BURNS & LEVINSON LLP

AUTOMOTIVE DEALER BULLETIN

GM Facilities Upgrade Mandate

March 1, 2011

Recently, GM has sent many of its dealers a notice mandating that the dealer upgrade its facilities. We encourage you to evaluate all of your options prior to signing up for GM's program. Often, the manufacturer's proposed upgrades come at a great expense to the dealer or in fact cannot be financially justified and place an undue financial burden on the dealer. While maintaining modern facilities that properly reflect GM's branding may be an obligation under the dealer sales and service agreement, not every "mandated" facilities upgrade is reasonable. Each dealership needs to carefully assess its current facilities as well as its resources prior to agreeing to an upgrade.

Chapter 93B, the Commonwealth's Motor Vehicle Dealer statute, may offer protection to dealers who are being unreasonably coerced into performing unnecessary upgrades to their facilities. If you have received a letter mandating that you upgrade your facilities, we encourage you to explore all of your options prior to agreeing to the upgrade.

The dealer is cautioned that once you agree in writing to upgrade your facility, under the case *Wagner and Wagner Auto Sales, Inc.* v. *Land Rover North America, Inc.*, decided in the United States Court of Appeals, First Circuit (Commonwealth of Massachusetts) in 2008, the failure to make the agreed to facility upgrades is good cause for termination under 93B, even if the economics change that originally warranted the need for facility upgrades. A dealer's failure to perform the facility upgrades that they agreed to is good cause to terminate the dealer under G.L. c. 93B.

However, a dealer may be able to reach a compromise with the manufacturer with respect to facility upgrades. As a matter of example, through negotiation and the use of an independent architect reviewing the manufacturer's architect's plans, we were able to successfully demonstrate to the manufacturer that the facility requirement proposed by the manufacturer could be met in a substantially less expensive manner.

The bottom line is that dealers may have options and alternatives that they may want to explore before committing to the mandated facility upgrades proposed by GM's architect, Gensler. Obviously, all circumstances are unique and thus, dealers are advised to examine their options before agreeing to GM's mandated facility upgrades.

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ABOUT BURNS & LEVINSON'S AUTOMOTIVE GROUP

For over 20 years the Automotive Group has been dedicated to advising and assisting motor vehicle dealers in all aspects of their business. We are proud of the fact that the focus of our practice is representing motor vehicle dealers on a daily basis and we have represented hundreds of motor vehicle dealers through the years. Our range of representation extends from representing some of the largest automotive groups in the country to representing small dealer groups consisting of one or two stores. We are involved in strategic planning for dealerships, such as advising dealerships how to best meet the objectives of the manufacturers. We represent dealers in trade practice matters, as well as issues related to floor plan or the buying or selling of a dealership. Because of the depth and breadth of Burns & Levinson, we are also able to assist dealers in everything from employment issues, consumer disputes, and family and estate planning to trademark matters. We take pride in having represented many of our clients for extensive periods of time, and in our involvement in their growth and success. For more information, visit: www.burnslev.com/auto.

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