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A GM or Chrysler Bankruptcy

**Protect Your Business Now:
How You Should Prepare for a
General Motor or Chrysler
Bankruptcy**



A GM or Chrysler Bankruptcy

Presenters:

- Jonathan Raven (Facilitator)
- Gary Rogers
- J. J. Burchman
- Loukas Kalliantasis

Facilitator: Jonathan E. Raven



- Member, Business Law Department; Chair Health Care Law Department
- Practices Business & Corporate Law; Health Care Law; Business Litigation
- Former General Counsel, President of Nu-Vision, Inc.

FraserTrebilcock

- Mid-Michigan's Longest-Established Law Firm
- Attorneys Regularly Named to "America's Best Lawyers"
- 45 Attorneys, Business & Government Relations Advisors
- Offices in Downtown Lansing & Detroit

Presenter: Gary C. Rogers



- Chair of Bankruptcy and Creditors' Rights Law Department
- Member, Federal Bar Association, Western Michigan Chapter, Bankruptcy Section
- Admitted in the Bankruptcy Courts for Eastern and Western District of Michigan, 6th Circuit Court of Appeals, and the United States Supreme Court

A GM or Chrysler Bankruptcy

Immediate Effect:

- Automatic Stay - §362
- What it is
- Effect
- Relief from Automatic Stay

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Preferences - §547, §550

- Defined:
 - a. Transfer of an interest of the debtor to or for the benefit of a creditor;
 - b. For or on account of an antecedent (meaning previously incurred debt) debt owed by the debtor before the transfer was made;
 - c. While the debtor was insolvent;
 - d. Made on or within 90 days before filing or one-year if an insider;
 - e. Which enables the creditor to receive more than such creditor would have received if the transfer had not been made.

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- Rationale – Policy behind Preference actions
- How Preference actions are brought
 - a. Who brings the preference action
 - b. Time in which to bring the action
 - c. Procedure for Preference actions

Creditor Actions to Prevent “Preference”

- Pre-bankruptcy –
 - Payment by guarantor
 - Payment by subsidiary or affiliate of debtor
 - Accept less than full amount owed (\$5,474)

Creditor Actions to Prevent “Preference”

- Post-bankruptcy defenses –
 - Affirmative defenses (burden of proof on creditor)
 - Contemporaneous Exchange for Value
 - Ordinary Course of Business
 - New Value Defense
- In what court will the Preference lawsuit be brought?

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How the Creditor Gets Paid

- Proof of Claims
 - a. Chapter 7
 - b. Chapter 11
 - c. Administrative claims

Presenter: Loukas P. Kalliantasis



- Associate Attorney with Fraser Trebilcock's Business & Tax Law Department
- Works within Bankruptcy and Creditors' Rights Law Group
- Practice includes commercial litigation and transactional matters

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Gaining Priority Status: The “20-Day Goods” Administrative Expense Claim

- Goods delivered to debtor
 - Within 20 days before bankruptcy
 - In the debtor’s ordinary course of business
- Motion for Administrative Expense
- Entitled to early payment
- Second priority among creditors

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Gaining Critical Vendor Status: The Doctrine of Necessity

- “Critical Vendors” entitled to early payment of pre-petition claims in Chapter 11 Reorganization
- Status gained when payment necessary to debtor’s reorganization
 - Creditor and debtor must negotiate
 - Debtor has discretion to make offer
 - Creditor should seek waiver of preferences and release of comparable claims
 - Debtor files first-day motion with court

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Setoff/Recoupment

- Setoff
 - Identical parties with mutual claims arising in different transactions or contracts
 - Not avoidable as a preference
 - Seek relief from automatic stay
- Recoupment
 - Claims arising in the same transaction or contract
 - Creditor not liable for the full amount of the debtor's claim
 - Relief from automatic stay not required

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Recovering Delivered Goods: Right to Reclaim “45-Day” Goods

- Right to reclaim goods
 - Debtor received goods
 - While insolvent
 - Within 45 day before bankruptcy
 - Goods sold in creditor’s ordinary course
 - Written demand
- Subject to secured creditor claims

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Executory Contracts

- May be assumed or rejected
- If assumed
 - Pre-petition claims paid and adequate assurance of future performance
 - Post-petition administrative expense claims paid prior to confirmation of reorganization plan
- If rejected
 - Administrative expense claim for period between filing and rejection
 - Relegated to general unsecured creditor after rejection

Presenter: J. J. Burchman



- Attorney with Fraser Trebilcock's Business & Tax Law Department
- Law Practice includes Business & Securities and Banking Law
- Former Corporate Counsel for Capitol Bancorp Ltd.

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Auto Supplier Support Program

- \$5 Billion in funding from U.S. Treasury Department

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Program Details:

- Government guarantees payment on eligible receivables
- Can sell receivables at a modest discount.

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Eligible Auto Companies:

- any domestic auto company
- have to apply to Treasury
- work with 3rd party servicer
- GM & Chrysler already enrolled

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Eligible Suppliers:

- any U.S.-based supplier
- goods shipped on qualifying commercial terms
- auto company decides who participates

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Eligible Receivables:

- any receivable created for goods shipped after March 19, 2009

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Supplier Concerns:

- Will your lender allow you to sell receivables?
- What are GM/Chrysler conditions for participation?

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