

**2017 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 handles automobile warranty disputes – including disputes subject to the Federal Magnuson-Moss Warranty Act¹ and disputes under state lemon laws – through mediation and arbitration. The program is administered by the Council of Better Business Bureaus (“CBBB”), located in Arlington, VA, together with local Better Business Bureau offices.

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 703,² manufacturers can insist on “prior resort” – in other words, they can insist that consumers use the mechanism before they pursue other remedies under the Act.³ Key elements of these standards require warrantors to take steps to alert consumers to the program, and require the program to meet certain standards for fairness and efficacy. The regulations further require that the mechanism maintain certain records and arrange for an annual audit “to determine whether the Mechanism and its implementation are in compliance with this part”; among other things, this audit must include a consumer survey that serves, in part, as a check on its records, as well as scrutiny of efforts by “warrantors” (manufacturers) to alert consumers to the program.⁴ State lemon laws impose further requirements and two states – Florida and Ohio – have their own audit requirements.

The auditor concludes that:

- BBB AUTO LINE itself substantially complies with the requirements of Federal, Florida, and Ohio law applicable to “mechanisms.” Although he offers several recommendations to BBB AUTO LINE itself, none warrant a reservation or question to the finding of substantial compliance.
- Based on the materials submitted and the contemplated changes that manufacturers plan to implement, thirteen manufacturers – Bentley, BMW, Ford, General Motors, Hyundai (including Genesis), Jaguar (including Land Rover), Kia, Lamborghini, Lotus, Mazda, Mercedes-Benz, Nissan (including Infiniti) and Volkswagen (including Audi) – are in substantial compliance for purposes of each applicable audit.⁵

¹ 15 U.S.C. § 2301 et seq.

² 16 C.F.R. § 703.

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

⁴ 16 C.F.R. § 703.6.

⁵ As explained below, the audit (like previous audits by the current auditor and his predecessor) focuses on Florida and Ohio requirements only for manufacturers that are “certified” in the state. It is these manufacturers who invoke (and do so by operation of law) prior resort requirements in those states.

These findings of substantial compliance are subject to questions and reservations discussed in Chapter 1.⁶

With regard to the questions and reservations, some of which are of growing concern to the extent they continue unresolved, one concern stands out because of both the clarity and potential utility of the provision: Some manufacturers still haven't provided materials showing compliance with a provision (FTC Rule 703.2(e)) that requires manufacturers, when disputes are submitted directly to them, to tell consumers about BBB AUTO LINE when they notify consumers of their decisions.

The auditor also notes that (as explained in greater detail below) he construes disclosures about the program in the warranty manual as sufficient, in and of themselves, to substantially comply with a requirement that manufacturers take reasonable steps to alert consumers to the program when a warranty dispute arises. However, the FTC may well have contemplated more (although it seemed to set a low threshold as to how much more might be needed), so the auditor provides details about other steps that manufacturers have taken. Thus, regulators will have these facts to make their own assessment if they disagree with the auditor's premise.

Also, on a question that goes to the extent to which FTC Rule 703.2 has *any* applicability to certain manufacturers, the auditor previously concluded that the better view is that manufacturers are subject to the "warrantor" provisions only if they require prior resort, although he tempered the conclusion with an element of uncertainty and, consistent with language in last year's audit, manufacturers who didn't require prior resort were invited to provide materials that would be "responsive" if a regulator disagreed with his interpretation. Several manufacturers either failed to respond or chose to end the inquiry with a statement that they didn't require prior resort. Again, the auditor includes manufacturer-specific details in the audit so that regulators can make their own assessment if they disagree with the auditor's premise.

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While this audit includes some recommendations, and while some findings of substantial compliance are qualified by reservations or questions, it is 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 is only when consumers accept the results that they are bound, and, by virtue of the consumer's decision, the manufacturers are bound as well.

Also, the results of the program are impressive. Using CBBB's national figures for ease

⁶ For reasons discussed at the start of Chapter 1, including the likelihood that some firms aren't subject to the audit in the first place, the auditor doesn't make findings of substantial compliance for five other firms that participate in two or more states.

of presentation (the thrust of what follows extends to Ohio and Florida figures as well), BBB AUTO LINE processed 4838 complaints in 2017 that weren't rejected as ineligible at the outset or subsequently withdrawn. Of these, 58.5% were resolved (at least initially) through mediation. Mediated settlements didn't all result in satisfied consumers in the first instance; some consumers are satisfied only after further proceedings and some are never satisfied.⁷ But some 1163 complaints, about 24.0% of the total of all eligible and non-withdrawn complaints, ended in repurchase or replacement remedies *through mediation*.⁸ Further, of those consumers who went to arbitration, another 571 were awarded repurchase or replacement remedies (though some consumers rejected such remedies, perhaps preferring to seek broader relief in court). These 571 represent 28.4% of arbitrated cases and 11.8% of all eligible and non-withdrawn complaints. So, adding the complaints that led to repurchase or replacement through mediation to those that produced such results through arbitration, 35.8% of these complaints led to repurchase or replacement settlements or awards through the program, and they did so more often through mediation than arbitration.

This doesn't mean that the process is a slam-dunk for consumers. 1161 complaints nationally, 57.8% of those that went to arbitration, resulted in no award for the consumer. But the more relevant figure, in the auditor's view, is that the "no awards" represented 24.0% of all eligible and non-withdrawn complaints. Viewed together with the 35.8% figure for repurchase and replacement remedies, and the remaining consumers who got some other remedy, this suggests a fair and well-balanced program.⁹

Given the auditor's focus on these numbers, one further element of the auditor's analysis, detailed in Chapters III.G, IV.G, and V.G, impacts the results sufficiently to merit note here. Focusing on the national sample, about 19% of consumers used attorneys for the BBB AUTO LINE process,¹⁰ and those consumers had a substantially different profile than other consumers. Based on some new results this year, it's not clear to the auditor that consumers with lawyers are less likely than others to get repurchase and replacement remedies before the end of the BBB AUTO LINE process.¹¹ However, some aspects of the attorney case profiles sufficiently distort

⁷ See Ch. 2, Section II.C. The referenced analysis is significantly revised from last year. For now, the auditor notes that complete consumer satisfaction isn't a realistic goal; some unsettled consumer complaints will be rejected in arbitration, and it's unreasonable to expect satisfaction when consumers get no relief.

⁸ Roughly one in eight of these appear to be a mediated repurchase or replacement settlement that followed an initial settlement for a mediated repair.

⁹ The other remedies generally included extended service plans, reimbursement of past repair expenses, 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.C.

¹⁰ The percentage was comparable for Florida and substantially higher for Ohio.

¹¹ See, e.g., Chapter 3, Section III.G.

the numbers as to bear note. For example, while 57.8% of all arbitrations nationally result in denials, the rate of denial in the national sample is 70.8% for consumers with attorneys and 47.0% for consumers without attorneys.

* * * *

The audit provision of Federal law (Florida and Ohio have similar provisions¹²) 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:
 - (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. The primary (though not exclusive) focus in Chapter 2 involves questions about the program's operation; the primary (though not exclusive) focus in Chapter 3 involves questions about its record-keeping.

¹² FLA STAT. § 681.108(4); OHIO ADMIN CODE § 109:4-4-04(E).

In undertaking this audit, the auditor has worked with TechnoMetrica Market Intelligence (and obtained insights from the CBBB) to undertake a survey with 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 over 175 individual case files and, as last year, the auditor used survey results to target specific files that were most likely, if underlying problems existed, to reveal them.

The targeted file reviews, for reasons discussed further below, provide a nuanced way to evaluate BBB AUTO LINE's record-keeping and performance, and are often the key to parts of Chapter 3. Even with 408 "national" interviews and nearly 650 for all three populations, some questions were inevitably directed to a relatively small subset of the total – leading to relatively large margins of error.¹³ 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 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 pointed analysis even on "small-number" questions.¹⁴

¹³ For example, in the Ohio survey, only 29 consumers were asked the questions directed only to consumers who used arbitration.

¹⁴ In addition to the materials he reviewed this year, the auditor previously reviewed print and some video materials used to train arbitrators. He also visited the office of the BBB of West Florida in Clearwater, Florida in 2015, but has not done so since.

Local BBB offices provide an important service for consumers who use BBB AUTO LINE, insofar as these offices are widely distributed through the country and provide reasonably local venues for arbitration hearings. Further, their staffs help facilitate the conduct of hearings. Except for Clearwater, though, their role is essentially limited to providing venues for hearings and facilitating them. Given BBB AUTO LINE's centralized recordkeeping and complaint handling processes, the availability of recordings from arbitrations, and difficulties in scheduling out-of-state visits to coincide with hearings, the auditor visited only the Clearwater office in 2015, and since then dealt with even that office solely by phone conversations.

As to the difficulty of scheduling visits to coincide with a hearing, there were, for example, 81 in-persons arbitration hearings in Ohio, roughly one-and-one-half per week, and these were spread

among eight local offices. Hearings aren't scheduled far in advance, and those that are scheduled can settle at the last minute – as happened with one hearing that the auditor hoped to attend in Clearwater during the 2015 audit. Indeed, though the auditor's predecessor visited Ohio for the 2014 audit, no hearing took place during the visit.)

**CHAPTER 1:
MANUFACTURER
WARRANTY MATERIALS**

I. Introduction

As noted above, the auditor finds, for 2017, that thirteen manufacturers are substantially compliant. These include all manufacturers with certification in either Florida or Ohio, and all manufacturers who provided submissions this year that included either stand-alone warranty booklets or owner's manuals containing warranties.

However, as in prior years he noted several areas where there were deficiencies (some clearer than others) and last year he began to add to the manufacturer-specific charts reservations or questions, keyed to specific subsections of the rule, to his findings of substantial compliance for specific manufacturers. Particularly where those concerns involve unambiguous problems that have yet to be addressed, the auditor's concerns are heightened by the passage of time. As noted above, the auditor's biggest concern in this regard involves the continued failure of some manufacturers to ignore a clear and potentially quite useful provision, FTC Rule 703.2(e), that requires manufacturers, when disputes are submitted directly to them, to tell consumers about BBB AUTO LINE when they notify consumers of their decision.

Additionally, before 2016, the audit was limited to manufacturers who participated in BBB AUTO LINE on a nationwide basis. Last year the audit was extended to those who either participated in eight or more states, or who participated in either Ohio or Florida. This year, the auditor further extended the audit's reach to all firms that participate in two or more states.

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

A. FTC Rule 703.2

The core of FTC Rule 703.2,¹⁵ a rule that was issued pursuant to the consumer product warranty provisions of the Magnuson-Moss Warranty – Federal Trade Commission Improvement Act,¹⁶ appears in Rule 703.2(a). Manufacturers can insist that consumers use an alternative dispute resolution mechanism 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, there's no federal certification method by which a program is approved in advance for use by specific manufacturers.¹⁷

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

¹⁵ 16 C.F.R. § 703.2.

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

¹⁷ The Commission has expressly declined to provide for such a process. 64 Fed. Reg. 19700, 19707-08 (1999).

aren't the sole focus of Rule 703.2,¹⁸ they're the primary focus of the auditor's review of manufacturer's 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, in the warranty itself.¹⁹

¹⁸ 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.

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.

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."

¹⁹ 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

(2) Rule 703.2(d) requires manufacturers to take “reasonable steps to make consumers aware” of the program when consumers “experience warranty disputes.”²⁰

(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.²¹

Most of the auditor’s analysis of manufacturers’ compliance appears in a chart below, a somewhat revised version of the chart included with the last year’s audit. Before turning to the chart, though, the auditor addresses a few issues.

1. Application of Warrantor Provisions to Warrantors That Don’t Require Prior Resort

Does Rule 703.2 apply to warrantors who don’t require prior resort to BBB AUTO LINE before consumers pursue other rights and remedies under the Act? As the auditor concluded last

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.

²⁰ An evaluation of warrantors’ efforts in this regard is a mandatory component of this audit. Rule 703.7(b)(1).

²¹ For a discussion of how these provisions interact with state laws, see Ch. 1, Section II.A.4..

year, the better (but not entirely clear) answer is no.

The Magnuson-Moss Act, which broadly defines a “warrantor,”²² seems to key warrantor’s obligations to their insisting on prior resort.²³ Most importantly, though, limiting language in Section 2310(a)(4)²⁴ authorizes the Commission to:

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.

(Emphasis added.)

While the matter is a bit muddled by a second enforcement provision (Section 2310(b)) that doesn’t include “prior resort” language,²⁵ the quoted text seems to contemplate that the FTC will

²² 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.”

²³ 15 U.S.C. § 2310(a)(1)(3) provides:

One or more warrantors may establish an informal dispute settlement procedure which meets the requirements of the Commission’s rules 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) [language applicable to class actions].

²⁴ 15 U.S.C. § 2310(a)(1)(4).

²⁵ 15 U.S.C. § 2310(b) provides:

It shall be a violation of section 45(a)(1) of this title [the prohibition on unfair or deceptive acts or practices] 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 prohibition contained in this chapter (or a rule thereunder).

oversee only “mechanisms” to which a manufacturer requires prior resort. And this suggests that, if some manufacturers require prior resort to a particular mechanism and others don’t, the FTC will oversee (and the auditor’s oversight will similarly extend) only to those that do.

Consistent with this reading of the statute, Rule 703.1 intertwines its definition of a “warrantor”²⁶ with that for a “mechanism.”²⁷ Also, Rule 703.2(a) provides 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 the 1975 Federal Register notice limits the “obligation to disclose minimal information about the availability of an informal dispute mechanism” to warrantors “incorporating a complying Mechanism into a written warranty.”²⁸

There could well be sound reasons why a participating manufacturer needn’t be subject to all of the Rule’s mandates and prohibitions if it doesn’t require prior resort. For example, if a manufacturer offers a dispute settlement program that’s optional to the consumer,²⁹ it doesn’t seem unreasonable that it might (despite Rule 703.2(d)) insist that consumers use its internal review processes before advancing to dispute resolution. While the matter isn’t certain,³⁰

²⁶ Rule 703.1(d), which defines the term more narrowly than does the statute, provides:

Warrantor means any person who gives or offers to give a written warranty which incorporates an informal dispute settlement mechanism.

²⁷ Rule 703.1(e) provides:

Mechanism means an informal dispute settlement procedure which is incorporated into the terms of a written warranty to which any provision of Title I of the Act applies, as provided in section 110 of the Act, 15 U.S.C. 2310.

²⁸ 40 Fed. Reg. 60190, 60193 (1975).

²⁹ That is, the consumer suffers no legal consequences if she bypasses dispute resolution, but can go directly to court. Also, if she goes to arbitration and doesn’t like the results, she’s free to reject them.

³⁰ For example, the auditor has already noted that Section 2310(b) of the Act could provide a statutory basis for enforcing Rule 703.2 against warrantors whether or not they require prior resort. At that point, there’s an argument that the Commission intended to use such authority and preclude manufacturers, even those who don’t require prior resort, from offering *any* noncomplying dispute resolution program. The language of Rule 703.2(a) could be read that way. (“The 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 the prior resort language of the statute and rules (together with the applicable definitions) could be read to create a prior resort provision that’s independent of the question of whether warrantors must comply with the rule. When Rule 703.2(b)(3) requires manufacturers to include in the warranty “a statement of any requirement that the consumer resort to the Mechanism before exercising rights or seeking remedies created by

therefore, the auditor believes the better view is that Rule 703.2 doesn't apply to warrantors unless they require prior resort.

Consistent with this analysis, the auditor doesn't make a finding of substantial compliance with Magnuson-Moss Act provisions for manufacturers that don't require prior resort to BBB AUTO LINE before consumers can use other processes under the Act. If such manufacturers do submit materials for his review (and those with Florida and Ohio certifications need to do so under state law even if submission isn't required under Federal law), he analyzes the materials and offers a conclusion about whether they would be in substantial compliance if the Commission didn't agree that the "better view" described above was in fact correct. In soliciting materials this year, manufacturers were told that they "may" not be subject to the Federal audit if they didn't require prior resort, and provided the full analysis in last year's report. The decision of how to proceed was left to each manufacturer.

Similarly, except to the extent that manufacturers were certified in Florida and Ohio, they don't appear to be subject to state-specific audits and, consistent with his own past practice and that of his predecessor, the auditor hasn't undertaken such an audit.³¹

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 a dispute 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

Title I of the Act; . . .", the language arguably leaves open the possibility that a manufacturer could be subject to the rule even if it didn't impose such a requirement. Further, as a matter of policy, the argument that manufacturers should only be able to offer a complying mechanism isn't untenable. For example, the Commission might have wanted to hold all manufacturers to the provision that they actually perform "obligations" to which they've agreed during dispute settlement. Rule 703.2(f)(3).

This interpretation is also consistent with language in the Federal Register notice, which provides, for example, that "if a warrantor incorporates an informal mechanism into the terms of a warranty, then the mechanism, and its implementation, must comply with minimum requirements to be prescribed by Federal Trade Commission rules." 40 Fed. Reg. at 60191. And it would put a gloss on language from the Federal Register notice, noted above, that "those warrantors incorporating a complying Mechanism into a written warranty are required to include minimal information discussing the availability of an informal dispute settlement mechanism . . ." The gloss is that this would take on a different hue if the *only* Mechanism they could offer were a complying mechanism.

³¹ 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.

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,³² 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 arguments 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).

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.”³³ 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

³² See the discussion that immediately follows.

³³ 40 Fed. Reg. 60190 (1975).

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.³⁴

Consumer-facing manuals can thus constitute, by themselves, at least a component of substantial compliance with subsection (d). This would be subject, in the auditor’s view, to a fact-specific determination that a consumer who did look at their booklet (and the accompanying glove-compartment packet) would likely find the references to BBB AUTO LINE.³⁵

However, the Commission in 1975 also seemed to contemplate that manufacturers would take further steps to supplement these manuals.³⁶ 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).³⁷ In any event, it’s certainly arguable that the Commission contemplated more additional steps than the notice already required by 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 doesn’t reach disputes that weren’t 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, 35.6% cited the internet (including the BBB web site but not government web sites), a source the Commission obviously didn’t contemplate in 1975. But among those who learned of the program from a dealership or manufacturer communication, 12.0% cited the warranty documents, but 15.7% cited manufacturers’ representatives or dealerships.³⁸ In other words,

³⁴ 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 today are typically printed in the same format as the accompanying user’s manual and packaged together in a single container. A consumer who seeks her owner’s manual when she experiences a warranty dispute will, therefore, routinely locate the accompanying service manual.

³⁵ 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”?

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

³⁷ For example, the notice seemed to contemplate that a warrantor might meet its obligation “by participating in T.V. ‘talk’ shows or by providing materials for use by consumer columnists.” *Id.* at 60199.

³⁸ Chapter 3, Table III-4.

dealers and manufacturers, 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 highly credible argument 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 Rule 703.2(d), he recognizes the argument to the contrary – which, as noted above, 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 in the next section). 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, at least for the present, 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.

4. 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 to proceed if they can't resolve an issue at the dealership level. Florida and Ohio serve as useful examples both because they're the subject of state-specific audits and because they take different approaches to these issues.

- Rule 703.2(d) *permits* manufacturers to “encourage consumers to seek redress directly from the warrantor.”
- But the rule also *forbids*, for purposes of Magnuson-Moss Act relief, “expressly requir[ing] consumers to seek redress directly from the warrantor.”
- State lemon laws, meanwhile, sometimes *require* (or allow manufacturers to require) a species of such resort, in providing for notice to manufacturers and a final repair opportunity before consumers can pursue (or benefit from

presumptions under) the state law. Florida, for example, has such a requirement.³⁹

- But not all state laws take this approach. Indeed, Ohio doesn't expressly require notice and a final repair attempt, but rather expands on the prohibition in Rule 703.2(d); it requires a clear and conspicuous disclosure that the manufacturer's process is optional and can be terminated at any time by either party.⁴⁰

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. 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.⁴¹

5. 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,⁴² typically exclude some

³⁹ The Florida 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 this subsection, the requirement that the manufacturer be given a final attempt to cure the nonconformity does not apply.

⁴⁰ Ohio Admin Code §109:4-4-03(E)(1). The provision is discussed in more detail in Section IV of this chapter.

⁴¹ 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.

⁴² The summaries are all within a few links of

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 at least some non-lemon law claims covered by the manufacturer's warranty.⁴³

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 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,⁴⁴ 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.⁴⁵

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 qualifying standards for 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

<https://www.bbb.org/autoline/bbb-auto-line-process/participating-auto-manufacturers/>.

⁴³ 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 parts with longer warranties.

⁴⁴ 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").

⁴⁵ If they raised such a challenge, it would presumably fail.

advisory opinion from FTC staff focused on the balance struck by the Act to promote the use of programs like BBB AUTO LINE,⁴⁶ and characterized such programs as “a warrantor’s opportunity to cure a possible breach of warranty.”⁴⁷ The staff advised that the Act shouldn’t be 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.”⁴⁸

The opinion identified, as remedies that didn’t have to be made available, “consequential damages, diminution of value, attorney’s fees and costs”⁴⁹ – a list that didn’t include repurchase (refund)⁵⁰ or replacement remedies. These remedies *typically* aren’t available under a manufacturer’s written warranty and *sometimes* (at least today⁵¹) 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. The opinion explained that the

⁴⁶ The Act balanced “on the one hand, warrantors’ incentives to establish IDSMs 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.

⁴⁷ *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 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.

⁴⁸ Advisory Opinion, at 2.

⁴⁹ 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.

⁵⁰ 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.

⁵¹ 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. The program summaries for manufacturers who don’t offer these remedies are all dated after the advisory opinion.

Magnuson-Moss Act allowed warrantors to offer a “full warranty,” whose terms, defined by the Act,⁵² *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.”⁵³ 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 at least a contrary argument that these remedies were neither the focus of the decision nor directly addressed by the decision.⁵⁴

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

Disclosures prescribed by Rule 703.2(b)⁵⁵ need to be made both “on the face of the warranty” and “clearly and conspicuously.” Prior audits expressly considered the former but not the latter. However, in previously reviewing 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 considered 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 (both required by Rule 703.2(b)) 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 of the BBB name and (where used) 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,

⁵² 15 U.S.C. § 2304.

⁵³ Advisory Opinion, at 5.

⁵⁴ As pointed out above, see note 51, the auditor hasn’t been able to ascertain if this would have been an issue at the time of the advisory opinion, because he isn’t certain if any manufacturers at the time excluded such relief while requiring prior resort under Magnuson-Moss. Further, it’s at least possible that the FTC assumed that manufacturers did routinely offer such relief.

⁵⁵ The text is quoted in note 19.

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 that arise 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(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,” in other words, could well be more important than a “reservation.” Questions and reservations 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 “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.⁵⁶ 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 do 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 contacting BBB AUTO LINE) what information they need to provide.⁵⁷ (Moreover, in at least some manuals, the description of BBB AUTO LINE is preceded by a discussion of the manufacturer’s internal review process, and a description of the relevant information may appear in *that* discussion.)

-- ***Raising the bar.*** The auditor has “raised the bar” in some aspects of the current audit, since the firms were all provided copies of last year’s audit, and thus were aware in advance of the issues that the auditor would be examining this year. He has, specifically, characterized some “questions” as ‘substantial,’ particularly where there’s a strong argument that the manufacturer’s text is problematic. And he has, as well, characterized some “reservations”⁵⁸ as “substantial,” “ongoing,” or both.

⁵⁶ Perhaps the second page is even the facing page, visible together with the first page when the consumer reads the manual.

⁵⁷ 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 retain them to have documentation if a problem went to arbitration. Even if it were clear that this were 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.

⁵⁸ As noted previously, reservations involve seemingly clear-cut failures to comply with regulatory standards.

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 requiring” use of manufacturer’s internal processes before using the program. Rule 703.2(d)	Some texts describe the manufacturer’s internal review procedures, and then use language to the effect that BBB AUTO LINE is available if other efforts have failed. Such language raises significant concerns about whether the text “expressly requires” consumers to use the earlier processes first. (See also note 5 to this chart.) (Question, whose substantiality depends on specific facts.)
TEXT PLACEMENT AND PROMINENCE	
3. Specific information required by Rule 703.2(b)	<p>When a warranty appears in a manual (as it routinely does), information required by Rule 703.2(b) should appear on the first page of the separate warranty manual or, when it appears as part of a longer manual, the first page of the warranty text. (See Rules 703.1(h)(2) and 703.2(b).) Some manufacturers properly place most of the required information, but delay the description of prior resort requirements (whose disclosure is required by Rule 703(2)(b)(3)). (Reservation.)</p> <p>Additionally, the rule requires that disclosures 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 findings 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)

The rule requires warrantors to disclose anew the information covered by Rules 703.2(b) and (c). (Reservation, though a more limited reservation if a manufacturer provides a substantial part of the information specified in the rule.)

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 generally based on language in one or more manuals.

(1) Optional nature of mediation within the program. Contrary to language in some warranty booklets, consumers aren't required to use BBB AUTO LINE's mediation services before they can use arbitration. Such mischaracterizations, however, should be quickly clarified when a consumer contacts BBB AUTO LINE; they are addressed, for example, in the pamphlet consumers are sent describing how BBB AUTO LINE works.

(2) "Agree with mediated solution" text. Several manuals tell consumers that arbitration can follow if they don't "agree with a mediated solution." Although the phrase is typically preceded by a reference to a "mutually agreeable resolution," it's at best imprecise – there can't be a mediated solution unless consumers agree with it. And it could potentially create some problems if it confuses consumers about the nature of mediation, perhaps by suggesting that BBB AUTO LINE staff might negotiate a mediated solution for them.

(3) The Magnuson-Moss Act and prior resort. Contrary to some language in warranty booklets, 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 law.

III. Obligations under Florida Provisions

Preliminarily, Florida has a Lemon Law⁵⁹ 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, after the transfer, the former agency repealed its regulations.⁶⁰ Although the Department of Legal Affairs hasn't issued replacement regulations, BBB AUTO LINE is continuing 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 2017⁶¹:

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)

The applicable Federal regulations in many respects create a framework on which state regulation builds,⁶² However, the Florida Lemon Law, like other state's lemon laws, contains

⁵⁹ FLA. STAT. § 681.

⁶⁰ 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).

⁶¹ <http://myfloridalegal.com/pages.nsf/Main/7629400e4ef8a25285256cc9005c5a5b>, The auditor has examined this page (and its predecessors) in prior years as well. After receiving various submissions from the CBBB (including the annual audits prepared by the current auditor and his predecessor), the state has been issuing six-month provisional certifications; these covered the months of April through September and October through March, so the 2017 calendar year was covered by three such certifications for each manufacturer. See FLA. STAT. § 681(5)(a) (providing for renewals "for a period not to exceed 1 year").

⁶² 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.

important provisions that don't appear in the federal law. Like other states, for example, Florida specified the number of repairs, and the time a vehicle can be out of service, before the lemon law's presumption of a reasonable number of repair attempts becomes available.⁶³ 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 attempt at repair.⁶⁴ 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,⁶⁵ and also as a predicate to use a state-run arbitration program administered by Florida's New Motor Vehicle Arbitration Board.⁶⁶

Initially, Florida requires the distribution of a statement prepared by the Attorney General's office, with the manufacturer obtaining a signed acknowledgement of receipt from the dealers and the dealers obtaining signed acknowledgment from the consumer⁶⁷; 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, including those prepared by 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 703.2.⁶⁸ For purposes of this audit, the auditor assumes that the "substantial compliance" required by Section 681.108(1) would be satisfied, even if the

⁶³ 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.

⁶⁴ FLA STAT. § 681.104(1)(a) and (b).

⁶⁵ *Id.* at § 681.108(1) (limiting application of provisions of section 681.104(2)).

⁶⁶ *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.").

⁶⁷ *Id.* at § 681.103(3).

⁶⁸ 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 law 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.

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 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).⁶⁹

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.⁷⁰ 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.⁷¹

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.⁷² This information appears in the above-referenced booklet prepared by the state.

⁶⁹ 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.

⁷⁰ FLA STAT. § 681.103(2), (3).

⁷¹ Former Rule 5J-11.006(2)(e).

⁷² Former Rule 5J-11.004.

IV. Obligations under Ohio Provisions

The following manufacturers were certified to use BBB AUTO LINE in Ohio during 2016:

1. American Honda Motor Company, Inc. (Honda/Acura)⁷³
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)

Again, the applicable Federal regulations in many respects create a framework on which state regulation builds,⁷⁴ and Ohio law tracks essential aspects of the applicable federal provisions. But Ohio law also includes additional substantive provisions and imposes additional disclosure obligations. Ohio Rule 109:4-4-03 generally parallels Federal Rules 703.2(b) and (c), although it differs in minor respects.⁷⁵ An Ohio statutory provision that requires a specified disclosure about the existence of lemon law rights seems to apply to all manufacturers, whether or not they're certified in the state.⁷⁶ Other Ohio provisions are prefaced by language that a warrantor must comply with the specified obligations "in order to qualify a board to hear its warranty disputes,"⁷⁷ and "qualification" appears to refer to certification. Thus, the better view appears to be that Ohio's specific disclosure requirements (other than the statutory requirement

⁷³ Honda doesn't participate in BBB AUTO LINE for cars manufactured after 2012 and wasn't included in this audit.

⁷⁴ See note 62.

⁷⁵ 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).

⁷⁶ 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.**

⁷⁷ Ohio Administrative Code 109:4-4-03(A).

described above) don't apply to manufacturers who aren't certified in Ohio but who still offer the program in the state.⁷⁸

Other Ohio provisions go beyond Federal requirements in significant ways. One significant difference is that Ohio requires consumers to use arbitration before asserting remedies in court if BBB AUTO LINE is certified as the manufacturer's dispute resolution mechanism in the state and the consumer has proper notice.⁷⁹ This differs from Federal law, which allows *manufacturers* to insist that consumers first use dispute settlement.⁸⁰

Some Ohio provisions deal with disclosure. As noted above, the Ohio Code requires a written disclosure of a notice to consumers, in capital letters, that state law provides replacement or compensation remedies for defective vehicles.⁸¹ Ohio also requires that some of the information covered by the Federal disclosure rule be disclosed, in Ohio, both 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."⁸² The signage and warranty document should also include 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."⁸³

⁷⁸ This seems particularly reasonable because the most important addition that Ohio makes to the Federal disclosure requirements is a mandated disclosure focusing on the need to use a qualified mechanism before the consumer pursues litigation under the lemon law. (Note that the alternative argument is that manufacturers who aren't certified in Ohio can't offer alternative dispute resolution in the state.)

⁷⁹ 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.

⁸⁰ 15 U.S.C. 2310(a)(3)(C).

⁸¹ Ohio Revised Code 1345.74(A).

⁸² Ohio Administrative Code 109:4-4-03(C).

⁸³ *Id.* at 109:4-4-03(C)(4). The auditor didn't previously review Ohio signage for this disclosure.

Further, where Federal Rule 703.2(b) requires notice *if* a manufacturer requires prior resort before consumers can seek remedies under the Magnuson-Moss Warranty Act, the Ohio analog affirmatively requires, where manufacturers have obtained certification, that consumers use arbitration before they sue under the Ohio lemon law; also, the disclosure component of this provision appears to require this disclosure either on a sign or in a separate written form.⁸⁴

And, 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.”⁸⁵ 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.”⁸⁶ The rule doesn’t specify where these disclosures need be clearly and conspicuously made, so, unless that regulator advises otherwise, the auditor will assume they can appear on the separate disclosure materials required by Ohio.

Ohio also requires that decisions of a “board” like BBB AUTO LINE must bind the warrantor (and manufacturers participating in BBB AUTO LINE agree to this condition even where it’s not required by state law), and that consumers be told this is the case and be told that a “decision will be rendered within forty days from the date that the board first receives notification of the dispute.”⁸⁷

⁸⁴ Ohio Administrative Code 109:4-4-03(C)(3).

⁸⁵ *Id.* at 109:4-4(E)(1). Prior audits haven’t focused on this provision, which is similar to one that the FTC expressly declined to address. 40 Fed. Reg. at 60199 (1975).

⁸⁶ *Id.* at 109:4-4(E)(2).

⁸⁷ Ohio Administrative Code 109:4-4-03(E)(2).

V. Audit results

A. Introductory Observations and Summary of Findings

1. Summary of Findings.

Eighteen firms were contacted this year, including eleven firms that participate nationally and the seven other firms that participate in two or more states. These include all firms, whether or not certified, that participate in Florida or Ohio.

Thirteen of these – Bentley, BMW, Ford, General Motors, Hyundai (including Genesis), Jaguar (including Land Rover) Kia, Lamborghini, Lotus, Mazda, Mercedes-Benz, Nissan (including Infiniti) and Volkswagen (including Audi) – are in substantial compliance for purposes of each applicable audit, with some combination of questions and reservations.⁸⁸

The firms not in this list include Ferrari and Mobility Ventures (which didn't respond to the audit request); Maserati (which may well be in substantial compliance with the rule, and which is the only firm among these that's further discussed below); Volvo (which provided limited materials that don't show substantial compliance, but that also suggest that Volvo doesn't require prior resort and doesn't appear subject to the audit);⁸⁹ and Subaru, which advised that they don't require prior resort (and have removed some state-specific statements to the contrary from their materials), and has declined to submit responsive materials.⁹⁰

⁸⁸ General Motors advises that it doesn't require prior resort under the Magnuson-Moss Act (and this appears consistent with the warranty manual language). However, GM (which *was* subject to the Florida and Ohio audits) submitted responsive materials, and the auditor finds that it *would be* in substantial compliance with federal requirements if they did apply. For Jaguar, the conclusion is based entirely on prior year's submissions; although Jaguar didn't respond to this year's request, even to confirm that its prior submissions are still in use, the auditor has determined to follow this approach for the current year. For Lotus, which submitted materials for the first time this year, the conclusion reflects changes they have already started to implement.

⁸⁹ Volvo participates only in Arkansas, Idaho, Kentucky, and Minnesota. It provided a warranty supplement this year that describes state lemon laws, but doesn't mention the Magnuson-Moss Act or BBB AUTO LINE. It didn't provide a copy of a warranty manual, and the auditor assumes that Volvo 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. Basically, with no reference to prior resort, BBB AUTO LINE or, or the Magnuson-Moss Act, there's nothing more to say in the audit. (The auditor did locate a copy of what appears to be a 2017 warranty manual on a dealer's website, and it appears consistent with this inference; there's no mention in the text of BBB AUTO LINE or the Magnuson-Moss Act.)

⁹⁰ Subaru participates nationally. 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

2. Manufacturer Submissions

The conclusions in the charts that follow are based primarily on manufacturer submissions, including consumer-facing materials and internal materials.

The charts themselves focus on internal materials, primarily warranty or owner's manuals.⁹¹ Among internal materials submission 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 provide recipients with information that they in turn might pass along to consumers.⁹² Of particular interest to the auditor were passages that describe *when* consumers should be told about BBB AUTO LINE. To the extent that the materials provided information that might be conveyed to consumers, directly or indirectly, the auditor also reviewed them for substantive accuracy.

It appears from some of this year's submissions that some manufacturers may be using the manufacturer-specific charts from last year's audit as guidelines for revising their materials. To better assist such endeavors, he has pointed out in footnotes where he found more technical issues that were covered in the previous discussion.

3. Survey Results and Other Sources

For manufacturers who didn't reply at all, or whose submission excluded warranty manuals, the auditor thought it sufficiently important to explore a fundamental question – to what extent did they require prior resort? – that he searched for warranty manuals on the web.

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 CBBB, 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.

⁹¹ Many manufacturers submitted multiple manuals this year. In general, the auditor focused primarily on a single manual, which for most manufacturers was a standalone warranty document; where there was a stand-alone warranty document, though, the auditor also searched an owner's manual (if provided) for references to BBB AUTO LINE, and examined those as well. Some manufacturers also submitted a detailed supplement, with state-by-state breakouts, that they provided to consumers as well. In these, the auditor reviewed the general information with nationwide applicability, as well as the state-specific information for Florida and Ohio. Manufacturers typically included California-specific sections in their "core" warranty manual; the auditor examined these as well, but only for compliance with Federal standards. When manufacturers submitted multiple service manuals for different models or model years, the auditor generally focused on one from the most recent year. However, he also sampled some others (particularly those with a substantially different file size) to confirm that they took essentially the same approach; if they didn't, the chart focuses on multiple manuals for the same manufacturer.

⁹² 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."

The results are mentioned in his references to Maserati (which may require prior resort) and Volvo (which doesn't).

Additionally, for purposes of the manufacturer-specific audits that are the subject of this chapter, the auditor derived some insights from the consumer survey discussed in Chapter 3. Surveyed consumers were asked how they first learned about the program, and about 16% identified their source as manufacturer or dealer representatives. By reviewing the spread sheets in which TechnoMetrica recorded these answers, the auditor identified firms that exceeded the average. The firms thus identified all exceeded the average by at least three points, and the auditor looked back to 2016 materials and found that all five had comparable results last year.

This analysis didn't necessarily identify all firms with relatively effective notification programs through dealers and manufacturer representatives. First, for some firms with lower shares of the U.S. market, the survey might not have picked enough consumers to provide useful information. Second, consumers were asked how they "first" learned of BBB AUTO LINE. Where manufacturers had particularly prominent disclosure booklets (such as a stand-alone "dispute resolution supplement"), consumer might have *first* learned of the program from the printed materials even if a dealer's representative also volunteered information about the program later. In other words, a particularly strong performance through one means of disclosure could have suppressed responses that would have revealed a second effective means.

The auditor therefore doesn't read any negative implications when this limited analysis *doesn't* show an above-average performance, but he does note on the charts that follow firms with above-average results. And these include some manufacturers who didn't submit any training materials, dealer's manuals, or comparable materials. In other words, for some firms it's not clear *what* they're doing to disseminate this information about BBB AUTO LINE, but it seems they're doing something right.

B. Bentley Motors, Inc.

Bentley participates in all states and is certified in Florida (though not Ohio). It’s therefore subject to the national and Florida audits.

Bentley has been advised of the auditor’s concerns, and he understands that they are planning changes to the relevant texts.

1. Consumer-Facing Materials

Bentley submitted multiple service manuals for two model years. It’s transitioning from a two-manual approach, with separate owner’s and warranty manuals, to a single-manual approach, with the warranty incorporated toward the end of the owner’s manual. The analysis below focuses on a “stand-alone” Continental manual and a combined Bentayga manual, which differ from each other in numerous respects, including the terms of their prior resort provisions.⁹³

<i>Federal Disclosure Provisions</i>	
(1) Rule 703.2 (b) (and Rule 703.1(h) to define “the face of the warranty”). (For context, see Section II.A.6 of this chapter.)	Bentley provides the required information, but with somewhat subtle questions about placement, in part stemming from separate headings in each booklet for “warranty information” and “warranty.” In the Continental booklet, a “warranty information” section that mentions BBB AUTO LINE starts on page 1; a “warranty” discussion starts on page 2; and the required information is all on page 3. In a vertically oriented book that fits in a glove compartment, pages 2 and 3 face each other and might reasonably be deemed a single “page,” so the combined 2 / 3 page is arguably the face of the warranty and the material is properly placed. In any event, the relevant information all appears by page 3. Further, disclosures of Rule 703.2(b) information seem clear and conspicuous, with the prior resort language, for example, preceded by the word “IMPORTANT.” (Possible technical

⁹³ Both manuals appear to require prior resort under at least some state lemon laws, and, under the Magnuson-Moss Act, to require it for at least some consumers. Bentayga owners are told (at page 489 of the consolidated manual) that prior resort is required only for remedies under the Magnuson Moss Act (identified by a statutory cite) and the California lemon law. (The clear statement that prior resort isn’t required elsewhere, though, is contradicted ten pages later.) Continental owners are told at page 3 of the stand-alone manual that prior resort may be required by state law, with no mention of Federal law. A California-specific discussion, though, says that consumers there “are required to use AUTO LINE before you may assert in court the presumption conferred by California Civil Code Section 1793.22, subdivision (b). You are not, however, required to use AUTO LINE before pursuing rights and remedies that are independent of the Magnuson-Moss Warranty Act or California’s replacement or repurchase laws.” The text doesn’t expressly state that prior resort is required under Federal law, but the second sentence implies that that’s the case.

