

**2020 AUDIT OF
BBB AUTO LINE**

**SUBMITTED TO
THE FEDERAL TRADE COMMISSION,
THE STATE OF FLORIDA,
AND THE STATE OF OHIO**

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INTRODUCTION AND SUMMARY

BBB AUTO LINE is an informal dispute settlement process that offers mediation and arbitration services to resolve automobile warranty disputes – including disputes subject to the Federal Magnuson-Moss Warranty Act¹ and disputes under state lemon laws. The program is administered (since July 1, 2019) by BBB National Programs, Inc., and located (since October 2020) in McLean, Virginia.² Though local BBB offices aren't part of BBB National Programs, Inc., they continue to provide hearing sites for BBB AUTO LINE's arbitration program.

Under the Magnuson-Moss Act, if a “mechanism” like BBB AUTO LINE meets standards set out in the statute and its implementing regulation, FTC Rule 703,³ manufacturers can insist on “prior resort” – that is, they can insist that consumers use the mechanism before they pursue judicial remedies under the Act.⁴ Key elements of these standards require warrantors to take steps to alert consumers to the program, and require the program to meet standards for fairness and efficiency. The regulations further require that the mechanism maintain certain records and arrange an annual audit “to determine whether the Mechanism and its implementation are in compliance with this part.” Among other things, the audit must include a consumer survey – which serves as a check on both the mechanism's substantive performance and its record-keeping – and the auditor must scrutinize efforts by “warrantors” (manufacturers) to alert consumers to the program.⁵ State lemon laws impose further requirements and two states – Florida and Ohio – impose their own audit requirements. The Florida and Ohio audits largely parallel the National audit in approach, with consumer surveys and accompanying analyses focused exclusively on consumers whose cases were processed under the relevant state's audit program.⁶

Of course, the program's operations for 2020 were affected by the pandemic, which in significant ways necessitated modifications in March. In particular, BBB AUTO LINE was unable to do in-person arbitrations after mid-March, and, concomitantly, BBB AUTO LINE arbitrators didn't do vehicle inspections; when inspections were done, they were done by a technical examiner. This was a sound approach – and it parallels the approach of many courts and other bodies that ceased in-person hearings if they held hearings at all.⁷ However, the

¹ 15 U.S.C. § 2301 et seq.

² The program was previously administered by the Council of Better Business Bureaus and headquartered in Arlington, Virginia.

³ 16 C.F.R. § 703.

⁴ 15 U.S.C. § 2310(a)(3). The Magnuson-Moss Act does not require prior resort; rather, it allows manufacturers to do so.

⁵ 16 C.F.R. § 703.6.

⁶ This is usually – but not always – the state where the consumer lives.

⁷ See <https://www.ncsc.org/newsroom/public-health-emergency> (guides to virtual hearings in state courts). As of this writing, the state-run Florida New Motor Vehicle Arbitration Board

auditor does have questions about whether BBB AUTO LINE might have done more to reconcile it with (in his view) the better reading of the program’s own rules as well as Ohio’s rules.

Among other things, once the new procedures were instituted, arbitrations were sped up somewhat nationally.⁸ But, at the compliance phase, the auditor’s strong impression is that manufacturers more often requested (and consumers more often granted) extensions of compliance dates. As in prior years, though, settlements and arbitrator decisions awarding relief specified dates for compliance, and those dates weren’t extended without the consumer’s consent.

The auditor concludes that:

- BBB AUTO LINE itself substantially complies with the requirements of Federal, Florida, and Ohio law applicable to “mechanisms.” He offers recommendations to BBB AUTO LINE itself,⁹ but, except for the question raised by the matter noted above, none warrant a qualification to the finding of substantial compliance. And even that matter is based on a debatable interpretation of underlying BBB AUTO LINE and Ohio rules.
- Sixteen manufacturers – Bentley, BMW (including Mini Cooper), Ferrari, Ford, General Motors, Hyundai (including Genesis), Jaguar (including Land Rover), Kia, Lamborghini, Lotus, Maserati, Mazda, Mercedes-Benz (as to consumers in California), Nissan (including Infiniti), Rolls Royce, and Volkswagen (including Audi) – are substantially compliant for purposes of each applicable audit.¹⁰
- Many findings of substantial compliance for manufacturers are qualified by questions and reservations, but only a few are subject to *noteworthy* qualifications. Ferrari and Rolls Royce didn’t show compliance with a notice requirement in FTC Rule 703.2(e), applicable when consumers seek review of dealer’s actions through the manufacturer’s own review processes. Rolls Royce (which was new to the auditor process last year) had other issues as well. And Jaguar/Land Rover didn’t submit any

continues to hold it’s hearings virtually, <https://www.myfloridalegal.com/lemonlaw> (checked June 15, 2021) and didn’t hold any hearings during the second and third quarters of 2020, <http://myfloridalegal.com/pages.nsf/Main/696c4cd4b287529085256cc9005d5869>.

⁸ The speed-up for arbitrations was more pronounced in Florida than nationwide. In Ohio, though, the rate of timely completions dropped for cases closed after June 30.

⁹ See Chapter 2; Chapter 3, Sections III.D and IV.D.

¹⁰ Two participants in the program – Subaru and Volvo – didn’t provide materials. Subaru had expressly relied in the past, and Volvo may well have similarly relied, on the view that FTC Rule 703.2 doesn’t apply to manufacturers unless manufacturers require prior resort. See Ch. 1, Section II.A.1.

documents this year, though the auditor finds compliance (for this year only) based on prior submissions.

Finally, Hyundai's last two submissions raise novel and noteworthy issues concerning its compliance with Federal regulations vis-à-vis consumers in California; its warranty now incorporates a binding arbitration program, unrelated to BBB AUTO LINE, for California consumers. The auditor think these questions are outside his purview, so they don't affect his determination of substantial compliance, but the matter of purview isn't entirely clear, so he doesn't feel comfortable ignoring the issue – and thus notes both significant steps that Hyundai has taken significant to alleviate the problem and issues that remain.

* * *

While this audit includes some recommendations, and while some findings of substantial compliance are qualified by questions or reservations (even noteworthy reservations), it's the auditor's view that none of these recommendations, reservations, or questions goes to the heart of the program. The overwhelming thrust of the program is positive, beginning with an important asymmetry at the heart of the program. Manufacturers participating in BBB AUTO LINE exceed Federal (and some state) requirements in a profoundly important way: consumers, but not manufacturers, can reject the results of arbitration and pursue other relief. It's only when consumers accept the results that they're bound, and, by virtue of a consumer's decision, the manufacturer is bound as well.

Also, the results of the program are impressive. Using national figures:

- BBB AUTO LINE processed 4294 complaints in 2020 that were found eligible at the outset and weren't subsequently withdrawn.¹¹ Of these, 56.2% were resolved (at least initially) through mediation. And, for cases where the consumer didn't use an attorney, 68.2% were resolved through mediation.
- While not all of these consumers were ultimately satisfied, some 991 complaints, about 23.1% of the total of all eligible and non-withdrawn complaints, ended in repurchase or replacement remedies *through mediation*. Further, of those consumers who went to arbitration, another 673 were awarded repurchase or replacement remedies (though some consumers rejected such awards, perhaps preferring to seek broader relief, including attorney's fees, in court). These 673 represent 35.9% of arbitrated cases and 15.7% of all eligible and non-withdrawn complaints. Combining the complaints that led to repurchase or replacement through mediation and those that produced such results through arbitration, 38.8% of the cases closed in 2020 ended with repurchase or replacement

¹¹ These numbers draw on the "A1" figures in Chapter 3, Tables III-5, III-7, III-9, and III-11.

resolutions – and they did so far more often through mediation than through arbitration. (Further, the 38.8% figure is quite similar to last year’s 38.1%.¹²)

The process isn’t a slam-dunk for consumers. 975 complaints nationally, or 52.0% of those that went to arbitration, ended with “denials” for consumers. But more important, in the auditor’s view, is that the “no awards” represented 22.7% of all eligible and non-withdrawn complaints. Viewed together with the 38.8% figure for repurchase and replacement remedies, and the remaining consumers who got some other remedy (albeit not necessarily a remedy that ultimately satisfied them¹³), this suggests a fair and well-balanced program.¹⁴

As a gloss on the above statistics, Chapters III.G, IV.G, and V.G compare the results in cases brought by attorneys to cases where consumers didn’t have lawyers. The discussion in that section, moreover, now includes further breakouts, for arbitrated cases, by the consumer’s mode of participating in the arbitration.¹⁵

* * *

The audit provision of Federal law (Florida and Ohio have similar provisions¹⁶) includes a general requirement in subsection (a) and sets forth several specific mandates in subsection (b):

(a) The Mechanism shall have an audit conducted at least annually, to determine whether the Mechanism and its implementation are in compliance with this part. All records of the Mechanism required to be kept under § 703.6 of this part shall be available for audit.

(b) Each audit provided for in paragraph (a) of this section shall include at a minimum the following:

- (1) Evaluation of warrantors’ efforts to make consumers aware of the Mechanism's existence as required in § 703.2(d) of this part;
- (2) Review of the indexes maintained pursuant to § 703.6(b), (c), and (d) of this part; and
- (3) Analysis of a random sample of disputes handled by the Mechanism to determine the following:

¹² For the two previous years, the rates were 41.5% and 35.8%, respectively.

¹³ Chapter 2, Section II.D.

¹⁴ The other remedies generally included extended service plans, reimbursement of past repair expenses, cash settlements, and, most commonly, repairs. Repairs are specifically recognized as an appropriate form of remedy by the Magnuson-Moss Act as well as Florida and Ohio, and a fuller discussion of the issues posed by repair remedies appears at Ch. 2, Section II.D.

¹⁵ Was the hearing conducted in person, by phone, or in writing?

¹⁶ FLA STAT. § 681.108(4); OHIO ADMIN CODE § 109:4-4-04(E).

- (i) Adequacy of the Mechanism's complaint and other forms, investigation, mediation and follow-up efforts, and other aspects of complaint handling; and
- (ii) Accuracy of the Mechanism's statistical compilations under § 703.6(e) of this part. (For purposes of this subparagraph "analysis" shall include oral or written contact with the consumers involved in each of the disputes in the random sample.)

Aspects of the audit that look to efforts by warrantors (manufacturers) are discussed in Chapter 1, while Chapters 2 and 3 focus on provisions applicable to BBB AUTO LINE itself. Although the issues in Chapters 2 and 3 overlap, Chapter 2 focuses primarily on non-survey considerations bearing on BBB AUTO LINE's operations and, specifically, its fairness and efficiency. Chapter 3 focuses primarily on the survey.

In undertaking this audit, the auditor has worked with TechnoMetrica Market Intelligence (and obtained insights from BBB AUTO LINE) to develop a survey instrument that was only slightly revised this year. The auditor has also done the following:

- Reviewed manufacturers' submissions;
- Reviewed certain materials available on the BBB AUTO LINE website;
- Reviewed recordings of six hearings, including two from Florida and two from Ohio;
- Reviewed aspects of hundreds of individual case files; and
- Viewed a training course for California arbitrators.

The targeted file reviews, for reasons discussed further below, provide a nuanced way to evaluate BBB AUTO LINE's record-keeping and performance. Even with 403 "national" interviews and over 600 for all three populations, some questions were inevitably directed to a relatively small subset of the total – leading to relatively large margins of error.¹⁷ When margins of error reach 20%, for example, a 50% "yes" response (on a question with a "yes" or "no" answer) would be consistent with reported BBB AUTO LINE figures ranging anywhere from 30% to 70%. While a "macro" comparison of the survey's results to BBB AUTO LINE's aggregate figures can be very useful for some questions, on others, particularly those directed to relatively few consumers, the macro analysis can become a rather blunt instrument. But the auditor's "micro" analysis – looking at "consumer agreement" figures showing the rate of concordance, together with targeted reviews of seemingly discordant files – enables a more pointed analysis even on "small-number" questions.

¹⁷ For example, in the Ohio survey, only eight consumers were asked the questions targeted for those who used arbitration.

**CHAPTER 1:
MANUFACTURER
WARRANTY MATERIALS**

I. Introduction

As noted above, the auditor finds, for the current audit, that the sixteen manufacturers noted previously are substantially compliant with their disclosure obligations, although with reservations and questions for most and noteworthy and ongoing reservations a few. These findings extend to the national, Florida, and Ohio audits, and include all but two manufacturers (neither of whom appears to require prior resort) who participate in two or more states, and all manufacturers with certification in either Florida or Ohio.

II. Obligations under Federal law and the FTC's rules

A. FTC Rule 703.2

The core of FTC Rule 703.2,¹⁸ a rule that was issued pursuant to the consumer product warranty provisions of the Magnuson-Moss Warranty – Federal Trade Commission Improvement Act,¹⁹ appears in Rule 703.2(a). Manufacturers can insist that consumers use an informal dispute settlement procedure before pursuing other remedies under the Act (and most participants in BBB AUTO LINE do so), but only if the program complies with other provisions of the rule. Unlike many state laws, including those of Florida and Ohio, the Magnuson-Moss Act and the FTC's implementing rules provide no procedure for the FTC to give advance approval (“certification”) for a manufacturer to insist on prior resort.²⁰

The rest of Rule 703.2 focuses on the obligations of warrantors. Rules 703.2(b) through (e), in particular, focus on mandatory disclosures and communications about the program, while one of these provisions (Rule 703.2(d)) also prohibits certain statements. While disclosure issues aren't the sole focus of Rule 703.2,²¹ they're the primary focus of the auditor's review of

¹⁸ 16 C.F.R. § 703.2.

¹⁹ 15 U.S.C. § 2301 *et seq.* (“Magnuson-Moss Act”). The provisions governing informal dispute resolution mechanisms appear in section 2310.

²⁰ The Commission declined to create such a process. 64 Fed. Reg. 19700, 19707-08 (1999).

²¹ Rule 703.2(e), which as noted in the text requires certain disclosures, also requires manufacturers who establish internal review processes to resolve disputes in a reasonable time and inform consumers of the results, as well as to provide information about alternative dispute resolution that they require consumers to pursue before seeking other relief.

Rule 703.2(f) requires warrantors to respond fully and promptly to reasonable requests from BBB AUTO LINE relating to disputes, tell BBB AUTO LINE whether it will abide by a BBB AUTO LINE decision that requires it to take action, and, if it agrees to do so, perform any such obligations. In the course of his review, the auditor has seen no problems in this respect; indeed, although they are not required to do so by federal law, all warrantors participating in BBB AUTO LINE agree at the outset to be bound by the results.

manufacturers' compliance, and the sole focus of this chapter.

Disclosure obligations can arise at three specified times.

- (1) Rules 703.2(b) and (c) require certain disclosures at the time of sale, and Rule 703.2(b) disclosures must appear in the warranty itself.²²
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Rule 703.2(g) requires warrantors to act in good faith in determining whether, and to what extent, they will abide by the program's decision. Finally, Rule 703.2(h) requires warrantors to "comply with any reasonable requirements imposed by the Mechanism to fairly and expeditiously resolve warranty disputes."

²² Rule 703.2(b) provides:

The warrantor shall disclose clearly and conspicuously at least the following information on the face of the written warranty:

- (1) A statement of the availability of the informal dispute settlement mechanism;
- (2) The name and address of the Mechanism, or the name and a telephone number of the Mechanism which consumers may use without charge;
- (3) A statement of any requirement that the consumer resort to the Mechanism before exercising rights or seeking remedies created by Title I of the Act; together with the disclosure that if a consumer chooses to seek redress by pursuing rights and remedies not created by Title I of the Act, resort to the Mechanism would not be required by any provision of the Act; and
- (4) A statement, if applicable, indicating where further information on the Mechanism can be found in materials accompanying the product, as provided in § 703.2(c) of this section.

Rule 703.2(c) provides:

The warrantor shall include in the written warranty or in a separate section of materials accompanying the product, the following information:

- (1) Either
 - (i) A form addressed to the Mechanism containing spaces requesting the information which the Mechanism may require for prompt resolution of warranty disputes; or
 - (ii) A telephone number of the Mechanism which consumers may use without charge;
- (2) The name and address of the Mechanism;
- (3) A brief description of Mechanism procedures;
- (4) The time limits adhered to by the Mechanism; and
- (5) The types of information which the Mechanism may require for prompt resolution of warranty disputes.

(2) Rule 703.2(d) requires manufacturers to take “reasonable steps to make consumers aware” of the program when consumers “experience warranty disputes.”²³

(3) If a dispute is submitted directly to the manufacturer, Rule 703.2(e) requires the manufacturer, in telling the consumer its decision, to provide anew the information covered by Rules 703.2(b) and (c).

In addition to these disclosure mandates, the prohibition, which appears in Rule 703.2(d), touches on the just-noted issue of submitting consumer disputes directly to the manufacturer. Under subsection (d), manufacturers may “encourage” consumers to submit disputes through such processes, but can’t “expressly require” them to do so.²⁴

Most of the auditor’s analysis of manufacturers’ compliance appears in a chart below. Before turning to the chart, though, the auditor addresses a few issues.

1. Application of Rule 703.2 to Warrantors that Don’t Require Prior Resort

To what extent do a warrantor’s obligations under Rule 703.2 (“Duties of Warrantor”) and other provisions of Rule 703 extend to warrantors that don’t require prior resort? And is the auditor’s purview to review and address warrantor conduct co-extensive with those obligations?²⁵

Turning first to the statutory text, section 2301(5) of the Act broadly defines a “warrantor,”²⁶ and section 2310(a) provides the basis for the FTC’s regulation of “informal dispute settlement mechanisms” (“IDSMs”) used by warrantors.²⁷ Thus, section 2310(a) describes Congress’s policy of encouraging IDSMs; authorizes the FTC to prescribe minimum requirements for IDSMs; allows manufacturers who meet these requirements to require that consumers resort to the IDSM before they can pursue other rights and remedies under the Act;

²³ An evaluation of warrantors’ efforts in this regard is a mandatory component of this audit. Rule 703.7(b)(1).

²⁴ For a discussion of how these provisions interact with state laws, see Section II.A.4 of this chapter.

²⁵ This section has been revised and refined this year.

²⁶ 15 U.S.C. § 2301(5) defines a warrantor as “any supplier or other person who gives or offers to give a written warranty or who is or may be obligated under an implied warranty.”

²⁷ There’s no separate statutory definition of an IDSM.

and (in subsection (a)(4)) provides for Commission review of “the bona fide operation of any dispute settlement *procedure resort to which is stated in a written warranty to be a prerequisite to pursuing a legal remedy under this section.*”²⁸ Additionally, section 2310(b) proscribes violations of the Warranty Act or rules issued thereunder.²⁹

²⁸ 15 U.S.C. § 2310(a) provides:

(a) Informal dispute settlement procedures; establishment; rules setting forth minimum requirements; effect of compliance by warrantor; review of informal procedures or implementation by Commission; application to existing informal procedures

(1) Congress hereby declares it to be its policy to encourage warrantors to establish procedures whereby consumer disputes are fairly and expeditiously settled through informal dispute settlement mechanisms.

(2) The Commission shall prescribe rules setting forth minimum requirements for any informal dispute settlement procedure which is incorporated into the terms of a written warranty to which any provision of this chapter applies. Such rules shall provide for participation in such procedure by independent or governmental entities.

(3) One or more warrantors may establish an informal dispute settlement procedure which meets the requirements of the Commission’s rules under paragraph (2). If—

(A) a warrantor establishes such a procedure,

(B) such procedure, and its implementation, meets the requirements of such rules, and

(C) he incorporates in a written warranty a requirement that the consumer resort to such procedure before pursuing any legal remedy under this section respecting such warranty,

then (i) the consumer may not commence a civil action (other than a class action) under subsection (d) of this section unless he initially resorts to such procedure; and (ii) [provisions applicable to class actions]. In any civil action arising out of a warranty obligation and relating to a matter considered in such a procedure, any decision in such procedure shall be admissible in evidence.

(4) The Commission on its own initiative may, or upon written complaint filed by any interested person shall, review the bona fide operation of any dispute settlement procedure resort to which is stated in a written warranty to be a prerequisite to pursuing a legal remedy under this section. If the Commission finds that such procedure or its implementation fails to comply with the requirements of the rules under paragraph (2), the Commission may take appropriate remedial action under any authority it may have under this chapter or any other provision of law.

²⁹ 15 U.S.C. § 2310(b) provides:

(b) Prohibited acts

It shall be a violation of section 45(a)(1) of this title for any person to fail to comply with any requirement imposed on such person by this chapter (or a rule thereunder) or to violate any

Subsection (a)(4) (though only subsection (a)(4)) is thus expressly limited to manufacturers that require prior resort. That section is the explicit basis for the Commission’s review of “the bona fide operation” of IDSMs, though, and this audit would appear to be a process in furtherance of that function. This strongly suggests that the auditor’s purview doesn’t reach conduct by a warrantor (manufacturer) that doesn’t require prior resort.

Still, the matter isn’t free from doubt – and, in light of that doubt, the auditor continues to accept and review submissions from manufacturers who choose to provide them even though they don’t require prior resort.³⁰ Perhaps, for example, the audit is in furtherance of the proscription in section 2310(b) as well as the FTC’s review under section 2310(a)(4).³¹ And if the Commission intended the substantive provisions of Rule 703.2 to apply to warrantors who used an IDSM even if they don’t require prior resort, it might seem incongruous if the auditor didn’t review the conduct of such warrantors.

But this raises a further complexity: Do the substantive provisions of Rule 703.2, then, reach that far? On the one hand, it’s not clear that any policies that might underlie specific rules are equally important if a manufacturer doesn’t require prior resort.³² On the other hand, the rules as construed by the Commission suggest that the agency intended to exercise broad authority. Before outlining disclosure requirements in Rule 703.2, subsection (a) of that provision states that “[t]he warrantor shall not incorporate into the terms of a written warranty a Mechanism that fails to comply with the requirements contained in §§ 703.3 through 703.8 of this part.” And, with specific reference to one provision – a prohibition on binding arbitration – the FTC has been quite explicit. The rule provides that “[d]ecisions of the Mechanism shall not be legally binding on any person,” and the Commission said in 1975:

... there is nothing in the Rule which precludes the use of any other remedies by the parties following a Mechanism decision. The warrantor, the Mechanism, or any other group can offer a binding arbitration option to consumers who are

prohibition contained in this chapter (or a rule thereunder).

³⁰ Also, if a manufacturer participates in multiple states but requires prior resort only in some of them, the auditor continues to review the submission (and will continue to review future submissions) for all states where the manufacturer participates, unless the manufacturer requests otherwise or the context suggests otherwise.

³¹ See notes 28, 29.

³² For example, if a manufacturer offers a dispute settlement program that doesn’t bind the consumer and that’s optional to the consumer, it doesn’t seem unreasonable that the manufacturer might (despite Rule 703.2(d)) insist that consumers use its internal review processes before advancing to the program. More broadly, even if a manufacturer participates in the program but doesn’t mention the program in its warranty manual or other document (so that consumers would have to learn of the program from an internet search or another source), it doesn’t seem that consumers are in a worse position than if the manufacturer didn’t participate at all.

dissatisfied with Mechanism decisions or warrantor intentions. *However, reference within the written warranty to any binding, non-judicial remedy is prohibited by the Rule and the Act.*³³

Further, the Commission subsequently reasserted its authority to proscribe references to binding arbitration in a warranty in 1999 and 2015.³⁴ Assuming (as the auditor does) that the Commission had authority to issue such a rule,³⁵ this may well suggest that the notice

³³ 40 Fed. Reg. at 60211 (1975) (emphasis added).

³⁴ 64 FR 19700, 16708 (1999); 80 Fed. Reg. 42710, 42718-19 (2015). To quote more fully from the 2015 discussion:

When the Commission first promulgated Rule 703.5(j) in 1975, it did so based on the MMWA’s language, legislative history, and purpose: to ensure that consumer protections were in place in warranty disputes. The Commission explained that “reference within the written warranty to any binding, non-judicial remedy is prohibited by the Rule and the Act.” The Commission’s underlying premise was that its authority over Mechanisms encompassed all nonjudicial dispute resolution procedures referenced within a written warranty, including arbitration.

During the 1996–97 rule review, some commenters asked the Commission to deviate from its position that Rule 703 bans mandatory binding arbitration in warranties. The Commission, however, relying on its previous analysis and the MMWA’s statutory language, reaffirmed its view that the MMWA and Rule 703 prohibit mandatory binding arbitration. As the Commission noted, Section 2310(a)(3) of the MMWA states that, if a warrantor incorporates an IDSM provision in its warranty, “the consumer may not commence a civil action (other than a class action) . . . unless he initially resorts to such procedure.” The Commission concluded “Rule 703 will continue to prohibit warrantors from including binding arbitration clauses in their contracts with consumers that would require consumers to submit warranty disputes to binding arbitration.”

80 Fed Reg. at 42718-41719 (footnotes omitted). After noting that several courts had raised questions about the agency’s authority to issue the rule (a matter that’s explored further below) the Commission “reaffirm[ed] its long-held view that the MMWA disfavors, and authorizes the Commission to prohibit, mandatory binding arbitration in warranties.” 80 Fed. Reg. at 42719. *See also id.* at 42719-42720 (detailing the agency’s rationale); *but see id.* at 42723 (Commissioner Ohlausen, dissenting).

³⁵ While the Commission asserts the authority to ban binding arbitration in warranties, some courts have questioned its authority to do so. As the Commission explained in 2015 (with footnotes to this passage included):

Since the issuance of the 1999 FRN, courts have reached different conclusions as to whether the MMWA gives the Commission authority to ban mandatory binding arbitration in warranties.¹¹⁵ In particular, two appellate courts have questioned whether Congress intended binding arbitration to be considered a type of IDSM, which would potentially place binding arbitration outside the scope of the MMWA.¹¹⁶

requirements in Rule 703.2 also apply, under the Commission’s reading, to any arbitration process mentioned in a warranty, either voluntary or mandatory, and either with or without reference to prior resort³⁶

* * * *

Finally, the auditor notes two related issues.

First, the discussion above explores the application of Rule 703.2 to manufacturers that *don’t* require prior resort. There’s a separate but intertwined issue that first arose last year about the extent of the auditor’s oversight where a manufacturer *does* require prior resort and makes various required disclosures, but also imposes a separate requirement for binding arbitration that doesn’t involve BBB AUTO LINE. That issue is discussed in Section V.G of this chapter.

Second, while the discussion above focuses on the Federal Magnuson-Moss Act, there’s a somewhat similar issue for the Florida and Ohio state audits. Except to the extent that manufacturers were certified in one or both of those states, they don’t appear to be subject to

¹¹⁵ See, e.g., *Kolev v. Euromotors West/The Auto Gallery*, 658 F.3d 1024 (9th Cir. 2011), *withdrawn* 676 F.3d 867 (9th Cir. 2012) (withdrawn pending the issuance of a decision on a separate issue by the California Supreme Court in *Sanchez v. Valencia Holding Co.*, S199119); *Davis v. Southern Energy Homes, Inc.*, 305 F.3d 1268 (11th Cir. 2002); *Walton v. Rose Mobile Homes, LLC*, 298 F.3d 470 (5th Cir. 2002); see also *Seney v. Rent-A-Center, Inc.*, 738 F.3d 631 (4th Cir. 2013).

¹¹⁶ *Davis v. Southern Energy Homes, Inc.*, 305 F.3d 1268 (11th Cir. 2002); *Walton v. Rose Mobile Homes, LLC*, 298 F.3d 470 (5th Cir. 2002).

80 Fed. Reg. at 42719. See also *Sheinfeld v. BMW Financial Services NA, LLC* (D. Nev. 2019), <https://ia800901.us.archive.org/28/items/gov.uscourts.nvd.133732/gov.uscourts.nvd.133732.17.0.pdf>, (compelling binding arbitration).

These questions could extend to Rule 703.2’s disclosures and prohibitions as well, but don’t necessarily do so. The judicial decisions questioning the FTC’s authority relied in part on conflicts with the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.*, and the disclosure provisions under Rule 703.2 don’t squarely raise that issue.

³⁶ Curiously, the text of section 703.2(a) – requiring warrantors to comply with 703.3 through 703.8 for *any* “Mechanism” that’s included in a warranty – doesn’t mention compliance with Rule 703.2 itself. Still, in the Federal Register notice, after describing this provision (and thus indicating that all mechanisms must comply with the rules), the Commission added that the disclosure duties under Rule 703.2 apply to “warrantors incorporating a complying Mechanism into a written warranty.” 40 Fed. Reg. at 60193.

state-specific audits and, consistent with his own past practice and that of his predecessor, the auditor hasn't undertaken such an audit.³⁷

2. When does a consumer “experience” a warranty dispute?

A second question in applying these provisions is this: For purposes of notice under Rule 703.2(d), when do consumers “experience warranty disputes”? Is it only after they submit a dispute to the manufacturer? Or can they experience a dispute before they've escalated the matter to the manufacturer? Would a consumer experience a warranty dispute, for example, if he expressly used the term “lemon law” or “replacement car” when talking to an employee in the dealer's service department?

One way that manufacturers provide Rule 703.2(d) notice is through the consumer-facing manuals that set forth the warranty (which must also comply with Rules 703.2(b) and (c)). To the extent that such manuals also “make consumers aware” of the program when they experience a warranty dispute, it's in a sense irrelevant when the dispute is “experienced.” Since the manuals are always available to consumers, a sufficiently prominent reference to the program in a manual could fulfill its function under Rule 703.2(d) at any time. To the extent the manuals alone aren't enough,³⁸ though, the question of when consumers experience a dispute becomes more important. If consumers “experience warranty disputes” before they submit a dispute to the manufacturer, and if the manuals alone aren't by themselves sufficient to comply fully with Rule 703.2(d), then manufacturers should have in place procedures to supplement the warranty manual at that earlier time, certainly extending to consumers who contact the manufacturer for assistance and perhaps extending to the dealership level as well.

For purposes of this audit, the auditor assumes that Rule 703.2(d) obligations *don't* arise until a dispute is submitted to the manufacturer. Thus, to the extent that manufacturers include information about BBB AUTO LINE in a consumer-facing manual, do so in a sufficiently prominent manner, and also provide the notice required by Rule 703.2(e) (described above), they are deemed in substantial compliance (albeit with possible reservations or questions) with the affirmative disclosure provision of Rule 703.2(d).

However, the auditor recognizes that regulators might disagree with this assessment of when consumers experience a dispute. Indeed, the structure and language of the rule suggest an argument to the contrary. The very fact that Rule 703.2(d) requires disclosures when consumers “experience warranty disputes,” while 703.2(e) requires other disclosures when a manufacturer resolves a dispute submitted directly to it, suggests that these provisions apply at different times, and subsection 703.2(d) disclosures are required before those under subsection (e).

³⁷ He notes, however, that some Florida and Ohio provisions requiring disclosures about lemon law rights seem applicable to non-certified as well as certified manufacturers.

³⁸ See the discussion that immediately follows.

3. The adequacy of consumer-facing manuals to provide notice under Rule 703.2(d)

As noted above, consumer-facing manuals that contain warranties are, at a minimum, an important component for providing the notice required by Rule 703.2(d) (as well as vehicles for complying with Rules 703.2(b) and (c)). The Commission expressly recognized in 1975 that “use and care manuals,” though distributed at the time of sale, are one way to tell consumers about a dispute resolution mechanism if and when they experience a warranty dispute. Apparently expecting that the warranty itself would often appear in a different format than a manual, the Commission observed: “While consumers might misplace a warranty or fail to consult it at the time of experiencing a product malfunction or defect, a larger number of consumers would be more likely to consult use and instruction manuals in an effort to remedy the malfunction or determine the procedure for contacting the retailer or warrantor to remedy malfunctions or defects.”³⁹ These “use and instruction manuals” seem to be, at a minimum, a component of directly telling consumers about BBB AUTO LINE when a warranty dispute arises. And they presumably can serve an indirect function as well; to the extent that manufacturer and dealership employees are familiar with these manuals, the manuals perform “employee education” as well as “consumer education” functions, and the employees thus educated might pass the information along to consumers.⁴⁰

Consumer-facing manuals can thus constitute at least a component of substantial compliance with subsection (d). This would be subject, in the auditor’s view, to a fact-specific determination about prominence: Would a consumer who reviewed her booklet (and the accompanying glove-compartment packet) likely find a reference to BBB AUTO LINE?⁴¹

However, the Commission in 1975 also seemed to contemplate that manufacturers would do more than provide a manual.⁴² The examples given in the notice didn’t seem to set a particularly high threshold (although those examples were backstopped by noting the Commission’s reliance on the auditor to review manufacturers’ efforts).⁴³ In any event, it’s

³⁹ 40 Fed. Reg. 60190 (1975).

⁴⁰ Given the way these documents are now packaged, the above analysis would seem equally valid when a manufacturer includes the warranty in a separate “service manual” or “warranty manual.” Such manuals now are typically printed in the same format as the accompanying user’s manual and packaged together in a single package. A consumer who seeks her owner’s manual when she experiences a warranty dispute will, therefore, routinely locate the accompanying service manual.

⁴¹ Factors that bear on prominence can include: Does some mention of the program appear early in the manual? Is there a full discussion either early in the manual or in a clearly noted warranty section? Is the discussion highlighted by a heading, and is that heading in turn highlighted in the table of contents – perhaps by a reference to BBB AUTO LINE, but perhaps by a more general reference to “alternative dispute resolution” or even “consumer protection”?

⁴² 40 Fed. Reg. 60190, 60197-99 (1975).

⁴³ For example, the notice seemed to contemplate that a warrantor might meet its obligation “by

certainly arguable that the Commission contemplated more additional steps than the notice already required by Rule 703.2(e), which applies at an important point (when the manufacturer tells the consumer about its resolution of a dispute submitted directly to the manufacturer) but which only reaches disputes that were submitted directly to the manufacturer.

The consumer survey discussed in detail in Chapter 3 also highlights the potential significance of further communications from dealerships or manufacturer representatives. When consumers in the national sample were asked how they learned of BBB AUTO LINE, nearly 40% cited the internet, a medium that didn't exist in 1975. But among those who learned of the program from a dealership or manufacturer communication, 14.5% of the national sample cited the warranty documents, but 18.0% cited manufacturers' representatives or dealerships.⁴⁴ In other words, dealers' and manufacturers' staffs, collectively, were more frequent sources of information about BBB AUTO LINE than were owners' manuals and similar publications. Thus, many consumers already rely (successfully) on dealer or manufacturer staff – but a systematic program providing that certain triggers might routinely require such disclosure could increase the utility of manufacturer or dealer representatives as a source.

Returning to the bigger question, there's a very credible argument that Rule 703.2(d) requires more than disclosures in the warranty manual (however prominent) supplemented by compliance with Rule 703.2(e). So, although the auditor continues to treat consumer-facing manuals alone as a basis for finding substantial compliance with subsection (d), he recognizes the argument to the contrary – which could be particularly important if consumers were found to have “experienced” a warranty dispute while still trying to resolve the issue at the dealership level.

In the auditor's view, it would therefore be prudent for dealers to tell a consumer, at least after multiple unsuccessful attempts to satisfy the consumer, about the existence of BBB AUTO LINE (although the complexities of that disclosure are discussed two sections below). And it would be prudent, as well, for manufacturers to so advise their dealers, in dealer-facing manuals and training courses, as some already do. Ideally, the advice to dealers would identify specific triggers that should prompt the dealership to tell consumers about BBB AUTO LINE.

Nonetheless, given the uncertainty in this area, the auditor continues to simply highlight for regulators other steps that manufacturers have (or haven't) taken to provide notice about BBB AUTO LINE to consumers. He further recognizes manufacturers who already take such steps with findings that specific manufacturers made commendable or highly commendable efforts in achieving substantial compliance.

participating in T.V. ‘talk’ shows or by providing materials for use by consumer columnists.” *Id.* at 60199.

⁴⁴ Chapter 3, Table III-4.

4. Rule 703.2(e) Notice

As noted in the introduction, the auditor has been particularly focused by his mandate on the failure by some manufacturers to submit materials showing compliance with Rule 703.2(e). The rule requires manufacturers to again tell consumers about BBB AUTO LINE, and again provide the information required by Rules 703.2(b) and (c), when the manufacturer decides a matter that the consumer has submitted to it.⁴⁵ The still-lingering issues on this score were largely resolved last year.

The auditor notes, though, that several manufacturers have in recent years reported that they convey these decisions to consumers *orally*, and make the required disclosure orally as well. This seems fully consistent with the rule. However, the auditor has asked manufacturers to clarify their precise policies, and it appears that some manufacturers make the disclosure contingent on how the consumer reacts to the company's notification.. (E.g., are they dissatisfied?) Rule 703.2(e) doesn't allow a contingency, though. In the auditor's view, any such condition on giving notification merits at least a reservation about compliance, and a sufficiently limiting restriction could merit a noteworthy reservation.

As to the more detailed disclosures about the program that the rule requires, so long as companies tell consumers that BBB AUTO LINE exists and either provide contact information or direct consumers to more detailed information in warranty or other manuals, consumers should quickly get most of the detail by indirect means. Still, the rule expressly requires that the information be disclosed by the warrantor, so, to the extent that a warrantor relies on such indirect presentation, the auditor will find a "question." Further, to the extent that manufacturers rely on BBB AUTO LINE itself for indirect disclosures, consumers are likely to get *most* of the detailed information required by the rule, but they won't necessarily learn about prior resort requirements under the Magnuson-Moss Act.⁴⁶ And that omission could possibly prejudice at least some consumers.⁴⁷ Thus, where a manufacturer has a Rule 703.2(e) letter that doesn't mention prior resort *and* doesn't refer consumers to a warranty manual that clearly provides prior

⁴⁵ As highlighted in the next section, consumers aren't required by federal law to give manufacturers an opportunity to address their concerns before arbitration, but may be required to do so to benefit from provisions of state lemon laws. A "final repair attempt" mandated by state law may thus trigger the disclosure requirements under Federal Rule 703.2(e).

⁴⁶ At least in some cases, state prior resort provisions are disclosed in summaries of state law that BBB AUTO LINE provides to complainants. But the auditor doesn't know of any disclosures of *Federal* prior resort provisions by BBB AUTO LINE, and, in any event, Federal law doesn't itself require prior resort; it rather allows manufacturers to impose prior resort requirements. And a consumer who proceeds directly to court for Magnuson-Moss or lemon law relief wouldn't get disclosures even if BBB AUTO LINE would, in some cases, provide it.

⁴⁷ For example, a consumer who didn't know about a prior resort requirement and first went to court might have problems if, before he learned of the requirement, he'd run beyond the warranty coverage period or the lemon law coverage period.

resort information, the auditor finds, not a “question,” but a more clear-cut “reservation.”⁴⁸

5. Federal Prohibition and State Mandates (and Prohibitions)

The auditor also notes the complexities that manufacturers face, because of the interplay of federal and state requirements, in advising consumers how they might proceed if they can’t resolve an issue at the dealership level. Florida and Ohio offer useful examples, both because they’re the subject of state-specific audits and because they take very different approaches.

- Rule 703.2(d) *permits* manufacturers to “encourage consumers to seek redress directly from the warrantor.” And Rule 703(e)(5) even allows the program to extend the 40-day time limit to complete a case for seven additional days “in those cases where the consumer has made no attempt to seek redress directly from the warrantor.”
- But Rule 703.2 (d) *forbids*, for purposes of Magnuson-Moss Act relief, “expressly requir[ing] consumers to seek redress directly from the warrantor.”⁴⁹
- Some state lemon laws, meanwhile, *require* (or allow manufacturers to require) a species of such resort, in providing for notice to manufacturers and the opportunity for a final repair opportunity before consumers can pursue remedies (or benefit from presumptions) under the state’s lemon law. Florida, among others, has such a requirement.⁵⁰

⁴⁸ For more on the difference between a question and a reservation, see Section II.B of this chapter, *infra*.

⁴⁹ Additionally, FTC Rule 703.5(e) allows an extension of the normal 40-day time to resolve a case “where the consumer has made no attempt to seek redress directly from the warrantor.”

⁵⁰ Florida’s lemon law provides:

§ 681.104 Nonconformity of motor vehicles.—

(1)(a) After three attempts have been made to repair the same nonconformity, the consumer shall give written notification, by registered or express mail to the manufacturer, of the need to repair the nonconformity to allow the manufacturer a final attempt to cure the nonconformity. The manufacturer shall have 10 days, commencing upon receipt of such notification, to respond and give the consumer the opportunity to have the motor vehicle repaired at a reasonably accessible repair facility within a reasonable time after the consumer’s receipt of the response. The manufacturer shall have 10 days, except in the case of a recreational vehicle, in which event the manufacturer shall have 45 days, commencing upon the delivery of the motor vehicle to the designated repair facility by the consumer, to conform the motor vehicle to the warranty. If the manufacturer fails to respond to the consumer and give the consumer the opportunity to have the motor vehicle repaired at a reasonably accessible repair facility or perform the repairs within the time periods prescribed in

- But not all state laws take this approach. Indeed, Ohio expands on the prohibition in Rule 703.2(d), and requires clear and conspicuous disclosure that the manufacturer’s process is *optional* and can be terminated at any time.⁵¹

It’s certainly possible to capture the nuanced interactions of these provisions in a carefully drafted text, and (whether or not the typical consumer will understand these nuances) many manufacturers have done so.⁵² But at the dealership level, even if only a single state law is involved, it’s not clear to the auditor that it’s reasonable to expect a typical employee to meaningfully convey all these nuances orally.⁵³

6. Limitations in Manufacturer-Specific Program Summaries

All the surveyed manufacturers impose some limits on the availability of the program. These limits, set forth in program summaries that are available online,⁵⁴ typically exclude some claims in their entirety; for example, program summaries typically exclude claims that an air bag failed to deploy and claims covered by insurance or warranties of other manufacturers. Also, most program summaries have age and mileage limits that exclude from the program at least some non-lemon law claims covered by the manufacturer’s warranty.⁵⁵

Roughly half the manufacturers that were audited include language in their warranty materials signaling that access was limited by age and mileage, with some noting that there

this subsection, the requirement that the manufacturer be given a final attempt to cure the nonconformity does not apply.

⁵¹ OHIO ADMIN CODE §109:4-4-03(E)(1). For more on this provision, see Section IV of this chapter.

⁵² For example, Hyundai, Jaguar/Land Rover, Kia, and Nissan/Infiniti have prepared supplementary booklets with specific pages for each state. Lotus has prepared a shorter supplement that identifies, for example, the states in which consumers must resort to BBB AUTO LINE before they can pursue other remedies created by lemon laws.

⁵³ In some circumstances, perhaps the best they can do is to tell the consumer about both the manufacturer’s processes and BBB AUTO LINE, and then direct the consumer to the text in the warranty booklet for more detail.

⁵⁴ The summaries can be found within a few links of www.bbbprograms.org/programs/all-programs/bbb-autoline.

⁵⁵ Some program summaries make the program available for only part of the time covered by the basic limited warranty (or “bumper-to-bumper” warranty). Others extend to the end of the basic limited warranty, but don’t extend beyond that for specific parts that have longer warranties than the bumper-to-bumper warranty.

might be other limits as well. In the auditor's view, a relatively precise description of the "availability of the informal dispute settlement mechanism" (Rule 703.2(b)(1)) should at least signal such limits, although, for purposes of the notification function of the Rule,⁵⁶ the auditor is inclined to treat omissions in this respect as at most minor violations of the disclosure requirement in Rule 703.2. Consumers whose claims fall outside of the program's parameters will be told so quickly if they contact BBB AUTO LINE. And if they don't contact BBB AUTO LINE but go directly into another forum, manufacturers presumably won't challenge their access to that forum because they didn't futilely submit to BBB AUTO LINE a complaint that BBB AUTO LINE would have rejected in its entirety as ineligible.

Also, a few program summaries reference warranty claims but focus exclusively on lemon law standards and remedies. The auditor reads these summaries (at least when the relevant warranty manuals require prior resort under Magnuson-Moss) to provide for warranty coverage coextensive with the applicable lemon law coverage. The auditor suggests that these texts might be clarified, but, read as described above, they essentially impose, if somewhat obliquely, age, mileage, and other limits on the extent to which the program covers warranty claims.

* * * *

Limits on the *relief* available for stand-alone warranty claims (non-lemon law claims) raise somewhat different issues. Rule 703.5(d)(1) requires that BBB AUTO LINE's decisions "shall include any remedies appropriate under the circumstances, including repair, replacement, refund, reimbursement for expenses, compensation for damages, and any other remedies available under the written warranty or the [Magnuson-Moss]Act (or rules thereunder); . . ."

In construing the reference to remedies available under the "Act (or rules thereunder)," an advisory opinion from FTC staff focused on the balance struck by the Act to promote the use of programs like BBB AUTO LINE,⁵⁷ and characterized such programs as "a warrantor's opportunity to cure a possible breach of warranty."⁵⁸ The staff advised that the Act shouldn't be

⁵⁶ See 40 Fed. Reg. 60190, 60194 (focusing on the need for disclosures to fulfill "one of the Rule's main purposes, that of ensuring access to the Mechanism at the time consumers experience warranty disputes").

⁵⁷ The Act balanced "on the one hand, warrantors' incentives to establish IDSMs [informal dispute settlement mechanisms] and submit to an IDSM's procedures so that consumers could have access to a relatively swift, inexpensive, and effective intermediary to obtain performance of promises made in the warranty, and, on the other hand, consumers' preserved and enhanced ability to seek desired remedies in court when, in the opinion of the consumers, an IDSM fails to result in fulfillment of warranty obligations." FTC Staff Advisory Opinion (October 25, 2005), at 4.

⁵⁸ *Id.*, quoting 40 Fed. Reg. 60190, 60191 (1975). The opinion added that this was "a last opportunity for the warrantor 'to take care of consumer grievances to avoid the necessity of litigating an action for breach.'" *Id.* Recall that, while some state lemon laws require that manufacturers be bound by the results of arbitration, and all manufacturers participating in BBB AUTO LINE agree to

read to require, as a predicate for prior resort, that the program include all remedies available in court. To the contrary, “the fact that, pursuant to the Act, a court may award a successful plaintiff in a warranty action remedies not included in the warranty, such as those provided by state law, attorneys’ fees, and costs, does not mean that, in order to comply with Rule 703, an IDSM must make these extra-warranty remedies available to consumers who submit their warranty disputes to the IDSM.”⁵⁹

The opinion identified, as remedies that didn’t have to be made available, “consequential damages, diminution of value, attorney’s fees and costs”⁶⁰ – a list that didn’t include repurchase (refund)⁶¹ or replacement remedies. These remedies *typically* aren’t available under a manufacturer’s written warranty and *sometimes* (at least today⁶²) aren’t available for non-lemon law warranty claims under a program summary. However, in addition to its broad reference that IDSMs needn’t have available “remedies provided by state law,” the opinion expressly addressed repurchase or replacement remedies in another passage. It explained that the Magnuson-Moss Act allowed warrantors to offer a “full warranty,” whose terms, defined by the Act,⁶³ *do* include “replacement or refund.” In the context of a full warranty, this was an example of something “deemed by the Act to be part of the warranty and . . . therefore capable of ‘cure’ by order of an IDSM decision.”⁶⁴ In other words, a replacement or refund remedy would be deemed to be incorporated into the warranty for purposes of the FTC rule (and thus would need to be available for relief in the Mechanism’s proceedings) *if* the manufacturer offered a full warranty.

Otherwise, the auditor thinks the better view, in light of the advisory opinion, is that manufacturers can impose prior resort provisions for purposes of Magnuson-Moss relief, even if (as a few do) they exclude repurchase and replacement remedies from the remedies available for non-lemon law claims. While this appears to be the better view, though, there’s a contrary

be bound by the results if consumers accept them, the Magnuson-Moss Act permits a process by which the manufacturers aren’t bound even if the consumers accepted the results.

⁵⁹ Advisory Opinion, at 2.

⁶⁰ Advisory Opinion, at 6. These remedies, it should be noted, include elements that could be the principal element of some consumers’ relief, as well as an element of another factor (damages) that’s within the specific examples under the rule.

⁶¹ BBB AUTO LINE typically uses the term “repurchase” when referring to a refund (with appropriate adjustments) of all or part of the price for which the car was sold.

⁶² The auditor hasn’t been able to ascertain whether any program summaries that were operative at the time of the advisory opinion, for manufacturers who required prior resort under the Magnuson-Moss Act, excluded repurchase or replacement remedies for non-lemon law warranty claims.

⁶³ 15 U.S.C. § 2304.

⁶⁴ Advisory Opinion, at 5.

argument that these remedies were neither the focus of the opinion nor directly addressed by it.

7. Clear and Conspicuous Disclosure of Information Covered by Rule 703.2(b)

Disclosures prescribed by Rule 703.2(b) must be made both “on the face of the warranty” and “clearly and conspicuously.” In evaluating whether materials effectively alerted consumers to the program at the time consumers experienced a warranty dispute, as required by Rule 703.2(d), the auditor essentially considers factors that would bear on the disclosure’s clarity and conspicuousness for purposes of Rule 703.2(b). Thus, to address whether a properly placed disclosure is clear and conspicuous for purposes of Rule 703.2(b), the factors considered under Rule 703.2(d) may also be relevant.

However, this doesn’t address the issues of whether two specific disclosures required by Rule 703.2(b) – disclosures of prior resort provisions and of where to find additional information – are sufficiently clear and conspicuous. Where specific details are part of a broader disclosure that’s clear and conspicuous, the auditor is inclined to find that the individual components are clear and conspicuous as well. Further, the BBB AUTO LINE name itself adds to the clarity and conspicuousness, both because it incorporates the “BBB” name and because of the all-caps spelling. Also, particularly with reference to disclosures of prior resort provisions, the auditor has noted that some manufacturers highlight these provisions, perhaps by prefacing them with a capitalized “IMPORTANT,” for example, or perhaps by including them in a text box. In essence, these manufacturers took some effort, within the context of an overall disclosure that was clear and conspicuous, to make certain information stand out even further. The auditor believes it would be prudent for all manufacturers to take comparable steps, at least if the prior resort language is part of a reasonably extended discussion of BBB AUTO LINE, and he has highlighted in the manufacturer-specific summaries where disclosures of prior resort provisions (at least those that appear on the face of the warranty) already take such steps.

B. The Auditor’s Criteria for Applying the Federal Standards

Most manufacturers who submitted materials for the current audit included consumer-facing manuals containing the warranty and describing the BBB AUTO LINE program. And some provided templates of letters used to comply with Rule 703.2(e), as well as additional materials – some consumer-facing, some facing towards dealership or manufacturer employees – that bear on notice to consumers.

Reservations and Questions. Using the analysis above to provide an overall framework, the chart that follows describes certain core issues arising under Rule 703.2. In general, the auditor’s approach is to find substantial compliance where manufacturers have made reasonable efforts to comply with Rule 703.2, but to note “reservations” or “questions” on certain findings – which can be heightened, particularly for seemingly unambiguous issues, with the passage of time.

“Reservations” are reserved for seemingly straightforward issues. For example, was information omitted that Rule 703.2(b) or (c) expressly requires to be disclosed? Was information covered by subsection (b) placed on the face of the warranty, as expressly required?

Did the manufacturer provide any evidence of compliance with subsection (d)?

A “question” is used when the matter isn’t as clear. The difference between a reservation and a question is one of relative clarity, not of relative importance; a “question” could well be more important than a “reservation.” Questions sometimes reflect uncertain legal standards; for example, when does a warranty dispute “arise”? They can also depend, at least in part, on factual determinations. For example, to the extent manufacturers rely on warranty manuals to provide notice when a dispute arises, various factors may become relevant: the placement of the warranty discussion, the placement of the discussion of BBB AUTO LINE within the warranty discussion, and the extent to which BBB AUTO LINE or alternative dispute resolution in general is highlighted by bold-faced headings or, perhaps, in the table of contents.

