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Legal victory for Chrysler may help in other lawsuits

BY HEATHER DRAPER

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A federal judge's dismissal of an auto dealer's lawsuit against Chrysler Group likely will influence other pending cases against the automaker, according to Denver attorneys who represented Chrysler in the suit.

Denver law firm Wheeler Trigg O'Donnell LLP (WTO) served as national co-counsel for Chrysler in the recent case, in which a California judge ruled that the company had complied with its statutory requirements to the former Chrysler dealers who had won the right to apply for dealerships under the new, restructured company.

"This decision is a vindication that what Chrysler Group has been doing ... is correct in how they move forward in a new, streamlined dealership system," said attorney Hugh Gottschalk, managing partner of Wheeler Trigg O'Donnell and co-lead trial counsel in the case.

The restructured Chrysler Group rejected the franchise agreements of 789 dealers — including 14 in Colorado — during the former Chrysler LLC's bankruptcy proceedings in 2009. The old Chrysler had about 3,200 dealerships nationwide.

Glendale, Calif.-based Star Chrysler-Jeep had sued Chrysler for alleged "oppressive and unreasonable" terms in a letter of intent to enter into a franchise agreement with the company.

In granting Chrysler's motion for dismissal on April 9, U.S. District Judge Gary Allen Feess clarified that "a customary and usual letter of intent ... refers to letters issued by the post-bankruptcy incarnation of Chrysler."

Further, Feess wrote that the letter of intent issued by the new Chrysler to Star Chrysler-Jeep complied with federal requirements "because the terms and conditions included in the letter ... are found in the vast majority of letters of intent, including those issued by the old Chrysler between 2006 and the 2009 bankruptcy."

Of the 789 dealerships nationwide that lost franchises in 2009, 418 have brought claims against Chrysler using the federal arbitration process. Chrysler resolved 310 of them without a hearing, has won another 76 cases and lost 32.

"Dealers rejected by bankruptcy court have



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Hugh Gottschalk and Mark Cloutre of Wheeler Trigg O'Donnell helped represent Chrysler Group.

fought very hard to undo what the bankruptcy court did," said Mark Cloutre, a partner at WTO who worked with Gottschalk on the case. "Chrysler Group has tried to do what's right under the law to create a more streamlined, more efficient dealer network."

Although the federal judge's dismissal of the California dealer's claims could affect pending cases against the automaker, dealerships in Colorado already have fought their battles with Chrysler, said Tim Jackson, president and CEO of the Colorado Automobile Dealers Association.

"I concur [the dismissal] could be precedent-setting, but it won't have much relevance in Colorado," he said.

Five dealerships tried to regain franchise

Of the 14 Colorado Chrysler dealers that lost their franchise agreements in the bankruptcy, only five filed for the right to regain their franchise under arbitration, Jackson said.

Two of those dealers won the right to restore their dealerships — Phil Long Chrysler Jeep on South Wadsworth in Littleton and MedVed Chrysler Jeep Dodge in Castle Rock.

After doing between \$3 million and \$5 million in renovations to a former Hummer dealership in Castle Rock, MedVed re-opened its

Chrysler Jeep Dodge dealership there, Jackson said.

But the plans to reopen the Phil Long dealership hit a snag in 2010 when Chrysler Group awarded the rights to sell Chryslers and Jeeps to an AutoNation Go Dodge dealership across the street.

The owners of Phil Long eventually settled with Chrysler Group, and the former Phil Long Chrysler Jeep dealership never re-opened, Jackson said.

Chrysler sued the state of Colorado in 2010 over a law that gave terminated dealers the right of first refusal if Chrysler or General Motors decided to re-award a franchise within five miles of them and within five years of their closing.

A federal court in southern New York state recently held that the "new Chrysler" wasn't required to comply with state laws giving dealers first rights of refusal because the bankruptcy code pre-empts state law.

In the March 14 ruling, U.S. District Judge P. Kevin Castel dismissed the case against Colorado, however, because attorneys for the state argued that "Colorado acknowledges that it is bound by the bankruptcy court's orders and opinions ... which found that new Chrysler is not a successor to old [Chrysler]."