

STATE OF Michigan
IN THE Circuit COURT FOR THE COUNTY OF oakland

CHRYSLER LLC, a Delaware limited liability company,

Plaintiff,

v

GETRAG TRANSMISSION MANUFACTURING LLC,
a Delaware limited liability company; GETRAG
GETRIEBE-UND ZAHNRADFABRIK HERMANN
HAGENMEYER GMBH & CIE KG, a German limited
partnership,

Defendants.

Case No: 08- -CK

HONORABLE

James P. Feeney (P13335)
Paul L. Nystrom (P57067)
Attorneys for Plaintiff Chrysler LLC
Dykema Gossett pllc
39577 Woodward Avenue, Suite 300
Bloomfield Hills, MI 48304
(248) 203-0700

Hugh R. McCombs, Jr.
Michael J. Gill
Robert E. Entwisle
Attorneys for Plaintiff Chrysler LLC
Mayer Brown
71 S. Wacker Drive
Chicago, IL 60606
(312) 701-7357

There is no other pending or resolved civil action arising
out of the transaction or occurrence alleged in the Complaint.

COMPLAINT

Plaintiff, Chrysler LLC ("Chrysler"), brings this Complaint against defendants GETRAG Getriebe –und Zahnradfabrik Hermann Hagenmeyer GmbH & Cie KG ("Getrag") and GETRAG Transmission Manufacturing LLC ("GG LLC"), for breach of contract, fraudulent misrepresentation, and declaratory judgment as set forth below.

NATURE OF ACTION

1. In February 2007, Chrysler and Getrag entered into a Memorandum of Understanding ("MOU") to consider the joint development of a manufacturing plant to build dual clutch transmissions ("DCTs"), which would be purchased principally by Chrysler for use in its vehicles (the "Project"). The MOU was to remain in effect until July 31, 2007, and would be superseded by definitive transaction agreements if Chrysler and Getrag decided to move forward with the Project. Definitive transaction agreements were not executed by July 31, 2007, because Getrag failed to arrange the debt financing it required to implement the Project and because Getrag, contrary to the terms of the MOU, demanded that Chrysler renegotiate the purchase price for the DCTs. A copy of the MOU is in the possession of defendants.

2. Chrysler and Getrag agreed to extend the MOU while price negotiations occurred and Getrag continued to seek debt financing. During this period, Getrag incurred substantial costs in connection with the Project. On or about

December 21, 2007, Getrag stopped work on the Project, refusing to resume unless and until Chrysler agreed to reimburse Getrag, if the Project did not go forward, for all costs that it had incurred.

3. While work was stopped, negotiations between Chrysler and Getrag continued. On March 11, 2008, Chrysler, Getrag and GG LLC entered into a series of definitive transaction agreements for the construction and operation of a plant in Tipton, Indiana (the "Tipton Plant") that would manufacture DCTs. Copies of the definitive transaction agreements are in the possession of defendants. Among the definitive transaction agreements are the Financing Options Agreement ("FOA") and the Transmission Supply Agreement ("TSA"). As part of the definitive transaction agreements, Chrysler agreed to reimburse Getrag and GG LLC for certain costs they had incurred to develop the Project if they were unable to obtain debt financing and the Project was not completed and to a price increase for the DCTs over the MOU price if the Project was completed.

4. Getrag's and GG LLC's performance of their obligations under these agreements required them to obtain debt financing in an amount up to \$300 million (the "Debt Financing"). If the Project was not completed for lack of Debt Financing, Getrag and GG LLC would demand reimbursement of their Project-related costs from Chrysler. Accordingly, Chrysler requested assurances that Getrag and GG LLC could obtain the Debt Financing required for the Project. During the negotiations and also as part of the definitive transaction agreements, Getrag and GG LLC represented to Chrysler on several occasions that they would be able to obtain the Debt Financing and that they knew of no barrier to obtaining it. Getrag and GG LLC further agreed in the definitive transaction agreements that they would use "good faith efforts to take, or cause to be taken, all actions and do, or cause to be done, all things necessary, proper or advisable to arrange the Debt Financing." Chrysler reasonably relied on these material representations in agreeing to sign the definitive transaction agreements.

