Testimony of

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I greatly appreciate the opportunity to testify in these oversight hearings as to the actions taken by General Motors Corporation ("GM") in connection with GM's commencing cases under chapter 11 of the Bankruptcy Code and the role the United States Government played in connection with the chapter 11 cases, including the decision to close certain GM dealerships.

I am a practicing attorney and senior member of the international law firm of Weil, Gotshal & Manges LLP ("WGM") that maintains its principal office in New York, New York. For the past 50 years,[2] I have specialized in matters relating to debtor-creditor relationships with an emphasis on restructuring, rehabilitating, and reorganizing distressed business entities. I created the Business Finance and Restructuring group at WGM. I have represented debtors, secured and unsecured creditors, trustees, and creditors' committees and have served as a trustee in cases under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa *et seq.*).[3]

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

It is my understanding that the Subcommittee is desirous of understanding the circumstances concerning the commencement of chapter 11 cases by GM, its restructuring efforts, the decision to restructure its dealer network, and the role that the United States

[2] During the period of September 1, 2002 to March, 2007, I was a Vice Chairman and Managing Director of Greenhill & Co., LLC, an investment banking firm located in New York, New York.

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

Government has played in the chapter 11 cases. I am certain that a review of the economic realities and circumstances that precipitated the commencement of GM's chapter 11 cases and the sale of substantially all of GM's viable assets to a U.S. Treasury-sponsored entity pursuant to section 363(b) of the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq*., will demonstrate that the sale and the restructuring that resulted, including the adjustment of the dealer network, was in the best interests of all economic stakeholders as well as the public interest.

The Events Leading Up to the Commencement of General Motors' Chapter 11 Cases

In December 2008, GM was confronted with a crisis situation as its liquidity dried up. Despite its efforts to alleviate its growing illiquidity, the consequences of the collapse of Lehman Brothers Holdings Inc. in September 2008 caused a freezing of the credit markets. As a result, GM had to turn to the only available source of liquidity, i.e., the United States Government, and more specifically, the United States Department of the Treasury ("U.S. Treasury"), to prevent the immediate shutdown and liquidation of this huge, American-based enterprise. The federal government/U.S. Treasury recognized there was a compelling need to finance GM's ongoing operations. Accordingly, it entered into a Loan and Security Agreement with GM on December 31, 2008 ("LSA"), which anticipated an emergency secured loan and advance in the aggregate amount of $13.4 billion. At the time the first advance of $4 billion was made on December 31, 2008 pursuant to the LSA, it appeared to be the belief of the U.S. Treasury that the loans would be repaid as GM achieved the milestones provided for in the LSA.

Unfortunately, as 2009 progressed, the economic circumstances deteriorated, particularly as they related to the automotive industry. Sales continued to deteriorate, and liquidity remained a major problem. In short order, the entire $13.4 billion was drawn down, but nevertheless, was insufficient to enable the continuation of GM's operations. Although the LSA

required GM to develop a proposal to transform its business and demonstrate future viability, it was ultimately determined that the viability plan GM submitted to the automobile task force appointed by President Obama ("Presidential Task Force" or "Automobile Task Force") was not sufficient for GM to attain sustainability and ultimately profits. President Obama announced on March 30, 2009 that the viability plan did not justify a substantial new investment of taxpayer dollars.

The crisis continued as the Presidential Task Force became intensely involved in the affairs of the automotive industry. Consistent with its obligations, GM honed its viability plan to meet the directives of its largest secured creditor and provide a deeper and faster restructuring of its business.

Once again, economic circumstances pre-ordained GM's actions. Its efforts to avoid the consequences of seeking relief under the Bankruptcy Code were in vain as a proposed debt for equity bond exchange was rejected by bondholders. The terms of this public exchange offer had been the subject of extensive negotiations between GM and the U.S. Treasury. When the exchange offer was launched, GM understood that at least 90% of the aggregate principal amount of outstanding bonds were required to be tendered in order to achieve a sufficient level of debt reduction to meet the viability requirement. On May 26, 2009, the exchange offer expired without achieving this threshold of required tendered acceptances.

To avoid a shutdown and termination of GM's business, GM needed to borrow, and the U.S. Treasury loaned and advanced, an additional $6 billion. June 1, 2009 was established as a watershed date for an effective plan to restructure the business of GM. As that date approached, it became clear that GM had no alternative but to initiate chapter 11 cases to maintain the going concern value of its assets. In doing so, GM and the U.S. Treasury had the

benefit of the results that had been achieved in the chapter 11 cases that had been initiated by Chrysler LLC and its affiliates on April 30, 2009.

The Chapter 11 Process and the Reduction in Dealerships

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

GM's chapter 11 cases were more complex and difficult given the nature of GM's business and its dependency on consumers. It was the almost universal opinion that a traditional chapter 11 case would not be successful as consumers would be hesitant and ultimately decline to purchase cars and trucks manufactured by a company in chapter 11 with an uncertain future. Consumers seek reliability and value when they purchase an automobile or truck. Consumers are concerned about residual value, replacement parts, warranty obligations, servicing, and maintenance of the manufacturers' products, all of which are critical to the preservation of the value of the assets. To preserve this value and instill confidence on the part of consumers, speed was of the essence.

Regrettably, bankruptcy reorganization is a zero-sum game. It has dual objectives: (i) creating a viable economic unit and (ii) providing recoveries to those creditors that have a cognizable economic stake in the assets based on the value of the debtor. Chapter 11 bankruptcy entails a determination of reorganization value, which is sometimes referred to as the going concern value of the debtor entity.

