

NADC Rejected Dealer Arbitration Webinar

January 13, 2010

1:00 PM EST (10:00 AM PST)

The webinar will address the following topics:

1. Timing requirements under the new arbitration bill
2. Helping your clients decide whether to pursue arbitration
3. Analysis of the factors that may be considered to achieve reinstatement
4. General arbitration strategy
 - a. What do GM and Chrysler fear the most and how to use this to your client's advantage
 - b. How your client's customers can help you win at arbitration
 - c. When and why should dealers "lawyer up"
5. Primer on American Arbitration Association rules and costs
6. Possible scenarios that the bill does not address

Our panelists will be Michael Charapp of Charapp & Weiss, Eric Chase of Bressler, Amery & Ross, P.C., and Len Bellavia of Bellavia, Gentile & Associates. NADC president, Rob Cohen, will moderate the discussion.

The webinar will be open only to NADC members and will cost \$95 per connection.

In preparation for the webinar (and for immediate consideration), our panelists have provided the following information:

- All dealers who are still in a position to operate a franchised dealership should seriously consider invoking his/her rights under this new law.
- Your client's must be aware of the costs of the proceeding, which will include half the administrative costs of the AAA, as well as half the cost of the arbitrator, in addition to your fees. AAA administrative fees are quite substantial, and the fees of the arbitrators generally are in the \$300-\$700 per hour range. Further, you may need an expert.
- To determine whether you have a reasonable likelihood of success, you must perform a candid assessment of your client's dealership in light of the factors the arbitrator must consider. Your client's answers to the following questions should be key to your consideration:
 - Does your client have the financial resources to fund your participation?
 - What is your client's level of experience?
 - Does your client still have adequate facilities?
 - How profitable (or not) was your client in 2006, 2007, 2008 and 2009?

- How well did your client fulfill performance objectives?
- How does your client fit into the manufacturer's overall business plan?
- Will your client be (is your client now) economically viable?
- Are the area's demographics and geography consistent with reinstatement?
- How does your client stack up to "normal" termination/nonrenewal criteria?
- If your client's franchise has already been "replaced," (or if you otherwise do not plan on re-opening), consider filing anyway, if you have a solid case. Perhaps you will have an opportunity to negotiate a monetary settlement.
- If you prevail, your client must reimburse any money received. (General Motors dealers have received 25% of the wind-down payments to date.) In addition, your client may have to reestablish his/her business, reinstate floorplans, restore inventories, rehire employees, and rehabilitate customer relationships.
- If you decide to go into arbitration, the following documents and materials will be important:
 - Your dealer agreement with all addenda
 - Correspondence with the franchisor from 2006 to termination concerning the dealership's performance.
 - All performance reports, specifically sales effectiveness and CSI for 2006 to termination
 - Any franchisor market studies from 2006 to termination.
 - Your dealer financial statements from 2006 to present
 - Any CPA audited or reviewed statements from 2006 to termination
 - Documents that describe or pertain to special circumstances, particularly demographic and geographic characteristics of your market that had an impact on your performance
 - Floorplan documentation and documentation concerning other lines of credit available to the dealership
 - Any documentation supporting your financial ability to maintain your business going forward
 - Documents that show and describe your facilities
 - To the extent not fully shown by your financial statements, documents that describe hard assets (equipment, signs, tools) and inventories you purchased to conduct business
 - Documents that describe the number and quality of your employees pre-termination

- Letters and records of contact that show your customers' view of the importance of your dealership to them
- Documents that show the importance of your dealership to your community
- Any plans you have developed to reinvigorate your business if reinstated

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Presenters' Biographies

Leonard A. Bellavia, Esq., founding partner of the law firm of Bellavia Gentile & Associates, LLP, is a nationally recognized authority in the field of automotive franchise law and represents hundreds of automobile and marine dealerships in all aspects of commercial litigation, franchise disputes and employment law. With extensive experience in dealership mergers and acquisitions, Mr. Bellavia has been instrumental in buy-sell transactions involving every manufacturer doing business in the United States.

Mr. Bellavia has spent his life in the automobile business as his family has been in the forefront of Long Island's automobile industry for over 50 years. After graduating from law school, Mr. Bellavia quickly gained recognition as a talented commercial litigator. Shortly thereafter, his expertise in the automobile industry led to the creation of Bellavia Gentile & Associates. Mr. Bellavia's vision has created a firm that is one of the nation's leading law firms representing automotive and marine dealers and dealer associations.

Mr. Bellavia has written numerous articles on dealership and franchise matters and is a regularly quoted source of comment in *Automotive News*, the industry's leading trade publication. In addition, Mr. Bellavia is a sought-after speaker for national automotive and dealer-related trade organizations.

Mr. Bellavia serves as Chairperson of the Litigation Section of the National Association of Dealer Counsel "NADC" and is a member of its Board of Directors and is the Chair of the Automotive Franchise Law Section of the Franchise Law Committee of the New York State Bar Association.

