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

-----X
In re : Chapter 11
Chrysler LLC, *et al.*, : Case No. 09-50002 (AJG)
Debtors. : (Jointly Administered)
-----X

**MOTION OF DEBTORS AND DEBTORS IN
POSSESSION, PURSUANT TO SECTION 105 OF THE
BANKRUPTCY CODE, FOR AN ORDER CONFIRMING THE
PROTECTIONS OF SECTIONS 362, 365 AND 525 OF THE BANKRUPTCY CODE**

TO THE HONORABLE
UNITED STATES BANKRUPTCY JUDGE:

Chrysler LLC ("Chrysler") and 24 of its domestic direct and indirect subsidiaries, as debtors and debtors in possession (collectively with Chrysler, the "Debtors"), respectfully represent as follows:

Background

1. On the date hereof (the "Petition Date"), the Debtors commenced their reorganization cases by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). By a motion filed on the Petition Date, the Debtors have requested that their chapter 11 cases be consolidated for procedural purposes only and administered jointly.

2. The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. The Debtors and their nondebtor direct and indirect subsidiaries (collectively, the "Chrysler Companies") comprise one of the world's largest manufacturers and distributors of automobiles and other vehicles, together with related parts and accessories. On the Petition Date, the Chrysler Companies employed approximately 55,000 hourly and salaried employees worldwide, 70% of whom were based in the United States. In addition, as of the Petition Date, the Debtors made payments for health care and related benefits to more than 105,000 retirees.

4. Chrysler's ultimate parent company, Chrysler Holding LLC ("Chrysler Parent"), also owns a financing company, nondebtor Chrysler Financial Services Americas LLC ("Chrysler Financial"), that operates under a governance structure separate from Chrysler, with

its own board and management. Historically, Chrysler Financial has provided financing to both Chrysler's dealers and consumers.

5. For the twelve months ended December 31, 2008, the Chrysler Companies recorded revenue of more than \$48.4 billion and had assets of approximately \$39.3 billion and liabilities totaling \$55.2 billion.

6. A more detailed explanation of Chrysler's businesses and operations, and the events leading to the commencement of these cases, can be found in the Affidavit of Ronald E. Kolka, which was filed contemporaneously herewith and is incorporated herein by reference.

Overview of These Cases

7. The significance of this chapter 11 filing to Chrysler and to the United States economy is difficult to overstate. In connection with the filing, Chrysler is seeking approval from this Court to consummate the only sale transaction that preserves some portion of its business as a going concern and averts a liquidation of historic proportions. If the proposed transaction, designed to effect an alliance with Italian automobile manufacturer Fiat S.p.A. ("Fiat"), is rejected and Chrysler liquidates, it will mean the end of an iconic, 83-year-old American car company whose name has been synonymous with innovative engineering, from the Slant-Six and HEMI engines, to power windows, power brakes and power steering, to the minivan. A liquidation would also have impacts on the nation's economy and Chrysler's stakeholders that are grim:

- 38,500 hourly and salaried Chrysler workers in the U.S. will lose their jobs;
- Chrysler's workers and retirees and their surviving spouses will lose over \$9.8 billion of health care and other benefits and \$2 billion in annual pension payments;

- All 23 of Chrysler's manufacturing plants and facilities and 15 parts depots in the United States will shut down (as well as 18 additional plants and parts depots worldwide);
- Approximately 3,200 Chrysler dealers will be put out of business and the over 140,000 employees of those dealerships will lose their jobs;
- Over \$5.7 billion in outstanding auto parts and service supplier invoices will not be paid to Chrysler's suppliers and new business will be cancelled, forcing hundreds of suppliers out of business and the loss of hundreds of thousands of additional jobs;
- Over 31 million Chrysler, Jeep and Dodge owners would lose significant value in their cars and trucks, particularly due to questions about the ongoing availability of warranties and replacement parts and services;
- Local, state and federal governments will lose tens of billions of dollars in tax revenues, according to a research memorandum published by the Center for Automotive Research in November 2008;¹
- Over \$100 billion in annual sales will disappear from local economies; and
- Chrysler's first lien secured creditors will receive net present value recoveries of less than 38 cents on the dollar and possibly as little as 9 cents; the U.S. government, another secured creditor, will receive less than that; and Chrysler's unsecured creditors will receive nothing.

