



Weekly Car Dealers Newsletter

June 30, 2008

Information that follows is taken from sources including *The Carconnection*, *Autoweek*, and other industry sources. For more information please call our Edmonton office.

Week of June 30, 2008

SALES ARE DOWN, BUT WHAT IS STILL SELLING?

[HONDA SAYS JUNE U.S. AUTO SALES RISING ON CIVIC, FIT](#)

[CHRYSLER DENIES CASH FLOW PROBLEMS](#)

[GM LEADS WAY INTO DOWNWARD SPIRAL AS AUTO ANXIETY SOARS](#)

[SUPREME COURT ERASES PUNITIVE DAMAGES IN DISMISSAL CASE](#)

SALES ARE DOWN, BUT WHAT IS STILL SELLING?

The latest auto-sales data, released earlier this month, show a glum market -- sales of cars and light trucks were down 11 percent in May from a year earlier. But a few cars have bucked the downward trend. A number of them are small... But there are also some surprising winners -- including a handful of gas guzzlers. Sales of the Toyota Sequoia, a large SUV, rose 29 percent to 14,100 in May from a year earlier, making it the only vehicle in the "large utility" segment for which sales have grown this year, according to J.D. Power & Associates. Still, any boost in sales is surprising as consumers focus increasingly on fuel economy and car makers like General Motors Corp. and Ford Motor Co. scramble to adjust their mix of vehicles. The market for large vehicles is being supported not only by high-income consumers but also by families. Many of these shoppers are turning to midsize "crossover" vehicles like the Ford Edge, driving the segment up 7.1 percent. Crossovers with three rows of seats, like the Mazda CX-9 and the GMC Acadia, have also sold well, appealing to people who want a big vehicle that's more efficient than a Chevy Suburban or other traditional large SUVs. The Mazda5 is the only vehicle in the midsize-van segment whose sales are up this year, apparently because it is smaller and cooler-looking than other minivans -- and it has better fuel economy. "Realistically, who would want a large car when you can have a crossover," says Tom Libby, analyst with research company J.D. Power & Associates. "Midsize crossovers have emerged as the sweet spot of the industry." - Source: The Wall Street Journal

HONDA SAYS JUNE U.S. AUTO SALES RISING ON CIVIC, FIT

Honda Motor Co., the second-largest Japanese automaker, told analysts that its June U.S. sales in the first 20 days were ahead of last year's pace on a 37 percent gain for cars. Total U.S. sales for the Tokyo-based automaker rose 16 percent in the period, according to the e-mail obtained by Bloomberg News. Chris Martin, a spokesman for Honda in Torrance, California, said he couldn't confirm the e-mail. An increase by Honda this month would solidify its place as the sole automaker among the top five in U.S. sales volume to grow in the weakest market in more than a decade. Gasoline prices topping \$4 a gallon, a slack economy and falling home values have cut demand for big pickups and sport-utility vehicles, which Honda doesn't sell, and buoyed sales of small, fuel-efficient cars and light trucks that are the company's specialty. "Civic, Accord and Fit continue to perform very strong," according to the e-mail, signed by Taku Kitamura of Honda's investor relations office in New York. "All the light-truck models were down due to the record high level of gas prices." - Source: [Bloomberg](#)

CHRYSLER DENIES CASH FLOW PROBLEMS

Chrysler LLC is not facing a cash crunch and has ample liquidity, a spokesman said Thursday, denying market rumors. Rumors that the auto maker might seek bankruptcy protection circulated in European markets after a Detroit newspaper said the company is facing a cash crunch. "It's not true. We have cash," spokesman Dave Elshoff said. A bankruptcy filing "is not on the table." Chrysler had \$9 billion at the end of 2007, according to Cerberus Capital Management LP, Chrysler's majority owner. Chrysler recently tapped a \$2 billion credit line from Cerberus and Daimler AG, which retains an interest in its former U.S. unit. At the time, Chrysler said it was meeting or exceeding its financial targets despite the woes facing the auto industry. Source: - [The Wall Street Journal](#)

GM LEADS WAY INTO DOWNWARD SPIRAL AS AUTO ANXIETY SOARS

The Detroit auto industry appeared to be imploding Thursday. Shares of General Motors stock hadn't traded so cheaply since the 1950s. Ford Motor stock was at a 52-week low. Privately held Chrysler doesn't trade but still felt compelled to deny a rumor that it will file for bankruptcy protection. Consultant J.D. Power and Associates is predicting June sales will calculate to an annual selling rate of 12.5 million, a breathtaking drop from a rate of 15.6 million in June 2007. The annual selling rate for the months so far this year has ranged from 14.3 million to 15.4 million, already almost guaranteeing a bad year. Full-year sales have been about 17 million most of the past decade. A drop to 14 million from 17 million for the entire year would be the equivalent of closing a dozen big auto factories. "There has never been a time in the auto industry like this," Van Conway, senior managing director of Conway MacKenzie & Dunleavy restructuring firm in Detroit, said Thursday. Conway called current conditions "the perfect storm" for the industry. - Source: *USA Today*

SUPREME COURT ERASES PUNITIVE DAMAGES IN DISMISSAL CASE

The Supreme Court of Canada erased Friday a landmark punitive damage award of \$100,000 to Kevin Keays, an employee of Honda Canada who was fired after years of struggling with chronic fatigue syndrome.

