

CHRYSLER CHAPTER 11 BANKRUPTCY - WHAT IT MEANS TO DEALERS

THE FOLLOWING INFORMATION IS BEING PROVIDED TO YOU AS GENERAL GUIDANCE ON THE IMPACT ON YOUR BUSINESS OF A CHRYSLER CHAPTER 11 FILING UNDER THE FEDERAL BANKRUPTCY CODE. THIS INFORMATION IS NOT INTENDED AS LEGAL ADVICE. DEALERS ARE STRONGLY ENCOURAGED TO CONSULT WITH THEIR LEGAL AND OTHER PROFESSIONAL ADVISORS TO DETERMINE THEIR RIGHTS AND RESPONSIBILITIES IN RESPONDING TO THIS MOST DIFFICULT SITUATION.

QUESTIONS REGARDING BANKRUPTCY IN GENERAL

Q. It has just been announced that Chrysler has filed for bankruptcy. What happens now?

A. Chrysler has filed for bankruptcy protection under Chapter 11 of the federal Bankruptcy Code. Under Chapter 11, Chrysler can continue to operate as a going business concern while it attempts to reorganize its operations and capital structure. Although there is always the possibility that a Chapter 11 bankruptcy may involve the liquidation of certain assets or be converted to a Chapter 7 liquidation, Chrysler hopes to eventually emerge from bankruptcy as a viable business enterprise, but potentially with a much different scope of operations than it has now.

Q. How long will the bankruptcy process take?

A. It is hard to predict at this point. However, a major corporation bankruptcy such as this may take several years. For example, United Airlines emerged from bankruptcy three years after it first filed. On the other hand, changes made last year to the bankruptcy law place a limit of 18 months from the filing date in which Chrysler can be given the exclusive right to file a reorganization plan. In addition, Chrysler has indicated that it wants to exit bankruptcy quickly,

and it has reportedly reached agreement with some of its major constituencies, so its case may be concluded much faster. This may help expedite the process.

Q. Who will be in control of Chrysler during the bankruptcy?

A. Unless the bankruptcy court appoints a trustee, Chrysler will continue to control its business operations and the bankruptcy estate as the "debtor in possession." As such, it will have all the rights and duties of a bankruptcy trustee. Although any creditor or other party in interest may ask the court to appoint a trustee, such appointments in Chapter 11 bankruptcies are disfavored and infrequent. If there are specific matters regarding Chrysler's conduct of its business or the bankruptcy that need to be investigated by a neutral party, the court may, upon request of any party in interest, appoint an examiner to conduct the investigation and report his or her findings.

QUESTIONS REGARDING CREDITORS' COMMITTEES

Q. How can I have input on what happens during the bankruptcy proceeding and protect my interests without spending a fortune on attorney's fees?

A. As a creditor, you have the right to individually monitor the proceeding and to ask the court to take actions to protect your interests. However, a more practical and less costly way of protecting your interests is to make sure that those interests and the interests of similarly situated dealers are adequately represented on a creditors' committee. In any Chapter 11 bankruptcy, there is at least one creditors' committee of unsecured creditors. The committee may or may not include a dealer representative. This committee is initially appointed by the United States Trustee. Any party in interest may ask the United States Trustee to appoint additional creditors'

committees or to change the makeup or expand the membership of the original committee. If the United States Trustee refuses this request, the request may be made to the bankruptcy court.

Chrysler dealers have interests, such as the continuation of their dealer agreements, that are different from those of other Chrysler creditors. It is also possible that the interests of some dealers will be different from other dealers. For example, if Chrysler attempts to reject some dealer agreements and to assume others, the dealers whose dealer agreements are being rejected will have a distinct interest that should merit special representation on a creditors' committee.

Q. How can Chrysler dealers go about ensuring that all of their interests are adequately represented on a creditors' committee?

A. The Chrysler National Dealer Council plans to ask the United States Trustee to appoint a dealers committee to represent the Chrysler dealers. However, we cannot be certain whether the United States Trustee will agree to appoint a dealers committee. NADA also will be working closely with state and local ATAEs. During the course of the proceeding, it may be necessary to ask that additional committees be appointed to represent the interests of dealers whose interests vary from other dealers. Individual dealers have the right to contact the United States Trustee directly about representation of their interests on a creditors' committee or to ask the court to change or expand the membership or appoint an additional committee.

Q. What will a creditors' committee or a dealer's committee do to protect my interests?

A. A creditors' committee would represent the collective interests of all unsecured creditors. A dealers committee – if one is appointed – would be comprised of dealers and would represent the interests of the dealer body as a whole. These committees, as part of their duties, would provide information to their constituency. Typically, this is done by a website. They would also

engage in negotiations with Chrysler and other constituencies, and appear at court hearings. However, these committees would not represent any individual dealer. For example, if a dealer had a dispute with Chrysler regarding amounts owed to the dealer, or issues under its contract with Chrysler, etc., that dealer would need to be individually represented -- the committee would not handle such a matter for the dealer

In order to adequately represent the dealers' interests, the creditors' committee, or a separate dealers committee, if one is appointed, may appoint attorneys, accountants, or other agents to represent it, consult with Chrysler, conduct investigations, help formulate the reorganization plan, and, if appropriate, request appointment of a trustee or examiner. Expenses incurred by the committee in performing these functions can be reimbursed by the bankruptcy estate. Members of a creditors' committee owe a fiduciary duty to all creditors represented by that committee. A major responsibility of a creditors' committee is to provide information to other creditors who hold claims of the kind represented by the committee and to solicit and receive comments from those creditors. The court may compel the committee to provide additional reports and disclosures to those other creditors.

