

EXECUTIVE SUMMARY: GM ACCIDENT VICTIMS TAKINGS LITIGATION

THE TRUMP ADMINISTRATION SHOULD BRING JUSTICE TO A GROUP OF FORGOTTEN AMERICANS—THE GM ACCIDENT VICTIMS—AND REVERSE ANOTHER FAILED OBAMA POLICY LEGACY

A. The 2009 GM bailout was wrought with problems ... we just didn't know how problematic it really was.

- In the final Sale Agreement that governed the bailout, New GM cherry-picked \$60 billion of liabilities for assumption. This included Old GM's trade vendors, senior executives, unions, and pensioners, all of whom were paid in full.
- 85% of the \$31 billion in liabilities left behind were those of unsecured public bondholders. The claims of accident victims were estimated at only \$400 million. Why were they left behind? Because the Obama administration did not consider the accident victims to be important to New GM's commercial success.
- Accident victims' claims left behind with Old GM were ultimately resolved by agreement in the bankruptcy case for an aggregate of \$320 million. Recoveries on these claims were only 12-15%.
- The victims fought vigorously in court and on Capitol Hill to be treated like all the other creditors who were paid in full. They argued that the amounts at issue were *de minimis* by comparison and only projected to cost New GM \$50 million a year over 8 years. The Obama administration, however, rejected these pleas. Harry Wilson callously quipped, "why would a buyer buy that liability if he or she didn't have to."
- The argument that the government was appropriately acting as a commercial buyer in a typical bankruptcy sale is deeply flawed. The government's job is not, as here, to force a small minority like the accident victims to absorb a disproportionate burden of the costs of the bailout that in all fairness and justice should be borne by the public as a whole. It is to protect them.
- Noteworthy is that those personal injury claimants from defective GM products were the only ones appealing the bankruptcy court's sale order. But rather than assume these claims, the Obama administration advised everyone that it would terminate funding and walk from the deal if these claimants' successor liability claims were not eliminated in the bankruptcy.
- In July 2015, some of the largest accident victims filed a complaint against the government alleging that its targeting of their successor liability claims for elimination in the bailout "went too far," and thus constituted a "taking" under the Constitution's Fifth Amendment.
- More background to the case can be found at <http://ForgottenGMBailoutVictims.org>.

B. Status of the Pending Litigation; Viable and Efficient Settlement Option through the Judgment Fund

- The accident victims' case was dismissed by the Court of Federal Claims, which held that the case was filed four days late and that the accident victims' products liability claims were not property interests protected under the takings clause. The Federal Circuit Court of Appeals affirmed the decision. The accident victims will file their petition for certiorari with the Supreme Court by no later than April 2020.
- The case represents a live case or controversy that can be settled using the "Judgment Fund."
- The "Judgment Fund is a permanent, indefinite appropriation created by Congress in 1956 "to pay final judgments, awards, [and] compromise settlements." 31 U.S.C. § 1304(a); 28 U.S.C. § 2517. Decisions regarding use of the Judgment Fund are made exclusively by the Executive Branch, usually through the Attorney General or officials under his direction.
- The GM accident victims seek to settle the pending litigation with the Federal government, funded through the Judgment Fund, and request that President Trump and his Administration right a wrong and give these forgotten, downtrodden Americans, whose rights were trampled by their own federal government in the bailout, the just compensation they deserve.
- A Congressional Research Service (CRS) study about the Judgment Fund can be found at <https://fas.org/sgp/crs/misc/R42835.pdf>.