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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 SECTIONS 105(a), 327, 328 AND 330 OF THE
BANKRUPTCY CODE AND BANKRUPTCY RULE 2014(a), FOR
AN ORDER AUTHORIZING THEM TO RETAIN, EMPLOY AND PAY
CERTAIN PROFESSIONALS IN THE ORDINARY COURSE OF THEIR BUSINESSES**

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,

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).

working with all key stakeholders and with the support of the U.S. government, the Debtors have 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. Pursuant to sections 105(a), 327, 328 and 330 of the Bankruptcy Code and Rule 2014(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the Debtors hereby seek the entry of an order authorizing them to retain, employ and pay certain professionals (each, an "Ordinary Course Professional") and service providers (each, a "Service Provider") in the ordinary course of the Debtors' businesses, without the submission of separate retention applications and the issuance of separate retention orders for each individual Ordinary Course Professional or Service Provider.

Basis for Relief

Cause Exists for Authorization to Retain, Employ and Pay Ordinary Course Professionals and Service Providers

15. The Debtors' officers and management, in the performance of their duties, regularly call upon a wide variety of Ordinary Course Professionals including attorneys, accountants and financial consultants to provide services to assist them and the Debtors in

carrying out their assigned duties and responsibilities. These Ordinary Course Professionals provide valuable — often critical — assistance in addressing issues of importance to the Debtors and their businesses. Exhibit A attached hereto and incorporated herein by reference is a nonexclusive list (the "OCP List") of the Ordinary Course Professionals identified by the Debtors as of the Petition Date.

16. The Debtors have prepared the OCP List based on a review of the professionals that they have employed regularly on an historic basis. At this early juncture, the Debtors have not determined which of the parties identified on the OCP List in fact will continue to provide services to the Debtors on a postpetition basis, particularly since the Debtors' manufacturing operations will be idled pending the anticipated sale. As such, the OCP List is not intended to constitute a representation that each party listed thereon will be retained, employed and paid by the Debtors during the course of these cases.³

17. In addition, in the ordinary course of their businesses, the Debtors historically have employed a variety of Service Providers⁴, including, without limitation: (a) actuaries; (b) employee benefits and human resources consultants; (c) engineers and designers; (d) environmental consultants and technicians; (e) information technology consultants, programmers, systems designers and technicians; (f) insurance brokers; (g) risk management consultants; (h) marketing consultants; (i) public relations firms; (j) medical service providers; (k) general business consultants; (l) governmental consultants; (m) legal support firms; and

³ Likewise, the Debtors believe that there will be additional professionals that will provide services as Ordinary Course Professionals in these cases, but that were not identified by the Debtors' preliminary review and thus are not included on the attached OCP List. Accordingly, the Debtors reserve the right to supplement or otherwise amend the OCP List from time to time by filing a supplemental or amended OCP List with the Court and serving it on parties in interest.

⁴ Notwithstanding the idling of the Debtors' manufacturing operations, the services of Service Providers still may be required to assist in Debtors' remaining business activities and to prepare for consummation of a sale transaction.

(n) trial experts.⁵ Although the Service Providers in some instances have professional degrees and certifications, these parties — like other vendors, suppliers and service providers — provide services to the Debtors that relate to the day-to-day conduct of the Debtors' businesses.

18. The Debtors anticipate that certain of the Ordinary Course Professionals and Service Providers will continue to provide valuable services in connection with the postpetition conduct of their business affairs. As such, to the extent necessary or appropriate, the Debtors desire to continue to employ the Ordinary Course Professionals and Service Providers to render a variety of services to their estates consistent with the nature and type of services provided prior to the Petition Date. It is essential that the employment of the Ordinary Course Professionals and Service Providers, many of whom are already familiar with the Debtors' businesses, assets and finances, be continued to avoid unnecessary disruption of the Debtors' postpetition activities. The Debtors also submit that the uninterrupted assistance of the Ordinary Course Professionals and Service Providers is vital to preserving the value of the Debtors' assets and assisting the Debtors in minimizing the adverse effects of their chapter 11 filing pending the consummation of the Fiat Transaction or other going concern sale. Yet, because of the

⁵ Trial experts are excluded from the definition of Ordinary Course Professionals and are treated as Service Providers for the purposes of this Motion because courts have recognized that retention of trial experts as professionals is not required and would subject a debtor's litigation strategy to unwarranted disclosure and scrutiny. See In re Napoleon, 233 B.R. 910, 913-14 (Bankr. D.N.J. 1999) (holding that an expert witness is not a "professional person" within the meaning of section 327 of the Bankruptcy Code where the witness does not "play an integral role in the administration of the bankruptcy case"); see also In re Argus Group 1700, Inc., 199 B.R. 525, 533-34 (Bankr. E.D. Pa. 1996) (denying forensic accounting firm's retention application, filed pursuant to section 327 of the Bankruptcy Code, and noting that if any members of the firm were needed to testify as expert witnesses, they would not be "professional persons" covered by section 327 of the Bankruptcy Code because their retention would not affect the administration of the estate); In re First Am. Health Care of Ga., Inc., 208 B.R. 996, 998 (Bankr. S.D. Ga. 1996) (holding that an accountant retained solely as an expert witness in collateral litigation need not be retained pursuant to section 327 of the Bankruptcy Code); Elstead v. Nolden (In re That's Entm't Mktg. Group), 168 B.R. 226, 230-31 (N.D. Cal. 1994) (holding that an "accountant who is retained solely to testify as an expert witness in collateral litigation does not assume a 'central role in the administration of the bankruptcy'" and, therefore, is not subject to the requirements of section 327 of the Bankruptcy Code and Bankruptcy Rule 2014).

magnitude and breadth of the Debtors' businesses and the geographic diversity of the professional parties that the Debtors historically have retained, it would be costly, time-consuming and administratively cumbersome for the Debtors and this Court — and, the Debtors submit, unnecessary under prevailing law — to require each Ordinary Course Professional and Service Provider to apply separately for approval of its employment and compensation through the filing of multiple pleadings in these cases.