8. The economic and market conditions that led to the commencement of Chrysler's chapter 11 cases and the need for the proposed sale transaction are well known, but sobering nonetheless. The automotive market meltdown, the worst in at least 26 years,² disrupted Chrysler's substantial progress in implementing a long-term plan to reduce costs and transform its businesses for the next generation of cars. With sales plummeting and credit markets frozen, Chrysler undertook an intense effort to address the challenges it faced. After months of hard work and dedication by Chrysler's management, employees and advisors, working with all key stakeholders and with the support of the U.S. government, the Debtors have

¹ Daniel Cole, *et al.*, Center for Automotive Research Memorandum, *The Impact on the U.S. Economy of a Major Contraction of the Detroit Three Automakers*, at <http://www.cargroup.org> (Nov 4, 2008).

² Chris Isidore, *Auto Sales Are Worst in 26 Years. January Sales Tumble More Than Expected at GM, Ford and Toyota as Rental Car Companies Slash Purchases*, CNNMoney.com, Feb. 3, 2009 (4:22 p.m., ET).

commenced these cases to implement a prompt sale to preserve the going concern value of their businesses and return these businesses to viability under new ownership.

9. The proposed sale transaction would create the sixth-largest global automaker by volume unit, increasing competitiveness with other Original Equipment Manufacturers ("OEMs") and creating billions of dollars in synergies. This transaction is the result of thousands of hours of negotiations among multiple parties. The transaction is being financially backed by the United States Department of the Treasury (the "U.S. Treasury") and Export Development Canada, an affiliate of the Canadian government, which together will provide the new alliance with approximately \$6 billion of taxpayer money to start up and maintain operations. In addition to this unprecedented government support, virtually all of the major constituencies that would be affected by a Chrysler liquidation have recognized how devastating it would be and have made important concessions in support of the proposed alliance:

- The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the "UAW") has agreed to wage and benefit reductions in the context of a sale to the new company, which would receive the benefit of a new collective bargaining agreement eliminating certain severance benefits, and would be a party to an agreement with the UAW containing restructured retiree health care benefits;
- Chrysler's dealers have agreed to reduce their dealer and service contract margins;
- Chrysler's already financially troubled suppliers have agreed to a further 3% price reduction and other measures that will save millions of dollars;
- Chrysler's largest secured creditors, JPMorgan Chase, Goldman Sachs, Morgan Stanley and Citigroup, have agreed to the transaction that would substantially compromise their first lien debt, comprising 70% of the \$6.9 billion total outstanding, for an estimated recovery of approximately 28 cents on the dollar; and
- Chrysler Parent's minority shareholder, Daimler AG ("Daimler"), has agreed as part of a settlement with Chrysler to (a) forgive \$1.5 billion of second lien

debt, at the same time that \$500 million of second lien debt is forgiven by majority shareholder Cerberus Capital Management L.P. ("Cerberus"); and (b) assist in funding Chrysler's pension plans.

Representatives of these constituencies have devoted the past six months to reaching these agreements.

10. As the culmination of these efforts, Chrysler, Fiat and New Chrysler (as defined below) have reached an agreement in principle and are expected to enter into a Master Transaction Agreement (collectively with other ancillary and supporting documents, the "Purchase Agreement") in short order. Pursuant to the Purchase Agreement, among other things: (a) Chrysler will transfer the majority of its operating assets to New CarCo Acquisition LLC ("New Chrysler"), a newly established Delaware limited liability company that currently is an indirect wholly-owned subsidiary of Fiat; and (b) in exchange for those assets, New Chrysler will assume certain liabilities of Chrysler and pay to Chrysler \$2 billion in cash (collectively with the other transactions contemplated by the Purchase Agreement, the "Fiat Transaction").

