

Chrysler dissidents back down

'Agony,' pressure left little choice

Presented by



Janet Whitman, *Financial Post*, with files from Barbara Shecter



The unwieldy task of steering Chrysler LLC through bankruptcy court just got a lot easier for Arthur J. Gonzalez, the federal bankruptcy judge assigned to the ailing U. S. automaker's case.

Amid pressure from Barack Obama, the U. S. President, the last of a dwindling group of dissident creditors who refused to go along with a U. S. government-backed sale of Chrysler to Italy's Fiat SpA stopped opposing the deal late yesterday.

The holdouts -- a group of hedge funds and other debtholders that helped send Chrysler hurtling into bankruptcy at the end of last month because they felt they were getting shortchanged -- were viewed as the last major obstacle to the approval of the plan backed by the U. S. President.

Their exit paves the way for Brooklyn-born and Bronxeducated Judge Gonzalez to approve a quick "sale" of Chrysler that could see the ailing automaker emerge within 30 to 60 days as a new company majority-owned by a union-aligned trust with an option for Fiat to own a large stake.

Although a big win for the auto industry, the decision by the creditors to abandon their effort in the face of political and public pressure sets a dangerous precedent by essentially wiping out centuries of commercial law.

Jim McGovern, chief executive of Arrow Hedge Partners Inc., one of the creditors that stepped aside in the Chrysler case, said Mr. Obama's tactics could make money managers less willing to take part in a raft of government programs that rely on private interests to invest in distressed companies. "Do you want to partner and ... [then] be told you're ripping off the American taxpayer? It'll certainly make people think twice about it," Mr. McGovern said.

The opposition from the dissident creditors, which held only a small portion of Chrysler's secured debt, put Judge Gonzalez in a tough spot.

Approving the quick sale of the No. 3 U. S. carmaker would essentially skirt the law by paying those secured creditors less than they could get if they stuck it out in court.

Bankruptcy experts familiar with the judge's track record don't believe he would have bowed to pressure from the Obama administration.

But he probably would have ended up approving the asset sale in a bid to help salvage the battered North American auto industry, which is considered part of the economic bedrock of both the United States and Canada, they said.

"He is an excellent judge and not the kind of person who is afraid to stand up and go against the pressure," said Ronald Sussman, a lawyer who represented Enron employees before Judge Gonzalez as a partner at Cooley Godward Kronish in New York. "But this is the most unusual of times and when he's confronted with the alternatives, I think he's going to do everything to find a legal basis to do what's necessary to save the auto industry. I don't think he'd do it for political reasons or because he's afraid. He'd be exercising his discretion as a bankruptcy judge and pushing the limits as far as he can go."

Pressure mounted on the creditor outliers earlier this week after Judge Gonzalez blocked their request to have their names kept anonymous because of death threats they said they had received after Mr. Obama bashed the group publicly by calling them "speculators" only interested in money.

With their names getting tarnished in public, the 20-member group quickly dwindled.

The entire group agreed to give up its fight yesterday after two of the largest funds in the group, Oppenheimer-Funds and Stairway Capital, abandoned their opposition.

"After a great deal of soul-searching and quite frankly agony, [the dissident creditors] concluded they just don't have the critical mass to withstand the enormous pressure and machinery of the U. S. government," said Tom Lauria, a lawyer with White & Case representing the group.

Although no longer blocking the sale, the group has no intention of agreeing to the proposal to exchange their debt for 29¢ on the dollar as the Obama administration's plan dictates, said Mr. Lauria.

As secured lenders, they are entitled to much more, according to decades of bankruptcy law.

It remains to be seen how that issue will play out in Judge Gonzalez's courtroom on the fifth floor of the federal courthouse in lower Manhattan.

The judge, known for arriving at the courthouse as early as 6 a. m., has no shortage of experience overseeing huge cases that have had a high profile with the American public.

The 62-year old competitive long-distance runner and former New York City public school teacher oversaw the reorganization of Enron, which in 2001 was the largest bankruptcy filing in U. S. history at US\$63-billion in assets. The following year he was assigned to WorldCom's bankruptcy case, which, with US\$107-billion in assets, topped Enron as the biggest bankruptcy ever.

"He's fair, smart, diligent and hardworking," said Mark Jacobs, a lawyer with Pryor Cashman, who represented creditors in the massive Enron bankruptcy case. "I think he will be fair and balanced."