19. Accordingly, the Debtors request authority to retain, employ and pay the Ordinary Course Professionals and the Service Providers on the terms set forth herein without further order of the Court. The Debtors submit that the proposed employment of the Ordinary Course Professionals and Service Providers and the payment of monthly compensation on the basis set forth below are in the best interest of their estates and creditors. Moreover, the relief requested will save the Debtors' estates the substantial expense associated with applying separately for the retention of each Ordinary Course Professional and Service Provider, as well as the incurrence of additional fees related to the preparation and prosecution of interim fee applications. The procedures outlined below also will relieve the Court, the Office of the United States Trustee for the Southern District of New York (the "U.S. Trustee") and any official committee of unsecured creditors or other statutory committee appointed in these cases (each, a "Committee") of the burden of reviewing numerous applications involving relatively small amounts of fees and expenses.

***The Ordinary Course Professionals and the Service Providers
Are Not Professionals Under Section 327(a) of the Bankruptcy Code***

20. To determine whether an entity to be employed in a bankruptcy case is a "professional" within the meaning of section 327(a) of the Bankruptcy Code, most courts have applied either a "quantitative" or a "qualitative" test. See In re First Merchs. Acceptance Corp.,

No. 97-1500, 1997 WL 873551, at *2 (D. Del. Dec. 15, 1997) (copy attached hereto as Exhibit B). Under the quantitative test, courts have required that an entity providing professional services must play a "central role" in the administration of the estate before it is considered a professional under section 327 of the Bankruptcy Code.⁶ Id. By contrast, under the qualitative test, an entity is considered a professional if it is permitted to exercise discretion and autonomy in addressing the administration of the estate.⁷ Id.

21. In addition, the First Merchants court developed a nonexclusive list of factors to be considered when determining whether an entity to be employed by a debtor is a professional within the meaning of section 327(a) of the Bankruptcy Code. These factors include:

- (a) whether the entity controls, manages, administers, invests, purchases or sells assets that are significant to the debtor's reorganization;
- (b) whether the entity is involved in negotiating the terms of a plan of reorganization;
- (c) whether the entity's employment is directly related to the type of work carried out by the debtor or to the routine maintenance of the debtor's business operations;

⁶ See, e.g., In re Palm Coast, Matanza Shores Ltd. P'ship, 101 F.3d 253, 257 (2d Cir. 1996) (noting In re Seatrain Lines, Inc., 13 B.R. 980, 981 (Bankr. S.D.N.Y. 1981), as establishing as the "benchmark for the purposes of" section 327 of the Bankruptcy Code that professional persons are "limited to persons in those occupations which play a central role in the administration of the debtor proceeding"); Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.), 60 B.R. 612, 619 (Bankr. S.D.N.Y. 1989) (finding that "the phrase 'professional persons' . . . is a term of art reserved for those persons who play an intimate role in the reorganization of a debtor's estate"); see also In re That's Entm't Mktg. Group, 168 B.R. at 230 (defining "professional person" under section 327 of the Bankruptcy Code as a person whose role is "central to the administration of the estate") (citation omitted); In re Sieling Assocs. Ltd. P'ship, 128 B.R. 721, 723 (Bankr. E.D. Va. 1991) (same); In re D'Lites of Am., Inc., 108 B.R. 352, 355 (Bankr. N.D. Ga. 1989) (section 327 approval not necessary for one who provides services to the debtor that are incidental to its ongoing business operations).

⁷ See, e.g., In re Neidig Corp., 117 B.R. 625, 629 (Bankr. D. Colo. 1990) (the most common factor in determining whether a person is a professional is the amount of autonomy or discretion such person is given by a debtor or trustee in performing its services); In re Fretheim, 102 B.R. 298, 299 (Bankr. D. Conn. 1989) (applying qualitative test and stating that "it must be determined whether an employee is to be given discretion or autonomy in some part of the administration of the debtor's estate").

(d) whether the entity is given discretion or autonomy to exercise its own professional judgment in some part of the administration of the debtor's estate;

(e) the extent of the entity's involvement in the administration of the debtor's estate; and

(f) whether the entity's services involve some degree of special knowledge or skill, such that the entity can be considered a professional within the ordinary meaning of the term.

See First Merchants, 1997 WL 873551, at *3.

22. These factors must be considered in their totality — none of the factors alone is dispositive. Id. Nevertheless, professionals assisting in routine conduct of a debtor's business and affairs, rather than the administration of its bankruptcy estate, are not professionals that must be retained under section 327 of the Bankruptcy Code. Id. at *4.

23. Considering all of the First Merchants factors, the Debtors believe that the Ordinary Course Professionals and the Service Providers are not "professionals" within the meaning of section 327(a) of the Bankruptcy Code. In particular, the Ordinary Course Professionals and the Service Providers generally will not be involved in the administration of these chapter 11 cases, but instead will provide services in connection with the ongoing management of the Debtors' assets and the conduct of their operations and affairs. To the extent that services provided by the Ordinary Course Professionals and the Service Providers involve some element of administration of the Debtors' estates, that involvement will be minimal or tangential. As a result, the Debtors do not believe that the retention and payment of the Ordinary Course Professionals and the Service Providers must be approved by the Court. Nevertheless, out of an abundance of caution, the Debtors seek the relief requested in this Motion to avoid any subsequent controversy regarding the Debtors' employment and payment of the Ordinary Course Professionals and the Service Providers during the pendency of these chapter 11 cases.

Proposed Procedures

OCP Fee Limits

24. In most cases, the Debtors do not believe that any of the Ordinary Course Professionals will have monthly fees of more than \$60,000 or total fees of more than \$1 million during the pendency of these chapter 11 cases (collectively, the "OCP Fee Limits"). As described below, however, if the monthly fees of any Ordinary Course Professional exceed the monthly OCP Fee Limit, or if the total postpetition fees of any Ordinary Course Professional exceed the OCP Fee Limit for the pendency of these chapter 11 cases, such fees will be subject to a further review and approval process as set forth below.⁸ Moreover, as also described below, any Ordinary Course Professional that becomes materially involved in the administration of these cases — even if its fees are below the OCP Fee Limits — will be retained pursuant to section 327 of the Bankruptcy Code.