The auditor also characterizes some reservations as essentially technical. For example, Rule 703.2(b) requires that certain disclosures be made on the face of the warranty, i.e., the first page. But warranties are routinely included in owner’s manuals or service manuals, which tend to have relatively small pages to fit into glove compartments; relatively large type; and numerous bold-faced headings that make them easier to read even when they have hundreds of pages. In this context, a violation would seem relatively technical if (to take an extreme case) the manufacturer began to provide relevant information in a paragraph that began on the warranty’s first page but carried over to the next page.⁶⁵ Without condoning any violations of express regulatory requirements, in such instances the auditor has sought to provide relevant context in the manufacturer-specific tables about his assessment of the gravity of a possible violation.

- ***Some violations seem less likely to harm consumers than others.*** While the auditor hesitates to downplay any violations, he notes that some seem more likely to harm consumers than others. For example, among the items whose disclosure is required by Rules 703.2(b) and (c), manufacturers most commonly omit the item in Rule 703.2(c)(5) – “the types of information which the Mechanism may require for prompt resolution of warranty disputes.” Consumers who get the other required information, though, will soon learn (when they contact BBB AUTO LINE) what information they need to provide.⁶⁶
- ***Raising the bar.*** The auditor has “raised the bar” over the years when certain reservations have been (repeatedly) highlighted to manufacturers in past audits (which BBB AUTO LINE then sent to them).

⁶⁵ Perhaps the second page is even the facing page, and the two are visible together.

⁶⁶ The auditor doesn’t suggest that this omission could never harm consumers; perhaps some would have been more likely to retain repair records if they were expressly told to keep documents for use if a problem went to arbitration. Even if this were clearly the case, though, with current computerized records, most consumers will presumably be able to obtain, from dealers and other repair facilities, records that they hadn’t retained.

TABLE 1

TEXT CONTENT	
1. Disclosures under Rule 703.2(b) and (c)	Although manufacturers routinely disclose the required information, some omit the “[t]he types of information which the Mechanism may require for prompt resolution of warranty disputes,” which is expressly required by Rule 703.2(c)(5). (Reservation.)
2. Prohibition on “expressly requir[ing]” use of manufacturer’s internal processes before using the program. Rule 703.2(d)	The fuller text of the prohibition allows warrantors to “encourage consumers to seek redress directly from the warrantor as long as the warrantor does not expressly require consumers to seek redress directly from the warrantor.” This gives manufacturers some leeway, although some texts may go too far in saying, directly or in essence, that BBB AUTO LINE is available if other efforts have failed. (Fact-specific question.)
TEXT PLACEMENT AND PROMINENCE	
3. Specific information required by Rule 703.2(b)	<p>In practice, warranties routinely appear in owners’ manuals, separate warranty manuals, or both. When they appear in a separate manual, Rule 703.2(b) information should be on the first page of the manual; when they appear in an owners’ manual, the information should be on the first page of the warranty text. (See Rules 703.1(h)(2) and 703.2(b).) Sometimes only some information – most often information about prior resort provisions – is absent or misplaced. (Reservation.)</p> <p>Additionally, disclosures must be clear and conspicuous. In the auditor’s view, when BBB AUTO LINE is mentioned by name, its very name, spelled with capital letters and drawing on widespread familiarity with the “BBB,” can be a substantial factor in making at least part of the disclosure clear and conspicuous. For properly placed warranties, factors considered under item (4) can also be relevant.</p>
4. Descriptions in manuals as a step “reasonably calculated to make consumers aware of” the Mechanism “at the time consumers experience warranty disputes.” Rule 703.2(d)	As discussed in the text, information in an owner’s or warranty manual can satisfy, at least in part, the requirement to take the requisite steps. In the auditor’s view, the efficacy of a manual in doing so depends on the prominence of the reference. For example: Is the program referenced early in the manual? Is there a reference in the warranty section? Is there a prominent heading to draw attention to the discussion? Does the heading appear, and if so with what prominence, in the table of contents? (Possible question or reservation, whose substantiality depends on specific facts.)

ALERTING CONSUMERS TO THE PROGRAM WHEN THEY EXPERIENCE WARRANTY DISPUTES

5. Additional “steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes.” Rule 703.2(d)

In addition to a prominent reference to the program in an owner’s or warranty manual, further steps are appropriate (and may well be necessary) to satisfy the rule. To this end, some manufacturers have submitted, for example, signage provided to dealerships, sometimes with accompanying materials explaining where to post them. Some have provided training materials or service manuals for dealership or manufacturer staff; these materials bear on Rule 703.2(d), particularly to the extent that they evidence policies to tell consumers about the program.

Information required by Rule 703.2(e) (see below) is also relevant to Rule 703.2(d). But such information isn’t sent until the consumer submits a dispute directly to the manufacturer and the manufacturer responds, and the obligations under Rule 703.2(d) may well arise sooner. As explained in the text, the auditor doesn’t treat evidence of additional steps as essential to finding substantial compliance, though a strong argument could be made that such evidence *is* essential. Rather, he recognizes such efforts by finding that a manufacturer has made “commendable” or “highly commendable” efforts to comply with Rule 703.2(d), and thus provides to regulators the information to inform their own judgments about individual manufacturer’s compliance.

DISCLOSURES WHEN A MANUFACTURER RESOLVES A DISPUTE SUBMITTED DIRECTLY TO IT

6. Providing information when consumers are told of the manufacturer’s decision in a dispute submitted directly to the manufacturer. Rule 703.2(e)

See Section A.4 of this chapter.

NOTES

These notes touch on some more technical matters that manufacturers should consider if they revise their discussions of BBB AUTO LINE. These are less substantial issues, and are based on language that now or in the past appeared in one or more manuals.

(1) Optional nature of mediation within the program. Consumers needn't use BBB AUTO LINE's mediation services before they use arbitration (although any mischaracterizations along these lines should be quickly dispelled when consumers contact BBB AUTO LINE).

(2) "Agree with mediated solution" text. Several manuals have told consumers that arbitration can follow if they don't "agree with a mediated solution." The phrase is at best imprecise – there can't be a mediated solution unless a consumer agrees to it. And it could potentially confuse consumers about the nature of mediation, perhaps by suggesting that BBB AUTO LINE staff might negotiate a mediated solution for them.⁶⁷

(3) The Magnuson-Moss Act and prior resort. Contrary to some warranty texts, the Magnuson-Moss Act doesn't require consumers to use the program before they pursue other rights and remedies under the Act; rather, it allows manufacturers to impose such a requirement. While it's hard to see any harm flowing from this, it does misstate the nuances of the statute.

⁶⁷ In other words, consumers can agree *to* a mediated solution; the auditor's concern is with text that speaks of agreement *with* a mediated solution.

III. Obligations under Florida Provisions

Preliminarily, Florida has a Lemon Law⁶⁸ that, until 2011, was administered by the Department of Agriculture and Consumer Services. Administration was then transferred to the Department of Legal Affairs in the Office of the Attorney General, and the former agency repealed its regulations.⁶⁹ Although the Department of Legal Affairs hasn't issued replacement regulations, BBB AUTO LINE continues to file (though now with the Department of Legal Affairs) the report that would have been required by those regulations. Further, BBB AUTO LINE treats the applicable regulations as if they were still operative.

As set forth on the web page of the Florida Attorney General, the following manufacturers were certified for participation in BBB AUTO LINE in Florida during 2020⁷⁰:

1. Bentley Motors, Inc.
2. Ford Motor Company
3. General Motors Company
4. Hyundai Motor America
5. Kia Motors America, Inc.
6. Mazda North American Operations
7. Nissan North America, Inc. (Nissan/Infiniti)
8. Volkswagen Group of America, Inc. (Volkswagen/Audi).

Florida in many ways builds on the Federal law and regulations.⁷¹ However, the Florida Lemon Law, like other states' lemon laws, contains important provisions that don't appear in the federal law. Like other states, for example, Florida specifies the number of repair attempts, and

⁶⁸ FLA. STAT. § 681.

⁶⁹ See https://www.flrules.org/Gateway/View_notice.asp?id=14913185 (Aug. 8, 2014) (notice of proposed rulemaking); <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=5J-11> (noting final repeal on Oct. 21, 2014).

⁷⁰ See <http://myfloridalegal.com/pages.nsf/Main/7629400e4ef8a25285256cc9005c5a5b>. (examined periodically by the auditor). Florida has been issuing provisional certifications, generally covering six months; when the auditor checked the site on June 6, the provisional certification extended to October 31. See FLA. STAT. § 681(5)(a) (providing for renewals "for a period not to exceed 1 year").

⁷¹ Thus, when the FTC conducted a regulatory review of Rule 703, the International Association of Lemon Law Administrators urged the Commission, in considering revisions, to consider the extent to which a repeal or change to its rules would affect state certification programs for informal dispute resolution mechanisms. Letter from Carol O. Roberts, October 24, 2011, available at https://www.ftc.gov/sites/default/files/documents/public_comments/16-cfr-parts-239-700-701-702-and-703-request-comments-concerning-interpretations-magnuson-moss/00012-80822.pdf.

the time a vehicle can be out of service, before the lemon law imposes a presumption of a reasonable number of repair attempts.⁷² Like many other states, Florida also requires consumers who wish to assert certain rights to give notice to the manufacturer, after these criteria are met, and give the manufacturer a final repair attempt.⁷³ While Federal law allows *manufacturers* to require prior resort to independent dispute resolution mechanisms like BBB AUTO LINE, Florida law requires resort to BBB AUTO LINE, if it's certified as a complying mechanism, to obtain statutory remedies and benefit from certain statutory presumptions,⁷⁴ and as a predicate to use state-run arbitration administered by Florida's New Motor Vehicle Arbitration Board.⁷⁵

Also, Florida requires the distribution at the time of sale of a statement prepared by the Attorney General's office, with the manufacturer providing a supply to the dealer and the dealer obtaining a signed acknowledgment of receipt from the consumer.⁷⁶ The state has prepared this statement in the form of a booklet, and the auditor hasn't reviewed whether the parties have the requisite acknowledgements (which previous audits, dating back to his predecessor, have noted was within the province of the state).

Section 681.108(1) incorporates into Florida law all the disclosure (and other) requirements under Federal Rule 703.2.⁷⁷ For purposes of this audit, the auditor assumes that the "substantial compliance" required by Section 681.108(1) would be satisfied, even if the warrantor's obligations under Federal Rule 703.2 were fully incorporated into Florida law, by compliance with Florida's more specific disclosure provision. And the current auditor, like his

⁷² FLA. STAT. § 681.104(1)(a) and (b). The Magnuson-Moss Warranty Act – Federal Trade Commission Improvement Act appeared to authorize the FTC to prescribe similar standards nationally, 15 U.S.C. § 2304(b)(3), but the Commission hasn't done so.

⁷³ FLA STAT. § 681.104(1)(a) and (b).

⁷⁴ *Id.* at § 681.108(1) (limiting application of provisions of section 681.104(2)).

⁷⁵ *Id.* at § 681.109. The Board offers consumers another arbitration process, to which (among others) consumers who are dissatisfied with the results of BBB AUTO LINE arbitration or who don't get a timely resolution in BBB AUTO LINE arbitration can turn. *Id.* After arbitration before the state board, the consumer can go to court. *Id.* at § 681.1095(4) ("Before filing a civil action on a matter subject to s. 681.104, the consumer must first submit the dispute to the department, and to the board if such dispute is deemed eligible for arbitration.").

⁷⁶ *Id.* at § 681.103(3).

⁷⁷ FLA STAT. § 681.108(1), for example, refers to a manufacturer who "has established a procedure that the department has certified as substantially complying with the provisions of 16 C.F.R. part 703, in effect October 1, 1983, as amended, and with the provisions of this chapter and the rules adopted under this chapter." This raises the possibility that Florida might impose on manufacturers the full panoply of Rule 703.2 disclosures – including such technical provisions as the requirement that certain disclosures appear on the first page of the warranty discussion – even if Federal law doesn't apply because the manufacturer doesn't require prior resort.

predecessor, treats compliance with the provision for a prominent disclosure in FTC Rule 703.2(d) as a reasonable surrogate for compliance with Florida Section 681.103(3).⁷⁸

The Florida statute also provides for conspicuous notice in the warranty or owner's manual of the address and phone number of the manufacturer's zone, district, or regional office for the state, as well as a copy of materials prepared by state regulators, both of which contain some provision for monitoring by the state Attorney General's office.⁷⁹ Manufacturers now have centralized national processing centers for consumer complaints, so the manufacturer materials routinely list a national complaint processing center. Unless Florida regulators advise to the contrary, the auditor will treat such listings as complying with Florida regulations. And, since manufacturers routinely provide this information, it's not mentioned in the manufacturer-by-manufacturer summary that follows.

The former Florida regulations (which BBB AUTO LINE and the auditor treat as operative despite the above-noted repeal) also require certain disclosures by certified dispute resolution mechanisms like BBB AUTO LINE at the end of their arbitrations. BBB AUTO LINE's standard language for Florida cases thus tells consumers that they can reject a BBB AUTO LINE arbitration decision and pursue further arbitration with the state board.⁸⁰

Additionally, the former Florida regulations require that consumers be told in writing that they can proceed directly to the state's arbitration program if a certified program like BBB AUTO LINE fails to render a decision in 40 days.⁸¹ This information appears in the above-referenced booklet prepared by the state.

⁷⁸ 2014 Audit, Chapter 1, page 5. The manufacturer-specific charts that follow, however, also note other steps taken by the manufacturer, which the regulator can consider if it concludes that manufacturers should do more.

⁷⁹ FLA STAT. § 681.103(2), (3).

⁸⁰ Former Rule 5J-11.006(2)(e).

⁸¹ Former Rule 5J-11.004.

IV. Obligations under Ohio Provisions

The following manufacturers were certified to use BBB AUTO LINE in Ohio in 2020

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1. Ford Motor Company
2. General Motors Company
3. Hyundai Motor America
4. Kia Motors America, Inc.
5. Mazda North American Operations
6. Nissan North America, Inc. (Nissan/Infiniti)
7. Volkswagen Group of America, Inc. (Volkswagen/Audi)

Again, the applicable Federal provisions in many respects create a framework on which state regulation builds,⁸² and Ohio law tracks essential aspects of those federal provisions. But Ohio also includes additional substantive provisions and imposes additional disclosure obligations, both minor⁸³ and more substantial.

Thus, Ohio requires a written disclosure about lemon law rights generally, to be made in prescribed form and on a “separate sheet of paper.”⁸⁴ Ohio also requires that decisions of a “board” like BBB AUTO LINE *must* bind the warrantor.⁸⁵ (Manufacturers participating in BBB AUTO LINE agree to be thus bound even where it’s not required by state law).

As to prior resort, while federal law allows manufacturers to insist on prior resort if they have a qualifying arbitration program, Ohio requires manufacturers to obtain state certification in

⁸² See note 71.

⁸³ Thus, where FTC Rule 703.2 requires warrantors to disclose “[t]he name and address of the Mechanism, *or* the name and a telephone number of the Mechanism which consumers may use without charge” (emphasis added), Ohio regulations require both an address and a telephone number. Ohio Administrative Code 109:4-4-03(C)(2).

⁸⁴ OHIO REVISED CODE § 1345.74(A) provides:

At the time of purchase, the manufacturer, either directly or through its agent or its authorized dealer, shall provide to the consumer a written statement on a separate piece of paper, in ten-point type, all capital letters, in substantially the following form: **IMPORTANT: IF THIS VEHICLE IS DEFECTIVE, YOU MAY BE ENTITLED UNDER STATE LAW TO A REPLACEMENT OR TO COMPENSATION.**

⁸⁵ OHIO ADMINISTRATIVE CODE § 109:4-4-03(F)(3).

order to do so – consumers have to use BBB AUTO LINE before pursuing remedies if (and only if) the manufacturer is certified and the consumer gets prior notice.⁸⁶

Ohio also requires that some of the information covered by the Federal disclosure rule be disclosed, not only on the face of the written warranty, but also “on a sign posted in a conspicuous place within that area of the warrantor’s agent’s place of business to which consumers are directed by the warrantor.” The signage and warranty document should include information about BBB AUTO LINE, its contact information, and a “statement, if applicable, indicating where further information about the board can be found in materials accompanying the motor vehicle, as provided in paragraph (D) of this rule.” Yet another subsection requires disclosures about Ohio’s prior resort provision, but deems this information to be disclosed so long as a specified statement appears on a conspicuous sign *or* on a separate sheet of paper distributed at the time of sale.⁸⁷

⁸⁶ OHIO REVISED CODE § 1345.77(B) provides:

If a qualified informal dispute resolution mechanism exists and the consumer receives timely notification, in writing, of the availability of the mechanism with a description of its operation and effect, the cause of action under section 1345.75 of the Revised Code may not be asserted by the consumer until after the consumer has initially resorted to the informal dispute resolution mechanism. If such a mechanism does not exist, if the consumer is dissatisfied with the decision produced by the mechanism, or if the manufacturer, its agent, or its authorized dealer fails to promptly fulfill the terms determined by the mechanism, the consumer may assert a cause of action under section 1345.75 of the Revised Code.

⁸⁷ OHIO ADMINISTRATIVE CODE § 109:4-4-03(C) provides:

(C) The warrantor shall disclose clearly and conspicuously at least the following information on the face of the written warranty and on a sign posted in a conspicuous place within that area of the warrantor's agent's place of business to which consumers are directed by the warrantor:

- (1) A statement of the availability of the board;
- (2) The board's name, address, and a telephone number which consumers may use without charge;
- (3) A statement of the requirement that the consumer resort to a qualified board before initiating a legal action under the act, together with a disclosure that, if a consumer chooses to seek redress by pursuing rights and remedies not created by the act, resort to the board would not be required by any provision of the act. This statement will be deemed to be disclosed if the warrantor or the warrantor's agent either posts a sign in a conspicuous place, or gives the consumer a separate form at the time of the initial face-to-face contact, which clearly and conspicuously contains the following language in boldface ten point type:

"NOTICE

OHIO LAW REQUIRES YOU TO USE A QUALIFIED ARBITRATION

Taken together, these provisions appear to require:

- disclosure on a sign of the name and contact information for BBB AUTO LINE, along with a description of where to find further information. (This also needs to be disclosed on the face of the warranty, as already required by federal law).⁸⁸
- Disclosure on a separate sheet of paper of a prescribed statement with basic information about the Ohio lemon law.⁸⁹
- Disclosure on a sign or on a separate form of a prescribed statement about the need for prior resort to BBB AUTO LINE for state lemon law relief. This is “deemed” to satisfy the requirement of Ohio Administrative Code § 109:4-4-03(C)(3), which could otherwise be read to require that comparable information is disclosed both on the face of the warranty and on signage.

Additionally, where FTC Rule 703.2(d) prohibits manufacturers from expressly requiring consumers to use their internal processes before they start the BBB AUTO LINE process, Ohio goes further and requires manufacturers to disclose clearly and conspicuously that “the process of seeking redress directly from the warrantor is optional and may be terminated at any time by either the consumer or warrantor.”⁹⁰ This disclosure is to be made clearly and conspicuously, as is a disclosure “[t]hat, if the matter is submitted to a qualified board, a decision, which shall be binding on the warrantor, will be rendered within forty days from the date that the board first receives notification of the dispute.”⁹¹ The rule doesn’t specify where these disclosures need be clearly and conspicuously made.⁹²

PROGRAM BEFORE SUING THE MANUFACTURER OVER NEW CAR WARRANTY DISPUTES. FAILURE TO ARBITRATE YOUR CLAIM MAY PRECLUDE YOU FROM MAINTAINING A LAWSUIT UNDER SECTION 1345.75 OF THE REVISED CODE."

(4) A statement, if applicable, indicating where further information about the board can be found in materials accompanying the motor vehicle, as provided in paragraph (D) of this rule.

⁸⁸ OHIO ADMINISTRATIVE CODE § 109:4-4-03(C)(1), (2), and (4).

⁸⁹ OHIO REVISED CODE § 1345.74(A).

⁹⁰ OHIO ADMINISTRATIVE CODE § 109:4-4-03(E)(1). The FTC declined to adopt a similar provision. 40 Fed. Reg. at 60199 (1975).

⁹¹ OHIO ADMINISTRATIVE CODE § 109:4-4-03(E)(2).

⁹² To the extent that manufacturers rely on warranty booklets to satisfy the requirements of Federal Rule 703.2(d), such booklets might be a reasonable place to make the Ohio-specific disclosure as well.

V. Audit results

A. Introductory Observations and Summary of Findings

1. Summary of Findings

- *Sixteen firms – Bentley, BMW, Ferrari, Ford, General Motors, Hyundai (including Genesis), Jaguar (including Land Rover), Kia, Lamborghini, Lotus, Maserati, Mazda, Mercedes-Benz (as to consumers in California), Nissan (including Infiniti), Rolls Royce, and Volkswagen (including Audi) – are in substantial compliance for purposes of each applicable audit, with some combination of questions and reservations*

- *Many findings of substantial compliance for manufacturers are qualified by questions and reservations, but only a few are subject to noteworthy qualifications. Ferrari and Rolls Royce didn't show compliance with a notice requirement in FTC Rule 703.2(e), applicable when consumers seek review of dealer's actions through the manufacturer's own review processes. Rolls Royce (which was new to the auditor process last year) had other issues as well. And Jaguar/Land Rover didn't submit any documents this year, though the auditor finds compliance (for this year only) based on prior submissions.*

Firms *not* on this list include Volvo and Subaru. Volvo provided limited materials that don't show substantial compliance, but also suggest that Volvo doesn't require prior resort and may not be subject to the audit.⁹³ Subaru expressly advised that it doesn't require prior resort and declined to submit responsive materials.⁹⁴

⁹³ Volvo participates only in Arkansas, Idaho, Kentucky, and Minnesota. It provided a warranty supplement last year that describes state lemon laws, but doesn't mention the Magnuson-Moss Act or BBB AUTO LINE. It didn't provide a warranty manual, and the auditor assumes that it doesn't require prior resort under the Magnuson-Moss Act. He thus treats Volvo, consistent with the previous description of the "better view" of the law, as not subject to the audit. See Section II.A.1 of this chapter.

⁹⁴ Subaru participates in Arkansas, California, Illinois, Kentucky, Minnesota, Ohio, Oregon, and Wisconsin. As explained in Section II.A.1 of this chapter, the auditor has concluded that the better view of the law is that manufacturers who don't require prior resort aren't subject to the audit, although he tempered his conclusion with some element of uncertainty and has encouraged manufacturers to submit materials even if they don't require prior resort. Through a letter sent by BBB National Programs, Inc. the auditor has stressed to Subaru that he understands Subaru's decision not to respond to be based on its own interpretation of the applicable requirements.

2. Manufacturer Submissions

The discussion that follows analyzes manufacturers' submissions, including consumer-facing materials (the bulk of most submissions) and internal materials. The key manufacturer submissions were warranty and owner's manuals, and the auditor's findings are presented in manufacturer-specific charts.⁹⁵ In reviewing other materials, such as training materials or dealer's manuals, the auditor's initial screen was on whether they describe the program in a way that might inform dealer or manufacturer staff who in turn might inform consumers.⁹⁶ Of particular interest to the auditor were passages that describe *when* consumers should be told about BBB AUTO LINE.

⁹⁵ When manufacturers presented multiple warranty manuals for different models and years, the auditor generally focused on one of the most recent ones, with glances at others (particularly those with substantially different files sizes) to confirm uniformity. When manufacturers provided separate warranty and owners' manuals, the auditor focused on one of each. Some manufacturers also submitted lemon law or dispute resolution supplements, with detailed state-by-state breakouts, and the auditor reviewed provisions applicable to Federal, Ohio, and Florida law. Also, manufacturers typically included California-specific sections in their "core" warranty manual; the auditor examined these as well, but only for compliance with Federal standards.

⁹⁶ This would exclude, for example, a reference along the lines of "If a consumer tells you they intend to use BBB AUTO LINE, contact the manufacturer immediately to alert us."

B. Bentley Motors, Inc.

Bentley participates in all states, and is certified in Florida.

1. Consumer-Facing Materials

Bentley’s consumer-facing submissions included two owner’s manuals, which contain their warranty materials. Page references in the text below are to the 2021 Flying Spur Manual and, except where expressly noted, all references are to that manual.

<i>Federal Disclosure Provisions</i>	
(1) Rule 703.2(b) (and Rule 703.1(h) to define “the face of the warranty”)	<p>The “WARRANTY AND SERVICE” section starts on page 359, with a subheading for “Warranty” on page 363.</p> <p>BBB AUTO LINE is first mentioned in a section headed “Bentley Corporate Assistance,” which begins on page 362 ,and it’s mentioned again. There’s a fuller discussion on page 363, at the start of the actual warranty, which contains all the information required by subsection (b) except for a reference to the fuller discussion that follows on page 372, in a section headed “Consumer protection information.” (Reservation.) The placement raises some question about conspicuousness. (Question.)</p> <p>A separate “Special Notice to California purchasers” discusses rights under the Magnuson-Moss Act (as well as those under the California lemon law, which fall outside the scope of this audit).</p>
(2) Rule 703.2(c)	The required information appears at page 372. ⁹⁷
(3) Rule 703.2(d) – “steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes”	Bentley’s notice to consumers after they file complaints with the manufacturer (discussed under item (5)) is a factor in assessing compliance with Rule 703.2(d). As to disclosure <i>before</i> consumers contact Bentley, though, the first mention of BBB AUTO LINE is relatively late in its manual. There’s a references to “Consumer protection information” in the table of contents, but it appears at the end of a long table of contents and doesn’t expressly mention BBB AUTO LINE or informal dispute resolution. (Question.)

⁹⁷ Also, Bentley imposes age, mileage, and other limits on the availability of the program, but only signals the age and mileage limits. (See Section II.A.6 of this chapter.). Further, Bentley obscures the optional nature of mediation, and sometimes uses problematic text about “agree[ing]” with a mediated solution. See Section II.B of this chapter, Notes to Table 11.

(4) Rule 703.2(d) – prohibition on requiring that consumers use manufacturer’s review processes before filing with BBB AUTO LINE	The text says that BBB AUTO LINE is available if “we are unable to resolve” an issue at the manufacturer level (page 363). But the previous sentence “request[s]” (in language that’s permissive but not obligatory) consumers to first bring their concerns to the manufacturer. (Question.)
(5) Rule 703.2(e)	Bentley has provided templates of letters telling consumers about BBB AUTO LINE <i>both</i> when a complaint is received and when it’s resolved. Though the letters don’t contain all the information required by Rule 703.2(e) (including all the information listed under subsections (b) and (c)), they do direct consumers to BBB AUTO LINE, and, when they contact BBB AUTO LINE, they’ll get most of the required information. Even then, though, they likely won’t get information about prior resort obligations under Magnuson-Moss (as set forth in Bentley’s manuals). (Question as to providing information indirectly; reservation because consumers probably won’t be told about prior resort even indirectly).
Florida Disclosure	
(F1) Section 681.103(3) – Clear and conspicuous disclosure of how and where to file a claim	For reasons discussed in Items(1) and (3) under Federal disclosure provisions, the placement of Bentley’s discussion of BBB AUTO LINE towards the back of the owner’s manual raises some question as to whether the disclosures are sufficiently clear and conspicuous. (Question.)
<i>Note on prior resort</i>	In all but its Bentayga manual, which it has committed to fixing next year, Bentley has eliminated text to the effect that prior resort was required <i>only</i> for Magnuson-Moss claims or before asserting a presumption under the California lemon law, a statement that was in tension with other language in the warranty manual, with Bentley’s apparent intent, and with Florida law requiring prior resort by consumers for manufacturers with Florida certification. Going forward, the new text addresses the previously identified problem.

2. Other Materials Bearing on Notice to Consumers about BBB AUTO LINE

In addition to the letters noted in the discussion of Rule 703.2(e), Bentley has noted that its customer service center has a small staff whose members are “aware of and can advise” customers about the availability of BBB AUTO LINE. While it would be useful to know what specific triggers will prompt disclosures about the program to consumers who didn’t independently raise it, this still indicates a policy of an additional disclosure when complaints reach the manufacturer level.

3. Conclusion

Bentley is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal and Florida law, with the qualifications that are noted above. A noteworthy reservation that was highlighted in the past has been partially corrected, and will be more fully corrected when a new Bentley manual come out.⁹⁸

⁹⁸ All manufacturers are referred, as well, to the full text of this chapter, with particular reference, for Federal law, to the chart and accompanying notes that immediately follow.

C. BMW (with Mini Cooper)

BMW and Mini Cooper participate in eleven states: Arkansas, California, Georgia, Kentucky, Iowa, Idaho, Massachusetts, Maryland, Minnesota, Pennsylvania, and Virginia. In those states, they require prior resort for consumers to pursue Magnuson-Moss remedies. Thus, they're subject to audit by Rule 703.

1. Consumer-Facing Materials

BMW provided copies of 2020 warranty manuals for Mini Cooper and various BMW models. The discussions in the various manuals all appear to be substantially similar, and references to BMW in the chart below apply to Mini Cooper as well.

Federal Disclosure Provisions	
(1) Rule 703.2(b) (and Rule 703.1(h) to define “the face of the warranty”)	BMW provides the required information, and identifies the specific states where BBB AUTO LINE is available. But the information appears <i>after</i> the warranty text and not on the face of the warranty. (Reservation.) When the text does appear, it’s under a heading of “BBB Auto Line” and the description of prior resort is highlighted by the boldfaced word “Important.”
(2) Rule 703.2(c)	BMW provides the required information. ⁹⁹
(3) Rule 703.2(d) – “steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes”	The relevant (and parallel) discussions begin around page 35 of the various manuals. The discussions are under a prominent heading naming BBB AUTO LINE, and the program’s name also appears, in bold-faced text, in the table of contents. The auditor believes this is a reasonably prominent disclosure, although its separation from the actual warranty text might raise some question about its prominence. (Possible question.)
(4) Rule 703.2(d) – prohibition on requiring that consumers use manufacturer’s review processes before filing with BBB AUTO LINE	After describing procedures to contact the manufacturer and telling consumers that they “may want” to make such contact, BMW provides that BBB AUTO LINE is available “if your concern is still not resolved to your satisfaction.” (Question.)

⁹⁹ Also, BMW imposes age, mileage, and other limits on the availability and scope of the program, and doesn’t signal this in their manuals. (See Section II.A.6 of this chapter.)

(5) Rule 703.2(e)	<p>Material previously provided for BMW but not for Mini Cooper. For the current year, given the similarity between BMW's and Mini Cooper's documentation, their use of a common post office box to receive consumer complaints, and the unusual situation created by the global pandemic, the auditor assumes that Mini Cooper also uses the same correspondence as BMW.</p> <p>However, while the material contains much of the required information, and most importantly alerts consumers that BBB AUTO LINE is available, it doesn't mention prior resort. (Reservation.)</p>
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2. Other Materials Bearing on Notice to Consumers about BBB AUTO LINE

No such materials were provided. BMW has advised that dealers are trained to refer consumers to the warranty manual if they have warranty-related questions, and the manual does discuss the availability of BBB AUTO LINE in specific states.

3. Conclusion

BMW, with Mini Cooper, is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal law, with the qualifications noted above.¹⁰⁰

¹⁰⁰ All manufacturers are referred, as well, to the full text of this chapter, with particular reference, for Federal law, to the chart and accompanying notes that immediately follow.

D. Ferrari

Ferrari participates in Florida and California. However, it isn't certified in Florida and isn't subject to the Florida audit. It *does* require prior resort, at least in California, for claims under the Magnuson-Moss Act, so it's clearly subject to the National audit.¹⁰¹

1. Consumer-Facing Materials

Federal Disclosure Provisions	
(1) Rule 703.2(b) (and Rule 703.1(h) to define “the face of the warranty”)	The text contains the required information with the required placement. However, at least in the materials provided to the auditor, Ferrari identifies only California, and not Florida, as a state where BBB AUTO LINE is available. ¹⁰² (Question.)
(2) Rule 703.2(c)	Ferrari provides all the relevant information in a section directed exclusively to California. (Potential reservation. ¹⁰³)
(3) Rule 703.2(d) – “steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes”	A California-specific discussion and a general discussion are both reasonably prominent. The former runs for two pages with prominent and multiple all-caps references to BBB AUTO LINE and a bold-faced all-caps heading “NOTICE TO CALIFORNIA CONSUMERS.” The latter is highlighted by a box and is in all-red type.

¹⁰¹ As noted previously, the Magnuson-Moss Act doesn't mandate prior resort requirements; rather, it allows manufacturers to do so in appropriate circumstances. 15 U.S.C. § 2310(a)(3). In a section of its warranty booklet directed solely to California consumers, Ferrari has done so. It's less clear if Ferrari sought to do so in Florida, although it does tell consumers that, “[i]n certain states where BBB AUTO LINE is available, you are specifically required to use BBB AUTO LINE before exercising your rights or seeking remedies under [the Magnuson-Moss Act].”

¹⁰² The text quoted in note 101 does imply that BBB AUTO LINE is available at least somewhere outside California, but doesn't identify where it's available.

If Ferrari does identify Florida elsewhere as a state where BBB AUTO LINE is available, it might also alert consumers that it doesn't require prior resort for state lemon law claims. (Without certification, it can't do so.)

¹⁰³ This wouldn't appear to be an issue if California is the only state where Ferrari requires prior resort.

(4) Rule 703.2(d) – prohibition on requiring that consumers use manufacturer’s review processes before filing with BBB AUTO LINE	The auditor doesn’t believe that there’s a problem. The California-specific discussion does provide, but in text that the auditor views as permissive rather than an express requirement, “If you have a problem arising under a Ferrari written warranty, we <i>encourage</i> you to bring it to our attention. If we are unable to resolve it, you may file a claim with BBB AUTO LINE.” (Emphasis added.)
(5) Rule 703.2(e)	Not provided. (Noteworthy reservation.)

2. Other Materials Bearing on Notice to Consumers about BBB AUTO LINE

None provided.

3. Conclusion

Ferrari is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal law, with the qualifications, including a noteworthy reservation, noted above.¹⁰⁴

¹⁰⁴ All manufacturers are referred, as well, to the full text of this chapter, with particular reference, for Federal law, to the chart and accompanying notes that immediately follow.

E. Ford Motor Co.

Ford participates in all states, and is certified in Florida and Ohio.

1. Consumer-Facing Materials

Federal Disclosure Provisions	
(1) Rule 703.2(b) (and Rule 703.1(h) to define “the face of the warranty”)	<p>Ford provides the required information, though some of it isn’t properly placed. Thus, there’s a reference to BBB AUTO LINE on page 2 of the warranty manual, in an introduction that precedes the section (starting on page 5) that’s headed “limited warranty.” The auditor considers this placement of the first reference at a spot that isn’t precisely the first page of the booklet or the first page of the “limited warranty” section to warrant at most a technical reservation. But even that discussion doesn’t mentioned prior resort, as required in the initial discussion by Rule 703.2(b) – although prior resort is later mentioned in a discussion at page 7. (Reservation.)</p> <p>In addition to discussions of BBB AUTO LINE in warranty manuals, the program is also discussed in Ford’s owners’ manuals. Somewhat confusingly, though, a reference to BBB AUTO LINE in the owners’ manuals (e.g., at page 254 of the 2021 Bronco manual), describes participation as an “option,” albeit in a paragraph that might imply that it’s actually mandated.¹⁰⁵</p>
(2) Rule 703.2(c)	Ford addresses the subjects required by the rule. ¹⁰⁶

¹⁰⁵ The text provides:

Additionally, in some states within the United States, a consumer has the option of submitting a warranty dispute to the BBB Auto Line before taking action under the Magnuson-Moss Warranty Act, or to the extent allowed by state law, before pursuing replacement or repurchase remedies provided by certain state laws. This dispute handling procedure is not required prior to enforcing state created rights or other rights which are independent of the Magnuson-Moss Warranty Act or state replacement or repurchase laws.

¹⁰⁶ On a more technical matter, Ford doesn’t consistently make clear the optional nature of mediation within the program. (See Notes to Table 1, Section II.B of this chapter.) Also, Ford imposes age, mileage, and other limits on the availability of the program, and doesn’t signal this in their manuals. (Section II.A.6 of this chapter.)

<p>(3) Rule 703.2(d) – “steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes”</p>	<p>Consumers are told that the program exists in a section, at the start of the warranty manual, with the heading “Important information you should know,” and the subheading “If you need consumer assistance.” The headings don’t mention BBB AUTO LINE or alternative dispute resolution, but the all caps “BBB AUTO LINE” stands out. The more extensive discussion that follows later in the manual is highlighted on the second page of the table of contents by a reference to “BETTER BUSINESS BUREAU (BBB) AUTO LINE PROGRAM.”¹⁰⁷</p> <p>Ford also alerts consumers to the program in a short document entitled “Our Commitment to You,” and in owners’ manuals.</p>
<p>(4) Rule 703.2(d) – prohibition on requiring that consumers use manufacturer’s review processes before filing with BBB AUTO LINE</p>	<p>Ford’s text indicates, in potentially problematic language, that BBB AUTO LINE may be available “if” internal procedures haven’t resolved the issue. (Question.)</p>
<p>(5) Rule 703.2(e)</p>	<p>Ford has advised that the results of its internal reviews are conveyed to consumers orally, and that, during those conversations, consumers are also told about BBB AUTO LINE and referred to their owners’ and warranty manuals for more information if they’re “not happy” with the decision. This doesn’t fully mesh with the rule, which requires notice whether or not consumers convey an adverse reaction, although the stated policy could get notice to most consumers whom it would benefit. (Reservation.)</p> <p>Ford also provides <i>written</i> notice of its internal decisions, along with information about BBB AUTO LINE, to consumers in California. That notice provides all the relevant information, although it somewhat confusingly blends issues under state law (which are beyond the scope of this audit) and those under Federal law.¹⁰⁸</p>

¹⁰⁷ The reference is also boldfaced and capitalized in the table of contexts, but doesn’t stand out there because the same applies to the rest of the table of contents.

¹⁰⁸ For example, the first paragraph advises that the request wasn’t eligible for relief under the California lemon law, while the next paragraph advises of the availability of BBB AUTO LINE if the consumer’s “warranty” concern hasn’t been met. See generally Section II.A.5 of this Chapter for a discussion about the often confusing interplay of Federal and state provisions.

Florida Disclosure	
(F1) Section 681.103(3) – Clear and conspicuous disclosure of how and where to file a claim	For reasons described in items (1) and (3) of this chart, Ford provides the required disclosures. However, the “option” language quoted in item (1) above could raise a possible question.
Ohio Disclosure	
(O1) Additional notices provided in warranty documents, separate sheets of paper, or signs, as described in Section IV of this chapter	Ford provided a separate sheet with information required by Ohio law, including language that the use of Ford’s internal processes “is optional and may be terminated at any time by you or by Ford.” Information about BBB AUTO LINE, including contact information, also appears in the “Our Commitment to You” document that Ford provides to its dealers. This information would satisfy Ohio’s signage requirement if it were posted as a sign, but there’s no indication that Ford instructs its dealers to do so; however, Ford believes that its dealers make the document available in common areas in service departments, which could give it prominence comparable to a sign. (Reservation, with a possible mitigating factor.)

2. Other Materials Bearing on Notice to Consumers about BBB AUTO LINE

Ford provided the “Our Commitment to You” document noted in Item (3) of the above table.

3. Conclusion

Ford is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal, Florida, and Ohio law, with the qualifications noted above. Ford also appears to be making successful efforts, beyond the disclosures in the warranty manual, to alert consumers to BBB AUTO LINE’s existence.¹⁰⁹

¹⁰⁹ All manufacturers are referred, as well, to the full text of this chapter, with particular reference, for Federal law, to the chart and accompanying notes that immediately follow.

F. General Motors Co.

General Motors participates in all states, and is certified in Florida and Ohio. A California-specific notice tells consumers that that they must use BBB AUTO LINE to pursue Magnuson-Moss relief (along with state lemon law remedies). Although GM doesn't require prior resort elsewhere, the California provision suffices to make it subject to the federal audit, as well as the Ohio and Florida audits.

In the discussion that follows, the pages noted on the chart are based on the 2021 Buick "Limited Warranty and Owner Assistance Information."

1. Consumer-Facing Materials

Federal Disclosure Provisions	
(1) Rule 703.2(b) (and Rule 703.1(h) to define "the face of the warranty")	"Alternative dispute resolution" is prominently mentioned on page 1. The text doesn't mention BBB AUTO LINE by name or include most details required by Rule 703.2(b). It does, however, reference consumers to a later discussion with most of the required information, though not information about the prior resort provision for Magnuson-Moss claims in California. (Reservation.)
(2) Rule 703.2(c)	GM addresses the subjects required by the rule, except for the types of information that consumers will need to provide to BBB AUTO LINE. (Reservation.) ¹¹⁰
(3) Rule 703.2(d) – "steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes"	The above-cited notice on page 1 prominently references alternative dispute resolution, although not BBB AUTO LINE by name. GM has previously submitted wall plaques that were presumably provided to dealerships in California; to the extent these were conspicuously placed, they further alerted California consumers to the program.
(4) Rule 703.2(d) – prohibition on requiring that consumers use manufacturer's review processes before filing with BBB AUTO LINE	The text indicates that BBB AUTO LINE may be available "if" previously described internal procedures have not resolved the issue. (Question.)

¹¹⁰ On a more technical matter, the introductory text describes the BBB AUTO LINE process as non-binding, and it would be more precise to communicate that an arbitrated decision *is* binding on the manufacturer if the consumer accepts it.

(5) Rule 703.2(e)	<p>GM has advised that consumers are told orally about the results of its internal review; during that discussion, GM further advised, they're also told about BBB AUTO LINE and referred to the owners' and warranty manuals for more information. GM has provided documentation of that policy.</p> <p>However, Rule 703.2(e) also requires a further disclosure of the detailed information required to be disclosed by Rules 703.2(b) and (c). And, while consumers will find that information if they refer to the warranty and owners' manuals to which GM directs them, the 703.2(e) notice <i>itself</i> doesn't provide all the information required by that rule. (Question.)</p>
Florida Disclosures	
(F1) Section 681.103(3) – Clear and conspicuous disclosure of how and where to file a claim	For reasons described in items (1) and (3) of this chart, General Motors provides the required disclosures.
Ohio Disclosures	
(O1) Additional notices provided in warranty documents, separate sheets of paper, or signs, as described in Section IV of this chapter	<p>General Motors has provided signs and separate sheets of paper, with accompanying instructions to dealers. Further, GM has instituted an audit of dealerships that looks to compliance with Ohio posting requirements.</p> <p>However, the submitted texts don't include the affirmative disclosure required by Ohio, at the time consumers experience a warranty dispute, that resort to GM's internal review process is optional and can be terminated at any time. (Reservation.).</p>

2. Other Materials Bearing on Notice to Consumers about BBB AUTO LINE

As noted above, General Motors has provided internal documentation indicating that consumers who use GM's internal processes are told about BBB AUTO LINE. GM also provided a description of its own audit process to check for compliance with state law by its Ohio dealers. GM also provides wall plaques for dealers to display that describe BBB AUTO LINE, though they're used only in California.

3. Conclusion

General Motors is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal, Florida, and Ohio law, with the qualifications noted above. GM is commended for the steps described under item (2).¹¹¹

¹¹¹ All manufacturers are referred, as well, to the full text of this chapter, with particular reference, for Federal law, to the chart and accompanying notes that immediately follow.

G. Hyundai Motor America (including Genesis)

Hyundai and Genesis participate in all states, and are certified in Florida and Ohio. This year, Hyundai submitted warranty manuals, for both Hyundai and Genesis, for the 2021 model year, and these included some changes to its 2020 manuals. Later, it submitted advance copies of manuals for the 2022 model year, reflecting further changes that it plans to make.¹¹² It also submitted, for Hyundai and for Genesis, a 2021 “Owner’s Handbook Supplement” with three subheadings on the cover; “State Disclosure Notices,” “Consumer Assistance Process,” and “Alternative Dispute Resolution Program.” In the discussion that follows, references to Hyundai, unless the context indicates otherwise, include Genesis.

Preliminarily, Hyundai’s manuals continued this year to tell consumers about BBB AUTO LINE; indeed, they continue to tell consumers that they *must* use BBB AUTO LINE before pursuing other remedies under the Magnuson-Moss Act.¹¹³ But in addition, in first provided to the auditor in 2020 manuals, Hyundai also tells California consumers that, if they accept warranty services and haven’t exercised an opt-out within thirty days of buying or leasing a car, they’ve agreed to use a separate *binding* arbitration program; that program, for which consumers are charged a \$250 filing fee, is administered by JAMS Mediation, Arbitration, and ADR services.

In the 2020 manuals, Hyundai didn’t explain the relation between BBB AUTO LINE arbitration and JAMS arbitration. In the 2021 manual and supplement, though, the text adds that the commitment to bring claims only through binding arbitration *excludes* claims under the Magnuson-Moss Act. And, for the 2022 model year, Hyundai will make a more prominent disclosure in the manual. (They haven’t specifically committed to a parallel change in the supplement). Hyundai’s text will provide:

PLEASE READ THIS SECTION IN ITS ENTIRETY AS IT AFFECTS YOUR RIGHTS. THIS SECTION DOES NOT PRECLUDE YOU FROM FIRST PURSUING ALTERNATIVE DISPUTE RESOLUTION THROUGH BBB AUTO LINE AS DESCRIBED IN THE “ALTERNATIVE DISPUTE RESOLUTION” PROVISION IN SECTION 3 OF THIS HANDBOOK.

The addition of a binding arbitration program raises issues that are arguably within his purview (so he wouldn’t be comfortable ignoring them), but for which the better view is that they *aren’t* (so he doesn’t consider them suitable for finding qualifications on compliance). In more detail, the auditor has explained above why he concludes that the better view is that his purview only extends to manufacturers who require prior resort.¹¹⁴ Since Hyundai does require

¹¹² The documents are titled “Owner’s Handbook & Warranty Information”; they’re basically warranty manuals with additional information about, *e.g.*, roadside assistance and arbitration.

¹¹³ The books in question were provided to the auditor in preliminary form, and don’t have final page numbers to which the auditor can refer.

¹¹⁴ Section II.A.1.

prior resort, though, that's not the precise issue here; the question that's now raised is the extent of that oversight. Assuming that Hyundai has made (or with the 2022 manual *will* make) sufficiently clear to consumers that binding arbitration doesn't displace BBB AUTO LINE arbitration, does the audit of "the Mechanism [BBB AUTO LINE] and its implementation" extend to Hyundai's overall compliance with section 703? Or does it extend only to Hyundai's compliance vis-à-vis the use and availability of BBB AUTO LINE? In the auditor's view, the better view is the narrower reading, though, as noted, the matter isn't clear.

And, since the matter isn't clear, the auditor notes that two issues remain despite any clarifying language. First, each new iteration will help consumers going forward, but won't help those with older texts, particularly those with the 2020 manuals. Second, even with the clarifying text, FTC Rule 703.5(j) (noted previously)¹¹⁵ provides in part that "[d]ecisions of the Mechanism shall not be legally binding on any person." And, while the rule only speaks of decisions by "the Mechanism," the 1975 Federal Register notice that accompanied the rule explained:

... there is nothing in the Rule which precludes the use of any other remedies by the parties following a Mechanism decision. The warrantor, the Mechanism, or any other group can offer a binding arbitration option to consumers who are dissatisfied with Mechanism decisions or warrantor intentions. *However, reference within the written warranty to any binding, non-judicial remedy is prohibited by the Rule and the Act.*¹¹⁶

(Emphasis added.) The Commission revisited Rule 703.5(j) in 1999 and 2015, and, on both occasions, it reaffirmed that the rule prohibits references in the warranty to binding arbitration.¹¹⁷ So, under the FTC's interpretation, the mere mention of binding arbitration in the manuals could well be a problem.

¹¹⁵ See note 35 and accompanying text..

¹¹⁶ 40 Fed. Reg. at 60211 (1975) (emphasis added).

¹¹⁷ See note 34, *supra*.

1. Consumer-Facing Materials

Federal Disclosure Provisions	
(1) Rule 703.2(b) (and Rule 703.1(h) to define “the face of the warranty”)	Hyundai makes the required disclosures with the required placement.
(2) Rule 703.2(c)	Hyundai makes the required disclosures, except that the Genesis manual doesn’t mention the types of information that consumers will be asked to provide to BBB AUTO LINE. (Reservation as to Genesis).
(3) Rule 703.2(d) – “steps reasonably calculated to make consumers aware of the Mechanism’s existence at the time consumers experience warranty disputes”	<p>The disclosures in the warranty book are prominent. BBB AUTO LINE is expressly mentioned in the table of contents, and the disclosures in the warranty book are reinforced by the supplementary booklet with a general introduction and state-specific breakdowns, most of which mention BBB AUTO LINE.¹¹⁸</p> <p>Although it didn’t provide details about how the document is distributed, Hyundai also provided short brochures, with front and back printing, titled “LET HYUNDAI HELP YOU” and “LET GENESIS HELP YOU.” One side of the document briefly describes the program, and the other includes detailed FAQs. The Genesis version, though not the Hyundai version, appears to be California-specific.</p>
(4) Rule 703.2(d) – prohibition on requiring that consumers use manufacturer’s review processes before filing with BBB AUTO LINE	Before describing BBB AUTO LINE, Hyundai “recommend[s]” (in permissive rather than mandatory terms) that consumers follow a series of internal steps.
(5) Rule 703.2(e)	Material provided. The sample letter contains the general notice and much but not all of the details required by the rule. As the letter itself notes, consumers will get more details if they contact BBB AUTO LINE; even then, though, they likely won’t get information about prior resort obligations under Magnuson-Moss (as set forth in Hyundai’s manuals). (Reservation.)

¹¹⁸ Hyundai expressly exempts Georgia from the prior resort requirement, although the program is still available there.

Florida Disclosures	
(F1) Section 681.103(3) – Clear and conspicuous disclosure of how and where to file a claim	Hyundai makes the required disclosures.
Ohio Disclosures	
(O1) Additional notices provided in warranty documents, separate sheets of paper, or signs, as described in Section IV of this chapter	<p>The supplement includes the required language, and Hyundai has provided signage and separate sheets of paper.</p> <p>However, the materials don't include the affirmative disclosure, required by Ohio, that resort to Hyundai's internal review process is optional and can be terminated at any time. (Reservation.)</p>

4. Other Materials Bearing on Notice to Consumers about BBB AUTO LINE

None provided.

5. Conclusion

Hyundai is in SUBSTANTIAL COMPLIANCE with the applicable disclosure provisions of Federal, Florida, and Ohio law, with the qualifications noted above.¹¹⁹

¹¹⁹ All manufacturers are referred, as well, to the full text of this chapter, with particular reference, for Federal law, to the chart and accompanying notes that immediately follow.

H. Jaguar Land Rover North America

Jaguar and Land Rover participate in all states, but aren't certified in Florida or Ohio. Jaguar Land Rover didn't respond to this year's document request. In light of the unusual circumstances this year and Jaguar Land Rover's responsiveness in the past, the auditor will continue to rely on its 2019 submission (including a document from 2018) for one more year.

1. Consumer-Facing Materials

Jaguar submitted two documents last year: an owner's manual and a separate booklet, containing the warranty, titled "Passport to Service." The auditor also discusses a previously-submitted (from 2018) "Dispute Resolution Supplement."¹²⁰

Federal Disclosure Provisions	
(1) Rule 703.2(b) (and Rule 703.1(h) to define "the face of the warranty")	Jaguar provides only limited information about BBB AUTO LINE in its warranty booklet, but it provides substantial information (with state-by-state breakouts) in a dispute resolution supplement that wasn't provided in 2019 but to which the 2019 warranty book refers. Still, despite the quality and prominence of the supplement, Jaguar doesn't comply with the placement requirements of Rule 703.2(b). (Reservation, with a possible mitigating factor.)
(2) Rule 703.2(c)	Jaguar addresses the required subjects. ¹²¹

¹²⁰ Jaguar submitted its materials belatedly this year, and didn't submit a new dispute resolution supplement (although the current warranty document still references that supplement). Given the extraordinary circumstances this year, and the fact that Jaguar's delay this year was an aberration for the firm, the auditor relies on the 2018 supplement one more time.

