

**2021 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 mechanism (“IDSMS” or “mechanism”) that offers mediation and arbitration services to resolve automobile warranty disputes – including disputes subject to the Federal Magnuson Moss Warranty Act<sup>1</sup> and disputes under state lemon laws. The program is administered by BBB National Programs, Inc., with offices in McLean, Virginia.<sup>2</sup> Though local BBB offices aren’t part of BBB National Programs,<sup>3</sup> Inc., they provide hearing sites, hearing administration, and logistical support for BBB AUTO LINE arbitrations.

The Magnuson Moss Act, enacted in 1975, addressed numerous warranty-related issues, as did FTC Rules 700-703,<sup>4</sup> first promulgated later that year. Among other provisions, and while leaving intact existing remedies under state law in warranty disputes, Magnuson Moss allowed attorneys’ fees in cases brought under the Act, and provided limited access to Federal courts for such cases.<sup>5</sup> But, at the same time, Magnuson also announced a policy “to encourage warrantors to establish procedures whereby consumer disputes are fairly and expeditiously settled through informal dispute settlement mechanisms.”<sup>6</sup> FTC Rule 703.2 provides for such mechanisms (“IDSMS”). If a warrantor – a term this audit uses interchangeably with “manufacturer” – uses a

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<sup>1</sup> 15 U.S.C. § 2301 et seq.

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

<sup>3</sup> They are part of the Better Business Bureau, a separate organization.

<sup>4</sup> 16 C.F.R. §§ 700-703.

<sup>5</sup> 15 U.S.C. § 2310(d). Subsection (d)(2) provided for reasonable attorneys’ fees based on actual time expended, unless the court determined such award to be inappropriate. Subsection (d)(1) provided for access to Federal district courts, as well as state courts, for Magnuson Moss suits, subject to limitations in subsection (d)(3). Subsection (d)(2) in turn provided,

No claim shall be cognizable in a suit brought under paragraph (1)(B) of this subsection—

(A) if the amount in controversy of any individual claim is less than the sum or value of \$25;

(B) if the amount in controversy is less than the sum or value of \$50,000 (exclusive of interests and costs) computed on the basis of all claims to be determined in this suit; or

(C) if the action is brought as a class action, and the number of named plaintiffs is less than one hundred.

<sup>6</sup> 15 U.S.C. § 2310(a)(1).

mechanism that meets the requirements of the Act, the warrantor can “incorporate[] in a written warranty a requirement that the consumer resort to such procedure before pursuing any legal remedy under this section.”<sup>7</sup> Magnuson Moss doesn’t require that decisions of the IDSM bind the parties<sup>8</sup>; however, BBB AUTO LINE, following the typical approach in state lemon laws as discussed below, binds the *manufacturer* if the consumer accepts a decision.<sup>9</sup>

The Magnuson Moss Act operates against a tapestry of state law, including the Uniform Commercial Code that every state has adopted. And since 1982, every state, starting with Connecticut, has also passed a lemon law. These laws vary from state to state but, at their core, they create a statutory right to a repurchase or replacement remedy for certain warranty violations. Lemon laws typically have age restrictions, and often mileage restrictions, for when a defect must first be reported and/or when a complaint must be filed; these limits are generally shorter than manufacturers’ bumper-to-bumper warranties. In addition to creating statutory remedies, moreover, lemon laws often require that, before consumers can file a case, they afford the manufacturer or its agents certain opportunities to repair a vehicle.<sup>10</sup> Alternatively, or additionally, they may allow consumers who meet specified standards to benefit from a presumption that they’ve provided the manufacturer with reasonable opportunities to attempt repairs.

Lemon laws and their implementing regulations were drawn against the backdrop of the Magnuson Moss Act and *its* implementing regulations,<sup>11</sup> as shown by their treatment of IDSMs.

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<sup>7</sup> 15 U.S.C. § 2310(a)(3)(C). As Rule 703.2(b)(3) makes explicit (and requires warrantors to disclose with any prior resort requirement), prior resort doesn’t apply “if a consumer chooses to seek redress by pursuing rights and remedies not created by Title I of the Act, . . .”

<sup>8</sup> Rule 703.2(g) provides that “[t]he warrantor shall act in good faith in determining whether, and to what extent, it will abide by a Mechanism decision.”

<sup>9</sup> BBB AUTO LINE Rule 21.I, available at <https://bbbprograms.org/programs/all-programs/bbb-AUTO LINE/how-bbb-auto-line-works>; BBB AUTO LINE Arbitration Rules (California), Rule, available at [https://BBB National Programs-bbbp-stf-use1-01.s3.amazonaws.com/docs/default-source/auto-line/bbb-auto-line-ca-rules-booklet-2019.pdf?sfvrsn=e95d4591\\_4](https://BBB National Programs-bbbp-stf-use1-01.s3.amazonaws.com/docs/default-source/auto-line/bbb-auto-line-ca-rules-booklet-2019.pdf?sfvrsn=e95d4591_4), Rule 23(f).

<sup>10</sup> These often set two benchmarks: one based on days the car was out of service (being repaired), the other based on the number of repair opportunities or the number of days out of service. Many statutes require that the manufacturer (rather than its dealers) have an opportunity for a “final repair attempt,” and these often require that the letter providing that notice be sent by certified mail.

<sup>11</sup> 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,

IDSMS that satisfy Magnuson Moss standards, and sometimes additional standards set out by state law, are authorized to decide lemon law claims under state law. Also, as noted above, while Magnuson Moss doesn't require that manufacturers agree in advance to be bound by Mechanism decisions, lemon laws typically provide that, once a consumer accepts an arbitrator's decision, the manufacturer is bound.<sup>12</sup>

Another way that two lemon law regimens build on the Magnuson Moss structure involves an annual audit; Florida and Ohio impose their own audit requirements. Going beyond Magnuson Moss, moreover, Florida, Ohio and some other states have certification procedures for IDSMS – procedures that the FTC declined to adopt on a national scale.<sup>13</sup>

This audit examines compliance by warrantors with disclosure provisions under Federal, Florida, and Ohio law (Chapter 1); BBB AUTO LINE's operations (Chapter 2); and surveys that reached, with some overlap between the Federal and state surveys,<sup>14</sup> 402 consumers in a national sample, 204 consumers from Florida, and 62 consumers from Ohio (Chapter 3). (The surveys were conducted by TechnoMetrica Marketing Intelligence, Inc., and the state surveys were essentially censuses rather than surveys, because TechnoMetrica attempted to reach every eligible consumer in each state who hadn't used an attorney.<sup>15</sup>) Chapters 2 and 3 have substantial overlap, but some matters (including the accuracy of BBB AUTO LINE's reporting on the process used in its case and the remedies or denials in those cases) are covered primarily in Chapter 3, while others (including ineligibility decisions and problems with consumers' access to BBB AUTO LINE's online portal) are covered primarily in Chapter 2.

*Lemon law provisions and the scope of the audit.* Manufacturers typically make disclosure about BBB AUTO LINE, including disclosure in warranty manuals, to consumers nationwide; the auditor examines these for disclosure with Magnuson Moss, Florida, and Ohio provisions. Additionally, most warranty manuals include a more expansive discussion directed

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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](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).

<sup>12</sup> E.g., OHIO ADMIN. CODE 109:4-4-03 (F).

<sup>13</sup> FL. STAT. § 681.108(1); OHIO REV. CODE 1345.77(B); 64 Fed. Reg. 19700, 19707-08 (1999) (FTC decision not to adopt national certification).

<sup>14</sup> The 62 Florida consumers and 17 Ohio consumers who completed interviews for the national survey were also included in the state surveys. All told, there were 585 interviews, and 34.9% of the interviewees had Florida cases.

<sup>15</sup> In Ohio, TechnoMetrica continued attempting to reach hard-to-contact consumers until it had tried four calls to each consumer.

specifically to California consumers; the auditor examines these, too, but only for compliance with Federal provisions. With respect to disclosure provisions, the auditor can draw reasonably clear lines between the regulatory regimes covered by the audit (Magnuson Moss and Florida and Ohio lemon laws) and those that aren't (all other lemon laws).

However, things sometimes become more complicated elsewhere. BBB AUTO LINE has two sets of rules, one directed specifically to California consumers. The California rules, though, apply California lemon law standard to determine eligibility for the program – including eligibility for Magnuson Moss relief. Further, most program summaries provide for consideration of lemon law claims (some provide *only* for consideration of such claims), and the auditor concludes the “warranty” coverage is to at least some extent bounded by lemon law limits. In situations like these, it’s harder to draw a clean line between lemon law analysis and Magnuson Moss analysis; thus, the auditor is sometimes drawn into discussions of lemon laws other than those of Florida and Ohio.

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The pandemic continued to affect BBB AUTO LINE’s operations in 2021. According to one source, only 2.5% of the population had at least one dose of Covid vaccine on January 15 of that year.<sup>16</sup>

In March 2020, BBB AUTO LINE abandoned in-person hearings for telephone hearings and (increasingly) video hearings, and it’s expressly noted in a footnote to Rule 9 of its national rules (and in introductory text to its California rules) that all non-document hearings will be held virtually until further notice. Since then, arbitrators no longer inspect or test drive the vehicles involved in the arbitration, as they did routinely before the pandemic. If arbitrators need an inspection and test drive, they can request independent inspections by technical examiners. Many courts and other bodies similarly abandoned in-person hearings during the pandemic, if they held hearings at all.<sup>17</sup> Although many of these bodies have since resumed in-person hearings, this has hardly been consistent practice.<sup>18</sup> BBB AUTO LINE has yet to resume in-

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<sup>16</sup> The auditor found this data with a search for “coronavirus vaccine statistics” on Google, drawing on a chart that Google attributes to “Our World in Data.”

<sup>17</sup> See <https://www.ncsc.org/newsroom/public-health-emergency> (guides to virtual hearings in state courts). As of this writing, the state-run Florida New Motor Vehicle Arbitration Board continues to hold its hearings virtually, <https://www.myfloridalegal.com/lemonlaw> (checked June 15, 2021) and didn’t hold any hearings during the second and third quarters of 2020, <http://myfloridalegal.com/pages.nsf/Main/696c4cd4b287529085256cc9005d5869>.

<sup>18</sup> See, e.g., In re: Court Operations During the Covid-19 Pandemic, Administrative Order Twenty-Four, U.S. District Court (E.D. Ark.) (July 19, 2022) (announcing remote proceedings wherever practicable for criminal and civil hearings), at <https://www.are.uscourts.gov/sites/are/files/AO24.pdf>. See generally

person hearings, and it advises that it hasn't received consumer requests for such hearings and, notwithstanding the text in its rules, it would accommodate such requests if they were made. Beyond that, moreover, it intends to retain some of current *status quo* going forward.

The pandemic also led to supply chain problems that impacted compliance with repurchase awards. With new cars in short supply, consumers in 2021 increasingly preferred replacement vehicles to repurchase resolutions<sup>19</sup> – but, by virtue of the same supply shortage, manufacturers in 2021 often had difficulties in securing replacements. Consumers who wanted replacements often agreed to lengthened compliance times or agreed to extend previously-set compliance times, so these lengthened time frames don't always show up as “delayed” compliance.<sup>20</sup> A similar problem extended to some repair cases where manufacturers sometimes had trouble securing replacement parts, although, in such cases, consumers could go back and seek a repurchase or replacement remedy.

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For the 2021 audit, the auditor concludes that BBB AUTO LINE's operations substantially comply with Federal, Florida, and Ohio provisions, although he has some questions and concerns. These are all discussed in Chapter 2 and key questions and concerns are summarized below. Unless otherwise noted, figures in the summary below are drawn from the national sample, and percentages are based on eligible and non-withdrawn cases that closed during 2021.

- Although most cases are resolved under lemon laws, many manufacturers' program summaries allow repurchase or replacement remedies in non-lemon-law cases, even if their express warranties don't provide for such relief.
- Of 4351 eligible cases that weren't subsequently withdrawn, 2728 (63.9%) were resolved, at least initially, through mediation.<sup>21</sup>

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<https://www.uscourts.gov/about-federal-courts/court-website-links/court-orders-and-updates-during-covid19-pandemic>.

<sup>19</sup> Some lemon laws incentivize consumers to choose replacements. For example, New York allows a usage fee adjustment for repurchases but not replacements. N.Y. GEN. BUS. LAW § 198-1(c)(1). Absent such incentive, though, the auditor is advised that consumers more often preferred a repurchase to a replacement car of the type that had already disappointed them. Indeed, Florida's lemon law provides that consumers can't be compelled to take a replacement in lieu of a repurchase. FL. STAT. § 681.104(2)(b).

<sup>20</sup> Some settlements provide for reimbursement of expense for rental vehicles.

<sup>21</sup> This bullet point draws on figures in Table III-5. For consumers who didn't use an attorney, 77.0% were resolved, at least initially, through mediation. For those with an attorney, it was 18.7%.

- While not all consumers who used mediation were ultimately satisfied with the results, 1363 complaints, about 31.3% of the total eligible and non-withdrawn complaints, ended in repurchase or replacement remedies *through mediation*.<sup>22</sup> Further, among those who used arbitration, another 497 (11.4% of those using either mediation or arbitration) were awarded repurchase or replacement remedies.<sup>23</sup> Combining the complaints that led to repurchase or replacement through mediation with those that produced such results through arbitration, 42.7% of BBB AUTO LINE’s cases that closed in 2021 through arbitration or mediation ended with repurchase or replacement resolutions – and they did so far more often through mediation than through arbitration.<sup>24</sup>

1120 cases (25.7%) led to repair resolutions via settlement or arbitration, while 463 (10.0%) led to reimbursement of past expenses or some other relief.<sup>25</sup>

- The process isn’t a slam-dunk for consumers, though. 908 complaints nationally, or 57.8% of those that went to arbitration, ended with “denials” for consumers. But more important, in the auditor’s view, is that the “no awards” represent 20.9% of all eligible

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<sup>22</sup> This was sometimes a two-stage process, where an initial settlement provided for the manufacturer to inspect the vehicle and fix any defects that it found to warrantable, and a second settlement, after the inspection and possibly after attempted repairs, provided for the repurchase or replacement. As noted below, repair settlements often incorporate a “final repair attempt” pursuant to state lemon law.

<sup>23</sup> The 497 arbitrated cases with repurchase or replacement remedies, which constitute 11.4% of mediated and arbitrated cases combined, also constitute 31.7% of arbitrated cases alone.

Some consumers rejected repurchase or replacement awards in arbitration. This was sometimes because the consumer learned that, because of usage fees and outstanding loan balances on their current vehicle, the transaction wasn’t financially viable. Far more commonly, though, rejections came from consumers with counsel – which accounts for 133 of 162 such rejections. In these cases, the lawyer may have leveraged the arbitration award, which for most manufacturers includes no attorneys’ fees, to negotiate a settlement outside the program with attorneys’ fees.

<sup>24</sup> This bullet point draws on figures in tables III-8, III-11, and III-14. As shown by tables III-6, III-9, and III-15, moreover, these figures have been relatively stable over time.

<sup>25</sup> See Chapter 2, Section III.H. As noted in that discussion, many consumers pursue repair remedies because state lemon laws often require that manufacturers be given an opportunity for a final repair attempt in order for the consumer to file a claim, or benefit from a presumption, under the statute. If consumers haven’t given manufacturers that opportunity before they come to BBB AUTO LINE, the final repair attempt is often incorporated into a BBB AUTO LINE settlement.



and non-withdrawn complaints.<sup>26</sup> Viewed together with the 42.7% figure for repurchase and replacement remedies, and the remaining consumers who got some other remedy, this points to a fair and balanced program<sup>27</sup> – and not a program that’s biased toward manufacturers.

Despite these results, however, the auditor has some concerns, many of them touched on previously or only recently emerged. These are all discussed in Chapter 2. Key findings, issues, and recommendations are summarized below; for some, the auditor simply identifies a problem that needs to be addressed.

- As to pandemic-induced changes, including dropping (perhaps for the long term) routine vehicle inspections by arbitrators, the auditor again recommends that BBB AUTO LINE conform its rules and its practice;<sup>28</sup> that it consider the role of video hearings, which the current procedures don’t account for, and that, in making changes, it consider that Ohio regulations appear to provide for in-person hearings at the consumer’s request. BBB AUTO LINE advises that it is in the process of doing all of these things and, as noted above, BBB AUTO LINE advises that it hasn’t received requests for in-person hearings and that, notwithstanding text to the contrary in its rules, it would accommodate such requests if they were made.
- The auditor also recommends that BBB AUTO LINE explore whether warrantors can be better incentivized to prioritize replacement commitments; again, BBB AUTO LINE advises that it is in the process of doing so.
- BBB AUTO LINE now offers an online interface as an option for consumers, and the interface seems to have encouraged many consumers to proceed with their cases who

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<sup>26</sup> Tables III-8 and III-14. For consumers without attorneys, only 11.2% of cases end with no relief.

<sup>27</sup> Other remedies generally included extended service plans, reimbursement of past repair expenses, cash settlements, and, most commonly, repairs. Repairs are specifically recognized as an appropriate form of remedy by the Magnuson Moss Act as well as Florida and Ohio, and a fuller discussion of the issues posed by repair remedies appears at Ch. 2, Section II.D.

<sup>28</sup> Rule 10 of BBB AUTO LINE’s national rules, providing for hearings to be conducted in-person, by telephone, or in writing, does contain a footnote that, effective March 2020, all non-document hearings are being conducted virtually due to Covid. However, there’s no comparable qualification in Rule 7, which provides for routine inspections unless the parties agree otherwise. (Rule 7 further provides that, unless state law or regulation provides otherwise, a case will be closed if an inspection is scheduled and the vehicle isn’t made available. See also note 283).

otherwise might not have. However, previously noted problems persist and appear to deter other consumers from pursuing cases.<sup>29</sup>

- Building on a point raised previously, the auditor recommends that BBB AUTO LINE review its communications with consumers to more fully explain their options, going forward, at various stages of its process.
- The auditor again recommends that BBB AUTO LINE explore ways to expedite its case handling, and address both short delays and longer delays. He also offers specific recommendations in this regard. Although the effect appears to be small, he also identified some cases where the start date for a case was recorded incorrectly, resulting in some understating of timing issues.
- The auditor found some problems in reviewing ineligibility determinations, but their numbers didn't appear substantial. Almost all ineligibility determinations – the auditor identified three kinds – involved straightforward applications of articulated standards,<sup>30</sup> and BBB AUTO LINE has escalation procedures by which novel or complex issues should be referred to a manager. Also, consumers outside California are often told that they can challenge these decisions. (In California, they're consistently told that they can seek review by a jurisdictional arbitrator). The auditor recommends that BBB AUTO LINE clarify certain matters; that it routinely tell consumers that they can challenge these decisions; and that ineligibility letters provide sufficient detail that consumers can understand if there's a basis for a challenge.
- The auditor didn't find significant problems in arbitration decisions, although he found one case where the consumer didn't meet a lemon law's presumption standard and, rather than addressing whether the requested relief might have been available without relying on the presumption, the arbitrator rested his analysis there. Additionally, where a program summary allowed arbitrators to award the requested relief as a non-lemon law warranty remedy, arbitrators didn't always address expressly the alternative theory – although they typically made findings that appeared inconsistent with awarding the requested relief under any theory.<sup>31</sup>

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<sup>29</sup> Chapter 2, Section III.C.

<sup>30</sup> Chapter 2, Section III.D. Ineligibility is most often based on age and mileage. Those are followed by specific exclusions from program summaries and a related issue – that the claim is against the dealer and not the manufacturer. Finally, there's a California-specific issue that, while based on an interpretation of California's lemon law, also determines program eligibility for Magnuson Moss claims in the state.

<sup>31</sup> Thus, the arbitrator may have found that there was no warranted problem, or that any problem wasn't sufficiently substantial to warrant a requested repurchase.

Also, BBB AUTO LINE reviews arbitration decisions internally before they're sent to the parties,<sup>32</sup> a process intended to maintain quality control without impacting the arbitrator's discretion. The substance of comments that the auditor reviewed seemed consistent with both goals, but some conveyed a tone that seemed unduly peremptory.<sup>33</sup> Also, a BBB AUTO LINE rule allows limited changes to a decision without the arbitrator's consent,<sup>34</sup> and the auditor recommends that this be construed narrowly.

- As to compliance, timely compliance, and compliance monitoring, the auditor offers several specific recommendations in Section III.I of Chapter 2 based on the findings that follow. He understands that BBB AUTO LINE is hiring a fulltime compliance manager, and recommends that the compliance manager address the issues note below.

There's been a substantial increase in the rate of *non-compliance* this year compared to 2019, the last pre-pandemic year. By BBB AUTO LINE's definition, there's a measure for non-compliant cases in which the consumer didn't make compliance impossible and, while there may be some problems with that category, it provides a benchmark for year-to-year comparisons. Nearly 80% of the cases in this category are repair cases, and, for these, the rate of non-compliance grew from 2.7% in 2019 (the last pre-pandemic year) to 5.4% in 2021. For other cases the rate also grew, from 0.2% to 0.7%. While it's hard to know the extent to which these problems stemmed from the pandemic (as noted above, only 1% of the population was vaccinated in early January), these figures are a matter of concern.<sup>35</sup>

The rate of *delayed compliance* during also appears to have risen somewhat, but that rise doesn't capture the extent to which consumers agreed to multiple and lengthy extensions to get the replacement car that they wanted in the midst of supply chain problems. Finally, there are questions about *compliance monitoring*. Among the 189 consumers in the national sample whose cases called for compliance monitoring,<sup>36</sup> the auditor found seven where the monitoring was delayed, including delays of three, four, and eight

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<sup>32</sup> According to a training manual, the review checks for such matters as incorrect information, consistent rationale, and exceeding the scope of the arbitrator's authority (in violation of BBB AUTO LINE rules).

<sup>33</sup> Such comments might note, for example, that an arbitrator failed to address an issue.

<sup>34</sup> BBB AUTO LINE Rule 22.G.

<sup>35</sup> For more nuanced discussions of this issue, see Chapter 2, Section III.I, and (especially) Chapter 3, Section III.E.

<sup>36</sup> This includes settlements and arbitrations with awards that the consumer accepted.

months. Moreover, one of these consumers reported non-compliance at the time of the survey, and there was another significant problem in that case. BBB AUTO LINE sent a performance verification letter four months late, and then delayed two months when the consumer asked to proceed further.

- In two cases, the consumer returned performance verification letters asking to pursue the case further, and staff overlooked the requests.

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As to manufacturers, the auditor this year obtained materials from 16 previously audited manufacturers. Also, he obtained initial submissions from Aston Martin and Winnebago, both of whom participate in a single state, and from Koenigsegg and Pagani, both of whom first participated in 2020 and both of whom provided warranty manuals. (McLaren, who also began to participate in 2021, was working with staff to develop materials.) Finally, the auditor solicited materials from Volvo and Subaru, both of whom reported that they didn't have any materials that mentioned BBB AUTO LINE. (The auditor also reviewed manuals of both manufacturers,<sup>37</sup> and neither mentions any arbitration program for U.S. consumers.) The auditor doubts that these manufacturers are subject to the rule or the audit.<sup>38</sup> Further, this conclusion extends to Winnebago, which also submitted a warranty manual that didn't mention arbitration and that confirmed that it doesn't discuss BBB AUTO LINE in any of its materials.

