

Statement of Clarence M. Ditlow
Executive Director, Center for Auto Safety
On Auto Industry Bankruptcies
Before the
House Judiciary Committee
May 21, 2009

Mr. Chairman and members of the Committee thank you for the opportunity to testify on Ramifications of Auto Industry Bankruptcies. The Center for Auto Safety (CAS) is a consumer group which was founded by Consumers Union and Ralph Nader in 1970 to be a voice for consumers on auto issues affecting their lives and pocketbooks. Seldom have consumers needed a voice more than today when fundamental rights such as the right to return a lemon or get compensation for deaths and injuries caused by defects may be swept away in auto industry bankruptcies aided by billions of tax payer dollars.

When the sale of Chrysler LLC's assets using \$2.2 billion taxpayer funds to pay off secured creditors to "New Chrysler" (New CarCo Acquisition LLC) was negotiated, New Chrysler would have retained all its obligations to consumers under state law including responsibility for mechanical and design defects in vehicles that caused economic or personal injury. BUT when Chrysler entered bankruptcy, it left consumers behind and proposed to sell all its valuable assets "free and clear" to "New Chrysler" leaving both consumers and personal injury victims without recourse against "New Chrysler" which assumed only the following consumer liabilities:

- *Liabilities for product warranties, product returns and rebates on vehicles sold pre-closing;*
- *Warranty obligations and product recall liabilities related to vehicles sold pre-closing;*
- *Product liability claims arising out of vehicles manufactured pre-closing and sold post-closing;*

Chrysler LLC has issued notices of bankruptcy in all pending lawsuits against it whether they are class actions, lemon lawsuits, or personal injury lawsuits against citing the automatic stay provision of § 362 of the Bankruptcy Code. If the bankruptcy proceeds as Chrysler seeks, consumer litigation claims whether they are personal injury or economic claims will be virtually worthless.

CAS and other consumer groups including Consumer Action, Consumers for Auto Reliability and Safety, Public Citizen and the National Association of Consumer Advocates have filed an objection to the sale of Chrysler LLC assets to "New Chrysler" free and clear of claims of consumer and personal injury victims on the basis that § 363 of the Bankruptcy Code permits free and clear sale of only "interests in property" such as liens, mortgages, encumbrances and security interests. Claims of consumer and personal injury victims are not "interests in property." Even if they were, other provisions in § 363 of the Bankruptcy Code bar free and clear sale from applying to claims of consumer and personal injury victims. See attached copy of Objection of Tort Claimants and Consumer Groups.

Let's put a face on some of the claims Chrysler LLC wants to wipe out. The following examples of known safety defects in Chrysler vehicles that have killed and injured consumers in the past and will continue to do so in the future.

Lack of Brake-Shift Interlock

An industry standard since 1990, BSI prevents the INADVERTENT and unintentional movement of an automatic transmission from “Park” to non-park. Chrysler management refused to install BSI in its cars, trucks and minivans on the basis that the US Government did not require. All Chrysler vehicles dating from model years 1990 through 2000, involving approximately **15 million** vehicles, continue to pose the threat of injury or death to unsuspecting owners and bystanders because Chrysler has refused to retrofit the defective vehicles or notify the owners of the lack of BSI.

Pending BSI Cases/Filings:

McIntosh v Chrysler LLC, 4 deaths, 2007, Connecticut

Callara v Chrysler LLC, severe injury, 2008, New York

Shew v. Chrysler LLC, severe brain damage, 2007, Illinois

Jeep Grand Cherokee Fuel Tank

Fuel tank mounted to the rear of axle causes tank rupture and explosion during real world collisions. No other SUV on the highway continues to utilize this defective fuel tank system design EXCEPT Chrysler Jeep SUVs. Jeep vehicles dating from model years 1993 through 2004, involving approximately **3 million** vehicles, continue to pose the threat of horrible fire death to unsuspecting owners. Chrysler identified a safety fix called a “Fuel Tank blocker” in 2003 but has refused to issue a safety recall notice.

Pending Jeep Grand Cherokee Fuel System Defect Cases:

Kline v Chrysler LLC, 1 fire death, wife and mother of 4, 2007, New Jersey

Other Chrysler models have defects that have led to burn deaths and injuries including the Dodge Neon which is significantly over-represented in fatal fire crashes in NHTSA’s FARS system. Even defects in brake and power steering fluid systems cause fires. A successful hotel manager, Jeremy Warriner from Indianapolis, Indiana, was heading home after a long day at work. Another motorist sped through a stop sign, smashing into Jeremy’s 2005 Jeep Wrangler. The poor design of the brake fluid reservoir ignited a fire that trapped Jeremy in the driver’s seat for five minutes, severely burning his legs. Ultimately, Jeremy’s legs had to be amputated.