Further, Jaguar didn't submit materials for Land Rover this year. For the reasons noted above, and because Jaguar previously submitted Land Rover materials that paralleled those for Jaguar, the auditor assumes, for the current audit, that it similarly had parallel materials for Land Rover.

¹²¹ On a technical matter (it's not something that could harm consumers), Jaguar says, at page 3 of the supplement, that the Magnuson-Moss Act requires prior resort. In fact, the act lets manufacturers impose such a requirement. See Notes to Table 1, Section II.B of this chapter. Also, Jaguar imposes age, mileage, and other limits on the availability and scope of the program, but only signals the age and mileage limits. (See Section II.A.6 of this chapter.)

(3) Rule 703.2(d) – “steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes”	The multi-source disclosure, including the clearly labelled “Dispute Resolution Supplement,” is quite prominent. Within the supplement, moreover, the discussion of BBB AUTO LINE is prominently placed and prominently listed near the top of the table of contents.
(4) Rule 703.2(d) – prohibition on requiring that consumers use manufacturer’s review processes before filing with BBB AUTO LINE	Potentially problematic language in the Supplement refers to the availability of BBB AUTO LINE “in the unlikely event” that efforts at both the dealer and manufacturer level don’t resolve a consumer’s concern. The impact of this text may be mitigated, however, by information that, according to the internal documents described below, may be provided to the consumer by other means. (Question.)
(5) Rule 703.2(e)	Jaguar provided the auditor with templates of the required letters. The letters provide the core information about the existence of BBB AUTO LINE with clear contact information, although they don’t provide all the detail specified by Rules 703.2(b) and (c). ¹²² (Question.)

2. Other Materials Bearing on Notice to Consumers about BBB AUTO LINE

In addition to the notice required by Rule 703.2(e) at the manufacturer level, Jaguar has previously sent materials used to highlight to its consumer response center team that they should tell consumers about BBB AUTO LINE if they aren’t satisfied with other resolutions. Also, Jaguar has told dealers about the need to alert consumers to BBB AUTO LINE when a dispute arises by emails of 2016 (California dealers) and 2014 (all dealers). The California email is particularly noteworthy, because it identifies specific triggers that should prompt notification to the consumers about BBB AUTO LINE. However, Jaguar hasn’t confirmed in the past two audits that it continues to use these materials.

3. Conclusion

Jaguar is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal law, with the qualifications noted above.¹²³ Additionally, assuming that the other materials

¹²² On a technical matter, the letter describes the BBB AUTO LINE process as non-binding, and it would be more precise to convey the message that an arbitrated decision is binding on the manufacturer if the consumer chooses to accept it.

¹²³ All manufacturers are referred, as well, to the full text of this chapter, with particular reference, for Federal law, to the chart and accompanying notes that immediately follow.

provided by Jaguar continue to be used, Jaguar is to be highly commended for efforts to tell consumers about the program at the manufacturer and dealer level. However, the auditor adds a noteworthy reservation, because Jaguar didn't submit materials this year and the auditor bases his evaluation on materials that he can't be sure are current.

I. Kia Motors America, Inc.

Kia participates in all states, and is certified in Florida and Ohio.

1. Consumer-Facing Materials

The auditor reviewed Kia’s Warranty and Consumer Information Manual for 2021.

Federal Disclosure Provisions	
(1) Rule 703.2(b) (and Rule 703.1(h) to define “the face of the warranty”)	Kia makes the required disclosures, but neither with the required placement (it’s not on the “face” of the warranty) nor (arguably) with the proper prominence. ¹²⁴ (Reservation.)
(2) Rule 703.2(c)	Kia addresses the subjects required by the rule, except for the types of information that consumers will need to provide to BBB AUTO LINE. (Reservation.) ¹²⁵
(3) Rule 703.2(d) – “steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes”	Kia’s Warranty booklet uses “Consumer Information” in its title, but BBB AUTO LINE isn’t mentioned until page 39. There’s no reference to BBB AUTO LINE, or even alternative dispute resolution, in the table of contents. On the other hand, in a 112- page book, pages 44-109 are devoted to state-specific notices, which typically mention (often multiple times, and highlighted with capital letters) BBB AUTO LINE. With over 100 references to BBB AUTO LINE in the booklet, there’s a good chance that a consumer might see one of them.

¹²⁴ BBB AUTO LINE isn’t mentioned early in the manual, nor is it highlighted in the table of contents. As noted below, though, the booklet contains detailed state-by-state breakdowns and, within those breakdowns, BBB AUTO LINE is mentioned prominently.

¹²⁵ On a more technical matter, Kia’s materials (at page 43) don’t make clear the optional nature of mediation within the program. See Notes to Table 1, Section II.B of this chapter. On an even more technical matter, Kia observes that, if a consumer doesn’t accept an arbitration decision, it might be introduced as evidence in a later court action “in some states.” In fact, so long as the action includes a Magnuson-Moss warranty claim, it might be introduced as evidence in every state.

<p>(4) Rule 703.2(d) – prohibition on requiring that consumers use manufacturer’s review processes before filing with BBB AUTO LINE</p>	<p>Kia indicates, in potentially problematic language, that BBB AUTO LINE may be available in the event that previously described internal procedures haven’t resolved an issue. (Question.)</p>
<p>(5) Rule 703.2(e)</p>	<p>Kia has advised that it communicates information about BBB AUTO LINE even before it renders a decision, and that, under a recently enhanced process, BBB AUTO LINE will be mentioned by name as part of the communication. When the decision is rendered in writing, contact information for BBB AUTO LINE is specifically provided.</p> <p>However, Rule 703.2(e) also requires disclosure of detailed information described by Rules 703.2(b) and (c). And, while consumers will find that information if they refer to the manuals to which Hyundai directs them, the 703.2(e) notice itself doesn’t provide all the information required by that rule. (Question.)</p>
<p>Florida Disclosures</p>	
<p>(F1) Section 681.103(3) – Clear and conspicuous disclosure of how and where to file a claim</p>	<p>See item (3) above. (Possible question.)</p>
<p>Additional Ohio Provisions</p>	
<p>(O1) Additional notices provided in warranty documents, separate sheets of paper, or signs, as described in Section IV of this chapter</p>	<p>Kia provides most of the required information in the Ohio-specific text in its Warranty and Consumer Information Manual. However, while the disclosures are quite prominent, Kia doesn’t provide a “separate sheet of paper” with basic notice that lemon law rights exist.¹²⁶. (Reservation.)</p> <p>They’ve advised that they’ve distributed relevant portions to dealers for posting, and provided BBB National Programs with a cover letter sent to dealers in Ohio.</p> <p>The submitted texts don’t include the affirmative disclosure required by Ohio, at the time consumers experience a warranty dispute, that resort to its internal</p>

¹²⁶ Ohio Code 1345.74(a). The auditor hasn’t previously noted this as the basis for a reservation.

	review process is optional and can be terminated at any time. (Reservation.)
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2. Other Materials Bearing on Notice to Consumers about BBB AUTO LINE

Kia has provided portions of a Service Policies and Procedure Manual indicating that consumers can or should be referred to BBB AUTO LINE. Further, the manual notes that notification can be given by dealer personnel.

3. Conclusion

Kia is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal, Florida, and Ohio law, with the qualifications noted above. Kia is to be commended for the additional efforts indicated by section 2.¹²⁷

¹²⁷ All manufacturers are referred, as well, to the full text of this chapter, with particular reference, for Federal law, to the chart and accompanying notes that immediately follow.

J. Automobile Lamborghini

Lamborghini participates in all states, but isn't certified in Florida or Ohio.

1. Consumer-Facing Materials

Lamborghini provided a warranty manual and an "Important Notice to Consumers." Page references are to the English-language portion of the manual.¹²⁸

Federal Disclosure Provisions	
(1) Rule 703.2(b) (and Rule 703.1(h) to define "the face of the warranty")	Lamborghini makes the required disclosures in its warranty booklet, but without the proper placement. Although the warranty begins on page 9, BBB AUTO LINE isn't mentioned in text until page 12 (mentioning prior resort), with an extended discussion beginning on page 24. (Reservation.)
(2) Rule 703.2(c)	Lamborghini addresses the subjects required by the rule. ¹²⁹
(3) Rule 703.2(d) – "steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes"	Information about BBB AUTO LINE appears early in the manual, and it's highlighted, in the text and the extended discussion that appears later. Also, the heading "CONSUMER PROTECTION INFORMATION" (though not a reference to BBB AUTO LINE or alternative dispute resolution) appears in the table of contents.

¹²⁸ Lamborghini submitted three manuals. The page references below are to the 2021 Adventador and Urus manuals, where the English-language discussion precedes the Spanish-language discussion. In the Huracan Evo manual, the Spanish-language discussion (which the auditor hasn't reviewed) comes first, so the page numbers differ.

¹²⁹ On more technical matters, Lamborghini makes clear the optional nature of mediation in the California-specific discussion. The general discussion omits this text, and uses problematic text about "agree[ing] with" a mediated solution. See Notes to Table 1, Section II.B of this chapter. Also, the "Important Notice to Consumers" says that consumers may use mediation *or* arbitration with BBB AUTO LINE, perhaps obscuring the fact that consumers can use them sequentially.

Also, Lamborghini imposes age, mileage, and other limits on the availability of the program, but only signals the age and mileage limits. (See Section II.A.6 of this chapter.).

<p>(4) Rule 703.2(d) – prohibition on requiring that consumers use manufacturer’s review processes before filing with BBB AUTO LINE</p>	<p>Lamborghini indicates, in potentially problematic language, that it “offers additional assistance” though BBB AUTO LINE “if” previously described internal procedures haven’t resolved the issue. However, any concern that consumers are told that they must first use internal processes may be somewhat mitigated by the notice, discussed under Rule 703.2(e), that they’re given when they do pursue those processes. (Question.)</p>
<p>(5) Rule 703.2(e)</p>	<p>Lamborghini has previously provided a template of a letter alerting consumers to BBB AUTO LINE at the time a dispute submitted directly to Lamborghini is <i>received</i>. Though the letter doesn’t contain all the information required by Rule 703.2(e) (including all the information listed under subsections (b) and (c)), it does direct consumers to BBB AUTO LINE – and, if and when they do contact BBB AUTO LINE, they’ll get most of the required information. Even then, though, they likely won’t get information about prior resort obligations under Magnuson-Moss (as set forth in Lamborghini’s manuals). (Question as to providing information indirectly; reservation because consumers probably won’t be told about prior resort even indirectly).</p> <p>Further, the letter sent upon receipt of the consumer’s claim doesn’t strictly comply with the requirement for notice when the internal review is completed. (Reservation, with a possible mitigating factor.)</p>

2. Other Materials Bearing on Notice to Consumers about BBB AUTO LINE

Lamborghini provides a manual indicating that dealers are advised to alert consumers to BBB AUTO LINE when there’s a dispute.

3. Conclusion

Lamborghini is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal law, with the qualifications noted above.¹³⁰

¹³⁰ All manufacturers are referred, as well, to the full text of this chapter, with particular reference, for Federal law, to the chart and accompanying notes that immediately follow.

K. Lotus

Lotus participates in all states but isn't certified in Florida or Ohio.

1. Consumer-Facing Materials

Lotus provided a 2020 warranty manual and a supplemental document distributed to consumers.

Federal Disclosure Provisions	
(1) Rule 703.2(b) (and Rule 703.1(h) to define “the face of the warranty”)	Lotus makes the required disclosures with the proper placement.
(2) Rule 703.2(c)	Lotus addresses the types of information required by the rule in the supplement. (Rule 703.3(c) disclosures can be made in the written warranty or “a separate section of materials accompanying the product.”) ¹³¹
(3) Rule 703.2(d) – “steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes”	The supplement seems sufficiently prominent to catch consumers' attention.
(4) Rule 703.2(d) – prohibition on requiring that consumers use manufacturer's review processes before filing with BBB AUTO LINE	Lotus doesn't expressly require consumers to use its internal review process before advancing to BBB AUTO LINE.
(5) Rule 703.2(e)	Lotus routinely offers a repair remedy with a manufacturer representative upon receipt of a consumer complaint. The auditor construes this as a decision that triggers Rule 703.2(e) notice, and they provide the notice at that point. The auditor notes, however, that if the manufacturer representative finds no problem that could be construed as a further “decision” that again triggers Rule 703.2(e) notice. (Question.)

¹³¹ Also, Lotus imposes age, mileage, and other limits on the availability and scope of the program, and doesn't signal this in their materials. (See Section II.A.6 of this chapter.)

2. Other Materials Bearing on Notice to Consumers about BBB AUTO LINE

None provided.

3. Conclusion

Lotus is in SUBSTANTIAL COMPLIANCE with applicable provisions of Federal law, with the qualification noted above.¹³²

¹³² All manufacturers are referred, as well, to the full text of this chapter, with particular reference, for Federal law, to the chart and accompanying notes that immediately follow.

L. Maserati

Maserati participates in three states, California, Florida, and Minnesota, and requires prior resort in those states for Magnuson-Moss claims. It isn't certified in Florida.

1. Consumer-Facing Materials

Maserati provided a 2021 “warranty card” with information about BBB AUTO LINE.

Federal Disclosure Provisions	
(1) Rule 703.2(b) (and Rule 703.1(h) to define “the face of the warranty”)	Maserati provides the required information with the proper placement. The warranty card identifies the three states where it participates.
(2) Rule 703.2(c)	Maserati provides the required information. ¹³³
(3) Rule 703.2(d) – “steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes”	Information about BBB AUTO LINE appears on the first textual page of the warranty booklet, under a boldfaced, all-caps heading “BBB AUTO LINE” Although BBB AUTO LINE isn't mentioned in the table of contents, the first three pages of warranty text, in relatively small print, prominently discuss BBB AUTO LINE.
(4) Rule 703.2(d) – prohibition on requiring that consumers use manufacturer's review processes before filing with BBB AUTO LINE	Maserati doesn't require that consumers use the manufacturer's review processes before seeking relief under the Magnuson-Moss Act.
(5) Rule 703.2(e)	Based on a Maserati document, it appears that Maserati routinely informs consumers who “believe they have an unresolved dispute” about BBB AUTO LINE. Although isn't yet clear, this suggests that consumers may get the basic notice required by Rule 703.2(e) – but not all the relevant details. Consumers are directed to BBB AUTO LINE, though, and when they contact BBB AUTO LINE, they'll get most of the required information. Even then, though, they likely won't get information about prior resort obligations under Magnuson-Moss (as set forth in Maserati's manuals). (Question as to providing

¹³³ Also, Maserati imposes age, mileage, and other limits on the availability and scope of the program, and doesn't signal this in their materials. (See Section II.A.6 of this chapter.)

	information indirectly; reservation because consumers probably won't be told about prior resort even indirectly).
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2. Other Materials Bearing on Notice to Consumers about BBB AUTO LINE

Maserati provided an internal document which provides for its staff to tell consumers about BBB AUTO LINE, although the exact context in which the document is applied isn't entirely clear.

3. Conclusion

Maserati is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal law, with the qualifications noted above.¹³⁴

¹³⁴ All manufacturers are referred, as well, to the full text of this chapter, with particular reference, for Federal law, to the chart and accompanying notes that immediately follow.

M. Mazda North America

Mazda participates in all states, and is certified in Florida and Ohio.

1. Consumer-Facing Materials

Mazda provided its 2021 warranty booklet.

Federal Disclosure Provisions	
(1) Rule 703.2(b) (and Rule 703.1(h) to define “the face of the warranty”)	Mazda provides the required information. It appears early in the booklet, before the warranty text. The auditor construes this as compliance with the “face of the warranty” placement requirement, even though the text doesn’t appear <i>on</i> the first page of the warranty text. The discussion is further highlighted by multiple all-cap references to BBB AUTO LINE by name. ¹³⁵
(2) Rule 703.2(c)	Mazda addresses the subjects required by the rule, except for the types of information that consumers will need to provide to BBB AUTO LINE. (Reservation.) ¹³⁶
(3) Rule 703.2(d) – “steps reasonably calculated to make consumers aware of the Mechanism’s existence at the time consumers experience warranty disputes”	The discussion of BBB AUTO LINE in Mazda’s warranty booklet is under a subheading that says “Contact Better Business Bureau (BBB).” And, as noted above, the discussion contains numerous all-cap references to BBB AUTO LINE by name. However, the main heading is “When you need to talk to Mazda,” and that’s the only heading that appears in the table of contents. (Possible question.)

¹³⁵ Consistent with the practice of many manufacturers, the auditor recommends that Mazda take steps to make the prior resort language more prominent.

¹³⁶ On some matters that the auditor considers more technical, the discussion of BBB AUTO LINE’s processes doesn’t make clear (except in a California-specific discussion) that mediation is an optional part of the process, and that the consumer can ask to go straight to arbitration. See Notes to Table 1, Section II.B of this chapter.

Also, Mazda imposes age, mileage, and other limits on the availability and scope of the program, and doesn’t signal this in their materials. See Section II.A.6 of this chapter.

(4) Rule 703.2(d) – prohibition on requiring that consumers use manufacturer’s review processes before filing with BBB AUTO LINE	In potentially problematic language for a Magnuson-Moss analysis, Mazda describes the BBB AUTO LINE program as a “final step” available when mutual agreement is not possible. (Question.)
(5) Rule 703.2(e)	Mazda has submitted a template of the requisite letter. The template provides the core information about the existence of BBB AUTO LINE with clear contact information. Though the letters don’t contain all the information required by Rule 703.2(e) (including all the information listed under subsections (b) and (c)), Mazda does direct consumers to BBB AUTO LINE, and, when they contact BBB AUTO LINE, they’ll get most of the required information. Even then, though, they likely won’t get information about prior resort obligations under Magnuson-Moss (as set forth in Mazda’s manuals). (Question as to providing information indirectly; reservation because consumers probably won’t be told about prior resort even indirectly).
Florida Disclosures	
(F1) Section 681.103(3) – Clear and conspicuous disclosure of how and where to file a claim	For reasons described in item (3) of this chart, there’s a possible question as to whether Mazda’s disclosure is sufficiently prominent. (Possible question.)
Ohio Disclosures	
(O1) Additional notices provided in warranty documents, separate sheets of paper, or signs, as described in Section IV of this chapter.	Mazda provided a document that likely satisfies some but not all of Ohio’s disclosure requirements. It’s not entirely clear how the document is used, and it doesn’t contain a basic statement, prescribed by Ohio law, about lemon law rights. (Reservation.)

2. Other Materials Bearing on Notice to Consumers about BBB AUTO LINE

Mazda has previously provided training and internal web-based materials that educate staff.¹³⁷ Mazda also provided FAQ’s for consumers, which it distributes to dealers and manufacturer representatives. The auditor commends these steps to get information about the program to consumers.

¹³⁷ It’s not clear if these materials are for Mazda’s own staff, dealership staff, or both.

3. Conclusion

Mazda is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal, Florida, and Ohio law, with the qualifications noted above.¹³⁸

¹³⁸ All manufacturers are referred, as well, to the full text of this chapter, with particular reference, for Federal law, to the chart and accompanying notes that immediately follow.

N. Mercedes-Benz

Mercedes-Benz participates in Arkansas, California, Kentucky and Minnesota. It appears to require prior resort for Magnuson-Moss remedies (as well as state remedies) only in California, but that suffices to subject it to the Rule 703 audit. It doesn't appear to mention BBB AUTO LINE to consumers outside California. Since its compliance efforts appear to be focused on California only, the auditor's findings regarding substantial compliance for the Federal audit extend only to California consumers.

1. Consumer-facing Materials

Federal Disclosure Provisions	
(1) Rule 703.2(b) (and Rule 703.1(h) to define "the face of the warranty")	Mercedes-Benz provides the specified information in the section of the 2021 warranty manual addressed to California consumers, and in an "IMPORTANT NOTICE" similarly directed to California consumers. While it appears in the warranty manual, however, it lacks the proper placement. (Reservation).
(2) Rule 703.2(c)	Mercedes-Benz addresses the subjects required by the rule.
(3) Rule 703.2(d) – "steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes"	The discussion of BBB AUTO LINE in Mercedes-Benz's warranty booklet appears late in the booklet, starts on page 92, which is relatively far back in the booklet. But the "IMPORTANT NOTICE for California Retail Buyers and Lessees" is also highlighted in the table of contents, and it also appears in a separate, and similarly titled, document that Mercedes-Benz calls a "California warranty insert." ¹³⁹
(4) Rule 703.2(d) – prohibition on requiring that consumers use manufacturer's review processes before filing with BBB AUTO LINE	In potentially problematic language, Mercedes-Benz describes the BBB AUTO LINE program as available to California consumers, even for purposes of federal remedies, only "if" a dispute can't be otherwise resolved. (Question.)

¹³⁹ On a more technical matter, Mercedes-Benz imposes age, mileage, and other limits on the availability of the program, and doesn't signal to these in its manual. The issue is discussed generally in Section II.A.6 of this chapter.

(5) Rule 703.2(e)	<p>In language that identifies all four states where Mercedes-Benz participates, it tells consumers about the existence of BBB AUTO LINE and provides a phone number and web link.</p> <p>Though the letter doesn't contain all the information required by Rule 703.2(e) (including all the information listed under subsections (b) and (c)), it does direct consumers to BBB AUTO LINE, and, when they contact BBB AUTO LINE, they'll get most of the required information. Even then, though, they likely won't get information about prior resort obligations under Magnuson-Moss (as set forth in Mercedes's manuals). (Question as to providing information indirectly; reservation because consumers probably won't be told about prior resort even indirectly).</p>
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2. Other Materials Bearing on Notice to Consumers about BBB AUTO LINE

Mercedes has provided the auditor with documents advising dealerships in California to tell consumers about BBB AUTO LINE when consumers request a repurchase. Mazda also provided FAQs that it provides to dealers and manufacturer representatives.

3. Conclusion

Mercedes Benz is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal law with respect to disclosure to California consumers, and with the qualifications noted above. Mercedes is also commended for other steps that it's taken to notify consumers about BBB AUTO LINE at the dealership level.¹⁴⁰

¹⁴⁰ All manufacturers are referred, as well, to the full text of this chapter, with particular reference, for Federal law, to the chart and accompanying notes that immediately follow.

O. Nissan North America (with Infiniti)

Nissan (together with Infiniti) participates in all states, with certification in Florida and Ohio.

1. Consumer-Facing Materials

Nissan (together with Infiniti) submitted multiple variants of warranty manuals and warranty manual supplements for differing models. The discussion that follows is based primarily on Nissan’s 2021 Warranty Information Booklet.

Federal Disclosure Provisions	
(1) Rule 703.2(b) (and Rule 703.1(h) to define “the face of the warranty”)	The warranty manual includes the required information in the required placement, and uses a text box to further highlight the prior resort requirement.
(2) Rule 703.2(c)	Nissan addresses the subjects required by the rule, except for the types of information that consumers need to provide to BBB AUTO LINE. ¹⁴¹ (Reservation.)
(3) Rule 703.2(d) – “steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes”	Discussions of BBB AUTO LINE are prominently placed in the warranty manuals, although they aren’t clearly highlighted in the table of contents.
(4) Rule 703.2(d) – prohibition on requiring that consumers use manufacturer’s review processes before filing with BBB AUTO LINE	Nissan indicates, in potentially problematic language, that BBB AUTO LINE may be available as the third step of a process “in the event that” previously described internal procedures have not resolved the issue. (Question.)
(5) Rule 703.2(e)	Nissan has templates of a letter that contains core information about filing a complaint, with references to consumer-facing manuals for more information. However, it doesn’t directly set forth all of the information described in subparts (b) and (c). Though the letter doesn’t contain all the information required by Rule 703.2(e), it does direct consumers to BBB AUTO LINE, and, when they contact

¹⁴¹ Also, Nissan imposes age, mileage, and other limits on the availability and scope of the program, and doesn’t signal this in their materials. (See Section II.A.6 of this chapter.)

	BBB AUTO LINE, they'll get most of the required information. Even then, though, they likely won't get information about prior resort obligations under Magnuson-Moss (as set forth in Nissan's manuals). (Question as to providing information indirectly; reservation because consumers probably won't be told about prior resort even indirectly).
Florida Disclosures	
(F1) Section 681.103(3) – Clear and conspicuous disclosure of how and where to file a claim	As described in items (1) and (3) of this chart, Nissan provides the required disclosures.
Additional Ohio Provisions	
(O1) Additional notices provided in warranty documents, separate sheets of paper, or signs, as described in Section IV of this chapter.	<p>Nissan has provided signage about the program. And, though the signage doesn't include Ohio-specific information, it does provide basic information about contacting BBB AUTO LINE.</p> <p>The Ohio-specific information does appear in the supplement (and this includes disclosures about the optional nature of Nissan's internal review processes). However, this doesn't precisely satisfy Ohio's requirements for disclosures on a separate form. (Question.)</p>

2. Additional Materials

A letter to dealers stresses the need to convey to consumers, including by display and distribution of materials provided by Nissan, information about BBB AUTO LINE.

3. Conclusion

Nissan (with Infiniti) is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal, Florida, and Ohio law, with the qualifications noted above.¹⁴² The company is to be highly commended for additional efforts, beyond disclosure in consumer-facing manuals, to alert consumers to the program.

¹⁴² All manufacturers are referred, as well, to the full text of this chapter, with particular reference, for Federal law, to the chart and accompanying notes that immediately follow.

P. Rolls Royce

1. Consumer-Facing Materials

Rolls Royce has audited for the last two years, and has submitted warranty manuals for the 2019, 2020, and 2021 model years. Apparently because of crossed signals with staff at BBB AUTO LINE, the 2019 and 2021 manuals discuss BBB AUTO LINE, but the 2020 manual doesn't. The auditor's findings on substantial compliance, therefore, don't extend to the 2020 model year.

According to Rolls Royce's 2019 and 2021 manuals, it participates in twelve states (Arkansas, California, Georgia, Kentucky, Iowa, Idaho, Massachusetts, Maryland, Minnesota, Ohio, Pennsylvania, and Virginia). In those states, it requires prior resort for consumers to pursue Magnuson-Moss remedies where required by a state's lemon law.

Federal Disclosure Provisions	
(1) Rule 703.2 (b) (and Rule 703.1(h) to define "the face of the warranty")	Rolls Royce provides the required information, which appears shortly before the warranty text; it's under a heading of "BBB Auto Line" and the description of prior resort is highlighted as "IMPORTANT." Rule 703.2(b) requires disclosure of the availability of the warranty, and the auditor construes this to require an accurate description of its availability. As noted above, Rolls Royce tells consumers that it participates in 12 states; according to the BBB AUTO LINE web site, though, it <i>doesn't</i> participate in Ohio. (Noteworthy reservation. ¹⁴³)
(2) Rule 703.2(c)	Rolls Royce provides the required information. ¹⁴⁴
(3) Rule 703.2(d) – "steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes"	The relevant discussion begins on page 28 of the 2021 manual with a prominent heading referring to "BBB Auto Line" on five consecutive pages. (The program's name doesn't appear, however, in the table of contents.)

¹⁴³ The fact that Rolls Royce isn't certified in Ohio has no bearing on this analysis, which is based on the application of the Magnuson-Moss Act in Ohio.

¹⁴⁴ Also, Rolls Royce imposes age, mileage, and other limits on the availability and scope of the program, and doesn't signal this in their materials. (See Section II.A.6 of this chapter.)

(4) Rule 703.2(d) – prohibition on requiring that consumers use manufacturer’s review processes before filing with BBB AUTO LINE	After describing procedures to contact the manufacturer, Rolls Royce provides that BBB AUTO LINE is available “if your concern is still not resolved to your satisfaction.” (Question.)
(5) Rule 703.2(e)	None provided. (Noteworthy reservation.)

2. Other Materials Bearing on Notice to Consumers about BBB AUTO LINE

No such materials were provided.

3. Conclusion

Rolls Royce is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal law, with the qualifications, including noteworthy reservations, noted above. The finding of substantial compliance, however, doesn’t extend, however, to the 2020 model year.¹⁴⁵

¹⁴⁵ All manufacturers are referred, as well, to the full text of this chapter, with particular reference, for Federal law, to the chart and accompanying notes that immediately follow.

Q. Volkswagen Group of America, Inc. (with Audi)

Volkswagen participates in all states, and is certified in Florida and Ohio.

1. Materials Distributed to Consumers at the Time of Sale

Volkswagen submitted multiple “Warranty and Maintenance” documents covering various Volkswagen and Audi cars. Except as otherwise noted, the Volkswagen and Audi materials are substantially similar, and references to Volkswagen include Audi.

Federal Disclosure Provisions	
(1) Rule 703.2(b) (and Rule 703.1(h) to define “the face of the warranty”)	The manuals (for the 2020 model year) include the required information with the required placement, including a heading that refers to “informal dispute resolution.”
(2) Rule 703.2(c)	Volkswagen and Audi address the subjects required by the rule. ¹⁴⁶
(3) Rule 703.2(d) – “steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes”	The manuals include multiple references to BBB AUTO LINE. BBB AUTO LINE is prominently referenced on the table of contents for the Volkswagen manual, although it doesn't appear in the table of contents for the Audi manual. Volkswagen also provided a template of a letter by its consumer advocate, which seems to inform consumers about the program after they contact the company but before they've gone through the company's internal processes.
(4) Rule 703.2(d) – prohibition on requiring that consumers use manufacturer's review processes before filing with BBB AUTO LINE	Although Volkswagen says that BBB AUTO LINE is available “if we are unable to resolve” a problem, it only “requests” that consumers first bring the matter to the manufacturer for review.

¹⁴⁶ On some matters that the auditor considers more technical, Volkswagen's materials don't consistently make clear the optional nature of mediation. They also use problematic text about “agree[ing]” with a mediated solution, although concerns along these lines may be mitigated by a previous reference to a “mutually agreeable resolution.” See Notes to Table 1, Section II.B of this chapter.

Also, Volkswagen imposes age, mileage, and other limits on the availability and scope of the program, and doesn't signal this in their materials. (See Section II.A.6 of this chapter.)

(5) Rule 703.2(e)	Volkswagen provided a letter with the requisite information.
Florida Disclosure	
(F1) Section 681.103(3) – Clear and conspicuous disclosure of how and where to file a claim	As described in items (1) and (3) of this chart, Volkswagen provides the required disclosures. ¹⁴⁷
Ohio Disclosures	
(O1) Additional notices provided in warranty documents, separate sheets of paper, or signs, as described in Section IV of this chapter.	<p>Volkswagen provided separate sheets of paper and signs, and apparently provides dealers with quarterly supplies of these materials.</p> <p>However, Volkswagen hasn't made the affirmative disclosure required by Ohio, at the time consumers experience a warranty dispute, that resort to its internal review process is optional and can be terminated at any time. (Reservation.)</p>

2. Additional Materials

Volkswagen provided samples of letters to dealers in various states, enclosing quarterly supplies of materials for those states. The letters also ask dealerships to take steps to ensure that sales staff is familiar with the lemon law. Volkswagen also provided a training module which talks about the need to notify consumers about BBB AUTO LINE when there's a warranty dispute, but curiously suggests that the duty arises only in certain states, when (as explained in the prior discussion), it's also required by Federal Rule 703.2(d).

3. Conclusion

Volkswagen (with Audi) is in SUBSTANTIAL COMPLIANCE with the applicable

¹⁴⁷ The auditor notes, though, that there's some seemingly contradictory text about prior resort. The text provides:

You are required to use the BBB AUTO LINE program before asserting in court any presumption set forth in California Civil Code Section 1793.22, and before pursuing any legal remedy under 15 U.S.C. 2310(d) with respect to the New Vehicle Limited Warranty. You are not required to use BBB AUTO LINE before pursuing rights and remedies under any other State or Federal law. You may also be required to use the BBB AUTO LINE procedure before pursuing legal remedies under your state lemon law.

There's a seeming tension between the second and third sentences, which might perhaps confuse consumers.

provisions of Federal, Florida, and Ohio law, with the qualifications noted above.¹⁴⁸

¹⁴⁸ All manufacturers are referred, as well, to the full text of this chapter, with particular reference, for Federal law, to the chart and accompanying notes that immediately follow.

CHAPTER 2
BBB AUTO LINE'S
ORGANIZATION
AND OPERATIONS

The previous chapter focused on FTC Rule 703.2(b), and comparable provisions of Florida and Ohio law, which describe the obligations of manufacturers who participate in BBB AUTO LINE. In this chapter and the next, the primary focus shifts to the obligations imposed on BBB AUTO LINE and its sponsor, BBB National Programs, Inc. The applicable Federal regulations, which in many respects create a framework on which state regulation builds,¹⁴⁹ essentially require the processes to be fair, thorough, and efficient. Furthering these ends, the rules also require certain recordkeeping and an audit that includes consumer input. This Chapter focuses primarily on Rules 703.3 (“Mechanism Organization”), 703.4 (“Qualifications of members,” *i.e.*, arbitrators), 703.5 (“Operation of the Mechanism”), aspects of Rule 703.6 (“Recordkeeping”), and Rule 703.8 (“Openness of Records and Proceedings”).

Based on information in this chapter and the next, the auditor finds that BBB AUTO LINE substantially complies with the applicable Federal, Florida, and Ohio provisions, notwithstanding questions – not significant enough to jeopardize substantial compliance in the auditor’s view – about whether steps that BBB AUTO LINE took to address the pandemic were consistent with its own rules and Ohio regulations. The auditor also has other recommendations for BBB AUTO LINE, but none of these raise sufficient concern to merit a reservation or question to the finding of substantial compliance.

The auditor’s understanding of BBB AUTO LINE’s *policies* draws on its published rules, which are available on the web,¹⁵⁰ sent to consumers after their initial contact,¹⁵¹ and the same in all states except California.¹⁵² He has also reviewed its arbitrator training manuals (including a California-specific manual) and he’s watched a recorded version, focused on California arbitrations, of an arbitrator training course. And he’s talked, this year as in past years, with members of BBB AUTO LINE staff. His review of how these policies are *implemented* also draws on discussions with staff, as well as statistics detailed in Chapter 3, case files that he examined (most targeted by consumer responses to the survey), and recordings of six arbitration hearings.¹⁵³ Further, he’s had recurring talks about the program’s operation with BBB AUTO

¹⁴⁹ When the FTC conducted a regulatory review of Rule 703, the International Association of Lemon Law Administrators urged the Commission, in considering revisions, to consider the extent to which a repeal or change to its rules would affect state certification programs for informal dispute resolution mechanisms. Letter from Carol O. Roberts, October 24, 2011, *available at* https://www.ftc.gov/sites/default/files/documents/public_comments/16-cfr-parts-239-700-701-702-and-703-request-comments-concerning-interpretations-magnuson-moss/00012-80822.pdf.

¹⁵⁰ <https://www.bbbprograms.org/programs/all-programs/bbb-autoline/how-bbb-auto-line-works>; https://BBB National Programs-bbbp-stf-use1-01.s3.amazonaws.com/docs/default-source/auto-line/bbb-auto-line-ca-rules-booklet-2019.pdf?sfvrsn=e95d4591_4.

¹⁵¹ This is sometimes done by providing consumers with a link to the web site.

¹⁵² Unless otherwise specified, references to specific rules refer to the rules applicable in all states but California.

¹⁵³ These include two from Florida and two from Ohio. At the auditor’s request, one of the

LINE staff, including, this year, discussions focused on the program’s coronavirus response.

I. Fairness

Among the provisions directed towards fairness, Rule 703.3(b) requires that the BBB National Programs shield BBB AUTO LINE from improper influence. Funding must be committed in advance, personnel decisions must be based on merit, and conflicting warrantor or sponsor duties can’t be imposed on BBB AUTO LINE staff.

While Rule 703.3 focuses primarily on staff operations, Rule 703.4 focuses on “members” as defined by Rule 703.1(f) – the arbitrators who make the actual decisions. For example, Rule 703.4 provides (with a limited exception for multi-member panels) that arbitrators can’t have “direct involvement in the manufacture, distribution, sale, or service of any product.” With regard to another aspect of fairness, Rule 703.5(f)(3) essentially bars *ex parte* communications by the parties; each party has a right to notice and an opportunity to be present when the other makes an oral presentation to the arbitrator.

Within the confines that an audit permits (the auditor didn’t scrutinize BBB AUTO LINE’s promotion practices, for example), the auditor has seen no problems in the program’s compliance with either the general fairness mandate or specific provisions set out in the rules. To the contrary, the introductory text and Rules 4 and 5 of “How BBB AUTO LINE Works” (and a comparable variant for California) reflect the sorts of provisions that would be appropriate for a consumer-facing document.

Additionally, BBB AUTO LINE’s arbitrator training manuals highlight the program’s focus on preserving impartiality, fairness, and the appearance of both. For example, arbitrators are told to avoid being in a room with one party. For test drives, if a car has only two seats and both parties are present, arbitrators are told that the parties should drive the vehicle together, and the arbitrator should either go alone or with a BBB staff person if available. Further, and going beyond any regulatory requirements of which the auditor is aware, arbitrations are held at local BBB offices. These are neutral sites and independent of the manufacturer and its dealership; whether or not this is essential to ensuring impartiality, fairness, and the appearance of both, it can certainly contribute to the consumer’s perception that the process is free from improper influence.

Together with the analysis of the overall results of BBB AUTO LINE’s processes, as summarized in the introduction, the auditor’s analysis points to an eminently fair process.

hearings was a case where an attorney appeared to represent the consumer.

II. Operations

Rule 703.3(a) provides that consumers can't be charged to use the process. They aren't.

Rule 703.5(a) requires the program to establish written procedures and make them available to any person on request. BBB AUTO LINE has incorporated such procedures into the previously noted "How BBB AUTO LINE Works" brochures. Among other modes of distribution, these brochures are available on the web, and they're routinely provided to consumers who file complaints.

A. Starting the Process

Consumers can initiate a case by telephone, by a written complaint, or online. Except for certain complaints filed by attorneys on behalf of consumers, the information isn't initially submitted on a complaint form; rather, the consumer responds to a series of questions, and those responses are incorporated onto a form that's sent to the consumer – by email and an online account if she chooses – to edit, sign, and return.

Rule 703.5(b) requires BBB AUTO LINE to notify the consumer and manufacturer when it gets notice of a dispute. In most states, this isn't triggered until the consumer makes the initial contact and then receives, and returns, the consumer complaint form. In Florida and California, it occurs when the consumer makes the initial contact. BBB AUTO LINE timelines reflect the processes appropriate for a particular state, so manufacturers get notice earlier in Florida and California than elsewhere.¹⁵⁴

B. Opening a Case

As noted above, during an initial phone or online contact, BBB AUTO LINE collects information that it incorporates into a consumer complaint form. The form is then sent to the consumer, together with materials about the program,¹⁵⁵ and the consumer is invited to update, edit, supplement, and sign the form. Among consumers surveyed in the 2020 national sample, 88.3% recalled receiving these materials.¹⁵⁶ And, among these, 90.3% said the explanatory

¹⁵⁴ Prior audits had noted questions about whether BBB AUTO LINE's web site adequately serviced consumers who weren't eligible in the state where they reside but might have been eligible elsewhere, and also whether it adequately serviced consumers who leased rather than purchased their vehicles. BBB AUTO LINE has now addressed these issues.

¹⁵⁵ These documents include, for example, the program summary for the relevant manufacturer and state. When the complaint form is sent electronically, BBB AUTO LINE transmits some documents by sending links to its web site.

¹⁵⁶ As detailed in Section III.F of this chapter, for some consumers who *didn't* recall getting the document, the auditor found copies of the form that they'd signed and returned to BBB AUTO LINE.

materials were very or somewhat clear and easy to understand,¹⁵⁷ and 77.8% said they were very or somewhat helpful.¹⁵⁸

During the initial contact, BBB AUTO LINE asks consumers whether they'd rather receive communications by mail or electronically. If they choose electronic communications, BBB AUTO LINE now relies *exclusively* on electronic transmittals to the consumer (and, at the consumer's discretion, from the consumer). These are sent via an online account. BBB AUTO LINE sends an initial email explaining to consumers how to access the account, and subsequent emails alert consumers when new communications appear in their accounts. The initial email advises consumers that, once they retrieve documents from their accounts, they can return them by uploading them to the account, but they also have the option to use mail or fax.

The auditor last year noted the possibility that some consumers might have abandoned the process because they had difficulties using the online system (whose use was substantially widened in 2019). Warning flags appeared in responses to document receipt questions by consumers in Florida and California – the only states where a case is routinely¹⁵⁹ opened before the consumer returns a signed consumer complaint form, and thus the only states where a file needs to be closed if the consumer doesn't return his form. There could well have been problems in other states, but, unless a case had opened, there wouldn't be a file for the consumer and thus the incident would have escaped the auditor's notice.

Among consumers who were part of the Florida-specific survey, for example, twelve consumers whose files didn't contain a signed consumer complaint form – 7.8% of the 154 surveyed – reported that they hadn't received an initial transmission of materials.¹⁶⁰ All twelve were found ineligible, and six of the ineligibility determinations were based solely on the failure to return the signed form.¹⁶¹ (These results are generally consistent with results for Florida and

¹⁵⁷ 65.7% said they were very clear and easy to understand.

¹⁵⁸ 63.5% said they were very helpful.

¹⁵⁹ In some instances in other states, BBB AUTO LINE may quickly open and close a case where the car clearly falls outside the program, perhaps because of its age or mileage. This spares the consumer the effort of compiling documents for a complaint that won't go forward anyway.

¹⁶⁰ In another four cases, surveyed consumers said that they hadn't received the packet but their files did contain a signed form – indicating that they had received the initial transmittal that included the form to sign.

¹⁶¹ Five were closed because of their age, and one because the consumer no longer owned the car. Of the six consumers whose cases were closed *because* they hadn't returned a consumer complaint form, moreover, BBB AUTO LINE advises that four hadn't even accessed their online accounts. These six cases were spread throughout the year, moreover, so the situation didn't appear to improve as the year went on; in fact, five of the twelve cases noted above were filed on or after October 20.

California consumers who were part of the national survey.¹⁶²) It's perhaps surprising that consumers who started the process and thought BBB AUTO LINE was ignoring them didn't follow up, but the survey suggests that this does happen – perhaps because some of these consumers assumed (correctly) that there were problems with their complaints,¹⁶³ but perhaps, at least for some, because they were intimidated by the process as presented on the web site.

BBB AUTO LINE has already acted to address these concerns. Until January 2021, BBB AUTO LINE sent some emails from a “no-reply” email address, which was particularly likely to trigger spam filters unless consumers could stop the blockage¹⁶⁴; it no longer use the “no-reply” address. Further, BBB AUTO LINE has revised the texts of some communications with consumers. Also, consumers who choose electronic communications in Florida and California previously got a single reminder email before the time to return the signed consumer complaint form had expired. Now BBB AUTO LINE sends at least one reminder email to all consumers and some get two, although BBB AUTO LINE hasn't provided the auditor with details as to timing.

Nonetheless, the auditor recommends that BBB AUTO LINE further review and revise communications to minimize possible consumer confusion. Recognizing that some consumers may not be particularly computer-savvy (or may have trouble uploading or even downloading documents if they rely exclusively on mobile phones for online communications¹⁶⁵), it should consider other steps.¹⁶⁶

¹⁶² Many randomly selected consumers in the national sample (167 out 403) came from Florida or California. In the national survey, 44 consumers said they hadn't received the initial packet, but twelve of them had returned a signed consumer complaint form and presumably just forgot that they'd received the packet in which it came. The remaining cases included eleven California claims that closed as ineligible, three of which closed for age or mileage and eight of which closed for failure to return the signed consumer complaint form. They also included nine Florida cases that closed as ineligible, including four that closed for age and mileage, one that closed for not alleging a manufacturing defect, and four that closed for failure to return a signed consumer complaint form.

¹⁶³ All twelve consumers were told by TechnoMetrica that BBB AUTO LINE had reported their case as ineligible. All but one (who said “other”) agreed with that characterization.

¹⁶⁴ See, e.g., <https://www.mdt.mt.gov/common/spam-filter.shtml>. Since BBB AUTO LINE made the change after the audit year, any improvement couldn't have been detected by the audit.

¹⁶⁵ According to a 2019 study by the Pew Research Center, for example, 17% of surveyed US adults reported that they used the internet only on a smartphone. See <https://www.pewresearch.org/internet/2019/06/13/mobile-technology-and-home-broadband-2019/>. And it could be a tedious process to upload documents to the BBB AUTO LINE interface with only a smartphone.

¹⁶⁶ For example, BBB AUTO LINE might encourage consumers to call for help if they have problems with the system. It might offer them the option to shift to regular mail, or highlight in all communications that ask the consumers to return documents that, even if the consumers view communications from BBB AUTO LINE online, they can use regular mail, as needed, to send

Recommendation: BBB AUTO LINE should supplement the significant steps that it's already taken to decrease the chance that consumer confusion, or email blockers, may deter consumers from pursuing complaints that are eligible for the program.

C. Resolving a Case

In Florida and California, as noted above, the complaint file formally opens (and a 40-day clock begins to run) with the original contact; elsewhere, it opens when the signed consumer complaint form is returned. Applying the standard for the jurisdiction in question, the manufacturer is told about the complaint (as required by Rule 703.5(b)) when the file is opened.

Once the manufacturer learns of the dispute, it may contact the consumer directly to resolve the issue. And, once BBB AUTO LINE gets sufficient documentation, the case will be investigated, a process covered by Rule 703.5(c). However, without awaiting additional documentation, BBB AUTO LINE may make an initial eligibility determination – and routinely does so in Florida and California. Thus, consumers whose claims are clearly ineligible may be spared the work of collecting documents to support their claims.

The next step is mediation; as BBB AUTO LINE describes the mediation process to consumers:¹⁶⁷

Efforts to resolve the dispute by settlement:

The settlement process is voluntary, and you may proceed to arbitration (if eligible) at any point.

Upon receipt of the information about your case, a representative from the manufacturer may contact you to discuss settlement options. You and the manufacturer representative may explore settlement options directly, or you may be assisted by your Dispute Resolution Specialist from our office.

If you and the manufacturer representative agree to a settlement, please inform your Dispute Resolution Specialist as soon as possible.

materials to BBB AUTO LINE. Also, BBB AUTO LINE might make sure that, whenever a consumer is told that a case could be closed unless the consumer returns a document, the consumer is also told, for cases that haven't yet been arbitrated, that they can renew the complaint in the future, albeit subject to age and mileage limits that might apply at the time. Another possibility might be to tell consumers, when they enter a complaint online, to look for a confirming email, and to contact BBB AUTO LINE (perhaps but not necessarily by phone) if it doesn't arrive.

¹⁶⁷ <https://bbbprograms.org/programs/all-programs/bbb-autoline/how-bbb-auto-line-works>.

We will work with you and the manufacturer representative to help parties take an objective look at the issues in dispute and the standards that will be considered by the arbitrator.

The role of our staff is to open communication between you and the manufacturer representative and to facilitate the exchange of offers. We will not comment on whether or not an offer made to you is “fair” or “unfair”; to do so would compromise our neutrality. Only you can decide whether an offer is satisfactory.

If a settlement is reached before the arbitration hearing begins, we will draft a letter that summarizes the terms of the agreement. This letter will be sent to both parties, and we will follow up with you to confirm the terms of the agreement were carried out.

Telephone settlement conference:

In some cases, a pre-hearing “settlement conference” will be held by telephone if all parties are willing to do so. During that telephone conference—which will include you, a manufacturer representative and the Dispute Resolution Specialist—you will discuss your vehicle’s problems and explore possibilities for a mutually-agreed settlement of your claim.

Rule 703.5(d) then provides for the arbitration itself, with the goal of producing a fair decision within 40 days.¹⁶⁸ Rule 703.5(f) governs oral presentations, and Rule 703.5(g) provides for the consumer to be told that she can reject the decision. If the consumer rejects it, the decision might still be admitted as evidence in a later court action.

Consumers are asked if they’d like any hearings to be conducted in-person, by telephone, or in writing. Though the matter isn’t entirely clear, the BBB AUTO LINE’s rules,¹⁶⁹ as well as

¹⁶⁸ See Chapter 3, Sections III.E, IV.E, and V.E. The rules allow certain exceptions to the 40-day limit, but, in calculating the percentage of cases resolved in timely fashion, BBB AUTO LINE hasn’t relied on these exemptions.

¹⁶⁹ BBB AUTO LINE Rule 10 provides:

10. MANNER IN WHICH HEARING IS CONDUCTED

Although most arbitrations involve in-person hearings, at your request, we may arrange to have your statement and evidence presented by telephone or in writing.

If the consumer asks to present his or her case at an in-person hearing, the company may present its case in person, by telephone or in writing.

If the consumer asks to present his or her case by telephone, the company may present its case by telephone or in writing.

Ohio's regulations,¹⁷⁰ at the least suggest – and in the auditor's view this is the better reading – that the consumer is entitled to an in-person hearing. (Neither the Federal nor the former Florida rules have comparable provisions.¹⁷¹) Further, while a virtual hearing perhaps might satisfy any “in-person” requirement, BBB AUTO LINE didn't consistently offer that option, and some local BBB offices (the offices that that managed most hearings) lacked the capability to conduct hearings virtually.

Except in California, BBB AUTO LINE rules also provide that “[w]e will always schedule an inspection of the vehicle *by the arbitrator* when the consumer seeks any remedy other than reimbursement for past repairs, unless all parties agree that such an inspection is not

If the consumer asks to present his or her case in writing, the company must also present its case in writing.

The Notice of Hearing sent to all parties will indicate the manner of participation that each party initially selected. A later change in the manner of participation by one party will not require that the other party also change its manner of participation.

The California rule differs in some details and in its final paragraph, but is essentially the same in relevant part. California Rule 11.

¹⁷⁰ Ohio Code 109:4-4-04(c)(9) provides:

(9) The board must allow an oral presentation at the request of the consumer. If the consumer elects an in-person oral presentation, the warrantor may make its presentation in person, by telephone conference call, or by written submission. If the consumer elects an oral presentation by telephone conference call, the warrantor may make its presentation by telephone conference call, or by written submission. If the consumer does not request an oral presentation the warrantor shall make its presentation by written submission. Upon receipt of the dispute the board shall fully disclose to the parties the following information:

- (a) That an oral presentation either in person or by telephone conference call will take place if requested by the consumer, but that, once requested, if one party fails to appear or give an oral presentation at the agreed-upon time and place, the presentation by the other party shall be allowed; . . .

The auditor does note that the only thing BBB AUTO LINE is *expressly* required to offer is an “oral presentation.”

¹⁷¹ The Federal Rules don't provide for an in-person hearing, but they *do* require the program to establish written operating procedures (that is, the procedures set forth in the rules), and compliance with those rules would thus appear to be an element of compliance with the FTC's regulations. A similar situation obtains in Florida, were certification is based in part on its review of BBB AUTO LINE's rules, *see* Florida Code 681.108(a).

necessary.”¹⁷² (Emphasis added.) In California – which isn’t alone in its practice – such inspections are left to the discretion of the arbitrator.¹⁷³

Also, and independent of any inspection by the arbitrator, the BBB AUTO LINE rules allow (but don’t require) appointments of technical experts who will also undertake inspections.¹⁷⁴

With an ongoing pandemic, of course, routine in-person hearings and arbitrator inspections were neither practicable nor feasible for most of the audit year. Indeed, given state and local stay-at-home orders, they would often have been unlawful.

BBB AUTO LINE advises that it began internal preparations for the pandemic on March 11, 2020, a critical day for the domestic and global pandemic response.¹⁷⁵ By March 12, it had decided to halt in-person hearings, including in-person inspections, by arbitrators. As did many courts (and others),¹⁷⁶ it moved to remote proceedings. Then it contacted manufacturers, hearing sites, and arbitrators. Through these contacts, it began to determine which sites could handle remote proceedings when their own staffs were working remotely, and which arbitrators were willing to conduct hearings remotely. Hearing schedules were soon adapted. With few

¹⁷² Rule 7. The national rule mandates an *inspection*, the test drive is at the discretion of the arbitrator. *Id.* California Rule 8 leaves both the inspection and test drive to the arbitrator’s discretion.