	<p>reservation on placement.)</p> <p>In the Bentayga manual, BBB AUTO LINE isn't mentioned under the "warranty information" heading that appears on page 486, but appears on the page (489) with the separate "Warranty" heading. (Question.) The discussion is somewhat prominent because of the repeated references, in capital letters, to "BBB AUTO LINE." However, the prior resort discussion isn't highlighted within the discussion. (Possible question.)</p>
(2) Rule 703.2(c)	Bentley provides the required information. ⁹⁴
(3) Rule 703.2(d) – Prominence of disclosures to alert consumers to the existence of BBB AUTO LINE, including placement of the text and references in the table of contents. (For context, see Section II.A.4 of this chapter.)	<p>Bentley's apparent compliance with Rule 704.2(e), discussed below, is a factor in assessing compliance with Rule 703.2(d) as well. Bentley also provided templates of letters sent to consumers when they first bring their complaints to Bentley for manufacturer-level review (and <i>before</i> Bentley has decided the matter), in which consumers are told upon filing with the manufacturer about BBB AUTO LINE.</p> <p>The discussion of BBB AUTO LINE is relatively prominent in the Continental manual; some information appears on page 1 and more extensive information on pages 3-8. Further, in the latter discussion, the term AUTO LINE is highlighted by capitalization and the Council of Better Business Bureau's address is highlighted by indentation.</p> <p>In contrast, the first mention of BBB AUTO LINE in the Bentayga manual is on page 488, with a more extensive discussion (referenced on page 488) that begins on page 498. There's a reference to "consumer protection information" in the table of contents, but it appears at the ninth page of a detailed table of contents, so the reference does little to compensate for the less prominent placement. (Question.)</p>

⁹⁴ On more technical matters, Bentley materials don't consistently make clear the optional nature of mediation, and they sometimes use problematic text about "agree[ing]" with a mediated solution. See Section II.B of this chapter, Notes to Table 1.

Also, Bentley's program summary speaks of warranty claims but essentially applies lemon law standards. (See Section II.A.5 of this chapter for a discussion of such limits.) The Continental manual, signals these limits with a broad statement that "not every claim is eligible." However, the Bentayga manual provides more narrowly that "some vehicle age and mileage" provisions limit availability, and that text might be broadened.

<p>(4) Rule 703.2(d) – Expressly requires that consumers use manufacturer’s review processes before filing with BBB AUTO LINE?</p>	<p>The Continental manual provides, at page 5, that consumers can proceed directly to BBB AUTO LINE if they “did not wish to” use Bentley’s internal procedures.</p> <p>There’s no similar language in the Bentayga manual, though, or in the section of the Continental manual directed to California consumers. For example, page 498 of the Bentayga manual provides that consumers can file with BBB AUTO LINE if they have a problem that Bentley’s dealer and consumer advocate “has been unable to satisfactorily address.” (Question.)</p>
<p>(5) Rule 703.2(e)</p>	<p>Bentley has provided a template of a letter alerting consumers to BBB AUTO LINE at the time a dispute submitted directly to Bentley is resolved. However, while the letter will likely accomplish all that it’s supposed to accomplish, particularly because it tells consumers how to get more information, it doesn’t provide all the detail required by Rule 703.2(e). (Technical reservation.)</p>
<p><i>Florida Disclosure</i></p>	
<p>(F1) Section 681.103(3) – Clear and conspicuous disclosure of how and where to file a claim</p>	<p>For the reasons discussed in Item (3) under Federal disclosure provisions, it’s not clear that the disclosures in the Bentayga manual are sufficiently clear and conspicuous. (See prior analysis).</p>
<p><i>Note on prior resort</i></p>	<p>Continental owners are told that some states require prior resort, which alerts consumers to a possible issue even though it doesn’t describe specific Florida provisions. Bentayga owners, though, are told at page 489 (although language ten pages later contradicts this) that prior resort is required only for Magnuson-Moss remedies and California remedies, The Bentayga text doesn’t accurately reflect Florida law. (Bentley advises that they are working to address this issue.) (Reservation).</p>

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 whether any specific triggers will prompt disclosures about BBB AUTO LINE to consumers who didn’t independently raise it, this still indicates a policy of 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 noted above. And, based on the information described in section 2, Bentley is commended for taking additional steps, at least after the customer contacts Bentley, to alert them to BBB AUTO LINE.⁹⁵

Finally, as noted at the outset, the auditor also understands that Bentley is making revisions to their manuals to address at least some of these concerns.

⁹⁵ 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. Also, although Bentley doesn't participate in BBB AUTO LINE in Ohio, it appears to be subject to the disclosure requirement, in Ohio Revised Code § 1345.74(A), to provide a written statement on a separate sheet of paper alerting consumers to the lemon law.

C. BMW (with Mini Cooper)

1. Consumer-Facing Materials

BMW participates in eleven states,⁹⁶ and in those states requires prior resort for consumers to pursue Magnuson-Moss remedies.⁹⁷ BMW is therefore subject to the audit requirement of Rule 703. It doesn't participate in Florida or Ohio, and isn't subject to audit in those states.

BMW provided, and the auditor reviewed, manuals for BMW and Mini Cooper cars for the 2017 model year. While the discussions are placed somewhat differently in the two books, the differences aren't material to the analysis that follows. In the chart below, references to "BMW" should be understood to include Mini Cooper.

Federal Disclosure Provisions	
(1) Rule 703.2 (b) (and Rule 703.1(h) to define "the face of the warranty"). (For context, see Section II.A.6 of this chapter.)	BMW provides the required information, but it 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 word "IMPORTANT."
(2) Rule 703.2(c)	BMW provides the required information. ⁹⁸
(3) Rule 703.2(d) – Prominence of disclosures to alert consumers to the existence of BBB AUTO LINE, including placement of the text and references in the table of contents. (For context, see Section II.A.4 of this chapter.)	The relevant (and parallel) discussions begin on page 35 of the BMW manual and page 24 of the Mini Cooper manual. 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,)

⁹⁶ The states are Arkansas, California, Georgia, Kentucky, Iowa, Idaho, Massachusetts, Maryland, Minnesota, Pennsylvania, and Virginia.

⁹⁷ 2018 Manual, at 36.

⁹⁸ On a more technical matter, BMW imposes age, mileage, and other limits on the availability of the program, and doesn't signal this in their manuals. The issue is discussed generally in Section II.A.% of this chapter..

(4) Rule 703.2(d) – Expressly requires that consumers use manufacturer’s review processes before filing with BBB AUTO LINE?	After describing procedures to contact the manufacturer, BMW provides that BBB AUTO LINE is available “if your concern is still not resolved to your satisfaction.” (Question.)
(5) Rule 703.2(e)	Not provided. (Substantial and ongoing reservation.)

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

No such materials were provided. However, based on the auditor’s review of the survey results (the nature and limitations of which are discussed in Section V.A.3 of this chapter), a relatively high percentage of BMW consumers who were surveyed learned about the program through BMW’s dealers or manufacturer representatives.

3. Conclusion

BMW is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal law, with the qualifications noted above,⁹⁹ and appears to be making successful efforts, beyond the disclosures in the warranty manual, to alert consumers to BBB AUTO LINE’s existence.

⁹⁹ 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. Also, although BMW doesn’t participate in BBB AUTO LINE in Ohio, it appears to be subject to the disclosure requirement, in Ohio Revised Code § 1345.74(A), to provide a written statement on a separate sheet of paper alerting consumers to the lemon law.

D. Ford Motor Co.

Ford participates in all states, with certification in Florida and Ohio.

1. Consumer-Facing Materials

Ford re-submitted some previously submitted manuals, an Ohio Lemon Law notice, and a short document, titled “Ford: Our Commitment to You,” describing the BBB AUTO LINE program. This analysis draws primarily on the 2018 Ford warranty manual, but also notes that there’s a briefer discussion of BBB AUTO LINE in an owner’s manual, which is useful to the extent it increases the likelihood that a consumer will see a reference to the program.

Federal Disclosure Provisions	
(1) Rule 703.2 (b) (and Rule 703.1(h) to define “the face of the warranty”). (For context, see Section II.A.6 of this chapter.)	Ford provides the required information, but, for some of the information, without the proper placement. The reference to prior resort, in particular, is somewhat hard to find, and could easily be missed by consumers. (Reservation.) (See also the description under Item (3)).
(2) Rule 703.2(c)	Ford addresses the subjects required by the rule, except for the “types of information” the mechanism may require. (Reservation.) ¹⁰⁰
(3) Rule 703.2(d) – Prominence of disclosures to alert consumers to the existence of BBB AUTO LINE, including placement of the text and references in the table of contents. (For context, see Section II.A.4 of this chapter.)	Consumers are told that the program exists in a section of the warranty manual, at the start of the manual, highlighted 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 name “BBB AUTO LINE” stands out. Further, the more extensive discussion that follows later in the manual is highlighted by a reference to “BETTER BUSINESS BUREAU (BBB) AUTO LINE PROGRAM” on the second page of the table of contents. ¹⁰¹

¹⁰⁰ On a more technical matter, Ford’s materials don’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. This issue is discussed generally in Section II.A.4 of this chapter.

¹⁰¹ The reference is boldfaced and capitalized in the table of contexts, but that doesn’t make it stand out more because the same applies to the rest of the table of contents.

	Ford also provides basic information about the program in a short stand-alone document entitled “Our Commitment to You,” and, as noted above, in owner’s manuals.
(4) Rule 703.2(d) – Expressly requires that consumers use manufacturer’s review processes before filing with BBB AUTO LINE?	Ford’s text indicates, in potentially problematic language for a Magnuson-Moss analysis, that BBB AUTO LINE may be available “if” internal procedures haven’t resolved the issue. (Question.)
(5) Rule 703.2(e) notice	Not provided. (Substantial and ongoing reservation.)
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, Ford provides the required disclosures.
Additional Ohio Provisions	
(O1) Additional notices provided in warranty documents, separate sheets of paper, or signs, as describe in Section IV of this Chapter. ¹⁰²	<p>Ford provided a separate sheet containing information required by Ohio law. The sheet also includes language consistent with Ohio Administrative Code 109:4-4-03(E)(1), telling Ohio consumers that the use of Ford’s internal processes “is optional and may be terminated at any time by you or by Ford.” However, while Ford’s disclosure sheet provides most of the required information, it doesn’t fully comply with Ohio’s detailed regulations as discussed in Section IV of this Chapter.</p> <p>Further, Ford hasn’t presented the signage that Ohio also requires. Thus, while Ford has taken substantial steps to comply with Ohio’s lemon law and the implementing regulations, the auditor still needs to note a reservation. (Reservation.)</p>

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

¹⁰² This includes issues not addressed in past audits.

Ford provided the “Our Commitment to You” document noted in Item (3) of the above table. And, based on his review of the survey results (the nature and limitations of which are discussed in Section V.A.3 of this chapter), a relatively high percentage of Ford consumers who were surveyed said they learned of the program through Ford’s dealers or manufacturer representatives.

3. Conclusion

Ford is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal, Florida, and Ohio law, with the qualifications noted above, and appears to be making successful efforts, beyond the disclosures in the warranty manual, to alert consumers to BBB AUTO LINE’s existence.¹⁰³ The auditor understands that Ford is exploring responses to the issues he has raised.

¹⁰³ 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. General Motors Co.

General Motors participates in all states, and is certified in Florida and Ohio. GM advises that it doesn't require prior resort to BBB AUTO LINE before a consumer can pursue rights and remedies under the Magnuson-Moss Act, and this appears consistent with the language of its manuals. For reasons explained previously, the auditor has concluded that the better view is that GM therefore isn't subject to Rule 703.2. Since the matter isn't entirely clear and GM has provided responsive materials, the auditor has evaluated them for purposes of the national audit (as well as for purposes of the state audits for which they were required). The chart below focuses primarily on a sample Chevy warranty manual for 2017.

1. Consumer-Facing Materials

Federal Disclosure Provisions	
(1) Rule 703.2 (b) (and Rule 703.1(h) to define "the face of the warranty"). (For context, see Section II.A.6 of this chapter.)	GM provides the required information, but without the proper placement. There's a prominent mention of "alternative dispute resolution" on page 1, but it doesn't mention BBB AUTO LINE by name or include any of the details required by Rule 703.2(b) (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.) ¹⁰⁴

¹⁰⁴ On some matters that the auditor consider more technical, General Motors imposes age, mileage, and other limits in their program summary; although they provide non-lemon-law warranty coverage throughout the life of the bumper-to-bumper warranty, the program isn't available, outside that period, for parts with longer warranties. However, this wouldn't be a problem even if BBB AUTO LINE did require prior resort, in the auditor's view, because they signal such limitations at page 32 of the warranty manual.

GM also limits relief in non-lemon law claims to repairs and reimbursements for past repairs. The issues raised by these provisions for manufacturers that require prior resort are discussed at in Section II.A.5 of this chapter. As noted above, though, GM doesn't require prior resort under the Magnuson-Moss Act (although, as a certified manufacturer, it requires prior resort by operation of state law in Florida and Ohio).

Also, the introductory text describes the BBB AUTO LINE process as non-binding, though, 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. See Notes to Table 1, Section II.B of this chapter.

<p>(3) Rule 703.2(d) – Prominence of disclosures to alert consumers to the existence of BBB AUTO LINE, including placement of the text and references in the table of contents. (For context, see Section II.A.4 of this chapter.)</p>	<p>The above-cited notice on page 1 does prominently reference alternative dispute resolution, although not BBB AUTO LINE. (Question).</p> <p>(GM also provided 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.)</p>
<p>(4) Rule 703.2(d) – Expressly requires that consumers use manufacturer’s review processes before filing with BBB AUTO LINE?</p>	<p>The text indicates that BBB AUTO LINE may be available “if” previously described internal procedures have not resolved the issue. (Question.)</p>
<p>(5) Rule 703.2(e) notice</p>	<p>Not provided. (Reservation.)</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>For reasons described in items (1) and (3) of this chart, General Motors provides the required disclosures</p>
<p>Additional Ohio Provisions</p>	
<p>(O1) Additional notices provided in warranty documents, separate sheets of paper, or signs, as describe in Section IV of this Chapter.¹⁰⁵</p>	<p>General Motors has provided signs and separate sheets of paper, with accompanying instructions to dealers.</p> <p>However, GM hasn’t made all the clear and conspicuous disclosure required by Ohio provisions, as discussed in Section IV of this Chapter. Thus, while GM has taken substantial steps to complying with Ohio’s lemon law and the impediment regulations, the auditor still needs to note a reservation. (Reservation.).</p>

¹⁰⁵ This includes issues not addressed in past audits.

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

GM has provided several internal documents. None of these set forth a policy of alerting consumers to the existence of BBB AUTO LINE.

3. Conclusion

Although GM doesn't appear to be subject to Rule 703.2, it would be in SUBSTANTIAL COMPLIANCE with the rule, with the qualifications noted above, if it were.

Based on its state certifications, GM is in SUBSTANTIAL COMPLIANCE with Ohio and Florida laws and regulations, subject to the qualifications noted above.

GM is commended for the wall plaques developed for use in California, an additional step apparently used to alert consumers to the program.¹⁰⁶

¹⁰⁶ 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. Hyundai Motor America (including Genesis)

Hyundai participates in all states, and is certified in Florida and Ohio. It provided sample manuals, including a Genesis manual, as well as information about changes it plans to implement in the future.

1. Consumer-Facing Materials

The auditor has reviewed Hyundai’s 2017 warranty handbook, as well as a supplement with discussions of applicable requirements under various state laws. (Hyundai hadn’t previously provided the supplement, but now provided portions of supplements for 2016 and 2017 as well as 2018).

Federal Disclosure Provisions	
(1) Rule 703.2 (b) (and Rule 703.1(h) to define “the face of the warranty”). (For context, see Section II.A.6 of this chapter.)	Hyundai makes the required disclosures. The information appears in a section of the warranty booklet (prominently labelled “Consumer Information”) just before the warranty discussion. And it appears again, several pages later, at the start of the warranty sections. In the initial discussion, indentation of BBB AUTO LINE’s name and address, with the all-caps presentation of BBB AUTO LINE’s name, makes the presentation more prominent. Also, a description of prior resort is highlighted by the word “IMPORTANT.” .
(2) Rule 703.2(c)	Hyundai addresses the subjects required by the rules, except for the types of information that consumers will need to provide to BBB AUTO LINE. (Reservation). The auditor understands that Hyundai will be adding corrective text in its 2019 manuals. ¹⁰⁷
(3) Rule 703.2(d) – Prominence of disclosures to alert consumers to the existence of BBB AUTO LINE, including placement of the text and references in the table of contents. (For context,	The discussion of “Consumer Information” includes a boldfaced section on “Alternative Dispute Resolution,” and, within the text, indenting the name and address, with the all-caps presentation of BBB AUTO LINE’s name, makes the presentation more prominent. The only heading in the table of contents, though, is to “Consumer Information,” not

¹⁰⁷ On a more technical matter, Hyundai imposes age, mileage, and other limits in their program summary; although they provide non-lemon-law warranty coverage throughout the life of the bumper-to-bumper warranty, the program isn’t available, outside that period, for parts with longer warranties. In the second discussion of BBB AUTO LINE described under Rule 703.2(b), Hyundai notes that age and mileage limitations may apply; it would be preferable if that appeared in both discussions and if it also noted that other limitations may apply as well. See Section II.A.5 of this chapter.

see Section II.A.4 of this chapter.)	<p>“Alternative Dispute Resolution” or “BBB AUTO LINE.” Alternative dispute resolution is also discussed in the supplement mentioned above.</p> <p>While this warrants a “possible question” if uncorrected Hyundai will be adding corrective text in its 2019 manuals.</p>
(4) Rule 703.2(d) – Expressly requires that consumers use manufacturer’s review processes before filing with BBB AUTO LINE	Hyundai encourages consumers to seek internal review of their complaints from the company. However, before describing BBB AUTO LINE, the text only “recommend[s]” that consumers follow a series of internal steps.
(5) Rule 703.2(e) notice	Materials provided.
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, there’s a possible question as to whether Hyundai’s disclosure is sufficiently clear and conspicuous in the manuals distributed in 2017. It is currently addressing the issue.
Additional Ohio Disclosure Provisions	
(O1) Additional notices provided in warranty documents, separate sheets of paper, or signs, as describe in Section IV of this Chapter. ¹⁰⁸	<p>The above-noted supplement includes the required language, and Hyundai has provided signage and separate sheets of paper.</p> <p>Although Hyundai doesn’t expressly require that consumers use their internal processes before starting a BBB AUTO LINE proceeding, they haven’t clearly and conspicuously disclosed in its Ohio notice or elsewhere, and consistent with Ohio Administrative Code 109:4-4-03(E)(1), that use of Hyundai’s internal processes is optional and may be terminated at any time by the consumer or Hyundai. For this and other specifics of Ohio disclosures, see Section IV of this Chapter. Thus, while Hyundai has taken substantial steps to complying with Ohio’s lemon law and the implementing regulations, the auditor still needs to note a reservation. (Reservation.).</p>

¹⁰⁸ This includes issues not addressed in past audits.

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

While Hyundai provided no such material, based on his review of the survey results (the nature and limitations of which are discussed in Section V.A.3 of this chapter), the auditor notes that a relatively high percentage of Hyundai consumers who were surveyed said they learned of the program through Hyundai's dealers or manufacturer representatives.

3. Conclusion

Hyundai is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal, Florida, and Ohio law and, while there are qualifications for 2017, Hyundai is to be commended for planning to revise their manual to address the auditor's past conclusions.¹⁰⁹ Hyundai also appears to be making successful efforts, beyond the disclosures in the warranty manual, to alert consumers to BBB AUTO LINE's existence.

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.

G. Jaguar Land Rover North America

Jaguar participates in all states, but isn't certified in Florida or Ohio. Thus, the auditor has reviewed Jaguar's materials solely for the national audit.

1. Consumer-Facing Materials

The auditor reviewed Jaguar's "Passport to Service" and "Dispute Resolution Supplement" for 2015, as well as letters sent to consumers who have pursued a dispute through the manufacturer's internal processes.

Jaguar hasn't provided revised manuals in the past two years, and didn't respond this year to the request for materials. For the current year, the auditor assumes that Jaguar is continuing to use essentially the same language, with essentially the same placement, as in the materials he reviewed before; however, he adds a conditional element to his conclusion.

Federal Disclosure Provisions	
(1) Rule 703.2 (b) (and Rule 703.1(h) to define "the face of the warranty"). (For context, see Section II.A.6 of this chapter.)	Jaguar provides only limited information about dispute resolution in its warranty booklet, but it provides substantial information (including detailed state-by-state information) in a dispute resolution supplement to which the warranty booklet refers. Despite the quality and prominence of the dispute resolution supplement, Jaguar doesn't comply with the placement requirements of Rule 703.2(b). (Reservation.)
(2) Rule 703.2(c)	Jaguar addresses the required subjects. ¹¹⁰

¹¹⁰ On a more technical matter, Jaguar imposes age, mileage, and other limits on the availability of the program, and in its manuals only signals to the age and mileage limits. It would be preferable to note that other limitations might apply as well. This issue is discussed in Section II.A.5 of this chapter..

On a very technical matter (it's not something that could harm consumers), Jaguar indicates, at page 3 of the dispute resolution supplement, that the Magnuson-Moss Act requires prior resort. In fact, the act allows manufacturers to impose such a requirement. See Notes to Table 1, Section II.B of this chapter.

On a potentially less technical matter, Jaguar limits relief in non-lemon law claims to repairs and reimbursements for past repairs. The issues raised by such provisions where manufacturers require prior resort are discussed at Section II.A.5 of this chapter.

(3) Rule 703.2(d) – Prominence of disclosures to alert consumers to the existence of BBB AUTO LINE, including placement of the text and references in the table of contents. (For context, see Section II.A.4 of this chapter.)	The disclosure is highly prominent, with a “Dispute Resolution Supplement” that’s referenced in other manuals. Within the supplement, 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) – Expressly requires that consumers use manufacturer’s review processes before filing with BBB AUTO LINE?	Potentially problematic language in the Dispute Resolution Supplement refers to the availability of BBB AUTO LINE “in the unlikely event” that previously described procedures to address the matter at the dealer or manufacturer level have not satisfactorily resolved 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) notice	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 information specified by Rules 703.2(b) and (c). ¹¹¹ (Technical reservation.)

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 highlighted 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.

These efforts seem to have borne fruit. Based on his review of the survey results (the nature and limitations of which are discussed in Section V.A.3 of this chapter), a relatively high percentage of Jaguar/Land Rover consumers who were surveyed said they learned of the

¹¹¹ 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. See Notes to Table 1, Section II.B of this chapter.

program through Jaguar's dealers or manufacturer representatives.

3. Conclusion

Assuming that Jaguar continues to use the same language with the same placement as in the materials Jaguar previously produced, Jaguar is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal law, with the qualifications noted above.¹¹² Additionally, assuming that the other materials provided by Jaguar continue to be used, Jaguar is to be highly commended for efforts to tell consumers about BBB AUTO LINE at the manufacturer and dealer level – efforts that, as noted above, appear to have borne fruit.

¹¹² 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. Also, although Jaguar isn't certified in Ohio, it appears to be subject to the disclosure requirement, in Ohio Revised Code § 1345.74(A), to provide a written statement on a separate sheet of paper alerting consumers to the lemon law.

H. 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 2017.

Federal Disclosure Provisions	
(1) Rule 703.2 (b) (and Rule 703.1(h) to define “the face of the warranty”). (For context, see Section II.A.6 of this chapter.)	Kia makes the required disclosures, but neither with the required placement nor with the proper prominence. ¹¹³ (Reservation.)
(2) Rule 703.2(c) ¹¹⁴	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.)
(3) Rule 703.2(d) – Prominence of disclosures to alert consumers to the existence of BBB AUTO LINE, including placement of the text and references in the table of contents. (For context, see Section II.A.4 of this chapter.)	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 45-109 are devoted to states-specific notices, which typically mention (often multiple times, and highlighted with capital letters) BBB AUTO LINE. ¹¹⁵ With over 100 references to BBB AUTO LINE in the booklet, there’s a good chance that a consumer might see one of them. (Question.)

¹¹³ Consistent with the practice of many manufacturers, the auditor recommends that Kia take steps to make the prior resort language more prominent.

¹¹⁴ 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.

The auditor notes that, while Kia imposes various limits on the availability of BBB AUTO LINE, it expressly signals to consumers that “age, mileage, and other contributing factors” may affect availability.

¹¹⁵ The auditor didn’t consider this last factor previously, and he decided it warrants a change from a “substantial question” to a “question.”

(4) Rule 703.2(d) – Expressly requires that consumers use manufacturer’s review processes before filing with BBB AUTO LINE?	Kia indicates, in potentially problematic language, that BBB AUTO LINE may be available in the event that previously described internal procedures have not resolved an issue. (Question.)
(5) Rule 703.2(e) notice	Not provided. (Substantial and ongoing reservation.)
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, there’s a question as to whether Kia’s disclosure is sufficiently clear and conspicuous. (Question.)
Additional Ohio Provisions	
(O1) Additional notices provided in warranty documents, separate sheets of paper, or signs, as describe in Section IV of this Chapter. ¹¹⁶	Kia provides the required information in an Ohio-specific page in its Warranty and Consumer Information Manual. However, it hasn’t provided the auditor with information on a separate sheet of paper to be provided to consumers, or with evidence of signage. Also, it hasn’t clearly and conspicuously disclosed to Ohio consumers, consistent with Ohio Administrative Code 109:4-4-03(E)(1), that use of Kia’s internal processes is optional and may be terminated at any time by the consumer or Kia. (Reservation.)

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

Kia 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, although it doesn’t appear to provide for notice before consumers have used the manufacturers’ internal processes.

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.

¹¹⁶ This includes issues not addressed in past audits.

I. Automobile Lamborghini

Lamborghini participates in all states, but isn't certified in Florida or Ohio. It requires prior resort in for purposes of the Magnuson-Moss Act in California, but doesn't appear to require it elsewhere. The California-specific prior resort requirement, however, suffices to make it subject to the national audit.

1. Consumer-Facing Materials

Lamborghini provided an undated warranty manual.

Federal Disclosure Provisions (Lamborghini appears to require prior resort to BBB AUTO LINE for purposes of Magnuson Moss rights and remedies only in California. This is sufficient, however, to trigger the rule's disclosure requirements.)	
(1) Rule 703.2 (b) (and Rule 703.1(h) to define "the face of the warranty"). (For context, see Section II.A.6 of this chapter.)	Lamborghini makes the required disclosures in its warranty booklet. However, although the warranty begins on page 3, BBB AUTO LINE isn't mentioned in text until page 9, and the California-specific prior resort provision doesn't appear until page 11. ¹¹⁷ (Reservation.)
(2) Rule 703.2(c)	Lamborghini addresses the subjects required by the rule, except for the types of information that consumers will need to provide to BBB AUTO LINE. (Reservation). ¹¹⁸
(3) Rule 703.2(d) – Prominence of disclosures to alert consumers to the existence of BBB AUTO LINE, including placement of the text and references in the table of contents. (For context, see Section II.A.4 of this chapter.)	As noted above, information about BBB AUTO LINE appears early in the warranty booklet. It's also highlighted, in the text and the table of contents, where "CONSUMER PROTECTION INFORMATION" appears as a boldfaced heading and "BBB AUTO LINE DISPUTE RESOLUTION PROGRAM" as a subheading.

¹¹⁷ Consistent with the practice of many manufacturers, the auditor recommends that Lamborghini also take steps to make the prior resort language more prominent.

¹¹⁸ On more technical matters, Lamborghini's material only 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, Lamborghini indicates that access to BBB AUTO LINE may be limited by the vehicle's age and mileage. It would be preferable to note that other limitations may apply as well. See Section II.A.5 of this chapter.

(4) Rule 703.2(d) – Expressly requires that consumers use manufacturer’s review processes before filing with BBB AUTO LINE?	Lamborghini indicates, in potentially problematic language, that BBB AUTO LINE may be available “if” previously described internal procedures have not resolved the issue. (Question.)
(5) Rule 703.2(e) notice	Not provided. (Substantial and ongoing reservation.)

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

Not provided.

3. Conclusion

Lamborghini is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal 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. Also, although Lamborghini isn’t certified in Ohio, it appears to be subject to the disclosure requirement, in Ohio Revised Code § 1345.74(A), to provide a written statement on a separate sheet of paper alerting consumers to the lemon law.

J. Lotus

Lotus, which to the best the auditor can tell is submitting materials for the first time,¹²⁰ participates in all states but isn't certified in Florida or Ohio; therefore, this audit is limited to compliance with Federal provisions.

1. Consumer-Facing Materials

Lotus provided a warranty manual, but the manual doesn't mention BBB AUTO LINE. They also provided a "supplement" (on which this audit necessarily focuses) that discusses BBB AUTO LINE at some length, but raises issues in several respects. Most are discussed in the chart that follows, but, preliminarily, the supplement contains a prior resort provision that (despite some confusing introductory text) imposes a prior resort provision under the Magnuson-Moss Act.¹²¹ However, the Lotus program summary (as of the date of this audit) doesn't mention the word "warranty" in describing covered claims.

While the audit identifies several issues in the Lotus submission, BBB AUTO LINE has alerted Lotus to these issues and Lotus is developing a new program guide and new materials in response; it quickly committed to adding text to the warranty manual and developing letters to comply with Rule 703.2(e). This quick response, in the auditor's view, warrants a finding of substantial compliance.

Federal Disclosure Provisions	
((1) Rule 703.2 (b) (and Rule 703.1(h) to define "the face of the warranty"). (For context, see Section II.A.6 of this chapter)	Lotus makes the required disclosures, but without the proper placement. Lotus has advised that this will be fixed for 2019 manuals. (Reservation.) Somewhat confusingly, the cover page to the "Supplement to the Owner's Manual And Maintenance Booklet" has a subheading of "State Repair Replacement Information." It's not clear that the omission of a reference to Federal law on the cover will deter consumers who might be eligible for the program from examining the brochure, though. (Possible question.)

¹²⁰ Although Lotus had participated previously, they weren't asked to provide materials until 2014. However, they didn't provide materials that year, and the auditor's predecessor therefore didn't make findings regarding compliance. 2014 Audit, at Ch, 1, pp. 3-4. They were omitted inadvertently from subsequent audits.

¹²¹ The supplement provides, "Unless superseded by applicable state law, you are required to use BBB AUTO LINE before exercising rights or seeking remedies under the Federal Magnuson-Moss Warranty Act." The introductory clause is potentially confusing, because state law *can't* supersede a manufacturer-imposed requirement of prior resort *for purposes of seeking remedies under the Magnuson-Moss Act*. Still, it seems unlikely that this clause will harm consumers.

(2) Rule 703.2(c)	Lotus addresses the types of information required by the rule in the supplement described above. The placement in a separate supplement isn't inherently problematic, since the rule allows these disclosures in the written warranty or "a separate section of materials accompanying the product." The omission of a reference to Federal remedies on the cover page of the supplement, though, could raise an issue. (Possible question.)
(3) Rule 703.2(d) – Prominence of disclosures to alert consumers to the existence of BBB AUTO LINE, including placement of the text and references in the table of contents. (For context, see Section II.A.4 of this chapter).	Although the cover page problematically references only "state" repair and replacement, the supplement seems sufficiently prominent to catch consumers' attention.
(4) Rule 703.2(d) – Expressly requires that consumers use manufacturer's review processes before filing with BBB AUTO LINE?	Lotus describes state provisions requiring notice to the manufacturer and an opportunity for the manufacturer to have a final repair attempt. Each is addressed in its own paragraph, but in neither paragraph does the language make clear that this provision is only relevant to state lemon law remedies, but not to federal remedies. (Question). ¹²³
(5) Rule 703.2(e) notice	Not given, but Lotus has committed to address the issue. (Reservation.)

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

Not provided.

¹²³ The auditor notes the possibility that the notice provision alone, if separated from the "opportunity to repair" provision, would raise a more subtle question about whether it expressly requires resort to the manufacturer's internal procedures.

3. Conclusion

Since Lotus hasn't been previously audited and is responding quickly to the auditor's concerns, the auditor finds Lotus in SUBSTANTIAL COMPLIANCE with applicable provisions of Federal law, with the qualifications noted above.¹²⁴

¹²⁴ 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. Also, although Lotus isn't certified in Ohio, it appears to be subject to the disclosure requirement, in Ohio Revised Code § 1345.74(A), to provide a written statement on a separate sheet of paper alerting consumers to the lemon law.

K. Maserati

Maserati participates in three states, California, Florida, and Minnesota. It isn't certified in Florida, though, so this audit is limited to compliance with Federal provisions.

Maserati submitted a California-specific notice to consumers that told them about the program but didn't mention prior resort. Maserati didn't submit any manuals. Based on Maserati's submissions, the auditor makes no findings regarding compliance.

However, the auditor found a Maserati "Warranty card," with a printing date of 2016,¹²⁵ and, per the auditor's request, the CBBB asked Maserati to confirm that this text had been distributed in 2017. Maserati didn't reply. Based on the limited materials Maserati provided (which had no application in two of the states where it participates), the auditor is unable to make a finding of substantial compliance – although it seems likely that he could have made such a finding (albeit with qualifications) had Maserati confirmed that the language the auditor found online was routinely distributed to consumers in 2017.

¹²⁵ <https://ownerdocumentation.maserati.com/L/910040913/index.html#11> (checked on June 20, 2018).

L. Mazda North America

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

1. Consumer-Facing Materials

Mazda has previously provided a full warranty booklet. This year they provided only selected pages with the discussion of BBB AUTO LINE and, although the auditor didn't see this year's pages in the overall setting of the warranty booklet, the pagination appears comparable.

Federal Disclosure Provisions	
(1) Rule 703.2 (b) (and Rule 703.1(h) to define “the face of the warranty”). (For context, see Section II.A.6 of this chapter.)	Mazda provides the required information in a warranty booklet. It appears early in the booklet and, assuming the rest of the booklet is comparable to last year's, it appears just after such material as a summary chart but <i>before</i> 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 sixteen all-cap references to BBB AUTO LINE by name (including eleven in a California-specific discussion). ¹²⁶
(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.) ¹²⁷

¹²⁶ Consistent with the practice of many manufacturers, the auditor recommends that Mazda take steps to make the prior resort language more prominent.

¹²⁷ On some matters that the auditor consider more technical, the discussion of BBB AUTO LINE's processes doesn't make clear 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, the California-specific discussion lists an outdated address for BBB AUTO LINE (although letters sent to that address should still be forwarded to BBB AUTO LINE's current address).

Also, the Mazda program summary imposes age, mileage, and other limits on the program's availability, but nothing in the warranty booklet signals that such limits exist. The issue is discussed generally in Section II.A.5 of this chapter.

(3) Rule 703.2(d) – Prominence of disclosures to alert consumers to the existence of BBB AUTO LINE, including placement of the text and references in the table of contents. (For context, see Section II.A.4 of this chapter.)	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.)
(4) Rule 703.2(d) – Expressly requires 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) notice	Mazda submitted templates of the requisite 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 information specified by Rules 703.2(b) and (c). (Technical reservation.)
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, there’s a possible question as to whether Mazda’s disclosure is sufficiently prominent. (Possible question.)
Additional Ohio Provisions	
(O1) Additional notices provided in warranty documents, separate sheets of paper, or signs, as describe in Section IV of this Chapter. ¹²⁸	Not provided. (Reservation.)

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

Mazda has provided training and internal web-based materials that educate staff¹²⁹ Mazda

¹²⁸ This includes issues not addressed in past audits.

¹²⁹ It’s not clear if these materials for Mazda’s own staff, dealership staff, or both.

also provided FAQ's for consumers, although it's not clear how these are distributed or used. Although they don't suggest specific triggers that should routinely prompt employees to volunteer information about BBB AUTO LINE, the auditor commends these significant efforts to get information about the program to consumers.

3. Conclusion

Mazda is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal, Florida, and Ohio 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.

M. Mercedes-Benz

Mercedes-Benz participates in Arkansas, California, Kentucky and Minnesota, and requires prior resort for Magnuson-Moss remedies (as well as state remedies) in California. This suffices to subject it to the Rule 703 audit.

Absent a warranty document or other information about Arkansas, Kentucky, or Mississippi, the auditor assumes that Mercedes doesn't impose prior resort requirements for Magnuson-Moss remedies on those states.

1. Consumer-facing Materials

Federal Disclosure Provisions	
(1) Rule 703.2 (b) (and Rule 703.1(h) to define “the face of the warranty”). (For context, see Section II.A.6 of this chapter.)	Mercedes Benz provides the specified information, but only for California consumers and (absent a warranty book) without the proper clear and conspicuous placement. (Reservation).
(2) Rule 703.2(c)	Mercedes Benz addresses the subjects required by the rule. It appears outside the warranty itself, but the placement in a separate “IMPORTANT NOTICE” is consistent with the rule’s provision allowing placement in the written warranty or “a separate section of materials accompanying the product.”
(3) Rule 703.2(d) – Prominence of disclosures to alert consumers to the existence of BBB AUTO LINE, including placement of the text and references in the table of contents. (For context, see Section II.A.4 of this chapter.).	The discussion of BBB AUTO LINE in Mercedes Benz’s warranty booklet is entirely within the separate insert – which could be prominent so long as the consumer didn’t lose the insert. It would seem prudent, at least for California consumers, to mention BBB AUTO LINE in the warranty document itself. ¹³¹

¹³¹ As noted above, the auditor assumes here that Mercedes doesn't require prior resort under the Magnuson-Moss Act outside California.

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.5 of this chapter

On a potentially less technical matter, Mercedes-Benz limits relief in non-lemon law claims to repairs and reimbursements for past repairs. The issues raised by these provisions where manufacturers require prior resort are discussed in Section II.A.5 of this chapter.

(4) Rule 703.2(d) – Expressly requires 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.)
(5) Rule 703.2(e) notice	Not provided. (Substantial reservation.)

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.

3. Conclusion

Mercedes Benz is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal law, with the qualifications noted above. Mercedes is also commended for steps to notify consumers about BBB AUTO LINE at the dealership level.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.

N. Nissan North America (with Infiniti)

Nissan participates in all states, and is certified 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 on Nissan’s 2017 Warranty Information Booklet; a 2016 edition of a supplemental booklet, captioned in part “Customer Care and Lemon Law Information”; and a handout entitled “Our Commitment to You.”

Federal Disclosure Provisions	
(1) Rule 703.2 (b) (and Rule 703.1(h) to define “the face of the warranty”). (For context, see Section II.A.6 of this chapter.)	The manuals include the required information in the required placement, and use text boxes to increase its prominence.
(2) Rule 703.2(c)	Nissan addresses the subjects required by the rule, except for the types of information that consumers will need to provide to BBB AUTO LINE. ¹³³ (Reservation.)
(3) Rule 703.2(d) – Prominence of disclosures to alert consumers to the existence of BBB AUTO LINE, including placement of the text and references in the table of contents. (For context, see Section II.A.4 of this chapter.)	Discussions of BBB AUTO LINE are prominently placed in both booklets, and the supplemental booklet even mentions lemon laws in its title. Nissan also describes the program in a handout entitled “Our Commitment to You.” Further, BBB AUTO LINE is prominently mentioned in state-specific discussions in the supplemental booklet.

¹³³ Nissan indicates that BBB AUTO LINE is not available in all states, perhaps because it hasn’t been certified in all states that have certification processes. It’s not clear to the auditor that this is consistent with information on the BBB AUTO LINE web site, which lists Nissan as a national participant.

On a more technical matter, the Nissan program summary imposes age, mileage, and other limits on the program’s availability, but nothing in the warranty booklet signals that such limits exist. See Section II.A.5 of this chapter. t

(4) Rule 703.2(d) – Expressly requires that consumers use manufacturer’s review processes before filing with BBB AUTO LINE?	<p>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.</p> <p>The “Our Commitment to You” handout contains language that might be less problematic, but still provides that BBB AUTO LINE is available in case of an “impasse.” (Question.)</p>
(5) Rule 703.2(e) notice	<p>Nissan has templates of a letter that contains the core information about filing a complaint, with references to consumer-facing manuals for more information. However, it doesn’t expressly set forth all of the information described in subparts (b) and (c). (Minor reservation)</p>
Florida Disclosures	
(F1) Section 681.103(3) – Clear and conspicuous disclosure of how and where to file a claim.	<p>As described in items (1) and (3) of this chart, Nissan provides the required disclosures.</p>
Additional Ohio Provisions	
(O1) Additional notices provided in warranty documents, separate sheets of paper, or signs, as describe in Section IV of this Chapter. ¹³⁴	<p>Nissan has provided signage handouts about the program, but they don’t include Ohio-specific provisions.</p> <p>The Ohio-specific information does appear in the 2016 supplement (and this includes disclosures about the optional nature about the manufacturer’s internal review processes). However, neither of these satisfies the Ohio requirement that certain state-specific information appear on signage and a separate piece of paper, and that certain disclosures be clear and conspicuous. (Reservation.)</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.

