DEFENDER
The NADC Newsletter

The Harsh Impact on Dealers of a Detroit Meltdown

(The What-ifs of a Franchisor Bankruptcy or Government Bailout. A Call for GM, Chrysler and Ford to Take Bold, Forward-Looking, Imperative Action)

Eric L. Chase, Esq.

Although there is the temptation to link the falling fortunes of the Detroit Three to the very recent series of American financial calamities in 2008, the reality is that GM, Chrysler and Ford have been losing market share and profitability for years. Critical events for these former masters of the car universe are now moving at breakneck speed. At the beginning of November 2008, with these three American corporate giants on the edge of bankruptcy, it seemed that federal intervention – a "bailout" – would be the most likely response from the federal government. After all, commitments in vast amounts had already been authorized for the drowning banking and financial sectors, and both the Bush administration and congressional leaders spoke of the need to inject cash.

Without a bailout, one or more Detroit Three bankruptcies are apt to follow in weeks or months. GM, especially, is on the brink, and Chrysler now warns that it, too, has little time. Only Ford seems to have staying power for 2009, but it still seeks assistance. By mid-November, however, congressional action to rescue the Detroit Three was suddenly very much in doubt. On November 18 and 19 the industry pro-

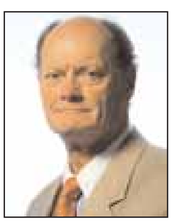
continued on page 3

Sidebar

Contents:

"Disaster Pack"

Ronald C. Smith

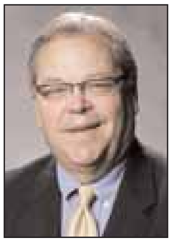


Ronald C. Smith

Those of us who were fortunate enough to live through the relatively carefree years of the 50s remember that the real downer was the threat of nuclear war with the Soviet Union. The air raid drills in school (getting under your desk - as if that would do any good) and the self-contained bomb shelters (you just had to have one buried in your backyard) with their radiation proof ventilation systems. You were supposed to stay in those things for two weeks and if you didn't strangle the other members of your family, you could get out, walk around and presumably be okay. What nobody thought was that there wouldn't be any living vegetation for miles and that the radioactivity of everything around you would be fatal. But, in any event, they were the rage. For the well-appointed bomb shelter (or your basement for those of us that couldn't afford bomb shelters), you were supposed to have a checklist with provisions, etc., which was commonly called a "disaster pack." Given today's rather radioactive times, the good folks at NADC thought we might develop a dealership advice "disaster pack" in case of one or more catastrophic events. This article could not, of course, be exhaustive, but is simply a compilation of bullet points that, in my opinion and experience, dealer

continued on page 5

President's Message
Helping Your Clients Survive Tough Times
Practical Tips to Help Clients Develop Sound Payables Policies



Michael Charapp

Dealers' biggest losses are seldom at the hands of thugs with masks and guns. Often, the most dangerous thugs use computers and postage stamps.

When times are tough, crooks intensify their efforts to scam dealers. But it is not just the crooks that dealers have to watch out for. Often, the culprits are legitimate suppliers who seek to be paid amounts to which they are not entitled.

While a sound payables policy is always important for dealers, in tough times it is critical to survival. What policies and procedures should a dealer implement to make sure it is paying only legitimate payables? How do you help your clients get what they pay for?

Every dealer should have in place a policy for entering contracts that result in recurring payables, making sure that non-recurring payables are legitimate, and watching carefully the largest demands for payment most dealers see in tough times–repurchase demands from finance sources.

A Contract and Payable Policy

A dealer's general office handles two kinds of payables–recurring and non-recurring. Each type requires policies to protect the dealership.

Recurring Charges

Recurring payables are generally the result of agreements that dealers enter for continuing services. Whether for uniforms, supplies of oil and transmission fluid, or dozens of other products and services used by the dealership, the agreements dealers enter should be carefully reviewed. A dealer should have a contracting policy for suppliers.

- All requests to enter contracts with suppliers should be directed to senior management;
- Individual department managers and staff should not have the authority to sign contracts;
- Only senior managers should sign contracts;
- Senior management should do a cost/benefit analysis for every contract;
- Senior managers should understand the terms and conditions of the contracts that they sign;
- There must be standards to prevent the company from entering long term and automatically renewable contracts unless absolutely necessary;
- No monthly payables should be set up without senior management approval based on a signed agreement;
- The contracting policy should be regularly communicated to department heads and other staff; and
- When a dealer knows that a supplier has approached dealer personnel to form a relationship, the dealer should send a letter to the supplier alerting it that only designated senior managers may enter agreements.

Getting What the Agreement Promises

If a dealer has a sound policy in place, it is likely to enter contracts that benefit the company without unduly burdening it. However, the dealer then must regularly ask if the company is getting its money's worth. When the dealer signs agreements that provide for fixed regular monthly payments, it's generally easy to check that the supplier is providing what was promised. However, where a contract's monthly payment is based on the units of product or service delivered, then the dealer must be much more careful. How does it know whether it is getting that for which it is invoiced, for example, by a lead generator that charges by the lead or a company that supplies uniforms, rags and walk off mats?

The general office should require dealership employees in charge of performance under the agreements to review bills monthly to be sure that the dealership is getting what it is entitled to. The approval that is sent to the office should include not only a sign off by the person who reviewed the matter, but documentation showing that the review took place.

Non-Recurring Charges

An invoice arrives at a dealership. Does the office simply pay it? Does your office route it to a manager who really doesn't review it but just signs off to approve the payment? Non-recurring payments may be difficult to track, but there are things that should be done.

- A dealer should use a purchase order system. No non-recurring payments should be authorized without a purchase order. By this method, the office will know that someone made the decision to buy the product or service.
- All bills must be reviewed by a manager. The manager may have decided to purchase a product and issued a purchase order. However, did the dealership get what was ordered? Is the amount charged correct? The manager should check to be sure.
- The policy should require proof of receipt with manager approval. The office must require packing slips, bills of lading, advertising cuts, etc. as support for non-recurring payables.

