



CHRYSLER FRAUDULENT TRANSFER CASE STUDY PART I BACKGROUND

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In [my last post](#), I promised to break down the lawsuit filed recently by Chrysler LLC's creditors alleging fraudulent transfer against Daimler AG. That project begins with this entry, which discusses the procedural background, the parties, and the attorneys.

[Chrysler LLC](#) filed for Chapter 11 Bankruptcy relief earlier this year, at least in part in order to allow it to restructure itself for the purposes of partnering with Italian automaker Fiat. Since then, Chrysler LLC has been reorganized into a new company called Chrysler Group LLC, of which Fiat is part owner. As part of the Bankruptcy, in June the Federal government helped finance the sale of most of Chrysler LLC's assets to Chrysler Group LLC (New Chrysler) in the amount of \$6.6 billion paid to Chrysler LLC (Old Chrysler). The Bankruptcy [continues](#) with respect to the remaining assets of Old Chrysler.

The Plaintiff in the fraudulent transfer action is the committee of creditors of Old Chrysler (New Chrysler is not involved). The Defendants are [Daimler AG](#), several of its American subsidiaries, and several common members of the boards of Daimler AG and Old Chrysler (although Old Chrysler is the Bankruptcy debtor, it is not a fraudulent transfer lawsuit defendant). Daimler AG is a German company whose earliest predecessor began operations in the 1800s. In 1926, the company became Daimler-Benz AG, the name by which it was known

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until 1998, when it merged with Chrysler, and Daimler and Chrysler became sister companies under the newly created parent company DaimlerChrysler AG. What's now Daimler AG is the remainder of DaimlerChrysler AG after its sale of Chrysler to Cerberus Capital Management in 2007.

Daimler AG is sued in its capacity as the owner of Old Chrysler. The creditor's committee obtained court authority to pursue Daimler AG in the Bankruptcy Court earlier this month. Creditor's counsel has apparently taken the case on a contingency fee basis, which means their analysis of the claims made by the committee is that there is more than minimal merit to them (documents indicate the firms may have agreed to be responsible for a certain portion of the litigation costs as well, another good indicator of counsel's positive impression of the claims). They do appear to have been advanced \$2 million in fees for taking the case, however. Commercial collection cases are often taken on a contingency fee basis (by my firm for example), but fraudulent transfer actions would only be pursued on contingency when the analysis of the claims indicates a strong likelihood of recovery of a significant amount of money. When there is too much of a risk of little or no recovery, creditor's attorneys will pursue the case (as long as it has merit), but only if the client agrees to pay for our services by the hour, and often in advance.

Obviously, this lawsuit does not represent the run of the mill collection case, and neither the complexity of the corporate structures involved in this lawsuit, nor their size, is typical. But as we will discuss in further detail in coming posts, the next with respect to the allegations of fraudulent transfer under the Bankruptcy Code, the issues and the analysis are quite similar.