11. With the support of the U.S. government, Fiat, the UAW, dealers, suppliers and other stakeholders, the Debtors commenced these cases to implement an expeditious sale process to implement the Fiat Transaction, or a similar transaction with a competing bidder, designed to maximize the value of the Debtors' operations and businesses for the benefit of their stakeholders. Pending the proposed sale, the Debtors will idle most operations as they conserve their resources, while at the same time ensuring that (a) the facilities are prepared to resume normal production schedules quickly upon the completion of a sale and (b) consumers are not impacted by the filing.

12. Time is of the essence. Given the continuing stress on all aspects of the automotive industry and the idling of the Debtors' manufacturing facilities, key relationships with suppliers, dealers and other business partners simply cannot be preserved if the sale process

is not concluded quickly. Absent a prompt sale, approved and consummated in the coming weeks, the value of the Debtors' assets will rapidly decline and the ability to achieve a going concern sale will be irretrievably lost. By contrast, the proposed sale transaction, if it can be promptly consummated, will maximize the value available for stakeholders, will save hundreds of thousands of jobs and will strengthen the U.S. automotive sector and the economy generally.

Jurisdiction

13. This Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Relief Requested

14. To aid in the administration of the Debtors' bankruptcy cases and to provide the Debtors with breathing space to focus on maximizing value for their stakeholders, the Debtors hereby seek an order, pursuant to section 105(a) of the Bankruptcy Code, that confirms the application of three key protections afforded to the Debtors under the Bankruptcy Code: (a) the automatic stay provisions of section 362 of the Bankruptcy Code; (b) the anti-termination and anti-modification provisions of section 365 of the Bankruptcy Code; and (c) the anti-discrimination provisions of section 525 of the Bankruptcy Code. The extensive and global nature of the Debtors' businesses and their wide-ranging dealings with non-U.S. creditors and other parties who are unfamiliar with the protections afforded chapter 11 debtors under sections 362, 365 and 525 of the Bankruptcy Code require that an order implementing these protections be entered by this Court.

Basis for Relief

Confirming the Protections of Sections 362, 365 and 525 of the Bankruptcy Code

15. As a result of the commencement of the Debtors' chapter 11 cases, by operation of law pursuant to section 362 of the Bankruptcy Code, the automatic stay enjoins (subject to certain enumerated exceptions) all persons and all governmental units from, among other things: (a) commencing or continuing any judicial, administrative or other proceeding against the Debtors that was or could have been commenced before the Debtors' chapter 11 cases were commenced; (b) recovering upon a claim against any of the Debtors that arose before the commencement of the Debtors' chapter 11 cases; and (c) taking any action to collect, assess or recover a claim against any of the Debtors that arose before the commencement of these chapter 11 cases. See 11 U.S.C. § 362(a)(1), (6).

16. Section 365 of the Bankruptcy Code prohibits all parties to executory contracts or unexpired leases with the debtors from, among other things, modifying or terminating such contract or lease, or any right or obligation under such contract or lease, at any time after the commencement of the case solely because of a provision in such contract or lease that is conditioned on: (a) the insolvency or financial condition of the debtor at any time before the closing of the Debtors' chapter 11 cases; (b) the commencement of the Debtors' chapter 11 cases; or (c) the appointment of a trustee in the Debtors' chapter 11 cases. See 11 U.S.C. § 365(e)(1).

17. In addition, section 525 of the Bankruptcy Code prohibits and enjoins any and all governmental units from, among other things: (a) denying, revoking, suspending or refusing to renew any license, permit, charter, franchise or other similar grant to the Debtors (or another person with whom the Debtors have been associated); (b) placing conditions upon such a grant to the Debtors (or another person with whom the Debtors have been associated); or

(c) discriminating against the Debtors (or another person with whom the Debtors have been associated) with respect to such a grant, solely because the Debtors are debtors under the Bankruptcy Code, may have been insolvent before the commencement of these chapter 11 cases or are insolvent during the pendency of these chapter 11 cases or have not paid a dischargeable debt. See 11 U.S.C. § 525.

