

## **ARBITRATION REMINDER:**

### **UPDATE FOR SC DEALERS ON ENFORCEABILITY OF ARBITRATION AGREEMENTS**

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Arbitration agreements continue to be an excellent way for automobile Dealers to reduce class action liability. The U.S. Supreme Court's 2011 opinion in *AT&T v. Concepcion* has tempered state court hostility to arbitration in consumer transactions. As a reminder, in *Concepcion*, the U.S. Supreme Court held that a state could not have a rule that invalidated class action waivers as unconscionable or in violation of public policy. In other words, if the Federal Arbitration Act applies to your arbitration agreement, then you can have a class action waiver in your arbitration agreement.

Based on the decision in *Concepcion*, state courts are more likely to uphold arbitration agreements that include a waiver of the customer's right to bring a class action on behalf of a group of other customers. However, it is important that that a Dealer's arbitration agreement provide that the Federal Arbitration Act applies, as opposed to the South Carolina Uniform Arbitration Act.

Another important development concerning arbitration is that the American Arbitration Association (AAA), which is a predominant entity used to administer arbitrations, has begun maintaining a publicly available Consumer Clause Registry for consumer arbitration provisions. This affects any Dealership that designates that the AAA's Consumer Rules in its arbitration clause or refers to the AAA in a consumer contract.

According to the AAA, the Registry allows customers "to search businesses by name to determine if the AAA has reviewed the business's arbitration clause and will administer their consumer arbitrations. If a business has not registered its consumer clause prior to the filing of the consumer case, the AAA will require that the business register its clause at that time." The registration is part of an overhaul of the AAA's Consumer Rules that took effect on September 1, 2014.

The AAA states that it will decline to administer consumer arbitrations where the business does not comply with these procedures, including registration of the arbitration clause, in which case "the parties may choose to submit their dispute to the appropriate court." Varying fees apply for registering the arbitration clause, depending on whether a Dealership registers the clause in advance of the commencement of an arbitration, or whether the Dealership waits until a customer brings an arbitration. More information is available at [www.adr.org](http://www.adr.org).

If members would like more information on the above topics, please contact James Becker at 803-540-7706 or [jbecker@hsblawfirm.com](mailto:jbecker@hsblawfirm.com), or Mary Caskey at 803-540-7870 or [mcaskey@hsblawfirm.com](mailto:mcaskey@hsblawfirm.com).

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