hundreds of millions of dollars to liquidate Chrysler.

Unless the secured lenders were real sure that they were going to get more than $2 billion plus the liquidation costs, if they had taken over this case, they had every reason to just sit back and let the Government hand them $2 billion in cash.

Quite frankly, by contract, these lenders had agreed to let Chase be their lead lender and their voice in these negotiations. My personal belief is that if Chase felt they were being strong-armed—it has been alleged that they were strong-armed, but Jamie Dimon is not somebody who is known to be quiet about his opinions—I think he would have let us know if Chase had been strong-armed in these negotiations.

That brings us, I think, to the last important point I want to make is that it is important to remember that the lenders in Chrysler agreed to majority rule by contracts. When they bought into the loan, they agreed that they were going to sort of sink or swim together. The terms of that loan agreement said "we decide whether to credit bid by a vote" and "we decide how we are going to proceed in a bankruptcy case by a vote." The contract does not allow individual lenders to go off on their own. So to the extent that we have individual lenders now complaining about that, you know, it is not really a TARP problem. It is not really a bankruptcy problem. It is not really even a Federal Government problem. It is a problem of the contract that they agreed to, and maybe they wish they had not agreed to it. But I think the bankruptcy court was absolutely right to enforce those terms.

And finally, on the issue of the bidding procedures, I think this is one area where Professor Adler and I are somewhat in agreement. I do think that the bidding procedures represent some degree of overreaching. That said, in a case like this where there is no alternate bidder—and quite frankly, there is plenty of case law to support the idea that an alternate bidder could come in and make a nonconforming bid. They do not need a bankruptcy professor like me to tell them about that case law. So they would have shown up if there was an alternate bidder. Bidding procedures only matter in a case where you have contested bids. If there is no contested bidder, bidding procedures are largely irrelevant. So essentially while I agree it was a bit of overreaching, it is probably harmless error in this particular case.

[The prepared statement of Mr. Lubben follows:]

Stephen J. Lubben
Daniel J. Moore Professor of Law
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Newark, NJ 07102

Testimony of Professor Lubben before TARP Congressional Oversight Panel Hearing to Examine Automotive Bankruptcy Cases

Detroit, Michigan -- July 27, 2009

Chair Warren and Distinguished Members of this Panel:

I am Stephen J. Lubben. I am the Daniel J. Moore Professor of Law at Seton Hall University School of Law in Newark, N.J. I have been at Seton Hall since entering academia in 2002. My research focuses on chapter 11, particularly issues concerning large corporate reorganization cases, and I teach bankruptcy and corporate finance classes at Seton Hall.

Before entering academia, I was an associate for several years with the law firm of Skadden, Arps, Slate, Meagher & Flom, where I specialized in corporate reorganization, and before that a law clerk to the Hon. John T. Broderick, Jr., who is presently the Chief Justice of the New Hampshire Supreme Court.

Because Chrysler and GM are among the largest chapter 11 cases ever filed, I have been following the cases rather closely, and I appreciate the opportunity to speak on these cases today.

The GM and Chrysler bankruptcy cases implicate TARP in two respects that come within my area of expertise. First, there is the claim that TARP money was used to violate the rights of creditors and otherwise undermine "typical" bankruptcy practice. Much of this argument turns on the use of a "363 sale" in both cases. Second, there is the question of the use of TARP money to fund these cases in place of a normal "DIP lender," that is the government acting as post-bankruptcy lender, and the consequent power that role gave to Treasury and the Automotive Task Force.

The "traditional" method of corporate reorganization is to file a chapter 11 case, to propose a plan and have creditors vote on the plan, and then have the plan confirmed by the bankruptcy court. This is the way most chapter 11 cases proceeded in the 1980s, although some cases lingered for so long while the parties tried to agree on a plan that the debtor's business died in the interim. The Eastern and Pan Am airline cases are good examples of the latter phenomenon.

But the Bankruptcy Code's section 363 allows the debtor to sell its assets before producing a plan. And in the past decade secured lenders have used this provision, plus the control inherent in being a secured lender, to take charge of the chapter 11 process.

These lenders, who typically have control over all of the debtor's operating cash and thus have almost complete control over the debtor's fate, are willing to fund a quick bankruptcy sale because section 363 provides a better mechanism for selling assets than state foreclosure law, particularly in those Circuits that hold that section 363(f) allows for the transfer of assets free from state successor liability doctrines.

Thus, current chapter 11 routinely involves a sale of the debtor's assets early in the case, with the remainder of the case devoted to allocating the proceeds of the sale among the creditors. This reality has been noted by leading bankruptcy academics.[1]

On Appendix A, attached hereto, I show that more than 90% of the large chapter 11 cases involving section 363 sales occurred from 1995 onward. Among the well-known debtors that have used 363 sales in their cases are TWA, Vlasic Foods, Polaroid and Bethlehem Steel.

Although section 363 itself contains no apparent limitations, the courts have developed rules that prevent imposition of a reorganization plan through the sale process. This is the so-called rule against "sub rosa" plans – that is, plans disguised as sales.[2] But the courts are also aware that an overly robust definition of what constitutes a "sub rosa" plan would destroy the utility of the Bankruptcy Code, which provides an important tool for mitigating the collateral effects of financial distress.

Thus, despite some overheated commentary to the contrary, the basic structure used to reorganize both GM and Chrysler was not unprecedented. Indeed, it was entirely ordinary.

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[1] *See, e.g.*, Douglas G. Baird & Robert K. Rasmussen, *The End of Bankruptcy*, 55 Stan. L. Rev. 751 (2002) ("Corporate reorganizations have all but disappeared. Giant corporations make headlines when they file for Chapter 11, but they are no longer using it to rescue a firm from imminent failure. Many use Chapter 11 merely to sell their assets and divide up the proceeds."); Stephen J. Lubben, The "New and Improved" Chapter 11, 93 Ky. L.J. 839, 841-42 (2005) ("[I]t is not clear that this development promotes social welfare. Rather, lender control may only benefit lenders."); Jay Lawrence Westbrook, *The Control of Wealth in Bankruptcy*, 82 Tex. L. Rev. 795 (2005).

[2] The phrase was first used in In re Braniff Airways, Inc., 700 F.2d 935 (5th Cir. 1983).

In both cases the "good" assets were sold to new entities. The consideration for that sale goes to the "old" debtor, and will be distributed according to the absolute priority rule.

The press has speculated -- generally accurately -- that all the consideration will go to the secured lenders in Chrysler. They have a $6.9 billion claim and the sale proceeds were $2 billion. The press has also speculated that the consideration in GM will go to the bondholders. That's only partially right; the GM pleadings make clear that the consideration will go to "old GM" to distribute to creditors. Since the secured lenders will have been paid off by this point, the sale proceeds will go to unsecured creditors (of which the bondholders are one part).

None of this constitutes a sub rosa plan.

In both GM and Chrysler the UAW is getting better treatment than other unsecured creditors. But that better treatment is not coming from the debtor. It is coming from the U.S. government, passing through the purchaser of the "good" assets in each case. We can debate whether it is wise for the government to bail out the UAW, but it still does not make it a sub rosa plan and really does not implicate the bankruptcy process at all.

There is also little beyond rhetoric to support the idea that either case impairs investor rights. GM had $27 billion in secured debt and an estimated liquidation value of at most $9.7 billion. That is, if GM had liquidated, the bondholders would have been entitled to absolutely nothing.

The chapter 11 strategy used in GM pays non-governmental secured creditors in full and gives unsecured creditors 10% of the reorganized company and warrants for 15% more of the company. This is substantially more than any other offer available to the bondholders.

Likewise, it was entirely rational for the bulk of Chrysler's secured lenders to believe that $2 billion in cash, on their $6.9 billion claim, was, by far, the highest possible recovery they could obtain. Indeed, a nearly 30% recovery is clearly better than these lenders could have done if they had liquidated the debtor's assets. And liquidation was the lenders' only real alternative.

While commentators often imply that liquidation is a costless endeavor, liquidating a company the size of Chrysler would have cost millions of dollars. Liquidation would thus only make sense if the lenders could be sure to recover more than $2 billion plus the costs of liquidation. Given the distressed state of the automotive industry, and the attendant effects this reality had for the value of Chrysler's assets, the lenders no doubt saw the wisdom of a risk-free $2 billion.

Essentially I see the dissenting investors in both cases as arguing that the buyers (and thus the U.S. and Canadian governments) should have overpaid for the debtors' assets. In neither case were the objecting creditors able to produce any credible evidence that the debtors' were worth more than was being paid, and in fact the evidence presented suggested that strategy promoted by the Automotive Task Force was all that stood between these investors and a substantially lower recovery.

It has been alleged that Chrysler's senior lenders only agreed to accept their treatment because they were recipients of TARP funds. And it has more generally been asserted that Treasury and Task Force members were overly aggressive in demanding changes from the debtors and concessions from creditors. Importantly, many of these allegations have not been supported by proof and instead seem to represent little more than conspiracy theories.

In a 2004 law review article describing the modern approach to chapter 11 cases, Douglas Baird, a leading bankruptcy professor at the University of Chicago, described current chapter 11 practice as consisting of four stages:

1. As the firm encounters financial distress . . . The senior lenders assess the condition of the business. In many instances, new managers are needed to put the business's affairs in order . . .

2. When the business enters chapter 11, a senior lender becomes the post-petition lender . . . Events of defaults include failure to meet specified financial targets, failure to sell the assets by a specified date, and sometimes even the filing of any motion in the bankruptcy court without its blessing.

3. The sale of the business is the benchmark by which all other options are assessed.

4. Once the restructuring is complete, the senior lenders or the new buyers replace the old board.[3]

In this context, Treasury and the Task Force's actions seem like those of a normal secured lender, exercising its rights to maximize recovery on its loans. And given the amount of money involved, I think the taxpayers have every reason to expect that the Treasury would negotiate just as hard as any other "DIP lender" under similar circumstances.

Moreover, it has to be remembered that all of the key players in these cases are highly sophisticated. GM's board – represented by Cravath, Swaine & Moore – is hardly a group to be easily cowed by some hard bargaining. And Chrysler's senior lenders had agreed by contract to have JPMorgan Chase, the lead lender, negotiate on their behalf. I find it hard to believe that Jamie Dimon would not have let it be known if he felt Chase had been pressured into supporting the Chrysler sale.

[3] Douglas R. Baird, *The New Face of Chapter 11*, 12 Am. Bankr. Inst. L. Rev. 69, 80-82 (2004).

The dissenting Chrysler lenders' complaint that they do not like the decisions made by the majority of the senior lenders ignores the simple fact that they agreed by contract to be bound by "majority rule." This is not a problem created by TARP, the Bankruptcy Code, or the federal government, but by the agreement to which the lenders themselves voluntarily agreed to be bound. In essence, they seem to be attacking the bankruptcy process out of frustration with their poor investment decision.

The handling of these cases was not always perfect - for example, the requirement in the bidding procedures that any bidder assume the UAW agreements smacks of overreaching. But in the context of these cases, it was probably a harmless error. I doubt there was another bidder willing to pay more than $2 billion for Chrysler's assets. And the senior lenders - who could have "credit bid" their claim - showed no interest in taking on these assets.