QUESTIONS REGARDING SALES OF CHRYSLER'S ASSETS PRIOR TO CONFIRMATION OF THE PLAN OF REORGANIZATION

Q. Can some or all of Chrysler's assets be sold to another entity as part of the bankruptcy proceeding and before a plan of reorganization has been confirmed?

A. Yes. It is possible that some or all of Chrysler's assets may be sold either as part of the confirmed plan of reorganization or during the course of the proceeding pursuant to Section 363 of the Bankruptcy Code.

Q. Will I, as a creditor or other interested party, receive notice and an opportunity to object to such a sale prior to the plan of reorganization?

A. Yes, if the assets are sold under Section 363 other than in the ordinary course of business (in other words, no notice or opportunity to object exists if, for example, Chrysler sells inventory to its dealers pursuant to their dealer agreements). For Section 363 sales other than in the ordinary course of business, Chrysler must give notice of the sale and provide an opportunity for objections and a hearing if there are any objections.

Q. If objections to a sale are made, what standard will the bankruptcy court apply in determining whether to approve the sale?

A. Sales in bankruptcy are typically measured by the “business judgment” rule, meaning that the court generally will approve a sale if there is a good business reason (from the standpoint of the debtor-Chrysler) to support it and adequate notice of it was given to all interested parties. Reasons why a sale might not be approved include: (a) if the proposed price is not fair and reasonable (for example, if the proposed price is clearly less than the assets' fair market value or the assets have not been properly exposed to the market to determine what their fair market value is); (b) if the sale process was not fair (for example, if there was collusion among potential buyers or potential buyers were not given sufficient access to information to enable them to make a purchase offer; or (c) if the court determines that the assets should be sold outside a plan of reorganization. The standard for court approval of a sale tends to be somewhat higher if the debtor proposes to sell substantially all of its business or assets prior to a chapter 11 plan.

Q. What happens to liens against the sold assets?

A. Section 363 permits the sale of assets free and clear of any liens or other interest in the assets under certain circumstances. In most cases, the liens will attach to the sale proceeds.

Q. How might a Section 363 asset sale affect my franchise agreement?

A. This will depend on which assets are sold and what happens to the assets that aren't sold. If the assets (including trademarks) related to the brand or brands covered by your franchise agreement are sold, the purchaser of those assets probably will become the new manufacturer and distributor of those brands, and your rights to continue as an authorized dealer of those brands will depend on such circumstances as whether your franchise agreement has been assumed by Chrysler and then assigned to the buyer as part of the Section 363 sale, whether the purchaser/new distributor offers you a new franchise agreement directly, and whether your state franchise law entitles you to continue as a dealer of the brand under a new distributor. If the assets relating to your brand(s) are not sold, the continuation of your franchise agreement may depend upon whether those assets are used by Chrysler to continue to manufacture and distribute the brand(s) in question, in which case what happens to your franchise agreement will depend on whether it assumed or rejected by Chrysler (see QUESTIONS RELATING TO ASSUMPTION OR REJECTION OF THE DEALER AGREEMENT below). If the unsold assets are liquidated after the Section 363 sale, your rights may be governed by your state franchise law provisions relating to franchise terminations and discontinuation of line makes, although any damage claims arising under those state law provisions will probably need to be asserted as unsecured claims against the bankruptcy estate.

QUESTION REGARDING PREFERENCES

Q. Might I be asked to return any monies that Chrysler has paid me before the bankruptcy was filed?

A. Certain payments made to creditors on account of pre-existing debts, within 90 days before the bankruptcy is filed may be recovered by the bankruptcy estate as "preferences." However, payments of obligations made in the ordinary course of both the debtor's and creditor's business are exempt from being recovered as preferences. Most payments that dealers have received from Chrysler prior to the bankruptcy, such as reimbursement for warranty work or incentive payments, should not be regarded as "preferences." However, payments received from Chrysler by a dealer for consideration other than in the ordinary course of business that was given a significant amount of time in advance of the payment may be recoverable as a "preference." In order to recover a preference, Chrysler would have to file an "adversary proceeding" against you. You would have an opportunity to contest your liability in such a proceeding.

QUESTIONS REGARDING AUTOMATIC STAY

Q. May I sue Chrysler or continue a suit that was commenced before the bankruptcy was filed, while the bankruptcy is pending?

A. The filing of a bankruptcy case creates an automatic stay against enforcement of claims against Chrysler that existed when the bankruptcy was filed. This stay bars the commencement or continuation of most judicial, administrative, or other proceedings against Chrysler, if the proceeding was or could have been brought before the bankruptcy was filed. It also prevents the enforcement of any judgments against Chrysler that existed before the bankruptcy.

The automatic stay does not prevent you from suing Chrysler on claims that arise after the bankruptcy was filed although the questions of when a claim arises can be complicated and depends on the facts in each situation.

Q. When will the automatic stay end?

A. Unless relief from the stay is granted, the stay continues in effect until the bankruptcy ends, which probably will be when Chrysler's reorganization plan is confirmed by the court.

Q. Will I be able to sue Chrysler on a pre-petition claim after the automatic stay ends?

A. Not, if as is likely, the claim is discharged under the reorganization plan. The discharge will serve as an injunction against further attempts to enforce the claim. You will have to be satisfied with whatever you receive on the claim under the plan.

Q. May I seek relief from the stay, so I can commence or continue a legal action against Chrysler on a claim that existed before the bankruptcy?