Service Providers

25. Because the Service Providers are providing day-to-day assistance to the Debtors in the conduct of their business affairs, the Debtors believe that the Service Providers are not acting as "professional persons" under the Bankruptcy Code and should be treated on terms consistent with other ordinary course vendors. Accordingly, Service Providers are: (a) not included within the definition of Ordinary Course Professionals used herein; (b) not listed on the OCP List attached hereto as Exhibit A; and (c) not intended to be subject to the OCP Fee Limits, the OCP Payment Procedures (described below) or any other restrictions on Ordinary Course Professionals described herein. The Debtors, in their discretion, intend to continue to employ

⁸ The OCP Fee Limits are intended only to limit the amounts of fees paid to Ordinary Course Professionals without further Court review and not to limit the reimbursement of out-of-pocket expenses incurred by Ordinary Court Professionals.

and pay the Service Providers from and after the Petition Date in the ordinary course of their businesses; provided, however, that, where necessary or appropriate, any Service Provider that becomes materially involved in the administration of these chapter 11 cases will be retained pursuant to section 327 of the Bankruptcy Code.

OCP Payment Procedures

26. The Debtors propose that they be permitted to pay each Ordinary Course Professional, without prior application to the Court, subject to the following procedures

(the "OCP Payment Procedures"):

- (a) The Debtors may pay 100% of the fees and disbursements incurred by an Ordinary Course Professional upon the submission to, and approval by, the Debtors of an appropriate monthly invoice setting forth in reasonable detail the nature of the services rendered and disbursements actually incurred during the month; provided, however, that all payments of fees to Ordinary Course Professionals will be subject to the OCP Fee Limits.
- (b) To the extent that the monthly fees sought by any Ordinary Course Professional exceed the monthly OCP Fee Limit of \$60,000, then such Ordinary Course Professional will submit a statement of the fees incurred during the applicable month (a "Compensation Statement") to the following parties (collectively, the "Notice Parties"): (i) the Debtors, c/o Chrysler LLC, 1000 Chrysler Drive, CIMS #485-14-96, Auburn Hills, Michigan 48326 (Attn: Holly E. Leese, Esq.); (ii) Jones Day, counsel to the Debtors, 222 East 41st Street, New York, New York 10017 (Attn: Corinne Ball, Esq.) and 1420 Peachtree Street, N.E., Suite 800, Atlanta, Georgia 30309-3053 (Attn: Jeffrey B. Ellman, Esq.); (iii) counsel to any statutory committees appointed in these cases; (iv) Simpson Thacher & Bartlett LLP, counsel to the administrative agent for the Debtors' prepetition senior secured lenders, 425 Lexington Avenue, New York, New York 10017 (Attn: Peter Pantaleo, Esq. and David Eisenberg, Esq.); (v) the Office of the United States Trustee for the Southern District of New York (the "U.S. Trustee"), 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: Brian S. Masumoto, Esq.); and (vi) Cadwalader, Wickersham & Taft LLP, counsel to the U.S. Treasury, One World Financial Center, New York, New York 10281 (Attn: John J. Rapisardi, Esq.). Pending review of the Compensation Statement by the Notice Parties, the Debtors are authorized, but not required, to pay the Ordinary Course Professional's fees up to the OCP Fee Limit and reimburse any expenses of the Ordinary Course Professional.

- (c) The Notice Parties will have 30 days from receipt of the Compensation Statement (the "Review Period") to review the Compensation Statement and object to the additional fees above the OCP Fee Limit requested by such Ordinary Course Professional. If any of the Notice Parties objects to the payment of the additional fees sought in a Compensation Statement, it will serve a written statement of its objection on the Ordinary Course Professional and the other Notice Parties so that it is received by such parties before the end of the Review Period. If the Debtors, the applicable Ordinary Course Professional and the objecting party or parties cannot informally resolve the objection(s) within 15 days following the end of the Review Period, then the Ordinary Course Professional will be required to submit a formal application or request for payment to the Court for the additional compensation or waive its right to any monthly fees in excess of the OCP Fee Limit. If no Interested Party timely objects to the payment of fees sought in a Compensation Statement, then the Debtors will be deemed authorized, but not required, to pay the additional compensation sought.
- (d) Likewise, if the aggregate fees incurred by an Ordinary Course Professional during the pendency of these cases would exceed the OCP Fee Limit of \$1 million for the case, then on or before the final business day of the month following the month during which the aggregate fees first exceeded the OCP Fee Limit for the case, and on or before the final business day of every month thereafter until the earlier of (i) the termination of the Ordinary Course Professional's employment or (ii) further order of the Court addressing the issue, the Ordinary Course Professional will submit to the Notice Parties each month a monthly statement (a "Monthly Statement") for all further compensation sought in these cases.
- (e) The Notice Parties will have 30 days after service of each Monthly Statement (the "Monthly Review Period") to review the Monthly Statement and object to the fees requested by such Ordinary Course Professional. If any of the Notice Parties objects to the payment of the additional fees sought in a Monthly Statement, it will serve a written statement of its objection on the Ordinary Course Professional and the other Notice Parties so that it is received by such parties before the end of the Monthly Review Period. If the Debtors, the applicable Ordinary Course Professional and the objecting party or parties cannot informally resolve the objection(s) within 15 days following the end of the Monthly Review Period, then the Ordinary Course Professional will be required to submit a formal application or request to the Court for the additional compensation or waive its right to any fees in excess of the OCP Fee Limit. If no Interested Party timely objects to the payment of fees, then the Debtors will be deemed authorized, but not required, to pay the additional compensation sought.

Disinterestedness

27. Although certain of the Ordinary Course Professionals may hold unsecured claims against the Debtors for prepetition services rendered to the Debtors, the Debtors do not believe that any of the Ordinary Course Professionals have an interest adverse to the Debtors, their creditors or other parties-in-interest on the matters for which they would be employed, and thus all of the Ordinary Course Professionals that the Debtors propose to retain would meet the special counsel retention requirement under section 327(e) of the Bankruptcy Code. The Debtors therefore propose that Ordinary Course Professionals be excused from filing an affidavit of disinterestedness pursuant to Bankruptcy Rule 2014, except that each Ordinary Course Professional that is an attorney located in the United States will be required to file with this Court and to serve upon the Notice Parties an Affidavit of Disinterestedness (the "OCP Affidavit") by the latest of (a) 60 days after the entry of an order granting this Motion, (b) 30 days after the Ordinary Course Professional is added to the OCP List and (c) 30 days after the date the Ordinary Course Professional first performs postpetition services for the Debtors. A form of the OCP Affidavit is attached hereto as Exhibit C. The Debtors propose that the U.S. Trustee and any Committee will have 20 days after the receipt of each OCP Affidavit (the "Affidavit Objection Deadline") to object to the retention of such Ordinary Course Professional. An objecting party will file its objection with the Court and serve the objection on the Notice Parties and the applicable Ordinary Course Professional so that it is received on or before the Affidavit Objection Deadline.

