

# THE GLOBE AND MAIL

June 8, 2009

## Court puts Chrysler deal in jeopardy

Greg Keenan and Sinclair Stewart

The U.S. Supreme Court has thrust Chrysler LLC into more legal limbo, delaying the rescue of the embattled auto maker by Fiat SpA and the U.S. and Canadian governments.

The delay, while the court decides whether to hear objections mounted by three Indiana pension funds, could scuttle the deal because Fiat has said it would walk away unless its takeover of Chrysler is completed by next Monday.

If the court agrees to hear an appeal of lower court decisions approving the Chrysler sale, such a lengthy examination could have even larger ramifications for the U.S. government's strategy for the auto industry, which involves relatively quick and "surgical" Chapter 11 bankruptcy protection filings for both Chrysler and General Motors Corp. (GM-N0.75----%)

The plan was for both companies to enter a Chapter 11 process with critical agreements from most stakeholders so that any objections would be kept to a minimum and the companies could exit the process without a prolonged battle with most of the groups affected by the filing.

Chrysler went into Chapter 11 protection at the end of April, and the governments, Fiat and Chrysler itself hoped it would emerge in about 30 days. GM, because it is larger and more complex, was expected to take 60 to 90 days after filing for Chapter 11 protection a week ago this Monday. It was not clear last night how long the takeover of Chrysler by Fiat could be delayed, because Madam Justice Ruth Bader Ginsburg said the sale is "stayed pending further order" and the U.S. Supreme Court has not yet agreed to hear an appeal.

Both companies are engaged in what is known as a Section 363 bankruptcy filing, where one set of assets is put up for sale to one buyer. Unwanted assets are stripped out and liquidated.

Fiat is the purchaser in the Chrysler case and, if all goes according to plan, will end up owning a new Chrysler in partnership with the U.S. and Canadian governments and a United Auto Workers health care fund.

In the case of GM, the new owners will be the U.S., Canadian and Ontario governments, the UAW and bondholders who swap their debt for equity.

The Indiana State Police Pension Trust, Indiana State Teachers Retirement Fund and Major Moves Construction Fund opposed the takeover of Chrysler. They hold about \$42.5-million (U.S.) of \$6.9-billion in secured Chrysler debt that is being restructured.

The funds argued that even though they are first lien lenders to Chrysler, they will receive less money than unsecured creditors. They also said no court has ever examined whether the U.S. government's Troubled Asset Relief Program has the judicial authority to finance the restructuring of Chrysler.

"The government-sponsored reorganization of the U.S. auto industry, of which the Chrysler Chapter 11 case is a significant (and at this point in time, leading) component, is a matter of incredibly high profile and importance," the funds said in a submission to the court.

"The public is watching and needs to see that, particularly, when the system is under stress, the rule of law will be honoured and an independent judiciary will properly scrutinize the actions of the massively powerful executive branch."

Judge Ginsburg's terse order came much to the surprise of veteran lawyers who have been following the case.

**"Quite frankly, I'm astounded," said Jerry Reisman, a partner at Reisman Peirez & Reisman. "She must feel there's some likelihood of success on behalf of the Indiana state pension funds."**

Judge Ginsburg's decision to stay the sale temporarily doesn't necessarily mean that the Supreme Court will review the matter. But she is buying time to consider several options.

She could decide, after reviewing Friday's appeal ruling and discussing the matter with fellow jurists, that the deal can proceed without the court's involvement. Or she could seek a review, which would effectively postpone the sale until the court hears legal arguments. Five of the nine justices would have to vote to hear the case and grant a postponement.

But the court does not have a reputation for alacrity, prompting fears its involvement could delay the deal beyond its June 15 deadline.

Lawyers said the lack of legal precedent here makes it impossible to forecast how long it would take for the court to hear the case and issue a ruling. However, most expect the court will make its intentions clear very shortly, either extending the temporary stay or announcing plans for a hearing.

**"There's no way of knowing," Mr. Reisman said. "Hopefully they will make a decision quickly, because it's in the best interest of this country, and of Canada."**

Even with fears of a delay, some lawyers welcomed Judge Ginsburg's stay, arguing that the Chrysler case has raised serious legal issues that deserve to be scrutinized by the country's highest court. One of the most contentious questions has been whether the government was justified in dipping into the Troubled Asset Relief Program, a bailout fund devised to help the banking sector, and use it to aid Chrysler.

"In light of the importance of the legal issues at play for the bankruptcy community, a review by the Supreme Court would be welcomed," said Angela Somers, senior counsel in the restructuring practice of with Allen & Overy LLP in New York.

The two bankruptcies involve almost \$100-billion worth of assets and the U.S. government “without any specific approval from Congress, is using the bankruptcy process to re-order private property rights on a scale and in a way that America has never seen before,” the funds said in describing the Chrysler case as a “guinea pig” for the later GM Chapter 11 filing.

That argument was countered yesterday by the Obama administration, which warned that blocking the deal could force liquidation of all Chrysler assets.

Chrysler said the sale would save about 38,000 direct jobs, as well as those at hundreds of suppliers of the No. 3 Detroit auto maker.