Based on the auditor’s review of the survey results (the nature and limitations of which

¹³⁴ This includes issues not addressed in past audits.

are discussed in Section V.A.3 of this chapter, Nissan's efforts to inform consumers about the program have borne fruit; a relatively high percentage of Nissan consumers who were surveyed said they learned of the program through Nissan's dealers or manufacturer representatives.

3. Conclusion

Nissan (with Infiniti) is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal, Florida, and Ohio law, with the qualifications noted above.¹³⁵ The company is to be highly commended for additional efforts, beyond disclosure in consumer-facing manuals, to alert consumers to the program.

¹³⁵ 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. 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. The auditor focuses on the manual for a 2017 Audi and the 2017 electric model Volkswagen.

Federal Disclosure Provisions	
(1) Rule 703.2 (b) (and Rule 703.1(h) to define “the face of the warranty”). (For context, see Section II.A.6 of this chapter.)	The manuals include the required information with the required placement, and with boldfaced type to increase its prominence. ¹³⁶
(2) Rule 703.2(c)	Volkswagen and Audi address the subjects required by the rule. ¹³⁷
(3) Rule 703.2(d) – Prominence of disclosures to alert consumers to the existence of BBB AUTO LINE, including placement of the text and references in the table of contents. (For context, see Section II.A.4 of this chapter.)	<p>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 Audi manual. The auditor understands that Volkswagen is taking steps to make the placement more prominent.</p> <p>Volkswagen also provided a template of a letter by its consumer advocate, which seems to inform consumers about the program after they contacted the company but before they’ve gone through the company’s internal processes.</p>

¹³⁶ Consistent with the practice of many manufacturers, the auditor recommends that Volkswagen take steps to make the prior resort language more prominent.

¹³⁷ 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 the preceding text refers to a “mutually agreeable resolution,” which might well mitigate any confusion that the “mediated solution” language may raise. See Notes to Table 1, Section II.B of this chapter.

Also, the Volkswagen program summary imposes age, mileage, and other limits on the program’s availability, but nothing in the warranty booklet signals that such limits exist. The issue is discussed generally in Section II.A.5 of this chapter

(4) Rule 703.2(d) – Expressly requires that consumers use manufacturer’s review processes before filing with BBB AUTO LINE?	Each discussion of BBB AUTO LINE contains potentially problematic “if” language, arguably telling consumers that it’s only available after they first used the manufacturer’s internal processes. The auditor believes Volkswagen is taking steps to address this. (Question, probably in the process of resolution.)
(5) Rule 703.2(e) notice	Volkswagen provided a letter, with substantial information about BBB AUTO LINE that appears to be sent when a consumer request through the manufacturer’s internal process is denied.
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.
Additional Ohio Provisions	
(O1) Additional notices provided in warranty documents, separate sheets of paper, or signs, as describe in Section IV of this Chapter. ¹³⁸	<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 all the clear and conspicuous disclosure required by Ohio provisions, as discussed in Section IV of this Chapter. Thus, while Volkswagen has taken substantial steps to complying with Ohio’s lemon law and the impediment regulations, the auditor still needs to note a reservation. (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).

¹³⁸ This includes issues not addressed in past audits.

Further, based on the auditor's review of the survey results (the nature and limitations of which are discussed in Section V.A.3 of this chapter), a relatively high percentage of Volkswagen consumers who were surveyed learned about the program either through Volkswagen's manuals or through its dealers or manufacturer representatives.

3. Conclusion

Volkswagen (with Audi) is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal, Florida, and Ohio law, with the qualifications noted above.¹³⁹ The company is to be commended for additional efforts, beyond disclosure in consumer-facing manuals, to alert consumers to the program, and they are to be further commended for planning to correct the issue raised under item (4).

¹³⁹ 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 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, the CBBB. The applicable Federal regulations, which in many respects create a framework on which state regulation builds,¹⁴⁰ 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”).

On the basis of information in this chapter and the next, the auditor finds that BBB AUTO LINE substantially complies with the applicable Federal, Florida, and Ohio provisions. Although the auditor offers recommendations, none raise an issue that would require even a qualification on 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,¹⁴¹ sent to consumers after their initial contact, and the same in all states except California.¹⁴² He has also reviewed its arbitrator training manual and talked with staff. His review of how these policies are *implemented* draws in part on further discussions with staff, in part on the statistics detailed at length in Chapter 3, and in part on case files that he examined, most of which were targeted by consumer responses to the TechnoMetrica survey.¹⁴³

I. Fairness

Among the specific provisions directed towards fairness, Rule 703.3(b) requires that the CBBB 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.

¹⁴⁰ 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.

¹⁴¹ <https://www.bbb.org/autoline/bbb-auto-line-process/how-bbb-auto-line-works/>;
<https://www.bbb.org/autoline/bbb-auto-line-process/how-bbb-auto-line-works-california/>.

¹⁴² Unless otherwise specified, references to specific rules refer to the rules for states other than California.

¹⁴³ See Chapter 3, Section I.

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 obviously didn’t examine CBBB’s promotion practices, for example), the auditor has seen no problems in CBBB’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 most of the FTC requirements that would be appropriate for such a document, again with the caveat that they don’t reflect provisions, like those governing personnel decisions, that wouldn’t be expected in a consumer-facing document.

This is also consistent with the CBBB’s broader role. The CBBB is a not-for-profit organization, and characterizes its mission and vision, in part, thus:

Our Vision:

An ethical marketplace where buyers and sellers trust each other.

Our Mission:

BBB’s mission is to be the leader in advancing marketplace trust. We do this by:

- Setting standards for marketplace trust
- Encouraging and supporting best practices by engaging with and educating consumers and businesses
- Celebrating marketplace role models . . . ¹⁴⁴

Additionally, BBB AUTO LINE’s training manual for arbitrators highlights the mechanism’s focus on preserving impartiality and fairness (and the appearance of both). For example, arbitrators are told to avoid being in a room with one party. During 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, in an aspect of BBB AUTO LINE arbitrations that goes beyond any regulatory requirements, arbitrations are held at local BBB offices, which are neutral sites independent of the manufacturer and its dealership. Whether or not this is essential to ensuring impartiality, fairness,

¹⁴⁴ <http://www.bbb.org/council/about/vision-mission-and-values/>.

and the appearance of both, it can certainly contribute to the consumer's perception that the process is free from improper influence.

Nothing that the auditor observed suggests any problems relating to fairness generally or to the specific provisions noted above. And, while it would go beyond the auditor's mandate to examine whether arbitrators made the right decisions in individual cases, the analysis of the overall results of BBB AUTO LINE's processes, as summarized in the introduction, points to an eminently fair process.

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 generally available on the web, and BBB AUTO LINE routinely provides them to consumers who file complaints.

A. Starting the Complaint 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 her responses are incorporated onto a form that's sent to her to correct, supplement, 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* receives and returns the consumer complaint form. In Florida and California, though, it occurs as soon as 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.

The web portal. As noted in prior audits, some manufacturers participate only in selected states,¹⁴⁵ and BBB AUTO LINE initially screens eligibility by asking consumers where they bought the car. Those who bought the car in a state where the manufacturer doesn't participate aren't directed to the complaint submission page; rather, they're told that they don't appear to be eligible but "may be able to participate" if the vehicle was *purchased* in another state.¹⁴⁶ The

¹⁴⁵ Three firms participate in 8 to 11 states; six participate in 1 to 4 states.

¹⁴⁶ The message provides:

Your vehicle does not appear to be eligible to participate in BBB AUTO LINE.

You may still be eligible to participate if you purchased your vehicle in a different

approach of alerting consumers that eligibility can turn on multiple factors (and, implicitly, that some consumers' claims could be considered under the laws of multiple states) is well-conceived; while the state of purchase (or lease¹⁴⁷) is often the key to coverage, some states rely, alternatively or additionally, on other factors.¹⁴⁸ The current text is potentially confusing, though. Since consumers reached the page because they *weren't* eligible by virtue of their state of purchase, the second page isn't clear when it refers to that very factor as an alternative basis for coverage. The BBB AUTO LINE is currently working to address this.

* * *

Further, at least some consumers might be confused about the availability of BBB AUTO LINE for leased vehicles. Many state lemon laws expressly cover leases, and others have been found to cover at least some leases by courts. And even when they aren't covered by state lemon laws, some lessees might be eligible for BBB AUTO LINE by virtue of the Magnuson-Moss Act¹⁴⁹ or by virtue of program summaries that extend beyond legal mandates.

state. Please call 1 800 955 5100 to discuss your eligibility with a BBB AUTO LINE Dispute Resolution specialist.

You are being redirected to the main BBB complaint site.

¹⁴⁷ See below.

¹⁴⁸ For example, the District of Columbia defines a motor vehicle for purpose of its lemon law, in part, as "a motor vehicle which is manufactured for sale, offered for sale, sold, or registered in the District." D.C Code § 50-501(9).

¹⁴⁹ The FTC in 2015 declined to issue an interpretation on the application of Magnuson-Moss protections to leases, explaining, essentially, that the matter was already sufficiently clear.

The majority of courts have found that a lessee meets the definition of "consumer" in the MMWA because warranty rights are transferred to lessees or the lessees are permitted to enforce the contract under state law, among other reasons. As NCLC notes, however, some courts have held that a lessee does not meet the definition of "consumer." These courts have generally found that the definition of "consumer" presupposes a transaction that qualifies as a sale under the Act, and that the lease transaction at issue was not a qualifying sale. . . .

The Commission does not agree with the view held by a minority number of courts that lessees cannot be a "consumer" under the MMWA because each prong of the "consumer" definition presupposes a sale to the end-consumer (which in this case is a lessee). Rather, as the majority of courts have held, lessees meet the definition of a "consumer" because warranty rights are either transferred to lessees or the lessees are permitted to enforce the contract under state law. Given that a majority of courts hold that the MMWA applies to *certain* leases, consistent with past agency guidance, a new Interpretation is not necessary.

Compared to the issue discussed above (eligibility on the basis of such qualifying factors as the state of registration), questions about leases could arise more frequently – but the issues posed by leases are less stark. Consumers with leasing arrangements aren’t told, expressly and starkly, that they’re *not* eligible when they directly follow the links on BBB AUTO LINE’s web portal to file a complaint. And, when consumers use the portal to file a complaint, they might find references to leased vehicles if they follow links to the relevant program summary; further, the “claim intake” page contains a reference to a “lease” as well as a purchase.

But there’s at least a chance that BBB AUTO LINE’s availability to certain lessees won’t be clear. For one thing, the reference to “lease” on the claim intake page (noted above) appears only in a dropdown menu and isn’t immediately visible to the consumer. Also, it’s next to a heading (“Purchase type”) whose use of the term “purchase” might confuse consumers. Further complicating matters, the “Purchase type” question immediately follows a question that asks “Are you the ONLY titled owner?”, a query that doesn’t mesh well with a leasing arrangement. Moreover, consumers generally won’t reach the claim intake page without first going through the “complaint form” page,¹⁵⁰ and *that* page mentions only purchasers. Further, meticulous consumers who go to state lemon law summaries might find statements that a particular law doesn’t appear to cover a lease,¹⁵¹ and, while these pages only purport to summarize *state* provisions, the consumer might not understand that coverage might still be available by virtue of the relevant program summaries or by virtue of federal law.

Ameliorating all of this are repeated invitations, on both the initial BBB AUTO LINE page¹⁵² and the claim input page, for a consumer to call or email BBB AUTO LINE for further information. A confused consumer should thus have ample opportunity to clarify any doubts about the coverage of leased vehicles. Still, the auditor can’t dismiss the possibility that a consumer with a lease might be deterred from proceeding by all of this, and it could well be prudent to address these matters and, at a minimum, to include clearer references to lessees on the “complaint form” and “complaint input” pages.

Recommendation: The auditor recommends that BBB AUTO LINE consider steps that might reduce any possibility that consumers with leased vehicles are dissuaded from using BBB AUTO LINE.

80 Fed. Reg. 42710, 42715 (emphasis added; footnotes omitted).

¹⁵⁰ <https://www.auto.bbb.org/lemon-law-complaint-form>.

¹⁵¹ E.g., <https://www.auto.bbb.org/docs/lemon-law-summaries/AL-LLsummary.pdf>.

¹⁵² <https://www.bbb.org/autoline>.

B. Resolving a Complaint

After the initial contact by phone or online in cases, BBB AUTO LINE sends complainants a printed “consumer complaint form” that incorporates information provided during the initial contact, along with its explanation of how BBB AUTO LINE works. Among the consumers who were surveyed in the national sample, 90.4% recalled receiving these materials. And, among those who didn’t, the auditor found signed complaint forms in BBB AUTO LINE’s files for over half, so they presumably forgot that they had received and returned them.¹⁵³ Further, and again using numbers from the national sample, most consumers found the materials to be clear and easy to understand or somewhat clear and easy to understand (96.8%) and most found them very or somewhat helpful (84.9%).¹⁵⁴

BBB AUTO LINE can start to address a complaint in earnest after the consumer returns a consumer complaint form with supporting documents, a process that CBBB staff suggests averages about ten days. In Florida and California, the complaint file opens with the original contact; elsewhere, it opens when the consumer complaint form is returned. Applying the appropriate 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. The manufacturer may then contact the consumer directly to resolve the issue.

If such efforts don’t occur and succeed, the case will be investigated, a process covered by Rule 703.5(c). Before the arbitrator is appointed, a dispute resolution specialist generally relies on facilitating the exchange of information between the parties, often by actively questioning the parties. At the same time, she explores mediation possibilities, at a minimum by facilitating the document exchange, although mediators do not, for example, advocate for a particular position. The consumer generally receives information submitted by the manufacturer before the distribution of the notice of hearing. BBB AUTO LINE has now implemented a nationwide consumer website portal with the intention of providing consumers with real-time access to case documents.

Mediation is intended to be optional; the consumer is supposed to be free to insist on proceeding directly to arbitration. While this is made explicit in the printed explanation of how BBB AUTO LINE works, the auditor observed a few case handler notes indicating that the process was described to some consumers in ways that suggested otherwise.

¹⁵³ In addition to the submitter’s signature, these forms typically contain uniform type of the sort expected for computer-generated printouts (and, in many cases, handwritten annotations added by the consumer). This is fully consistent that these are forms generated by BBB AUTO LINE and sent to the consumer for supplementation, modification, and signature.

¹⁵⁴ Chapter 3, Section III.F. As further discussed in that section, in some cases where consumers didn’t recall receiving a complaint form and there wasn’t a signed form in the file, the file was closed precisely because the consumer hadn’t returned the form (and the consumer was so advised in a closing letter).

Recommendation: The auditor recommends that BBB AUTO LINE take steps to ensure that case handlers explain that mediation is optional within the BBB AUTO LINE program.

Rule 703.5(d) then provides for the arbitration itself, with the goal of producing a fair decision within 40 days of the complaint, unless an exception under Rule 703.5(e) allows longer. Rule 703.5(f) governs oral presentations, and Rule 703.5(g) provides that the consumer must be told that she can reject the decision. If she does reject the decision, it might still be admitted as evidence in a subsequent court action. However, the apparent indifference of at least some attorneys to getting adverse decisions (see Chapter 3, section IV.G) suggests that, at least to some, this isn't a significant concern.

In some respects, the BBB AUTO LINE rules give consumers greater rights than the underlying Federal provisions (though not necessarily underlying state provisions) require. For example, Rule 703.5(f) provides for an oral hearing where both the manufacturer and the consumer agree to the hearing. However, the BBB AUTO LINE rules don't allow the manufacturer to block a consumer's request for an in-person hearing.

As the process proceeds, mediation remains possible; the parties can even settle after an arbitration hearing but before a decision,¹⁵⁵ or they can agree to a post-decision settlement.¹⁵⁶ An arbitrator can't engage in mediation herself, but, if the parties seem to be moving in that direction, she can temporarily remove herself from the process, allow the parties to negotiate, and (if negotiations succeed) issue a consent decision. Absent a consent settlement, BBB AUTO LINE policy provides for the arbitrator to run her decision through BBB AUTO LINE staff first, but BBB AUTO LINE staff's role is intended to be limited, and the arbitrator retains the discretion to decide the case as she deems fit.

The auditor has examined the BBB AUTO LINE rules, which provide far more detail than the regulatory provisions about how the case will be developed and resolved, but which appear fully consistent with those rules. The BBB AUTO LINE rules include, for example, details about the arbitrator's inspection of the car¹⁵⁷ and about the use of technical experts in

¹⁵⁵ Rule 20; California Rule 21.

¹⁵⁶ This might occur, for example, if the consumer wants to substitute a repurchase for a replacement remedy.

¹⁵⁷ Rule 7 of the rules applicable outside California provides:

We 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 necessary.

If an inspection is scheduled and the vehicle is not available for inspection, your case will be closed and no decision will be made unless state law or regulation provide otherwise.

arbitrations.¹⁵⁸

The auditor also reviewed recordings from two Florida hearings, two Ohio hearings, and two hearings from other states. He also examined the original spread sheet prepared by BBB AUTO LINE for TechnoMetrica's use in calling consumers, and, as explained above, he also used the results of the consumer survey to identify case files most likely to be problematic.

The auditor noted occasional issues, which he has no reason to believe represent patterns of behavior. For example, in one hearing transcript where the arbitrator was describing

The arbitrator will determine whether a test drive will be taken in the vehicle. A test drive may not be taken unless the consumer has liability insurance that satisfies the state's minimum requirements. The consumer's liability insurance will apply during any test drive.

During the test drive, all laws will be observed and reasonable safety precautions will be taken.

California Rule 8 is similar, though it leaves more discretion to the arbitrator by stating, "The arbitrator may request an inspection of the vehicle involved in your dispute."

¹⁵⁸ Rule 8 of the non-California Rules provides:

At the request of the arbitrator or by agreement of both parties, we will make every effort to obtain an impartial technical expert to inspect the vehicle involved in the dispute. In some cases, to the extent permitted by state law, we will automatically appoint an impartial technical expert to examine your vehicle prior to the arbitration. (Please check the manufacturer's Program Summary to see if a mandated technical inspection will apply to your case.)

If there is an inspection by an impartial technical expert, the consumer will be contacted by the technical expert to arrange the inspection. To maintain the technical expert's impartiality, the consumer should not speak with the expert, except to arrange access to the vehicle for inspection, nor accompany the technical expert on the test drive of the vehicle.

The impartial technical expert's findings will be presented in writing before, during or after the hearing as appropriate to the process. Both parties will have an opportunity to evaluate and comment on the qualifications and findings of the technical expert. The parties agree that they will not contact the impartial technical expert at any time, including after the arbitration case has closed, in relation to the impartial technical expert's findings. You also have the right to have your own technical expert serve as a witness at your own expense.

California Rule 9 is briefer but similar.

confidentiality, he seemed to suggest that the *consumer* couldn't discuss the hearing. Also, in a case from California, where the file is opened with the initial contact, it was later closed because the BBB AUTO LINE hadn't received a consumer complaint form – and the consumer then insisted that he'd sent it. The “process” problem is that the consumer was mistakenly told that the next step (implicitly the only available step) was an appeal – but in fact he should have been told that he could simply refile.

These aren't the sorts of issue that would seem to reflect broad problems. However, there was one more substantial deficiency in Ohio cases. At least some letters that accompanied arbitrated decisions in Ohio cases didn't include specific disclosures required by the Ohio code.¹⁵⁹

Recommendation: BBB AUTO LINE should ensure that cover letters accompanying decisions in Ohio contain the required disclosures.

C. Compliance (and Satisfaction)

Rule 703.6(h) requires BBB AUTO LINE to ascertain, within 10 working days of the date set to perform a remedy, whether the manufacturer has complied.

BBB AUTO LINE fulfills this obligation primarily through a performance verification letter that asks consumers whether the manufacturer had “performed,” whether the performance was satisfactory, and, if not, whether the consumer wants to pursue the matter further through BBB AUTO LINE. The letter also informs the consumer that compliance will be assumed unless the consumer replies within eight days after it was sent.

In the auditor's view, it's not unreasonable to assume compliance should a consumer fail to respond. Otherwise, the measure of manufacturer compliance could depend on the whims or attentiveness of consumers (or their lawyers). However, the auditor did observe that, when informing manufacturers of the consumer responses in cases where compliance was assumed because the form wasn't returned, BBB AUTO LINE usually (though not always) reported that performance verification was “received.” It's not clear that this causes any harm, although it might confuse manufacturers if the consumer at issue contracted them and told them the problem

¹⁵⁹ Although not previously highlighted in past audits, 109:4-4-04(C)(7) provides:

(7) The board shall inform the consumer at the time of disclosure required in paragraph (C)(5) of this rule 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.

in fact was not resolved. In any event, the auditor would prefer more precise records.

The options presented to consumers raise the distinction between “compliance” and consumer satisfaction. A consumer may be dissatisfied with a repurchase remedy because of a dispute with the manufacturer in its implementation (*e.g.*, how much did the car’s condition affect its value?), although some appeared dissatisfied that the law allowed because there was *any* adjustment to the car’s value reflecting past use, even where such adjustments are expressly authorized by state lemon laws. However, the distinction between compliance and satisfaction is most often highlighted by repair remedies. In many repair cases, particularly settlements, the precise remedy provides for an inspection by the manufacturer’s field service engineer and the correction of any warrantable problems she finds. Here, the potential for disagreement is obvious; most often, it arises because the field service engineer finds that no repairs are needed or warranted.

How, then, to record such disputes? In the auditor’s view, even if the consumer wasn’t satisfied with the result, it would be problematic to deem the manufacturer’s initial performance as non-compliant – particularly when the manufacturer’s position might still prevail if, as the consumer is invited to do, the consumer returned to BBB AUTO LINE. On the other hand, it could also be the consumer who prevails in a later proceeding. Given a binary choice between “compliant” and “non-compliant,” the auditor believes the former designation is appropriate. But the situation is more nuanced than a binary choice can capture, and certain statistics – particularly the number of cases reopened in light of the consumer’s displeasure, can cast some light on this.

Through some suggestive if imprecise analysis, the auditor has looked to the number of follow-on cases – which are identifiable because they have the same case number as the original with a “1R” (or higher¹⁶⁰) suffix. These are all mediated cases,¹⁶¹ and it appears from that analysis that nearly half of repair settlements may lead to 1R cases.¹⁶² But this only tells part of the story. Thus:

-- Repair remedies are recognized as an appropriate resolution of dispute resolution process

¹⁶⁰ References to “1R” cases include 2R (and beyond) cases as well.

¹⁶¹ If the original resolution was an arbitrator’s decision, the arbitration would be reconvened as part of the original case file.

¹⁶² Using the spread sheet BBB AUTO LINE provided, the auditor identified 624 “R” cases in 2017. Working with the spread sheet prepared by BBB AUTO LINE, he grouped these by pairs (or, in a few cases, triplets), This captured about 80% of the 624 cases. (This approach only captured cases where both the 1R case and its predecessor closed in 2017). Working with the cases he found, the auditor estimates that 95% of these follow-on cases stem from settlements that originally provided for repairs – which suggests that roughly 600 cases mediated repair cases were associated with follow-on cases. Since there were 1262 mediated repair cases during the year, this suggests that somewhat less than half eventually lead to follow-ons.

by FTC, Ohio, and former Florida regulations.¹⁶³

-- Repairs remedies can resolve a problem and, when they don't, the performance verification letter invites the consumer to pursue the matter further – often leading at that point to a repurchase or replacement remedy. Again based on some rough calculations that drew on the spread sheets, the auditor estimates that about one-third of 1R cases lead to repurchase or replacement remedies – and they often do so, perhaps as frequently as two-thirds of the time, without arbitration.

-- Repair remedies aren't necessarily a preliminary remedy. In some cases, generally where the car's age or mileage falls outside lemon law limits but the car remains under warranty, they may be the only remedy available to consumers by the terms of the program summary.¹⁶⁴

-- And, 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, sometimes a repair remedy is a substitute for the opportunity that the final repair opportunity that consumers should have afforded the manufacturer before filing the complaint – and without which consumers couldn't avail themselves of lemon law remedies or presumptions.

Thus, the auditor didn't detect a systematic problem with BBB AUTO LINE's treatment of compliance matters. He did find one case that didn't report why performance verification was found or assumed, but this was sufficiently rare that it didn't affect any aggregate calculations or suggest a systematic problem. While BBB AUTO LINE might consider procedures to ensure that every case file fully addresses this predicate for finding compliance, the problem is sufficiently rare that the auditor doesn't raise this suggestion to the level of a recommendation.

D. Recordkeeping Provisions

Rule 703.6(a) requires the BBB AUTO LINE to maintain certain records in specific cases.¹⁶⁵ To the extent it's possible to tell from a review of the files,¹⁶⁶ the auditor saw no

¹⁶³ 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).

¹⁶⁴ See Chapter 1, Section II.A.5.

¹⁶⁵ Rule 703.6 provides:

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

(1) Name, address and telephone number of the consumer;

(2) Name, address, telephone number and contact person of the warrantor;

systematic problems on compliance with this provision, or with analogous provisions from Florida¹⁶⁷ or Ohio.¹⁶⁸

- (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.

¹⁶⁶ There's no way to tell, for example, if "all" written documents from all parties are included.

¹⁶⁷ Florida requires the submission of certain aggregate figures not required by Federal law (and these are reported discussed in the Chapter 3), but does not require additional records to be kept in individual cases.

¹⁶⁸ 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;

The auditor has observed, though, that there were occasional, if rare, cases where 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. BBB AUTO LINE's records in these cases varied in their level of specificity; some files contained two letters sent to consumers plus reports in the case handler's notes of multiple calls; others contained less. It might be helpful if the files systematically included more information or if BBB AUTO LINE developed protocols for minimum contact attempts in different circumstances. Even with more consistent records reporting multiple attempts to reach the consumer, though, the auditor acknowledges that he would hesitate to definitively conclude that the problem should be attributed to the consumer; there could conceivably be cases, for example, where BBB AUTO LINE and the consumer each missed the others' attempts at contact.

* * *

Additionally, rule 703.6(b) requires that the BBB AUTO LINE maintain an index of cases grouped under brand name and product model. The auditor has seen this index, although, consistent with past practice, it doesn't appear in this report. Also, rules 703.6(c), (d), and (e) (and analogous provisions of Florida and Ohio law) require BBB AUTO LINE to maintain certain indices and undertake certain aggregate calculations, which are discussed in Chapter 3.

- (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;
- (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.

* * *

The auditor also notes that the initial spread sheet developed by BBB AUTO LINE for TechnoMetrica's use in conducting the survey contained a small percentage (less than 0.4%) of facially problematic entries. The auditor identified these relatively easily by sorting the spread sheets in different ways and then visually scanning through the file on a computer monitor; they included, for example, cases listed as ineligible or withdrawn that show a remedy; cases listed as arbitrated or mediated that don't show a remedy or a denial decision; cases shown as both arbitrated and withdrawn; and cases showing arbitration but not recording if the consumer accepted the decision.

BBB AUTO LINE staff has advised that they use certain checks in compiling the Rule 703 statistics that may well have corrected the anomalous cases for purposes of those calculations even if they weren't corrected for purposes of generating the spread sheet. Even if they didn't correct for these anomalies, moreover, the anomalies likely had only minimal impact on most aspects of the audit. For example, most remedies that were entered for withdrawn or ineligible cases (which shouldn't have shown a remedy) provided for repurchase or replacement remedies,¹⁶⁹ while most remedies that were omitted for mediated cases similarly provided for repurchase or replacement; thus, the additions and omissions to some extent cancelled out. However, because of the ways that these cases they were concentrated, they had a somewhat more noticeable impact – though still small enough not to be a primary cause of any changes to the auditor's views – on the "optional" calculations discussed in subsection G of sections III, IV, and V.

Recommendation: BBB AUTO LINE might explore whether the anomalous cases impacted, if only to a small extent, the Rule 703 calculations. Particularly if they had such impact, BBB AUTO LINE might take steps to minimize, identify and correct any inconsistencies.

E. Openness of Records and Proceedings

Rule 703.8 governs the extent to which records and proceeding 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 arbitration rules does so, promising (with specified limits) privacy and confidentiality.¹⁷⁰

¹⁶⁹ These included several cases where the consumer had a lawyer who settled the case, apparently outside the BBB AUTO LINE process, and then asked to withdraw it.

¹⁷⁰ 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

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 FTC Rule 703.8(c) and BBB AUTO LINE Rule 24. And, in the context of the twenty-first century's second decade, data security is an essential component of confidentiality. Without discussing the issue in great detail in a public filing, the auditor noted that BBB AUTO LINE had addressed important issues after the matter was originally 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.

The auditor did note one outstanding issue: BBB AUTO LINE has retained case files that are more than a decade old. He understands that BBB AUTO LINE is currently formulating and implementing changes to address data retention.

And, the auditor again notes that, while he has felt qualified to make recommendations on certain matters and respond to certain BBB AUTO LINE actions taken in light of those recommendations, he's not an expert on the subject. He's very 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 the auditor isn't in a position to fully evaluate BBB AUTO LINE's data handling.

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

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.¹⁷¹ This part of the audit 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 aggregates required by Federal or state law. As in the past, this part of the audit was accomplished through a nationwide telephone survey, conducted this year, as in the two preceding years, by TechnoMetrica Marketing Intelligence. The survey reached out to consumers who used the program and met certain other criteria (discussed below), and it included a national sample and separate Florida and Ohio samples.¹⁷²

The survey was substantially redesigned last year. Most significantly, on two key factors – process (was the complaint arbitrated, mediated, ineligible, or withdrawn) and remedy – consumers are now told how BBB AUTO LINE records reported their cases, and asked to confirm or correct those records. This facilitates analysis on both a “macro” and a “micro” level. On the macro level (previously the exclusive mode of analysis), the auditor compares aggregate results from the survey to aggregates compiled by the CBBB. On the micro level, the new format enabled the auditor to identify how frequently consumers agreed with BBB AUTO LINE records specific to their cases and, by examining the underlying cases where they did disagree, to determine whether certain discordances reflected a problem, an understandable difference in perception, or an irreconcilable conflict about (most commonly) who was responsible for occasional failures of communication.¹⁷³ The auditor and TechnoMetrica are continuing to refine this approach, but the refinements are minor.¹⁷⁴ As a result, this year’s survey was sufficiently close to last year’s that this report includes additional year-by-year comparisons, some of which cast useful light on specific results.

While the audit has previously included (in addition to the survey) an examination of individual case files, until last year the selection of those files was independent of the survey. Starting last year, selected survey responses became a primary basis to identify files for examination because they were most likely to have problems; this year those files were chosen

¹⁷¹ Rule 703.7(b)(3).

¹⁷² The survey process was structured so that Florida and Ohio consumers, in addition to being the subject of state-specific surveys, were no less likely than consumers elsewhere to be included in the national survey.

¹⁷³ Among other things, the micro analysis would have been is useful to isolate the source of the problem had substantial problems if they had emerged in the macro analysis. If the aggregate “macro” numbers didn’t reasonably match, for example, the “micro” analysis would have shown if the underlying problem was (at least in part) in the classification of individual cases.

¹⁷⁴ This year, for example, new categories were added into which the interviewer could classify responses when consumers were asked how they learned about BBB AUTO LINE.

from among the 634 consumers who took the survey,¹⁷⁵ and included files for consumers who either:

- (1) disagreed with BBB AUTO LINE records reporting on the process used; the remedy obtained, or whether an arbitration decision was accepted;
- (2) reported that manufacturers hadn't complied, even belatedly, with obligations under arbitrator's awards or settlements;
- (3) withdrew a complaint, unless the consumer seemed to indicate that the matter had been resolved to her satisfaction; or
- (4) said they hadn't received one of several specified communications from BBB AUTO LINE.

As noted above, this process enabled the auditor to formulate conclusions about the extent to which discordances or other responses pointed to real problems in the program's operation or recordkeeping, and the extent to which they were, essentially, false negatives.

The auditor also examined several files for cases that weren't resolved within 40 days. Applying all of these criteria, the auditor reviewed files for over 25% of the consumers that TechnoMetrica sampled. While the auditor explored any question in the file that caught his attention, though, his initial, primary, and sometimes exclusive focus was to explore the issue that drew him there in the first place.¹⁷⁶

Also, as discussed below,¹⁷⁷ the survey didn't reach, and thus couldn't identify files for, consumers who used lawyers. So the auditor this year supplemented his file review by examining 87 cases brought by attorneys on behalf of consumers. These included, for each population, 10 arbitrated cases, 10 mediated cases (unless fewer mediated attorney cases were available), 5 withdrawn cases, and 5 ineligible cases.¹⁷⁸ This exercise helped the auditor

¹⁷⁵ These include 408 in the national sample, 158 in the Florida sample, and 91 in the Ohio sample. Twenty-three Ohio consumers who were included in the national sample were used for the Ohio sample as well.

¹⁷⁶ The questions that drew him to the files were sometimes fundamental issues about the case. (Why did the consumer say the case was arbitrated when there was no sign of arbitration?) And sometimes, as with questions about whether the consumer received a consumer complaint form, they focused on a relatively narrow point.

¹⁷⁷ Section II.C.2 of this chapter.

¹⁷⁸ The most significant finding from this review, particularly for the discussion of attorney cases compared to non-attorney cases in Chapters III.G, IV.G, and V.G, came from the review of withdrawn cases. Roughly 11.4% of attorney cases were withdrawn, and, among these the most common reason for withdrawal was that the attorney had negotiated a settlement, presumably, in

substantiate some mandatory aspects of the audit (could he confidently assert that certain BBB AUTO LINE's aggregates were reasonably accurate), and led to some new insights on a longstanding "optional" analysis: did attorney representation affect the consumer's experience and did it potentially create misleading implications for some reported figures.

Finally, as noted previously,¹⁷⁹ the auditor also observed that the spread sheet BBB AUTO LINE prepared for TechnoMetrica included some anomalous entries, such as cases showing arbitration or mediation but no remedy or denial. While these involved less than 0.4% of cases, the auditor examined a selection to see if they showed any patterns that raised questions for the statistical analyses that followed.¹⁸⁰

For the reasons discussed below, the auditor finds that BBB AUTO LINE processes and recordkeeping are in substantial compliance with Rule 703, as well as applicable provisions of Florida and Ohio law.

A. Micro Analysis Summary

1. Introduction

As noted above, the audit serves both 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 identify existing problems. And, with respect to the quality of BBB AUTO LINE's record-keeping, the case file review provided context for understanding, and to some extent discounting, certain "discordances" between BBB AUTO LINE's records and consumer survey responses. In doing so, the examination largely alleviated possible concerns about that record-keeping.

Consider, for example, Table III-V. The table reports the responses, for the national sample, to a (seemingly) straightforward question: By what process was the consumer's complaint resolved or file closed.¹⁸¹ This doesn't involve details about which a consumer might be uncertain,¹⁸² or quantitative measures about which his memory might be fuzzy. So it seems

most cases, a replacement or repurchase settlement that fell outside the program.

¹⁷⁹ Chapter 2, Section II.D.

¹⁸⁰ While the audit will touch on this more in the discussions that follow, some omissions tended to leave out omit repurchase or replacement remedies, so that certain aggregates may have slightly *understated* consumers' success through the program. The impact on most calculations was trivial, although, because the problem was most prevalent among attorney cases, the effect there, while still slight, was more than trivial. This, too, is discussed in subsection III.G.

¹⁸¹ Was the complaint is ineligible, withdrawn, mediated, or arbitrated?

¹⁸² That detailed nature of the inquiry, in contrast, could be an issue when consumers are asked if they received certain documents during the proceeding.

surprising that the discordance rate was 4.5% discordance rate – which, if projected to over 10,600 cases this year, suggests possible issues with nearly 500 cases.

However, the auditor’s review of the underlying files, along with the details of the survey responses, shows that potential problems are actually far less widespread than the initial discordance numbers might suggest; in essence, most of the seeming problems are false negatives. The auditor’s detailed analytic framework builds on and refines the framework used last year. It breaks the “discordant” cases into those where the BBB AUTO LINE records are likely accurate, either because the consumers’ responses and BBB AUTO LINE’s records are in a sense both “right” or because the consumer appears to be demonstrably wrong (a category the auditor relies upon with great caution). In other cases, there appears to be a true conflict, although even here BBB AUTO LINE’s underlying files usually provide reasonable support for the characterization in the program’s records.¹⁸³ And, finally, in a very small number of cases identified through the survey, BBB AUTO LINE records appear to be wrong; the least ambiguous are where the entry in BBB AUTO LINE’s data base is inconsistent with its own underlying file.

2. Cases Where BBB AUTO LINE Error Is Highly Unlikely

This section describes recurring patterns that the auditor has observed over two years of scrutinizing specific cases where BBB AUTO LINE records differ from consumer responses. Sometimes, as with straddle cases described in subsection a, the possibility of multiple “correct” answers is an artifact (to some extent unavoidable) of the survey process. Elsewhere, as with the settlements that aren’t “mediations” described in subsection b, discordances are “reasonably explicable” because BBB AUTO LINE’s treatment reflects nuances that consumers don’t fully grasp, often despite efforts to clarify the issue in the survey questions. Some involved consumer doubt, reflected in “not sure” or “don’t remember” responses. And still others – such as some responses to document receipt questions or cases where consumers who corrected the recorded answers in follow-up calls by the auditor – involved likely error by consumers.

a. Reasonably Explicable Discordances: Straddle Cases

In a straddle case, an entry appears on the spread sheet because a case was originally closed during the audit year, but, subsequently, either the original case was reopened or a related case was filed.¹⁸⁴ The spread sheet (and thus the answers available to TechnoMetrica) didn’t, and often couldn’t, reflect the later developments that the consumer reported – which sometimes occurred within days of the survey.¹⁸⁵

¹⁸³ These are typically cases where the consumer said BBB AUTO LINE failed to return her calls, while BBB AUTO LINE records report unsuccessful efforts to reach the consumer.

¹⁸⁴ If the original case was resolved through arbitration, subsequent developments would be handled by reopening the original file; otherwise, a new file would open.

¹⁸⁵ Some consumers were interviewed during the second week of March, so that TechnoMetrica

To suggest the significance of these cases, straddles accounted this year for three discordant cases in the national sample on process. These are less than 1% of all the consumers surveyed, but they're 17% of the discordant responses. And, in the 2016 audit, straddle cases accounted for 5 of the 22 (23%) of the discordant responses on the same question. So over two years, straddle cases explained 8 of 40, or 20%, of the discordant responses to the question.

b. Reasonably Explicable Discordances: Settlements That Aren't "Mediations"

Consumers sometimes resolve their complaints directly with the manufacturer in ways that BBB AUTO LINE doesn't record as a "settlement." Or they settle the matter with the dealer, and such settlements are inherently outside the BBB AUTO LINE process. BBB AUTO LINE reports these cases as withdrawn (by virtue of the settlement) and notes the characterization in a closing letter. Still, BBB AUTO LINE staff may have started to work with the parties, and some consumers describe the process as "mediated."¹⁸⁶

c. Reasonably Explicable Discordances: Settlements after an Arbitration Hearing Begins

Other situations where consumers are often confused involve settlements after arbitration begins.¹⁸⁷ If a matter 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, the agreement is embodied in a "consent decision," prepared by staff, that becomes effective when the parties and the arbitrator sign it – and, to the apparent confusion of some consumers, BBB AUTO LINE reports an arbitrated case.

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 the remedy as what the arbitrator ordered. In the auditor's view, this is the best way to

could prepare its analysis and leave the auditor time to expand on that analysis for a June filing date. In that context, consider the following scenario. A consumer filed a complaint in late December and was told just before New Year's that the complaint was problematic because he didn't give the dealer and/or manufacturer the requisite opportunities to attempt repairs under the state lemon law. The consumer withdrew the complaint and provided the dealer and then the manufacturer with further opportunities to attempt repairs (as required by the relevant lemon law) and that extended the process into February. If the consumer then filed a new complaint in early February, BBB AUTO LINE would have had 40 days from the time of filing to resolve the matter – which would have extended past the survey date.

