To: GM Dealers

From: MADA

Re: Summary of GM Dealer Meeting

Date: June 8, 2009

<u>MADA Executive VP, Scott Lambert:</u>
Opening remarks.

<u>MADA General Counsel, Jim Schutjer to discuss overview:</u>
Bankruptcy filing itself:
GM bankruptcy was filed on June1. It looks like they will try same general approach as Chrysler. "New GM" will hold the bulk of the valuable assets while the "Old GM" will be left with the rest, then dissolve.

The U.S. Supreme Court might grant a hearing soon to determine whether the sale of the Old Chrysler assets to New Chrysler is just a reorganization or a sale to a new company. If just a reorganization, then likely finding will be that its plan discriminates against certain creditors; if it really is a sale to a new company, then it is more likely to be successful. This could be precedent for the GM Bankruptcy.

Papers from GM bankruptcy court starting to arrive in mailboxes– mostly notices of creditors committee and notices to attend meetings right now. **[*Please let Jim Schutjer know about any communications you're receiving – Email's the best – schutjer@mada.org*]**

Three months (but possibly longer) is the anticipated time frame to complete GM bankruptcy.

GM has been more cunning than Chrysler. Chrysler didn't really seem to go in with a plan for dealers. GM seems to have put more thought into it and using bankruptcy to bring only certain dealers along to the New GM. They are using that as leverage to get dealers to sign documents that they wouldn't otherwise be able to get signatures on.

Mainly, 2 types of documents being presented right now: **<u>wind-down agreements</u>** and **<u>participation agreements</u>**.

<u>Wind down agreements</u> – dealers that GM decided they don't want to carry forward to New GM. These have been drafted as an add-on to dealers' existing general sales and services agreement. Designed to end in October 2010.
They offer some consideration from GM in exchange for wind down agreement: Modest cash payment and the ability to continue to wind-down business in the ordinary course. Even terminated dealers will be carried along to New GM to facilitate orderly closures.

No ability to buy more vehicles from New GM; although no prohibition on dealer trades;

Parts and warranty reimbursement will be allowed during the duration of wind down;

No repurchase offered by GM for special tools/signage/ parts/ accessories.

Signage will be required to be removed.

Dealer required to deliver customer lists to New GM.

Generally, expect franchise agreement to be terminated after Dec.31, 2009 but no later than 3Q of 2010

If dealer elects, GM would agree to earlier termination.

Wind-down consideration payments will be paid as follows:

- 25% to be paid within 10 days after approval by court;
- Remaining 75% payable after effective date of termination – assuming dealer can verify that transportation fees and all state and federal taxes due have been paid.

Broad waiver of rights required: dealer agrees to make no claims under state law; hold harmless agreement; agree not to protest assignments of franchise to other dealers; very dramatic waivers required.

All contingent upon bankruptcy court approval.

<u>Participation agreements</u> – dealers that GM wants to carry along to New GM – requiring them to agree to broad hold harmless, indemnities, promise not to protest.

Time frame very short – June 12 deadline to sign. Very difficult to react to.

Also structured as addendum to dealers' existing sales and service agreement. Only consideration is their willingness to carry you on to new GM – no money being offered as consideration.

Requirements: sales performance improvements – they'll expect you to sell more; inventory increases; buy more vehicles from them; exclusivity provision (if non-GM line shares dealership facility, then dealer must get competitor's line out of the facility); you agree not to protest relocating competing lines outside of 6 miles; extremely broad release/indemnity agreements; no protesting allowed or they will get injunction and you will pay all attorney fees.

Asking for bankruptcy court to take continuing jurisdiction over these agreements. Highly unusual.

<u>Attorney Steve DeRuyter to discuss Bankruptcy law:</u>
Purpose of bankruptcy code is to help reorganize debtors (GM/Chrysler) in an equitable manner.

It has been very clear from beginning that these companies are getting special treatment.

Case law for many years since the *Lionel Corp.* decision, was that a judge determining whether Sec. 363 (b) would permit sale of assets must expressly find a good business reason for the application of Sec. 363(b).

Debtor can sell assets with bankruptcy court approval. But following the plan/rules would normally take years to complete to properly consider and weigh all the equity interests involved. This is taking two-three months after filing. That is a super-fast track and bankruptcy court is going along with it.