18. The injunctions contained in sections 362, 365 and 525 of the Bankruptcy Code are self-executing. They constitute fundamental debtor protections that, in combination with other provisions of the Bankruptcy Code, provide the Debtors with the "breathing spell" that is essential to the Debtors' ability to position themselves to maximize value to stakeholders. See, e.g., Variable-Parameter Fixture Dev. Corp v. Morpheus Lights, Inc., 945 F. Supp. 603, 608 (S.D.N.Y. 1996) ("[Section] 362 is meant to give 'the debtor a breathing spell from his creditors [and] . . . permit [] the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy.'" (quoting the legislative history of section 362)).

19. The protections in these provisions extend to protect a debtor's property and contracts wherever it is located and by whomever held. See, e.g., Underwood v. Hilliard (In re Rimsat, Ltd.), 98 F.3d 956, 961 (7th Cir. 1996) (bankruptcy court's *in rem* jurisdiction over property of the estate permits injunctions against foreign proceedings pursuant to the automatic stay); Hong Kong & Shanghai Banking Corp., Ltd. v. Simon, 153 F.3d 991, 996 (9th Cir. 1998) (bankruptcy court may protect estate property wherever located by issuing a discharge injunction under section 524 of the Bankruptcy Code); see also 11 U.S.C. § 541(a) ("The commencement of a case under section 301 . . . of this title creates an estate. Such estate is comprised of all the following property, *wherever located and by whomever held*. . .") (emphasis added). "Courts have consistently held that contract rights are property of the estate." Elder-Beerman Stores

Corp. v. Thomasville Furniture Indus., Inc. (In re Elder-Beerman Stores Corp.), 195 B.R. 1019, 1023 (Bankr. S.D. Ohio 1996).

20. Accordingly, any actions by third parties to modify or terminate contracts or enforce their terms against the Debtors are prohibited absent court approval. See NLRB v. Bildisco & Bildisco, 465 U.S. 513, 531 (1984) (holding that while the debtor may enforce the terms of the contract against the creditor, the creditor is "precluded from . . . enforcing the contract terms" of an executory contract prior to assumption by the debtor); see also United States Postal Service v. Dewey Freight System, Inc., 31 F.3d 620, 624-25 (8th Cir. 1994) ("After a debtor commences a Chapter 11 proceeding, but before executory contracts are assumed or rejected under § 365(a), those contracts remain in existence, *enforceable by the debtor but not against the debtor.*") (emphasis by the court). Thus, a third party must continue to perform under an executory contract until it is assumed or rejected. Krafsur v. UOP (In re El Paso Refinery, L.P.), 196 B.R. 58, 72 (Bankr. W.D. Tex. 1996) ("The [Bankruptcy] Code places an independent duty on the non-debtor to continue the performance of an executory contract until it is assumed or rejected Whether the debtor performs or not, the non-debtor must perform until assumption or rejection."); see also Interstate Gas Supply, Inc. v. Wheeling Pittsburgh Steel Corp. (In re Pittsburgh-Canfield Corp.), 283 B.R. 231, 238 (Bankr. N.D. Ohio 2002) ("Until an executory contract has been rejected, generally a non-debtor must continue to perform. . . . It follows that the non-debtor party cannot unilaterally elect to cease performance on an executory contract prior to its assumption or rejection.") (internal citations omitted).

21. Notwithstanding the self-executing and global nature of sections 362, 365 and 525 of the Bankruptcy Code, not all parties affected or potentially affected by the commencement of a chapter 11 case are aware of these Bankruptcy Code provisions. Nor are all parties cognizant of their significance and impact. Experience has shown that it is often

necessary to advise third parties of the existence and effect of sections 362, 365 and 525 of the Bankruptcy Code through a separate order. For these reasons, it is not uncommon for a bankruptcy court to issue an order embodying and restating the provisions of sections 362, 365 and 525 of the Bankruptcy Code.

