



Weekly Car Dealers Newsletter

April 5, 2010

This information that follows is taken from sources including *The Carconnection*, *Autoweek*, and other industry sources.

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A CLOSER LOOK AT CONGRESSIONAL INVESTIGATIONS NO NEW JEEP GRAND CHEROKEE UNTIL ITS "FLAWLESS" SHORTAGE OF USED CARS SEND PRICES SKYWARD

A CLOSER LOOK AT CONGRESSIONAL INVESTIGATIONS

For the past few weeks, the news media has been fixated on the Congressional investigation and hearings into purported defects in Toyota vehicles. But why is it such a big story? In reality, Congress has held hundreds of investigative hearings during the past few years on matters involving nearly every industry. This article will review – in very basic detail – Congress's power to conduct an investigative hearing, the limitations on those powers, and the practical effects of a Congressional investigation.

The Power To Investigate

We all know that the primary role of Congress is to pass legislation. As part of that role, Congress also has the capacity to conduct hearings and investigations. The power to investigate is not explicitly referenced in the text of the Constitution. Article I, § 8 of the Constitution simply provides that Congress has the authority "To make all Laws which shall be necessary and proper." But the Supreme Court's broad interpretation of the role clearly provides the authority for Congressional investigation into substantive matters.

In what is perhaps the most important case on this subject, Justice Willis Van Devanter noted that in legislative practice the power to secure needed information by means of investigations "has long been treated as an attribute of the power to legislate. It was so regarded in the British Parliament and in the Colonial legislatures before the American Revolution; and a like view has prevailed and been carried into effect in both houses of Congress and in most of the state legislatures." *McGrain v. Daugherty*.

Congress has delegated the power to initiate and conduct investigations and issue subpoenas for both documents and testimony to all of its standing committees and subcommittees. House and Senate rules afford those committees broad powers to conduct investigative proceedings. For instance, Senate Rule XXVI sets forth many of the hearing regulations to which committees must conform, including the quorum requirement, advance submission of witness statements, the opportunity for minority party Senators to call witnesses of their choosing, and procedures for closing a hearing to the public. Each committee is authorized to hold hearings and has broad discretion in doing so.

The typical chronology consists of an investigation, followed by a hearing, and then, for the most important investigations, a committee report detailing the results of the investigation and often calling for legislative changes which may or may not be implemented. Once an investigation is commenced, which can occur in any number of ways, there is no standard format that will be followed. A hearing is not like a formal legal proceeding; questions are tightly scripted and the subject of the hearing often has little chance to state his or her position. If a person does not comply with a committee's investigative demands, the committee may hold the person in contempt.

Limitations On Investigations

Though broad, Congress's investigative powers are subject to well-recognized limitations. In *Quinn v. United States*, the Supreme Court stated that the power to investigate "cannot be used to inquire into private affairs unrelated to a valid legislative purpose" and that it does not "extend to an area in which Congress is forbidden to legislate." The Court further stated that "the power to investigate must not be confused with any of the powers of law enforcement," which are assigned by the Constitution to the executive and the judiciary. Further limitations include the First, Fourth, and Fifth Amendments to the Constitution, as well as attorney-client privilege.

Practical Effects Of A Congressional Investigation

Recent years have seen widespread criticism of Congressional investigating committees, especially when their actual purpose seems to be subjecting individuals to public exposure rather than obtaining information necessary to legislate. The Congressional hearings on the issue of steroids in baseball is a good example. While any long-term changes were necessarily going to be implemented by a collective bargaining agreement between the players' union and management, Congress took advantage of the public outcry by "addressing" the issue through its investigatory power.

Of course, the players' union and the owners reached an agreement on steroids, thus showing the practical effect of a congressional investigation: to move entities into action. Other effects, unfortunately, often include additional investigations and lawsuits. As all automobile manufacturers are already committed to producing products of the highest possible quality, it is helpful to keep in mind that Toyota is not the only automobile manufacturer to recently issue a widespread recall. In March 2010, GM recalled approximately 1.3 million cars. To the extent that a similar investigation is not conducted into GM, it may be helpful to remember a fundamental truth about Congressional investigations: they are not judicial fact-finding proceedings searching

for truth; rather, they are mainly driven by political considerations *Source: [Timothy Weatherholt, Fisher & Phillips LLP, an Auto Team America member](#)*

NO NEW JEEP GRAND CHEROKEE UNTIL ITS “FLAWLESS”

Sergio Marchionne, the chief of both Chrysler Group and Fiat Group, said he will delay the launch of Chrysler's redesigned 2011 Jeep Grand Cherokee if he doesn't think the vehicle's quality is flawless. The SUV is scheduled to go on sale in June or early July. It was unveiled at the New York auto show last spring.



