



American Arbitration Association

Dispute Resolution Services Worldwide

AAA Automobile Industry Special Binding Arbitration Program Overview

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AAA Mediation

- AAA mediation is offered as an option to reach a settlement.
- Mediation is a negotiation conference facilitated by a neutral third-party, the Mediator.
- Mediators charge a fee, but there are no additional AAA fees for these mediations.
- You can learn more about mediation at www.aaamediation.com

Section 747 Arbitrations

- These arbitrations are authorized by Section 747 of Public Law 111-117 and are *voluntary* for the Covered Dealerships, not the Covered Manufacturers.
- These cases must be completed within a six month time frame.
- Discovery is limited.
- Arbitrator must weigh specific factors.
- Scope and format of an award are specific.
- Award is binding on both parties.
- Over 1500 parties filed cases.

Section 747 Arbitrations *continued*

- Final submissions due by June 14, 2010, 180 days from enactment (December 16, 2009).
 - This is the final day for any party to submit any materials required for their case.
- Last award will be rendered no later than June 23, 2010.
- Costs of the forum (arbitrator, AAA administration, rooms, etc.) split equally between parties.
- Each side bears its own costs, arbitrator cannot award attorney fees or award costs.

Section 747 Arbitrations *continued*

- Some dealers have requested hearings in their specific locale.
- Manufacturers have objected and want one locale within each state.
- Arbitrations will take place within the state of the covered dealership. AAA will determine the locale within each state.
- Parties may propose to hold part of the hearing at another locale—the arbitrator will make this decision.

Arbitrator Appointment

- First, both parties try to agree on an arbitrator.
- If unable to agree, the parties ask the AAA to appoint an arbitrator.
- AAA will then provide a formal list of 10-20 names. The list will have a timeline of 15 days for parties to strike off names and rank the remaining names on the list.
- Parties should continue to try to agree on an arbitrator.
- If there is still no mutual selection after the 15 days, AAA will appoint an arbitrator to keep the case moving in accordance with the AAA's Rules and Section 747.

Arbitrator Appointment *continued*

- If parties *later agree* on a different arbitrator, AAA will withdraw its administrative appointment and continue with the agreed upon arbitrator. Parties may have to pay for the administratively appointed arbitrator's time.
- Many of AAA's 'regions' cover multiple states.
- Arbitrators routinely serve on cases in different states.

Arbitrator Appointment, Disclosures

- Arbitrators must provide disclosures, pursuant to the AAA Rules, see Section R 16.
 - A ‘disclosure’ means the arbitrator checks to see if he/she has had any professional or social contact with the parties or lawyers.
- AAA solicits information from the parties to help the arbitrators (and parties) uncover potential disclosures or *conflicts*.
- Any disclosures the arbitrators make will be provided to parties in writing—except in cases of a significant disclosure, when the AAA will move on to another arbitrator.
- Arbitrators have a Code of Ethics you can get at www.adr.org

Process Overview

- Information can be provided to the arbitrator and the other party, using electronic transmission and using AAA WebFileSM as the online case site for all the documents on a specific case.
- Register as an AAA WebFile user and then request access to your case(s) through the Manager of ADR Services.
- Parties or attorneys who have more than one case can work on all of their cases once they sign on to WebFile.
- Parties can agree to do the entire case exclusively through the submission of documents, with the option of a telephone or video conference.

Process Overview *continued*

- AAA has videoconference capability in many AAA offices- there is a charge based on length of connection time.
- Parties are responsible for their presentations, evidence, argument, etc.
- Parties should keep in mind the following in preparing their case:
 - What determination should the arbitrator make?
 - On what can the arbitrator base the determination?
 - Why should the arbitrator reject the other party's positions, facts, arguments?

Quantity is not Quality

- Parties mistake “a lot of information” for the right information.
- AAA encourages parties to review the AAA’s *Guide to Mediation and Arbitration for Business People*.
- www.aaauonline.org (under Resources).

Scheduling Orders

- Most of AAA's cases have Scheduling Orders that provide a clear roadmap to the end of the case.
- The parties should adopt reasonable scheduling stipulations now, even before the arbitrator is appointed in order to get these cases ready for hearing.

Sample of Timeline

- March 16 Initial Brief
- March 26 Reply Brief, if any
- March 31 Any Arbitrator Questions
- **April 5-6** **Hearing**
- April 13 Post Hearing Brief or Final Submissions
- April 13 Closing
- April 22 Determination Sent

AAA Model Scheduling Order

- AAA will have a model scheduling order which the parties can adopt or modify.
- This order drives the parties toward the Section 747 requirements of the arbitrators.

Written Determination (Award)

- The written determination (award) shall include:
 - 1. a description of the covered dealership.
 - 2. a clear statement indicating whether the franchise agreement at issue is to be renewed, continued, assigned or assumed by the covered manufacturer.
 - 3. the key facts relied upon by the arbitrator in making the determination.
 - 4. an explanation of how the balance of economic interests supports the arbitrator's determination.

Recap of Process

- Arbitrators will be jointly selected or AAA appointed.
- Optional Discovery Arbitrator(s) will be available.
- Parties will exchange and provide the arbitrator with witness lists, exhibits, briefs.
- Parties must provide the arbitrators with information covering the seven factors required in Section 747.
- Parties must provide the arbitrator with clear positions as to the determination the arbitrator is to render.
 - Description, determination, key facts to rely on.
 - How the balance of economic interests will support the determination you have asked the arbitrator to make.

Automobile Industry Program Refund Schedule

Standard Fee Refund Schedule

We are using January 25 as 'filing' date to calculate.

Date withdrawn Prior to Arbitrator Appointment	Refund to Dealer	Due from Manufacturer
1/25-1/30	\$1,375.00	\$250.00
1/31-2/24	\$812.50	\$812.50
2/24-3/26	\$406.25	\$1,218.75
Flex Fee Schedule refunds	Refund to Dealer	Due from Manufacturer
Withdrawn Prior to Arbitrator Appointment	\$0	\$500