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ARBITRATION: THE BEAT GOES ON

GM, dealers tussle over discoverable data

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A number of General Motors Co. dealers who are continuing to arbitrate say the company is withholding the documents they need to prove their case.

Dealers are having trouble getting GM's data that were the basis for termination.

These data include state and local sales statistics from other dealerships, they say.

GM's refusal to provide this information has complicated many dealers' efforts to show they were wrongly marked for termination.

"If GM wants you, they'll make it happen," said Scott Watkins, senior consultant for Anderson Economic Group in East Lansing, Mich., a dealer consulting firm. "If they don't, it will be a tough battle."

Separately, Chrysler Group continues to resist providing the criteria it used to close dealerships, as well as documents and data that might shed light on dealership performance, several lawyers said.

But the hard line is creating delays in an arbitration process that must be completed by law before July 14.

Of the 2,000 stores marked for closure in last year's reorganization, GM has offered reinstatement to 661 dealerships and has said it is willing to consider settlement talks with the 499 others that have filed arbitration claims. GM North America President Mark Reuss also has been a visible, sympathetic presence on Facebook and in other public forums.

But lawyers complain that GM's strategy toward dealerships that have chosen arbitration conflicts with the tone of its conciliatory gestures in public.

In dozens of cases handled by law firms, GM has been "withholding virtually all information" related to other local dealers "no matter how relevant that information is to a dealer's defense," said Richard Sox, a lawyer at Bass Sox Mercer in Tallahassee, Fla.

In one case, the law firm hired a consultant who discovered that GM used outdated data to miscalculate a dealership's performance score, said Rob Byerts, another Bass Sox Mercer lawyer.

GM confirmed its error last week and offered to reinstate the dealership, he said.

"The dealer never should have been wound down," Byerts said. "GM makes mistakes, by their own admission, then keeps dealers from checking their calculations by refusing to provide the data."

GM spokeswoman Ryndee Carney said: "GM is fully participating in the arbitration process and providing relevant data and information in accord with the arbitration process and will continue to do so. We are committed to conducting the arbitrations in a professional and expeditious manner."

The arbitration legislation signed by President Barack Obama in December limits discovery to "documents specific to the covered dealership."

Dealer lawyers say sales figures from other showrooms are relevant to their clients because they were used by GM to compute their clients' performance scores.

But in two recent arbitrations, GM denied a total of 114 requests for documents, citing the language of the new law.

The law "forbids any discovery other than 'requests for documents specific to the covered dealership,' " GM said in identical statements to dealers in those arbitrations.

In addition, with 1,150 claims filed by GM stores and an arbitration deadline of July 14, "GM's practical ability to provide discovery is severely constrained by the need to address or respond to discovery requests in hundreds of arbitrations," the GM statements said.

Chrysler isn't responding to dealer requests for performance-related documents required under the new law, said lawyer Chris Floyd of Norfolk, Va.

The arbitrator in her client's case ordered Chrysler to produce the documents by the end of this week, Floyd said.

"Chrysler isn't doing anything voluntarily. It's kicking and screaming through the whole process," she said.

Said Chrysler: "The discovery process was fully outlined in the legislation that governs the arbitration process, Chrysler Group has, and continues to, comply fully with the legislation."

By the numbers

Of the 1,573 arbitration filings by GM and Chrysler dealers

-- 548 cases withdrawn or settled

-- 253 cases on hold

-- 537 hearings scheduled by June 14

-- 121 hearings scheduled June 15-30

-- 16 hearings scheduled July 1-14

-- 98 hearings not yet scheduled

Source: American Arbitration Association

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