CRAIN

autonews.com

Automotive News

APRIL 1, 2019 $159/YEAR; $6/COPY

SPECIAL SECTION | AUTOMOTIVE NEWS RISING STARS

STAR POWER

The auto industry's young leaders came from far and wide to take on challenges that prepare them — and their companies — for an era of profound change | PAGES 15-27 |

GPB legal troubles of Prime concern

Retailer determined to stay on course

Melissa Burden and Hannah Lutz
mburden@crain.com

As federal and state investigations into the majority owner of Prime Automotive Group intensify, concern is growing about the future of one of the largest, and fastest-growing, dealership groups in the country.

GPB Capital Holdings, Prime's majority owner and an alternative asset management firm that began investing in dealerships in 2013, confirmed that the FBI and a New York City agency searched its offices Feb. 28.

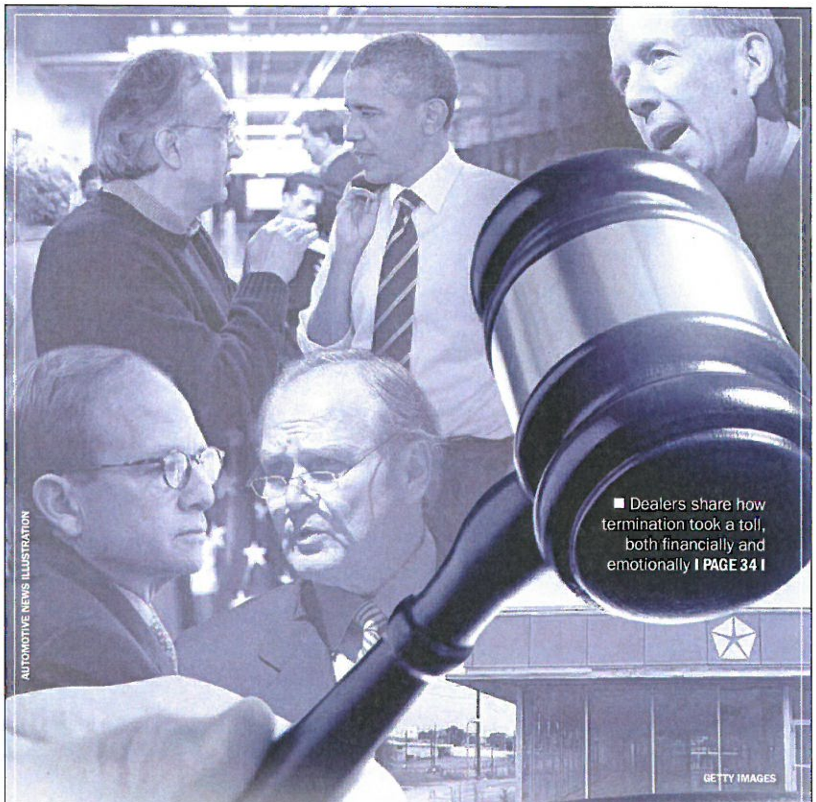
GPB said it also faces inquiries by the U.S. Securities and Exchange Commission — the firm describes the probes as centering on potential violations of securities law. Massachusetts also is investigating broker-dealers who worked with the company.

Rosenberg: Other investors show interest

The investigations and a halt in distribution payments have GPB investors worried about their money. A former business partner, who helped GPB acquire dealerships and who has been embroiled in a lawsuit with the firm, has accused GPB in court filings of running a Ponzi scheme.

The stakes are high. The potential unraveling of GPB could leave Prime, the 11th-largest dealership group in the country as ranked by *Automotive News*, without its majority investor. Prime Automotive's 61 dealerships haven't been part of the investigations, says CEO David

see **GPB,** Page **33**



DEALERS' DAY

10 years after Chrysler terminated franchises, retailers' fight goes to trial and could set tone for GM cases

Hannah Lutz
hlutz@crain.com

Almost 300 of the Chrysler dealers whose franchises were terminated in the 2009 bailout plan to continue their fight in Washington next week, nine years after they sued the U.S. Treasury.