General Precautions

Regardless of whether a dealership is dealing with recurring or non-recurring payables, there are precautions that should be in place.

continued on page 12

Impact on Dealers ...
from page 1

vided some high drama in pleading the bailout case before congressional committees. Arriving separately from Detroit in private corporate jets (a fact which became a subject of much ridicule), GM's Rick Wagoner, Ford's Alan Mulally, Chrysler's Robert Nardelli and the UAW's Ron Gettelfinger forecast that, without federal relief, this vital American industry would fail, and the greater economy would suffer even more. Together, they want $25 billion in bridge loans, in addition to a previously approved $25 billion for R&D linked to improved environmentally friendly standards. In a public appeal, Wagoner editorialized, "[t]he future of the domestic auto business is critical to the health of the U.S. economy." [1]

The legislators were doubtful. Some noted that such a bailout "rescue" (if it were to happen) would hardly be a panacea and might just delay the inevitable, with the taxpayer expense going to waste. Neither the auto executives nor the UAW confessed to past errors, nor were they specific in laying out their turnaround strategies. Treasury Secretary Hank Paulson (himself under fire for his stewardship of the financial crisis) expressed reservations about government intervention for Detroit. By no means is it certain that fresh government monies, whether in loans, guaranties, equity acquisition or other forms, would trigger long term solutions to problems that were decades in the making and continue even now. With the TARP controversy in mind, Democrats and Republicans alike reacted with skepticism and even hostility to bailout requests from the auto industry.

On November 20, just when it appeared that bailout possibilities had evaporated, a group of senators from the most impacted industrial states proposed a compromise lifeline for the Detroit Three. The monies would come from the already-approved $25 billion that was specifically meant for the development of energy efficient cars. By the end of the day there was an "agreement" of sorts: The Congress would put off a vote on a Detroit Three bailout until December. The bottom line seems to be that the Detroit Three need to present Congress with a realistic turnaround plan by December 2 in order to have a chance to secure their bailout.

Thus, as this article goes to press, the fates of the Detroit Three are still fraught with uncertainty. If the belated proposed compromise fails in early December, there would be little hope for government assistance before 2009. This much, however, is certain. The status quo will not continue much longer, and two alternatives seem realistic for two of the Detroit Three (GM and Chrysler)—bailout or bankruptcy.

Unfortunately, with or without bailout monies, the stress on the Detroit Three brands, their dealers and suppliers will continue. Without a turnaround in their strategies and core businesses, without cost reductions (especially by accelerating the scheduled 2010 reductions in UAW worker and retiree benefits), and without improvements in consumers' marketplace perceptions about their brands, a bailout would almost certainly merely delay bankruptcy, not prevent it. Nor would a bankruptcy reorganization necessarily cause GM, Chrysler and/or Ford to emerge as healthy, albeit smaller, carmakers as some observers contend.[2] The Detroit Three have been mired for years in their own sub-industry recession, and a deep recession in the broader economy in 2009 would impact them disproportionately.

Some argue that a bailout for the American companies will have unintended adverse reactions in the world marketplace. Economic Professor Matthew J. Slaughter warns that, "a federal bailout of the automotive industry could cost Americans jobs as well as foreign markets to trade in."[3]

The affected Detroit Three franchised dealers have little say or control in all this. Yet it is vital for them to (1) realistically evaluate their positions, (2) take prudent steps to soften their losses and minimize further exposure, and (3) gain an understanding of what the possible road to franchisor bankruptcy means to them in the short and long terms.

The possibility of a GM-Chrysler merger has apparently evaporated. That would be good news, because such an alliance, if consummated between these struggling franchisors, would have had dire consequences and, predictably, would have cured few, if any, existing operational and product infirmities. In fact, as GM's Wagoner and Chrysler's Nardelli admitted to Congress, neither company has enough cash to operate more than a month or two. For now, the merger scenario is unlikely for any of the Detroit Three, but that prospect could reawaken in 2009.

Even if a federal bailout is authorized, all the important underlying risks affecting dealers will remain. It will take bold Detroit Three decision-making and solid (*i.e.*, new) leadership, in addition to a financial rescue, for each of these manufacturers to outlast any new cash and guaranties, and still survive. Even then, these franchisors do not seem terribly concerned about the pressures on their dealers (e.g., GM's recent, unilateral and sudden decision to delay for two weeks $300 million in incentive payments due to dealers).

Continued on Page 6

[1] Rick Wagoner, "Why GM Deserves Support," *Wall Street Journal*, Nov. 19, 2008.

[2] Mitt Romney, "Let Detroit Go Bankrupt," *New York Times*, Nov. 19, 2008.

[3] Matthew J. Slaughter, "An Auto Bailout Would Be Terrible For Free Trade," *Wall Street Journal*, Nov. 20, 2008.

Executive Director's Message

Jack Tracey

This is the final 2008 issue of The Defender. The timely articles focus on economic issues affecting our members and their clients. The economy will continue to be a major news topic in 2009 in the trade media and in this newsletter.

Keeping up with the twists and turns that affect the auto industry has never been more important. Plan now to attend the 5th Annual NADC Member Conference, April 1-3, 2009 at the Four Seasons Resort in Dallas Las Colinas. Both the program content and the networking opportunities will provide vital information.

The conference committee is working now to put together a program of 12 to 13 hours of relevant topics and speakers. As usual, CLE will be available.

Topics being considered include:

- Compliance
- Franchise & Bankruptcy
- Personnel
- Master Dealer Agreements/ Supplier Contracts
- Uniform Commercial Code
- NADA update

If you have suggestions about speakers or topics, please contact me. The next committee meeting is in mid-December.

Program and registration information will be posted at www.dealercounsel.com early in 2009.

Contact Jack Tracey, CAE, NADC Executive Director, at: jtracey@dealercounsel.com

---

Save the dates —

April 1 – 3, 2009

5th Annual NADC Member Conference

Four Seasons Resort and Club

Dallas at Las Colinas

The NADC website www.dealercounsel.com is an importaqnt source of information for members:

- *Member Directory, searchable by name, firm, state, area of interest and dealership type*
- *List Archive, a collection of messages shared by those members who sign up for the List Serve*
- *Events, conference information and downloadable materials from conferences and workshops*
- *Banners that link to associate member websites for information on products and services*
- *Forum, an online discussion of timely issues*
- *Those wishing to apply for membership will find an online application*

www.dealercounsel.com

Disaster Pack... from page 1

lawyers should consider in advising their clients.

1. *Employment.* On the employment front, a major issue would seem to be the applicability of the Federal Worker Adjustment and Re-Training Notice Act (WARN). The WARN Act applies to businesses with over 100 employees and requires a 60-day notice if an employer is going to layoff over half the workforce at a particular location. The 100 employee mark is subject to some calculation adjustments, i.e., no part-time employees, etc. Most dealerships, if they have not already done so, are in the process of trimming their work staffs at this point. You might note that a WARN Act class action is in the works against the Bill Heard dealerships. I have been stressing that when making cutbacks, employers should try to get below the 100 employee limit if possible (although there is a 90-day rolling look back and look forward as to the number of employees subject to layoffs). Care should be taken to check appropriate state WARN Acts. If the state act gives greater protection than the federal, the state act will be applicable. Otherwise the federal act supercedes state law. Also, note that employees of a dealership in bankruptcy are given priority claim status for WARN Act violations. There are a couple of bankruptcy issues if the dealership, not the manufacturer, takes bankruptcy.