A. Any party in interest may ask the court to relieve it from the automatic stay "for cause" so it may pursue the debtor in a legal proceeding outside the bankruptcy court. In order to obtain relief, you will need to show that the legal proceeding will not prejudice the effective reorganization of the debtor, that the hardship to you if you are unable to continue with the proceeding will significantly outweigh the hardship to Chrysler if the proceeding continues, and you have a probability of prevailing on the merits of your case. Other factors that the court will consider in deciding whether to lift the automatic stay to allow continuation of pending litigation include (1) whether the issues in the pending litigation involve only state law, (2) whether modifying the stay will promote judicial economy; (3) whether there would be greater interference with the bankruptcy case if the stay were not lifted because matters would have to be

litigated in bankruptcy court; and (4) whether the estate can be protected properly by a requirement that creditors seek enforcement of any judgment through the bankruptcy court.

Under certain circumstances the bankruptcy court will be required to abstain from deciding an issue that is the subject of a pending proceeding and, therefore, should be willing to grant relief from the stay to allow the issue to be resolved in that proceeding. A bankruptcy court must abstain from resolving an issue when all of the following circumstances exist:

- A timely motion to abstain is filed.
- There is a pending proceeding in a non-bankruptcy forum involving the same issue.
- The issue is "related" to the bankruptcy case, but is not one that arises solely under the bankruptcy code ("core proceeding").
- The issue is governed by state law.
- The pending proceeding could not have been brought in federal court (this includes federal court jurisdiction based on diversity of citizenship).
- The issue can be timely adjudicated in the non-bankruptcy proceeding.

In many instances, where a proceeding involving a state law claim is pending in a non-bankruptcy forum when the bankruptcy is filed, the only element for mandatory abstention that may be missing is that the pending proceeding could not have been brought in federal court. If your dealership entity and Chrysler are not "citizens" of the same state (*i.e.*, your dealership's principal place of business is not in Michigan and it is not incorporated in Delaware) and the state law claim could be filed in court, the pending proceeding probably could have been brought in federal court under diversity jurisdiction and, therefore, mandatory abstention would not

apply. However, if diversity jurisdiction does not exist between your dealership and Chrysler or the state law required the claim to be brought before a specific administrative agency, the bankruptcy court may very well be required to abstain from resolving the issue and, therefore, is likely to grant relief from the stay to allow the issue to be resolved in the pending non-bankruptcy proceeding.

Q. Can my state's motor vehicle licensing agency continue or begin regulatory proceedings to prevent Chrysler from violating the state's franchise law while the bankruptcy is pending?

A. The automatic stay does not bar the commencement or continuation of an action or proceeding by a "governmental unit" to enforce its police or regulatory powers. However, the proceeding must concern generally applicable regulatory laws and not simply adjudicate private rights between Chrysler and a dealer or seek to protect a particular dealer's pecuniary interest. Even an agency proceeding that is not barred by the automatic stay may be enjoined by the bankruptcy court if it appears likely to interfere with Chrysler's effective reorganization.

QUESTIONS REGARDING DEALERS' PRE-PETITION CLAIMS AGAINST CHRYSLER

Q. How do I preserve my right to receive money Chrysler owed me before the bankruptcy petition was filed?

A. As stated earlier, the filing of a petition for bankruptcy results in an automatic stay against enforcement of pre-petition claims against the debtor. If the manufacturer assumes the franchise agreement in a Chapter 11 proceeding (assumption and rejection of franchise agreements are discussed later), it will be obligated to satisfy any pre-petition (and post-petition) claims of the dealer as a condition of the assumption. Otherwise, the dealer will need to assert an

unsecured claim against the bankruptcy estate. This is done by filing a “proof of claim” form, which states the amount and basis for the claim. The debtor or other parties may object to the claim. Absent an agreed resolution of such an objection, the court would determine whether the claim is valid, and the amount of the claim. A deadline (referred to as a “bar date”) will be set for filing claims.

Q. Can I set off my pre-petition claims against money that I owe Chrysler?

A. Generally, the automatic stay prohibits you from setting off money that Chrysler owes you against money that you owe Chrysler. Therefore, you would need to get relief from the stay, before you could setoff in most circumstances.

Even in the absence of the stay, the right to setoff applies only if both debts arose before commencement of the bankruptcy action and are in fact mutual. If you have a claim for money that Chrysler owed you before the bankruptcy was filed, it cannot be setoff against amounts that you owe Chrysler after the bankruptcy is filed.

An exception to the automatic stay barring setoff may exist if your claim against Chrysler arises from the same transaction as Chrysler's claim against you. In that case, you may be able to use the doctrine of "recoupment" as a defense to Chrysler's claim. However, your claim must arise out of the identical transaction as Chrysler's claim in order for this exception to apply.

Dealer warranty, holdback and incentive claims, as well as amounts dealers owe the manufacturer for parts and special tools and equipment purchases, are normally paid via the dealer's open account with the manufacturer. Dealers may be able to successfully argue that the open account is a single transaction and, therefore, the amounts owed the dealer under the account may be recouped against the amounts it owes the manufacturer under the same account.

However, to the extent the dealer's open account has a positive balance when the petition was filed, unless the court orders otherwise the dealer will likely need to assert an unsecured claim for the amount of that balance.

Q. What about holdbacks and advertising fees? Can I ask that they be paid to me on the basis that they are my property being held by Chrysler?

You might attempt to argue that holdbacks and certain advertising fees held by the manufacturer when a bankruptcy petition is filed are your property and, therefore, not part of the bankruptcy estate. To make this argument, you (or the dealers' creditor committee) will need to petition the court to exclude this property from the estate and order it paid to the dealers to whom it belongs. It is also possible that Chrysler might agree to make these payments in order to avoid adverse impact on dealers.

Q. Is it possible Chrysler will pay the amounts it owes me in the ordinary course of business despite the bankruptcy filing?

