

POLICIES AND PROCEDURES OF THE MASSACHUSETTS STATE AUTOMOBILE DEALERS ASSOCIATION (MSADA) LEGAL ACTION PROGRAM

LEGAL ACTION PROGRAM POLICIES

- The legal action program (the “Program”) will be funded with monies made available from time to time as needed by direction of the MSADA Board of Directors (the “Board”) to provide legal assistance to dealers in state, federal, municipal or agency proceedings where the outcome would have a substantial impact on the entire dealer body.
- The legal assistance may be in the form of partial reimbursement for attorneys’ fees incurred by the dealer, technical or strategic support provided by MSADA staff or outside consultants, submission of an *amicus* brief supporting the dealer’s claim, or other appropriate litigation support.
- Taking cases that impact the entire dealer body is not only the policy of this Program, but also a legal requirement that must be kept in order to maintain MSADA’s tax-exempt status.
- **CRITERIA:** The following criteria shall be used to determine whether or not to provide assistance to an applicant:
 1. The importance of the issue to MSADA members;
 2. The case or proceeding has national or statewide significance;
 3. Reasonable expectation of success based on the facts and the law;
 4. The existence of factual circumstances best designed to support or defend the dealer position;
 5. The most effective allocation and use of available Program resources;
 6. Support, assistance, and involvement on the part of the national association, if appropriate; and
 7. Financial circumstances of the affected dealer or dealer group.
- To obtain assistance from the Program, a dealer must write a formal application, as provided by MSADA, to the MSADA President and the MSADA Executive Vice President, who, along with staff or outside counsel, shall review and make a recommendation on it. The application shall then be reviewed by the Executive Committee at its next regular meeting, or sooner if necessary. The Executive Committee will recommend that the Board either accept or reject the request for assistance. The applicant will be notified of the Executive Committee’s recommendation. The Executive Committee’s recommendation will then be presented to the Board at its next meeting.

Two-thirds of the Board members present must vote to accept the Executive Committee's recommendation to provide assistance in order for assistance to be given to the applicant. If the Executive Committee recommends rejecting the application for assistance, the applicant may appeal the recommendation to the Board. Both the Executive Committee and the Board must approve any request by an active MSADA Director for such assistance in any proceeding involving his or her dealership or where he or she has any interest other than as a member of MSADA and such interest must be fully disclosed to the Executive Committee and the Board.

- Monies shall come from the MSADA general budget as directed by the MSADA Board. Voluntary member donations may be solicited as directed by the MSADA Board.
- It shall be the general policy of the Program not to supply one hundred percent (100%) of the financial assistance in a particular action or proceeding involving a dealer except in exceptional circumstances.
- It shall be the general policy of the Program to require reimbursement for all assistance granted to an applicant if said applicant chooses to settle the action prior to final adjudication, thus denying MSADA the value of a precedent setting decision.
- In circumstances where an applicant may be entitled to monetary damages if his or her action is successful, the Board may choose to grant assistance contingent upon being reimbursed for said assistance if the applicant receives monetary damages.
- No MSADA Officer, Director, or member of the staff of MSADA shall have the authority to commit assistance to any applicant.

LEGAL ACTION PROGRAM PROCEDURES

In reviewing a request for assistance from the Program, the following factors shall be considered by the MSADA Executive Committee and Board of Directors:

I. Nature of Case

- A. Franchise;
- B. Licensing;
- C. Other relating solely to dealers;
- D. Other relating to dealers and non-dealers.

II. Issues Involved for Determination

- A. Strictly legal: The issue involves an interpretation of law with no question of fact.
- B. Strictly factual: The interpretation of law is settled and the sole question is the facts of the case to which the law will be applied.

C. Combination of factual and legal questions.

III. Application and Effect of Case

A. Broad application: The question at stake is of broad application to dealers, and the determination of legal issues is expected to have lasting effect.

B. Narrow application: The question at stake arises from a peculiar set of circumstances expected to rarely occur again.

C. Willingness of the applicant to see the case through to a final adjudicated decision.

1. If the applicant settles the case prior to receiving a final adjudicated decision, said applicant shall reimburse MSADA for the full costs incurred by MSADA in support of said applicant.

IV. Existing Precedent

A. Has the issue previously been determined by another court or tribunal?

B. Are there any existing administrative interpretations or precedent?

V. Alternative Resolutions Available

A. Possibility of legislative action;

B. Administrative rulemaking;

C. MSADA participation as a separate party.

VI. Need for Assistance

A. Question or issue will not be litigated without MSADA assistance;

B. Previous expenditures of dealer in case;

C. Nature of Assistance (*e.g.* direct financial support, legal strategy, *amicus* brief)

D. Other available assistance –

1. NADA Legal Defense Fund;
2. Assistance from other trade groups.

VII. Ripeness of Case

A. Initial hearing or trial stage: Are questions of fact and law intermingled?

B. Appellate stage: Are questions of law well defined?

Weight of Factors

By necessity, the MSADA Executive Committee and Board of Directors will weigh the foregoing factors subjectively. Legal issues relating to dealer licensing and franchise issues will be given the greatest weight as only dealers are affected. Even if meritorious requests are received, the availability of Program resources will often be a determining factor. The Executive Committee and Board are free to select other tests for approval of requests depending upon the circumstances of the particular case. The foregoing factors will serve as an outline for recommendations and analyses of requests by the MSADA staff for Executive Committee and Board actions.

MSADA LEGAL ACTION PROGRAM APPLICATION FORM

Dealer Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____ E-Mail: _____

Dealership Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____ E-Mail: _____

Others who have a financial interest in case and their relationship to the dealership:

1. Have you hired an attorney? _____ If so,

Name: _____

Firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____ E-Mail: _____

2. Legal costs to date? _____

3. What is your estimate as to the additional expenses to be incurred in your proceeding?

4. Have you applied for any other type of assistance? If so, what assistance and result?

5. Nature of Case (i.e. franchise, licensing, other)?

6. What legal forum is your case in (i.e. federal/state court, administrative hearing)?

7. What is the legal status of your case (briefs filed, hearings, decisions, appeals, etc.)?

8. What kind of assistance do you seek?

9. Are you willing to see the case through to a final adjudicated decision, with the expectation that if you settle the case without such a decision you will be responsible for reimbursing MSADA for its costs incurred in assisting you? _____

10. Please include, in letter form, an explanation of your case and all related documentation (legal documents, correspondence, citations, etc.).

SEND COMPLETED APPLICATION TO EACH UNDER SEPARATE COVER:

MSADA President and MSADA Executive Vice President
c/o MSADA
59 Temple Place
Suite 505
Boston, MA 02111