The auditor concludes as follows:

- Nineteen manufacturers – Aston-Martin, Bentley, BMW (including Mini Cooper), Ferrari, Ford, General Motors, Hyundai (including Genesis), Jaguar (including Land Rover), Kia, Koenigsegg, Lamborghini, Lotus, Maserati, Mazda, Mercedes-Benz (only as to consumers in California), Nissan (including Infiniti), Pagani, Rolls Royce, and Volkswagen (including Audi) – are SUBSTANTIALLY COMPLIANT for purposes of each applicable audit.
- But these findings are qualified by questions and reservation, and with particularly *noteworthy* reservations identified because of issues relating to disclosures for Ferrari and Rolls Royce (for whom such reservations were noted previously); for Aston Martin, Koenigsegg, and Pagani (first audited this year); for Lotus (who no longer uses materials on which past audits relied and who didn't provide sufficient context for material that it

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<sup>37</sup> Volvo submitted a manual in response to the auditor's request; Subaru didn't, but the auditor located a manual from a Subaru.com website.

<sup>38</sup> See Chapter 1, Section II.A.1. 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.” (Emphasis added)

did submit); and for Maserati (who didn't explain the use, or confirm the continued use, of materials that might have addressed some concerns).<sup>39</sup> None of these provided a specific notice sent to consumers when they tell consumers the results of a dispute submitted for manufacturer-level review, as required by FTC Rule 703.2(e). Further, most of them didn't provide clear support showing notice to consumers beyond their warranty manuals, and thus they don't tell consumers about BBB AUTO LINE when a warranty dispute arises, as required by FTC Rule 703.2(d); an important factor here is the diminished utility of warranty manuals disclosures suggested by recent survey results.<sup>40</sup> As to Aston Martin, a mitigating factor is that it has committed to provide Rule 703.2(e) notice going forward.

- The auditor also notes this year that the materials or information submitted by some manufacturers to show compliance with Rule 703.2(e) are specifically addressed to consumers who sought repurchases or replacements and were offered no relief. However, the rule isn't thus limited, and, going forward, he believes that compliance with the rule should be evaluated in other contexts as well.<sup>41</sup>
- Hyundai's recent warranty manuals reference a binding arbitration program directed to California consumers who don't opt out in timely fashion. The program is unrelated to BBB AUTO LINE, and the latest manuals make explicit that the binding arbitration provision doesn't preclude resort to BBB AUTO LINE. Consistent with the FTC's own presentation of the matter in a 1975 Federal Register notice, though, this provision still raises a noteworthy reservation under the FTC's interpretation of its rules, albeit an interpretation that has received mixed reviews from courts.<sup>42</sup>

A similar concern applies to Aston Martin, newly surveyed this year, although its binding arbitration provision appears to operate differently than Hyundai's.<sup>43</sup> However, Aston

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<sup>39</sup> The auditor would note, as a mitigating circumstance for purposes of Rule 703.2(e), if manufacturers reported telling consumers about BBB AUTO LINE when they first contacted the manufacturer's consumer service center.

<sup>40</sup> See chart following note 69.

<sup>41</sup> At the least, Rule 703.2(e) notice needs to be given when a consumer's request for *any* relief, including a request for repairs, is denied. Also, the notice needs to be given if the manufacturer denies a request for a repurchase and offers some other relief, such as a repair or a goodwill payment. Read literally, the rule even appears to require notice if the manufacturer grants a repurchase or other request – and it would, in fact, serve a useful purpose to know that, if she's not satisfied with the follow-through on the offer, she can turn to BBB AUTO LINE.

<sup>42</sup> See note 62 and accompanying text.

<sup>43</sup> While Hyundai's provision applies only in California, Aston Martin's seems to apply

Martin has advised that it won't include a binding arbitration provision going forward and, as to consumers who have manuals that contain the language, it will make clear that it no longer insists on binding arbitration if they approach Aston Martin about doing so.

- The manufacturer-specific analysis in Chapter 1 focuses primarily on disclosure obligations under Federal, Florida, and Ohio law. However, questions of compliance with settlement agreements and arbitration awards, discussed in Chapter 3, also involve manufacturer compliance with the Magnuson Moss rules. For the current audit, the auditor highlights the figures noted above, particularly the 5.4% non-compliance rate for repair remedies, up from 2.7% during the last pre-pandemic year.

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The audit provision of FTC Rule 703.7 (Florida and Ohio have similar provisions<sup>44</sup>) includes a general requirement in subsection (a) and sets forth several specific mandates in subsection (b).<sup>45</sup> In undertaking this audit, the auditor has worked with TechnoMetrica Market

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everywhere but California.

<sup>44</sup> FLA STAT. § 681.108(4); OHIO ADMIN. CODE § 109:4-4-04(E).

<sup>45</sup> These provisions of Section 703.7 are set out below:

(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"

Intelligence (and obtained insights from BBB AUTO LINE) to develop a survey instrument that was only slightly revised this year. In addition to reviewing and analyzing the survey results, the auditor has also done the following:

- Reviewed manufacturers' submissions, including materials submitted in response to follow-up questions;
- Reviewed manufacturer's program summaries.
- Reviewed recordings of six hearings, including two from Florida and two from Ohio. One of the six was a case where the consumer was represented by counsel.
- Viewed a training course for Florida arbitrators, and viewed again a training course for California arbitrators.
- Talked with BBB AUTO LINE and BBB National Programs staff.

Reviewed (for the three surveys combined) hundreds of individual case files, some selected randomly, some targeted, and including (for the first time) certain highly targeted files identified by a jurisdictional arbitration process available only in California. To explore the source of previously-noted delays in BBB AUTO LINE's cases, the auditor reviewed a larger number of these comprehensively this year, although, on some files (as where consumers reported that they hadn't received certain documents), he did a relatively limited review.

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shall include oral or written contact with the consumers involved in each of the disputes in the random sample.)

**CHAPTER 1:  
MANUFACTURER'S  
WARRANTY MATERIALS  
AND  
DISCLOSURES  
ABOUT BBB AUTO LINE**



## **I. Introduction**

As noted above, the auditor finds, for the current audit, that nineteen manufacturers are SUBSTANTIALLY COMPLIANT with applicable laws and regulations under the Magnuson Moss Act, and the Florida and Ohio lemon laws. However, all findings of substantial compliance are subject to qualifications, and, for eight manufacturers (one of whom has mitigating circumstances) the qualifications include noteworthy reservations. This is primarily based on an analysis of how well they fulfill their disclosure obligations, and such obligations are the subject of this chapter.

## **II. Manufacturer's Disclosure Obligations under the FTC's Rules**

### **A. FTC Rule 703**

FTC Rule 703 defines the obligations of informal dispute settlement mechanisms and the warrantors who incorporate such mechanisms into their written warranties.<sup>46</sup> As noted previously, this discussion focuses on their disclosure obligations under Rule 703.2.

The auditor begins with a brief overview of the obligations imposed on warrantors by Rule 703.2, quoted below.<sup>47</sup> Rule 703.2(b) requires basic disclosures about the existence of the

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<sup>46</sup> See Rule 703.1(e) ("*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."

<sup>47</sup> Together with the introductory text in subsections (a), these provisions state:

#### § 703.2 Duties of warrantor.

(a) 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. This paragraph (a) shall not prohibit a warrantor from incorporating into the terms of a written warranty the step-by-step procedure which the consumer should take in order to obtain performance of any obligation under the warranty as described in section 102(a)(7) of the Act, 15 U.S.C. 2302(a)(7), and required by part 701 of this subchapter.

(b) 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;

program, contact information for the program, a description of any prior resort requirements, and a statement, if applicable, of where the consumer can find more information. These disclosures must appear on “the face of the warranty,” a term defined in Rule 703.1(h).<sup>48</sup> Rule 703.2(c)

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(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.

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

(1) Either

(i) A form addressed to the Mechanism containing spaces requesting the information which the Mechanism may require for prompt resolution of warranty disputes; or

(ii) A telephone number of the Mechanism which consumers may use without charge;

(2) The name and address of the Mechanism;

(3) A brief description of Mechanism procedures;

(4) The time limits adhered to by the Mechanism; and

(5) The types of information which the Mechanism may require for prompt resolution of warranty disputes.

(d) The warrantor shall take steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes. Nothing contained in paragraphs (b), (c), or (d) of this section shall limit the warrantor's option to encourage consumers to seek redress directly from the warrantor as long as the warrantor does not expressly require consumers to seek redress directly from the warrantor. The warrantor shall proceed fairly and expeditiously to attempt to resolve all disputes submitted directly to the warrantor.

<sup>48</sup>

Rule 703.1(h) provides:

requires more extensive disclosures, but allows them to be made anywhere in the warranty or in a “separate section of materials accompanying the product.” Rule 703.2(d) requires steps “reasonably calculated to make consumers aware of the Mechanism’s existence at the time consumers experience warranty disputes,” and allows manufacturers to “encourage” consumers to use the manufacturer’s internal processes so long as the manufacturers don’t “expressly require” that consumers do so. Rule 703.2(e) applies when consumers seek relief directly from the manufacturer, imposes both an obligation to resolve the matter in a reasonable time, and a disclosure obligation, in the form of a further, detailed notice about BBB AUTO LINE.<sup>49</sup> Rules 703.2(f) and (g) require that manufacturers cooperate with the mechanism, perform obligations to which they have agreed, and determine, in good faith, whether to comply with specific decisions by the mechanism, while subsection (h) requires manufacturers to advise the mechanism about whether they will comply with specific decisions.<sup>50</sup>

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***On the face of the warranty*** means:

- (1) If the warranty is a single sheet with printing on both sides of the sheet, or if the warranty is comprised of more than one sheet, the page on which the warranty text begins;
- (2) If the warranty is included as part of a longer document, such as a use and care manual, the page in such document on which the warranty text begins.

<sup>49</sup> In other words, this is a review above the dealership level. Subsection (e) provides:  
Whenever a dispute is submitted directly to the warrantor, the warrantor shall, within a reasonable time, decide whether, and to what extent, it will satisfy the consumer, and inform the consumer of its decision. In its notification to the consumer of its decision, the warrantor shall include the information required in § 703.2(b) and (c) of this section.

<sup>50</sup> Subsections (f) through (h) provide:

(f) The warrantor shall:

- (1) Respond fully and promptly to reasonable requests by the Mechanism for information relating to disputes;
- (2) Upon notification of any decision of the Mechanism that would require action on the part of the warrantor, immediately notify the Mechanism whether, and to what extent, warrantor will abide by the decision; and
- (3) Perform any obligations it has agreed to.

(g) The warrantor shall act in good faith in determining whether, and to what extent, it will abide by a Mechanism decision.

(h) The warrantor shall comply with any reasonable requirements imposed by the Mechanism to fairly and expeditiously resolve warranty disputes.

While this chapter focuses on warrantors' *disclosure* obligations, moreover, the auditor notes the following with respect to other provisions of Rule 703:

- (1) Under Rule 703.5(g)(3), warrantors must determine whether to comply with IDSM decisions. Consistent with common requirements of state lemon laws, participants agree in advance to comply with *any* arbitration decision that the consumer accepts.
- (2) Chapters II.I, III.E, IV.E, and V.E discuss how well manufacturers perform obligations to which they're committed by virtue of settlement or arbitration decisions. In general, BBB AUTO LINE statistics show some non-compliance, with a highly disproportionate amount in cases with repair remedies. (And, in the vast majority of cases where BBB AUTO LINE reports non-compliance, consumers indicated an intent to pursue the matter further with BBB AUTO LINE.)
- (3) As to provisions governing manufacturers' handling of complaints forwarded for manufacturer-level review, the auditor sees no practical way to monitor the internal processing processes of warrantors where consumers haven't yet filed complaints with BBB AUTO LINE. As explained below, though, state lemon laws often require that, before a consumer can take advantage of some provisions of the relevant law, the consumer *must* submit a dispute to the manufacturer and provide the manufacturers an opportunity for a final repair attempt.<sup>51</sup>

### **1. Application of Rule 703.2 to Certain Manufacturers**

A preliminary question is whether some participating manufacturers are subject to Rule 703 at all. There raises two issues.

*First*, does the rule apply to manufacturers that don't require prior resort? While Section 2310(a)(2) authorizes the Commission to "prescribe rules setting forth minimum requirements for any informal dispute settlement procedure which is incorporated into the terms of a written warranty to which any provision of this chapter applies," Section 2310(a)(4) uses more limiting language in authorizing Commission review of the bona fide operation of IDSMs; it provides for review 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.*"<sup>52</sup> (Emphasis added.) To the

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<sup>51</sup> See Section II.A.3 of this Chapter. Thus, while the FTC rules don't allow a manufacturer to require such submission before the consumer can benefit from provisions of the Magnuson Moss Act, some state lemon laws *do* require such submission for consumers to benefit from provisions of *those* laws. Further, state laws may also specify a precise time, rather than a "reasonable time," for the manufacturer to respond.

<sup>52</sup> 15 U.S.C. § 2310(a) provides:

extent that the audit is in furtherance of a bona fide review, there could well be questions about the reach of the statute, the rule, and the auditor's purview.

On the other hand, Section 2310(a)(2) seems to provide rulemaking authority to the FTC even if manufacturers don't require prior resort,<sup>53</sup> and Rule 703.2 doesn't mention prior resort in picking up text from Section 2310(a)(2) that "[t]he warrantor shall not *incorporate into the terms*

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

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

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

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

(A) a warrantor establishes such a procedure,

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

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

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

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

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Quoted at note 52, *supra*.

of a written warranty a Mechanism that fails to comply with the requirements contained in §§ 703.3 through 703.8 of this part.” (Emphasis added.)<sup>54</sup>

*Second*, though, the highlighted text above, reflecting statutory language in Section 2310(a)(2), extend by their express terms to programs that are “incorporated into the terms of a written warranty.” This would appear to place outside the reach of the statute, rule, and this audit, firms that don’t mention BBB AUTO LINE (or any other U.S. arbitration program) in their warranties. And this appears to be the case for three participants in BBB AUTO LINE: Subaru, Volvo, and Winnebago.<sup>55</sup>

## **2. Binding Arbitration Separate from BBB AUTO LINE Arbitration**

As noted in prior audits, Hyundai’s manuals since 2020 have provided, for California consumers only, for a binding arbitration program independent of BBB AUTO LINE. The texts continue to mention BBB AUTO LINE, and, indeed, to require prior resort to BBB AUTO LINE if consumers seek relief under the Magnuson Moss Act. But Hyundai also tells California consumers – with an explicit exemption now added for BBB AUTO LINE and with an explicit reference to the Federal Arbitration Act<sup>56</sup> – that, if they accept warranty services and haven’t opted out within thirty days of buying or leasing a car, they’ve agreed to use a separate binding arbitration program; that program, for which consumers are charged a \$250 filing fee, is administered by JAMS Mediation, Arbitration, and ADR services. Further, Aston Martin’s 2021 submission contains a similar provision,<sup>57</sup> although Aston Martin indicated that it will omit the

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<sup>54</sup> Further, the audit may be in furtherance, not only of a bona fide review under Section 2310(a)(4), but also of the Commission’s broader authority, under Section 2310(b), to enforce the Magnuson Moss Act and its implementing rules. There’s also a textual argument that Rule 703.2(b)(3) allows a warrantor to disclose “any requirement that the consumer resort to the mechanism before exercising rights or seeking remedies” created by the Magnuson Moss Act, which might imply that warrantors needn’t require prior resort to be subject to the rule. And, as discussed in the next section, in a different context the Commission has read Rule 703.2 quite broadly.

<sup>55</sup> Subaru reported that it didn’t mention BBB AUTO LINE to consumers, and that’s consistent with a manual on its website. [https://techinfo.subaru.com/stis/doc/warrantyBooklet/2021\\_war\\_and\\_maint\\_081120.pdf](https://techinfo.subaru.com/stis/doc/warrantyBooklet/2021_war_and_maint_081120.pdf). Volvo and Winnebago both provided warranty documents that didn’t mention BBB AUTO LINE, and also reported that they don’t mention BBB AUTO LINE in other consumer-facing documents. Further, none of these mentions any other U.S. arbitration program in their manuals, although Volvo does mention a Canadian program.

<sup>56</sup> 9 U.S.C. §§ 1-16.

<sup>57</sup> The auditor this year expanded his review to single-state participants, specifically Aston Martin and Winnebago (discussed at note 55).

provision going forward.<sup>58</sup>

In prior discussions of Hyundai's provision, the auditor pointed to the FTC's interpretation of Rule 703.5(j),<sup>59</sup> which provides that "[d]ecisions of the Mechanism shall not be legally binding on any person." Discussing this provision, the Commission declared in 1975 that:

... there is nothing in the Rule which precludes the use of any other remedies by the parties following a Mechanism decision. The warrantor, the Mechanism, or any other group can offer a binding arbitration option to consumers who are dissatisfied with Mechanism decisions or warrantor intentions. *However, reference within the written warranty to any binding, non-judicial remedy is prohibited by the Rule and the Act.*<sup>60</sup>

(Emphasis added.) The Commission affirmed this reading in 1999 and 2015,<sup>61</sup> although the 2015 notice also observed that, based on the interplay of the Magnuson Moss Act and the Federal Arbitration Act (on which Hyundai expressly relies), the Commission's interpretation had received mixed reviews in courts.<sup>62</sup>

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<sup>58</sup> As the auditor notes in the discussions of Hyundai and Aston Martin, changes to the relevant text (in Hyundai's case) or even deletions (in Aston Martin's) don't resolve questions as to consumers who have more problematic manuals from prior years.

<sup>59</sup> 16 C.F.R. § 703.5(j).

<sup>60</sup> 40 Fed. Reg. at 60211 (1975) (emphasis added).

<sup>61</sup> 64 FR 19700, 16708 (1999); 80 Fed. Reg. 42710, 42718-19 (2015).

<sup>62</sup> As the Commission explained in 2015:

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

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

<sup>116</sup> *Davis v. Southern Energy Homes, Inc.*, 305 F.3d 1268 (11th Cir. 2002);

The auditor has previously highlighted the Hyundai issue but expressed uncertainty about whether his purview extends to them; while the matter isn't free from doubt, he now concludes that it does fall within his purview, although the unusual circumstances here lead him to treat these as reservations under the FTC's interpretation of its rule, with the observation that courts have treated that interpretation with mixed reviews.

One final note: some warranty materials refer to binding arbitration in Canada. It doesn't appear that the FTC considered such references, but the auditor doesn't believe that reference to a program for binding arbitration outside the United States poses a problem.

### **3. Taking “Steps Reasonably Calculated to Make Consumers aware of the Mechanism's Existence at the Time Consumers Experience Warranty Disputes” (Rule 703.2(d)).**

In defining “the face of the warranty” (where disclosures under Rule 703.2(b) must appear), Rule 703.1(h) provides for situations where the warranty is on a separate piece of paper or where it appears “as part of a larger document, such as a use and care manual.”<sup>63</sup> And, in the Federal Register notice initially promulgating the rule, the FTC explained that “owner and care” manuals could be, at the least, a key component of compliance. Perhaps anticipating 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.”<sup>64</sup>

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*Walton v. Rose Mobile Homes, LLC*, 298 F.3d 470 (5th Cir. 2002).

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

<sup>63</sup> Rule 703.2(h) provides:

(h) On the face of the warranty means:

- (1) If the warranty is a single sheet with printing on both sides of the sheet, or if the warranty is comprised of more than one sheet, the page on which the warranty text begins;
- (2) If the warranty is included as part of a longer document, such as a use and care manual, the page in such document on which the warranty text begins.

<sup>64</sup> 40 Fed. Reg. 60190 (1975).



Today, many manufacturers have warranty manuals separate from their owner's manuals; some even have warranty manual supplements. Separate warranty manuals moreover, almost always have the same horizontal dimension, vertical dimension, and binding as the owner's manual; in essence, they're part of a set, and often included in a container holding both. In this respect, warranty manuals now would seem even more prominent, and more likely to prove useful, than they were in 1975. Thus, the auditor has been reporting fact-specific analyses of the prominence of the disclosure of BBB AUTO LINE in the manuals provided to consumers.<sup>65</sup>

Further, while the Commission in 1975 seemed to contemplate that manufacturers would do more than provide a manual,<sup>66</sup> while some of the examples were relatively strong, and while the Commission noted the auditor's review as a backstop, it also seemed prepared to sometimes accept relatively limited steps. For example, the notice contemplated that some warrantors might meet their obligations to supplement warranty manual disclosures "by participating in T.V. 'talk' shows or by providing materials for use by consumer columnists."<sup>67</sup>

The auditor previously focused his analysis on warranty manuals backed by letters that manufacturers send to consumers who, after using a manufacturer-level repair process, are told the results of those processes. Still, the auditor has repeatedly pointed out that it would 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. And he noted that it would be prudent, as well, for manufacturers to so advise their dealers, in dealer-facing manuals and training courses, as some already do.

Recent survey results, moreover, suggest that the utility of warranty manuals as a means of telling consumers about BBB AUTO LINE has recently declined. When consumers in the national sample were asked how they learned of BBB AUTO LINE, nearly 40% cited the internet, a medium that didn't exist in 1975. But among those who learned of the program from a dealership or manufacturer communication, only 8.8% cited manufacturer's manuals and other warranty documents, while 22.1% cited dealers or manufacturers' representatives<sup>68</sup> Further, *during the past two years, warranty manuals have noticeably declined as a factor in alerting*

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<sup>65</sup> 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”?

<sup>66</sup> 40 Fed. Reg. 60190, 60197-99 (1975).

<sup>67</sup> 40 Fed. Reg. at 60199.

<sup>68</sup> Chapter 3, Table III-4. The 22.1% figure does likely include consumers who learned about BBB AUTO LINE when the manufacturer gave the notice required by Rule 703(e).

surveyed consumers to *BBB AUTO LINE*. This is shown by the chart below, which is based, for each year, on at least 400 consumers who completed the national survey.<sup>69</sup>

	Manufacturer materials/ Other warrant documents	Dealer or manufacturer representative
2015	14.6%	10.4%
2016	12.2%	16.6%
2017	12.0%	15.7%
2018	12.2%	23.3%
2019	14.5%	18.0%
2020	8.3%	17.3%
2021	8.8%	22.1%

And, while the 2020 results standing alone might have been an aberration, the extension of the trend into 2021 more strongly suggests a pattern.

Recent figures in Ohio show an even steeper decline, although the smaller sample size subjects them to a greater margin of error. Since 2018, the percentage of consumers who learned of *BBB AUTO LINE* from warranty documents went from 14.5% to 14.9% to 6.5% to 1.7%, the last number reflecting a response by only one of sixty surveyed consumers – while the number of consumers in Ohio reporting in 2021 that they learned of the process for dealers or manufacturer representatives stood at 26.7%. (As discussed below, Ohio has state-specific disclosure requirements at the dealership level, including a signage requirement.)<sup>70</sup>

These figures are highly suggestive in pointing to the increased importance of disclosures outside the warranty manual, and the auditor now incorporates into his manufacturer-specific reviews more detailed discussions of steps beyond the disclosures specifically required by other parts of Rule 703.2.

In reviewing manufacturer submissions and lemon law disclosure provisions, moreover, the auditor has encountered several types of disclosure mechanisms that can be used after the time of sale. These include:

- Signs in a dealership service area; *BBB AUTO LINE* has even provided a template that manufacturers can use:

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<sup>69</sup> Multiple responses weren't accepted to the "How did you learn about *BBB AUTO LINE*" question until 2018. (Previously, the question asked consumers how they first learned of *BBB AUTO LINE*. If anything, this would have depressed the figures for 2015, 2016, and 2017.