22. Such an order is particularly appropriate in the Debtors' chapter 11 cases because the Debtors have operated global businesses across numerous countries and sold hundreds of thousands of cars annually outside of North America. The Debtors believe that, in particular, many of the non-U.S. creditors affected by sections 362, 365 and 525 of the Bankruptcy Code are unaware of the significant protection these sections provide to the Debtors. Moreover, certain of the Debtors' assets are located around the globe, which may further confuse a non-U.S. creditor. Accordingly, the Debtors respectfully request that this Court issue an order that confirms the applicable provisions of sections 362, 365 and 525 of the Bankruptcy Code. The Debtors believe that the existence of such an order, which the Debtors will be able to transmit to affected parties, will maximize the protections afforded by sections 362, 365 and 525 of the Bankruptcy Code. Further, the Debtors believe that the "automatic" and self-executing nature of these protections may not be recognized by foreign creditors or tribunals unless embodied in an order of this Court.

Applicable Authority

23. The Court's general equitable powers are codified in section 105(a) of the Bankruptcy Code. Section 105(a) empowers the court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Granting the relief requested herein is fully consistent with the terms of the Bankruptcy Code and will facilitate a smooth and orderly transition into chapter 11. The Debtors, therefore, request that this Court grant the requested relief.

24. Similar relief has been granted by this Court. See In re PLVTZ, Inc., No. 07-13532 (REG) (Bankr. S.D.N.Y. Nov. 9, 2007); In re Dana Corp., No. 06-10354 (BRL) (Bankr. S.D.N.Y. Mar. 6, 2006); In re Delphi Corp., No. 05-44481 (RDD) (Bankr. S.D.N.Y. Oct. 13, 2005); In re Trans World Airlines, Inc., No. 01-0056 (PJW) (Bankr. D. Del. Jan. 26, 2001).³

Notice

25. No trustee or examiner has been appointed in these chapter 11 cases. Notice of this Motion has been given to: (a) the Office of the United States Trustee for the Southern District of New York; (b) the creditors holding the 50 largest unsecured claims against the Debtors' estates, as identified in the Debtors' chapter 11 petitions; (c) counsel to the administrative agent for the Debtors' prepetition senior secured lenders; (d) counsel to Cerberus; (e) counsel to Daimler; (f) counsel to the UAW; and (g) counsel to the U.S. Treasury. The Debtors submit that no other or further notice need be provided.

No Prior Request

26. No prior request for the relief sought in this Motion has been made to this or any other Court.

³ These unreported orders are not attached to this Motion, but copies of these unreported orders will be made available to the Court at or prior to the hearing on this Motion and are available to other parties upon request from counsel to the Debtors.

WHEREFORE, the Debtors respectfully request that this Court: (i) enter an order substantially in the form attached hereto as Exhibit A, granting the relief sought herein; and (ii) grant such other and further relief to the Debtors as the Court may deem proper.

Dated: April 30, 2009
New York, New York

Respectfully submitted,

/s/ Corinne Ball

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PROPOSED ATTORNEYS FOR DEBTORS
AND DEBTORS IN POSSESSION

EXHIBIT A

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

-----X
In re : Chapter 11
Chrysler LLC, *et al.*, : Case No. 09-50002 (AJG)
Debtors. : (Jointly Administered)
-----X

**ORDER, PURSUANT TO SECTION 105 OF THE
BANKRUPTCY CODE, CONFIRMING THE PROTECTIONS
OF SECTIONS 362, 365 AND 525 OF THE BANKRUPTCY CODE**

This matter coming before the Court on the Motion of Debtors and Debtors in Possession, Pursuant to Section 105 of the Bankruptcy Code, Confirming the Protections of Sections 362, 365 and 525 of the Bankruptcy Code (the "Motion"),¹ filed by the debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors"); the Court having reviewed the Motion and the Affidavit of Ronald E. Kolka filed in support of the Debtors' first day papers (the "Affidavit") and having considered the statements of counsel and the evidence adduced with respect to the Motion at a hearing before the Court (the "Hearing"); and the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (c) notice of the Motion and the Hearing was sufficient under the circumstances and (d) the requested relief confirms the protections of sections 362, 365 and 525 of the Bankruptcy Code; and the Court having determined that the legal and factual bases set forth in the Motion and the Affidavit and at the Hearing establish just cause for the relief granted herein;

¹ Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.