¹⁸⁶ In a variation on this theme, one consumer this year obtained some relief from the manufacturer and some from the dealer, as goodwill gestures even though the car was outside the warranty period. The program recorded the matter as ineligible; the consumer reported a settlement.

¹⁸⁷ The auditor saw this situation in several cases in 2016, although it didn't come up in 2017.

handle a situation with no optimal solution,¹⁸⁸ but it's hardly a resolution that would be intuitively obvious to a consumer taking the survey.¹⁸⁹

d. Reasonably Explicable Discordances: Confusion between “Ineligibility” and Withdrawals

In several cases, consumers withdrew their complaint when told they were ineligible for the program or for specific remedies under the program; the BBB AUTO LINE's closing letter to the consumer characterized the matter as withdrawn; but the consumer described it to TechnoMetrica as ineligible.

e. Reasonably Explicable Discordances: Consumers Dissatisfied with Execution of Repair Remedy

Another recurring situation involved consumers who received a mediated repair remedy but said that their complaint was ineligible or withdrawn, or who replied “other” and clarified that the matter wasn't resolved to their satisfaction. As noted previously, mediated repair remedies typically provided that the manufacturer's field service engineer would examine the car for warranted problems, and these appear to be cases where the FSE said there was no warranted issue. In essence, consumers (not unreasonably) confused ineligibility *for relief* (or at least an FSE's determination that they didn't challenge) for ineligibility *for the program*.

f. Reasonably Explicable Discordances: Consumers Who Based Replies on Developments After a Case Was Closed as Withdrawn or Ineligible

In some matters that BBB AUTO LINE reported as ineligible or withdrawn, consumers responded “other” to the process question and then described later developments or gave later status reports regarding their case; some said, for example, that the matter was never resolved even though they hadn't returned a performance verification letter – or even *had* returned a performance verification letter that reported the matter resolved to their satisfaction. These are similar to straddle cases, which also involved developments after that post-date BBB AUTO LINE records on which the survey relied. But here the later developments occurred outside BBB AUTO LINE's purview; they didn't involve, for example, follow-on cases that appear in BBB AUTO LINE's records with entries in 2018.

¹⁸⁸ The arbitrator had heard and decided the case and, the auditor believes, the program needs to report an arbitrated case. Once that's done, though, it would seem misleading to associate with an arbitration decision a different remedy than the remedy found appropriate. To do otherwise would muddy the waters when BBB AUTO LINE develops aggregate statistics that show regulators the relief (if any) that arbitrators collectively found appropriate.

¹⁸⁹ Further, it's not practicable to clarify all these nuances in survey questions, without bogging down the survey with details that, to most consumers, would be complex and even annoying minutia.

g. Consumers Who Don't Remember

Some questions included a “not sure” option, and consumers who chose that option weren't counted in the discordance analysis. Other questions omitted that option, but invited consumers who answered “other” to explain – at which point some consumers said that they weren't sure or didn't remember. In either case, there's no real discordance between BBB AUTO LINE's specific entry and the consumer's uncertainty.

h. Branching Issues

This subsection is something of a flip side to subsection g, where BBB AUTO LINE recorded a specific result but the consumer couldn't recall the answer. Here, the consumer gives a response, but the BBB AUTO LINE, for good reason, didn't record one. Consider, for example, the consumer in subsection b who withdrew a complaint because she resolved the matter with the dealer, and who was recorded in BBB AUTO LINE's records as ineligible while the consumer reported a settlement. From the perspective of the process metric, this was a reasonably explicable discordance. But now consider the remedy metric. Since BBB AUTO LINE recorded the matter as withdrawn, it showed no remedy. But, since the consumer described a mediated settlement, she was asked about the remedy she got when she settled. Since BBB AUTO LINE didn't even show a remedy, in the auditor's view it isn't really discordant on the remedy question.

i. Consumer 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 full access to the underlying BBB AUTO LINE documentation but only survey responses (sometimes supplemented by a follow-on phone call) for consumers. Further, seeming discordances aren't necessarily inconsistencies; even if BBB AUTO LINE sent a communication, for example, that doesn't necessarily mean that the consumer received it.

Still, sometimes consumer error seems highly likely, to the point of near-certainty, based on clear documentation. For example, some consumers said they didn't receive an initial packet of documents from BBB AUTO LINE. But BBB AUTO LINE's initial communication to the consumer, which should include these documents, also includes consumer complaint forms that incorporate information previously provided by consumers, by phone or online, which the consumer is asked to correct, supplement, sign and return. The auditor can point to consumer error, with a high degree of confidence, when consumers say that they didn't receive these documents but the files contain signed documents that they *returned*.¹⁹⁰ And perhaps not surprisingly, demonstrable consumer error is most common on document receipt questions,

¹⁹⁰ Further, these documents routinely contain consistent printing of certain answers, indicating the sort of computer-generated printout that BBB AUTO LINE would produce, often though they not always 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.

which involve events of secondary import to the consumer, often from months (or even a year or more) before. Thus, for example, 37 of 408 consumers in the national sample said they didn't receive a complaint form, and the auditor found signed forms in 20 (54%) of the case files.

j. Consumer Error Shown by a Subsequent Call

Consumers who gave discordant responses on process or remedy during the survey were asked if they would take a follow-up call. In several cases where the consumer said "yes" and the answers were unclear (as where a consumer said his case was arbitrated but the files contained no sign of arbitration), the auditor attempted (not always successfully¹⁹¹) to contact the consumer for clarification. In some cases, a discussion made clear that there was a conflict between the consumer's response and BBB AUTO LINE's records. In others, the discussion clarified that the case involved something akin to a "reasonably explicable discordance" described above. And in still others, the consumer essentially corrected his earlier response – in which event the auditor treats the discordance as apparent consumer error.¹⁹² While the auditor couldn't make or didn't successfully complete such calls in every case where they might have been useful, these results suggest that, even in some cases where the consumers didn't agree to a follow-up or couldn't be reached, such a call might also have shown consumer error.

3. Other Cases

Most of the seeming discordances – and generally a substantial majority of the seeming discordances – fell into one of the categories described above. Among the remaining cases, there was a very small number where the BBB AUTO LINE spread sheet is clearly wrong. These are cases where the entry in the data base diverges from BBB AUTO LINE's own underlying files, and the survey and subsequent file review shows this to be highly unusual.

In another small (but somewhat larger) number of cases, there's a discordance that the auditor is unable to explain or resolve, although BBB AUTO LINE's data entry is typically supported by some detail, even substantial detail, in the case file. For example, some consumers said that they tried to reach BBB AUTO LINE and BBB AUTO LINE staff never replied, while the documentation and case handler notes report unsuccessful efforts, often numerous unsuccessful efforts, to reach out to the consumer (These include as many as four phone calls and two letters.) There's no way to evaluate decisively if, for example, both are accurate, particularly because the records available to the auditor don't always reflect how written communications reported in their files were sent. While it's obviously preferable to have more detail in the file than less, the auditor still can't determine with certainty if the communications were received by BBB AUTO LINE and ignored.

¹⁹¹ In one case, for example, the auditor attempted in April to call the same number that TechnoMetrica had used in March, and it was disconnected.

¹⁹² An alternative, which the auditor can't discount, is that TechnoMetrica's interviewer made an error.

4. Broad Summary of the Micro Analysis

Without delving into too much detail here – the detail appears later in this chapter – the micro analysis showed that, for the 637 consumers surveyed, BBB AUTO LINE records matched consumer responses reasonably well on key metrics. On the process metric for the national sample, for example, they matched over 95% of the time and, on the remedy metric for the national sample, they matched 97.5% of the time. More importantly, the records matched the underlying circumstances even more frequently, based on the reasonably explicable discordances and other considerations discussed above. Again focusing on the process and remedy entries, actual discordances appear to be no more than 1-2%, and likely well below that. In other words, the micro analysis shows that BBB AUTO LINE records accurately report the underlying circumstances in the vast majority of cases.

Together with the macro analysis discussed below, and despite some facial anomalies on the spread sheet with which TechnoMetrica and the auditor worked,¹⁹³ this 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 these records were substantially accurate as well.

B. Macro Analysis Overview

Before 2016, audits of BBB AUTO LINE presented the core of their “macro” analyses (without using that term) by comparing aggregates from the survey to BBB AUTO LINE’s calculated aggregates. This is still an important component of the analysis, but it’s important to understand its limits – and how the auditor has sought to minimize some of those limits.

First, the auditor has taken steps to address *coverage errors*. These arise when the sampling frame, the list from which consumers were selected for calling, differs systematically from the overall population. As explained below, certain cases were omitted from the sampling frame: those where consumers had lawyers and those that were followed by a related case that also closed in 2017. Absent parallel adjustments to BBB AUTO LINE’s aggregate figures, there would have been a coverage error; since the omitted cases had different profiles than the included cases,¹⁹⁴ the audit would have compared apples to oranges. To address this, the auditor used, as one source for comparing the survey results, a modified version of the BBB AUTO LINE spreadsheet that TechnoMetrica generated before calling consumers. This list omitted precisely the cases that the auditor needed to omit. In essence, it let him compare the survey results to the precise “sampling frame” from which it was derived, and thus addressed the

¹⁹³ See Chapter II, Section II.D..

¹⁹⁴ For example, in situations involving multiple complaints about the same vehicle, the earlier (omitted) cases mostly involved mediations. As to complaints by consumers who had lawyers, the differing profiles included, for example, far less mediation and far more denials in arbitration. See Chapters III.G, IV.G, and V.G.

reliability of entries in the sampling frame.¹⁹⁵

Second, another issue the auditor addressed, though only for the process question where it seemed most problematic, is a *non-response error*. These arise when some types of consumers are less likely to respond to the survey than others. The auditor suspected such an issue when he noted, in Table III-6 of the 2016 audit, that fewer than 37% of consumers in the national survey said their complaint was “ineligible,” while the adjusted aggregates reported more than 47% ineligible. The difference was outside the margin of error, and the auditor wondered if ineligible consumers – most of whom learned they weren’t eligible right after filing a complaint – had so little contact with the program that they were less vested in it and less likely to start, much less finish, a survey. TechnoMetrica then provided response rate data that seemed to bear this out; it showed, for example, that about 17% of “ineligibles” in the national population completed the survey, compared to 28% of those who used arbitration. These numbers largely explained the discrepancy noted above, and this year the auditor arranged to get response rate statistics, on the process metric, for each population.

Another issue is *measurement error*, a term that applies, for example, to the various “reasonably explicable discordances” described above. Once the nature of these discordances became apparent from last year’s audit, the auditor worked with TechnoMetrica to refine the questionnaire to reduce them, but he wasn’t able to eliminate them.¹⁹⁶ The problem is that there’s a tradeoff here. TechnoMetrica calls consumers at home or on cell phones and asks them to complete an extended survey. At some point, adding greater precision to the questions could lead to detailed inquiries that might, in a worst case scenario, lower response rates. While the auditor will continue to work with TechnoMetrica to further reduce measurement errors, therefore, some will likely remain.¹⁹⁷

And this would be on top of the *sampling error* that’s inherent in projecting to the whole population survey results from a subset of that population.¹⁹⁸ Under the current survey, the margin of error was least when dealing with the largest populations – for example, in projecting

¹⁹⁵ Of course, this required some further steps to add back in the cases omitted from the spread sheet TechnoMetrica produced to the full set of cases; the auditor addresses below how this was done.

¹⁹⁶ For example, as noted above, some consumers confused ineligibility for relief (perhaps because a field service engineer found no warrantable problem) with ineligibility *for the program*. So this year’s survey explained “ineligibility” consistent with this limitation. But some consumers still applied the term to the former situation.

¹⁹⁷ The impact of such divergences is reduced, however, to the extent that some “errors” cancelled out. For example, if one consumer said that a mediated case was arbitrated while another said that an arbitrated case was mediated, the discordances would balance out in the aggregate calculations where the base included both mediated and arbitrated cases.

¹⁹⁸ Such projection is unavoidable; even in Ohio, where TechnoMetrica attempted to contact *every* consumer in the sampling frame, they completed interviews with only one in three.

from 408 consumers interviewed in the national survey to the adjusted the “sampling frame” of 7634 from which they were drawn. Even here, margin of error was +/-4.7%. But it grew to +/- 7.4% for the (smaller) Florida sample and to +/- 8.5% for the (even smaller) Ohio sample.¹⁹⁹ And *those* numbers grow even further, sometimes to +/-20% or more (a range of at least 40%) for questions posed to only some of the interviewed consumers.²⁰⁰ 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 occasional comparisons can reasonably be expected to fall outside the margin.

But at some point the margins of error grow sufficiently that the results don’t provide much support to test the accuracy of BBB AUTO LINE’ records. Thus, for example, the margin of error for questions about remedies in Ohio arbitrations is over 20%, so the “no award” responses when consumers who used arbitration were asked if they accepted the decision (34.5% in the survey and 48.1% in the computed aggregates) were within the margin of error. But, given the BBB AUTO LINE aggregate figure, any survey result between 28% and 68% would have been within the margin. So, at least where differentials push into the double-digits, the survey provides somewhat limited support to conclude that the underlying aggregates are accurate. Of course, even where the margins of error are high, most comparisons do fall within the single digits – but some (particularly on the Florida repair figures) include numbers that fall outside of the (relatively large) margins of error. Using a well-designed survey instrument, administered by a professional survey firm, the auditor might therefore have found a number of results 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.²⁰¹

C. Satisfaction Rates

Additionally, the survey continues to include questions about consumer satisfaction and, starting last year, the audit began to report satisfaction rates as a grade on a 4.0 scale. Among this year’s findings, detailed in subsections H of sections III, IV, and V, were the following.

- (1) In all three populations, consumers who used mediation or arbitration gave BBB AUTO LINE staff a solid B+, with grades ranging from 3.24 (national population) to 3.33 (Ohio and Florida).
- (2) Grades for arbitrators varied, although overall grades were somewhat

¹⁹⁹ This is an improvement over last year, when the Ohio sampling frame was smaller and the margin of error for questions posed to all the Ohio consumers who were interviewed was +/-10.4%.

²⁰⁰ For example, while 91 consumers completed surveys in Ohio, only the 29 who said they used arbitration were asked if they accepted the arbitration decision.

²⁰¹ This is precisely what happened, for example, in the Florida “remedy” questions discussed in Section IV.C.

higher for Ohio than for the other populations. Not surprisingly, though, consumers who got the most favorable decisions were far more likely to think their arbitrators understood the facts, were objective and fair, and reached an impartial and well-considered decision. For example, composite grades for consumers with repurchase or replacement remedies ranged from 3.53 (Florida), to 3.58 (national), to 3.83 (Ohio). Aggregates for those who got no award ranged from 1.00 (Ohio) to 1.03 (national) to 1.46 (Florida).

(3) When asked if they would recommend BBB AUTO LINE to friends and family, 70% in the national sample said yes, as did 73% in Florida and 76% in Ohio. Looking only to responses by consumers who used mediation or arbitration, the numbers rose to 83% for the national sample, 86% for Florida, and nearly 88% for Ohio.²⁰² Even among consumers who went to arbitration and lost, at least half of those who responded said they would recommend BBB AUTO LINE to friends and family.

II. Conducting the Survey

A. TechnoMetrica

As noted last year, the auditor lacks the capacity to conduct a survey himself and, as was done in the past two years, CBBB contracted with TechnoMetrica Market Intelligence²⁰³ to conduct the study and help the auditor in designing and analyzing it.²⁰⁴ The auditor participated

²⁰² These are all good numbers, and the auditor hesitates to attach much significance to the differences between them – differences that might be influenced, for example, by the differing remedies obtained by consumers in different populations.

²⁰³ TechnoMetrica describes itself as follows:

Incorporated in 1992, TechnoMetrica Market Intelligence is a full-service firm offering enterprise-class research to a wide variety of industries. For over 20 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 4 consecutive Presidential elections (2004, 2008, 2012 and 2016).

TechnoMetrica is certified by the State of New Jersey as a Minority Business Enterprise (MBE) and is a member of a number of industry organizations, including AAPOR and the American Marketing Association.

²⁰⁴ The auditor spoke to TechnoMetrica before last year's survey and agreed to work with them,

in the selection process, and, once TechnoMetrica was chosen, he worked directly with TechnoMetrica and took the lead in deciding on the survey's approach. He worked closely with TechnoMetrica in creating the survey instrument, and, while he solicited input from the CBBB, the auditor made the final decisions on questions about the survey's approach and content.

B. Survey Timing

As noted last year, the 2015 study had been conducted exclusively on the "macro" level and found several disparities between the aggregate consumer responses and BBB AUTO LINE statistics; further, it found a fair number of consumers reporting that they hadn't received certain documents, a result seemingly at variance with BBB AUTO LINE records showing the documents were sent. In his report, the auditor suggested that one explanation for these responses might have been that consumers had been surveyed as late as April 2016 about cases that had closed as much as sixteen months earlier. With the passage of time, he speculated, some consumers might have forgotten (for example) that they had received certain documents.

However, this does not appear to be an issue. First, subsequent results showed less discordance, particularly on issues of document receipt, so the need for explanation was correspondingly reduced. Second, on the document receipt questions where memory lapse seems most likely, the auditor asked TechnoMetrica, starting in 2016, to break out the results by quarters. If a lengthening time lag were an issue, the auditor would have expected that consumers surveyed about cases closed early in the audit year to have reported substantially fewer "receipts" than consumers surveyed about cases closed later in the year. As detailed last year by breaking out "receipt" results by quarters, though, any such affect was limited (and this appears consistent with the 2017 results as well). So this concern, in the auditor's view, does not warrant a substantial and costly change in procedure.

C. The Population That Was Sampled

1. Temporal Scope

Consistent with prior audits by the current auditor, this 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 eliminates a previous issue with double counting.²⁰⁵

2. Consumers Represented by Counsel

One issue posed by the survey was how to handle consumers who had counsel in a BBB AUTO LINE proceeding. When consumers had lawyers representing them, their point of

and this year again agreed to the use of TechnoMetrica.

²⁰⁵ Before 2015, consumers whose cases were opened in one year and closed in another were potentially contacted for both years (and BBB AUTO LINE, in calculating aggregate statistics, included these cases for both years).

contact for communication (including phone calls) was through their attorney. But the FTC rule doesn't seem to contemplate calls to attorneys – the audit rule specified contacts with “consumers.” And attorneys were unlikely to respond to a multi-question survey, particularly about specific cases. The likely problems were exacerbated by firms that handled a large number of cases – in some cases hundreds of them. Indeed, as discussed in Section III.G, three firms accounted for over 58% of the 1800 cases where consumers had lawyers in 2016.

However, there were also problems with directly contacting consumers who had counsel. For example, these consumers hadn't provided their personal phone numbers as contact information, so it would have taken some effort to develop that contact information – and some consumers may have 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. Also, the information available from consumers who had lawyers would, in many respects, have been less useful than the information from other consumers. Consumers with counsel were more likely to use arbitration, but far less likely to appear in person at arbitration hearings. Perhaps concomitantly, they experienced a relative lack of success.²⁰⁶ When they did succeed in arbitration, moreover, consumers with lawyers were more likely to reject arbitration awards, even those providing repurchase or replacement remedies. 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 of their attorneys might have viewed it) as a hurdle to be cleared so they could go to court under a state lemon law.

As in past audits by the current auditor (and, to the best the auditor could determine, in prior audits as well), the auditor excluded consumers with counsel from the survey. He thus omitted about 19% of consumers from the national and Florida samples, and about 32% from the Ohio sample. And, as explained above, the auditor took steps to prevent a coverage error from resulting.

3. Multiple Complaints about the Same Vehicle (MCSVs)

This year's survey also took the same approach as the auditor previously used for MCSVs. These include so-called “1R” cases,²⁰⁷ where a remedy (usually an inspection under the auspices of a Field Service Engineer followed by a repair if the FSE finds a problem) results from a settlement;²⁰⁸ the manufacturer undertakes to perform; the consumer isn't satisfied; and the consumer, in a timely fashion, tells the BBB AUTO LINE that she wants to proceed further.

²⁰⁶ For more detailed analyses of the results in attorney cases compared to cases where consumers represented themselves, see Chapter III, Parts III.G, IV.G, and V.G.

²⁰⁷ The term “1R” also includes “2R” cases (and beyond).

²⁰⁸ 1R cases are used only in the aftermath of settlements; if a consumer isn't satisfied with the implementation of an arbitrated remedy, the original case is reconvened before the arbitrator.

TechnoMetrica identified MCSVs, including but not limited to 1R cases,²⁰⁹ by finding cases with the same contact phone number.²¹⁰

As the current auditor noted previously, the BBB AUTO LINE's general approach is to open a new case when a consumer with a mediated settlement isn't satisfied with its implementation. And, as also noted previously, this approach has a sound basis. The FTC, Florida, and Ohio all recognize a repair remedy as an appropriate outcome to the dispute resolution process.²¹¹ A repair resulting from a BBB AUTO LINE case might well resolve the consumer's concerns where past attempts have failed, particularly because it likely involves an inspection by a FSE. Despite the potential for some delay, a repair remedy also provides an alternative to an "all-or-nothing" approach in the face of ambiguous evidence. Yet repair remedies may not resolve consumers' concerns, and the process can take time; even before the consumer returns to BBB AUTO LINE, the manufacturer will have arranged an inspection and perhaps attempted a repair; and, when the underlying problem manifests itself only intermittently, the consumer may have needed to drive the car for a time before deciding whether he's satisfied. Yet the time to process the initial complaint and to attempt a repair will likely have exhausted much of the time allotted for the original complaint. So, from BBB AUTO LINE's perspective, and from the perspective of this auditor's review, it seems reasonable to restart the clock for a new "1R" case.²¹²

Yet starting the clock anew poses complications of its own, both for the survey and for calculating aggregate statistics. 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 be confused in distinguishing events in the original case from those in the 1R case. But more fundamentally, a consumer who was called twice about the same vehicle would likely be annoyed and refuse to repeat the survey.²¹³ So, when the same phone number appeared more

²⁰⁹ 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.

²¹⁰ This could be over-inclusive if a consumer filed cases involving different vehicles in a single year, but that's very rare. A single phone number could also be associated with multiple cases when a case is brought by a lawyer and contact number as the attorney's number. But attorney cases were already excluded from the survey.

²¹¹ 16 C.F.R. § 703.5(d); former Florida Rule 5J-11-010(2)(C); Ohio Administrative Code 109:4-4-04(C)(5)(A).

²¹² Further, while the discussion above focused on cases reopened after an initial settlement failed to resolve the issue to the consumer's satisfaction, in other cases a consumer might withdraw and refile a complaint, often with new evidence and sometimes having filed little evidence before withdrawing. Here, a new start seems particularly appropriate.

²¹³ In Ohio, where TechnoMetrica needed to call every eligible consumer, this annoyance and futility would have reached every consumer with MCSVs.

than once on the spread sheet that BBB AUTO LINE provided, TechnoMetrica scrubbed all but the latest case from the list. And, when consumers were called, they were asked to focus solely on the *last* case they filed if they filed multiple complaints during the year.

MCSVs would also create an apples and oranges problem, if the auditor compared BBB AUTO LINE's aggregate calculations to the survey results, absent appropriate adjustments (for the limited purposes of facilitating these comparisons) to the aggregate figures. As noted above, consumers who filed MCSVs were queried only about the latest case that they filed. Most of the MCSVs were 1R cases (a rough estimate suggests these were nearly 65% of the MCSVs), and the cases that preceded 1R cases (the "pre-1R cases") accounted for roughly 7.6% of the non-attorney cases.²¹⁴ Further, these pre-1R cases (the cases excluded from the survey process) have a different profile than the average BBB AUTO LINE case; most significantly, about 30% of the complaints filed with BBB AUTO LINE end in mediation, but pre-1R cases are *always* mediations. If the omitted cases were excluded from the survey but included in the CBBB's aggregates, the impact might well create a difference between the two on the order of 5%.²¹⁵ And this, as discussed above, would be a *coverage error*.²¹⁶ As explained in Chapter I.B.2, however, the auditor was able to control for virtually all questions raised by the omitted cases in MCSV situations, including but not limited to questions raised by pre-1R cases, by using the abbreviated spread sheet prepared by TechnoMetrica.

D. Sampling

As noted above, TechnoMetrica scrubbed the lists provided by BBB AUTO LINE before sampling. Using phone numbers as the key fields, any multiple complaints from the same consumer were identified and removed, as were any records with no contact phone number. The size of the national sampling frame after scrubbing for MCSVs and attorney cases was 7,034 records. According to TechnoMetrica,

TechnoMetrica then randomized the sampling frame and divided it into a total of 16 replicates: 15 replicates of 500 records each and 1 with 134 records. Sample for data collection was released in replicates – that is, a fresh replicate was only released upon completion of the prior replicate. The National data collection used seven replicates (six full replicates and part of the 7th). This sampling method ensured that the National sample was truly representative from

²¹⁴ By sorting the spread sheets provided by BBB AUTO LINE, the auditor found 7944 non-attorney cases. Of these, 647 were either 1R or 2R cases; 634 of these were non-attorney cases, constituting 8% of the 7944. While straddle cases add further complications (some of the pre-1R cases had closed in 2015 and wouldn't have shown up in the 2016 spread sheet anyway) the auditor estimates that over 7% of the cases excluded from the survey *were* 1R cases.

²¹⁵ Roughly speaking, assume 600 1R cases (slightly less than 634 noted above). 600 "typical" BBB AUTO LINE cases would include about 180 mediations (30% of the total), while 600 pre-1R cases would include 600 mediations. The difference (420) is over 5% of the total non-attorney cases.

²¹⁶ See Section I.B of this chapter.

the standpoint of inclusion of Florida and Ohio records.

Sample for the Florida and Ohio surveys was taken from the remaining replicates 8 to 16 as well as any available records remaining from the national sample. The sampling frames for Florida and Ohio were 1,521 and 292 records, respectively. Note that due to extremely limited sample, Ohio completes in the National survey were counted under both National and Ohio surveys.

E. Fielding and Margin of Error

Again quoting from TechnoMetrica,

Interviews were conducted on weeknights between 3/9/18 and 3/16/18, with up to 6 call attempts per respondent.

A total of 408 completes were obtained in the National survey, 158 in Florida and 91 in Ohio. The following table shows the response rate and margin of error for each of the surveys.

	Sampling Frame	Used Sample*	Completes	Response Rate	Margin of Error**
National	7,634	2,186	408	18.7%	+/- 4.7
Florida	1,521	910	158	17.4%	+/-7.4
Ohio	292	272	91	33.5%	+/-8.5

* Excluding sample with outdated contact information

** Note that MOE is larger for subgroups and based questions

IIA. Survey Results – Some Preliminary Notes

The next three sections present and analyze the survey results for the National, Florida, and Ohio populations. Preliminarily, though, the following notes may help the reader in understanding the tables in those analyses.

(1) **“Not sure” responses.** As was done last year, the audit excludes not sure responses in calculating percentage figures and, for questions measuring consumer satisfaction, in calculating the mean grades. The auditor was concerned, for example, that counting the “not sure” responses in calculating mean grades was tantamount to treating them as failing grades.²¹⁷ For practical and other reasons, the auditor thought it appropriate to apply a consistent approach in treating these responses, and he concluded that omitting “not sure” responses provides a more meaningful measure of BBB AUTO LINE’s performance.

(2) **Gendered pronouns in describing consumers.** The analysis that follows (as well as the summary above) references various consumer case files in summary form, without identifying the parties involved. To add an extra layer of anonymity, the auditor doesn’t necessarily use the appropriate gender-specific pronouns.

(3) **Characterization of the base for targeted questions.** Some questions were directed only to some consumers, e.g., those who used arbitration or those who reported that their cases took more than forty days to resolve. When the table describes the base for a question, such as “arbitrated cases” it means “cases identified by the consumer as ‘arbitrated.’”

(4) **“Imported” results.** In a similar manner, in tables comparing consumer responses to BBB AUTO LINE records, the term “imported” refers to the characterization “imported” from BBB AUTO LINE records.

(5) **“Fully adjusted” results.** This refers to aggregate figures that were adjusted both to exclude cases where a consumer had an attorney, as well as, in an MCSV situation, the earlier case that had subsequent follow-on.

(6) **Table numbering.** The tables are generally labelled consistently for the three populations, so Table III-1 in the National sample parallels Table IV-1 of the Florida sample and Table V-1 of the Ohio sample. With limited exceptions, the numbering also parallels that used last year as well. Thus, when a table is omitted, its number is skipped.²¹⁸ And, when a table is added this year, it has an intermediate number (e.g., Table III-5A).

²¹⁷ The survey asked consumers to grade arbitrators and BBB AUTO LINE staff on a scale from A to F, then converted those answers to a 4.0 scale to facilitate numerical calculations. When “not sure” responses were included in the basis for making aggregate calculations, they added zero points to the numerator while raising the denominator – thus having the same impact as an F.

²¹⁸ For example, some questions are posed only to consumers who gave a specific response to a prior question. If no one in a population gave the triggering answer to the prior question, no one got the later question.

III. SURVEY RESULTS – NATIONAL SAMPLE

A. GENERAL INFORMATION

Table III-1: Vehicle Year

	Audit
TOTAL	408
	100.0%
2004	1
	0.2%
2005	1
	0.2%
2006	4
	1.0%
2007	6
	1.5%
2008	5
	1.2%
2009	6
	1.5%
2010	14
	3.4%
2011	22
	5.4%
2012	25
	6.1%
2013	39
	9.6%
2014	33
	8.1%
2015	85
	20.8%
2016	104
	25.5%
2017	62
	15.2%
2018	1
	0.2%

Table III-2:

The BBB AUTO LINE's records show they closed a complaint in 2016 about your <year><make> vehicle. Is that correct?

	2017 Survey	2016 Survey
TOTAL	408	401
	100.0%	100.0%
Yes	406	397
	99.5%	99.0%
No	2	4
	0.5%	1.0%

The “no” responses involved corrections to details; one consumer corrected the model, but agreed with the year and manufacturer shown in BBB AUTO LINE’s records; the other corrected the model year. Neither correction directly impacts the rest of the analysis that follows.

Table III-3: Repair attempts

	2017 Survey	2016 Survey
BASE: all respondents, , “not sure” excluded	397	392
	100.0%	100.0%
One	23	34
	5.8%	8.7%
Two	24	21
	6.0%	5.4%
Three	71	55
	17.9%	14.0%
Four or more	205	208
	51.6%	53.1%
None	74	74
	18.6%	18.9%

Table III-4: How did you first learn about BBB AUTO LINE?

	2017 Survey	2016 Survey
TOTAL	408	401
BASE: All respondents, excluding those who responded “not sure” to this question	401	392
	100.0%	100.0%
Manufacturer's manuals/other warranty documents	49	48
	12.0%	12.2%
Dealer or manufacturer representative	63	65
	15.7%	16.6%
BBB/BBB Website	31	55
	7.7%	14.0%
Internet website (NOT BBB or government website)	112	94
	27.9%	24.0%
Lawyer	10	10
	2.5%	2.6%
Friend/family/word of mouth	92	88
	22.9%	22.4%
TV/Radio/Newspaper	7	4
	1.7%	1.0%
Government website, office, or official	9	9
	2.2%	2.2%
Had used the BBB AUTOLINE previously	17	3
	4.2%	0.8%
Other²¹⁹	11	16
	2.7%	4.1%

²¹⁹ The auditor adjusted some responses initially classified as “other,” concluding that they belonged in one of the existing categories. Among the 11 remaining “other” responses for 2017, only two appeared more than once: Four responded “lemon” or “lemon law” (although it’s unclear what they meant by those responses). Two others said they learned of the program from their mechanics.

B. PROCESS QUESTIONS

Table III-5: Aggregate “process” responses

	2017 BBB AUTO LINE				2017 Survey (B1)	Same, adjusted for response rate (see below) (B2)	2016 Survey (C1)
	BBB AUTO LINE stats (A1)	Same, excluding attorney cases (A2)	Auditor’s stats from original spread sheet, excluding att’y cases (A3)	Auditor’s stats from “fully adjusted” spread sheet (A4)			
TOTAL	10615	8585	8587	7634	408	--	401
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Mediation	2828	2693	2705	2173	126	--	125
	26.6%	31.4%	31.5%	28.5%	30.9%	29.2%	31.2%
Arbitration	2010	1105	1106	1090	75	--	94
	18.9%	12.9%	12.9%	14.3%	18.4%	15.8%	23.4%
Withdrawn	963	732	732	657	36	--	28
	9.1%	8.5%	8.6%	8.6%	8.8%	9.8%	7.0%
Ineligible	4814	4055	4043	3714	165	--	148
	45.3%	47.2%	47.1%	48.6%	40.4%	45.3%	36.9%
Other					6 ²²⁰		6
					1.5%		1.5%

Table III – 5A: Further multi-year comparisons

	A1 Figures		A4 Figures	
	2017	2016	2017	2016
TOTAL	10615	9748	7634	7032
	100.0%	100.0%	100.0%	100.0%
Mediation	2828	2547	2173	1969
	26.6%	26.1%	28.5%	28.0%
Arbitration	2010	2160	1090	1088
	18.9%	22.2%	14.3%	15.5%
Withdrawn	963	866	657	619
	9.1%	8.8%	8.6%	8.8%
Ineligible	4814	4175	3714	3355
	45.3%	42.8%	48.6%	47.7%

220

One consumer didn’t remember and five indicated that the matter wasn’t resolved.

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

	Mediated	Arbitrated	Withdrawn	Ineligible	Other
TOTAL	126	75	36	165	6
	100.0%	100.0%	100.0%	100.0%	100.0%
Mediation (Imported)	124	5	1	1	1
	98.4%	6.7%	2.8%	0.6%	16.7%
Arbitration (Imported)	-	70	-	-	1
	-	93.3%	-	-	16.7%
Withdrawn (Imported)	-	-	33	1	2
	-	-	91.7%	0.6%	33.3%
Ineligible (Imported)	2	-	2	163	2
	1.6%	-	5.6%	98.8%	33.3%

Concordance: 390/408 = 95.6%

Discordance: 18/408 = 4.4% (see below)

1. Micro analysis.

Table III-6, the core of the micro analysis, reports a “concordance” of 95.6%, which is perhaps a reasonable if not particularly impressive figure. With over 10600 files on the original spread sheet, this would suggest a fundamental error in over 450 cases.

However, most of the 18 “discordances” fall into one of the categories noted in Section I.A.2 of this chapter, and, on examination, the cases don’t appear to reflect problems with the process or with record-keeping. Three were straddle cases, where the consumer described case-related developments (often in follow-on case) that occurred in 2018 (section I.A.2, category a). In two cases, consumers described as mediated a settlement reached outside the BBB AUTO LINE process (category b). Three consumers appeared to confuse ineligible with withdrawn complaints (category d). In three cases, the consumer accepted a mediated repair settlement, the files don’t include a returned performance verification letter (although they report that letters for signing were sent to the consumers), but the consumers said the matters were unresolved; these are quite likely to be cases where the consumer wasn’t satisfied with the implementation of a repair remedy (category e). In three other cases, consumers seemed to be describing events that occurred after a file was closed as withdrawn or ineligible (category f),²²¹ and, in another, the

²²¹ These include a consumer whose complaint was reported as ineligible for failure to return the consumer complaint form, and who reported to TechnoMetrica that the dealer was still working on the car. In two others, BBB AUTO LINE records report a withdrawal and the consumers said the matters still weren’t resolved at the time of the survey.

consumer said “not sure” (category g). Yet another said his case was arbitrated but confirmed in a phone call with the auditor, consistent with the BBB AUTO LINE record, that in fact there was no arbitration hearing (category h).

In one of the remaining cases, the consumer described her case as arbitrated although the files contained none of the documentation that would accompany an arbitration. This could well be consumer error, but the auditor couldn’t reach the consumer to confirm it.²²²

The final case was from California, where the file opens before the consumer returns the signed complaint form, and it was closed, according to BBB AUTO LINE records, precisely because the consumer didn’t return the form. But the consumer maintained that he had sent it.

While there’s room for debate as to how many of these should be considered as discordances, the auditor is inclined to treat at most the last two as such. In any event, the discordant rate is substantially below the 4.4% reported on Table IV-7.

Attorney cases. As noted above, the auditor also examined 30 case files where the consumer had counsel, including ten arbitrated cases, ten mediated cases, five withdrawn cases, and five ineligible cases.²²³ On the process variable, there was complete concordance.

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 2017. These provide important information about the full range of cases filed in the program; for example, Column A1 highlights that BBB AUTO LINE closed more cases through mediation than arbitration.

Column A2 provides comparable figures, also as reported by BBB AUTO LINE, but only for cases that where the consumer appeared without counsel. There’s more detail about these figures (and how they compare to figures where the consumer had counsel), in Section III.G.

Column A3 also measures the numbers of non-attorney cases closed in 2017 by each process, but was developed *by the auditor* from the spread sheet that BBB AUTO LINE produced as the basis for TechnoMetrica’s calls. Since column A2 reports aggregates for non-attorney cases drawn directly from the underlying data base by BBB AUTO LINE, while column A3 derives the same numbers from the spread sheet (in turn derived from that data base that was used for the survey) it’s important, though not unexpected, that the results are nearly identical.

²²² The number provided by the consumer, with which TechnoMetrica successfully reached him in March, no longer worked in May. Without a confirming call, the auditor can’t dismiss highly unlikely scenarios, *e.g.*, that the consumer filed a second case under a different name.

²²³ The auditor alphabetized the all the cases where consumers had attorneys, and then took the first five or ten in each category, alphabetically by *first* name.

While columns A2 and A3 are consistent with each other in that both reflect cases where the consumer didn't have a lawyer, both differ from the surveyed population in that they include multiple complaints about the same vehicle. Thus, comparing either or both to the survey results would raise an apples and oranges problem. And the differences between the apples and the oranges would appear far from trivial. The MSCV files that were omitted from the survey sample tend to be mediated cases, and thus have a different "process" profile than other cases.

However, the auditor was able to use a variant of the spread sheet from which he developed column A3 to develop another column, A4. Specifically, TechnoMetrica scrubbed the BBB AUTO LINE spread sheet (the basis for column A3) to eliminate both attorney cases and MCSVs. The auditor used *this* spread sheet to develop aggregate figures that, like the survey, excluded both attorney cases and MCSVs. This enabled apples-to-apples comparisons. Indeed, the spread sheet essentially *was* the sampling frame, so the auditor was comparing aggregates based directly on the sampling frame (the A4 figures) to survey results drawn from that sampling frame.

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,²²⁴ the auditor speculated, based on some results in the 2016 survey, that consumers who were deemed ineligible might have been less likely to complete a questionnaire than those who used mediation or arbitration, and the auditor found, based on responses rates that TechnoMetrica provided, that this was in fact the case. The auditor therefore asked TechnoMetrica to provide a response rate for the national, Florida, and Ohio samples this year, and the results *consistently* showed some such pattern (although, somewhat mysteriously, not for the reasons that the auditor had anticipated²²⁵).

Thus, the percentage of ineligible consumers in column A4 was 48.6%, while the percentage in column B1 was 40.4% – an 8.2% differential that's well outside this year's 4.7% margin of error. But data from TechnoMetrica showed response rates of:

- 20.0% for consumers who used arbitration;
- 18.1% of those who resolved their case through mediation;
- 15.4% for consumers who withdrew their complaints, and
- 15.3% for those deemed ineligible to participate in BBB AUTO LINE.

²²⁴ See Section I.B of this chapter.

²²⁵ The auditor's original speculation was that the reduced rate of completions would come from consumers who refused to start (or finish) the survey, but this doesn't appear to be the case. The reported "refusal" rates, for both 2016 and 2017, didn't vary much among the various types of cases. Nevertheless, for each population (National, Florida, and Ohio), by virtue of some combination of reported factors (refusals, answering machine, caller away, busy signal, etc.), the percentage of "completes" was lower for consumers reported as ineligible than for those reported as using arbitration or mediation.

Consumers who used arbitration were 30.7% more likely to complete the survey²²⁶ than those deemed ineligible to participate in BBB AUTO LINE.. And, had the participation rate among the various categories been equal, this would have moved various survey numbers closer to the aggregate numbers reported in column A4. To better highlight this, the auditor this year has derived a new column (B2) by weighting the response numbers in Column B1.²²⁷ With those adjustments used to calculate the figures in column B2 (and thus compensating for non-response error), and drawing comparisons to column A4 (aggregates appropriately adjusted to eliminate coverage error), the numbers matched within the margin of error. The weighted survey result for ineligible claims, for example, was 45.3%, so the 8.2% differential noted above (aggregates compared to unweighted survey figures) dropped to 3.3% (aggregates compared to weighted survey figures).