28. If any such objection cannot be resolved informally within 20 days after the Affidavit Objection Deadline, the matter shall be scheduled for hearing before this Court at the next regularly scheduled omnibus hearing date or at such time as may be agreed upon by the Ordinary Course Professional, the Debtors and the objecting party. If no objection is filed and

served prior to the Affidavit Objection Deadline, the Debtors will be deemed authorized to retain such Ordinary Course Professional without further action by the Court or any other party.

29. Relief similar to that requested herein has been granted by courts in this District in numerous cases. See, e.g., In re Lyondell Chemical Co., 09-10023 (REG) (Bankr. S.D.N.Y. Feb. 4, 2009) (setting a monthly fee cap of \$50,000 and a total fee cap of \$500,000); In re Lehman Bros. Holdings Inc., No. 08-13555 (JMP) (Bankr. S.D.N.Y. Nov. 5, 2008) (setting a monthly fee cap of \$150,000 and a total fee cap of \$1,000,000); In re DJK Residential LLC, No. 08-10375 (JMP) (Bankr. S.D.N.Y. Feb. 5, 2008) (setting a monthly fee cap of \$50,000 and a total fee cap of \$500,000); In re Dana Corp., No. 06-10354 (BRL) (Bankr. S.D.N.Y. Mar. 6, 2006) (setting a monthly fee cap of \$50,000 and a total fee cap of \$1,200,000); In re Calpine Corp., No. 05-60200 (BRL) (Bankr. S.D.N.Y. Jan. 25, 2006) (setting a monthly fee cap of \$50,000 and an aggregate cap of \$500,000 per professional); In re Musicland Holding Corp., No. 06-10064 (SMB) (Bankr. S.D.N.Y. Jan. 17, 2006) (setting a monthly fee cap of \$50,000 and a total fee cap of \$500,000); In re Delphi Corp., No. 05-44481 (RDD) (Bankr. S.D.N.Y. Nov. 4, 2005) (same); In re Northwest Airlines Corp., No. 05-17930 (ALG) (Bankr. S.D.N.Y. Oct. 19, 2005) (same); In re Delta Air Lines, Inc., No. 05-17923 (PCB) (Bankr. S.D.N.Y. Sept. 16, 2005) (setting a monthly fee cap of \$60,000 and a total fee cap of \$900,000); In re WorldCom, Inc., No. 02-13533 (AJG) (Bankr. S.D.N.Y. Sept. 4, 2002) (setting a monthly fee cap of \$100,000 per professional and an aggregate fee cap of \$2,000,000 per month for all professionals).⁹

⁹ Because of the voluminous nature of these unreported orders, they are not attached to this Motion. 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.

Other Professionals

30. All professionals employed by the Debtors to assist in the prosecution of these chapter 11 cases will be retained by the Debtors pursuant to separate retention applications. These professionals will be compensated in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York and other orders of this Court.

Notice

31. No trustee or examiner has been appointed in these chapter 11 cases. Notice of this Motion has been given to: (a) the U.S. Trustee; (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

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

[The remainder of this page is intentionally blank.]

WHEREFORE, the Debtors respectfully request that this Court: (i) enter an order substantially in the form attached hereto as Exhibit D, 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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EXHIBIT A

EXHIBIT A

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¹ The Debtors have prepared the OCP List based on a review of the professionals that they have employed regularly on an historic basis. In addition to the services listed in this Exhibit, certain of the Ordinary Course Professionals provide additional types of services to the Debtors. At this early juncture, the Debtors have not determined which of the parties identified on the OCP List in fact will continue to provide services to the Debtors on a postpetition basis. For example, many of the litigation matters handled by counsel will be stayed as a result of the commencement of the Debtors' chapter 11 cases. As such, the OCP List is not intended to constitute a representation that each party listed thereon will be retained, employed and paid by the Debtors during the course of these cases. Likewise, the Debtors believe that there will be additional professionals that will provide services as Ordinary Course Professionals in these cases, but that were not identified by the Debtors' preliminary review and thus are not included on the attached OCP List. Accordingly, the Debtors reserve the right to supplement or otherwise amend the OCP List from time to time by filing a supplemental or amended OCP List with the Court and serving it on parties in interest.

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Rice
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Charlotte, NC 28260-1879

EXHIBIT B



Only the Westlaw citation is currently available.

United States District Court, D. Delaware.
 In Re: FIRST MERCHANTS ACCEPTANCE
 CORPORATION, a Delaware Corporation, Debtor.
No. 97-1500 JJF.

Dec. 15, 1997.

Laura Davis Jones, Esquire, Robert S. Brady, Esquire, Edwin J. Harron, Esquire of Young, Conaway, Stargatt & Taylor, Wilmington, Special Counsel; Robert E. Richards, Esquire, of Sonnenschein Nath & Rosenthal, Chicago, IL, for Debtor and Debtor-in-Possession.

Patricia A. Staiano, Esquire, United States Trustee, Daniel K. Astin, Esquire of the Office of the U.S. Trustee, Philadelphia, PA, for the United States Trustee.

OPINION

FARNAN, Chief J.

*1 Presently before the Court in this Chapter 11 case is a Motion For An Order Pursuant To Sections 363 and 105 Of the Bankruptcy Code Approving (A) Consultation and Assistance Agreement between the Debtor and Ugly Duckling Corporation and (B) Break-Up Fee Agreement In Connection With Proposal For a Chapter 11 Plan (D.I.391) filed by the Debtor, First Merchants Acceptance Corporation (the "Debtor" or "First Merchants"). The United States Trustee (the "Trustee") has filed an objection to the Debtor's Motion to enter into a Consultation and Assistance Agreement with Ugly Duckling Corporation ("UDC"). For the reasons set forth below, the Court will deny the Motion insofar as it pertains to the Consultation and Assistance Agreement.^{FN1}

FN1. It is the Court's understanding that no objection has been filed with regard to the Break-Up Fee Agreement.

BACKGROUND

On July 11, 1997, First Merchants filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code. Pursuant to Sections 1107 and 1108 of the Bankruptcy Code, the Debtor is continuing to operate and manage its properties, affairs and assets as a debtor-in-possession. Although no trustee or examiner has been sought or appointed in this case, An Official Committee of Unsecured Creditors (the "Committee") was appointed by the Trustee on July 28, 1997.