Seat Back Collapse

NHTSA Safety Standard 207 is woefully inadequate and out of date. Internal standard used by Chrysler continues to rely on NHTSA standard as basis for manufacture. Rear collision to Chrysler vehicles results in seat back collapse and instant injury to children behind the collapsing seat or subsequent injury due to loss of vehicle control. Chrysler vehicles dating from model years 1990 through 2009, involving over **10 million** vehicles, continue to pose the threat of seat back collapse.

Chrysler has admitted to over one hundred instances of serious injury in its vehicles due to seat back collapse.

Julio and Lilian Melgar’s case pending in District Court in Clark County, Nevada against Chrysler represents the devastation the current Chrysler bankruptcy restructuring plan will create for Chrysler customers and their families. Mr. Melgar’s 1997 Dodge Caravan was rear ended while stopped at a traffic light. Although the collision was moderate and the person driving the Ford Taurus that struck Mr. Melgar’s minivan suffered no serious injuries, Mr. Melgar’s front seat

collapsed rearward in the impact, throwing him to the rear of the vehicle and causing a catastrophic spinal cord injury. Mr. Melgar was not at fault and was wearing his seat belt. The Melgar family faces enormous future medical bills, and Mr. Melgar has lost his ability to work as well as to independently care for himself.

As early as 1980, Chrysler meeting minutes revealed that seat backs had collapsed rearward in every rear impact crash test but that any improvements were resisted because they would entail additional development costs. In fact, Chrysler's internal memoranda showed that the seats were so weak that, in rear crash tests, the front seats were braced to prevent the seatbacks from impacting testing equipment occupying the back seat. Chrysler has also received hundreds of reports of minivan seats collapsing rearward in rear impacts. Of these incidents, many involve deaths and serious injuries.

In the early 1990s, Chrysler formed the Minivan Safety Leadership Team ("MSLT"). The MSLT sought to address safety concerns in Chrysler minivans, including specifically the issue of seat back strength. The MSLT studied complaints regarding injuries caused by yielding seat backs. At its March 16, 1993, meeting, the MSLT reached a consensus that it was unacceptable for seats to yield rearward into the passenger space behind them and that the seats were *inadequate to protect customers*. After the meeting, the minutes of the meeting were distributed to various Chrysler executives. Later, a Chrysler executive in charge of engineering ordered the meeting minutes retrieved and destroyed.

Chrysler never issued any warning to customers and continued to advertise the Caravan as a vehicle specifically designed as a family vehicle. Seat backs in minivans sold before the bankruptcy will continue to collapse after the bankruptcy. The only difference will be consumers will have no recourse for their catastrophic losses against Chrysler.

Roof Crush in Chrysler SUV's

CAS dynamic roof crush tests have shown that Chrysler SUVs such as the Jeep Grand Cherokee have weak roofs that have substantial buckling of the roof header over the driver. Over 2 million Grand Cherokee with weak roofs have been produced since 1994.

Pending Jeep Grand Cherokee Roof Crush Case:
Schute v Chrysler LLC, New York State Court

Some defect claims which Chrysler LLC seeks to wipe out impose significant economic loss on consumers who receives no bailout from the government. Chrysler used to buy back over 5,000 lemons each year. At an average price of \$25,000, that's \$125 million of lemons every year. While Chrysler LLC says it will continue to buy back some lemons before lawsuits are filed, the \$125 million is significant economic incentive for Chrysler to force consumers into filing lawsuits which are automatically stayed by the bankruptcy and which could be wiped out if the free and clear sale goes through.

Some economic defects are so widespread they have formed the basis for class actions which would also be wiped out by the bankruptcy. For example, 1998-2005 Chrysler cars with 2.7L engines are prone to oil sludge which causes catastrophic engine failure typically at 50-90,000 miles which is well within the normal vehicle life. Repair costs run from \$5-9,000. A class

action on 2.7L engine oil sludge which would be wiped out by this bankruptcy is pending in a MDL proceeding in Federal District Court in New Jersey (*In re Chrysler LLC 2.7 Liter V-6 Engine Oil Sludge Products Liability Litigation*), Master Case No. 07-1740.

