

SCHAFFER AND WEINER, PLLC
Daniel J. Weiner (P32010)
Ryan D. Heilman (P63952)
40950 Woodward Ave., Ste. 100
Bloomfield Hills, MI 48304
248-540-3340
Counsel for Plast-O-Form, LLC

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
In re

Chapter 11

CHRYSLER LLC, *et al.*¹,

Debtors.

Case No. 09-50002(AJG)
(Jointly Administered)

-----X

**LIMITED OBJECTION TO
MOTION OF DEBTORS AND DEBTORS IN POSSESSION, PURSUANT TO
SECTIONS 105(a) AND 503 OF THE BANKRUPTCY CODE AND BANKRUPTCY
RULES 3002 AND 3003, FOR AN ORDER ESTABLISHING PROCEDURES FOR THE
ASSERTION OF SECTION 503(b)(9) CLAIMS RELATING TO GOODS RECEIVED
BY THE DEBTORS WITHIN TWENTY DAYS BEFORE THE PETITION DATE**

Plast-O-Foam, LLC (“Plast-O-Foam”) hereby objects to the relief requested by the above-caption debtors (the “Debtors”) in their Motion For An Order Establishing Procedures For The Assertion Of Section 503(b)(9) Claims Relating To Goods Received By The Debtors Within Twenty Days Before The Petition Date (the “Motion”).

INTRODUCTION

1. Through the Motion, the Debtors propose procedures for the assertion by creditors of administrative expense claims arising under section 503(b)(9) of the Bankruptcy Code for

¹ A list of the Debtors, their addresses and tax identification numbers is located on the docket for Case No. 09-50002 (AJG), Docket No. 169, and also can be found at www.chryslerrestructuring.com.

goods received by the Debtors within 20 days prior to the commencement of these chapter 11 cases (“Twenty-Day Claims”).

2. Plast-O-Foam delivered approximately \$300,000 worth of goods to the Debtors during the twenty days immediately preceding the commencement of these chapter 11 proceedings and therefore asserts a Twenty-Day Claim in this amount.²

3. Plast-O-Foam does not generally object to the methodology proposed by the Debtors for the assertion of Twenty-Day Claims.

4. Plast-O-Foam does, however, object to the Debtors’ request for an order establishing the Debtors’ proposed procedures as the sole and exclusive method for creditors to assert, seek determination of and obtain payment of Twenty-Day Claims, without regard to any creditor’s right to be heard on the matter or this Court’s discretion to determine the timing of the payment of administrative expense claims.

5. Additionally, Plast-O-Foam objects to the extent that the Debtors’ procedures may create a conflict with section 1129(a)(9) of the Bankruptcy Code by unnecessarily extending the time for allowance of Twenty-Day Claims to, in effect, obtain free credit during the claims objection process.

OBJECTION

6. Section 503(b) of the Bankruptcy Code provides that:

After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under §502(f) of this title, including--

* * *

² Because Plast-O-Foam did not have actual knowledge of the Motion until late in the afternoon on Friday, May 1, 2009, Plast-O-Foam has not yet ascertained the precise amount of its Twenty Day Claim. Plast-O-Foam, along with the vast majority of Twenty-Day Claim holders, never received service of the Motion or of any notice thereof.
{00209683}

(9) the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of business.

7. Under sections 507(a)(2) and 503(b)(9), Plast-O-Foam's Twenty-Day Claim for goods delivered in the ordinary course of business within 20 days before the Petition Date is entitled to administrative priority.

A. The Debtor's Motion Improperly Attempts to Usurp the Court's Discretion to Determine Timing of Twenty-Day Claims.

8. The timing of payment of an administrative expense claim is submitted to the sound discretion of the Bankruptcy Court. This is acknowledged by the Debtors and in the cases cited by the Debtors. *See* Motion, 13 fn.2 (*citing* Bookbinders' Restaurant, Inc., No. 06-12302, 2006 WL 3858020, at *4 (Bankr. E.D. Pa. Dec. 28, 2006) *and* In re Global Home Prods. LLC, No. 06-10340, 2006 WL 3791955 *5 (Bankr. D. Del. Dec. 21, 2006).³ *See also, e.g.,* In re Garden Ridge Corp., 323 B.R. 136, 143 (Bankr. D. Del. 2005) (ordering payment of postpetition rent); In re The Korea Chosun Daily Times, 337 B.R. 773, 784 (Bankr. EDNY 2005) (ordering payment of postpetition of professional fees).

9. In exercising their discretion on the timing of payment of administrative expense claims, courts generally consider three factors: (1) the prejudice to the debtors, (2) hardship to claimant and (3) potential detriment to other creditors. Garden Ridge Corp., 323 B.R. at 143; Global Home Prods. LLC, at *12. *See also* The Korea Chosun Daily Times, 337 B.R. at 784-85 (ordering payment after a finding that the debtor was not administratively insolvent).