<sup>70</sup> The four-year numbers for Florida went from 19.2% to 17.7% to 13.6% to 8.0%.

# RESOLVE YOUR DISPUTE

## [Manufacturer]

is committed to providing you with exceptional customer service and complete owner satisfaction but we understand that sometimes problems can arise.

If you have a lemon law or other warranty-related vehicle dispute, we have partnered with BBB AUTO LINE to provide an out-of-court dispute resolution process to address your eligible vehicle defect that cannot be resolved with your dealership, with no out-of-pocket costs.

.....

**BBB AUTO LINE. Helping consumers and manufacturers resolve lemon law disputes since 1982.**

[bbbprograms.org/BBBAUTOLINE](http://bbbprograms.org/BBBAUTOLINE) 1-800-955-5100

 **National Programs**  
BBB AUTO LINE®



- Cards or placards available to consumers in a dealership service areas.
- Educating and instructing dealers to discuss BBB AUTO LINE with consumers who aren't satisfied with warranty service.
- Telling consumers about BBB AUTO LINE when they first seek relief at the manufacturer level. For consumers who contact the manufacturer's service center by phone, this could be done orally, perhaps backed by a written communication. For

consumers who contact by other means (in writing or via an electronic communication), it could be done via the same mechanism means by which the initial contact was made.

- The notice required by Rule 703.2(e), provided by the manufacturer when it tells the consumer its decision in a matter submitted for manufacturer-level review and discussed in the section that follows, serves as a capstone and a backstop for any and all of the means discussed above.<sup>71</sup>

The most effective disclosure program would include all of these, together with a program for the manufacturer to monitor compliance. Disclosures that are made when consumers first contact the manufacturer's consumer service center reach only those who make contact, but, particularly if disclosures are provided in writing, they're relatively easy to monitor. Disclosures at the dealership level are most easily monitored if they involve placards and signs; if manufacturer representatives visit dealerships and their service centers, they can presumably monitor compliance.<sup>72</sup> Oral disclosures by service center personnel, in contrast, could reach broadly and to targeted consumers, but are particularly difficult to monitor.

Thus, a top-notch approach might include signs and consumer handouts for display and distribution in the dealer's service center, combined with a program to monitor the use of those materials. Nissan's submission this year came the closest the auditor has seen to a gold standard for dealership disclosures. As described in an accompanying letter to dealers, Nissan provided dealerships with an 11x15 laminated wall-mount placard, a laminated 8.5 x 11 desk card, and consumer handout cards, together with instructions that dealers properly display the laminated materials, provide easy access to the desk card materials in service reception and waiting areas, ensure that dealership personnel understand the materials, understand the need to provide them to consumers as needed, and can explain the BBB AUTO LINE program to consumers. Further, while Nissan didn't report an *ongoing* monitoring program, it did tell dealers to expect an initial monitoring visit.

Finally, the auditor notes that "Better Business Bureau" is a name with some brand value, and consumers who have a warranty or lemon law problems might choose BBB as a web site or organization to consult. In the auditor's view, it's not unreasonable to attribute to manufacturers

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<sup>71</sup> The auditor sees no problem in relying on a mandated disclosure under another provision as an element of a manufacturer's efforts to provide notice under Rule 703.3(d)); the Commission itself, as noted above, relied on disclosures in the warranty, required by Rule 703.2(b), as a component or a Rule 703.2(d) analysis.

<sup>72</sup> Of course, surprise inspections would be the most effective way to monitor, but the auditor doubts that these are practical.

Placards and signs would also educate consumers generally about BBB AUTO LINE, even before there's a warranty dispute.

disclosure about BBB AUTO LINE on the websites of the BBB<sup>73</sup> or BBB National Programs, although the matter is sufficiently uncertain that the auditor notes gives limited weight to these disclosures.

**4. Magnuson Moss’s Provision Permitting Manufacturers To Encourage, But Not Require, that Consumers Use the Manufacturer’s Internal Processes Before Using BBB AUTO LINE: The Intersection of Federal and State Law**

The auditor also notes the complexities that manufacturers or dealers face, because of the interplay of federal and state requirements, in advising consumers how they might proceed if they can’t resolve an issue at the dealership level.

Lemon laws generally set standards, either as the predicate for bringing a case or as a basis for a presumption once a case is brought, defining what constitutes a reasonable opportunity for a warrantor to cure a defect. Such standards are generally satisfied by a specified number of repair attempts or a specified number of days out of service. In either event, many of these laws provide, as a final step, for notice to the manufacturer and an opportunity for the manufacturer to make a final repair attempt (“FRA”). The FRA is the focus here, because states take varying approaches that rarely, if ever, coincide with the FTC’s approach. The auditor here uses as examples Florida’s, Ohio’s, and California’s lemon laws.

- Rule 703.2(d) *permits* manufacturers to “encourage consumers to seek redress directly from the warrantor.” Indeed, while BBB AUTO LINE doesn’t rely on this provision, Rule 703(e)(5) even allows the program to extend the 40-day time limit to complete a case for seven additional days “in those cases where the consumer has made no attempt to seek redress directly from the warrantor.”
- But Rule 703.2 (d) *forbids*, for purposes of Magnuson Moss Act relief, “expressly requir[ing] consumers to seek redress directly from the warrantor.”<sup>74</sup>
- However, many states, among them Florida, *require* notice to manufacturers and a (time-limited) final repair opportunity.<sup>75</sup>

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<sup>73</sup> While BBB and BBB National Programs are now separate entities, both organizations discuss BBB AUTO LINE on the home page of their websites. *E.g.*, [www.bbb.org](http://www.bbb.org).

<sup>74</sup> Additionally, FTC Rule 703.5(e) allows an extension of the normal 40-day time to resolve a case “where the consumer has made no attempt to seek redress directly from the warrantor.”

<sup>75</sup> Florida’s lemon law provides:

(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,

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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, . . . 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.

(b) If the motor vehicle is out of service by reason of repair of one or more nonconformities by the manufacturer or its authorized service agent for a cumulative total of 15 or more days, exclusive of downtime for routine maintenance prescribed by the owner's manual, the consumer shall so notify the manufacturer in writing by registered or express mail to give the manufacturer or its authorized service agent an opportunity to inspect or repair the vehicle.

(2)(a) If the manufacturer, or its authorized service agent, cannot conform the motor vehicle to the warranty by repairing or correcting any nonconformity after a reasonable number of attempts, the manufacturer, within 40 days, shall repurchase the motor vehicle and refund the full purchase price to the consumer, less a reasonable offset for use, or, in consideration of its receipt of payment from the consumer of a reasonable offset for use, replace the motor vehicle with a replacement motor vehicle acceptable to the consumer. The refund or replacement must include all reasonably incurred collateral and incidental charges. However, the consumer has an unconditional right to choose a refund rather than a replacement motor vehicle. \*\*\*

\* \* \*

(3) It is presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the warranty if, during the Lemon Law rights period, either:

(a) The same nonconformity has been subject to repair at least three times by the manufacturer or its authorized service agent, plus a final attempt by the manufacturer to repair the motor vehicle if undertaken as provided for in paragraph (1)(a), and such nonconformity continues to exist; or

(b) The motor vehicle has been out of service by reason of repair of one or more nonconformities by the manufacturer, or its authorized service agent, for a cumulative total of 30 or more days, . . . exclusive of downtime for routine maintenance prescribed by the owner's manual. The manufacturer or its authorized service agent must have had at least one opportunity to inspect or repair the vehicle following receipt of the notification as provided in paragraph (1)(b). The 30-day period, . . . may be extended by any period of time during which repair services are not available to the consumer because of war, invasion, strike, fire, flood, or natural disaster.

- California, also taking an approach followed by many other states, allows a presumption that the manufacturer has had reasonable opportunity to correct a defect if specified standards are met, including a final repair opportunity for the manufacturer, but allows the case to go forward if the presumption standard isn't met.<sup>76</sup>
  - While most states require or encourage recourse to the manufacturer before consumers bring a case, Ohio takes a different approach; it expands on the prohibition in Rule 703.2(d), and requires clear and conspicuous disclosure that
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Curiously, the Florida text provides for a presumption as well as what appears to be a prerequisite, although the days-out-of-service standard is shorter for one green light to proceed than for the presumption

<sup>76</sup> CA. CIV. CODE § 1793.22(b) provides:

It shall be presumed that a reasonable number of attempts have been made to conform a new motor vehicle to the applicable express warranties if, within 18 months from delivery to the buyer or 18,000 miles on the odometer of the vehicle, whichever occurs first, one or more of the following occurs:

- (1) The same nonconformity results in a condition that is likely to cause death or serious bodily injury if the vehicle is driven and the nonconformity has been subject to repair two or more times by the manufacturer or its agents, and the buyer or lessee has at least once directly notified the manufacturer of the need for the repair of the nonconformity.
- (2) The same nonconformity has been subject to repair four or more times by the manufacturer or its agents and the buyer has at least once directly notified the manufacturer of the need for the repair of the nonconformity.
- (3) The vehicle is out of service by reason of repair of nonconformities by the manufacturer or its agents for a cumulative total of more than 30 calendar days since delivery of the vehicle to the buyer. The 30-day limit shall be extended only if repairs cannot be performed due to conditions beyond the control of the manufacturer or its agents. The buyer shall be required to directly notify the manufacturer pursuant to paragraphs (1) and (2) only if the manufacturer has clearly and conspicuously disclosed to the buyer, with the warranty or the owner's manual, the provisions of this section and that of subdivision (d) of Section 1793.2, including the requirement that the buyer must notify the manufacturer directly pursuant to paragraphs (1) and (2). The notification, if required, shall be sent to the address, if any, specified clearly and conspicuously by the manufacturer in the warranty or owner's manual. This presumption shall be a rebuttable presumption affecting the burden of proof, and it may be asserted by the buyer in any civil action, including an action in small claims court, or other formal or informal proceeding.

the manufacturer's process is *optional* and can be terminated at any time.<sup>77</sup>

It's certainly possible to capture the nuanced interactions of these provisions in carefully worded, state-specific texts. On the other hand, it seems doubtful that dealership personnel could clearly provide, or that typical consumers would understand, an oral explanation that captures all the nuances of federal and state law. In a state where a final repair opportunity is mandated for lemon law purposes, the most salient disclosure for consumers who are still in the lemon law period is that they *do* need to provide manufacturers with the opportunity (and that may entail specific procedures such as sending notice by certified mail). A full disclosure, though, would also mean telling consumers that they needn't give a final repair opportunity to pursue Magnuson Moss relief or to seek warranty remedies without benefit of the lemon law.

In any event, the FTC rule presumably doesn't preclude a manufacturer from accurately describing Final Repair Attempt provisions under state law.

\* \* \* \*

Finally, the auditor reviewed one contract between BBB AUTO LINE and a manufacturer and discussed other such contracts with BBB National Program's legal staff. He noted language in the first contract to the effect that BBB AUTO LINE staff should encourage consumers to follow consumer satisfaction procedures outline in warranty manuals or owner's guides. To the extent this suggests that staff will send consumers back to manufacturers on the basis of manufacturer policies, the auditor is advised this isn't BBB AUTO LINE practice; the auditor is also assured that no such language (including a milder variant providing the BBB AUTO LINE would "inform" consumers about the manufacturer's processes) will appear in future contracts.

The auditor notes, though, outside Florida and California, the 40-day clock doesn't begin to run until the consumer returns a signed consumer complaint form.<sup>78</sup> In those circumstances, BBB AUTO LINE does tell the manufacturer that the initial complaint has been filed, and further tells the manufacturer that it "may contact the consumer directly"; further, the letter sent to consumers at that point tells them that the manufacturer has been notified and may contact her, and asks the consumer to tell BBB AUTO LINE if it reaches a settlement outside the program. This is somewhat different than the contract language above, even in its milder form, appeared to contemplate, though. *First*, it requires the manufacturer to take the affirmative step of reaching out to the consumer. *Second*, having submitted an initial filing to BBB AUTO LINE, consumers will likely have received detailed information about BBB AUTO LINE before the manufacturer's outreach.<sup>79</sup>

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<sup>77</sup> OHIO ADMIN CODE §109:4-4-03(E)(1).

<sup>78</sup> See Chapter 2, Section III.C.

<sup>79</sup> This preliminary process does raise an issue discussed in Chapter 3, Section III.C., where the



Also, BBB AUTO LINE staff may tell consumers about lemon law provisions that require the consumer, in order to file or benefit from a presumption, to provide manufacturers or their agents with specified opportunities to address a problem. And, in some cases, consumers may have to withdraw their complaints if they need (or choose) to provide such opportunities.<sup>80</sup> The auditor understands, though, that the issue is telling consumers about manufacturer's preferred processes for the purpose of promoting those policies. In the situation describe above, the consumer wouldn't go to the manufacturer because BBB AUTO LINE is promoting the manufacturer's policies, but rather because of lemon law provisions that, in some cases, may parallel the manufacturer's preferred approach.

## **5. Rule 703.2(e) Notice**

As noted in the introduction, the auditor has particularly focused on the failure by some manufacturers to show compliance with Rule 703.2(e), which requires manufacturers to again tell consumers about BBB AUTO LINE, and again provide information about BBB AUTO LINE required by Rules 703.2(b) and (c), when the manufacturer decides a matter that the consumer has submitted to it.<sup>81</sup> The still-lingering concerns about manufacturers who didn't give any such notice were largely resolved by last year, although problems remain for Ferrari and Rolls Royce. Aston Martin and Pagani, audited for the first time this year, haven't previously provided such notice but Aston Martin has committed to do so going forward.

As the auditor has previously noted, though, several manufacturers – Ford, General Motors, and now Jaguar – have reported that they convey these decisions to consumers orally and make the required disclosures orally. Nothing in the text of the rule requires that 703.2(e) disclosures be in writing, so this appears to be consistent with the rule. However, the auditor has asked manufacturers to clarify their precise policies, and it appears that some disclosures have been contingent on how the terms that the consumer uses (such as a specific reference to “lemon

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consumer might preserve it's right to file a lemon law claim if the matter goes through BBB AUTO LINE, but not if there's a settlement directly with the manufacturer.

<sup>80</sup> As noted above, BBB AUTO LINE settlements sometimes include an opportunity for a manufacturer to make a final repair attempt (“FRA”). However, lemon laws generally provide for an FRA only after multiple attempts to resolve an issue with the dealership. If the lemon law provides for three dealership attempts followed by a manufacturer's FRA, and if the consumer hasn't provided the manufacturer and its agents with the requisite repair opportunities, the only way to address all the missing steps may be for the consumer to withdraw her complaint with the intent of refile if she isn't satisfied after affording the dealer and manufacturer sufficient opportunities to attempt repairs.

<sup>81</sup> As noted previously, consumers aren't required by federal law to give manufacturers an opportunity to address their concerns before arbitration, but may be required to do so to pursue a lemon law case or benefit from a presumption under a lemon law.

law” BBB, or BBB AUTO LINE.) or consumer reacts to the company’s notification. (E.g., are they “not happy” or “dissatisfied”?) Rule 703.2(e) doesn’t allow such contingencies.

Further, many manufacturers don’t disclose all the details encompassed by the references to subsections (b) and (c), but rather tell consumers that BBB AUTO LINE exists and direct them to either BBB AUTO LINE or their warranty manuals for details. In these cases, consumers should get much of the required information by indirect means; still, the rule expressly requires that the information be disclosed by the warrantor, so, to the extent that a warrantor relies on an indirect presentation, the auditor will find a “question.” Further, to the extent that manufacturers simply refer consumers to BBB AUTO LINE and then rely on BBB AUTO LINE itself for indirect disclosures, BBB AUTO LINE hasn’t previously provided detailed information about most prior resort requirements, and that information could conceivably be important to some (though not the vast majority) of consumers who have already come to BBB AUTO LINE. Also, and notwithstanding that the situation might be relatively uncommon, the letter isn’t getting the information to consumers who might *have* to go to BBB AUTO LINE, who would otherwise go to a court or another forum, and who, by the time they learn about the prior resort requirement, have exceeded age or mileage limitation for the claim. In any event, where a manufacturer has a Rule 703.2(e) letter that doesn’t mention prior resort *and* doesn’t refer consumers to a warranty manual that clearly provides prior resort information, the auditor finds, not a “question,” but a more clear-cut “reservation.”<sup>82</sup>

Finally, the notice requirement under Rule 703.2(e) applies “[w]henver a dispute is submitted to the warrantor” and the warrantor advises the consumer of its decision. It isn’t limited to denials of requests for repurchase or replacement. It also applies to denials of requests for other relief, like repairs or reimbursement. And it applies to “decisions” other than denials – for example, if a consumer requests a repurchase and the manufacturer offers instead a repair or a “good will” cash payment. Indeed, by its terms the rule would apply even where the manufacturer grants the requested relief, so the consumer knows that BBB AUTO LINE is available as a backstop if the consumer isn’t satisfied with the remedy’s implementation. While notice in the last situation is arguably less pressing than disclosures where a repurchase request is fully rejected, full compliance with Rule 703.2(e) would arguably encompass all these scenarios. This issue wasn’t raised before, though, and the auditor this year notes the issue without using it as a basis for reservations.

## **6. Limitations in Manufacturer-Specific Program Summaries and Disclosures of Such Limits**

All the surveyed manufacturers impose some limits on the availability of the program. These limits are set forth in program summaries that are available online<sup>83</sup> and typically exclude

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<sup>82</sup> As to the difference between questions and reservations, see Section II.B of this chapter, *infra*.

<sup>83</sup> The summaries can be found within a few links of <https://bbbprograms.org/programs/all->

some warranty claims in their entirety, among them claims that an air bag failed to deploy and claims covered by insurance or warranties of other manufacturers. Also, most program summaries have age and mileage limits that exclude from the program at least some non-lemon law claims covered by the manufacturer's warranty; even when the program's reach extends the full length of the manufacturer's bumper-to-bumper warranty, for example, it may not reach claims covered by a powertrain or emissions warranty.<sup>84</sup>

This raises several issues. First, roughly half the audited manufacturers include language in their warranty materials signaling that access is limited by age and mileage, with some also signaling other limits as well. In the auditor's view, a relatively precise description of the "availability of the informal dispute settlement mechanism," required by Rule 703.2(b)(1)), should at least signal such limits.<sup>85</sup> While consumers will quickly learn of these limits if and when they contact BBB AUTO LINE, the auditor highlights the need for manufacturers to signal these in advance.

In a variation on this theme, some program summaries only provide for BBB AUTO LINE to consider lemon law claims; the auditor reads these summaries to provide for warranty coverage under the program to be coextensive with the applicable lemon law coverage.<sup>86</sup> The

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programs/bbb-AUTO LINE/participating-manufacturers.

<sup>84</sup> Some program summaries make the program available for only part of the time covered by the basic limited warranty (or "bumper-to-bumper" warranty). Others extend to the end of the basic limited warranty, but don't extend beyond that for specific parts that have longer warranties than the bumper-to-bumper warranty.

<sup>85</sup> If consumers with excluded claims don't contact BBB AUTO LINE but go directly into another forum, manufacturers presumably won't challenge their access to that forum on the basis that they didn't futilely submit to BBB AUTO LINE a complaint that BBB AUTO LINE would have rejected as ineligible.

<sup>86</sup> A similar situation arises under BBB AUTO LINE's California rules, which apply to most claims in California and which also double, for most California claims, as program summaries. BBB AUTO LINE's California rule 2 provides:

## 2. JURISDICTION OF BBB AUTO LINE

A. Disputes That May Be Arbitrated. Disputes must arise under a participating manufacturer's written new vehicle warranty and under the Song-Beverly Consumer Warranty Act. Certain disputes that do not fall within the jurisdiction of these Rules may still be eligible for resolution in BBB AUTO LINE – please contact your Dispute Resolution Specialist for more information.

B. Filing Deadline. Claims must be received by BBB AUTO LINE within six months of the expiration of the applicable warranty

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.

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

In construing the reference to remedies available under the “Act (or rules thereunder),” an advisory opinion from FTC staff focused on the balance struck by the Act to promote the use of programs like BBB AUTO LINE,<sup>87</sup> and characterized such programs as “a warrantor’s opportunity to cure a possible breach of warranty.”<sup>88</sup> 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.”<sup>89</sup>

The opinion identified, as remedies that didn’t have to be made available for Magnuson Moss claims, “consequential damages, diminution of value, attorney’s fees and costs”<sup>90</sup> – a list

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<sup>87</sup> The Act balanced “on the one hand, warrantors’ incentives to establish IDSMs [informal dispute settlement mechanisms] and submit to an IDSM’s procedures so that consumers could have access to a relatively swift, inexpensive, and effective intermediary to obtain performance of promises made in the warranty, and, on the other hand, consumers’ preserved and enhanced ability to seek desired remedies in court when, in the opinion of the consumers, an IDSM fails to result in fulfillment of warranty obligations.” FTC Staff Advisory Opinion (October 25, 2005), at 4.

<sup>88</sup> *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.

<sup>89</sup> Advisory Opinion, at 2.

<sup>90</sup> Advisory Opinion, at 6. These remedies, it should be noted, include elements that could be

that didn't include repurchase (refund)<sup>91</sup> or replacement remedies. These remedies *typically* aren't available under a manufacturer's written warranty and *sometimes* (at least today<sup>92</sup>) aren't available for non-lemon law warranty claims under a program summary. However, in addition to its broad reference that IDSMs needn't have available "remedies provided by state law," the opinion expressly addressed repurchase or replacement remedies in another passage. It explained that the Magnuson Moss Act allowed warrantors to offer a "full warranty," whose terms, defined by the Act,<sup>93</sup> *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."<sup>94</sup> In other words, a replacement or refund remedy would be deemed to be incorporated into the warranty for purposes of the FTC rule (and thus would need to be available for relief in the Mechanism's proceedings) *if* the manufacturer offered a full warranty.

Otherwise, the auditor thinks the better view, in light of the advisory opinion, is that manufacturers can impose prior resort provisions for purposes of Magnuson Moss relief, even if (as a few do) they exclude repurchase and replacement remedies from the remedies available for non-lemon law claims. While this appears to be the better view, though, there's a contrary argument that these remedies were neither the focus of the opinion nor directly addressed by it.

## **B. Reservations and Questions**

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

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" can be more important, indeed far more important, than a reservation. And**

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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.

<sup>91</sup> 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.

<sup>92</sup> 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.

<sup>93</sup> 15 U.S.C. § 2304.

<sup>94</sup> Advisory Opinion, at 5.

**some reservations are far more important than others.**

As to a particularly important provision, in assessing whether a warrantor took “steps reasonably calculated to make consumers aware of the Mechanism’s existence when a warranty dispute arises” (Rule 703.3(d)) the auditor finds a *noteworthy reservation* if a manufacturer took no steps beyond disclosures in the warranty.

If it gave some notice under Rule 703.2(e) or took some other meaningful step beyond the warranty book disclosure, he reports a *reservation*.

If a manufacturer gave Rule 703.2(e) notice and took some meaningful steps to alert consumer to BBB AUTO LINE, either at the dealership level *or* upon the consumer’s initial contact seeking manufacturer-level review, the auditor notes a *question*.