2. Pursuant to section 362 of the Bankruptcy Code, all persons (including individuals, partnerships, corporations and all those acting for or on their behalf) and all foreign or domestic governmental units (and all those acting for or on their behalf) are hereby stayed, restrained and enjoined from:

- (a) commencing or continuing any judicial, administrative or other proceeding against the Debtors, including the issuance or employment of process that was or could have been commenced before any of the Debtors' chapter 11 cases were commenced;
- (b) recovering a claim against any of the Debtors that arose before the commencement of any of their chapter 11 cases;
- (c) taking any action to obtain possession of property of any of the Debtors or of property from any of the Debtors;
- (d) taking any action to create, perfect or enforce any lien against property of any of the Debtors, to the extent that such lien secures a claim that arose before the commencement of any of the Debtors' chapter 11 cases;
- (e) taking any action to collect, assess or recover a claim against any of the Debtors that arose before the commencement of any of their chapter 11 cases; and
- (f) offsetting any debt owing to any of the Debtors that arose before the commencement of any of their chapter 11 cases against any claim against any of the Debtors.

3. All persons and all foreign and domestic governmental units, and all those acting on their behalf, including sheriffs, marshals, constables and other or similar law enforcement officers and officials are stayed, restrained and enjoined from in any way seizing, attaching, foreclosing upon, levying against or in any other way interfering with any and all property of any of the Debtors, wherever located.

4. Pursuant to 365 of the Bankruptcy Code, all persons (including individuals, partnerships, corporations and all those acting for or on their behalf) and all foreign or domestic governmental units (and all those acting for or on their behalf) are hereby prohibited from modifying or terminating any executory contract or unexpired lease, or any right or obligation under such contract or lease, at any time after the commencement of the Debtors' chapter 11 cases solely because of a provision in such contract or lease that is conditioned on:

- (a) the insolvency or financial condition of the debtor at any time before the closing of the Debtors' chapter 11 cases;
- (b) the commencement of the Debtors' chapter 11 cases; or
- (c) the appointment of a trustee in the Debtors' chapter 11 cases.

5. Pursuant to 362 and 365 of the Bankruptcy Code, all parties to an executory contract or unexpired lease with one or more of the Debtors shall continue to perform their obligations under such contract or lease until such contract or lease is assumed or rejected by the Debtors or otherwise expires by its own terms.

6. This Order shall not affect the substantive rights of any party. Specifically this Order shall not affect the exceptions contained in sections 362(b) and 365(e)(2) of the Bankruptcy Code or the right of any party in interest to seek relief from the automatic stay in accordance with section 362(d) of the Bankruptcy Code or with respect to an unexpired lease or executory contract under section 365 of the Bankruptcy Code.

7. Pursuant to section 525 of the Bankruptcy Code, all foreign and domestic governmental units are prohibited and enjoined from: (a) denying, revoking, suspending or refusing to renew any license, permit, charter, franchise or other similar grant to the Debtors (or another person with whom the Debtors have been associated); (b) placing conditions upon such a grant to the Debtors (or another person with whom the Debtors have been associated); or

(c) discriminating against the Debtors (or another person with whom the Debtors have been associated) with respect to such a grant, solely because the Debtors are debtors under the Bankruptcy Code, may have been insolvent before the commencement of these chapter 11 cases or are insolvent during the pendency of these chapter 11 cases.

8. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Dated: New York, New York
_____, 2009

UNITED STATES BANKRUPTCY JUDGE