A. *Layoffs versus layoffs without recall versus termination*. In most states, a layoff has a connotation that an employer will call people back. This course of action could be fraught with discrimination claims, depending upon minority mix, gender, age, etc. I counsel that the safest method of layoff is performance based according to statistics over the past year. If done correctly, those are generally safe from successful challenge. I spoke to a dealer recently who wanted to lay off four sales people. He wanted to retain a white employee over age 55 because he was sure the white employee would sue. He was willing to lay off an African American employee who was a bit more productive but was a gambler, had bad work habits, etc. (the usual story about keeping someone they never should have hired in the first place). After going through performance standards, he is going to layoff the over-55 individual and take his chance and start properly disciplining the minority. It's best to run through the detail of layoffs with dealers. Usually you can straighten them out with regard to appropriate standards, protocol, etc. I generally counsel dealers that they should simply terminate the employment because of lack of work; then there is no question concerning any recall rights. Occasionally a dealer will make a choice to use the term "layoff" and I counsel them to use terminology

continued on page 8

Impact on Dealers ... from page 3

Some specific editorial thoughts on what they should do appear at the end of this article.

Today's crucial facts are clear and grim. General Motors, Chrysler and Ford are all in acute financial distress and are prime candidates now to take the leap into bankruptcy. As recently as September 2008, all three defiantly and very publicly boasted that bankruptcy was not an option and would not happen. Those statements were highly questionable then, and since then, the Detroit Three's tumbling economic fortunes have fallen steeply. GM's Wagoner has warned repeatedly that, without a government rescue, the company could crash before President-elect Obama takes the oath of office on January 20, 2009. In the current political environment, both GM and Chrysler could be forced to file for bankruptcy very soon, while Ford may have the staying power to await the greater likelihood of a bailout under a new President and a new Congress with a larger majority of Democrats. *Automotive News* ominously predicts that, "Chapter 11 [for GM] means a collapse of sales and a spiral into Chapter 7 liquidation."[4] Incredibly, Wagoner testified that GM has not done any bankruptcy planning, and if faced with that choice, it would have to consider liquidation, because credit would be unavailable in bankruptcy.[5]

The American auto industry imbroglio is not good news for America. The fall of any or all of the three Michigan-based domestic automakers would directly impact hundreds of thousands of people who work for those companies, as well as dealerships and their employees, automotive suppliers, investors and consumers. It would also be a broad blow to the general economy, and in a perfect storm of *three* Detroit Three bankruptcies, the devastation could be more profound and enduring than all the tectonic shocks in preceding months combined (the sub-prime meltdown, home foreclosures, bank and financial company failures, etc.). Many more bankruptcies, including dealers, lenders and suppliers, would inevitably follow. Unemployment could spike to double digits, and a recession could endure beyond 2009. Thus, the motivations driving advocates of government intervention are profound and rational.

Politics will play a heavy role in furthering any bailout scenario. A bankruptcy could threaten the viability of the UAW and the jobs of its members, as well as the very existence of dealers and suppliers. Yet some, including many (if not most) congressional Republicans, agree with Mitt Romney. They argue that bankruptcy for these struggling companies would serve positive purposes (e.g., discharging debt, ending expensive obligations, and downsizing) and allow healthy and revitalized entities to emerge. They contend that, unlike a bailout, a bankruptcy would have a thorough cleansing effect. It would, for example, be "easier" and much cheaper to reduce the dealer body through bankruptcy.[6] There are still about 7,000 GM dealers.

Moreover, some in Congress have expressed angst at what they perceive as manipulation by Treasury Secretary Hank Paulson in gaining a $700 billion commitment to address the financial/banking crises. A few accused Paulson of misleading them. Thus, the Detroit Three are confronting a wall of skepticism in Washington about the concept of taxpayer-funded rescues.

Bailout critics, however, tend to minimize the likelihood of extraordinary long-term injury to the economy and millions of people. Bankruptcy frequently ends in the closing of businesses and liquidation, not reorganization. We are in a recession that would probably be exacerbated and lengthened by Detroit Three bankruptcies. In bankruptcy, GM alone would strike a jarring blow to the overall economy.

Nevertheless, if there is a bailout, the diseases that brought these companies to their current peril will not necessarily be cured. The present weaknesses of the Detroit Three grew and solidified over decades. The UAW's bargaining power lifted their members' benefits (e.g., health plans, retirement, etc.) so high that the Detroit Three's products pricing give the imports (including those made in U.S. plants) a wide advantage. (*Wages* are comparable, however.) Pursuant to agreements with the UAW, this "legacy" disparity is scheduled to be minimized by 2010, but the crisis is *now*. Moreover, American consumer perceptions of product quality and reliability now favor imports. It took many years for their collective and individual market shares to erode, and for consumer habits and preferences to shift. The combined sales of the Detroit Three now account for less than half of American new car purchases, and their downward market share spiral continues.

A bailout—without accompanying product, workforce and operational plans that radically and immediately overhaul the lethargic and unimaginative strategies of the past—will simply delay, and probably worsen, the consequences of embedded weaknesses. Everyone should hope that, in any bailout scenario, new, General Petraeus-like boldness and creativity will combine with possible government backing to cure the failings of the past and pres-

Continued on Page 7

[4] "The Cost of GM's Death," *Automotive News*, Nov. 14, 2008.

[5] *New York Times*, Nov. 20, 2008 at p. 4.

[6] *See* Michael E. Levine, "Why Bankruptcy is the Best Option for GM," *Wall Street Journal*, Nov. 17, 2008.

Impact on Dealers ...
from page 6

ent. (The ludicrous short-lived courtship between GM and Chrysler is an example of the kind of bewildering executive thinking that cannot continue.)

The Detroit Three's dealers have no control over, and little or no influence with, their franchisors on these overarching issues. Therefore, from the perspective of franchised dealers contemplating the possible insolvency of their franchisors, the time is now to consider their own options and strategies.

Given these unsettling facts and circumstances, let us look at the issues, and the strategies for dealer franchisees of Detroit Three brands.

