



The Continuing Impact of the GM and Chrysler Bankruptcies

Upcoming Issues on Estimation, Liability, and the Effect on Co-Defendants

Panelists:

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Discussion Overview

- **GM and Chrysler Bankruptcies and the Treatment of Products & Asbestos Claims**
- **Claims Against the Successors - "New GM" and "New Chrysler"**
- **Impact of Auto Bankruptcies on Friction Defendants**
- **Recent Developments**
- **Questions**



Chrysler & GM Bankruptcies

- **Plan / Sale Distinctions Vanish Based on Political and Economic Exigencies**
- **Flawed Premise?**
 - *“Allocation of ownership interests in the new enterprise is irrelevant to the estate’s economic interests.” Chrysler, 405 BR at 99*
 - *Did the exigency of maximizing value warrant distributing value without restriction to politically favored classes?*



The Sale Proceedings

■ Uniqueness:

- Speed
- Absence of Alternative Lenders or Bidders
- Alteration of Normal Distribution Priorities

■ Key Sale Order Provisions:

- Assets Vest “Free and Clear”
- Purchaser Is Not the Legal Successor
- Bar Order for Present & Future Claims

■ Appeals:

- *Chrysler*: 2d Cir. Opinion Vacated
- *GM*: Statutory / Equitable Mootness



Comparing Chrysler & GM

- **Differences in Capital Structure:**
 - **Chrysler:** Consenting Undersecured Senior Lenders
 - **GM:** US Treasury Dominant New Secured Lender
- **Differences in Purchaser:**
 - **Chrysler:** Fiat Alliance
 - **GM:** UST Credit Bids Secured Debt
- **Differences in Treatment of Existing and Future Claims:**
 - **Chrysler:**
 - Substantial and Inconclusive Bar of Future Claims
 - Complete Bar of Present Claims
 - Post-GM Amendments
 - **GM:**
 - Future Asbestos Claims Carved Out from Injunction *"to the fullest extent constitutionally permissible."*
 - Future Products Claims Assumed by New GM
 - Pre-Existing Products Claims Potentially Covered by Dealer Indemnities



Key Legal Issues

- Legitimate Sale or “Sub Rosa” Plan?
- Authority to Cut Off Successor Claims of Present & Future Claimants
- Products & Asbestos Claims: Concurring & Competing Objectives
- Precedential Significance



Post-Sale Legal Proceedings

- **Non-Debtors Seeking Extension of Automatic Stay**
- **ADR Procedures for Products Claims and Most Other Claims**
- **Appt. of Asbestos Committee and Future Claimants' Rep.**



Successor Liability Issues

- **Claims Against "New" GM & Chrysler**
- **Claims Against Non-Debtor Subsidiaries of "New" GM & Chrysler**
- **Status of Cases Before the Bankruptcy Court and Various State Courts**



Impact on Friction Defendants

- Transactional costs will go up
- Settlement demands will go up
- Available evidence for trial will go down
- Number of parties on verdict slips will go down



Recent Developments

- **Future Mass Tort Cases (*e.g.*, BP / Chinese Drywall)**
- **Third Circuit's *Frenville* Reversal**
- **Trusts**
- **Other**

Questions