The trial is to begin April 8 in the Court of Federal Claims and is expected to last six to eight weeks. If the dealers succeed, the court could order the Treasury to pay as much as $850 million to terminated dealers. The trial could act as a harbinger for terminated General Motors dealers, who filed a separate but similar lawsuit in 2010.

The court will decide whether the government coerced Chrysler to terminate 789 of its franchises — a quarter of its dealer network — as a condition of the bailout or whether Chrysler made the decision on its own. Dealers are asking the court for the fair value of their stores on the day the franchises were terminated. Damages range from $524,000 to $8.8 million per rooftop

see **CHRYSLER,** Page **34**

Lentz: U.S. has a lot to lose in trade fight

Clashing with Japan could 'derail' market

Larry P. Vellequette
lvellequette@crain.com

PLANO, Texas — From his still-new, glass-walled perch above the flat topography of north-central Texas, Toyota Motor North America CEO Jim Lentz can see storm clouds bubbling up hundreds of miles away.

But not every threat to Toyota's new North American headquarters comes from the sky — or from the west.

Lentz: Quotas are "nonstarter"

A still-polite but growing trade dispute between the U.S. and Japan — one with talk of 25 percent tariffs, volume-limiting quotas and faint echoes of jingoistic populist themes from three or four decades ago — threatens to "derail" an otherwise healthy U.S. auto market, Lentz says.

If worse comes to worst, and the two longtime trading partners can't find common ground, tariffs could knock down 2 million new-vehicle sales as quick as a Texas windstorm, he warned.

"I don't think Japan is interested at all in talking about quotas," Lentz said. "I don't think they want to create that conduit of quotas that maybe seem reasonable today but could be ratcheted down at any point in the future. From what I'm hearing, that's kind of a nonstarter with Japan."

In an exclusive March 25 interview with *Automotive News* at the company's headquarters here, Lentz said Toyota Motor North America and its Japanese parent are on board with the Trump administration's desire to increase auto manufacturing in the U.S. Toyota just last month upped its

see **LENTZ,** Page **36**

Dealers' termination tales: 'It just wasn't right'

Loss takes financial and emotional toll

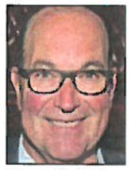
Hannah Lutz
hlutz@crain.com

Dealers who lost their Chrysler franchises in 2009 are suing the U.S., asking for compensation. What some of them really want is recognition of their emotional losses.

"Of course, I'd like to see some money," said Michigan dealer Jeff Tamaroff. "But just being vindicated would be nice."

Tamaroff is one of 280 dealers who sued the government in 2010, and the case is finally heading to a trial next week in the Court of Federal Claims. In an industry defined by family-owned businesses handed down through generations, the pain was personal as well as financial when 789 franchise agreements were suddenly broken as part of the Chrysler bankruptcy restructuring that was managed and financed by the U.S. Treasury.

Tamaroff knew there would be consolidation, but he never anticipated having his franchise agreement terminated with only three weeks' notice, he said.


Tamaroff: Kept paying for store


Engel: "Took my breath away"

"I don't think any of us thought that we were going to get bulldozed like that when we really don't cost the manufacturer anything to operate," Tamaroff said.

He had to shut down Tamaroff Dodge in Southfield, Mich., which had been in business for 22 years.

Today, Tamaroff is dealer principal for Tamaroff Auto Group, which has two rooftops in Southfield, and Jeffrey Automotive Group, which has four rooftops in Roseville, Mich., another Detroit suburb.

Tamaroff operated the Dodge store as used-only for six months. The building was vacant for six years while Tamaroff continued to make mortgage and insurance payments. Finally, he sold the building to another Chrysler dealer in 2016, he said.

In northern New Jersey, when Robert Engel learned that the profitable Chrysler-Jeep store he owned in Tenafly with his brother Richard was being terminated, "It took my breath away, literally," he said. "I couldn't even talk. It was a terrible time. It was a very emotional day for my employees as well."

