

TWO CRITICAL ISSUES IN THE CHRYSLER BANKRUPTCY

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To Our Clients and Friends:

Decisions by Judge Gonzalez in the first days of the Chrysler bankruptcy may determine the success or failure of Chrysler's restructuring plan. The parties to the case are dealing with many complex issues, including DIP financing to be provided by the U.S. government, payment of pre-petition claims in unprecedented amounts and approval of the terms of the sale. A group of secured lenders (the Non-TARP Lenders) has raised significant objections. This email focuses on two objections, the determination of which we believe will be critical to the process.

SALE FREE AND CLEAR OF LIENS

The Bankruptcy Code provides that a sale can be made free and clear of liens so long as the purchase price exceeds "the aggregate value of all liens on such property." Citing a number of decisions, including a decision of the Bankruptcy Court in the Southern District of New York, the Debtors argue that the Bankruptcy Code permits the sale of the assets free and clear of liens because the \$2 billion cash purchase price exceeds the *economic value of the liens*.

The Non-TARP Lenders objected to the proposed sale free and clear of their liens, citing cases that hold that the Bankruptcy Code instead requires that the purchase price exceed the *face amount of their debt secured by the liens*, or \$6.9 billion. The interpretation of the phrase "aggregate value of all liens" has been the subject of disagreement among the courts.

PAYMENT OF PRE-PETITION OBLIGATIONS

Today in court, the Debtors are seeking authority to pay billions of dollars of pre-petition claims, including claims arising from obligations to (a) dealers and other customers under warranty programs, extended service programs, goodwill allowances, dealer incentive programs, customer incentive programs, annual dealer parts inventory allowances and dealer support programs, (b) suppliers and (c) taxing authorities. The Debtors argue that failure to honor these obligations will result in significant disruptions and will therefore impede their ability to preserve and maximize the going concern value of their assets pending the sale transaction.

The Non-TARP Lenders argue that the estate will receive no benefit from the preservation of the going concern value, which will be transferred in its entirety to the purchaser and that the

effect of these payments will be to prefer junior claims to those of the secured lenders. If the Non-TARP Lenders are successful today, the sale process will be much more difficult.

Please feel free to contact us with any questions.

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