If it gave Rule 703.2(e) notice and took some meaningful steps to alert consumer to BBB AUTO LINE, *both* at the dealership level and upon the consumer’s initial contact seeking manufacturer-level review, the auditor notes *no reservation or question*..

Going forward, the auditor notes a caveat. He believes that the assessment of compliance with Rule 703.2(e), and by extension of compliance with Rule 703.2(d), needs to be revisited going forward if the manufacturer doesn’t clearly show, in future submissions, that Rule 703.2(e) notice is given when (1) any request to the manufacturer for relief is denied, and (2) when a request to the manufacturer for any relief is met with an offer of different relief, as where a manufacturer offers a repair or a goodwill payment in response to a consumer’s request for a repurchase.

### III. Obligations under Florida Provisions

Preliminarily, Florida's lemon law<sup>96</sup> was administered by the Department of Agriculture and Consumer Services until 2011. Administration was then transferred to the Department of Legal Affairs in the Office of the Attorney General, and the former agency repealed its regulations.<sup>97</sup> Although the Department of Legal Affairs hasn't issued replacement regulations, BBB AUTO LINE continues to file (though now with the Department of Legal Affairs) the report that would have been required by those regulations. Further, BBB AUTO LINE treats the (repealed) regulations as operative.

As set forth by the Florida Attorney General, the following manufacturers were certified to participate in BBB AUTO LINE in Florida during 2021<sup>98</sup>:

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

Florida in many ways builds on the Federal law and regulations. However, the Florida lemon law, like other states' lemon laws, contains important provisions that don't appear in the Federal law. Like other states, for example, Florida specifies the numbers of repair attempts, and the time a vehicle can be out of service, before a claim can be filed or the consumer can benefit from the presumption that the manufacturer has had a reasonable opportunity to cure any problems.<sup>99</sup> While Federal law allows manufacturers to require prior resort to independent dispute resolution mechanisms like BBB AUTO LINE (and leaves manufacturers the option of

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<sup>96</sup> FLA. STAT. § 681.

<sup>97</sup> See [https://www.flrules.org/Gateway/View\\_notice.asp?id=14913185](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).

<sup>98</sup> See <http://myfloridalegal.com/pages.nsf/Main/7629400e4ef8a25285256cc9005c5a5b>. (examined periodically by the auditor). Florida has been issuing provisional certifications, generally covering six months; when the auditor checked the site on July 22, 2022, the provisional certification extended to October 31. See FLA. STAT. § 681(5)(a) (providing for renewals "for a period not to exceed 1 year").

<sup>99</sup> See note 75, *supra* (quoting text)

participating without requiring prior resort, Florida law explicitly requires resort to BBB AUTO LINE, if its certified as a complying mechanism, before consumers can turn to the next stage in the Florida lemon law process: a state-run arbitration administered by Florida's New Motor Vehicle Arbitration Board.<sup>100</sup>

Also, Florida requires that manufacturers inform consumers, clearly and conspicuously in writing at the "time of acquisition," of how to file a complaint with BBB AUTO LINE, along with a written statement of the consumer's rights under the lemon law. This provision is met by distributing a pamphlet prepared by the Attorney General's office. This provision allows for monitoring by the Attorney General's office,<sup>101</sup> but this year the auditor began asking manufacturers directly if they were distributing these materials to their dealers.

The former Florida regulations 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.<sup>102</sup>

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.<sup>103</sup> This information appears in the above-referenced booklet prepared by the state.

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<sup>100</sup> *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.").

<sup>101</sup> FLA. STAT. § 681.103(3) provide:

If the manufacturer obtains a signed receipt for timely delivery of sufficient quantities of this written statement to meet the dealer's vehicle sales requirements, it shall constitute prima facie evidence of compliance with this subsection by the manufacturer. The consumer's signed acknowledgment of receipt of materials required under this subsection shall constitute prima facie evidence of compliance by the manufacturer and dealer.

<sup>102</sup> Former Rule 5J-11.006(2)(e).

<sup>103</sup> Former Rule 5J-11.004.



#### IV. Obligations under Ohio Provisions

The following manufacturers were certified to use BBB AUTO LINE in Ohio in 2021:

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

Again, the applicable Federal provisions in many respects create a framework on which state regulation builds, and Ohio law tracks essential aspects of those federal provisions. But Ohio also includes additional substantive provisions and imposes additional disclosure obligations, both minor<sup>104</sup> and more substantial.

Thus, Ohio requires a written disclosure to car buyers about lemon law rights generally, to be made in prescribed form and on a “separate sheet of paper.”<sup>105</sup> Ohio also requires that decisions of a “board” like BBB AUTO LINE *must* bind the warrantor,<sup>106</sup> consistent with BBB AUTO LINE’s practice for all participants in the program.

As to prior resort, while federal law allows manufacturers to insist on prior resort if they have a qualifying arbitration program, Ohio requires manufacturers to obtain state certification in order to do so – consumers have to use BBB AUTO LINE before pursuing remedies if (and only if) the manufacturer is certified and the consumer gets prior notice.<sup>107</sup>

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<sup>104</sup> 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).

<sup>105</sup> 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.

<sup>106</sup> OHIO ADMINISTRATIVE CODE § 109:4-4-03(F)(3).

<sup>107</sup> OHIO REVISED CODE § 1345.77(B) provides:

Ohio also requires that some of the information covered by the Federal disclosure rule be disclosed, not only on the face of the written warranty, but also “on a sign posted in a conspicuous place within that area of the warrantor’s agent’s place of business to which consumers are directed by the warrantor.” The signage and warranty document should include information about BBB AUTO LINE’s availability, contact information, and a statement about where further information can be found. Yet another subsection requires disclosures about Ohio’s prior resort provision, but deems this information to be disclosed so long as a specified statement appears on a conspicuous sign *or* on a separate sheet of paper distributed at the time of the initial face-to-face contact,<sup>108</sup> a term that isn’t defined in the regulations, but clearly isn’t the first time the consumer walks into the dealership.<sup>109</sup>

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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.

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

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

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

"NOTICE

**OHIO LAW REQUIRES YOU TO USE A QUALIFIED ARBITRATION PROGRAM BEFORE SUING THE MANUFACTURER OVER NEW CAR WARRANTY DISPUTES. FAILURE TO ARBITRATE YOUR CLAIM MAY**

Additionally, where FTC Rule 703.2(d) prohibits manufacturers from expressly requiring consumers to use their internal processes before they start the BBB AUTO LINE process, Ohio goes further and requires warrantors 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.” The rule doesn’t specify where this disclosure should appear, but it would seem that a logical place is in the disclosure document. It also requires clear and conspicuous 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.” The rule doesn’t specify where these disclosures need be clearly and conspicuously made. Taken together, these provisions appear to require: .

- That the manufacturer disclose on a separate sheet of paper a prescribed statement with basic information about the Ohio lemon law.<sup>110</sup>
- That the manufacturer disclose the name and contact information for BBB AUTO LINE, along with a description of where to find further information, in addition to, as required by FTC Rule 703.2(b), on the face of the warranty.<sup>111</sup>
- That the manufacturer disclose a prescribed statement about prior resort under the Ohio lemon law on a sign *or* a separate sheet of paper.<sup>112</sup>

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PRECLUDE YOU FROM MAINTAINING A LAWSUIT UNDER SECTION 1345.75 OF THE REVISED CODE."

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

<sup>109</sup> It seems highly unlikely that the regulations contemplated that, at the start of the initial sales presentation, sales personnel would essentially say, “If you buy the car I’m showing you today, and if problems later develop, you may have access to BBB AUTO LINE.”

<sup>110</sup> OHIO REVISED CODE § 1345.74(A).

<sup>111</sup> OHIO ADMIN CODE § 109:4-4-03 (C) (1), (2), and (4).

<sup>112</sup> OHIO ADMIN CODE § 109:4-4-03 (C) (3).

## V. Audit Results

### A. Introductory Observations and Summary of Findings

The auditor's findings, identifying the 19 manufacturers for whom substantial compliance was found and highlighting noteworthy reservations on those findings, are set forth in the introduction.

### B. Manufacturer Submissions: Previously Audited Manufacturers

The discussion that follows analyzes manufacturers' submissions, including consumer-facing materials (the bulk of most submissions) and internal materials. The key manufacturer submissions were warranty and owner's manuals, and the auditor's findings are presented in manufacturer-specific charts.<sup>113</sup> In reviewing other materials, such as training materials or dealer's manuals, the auditor's initial screen was on whether they describe the program in a way that might inform dealer or manufacturer staff who in turn might inform consumers.<sup>114</sup> Of particular interest to the auditor were passages that describe *when* consumers should be told about BBB AUTO LINE.

A note on repetition: Because of the possibility that some manufacturers may focus only on the pages of this audit specific to them, the auditor repeats certain footnotes in multiple manufacturer-specific tables.

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<sup>113</sup> When manufacturers presented multiple warranty manuals for different models and years, the auditor reviewed at last two, with glances at some others. When manufacturers provided separate warranty and owners' manuals, the auditor focused on one of each. Some manufacturers also submitted lemon law or dispute resolution supplements, with detailed state-by-state breakouts. For these, the auditor reviewed provisions applicable to Federal, Ohio, and Florida law. Also, manufacturers typically included California-specific sections in their "core" warranty manual; the auditor examined these as well, but only for compliance with Federal standards.

<sup>114</sup> 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."

## 1. Bentley Motors, Inc.

Bentley participates in all states and is certified in Florida. Bentley’s consumer-facing submissions included five owner’s handbooks, which contain their warranty materials; page references below are to the Flying Spur handbook.

Bentley is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal and Florida law, with the qualifications noted below.<sup>115</sup>

<i>Federal Disclosure Provisions</i>	
(1) Rule 703.2(b) (and Rule 703.1(h) to define “the face of the warranty”)	<p>The “WARRANTY AND SERVICE” section starts on page 377 and the warranty itself starts on page 380. BBB AUTO LINE is mentioned on page 379, with another description (separated from the description on page 379) on page 380-381. The description at page 380 appears on the face of the warranty and includes all of the information required by Rule 703.2(b) except for a reference to a more extended discussion that begins on page 389. (Reservation.)</p> <p>Bentley imposes age, mileage, and other limits on the availability of the program, but, in describing the availability of the program at page 389, only signals the age and mileage limits. (Reservation.)</p>
(2) Rule 703.2(c)	<p>Some but not all of the required information appears at pages 389-390; the general text doesn’t discuss how long BBB AUTO LINE will take to resolve a case, although a California-specific disclosure (which applies to Magnuson Moss) does.<sup>116</sup></p>

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<sup>115</sup> A noteworthy recommendation as to compliance with Florida law, largely fixed last year, has been fully addressed this year.

<sup>116</sup> As to timing, the only discussion is in California-specific text (which applies to Magnuson Moss as well as lemon law claims in California) providing that “[t]he arbitrator’s decision should ordinarily be issued within 40 days,” and further providing for a 30 day extension under certain conditions, such as an arbitrator’s requests an examination by a technical expert. For a discussion of the 30-day extension (which is based on California regulations and doesn’t apply to Magnuson Moss claims), as well as issues raised by BBB AUTO LINE’s substantial compliance with deadlines in arbitration, see Ch. 2, Section III.H.

<p>(3) Rule 703.2(d) – “steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes”</p>	<p>The disclosure about BBB AUTO LINE isn't particularly prominent; the first mention of the program appears relatively late in Bentley's warranty manual. See (1), above. Also, while there's a reference to “Consumer protection information” in the table of contents, it appears at the end of a long table of contents and doesn't expressly mention BBB AUTO LINE or informal dispute resolution. (Question as to prominence.)<sup>117</sup></p> <p>Bentley also provided state-specific materials that it distributes in Florida and California. While focused on state lemon laws, these provide further notice about BBB AUTO LINE in those states. Bentley didn't provide materials showing dealer-level disclosures in other states.</p> <p>As to other disclosures at either the dealership level or upon the consumer's initial contact, Bentley didn't provide materials relating to disclosure at the dealership level. It did, however, provide a letter sent to consumers after the initial contact with Bentley's contact center that alerts the consumers to BBB AUTO LINE. Also, training materials indicate that contact center personnel are told to provide the information orally to consumers (albeit presumably only consumers who call in).</p> <p>Consumers may be drawn by the “BBB” name to the BBB's or BBB National Programs' web site, and both discuss BBB AUTO LINE. To the extent these web-based disclosures can be attributed to the manufacturers who chose to use BBB AUTO LINE, these disclosures (and oral disclosures to consumers call a BBB) would constitute a further disclosure by all warrantors who use BBB AUTO LINE.<sup>118</sup></p> <p>See also item (5).</p> <p>(Question.)</p>
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<sup>117</sup> Bentley also provided an “Aftersales Policies and Procedures Manual,” but that manual does not discuss possible disclosure to consumers about BBB AUTO LINE.

<sup>118</sup> See the last paragraph of Section II.A.3 of this chapter.

<p>(4) Rule 703.2(d) – prohibition on requiring that consumers use manufacturer’s review processes before filing with BBB AUTO LINE<sup>119</sup></p>	<p>The text says that BBB AUTO LINE is available if “we are unable to resolve” an issue at the manufacturer level (page 379). But the previous sentence “request[s]” (in language that’s permissive but not obligatory) consumers to first bring their concerns to the manufacturer.</p>
<p>(5) Rule 703.2(e) - in telling consumers whether and to what extent the warrantor will satisfy a consumer request submitted directly to the warrantor, “the warrantor shall include the information required in § 703.2(b) and (c) of this section.”</p>	<p>Bentley provided a template of a letter denying a repurchase, and the letter tells consumers that BBB AUTO LINE is available and provides contact information. (As noted above, Bentley also sends a letter that discusses BBB AUTO LINE when consumers first reach out to its contact center.)</p> <p>However, the letter doesn’t contain all the required disclosures and, while it directs consumers to BBB AUTO LINE, consumers who contact BBB AUTO LINE may not get a clear disclosure about one element of the required notice: prior resort requirements. (Question as to providing information indirectly; reservation because consumers may not get a clear disclosure about prior resort requirements.)</p> <p>Also, the letter is directed to consumers whose request for a repurchase is denied, but the rule itself isn’t so limited.<sup>120</sup> However, for the 2021 audit, the auditor didn’t seek clarification from most manufacturers of how far their disclosure policies extended beyond denial of repurchase requests, which he believes is the better approach going forward.</p>

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<sup>119</sup> Rule 703.2(d) provides that the rule doesn’t “limit the warrantor's option to encourage consumers to seek redress directly from the warrantor as long as the warrantor does not expressly require consumers to seek redress directly from the warrantor.” Further, the auditor doesn’t construe this language to preclude accurate description of notice provisions and provisions for a manufacturer’s final repair attempt under state lemon laws.

<sup>120</sup> By its terms, for example, the rule would apply when a manufacturer denies other requested relief (such as a request for repairs), where it offers an alternative remedy to requested relief (such as a cash settlement or an extended service plan in lieu of a repurchase); or even, arguably, when the manufacturer grants the consumer’s request (where, particularly for repair remedies, the information would be useful if the consumer isn’t satisfied with the implementation of the remedy).

**Florida Disclosure**

(F1) Section 681.103(3) – Clear and conspicuous disclosure of how and where to file a claim, accomplished through the distribution of a booklet prepared by the Florida Attorney General’s office.

Bentley reports that it distributes the Consumer Guide to the Florida Lemon Law, produced by the Florida Attorney General’s Office, and that it provides sufficient copies to cover the allocated vehicles for each dealer.



## 2. BMW (with Mini Cooper)

BMW (with MiniCooper) participates in eleven states: Arkansas, California, Georgia, Kentucky, Iowa, Idaho, Massachusetts, Maryland, Minnesota, Pennsylvania, and Virginia.

BMW provided copies of one 2021 warranty manual for BMW and two 2021 manuals for different Mini models. The discussions in the various manuals all appear to be substantially similar. Page references below are to the BMW manual.

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

Federal Disclosure Provisions	
(1) Rule 703.2(b) (and Rule 703.1(h) to define “the face of the warranty”)	<p>The manual provides the required information, and identifies the states where BBB AUTO LINE is available. But the information appears <i>after</i> the warranty text and not on the face of the warranty; indeed, the warranty starts on page 2 and BBB AUTO LINE isn’t mentioned until page 44. (Reservation as to placement.)</p> <p>In describing the availability of the program, BMW does tell consumers that “there are some minimum requirements for participation in the program,” and that BBB AUTO LINE can provide more details.</p>
(2) Rule 703.2(c)	The manual provides the required information. <sup>121</sup>

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<sup>121</sup> As to timing, a general discussion reports that “BBB AUTO LINE will usually render a decision within 40 days from the time you file your complaint.” Also, California text provides that the decision will “ordinarily” be issued within 40 days, and provides for a 30 day extension under certain conditions, such as an arbitrator’s requests an examination by a technical expert. For a discussion of the 30-day extension (which is based on California regulations and doesn’t apply to Magnuson Moss claims), as well as issues raised by BBB AUTO LINE’s substantial compliance with deadlines in arbitration, see Ch. 2, Section III.H.

<p>(3) Rule 703.2(d) – “steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes”</p>	<p>The discussion of BBB AUTO LINE appears under a prominent headline naming BBB AUTO LINE, but it doesn't appear until page 44, which makes it inherently less prominent. The program's name also appears, in bold-faced text, in the table of contents, but the prominence of this disclosure is diminished because BBB AUTO LINE's name isn't printed in all caps.</p> <p>BMW provided a bulletin sent to various dealership personnel on August 22, 2022. While outside the audit period, the auditor nonetheless considers it, hesitating to identify serious problems for matters that BMW has acted to address. The bulletin gives them contact information for BBB AUTO LINE to pass along to consumers, as well as a BMW-specific copy of the poster prepared by BBB AUTO LINE and reproduced in section II.A.3 of this chapter. The bulletin describes it only as a “suggested” flyer for display, though, not as a flyer that <i>should</i> be displayed.</p> <p>(Reservation based on timeliness and on description of flyer as a “suggested” document for display. }</p> <p>Finally, consumers may be drawn by the “BBB” name to the BBB's or BBB National Programs' web site, and both discuss BBB AUTO LINE. To the extent these web-based disclosures can be attributed to the manufacturers who chose to use BBB AUTO LINE, these disclosures (and oral disclosures to consumers call a BBB) would constitute a further disclosure by all warrantors who use BBB AUTO LINE.<sup>122</sup></p>
<p>(4) Rule 703.2(d) – prohibition on requiring that consumers use manufacturer's review processes before filing with BBB AUTO LINE<sup>123</sup></p>	<p>After describing procedures to contact the manufacturer and telling consumers that they “may want” to make such contact, BMW tells consumer that BBB AUTO LINE is available “if your concern is still not resolved to your satisfaction.” (Question.)</p>

<sup>122</sup> See the last paragraph of Section II.A.3 of this chapter.

<sup>123</sup> Rule 703.2(d) provides that the rule doesn't “limit the warrantor's option to encourage consumers to seek redress directly from the warrantor as long as the warrantor does not expressly require consumers to seek redress directly from the warrantor.” Further, the auditor doesn't construe this language to preclude accurate description of notice provisions and provisions for a manufacturer's final repair attempt under state lemon laws.

<p>(5) Rule 703.2(e) - in telling consumers whether and to what extent the warrantor will satisfy a consumer request submitted directly to the warrantor, “the warrantor shall include the information required in § 703.2(b) and (c) of this section.”</p>	<p>BMW previously provided a letter sent to consumers for BMW, although it didn’t provide a comparable letter for Mini Cooper. The letter contained much of the required information, and most importantly alerted consumers that BBB AUTO LINE is available, although among other things it didn’t include a reference, required by the rule, to prior resort. <i>However</i>, BMW hasn’t confirmed the continued use of the letter, or provided a substitute for the previously provided letter, for the current audit. As things stand, the auditor won’t assume that the previously submitted document remains in use. (Noteworthy reservation.)</p> <p>The auditor also notes that the previously submitted letter was directed to consumers whose request for a repurchase was denied, but the rule by its terms isn’t so limited.<sup>124</sup> However, for the 2021 audit, the auditor didn’t seek clarification from most manufacturers of how far their disclosure policies extended beyond denial of repurchase requests, which he believes is the better approach going forward.</p>
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<sup>124</sup> By its terms, for example, the rule would apply when a manufacturer denies other requested relief (such as a request for repairs), where it offers an alternative remedy to requested relief (such as a cash settlement or an extended service plan in lieu of a repurchase); or even, arguably, when the manufacturer grants the consumer’s request (where, particularly for repair remedies, the information would be useful if the consumer isn’t satisfied with the implementation of the remedy).

### 3. Ferrari

Ferrari participates in Florida and California. However, it isn't certified in Florida and isn't subject to the Florida audit.

Ferrari provided numerous, model-specific, owner's manuals and warranty and service books.

Ferrari is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal law, but with *noteworthy reservations that could impact any future finding of substantial compliance*.

#### 1. Consumer-Facing Materials

Federal Disclosure Provisions	
(1) Rule 703.2(b) (and Rule 703.1(h) to define "the face of the warranty")	<p>Introductory text in the Warranty and Service Book (Ferrari provided seven model-specific variants) includes the required information.</p> <p>The text has a California-specific discussion, which is preceded by a discussion which isn't state specific. The non-state-specific discussion provides that, "[i]n certain states where BBB AUTO LINE is available, you are specifically required to use BBB AUTO LINE before exercising your rights or seeking remedies under [the Magnuson Moss Act]." This does seem to convey that BBB AUTO LINE isn't available everywhere, but seems an obscure way to convey that BBB AUTO LINE is available only in Florida and California. It's not clear to the auditor that this constitutes a "clear" statement about the availability of the program. (Question.)</p> <p>In describing the availability of BBB AUTO LINE, Ferrari doesn't signal that, even in states where the program is available, there are age, mileage, and other limits on its availability. (Reservation.)</p>

(2) Rule 703.2(c)	<p>Ferrari provides all the relevant information in a section directed exclusively to California consumers, but doesn't provide that information to the other consumers (<i>i.e.</i>, Florida consumers) for whom the program is available.<sup>125</sup></p> <p>(Noteworthy reservation as to Florida consumers.)</p>
(3) Rule 703.2(d) – “steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes”	<p>The discussions described in the previous sections are reasonably prominent. The former runs for two pages with prominent and multiple all-caps references to BBB AUTO LINE and a bold-faced all-caps heading “NOTICE TO CALIFORNIA CONSUMERS.” The latter is highlighted by a box and is in all-red type.</p> <p>However, Ferrari still hasn't provided the notice discussed in item (5), nor has it provided any indication of other steps, beyond the warranty manual, to tell consumers about BBB AUTO LINE.</p> <p>Consumers may be drawn by the “BBB” name to the BBB's or BBB National Programs' web site, though, and both discuss BBB AUTO LINE. To the extent these web-based disclosures can be attributed to the manufacturers who chose to use BBB AUTO LINE, these disclosures (and oral disclosures to consumers call a BBB) would constitute a further disclosure by all warrantors who use BBB AUTO LINE.<sup>126</sup></p> <p>(Noteworthy reservation.)</p>

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<sup>125</sup> As to timing, the California-specific discussion (which applies to Magnuson Moss as well as lemon law claims) provides that the arbitrator's decision will ordinarily be issued within 40 days “[t]he arbitrator's decision should ordinarily be issued within 40 days,” and further provides for a 30 day extension under certain conditions, such as an arbitrator's requests an examination by a technical expert. For a discussion of the 30-day extension (which is based on California regulations and doesn't apply to Magnuson Moss claims), as well as issues raised by BBB AUTO LINE's substantial compliance with deadlines in arbitration, see Ch. 2, Section III.H.