¹⁷³ California Rule 8. Inspections are similarly discretionary, for example, in hearings before the state-run Florida New Motor Vehicle Arbitration Board. See Florida Code 681.1095(7) (inspection “may” be performed); see also <https://myfloridalegal.com/pages.nsf/Main/d598373b80f1cad985256cc9005c334d>.

¹⁷⁴ Rule 8 (appointment at the request of the arbitrator or by agreement of the parties, in which event BBB AUTO LINE will “make every effort to obtain an impartial technical expert”); California Rule 9 (“At the request of the arbitrator, we may obtain an impartial technical expert to inspect your vehicle”). BBB AUTO LINE routinely defers to such requests from arbitrators, unless the consumer elects not to allow such third-party inspection.

¹⁷⁵ That morning, with only 647 confirmed cases in the United States, Dr. Anthony Fauci testified before Congress that the outbreak would worsen. Later that day, the World Health Organization declared Covid-19 a global pandemic, President Trump banned travel from Europe, and the NBA postponed its season. www.npr.org/2021/03/11/975663437/march-11-2020-the-day-everything-changed.

¹⁷⁶ See <https://www.ncsc.org/newsroom/public-health-emergency> (guides to virtual hearings in state courts); <https://www.politico.com/news/2020/05/04/coronavirus-supreme-court-arguments-234186>. As of this writing, the state-run Florida New Motor Vehicle Arbitration Board continues to hold its hearings virtually, <https://www.myfloridalegal.com/lemonlaw> (checked June 15, 2021). (It held no hearings during the second and third quarters of 2020. <https://myfloridalegal.com/pages.nsf/Main/696c4cd4b287529085256cc9005d5869>.)

exceptions, scheduled in-person arbitrations were shifted to electronic hearings – generally telephonic – and sometimes the dates and times were moved. And in practice, and where feasible, BBB AUTO LINE substituted an inspection by a technical expert for the arbitrator’s inspection when consumers requested an inspection.

This appears to have been an eminently practical approach, allowing hearings to go forward that otherwise couldn’t have done so, particularly since arbitrators who felt that a vehicle inspection was needed could obtain (albeit with an attendant delay and subject to the consumer’s cooperation) the appointment of a technical expert.¹⁷⁷ In light of BBB AUTO LINE’s rules (and the auditor’s view of the better reading of those rules), it might have been preferable to do a rule amendment, subject, of course, to applicable state provisions like the Ohio regulation noted above. And, in light of Rule 7, it might have been preferable, for arbitrations outside California, to obtain agreements from the parties to proceed without an arbitrator’s inspection, perhaps offering the opportunity to substitute a technical expert’s inspection if requested by a party. Perhaps consumers could also have been given the option to postpone a proceeding, with the possible risk that their claims could have gone stale before they could be heard. Still, it’s not clear that there would have been much difference in practice if BBB AUTO LINE had taken steps to change the current rule or to more thoroughly conform practice to it.

The possibility that Ohio consumers may have a right to an in-person hearing, though, could impact the calculus there. Any amendment to the BBB AUTO LINE rules limiting the right to an in-person hearing would be subject to state mandates (and presumably should acknowledge such mandates); thus, if Ohio mandates an in-person hearing, then, and to the extent that any such mandate wasn’t superseded by an emergency declaration in the state, BBB AUTO LINE may have had to maintain an in-person option in Ohio -- though perhaps that might have been satisfied by offering a virtual hearing. Even in Ohio, though, it presumably could have told consumers that, in view of the pandemic, any hearing would be delayed if the consumer exercised any such right.

In sum, in the auditor’s view, there are questions – though not significant enough to jeopardize substantial compliance – about whether steps that BBB AUTO LINE took to address the pandemic were consistent with its own rules and Ohio regulations.

* * *

Settlements after arbitration are scheduled. Even when a case moves into the arbitration phase and a hearing is scheduled, the parties can still settle. Indeed, they can settle after a hearing is scheduled but before it begins; after it begins but before the arbitrator issues a

¹⁷⁷ There were 211 technical experts appointed this year, compared to 180 in 2019 and 140 in 2018. The numbers aren’t quite comparable (the case count is based on cases closed during the year, while the technical expert count reflects technical experts for whom BBB AUTO LINE contracted during the year). Still, this suggests that there was roughly one technical expert in every 8.9 cases in 2020, compared to one in every 9.9 cases in 2019 and one in every 10.8 cases in 2018.

decision; and even after the arbitrator issues a decision.¹⁷⁸ Arbitrators can't engage in mediation themselves, but, if the parties seem to be moving towards a settlement, they can temporarily remove themselves from the process and allow the parties to negotiate; then, if negotiations succeed, the arbitrator and the parties can sign a consent decision.

This is all quite reasonable, although these situations can pose some complexities for record-keeping. For cases settled after a hearing is scheduled but before it begins, BBB AUTO LINE reports the case as mediated. For settlements reached during the hearing (“consent settlements”), BBB AUTO LINE reports the case as arbitrated. And, if the parties settle *after* the arbitrator issues a decision, the settlement supersedes the decision, but BBB AUTO LINE still records the process as arbitration, and it reports the *remedy* as what the arbitrator ordered even though the settlement modified that remedy. While hardly an intuitive result, BBB AUTO LINE's practice may well be the best way to handle a situation with no optimal solution.¹⁷⁹

Review of other materials. In addition to talking with BBB AUTO LINE staff and reviewing documents such as case files, the auditor also reviewed recordings from two Florida hearings, two Ohio hearings, and two hearings from other states (one of them a case where the consumer was represented by counsel). He also examined the original spread sheet prepared by BBB AUTO LINE for TechnoMetrica's use in calling consumers, and, as explained above, he used the results of the consumer survey to identify case files most likely to be problematic. From his review of the hearing recordings, the auditor this year detected no significant problem at the hearing stage.¹⁸⁰ From his review of case files, the auditor notes that BBB AUTO LINE still doesn't consistently make disclosures required by the Ohio Code when a board like BBB AUTO LINE gets written notification of a dispute¹⁸¹ or when it tells consumers of an arbitrator's

¹⁷⁸ Rule 20; California Rule 21. Post-decision settlements most often modify the date by which the manufacturer needs to comply with the order, but might also incorporate substantive changes, as where the consumer wants to substitute a repurchase for a replacement remedy.

¹⁷⁹ Once an arbitrator has heard and decided the case, for example, the program needs to report an arbitrated case even if there's a superseding settlement. And, once a case is reported as arbitrated, it would seem incongruous to associate with an arbitration decision a different remedy than that which the arbitrator found appropriate. To do so would muddy the waters when BBB AUTO LINE develops aggregate statistics that show regulators the relief (if any) that arbitrators collectively found appropriate.

¹⁸⁰ However, the auditor did previously suggest, and he repeats the suggestion, that, when the arbitrator tells consumers about the confidentiality provisions that bind the arbitrator (as part of her opening statement), she might also note that BBB AUTO LINE has a confidentiality rule that governs disclosures *by the program*. This disclosure was made in one of the hearings that the auditor examined this year, but not the other five.

¹⁸¹ Section 109:4-4-04(C)(2) of the Code requires a “board” like BBB AUTO LINE, on getting written notification of a dispute, to tell the consumer and (somewhat curiously) the warrantor, in ten point boldface type, that:

OHIO LAW REQUIRES YOU TO USE A QUALIFIED ARBITRATION

decision.¹⁸²

Further, based on the analyses in Chapters III, IV, and V, the auditor offers other recommendations as well; most significantly, he recommends that BBB AUTO LINE explore ways to expedite arbitrations.

Recommendations:

BBB AUTO LINE should consider the best process to implement emergency protocols, particularly when it's unable to conduct in-person hearings; it should make the required Ohio disclosures; and it should explore ways to expedite arbitrations.

D. Compliance

Rule 703.6(h) requires BBB AUTO LINE to ascertain, within ten working days of the deadline for the manufacturer to comply, whether the manufacturer has in fact complied. BBB AUTO LINE does so primarily through “performance verification letters” that ask consumers, among other questions (and in the version used for settled cases), if and when the settlement was performed, whether performance was satisfactory, and (if not) whether the consumer wants to further pursue the claim. The letter further tells the consumer that, if a timely response isn’t received, “I will assume that performance was satisfactory . . .” The responses in returned performance verification letters – and more frequently the assumption of timely compliance because the letter *wasn't* returned – are the principal bases for assessing compliance.

Based on an empirical analysis set forth below, it seems highly unlikely that this treatment of unreturned verification letters, despite their quantity, significantly distorts BBB

PROGRAM BEFORE SUING THE MANUFACTURER OVER NEW CAR WARRANTY DISPUTES. FAILURE TO ARBITRATE YOUR CLAIM MAY PRECLUDE YOU FROM MAINTAINING A LAWSUIT UNDER SECTION 1345.75 OF THE REVISED CODE.

¹⁸² Section 109:4-4-04(C)(7) provides:

The board shall inform the consumer at the time of disclosure [of its decision] that:

- (a) If he or she is dissatisfied with its decision or if the warrantor, its agent, or its authorized dealer fails to promptly fulfill the terms of the board's decision, the consumer may seek redress by other rights and remedies, including asserting a cause of action under section 1345.75 of the Revised Code.
- (b) The consumer may obtain, at reasonable cost, copies of all board records relating to the consumer's dispute.

For purposes of his review, the auditor examined several Ohio case with arbitrated decisions that were processed late in the audit year.

AUTO LINE's compliance figures. Still, these letters are important to the compliance analysis and, in practice, can remind consumers that they can pursue their cases further in BBB AUTO LINE if they aren't satisfied with the execution of a previous remedy. Given this importance, the auditor reiterates one previous recommendation, upgrades one previous suggestion to a recommendation, and offers two new recommendations.

- (1) *The auditor again recommends that consumers be told that, if the consumer doesn't return a performance verification letter, BBB AUTO LINE will assume timely as well as satisfactory performance.*
- (2) *When telling a manufacturer about a consumer's performance verification, the auditor recommends (he had previously suggested) that the manufacturer be told when compliance has been assumed because the letter wasn't returned.¹⁸³*
- (3) *Although BBB AUTO LINE must confirm compliance within ten days after the time for compliance has passed, at that time consumers with a repair remedy may still be in a test-drive period, which generally runs for 30 days after a repair.¹⁸⁴ They may hesitate to evaluate the repair until more time has passed, and the auditor recommends that they have an option to report that they're still in a test drive period and advise when that period will end (so that BBB AUTO LINE can check in again at an appropriate time)..*
- (4) *Consumers using the online interface must now download the performance verification letter, fill it out, and return it by upload or other means. The auditor recommends that BBB AUTO LINE explore whether it can increase the reporting rate by using an online questionnaire.*

* * *

The auditor now turns to the treatment of various responses to the performance verification letter.

Consumers reporting unsatisfactory performance. As noted above, the letter asks separately about "performance" (compliance) and satisfaction – consistent with which, BBB AUTO LINE may report manufacturer compliance despite consumer dissatisfaction. Such dissatisfaction isn't uncommon, and it's most common in cases with repair remedies.¹⁸⁵ Indeed,

¹⁸³ On reflection, the auditor believes this merits more than a suggestion. To the extent that BBB AUTO LINE makes a misstatement, even if the misstatement isn't directed to consumers, it potentially undermines the credibility of the program staff.

¹⁸⁴ Rule 22.B.2.

¹⁸⁵ Repair remedies often provide for the manufacturer to inspect the car and fix any warranted defects, which unsurprisingly leads to consumer dissatisfaction if the manufacturer reports that there's no problem or attempts a repair that, according to the consumer, doesn't fix the problem. As

using spread sheet entries that he's asked BBB AUTO LINE to add since 2019, the auditor found, based on a spread sheet produced this February, that there were 978 mediated¹⁸⁶ repair settlements with a compliance code. In 454 of those, (46.4%), the compliance code indicates that the consumer wasn't satisfied – although, in 432 of *those* – 95.2% of cases with dissatisfied consumers – the matter was reopened at the consumer's request.

Despite not-infrequent dissatisfaction with repair remedies, though, such remedies play an important role in dispute resolution. *First*, FTC, Ohio, and former Florida regulations all recognize repairs as an appropriate resolution of disputes.¹⁸⁷ *Second*, with the participation of a manufacturer representative, repair remedies can resolve a problem and, when they don't, the consumer can (and usually does) pursue the matter further. *Third*, in some cases where a car's age or mileage falls outside lemon law limits but within warranty limits, repairs may be the only remedy available to consumers by the terms of the applicable program summary. *Fourth*, in cases where consumers haven't complied with lemon law provisions that require notice to the manufacturer and a chance for the manufacturer (as opposed to the dealer) to address the issue, a mediated repair remedy may essentially overlap a final repair attempt that the consumer must afford the manufacturer to obtain benefits and presumptions under the state lemon law. Here, the repair remedy doesn't slow the process; it merely incorporates into the program a step the consumer could have taken before filing the complaint.

Thus, a repair remedy is a legitimate and potentially beneficial resolution of a dispute, even if the result doesn't always satisfy the consumer. In the auditor's view, BBB AUTO LINE has acted reasonably in providing for repair remedies and in treating manufacturer's performance as "compliant," even if the consumer isn't satisfied, so long as the manufacturer undertook the promised inspection and perhaps attempted a repair. Given a binary option (compliant or noncompliant), and since the manufacturer could be vindicated in a follow-on proceeding, it seems problematic to attach the stigma of noncompliance to its performance. On the other hand, it's also possible that the consumer will be vindicated, so a simple report of "compliance" doesn't really capture the nuances of the situation. On balance, the auditor therefore sees no problem with manufacturer performance as compliant even if the consumer is dissatisfied, so long as the staff has no independent reason to question the finding of compliance.

to other types of remedy, where dissatisfaction is less common, perhaps there's a dispute in a repurchase or replacement case about the impact of an accident on the value of the car that the manufacturer is taking back. Or perhaps (as the author has sometimes seen) the consumer simply doesn't like a statutory formula that takes the car's past usage into account.

¹⁸⁶ The auditor focuses on mediated repair settlements because, for consumers who aren't satisfied with the execution of arbitrated repair remedies, the next step is to reconvene the arbitration. This happens less frequently in arbitration than in mediation, since repair remedies are less common in arbitration than in mediation; when it does, though, there may be issues, discussed below, with the treatment of compliance coding in "reconvened" cases.

¹⁸⁷ 16 C.F.R. § 703.2(d); OHIO ADMINISTRATIVE CODE § 109:4-4-04(5)(A); FORMER FLORIDA ADMINISTRATIVE CODE § 5J-11.010(2)(C).

In any event, with the compliance codes now available, the audit can now report in more detail (and some of that detail appears above) about the extent of dissatisfaction. To the extent this information is provided, the reporting arguably isn't binary at all.

Finally, the auditor makes a recommendation that, if implemented, would apply to a relatively small number of cases. As noted, BBB AUTO LINE generally assumes manufacturer compliance, in a repair context, when a manufacturer inspects and perhaps attempts a repair to a vehicle. But sometimes BBB AUTO LINE might revisit that determination – or where, conversely, it might revisit a decision that the manufacturer hadn't complied.

Recommendation: If an arbitrated decision makes finding that are inconsistent with an earlier entry in BBB AUTO LINE's files reporting compliance or non-compliance, BBB AUTO LINE should revisit the determination.

Consumers reporting delayed performance. In evaluating whether performance was timely, BBB AUTO LINE considers any documented extensions of time to which the party's had agreed. The auditor believes this is a reasonable approach, so long as mutual agreement to the extension is documented in the file.

Cases where consumers didn't return the performance verification letter. The most important assumption underlying the compliance statistics is that a manufacturer's performance should be recorded as compliant when the consumer *doesn't* return a performance verification letter. The importance of this assumption is highlighted by some numbers. This year, there were 3066 cases that merited a compliance code.¹⁸⁸ Of these, 2887 (94.1%) were reported as compliant.¹⁸⁹ Of the 2887 cases reported as compliant, though, 2009 cases (65.5% of all cases meriting a compliance code and 69.5% of those for which BBB AUTO LINE reports compliance) were based on an unreturned performance verification letter.

The auditor has previously note (without presenting details about the frequency with which this situation arises) that BBB AUTO LINE's treatment of unreturned performance verification letter cases seemed conceptually sound; it didn't seem fair to attach the stigma of non-compliance based on the whims of consumers who didn't return a form. The auditor notes, as well, that the consumers *least* likely to return the form might well be those who were satisfied and had no further use for the program's services.¹⁹⁰

¹⁸⁸ These include all mediated cases, as well as arbitrated cases that provided some relief to the consumer and that the consumer accepted.

¹⁸⁹ Sixteen of these (0.1%) were reported as delayed compliance.

¹⁹⁰ The issue might be even more pronounced for consumers who used attorneys. In those cases, the performance verification letter would go to a lawyer, perhaps a lawyer with many lemon law cases to handle, who might well be more focused on pending cases than on reporting about compliance to facilitate BBB AUTO LINE record-keeping.

This year, moreover, the auditor asked BBB AUTO LINE and TechnoMetrica to develop their spread sheets in a way that facilitated further analysis. As a result, identified 103 consumers in the national sample who were asked a compliance question *and* for whom BBB AUTO LINE assumed compliance because they hadn't returned the verification letter.¹⁹¹ Among these 103 consumers, 76 reported timely performance, 18 reported delayed compliance (some didn't account for extensions to which they had agreed), three reported that the time for performance hadn't passed, five reported nonperformance, and one wasn't sure.

Going further, four of the five consumers reporting noncompliance had repair remedies, and consumers in that situation were routinely asked about steps that the manufacturer had taken – and all four reported that the manufacturer had at least inspected their cars, while two reported that the manufacturer had attempted a repair. The fifth consumer reporting dissatisfaction, moreover, should probably have been categorized as not having allowed performance.¹⁹² So the national survey found only a single case where BBB AUTO LINE assumed compliance and the consumer reported non-performance – and, in that case, non-performance seemed reasonably attributable to the consumer. In sum, BBB AUTO LINE's treatment of matters where performance verification letters aren't returned as reflecting satisfactory performance seems quite consistent with the empirical record.

Reconvened cases. Finally, the auditor this year honed in on one particular category of compliance recording: the treatment of reconvened arbitrations. When a case *settles* and the consumer isn't satisfied with the remedy's implementation and wants to pursue the matter further, BBB AUTO LINE opens a new case. But when the consumer isn't satisfied with the implementation of an *arbitration* remedy, in most states the original case "reconvenes" before the arbitrator. And, in that event, a single case may include two decisions by the arbitrator, two opportunities for the consumer to accept or reject a decision, and two opportunities for the manufacturer to comply and BBB AUTO LINE to report on compliance. In California, the procedure is somewhat different; California Rule 23.C, which is limited to repair decisions, allows the arbitrator to "reconsider" the decision. But even in California, if the arbitrator grants reconsideration and substitutes a new remedy,¹⁹³ there could be measures of compliance for both the original and the substituted remedies.

¹⁹¹ These include consumers who said that they agreed to a settlement, as well as consumers who went to arbitration, got a decision that provided some reward, and accepted the decision.

¹⁹² This was a repurchase/replacement remedy, where the consumer wasn't satisfied with the amount allowed under the program summary and wouldn't complete the transaction.

¹⁹³ However, if the arbitrator rejects the consumer's position outside California, there's a final "denial" following the earlier decision, generally an "interim repair decision." If the arbitrator rejects the consumer's position *within* California, the original decision stands. Separate from these provisions for reconvening or reconsideration, both the National rules and the California rules allow requests for the arbitrator to "clarify" a decision if the consumer doesn't understand what actions it requires, or the parties disagree about what actions are required. Rule 22.C, California Rule 23.C.

These occur with moderate frequency; using case-specific compliance codes that he requested from BBB AUTO LINE, the auditor identified 76 such cases this year, although there could have been more.¹⁹⁴ The question of dual compliance evaluations, though, didn't arise in 34 of these cases, because the second decision was either a denial (29 cases), because it provided a remedy that the consumer rejected (3 cases), or because the consumer later decided not to pursue or to drop the request to reconvene (2 cases). In other words, the potential problem that the auditor was able to identify was limited some 42 cases, which constitute roughly 2.2% of arbitrations and 1.4% of cases that merited a compliance code. And these include many cases where the consumer either returned a performance verification letter on the *second* remedy confirming compliance or didn't return the performance verification letter on the second remedy, so that compliance was (reasonably) assumed.

The issue is thus a known source of inaccuracy, and appears to miss at least some instances of noncompliance. Particularly given the importance of non-compliance, the auditor believes that the matter should be addressed. But the impact on aggregate compliance figures is quite likely to be small. The auditor thus recommends that BBB AUTO LINE establish a protocol for treating these cases.

Recommendation: While the auditor doesn't anticipate that it will significantly change BBB AUTO LINE's compliance reporting, he recommends that BBB AUTO LINE develop a clear protocol for recording remedy and compliance where consumers request that a case be reconvened or, in California, reconsidered. Ideally, such a process should report the final remedy, although (to reflect existing practice) the initial remedy would be the key when a post-decision settlement changes the nature of the relief. As to compliance, he believes that the protocol should show where a manufacturer failed to comply (or complied belatedly) with either the initial order or a later order.

Other questions on compliance monitoring. The auditor also identified some cases where case handlers failed to send out a performance verification letter, or didn't record any response when a returned performance verification letter reported consumer dissatisfaction.¹⁹⁵ These weren't large in number, but it's clearly a problem when consumers aren't offered an opportunity for follow-up or BBB AUTO LINE doesn't even have the information to present the option to consumers.

Recommendation: BBB AUTO LINE should consider steps to address the problem (though limited in scope) that case handlers may in some cases seemed to have failed to adequately follow up, or at least failed to document that they had followed up, on compliance questions.

¹⁹⁴ The cases the auditor identified all had codes reflecting compliance with the first order, and thus all reported that the consumer wasn't satisfied and asked to reconvene the proceeding. If the code reflected compliance with the order after reconvening, as may well have happened in at least some cases, the auditor's screen wouldn't have picked it up.

¹⁹⁵ See, for example, the discussion in Chapter 3, Section 3.D.

* * *

On April 6, 2020, BBB AUTO LINE amended Rule 22 of its national rules (drawing in part on Rule 23 of its California rules) to expressly permit arbitrators to modify their decisions to allow certain delays.¹⁹⁶ It's not clear to the auditor that arbitrators couldn't have reached the

¹⁹⁶ The rule now provides in part, with the new language highlighted:

22. THE DECISION

When the arbitrator has reached a decision in your case, all parties will receive a written decision accompanied by the arbitrator's reasons for the decision. We will not read a decision to a party over the phone.

A. Scope of decision

A decision shall be one that the arbitrator considers fair and falls within the scope of these *Rules* and the company's Program Summary.

B. Types of decisions

There are two types of decisions:

1. A final decision might award reimbursement for past repairs, repurchase, replacement or nothing at all. In these cases, the arbitrator has no further authority over the decision unless a valid request is made pursuant to Rule 22(C), Clarifying the decision; Rule 22(D), Correcting the decision or reasons for decision; or Rule 22(E), Decision is impossible to perform or to perform on time. Except to the extent that a lesser period of time is required by state law or regulation, a repurchase decision shall require the manufacturer to perform the decision within 30 days after the manufacturer receives notice the decision has been accepted; replacement decisions shall require the manufacturer to perform the decision within 45 days after the manufacturer receives notice the decision has been accepted.
2. An interim decision will be written when the decision requires a repair to be performed, and it will require the repairs be completed within 30 days after the manufacturer receives notice the decision has been accepted.

* * *

When an interim decision is rendered, the arbitrator maintains continuing authority over the decision during the time periods specified in the decision. A 30-day test-drive period shall apply, unless the arbitrator determines a longer period of time is necessary.

* * *

3. The time for performance shall be extended for delays caused by reasons beyond the control of the manufacturer or its representatives, including any delay attributable to any act or omission of the consumer, but only while the reason for the delay continues.

E. Decision is impossible to perform or to perform on time

If any party believes the arbitrator's decision cannot be performed within the established time limit or

same result under prior rule 22.E, but, even if that were the case, the new text highlights the possibility of extending the time for compliance. If an arbitrator does decide to extend the time for compliance, moreover, that decision is itself subject to acceptance or rejection by the consumer (although the consumer can't reject the extension without rejecting the original relief).

The auditor sees no significant problem with this rule change, though he notes that the revised rule doesn't specify that extensions can't be indefinite, but rather must be for a time certain. Any such concern is theoretical, though. In practice, the auditor hasn't encountered any cases where an arbitrator extended the time for compliance without specifying a deadline for the extension, often 30 days.¹⁹⁷

E. Recordkeeping Provisions

Among the record-keeping provisions, much of this audit focuses on the statistical provisions in Rule 703.2(e); this is a principal subject of Chapters III, with analogous reporting for Florida and Ohio presented in Chapters IV and V.

In addition, Rule 703.6(a) requires BBB AUTO LINE to maintain certain records in specific cases.¹⁹⁸ To the extent it's possible to tell from a review of the files,¹⁹⁹ the auditor saw

at all, that party should immediately inform us in writing. We will process your submission in the same manner as a request for clarification.

* * * * If the arbitrator confirms such impossibility, the original decision may then be changed to include any remedy falling within the scope of these *Rules* and the manufacturer's Program Summary.

If the manufacturer has exceeded the time for performance specified in the decision, the consumer should notify us in writing. We will immediately contact the manufacturer and attempt to determine the reasons for its noncompliance.

* * * *

I. Acceptance/Rejection of Decision

We will send the arbitrator's decision to the consumer for acceptance or rejection. Accompanying the decision will be an *Acceptance/Rejection of Decision* form, which will specify the number of days within which the consumer must accept or reject the decision. We may extend this period by a reasonable number of days for good cause.

* * * *

¹⁹⁷ Still, if BBB AUTO LINE makes further changes to its rules, it might clarify that any extension granted under the new rule must be for a specified period.

¹⁹⁸ Rule 703.6 provides:

(a) The Mechanism shall maintain records on each dispute referred to it which shall

no systematic problems in compliance with this provision, or with analogous provisions from Florida²⁰⁰ or Ohio.²⁰¹ There have been, however, occasional (though rare) cases where

include:

- (1) Name, address and telephone number of the consumer;
- (2) Name, address, telephone number and contact person of the warrantor;
- (3) Brand name and model number of the product involved;
- (4) The date of receipt of the dispute and the date of disclosure to the consumer of the decision;
- (5) All letters or other written documents submitted by either party;
- (6) All other evidence collected by the Mechanism relating to the dispute, including summaries of relevant and material portions of telephone calls and meetings between the Mechanism and any other person (including consultants described in § 703.4(b) of this part);
- (7) A summary of any relevant and material information presented by either party at an oral presentation;
- (8) The decision of the members including information as to date, time and place of meeting, and the identity of members voting; or information on any other resolution;
- (9) A copy of the disclosure to the parties of the decision;
- (10) A statement of the warrantor's intended action(s);
- (11) Copies of follow-up letters (or summaries of relevant and material portions of follow-up telephone calls) to the consumer, and responses thereto; and
- (12) Any other documents and communications (or summaries of relevant and material portions of oral communications) relating to the dispute.

¹⁹⁹ There's no way to tell, for example, if "all" written documents from all parties are included.

²⁰⁰ Florida requires the submission of certain aggregates not required by Federal law (as discussed in Chapter 3, Section IV.C), but doesn't require additional records in individual cases.

²⁰¹ Section 109:4-4-04(D)(1) provides:

- (1) The board shall maintain records on each dispute referred to it which shall include:
 - (a) Name, address and telephone number of the consumer;
 - (b) Name, address, and telephone number of the contact person designated by the warrantor under paragraph (F)(1) of rule 109:4-4-03 of the Administrative Code;
 - (c) Makes, models and vehicle identification numbers of the motor vehicles;
 - (d) The date of receipt of the dispute and the date of disclosure to the consumer of the decision;

consumers said that BBB AUTO LINE hadn't contacted them or hadn't returned their calls before it closed a case, while the BBB AUTO LINE records report unsuccessful efforts to reach consumers; the auditor discusses these below.²⁰²

* * *

Additionally, rule 703.6(b), (c), and (d) require that BBB AUTO LINE maintain certain indices, including indices of disputes grouped by brand name and product number, disputes in which the warrantor hasn't complied with a "promised" performance, and disputes that extended beyond 40 days. BBB AUTO LINE has shown indices to the auditor in the past, but he notes that the spread sheet that BBB AUTO LINE provides to him annually can easily be sorted on all but one of these dimensions and, with such sorting, the auditor believes that they could be deemed an index. The only information required by these provisions that's not on the spread sheet is information about consumers who "refused to abide" by a decision, rather than merely failing to comply. It's not quite clear what "plus factor" distinguishes refusal to abide from failure to comply, but BBB AUTO LINE believes that there are no such cases.²⁰³

F. Openness of Records and Proceedings

Rule 703.8 governs the extent to which records and proceedings are open or, conversely, confidential. Rule 703.8(b) allows the mechanism to keep certain records confidential, and Rule 703.8(c) requires it to set out a confidentiality policy. Rule 24 of the BBB AUTO LINE's

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- (e) All letters or other written documents submitted by either party;
 - (f) All other evidence collected by the board relating to the dispute, including summaries of relevant and material portions of telephone calls and meetings between the board and any other person (including neutral consultants described in paragraph (B)(4) or (C)(4) of this rule);
 - (g) A summary of any relevant and material information presented by either party at an oral presentation;
 - (h) The decision of the arbitrators, including information as to date, time and place of meeting and the identity of arbitrators voting, or information on any other resolution;
 - (i) A copy of the disclosure to the parties of the decision;
 - (j) Copies of follow-up letters (or summaries of relevant and material portions of follow-up telephone calls) to the consumer and responses thereto; and
 - (k) Any other documents and communications (or summaries of relevant and material portions of oral communications) relating to the dispute.

²⁰² Chapter 3, Section I.A.5.

²⁰³ Additionally, Rule 703.6(e) requires that BBB AUTO LINE maintain certain statistics. That information (and more) appears in Chapter 3.

arbitration rules does so, promising (with specified limits) privacy and confidentiality.²⁰⁴

The 2015 audit alluded to issues with data handling, the specifics of which, the auditor observed, would be premature to discuss at the time but would be addressed subsequently. As described in the 2016 audit, the issues concerned confidentiality, the subject of the above-noted rules. And, in a modern context, data security is an essential component of confidentiality. Without discussing the issue in great detail in a public filing, the auditor noted in 2016 that BBB AUTO LINE had addressed important issues after the matter was brought to its attention. Most importantly, it had contracted with a third party vendor to assess, detect and block threats to applications and other workloads by integrating advanced full-stack detection techniques. And it had acted to increase a culture of security, for example, by allocating full time staff to compliance and ethics oversight, consolidating data security standards across the BBB system, and increasing their participation in privacy groups such as the International Association of Privacy Professionals. BBB AUTO LINE has also acted to purge older files from its system, consistent with another aspect of data security, and it continues to make further improvements, such as adding Alert Logic Detection throughout the enterprise.

The auditor again notes that, while he has felt qualified to make broad suggestions on these matters and noted BBB AUTO LINE's subsequent actions, he's not a data-security expert. He's impressed, though, that BBB AUTO LINE's own efforts to maintain data securely have been supplemented by a firm that has greater technical expertise, although he isn't in a position to fully evaluate BBB AUTO LINE's data handling.

²⁰⁴ The rule provides:

It is our policy that records of the dispute resolution process are private and confidential.

We will not release the results of an individual case to any person or group that is not a party to the arbitration unless all parties agree or unless such release is required by state law or regulation or pertinent to judicial or governmental administrative proceedings.

We may use information in BBB AUTO LINE records to conduct general research, which may lead to the publication of aggregate demographic data, but will not result in the reporting or publication of any personal information provided to us. Semi-annual statistics for the national BBB AUTO LINE program are available on request.

CHAPTER 3
SURVEY AND ANALYSIS

I. Introduction and General Analysis

As noted previously, the audit must include a survey of “a random sample of disputes handled by the mechanism,” including written or oral contact with each consumer surveyed.²⁰⁵ This serves two purposes: to evaluate the adequacy of BBB AUTO LINE’s procedures, and to substantiate the accuracy of its record-keeping and reporting, particularly with respect to certain aggregate statistics required by Federal or state law. This year’s survey was again conducted by phone, and was again conducted by TechnoMetrica Marketing Intelligence. The survey reached out to consumers who had used the program and met certain other criteria (discussed below). It includes a national sample, as well as Florida and Ohio samples.²⁰⁶

The analysis has long included a “macro” component, which compares aggregates from the survey to aggregates compiled, for all consumers who used the program, by BBB AUTO LINE. To simplify the process and promote transparency, BBB AUTO LINE, beginning with the 2019 audit, compiled its aggregates directly from the spread sheet that it produced for TechnoMetrica to conduct the survey.

The macro analysis can be quite useful with large populations; for questions posed to 403 consumers in the national sample, for example, comparisons between the survey results and aggregates calculated by BBB AUTO LINE have a margin of error of +/- 4.3%. But when questions are posed to small groups²⁰⁷, the margin of error can increase substantially, and the macro analysis becomes a very blunt tool. Further, the macro analysis is an inherently blunt tool when exploring a quantitative measure (how long did it take to resolve a case?) or details about which consumers may understandably be fuzzy (the receipt of a form perhaps fifteen months before²⁰⁸). On top of that, and as summarized in the micro analysis below, the margin of error is often accompanied by essentially unavoidable “measurement errors,” where consumers don’t grasp subtle (and sometimes less subtle) aspects of how BBB AUTO LINE classifies a case,

So what can be done to supplement the annual macro analysis comparing BBB AUTO LINE’s statistics to aggregates based on survey responses? Fortunately, the auditor has other

²⁰⁵ Rule 703.7(b)(3).

²⁰⁶ See Section II.C for a discussion of the composition of the state samples. After a substantial revision in 2016, later changes to the survey instrument have been relatively minor.

²⁰⁷ The numbers get particularly small in the Ohio survey, particularly since questions can be directed to populations as targeted as consumers who received and accepted awards in arbitration. For the 2020 survey, for example, the total cases for the year included 287 consumers who didn’t use attorneys. With multiple calls attempting to reach each, TechnoMetrica completed 78 interviews (an unusually high completion rate of 29.1% for an extended survey of this nature). Among the 78, only 15 received and accepted arbitration awards.

²⁰⁸ The survey was conducted in March of the current year, and addresses cases that *closed* as early as January of the previous year (and may have opened before that).

tools at his disposal.

First, he looks to past survey results, and past aggregates reported by BBB AUTO LINE, to spot whether specific survey results or BBB AUTO LINE aggregates substantially deviate from those in the past. The auditor generally looks back to three prior years, although sometimes further.

Second, he has created and refined a *targeted* microanalysis that explores (primarily) discordances in individual cases. Before the current auditor began, the audit had long included a “micro” analysis that examined files selected randomly from each population.²⁰⁹ Since 2016, though, the current auditor has targeted specific types of files. The targeted micro analysis has two components. First, TechnoMetrica Market Intelligence, which conducts the survey, develops tables with a second type of aggregate figures. Whereas the macro analysis compares aggregates from the survey to aggregates developed by BBB AUTO LINE, the micro analysis reports the numbers and percentages of *individual* consumers whose replies differed from those reported by BBB AUTO LINE. Then, the auditor looks at underlying case files to explore the sources of specific disagreements.²¹⁰

²⁰⁹ For example, see Ch. 3, page 2 of the 1999 audit. www.ftc.gov/sites/default/files/documents/reports_annual/1999-audit-better-business-bureau-auto-line-including-state-florida-and-state-ohio/1999bbbautolineaudit.pdf.

²¹⁰ These files which the auditor examined include:

- (1) Files where surveyed consumers disagreed with BBB AUTO LINE records about the process by which their cases were resolved or otherwise closed (mediated, arbitrated, ineligible or withdrawn);
- (2) For mediated and arbitrated cases, files where surveyed consumers disagreed with BBB AUTO LINE records about the resolution of their cases (repurchase/replacement, repair, other remedy; denial in arbitration).
- (3) Selected files for consumers who reported substantial delays in processing their cases, for whom BBB AUTO LINE reported substantial delay; or who disagreed with BBB AUTO LINE about whether the processing of their case was delayed.
- (4) Files for surveyed consumers who reported that manufacturers hadn't performed a promised repair or other remedy, or who disagreed with BBB AUTO LINE's reporting on compliance in their case;
- (4) Certain categories of files for consumers who, according to BBB AUTO LINE records, requested that their cases be reconvened or (in California) reconsidered.
- (5) Selected files for consumers for whom BBB AUTO LINE hadn't included a compliance code on the spread sheet it prepared for TechnoMetrica's use in February
- (6) Files for surveyed consumers who reported that they hadn't received one of several specified communications from BBB AUTO LINE.

The resulting analysis provides important context and correctives. Most of the discordant responses appear to be reasonably explicable divergences or, to put it another way, reasonably explicable *misunderstandings*. To give a particularly straightforward example, BBB AUTO LINE can resolve a case only with a manufacturer, not with a dealer. When a consumer files a case but then works directly with the dealer to resolve it, therefore, any such “settlement” falls outside the program and BBB AUTO LINE won’t report it. But a surveyed consumer, perhaps having had some talks with BBB AUTO LINE staff, might see things differently and report a settlement. Then, having reported a settlement, the consumer will be asked about remedies and compliance, as well as contacts from BBB AUTO LINE to document the settlement and monitor compliance. BBB AUTO LINE, of course, won’t have metrics on any of these, since it didn’t report a settlement in the first place. So this single misunderstanding could yield apparent discordances on multiple metrics. And, as detailed below, there are many other types of misunderstanding that lead to apparent (but not true) discrepancies – and some will have similar downstream effects.

Still, while most divergences tend to be reasonably explicable, this isn’t so with all of them. Sometimes the survey reveals a discordance that can’t be explained or resolved, most clearly when the consumer and BBB AUTO LINE each report that communications broke down because the other didn’t return calls. Other times (though the auditor takes great care in reaching such conclusions), a consumer response was clearly wrong.²¹¹

And, sometimes, there’s a clear error in BBB AUTO LINE’s records. These don’t occur frequently (and certain errors have already become less frequent as BBB AUTO LINE has acted on the auditor’s past suggestions²¹²). This year the auditor has focused particularly on compliance reporting, where the number of errors (while still small) may be somewhat higher than the remaining errors on other metrics.

Once the auditor identified a file, he explored any question that caught his attention -- but his initial, primary, and sometimes sole focus was on the issue that drew him there in the first place.

²¹¹ The auditor may reach this conclusion, for example, if he calls the consumer directly to explore the underlying fact in more detail and, after the auditor provides some explanation, the consumer acknowledge an error. (For example, although the survey instrument provides detail about the meaning of “arbitration,” some consumers think that the entire process, including mediation, is all part of an arbitration.) In another situation, the consumer may report not receiving a document, but his file contains a signed copy of the document that he returned.

²¹² For example, after the auditor questioned some cases where compliance was reported as timely because the files didn’t document that the consumer had granted an extension requested by the manufacturer, BBB AUTO LINE took steps to encourage dispute resolutions specialists to obtain and document consent from both parties. Note as well the discussion of facial anomalies in the text below.

Consumers with counsel. As discussed below,²¹³ the survey doesn't reach consumers who used lawyers, and thus doesn't highlight specific "attorney cases" for review. To compensate, the auditor examined, for each population (national, Florida, and Ohio), 25 files for consumers who used counsel.²¹⁴

Facial anomalies. Several years ago, the auditor noted that 40 cases (0.4% of all cases) on the BBB AUTO LINE spread sheet had facial anomalies (for example, mediations and arbitrations with no remedy identified; ineligible or withdrawn cases for which a remedy was identified).²¹⁵ BBB AUTO LINE now addresses these before turning over the spread sheet, essentially using the sheet as an internal diagnostic tool, and the issue has been resolved.

A. Micro Analysis Summary

1. Introduction

As noted above, the audit serves to evaluate both BBB AUTO LINE's processes and its record-keeping. With respect to the former, the targeted examination of potentially problematic case files, as described above, made it more likely that the auditor would hone in on any problems that existed). With respect to the latter, the same review provided context for understanding, and to some extent discounting, many "discordances" between BBB AUTO LINE records and consumer survey responses. In providing such context, the examination substantially alleviates possible concerns about that record-keeping, by distinguishing cases where BBB AUTO LINE was clearly wrong from situations where the consumer was clearly or likely wrong, ambiguous situations, and – most commonly – "reasonably explicable discordances." The auditor notes examples of each below.

Consider, for example, Table III-V. The table reports the responses, for the national sample, to a seemingly straightforward question: Was the case closed by arbitration, mediation, withdrawal, or a finding of ineligibility? This doesn't involve details about which a consumer might be uncertain, such as whether a particular document was received, or quantitative measures about which his memory might be fuzzy, such as the time to process his complaint. So it might at first seem surprising that the discordance rate was 7.7% – which, if projected to all this year's cases, would amount to over 700 cases on this metric. But, as touched on above and detailed below, the number of true discordances is likely a small percentage of this number (and likely includes some consumer error as well).

²¹³ Section II.C.2 of this chapter.

²¹⁴ For each population, the auditor this year sorted the cases in reverse alphabetical order by the consumer's last name, and then examined the last 25 cases (*e.g.*, the last case listed alphabetically, and the 24 cases immediately preceding it).

²¹⁵ To emphasize a point: this isn't 40 cases from among the 400 or so consumers surveyed each year in the national survey; it's 40 cases from the roughly 10,000 filed with BBB AUTO LINE annually.

2. Reasonably Explicable Discordances

This section describes recurring patterns that the auditor has observed in the targeted micro analysis that he began with the 2016 audit. These represent recurring patterns, and he's worked with TechnoMetrica to refine the survey a bit to address them. Unfortunately, though, these refinements involve trade-offs. Particularly for some subtle matters (as with the complications in arbitrations discussed in section c), providing the level of detail that might usefully clarify matters for a few consumers could frustrate others, perhaps even leading some to abandon the survey before they finish it.²¹⁶ The cost of clarification, in other words, might be too high and, in some cases, it seems preferable to accept a few discordances and then explain them rather than to try to eliminate them.

a. Straddle Cases Where Consumers Reported Developments within the Program but Outside the Audit Year

In a straddle case, an entry appears on the spread sheet for the audit year because a case was closed during that year, but, later, either the original case was reopened or a related case was filed – and the later case *didn't* close during the audit year. The spread sheet (and thus the answers available to TechnoMetrica) didn't, and often couldn't, reflect the later developments that the consumer reported – events that sometimes occurred within days of the survey.²¹⁷ In this year's national survey, straddles explained 3 of the 31 discordant cases on process (9%).²¹⁸

b. Settlements that Consumers Reach Outside the Program

Consumers sometimes resolve complaints directly with the manufacturer in ways that BBB AUTO LINE doesn't record as a "settlement."²¹⁹ Or they settle a matter with the *dealer*, and such settlements are inherently outside the BBB AUTO LINE process. BBB AUTO LINE reports these cases as withdrawn or ineligible, depending on the circumstances. Still, BBB AUTO LINE staff may have done some work with the parties, and some consumers describe

²¹⁶ For example, one category discussed below involves how BBB AUTO LINE treats settlements that the parties reach after arbitration begins. This doesn't affect many cases, and an explanation would require sufficient detail that (particularly if similar detail were added for other issues) a survey that's already long enough to try some consumers' patience might, for some of them, become too unwieldy to finish.

²¹⁷ Consumers are interviewed in March. An earlier date wouldn't allow many consumers whose cases closed in December to obtain and evaluate compliance, particularly on repair remedies. On the other hand, a later date wouldn't allow sufficient time for TechnoMetrica to write up the results and the auditor to complete his analysis in time for a June filing.

²¹⁸ This was an atypically low figure. In 2019, for example, they accounted they accounted for 9 of 32 such cases (28%).

²¹⁹ Although not covered by the survey, this often happens when consumers have counsel.

such cases as “mediated.”

c. Complications in Arbitrations

Settlements. If a case settles after a hearing is scheduled but before it begins, it’s reported as mediated. If it settles after the hearing begins but before the arbitrator issues a decision, though, the agreement is embodied in a “consent decision,” prepared by BBB staff, that’s signed by the parties and arbitrator – and, to the apparent (and understandable) confusion of some consumers, BBB AUTO LINE reports that the case was arbitrated.

Even more confusingly, if the parties settle *after* the arbitrator issues a decision, the settlement supersedes the decision, but BBB AUTO LINE still records the process as arbitration – and, to the understandable confusion of some consumers in these situations, it usually (though not consistently) records the *remedy* as what the arbitrator ordered. While BBB AUTO LINE’s intended practice may well be the best way to handle a situation with no optimal solution,²²⁰ it’s hardly a resolution that would be intuitively obvious to surveyed consumers.²²¹

Reconvened cases. As discussed in Chapter 2,²²² when a consumer isn’t satisfied with the execution of an “interim repair remedy,” the consumer can ask for the case to reconvene or, in California, can seek reconsideration. BBB AUTO LINE’s normal practice is then to report the arbitrator’s second decision as the “remedy,” with the logical if confusing nuance that a denial on reconsideration is to be reported as a denial while a denial of a request to reconvene leaves intact the original repair decision. Consumers may well be confused about the treatment of denials, but, otherwise, this doesn’t appear to be a significant source of consumer confusion.

d. Confusion about Ineligibility and Withdrawals

Some consumers withdrew complaints early in the process, perhaps because they were told that they weren’t eligible for specific remedies or presumptions under the program.²²³ The

²²⁰ Once an arbitrator has heard and decided the case, for example, the program needs to report an arbitrated case even if there’s a superseding settlement. And, once a case is reported as arbitrated, it would seem incongruous to associate with an arbitration decision a different remedy than that which the arbitrator found appropriate. To do so would muddy the waters when BBB AUTO LINE develops aggregate statistics that show regulators the relief (if any) that arbitrators collectively found appropriate.

²²¹ As noted above, it’s also impractical to clarify these nuances in survey questions, without bogging down the survey with details that, to most consumers, would be complex and even annoying minutia.

²²² Chapter 2, Section II.D;

²²³ A consumer might withdraw a complaint, for example, if she hadn’t yet afforded the manufacturer a final repair attempt under state law and had travel plans that prevented her from

BBB AUTO LINE characterizes these complaints as withdrawn (though it doesn't routinely use that word in its closing letter), but some surveyed consumers have described them as ineligible. Other consumers have classified ineligible cases as withdrawn, or cases that were either ineligible or withdrawn as "other" (and then provided details consistent with BBB AUTO LINE's treatment of the case).

e. Consumers Dissatisfied with the Performance of a Remedy

Another recurring situation involves consumers who received a mediated repair remedy, who weren't happy with the result but didn't follow up with BBB AUTO LINE – and who, during the survey, either described their complaint as ineligible, withdrawn, or "other."

As noted previously, mediated repair remedies typically provide for the manufacturer's representative to examine the car for warranted problems, and sometimes the representative reports no warranted issue. In essence, some consumers confused the manufacturer's determination that they didn't qualify *for relief* (a determination that they could have challenged) as a determination by BBB AUTO LINE of ineligibility *for the program*.

f. Consumers Who Respond "Other" but Provide Details Consistent with BBB AUTO LINE's Characterization of the Case

Consumers who didn't agree with BBB AUTO LINE's description of the process used to resolve their case were then asked if the case was arbitrated, mediated, ineligible, withdrawn, or "other."²²⁴ Those who responded "other" were then invited to explain their responses, and many provided details that were actually consistent with BBB AUTO LINE's records.²²⁵ In essence, many chose the "other" option to provide clarification and supplementation that's consistent with BBB AUTO LINE's record.

g. Consumers who Obtained Less Relief Than They Sought and Described Their Claims as "Ineligible"

Some consumers appear to use the term "ineligible" when they didn't get all the relief they wanted, as where they sought broader relief and accepted a cash payment.

doing so expeditiously.

²²⁴ More precisely, each consumer was initially asked to choose among four of the five possible responses. If BBB AUTO LINE recorded a case as arbitrated and the consumer disagreed, she was asked if it was mediated, ineligible, withdrawn, or "other." The process she had already rejected (arbitration in this example) wasn't included among the options in the follow-up.

²²⁵ For example, consider the case of the consumer who settled with the dealer. As discussed above, some consumers reported this as a settlement. But some other consumers, who understood that this couldn't be a settlement under the program, said "other" to the process question and then described a settlement with the dealer.

h. Misunderstanding of “Arbitration”

Despite efforts to explain the matter in the survey text, some consumers misunderstand the term “arbitration,” and, assume that, since BBB AUTO LINE is an arbitration program, everything it does is properly classified as arbitration.

i. Confusion about Timing

The previous categories focused primarily on misunderstandings that affected responses to the process and remedy questions. There are also several sources of potential confusion on questions about timing.

In terms of misunderstanding about times to decide the case, *first*, surveyed consumers (outside Florida a California) are specifically told, for purposes of measuring the duration of their case, that the case doesn’t begin until they returned detailed information about their cars to BBB AUTO LINE; it’s not clear, though, that all consumers applied this standard. *Second*, as explained in Chapter 2, when a consumer isn’t satisfied with the implementation of a mediated repair settlement and wants to pursue the matter further, a new case is opened.²²⁶ In dealing with timing questions, some consumers (not unreasonably) may merge separate but related cases into one. *Third*, while the survey focused on the time to *secure* a remedy, some consumers may have included in their responses the time to *implement* it.

As to the timing of *compliance*, BBB AUTO LINE may obtain extensions from both parties if the manufacturer can’t comply in a timely fashion, perhaps because it can’t obtain a part needed for a repair, or perhaps because the consumers’ specific demands for a replacement car requires a special order. Although the survey asks consumers to consider extensions to which they’ve agreed in assessing whether compliance was timely, it’s not clear that all consumers do so.

j. Compliance and Satisfaction

As discussed previously,²²⁷ there’s a difference between manufacturer compliance (or “performance”) and consumer satisfaction. Even if a consumer isn’t satisfied, for example, BBB AUTO LINE reports “compliance” if a settlement provided that the manufacturer would inspect the car and correct any warranted defects, and the manufacturer did an inspection and reported that there wasn’t a problem.²²⁸

²²⁶ An initial reopened case uses a “1R” suffix added to the original case number. Occasional cases have a 2R suffix and, less often, the numbering goes higher.

²²⁷ Ch. 2, Section II.D.

²²⁸ As noted in Chapter II, Section II.D, the auditor thought this approach was reasonable, although he recommends that BBB AUTO LINE revisit this determination if a subsequent decision by the arbitrator that are inconsistent with the original characterization.

3. Consumer Error

a. Demonstrable Error Shown by a Subsequent Call

Consumers who gave discordant responses on process or remedy questions were asked if they would take a follow-up call, and the auditor sometimes contacts a consumer for clarification. In some of these cases, a consumer has essentially retracted his earlier response.²²⁹

b. Highly Likely Error Shown by BBB AUTO LINE Records

The auditor hesitates to characterize specific consumer responses as wrong. There's an asymmetry in the audit process, since he has broad access to the underlying BBB AUTO LINE documentation but only survey responses, sometimes supplemented by a follow-up call, for consumers. Further, seeming discordances aren't necessarily inconsistencies; even if BBB AUTO LINE records that consumers were *sent* a communication, for example, that doesn't necessarily establish that the consumer *received* it. Still, sometimes consumer error seems highly likely, and sometimes, based on apparently clear documentation, it seems likely to the point of near-certainty. This would be the case, for example, when a consumer reports using arbitration, but the underlying case files (including a check for a follow-on case) contain none of the extensive documentation that would accompany arbitration.

Or consider a document receipt question. Some consumers said they didn't receive an initial packet of documents from BBB AUTO LINE. But, when a consumer files an online or phone complaint, BBB AUTO LINE sends an initial packet that includes a consumer complaint form incorporating the information the consumer had provided; the consumer is asked to correct, supplement, sign and return the form. The auditor can point to consumer error, with a high degree of confidence, when consumers say that they didn't receive these documents, but BBB AUTO LINE's files contain signed documents that they *returned*.²³⁰

4. Demonstrable BBB AUTO LINE error

In some cases, data on the BBB AUTO LINE spread sheet is inconsistent with BBB AUTO LINE's own underlying files. The auditor has found some such inconsistencies by facial anomalies²³¹ and others by his targeted file examination. These include, for example, occasional

²²⁹ For example, although the questions include short explanations of "settlements" and "arbitration," some consumers confuse the two. Thus, a consumer who called his settlement and "arbitration" might correct his response after the auditor explained in more detail the difference between the two.