Bidding procedures sometimes have practical effects, but only in situations where a credible bidder emerges with a truly comparable offer. And in those cases the bidder has incentives to challenge the bidding procedures, and the court can modify the bidding procedures to maximize return to creditors.

In short, by and large, I think that the criticism of the automotive bankruptcy cases does not stand up to careful scrutiny. Congress may well want to consider the policy implication of a chapter 11 process that has become heavily driven by quick asset sales and lender control. But given the reality of current chapter 11 practices, both GM and Chrysler's chapter 11 cases were not all that exceptional.

I appreciate the opportunity to appear before the Committee today to share my views and look forward to any questions.

Appendix A: Chapter 11 §363 Sales

Year filed	*Corporation Name*
1981	McLouth Steel Corp.
1984	Air Florida System Inc.
1986	Frontier Holdings Inc.
1990	Daisy Systems Corp.
1991	Days Inns of America Inc.
1991	Telesphere Communications Inc.
1992	McCrory Corp.
1995	Caldor Corporation
1995	Plaid Clothing Group Inc.
1996	Best Products Company, Inc. (1996)
1996	Ernst Home Center, Inc.
1996	FoxMeyer Health Corp.
1997	Mid-American Waste Systems, Inc.
1997	Molten Metal Technology, Inc.
1999	Costilla Energy, Inc.
1999	Graham-Field Health Products, Inc.
1999	Hechinger Company
1999	Iridium LLC
1999	Renaissance Cosmetics, Inc.
1999	Thorn Apple Valley, Inc.
2000	Bradlees Inc. (2000)
2000	Cambridge Industries, Inc. of DE
2000	Drypers Corp.
2000	Einstein Noah Bagel Corp
2000	Flooring America, Inc.
2000	Grand Union Company (2000)
2000	GST Telecommunications, Inc.
2000	New American Healthcare Corp.
2000	Orbcomm Global, LP
2000	Stone & Webster, Inc.
2000	System Software Associates, Inc.
2001	ABC-NACO, Inc.
2001	ACT Manufacturing, Inc.
2001	ANC Rental Corp
2001	Bethlehem Steel Corp
2001	Carbide Graphite Group Inc.
2001	Casual Male Corp.
2001	Derby Cycle Corp
2001	DTI Holdings, Inc. / Digital Teleport
2001	e.spire Communications, Inc.
2001	NorthPoint Communications Group, Inc.
2001	Payless Cashways, Inc. (2001)
2001	Phar-Mor, Inc. (2001)
2001	Polaroid Corp
2001	Republic Technologies International Holdings, LLC
2001	RSL Communications, Ltd.

2001	Trans World Airlines, Inc. (2001)
2001	U.S.A. Floral Products, Inc.
2001	Vlasic Foods International, Inc.
2001	Winstar Communications, Inc.
2002	Adelphia Communications Corp.
2002	Asia Global Crossing, Ltd.
2002	Budget Group Inc.
2002	Clarent Corp.
2002	Coho Energy, Inc. (2002)
2002	Geneva Steel Holdings Corp. (2002)
2002	Genuity Inc.
2002	Globalstar LP
2002	International Fibercom, Inc.
2002	IT Group, Inc.
2002	Kellstrom Industries, Inc.
2002	National Steel Corp.
2002	Network Plus Corp.
2002	U.S. Aggregates, Inc.
2002	Velocita Corp.
2003	Allegiance Telecom Inc.
2003	AT&T Latin America Corp.
2003	Cone Mills Corp
2003	divine, inc.
2003	Impath Inc.
2003	Pillowtex Corp. (2003)
2003	Read-Rite Corp.
2003	Republic Engineered Products Holdings, LLC
2003	Rouge Industries, Inc.
2003	Venture Holdings Co LLC
2003	Weirton Steel Corp.
2003	Wherehouse Entertainment, Inc. (2003)
2006	Radnor Holdings Corporation
2006	Werner Holding Co. (PA), Inc.
2007	Tweeter Home Entertainment Group, Inc.

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Chair WARREN. Thank you, Professor Lubben.

I have a series of questions I want to ask about the bankruptcy part of this, but actually feel compelled to ask since Mr. Silvers cannot be with us here. You have spoken about the UAW. It is my understanding that the party-in-interest here is the VEBA and not the UAW. I just want to be sure and make sure I have not misunderstood since it is a distinction he often draws that is quite important to the parties involved.

Mr. ADLER. The VEBA was established at the behest of the UAW to benefit their retired workers.

Chair WARREN. Because of their obligations to their retired workers. I just want to be clear. What we are really talking about here on the other side are the retiree health plans and pension benefits. Is that right?

Mr. ADLER. Yes. I think I was the one that used the UAW. I was speaking generally of the UAW's interest, but it is the VEBA——

Chair WARREN. But it is the VEBA's legal interest on behalf of the retirees. I just wanted to be clear on that.

So if I can, I will start with you, Professor Adler. I share your concern about the substitution of a 363 sale for the protections of an 1129 confirmation. The question that interests me here, why not go to an 1129(a)? Are there any facts that suggest that there was something that the parties were worried about with an 1129? Had they gone to ordinary plan conformation proceedings?

Mr. ADLER. I do not know the answer to that because the Government-orchestrated plan was for a sale from the beginning, as I understand it, and the judge approved the sale. There will be a Chapter 11 process with respect to the proceeds of the sale in each case, and that may have an 1129 component. And it may be a conversion to a Chapter 7—which is a liquidation—I don't know. So yes, I do not know why there was no Chapter 11 process prior to the sale.

Chair WARREN. Well, then perhaps I should have asked it the other way. If both of us are going to be critical about the substitution of 363 for 1129, what advantages were there in using a 363 approach as opposed to an 1129?

Mr. ADLER. Well, as Professor Lubben points out, there has been a large number of cases in which the companies' assets are put into their new use very quickly through a sale. And I do not object to that process personally. So the answer, I am sure, the Government would give and that the debtor itself in each case would give is that we needed to quickly get these assets under their new management. And that is an advantage and would be an advantage, which is why I focused my criticism on the nature of the sale, on the restrictions, which Professor Lubben calls harmless, but if they are harmless, why were they there?

Chair WARREN. I see. But the point you are really making is this is how we could do this process much faster than otherwise would have been possible. So the notion was to get some real speed in this process.

I also take it—I just want to be sure, since you have mentioned this—this is not unique to the auto industry.

Mr. ADLER. Not at all. The trend since the late '90s—in fact, I worked with authors who have done studies on this in particular, empirical studies—has been to sell firms as a going concern or in liquidation rather than keep the assets in place during reorganization, which in the past could have taken literally years. But again, my criticism is not with the sale. It is with the restrictions on the sale.

Again, speaking of Chrysler in particular, I do not know what the economics of it were, but it certainly seems plausible that the Government, which was determined to have this company reorganized, was concerned that a bidder was going to come along and bid for the assets in liquidation and not want to take on the liabilities to the VEBA because their plan was not to continue to make autos under the old structure, rather to use the plants in some other capacity or the Jeep brand in some other capacity, and the Government——

Chair WARREN. Do you have any Government comments? I am just wondering. Is there any evidence to support that speculation?

Mr. ADLER. As I say, it is just a speculation. The question is why did the debtor put the restrictions in place. It seems an odd thing to do, to restrict your bidders. Generally people selling something want the process to be open as possible. Give me as much cash as you possibly can. I do not care what you do with the assets once you buy them. Clearly, someone cared what was going to be done with the assets once they were purchased, and that is the problem.

Chair WARREN. Would you like me to go on with Professor Lubben on this line? Professor Lubben.

Mr. LUBBEN. Yes. I think Professor Adler and I are in agreement on the 363 point as it applies broadly. My point is just one that GM and Chrysler were not particularly unique in the use of 363 to execute a quick sale. It has become fairly common and it has been for at least 10 years. So I am just trying to dispel the notion that somehow what was done in GM or Chrysler was some sort of perversion of the bankruptcy process. Congress may well want to look at, as you say, sort of the way in which Chapter 11 has become overtaken by 363 generally.

I think the answer is the speed, though. That is why people like to use 363. That is why secured lenders like to use 363, that you can get the good assets out of bankruptcy and on their way without having to wait for the negotiation of a plan and the voting on a plan and so forth. Basically it is a move to avoid what happened to companies like Eastern Airlines and Pan Am back in the 1980s.

Chair WARREN. Thank you very much.

Congressman Hensarling.

Mr. HENSARLING. Professor Adler, I think I heard you say in your testimony—I want you to elaborate a little bit more—maybe I am paraphrasing here—that the Government bought the companies and gave them to the UAW, a fairly provocative——

Mr. ADLER. I said that was a plausible characterization.

Mr. HENSARLING. A plausible characterization. Well, could you elaborate on that please?

Mr. ADLER. Yes. Mr. Bloom testified earlier that there was an arm's-length transaction between the purchaser of the companies and the UAW in which the purchaser agreed to take on significant liabilities to the VEBA and to assume the collective bargaining agreements of the UAW, admittedly a collective bargaining agreement that included sacrifices by the UAW itself. And here I mean the UAW, Chair Warren. That is also a plausible characterization, which is why I was careful to say that the alternative is only a plausible characterization.

My concern over that particular characterization, that is, Mr. Bloom's characterization or his statement that this was an arm's-length transaction between the UAW and the purchaser of assets, is a skepticism I have on my part. Again, this is not based on an expertise. My expertise is on the bankruptcy process. But it is a skepticism on my part that a new car company walking into this area where the economy is in disrepair, where there are many unemployed workers, including many unemployed autoworkers throughout the industry, would have had to pay that much to get new employees to work in its company. So if it is true that the billions of dollars of funding of the VEBA were necessary to the continued employment of workers necessary to build cars, then I think it would be correct to say that there was no transfer between the Government and the UAW or the VEBA.

If, however, my skepticism is well founded and a new automaker would not have had to make these enormous payments in order to get employees to build their cars, then what you have is a transfer to the VEBAs. That is to the United Auto Workers. And it is in this sense that I say what happened is the Government bought the companies because they provided the funding to buy the companies and then did not take, arguably, the full value of the companies that they just bought. What they, instead, did is made a transfer to the VEBAs, which was a benefit to the retired workers. And again, maybe that was appropriate. I do not know.

Mr. HENSARLING. But in your experience and expertise, how common is it then for the debtor to put such conditions on bids? In other words, I want my highest price but only if you essentially take care of the UAW's VEBA in such a fashion. How common is this phenomenon?

Mr. ADLER. Uncommon, as far as I know, although I have not studied it. And that is the next point I was going to make. The other thing that supports the characterization of a transfer to the UAW were the restrictions themselves. It seemed as if the Government was very interested in benefitting the United Auto Workers through the VEBAs and requiring any bidder to make sure that whoever purchased the assets pays from those assets these claims of the VEBA. I do not think it is very common. As I said, I have not studied this empirically. As an academic, I hesitate to say it is uncommon, but I am willing to bet that it is.

