

JONES DAY
222 East 41st Street
New York, New York 10017
Telephone: (212) 326-3939
Facsimile: (212) 755-7306
Corinne Ball
Veerle Roovers

JONES DAY
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114
Telephone: (216) 586-3939
Facsimile: (216) 579-0212
David G. Heiman

JONES DAY
1420 Peachtree Street, N.E.
Suite 800
Atlanta, Georgia 30309
Telephone: (404) 521-3939
Facsimile: (404) 581-8309
Jeffrey B. Ellman

Proposed Attorneys for Debtors
and Debtors in Possession

**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 361, 363(e), 541(a) AND 542(a) OF
THE BANKRUPTCY CODE, FOR AN ORDER (A) AUTHORIZING
ADEQUATE PROTECTION PROCEDURES FOR CERTAIN POTENTIAL
POSSESSORY LIENHOLDERS AND (B) GRANTING CERTAIN RELATED RELIEF**

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

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).

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 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 entered 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 361, 363(e), 541(a) and 542(a) of the Bankruptcy Code, the Debtors hereby seek the entry of an order: (a) approving procedures (i) authorizing grants of adequate protection to certain potential lienholders to permit the Debtors' to recover Production Tooling (as such term is defined below) currently in such lienholders' possession and (ii) authorizing the Debtors to seek the entry of an order compelling any potential lienholder that withholds possession of the Production Tooling from the Debtors to appear before the Court to show cause why, among other things, it should not be required to turn such Production Tooling over to the Debtors (collectively, the "Adequate Protection Procedures"); and (b) granting certain related relief.

Basis for Relief

15. As set forth above, the Debtors are pursuing the prompt approval and consummation of the Fiat Transaction or a similar going concern transaction with a competing bidder (any such transaction, a "Sale Transaction"). Pending such a sale, the Debtors have idled 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 (e.g., by continuing operations at parts depots to provide an uninterrupted supply of parts to service the Debtors' vehicles). Immediately upon the consummation of the Fiat Transaction, the Debtors anticipate that the purchased manufacturing and assembly facilities will resume normal operations under ownership of New Chrysler

16. Although the Debtors' currently contemplate that the majority of the Debtors' manufacturing and assembly facilities will continue to be operated by New Chrysler or other purchaser (any such purchaser, the "Purchaser") following the closing of any Sale Transaction, the Fiat Transaction, as currently structured, contemplates that certain of those facilities (collectively, the "Idled Facilities") will not be operated by the Purchaser and instead will be idled permanently.

17. Given the cessation of operations at the Idled Facilities, the Debtors currently are contemplating the potential sale of the Idled Facilities as well as any related vehicle platforms. In connection with any such efforts, the Debtors anticipate that they may need to marshal certain valuable machinery, jigs, dies, gauges, molds, patterns, equipment, tooling and other personal property (collectively, "Production Tooling") previously dedicated and tailored to the production of component parts incorporated into the Debtors' vehicles at the Idled Facilities.

18. Although the Debtors typically have manufactured some of the component parts incorporated into the vehicles they produce, the vast majority of these component parts are produced by outside suppliers.³ Because the production of component parts is particularly capital intensive, the Debtors historically have funded certain of these production costs for their outside suppliers. In particular, the Debtors regularly have purchased various types of Production Tooling for use by their suppliers. Although this Production Tooling is owned by the Debtors, it is located at the suppliers' facilities and used by the suppliers solely in the production of vehicle parts for the Debtors. In addition to helping the suppliers financially, the Debtors' purchase of Production Tooling provides the Debtors with the flexibility to move production to a new supplier if circumstances warrant or to collect such tooling in connection with a sale of their businesses and assets.

19. Because the dynamic nature of the automotive markets has required the Debtors to develop new vehicles on a continuous basis, the Debtors regularly have purchased new Production Tooling. In recent years, the Debtors have purchased between \$600 million and \$900 million in Production Tooling annually. Millions of dollars' worth of such Production Tooling currently in the possession of the Debtors' suppliers was dedicated to the production and assembly of vehicle platforms at the Idled Facilities.

