ABBOTT NICHOLSON PC
ATTORNEYS AT LAW

Abbott Nicholson attorneys quoted on auto dealership terminations

No constituency has faced as much tumult resulting from the bankruptcies of Chrysler LLC and General Motors Corporation as auto dealerships. As one of the leading law firms in the country representing auto dealerships, Abbott Nicholson and its attorneys have been asked to comment on the challenges faced by auto dealerships by a number of media sources. Auto dealership attorneys John Youngblood and Robert Weller have recently been featured in a number of articles in Crain's Detroit Business, excerpts of which are set forth below.

Car dealer closings: 'Immoral,' 'slow death'

Crain's Detroit Business | June 9, 2009

The deal isn't so much a soft landing as it is a "slow death," said Robert Weller, an attorney at the Detroit office of Abbott Nicholson P.C. who specializes in representing dealerships.

Weller has been privy to the contracts GM has sent dealers and said that while the dealers will receive some money, they only get 25 percent, with the rest coming when they sell all their inventory and get their tax clearances.

"It's pretty draconian," he said of the offer. "They have to give up everything and then agree not to sue them."

Weller said he knows a dealer who was given the wind-down agreement and has 100 cars left, 30 of which are models that will be difficult to sell.

"He's saying, 'How do I get rid of these dogs?' " he said. "It's essentially distressed merchandise now. And then, how does he keep his employees?"

Weller also said GM seems to be basing dealer payouts on the amount of inventory dealers have on hand.

He said he knows of a dealer in the Thumb area set to receive $35,000, a dealer in the Flint area to receive $65,000 and a dealer in the Detroit area to receive $300,000.

"So this is considered to be a stipend to help the dealers wind down their operations and get rid of some distressed merchandise," Weller said.

Dealerships await word on which will be cut

Crain's Detroit Business | May 3, 2009

With Chrysler in the Chapter 11 bankruptcy process, franchise agreements can be dissolved if a business purpose can be demonstrated, said John Youngblood, an attorney specializing in car dealership work at the Detroit law firm of Detroit-based Abbott Nicholson P.C.

Youngblood expects the criteria for those dealerships saved likely will be based on high financial performance, large borrowing capacity and those with a large enough operation to accommodate all three brands.

He also expects that some brokering will occur, with smaller dealerships being approached by Chrysler and told to accept an offer from a larger dealership willing to buy them out.

"It may be a case where they're offered something rather than nothing," Youngblood said.

In the case of General Motors, the goal to cut dealer counts will be more difficult without the use of Chapter 11 bankruptcy proceedings. Youngblood expects that much of the count will be winnowed by shedding the standalone Pontiac, Saab, Saturn and Hummer dealerships.

Otherwise, GM will have to show "good cause." Good cause is justified by insolvency or dealer bankruptcy, failure to conduct sales or service operations for seven consecutive business days, conviction by the owner of theft, dishonesty or false statement, revocation of a business license or fraudulent misrepresentation, Youngblood said.

"But just because GM tries to show good cause doesn't mean the dealers won't put up a fight," he said.

Car dealers' bankruptcy fears outweigh news of incentives

Crain's Detroit Business | April 5, 2009

Under a Chapter 11 reorganization bankruptcy, the manufacturer could reject or terminate franchise agreements with dealers, said John Youngblood, an attorney with Detroit-based Abbott Nicholson P.C., which represents many automobile dealers.

If its franchise is terminated, a car dealership would no longer be able to sell new cars, he said, since Michigan laws and those of all other states prohibit the sale of new vehicles by any entity other than a dealer who holds a franchise for that brand.

In a worst-case scenario, Youngblood said, in which there is no provision for the return of new vehicles to the manufacturer, dealers whose franchises were terminated would be obligated to pay their floor-plan lenders for the vehicles, but would be unable to sell them as new vehicles. In addition, they would still own the real estate and bricks-and-mortar portion of the operation.

"They can be wiped out by a bankruptcy unless they're one of the favored dealerships," he said. "So there is plenty to keep them up at night."