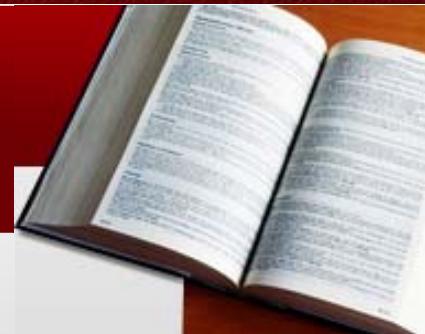


The Bankruptcy Weekly

July 22, 2009

Brought to you by the National Association of Dealer Counsel



Forgive the cliché, but all good things must come to an end. Such is the case with The Bankruptcy Weekly. With many of the manufacturer bankruptcy issues winding down, this will be the final edition.

On behalf of the NADC Board of Directors, I again want to extend our sincerest appreciation to the attorneys of Venable, LLC. for a job well done. Specifically, I would like to thank NADC members Aaron Jacoby and Lawrence Katz for shouldering the bulk of the burden. As those of you who have read any of the prior seven editions of The Bankruptcy Weekly know, the quality of the articles has been superb. This week's edition is equally informative and insightful.

The Board will now set its sights on our fall workshop. Of course, bankruptcy issues will be one of the topics discussed. But, we are also soliciting members to submit fresh ideas. If you would like to present on a specific topic, please submit an outline as soon as possible to Jack Tracey at jtracey@dealercounsel.com.

Sincerely,

Rob Cohen
President
National Association of Dealer Counsel



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Beyond Survival Mode/ Charting A New Course

by Aaron Jacoby, Esq.

GM says it will reinvent itself to chart a new course. Our clients need to do the same. Most agree that we have not seen an economic crisis of this magnitude in our lifetimes. This is particularly true when it comes to the auto industry. The wheels truly fell off the bus as credit disappeared, sales plummeted and major manufacturers filed for bankruptcy. Business came to a near standstill and dealers worked to put themselves in survival mode, cutting back costs, employees and getting rid of all frills. Many dealers have now achieved stasis and are finally ready to look down the road to see what's ahead. As manufacturers emerge from bankruptcy and dealers assess their vital signs, now is a good time to reflect and anticipate hurdles that lie ahead.

First, let's not fix what's not broken. It's not all bad. There are many things that work well in this industry. Bob Lutz, recently named as GM's "Image Czar," was quoted recently as saying that the

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franchised dealer distribution model is here to stay. Our clients can expect that much of what they already know will be business as usual as we emerge from the depths of the crisis. American and import manufacturing of most brands is here to stay. The franchised dealer model is here to stay. Vehicle demand will slowly increase. Therefore, customers will come back and employees will return to work in greater numbers. Some of the things we love to hate are here to stay as well. Litigation will continue to rear its head; consumer class actions, wage and hour claims and government regulatory investigations are not going away. Regulatory compliance, monitoring and enforcement must remain a priority.

Though much will remain the same, much will also change. While GM and Chrysler (Fiat) are reinventing themselves, the entire manufacturing sector of the auto industry is re-tooling to survive in a reduced overall market. Most forecasters are revising estimates downward to total light vehicle sales of barely 10 million units for 2009 with slow growth for the foreseeable future. Therefore, every possible sales channel is being explored. Dealers must take part in that exploration. Some channels are already available: Cash for Clunkers may generate sales and incentivize a greener market; the Internet will continue to drive more sales; new partnerships are being explored by GM and Chrysler with e-bay; brick and mortar chains like Best Buy are experimenting with electric motorcycle sales. New competition is seeking American market share, including Fiat and Tata and numerous, small alternative fuel vehicle companies are entering the market-each with the hope of becoming the next Honda or Toyota.

Dealers need to adapt to the uncertain road ahead. Dealer lawyers need to help lead the way with new ideas and creative solutions. The NADC is a great forum for doing so and we are honored to have had the opportunity to participate by providing content for this newsletter.