5. Contrary to their representations to Chrysler during negotiations and in the definitive transaction agreements, Getrag and GG LLC knew that they could not obtain Debt Financing within the time frame called for by the definitive transaction agreements. Getrag and GG LLC also knew that unless Chrysler was willing to assume substantial obligations beyond those imposed on it by the definitive transaction agreements, they would be unable to obtain Debt Financing within any timeframe. Additionally, Getrag and GG LLC have failed to use good faith efforts to take all actions and to do all things necessary, proper or advisable to arrange Debt Financing. As a result, Getrag and GG LLC have not obtained the Debt Financing necessary for the Project and Chrysler will sustain substantial damages because it will not be able to obtain DCTs from the Tipton Plant for use in its automobiles. Despite this conduct, which will likely result in the Project not being completed, Getrag and GG LLC expect Chrysler to reimburse the substantial costs they have incurred in connection with development of the Project.

6. Because of defendants' conduct and their demands for reimbursement as described above, Chrysler brings a civil action for breach of contract, fraudulent misrepresentation and declaratory judgment, seeking to recover all damages it has sustained as a result of defendants' wrongful conduct and a declaration that it has no obligation to reimburse defendants' costs related to the Project.

PARTIES

7. Plaintiff Chrysler is a limited liability company organized in Delaware. Chrysler, formerly known as DaimlerChrysler Corporation, changed its form of business organization from a corporation to a limited liability company on March 31, 2007. Chrysler's corporate headquarters and technology center is located in Auburn Hills, Michigan. Chrysler is a leading manufacturer of passenger cars and trucks.

8. Defendant Getrag is a limited partnership organized under the laws of Germany. Getrag is engaged in the business of developing, manufacturing, and selling manual, automated manual and automatic dual clutch transmissions for use in passenger cars and light commercial vehicles and holds a number of patents in these areas. DCT technology is in high demand because of the better gas mileage that DCTs provide over ordinary transmissions. Getrag is one of only a few suppliers in the world with the intellectual property and manufacturing capacity to supply Chrysler's requirements for DCTs.

9. Defendant GG LLC is a limited liability company organized in Delaware. GG LLC is a wholly owned indirect subsidiary of Getrag.

JURISDICTION AND VENUE

10. Subject matter jurisdiction in this Court is proper pursuant to MCL 600.605 as the amount in controversy exceeds \$25,000 exclusive of interest and costs.

11. This Court has personal jurisdiction over the defendants pursuant to MCL 600.711(2) because all of the parties have consented to jurisdiction in the courts of the State of Michigan pursuant to Section 4.2 of the FOA.

12. Venue is proper in this State pursuant to MCL 600.1621 as Chrysler is doing business and has its corporate headquarters in Oakland County. The parties have also waived objection to venue under Section 4.2 of the FOA.

THE MEMORANDUM OF UNDERSTANDING

13. In February 2007, Plaintiff Chrysler, then known as DaimlerChrysler Corporation, and Getrag entered into the MOU to explore the possibility of jointly developing a manufacturing facility to build DCTs, which would be purchased by Chrysler for use in certain of its automobiles. The parties originally expected the MOU to remain in effect until July 31, 2007 and that it would be superseded at that time by definitive transaction agreements if Chrysler and Getrag decided to proceed with the Project.

14. According to the MOU, Getrag would fund Project-related expenses before definitive transaction agreements were executed in order to ensure meeting the parties' anticipated date for the start of production at the Tipton Plant. Ultimate liability for the Project-related expenses incurred by Getrag was to be addressed in the definitive transaction agreements, except that if the parties did not go forward with the Project, Chrysler would reimburse Getrag under the MOU for those Project related expenses which Chrysler authorized in writing. All other expenses or investments incurred by the parties in connection with the Project were to be borne by the party incurring those expenses. Chrysler provided written authorization in July 2007 for Project-related expenses to be incurred by Getrag through September 2007.

15. Under the MOU, the parties agreed to pricing for the DCTs, which was not to be exceeded in any successor agreements regarding the Project.

16. The parties were unable to negotiate and execute definitive transaction agreements by July 31, 2007 because Getrag had not arranged the Debt Financing required for the Project and because Getrag refused to enter into definitive transaction agreements using DCT pricing that had been agreed to as part of the MOU. However, the parties agreed to continue to operate under the terms of the MOU after July 31, 2007 so Getrag could continue to pursue Debt Financing and the parties could try to agree upon the terms of definitive transaction agreements covering the Project.

17. Chrysler did not authorize Getrag to incur Project-related expenses after September 2007, although Getrag did continue to incur such expenses.