The macro analysis therefore compares the adjusted aggregates in Column A4 to the weighted survey results in Column B2. Both exclude consumers who had lawyers and, for consumers who filed multiple complaints about the same vehicle, both omitted all but the last. The resulting comparisons are well within the margin of error (the sampling error). And the conclusion that the A4 figures accurately reflect the sampling frame is even more strongly backed by the micro analysis.

How, then, do we get back to the earlier columns, which add back in the attorney cases and the MCSV cases that the sampling frame omitted? Column A3, derived from the same spread sheet as Column A4, adds back in the multiple complaints about the same vehicle. There's no reason to expect a lower degree of accuracy for the cases previously omitted than for the cases included in column A4. Further, while the auditor didn't systematically examine the cases omitted because they involved MCSVs, he did, when reviewing later cases included in an MCSV context, glance back at the earlier cases, and found no significant problems in the "omitted": cases. He also went back to the original BBB AUTO LINE spread sheet and found that the results of selected "pre-1R" cases were properly recorded.

²²⁶ (20.0%) / (15.3%).

²²⁷ Thus, for example, the response rate was 20.0% for consumers who used arbitration but only 15.3% for consumers who were ineligible. To compensate, the auditor multiplied the 165 "ineligible" responses by 20.0/15.3. The resulting total (220.9) is an approximation of the number of "ineligible" responses that the survey would have reported if ineligible consumers had responded at the 20.0% rate found for consumers who used arbitration. Similar adjustments were made to the numbers of withdrawn and multiplied cases. The auditor then recalculated percentages using these constructed numbers. (The nature of this calculation was such that the auditor reported only percentages in column B2.) On a technical matter, TechnoMetrica's response rate figures were (necessarily) based on BBB AUTO LINE's classification of a case as arbitrated, mediated, etc., and those figures were the basis for calculating the weighting factor. Once calculated, though, the weighting factor was applied to the aggregates based consumer responses.

While column A2 covers the same cases as column A3 – all but attorney cases – these figures were developed by BBB AUTO LINE directly from the underlying data base. And the A2 figures are substantially the same as the A3 figures, whose credibility has already been established.

The last step is the extension back to the A1 figures, which add back the attorney cases. Here the auditor relies on his scrutiny of 30 such cases, described in the micro analysis, which found no problems on the process metric. The auditor thus concludes that the macro analysis (drawing a bit on the micro analysis in the final steps) supports the credibility of the A1 figures as well.

C. RELIEF QUESTIONS

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.²²⁸

1. Combined Results for 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 that 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 far more consumers got a repurchase or replacement through mediation (1163) than through arbitration (571), although some consumers didn’t get the mediated repurchase/replacement remedy until a follow-on case.²²⁹

Table III-7: Remedies in Cases Identified by Consumers as Mediated and Arbitrated

	2017 BBB AUTO LINE				2017 Survey (B)	2016 Survey (C)
	BBB AUTO LINE statistics (A1)	Same, excluding attorney cases (A2)	Auditor’s stat’s from original spread sheet, excluding att’y cases (A3)	Auditor’s stat’s from “fully adjusted” spread sheet (A4)		
BASE: med. & arbitrated cases	4838	3809	3811	3263	201	219
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Replacement /Repurchase	1734	1455	1455	1430	84	101
	35.8%	38.2%	38.2%	43.8%	41.8%	46.1%
Repair	1487	1412	1411	918	56	43
	30.7%	37.1%	37.1%	28.1%	27.9%	19.6%
Other	456	422	422	408	23	33
	9.4%	11.1%	11.1%	12.5%	11.4%	15.1%
No Award	1161	520	518	507	38	42
	24.0%	13.7%	13.6%	15.6%	18.9%	19.2%
No entry			5			
			0.1%			

²²⁸ There were small variations in wording depending on whether the consumer had identified the case as mediated or arbitrated.

²²⁹ See Ch. II, Section II.C.

Table III-7A: Further Multi-Year Comparisons

	A1 Figures		A4 Figures	
	2017	2016	2017	2016
BASE: med. & arbitrated cases	4838	4707	3263	3057
	100.0%	100.0%	100.0%	100.0%
Replacement/Repurchase	1734	1549	1431	1259
	35.8%	32.9%	43.8%	41.2%
Repair	1487	1400	917	815
	30.7%	29.7%	28.1%	26.7%
Other	456	505	408	459
	9.4%	10.7%	12.5%	15.0%
No Award	1161	1253	507	524
	24.0%	26.6%	15.6%	17.1%

Table III-8: Consumer Agreement with BBB AUTO LINE Records on Remedies

	Replacement/Repurchase	Repair	Other	No Award
BASE=MEDIATED AND ARBITRATED CASES	84	56	23	38
	100.0%	100.0%	100.0%	100.0%
Replacement/Repurchase (Imported)	82	-	-	-
	97.6%	-	-	-
Repair (Imported)	1	53	-	-
	1.2%	94.6%	-	-
Other (Imported)	-	2	23	-
	-	3.6%	100.0%	-
No Award (Imported)	-	-	-	38
	-	-	-	100.0%
None on File-Ineligible/Withdrawn Cases (Imported)	1	1	-	-
	1.2%	1.8%	-	-

Concordance: 196/201 = 97.5%

Discordance: 5/201 = 2.5% (see below)

Again starting with the micro analysis, of the five discordant cases, two appear on Table III – 8 as “none on file.” These are cases where the consumer seems to have reached a settlement outside the BBB AUTO LINE process and reported a mediated remedy, although BBB AUTO LINE records clearly show both cases as ineligible. Thus, BBB AUTO LINE showed no “remedy” to which the consumer’s response might be compared, and the auditor

hesitates to call this “discordant” on the question of remedies.²³⁰

In two other cases, based on phone conversations with the auditor, the consumers revised their answers to agree with BBB AUTO LINE records.

In the last case, the decision clearly provided for a reimbursement remedy on one of a number of problems, but denied relief on other issues because the consumer hadn’t given the dealership sufficient repair opportunities. The consumer’s description – that he got a repair remedy – might have reflected subsequent events.

Again, while there’s room for debate as to precisely which of these should be deemed truly discordant, in the auditor’s view the 2.5% figure above substantially overstates the number.

Turning next to Table III – 7, the key comparison is between columns A4 and B, because both exclude consumers who used attorneys and, for MCSV’s, both exclude all but the last complaint filed in 2017.²³¹ The margin of error for questions posed to all 408 consumers who completed participants the survey in the national sample was +/- 4.7%, and it’s higher for this question, which was posed only to the 201 who used arbitration or mediation.²³² But the differential between the A4 and B figures is never more than 3.3%. Further, as Table III-7A shows, the A1 and A4 figures for 2017 are quite similar to those for 2016. And the conclusion that the A4 figures accurately reflect the sampling frame is even more strongly backed by the micro analysis.

As with the process metric, the next step is to get back to the earlier columns, which add

²³⁰ As noted previously, it seems somewhat analogous to a case where BBB AUTO LINE reported a remedy and the consumer said “not sure.”

²³¹ The auditor didn’t use weighted averages and create a column B2 for the remedy metric. There seemed good reason, theoretically and empirically from the 2016 data, to anticipate that, e.g., ineligible consumers might be less likely to complete the survey than consumers who used arbitration. There didn’t seem a comparable concern, for example, about differing response rates between consumers who got replacements and consumers whose claims were denied.

²³² If TechnoMetrica had simply used as the sampling frame only the 3263 consumers reported to have used arbitration or mediation on the fully adjusted spread sheet, and if it had interviewed 201 consumers from that sample (a situation somewhat comparable to that reported above), the margin of error would have been +/- 6.7%. Similarly, for Table III-9 (remedies in mediated cases only), had the sampling frame been 2173 consumer and the number surveyed 126 consumers, the margin of error would have been +/- 8.4%. And, for Table III-11 (remedies in arbitrated cases only), had the sampling frame been 1090 consumers and the number interviewed 75, the margin of error would have been +/- 10./9%. (And this ignores the further complication that discordances on the process question had spillover effects onto the remedy question, so that, for example, a consumer who negotiated a repurchase settlement with the dealer and reported a mediation with a repurchase would be included in this chart – although BBB AUTO LINE properly records such cases as withdrawals and shows no remedy).

back in the attorney cases and the MCSV cases that the sampling frame omitted. Column A3, derived from the same spread sheet as Column A4, adds back in the multiple complaints about the same vehicle. There's no reason to expect a lower degree of accuracy for the cases previously omitted than for the cases included in column A4. Further, while the auditor didn't systematically examine the cases omitted because they involved MCSVs, he did, when reviewing later cases included in an MCSV context, glance back at the earlier cases, and found no significant problems in the "omitted" cases. He also went back to the original BBB AUTO LINE spread sheet and found that the results of selected "pre-1R" cases were properly recorded.

While column A2 covers the same cases as column A3 – all but attorney cases – these figures were developed by BBB AUTO LINE directly from the underlying data base. And the A2 figures are substantially the same as the A3 figures, whose credibility has already been shown.

The last step is the extension back to the A1 figures, which add back the attorney cases. Here, the auditor relies on his previously-noted examination of 30 case files for consumers who used a lawyer. On the process metric, there was complete concordance; on the remedy metric, there were some discordant entries among the 30 cases the auditor examined. However, all the discordant cases that the auditor found through his random sample led back to the small number of anomalous entries on the original spread sheet (which were disproportionately represented in the auditor's random sample).²³³ Since the problem was limited to roughly 1% of attorney cases, the auditor believes the survey numbers, together with the two-year comparisons in Table III-7A and the micro analysis, indicate that the A1 figures are highly credible.

* * *

At this point, the auditor turns to more substantive matters. Assuming the figures in columns A1 through A4 of Table III-7 are 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 columns A1), 35.8% ended with a repurchase or replacement remedy, 40.1% ended with some other relief, and 24.0% ended in no relief. Further, excluding cases brought by attorneys (whose profile is discussed in Section G), column A3 – which is substantially identical to column A2 – reports that 38.2% of cases ended with a repurchase or replacement remedy; 48.2% ended with some other relief; and only 13.7% ended with no award. As noted in the introduction to the audit as a whole, this suggests a process that's fair to consumers but not a "slam-dunk" that wouldn't be fair to manufacturers.

²³³ See Ch. II, Section II.D.

2. Relief in Mediated Cases Only

Table III-9: Final Remedy in Cases Identified by Consumers as Mediated

	2017 BBB AUTO LINE				2017 Survey (B)	2016 Survey (C)
	BBB AUTO LINE statistics (A1)	Same, excluding attorney cases (A2)	Auditor's statistics from original spread sheet, excluding att'y cases (A3)	Auditor's statistics from "fully adjusted" spread sheet (A4)		
BASE: mediated cases	2828	2704	2705	2173	126	125
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Replacement /Repurchase	1163	1054	1056	1034	65	59
	41.1%	39.0%	39.0%	47.6%	51.6%	47.2%
Repair	1262	1253	1248	757	38	35
	44.6%	46.3%	46.1%	34.8%	30.2%	28.0%
Other	403	397	396	382	23	31
	14.2%	14.7%	14.6%	17.6%	18.3%	24.8%
No Entry for remedy			5			
			0.2%			

With a margin of error of +/-4.7% for questions posed to all 408 consumers in the national sample, and a substantially higher margin for responses from 126 consumers to a follow-up question, the figures in column A4 are quite comparable to those in column B.²³⁴

²³⁴

See note 232.

Table III-9A: Further Multi-Year Comparisons

	A1		A4	
	2017	2016	2017	2016
BASE: mediated cases	2828	2547	2173	1969
	100.0%	100.0%	100.0%	100.0%
Replacement/Repurchase	1163	930	1034	846
	41.1%	35.5%	47.5%	43.0%
Repair	1262	1174	757	697
	44.6%	46.1%	34.8%	35.4%
Other	403	443	382	426
	14.2%	17.4%	17.5%	21.6%

Table III-7A showed a very close consistency between BBB AUTO LINE’s figures for various remedies when mediated and arbitrated cases are combined, suggesting that consumers fared relatively consistently when using mediated and arbitrated cases combined. The variations showed in Table III-9A, for mediated cases alone, are in the auditor’s view far less significant and, in any event, don’t point to a problem.

Table III-10: Consumer Agreement with BBB AUTO LINE Records

	Replacement Repurchase	Repair	Other
BASE: =MEDIATED CASES	65	38	23
	100.0%	100.0%	100.0%
Replacement/Repurchase (Imported)	63	-	-
	96.9%	-	-
Repair (Imported)	1	36	-
	1.5%	94.7%	-
Other (Imported)	-	1	23
	-	2.6%	100.0%
None on File-Ineligible/Withdrawn Cases (Imported)	1	1	-
	1.5%	2.6%	-

Concordance: 122/126 = 96.8%

Discordance: 4/126 = 3.2%

The four discordant cases with mediation were the first four discordances discussed in connection with Table III-8.

3. Relief in Arbitrated Cases Only

Table III-11: Final Remedy in Cases Identified by Consumers as Arbitrated

	2017 BBB AUTO LINE				2017 Survey (B)	2016 Survey (C)
	BBB AUTO LINE statistics (A1)	Same, excluding attorney cases (A2)	Auditor's stats from original spread sheet, excluding att'y cases (A3)	Auditor's stats from "fully adjusted" spread sheet (A4)		
BASE: arbitrated cases	2010	1105	1106	1090	75	94
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Replacement /Repurchase	571	401	399	396	19	42
	28.4%	36.3%	36.1%	36.3%	25.3%	44.7%
Repair	225	159	163	161	18	8
	11.2%	14.4%	14.7%	14.7%	24.0%	8.5%
Other	53	25	26	26	-	2
	2.6%	2.3%	2.4%	2.4%	-	2.1%
No Award	1161	520	518	507	38	42
	57.8%	47.0%	46.8%	46.5%	50.7%	44.7%
No Entry						

The margin of error for this question, analyzing responses from only 75 consumers who were drawn from a population that included some 1090 consumers, is far higher than the 4.7% figure for the populations as a whole, and probably on the order of 10.9%.²³⁵ A comparison of column A4 to column B shows numbers within that margin, with the figures for repurchase/replacement remedies just outside that margin and those for repair remedies just inside the margin. In any event, the numbers are sufficiently separated that the auditor relies as well (as he does elsewhere in this chapter) on his micro analysis. Indeed, as the samples become smaller (and they'll be even smaller when dealing with state-specific populations), the micro analysis becomes more significant.

²³⁵ See note 232.

Table III-11A – Further Multi-year comparisons

	A1		A4	
	2017	2016	2017	2016
BASE:	2010	2160	1090	1088
arbitrated cases	100.0%	100.0%	100.0%	100.0%
Replacement /Repurchase	571	619	396	413
	28.4%	28.7%	36.3%	38.0%
Repair	225	226	161	118
	11.2%	10.5%	14.7%	10.8%
Other	53	62	26	33
	2.6%	2.9%	2.4%	3.0%
No Award	1161	1253	507	524
	57.8%	58.0%	46.5%	48.2%

Additionally, the multi-year comparison provides useful context here. As shown by Table III-11A, the A1 and A4 numbers are both reasonably consistent over the years – far more so than the survey numbers. This is shown most dramatically by looking at the “repair” figures over the two years. The 14.7% rate of repair remedies in the fully adjusted BBB AUTO LINE figures for 2017 (the A4 number) is relatively close to its counterpart from 2016 (10.8%). In contrast, the 24.0% *survey* figure for repair remedies in arbitration in 2017 is dramatically different, although not in an inexplicable way, from the comparable figure (8.5%) for last year’s survey.²³⁶

Further, and consistent with his earlier remarks, the auditor highlights that this chart can’t be viewed in a vacuum, but should be examined together with Tables III-7 (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. And, in that context, for example, the 46.8% “no award” rate for consumers without lawyers doesn’t seem unreasonable – particularly since these constitute only 15.6% of the consumers who used either mediation or arbitration. As noted previously, the large number of cases that ended in mediation thus provides an important gloss that the arbitration (or mediation) numbers don’t provide individually.

²³⁶ A margin of error has an upper and a lower boundary; the survey results can be within the margin of error if they’re above or below the calculated aggregates. The swing in the survey result numbers reflects the fact that the 24.0% survey figures for 2017 was well *above* the 14.7% calculated aggregate; for 2016, the 8.5% survey result was *below* the 10.8% measured aggregate.

Table III-12: Consumer Agreement with BBB AUTO LINE Records

	Replacement /Repurchase	Repair	Other	No Award
BASE: ARARBITRATED CASES	19	18	-	38
	100.0%	100.0%	-	100.0%
Replacement/Repurchase (Imported)	19	-	-	-
	100.0%	-	-	-
Repair (Imported)	-	17	-	-
	-	94.4%	-	-
Other (Imported)	-	1	-	-
	-	5.6%	-	-
No Award (Imported)	-	-	-	38
	-	-	-	100.0%
None on File- Ineligible/Withdrawn Cases (Imported)	-	-	-	-
	-	-	-	-

Concordance: 74/75 = 98.7%

Discordance: 1/75 = 1.3%

The sole discordant case was the fifth such case discussed under Table III-8.

Table III-13: Did you accept the arbitrator's decision?

	2017 Survey	2016 Survey
BASE: Arbitrated cases with award to consumers, “not sure” responses to this question excluded	37	51
	100.0%	100%
Yes	30	42
	81%	82%
No	8	9
	19%	18%

Table III-14: Acceptance of different types of remedies

	Total	Replacement/ Replacement	Repair	Other
BASE: Arbitrated cases with award to consumers, “not sure” excluded	37	19	18	-
	100.0%	100.0%	100.0%	-
Yes	30	19	11	-
	63.5%	100.0%	61.1%	-

Table III-15: Consumer Agreement with BBB AUTO LINE Records

	Survey Responses	
	Accepted	Rejected
BASE: Arbitrated cases, with exclusions (see below)	2	5
	100.0%	100.0%
Accepted (Imported)	26	-
		-
Rejected (Imported)	1	5
		100.0%

Concordance: 31/32 (96.9%)

Discordance: 1/32 (3.1%)

In the one discordant case on the above chart, the consumer sent an acceptance, but not in a timely fashion, and the manufacturer declined to extend the return date. While the circumstances were unfortunate for the consumer, it appears that BBB AUTO LINE’s records were correctly reported as a “rejection” by failure to accept in timely fashion.²³⁷

³ The form that accompanies the arbitration decision, which the consumers are told to return to

In addition to the “not sure” case that was excluded from Tables III-13 and III-14, Table III-15 also omits five cases where the consumer reported arbitration but BBB AUTO LINE’s records showed mediation. (Three of these were straddle cases where the earlier case was mediated and the second was arbitrated). Since BBB AUTO LINE’s record showed mediation, they had no entry for whether or not the consumer accepted an arbitration decision.²³⁸

4. Withdrawn Cases

Table III – 16: Reasons for withdrawal

	2017 Audit	2016 Audit
BASE: withdrawn cases	36	28
	100.0%	100%
You settled the matter or your car was fixed	18	11
	50.0%	39%
You sold the car	1	1
	2.8%	4%
Some other reason	17	16
	47.2%	57%

Preliminarily, the auditor examined the spread sheet (which initially showed 16 “settled or fixed” responses and 19 “other” responses, and found two consumers who replied “other” explained that their car was fixed. The auditor reclassified these responses for the above chart.

This left 18 potentially dissatisfied consumers, including the one who sold her car. However, one of them said that he arranged an independent inspection of his car, and was persuaded it was acting properly. Another, whose case was recorded by BBB AUTO LINE as a mediated repair settlement, seemed to be dissatisfied with the results of a field service inspection. Other responses encompassed a range of options – three consumers seemed to be pursuing other legal recourse and some seem to have given up – but the auditor didn’t discern a pattern of problematic activity on BBB AUTO LINE’s part.

accept or reject the decision, tells consumers that they need to return the form in a timely fashion, that they may want to use certified mail or a fax, and it encourages them to call the case handler to confirm receipt.

²³⁸ While these cases are omitted from Table III-15, they aren’t omitted from the other “consumer agreement” tables above. Because the consumers’ and BBB AUTO LINE’s responses diverge on process, all five cases are shown as discordant for purposes of Table III-V. And because all five consumers and BBB AUTO LINE agree about the remedies in each case, they are shown as concordant for purposes of Table III-8.

D. COMPLIANCE QUESTIONS

Table III-17: Which of the following applies to your case? The manufacturer...

2017 Results						
	Mediated		Arbitrated		Med/Arbitrated Combined	
	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE
BASE: *	121	2828	30	580	151	3408
	100.0%		100.0%	100.0%	100.0%	100.0%
Carried out the settlement/terms of decision within the time specified, including any extension to which you agreed	97	2739	18	580	115	3319
	80.2%	96.8%	60.0%	100.0%	76.2%	97.4%
Carried out the settlement/terms of decision after the time specified, including any extension to which you agreed	12**	2	5**	0	17**	2
	9.9%	0.1%	16.7%	0.0%	11.3%	0.1%
Has not yet carried out the settlement/terms of decision, but the time to do so has not yet expired	10	0	2	0	12	0
	8.3%	0.0%	6.7%	0.0%	7.9%	0.0%
Has not yet carried out the remedy and the time to do so has expired	2**	83	5**	0	7**	83
	1.7%	2.9%	16.7%	0	4.6%	2.4%
(Failure to comply was the fault of the consumer)	-	(53)	-	-	-	(53)
	-	(1.9%)	-	-	-	(1.6%)
Time for compliance has expired, performance not verified		4				4
		0.1%				0.1%

* *BASE: For mediation, all cases reported by the consumer as mediated. For arbitration, all cases where the consumer reported that they used arbitration, the arbitrator awarded them relief, and they accepted the award. "Not sure" replies to this question were excluded.*

** *See below*

Consumers reporting non-compliance after the time for compliance had expired. In two cases (one mediated case and one arbitrated) where the consumer reported non-compliance, the

consumer replied, in response to a follow-up question reported in Table III-18, that the manufacturer had either inspected the car and said there wasn't a problem, or attempted a repair unsuccessfully. As discussed previously,²³⁹ this highlights the difference between compliance and consumer satisfaction. Particularly if the consumer didn't chose to pursue the matter further, the auditor believes these can be properly classified as compliant.

In two other cases where consumers reported noncompliance, BBB AUTO LINE records report that the consumers were deemed to have rejected the awards because the program's records said they hadn't returned the letters containing their acceptances. While these situations were unfortunate,²⁴⁰ it would appear that "compliance" wasn't an issue, because the award never became effective. In a third case, the last indication in the file is a returned performance verification letter from the consumer saying a repair had been satisfactorily completed. In the two remaining cases, the problems appear to involve consumers who didn't believe they had received a sufficient amount for the value of their cars.²⁴¹ In sum, while the precise level of noncompliance for the surveyed consumers is debatable, the 4.6% level reported by the survey substantially overstates it.

Consumers reporting delayed compliance. The number of *surveyed* consumers reporting delayed compliance this year exceeded the total BBB AUTO LINE reported having done so in the entire relevant population. However, there's sufficient ambiguity on this point that the auditor doesn't identify a concern with BBB AUTO LINE record-keeping. First, as reported in typical settlement letters, the time to complete settlement doesn't begin to run until the consumers take some initial step, *e.g.*, providing the necessary documentation to complete a repurchase. Based on the files available to the auditor, he can't always identify when the clock should start, but it's certainly possible that some of the surveyed consumers missed this nuance

²³⁹ See Ch. 2. Section II.C.

²⁴⁰ See also Table III-18. As noted previously, the form that accompanies the arbitration decision, which the consumers are told to return to accept or reject the decision, tells consumers that they need to return the form in a timely fashion, that they may want to use certified mail or a fax, and it encourages them to call the case handler to confirm receipt. In one of the cases noted above, BBB AUTO LINE records describe an email from the consumer, three days after the return date, asking belatedly that the file not be closed. The other case had more complications, including a delay by the arbitrator in finalizing the decision. According to the case handler's notes, the consumer asserted that the decision was misdirected by the postal service and didn't reach him in time, and that the consumer made an inquiry during the period of delay about the status. However, the case handler's notes assert that the decision was sent by email as well as mail. (The assertion is part of a later email sent to the consumer after the non-delivery issue arose). From that, it would appear that the BBB AUTO LINE took appropriate precautions to provide the consumer with timely notice.

²⁴¹ In one of those files, a case from late in 2017, there was a post-settlement decision from the week during which the survey was conducted; it's possible that the matter was resolved after the consumer was surveyed by TechnoMetrica.

in describing compliance as delayed.²⁴² Second, in examining some files, the auditor found references to extensions granted by consumers that consumers might not have recalled in responding to the question. All in all, the auditor concludes that the delayed compliance numbers reported by consumers don't, at this point, demonstrate a record-keeping or substantive problem.

Turning now to some comparative figures that didn't fit neatly into Table III-17, the numbers for 2016 and 2017, in both cases using figures unadjusted by the auditor's review, show reasonable consistency:

Table III-17A: Comparative analysis on compliance (mediated and arbitrated combined)

	2017		2016	
	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE
BASE: *	151	3408	163	3134
	100.0%	100.0%	100%	100%
Carried out the settlement/terms of decision within the time specified, including any extension to which you agreed	115	3319	130	3020
	76.2%	97.4%	79.8%	96.4%
Carried out the settlement/terms of decision after the time specified, including any extension to which you agreed	17	2	21	4
	11.3%	0.1%	12.9%	0.1%
Has not yet carried out the settlement/terms of decision, but the time to do so has not yet expired	12	0	5	16
	7.9%	0.0%	3.1%	0.5%
Has not yet carried out the remedy and the time to do so has expired	7	85	7	91
	4.6%	2.5%	4.3%	2.9%
(Failure to comply was the fault of the consumer)	-	(53)	-	(63)
	-	(1.6%)	-	(2.0%)
Time for compliance has expired, performance not verified			-	1
			.-	0.0%

**BASE: Same as for mediation/arbitration in Table V-17 above*

²⁴² It may be possible to modify the survey question next year to alert consumers to this nuance.

Table III-18: Which of the following best applies to your case? The manufacturer...

	Mediated	Arbitrated	Med/Arb Combined
BASE: those with non-compliant repair remedies	1	2	3
	100.0%	100.0%	100.0%
Didn't examine your car	-	-	-
	-	-	-
Examined your car and decided that no repair was needed	-	1	1
	-	50.0%	33.3%
Tried to fix your car, but the repair didn't solve the problem	1	1	2
	100.0%	50.0%	66.7%
Something else	-	-	-
	-	-	-

As explained above, this question was intended to better understand the facts where a consumer said that the manufacturer hadn't complied with a mediated repair remedy. It reports three cases where manufacturers did in fact take steps that would have constituted compliance.²⁴³

Table III-18A: Had you taken some action, like selling the car, that prevented the manufacturer from complying?

	Mediated	Arbitrated	Med/Arb Combined
BASE: Same	2	5	7
	100.00%	100.00%	100.00%
Yes	-	-	-
	-	-	-
No	2	5	7
	100.0%	100.00%	100.0%

²⁴³ However, one of these was one of the cases, discussed above, where BBB AUTO LINE records show that the decision wasn't returned in a timely fashion and thus wasn't accepted. It appears that the consumer may have been referring to an inspection in connection with an earlier related case.

E. TIMING QUESTIONS

As in past years, BBB AUTO LINE’s timing figures report the timing of mediated and arbitrated cases, and the auditor’s scrutiny focuses primarily on those cases. The analysis in this section is thus based on 201 cases from a survey sample of 408. BBB AUTO LINE is to be commended for focusing on these 201 cases; the 207 cases that were excluded were, on average, far *more* likely to be resolved quickly, so the reporting basis used by BBB AUTO LINE likely lowered their measure of performance.²⁴⁴ Table III-19 presents timing data from the survey for mediated and arbitrated cases combined, and includes similar data from last year. The results are rather close and, as Table III-19A shows, relatively consistent with last year’s figures.

Table III–19: Time to Resolve Cases

	Mediated	Arbitrated	Med/Arb Combined	BBB AUTO LINE report
BASE: mediated or arbitrated cases	126	75	201	4838
	100.0%	100.0%	100.0%	100.0%
Within 40 days	106	33	139	3783
	84.1%	44.0%	69.2%	78.2%
41 or more	20	42	62	1055
	15.9%	56.0%	30.8%	21.8%

Table III–19A: Comparative analysis on timing, mediated and arbitrated cases combined

	2017		2016	
	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE
BASE: mediated or arbitrated cases	201	4838	219	4707
	100.0%	100.0%	100%	100%
Within 40 days	139	3783	155	3519
	69.2%	78.2%	71%	75%
41 or more	62	1055	64	1188
	30.8%	21.8%	29%	25%

In appraising BBB AUTO LINE’s compliance, Table III-20 shows that six of the surveyed consumers who said the process took more than 40 days also acknowledged that the

²⁴⁴ Of the 201, 165 (81%) reported that their cases were ineligible – and ineligible cases are usually resolved quickly, most often within a day or two.

delays resulted from their own actions.²⁴⁵ Even if this doesn't affect the legal standard for timeliness, it does provide a significant gloss on the reported delay figures; if we were to treat as timely the "consumer's own fault" respondents, BBB AUTO LINE resolved the case within 40 days in:

- 110/126 (87%) of mediated cases;
- 35/75 (47%) of arbitrated cases; and
- 145/201 (72%) of mediated and arbitrated cases combined.

Additionally, Table III – 21 explores whether BBB AUTO LINE can rely on a slight extension, applicable where the consumer hadn't contacted the manufacturer about the problem before filing the complaint, which extends the time for compliance to 47 days.²⁴⁶ BBB AUTO LINE relied on this provision in 52 (2.4%) of arbitrated cases. While none of the 18 consumers who responded to this question in the survey reported that they hadn't first contacted the manufacturer, the numbers are sufficiently small, and the margin of error sufficiently large, that this doesn't call into question BBB AUTO LINE's figures. In many cases, particularly those where the arbitrator decides that she needs the input of a technical expert to resolve a dispute, there seems good reasons for some delay; it takes time to arrange for such an expert to participate. All in all, the auditor concludes that BBB AUTO LINE is substantially compliant with the statutory standard on timeliness.

The auditor also notes that he looked at the four cases, among the 408 consumers surveyed, that took the longest to resolve. In two of these, the delay resulted from the arbitrator's decision to seek additional information after the hearing. In two others, though, the fault appeared to be primarily the consumer's; both consumers failed to bring their cars to the hearings, and the absence was addressed by scheduling a technical inspection after the hearing.²⁴⁷

²⁴⁵ There were three "not sure" responses to the question whose results Table III-20 reports; hence the base for that question is 59 rather than 62.

²⁴⁶ *E.g.*, FTC Rule 703.5(e)(2)).

²⁴⁷ For example, in a case that took 108 days to resolve, the consumer consistently failed to return calls; didn't bring vehicle to hearing; and failed to appear at a post-hearing inspection of which she'd been told.

Table III – 20: Did it take more than 40 days because of some action you took?

	Mediated	Arbitrated	Med/Arb Combined
BASE: Mediated or arbitrated cases more than 40 days, , “not sure” to this question excluded	20	39	59
	100.0%	100.0%	100.0%
Yes	4	2	6
	20.0%	5.1%	10.2%
No	16	37	53
	80.0%	94.9%	89.8%

Table III-21: Did you contact the manufacturer -- not just the dealer-- before you filed your complaint?

	Mediated	Arbitrated	Med/Arb Combined
BASE: Mediated or arbitrated cases between 41-47 days, , “not sure” response to the question excluded	4	14	18
	100.0%	100.0%	100.0%
Yes	4	14	18
	100.0%	100.0%	100.0%
No	-	-	-
	-	-	-

Table III–22: Consumer Agreement with BBB AUTO LINE

	Consumer replies	
	Within 40 Days	41+ Days
BASE: Mediated or arbitrated cases	139	62
	100.0%	100.0%
Within 40 Days (Imported)	136	19
	97.8%	30.6%
41+ Days (Imported)	3	43
	2.2%	69.4%

Concordance: 179/201 = 89.1%

Discordance: 11/201 = 10.9%

It isn't surprising to get a lower concordance rate on a quantitative metric (days to process complaint) than on a qualitative metric (relief obtained, processed used). Further, the timing might be muddled in consumers' minds by the nuances of when the clock started, although the questionnaire tried to make these matters clear. That is, the case begins in Florida and California with the initial submission; it begins elsewhere when the consumer returns the signed complaint form; and it ends when the parties reach a settlement or the arbitrator issues a

decision – *not* when the manufacturer complies with the decision. Given all of these nuances, the 10.9% discordance rate, in the auditor’s view, is not unreasonable.

2. Withdrawn Cases

Table III–23: Days until complaints were withdrawn, as reported by consumers who reported withdrawing their complaints

BASE: Withdrawn cases	36
	100.0%
Within 40 days	36
	100.0%
41 or above	-
	-

F. DOCUMENTS AND CONTACTS

Table III–24: After you first contacted BBB AUTO LINE, did you get a claim form and an explanation of the program?

	2017	2016
BASE: answering, , “not sure” excluded	385	380
	100.0%	100%
Yes	348	365
	90.4%	96.1%
No	37	15
	9.6%	3.9%

Excluding the consumers who replied “not sure,” 9% of consumers – a total of 37 – reported that they hadn’t received the claim forms. But the auditor examined the underlying files for those consumers, and 20 contained complaint forms signed and returned by the consumer.²⁴⁸

Among the other 17, five cases were from Florida or California (where case can and must be opened with the initial contact) and were closed precisely *because* the consumer hadn’t returned a signed complaint form.²⁴⁹ The remaining 12 cases (3.1% of the total) are the ones where it seems most likely that consumers actually didn’t receive the consumer complaint form and accompanying package. However, in eleven of these cases, the consumers were found ineligible for the program based on the information provided in their initial contact. This is significant because, when the initial contact is via phone or the BBB AUTO LINE’s online portal, the consumer provides the information from which an unsigned consumer complaint form is generated and sent to the consumer for signing. And, if staff has the relevant information to determine that the car isn’t eligible for the program (e.g., information about the car’s age and mileage), they may be reluctant to press a consumer to return a signed consumer complaint form before they tell the consumer about the determination.

²⁴⁸ 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.

²⁴⁹ Of course, the auditor can’t dismiss the possibility that one or more of these consumers didn’t receive *either* the consumer complaint form for signing or the letter telling them that the file was closed for failure to return the consumer complaint form. If that happened, though, it would appear as well that the consumer didn’t follow up to find out why nothing was happening with his complaint.

Table III–25: How clear and understandable were these documents?

	2017	2016
BASE: responding “yes” to question in III-24; not responding “not sure” to this question	343	361
	100.0%	100%
Very	234	236
	68.2%	65%
Somewhat	98	113
	28.6%	31%
Not at all	11	12
	3.2%	3%

Table III-26: And how helpful were they?

	2017	2016
BASE: responding “yes” to question in III-24; not responding “not sure” to this question	344	354
	100.0%	100%
Very	187	174
	54.4%	49%
Somewhat	105	121
	30.5%	34%
Not at all	52	59
	15.1%	17%

As shown above, an overwhelming majority of consumers (96.8) found them at least somewhat clear and understandable, while a substantial majority (84.9%) found them at least somewhat helpful. Not surprisingly, the 2017 numbers are comparable to those for 2016, which evaluated the same materials.

Table III – 27: After you reached a settlement, did you get an explanation by letter or email describing the terms of the settlement?

	2017	2016
BASE: mediated cases, “not sure” responses to this question excluded	117	121
	100.0%	100%
Yes	105	114
	89.7%	94%
No	12	7
	10.3%	6%

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 the twelve consumers who said they didn't receive them all contain entries (including copies of letters sometimes supplemented by notes) showing the documents were *sent*.²⁵⁰ Given the likelihood 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 by letter or email telling you when and where to go for your hearing or vehicle inspection?

	2017	2016
BASE: ARBITRATED CASES ("not sure" excluded)	71	93
	100.0%	100%
Yes	68	93
	95.8%	100%
No	3	-
	4.2%	-

The consumers who said "no" all 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 at least one consumer didn't receive the notice, in which event he likely obtained the information by phone.

Table III – 29: Did you get a copy by letter or email of the arbitrator's decision?

	2017	2016
BASE: Arbitrated cases, excluding consumers who responded "not sure" to this question	71	92
	100.0%	100%
Yes	70	89
	98.6%	97%
No	1	3
	1.4%	3%

The auditor reviewed the files for the single consumer who said he hadn't received the arbitrator's decision, and who told TechnoMetrica that he had to call to get it. While not fully

²⁵⁰ Further, after the manufacturer has time to implement the settlement, BBB AUTO LINE routinely sends a performance verification letter asking if the settlement had been performed, and one file contains a signed letter that the consumer returned.

probative – it doesn’t establish that the letter was received – the file reports that the decision was sent the day after the hearing.

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?

	Mediated cases	Arbitrated cases; received & accepted award	Previous columns combined	Combined figures for 2016
BASE: See top row (“not sure” replies to this question excluded)	122	29	151	167
	100.0%	100.0%	100.0%	100%
The staff contacted me by letter or email	40	12	52	48
	32.8%	41.3%	34.4%	29%
The staff spoke to me	23	6	29	22
	18.9%	20.7%	19.2%	13%
Both of those	47	10	57	75
	38.5%	34.5%	37.7%	45%
Neither of those	11	1	12	12
	9.0%	3.4%	7.9%	7%
Something else	1		1	10
	0.8%		0.6%	6%

Preliminarily, the survey for didn’t include a “not sure” category, but five consumers replied “something else” and then explained that they weren’t sure. These cases were omitted from the base as well as the “something else” figure. A sixth consumer who initially said “other” explained that he got the communication by fax. This is sufficiently comparable to a letter or email that the auditor reclassified it into that category.

The remaining “something else” response was a consumer who said she contacted BBB AUTO LINE before she heard from the program. On examining the file, though, the auditor noted that she called less than thirty days after the settlement; thus, this doesn’t seem to indicate a problem with the BBB AUTO LINE process in the case.

Of the twelve who said they hadn’t been contacted by staff, BBB AUTO LINE’s records report that performance verification letters were sent and not returned in ten. Also, in several cases, including the two with no performance verification letters, the case handler’s notes describe ongoing contacts, by calls or email, with the consumers.

**G. COMPARING CLAIMS FILED BY CONSUMERS WHO HAVE COUNSEL
WITH CLAIMS FILED DIRECTLY BY CONSUMERS**

This section explores the differing profiles of cases brought by attorneys on behalf of consumers and those brought directly by consumers.

Table III–32: Comparisons on process for resolving complaints

	Claims filed by attorneys on behalf of consumers	Claims filed directly by consumers
TOTAL	2030	8585
	100.0%	100.0%
Mediation	135	2693
	6.7%	31.4%
Arbitration	905	1105
	44.6%	12.9%
Ineligible	759	732
	37.4%	8.5%
Withdrawn	231	4055
	11.4%	47.2%

Table III-33: Comparison on remedies

1. Combined Mediation and Arbitration

	2017			2016	
	Claims filed by attorneys on behalf of consumers	Claims filed directly by consumers		Claims filed by attorneys on behalf of consumers	Claims filed directly by consumers
TOTAL	1029	3809		1137	3570
	100.0%	100.0%		100.0%	100.0%
Repurchase/ Replacement	279	1455		274	1275
	27.1%	38.2%		24.1%	35.7%
Repair	75	1412		110	1290
	7.3%	37.1%		9.7%	36.2%
Other award	34	422		26	479
	3.3%	11.1%		2.2%	13.4%
No award	641	520		727	526
	62.3%	13.7%		63.9%	14.7%

2. Mediation only

TOTAL	124	2704		71	2476
	100.0%	100.0%		100.0%	100.0%
Repurchase/ Replacement	109	1054		64	866
	87.9%	39.0%		90.1%	35.0%
Repair	9	1253		6	1168
	7.3%	46.3%		8.5%	47.2%
Other award	6	397		1	442
	4.8%	14.7%		1.4%	17.8%

3. Arbitration only

TOTAL	905	1105		1066	1094
	100.0%	100.0%		100.0%	100.0%
Repurchase/ Replacement	170	401		210	409
	18.8%	36.3%		19.7%	37.4%
Repair	66	159		104	122
	7.3%	14.4%		9.8%	11.1%
Other award	28	25		25	37
	3.1%	2.3%		2.3%	3.4%
No award	641	520		727	526
	70.8%	47.0%		68.2%	48.1%

According to BBB AUTO LINE statistics, consumers nationwide used lawyers in 2030 cases, or 19.1% of 10615 cases reported on the spread sheet as closed in 2017. These cases had a very different profile than cases without lawyers. On the whole, consumers with lawyers were far less likely than others to reach mediated settlements under BBB AUTO LINE auspices, particularly settlements that provided for remedies short of repurchase or replacement. Further, through mediation and arbitration combined, consumers with lawyers were far less likely to obtain a repurchase or replacement under BBB AUTO LINE's auspices (27.1% to 38.2%), far less likely to obtain a repair or "other" award²⁵¹ (3.3% to 11.1%), and far more likely to go to arbitration and have their claims rejected (62.3% to 13.7%).

