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Auto Products Liability & Bankruptcy
DANIEL DELL'OSSO AND CASEY KAUFMAN

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Do Auto Products Liability Claims Have Life After Bankruptcy?

In the spring of 2009, after accepting billions in Federal bailout money, Chrysler declared bankruptcy. Shortly thereafter GM followed into insolvency. What the two companies left in their wake were 40 million vehicles (10 million Chryslers and 30 million GM vehicles) whose owners and passengers were without recourse in the event of injury or death caused by a vehicle defect. Every year, between 500 and 1000 people are seriously injured or killed because of defects in the design and manufacture of Chrysler and GM cars alone. [1]

Since Chrysler and GM submitted their plans to emerge from bankruptcy, there has been a Herculean effort by a number of trial lawyer organizations to draw attention to this injustice. Through their efforts, and with the support of some sympathetic legislators, some redress for the victims of defective cars has been salvaged.

A Brief History of Where We Have Been

As originally approved, the Chrysler Bankruptcy plan provided that any person driving a Chrysler now on the road whose occupants were severely injured because the car was not made safely would have no recourse against the "old" bankrupt Chrysler or the new successor company. This plan marked a sharp departure from what had occurred in the Dalkon Shield and Asbestos Litigation and in similar litigation. In these cases, usually trust funds were established for the payment of injured victims. In addition, it was rare that a successor company was able to avoid all liability for defects in the products manufactured by its predecessor. Nonetheless that is what has occurred.

The Chrysler bankruptcy involved something called a "363" sale. This procedure involves the sale of assets to a new company. Using this procedure, Chrysler with the help of the U.S. Treasury decided which liabilities would be part of the sale. Together, they expressly decided to honor warranty claims, recalls, lemon law claims, and rebates, but refused to extend liability to those injured or killed due to defect. Under the plan, Chrysler will pay to replace a defective part, but not the costs of care for a person injured by that defective part. Interestingly, Bob Manzo, Chrysler's financial advisor, testified in court that before the bankruptcy was contemplated, Fiat had agreed to assume the liability for injury claims, a fact confirmed by Alfredo Altavilla of Fiat.

Honoring warranty claims and recalls has allowed dealers selling cars built by the old Chrysler to (mis)represent to buyers that the government was standing behind these cars. As a result by the terms of the existing plan, anyone injured by a vehicle manufactured by the "old" Chrysler has no recourse other than to file a claim with the bankruptcy court. At this point no fund has been set aside to pay those claims and all current state court actions have been stayed.

The General Motors bankruptcy which occurred on June 1, 2009 followed a similar pattern. Like Chrysler, the GM bankruptcy plan abandoned the 30 million vehicles it had on the road. However, because by the time GM started the process opposition forces had been galvanized, the outcome was slightly more consumer friendly. Specifically, under its plan, GM agreed to indemnify its dealers. In addition, GM agreed that it would honor defect claims involving vehicles manufactured before

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the bankruptcy where the claim arose after the bankruptcy. However, as was true with Chrysler, existing state court claims against GM have been stayed, leaving existing victims with the sole option of filing a claim in bankruptcy. Like Chrysler, the current GM bankruptcy estate has no fund set aside for victims injured prior to the June 1, 2009 filing date. The deadline for filing such a claim was November 30, 2009.

Recent Developments

In an effort to protect consumers, and to inject some transparency into the process, trial lawyers with the help of other consumer advocate groups approached the FCC about requiring a label on all Chrysler vehicles built before the bankruptcy that warned consumers that they were without legal remedy should a defect in the vehicle seriously or fatally injure them or one of their passengers. The FCC initially expressed support for the proposal.

On August 27, 2009, while a decision on the proposal was pending, Senator Richard Durbin received a letter from John T. Bozzella of Chrysler which read in part:

Dear Senator Durbin:

We very much appreciate the support you have given to the new Chrysler Group LLC, and we understand the concerns you have raised about Chrysler Group's commitments on product liability claims.

As you know, on June 10, 2009, Chrysler Group purchased substantially all of the assets of the former Chrysler LLC (now known as "Old Carco LLC"). As part of the bankruptcy court-approved sale transaction, Chrysler Group assumed product liability claims relating solely to vehicles sold by Chrysler Group to its dealers. Chrysler Group did not assume product liability claims arising out of vehicles sold before June 10, 2009 (except to the extent required by our sales and service agreements with sustained dealers).

Today, Chrysler Group has a much better appreciation of the viability of our business than it did on June 10. As a result, we will announce today that the company will accept product liability claims on vehicles manufactured by Old Carco before June 10 that are involved in accidents on or after that date. This is in addition to our previous commitment to honor warranty claims, lemon law claims and safety recalls regarding these vehicles. As a result of today's announcement, Chrysler Group's approach is consistent with that taken by General Motors as part of its bankruptcy process.

By the terms of this letter it is now clear that Chrysler will honor injury claims involving vehicles manufactured before the bankruptcy where the claim arose after the bankruptcy.

Where we are today

As it stands, pending claims against both GM and Chrysler are stayed while claims against dealers and component manufacturers may still be viable. Parties with pending claims may file a claim against the bankruptcy estate as an unsecured, non-priority claimant. At this point there is no fund for the injured in the bankruptcy estate. As to Chrysler, the projected recovery is expected to be ½ cent on the dollar.

With reference to GM: *What's In:* The new GM agreed to assume liability for vehicles built by the old company, if the incident occurred *after* July 10, 2009, when GM exited bankruptcy. *What's Out:* The old GM retains the liability for all current and pending claims. If the incident occurred before July 10th, it is considered a pending claim, even if it has not yet been filed. *Recovery of Unsecured Claims:* Unsecured claims in GM are predicted to receive between 10-20 cents on the dollar, several years from now. This is based on projections; there is no guarantee. Cost of administration claims will likely be paid in full for anyone having an accident in the five weeks in between when GM entered and exited bankruptcy, once the old company is liquidated.

What do we do now

At this point the legal remedies are fixed and some available options are described below. However, the real solution for persons with existing claims is political. Currently, the fight continues on Capitol Hill to force a legislative remedy on the manufacturers' and the administration's conscious decision to leave consumers behind. People like Kimberly Young, a mother turned quadriplegic as a result of a defective roof on her 2004 Jeep Grand Cherokee who, because she had the misfortune to be injured before June 10, 2009, has no recourse. The legislative remedies include passing a law requiring the manufacturers to obtain insurance to cover these claims, and/or requiring the new companies to honor existing claims. This will require that we use our advocacy skills and resources to gain support for the proposed legislation.

Legally the options appear to be somewhat more limited. They include but are not limited to:

1. Filing claims with the bankruptcy courts.
2. Including both dealership and component manufacturers as part of your lawsuit.
3. Dismissing the manufacturer without prejudice and proceeding only against the dealer and/or component manufacturer
4. Amending existing actions to include dealerships and component manufacturers and then seeking leave to sever the manufacturer and proceed only against the dealership and component manufacturer
5. Do nothing for a bit and wait and see what type of political solution if any can be achieved.
6. And finally, continue to get the word out about the unfairness of what has occurred. The public has contributed hundreds of millions in tax dollars to bail these manufacturers out, and yet must also bear the high cost and burden of caring for the those injured by their defective products.

End Notes

Chrysler and GM Bankruptcies: Wiping out the Rights of All Consumers Who Drive These Cars ; Center for Justice and Democracy (2009)

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