GETRAG'S FAILURE TO SECURE FINANCING AND FURTHER NEGOTIATIONS REGARDING PRICE

18. In August 2007, Getrag notified Chrysler that it had spoken to 20 banks in Germany and the United States about the Debt Financing. Getrag told Chrysler that the feedback from the banks was quite positive. Nevertheless, Getrag did not present a Debt Financing proposal to Chrysler as the parties continued to negotiate definitive transaction agreements.

19. Throughout late summer and fall 2007, Getrag sought Chrysler's agreement to an increase in the prices for the DCTs based on a claim of increased costs for production. It also repeatedly requested that Chrysler authorize additional Project-related expenses for which Chrysler would agree to reimburse Getrag. Because of the parties' dispute over pricing and Getrag's failure to obtain the Debt Financing, Chrysler refused to authorize further Project-related expenses.

20. Despite failing to obtain the required Debt Financing, on or about December 21, 2007, Getrag initiated a work stoppage, ending construction and development work on the Tipton plant until Chrysler agreed to authorize expenditures incurred on and after October 1, 2007.

21. On or about January 16, 2008, Thomas LaSorda, Vice Chairman and President of Chrysler, met with Tobias Hagenmeyer, Managing Director of Getrag, to discuss resolution of the disputes that led to Getrag's work stoppage. At the meeting, Mr. LaSorda and Mr. Hagenmeyer discussed various topics including Getrag's financing for the Project and Chrysler's obligation to reimburse Getrag for Project-related expenses and commitments. With respect to the Debt Financing, Getrag agreed to provide a "comfort letter" to Chrysler concerning its efforts to obtain such financing in exchange for Chrysler no longer requiring that the Debt Financing be obtained before it would enter into a transmission supply agreement with GG LLC. As to Chrysler's obligation to reimburse Getrag's Project-related expenses, Chrysler confirmed its commitment to backstop Getrag for expenses and commitments authorized in writing by Chrysler in July 2007. The parties further acknowledged a disagreement as to ultimate liability for Getrag's Project-related expenses and commitments incurred between October 1 and December 20, 2007.

22. As a result of the understandings reached at the January 16, 2008 meeting, Getrag re-commenced engineering work on the DCTs and began work on necessary adjustments to the business plan assumptions in order to put Getrag and GG LLC in a position to re-start construction and development work on the Project as soon as an agreement was in place by which Chrysler would agree to reimburse Getrag and GG LLC for the contested and subsequently incurred Project-related expenses if the Project was not completed.

23. On or about February [5], 2008, Getrag, in accordance with understandings reached at the January 16 meeting, provided a "comfort letter" to Chrysler with respect to the Debt Financing. In that letter, Getrag stated that it "will provide Chrysler in a timely manner with transparency in the financing process."

FINANCING OPTIONS AGREEMENT AND TRANSMISSION SUPPLY AGREEMENT

24. In further negotiations in February and early March 2008, Getrag repeatedly assured Chrysler that it would have no difficulty arranging Debt Financing for the Tipton Project, with the only source of uncertainty being the interest rate at which the financing could be obtained.

25. Following these further negotiations, Chrysler, Getrag and GG LLC executed the FOA on March 11, 2008.

26. Chrysler executed the FOA in reliance on defendants' representations during negotiations that they would have no difficulty obtaining the necessary Debt Financing to fund the Project. Getrag also represented, in Section 4.10 of the FOA, that as of March 11, 2008: "to the best of GETRAG'S Knowledge, assuming compliance by Chrysler with its obligations hereunder, GETRAG has not received any information from its current potential sources of the Debt Financing that would cause GETRAG to believe that GG LLC will be unable to obtain a Firm Commitment for the Debt Financing for the Project."

27. The FOA defined Firm Commitment as: "a letter, together with a Definitive Term Sheet, expressing a firm commitment (containing only customary conditions) for the provision of Debt Financing or Alternative Debt Financing to GG LLC for the Project, executed by the banks or other financing sources proposing to provide such financing and approved by the credit committees of such banks or other financing sources, if applicable."

28. Getrag further agreed in Section 2.1 of the FOA that "GETRAG will use its good faith efforts to take, or cause to be taken, all actions and do, or cause to be done, all things necessary, proper or advisable to arrange for the Debt Financing, including seeking to obtain Firm Commitments, promptly after [March 11, 2008] and to consummate the Debt Financing no later than ninety (90) days after [March 11, 2008] (but with a target date of May 15, 2008) or such longer period of time provided for in" other sections of the FOA "as applicable."