Wind Down Dealers Ineligible for Allocation-Based Incentives

by Stephen Gallagher, Esq.

So-called "wind-down" dealers that are being phased out as part of the General Motors Chapter 11 sale process are reporting that they are not eligible for allocation-based incentives available to surviving franchisees. These dealers complain that in order to qualify for certain dealer incentives, they must agree to accept product allocation in the future, but are being prohibited from doing so (either because they are on finance hold or because their franchise is being wound down). The dealers argue that this places them at a competitive disadvantage during a time when they are already trying to liquidate remaining inventory, but must now do so by selling at higher prices than dealers who will survive the manufacturers' bankruptcy maneuvers.

Laws enacted by many states restrict modification of franchise agreements and require that equal incentives be provided to all dealers. For example, recent franchise protection legislation in Maryland requires that all consumer rebates, dealer incentives, price, interest rate deductions or finance terms be made available to all same line make dealers and requires that all dealers be able to purchase vehicle and truck component parts at the same price and with the right to the same incentive payments. This issue has not yet been fully explored in the bankruptcy proceedings, and it appears that any ruling may be left to state courts after the bankruptcy cases are completed. Some affected dealer groups believe this is yet another injury that could have been addressed by the Bankruptcy Court in the July 5, 2009 order approving the sale in the GM case, but was not. The Bankruptcy Court instead found simply that "GM cannot take all of the dealers on the same basis. At the remaining dealer's option, GM will either reject those [existing dealer] agreements, or assume modified agreements, called 'Deferred Termination Agreements.' The Deferred Termination Agreements will provide dealers with whom GM cannot go forward

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Dedication to the automotive industry during difficult times.

With Chrysler and General Motors in bankruptcy, the need for competent bankruptcy and

a softer landing and orderly termination. GM is providing approximately 17 months' notice of termination."

What recourse is there for the dealers who are being denied equal incentives? Even if the Deferred Termination Agreements violate state franchise laws with respect to equal rights to incentives, who can the dealer claims be asserted against? If they can only be asserted against Old GM, what value do they have? If arguably they can be asserted against New GM, what court has the power to enforce such claims? More importantly, can these claims be asserted at all, now that the dealers have entered into the Deferred Termination Agreements? It remains to be seen whether any of the wind-down dealers will be able to litigate these issues either in the Bankruptcy Court (where they are not likely to be well-received in any event) or in state court.

Potential Product Liability Claim - Buying the Wrong Vehicle May Leave You Hanging

by Victor P. Danhi, Esq.

During the bankruptcy process, both Chrysler and GM frequently cited the ability to form new companies free from consumer warranty and product liability claims as a fundamental element of their ability to survive, post-bankruptcy. They reasoned that the financial burdens of these pending and potential claims could prevent the new companies from ever becoming financially viable after emerging from bankruptcy.

While concessions reached during the bankruptcy obligates the new Chrysler Group LLC for consumer warranty claims relating to vehicles manufactured and sold up to five years prior to the approval of Chrysler's Bankruptcy Plan on June 1, 2009, Chrysler Group emerged from bankruptcy without assuming any product liability claims relating to vehicles manufactured and sold prior to the closing of the bankruptcy. And while the old Chrysler remains liable for pre-bankruptcy claims, these claims must be pursued in bankruptcy court against the remaining assets of old Chrysler, where the claimants have little chance of any financial recovery.

This differs from General Motors, who, in order to overcome objections from numerous stakeholders in its bankruptcy, agreed to assume responsibility for product liability claims for vehicles sold both before and after its bankruptcy. GM did limit its liability to new claims only, and therefore, parties involved in existing litigation against GM on product liability claims will be required to pursue the now bankrupt old GM, again, with little chance of recovery.

In light of the forgoing, and because a consumer's selection of a particular used Chrysler vehicle in the future will dictate whether the customer has any meaningful recourse with respect to potential product liability claims, consumer groups such as the Consumers Union and the Center for Auto Safety recently asked the Federal Trade Commission to revise the Used Car Rule (16 C.F.R. Part 455) to require Chrysler Group to affix new warning labels to used Chrysler, Dodge and Jeep vehicles to inform potential buyers that the new Chrysler Group LLC is not liable for damages connected with vehicles manufactured and sold before May 30, 2009.