First, consider the parameters of a federal bailout, and how it could affect the future of the Detroit Three:

• Current information suggests that, together, the Detroit Three companies are asking that the government commit at least $25 billion to the industry, not counting the $25 billion already committed for "greening" R&D. Like AIG, however, the currently discussed levels would probably have to increase, because, believe it or not, the scope of the problem greatly exceeds $25 billion or even $50 billion. As of now, however, the bailout options may be limited to a developing compromise, whereby the $25 billion originally approved for R&D could be used instead for the current emergency. By January 20, 2009, it could be too late to keep GM and Chrysler from bankruptcy filings.

• Federal bailout monies could be committed in the form of credit guaranties, loans, government equity acquisitions (probably preferred stock), or combinations of these.

• There will be conditions on any U.S. funding. The Detroit Three need to demonstrate to Congress a specific plan conceived to cure the current market disaster.

• An industry bailout would likely involve, not only the manufacturers, but also their affiliates and subsidiaries (including lending companies).

• Beleaguered suppliers also want help. If the Detroit Three were to file, many dependent companies would surely follow.

• *Solving Core Problems.* So far, except for the obvious observation that the Detroit Three want to survive until 2010 to outlast their competitive disadvantages of employee "legacy" benefits, no specific turnaround plans are evident. How will they upgrade core business and change consumer attitudes? If this does not or cannot happen, any bailout will fail. (See editorial comments at the end of this article.)

Second, here are some of the bankruptcy basics for all affected dealers to ponder, in the event that a Detroit Three automaker files:

• Filing is relatively easy and is immediately effective. Any such filing would likely be under Chapter 11 (Reorganization) of the Bankruptcy Code, meaning that the debtor continues to operate as a "debtor-in-possession," with the right to carry out most ordinary course of business activities. (Note, however, that GM CEO Rick Wagoner implied that, if forced to file, GM might have to liquidate its assets under Chapter 7, because he thinks credit to operate would not be available.) During a Chapter 11 process, the debtor will propose a plan of reorganization through which its pre-petition obligations will be resolved and have that plan approved by the Court. A franchisor could file a "prepackaged bankruptcy" in which it would seek from the outset the Court's approval in implementing a comprehensive plan. This would entail much cooperation with creditors and, probably, the UAW. There may not be sufficient time for that.

• Under the Court's aegis, the Office of the United States Trustee provides oversight of various proceedings and would likely form a number of committees to protect the rights of various categories of creditors. In this web of innumerable participants, there would surely be committees composed of dealers in addition to myriad claimants.

• *The Automatic Stay* (11 U.S.C. § 362(a)). As soon as bankruptcy is filed, there is an instantaneous and immediately effective automatic stay of virtually all actions against the debtor and its property. Certain enumerated acts and proceedings are exempt from the stay, and the Court may modify the stay for cause.

• Doing business with a reorganizing auto franchisor in bankruptcy will not be easy. The public will likely become even more turned off, and business for any bankrupt brand will be even slower. For dealers representing a bankrupt automaker's brands, there will be many confusing and frustrating issues, involving vehicle allocations, product availability, and warranty work/reimbursement. No doubt, franchised dealers will be aligned in their own committees and will play a role in the proceedings.

• *Cash Collateral*. The debtor's pre-petition secured lenders will have the ability to object to the debtor's continued use of cash collateral. Any continued use of such cash shall require either lender consent or court approval. The debtor will likely have its post-bankruptcy budgets scrutinized by the court and lenders. Any new borrowing after a bankruptcy filing would require court approval. Such debtor-in-possession loans are typically

Continued on Page 10

Disaster Pack... from page 5

such as “layoff - lack of work with no right or possibility of recall.” Employees are going to have unemployment compensation rights anyway, so the more you try to sugarcoat a bad situation, the worse off you can be. If you have a good, solid employee handbook in place, follow the provisions of the handbook.

B. *Expect your unemployment compensation rate to increase*.

2. *Lending relationships*. If your client has a current floorplan, tell them to keep it. Floorplan shopping is almost impossible at this point. Have your clients review their floorplan agreements, as well as mortgage loan documents. Many lenders are trying to strong-arm their way out of lending relationships that they have had with dealerships that are still profitable and have never had any credit problems or other covenant issues. Make sure that loan ratios and other loan covenants have been met and can be maintained. Don’t let a floorplan lender try to increase the cost of capital or increase their security position (if same is not allowed in the loan documents). Don’t let them get away with the argument that they are “insecure.” That argument is for Linus of Charlie Brown fame. Counsel your clients about the importance of not being out of trust. There is virtually no defense to an out-of-trust situation and there is substantial bankruptcy case law holding that debt to be nondischargeable. Also, beware of lenders that are trying to reduce the pay-off time in midstream. Push back against any attempt of this sort or against unreasonable curtailment demands.

3. *Cash Management Account.* Take steps to guard your client’s Cash Management Account. Your client’s Cash Management Account could be an unsecured debt in the event of a manufacturer bankruptcy if it is maintained by a factory division or subsidiary. I have been advising clients to get money out of Cash Management Accounts and if they wish, pay down used car floorplans. Depending upon the amount of water they have in their used car inventory, this course of action could be a much safer investment. The dealer’s Cash Management Account terms would need to be checked, as that might affect capital requirements under various loan documents. In any event, I think it’s worthwhile to retrieve that money, if possible. The future of the domestic three auto companies will probably be determined by the end of the first quarter next year. Certainly within one year we will know what will happen with those manufacturers.

4. *Factory Accounts.* Advise your clients to keep their factory accounts as lean as possible. Holdback would probably be deemed a fiduciary payment and would be given some priority in the bankruptcy. Positive parts accounts, reserves, warranty claims, rebates or other incentive pay-

continued on page 9

Disaster Pack... from page 8

ments would only qualify for general creditor status, hence could be subject to a "cram down" in a Chapter 11. Most people understand that the difference between a Chapter 11 bankruptcy and a Chapter 7 bankruptcy is that Chapter 7 is a liquidating bankruptcy. The company will, in fact, cease operations and liquidate. A Chapter 11 bankruptcy is different in that the company will formulate a plan subject to approval of various creditor committees and the court and seek to implement that plan to emerge from bankruptcy, theoretically capable of remaining viable. In a Chapter 11, there must be sufficient cash flow to meet current obligations. Past obligations and contracts are subject to being modified, voided or crammed down in terms of dollar amount. As to manufacturers' vehicle warranties, certainly in a Chapter 11 the manufacturer will continue to honor warranties as they want a market for their vehicles after exit from bankruptcy. Dealers, however, would not be allowed to offset their obligations against factory obligations. Amounts that dealers owe to the factories are part of the bankruptcy estate and subject to collection. Amounts owed to dealers by factories almost always are unsecured; therefore they would be general creditors and subject to a cram down or extended pay. This is why I advise clients to keep those factory accounts as lean as possible.

