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Respond to: Tallahassee Office

DEALER ALERT

BANKRUPTCY CONSIDERATIONS

November 20, 2008

As a follow up to our last Dealer Alert concerning floorplan financing issues, we have received a number of calls regarding the possibility of a Chapter 11 bankruptcy as protection for dealers in these very difficult times in our industry. Myers & Fuller, P.A. attorneys have advised dealers in a number of bankruptcy matters. A Chapter 11 filing is the mechanism which would likely be used by a dealership corporation to seek bankruptcy protection where its debts exceed its assets.

Whether a bankruptcy filing is right for your dealership must be determined on a case-by-case basis. With that said, our experience in working with dealers in bankruptcy proceedings is that bankruptcy may be beneficial in certain instances where dealers are 1) having their floorplan financing summarily terminated; or 2) being terminated by the manufacturer as a result of the loss of floorplan financing or some other default such as inadequate working capital.

A bankruptcy filing may be of assistance to a dealership which is having its floorplan line shutoff with a demand to pay the balance within a short period of time. If the dealership cannot find a replacement floorplan lender, the existing lender may attempt to come in and take possession of the vehicle inventory as its loan collateral. The lender will sell the vehicle inventory at auction for something much less than the dealer owes on each unit. As in most cases, if the dealer has a personal guaranty in place on the floorplan loan then the dealer is personally liable for the deficit created by the "fire sale" of those vehicles. A bankruptcy proceeding in some cases can serve the purpose of a more controlled sale of the dealership's vehicle inventory (or perhaps the business as a whole) in order to maximize sale proceeds and minimize any deficit on existing financial obligations.

We have also advised dealers in bankruptcy proceedings where the franchise was being summarily terminated by the manufacturer as a result of a lack of adequate working capital and, in many cases, in conjunction with the loss of floorplan financing. In these cases, bankruptcy proceedings may permit the dealer to stay the termination in order to allow the dealer to find a buyer for the franchise. Although in these difficult times obtaining historic prices for franchises, in particular domestic franchises, may not be possible. However, it is better to receive *some* value for the franchise than to simply turn it back in to the manufacturer.

In addition to having legal counsel who understands floorplanning and franchise issues advising you in bankruptcy, it is important to have experienced legal counsel involved *immediately* upon receipt of a notice from your floorplan lender of a change in the relationship as well as receipt of any similar notice from your manufacturer. In many cases, involving experienced counsel from the beginning will allow for an orderly workout of the situation which will, in some cases, obviate the need for a bankruptcy proceeding.

The foregoing information is provided for educational purposes only and is not to be construed or interpreted as legal advice.

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