In Chrysler, notice of rejection of dealers was filed. Terminated Chrysler dealers filed objections and attended hearing. DeRuyter attended this hearing – only 18 dealers from around the country there to testify – each given 15 minutes. Entire 789 rejected Chrysler dealers had their "day in court" in a total of 6 hours in front of court.

Court clearly sees reorganization of these manufacturers as the paramount issue. The court does not have capacity to deal with the problems of individual dealers.

GM has been more clever than Chrysler with respect to treatment of dealers. In Chrysler, you either kept your franchise or you were rejected as of June 9. No downside to a Chrysler dealer filing an objection to the termination of their franchise.

In GM, GM given dealers a short time to accept or reject wind-down on very onerous terms. To a terminated dealer: longer term to have orderly wind down and a certain amount of money.

To a continuing GM dealer, GM is asking for the bankruptcy court to maintain jurisdiction over dealer's contracts with New GM. This is highly unusual. New GM would essentially be going to bankruptcy court to say that it wants to buy these assets – normally, New GM would be a totally new entity, and not subject to the bankruptcy court governance. ***We will argue vigorously that they shouldn't be able to do this.***

This participation contract is very one-sided, to say the least.

One of the arguments we were able to make to the bankruptcy court in Chrysler was that the MN Legislature adopted a new franchise law (successor manufacturer language) in May. We will make the argument that the terminated Chrysler dealers are entitled to a dealership under that new state law.

That option would not be available to a GM dealer accepting the wind-down, because it would be a violation of the agreement not to protest.

Procedurally, if you decide that the wind-down is unacceptable, the next step is that the dealer declines the wind-down agreement, and GM terminates the dealer.

Dealers have been told that unless they sign the letter, they will be terminated. Dealers will get a notice of rejection of their contract. A hearing date will be set in a few weeks – they'll get a little time to plead their case in front of bankruptcy judge and probably not win. Dealers will be trying to win on appeal.

Dealers will be arguing that this termination has no business purpose; also dealers could argue that bankruptcy court jurisdiction should not be extended so that we could preserve right to argue our rights

under the state franchise law. Chrysler dealers argued that their termination did not benefit Chrysler because they were profitable dealerships.

<u>Attorney Mark Jacobson to discuss MN Franchise Law:</u>
2 agreements being presented: participation and wind-down for those dealers with GMC, Pontiac, Cadillac, Buick and Chevrolet.

Hummer, Saab, or Saturn dealers have not come forward with agreements – anticipate those dealers could well be treated differently.

Waiver provisions of these agreements are about as onerous as you can get. Very significant; they override any protections dealers have under dealer agreement and under state law. You're being asked to waive any claims you have.

It turns MN franchise law upside down. Under MN franchise law, dealer can bring an action and if he prevails, then the court can award attorney fees to the dealers; In the GM (wind-down/participation) agreements, GM can recover its legal fees *from* the dealer if it prevails on any challenge to its actions. This is HUGE exposure for dealers. It could mean hundreds of thousands or millions of dollars.

Participation agreements – by Dec 31st dealers have to have all non-GM brands moved out of the store.

The agreement has carefully worded language that looks like dealer will have exclusivity, except non-GM brands approved in the dealer agreement. This wording might lead dealer to believe that he'll be OK if he were previously approved. But, it goes on to say, if the dealer doesn't have the non-GM brand out of there by Dec. 31st he'll be terminated.

GM was very thorough in drafting participation agreements and wind-down agreements – ***there is clear language that says that the addendum is the one and only agreement (the integration clause) – dealers cannot rely on anything outside of this agreement***.

For dealers that will continue, termination provisions in the contract are upside down. In MN franchise law, manufacturer needs to have grounds to terminate/or not renew dealers. The area most difficult to prove is performance (failure to achieve CSI scores, sales, etc.). Under MN franchise law, manufacturer needs to give dealer 180 days, in writing, where performance is falling short, and must use specific language telling dealer to improve or be terminated. If at end of 180 day period, the dealer is making substantial progress toward improvement, then manufacturer cannot terminate the dealer. If no progress, then manufacturer must give dealer another 90 days notice. The termination provision in these participation agreements is upside down – if dealer is not performing, GM can give the dealer 30 days notice of termination. That's it. Plus, their legal fees if you fight and lose.