Undoubtedly in a Chapter 11, manufacturers would continue to make parts available. Obligations to parts suppliers would be current accounts and while the past due balance would be subject to cram down, current obligations after the date of the bankruptcy would need to be paid. Again, one would expect a manufacturer that is seeking to exit from bankruptcy and continue business will make parts available. If any manufacturer is unfortunate enough to declare Chapter 7 or show during the operation of the Chapter 11 bankruptcy that they can not sustain their business and be converted to a Chapter 7, then everything will cease and at that point. This result would be catastrophic for those having anything to do with that manufacturer.

5. *Franchise Alignment.* In the event any of the three domestics merge or file bankruptcy, in my opinion those dealers that are properly aligned with product lines will have a higher chance of survival. There is little doubt in the minds of any experts that if one or more factories file, they will not only seek to renegotiate labor agreements and rid themselves of inordinate legacy costs and union pension funding obligations, but they will also try to trim their dealer networks. This does not bode well for single-line dealerships, particularly in mid-to-smaller sized communities. For example, Chrysler dealers who have Chrysler, Dodge and Jeep are going to be in a much better position to survive than any stand-alones. The same is true for dealers with regard to Buick, Pontiac, GMC alignment or Chevrolet, Cadillac, Saab (or some combination thereof) who will be in a much better position than stand-alone Pontiacs or GMCs (I don't believe there are many stand-alone Buicks left). Undoubtedly, Ford will, and is currently in certain markets seeking to, combine Ford and Lincoln Mercury. The bet is that Mercury will eventually go away which would seem to make sense. Try to look around your client's market area and determine what consolidations might be helpful to your client and act as an intermediary on behalf of your client in trying to facilitate those transactions. It would behoove dealers, if possible, to get into a proper alignment prior to the expiration of any term agreements. For example, all of General Motors' agreements expire in October of 2010. If I were advising a GM dealer, I would try to get that dealer aligned by that time or I would start to prepare a challenge to non-renewal under state franchise law if a decision was made not to renew a particular dealer.

Publicly, all of the domestics say that they are not putting money into transactions to consolidate dealerships. There will, however, continue to be some exceptions to that general rule. It is clear, however, that the days of putting money into transactions of marginal value are over. Any manufacturer participation in transactions are going to be limited to major market areas where it is clear there is something to be economically gained for the manufacturer. As one GM official told me, "We're going to have to let the market place pare the dealer body."

continued on page 13

Impact on Dealers ...
from page 7

costly and difficult to obtain.

• *A reorganization plan*, if one is developed, would likely include the debtor's decision to cancel selected dealer agreements. We already know that the American brands want many more dealer point closures. Under U.S.C. § 365, the Court is empowered to reject the continuation of "executory" contracts (*i.e.*, those that have continuing mutual obligations). This power in the Court stands as the biggest bankruptcy threat to dealers because this kind of termination of dealer franchises may not compensate dealers for goodwill, if there is any.

• The Court would also likely alter the rights and benefits of the many thousands of unionized employees.

• Ultimately, reorganization contemplates an emergence from bankruptcy and a resumption to "normal" operations, presumably with many of the financial burdens lifted from the company by discharge. While many Chapter 11 cases do not result in a successful reorganization, some large debtors do succeed, as illustrated by several airlines.

• Alternatively, as GM's Wagoner has threatened, there could be a *liquidation*, either immediately in a Chapter 7 filing, or at some point which would allow for disposition of the assets and cessation of business. Some agree with Wagoner's dire prediction, including the editorial board of *Automotive News*, that liquidation would inevitably follow a GM (and, probably, Ford and Chrysler) Chapter 11 filing.

What Should a Dealer *Do* and *Not Do* Pre-bankruptcy?

A dealer representing any of the Detroit Three brands has a franchisor in financial distress, with an uncertain future. If there is a federal bailout, the underlying problems may remain. Loans, guaranties or equity investments by the government could only put off the bankruptcy option for another day. For the time being, here are some thoughts for GM, Chrysler and Ford dealers to consider:

• *Do* recognize the impact of a recession on consumer buying trends. New unit sales will stay down until the inevitable upturn, and other profit centers (used cars, service) will be hit, too.

• *Do* stay informed. You cannot make your own strategic plan without knowledge of your franchisor's financial wherewithal and intentions. GM dealers should be particularly attentive, because a bankruptcy filing could happen imminently.

• *Do* make an unbiased assessment of your standing with your franchisor. Have you been targeted for termination? Is your franchisor a bankruptcy candidate? Is your franchisor a merger/acquisition candidate?

• *Do* consider with your financial/legal advisors whether keeping funds in a Detroit Three-related CMA (e.g., Chrysler Financial) is in your best interest. (The supposed comfort that a dealer will have the ability in a lender bankruptcy to set off CMA deposits against floor plan obligations is *not* at all certain.)[7]

• If your floor plan is shaky, *do* consider looking for a floor planner that is not related to, or dependent on, your financially stressed franchisor.

• *Do* try to have a floor plan with an FDIC-insured bank (where you will also keep your cash). Unlike the situation with automaker finance companies, offsets with cash deposits against floor plan balances would likely be allowed in the event of an FDIC takeover of a bank.

• *Do not* go out of trust. (Author's comment: In nearly thirty years, I have never seen an SOT situation that ultimately helped a dealer.) If you are in financial extremis, go to your lender and try to negotiate a workout. If you are out of trust, *do not* dig deeper. Bring your lender into the picture and try to negotiate a payment plan.

• *Do not* sign any significant/expensive new, unwanted and unnecessary commitments with your franchisor (e.g., renovations, new facility or relocation).

• *Do not* rely on factory representations or promises that are only verbal. And, remember, even written promises will not necessarily be enforced in bankruptcy.

• *Do* manage your inventory so as to avoid stocking vehicles beyond a 60-day supply. And *do not* overstock parts.

During Franchisor Bankruptcy

There is no meaningful experience or precedent for a guide on the size, depth and complexity of the bankruptcy of any of the Detroit Three. Neither the 1999 filing by Daewoo Motor Company nor the 1989 bankruptcy of Global Motors (Yugo's importer) offers much by way of comparison. The 1980 rescue of Chrysler by a federal guaranty also does not offer a workable analogy; Lee Iacocca had an inspired and substantive plan for the core business, along with the ability to deploy it and follow through. The bankruptcy of GM, Chrysler and/or Ford would spawn almost incalculable entanglements, complexities and repercussions. If GM and Chrysler file before the end of 2008, there is at least a possibility that Ford could become healthier, at the expense of its American rivals.