²³⁰ Further, these documents generally contain annotations in the same handwriting as the signature.

²³¹ See Section I of this chapter.

cases (less frequent this year than last) where BBB AUTO LINE counted a case as timely by relying on an extension requested by the manufacturer for which it hadn't documented the consumer's assent.²³²

5. Ambiguous Cases: Breakdowns in Communications, with Each Party Attributing the Breakdown to the Other

In audits over the last five years, the auditor has found occasional discordances during some (but not all) of his audits that involve breakdown in communications that the auditor can't explain or resolve. These are cases where the BBB AUTO LINE records and the consumer each attribute the breakdown to the other. And, as noted before, though, there's a fundamental asymmetry in the audit here. The auditor has access to BBB AUTO LINE's case files, and these typically include a letter that references other attempts to reach the consumer, sometimes with some detail and, sometimes, with further documentation in the DRS's notes. But for the consumer, the auditor generally has only survey responses.²³³

Since 2019, though, as BBB AUTO LINE has relied increasingly on its online platform to communicate with consumers, these general types of situations have become somewhat more frequent, though it's also somewhat easier to understand why they've occurred. It seems likely that some consumers have had trouble accessing their online accounts.²³⁴

6. Treatment of "Not Sure" Response

Some questions include a "not sure" option. Consumers who chose that option weren't included, for purposes of the specific response, in either the micro or the macro analyses.²³⁵ To illustrate, consider a question posed to 100 people, with 45 responding "yes," 45 "no," and 10

²³² Chapter 2, Section II.D.

²³³ The auditor has at most encountered a few of these cases each year, but, among those few, he did find one unusual case, in the 2018 audit, where the consumer's contacts were documented. The case was among the "attorney" cases that the auditor reviews each year. See Section II.B.2 of this chapter. The files contained a letter from an attorney who was responding to an earlier letter from BBB AUTO LINE, reporting that the staff hadn't been able to reach him. In his response the attorney reported, by dates, two attempts to reach BBB AUTO LINE by phone (with a message reportedly left on at least one), as well as another attempt to reach BBB AUTO LINE by email.

²³⁴ For further discussions of this matter, see Chapter 2, section II.B, and Chapter 3, section III.F.

²³⁵ One area where the problem with including "not sure" responses is particularly stark involves satisfaction questions. Since "not sure" response don't add any points to the arbitrator satisfaction calculations, counting them in calculating average grades would be tantamount to treating them as failing grades.

“not sure.” The chart would report a base of 90, with 45 affirmative and 45 negative replies.²³⁶

7. Branching Issues

This is something of a flip side to the preceding section, where BBB AUTO LINE recorded a specific result but the consumer couldn't recall the answer. Here, the consumer gives a specific response, but BBB AUTO LINE, because of a prior entry, didn't record one.²³⁷ Consider, for example, the consumer in subsection 2.b who withdrew a complaint because she reached a settlement with the dealer. On the process metric, BBB AUTO LINE records the case as withdrawn and (in what the auditor characterized as a reasonably explicable discordance on that metric) consumers may report a settlement. But now consider the remedy metric. Since BBB AUTO LINE showed the matter as withdrawn, it didn't record a remedy; but, since the consumer described a settlement, she *was* asked about her what, if any, remedy she received. Thus, there's essentially a reasonably explicable discordance on remedy, as well as on process, with the second discordance flowing directly from the first.²³⁸

8. Micro Analysis: Broad Conclusions

Without delving into great detail here – the detail appears in the rest of the report – the micro analyses for the three populations draws on responses by 594 consumers who completed surveys,²³⁹ and, for these consumers, BBB AUTO LINE records usually matched consumer responses on key metrics.

Also importantly, the records matched the underlying circumstances even more frequently, since many of the discordances reflected the reasonably explicable discordances and other considerations discussed above. This is often clear from the BBB AUTO LINE records (including the case handler's notes) or the consumer's survey responses.²⁴⁰ On occasion, the

²³⁶ To pursue this example a bit further, if the 10% “not sure” responses were reported separately, then the affirmative and negative responses would only total 90%. However, the BBB AUTO LINE total would be 100% – so the reduced figure for the survey would introduce an apparent error that wasn't really there.

²³⁷ This doesn't include cases where BBB AUTO LINE *mistakenly* failed to record an entry.

²³⁸ Indeed, it's arguable that there isn't a true discordance on the remedy metric at all.

²³⁹ As explained in Section I.D, below, this includes 31 Ohio consumers who were surveyed in the national sample and also included in the Ohio sample.

²⁴⁰ Many questions include an “other” response. When a consumer is surveyed, for example, if BBB AUTO LINE records report that her case was mediated, she's first asked if it was mediated. If she says “no,” she's then given a selection of choices (it wasn't eligible for the program; she withdrew the complaint; an arbitrator decided the case; other). If the consumer replies other, TechnoMetrica reports any other statement that she then makes.

auditor has clarified the matter in a call to a consumer.²⁴¹ Based on his experience over multiple years, moreover, the auditor has detected certain recurring patterns; for example, where BBB AUTO LINE reports a case as ineligible or withdrawn and the consumer reports a settlement, the consumer likely reached a settlement outside the program. For the process and remedy metrics, actual discordances appear to be no more than 1-2%, and likely below 1%; the figure may be somewhat higher on the compliance metric. In other words, the micro analysis shows that BBB AUTO LINE records accurately report the underlying circumstances on these metrics in the vast majority of cases.

Together with the macro analysis discussed below, results of this nature gave the auditor substantial confidence that the spread sheet from which BBB AUTO LINE made its calls was accurate. Further, some additional scrutiny of the cases omitted from that spread sheet (cases where consumers had attorneys and those that preceded a further case involving the same vehicle) supports the conclusion that those records were substantially accurate as well.

B. Overview of the Macro Analysis

Before turning to specifics of the macro analysis, which compares aggregate results from the survey to aggregate figures reported by BBB AUTO LINE, it's important to understand the reach and limits of consumer surveys. To begin, this section describes the types of errors that can undercut the utility of *any* consumer survey, and explains how the auditor, working with TechnoMetrica, has sought to minimize potential problems.

First, the auditor addressed *coverage errors*. These arise when the sampling frame, the list from which consumers were selected for calling, differs systematically from the overall population. Thus, as explained below, the sample frame didn't include cases where consumers had lawyers, as well as those that were followed by a related case that also closed during the audit year. Absent parallel adjustments to BBB AUTO LINE's aggregate figures, there would have been a coverage error. In essence, the cases that were omitted had different profiles than those that were included,²⁴² and the audit would have compared apples to oranges. And this was particularly important for the process and remedy variables, where the auditor's analysis relied most heavily on comparisons between aggregate statistics based on BBB AUTO LINE's records and aggregates based on the survey.

To address these problems for certain key metrics, the auditor developed aggregates of his own from the *modified* spread sheets that TechnoMetrica generated and used to place calls – a modified spread sheet that eliminated both attorney cases and earlier cases where there were multiple complaints about the same vehicle. The auditor then compared the survey results to aggregates based on the precise “sampling frame” from which the surveyed consumers were randomly selected – so that the survey became a direct test of the accuracy of the sampling

²⁴¹ Consumers who disagree with BBB AUTO LINE records on process or remedy are asked at the end of the survey if they're willing to take a follow-up call from the auditor.

²⁴² For example, in situations involving multiple complaints about the same vehicle, the earlier (omitted) cases mostly involved mediations.

frame.²⁴³ In essence, under the protocol used by the current auditor, coverage errors aren't an issue.

Second, the auditor took steps to address, in the area where it seemed to matter the most, the possibility of a *non-response error*. These arise when some types of consumers are less likely to respond to the survey than others. Specifically (and not surprisingly), the auditor has found that consumers who weren't eligible for the program were less likely to complete a survey than those who used mediation or arbitration.²⁴⁴ As detailed below, the auditor essentially "weighted" the survey numbers on the process question to account for disparate response rates, and this adjustment has far more often than not (though not consistently) corrected or at least reduced some apparent discrepancies.

Third, another issue is *measurement error*. These arise, for example, from the various "reasonably explicable discordances" described above, most of which, in turn, stem either from the survey process itself (as with straddle cases) or from subtle distinctions that BBB AUTO LINE makes in classifying a case (for example, should a case that the consumer settles with the dealer rather than the manufacturer be treated as ineligible or as withdrawn).

Once the nature of numerous discordances started to become apparent with the 2016 audit, the auditor worked with TechnoMetrica to refine the questionnaire to address some confusion, but we haven't been able to fully eliminate it.²⁴⁵ Indeed, there's a trade-off here. TechnoMetrica calls consumers at home or on cell phones, interrupting consumer's daily lives to administer an extended survey. And, while there's virtue in precision, there's also virtue in brevity; consumers are less likely to finish the survey if it's weighted down with detailed excursions that many would view as tangents. And even with detailed excursions, some confusion would doubtless remain. So, coverage errors will invariably impact the micro analysis, and these errors will extend, as well, to the macro analysis that compares BBB AUTO LINE's aggregates to the survey results. There is, however, a curious twist: two coverage errors might effectively cancel each other out in the macro analysis.²⁴⁶

²⁴³ Of course, this required some further steps to restore the cases that had been omitted from the spread sheet that comprised the sampling frame. The auditor addresses below how this was done.

²⁴⁴ Consumers who aren't eligible were often told so within a day; perhaps they were less vested in the program and less willing to complete a detailed survey.

²⁴⁵ For example, to address the straddle case issue discussed in Section A.1.2, the survey repeatedly asks consumers, if they filed multiple complaints during the year, to focus on the last case closed last year. It's hardly a surprise, though, that some consumers still report on follow-on cases from this year.

²⁴⁶ In the simplest example, if one case is reported by a consumer as ineligible and BBB AUTO LINE as withdrawn, and a second case is reported by the consumer as withdrawn and BBB AUTO LINE as ineligible, there's no net effect on the aggregate macro figures.

Fourth, there's a *sampling error* that's inherent in projecting to the whole population survey results from a subset of that population.²⁴⁷ This is measured by the "margin of error," and that margin is least when dealing with the largest populations; for example, in projecting from 403 consumers interviewed in the national survey to the "sampling frame" of 6741 from which they were drawn. Even here, the margin of error was +/-4.3%. And it grew to +/-7.0% for the (smaller) Florida sample and to +/- 9.4% for the (even smaller) Ohio sample – despite TechnoMetrica's efforts to contact every consumer in the Ohio sample. And *those* numbers grow even further for questions posed to only some of the interviewed consumers – which include most of the questions in the survey.²⁴⁸ On top of that, the margin of error has a "confidence interval," usually, as here, set at 95%. While the precise statistical implications are complex, this means broadly that, even if there were no problem with BBB AUTO LINE's records, occasional comparisons can reasonably be expected to fall outside the margin.

When the range of errors reaches the realm of 20% (+/-10%) or higher, the survey provides rather limited support (at best) to conclude that the underlying aggregates are accurate. Despite a well-designed survey instrument, administered by a professional survey firm, despite reasonably large numbers of completed surveys in the national survey (403) and Florida survey (154), and, despite repeated efforts to reach *every* Ohio consumer who didn't use an attorney, the auditor might find that some results are potentially problematic *if he had to rely on the macro analysis alone*. It's in those instances that the micro analysis, sometimes further reinforced by historical data, can provide the support that the macro analysis doesn't.

In sum, the process developed by the auditor, working with TechnoMetrica, essentially eliminates coverage errors and (for the process metric where it seemed to matter most) non-response errors. However, it doesn't eliminate measurement errors, which as noted above can affect perhaps five to seven percent of consumer responses on the straightforward process question. And it doesn't eliminate sampling errors, which are inevitable in any survey process that doesn't attempt a full census of all consumers. And these errors can have a cumulative effect, so it's quite likely (and at most a reason for further exploration) or some errors in the macro study fall outside the margin of error.²⁴⁹

²⁴⁷ Such projection is unavoidable; even in Ohio, where TechnoMetrica attempted to contact *every* eligible consumer, they completed interviews with only 29%.

²⁴⁸ For example, while 78 Ohio consumers completed a survey, only 20 reported using arbitration. Responses involving *compliance* with arbitration were considered only if consumers received an award and accepted it – and there were only 15 consumers who met those criteria.

²⁴⁹ These errors, though, aren't purely additive. As noted above, some errors detected in the micro analysis will cancel each other out for purposes of the macro analysis; so, for example, if one consumer said that a case recorded by BBB AUTO LINE as ineligible was withdrawn, and another said that a case record by BBB AUTO LINE as withdrawn was ineligible, the measurement errors would cancel out in the macro analysis. Also, the coverage errors and sampling errors don't necessarily move in the same direction. A net coverage error could actually balance out a net sampling error if they moved in opposite directions.

Fortunately, as discussed further below, the survey does more than allow a macro analysis. It also identifies cases that bear further scrutiny in the micro analysis, discussed above, which provides another critical leg to the auditor's analysis.

C. Satisfaction Rates

Additionally, the survey poses questions about consumer satisfaction and the audit reports satisfaction rates as grades on a 4.0 scale. Detailed findings are set forth in subsections H of sections III, IV, and V (along with caveats about attaching undue significance to small differences or year-to-year fluctuations in grades). Among the findings:

- (1) Consumers who used mediation or arbitration gave BBB AUTO LINE staff a B/B+, with grades of 3.12 (national), 3.25 (Florida), and 3.19 (Ohio).
- (2) In grading arbitrators, not surprisingly, consumers who got more favorable decisions were more impressed with their arbitrators' virtues. Thus, composite grades from consumers with repurchase or replacement remedies were 3.78 (national), 3.73 (Florida) and 3.88 (Ohio); grades from those with no award were 1.65 (national), 1.21 (Florida) and 1.20 (Ohio).
- (3) When asked if they would recommend BBB AUTO LINE to friends and family, 63.7% in the national sample said yes, as did 69.8% in Florida and 80.5% in Ohio. Among consumers who used mediation or arbitration, the numbers rose to **82.8%** for the national sample, 82.6% for Florida, and 89.6% for Ohio. Even among consumers who went to arbitration and lost, nearly half of those who responded said they would recommend BBB AUTO LINE to friends and family.
- (4) The auditor also compares satisfaction rates from year to year, although he does so with caution, since fluctuations in reported satisfaction may reflect fluctuations in the relief obtained by consumers. However, one interesting statistic that stood out this year was that, in the national sample, consumers who *didn't* get an award seemed to have growing respect for the arbitrators. The auditor wouldn't expect consumers whose claims were denied to be particularly impressed with their arbitrators, but the grade has risen for five consecutive years, from, in the national sample, from 0.79 (D-) in 2015 to 1.65 (C-) in 2020.

II. Conducting the Survey

A. TechnoMetrica

The auditor lacks the capacity to conduct a survey himself and BBB National Programs, Inc. contracted with TechnoMetrica Market Intelligence²⁵⁰ to conduct the study and help the

²⁵⁰ TechnoMetrica describes itself as follows:

Incorporated in 1992, TechnoMetrica Market Intelligence is a full-service firm

auditor in designing and analyzing it; this is essentially the process used since 2015.²⁵¹ The auditor participated in the selection process, and, once TechnoMetrica was chosen, he worked directly with TechnoMetrica and took the lead in deciding the broad outline of the survey's approach. He worked closely with TechnoMetrica in creating the survey instrument, and, while he has solicited input from the BBB AUTO LINE, the auditor made the final decisions on questions about the survey's approach and content.

B. The Population That Was Sampled

1. Temporal Scope

Consistent with prior audits by the current auditor, the audit covers cases *closed* between January and December of the audit year, regardless of when they opened. This is a consistent standard, applied year-to-year, and avoids double-counting a case in two separate years.

2. Consumers Represented by Counsel

When consumers had lawyers representing them, their point of contact for phone calls and correspondence was through their attorneys. But the FTC rule doesn't seem to contemplate calls to attorneys – the audit rule specifies contacts with “consumers.” And attorneys were in any event unlikely to respond to a multi-question, case-specific survey. The likely problems were exacerbated by firms that handled a large number of cases – sometimes hundreds of them. Indeed, the auditor has previously found, for example, that as many as 60% of cases with attorneys were brought by three firms.

However, there were also problems with directly contacting consumers who had counsel. These consumers hadn't provided personal phone numbers as contact information, so it would

offering enterprise-class research to a wide variety of industries. For over 25 years, we've served our clients an extensive menu of customizable research options backed by skilled personnel with a broad knowledge base spanning a wide variety of industries and research techniques.

In addition to our market research expertise, our nationally recognized polling arm, TIPP (TechnoMetrica Institute of Policy and Politics), achieved most accurate pollster status for the last 5 consecutive Presidential elections (2004, 2008, 2012, 2016 and 2020).

TechnoMetrica is a certified MBE/DBE/SBE in the state of New Jersey and is a member of a number of industry organizations, including AAPOR and the American Marketing Association.

²⁵¹ Prior to 2015, the contract was arranged by the Council of Better Business Bureaus, who at the time oversaw BBB AUTO LINE. The auditor spoke to TechnoMetrica before the 2015 survey and agreed to work with them, and each year since has requested the use of TechnoMetrica.

have taken some effort to develop that information – and many consumers likely had unlisted phone numbers that couldn't be obtained. So, even with substantial added effort, these consumers would still have been under-sampled. Further, many lawyers specifically demanded that their clients not be contacted directly by BBB AUTO LINE, which could raise serious concerns about direct contact by a contractor to BBB AUTO LINE. Also, the information available from consumers who had lawyers would, in many respects, have been less useful than the information from other consumers. The former were more likely to use arbitration, for example, but far less likely to appear in person at arbitration hearings. In general, consumers with lawyers were less likely to have direct experience with the process – they might well not have known if their lawyers had received certain written communications – and they may well have been less committed to the process, perhaps even viewing it (as some attorneys might have viewed it) as a hurdle to clear so they could go to court under a state lemon law.

As in past years, the current auditor excluded consumers with counsel from the survey. He thus omitted about 15.9% of consumers from the national sample, 28.1% from the Florida sample, and about 30.3% from the Ohio sample. But, though TechnoMetrica didn't survey these consumers, the auditor did review, for each population, 25 case files for consumers who used counsel.

3. Multiple Complaints about the Same Vehicle (MCSVs)

This year's survey also repeated the auditor's prior approach to MCSVs. Most of these were "1R" cases,²⁵² where a settlement²⁵³ produces a remedy (usually an inspection under the auspices of a manufacturer representative followed by a repair if the representative finds a problem); the manufacturer undertakes to perform; the consumer isn't satisfied; and the consumer, in timely fashion, tells BBB AUTO LINE that she wants to proceed further.²⁵⁴ TechnoMetrica identified MCSVs, including but not limited to 1R cases, primarily by finding cases with the same contact phone numbers.²⁵⁵

The BBB AUTO LINE's general approach – to open a new "R" case when a consumer isn't satisfied with the implementation of a remedy – has a sound basis. "R" cases are most often preceded by mediated repair settlements, and, as noted previously, the FTC, Florida, and Ohio all

²⁵² "1R" also includes "2R" (and beyond).

²⁵³ 1R case numbers are used only in the aftermath of settlements; if a consumer isn't satisfied with the implementation of an *arbitrated* remedy, the case is reconvened before the arbitrator.

²⁵⁴ Other MCSVs might also include, for example, a situation where the consumer withdrew a complaint because she was travelling abroad, and refiled when she returned.

²⁵⁵ This would also screen out the rare case where a consumer filed multiple cases involving *different* vehicles in a single year. A single phone number could also be associated with multiple cases when consumers have counsel and the given number is the attorney's, but attorney cases are already excluded from the survey.

recognize repair remedies as appropriate outcomes to dispute resolution, and there are good reasons to do so.²⁵⁶ Yet the process can take time; an interim repair decision gives the manufacturer thirty days to complete the repair, and the consumer then has another thirty days (and longer if the arbitrator decides it's necessary) to evaluate the repair.²⁵⁷ The manufacturer and consumer must coordinate an inspection and possible repair, and, if the manufacturer agrees that a repair is warranted, the consumer may need to drive the car for weeks before deciding whether the repair satisfies his concerns. Indeed, these multiple steps can easily absorb most if not all of the 40 days generally allotted to process a claim. So, from BBB AUTO LINE's perspective, and from the perspective of this review, it seems reasonable to restart the clock for a "1R" case.

Yet starting a new case poses complications of its own, both for the survey and for calculating aggregates. As a practical matter, for example, in the unlikely event that a consumer who was called twice about the same vehicle was willing to do the survey twice, he might well confuse events in the original case with those in the 1R case. But more fundamentally, a consumer who was called twice about the same vehicle could be annoyed and likely *wouldn't* repeat the survey.²⁵⁸ So, at the auditor's request and in the face of MCSVs, TechnoMetrica scrubbed all but the latest case from the list. Then, when consumers were called, they were asked to focus solely on the *last* case they filed if they filed multiple complaints during the year (the result they would likely have focused on in any event).

MCSVs would also create an apples and oranges problem – on the order of several percent – if the auditor compared BBB AUTO LINE's aggregate calculations to the survey results without making appropriate adjustments. To address this *coverage error*,²⁵⁹ the auditor (as noted above) compared the survey results to aggregates developed from the abbreviated spread sheet created by TechnoMetrica.

C. Sampling

As noted above, TechnoMetrica scrubbed the lists provided by BBB AUTO LINE before sampling. Using phone numbers as the key fields, multiple complaints from the same consumer were identified and removed, as were records with no contact phone number. The size of the national sampling frame after scrubbing for MCSVs and attorney cases was 7,804 records. According to TechnoMetrica,

²⁵⁶ Chapter II, Section II.D. *See also* 16 C.F.R. § 703.5(d), former Florida Rule 5J-11-010(2)(C), and Ohio Administrative Code 109:4-4-04(C)(5)(A) (all recognizes repair remedies as appropriate for the resolution of a dispute).

²⁵⁷ BBB AUTO LINE Rule 24.B.2. California Rule 23.A similarly provided the manufacturer thirty days to comply with the arbitrator's decision.

²⁵⁸ In Ohio, where TechnoMetrica needed to call every eligible consumer, this annoyance and likely futility would have reached every consumer with MCSVs.

²⁵⁹ See Section I.B of this chapter.

The sampling frame was then randomized and divided it into a total of 14 replicates: 13 replicates of 500 records each and 1 with 241 records. Sample for data collection was released in replicates – that is, a fresh replicate was only released upon completion of the prior replicate. This sampling method ensured that the National sample was truly representative of the population of 2020 cases. The National data collection used five replicates.

Sample for the supplemental Florida survey was taken from the remaining replicates 6 through 14. Because of limited Florida sample this year, data collection was completed by utilizing uncompleted Florida records from replicates 1-5. The sampling frame for Florida was 684.

Due to extremely limited Ohio sample, the supplemental Ohio survey also utilized records from all replicates. In addition, Ohio completes in the National survey were counted under both National and Ohio surveys. The sampling frame for the Ohio survey was 287.

D. Fielding and Margin of Error

Again quoting from TechnoMetrica,

Interviews were conducted on weeknights between 3/9/21 and 3/22/20, with up to 4 call attempts per respondent.

A total of 403 completes were obtained in the National survey, 154 in Florida and 78 in Ohio. The following table shows the response rate and margin of error for each of the surveys.

	Sampling Frame	All Used Sample	Valid Used Sample*	Completes	Response Rate	Margin of Error†
National	6741	2094	1935	403	20.8%	+/- 4.34
Florida	1126	819	772	154	19.9%	+/- 7.07
Ohio	287	287	268	78	29.1%	+/- 9.36

**Excludes sample without currently valid contact information*

†Note that MOE is larger for subgroups and based questions

* * *

To make explicit one aspect of this summary: Given the limited number of Ohio complaints, attempts were made (with up to four phone calls per consumer) to contact every Ohio consumer that BBB AUTO LINE identified and for which it provided currently valid contact information. Further, every Ohio consumer who was surveyed was included in the Ohio results, even if the consumer was initially contacted as part of the national survey. This was all done to maximize the Ohio responses, although in the final tally there were only 78, including 31

consumers who were called as part of the national survey..

E. Identifying Florida and Ohio Cases for the State Audits

BBB AUTO LINE's records identify both the state for the consumer's contact address *and* the state under whose program the program was processed. The two states often diverge when a consumer has an attorney, because multi-state law firms often use a central address, often an out-of-state address, for contact purposes. For consumers *without* attorneys – the only consumers contacted in the survey – the two states are generally the same.²⁶⁰ In any event, the audit uses the processing state to identify Florida and Ohio consumers for the state audits.

²⁶⁰ The auditor analyzed this in the 2018 audit. Among consumers who didn't use attorneys, 2.3% of those whose cases were processed in Florida lived elsewhere, for example, while roughly 2.0% of consumers with Florida contact information had cases processed elsewhere. For Ohio, the comparable figures were 2.4% and 1.2%.

IIA. Survey Results – Some Preliminary Notes

A NOTE ON MISSING TABLE NUMBERS

Over the years, the auditor has periodically added new tables, or consolidated or removed old tables, from his presentation. However, to facilitate comparisons among the National, Florida, and Ohio audits, as well as comparisons from one year to the next, he has maintained consistent table numbering, where possible, across the surveys and from year to year. Thus, Table III-1 in his year’s National audit reports on consumers’ responses to the same question as Table IV-1 of the Florida audit and Table V-1 of the Ohio audit, as well as to comparable questions in prior audits.

To maintain this consistency, and so long as the numbering system doesn’t become too arcane, the auditor may skip a number when he omits a table or consolidates multiple tables into one. Similarly, when the auditor adds a table that wasn’t included before, he may give it an interstitial number, such as “Table VIIA.”

The next three sections present and analyze the survey results for the National, Florida, and Ohio populations. Preliminarily, please note the following.

- (1) **Use of gendered pronouns in discussing consumers.** To add an extra layer of anonymity when the auditor refers to specific cases, the auditor doesn’t necessarily use the appropriate gender-specific pronoun.
- (2) **Characterization of the bases for targeted questions.** Many questions were directed only to some consumers, e.g., those who used mediation weren’t asked about whether they accepted an arbitrator’s award, nor were they asked to evaluate their arbitrator. When the table describes the base for a question, such as “arbitrated cases” it means “cases identified *by the consumer* as ‘arbitrated.’”
- (3) **“Imported” results.** In tables comparing consumer responses to BBB AUTO LINE records, the term “imported” refers to results “imported” from BBB AUTO LINE records.
- (4) **“Fully adjusted” results.** This refers to aggregate figures that are adjusted to exclude: (1) cases where a consumer had an attorney, and (2) where a consumer filed multiple complaints about the same vehicle during the audit year, all but the latest case to close.
- (5) **Restitution.** In a few cases from California this year, arbitrated decisions provided for payments to a consumer who no longer owned the car. BBB AUTO LINE reports these as “restitutions.”²⁶¹ The auditor treats them as interchangeable with “repurchase/replacement.”

²⁶¹ The term appears, with a broader meaning, in Section 1793.2(d) of the California Civil Code.

III. SURVEY RESULTS – NATIONAL SAMPLE

A. GENERAL INFORMATION

Table III–1: Vehicle year (Surveyed Consumers)

TOTAL	403
	100.0%
2007 or older	4
	0.9%
2008	2
	0.5%
2009	1
	0.2%
2010	3
	0.7%
2011	5
	1.2%
2012	7
	1.7%
2013	12
	3.0%
2014	13
	3.2%
2015	30
	7.4%
2016	29
	7.2%
2017	61
	15.1%
2018	67
	16.6%
2019	107
	26.6%
2020	59
	14.6%
2021	3
	0.7%

Table III–2: Agreed with Statement that BBB AUTO LINE Closed a Complaint About the Consumer’s Vehicle During the Audit Year?

TOTAL	403
	100.0%
Yes	401
	99.5%

In both of the “no” responses, the consumer agreed with the year and make, but corrected the model name. (In one of these, she gave a longer version of the name).

Table III–3: Repair attempts

	2020 Survey	2019 Survey	2018 Survey	2017 Survey
BASE: All respondents, “not sure” excluded	398	391	398	397
	100.0%	100.0%	100.0%	100.0%
None	34	53	56	74
	8.5%	13.6%	14.1%	18.6%
One	30	31	40	23
	7.5%	7.9%	10.1%	5.8%
Two	58	45	31	24
	14.6%	11.5%	7.8%	6.0%
Three	213	72	64	71
	53.5%	18.4%	16.1%	17.9%
Four or more	63	190	207	205
	15.8%	48.6%	52.0%	51.6%

**Table III-4: How did you find out that you could file a complaint with BBB AUTO LINE?
(Multiple replies accepted)**

	2020	2019	2018	2017 ²⁶²
BASE: All respondents, except those who responded “not sure”	398	394	395	401
	100.0%	100.0%	100.0%	100.0%
Manufacturer's manuals/warranty documents	33	57	48	49
	8.3%	14.5%	12.2%	12.0%
Dealer or manufacturer representative	69	71	92	63
	17.3%	18.0%	23.3%	15.7%
BBB AUTO LINE, BBB, or their websites	90	49	54	31
	22.6%	12.4%	13.7%	7.7%
Gov't website, office, or official	26	13	14	9
	6.5%	3.3%	3.5%	2.2%
Other Website (not BBB, BBB AUTO LINE, or government)	55	89	81	112
	13.8%	22.6%	20.5%	27.0%
Lawyer	19	15	22	10
	4.8%	3.8%	5.6%	2.5%
Friend/family/word of mouth	86	66	71	92
	21.6%	16.8%	18.0%	22.9%
TV/Radio/Newspaper	1	-	3	7
	0.3%	-	0.8%	1.7%
Used the program previously	11	14	17	17
	2.8%	3.6%	4.3%	4.2%
General knowledge	14	25	16	
	3.5%	6.3%	4.1%	
Other	11	4 ²⁶³	3	11
	2.8%	1.0%	0.7%	2.7%

²⁶² Multiple responses weren't accepted until 2018; previously, consumers were asked how they *first* learned about the program.

²⁶³ One consumer cited a corporate web site; two cited a recall notice; one noted that she worked in the auto industry.

B. PROCESS

Table III--5: Aggregate “process” responses

	BBB AUTO LINE stats (A1)	Same, excluding att’y cases (A2)	Fully adjusted²⁶⁴ (A3)	Survey (B1)	Survey adjusted for response rate (see below) (B2)
TOTAL	9044	7605	6741	403	
	100.0%	100.0%	100.0%	100.0%	100.0%
Mediation	2416	2310	1870	120	
	26.7%	30.4%	27.7%	29.8%	32.0%
Arbitration	1878	1077	1053	69	
	20.8%	14.1%	15.6%	17.1%	19.3%
Withdrawn	820	690	612	25	
	9.1%	9.0%	9.1%	6.2%	4.3%
Ineligible	3930	3528	3206	175	
	46.5%	46.4%	47.6%	43.4%	44.3%
Other				14	
				3.5%	

Table III–5A: Multi-year comparisons (A1 Figures)

	2020	2019	2018	2017
TOTAL	9044	10351	9318	10615
	100.0%	100.0%	100.0%	100.0%
Mediation	2416	2959	2773	2828
	26.7%	28.6%	29.8%	26.6%
Arbitration	1878	1775	1515	2010
	20.8%	17.2%	16.3%	18.9%
Withdrawn	820	870	766	963
	9.1%	8.4%	8.2%	9.1%
Ineligible	3930	4747	4,264	4814
	46.5%	45.9%	45.8%	45.3%

²⁶⁴ See below; also Section II.A of this Chapter.

Table III–6: Comparisons of individual “process” responses

	Mediated	Arbitrated	Withdrawn	Ineligible	Other
TOTAL	120	69	25	175	14
	100.0%	100.0%	100.0%	100.0%	100.0%
Mediation (Imported)	113	3	1	-	2
	94.2%	4.3%	4.0%	-	14.3%
Arbitration (Imported)	-	65	-	-	-
	-	94.2%	-	-	-
Withdrawn (Imported)	-	-	20	1	2
	-	-	80.0%	0.6%	14.3%
Ineligible (Imported)	7	1	4	174	10
	5.8%	1.4%	16.0%	99.4%	71.4%

Concordance: 372/403 =92.3%

Discordance: 31/403 = 7.7%

1. Micro analysis

Table III-6, the core of the micro analysis, reports a concordance of 92.3%, a rather unimpressive figure.²⁶⁵ However, most of the discordances fall into categories noted in Section I.A.2 of this chapter, and, on examination, don’t appear to show problems with either the process or BBB AUTO LINE’s record keeping. And most involve reasonably explicable differences.

- Three were straddle cases, where the consumer described case-related developments that occurred after the case reflected in the BBB AUTO LINE file. (Category 2.a.)
- At least five, and probably seven, were cases where the consumer apparently reached a settlement outside the program.²⁶⁶ (Category 2.b.)
- Five were cases where, reflecting confusion about the terms, the consumer and BBB AUTO LINE diverged on whether a case was ineligible or was withdrawn. (Category 2.d.)

²⁶⁵ With over 9000 files on the original spread sheet, this would suggest a fundamental error in nearly 700 cases.

²⁶⁶ In one case, for example, BBB AUTO LINE reported a mediated repair settlement (which paralleled the final repair opportunity for the manufacturer under the state’s lemon law. During the survey, the consumer replied “other” on process and, in a later response, indicated that “they” had bought the car back.

These include five cases where the auditor’s reading is backed by notes in the BBB AUTO LINE files or by the consumer’s comment during the survey. In the other two cases, category 2.b seems the likely reading of the consumer’s response.

- One seems to involve a consumer who was dissatisfied with the execution of a repair remedy. (Category 2.e)
- Eleven involved consumers who replied “other” to the question, and then gave details that were consistent with BBB AUTO LINE’s characterization. (Category 2.f)
- One consumer, for whom BBB AUTO LINE reported that the claim was ineligible, explained in a call with the auditor that the matter had never been resolved, suggesting that the BBB AUTO LINE record was correct. (Category 3.a)
- In another case, BBB AUTO LINE reported a case as ineligible for mileage and the consumer said it was arbitrated. During a call with the auditor, where the auditor highlighted the difference between mediation and arbitration, the consumer changed her response the mediation. (Category 2.h and other issues.²⁶⁷)
- One case involved a consumer who said he didn’t get a response from BBB AUTO LINE, in a matter that BBB AUTO LINE determined to be ineligible. A final consumer, whose case was processed in Florida where the case is opened before the signed consumer complaint form is returned and then closed if it isn’t subsequently returned, similarly pointed to missed communications. Both of these may have involved complications with the online filing system, and there’s a chance that one of them had a valid complaint.

Attorney cases. As noted above, the auditor also examined 25 cases where the consumer had counsel.²⁶⁸ On the process variable, the underlying files consistently supported the entries on the spread sheet, and the auditor didn’t detect any problems with BBB AUTO LINE’s processes.

2. Macro analysis

The “A” columns of Table III-5. Column A1 shows aggregate “process” statistics, as reported by BBB AUTO LINE, for all cases closed in the audit year. These provide important information about the full range of cases filed in the program; for example, they highlight that BBB AUTO LINE closed more cases through mediation than arbitration (and Table III-5A shows that this is a recurring pattern).

Column A2 reports similar figures, but only for consumers who appeared without counsel. These constitute about 84.1% of the cases in column A1. There’s more detail in Section III.G about these figures.

²⁶⁷ The consumer’s corrected response, of course, still didn’t match the BBB AUTO LINE’s records. The consumer seemed reasonably confident that BBB AUTO LINE staff had helped negotiate her settlement, part of whose cost was absorbed by the dealer, but BBB AUTO LINE’s records show no further involvement by the program after the claim was found to be ineligible.

²⁶⁸ The auditor selected the first 25 cases in the national sample in reverse alphabetical order.

Column A3, based on TechnoMetrica’s actual sampling frame, omits *both* cases where the consumer had counsel and, where the consumer filed multiple complaints during the audit year, it omits all but the last.²⁶⁹ Both omissions are needed to avoid *coverage errors*, essentially “comparing apples and oranges.”²⁷⁰ This column has the appropriate figures to compare to the survey results.

The “B” columns. On the process question, the auditor also adjusted the survey results to account for *non-response error*.²⁷¹ Here, the B columns report those results, with column B1 reporting the actual results and column B2 adjusting them with a weighting factor. As in prior audits, TechnoMetrica this year reported the responses rate for consumers who used different processes. The differences in response rates based on the process used (as reported by BBB AUTO LINE) was notable, although the variation was less than during past years. :

- 20% for those whose cases were resolved through mediation;
- 21% for those who used arbitration;
- 19% for those deemed ineligible to participate in BBB AUTO LINE; and
- 13% for consumers who withdrew their complaints.

Thus, consumers who used arbitration were over 71% more likely to complete the survey than those who withdrew their complaints.²⁷² Column B2 thus weights the responses in each category to simulate a scenario where all categories of consumers responded at the same rate.²⁷³

So, for purposes of Table III-5, the relevant comparison is between Columns A3 and B2. Looking at those columns, the differences are within the margin of error (+/- 4.5%). In other words, for cases covered by the survey, the survey aggregate reasonably reflects the BBB AUTO LINE’s calculated aggregate.

The auditor considers this a sound technique and, in the past, the B2 figures have tended

²⁶⁹ TechnoMetrica created this modified spread sheet and provided it to the auditor.

²⁷⁰ See Section I.B. of this chapter. The broad question posed by coverage errors is whether the population that’s covered by the BBB AUTO LINE statistics but not by the survey has a different profile than the population covered by both. On the process metric, it clearly does. For example, most of the “earlier” cases omitted by the MCSV screen had been resolved by mediation, and none were resolved by arbitration.

²⁷¹ See Section I.B of this Chapter.

²⁷² This comes from dividing 21.1% by 12.2%.

²⁷³ During some past audits, this weighting brought larger errors down, and within the margin of error. This year, it actually increased several of the differences between the survey results and calculated aggregates.

to be closer than the B1 figures to the A3, sometimes bringing discrepancies that had been outside the relevant margin of error to within that margin. This year, somewhat curiously, the adjustments tended to increase the differences – indeed, the difference between the B2 and A3 figures for withdrawn cases falls a bit outside the margin of error, although the difference between the unadjusted B1 figures and the A3 figure didn't. However, even that figure is nearly within the margin of error and, as explained previously, the nature of margins of error (with a 95% “confidence interval”) is such that some cases can be expected to fall outside the margin. Further, any lingering concerns, in the auditor's view, are addressed by the macro analysis above.

* *

At this point, it's necessary to add back in the MCSV omissions to get back to columns A2, and then to add back in the “attorney case” omissions to get back to column A1. For these, the auditor relies on his systematic examination of 25 attorney case files, as well as his review of the omitted MCSV cases during his review of case files.²⁷⁴ In neither did he find systematic problems with the “restored” BBB AUTO LINE records.

Finally, Table III-5A's multi-year comparisons show relatively consistent results over the last four years.

²⁷⁴ When the auditor was reviewing targeted case files, as described above, he also examined earlier cases in the series.

C. RELIEF

The relief questions were posed to consumers who identified their cases as either arbitrated or mediated. As with the process questions, consumers were told how BBB AUTO LINE reported the relief they received, and invited to confirm or correct the records.²⁷⁵

1. Combined Mediated and Arbitrated Cases

The auditor starts with the combined results for mediated and arbitrated cases. These, in his view, present the most significant insights into the program as a whole – and point to advantages in a program that, unless the consumer rejects it, typically starts with mediation. From the consumer’s perspective, as noted above, a repurchase obtained through mediation is no less valuable than one obtained through arbitration – and far more consumers got a repurchase or replacement through mediation (991) than through arbitration (673).

Table III–7: Remedies in mediated and arbitrated cases

	BBB AUTO LINE stats (A1)	Same, excluding attorney cases (A2)	Stats from “fully adjusted” spread sheet (A3)	Survey (B)
BASE: med/arb cases	4294	3387	2923	189
	100.0%	100.0%	100.0%	100.0%
Replacement/ Repurchase	1664	1311	1278	91
	38.8%	38.7%	43.7%	48.1%
Repair	1183	1122	723	50
	27.6%	33.1%	24.7%	26.5%
Other	472	451	433	29
	11.0%	13.3%	14.8%	15.3%
No Award	975	503	489	19
	22.7%	14.8%	16.7%	10.1%

Starting with the macro analysis in Table III-7, the key comparison is between columns A3 and B, both of which exclude consumers who used attorneys and, for MCSVs, all but the last complaint filed during the audit year. The margin of error for questions posed to all 403 consumers who completed the survey in the national sample was +/- 4.3%, and it’s higher for this question, which was posed only to 189 consumers who used arbitration or mediation; in that context, the highest differential here (6.6% for “no award”) seems to be acceptable.²⁷⁶

²⁷⁵ There were small variations in wording depending on whether the consumer had identified the case as mediated or arbitrated.

²⁷⁶ In a straightforward case where 189 consumers (the number of surveyed consumers who used

As with the process metric, the next step is to get back to the earlier columns, which adds back in the attorney cases and the MCSV that the sampling frame omitted. The same rationale discussed in the “process” section applies here.

Table III–7A: Multi-year comparisons (A1 Figures)

	2020	2019	2018	2017
BASE: med/arb cases	4294	4734	4288	4838
	100.0%	100.0%	100.0%	100.0%
Replacement/ Repurchase	1664	1804	1779	1734
	38.8%	38.1%	41.5%	35.8%
Repair	1183	1563	1253	1487
	27.6%	33.0%	29.2%	30.7%
Other	472	414	396	456
	11.0%	8.8%	9.2%	9.4%
No Award	975	953	860	1161
	22.7%	20.1%	21.0%.	24.0%

The multi-year comparison shows a relatively consistent distribution of remedies.

mediation or arbitration) were selected from a sample of 4294, the margin of error would be 7.0%.

Table III–8: Consumer agreement with BBB AUTO LINE records

	Replacement/ Repurchase	Repair	Other	No Award
BASE = med/arb	91	50	29	19
	100.0%	100.0%	100.0%	100.0%
Replacement/Repurchase (Imported)	87	-	1	-
	95.6%	-	3.4%	-
Repair (Imported)	1	47	-	-
	1.1%	94.0%	-	-
Other (Imported)	-	-	25	-
	-	-	86.2%	-
No Award (Imported)	-	-	1	19
	-	-	3.4%	100.0%
No entry (Imported)²⁷⁷	3	3	2	-
	3.3%	6.0%	6.9%	-

Concordance: 178/189 = 94.2%

Discordance: 11/189 = 5.8%

Two of the discrepant reports involved straddle cases. (Category 2.a)

Six appear to have involved settlements outside the program. (Category 2.b).²⁷⁸

Two of the cases were those where consumer corrected his prior answer during a call with the auditor, as described in Section III.B.1 of this Chapter.

The last case was an arbitration where the arbitrator denied the consumer’s claim but the consumer was told that a small cash offer was still on the table; she apparently focused on that cash offer, while BBB AUTO LINE reported the arbitrator’s denial.

²⁷⁷ These are cases that BBB AUTO LINE reported as ineligible or withdrawn on process. As such, they didn’t list a remedy.

²⁷⁸ All six of these cases were also picked up as discrepancies on process. A seventh case that was analyzed as discrepant on process involved a consumer who responded “other” rather than “mediated” on the process used. Because she responded “other,” she wasn’t asked a separate remedy question.

2. Mediated Cases Only

Table III--9: Remedies in mediated cases

	BBB AUTO LINE stats (A1)	Same, excluding attorney cases (A2)	Stats from “fully adjusted” spread sheet (A3)	Survey (B)
BASE: med. cases	2416	2310	1870	120
	100.0%	100.0%	100.0%	100.0%
Replacement/ Repurchase	991	901	872	60
	41.0%	39.0%	46.6%	50.0%
Repair	992	987	594	35
	41.1%	42.7%	31.8%	29.2%
Other	433	422	404	25
	17.9%	18.3%	21.6%	20.8%

With a margin of error of +/-4.3% for questions posed to all 403 consumers in the national sample, and a substantially higher margin for responses from 120 consumers to a follow-up question,²⁷⁹ the figures in columns A3 and B are well within the margin of error.

Table III-9A: Multi-year comparisons (A1 figures)

	2020	2019	2018	2017
BASE: med. cases	2416	2959	2773	2828
	100.0%	100.0%	100.0%	100.0%
Replacement/ Repurchase	991	1166	1311	1163
	41.0%	39.4%	47.3%	41.1%
Repair	992	1399	1081	1262
	41.1%	47.2%	39.0%	44.6%
Other	433	394	381	403
	17.9%	13.3%	13.7%	14.2%

But for a spike in repurchase/replacement remedies (and a concomitant drop in repair remedies) in 2018, the distribution of remedies has been rather consistent over the last four years. There was a bit of a spike in “other” remedies in 2020.

²⁷⁹ If this were a straightforward case where 120 consumers (the number surveyed) were selected from a sample of 1870, the margin of error would be 8.7%.

Table III-10: Consumer agreement with BBB AUTO LINE records

	Replacement Repurchase	Repair	Other
BASE: med. cases	60	35	25
	100.0%	100.0%	100.0%
Replacement/Repurchase (Imported)	57	-	1
	95.0%	-	4.0%
Repair (Imported)	1	32	-
	1.7%	91.4%	-
Other (Imported)	-	-	22
	-	-	88.0%
No entry (Imported)²⁸⁰	2	3	2
	3.3%	8.6%	8.0%

Concordance: 111/120 = 92.5%

Discordance: 9/120 = 7.5%

These cases were among those analyzed in connection with Table III-8.

²⁸⁰ These are cases that BBB AUTO LINE reported as ineligible or withdrawn on process. As such, they didn't list a remedy.

3. Arbitrated Cases Only

Table III–11: Remedies in arbitrated cases

	BBB AUTO LINE stats (A1)	Same, excluding att’y cases (A2)	Stats from fully adjusted spread sheet (A3)	Survey (B)
BASE: ARBs	1878	1077	1053	69
	100.0%	100.0%	100.0%	100.0%
Replacement /Repurchase	673	410	406	31
	35.8%	38.1%	38.6%	44.9%
Repair	191	135	129	15
	10.2%	12.5%	12.3%	21.7%
Other	39	29	29	4
	2.1%	2.7%	2.8%	5.8%
No award	975	503	489	19
	51.9%	46.7%	46.4%	27.5%

The margin of error for this question, analyzing responses from only 69 consumers who were drawn from a population that included some 1053 consumers, is far higher than the 4.3% figure for the populations as a whole. Further, while the nature of the population here suggests a higher error, on the order of 11.4%,²⁸¹ one disparity between column A3 and column B – the percentage of decisions resulting in no award – falls outside even that range.

Nonetheless, the auditor doesn’t find an immediate problem – though he finds a discrepancy that will bear scrutiny in future years. This conclusion is specifically informed by the two other tables that follow: the next table shows a substantial consistency of BBB AUTO LINE numbers in 2030 to those in past years, and the table after that, with the accompanying analysis, shows a strong confirmation of the BBB AUTO LINE figures. These lend credibility of the survey results and the BBB AUTO LINE aggregate figures, respectively, even if, on this one measure, they vary more than might be expected at first glance.

²⁸¹ If this were a straightforward case where 69 consumers were selected from a sample of 1053, the margin of error would be 11.4%.

Table III–11A: Multi-year comparisons (A1 figures)

	2020	2019	2018	2017
BASE: ARB	1878	1775	1,515	2010
	100.0%	100.0%	100.0%	100.0%
Replacement/ Repurchase	673	638	468	571
	35.8%	35.9%	30.9%	28.4%
Repair	191	164	172	225
	10.2%	9.2%	11.3%	11.2%
Other	39	20	15	53
	2.1%	1.1%	1.0%	2.6%
No Award	975	953	860	1161
	51.9%	53.7%	56.7%	57.8%

The multi-year comparisons show that, according to BBB AUTO LINE figures, consumers in 2020 did quite similarly in arbitrations to the results they obtained in 2019. In fact, there were 1.8% fewer “no awards” in 2020. In general, consumers results in 2019 had improved over those from the two prior years, and those improvements held (and even improved slightly) in 2020.

Further, consistent with his earlier remarks, the auditor highlights that these tables can’t be viewed in a vacuum, but should be examined together with Tables III-7 and III-8 (arbitrated plus mediated cases). Because BBB AUTO LINE has a vibrant mediation program, the cases that go to arbitration may well be those that pose the most difficult fact situations to resolve. So, for example, the auditor considers the 51.9% “no award” rate for all consumers in arbitration far less telling than the fact that these cases constitute only 22.7% of all consumers with eligible, non-withdrawn complaints.²⁸²

²⁸² If the 53.7% “no award” figure in Table III-11A overstates consumer “failure,” though, the 20.1% figure in a sense understates it, to the extent that it includes consumers who got relief but weren’t satisfied with its execution.

Table III-12: Consumer agreement with BBB AUTO LINE records

	Replacement/ Repurchase	Repair	Other	No Award
BASE: ARB	31	15	4	19
	100.0%	100.0%	100.0%	100.0%
Replacement/Repurchase (Imported)	30	-	-	-
	96.8%	-	-	-
Repair (Imported)	-	15	-	-
	-	100.0%	-	-
Other (Imported)	-	-	3	-
	-	-	75.0%	-
No Award (Imported)	-	-	1	19
	-	-	25.0%	100.0%
No entry (Imported)²⁸³	1	-	-	-
	3.2%	-	-	-

Concordance: 67/69 = 97.1%

Discordance: 2/69 = 2.9%

The discrepancies were among those discussed in connection with Table II-8.

²⁸³ These are cases that BBB AUTO LINE reported as ineligible or withdrawn on process. As such, they didn't list a remedy.

Table III-13: Did you return a form accepting the arbitrator's decision?²⁸⁴

	2020	2019	2018	2017
BASE: ARB, with award, not sure excluded	44	43	26	37
	100.0%	100.0%	100.0%	100.0%
Yes	42	38	25	30
	95.5%	88.4%	96.2%	81%

Table III-14: Acceptance of different types of remedies

	Total	Replacement/ Repurchase	Repair	Other
BASE: Same as Table III-13	50	31	15	4
	100.0%	100.0%	100.0%	100.0%
Yes	44	28	13	3
	100.0%	100.0%	100.0%	100.0%

Table III-15: Consumer agreement with BBB AUTO LINE records

	Survey Responses	
	Accepted	Rejected
BASE: ARB, w/ award, "not sure" excluded	42	2
	100.0%	100.0%
Accepted (Imported)	37	-
	88.1%	-
Rejected (Imported)	1	2
	2.4%	100.0%
No entry (Not recorded by BBB AUTO LINE as an ARB case)	4	-
	9.52%	-

Concordance: 42/47 = 89.4%

Discordance: 5/47 = 10.6%

Four of the discordant cases resulted from the fact that BBB AUTO LINE didn't include any entry because it didn't show the case as arbitrated in the first place. These included three straddle cases where there was an arbitration, but only in a follow-on case, and one other case.

²⁸⁴ This question was reworded from "Did you accept the arbitrator's decision?" to draw attention to a more concrete act of returning a form.

4. Withdrawn Cases (Survey Responses)

Table III-16: Reasons for withdrawal

	2020	2019	2018	2017
BASE: withdrawn cases, “not sure” excluded	25	21	24	36
	100.0%	100.0%	100.0%	100.0%
You settled the matter or your car was fixed	12	14	10	18
	48.0%	66.7%	41.7%	50.0%
You sold the car	1	-	2	1
	4.0%	-	8.3%	2.8%
Some other reason	12	7	12	17
	48.0%	33.3%	50.0%	47.2%

C. COMPLIANCE

Starting with the 2019 audit, the auditor asked BBB AUTO LINE to provide case-by-case compliance codes on the spread sheet that it prepares, each February, for TechnoMetrica's use in conducting the survey.²⁸⁵ TechnoMetrica doesn't need this data²⁸⁶; the auditor requested it for his own use. Further, starting with the 2020 audit, he asked TechnoMetrica to incorporate these codes into the spread sheets that *they* generate, showing survey responses. With these, the auditor can, with relative ease, compare individual consumer's survey responses on compliance to BBB AUTO LINE's coding. Taken together, these steps enabled the auditor to refine his analysis on compliance last year, and to refine it further this year.