On October 22, 1997, after considering proposals from four interested parties, the Debtor, the Committee and Financial Security Assurance, Inc., ("FSA") selected a plan proposed by UDC. In connection with the UDC plan proposal, the Debtor seeks the Court's approval to enter into a "Consultation and Assistance Agreement" with UDC, in which UDC will assist the Debtor with its loan servicing operations.

The Debtor is a national specialty finance company, primarily engaged in the business of servicing retail installment sale contracts for the purchase of new or used automobiles, trucks and sport utility vehicles by consumers who have limited access to traditional sources of credit. These contracts were acquired by the Debtor pre-petition and have been coined by the Debtor as "Receivables." The Debtor has entered into various agreements with various entities concerning these Receivables. Based on these agreements, the Receivables can be divided into three groups: (1) the FSA Receivables^{FN2}, (2) the Bank Group Receivables^{FN3}, and (3) the Greenwich Receivables.^{FN4} Pursuant to a motion dated August 28, 1997, UDC, as an agent for the Bank Group, intends to purchase the Bank Group

Receivables from the Debtor. After the sale, the Debtor intends to service the Bank Group receivables pursuant to an agreement entered into between the Debtor and UDC until confirmation of the Debtor's Chapter 11 Plan. However, pursuant to the Consultation and Assistance Agreement (the "Consultation Agreement"), which is the subject of the Trustee's current objection, the Debtor seeks UDC's assistance with the task of servicing the Bank Group Receivables, as well as the FSA and Greenwich Receivables.

FN2. With respect to these receivables, the Debtor entered into a securitization transaction in which certain notes and/or certificates were issued that are payable from the proceeds of and collection and payments on the receivables. FSA guaranteed the payment obligations on these notes and upon payment, will be subrogated to the rights of the holders of these notes. By agreement between the Debtor and FSA, the Debtor currently services the FSA Receivables.

FN3. The Bank Group Receivables are non-securitized receivables that secure obligations of the Debtor to certain of its main pre-petition warehouse line lenders, known as the Bank Group. UDC purchased 78% of these receivables, and has an agreement to purchase the remaining 22% from Cerebrus Partners, LP and Bear Stearns.

FN4. The Debtor granted Greenwich Capital Financial Products, Inc. ("Greenwich") a security interest in the Greenwich Receivables. Pursuant to an agreement between the Debtor and Greenwich, the Debtor currently services these Receivables.

DISCUSSION

The Trustee objects to the Consultation Agreement between the Debtor and UDC based on Section 327(a) of the Bankruptcy Code. The Trustee contends that by entering into the Consultation Agreement with UDC, the Debtor is employing a "professional," as that term is used in Section 327, and that UDC's creditor status in this case precludes its retention.

*2 In contrast, the Debtor contends that Section 327 is not, in any way, implicated by the instant Motion. Rather, the Debtor prefers to characterize its Motion as a Motion under Section 363, in which the Debtor seeks to retain assistance with the daily operation of its business, and accordingly, the "interestedness" of the entity to be retained is not in issue.

Section 327(a) of the Bankruptcy Code provides:

Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.

11 U.S.C. § 327(a). Although the term "professional" is not statutorily defined, it has been judicially defined by a number of courts examining the issue.

The judicial trend with respect to the definition of "professional" can be divided into two camps, those adopting a quantitative analysis and those adopting a qualitative analysis. Under the quantitative analysis, the definition of "professional" is limited to those occupations which play a central role in the administration of the debtor proceeding, and not those occupations which are involved in the day-to-day mechanics of the debtor's business. *In re Seatrain Lines, Inc.*, 13 B.R. 980, 981 (Bankr.S.D.N.Y.1981); *see also In re River Ranch*, 176 B.R. 603, 604 (Bankr.M.D.Fla.1994); *In re*

Biocoastal Corporation, 149 B.R. 216, 218 (Bankr.M.D.Fla.1993) (defining professional as person who assists debtor in administration of bankruptcy). Under the qualitative analysis, a “professional” is an employee that is given discretion or autonomy in some part of the administration of the debtor's estate. *In re Fretheim*, 102 B.R. 298, 299 (Bankr.D.Conn.1989) (espousing qualitative analysis and criticizing quantitative approach as “difficult to apply and subject to arbitrary and inconsistent results”); *In re Semenza*, 121 B.R. 56, 57 (Bankr.D.Mont.1990) (adopting qualitative analysis).

In determining the manner in which this Court should approach the definition of “professional,” the Court makes two observations regarding the differing approaches. First, it is the Court's view that the quantitative and qualitative analyses need not be mutually exclusive. While the quantitative test focuses on the significance of the individual's role to the debtor proceeding and the qualitative test focuses on the amount of discretion the individual has in accomplishing that role, the bottom line of both tests involves an examination of the types of duties to be undertaken by the individual. *See In re Sieling Associates Limited Partnership*, 128 B.R. 721, 722 (Bankr.E.D.Va.1991) (describing *Fretheim* qualitative approach as only “deviating slightly” from *Seatrain* quantitative approach). Second, it is the Court's view that both tests are somewhat vague and difficult to apply. While other courts have agreed with this view, they have been reluctant to propose an alternative method or to improve upon the methods previously discussed. *See e.g. In re First Security Mortgage Company, Inc.*, 117 B.R. 1001, 1006-1007 (Bankr.N.D.Okla.1990) (criticizing both approaches, but assuming arguing that employee in issue was “professional” and thereby avoiding clarification of approaches).

*3 In an effort to lend some clarity to this issue, the Court has examined the cases to discern a list of factors to be considered and applied in making the determination of whether an employee is a

“professional” within the meaning of Section 327. Although the list is not exclusive, the Court believes that it reflects many of the considerations that have impacted judicial decisions in this area. The factors embrace both the qualitative and quantitative approaches and include the following: (1) whether the employee controls, manages, administers, invests, purchases or sells assets that are significant to the debtor's reorganization ^{FN5}, (2) whether the employee is involved in negotiating the terms of a Plan of Reorganization ^{FN6}, (3) whether the employment is directly related to the type of work carried out by the debtor or to the routine maintenance of the debtor's business operations; (4) whether the employee is given discretion or autonomy to exercise his or her own professional judgment in some part of the administration of the debtor's estate, i.e. the qualitative approach, (5) the extent of the employee's involvement in the administration of the debtor's estate, i.e. the quantitative approach; and (6) whether the employee's services involve some degree of special knowledge or skill ^{FN7}, such that the employee can be considered a “professional” within the ordinary meaning of the term. In applying these factors, the Court stresses that no one factor is dispositive and that the factors should be weighed against each other and considered in toto.