Sergio Marchionne, CEO of Chrysler Group and Fiat Group.

By Carlos Osorio, AP

"It is the signature vehicle" of Fiat-run Chrysler -- the first all-new vehicle since Italy's Fiat took over -- and will be seen as a sign of the quality of all successive Chrysler-Fiat vehicles, Marchionne said today in a speech to the Automotive Forum 2010 in New York.

The Grand Cherokee "must be flawless" he said. "It will not be launched (on time) otherwise."

Marchionne also continued to insist, as he has for months, that privately held Chrysler Group is making money, an assertion that has met with industry and media skepticism. He said he's been able to do it because he has gotten the company's break-even point "much lower than people thought." *Source: USA Today*

SHORTAGE OF USED CARS SEND PRICES SKYWARD

If you're in the market for a used car, you may be in for a shock. The price of used cars has skyrocketed over the past year. Auto dealers say the reason for the price hike is a nationwide shortage of quality used cars, and some dealers are having trouble finding cars to sell. Heartland Auto Sales in Bemidji typically has a good selection of affordable used cars, but if you look around the lot lately, choices are fewer and prices are higher than a year ago. Owner Davey Mills said it's especially hard to find cars in the mid-price range. "Getting those cars in that \$4,000-\$7,000 range is tough," he said. "And we probably move more cars here in that price range than anybody, but it's hard to find them. That range of car has basically disappeared."

The used car shortage is happening across the country, according to AuctionNet, a data supplier for the auto industry. The shortage has pushed wholesale used car prices up every month last year, which has meant a steady rise in prices on Davey Mills' car lot.

Mills points to a 2005 Chevy Malibu Max as an example. It's a nice looking car with 60,000 miles. A year ago, Mills would have sold it for around \$5,000. Today, the car is priced at nearly \$8,000. Mills said he thinks the recession forced people to hang onto their cars longer.

"I think it is the economy that's driving what's happening," Mills said. "I think people are tightening up their belts for sure and fixing what they have."

A few miles north of Bemidji, used car dealer Vern Voss has a different theory. He's had trouble finding cars to sell in the \$1,000-\$2,500 price range. Voss blames the federal government.

"They're hard to buy now, hard to buy good cars, because of Cash for Clunkers," he said.

"That's the one that put everything down the tube. Took a lot of good cars off the lots, you know, cheaper cars." Last fall's Cash for Clunkers program provided a cash incentive for people to trade in their gas guzzlers and buy a new car. The program removed nearly 700,000 used vehicles from the marketplace. Those old cars were destroyed. But experts say the impact of Cash for Clunkers on the used car market was minimal. Paul Taylor, chief economist for the National Automobile Dealers Association, said most of the clunkers weren't worth much on the resale market. Taylor says the shortage of used cars is most directly linked to the slump in new car sales. Last year about 10.4 million new vehicles were sold in the U.S., approximately 21 percent fewer than in 2008. Fewer new car sales means fewer trade-ins, Taylor said.

"There are approximately eight million cars that didn't come into the marketplace in 2008 and 2009," he said. That's about four million fewer used vehicles a year that weren't available for resale.

On top of the slump in trade-ins, Taylor says many rental car companies have reduced their fleet sizes and are holding onto their cars longer. Again, that means fewer used rentals in the marketplace. Auto repair shops are perhaps the biggest benefactor of the used car shortage and the slump in new car sales. Many repair shops report strong business these days. Bemidji mechanic Chris Hanevold says people are investing in what they have. "They're saving money by not purchasing new cars, so we're seeing them fixing the old cars, putting a lot of money into

their old cars," Hanevold said. "You can easily put a thousand-dollar repair bill on an old car, and you can get by for a year or two on that old car."

The auto industry should see some improvement this year. Experts predict a 15 percent upswing in new-vehicle sales in 2010. That will probably mean that more than a million additional trade-in vehicles will end up on used car lots compared to last year. *Source: Minnesota Public Radio*