Both wind-down and participation agreements are to be construed under Michigan law.

One thing not in agreements is that any disputes will be *resolved* in another state.

Hidden impact on some dealers – Teamsters contracts have unfunded pension liability (Mpls side). If significant enough, unfunded pension plan liability can run into millions of dollars.

Bulk transfer notice provisions not applicable in MN
A selling business must give notice to all its creditors that it is selling

If dealer doesn't sign participation agreement, then GM *may* seek rejection of his contract.
The participation agreement has a limited term – ends in Oct 2010, when most current dealer agreements run out. When that ends, we'll have to wait and see what new dealer agreements look like post-Oct 2010.

QUESTION/ANSWERS:

Q: What happens if you elect to sign the participation agreement and then manufacturer wants you to build a building that you can't afford – how will court address this?
A (Mark Jacobson): There may be some protections under MN law, but it depends on continuing jurisdiction of bankruptcy court. Under participation agreement, remember attorney fees provision is a big deterrent to protesting manufacturers' directives. Queasy feeling about ability of individual dealer to challenge GM's mandates. These will be potentially very expensive battles.

Q: Since waiver agreements are void under MN franchise law, how could these agreements which have questionable consideration and a non-bargained waiver be upheld?
A (Mark Jacobson): New agreements are being offered by GM in the bankruptcy context – so bankruptcy preempts MN law. The new 363 aquirer/(New GM) has not technically been in bankruptcy court.
(Steve DeRuyter): to make this transaction more clear, GM has to assume your contract – needs bankruptcy court approval to do that. Terms of that approval are under bankruptcy code, and preempt state law. But, when that contract is assigned to New GM, it is untested under any court whether contract will be under bankruptcy court jurisdiction forever. NADA really ought to fight hard on this point. Bankruptcy court does not want a trial on every little dealer dispute. Highly unusual for a bankruptcy court to retain that type of jurisdiction.
(Mark Jacobson): No single dealer can take on GM with the extraordinary risks involved in these new agreements. There's not much choice, but to sign the new agreement. If one dealer takes on one of these provisions and prevails, it will benefit all the dealers throughout the country – some of these things could be clarified over time.

Q: For a contract to be valid, it must be voluntary on both sides. So, if your only alternative is to sign or be terminated, wouldn't a dealer have a position in state court that the whole thing is invalid because it was coerced?
A(Mark Jacobson): You're referring to what is known as "contracts of adhesion" – contracts that are onerous on the party with less bargaining power; dealers in this case clearly have disparate bargaining power with manufacturers. If dealers organize as a group to say no, we're not signing these agreements, then they may take back some power. But, on an individual basis, the first dealer who takes that claim up with GM, GM will skewer them to prove a point – they'll spend millions to prevail. You may have a good legal argument, but I'd counsel you to seriously consider the practical consequence of downside if you lose.

Q: Is there no chance that some kind of class action suit could be brought by NADA to reduce the onerous nature of these agreements?
A (Scott Lambert): NADA is meeting with their board to decide what to do – not yet released.
(Steve DeRuyter): the place to raise objection is with the bankruptcy court – dealers need to organize and get it done. The court needs to be directed that the dealers are very serious about this and we do that by showing up in large numbers.
(Mark Jacobson): if there is to be a class action, someone needs to be willing to be the named member of the class – who wants to do that?

Q: I read that Senator Jay Rockefeller has a bill that requires manufacturers to play by state franchise laws if they've taken taxpayer money. Is that true and if so what's the status of that?
A (Scott Lambert): Yes. That's true. NADA hasn't taken a position on it yet.
UPDATE: The legislation has been introduced in the U.S. House of Representatives as H.R. 2743, known as the "Automobile Dealer Economic Rights Restoration Act."

- Restores the protections of state motor vehicle franchise laws to General Motors and Chrysler dealers as they existed prior to each company's bankruptcies;
- Preserves General Motors and Chrysler car dealers' rights to recourse under state law;
- At the request of an automobile dealer, requires General Motors and Chrysler to reinstate franchise agreements in effect prior to each company's bankruptcies; and,
- Makes clear that the legislation is not intended to void the court-ordered transfer of assets from Chrysler to New CarCo or the transfer of General Motors assets that could be approved by a court after the introduction of the Act.