20. Because the Debtors have paid for — and own — the Production Tooling, the Production Tooling is property of the Debtors' estates within the meaning of section 541(a) of the Bankruptcy Code even though possession is maintained by suppliers. See, e.g., U.S. v.

³ Suppliers that sell directly to the Debtors are commonly referred to as "Tier I Suppliers" with their suppliers known as "Tier II Suppliers," etc.

Whiting Pools, Inc., 462 U.S. 198, 204-205 (1983) ("Congress intended a broad range of property to be included in the estate § 541(a)(1) is intended to include in the estate any property made available to the estate by other provisions of the Bankruptcy Code. Several of these provisions bring into the estate property in which the debtor did not have a possessory interest at the time the bankruptcy proceedings commenced."); Alofs Mfg. Co. v. Toyota Mfg. Kentucky, Inc. (In re Alofs Mfg. Co.), 209 B.R. 83, 93 n.7 (Bankr. W.D. Mich. 1997) (observing that tooling in a supplier's possession for which the debtors had paid in full was property of the debtors' estates and subject to immediate turnover).

21. In connection with proposed sale of the Idled Facilities and the vehicle programs associated therewith, it may be necessary for the Debtors to take possession of Production Tooling from certain suppliers. Alternatively, given the fragile state of the automotive industry, the Debtors may wish to recover possession of their Production Tooling in the event of a supplier's financial difficulties, e.g., where a faltering supplier faces bankruptcy and/or liquidation. In sum, the Production Tooling is proprietary and valuable, and prompt access to this tooling may be required to preserve its value and promote the Debtors' efforts to maximize value available to stakeholders.

22. The Debtors believe that they are entitled to recover the Production Tooling from their suppliers in support of their restructuring efforts pursuant to section 542(a) of the Bankruptcy Code. Section 542(a) of the Bankruptcy Code provides that "an entity . . . in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title . . . *shall deliver* to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate." 11 U.S.C. § 542(a) (emphasis added). If the Debtors seek to recover Production Tooling, there is

little question that the statutory predicates would be satisfied, as such Production Tooling is in the possession of the Debtors' suppliers and of more than inconsequential value and benefit to the Debtors' estates. Moreover, because (a) section 363(b) of the Bankruptcy Code provides that a "trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate" and (b) the Production Tooling is property of the Debtors' estates within the meaning of section 541(a) of the Bankruptcy Code (as described above), it is likewise clear that the Production Tooling is subject to the Debtors' use, sale or lease under section 363 of the Bankruptcy Code. Accordingly, the Production Tooling is subject to recovery by the Debtors pursuant to section 542(a) of the Bankruptcy Code. See, e.g., Savage & Assocs., P.C. v. Mandl (In re Teligent, Inc.), 325 B.R. 134, 137 (Bankr. S.D.N.Y. 2005) ("Under § 542(a), the trustee may compel the turnover of property of the estate that the trustee can use, sell or lease.").

23. In addition to their rights under the Bankruptcy Code, the Debtors generally possess contractual rights to recover Production Tooling from their Tier I Suppliers. The Debtors' "Production Purchasing General Terms and Conditions" (the "Terms and Conditions"), which generally are incorporated into the agreements governing the Debtors' supply relationships, provide that "all tools ... acquired or manufactured by Seller for use in the performance of this order, for which Seller has been reimbursed by Chrysler will be the property of Chrysler All Chrysler tooling or property will be transferred as Chrysler may direct at any time." Terms and Conditions, at ¶ 10.

24. The Debtors anticipate, however, that their attempts to recover Production Tooling may be complicated by the fact that many Tier I Suppliers will attempt to assert liens on such tooling. Under the applicable law of many of the states in which the Production Tooling is

located, a supplier that possesses tooling owned by its customer (such as the Production Tooling) has the right under certain circumstances to assert a lien on such tooling (commonly known as a "molder's" or "fabricator's" lien) for the unpaid value of the goods that were manufactured by the supplier with the tooling.⁴ A supplier also might assert that it has a right under some state laws to maintain possession of, or even sell, the Production Tooling if not paid.

