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Arbitration Option for Terminated Dealers Signed into Law

Affected Dealers Shift Focus to Logistics of the Process

President Obama signed legislation this week providing terminated Chrysler and GM dealers with the option to arbitrate the loss of their franchise, but NADA, industry and legal experts suggest that any dealer considering the arbitration route carefully analyze costs involved before proceeding.

According to dealer attorney and WANADA advisor Mike Charapp, there are at least seven questions a dealer should ask before proceeding on with arbitrations.

1. If you seek to be reinstated, will resurrecting your business genuinely benefit you, your affiliated ventures, your employees, and your customers? Is there a viable future for your franchisor in your marketplace?
2. Are you able to resume business or is the business so degraded as a result of termination that reinstatement is not realistic?
3. What are the chances of prevailing in arbitration?
4. What will be the cost of the arbitration process?
 - a. If you choose to use an attorney, you will have to pay for your own attorney.
 - b. You will have to share the actual costs of arbitration and those can be expensive. Administrative fees are quite substantial, and the fees of the arbitrators generally are in the \$300-\$700 per hour range. An arbitrator can spend many hours learning about your case, hearing evidence, and making a decision.

A Special WANADA Seminar

The “*Ins and Outs of Arbitration*”

For Terminated GM & Chrysler Dealers

with Mike Charapp, Esq.,
Charapp & Weiss

January 7, 2010 from 9:30 am

WANADA Conference Center
5301 Wisconsin Ave, NW
Washington, DC

For details and to register contact:
Kristina Henry at: (202) 237-7200 or
kh@wanada.org

- c. If you must use the assistance of an expert, that too can be costly. Since the dealer's performance must be considered, a dealer may wish to utilize the services of an expert to challenge the manufacturer's determinations. Expert fees can be quite substantial for getting up to speed, doing the required analysis appearing in proceedings.
 - d. Preparation. There may be substantial costs incurred by dealers in pulling together documents, reports and analyses in support of the case.
5. Are you able to cover the cost of being reinstated? Charapp notes that if a dealer prevails, he or she must reimburse any money received. (General Motors dealers have received 25% of the wind-down payments to date.) Then there is the cost of reestablishing the business, reinstating floor plan, restoring inventories, rehiring employees, and rehabilitating customer relationships.
 6. Can you live with the new franchise agreement you will be offered? The arbitration right does not specifically discuss the terms that may be imposed by a manufacturer as part of a new sales and service agreement if reinstatement is ordered. Consequently, a dealer may find that the manufacturer is imposing its "new" criteria for facilities, for signs and other identification, and in other areas that may make reinstatement costly.
 7. Can you compete with a new dealer who has been appointed in your market area by the franchisor? If another dealer has been appointed in the market to take the place of your dealership, the arbitrator cannot make that dealership go away.

It is anticipated that only about one quarter of the 2,000 plus dealerships that lost franchises will file for arbitration. Arbitration must be commenced no later than 40 days after the law's enactment, or January 31, 2010 and cases must be resolved within 6 months of initiation, though 30 days can be tacked on for special circumstances.

Washington Business Leaders Predict Growth Ahead

A new survey by the Greater Washington Board of Trade suggests a growing optimism among area business owners that better days are ahead. In its latest survey the BOT found that nearly 50% of all business owners believe current business and economic conditions are "mostly good" in the metropolitan area and nearly 60% feel they will get better in the next 6 months.



The survey also found an "uptick" in the number of business executives who expect their companies to hire more people, with fully 32% expecting to do so just 12% a year ago. The majority of executives also believe their businesses will strengthen in the year ahead, and note that business conditions in the Washington Area are substantially better than in the rest of the U.S.

As in most other parts of the country, the survey found that business financing remains the "major impediment" to economic growth in the area, with 59% of respondents noting that getting credit had gotten harder rather than easier over the past year.

To get ready for the business rebound, most businesses are planning to boost their advertising expenditures, upgrade computer technology, buy new equipment and boost the services or products they offer, the survey found.

