

Franchise Experts at Zarco Einhorn Salkowski & Brito, P.A. Advise on What Dealers Can Expect In the Wake of Auto Manufacturer Bankruptcy

By Robert Zarco

After months of grim indicators and anxious hand-wringing, the idea of America's Big Three automakers going bankrupt is no longer a bad dream, but rather a harsh reality for the nation's dealerships. Chrysler has filed for bankruptcy and it would seem to be only a matter of time before General Motors follows in Chrysler's footsteps. Dealers for the Big Three are concerned, and rightfully they should be.

An auto manufacturer's bankruptcy will inevitably result in significant consequences for its entire dealer network. Chrysler has already announced that it has identified 789 of its dealers across the nation whose contracts will be terminated. The Wall Street Journal reports that General Motors expects to let go of 2,600 franchisees. With very little notice, these long-time Chrysler business partners are essentially having the rug pulled out from under them. Many terminated dealers may feel that they have no recourse. However, this is not necessarily the case.

Bankruptcy laws generally allow a reorganizing entity to either "assume" or "reject" franchise agreements and dealership contracts. In other words, the bankrupt manufacturer can either choose to re-affirm a franchise agreement and continue with performance under its terms, or elect to stop performance and release the dealer from its obligations under the contract. While bankruptcy courts generally afford bankrupt entities latitude in which contracts to keep, a dealer/franchisee is not without rights in this situation. For example, a dealer can sue for the damages it sustained as a result of the rejection of its franchise contract. The amount of damages will vary on the particular circumstances of each case and the time left on the agreement. Alternatively, dealers can file a motion challenging the rejection of their franchise agreement. Or, if an automaker goes into bankruptcy, but procrastinates on the decision of whether to assume or reject franchise agreements, a dealer can petition the bankruptcy court to order the manufacturer to meet a deadline to make this decision. Such action goes a long way in relieving uncertainty and helping dealers plan for the future. Also, many states have statutes that regulate the automobile sales industry, and provide dealers with various protections against wrongful or premature termination. These franchise rights do not evaporate just because the manufacturer has filed for bankruptcy. However, because this situation requires that franchise law and bankruptcy law must be construed together, it creates a highly complicated legal tapestry. Legal counsel with expertise in franchising and who has knowledge of bankruptcy law is a must. This is especially true because every dealer's situation and interests will necessarily be different from another, calling for an individualized solution on a case by case basis.

The items addressed in this brief article are merely the tip of the iceberg. The bankruptcy of an auto manufacturer can be very frightening, and dealers owe it to themselves, their employees, and their customers to seek out and retain experienced legal counsel to fight for and protect their rights and interests. It will not be easy; profound change never is. But in these precarious times, a car dealer simply cannot afford to rely on the word of its manufacturer as to

what should be the dealer's best course of action. A dealer's best defense is to pro-actively seek out and identify its rights and options; they are out there. The automakers just don't want you to know it.

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