29. Chrysler had no choice but to rely on Getrag's representations during negotiations and its contractual representations in FOA Sections 2.1 and 4.10 regarding the Debt Financing because Getrag refused to provide terms sheets and other information concerning its financing efforts to Chrysler, and refused to allow Chrysler to talk with the banks from which it was seeking financing. According to Getrag, the Project had to appear to be a transaction with a German company and Chrysler's direct involvement might interfere with GG LLC's ability to secure the Debt Financing.

30. In reliance on Getrag's representations with respect to the Debt Financing, Chrysler agreed to cost increases for the DCTs above prices guaranteed by the MOU and agreed to authorize Getrag's outstanding past expenditures as well as certain of Getrag's future Project-related expenditures through July 2008 even if the Project were not completed. *See* FOA at Sections 3.1, 3.2, (authorizing expenditures) and 4.4 (noting that the MOU—and its price terms for DCTs—was superseded by the FOA, the TSA, and the Other Agreements as defined in the TSA).

31. On the effective date of the FOA, GG LLC and Chrysler executed the TSA, which reiterated GG LLC's commitment to securing Debt Financing in good faith with TSA provision 3.7(a): "Within ninety (90) days after [March 11, 2008] (but with a target date of May 15, 2008), GG LLC will use its good faith efforts to obtain, from banks or other financial institutions, senior debt financing with respect to the supply of Chrysler DCTs to Chrysler (the "Financing")..." As part of the TSA, GG LLC also represented and warranted in Section 23.2(b) that "No governmental action or consent, authorization or approval is required to be taken, given or obtained, as the case may be, by or from any governmental authority . . . to authorize the execution, delivery and performance by GG LLC of this Agreement..."

32. Chrysler reasonably relied on the representations made by GG LLC during negotiations of the FOA and TSA concerning the availability of Debt Financing and the contractual representations contained in the TSA in making the determination to execute the TSA.

GERMAN GOVERNMENT GUARANTEE AS PART OF DEBT FINANCING

33. In April 2008, only a month after the FOA and TSA were executed, Getrag disclosed that it was seeking an export credit guarantee of its repayment of all or part of the Debt Financing from the German Federal Government through Euler Hermes (the "Export Bank" and the "Export Bank Guarantee"). The only Debt Financing proposals provided to Chrysler by Getrag to date have been conditioned on receipt of this Export Bank Guarantee of repayment. In or about June 2008, Chrysler first learned that the Export Bank Guarantee was a condition precedent to Getrag and GG LLC obtaining the Debt Financing.

34. Getrag and GG LLC intended to seek and knew the necessity of the Export Bank Guarantee long before they executed the FOA and TSA.

35. Prior to the execution of the FOA and TSA, Getrag took affirmative steps to prevent Chrysler from learning of the intended Export Bank guarantee by refusing to provide term sheets and other information concerning its financing efforts to Chrysler, and refusing to allow Chrysler to meet with its potential lenders.

36. The plan to obtain the Export Bank Guarantee of repayment for all or part of the Debt Financing for the Project was never disclosed to Chrysler before execution of the FOA and the TSA. The requirement of an Export Bank Guarantee as a condition precedent to Getrag's ability to obtain Debt Financing was directly contrary to Getrag's representations during negotiations and in FOA Section 4.10 regarding the availability of Debt Financing. Further, the requirements of the Export Bank Guarantee are inconsistent with the Target Terms for the Debt Financing reflected in Exhibit A-1 to the FOA.

37. As is typical in deals involving an Export Bank Guarantee, demands have been made by the Export Bank and the potential lenders that Chrysler provide significant security for repayment of Getrag's and GG LLC's Debt Financing. According to Getrag and GG LLC, the bank lenders and the Export Bank have insisted that (1) Chrysler establish an

upfront escrow in an amount in excess of \$300 million to pay all machinery and equipment costs that are Chrysler's responsibility under the TSA, some of which shall not come due for years; (2) the machinery and equipment to be acquired by Chrysler under the FOA and TSA be owned by a special purpose entity ("SPE") (and that legal opinions be provided as to the bankruptcy-remoteness of the SPE), not Chrysler, and (3) conditions be imposed on Chrysler's right to "step-in" under the TSA upon the occurrence of certain events (including if Getrag fails or refuses to perform certain of its contractual obligations to Chrysler). These structural requirements are wholly inconsistent with the terms of the FOA and the TSA.

