



CURRENTS IN COMMERCE

REKINDLING THE HUMAN SPIRIT IN BUSINESS

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The cure for automakers' crisis? File Chapter 14

Editor's Note: Academy President Rinaldo S. Brutoco wrote the following proposal which presents a politically acceptable way to use taxpayer funds to help preserve the United States' industrial base and autoworkers' jobs.

In all the analyses of The Big Three automakers' looming insolvency, no one has suggested the best solution. GM, Ford and Chrysler need to file for Chapter 14 bankruptcy protection and the National Corporations Recovery Administration (NCRA) needs to classify them as "companies of national interest." The reason this hasn't happened, of course, is because neither Chapter 14 nor the NCRA exist. But they should.

Congress is in the sticky position of trying to protect the jobs and suppliers that Detroit supports while dealing with a major American industry whose business model is broken. On top of that, the public's bailout fatigue after AIG, Fanny and Freddy, and now Citigroup, is pressuring lawmakers to demand detailed restructuring plans before writing any more checks.

Solutions mostly revolve around GM reorganizing into profitable pieces, each capable of making and selling fuel-efficient vehicles while preserving jobs for the manufacturers and parts suppliers. But filing Chapter 11 would keep in place GM's incompetent management along with their bloated compensation packages. That won't make GM competitive globally. To do that, GM must fundamentally change its business model, something it won't do on its own.

The new bankruptcy provisions would create a mechanism to sweep aside bad management and speed reorganization or the sale of assets. Congress should pass a major amendment to the Bankruptcy Reform Act that would establish Chapter 14 for companies that have previously received federal bailouts or are widely regarded as "too big to fail." (This provision alone would slash the number of companies asking for federal handouts.)

Under Chapter 14, the NCRA-appointed trustee would be charged with running the troubled entity. The trustee would wield immediate power to terminate management and their stock option packages and golden parachutes, sever other agreements, and sell assets. To protect taxpayers and guarantee transparency, a Chapter 14 trustee would create a public record with written explanations of all material decisions.

With Chapter 14, sophisticated financing or joint ventures could speed corporate turnarounds. An idle GM factory in Fremont, Calif., could join a transaction with a company like Tesla, the electric car manufacturer, which would otherwise have to build a new plant in San Jose. The government could supply Tesla with a GM factory in return for Tesla's agreement to rapidly increase production,

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Did you know?

Amount of bonuses Wall St. paid out last year	<u>\$33.2 billion</u>
Percentage of 1.9 million job losses in past year that occurred in the last 3 months	<u>66%</u>
Percentage of 300-year-old Barclays now owned by Mideast investors	<u>30%</u>
Percentage of China's small toy exporters that closed in the first 9 months of 2008	<u>66%</u>
U.S. world rank in countries' access to high-speed internet connections.	<u>15th</u>



Markets and The Economy

The job picture

As too many people know all too well, the job picture is [tanking fast](#).

Job losses, Nov. 2008533,000

Job losses, Oct. 2008320,000

Average monthly job losses, Sept.-Nov. 2008.....419,000

Average monthly job losses, first 9 months of 2008 ... 82,000

The U.S. Labor Department's reported unemployment rate of 6.7% for November 2008 vastly understates the true rate, as we've reported in *EconForecast*, because the Department's standard rate doesn't count people as unemployed whose unemployment benefits have expired. But even the Department's report showed that the November unemployment rate was 12.5% when the count included the "total employed part time for economic reasons... plus all marginally attached workers." The *NY Times* reported that "the number of people working part-time because they couldn't find a full-time job rose by 621,000 last month."

Meanwhile, [major companies' job cuts in Q4](#) just keep coming.

1 in 10 homeowners in trouble

At the end of September, about [1 in 10 Americans](#) with a mortgage were at least a month behind on payments or in foreclosure. In Florida, over 7% of loans were in foreclosure, compared with about 3% nationally.

Latin American economies feel the pain

Since 2002, Latin America has enjoyed a period of unusual social gains and economic growth. According to a UN study released last week, the percentage of Latin Americans living in poverty has fallen to 33% this year, down from 44% in 2002. That may change. Now countries throughout the region, including powerhouse Brazil, are launching stimulus plans [to fight the impact](#) of the global downturn.

Fed ups the ante, rolls the dice

During the last year, the Fed's balance sheet has tripled to \$2.2 trillion. This week, it effectively cut the fed funds rate to zero, taking yet another action unprecedented in its 95-year history. The discount rate is down to 0.5%, the lowest since the 1940s.

If the saga and numbers of the Fed's journey ever deeper into uncharted territory are becoming too much to hold in your head, read the [UPI's handy summary](#). Just don't try to recount it in your mind to fall asleep because warm, fuzzy sheep will work much better.

