

RECENT DEVELOPMENTS IN THE CHRYSLER BANKRUPTCY

May 6, 2009

To Our Clients and Friends:

Since our first update on May 4, decisions by Judge Gonzalez in the Chrysler bankruptcy have made a timely completion of the intended sale likely. The parties to the case continue to deal with complex issues, but hurdles, such as approval of payment of pre-petition claims in unprecedented amounts and approval of DIP financing from the U.S. government, have been cleared. This update focuses on three developments.

Bidding Procedures

Yesterday evening Judge Gonzalez approved with modifications the Debtors' motion for approval of bidding procedures leading to a quick sale of substantially all operating assets. Bids will be accepted until May 20, with a lead bid identified on May 26 and a sale hearing on May 27. These dates are five days later than requested by the Debtors, at the insistence of the official committee of unsecured creditors, formed yesterday morning.

Testimony presented by the Debtors in support of quick approval of the bidding procedures included their new and lower estimate of the amount realizable in a liquidation, after liquidation costs: between zero and \$1.5 billion (midpoint: \$700 million). That analysis includes sale of the Jeep business intact, and Debtors suggested that this was becoming unlikely. The objecting creditors have not yet disclosed their own valuations.

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." Interpretation of that phrase has been the subject of disagreement among the courts. The Debtors continue to insist 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 maintain instead that the Bankruptcy Code requires the purchase price exceed the *face amount of the debt secured by the liens*. The Non-TARP Lenders have pressed the issue from the start, saying that the bidding procedures order and other early orders foreordain a sale, but Judge Gonzalez has insisted that the time for this argument is later – when considering the final sale – and that any value due the Non-TARP Lenders is being preserved by moving forward.

Standing of the Non-TARP Lenders

Judge Gonzalez has indicated that he will require briefing on the standing of the Non-TARP Lenders prior to the final sale hearing. These lenders hold claims under Chrysler's syndicated first lien loan agreement; the agent and co-agent, J.P. Morgan and Citibank, have argued that only they, and not individual lending members of the syndicate, can represent the first lien creditors and make decisions on their behalf in Chrysler's bankruptcy case. The Non-TARP Lenders suggest that the syndication agreement is not so simple, and that the agents are unable to fulfill their fiduciary duties to the syndicated lenders because the agents took TARP money and are beholden to the U.S. government.

As required by Judge Gonzalez, counsel to Non-TARP lenders disclosed today at noon the identity of the nine Non-TARP lenders willing to go forward. Collectively they hold approximately \$295 million in senior secured debt (4.3% of the first lien debt).

Please feel free to contact us with any questions.

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