Also, at the auditor's suggestion, BBB AUTO LINE began to compile its aggregate statistics, including aggregate compliance statistics, from the data on the spread sheet that it prepares for TechnoMetrica. This has led to somewhat greater precision on various metrics, including compliance, from the outset. And, because of the greater transparency, the auditor was able to hone in more precisely on possible problems, particularly those involving reconvened cases, this year.²⁸⁷ These problems bear addressing, although they're limited in scope and far from severe enough to jeopardize substantial compliance.

²⁸⁵ Previously, he had asked them to identify compliance coding for specific cases that had been highlighted by the survey, particularly those where consumers reported non-performance.

²⁸⁶ In survey questions about process, remedy, and timing, consumers were told how BBB AUTO LINE reported their cases and asked to agree or disagree; thus, TechnoMetrica needed to know how BBB AUTO LINE reported the cases. On compliance though, consumers were simply asked about their experiences.

²⁸⁷ Chapter 2, Section II.D.

Table III-17: Compliance (as reported through Feb. 22, 2021)²⁸⁸

	Mediated		Arbitrated		Med + Arb	
	Survey	BBB AUTO LINE, all cases	Survey	BBB AUTO LINE, all cases	Survey	BBB AUTO LINE, all cases
BASE: MED cases and ARB cases with an award that consumer accepted. “Not sure” excluded from survey figures	118	2416	41	650	159	3066
	100.0%	100.0%	100.0%	100.0%	100%	100.0%
Carried out remedy within the time specified, including any extension to which you agreed	84	2161	24	571	108	2732
	71.2%	89.4%	58.5%	89.2%	67.9%	89.1%
Carried out remedy after the time specified, including any extension to which you agreed	19	14	9	2	28	16
	16.1%	0.6%	22.0%	0.3%	17.6%	0.5%
Hasn’t yet carried out remedy, time to do so has expired	8	122	6	28	14	150
	6.8%	5.0%	14.6%	2.8%	8.8%	4.9%
(Failure to comply was the fault of the consumer)²⁸⁹	-	(51)	-	(18)	-	(69)
	-	(2.1%)	-	(2.8%)	-	(2.2%)
Hasn’t yet carried out remedy, time to do so hasn’t expired	7	119	2	49	9	168 ²⁹⁰
	5.9%	4.9%	4.9%	7.5%	5.7%	(5.5%)
Time for compliance has expired, performance not verified		(See details below)		(See details below)		(See details below)

²⁸⁸ These are the figures provided by BBB AUTO LINE in February, adjusted by the auditor to include ten cases with a code that was previously omitted from the aggregate calculations.

²⁸⁹ BBB AUTO LINE identifies these cases with a specific compliance code. For purposes of the survey, consumers who report non-performance are asked whether they took some action, like selling the car, that prevented the manufacturer from complying.

²⁹⁰ BBB AUTO LINE’s April spread sheet indicates that 73 of these were cases where the time for performance had already passed when the initial spread sheet was prepared (so they were “performance not verified” cases). For the other 95, the time for compliance hadn’t yet passed.

Table III–17A: Initial Compliance Reporting and Subsequent Refinements²⁹¹

	Compliance as initially reported	Subsequently Adjusted Figures	Compliance in reconvened/reconsidered cases²⁹²
BASE: MED cases and ARB cases with award that consumer accepted	3066	3066	42
	100.0%	100.0%	100.0%
Carried out remedy within the time specified, including any extension to which consumer agreed	2732	2871	34 ²⁹³
	89.1%	93.6%	80.9%
Carried out remedy after the time specified, including any extension to which consumer agreed	16	16	
	0.5%	0.5%	
Hasn't yet carried out remedy, time to do so has expired	150	159	2
	4.9%	5.2%	4.7%
(Failure to comply was the fault of the consumer)²⁹⁴	(69)	(71)	(1)
	(2.2%)	2.3%	2.4%
Hasn't yet carried out remedy, time to do so hasn't expired	168 ²⁹⁵	9	3
	5.5%	0.2%	7.1%
Time for compliance has expired, performance not verified		11	3
		0.4%	7.1%

²⁹¹ This table is primarily based on BBB AUTO LINE's data submission, but also reflects some inputs and adjustments based on those tables by the auditor. The auditor needed to work with BBB AUTO LINE to improve the process for developing these statistics, and views his input on this charts as an aberration that will enable him to get comparable results, without such input, in the future.

²⁹² These include reconvened cases (or reconsidered cases in California) where consumers who weren't satisfied with the execution of an interim repair remedy sought, obtained, and accepted other relief. These figures don't reflect compliance in additional cases; rather, they reflect an additional measure of compliance measures in cases for which an initial measure of compliance (reflecting the consumer's dissatisfaction and intent to reconvene) had already been recorded.

²⁹³ Includes one debatable case, where a decision fell apart in a dispute over damages and the consumer didn't ask to reconvene a second time.

²⁹⁴ See note 289.

²⁹⁵ See note 290.

The second column of Table III-17A updates the statistics that BBB AUTO LINE provided in February, primarily to reflect developments since February but also to correct some prior omissions. The third column reports on compliance with second orders issued by arbitrators in reconvened or (in California) reconsidered cases, a matter discussed in Chapter 2.²⁹⁶ The main take-away from this table, the auditor believes, is that the compliance rates reflected in the three columns are quite similar. This may not be apparent at first, noting, for example, the 93.6% rate of timely compliance in column 2 and the 80.9% rate in column 3. But that mainly reflects the fact the percentage of cases in Column 3 for which compliance still hasn't been resolved (14.3%) – many of which will eventually shift to timely compliance or at least belated compliance

Lapses in performance verification or follow through. Among the 168 cases that lacked compliance codes in February, the auditor examined the 25 with the earliest compliance dates and found at least seven where the files don't include timely performance verification letters.²⁹⁷ Further, in two of these cases and one other case, there seemed to be incomplete (or at least incompletely documented) follow-up after the consumer reported a compliance issue. The rate of apparent problems detected here can't be projected to other cases that called for compliance codes, because the process by which the 25 cases were chosen meant they were particularly likely to have compliance (or compliance reporting) issues.²⁹⁸ Still, even assuming that the numbers and percentages of cases with problems is small, timely monitoring, as required by FTC Rule 703.2(h), is important; if there's a problem and BBB AUTO LINE doesn't learn about it (from its own monitoring or the consumer's proactive contact), it can't act to address it. Hence, the recommendation in Chapter 2 that BBB AUTO LINE take steps to address the cases, seemingly rather limited in number, that may have slipped through the cracks for a time.²⁹⁹

Non-performance reported by surveyed consumers. The survey provides a check on the aggregates that were calculated by BBB AUTO LINE, and consumers surveyed this year

²⁹⁶ Based on the reported compliance codes, the auditor identified 76 such cases in 2020, but in 34 of them there was no compliance issue in the reconvened case, because the arbitrator denied further relief, the consumer rejected the relief the arbitrator found appropriate, or the consumer didn't pursue or dropped the reconvening. Thus, the table reports on only 42 cases.

²⁹⁷ In another case, the case handler's notes report that a performance verification letter was returned, but it doesn't appear in the file.

²⁹⁸ As shown in Table III-30 and the accompanying analysis below, 16 of 159 surveyed consumers whose cases merited compliance monitoring reported that they hadn't been contacted by BBB AUTO LINE by any means. Among these, the auditor found documentation showing that performance verification letters were sent in all 16, but in three of the cases they were delay (although two of those cases involved delays on the order of two weeks). The analysis of the surveyed consumer's responses, then, suggested lapses in sending performance verification letters of 1.9%.

²⁹⁹ Chapter II, Section 2.D.

reported a higher rate of non-compliance than did BBB AUTO LINE. BBB AUTO LINE reported a 4.9% non-compliance rate and, omitting cases where BBB AUTO LINE attributed the failure to perform to the fault of the consumer, the figure drops to 2.6%. But 8.8% of surveyed consumers – 14 of 159 – reported such problems. And none of the 14 indicated that they had themselves hindered compliance.

Consumers who reported non-compliance on a repair remedy, however, were also asked whether the manufacturer had inspected or even attempted a repair on the car, and nine responded that the manufacturer had done one or both. As noted before, BBB AUTO LINE policy is to report such cases as compliant. This alone would lower the noncompliance rate to 3.1% – within striking range of BBB AUTO LINE’s 2.6% figure.

In two of the remaining cases, moreover, the consumer didn’t agree with the statutory formula for calculating the value of their vehicles. In two others, BBB AUTO LINE reports that an inspection (constituting performance) took place, but the basis for the conclusion isn’t visible to the auditor (though at least one of the cases appears to be a technical glitch). The remaining case, though, does seem to indicate a problem, with limited pro-active follow-up by BBB AUTO LINE and a three-month gap in any follow-up at one point.

Consumers reporting delayed compliance. Among the 28 consumers reporting delayed compliance, 18 hadn’t returned a performance verification letter. In three other cases, the files showed timely performance.³⁰⁰ One case was ineligible due to mileage, so there may have been a settlement outside the program and BBB AUTO LINE didn’t report a remedy, much less compliance.

The other six files are consistent with consumer reports of timeliness problems, though precise circumstances varied. In one, for example, the files contain an extension that could have established timeliness – but the consumer hadn’t signed it. In another, there were extensions to which the consumer agreed, but with gaps. In yet another, the dispute resolution specialist reporting having confirmed compliance by phone, but the record didn’t mention timeliness.

As noted in Chapter 2, the auditor has previously pointed out that the performance verification letter BBB AUTO LINE has been using tells consumers that BBB AUTO LINE would assume *successful* compliance if they didn’t return the form, but doesn’t make explicit that compliance would also be assumed to be timely. So there’s a chance that at least some consumers didn’t bother to return the form because they didn’t realize that would be essentially confirming timeliness. BBB AUTO LINE is now changing the performance verification letter text to address this point.

Discordances. There were 45 cases where BBB AUTO LINE’s compliance code didn’t mesh with the consumer’s response. Many of these involve delay, including 18 cases where BBB AUTO LINE assumed timely performance from an unreturned performance verification letter and the consumer reported delay, a matter, as noted just above, that the auditor recommends that BBB AUTO LINE address by clarifying its performance verification letters.

³⁰⁰ One of these turned on an extension of time to which the consumer agreed.

Still others involve compliance/satisfaction issues, where consumers reported non-performance on a repair remedy but acknowledged that the manufacturer had at least inspected their cars. In one, a consumer who sold his car (so that the repair remedy was impossible to perform) reported that the manufacturer had complied. In another, a case that later reopened, BBB AUTO LINE actually reported noncompliance where the consumer reported delay. And in a final case, BBB AUTO LINE reported delayed compliance with a repurchase remedy, but the consumer reported non-performance and the basis for BBB AUTO LINE's characterization isn't clear.

Multi-year analysis. As reported by Tables III-17A1 and III-17A2, both the survey figures and BBB AUTO LINE's own statistics show some drop-off in compliance rates this year, although, in the midst of the pandemic, that may not be a surprise. It is somewhat curious that the drop-off was more pronounced in the survey than in BBB AUTO LINE's statistics, but at least part of the drop-off involved delay rather than non-compliance; the rate of non-compliance, in fact, held relatively steady, rising only from 8.2% in 2019 to 8.8% in 2020.

Table III–18: Comparative analysis on compliance: Survey

	2020	2019	2018	2017
BASE: MED case and ARB cases with an award that the consumer accepted. “Not sure” responses excluded from the survey figures.	159	147	161	151
	100%	100%	100.0%	100.0%
Carried out the remedy within the time specified, including any extension to which you agreed	108	113	126	115
	67.9%	76.9%	78.3%	76.2%
Carried out the remedy after the time specified, including any extension to which you agreed	28	18	25	17
	17.6%	12.2%	15.5%	11.3%
Has not yet carried out the remedy and the time to do so has expired	14	12	4	7
	8.8%	8.2%	2.5%	4.6%
(Failure to comply was the fault of the consumer)			(4)	-
			(2.5%)	-
Has not yet carried out the remedy, but the time to do so has not yet expired	9	4	6	12
	5.7%	2.8%	3.7%	7.9%

Table III-18A: Comparative analysis on compliance: BBB AUTO LINE Statistics

	2020	2019	2018	2017
BASE: MED case and ARB cases with an award that the consumer accepted. “Not sure” responses excluded from the survey figures.	3066	3541	3191	3408
	100.0%	100%	100.0%	100.0%
Carried out the remedy within the time specified, including any extension to which you agreed	2871	3383	3076	3319
	93.6%	95.5%	96.4%	97.4%
Carried out the remedy after the time specified, including any extension to which you agreed	16	5	3	2
	0.5%	0.1%	0.1%	0.1%
Has not yet carried out the remedy and the time to do so has expired	159	96	75	85
	5.2%	2.7%	2.4%	2.5%
(Failure to comply was the fault of the consumer)	(71)	(54)	(43)	(53)
	2.3%	(1.5%)	(1.3%)	(1.6%)
Has not yet carried out the remedy, but the time to do so has not yet expired	9		35	0
	0.4%		1.1%	0.0%
Time for compliance has expired, performance not verified	11	57	2	
	0.4%	1.6%	0.1%	0.0%

While the rate of delayed compliances reported by BBB AUTO LINE increased only slightly this year (from 0.1% to 0.5%), this reflects cases that actually *missed* the compliance date, including any extensions sought by one party and granted by the other. While there's no practical way to quantify this, though, it's the auditor's strong impression that parties this year more often agreed to extensions beyond the original compliance date.

E. TIMING

1. Mediations and Arbitrations

Consistent with FTC rules, BBB AUTO LINE reports the numbers and percentages of cases that were resolved within 40 days.³⁰¹ BBB AUTO LINE’s statistics, and the auditor’s analysis, focus on arbitrated and mediated cases.³⁰²

Of course, the pandemic influenced the timing of cases in 2020, but the impact was smaller than might have been anticipated. Indeed, since arbitrations were conducted online or by phone, and vehicles weren’t routinely inspected, some aspects of pandemic-induced adaptations tended to expedite the process for resolving arbitrated complaints.

Tables III–19: Time to resolve cases (Survey responses)

	Mediated	Arbitrated	Combined
BASE: MED/ARB, excluding “not sure” for this question	120	69	189
	100.0%	100.0%	100.0%
Within 40 days	87	19	106
	72.5%	27.5%	56.1%
Within 40 days or consumer acknowledged responsibility for delay	89	29	118
	74.2%	42.2%	64.2%

Table III–20: Time to resolve cases (BBB AUTO LINE; All cases)

	Mediated	Arbitrated	Combined
BASE: MED/ARB	2416	1878	4304
	100.0%	100.0%	100.0%
Within 40 days	2177	645	2822
	90.1%	36.5%	65.5%

³⁰¹ FTC Rule 703.6(e)(11) (figures showing delay to be maintained by “number and percent”).

³⁰² Most of the omitted cases were ineligible cases – and most of *those* were resolved in short order, often a day or two. Thus, excluding these cases *lowered* the reported rate of timely compliance.

Table III–20A: Time to resolve cases (BBB AUTO LINE; cases closed after June 30)

	Mediated	Arbitrated	Combined
BASE: MED/ARB	1166	879	2045
	100.0%	100.0%	100.0%
Within 40 days	1057	368	1425
	90.7%	41.8%	69.7%

Arbitrations, in particular, were handled more expeditiously during the second half of the year than during the first half, when the initial shock of the pandemic hit. Indeed, the timeliness for the second half of the year improved over the timing for the previous year.³⁰³

Table III—21: Time to Resolve Cases (BBB AUTO LINE; fully adjusted cases)

	Mediated	Arbitrated	Combined
BASE: MED/ARB	1870	1053	2923
	100.0%	100.0%	100.0%
Within 40 days	1665	250	1915
	89.0%	23.7%	65.5%

Table III–22: Comparative analysis on timing (Combined cases)

	2020		2019		2018		2017	
	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE
BASE: MED/ARB, excluding “not sure”	189	4304	190	4734	198	4287	201	4838
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Within 40 days	106	2822	108	3444	146	3339	139	3783
	56.1%	65.5%	56.8%	72.8%	73.7%	77.9%	69.2%	78.2%

For comparative purposes, the auditor first focuses on the “fully adjusted” cases aggregates. Table III-21 shows a 65.5% rate of timely compliance reported by BBB AUTO LINE, and Table III-19 shows a 56.1% rate reported by consumers. In the auditor’s view, though, the discrepancy is reasonably close, and the differences reasonably explicable, and BBB AUTO LINE’s figures are likely reasonably accurate.

³⁰³ In 2019, BBB AUTO LINE reported that 36.5% of arbitrations were completed within 40 days.

Because of the structure of the survey question and the quantitative nature of the consumers' replies, the auditor has used a somewhat different mode of analysis to explore discordances on timeliness than he's used for other metrics. During the survey, consumers were first asked to confirm whether the BBB AUTO LINE timing figure were accurate. Among the 189 consumers who reported that their cases were resolved through mediation or arbitration, 122 agreed with BBB AUTO LINE's records, 51 disagreed, and 16 weren't sure. (For this analysis, the auditor assumed that BBB AUTO LINE's records were right unless the consumer affirmatively corrected them). Among the 51 consumers who disagreed, though, 26 nonetheless reported timely compliance; curiously, five of these corrected BBB AUTO LINE records that reported *untimely* performance, substituting instead a duration that would have been timely

Among the other 25 cases, six were 1-R or 2-R cases where the consumer may have collapsed a prior case into the case about which he was asked.³⁰⁴ Many of the others seemed to include the time to implement a remedy. For all of these reasons, the auditor doesn't believe that discrepancies between BBB AUTO LINE records and consumer recollections on timing are particularly probative.

Further, the figures in Tables III-21 and III-22, such as the 65.5% timeliness rate that BBB AUTO LINE reported for all mediated and arbitrated cases, don't account for cases that missed the 40 day deadline because of the consumer's fault – and, in the survey, where 83 consumers reported delay in arbitrated proceedings, 11 of them (13.3% of those reporting delay and 2.7% of all consumers) attributed the fault to themselves. So, the 65.5% timeliness figure might well be boosted by a few percentage points if the BBB AUTO LINE figures were similarly adjusted to reflect cases where the consumer caused the delay.³⁰⁵

Still, particularly after the survey results highlighted a timing issue, the auditor, both last year and this, scrutinized separately the timing results for arbitrated cases and those for mediated cases. *He did this, though, for essentially diagnostic purposes.* It seems clear that the combined results for mediations-plus-arbitrations is far more important than the results for either type of process individually; as noted before, consumers who use the program are seeking a resolution to their complaints, and there's no reason to think they'd be less satisfied if they obtained a result through mediation rather than through an adversarial proceeding.

With these caveats, the auditor turns to the breakout figures. And, since his primary aim here is to focus on overall performance, he uses the aggregate figures from the "all cases" table

³⁰⁴ In other words, the consumer may have included the time from the filing of the first case to the resolution of the second case. It's possible that some of the other 20 cases were also parts of MCSV pairs, where the follow-on case hadn't closed (and perhaps hadn't even opened) in 2020.

³⁰⁵ It also bears noting that BBB AUTO LINE doesn't rely on certain extensions that are allowed under FTC rules. For example, FTC Rule 703.5(e) allows seven additional days "where the consumer has made no attempt to seek redress directly from the warrantor."

rather than the “fully adjusted” table.³⁰⁶

Not surprisingly, delays are far less likely in mediated cases (90.1% timely) than in arbitrations (36.5% timely), with neither of these figures making adjustment for consumer fault. Further, any delays in resolving arbitrations under BBB AUTO LINE are, to some extent, the flip side of an often-successful mediation program that likely delays, at least somewhat, the arbitration hearing.

While all these factors provide important context for the BBB AUTO LINE figures, the auditor still suggests that BBB AUTO LINE consider ways to improve timeliness – and he understands that they’re already seeking ways to do so. To that end, moreover, the auditor notes a few points that he’s observed.

First, while Table III-19(1) shows that only 36.5% of cases were resolved in 40 days, the auditor found that 44.7% of cases were resolved within 44 days. Thus, a small speed-up in resolving arbitrations would substantially raise the rate of timely decision-making.

Second, again starting with the 36.5% rate of timely completions within 40 days, further scrutiny shows that 75.6% were resolved within 60 days, and 91.1% were resolved within 80 days.³⁰⁷ A very impressionistic survey by the auditor suggests that most of the more extended cases included technical examinations, which are most frequently requested by the arbitrator after the hearing, and routinely delay resolution beyond 40 days.³⁰⁸

And all of this led to the recommendation, in Chapter 2, that BBB AUTO LINE consider ways to improve its case processing time.³⁰⁹

³⁰⁶ The auditor suspects that the lower timeliness rate for the “fully adjusted” figures is because the adjustments deleted cases brought by an attorney, which tend to be tried on written submissions, which may allow a faster turnaround.

³⁰⁷ The comparable figures last year were 81.3% within 70 days and 94.6% within 80 days, perhaps unsurprisingly showing some deterioration.

³⁰⁸ Since most technical examinations are requested by arbitrators, one question is whether those arbitrators overestimate its likely value. As BBB AUTO LINE notes in its training guide, these examinations, which can be time-consuming, don’t include major diagnostic work or component disassembly; the technical expert doesn’t have sophisticated diagnostic equipment available during the inspection; and the expert’s report is ultimately only an opinion. Since BBB AUTO LINE has already made these points to arbitrators, though, and since it could be problematic to limit the arbitrator’s discretion to request a technical inspection, it’s not clear that they can do more. Perhaps one possibility, though, might be to make available to arbitrators copies of carefully anonymized and redacted reports previously submitted by technical examiners

³⁰⁹ Thus, for example, BBB AUTO LINE apparently hasn’t told arbitrators when the 40-day timetable for a case will be reached. Though arbitrators could in theory derive this information from the case file, it seems unlikely that they routinely do so – and, knowing the deadline might encourage

2. Withdrawn Cases

Table III–23: Days until complaints were withdrawn, as reported by consumers who reported withdrawing their complaints

BASE: Withdrawn cases	22
	100.0%
Within 40 days	17
	77.3%

some small improvement that brings more cases within the deadline. BBB AUTO LINE now plans to provide arbitrators with this information.

F. DOCUMENTS AND CONTACTS

Table III–24: Next I'm going to ask a few questions about various documents that BBB AUTO LINE sends to consumers--whether by email, an online account that they created for you, or by mail, UPS or FedEx.³¹⁰

After you first contacted BBB AUTO LINE, did you get a claim form and an explanation of the program?

	2020	2019	2018	2017
BASE: ALL, “not sure” excluded	377	361	376	385
	100.0%	100.0%	100.0%	100.0%
Yes	333	317	342	348
	88.3%	87.8%	91.0%	90.4%

Excluding those who replied “not sure,” 11.7% of consumers – a total of 44 – reported that they hadn’t received the claim forms. But the auditor examined the underlying files for those consumers, and 12 files (27.2% of the 44) contained complaint forms signed and returned by the consumer.³¹¹

Among the other 32 consumers, the files for 17 were ineligible by reason of age and mileage. Where staff has sufficient information to determine that the car isn’t eligible for the program (generally based on the car’s age or mileage), they may be reluctant to press a consumer to return a signed consumer complaint form before they tell the consumer that they can’t use the program any further,

Notably, though, there were four cases from Florida, six from California, and two from other jurisdictions where the consumer said they hadn’t received the materials and the claims were rejected for failure to file a signed consumer complaint form.³¹² These reinforce the results observed in the Florida state survey, where 154 consumers were surveyed and 6 whose cases were rejected for failure to return a signed form said they never received the form.³¹³ And all of

³¹⁰ This wording of this and various document receipt questions was revised for 2020 to reflect the use of online accounts for communications with most consumers.

³¹¹ As noted previously, moreover, these documents routinely contain consistent printing of certain answers, indicating the sort of computer-generated printout that BBB AUTO LINE would produce, often accompanied by handwritten additions in the same handwriting as the signature. Thus, a visual inspection of the document is consistent with the explanation assumed by the auditor.

³¹² As a general rule, BBB AUTO LINE doesn’t even open a file, in states other than Florida and California, until it receives a signed consumer complaint form.

³¹³ Chapter 3, Section IV.F.

these results accompany the default to relying, starting in 2019, on online consumer accounts to transmit documents to consumers. The matter is discussed further in Chapter 2, where it forms the basis for a recommendation by the auditor.

Table III–25: How clear and understandable were these documents?

	2020	2019	2018	2017
BASE: responding “yes” to prior question, excluding “not sure” responses to this question	329	311	340	343
	100.0%	100.0%	100.0%	100.0%
Very	185	198	223	234
	56.2%	63.7%	65.6%	68.2%
Somewhat	112	97	110	98
	34.0%	31.2%	32.4%	28.6%
Not at all	32	16	7	11
	9.7%	5.1%	2.1%	3.2%

Table III–26: And how helpful were they?

	2020	2019	2018	2017
BASE: Same	329	314	340	344
	100.0%	100.0%	100.0%	100.0%
Very	143	168	186	187
	43.5%	53.5%	54.7%	54.4%
Somewhat	113	101	108	105
	34.3%	32.2%	31.8%	30.5%
Not at all	73	45	46	52
	22.2%	14.3%	13.5%	15.1%

As shown above, an overwhelming majority of consumers (90.3%) found them at least somewhat clear and understandable, while a substantial majority (77.8%) found them at least somewhat helpful. It’s not clear why these figures dropped this year, but the most likely explanation would be that the materials didn’t described the program’s normal procedures, and didn’t capture the complications posed by the pandemic.

Table III–27: After you reached a settlement, did you get an explanation either by mail, email or your online account, describing the terms of the settlement?³¹⁴

	2020	2019	2018	2017
BASE: MED, “not sure” responses excluded	113	112	135	117
	100.0%	100.0%	100.0%	100.0%
Yes	102	104	130	105
	90.3%	92.9%	96.3%	89.7%

BBB AUTO LINE doesn’t ask consumers to return the settlement letter if they agree with its description, so (unlike with the consumer complaint form) there aren’t signed documents in the files reflecting that any consumers actually *received* the documents. But the files for consumers who said they didn’t receive them all contain entries reporting that the documents were *sent*. Given the possibility that some consumers simply didn’t focus on whether they received these documents (which memorialized agreements about which they already knew) the auditor doesn’t see a problem here.

Table III–28: Did you get a notice either by mail, email, or your online account, telling you when and where to go for your hearing or vehicle inspection?³¹⁵

	2020	2019	2018	2017
BASE: ARB, “not sure” responses excluded	66	83	55	71
	100.0%	100.0%	100.0%	100.0%
Yes	63	79	53	68
	95.5%	95.2%	96.4%	95.8%

Three consumers who said “no” appear to have attended a hearing or vehicle inspection, and the underlying files all report that a notice was sent. Still, the auditor can’t dismiss the possibility that these consumers didn’t receive the written notice, but, perhaps, were told by phone where to report.

The other consumer, according to BBB AUTO LINE records, didn’t have an arbitration in the first place.

³¹⁴ See note 310 concerning wording changes introduced in the 2020 survey.

³¹⁵ See note 310 concerning wording changes introduced in the 2020 survey.

Table III–29: Did you get a copy either by mail, email or your online account, of the arbitrator's decision?³¹⁶

	2020	2019	2018	2017
BASE: ARB, “not sure” responses excluded	67	81	57	71
	100.0%	100.0%	100.0%	100.0%
Yes	66	80	57	70
	98.5%	98.8%	100.0%	98.6%

Table III–30: After you accepted the arbitrator's award/agreed to a settlement, which of the following best describes your later contacts with BBB AUTO LINE staff to discuss whether the manufacturer was doing what it promised/what the order required?

	2020	2019	2018	2017
BASE: (1) MED and (2) ARB where the consumer received and accepted an award. “Not sure” responses excluded.	159	148	157	151
	100.0%	100.0%	100.0%	100.0%
The staff contacted me by mail, email, or my online account³¹⁷	35	44	49	52
	22.0%	29.7%	31.2%	34.4%
The staff spoke to me	31	24	26	29
	19.5%	16.2%	16.6%	19.2%
Both of those	74	65	71	57
	46.5%	43.9%	45.2%	37.7%
Neither of those	16	11	10	12
	10.1%	7.4%	6.4%	7.9%
Something else	3	4	1	1
	1.9%	2.7%	0.6%	0.6%

Starting with the three consumers who said “something else, one said that he contacted the BBB AUTO LINE³¹⁸ One hired a lawyer. The third offered no explanation.

Looking now to all 19 consumers who said either “neither of these” or something else, the auditor went back to the files for indicia that a performance verification letters were sent and received. Additionally, he looked at the case handlers notes for any post-complaint notes

³¹⁶ See note 310 concerning wording changes introduced in the 2020 survey.

³¹⁷ See note 310 concerning wording changes introduced in the 2020 survey.

³¹⁸ There was an unreturned performance verification letter in that consumers file.

indicating contact with the consumer. In 18 cases, the file indicates that a performance verification letter was *sent*. In four of these cases, the files contain a returned performance verification letter, supporting the conclusion that the letters were not only sent but received.

G. CLAIMS FILED BY CONSUMERS WITH COUNSEL COMPARED TO CLAIMS FILED DIRECTLY BY CONSUMERS; ALSO, MODE OF PRESENTATION AS A FACTOR

Table III--31: Comparisons on process for resolving complaints

	With Attorneys (2020)	No Attorneys (2020)
TOTAL	1439	7605
	100.0%	100.0%
Mediation	106	2310
	7.4%	30.4%
Arbitration	801	1077
	55.7%	14.1%
Ineligible	402	3528
	27.9%	46.4%
Withdrawn	130	130
	9.0%	9.0%

	With Attorneys (2019)	No Attorneys (2019)
TOTAL	1459	8892
	100.0%	100.0%
Mediation	144	2815
	9.9%	31.6%
Arbitration	705	1070
	48.3%	12.0%
Ineligible	475	4272
	32.6%	48.0%
Withdrawn	135	735
	9.2%	8.3%

Tables III–32: Comparison on remedies

1. Combined Mediation and Arbitration

	2020			2019	
	With att'ys	No att'ys		With att'ys	No att'ys
TOTAL	907	3387		849	3885
	100.0%	100.0%		100.0%	100.0%
Repurchase/ Replacement	353	1311		351	1453
	41.3%	38.7%		41.3%	37.4%
Repair	61	1122		63	1500
	7.4%	33.1%		7.4%	38.6%
Other award	21	451		20	394
	2.3%	13.3%		2.4%	10.2%
No award	472	503		415	538
	20.9%	14.8%		48.9%	13.8%

2. Mediation only

TOTAL	106	2310		144	2815
	100.0%	100.0%		100.0%	100.0%
Repurchase/ Replacement	90	901		110	1056
	84.9%	39.0%		78.4%	37.5%
Repair	5	987		18	1381
	4.7%	42.8%		12.5%	49.0%
Other award	11	422		16	378
	10.4%	18.3%		11.1%	13.4%

3. Arbitration only

TOTAL	801	1077		705	1070
	100.0%	100.0%		100.0%	100.0%
Repurchase/ Replacement	263	410		241	397
	32.8%	38.1%		34.2%	37.1%
Repair	56	135		45	119
	7.0%	12.5%		6.4%	11.1%
Other award	10	29		4	16
	1.2%	2.7%		0.6%	1.5%
No award	472	503		415	538
	58.9%	46.7%		58.9%	50.3%

According to BBB AUTO LINE statistics, consumers nationwide used lawyers in 1439 cases, or 15.9% of 9044 cases that closed in 2020. These cases had a different profile than cases

without lawyers. Focusing on the first table in Table III-33, these consumers are somewhat more likely to get a repurchase or replacement remedy, far less likely to get a repair remedy, and far more likely to end the process with an arbitrated denial (mainly because they're far more likely to use arbitration in the first place).

Still, these numbers are at most suggestive. For example, many "withdrawals" in attorney cases reflect settlements outside the program. Of course, it wasn't only consumers with attorneys who withdrew cases for this reason, but this seemed to the auditor to occur far more frequently when consumers had lawyers. Further, there's no easy way to quantify the impact of withdrawals reflecting such settlements outside the program; even when dispute resolution specialists report a settlement, they don't necessarily describe its nature. Still, from cases where the specialist's notes did report the remedy that the consumer obtained outside the program, it seemed that many got repurchases or replacements.

And a fuller examination of the differences between attorney and non-attorney cases would need to account for the 54.4% of consumers with attorneys who *rejected* repurchase or replacement decisions that were awarded in arbitration in 2020, as well as other factors that aren't available to the auditor. How did consumers with attorneys who lost in arbitration, and those who rejected awards in arbitration, fare subsequently? Did they get more favorable resolutions than BBB AUTO LINE processes had afforded them? And to what extent were more favorable resolutions balanced by attorneys' fees that went to lawyers instead of consumers?

Table III–33: Mode of presentation

	In Writing		Telephone		In Person	
	#	%	#	%	#	%
REMEDIES: ARB CASES						
Repurchase/ replace	219	29.95%	335	38.06%	119	44.56%
Repair	52	7.11%	110	12.50%	29	10.86%
Other	9	1.24%	22	2.50%	8	3.00%
Denial	451	61.70%	413	46.94%	111	41.58%
Total	731	100.00%	880	100.00%	267	100.00%
REMEDIES -- ARB W ATTY						
Repurchase/ replace	206	28.98%	50	62.50%	7	70.00%
Repair	52	7.32%	4	5.00%	0	0.00%
Other	9	1.26%	1	1.25%	0	0.00%
Denial	444	62.44%	25	31.25%	3	30.00%
Total	711	100.00%	80	100.00%	10	100.00%
REMEDIES – ARB, NO ATTY						
Repurchase/ replace	13	65.00%	285	35.63%	112	43.58%
Repair	0		106	13.25%	29	11.28%
Other	0		21	2.62%	8	3.12%
Denial	7	35.00%	388	48.50%	108	42.02%
Total	20	100%	800	100.00%	257	100.00%

Consumers with attorneys were far more likely than those without attorneys to undertake arbitration in writing, and, at the auditor’s request, BBB AUTO LINE in 2019 first provided the sorts of data in Table III-33A. This table breaks out the awards granted in arbitrations conducted in writing, by telephone, and in person, and further breaks each of these out for attorney cases and non-attorney cases. Of course, for most of 2020, the pandemic necessitated that arbitrations be conducted only in writing or by telephone, and not in person.

Although some of the categories involve too few cases to illuminate meaningful patterns,³¹⁹ the results indicate that consumers, with or without attorneys, fared somewhat better

³¹⁹ Even in the national sample, the auditor is particularly skeptical of categories with fewer than 25 cases. With a sample size of 25, a change in a single case would change the relevant percentage by 4%. When the sample drops to 7, a shift of a single case’s resolution would change the relevant percentages by over 14%.

when they brought cases in-person than when they brought them by telephone;. The difference in the nature of the process was accentuated this year, moreover, since the constraints precluded inspections and test drives by the arbitrator – and, while these could be accomplished indirectly through a technical expert, the process of obtaining a technical expert, particularly during the pandemic, could be time-consuming. .

H. SATISFACTION

The last portion of the “national-survey” analysis concerns consumer satisfaction. For most of these questions, consumers were asked to grade BBB AUTO LINE staff and (for consumers who said they used arbitration) the arbitrators. Grades are presented for all consumers, and then broken out to show grades from consumers who reported that they got awards (with further breakouts based on the nature of the award) and from those who said their claims were denied.

Not surprisingly, consumers who got better results were more impressed with the virtues of the program.

1. Satisfaction with Arbitrator

Table III--34: How would you grade the arbitrator on understanding the facts of your case?

	Total	Award	No Award	Refund/ Replacement	Repair/ Other
BASE: ARBITRATED CASES, NOT SURE EXCLUDED	69	50	19	31	19
	100.0%	100.0%	100.0%	100.0%	100.0%
A=Excellent	37	35	2	26	9
	53.6%	70.0%	10.5%	83.9%	47.4%
B=Good	9	5	4	2	3
	13.0%	10.0%	21.1%	6.5%	15.8%
C=Average	10	5	5	2	3
	14.5%	10.0%	26.3%	6.5%	15.8%
D=Poor	6	2	4	-	2
	8.7%	4.0%	21.1%	-	10.5%
F-Failing Grade	7	3	4	1	2
	10.1%	6.0%	21.1%	3.2%	10.5%
MEAN	2.91	3.34	1.79	3.68	2.79

Table III--35: How would you grade the arbitrator on objectivity and fairness?

	Total	Award	No Award	Refund/ Replacement	Repair/ Other
BASE: Arb., "not sure" excluded	67	48	19	30	18
	100.0%	100.0%	100.0%	100.0%	100.0%
A=Excellent	36	35	1	26	9
	53.7%	72.9%	5.3%	86.7%	50.0%
B=Good	8	4	4	3	1
	11.9%	8.3%	21.1%	10.0%	5.6%
C=Average	8	4	4	-	4
	11.9%	8.3%	21.1%	-	22.2%
D=Poor	9	3	6	-	3
	13.4%	6.3%	31.6%	-	16.7%
F-Failing Grade	6	2	4	1	1
	9.0%	4.2%	21.1%	3.3%	5.6%
MEAN	2.88	3.40	1.58	3.77	2.78

Table III-36: How would you grade the arbitrator on reaching an impartial decision?

	Total	Award	No Award	Refund/ Replacement	Repair/ Other
BASE: Arb., “not sure” excluded	68	49	19	30	19
	100.0%	100.0%	100.0%	100.0%	100.0%
A=Excellent	40	37	3	28	9
	58.8%	75.5%	15.8%	93.3%	47.4%
B=Good	4	3	1	-	3
	5.9%	6.1%	5.3%	-	15.8%
C=Average	7	3	4	1	2
	10.3%	6.1%	21.1%	3.3%	10.5%
D=Poor	11	4	7	-	4
	16.2%	8.2%	36.8%	-	21.1%
F-Failing Grade	6	2	4	1	1
	8.8%	4.1%	21.1%	3.3%	5.3%
MEAN	2.90	3.41	1.58	3.80	2.79

Table III-37: How would you grade the arbitrator on coming to a reasoned & well thought-out decision?

	Total	Award	No Award	Refund/ Replacement	Repair/ Other
BASE: Arb., “not sure” excluded	68	49	19	30	19
	100.0%	100.0%	100.0%	100.0%	100.0%
A=Excellent	39	37	2	28	9
	57.4%	75.5%	10.5%	93.3%	47.4%
B=Good	5	2	3	-	2
	7.4%	4.1%	15.8%	-	10.5%
C=Average	8	3	5	1	2
	11.8%	6.1%	26.3%	3.3%	10.5%
D=Poor	7	3	4	-	3
	10.3%	6.1%	21.1%	-	15.8%
F-Failing Grade	9	4	5	1	3
	13.2%	8.2%	26.3%	3.3%	15.8%
MEAN	2.85	3.33	1.63	3.80	2.58

Table III-38: ARBITRATOR SATISFACTION COMPOSITE

BASE: Arb., “not sure” excluded	Total	Award	No Award	Refund/ Replacement	Repair/ Other
Understanding the facts of your case	2.91	3.34	1.79	3.68	2.79
Objectivity and fairness	2.88	3.40	1.58	3.77	2.78
Reaching an impartial decision	2.90	3.41	1.58	3.80	2.79
Coming to a reasoned & well-thought-out decision	2.85	3.33	1.63	3.80	2.58
AVERAGE	2.89	3.37	1.65	3.76	2.74

Table III-38A
ARBITRATOR SATISFACTION COMPOSITE (BY YEAR)

	Total	Award	No Award	Repurchase/ Replacement	Repair/ Other
Composite (2020)	2.89	3.37	1.65	3.76	2.74
Composite (2019)	2.63	3.56	1.31	3.78	3.18
Composite (2018)	2.36	3.52	1.26	3.72	2.70
Composite (2017)	2.03	2.97	1.07	3.58	2.33
Composite (2016)	2.34	3.40	1.02	3.69	2.30
Composite (2015)	2.59	3.40	0.79		

The auditor has previously expressed skepticism about composites that measure satisfaction rates for arbitrators without adjusting for how well consumers did in arbitration. The auditor suspected that consumers’ satisfaction with arbitrators was highly correlated to their success in arbitration – and, therefore, year-to-year fluctuations in satisfaction might reflect, in substantial part, fluctuations in the success of the consumers surveyed.

To this end, the current auditor included some breakouts in his first (2015) audit, and added more in 2016. Not surprisingly, consumers who got relief in arbitration tend to view their arbitrators far more favorably than those who didn’t, and, the better they fared, the more impressed they were with the arbitrator’s virtues. As shown by the above summary, there was in fact a substantial difference in satisfaction between consumers who got repurchase/replacement awards and those who got other awards.

Looking at the data for the last six years, though, one pattern does seem to emerge. The “grades” from consumers whose claims were denied has been rising since 2015, and rose particularly dramatically this year. The 1.61 grade from consumers whose claims were denied was still a somewhat underwhelming C-, but the score continued to rise, essentially. Indeed, it rose from about a D- min 2015, to a D in 2016, then to a D+ by last year, and now to a C-.

2. Satisfaction with BBB AUTO LINE staff

Table III-39: How would you grade BBB AUTO LINE staff on objectivity and fairness?

BASE: ARB/MED, “not sure” excluded	187
	100.0%
A=Excellent	110
	58.8%
B=Good	42
	22.5%
C=Average	18
	9.6%
D=Poor	8
	4.3%
F=Failing Grade	9
	4.8%
MEAN	3.26

Table III-40: How would you grade BBB AUTO LINE Staff on efforts to assist you in resolving your claim?

BASE: ARB/MED, “not sure” excluded	188
	100.0%
A=Excellent	104
	55.3%
B=Good	35
	18.6%
C=Average	21
	11.2%
D=Poor	13
	6.9%
F=Failing Grade	15
	8.0%
MEAN	3.06

Table III-41: Overall, what grade would you give BBB AUTO LINE?

BASE: ARB/MED, “not sure” excluded	188
	100.0%
A=Excellent	99
	52.7%
B=Good	38
	20.2%
C=Average	25
	13.3%
D=Poor	11
	5.9%
F=Failing Grade	15
	8.0%
MEAN	3.04

Table III-42
BBB AUTO LINE STAFF EFFORTS
SATISFACTION COMPOSITE
FOR CONSUMERS WHO USED MEDIATION OR ARBITRATION

	Mean
Objectivity and fairness	3.26
Efforts to resolve claim	3.06
Overall grade	3.04
AVERAGE	3.12

Composite Mean (2020)	3.12
Composite Mean (2019)	3.18
Composite mean (2018)	3.35
Composite mean (2017)	3.24
Composite mean (2016):	3.29
Composite mean (2015)	3.20

Table III-43: Would you recommend BBB AUTO LINE to friends or family?

	Total	Med/Arb
BASE: total, not sure responses to this question excluded	394	186
	100.0%	100.0%
Yes	251	154
	63.7%	82.8%

Composite Means (2020)

All consumers 63.7%
 Consumers with mediations or arbitrations 82.8%

Composite Means (2019)

All consumers 74.4%
 Consumers with mediations or arbitrations 86.9%

Composite Means (2018)

All consumers: 70.0%
 Consumers with mediations or arbitrations: 88.2%

Composite Means (2017)

All consumers: 70.9%
 Consumers with mediations or arbitrations: 82.9%

Composite Means (2016)

All consumers: 69%
 Consumers with mediations or arbitrations: 82%

Composite Means (2015)

All consumers: 65%
 Consumers with mediations or arbitrations: 74%

Interestingly, among the 17 consumers in the survey who went to arbitration and lost (and who didn't respond "not sure" to this question), 7 (41.2%) nonetheless said they'd recommend the program

IV. SURVEY RESULTS – FLORIDA

Preliminarily, the notes in Section IIA, addressing such matters as table numbering and gender-specific pronouns, apply here as well.

Among the 9,044 cases that BBB AUTO LINE closed during the audit year, 1834 (20.3%) were from Florida. And, although individual Florida consumers were far more likely to be called by TechnoMetrica than were consumers from any other state except Ohio, the margin of error for questions posed to all 154 consumers in the Florida sample was still +/-7.1%, substantially higher than the +/-4.3% for questions posed to all 403 consumers in the national sample. Further, as noted before, most questions were posed only to certain consumers, such as those who used arbitration. (There were 37 surveyed consumers in the Florida survey who said they used arbitration. For those questions, the Florida margin of error grows substantially³²⁰; when it gets well into the double-digits, the macro comparisons become, at best, a very blunt instrument.

Still, other parts of the analysis, as described below, substantially alleviate any concerns that might be posed by high margins or error – or by occasional figures outside the applicable margin of error. These include multi-year comparisons, but, even more importantly, and for reasons discussed above, they include the *micro* analysis for the relevant population.

³²⁰ Some questions were directed to even more select groups of consumers, e.g., consumers who said that a repair remedy failed. While these questions probed issues of interest to the audit, they weren't used for projections to the larger population; the margin of error would have made such projections to all intents useless.

A. GENERAL INFORMATION

Table IV-1: Vehicle Year (Survey)

	2020 Cases
TOTAL	154
	100.0%
2007 or older	-
	-
2008	-
	-
2009	-
	-
2010	-
	-
2011	3
	1.9%
2012	2
	1.3%
2013	4
	2.6%
2014	2
	1.3%
2015	4
	2.6%
2016	7
	4.5%
2017	20
	13.0%
2018	39
	25.3%
2019	51
	33.1%
2020	22
	14.3%
2021	-
	-

Table IV-2: The BBB AUTO LINE's records show they closed a complaint in 2019 about your <make> vehicle. Is that correct?

TOTAL	154
	100.0%
Yes	154
	100.0%

Table IV-3: Repair Attempts

	2020	2019	2018	2017
BASE: all, not sure" excluded	153	145	149	154
	100.0%	100.0%	100.0%	100.0%
One	11	13	11	18
	7.2%	9.0%	7.4%	11.7%
Two	9	13	6	6
	5.9%	9.0%	4.0%	3.9%
Three	25	20	24	26
	16.3%	13.8%	16.1%	16.9%
Four or more	98	81	87	89
	64.1%	55.9%	58.4%	57.8%
None	10	18	21	15
	6.5%	12.4%	14.1%	9.7%

Table IV–4: How did you find out that you could file a complaint with BBB AUTO LINE? (Multiple replies accepted).

	2020	2019	2018	2017 ³²¹
BASE: All, “not sure” excluded	154	147	151	157
	100.0%	100.0%	100.0%	100.0%
Manufacturer's manuals/warranty documents	21	26	29	23
	13.6%	17.7%	19.2%	14.6%
Dealer or manufacturer representative	22	15	16	11
	14.3%	12.2%	10.6%	7.0%
BBB AUTO LINE, BBB, or their websites	31	14	11	22
	20.1%	9.5%	7.0%	14.9%
Gov't website, office, or official	9	12	18	16
	5.8%	8.2%	11.9%	9.6%
Other Website (not BBB, BBB AUTO LINE, or government)	28	33	36	48
	18.2%	22.4%	23.8%	30.6%
Lawyer	8	3	3	1
	5.2%	2.0%	2.0%	0.6%
Friend/family/word of mouth	27	32	28	31
	17.5%	21.8%	18.5%	19.7%
TV/Radio/Newspaper	-	1	-	-
	-	0.7%	-	-
Used the program previously	3	7	3	4
	1.9%	4.8%	2.0%	2.5%
General knowledge	14	10	3	
	9.1%	6.8%	2.0%	
Other	-		4	0
	-		2.6%	0.0%

³²¹ Multiple responses weren't accepted until 2018; previously, consumers were asked how they *first* learned about the program.

B. PROCESS

Table IV-5: Aggregate “process” responses

	BBB AUTO LINE stats (A1)	Same, excluding att’y cases (A2)	Fully adjusted³²² (A3)	Survey (B1)	Survey, adjusted for response rate (see below) (B2)
TOTAL	1834	1318	1126	154	
	100.0%	100.0%	100.0%	100.0%	100.0%
Mediation	404	365	279	50	
	22.0%	27.7%	24.8%	32.5%	27.6%
Arbitration	515	226	221	37	
	28.1%	17.1%	19.6%	24.0%	22.4%
Withdrawn	153	115	87	6	
	8.4%	8.7%	7.7%	3.9%	4.7%
Ineligible	762	612	539	57	
	41.6%	46.4%	47.9%	37.0%	45.2%
Other				4	
				2.6%	

As explained below, the key comparison, for purposes of using the survey results to check the accuracy of the BBB AUTO LINE spread sheet, is between columns A3 and B2.

³²² See below; also Section II.A of this Chapter.

Table IV–5A: Multi-year comparisons (A1 Figures)

	2020	2019	2018	2017
TOTAL	1834	2365	2028	2195
	100.0%	100.0%	100.0%	100.0%
Mediation	44	531	621	648
	22.0%	22.4%	30.6%	29.5%
Arbitration	515	588	357	441
	28.1%	24.9%	17.6%	20.1%
Withdrawn	153	196	143	145
	8.4%	8.3%	7.1%	6.6%
Ineligible	762	1050	907	961
	41.6%	44.4%	44.7%	43.8%

Table IV- 6: Consumer agreement with BBB AUTO LINE records

	Mediated	Arbitrated	Withdrawn	Ineligible	Other
TOTAL	50	37	6	57	4
	100.0%	100.0%	100.0%	100.0%	100.0%
Mediation (Imported)	46	1	-	-	-
	92.0%	2.7%	-	-	-
Arbitration (Imported)	-	35	-	-	-
	-	94.6%	-	-	-
Withdrawn (Imported)	2	-	6	1	1
	4.0%	-	100.0%	1.8%	25.0%
Ineligible (Imported)	2	1	-	56	3
	4.0%	2.7%	-	98.2%	75.0%

Concordance: 143/154 = 92.9%

Discordance: 11/154 = 7.1%

1. Micro Analysis

Table IV-6, the core of the micro analysis, reports a “concordance” of 92.9%, a rather unimpressive figure. The second step of the micro analysis, though, substantially alleviates any concerns about the accuracy of BBB AUTO LINE’s records – providing clear explanations for most divergences, and likely explanations (with various degrees of confidence) for others.

Of the eleven reported discordances (and using categories discussed in section I.A), one appears to be a straddle-like situation (category 2.a).³²³ At least two, but probably five, appear to be settlements outside the program. (Category 2.b)³²⁴ Another consumer confused ineligibility with withdrawal (category 2.d), and still another seemed to confuse mediation with arbitration (category 2.h). In yet another, BBB AUTO LINE reported a case as ineligible and the consumer said “other,” but then gave an explanation consistent with BBB AUTO LINE’s characterization (category 2.f). The other consumers, one of whose case was closed by BBB AUTO LINE as ineligible for age and the other for failure to return a signed consumer complaint form, said they never heard back from BBB AUTO LINE.³²⁵

Attorney cases: As noted above, the auditor also examined 25 case files where the consumer had counsel. On the process variable for the Florida attorney cases, there was complete concordance and the only issues the auditor observed were quite minor.³²⁶

2. Macro analysis

The “A” columns of Table IV-5. Column A1 shows aggregate “process” statistics, as reported by BBB AUTO LINE, for all cases closed in the audit year. These provide important information about the full range of cases filed in the program. Using the figure in column A1, for example, 44.0% of all eligible cases were that weren’t withdrawn were resolved through mediation,³²⁷ and, using the figures in column A2, 61.8% of cases brought by consumers without

³²³ In a typical straddle, the spread sheet misses a second case that didn’t close during the audit year. Here, the second case was missed for a different reason. After an initial request was withdrawn (as reported by BBB AUTO LINE), a second case was filed by an attorney on behalf of the consumer, and was inadvertently winnowed out by the screening process by which TechnoMetrica removed attorney cases and multiple complaints about the same vehicle. (TechnoMetrica will tweak the winnowing process next year to address the issue; instead of screening for attorney cases and then for multiple complaints about the same vehicle, TechnoMetrica will reverse the two stages).