Without doubt, any remaining public acceptance of a bankrupt automaker's

Continued on Page 11

[7] GMAC announced on November 20, 2008 that it was seeking to become a bank holding company, to make it eligible to apply for relief (bailout monies) from the $700 billion Troubled Asset Relief Program (TARP).

Impact on Dealers ...
from page 10

products would instantly tumble. Consumers would worry about their warranties, lemon law rights and product reliability. The public will fly on a bankrupt airline, but will not pay $20,000 or $40,000 for a new car built by a bankrupt brand. A summer 2008 survey of 6,000 consumers by CNW Marketing revealed that 80% would defect if GM or Ford went into bankruptcy.[8] If consumers abandon a bankrupt carmaker's product to that extent, it would be a mere matter of months before liquidation, and the end of that entity. Dealers and suppliers, reliant on the bankrupt debtor, would themselves become bankruptcy candidates, if they were not already.

Dealer Participation in Bankruptcy Proceedings. If a dealer's franchisor files for bankruptcy, the dealer will need to file a claim to try to protect what may be owed (e.g., holdback). More importantly, dealers—mostly in groups with aligned issues—will want to have a say in both ongoing operations in Chapter 11 and in any plan to emerge from bankruptcy.

Workforce. Dealers will have more than a little difficulty holding their best employees, especially if they have no prospect of doing work for another brand within the dealer's overall operations. Difficult decisions to lay off people and reduce benefits will be necessary.

Day-to-Day Business. There will be fewer new-unit sales, less service work, and a reduction in used car sales. Consumers will not want the automotive products of a bankrupt carmaker.

Debt Management. We have already witnessed the abandonment by some lenders of their auto dealer portfolios. As difficult as debt management may be now, it will be even more challenging for every dealer whose franchisor is in bankruptcy.

Selling/Buying a Dealership When the Franchisor Is Bankrupt. As of at least a year ago, dealers were acknowledging that franchises of American brands had little or no goodwill. (A prominent example is AutoNation, which values its Detroit Three franchises at zero.) Dealer buy-sells involving bankrupt brands will be a rarity.

Planning for the worst. If your franchisor is in bankruptcy, your plans should include a possible winding-up, in anticipation of a possible liquidation and closing of the factory.

Author's Viewpoint: How the Detroit Three Might Pull Out of the Nosedive

Writing for the Wall Street Journal in an Op-Ed, Paul Ingrassia concluded, "pouring taxpayer billions into the same old dysfunctional morass isn't the answer."[9] The statement is true. At the same time, Detroit Three turnarounds are possible, but Mr. Ingrassia and many others are absolutely right that "business as usual" would ensure failure. With the prospect that the Treasury of the United States, and thus the United States taxpayer, may be positioned to pony up billions to revive American auto manufacturers, the rescue must come with bold and creative conditions and requirements. Mr. Ingrassia argues that, "[i]f public dollars are the only way to keep General Motors afloat, as the company contends, a complete restructuring under a government overseer or oversight board has to be the price."

In my view, such direct governmental operational control is a recipe for failure. Rather, the multifaceted solutions, although required as conditions for a bailout, must be entrepreneurial. It is instructive that the most successful imports, such as Honda and Toyota, have thrived at the expense of the Detroit Three; their "secrets" for doing so are hardly secrets at all. In a sense, a bailout must mimic some of the advantages of bankruptcy, without all the harmful fallout. In short, a post-bailout automaker must have a solid chance of being leaner and better than before. While the devil will be in the details, here are some of the broad parameters that could resuscitate Detroit, either in a bankruptcy scenario or through a bailout:

- Start at the top. From the CEO on down in the executive suites, salaries would be set at a reasonable and competitive level, but no bonuses in any form would be paid, except upon measurable success, based upon specific criteria. No exceptions. This goal can be accomplished in a bankruptcy plan, or through bailout conditions.
- Certain consolidations would be mandatory in either a bankruptcy reorganization plan or a bailout. For example, with Ford, non-performing models would be dumped, and Mercury, as a separate franchise, would be eliminated. At GM, either Buick or Pontiac would be eliminated. Model redundancies would also be eliminated.
- In the government-subsidized alternative, franchisors would quickly move to streamline their dealer bodies, with reasonable compensation to motivate voluntary buyouts of dealer points to be closed. In bankruptcy, the Court could cancel dealer and supplier agreements.
- Targeted layoffs and plant closings would continue, but each such action must be linked directly to the post-bailout/post-bankruptcy strategy of a stronger competitor, against the import juggernaut.
- The benefits packages for UAW workers would be equalized with employees at the plants operated by the import brands in the United States. The UAW's concessions should be accelerated, so that they are effective immediately, rather than in 2010. Cost parity with the imports is indispensable to any comeback of the Detroit Three.
- Research and development would move toward combining well-established consumer preferences, along with environmental and performance improvements, and cost reductions.
- In marketing blitzes, these franchisors would accurately inform American consumers of the exceptional improvements

Continued on Page 16

[8] *New York Times*, Nov. 13, 2008, p. A26.

[9] Paul Ingrassia, "Detroit Auto Makers Need More Than a Bailout," *Wall Street Journal*, Nov. 10, 2008.

President ... from page 2

• The dealer should know its vendors. Does the dealership have full contact information for a new vendor, or is it just sending payments to a P.O. box? When setting up payments for new vendors, the dealership should take some simple precautions to be sure that the vendors are listed in the phone book, or the dealer should get references from others with whom the suppliers have done business, or it should run an industry report about the supplier.

• Even when a dealership has policies in place, sometimes even the reviewers must be reviewed. A dealer should have a practice of regularly reviewing the performance of general office staff dealing with payables to be sure they are complying with dealer policies. Employees respect what the dealer inspects.

Retail Finance Source Policy

Some of the most expensive demands for payment that dealers receive come from retail finance sources. The dealer delivers a vehicle on a retail installment sale contract. It assigns that contract to a finance source. Often, the finance source demands reimbursement of a part of the finance spread that is advanced to the dealer as a result of the customer paying the loan early or going into default. The dealer cannot avoid the obligations. They happen.