Mr. HENSARLING. Mr. Mourdock, let me ask you a question representing the State of Indiana. Did I understand that it is more specifically the State's pension fund for State employees that is truly the impacted legal entity in the Chrysler case? Is this correct?

Mr. MOURDOCK. Yes, sir. There are three separate funds. There is the Indiana Teachers Retirement Fund. There is the Indiana State Police Pension Fund, and then the last one is not a pension fund per se, but it is an infrastructure fund, our Major Moves Construction Fund.

Mr. HENSARLING. I am sorry. The latter was?

Mr. MOURDOCK. It is an infrastructure fund, Major Moves Construction Fund.

I have to say each time I hear "to the benefit of the retirees," I always want to scream, whose retirees?

Mr. HENSARLING. I suppose that is my question then. I suppose nobody sees any winners in such an economic calamity as we have seen with these two American icon companies going through Chapter 11. But relatively speaking, I suppose there are relative winners and losers. So I assume it is your position that the teachers of Indiana have lost. The policemen and policewomen of Indiana have lost, and relative to them, the UAW VEBA has won. Is that a fair assessment of your position?

Mr. MOURDOCK. That is absolutely fair.

Mr. HENSARLING. I see I am out of time for this line of questioning.

Chair WARREN. So if I can just make sure I am following the narrower point that you want to make here, Professor Adler. That is, for the post-petition financer to make sure that assets go, let us just say, to labor or to suppliers who are going to be supplying benefits to the company going forward, that is both not unusual and not unlawful under the bankruptcy laws. Is that right?

Mr. ADLER. Yes, that is right. However, for it to make sense for a post-petition financer to make sure that certain payments are made—I am sorry. Let me start that again. For it to make sense for a post-petition financer to make sure that payments are made, it has to be that those payments are justified by the need of the purchaser to continue the operation of the company. So it may be——

Chair WARREN. I am sorry. What part of bankruptcy law are you referring to now?

Mr. ADLER. The assumption of—well, this is going to be complicated.

Chair WARREN. Post-petition financing. Is it not?

Mr. ADLER. Yes. I am sorry. What I thought you were referring to was the case in which a post-petition financer wants to see that certain executory contracts are assumed. If you are not referring to that, I am misunderstanding.

Chair WARREN. I am simply asking the question if post-petition dollars are being used and everyone, all of the creditors have received whatever would have been their allocation of division of assets of the estate—but now we are talking about the distribution of post-petition assets from a post-petition financer. If those go, as they often do I think—this is the point. Labor and suppliers are the two typical places where they may, although they had a role as creditors and they may be paid 100 cents on the dollar, as creditors of the pre-petition entity so long as they are being paid with post-petition financing dollars, I take it, first, that is entirely consistent with bankruptcy law.

Mr. ADLER. Yes, that is right, which is again why I point to the restriction on the sale as the key problem.

Chair WARREN. That is right, as your concern.

Mr. ADLER. My concern, yes.

Chair WARREN. And also that it is not uncommon, I think you were saying from your own studies.

Mr. ADLER. No. What is not uncommon from my own studies is the sale of the assets.

Chair WARREN. The sale itself is not uncommon. I suppose it was Professor Lubben who was talking about that it is not uncommon to use post-petition financing dollars in this way.

Mr. LUBBEN. Yes. I mean, I will concede that it is somewhat unusual to see the union as the one who is the beneficiary, but I suspect that that is more—tells us who is usually providing the post-petition financing. I mean, it is quite typical for banks to specify exactly how their post-petition financing will be used post-bankruptcy like, for example, "thou shall not use this financing to challenge pre-petition liens," for example. So these kind of conditions are quite typical.

It is somewhat unusual to have a post-petition lender who wants to benefit a union, but again, I think that is because the Chases and the Citibanks of the world are not really often looking out for the unions.

I think the other point I would make too is that while we were kind of obsessed—and I think everybody is a little obsessed with the unions in these cases. One point you kind of glanced by here was the trade creditors, for example. The trade creditors got a much higher recovery than the unions did in these cases. I mean, they got paid in full, and the unions actually had concessions.

Chair WARREN. So let me be just I am following here. So the people who made out best in this bankruptcy, at least as compared with where they might have been in a liquidation, were actually the trade creditors.

Mr. LUBBEN. Right because they got paid under a critical vendor order, at least the trade creditors who were needed for the new entities going forward. If you were unfortunate enough to be a trade creditor exclusively for, say, Pontiac, I guess you would not feel as though you got out of this process too well.

Chair WARREN. And in your experience, the payment, for example, of critical vendors or trade creditors through the use of post-petition financing—does that happen with some frequency?

Mr. LUBBEN. Well, again, I hesitate to make an empirical study out of my own experience and practice, but I would say that in 100 percent of the cases I did while I was in practice, which was in the late '90s when this process started, I always had a critical trade vendor order.

Mr. ADLER. That is right, and it is controversial. The Seventh Circuit issued an opinion in the KMart case suggesting that it should not happen, and I do not mean to be singling out the union here. I think all of this is inappropriate.

Chair WARREN. Well, let us stop. Is the Seventh Circuit opinion not talking about paying critical vendors out of estate funds rather than out of post-petition financing funds?

Mr. ADLER. Yes, but then I go back to the sale restriction. That is, what is happening here is where the conversation is going astray is that I keep converting the case as if it is a reorganization and using the estate's funds because the sale was flawed in my view. But you are quite right. If we treat the sale as legitimate, what the purchaser does with the assets is entirely up to the purchaser, and there is no problem there at all.

Chair WARREN. Thank you, Professor Adler.

Congressman.

Mr. HENSARLING. Mr. Mourdock, had the Obama administration's Automotive Task Force chosen to treat the retired teachers and retired policemen and policewomen of Indiana equally to the retired autoworkers of the UAW, have you done a calculation on what that would mean to the bottom line of these retired teachers and policemen in your State?

Mr. MOURDOCK. No, sir, I have not because we have never heard such an offer put before us to see us treated in any way different than any of the other secured creditors who were going to be thrown 29 cents.

Mr. HENSARLING. So at this point in the process, what do you consider your remedies to be?

Mr. MOURDOCK. Well, because the Supreme Court, in issuing a petition, basically ruled and let the sale go forward, we understand we have 90 days. That was in early June. We understand we have 90 days to go back to the Court and ask for clarifications, and we are certainly considering doing that. As a fiduciary who believes very strongly those three points of law that I mentioned to you do deserve review by the high Court, I will not let any stone remain unturned to see that we cannot see this process work, that we might not get remuneration for our retirees.

Mr. HENSARLING. Well, I am certainly enjoying and learning much from the discussion among our three law professors, including the distinguished chair here.

Not being an academic, I do want to try to go back to a point that has probably been covered, but I need to make sure I understand it. Is it not unusual to pay post-petition dollars for past pension obligations? I understand it may not be unusual going forward, but is it not unusual in your experience, Professor Lubben and Professor Adler, to have such post-petition dollars go for previous pension obligations?

Mr. ADLER. Sadly, it is not unprecedented. I do not know whether it is common. As I mentioned earlier, though I can't be sure. I'm willing to speculate that it is not ordinary course for bidding procedures to require that bidders assume particular liabilities as a condition of bidding. But as Professor Lubben points out, it happens from time to time at least in which post-petition financers insist that their pre-petition claims get paid out of order.

The way this is justified, if it is justified at all, is that the terms of the new loan are so attractive that it is beneficial to the estate, including the other creditors, to pay the post-petition lenders' old claims in full. This is controversial and inappropriate. It clouds the issue. But to say that it is unusual would be an overstatement. It is inappropriate in my view.

Mr. HENSARLING. Professor Lubben, do you have comments?

Mr. LUBBEN. Yes. I think on the specific issue too of labor, I think while as a formal matter of the absolute priority rule, they are not supposed to get paid, the reality is that if you want to keep operating the business going forward, you cannot have people picketing in front of the business and disrupting the operations. So it is quite frequent that you see pre-petition claims getting paid post-petition to buy peace essentially going forward. And I assume that is what happened in this case.

Mr. ADLER. But again, if the best use of these assets were in liquidation, this would not have been a concern to a purchaser. So this is, again, why I keep focusing on Chrysler in particular and the restrictions in Chrysler and the fact that you had a secured creditor that would have benefitted if the liquidation value of the company exceeded $2 billion. Then the fact that the UAW would have been unhappy and might have picketed would have, arguably, been irrelevant because the purchaser would not have wanted to continue operations anyway. That is the problem with the restrictions on the sale.

Mr. LUBBEN. I do not want to make this a debating society here, but my thought is if liquidation was the better option here, again, we would have seen Chase as lead lender wanting to credit bid in this situation and take control of the assets and liquidate them. I think we can assume because they did not take control of the assets and liquidate them, that the costs of liquidating them would have ended up with them getting a recovery substantially less than $2 billion.

Mr. ADLER. And that is possible, but the procedure should not have been perverted to guarantee that result.

Mr. HENSARLING. This is probably for my personal edification more than anything else since I think I took one bankruptcy law course and it was many, many years ago. But I vaguely remember 363 had to do with rotting vegetables on a cart, and now I think what I am hearing is there have been incredible developments with the use of 363.

As I view TARP, TARP is written in a sense or is certainly practiced today by the administration—I am not sure if there is any firm in America that cannot receive TARP funds. If there is, I am not aware of it.

What are the limits on 363 these days? What cannot be done?

Mr. LUBBEN. Well, I think your notion of 363 sales might be one that predates 1978 because that is the rule under the old Bankruptcy Act, is you had to have something that was perishable.

Mr. HENSARLING. You are showing my age, Professor.

Mr. LUBBEN. Yes. Since 1978, 363 really has not had any perishability requirements. So other than court-adopted rules like the rule on sub rosa plans, 363 by its terms does not really have any limitations about when and what you can sell. So there is some court gloss on there, but there really are not any limits and secured lenders have figured that out and they are using it quite aggressively in part because 363(f), which allows a sale free and clear of liens and so forth, is much more powerful than real estate foreclosure law. So it is a much easier way to sell assets.

Mr. HENSARLING. Thank you. I see I am out of time.

Chair WARREN. Mr. Mourdock, I understand that at the time you purchased your bonds, you paid 43 cents on the dollar for them.

Mr. MOURDOCK. That is correct.

Chair WARREN. Which I assume was the current market price?

Mr. MOURDOCK. Precisely.

Chair WARREN. Why was the current market price 43 cents on the dollar for a bond? Why was it not closer to 100 cents on the dollar for GM bonds?

Mr. MOURDOCK. No. This was Chrysler.

Chair WARREN. Chrysler bonds.

Mr. MOURDOCK. Yes. We did not have any General Motors.

Well, as you certainly know—and somewhat of a rhetorical question I think—the reason the price was 43 cents was because that is where the market put the price based on all that had been happening in the American automotive industry with Chrysler specifically. At the time, gasoline was about $4 a gallon, and they were certainly seeing the results of that in their sales and forecasts.