WANADA Members and Staff Should Plan to attend

**The 2010 Washington Auto Show
Automobile Business Seminars Series!**

The Essentials of Finance & Insurance
Professional Certification Program

Wednesday, January 27, 2010

8:00am – 5:00pm

Presented by JM&A

Regional Tag & Title Update

With Motor Vehicle Agency Representatives from DCDMV, MDMVA and VADMV

Thursday, January 28, 2010

9:30am Registration

10:00am - Noon Program

The Keys to Growing Fixed Operations

With Don Tipton

Auto Dealership Consultant and NADA "Top Ten" Speaker

Thursday, January 28, 2010

9:00 am - Registration

9:30 am- 11:00 am- Program

Lessons for All Dealers from the GM and Chrysler Bankruptcies

With Michael Charapp, Esq.

Charapp & Weiss, Attorneys at Law

Friday, January 29, 2010

9:00am Registration

9:30am- 11:00am Program

***The New and Used Vehicle Sales Outlook
The Washington Market***

With NADA Economist Paul Taylor and Howard Polier of AutoTrader.com

Friday, January 29, 2010

9:00am Registration

9:30am- 11:00pm Program

WANADA Announces “Student Day” At 2010 Washington Auto Show

The 2010 Washington Auto Show (WAS) will play host to area high school students with a special interest in “**The Future Role of the Automobile in American Society**,” on what is being billed as “Student Day,” Thursday, January 28, 2010.



Aimed at junior and senior high school students with an interest in the automobile industry, public policy, mechanical engineering, or environmentalism, the day will kick off with a dedicated tour of the “Advanced Technology Superhighway Pavilion,” where students will learn how the world’s automakers are responding to societal needs for cleaner, more fuel efficient and environmentally friendly transportation options.

Students and school chaperones will be greeted in a Reception/Departure room at the Convention Center where they will be welcomed by WAS and Automotive Dealer Education Institute representatives who will provide information on the auto show and careers in the auto industry.

“It is imperative that the next generation plays a role in the future of our industry, and we can’t think of a better way to introduce them to it than with a special tour of a major show,” said WAS producer Gerard Murphy. “We have cutting edge technology and lots of new cars to show them and we anticipate a large turnout,” he said.

NADA Pushes Proposed LIFO Relief Already Included In President Obama’s Proposed Budget

Dealers who have lost or are losing their franchises because of the General Motors and Chrysler bankruptcies earlier this year face unique challenges. NADA has developed a transitional relief package that would provide dealers relief from adverse tax consequences (*such as LIFO recapture*) triggered by the unanticipated loss of a franchise, pension liability or product liability exposure. The goal is to enable dealers to retain capital in their businesses. Congress must act to mitigate some of the adverse tax consequences for dealers affected by the government restructuring of GM and Chrysler.

LIFO (“*Last In, First Out*”) is an inventory accounting method used by companies throughout the United States to help mitigate the impact of inflation. The accounting practice allows companies to show smaller incomes by basing sales on the newest inventory.

LIFO is an accepted accounting method that has been in place for over 60 years. Taxpayers may not change between LIFO and FIFO (“*first in, first out*”) without approval of the Internal Revenue Service (*IRS*).

In addition to LIFO, dealers impacted by the bankruptcies of GM and Chrysler are facing multiple tax issues related to capital losses, goodwill, vacant real estate, manufacturer payments related to loss of franchise termination-related income, expenses, and credits, UNICAP, estate tax, and built-in gains tax. Other completely unforeseen obligations have been triggered by the premature closure of businesses, such as pension liabilities.

KEY POINTS NADA IS STRESSING TO CONGRESS AND THE IRS:

- ◆ Dealership closures due to the bankruptcy of GM and Chrysler were NOT foreseeable events. Traditional tax and business planning techniques were not available to the owners of these businesses.
- ◆ The extraordinarily short timeframe for the termination of these dealerships due to bankruptcy (*23 days in the case of the terminated Chrysler dealers*) has triggered a LIFO recapture that no dealer could ever have anticipated. The trigger of LIFO recapture is a classic case of phantom income – recognition of gain without sufficient corresponding income.
- ◆ Similar transition challenges are presented from pension liability that will be triggered prematurely due to the totally unforeseen closure of a business.
- ◆ Dealers who lost franchises are trying to preserve a going concern in the wake of the loss of a franchise. The ability to retain capital in the remaining business will preserve current jobs.