In some Chapter 11 cases, a large number of small claims will be classified as "administrative convenience" claims which will be paid in full at confirmation. This allows the debtor to avoid soliciting large numbers of acceptances from a creditor class whose total claims are relatively insignificant in amount. It is possible Chrysler may elect to treat your and other dealers' pre-petition claims for warranty reimbursement, incentive payments, holdbacks and other amounts due in the ordinary course of business as "administrative convenience" claims and pay them in the ordinary course.

If Chrysler assumes your franchise agreement (see discussion below), it will be obligated to pay all of the monies it owes you under that agreement - whether before or after the bankruptcy was filed. Although it doesn't necessarily have to pay you these amounts

immediately, they will become administrative priority claims that must be paid before any other creditors are paid at the conclusion of the bankruptcy proceeding.

Q. What must I do to preserve my claims that are not otherwise satisfied through payment in the ordinary course or through recoupment?

Chrysler will file bankruptcy schedules. These schedules will include a list of all creditors, according to Chrysler's books and records. If the amount that Chrysler owes you is listed as a claim on its schedules and the claim is not marked as disputed, contingent or unliquidated, you do not need do anything to preserve the claim. If it is not listed on the schedule or it is marked as disputed, contingent or unliquidated, you need to file a proof of claim by whatever deadline is set by the bankruptcy court. Once the proof of claim is filed, it is presumed to be valid unless objected to. If an objection is filed, the bankruptcy court will determine the validity and amount of the claim.

Q. If Chrysler owes me for warranty work performed before the bankruptcy, will the court allow my claim based on my retail labor rate and retail parts markup?

A. If your state franchise law requires Chrysler to pay you for warranty work based on your retail labor rate and/or retail parts markup, you have a good argument that your claim should be allowed on that basis because the amounts of claims that should be allowed are generally determined based on applicable state law.

Q. When will the money that Chrysler owed me when the bankruptcy petition was filed be paid to me?

A. If your pre-petition claims against Chrysler are not paid in the ordinary course, either as administrative convenience claims or because your dealer agreement is assumed, you will probably have to wait until Chrysler's reorganization plan is confirmed before you receive

payment. That could be many months from now. Also, as discussed below, the amount you receive on your claim may be reduced under the reorganization plan.

Q. Can I recover interest for the time that has elapsed since the claim should have been paid?

A. Unsecured creditors generally are not entitled to post petition interest on their allowable claims, except in fairly rare cases where the debtor is solvent.

Q. What are the chances that my pre-petition claim will be paid in full?

A. That is impossible to say. If the claim is not paid in the normal course or upon the assumption of your dealer agreement, the amount you will be paid will depend on the reorganization plan that is ultimately confirmed. It is possible that the plan will classify pre-petition claims by dealers for warranty work and incentives as "administrative convenience" claims that will be paid in full so that Chrysler will not be required to solicit the dealers holding those claims for approval of the plan. If the claims are classified by the plan as "impaired" claims, it will mean that the plan does not propose to pay them in full upon confirmation of the plan. The plan may propose to make only partial payment of impaired claims or to delay payment or to make payment by means other than cash. Regardless of how the plan proposes to handle a class of impaired claims, a majority of the claim holders in number and two-thirds of the amount of the claims in the class must approve the plan before it can be confirmed by consent.

Q. What happens if a majority of the class members vote to approve the plan, but I vote against it?

A. If the plan is confirmed, you will be bound by it and have to accept whatever payment of your claim is proposed, even though you voted against it, as long as the payment that you receive is not less than what you would have received in a Chapter 7 liquidation of Chrysler.

Q. What happens if a majority of the class members do not vote to approve the plan?

A. If a majority of any impaired class does not vote to approve the plan, it may still be confirmed by a process called "cram down", provided that the majority of at least one class of impaired claims does vote to approve it. Under "cram down" confirmation, each class of unsecured claims must either (1) receive consideration having a present value, as of the plan's effective date, of not less than the full allowed amount of the claims in the class, or (2) no class which is junior to the class can receive anything unless the subject class is paid in full. This means that you will be entitled to full payment before Chrysler's shareholders can receive anything under the plan.

QUESTIONS REGARDING POST-PETITION CLAIMS

Q. If Chrysler doesn't pay me incentives or amounts for services that become due and owing after the bankruptcy petition was filed, do I need to pursue a claim for such payments in the bankruptcy case?

A. No. These are post-petition claims that do not have to be resolved in the bankruptcy and are not subject to the automatic stay; so you can pursue them independent of the bankruptcy case, if you choose. Dealers may file a motion to allow payment of such claims as administrative expenses. In addition, if a contract is assumed, the debtor must pay all amount that remain due under that contract, including both prepetition and postpetition amounts.

Q. Why wouldn't I choose to pursue them in state court?

A. Because claims for services provided during the bankruptcy that benefited the bankruptcy estate are apt to qualify as priority administrative expense claims that, if filed in the bankruptcy case, will be paid in full before any other claims can be paid. If you pursue such claims in an independent non-bankruptcy action, not only would you not receive this priority treatment, you also could not attempt to collect a judgment against the assets of the bankruptcy estate until after the reorganization plan was confirmed and the automatic stay ended.

Q. Will the amount I'm entitled to be paid for warranty work that I provide after the bankruptcy has been filed be based on my retail labor rate and/or retail parts markup, if my state law requires Chrysler to pay me on that basis?

A. As discussed previously, payment for warranty work performed after the bankruptcy is filed will likely be treated as an administrative expense the highest unsecured priority claim. However, Chrysler may argue that the amount of priority administrative expenses should be determined on the basis of the value that the post-petition services conferred on the bankruptcy estate. Therefore, it is possible that the court will allow a priority administrative expense claim for post-petition warranty work in an amount that is less than on your retail labor rates or retail price markup. There could be a dispute in court about this issue.