A few easy-to-remember tidbits from the UPI's assembled numbers: The federal government and its various agencies have already committed over \$7 trillion to the financial crisis, "about the

wealth that the entire U.S. economy produces in six months.... But we are only in the initial stages of this recession, and already the federal debt is heading toward 80 percent of GDP. Back in 1980, it was just over 30 percent of GDP. The last time it was as high as this was the aftermath of World War II, when the debt peaked at 120 percent of GDP."

The fed has injected [over \\$1 trillion](#) in new money since September, when its balance sheet was only about \$900 billion. Because the Fed can't lower its benchmark rate below zero, it is now switching its approach to "quantitative easing," injecting money into the economy rather than focusing on interest rates. Moran Stanley's chief economist, Richard Berner, said, "This is a whole new world."





Tribune Company debacle

Governor Blagojevich schemed to oust journalists at *The Chicago Tribune* who criticized him, but the real damage to the paper's employees was done by Sam Zell's \$8.2 billion take-over of the Tribune Company, which owns *The Chicago Tribune* and the *LA Times*.

"I'm here to tell you that the transaction from hell is done."

—Sam Zell, upon closing his takeover of *The Chicago Tribune* and *LA Times*

When the 161-year-old *Tribune* filed bankruptcy last week, the spotlight on the company gave new meaning to Zell's moniker, "The Grave Dancer." (He earned the name by buying when everyone else was selling).

Zell took control less than a year ago, using the employees' pension fund to help finance the deal. In return, employees got equity. Zell [reportedly](#) put up just \$315 million of the purchase price himself in the course of tripling the company's debt. Employees who took buy-outs or were recently laid off stand in the long line of unsecured creditors, well behind Zell.

The employees' big financial hit is in stark contrast to the fees paid the bankers and analysts who put together and blessed the deal, walking away with tens of millions of dollars. Andrew Ross Sorkin's *New York Times* [piece](#) exposes the "year-long debacle" and the Wall Street fees that drove the deal:

Tribune's board was advised by a group of bankers from Citigroup and Merrill Lynch, which walked off with \$35.8 million and \$37 million, respectively. But those banks played both sides of the deal: they also lent Mr. Zell the money to buy the company. For that, they shared an additional \$47 million pot of fees with several other banks... And then there was Morgan Stanley, which wrote a "fairness opinion" blessing the deal for which it was paid a \$7.5 million fee (plus an additional \$2.5 million advisory fee). On top of that...the Valuation Research Corp. wrote a "solvency opinion" suggesting that Tribune could meet its debt covenants. Thomson Reuters...estimates V.R.C. was paid \$1 million for that opinion.

This just in: the Street can't assess risk

Just when you thought the evidence couldn't get stronger that Wall Street can't assess risk, the news breaks about the Marc Dreier and Bernard Madoff frauds. Con artists are nothing new but there's quite a roster of supposedly sophisticated individual investors, institutions, and funds managers who hadn't heard the adage about eggs and a basket, and who didn't question oddly consistent investment returns, the tiny shop that did Madoff's accounting, or the lack of an independent outfit to hold assets.



Funds of hedge funds and investment subsidiaries of some of the biggest European banks are among those whose reputations will suffer. A fund of funds operation of the Spanish bank [Santander](#) had \$8 billion under management and had parked \$3.1 billion of it with Madoff.

With about \$50 billion of estimated losses from Madoff's Ponzi scheme, those who funneled him their clients' money have not yet begun to feel the pinch.

CEO bonuses: end of an era

For now, year-end bonuses are being [slashed](#). After UBS executives waived bonuses, others including Credit Suisse, Deutsche, and Goldman [followed suit](#).



Even Merrill Lynch's CEO John Thain has decided to do without a bonus. Until this month, he insisted on a bonus of at least \$10 million despite the fact that Merrill lost about \$11.7 billion this year and is being acquired by Bank of America. Thain [argued](#) that since taking over a year ago (with a \$15 million signing bonus), he had salvaged value from his predecessor's mistakes. Morgan Stanley and UBS AG have instituted mechanisms for bonus clawbacks if gains prove illusory.



Energy and Sustainability

The nuclear nemesis *redux*

The Academy's most recent article on nuclear power was published this month in the second issue of a new European magazine, [*FORUM CSR International*](#), which reports on the latest developments and best practices in sustainability and corporate responsibility in business, politics, and society.



The article, "[The Nuclear Nemesis Redux](#)," by Academy President Rinaldo Brutoco and Vice President Madeleine Austin, is a sequel to their article, "[The Nuclear Nemesis](#)," published in the American Bar Association's *Trends* in May 2008.

The articles explain how nuclear power creates unacceptable risks to the planet, undercuts our ability to solve the intertwined energy and climate change crises, and increases the risk of cancer, contamination from nuclear waste, nuclear proliferation and terrorism.