38. Each of these demands upon Chrysler go far beyond Chrysler's obligations under the FOA, the TSA and related agreements. Moreover, the Export Bank's demand that Chrysler form a bankruptcy remote SPE to own the machinery and equipment and provide legal opinions as to the bankruptcy remoteness of the SPE cannot be met given the current structure of the transaction. For various reasons, the structure of the transaction does not lend itself to being the subject of a typical U.S. bankruptcy remote opinion, and restructuring the transaction raises complications from a commercial standpoint. [Need to confirm that this is still correct state of the record.]

39. In an effort to meet the demand that the machinery and equipment intended to be owned by Chrysler under the TSA not be subject to any potential Chrysler bankruptcy, Chrysler proposed, as a compromise on this issue, that Getrag take ownership under an arrangement that would result in no cost to Getrag. In violation of its contractual obligation to use its good faith efforts to secure financing, Getrag refused to consider owning the machinery and equipment.

40. Getrag and GG LLC knew or should have known that the Export Bank would place these extraordinary conditions upon the Debt Financing. These conditions are material and are not customary conditions for private financings, but rather unique conditions of a deal guaranteed by a governmental export bank. Due to the fundamentally different and more stringent requirements imposed by the Export Bank as conditions to the Export Bank Guarantee, Getrag has failed to provide Chrysler with a Firm Commitment in accordance with the terms of the FOA. Moreover, as Getrag and GG LLC knew or should have known about these extraordinary conditions, their representations during negotiations, in FOA Section 4.10 and in TSA Sections 3.7(a) and 23.2(b) about the availability of Debt Financing were false.

41. Based upon the material misrepresentations made by defendants to Chrysler and related breaches of the FOA and the TSA, Chrysler has lost investments in an amount to be proved at trial. Because it relied on the defendants' representations, Chrysler has no alternative source of DCTs, which will result in damages in an amount to be proved at trial as Chrysler attempts to cover by finding a new source of DCTs or alternative transmissions. Chrysler will also suffer lost sales due to its inability to deliver vehicles that include the increased fuel efficiency provided by DCTs.

COUNT I

(Breach Of Contract Against Both Defendants)

42. Chrysler realleges and incorporates by reference each of the allegations set forth in paragraphs 1-41 above.

43. Both defendants have breached their commitments under the FOA. In particular, defendants failed to act in good faith to secure Firm Commitments for the Debt Financing as they were obligated to do pursuant to FOA Section 2.1. Instead, Getrag only sought financing subject to the Export Bank Guarantee, even though Getrag was aware that the stipulations required by the government are burdensome and not customary conditions of financing as required for a Firm Commitment under the FOA.

44. The breach set forth in paragraph 43 above was exacerbated by defendants' refusal to help Chrysler meet one of the Export Bank's conditions. In particular, Getrag has refused to agree to own the machinery and equipment that the Export Bank demanded that Chrysler place in a bankruptcy remote SPE (a condition Chrysler could not meet), which would address the Export Bank's concerns that GG LLC could lose the right to use such property in the event of a Chrysler bankruptcy. Defendants' refusal is a further breach of their obligation under the FOA to seek financing in good faith.

45. In direct contradiction of Section 4.10 of the FOA, defendants knew of and received information from potential sources of the Debt Financing prior to the execution of the FOA that GG LLC would be unable to attain a Firm Commitment for the Debt Financing, unless Chrysler were to meet special conditions beyond those imposed on Chrysler by the FOA, and in any event, could not obtain Debt Financing in accordance with the timing provisions of the FOA. Defendants therefore had information that provided a basis for the defendants to believe a Firm Commitment would not be attained.

46. As a direct result of defendants' breaches of the FOA, Chrysler has sustained and will continue to sustain substantial damages, including costs incurred in development of the Project, costs to cover from an alternative source of transmissions, costs of potential supplier claims relating to tooling and equipment, and lost sales to the extent it is unable to cover the DCT with a like-quality product in a timely fashion.

47. As a direct and proximate result of the actions by defendants set forth above, Chrysler has been damaged in an amount to be proved at trial.

WHEREFORE, Chrysler respectfully requests that the Court enter judgment against the defendants and award Chrysler:

- (a) actual money damages according to proof at trial, plus pre-judgment and post-judgment interest as allowed by law;
- (b) its attorneys fees and costs incurred in connection with this suit; and
- (c) such other relief as this Court deems just and proper.