Q. Can I receive interest on a priority administrative expense claim?

A. Probably. There is a dispute in the authorities over whether interest on post-petition expenses that qualify as administrative expense claims themselves may be also treated as administrative expense claims. However, the majority rule today appears to be that interest on debts incurred as administrative expenses during a Chapter 11 case enjoy the same priority as the administrative expense itself.

QUESTIONS RELATING TO ASSUMPTION OR REJECTION OF THE DEALER AGREEMENT

Q. What happens to my Chrysler dealer agreement as a result of the bankruptcy?

A. Ultimately, the dealer agreement will be either assumed or rejected. If it is assumed, it will continue in effect until terminated in accordance with its provisions and applicable franchise laws. If it is rejected, neither you nor Chrysler will have any further obligation to perform under it; however, you will have an unsecured claim against Chrysler for damages as if Chrysler had breached the dealer agreement immediately before the bankruptcy was filed. Since this would be considered a "pre-petition" claim, you would need to file a proof of claim in bankruptcy court. If all or a part of Chrysler's business is sold, it is possible that your contract could be "assumed and assigned" – or, in other words, sold to the buyer.

Q. When does Chrysler have to decide whether to assume or reject my dealer agreement?

A. Absent a court order, Chrysler may assume or reject your dealer agreement at any time before confirmation of the reorganization plan, including as part of the reorganization plan. However, you (or another party, such as a committee) may request the court to fix a specific date by which Chrysler must determine whether to assume or reject its dealer agreements. In acting on such a request, the court generally will want to make sure that Chrysler has a "reasonable time" to determine which contracts would be beneficial to an effective reorganization.

Q. Until Chrysler decides whether to assume or reject my dealer agreement, do I have an obligation to continue to perform under it?

A. Your Chrysler dealer agreement is what is known as an "executory contract", which means that both sides have continuing obligations to perform. The dealer agreement provides

that, as the dealer, you may terminate it at any time by giving prior notice to Chrysler. However, the automatic stay prevents you from exercising that right at the present time. So, unless and until the dealer agreement is rejected, you are obligated to continue performing your obligations under it, including stocking and promoting Chrysler products and providing service under Chrysler's warranty.

Q. Prior to its decision to assume or reject, does Chrysler also have an obligation to perform?

A. Yes. Chrysler's obligation to perform under the dealer agreement will continue until that agreement is either "rejected" with the bankruptcy court's approval or it is terminated in accordance with its provisions and applicable state franchise laws. However, even if Chrysler breaches this obligation, you will be required to continue your own performance until the contract is rejected or terminated.

Q. What happens if Chrysler never says whether it is assuming or rejecting my dealer agreement?

A. If an executory contract is never properly assumed, even upon confirmation of a reorganization plan, it will be deemed rejected. Assumption of the agreement will not be implied simply because Chrysler has continued to perform under it while the bankruptcy case is pending but never formally assumed it. This is why dealers will probably want to ask the court to fix a specific date by which Chrysler must assume or reject its dealer agreements.

Q. What are Chrysler's obligations if my dealer agreement is assumed?

A. If Chrysler assumes your dealer agreement, it must cure any default or provide you with adequate assurance that it will promptly cure any default and compensate you for any actual pecuniary loss caused by the default. It must also provide you with adequate assurances of

future performance under the contract. The amounts Chrysler owes you under an assumed dealer agreement become administrative priority claims that entitle you to payment before ordinary unsecured creditors are paid.

Q. What happens if Chrysler assumes my dealer agreement, but then doesn't honor the agreement?

A. If your dealer agreement is assumed, any claims arising under that agreement after the date of assumption will be treated as priority administrative expenses, which must be paid in full before any other claims can be paid. However, it is important that the assumption be approved by the bankruptcy court to assure priority status for any post-assumption claims.

Q. If my dealer agreement is assumed, can it be later terminated by Chrysler?

A. If Chrysler assumes your dealer agreement, it will later be able to terminate or not renew it in accordance with the terms of the agreement and applicable state law. In other words, the termination or nonrenewal of your agreement after it is assumed will be governed by the same rules that applied before the bankruptcy. Under the bankruptcy code, Chrysler may also elect to subsequently reject a contract that it has assumed, but in that event the rejection damages are elevated to administrative priority.

Q. Can Chrysler assume only part of my agreement and reject the rest?

A. No. A debtor who assumes an executory contract takes it subject to all existing burdens and may not assume favorable aspects of the contract while rejecting unfavorable aspects. For example, Chrysler can not assume only the part of the agreement that obligates you to provide warranty work or other services, but reject the parts that allow you to order new vehicles for resale and to use its trademarks.

Q. Can Chrysler reject my dealer agreement if it was signed after the bankruptcy was filed?

A. No. Chrysler's right to reject dealer agreements does not apply to contracts entered into by it after the bankruptcy was filed.

Q. Is Chrysler's right to reject my dealer agreement restricted by my state's franchise law that says it must have good cause to terminate or not renew that agreement?

A. Not directly. The existence of a state law prohibiting termination of an executory contract does not stand as an obstacle to the debtor's authority to reject that contract. However, the state franchise law may affect the amount of your claim for damages resulting from the rejection.

Q. Does Chrysler have the final say on whether to reject my dealer agreement?

A. No. The rejection is not effective unless approved by the bankruptcy court.

Q. Do I have the right to contest Chrysler's decision to reject?

A. Yes.

Q. If I contest the rejection of my dealer agreement, what standard will the court apply in deciding whether to approve the rejection?

A. The basic test will be whether rejection of your dealer agreement will benefit the bankruptcy estate and Chrysler's creditors as a whole. Chrysler has the burden of showing that the rejection will be beneficial, but the bankruptcy court is likely to give a great amount of deference to its business judgment. However, dealers may try to argue for the application of a higher standard for rejection of dealer agreements.