The Used Car Rule, which became effective in 1985 and has seen little change since then, requires used car dealers to disclose on a window sticker (the Buyers Guide), whether they are offering a dealer warranty, and if so, its basic terms and conditions. The Buyers Guide is also used by car dealers to disclose whether or not the vehicle is still covered by an unexpired manufacturer warranty. The Rule replaced a former FTC rule that required car dealers to disclose certain known defects in motor vehicles offered for sale.

It is unclear how the new Chrysler Group LLC would undertake such an effort since the vehicles requiring the stickers are, by

litigation counsel - with a focus on the auto industry - is increasing. Venable's national team has worked in the automotive industry for many years and is providing insight in identifying issues and mitigating risks involved for dealers, suppliers and other creditors in the auto manufacturers' business reorganization and restructuring. Venable's auto industry bankruptcy team is led by Larry Katz and Aaron Jacoby, with additional contributions to this week's newsletter by partner Steve Gallagher and associates Victor Danhi, Kristen Burgers and Melanie Joo.

Disclaimer.

This newsletter is published by the National Association of Dealer Counsel with content provided by the law firm of Venable LLP. It is intended to provide timely summaries of recent events that may impact dealers and should not be construed as providing legal advice or legal opinions. You should consult an attorney for any specific legal questions or to address dealer-specific fact situations.

Industry Wire Chatter Compiled by Melanie Joo, Esq.

July 15, 2009

1. "Regulators Pushed to Make Chrysler Display Liability Warning Stickers" - Federal regulators have been asked to move quickly on petition by consumer groups to require Chrysler Group to display stickers on used vehicles warning prospective buyers of liability risks. [Automotive News, July 15, 2009]

July 17, 2009

1. "House Committee Wants GM, Chrysler Documents" - Obama administration asked to release documents on federal bailouts of GM and Chrysler. [The Associated Press, July 17, 2009]

2. "Cash-for-Guzzlers Plan Taking Shape" - Thousands of federal letters containing electronic registration instructions mailed to dealers in advance of July 24 final program rules. [Automotive News, July 17, 2009];

3. "CARS Important Things to Know" - Dealer Update [www.cars.gov]

July 20, 2009

1. "Axed Dealers' Best Bet: US Aid" - Analysts predict that restoration of

definition, used vehicles that are presumably in the stream of commerce. Assuredly, if this requirement does become law, dealers who sell used Chrysler vehicles requiring these stickers will have one more obligation, which, if overlooked, may result in potential liability to consumers. Also bear in mind that dealers may be liable for product liability claims when they place a vehicle into the stream of commerce by selling the vehicle to the consumer, and that the bankruptcy limitations on these claims for the new GM and Chrysler companies will operate to limit dealers' contractual and implied rights of indemnity against the vehicle manufacturers.

Moreover, it can be anticipated that Chrysler, Dodge and Jeep vehicles manufactured and sold prior to May 30, 2009, and those GM vehicles subject to existing product liability claims, will have marked decreases in value since their owners are essentially without recourse with respect to potential product liability claims as against the new and financially solvent manufacturers.

The Week At A Glance

Summaries Compiled by Kristen Burgers, Esq.

Chrysler

Creditor Access to Information - The Bankruptcy Court entered an order on July 16, 2009 approving Official Committee of Unsecured Creditors' (the "Committee") Motion for Entry of an Order (A) Approving a Stipulation with the Debtors Regarding Creditor Access to Information Pursuant to Sections 105(a), 1102 (b)(3) and 1103(c) of the Bankruptcy Code and (B) Authorizing Retention of Kurtzman Carson Consultants LLC as Committee Website Agent [Docket No. 4722]. The order approves procedures for the Committee to (i) disseminate information to unsecured creditors, including the establishment of a dedicated e-mail address for creditor inquiries, the establishment of a dedicated website to provide non-confidential information, such as highlights of significant events in the case and responses to creditor questions and (ii) respond to creditor requests for information, including requests for confidential information.