I have been asked many times as an elected official, why in the world would you buy those bonds even at 43 cents? And there are two answers. Number one, it was discounted as a secured piece of credit, "secured" being a word that at least at that time had meaning. And secondly—and this is not an unimportant fact—we have as a policy, as most States do, we want to help businesses that have a large footprint in our State. There are over 6,000 employees who worked for Chrysler Corporation in Indiana. We hoped to be a part of the party of their success. We never imagined in doing so that we would end up on this side.

Let me also add, just as a footnote, and this is certainly in my written testimony. But I harbor no ill will whatsoever towards Chrysler Corporation or the UAW. What we are concerned about and what I think the Congress as the oversight committee should be concerned about are all the processes that are being upset here. And what we bring forward in our lawsuit Chrysler could not have done if they wanted to. It has been solely the actions of the United States Government that have put us in this position.

Chair WARREN. So actually, let me press on your point there. You said the reason that you bought these bonds was because you knew they were secured but they were priced at 43 cents on the dollar, which tells you something about the value of the security. Does it not? What does it tell you?

Mr. MOURDOCK. It certainly does. It tells us that the security was seen through a little bit of a squinty eye of the market. However——

Chair WARREN. I am sorry. What does that mean? What does it tell you about the value of the security relative to the bond?

Mr. MOURDOCK. There was a higher level of risk there.

Chair WARREN. Not just higher level of risk. What does it tell you about the value of the collateral, at least as the market perceived it?

Mr. MOURDOCK. Well, it goes with my comment that I just said about the risk. I mean, people are discounting it because they see some level of uncertainty out there as far as the future performance of the company.

Chair WARREN. I am trying to ask two different questions here. There is a risk that the company may fail. I understand that, and that is a risk that unsecured creditors take generally. And then there is a risk about the value of the collateral, that is, that the collateral will not cover the amount of the outstanding liability. So when the bonds are trading at 43 cents on the dollar, I presume it is not only because there is a risk that the company may fail, indeed may liquidate at some point, but that the value of the collateral is substantially less than the face value of the bond.

Mr. MOURDOCK. Understood.

Chair WARREN. So you knew when you purchased these that you were purchasing them—I just want to be clear—in part as a secured creditor, but in larger part as a general unsecured creditor.

Mr. MOURDOCK. When that debt was purchased—and we do this through a private firm, but the firm did the analysis based on the collateral, based on the performance, all that was out there, and they basically looked at it as a very conservative investment based solely on where Jeep was within the total portfolio of Chrysler.

Chair WARREN. But a price of 43 cents on the dollar tells you that the market at least strongly perceived and you purchased believing you were purchasing a partially secured and largely unsecured obligation of Chrysler.

Mr. MOURDOCK. With the historical understanding it was still secured as a secured creditor.

Chair WARREN. Well, secured to the extent perhaps of 43 cents on the dollar. Plus whatever its future upside earning was has to be included in that 43 cents. So secured at something less than, considerably less than that. Is that right?

So the difficulty here is not that you were not paid 100 cents on the dollar. It is simply the disagreement over the valuation of the collateral?

Mr. MOURDOCK. Correct.

Chair WARREN. So your objection is that—I just want to make sure I understand—the valuation produced by Capstone—is that right—was inaccurate?

Mr. MOURDOCK. Capstone was the consultant, I believe, for Chrysler.

Chair WARREN. Is that right?

Mr. MOURDOCK. I believe that is correct, yes.

Chair WARREN. So you think that the valuation is wrong.

Mr. MOURDOCK. Yes, I do.

And I think there have been a number of things that have come forward even since then that raise more questions. For instance, during the bankruptcy testimony in New York, it was said the value of the Dodge Viper line might be maybe $5 million when, in fact, Chrysler had received an offer just 2 months before for $35 million. I mean, there are those types of valuations that we think were not given due merit in what the total valuation of this company was.

You know, it has come up several times too. Again, I am not a lawyer and I make no apology here. But I do understand the value of time. While it has been said throughout the hearing today what is—you know, it was pushed, it was pushed, it was pushed. What was the issue that was pushing the timing? And it was a date of June 15th. It was said repeatedly that if this deal was not done, Fiat was going to walk away from the deal.

Well, throughout that period, I kept raising the question, Fiat is not putting a penny of investment in here. They are being given hundreds of millions of dollars of assets on day 1. What difference does it make, if somebody is going to give me $100 million, if I do not get it on Monday, I will come back on Tuesday or Thursday. The day the sale took place, Mr. Marchionne, in fact, made the comment we do not know where the date came from.

Chair WARREN. So if I am understanding this, you are saying you would have made a different business judgment at that point in time. But as a creditor, that was not your legal right. Is that right?

Mr. MOURDOCK. Well, that is not a decision as a creditor that I could set as far as what the date was going to be for the sale. But I am saying, in line with some of the other testimony here, that if the process had been opened up for other bidders, there might have been other bidders to get us a better valuation, but there was no time for other bidders because the Government so pushed this process forward to meet an artificial deadline.

Chair WARREN. Thank you, Mr. Mourdock.

Congressman Hensarling.

Mr. HENSARLING. Mr. Mourdock, I assume somewhere in the investment decision-making process of the State of Indiana probably would have been the assumption that the pension fund would be treated at least equally to other secured creditors and be treated preferentially to unsecured creditors. Would that have been part of the decision-making process to buy these bonds at 43 cents on the dollar?

Mr. MOURDOCK. Certainly.

Mr. HENSARLING. I think you also said, Mr. Mourdock, that "all processes are being upset here." So I will just kind of frankly lob a softball out to the panel as we end this round of questioning, and that is, from your vantage point, as you look at the entirety of the processes and decisions that have brought us here—and clearly, a lot of new ground is being broken certainly from a policymaking perspective and maybe a bankruptcy perspective, maybe not—what do you see as the long-term either positive or negative policy consequences for what certainly has been a fairly unprecedented excursion by the Federal Government into these two private companies? We will just go left to right. We will start with you, Professor Adler.

Mr. ADLER. Thank you, Congressman.

In a nutshell, whether the Government dictated the sale or not, it influenced a process through which the sale proceeds of the assets of a bankrupt company were going to go to a favored creditor. That may have been legitimate. It may have been illegitimate. The process, though, was not legitimate, in my view. That is, the direction of the proceeds to those creditors may have been appropriate in the end, consistent with what would have occurred had the process been fair. But we do not know. Instead, what we have is a potential diversion of value in a process that was flawed.

And as a result, the parties that might have been injured by this, the creditors in this case, or some of them, complained. Other went along with the sale, I know, and perhaps those creditors were speaking in their best interests, but others dissented. Whether the dissenters had standing is in dispute, as I believe Mr. Lubben pointed out, but for my purposes here that's beside the point. Creditors who dissented, or others who worry about being in their position in the future, may be hesitant to lend in the future on terms that are favorable to future debtors. And as a result, when you do not have an open sale process, but instead allow the Government or the court to approve a sale in which only certain bidders are permitted and in which the sale proceeds are going to be siphoned off in a particular direction, you run the risk that the confidence in credit will be diminished and as a result, the cost of capital to future debtors will be increased.

Mr. HENSARLING. Thank you.

Professor Lubben.

Mr. LUBBEN. I guess I would start with the idea that there has been a diversion of value presupposes, I guess, that there was extra value there to be diverted and that the full value had not been paid in this process. Given the lack of evidence on valuation, other than what was presented in the bankruptcy court, it looks like the Government, if anything, paid more than adequate value for these assets. So I do not think we can assume that there has been a diversion of value here to anybody in particular.

Again, I will agree that there has been kind of a Government bailout of the unions, and we can debate whether or not that is a good thing or a bad thing. But it is really not relevant to the bankruptcy issues.

As to what do we take away from all these cases, I ultimately think that these cases will be recognized for what they are, as two very large bankruptcy cases that happened at a point in time where private DIP financing was not available, the Government stepped up and provided it. In that sense, they are kind of unique and I do not think they will really set a big precedent for anything going forward.

One good thing that could come out of this, though, is I think to the extent that the larger public and Congress is being made aware of what is going on in Chapter 11 generally, that is a good thing because those of us in the bankruptcy community have been talking about it now for 5 or 6 years. But we could all fit in an elevator together and have that conversation, and I do not think the conversation has gotten out of the elevator. So now it has and that could be a good thing ultimately.

Mr. HENSARLING. Mr. Mourdock, you get the last word.

Mr. MOURDOCK. Well, I would agree with you on that point, Mr. Lubben. I think it is good to have this discussion.

I had, as you phrased the question, thought of three quick things.

Number one is with TARP specifically—and you said this a few moments ago—it looks like anybody can get money from TARP, though that was clearly not Congress' intent in passing it. Certainly it seems the door is wide open, and I think that is rather frightening.

Secondly—and this was mentioned a moment ago—the credit markets are still feeling the effect of this. I could not agree more with the Obama administration when they recently said we need to see unprecedented new investment in American manufacturing. I totally agree. But this type of change in the historical understanding of creditors' rights is going to cause billions of dollars to flow overseas where they are not changing the rules. We are already seeing that. We have changed the rules of investing in our office because of the new risk.

And last but not least—and again, I said at the outset I have great reverence for this process—will we continue to have a true system of check and balances? The Congress voted to have an auto bailout bill, and it failed. It did not matter the executive acted. The leadership of Congress, obviously, agreed with the administration in their actions. So totally the actions of Congress were deemed irrelevant. The auto bailout bill failed. If the Congress had passed an automobile bailout bill, I doubt that I would be sitting here because then, clearly, most of our argument goes away and I think the process would have been handled differently.

But as a congressional oversight committee, I guess the last word I would leave with you is you are being made irrelevant and you ought not let that happen.

Mr. HENSARLING. Thank you.

Chair WARREN. Thank you.

With that, this panel is excused. Thank you very much for coming. We appreciate it.

This hearing will be adjourned. We will hold the record open for 30 days. If there are any additional questions from the panelists, they will be submitted in writing and we will ask you to give your responses in writing as well.

Again, we appreciate the hospitality of Wayne State University. We appreciate the participation of two of Michigan's finest Congressional representatives here. We appreciate your dedication and your willingness to come and share your thoughts and your time with us.

With that, this meeting is adjourned.

[Whereupon, at 1:06 p.m., the hearing was adjourned.]

[The responses of the witnesses to questions for the record from the Congressional Oversight Panel follow:]

Responses of Ron Bloom, Senior Advisor, U.S. Department of the Treasury, to Questions for the Record from Panelist Representative Jeb Hensarling

1. Will the Administration provide the Panel with the written criteria the Administration uses to determine which entities or types of entities are allowed to receive assistance through TARP?

Each program has guidelines that specify eligibility criteria. These criteria are posted on the financial stability website, www.financialstability.gov.