25. The Debtors believe that attempts by suppliers to assert liens upon, take adverse action against or retain possession of the Debtors' Production Tooling generally would violate the parties' agreements and various provisions of the Bankruptcy Code and, thus, would ultimately prove unsuccessful. Specifically, because the Production Tooling is undeniably property of the Debtors' estates within the meaning of section 541 of the Bankruptcy Code, any attempt by suppliers to continue to maintain possession of Production Tooling upon a demand

⁴ See, e.g., Ind. Code. Ann. § 32-33-16-3 ("A fabricator has a lien, dependent on possession, on any die, mold, form, jig, or pattern in the fabricator's possession belonging to the customer for the amount due the fabricator from the customer for fabrication work performed with the die, mold, form, jig, or pattern."); 770 Ill. Comp. Stat. Ann. § 105/1 ("Plastic or metal processors or persons conducting a plastic or metal processing business shall have a lien on the tools, dies, molds, jigs, fixtures, forms or patterns in their possession belonging to a customer, for the balance due them from such customer for plastic or metal processing work, and for all materials related to such work. The processor may retain possession of the tool, die, mold, jig, fixture, form or pattern until such balance is paid . . ."); Mich. Comp. Laws Ann. § 445.618 ("A molder has a lien, dependent on possession, on any die, mold, or form in the molder's possession belonging to a customer for the amount due the molder from the customer for plastic fabrication work performed with the die, mold, or form. A molder may retain possession of the die, mold, or form until the amount due is paid."); Mich. Comp. Laws. Ann. § 570.533 ("An end user has a lien, dependent on possession, on any special tool in the end user's possession belonging to a customer for the amount due the end user from the customer for metal fabrication work performed with the special tool. An end user may retain possession of the special tool until the amount due is paid."); Ohio Rev. Code Ann. § 1333.31(A)(1) ("A molder has a lien on a die, mold, pattern, or form that is in his possession and that belongs to a customer, for the following: (a) the amount due from the customer for . . . making or improving the die, mold, pattern, or form"); Tenn. Code Ann. § 66-18-102 ("Molders, shall have a lien, dependent on possession, on all dies, molds, forms or patterns in their hands belonging to a customer, for the balance due them from such customer for any manufacturing or fabrication work, and in the value of all material related to such work. Such liens shall attach upon the commencement of work by the molder and shall be subject to any prior perfected security interest in such property as of the commencement date. The molder may retain possession of the dye, mold, form or pattern until the charges are paid, or until repossessed by a creditor with a prior perfected security interest.").

for turnover by the Debtors would plainly violate sections 362 and 542 of the Bankruptcy Code.

See, e.g., TranSouth Fin. Corp. v. Sharon (In re Sharon), 234 B.R. 676, 681-82 (6th Cir.

B.A.P. 1999) (observing that section 542 of the Bankruptcy Code "requires an entity ... holding

any property of the debtor that the trustee can use under § 363 to turn that property over to the

trustee" and "[w]ithholding possession of property of the bankruptcy estate constitutes 'the

exercise [of] control over property of the estate' for purposes of the automatic stay in 11 U.S.C.

§ 362(a)(3)."⁵ Any attempt to sell the Production Tooling likewise would violate section 362 of

the Bankruptcy Code. Moreover, the Debtors have strong arguments that their suppliers have no

liens or other rights in the Production Tooling in the first instance.⁶

26. The Debtors nevertheless anticipate that their Tier I Suppliers will be reluctant to relinquish possession of Production Tooling for fear of losing any alleged molder's or fabricator's lien asserted thereupon (which liens are sometimes dependent upon the supplier's continuing possession). See, e.g., Terpstra v. Farmers and Merchants Bank, 483 N.E.2d 749, 755 (Ind. App. 3d Dist. 1985) ("In cases of common-law liens, in order that such lien may be kept

⁵ See also California Employment Dev. Dep't v. Taxel (In re Del Mission Ltd.), 98 F.3d 1147, 1151 (9th Cir. 1996) (stating that "the knowing retention of estate property violates the automatic stay of § 362(a)(3)... [T]he onus to return estate property is placed upon the possessor; it does not fall on the debtor to pursue the possessor."); Knaus v. Concordia Lumber Co. (In re Knaus), 889 F.2d 773, 775 (8th Cir. 1989) ("[T]he duty [to turn over property of the estate] arises upon the filing of the bankruptcy petition. The failure to fulfill this duty, regardless of whether the original seizure was lawful, constitutes a prohibited attempt to 'exercise control over the property of the estate' in violation of the automatic stay.").

