



## Ownership

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# Chrysler and GM Dealer Reinstatement Legislation

What dealers can expect through the arbitration process

**B**y the time you read this article, the deadline for Chrysler and General Motors dealers to seek a reinstatement of their franchise pursuant to new federal legislation may be near or already passed. As I write this article (December 15, 2009), over the past weekend the U.S. Senate approved legislation that provides possible reinstatement for rejected Chrysler and GM dealers through a neutral arbitration process. The Senate's approval follows the U.S. House of Representatives favorable vote on the legislation last week. President Obama is expected to sign the legislation into law this week.

### Not all dealers may seek reinstatement

The legislation provides relief for all rejected Chrysler dealers and those Buick, GMC, Chevrolet and Cadillac dealers who entered into wind-down agreements with GM. GM dealers who held a Pontiac, Saab, Saturn and Hummer franchise are not covered by this legislation. Importantly, although it may be difficult for some Chrysler and GM dealers who have already discontinued dealership operations to make a viable case for reinstatement, all such dealers are eligible to seek relief through the arbitration process. A rejected Chrysler or GM dealer's right to participate in the arbitration process is likewise not affected by the fact that the dealer operates another Chrysler or GM franchise on a going-forward basis.

Under the legislation, Chrysler and GM are required to provide eligible dealers with written notice of the basis upon which the dealer was eliminated and notice of the dealer's right to an arbitration hearing challenging the elimination within 30 days of the date of enactment of the legislature. Once that notice is received, *the dealer will have as little as 10 days to elect to proceed with arbitration.* The arbitration hearing is expected to take place within 180 days.

### Possible settlements with Chrysler and GM

It is difficult to imagine that Chrysler and GM will have the wherewithal to defend the hundreds of requests for arbitration that are

expected from rejected dealers. Instead, in order to avoid many of the reinstatement actions, we would expect Chrysler and GM to make offers of settlement to dealers. Chrysler and GM will not have much time to decide how to handle the arbitration requests expected, as the arbitration hearing must take place within six months of the date the legislation becomes law. No matter how Chrysler and GM plan to try to settle reinstatement requests, dealers must be sure to make their arbitration request within the time allotted by Congress or leverage to reach a settlement is lost.

### Phases of the arbitration process

If a dealer does not reach a settlement with Chrysler or GM, we expect the arbitration process to involve several phases. The first phase will involve receiving Chrysler and GM's notice, which is required to include the basis for the dealer's rejection. In this phase, the dealer will want to submit a document request to Chrysler or GM for more information related to rejection of the dealership.


The second phase of the arbitration process will involve evaluating information from the manufacturer and preparing the dealer's case for presentation to the arbitrator. This phase includes organizing documents and witness testimony for presentation to the arbitrator and preparing to challenge the manufacturer's decision. Under the federal legislation, the parties can agree to handle the arbitration by way of an electronic submission or an appearance at an arbitration hearing. Although less expensive, the written submission method compromises the presentation of your case and the ability to challenge Chrysler's or GM's basis for your rejection. We believe that presentation of your case at an arbitration hearing will be much more effective.

The third phase of the arbitration process is the presentation of your case to the arbitrator. If you have chosen to present your case by written submission, this phase will involve the preparation of a written memorandum and possibly a rebuttal memorandum to Chrysler's or GM's written submission. If you have chosen to present your case at a hearing, this phase will involve preparation of witnesses

and documentary evidence and a hearing at the arbitrator's office, as well as a post-hearing written submission of your case.

### Begin preparing now for arbitration

In crafting the legislation, Congress required the arbitrator to consider a number of performance and market-related factors in determining whether the dealer should be reinstated. As such, there is much internal dealership information that dealers should begin gathering to gauge the strength of their case for reinstatement. The legislation also allows dealers to seek documents from Chrysler and GM to assist the dealers in making their case for reinstatement. There are many critical pieces of information dealers will want to consider obtaining from Chrysler and GM relative to dealership performance, the performance of other dealerships within your market and Chrysler and GM's treatment of other similarly situated dealerships.

The attorneys at Bass Sox Mercer PA (formerly known as Myers & Fuller) have been busy putting together the framework for a successful arbitration case and are asking our dealer clients to begin gathering certain dealership information which will be crucial to making their case for reinstatement pursuant to the performance and market factors delineated by Congress. Affected Chrysler and GM dealers should consult with an experienced dealer lawyer to assist them in requesting arbitration and preparing to argue for reinstatement. 

*Richard Sox is a lawyer with the firm of Bass Sox Mercer PA (formerly known as Myers & Fuller PA) with offices in Tallahassee, Florida and Raleigh, North Carolina. The firm's sole practice is the representation of automobile dealers in their quest to establish a level playing field when they deal with automobile manufacturers.*

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