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Bankruptcy

Chrysler Files Chapter 11

Chrysler LLC filed a Chapter 11 bankruptcy petition on April 30 in New York. This filing will directly affect all companies that do business with Chrysler, including its suppliers and dealers. As part of the filing, Chrysler also announced that most of its plants will shut down until the Fiat transaction (discussed below) is completed.

Chrysler Suppliers

Many Chrysler suppliers are undoubtedly owed money as of April 30. The general rule is that a company filing bankruptcy cannot pay any of its pre-bankruptcy creditors without a court order. On April 30, however, Chrysler filed a series of motions with the Bankruptcy Court seeking permission to pay certain of its suppliers in the ordinary course of business. A hearing is scheduled for Friday, May 1, at 10 a.m. Motions of this sort are normally granted. The upshot is that some suppliers will almost certainly be paid their pre-April 30 balances in the ordinary course of business, while others will not.

Chrysler has specifically requested the court to approve payment of pre-April 30 balances for several different types of creditors/suppliers. For example, creditors holding lien rights, like warehousemen, customs brokers, tooling suppliers, artisans and repairmen, will likely be paid. Chrysler has also requested authority to pay suppliers of key components incorporated directly into the vehicles or sub-assemblies and suppliers of parts sold to dealerships. It has also requested permission to pay certain creditors that supply items that are not directly incorporated into the vehicles but which are otherwise critical to the ongoing business, such as suppliers of lubricants, maintenance and repair services and support for engineering and development efforts. If the motion is granted, Chrysler will be given the discretion to determine which of its suppliers/creditors are entitled to this special treatment. Suppliers who are so designated by Chrysler will receive payment of their pre-April 30 balances so long as they agree to continue to extend trade credit to Chrysler after the filing on the same basis as they were before filing.

Suppliers that are not designated as "critical" will not be paid their pre-April 30 balances immediately. Nevertheless, there are actions that an unpaid supplier can take that may increase the likelihood of ultimately being paid. For example, suppliers that shipped goods to Chrysler after April 10 (20 days before the filing) may be entitled to a higher priority for repayment for such goods than goods shipped before April 10. Husch Blackwell Sanders will be happy to assist suppliers in determining their precise legal rights.

Many suppliers will be concerned (justifiably) about continuing to extend trade credit to Chrysler after the bankruptcy. However, there is reason to believe that the risk of non-payment is minimal. Chrysler is obligated by law to pay all post-bankruptcy petition invoices within terms. Moreover, the U.S. Treasury will lend to Chrysler \$3.3 billion in so-called "debtor in possession" loans - or "DIP loans" - to ensure that Chrysler has sufficient liquidity to fund operations during the Chapter 11.

Chrysler Dealers

Most dealers will hold claims against Chrysler for unpaid holdbacks, incentives, dealer credits and similar amounts. Many dealers may simultaneously owe Chrysler for parts or other items. Chrysler has also filed a motion with the Bankruptcy Court to continue its pre-petition relationship with its dealers in the ordinary course of business. This motion will also be considered by the Bankruptcy Court on May 1. If granted, and we expect that it will be, most Chrysler dealers should be paid their pre-bankruptcy balances in the ordinary course of business.

The news is not all good for Chrysler dealers, however. Chrysler intends to use Chapter 11 to reduce the total number of dealers. It will undoubtedly file motions to reject hundreds of dealer franchise agreements in the coming days, and will argue that rejection of the agreements in bankruptcy will excuse compliance with state laws pertaining to auto dealer franchises. The NADA has retained national bankruptcy counsel to look at this issue and other similar issues that will affect the collective interests of all dealers. This national counsel will not, however, represent the interests of individual dealers with unique issues. We expect that all dealers will have to monitor this case very carefully. Husch Blackwell Sanders has been in contact with the state auto dealer associations in several states and stands ready to assist dealers in any states where we are located.

One interesting tidbit in the reams of paperwork filed on Thursday is that Chrysler Financial will apparently be folded into GMAC. The White House press release states that "Chrysler will enter into an agreement with GMAC to provide dealer and customer financing ... Chrysler Financial has agreed to uphold and cooperate in the transition of its current agreements with dealers to GMAC."

Reorganization Plan

The basic plan is for a new company (New Chrysler) to purchase substantially all of the assets of the old company under Section 363 of the Bankruptcy Code for approximately \$2 billion in cash. A majority of New Chrysler will be owned by a VEBA Trust established for the benefit of Old Chrysler

retirees. Fiat will own between 20% and 35% of New Chrysler, and the U.S. and Canadian governments will own 8% and 2% respectively.

The federal government will loan up to \$4.7 billion to capitalize New Chrysler, and the Canadian government will loan another \$2 billion plus. New Chrysler's board of directors will include representatives from the U.S. and Canadian governments, the retirees and Fiat.

About 70% of Chrysler's secured creditors have agreed to this plan. The recalcitrant secured creditors, mainly hedge funds, were singled out for criticism by President Obama. In fact, these dissenting secured creditors have a number of potentially valid legal arguments that will complicate, and probably delay, approval of the sale. We believe that the 30- to 60-day time frame is very optimistic and extremely unlikely to be achieved. While we expect that a transaction will ultimately be approved, the whole process is likely to be much more complicated than some early press reports indicate.

Contact Info

If you have any questions, please contact Gary D. Barnes at 816.283.4687.

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