⁶ The Debtors believe that no valid liens can be asserted by their production parts suppliers on the Production Tooling, in part, because any such lien rights have been waived contractually. The Terms and Conditions provide that suppliers must "keep [the Debtors'] tooling or property in its possession and/or control in good condition, fully covered by insurance, free of liens and encumbrances and will replace such tooling or property when lost, damaged or destroyed." See Terms and Conditions ¶ 10 (emphasis added). As such, the Debtors believe that any state law rights of suppliers to assert liens or sell tooling have been waived. See, e.g., Cornerstone Prods., Inc. v. Pilot Plastics, Inc. (In re Cornerstone Prods., Inc.), No. 05-4217, 2007 WL 4298745, at *9 (Bankr. E.D. Tex. Dec. 5, 2007) (holding that, where claimant asserting molder's lien against tooling had agreed in writing to "keep the [tooling] free and clear of all liens claims and encumbrances," claimant had "expressly waived its right to assert a molder's lien").

alive, it is absolutely essential that the person claiming the lien should retain and hold an independent and exclusive possession of the particular chattel. Whenever he voluntarily surrenders its possession his lien is lost."); Mich. Comp. Laws Ann. § 445.618 (providing that molder's lien is dependent on the molder's possession); Ohio Rev. Code Ann. § 1333.31(A)(1) (same).

27. The Debtors further recognize that, to the extent a supplier believes it holds a valid and enforceable lien against Production Tooling securing payment for fabrication work performed therewith, the supplier may request that its interest in the Production Tooling be adequately protected pursuant to section 363(e) of the Bankruptcy Code. Section 363(e) of the Bankruptcy Code provides that "at any time, on request of an entity that has an interest in property used, sold, or leased, or proposed to be used, sold, or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest." 11 U.S.C. § 363(e). Thus, although a supplier may not refuse to relinquish possession of the Production Tooling consistent with its duties under section 542 of the Bankruptcy Code,⁷ a supplier may request adequate protection of any interest that it may have in the Production Tooling.

⁷ See Ratliff v. Ford Motor Credit Co. (In re Ratliff), 318 B.R. 579, 582 (Bankr. E.D. Okla. 2004) (holding that "[t]he Defendant's duty to deliver possession of estate property is not defeated by its right to adequate protection."); Metromedia Fiber Network Servs. v. Lexent, Inc. (In re Metromedia Fiber Network, Inc.), 290 B.R. 487, 493 (Bankr. S.D.N.Y. 2003) ("Defendants were obligated under Section 542(a) to deliver the Equipment to the debtor upon the debtor's demand for possession. Defendants' refusal to comply with the statute ... constituted an exercise of control over the debtor's property in violation of the automatic stay under Section 362(a)(3)."); In re Sharon, 234 B.R. at 683 ("There is no 'exception' to § 362(a)(3) that excuses [an entity's] refusal to deliver possession of the Debtor's [property] based on [the entity's] subjective opinion that adequate protection offered by the Debtor was not 'adequate' [An entity's] 'adequate protection' right does not defeat the statutory obligation in § 542(a) that [the entity] 'shall deliver' possession of property of the estate.").

28. Section 361 of the Bankruptcy Code provides that an entity's interest in property may be adequately protected by, among other things, the grant of a replacement lien. See 11 U.S.C. § 361(2) ("When adequate protection is required under section 362, 363, or 364 of this title of an interest of an entity in property, such adequate protection may be provided by — providing to such entity an additional or replacement lien"). Thus, the Debtors seek approval of Adequate Protection Procedures that will facilitate their recovery of Production Tooling from suppliers while preserving any valid interests such suppliers may have in recovered Production Tooling by granting suppliers adequate protection as required by section 363(e) of the Bankruptcy Code.