FN5. *In re Biocoastal*, 149 B.R. at 218.

FN6. *In re Sieling Associates Ltd. Partnership*, 128 B.R. at 723 (concluding that environmental consultant was not “professional” within meaning of § 327, where consultant was not employed to assist debtor with reorganization, or with sale or purchase of assets).

FN7. *In re Metropolitan Hospital*, 119 B.R. 910, 916 (Bankr.E.D.Pa.1990) (“[A] professional should be considered someone with a special knowledge and skill usually achieved by study and educational attainments whether licensed or not.”)

Applying the above factors to the instant case, the Court concludes that UDC is a professional within the meaning of Section 327(a). It is clear from the terms of the Consultation Agreement, that the type of work which UDC intends to perform for the Debtor is work that requires a specialized skill or knowledge, such that UDC can be considered a "professional" within the ordinary and common sense meaning of the term. However, what is unclear in this case is whether UDC's employment pertains to the ordinary course of business of the Debtor, or whether UDC's employment pertains to the administration of the Debtor's estate. According to the terms of the Consultation Agreement, UDC is to assist the Debtor in servicing its Receivables. In this case, this function is simultaneously linked with the ordinary operations of the Debtor, in that the Debtor is by trade a national specialty finance company, primarily engaged in servicing retail installment sales contracts, and with the administration of the Debtor's estate, in that the Receivables that will be serviced under the Consultation Agreement form the primary asset of the Debtor's estate. Because these Receivables are so vital to the underlying estate, quantitatively speaking, UDC's role, from an estate administration point of view, would be quite significant.

Given the overlap between the Debtor's estate administration and the Debtor's ordinary business operations in this case, the Court finds the amount of discretion afforded UDC in the Consultation Agreement to be troublesome. For example, the terms of the original draft Consultation Agreement provided that consultation, advice, evaluation, and servicing of receivables would be in the sole discretion of UDC, and that UDC, in its sole discretion, could employ outside personnel or consultants without the scrutiny of the Court, creditors, or the U.S. Trustee, and by implication, without the supervision, control, or advance approval of the Debtor. Although the Debtor has submitted a revised Consultation Agreement which provides that "UDC shall not utilize third party professionals or consultants except such persons as the Debtor currently

utilizes or as approved by the Court or the United States Trustee's office," the revised Consultation Agreement still provides that UDC's assistance will be within its sole discretion. Consultation Agreement, § 1.A. Moreover, the revised Consultation Agreement also provides that "[t]o the extent deemed necessary and appropriate by UDC, [UDC] will support the Debtor with specific accounting, record keeping and cash management functions with respect to billing, payment and collection of the Serviced Receivables, except that UDC will not hereunder, prior to the effective date of any plan, collect or distribute property of the estate." Consultation Agreement, § 1.B. Again, under these terms, UDC will be intimately involved in the *management* of these receivables, the primary asset remaining in the Debtor's estate, and in accomplishing tasks that are within the fiduciary duties undertaken by a debtor-in-possession. As such, it is the Court's view that such unbridled discretion, though less worrisome than the discretion provided for in the original draft, still weighs against the Debtor's position that Section 327 is inapplicable and that UDC is not a "professional."

*4 Of course, if these Receivables are viewed as simply a part of what the Debtor does as a national specialty financing company, and not as the primary assets of the Debtor's estate, then, despite the discretion afforded UDC, UDC would simply be functioning to assist the Debtor's daily business operations. However, given the extent of the overlap between the ordinary business operations and the debtor's estate administration in this case, the fact that these Receivables comprise the bulk of the remaining estate, and the fact that the Consultation Agreement affords UDC wide discretion in its employment, the Court does not believe it proper to view UDC's role as purely pertaining to the Debtor's ordinary course of business. Indeed, in the Court's view, UDC's role under the terms of the Consultation Agreement is akin to that of a professional, specialized "collection agency." In *In re Metropolitan Hospital*, the United States Bankruptcy Court for the Eastern District of

Pennsylvania concluded that a company that was retained to perform debt collection, as well as other services, was a "professional person" within the meaning of Section 327. 119 B.R. at 918, *see also Windsor Communications Group, Inc. v. Rogers and Rogers Inc.*, 54 B.R. 844, 848-49 (Bankr.E.D.Pa.1985) (concluding that collection agency falls within meaning of "professional person" under § 327, particularly where collection of accounts receivable was central to administration of case), *vacated by*, 68 B.R. 1007 (E.D.Pa.1986) (vacating decision because genuine issues of material fact existed, but declining to rule out possibility that collection agency could be "professional person"). Of additional importance to the Court in *Metropolitan Hospital* was the company's role in collecting receivables that enabled the debtor to increase its cash flow and continue to operate and try to reorganize. *Id.* at 918.

Similarly, UDC's role under the Consultation Agreement extends beyond mere debt collection to the evaluation and assessment of the Debtor's equipment, personnel, organization, current and future facilities, and certain procedures and policies, relating to servicing the Receivables. Although other entities performing these types of functions have been referred to as "managers" or "management consultants," courts examining the duties of these entities have concluded that they fall within the ambit of Section 327. *See e.g. In re Marion Carefree Ltd. Partnership*, 171 B.R. 584, 588 (Bankr.N.D.Ohio 1994) (concluding "manager" was within definition of professional, where manager had significant responsibility and discretion in area of personnel management, and performed general accounting, payroll accounting and cash management functions which played critical role in providing estate with financial data). Moreover, it is not disputed that the Receivables in this case play a substantial role in the Debtor's estate and that maximizing recovery of these Receivables is important to the Debtor's continued operations and reorganization.

*5 Accordingly, given the nature of the work to be performed by UDC, the skill involved in that work, the degree of discretion afforded UDC in performing that work, and the importance of that work to the estate administration, the Court concludes that the factors discussed by the Court weigh in favor of the conclusion that Section 327 is applicable to UDC's retention and that UDC's role falls within the definition of "professional." Because UDC is a creditor of the estate, UDC cannot satisfy the disinterestedness requirement of Section 327, and accordingly, the Court cannot approve the Debtor's Motion to retain UDC.