In 1998 Long Island Cares presented Mr. Bellavia with the 8th Annual Harry Chapin Humanitarian Award for his commitment and efforts in the fight against hunger. Following this recognition, Mr. Bellavia created "Balancing the Scales on Long Island," a pro-bono public service program that provides quality legal services to the disadvantaged and underserved.

Michael Charapp, Partner in the firm of Charapp & Weiss, LLP, has spent his life in and around the automobile business. He is a graduate of the University of Pittsburgh (B.A. 1971), and of the Georgetown University Law Center (J.D. Degree 1974). Mr. Charapp is a member of the Bars of the Commonwealth of Virginia and the District of Columbia.

Mr. Charapp worked in his family's Dodge dealership in the Pittsburgh, PA area until he graduated from College. After his graduation from law school, he was an associate and later a partner in the firm of Stein, Mitchell & Mezines, Washington, DC, from 1974 to 1984 where he specialized in litigation and commercial transactions, including representation of car dealers and car dealer trade associations. From 1984 to 1996 he was Executive Vice President and General Counsel of the Rosenthal Automobile Organization headquartered in Arlington, VA, at the time one of the 10 largest auto dealer organizations in the country. In 1996 he formed the firm of Charapp & Weiss.

Today, Mr. Charapp represents and advises numerous business clients, including well over 200 automobile dealers and several automobile dealer trade associations, including the Maryland Automobile Dealers Association, the Virginia Automobile Dealers Association, and the Washington Area New Automobile Dealers Association.

Eric L. Chase is one of America's leading automotive attorneys. Over many years he has represented hundreds of dealers in their disputes with automobile factories, distributors and importers, as well as in investigations by and disputes with state and federal agencies. As a litigation partner in the New Jersey office of Bressler, Amery & Ross, P.C., his automotive practice is national in scope. He has served as lead counsel in a variety of landmark cases that are important and enduring legal precedents for dealers.

Upon graduation from Princeton University in 1968, Mr. Chase entered the Marine Corps as a 2nd lieutenant and served as an infantry officer in Vietnam. After three years of active duty, he attended the University of Minnesota Law School, from which he received his J.D. degree, cum laude, in 1974. Prior

to entering private practice, he served as an Assistant United States Attorney in Newark, N.J.

Mr. Chase has written dozens of articles on automotive subjects which have appeared in, among other publications, *Automotive News*, *Dealer Business (Auto Age)*, *Automotive Executive*, and *Automotive Dealers Digest*. He is a frequent speaker at seminars for dealers throughout the United States and his advice regarding new state franchise legislation is often sought by state associations. One of the original members of the New Jersey State Bar Association's Franchise Law Committee, he served as its co-chairman during 1999-2000.

Since its initial publication in 1994, Mr. Chase's book, *Automobile Dealers and The Law*, has become a primary legal handbook for dealers.

Mr. Chase retired in 1998 from the Marine Corps Reserve as a colonel, and is an acknowledged authority on national security and the law of war. His writings on those subjects include articles in the *New York Times*, *Newsweek*, *The Washington Post*, and *Strategic Review*. He has appeared as a military expert on *Good Morning America*, *Larry King Live*, *CBS Sunday Morning* and the *Charlie Rose Show*. His biography appears in several publications, including *Who's Who in America* and *Who's Who in American Law*.

Rob Cohen, Esq., started with Auto Advisory Services in 1994 and he became President in 2006. Prior to devoting his full time effort to Auto Advisory Services, Rob represented dealers in litigation for four years. Rob specialized in the defense of consumer claims and represented licensees before DMV administrative hearings. He developed a strong background inside dealerships by working as a car salesman and doing F&I during law school. Rob received his B.A. and M.B.A. from the University of California, Irvine and then went on to earn his J.D. from Whittier College, School of Law.

Rob currently serves as Vice President of the National Association of Dealer Counsel (NADC), is editor of *Transmission* (Auto Advisory Services' monthly newsletter) and *The Defender* (the NADC newsletter), and has been published in *Ward's Dealer Business*, *Orange County Business Journal* and *F&I Management and Technology*. He is a frequent speaker and trainer on a wide range of subjects pertaining to dealership sales and finance compliance. Rob co-authored the top-selling *Automotive Dealership Information Safeguards Manual*, the *Automotive Dealership Identity Theft Guide*, as well as the recently published *Red Flags Rule Guidebook*.

Key Seminars: *Red Flags Rule, Identity Theft Prevention Program Workshops*, California, Colorado (multiple sessions), August–September, 2008. *Compliance Exposure That Can Crush Your Dealership*, NADA Conference, San Francisco, CA, February, 2008. *Common But Potentially Dangerous F&I Practices*, NADC F&I Workshop, Baltimore, MD, November, 2006; *Changes for 2007*, Reynolds and Reynolds University Online, November, 2006; *F&I Matters*, NADC Member Conference, Chicago, IL, April, 2006; *Car Buyer's Bill of Rights Training*, California (multiple sessions), May-June, 2005; *Negative Equity Disclosure*, NADC Member Conference, Atlanta, GA, April, 2005.