However, the most serious losses are generally the result of something the dealer can prevent – alleged breaches of the dealer's representations and warranties that accompany every retail installment sale contract that is assigned. Then the finance source may demand that the dealer repurchase the contract. If the dealer can find the car the losses are generally tallied in the thousands. If the dealer cannot find the car, the losses are usually tallied in the tens of thousands. So how does a dealer avoid these liabilities?

Negotiate the Master Dealer Agreement

The representations and warranties accompanying retail installment sale contracts are contained in the master dealer agreement. Dealers should negotiate the terms of the agreements to be sure that they can comply with them.

The details of the lender's rights and remedies in the master dealer agreement are critical to a dealer if a customer defaults and the creditor wants the dealer to buy the RISC back. Dealers must understand what they represent and warrant. They must be sure that they can comply. Preferably, they should have their counsel review these agreements because of the substantial losses that can be generated when there is an alleged breach of a representation and warranty.

Some things to watch out for:

1. *Warranty of Customer Information.* Some agreements require dealers to warrant not only what they know and represent to the lender about the customer, but also that everything the customer has represented is true. While it is reasonable for the lender to require the dealer to represent that it has told the lender what it knows, it is overreaching for the lender to require a dealer to guarantee the truth of all representations made by the consumer. Any such warranty or representation should contain a "knowledge" of the dealer qualifier.

2. *Insurance.* Does the agreement state the dealer to verify insurance? Or does the agreement require the dealer to guarantee that fully paid insurance covers the vehicle for an extended duration? A lender requirement that the dealer verify insurance is appropriate. A lender requirement that the dealer guarantee the existence of insurance for an extended period is overreaching.

3. *Vehicle Service.* Does the agreement provide that the dealer will provide manufacturer-required maintenance and service? Clearly, the dealer has no control over whether the buyer will return to it for service, and a guarantee that the vehicle will be serviced according to manufacturer requirements often cannot be met.

4. *Delivery Prior to Assignment.* Does the agreement include a representation by the dealer that the vehicle was not delivered to the customer prior to assignment of the contract to the lender? In spot delivery situations, vehicles are always delivered to the customer prior to assignment of the contract to the lender. This is an obsolete representation that should be deleted.

5. *Time to perfect a security lien.* What period is given to the dealer to perfect a security lien? U. S. bankruptcy law was changed a few years ago to extend the period for perfection from twenty to thirty days. However, some agreements still require that liens be perfected within twenty days.

6. *Sale of other products.* Does the agreement limit the sale of other products such as extended service agreements? If so, is there a process for approval of the products the dealer sells? Or does the lender reserve to itself the right to determine what products may be sold? Quite clearly, the dealer should have an opportunity to sell its products in connection with a RISC assigned to a lender.

7. *Scope of indemnification.* For what does the dealer indemnify the lender? The lender is entitled to ask for indemnification for breaches of the indirect finance agreement or for improper actions by the dealer. However, the creditor should not require a dealer to indemnify a creditor against

Continued on Page 14

Disaster Pack... from page 9

I am actively looking at some potential transactions on behalf of clients. The usual problem, however, is the real estate that's involved. While there are some alternative uses for dealership facilities (ambulance services, construction companies, auto parts or services, cab companies, etc.), there is not a lot of utility for dealership real estate. Bankruptcy for a manufacturer would be a way to avoid state franchise laws that currently protect dealers; manufacturer mergers would not. Federal bankruptcy law trumps state franchise laws. Dealers whose agreements would be terminated would have a claim in the bankruptcy, but the claim would be a general claim, probably worth only cents on the dollar.

6. *Facilities and Upgrades*. Clients should resist factory mandated stand-alone facilities and facilities upgrades where it is not economically justifiable for the dealer. It's amazing in these times that factories still have the testosterone to try to require new construction and facilities upgrades where there is clearly no economic justification. The demand by Kia for a stand-alone showroom and service facilities for a projected 15-unit per month dealership comes to mind. A good franchise lawyer can generally weave together an argument based upon even relatively weak state franchise laws that such an action would be illegal.

7. *Short-Term Franchises.* Resist short-term franchise agreements in case of facilities issues. Some of the imports are trying to force dealers into facilities improvements by cutting franchise terms down, thereby threatening the dealer with loss of the franchise. For example, I know of one instance where Toyota gave a dealer a six-month agreement with facilities as a qualifier for renewal. Again, many of these strong-arm attempts are invalid under state law.

8. *Performance and CSI Requirements*. Clients should resist absurd franchise performance standards and CSI requirements. Develop a paper trail on behalf of your client, pointing out the statistical flaws in the measurements. There are experts available that can show that these performance statistics are flawed, generally because they don't relate to local market standards or are otherwise statistically invalid. The domestics are trying to trim dealer bodies by placing dealers on cure periods as a precursor to franchise termination. Build a record in case you have to litigate or argue administratively under state franchise law that any proposed termination is invalid.

9. *Personal Debt Planning*. Advise your dealers to engage in a bit of personal debt planning. Now might be a good time to move assets into joint names, trusts, family limited partnerships, etc. Dealers must, however, be aware of the bankruptcy preference periods and the rules against creditor fraud. But if your client believes that his/her long-term future is insecure, now

continued on page 16

President … from page 12

problems caused by the creditor, including actions as a result of the form retail installment sale contract or other documents that the creditor prepares and requires.

8. *Complaints.* Does the creditor have the right to demand that the dealer repurchase a RISC if the customer makes a complaint against the dealer? Or does that right accrue only after there has been some determination of the customer's rights that affects the rights of the creditor under the retail installment sale contract? Never agree that a RISC can be tendered simply because there is a complaint raised by the customer or because there is a dispute between the customer and dealer before there is a decision about that dispute.

9. *Remedies of the creditor*. Be careful of the remedies of the creditor if there is a breach of the agreement. The creditor is entitled to demand that it may tender the RISC for repurchase. However, some master dealer agreements provide that upon a breach, the creditor can re-tender the entire portfolio. That is never acceptable.

10. *Dealer/lender disputes.* Where are dealer/lender disputes required to be determined? Where the lender does business? Or where the dealer does business? The lender comes to the dealer at the dealer's location to have the dealer enter the master dealer agreement. If there is a dispute it should be decided where the dealer is located.

Many dealers assume that lenders will not negotiate the terms of the master dealer agreements. As with all agreements, the flexibility of the lenders depends upon the perceived market power of the parties. If a lender wishes to enter the dealer's market or wants to establish a business relationship with the dealer, it is likely to have flexibility. If a dealer is chasing the lender to establish the relationship, there is likely to be less flexibility in the lender's position. In any event, a dealer will not know what can be achieved until it engages the lender, or has you engage the lender, to discuss provisions of the agreement that the dealer finds onerous or oppressive.