Q. What are some of the reasons that courts have given for approving contract rejections?

A. Specific reasons include the obvious one of the contract being unprofitable for the debtor (costs exceed benefits), the debtor's desire to substitute a more favorable contract for the one being rejected, and the existence of a troubled relationship between the parties to the contract.

Q. What arguments can I make against approving the rejection?

A. Generally, the best argument will be to show that the dealer agreement benefits Chrysler and, therefore, the bankruptcy estate. A showing that the harm to you greatly outweighs whatever benefit the estate would derive from the rejection may also be persuasive. Another persuasive argument that you can make is that the rejection of your dealer agreement will create a substantial claim against the estate that will outweigh the benefit of the rejection.

Q. Is Chrysler likely to reject all of the dealer agreements of its dealers?

A. No, absent a liquidation. If Chrysler rejected all of its dealer agreements, it could not find sufficient alternatives with the facilities, equipment, personnel and capital necessary to effectively sell and service its vehicles. Without a feasible plan to replace its dealer network with a more efficient or less expensive alternative, Chrysler would not likely be able to show that the rejection would benefit the estate.

Q. Which dealer agreements might Chrysler attempt to reject?

A. Chrysler might attempt to use rejection to restructure its dealer network by eliminating certain dealers that it considers to be no longer needed (*e.g.*, dealers in small markets that generate limited sales) or to implement its channeling strategy or to rid itself of dealers that it believes have poor locations or poor performance records

Q. What arguments might I make if Chrysler rejects my dealer agreement because I'm in a small market?

A. Other than the general arguments against rejection discussed earlier, you might try to show that closing your dealer point will cause Chrysler's sales to decline because sales and service of Chrysler products will no longer be convenient for residents in the area that you serve. There may also be arguments based on the public interest.

Q. How will Chrysler attempt to justify rejecting a small dealer's agreement as being beneficial to the bankruptcy estate?

A. Chrysler may contend that it needs to reduce its dealer count because planned reductions in its production capacity will no longer permit it to supply all of its existing dealers. It might also stress the need to strengthen its dealer network by providing the remaining dealers with more sales potential and the need to reduce the administrative expense of a large dealer network.

Q. How likely is it that Chrysler will be allowed to reject dealer agreements in order to achieve its "channeling" strategy or to rid itself of dealers it considers to be in poor locations or to be poor performers?

A. Chrysler may argue that rejection for these reasons will allow it to give the franchises to stronger, better located and/or better performing dealers with resulting increases in sales for the benefit of the estate. Unlike a franchise termination proceeding under state law where the manufacturer normally must prove, among other things, that the dealer is in material breach of the dealer agreement, the bankruptcy court is likely to give a great deal of deference to Chrysler's business judgment and not carefully scrutinize all of the circumstances.

Q. How might I counter these arguments?

A. The general arguments against rejection have been previously discussed. In addition, where Chrysler is attempting to reject a dealer agreement in order to give the franchise to another

dealer, you might argue that the state franchise law may prevent it from doing so, even if the court approves the rejection.

Q. How might my state's franchise law prevent Chrysler from replacing me with another dealer if my dealer agreement is rejected?

A. It has been held that the rejection of a contract under the bankruptcy law does not result in its termination. Therefore, even if your agreement is rejected, you can claim that you have rights as a franchised Chrysler dealer under your state's franchise law. If your state has a "relevant market area" (RMA) law that allows a franchised dealer to protest the establishment of another dealer of the same make in the protesting dealer's RMA, you could file such a protest against Chrysler entering into a dealer agreement with the dealer its intends to replace you with. Some state laws also prohibit the licensing agency from issuing a license to a dealer who is intended to replace a dealer whose dealer agreement that has not been terminated in accordance with the state law. Dealers with rejected dealer agreements in those states could argue that Chrysler's failure to terminate the dealer agreement in accordance with the state law bars its proposed replacement dealer from being licensed. These statutes might be used to persuade the bankruptcy court that rejecting your franchise agreement is not in the best interests of the bankruptcy estate because Chrysler may not be able to replace you with another dealership in your market.

Q. What happens if the court approves the rejection of my dealer agreement?

A. If your dealer agreement is rejected with court approval, neither you nor Chrysler will have any further obligation to perform under it. However, you will have a claim for damages based on breach of the agreement as of the date the bankruptcy was filed.

Q. What will I have to do to assert that claim?

A. This damages claim will be treated as an unsecured debt accruing prior to the filing date of the petition. Therefore, you will need to pursue it as an unsecured claim in bankruptcy. This means you will need to file a proof of claim. This is a prepetition claim, so it may not be paid in full. If there is a dispute over the amount of rejection damage claim, that dispute will be resolved by the bankruptcy court.

Q. How will the amount of this claim be determined?

A. The amount of the claim will be governed by applicable state law. Normally, the amount of a claim for breach of contract that results in no further performance by either party is determined by the future net profits that the non-breaching party lost due to the nonperformance. Future net profits will need to be estimated based on the dealership's past financial performance and the total amount of such profits will have to be discounted to present value to reflect the fact that the claim is for payment now instead of in the future when the profits would have been earned. The amount you receive on this claim might be less than the damages you can show were caused by the rejection because it will be an unsecured claim that is subject to impairment and cram down when the reorganization plan is approved.

Q. How far into the future will I be able to project future lost profits in determining the amount of my claim?

A. The current Chrysler dealer agreement does not have an expiration date. You will be able to argue that the amount of your claim should include future lost profits. In termination cases, dealers have been awarded future lost profits for up to 10 to 20 years. However, when future

profits 20 years from now are discounted they will have a substantially reduced present value, depending on the discount rate that is used.