Employers breathed a large sigh of relief as the award – originally \$500,000, but reduced to \$100,000 by the Ontario Court of Appeal - evaporated altogether as a result of the Supreme Court's 7-2 ruling. "Aggravated damages should not have been awarded in this case," Mr. Justice Michel Bastarache wrote in the majority reasons. "The employer's conduct in dismissing Keays was in no way an egregious display of bad faith justifying an award of damages for conduct in dismissal. "Similarly, punitive damages should not have been awarded," he said. "Punitive damages are restricted to advertent wrongful acts that are so malicious and outrageous that they are deserving of punishment on their own. The facts of this case demonstrate no such conduct."

It had been the largest ever in a Canadian employment context. Despite the reduction by the Ontario Court of Appeal, the punishment remained strikingly large – as was an award of 24 months of salary in lieu of proper notice, coupled with a legal cost award to the plaintiff of \$610,000. The court on Friday also reduced the salary award to 15 months pay. Mr. Keays was employed for 14 years as a senior quality engineering associate. His employment was wrongfully terminated in May, 2000, after he refused to attend at a medical assessment which the trial judge concluded was a set-up by Honda to evade its duty to accommodate Keays under Ontario human rights law. "Generally, damages are not available for the actual loss of a job or for pain and distress suffered as a consequence of being terminated," the majority said. "However, in cases where parties have contemplated at the time of the contract that a breach in certain circumstances would cause the plaintiff mental distress, the plaintiff is entitled to recover." Mr. Keays's grim struggle with chronic fatigue syndrome had played havoc with his work attendance at the Honda plant in Allison, Ont. Co-workers had taken to mocking his constant absenteeism with cruel cartoons and resentful ridicule. With workplace morale in a tailspin and their patience spent, Honda managers decided the situation was at the point of no return. They fired Mr. Keays, spawning a bitter court battle that resulted in a record-setting damage award for him – granted by a judge who blasted the company for an "outrageous" campaign of intimidation against Mr. Keays.

Corporate managers, insurers and human-rights advocates have been watching the case closely to see how the court interprets the evolving duty of an employer to accommodate an employee suffering from a debilitating condition. The landmark case also induced the court to reconsider a 30-year-old Supreme Court decision that limited the ability of judges to award damages for violations of human-rights code guarantees. At the 2005 trial of Keays v. Honda Canada, both sides portrayed a bitter standoff between an ambitious worker and a company that had originally prized his intelligence, potential and diligent approach to his duties. For several years after he was first hired at the Honda plant in 1986, Mr. Keays's career had been on the fast track. He rose from the production line to a management position, where he was viewed as a key figure in the company's future. Unfortunately, his illness steadily worsened. Having invested considerably in upgrading Mr. Keays's training in a special computer system, Honda was chagrined. He was off work for most of the period from October, 1996, until December, 1998. At that point, he was cut off long-term disability benefits by London Life, which had arranged for an assessment of his medical condition. He returned to work, but his

absences soon began anew. Honda insisted that he begin providing a doctor's note to explain any absence. Mr. Keays was also assessed by a company doctor, who allegedly threatened to have him moved back to the production line. "He had spent his entire adult life at Honda and felt his world was coming down on his head," Mr. Justice John McIsaac of Ontario Superior Court said in his trial ruling. "The deck was stacked against him and he was only a minnow compared to the leviathan that Honda represented."

Mr. Keays hired a lawyer. However, in keeping with a policy of not dealing with "third parties," Honda ignored him. According to Judge McIsaac, the company had its own lawyers attempt to persuade Mr. Keays to ignore the advice of his lawyer. It also had two more company doctors assess him. Judge McIsaac found that the company grossly misrepresented the doctors' advice and conclusions that he ought to return to work, and that it went further off-side when it tried to force him to see another company doctor who felt the chronic fatigue syndrome was a sham. "The subterfuge practised by everyone associated with Honda in attempting to intimidate him to seeing their occupational medicine specialist should make the blood boil of any right-thinking individual," Judge McIsaac observed. The judge concluded that Honda set about abusing a dedicated worker by misusing medical evidence to mount a case for firing, which occurred on March 29, 2000. "Just because Mr. Keays did not carry a white cane, use a hearing aid or get around in a wheelchair, did not make him any less deserving of workplace recognition of his debilitating condition," Judge McIsaac said.

Affirming the essential findings by the trial judge, the Ontario Court of Appeal said: "The need for this large employer, and indeed all employers, to take seriously their responsibilities in accommodating employees with disabilities is very important."

In a brief to the Supreme Court on behalf of Honda, lawyers Earl Cherniak and Jasmine Akbarali argued that the Court of Appeal took the ground out from under Judge McIsaac's harsh judgment by finding that Honda did not run amok or engage in "corporate malfeasance. The import of these findings is that there was no bad faith on the part of Honda and no conduct justifying an award of punitive damages." – Source *Globe and Mail*
