

ARBITRATION AND THE LEMON LAW
(AN ALTERNATIVE OR THE GAUNTLET EXTENDED)

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If the neighbor's Pekinese decides to scare off bad guys at 2:00AM in the morning, and does this every night, and you can't persuade your neighbor to correct the situation, perhaps mediation or arbitration is the answer. After all, going to court seems a bit much, and committing crimes against the little \$%%\$# is probably counter productive. We say this by way of introducing the fact that your long battle against the Fords or Mercedes' of the world isn't at all like getting the neighbor's lap dog to be quiet. There are situations where arbitration or a dispute resolution process is entirely appropriate. However we want to say it right up front, after over four thousand lemon law cases we have almost never seen a case where the vehicle owner benefited from arbitration with a manufacturer.

It is an unequal battle that is but one step in a long war. The outcome is inevitable. To engage in this war is equivalent to a middle-aged, non-athletic accountant, dedicated to ribs and beer stepping into the ring with the young Muhammad Ali. You won't even see that sweet left hook coming. Everything is on the side of the manufacturer, even the arbitrators in some circumstances.

Sun-tzu in the **"The Art of War"** wrote, "Generally in warfare: if ten times the enemies strength, surround them; if five times, attack them; if double, divide them; if equal, be able to fight them; if fewer, be able to evade them; if weaker, be able to avoid them." I hate to be the one to break the news but consumers very definitely fall in the latter two categories. Consumers going into arbitration have fewer soldiers and are certainly weaker.

In California two things level the playing field. A strong lemon law - the Song Beverly Act - and very experienced lemon law attorneys. We should have these things, after all California has more cars on the road than any other state.

Lets look at a definition of Arbitration: *"The process by which the parties to a dispute submit their differences to the judgment of an impartial person or group appointed by mutual consent or statutory provision."* With very few exceptions you can forget impartial and mutual consent.

If Saddam Hussein offered to arbitrate detente between Islam vs. Israel, I for one would have problems with the impartiality of his decision. Mr. Hussein will never be found on the moral high ground. Arbitration can be similarly unequal. Fairness, equity and the proper application of the law are what should occur in arbitration. If you want the consumer to accept arbitration that is sponsored by an automobile manufacturer, or where the arbitration organization receives most of its business from automobile manufacturers, then I give you the same answer Israel would give Saddam. "Forget it!"

There are other factors that unfortunately work against arbitration being an equitable solution for consumers with lemon vehicles.

Training:

Professional arbitrators are not necessarily trained in the lemon law; in fact it is far more likely that they have no training in the subject at all. Arbitrators are rarely judges or lawyers. Generally the arbitrator is trained in so-called people skills, how to negotiate and perhaps a smattering of legal knowledge.

This is a subject area where a little knowledge is very definitely dangerous. Perhaps the arbitrator imagines he or she can get by on common sense and honesty. If it were true the consumer would seldom lose a case.



"Finally, Sandy, someone's going to listen." "They listened all right, but not to me!"

Preparation:

Are consumers properly prepared for arbitration? How could they be, even if they read the Song Beverly Act, or anything else? Even with all the facts, consumers don't know what to expect. Consumers aren't all lawyers. The manufacturer will send a lawyer trained to handle this sort of thing. The manufacturer's lawyer may lie; that's correct, lie. There's not much consumers can do about that except feel miserable. Whether the manufacturer's representatives lie or not, they will present a blizzard of bizarre possibilities, all designed to confuse and dilute the consumer's case. There is light at the end of this particular tunnel, however. In California, arbitration is not binding; it's just another waste of time. When the ruling is handed down, and the manufacturer is permitted another repair attempt, consumers need not comply, consumers can get a lemon law attorney and put an end to the endless games manufacturers play.

Cost: Even if the arbitration is paid by the state, what is often ignored is the lost time from work, expenses for experts where expenses are required, copying, and running around to get copies of missing paperwork. Then there is the time spent preparing an oral argument, trying to figure out how to answer the manufacturer's defenses. Of course, if the manufacturer runs the arbitration, this is no arbitration at all.

How long does it take? If consumers get this far they have often been trying to get the dealer/manufacture to do something about their car for many months, even years. Arbitration adds another 30-90 days onto to the process. If the car is dangerous to drive what do consumers do? Are they supposed to endanger themselves and their passengers in an attempt to finally get the problem resolved? Should they do this, especially when there is a better than even chance that more delay will be added into the process by awards of additional repair attempts? This is hardly a fair and equitable solution to the problem.

A little known fact: All major vehicle manufacturers have networks of dealerships all across the country and even the world. Manufacturers enter into contracts with dealerships. These contracts affect every aspect of sales, maintenance and repair of their vehicles. More frequently than the public ever discovers there are disputes between dealerships and manufacturers. Dealerships want uniform arbitration procedures and laws to help them deal with these disagreements. Guess who fights any sort of arbitration with dealerships? Exactly! The manufacturers. And yet, the manufacturer touts the benefits of the arbitration/dispute resolution process when it comes to consumers. What's wrong with this picture?

If the manufacturer wants arbitration, it's not good for the consumer.

Arbitration does not take place on a level playing field. At Norman Taylor & Associates we have seen enough cases to know this. The two sides have very different goals. Consumers simply want vehicles that work as advertised. The manufacturer does not want to give consumers a refund or replacement for their defective car and then be stuck with a vehicle that is worth half its current value, and may be impossible to fix or to sell. From the manufacturer's point of view they have every incentive to make the entire process so difficult that consumers will give up and go away. Don't do it, Mr. and Mrs. Consumer. With professional help you can prevail. Absolutely nothing beats winning a hard fought battle when you are right.