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SATURN DEALER ALERT

There is little doubt that General Motors plans to sell or eliminate the Saturn linemake in the near future. In its bailout plan to Congress, GM promised the elimination of Saturn as it has never turned a profit for the company. Of course, the bailout plan is also a roadmap for the action GM would take within any future bankruptcy proceeding. Most dealers we speak with agree that it is highly unlikely that Saturn would be sold in that it is no longer a unique product line. Instead, Saturn vehicles are now produced at GM plants on the same vehicle platforms as other GM linemakes. With elimination of the Saturn linemake appearing to be inevitable, what are Saturn dealers to do?

Potential Litigation

Legal Claims

Because GM has announced to the world that it no longer intends to support the Saturn brand, like with the announcement of the pending discontinuance of Oldsmobile, there is a strong legal argument that your franchise has been effectively or “constructively” terminated. This claim centers on the contention that even though the manufacturer has not formally notified you of its intent to terminate your franchise, it has taken certain action which results in the effective termination of your franchise. Courts across the country have accepted constructive termination as a legitimate claim against a manufacturer. In the case of Saturn, following GM’s announcement of its bailout plan to Congress, your franchise likely has little or no blue sky value and customers are not likely to buy from a dealership which is slated for elimination.

The constructive termination claim is generally brought under your state’s motor vehicle franchise laws as a claim for “unfair termination.” Each state’s motor vehicle franchise law differs and must be reviewed on an individual basis to determine the ultimate strength of your legal claim for constructive termination. Likewise, there may be other claims that can be brought based upon manufacturer prohibitions contained in your state’s motor vehicle franchise law.

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Apart from the state motor vehicle franchise laws, claims may also exist for violation of the Saturn Retailer Agreement. The Agreement promises that if the Retailer continues to meet all conditions and responsibilities under the Agreement, the Agreement will not expire except in the case of the offering of a replacement Retailer Agreement or the death of the Operator. Terminating the Agreement as a result of a change in business plans on the part of GM is generally not a legal excuse for violating its promise to continue to keep the Agreement in effect in most jurisdictions.

Lawsuit Against SDC and GM

Unlike other GM linemakes, dealers entered into a franchise agreement with a separate corporation known as Saturn Distribution Corporation ("SDC"). We were not surprised to hear that in the Franchise Operations Team ("FOT") meeting this past week that GM officials threatened to take SDC into bankruptcy if dealers pressed to hard for termination financial assistance. Unfortunately, because we suspect that SDC's liabilities exceed its assets, it would not be difficult for GM to make good on its promise. For this same reason, bringing a lawsuit against SDC alone would likely not result in payment of any judgment ultimately obtained. As a result, it will be imperative to find a way to include GM as a defendant in the lawsuit in order to have a realistic opportunity to obtain a judgment which can be collected upon or to settle the litigation for a fair amount.

Whether GM can be made part of a Saturn dealer's lawsuit largely rests upon how your state motor vehicle franchise law defines the "manufacturer" or "franchisor" or "licensee" depending upon the terms used in your State. If the definition is broad enough to include related companies, parent and subsidiary companies or the company that actually manufactures the product sold through a distributor then GM will likely be a proper party in the lawsuit.

If your state's franchise laws don't provide a definition which allows GM to be named as a party to the litigation then other arguments for including GM as a defendant, such as GM's role as the controlling entity over SDC as its agent, will have to be considered.

Termination Benefits

The Retailer Agreement provides for the payment of current model year vehicles acquired directly from SDC (no dealer trades), certain parts, signage and special tools. It is not entirely clear that this provision will apply if and when SDC ultimately terminates the Retailer Agreements in that the payment of termination benefits was contemplated only in the case of the dealer's termination of the Agreement or SDC's termination of the Agreement *for cause* (i.e. the dealer violated the Agreement).

Typically, your state motor vehicle franchise law will require a manufacturer to compensate dealers on at least as favorable terms as provided in the Retailer Agreement. Dealers should also consider the fact that their state franchise laws may also provide additional termination benefits such as payment of facilities assistance and even payment of the fair market value of the franchise in some cases.

If a dealer decides to “voluntarily” terminate his or her franchise before SDC terminates the Agreements, then at a minimum the benefits provided under the Retailer Agreement apply and may be enhanced by your state franchise law. It will be important to determine if your state franchise law requires the franchisor to pay termination benefits where the dealer is the one terminating the agreement as opposed to the franchisor terminating the franchise relationship.

Whether a dealer is terminated by SDC or terminates the relationship on his or her own accord, dealers should *not* be required by SDC to sign any waiver or release documents to the benefit of SDC or GM in order to be eligible for termination benefits. Termination benefits are an existing obligation under the Retailer Agreement or state franchise law, as the case may be. SDC cannot legally require a dealer to agree to waive all claims it may have against SDC or GM in exchange for the required termination benefits being paid. This point is critically important in order to continue to allow dealers the option of bringing a lawsuit against SDC and GM following termination of the franchise relationship.

SDC or GM Bankruptcy

As we have written about at length over the last few weeks, if GM were to file for Chapter 11 bankruptcy protection, GM would argue that it must reject its distribution agreement with SDC in order to be a viable business going forward. In that case, Saturn dealers would likely have little recourse against GM and, as discussed above, no realistic opportunity to obtain substantial relief from SDC. Likewise, the bankruptcy court would have no obligation to recognize a dealer’s termination rights under the state motor vehicle franchise laws.

If Saturn dealers file a lawsuit *prior to* GM filing for bankruptcy protection, that lawsuit would be put on hold while the bankruptcy is resolved, and the disposition of the claim and the amount, if any, to be paid on such claim is subject to the Bankruptcy Court’s discretion.

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