Testimony Submitted to the House Committee on the Judiciary

Hearing on Ramifications of Auto Industry Bankruptcies

Thursday, May 21, 2009

Submitted by Ralph Nader

May 18, 2009

Senator Chris Dodd
U.S. Senate Committee on Banking, Housing and Urban Affairs
448 Russell Building
Washington, DC 20510

Congressman Barney Frank
House Committee on Financial Services
2252 Rayburn H.O.B.
Washington, DC 20515

Dear Senator Dodd and Congressman Frank:

The government-led restructuring of Chrysler and General Motors has been twice delegated -- first by Congress to the Executive, and then by the President to a task force. Formally made up of cabinet officials and high-level political appointees, control over the process has in fact been delegated, without adequate standards, to a handful of special advisers. Thus has the future of a centerpiece of American manufacturing capacity been delegated to a small unelected and largely unaccountable group arranged to avoid the Federal Advisory Committee Act. The Congress must, at the least, reclaim its oversight role in this process, and subject the Auto Task Force's proposals and plans to careful scrutiny before irreversible measures -- such as a GM bankruptcy filing -- are undertaken.

The President has stated that "I am absolutely committed to working with Congress and the auto companies to meet one goal: The United States of America will lead the world in building the next generation of clean cars." That is a laudable sentiment, and it is imperative that this goal be achieved.

But it is not befitting our system of checks and balances for Congress to rely on a presidential statement of good intentions -- particularly when it is a small, informal group of appointed non-experts who are charged with rescuing the auto industry.

The Auto Task Force has guided Chrysler into bankruptcy, and appears on course to do the same with GM. The government overseers are hoping for a quick bankruptcy reorganization, resolution of creditor claims that were not resolving themselves through private negotiation, and emergence of a debt-free company, shorn of encumbering assets, post-bankruptcy.

However, there is enormous risk in such a move. The bankruptcy process may not move as quickly as imagined; it is after all, independent judges who control the process, not the executive branch. Especially if the bankruptcy process lingers -- but even if it does not -- there is a serious risk of impairing consumer purchasing confidence in a once-bankrupt auto company. This was conventional wisdom just six months ago. It is not clear why this conventional wisdom has been abandoned, notwithstanding the government guarantee of GM and Chrysler warrantees.

The matter of impaired consumer confidence deserves much more attention than it has received, at least in any public fashion. Already, reports are emerging of further declines in Chrysler sales after its bankruptcy filing, and of widespread belief among consumers that the company is liquidating.

Lost consumer confidence in GM could quite conceivably overwhelm the “benefits” to the company of eliminating outstanding liabilities. Thus the plans of the task force may prove to be a house of cards.

The bankruptcy route for GM is also likely to have important ripple effects especially on suppliers, with a ripple of supplier bankruptcies likely to follow such a move by GM. Even Toyota has commented to Members of Congress on its concern that a GM bankruptcy will pull down suppliers that sell to both companies. Such a ripple will mean more lost jobs, more pain for communities across the country, and a loss of some the most dynamic and innovative parts of the industry.

It is obvious that GM needs a new direction, and the removal of its CEO was a welcome step. The rest of the incumbent management though, remains in place, raising concerns about the ability of the company to remake itself.

While the company needs a new direction, and probably a contraction, it is not obvious that it needs to contract as much as the secretive task force envisions, and in the ways apparently planned. Before the task force's plans with GM are enacted -- and certainly before the company declares bankruptcy -- Congress should hold deliberative hearings to protect taxpayers’ investments and seek answers to these questions, among many others:

* Is the task force right in pushing for elimination of as many brands as it has demanded?

* Is the task force asking for too many plants to close?

* Do GM and Chrysler really need to close as many dealerships as have been announced? Is the logic of closing dealers to enable the remaining dealers to charge higher prices (See, for example, Peter Whoriskey and Kendra Marr, "Chrysler Pulls Out of Hundreds of Franchises," Washington Post, May 15, 2009); and if so, why is the government facilitating such a move? Is it reasonable and fair for GM to impose liability for disposing of unsold cars on dealers with which it severs relations, as Chrysler has apparently done?

* Has the task force evaluated the social ripple effects on suppliers, innovation, dealers, newspapers, banks and others that hold company stock and/or are company creditors, and other unique harms that might stem from bankruptcy?

* Would a government-driven bankruptcy process comport with the rights of owner-shareholders?

* Why has the task force maintained the Bush administration-negotiated obligation for unionized

auto workers at GM and Chrysler to accept wages comparable to those in non-unionized Japanese company plants in the United States? This requirement is especially troubling given the low contribution of wages to the cost of a car (10 percent), and that it may set off a downward spiral of wages, with the non-union plants no longer needing to compete with union wages, and union wages following those in non-union plants.

* Is the task force obtaining guarantees that, after restructuring with U.S. taxpayer financing, GM cars sold in the United States be made in the United States? If not, why not?

* How will bankruptcy affect GM's overseas operations, with special reference to China and GM corporate entanglements with Chinese partners? Are they and their profits being exempted from the restrictions and cutbacks imposed on domestic operations? If there is such a disparity, is it reasonable and unavoidable?

* How will bankruptcy affect GM's obligations to parties engaged in pending litigation in the courts with GM regarding serious injuries suffered because of design or product defects?

* What guarantees is the task force obtaining to ensure that the GM of the future invests in safer and more fuel efficient vehicles, and what investments will the new company make in ecologically sustainable technologies? How will a potential bankruptcy filing affect, ignore or preclude any such future investments and commitments?

Among the most worrisome components in the restructuring plan is the willingness to sacrifice U.S. manufacturing, and permit GM to increase manufacturing overseas for export back into the United States. Recent news reports indicate that the company will rely increasingly on overseas plants to make cars for sale in the United States, with cars made in low-wage countries like Mexico rising from 15 to 23 percent of GM sales in the United States. For the first time, GM plans emerged to export cars from China to the United States, in what may be a harbinger of the company's future business model; although the company has stated after negative publicity that it will not export from China, there is no evidence that it is abandoning the business model of outsourcing production for the U.S. market, and questions remain about how binding is the recent commitment not to export to the United States from China.

Not surprisingly, industry analysts have quickly weighed in to emphasize that "political considerations" should not interfere with obtaining purported "efficiencies." But such talk is gibberish in the context of a government bailout. What is the point of the U.S. government bailing out GM if not to respond to the political considerations of preserving jobs, communities, manufacturing capacity and directing the mismanaged company to an ecologically sustainable future?

Will the U.S. Congress abdicate its responsibilities while such plans are finalized by the delegated task force? Such a willful abdication would contrast starkly with the dutiful legislative hearings and legislation regarding the Chrysler bailout in 1979.

At the very least, the Congress must exercise its oversight powers. It should, at the very least, urge the Obama administration to defer any plans for bankruptcy or other irreversible moves until after the task force plan has been subjected to close and careful review via thorough Congressional hearings. If delay requires some additional bridge funding for GM, surely such funding with suitable equity positions is appropriate, in light of the potential risks of bankruptcy to millions of families and further governmental relief programs, and the vastly greater sums that have been so recklessly expended on the virtually condition-free Wall Street bailout.

Sincerely,

/s/ Ralph Nader

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