Q. If my dealer agreement is rejected, can I claim damages against Chrysler for violating my state's franchise law that prohibits Chrysler from terminating or failing to renew my agreement without good cause?

A. Although the rejection of the dealer agreement technically does not result in its termination, the effect of the rejection will be that Chrysler will no longer perform under it. This arguably results in an actual or *de facto* termination of the agreement for purposes of your state's franchise law. Because Chrysler presumably would not have followed the procedures required for termination of the agreement under that law, you should have a damages claim caused by the state law violation.

Q. How would a claim for violation of the state franchise law differ from the claim for damages based on breach of contract resulting from the rejection?

A. The actual damages you could claim for Chrysler's violation of the state franchise law would at least partially duplicate the damages for the breach of contract claim. You could not recover duplicative damages twice. Because most state franchise laws prohibit failures to renew dealer agreements without good cause, the damages on a state franchise law claim would not be limited by the term of the dealer agreement. In addition, some states allow recovery of double or treble damages and attorney fees for a state franchise law violation.

Q. Where could I bring a state franchise law claim resulting from the rejection of my dealer agreement?

A. This claim would also need to be asserted in the bankruptcy. The bankruptcy code requires that any "claim arising from the rejection" of an executory contract must be determined and allowed or disallowed as a pre-petition claim, and pre-petition claims are ordinarily (thought

not always) resolved in the bankruptcy court. A state franchise law claim resulting from Chrysler's failure to perform under the dealer agreement following its rejection would probably be deemed one "arising from the rejection" and, therefore, a prepetition claim.

Q. How likely is it that the bankruptcy court would award me double or treble damages for the state franchise law violation?

A. This will depend, among other things, on how the bankruptcy court interprets state franchise law.

Q. How likely is it that the bankruptcy court would award me attorney fees incurred in prosecuting the state franchise law claim?

A. Again, this will depend on how the bankruptcy court interprets state franchise law.

Usually, a creditor does not receive attorney fees for asserting a claim in bankruptcy court.

Q. Even if the bankruptcy court approves the rejection of my dealer agreement, can I ask a state court or administrative agency to force Chrysler to continue it based on my state's franchise law?

A. No. Although most state franchise laws allow dealers to obtain injunctions against the termination of their dealer agreements without good cause, and there have been some bankruptcy court decisions that have held that the rejection of a contract does not bar the non-debtor party from seeking specific performance if such a remedy is allowed under the applicable state law, a claim for an injunction to force Chrysler to continue performing under a rejected dealer agreement would be a "claim arising from the rejection" that must be resolved by the bankruptcy court. The definition of "claim" in the bankruptcy code includes a "right to an equitable remedy for breach of performance if such breach gives rise to a right to payment . . ." It is extremely

doubtful that the bankruptcy court, which approved the rejection of the dealer agreement in the first place, would turn around and order Chrysler to continue performing under it.

Q. Could the motor vehicle commission or licensing agency in my state commence an action on its own to bar Chrysler from refusing to perform under my dealer agreement after it has been rejected?

A. This is possible but very difficult to predict with any certainty. A state regulatory action would not be "a claim arising from the rejection" because the state agency would have no right to payment from Chrysler resulting from its breach of the dealer agreement. Therefore, the state agency's action would not have to be treated as a pre-petition claim that must be asserted in bankruptcy court. It also would not be barred by the automatic stay because it could not have been brought before the bankruptcy petition was filed and would also likely fall within the police and regulatory actions exception to the stay. However, Chrysler would presumably argue that any state laws requiring it to perform under a rejected contract are superseded by the Bankruptcy Code because they would, in effect, negate the power to reject a contract.

QUESTIONS RELATING TO DEALER AGREEMENT TERMINATION PROCEEDINGS

Q. If Chrysler issued a notice of termination of my dealer agreement before it filed bankruptcy and the termination is now subject to a pending proceeding before a state court or administrative agency, can that proceeding be continued in order to resolve whether Chrysler can terminate my dealer agreement under the state franchise law?

A. Not unless you receive relief from the automatic stay.

Q. How likely is it that the bankruptcy court will grant relief from the stay to allow the state court or administrative proceeding to resolve whether Chrysler may terminate my dealer agreement?

A. This will depend on how far along the pending proceeding is, how soon the question will be resolved if the proceeding is allowed to continue, whether continuation of the proceeding will prejudice Chrysler or its creditors, and whether the bankruptcy court is required to abstain from resolving the question itself.

Q. Under what circumstances would the bankruptcy court be required to abstain from resolving whether Chrysler may terminate my dealer agreement under the state law?

The elements that must exist before a bankruptcy court is required to abstain from hearing and deciding a matter have been discussed earlier. If there was a state court or administrative proceeding already pending when Chrysler filed bankruptcy that involves the issue of whether Chrysler can terminate your dealer agreement under state law, these elements may all exist. The proceeding was pending when the bankruptcy was filed, is based on state law, is related to the bankruptcy but is not a "core proceeding", and presumably will be timely resolved if allowed to be continued. The one element that will depend on the particular circumstances of your case is whether the pending proceeding could have been brought in federal court. If your dealership entity and Chrysler are citizens of different states (your dealership entity's principal place of business is not in Michigan and it is not incorporated in Delaware) and the state law allows proceedings under it to be brought in court, rather than before an administrative agency, the pending proceeding probably could have been brought in federal court under diversity jurisdiction and, if so, mandatory abstention does not apply. If your dealership entity and Chrysler are both citizens of Michigan (because that is where your dealership is located) or Delaware (because that is where your dealership is incorporated) or the pending proceeding was required by state law to be brought before a specific administrative agency, the

proceeding could not have been brought in federal court and mandatory abstention should apply if you file a timely motion for abstention. If the court is required to abstain from resolving the issue itself, it probably will grant relief from the stay to allow the issue of whether Chrysler may terminate your dealer agreement under state law to be resolved in the pending state proceeding. Even if mandatory abstention doesn't apply, the bankruptcy court has the discretion to abstain from resolving the issue itself and allowing the pending proceeding to continue.