29. Specifically, the Debtors seek authority to implement the following Adequate Protection Procedures if and when necessary to satisfy a supplier's request for adequate protection:

- If the Debtors seek to recover Production Tooling from a supplier that is requesting adequate protection of its interest therein, the Debtors may file with the Court, and serve on the supplier, a notice (a "Replacement Lien Notice"), substantially in the form attached hereto as Exhibit A. The Replacement Lien Notice will describe (a) the Production Tooling for which a replacement lien is to be provided to the supplier (any such lien, a "Replacement Lien"), which Replacement Lien shall be identical in validity, extent and priority to any possessory lien on the Production Tooling held by the supplier at the time of the Debtors' recovery of the Production Tooling; and (b) whether the Debtors and the supplier have reached a consensual agreement regarding the return of the Production Tooling.
- Where the Debtors and a supplier have not reached a consensual agreement regarding the return of Production Tooling, the Replacement Lien Notice will further set forth: (a) the Debtors' demand for the return of the Production Tooling; (b) the supplier's obligation to comply with the Debtors' demand for return of the Production Tooling and otherwise assist and cooperate with the Debtors in their efforts to recover possession of the Production Tooling, in accordance with the supplier's duties under section 542 of the Bankruptcy Code; and (c) that the supplier will have ten business days from the date of the Debtors' service of the Replacement Lien Notice (or such other period of time as may be agreed upon by the Debtors and the supplier) to arrange for the return of the

Production Tooling to the Debtors, with the costs of such recovery to be borne by the Debtors.

- Upon a supplier's relinquishment of possession of Production Tooling subject to a Replacement Lien Notice, the Replacement Lien will automatically attach thereto.
- If a supplier fails to comply with a demand for return of the Production Tooling set forth in a Replacement Lien Notice or otherwise fails to assist and cooperate with the Debtors in their efforts to recover possession of the Production Tooling in a timely fashion, or withholds possession of the Production Tooling from the Debtors, the Debtors will be authorized to seek immediate entry of an order (an "Order to Show Cause"), substantially in the form attached hereto as Exhibit B, requiring the supplier to appear before the Court to show cause why it should not be found to have willfully violated sections 362 and 542(a) of the Bankruptcy Code and why it should not be required to immediately turn over any Production Tooling to the Debtors.
- The hearing on an Order to Show Cause may be scheduled on an expedited basis, provided that no hearing on an Order to Show Cause shall be scheduled upon less than two business days' notice of such hearing to the relevant supplier.

30. The Debtors submit that requiring Court approval of each supplier's request for adequate protection of its alleged interest in the Production Tooling would be both administratively burdensome to the Court and costly for the Debtors' estates, especially in light of (a) the hundreds of suppliers in possession of the Debtors' Production Tooling and (b) the relatively small value of each individual piece of Production Tooling. Moreover, the Debtors need the flexibility to move quickly to collect their assets and pursue opportunities to maximize value with respect to the Idled Facilities or to address other exigent circumstances. The potential costs and delays associated with seeking individual Court approval of supplier requests for adequate protection or to address recalcitrant suppliers could diminish the economic benefits of certain transactions that the Debtors may wish to consummate with respect to the Idled Facilities.

31. The Adequate Protection Procedures are designed to minimize the costs and burdens to the Debtors by (a) providing suppliers in possession of the Debtors' Production Tooling, upon a request for adequate protection and the Debtors' recovery of the tooling, with

adequate protection of any interest therein as required by section 363(e) of the Bankruptcy Code; and (b) implementing a streamlined process to address uncooperative suppliers who fail to comply with the requirements of the Bankruptcy Code. The Replacement Liens granted pursuant to the Adequate Protection Procedures — which liens attach to precisely the same Production Tooling released by a supplier and are identical in validity, extent and priority to any possessory lien held by the supplier — ensure that the Debtors' suppliers will retain the full benefit of any possessory lien on Production Tooling that they may possess while granting the Debtors the flexibility to use, sell or lease such Production Tooling as may become necessary in these chapter 11 cases.

32. For the reasons described herein, the Debtors submit that the requested relief is appropriate under sections 361, 363(e), 541(a) and 542(a) of the Bankruptcy Code.

33. Nothing contained herein is intended or should be construed as an implication or admission that any particular claim is supported by a valid lien or security interest. For the avoidance of doubt, the Debtors reserve and retain the rights to contest the validity of any asserted lien on Production Tooling.