<sup>126</sup> See the last paragraph of Section II.A.3 of this chapter.

<p>(4) Rule 703.2(d) – prohibition on requiring that consumers use manufacturer’s review processes before filing with BBB AUTO LINE<sup>127</sup></p>	<p>The auditor doesn’t believe that there’s a problem. The California-specific discussion does provide, but in text that the auditor views as permissive rather than an express requirement, “If you have a problem arising under a Ferrari written warranty, we <i>encourage</i> you to bring it to our attention. If we are unable to resolve it, you may file a claim with BBB AUTO LINE.” (Emphasis added.)</p>
<p>(5) Rule 703.2(e) - in telling consumers whether and to what extent the warrantor will satisfy a consumer request submitted directly to the warrantor, “the warrantor shall include the information required in § 703.2(b) and (c) of this section.”</p>	<p>Not provided. (Noteworthy reservation.)</p> <p>If Ferrari does provide notice in the future, that auditor notes that notice is required whenever a manufacturer tells a consumer whether and to what extent a consumer’s request will be satisfied, and isn’t limited to cases where the consumer requests a repurchase or replacement and is offered nothing.<sup>128</sup></p>

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<sup>127</sup> Rule 703.2(d) provides that the rule doesn’t “limit the warrantor's option to encourage consumers to seek redress directly from the warrantor as long as the warrantor does not expressly require consumers to seek redress directly from the warrantor.” Further, the auditor doesn’t construe this language to preclude accurate description of notice provisions and provisions for a manufacturer’s final repair attempt under state lemon laws.

<sup>128</sup> By its terms, for example, the rule by its terms would seem to apply when a manufacturer denies other requested relief (such as a request for repairs), where it an alternative remedy to requested relief (such as a cash settlement or an extended service plan in lieu of a repurchase); or even when the manufacturer grants the consumer’s request (where, particularly for repair remedies, the information would be useful if the consumer isn’t satisfied with the implementation of the remedy).

#### 4. Ford Motor Co.

Ford participates in all states and is certified in Florida and Ohio. For the current audit, Ford provided four warranty manuals. Unless otherwise stated, references here are to its 2022 Model Year Ford Warranty Guide.<sup>129</sup>

Ford is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal, Florida, and Ohio law, with the qualifications noted below.

Federal Disclosure Provisions	
(1) Rule 703.2(b) (and Rule 703.1(h) to define “the face of the warranty”)	<p>Ford provides the required information, though some of it isn’t properly placed. Thus, there’s a reference to BBB AUTO LINE on page 2 of the 2022 warranty manual, in an introduction that precedes the section (starting on page 5) that’s headed “limited warranty.” The auditor considers this placement of the first reference at a spot that isn’t precisely the first page of the booklet or the first page of the “limited warranty” section to warrant at most a technical reservation. The discussion on page 2 also references a more detailed discussion that follows at page 44. But neither the discussion on page 2 nor that beginning on page 44 mentions prior resort, as required in the initial discussion by Rule 703.2(b) – although prior resort is, somewhat confusingly, mentioned in a separate discussion on page 7. (Reservation.)</p> <p>In addition to discussions of BBB AUTO LINE in warranty manuals, the program is also discussed in Ford’s owners’ manuals; it appears, for example, at page 656 of the 2022 Ford F1-150 Owner’s Manual. As with the discussions on pages 2 and 44 of the Warranty Manual, though, the discussion in the Operating Manual doesn’t mention prior resort.</p> <p>Although Ford doesn’t expressly note that it imposes age, mileage, and other limits on the availability of the program, it does note that claims are reviewed “for eligibility under the Program Summary Guidelines.” (Page 657). (Question.)</p>

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<sup>129</sup> This guide is available online.  
[https://www.ford.com/cmslibs/content/dam/brand\\_ford/en\\_us/brand/resources/general/pdf/warranty/2022-Ford-Car-Lt-Truck-Hybrid-Warranty-version-2\\_frdwa\\_EN-US\\_12\\_2020.pdf](https://www.ford.com/cmslibs/content/dam/brand_ford/en_us/brand/resources/general/pdf/warranty/2022-Ford-Car-Lt-Truck-Hybrid-Warranty-version-2_frdwa_EN-US_12_2020.pdf) (checked on March 21, 2021).

(2) Rule 703.2(c)	Ford addresses the subjects required by the rule. <sup>130</sup>
(3) Rule 703.2(d) – “steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes”	<p>Consumers are told that the program exists in a section, at the start of the warranty manual, with the heading “Important information you should know,” and the subheading “IF YOU NEED CONSUMER ASSISTANCE.” The headings don’t mention BBB AUTO LINE or alternative dispute resolution, but the all caps “BBB AUTO LINE” stands out. The more extensive discussion that follows later in the manual is highlighted on the second page of the table of contents by a reference to “BETTER BUSINESS BUREAU (BBB) AUTO LINE PROGRAM.”<sup>131</sup></p> <p>There is a brief discussion of BBB AUTO LINE in a 2022 <i>Owner’s</i> manual that the auditor reviewed. Since it begins at pages 656 of the document, though, the auditor doesn’t think this contributes substantially to fulfilling the requirement at hand.</p> <p>As to other disclosures at either the dealership level or upon the consumer’s initial contact with its corporate service center, Ford has provided a document titled “Lemon Law Consumer Rights Notifications.” directed to all Ford and Lincoln dealers, advising dealers to maintain an inventory of BBB AUTO LINE dealer cards in the service department and that distribution to consumers who experience a warranty dispute is “required.” The cards tell consumers about the availability of BBB AUTO LINE and provide contact information; they are available to dealers without charge.</p> <p>The notice also points out that many state lemon laws require distribution of lemon law rights notices at vehicle delivery. On a state-by-state basis, state-mandated notices would be an additional source of information, to which consumers might turn later, alerting them generally to the availability of BBB AUTO LINE. Materials discussed in the “Florida disclosures” and “Ohio disclosures” sections below would also be relevant to compliance</p>

<sup>130</sup> As to timing, Ford’s discussion reports that “Disputes submitted to the BBB AUTO LINE program are usually decided within forty days after you file your claim with the BBB. For a general discussion of issues raised by BBB AUTO LINE’s substantial compliance with deadlines in arbitration, see Ch. 2, Section III.H.

<sup>131</sup> The reference is also boldfaced and capitalized in the table of contexts, but doesn’t stand out there because the same applies to the rest of the table of contents.



	<p>with Rule 703.2(d) in those states.</p> <p>Ford also provided a knowledge base article used by staff in its consumer response center, although it seems to require the consumer to mention BBB AUTO LINE first to trigger a response.</p> <p>Also, Ford has information about BBB AUTO LINE in a data base, but it seems to convey that information to consumers only if the consumers ask about BBB AUTO LINE.</p> <p>See also item (5).</p> <p>Finally, consumers may be drawn by the “BBB” name to the BBB’s or BBB National Programs’ web site, and both discuss BBB AUTO LINE. To the extent these web-based disclosures can be attributed to the manufacturers who chose to use BBB AUTO LINE, these disclosures (and oral disclosures to consumers call a BBB) would constitute a further disclosure by all warrantors who use BBB AUTO LINE.<sup>132</sup></p> <p>(Question, because of the reservation noted in item (5).)</p>
<p>(4) Rule 703.2(d) – prohibition on requiring that consumers use manufacturer’s review processes before filing with BBB AUTO LINE<sup>133</sup></p>	<p>Ford’s text indicates, in potentially problematic language, that BBB AUTO LINE may be available “if” internal procedures haven’t resolved the issue. (Question.)</p>

<sup>132</sup> See the last paragraph of Section II.A.3 of this chapter.

<sup>133</sup> Rule 703.2(d) provides that the rule doesn’t “limit the warrantor's option to encourage consumers to seek redress directly from the warrantor as long as the warrantor does not expressly require consumers to seek redress directly from the warrantor.” Further, the auditor doesn’t construe this language to preclude accurate description of notice provisions and provisions for a manufacturer’s final repair attempt under state lemon laws.

<p>(5) Rule 703.2(e) - in telling consumers whether and to what extent the warrantor will satisfy a consumer request submitted directly to the warrantor, “the warrantor shall include the information required in § 703.2(b) and (c) of this section.”</p>	<p>Ford provides written notice of its internal decisions, along with information about BBB AUTO LINE, to consumers in California. That notice provides all the relevant information, although it perhaps confusingly blends issues under state law (which are beyond the scope of this audit) and those under Federal law.</p> <p>Ford has advised that the results of its internal reviews are conveyed to consumers orally, and, during those conversations, consumers are also told about BBB AUTO LINE and referred to their owner’s and warranty manuals for more information if they’re “not happy” with the decision. According to Ford, some consumers will not get notice under this standard even if a repurchase request is denied, perhaps because they expected the result, perhaps because they’re satisfied with an alternative remedy, such as repair assistance. This is based on Ford’s representations in this audit; the standard for “not happy” doesn’t appear in a written text. (Reservation .)</p> <p>Also, the reference to the warranty manual for detail, without providing the detail yesterday, raises a question as to compliance.</p> <p>More broadly, the rule by its terms isn’t limited to matters where the consumer requested a repurchase and was offered nothing; if a manufacturer offers an alternative remedy, that’s appears to be a “decision” for purposes of Rule 703.2(e).<sup>134</sup></p>
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<sup>134</sup> By its terms, the rule would apply when a manufacturer denies other requested relief (such as a request for repairs). Arguably, it even applies when the manufacturer grants the consumer’s request; particularly for repair remedies, the information would be useful if the consumer isn’t satisfied with the implementation of the remedy.

<b>Additional Florida Disclosure</b>	
<p>(F1) Section 681.103(3) – Clear and conspicuous disclosure of how and where to file a claim, accomplished through the distribution of a booklet prepared by the Florida Attorney General’s office.</p>	<p>Ford advises that it distributes the consumer’s guide prepared by the Florida Attorney General’s office.</p> <p>It provided a 2014 field communication sent to Florida dealers so advising them, and reports that it is reviewing sending another such communication later this year.</p> <p>The prominence of this booklet would also be a factor in an analysis of whether Ford takes reasonable steps to make consumers in Florida aware of BBB AUTO LINE at the time a warranty dispute arises.</p>
<b>Additional Ohio Disclosures</b>	
<p>(O1) Code § 1345.74(A) – Lemon law disclosure on a separate sheet of paper</p>	<p>Ford provided a document, headed “LEMON LAW RIGHTS, NOTICE TO OHIO CONSUMERS,” that contains the required information.</p>
<p>(O2) Rule 109:4-4-03(C) (1), (2), and (4)— disclosures on the “face of the written warranty” and on a sign</p>	<p>For the “face of the written warranty” requirement, Ohio rule 109:4-4-01(C)(5) (paralleling a Federal provision) provides that a “face of the warranty” disclosure can be met by disclosure in an alternative document, and the document noted in item (O1) contains most of the required information. The document doesn’t refer consumers to materials accompanying the vehicle that contain more detailed information about the program, but rather directs them to BBB AUTO LINE for further information. BBB AUTO LINE will provide them with the relevant information in the manual and, while it won’t highlight prior resort requirements that are mentioned in the manual, the Ohio requirement is set forth in large bold type on the document itself, so the auditor does not consider this a serious problem, although he notes a question. (Question.)</p> <p>Ford has previously provided an “Our Commitment to You” card. If Ford still uses that card and if it were posted as a sign, it would largely show compliance with these provisions, although it does direct consumers to BBB AUTO LINE for further information, rather than Ford’s own materials, as provided by subsection (4). Ford has previously suggested that these cards may be available in a common area, but this doesn’t seem sufficient to satisfy the signage requirement. (Reservation; Ford has advised that it “is looking at the current status of signage in Ohio dealerships and if</p>

	out of compliance, will work to bring the dealers into compliance.)
(O3) Rule 109:4-4-03(C)(3)—Prior resort disclosure, with specified text, on a sign <i>or</i> a separate sheet of paper provided to the consumer “at the time of the initial face-to-face contact”	The information is disclosed in the Lemon Law Rights document. Ford’s letter is provided to consumers at the vehicle delivery. Assuming the purpose of the disclosure is to tell a consumer who bought a car how to proceed if problems develop (and not to influence the initial decision to buy the car), it appears that a disclosure at the time of delivery would largely satisfy the regulatory purpose.
(O4) Rule 109:4-4-03(E) – Taking steps “reasonably calculated to make consumers aware of the existence of the board at the time consumers experience warranty disputes”	See discussion in item (3), as well as the document noted in item (O1).
(O5) Rule 109:4-4-03(E) – Prohibition on requiring that consumers use manufacturer’s review processes before filing with BBB AUTO LINE (paralleling item (4)) <i>and</i> requirement of affirmative disclosures to consumers that the use of such process is optional and may be terminated at any time by either the consumer or warrantor	The lemon law document provides the required notice.  However, the problematic text from the warranty manual, noted in item (4), would still be an issue. (Question).

## 5. General Motors Co.

General Motors participates in all states, and is certified in Florida and Ohio. General Motors this year provided a 2022 Chevrolet Blazer Warranty Manual and 2022 Owner’s Manuals for the Blazer and the Chevrolet Silverado. Reference in the discussion below are to the Blazer manuals.

General Motors is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal, Florida, and Ohio law, with the qualifications noted below.

### 1. Consumer-Facing Materials

Federal Disclosure Provisions	
(1) Rule 703.2(b) (and Rule 703.1(h) to define “the face of the warranty”)	“Alternative dispute resolution” is prominently mentioned on page 1 of the warranty manual, preceding the warranty text. . The text doesn’t mention BBB AUTO LINE by name (General Motors has advised that it intends to address this), not does it include most details required by Rule 703.2(b). The text does, however, reference a later discussion with most of the required information, though even that later discussion does not provide information about the prior resort provision for Magnuson Moss claims in California. (Reservation.)
(2) Rule 703.2(c)	General Motors addresses the subjects required by the rule, except for the types of information that consumers will need to provide to BBB AUTO LINE. (Reservation.) <sup>135</sup>  It makes explicit that participation in BBB AUTO LINE is limited by age, mileage, an other factors. <sup>136</sup>

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<sup>135</sup> On a more technical matter, the introductory text describes the BBB AUTO LINE process as non-binding, and it would be more precise to communicate that an arbitrated decision *is* binding on the manufacturer if the consumer accepts it.

<sup>136</sup> As to timing, the discussion reports that “your case will generally be heard within 40 days. Disputes submitted to the BBB AUTO LINE program are usually decided within forty days after you file your claim with the BBB.” For a discussion of issues raised by BBB AUTO LINE’s substantial compliance with deadlines in arbitration, see Ch. 2, Section III.H

<p>(3) Rule 703.2(d) – “steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes”</p>	<p>The above-cited notice on page 1 prominently references alternative dispute resolution, although not BBB AUTO LINE by name. As noted, General Motors advises that it intends to address this.</p> <p>As to other disclosures at either the dealership level or upon the consumer’s initial contact, except on a state-specific basis, GM does not appear to tell dealers to alert consumers to BBB AUTO LINE. On a state-specific basis, for example, GM has submitted an image of a wall plaque intended for display in California dealerships, and Ohio signage could alert consumers in that state to BBB AUTO LINE.</p> <p>When a consumer calls GM directly, manufacturer personnel are instructed to tell consumers about BBB AUTO LINE, but only if a consumer mentions BBB AUTO LINE or lemon laws.</p> <p>Disclosures discussed under item (5) would also be relevant here.</p> <p>Finally, consumers may be drawn by the “BBB” name to the BBB’s or BBB National Programs’ web site, and both discuss BBB AUTO LINE. To the extent these web-based disclosures can be attributed to the manufacturers who chose to use BBB AUTO LINE, these disclosures (and oral disclosures to consumers call a BBB) would constitute a further disclosure by all warrantors who use BBB AUTO LINE.<sup>137</sup></p> <p>(Reservation.)</p>
<p>(4) Rule 703.2(d) – prohibition on requiring that consumers use manufacturer’s review processes before filing with BBB AUTO LINE.<sup>138</sup></p>	<p>The text indicates that BBB AUTO LINE may be available “if” previously described internal procedures have not resolved the issue. (Question.)</p>

<sup>137</sup> See the last paragraph of Section II.A.3 of this chapter.

<sup>138</sup> Rule 703.2(d) provides that the rule doesn’t “limit the warrantor's option to encourage consumers to seek redress directly from the warrantor as long as the warrantor does not expressly require consumers to seek redress directly from the warrantor.” Further, the auditor doesn’t construe this language to preclude accurate description of notice provisions and provisions for a

<p>(5) Rule 703.2(e) - in telling consumers whether and to what extent the warrantor will satisfy a consumer request submitted directly to the warrantor, “the warrantor shall include the information required in § 703.2(b) and (c) of this section.”</p>	<p>GM has advised that consumers are told orally about the results of its internal review; during that discussion, GM further advised, they’re also told about BBB AUTO LINE and referred to the owner’s and warranty manuals for more information. GM has revised some internal documents to clarify to case handlers the need to disclose the availability of BBB AUTO LINE whenever a request for a repurchase or replacement is denied.</p> <p>Rather than directly provide more detailed information required by Rule 703.2(e), however, the text provides the information indirectly by directing them to the owner’s and warranty manual. (Question as to indirect disclosure).</p> <p>More broadly, the rule by its terms isn’t limited to consumers whose request for a repurchase is denied.<sup>139</sup> However, for the 2021 audit, the auditor didn’t seek clarification from most manufacturers of how far their disclosure policies extended beyond denial of repurchase requests, which he believes is the better approach going forward.</p>
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manufacturer’s final repair attempt under state lemon laws.

<sup>139</sup> By its terms, for example, the rule would apply when a manufacturer denies other requested relief (such as a request for repairs), where it offers an alternative remedy to requested relief (such as a cash settlement or an extended service plan in lieu of a repurchase); or even, arguably, when the manufacturer grants the consumer’s request (where, particularly for repair remedies, the information would be useful if the consumer isn’t satisfied with the implementation of the remedy).

<b>Additional Florida Disclosure</b>	
<p>(F1) Section 681.103(3) – Clear and conspicuous disclosure of how and where to file a claim, accomplished through the distribution of a booklet prepared by the Florida Attorney General’s office.</p>	<p>General Motors advises that it distributes the Consumer Guide to the Florida Lemon Law. It provided a “Florida Lemon Law Point-of-Sale Instructions” document that highlights the need for dealership personnel to distribute the document, to review with each new vehicle purchase, and to get a signed acknowledgement from each consumer. The letter also asks each dealership to assign one person the responsibility for maintaining an adequate supply</p> <p>General Motors also advises that it has monitored the aggregate distribution of copies of the booklet sent to Florida dealers, and indicated that it intends to do some monitoring on a dealership by dealership basis.</p>
<b>Additional Ohio Disclosures</b>	
<p>(O1) Code § 1345.74(A) – Lemon law disclosure on a separate sheet of paper.</p>	<p>GM has provided the requisite documentation, along with instructions to dealers.</p>
<p>(O2) Rule 109:4-4-03(C) (1), (2), and (4)—disclosures on the “face of the written warranty” and on a sign.</p>	<p>For the “face of the written warranty” requirement, Ohio rule 109:4-4-01(C)(5) (paralleling a Federal provision) provides that a “face of the warranty” disclosure can be met by disclosure in an alternative document, and General Motors provides the relevant information in a separate document that dealers are instructed to distribute to consumers.</p> <p>Dealers are also instructed to post this information as a sign.</p>
<p>(O3) Rule 109:4-4-03(C)(3)—Prior resort disclosure, with specified text, on a sign <i>or</i> a separate sheet of paper provided to the consumer “at the time of the initial face-to-face contact.”</p>	<p>The sign noted in item (O2) satisfies this requirement</p>



<p>(O4) Rule 109:4-4-03(E) – Taking steps “reasonably calculated to make consumers aware of the existence of the board at the time consumers experience warranty disputes.”</p>	<p>Item (4) noted a question in this regard. In Ohio, the concern is mitigated by the signage disclosure noted in item (O2). (Question)</p>
<p>(O5) Rule 109:4-4-03(E) – Prohibition on requiring that consumers use manufacturer’s review processes before filing with BBB AUTO LINE (paralleling item (4)) <i>and</i> requirement of affirmative disclosures to consumers that the use of such process is optional and may be terminated at any time by either the consumer or warrantor.</p>	<p>GM has not provided documents showing that it makes the affirmative disclosure. (Reservation.)</p> <p>Further, potentially problematic text from the warranty manual, noted in Item (4), is also an issue under the Ohio regulations. (Question.)</p>

## 6. Hyundai Motor America (including Genesis)

Hyundai and Genesis participate in all states, and are certified in Florida and Ohio. In reviewing Hyundai's submission for the 2021 audit year, the auditor focused on Hyundai's 2022 Owner's Handbook and Warranty Information booklet, as well as a supplement to that booklet. Hyundai also provided comparable materials for Genesis. Page cites below are to the Hyundai booklets.

For reasons discussed below, Hyundai and Genesis are in SUBSTANTIAL COMPLIANCE with the applicable disclosure provisions of Federal, Florida, and Ohio law. However, for reasons noted in Section II.B.2 of this chapter and explored further below, there is a *noteworthy reservation* under the FTC's interpretation of its rules – albeit an interpretation that, as the FTC has noted, has received mixed reviews in the courts.

Hyundai's 2022 Owner's Handbook and Warranty Information: tell consumers about BBB AUTO LINE and require prior resort to BBB AUTO LINE for Magnuson Moss claims (except in Georgia) or "if you are seeking remedies under the 'Lemon Laws' of your state if your state statute requires you to do so." BBB AUTO LINE is discussed on pages 9-10 and then again on page 12, and the Genesis manual has similar text.

But in addition, in text first provided to the auditor in 2020 manuals, Hyundai – and subsequently Genesis as well – also tells California consumers that, if they accept warranty services and haven't exercised an opt-out within thirty days of buying or leasing a car, they've agreed to use a separate *binding* arbitration program; that program, for which consumers are charged a \$250 filing fee, is administered by JAMS Mediation, Arbitration, and ADR services. Hyundai apparently used such language in the past, but deleted it around 2013.<sup>140</sup>

In the 2020 manuals, Hyundai didn't explain the relation between BBB AUTO LINE arbitration and JAMS arbitration. For the 2022 model year, the binding arbitration section starts with the following text.

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

This language also appears on page 13 of the supplement.<sup>141</sup>

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<sup>140</sup> "Hyundai Reverses Policy on Settling Warranty Disputes," NEW YORK TIMES, Dec. 6, 2013 (available at <https://www.nytimes.com/2013/12/08/automobiles/warranty-clause-limits-hyundai-owner-rights.htm>) .

<sup>141</sup> As a minor point, the reference to "Section 3" in the supplement is somewhat confusing,

As discussed in Section II.A.2 of this chapter, though, the FTC in 1975 declared that “reference within the written warranty to any binding, non-judicial remedy is prohibited by the Rule and the Act,”<sup>142</sup> and the Commission reiterated this position in 1999 and 2015, although the latter notice acknowledged that courts were divided on whether the Commission had the authority to take this position. As noted above, the auditor now treats this as a noteworthy reservation on his finding of substantial compliance, while noting, as the Commission itself has noted, the mixed judicial reception to the Commission’s interpretation.

