

by Scott Silverman

States Re-Write Dealer Franchise Laws

As rejected GM dealers are now beginning to receive "requests for proposals" to establish new GM points, states throughout the country are amending their franchise statutes to address matters that have persisted in the past decade as well as some of the more inequitable issues that arose during the wake of the GM/Chrysler bankruptcies.

Locally, Connecticut and Rhode Island have passed amendments joining New York, New Jersey, Florida and others that have attempted to strengthen the dealer's position in the OEM-dealer relationship. Many of these legislative efforts are duplicating amendments we inserted in our own 93B law in 2002. Various dealer organizations have identified the present time as a rare occasion when there is wide-spread and justifiable sympathy for auto dealers.

Below is a summary of some of the more common protections states are seeking to provide their dealers:

ENHANCED POST-TERMINATION ASSISTANCE

As manufacturers continue to demand facility upgrades and alterations that cost millions of dollars, it never comes with a guarantee that any dealer will recoup his investment for these efforts. Many states are now codifying a manufacturer's obligation to reimburse dealers for early lease terminations, recent facility upgrades and all new vehicle inventory (not just current model year) regardless of whether the termination is initiated by the manufacturer or the dealer. Far too many Chrysler dealers were burdened with stale inventory purchased under questionable conditions.

Equal Pricing Guarantees

Pricing protections have become Swiss cheese as loop-holes have been carved away into the laws and regulations that in theory require manufacturers to sell vehicles to all dealers at the same price. New provisions seek to give these protections updated teeth by eliminating the need to prove a loss of a sale (something that is difficult and expen-

sive to demonstrate), and simplifying the way damages would be calculated. More than just helping in lawsuits, these type of detailed provisions should curb manufacturers' practices and prevent the need for claims and complaints.

RIGHTS FOR REJECTED DEALERS

GM and Chrysler convinced the government that they needed to reduce their dealer count and abandon dead markets to survive and justify the wholesale rejection of hundreds of dealers. Now, GM is beginning the much anticipated re-population of various markets with hand-picked dealers. Most (if not all) claims for this inequity were released or discharged during the bankruptcy process. However, many states have introduced language that would prevent manufacturers from appointing new dealers in a rejected dealers market for a period of years if they don't compensate the old dealer (or give him/her their old dealership back).

EQUITY IN WARRANTY REIMBURSEMENTS

There is a common belief that dealers should not unnecessarily subsidize their manufacturers. Countless states are updating their warranty reimbursement provisions to require manufacturers to pay their dealers the same as any other customer for the work they perform. This can mean hundreds of thousands of dollars annually in additional net income with no additional costs.

FACILITY UPGRADES

With a blind eye towards economic reality, manufacturer demands for facility upgrades and improvements are still pervasive. Most states are enacting laws that require reasonableness in any such demands - and, more important, a mandate that such demands must be justified in the context of current economic conditions and reasonable expectations to recoup any investment.

LEVERAGE

Beyond concerns about performance, dealers must constantly analyze their market along with their long-term goals and objectives with little, if any, insight into the often closely guarded secrets that are the manufacturers' initiatives. One certainty that is always right around the corner is some sort of demand (facility upgrade, better performance, etc.) from the manufacturer. It takes very little time working in the auto industry to learn that because of these facts, a franchise relationship is, as much as anything, a never-ending negotiation between the dealer and the manufacturer. As with any negotiation, the key is identifying your leverage. For dealers, leverage is sometimes obvious, but more often, evasive and difficult to identify. If your manufacturer proposes an add-point in your market, you initiate a protest. If your manufacturer demands facility upgrades consistent with your competition but your local zoning regulations prohibit any work on your building, you need to get more creative.

This obvious dearth of leverage is part of the reason why auto franchise laws now exist in all 50 states. However, dealers should not rely on any expectation that their franchise laws (no matter how robust) will adequately protect them and provide enough assistance to level the playing field. Every dealer must be proactive in identifying leverage - even if it is tucked in their back pocket for the next negotiation down the road.



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