

ORAL TESTIMONY OF MR. JOHN MCELENEY
CHAIRMAN, NATIONAL AUTOMOBILE DEALERS ASSOCIATION
BEFORE THE
U.S. SENATE COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION
ON
GM And Chrysler Dealership Closures: Protecting Dealers and Consumer
FINAL

June 3, 2009

Mr. Chairman, Senator Hutchison, my name is John McEleney, and I am the Chairman of N.A.D.A, the National Automobile Dealers Association.

I am also president of McEleney Autocenter, of Clinton, Iowa. We operate General Motors, Toyota and Hyundai franchises and have been in business for 95 years and provide jobs for 140 people. Additionally, my family held a Chrysler franchise between 1984 and 2007.

Mr. Chairman, we commend you and Sen. Hutchison for convening this hearing. In three face-to-face meetings with the President's Auto Task Force and in numerous meetings and with the manufacturers, no one has explained why dealer reductions will make GM or Chrysler more viable. Over 90% of Chrysler and GM's revenue comes from the dealers, because the dealers buy the cars, the parts, and even the dealership signs from the manufacturers. The retail network— the land, the buildings, the employees – the dealers pay for it all. Dealer cuts won't save any money, because dealers don't cost the manufacturers any money. When a dealership closes, the manufacturers will tell you that they lose market share.

Where is the objective standard and where is the public accountability for these decisions? 789 Chrysler and 1,350 General Motors dealerships face terminations, and these businesses employ well over 100,000 people. These people deserve more.

The Chrysler dealership terminations are particularly harsh. These 789 dealers were given 26 days to wind down. Also, Chrysler has refused to buy back vehicles, parts, and special equipment. No manufacturer has ever done this. Just four days after Chrysler dealers received their termination letters, media reports said Chrysler already was planning to re-enter some of the very markets they were abandoning.

With respect to GM, the effects were much broader. Yesterday, GM delivered to my dealership a "Participation Letter," which every GM dealer must sign. Even though I am one of the "go-forward dealers," I will have to make significant changes that could threaten the viability of my dealership and employees.

Actually, GM's "letter" is a 24 page binding, legal contract. If I sign it, I will be committing my business to spend hundreds of thousands of dollars that I know about today, and committing to millions of dollars of potential financial obligations in the future. Also, I will be subjecting my business to sales performance standards that are not specified in the contract. Even worse, GM can alter the terms of these requirements at any time at its sole discretion. The final blow: I must waive any right of protest to any action taken by the manufacturer.

This contract actually says: This document shall be null and void if the Dealer changes any term or provision or if it is not executed by the Dealer on or before June 12, 2009. That is next Friday, so I would have to Fed Ex it next Thursday.

So, my “choice” is – Sign this completely one-sided, open-ended legal document and give up all my basic rights as a dealer, or face the consequences of the cancellation of my GM franchises during the pending bankruptcy. The other 4,000 “go-forward” dealers have the same choice.

This really is no choice at all. This is a classic example of opportunistic and overreaching behavior by the manufacturers that has prompted the enactment by the legislatures of all 50 states of franchise laws that govern the relationship between dealers and their manufacturers. No other manufacturer has forced dealers to sign such an onerous agreement. This is NOT necessary for GM’s viability, and federal funds are being used to empower GM to do this.

This is a manipulation of the bankruptcy process to eviscerate the state franchise laws. Laws that inject balance in the inherently one-sided economic relationship between a dealer and the manufacturer and that also provide consumers a reliable, convenient, and competitive auto retail network.

So, we urge the following: The Executive Branch should provide sufficient debtor-in-possession financing to enable Chrysler to buy back the parts, inventory and manufacturer-specific tools from the terminated dealers. This is standard practice in the industry. Second, the terminated Chrysler dealers need more time to make an orderly transition. No manufacturer has ever imposed such onerous terms or such a tight deadline. Third, the terms of the GM “go-forward” Agreements must be changed. No manufacturer has ever imposed such outrageous terms in dealer operator agreements. Fourth, franchise laws of the 50 states should remain intact and apply with full force and effect once Chrysler and GM emerge from bankruptcy. Since this entire bankruptcy has

been negotiated by the Executive Branch, Congress should intervene, if necessary, to make sure these actions are taken.

Thank you for holding this important hearing, and thank you for the opportunity to testify.