For example, in determining whether an institution is eligible for funding under the Automotive Industry Financing Program, Treasury has identified the following factors for consideration, among other things:

1. The importance of the institution to production by, or financing of, the American automotive industry;
2. Whether a major disruption of the institution's operations would likely have a materially adverse effect on employment and thereby product negative effects on overall economic performance;
3. Whether the institution is sufficiently important to the nation's financial and economic system that a major disruption of its operations would, with a high probability, cause major disruptions to credit markets and significantly increase uncertainty or losses of confidence, thereby materially weakening overall economic performance; and
4. The extent and probability of the institution's ability to access alternative sources of capital and liquidity, whether from the private sector or other sources of U.S. government funds.

2. How much additional funding and credit support does the Administration expect to ask the American taxpayers to provide each of Chrysler and GM (i) by the end of this year and (ii) during each following year until all investments have been repaid in full in cash and all credit support has been terminated? What will be the source of these funds?

The Administration does not plan to provide any additional funds to GM and Chrysler beyond those that have already been committed. GM and Chrysler may draw additional amounts under the loan agreements relating to the supplier support program. This amount is expected to be up to $500 million in total.

3. Will the Administration agree to provide the American taxpayers with timely reports describing in sufficient detail the full extent of their investments in Chrysler and GM?

The Treasury provides details of all investments within two business days pursuant to the transaction reports under section 105 of EESA. These reports are posted and available for review by the public at *http://www.financialstability.gov/latest/reportsanddocs.html*. These transaction reports identify the funds provided to GM and Chrysler.

4. Will the Administration provide the Panel with a formal written legal opinion justifying the use of TARP funds (i) to support Old Chrysler and Old GM prior to their bankruptcies, (ii) in the Chrysler and GM bankruptcies, including the Section 363 sales, (iii) regarding the transfer of equity interests in New Chrysler and New

GM to the UAW/VEBAs, and (iv) regarding the delivery of promissory notes and other credit support by New Chrysler and New GM for the benefit of the UAW/VEBAs?

The Treasury described the authority to use TARP funds to finance the old Chrysler and GM in bankruptcy court filings made on its behalf by the Department of Justice, specifically in the Statement of the United States of America Upon The Commencement of General Motors Corporation's Chapter 11 Case filed June 10, 2009, a copy of which has been provided to the Congressional Oversight Panel. In Judge Gerber's final sale order in the GM bankruptcy case dated July 5, 2009, also provided to the Congressional Oversight Panel, he wrote:

> The U.S. Treasury and Export Development Canada ("EDC"), on behalf of the Governments of Canada and Ontario, have extended credit to, and acquired a security interest in, the assets of the Debtors as set forth in the DIP Facility and as authorized by the interim and final orders approving the DIP Facility (Docket Nos. 292 and 2529, respectively). Before entering into the DIP Facility and the Loan and Security Agreement, dated as of December 31, 2008 (the "Existing UST Loan Agreement"), the Secretary of the Treasury, in consultation with the Chairman of the Board of Governors of the Federal Reserve System and as communicated to the appropriate committees of Congress, found that the extension of credit to the Debtors is "necessary to promote financial market stability," and is a valid use of funds pursuant to the statutory authority granted to the Secretary of the Treasury under the Emergency Economic Stabilization Act of 2008, 12 U.S.C. §§5201 et seq. ("EESA"). The U.S. Treasury's extension of credit to, and resulting security interest in, the Debtors, as set forth in the DIP Facility and the Existing UST Loan Agreement and as authorized in the interim and final orders approving the DIP Facility, is a valid use of funds pursuant to EESA.

The rationale and determination of the ability to use TARP funds applies equally to the financing provided to the new Chrysler. There was no new financing provided to New GM. Instead, cash flowed from old GM to new GM as part of the asset sale, and new GM assumed a portion of the loan that Treasury had made to old GM.

The interests received by other stakeholders of Chrysler and GM including the UAW/VEBAs were a result of negotiations between all stakeholders as described in detail by myself and Harry Wilson in our depositions in the bankruptcy cases, transcripts of which have been provided to the Congressional Oversight Panel.

5. When does the Administration anticipate that Chrysler and GM will return to profitability? What are the Administration's projections for Chrysler and GM over the next five years? When does the Administration anticipate that Chrysler and GM will go public?

The Administration reviewed Chrysler's and GM's business plans, which were developed by the companies. As part of this review process, the Administration's financial advisors performed sensitivity analyses by varying the assumptions underlying the business plans. These scenarios helped the Administration with its decision making process.

The Administration has not projected dates by which the companies will return to profitability, which is dependent on the overall market conditions and economic recovery.

GM, which will probably go public before Chrysler, is expected to go public over the next twelve months, but the final decision will be made in both cases by the companies' boards of directors and will be dependent, among other things, on the state of the public securities markets.

6. What is the Administration's exit strategy regarding Chrysler and GM?

The Administration plans to be a responsible steward of taxpayer money, and will periodically evaluate both public and private options to exit these investments. For GM the most likely exit strategy is a gradual sell off of shares following a public offering. For Chrysler, the exit strategy may involve either a private sale or a gradual sell off of shares following a public offering.

7. When does the Administration anticipate that Chrysler and GM will repay in full in cash all TARP funds advanced by the America taxpayers?

The Administration evaluated various scenarios and believes that, under certain assumptions, GM may be able to pay off a high percentage of the total funds advanced by the taxpayers. Less optimistic, and in Treasury's view more likely scenarios involve a reasonable probability of repayment of substantially all of the government funding for new GM and new Chrysler, and much lower recoveries for the initial loans. Such analyses are obviously sensitive to the overall market and the economy.

8. Will the Administration agree to treat the American taxpayers as bona fide investors in Chrysler ad GM and provide them with at least the same disclosure they would receive under the securities laws if Chrysler and GM were public companies and each American taxpayer a common shareholder?

Chrysler and GM plan to file financial reports with the Securities and Exchange Commission in the future in accordance with the requirements for other public companies. Prior to that time, they will be providing regular public reports on their financial performance.

9. By making such an unprecedented investment in Chrysler and GM the United States government by definition chose not to assist other Americans that are in need. Given economic suffering that the american taxpayers have endured during the last several months please tell us why Chrysler and GM merited such generosity to the exclusion of other American taxpayers?

In other words, why would the Untied States government choose to reward two companies that have been mismanaged for many years, as evidenced by a protracted deterioration in the financials of both companies, at the expense of hard working American taxpayers?

What information does the Administration possess that proves Chrysler and GM are both sound investments for the taxpayer?

Outright failure of GM and Chrysler would likely have led to uncontrolled liquidations in the automotive industry, with widespread devastating effects. Importantly, the repercussions of such liquidations could have included immediate and long-term damage to the U.S. manufacturing/industrial base, a significant increase in unemployment with direct harm to those both directly and indirectly related to the auto sector (e.g., dealerships being shuttered, plant closings, supplier failures, service centers closing, etc.), and further damaged our financial system, as automobile financing accounts for a material portion of our overall financial activity.

Under the direction of the President, the Administration sought to avoid such disruptions to the financial system and the economy as a whole by providing the minimum capital necessary to these companies to facilitate their restructurings. Prior to advancing new funds, the Administration has relied on commercial principles in determining the viability of these businesses and in structuring the terms of its investments.

The President's March 30th, April 30th, and June 1st speeches detail the rationale for further investments in the companies.

10. TARP funds were used by New Chrysler and New GM to purchase assets of the old auto makers, yet a substantial portion of the equity in the new entities was transferred to the UAW/VEBAs. As such, TARP funds were transferred to the UAW/VEBAs. In addition, New Chrysler and New GM entered into promissory notes and other contractual arrangements for the benefit of the UAW/VEBAs.

Why did the United States government spend billions of dollars of taxpayer money to give preference to employees and retirees of the UAW to the detriment of other non-UAW employees and retirees who pension funds invested in Chrysler and GM indebtedness?

Why didn't New Chrysler and New GM transfer some of their equity interests to, or enter into promissory notes and other contractual arrangements for the benefit of, the non-UAW/VEBA creditors of Old Chrysler and Old GM?

The President directed the auto team to take a commercial approach to the restructuring process of these companies. As a result, the Administration dealt with the various creditors to GM/Chrysler as a commercial actor would. The final division of debt, preferred, and equity securities between the various creditors was the result of arm's length negotiations.

The UAW/VEBA had many billions of dollars of claims and labor agreements governing the companies' active workforces. As part of this process the Union agreed to major modifications in their labor agreement. Under the new contracts, the VEBA received a stake in the reorganized companies without any immediate payment. The cooperation and support of the UAW is essential to the ability of the reorganized companies to succeed.

11. Given the judicial holdings in the Chrysler and GM bankruptcies, one might expect future firms to face a higher cost of capital, thus impeding economic development at a time when the country can least afford impediments to growth. Did the Administration consider these consequences when it orchestrated a plan that deprived certain creditors of the benefit of their bargains?

How does the Administration defend the concern that, based on the Chrysler and GM precedents, the contractual rights of investors may be ignored when dealing with the United States government?

The rights of all stakeholders were dealt with in accordance with the normal requirements and procedures of the Bankruptcy Code and the Bankruptcy Rules.

The Chrysler senior lenders got $2 billion out of the proceeds of the Treasury loan to the new Chrysler, which was deemed to be in excess of the value of the collateral securing their loans. In the case of GM, the unsecured creditors received 10% of the stock of the new GM together with warrants for up to an additional 15% of stock.

The findings by the judges in both the Chrysler and the GM cases attest to the fact that the administration and outcomes of these cases were well within acceptable practice. Further, as noted in my July 27 testimony before the Congressional Oversight Panel, the creditors of Chrysler and GM received more than they would have received had the Government not stepped in. Treasury does not expect that the judicial holdings in these cases will increase capital costs or impede economic development.

Separately, had the Administration not acted, it would have led to a spiraling liquidation of GM and Chrysler leading to massive job losses and long-term damage to the U.S. manufacturing base.

12. Please provide a list to the Panel of all auto task force officials as well as any additional Administration officials involved in the restructuring negotiations of Chrysler and GM. Which officials communicated with the senior, secured bondholders? Mr. Bloom mentioned those officials involved in the negotiations had gone through "extensive questioning." Can you again affirm that no one on the list you provide encouraged in any manner a TARP creditor to support the bankruptcy of either Chrysler or GM? Did any of these TARP recipients acquiesce with the knowledge that losses from their Chrysler or GM holdings may be directly or indirectly replenished with TARP funds? How would the American taxpayers know whether or not Treasury channeled TARP funds through these institutions as a backdoor way of financing the auto industry and, indirectly, UAW/VEBA claims?

The Auto Task Force is co-chaired by National Economic Council Director Larry Summers and Secretary of the Treasury Tim Geithner and is composed of agency heads, including: Secretary of Transportation Ray LaHood, Secretary of Commerce Gary Locke, Secretary of Labor Hilda Solis, Secretary of Energy Stephen Chu, Chair of the President's Council of Economic Advisers Christina Romer, Director of the Office of Management and Budget Peter Orzsag, Environmental Protection Agency Administrator Lisa Jackson, and Director of the White House Office of Energy and Climate Change Carol Browner. However, only the auto team within the Treasury Department was involved in negotiations relating to the Chrysler and GM bankruptcies.