CONCLUSION

For the reasons discussed, the Debtor's Motion For An Order Pursuant To Sections 363 and 105 Of the Bankruptcy Code Approving Consultation and Assistance Agreement between the Debtor and Ugly Duckling Corporation (D.I.391) will be denied.

An appropriate Order will be entered.

ORDER

At Wilmington this 15 day of December 1997, for the reasons set forth in the Opinion issued this date;

IT IS HEREBY ORDERED that the Debtor's Motion For An Order Pursuant To Sections 363 and 105 Of the Bankruptcy Code Approving Consultation and Assistance Agreement between the Debtor and Ugly Duckling Corporation (D.I.391) is DENIED.

D.Del., 1997.

In re First Merchants Acceptance Corp.

Not Reported in F.Supp., 1997 WL 873551 (D.Del.)

END OF DOCUMENT

EXHIBIT C

commenced (the "Petition Date"), the Debtors have requested that the Firm provide services (or continue to provide services) to the Debtors, and the Firm has agreed to provide such services. Accordingly, the Firm is filing this Affidavit pursuant to the Order.

3. The Firm, through me, and other members, partners, associates or employees of the Firm, has provided, or plans to provide, the following services to the Debtors from and after the Petition Date: [_____].

4. To the best of my knowledge, information and belief, formed after due inquiry, (a) except for the proposed retention of the Firm in these chapter 11 cases, the Firm does not currently provide services to any party in any matter related to the Debtors and (b) the Firm does not represent or hold an interest adverse to the Debtors.

5. The Firm may provide, now or in the future, services to certain creditors of the Debtors or other interested parties in matters that are unrelated to the Debtors, but the Firm's work for these clients will not include the provision of services on any matters relating to the Debtors' chapter 11 cases.

6. The Firm is owed approximately \$[_____] on account of services rendered and expenses incurred prior to the Petition Date in connection with the Firm's employment by the Debtors.

7. The Firm has not shared, has not agreed to share, nor will it agree to share, any compensation received in connection with these chapter 11 cases with any party or person, although such compensation may be shared with any member or partner of, or any person employed by, the Firm.

8. If, at any time during its employment by the Debtors, the Firm discovers any facts bearing on the matters described herein, the Firm will supplement the information contained in this Affidavit.

Dated: _____, 200_

By: _____
[name of counsel]

Sworn to and subscribed before me
this ____ day of _____, 200_

Notary Public

EXHIBIT D

**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 SECTIONS 105(a), 327, 328
AND 330 OF THE BANKRUPTCY CODE AND BANKRUPTCY
RULE 2014(a), AUTHORIZING DEBTORS AND DEBTORS
IN POSSESSION TO RETAIN, EMPLOY AND PAY CERTAIN
PROFESSIONALS IN THE ORDINARY COURSE OF THEIR BUSINESSES**

This matter coming before the Court on the Motion of Debtors and Debtors in Possession, Pursuant to Sections 105(a), 327, 328 and 330 of the Bankruptcy Code and Bankruptcy Rule 2014(a), for an Order Authorizing Them to Retain, Employ and Pay Certain Professionals in the Ordinary Course of Their Businesses (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"); the Court finding that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), (iii) notice of the Motion and the Hearing was sufficient under the circumstances, (iv) the Ordinary Course Professionals and the Service Providers are not "professionals" within the meaning of

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

section 327(a) of the Bankruptcy Code and (v) the relief requested granted herein is in the best interests of the Debtors, their estates and their creditors; 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;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.

2. Pursuant to sections 105(a), 327, 328 and 330 of the Bankruptcy Code and Bankruptcy Rule 2014(a), to the extent deemed necessary or appropriate by the Debtors, the Debtors are authorized to retain and employ Ordinary Course Professionals and Service Providers in the ordinary course of the Debtors' businesses, effective as of the Petition Date, on the terms set forth herein.

3. The Service Providers may include, without limitation: (a) actuaries; (b) employee benefits and human resources consultants; (c) engineers and designers; (d) environmental consultants and technicians; (e) information technology consultants, programmers, systems designers and technicians; (f) insurance brokers; (g) risk management consultants; (h) marketing consultants; (i) public relations firms; (j) medical service providers; (k) general business consultants; (l) governmental consultants; (m) litigation support firms; and (n) trial experts. The Service Providers (a) are not included within the definition of Ordinary Course Professionals used herein; and (b) are not subject to the OCP Fee Limits, the OCP Payment Procedures or any other restrictions on Ordinary Course Professionals set forth herein. The Debtors are authorized to pay the Service Providers in the ordinary course of business for services performed from and after the Petition Date.

4. The Debtors are permitted to pay each Ordinary Course Professional, including those identified on the OCP List attached to the Motion as Exhibit A and any

supplement thereto, without prior application to the Court, subject to the following

OCP Payment Procedures:

- (a) The Debtors may pay 100% of the fees and disbursements incurred by an Ordinary Course Professional upon the submission to, and approval by, the Debtors of an appropriate monthly invoice setting forth in reasonable detail the nature of the services rendered and disbursements actually incurred during the month; provided, however, that all payments of fees to Ordinary Course Professionals shall be subject to the OCP Fee Limits. The OCP Fee Limits are, for each Ordinary Course Professional, (a) \$60,000 in fees during any month and (b) \$1 million in total fees during the pendency of the Debtors' chapter 11 cases. The OCP Fee Limits apply only to the payment of fees and not to the reimbursement of expenses.
- (b) To the extent that the monthly fees sought by any Ordinary Course Professional exceed the monthly OCP Fee Limit of \$60,000, then such Ordinary Course Professional shall submit a statement of the fees above the incurred during the applicable month (a "Compensation Statement") to the following parties (collectively, the "Notice Parties"): (i) the Debtors, c/o Chrysler LLC, 1000 Chrysler Drive, CIMS #485-14-96, Auburn Hills, Michigan 48326 (Attn: Holly E. Leese, Esq.); (ii) Jones Day, counsel to the Debtors, 222 East 41st Street, New York, New York 10017 (Attn: Corinne Ball, Esq.) and 1420 Peachtree Street, N.E., Suite 800, Atlanta, Georgia 30309-3053 (Attn: Jeffrey B. Ellman, Esq.); (iii) counsel to any statutory committees appointed in these cases; (iv) Simpson Thacher & Bartlett LLP, counsel to the administrative agent for the Debtors' prepetition senior secured lenders, 425 Lexington Avenue, New York, New York 10017 (Attn: Peter Pantaleo, Esq. and David Eisenberg, Esq.); (v) the Office of the United States Trustee for the Southern District of New York (the "U.S. Trustee"), 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: Brian S. Masumoto, Esq.); and (vi) Cadwalader, Wickersham & Taft LLP, counsel to the U.S. Treasury, One World Financial Center, New York, New York 10281 (Attn: John J. Rapisardi, Esq.). Pending review of the Compensation Statement by the Notice Parties, the Debtors are authorized, but not required, to pay the Ordinary Course Professional's monthly fees up to the OCP Fee Limit and reimburse any expenses of the Ordinary Course Professional.
- (c) The Notice Parties shall have 30 days after the receipt of the Compensation Statement (the "Review Period") to review the Compensation Statement and object to the additional fees above the OCP Fee Limit requested by such Ordinary Course Professional. If any of the Notice Parties objects to the payment of the additional fees sought in a Compensation Statement, it shall serve a written statement of its objection on the Ordinary Course Professional and the other Notice Parties so that it