The first issue of *FORUM CSR International* was devoted to the theme, "Responsibility for one world," and included prefaces by EU Environment Commissioner Stavros Dimas and EU Commission Vice-President Günther Verheugen.

U.S. food aid fans starvation

For blunt reporting about how "U.S. farm and shipping lobbyists have stifled efforts to simplify aid deliveries, leaving Africans to starve when they might have been saved," read the [Bloomberg News](#) article, "Dead Children Linked to Aid Policy in Africa Favoring Americans."

Canada and the EU provide food aid by buying food near where it is needed. Because of legal mandates to buy U.S. produce and transport it on U.S. ships, Oxfam America says that U.S. food aid "serves domestic interests more than the world's needy." Shipping, logistical, and administrative costs can consume 2/3 of the budget for Food for Peace, the GAO reported last year.

The U.S. program steers the bulk of its food purchases to its largest three agribusinesses, Archer Daniels Midland Co., Cargill Inc., and Bunge Ltd., which together received 47% of all 2007 U.S. commodities spending for food aid. Their lobbying expenditures in the first 11 months of 2008 came to \$1.78 million, \$669,000, and \$395,000, respectively.

Last year, Congress rejected President Bush's proposal for locally-purchased food aid. Congress eventually approved such a pilot project involving 1% of 2008 U.S. food aid, and approved a one-time \$50 million expenditure in 2009 for locally-purchased food aid.

We can do better.

Nuclear illusions

In October 2008, Mohamed ElBaradei, the head of the UN International Atomic Energy Agency (IAEA), reported that there had been 250 reports of theft of nuclear or radioactive material in the year ending in June. Without question, there is an urgent need to devise a better global regime to make it harder for terrorists to get such material, and we applaud the President-elect's determination to make this a priority. It is long overdue.

But it is a dangerous illusion to think that such a system could ever be foolproof in light of the rampant corruption in countries that have nuclear materials. The only solution is to stop the spread of nuclear power technology.

Graham Allison's article, "Nuclear Deterrence in the Age of Nuclear

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Terrorism," in the December issue of MIT's *Technology Review*, is too optimistic about the global capacity for good governance.

To give just two examples, Bulgaria and Romania, which both plan to expand their use of nuclear power, are notoriously corrupt and already have plenty of nuclear material to go around. Bulgaria is so corrupt that the EU recently cut off its EU funds. We recommend comparing the list of countries that have nuclear power plants or are planning to build them with those countries' rankings on Transparency International's Corruption Perception Index.



ElBaradei, winner of the 2005 Nobel Peace Prize, warned this October that the more nuclear material there is worldwide, the greater the risk some of it will be diverted to make nuclear bombs. "Countries that master uranium enrichment and plutonium separation become de facto nuclear weapons-capable states," he said. He has previously predicted that enrichment and reprocessing technologies "could be the Achilles' heel of the nuclear non-proliferation regime." We agree.

Act as if it were urgent and possible to secure nuclear materials. But don't imagine that it can be done.

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lower the sale price, and hire more GM workers.

Or, investor T. Boone Pickens, a big natural gas speculator, could play a valuable role in a new joint venture combining an idle GM plant with Mazda technology to mass-produce natural gas vehicles. The Mazda Rx-8 Rotary Hydrogen car is the only mass-production vehicle whose engine can go from running on gasoline to natural gas or hydrogen with the flip of a dashboard switch. A third option would be to use an idle GM factory as part of a deal with Nissan or another partner of Better Place, which has an innovative business model to speed the introduction of electric vehicles by creating vast networks of charging stations and battery-exchange depots.

GM's creditors may not like the structure of transactions like these in the short term. But Chapter 14 would make it possible to use GM's existing assets for the greater good — and would eventually make those assets viable again. Without Chapter 14's swift options and protections, GM won't be able to retool its factories fast enough.

Everyone wants to know when the cascading

demands for bailouts and federal largesse will end. It's time for a solution worthy of what Franklin Delano Roosevelt would have proposed had he been faced with this degree of widespread financial destruction. We need a way to provide troubled companies with government loans contingent on smart restructuring plans with durable controls. The expanded powers of a Chapter 14 trustee are designed to limit the rights of creditors and shareholders to object to operational decisions, reducing the time and money required to successfully restructure a company.

A mechanism like Chapter 14 is the only possible way to both assist truly troubled companies and discourage bailout requests from companies who should rely on their own innovation and resources for financial solutions. Corporate brass would do everything to avoid running into trouble in the first place if they understood that bailout funds came with strings pulled by a trustee with almost total power over the disposition of assets and contracts. And for those companies that we must bail out, Chapter 14 provides all stakeholders with a solution that's efficient and just while protecting the public's money.