

What Would the Sale of the Chrysler Division Mean to Dealers?

by : Rich Sox

Like you, I am reading everything I can get my hands on as it relates to the possible sale of the Chrysler Division by Daimler Chrysler. I know I shouldn't be surprised, but I continue to be dismayed that none of the pundits is discussing the impact of such a sale on all the Chrysler, Dodge and Jeep dealers across the United States. Well, never fear, the attorneys at Myers & Fuller have got you covered!

As I am sure you have realized, the sale of the Chrysler, Dodge and Jeep linemakes to any third- party places dealers holding franchise agreements for those linemakes in grave danger of having their franchises unilaterally taken from them. The scariest scenario, of course, is one in which an existing United States manufacturer acquires the Chrysler division. As an example, as of this writing the latest rumor is that General Motors is taking a serious look at the possibility.

Don't ask me why General Motors would want to take on additional linemakes when it has repeatedly said consolidation of its current lines is necessary for survival. I also can't imagine why Daimler would be willing to take payment for the Chrysler Division in GM stock. Talk about going from the frying pan into the fire! I might be able to understand why Daimler would sell the Chrysler Division to GM for cash, but payment with GM stock just doesn't make sense. Anyway, however bizarre this sounds to me, the fact of the matter is that the reports persist that GM or another manufacturer with a U.S. distribution system (Nissan-Renault) is taking a serious look.

If the likes of General Motors acquire the Chrysler, Dodge and Jeep linemakes it is highly unlikely that GM will want to assume the existing Chrysler, Dodge and Jeep dealer body. If GM chooses to not continue to honor the franchise agreements with these dealers, both GM and Daimler would have legal exposure. For one, most Chrysler, Dodge and Jeep dealers have in the past five years expended significant sums of cash on building their Alpha facilities. Our experience in representing many Oldsmobile dealers around the country after the announced "discontinuance" of the Oldsmobile linemake tells us that at the very least Daimler would have legal exposure to claims for reimbursement of these facility expenses. We were successful in arguing in the Oldsmobile cases that facility expenses should be reimbursed in that the dealer was not provided the opportunity to obtain a return on its investment (an investment, like Alpha, that was done at the behest of GM). Of course, Chrysler, Dodge and Jeep dealers would have claims for lost profits on a going forward basis. The outcome of these claims is more difficult to predict based on our experience with Oldsmobile because GM has settled all of the Oldsmobile lawsuits before going to trial.

Another interesting, or should I say scary thought, is that GM or any other manufacturer with an existing U.S. dealer body may choose to keep some or all of the Chrysler division dealers and eliminate some of their own dealers. In the case of GM, the likely candidates for elimination under this scenario are the Pontiac, Buick and GMC dealers. Under this theory, GM would keep what little product is doing well in these linemakes and simply turn that product over to either one of its other existing linemakes or the Chrysler, Dodge and Jeep dealers. Of course, GM would be running into the same buzz saw it ran into with Oldsmobile. However, GM may be willing to pay the price of settling with Pontiac, Buick and GMC dealers if it sees the benefit of having the Chrysler, Dodge and Jeep linemakes as outweighing that cost. Nothing would surprise me! The bottom line here is that it is almost a certainty that a significant number of dealers, from either the Chrysler dealer body or the purchasing manufacturer's dealer body, will be eliminated to make room in the new line-up of dealers.

In our opinion, the best scenario for the Chrysler Division dealer body would be for a Chinese or Indian manufacturer to acquire the rights to Chrysler, Dodge and Jeep and, in turn, distribute low cost Chinese or Indian vehicles through those dealers. If the sale of the Chrysler Division is in fact to a manufacturer

that does not have a United States dealer network, the chances are much better that the Chrysler, Dodge and Jeep dealers will maintain their franchises. However, it is highly likely that even under those circumstances the new owner would take liberty with its recently acquired dealer network and eliminate those Chrysler, Dodge and Jeep dealers it deems to either not be performing up to snuff or to otherwise not be located in a "viable" market.

So with all this said, what do the motor vehicle franchise laws say about the elimination of dealers after the sale of a linemake? Unfortunately, our experience in representing hundreds of Daewoo dealers when General Motors acquired the rights to sell Daewoo vehicles in the United States (ultimately under the Suzuki nameplate) as well as Oldsmobile dealers following General Motors' "discontinuance" of that linemake tells us that the answer is far from clear. The answer depends largely upon in which state a dealership resides. What we do know is that a handful of states may provide some unique protection against a change in the ownership and distribution of a linemake. In those states, the franchise laws provide that with any change in ownership and/or distribution the new owner and/or distributor must either continue to honor the terms of the existing franchise agreement or pay the dealer the fair market value of the franchise. In most states, dealers will likely be limited to a claim for monetary damage as discussed above. Any dealer who is terminated will more than likely have forever lost their right to continue to sell vehicles under the franchise.

We encourage all dealers to work along side their state and metro dealer associations to put into place express requirements that the new owner of the rights to distribute a franchise continue to honor the terms of the dealers' franchise agreement. We have no doubt that a strong case can be made to any legislative body that with the overwhelming evidence that a consolidation of the U.S. automobile manufacturers is inevitable, whether it is the sale of Chrysler, Hummer, Jaguar, Land Rover or Volvo, the time is right to add provisions to the state franchise laws which protect the dealers' substantial investment in their franchise. We are working closely with several state and metro dealer associations to accomplish this change to their existing franchise protections.

Dealers cannot sit by and let their manufacturers unilaterally decide the fate of their franchise. Learning from the financial devastation visited upon Daewoo and Oldsmobile dealers, all dealers who could be caught in the consolidation fray need to stand up and be counted. Shame on manufacturers like Daewoo Motors and General Motors for taking dealers' franchises from them, but shame on any dealer who doesn't learn from those very hard lessons of the recent past.

Update on the status of new VW and Audi programs

Regular readers of this column will recall that I recently discussed the newly proposed VW 1 percent holdback program, which looked a heck of a lot like Ford's Blue Oval program to me. In that article I wrote that dealers, large and small, needed to stand up to this program, as it was one more way for VW to gain control of how you as a dealer spend your hard-earned money on facilities, training, etc. I also pointed out that VW may very well run afoul of certain states' franchise protections as this proposal program may violate the price discrimination laws of those states. Well, I have good news to report. The word from our clients is that the VW dealers stood up in mass at the NADA dealer make meeting and objected to this new program. This apparently knocked VW back on its heels as it has agreed to analyze the program and bring something more palatable back to the dealer body. We will be waiting...

I also recently discussed the new Audi R8 allocation program in this column. For those of you that don't recall the issue, Audi had sent to all of its dealers a memorandum describing what the dealers will have to do, and pay, to receive an allocation of new R8 vehicles. The memorandum required those dealers wishing to receive a full allocation of R8 vehicles were required, among other things, to stroke a check for \$100,000 to supposedly pay for marketing and training. Enough dealers and dealer associations have raised a stink over this program that Audi has now substantially reduced the buy-in and associated

facility requirements. Although under most state franchise protections we believe that Audi must provide the new R8 to all of its dealers without any required buy-in, it appears that Audi's revisions to the R8 allocation program are reasonably satisfactory to its dealers.

These are two examples of the impact a dealer body can have upon its manufacturer by standing together to enforce your rights.

Rich Sox is a lawyer with the firm Myers and Fuller, P.A., located in Tallahassee, Florida. The firm's sole practice is the representation of automobile dealers in their quest to establish a level playing field when they deal with automobile manufacturers.