

## **Car dealership closings curbed, profits returning**

By Marilyn Bowden

Car dealerships have been hit hard over the past three years, but attorneys who specialize in this industry say the rate of closings and consolidations has slowed, and some are returning to profitability.

In 2009, Chrysler and GM closed down thousands of underperforming dealerships around the country.

As a result of political pressure, said Alex Kurkin, Aventura-based partner in the law firm Kurkin Forehand Brandes, which represents the Florida Automobile Dealers Association, "most of the GM franchises that had been terminated were given reinstatement agreements that had a performance criterion. They would be permanently reinstated if they met that performance threshold."

Most dealers have met their threshold, he said, but all GM dealers struggled this year because GM produced almost nothing for them to sell, so it's unclear how the manufacturer will treat those who didn't meet the sales criterion.

"With respect to Chrysler," he said, "we didn't lose too many dealerships here." As for new sites coming to market, Mr. Kurkin said, "at this point, dealers that were sufficiently capitalized have returned to profitability and are not now motivated to sell."

There's still some repurposing and consolidation going on, said Robert E. Sickles, a Tampa-based partner with the law firm Hinshaw & Culbertson who is outside general counsel to the Florida Independent Auto Dealers Association. "There is ongoing arbitration and disputes about whether some dealerships should be closed or what compensation they should receive. But it's not the problem it once was."

Some consolidations are the result of changes in the way cars are sold. Gone are the days when a dealership carried just one brand, said Robert Zarco, a partner in the downtown Miami law firm Zarco Einhorn Salkowski & Brito who focuses on dealership and distribution law. Now most manufacturers have consolidation agreements that allow dealers to carry several brands on one lot.

"The larger dealerships are gobbling up the smaller," Mr. Zarco said. "Consolidation means less real estate, fewer employees, lower taxes and utility costs, so it's more profitable. That frees up working capital."

The past few years have seen a decline in sales of domestic brands that is in part the result of a drop in supply, he said. Not wanting to get caught in a downturn with huge inventories on hand, as they were in 2008, US auto manufacturers have in the past several years cut production back drastically, and in the interim, Mr. Zarco said, foreign brands such as Toyota, Hyundai and Kia "have taken such a much larger market share."

In 2012, about 30 all-new domestic models are going to be launched, he said. "What that does is create interest in people not otherwise inclined to buy a new car. That will have a significant impact on dealerships."

Although financing is not as weak as it was, Mr. Kurkin said, "from the consumer perspective factories are not rebating prices as they once did."

"Customers have come to expect that a dealer has a lot of room to negotiate, but they don't. The Manufacturer's Suggested Retail Price is not now irrelevant. So people think they are being cheated — a perception the industry is going to have to cope with."

"Consumer confidence is very much lagging," Mr. Zarco said. "People are afraid of buying new cars and are buying more used, and that has caused a continuous decline in the number of dealerships."

"As of Dec. 31 last year, there were 31,140 franchises and 17,659 dealerships in the US. That represented a 4.4% decrease in the number of dealers in 2010 — an improvement over 2009, when attrition was an unprecedented 8%." Almost all the attrition, he said, affects domestic brands.

Meanwhile, independent dealers, who predominantly sell used cars, are experiencing severe inventory shortages, Mr. Sickles said.

The government's Car Allowance Rebate System, popularly known as Cash for Clunkers, took a lot of older cars off the road, he said, and the cuts in the number of new cars produced over the past several years means that in the next three to five years "there will be a smaller universe of used cars."