

STATEMENT OF JACK FITZGERALD
OWNER / DEALER, FITZGERALD AUTO MALLS

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Chairman Cohen and Members of the Committee, I am testifying as one of three co-chairs of the Committee to Restore Dealer Rights, which represents many of the automobile dealerships recently – or soon to be – terminated by old GM and Chrysler. We formed the Committee in the wake of the Chrysler and GM bankruptcies to protect the rights of thousands of auto dealerships and the 169,000 employees who may lose their jobs, and the customers and communities they serve. (See attached table of job losses)

I have over 40 years experience as an auto dealer and am the founder and owner of the Fitzgerald Auto Malls located in Maryland, Pennsylvania, and Florida. I am the owner of five dealerships whose agreements Chrysler has rejected, and three whose dealership agreements GM has opted to wind down.

We appreciate the opportunity to testify and to shed light on what we call the “Big Lie.” I wish we didn’t have to take up your valuable time. Our Committee has made clear for weeks that we are prepared to sit down with the White House Auto Task Force, the CEOs of GM and Chrysler, and others to work toward the reinstatement of the nearly 3,400 dealers terminated or slated for termination. But, there is silence on the other end of the line.

At the outset, I want to stress that we all want the auto manufacturers to succeed — there is no alternate agenda. Dealers are part of the solution, not part of any problem. If McDonalds wants to sell more Big Macs, would it close 3,400 franchises?

It is clear to us that the White House Auto Task Force misunderstood the vitally important role the dealerships play in the success of Chrysler and GM. I hope today to set the record straight, to show how the Bankruptcy Code was used inappropriately, and to explain why the dealers should be reinstated, either by the legislation we support or through a nonlegislative solution worked out with GM, Chrysler, and the Task Force.

Congress created the Bankruptcy Code and the Bankruptcy courts and it is up to you to ensure that your intent is followed and not ignored. In this case, the failed management of GM and Chrysler, abetted by unelected neophytes on the Auto Task Force, have turned the Bankruptcy Code on its head and needlessly extinguished profitable small businesses that were neither failing nor in need of a government bailout.

Rather than assuring that the new Chrysler and new GM are well-positioned to succeed by having a robust national distribution chain, their management instead handicapped the companies by drastically reducing their points of sale. You have the opportunity to correct this.

This reduction is a problem because there are nearly two domestic vehicles on the road for every one import vehicle. The Task Force made a glaring error in its analysis of the marketplace by not focusing on vehicles in operation. A principal reason for dealers to exist is to service cars and to provide consumers with sufficiently good service that the next time they are in the market for a new car, they will purchase the same brand of vehicle. There is nothing more

important than enhancing the customer's experience with a vehicle and that is why the companies should be adding dealers, not extinguishing them, particularly in states where imports are outselling domestics. But, we have heard that the Task Force directed the companies to drop dealers and we can only surmise that the management of both companies, in an effort to save their own necks, went along and decided that the bankruptcy process could be hijacked to accomplish this goal.

Chrysler and GM have conceded that they need dealers in many locations where dealerships are closed, or in GM's case, slated to close. Both have taken steps to award closed or closing franchises to other local dealers. It is appropriate for this Subcommittee to find out whether the White House Auto Task Force intended, as part of a restructuring of Chrysler and GM under the bankruptcy process, to interfere with local profitable distribution points and to pick winners and losers. It is necessary for the Subcommittee to ascertain what the basis was for the selection of dealers for closure and wind-downs using the cover of the bankruptcy code.

The Big Lie

Congress, the White House, and the American people have been misled by GM and Chrysler. Dealer terminations will be counterproductive. GM and Chrysler vastly exaggerated possible savings and underestimated the adverse impact of closing dealerships and ceding market share.

It is time to end the "Big Lie" perpetrated by GM and Chrysler. Dealers are not an economic liability for an auto manufacturer. Dealers are the robust economic engine that permit auto manufacturers to sell their products and consumers to receive quality service and parts at convenient locations. Dealers are the backbone of product support at the local level, with 1.1 million employees and \$234 billion invested.

Let me share with you examples of misleading statements made by GM and Chrysler.

In a document provided by GM to the House Energy and Commerce Committee last month, the company stated that terminating a couple thousand dealers will "allow GM to systematically reduce virtually all direct dealer support programs, which cost GM approximately \$2.1 billion, or \$928,000 per "rooftop" or dealership.

This is a highly inflated figure not borne out by the facts. The savings cited by GM are all related to the sale of a car. If GM does not sell the car to a dealer, and the dealer does not sell that car to a consumer, GM does not make an incentive payment to a dealer. It is a distortion to cite \$2.1 billion in potential savings since these are payments that are not tied to the number of dealers, but are related to the number of cars sold.

For example, it is not true that GM will save:

\$380 million because there will be fewer dealers collecting incentive payments. Eliminating any specific dealer will not eliminate GM's incentive expenses because the cost of the incentives follows the sale of the car - regardless who sells it.