Assumption and Rejection of Executory Contracts and Unexpired Leases of Real Property - The Chrysler Debtors continue to file notices of certain executory contracts and unexpired leases of real property they plan to assume and the proposed cure amounts for each such contract. The notices filed this week include: Notice of Filing of Schedule of Certain Designated International Agreements and Cure Costs Related Thereto [Docket No. 4776, filed July 20, 2009] and Notice of (I) Assumption by Debtors and Assignment to Purchaser of Certain Executory Contracts and Unexpired Leases and (II) Cure Costs Related Thereto [Docket No. 4729, filed July 17, 2009]. On the rejection side, the Chrysler Debtors filed their Sixteenth Omnibus Motion of Debtors and Debtors in Possession, Pursuant to Section 365 of the Bankruptcy Code and Bankruptcy Rule 6006, for an Order Authorizing the Rejection of Certain Executory Contracts and Unexpired Leases on July 16, 2009 [Docket No. 4728]. Also on July 16, 2009, the Court entered nine omnibus orders on July 16, 2009 authorizing the rejection of certain executory contracts and unexpired leases [Fifth through Ninth Omnibus Orders, Eleventh Omnibus Order, and Thirteenth through Fifteenth Omnibus Orders, Docket Nos. 4712 through 4720 respectively].

Monthly Fee Statements - Pursuant to the order establishing interim compensation procedures for these Chapter 11 cases [Docket No. 1334] dated May 20, 2009, the professionals retained by the Chrysler Debtors and the Official Committee of Unsecured Creditors (the "Committee") have filed their second monthly statements for services rendered and expenses incurred in June. Jones Day, counsel to the Chrysler Debtors, has rendered services in the amount of \$4,595,542.00 and incurred expenses in the amount of \$379,401.63 [Docket No. 4813]. Capstone Advisory Group, LLC, financial advisors to the Chrysler Debtors, has

franchises unlikely due to weak ties to senators and Obama administration. [Automotive News, July 20, 2009]

2. "US Treasury Has Collected \$200M in Interest from TARP Auto Cos" - The bulk of the interest payments (\$143.53 million) have come from General Motors. [Wall Street Journal, July 20, 2009]

3. "Toyota Overhauling US Manufacturing Strategy" - Toyota's back-to-basics strategy includes listening to consumers and dealers more carefully on products and consideration of U.S. advanced technology loans. [Reuters, July 20, 2009]

July 21, 2009

1. "The Termination Does Not Matter; Just Reimburse Us" - Article written by President of Raceway Automotive, John Isgett. [Automotive News, July 21, 2009]

2. "Magna Bid to Acquire GM's Opel Includes EUR500M Investment" - Final offer for 55% stake is jointly submitted by Magna and Sberbank Russia. [Wall Street Journal, July 21, 2009]

3. "Key Lawmaker Urges NADA to Join Dealer Termination Talks" - NADA considers its options and hopes for "meaningful" settlement talks. [Automotive News, July 21, 2009]

4. "Delphi Auction Postponed to Continue Talks with Lenders" - Delphi auction delayed until July 24. [Detroit Free Press, July 21, 2009]

July 22, 2009

"Lawmakers Warned Not to Meddle in Dealer Closings" - Head of automotive taskforce, Ron Bloom, claims enactment of House bill could set dangerous precedent and prevent repayment of billions in government loans. [The New York Times, July 22, 2009]

For additional information go to the manufacturer bankruptcy page on the [NADC](#) website.

About NADC

The National Association of Dealer Counsel (NADC) is a professional organization of attorneys who represent automobile and other vehicle dealers.