Engel had a mortgage on that store and a less successful one, Wyckoff Chrysler, which also was terminated. He rented the building in Wyckoff to a body shop, but the Tenafly dealership was empty until he acquired a Kia franchise the following year.

"I had to sell my house and all sorts of things to get the working capital together to take on Kia," he said. Engel sold the Kia store in 2014 and now works as a real estate agent.

Engel benefited from local TV coverage when a reporter told viewers about huge discounts consumers could get on cars. After that newscast, Engel sold most of his vehicles, though at a substantial loss, he said. He ended up losing more than a couple hundred thousand dollars, he said, but if he hadn't sold so many cars, the loss could have quadrupled.

Engel's Wyckoff store was also a prominent parts supplier in the area. At the time of the terminations, the store had over $1 million in parts that it sold at only 15 cents on the dollar.

It's still difficult to talk about the ordeal, Engel said.

"It's very hard to describe the emotions we've been through."

Tamaroff believes the market would have settled itself if the government hadn't intervened. "To do it the way they did it, I don't get it," Tamaroff said. "It just wasn't right, and that's why we're suing them." AN

CHRYSLER

Dealers didn't suffer greater harm, U.S. says

continued from Page 1

among the seven model plaintiffs represented by Bellavia Blatt & Crossett in Mineola, N.Y., said Len Bellavia, founding partner.

The trial will include testimonies from high-profile witnesses, such as Steven Rattner and Ron Bloom, who were senior members of the U.S. Department of the Treasury's auto team; Bob Nardelli, who was CEO of Chrysler; Peter Grady, who was Chrysler's director of dealer operations; current and former dealers; and industry analyst Maryann Keller.

Fear of failure

In 2008 and 2009, the financial crisis and ensuing plunge in vehicle sales put the future of Chrysler and GM in jeopardy. The companies were insolvent, and in December 2008, the Bush administration approved a preliminary bailout plan, under which the automakers obtained loans from the Treasury to help them operate as they restructured. The loans required the automakers to submit plans for cost reduction and viability, which became the basis for the Obama administration's shepherding of the companies through bankruptcy proceedings.


Bellavia: Bailout not the only way

The government feared that GM's or Chrysler's downfall "would cause a systemic failure throughout the domestic automotive industry and significantly harm the overall United States economy," according to the government's motion to dismiss the suit, filed in 2011. Through the Treasury and the Presidential Task Force on the Auto Industry, the government — under both presidents — sought to prevent the collapse of the industry at large, the motion said.

Chrysler filed for bankruptcy April 30, 2009, and GM followed June 1 that year. On May 23, Chrysler told the terminated dealers that they must close their doors by June 9.

Two sides

According to the government, the dealers suffered no greater harm than they would have if the Treasury hadn't served as "the lender of last resort."

The only alternative, the government said in the motion, was immediate liquidation of Chrysler, which could include canceling all franchise agreements. "Plaintiffs cannot plausibly allege that they suffered any harm from the Government's election to provide financing where none other was forthcoming."

The U.S. Justice Department, which is representing the Treasury in the matter, declined

Termination was devastating to dealer James Painter, shown with wife Zoma Painter, his son said.

Automotive News' request for comment last week. Fiat Chrysler Automobiles also declined to comment.

The plaintiff dealers argue that without pressure from the government, Chrysler wouldn't have terminated the dealerships. Rather, the automaker would have continued to promote Project Genesis, an initiative in which dealerships that did not sell all three of Chrysler's brands at the time — Chrysler, Dodge and Jeep — were encouraged to merge into locations selling all three.

The mergers were voluntary and would reduce Chrysler's dealer network over four to five years without involuntary terminations, according to the plaintiffs' proposed findings of fact and conclusions of law, filed March 26 this year. "The goal was consolidation — not termination," the court document said.

