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## **CHRYSLER AND GM BANKRUPTCIES: WIPING OUT THE RIGHTS OF ALL CONSUMERS WHO DRIVE THESE CARS**

### **An Extraordinary And Unnecessary Result**

According to the Chrysler bankruptcy plan, families driving any Chrysler now on the road (more than 10 million vehicles), whose occupants are severely injured in a collision or otherwise **because** the car was not made safely, will have no recourse against the “old” bankrupt Chrysler or the “new” successor company. The GM bankruptcy proposes the same thing (more than 30 million vehicles).\*

Despite what some pundits and the Administration itself have suggested publicly, this cruel abandonment of these victims is completely avoidable during *any* bankruptcy. And, it is particularly true here. In addition, this result conflicts with the opinion of many experts.

**In bankruptcy, injury victims are *not* regularly discarded like this, especially when there are known products on the market that will continue to severely harm or kill people.**

- It is common for trust funds to be established for the payment of injury victims when culpable companies enter into bankruptcy. Historically, these have included victims of the Dalkon Shield IUD (which injured or killed thousands of women),<sup>1</sup> asbestos poisoning,<sup>2</sup> and priest abuse.<sup>3</sup>
- According to a recent *Philadelphia Inquirer* article, “Bankruptcy experts say it is not uncommon for companies to try to escape future product-defect liabilities in search of a ‘fresh start.’ But courts do not necessarily go along. At the least, they sometimes require that a pot of money be set aside for future claims.”<sup>4</sup>
- Every year, there are at least 500 to 1000 serious injuries or deaths due to Chrysler and GM cars that are designed or built with defects.

**The Chrysler bankruptcy involves the sale of assets to a new company – known as a “363 sale”<sup>5</sup> – but this is not a typical bankruptcy or sale; the car companies and U.S. Treasury Department have “cherry picked and chosen” which liabilities will continue.**

- In Chrysler’s case, the car companies and the Treasury Department expressly decided to abandon injury victims while sticking by others. For example, “new Chrysler” (after the bankruptcy) is responsible to pay hundreds of millions of dollars for warranties, recalls, lemon law claims and rebates on the vehicles now on the road. The new company will replace a defective part, but if the part causes an accident or leads to a catastrophic injury or death, the company is off the hook.
- As reported by the *Philadelphia Inquirer*, “David Skeel, a law professor at the University of Pennsylvania, said the strongest claims would come from those who have no idea today that they might someday have a claim, such as people who may one day be in accidents caused by other drivers’ defective Chryslers. Skeel said the government’s involvement in the bankruptcy bolsters the victims’ case. ‘If you’re going to pick and choose who gets paid, there’s a pretty strong argument that the victims of Chrysler cars have a moral claim,’ he said.”<sup>6</sup>

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\* This is a conservative estimate reflecting the approximate number of vehicles still under warranty based on sales. However, with the exception of states with statutes of repose for product liability claims, defect claims can be brought at any time irrespective of the year of a vehicle’s manufacture. Based on 2008 vehicle registration data from RL Polk there are approximately 30 million Chrysler and 69 million GM cars and light trucks on the road. *2008 US Light Duty Vehicle Registrations, RL Polk Inc.*

**This result conflicts with standard bankruptcy practice in many states.**

- Under the law of most states, where the new, or successor company (like “new Chrysler”), acquires the trade name, good will and customer lists of the bankrupt company, and it continues to produce the same line of products, holding itself out to customers as the same, the new company should bear the costs of injuries from defective products sold by the old company.<sup>7</sup>

**Since Treasury and the car companies have left the old “Chrysler” with no money for claims either, some experts are advising consumers to get rid of their cars now.**

- Norman I. Silber, law professor at Hofstra, said, “Given the terms of the Court’s approval, consumers would be well advised to get rid of any Chrysler purchased before the deal because if this ruling holds, nobody solvent will bear responsibility for design defects. When it becomes apparent that dumping these cars is the prudent thing to do, anyone who can afford to, will be apt to, do this; and this will leave mainly poor and ignorant persons holding pre-deal Chryslers.”<sup>8</sup>

**Before the Chrysler bankruptcy, Fiat’s original idea was to assume liability for these injury claims; the Treasury Department paved the way for shielding the “new Chrysler” from them.**

- Bob Manzo, Chrysler’s financial advisor, testified in court that before bankruptcy was contemplated, Fiat had agreed to assume the liability for injury claims. Alfredo Altavilla of Fiat confirmed this.<sup>9</sup>
- Chrysler CEO Robert Nardelli testified that the first time this came up were “discussions that took place between United States Treasury and Fiat.”<sup>10</sup>

**There are reasonable solutions to help the injury victims.**

- Solutions include: Ensure that “new Chrysler” and GM accept responsibility for existing products (successor liability); or
- Have “new” or “old” Chrysler develop a victims’ fund that will allow current and future injured consumers to proceed with their cases (this money could be accessed only after a claim is resolved successfully); or,
- Purchase a retroactive insurance policy to cover past, present and future injury claims.

**NOTES**

<sup>1</sup> *In re A.H. Robins Co.*, 880 F.2d 709 (4th Cir. 1989).

<sup>2</sup> *Kane v. Johns-Manville Corp.*, 843 F.2d 636 (2d Cir. 1988); *In re Kaiser Aluminum Corp.*, 2006 Bankr. LEXIS 3945 (D. Del. 2006); *In re United States Mineral Products*, 2005 Bankr. LEXIS 3259 (D. Del. 2005); *In re Mid-Valley, Inc.*, 2004 Bankr. LEXIS 1553 (Bankr. W.D. Pa. 2004); *In re Chiles Power Supply Co, Inc.*, 264 B.R. 533 (Bankr. W.D. Mo. 2001); *In re Lykes Bros. Steamship Co.*, 233 B.R. 497 (Bankr. M.D. Fla. 1997).

<sup>3</sup> *In re Roman Catholic Archbishop of Portland in Oregon*, 2007 Bankr. LEXIS 1180 (D. Ore. 2007).

<sup>4</sup> Jeff Gelles, “Two-time victims in Chrysler’s bankruptcy,” *Philadelphia Inquirer*, June 7, 2009;

[http://www.philly.com/philly/business/20090607\\_Two-time\\_victims\\_in\\_Chrysler\\_s\\_bankruptcy.html](http://www.philly.com/philly/business/20090607_Two-time_victims_in_Chrysler_s_bankruptcy.html)

<sup>5</sup> This is for the section of the bankruptcy code, 11 USC §363

[http://uscode.law.cornell.edu/uscode/html/uscode11/usc\\_sec\\_11\\_00000363----000-.html](http://uscode.law.cornell.edu/uscode/html/uscode11/usc_sec_11_00000363----000-.html)

<sup>6</sup> Jeff Gelles, “Two-time victims in Chrysler’s bankruptcy,” *Philadelphia Inquirer*, June 7, 2009;

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<sup>7</sup> See *Ray v. Alad Corporation*, 19 Cal. 3d 22, 136 Cal. Rptr. 574,560 P.2d 3 (Calif., 1977). See also, *Schwinn Cycling and Fitness, Inc. v. Benonis*, 217 B.R. 790 (N.D. Ill. 1997).

<sup>8</sup> Email from Professor Norman I. Silber to Clarence Ditlow, Center for Auto Safety, June 5, 2009.

<sup>9</sup> May 27, 2009, Hearing Tr. 252:1-4, 348:16-23.

<sup>10</sup> May 28, 2009, Hearing Tr. 404.