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# Automobile Dealership and Manufacturer Arbitration Program

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## Background

- National economic decline beginning in 2007 impacts GM & Chrysler particularly hard
  - Threatening their very viability
- Federal government responds by enacting Troubled Asset Relief Program (TARP)
  - Invests \$80MM in both companies
  - Treasury demands restructuring



## Background (cont.)

- Both companies submitted voluntary restructuring plans
  - Government rejected both as inadequate
- Both companies filed for Chapter 11 bankruptcy protection in 2009
  - GM terminated 2000 dealerships
  - Chrysler terminated 789 dealerships



## Background (cont.)

- Dealer organizations demanded that Congress provide an avenue of redress
- Countervailing pressure from “significant shareholder” not to intervene in order to allow the companies to emerge from bankruptcy as lean, profitable enterprises
- Democrats and Republicans worked together to balance interests and created a fair, swift and economical appeal process for dealers



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# Consolidated Appropriations Act of 2010

## Public Law 111-117

- In December 2009, Congress passed and the President signed a law that provided an appeal process for auto dealers who had been terminated as part of the reorganization plans for General Motors and Chrysler
- Congress designated AAA to administer the program



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# Consolidated Appropriations Act of 2010

## Section 747

- Expedited timeframe for resolution of disputes
- Provisions for fair and cost-effective arbitration
- Requirements for arbitrator's analysis and determination



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## Expedited Timeframe for Resolution of Disputes

December 16, 2009 – President Obama signs spending bill

January 25, 2010 – Statutory deadline for filing with AAA

June 14, 2010 – Statutory deadline for hearings to conclude

July 23, 2010 – Final due date for arbitrator determinations



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## Provisions for Fair and Cost-Effective Arbitration

Hearing Locale – hearings to be held in the dealer’s state

Fees – each party responsible for their own fees and costs

Limited Discovery – prohibited both depositions and discovery beyond documents specific to the covered dealership



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## Requirements for Arbitrator's Analysis and Determinations

Balance Economic Interests – consider interests of dealer, the manufacturer, and public at large

Limited Authority – Arbitrator's could only determine whether or not the dealer should be reinstated and no damages could be awarded



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## Unique Measures Taken by AAA

- Consolidated administration with specialized case teams in case management centers in Atlanta & Fresno
- Created panel of 350 highly qualified arbitrators and offered 3-arbitrator fixed-rate option
- Special training webinars on arbitration process
- Provided national support in 22 AAA offices



## Unique Measures (cont.)

- Hosted 25 online/telephonic administrative conferences for parties & counsel
- Customized demand, disposition and scheduling order forms, and determination template
- Posted summary decisions
- Specific landing page on AAA website and secure website for parties and their representatives

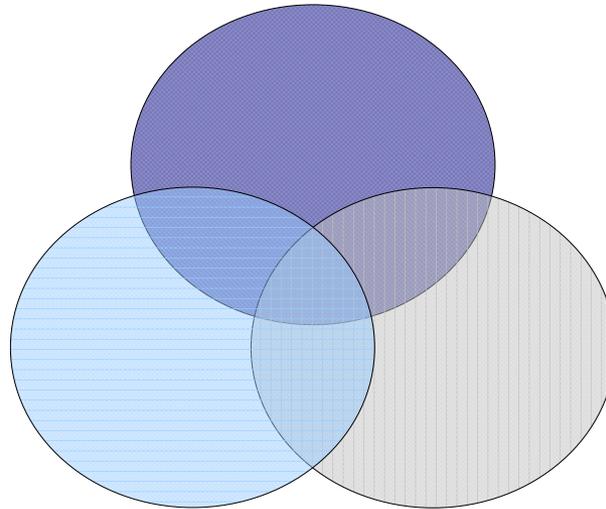


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# AAA's Case Management System