Demands for Repurchase

In difficult financial times, finance sources are especially aggressive in their demands to repurchase contracts when the customer has defaulted. A dealer must carefully scrutinize every demand and challenge claims that the dealer did not comply with the master dealer agreement. Here are some common issues that finance companies raise.

- The deal contains a promissory note or a hold check for the down payment. What does the indirect finance agreement say? A hold check or a promissory note should not be a problem if the instrument was collected before the dealer assigned the retail installment sale contract to the finance company, but that depends upon the language of the master dealer agreement.
- The customer does not have insurance. What does the agreement say? If the dealer was careful in negotiating the agreement provision on insurance, the dealer should only have been required to verify insurance at the time the retail installment sale contract was done.
- The debtor's signature or the cosigner's signature on the RISC was forged. A finance company may even have an affidavit of forgery. A dealer should not blindly accept a claim of forgery. Customers unhappy with their obligations, especially cosigners, will often complain that they never signed the RISC. Check the details of the transaction carefully. If the dealer can prove that the RISC was appropriately signed, it should challenge the finance company as well as the customer claiming a forgery.
- The customer went bankrupt and the lien was not perfected in time. Under federal bankruptcy law, a dealer has 30 days from the time the customer takes possession of the vehicle to perfect the lien and protect the creditor's security in the event the customer declares bankruptcy. Under many state laws, perfection is achieved when the paperwork is processed or filed, not when DMV finally notes the lien. A dealer should carefully check the claim of the finance company. If the vehicle was delivered after the papers were signed, it is the delivery date that controls. In a state which deems a lien perfected when the paperwork is filed or processed, the dealer may have complied with its obligation.

A solid policy may protect a dealer against significant losses. In difficult times, that may be the difference between making it through or not.

Michael Charapp, President of the NADC, is a partner with Charapp & Weiss, LLP in McLean, VA.

New Members

NADC welcomes the following new members:

Full Members

Lisa B. Hogan
Lisa B. Hogan, P.A.
Miami, FL

Brad A. Birmingham
Hodgson Russ LLP
Buffalo, NY

Fellow Members, Corrected

Susan J. Garcia
Mosaic Compliance Services
Tampa, FL

Disaster Pack ... from page 13

would be the time to start planning asset preservation moves.

10. *Punt.* Try as we might as hopefully good lawyers, there are some dealers that are just, for whatever reason, not cutting muster. In those situations, counseling could take place concerning after-dealer life and a used car and service operation. Sometimes in life, we do have to drop back ten yards and punt.

The contents of this article are general in nature only and reflect the opinions of the author. The comments are not to be construed as legal advice with regard to any particular question or jurisdiction. Dealers reading this article should contact their personal attorney or an attorney that has experience in dealership law.

Ronald C. Smith, past President of Stewart & Irwin, P.C., chairs the Business, Automotive Retail and Employment/Labor sections of the firm's practice. Ron represents numerous non-publicly traded companies of virtually every type and has specialized in representing hundreds of automobile dealerships throughout the Midwest, Southeast and Eastern United States, together with various vehicle trade associations, for over 39 years. Matters handled for clients, as well as automobile dealerships, have included manufacturer disputes, acquisitions and sales, consumer defense, estate and succession planning, class actions, wage/hour compliance, OSHA compliance, environmental compliance, Union avoidance and representation of dealerships in organizing attempts, Equal Employment Opportunity Commission and other discrimination and family leave issues. Ron has also been active in dealership consulting with regard to all other aspects of the human resource process, including the design and implementation of various policies and procedures, handbook drafting and preparation of human resource forms, etc.

For over 35 years, Ron has lectured and conducted programs for numerous trade associations and trade groups and has written extensively in automotive trade publications. His most recent article appeared in the December, 2007 issue of Auto Dealer Monthly dealing with succession planning.

Impact on Dealers ... from page 11

and reliability standards that have brought them at least even with most of the import competition.

- Infighting and disputes with dealers have hampered the Detroit Three's ability to present a cooperative face to the public. Each franchisor should have a dispute resolution mechanism for dealers that is informal, simple, quick and fair, with the dealer's ultimate right to seek remedies now permissible by law if the informal process doesn't succeed. It should be set up along the lines of Ford's Dealer Policy Board, and staffed with highly respected and able members who would no longer be eligible to return to operational jobs with their franchisor employer.

The revitalization of the Detroit Three, or any of them, if it happens, will be a long, hard slog. I agree with some commentators that a total automotive void in American manufacturing would be harmful on many levels, including national security.[10] It is not too late. But time is clearly of the essence. Unless there is to be a series of government bailouts, the fate of the Detroit Three should be reasonably clear by the end of 2009. If there is even one bankruptcy or two, (GM and/or Chrysler, most likely), the return to vitality will be long and hard; some observers say that this alternative leads to an ultimately more viable cure, but others (e.g., Automotive News) argue that bankruptcy is a death knell that will delay the U.S. economic recovery. Every dealer in the United States, regardless of brand, irrespective of whether there is a bailout or bankruptcy or both, should want robust retail auto competition to include the venerable old domestics, reborn and reinvigorated.

Eric L. Chase

Eric L. Chase is an attorney and a member of Bressler, Amery & Ross in Florham Park, New Jersey. He has represented hundreds of dealers nationwide, principally in disputes with their automotive franchisors. He has published over 100 articles, and is a frequent guest speaker to dealer associations and other automotive-related audiences. His biography appears in Who's Who in American Law, Who's Who in America *and other publications, and he has again been selected by his peers as a New Jersey Super Lawyer for 2009. The views set forth in this article are his own and do not necessarily reflect the views of his firm or any of its clients.*

Note: Nothing in this article is intended to constitute legal, financial or tax advice. Each reader should consult with his or her professional advisor regarding any such advice.

10 *See* Wesley Clark, "What's Good for GM is Good for the Army," *New York Times*, Sunday Opinion, Nov. 16, 2008, p.14.

NADC
NATIONAL ASSOCIATION OF DEALER COUNSEL
Volume IV, Number 9
Nov./Dec., 2008
Rob Cohen, Editor
rob.cohen@autoadvisory.com
Trudy Boulia, Assistant Editor
tboulia@harveyandmumford.com
Defender, The NADC Newsletter is published by the National Association of Dealer Counsel
7250 Parkway Drive, Suite 510
Hanover, MD 21076
410-712-4037
Fax 410-712-4038
www.dealercounsel.com