

## **PONTIAC DEALER SOLICITATION**

**May 6, 2009**

We have been asked to comment on a recent letter received by Pontiac dealers in the State of Indiana from a Florida law firm soliciting clients to participate in a class action suit against General Motors for discontinuance of the Pontiac brand. In reviewing their solicitation, several major flaws are apparent in the premise of the solicitation.

- The solicitation is predicated on discontinuance of the Pontiac brand by the end of 2009. That is not the case. Under recent announcements, franchise agreements will continue (unless interrupted by a GM bankruptcy) through the term of the franchise agreement - October, 2010, at which time Pontiac will simply go away and franchise agreements for that brand will not exist.

- The solicitation seems to mix Florida law with other franchise law. Essentially the premise of the letter would require 50 class action suits in 50 states.

- There is a lack of commonality among Pontiac dealers in any given state. Commonality is one of the four keystones to get class certification. You may remember the Indiana class action against General Motors for discontinuance of the advertising groups and refusal to refund the money collected to Indiana dealers. That issue was common to all Indiana GM dealers. In the present situation, any claims that may exist for discontinuance of the Pontiac brand will likely depend on individual, specific circumstances. Given that, a court is not likely to certify a class action.

- The constructive termination argument has been used with very limited results around the country in the Oldsmobile case. The stronger argument is that individual dealers, in reliance on having the brand, made certain facility improvements, incurred expenses, etc. within a reasonably short period of time prior to the announcement of the discontinuance of Oldsmobile.

- There are issues with individual dealers' exclusivity agreements, if they exist. Those, however, relate to specific dealer circumstances and as such, are not apt to be viewed by the court as class action material.

- In the event of a GM bankruptcy, all of these claims are likely to be swept into the bankruptcy court for adjudication there. It is our opinion that the likelihood of any class action surviving the bankruptcy or avoiding being swept into the bankruptcy is very remote, at best.

*(continued)*

Before responding to such a solicitation, you may wish to get advice from your local attorney or someone else knowledgeable in the automotive business. The most glaring inaccuracy in the solicitation is the assertion of Pontiac's discontinuance by the end of 2009, when that is clearly (at this moment) not the case.

Ronald C. Smith  
Stewart & Irwin, P.C.  
251 E. Ohio Street, #1100  
Indianapolis, IN 46204  
317-639-5454