<b>Federal Disclosure Provisions</b>	
(1) Rule 703.2(b) (and Rule 703.1(h) to define “the face of the warranty”)	Hyundai provides information about BBB AUTO LINE in two discussions that are separate but in close proximity to each other. (Pages 9-10 and 12). The former discussion references the latter, and provides the required information. The placement satisfies the “face of the warranty” requirement.  Hyundai notes that time, mileage, and other limitations may affect the availability of BBB AUTO LINE. Handbook at 9.
(2) Rule 703.2(c)	Hyundai makes the required disclosures. <sup>143</sup>
(3) Rule 703.2(d) – “steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes”	The disclosures in the warranty book are prominent. BBB AUTO LINE is expressly mentioned in the table of contents. Further, the disclosures in the warranty book are reinforced by further disclosures in the supplementary booklet; the supplement includes a general introduction and state-specific breakdowns, most if not all of which mention BBB AUTO LINE. <sup>144</sup>

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because there’s Section 3 in the warranty manual but not the supplement.

<sup>142</sup> 40 Fed. Reg. at 60211 (1975) (emphasis added).

<sup>143</sup> As to questions of timing, the text provides that, “A decision should be rendered within forty days of BBB AUTO LINE’s receipt of your properly completed Customer Complaint Form.” For a discussion of issues raised by BBB AUTO LINE’s substantial compliance with deadlines in arbitration, see Ch. 2, Section III.H. The auditor also notes that this doesn’t capture the nuance that the clock starts running in Florida and California earlier at an earlier point, but perhaps that’s too much detail to attempt to convey.

<sup>144</sup> Hyundai expressly exempts Georgia from the prior resort requirement, although the program is still available there.

	<p>As to other disclosures at either the dealership level or upon the consumer’s initial contact with Hyundai’s service center, Hyundai provided only state-specific information. For example, it provided short “cards, specific to California,” labelled “LET HYUNDAI HELP YOU” and “LET GENESIS HELP YOU.” One side of the document briefly describes the program, and the other includes detailed FAQs. Also, see the discussions of the Ohio and Florida materials discussed below, Hyundai provided no information about disclosures at the dealership level or upon the initial filing of a complaint with the manufacturer.</p> <p>See also item (5).</p> <p>Finally, consumers may be drawn by the “BBB” name to the BBB’s or BBB National Programs’ web site, and both discuss BBB AUTO LINE. To the extent these web-based disclosures can be attributed to the manufacturers who chose to use BBB AUTO LINE, these disclosures (and oral disclosures to consumers call a BBB) would constitute a further disclosure by all warrantors who use BBB AUTO LINE.<sup>145</sup></p> <p>(Reservation as to compliance with the Rule.)</p>
<p>(4) Rule 703.2(d) – prohibition on requiring that consumers use manufacturer’s review processes before filing with BBB AUTO LINE<sup>146</sup></p>	<p>Before describing BBB AUTO LINE in the warranty manual, Hyundai “recommend[s]” (in permissive rather than mandatory terms) that consumers follow a series of internal steps. (Page 2.)</p>

<sup>145</sup> See the last paragraph of Section II.A.3 of this chapter.

<sup>146</sup> Rule 703.2(d) provides that the rule doesn’t “limit the warrantor's option to encourage consumers to seek redress directly from the warrantor as long as the warrantor does not expressly require consumers to seek redress directly from the warrantor.” Further, the auditor doesn’t construe this language to preclude accurate description of notice provisions and provisions for a manufacturer’s final repair attempt under state lemon laws.

<p>(5) Rule 703.2(e) - in telling consumers whether and to what extent the warrantor will satisfy a consumer request submitted directly to the warrantor, “the warrantor shall include the information required in § 703.2(b) and (c) of this section.”</p>	<p>Material provided. The sample letter refers to a lemon law denial in California, but Hyundai advises that, with modifications, it is used for all denials. The letter contains the general notice and much but not all of the details required by the rule. As the letter itself notes, consumers will get more details if they contact BBB AUTO LINE; even then, though, they may not get information about prior resort obligations under Magnuson Moss (as set forth in Hyundai’s manuals). (Reservation.)</p> <p>More broadly, the rule by its terms isn’t limited to consumers whose request for a repurchase is denied.<sup>147</sup> However, for the 2021 audit, the auditor didn’t seek clarification from most manufacturers of how far their disclosure policies extended, which he believes is the better approach going forward.</p>
<p><b>Additional Florida Disclosure</b></p>	
<p>(F1) Section 681.103(3) – Clear and conspicuous disclosure of how and where to file a claim, accomplished through the distribution of a booklet prepared by the Florida Attorney General’s office.</p>	<p>Hyundai advises that it provides the Consumer’s Guide to its dealers.</p>
<p><b>Additional Ohio Disclosures</b></p>	
<p>(O1) Code § 1345.74(A) – Lemon law disclosure on a separate sheet of paper.</p>	<p>Hyundai provides the lemon law disclosure in the pages of its warranty supplement devoted to Ohio, but not on a separate sheet of paper. (Reservation.)</p>

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<sup>147</sup> By its terms, for example, the rule would apply when a manufacturer denies other requested relief (such as a request for repairs), where it offers an alternative remedy to requested relief (such as a cash settlement or an extended service plan in lieu of a repurchase); or even, arguably, when the manufacturer grants the consumer’s request (where, particularly for repair remedies, the information would be useful if the consumer isn’t satisfied with the implementation of the remedy).

<p>(O2) Rule 109:4-4-03(C) (1), (2), and (4)—disclosures on the “face of the written warranty” and on a sign.</p>	<p>Hyundai discloses the required information on the face of its warranty. See Item (1).</p> <p>In the past, Hyundai provided two documents, noting that one was a sign and one was distributed to Ohio customers. Hyundai didn’t confirm their continued use this year, but the auditor relies on them, without resubmission, for the current year only.</p> <p>Hyundai hasn’t identified which document was used as a sign and which as a separate-sheet disclosure, but both essentially contain the required information, though one doesn’t fully comply; the rule requires disclosure of where consumers can get further information “in materials accompanying the motor vehicle.” One of the documents does that precisely, but the other directs the consumer to BBB AUTO LINE for further information. If the consumer does contact BBB AUTO LINE, BBB AUTO LINE will provide them with the relevant information in the manual and, while it won’t highlight prior resort requirements that are mentioned in the manual, the Ohio requirement is set forth in large bold type on the document itself. Thus, the auditor does not consider this a serious problem, although he notes a question. (Question.)</p>
<p>(O3) Rule 109:4-4-03(C)(3)—Prior resort disclosure, with specified text, on a sign <i>or</i> a separate sheet of paper provided to the consumer “at the time of the initial face-to-face contact.”</p>	<p>Both documents discussed in item (O2) contain the required disclosure. Thus, whichever one is used as a sign would establish compliance with this provision.</p> <p>.</p>
<p>(O4) Rule 109:4-4-03(E) – Taking steps “reasonably calculated to make consumers aware of the existence of the board at the time consumers experience warranty disputes.”</p>	<p>The auditor noted a reservation for the Federal audit. For the Ohio audit, the signage provided in item (O2) would provide additional notice. (Question.)</p>

<p>(O5) Rule 109:4-4-03(E) – Prohibition on requiring that consumers use manufacturer’s review processes before filing with BBB AUTO LINE (paralleling item (4)) <i>and</i> requirement of affirmative disclosures to consumers that the use of such process is optional and may be terminated at any time by either the consumer or warrantor.</p>	<p>As discussed in item (4), the auditor didn’t find a reservation for the Federal audit in Hyundai’s compliance with the Federal prohibition; for the same reasons, he doesn’t find a reservation here on that score.</p> <p>However, the notices Hyundai has provided don’t note that the manufacturer’s internal review process can be terminated at any time by either the consumer or the warrantor. (Reservation.)</p>
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## 7. Jaguar Land Rover North America

Jaguar and Land Rover participate in all states, but aren't certified in Florida or Ohio. (Unless the context clearly indicates otherwise, references to Jaguar include Land Rover as well.)

This year, Jaguar submitted three owner's manuals, each of which includes a detailed description of BBB AUTO LINE generally, followed by state-specific information. Much of this information was previously included in a separate dispute resolution supplement, which has now been consolidated into the owner's manual. References in the chart below are to the 2022 model year Jaguar manual, which appears comparable to the two Land Rover manuals.

Jaguar now imposes only limited prior resort requirements. It appears to require prior resort for Magnuson Moss claims only for California consumers. Indeed, consistent with non-certified status in Florida and Ohio, Jaguar tells consumers in those states that there is *no* prior resort requirement for Jaguar claims under the states' lemon laws. (Pages 338, 357.)<sup>148</sup>

Jaguar is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal law, with the qualifications noted below (including issues, noted in item (5), that need to be clarified going forward).

Federal Disclosure Provisions	
(1) Rule 703.2(b) (and Rule 703.1(h) to define "the face of the warranty")	Jaguar provides the required information, but without the proper placement. The warranty begins at page 302; BBB AUTO LINE isn't mentioned until page 325, and that brief mention points to a more extended discussion that begins on page 330. Prior resort for Magnuson Moss claims in California is mentioned at page 335. (Reservation.)

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<sup>148</sup> In the initial discussion of BBB AUTO LINE at page 325 of the Manual, Jaguar notes that it also participates in AUTOCAP, and directs consumers to state motor vehicle bureaus for information. The accuracy of the information about AUTOCAP is beyond the scope of this audit, although the auditor notes that it generally appears to be a program for dealers rather than manufacturers and the description of one program (Texas) specifically exempts a "repair covered by the manufacturer's warranty" <https://www.tada.org/web/Online/Consumers/AutoCAP/Online/Consumers/AutoCAP.aspx?hkey=59220404-34b9-45a0-92ae-bfad6eb81412>. In any event, it doesn't appear to require binding arbitration, and thus doesn't raise the issues discussed in Section II.A.2 of this chapter. The auditor does note, though, that the discussion doesn't make clear that consumer's choice between the programs might be influenced prior resort requirements.



	<p>In describing the availability of the program, Jaguar notes age and mileage limits, and then notes that “JLRNA has pre-committed to arbitrate certain unresolved claims relating to our vehicles. For example, claims must allege a defect in the vehicle’s material or workmanship, and/or an inability to repair the vehicle so that it conforms to the written warranty. All of JLRNA pre-commitment eligibility requirements are found in our Program Summaries, which you may obtain from BBB AUTO LINE®.” (Page 331). While not entirely clear, this seems to reasonably signal that other limits will apply.</p>
(2) Rule 703.2(c)	<p>Jaguar addresses the required subjects.<sup>149</sup></p>
(3) Rule 703.2(d) – “steps reasonably calculated to make consumers aware of the Mechanism’s existence at the time consumers experience warranty disputes”	<p>Now that the dispute resolution supplement has been consolidated with the owner’s manual (see the introductory text), the discussion of BBB AUTO LINE isn’t particularly prominent.</p> <p>As to other disclosures at either the dealership level or upon the consumer’s initial contact with Jaguar’s service center, Jaguar provided no materials and didn’t confirm that any past submissions were current.</p> <p>See also Item (5).</p> <p>(Reservation.)</p> <p>Finally, consumers may be drawn by the “BBB” name to the BBB’s or BBB National Programs’ web site, and both discuss BBB AUTO LINE. To the extent these web-based disclosures can be attributed to the manufacturers who chose to use BBB AUTO LINE, these disclosures (and oral disclosures to consumers call a BBB) would constitute a further disclosure by all warrantors who use BBB AUTO LINE.<sup>150</sup></p>

<sup>149</sup> As to timing, Jaguar tells consumers that “[t]he arbitrator’s decision will ordinarily be issued within 40 days from the time your complaint is filed.” Similar language appears in some state-specified discussions, with the California-specific discussion providing for a 30 day extension under certain conditions, such as an arbitrator’s request for an examination by a technical expert. For a discussion of the 30-day extension (which is based on California regulations and doesn’t apply to Magnuson Moss claims), as well as issues raised by BBB AUTO LINE’s substantial compliance with deadlines in arbitration, see Ch. 2, Section III.

<sup>150</sup> See the last paragraph of Section II.A.3 of this chapter.

<p>(4) Rule 703.2(d) – prohibition on requiring that consumers use manufacturer’s review processes before filing with BBB AUTO LINE<sup>151</sup></p>	<p>Potentially problematic language providing for the program’s availability “in the unlikely event” that efforts at both the dealer and manufacturer level don’t resolve a consumer’s concern. (Page 330.) (Question.)</p>
<p>(5) Rule 703.2(e) - in telling consumers whether and to what extent the warrantor will satisfy a consumer request submitted directly to the warrantor, “the warrantor shall include the information required in § 703.2(b) and (c) of this section.”</p>	<p>Jaguar advised that it no longer used a template that it provided in the past. Rather, it tries to resolve the complaint and, “[i]f resolution cannot be reached, JLRNA specialist will advise customer that they can contact BBB AUTO LINE regarding their concerns.” However, as the auditor has previously noted with respect to other manufacturers, Rule 703.2(e) doesn’t allow disclosures to turn on a contingency. Further, Jaguar didn’t provide documents showing how this works in practice, which the auditor needs for a fuller evaluation. (Reservation)</p> <p>More broadly, the auditor notes that the rule by its terms isn’t limited to denials of repurchase remedies, although the auditor didn’t seek clarification on this point for the 2021 audit and doesn’t use it as a basis for a qualification this year.<sup>152</sup></p>

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<sup>151</sup> Rule 703.2(d) provides that the rule doesn’t “limit the warrantor's option to encourage consumers to seek redress directly from the warrantor as long as the warrantor does not expressly require consumers to seek redress directly from the warrantor.” Further, the auditor doesn’t construe this language to preclude accurate description of notice provisions and provisions for a manufacturer’s final repair attempt under state lemon laws.

<sup>152</sup> By its terms, for example, the rule would apply when a manufacturer denies other requested relief (such as a request for repairs), where it offers an alternative remedy to requested relief (such as a cash settlement or an extended service plan in lieu of a repurchase); or even, arguably, when the manufacturer grants the consumer’s request (where, particularly for repair remedies, the information would be useful if the consumer isn’t satisfied with the implementation of the remedy).

## 8. Kia Motors America, Inc.

Kia participates in all states, and is certified in Florida and Ohio. References to the warranty manual are to the 2022 Warranty and Consumer Information Manual used for most Kia vehicles.<sup>153</sup>

Kia is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal, Florida, and Ohio law, with the qualifications noted below.

<b>Federal Disclosure Provisions (See Section II of this Chapter).</b>	
(1) Rule 703.2(b) (and Rule 703.1(h) to define “the face of the warranty”)	Kia makes the required disclosures, but neither with the required placement (BBB AUTO LINE isn’t mentioned until page 39 of the warranty manual and isn’t on the “face of the warranty”) nor (arguably) with the proper prominence. <sup>154</sup> (Reservation.)  Kia tells consumers that participation in BBB AUTO LINE is limited by age, mileage, and “other contributing factors.”
(2) Rule 703.2(c)	Kia addresses the subjects required by the rule, except for the types of information that consumers will need to provide to BBB AUTO LINE. (Reservation.) <sup>155</sup>

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<sup>153</sup> Kia uses a different manual for its electric vehicles, but that manual appears to have the same information about BBB AUTO LINE.

<sup>154</sup> BBB AUTO LINE isn’t mentioned early in the manual, nor is it highlighted in the table of contents. As noted in Item (3), though, the booklet, titled “Consumer Information,” contains detailed state-by-state breakdowns and, within those breakdowns, BBB AUTO LINE is mentioned prominently.

<sup>155</sup> On a more technical matter, the manual (at page 43) doesn’t make clear the optional nature of mediation within the program. On an even more technical matter, Kia observes that, if a consumer doesn’t accept an arbitration decision, it might be introduced as evidence in a later court action “in some states.” In fact, at least for Magnuson Moss purposes, it might be introduced as evidence in every state.

As to timing, Kia tells consumers that “[d]isputes handled through the BBB Auto Line process are usually resolved within 40 days of your contacting the BBB.” The California-specific discussion (which extends to Magnuson Moss claims in California) “[t]he arbitrator’s decision should ordinarily be issued 40 days from the time your complaint is filed (47 days if you did not first contact Kia about your problem), or a delay of up to 30 days if the arbitrator requests an inspection/report by an impartial technical expert of further investigation and report by BBB AUTO

<p>(3) Rule 703.2(d) – “steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes”</p>	<p>Kia’s Warranty booklet uses “Consumer Information” in its title, but BBB AUTO LINE isn’t mentioned until page 39, with a more extended discussion at pages 42-43, . There’s no reference to BBB AUTO LINE, or even alternative dispute resolution, in the table of contents. On the other hand, in a 112- page book, pages 44-1111 are devoted to state-specific notices, which typically mention (often multiple times, and highlighted with capital letters) BBB AUTO LINE. With over 100 references to BBB AUTO LINE in the booklet, there’s a good chance that a consumer who looked at the book would see the reference.</p> <p>As to other disclosures at either the dealership level or upon the consumer’s initial contact with Kia’s service center, Kia provides details about BBB AUTO LINE to dealers in its “Service Policies and Procedures.” That document tells dealers that, “[i]n the unlikely event that the consumer believes the Dealer and/or KMA have been able to resolve their concerns, the consumer can be referred to the BBB Auto Line.”</p> <p>Kia’s latest submission includes a script that call center representatives read, telling consumers about BBB AUTO LINE and referring them to the warranty booklet for a warranty dispute or a repurchase request.</p> <p>Kia also tells consumers about BBB AUTO LINE in an email acknowledging receipt of their concerns, although that email says that BBB AUTO LINE is available “in the event that Kia has been unable to satisfactorily address your concern.”</p> <p>Kia then gives further notice about BBB AUTO LINE if a consumer who requests a repurchase or replacement is offered a goodwill payment.</p> <p>Finally, consumers may be drawn by the “BBB” name to</p>
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LINE.” The 30-day extension isn’t based on the Magnuson Moss Act. For timing issues generally, see Ch. 2, Section III.H.

	<p>the BBB’s or BBB National Programs’ web site, and both discuss BBB AUTO LINE. To the extent these web-based disclosures can be attributed to the manufacturers who chose to use BBB AUTO LINE, these disclosures (and oral disclosures to consumers call a BBB) would constitute a further disclosure by all warrantors who use BBB AUTO LINE.<sup>156</sup></p> <p>Kia appears to take reasonable steps to advise consumers about BBB AUTO LINE, although some were only recently implemented.</p>
<p>(4) Rule 703.2(d) – prohibition on requiring that consumers use manufacturer’s review processes before filing with BBB AUTO LINE<sup>157</sup></p>	<p>Kia indicates, in potentially problematic language, that BBB AUTO LINE may be available in the event that previously described internal procedures haven’t resolved an issue. (Question.)</p>
<p>(5) Rule 703.2(e) - in telling consumers whether and to what extent the warrantor will satisfy a consumer request submitted directly to the warrantor, “the warrantor shall include the information required in § 703.2(b) and (c) of this section.”</p>	<p>As discussed in item (4), Kia instructs its call center representatives to tell consumers about BBB AUTO LINE when a complaint is received, and sends an email at that time alerting consumers to BBB AUTO LINE. When a subsequent decision is rendered in writing, contact information for BBB AUTO LINE is specifically provided. Kia provides this information both when it declines a repurchase request and when it makes a “goodwill” case offer in response to the consumer’s repurchase request.</p> <p>These letters don’t contain all the disclosures required by BBB AUTO LINE. And, while they direct consumers to BBB AUTO LINE, consumers who contact BBB AUTO LINE may not get a clear disclosure about prior resort requirements, which is part of the required information. (Question as to providing information indirectly;</p>

<sup>156</sup> See the last paragraph of Section II.A.3 of this chapter.

<sup>157</sup> Rule 703.2(d) provides that the rule doesn’t “limit the warrantor's option to encourage consumers to seek redress directly from the warrantor as long as the warrantor does not expressly require consumers to seek redress directly from the warrantor.” Further, the auditor doesn’t construe this language to preclude accurate description of notice provisions and provisions for a manufacturer’s final repair attempt under state lemon laws.

	<p>reservation because consumers may not get a clear disclosure about prior resort requirements.)</p> <p>Finally, notification to consumers is also required when a request for any remedy, including a repair remedy, is involved.<sup>158</sup> However, the auditor didn't seek clarification on this point for the 2021 audit year.</p>
<b>Additional Florida Disclosure</b>	
(F1) Section 681.103(3) – Clear and conspicuous disclosure of how and where to file a claim, accomplished through the distribution of a booklet prepared by the Florida Attorney General's office.	<p>Kia advises that the books are ordered by KUS and added to vehicles that are being shipped and allocated to Florida dealers.</p> <p>The prominence of this booklet would also be a factor in an analysis of whether Kia takes reasonable steps to make consumers in Florida aware of BBB AUTO LINE at the time a warranty dispute arises.</p>
<b>Additional Ohio Disclosures</b>	
(O1) Code § 1345.74(A) – Lemon law disclosure on a separate sheet of paper.	<p>Kia provides the required information in the Ohio-specific text in its Warranty and Consumer Information Manual as well as in signs that it distributed to its dealerships with instructions for posting. While these disclosures, taken together, are substantial steps towards telling the consumer about the lemon law, the statute specifically requires disclosure on a separate sheet of paper. (Reservation.)</p>
(O2) Rule 109:4-4-03(C) (1), (2), and (4)-- disclosures in the warranty manual <i>and</i> on a sign.	<p>For disclosure in the Warranty and Consumer Information Manual, see item (1). (Reservation).</p> <p>The information is also disclosed on a sign that Kia has acted to distribute to dealer principles, general managers, and service managers, advising that they must post the material prominently in a service area.</p>

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<sup>158</sup> Further, the rule arguably applies when the manufacturer grants the consumer's request (where, particularly for repair remedies, the information would be useful if the consumer isn't satisfied with the implementation of the remedy).

<p>(O3) Rule 109:4-4-03(C)(3)—Prior resort disclosure, with specified text, on a sign <i>or</i> a separate sheet of paper provided to the consumer “at the time of the initial face-to-face contact.”</p>	<p>Kia provided a document indicating the Ohio dealers were provided a sign for posting, and instructed to post it in a conspicuous place to which consumers are directed.</p>
<p>(O4) Rule 109:4-4-03(E) -- Taking steps “reasonably calculated to make consumers aware of the existence of the board at the time consumers experience warranty disputes.”</p>	<p>See the sign noted in (O3), and the warranty manual and instructions to call center agents, noted in (3), which include general and Ohio-specific information described in items (O1), (O2), and (O3)</p> <p>In the email described in item (O2), Kia seemed to assume that these obligations could arise at the dealership level, and noted that Kia personnel must notify consumers about BBB AUTO LINE when they experience warranty disputes, and must refer consumers with warranty disputes to BBB AUTO LINE. Also, the instructions to call center agents (noted in item (3)), would seem a useful backstop.</p>
<p>(O5) Rule 109:4-4-03(E) Prohibition on requiring that consumers use manufacturer’s review processes before filing with BBB AUTO LINE (paralleling item (4)) <i>and</i> requirement of affirmative disclosures to consumers that the use of such process is optional and may be terminated at any time by either the consumer or warrantor.</p>	<p>The general discussion of BBB AUTO LINE in the Kia’s manual indicates, in potentially problematic language, that BBB AUTO LINE may be available in the event that previously described internal procedures haven’t resolved an issue. Similar language doesn’t appear in the Ohio-specific portions of the manual, but it does appear in the letter sent to consumers when they start the manufacturer-level review process. (Question.) Kia does not make the affirmative disclosure that resort to the internal process is optional. (Reservation.)</p>

## 9. Automobile Lamborghini

Lamborghini participates in all states, but isn't certified in Florida or Ohio. This year, Lamborghini submitted this year a series of owners' manuals and warranty documents; the chart that follows refers to the Aventador Ultima materials.