Following is the List of Treasury auto team members that were principally involved in communicating with senior secured creditors:

- Steve Rattner
- Ron Bloom
- Harry Wilson
- Matt Feldman

Specifically, the government required the companies to demonstrate that they could generate positive cash flow and be viable and profitable over the long term. It was up to the companies and their management to develop business plans that would achieve those results and to negotiate the concessions necessary to implement those business plans. While auto team members participated in some of those discussions, they did so as potential lenders and investors.

At no time in any meetings involving stakeholders were there discussions related to TARP funding for such stakeholders. As described in my testimony to the Congressional Oversight Panel, no one on this list had any role in dictating what stance other TARP recipients should take in dealing with GM and Chrysler.

13. How frequently does communication occur between any member of the Administration and the directors and executives of Chrysler or GM? What is the nature of such communication?

The members of the Treasury auto team communicate with a limited group of directors and executives at GM and Chrysler as necessary to administer the government's investments and protect the taxpayers' interests. The approach is consistent with what a commercial lender and investor would do in order to monitor their investments. It should be noted that the Administration has made an overall core decision not to engage in the management of these businesses, and any communication with the companies is consistent with this principle.

14. What is the Administration's vetting process for new directors of Chrysler and GM?

The Treasury auto team used a commercial process to vet directors as would be expected of any well-managed corporation. In the end, the auto team is comfortable that it has brought together world-class boards that are focused on being responsible stewards of taxpayer dollars and creating shareholder value.

15. Will Chrysler and GM receive favorable government contracts or other direct or indirect subsidies the award of which is not based upon objective and transparent criteria?

Chrysler and GM will not receive any special treatment when competing for government contracts or any direct or indirect subsidies as a result of the government's investments in these companies. They will have to win contracts based on their commercial strengths like any other auto manufacturer. As a principle, the Administration does not plan to manage these businesses or get involved in day to day management.

16. Will Chrysler and GM promptly disclose all contractual arrangements with (i) the United States government and (ii) recipients of TARP funds, together with a detailed description of the contract, its purpose, the transparent and open competitive bidding process undertaken and the arm's length and market directed nature of the contract?

Chrysler and GM will be subject to the same reporting requirements with respect to contractual arrangements as are any other similarly situated business entity. The companies are also subject to audit, including by SIGTARP and GAO.

17. Will Chrysler or GM be able to obtain private or public credit or enter into other contractual arrangements at favorable rates be-

cause of the implicit governmental guarantee of such indebtedness and contracts?

As indicated earlier, Chrysler and GM will have to win contracts and business solely based on the commercial strength of their offers. There is no actual or implicit government guarantee for their debt or contractual obligations.

18. How will the United States government resolve any conflict of interest issues arising from its role as a creditor or equity holder in Chrysler and GM and as a supervising authority for Chrysler and GM?

The Administration has already separated its role as investor/lender from that of regulator. The Administration has completely different teams working in these capacities, and decisionmaking in these areas is very purposefully separated. For matters related to the financial interests of taxpayers, the team overseeing the investments and loans will continue to act like any commercial actor in terms of protecting taxpayer capital. For regulatory matters, those functions will continue as if the GM and Chrysler interventions had not taken place.

19. Will the IRS, SEC and other governmental agencies be able to discharge their regulatory and enforcement responsibilities with respect to Chrysler and GM without political influence?

The companies will be subject to the same regulatory and enforcement requirements as are any other similarly situated business entity.

20. Thomas E. Lauria, the Global Practice Head of the Financial Restructuring and Insolvency Group at White & Case LLP, represented a group of senior secured creditors, including the Perella Weinberg Xerion Fund ("Perella Weinberg"), during the Chrysler bankruptcy proceedings.

On May 3, the New York Times reported: "In an interview with a Detroit radio host, Frank Beckmann, Mr. Lauria said that Perella Weinberg was directly threatened by the White House and in essence compelled to withdraw its opposition to the deal under threat that the full force of the White House press corps would destroy its reputation if it continued to fight." In a follow-up interview with ABC News' Jake Tapper, he identified Mr. [Steven] Rattner, the head of the auto task force, as having told a Perella Weinberg official that the White House would embarrass the firm. At the hearing Mr. Bloom stated that Mr. Rattner denied Mr. Lauria's allegations. Has any member of the Administration spoken with Mr. Lauria or representatives of Perella Weinberg regarding this matter? If so, what did they say? If not, why not? Do you plan to ask SIGTARP to subpoena Mr. Rattner, Mr. Lauria and representatives of Perella Weinberg and ask them to respond under oath? If not, why not?

As I testified during the July 27 Field Hearing of the Congressional Oversight Panel, I have spoken to Mr. Rattner about this matter, and he categorically denies Mr. Lauria's allegations. I have no knowledge of any other contact with Mr. Lauria or with people at Perella Weinberg regarding the issues mentioned above. SIGTARP will determine the appropriate use of its subpoena power or executive bodies to questions presented by the panel.

21. Regarding the reorganization of the auto parts manufacturer, Delphi, on July 17 the New York Times reported: "Delphi's new pro-

posal [reached with its lender group] is similar to its agreement with Platinum [Equity, a private equity firm], which was announced June 1, the day GM filed for bankruptcy. But hundreds of objectors, including the company's debtor-in-possession lenders, derided that proposal as a 'sweetheart deal' that gave the private equity firm control of Delphi for $250 million and a $250 million credit line." On June 24 the New York Times reported that "Delphi worked with GM and the Obama Administration to negotiate with Platinum. . . ." Why would the Administration participate in the negotiation of a "sweetheart deal" for the benefit of Platinum Equity?

The Delphi transactions were negotiated between GM and Delphi. GM determined a failure of Delphi would have led to high losses at GM. The auto team was involved in discussions to the extent necessary to avoid potential destruction of equity value of GM, which would have led to large losses to the Treasury investment and for the U.S. taxpayer.

22. Did the Administration in any manner pressure or encourage Chrysler to accept a deal with Fiat?

The Administration made the determination that Chrysler's business plan submitted on February 17th was not viable and that, in order for Chrysler to receive taxpayer funds, it needed to find a partner with whom it could establish a successful alliance. Chrysler identified Fiat as a potential partner after conducting a lengthy search process that began before Treasury made its initial loan to Chrysler and in which Treasury had no involvement. Fiat was the only potential partner to offer to enter into such an alliance, and ultimately the Chrysler Board made the determination that forming an alliance with Fiat was the best course of action for its stakeholders.

23. Did the Administration in any manner thwart or discourage any merger or business combination or arrangement between Chrysler and GM?

The Administration allowed GM and Chrysler to work toward a commercial solution they thought made sense for their businesses. Each company made its own determination to pursue a future independent of the other.

24. Did the Administration in any manner communicate or consult with any director or executive of Chrysler or GM regarding their testimony before the Panel or their response to the questions presented by the Panel?

Auto team staff have had discussions with Chrysler and GM management about a wide variety of issues, including requests for information from oversight bodies, but have never sought to influence responses of Chrysler or GM directors or executive bodies to questions presented by the panel.

Responses of Jan Bertsch, Senior Vice President, Treasurer and Chief Information Officer, Chrysler Group LLC to Questions for the Record from Panelist Representative Jeb Hensarling

1. By making the unprecedented investment in Chrysler and GM, the United States government by definition chose not to assist other

Americans that are in need. Given the economic suffering that the American taxpayers have endured during the last several months, please tell us why your company merited such generosity to the exclusion of other taxpayers?

In other words, why would the United States government choose to reward two companies that have been mismanaged for many years, as evidenced by a protracted deteriorating in the financials of both companies, at the expense of hard working taxpayers?

What information do you possess that proves your company is a sound investment for the American taxpayer?

Please refer to (1) the materials submitted to the U.S. Congress by Chrysler LLC on December 2, 2008, (2) the Restructuring Plan for Long-Term Viability submitted by chrysler LLC to the U.S. Treasury on February 17, 2009, and (3) the testimony and supporting materials from Chrysler LLC and its advisors that are part of the public record in the bankruptcy proceedings of Chrysler LLC pending in the U.S. Bankruptcy Court for the Southern District of New York. These public materials provide comprehensive information detailing the sudden and drastic effects of the global credit crisis on the U.S. auto industry, the potential disastrous effects on the U.S. economy of a liquidating bankruptcy of Chrysler, and the potential for the new Chrysler to preserve tens of thousands of jobs and generate billions of dollars of federal, state and local tax revenues in the U.S.

2. When do you anticipate that your company will return to profitability?

What are your projections for your company over the next five years?

When do you anticipate that your company will go public?

As part of the 363 sales process, Chrysler LLC submitted a business plan (the “363 plan”). Currently, Chrysler Group LLC is elaborating its 5-year business plan, the results of which are expected to represent an improvement on the 363 plan outcome.

Decisions with respect to an initial public offering are within the province of the Members (equity holders).

3. What is the Administration’s exit strategy regarding the investment of TARP funds in your company?

The $7 billion secured loan to Chrysler Group LLC from the U.S. Treasury requires repayment of all amounts borrowed by June 2017. Decisions with respect to an initial public offering are within the province of the Members (equity holders).

Funds advanced under the Warranty Support Program were repaid in July 2009, and funds advanced under the Supplier Support Program in May 2009 are scheduled to be repaid in 2010.

4. When do you anticipate that your company will repay in full in cash all TARP funds advanced by the American taxpayers?

The $7 billion secured loan to Chrysler Group LLC from the U.S. Treasury requires repayment of all amounts borrowed by June 2017. Decisions with respect to an initial public offering are within the province of the Members (equity holders).

Funds advanced under the Warranty Support Program were repaid in July 2009, and funds advanced under the Supplier Support Program in May 2009 are scheduled to be repaid in 2010.

5. How frequently does communication occur between any member of the Administration and the directors and executives from your company? What is the nature of such communication?

There is no established schedule for communications. Since June 10, 2009, interactions with the U.S. Treasury have occurred a few times a week and have related to, among other things, the formation and composition of the Board, financial reporting requirements, efforts to finalize a long-term business plan and an executive compensation program, and the Warranty Commitment Program and Supplier Receivables Program sponsored by the U.S. Treasury.

6. Is the Administration in any manner providing input regarding corporate policy and/or the day-to-day management of your company? If so, what input is being provided and under what authority? Does your company seek the approval of the Administration regarding any matter?

The U.S. Treasury has no role in the company's day-to-day management or policy making, except that (1) the U.S. Treasury included a requirement in its First Lien Credit Agreement with the company that requires the company to maintain an expense policy prohibiting or limiting certain expenditures, and (2) the company's executive compensation program is required to be approved by the U.S. Treasury's Special Master for Executive Compensation, Mr. Kenneth Feinberg.