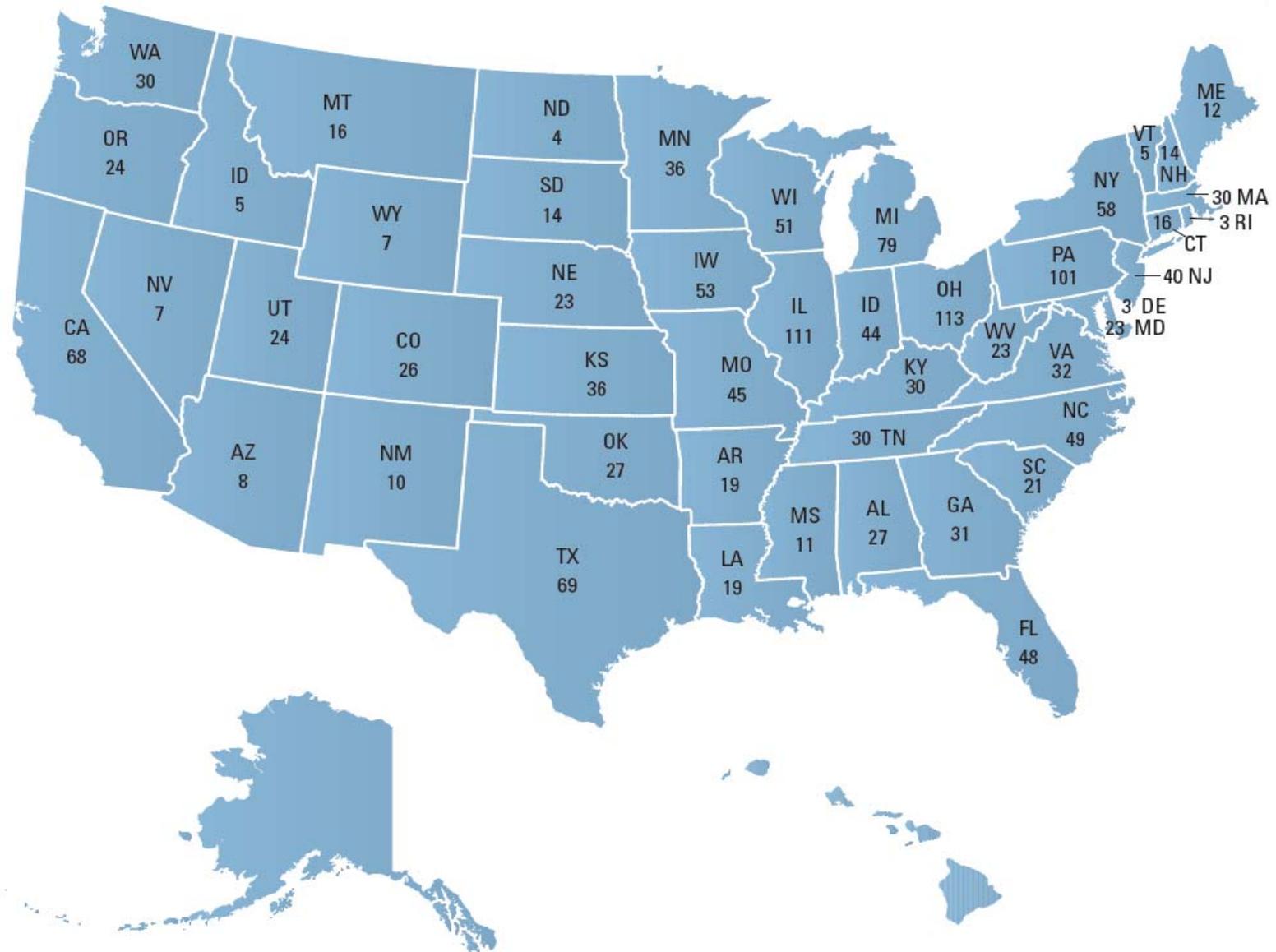
Neutrals eCenter<sup>SM</sup>



Case Manager  
Portal

WebFile<sup>SM</sup>

# 1575 Dealers (56%) Filed for Arbitration





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Program Totals by Case Disposition	
Status	Final Program Total
Total Cases Filed	1,575
Withdrawn	493
Settled	803
Administratively Closed	113
Arbitral Determination	166
• <i>Dealer</i>	55
• <i>Manufacturer</i>	111



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End-Of-Month And Final Program Totals <i>By Case Disposition</i>								
Status	January	February	March	April	May	June	July	Final Program Totals
Withdrawn	2	40	179	163	67	29	14	493
Settled		1	66	254	263	163	55	803
Administratively Closed			2	45	6	35	25	113
Arbitral Determination				1	30	81	54	166
• <i>Dealer</i>					9	24	22	55
• <i>Manufacturer</i>				1	21	57	32	111
Monthly Closure Total	2	41	247	463	366	308	148	1,575
Cumulative Closed	2	43	290	753	1,119	1,427	1,575	1,575
Total Active Cases	1,573	1,532	1,285	822	456	148	0	0



## Lessons Learned

- That parties would spend a full month or more arguing about who would go first/who had burden of proof
- That parties would continue to argue about discovery of documents
- There were LOI disputes but arbitrator had limited authority
- We needed to be able to appoint an Interim Arbitrator to make decisions early on



## Epilogue

- Litigation—some of the determinations are now in court
  - U.S. District Court, Central District of California
    - Rally sought to modify and partially vacate that portion of the award that “[took] the Chevrolet brand from the covered dealership and [gave] it to a non-party, a former Saturn dealer, in the same local Palmdale market.”



## Epilogue (cont.)

- GM's Main Defenses
  - FAA does not apply to the auto dealer decisions because the FAA is directed only to contractual arbitration, and not arbitration by operation of law
  - U.S. Bankruptcy Court for Southern District of NY has exclusive jurisdiction to enforce and implement the Wind Down Agreement between Rally and GM



## Epilogue (cont.)

- U.S. Bankruptcy Court, Southern District of New York
  - Order Oct. 12, 2010 required Rally to dismiss its Central District of California court action
  - Granted an immediate temporary stay in order to allow Rally to appeal to the U.S. District Court of New York (Federal Court)



## Epilogue (cont.)

- New York Federal District Court
  - Rally appealed the Bankruptcy Court's order from Oct. 12, 2010
  - GM filed motion to dismiss the appeal on “equitable mootness”
  - Order Oct. 29, 2010 denying Rally's motion or stay pending appeal



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## Epilogue (cont.)

- Status
  - Appeal is fully briefed and pending before the court
  - Rally dismissed the action in the Central District of California



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Questions?