

## **U.S. UPDATE**

### **GM's INCENTIVE PROGRAM UNDER ATTACK**

A number of General Motors' dealers are grumbling vocally about the Essential Brand Elements Program instituted by General Motors. Some of them are doing more than grumbling, filing lawsuits to challenge the validity of the program.

Under the Essential Brand Elements Program, Cadillac dealers have been called upon to make costly improvements to their facilities. Those that don't make the improvements face the prospect of having incentive payments withheld. According to some dealers, the loss of incentive payments can amount to a loss of about \$700 per vehicle. Dealers claim that this results in illegal two-tier pricing.

One of the notable suits filed against General Motors, which is still in its early stages, was brought by Florida dealer Braman Cadillac, founded by Norman Braman. Braman is probably not what the U.S. Congress had in mind when it enacted the Automobile Dealers' Day In Court Act in an attempt to level the playing field between large auto manufacturers and dealers, who typically did not have deep pockets. Braman comes in at No. 273 on the Forbes 400 list of the richest people in America, with a reported net worth of \$1.6 billion.

One sore spot cited by Plaintiff in the lawsuit was a requirement that Braman's Cadillac dealership clad the showroom's exterior walls with limestone. According to Braman, the limestone required by the program is too heavy for the building structure. Braman proposed using a lightweight synthetic limestone that he believed would be virtually identical to the actual limestone dictated by General Motors, but General Motors rejected that option.

Braman filed suit in state court in Florida, and General Motors promptly removed the case to the United States District Court for the Southern District of Florida. As expected, General Motors denies the allegations.

Braman's suit is being closely watched by dealers throughout the United States and at least one other dealer has filed suit. Dealer Jack Fitzgerald has filed a similar suit against General Motors in Maryland state court. Fitzgerald Auto Malls has thirty-one franchises at thirteen stores in Maryland, Pennsylvania and Florida. Fitzgerald's claims are similar to those in the Braman case. Both dealers are concerned that competing dealers that receive the incentive payments can offer the same vehicles for hundreds of dollars less than those that do not receive the incentive payments, and still have the same profit margin.