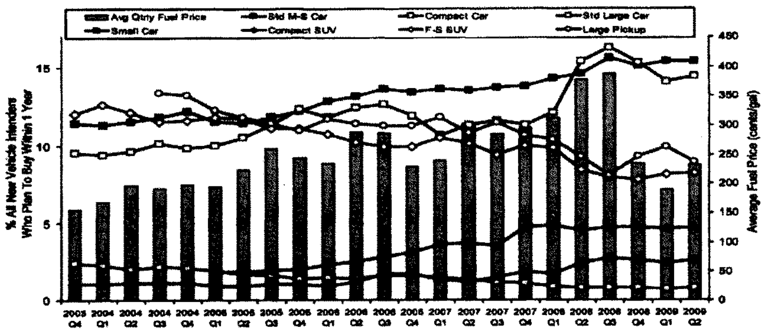
7. What objective market analysis has your company undertaken indicating that American consumers prefer small cars to larger cars and SUV's?

- Analysis of industry trends indicate that over the past five small and compact vehicles have captured a larger portion of the U.S. light vehicle industry (2004 14%; 2008 22%). Industry forecasts predict a continuation of this growth over the next five years.
- Based on our propriety web-based survey about powertrains, Americans feel that fuel prices will be, on average, $2.89 per gallon in one year and $4.50 in five years. This supports the expectation that more fuel efficient vehicles will grow in demand as we have seen with recent fuel price spikes. With technology, consumers will also have a choice of getting large vehicles that are more fuel efficient but with the likely price premium of the technology, small car demand will rise.
- Since 2004, there has been a gradual increase in purchase intentions for smaller vehicles and a gradual decrease for larger vehicles. The gas price spike in 2008 magnified (and possibly accelerated) this trend.

Segment Intentions Trends vs. Gasoline Prices

Segments % Industry

Purchase intentions for smaller vehicles (in green), have increased over time – especially after the gasoline price spike in Q2 & Q3 2008. When gasoline prices dropped significantly in Q4 2008, purchase intentions declined only slightly for smaller vehicles.



Segment Intentions Source: GfK AFI® AIP & Shopping Studies

Fuel Prices Source: U.S. Government Energy Information Administration

• Based on our dedicated, proprietary i-community that monitors consumer perceptions of automotive propulsion and small cars, 41% of consumers would likely consider a small car in the future. Fifty percent indicated they were unlikely to consider a small car.

What objective market analysis has your company undertaken indicating that American consumers will prefer vehicles produced by your company to those produced by other companies within and outside this country?

• Chrysler does not currently offer A/B segment vehicles, however, we are successful in the segments in which we offer vehicles:

Chrysler Share of Segment (Chrysler Segmentation)

- Full Size Luxury 17.8% (Chrysler 300/C)
- Compact SUV 43.5% (Wrangler, Compass, Patriot)
- MPV 40.1% (Town & Country, Grand Caravan)
- Large Pick-Up 17.8% (Ram)

• Research shows that for small car buyers the top five primary reasons for purchase are the following (2008 New Vehicle Experience Study, Strategic Vision Inc.):

Fuel Economy 42.7%
Value for the Money 17.6%
Price/Monthly Payment 6.0%
Fun to Drive 4.2%
Reliability 3.7%

Having access to Fiat's technology will enable Chrysler to compete in the small vehicle segments with these needs.

• Fiat's success in highly competitive small car segments in markets such as Europe and Brazil helped establish Fiat as a highly competitive global manufacturer. The small car technology that Fiat will transfer to Chrysler will lead to similar success in the growing U.S. small car segment.

• In addition, Fiat will make available to Chrysler Group its C platform technology, which will be the basis for the renewal of the Chrysler product offerings in both the C and D market segments. These actions by Fiat will provide Chrysler with technologically updated and more competitive products in the most important segments in the U.S. market.

8. Did the Administration in any manner pressure or encourage Chrysler to accept a deal with Fiat?

Chrysler pursued an alliance with Fiat because it viewed Fiat's products and distribution network as complementary to Chrysler's and capable of strengthening Chrysler for the long-term. The U.S. Treasury indicated that it would provide financing in support of an alliance with Fiat—first in the context of an out-of-court restructuring that required significant concessions by key constituencies, and later in the context of a sale transaction under Section 363 of the U.S. Bankruptcy Code.

9. Did the Administration in any manner thwart or discourage any merger or business combination or arrangement between Chrysler and GM?

GM advised Chrysler it would discontinue merger discussions due to the need to address its own pressing liquidity issues.

10. Will your company receive favorable government contracts or other direct or indirect subsidies the award of which is not based on objective and transparent criteria?

No.

11. Will your company agree to promptly disclose all contractual arrangement with (i) the United States government and (ii) recipients of TARP funds, together with a detailed description of the contract, its purpose, the transparent and open competitive bidding process undertaken and the arm's length and market directed nature of the contract?

The Company would be willing to disclosure such arrangements as long as such disclosure would not violate confidentiality agreements or risk competitive harm.

12. Do you anticipate that your company will be able to obtain private or public credit or enter into other contractual arrangement at favorable rates because of the implicit government guarantee of such indebtedness and contracts?

No. And we question the validity of your premise regarding an implicit guarantee.

13. Did any director or executive of your company in any manner communicate or consult with any member of the Administration regarding any testimony before the Panel or any response to the questions presented by the Panel? If so, please describe the communication or consultation.

No, except for an ongoing dialog with the U.S. Treasury in the ordinary course of business to validate debt/cash amounts outstanding.

Responses of Walter Borst, Treasurer, General Motors Company, to Question for the Record from Panelist Representative Jeb Hensarling

1. By making the unprecedented investment in Chrysler and GM the United States government by definition chose not to assist other Americans that are in need. Given the economic suffering that the American taxpayers have endured during the last several months please tell us why your company merited such generosity to the exclusion of other taxpayers?

In other words, why would the United States government choose to reward two companies that have been mismanaged for many years, as evidenced by a protracted deterioration in the financials of both companies, at the expense of hard working American taxpayers?

What information do you possess that proves your company is a sound investment for the American taxpayer?

The government's provision of debtor-in-possession financing when none was available in the private market, along with its other support for General Motors, enabled the company to go through bankruptcy without liquidation. As Mr. McAlinden testified, the government's actions probably avoided millions of job losses and billions of dollars of lost income and lost tax revenue. These millions of taxpayers, along with the state and local governments which their taxes support, benefited substantially from the government's involvement. Beyond this, the soundness of the government's investment will only be proved out over time.

2. When do you anticipate that your company will return to profitability?

Only July 10, GM's CEO announced that our Viability Plan projections comtemplate breakeven Adjusted Earnings Before Interest and Tax (EBIT) by 2010 and positive Adjusted Operating Cash Flow by 2011.

What are your projections from your company over the next five years?

Business plan projections from GM were included in the Stephen Worth Declaration filed in Bankruptcy court on June 4, 2009, in support of the proposed 363 sale. These projections contemplate adjusted Earnings Before Tax (EBT) of ($1.3)B, $3.0B, $5.3B, $6.9B and $7.8B for CY 2010—2014 and at the time were based on current assumptions including total U.S. industry sales projections of 12.15M units, 14.3M units, 16.0M units, 16.4M units and 16.8M units for CY 2010—CY2014.

When do you anticipate that your company will go public?

The timing of an initial public offering will be heavily influened by conditions in the equity markets and continued recovery in the auto industry, but we'd like to see the company in a position to launch a public offering as soon as sometime next year if the market conditions are suitable. Ultimately, General Motor's Board of Directors will determine when an IPO would be in the best interest of the Company and its stockholders.

3. What is the Administration's exit strategy regarding the investment of TARP funds in your company?

We do not have any information to add to the testimony of Mr. Bloom at the hearing.

4. When do you anticipate that your company will repay in full in cash all TARP funds advanced by the American taxpayers?

The American taxpayer will be repaid as GM repays the United States Department of the Treasury loan and as the United States Department of the Treasury monetizes its equity in GM post our IPO. While we are required to repay the United States Department of the Treasury loan by 2015, our goal is to repay this loan much sooner. We expect the company will be taken public as soon as practical sometime next year. Ultimately, General Motors' Board of Directors will determine when an IPO would be in the best interest of the Company and its stockholders.

5. How frequently does communication occur between any member of the Administration and the directors and executives from your company?

Communciations between the Administration and General Motors Company has been reduced significantly since July 10, 2009. The number of members on the President's Automotive Task Force has been reduced significantly.

What is the nature of such communication?

The contact has focused on questions related to regular financial reporting requirements under the UST loan as well as the amendment of the UST loan document to further clarify certain reps and warranties related to GM and its covered group members.

6. Is the Administration in any manner providing input regarding corporate policy and/or the day-to-day management of your company?

There are some areas regarding corporate policy in which we communicate with Administration such as executive compensation.

The Administration does not provide input regaring day-to-day management of our company.

If so, what input is being provided and under what authority?

Generally, input has been provided by the United States Department of Treasury and we expect input from the TARP Special Compensation Master.

Does your company seek the approval of the Administration regarding any matter?

Yes, under the terms of the United States Department of the Treasury loan we must seek approval on items such as withdrawals from the escrow account as well as TARP Special Compensation Master approval of compensation plans and payments for our senior executive officers and the next 20 highest compensated employees.

7. What objective market analysis has your company undertaken indicating that American consumers prefer small cars to larger cars and SUVs?

GM continuously assesses the automotive market and consumer behavior from three viewpoints: historical lessons, current realities and future projections. History provides insight re: consumer behavior relative to actual market conditions—the end result of economic factors such as overall economic health, gas prices, regulatory impacts; new product entries; societal trends, etc. Current realities provide insight to real-time behaviors—for example, the dramatic shift to compact sized vehicles during the gas price spike of 2008 when consumers expected fuel prices to continue to climb to the $5/gal level. Future projections assess the expected impact of the economic and regulatory outlook, demographic and societal trends and expected supply side influences. This “scanning” process leverages consumer surveys, primary research and product clinics, internal models and external academic and industry experts from various fields.

What objective market analysis has your company undertaken indicating that American consumers will prefer vehicles produced by your company to those produced by other companies within and outside this country?

As part of both the vehicle and marketing development processes, GM leverages extensive consumer and expert opinion research. The research may include full scale models of future entries in a competitive showroom environment with a representative sample of current new vehicle owners, “garage visits” (ethnography) in competitive owners’ homes or focus groups in a neutral setting. All research is constructed to eliminate bias and GM’s sponsorship of the research is masked.

8. Did the Administration in any manner pressure or encourage Chrysler to accept a deal with Fiat?

We have no information regarding this matter.

9. Did the Administration in any manner thwart or discourage any merger or business combination or arrangement between Chrysler and GM?

No, the Obama Administration did not thwart or discourage any arrangements between GM and Chrysler.

10. Will your company receive favorable government contracts or other direct or indirect subsidies the award of which is not based upon objective and transparent criteria?

We do not anticipate that we would receive any such treatment.

11. Will your company agree to promptly disclose all contractual arrangements with (i) the United States government and (ii) recipients of TARP funds, together with a detailed description of the contract, its purpose, the transparent and open competitive bidding process undertaken and the arm's length and market directed nature of the contract?

We have agreed with the SEC to voluntarily comply with security laws and disclose material contracts as we enter into them. Per this agreement, we disclosed on August 7, 2009 the Amendments to the Loan and Security Agreement between General Motors Corporation and the United States Department of the Treasury, Secured Credit Agreement between General Motors Company and the United States Department of the Treasury, as well as other material agreements.

