

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re

CHRYSLER LLC, *et al.*

Debtors

Chapter 11

Case No. 09-50002 (AJG)

(Jointly Administered)

**WRITTEN STATEMENT OF TORT CLAIMANT AND CONSUMER ORGANIZATION
OBJECTORS TO PROPOSED SALE OF DEBTORS' ASSETS FREE AND CLEAR OF
CURRENT AND FUTURE CLAIMS**

The Tort Claimant and Consumer Organization Objectors (Center for Auto Safety, Consumer Action, Consumers for Auto Reliability and Safety (CARS), National Association of Consumer Advocates (NACA), and Public Citizen) do not oppose the proposed sale to New Chrysler “free and clear” of *liens*. Section 363(f) of the Code may allow such a sale. Rather, Chrysler may not expand the notion of “free and clear” beyond that allowed by the Bankruptcy Code in a quick Section 363(f) sale. As explained in our Objection, Section 363(f) does not allow the sale free and clear of *current “claims”*— here, claims under State lemon laws, State consumer protection laws, and State product liability laws. And due process principles do not allow the sale to New Chrysler “free and clear” of *future* claims, which, in any event, are not existing “claims” under the Bankruptcy Code. The sale of Chrysler’s property should be subject to the retention of such current and potential future claims by New Chrysler.

Many individuals, including the individual tort claimants, have been injured by defects in Debtor’s products and, under state law, have the right to bring claims seeking compensation for their injuries. Victims of vehicle accidents attributable to defects are injured in often life-

changing ways. They may have incurred staggering medical bills because of the physical injuries they have suffered, lost income because of the time they could not work, and/or suffered the loss of family members in devastating accidents. Even discovering one's vehicle is a "lemon" can lead to loss of jobs and family strains in places where passenger vehicles are the primary form of transportation. These claimants should not be required, themselves, to bear the costs of Chrysler's design and manufacturing defects.

Prior to Chrysler's bankruptcy filing, the United States Treasury and Chrysler negotiated a sale that would have paid the secured creditors 31 cents on the dollar (using \$2.2 billion in Treasury funding to retire the secured debts) and sold all of Chrysler to New Chrysler. In this sale, New Chrysler would have retained all of its current obligations to consumers under State law. Despite the purchaser's earlier willingness to take over Chrysler's obligations to millions of individuals to whom Chrysler has sold vehicles, Chrysler now proposes to leave injured consumers without recourse against New Chrysler. The change has not been justified as necessary for Chrysler's survival. And using the bankruptcy proceedings to avoid its liability to injured consumers is both inequitable and, in the circumstances of a mass market manufacturer of automobiles, would have unfortunate consequences for consumers, the public, the economy, Chrysler's business partners, and ultimately New Chrysler's ability to survive as an-ongoing business:

- Allowing a sale free and clear of existing liability to consumers would leave injured consumers without recourse against the products' manufacturer, the entity that is properly held accountable for product defects and that is best situated to address consumer complaints in a reasonable manner;
- If Chrysler is able to immunize itself from liability to consumers, many

injured consumers may sue others in the chain of production and sale, including dealers and suppliers—the very entities that New Chrysler will rely on for its survival. For those individuals who are unable to reach dealers or suppliers, the cost of their injuries and losses will be borne by them, the government, or insurers in the form of uncompensated care.

- Current owners of Chrysler vehicles will suffer because their vehicles will be devalued as a result of the manufacturer’s lack of accountability for injuries caused by defects, thereby lowering resale and trade-in values; and

- New Chrysler will be confronted by a slew of articles in the press and complaints on the Web about how those who bought Chrysler vehicles, *or might buy them in the future*, are left out in the cold. Indeed, these articles have already started, as has congressional inquiry into the bankruptcy process. The belief that the company will not stand by its vehicles could undermine consumer confidence and trust in the Chrysler brand, which could ultimately damage the brand and decrease the likelihood of New Chrysler’s survival.

* * * * *

Although the sale of Chrysler “free and clear” of product liability claims is not appropriate as to current consumer claimants, it is particularly problematic to allow such a sale free and clear of liability to individuals who have yet to suffer injury or loss, but will in the future, as a result of defects in the Debtor’s vehicles. Such “future claimants” cannot appear or file claims in this Court, as they do not have existing claims. Indeed, they have no way of knowing whether they will have claims in the future, and they cannot be given meaningful notice of the loss of their rights or the opportunity to seek to preserve those rights. This Court should make clear that the sale of Chrysler’s assets does not release New Chrysler from liability for those future claims.

The sale of Chrysler's property to New Chrysler should be subject to the retention of liability to consumers and personal-injury victims that arise out of alleged defects in the vehicles sold by Chrysler. Congress has already held hearings on Chrysler's attempted misuse of the Bankruptcy Code, and more hearings and congressional action is contemplated (see attached). Given the widespread sale and presence of Chrysler's vehicles in the United States, as well as Chrysler's superior knowledge regarding any issues with them, it would be inequitable and unwise to attempt to transfer the liability for defects in these consumer products to consumers, third parties, and the public at large as Chrysler now seeks.

Dated: May 26, 2009

Respectfully submitted,

STICHTER, RIEDEL, BLAIN & PROSSER, P.A.

By: /s/ Edward J. Peterson, III

Edward J. Peterson, III

Edward J. Peterson, III

epeterson@srbp.com

STICHTER, RIEDEL, BLAIN & PROSSER, P.A.

110 East Madison Street

Suite 200

Tampa, Florida 33602

Telephone: (813) 229-0144

Facsimile: (813) 229-1811

Elizabeth J. Cabraser

ecabraser@lchb.com

Robert J. Nelson

rnelson@lchb.com

Scott P. Nealey

snealey@lchb.com

LIEFF CABRASER HEIMANN, and BERNSTEIN,

LLP

275 Battery Street, 30th Floor

San Francisco, CA 94111-3339

Telephone: (415) 956-1000

Facsimile: (415) 956-1008

*Attorneys for Objectors William Lovitz, Farbod
Nourian and Brian Catalano*

Adina H. Rosenbaum
arosenbaum@citizen.org
Allison M. Zieve
azieve@citizen.org
PUBLIC CITIZEN LITIGATION GROUP
1600 20th Street NW
Washington, DC 20009
202-588-1000

*Counsel for Objectors Center for Auto Safety,
Consumer Action, Consumers for Auto Reliability and
Safety, National Association of Consumer Advocates,
and Public Citizen.*