Lamborghini is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal law but *with noteworthy reservations that could impact any future findings of substantial compliance.*

Federal Disclosure Provisions	
(1) Rule 703.2(b) (and Rule 703.1(h) to define "the face of the warranty")	<p>Lamborghini makes the required disclosures in its warranty booklet, but without the proper placement. Although the warranty begins on page 9, BBB AUTO LINE isn't mentioned in text until page 12 (mentioning prior resort, though somewhat inconspicuously), with an extended discussion beginning on page 24. (Reservation.)</p> <p>With respect to the availability of the program, Lamborghini imposes age, mileage, and other limits on the availability of the program, but only signals the age and mileage limits. (Page 25) (Reservation.)</p>
(2) Rule 703.2(c)	Lamborghini addresses the subjects required by the rule. <sup>159</sup>

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<sup>159</sup> As to timing, Lamborghini tells consumers that "[t]he BBB will make every effort to reach a final resolution of your claim within 5 business days from the hearing (and within 40 days from the date your claim was filed), unless state or federal law provides otherwise." A California-specific discussion (which extends to Magnuson Moss claims in California) provides for a 30 day extension under certain conditions, such as an arbitrator's requests an examination by a technical expert. For a discussion of the 30-day extension (which is based on California regulations and doesn't apply to Magnuson Moss claims), as well as issues raised by BBB AUTO LINE's substantial compliance with deadlines in arbitration, see Ch. 2, Section III.H.

On more technical matters, Lamborghini makes clear the optional nature of mediation in the California-specific discussion. The general discussion omits this text, and uses imprecise text about "agree[ing] with" a mediated solution. (There can be no mediated solution unless the consumer agrees to it.)



<p>(3) Rule 703.2(d) – “steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes”</p>	<p>Information about BBB AUTO LINE appears early in the warranty manual, and is highlighted in the text and the extended discussion that appears later. Also, the heading “CONSUMER PROTECTION INFORMATION” (though not a reference to BBB AUTO LINE or alternative dispute resolution) appears in the table of contents.</p> <p>As to other disclosures at either the dealership level or upon the consumer’s initial contact with its service center, Lamborghini this year didn’t provide any responsive materials. It has provided some such materials in the past, but didn’t confirm their currency this year.<sup>160</sup> Nor, as noted in item (5), did Lamborghini show that it tells consumers about BBB AUTO LINE when it informs them of its decisions in cases submitted directly to Lamborghini.</p> <p>Thus, except for the warranty manual, Lamborghini hasn’t submitted any materials that are confirmed to be current and that tell consumers about BBB AUTO LINE. (Noteworthy reservation.)</p> <p>However, consumers may be drawn by the “BBB” name to the BBB’s or BBB National Programs’ web site, and both discuss BBB AUTO LINE. To the extent these web-based disclosures can be attributed to the manufacturers who chose to use BBB AUTO LINE, these disclosures (and oral disclosures to consumers call a BBB) would constitute a further disclosure by all warrantors who use BBB AUTO LINE.<sup>161</sup></p>
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<sup>160</sup> The materials provided previously include a letter, last submitted in 2019, telling consumers about BBB AUTO LINE when the consumers contacted the warrantor itself; a training manual in 2018; and an “Important Notice to Consumers” telling them about BBB AUTO LINE. As to the latter document, Lamborghini hasn’t provided context telling how it is used, and the auditor has now observed that the title of the file indicates that it was specifically intended for use in California.

<sup>161</sup> See the last paragraph of Section II.A.3 of this chapter.

<p>(4) Rule 703.2(d) – prohibition on requiring that consumers use manufacturer’s review processes before filing with BBB AUTO LINE<sup>162</sup></p>	<p>Lamborghini indicates, in potentially problematic language, that it “offers additional assistance” though BBB AUTO LINE “if” previously described internal procedures haven’t resolved the issue. However, any concern that consumers are told that they must first use internal processes may be somewhat mitigated by the notice, discussed under Rule 703.2(e), that they’re given when they do pursue those processes. (Question.)</p>
<p>(5) Rule 703.2(e) - in telling consumers whether and to what extent the warrantor will satisfy a consumer request submitted directly to the warrantor, “the warrantor shall include the information required in § 703.2(b) and (c) of this section.”</p>	<p>The auditor is not aware of any materials submitted by Lamborghini, this year or in prior years, showing that it notifies consumers about BBB AUTO LINE when it tells them whether and to what extent it will satisfy a consumer’s request submitted to the warrantor.</p> <p>As noted above, Lamborghini has previously provided, most recently in 2019, a template of a letter alerting consumers to BBB AUTO LINE at the time a dispute submitted directly to Lamborghini was <i>received</i>. Though the letter didn’t contain all the information required by Rule 703.2(e), it did direct consumers to BBB AUTO LINE – and, if and when they contacted BBB AUTO LINE, they would have gotten most of the required information. Even then, though, they may not have gotten clear information about prior resort obligations under Magnuson Moss (which are set forth in Lamborghini’s manuals).</p> <p>If this letter were current, it would merit a question as to providing information indirectly; a reservation because consumers might not be clearly told about prior resort requirements that must be disclosed under the rule; and a further reservation, with a possible mitigating factor, because the notice it provided, however useful for purposes of item Rule 703.2(d) (item 4), was premature for purposes of Rule 703.2(e) (the current item 5).</p> <p>These are the qualifications the auditor would find if the document were current; however, during the current audit, he has received no confirmation of its currency. (Noteworthy reservation.)</p>

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<sup>162</sup> Rule 703.2(d) provides that the rule doesn’t “limit the warrantor's option to encourage consumers to seek redress directly from the warrantor as long as the warrantor does not expressly require consumers to seek redress directly from the warrantor.” Further, the auditor doesn’t construe this language to preclude accurate description of notice provisions and provisions for a manufacturer’s final repair attempt under state lemon laws.

	Finally, the rule by its terms isn't limited to consumers whose request for a repurchase is denied. <sup>163</sup> However, for the 2021 audit, the auditor didn't seek clarification from most manufacturers of how far their disclosure policies extend, which he believes is the better approach going forward.
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<sup>163</sup> By its terms, for example, the rule would apply when a manufacturer denies other requested relief (such as a request for repairs), where it offers an alternative remedy to requested relief (such as a cash settlement or an extended service plan in lieu of a repurchase); or even, arguably, when the manufacturer grants the consumer's request (where, particularly for repair remedies, the information would be useful if the consumer isn't satisfied with the implementation of the remedy).

## 10. Lotus

Lotus participates in all states, but isn't certified in Florida or Ohio. It has provided a 2021 warranty manual and a supplemental document distributed to consumers.

Lotus is in SUBSTANTIAL COMPLIANCE with applicable provisions of Federal law, but *with noteworthy reservations (at least outside California) that could impact any future findings of substantial compliance.*

Federal Disclosure Provisions	
(1) Rule 703.2(b) (and Rule 703.1(h) to define “the face of the warranty”)	Lotus makes the required disclosures with the proper placement, although its prior resort provision is sufficiently muddled to create potential confusion. <sup>164</sup>  However, Lotus imposes age, mileage, and other limits on the availability and scope of the program, and doesn't signal this in their materials. (Reservation).
(2) Rule 703.2(c)	Lotus addresses the types of information required by the rule in the supplement noted above (to which the notice in the warranty manual refers). This is consistent with Rule 703.2(c), which requires disclosures in the written warranty or “a separate section of materials accompanying the product.” <sup>165</sup>

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<sup>164</sup> The text provides:

Unless superseded by applicable state law, you are required to use BBB AUTO LINE before exercising rights or seeking remedies created by Title I of the Federal Magnuson Moss Warranty Act. If you choose to seek redress by pursuing rights and remedies not created by Title I of the Federal Magnuson Moss Warranty Act, resort to BBB AUTO LINE would not be required by any provision of the Federal Magnuson Moss Warranty Act.

Of course, state laws wouldn't override a prior resort requirement for Magnuson Moss purposes, although they might decline to allow a separate prior resort requirement for lemon law purposes.

<sup>165</sup> As to timing, Lotus reports that “[t]he whole AUTO LINE process normally takes 40 days or less. For a discussion of the issues raised by BBB AUTO LINE's substantial compliance with deadlines in arbitration, see Ch. 2, Section III.H

<p>(3) Rule 703.2(d) – “steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes”</p>	<p>The supplement seems sufficiently prominent to catch consumers’ attention.</p> <p>Lotus also provided a notice to dealers reminding them that they must tell consumers about BBB AUTO LINE if there’s a lemon law or warranty-related dispute. The notice was accompanied by a sign, prominently titled “RESOLVE YOUR DISPUTE” that BBB AUTO LINE distributed to manufacturers, and that Lotus told its dealers to post in their service areas.<sup>166</sup> However, the title of the submitted file includes “ACP,” presumably a reference to California’s Arbitration Certification Program that suggests that the document may have gone only to California dealers. Lotus hasn’t clarified the matter, so the auditor doesn’t assume that it’s used outside California.</p> <p>Further, it appears that Lotus no longer provides notice when consumers first contact its corporate consumer response center (when it apparently used to offer a repair remedy as a matter of course), and Lotus has made no showing that it continues to provide any notice required by Rule 703.2(e).</p> <p>(Noteworthy reservation.)</p> <p>The auditor does note that consumers may be drawn by the “BBB” name to the BBB’s or BBB National Programs’ web site, and both discuss BBB AUTO LINE. To the extent these web-based disclosures can be attributed to the manufacturers who chose to use BBB AUTO LINE, these disclosures (and oral disclosures to consumers call a BBB) would constitute a further disclosure by all warrantors who use BBB AUTO LINE.<sup>167</sup></p>
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<sup>166</sup> The generic version of the sign is reproduced in Section II.A.3 of this chapter.

<sup>167</sup> See the last paragraph of Section II.A.3 of this chapter.

<p>(4) Rule 703.2(d) – prohibition on requiring that consumers use manufacturer’s review processes before filing with BBB AUTO LINE.<sup>168</sup></p>	<p>Lotus doesn’t require consumers to use its internal review process before advancing to BBB AUTO LINE for purposes of Magnuson Moss. It does have a somewhat poorly worded lemon law notice about final repair attempts under state lemon laws, but specifically notes that the provision doesn’t apply to the Magnuson Moss Act.<sup>169</sup></p>
<p>(5) Rule 703.2(e) - in telling consumers whether and to what extent the warrantor will satisfy a consumer request submitted directly to the warrantor, “the warrantor shall include the information required in § 703.2(b) and (c) of this section.”</p>	<p>Lotus no longer provides the notice to consumers that it did previously. (Noteworthy reservation.)</p>

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<sup>168</sup> Rule 703.2 (e) provides that the rule doesn’t “limit the warrantor's option to encourage consumers to seek redress directly from the warrantor as long as the warrantor does not expressly require consumers to seek redress directly from the warrantor.” Further, the auditor doesn’t construe this language to preclude accurate description of notice provisions and provisions for a manufacturer’s final repair attempt under state lemon laws.

<sup>169</sup> The text says:

UNLESS PROVIDED OTHERWISE BY YOUR STATE LEMON LAW, IN ORDER TO PROCEED WITH A CLAIM AGAINST LOTUS AND/OR TO BENEFIT FROM CERTAIN PRESUMPTIONS SET FORTH IN YOUR LEMON LAW, YOU MUST FIRST GIVE LOTUS ONE FINAL DIRECT ATTEMPT TO REPAIR YOUR VEHICLE. IF YOUR STATE SO PROVIDES, YOU MUST SEND YOUR NOTICE AND FINAL REPAIR ATTEMPT REQUEST TO LOTUS AT THE ADDRESS ABOVE.

This is a muddled description of state lemon laws, since a manufacturer can’t require a final repair attempt unless the state law affirmatively authorizes the provision, it doesn’t pose problems for the Federal audit to which Lotus is subject.

## 11. Maserati

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

During 2021, Maserati expanded its participation to Arkansas, Kentucky, and Idaho, However, the manual submitted for the current audit doesn't advise consumers of Maserati's participation in these additional states.

Maserati is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal law but *with noteworthy reservations that could impact any future findings of substantial compliance.*

Federal Disclosure Provisions	
(1) Rule 703.2(b) (and Rule 703.1(h) to define “the face of the warranty”)	Maserati provides the required information with the proper placement, and the warranty card identifies the three states where it participates.  With respect to the availability of the program, however, Maserati imposes age, mileage, and other limits on the availability and scope of the program, and doesn't signal this in their materials. (Reservation.)
(2) Rule 703.2(c)	Maserati provides the required information. <sup>170</sup>
(3) Rule 703.2(d) – “steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes”	Information about BBB AUTO LINE appears on the first textual page of the warranty booklet, under a boldfaced, all-caps heading “BBB AUTO LINE.” Although the program isn't mentioned in the table of contents, moreover, the first three pages of warranty text, in relatively small print, prominently discuss BBB AUTO LINE.

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<sup>170</sup> As to timing, Maserati reports that claims are “BBB AUTO LINE will usually render a decision with 40 days from the time that you file your complaint.” In the California-specific disclosure, the text provides for a 30 day extension under certain conditions, such as an arbitrator's requests an examination by a technical expert. For a discussion of the 30-day extension (which is based on California regulations and doesn't apply to Magnuson Moss claims), as well as issues raised by BBB AUTO LINE's substantial compliance with deadlines in arbitration, see Ch. 2, Section III.H.

	<p>Maserati also provided a document indicating that consumers who believe they have an unresolved warranty dispute should be told about BBB AUTO LINE and given contact information. The document is potentially significant, but Maserati hasn't provided sufficient context to understand how it's used. With key questions unanswered,<sup>171</sup> the auditor doesn't rely on this document, and assumes that the only disclosure made by Maserati is in its warranty manual.</p> <p>Also, consumers may be drawn by the "BBB" name to the BBB's or BBB National Programs' web site, and both discuss BBB AUTO LINE. To the extent these web-based disclosures can be attributed to the manufacturers who chose to use BBB AUTO LINE, these disclosures (and oral disclosures to consumers call a BBB) would constitute a further disclosure by all warrantors who use BBB AUTO LINE.<sup>172</sup></p> <p>(Noteworthy reservation.)</p>
<p>(4) Rule 703.2(d) – prohibition on requiring that consumers use manufacturer's review processes before filing with BBB AUTO LINE.<sup>173</sup></p>	<p>Maserati doesn't require that consumers use the manufacturer's review processes before seeking relief under the Magnuson Moss Act.</p>

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<sup>171</sup> For example, it's not clear if it's used in every state in which Maserati participates, or if (like some other manufacturers) Maserati has California-specific procedures and the document isn't used in Florida or Minnesota. It's also not clear if the notice is given to all consumers who contact Maserati, or, perhaps, only consumers who contact Maserati by phone. And it's not clear if the notice described in the document would be disclosed to any consumers in the states where it's used, or if the consumer must mention some trigger words.

<sup>172</sup> See the last paragraph of Section II.A.3 of this chapter.

<sup>173</sup> Rule 703.2 (e) provides that the rule doesn't "limit the warrantor's option to encourage consumers to seek redress directly from the warrantor as long as the warrantor does not expressly require consumers to seek redress directly from the warrantor." Further, the auditor doesn't construe this language to preclude accurate description of notice provisions and provisions for a manufacturer's final repair attempt under state lemon laws.



<p>(5) Rule 703.2(e) - in telling consumers whether and to what extent the warrantor will satisfy a consumer request submitted directly to the warrantor, “the warrantor shall include the information required in § 703.2(b) and (c) of this section.”</p>	<p>There is some possibility that the document discussed in item (3) points to at least some compliance with Rule 703.2(e), but Maserati hasn’t clarified this point and hasn’t submitted other materials showing compliance with the rule. (Noteworthy reservation.)</p> <p>Further, the text doesn’t directly provide all of the information required by Rule 703.2(e). Consumers are directed to BBB AUTO LINE, though, and when they contact BBB AUTO LINE, they’ll get most of the required information. Even then, though, they may not get information about prior resort obligations under Magnuson Moss (as set forth in Maserati’s manuals). (Question as to providing information indirectly; reservation because consumers probably won’t be told about prior resort even indirectly).</p> <p>Finally, as the auditor has noted, Rule 703.2(e) isn’t limited to cases where a request for repurchase or replacement is denied; it applies by its terms whenever consumers are told about a manufacturer’s decision on review. The auditor didn’t seek clarification on this point for the 2021 audit and doesn’t use it as a basis for a qualification this year.<sup>174</sup></p>
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<sup>174</sup> By its terms, for example, the rule by its terms would seem to apply when a manufacturer denies other requested relief (such as a request for repairs), where it an alternative remedy to requested relief (such as a cash settlement or an extended service plan in lieu of a repurchase); or even when the manufacturer grants the consumer’s request (where, particularly for repair remedies, the information would be useful if the consumer isn’t satisfied with the implementation of the remedy).

## 12. Mazda North America

Mazda participates in all states, and is certified in Florida and Ohio. Mazda is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal, Florida, and Ohio law, with the qualifications noted below.

Federal Disclosure Provisions	
(1) Rule 703.2(b) (and Rule 703.1(h) to define “the face of the warranty”)	<p>Mazda provides the required information in both its owner’s and warranty manuals.</p> <p>In the warranty manual, the information appears early in the booklet, in a section with the broad heading “When You Need to Talk to Mazda” that precedes the section called “New Vehicle Limited Warranty. Within the “When You Need to Talk to Mazda Section,” Step 3 says “Contact Better Business Bureau.”<sup>175</sup> 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, and even though all of these discussions are preceded by a chart labelled “Warranty Coverage at a Glance. The discussion is further highlighted by multiple all-cap references to BBB AUTO LINE by name.</p> <p>However, Mazda’s program summary imposes age, mileage, and other limits on the availability and scope of the program, and Mazda doesn’t signal this in its materials. (Reservation.)</p>
(2) Rule 703.2(c)	<p>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.)<sup>176</sup></p>

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<sup>175</sup> Questions raised by the three-step process are noted in item (4).

<sup>176</sup> On a matter that the auditor considers more technical, the discussion of BBB AUTO LINE’s processes doesn’t make clear (except in a California-specific discussion) that mediation is an optional part of the process, and that the consumer can ask to go straight to arbitration.

As to timing, Mazda reports that “[t]he whole [BBB AUTO LINE] process normally takes 40 days or less.” A California-specific provides for a 30 day extension under certain conditions, such as an arbitrator’s requests an examination by a technical expert. For a discussion of the 30-day extension (which is based on California regulations and doesn’t apply to Magnuson Moss claims), as well as issues raised by BBB AUTO LINE’s substantial compliance with deadlines in arbitration, see Ch. 2, Section III.H.

<p>(3) Rule 703.2(d) – “steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes”</p>	<p>As noted above, the discussion of BBB AUTO LINE in Mazda’s warranty booklet is under a subheading that says “Contact Better Business Bureau (BBB).” And 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.</p> <p>There’s also a discussion of BBB AUTO LINE in Mazda’s owner’s manual, in a section on “Customer Assistance,” although it appears relatively late in the manual</p> <p>Mazda also provided a document titled Mazda Customer FAQs for the BBB AUTO LINE Program, Better Business Bureau (BBB). According to Mazda, it’s given when customers ask about the lemon law, which means that it doesn’t tell consumers who don’t already know about BBB AUTO LINE that the program exists. .</p> <p>Mazda also submitted a template of a letter acknowledging receipt of a consumer complaint in its response center. The letter, sent before Mazda resolves the issue, tells consumers about BBB AUTO LINE and provides a web link and a phone number. However, the text suggests that it may be limited to repurchase/request claims.</p> <p>Mazda further advised that all service personnel have web-based training in which BBB AUTO LINE is discussed in substantial detail.</p> <p>See also item (5).</p> <p>Finally, consumers may be drawn by the “BBB” name to the BBB’s or BBB National Programs’ web site, and both discuss BBB AUTO LINE. To the extent these web-based disclosures can be attributed to the manufacturers who chose to use BBB AUTO LINE, these disclosures (and oral disclosures to consumers call a BBB) would constitute a further disclosure by all warrantors who use BBB AUTO LINE.<sup>177</sup></p>
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<sup>177</sup> See the last paragraph of Section II.A.3 of this chapter.

<p>(4) Rule 703.2(d) – prohibition on requiring that consumers use manufacturer’s review processes before filing with BBB AUTO LINE.<sup>178</sup></p>	<p>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.)</p>
<p>(5) Rule 703.2(e) - in telling consumers whether and to what extent the warrantor will satisfy a consumer request submitted directly to the warrantor, “the warrantor shall include the information required in § 703.2(b) and (c) of this section.”</p>	<p>In addition to submitting a template of a letter acknowledge <i>receipt</i> of a consumer complaint in its response center, Mazda has submitted a template of a letter sent when Mazda tells the consumer its decision on the matter, and informs the auditor that it’s used if the consumer submits a claim to Mazda and is denied assistance. Mazda advises that it’s used when a consumer makes any request and is denied assistance.</p> <p>The template provides the core information about the existence of BBB AUTO LINE with clear contact information. Though the letter doesn’t contain all the information required by Rule 703.2(e) (including all the information listed under subsections (b) and (c)), Mazda does direct consumers to BBB AUTO LINE, and, when they contact BBB AUTO LINE, they’ll get most of the required information. Even then, though, they may not receive a clear disclosure about prior resort obligations under Magnuson Moss (as set forth in Mazda’s manuals). (Question as to providing information indirectly; reservation because consumers may not be told about prior resort even indirectly).</p> <p>More broadly, the rule by its terms isn’t limited to consumers whose request for a repurchase is denied.<sup>179</sup> However, for the 2021 audit, the auditor didn’t seek clarification from most manufacturers of how far their disclosure policies extended</p>

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<sup>178</sup> Rule 703.2(d) provides that the rule doesn’t “limit the warrantor's option to encourage consumers to seek redress directly from the warrantor as long as the warrantor does not expressly require consumers to seek redress directly from the warrantor.” Further, the auditor doesn’t construe this language to preclude accurate description of notice provisions and provisions for a manufacturer’s final repair attempt under state lemon laws.