However, as noted above, there were some anomalies in the original spread sheet that omitted remedies for arbitrated cases,²⁵² and these included a disproportionate number – twelve – of cases that were mediated, brought by attorneys, and ended with repurchase or replacement remedies. If these anomalies were reflected in the BBB AUTO LINE's calculations, which may or may not be the case, the 279 repurchase/replacement remedies for lawyers might actually be 291 – raising the percentage of attorney cases obtaining this remedy to over 29 percent.

As noted above, moreover, the auditor this year examined 30 files in cases with attorneys from the national sample, including five cases where the attorney withdrew the complaint. In four of these five, the attorneys told staff that they had negotiated a settlement for their client's case. Of course, it wasn't only consumers with attorneys who withdrew cases for this reason, but it seemed to the auditor that, for consumers with attorneys, this occurred with greater frequency. There's no easy way to quantify the impact of this; the case handlers' notes don't describe the nature of the settlements. Still, the auditor suspects that, in most cases involving withdrawals by attorneys who settled their clients' cases, the settlement provided for repurchase or replacement remedies. Therefore, many of the 231 withdrawals reported on Table III-32 probably involved settlements with repurchase or replacement remedies that don't appear on Table III-33.

All in all, this suggests that consumers with attorneys may have obtained numerous repurchase or replacement remedies that don't appear on BBB AUTO LINE's charts. Indeed, looking at these "hidden" remedies might have affected the charts, it's possible they attorneys representing consumers were at least as successful as those without attorneys in obtaining repurchase or replacement remedies before the BBB AUTO LINE process closed.²⁵³ The auditor

²⁵¹ "Other" awards generally include reimbursements of past repair expenses or extended service plans.

²⁵² See Ch. 2, Section II.D.

²⁵³ To do a more precise analysis would require a case-by-case analysis of all withdrawn cases, by consumers with attorneys as well as consumers without, to determine how many of each withdrew because they obtained a repurchase or replacement remedy. Further, if these sorts of cases are to be counted as successes for the consumers (a very reasonable assumption), some additional cases would need to be considered in the "total" figures for column III-32, which would have a separate effect on the relevant percentages.

has previously noted that a repurchase or replacement obtained through mediation is equally useful to the consumer as a similar remedy obtained through arbitration. By extension, a settlement after the complaint was filed but outside the program, similarly obtaining a repurchase or replacement remedy, is also equally valuable to the consumer, though properly counted as a withdrawal by BBB AUTO LINE.²⁵⁴

The numbers in Table III-33 still show meaningfully different profiles from the program's point of view, and in particular they show that, when consumers go to arbitration, those with attorneys are more likely to lose – and the losses in attorney cases tends to inflate the overall denial rate for arbitrated cases. (Perhaps one reason for attorneys' performance in litigation is that they more often request a hearing on the papers rather than in person or by telephone.²⁵⁵) Even more tellingly, when consumers without lawyers do obtain repurchase or replacement remedies, 48.5% rejected the award.

It's not clear precisely what's happening here. Perhaps attorneys would argue that arbitrators hold them to a higher standard in hearings than they apply to consumers who represent themselves, or perhaps they might argue that they get the harder cases. On balance, though, it seems that at least some attorneys may view the BBB AUTO LINE process as little more than an impediment to getting into court.

Before leaving this subject, though, the auditor wants to add another factor to the mix. As noted last year, some attorneys handle relatively few cases before BBB AUTO LINE in a year, while others handle hundreds and hundreds. So, in last year's audit, the auditor took a further step, which he didn't repeat this year but which still warrants mention. Specifically, he analyzed the attorney cases and concluded that three firms accounted for 58% of all such cases. And, in the 1062 cases brought by those firms in 2016, only 33 (3%) led to a settlement or an arbitrated award that the consumer accepted. For consumers represented by those firms, moreover, 69 of the 90 (76%) who were awarded a repurchase or replacement remedy in arbitration rejected the remedy.

²⁵⁴ The consumer's relief might also be impacted by attorney's fees if the manufacturer didn't separately pay the cost of such fees. In most cases where consumers had lawyers, the auditor has no way of knowing the fee arrangements between the consumers and their lawyers.

²⁵⁵ In cases with in-person hearings, the consumer obtained a repurchase or replacement decision 35.8% of the time, with denials in 46.7% of cases. In cases handled on the papers, the consumer obtained a repurchase or replacement decision 17.5% of the time, with denials in 73.0% of cases.

H. SATISFACTION

The final portion of these sections examines 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 III-34: How would you grade the arbitrator on understanding the facts of your case?

	Total	All Award	Award: Replace-ment/ Repurchase	Award: Repair/ Other	No Award
BASE: arbitrated cases , “not sure” excluded	74	37	19	18	37
	100.0%	100.0%	100.0%	100.0%	100.0%
A=Excellent	25	23	14	9	2
	33.8%	62.2%	73.7%	50.0%	5.4%
B=Good	9	3	2	1	6
	12.2%	8.1%	10.5%	5.6%	16.2%
C=Average	10	2	1	1	8
	13.5%	5.4%	5.3%	5.6%	21.6%
D=Poor	8	4	2	2	4
	10.8%	10.8%	10.5%	11.1%	10.8%
F=Failing Grade	22	5	-	5	17
	29.7%	13.5%		27.8%	45.9%
MEAN	2.09	2.95	3.47	2.39	1.24

Table III – 35: How would you grade the arbitrator on objectivity and fairness?

	Total	All Award	Award: Replacement/Repurchase	Award: Repair/Other	No Award
BASE: arbitrated cases, “not sure” excluded	73	37	19	18	36
	100.0%	100.0%	100.0%	100.0%	100.0%
A=Excellent	24	23	14	9	1
	32.9%	62.2%	73.7%	50.0%	2.8%
B=Good	13	5	3	2	8
	17.8%	13.5%	15.8%	11.1%	22.2%
C=Average	8	2	1	1	6
	11.0%	5.4%	5.3%	5.6%	16.7%
D=Poor	7	3	1	2	4
	9.6%	8.1%	5.3%	11.1%	11.1%
F=Failing Grade	21	4	-	4	17
	28.8%	10.8%		22.2%	47.2%
MEAN	2.16	3.08	3.58	2.56	1.22

Table III-36: How would you grade the arbitrator on reaching an impartial decision?

	Total	All Award	Award: Replacement/Repurchase	Award: Repair/Other	No Award
BASE: arbitrated cases, “not sure” excluded	74	37	19	18	37
	100.0%	100.0%	100.0%	100.0%	100.0%
A=Excellent	22	21	15	6	1
	29.7%	56.8%	78.9%	33.3%	2.7%
B=Good	6	5	2	3	1
	8.1%	13.5%	10.5%	16.7%	2.7%
C=Average	13	4	1	3	9
	17.6%	10.8%	5.3%	16.7%	24.3%
D=Poor	11	2	1	1	9
	14.9%	5.4%	5.3%	5.6%	24.3%
F=Failing Grade	22	5	-	5	17
	29.7%	13.5%		27.8%	45.9%
MEAN	1.93	2.95	3.63	2.22	0.92

Table III–37: How would you grade the arbitrator on coming to a reasoned & well thought-out decision?

	Total	All Award	Award: Replace-ment/ Repurchase	Award: Repair/ Other	No Award
BASE: arbitrated cases, “not sure” excluded	72	37	19	18	35
	100.0%	100.0%	100.0%	100.0%	100.0%
A=Excellent	22	22	15	7	-
	30.6%	59.5%	78.9%	38.9%	-
B=Good	7	3	2	1	4
	9.7%	8.1%	10.5%	5.6%	11.4%
C=Average	10	4	1	3	6
	13.9%	10.8%	5.3%	16.7%	17.1%
D=Poor	10	3	1	2	7
	13.9%	8.1%	5.3%	11.1%	20.0%
F=Failing Grade	23	5	-	5	18
	31.9%	13.5%		27.8%	51.4%
MEAN	1.93	2.92	3.63	2.17	0.89

Table III–38: ARBITRATOR SATISFACTION COMPOSITE

	Total	All Award	Award: Replacement/Repurchase	Award: Repair/Other	No Award
Understanding facts	2.09	2.95	3.47	2.39	1.24
Objectivity and fairness	2.16	3.08	3.58	2.56	1.22
Reaching and impartial decision	1.93	2.95	3.63	2.22	0.92
Coming to a reasoned & well thought-out decision	1.93	2.92	3.63	2.17	0.89
AVERAGE	2.03	2.97	3.58	2.33	1.07

Composite Means (2017)

All consumers with arbitration	2.03
Consumers who received awards:	2.97
Replacement/Repurchase	3.58
Repair/other	2.33
Consumers with no awards:	1.07

Composite mean (2016)²⁵⁶

All consumers using arbitration:	2.34
Consumers who received awards:	3.40
Replacement/Repurchase	3.69
Repair./other	2.30
No award:	1.02

Composite mean (2015)

All consumers using arbitration:	2.31
Consumers who received awards:	3.21
No award:	1.14

The auditor has expressed skepticism in prior audits 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, 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.

²⁵⁶ The replacement/repurchase and refund/other figures for 2016 were newly calculated by the auditor.

To this end, the auditor began, in the 2015 audit, to present separate breakouts for consumers with awards and consumers who were denied awards. Not surprisingly, consumers who got relief in arbitration tended to view the arbitrators far more favorably than those who didn't. For the 2017 audit, the auditor has further refined his analysis, and distinguished the satisfaction rates, among consumers who did get awards, between those who received repurchase and replacement awards and those who received lesser relief – which often means they didn't get all that they wanted.²⁵⁷ Further, based on materials provided by TechnoMetrica last year, he undertook similar calculations for 2016.²⁵⁸

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. Further, as shown in Table III – 11 (and explored in the discussion accompanying that table) there was a substantial increase in the national survey for 2017 in the percentage of *surveyed* consumers who reported repair awards (from 8.5% to 24.0%), and a similarly substantial decrease in percentage reporting repurchase and replacement awards (from 44.7% to 25.3%).²⁵⁹ And, while the overall grades did drop this year from 2.25 to 2.03, that reflected in part the increased rate of repair remedies in the surveyed sample. Looking at the more nuanced breakouts, the grade from consumers who were denied relief dropped from 1.46 to 1.07 (after rising to 1.46 from 0.79 last year); the grade from consumers with replacement/repurchase remedies dropped slightly, from 3.69 to 3.58; and the grade from consumers with some other remedy (generally a repair) rose slightly, from 2.16 to 2.33.

²⁵⁷ While arbitrators sometimes issue decisions providing for repair or other lesser remedies when the consumer had also sought repurchase or replacement, in some cases repurchase and replacement isn't even an option. This might happen, for example, when the car is too old for lemon law relief but still qualified for warranty relief, and the manufacturer has agreed to warranty arbitration only for repairs or reimbursement of expenses.

²⁵⁸ On a more technical point, the auditor undertook these composite calculations himself and, as he did so, he used a slightly modified approach for the new calculations that's far easier to perform but yields substantially the same results as his earlier approach. Previously, he averaged each individual grade given by consumers to each of the four questions described above. Now, he took the mean grades for each of the original questions (figures that TechnoMetrica had already calculated) and averaged them together. The new approach, which is easier to work with, could yield slightly different results if there were substantially different rates of "not sure" responses to some questions than to others.

²⁵⁹ As noted above, it seems likely that most if not all of this resulted from random sampling errors, and not actual differences in the relief received by consumers in the national sample.

2. Satisfaction with BBB AUTO LINE staff

Table III-39: How would you grade BBB AUTO LINE staff on objectivity and fairness?

	2017 Audit
BASE: Arbitrated or mediated cases," not sure" responses to this question excluded	195
	100.0%
A=Excellent	121
	62.1%
B=Good	31
	15.9%
C=Average	29
	14.9%
D=Poor	8
	4.1%
F=Failing Grade	6
	3.1%
MEAN	3.30

Table III-40: How would you grade BBB AUTO LINE Staff on efforts to assist you in resolving your claim?

	2017 Audit
BASE: Arbitrated or mediated cases," not sure" responses to this question	196
	100.0%
A=Excellent	115
	58.7%
B=Good	37
	18.9%
C=Average	21
	10.7%
D=Poor	15
	7.7%
F=Failing Grade	8
	4.1%
MEAN	3.20

Table III-41: Overall, what grade would you give BBB AUTO LINE?

	2017 Audit
BASE: BASE: Arbitrated or mediated cases," not sure" responses to this question excluded	198
	100.0%
A=Excellent	117
	59.1%
B=Good	40
	20.2%
C=Average	19
	9.6%
D=Poor	10
	5.1%
F=Failing Grade	12
	6.1%
MEAN	3.21

Table III – 42
BBB AUTO LINE STAFF EFFORTS-SATISFACTION COMPOSITE
FOR CONSUMERS WHO USED MEDIATION OR ARBITRATION

	Mean
Objectivity and fairness	3.30
Efforts to resolve claim	3.20
Overall grade	3.21
AVERAGE	3.24

Composite mean (2017)	3.24 ²⁶⁰
Composite mean (2016):	3.29
Composite mean (from 2015 audit)	2.85

²⁶⁰ The auditor notes that consumer’s satisfaction with staff did vary based on how their case was resolved. Still, as might be expected, even consumers who eventually were denied relief in arbitration didn’t feel as negatively about the staff as they did about the arbitrator who made the decision. In a question that asked for an overall grade, they gave staff a mean grade of 2.15 pp substantially better than the 1.07 grade that they gave to the arbitrator.

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	399	199
	100.0%	100.0%
Yes	283	165
	70.9%	82.9%
No	116	34
	29.1%	17.1%

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 37 consumers in the survey who went to arbitration and lost, 19 (51.4%) nonetheless said they'd recommend the program.²⁶¹

²⁶¹ This omits one consumer who said “not sure” to the recommendation question.

IV. SURVEY RESULTS – FLORIDA

The preliminary note in Section IIA, addressing “not sure” responses, gender-specific pronouns, and other matters, applies to the Florida discussion as well. The reader is referred to that section for background. The auditor also highlights that, for ease of reference, the section and table numberings largely parallel each other among sections III (National analysis), IV (Florida analysis) and V (Ohio analysis), and the numbering in the 2017 audit largely parallels that in the 2016 audit.

As the auditor turns to the Florida sample, the margin of error in the macro analysis grows and the micro analysis plays a larger role in his analysis. The Florida sampling frame included one in five consumers from the national sampling frame.²⁶² Although individual Florida consumers were almost twice as likely as those outside Florida to be interviewed, the margin of error for questions posed to all 158 consumers in the Florida sample was +/-7.4%, substantially higher than the +/-4.7% for questions posed to all 408 consumers in the national sample. Further, as observed before, some questions were posed only to certain consumers, *e.g.*, those who used arbitration. For those questions, the Florida sample size dropped to as low as 34.²⁶³

Nevertheless, the *micro* analysis for Florida consumers substantially alleviates any concern posed by survey results that bump against, or exceed, the margin of error range when compared to calculated aggregate figures. As explained previously, the auditor used the survey to hone in on cases where consumers disagreed with BBB AUTO LINE records. On most metrics, these “discordances” were 5% or less and, by examining the underlying files, the auditor concluded that, the vast majority of the discordances fell into the categories describe in Section II.B.1 , where these a strong to clear case that the discordance didn’t point to a discrepancy in recordkeeping. Then, through a chain of comparisons described previously, the auditor was able to extend his confidence in the BBB AUTO LINE spread sheets to confidence in their aggregate calculations.

²⁶² The sampling frame includes all cases involving the relevant population, excluding attorney cases and allowing only one case per consumer (thus excluding the earlier cases when multiple complaints about the same vehicle (MCSVs) were closed in 2017.

²⁶³ Some questions were directed to even more select groups of consumers, *e.g.*, consumers who said that a repair remedy failed. While those probed issues of interest of 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

	2017 Audit
TOTAL	158
	100.0%
2004	-
	-
2005	1
	0.6%
2006	-
	-
2007	-
	-
2008	7
	4.4%
2009	3
	1.9%
2010	3
	1.9%
2011	4
	2.5%
2012	3
	1.9%
2013	6
	3.8%
2014	17
	10.8%
2015	42
	26.6%
2016	46
	29.1%
2017	25
	15.8%
2018	1
	0.6%

Table IV-2: The BBB AUTO LINE's records show they closed a complaint in 2016 about your <make> vehicle. Is that correct?

	2017 Audit	2016 Audit
TOTAL	158	151
	100.0%	100.0%
Yes	158	151
	100.0%	100.0%
No	-	-
	-	-

One consumer said “no” for the 2017 audit, but then simply added the model as well as the make to his response; the auditor has changed this to a “yes” response.

Table IV-3: Repair Attempts

	2017 Audit	2016 Audit
BASE: all respondents, “not sure” excluded	154	147
	100.0%	100.0%
One	18	15
	11.7%	10.2%
Two	6	9
	3.9%	6.1%
Three	26	21
	16.9%	14.3%
Four or more	89	76
	57.8%	51.7%
None	15	26
	9.7%	17.7%

Table IV–4: How did you first learn about BBB AUTO LINE?

	2017 Audit	2016 Audit
BASE: all respondents, “not sure” excluded	157 100.0%	148 100.0%
Manufacturer's manuals/other warranty documents	23 14.6%	21 14.2%
Dealer or manufacturer representative	22 14.6%	20 13.5%
BBB/BBB Website	11 7.0%	22 14.9%
Internet website (NOT BBB or government website)	48 30.6%	44 29.7%
Lawyer	1 0.6%	4 2.7%
Friend/family/word of mouth	31 19.7%	29 19.6%
TV/Radio/Newspaper	- -	2 1.4%
Government website, office, or official	16 9.6%	3 2.0%
Had used the BBB AUTOLINE previously	4 2.5%	
Other	0 0.0%	3 2.0%

This was an open-ended question and the interviewer had a series of possible silos in which she could classify the answer. The first category (manufacturers’ manuals/other warranty documents) was somewhat refined this year to reflect that manufacturer manuals generally contain the actual warranty, and the “government website, office, or official” category was added.

The auditor adjusted some of the 2016 and 2017 “other” responses that clearly fit into one of the existing or new categories.

B. PROCESS QUESTIONS

Table IV–5: Aggregate Process Responses

	2017 BBB AUTO LINE				2017 Survey (B1)	Same, adjusted for response rate (see below) (B2)	2016 Survey (C1)
	BBB AUTO LINE statistics (A1)	Same, excluding attorney cases (A2)	Auditor’s statistics from original spread sheet, excluding attorney cases (A3)	Auditor’s statistics from “fully adjusted” spread sheet (A4)			
TOTAL	2195	1764	1764	1521	158		151
	100.0%	100.0%	100.0%	100.0%	100.0%		100.0%
Mediation	648	584	597	490	44		45
	29.5%	33.1%	33.8%	32.2%	27.8%	30.2%	29.8%
Arbitration	441	224	221	219	34		42
	20.1%	12.7%	12.5%	14.4%	21.5%	16.3%	27.8%
Withdrawn	145	122	124	100	8		10
	6.6%	6.9%	7.0%	6.6%	5.1%	5.2%	6.6%
Ineligible	961	834	822	712	67		52
	43.8%	47.3%	46.6%	46.8%	42.4%	48.2%	34.4%
Other					5		2
					3.2%		1.3%

Table IV–5A: Further multi-year comparisons

	A1 Figures		A4 Figures	
	2017	2016	2017	2016
TOTAL	2195	2030	1521	1410
	100.0%	100.0%	100.0%	100.0%
Mediation	648	493	490	372
	29.5%	24.3%	32.2%	26.4%
Arbitration	441	523	219	296
	20.1%	25.8%	14.4%	21.0%
Withdrawn	145	156	100	106
	6.6%	7.8%	6.6%	7.5%
Ineligible	961	856	712	636
	43.8%	42.7%	46.8%	45.1%

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

	Verified Case Type				
	Mediated	Arbitrated	Withdrawn	Ineligible	Other
TOTAL	44	34	8	67	5
	100.0%	100.0%	100.0%	100.0%	100.0%
Mediation (Imported)	44	2	-	-	2
	100.0%	5.9%	-	-	40.0%
Arbitration (Imported)	-	32	-	-	-
	-	94.1%	-	-	-
Withdrawn (Imported)	-	-	8	1	1
	-	-	100.0%	1.5%	20.0%
Ineligible (Imported)	-	-	-	66	2
	-	-	-	98.5%	40.0%

Concordance: 150/158 = 94.9%

Discordance: 8/158 = 5.1%

1. Micro Analysis

1. Micro analysis.

Table IV-6, the core of the micro analysis, reports a “concordance” of 94.9%, which is a perhaps reasonable if not particularly impressive on a fundamental aspect of each case.

However, most of the 8 “discordances” fall into one of the categories noted in Section I.A.2 of this chapter, and, on examination, don’t appear to reflect problems with the process or with record-keeping. Thus, three were straddle cases, where the consumer’s responses reflected developments in their case, or a follow-up case, that post-dated the closing of the original file. Another had a reasonably explicable discordance in confusing a withdrawn case with an ineligible case. In yet another (which doesn’t fall neatly within one of the categories discussed in Section A.1.2), it appears that the consumer didn’t consider a case “mediated” because the manufacturer wouldn’t agree, in the context of a replacement, to reduce a usage fee that was authorized by the state’s lemon law. And in yet another case, the consumer was supposed to bring in her car for a field service engineer inspection but traded in the car before the inspection date; because she no longer owned the car, BBB AUTO LINE recorded it as ineligible.²⁶⁴

²⁶⁴ The consumer’s explanation of her “other” response to the process question suggests that the matter may have been resolved to her satisfaction. However, when asked during the original survey whether BBB AUTO LINE might call her back, the consumer said no.

Finally, in a case where BBB AUTO LINE files include a closing letter explaining that the vehicle was ineligible due to age, the consumer said she never heard back from the program. There's no discussion of the matter in notes, and the consumer gave no indication that he followed through with BBB AUTO LINE to check on the status of his complaint.

While there's room for debate about how many of these should be considered as discordances, the auditor is inclined to treat only the last case as such. But, in any event, the discordance rate is substantially below the 5.1% reported on Table IV-7.

Attorney cases: As noted above, the auditor also examined 30 case files where the consumer had counsel, including ten arbitrated cases, ten mediated cases, five withdrawn cases, and five ineligible cases.²⁶⁵ On the process variable for the Florida attorney cases, there was complete concordance.

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 2017. These provide important information about the full range of cases filed in the program; for example, Columns A1 and A2 highlight that BBB AUTO LINE closed more cases through mediation than arbitration.

Column A2 provides comparable figures, also as reported by BBB AUTO LINE, but only for cases that where the consumer appeared without counsel. There's more detail about these figures (and how they compare to figures where the consumer had counsel), in Section IV.G.

Column A3 also measures the numbers of non-attorney cases closed in 2017 by each process, but was developed *by the auditor* from the spread sheet that BBB AUTO LINE produced as the basis for TechnoMetrica's calls. Since column A2 reports aggregates for non-attorney cases drawn directly from the underlying data base by BBB AUTO LINE, while column A3 derives the same numbers from the spread sheet (in turn derived from that data base that was used for the survey) it's important, though not unexpected, that the results are nearly identical.

While columns A2 and A3 are consistent with each other in that both reflect cases where the consumer didn't have a lawyer, both differ from the surveyed population in that they include multiple complaints about the same vehicle. Thus, comparing either or both to the survey results would raise an apples and oranges problem. And the differences between the apples and the oranges would appear far from trivial. The MSCV files that were omitted from the survey sample tend to be mediated cases, and thus have a different "process" profile than other cases.

However, the auditor was able to use a variant of the spread sheet from which he developed column A3 to develop another column, A4. Specifically, TechnoMetrica scrubbed the

²⁶⁵ The auditor alphabetized the all the cases where consumers had attorneys, and then took the first five or ten in each category, alphabetically by surname and starting with the letter "B." (For the national sample, he sorted alphabetically by first name, and began with the letter "A.")

BBB AUTO LINE spread sheet (the basis for column A3) to eliminate both attorney cases *and* MCSVs. The auditor used *this* spread sheet to develop aggregate figures that, like the survey, excluded both attorney cases and MCSVs. This enabled apples-to-apples comparisons. The survey spread sheet *was* the sampling frame, so the auditor was comparing aggregates based directly on the sampling frame (the A4 figures) to figures based on that sampling frame.

The “B” columns. The B columns report the survey results, with column B1 reporting the actual survey results and column B2 using a weighting factor.

As explained in the discussion of the national survey results, the auditor speculated, based on some results in the 2016 survey, that consumers who were deemed ineligible might have been less likely to complete a questionnaire than those who used mediation or arbitration, and the auditor found, based on responses rates that TechnoMetrica provided, that this was in fact the case. The auditor therefore asked TechnoMetrica to provide a response rate for the national, Florida, and Ohio samples this year, and the results *consistently* showed some such pattern (although, somewhat mysteriously, not for the reasons that the auditor had anticipated²⁶⁶).

According to TechnoMetrica, 15.9% of all consumers whom TechnoMetrica attempted to call in the Florida sample completed the survey – but the percentage was 21.8% for consumers who used arbitration; 20.4% of those who resolved their case through mediation; 16.1% for consumers who withdrew their complaints, and 14.5% for those deemed ineligible. Had the participation rate among the various categories been equal, this would have moved various survey numbers closer to the aggregate numbers reported in column A4. To better highlight this, the auditor this year has derived a new column (B2) by weighting the response numbers in Column B1.²⁶⁷

²⁶⁶ The auditor’s original speculation was that the reduced rate of completions would come from consumers who refused to start (or finish) the survey, but this doesn’t appear to be the case. The reported “refusal” rates, for both 2016 and 2017, didn’t vary much among the various types of cases. Nevertheless, for each population (National, Florida, and Ohio), by virtue of some combination of reported factors (refusals, answering machine, caller away, busy signal, etc.), the percentage of “completes” was lower for consumers reported as ineligible than for those reported as using arbitration or mediation.

²⁶⁷ Thus, for example, the response rate was 21.8% for consumers who used arbitration but only 14.5% for consumers who were ineligible. To compensate, the auditor multiplied the 67 “ineligible” responses by 21.8/14.5. The resulting total (100.7) is an approximation of the number of “ineligible” responses that the survey would have reported if ineligible consumers had responded at the 21.8% rate of consumers who used arbitration. Similar adjustments were made to the numbers of withdrawn and multiplied cases. The auditor then recalculated percentages using these constructed numbers. (The nature of this calculation was such that the auditor reported only percentages in column B2.) On a technical matter, TechnoMetrica’s response rate figures were (necessarily) based on BBB AUTO LINE’s classification of a case as arbitrated, mediated, etc., and those figures were the basis for calculating the weighting factor. Once calculated, though, the weighting factor was applied to the aggregates based consumer responses.

Further taking into account the margin of error for this question (+/- 7.4%), the B2 (weighted) figures are consistent with the relevant aggregates – the A4 figures that similarly exclude both attorney cases and the earlier cases in an MCSV sequence. And, as noted above, the auditor finds it even more convincing that the aggregates that he derived from the spread sheets, whose substantial accuracy was confirmed by the micro analysis, are essentially the same as the aggregates that BBB AUTO LINE calculated directly from its data base – a point to which he soon turns in greater detail .

The macro analysis therefore compares the adjusted aggregates in Column A4 to the weighted survey results in Column B2. Both exclude consumers who had lawyers and, for consumers who filed MCSVs, both omitted all but the last. The resulting comparisons are well within the margin of errors. And the conclusion that the A4 figures accurately reflect the sampling frame is even more strongly backed by the micro analysis.

How, then, do we get back to the earlier columns, which add back in the attorney cases and the MCSV cases that the sampling frame omitted? Column A3, derived from the same spread sheet as Column A4, adds back in the multiple complaints about the same vehicle. There's no reason to expect a lower degree of accuracy for the cases previously omitted than for the cases included in column A4. Further, while the auditor didn't systematically examine the cases omitted because they involved MCSVs, he did, when reviewing later cases included in an MCSV context, glance back at the earlier cases, and found no significant problems in the "omitted: cases. He also went back to the original BBB AUTO LINE spread sheet and found that the results of selected "pre-1R" cases were properly recorded.

While column A2 covers the same cases as column A3 – all but attorney cases – these figures were developed by BBB AUTO LINE directly from the underlying data base. And the A2 figures are substantially the same as the A3 figures, whose credibility was already shown.

The last step is the extension back to the A1 figures, which add back the attorney cases. Here the auditor relies on his scrutiny of 30 such cases, described in the micro analysis, which found no problems on the process metric. The auditor thus concludes that the macro analysis (drawing a bit on the micro analysis in the final steps) supports the credibility of the A1 figures as well.

C. RELIEF QUESTIONS

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.²⁶⁸

1. Combined Results for 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 that 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 far more consumers got a repurchase or replacement through mediation (367) than through arbitration (162).

Table IV – 7: Remedies in Cases Identified by Consumers as Mediated or Arbitrated

	2017 BBB AUTO LINE				2017 Survey (B)	2016 Survey (C)
	BBB AUTO LINE statistics (A1)	Same, excluding attorney cases (A2)	Auditor’s stat’s from original spread sheet, excluding att’y cases (A3)	Auditor’s statistics from “fully adjusted” spread sheet (A4)		
BASE:	1089	815	818	709	78	87
med. & arb’d cases	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Repurchase/ Replacement	529 48.6%	415 50.9%	413 50.5%	407 57.4%	43 55.1%	36 41.4%
Repair	211 19.4%	203 24.9%	210 25.7%	114 16.1%	6 7.7%	19 21.8%
Other	93 8.5%	83 10.2%	83 10.1%	77 10.9%	7 9.0%	8 9.2%
No Award	25645 23.5%	114 14.0%	112 13.7%	111 15.7%	22 28.2%	24 27.6%
No entry						

²⁶⁸ There were small variations in wording depending on whether the consumer had identified the case as mediated or arbitrated.

Table IV—7A: Further Multi-Year Comparisons

	A1 Figures		A4 Figures	
	2017	2016	2017	2016
BASE:; med & arbitrated	1089 100.0%	1016 100.0%	709 100.0%	668 100.0%
Replacement /Repurchase	529 48.6%	423 41.6%	407 57.4%	322 48.2%
Repair	211 19.4%	235 23.1%	114 16.1%	135 20.2%
Other	93 8.5%	81 8.0%	77 10.9%	77 11.5%
No Award	245 23.5%	277 27.3%	111 15.7%	134 20.1%

Table V-IV-8: Consumer Agreement with BBB AUTO LINE Records on Remedies

	Verified Remedy			
	Repurchase/ Replacement	Repair	Other	No Award
BASE: MEDIATED AND ARBITRATED CASES	43 100.0%	6 100.0%	7 100.0%	22 100.0%
Repurchase/Replacement (Imported)	42 97.7%	- -	- -	1 4.5%
Repair (Imported)	1 2.3%	5 83.3%	- -	- -
Other (Imported)	- -	1 16.7%	7 100.0%	- -
No Award (Imported)	- -	- -	- -	21 95.5%
None on File- Ineligible/Withdrawn Cases (Imported)	- -	- -	- -	- -

Concordance: 75/78 = 96.2%

Discordance: 3/78 = 3.8%

Again starting with the micro analysis, two of the recorded discordances were straddle cases, where the consumer was reporting about developments in a case that hadn't closed in 2017 while the records BBB AUTO LINE provided to TechnoMetrica focused on an earlier case that had. The remaining case involves an arbitrator's decision that the consumer rejected. The decision clearly provided for an extended service plan (an "other" remedy), and the auditor can't account for the consumer's assertion that it was a repair. Again, while there's room for debate as

to precisely which of these should be deemed truly discordant, in the auditor's view the 3.8% figure overstates the matter.

Turning next to Table IV – 7, the key comparison is between columns A4 and B, because both exclude consumers who used attorneys and, for MCSV's, all but the last complaint filed in 2017.²⁶⁹ The margin of error for questions posed to all 158 participants in the Florida sample was +/-7.4%; it's substantially higher for these tables, for questions posed only to the 78 consumers who reported using arbitration or mediation (Table IV-7), the 44 consumers who reported using mediation (Table IV-9), and the 34 who reported using arbitration (Table IV-119).²⁷⁰

Still, some discrepancies between columns A4 and B seem to fall at the edge of, or beyond, even these margins of error. For example, the survey numbers for “no awards” substantially exceed the “A4” numbers, even outside the sort of expanded margin of error noted previously (28.2% compared to 15.7%). And, while Table IV-7 shows a relatively close match for repurchase and replacement remedies when arbitrated and mediated cases are combined, Table IV-9 reports a survey result that's 15.7% higher for mediated cases alone – while Table V-11 reports a survey number that's 19.5% *lower* for arbitrated cases alone. These results suggest that the numbers bear watching in the future. But, given the micro analysis that follows, the auditor doesn't believe that there's a problem; the results are most likely aberrations of the sampling process. On balance, though, the micro analysis following Table IV – 8 resolves any remaining questions, and supports (substantially better support than does the macro analysis) the conclusion that the survey results accurately reflect the experience of consumers in the sampling frame – that is, Florida consumers who used BBB AUTO LINE but didn't use an attorney, with appropriate adjustments for MCSVs.

As with the process metric, the next step is to get back to the earlier columns, which add

²⁶⁹ The auditor didn't use weighted averages and create a column B2 for the remedy metric. There seemed good reason, theoretically and empirically from the 2016 data, to anticipate that, e.g., ineligible consumers might be less likely to complete the survey than consumers who used arbitration. There didn't seem a comparable concern, for example, about differing response rates between consumers who got replacements and consumers whose claims were denied.

²⁷⁰ If TechnoMetrica had simply used as the sampling frame only the 709 Florida consumers reported to have used arbitration or mediation on the fully adjusted spread sheet, and if it had interviewed 78 consumers from that base (a situation somewhat comparable to that reported above), the margin of error would have been +/- 10.5%. Similarly, for Table IV-9, had the sampling frame been 490 consumers and the number interviewed 44, the margin of error would have been +/- 14.1%. And, for Table IV-11, had the sampling frame been 219 consumers and the number interviewed 34, the margin of error would have been +/- 15.5% (This ignores the further complication posed because some of the consumers disagreed with BBB AUTO LINE's records about the underlying process used, so that some of the consumers covered in Table IV-7 disagreed with BBB AUTO LINE's characterization, told the interviewer that they had been found ineligible or withdrawn their complaints, and not been asked the remedy question.).

back in the attorney cases and the MCSV cases that the sampling frame omitted. Column A3, derived from the same spread sheet as Column A4, adds back in the multiple complaints about the same vehicle. There's no reason to expect a lower degree of accuracy for the cases previously omitted than for the cases included in column A4. Further, while the auditor didn't systematically examine the cases omitted because they involved MCSVs, he did, when reviewing later cases included in an MCSV context, glance back at the earlier cases, and found no significant problems in the "omitted": cases. He also went back to the original BBB AUTO LINE spread sheet and found that the results of selected "pre-1R" cases were properly recorded.

While column A2 covers the same cases as column A3 – all but attorney cases – these figures were developed by BBB AUTO LINE directly from the underlying data base. And the A2 figures are substantially the same as the A3 figures, whose credibility has already been established.

The last step is the extension back to the A1 figures, which add back the attorney cases. Here, the auditor relies on his previously-noted examination of 30 case files for consumers who used lawyer. On the process metric, there was complete concordance; on the remedy metric, there were some discordant entries among the 30 cases the auditor examined, but all led back to the small number of anomalous entries on the original spread sheet. Since the problem was limited to some seven Florida cases, though, its impact on the A1 numbers would be slight. Thus, the auditor believes the survey numbers, together with the two-year comparisons in Table IV-7A as well as the micro analysis, indicate that the A1 figures are highly credible.

* * *

At this point, the auditor turns to the substantive analysis. Assuming the figures in columns A1 through A4 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 columns A1), 48.6% ended with a repurchase or replacement remedy, 27.9% ended with some other relief, and 23.5% ended in no relief. Further, excluding cases brought by attorneys (whose profile is discussed in Section G), column A4 reports that 57.4% of cases ended with a repurchase or replacement remedy; 27.0% ended with some other relief; and only 15.7% ended with no award. As noted in the Introduction to the audit as a whole, this suggests a process that's fair to consumers but not a "slam-dunk" that wouldn't be fair to manufacturers.

2. Mediated Cases

Table V-IV-9: Final Remedy in Cases Identified by Consumers as Mediated

	2017 BBB AUTO LINE				2017 Survey (B)	2016 Survey (C)
	BBB AUTO LINE statistics (A1)	Same, excluding attorney cases (A2)	Auditor's statistics from original spread sheet, excluding attorney cases (A3)	Auditor's statistics from "fully adjusted" spread sheet (A4)		
BASE: mediated cases	648	591	597	490	44	45
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Repurchase/ Replacement	367	317	318	313	35	23
	56.6%	53.6%	53.3%	63.9%⁸	79.5%	51.1%
Repair	197	195	200	104	4	15
	30.4%	33.0%	33.5%	21.2%	9.1%	33.3%
Other	84	79	79	73	5	7
	13.0%	13.4%	13.2%	14.9%	11.4%	15.6%
No entry						

Table IV--9A: Further Multi-Year Comparisons

	A1		A4	
	2017	2016	2017	2016
BASE: mediated cases	648	493	490	372
	100.0%	100.0%	100.0%	100.0%
Replacement/ Repurchase	367	218	313	189
	56.6%	44.2%	63.89%	50.8%
Repair	197	207	104	118
	30.4%	42.0%	21.2%	31.7%
Other	84	68	73	65
	13.0%	13.8%	14.9%	17.5%

Preliminarily, Table IV-9A shows a substantial rise in the *percentage* of mediated cases that resulted in repurchase and preplacement remedies compared to last year. Taken together with a growth in the number of mediated cases – the total number of mediations resulting in repurchase or replacement remedies rose this year from 218 to 367, a rise of 68.3%

Taken together with the some of the differences between Columns A4 and B2, this could raise questions, at least for further scrutiny. For now, however, the auditor notes several factors:

(1) With a margin of error of +/-7.4% for questions posed to all 158 consumers in the Florida sample, and the margin likely to arise to +/14.1% here,²⁷¹ the figures in column A4 aren't outside the range of the credible – though the repurchase/replacement figures fall a bit outside the large margin of error.

(2) Further skewing the comparisons, reasonably explicable discordances including straddle cases add a non-trivial error. And, with only 44 cases reported as mediated in the survey, every such “explicable” error can throw off the percentage calculations for the survey by over 2%.

(3) Finally, and most importantly, the micro analysis reported in Table IV-10 shows a very close match between individual consumer responses in the survey and the entries in the BBB AUTO LINE spread sheets from which these were calculated. And that strongly suggests that the differences between the A4 figures and B figures don't point to a serious problem.

²⁷¹ See note 270.

Table IV – 10: Consumer Agreement with BBB AUTO LINE

	Repurchase/ Replacement	Repair	Other
BASE: MEDIATED CASES	35	4	5
	100.0%	100.0%	100.0%
Repurchase/Replacement (Imported)	34	-	-
	97.1%	-	-
Repair (Imported)	1	4	-
	2.9%	100.0%	-
Other (Imported)	-	-	5
	-	-	100.0%
None on File- Ineligible/Withdrawn Cases (Imported)	-	-	-
	-	-	-

Concordance: 43/44 = 97.7%

Discordance: 1/44 = 2.3%

The sole discordance was a straddle case; in essence, the micro analysis shows a perfect match.

