IALLA International Association of Lemon Law Administrators

The International Association of Lemon Law Administrators includes in its membership government agencies and other organizations that administer various types of alternative dispute resolution programs. These programs may be administered under state Lemon Laws, they may be required to meet certain state and/or federal requirements, they may be established by private contracts between businesses and private dispute resolution firms, or they may be established by other types of agreements. All such programs have rules and procedures under which they operate.

This brochure is not intended to provide detailed information regarding any particular program procedure, but is offered to give guidance to motor vehicle manufacturers participating in an informal arbitration proceeding under a state Lemon Law. For detailed information about the rules of procedure of any dispute resolution program, manufacturers should contact the particular program or administering agency directly.

MANUFACTURER LEMON LAW AND ARBITRATION PARTICIPATION TIPS

Tip No. 1 – Catch Situations Early

Implementing an "early warning trigger" in a manufacturer's electronic warranty repair reporting system such that contact is made with the consumer after a second repair for the same problem, or after the vehicle has been in for several cumulative days for repair of different problems is a good way to catch situations early, before things escalate, and before written notice is even required.

Tip No. 2 – Assess and Respond

If a state Lemon Law requires a consumer to notify the manufacturer once a certain repair or out-of-service time threshold has been reached, or as a precondition for the filing of a claim, the manufacturer should recognize that the purpose of this

notification is to provide the manufacturer with an opportunity to take action to retain that customer before the parties become involved in adversary proceedings (and in some states, before the manufacturer is required to repurchase or replace the defective vehicle) and respond accordingly. It is not the time to ignore the consumer, send the consumer back to the dealer without the manufacturer's direct involvement, or tell the consumer whether the manufacturer thinks the claim is eligible under the Lemon Law. Rather, it would behoove the manufacturer to review the repair history and meet with the consumer to discuss options for resolving the issue to avoid further action.

It would also be wise to note that if the manufacturer is scheduling a "final repair attempt" or vehicle inspection, it is not advisable to schedule it at the dealership with which the consumer has not had a good relationship.

Tip No. 3 – Read the Rules

All dispute resolution programs have rules and procedures that must be followed. Once a manufacturer has been notified that an arbitration process has been commenced by a consumer, the manufacturer's representative should become familiar with the procedural requirements of the particular dispute resolution process. If the representative handles many states, it would be difficult to remember each state's specific lemon law provisions, arbitration requirements, forms to complete, and deadlines for the filing of documents. The representative should read the law, rules, and all the information given to the representative by the dispute resolution program. If this is the representative's first case, the representative should contact the program administrator to get an overview of how the process works.

If the representative who will attend the hearing is not the person who receives the initial notice of the claim from the program, it is the manufacturer's responsibility to assure that the person attending the hearing has all of the relevant information and documents sufficiently in advance of the hearing to adequately prepare. Lack of adequate internal communication within the company is not a good reason for failure to comply with program rules or failure to appear at a hearing.

Tip No. 4 – Provide Documents and Fees

Provide all documents requested by the program in a timely manner, consistent with the rules of the program. Respond to any reasonable request by the consumer for additional documentation. Most programs provide a means of objecting either at a pre-hearing conference or during the hearing to the production of irrelevant documents or documents which would be overly burdensome to produce. If the program requires that the manufacturer pay a filing fee, make sure this is done by the deadline.

Tip No. 5 – Offer a Settlement

Offers of settlement to consumers should be made in writing, giving clear terms and information regarding how certain calculations were made (e.g., the offset for use, collateral charges, etc.), an itemization of what amounts the manufacturer is willing to pay and a date certain by which the settlement will occur. Remember that this is an offer, and the consumer can make a counter-offer, and is free to decline or accept. Intimidation, rigid adherence to internal company policies, and a failure to clearly communicate what is being offered will not promote settlement.

Some programs may require submission of a copy of the written terms of the settlement, including signatures, or a form may be provided to the manufacturer to verify

settlement terms. If a settlement offer is initiated just before or at the hearing, the hearing may have to be postponed or continued until the parties complete their negotiations. The goal should be to complete the settlement several days prior to the scheduled hearing.

Tip No. 6 – Arrange for Witnesses

Make the arrangements for any witnesses to appear at the hearing according to the rules of the program. Some programs may allow witnesses to testify via telephone. It is advisable to talk to the witness before the hearing to ascertain what they know about the case.

Tip No. 7 – Understand Differences in Authority

The manufacturer should understand the particular state Lemon Law statute being applied by the decision makers, and the scope of the decision makers' authority. Some state statutes track the terms and provisions of the manufacturer's written warranty, while others may incorporate the warranty, but also may provide additional coverages and exclusions. Understanding the differences in decision-making authority between manufacturer-sponsored dispute resolution procedures and state-run dispute resolution procedures is also important.

The manufacturer should understand that, in most cases, if a program administrator is telling the manufacturer that something cannot be done, it is not a personal decision by the administrator; rather, it is based upon the program's scope of authority established by federal or state law or regulation.

Make sure that any third-party vendor to which settlement negotiation and/or compliance has been outsourced is adequately trained in the state requirements.

Tip No. 8 – Exhibit Professional Conduct

Maintain appropriate decorum and conduct during a hearing, and raise any objections permitted by the rules of the program or applicable law in a timely and professional manner.

The manufacturer should understand the law and defenses being presented to the arbitrator(s). All the information and evidence needed to prove the manufacturer's points should be presented. The consumer is not the only party at a hearing who has a burden of proof. Affirmative or other defenses should be timely raised and have a good faith basis. The manufacturer should be prepared to submit evidence and testimony to support these defenses.

Tip No. 9 – Adhere to Compliance Time Limits

Be aware of the state requirements and time limits for compliance with decisions rendered by state-run arbitration programs and adhere to them. Make sure that any third-party vendor to which this responsibility is outsourced is adequately trained in these requirements as a failure to comply will result in sanctions imposed upon the manufacturer, not the third-party vendor.

Tip No. 10 – Adhere to Resale Disclosure Requirements

Be aware of the state resale disclosure and title-branding requirements for reacquired vehicles and make sure that any third-party vendor to which this responsibility is outsourced is adequately trained in these requirements.