The only feasible manner of preserving GM's going concern value was to propose and implement a sale of all of GM's viable assets pursuant to section 363(b) of the Bankruptcy Code ("363 Transaction"). Specifically, the 363 Transaction was designed to continue the business represented by the assets that were sold that will make the U.S. Treasury-sponsored purchaser (sometimes referred to as "New GM," now the General Motors Company), a linchpin of the domestic automotive industry so that the United States can once again assume its place as the domicile of one of the leading automotive manufacturers in the world. The 363 Transaction provided the only means for GM to preserve and maximize the value, viability, and continuation of GM's survivable business and, by extension, preserve and provide jobs for GM's employees and its dependent supplier entities, and enhance the interests of all such economic stakeholders. Notably, the 363 Transaction was only made possible because it was a critical element of the objective adopted by the United States Government to preserve the domestic automotive industry, avoid systemic failure in the automotive industry and other sectors of the economy, as well as offer hope for hundreds of other businesses and their thousands of employees that supply or otherwise are dependent on GM.

The purchaser of assets pursuant to a section 363(b) sale typically plays a dominant role. The purchaser's objective generally is to acquire a viable business. Therefore, the purchaser determines which assets it will purchase and which liabilities it will assume that will contribute to the future success of the business to be created. Section 363(b) sales are the daily grist of bankruptcy courts. In today's economic environment, secured creditors usually dominate the sale process as they possess the largest economic stake. The U.S. Treasury, as GM's largest secured creditor as well as GM's post-chapter 11 financier to the extent of $33.3 billion, acted as any other secured creditor would in selecting the assets it would purchase and

liabilities it would assume, and the terms and conditions under which it would purchase the assets. This was the only manner in which the going concern value of the assets that were being purchased could be preserved for the benefit of the direct economic stakeholders, including GM's 235,000 employees worldwide, that includes 91,000 domestic employees, the overall supplier industry, and its employees.

No purchaser of assets of a chapter 11 debtor would purchase assets that would not contribute to the ultimate success of the successor business using the purchased assets. It was incumbent on GM to provide an attractive package of assets to the U.S. Treasury-sponsored purchaser. As stated by Mr. Michael J. Robinson, the Vice President of GM's North American operations, in order to achieve economic viability, a condition precedent for the U.S. Treasury-sponsored purchaser, GM had to analyze its dealer network in conjunction with representatives of the Presidential Task Force to determine the best way in which to make New GM a viable, profitable Original Equipment Manufacturer. It was patent that a leaner, more profitable dealer network with higher annual vehicle sales per dealership was critical to reducing GM's staggering dealer support costs and creating an economically viable New GM. The failure to achieve the objective of a viable economic business would have imposed on the U.S. Treasury-sponsored purchaser unsupportable obligations that would continue some of the problems that caused the demise of Old GM and might cause the failure of New GM and an even worse catastrophe.

GM conducted a comprehensive, objective, and quantitative evaluation of each dealership, including, among other things, minimum sales thresholds, customer satisfaction indices, working capital needs, profitability, whether a dealership sold competing non-GM brands, dealership location, and other market factors. The substantial majority of GM's dealers were offered Participation Agreements, which provided for their dealership franchise agreements

to be assumed and assigned to New GM, subject to certain modifications. Over 99% of the dealers that were offered Participation Agreements signed and returned such agreements.

The remaining dealers that were not offered Participation Agreements were not to be retained as part of the dealer network of New GM. Nevertheless, GM did not seek to abruptly reject and terminate their dealer franchise agreements with these dealers. Instead, GM offered these dealers the opportunity to accept Wind-Down Agreements which provided such dealers with substantial monetary payments and allowed them to remain in business until October 2010 and sell down their inventories in an orderly fashion while continuing to provide warranty and other services to their customers with the continued support of New GM. The Wind-Down Agreements were designed to help minimize the financial and other hardships that would have been associated with an immediate rejection and shutdown of the dealerships. Indeed, GM provided a review process that could be initiated by aggrieved dealers. As of the beginning of July 2009, over 845 dealers initiated such review, and GM did reverse at least 60 decisions and agreed to retain such dealers. Not surprisingly, over 98% of such dealers accepted and executed the Wind-Down Agreements.

Conclusion

Chapter 11 is not a painless process. It results in losses and hardships to many constituencies. But, as Congress recognized when it enacted the United States Bankruptcy Code, it is in the best interests of the nation to provide a process for distressed businesses to preserve and protect going concern values and enable restructured businesses to go on and achieve success. The negative effects of the contraction of the number of dealers as well as the liabilities not assumed by the U.S. Treasury-sponsored purchaser have to be balanced with the fact that the 363 Transaction permitted thousands of dealerships to survive while providing an orderly wind-

down of those dealerships not being retained and enabled the rehabilitation of a business that hundreds of thousands rely upon for their survival. GM did everything in its power to provide a soft landing for discontinued dealers by helping to ease the disruptions and financial hardships that would otherwise result from an abrupt shutdown and rejection of its dealer contracts. It would have been foolhardy for the U.S. Treasury-sponsored purchaser to purchase assets and operate a business with the same burdens that caused the demise of GM. Indeed, it would have resulted in a failure of the U.S. Treasury to protect the ability to recover the taxpayers' investments in New GM. The alternative to the exercise of the sound business judgment by GM and the U.S. Treasury-sponsored purchaser would have been the liquidation of GM – and *all dealerships* would have terminated, including the thousands of dealerships that otherwise are continuing to operate and prosper under New GM.

Once again, I want to express my appreciation for the opportunity extended by the Subcommittee to testify at this Hearing.