3. Arbitrated Cases

Table IV-11: Final Remedy in Cases Identified by Consumers as Arbitrated

	2017 BBB AUTO LINE				2017 Survey (B)	2016 Survey (C)
	BBB AUTO LINE statistics (A1)	Same, excluding attorney cases (A2)	Auditor's statistics from original spread sheet, excluding attorney cases (A3)	Auditor's statistics from "fully adjusted" spread sheet (A4)		
BASE:	441	224	221	219	34	42
arb'd cases	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Repurchase/ Replacement	162	98	95	94	8	13
	36.7%	43.8%	43.0%	42.9%	23.5%	31.0%
Repair	14	8	10	10	2	4
	3.2%	3.6%	4.5%	4.6%	5.9%	9.5%
Other	9	4	4	4	2	1
	2.0%	1.8%	1.8%	1.8%	5.9%	2.4%
No Award	256	114	112	111	22	24
	58.0%	50.9%	50.6%	50.7%	64.7%	57.1%
No entry						

Table IV-11A – Further Multi-year comparisons

	A1		A4	
	2017	2016	2017	2016
BASE:	441	523	219	296
arbitrated cases	100.0%	100.0%	100.0%	100.0%
Replacement /Repurchase	162	205	94	133
	36.7%	39.2%	42.9%	44.9%
Repair	14	28	10	17
	3.2%	5.4%	4.6%	5.7%
Other	9	13	4	12
	2.0%	2.5%	1.8%	4.1%
No Award	256	277	111	134
	58.0%	53.0%	50.7%	45.3%

Preliminarily, Table IV-11A shows a slight decrease in the percentage of “A1” consumers who obtained repurchase or replacement remedies in arbitration from 2016 to 2017, and a greater decrease in the absolute number of arbitrated cases resulting in repurchase or replacement remedies (which reflects in part the reduced number of total arbitrated cases). But these changes are dwarfed by the rise in repurchase or replacement remedies through mediation; where the total of such remedies obtained in arbitration dropped by 43, the number obtained through mediation rose by 149.

Taken together with the some of the differences between Columns A4 and B2 in table IV-11 – differentials as high as 19.6% -- these variations could raise questions, at least for further scrutiny. For now, however, the auditor notes several factors:

(1) With a margin of error of +/-7.4% for questions posed to all 158 consumers in the Florida sample, and the margin likely to rise to +/-15.5% here,²⁷² the figures in column A4 aren't outside the range of the credible – though the repurchase/replacement figures fall a bit outside the large margin of error.

(2) Further skewing the comparisons, straddles add a non-trivial error. And, with only 34 cases reported as mediated in the survey, every such “explicable” error can throw off the percentage calculations for the survey by almost 3%.

(3) Finally, and most importantly, the micro analysis reported in Table IV-10 shows a very close match between individual consumer responses in the survey and the entries in the BBB AUTO LINE spread sheets from which these were calculated. And that makes the A4 figures credible – at which point the auditor believes this credibility can be extended back to the A1 statistics.

²⁷² See note 270.

Table IV-12: Consumer Agreement with BBB AUTO LINE Records

	Repurchase/ Replacement	Repair	Other	No Award
BASE: ARBITRATED CASES	8	2	2	22
	100.0%	100.0%	100.0%	100.0%
Repurchase/Replacement (Imported)	8	-	-	1
	100.0%	-	-	4.5%
Repair (Imported)	-	1	-	-
	-	50.0%	-	-
Other (Imported)	-	1	2	-
	-	50.0%	100.0%	-
No Award (Imported)	-	-	-	21
	-	-	-	95.5%
None on File- Ineligible/Withdrawn Cases (Imported)	-	-	-	-
	-	-	-	-

Concordance: 32/34 = 94.1%

Discordance: 2/34 = 5.9%

Consistent with the discussion of Table IV-8, one of the recorded discordances was a straddle cases, where the consumer was reporting about developments in a case that hadn't closed in 2017 while the records BBB AUTO LINE provided to TechnoMetrica focused on an earlier case that had. The remaining case involves an arbitrator's decision that the consumer rejected. The decision clearly provided for an extended service plan (an "other" remedy), and the auditor can't account for the consumer's assertion that it was a repair. In sum, it seems there was at most one non-explicable discordance.

* * *

Pursuant to a requirement specific to Florida, BBB AUTO LINE also provided the following breakdown:

	All manufacturers		Certified Manufacturers	
ALL FILED CLAIMS	2195	100.0%	2019	100.0%
Mediated	648	29.52%	609	30.17%
Arbitrated	441	20.09%	397	19.66%
No Jurisdiction	961	43.78%	884	43.79%
Withdraw	145	6.61%	129	6.39%
ALL ARBITRATIONS	441	100.00%	397	100.00%
Full repurchase	114	25.85%	103	25.94%
Partial repurchase	12	2.72%	11	2.77%
Replacement	32	7.26%	29	7.30%
Repair	14	3.17%	13	3.27%
Trade Assist	4	0.91%	4	1.01%
Other award	9	2.04%	8	2.16%
No award	256	58.05%	230	57.93%

Table IV – 13: Did you accept the arbitrator's decision?

	2017 Audit
BASE: Arbitrated cases with awards to consumers; “not sure” responses to this question excluded	10
	100.0%
Yes	7
	70.0%
No	3
	30.0%

Table IV-14: Acceptance of different types of remedies

	Total	Repurchase/ Replacement	Repair	Other	All Remedies
BASE: Arbitrated cases with awards to consumers; “not sure” responses to this question excluded	10	8	1	1	10
	100.0 %	100.0%	100.0%	100.0%	100.00%
Yes	7	7	-	-	7
	70.0%	87.5%	-	-	70.0%

Table IV- 15: Consumer Agreement with BBB AUTO LINE Records

	Verified Accepted/Rejected	
	Accepted	Rejected
BASE: See below	7	3
	100.0%	100.0%
Accepted (Imported)	7	
	100.0%	
Rejected (Imported)		3
		100.0%

Concordance: 9/9 100.0%

The chart reflects arbitrated cases with awards to consumers, but omits consumers who weren't sure if they accepted or rejected the award. It also omits one consumer who reported arbitration but for whom BBB AUTO LINE showed mediation, and therefore didn't have an entry as to whether the consumer accepted an arbitration award. (That consumer's responses are treated as discordant for purposes of the process tables above, but not for the remedy table).

4. Withdrawn Cases

Table IV – 16: Which of the following best describes why you withdrew your complaint?

	2017 Audit
BASE: WITHDRAWN CASES	8 100.0%
You settled the matter or your car was fixed	6 75.0%
You sold the car	1 12.5%
Some other reason	1 12.5%

While the consumer who gave another reason essentially became frustrated with the process, the other seven consumers who withdrew their complaints seemed to have reached some sort of satisfactory resolution. .

D. COMPLIANCE QUESTIONS

Table IV-17: Which of the following applies to your case? The manufacturer...

	Mediated		Arbitrated*		Med/Arb Combined	
	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE
BASE: *	43	654	7	133	50	787
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Carried out remedy within the time specified, including extensions to which you agreed	36	635	4	131	40	766
	83.7%	97.1%	57.1%	98.5%	80.0%	97.3%
Carried out remedy after the time specified, including any extension to which you agreed	5	1	3	0	8	1
	11.6%	0.2%	42.9%	0.0%	16.0%	0.1%
Has not yet carried out the remedy, but the time to do so has not yet expired	2	6			2	6
	4.7%	0.9%			4.0%	0.8%
Has not yet carried out the remedy and the time to do so has expired	-	12		2		14
	-	1.9%		1.5%		1.8%
(Failure to comply was the fault of the consumer)		(5)		(2)		(7)
		(0.7%)		(1.5%)		(0.9%)
Time for compliance has expired, performance not verified.						
	-	-	-			

* *BASE: For mediation, all cases reported by the consumer as mediated. For arbitration, all cases where the consumer reported that they used arbitration, the arbitrator awarded them relief, and they accepted the award. "Not sure" replies to this question were excluded in calculating percentages for the survey results.*

There were no non-compliant cases reported in the Florida consumer survey. And, for reasons explained in Section III.D, the auditor doesn't have a substantial concern with the disparity in numbers on delayed cases.

Turning now to some comparative figures that didn't fit neatly into Table IV-17, the numbers for 2016 and 2017, in both cases using figures unadjusted by the auditor's review, show reasonable consistency:

Table IV-17A: Comparative analysis on compliance (mediated and arbitrated combined)

	2017		2016	
	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE
BASE: *	50	787	58	677
	100.0%	100.0%	100.0%	
Carried out the settlement/terms of decision within the time specified, including any extension to which you agreed	40	766	52	658
	80.0%	97.3%	89.7%	97.2%
Carried out the settlement/terms of decision after the time specified, including any extension to which you agreed	8	1	3	1
	16.0%	0.1%	5.2%	0.1%
Has not yet carried out the settlement/terms of decision, but the time to do so has not yet expired	2	6	1	2
	4.0%	0.8%	1.7%	0.3%
Has not yet carried out the remedy and the time to do so has expired		14	2	16
		1.8%	3.4%	2.3%
(Failure to comply was the fault of the consumer)	-	(7)		(11)
	-	(0.9%)		(1.6%)
Time for compliance has expired, performance not verified				

* *BASE: Same as for mediation/arbitration in Table V-17 above*

Tables IV-18 and 18A reported the results of questions posed to consumers with non-compliant repair remedies; there were no such consumers in the Florida sample, so the tables are omitted.

E. TIMING QUESTIONS

1. Mediated and Arbitrated Cases

As in past years, BBB AUTO LINE’s timing figures turn on the timing of mediated and arbitrated cases, and the auditor’s scrutiny focuses primarily on those cases. The analysis in this section is thus based on 78 cases from a survey sample of 158. BBB AUTO LINE is to be commended for focusing on these 78 cases; the 80 cases that were excluded were, on average, far *more* likely to be resolved quickly, so the reporting basis used by BBB AUTO LINE probably lowered their measure of performance.²⁷³

Table IV – 19: Time to resolve their cases (Survey results, with year-by-year comparison)

	2017			2016		
	Mediated	Arbitrated	Med/Arb Combined	Mediated	Arbitrated	Med/Arb Combined
BASE: mediated or arbitrated cases	44 100.0%	34 100.0%	78 100.0%	45 100.0%	42 100.0%	87 100.0%
Within 40 days	38 86.4%	17 50.0%	55 70.5%	38 84.4%	20 47.6%	58 66.7%
41 or more	6 13.6%	17 50.0%	23 29.5%	7 15.6%	22 52.4%	29 33.3%

Table IV – 19A: Comparative analysis of timing, mediated and arbitrated cases combined.

	2017		2016	
	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE
BASE: mediated or arbitrated cases	78 100.0%	1089 100.0%	87 100.0%	1016 100.0%
Within 40 days	55 70.5%	875 80.4%	58 66.7%	712 70.8%
41 or more	23 29.5%	214 19.6%	29 33.3%	304 29.2%

As shown in Table IV-201, one consumer who used arbitration and one who used mediation acknowledged that cases took more than 40 days to resolve because of their own

²⁷³ Of the 80, 67 (84%) reported that their cases were ineligible – and ineligible cases are usually resolved quickly, most often within a day or two.

actions. Whatever the relevance of these numbers, though, they're a sufficiently small percentage of the cases that they wouldn't significantly affect the results reported above.

Table IV-20: Did it take more than 40 days because of some action you took?

	Mediated	Arbitrated	Med/Arb Combined
TOTAL mediated or arbitrated cases more than 40 days.	6 100.0%	17 100.0%	23 100.0%
BASE: mediated or arbitrated cases, more than 40 days, "not sure" responses to this question excluded.	5 100.0%	16 100.0%	21 100.0%
Yes	1 20.0%	1 6.3%	2 9.5%
No	4 80.0%	15 93.8%	19 90.5%

Table IV-21: Did you contact the manufacturer--not just the dealer--before you filed your complaint?

	Mediated	Arbitrated	Med/Arb Combined
BASE: mediated or arbitrated cases between 41 and 47 days, "not sure" responses to this question excluded	2 100.0%	8 100.0%	10 100.0%
Yes	2 100.0%	8 100.0%	10 100.0%
No	- -	- -	- -

Table IV-22: Consumer agreement with BBB AUTO LINE records

	Within 40 Days	41 + Days
BASE: mediated or arbitrated cases	55 100.0%	23 100.0%
Within 40 Days (Imported)	54 98.2%	7 30.4%
41 + Days (Imported)	1 1.8%	16 69.6%

Concordance: 70/78 = 89.7%

Discordance: 8/78 = 10.3%

It isn't surprising to get a lower concordance rate on a quantitative metric (days to process complaint) than on a qualitative metric (relief obtained, processed used). Further, the timing might be muddled in consumers' minds by the nuances of when the clock started, although the questionnaire tried to make these matters clear. That is, the case begins in Florida and California with the initial submission; it begins elsewhere when the consumer returns the signed complaint form; and it ends when the parties reach a settlement or the arbitrator issues a decision – *not* when the manufacturer complies with the decision. Given all of these nuances, the 10.3% discordance rate, in the auditor's view, is not unreasonable.

2. Withdrawn Cases

Table IV–23: Days until complaints were withdrawn, as reported by consumers who reported withdrawing their complaints

BASE: withdrawn cases	8
	100.0%
Within 40 days	8
	100.0%
41 or above	-
	-

F. DOCUMENTS AND CONTACTS

Table IV–24: After you first contacted BBB AUTO LINE, did you get a claim form and an explanation of the program?

	2017	2016
BASE: answering, “not sure” responses excluded	149	143
	100.0%	100.0%
Yes	141	132
	94.6%	92.3%
No	8	11
	5.4%	7.7%

Excluding the consumers who replied “not sure,” 5.4% of consumers – a total of 8 – reported that they hadn’t received their claim forms. But the auditor examined the underlying files for those consumers, and 3 contained complaint forms signed and returned by the consumer.²⁷⁴

Four other cases were closed because the information on the unsigned form indicated that they were clearly ineligible (in all but one case because of mileage). This is significant because, when the initial contact is via phone or the BBB AUTO LINE’s online portal, the consumer provides the information from which an unsigned consumer complaint form is generated and sent to the consumer for signing. Under these procedures, if staff already has information about the car’s age and mileage that shows it ineligible for the program, they may be reluctant to press a consumer to return a signed consumer complaint form before they tell the consumer about the determination.

The final file was closed precisely because the consumer hadn’t returned a consumer complaint form and the consumer was sent a closing letter; according to the case handler’s notes, the consumer subsequently called back and the case handler left a voice mail message in return, after which the consumer didn’t call back.

²⁷⁴ 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 though not always 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.

Table IV–25: How clear and understandable were these documents?

	2017	2016
BASE: RECEIVING DOCS, NOT SURE EXCLUDED	137	128
	100.0%	100.0%
Very	103	87
	75.2%	68.0%
Somewhat	30	34
	21.9%	26.6%
Not at all	4	7
	2.9%	5.5%

Table IV-26: And how helpful were they?

	2017	2016
BASE: RECEIVING DOCS, “NOT SURE” EXCLUDED	138	126
	100.0%	100.0%
Very	71	73
	51.4%	57.9%
Somewhat	49	36
	35.5%	28.6%
Not at all	18	17
	13.0%	13.5%

Table IV-25 shows that 97.1% of the consumers surveyed found BBB AUTO LINE’s documents at least somewhat understandable, with 75.9% reporting that they were very understandable. Table IV – 26 shows that 87.0% reported that they were at least somewhat helpful, with 51.4% finding them very helpful.

Table IV-27: After you reached a settlement, did you get an explanation by letter or email describing the terms of the settlement?

	2017	2016
BASE: MEDIATED CASES (“NOT SURE” EXCLUDED)	42	40
	100.0%	100.0%
Yes	41	38
	97.6%	95.0%
No	1	2
	2.4%	5.0%

As to the “no” response in the current audit, BBB AUTO LINE doesn’t ask consumers to return the settlement letter if they agree with its content, so (unlike with the consumer complaint form) there aren’t signed documents in the files reflecting that any consumers actually *received* the documents. But BBB AUTO LINE’s files report that the document was *sent*.²⁷⁵ Given the likelihood 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 strong evidence of even a single problem here.

Table IV–28: Did you get a notice by letter or email telling you when and where to go for your hearing or vehicle inspection?

	2017	2016
BASE: ARBITRATED CASES (“NOT SURE” EXCLUDED)	34	41
	100.0%	100.0%
Yes	33	40
	97.1%	97.6%
No	1	1
	2.9%	2.4%

²⁷⁵ Further, after the manufacturer has time to implement the settlement, BBB AUTO LINE routinely sends a performance verification letter asking if the settlement had been performed, and one file contains a signed letter that the consumer returned.

Table IV – 29: Did you get a copy by letter or email of the arbitrator's decision?

	2017	2016
BASE: Arbitrated cases, excluding consumers who responded “not sure” to this question	32	40
	100.0%	100.0%
Yes	31	38
	96.9%	95.0%
No	1	2
	3.1%	5.0%

The consumer who said “no,” explained, in response to a follow-up question, that she had to call the BBB. In fact, she got the decision when it was prepared, but the decision was delayed for reasons not reflected in the file.

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?

	Mediated cases	Arbitrated cases; accepted award	Previous columns combined	Combined figures for 2016
BASE: MEDIATED CASES	44	17	61	60
	100.0%	100.0%	100.0%	100.0%
The staff contacted me by letter or email	6	11	17	14
	13.6%	64.7%	27.9%	23.3%
The staff spoke to me	11	2	13	10
	25.0%	11.8%	21.3%	16.7%
Both of those	23	3	26	32
	52.3%	17.6%	42.6%	53.3%
Neither of those	2	1	3	3
	4.5%	5.9%	4.9%	5.0%
Something else	2	-	2	1
	4.5%	-	3.3%	1.7%

**G. COMPARING CLAIMS FILED BY CONSUMERS WHO HAVE COUNSEL
WITH CLAIMS FILED DIRECTLY BY CONSUMERS**

Table IV–32: Comparisons on process for resolving complaints

	Claims filed by attorneys on behalf of consumers	Claims filed directly by consumers
Mediation	64	584
	14.8%	33.1%
Arbitration	217	224
	50.4%	12.7%
Ineligible	127	834
	29.5%	47.3%
Withdrawn	23	122
	5.3%	6.9%
TOTAL	431	1764
	100.0%	100/0%

**Table IV–33: Comparison on remedies:
Combined mediation and arbitration**

Repurchase/Replacement	114	415
	41.6%	50.3%
Repair	8	203
	2.9%	24.9%
Other award	10	83
	3.6%	10.2%
No award	142	114
	51.8%	14.0%
TOTAL	274	815
	100.0%	100.0%

According to BBB AUTO LINE statistics, consumers in Florida had lawyers in about 19% of the cases they filed before BBB AUTO LINE, a rate comparable to the national sample. And as the chart above shows, these cases had a very different profile than other cases – less likely to use mediation and correspondingly more likely to use arbitration, far less likely to get repair remedies (reflecting the limited use of settlements) and substantially more likely to end with a denial in litigation.

However, as noted above, there were some anomalous cases in the original spread sheet that omitted remedies for certain cases, and these included a disproportionate number of Florida

cases, brought by attorneys, that settled for a repurchase or replacement remedy. This suggests that the 114 repurchase/replacement remedies for lawyers might actually be 121, which would raise the percentage of attorney cases obtaining this remedy to over 44 percent.

As noted above, moreover, the auditor this year examined 30 files in cases with attorneys from the Florida sample, including five cases where the attorney withdrew the complaint. In three of the five withdrawn Florida cases, the attorneys told BBB AUTO LINE staff they had negotiated a settlement for their client's case. Of course, it wasn't only consumers with attorneys who withdrew cases for this reason, but it seemed to the auditor that, for consumers with attorneys, this occurred with greater frequency. There's no easy way to quantify the impact of these settlements; the case handlers' notes don't describe their nature. Still, the auditor suspects that, in most cases involving withdrawals by attorneys who settled their clients' cases, the settlement provided for repurchase or replacement remedies. Therefore, many of the 23 withdrawals reported on Table IV-32 probably involved settlements with repurchase or replacement remedies that don't appear on Table IV-33.²⁷⁶

All in all, this suggests that consumers with attorneys may have obtained numerous repurchase or replacement remedies that don't appear on BBB AUTO LINE's charts. Indeed, looking at these "hidden" remedies might have affected the charts, it's possible they attorneys representing consumers were at least as successful as those without attorneys in obtaining repurchase or replacement remedies before the BBB AUTO LINE process closed. The auditor has previously noted that a repurchase or replacement obtained through mediation is equally useful to the consumer as a similar remedy obtained through arbitration. By extension, a settlement after the complaint was filed but outside the program, similarly obtaining a repurchase or replacement remedy, is also similarly valuable to the consumer, though properly counted as a withdrawal by BBB AUTO LINE.²⁷⁷

The numbers in Table IV-33 still show meaningfully different profiles from the program's point of view, and in particular they show that, when consumers go to arbitration, those with attorneys are more likely to lose – and the losses in attorney cases tends to inflate the overall denial rate for arbitrated cases. (Perhaps one reason for attorneys' performance in litigation is that they more often request a hearing on the papers rather than in person or by

²⁷⁶ To do a more precise analysis would require a case-by-case analysis of all withdrawn cases, by consumers with attorneys as well as consumers without, to determine how many of each withdrew because they obtained a repurchase or replacement remedy. Further, if these sorts of cases are to be counted as successes for the consumers (a very reasonable assumption), some additional cases would need to be considered in the "total" figures for column IV-32, which would have a separate effect on the relevant percentages.

²⁷⁷ The consumer's relief might also be impacted by attorney's fees if the manufacturer didn't separately pay the cost of such fees. In most cases where consumers had lawyers, the auditor has no way of knowing the fee arrangements between the consumers and their lawyers.

telephone.) Even more tellingly, when consumers without lawyers do obtain repurchase or replacement remedies, 26.2% rejected the award.²⁷⁸

It's not clear precisely what's happening here. Perhaps attorneys would argue that arbitrators hold them to a higher standard in hearings than they apply to consumers who represent themselves, or perhaps they might argue that they get the harder cases. On balance, though, it seems that at least some attorneys may view the BBB AUTO LINE process as little more than an impediment to getting into court.

Before leaving this subject, though, the auditor wants to add another factor to the mix. As noted last year, some attorneys handle relatively few cases before BBB AUTO LINE in a year, while others handle hundreds and hundreds. So, in last year's audit, the auditor took a further step, which he didn't repeat this year but warrants mention. Specifically, he analyzed the attorney cases and concluded that three firms accounted for 58% of all attorney cases nationally. And, in the 1062 cases brought by those firms in 2016, only 33 (3%) led to a settlement or an arbitrated award that the consumer accepted. For consumers represented by those firms, moreover, 69 of the 90 (76%) who were awarded a repurchase or replacement remedy in arbitration rejected the remedy.

²⁷⁸ While seemingly high, this is well below the 48.5% rate by which consumers with attorneys rejected such awards in the entire national population.

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	All Award	Award: Replace-ment/ Repurchase	Award: Repair/ Other	No Award
BASE: ARBITRATED CASES, “NOT SURE” EXCLUDED	32 100.0%	12 100.0%	8 100.0%	4 100.0%	20 100.0%
A=Excellent	8 25.0%	6 50.0%	5 62.5%	1 25.0%	2 10.0%
B=Good	3 9.4%	3 25.0%	2 25.0%	1 25.0%	- -
C=Average	6 18.8%	3 25.0%	1 12.5%	2 50.0%	3 15.0%
D=Poor	5 15.6%	- -			5 25.0%
F=Failing Grade	10 31.3%	- -			10 50.0%
MEAN	1.81	3.25	3.50	2.75	0.95

Table IV-35: How would you grade the arbitrator on objectivity and fairness?

	Total	All Award	Award: Replacement/Repurchase	Award: Repair/Other	No Award
BASE: ARBITRATED CASES, "NOT SURE" EXCLUDED	32	12	8	4	20
	100.0%	100.0%	100.0%	100.0%	100.0%
A=Excellent	9	9	7	2	-
	28.1%	75.0%	87.5%	50.0%	-
B=Good	1	-			1
	3.1%	-			5.0%
C=Average	6	2	1	1	4
	18.8%	16.7%	12.5%	25.0%	20.0%
D=Poor	6	1		1	5
	18.8%	8.3%		25.0%	25.0%
F=Failing Grade	10	-			10
	31.3%	-			50.0%
MEAN	1.78	3.42	3.75	2.75	0.80

Table IV-36: How would you grade the arbitrator on reaching an impartial decision?

	Total	All Award	Award: Replacement/Repurchase	Award: Repair/Other	No Award
BASE: ARBITRATED CASES, "NOT SURE" EXCLUDED	33	12	8	4	21
	100.0%	100.0%	100.0%	100.0%	100.0%
A=Excellent	6	5	5	1	1
	18.2%	41.7%	62.5%	25.0%	4.8%
B=Good	3	2	1	1	1
	9.1%	16.7%	12.5%	25.0%	4.8%
C=Average	7	4	2	2	3
	21.2%	33.3%	25.0%	50.0%	14.3%
D=Poor	6	1			5
	18.2%	8.3%			23.8%
F=Failing Grade	11	-			11
	33.3%	-			52.4%
MEAN	1.61	2.92	3.38	2.75	0.86

Table IV–37: How would you grade the arbitrator on coming to a reasoned & well thought-out decision?

	Total	All Award	Award: Replace-ment/ Repurchase	Award: Repair/ Other	No Award
BASE: ARBITRATED CASES, “NOT SURE” EXCLUDED	33	12	8	4	21
	100.0%	100.0%	100.0%	100.0%	100.0%
A=Excellent	8	6	6		2
	24.2%	50.0%	75.0%		9.5%
B=Good	2	2		1	-
	6.1%	16.7%		25.0%	-
C=Average	6	3	2	2	3
	18.2%	25.0%	25.0%	50.0%	14.3%
D=Poor	8	1		1	7
	24.2%	8.3%		25.0%	33.3%
F=Failing Grade	9	-			9
	27.3%	-			42.9%
MEAN	1.76	3.08	3.50	2.0	1.00

**Table IV – 38:
ARBITRATOR SATISFACTION COMPOSITE**

	Total	All Award	Award: Replacement/Repurchase	Award: Repair/Other	No Award
Understanding facts	1.81	3.25	3.50	2.75	0.95
Objectivity and fairness	1.78	3.42	3.75	2.75	0.80
Reaching and impartial decision	1.61	2.92	3.38	2.75	0.86
Coming to a reasoned & well thought-out decision	1.76	3.08	3.50	2.0	1.00
AVERAGE	1.74	3.17	3.53	2.56	0.90

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
Replacement/Repurchase	3.70
Repair/other	2.15
Consumers who received awards	3.26
Consumers with no awards	1.46

Composite Means (2015)

Consumers who received awards	3.40
Consumers with no awards	0.79

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. The auditor suspected that consumers' satisfaction with arbitrators was highly correlated 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.

To this end, the auditor began, in the 2015 audit, to present separate breakouts for consumers with awards and consumers who were denied awards. Not surprisingly, consumers who got relief in arbitration tended to view the arbitrators far more favorably than those who didn't. For the 2017 audit, the auditor has further refined his analysis, and distinguished the satisfaction rates, among consumers who did get awards, between those who received repurchase and replacement awards and those who received lesser relief – which often means they didn't get all that they wanted.²⁷⁹

Further, based on materials provided by TechnoMetrica last year, he undertook similar calculations for 2016.²⁸⁰ And there was some drop-off in arbitrator satisfaction this year, with the lion's share of that seemingly coming from consumers who didn't get awards. Consumers who got only limited relief (repairs, reimbursement of expenses, extended service plans) also showed a drop-off, but the numbers in this population are sufficiently small that it's hardly surprising to find variation for year-to-year; there were five such consumers in 2016, for example, so individual consumers' grades could make a substantial difference in that measure.

²⁷⁹ While arbitrators sometimes issue decisions providing for repair or other lesser remedies when the consumer had also sought repurchase or replacement, in some cases repurchase and replacement isn't even an option. This might happen, for example, when the car is too old for lemon law relief but still qualified for warranty relief, and the manufacturer has agreed to warranty arbitration only for repairs or reimbursement of expenses.

²⁸⁰ On a more technical point, the auditor undertook these composite calculations himself and, as he did so, he used a slightly modified approach for the new calculations that's far easier to perform but yields substantially the same results as his earlier approach. Previously, he averaged each individual grade given by consumers to each of the four question described above. Now, he took the mean grades for each of the original question (figures that TechnoMetrica had already calculated) and averaged them together. The new approach, which is easier to work with, could yield slightly different results if there were substantially different rates of "not sure" responses to some questions than to others.

2. Satisfaction with BBB AUTO LINE staff

Table IV-39: How would you grade BBB AUTO LINE staff on objectivity and fairness?

	2017 Audit
BASE: TOTAL ARBITRATED OR MEDIATED CASES (“NOT SURE” EXCLUDED)	78 100.0%
A=Excellent	49 62.8%
B=Good	15 19.2%
C=Average	8 10.3%
D=Poor	5 6.4%
F=Failing Grade	1 1.3%
MEAN	3.36

Table IV-40: How would you grade BBB AUTO LINE Staff on efforts to assist you in resolving your claim?

	2017 Audit
BASE: TOTAL ARBITRATED OR MEDIATED CASES (“NOT SURE” EXCLUDED)	77 98.7%
A=Excellent	49 63.6%
B=Good	16 20.8%
C=Average	7 9.1%
D=Poor	3 3.9%
F=Failing Grade	2 2.6%
MEAN	3.39

Table IV-41: Overall, what grade would you give BBB AUTO LINE?

	2017 Audit
BASE: TOTAL ARBITRATED OR MEDIATED CASES (“NOT SURE” EXCLUDED)	78
	100.0%
A=Excellent	47
	60.3%
B=Good	16
	20.5%
C=Average	6
	7.7%
D=Poor	5
	6.4%
F=Failing Grade	4
	5.1%
MEAN	3.24

**Table IV – 42
BBB AUTO LINE STAFF EFFORTS-SATISFACTION COMPOSITE
FOR CONSUMERS WHO USED MEDIATION OR ARBITRATION**

	Mean
Objectivity and fairness	3.36
Efforts to resolve claim	3.39
Overall grade	3.24
AVERAGE	3.33

Composite mean (2017) 3.33

Composite mean (2016): 3.10

Composite mean (from 2015 audit) 3.20

Table IV–43: Would you recommend BBB AUTO LINE to friends or family?

	Total	Med/Arb
BASE: ANSWERING, “NOT SURE” EXCLUDED	157	78
	100.0%	100.0%
Yes	115	67
	73.2%	85.9%
No	42	11
	26.8%	14.1%

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%

Interestingly, among the 22 consumers in the survey who said they went to arbitration and lost, 14 (63.6%) said they would recommend BBB AUTO LINE.

V. SURVEY RESULTS – OHIO

The preliminary note in Section IIA, addressing “not sure” responses, gender-specific pronouns, and other matters, applies to the Ohio discussion as well. The reader is referred to that section for background. And the auditor highlights that, for ease of reference, the numbering of sections and tables in Section V (discussing the Ohio survey and aggregates) parallels the numbering in Sections III (discussing the national survey and aggregates) and IV (discussing the Florida survey and aggregates). And it largely mirrors the numbering of the 2016 audit as well. (Where needed to maintain parallel numbering, the auditor may therefore skip table numbers).

The most significant difference between the Ohio data and the national data is the far smaller size of the former. The Ohio sampling frame included only 3.8% of the national sampling frame. Even though individual Ohio consumers were almost *six* times as likely to be surveyed as individual consumers in the national sample, the 91 consumers surveyed in Ohio were only 22.3% as many as the number of survey completions (408) in the national sample. And, with the smaller numbers, the margin of error for questions posed to all consumers in the Ohio sample was +/-8.5% compared to +/-7.4% for the Florida sample and +/-4.7% for the national.

More specifically, for the Ohio survey, 91 interviews were completed from a sampling frame of 292.²⁸¹ To get this many interviews, TechnoMetrica took additional steps it hadn’t taken for the other populations. It continued trying to reach consumers until it had made six unsuccessful attempts to call each of the consumer’s contact numbers. Also, Ohio consumers who were surveyed as part of the national sample were counted in the Ohio sample as well, so they weren’t “lost” to the Ohio sample.²⁸² With these efforts, the total population surveyed reached the 91 consumers mentioned above. Still, with the completed interviews for all Ohio consumers numbering only 91, the numbers of consumers who were asked questions posed only to subsets of consumers sometimes became quite small; for example, only 14 consumers said they used arbitration and were asked arbitration-specific questions.²⁸³

Nevertheless, the micro analysis for Ohio consumers substantially alleviates any concern posed by this margin of error. Basically, the auditor used the survey to hone in on cases where consumers disagreed with BBB AUTO LINE records. On most metrics, these “discordances” were 5% or less and, by examining the underlying files, the auditor concluded that these figures overstated the real extent of consumer disagreement with BBB AUTO LINE’s records. Through his micro and macro analyses, the auditor concludes that the Ohio figures compiled by BBB AUTO LINE represent the underlying records and cases with a high degree of accuracy.

²⁸¹ The 292 in the sampling frame, in turn, had been developed by eliminating from the original total of 429: (1) cases where the consumer had an attorney; and (2) in cases where consumers filed multiple complaints about the same vehicle (MCSVs), all but the last case closed in 2017.

²⁸² Ohio consumers needed to be included in the national sample to keep it a representative sample.

²⁸³ For example, how did the arbitrator decide the case? Did the consumer accept the decision?

A. GENERAL INFORMATION

**Table V – 1:
Vehicle Year**

	2017 Audit
TOTAL	91
	100.0%
2006	1
	1.1%
2007	1
	1.1%
2008	1
	1.1%
2009	2
	2.2%
2010	1
	1.1%
2011	3
	3.3%
2012	4
	4.4%
2013	8
	8.8%
2014	10
	11.0%
2015	15
	16.5%
2016	26
	28.6%
2017	19
	20.9%

Table V-2: The BBB AUTO LINE's records show they closed a complaint in 2016 about your <make> vehicle. Is that correct?

	2017 Audit	2016 Audit
TOTAL	91	64
	100.0%	100.0%
Yes	91	64
	100.0%	100.0%
No	-	-
	-	-

Table V-3: Repair Attempts

	2017 Audit	2016 Audit
BASE: all respondents, “not sure” excluded	84	61
	100.0%	100.0%
One	8	4
	9.5%	6.6%
Two	-	2
	-	3.3%
Three	11	8
	13.1%	13.1%
Four or more	56	41
	66.7%	67.2%
None	9	6
	10.7%	9.8%

Seven consumers said “not sure” to this question.

Table V-4: How did you first learn about BBB AUTO LINE?

	2017 Audit	2016 Audit
BASE: all respondents, excluding those who said “not sure” to this question	90	62
	100.0%	100.0%
Manufacturer's manuals/other warranty documents	9	8
	10.0%	12.5%
Dealer or manufacturer representative	16	11
	17.8%	17.7%
BBB/BBB Website	10	8
	11.1%	12.9%
Internet website (NOT BBB or government website)	17	13
	18.9%	21.0%
Lawyer	5	3
	5.6%	4.8%
Friend/family/word of mouth	24	15
	26.7%	24.2%
TV/Radio/Newspaper	-	-
	-	-
Government website, office, or official	3	1
	3.3%	1.6%
Had used the BBB AUTOLINE previously	5	
	5.6%	
Other	1	3
	1.1%	4.8%

This was an open-ended question and the interviewer had a series of possible silos in which she could classify the answer. The first category (manufacturers’ manuals/other warranty documents) was somewhat refined this year to reflect that manufacturer manuals generally contain the actual warranty, and the “government website, office, or official” category was added.

The one consumer who said “other” in 2017 observed that he knew about the program because he owns a business.

B. PROCESS QUESTIONS

Table V-5: Aggregate Process Responses

	2017 BBB AUTO LINE				2017 Survey (B1)	Same, adjusted for response rate (see below) (B2)	2016 Survey (C1)
	BBB AUTO LINE statistics (A1)	Same, excluding attorney cases (A2)	Auditor's statistics from original spread sheet, excluding attorney cases (A3)	Auditor's statistics from "fully adjusted" spread sheet (A4)			
TOTAL	469	316	314	292	91		64
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Mediation	102	91	93	74	21		28
	21.8%	28.8%	29.6%	25.3%	23.1%	22.7%	43.8%
Arbitration	167	79	78	77	29		14
	35.6%	25.0%	24.8%	26.4%	31.9%	27.1%	21.9%
Withdrawn	55	22	21	19	7		2
	11.7%	7.0%	6.7%	6.5%	7.7%	5.9%	3.1%
Ineligible	145	124	122	122	31		18
	30.9%	39.2%	38.9%	41.7%	34.1%	44.3%	28.1%
Other					3		2
					3.3%		3.1%

Table V-5A: Further multi-year comparisons

	A1 Figures		A4 Figures	
	2017	2016	2017	2016
TOTAL	469	394	292	228
	100.0%	100.0%	100.0%	100.0%
Mediation	102	114	74	82
	21.8%	28.9%	25.3%	36.0%
Arbitration	167	141	77	39
	35.6%	35.8%	26.4%	17.1%
Withdrawn	55	48	19	26
	11.7%	12.2%	6.5%	11.4%
Ineligible	145	91	122	81
	30.9%	23.1%	41.7%	35.6%

Table V-6: Consumer Agreement with individual “process” responses.

	Mediated	Arbitrated	Withdrawn	Ineligible	Other
TOTAL	21	29	7	31	3
	100.0%	100.0%	100.0%	100.0%	100.0%
Mediation (Imported)	21	-	-	1	2
	100.0%			3.2%	66.7%
Arbitration (Imported)	-	29	-	-	-
		100.0%			
Withdrawn (Imported)	-	-	7	-	1
			100.0%		33.3%
Ineligible (Imported)	-	-	-	30	-
				96.8%	

Concordance: 87/91 = 95.6%

Discordance: 4/91 = 4.4%

1. Micro analysis.

Table V-6, the core of the micro analysis, reports a “concordance” of 95.6%, which is a perhaps reasonable if not particularly impressive on a fundamental aspect of each case. As discussed in Section A.1.2 of this chapter, however, the auditor has found that most seeming discordances involve nuances in case classifications that, despite efforts to clarify matters in the questions, consumers don’t fully grasp. Thus, the “discordant” files above include two where, with somewhat different degrees of support for this conclusion, the consumer seems to have accepted a mediated repair settlement and her answer (“ineligible” or “other”) seems to reflect dissatisfaction with the execution. In a third case, reported by the consumer as a mediated repair, the consumer reported that she eventually got a new car from the manufacturer.

The final case is in the “dispute about missed communications” category. The consumer said there was no attempt to reach her; the BBB AUTO LINE records report multiple attempts, included one occasion where the case handler reported reaching the consumer at work, but being told that he couldn’t talk then and would call back.

While there’s room for debate as to how many of these should be considered as “true” discordances, the auditor is inclined to treat only the last case as such. But, in any event, the discordant rate is substantially below the 4.4% reported on Table V-7.

Attorney cases: As noted above, the auditor also examined 27 case files where the consumer had counsel, including ten arbitrated cases, seven mediated cases (that’s all there

were), five withdrawn cases, and five ineligible cases.²⁸⁴ On the process variable, there was complete concordance.

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 2017. These provide important information about the full range of cases filed in the program. For example, Columns A1 and A2 highlight that BBB AUTO LINE closed more non-attorney cases through mediation than arbitration (even though, because Ohio had a large number of attorney cases and attorneys tended to use arbitration, the overall figures show more arbitrated cases than mediations).

Column A2 provides comparable figures, also as reported by BBB AUTO LINE, but only for cases that where the consumer appeared without counsel. There’s more detail about these figures (and how they compare to figures where the consumer had counsel), in Section V.G.

Column A3 also measures the numbers of non-attorney cases closed in 2017 by each process, but was developed *by the auditor* from the spread sheet that BBB AUTO LINE produced as the basis for TechnoMetrica’s calls. Since column A2 reports aggregates for non-attorney cases drawn directly from the underlying data base by BBB AUTO LINE, while column A3 derives the same numbers from the spread sheet (in turn derived from the data base that was used for the survey) it’s important, though not unexpected, that the results are nearly identical.