Notice

34. 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; (g) counsel to the U.S. Treasury; and (h) all Tier I Suppliers of the Debtors that the Debtors believe may be in possession of Production

Tooling. The Debtors submit that they have complied with the requirements of Bankruptcy Rule 4001(a) and that no other or further notice need be provided.

No Prior Request

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

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

Corinne Ball
Veerle Roovers
JONES DAY
222 East 41st Street
New York, New York 10017
Telephone: (212) 326-3939
Facsimile: (212) 755-7306

David G. Heiman
JONES DAY
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114
Telephone: (216) 586-3939
Facsimile: (216) 579-0212

Jeffrey B. Ellman
JONES DAY
1420 Peachtree Street, N.E.
Suite 800
Atlanta, Georgia 30309
Telephone: (404) 521-3939
Facsimile: (404) 581-8309

PROPOSED ATTORNEYS FOR DEBTORS
AND DEBTORS IN POSSESSION

EXHIBIT A

JONES DAY
222 East 41st Street
New York, New York 10017
Telephone: (212) 326-3939
Facsimile: (212) 755-7306
Corinne Ball
Veerle Roovers

JONES DAY
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114
Telephone: (216) 586-3939
Facsimile: (216) 579-0212
David G. Heiman

JONES DAY
1420 Peachtree Street, N.E.
Suite 800
Atlanta, Georgia 30309
Telephone: (404) 521-3939
Facsimile: (404) 581-8309
Jeffrey B. Ellman

Proposed Attorneys for Debtors
and Debtors in Possession

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

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

**NOTICE OF DEMAND FOR RECOVERY OF,
AND GRANT OF REPLACEMENT LIEN ON, PRODUCTION TOOLING**

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. On April 30, 2009, Chrysler LLC and 24 of its domestic direct and indirect subsidiaries (collectively, the "Debtors"), filed their Motion of Debtors and Debtors in Possession, Pursuant to Sections 361, 363(e), 541(a) and 542(a) of the Bankruptcy Code, for an

Order (A) Authorizing Adequate Protection Procedures for Certain Potential Possessory Lienholders and (B) Granting Certain Related Relief (the "Motion"). On [____], 2009, the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") entered an order granting the relief requested in the Motion (Docket No. [____]) (the "Order").

2. The Debtors have identified _____ (the "Supplier") as an entity currently in possession of the machinery, jigs, dies, gauges, molds, patterns, equipment, tooling and/or other personal property identified on Schedule A hereto (the "Production Tooling"). The Production Tooling is property of the Debtors' chapter 11 estates pursuant to section 541(a) of title 11 of the United States Code (the "Bankruptcy Code"). Pursuant to section 542(a) of the Bankruptcy Code, the Supplier is obliged to turn over to the Debtors any property of the Debtors' chapter 11 estates currently in the Supplier's possession upon the Debtors' request for the return of such property. Pursuant to section 363(e) of the Bankruptcy Code, the Supplier has requested adequate protection of its alleged liens in the Production Tooling. The Debtors and the Supplier **[have/have not]** reached a consensual agreement regarding the return of the Production Tooling.

3. **[To be included as necessary]** Pursuant to paragraph 3 of the Order, and in accordance with the Supplier's duties under section 542(a) of the Bankruptcy Code, the Debtors hereby demand that the Supplier (a) relinquish possession of the Production Tooling to the Debtors and (b) otherwise assist and cooperate with the Debtors in their efforts to recover possession of the Production Tooling.

4. Pursuant to paragraph 4 of the Order, upon the Supplier's return of the Production Tooling, the Supplier will be granted a replacement lien against the Production Tooling, which replacement lien (a) shall automatically attach to the Production Tooling upon

the Supplier's relinquishment of possession thereof, (b) shall be identical in validity, extent and priority to any possessory lien on the Production Tooling held by the Supplier at the time of the Debtors' recovery of the Production Tooling and (c) shall be deemed to provide the supplier with adequate protection of its interest in the Production Tooling as required by section 363(e) of the Bankruptcy Code.

