

# Automotive News

## NEWS ANALYSIS

### Chrysler's Genesis plan sways arbitrators

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Chrysler Group and General Motors Co. are getting mixed results from arbitration hearings. Chrysler's Genesis plan for consolidating all its brands in each dealership has swayed most arbitrators, while GM's cost-cutting rationale for eliminating dealerships has developed little traction.

Chrysler says it has won 12 cases and lost four since late April, when the first arbitration decision was made involving dealerships terminated during bankruptcy proceedings.

Rejected Chrysler stores have fought an uphill battle in arbitration against the Genesis program and the automaker's year-long strategy of awarding franchises in the backyards of rejected dealerships.

"Arbitrators are giving credence to the Genesis plan," said Tammy Darvish, a rejected Chrysler dealer in Maryland who is a co-leader of the Committee to Restore Dealer Rights. "That's a big sticking point for dealers."

GM has lost the three decisions that are publicly known, though the automaker says there are other cases it has won but won't discuss.

"GM has been much more inconsistent with its business plan than Chrysler by reinstating a large percentage of the dealers terminated in bankruptcy," said dealer lawyer Richard Sox of Tallahassee, Fla. "This causes GM's business plan to lose credibility in the eyes of an arbitrator."

An *Automotive News* review of 15 of the 19 decisions shows that arbitrators have:

- Given deference to Chrysler's Genesis plan to put all four brands under each dealership roof.
- Upheld Chrysler's "backfilling" strategy of awarding franchises in the markets of rejected dealers.
- Been influenced by the weakened condition of Chrysler stores shut down a year ago and by the financial strength of GM dealerships allowed to wind down gradually.
- Given more weight to the specific circumstances of each GM dealership than to the company's overall plan for dealer cuts.

In one decision affirming Chrysler's Genesis strategy, arbitrator Robert Anderson wrote: "Chrysler will have the Ogden [Utah] marketplace arranged in a way that more closely coincides with its plan to implement Genesis."

Chrysler's goal is to increase Genesis stores from 83 percent of its network to 100 percent by the end of 2011.

In another ruling that supported both Genesis and the backfilled dealership, a Texas arbitrator wrote: "Chrysler's new business model, and the existence of a high-volume, full-line dealership at this high-volume location, would bring more products to the surrounding community and to customers encountering the store at lower prices."

GM has introduced in arbitration an affidavit from former CEO Fritz Henderson saying that planned dealership cuts would save the company \$2.6 billion.

But the company announced offers this year to reinstate 666 of the 1,160 rejected dealerships that have filed for arbitration. It also is restoring dozens more with sales and store-upgrade conditions, and paying compensation in settlements with still other dealers, lawyers have said.

In a ruling last week for Dick Wickstrom Chevrolet of Roselle, Ill., arbitrator Mitchell Marinello wrote: "The fact that GM voluntarily reinstated some 650 or so of the 1,100 dealers who sought arbitration detracted from the credibility of its assertion that having fewer dealers was an important part of its business plan."

It's too early to tell whether these trends will continue and ultimately affect more than 300 other bids for reinstatement scheduled to be heard by mid-July.

For one thing, Chrysler has lost three of its last five cases.

It also suffered a setback last week when an arbitrator for the first time challenged the importance to the case of the company's plan to cut the number of dealerships.

Chrysler had argued that its dealership-reduction strategy "tilts the balance of economic interests" against Cutrbus Motors Chrysler-Jeep-Dodge in Layton, Utah.

But the arbitrator countered that to give the strategy that kind of weight would "eviscerate" the law creating the arbitration process, a copy of the decision shows.

"The actions to reduce our dealer network were a necessary part of Chrysler Group's viability and central to the interim financing and partnership with Fiat," Chrysler said last week. "The only alternative would have been complete liquidation."

The company added: "While we are pleased that the decisions of many arbitrators reflect a keen appreciation of these circumstances, Chrysler Group is disappointed that some decisions undermine the Federal Bankruptcy Court Order that affirmed the rationalization process used to reject the dealership agreements."

GM added an element of uncertainty to any predictions by saying it has won an undisclosed number of cases but won't discuss them.

Said GM spokeswoman Ryndee Carney: "We respect the confidentiality of our discussions with our dealers."

#### Arbitration tally

A growing number of the 1,576 arbitrations filed by rejected General Motors Co. and Chrysler Group dealers are closing and ending up as reinstatements or settlements. Here's where things stood at the end of last week:

- 12 wins for Chrysler, 4 for dealers
- 0 known wins for GM, 3 for dealers
- 1,151 cases closed
- 9 hearings held in April
- 90 held in May
- 146 scheduled for June 1-14
- 129 for June 15-30
- 47 for July 1-14

Numbers don't add up because of double-counting of multiday hearings scheduled at end of one month and start of another.

Source: American Arbitration Association

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