³²⁴ Two files explicitly reported that there was a settlement outside the program. For the other three, this seems a reasonable inference where BBB AUTO LINE reported the case as ineligible and the consumer reported a mediation with a specific remedy. (In the three cases, the remedies were repairs.)

³²⁵ Curiously, one of these consumers had put together an extensive submission, so it seems curious that he didn’t contact BBB AUTO LINE if he thought the submission had been ignored.

³²⁶ In one case, for example, the parties apparently reached an agreement outside the program and the case notes indicate that the dispute resolution specialist obtained a copy of the settlement. But the copy wasn’t in the file.

³²⁷ 404 out of 919.

an attorney were resolved through mediation.³²⁸

While column A1 shows BBB AUTO LINE's calculated aggregates for *all* cases closed during the year, column A2 is limited to cases where consumers appeared without counsel; these constitute about 71.9% of the "total" cases in column A1. There's more detail in Section IV.G about these figures (and how consumers with counsel reportedly fared compared to those without).

And, while column A2 omits only cases where the consumer had a lawyer, column A3 (based on TechnoMetrica's modified version of the spread sheet) *further* omits all but the last case where the consumer filed two (or more) cases about the same vehicle that closed during the year. Both types of omission are needed to avoid the "comparing apples and oranges" problem noted above.³²⁹

Thus, column A3 reports the appropriate figures to compare to the survey results. And, as discussed next, adjustments are also appropriate for the survey results.

The "B" columns. The B columns report the survey results, with column B1 reporting the actual results and column B2 adjusting them with a weighting factor. As explained above,³³⁰ some consumers – particularly those who were deemed ineligible – are less likely than others to finish a questionnaire than those who used mediation or arbitration. This year, for example, TechnoMetrica reported the following response rates for consumers, based on the process by which, according to BBB AUTO LINE's records, their cases were resolved.

- 22.8% for those whose cases were resolved through mediation;
- 21.5% for those who used arbitration;
- 16.0% for those deemed ineligible to participate in BBB AUTO LINE; and
- 16.1% for consumers who withdrew their complaints.

Column B2 thus weights the responses in each category and simulates a scenario where all categories of consumers responded at the same rate.

So, for purposes of Table IV-5, the relevant comparison is between Columns A3 and B2. And, looking at those columns, all the differences between the two are generally within the margin of error for the Florida survey (+/- 7.2%). In other words, for cases covered by the survey – non-attorney cases with only the latest counted if there were multiple complaints about

³²⁸ 365 out of 591.

³²⁹ See Section II.B.3 of this chapter. Most significantly, for pairs of cases, a very high percentage of the first cases involved mediations.

³³⁰ See Section I.B of this chapter.

the same vehicle – the survey reasonably reflects the BBB AUTO LINE’s calculated aggregates. The macro analysis covered thus provides further support to validate the accuracy of BBB AUTO LINE’s records and calculations.

* * *

At this point, it’s necessary to add back in the MCSV omissions to get back to columns A2 and A3, and to add back in the “attorney case” omissions to get back to column A1. For these, the auditor relies on his systematic examination of 25 attorney case files, as well as his review of the omitted MCSV cases during his review of case files.³³¹ In neither did he find systematic problems with the “restored” BBB AUTO LINE records.

* * *

Finally, Table IV-5A’s multi-year comparisons show relatively consistent results over the years, although the figures fluctuate a bit and the 2020 figure suggests an increasing focus on arbitrations rather than mediations. However, among non-attorney cases the figures held reasonably steady (rising only from 16.2% to 17.1%), as did the figures among attorney cases (rising from 53.9% to 56.0%). Attorneys *are* more likely to use arbitration, though, and the key difference this year was that a higher percentage of cases were brought by attorneys.

³³¹ When the auditor was reviewing targeted case files, as described above, he also examined earlier cases in the series (whether the earlier case closed during the audit year or earlier).

C. RELIEF

The relief questions were posed only to consumers who identified their cases as arbitrated or mediated. As with the process questions, consumers were told how BBB AUTO LINE reported the relief they received, and asked to confirm or correct the results.³³²

1. Combined Mediated and Arbitrated Cases

The auditor starts with the combined results for mediated and arbitrated cases. These, in his view, present key insights into the program as a whole – and point to advantages in a program that typically starts with mediation. From the consumer’s perspective, as noted above, a repurchase obtained through mediation is no less valuable than similar relief obtained through arbitration. And, among all Florida consumers this year, 173 got repurchase or replacement remedies through mediation, while 221 got them through arbitration. For consumers who didn’t use attorneys, though, the balance shifted; 139 got repurchase or replacement remedies through mediation, while 102 got them through arbitration.³³³

Table IV–7: Relief in mediated and arbitrated cases

	BBB AUTO LINE stats (A1)	Same, excluding attorney cases (A2)	Stats from “fully adjusted” spread sheet (A3)	Survey (B)
BASE: med. & arb. cases	919	591	500	87
	100.0%	100.0%	100.0%	100.0%
Replacement/ Repurchase	394	241	234	51
	42.9%	40.8%	46.8%	58.6%
Repair	212	194	115	17
	23.1%	32.8%	23.0%	19.5%
Other	60	55	52	6
	6.5%	9.3%	10.4%	6.9%
No Award	253	101	99	13
	27.5%	17.1%	19.8%	14.9%

The key comparison in Table IV-7 is between columns A3 and B, because both exclude consumers who used attorneys and, for MCSVs, all but the last complaint filed during the audit

³³² There were small variations in wording depending on whether the consumer had identified the case as mediated or arbitrated.

³³³ See Tables IV-9 and IV-11.

year. The margin of error for questions posed to all 154 participants in the Florida sample was +/-7.1%; it's substantially higher for these tables, for questions posed only to the 87 consumers who said they used arbitration or mediation, (Table IV-7), the 50 consumers who said they used mediation (Table IV-9), and the 37 who said they used arbitration (Table IV-11).³³⁴ And here, as elsewhere, the auditor isn't troubled that one set of figures in Table IV-7 (for replacement and repurchase remedies in mediation and arbitration) has a differential slightly out of the (adjusted) margin of error,³³⁵ in part because some figures will inherently fall outside that margin, in part because of other components of the analysis. Most significantly, the most common type of "reasonably explicable discordance" this year was for consumers to attribute to the program remedies that fell outside the program – an error that would tend to boost the numbers of reported remedies.

As with the process metric, the next step is to get back to the earlier columns, which restore the attorney cases and the MCSVs that the sampling frame omitted. The same rationale discussed in the "process" section applies here.

* * *

Substantively, moreover, the auditor notes the overall distribution of remedies. Among cases that were either mediated or arbitrated (and taking the figures from columns A1), 42.9% ended with a repurchase or replacement remedy, 29.6% ended with a repair remedy or other relief, and 27.5% ended in no relief. Further, excluding cases brought by attorneys, column A2 reports that 40.8% ended with a repurchase or replacement remedy; 42.1% ended with a repair remedy some other relief; and only 17.1% ended with no award.³³⁶

³³⁴ If TechnoMetrica had simply used as the sampling frame only the 500 Florida consumers reported to have used arbitration or mediation on the fully adjusted spread sheet, and if it had interviewed 87 consumers from that base (a situation somewhat comparable to that reported above), the margin of error would have been +/- 9.6%. Similarly, for Table IV-9, had the sampling frame been 279 consumers and the number interviewed 50 the margin of error would have been +/- 12.6%. And, for Table IV-11, had the sampling frame been 292 consumers and the number interviewed 37, the margin of error would have been +/- 15.1% – a range of over 30%.

³³⁵ As explained in Section I.B of this chapter, this ties into the fact that the margin of error has a 95% "confidence interval."

³³⁶ The divergences between attorney and non-attorney cases are explored further in Section IV.G.

TABLE IV- 7A: Multi-year comparisons (A1 figures)

	2020	2019	2018	2017
BASE: med. & arb. cases	919	1119	978	1089
	100.0%	100.0%	100.0%	100.0%
Replacement/ Repurchase	394	502	512	529
	42.9%	44.9%	52.3%	48.6%
Repair	212	250	207	211
	23.1%	22.3%	21.2%	19.4%
Other	60	76	70	93
	6.5%	6.8%	7.2%	8.5%
No Award	253	291	189	245
	27.5%	26.0%	19.3%	23.5%

Table IV-8: Consumer agreement with BBB AUTO LINE records

	Replacement/ Repurchase	Repair	Other	No Award
BASE = med/arb	51	17	6	13
	100.0%	100.0%	100.0%	100.0%
Replacement/Repurchase (Imported)	49	-	-	-
	96.1%	-	-	-
Repair (Imported)	-	13	-	-
	-	76.5%	-	-
Other (Imported)	-	1	6	-
	-	5.9%	100.0%	-
No Award (Imported)	-	-	-	13
	-	-	-	100.0%
No entry (Imported)³³⁷	2	3	-	-
	3.9%	17.6%	-	-

Concordance: 81/87 = 93.1%

In five of the six cases with a divergence on remedy, the remedy divergence was a byproduct of a process divergence discussed in the previous section; in other words, BBB AUTO LINE had no entry on remedy because it didn't report the case as arbitrated or mediated in the

³³⁷ These are cases that BBB AUTO LINE reported as ineligible or withdrawn on process. As such, they didn't list a remedy.

first place, and these cases are encompassed within the discussion in the previous section. The final case is a bit more complex and involves a straddle case that was in progress at the time of the survey, but BBB AUTO LINE's records appear to be correct.

* * *

2. Mediated Cases

Most of this section and the section that follows are presented without commentary; the key commentary appears in Section 1.

Table IV–9: Relief in mediated cases

	BBB AUTO LINE stats (A1)	Same, excluding att’y cases (A2)	Stats from “fully adjusted” spread sheet (A3)	Survey (B)
BASE: MED	404	365	279	50
	100.0%	100.0%	100.0%	100.0%
Replacement/Rep urchase	173	139	134	31
	42.8%	40.6%	48.0%	62.0%
Repair	175	174	96	13
	43.3%	44.2%	34.4%	26.0%
Other	56	52	49	6
	13.9%	15.2%	17.6%	12.0%

Table IV–9A: Multi-year comparison (A1 figures)

	2020	2019	2018	2017
BASE: MED	404	531	621	648
	100.0%	100.0%	100.0%	100.0%
Replacement/ Repurchase	173	236	374	367
	42.8%	44.4%	60.2%	56.6%
Repair	175	220	182	197
	43.3%	44.4%	29.3%	30.4%
Other	56	75	65	84
	13.9%	14.1%	10.5%	13.0%

Table IV-10: Consumer agreement with BBB AUTO LINE records

	Replacement Repurchase	Repair	Other
BASE: MED	31	13	6
	100.0%	100.0%	100.0%
Replacement/Repurchase (Imported)	29	-	-
	93.5%	-	-
Repair (Imported)	-	10	-
	-	76.9%	-
Other (Imported)	-	1	6
	-	7.7%	100.0%
No entry (Imported)³³⁸	2	2	-
	6.5%	15.4%	-

Concordance: 40/43 = 93.0%

³³⁸ These are cases that BBB AUTO LINE reported as ineligible or withdrawn on process. As such, it didn't list a remedy.

3. Arbitrated Cases

Table IV–11: Relief in arbitrated cases

	BBB AUTO LINE stats (A1)	Same, excluding att’y cases (A2)	Stats from “fully adjusted” spread sheet (A3)	Survey (B)
BASE: ARB	515	226	221	37
	100.0%	100.0%	100.0%	100.0%
Replacement/Rep urchase	221	102	100	20
	42.9%	45.1%	45.2%	54.1%
Repair	37	20	19	4
	7.2%	8.8%	8.6%	10.8%
Other	4	4	3	-
	0.8%	1.8%	1.4%	-
No Award	253	101	99	13
	49.1%	44.7%	44.8%	35.1%

Table IV–11A: Multi-year comparisons (A1 figures)

	2020	2019	2018	2017
BASE: ARB	515	588	357	441
	100.0%	100.0%	100.0%	100.0%
Replacement/ Repurchase	221	266	138	162
	42.9%	45.2%	38.7%	36.7%
Repair	37	30	25	14
	7.2%	5.1%	7.0%	3.2%
Other	4	1	5	9
	0.8%	0.2%	1.4%	2.0%
No Award	253	291	189	256
	49.1%	49.5%	52.9%	58.0%

Table IV–12: Consumer agreement with BBB AUTO LINE records

	Replacement /Repurchase	Repair	Other	No Award
BASE: ARB	20	4	-	13
	100.0%	100.0%	-	100.0%
Replacement/Repurchase (Imported)	20	-	-	-
	100.0%	-	-	-
Repair (Imported)	-	3	-	-
	-	75.0%	-	-
Other (Imported)	-	-	-	-
	-	-	-	-
No Award (Imported)	-	-	-	13
	-	-	-	100.0%
No entry (Imported)³³⁹	-	1	-	-
	-	25.0%	-	-

Concordance: 34/35 = 97.1%

Table IV–13: Did you return a form accepting the arbitrator's decision?

BASE: ARB, with award, “not sure” excluded	19
	100.0%
Yes	17
	89.5%

Table IV–14: Acceptance of different types of remedies

	Total	Repurchase/ Replacement	Repair	Other
BASE: ARB with award, “not sure” excluded	19	17	2	-
	100.0%	100.0%	100.0%	-
Yes	17	17	-	-
	89.5%	100.0%	-	-

³³⁹ These are cases that BBB AUTO LINE reported as ineligible or withdrawn on process. As such, they didn't list a remedy.

Table IV–15: Consumer agreement with BBB AUTO LINE records

	Survey	
	Accepted	Rejected
BASE: See below	17	2
	100.0%	100.0%
Accepted (Imported)	17	-
	100.0%	-
Rejected (Imported)	-	2
	-	100.0%

Concordance: 19/19: 100.0%

4. Withdrawn Cases

Table IV–16: Which of the following best describes why you withdrew your complaint?

	2019 Cases
BASE: Withdrawn cases	8
	100.0%
You settled the matter or your car was fixed	5
	62.5%
You sold the car	1
	12.5%
Some other reason	2
	25.0%

Pursuant to a requirement specific to Florida, BBB AUTO LINE has provided the following breakout:

	All Manufacturers		Certified Manufacturers	
All filed claims:	2,365	100.0%	2,337	100.0%
Mediated	531	22.4%	528	22.6%
Arbitrated	588	24.9%	580	24.8%
No jurisdiction	1,050	44.7%	1,037	44.4%
Withdrawn	196	8.3%	192	8.2%
All arbitrations:	588	100.00%	584	100.00%
Full repurchase	226	38.4%	224	38.4%
Partial repurchase	7	1.2%	7	1.2%
Replacement	33	5.6%	33	5.6%
Repair	30	5.1%	30	5.1%
Trade assist	0	0.0%	0	0.0%
Other award	1	0.2%	1	0.2%
No award	291	49.5%	289	49.5%

The seven cases reporting a partial repurchase were all non-lemon law cases.

C. COMPLIANCE QUESTIONS

As discussed in connection with the national survey,³⁴⁰ starting with the 2019 audit, the auditor asked BBB AUTO LINE to provide case-by-case compliance codes on the spread sheet that it prepares, each February, for TechnoMetrica's use in conducting the survey.³⁴¹ TechnoMetrica doesn't need this data³⁴²; the auditor requested it for his own use. Further, starting with the 2020 audit, he asked TechnoMetrica to incorporate these codes into the spread sheets that *they* generate, including those showing survey responses. With these, the auditor can, with relative ease, compare individual consumer's survey responses on compliance to BBB AUTO LINE's coding. Taken together, these steps enabled the auditor to refine his analysis on compliance last year, and to refine it further this year.

Also, at the auditor's suggestion, BBB AUTO LINE began to compile its aggregate statistics, including aggregate compliance statistics, from the data on the spread sheet that it prepares for TechnoMetrica. This has led to somewhat greater precision on various metrics, including compliance, from the outset. And, because of the greater transparency, the auditor was able to hone in more precisely on possible problems, particularly those involving reconvened cases, this year.³⁴³ These problems bear addressing, although they're limited in scope and far from severe enough to jeopardize substantial compliance.

³⁴⁰ See Chapter III.C.

³⁴¹ Previously, he had asked them to identify compliance coding for specific cases that had been highlighted by the survey, particularly those where consumers reported non-performance.

³⁴² In survey questions about process, remedy, and timing questions, consumers were told how BBB AUTO LINE reported their cases and asked to agree or disagree; thus, TechnoMetrica needed to know how BBB AUTO LINE reported the cases. On compliance though, consumers were simply asked about their experiences.

³⁴³ Chapter 2, Section II.D.

Table IV–17: Which of the following applies to your case? The manufacturer...

	Mediated		Arbitrated		Med + Arb	
	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE
BASE: MED cases and ARB cases with an award that consumer accepted. “Not sure” excluded from survey figures	50	404	21	185	71	589
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Carried out remedy within the time specified, including any extension to which you agreed	40	353	15	168	55	521
	80.0%	87.4%	71.4%	90.8%	77.5%	88.5%
Carried out remedy after the time specified, including any extension to which you agreed	7	2	6	2	13	4
	14.0%	0.5%	28.6%	1.1%	18.3%	0.7%
Hasn’t yet carried out remedy, time to do so hasn’t expired	1	22	-	6	1	28 ³⁴⁴
	2.0%	5.4%	-	3.2%	1.4%	4.8%
Hasn’t yet carried out remedy, time to do so has expired	2	21	-	7	2	28
	4.0%	5.2%	-	3.8%	2.8%	4.8%
(Failure to comply was the fault of the consumer)³⁴⁵		(9)		(5)		(14)
		(2.2%)		(2.7%)		(2.4%)
Time for compliance has expired, performance not verified		6		2		8 ³⁴⁶
		0.1%		1.1%		1.4%

³⁴⁴ Compliance was subsequently confirmed in all of these cases, except for one arbitration

³⁴⁵ For the survey, this is based on consumers’ responses to a follow-up question. No consumers accepted fault on the compliance question (through some did so, as reported in the next section, for delays in resolving cases in the first place).

³⁴⁶ BBB AUTO LINE reported manufacturer compliance in all eight of these cases by April. BBB AUTO LINE had confirmed compliance in four of these cases during the audit year, but the confirmation wasn’t recorded in a way that got picked up by the spread sheet. In the other four cases, the compliance deadline had passed in the weeks just before the survey, and, in three of the cases, compliance was confirmed soon after BBB AUTO LINE prepared the February spread sheet. In the fourth, compliance isn’t listed and confirmed (in connection with a consumer request to reconvene) until April.

* As noted in Chapter 2, Section II.D, “compliance” doesn’t necessarily ensure consumer satisfaction. Thus, a manufacturer who agrees to inspect a car and repair any warranted defects that it finds “complies” if it does the inspection and finds no warranted defects, even if the consumer doesn’t accept that result and pursues the matter (perhaps successfully, perhaps not) in BBB AUTO LINE.

* Compliance was later confirmed in 27 of the 28 cases for which the time for compliance hadn’t yet expired when BBB AUTO LINE prepared its spread sheet in February, and for all eight cases where the time for compliance had passed but performance hadn’t yet been verified. Taking these into account (and assuming compliance was timely), the compliance rate would have been 94.3%.

Preliminarily, this chapter is primarily based on BBB AUTO LINE’s data submission, but, as to some April updates, it reflects input from the auditor himself.³⁴⁷ The auditor needed to work with BBB AUTO LINE to improve the *process* for developing these statistics, and the auditor views this as a one-year aberration that will enable him to get comparable results, without such personal input, in the future.

Reconvened cases. Among the Florida cases on the February spread sheet, the compliance codes for ten reported a reconvening. These had the potential to warrant a second compliance metric, reflecting how the manufacturer complied with a second order, if the arbitrator ordered relief and the consumer accepted the decision?

Among these ten cases, the arbitrator denied relief in three, so there wasn’t a compliance issue. Among the other seven (two settlements and five arbitrator decisions, with repurchase or replacement relief in five), compliance was confirmed in three, it was assumed (from an unreturned performance verification letter) in another three, and, in one (a settlement for a \$250 certificate), there was no confirmation.,

Non-performance reported by surveyed consumers. The survey provides a check on the aggregates that were calculated by BBB AUTO LINE, and consumers surveyed this year reported a higher rate of non-compliance than did BBB AUTO LINE. BBB AUTO LINE this year reported a *higher* non-performance rate than did surveyed consumers – the BBB AUTO LINE figures was 4.8%, reduced to 2.4% in cases where BBB AUTO LINE attributed fault to the consumer, while the rate reported by surveyed consumers was 2.8%. Further, one of the two consumers who reported non-performance during the survey indicated that the manufacturer has inspected the consumer’s car, which, by BBB AUTO LINE’s standards, would be a basis for finding compliance.

³⁴⁷ This is particularly the case for the breakouts of how many cases for which compliance codes weren’t initially provided should have been classified as “time for compliance has passed, performance not verified,” and how many should have been treated as “time for compliance hasn’t yet passed.” It also applies to some of the analysis of reconvened cases, just below.

Consumers reporting delayed compliance. Among the 13 consumers reporting delayed compliance, nine hadn't returned a performance verification letter, although, in one of these, the case notes seems to indicate that the dispute resolution specialist should have known that the manufacturer hadn't complied by the due date. Three other cases seem to reflect timely compliance.³⁴⁸

As noted in Chapter 2, the auditor has previously pointed out that the performance verification letter BBB AUTO LINE has been using tells consumers that BBB AUTO LINE would assume *successful* compliance if they didn't return the form, but doesn't make explicit that compliance would also be assumed to be timely. So there's a chance that at least some consumers didn't bother to return the form because they didn't realize that would be essentially confirming timeliness. BBB AUTO LINE is now changing the performance verification letter text to address this point.

³⁴⁸ In one of these, the consumer returned a performance verification letter giving a date of performance that was timely (although the performance wasn't satisfactory to the consumer). In another, the notes indicate that the manufacturer was prepared to complete a transaction on the compliance date, but that the car had damage that the consumer needed to repair first. In the third, the arbitrator extended the compliance deadline; strangely, the consumer returned the accept/reject form with a signature but with neither the accept nor reject box checked off, but also appears to have sent in the car's registration at the same time.

Table IV–18: Comparative analysis on compliance

	2020	2019	2018	2017
BASE: MED cases and ARB cases with an award that consumer accepted. “Not sure” excluded from survey figures	589	747	727	787
	100.0%	100.0%	100.0%	100.0%
Carried out remedy within the time specified, including any extension to which consumer agreed	521	731	702	766
	88.5% (See note)	97.8%	96.6%	97.3%
Carried out remedy after the time specified, including any extension to which consumer agreed	4	-	1	1
	0.7%	-	0.1%	0.1%
Hasn’t yet carried out remedy, time to do so hasn’t expired	28	-	12	6
	4.8%	-	1.7%	0.8%
Hasn’t yet carried out remedy, time to do so has expired	28	10	12	14
	4.8%	1.4%	1.7%	1.8%
(Failure to comply was the fault of the consumer)³⁴⁹	(14)	(2)	(9)	(7)
	(2.4%)	(0.3%)	(1.2%)	(0.9%)
Time for compliance has expired, performance not verified	8 ³⁵⁰	6		
	1.4%	0.8%		

Note: Compliance was later confirmed in 27 of the 28 cases for which the time for compliance hadn’t yet expired when BBB AUTO LINE prepared its spread sheet in February, and for all eight cases where the time for compliance had passed but performance hadn’t yet been verified. Taking these into account (and assuming compliance was timely), the compliance rate would have been 94.3%.

³⁴⁹ For the survey, this is based on consumers’ responses to a follow-up question. No consumers accepted fault on the compliance question (through some did so, as reported in the next section, for delays in resolving cases in the first place).

³⁵⁰ BBB AUTO LINE reported manufacturer compliance in all eight of these cases by April. BBB AUTO LINE had confirmed compliance in four of these cases during the audit year, but the confirmation wasn’t recorded in a way that got picked up by the spread sheet. In the other four cases, the compliance deadline had passed in the weeks just before the survey, and, in three of the cases, compliance was confirmed soon after BBB AUTO LINE prepared the February spread sheet. In the fourth, compliance isn’t listed and confirmed (in connection with a consumer request to reconvene) until April.

E. TIMING

1. Mediated and Arbitrated Cases

These statistics, and the auditor’s analysis herein, focus exclusively on arbitrated and mediated cases.³⁵¹

Tables IV–19: Time to resolve cases (Survey)

	Mediated	Arbitrated	Combined
BASE: MED/ARB, excluding “not sure” responses to this question	50	37	87
	100.0%	100.0%	100.0%
Within 40 days	42	7	49
	84.0%	18.9%	56.3%
Within 40 days or consumer acknowledged responsibility for delay	42	11	53
	84.0%	29.8%	60.9%

Table IV–20: Time to resolve cases (BBB AUTO LINE; all cases)

	Mediated	Arbitrated	Combined
BASE: MED/ARB	404	515	919
	100.0%	100.0%	100.0%
Within 40 days	369	200	569
	91.3%	38.8%	61.2%

Table IV–20A: Time to Resolve Cases (BBB AUTO LINE; All case closed after June 30)

	Mediated	Arbitrated	Combined
BASE: MED/ARB	210	214	424
	100.0%	100.0%	100.0%
Within 40 days	196	109	305
	93.3%	50.9%	71.9%

The six-month Florida breakout shows a noticeable speedup in processing arbitrations

³⁵¹ Most of the omitted cases were ineligible cases – and most ineligible cases were resolved in short order, often a day or two. Excluding these cases thus *lowered* the reported rate of timely compliance.

during the second half of the year; the six-month rate was substantially higher than the 12-month rate.

Table IV–21: Time to resolve cases (BBB AUTO LINE; fully adjusted cases)

	Mediated	Arbitrated	Combined
BASE: MED/ARB	279	221	500
	100.0%	100.0%	100.0%
Within 40 days	254	51	305
	91.0%	23.1%	62.0%

BBB AUTO LINE didn’t provide a breakout of the extent to which consumers were responsible for delays in resolving cases, but some of the “untimely” cases may have resulted from delay caused by the consumers.

Table IV–22: Comparative analysis of timing (Combined cases)

	2020		2019		2018	
	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE
BASE: MED/ARB	87	919	78	1108	89	1189
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Within 40 days	49	569	54	766	66	978
	56.3%	61.2%	69.2%	69.1%	74.2%	78.5%

For comparative purposes, the auditor first focuses on the “fully adjusted” cases aggregates in Table IV–21. BBB AUTO LINE shows a 61.2% rate of timely compliance and the survey (Table IV-19) reports a 56.3% rate, a reasonably close correlation.

As he did last year, though, the auditor again scrutinized separately the timing results for arbitrated cases and those for mediated cases. *He did this, though, for essentially diagnostic purposes.* It seems clear that the combined results for mediations-plus-arbitrations is far more important than the results for either type of process individually; as noted before, consumers who use the program are seeking a resolution to their complaints, by whatever process is used.

With these caveats, the auditor turns to the breakout figures. And, since his primary aim here is to focus on overall performance, he uses the aggregates from the “all cases” table (Table IV–20) rather than the “fully adjusted” table.

Not surprisingly, delays are far less likely in mediated cases (91.3% timely) than in arbitrations (38.8% timely), with neither of these figures making adjustment for consumer fault. Further, any delays in resolving arbitrations under BBB AUTO LINE are, to some extent, the flip

side of an often-successful mediation program, which likely delays the start of arbitration at least somewhat.

While all these factors provide important context for the BBB AUTO LINE figures, the auditor still suggests that BBB AUTO LINE consider ways to improve timeliness – and he understands that they’re already seeking ways to do so. To that end, moreover, the auditor notes a few points that he’s observed.

First, while 38.8% of arbitrations were resolved in 40 days, the auditor’s analysis of BBB AUTO LINE’s spread sheet shows that 50.5% were resolved within 44 days. In other words, a small speed-up in resolving arbitrations (which perhaps might be accomplished by a small speed-up in attempting mediation and scheduling the arbitration), would substantially raise the rate of timely closings.³⁵²

Second, again starting with the point that 38.87% of arbitrations were resolved within 40 days, the auditor notes that 79.2% were resolved within 60 days, and 95.1% within 80 days. A very impressionistic survey by the auditor suggests that most of the more extended cases included technical examinations, which are most frequently requested by the arbitrator after the hearing, and thus routinely delay resolution beyond 40 days.³⁵³

Recommendation: BBB AUTO LINE should consider ways to improve its case processing time.

³⁵² Thus, for example, BBB AUTO LINE apparently hasn’t been highlighting to arbitrators when the 40-day timetable for a case will be reached. Though arbitrators could in theory figure this out from the case file, it seems unlikely that they routinely do so – and, knowing the deadline might encourage the small improvement that could bring more cases within the deadline. They now plan to do so.

³⁵³ Most technical examinations are requested by arbitrators, and one question this raises is whether those arbitrators overestimate its likely value. As BBB AUTO LINE notes in its training guide, these examinations, which can be time-consuming, don’t include major diagnostic work or component disassembly; the technical expert doesn’t have sophisticated diagnostic equipment available during the inspection; and the expert’s report is ultimately only an opinion. Since BBB AUTO LINE has already made these points to arbitrators, though, and since it could be problematic to limit the arbitrator’s discretion to request a technical inspection, it’s not clear that they can do more. Perhaps one possibility, though, might be to make available to arbitrators copies of carefully anonymized and redacted reports previously submitted by technical examiners.

2. Withdrawn Cases

Table IV–23: Days until complaints were withdrawn, as reported by consumers who reported withdrawing their complaints

BASE: withdrawn cases	5
	100.0%
Within 40 days	5
	100.0%

F. DOCUMENTS AND CONTACTS

Table IV–24: Next I'm going to ask a few questions about various documents that BBB AUTO LINE sends to consumers--whether by email, an online account that they created for you, or by mail, UPS or FedEx.³⁵⁴

After you first contacted BBB AUTO LINE, did you get a claim form and an explanation of the program?

	2020	2019	2018	2017
BASE: answering, “not sure” responses excluded	137	139	136	149
	100.0%	100.0%	100.0%	100.0%
Yes	121	115	122	141
	88.3%	82.7%	89.7%	94.6%

The issues posed by the consumers who reported that they didn’t get an initial package are discussed in Chapter 2, Section II.D.

Table IV–25: How clear and understandable were these documents?

	2020	2019	2018	2017
BASE: receiving docs, “not sure” excluded	121	111	120	137
	100.0%	100.0%	100.0%	100.0%
Very	78	64	76	103
	64.5%	57.7%	63.3%	75.2%
Somewhat	36	39	38	30
	29.8%	35.1%	31.7%	21.9%
Not at all	7	8	6	4
	5.8%	7.2%	5.0%	2.9%

³⁵⁴ This wording of this and various document receipt questions was revised for 2020 to reflect the use of online accounts for communications with most consumers.

Table IV–26: And how helpful were they?

	2020	2019	2018	2017
BASE: Same	119	111	121	138
	100.0%	100.0%	100.0%	100.0%
Very	66	58	59	71
	55.5%	52.3%	48.8%	51.4%
Somewhat	36	34	41	49
	30.3%	30.6%	33.9%	35.5%
Not at all	17	19	21	18
	14.3%	17.1%	17.4%	13.0%

Table IV-25 shows that 94.2% of the consumers surveyed found BBB AUTO LINE’s documents at least somewhat understandable, with 57.5% reporting that they were very understandable. Table IV-26 shows that 85.8% reported that they were at least somewhat helpful, with 52.3% finding them very helpful.

Table IV–27: After you reached a settlement, did you get an explanation either by mail, email or your online account describing the terms of the settlement?

	2020	2019	2018	2017
BASE: MED, “not sure” excluded	48	40	64	42
	100.0%	100.0%	100.0%	100.0%
Yes	41	39	61	41
	85.4%	97.5%	95.3%	97.6%

The seven “no” response to this question were something of an aberration compared to past years. However, two of the cases were reported by BBB AUTO LINE as ineligible or withdrawn, suggesting that any settlement that occurred was outside the program.

In the other five cases, the files contained a settlement letter that was reported to have been sent to the consumer, and, if the consumer got to the point of a settlement, it seems unlikely that he wasn’t able to access an online account.

Table IV–28: Did you get a notice either by mail, email, or your online account, telling you when and where to go for your hearing or vehicle inspection?

	2020	2019	2018	2017
BASE: ARB, “not sure” excluded	36	34	21	34
	100.0%	100.0%	100.0%	100.0%
Yes	33	33	20	33
	91.7%	97.1%	95.2%	97.1%

Table IV – 29: Did you get a copy, either by mail, email, or your online account, of the arbitrator's decision?

	2020	2019	2018	2017
BASE: ARB, “not sure” excluded	35	35	18	32
	100.0%	100.0%	100.0%	100.0%
Yes	34	35	18	31
	97.1%	100.0%	100.0%	96.9%

The consumer who said “no” explained that she was told the decision – her claim was denied – over the phone. BBB AUTO LINE’s files report, however, that a copy was also sent to the consumer.

Table IV–30: After you accepted the arbitrator's award/agreed to a settlement, which of the following best describes your later contacts with BBB AUTO LINE staff to discuss whether the manufacturer was doing what it promised/what the order required?

	2020	2019	2018	2017
BASE: (1) MED and (2) ARB where the consumer received and accepted an award. “Not sure” responses excluded.	69	55	68	61
	100.0%	100.0%	100.0%	100.0%
The staff contacted me by letter or email	14	16	14	17
	20.3%	29.1%	20.6%	27.9%
The staff spoke to me	8	6	10	13
	11.6%	10.9%	14.7%	21.3%
Both of those	36	26	38	26
	52.2%	47.3%	55.9%	42.6%
Neither of those	10	7	5	3
	14.5%	12.7%	7.4%	4.9%
Something else	1	-	1	2
	1.4%	-	1.5%	3.3%

Table IV–30 reports that ten consumers said they never heard from BBB AUTO LINE to check on the manufacturer’s compliance. One of these was a case that the consumer withdrew because he learned that the manufacturer had already extended a settlement offer, and the other case, reported as ineligible, probably involved a settlement outside the program as well.

In the other eight cases, the files reported that performance verification letters were *sent*, though that doesn’t necessarily mean that they were received.

G. CLAIMS FILED BY CONSUMERS WITH COUNSEL COMPARED TO CLAIMS FILED DIRECTLY BY CONSUMERS; ALSO, MODE OF PRESENTATION

TABLE IV–31: Comparison on process and remedy

	All cases		Cases without att'ys		Cases with att'ys	
	#	%	#	%	#	%
PROCESS						
Mediated	404	22.0%	365	27.7%	39	7.6%
Arbitrated	515	28.1%	226	17.1%	289	56.0%
Ineligible	762	41.6%	612	46.4%	150	29.1%
Withdrawn	153	8.4%	115	8.7%	38	7.4%
Total	1,834	100.0%	1,318	100.0%	516	100.0%

]

	All cases		Cases without att'ys		Cases with att'ys	
	#	%	#	%	#	%
REMEDIES: MED						
Repurchase/replace	173	42.8%	139	40.6%	34	87.2%
Repair	175	43.3%	174	44.2%	1	2.6%
Other	56	13.9%	52	15.2%	4	10.3%
Total	404	100.0%	365	100.0%	39	100.0%
REMEDIES: ARB						
Repurchase/replace	221	42.9%	102	45.1%	119	41.2%
Repair	37	7.2%	20	8.8%	17	5.9%
Other	4	0.8%	3	1.8%	1	0.3%
No award	253	49.1%	101	44.7%	152	52.6%
Total	515	100.0%	226	100.0%	289	100.0%
REMEDIES: MED+ARB						
Repurchase/replace	394	42.9%	241	40.8%	157	46.4%
Repair	212	23.1%	194	32.8%	20	5.9%
Other	60	6.5%	55	9.3%	1	0.3%
No Award	253	27.5%	101	17.9%	160	47.3%
Total	919	100.0%	591	100.0%	338	100.0%

Table IV- 33 – Mode of presentation

	In Writing		Telephone		In Person	
	#	%	#	%	#	%
REMEDIES: ARB						
Repurchase/replace	96	36.50%	81	47.64%	44	53.66%
Repair	17	6.46%	15	8.83%	5	6.09%
Other	1	0.38%	3	1.77%	0	0.00%
Denial	149	56.66%	71	41.76%	33	40.25%
Total	263	100%	170	100%	82	100%
REMEDIES: ARB WITH ATTY						
Repurchase/replace	92	35.93%	23	79.32%	4	100.00%
Repair	17	6.64%	0		0	0.00%
Other	1	0.40%	0		0	
Denial	146	57.03%	6	20.68%	0	0.00%
Total	256	100%	29	100%	4	100%
REMEDIES – ARB W/O ATTY						
Repurchase/replace						
Repair	4	57.14%	58	41.14%	40	51.28%
Other	0	0%	15	10.64%	5	6.42%
Denial	0	0%	3	2.12%	0	0.00%
Total	3	42.86%	65	46.10%	33	42.30%

According to BBB AUTO LINE statistics, consumers who brought claims under the Florida program used lawyers in 516 cases, or 28.1% of 1834 cases reported closed in 2020. Looking at the combined mediation plus arbitration figures, the percentages of consumers with repurchase or replacement remedies, for attorney compared to non-attorney cases, were relatively close this year. Consumers who used attorneys were much more likely to leave the process with “no award,” a results that’s not possible in mediation but only in arbitration.

Further, and this is somewhat impressionistic, withdrawals by consumers with attorneys often seem to reflect settlements outside the program, although this also occurs in some cases where consumers without attorneys withdraw certainly occasionally occurs in some cases where consumers didn’t use attorneys as well. There’s no easy way to quantify the impact of withdrawals reflecting settlements outside the program; even when the case handler’s note report a settlement, they don’t describe the nature of the settlement (although the auditor suspects that, in many cases involving withdrawals by attorneys who settled their clients’ cases, the settlement provided for repurchase or replacement remedies).

* * *

The auditor also noted previously that consumers with attorneys were far more likely than those without attorneys to undertake arbitration in writing. At the auditor's request, BBB AUTO LINE this year provided the data presented in Table IV-33A.

This table breaks out the awards granted in arbitrations conducted in writing, by telephone, and in persons, with further break-outs within each for attorney and non-attorney cases. It's harder to discern patterns as the numbers get smaller, and the auditor is skeptical of aggregates based on relatively few consumers.

H. SATISFACTION

The final portion of these sections examines a series of questions by which consumers graded arbitrators and BBB AUTO LINE staff, and advised whether they would recommend BBB AUTO LINE.

1. Satisfaction with Arbitrator

Table IV–34: How would you grade the arbitrator on understanding the facts of your case?

	Total	Award	No Award	Refund/ Replacement	Repair/ Other
BASE: arb. cases, “not sure” excluded	37	24	13	20	4
	100.0%	100.0%	100.0%	100.0%	100.0%
A=Excellent	21	19	2	17	2
	56.8%	79.2%	15.4%	85.0%	50.0%
B=Good	3	2	1	1	1
	8.1%	8.3%	7.7%	5.0%	25.0%
C=Average	3	2	1	2	-
	8.1%	8.3%	7.7%	10.0%	-
D=Poor	6	1	5	-	1
	16.2%	4.2%	38.5%	-	25.0%
F=Failing Grade	4	-	4	-	-
	10.8%	-	30.8%	-	-
MEAN	2.84	3.63	1.38	3.75	3.00

Table IV–35: How would you grade the arbitrator on objectivity and fairness?

	Total	Award	No Award	Refund/ Replacement	Repair/ Other
BASE: arb. cases, “not sure” excluded	37	24	13	20	4
	100.0%	100.0%	100.0%	100.0%	100.0%
A=Excellent	20	18	2	17	1
	54.1%	75.0%	15.4%	85.0%	25.0%
B=Good	3	2	1	1	1
	8.1%	8.3%	7.7%	5.0%	25.0%
C=Average	3	2	1	2	-
	8.1%	8.3%	7.7%	10.0%	-
D=Poor	5	1	4	-	1
	13.5%	4.2%	30.8%	-	25.0%
F=Failing Grade	6	1	5	-	1
	16.2%	4.2%	38.5%	-	25.0%
MEAN	2.70	3.46	1.31	3.75	2.00

Table IV–36: How would you grade the arbitrator on reaching an impartial decision?

	Total	Award	No Award	Refund/ Replacement	Repair/ Other
BASE: arb. cases, “not sure” excluded	37	24	13	20	4
	100.0%	100.0%	100.0%	100.0%	100.0%
A=Excellent	20	18	2	17	1
	54.1%	75.0%	15.4%	85.0%	25.0%
B=Good	2	2	-	1	1
	5.4%	8.3%	-	5.0%	25.0%
C=Average	4	2	2	2	-
	10.8%	8.3%	15.4%	10.0%	-
D=Poor	2	-	2	-	-
	5.4%	-	15.4%	-	-
F=Failing Grade	9	2	7	-	2
	24.3%	8.3%	53.8%	-	50.0%
MEAN	2.59	3.42	1.08	3.75	1.75

Table IV–37: How would you grade the arbitrator on coming to a reasoned & well thought-out decision?

	Total	Award	No Award	Refund/ Replacement	Repair/ Other
BASE: arb. cases, “not sure” excluded	37	24	13	20	4
	100.0%	100.0%	100.0%	100.0%	100.0%
A=Excellent	19	17	2	16	1
	51.4%	70.8%	15.4%	80.0%	25.0%
B=Good	2	2	-	1	1
	5.4%	8.3%	-	5.0%	25.0%
C=Average	5	3	2	3	-
	13.5%	12.5%	15.4%	15.0%	-
D=Poor	3	1	2	-	1
	8.1%	4.2%	15.4%	-	25.0%
F=Failing Grade	8	1	7	-	1
	21.6%	4.2%	53.8%	-	25.0%
MEAN	2.57	3.38	1.08	3.65	2.00

**Table IV–38:
ARBITRATOR SATISFACTION COMPOSITE**

	Total	Award	No Award	Refund/ Replacement	Repair/ Other
Understanding facts	2.84	3.63	1.38	3.75	3.00
Objectivity and fairness	2.70	3.46	1.31	3.75	2.00
Reaching and impartial decision	2.59	3.42	1.08	3.75	1.75
Coming to a reasoned & well thought-out decision	2.57	3.38	1.08	3.65	2.00
AVERAGE	2.68	3.47	1.21	3.73	2.19

Composite Means (2020)

All consumers with arbitration	2.68
Consumers who received awards:	3.47
Replacement/Repurchase	3.73
Repair/other	2.19
Consumers with no awards:	1.21

Composite Means (2019)

All consumers with arbitration	2.52
Consumers who received awards:	3.63
Replacement/Repurchase	3.73
Repair/other	3.25
Consumers with no awards:	0.86

Composite Means (2018)

All consumers with arbitration	2.72
Consumers who received awards:	3.52
Replacement/Repurchase	3.73
Repair/other	2.66
Consumers with no awards:	1.22

Composite Means (2017)

All consumers with arbitration	1.74
Consumers who received awards:	3.17
Replacement/Repurchase	3.53
Repair/other	2.56
Consumers with no awards:	0.90

Composite Means (2016)

All consumers with arbitration:	2.25
Consumers who received awards	3.26
Replacement/Repurchase	3.70
Repair/other	2.15
Consumers with no awards	1.46

As discussed in the analysis of the national sample, the auditor has previously expressed skepticism about composites that measure satisfaction rates for arbitrators without adjusting for how well consumers did in arbitration. He suspected – and the survey breakouts show – that consumer’s satisfaction with arbitrators largely correlates to their success in arbitration, so year-to-year fluctuations in satisfaction could well represent, at least in substantial part, fluctuations in the success of the consumers surveyed. And, even if consumers had the identical success from one year to the next, it’s unlikely (given sampling errors) that the consumers surveyed would have had similarly identical success.

Further, for arbitrator satisfaction, at the state level in particular, the sample size is quite small. With only 13 “no award” consumers responding to the question, for example, each consumer controls 0.31% of the arbitrator’s grade.

For all these reasons, the auditor hesitates to put much weight in minor variations from year to year.

2. Satisfaction with BBB AUTO LINE staff

Table IV–39: How would you grade BBB AUTO LINE staff on objectivity and fairness?

BASE: arb. or med. cases, “not sure” excluded	85
	100.0%
A=Excellent	53
	62.4%
B=Good	14
	16.5%
C=Average	10
	11.8%
D=Poor	3
	3.5%
F=Failing Grade	5
	5.9%
MEAN	3.26

Table IV–40: How would you grade BBB AUTO LINE Staff on efforts to assist you in resolving your claim?

BASE: arb. or med. cases, “not sure” excluded	85
	100.0%
A=Excellent	55
	64.7%
B=Good	13
	15.3%
C=Average	8
	9.4%
D=Poor	3
	3.5%
F=Failing Grade	6
	7.1%
MEAN	3.27

Table IV-41: Overall, what grade would you give BBB AUTO LINE?

BASE: arb. or med. cases, “not sure” excluded	86
	100.0%
A=Excellent	51
	59.3%
B=Good	17
	19.8%
C=Average	9
	10.5%
D=Poor	3
	3.5%
F=Failing Grade	6
	7.0%
MEAN	3.21

**Table IV-42
BBB AUTO LINE STAFF EFFORTS-SATISFACTION COMPOSITE
FOR CONSUMERS WHO USED MEDIATION OR ARBITRATION**

	Mean
Objectivity and fairness	3.26
Efforts to resolve claim	3.27
Overall grade	3.21
AVERAGE	3.25

Composite mean (2020)	3.25
Composite mean (2019)	3.33
Composite mean (2018)	3.38
Composite mean (2017)	3.33
Composite mean (2016):	3.10

Table IV-43: Would you recommend BBB AUTO LINE to friends or family?

	Total	Med/Arb
BASE: answering, “not sure” excluded	149	86
	100.0%	100.0%
Yes	104	71
	69.8%	82.6%

Composite Means (2019)		
All consumers:		69.9%
Consumers with mediations or arbitrations:		82.6%
Composite Means (2019)		
All consumers:		69.9%
Consumers with mediations or arbitrations:		88.0%
Composite Means (2018)		
All consumers:		73.8%
Consumers with mediations or arbitrations:		87.2%
Composite Means (2017)		
All consumers:		73.2%
Consumers with mediations or arbitrations:		85.9%
Composite Means (2016)		
All consumers:		73.0%
Consumers with mediations or arbitrations:		77.0%
Composite Means (2015)		
All consumers:		76%
Consumers with mediations or arbitrations:		78.1%

Among the thirteen consumers in the survey who said they went to arbitration and lost, six of them (46.2%) said they would recommend BBB AUTO LINE.

V. SURVEY RESULTS – OHIO

Preliminarily, the notes in Section IIA, addressing such matters as table numbering and gender-specific pronouns, apply here as well.

Among the 9,044 cases that BBB AUTO LINE closed during the audit year, 404 (4.5%) were from Ohio. Individual Ohio consumers were more likely to be called by TechnoMetrica than consumers in every state – TechnoMetrica made multiple attempts to call each of the 287 eligible Ohio consumers for whom it had current contact information.

Still, given the small sample size, the margin of error for questions posed to all 78 consumers in the Ohio sample was +/- 9.4%, substantially higher than the +/-4.3% for questions posed to all 403 consumers in the national sample and even the +/- 7.1% for the 154 consumers in the Florida sample. And, for questions pertaining to remedies, the margin of error grew to figures on the order of +/-16.1%³⁵⁵ – a 32.2% range that could have rendered some tables relatively useless – although, in fact, the differentials between BBB AUTO LINE’s statistics and the survey results were sufficiently small (the numbers were much closer than the margin of error would have allowed) that these comparisons *did* show an unusually close correlation, and had more probative value than might have been anticipated.³⁵⁶

Further, other parts of the analysis, as described below, substantially alleviate any concerns that might have been posed had the differentials been higher. These include multi-year comparisons, but, even more importantly, and for reasons discussed above, they include the *micro* analysis for the relevant population.

³⁵⁵ This is the approximate margin of error for remedy questions directed only to Ohio consumers who used mediation.

³⁵⁶ Some questions were directed to even more select groups of consumers, e.g., consumers who said that a repair remedy failed. While these questions probed issues of interest to the audit, they weren’t used for projections to the larger population; the margin of error would have made such projections to all intents useless.

A. GENERAL INFORMATION

Table V-1: Vehicle Year (Survey)

TOTAL	78
	100.0%
2007 or older	1
	1.3%
2008	1
	1.3%
2009	-
	-
2010	-
	-
2011	2
	2.6%
2012	-
	-
2013	1
	1.3%
2014	2
	2.6%
2015	2
	2.6%
2016	7
	9.0%
2017	10
	12.8%
2018	14
	17.9%
2019	23
	29.5%
2020	15
	19.2%
2021	-
	-

Table V-2: The BBB AUTO LINE's records show they closed a complaint in 2020 about your <make> vehicle. Is that correct?

TOTAL	78
	100.0%
Yes	78
	100.0%

Table V-3: Repair Attempts

	2020	2019	2018	2017
BASE: ALL, “not sure” excluded	76	65	74	84
	100.0%	100.0%	100.0%	100.0%
One	6	3	4	8
	7.9%	4.6%	5.4%	9.5%
Two	4	4	7	-
	5.3%	6.2%	9.5%	-
Three	10	13	8	11
	13.2%	20.0%	10.8%	13.1%
Four or more	44	31	49	56
	57.9%	47.7%	66.2%	66.7%
None	12	14	6	9
	15.8%	21.5%	8.1%	10.7%

Table V-4: How did you find out that you could file a complaint with BBB AUTO LINE? (Multiple replies accepted).

	2020	2019	2018	2017 ³⁵⁷
BASE: all respondents, “not sure” excluded	77	67	76	90
	100.0%	100.0%	100.0%	100.0%
Manufacturer's manuals/other warranty documents	5	10	11	9
	6.5%	14.9%	14.5%	10.0%
Dealer or manufacturer representative	13	18	18	16
	16.9%	26.9%	23.7%	17.8%
BBB/BBB Website	18	5	10	10
	23.4%	7.5%	13.2%	11.1%
Government website, office, or official	2	-	4	3
	2.6%	-	5.3%	3.3%
Internet website (NOT BBB or government website)	5	1	7	17
	6.5%	1.5%	9.2%	18.9%
Lawyer	7	15	4	5
	9.1%	22.4%	5.3%	5.6%
Friend/family/word of mouth	17	2	12	24
	22.1%	3.0%	15.8%	26.7%
TV/Radio/Newspaper	-	10	-	-
	-	14.9%	-	-
Had used the BBB AUTOLINE previously	2	5	5	5
	2.6%	7.5%	6.6%	5.6%
General Knowledge	6	6	7	
	7.8%	9.0%	9.2%	
Other	3	-		1
	3.9%	-		1.1%

³⁵⁷ Multiple responses weren't accepted until 2018; previously, consumers were asked how they *first* learned about the program.

B. PROCESS QUESTIONS

Table V-5: Aggregate process responses

	BBB AUTO LINE stats (A1)	Same, excluding att’y cases (A2)	Fully adjusted³⁵⁸ (A3)	Survey (B1)	Survey, adjusted for response rate (see below) (B2)
TOTAL	404	310	287	78	
	100.0%	100.0%	100.0%	100.0%	
Mediation	135	124	110	28	
	33.4%	40.0%	38.3%	35.9%	36.2%
Arbitration	105	47	47	20	
	26.0%	15.2%	16.3%	25.6%	9.7%
Withdrawn	51	40	37	4	
	12.6%	12.9%	12.9%	5.1%	27.6%
Ineligible	113	99	93	25	
	28.0%	31.9%	32.4%	32.1%	26.4%
Other				1	
				1.3%	

Table V-5A: Multi-year comparisons (A1 Figures)

	2020	2019	2018	2017
TOTAL	404	347	414	469
	100.0%	100.0%	100.0%	100.0%
Mediation	135	151	166	102
	33.4%	43.5%	40.1%	21.8%
Arbitration	105	60	107	167
	26.0%	17.3%	25.8%	35.6%
Withdrawn	51	37	41	55
	12.6%	10.7%	9.9%	11.7%
Ineligible	113	99	100	145
	28.0%	28.5%	24.2%	30.9%

³⁵⁸ See below; also Section II.A of this Chapter.