Federal Sales Tax Incentive To Buy New Vehicles Expires December 31, 2009

Dealers are reminded that The American Recovery and Reinvestment Act, which passed earlier this year, includes a deduction for state and local sales and excise taxes when consumers purchase a new car, light truck, motor home or motorcycle through December 31, 2009.

The deduction is limited to the first \$49,500 of the vehicle's purchase price and the amount of the deduction starts phasing out if a consumer makes more than \$125,000 individually, or \$250,000, if they file a joint return.

The Internal Revenue Service has produced a letter-sized handout that can be given to potential car buyers reminding them of this added incentive. The flyer is available electronically at <http://www.irs.gov/recovery> in English, Spanish, Russian, Chinese, Korean and Vietnamese.

2010 IRS Mileage Allowance Goes DOWN

Beginning January 1, 2010, the IRS mileage allowance for business miles driven will be \$.50 per mile, down from \$.55 per mile in 2009. For dealers who offer mileage allowances to their employees, as well as for accounting purposes, please note the change in the rate for 2010. The mileage deduction amounts change every year so be sure to verify what the IRS rate is prior to the beginning of each new year. For more detailed tax information, go to www.irs.gov.

Life Insurance Scam

NADA has learned that individuals from a business calling itself The Dealer Life Group in Florida are approaching dealers and identifying themselves as life insurance salesmen for NADA. NADA does NOT employ salesmen to call on dealers, and has NOT authorized the Dealer Life Group or anyone else to sell insurance for NADA.

Contact Lin Peacock, senior director of NADA Insurance Plans and Programs, at 703-821-7229 immediately if you are approached by a life insurance salesman who claims to be representing NADA.

Major Rating Agency Says Auto Loan Delinquencies Likely to Rise in 2010

TransUnion, one of the nation's largest credit rating agencies, predicts that the rate of auto loan delinquencies nationwide will grow 7% in 2010.

The Chicago-based company considers an auto loan delinquent if the borrower is 60 days or more past due on their payment for a new or used vehicle. Approximately 0.87 percent of all auto loans are currently delinquent.



“The unemployment number is a driving factor in our forecast,” Peter Turek, automotive vice president in TransUnion’s financial services group, told the Free Press in an interview Tuesday. The unemployment rate was 10% nationwide in November.

Generally, TransUnion reports that the biggest auto loan delinquencies will come in the Midwest and Southeast. Some areas of the country hit hard by the mortgage crisis, such as California, Florida, Nevada and Arizona are expected to slowly improve, with the least amount of increase in auto loan delinquencies as many auto loans reach maturity.

Turek said TransUnion is uncertain about when auto loan delinquency rates will start to improve because “there’s still a high degree of uncertainty” in the economy, although he said late 2010 and early 2011 appear to be more promising.

In all, the average U.S. consumer had \$12,542 in automotive debt at the end of the third quarter, a slight decrease from the year-ago period, when that debt averaged \$12,861.

New Ford Fiesta and GM Cruze May Be Winners

If website activity is any indicator of how well a new model may sell, Ford and GM may have winners on their hands with the new Fiesta and Cruze models. According to Edmunds.com, web activity related to these two models rose significantly after they were introduced at the LA Auto Show, both in terms of the number of unique visitors and page views of the model sites. The auto site suggests such activity indicates the vehicles are very high on the consideration list for would be buyers.

Edmunds.com also found a significant increase in unique visitors and page views for the new Buick Regal, Hyundai Sonata, Mazda 2 and Toyota Sienna, all of which, in addition to the Fiesta and Cruze will be displayed at the 2010 Washington Auto Show.

Consideration is the percentage of visitors to Edmunds.com who view vehicle content, such as pricing, reviews, specifications and photos about a specific new vehicle, as a share of visitors who view similar content about any new vehicle within the same vehicle segment.

Make	Model	Gain in Consideration
Buick	Regal	14%
Chevrolet	Cruze	37%
Ford	Fiesta	48%
Hyundai	Sonata	12%
Mazda	Mazda2	20%
Toyota	Sienna	10%

Source: Edmunds.com

Thought for the Week...

"The relationships of dealers and customers are my highest priorities. Period."

Mark Reuss, new president of GM North America