



THE DAIMLER CHRYSLER FRAUDULENT TRANSFER LAWSUIT A CASE STUDY

*Craig R. Lewis, Esq.*¹

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[Earlier this month](#), United States Bankruptcy Judge Arthur Gonzalez in New York entered an order allowing an organization of creditors of former Chrysler LLC to file a lawsuit against Daimler AG alleging fraudulent transfer of a significant portion of Chrysler's assets on the eve of the 2007 sale of Chrysler by Daimler to Cerberus Capital Management LP. The lawsuit was [filed](#) Monday, and I have reviewed a redacted version thereof.

The 31 page complaint alleges that Daimler recognized in 2006 that its merger with Chrysler would ultimately prove to be detrimental to Daimler, partially because Chrysler's pension and employment related liabilities (and Daimler's potential responsibility for those liabilities) outweighed its assets, the most valuable of which were its financial services subsidiaries (collectively FinCo). According to the complaint, in an effort to segregate FinCo from Chrysler's liabilities in anticipation of selling the company, Daimler carried out an intricate restructuring plan, which resulted in Daimler and its own subsidiaries receiving in excess of \$9 billion in Chrysler assets in exchange for Chrysler's receipt of a promissory note valued at roughly \$1.5 billion and equity in arms of Daimler that were allegedly "worthless." Then, it is alleged, Daimler sold a majority of FinCo (without Chrysler's liabilities) to Cerberus for roughly

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\$7 billion, \$3.45 billion of which went to Chrysler, \$2.275 billion to FinCo (who then immediately paid off the note owed to Daimler), and \$1.212 billion directly to Daimler. According to the complaint, these transfers were made with the knowledge on the part of Daimler that there were numerous lawsuits pending against Chrysler that could be satisfied, at least partially, with the transferred assets; and with the intent on the part of Daimler to defraud Chrysler creditors.

The creditors seek damages against Daimler on theories of constructive and intentional fraudulent transfer under the Bankruptcy Code, and on state law causes of action for breach of Daimler's fiduciary duty as sole shareholder and controlling force behind all Chrysler decisions, unjust enrichment, and corporate alter ego liability. Daimler has filed no formal response to the complaint yet, as the time to do so has not come, but their initial reaction to the lawsuit is that it is without merit.

This case should be of interest to business debtors and creditors of all shapes and sizes (and their attorneys) because it highlights the remedies available to creditors when assets that could be used to satisfy creditor claims are transferred beyond the reach of creditors without justification, and hopefully it will provide the public some insight into how these remedies are obtained (or avoided). Over the next few weeks we will present a discussion on each theory of liability raised by Chrysler's creditors (and on the defenses raised by Daimler), with an aim toward relating these issues to more typically-structured businesses and their attorneys.