is received by such parties before the end of the Review Period. If the Debtors, the applicable Ordinary Course Professional and the objecting party or parties cannot informally resolve the objection(s) within 15 days following the end of the Review Period, then the Ordinary Course Professional shall be required to submit a formal application or request for payment to the Court for the additional compensation or waive its right to any monthly fees in excess of the OCP Fee Limit. If no Interested Party timely objects to the payment of fees sought in a Compensation Statement, then the Debtors shall be deemed authorized, but not required, to pay the additional compensation sought.

- (d) Likewise, if the aggregate fees incurred by an Ordinary Course Professional during the pendency of these cases would exceed the OCP Fee Limit of \$1 million for the case, then on or before the final business day of the month following the month during which the aggregate fees first exceeded the OCP Fee Limit for the case, and on or before the final business day of every month thereafter until the earlier of (i) the termination of the Ordinary Course Professional's employment or (ii) further order of the Court addressing the issue, the Ordinary Course Professional shall submit to the Notice Parties each month a monthly statement (a "Monthly Statement") for all further compensation sought in these cases.
- (e) The Notice Parties shall have 30 days after service of each Monthly Statement (the "Monthly Review Period") to review the Monthly Statement and object to the fees requested by such Ordinary Course Professional. If any of the Notice Parties objects to the payment of the additional fees sought in a Monthly Statement, it shall serve a written statement of its objection on the Ordinary Course Professional and the other Notice Parties so that it is received by such parties before the end of the Monthly Review Period. If the Debtors, the applicable Ordinary Course Professional and the objecting party or parties cannot informally resolve the objection(s) within 15 days following the end of the Monthly Review Period, then the Ordinary Course Professional shall be required to submit a formal application or request for payment to the Court for the additional compensation or waive its right to any fees in excess of the OCP Fee Limit. If no Interested Party timely objects to the payment of fees, then the Debtors shall be deemed authorized, but not required, to pay the additional compensation sought.

5. The Ordinary Course Professionals are excused from filing an affidavit of disinterestedness pursuant to Bankruptcy Rule 2014, except that each Ordinary Course Professional that is an attorney located in the United States must file with this Court and serve upon the Notice Parties an Affidavit of Disinterestedness, substantially in the form attached

hereto as Annex A (the "OCP Affidavit") by the latest of (a) 60 days after the entry of this Order, (b) 30 days after an Ordinary Course Professional is added to the OCP List and (c) 30 days after the date the Ordinary Course Professional first performs postpetition services for the Debtors.

6. The U.S. Trustee and any Committee shall have 20 days after the receipt of each OCP Affidavit (the "Affidavit Objection Deadline") to object to the retention of such Ordinary Course Professional. An objecting party shall file its objection with the Court and serve the objection on the Notice Parties and the applicable Ordinary Course Professional so that it is received on or before the Affidavit Objection Deadline. If any such objection cannot be resolved informally within 20 days after the Affidavit Objection Deadline, the matter shall be scheduled for hearing before this Court at the next regularly scheduled omnibus hearing date or at such time as may be agreed upon by the Ordinary Course Professional, the Debtors and the objecting party. If no objection is filed and served prior to the Affidavit Objection Deadline, the Debtors are authorized to retain such Ordinary Course Professional without further action by the Court or any other party.

7. Notwithstanding any of the foregoing, the Debtors shall separately retain any Ordinary Course Professional or Service Provider that becomes materially involved in the administration of these cases, pursuant to section 327 of the Bankruptcy Code.

8. The entry of this Order does not prejudice the Debtors' right to seek this Court's approval to amend the OCP Fee Limits or the OCP Payment Procedures at any time during these chapter 11 cases.

Dated: New York, New York
_____, 2009

UNITED STATES BANKRUPTCY JUDGE

ANNEX A TO ORDER

commenced (the "Petition Date"), the Debtors have requested that the Firm provide services (or continue to provide services) to the Debtors, and the Firm has agreed to provide such services.

Accordingly, the Firm is filing this Affidavit pursuant to the Order.

4. The Firm, through me, and other members, partners, associates or employees of the Firm, has provided, or plans to provide, the following services to the Debtors from and after the Petition Date: [_____].

5. To the best of my knowledge, information, and belief, formed after due inquiry, (a) except for the proposed retention of the Firm in these chapter 11 cases, the Firm does not currently provide services to any party in any matter related to the Debtors and (b) the Firm does not represent or hold an interest adverse to the Debtors.

6. The Firm may provide, now or in the future, services to certain creditors of the Debtors or other interested parties in matters that are unrelated to the Debtors, but the Firm's work for these clients will not include the provision of services on any matters relating to the Debtors' chapter 11 cases.

7. The Firm is owed approximately \$[_____] on account of services rendered and expenses incurred prior to the Petition Date in connection with the Firm's employment by the Debtors.

8. The Firm has not shared, has not agreed to share, nor will it agree to share, any compensation received in connection with these chapter 11 cases with any party or person, although such compensation may be shared with any member or partner of, or any person employed by, the Firm.

9. If, at any time during its employment by the Debtors, the Firm discovers any facts bearing on the matters described herein, the Firm will supplement the information contained in this Affidavit.

Dated: _____, 200_

By: _____
[Name of counsel]

Sworn to and subscribed before me
this _____ day of _____, 200_

Notary Public