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TERMINATION ARBITRATIONS REVISITED

Earlier this week, a Federal court in Michigan decided in favor of Chrysler and those dealers' protesting the reopening of terminated stores. The Court ruled that Section 747 of the Consolidated Appropriations Act of 2010, Pub. L. No. 111-117, the federal statute enacted to give terminated dealers the right to be added to a dealer network through arbitration, does not preempt state laws, such as Ohio's Dealer Act (also referred to as O.R.C. §4517.01, *et seq.*) and does not provide for reinstatement. Rather, the "sole and exclusive remedy" for a terminated dealer who prevailed in arbitration is a customary and usual letter of intent ("LOI") to enter into a sales and service agreement. The effect of this ruling will significantly weaken the positions of those terminated dealers who have already prevailed in Section 747 arbitrations with Chrysler Group LLC ("New Chrysler"). The decision, *Chrysler Group LLC v. Sowell Automotive, Inc., et al.* Case No. 10-12984.

On December 16, 2009, the United States Congress enacted Section 747. Section 747 provides that a "covered dealership that was not lawfully terminated under applicable State law on or before April 29, 2009 (the day before Old Chrysler filed its bankruptcy petition), shall have the right to seek, through binding arbitration, continuation, or reinstatement of a franchise agreement, or to be added as a franchisee to the dealer network of the covered manufacturer in the geographical area where the covered dealership was located when its franchise agreement was terminated, not assigned, not renewed, or not continued." §747(b).

In *Sowell Automotive*, New Chrysler sought declaratory relief as to several terminated dealers who prevailed in Section 747 arbitrations with New Chrysler and some additional existing like-line dealers who had threatened to sue New Chrysler to prevent the establishment of dealerships (for the terminated dealers) in their areas. New Chrysler asked the Court to declare that: (1) Section 747 does not preempt state dealer acts; (2) the LOIs provided by New Chrysler are customary and usual within the meaning of Section 747; and (3) an LOI is the sole and exclusive remedy under Section 747. The Court concluded that Section 747 does not preempt state dealer acts, and an LOI is the sole and exclusive remedy under Section 747. The Court has not decided whether the LOIs provided by Chrysler to the terminated dealers were "customary and usual" within the meaning of Section 747.

Prior to *Sowell Automotive*, the general consensus had been that a terminated Chrysler dealer who prevailed in its Section 747 arbitration was entitled to reinstatement, regardless of state law.

In Ohio, that would mean a terminated Chrysler dealer could be unconditionally reinstated to a location within an existing like-line dealer's relevant market area. The *Sowell Automotive* ruling, however, provides those effected like-line dealers with the protections of Ohio's Dealer Act.

In summary, the decision in *Sowell Automotive* creates obvious uncertainty regarding the fates of those terminated dealers who have already prevailed in Section 747 arbitrations with New Chrysler. A prevailing terminated dealer, who once thought that he was afforded unconditional reinstatement, is now likely to face protest challenges from like-line dealers in the terminated dealer's relevant market area. Even more daunting, those terminated dealers will have to rely on New Chrysler, who already fought for their termination, to stand up for them during these protest challenges. Further, the Court did not rule on whether or not Section 747 was Constitutional.

This author was heavily involved in this litigation.



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As always, these are highlights of the law and are not to be construed as containing the entire law. This is not to be construed or relied upon as a legal opinion. If you are presented with this problem, contact your legal counsel for advice.

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Having been a Chevrolet dealer, Robert A. Poklar's business background and experience in the automotive industry aid him in his representation of numerous Ohio automotive dealerships. He also represents after-market service companies, trade organizations, dealers, advertising associations and corporations. Pursuant to certain ethical standards, this may be construed as advertising.