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BLOGS

Terminations

GM, Chrysler Bankruptcy Filings Spur Debate – And Lawsuits – Over Dealership Terminations

The recent bankruptcy filings by General Motors and Chrysler have left the auto industry under siege and led to hundreds of dealership terminations across the country. In June, both the U.S. Senate Commerce Committee and the U.S. House Committee on Energy and Commerce held hearings on the status of dealership closures across the country. James Press, President and CEO of Chrysler, testified that Chrysler would be closing 789 dealerships—representing about 25% of dealerships—as a result of the Chapter 11 bankruptcy filing. General Motors' CEO, Frederick Henderson, testified that by 2010, GM will have shrunk its dealerships by over 1,200. Both executives testified that there may be additional “wind down” terminations announced in the coming year.

As the next article shows, litigation between auto manufacturers and their dealers was commonplace long before bankruptcy filings by GM and Chrysler. The National Automobile Dealers Association, along with dealerships in many states, however, are fighting this round of terminations through the courts and through their legislators in Congress. For now, it looks as though the courts are continuing to side with the manufacturers, rejecting claims made by terminated dealers in an effort to expedite bankruptcy proceedings. See *In re Old Carco LLC (f/k/a Chrysler LLC), et al.*, 2009 WL 1708813 (Bkrtcy. S.D.N.Y. June 19, 2009) (court found that state dealership laws do not protect dealers from auto manufacturers' use of the “business judgment rule” to reject current dealership contracts). At least one bill has been introduced in Congress, the Automobile Dealer Economic Rights Restoration Act of 2009, H.R. 2743, that seeks to reinstate the economic rights of terminated Chrysler and GM dealers as part of the bankruptcy restructuring.

Legal challenges have already been made—or at least threatened—on the language used in “Participation Agreements” for dealerships remaining in the system, as well as the “wind down” agreements presented to some dealers. GMAC recently announced the suspension of any financing to Chrysler dealerships, and there have been a growing number of reports that even healthy dealerships have lost channels of inventory needed to survive the slump. These issues look ripe for a new round of litigation likely to emerge in the post-bankruptcy auto industry.