My name is John Spatcher. I am a CPA and a partner in the public accounting firm of Blum Shapiro and Co., P.C. based out of West Hartford, Connecticut. My firm provides services for approximately 125 automobile dealerships. I personally have worked almost exclusively with automobile dealerships since 1988.

I am writing in reference to the January 19, 2016 workshop that the FTC conducted relative to the franchise laws that regulate auto retailing and the relationships between the dealers and the vehicle manufacturers.

It is my understanding that at the workshop, a number of the speakers made the following conclusions:

1. The economic relationship between motor vehicle manufacturers and their dealers was increasingly balanced.
2. Dealers have grown in stature and size to the point that they had sufficient power in the marketplace to protect themselves.
3. Manufacturer over-reach was a thing of the past.
4. State franchise laws were outdated and unnecessary.

I do not agree with these conclusions.

Based upon my experience, I believe manufacturers still maintain significant control over dealerships. Dealerships are in no better position today to negotiate matters with their manufacturer than they were in 1988 when I began working with dealerships on a regular basis. If it were not for the franchise laws that exist today, laws that protect dealerships from the strong arm of the manufacturer, I believe that many dealerships would be forced to close or fail, leaving manufacturers to control and monopolize markets and customers.

I offer some examples of how the manufacturers continue to exert strength over dealerships. In each of these examples, franchise laws offer some protection to the dealership.

Facility requirements

> Today, most manufacturers have facility requirements that include overall image, space, service facilities and even furniture. Whereas on surface the manufacturers' desire to have the dealerships representing them look and feel consistent for a consumer experience may appear reasonable, the enforcement and execution of the manufacturers' desires can be described as "heavy handed" or discriminatory in the end.
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> For instance, manufacturer M had a program where dealerships that had "reimaged" their facility to M's standards were given a "rebate" on each on new vehicles purchased by the dealership. M's standards for the reimaging included outside facade, entryway, flooring, ceilings, lighting, windows and such detail as to dictating the bathroom fixtures to be installed in restrooms. Upon completion of the renovation, an M inspector would tour the facility checking for compliance with each requirement. Only upon full satisfaction of the inspector would the rebate money flow to the dealership. Of course the dealership

already expended anywhere from $500,000 - $5,000,000 doing the renovations, so failure on the inspection would be problematic for the dealership.

I have had several clients go through the M reimaging process. Each one was difficult and involved delays at the approval stage, benefiting GM who did not have to pay out to the dealership and harming the dealership, who often times was not only waiting for payment but also competing with a nearby dealer who had receive approval and was now presumably able to sell vehicles at a lower cost.

As an update to M's program, M is now looking at discontinuing the present rebate program and replacing it with something else, with new rules, only after four or five years.

Inventory

At the end of the year, manufacturer B was forcing a dealership to accept unwanted new vehicle inventory. The dealership already had excess inventory and taking on the additional would have brought the client's outstanding floor plan well beyond its banking line of credit limit for new vehicles. The dealership and its floor planning bank requested of B that it stop sending inventory. B responded with a threat to put the dealership on a "cash on delivery" basis for parts bought from B, an action that would hurt the dealership's ability to provide service and parts for customers. Upon review of state franchise law, the dealership was protected from such punitive actions by a manufacturer. When informed that its actions were contrary to state law, B immediately ceased shipping excess inventory to the dealership and retracted its threat to put the dealership on "cash on deliver" for parts. In this case the franchise laws protected the dealership from B's desire to unload inventory and punitive threat when the dealership requested the manufacturer not send such inventory.

Termination for sales performance or working capital requirements

Most manufacturers have sales performance targets, which if not met can result in demands and eventually termination procedures by the manufacturer. Sales targets are based on the manufacturer's sales goals applied to the geographic area in which the dealership conducts business, also known as its "area of responsibility" (AOR). It is not unusual for a manufacturer to change a dealership's AOR without notice to the dealership or provide notice amongst other communications, whereupon the notice is missed by the dealer. At times these changes to AOR are detrimental to the dealerships sales performance, simply because of the manufacturer's misunderstanding of the local geography (rivers/mountains/roads). If not for franchise laws which afford the dealership a set of protections from termination, an action such as changing an area of responsibility can give the manufacturer presumed grounds for termination of a dealership. It is of my opinion that if given the right to terminate dealers in an environment of no dealer protections, manufacturer termination of dealerships would increase.

Not dissimilar from sales performance, all manufacturers mandate that dealerships maintain a minimum working capital standard (WCS). The WCS is based upon the manufacturer's interpretations of how the dealership should be run, and the calculation is not negotiable. Dealerships that fall below the working capital standard are given notice that failure to meet the standard is cause for termination. Most dealers acquiesce to the manufacturer's demands, even though that demand may be unwarranted, mainly as a result of intimidation by the manufacturer. Franchise law does, I believe in most states preclude a manufacturer from terminating a dealership solely for not being able to meet the WCS.

Naturally, when it comes to fighting the manufacturer on any matter, the risk is significant. Most owners of dealerships have the majority of their personal wealth invested in the dealership and fighting the manufacturer can be risky. A single dealership, or even a group of dealerships does not have the financial strength of a manufacturer, so long drawn out court battles are not in the best interest of the dealership.

It is of my opinion that in an environment of no dealer protection in the form of franchise laws that the incidence of manufacturer termination of dealerships would increase.

In conclusion, I believe the conclusions reached by many of the presenters at the workshop are not based on what really happens in the industry. To think that dealerships and manufacturers are of equal footing when it comes to matters of negotiation or conflict is simply not true.

I hope my comments are of value to the FTC.