

PRODUCT LIABILITY ISSUES

May 22, 2009

Chrysler finally filed the actual sale agreement with Fiat. There is some trouble with regard to products liability claims:

- Under the sale agreement, new Chrysler is not picking up any product liability for claims attributable to inventory sold **before** the closing date of the transaction. It will, apparently, pick up lemon law claims on those units.

- This raises issues with regard to dealers' product liability since dealers are generally named as co-defendants in any products liability suit. Under state law, if it is a pure products liability issue, the manufacturer is required to assume the defense of the claim and indemnify the dealer from any liability. That indemnification would now be worthless since that would have to come from the assets of old Chrysler, which will be non-existent by the time product liability claims are filed.

- Each individual affected dealer should check with their insurance agent to make sure that they have continued products liability coverage. If the dealership has a "claims made" policy, it may be necessary to buy "tail" insurance coverage if the dealer is going to cease business.

- If the dealer is going to continue business and has a claims made policy, it probably is not necessary to acquire any additional insurance but you should check.

- If you are on an occurrence policy, it is important that you check with your insurance agent because you are only covered if the claim is made during the policy period. Fortunately most insurance is now written on a claims made basis.

- It is **IMPERATIVE** that you save copies of each and every insurance policy you have had. There is no time limit on retainage - not only can products liability claims come up for extended periods of time (perhaps the life of the vehicle) but environmental claims can also arise.

- Be sure to check with your insurance agent to make sure that you have adequate coverage.