



NATIONAL AUTOMOBILE DEALERS ASSOCIATION
8400 Westpark Drive • McLean, VA 22102-3591

MEMORANDUM

To: All GM and Chrysler Dealer Members (as of April 29, 2009)

Re: New Dealer Rights law

Date: December 17, 2009

Earlier this month, Congress passed a bill that grants certain GM and Chrysler dealerships and former dealerships (“Covered Dealerships”) the right to demand binding arbitration with GM or Chrysler to determine whether that manufacturer must be required to restore the dealership to the manufacturer’s dealer network. The bill was signed by President Obama and became effective on December 16, 2009. Copies of the new law and the Conference Report that accompanied the legislation are available at www.nada.org under the “Dealer Rights” tab.

Because every dealer’s situation is unique, NADA strongly encourages each dealer to work with its individual financial and legal professionals to examine in detail whether and how to pursue the rights granted by the new law.

A more comprehensive summary of the new law can also be found at the “Dealer Rights” tab on www.nada.org, but a few important points that dealers should note are set out below. We recognize that there likely will be many other questions regarding the arbitration process established by the new law. NADA will post additional information about the process at www.nada.org as that information becomes available.

Election of arbitration and arbitration logistics

- By January 15, 2010 Covered Dealerships will receive a “summary” from their manufacturer/former manufacturer of their rights under this law and the specific criteria pursuant to which that Covered Dealership was terminated, not renewed, or “wound-down.”
- **Covered Dealerships that wish to seek binding arbitration with GM or Chrysler must make the election to do so by January 25, 2010.** (Note that you do *not* have to wait to receive the foregoing “summary” – you can elect arbitration at any time prior to January 25, 2010).
- Covered Dealerships that elect arbitration must pay their own fees, expenses, and costs associated with the arbitration, as well as ½ of the shared costs of the arbitration (arbitrators’ fees, meeting room charges, administrative costs, etc.).

- The arbitration will be held in the state where the Covered Dealership is located, although the parties can agree to conduct the arbitration electronically or over the telephone.
- Any arbitration must be completed by June 14, 2010 (although the arbitrator may decide to extend the arbitration to July 14, 2010 for good cause).

Arbitration standard and presentation of evidence

- The arbitrator will decide whether the Covered Dealership should be continued or reinstated based on a balancing of the economic interests of the Covered Dealership, the manufacturer, and the public at large.
- In conducting this balancing, the arbitrator will consider, among other things, the following seven factors:
 - the Covered Dealership's profitability in 2006, 2007, 2008, and 2009;
 - the manufacturer's overall business plan;
 - the Covered Dealership's current economic viability;
 - the Covered Dealership's satisfaction of the performance objectives established by its franchise agreement;
 - the demographic and geographic characteristics of the Covered Dealership's market territory;
 - the Covered Dealership's performance in relation to the criteria used by its manufacturer to terminate, not renew, not assume or not assign the Covered Dealership's franchise agreement; and
 - the length of experience of the Covered Dealership.

Accordingly, the Covered Dealership should be prepared to address each of these areas during the arbitration.

- At the arbitration, the Covered Dealership and the manufacturer may present any information that is relevant to the question above.

Settlements outside of arbitration

- While the new law does not allow the arbitrator to order the awarding of damages, it permits a Covered Dealership and its manufacturer/former manufacturer to reach a voluntary, negotiated settlement of the dealerships claims – including one that includes compensation – in lieu of arbitration.

State franchise laws

- No provision of the new federal law preempts state franchise laws. Dealers are advised to consult legal counsel about the impact of the state law on their specific situation.