

Chrysler Creditors Seek ‘Billions’ From Daimler

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By Brendan Pierson

Law360, New York (August 04, 2009) –Creditors of Chrysler LLC have asked a bankruptcy court for permission to sue the recently reorganized car company’s former parent, Daimler AG, to recover “billions of dollars” Daimler allegedly stripped from Chrysler when it sold the company to Cerberus Capital Partners LP in 2007.

In a motion filed Tuesday in the U.S. Bankruptcy Court for the Southern District of New York, the official committee of Chrysler’s unsecured creditors asked for permission to file a complaint against Daimler and four former Chrysler directors on behalf of Chrysler’s estate, claiming that the defendants “stripped Chrysler of its most valuable assets for grossly inadequate consideration” in the 2007 sale.

The motion said that the complaint would include counts of intentional and constructive fraudulent transfer and unjust enrichment against Daimler, and breach of fiduciary duty against the directors, who were not named.

The details of the creditors’ allegations were redacted from the motion, and the proposed complaint was filed under seal.

Susman Godfrey LLP and Stutzman Bromberg Esserman & Plifka PC have agreed to prosecute the claims, if they are allowed to proceed, in exchange for a flat fee of \$2 million and a contingent fee of 20 percent of any recovery up to \$200 million and 15 percent of any recovery beyond that, the motion said.

The law firms will also be responsible for any costs above \$7.5 million, limiting the committees’ costs in the complaint to a total of \$9.5 million, it said.

“We think there’s absolutely no merit to these claims, and we will defend ourselves vigorously,” Daimler spokesman Han Tjan said.

Chrysler and Daimler reached a settlement in June under which Chrysler agreed to release Daimler from claims related to the 2007 sale, and Daimler agreed to forgive \$2 billion in Chrysler debt and inject \$600 million into Chrysler’s ailing pension plans over the next two years.

However, the agreement gave Chrysler’s creditors a two-month window, later extended through Aug. 18, in which to investigate possible claims it might bring against Daimler on Chrysler’s behalf.

Daimler acquired Chrysler in 1998, but as the company’s fortunes began to wane, it sold its controlling interest to a subsidiary of Cerberus in 2007.

In May, Chrysler filed for Chapter 11 bankruptcy, listing assets of \$39.3 billion and liabilities of more than \$55.2 billion as of Dec. 31, 2008.

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The company emerged from bankruptcy in June after being sold to Fiat SpA for \$2 billion.

The creditors committee is represented by Kramer Levin Naftalis & Frankel LLP, Susman Godfrey LLP and Stutzman Bromberg Esserman & Plifka PC.

Daimler is represented in Chrysler's bankruptcy by Skadden Arps Slate Meagher & Flom LLP and Shearman & Sterling LLP.

Chrysler is represented by Jones Day.

The case is In re: Old Carco LLC, case number 09-50002, in the U.S. Bankruptcy Court for the Southern District of New York.

—Additional reporting by Jessica Dye