10. The Debtors cite and attach the law that governs their motion, but then they ignore it. The Debtors' proposed procedures, as the sole and exclusive method for asserting

³ Each of these unpublished cases are attached to the Motion.
{00209683}

Twenty-Day Claims, would prohibit all holders of Twenty-Day Claims from requesting immediate or expedited payment of their Twenty-Day Claims no matter what the circumstances or hardship to the claimants, and without any showing whatsoever of hardship to the Debtors. These procedures, if approved, would eviscerate the very factors which the Court is supposed to weigh and impermissibly replace the sound discretion of the Bankruptcy Court with the diktat of the Debtors.

11. As admitted by the Debtors in other pleadings, many of Debtors suppliers, including Plast-O-Foam, will be hard-pressed to survive without payment of their Twenty-Day Claims. In these situations, where creditors are fighting for their own survival – a specific factor acknowledged by the Debtors themselves -- the creditors should be permitted a hearing to request that this Court exercise its discretion to compel immediate or expedited payment of Twenty-Day Claims.

12. This is especially important in this case where the Debtors request authority to pay general unsecured claims, priority tax claims, and certain Twenty-Day Claims, in the Debtors' sole discretion. If the Debtors are willing and able to make expedited payment of lower-priority claims, the holders of Twenty-Day Claims should, at a minimum, be entitled to a hearing to present their own case to this Honorable Court.

13. Plast-O-Foam proposes that the Court approve the Debtors' proposed procedures, but permit each individual holder of a Twenty-Day Claim to move for immediate or expedited payment where the creditor believes that payment is warranted pursuant to the factors discussed above.

B. The Twenty-Day Claims Must Be Paid No Later Than The Effective Date Of The Plan of Reorganization.

14. Section 1129(a)(9) of the Bankruptcy Code provides, in relevant part:

Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that—
(A) with respect to a claim of a kind specified in section 507(a)(2) or 507(a)(3) of this title, on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim.

15. Thus, under section 1129(a)(9), administrative claims, including Twenty-Day Claims, must be paid, at the latest, on the effective date of a plan of reorganization.

16. The Debtors' propose to treat Twenty-Day Claims the same as general unsecured claims for all purposes other than priority. The Debtors do not specify when they expect to confirm a plan of reorganization or when they expect to conclude claims objections. However, it is typical, especially in large cases, for the claims objection process to not even begin until well after the effective date of a plan of reorganization.

17. Accordingly, Plast-O-Foam objects to the extent that the Debtors' proposed procedures would delay payment of Twenty-Day Claims beyond the effective date of any plan of reorganization.

**C. Implementing Procedures Consistent With This Objection Would
Not Unduly Burden the Debtors.**

18. Plast-O-Foam anticipates that the Debtors will argue that permitting individual claimants to move for expedited payment of Twenty-Day Claims will be unduly cumbersome. This response is not persuasive.

19. First, Plast-O-Foam believes that the Debtors' process for determining the correct amount for Twenty-Day Claims will not be unduly burdensome. The Debtors presumably keep adequate records to determine what shipments the Debtors received within twenty days of the

bankruptcy filing.⁴ The Debtors are currently preparing their schedules and statements of financial affairs, which they propose to have prepared by July 14, 2009. To the extent that the Debtors believe that Twenty-Day Claims are procedurally no different than general unsecured claims,⁵ Plast-O-Foam submits that it would not be an undue burden to require the Debtors to Twenty-Day Claims as part of its schedules of priority pre-petition claims on or shortly after submission of the Debtors schedules.

20. Second, to the extent that following the relevant statutes, judicial decisions and bankruptcy rules does present a burden to the Debtors, this is a burden that must be borne by the Debtors who filed voluntary petitions for chapter 11 bankruptcy protection. The burden should not be borne by the innocent creditors and suppliers that are already suffering significantly.

WHEREFORE, Plast-O-Foam respectfully requests that this Honorable Court (i) deny the Motion to the extent that it would prohibit creditors from requesting the Court to order immediate or expedited payment of Twenty-Day Claims, (ii) deny the Motion to the extent that it would permit the Debtors to delay payment of Twenty-Day Claims beyond the effective date of any plan of reorganization and (iii) grant such other relief as may be just and proper.

Respectfully Submitted:

SCHAFFER AND WEINER, PLLC

By: /s/ Ryan D. Heilman
DANIEL J. WEINER (P32010)
RYAN D. HEILMAN (P63952)

⁴ Considering that the Debtors planned and prepared for this bankruptcy filing for a considerable period of time, it is inconceivable that they would be ignorant of the Twenty-Day Claims that will be asserted. Indeed, their own Motion states that they are aware of approximately \$800 million in Twenty-Day Claims.

⁵ See Motion, 10-12 (arguing that Twenty-Day Claims should be treated as any other pre-petition claims). If Twenty-Day Claims are to be treated as other pre-petition claims, they must also be scheduled as a pre-petition priority claims.

Counsel for Plast-O-Foam, LLC
40950 Woodward Ave., Ste. 100
Bloomfield Hills, MI 48304
248-540-3340
Rheilman@schaferandweiner.com

Dated: May 4, 2009