Count ii

(Breach of Contract against GG LLC)

48. Chrysler realleges and incorporates by reference each of the allegations set forth in paragraphs 1-47 above.

49. Defendant GG LLC has breached its commitments under the TSA. In particular, GG LLC failed to act in good faith to secure Debt Financing for the Project as it agreed to do in TSA provision 3.7(a). Instead, GG LLC only sought financing subject to the Export Bank Guarantee, even though GG LLC was aware that the stipulations required by the German government included atypical financing conditions that would make the financing unacceptable to Chrysler.

50. Because of GG LLC's need for the Export Bank Guarantee and government approval required to attain such a guarantee, GG LLC also breached provision 23.2(b) of the TSA by misrepresenting that no governmental action, consent, authorization, or approval would be required to authorize GG LLC's execution and performance of the TSA's financing under provision 3.7(a).

51. As a direct result of GG LLC's breaches of the TSA, Chrysler has sustained and will continue to sustain substantial damages, including costs incurred in development of the Project, costs to cover from an alternative source of transmissions, and lost sales to the extent it is unable to cover the DC transmissions with a like-quality product in a timely fashion.

52. As a direct and proximate result of the actions by GG LLC set forth above, Chrysler has been damaged in an amount to be proved at trial.

WHEREFORE, Chrysler respectfully requests that the Court enter judgment against the defendants and award Chrysler:

- (a) actual money damages according to proof at trial, plus pre-judgment and post-judgment interest as allowed by law;
- (b) its attorneys fees and costs incurred in connection with this suit; and
- (c) such other relief as this Court deems just and proper.

count iii

(Fraudulent Misrepresentation Against Both Defendants)

53. Chrysler realleges and incorporates by reference each of the allegations set forth in paragraphs 1-52 above.

54. Defendants' ability to secure financing was a critical and material concern to Chrysler in entering into the FOA and the TSA with Getrag and GG LLC. Chrysler repeatedly conveyed to defendants its concerns about defendants' abilities to obtain financing in the six months preceding the signing of the FOA.

55. In response, defendants repeatedly represented to Chrysler that financing would not be a problem. Defendants even signed a best-efforts comfort letter expressly stating that they would provide transparency in the financing process.

56. Defendants made these representations with the purpose of causing Chrysler to sign the FOA in order to ensure that they were reimbursed for past and future expenditures, some of which were not reimbursable under the MOU, if the Project was not completed due to a failure to obtain Debt Financing and to obtain higher pricing than was agreed to in the MOU if the Project were completed.

57. Chrysler reasonably relied on defendants' false and material representations. As a direct and proximate result of these representations by defendants, Chrysler has been damaged in an amount to be proved at trial.

WHEREFORE, Chrysler respectfully requests that the Court enter judgment against the defendants and award Chrysler:

- (a) actual money damages according to proof at trial, plus pre-judgment and post-judgment interest as allowed by law;
- (b) its attorneys fees and costs incurred in connection with this suit; and
- (c) such other relief as this Court deems just and proper.

count iv

(Declaratory Judgment)

58. Chrysler realleges and incorporates by reference each of the allegations set forth in paragraphs 1-57 above.

59. Defendants have demanded that Chrysler reimburse them for Project-related expenses incurred in development of the Project.

60. Defendants materially breached the FOA and the TSA. Because of these material breaches, Chrysler is relieved of any liability under the FOA or the TSA.

61. There is a real and substantial dispute between Chrysler and defendants as to Chrysler's obligation to reimburse defendants' Project-related expenses.

62. Plaintiff seeks a declaratory judgment that it has no obligations, financial or otherwise, to defendants under the FOA or TSA due to their breaches of these agreements.

WHEREFORE, Chrysler respectfully requests that the Court enter judgment:

- (a) declaring that as a result of defendants' breaches, Chrysler is not obligated to reimburse defendants for any expenses they incurred under the FOA, the MOU, the TSA, or any other agreements related to the Project; and
- (b) declaring that as a result of defendants' breaches, Chrysler has no other obligations, financial or otherwise, to defendants under either the FOA, the MOU, the TSA, or any other agreements related to the Project.

Dykema Gossett pllc

By: _____
James P. Feeney (P13335)
Paul L. Nystrom (P57067)
Attorneys for Plaintiff Chrysler LLC
Dykema Gossett PLLC
39577 Woodward Avenue, Suite 300
Bloomfield Hills, MI 48304
(248) 203-0700

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