The NADC provides a forum for members to share information, common experience, advice, help and answers to questions on manufacturer

rendered services in the amount of \$998,438.00 and incurred expenses in the amount of \$117,196.49 [Docket No. 4804]. The monthly statements of other professionals include: Kramer Levin Naftalis & Frankel LLP, counsel to the Committee, fees in the amount of \$1,134,481.00 and expenses in the amount of \$60,618.02 [Docket No. 4805]; Mesirow Financial Consulting LLC, financial advisor to the Committee, fees in the amount of \$799,576.00 and expenses in the amount of \$13,961.00 [Docket No. 4807]; and Greenhill & Co., LLC, investment bankers for the Chrysler Debtors, fees in the amount of \$0 and expenses in the amount of \$124,709.86 [Docket No. 4802]. Responses to the monthly fee statements must be filed by August 10, 2009.

General Motors

Pending Appeals of the Order Approving the Sale of Assets Pursuant to Master Sale and Purchase Agreement - The IUE-CWA, as well as groups of individual accident litigants ("Accident Litigants") and asbestos claimants ("Asbestos Claimants"), have filed Notices of Appeal [Docket Nos. 2970, 2988, and 3115, respectively] of the July 5, 2009, order approving the GM Debtors' Motion Pursuant to 11 U.S.C. §§ 105, 363(b), (f), (k), and (m), and 365 and Fed. R. Bankr. P. 2002, 6004, and 6006, to (I) Approve (A) the Sale Pursuant to the Master Sale and Purchase Agreement with Vehicle Acquisition Holdings LLC, a U.S. Treasury-Sponsored Purchaser, Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (C) Other Relief; and (II) Schedule Sale Approval Hearing [Docket No. 2968]. The Asbestos Claimants filed an emergency motion in the U.S. District Court for the Southern District of New York for an order expediting the appeal and staying the sale order. In a Memorandum and Order entered on July 16, 2009 [Docket No. 3193], the District Court declined to stay the sale order but established an expedited briefing schedule. Oral arguments on the Asbestos Litigants' appeal will be heard the week of July 20, 2009 at a date and time to be announced. Oral arguments for the appeals of the IUE-CWA and Accident Litigants have not yet been scheduled.

Rejection of Personal Property Agreements - On July 17, 2009, the GM Debtors filed a Motion for Entry of an Order Authorizing Rejection of Certain Personal Property Agreements and/or Abandonment of Collateral to Secured Creditors [Docket No. 3212]. Pursuant to the motion, the GM Debtors seek to reject personal property "leases" for an engine assembly line with an estimated remaining principal balance of \$250 million and three stamping presses and related equipment with an estimated remaining principal balance of \$43 million (collectively, the "Property"). To the extent that the "leases" are later determined to be secured financing arrangements, the GM Debtors seek authorization to abandon the Property effective July 31, 2009. A hearing on the motion is scheduled for August 3, 2009. Responses are due by July 29, 2009.

Extension of Time to File Bankruptcy Schedules and Statements of Financial Affairs - On July 15, 2009, the GM Debtors filed a Motion for Entry of an Order Pursuant to 11 U.S.C. § 521 and Fed. R. Bankr. P. 1007(C) Further Extending Time to File Schedules of Assets and Liabilities, Schedules of Executory Contracts And Unexpired Leases, and Statements of Financial Affairs [Docket No. 3180]. The GM Debtors were previously granted a forty-five day extension of time to file schedules and statements, which expires on July 31, 2009. Through this motion, the GM Debtors seek an additional sixty days - through September 29, 2009 - in which to file their schedules and statements. A hearing on the motion is scheduled for July 22, 2009. Objections are due by July 20, 2009.

franchise issues, lemon laws, vehicle financing, regulatory complexities, insurance laws, tax laws, buy/sell agreements, employment laws, and the many other legal issues facing dealers and their counsel today.

NADC members find common ground at meetings and in on-line communication. With the proliferation of legislation and uncertain futures of manufacturers, questions and challenges multiply. Members can rely on thoughtful answers, creative strategies and solid advice from colleagues who face the same issues.

Please visit www.dealercounsel.com for more information and to apply for membership.

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