\$350 million from reductions associated with prepping cars. Dealers must inspect new cars to ensure that a GM vehicle is safe to drive. Is GM suggesting that it will choose not to inspect vehicles?

\$120 million through reductions in filling gas tanks. GM reimburses the dealer for providing the purchaser of a new GM car or truck a full tank of gas at delivery. The only way GM can eliminate this expense is to not to fill the tank or not to sell a car; it is unrelated to the number of dealers.

Another misleading statement by both GM and Chrysler in testimony to the Energy and Commerce Committee is their claim that dealers cost their companies money.

The truth is that dealers invest significantly in their businesses in the form of land and facilities, inventory and working capital. Dealers are sources of revenue, not cost centers, for manufacturers. At a minimum of \$40,000 per year per franchise, the manufacturer makes money from the dealer over and above any revenue from the sale of cars, parts and services. Without choice, dealers pay thousands of dollars annually to the manufacturers for parts manuals, service mailers, special tools, websites and computers, tech training, tow programs, and promotional kits. Closing dealerships does not materially reduce manufacturers' costs and will materially lessen Detroit's chances of success in the future.

As one notable industry analyst stated recently, "Far from being a burden to the manufacturer it represents, the automobile dealer supports the manufacturer's efforts by providing a vast distribution channel that allows for the efficient flow of the manufacturer's products at virtually no cost to the manufacturer." (Casesa Shapiro Group report, "The Franchised Automobile Dealer: The Automakers' Lifeline," 11/08).

As indicated by the numerous messages from customers I've received since Chrysler announced it intended to reject my dealerships, customers appear to be more loyal to the dealership than the brand. As Chrysler and GM extensively reduce their number of dealers, making it more difficult and less convenient for current customers to get service, they decrease the likelihood that customers will remain loyal to a Detroit brand. This is particularly the case in Montgomery County, Maryland, where Chrysler has proposed to reject each of my longstanding Dodge and Chrysler-Jeep dealerships, as well as other Dodge and Jeep dealerships, leaving the Chrysler-Jeep-Dodge franchise represented by only two dealerships owned by the same principal in a service area with a population of nearly 1.4 million people.

Most assuredly, GM and Chrysler will fail if a significant number of the 150 million current owners of their vehicles don't continue to do business with them. GM and Chrysler assert that with fewer dealers, each dealership will be more profitable, presumably because of the reduced price competition and resulting higher sales prices. Will consumers remain loyal to these brands then? Most likely the dealer termination plan will put in motion a process that will lead some brands to fail, putting the billions of taxpayer dollars invested in the two companies at great risk. (See map of United States attached)

Another area of statements for the Subcommittee to explore is that several Chrysler dealers have told our Committee that Chrysler was not paying the warranty expenses and incentives payments for sales before the June 9 closing, as authorized by the Bankruptcy court. Further, Chrysler has not, to my knowledge, implemented fully the promised programs to “redistribute” vehicles and parts.

Other Legal Issues Pertaining to the Bankruptcy Cases

As you examine how the bankruptcy laws have been relied upon for these severe economic dislocations, the Subcommittee should analyze additional legal issues that have arisen.

For example, GM and Chrysler, along with the Task Force, used the bankruptcy laws to eviscerate the long-standing state franchise laws that protect dealers. The Subcommittee needs to know that in an attempt to bring about fairness, every State has enacted legislation concerning new car and truck franchises to protect consumers, jobs, and dealers. Car and truck manufacturers can change the terms of their franchises at any time, simply by sending us letters in the mail. The Federal Trade Commission has not historically regulated franchises of automobile and truck manufacturers, making state law the only area of regulation. Accordingly, it is critical that GM and Chrysler should not be permitted to avoid state regulations in their termination and wind-down decisions. Surely, the Bankruptcy Code was not intended to eliminate the only kind of protection that consumers and dealers have in our industry.

Another abusive use of the bankruptcy process is that GM and Chrysler are leaving their dealers out to dry regarding product liability. Our insurance companies had certain expectations as to the way liability for GM and Chrysler products would be handled, and the bankruptcy process has confused the matter for dealers and consumers and may result in fewer protections all around.

Conclusion

Thank you, again, for having this important hearing today and thank you for allowing me to testify on behalf of the thousands of terminated dealers who could not be here. Livelihoods and economic progress depend on our policymakers making the right decisions during this difficult time. I am hopeful that I have succeeded through this testimony in conveying sufficient information for you to have reasonable doubt as to the appropriateness of the dealership terminations that I and many other dealers are facing as you hold this important hearing. I urge Congress to enact the Automobile Dealer Economic Rights Restoration Act or the LaTourette Amendment, so that we can get back to doing what we do best, selling cars and generating economic and social benefits in thousands of communities from coast to coast.