

Supplier Strategies for New Chrysler and New GM

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Doing Business With New GM and New Chrysler



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Trade Agreement - Chrysler

- Supplier agrees to assumption and assignment of contracts
- Chrysler's terms and conditions apply (note possible changes to T/C); binding agreement (would reinstate previously-cancelled contracts)
- Supplier agrees to cure amount
- Waiver provision
- Term of the purchase order is life of the program unless the Debtors terminate

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Trade Agreement - GM

- Supplier agrees to assumption and assignment of its contracts with GM
- GM's terms and conditions apply (note possible changes to T/C)
- Cure amount to be determined in accordance with Cure Dispute Resolution Process
- Term of contract extended through the chapter 11
- Requires performance in favor of GM's foreign affiliates (*i.e.*, ship to non-Debtor GM entities)
- Any terminated contracts are reinstated with waiver of any defaults
- GM has right to possession of tooling

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Cure Dispute Resolution Process

- GM
 - GM and Supplier negotiate cure amount (20 days after objection; may be extended by 20 days)
 - If unresolved, elevate to Executive Director level at GM Purchasing (20 days)
 - If not resolved, submit to binding arbitration (GM to select arbitration group)
 - Most cure amounts are being resolved/paid; some are still outstanding
 - Once cure amount resolved, agreement documented in Cure Agreement letter (waiver of jury trial; affiliates bound)
- Chrysler
 - Negotiate and if not resolved, the Bankruptcy Court will resolve via hearing

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Post-Assumption Issues

- Payment of cure amount; timing; setoffs and changes to cure amount
- Filing a proof of claim?
- Tooling payments not covered as part of the cure amount

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Post-Assumption Issues (cont'd)

- New business/new POs
- Warranty obligations
- Indemnity obligations

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Current Pending Automotive Bankruptcies and Emerging Trends



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Recent Automotive Bankruptcies (2009)

- Form-Tech
- Lear Corp.
- Visteon Corp.
- Metaldyne Corp.
- Cooper-Standard Automotive Inc.
- General Motors Corporation
- Chrysler LLC
- Metaldyne Corporation
- Noble International Ltd.
- J.L. French Automotive Castings Inc.
- Mark IV Industries/Mark IV Dayco Products
- Fluid Routing Solutions, Inc.
- Contech U.S., LLC
- Checker Motors Corp.
- Holley Performance Products Inc.
- Foamex International Inc.
- Fabtech Industries Inc.
- Milacron Inc.
- Hayes Lemmerz International Inc.
- Sanderson Industries
- Proliance International Inc.
- May & Scofield

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Recent Automotive Bankruptcies (2008 and older)

■ 2008 Cases:

- Internet Corporation
- Precision Parts International LLC
- Cadence Innovation
- Wellman, Inc.
- Plastech Engineered Products, Incorporated

■ Older cases:

- Remy International, Inc. (2007)
- Tower Automotive (2005)
- Delphi Corporation (2005)
- Dana Corporation (2006; emerged in 2008)
- Collins & Aikman (2005; liquidated in 2007)

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Trade Term Agreements

- Definition: Agreements that are sent out post-petition by the debtor, often changing the terms between debtor and supplier and requiring signature before the debtor will assume the contract and pay the cure amount
 - Often these are one-sided agreements in favor of the debtor, but the supplier wants its contract to be assumed so it has no choice but to sign
- Example: Chrysler and GM trade terms letters— debtors allowed very few modifications by suppliers, and suppliers needed pre-petition amounts paid, so forced to sign

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Section 363 Sales

- Sale of some or all (in GM and Chrysler) of good assets of debtor with remaining “bad assets” liquidated through a plan or chapter 7 proceeding, depending on ability to pay administrative expenses
 - Debtor is permitted to sell free and clear of liens and transfer the liens to proceeds — allows debtor to sell now and deal with creditors later
- Allows a debtor to file a chapter 11, sell off all assets to a new company (like in GM and Chrysler) without the liability and debt associated with the assets
- Asset sales are often for substantially lower than the amount of the secured debt, raising legal issues and prompting credit bids

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Prepackaged Bankruptcies

- **Definition:** All work is done before bankruptcy is filed to allow for a very expedited exit from bankruptcy. Debtor solicits acceptances and rejections to plan prior to filing
 - If plan is accepted by sufficient holders of claims to confirm — debtors will file bankruptcy and seek immediate confirmation
- **Examples:**
 - Lear is example of true prepackaged bankruptcy
 - GM (39 days to emergence — June 1, 2009 - July 10, 2009) and Chrysler (42 days to emergence — April 30, 2009 - June 10, 2009) were a form of pre-negotiated bankruptcy

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Balance Sheet Restructuring

- Goal is to de-leverage
- Often operational restructure is not done

Lender Attitudes Where Covenant Defaults

- Credit crises pushing lenders into distress (for example, CIT)
- More lenience on covenant defaults given desire to wait out the market

Risk of Customer Flight

- Need for industry consolidation and capacity is prompting more aggressive resourcing
- High leverage ratio, lack of customer diversity, etc. can be reasons to prompt resourcing protections

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Questions and Answers

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