The free and clear sale would preserve the right to a safety recall but this creates a huge and ironic safety gap. Recalls are often based on deaths and injuries yet the victims of the crashes that led to the recall would not be entitled to any compensation for their injuries if the vehicles were sold prior to the bankruptcy even if the crash occurred after the bankruptcy. In large recalls, only 50-60% of the defective vehicles are remedied leaving millions on the road to result in future deaths and injuries which will go uncompensated if the bankruptcy goes through. In the Chrysler tailgate latch failure that resulted in 40 deaths, only 2.4 out of 4.1 million minivans were ever repaired leaving 1.7 million with a defective tailgate latch that could pop open with the occupant flying out. If the Chrysler bankruptcy goes through with free and clear of injury claims, owners of unrepaired vehicles, yet recalled, vehicles will have no recourse against Chrysler for admitted defects.

According to the National Highway Traffic Safety Administration (NHTSA), the cost of motor vehicle crashes is \$366 billion annually based on the most recent data. Chrysler and GM crashes account for almost half of the total. With Chrysler already in bankruptcy and GM soon to be in bankruptcy, a significant portion of the economic costs of vehicle deaths and injuries for vehicles on the road today will fall on the consumer and government programs like Medicare if crash victims have no insurance or when their insurance runs out.

One of the early warnings of the impact of the Chrysler bankruptcy was Chrysler's failure to pay lemon law claims. Just this week, GM told lemon lawyers it would no longer pay its lemon claims even if an agreement to buyback a lemon had been reached. Another early warning was auto dealers going out of business. In all too many cases, consumers who traded in cars with liens which were supposed to be paid off by dealers in the trade-ins were never paid off, leaving consumers victimized by yet another consequence of auto bankruptcies. With Chrysler terminating nearly a 1,000 dealers and GM 2,000 more, we can expect another major economic hit on consumers who are the forgotten victims of auto company bankruptcies.

Conclusion: What needs to be done is not to stop the restructuring of GM and Chrysler but to stop treating consumers as if they were collateral damage. Catastrophic injury in crashes and loss of income can destroy a family. Even a lemon vehicle in a country where the private passenger automobile is the primary means of transportation can cause loss of jobs and strains on family ties. To ask consumers to bear the cost of design and manufacturing defects in Chrysler and GM vehicles at the same time tens of billions of their tax dollars are bailing out these companies is too much.

We recommend:

- (1) the "New Chrysler" assume the liability for all personal injury and consumer liability claims of Chrysler LLC, the "Old Chrysler."
- (2) the "New Chrysler" take out an insurance policy to pay such claims.
- (3) the government create a fund sufficient to make consumers whole should the "New Chrysler" fail to pay personal injury and consumer liability claims. Such fund should also cover

consumer losses associated with bankrupt dealers failing to pay off liens on purchase of new vehicles.

(4) when GM goes bankrupt, take the same steps outlined above for Chrysler to insure that consumers are protected, and

(5) as recommended by the International Association of Lemon Law Administrators in the attached statement which I have asked to deliver, honor all lemon law claims regardless of when a vehicle is purchased.

**Message on Behalf of Philip Nowicki, Ph.d., President
International Association of Lemon Law Administrators (IALLA)**

IALLA, established in 1997, is comprised of government officials who administer and enforce our states' new motor vehicle lemon laws. The laws, enacted in all 50 states, afford minimum protections for consumers who acquire chronically defective new motor vehicles. IALLA's mission on behalf of its member agencies is, in part, to:

Ensure an honest, safe, and informed marketplace.

Protect the rights of consumers who buy motor vehicles, including the right to receive a refund or replacement vehicle if a manufacturer cannot conform a new motor vehicle to the warranty within a reasonable number of attempts.

Since Chrysler went into bankruptcy, there has been a stay on all lemon law claims with the disposition of those claims uncertain. Neither Chrysler, nor the Presidential Task Force on the Automobile Industry, has indicated whether lemon law claims, including those brought by consumers who bought unbranded or undisclosed repurchased "lemon" vehicles, will be covered during the bankruptcy period or after the new company emerges. With a similar situation looming for General Motors consumers, IALLA believes that Chrysler and GM consumers currently experiencing a hardship as a result of a chronically defective vehicle as well as prospective Chrysler and GM customers need to know whether their lemon law rights are safe and whether their lemon law claims will be honored, regardless of when they acquired their new motor vehicles.

IALLA would greatly appreciate the help of this Committee to have this question answered.