5. **[To be included as necessary]** The Supplier has ten business days from the date of the Debtors' service of this Notice (or such other period of time as may be agreed upon by the Debtors and the Supplier) to arrange for the return of the Production Tooling to the Debtors, with the cost of such recovery to be borne by the Debtors. Pursuant to paragraph 5 of the Order, if the Supplier fails to comply with the demand for return of the Production Tooling set forth herein or otherwise fails to assist and cooperate with the Debtors in their efforts to recover possession of the Production Tooling in a timely fashion, or withholds possession of the Production Tooling from the Debtors, the Debtors are authorized to seek an order to show cause (the "Order to Show Cause") requesting that the Bankruptcy Court order the Supplier to appear before the Bankruptcy Court at a hearing and demonstrate why the Supplier should not be found to have willfully violated sections 362 and 542(a) of the Bankruptcy Code and why it should not be required to immediately turn over any Production Tooling to the Debtors. The hearing on the Order to Show Cause may be scheduled on an expedited basis, provided that no hearing on an Order to Show Cause shall be scheduled upon less than two business days' notice of such hearing to the Supplier.

Dated: _____, 2009
New York, New York

Respectfully submitted,

Corinne Ball
Veerle Roovers
JONES DAY
222 East 41st Street
New York, New York 10017
Telephone: (212) 326-3939
Facsimile: (212) 755-7306

David G. Heiman
JONES DAY
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114
Telephone: (216) 586-3939
Facsimile: (216) 579-0212

Jeffrey B. Ellman
JONES DAY
1420 Peachtree Street, N.E.
Suite 800
Atlanta, Georgia 30309
Telephone: (404) 521-3939
Facsimile: (404) 581-8309

PROPOSED ATTORNEYS FOR DEBTORS
AND DEBTORS IN POSSESSION

SCHEDULE A

EXHIBIT B

JONES DAY
222 East 41st Street
New York, New York 10017
Telephone: (212) 326-3939
Facsimile: (212) 755-7306
Corinne Ball
Veerle Roovers

JONES DAY
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114
Telephone: (216) 586-3939
Facsimile: (216) 579-0212
David G. Heiman

JONES DAY
1420 Peachtree Street, N.E.
Suite 800
Atlanta, Georgia 30309
Telephone: (404) 521-3939
Facsimile: (404) 581-8309
Jeffrey B. Ellman

Proposed Attorneys for Debtors
and Debtors in Possession

**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 TO SHOW CAUSE

This matter coming before the Court on the Notice of Demand for Recovery of,
and Grant of Replacement Lien on, Production Tooling, dated _____, 2009 (Docket No. ____)
(the "Notice"), filed by the debtors and debtors in possession in the above-captioned cases
(collectively, the "Debtors"); the Court having reviewed the Notice and the Order, Pursuant to
Sections 361, 363(e), 541(a) and 542(a) of the Bankruptcy Code, (A) Authorizing Adequate

Protection Procedures for Certain Potential Possessory Lienholders and (B) Granting Certain Related Relief (Docket No. ____) (the "Order") pursuant to which the Notice was filed; and the Court having found 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), (iii) the Notice provided for herein is sufficient under the circumstances and (iv) the Debtors have complied with the terms and conditions set forth in the Order;

IT IS HEREBY ORDERED THAT:

1. _____ (the "Supplier"), which is identified by the Debtors as an entity in possession of certain of the Debtors' production tooling (as such tooling is identified in the Notice, the "Production Tooling"), is hereby ordered, at a hearing to be conducted before this Court at _____ a.m., Eastern Time on, _____, 2009, before the Honorable Arthur J. Gonzalez, United States Bankruptcy Judge, in the Bankruptcy Court, Courtroom 523, One Bowling Green, New York, New York 10004-1408 (the "Hearing"), to show cause why the Supplier should not be (a) held in violation of sections 362 and 542 of title 11 of the United States Code (the "Bankruptcy Code") and the Order for willfully withholding possession of the Production Tooling from the Debtors and (b) required to immediately relinquish possession of the Production Tooling to the Debtors pursuant to section 542(a) of the Bankruptcy Code.