While columns A2 and A3 are consistent with each other in that both reflect cases where the consumer didn’t have a lawyer, both differ from the surveyed population in that they include multiple complaints about the same vehicle. Thus, comparing either or both to the survey results would raise an apples and oranges problem. And the differences between the apples and the oranges would appear far from trivial. The MSCV files that were omitted from the survey sample tend to be mediated cases, and thus have a different “process” profile than other cases.

However, the auditor was able to use a variant of the spread sheet from which he developed column A3 to develop another column, A4. Specifically, TechnoMetrica scrubbed the BBB AUTO LINE spread sheet (the basis for column A3) to eliminate both attorney cases *and* MCSVs. The auditor used *this* spread sheet to develop aggregate figures that, like the survey, excluded both attorney cases and MCSVs. This enabled apples-to-apples comparisons. The survey spread sheet *was* the sampling frame, so the auditor was comparing aggregates drawn from that based directly on the sampling frame (the A4 figures) to survey results similarly drawn from the same sampling frame.

The “B” columns. The B columns report the survey results, with column B1 reporting the actual survey results and column B2 using a weighting factor.

²⁸⁴ The auditor alphabetized the all the cases where consumers had attorneys, and then took the first five or ten in each category, alphabetically by surname and starting with the letter “B.”. (For the national sample, he sorted alphabetically by first name, and began with the letter “A.”)

As explained in the discussion of the “national” survey, the auditor speculated, based on some results in the 2016 survey, that consumers who were deemed ineligible might have been less likely to complete a questionnaire than those who used mediation or arbitration, and the auditor found, based on responses rates that TechnoMetrica provided, that this was in fact the case. The auditor therefore asked TechnoMetrica to provide a response rate for the national, Florida, and Ohio samples this year, and the results *consistently* showed some such pattern (although, somewhat mysteriously, not for the reasons that the auditor had anticipated²⁸⁵).

According to TechnoMetrica, 31.2% of all consumers whom TechnoMetrica attempted to call in the Ohio sample completed the survey – but the percentage was 37.7% for consumers who used arbitration; 27.3% for those who resolved their case through mediation; 42.1% for consumers who withdrew their complaints, and 24.5% for those deemed ineligible. Had the participation rate among the various categories been equal, this would have moved various survey numbers closer to the aggregate numbers reported in column A4. To better highlight this, the auditor this year has derived a new column (B2) by weighting the response numbers in Column B1.

Further taking into account the margin of error for this question (+/- 8.5%), the B2 (weighted) figures are consistent with the relevant aggregates – the A4 figures that similarly exclude both attorney cases and the earlier cases in an MCSV sequence. And, as noted above, the auditor finds it significant (if not surprising) that the aggregates that he derived from the spread sheets, whose substantial accuracy was confirmed by the micro analysis, are essentially the same as the aggregates that BBB AUTO LINE calculated directly from its data.

The macro analysis therefore compares the adjusted aggregates in Column A4 to the weighted survey results in Column B2. Both exclude consumers who had lawyers and, for consumers who filed multiple complaints about the same vehicle, both omitted all but the last. The resulting comparisons are well within the margin of errors (the sampling error). And the conclusion that the A4 figures accurately reflect the sampling frame is even more strongly backed by the micro analysis.

How, then, do we get back to the earlier columns, which add back in the attorney cases and the MCSV cases that the sampling frame omitted? Column A3, derived from the same spread sheet as Column A4, adds back in the multiple complaints about the same vehicle. There’s no reason to expect a lower degree of accuracy for the cases previously omitted than for the cases included in column A4. Further, while the auditor didn’t systematically examine the

²⁸⁵ The auditor’s original speculation was that the reduced rate of completions would come from consumers who refused to start (or finish) the survey, but this doesn’t appear to be the case. The reported “refusal” rates, for both 2016 and 2017, didn’t vary much among the various types of cases. Nevertheless, for each population (National, Florida, and Ohio), by virtue of some combination of reported factors (refusals, answering machine, caller away, busy signal, etc.), the percentage of “completes” was lower for consumers reported as ineligible than for those reported as using arbitration or mediation.

cases omitted because they involved MCSVs, he did, when reviewing later cases included in an MCSV context, glance back at the earlier cases, and found no significant problems in the “omitted: cases. He also went back to the original BBB AUTO LINE spread sheet and found that the results of selected “pre-1R” cases were properly recorded.

While column A2 covers the same cases as column A3 – all but attorney cases – these figures were developed by BBB AUTO LINE directly from the underlying data base. And the A2 figures are substantially the same as the A3 figures, whose credibility has already been established.

The last step is the extension back to the A1 figures, which add back the attorney cases. Here the auditor relies on his scrutiny of 27 such cases, described in the micro analysis, which found no problems on the process metric. The auditor thus concludes that the macro analysis (drawing a bit on the micro analysis in the final steps) supports the credibility of the A1 figures as well,

C. RELIEF QUESTIONS

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 ²⁸⁶

1. Combined Results for 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 that 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 got a repurchase or replacement through mediation (49) than through arbitration (41).

Table V – 7: Remedies in Cases Identified by Consumers as Mediated or Arbitrated

	2017 BBB AUTO LINE				2017 Survey (B)	2016 Survey (C)
	BBB AUTO LINE statistics (A1)	Same, excluding attorney cases (A2)	Auditor’s stats from original spread sheet, excluding attorney cases (A3)	Auditor’s statistics from “fully adjusted” spread sheet (A4)		
BASE: med. & arb’d cases	269	172	171	151	50	42
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Repurchase/ Replacement	90	71	71	71	26	19
	33.5%	41.3%	41.5%	47.0%	52.0%	45.2%
Repair	53	47	46	27	7	12
	19.7%	27.3%	26.9%	17.9%	14.0%	28.6%
Other	21	16	17	16	7	7
	7.8%	9.3%	9.9%	10.6%	14.0%	16.7%
No Award	35	38	37	37	10	4
	39.0%	22.1%	21.6%	214.5%	20.0%	9.5%
No entry						

²⁸⁶ There were small variations in wording depending on whether the consumer had identified the case as mediated or arbitrated.

Table V—7A: Further Multi-Year Comparisons

	A1 Figures		A4 Figures	
	2017	2016	2017	2016
BASE; med & arbitrated	269 100.0%	255 100.0%	151 100.0%	121 100.0%
Replacement /Repurchase	90 33.5%	85 33.3%	71 47.0%	57 47.1%
Repair	53 19.7%	66 25.9%	27 17.9%	29 24.0%
Other	21 7.8%	20 7.8%	16 10.6%	19 15.7%
No Award	35 39.0%	84 32.9%	37 14.5%	16 13.2%

Table V-8: Consumer Agreement with BBB AUTO LINE Records on Remedies

	Verified Remedy			
	Repurchase/ Replacement	Repair	Other	No Award
BASE=MEDIATED AND ARBITRATED CASES	26 100.0%	7 100.0%	7 100.0%	10 100.0%
Refund/Replacement (Imported)	25 96.2%	- -	- -	- -
Repair (Imported)	- -	7 100.0%	- -	- -
Other (Imported)	- -	- -	7 100.0%	- -
No Award (Imported)	1 3.8%	- -	- -	10 100.0%
None on File- Ineligible/Withdrawn Cases (Imported)	- -	- -	- -	- -

Concordance: 49/50 = 98.0%

Discordance: 1/50 = 2.0%

The divergent entry here was an erroneous entry by BBB AUTO LINE in an arbitrated case, so the 2.0% discordant rate is accurate.

Turning next to Table V – 7, the key comparison is between columns A4 and B, because both exclude consumers who used attorneys and, for MCSV’s, all but the last complaint filed in

2017.²⁸⁷ The margin of error for questions posed to all 91 participants in the Ohio sample was +/-8.7%; it's substantially higher for these tables, where the relevant questions were posed only to the 50 consumers who reported using arbitration or mediation (Table V-7), the 21 consumers who reported using mediation (Table V-9), and the 29 who reported using arbitration (Table V-9). Here, it would have been on the order of +/-11.4%,²⁸⁸ and the relevant comparisons are well within that range. Indeed, the largest differential is 5.5%, less than half the sampling error.

As with the process metric, the next step is to get back to the earlier columns, which add back in the attorney cases and the MCSV cases that the sampling frame omitted. Column A3, derived from the same spread sheet as Column A4, adds back in the multiple complaints about the same vehicle. There's no reason to expect a lower degree of accuracy for the cases previously omitted than for the cases included in column A4. Further, while the auditor didn't systematically examine the cases omitted because they involved MCSVs, he did, when reviewing later cases included in an MCSV context, glance back at the earlier cases, and found no significant problems in the "omitted" cases. He also went back to the original BBB AUTO LINE spread sheet and found that the results of selected "pre-1R" cases were properly recorded.

While column A2 covers the same cases as column A3 – all but attorney cases – these figures were developed by BBB AUTO LINE directly from the underlying data base. And the A2 figures are substantially the same as the A3 figures, whose credibility has already been established.

The last step is the extension back to the A1 figures, which add back the attorney cases. Here, the auditor relies on his previously-noted examination of 27 case files for consumers with lawyers. On the remedy metric for the Ohio cases, there was complete concordance. The auditor believes the survey numbers, together with the two-year comparisons in Table V-7A and the micro analysis, indicates that the A1 figures are highly credible.

²⁸⁷ The auditor didn't use weighted averages and create a column B2 for the remedy metric. There seemed good reason, theoretically and empirically from the 2016 data, to anticipate that, e.g., ineligible consumers might be less likely to complete the survey than consumers who used arbitration. There didn't seem a comparable concern, for example, about differing response rates between consumers who got replacements and consumers whose claims were denied.

²⁸⁸ If TechnoMetrica had simply used as the sampling frame only the 151 Ohio consumers reported to have used arbitration or mediation on the fully adjusted spread sheet, and if it had interviewed 50 consumers from that base (a situation somewhat comparable to that reported above), the margin of error would have been +/- 11.4%. Similarly, for Table V-9, had the sampling frame been 74 consumers and the number interviewed 21, the margin of error would have been +/- 18.2%. And, for Table V-11, had the sampling frame been 77 consumers and the number interviewed 29, the margin of error would have been +/- 14.5%. And this ignores the further complication posed because some of the consumers disagreed with BBB AUTO LINE's records about the underlying process used, so that some of the consumers covered in Table IV-7 disagreed with BBB AUTO LINE's characterization, told the interviewer that they had been found ineligible or withdrawn their complaints, and not been asked the remedy question.).

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), 33.5% ended with a repurchase or replacement remedy, 27.5% ended with some other relief, and 39.0% ended in no relief. Further, excluding cases brought by attorneys (whose profile is discussed in Section G), Column A2, which is substantially identical to column A3, reports that 41.3% of cases ended with a repurchase or replacement remedy; 36.6% ended with some other relief; and only 22.1% ended with no award. As noted in the Introduction to the audit as a whole (preceding Chapter 1), this suggests a process that's fair to consumers but not a "slam-dunk" that wouldn't be fair to manufacturers.

2. Mediated cases

Table V-9: Final Remedy in Cases Identified by Consumers as Mediated

	2017 BBB AUTO LINE				2017 Survey (B)	2016 Survey (C)
	BBB AUTO LINE statistics (A1)	Same, excluding attorney cases (A2)	Auditor's stats from original spread sheet, excluding attorney cases (A3)	Auditor's statistics from "fully adjusted" spread sheet (A4)		
BASE: mediated cases	102	93	93	74	21	28
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Repurchase/ Replacement	49	40	40	40	13	10
	48.0%	43.0%	43.0%	54.1%	61.9%	35.7%
Repair	39	39	38	20	2	11
	38.2%	41.9%	40.9%	27.0%	9.5%	39.3%
Other	5314	14	15	14	6	7
	13.7%	15.1%	16.1%	18.9%	28.6%	25.0%

Had the sampling frame been 74 consumers and the number interviewed 21, the margin of error would have been +/- 18.2%.²⁸⁹ In that light, the match between columns A4 and B isn't unreasonable. And, critically, it's backed up by the macro analysis in Table V-10 and (for purposes of extending the auditor's conclusion to column A1) the auditor's review of 27 cases brought by attorneys on behalf of consumers.

Table V-9A: Further Multi-Year Comparisons

	A1 Figures		A4 Figures	
	2017	2016	2017	2016
BASE; med & arbitrated	102	114	74	82
	100.0%	100.0%	100.0%	100.0%
Replacement /Repurchase	49	50	40	39
	48.0%	43.9%	54.1%	47.6%
Repair	39	49	20	29
	38.2%	42.3%	27.0%	35.4%
Other	53	15	14	14
	13.7%	13.2%	18.9%	17.1%

²⁸⁹ See note 288.

Table V-10: Consumer Agreement with BBB AUTO LINE

	Refund/ Replacement	Repair	Other
BASE=MEDIATED CASES	13	2	6
	100.0%	100.0%	100.0%
Refund/Replacement (Imported)	13	-	-
	100.0%	-	-
Repair (Imported)	-	2	-
	-	100.0%	-
Other (Imported)	-	-	6
	-	-	100.0%
None on File- Ineligible/Withdrawn Cases (Imported)	-	-	-
	-	-	-

Concordance: 21/21 = 100.0%

3. Arbitrated Cases

Table V-11: Final Remedy in Cases Identified by Consumers as Arbitrated

	2017 BBB AUTO LINE				2017 Survey (B)	2016 Survey (C)
	BBB AUTO LINE statistics (A1)	Same, excluding attorney cases (A2)	Auditor's stats from original spread sheet, excluding attorney cases (A3)	Auditor's statistics from "fully adjusted" spread sheet (A4)		
BASE: arbitrated cases	167	79	78	77	29	14
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Repurchase/ Replacement	41	31	31	31	13	9
	24.5%	39.2%	39.7%	40.3%	44.8%	64.3%
Repair	14	8	8	7	5	1
	8.4%	10.1%	10.3%	9.12%	17.2%	7.1%
Other	7	2	2	2	1	-
	4.2%	2.5%	2.6%	2.6%	3.4%	-
No Award	105	38	37	37	10	4
	62.9%	48.1%	47.4%	48.1%	34.5%	28.6%

Had the sampling frame been 77 consumers and the number interviewed 29, the margin of error would have been +/- 14.5%.²⁹⁰ In that light, the match between columns A4 and B isn't unreasonable. And, critically, it's backed up by the macro analysis in Table V-10 and (for purposes of extending the auditor's conclusion to column A1) the auditor's review of 27 cases brought by attorneys on behalf of consumers.

²⁹⁰ See note 288.

Table V-11A: Further Multi-Year Comparisons

	A1 Figures		A4 Figures	
	2017	2016	2017	2016
BASE:	167	141	77	39
arbitrated	100.0%	100.0%	100.0%	100.0%
Replacement /Repurchase	41	35	31	18
	24.5%	24.8%	40.3%	46.2%
Repair	14	17	7	5
	8.4%	12.1%	9.2%	12.8%
Other	7	5	2	-
	4.2%	3.6%	2.6%	-
No Award	105	84	37	16
	62.9%	59.6%	48.1%	41.0%

While the A4 figures suggest something of a spike in non-attorney cases that went to arbitration, the A4 numbers for both 2016 and 2017 are independently corroborated, and the auditor sees no reason for concern. This is, however, a number that will bear monitoring in the future.

Table V-12: Consumer Agreement with BBB AUTO LINE Records

	Refund/ Replacement	Repair	Other	No Award
BASE: ARBITRATED CASES	13	5	1	10
	100.0%	100.0%	100.0%	100.0%
Refund/Replacement (Imported)	12	-	-	-
	92.3%	-	-	-
Repair (Imported)	-	5	-	-
	-	100.0%	-	-
Other (Imported)	-	-	1	-
	-	-	100.0%	-
No Award (Imported)	1	-	-	10
	7.7%	-	-	100.0%
None on File- Ineligible/Withdrawn Cases (Imported)	-	-	-	-
	-	-	-	-

Concordance: 28/29 = 96.6%

Discordance: 1/29 = 3.4%

The sole discordance, as noted above, appears to be an error in BBB AUTO LINE’s data entry, one of the few the auditor has encountered; it doesn’t pose a serious problem, although, in

the context of a metric with only 29 entries, it results in a higher discordance rate than the auditor finds elsewhere.

Table V – 13: Did you accept the arbitrator's decision?

	2017 Audit	2016 Audit
BASE: Arbitrated cases with awards to consumers; “not sure” responses to this question excluded	19	10
	100.0%	100.0%
Yes	17	7
	89.5%	70.0%
No	2	3
	10.5%	30.0%

Table V-14: Acceptance of different types of remedies

	Refund/ Replacement	Repair	Other	Total
BASE: Arbitrated cases with awards to consumers; “not sure” responses to this question excluded	13	5	1	19
	100.0%	100.0%	100.0%	100.00%
Yes	13	4	-	17
	100.0%	80.0%	-	89.5%

Table V- 15: Consumer Agreement with BBB AUTO LINE Records

	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 V – 16: Which of the following best describes why you withdrew your complaint?

	2017 Audit
BASE: withdrawn case	7 100.0%
You settled the matter or your car was fixed	2 28.6%
You sold the car	2 28.6%
Some other reason	3 42.9%

The audit examined the files for the five consumers who either sold the car or withdrew for some other reason, and saw no pattern of problems. For example, two consumers indicated that the problem had gone away at the time they withdrew; two consumers didn't qualify for lemon relief or, under the manufacturer's program guide, for repurchase or replacement in a warranty case.

D. COMPLIANCE QUESTIONS

Table V-17: Which of the following applies to your case? The manufacturer...

	Mediated		Arbitrated*		Med/Arb Combined	
	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE
BASE: *	20	104	17	42	37	146
	100.0%		100.0%		100.0%	100.0%
Carried out remedy within the time specified, including extensions to which you agreed	18	97	14	39	32	136
	90.0%	93.3%	82.4%	92.9%	86.5%	93.2%
Carried out remedy after the time specified, including any extension to which you agreed	2		2		4	
	10.0%		11.8%		10.8%	
Has not yet carried out the remedy, but the time to do so has not yet expired	-		-	1	-	1
	-		-	2.4%	-	0.7%
Has not yet carried out the remedy and the time to do so has expired	-	7	1	2	1	9
	-	6.7%	5.9%	4.8%	2.7%	6.1%%
(Failure to comply was the fault of the consumer)		(5)		(2)		(7)
		(4.8%)		(4.8%)		(4.8%)
Time for compliance has expired, performance not verified.						
	-	-	-			

* *BASE: For mediation, all cases reported by the consumer as mediated. For arbitration, all cases where the consumer reported that they used arbitration, the arbitrator awarded them relief, and they accepted the award. "Not sure" replies to this question were excluded in calculating percentages for the survey results.*

The sole non-compliant matter in the survey is a case where there were still ongoing disputes about the payment amount and process at the time of the survey, and the arbitrator has since issued a clarifying decision.

Turning now to some comparative figures that didn't fit neatly into Table V-17, the numbers for 2016 and 2017, in both cases using figures unadjusted by the auditor's review, show reasonable consistency.

Table V-17A – comparative analysis on compliance (mediated and arbitrated combined)

	2017		2016	
	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE
BASE: *	37	146	35	150
	100.0%	100.0%	100.0%	100.0%
Carried out the settlement/terms of decision within the time specified, including any extension to which you agreed	32	136	28	142
	86.5%	93.2%	80.0%	94.7%
Carried out the settlement/terms of decision after the time specified, including any extension to which you agreed	4		5	5
	10.8%		14.3%	3.3%
Has not yet carried out the settlement/terms of decision, but the time to do so has not yet expired	-	1	-	
	-	0.7%	-	
Has not yet carried out the remedy and the time to do so has expired (Failure to comply was the fault of the consumer)	1	9	2	3
	2.7%	6.1%	5.7%	2.0%
Time for compliance has expired, performance not verified		(7)		
		(4.8%)		

**BASE: Same as for med/arbitration in Table V-17 above*

(Table V-18 was reserved for a question directed only to consumers reporting non-compliant repair remedies, and there were no such consumers.)

E. TIMING QUESTIONS

1. Mediated and Arbitrated Cases

As in past years, BBB AUTO LINE’s timing figures turn on the timing of mediated and arbitrated cases, and the auditor’s scrutiny focuses primarily on those cases. The analysis in this section is thus based on 50 cases from a survey sample of 91. BBB AUTO LINE is to be commended for focusing on these 50 cases; the 41 cases that were excluded were, on average, far *more* likely to be resolved quickly, so the reporting basis used by BBB AUTO LINE probably lowered their measure of performance.

Table V–19: Time to Resolve their Cases

	2017			2016		
	Mediated	Arbitrated	Med/Arb Combined	Mediated	Arbitrated	Med/Arb Combined
BASE=mediated or arbitrated cases	21 100.0%	29 100.0%	50 100.0%	28 100.0%	14 100.0%	42 100.0%
Within 40 days	21 100.0%	10 34.5%	31 62.0%	23 82.1%	11 78.6%	34 81.0%
41 or more	- -	19 65.5%	19 38.0%	5 17.9%	3 21.4%	8 16.7%

As noted in Table V-20, 4 of the consumers whose cases took more than 40 days, of whom reported on arbitrated cases, said the delay resulted from their own actions. Whatever the legal significance of this, it provides some context for BBB AUTO LINE’s numbers. If those cases had been timely, the 65.5% figure for delay in arbitration would have dropped to 51.7%, the overall figure would have dropped to 30%.

Table V–19A: Comparative analysis of timing, mediated and arbitrated cases combined.

	2017		2016	
	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE
BASE=mediated or arbitrated cases	50 100.0%	273 100.0%	42 100.0%	255 100.0%
Within 40 days	31 62.0%	199 74.0%	34 81.0%	200 78.5%
41 or more	19 38.0%	74 26.0%	8 16.7%	55 21.5%

Table V-20: Did it take more than 40 days because of some action you took?

	Mediated	Arbitrated	Med/Arb Combined
BASE=med. or arbitrated cases, > 40 days, “not sure” responses excluded.	-	18	18
	-	100.0%	100.0%
Yes	-	4	4
	-	22.2%	22.2%
No	-	14	14
	-	77.8%	77.8%

Table V-21: Did you contact the manufacturer – not just the dealer – before you filed your complaint?

	Mediated	Arbitrated	Med/Arb Combined
BASE: mediated or arbitrated cases between 41 and 47 days, “not sure” responses to this question excluded	-	6	6
	-	100.0%	100.0%
Yes	-	6	6
	-	100.0%	100.0%
No	-	-	-
	-	-	-

Table V-22: Consumer Agreement with BBB AUTO LINE Records

	Within 40 Days	41 + Days
BASE= mediated or arbitrated cases.	31	19
	100.0%	100.0%
Within 40 Days (Imported)	31	2
	100.0%	10.6%
41 + Days (Imported)	-	17
	-	89.4%

Concordance: 48/50 = 96.0%

Discordance: 2/50 = 4.0%

2. Withdrawn Cases

Table V – 23: Days until complaints were withdrawn, as reported by consumers who reported withdrawing their complaints

BASE=withdrawn cases	7
	100.0%
Within 40 days	6
	85.7%
41 or above	1
	14.3%

F. DOCUMENTS AND CONTACTS

Table V–24: After you first contacted BBB AUTO LINE, did you get a claim form and an explanation of the program?

	2017	2016
BASE: all respondents, “not sure” responses to this question excluded	84	59
	100.0%	100.0%
Yes	81	59
	89.0%	92.2%
No	3	-
	3.3%	-

Three consumers reported that they hadn’t received the claim forms. But the auditor examined the underlying files for those consumers, and each contained a complaint forms signed and returned by the consumer.²⁹¹

Table V–25: How clear and understandable were these documents?

	2017	2016
BASE: all respondents, “not sure” responses to this question excluded	80	58
	100.0%	100.0%
Very	48	44
	60.0%	75.9%
Somewhat	31	13
	38.8%	22.4%
Not at all	1	1
	1.3%	1.7%

²⁹¹ 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 though not always 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.

Table V-26: And how helpful were they?

	2017	2016
BASE: all respondents, “not sure” responses to this question excluded.	81 100.0%	59 100.0%
Very	32 39.5%	34 57.6%
Somewhat	39 48.1%	15 25.4%
Not at all	10 12.3%	10 16.9%

Table V-26 shows that 98.7% of the consumers surveyed found BBB AUTO LINE’s documents at least somewhat understandable, with 60.0% reporting that they were very understandable. Table V–27 shows that 87.7% reported that they were at least somewhat helpful, with 39.5% finding them very helpful.

Table V-27: After you reached a settlement, did you get an explanation by letter or email describing the terms of the settlement?

	2017	2016
BASE: mediated cases, “not sure” responses to this question excluded	18 100.0%	26 100.0%
Yes	18 100.0%	26 100.0%
No	- -	- -

Table V – 28: Did you get a notice by letter or email telling you when and where to go for your hearing or vehicle inspection?

	2017	2016
BASE: arbitrated cases, “not sure” responses to this question excluded	28 100.0%	14 100.0%
Yes	28 100.0%	14 100.0%
No	- -	- -

Table V – 29: Did you get a copy by letter or email of the arbitrator's decision?

	2017	2016
BASE: Arbitrated cases, “not sure” responses to this question excluded	29	14
	100.0%	100.0%
Yes	29	13
	100.0%	92.9%
No	-	1
	-	7.1% ²⁹²

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?

	Mediated cases	Arbitrated cases; accepted award	Previous columns combined	Combined figures for 2016
BASE: See column titles	21	22	43	35
	100.0%	100.0%	100.0%	100.0%
The staff contacted me by letter or email	7	5	12	7
	33.3%	22.7%	27.9%	20.0%
The staff spoke to me	3	4	7	4
	14.3%	18.2%	16.3%	11.4%
Both of those	9	10	19	14
	42.9%	45.5%	44.2%	40.0%
Neither of those	-	2	2	6
	-	9.1%	4.7%	17.1%
Something else	2	1	3	4
	9.5%	4.5%	7.0%	11.4%

²⁹² The one consumer who said that she didn’t get an arbitrator’s decision in 2018 reached a consent settlement during the hearing. She presumably didn’t recall that the settlement was embodied in a consent decision, which resides in her file.

**G. COMPARING CLAIMS FILED BY CONSUMERS WHO HAVE COUNSEL
WITH CLAIMS FILED DIRECTLY BY CONSUMERS**

Table V – 32: Comparisons on process for resolving complaints

	Claims filed by attorneys on behalf of consumers	Claims filed directly by consumers
Mediation	11	91
	7.2%	28.8%
Arbitration	88	79
	57.5%	25.0%
Ineligible	21	124
	13.7%	39.2%
Withdrawn	33	22
	21.5%	7.0%
TOTAL	153	316
	100.0%	100.0%

**Table V – 33: Comparison on remedies:
Combined Mediation and Arbitration²⁹³**

Repurchase/Replacement	19	71
	19.6%	41.3%
Repair	6	47
	6.2%	27.3%
Other award	5	16
	5.2%	9.3%
No award	67	38
	69.1%	22.1%
TOTAL	97	172
	100.0%	100.0%

According to BBB AUTO LINE statistics, consumers in Ohio had lawyers in over 32% of the cases they filed before BBB AUTO LINE, compared to about 19% of the cases filed in Florida and nationally. And cases where consumers had counsel had a very different profile than cases without lawyers. On the whole, consumers with lawyers are far less likely than others to reach mediated settlements under BBB AUTO LINE auspices, particularly settlements that provide for less than a repurchase or replacement. Further, through mediation and arbitration

²⁹³ For reasons explained in the text, and in light of the national results in Section V.G, the auditor presented remedies data only on the basis of combined mediated and arbitrated cases.

combined, consumers with lawyers are less likely to obtain a repurchase or replacement, far less likely to obtain a repair or “other” remedy” and far more likely to go to arbitration and have their claims rejected.

As noted above, moreover, the Ohio audit this year examined 27 files in cases where the consumer had an attorney, including five cases where the attorney withdrew the complaint. In three of those five cases, the attorneys told BBB AUTO LINE staff they had negotiated a settlement for their client’s case. Of course, it wasn’t only consumers with attorneys who withdrew cases for this reason, but it seemed to the auditor that, for consumers with attorneys, this occurred with greater frequency. There’s no easy way to quantify the impact of these settlements; the case handlers’ notes don’t identify the remedies. Still, the auditor suspects that, in most cases involving withdrawals by attorneys who settled their clients’ cases, the settlement provided for repurchases or replacements remedies. Therefore, many of the 33 withdrawals reported on Table V-32 probably involved settlements with repurchase or replacement remedies that didn’t result from BBB AUTO LINE mediation and don’t appear on Table V-33.²⁹⁴

All in all, this suggests that consumers with attorneys may have obtained numerous repurchase or replacement remedies that don’t appear on BBB AUTO LINE’s charts. Indeed, looking at these “hidden” remedies might have affected the charts, it’s possible they attorneys representing consumers were at least as successful as those without attorneys in obtaining repurchase or replacement remedies before the BBB AUTO LINE process closed. The auditor has previously noted that a repurchase or replacement obtained through mediation is equally useful to the consumer as a similar remedy obtained through arbitration. By extension, a settlement after the complaint was filed but outside the program, similarly obtaining a repurchase or replacement remedy, is also equally valuable to the consumer, though properly counted as a withdrawal by BBB AUTO LINE.²⁹⁵

The numbers in Table V-33 still show meaningfully different profiles from the *program’s* point of view, and in particular they show that, when consumers go to arbitration, consumers with lawyers are more likely to lose – and the losses in attorney cases tends to inflate the overall denial rate for arbitrated cases. (Perhaps one reason for attorneys’ performance in litigation is that they more often request a hearing on the papers rather than in person or by telephone.) Even

²⁹⁴ To do a more precise analysis would require a case-by-case analysis of all withdrawn cases, by consumers with attorneys as well as consumers without, to determine how many of each withdrew because they obtained a repurchase or replacement remedy. Further, if these sorts of cases are to be counted as successes for the consumers (a very reasonable assumption), some additional cases would need to be considered in the “total” figures for column III-32, which would have a separate effect on the relevant percentages.

²⁹⁵ The consumer’s relief might also be impacted by attorney’s fees if the manufacturer didn’t separately pay the cost of such fees. In most cases where consumers had lawyers, the auditor has no way of knowing the fee arrangements between the consumers and their lawyers.

more tellingly, when Ohio consumers without lawyers do obtain repurchase or replacement remedies, 40% rejected the award.

It's not clear precisely what's happening here. Perhaps attorneys would argue that arbitrators hold them to a higher standard in hearings than they apply to consumers who represent themselves, or perhaps they might argue that they get the harder cases. On balance, though, it seems that at least some attorneys may view the BBB AUTO LINE process as little more than an impediment to getting into court.

* * *

Before leaving this subject, though, the auditor wants to add another factor to the mix. As noted last year, some attorneys handle relatively few cases before BBB AUTO LINE in a year, while others handle hundreds and hundreds. So, in last year's audit, the auditor took a further step, which he didn't repeat this year but warrants mention. Specifically, he analyzed the attorney cases and concluded that three firms accounted for 58% of all attorney cases. And, in the 1062 cases brought by those firms in 2016, only 33 (3%) led to a settlement or an arbitrated award that the consumer accepted. For consumers represented by those firms, moreover, 69 of the 90 (76%) who were awarded a repurchase or replacement remedy in arbitration rejected the remedy.

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 V – 34: How would you grade the arbitrator on understanding the facts of your case?

	Total	All Award	Award: Replace-ment/ Repurchase	Award: Repair/ Other	No Award
BASE: ARBITRATED CASES, “NOT SURE” EXCLUDED	29	19	13	6	10
	100.0%	100.0%	100.0%	100.0%	100.0%
A=Excellent	11	11	13	2	10
	37.9%	57.9%	100.0%	33.3%	100.0%
B=Good	6	5	9	2	-
	20.7%	26.3%	69.2%	33.3%	-
C=Average	4	1	3		1
	13.8%	5.3%	23.1%		10.0%
D=Poor	4	2	1	2	3
	13.8%	10.5%	7.7%	33.3%	30.0%
Failing Grade	4		-		
	13.8%				
MEAN	2.55	3.32	3.62	2.67	1.10

Table V – 35: How would you grade the arbitrator on objectivity and fairness?

	Total	All Award	Award: Replacement/ Repurchase	Award: Repair/ Other	No Award
BASE: ARBITRATED CASES, “NOT SURE” EXCLUDED	29	19	13	6	10
	100.0%	100.0%	100.0%	100.0%	100.0%
A=Excellent	16	16	12	4	-
	55.2%	84.2%	92.3%	66.7%	
B=Good	4	2	1		2
	13.8%	10.5%	7.7%		20.0%
C=Average	2	-	-	1	2
	6.9%			16.7%	20.0%
D=Poor	3	1	-	1	2
	10.3%	5.3%		16.7%	20.0%
F=Failing Grade	4	-	-		4
	13.8%				40.0%
MEAN	2.86	3.74	3.92	3.16	1.20

Table V-36: How would you grade the arbitrator on reaching an impartial decision?

	Total	All Award	Award: Replacement/ Repurchase	Award: Repair/ Other	No Award
BASE: ARBITRATED CASES, “NOT SURE” EXCLUDED	29	19	13	6	10
	100.0%	100.0%	100.0%	100.0%	100.0%
A=Excellent	15	15	12	3	-
	51.7%	78.9%	92.3%	50.0%	
B=Good	1	1	1		-
	3.4%	5.3%	7.7%		
C=Average	4	2	-	2	2
	13.8%	10.5%		33.3%	20.0%
D=Poor	5	1	-	1	4
	17.2%	5.3%		16.7%	40.0%
F=Failing Grade	4	-	-		
	13.8%				
MEAN	2.62	3.58	3.92	3.33	0.80

Table V – 37: How would you grade the arbitrator on coming to a reasoned & well thought-out decision?

	Total	All Award	Award: Replace-ment/ Repurchase	Award: Repair/ Other	No Award
BASE: ARBITRATED CASES, “NOT SURE” EXCLUDED	27 100.0%	19 100.0%	13 100.0%	6 100.0%	8 100.0%
A=Excellent	14 51.9%	14 73.7%	11 84.6%	3 50.0%	-
B=Good	2 7.4%	2 10.5%	2 15.4%	2 33.3%	-
C=Average	4 14.8%	2 10.5%	-	1 16.7%	2 25.0%
D=Poor	4 14.8%	1 5.3%	-		3 37.5%
F=Failing Grade	3 11.1%	-	-		3 37.5%
MEAN	2.74	3.53	3.85	3.16	0.88

**Table V – 38:
ARBITRATOR SATISFACTION COMPOSITE**

	Total	All Award	Award: Replacement/Repurchase	Award: Repair/Other	No Award
Understanding facts	2.55	3.32	3.62	2.67	1.10
Objectivity and fairness	2.86	3.74	3.92	3.16	1.20
Reaching and impartial decision	2.62	3.58	3.92	3.33	0.80
Coming to a reasoned & well thought-out decision	2.74	3.53	3.85	3.16	0.88
AVERAGE	2.69	3.55	3.83	3.08	1.00

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

Composite Means (2016)

Consumers who received awards	3.47
Consumers with no awards	1.62

Composite Means (2015)

Consumers who received awards	324
Consumers with no awards	1.45

As discussed with the prior samples, 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, 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.

To this end, the auditor began, in the 2015 audit, to present separate breakouts for consumers with awards and consumers who were denied awards. Not surprisingly, consumers who got relief in arbitration tended to view the arbitrators far more favorably than those who

didn't. For the 2017 audit, the auditor has further refined his analysis, and distinguished the satisfaction rates, among consumers who did get awards, between those who received repurchase and replacement awards and those who received lesser relief – which often means they didn't get all that they wanted.²⁹⁶ Further, based on materials provided by TechnoMetrica last year, he undertook similar calculations for 2016.²⁹⁷

The results not only showed the patterns the auditor had anticipated, they also showed a curious result for 2017. The satisfaction rate for consumers who received awards rose, although this is likely explained by some shift in the distribution of such awards; as shown in Table V-7, a higher percentage of surveyed consumers this year reported repurchase or replacement awards, while a lower percentage reported repairs or “other” remedies. However, the approval ratings among consumers who *lost* in arbitration declined substantially.

²⁹⁶ While arbitrator's sometimes issue decisions providing for repair or other lesser remedies when the consumer had also sought repurchase or replacement, in some cases repurchase and replacement isn't even an option. This might happen, for example, when the car is too old for lemon law relief but still qualified for warranty relief, and the manufacturer has agreed to warranty arbitration only for repairs or reimbursement of expenses.

²⁹⁷ On a more technical point, the auditor undertook these composite calculations himself and, as he did so, he used a slightly modified approach for the new calculations that's far easier to perform but yields substantially the same results as his earlier approach. Previously, he averaged each individual grade given by consumers to each of the four question described above. Now, he took the mean grades for each of the original question (figures that TechnoMetrica had already calculated) and averaged them together. The new approach, which is easier to work with, could yield slightly different results if there were substantially different rates of “not sure” responses to some questions than to others.

2. Satisfaction with BBB AUTO LINE staff

Table V – 39: How would you grade BBB AUTO LINE staff on objectivity and fairness?

	2017 Audit
BASE: TOTAL ARBITRATED OR MEDIATED CASES (“NOT SURE” EXCLUDED)	50
	100.0%
A=Excellent	49
	100.0%
B=Good	33
	67.3%
C=Average	7
	14.3%
D=Poor	6
	12.2%
F=Failing Grade	1
	2.0%
MEAN	3.39

Table V-40: How would you grade BBB AUTO LINE Staff on efforts to assist you in resolving your claim?

	2017 Audit
BASE: TOTAL ARBITRATED OR MEDIATED CASES (“NOT SURE” EXCLUDED)	50
	100.0%
A=Excellent	49
	100.0%
B=Good	32
	65.3%
C=Average	8
	16.3%
D=Poor	6
	12.2%
F=Failing Grade	1
	2.0%
MEAN	3.37

Table V-41: Overall, what grade would you give BBB AUTO LINE?

	2017 Audit
BASE: TOTAL ARBITRATED OR MEDIATED CASES (“NOT SURE” EXCLUDED)	50
	100.0%
A=Excellent	50
	100.0%
B=Good	30
	60.0%
C=Average	10
	20.0%
D=Poor	5
	10.0%
F=Failing Grade	2
	4.0%
MEAN	3.24

**Table V – 42
BBB AUTO LINE STAFF EFFORTS –
SATISFACTION COMPOSITE FOR CONSUMERS
WHO USED MEDIATION OR ARBITRATION**

	Mean
Objectivity and fairness	3.39
Efforts to resolve claim	3.37
Overall grade	3.24
AVERAGE	3.33

Composite mean (2017):	3.33
Composite mean (2016):	3.01
Composite mean (2015)	2.94

Table V – 43: Would you recommend BBB AUTO LINE to friends or family?

	Total	Med/Arb
BASE: ANSWERING, NOT SURE“NOT SURE” EXCLUDED	85	49
	100.0%	100.0%
Yes	65	43
	76.5%	87.8%
No	20	6
	23.5%	12.2%

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%

Composite Means (2015)

All consumers: 64%
 Consumers with mediations or arbitrations: 69%

Among the 10 consumers in the survey who said they went to arbitration and lost, half said they would recommend BBB AUTO LINE.

Appendix
Survey Instrument

Except for some added emphases, 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 first learn about 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 2017.

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 your case. 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)²⁹⁸

²⁹⁸ The survey was constructed so that each consumer was given only four of the five options, omitting the option that appeared in BBB AUTO LINE records and that, in responding to Question 3,

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 REFUND²⁹⁹ 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. 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)³⁰⁰

the consumer had said was wrong.

²⁹⁹ Although BBB AUTO LINE uses “repurchase” for remedies where the dealer takes back the car, the auditor and TechnoMetrica, in light of some consumer confusion last year, 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.”

³⁰⁰ 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. 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 remedy³⁰¹

For all consumers who used arbitration:

9. And did you accept the arbitrator's decision?

³⁰¹ 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. OR
 - 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 11e:

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 2016.

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 2016, 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--sometimes by mail, sometimes by UPS or FedEx, or sometimes by email if you request that.

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 by letter or email describing the terms of the settlement?

For arbitrated cases:

20. Did you get a notice by letter or email telling you when and where to go for your hearing or vehicle inspection?

21. Did you get a copy by letter or email of the arbitrator's decision?

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 letter or email
- 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?