Q. If Chrysler gave me a notice of termination before the bankruptcy was filed but no non-bankruptcy proceeding to block the termination was commenced before the filing, does the filing of the bankruptcy void that notice?

A. No. The automatic stay does not toll the mere running of time under a contract.

Therefore, if Chrysler gave you notice of the termination of your dealer agreement in accordance with its terms and applicable state law prior to the filing of the bankruptcy, the automatic stay does not void its termination even if the effective termination date is after the filing date.

Q. Can I file a non-bankruptcy proceeding now to block the termination?

A. Not without getting relief from the stay.

Q. How then do I avoid having the termination become effective?

A. If your state law allows you to stop a notice of termination from becoming effective by filing a state court or administrative proceeding after you receive a notice of termination and you haven't done so by the time the bankruptcy was filed, you should immediately move for relief from the stay so you can file the state proceeding and, in the alternative, commence an adversary proceeding asking the bankruptcy court to temporarily enjoin the termination until the issue of whether Chrysler has the right to terminate under your state's franchise law has been resolved.

Q. What if the time for filing the state proceeding required to block the termination has elapsed before I obtain relief from the stay in order to file it?

A. Assuming that the time for filing the state proceeding did not elapse before the bankruptcy was filed, you can ask the bankruptcy court to enjoin the termination until the issue of whether Chrysler has good cause for it is resolved on the grounds that the bankruptcy filing extended the time you have to file the state proceeding. The bankruptcy code extends any time limit under applicable non-bankruptcy law for commencing a "civil action in a court other than a bankruptcy court on a claim against the debtor" to 30 days after notice of the termination or expiration of the automatic stay "with respect to such claim." If the state proceeding required to block a termination is before an administrative agency, there will be the question of whether this statutory time extension for commencing a "civil action in a court" is applicable.

Q. What if Chrysler serves me with a termination notice after the bankruptcy was filed?

A. If you receive a termination notice from Chrysler after the bankruptcy petition was filed, the automatic stay will not bar you from commencing whatever action is available under your state franchise law to contest the termination. Therefore, you should proceed as if the bankruptcy case does not exist, unless the bankruptcy court takes some action to enjoin the state proceeding. However, if you collect a judgment for damages in the state proceeding, you cannot attempt to collect it from the assets of the estate until the automatic stay has terminated.

QUESTIONS RELATING TO ADVERSARY PROCEEDINGS

Q. If I need to seek relief in bankruptcy court, other than simply through filing a proof of claim, what procedure do I need to use?

A. You may initiate an adversary proceeding in bankruptcy court by the filing of a complaint under the bankruptcy rules. The proceeding will be treated as a separate lawsuit within the context of a bankruptcy case and has all of the attributes of a lawsuit. The proceeding will be governed by certain bankruptcy rules which incorporate various Federal Rules of Civil Procedure. Adversary proceedings may be for the purpose of recovering money or property or to obtain an injunction or other equitable relief.

Q. Who makes the final decision in an adversary proceeding?

If the proceeding is a "core proceeding," the bankruptcy court may hear it and render a final determination, subject to appeal to the federal district court. If the proceeding is a "non-core proceeding," the bankruptcy court may hear it, but may not enter a final order, unless all parties consent. Instead, the bankruptcy judge must submit findings of fact and conclusions of law to the district court, which may then enter a final order or judgment after considering the bankruptcy judge's proposals and reviewing *de novo* any matters to which any party objects. Generally, "core" proceedings are those that exist only because of the bankruptcy law, while "non-core" proceedings are those civil proceedings that, in the absence of bankruptcy, could have been brought in a district court or state court.

QUESTIONS RELATING TO PLAN OF REORGANIZATION

Q. Who may file the plan of reorganization?

A. Chrysler has the exclusive right to file a plan of reorganization during the first 120 days after the bankruptcy is filed. In addition, it may ask the court to extend this time, which

frequently occurs. However, a recent change in the bankruptcy code prohibits the "exclusivity period" being extended beyond a date that is 18 months after the bankruptcy was filed.

After the applicable exclusivity period has expired, any party in interest (including any creditor or creditors' committee) may file a reorganization plan.

Q. What must a reorganization plan contain?

A. Generally, a Chapter 11 reorganization plan must:

- Divide the creditor claims and ownership interests into classes.
- State which classes are "impaired" and "not impaired" by the plan.
- Specify how the plan is to satisfy "impaired" classes.
- Treat every member of a given class in the same way unless the member individually agrees to accept less favorable treatment. However, the plan may give the members of a given class an election between alternative treatments - such as, to receive immediate payment of a lesser percentage of their claim or payment of a higher percentage of their claim over a period of time - as long as each member may make the election.
- Set forth an adequate means for its implementation. These means may include selling assets, modifying contracts, issuing securities, merging or consolidating with another company, or amending the corporate charter.
- Provide for treatment of priority claims.
- Contain certain provisions on the voting rights of shareholders of the reorganized debtor and the selection of officers and directors.

In addition to these mandatory provisions, the plan may contain any other proposals that do not conflict with the Code. Any or all classes of claims may be impaired or left unimpaired. The treatment of an impaired class may consist of anything that does not violate an express provision of the Code. Executory contracts may be rejected or assumed as part of the plan, as well as during the preplan stage of the case. Litigation may be settled as part of the plan, or the lawsuit may be retained and prosecuted by the plan proponent or a representative of the estate.