If the government wasn't involved and Chrysler went bankrupt, there would have been an "orderly liquidation," said Bellavia. That means other automakers, or even new entrants, may have bought Chrysler's brands and kept many of the dealerships in business.

"We have to show the court that while it's true the government bailed out Chrysler, it doesn't mean it was the only solution here, and therefore, had our clients not been rejected ... they would have still been able to survive by virtue of a sale of the Chrysler assets to another automotive entity," Bellavia said.

Under the Fifth Amendment's Takings Clause, added Bellavia, the government can't take property without fair compensation, which means Chrysler dealers are entitled to the fair value of their dealerships on the day their franchises were terminated.

The dealers didn't have their rooftops taken from them, but the franchises themselves should be considered property, said Marquette Wolf, an attorney at Ted B. Lyon & Associates in Mesquite, Texas, who is representing dealers in the Chrysler and GM cases. The franchise agreement comes with a suite of benefits that boosts the value of a new-vehicle dealership, compared with an independent, he said.

Valuation experts will testify on the value of the dealerships based on their tangible and intangible assets and their cash-flow projections, Bellavia said.

Waiting

Nearly 300 plaintiff dealers have been waiting for their trial for nearly a decade, but some who were committed to the cause won't be there to witness its resolution. The Painter family has been in the auto retail business since 1945. James Painter, son of one of the founders, began working at the store when he was 14.

In 2009, when Chrysler told then-79-year-old James Painter that he had to close his two Chrysler stores in St. George and Nephi, Utah, "He tried to keep a stiff upper lip, but it tore his heart out," said his son Patrick Painter.

"He and his dad started the business after World War II. That was all he had ever done. They smoked the American Dream."

James Painter died in 2016. His wife, Zoma Painter, who helped run the stores, died in January. "She promised me she would stick around to go to the trial," said Patrick Painter. "I'm absolutely certain it had a devastating effect on my father. Everything he had worked for was taken away by the federal government."

Today, the Painters have a Mitsubishi store and a Chevrolet-Buick store, both in Utah.

Nearly 500 terminated dealers chose not to participate in the lawsuit, Bellavia said. Some are focusing on their other franchises; others were afraid to sue the government. But most were financially devastated and couldn't afford the cost over the last nine years, about $15,000, Bellavia said.

About 120 terminated Chrysler dealers applied for reinstatement; about 50 of those requests were granted. GM reinstated 660 of the more than 1,100 dealer franchises it terminated.

The GM dealers' case has not advanced as quickly as the Chrysler case. No trial date has been scheduled. Like the Chrysler dealers, GM's terminated dealers will fight for just compensation of the dealerships they lost, with the Chrysler case serving as a bellwether, Wolf said.

Still, it's unlikely that the upcoming Chrysler trial will close the case, he said. Parsing through the Takings Clause will be nuanced and difficult, said Wolf.

"These cases have a very long tail still to go, which will involve appeals to the Federal Circuit and probably to the United States Supreme Court because it is just something so different and extraordinary," he said. "It's just unprecedented." AN

Vince Bond Jr. and Larry P. Vellequette contributed to this report.

The testimonies

At least 40 witnesses will be called to the stand. Here are some key individuals and their titles at the time of Chrysler's bankruptcy and the franchise terminations.

- **Steven Rattner,** senior U.S. Treasury official in charge of the task force on the auto industry
- **Ron Bloom,** senior U.S. Treasury official in charge of the task force on the auto industry
- **Robert Gerber,** U.S. bankruptcy judge who presided over GM's restructuring
- **Bob Nardelli,** CEO of Chrysler
- **Tom LaSorda,** president and vice chairman of Chrysler
- **Peter Grady,** director of dealer operations for Chrysler
- **Alfredo Altavilla,** head of business development for Fiat and CEO of Fiat Powertrain Technology in 2009; served as the principal negotiator for Fiat in its discussions with the Treasury
- **Maryann Keller,** auto industry expert; expected to testify on the potential outcome for dealers if Chrysler had not received financial assistance from the government
- **12** current and former dealers and dealership managers