Table V-6: Consumer Agreement with BBB AUTO LINE records

	Mediated	Arbitrated	Withdrawn	Ineligible	Other
TOTAL	28	20	4	25	1
	100.0%	100.0%	100.0%	100.0%	100.0%
Mediation (Imported)	27	-	-	-	1
	96.4%	-	-	-	100.0%
Arbitration (Imported)	-	19	-	-	-
	-	95.0%	-	-	-
Withdrawn (Imported)	-	-	4	-	-
	-	-	100.0%	-	-
Ineligible (Imported)	1	1	-	25	-
	3.6%	5.0%	-	100.0%	-

Concordance: 75/78 = 96.2%

1. Micro Analysis

Table V-6, the core of the micro analysis, reports a “concordance” of 96.2%.

Given the relatively small sample in Ohio, though, there were only three discordant responses.³⁵⁹ In one case where the consumer disagreed during the survey with BBB AUTO LINE’s reporting that her case was ineligible, the consumer confirmed during a call with the auditor that the car was out of warranty. In another (rather confusing) case, the consumer initially reported that the case was arbitrated; later, after the auditor highlighted the difference between mediation and arbitration during a follow-up call, he said that it was mediated, but also described a settlement that included the dealer – which would have been outside the program and thus ineligible, although the consumer still asserted that BBB AUTO LINE had worked on that settlement. Finally, in the last case, BBB AUTO LINE reported a mediation (with a repair remedy), while the consumer, for whom BBB AUTO LINE’s files didn’t show a returned performance verification letter, asserted that the manufacturer had unsuccessfully attempted repairs – a description seemingly consistent with BBB AUTO LINE’s records.

Attorney cases: As noted above, the auditor also examined 25 case files where the consumer had counsel. On the process variable for the Ohio attorney cases, there was complete concordance.

³⁵⁹ Two of these were among the cases that were considered in both the Ohio sample and the national sample, and were also discussed in connection with Table III-6.

2. Macro analysis

The “A” columns of Table V-5. Column A1 shows aggregate “process” statistics, as reported by BBB AUTO LINE, for all cases closed in the audit year. These provide important information about the full range of cases filed in the program; for example, Column A1 highlights that BBB AUTO LINE closed far more cases through mediation as through arbitration (and the differential grows even higher, as shown by Column A2, when looking solely at non-attorney cases).

While column A1 shows BBB AUTO LINE’s calculated aggregates for *all* cases closed during the year, column A2 provides comparable figures, as reported by BBB AUTO LINE, for cases where consumers appeared without counsel; these constitute about 76.7% of the “total” cases in column A1. And, while column A2 omits only cases where the consumer had a lawyer, column A3 (based on TechnoMetrica’s modified version of the spread sheet) omits *both* cases where the consumer had a lawyer and, where a consumer filed multiple complaints about the same vehicle that closed during the year, it also omits the earlier of those cases. Both types of omission are needed to avoid the “comparing apples and oranges” problem noted above.³⁶⁰

Thus, column A3 reports the appropriate figures to compare to the survey results. But, as discussed next, adjustments are also appropriate for the survey results.

The “B” columns. The B columns report the survey results, with column B1 reporting the actual results and column B2 adjusting them with a weighting factor. As explained previously,³⁶¹ past audits have found that some consumers – particularly those who were deemed ineligible – are less likely than others to finish a questionnaire than those who used mediation or arbitration.

TechnoMetrica this year calculated a single set of response rates for Ohio consumers included in the Ohio survey results, whether or not they were also among the Ohio consumers in the national survey.³⁶² TechnoMetrica’s figures showed the following response rates:

- 28% for those whose cases were resolved through mediation;
- 40% for those who used arbitration;
- 29% for those deemed ineligible to participate in BBB AUTO LINE; and

³⁶⁰ See Section II.B.3 of this chapter. Most significantly, for pairs of cases, a very high percentage of the first cases involved mediations.

³⁶¹ See Section I.B of this chapter.

³⁶² As noted previously, the number of Ohio cases was sufficiently small that, to obtain 78 sets of responses for Ohio, TechnoMetrica needed to include Ohio consumers who were interviewed during the national survey. (There were 31 of them.)

- 11% for consumers who withdrew their complaints.

Thus, consumers who used arbitration were over three-and-a-half times more likely than consumers who withdrew their complaints to complete a survey, the greatest differential the auditor has seen in this regard in several years of doing this analysis, a result perhaps tied to the curiously high percentage, among Ohio consumers who withdrew their complaints, of consumers whose call were consistently taken by answering machines.³⁶³ In any event, Column B2 weights the responses in each category to simulate a scenario where all categories of consumers responded at the same rate.

So, for purposes of Table V-5, the relevant comparison is between Columns A3 and B2. And, looking at those columns, most of the figures are within the 9.4% margin of error. The difference on withdrawn claims is 14.7%, though. As noted, though, this disparity may have been influenced by the high rate of “answering machine” responses in this population.³⁶⁴ Also, it’s not unexpected, as a matter of statistics, that an occasional set of numbers will fall outside the margin of error. And, particularly given the results of the micro analysis, the auditor doesn’t see a cause for concern.

* * *

At this point, it’s necessary to add back in the MCSV omissions to get back to columns A2 and A3, and to add back in the “attorney case” omissions to get back to column A1. For these, the auditor relies on his systematic examination of 25 attorney case files, as well as his review of the omitted MCSV cases during his review of case files.³⁶⁵ In neither did he find systematic problems with the “restored” BBB AUTO LINE records.

* * *

Finally, Table IV-5A’s multi-year comparisons show relatively consistent results over the years, particularly over the last three years, although the relative rates of mediation and arbitration, perhaps reflecting fluctuations in the rates of cases brought by attorney (who tend to favor arbitration) from year to year.

³⁶³ Looking at the four types of complaint resolution processes (arbitration, mediation, ineligible, withdrawn), there was only a 4% differential in the “answering machine” response rate among the four categories in the national survey; a 6% differential in the Florida survey; and a 29% differential in Ohio. Among the 37 Ohio consumers for whom BBB AUTO LINE reported a withdrawal, fully 65% consistently sent their calls to answering machines.

³⁶⁴ For example, each individual response has an outsized effect when it’s subjected to a multiplier greater than three and one half.

³⁶⁵ When the auditor was reviewing targeted case files, as described above, he also examined earlier cases in the series (whether the earlier case closed during the audit year or earlier).

C. RELIEF

The relief questions were posed only to consumers who identified their cases as arbitrated or mediated. As with the process questions, consumers were told how BBB AUTO LINE reported the relief they received, and asked to confirm or correct the results.³⁶⁶

1. Combined Mediated and Arbitrated Cases

The discussion that follows presents the combined results for mediated and arbitrated cases. These, in the auditor’s view, present the most significant insights into the program as a whole – and point to advantages in a program in which, unless the consumer wants to bypass mediation, a mediation process precedes arbitration. From the consumer’s perspective, as noted previously, a replacement vehicle obtained in mediation is no less valuable than a similar replacement obtained in arbitration – and more consumers in the Ohio program got a repurchase or replacement through mediation (85) than through arbitration (23).

Table V–7: Remedies in combined mediated and arbitrated cases

	BBB AUTO LINE stats (A1)	Same, excluding att’y cases (A2)	Stats from “fully adjusted” spread sheet (A3)	Survey (B)
BASE: MED/ARB	240	171	157	48
	100.0%	100.0%	100.0%	100.0%
Replacement/ Repurchase	98	79	78	24
	40.8%	46.2%	49.7%	50.0%
Repair	46	44	32	10
	19.2%	25.7%	20.4%	20.8%
Other	34	29	28	9
	14.2%	17.0%	17.8%	18.8%
No Award	62	19	19	5
	25.8%	11.1%	12.1%	10.4%

The key comparison is between columns A3 and B, because both exclude consumers who used attorneys and, for MCSV’s, all but the last complaint filed in 2019.

The margin of error for questions posed to all 79 participants in the Ohio sample was +/-9.4%; it’s more on the order of 11.8% for Table V–7, where the relevant questions were posed

³⁶⁶ There were small variations in wording depending on whether the consumer had identified the case as mediated or arbitrated.

only to the 48 consumers who reported using arbitration or mediation. The relevant columns are all within that margin of error; indeed, the differential never exceeds 1.7%.

As with the process metric, the next step is to get back to the earlier columns, which adds back in the attorney cases and the MCSV that the sampling frame omitted. The same rationale discussed in the “process” section applies here.

TABLE V-7A: Multi-year comparisons (A1 figures)

	2020	2019	2018	2017
BASE: MED/ARB	240	211	274	269
	100.0%	100.0%	100.0%	100.0%
Replacement/ Repurchase	98	108	116	90
	40.8%	51.2%	42.3%	33.5%
Repair	46	56	66	53
	19.2%	26.5%	24.1%	19.7%
Other	34	14	30	21
	14.2%	6.6%	11.0%	7.8%
No Award	62	33	62	35
	25.8%	15.6%	22.6%	39.0%

Table V-8: Consumer Agreement with BBB AUTO LINE records

	Repurchase/ Replacement	Repair	Other	No Award
BASE=MED/ARB	24	10	9	5
	100.0%	100.0%	100.0%	100.0%
Repurchase/Replacement (Imported)	23	-	-	-
	95.8%	-	-	-
Repair (Imported)	-	9	1	-
	-	90.0%	11.1%	-
Other (Imported)	-	-	8	-
	-	-	88.9%	-
No Award (Imported)	-	-	-	5
	-	-	-	100.0%
None on File-Ineligible/ Withdrawn Cases (Imported)	1	1	-	-
	4.2%	10.0%	-	-

Concordance: 45/48=93.85.

Of the three discordant cases, two were cases previously reported for discordant responses on the process metric; the consumer reported a settlement or arbitration with a remedy; BBB AUTO LINE, apparently properly, reported that the case was ineligible and thus didn't show a remedy.

In the third case, BBB AUTO LINE showed a repair settlement. During the survey, the consumer said he received a cash settlement, presumably after the inspection and/or repair. However, there's no returned performance verification letter in the case file, so it appears that he hadn't told BBB AUTO LINE about the resolution when BBB AUTO LINE solicited information on the manufacturer's performance.

* * *

At this point, the auditor turns to the substantive analysis. Assuming the figures in columns A1 through A4 of Table V-7 are all substantially accurate, what do they tell us? In the auditor's view, the overall distribution is revealing: among cases that were either mediated or arbitrated (and taking the figures from column A1), 40.8% ended with a repurchase or replacement remedy, 33.4% ended with some other relief, and 25.8% ended in no relief. Further, excluding cases brought by attorneys, only 11.1% of consumers got no award.

2. Mediated cases

Table V-9: Remedies in mediation

	BBB AUTO LINE stats (A1)	Same, excluding att’y cases (A2)	Stats from “fully adjusted” spread sheet (A3)	Survey (B)
BASE: MED	135	124	110	28
	100.0%	100.0%	100.0%	100.0%
Replacement/Rep urchase	68	60	59	16
	50.4%	48.4%	53.6%	57.1%
Repair	38	38	26	6
	28.2%	30.6%	23.6%	21.4%
Other	29	26	25	6
	21.5%	21.0%	22.7%	21.4%

Had the sampling frame been 110 consumers and the number interviewed 28, the margin of error would have been +/- 16.1%. The differences between columns A3 and B never exceed 3.5%.

Table V-9A: Multi-year comparisons (A1 figures)

	2020	2019	2018	2017
BASE: MED	135	151	125	102
	100.0%	100.0%	100.0%	100.0%
Replacement/ Repurchase	68	85	66	49
	50.4%	56.3%	52.8%	48.0%
Repair	38	53	32	39
	28.2%	35.1%	25.6%	38.2%
Other	29	13	27	53
	21.5%	8.6%	21.6%	13.7%

Table V-10: Consumer agreement with BBB AUTO LINE records

	Repurchase/ Replacement	Repair	Other
BASE: MED	16	6	6
	100.0%	100.0%	100.0%
Repurchase/Replacement (Imported)	16	-	-
	100.0%	-	-
Repair (Imported)	-	5	1
	-	83.3%	16.7%
Other (Imported)	-	-	5
	-	-	83.3%
Ineligible/Withdrawn Cases (Imported)	-	-	-
	-	-	-

Concordance: 26/28 = 92.9%

3. Arbitrated Cases

Table V-11: Remedies in arbitration

	BBB AUTO LINE stats (A1)	Same, excluding att’y cases (A2)	Stats from “fully adjusted” spread sheet (A3)	Survey (B)
BASE: ARB	105	47	47	20
	100.0%	100.0%	100.0%	100.0%
Replacement/ Repurchase	30	19	19	8
	28.6%	40.4%	40.4%	40.0%
Repair	8	6	6	4
	7.6%	12.7%	12.7%	20.0%
Other	5	3	3	3
	4.8%	6.3%	6.3%	15.0%
No Award	62	19	19	5
	59.0%	40.4%	40.4%	25.0%

The margin of error here is +/-16.8%, which puts the differentials between columns A3 and B within the margin.

Table V-11A: Multi-Year Comparisons (A1 Figures)

	2020	2019	2018	2017
BASE: ARB	105	60	106	167
	100.0%	100.0%	100.0%	100.0%
Replacement/ Repurchase	30	23	37	41
	28.6%	38.3%	34.3%	24.5%
Repair	8	3	9	14
	7.6%	5.0%	8.3%	8.4%
Other	5	1	-	7
	4.8%	1.7%	-	4.2%
No Award	62	33	62	105
	59.0%	55.0%	57.4%	62.9%

Table V-12: Consumer agreement with BBB AUTO LINE records

	Repurchase/ Replacement	Repair	Other	No Award
BASE: arb. cases	20	4	-	13
	100.0%	100.0%	-	100.0%
Repurchase/Replacement (Imported)	20	-	-	-
	100.0%	-	-	-
Repair (Imported)	-	3	-	-
	-	75.0%	-	-
Other (Imported)	-	-	-	-
	-	-	-	-
No Award (Imported)	-	-	-	13
	-	-	-	100.0%
None on File- Ineligible/Withdrawn Cases	-	1	-	-
	-	25.0%	-	-

Concordance: 34/35 = 97.1%

Table V-13: Did you return a form accepting the arbitrator's decision?³⁶⁷

	2020	2019	2018	2017
BASE: ARB, with award, not sure excluded	15	5	6	19
	100.0%	100.0%	100.0%	100.0%
Yes	14	5	6	17
	93.3%	100.0%	100.0%	89.5%

³⁶⁷ This question was reworded from “Did you accept the arbitrator’s decision,” to draw attention to a more concrete act of returning a form.

Table V-14: Acceptance of different types of remedies

	Repurchase/ Replacem't	Repair	Other	Total
BASE:	8	4	3	15
ARB, with award, not sure excluded	100.0%	100.0%	100.0%	100.0%
Yes	7	4	3	14
	87.5%	100.0%	100.0%	93.3%

Table V-15: Consumer Agreement with BBB AUTO LINE Records

	Accepted	Rejected
BASE:	14	1
ARB, with award, not sure excluded	100.0%	100.0%
Accepted (Imported)	13	1
	92.9%	100.0%
Rejected (Imported)	-	-
	-	-
No entry (not listed by BBB AUTO LINE as an arbitration)	1	-
	7.1%	-

4. Withdrawn Cases

Table V-16: Which of the following best describes why you withdrew your complaint?

BASE: withdrawn cases	4
	100.0%
You settled the matter or your car was fixed	3
	75.0%
You sold the car	-
	-
Some other reason	1
	25.0%

D. COMPLIANCE QUESTIONS

As discussed in connection with the national survey,³⁶⁸ starting with the 2019 audit, the auditor asked BBB AUTO LINE to provide case-by-case compliance codes on the spread sheet that it prepares, each February, for TechnoMetrica's use in conducting the survey.³⁶⁹ TechnoMetrica doesn't need this data³⁷⁰; the auditor requested it for his own use. Further, starting with the 2020 audit, he asked TechnoMetrica to incorporate these codes into the spread sheets that *they* generate, including those showing survey responses. Taken together, these steps enabled the auditor to refine his analysis on compliance last year, and to refine it further this year.

Also, at the auditor's suggestion, BBB AUTO LINE began to compile its aggregate statistics, including aggregate compliance statistics, from the data on the spread sheet that it prepares for TechnoMetrica. This has led to somewhat greater precision on various metrics, including compliance, from the outset. And, because of the greater transparency, the auditor was able to hone in more precisely on possible problems this year, particularly – though it wasn't an issue in Ohio – those involving reconvened cases. These problems bear addressing, although they're limited in scope and far from severe enough to jeopardize substantial compliance.

³⁶⁸ See Chapter III.C.

³⁶⁹ Previously, he had asked them to identify compliance coding for specific cases that had been highlighted by the survey, particularly those where consumers reported non-performance.

³⁷⁰ In survey questions about process, remedy, and timing questions, consumers were told how BBB AUTO LINE reported their cases and asked to agree or disagree; thus, TechnoMetrica needed to know how BBB AUTO LINE reported the cases. On compliance though, consumers were simply asked about their experiences.

Table V-17: Which of the following applies to your case? The manufacturer...

	Mediated		Arbitrated		Med + Arb	
	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE
BASE: MED cases and ARB cases with an award that consumer accepted. “Not sure” excluded from survey figures	28	135	14	37	172	172
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Carried out remedy within the time specified, including any extension to which you agreed	17	121	12	32	29	153
	60.7%	89.6%	85.7%	86.5%	69.0%	88.9%
Carried out remedy after the time specified, including any extension to which you agreed	6	-	-	-	6	-
	21.4%	-	-	-	14.3%	-
Hasn’t yet carried out remedy, time to do so hasn’t expired	2	5	1	2	3	7
	7.1%	3.7%	7.1%	5.4%	7.1%	4.0%
Hasn’t yet carried out remedy, time to do so has expired	3	3	1	2	4	5
	10.7%	2.2%	7.1%	5.4%	9.5%	2.9%
(Failure to comply was the fault of the consumer)³⁷¹		(3)		(2)		(5)
		(2.2%)		(5.4%)		(2.9%)
Time for compliance has expired, performance not verified		6		1		7
		4.4%		2.7%		4.0%

* As noted in Chapter 2, Section II.D, “compliance” doesn’t necessarily ensure consumer satisfaction. Thus, a manufacturer who agrees to inspect a car and repair any warranted defects that it finds “complies” if it does the inspection and finds no warranted defects, even if the consumer doesn’t accept that result and pursues the matter (perhaps successfully, perhaps not) in BBB AUTO LINE.

Preliminarily, this chapter is primarily based on BBB AUTO LINE’s data submission, but, as to some April updates, it reflects input from the auditor himself.³⁷² The auditor needed to work with BBB AUTO LINE to improve the *process* for developing these statistics, and the auditor views this as a one-year aberration that will enable him to get comparable results, without

³⁷¹ For the survey, this is based on consumers’ responses to a follow-up question. No consumers accepted fault on the compliance question,

³⁷² This is particularly the case for the breakouts of how many cases for which compliance codes weren’t initially provided should have been classified as “time for compliance has passed, performance not verified,” and how many should have been treated as “time for compliance hasn’t yet passed.” It also applies to some of the analysis of reconvened cases, just below.

such personal input, in the future.

Reconvened cases. Only one Ohio case on the February spread sheet had a compliance code that indicated a reconvening. In that case, the reported compliance code reflected the consumer's dissatisfaction and action to reconvene after the manufacturer had had a chance to comply with the first (interim repair) order. The compliance follow-through on the *final* order shows an unreturned performance verification letter, so, had compliance at that stage been reported, BBB AUTO LINE would have assumed compliance on the basis of the unreturned performance verification letter.

Non-performance reported by surveyed consumers. The survey provides a check on the aggregates that were calculated by BBB AUTO LINE, and consumers surveyed this year reported a higher rate of non-compliance than did BBB AUTO LINE. However, three consumers who reported noncompliance had repair remedies, and all reported that the manufacturer had at least inspected their vehicles (and in one case had attempted a repair); according to BBB AUTO LINE's protocols, this would be reported as compliant. The fourth case is still pending, and has a currently operative extension; this was a repurchase case for a luxury vehicle that essentially must be built to specifications.

Table V-18: Comparative analysis on compliance

	2020	2019	2018	2017
BASE: Same as Table V-17	172	151	201	146
	100.0%	100.0%		100.0%
Carried out remedy within the time specified, including any extension to which you agreed	153	141	198	136
	88.9%	93.4%	98.5%	93.2%
Carried out remedy after the time specified, including any extension to which you agreed	-	1	1	
	-	0.7%	0.5%	
Hasn't yet carried out remedy, time to do so hasn't expired	7		2	1
	4.0%		1.0%	0.7%
Hasn't yet carried out remedy, time to do so has expired	5	3		9
	2.9%	2.0%		6.1% %
(Failure to comply was the fault of the consumer)³⁷³	(5)	(2)		(7)
	(2.9%)	(1.3%)		(4.8%)
Time for compliance has expired, performance not verified	7	6		
	4.0%	4.0%		

³⁷³ For the survey, this is based on consumers' responses to a follow-up question. No consumers accepted fault on the compliance question (through some did so, as reported in the next section, for delays in resolving cases in the first place).

E. TIMING QUESTIONS

1. Mediated and Arbitrated Cases

These statistics and analysis, focus exclusively on arbitrated and mediated cases.³⁷⁴

Tables V–19: Time to resolve cases (survey)

	Mediated	Arbitrated	Combined
BASE: MED/ARB	28	20	48
	100.0%	100.0%	100.0%
Within 40 days	19	5	24
	67.9%	25.0%	50.0%
Within 40 days <i>or</i> consumer acknowledged responsibility for delay	19	7	26
	67.9%	35.0%	54.1%

Table V–20: Time to resolve cases (BBB AUTO LINE; all cases)

	Mediated	Arbitrated	Combined
BASE: MED/ARB	135	105	240
	100.0%	100.0%	100.0%
Within 40 days	109	37	146
	80.7%	35.2%	60.8%

Table IV–20A: Time to Resolve Cases (BBB AUTO LINE; all case closed after June 30)

	Mediated	Arbitrated	Combined
BASE: MED/ARB	61	49	110
	100.0%	100.0%	100.0%
Within 40 days	46	13	60
	75.4%	26.5%	55.5%

The Ohio figures (unlike that national and Florida figures, show a slow-down in processing time during the second half of the year.

³⁷⁴ Most of the omitted cases were ineligible cases – and most ineligible cases were resolved in short order, often a day or two. Excluding these cases thus *lowered* the reported rate of timely compliance.

Table V–21: Time to resolve cases (BBB AUTO LINE; fully adjusted cases³⁷⁵)

	Mediated	Arbitrated	Combined
BASE: MED/ARB	110	47	157
	100.0%	100.0%	100.0%
Within 40 days	88	8	96
	80.0%	17.0%	61.1%

Table V–22: Comparative analysis or timing

	2020		2019		2018	
	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE
BASE: MED/ARB	48	240	35	211	50	335
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Within 40 days	24	146	24	148	39	273
	50.0%	60.8%	68.6%	70.1%	78.0%	81.5%

For comparative purposes, the auditor focuses on the “fully adjusted” cases aggregates in Table V–21; the omissions that go into these calculations align the calculations with the population from which the surveyed consumers were chosen, and thus avoids an “apples and oranges” comparison.

BBB AUTO LINE shows a 61.1% rate of timely compliance, while the survey reports a 50.0% rate. Given the ambiguities for consumers asked to make this determination,³⁷⁶ the auditor considers this an acceptable correlation.

Because of the structure of the survey question and the quantitative nature of the consumers’ replies, the auditor has used a somewhat different mode of analysis to explore discordances on timeliness than he’s used for other metrics. During the survey, consumers are first asked to confirm whether the BBB AUTO LINE timing figure is accurate. Among the 48 consumers who reported that their cases were resolved through mediation or arbitration, the auditor’s review of consumer’s survey responses showed that 38 agreed with BBB AUTO

³⁷⁵ “Fully adjusted cases” omits both cases where consumer had counsel and, where a consumer filed multiple complaints about the same vehicle, all but the last such case.

³⁷⁶ See Section I.A.2.i of this chapter.

LINE's records, seven disagreed, and three weren't sure.³⁷⁷ And, among the seven consumers who disagreed with the specific timing reported by BBB AUTO LINE, though, two agreed with BBB AUTO LINE that compliance was timely even though they disagreed about the precise duration, while another reported timely compliance where BBB AUTO LINE hadn't. In the other four cases, BBB AUTO LINE and the consumer both reported that compliance wasn't timely, but the consumer (perhaps measuring time by a different standard than used by BBB AUTO LINE³⁷⁸) reported a longer time.

Further, the figures in Tables V-20 and V-21, such as the 60.8% timeliness rate that BBB AUTO LINE reported for all mediated and arbitrated cases, don't account for cases that missed the 40 day deadline because of the consumer's fault – and while none of the consumer surveyed in Ohio attributed fault to themselves, the responses in the Florida and National surveys show that consumers do cause delay in at least some cases; so, the reported timeliness figure might well be boosted by a few percentage points if the figures were similarly adjusted to reflect cases where the consumer caused the delay.

Still, particularly after this year's survey results highlighted a timing issue, the auditor scrutinized separately the timing results for arbitrated cases and those for mediated cases. *He did this, though, for essentially diagnostic purposes.* It seems clear that the combined results for mediations-plus-arbitrations is far more important than the results for either type of process individually; as noted before, consumers who use the program are seeking a resolution to their complaints, by whatever process is used.

With these caveats, the auditor turns to the breakout figures. And, since his primary aim here is to focus on overall performance, he uses the aggregates from the "all cases" table rather than the "fully adjusted" table. Not surprisingly, delays are far less likely in mediated cases (80.7% timely) than in arbitrations (35.2% timely), with neither of these figures making adjustment for consumer fault. Further, any delays in resolving arbitrations under BBB AUTO LINE are, to some extent, the flip side of an often-successful mediation program, which likely delays the start of arbitration at least somewhat.

While all these factors provide important context for the BBB AUTO LINE figures, the auditor still suggests that BBB AUTO LINE consider ways to improve timeliness – and he understands that they're already seeking ways to do so. To that end, moreover, the auditor notes a few points that he's observed.

First, while Table V-20 shows that 35.2% of arbitrations were resolved in 40 days, the auditor's analysis of BBB AUTO LINE's spread sheet shows that 47.4% of cases were resolved

³⁷⁷ For this analysis, the auditor included "not sure" cases, where the consumer wasn't sure if the precise number of days that BBB AUTO LINE reported was right. In other words, BBB AUTO LINE's records were treated as being accurate unless the consumer affirmatively corrected them.

³⁷⁸ For example, the consumer might be counting the time to implement a remedy.

within 45 days. In other words, a small speed-up in resolving arbitrations (which perhaps might be accomplished by a small speed-up in attempting mediation and scheduling the arbitration), would substantially raise the rate of timely closings.³⁷⁹

Second, again starting with the point that 35.2% of arbitrations were resolved within 40 days, the auditor found that 73.7% were resolved within 60 days, and 94.7% within 80 days. A very impressionistic survey by the auditor suggests that most of the more extended cases included technical examinations, which are most frequently requested by the arbitrator after the hearing, and thus routinely delay resolution beyond 40 days.

2. Withdrawn Cases

Table V–23: Days until complaints were withdrawn, as reported by consumers who reported withdrawing their complaints

BASE: withdrawn cases	3
	100.0%
Within 40 days	3
	100.0%

³⁷⁹ Thus, for example, BBB AUTO LINE apparently hasn't been highlighting to arbitrators when the 40-day timetable for a case will be reached. Though arbitrators could in theory figure this out from the case file, it seems unlikely that they routinely do so – and, knowing the deadline might encourage the small improvement that could bring more cases within the deadline. They now plan to do so.

F. DOCUMENTS AND CONTACTS

Table V–24: Next I'm going to ask a few questions about various documents that BBB AUTO LINE sends to consumers--whether by email, an online account that they created for you, or by mail, UPS or FedEx.³⁸⁰

After you first contacted BBB AUTO LINE, did you get a claim form and an explanation of the program?

	2020	2019	2018	2017
BASE: ALL, “not sure” excluded	73	62	73	84
	100.0%	100.0%	100.0%	100.0%
Yes	69	55	68	81
	94.5%	88.7%	89.5%	89.0%

Four consumers reported that they hadn't received the claim forms. The auditor examined the underlying files for those consumers; none of them contained a complaint form signed and returned by the consumer, but three were quickly closed for various reasons (age; age and mileage; not alleging a manufacturer's defect), in which case BBB AUTO LINE staff's practice is not to burden the consumer with reviewing, correcting, and supplementing a complaint form; rather, the case is quickly opened and shut. The final case was closed because the consumer didn't return a signed consumer complaint form, a somewhat curious event in Ohio where cases usually aren't opened until the consumer complaint form is received.

Table V–25: How clear and understandable were these documents?

	2020	2019	2018	2017
BASE: ALL, “not sure” excluded	67	55	67	80
	100.0%	100.0%	100.0%	100.0%
Very	41	32	42	48
	61.2%	58.2%	62.7%	60.0%
Somewhat	24	21	25	31
	35.8%	38.2%	37.3%	38.8%
Not at all	2	2	-	1
	3.0%	3.6%	-	1.3%

³⁸⁰ This wording of this and various document receipt questions was revised for 2020 to reflect the use of online accounts for communications with most consumers.

Table V–26: And how helpful were they?

	2020	2019	2018	2017
BASE: ALL, “not sure” excluded.	66	54	65	81
	100.0%	100.0%	100.0%	100.0%
Very	39	26	31	32
	59.1%	48.1%	47.7%	39.5%
Somewhat	16	19	32	39
	24.2%	35.2%	49.2%	48.1%
Not at all	11	9	2	10
	16.7%	16.7%	3.1%	12.3%

Table V-25 shows that 97.0% of the consumers surveyed found BBB AUTO LINE’s documents at least somewhat understandable, with 61.2% reporting that they were very understandable. Table V–26 shows that 83.3% reported that they were at least somewhat helpful, with 59.1% finding them very helpful.

Table V–27: After you reached a settlement, did you get an explanation either by mail, email or your online account describing the terms of the settlement?

	2020	2019	2018	2017
BASE: MED, “not sure” excluded	27	24	29	18
	100.0%	100.0%	100.0%	100.0%
Yes	21	22	28	18
	77.8%	91.7%	96.6%	100.0%

Six consumers reported that they hadn’t received an explanation by mail, email, or their online account of their settlement. The auditor examined the underlying files, and all report that settlement letters were *sent*, although this doesn’t establish that they were *received*. In theory, there could have been a technical problem because consumers couldn’t figure out how to use their online accounts. But, by the point of settlement, consumers have had at least some experience with the accounts; thus, it seems less likely that problems with the online accounts would be a problem at this phase of the proceeding than at the start.

Table V–28: Did you get a notice by mail, email, or your online account telling you when and where to go for your hearing or vehicle inspection?

	2020	2019	2018	2017
BASE: ARB, “not sure” excluded	20	8	17	28
	100.0%	100.0%	100.0%	100.0%
Yes	17	8	16	28
	85.0%	100.0%	94.1%	100.0%

Focusing again on the consumers who said “no” (three in this instance), the files for each report that a notice of hearing was sent. Further, while that doesn’t establish that it was *received*, all of the consumers involved showed up for their hearings. They thus clearly learned about the hearings in advance, although this doesn’t necessarily establish that they learned of the hearings from the written notice of hearing.

Table V–29: Did you get a copy, either by mail, email, or your online account, of the arbitrator's decision?

	2020	2019	2018	2017
BASE: ARB, “not sure” excluded	20	7	17	29
	100.0%	100.0%	100.0%	100.0%
Yes	20	7	17	29
	100.0%	100.0%	100.0%	100.0%

Table V–30: After you accepted the arbitrator's award/agreed to a settlement, which of the following best describes your later contacts with BBB AUTO LINE staff to discuss whether the manufacturer was doing what it promised/what the order required?

	2020	2019	2018	2017
BASE: (1) MED and (2) ARB where the consumer received and accepted an award. “Not sure” responses excluded.	37	29	35	43
	100.0%	100.0%	100.0%	100.0%
The staff contacted me by letter or email	8	2	12	12
	21.6%	6.9%	34.3%	27.9%
The staff spoke to me	10	6	4	7
	27.0%	20.7%	11.4%	16.3%
Both of those	13	16	15	19
	35.1%	55.2%	42.9%	44.2%
Neither of those	5	3	3	2
	13.5%	10.3%	8.6%	4.7%
Something else	1	2	1	3
	2.7%	6.9%	2.9%	7.0%

In the five cases where the consumer said “neither of these,” four files reported that a performance verification letter was sent, but don’t report that it was returned. In a fifth case, the performance verification letter should have been sent shortly before the survey was conducted, but was in fact delayed (and the delay, for a case closed in December, happened to overlap the conduct of the survey).

The consumer who replied “something else” added that she had contacted BBB AUTO LINE. But the file also indicates that a timely performance verification letter was sent.

G. CLAIMS FILED BY CONSUMERS WITH COUNSEL COMPARED TO CLAIMS FILED DIRECTLY BY CONSUMERS

Table V-31: Comparison on Process and Remedy

	All cases		Cases without att'ys		Cases with att'ys	
	#	%	#	%	#	%
PROCESS						
Mediated	135	33.41%	124	40.00%	11	11.70%
Arbitrated	105	26.00%	47	15.17%	58	61.70%
Ineligible	113	27.97%	99	31.93%	14	14.90%
Withdrawn	51	12.62%	40	12.90%	11	11.70%
Total	404	100.00%	310	100.00%	94	100.00%
REMEDIES: MED						
Repurchase/replace	68	50.37%	60	48.39%	8	72.72%
Repair	38	28.15%	38	30.65%	0	0.00%
Other	29	21.48%	26	20.96%	3	27.28%
Total	135	100.00%	124	100.00%	11	100.00%
REMEDIES: ARB						
Repurchase/replace	30	28.58%	19	42.86%	11	18.97%
Repair	8	7.62%	6	2.86%	2	3.45%
Other	5	4.76%	3	2.86%	2	3.45%
No award	62	59.04%	19	51.42%	43	74.13%
Total	105	100.00%	47	100.00%	58	100.00%
REMEDIES: MED+ARB						
Repurchase/replace	98	40.83%	79	46.19%	19	27.54%
Repair	46	19.17%	44	25.74%	2	2.90%
Other	34	14.17%	29	16.96%	5	7.24%
No Award	62	25.83%	19	11.11%	43	62.32%
Total	240	100%	171	100%	69	100%

While the auditor notes that the final table indicates that consumers were less likely to get a repurchase or replacement remedy through the program if they proceeded without an attorney, he also notes that “withdrawals” in attorney cases (more so than in non-attorney cases) may involve settlements that the attorney reached outside of the program.

H. SATISFACTION

1. Satisfaction with Arbitrator

Table V-34: ³⁸¹ How would you grade the arbitrator on understanding the facts of your case?

	Total	Award	No Award	Repurchase/ Replace	Repair/ Other
BASE: ARB, not sure excluded	20	15	5	8	7
	100.0%	100.0%	100.0%	100.0%	100.0%
A=Excellent	10	10	-	6	4
	50.0%	66.7%	-	75.0%	57.1%
B=Good	2	1	1	1	-
	10.0%	6.7%	20.0%	12.5%	-
C=Average	5	4	1	1	3
	25.0%	26.7%	20.0%	12.5%	42.9%
D=Poor	-	-	-	-	-
	-	-	-	-	-
Failing Grade	3	-	3	-	-
	15.0%	-	60.0%	-	-
MEAN	2.80	3.40	1.00	3.63	3.14

³⁸¹ To maintain consistency with table numbers for prior audits, Tables V-32 and V-32 are omitted.

Table V–35: How would you grade the arbitrator on objectivity and fairness?

	Total	Award	No Award	Repurchase/ Replace	Repair/ Other
BASE: ARB, not sure excluded	20	15	5	8	7
	100.0%	100.0%	100.0%	100.0%	100.0%
A=Excellent	12	12	-	7	5
	60.0%	80.0%	-	87.5%	71.4%
B=Good	2	-	2	-	-
	10.0%	-	40.0%	-	-
C=Average	3	3	-	1	2
	15.0%	20.0%	-	12.5%	28.6%
D=Poor	-	-	-	-	-
	-	-	-	-	-
F=Failing Grade	3	-	3	-	-
	15.0%	-	60.0%	-	-
MEAN	3.00	3.60	1.20	3.75	3.43

Table V–36: How would you grade the arbitrator on reaching an impartial decision?

	Total	Award	No Award	Repurchase/ Replace	Repair/ Other
BASE: ARB, not sure excluded	19	14	5	8	6
	100.0%	100.0%	100.0%	100.0%	100.0%
A=Excellent	11	11	-	7	4
	57.9%	78.6%	-	87.5%	66.7%
B=Good	3	1	2	1	-
	15.8%	7.1%	40.0%	12.5%	-
C=Average	1	1	-	-	1
	5.3%	7.1%	-	-	16.7%
D=Poor	1	1	-	-	1
	5.3%	7.1%	-	-	16.7%
F=Failing Grade	3	-	3	-	-
	15.8%	-	60.0%	-	-
MEAN	2.95	3.57	1.20	3.88	3.17

Table V–37: How would you grade the arbitrator on coming to a reasoned & well thought-

out decision?

	Total	Award	No Award	Repurchase/ Replace	Repair/ Other
BASE: ARB, “not sure” excluded	19	14	5	8	6
	100.0%	100.0%	100.0%	100.0%	100.0%
A=Excellent	10	10	-	7	3
	52.6%	71.4%	-	87.5%	50.0%
B=Good	1	1	-	-	1
	5.3%	7.1%	-	-	16.7%
C=Average	4	2	2	1	1
	21.1%	14.3%	40.0%	12.5%	16.7%
D=Poor	1	1	-	-	1
	5.3%	7.1%	-	-	16.7%
F=Failing Grade	3	-	3	-	-
	15.8%	-	60.0%	-	-
MEAN	2.74	3.43	0.80	3.75	3.00

**Table V-38:
ARBITRATOR SATISFACTION COMPOSITE**

	Total	All Award	No Award	Award: Replace-ment/ Repurchase	Award: Repair/ Other
Understanding facts	2.80	3.40	1.00	3.63	3.14
Objectivity and fairness	3.00	3.60	1.20	3.75	3.43
Reaching an impartial decision	2.95	3.57	1.20	3.88	3.17
Coming to a reasoned & well thought-out decision	2.74	3.43	0.80	3.75	3.00
AVERAGE	2.87	3.50	1.05	3.75	3.19

Composite Means (2020)

All consumers with arbitration	2.87
Consumers who received awards:	3.500
Replacement/Repurchase	3.75
Repair/other	--
Consumers with no awards:	1.05

Composite Means (2019)

All consumers with arbitration	2.82
Consumers who received awards:	4.00
Replacement/Repurchase	4.00
Repair/other	--
Consumers with no awards:	0.63

Composite Means (2018)

All consumers with arbitration	2.34
Consumers who received awards:	3.59
Replacement/Repurchase	4.00
Repair/other	3.08
Consumers with no awards:	1.50

Composite Means (2017)

All consumers with arbitration	2.69
Consumers who received awards:	3.55
Replacement/Repurchase	3.83
Repair/other	3.08
Consumers with no awards:	1.00

As discussed in the analysis of the national and Florida samples, the auditor has expressed skepticism about composites that measure satisfaction rates for arbitrators without adjusting for how well consumers did in arbitration. He suspected – and the survey breakouts show – that consumer’s satisfaction with arbitrators largely correlates to their success in arbitration, so year-to-year fluctuations in satisfaction could well represent, at least in substantial part, fluctuations in the success of the consumers surveyed. And, even if consumers overall had the identical success from one year to the next, it’s unlikely (given sampling errors) that the consumers *surveyed* would have had similarly identical success.

Further, for arbitrator satisfaction at the state level in particular, the sample size is quite small. With only 5 “no award” consumers responding to a question, for example, a drop by one consumer of a single grade (e.g., from A to B) would change the overall GPA by 0.20.

2. Satisfaction with BBB AUTO LINE staff

Table V-39: How would you grade BBB AUTO LINE staff on objectivity and fairness?

BASE: ARB/MED, “not sure” excluded	48 100.0%
A=Excellent	25 52.1%
B=Good	17 35.4%
C=Average	3 6.3%
D=Poor	2 4.2%
F=Failing Grade	1 2.1%
MEAN	3.31

Table V-40: How would you grade BBB AUTO LINE staff on efforts to assist you in resolving your claim?

BASE: ARB/MED, “not sure” excluded	48 100.0%
A=Excellent	23 47.9%
B=Good	16 33.3%
C=Average	6 12.5%
D=Poor	- -
F=Failing Grade	3 6.3%
MEAN	3.17

Table V-41: Overall, what grade would you give BBB AUTO LINE?

BASE: ARB/MED, “not sure” excluded	48 100.0%
A=Excellent	22 45.8%
B=Good	16 33.3%
C=Average	5 10.4%
D=Poor	2 4.2%
F=Failing Grade	3 6.3%
MEAN	3.08

**Table V-42
BBB AUTO LINE STAFF EFFORTS –
SATISFACTION COMPOSITE FOR CONSUMERS
WHO USED MEDIATION OR ARBITRATION**

	Mean
Objectivity and fairness	3.31
Efforts to resolve claim	3.17
Overall grade	3.08
AVERAGE	3.19

Composite Mean (2020)	3.19
Composite Mean (2019)	3.02
Composite Mean (2018)	3.17
Composite Mean (2017):	3.33
Composite Mean (2016):	3.01

Table V-43: Would you recommend BBB AUTO LINE to friends or family?

	Total	Med/Arb
BASE: ANSWERING, NOT SURE“NOT SURE” EXCLUDED	77	48
	100.0%	100.0%
Yes	62	43
	80.5%	89.6%

Composite Mean (2019)		
All Consumers		80.5%
Consumers with mediations or arbitrations		89.6%
Composite Mean (2019)		
All Consumers		68.3%
Consumers with mediations or arbitrations		84.5%
Composite Means (2018)		
All consumers		76.7%
Consumers with mediations or arbitrations		85.7%
Composite Means (2017)		
All consumers:		76.5%
Consumers with mediations or arbitrations:		87.8%
Composite Means (2016)		
All consumers:		77.4%
Consumers with mediations or arbitrations:		83.3%

Among the five consumers in the survey who said they went to arbitration, who said they lost, and who answered this question, two said they would recommend BBB AUTO LINE.

Appendix
Survey Instrument

But for minor details, the survey text was essentially the same as that used last year.

General Questions

1. How many times, if any, did the dealer or manufacturer try to repair your vehicle before you filed the complaint?
2. How did you find out that you could file a complaint with BBB AUTO LINE?

Process

Now I'm going to ask about how BBB AUTOLINE addressed your case. As I mentioned before, if you filed more than one complaint about your vehicle during the year, please focus on the LAST complaint you filed in 2020.

3. BBB AUTO LINE files show that
(based on BBB AUTO LINE records, either):
 - your complaint wasn't eligible FOR THE PROGRAM. Is that correct?
 - you withdrew your complaint, without using BBB AUTO LINE to resolve it. Is that correct?
 - you agreed with the manufacturer to settle your complaint. Is that correct?
 - your complaint went to an arbitrator to decide what remedy, if any, you should get. Arbitrators usually hold hearings, unless the consumer asks that the arbitrator simply inspect the car and review materials from the parties. Were BBB AUTO LINE's records correct when they said your case went to an arbitrator?

If the consumer says no when asked to confirm BBB AUTO LINE records:

4. Which of the following BEST describes how your complaint was resolved?

It wasn't eligible for the program
You withdrew your complaint
You agreed to a settlement
An arbitrator decided the case
Other (SPECIFY)³⁸²

³⁸² The survey was constructed so that each consumer was given only four of the five options,

Remedy

For consumers who said they used mediation:

5. According to the BBB AUTO LINE's records:
(based on BBB AUTO LINE records, either)
- the manufacturer was supposed to TAKE YOUR CAR BACK for a full or partial REFUND³⁸³ or for REPLACEMENT of the vehicle. Is that correct?
 - the manufacturer was supposed to REPAIR your car, or at least to examine the car again to look for a problem. Is that correct?
 - you got some remedy in a settlement, but the PRINCIPAL remedy was NOT a replacement, a refund, or a repair. For example, this would include reimbursements of out of pocket expenses for past repairs, a cash payout where you got cash but kept the car, an extended warranty, etc. Is that correct?

If the answer to Question 5 was no:

6. Which of the following best describes the relief provided in your settlement?
- A refund or replacement, where the manufacturer would take back your car.
 - A repair, where the manufacturer would try to fix your car, or at least examine it again to look for a problem.
 - Some other remedy (SPECIFY)³⁸⁴

omitting the option that appeared in BBB AUTO LINE records and that, in responding to Question 3, the consumer had said was wrong.

³⁸³ Although BBB AUTO LINE uses “repurchase” for remedies where the dealer takes back the car, the auditor and TechnoMetrica, in light of some past consumer confusion, decided to use the term that consumers would most likely associate with a “buy back” remedy – and which seemed relatively unambiguous when it was tied to “tak[ing] your car back.”

³⁸⁴ The survey was constructed so that each consumer was given only two of the three options, omitting the option that appeared in BBB AUTO LINE records and that, in responding to Question 5, the consumer had said was wrong.

For consumers who said they used arbitration

7. According to the BBB AUTO LINE's records:
(based on BBB AUTO LINE records, either)
- the manufacturer was supposed to TAKE YOUR CAR BACK for a full or partial REFUND or REPLACEMENT of the vehicle. Is that correct?
 - the manufacturer was supposed to repair your car, or at least to examine the car again to look for a problem. Is that correct?
 - you were awarded a remedy, but the PRINCIPAL remedy was NOT a replacement, a refund, or a repair. For example, this would include reimbursements of out of pocket expenses for past repairs, a cash payout where you got cash but kept the car, an extended warranty, etc. Is that correct?
 - you were not awarded any remedy. Is that correct?

If the answer to Question 7 was no:

8. Which of the following best describes the relief awarded by the arbitrator?
- A refund or replacement, where the manufacturer would take back your car
 - A repair, where the manufacturer would try to fix your car, or at least examine it again to look for a problem
 - Some other remedy (SPECIFY)
 - No remedy³⁸⁵

For all consumers who used arbitration:

9. And did you accept the arbitrator's decision?

³⁸⁵ The survey was constructed so that each consumer was given only three of the four options, omitting the option that appeared in BBB AUTO LINE records and that, in responding to Question 6, the consumer had said was wrong.

Follow-up question for consumers who said they withdrew their complaints

10. Which of the following best describes why you withdrew your complaint?

You settled the matter or your car was fixed

You sold the car

Or some other reason (SPECIFY)

Compliance

For consumers who said they used mediation:

11. Which of the following applies to your case? The manufacturer:
- Carried out the settlement within the time specified, including any extension to which you agreed
 - Carried out the settlement AFTER the time specified, including any extension to which you agreed
 - Has not yet carried out the settlement, but the time to do so has not yet expired
 - Has not yet carried out the settlement, and the time to do so has expired

If the consumer picked the fourth option to Question 11 and previously answered that they had a repair remedy:

12. Which of the following best applies to your case? The manufacturer:
- Didn't examine your car
 - Examined your car and decided that no repair was needed
 - Tried to fix your car, but the repair didn't solve the problem
 - (Something else)

If the consumer picked the fourth option to Question 11:

13. Had you taken some action, like selling the car, that prevented the manufacturer from complying?

For consumers who said they used arbitration, received an award, and accepted it

Same questions as asked to consumers in mediated cases, but substitute “decision” for “settlement” in Question 11.

Timing

Now I'm going to ask you about how much time it took to DECIDE your case.

For consumers who said their cases were mediated or arbitrated:

14. Please assume that your case BEGAN when you returned detailed information to BBB AUTO LINE about your car and that it ENDED when you reached a settlement or got the arbitrator's decision. Please DO NOT INCLUDE the time it took to carry out the remedy.

For California and Florida: Please assume that your case BEGAN when you first told BBB AUTO LINE about your complaint and that it ENDED when you reached a settlement or got the arbitrator's decision. Please DO NOT INCLUDE the time it took to carry out the remedy.

And as I mentioned before, if you filed more than one complaint about your vehicle, please focus only on the LAST complaint you filed in 2020.

According to BBB AUTO LINE records, it took --- days to come to a decision about your complaint. Does that seem right?

If "no":

To the best you can recall, how many days did it take to decide your case?

If more than 40 days:

Did it take more than 40 days because of some action you took?

If between 41 and 47 days:

Did you contact the manufacturer -- not just the dealer -- before you filed your complaint?

For consumers who said they withdrew their complaints:

15. Please assume that your case BEGAN when you returned detailed information to BBB AUTO LINE about your car.

For California and Florida: Please assume that your case began when you first told BBB AUTO LINE about your complaint

And as I mentioned before, if you filed more than one complaint about your vehicle in 2018, please focus only on the LAST complaint you filed. .

--

According to BBB AUTO LINE records, it took <DAYS>days until you withdrew your complaint. Does that seem right?

If “no”:

To the best you can recall, how many DAYS did it take until you withdrew your complaint?

If more than 40 days:

Did it take more than 40 days because of some action you took?

If between 41 and 47 days:

Did you contact the manufacturer – not just the dealer – before you filed your complaint?

Documents and Contacts

Next I'm going to ask a few questions about various documents that BBB AUTO LINE sends to consumers--whether by email, an online account that they created for you, or by mail, UPS or FedEx.³⁸⁶

16. After you first contacted BBB AUTO LINE, did you get a claim form and an explanation of the Program?

17. How clear and understandable were these documents? Would you say:

- Very
- Somewhat
- Not at all
- Not sure

18. And how helpful were they? Would you say:

- Very
- Somewhat
- Not at all
- Not sure

For mediated cases:

19. After you reached a settlement, did you get an explanation either by mail, email or your online account, describing the terms of the settlement?

For arbitrated cases:

20. Did you get a notice either by mail, email, or your online account, telling you when and where to go for your hearing or vehicle inspection?

21. Did you get a copy either by mail, email or your online account, of the arbitrator's decision?

³⁸⁶ References to online accounts were added to the survey questions, to better reflect BBB AUTO LINE's current practice.

If no to question 21

:

22. How did you learn about the arbitrator's decision?

For mediated and arbitrated cases:

23. After you agreed to a settlement (OR “accepted the arbitrator’s award”), which of the following best describes your later contacts with BBB AUTO LINE staff to discuss whether the manufacturer was doing what it promised:

- The staff contacted me by mail, email, or my online account
- The staff spoke to me
- Both of those
- Neither of those
- Something else (SPECIFY)

Satisfaction

OK, lastly I'd like you to rate your satisfaction with a few aspects of your experience with the BBB AUTO LINE. For each of the following, please rate your satisfaction using the familiar letter grade scale of A through F, where A is Excellent, B is Good, C is Average, D is Poor and F is a Failing grade.

For arbitrated cases:

Focusing first on the arbitrator

24. How would you grade the arbitrator on understanding the facts of your case?
25. How would you grade the arbitrator on objectivity and fairness?
26. How would you grade the arbitrator on reaching an impartial decision?
27. How would you grade the arbitrator on coming to a reasoned & well thought-out decision?

Okay, and for the next two questions, please focus on BBB AUTO LINE staff, not the arbitrator...

For all respondents:

28. How would you grade BBB AUTO LINE staff on objectivity and fairness?
29. How would you grade BBB AUTO LINE staff on efforts to assist you in resolving your claim?
30. Overall, what grade would you give BBB AUTO LINE?
31. And finally, would you recommend BBB AUTO LINE to friends or family?