Q: We're on your side, you're on our side – you instructed us back in December that the courts don't listen to a single dealer – but now you're saying that nobody showed up. You're preaching to the choir. Even a biased judge would have to listen to our arguments.
A (Jim Schutjer): from the perspective of the carried-along dealers, they will have a different argument in the bankruptcy court than those who are being terminated. As far as NADA, their primary counsel, has done a decent job trying to represent the carried –along dealers, they have a secondary counsel to represent the terminated. I assume the GM program to go the same way. I don't know that we've had much influence.

Q: Is the advice right now to sign the participation agreements and hope for the best?
A (Jim Schutjer): Yes, I don't think there is another choice.
(Mark Jacobson): Possibly the best outcome, is Rockefeller's bill. Absent collective participation of the dealers to achieve a legislative solution, it is unlikely that anyone will be able to turn this ship around.

(Steve DeRuyter): The difference between Chrysler and GM is that Chrysler angered 19 dealers in MN, and left the rest alone; GM has offended every dealership in the country. Every senator and representative should be outraged by this treatment. It seems to me that NADA should really take advantage of this.

Q: What if we say we're not interested in signing a wind down agreement, we'd rather go in the pool of unsecured creditors?

A (Steve DeRuyter): if you don't sign, you'll be rejected. You'll sue them as a prepetition claim. You'll get paid in bankruptcy dollars – ten cents on the dollar.

Q: Ten cents on what amount? Maybe the ten cents on the dollar payout under bankruptcy would be better than what they're offering under these wind-downs.
A (SD): first look at damages allowed under state law and your contract; the profits you could've anticipated to make under the remainder of your contract.

Q: Since contracts can't really be terminated, could those damages go for a time beyond then end of this contract?
A (MJ): MADA just passed a new franchise bill to entitle you to damages for blue sky in addition to other damages. But there are three things to consider under here:
What you'd get under the wind-down agreement;
What you're owed under franchise law/dealer agreement;
What's left in the pot of money 4 to 5 years from now to pay unsecured claims – that may be next to nothing.

Q: In wind-down, they want sigsn taken down. Can they force you to take down sign?
A (MJ): yes, you'll be forced to take down your signs.

Q: If you sign participation agreement, and GM says you have to build a new building, do you have to do that?
A(MJ): With participation agreement, you have the lack of consideration argument (that they haven't given you anything in exchange for you agreeing to their terms); MJ's position is that you might be right, but you're taking such a huge risk in fighting it.

Q: In signing participation agreement, are you agreeing to other things?
A (MJ): yes, you're agreeing to increase your inventory, to improve sales, improve facilities. GM is saying trust us (laughter) – they might ask you to pony up to keep up with image program requirements. You have exposure.

Q: If you decide at that point to <u>not</u> do what they're asking you to do, you have the option to just go away, right?
A (MJ): GM can terminate you upon 30 days notice, with some termination assistance (but not facilities assistance).

Q/Comment: whoever wrote these agreements are brilliant. They're counting on attrition. Termination is not such a bad deal if you consider staying in the game and making the investment is a huge risk. I bet GMC and Buick will not be here. They're ultimate intent is Chevrolet and Cadillac. You know what you have today, the future is not solid. We should get the accountants on this more so than the lawyers.

Q: I feel like we're making decisions in a void. NADA is meeting in a private meeting; GM is doing same. We've got to get more information in front of us.
A (JS): We agree. There is an information vacuum for us.

Q: Maybe all the dealers should get together to attack this law in relation to MN state law.
A (SL): Tom's right. Dealers winding down need help; but this will be a fight for another generation.

Q: How long does this go until our state franchise law kicks back in?
A: Participation agreements entered into in bankruptcy context go until October 2010. Arguably, a new agreement will be entered into after October 2010.

Q: What if bankruptcy court doesn't accept these agreements, even if dealers and GM sign?
A: Then, it gets renegotiated.

Q: What happens to inventory?
A: GM doesn't have to take them back. You can sell them as used or you can lease them.

Q/Comment: GM has no friends on Capitol Hill. It is so important to be actively involved.

MADA President Todd Snell's closing remarks:
These are unprecedented times. Congress people have no clue who is making the decisions and there's clearly no due process.