12. Do you anticipate that your company will be able to obtain private or public credit or enter into other contractual arrangements at favorable rates because of the implicit governmental guarantee of such indebtedness and contracts?

No.

13. Did any director or executive of your company in any manner communicate or consult with any member of the Administration regarding any testimony before the Panel or any response to the questions presented by the Panel?

A copy of Walter Borst's prepared remarks was provided to the Automotive Task Force immediately prior to his testimony.

If so, please describe the communication or consultation.

Prepared remarks were provided as a courtesy, no consultation took place.

Responses of Barry Adler, Charles Seligson Professor of Law, New York University School of Law to Questions for the Record from Panelist Representative Jeb Hensarling

1. Does it appear that the United States government (as a major investor) or any other party supported or created any restrictions on bidders as part of the Section 363 sale of either the Chrysler or GM assets? If so, what were they and why do you think they were created?

There were restrictions, described below, but I have no information on the source of the restrictions.

2. Was there a market test to determine whether or not the creditors of Chrysler or GM would fare better from a Section 363 sale, a Chapter 11 reorganization or a liquidation?

It is often stated that potential buyers of these companies knew of their availability for months or years prior to their bankruptcy filings and that this knowledge, together with management efforts to attract suitors prior to filing, constituted a market test. However, once the companies entered bankruptcy, the courts severely restricted the time for potential buyers to bid and generally required that any bidder assume significant liabilities to the auto-worker retirement fund known as VEBA. In each case, there was an exception to the requirement that the liabilities be assumed, but by court order, the UAW had to be consulted before a noncompliant bid would be approved. Because it is possible that, but for these restrictions, potential bidders might have appeared after the bankruptcy filings, I do not believe that there was an adequate market test.

If so, please describe the market test. If not, why do you think a market test was not employed?

As to whether there was a market test, please see my response above. I have no information about why the debtor did not request what I would consider an adequate market test.

3. Did the courts in the Chrysler and GM bankruptcies err in any manner?

In my view, subject to a qualification mentioned below, I believe that the courts erred in approving a sale without requiring an unconditional auction of the assets, one designed to maximize the highest possible price for the bankruptcy estates. Because there was no such auction, the transactions should have been characterized not as sales but as reorganizations and the VEBA interests in the purchased assets should have been considered distributions, which arguably violated prohibitions against unfair discrimination. The qualification is that in the Chrysler case, the secured creditors who objected to the sale were subject to a loan agreement that arguably bound them to be represented by an agent of a majority of such creditors. Consequently, there may have been no dissenting creditor in the case with standing and sufficient voice to block the sale even if the transaction had been characterized as a reorganization. These matters are addressed in my statement and related article, which are, I believe, already part of the record.

4. What action would you recommend to solve any of the problems presented by the Chrysler and GM bankruptcies?

In my view, the bankruptcy code should be amended to prohibit sale of all or substantially all of a debtor's assets except under conditions that would obtain under applicable non-bankruptcy law and unless the sale process imposes no requirement that a bidder assume some but not all of a debtor's obligations. This proposal is set out in more detail in my statement and related article.

5. What role did TARP play in the Chrysler and GM bankruptcies?

My understanding is that TARP funds were a source of government finance, but I have no information beyond this.

6. What negative public policy consequences have risen from the Chrysler and GM bankruptcies?

My fear is that the Chrysler and GM bankruptcy cases will stand for the proposition that bankruptcy courts are permitted to substitute their own judgment for that of the market and sidestep creditor protections prescribed by the bankruptcy code. The result could be that lenders will become wary of extending credit on favorable terms to firms in need of funds, thus increasing the cost of capital. This would impede economic growth and development.

Responses of Stephen Lubben, Daniel J. Moore Professor Law, Seton Hall University School of Law, to Questions for the Record from Panelist Representative Jeb Hensarling

1. Does it appear that the United States government (as a major investor) or any other party supported or created any restrictions on bidders as part of the Section 363 sale of either the Chrysler or GM assets?

Yes.

If so what were they and why do you think they were created?

As I described at the Detroit Hearing and in my prepared remarks, the bidding procedures approved by both bankruptcy courts required any "Qualified Bidder" to assume various union agreements. As I also explained at the Detroit Hearing, and as I explain more fully in the supplemental paper prepared for the Panel, the flexible nature of bidding procedures in chapter 11 cases calls into question the importance of these requirements, since they could always have been changed to accommodate a bidder, if any had existed.

The remainder of the question asks that I speculate or guess as to who required these procedures and why. I decline the invitation.

2. Was there a market test to determine whether or not the creditors of Chrysler or GM would fare better from a section 363 sale, a Chapter 11 reorganization or a liquidation?

Yes.

If so, please describe the market test. If not, why do you think a market test was not employed?

As is commonly the case in section 363 sales, the initial bids in the automotive cases were subject to higher and better offers. Moreover, under the terms of Bankruptcy Code section 363(k), the secured lenders in both cases had the option to bid their secured claims (in place of cash). Either an alternative bid or a credit bid would have resulted in an auction with the initial bidder. As is widely known, no alternative bidders of any sort materialized at either sale hearing, suggesting the current market value of the debtors' assets were less than the initial bid.

3. Did the courts in the Chrysler and GM bankruptcies err in any manner?

Both the bankruptcy and appellate courts properly applied the law, as currently understood in the Second Circuit, to these cases. The bankruptcy courts in particular appear to have done a commendable job of balancing the right of claimants to be heard with the debtors' need to resolve their financial difficulties in a timely manner.

4. What action would you recommend to solve any of the problems presented by the Chrysler and GM bankruptcies?

As I noted at the Detroit Hearing, section 363 sales followed by chapter 11 liquidating plans have become extremely common in the past decade. Congress may want to examine if this change in chapter 11 practice represents a socially or economically optimal development.

5. What role did TARP play in the Chrysler and GM bankruptcies?

TARP funding allowed the debtors to enter bankruptcy in an orderly fashion, by avoiding an uncontrolled or "free fall" Chapter 11 case. The funding also allowed the debtors to successfully reorganize—given credit market conditions, it was unlikely that these debtors would have been able to obtain sufficient DIP and exit financing.

6. What negative public policy consequences have arisen from the Chrysler and GM bankruptcies?

I am not aware of any.

Responses of Richard Mourdock, Treasurer, State of Indiana, to Questions for the Record from Panelist Representative Jeb Hensarling

1. Does it appear that the United States government (as a major investor) or any other party supported or created any restrictions on bidders as part of the Section 363 sale of either the Chrysler or GM assets?

Indiana's funds were *only* invested in the secured credit of Chrysler. Therefore, I have no comments or observations to offer regarding the specifics of the GM bankruptcy. At the time of the Chrysler petitions to the bankruptcy court, I was neither concerned with nor watching developments in the GM case.

To the question . . . "yes," absolutely.

If so, what were they and why do you think they were created?

The principal restriction was imposed by the time requirement that mandated the bankruptcy be completed by June 15, 2009. Throughout the bankruptcy process, the government maintained if the deal was not completed by that date that Fiat would walk away from its "purchase" of 20% of the Chrysler assets. From the beginning, the June 15 date was a myth generated by the federal government. Fiat was being given the assets at not cost at a minimum value of $400,000,000. Why would Fiat establish or negotiate such a date when they were to receive such a bonanza? On the very day that the Chrysler assets were transferred to Fiat, the company's chairman stated to the media that the June 15th date never originated from them. The artificial date drove the process in preventing creditors from having any opportunity to establish true values, prepare adequate cases, and therefore failed to protect their rights to the fullest provisions of the law. The artificial date also forced the courts to act with less than complete information.

2. Was there a market test to determine whether or not the creditors of Chrysler or GM would fare better from a Section 363 sale, a Chapter 11 re-organization or a liquidation?

I have no knowledge that any such test was conducted.

If so, please describe the market test. If not, why do you think a market test was not employed?

I assume that no test was conducted so that the restructuring could be done in a manner to reward specific non-secured creditors. There is no other logical reason to believe that a trustee or officer of the corporation, who acted in good faith, wouldn't have performed such a test.

3. Did the Courts in the Chrysler and GM bankruptcies err in any manner?

As stated in my verbal testimony, I am not a lawyer though we do have ample legal staff working on this issue as we consider going back to the Supreme Court of the United States to petition for a hearing. The U.S. 2nd District Court of Appeals in its written opinion of August 9th, 2009, denied our pensioners standing pursuant to the argument that we could not prove, under any other bankruptcy plan, we could have received more than the $0.29 we were offered. We believe this was an error because the court used a liquidation value for the company rather than an "on-going concern" basis. We received written notice from the U.S. Bankruptcy Court of New York by certified letter of our rights to file a claim on Monday, May 18, 2009, at 10:00 a.m. We were advised in the letter that any evidence we wished to submit to make a claim against the submitted plan, (in part, the $0.29), would have to include trade tickets, depositions, affidavits, documents of evidence to substantiate claims, and etc. and would have to be filed with the bankruptcy court on Tuesday, May 19, 2009, by 4:00 p.m. The bankruptcy of Chrysler was frequently referred to as "the most complex bankruptcy in American history," and yet we were given thirty hours to respond. We feel this was clearly an error in the process that helped to reduce the wealth of our beneficiaries.

4. What action would you recommend to solve any of the problems presented by the Chrysler and GM bankruptcies?

This is the simplest question that could be asked of a former secured creditor of Chrysler. In the future, just follow the law.

5. What role did TARP play in the Chrysler and GM bankruptcies?

TARP funds were used to begin funding Chrysler in December of 2008. As stated in my written and previously submitted oral testimony, the U.S. Congress passed TARP in October 2008 after hearing testimony from then U.S. Treasury Secretary Henry Paulson that TARP was *not* intended to be used to bailout the automobile industry. Two months later, the same Congress tried to pass a separate automobile bailout bill that failed. The obvious question is why would Congress have done such a thing if they thought that they already had the means to bailout the car companies? Clearly, Congress knew that TARP funds were not intended for the automobile industry when they passed the legislation. The Bush administration began the misappropriation of TARP funds and it continued under the Obama administration. If the TARP did not exist, it's highly unlikely that the Chrysler bankruptcy would have proceeded as it did.

It is important to note that in its written opinion of the 2nd District U.S. Court of Appeals, the Court pointed out that the questions raised by us, Indiana's pensioners, remain interesting and "vexing." In oral arguments, the federal government stated that because car companies are so dependent and inter-related with banks that the car companies are, in fact, banks themselves. To the federal government's statement, the Appellate Court stated if that is the standard then clearly no standard exists because all business are interrelated with their banks. The Appellate Court goes so far as to explain that the use of TARP funds for the automakers is worthy of review by a higher court, but they then state that they do not have jurisdiction to make such a ruling because we, Indiana pensioners, have no claim of standing.

The claim that Indiana's pensioners don't have standing remains, in itself, a "vexing" issue given the extraordinary schedule put into place by the government to facilitate its actions.

6. What negative public policy consequences have arisen from the Chrysler and GM bankruptcies?