2. Service of this Order to Show Cause is to be made by the Debtors upon (a) the Supplier, (b) the Office of the United States Trustee for the Southern District of New York, (c) counsel for any official committee of unsecured creditors appointed in these cases pursuant to section 1102 of the Bankruptcy Code, (d) counsel to the administrative agent for the Debtors' prepetition senior secured lenders, (e) counsel to Cerberus, (f) counsel to Daimler, (g) counsel to the UAW and (h) counsel to the U.S. Treasury.

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

Dated: _____, 2009
New York, New York

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT C

**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 361, 363(e), 541(a)
AND 542(a) OF THE BANKRUPTCY CODE, (A) AUTHORIZING
ADEQUATE PROTECTION PROCEDURES FOR CERTAIN POTENTIAL
POSSESSORY LIENHOLDERS AND (B) GRANTING CERTAIN RELATED RELIEF**

This matter coming before the Court on the Motion of Debtors and Debtors in Possession, Pursuant to Sections 361, 363(e), 541(a) and 542(a) of the Bankruptcy Code, for an Order (A) Authorizing Adequate Protection Procedures for Certain Potential Possessory Lienholders and (B) Granting Certain Related Relief (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 having found 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), (iii) notice of the Motion and the Hearing was sufficient under the circumstances and (iv) the Production Tooling is property of the Debtors' chapter 11 estates within the meaning of section 541 of the

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

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;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.

2. The Adequate Protection Procedures are approved in their entirety, and the Debtors are authorized to take any and all steps that are necessary to implement the Adequate Protection Procedures.

3. If the Debtors seek to recover Production Tooling from a supplier that is requesting adequate protection of its interest therein, the Debtors may file with the Court, and serve on the supplier, a notice (a "Replacement Lien Notice"), substantially in the form attached to the Motion as Exhibit A, setting forth: (a) the Production Tooling for which a replacement lien is to be provided to the supplier (any such lien, a "Replacement Lien"); and (b) whether the Debtors and the supplier have reached a consensual agreement regarding the return of the Production Tooling.

4. Where the Debtors and a supplier have not reached a consensual agreement regarding the return of Production Tooling, the Replacement Lien Notice shall further set forth: (a) the Debtors' demand for the return of the Production Tooling; (b) the supplier's obligation to comply with the Debtors' demand for return of the Production Tooling and otherwise assist and cooperate with the Debtors in their efforts to recover possession of the Production Tooling, in accordance with the supplier's duties under section 542 of the Bankruptcy Code; and (c) that the supplier shall have ten business days from the date of the Debtors' service of the Replacement Lien Notice (or such other period of time as may be agreed upon by the

Debtors and the supplier) to arrange for the return of the Production Tooling to the Debtors, with the costs of such recovery to be borne by the Debtors.

5. Any Replacement Lien granted pursuant to the Adequate Protection Procedures shall: (a) automatically attach to the Production Tooling upon the Supplier's relinquishment of possession thereof; (b) be identical in validity, extent and priority to any possessory lien on the Production Tooling held by a supplier at the time of the Debtors' recovery of the Production Tooling; and (c) be deemed to provide the supplier with adequate protection of its interest in the Production Tooling as required by section 363(e) of the Bankruptcy Code.

6. If the supplier fails to comply with the demand for return of the Production Tooling set forth in a Replacement Lien Notice or otherwise fails to assist and cooperate with the Debtors in their efforts to recover possession of the Production Tooling in a timely fashion, or withholds possession of the Production Tooling from the Debtors, the Debtors hereby are authorized to seek immediate entry of an Order to Show Cause, substantially in the form attached to the Motion as Exhibit B, requiring the supplier to appear before the Court to show cause why it should not be found to have willfully violated sections 362 and 542(a) of the Bankruptcy Code and why it should not be required to immediately turn over any Production Tooling to the Debtors. The hearing on an Order to Show Cause may be scheduled on an expedited basis, provided that no hearing on an Order to Show Cause shall be scheduled upon less than two business days' notice of such hearing to the supplier.

7. Nothing in the Motion or this Order shall be deemed or construed as an implication or admission that any particular claim is supported by a valid lien or security interest. The Debtors shall retain all rights to contest the validity of any asserted lien on the Production Tooling.

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

Dated: New York, New York
_____, 2009

UNITED STATES BANKRUPTCY JUDGE