<sup>179</sup> By its terms, for example, the rule would apply when a manufacturer denies other requested relief (such as a request for repairs), where it offers an alternative remedy to requested relief (such as a cash settlement or an extended service plan in lieu of a repurchase); or even, arguably, when the manufacturer grants the consumer’s request (where, particularly for repair remedies, the information would be useful if the consumer isn’t satisfied with the implementation of the remedy).

	beyond denials of repurchase/replace claims, which he believes is the better approach going forward.
<b>Florida Disclosures</b>	
(F1) Section 681.103(3) – Clear and conspicuous disclosure of how and where to file a claim, accomplished through the distribution of a booklet prepared by the Florida Attorney General’s office.	Mazda reports that it provides the Consumer’s Guide with new vehicles, and provided an order form showing that it obtains these materials from the office of the Florida Attorney General.
<b>Ohio Disclosures</b>	
(O1) Code § 1345.74(A) – Lemon law disclosure on a separate sheet of paper.	Mazda doesn’t provide this information, but advises that it intends to address the issue. (Reservation.)
(O2) Rule 109:4-4-03(C) (1), (2), and (4)—disclosures on the “face of the written warranty” and on a sign.	Mazda provided documents indicating disclosure of the required information on a sign. For disclosure on the “face of the warranty,” see item (1).
(O3) Rule 109:4-4-03(C)(3)— Prior resort disclosure, with specified text, on a sign <i>or</i> a separate sheet of paper provided to the consumer “at the time of the initial face-to-face contact.”	Mazda provides the required information on the sign noted in Item (2).
(O4) Rule 109:4-4-03(E) – Taking steps “reasonably calculated to make consumers aware of the existence of the board at the time consumers experience warranty disputes.”	See discussion in item (3), supplemented by the Ohio signage disclosure discussed in item (O2).

<p>(O5) Rule 109:4-4-03(E) – Prohibition on requiring that consumers use manufacturer’s review processes before filing with BBB AUTO LINE (paralleling item (4)) <i>and</i> requirement of affirmative disclosures to consumers that the use of such process is optional and may be terminated at any time by either the consumer or warrantor.</p>	<p>Mazda’s warranty booklet uses the potentially problematic language noted in Item (4). (Question).</p> <p>Mazda does make the affirmative disclosure in its signage.</p>
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### 13. Mercedes-Benz

Mercedes-Benz participates in Arkansas, California, Kentucky and Minnesota. The discussion of BBB AUTO LINE in the warranty manual, though, is directed solely to California consumers.

Arguably, Mercedes-Benz doesn't even "incorporate [BBB AUTO LINE] into the terms of a written warranty" in states that aren't mentioned in the warranty document and, for that reason, under the text of Rule 703.2(a), Mercedes-Benz isn't even subject to the rule in those states.<sup>180</sup> *Assuming that the Magnuson Moss rules allow substantial compliance to be found in one state where a manufacturer participates without finding substantial compliance (or even that the rules apply) in others, Mercedes-Benz would be in SUBSTANTIAL COMPLIANCE with the Act and the implementing rules, with the qualifications noted below, in California.*

Federal Disclosure Provisions	
(1) Rule 703.2(b) (and Rule 703.1(h) to define "the face of the warranty")	<p>Mercedes-Benz provides the specified information in the section of the 2021 warranty manual addressed to California consumers, and in an "IMPORTANT NOTICE" similarly directed to California consumers. While it appears in the warranty manual, however, it lacks the proper placement. (Reservation).</p> <p>Mercedes-Benz imposes age, mileage, and other limits on the availability of BBB AUTO LINE, and doesn't signal this in it's manual. (Reservation.)</p>
(2) Rule 703.2(c)	Mercedes-Benz addresses the subjects required by the rule. <sup>181</sup>

<sup>180</sup> See also the discussion in Section II.A.1 of this chapter. When Mercedes Benz sends a letter to consumers denying "refund or replacement" requests (item (5)), the letter tells consumers that the program is available in all four states in which it participates. However, assuming Mercedes-Benz is outside the scope of the rule in states other than California because the manual only mentions BBB AUTO LINE in the context of California consumers, a mention of BBB AUTO LINE at this late stage wouldn't seem relevant to the question of whether Rule 703 applies at all.

Even assuming that a warrantor isn't subject to the rule when it doesn't incorporate BBB AUTO LINE into its written warranty, it's at least questionable if this can be separated.

<sup>181</sup> As to timing, the manual says, "[t]he arbitrator's decision should ordinarily be issued within 40 days from the time your complaint is filed." For a discussion issues raised by BBB AUTO LINE's substantial compliance with deadlines in arbitration, see Ch. 2, Section III.H.

<p>(3) Rule 703.2(d) – “steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes”</p>	<p>The discussion of BBB AUTO LINE in Mercedes-Benz’s warranty booklet appears late in the booklet, starting on page 92. But the “IMPORTANT NOTICE for California Retail Buyers and Lessees” is also highlighted in the table of contents, and it also appears (with an introductory paragraph in a separate, and similarly titled, document that Mercedes-Benz calls a “California warranty insert.”</p> <p>It provided as well a “California Better Business Bureau (BBB) Auto Line Dispute Resolution Dealer Guide,” which advises dealers to tell dissatisfied customers about BBB AUTO LINE and provides contact information. Again, this is limited to California; indeed, the text references the California lemon law and doesn’t even mention the Magnuson Moss Act.</p> <p>Mercedes-Benz also submitted FAQs for dealerships, noting situations, such as where the consumer has exhausted all avenues to address the consumer’s concerns.</p> <p>Additionally, Mercedes-Benz provided an email template sent to consumers when they manufacturer. It’s not clear if the email is sent to all consumers or only to consumers is California, but it alerts them to the availability of BBB AUTO LINE only in California.</p> <p>See also item (5).</p> <p>Finally, consumers may be drawn by the “BBB” name to the BBB’s or BBB National Programs’ web site, and both discuss BBB AUTO LINE. To the extent these web-based disclosures can be attributed to the manufacturers who chose to use BBB AUTO LINE, these disclosures (and oral disclosures to consumers call a BBB) would constitute a further disclosure by all warrantors who use BBB AUTO LINE.<sup>182</sup></p>
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<sup>182</sup> See the last paragraph of Section II.A.3 of this chapter.



<p>(4) Rule 703.2(d) – prohibition on requiring that consumers use manufacturer’s review processes before filing with BBB AUTO LINE.<sup>183</sup></p>	<p>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.)</p>
<p>(5) Rule 703.2(e) - in telling consumers whether and to what extent the warrantor will satisfy a consumer request submitted directly to the warrantor, “the warrantor shall include the information required in § 703.2(b) and (c) of this section.”</p>	<p>In language that identifies all four states where Mercedes-Benz participates, it tells consumers about the existence of BBB AUTO LINE and provides a phone number and web link.</p> <p>Though the letter doesn’t contain all the information required by Rule 703.2(e) (including all the information listed under subsections (b) and (c)), it does direct consumers to BBB AUTO LINE, and, when they contact BBB AUTO LINE, they’ll get most of the required information. Even then, though, they may not get information about prior resort obligations under Magnuson Moss (as set forth in Mercedes’s manuals). (Question as to providing information indirectly; reservation because consumers probably won’t be told about prior resort even indirectly).</p> <p>More broadly, the rule by its terms isn’t limited to consumers whose request for a repurchase is denied.<sup>184</sup> However, for the 2021 audit, the auditor didn’t seek clarification from most manufacturers of how far their disclosure policies extended, which he believes is the better approach going forward.</p>

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<sup>183</sup> Rule 703.2(d) provides that the rule doesn’t “limit the warrantor's option to encourage consumers to seek redress directly from the warrantor as long as the warrantor does not expressly require consumers to seek redress directly from the warrantor.” Further, the auditor doesn’t construe this language to preclude accurate description of notice provisions and provisions for a manufacturer’s final repair attempt under state lemon laws.

<sup>184</sup> By its terms, for example, the rule would apply when a manufacturer denies other requested relief (such as a request for repairs), where it offers an alternative remedy to requested relief (such as a cash settlement or an extended service plan in lieu of a repurchase); or even, arguably, when the manufacturer grants the consumer’s request (where, particularly for repair remedies, the information would be useful if the consumer isn’t satisfied with the implementation of the remedy).

#### 14. Nissan North America (with Infiniti)

Nissan (together with Infiniti) participates in all states, with certification in Florida and Ohio. Nissan (together with Infiniti) submitted warranty manuals and warranty manual supplements for differing models of 2021 and 2022 cars. (For 2022, Nissan submitted both a warranty manual and a supplement for Infiniti, but only a warranty manual for Nissan. However, the 2022 Nissan warranty manual refers to the supplement. References to Nissan in the chart that follows should be understood as extending to Infiniti as well.

Nissan is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal, Florida, and Ohio law, with the qualifications noted below.

Federal Disclosure Provisions	
(1) Rule 703.2(b) (and Rule 703.1(h) to define “the face of the warranty”)	The warranty manual includes the required information in the required placement, and uses a text box to further highlight the prior resort requirement.  However, Nissan imposes age, mileage, and other limits on the availability and scope of the program, and doesn’t signal this in their materials. (Reservation.)
(2) Rule 703.2(c)	Nissan addresses the subjects required by the rule, except for the types of information that consumers need to provide to BBB AUTO LINE. (Reservation.) <sup>185</sup>

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<sup>185</sup> Although the auditor doesn’t consider it a significant problem, Nissan’s description of BBB AUTO LINE’s processes doesn’t make clear that mediation is optional.

As to timing, the manual says that, “[t]he BBB will, in most cases, send you a final decision within forty (40) days (plus 7 if you have not contacted the proper person from the dealership or Nissan) unless you delay the process.” In the supplement, California-specific text says that, “AUTO LINE will . . . issue a decision 40 days from the time your complaint is filed unless you delay the process. Ohio-specific text provides that “[w]ithin 40 days after you file your case, the arbitrator will render a decision that you may accept or reject.” For a discussion of issues raised by BBB AUTO LINE’s substantial compliance with deadlines in arbitration, see Ch. 2, Section III.H. (Also, the extension if the consumer delays the process isn’t relevant to Magnuson Moss.)

<p>(3) Rule 703.2(d) – “steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes”</p>	<p>Discussions of BBB AUTO LINE are prominently placed in the warranty manuals, although they aren't clearly highlighted in the table of contents. As noted above, moreover, consumers receive a supplement titled “CUSTOMER CARE &amp; LEMON LAW INFORMATION”; which discusses BBB AUTO LINE at the outset and in various state-specific discussions. .</p> <p>Nissan also provided a placard titled “Our Commitment to You,” alerting consumers to the existence of BBB AUTO LINE. Nissan advises that it tells dealers to post these on their walls and make them available to consumers.</p> <p>Nissan provided a letter sent to its dealers in June 2022 (outside the warranty period) transmitting a laminated wall plaque, a laminated desk card, and consumer handout cards, and announcing that it would send someone to dealerships, within 30 days, to ensure, among other things, that the materials provided are properly displayed and available to consumers. The letter further says that the handouts should be distributed when consumers feel that a warranty issue isn't being fairly handled.</p> <p>Nissan also advised that “when consumers interact with our call center and there is not a resolution, we send a letter referring them to BBB AUTO LINE.”</p> <p>See also Item (5).</p> <p>Finally, consumers may be drawn by the “BBB” name to the BBB's or BBB National Programs' web site, and both discuss BBB AUTO LINE. To the extent these web-based disclosures can be attributed to the manufacturers who chose to use BBB AUTO LINE, these disclosures (and oral disclosures to consumers call a BBB) would constitute a further disclosure by all warrantors who use BBB AUTO LINE.<sup>186</sup></p>
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<sup>186</sup> See the last paragraph of Section II.A.3 of this chapter.

<p>(4) Rule 703.2(d) – prohibition on requiring that consumers use manufacturer’s review processes before filing with BBB AUTO LINE.<sup>187</sup></p>	<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. (Question.)</p>
<p>(5) Rule 703.2(e) - in telling consumers whether and to what extent the warrantor will satisfy a consumer request submitted directly to the warrantor, “the warrantor shall include the information required in § 703.2(b) and (c) of this section.”</p>	<p>Nissan submitted templates of denial letters that contains core information about filing a complaint, with references to consumer-facing manuals for more information. However, the text doesn’t directly set forth all of the information described in subparts (b) and (c). Though the letter doesn’t contain all the information required by Rule 703.2(e), it does direct consumers to both BBB AUTO LINE and the warranty manual; if they review the manual, they’ll get all the required information; if they first contact BBB AUTO LINE, they’ll get most if not all of the required information, but they might not get a prominent disclosure about prior resort requirements. . (Question as to providing information indirectly; reservation because consumers who go straight to BBB AUTO LINE may not be given a prominent disclosure about prior resort).</p> <p>More broadly, the rule by its terms isn’t limited to consumers whose request for a repurchase is denied.<sup>188</sup> For the 2021 audit, the auditor didn’t seek clarification from most manufacturers of how far their disclosure policies extended, which he believes is the better approach going forward. He notes, however, that the title of the files containing Nissan’s denial letters specifically refers to repurchase denials.</p>

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<sup>187</sup> Rule 703.2(d) provides that the rule doesn’t “limit the warrantor's option to encourage consumers to seek redress directly from the warrantor as long as the warrantor does not expressly require consumers to seek redress directly from the warrantor.” Further, the auditor doesn’t construe this language to preclude accurate description of notice provisions and provisions for a manufacturer’s final repair attempt under state lemon laws.

<sup>188</sup> By its terms, for example, the rule would apply when a manufacturer denies other requested relief (such as a request for repairs), where it offers an alternative remedy to requested relief (such as a cash settlement or an extended service plan in lieu of a repurchase); or even, arguably, when the manufacturer grants the consumer’s request (where, particularly for repair remedies, the information would be useful if the consumer isn’t satisfied with the implementation of the remedy).

<b>Additional Florida Disclosure</b>	
(F1) Section 681.103(3) – Clear and conspicuous disclosure of how and where to file a claim, accomplished through the distribution of a booklet prepared by the Florida Attorney General’s office.	Nissan advises that it maintains a stock of the Consumer Guide and that dealers can submit orders.
<b>Additional Ohio Disclosures</b>	
(O1) Code § 1345.74(A) – Lemon law disclosure on a separate sheet of paper.	Nissan indicates that it provides the Ohio-specific pages of the supplement, which contains this information, in signs and pamphlets
(O2) Rule 109:4-4-03(C) (1), (2), and (4)—several disclosures on the “face of the written warranty” and on a sign.	Nissan indicates that it provides the Ohio-specific pages of the supplement, which contains this information, in signs
(O3) Rule 109:4-4-03(C)(3)—Prior resort disclosure, with specified text, on a sign <i>or</i> a separate sheet of paper provided to the consumer “at the time of the initial face-to-face contact.  ”	See Item (O2)
(O4) Rule 109:4-4-03(E) Taking steps “reasonably calculated to make consumers aware of the existence of the board at the time consumers experience warranty disputes.”	See Items (3), (5) and (O2), as well as the Ohio pages of the Supplement

<p>(O5) Rule 109:4-4-03(E)  Prohibition on requiring that consumers use manufacturer’s review processes before filing with BBB AUTO LINE (paralleling item (4)) <i>and</i> requirement of affirmative disclosures to consumers that the use of such process is optional and may be terminated at any time by either the consumer or warrantor.</p>	<p>The potentially problematic language discussed in item (4) creates a possible issue under the Ohio rules as well, notwithstanding more permissive language in the Ohio-specific pages of Nissan’s and Infiniti’s Supplements saying that the warrantor “ would very much appreciate a reasonable opportunity to repair the vehicle after receipt of your letter.”</p> <p>The Infiniti text does not include the affirmative disclosure under the rule; the Nissan text does. (Reservation as to Nissan</p> <p>.</p>
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## 15. Rolls Royce

Rolls Royce’s 2019 and 2021 participates in twelves states (Arkansas, California, Georgia, Kentucky, Iowa, Idaho, Massachusetts, Maryland, Minnesota, Ohio, Pennsylvania, and Virginia). and so notes in its manuals. In those states, it requires prior resort for consumers to pursue Magnuson Moss remedies.

The auditor has previously noted that Rolls Royce didn’t participate in Ohio, notwithstanding references to Ohio in its manual. That problem has now been rectified, and it does participate in BBB AUTO LINE. However, BBB AUTO LINE hasn’t adjusted its “manufacturer participants” page to show this participation; further, if consumers go to the “file a complaint” page and list Ohio as the state of purchase or lease, Rolls Royce doesn’t appear among the possible selections. This doesn’t point to a problem in Rolls Royce’s manuals, though, but rather to BBB AUTO LINE’s delay in adjusting its web site.

Rolls Royce submitted a 2021 manual for this year’s audit.

Rolls Royce is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal law but *with noteworthy reservations that could impact any future findings of substantial compliance.*

Federal Disclosure Provisions	
(1) Rule 703.2(b) (and Rule 703.1(h) to define “the face of the warranty”)	Rolls Royce provides the required information, which appears, on page 26, shortly before the warranty text; it’s under a heading of “BBB Auto Line” and the description of prior resort is highlighted as “IMPORTANT.”  The manual notes that there are “some minimum requirements for participation in the program.
(2) Rule 703.2(c)	Rolls Royce provides the required information. <sup>189</sup>

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<sup>189</sup> As to timing, the manual states that “BBB AUTO LINE will usually render a decision within 40 days from the time you file your complaint.” The California-specific discussion (which applies to Magnuson Moss as well as lemon law claims) says that “The arbitrator’s decision should ordinarily be issued within 40 days from the time your complaint is filed,” and provides for a 30 day extension under certain conditions, such as an arbitrator’s requests an examination by a technical expert. For a discussion of the 30-day extension (which is based on California regulations and doesn’t apply to Magnuson Moss claims), as well as issues raised by BBB AUTO LINE’s substantial compliance with deadlines in arbitration, see Ch. 2, Section III.H.

<p>(3) Rule 703.2(d) – “steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes”</p>	<p>The relevant discussion begins on page 26 of the 2021 manual with a prominent heading referring to “BBB Auto Line” on five consecutive pages. (The program’s name doesn’t appear, however, in the table of contents.)</p> <p>Rolls Royce did not report any steps to securing notice about BBB AUTO LINE at the dealership level or the manufacturer level. See also item (5). Also, it didn’t provide the letter discussed in Item (5).</p> <p>However, consumers may be drawn by the “BBB” name to the BBB’s or BBB National Programs’ web site, and both discuss BBB AUTO LINE. To the extent these web-based disclosures can be attributed to the manufacturers who chose to use BBB AUTO LINE, these disclosures (and oral disclosures to consumers call a BBB) would constitute a disclosure by all warrantors who use BBB AUTO LINE.<sup>190</sup></p> <p>(Noteworthy reservation.)</p>
<p>(4) Rule 703.2(d) – prohibition on requiring that consumers use manufacturer’s review processes before filing with BBB AUTO LINE.<sup>191</sup></p>	<p>After describing procedures to contact the manufacturer, Rolls Royce provides that BBB AUTO LINE is available “if your concern is still not resolved to your satisfaction.” (Question.)</p>

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<sup>190</sup> See the last paragraph of Section II.A.3 of this chapter.

<sup>191</sup> Rule 703.2(d) provides that the rule doesn’t “limit the warrantor's option to encourage consumers to seek redress directly from the warrantor as long as the warrantor does not expressly require consumers to seek redress directly from the warrantor.” Further, the auditor doesn’t construe this language to preclude accurate description of notice provisions and provisions for a manufacturer’s final repair attempt under state lemon laws.



<p>(5) Rule 703.2(e) - in telling consumers whether and to what extent the warrantor will satisfy a consumer request submitted directly to the warrantor, “the warrantor shall include the information required in § 703.2(b) and (c) of this section.”</p>	<p>None provided. (Noteworthy reservation.)</p> <p>If Rolls Royce does provide notice in the future, that auditor notes that notice is required whenever a manufacturer tells a consumer whether and to what extent a consumer’s request will be satisfied, and isn’t limited to cases where the consumer requests a repurchase or replacement and is offered nothing.<sup>192</sup></p>
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<sup>192</sup> By its terms, for example, the rule by its terms would seem to apply when a manufacturer denies other requested relief (such as a request for repairs), where it an alternative remedy to requested relief (such as a cash settlement or an extended service plan in lieu of a repurchase); or even when the manufacturer grants the consumer’s request (where, particularly for repair remedies, the information would be useful if the consumer isn’t satisfied with the implementation of the remedy).

**16. Volkswagen Group of America, Inc. (with Audi)**

Volkswagen participates in all states, and is certified in Florida and Ohio. It provided warranty manuals for Volkswagen model year 2021 and Audi model year 2021 and 2022. Cites below are to the 2022 Audi manual for non-electric cars, unless otherwise noted.

Volkswagen is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal, Florida, and Ohio law, with the qualifications noted below.

<b>Federal Disclosure Provisions</b>	
<p>(1) Rule 703.2(b) (and Rule 703.1(h) to define “the face of the warranty”)</p>	<p>The manual includes the required information with the required placement.</p> <p>The New Vehicle Limited Warranty contains several discussions about BBB AUTO LINE. There’s a reference to BBB AUTO LINE in page 4. A second discussion, on page 7, has two prominent bold-faced heading. The first says “Consumer Protection Information” in red type and the second says “Independent Dispute Resolution Program” in black. That discussion contains all the information required by Rule 703.2(b) (as well as the information required by Rule 703.(c)). That’s followed be a general discussion of state lemon laws, which is in turn followed by a California-specific notice about BBB AUTO LINE. Next, on page 10, The actual warranty begins, and the introductory discussion on that page again provides the information required by subsection (b). The reference to BBB AUTO LINE on page 10 is somewhat prominent because the all-caps name stands out, even though the section is headed “Warranty period.” The auditor believes that the discussion on page 7 could reasonably construed as appearing on the face of the warranty, but the discussion on page 10 effectively resolves doubts.</p> <p>Volkswagen also provided a California Emissions Warranty Supplement, which again contains information about BBB AUTO LINE beginning on page 3.</p> <p>This year’s submission didn’t include at 2022 Volkswagen manual, but did include a 2021 manual. That manual contains a section comparable to that on Page 7 of the 2022 Audi manual, followed soon after by the warranty text (with the discussion of state lemon laws and a California-specific notice intervening). There’s no discussion comparable to that on</p>

	<p>page 10 of the 2022 Audi Manual. As noted above, the auditor believes that placement before and in close proximity to the start of the warranty text can reasonably be construed as appearing on the face of the warranty.</p> <p>The discussions of BBB AUTO LINE indicate that participation is limited by age and mileage; however, they don't signal that it's limited by other factors as well.</p>
(2) Rule 703.2(c)	<p>The manual addresses the subjects required by the rule, except that the timing to resolve a case only appears in the California-specific discussion.<sup>193</sup> (Reservation)</p>
(3) Rule 703.2(d) – “steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes”	<p>The manuals include multiple references to BBB AUTO LINE.</p> <p>Volkswagen also provided a letter sent by its “customer care advocate”, which appears to be sent to all consumers when the contact the manufacturer about a problem and appears to be used in all states, although this hasn't been confirmed. .</p> <p>Volkswagen has also provided an “Our commitment to you” card that tell consumers about BBB AUTO LINE. Volkswagen advises that it distributes the cards to dealers quarterly, with instruction to distribute them to consumers, but appears to distribute them routinely only to dealers in</p>

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<sup>193</sup> As to the time to resolve a case, the issue isn't discussed in the “all-states” discussion of Volkswagen's warranty manual. However, the California-specific discussion, which applies to Magnuson Moss as well as lemon law claims, provides, “[t]he arbitrator's decision should ordinarily be issued within 40 days from the time your complaint is filed.” It also provides for a 30 day extension under certain conditions, such as an arbitrator's requests an examination by a technical expert. For a discussion of the 30-day extension (which is based on California regulations and doesn't apply to Magnuson Moss claims), as well as issues raised by BBB AUTO LINE's substantial compliance with deadlines in arbitration, see Ch. 2, Section III.H.

The auditor notes, moreover, that the description of how the program operates (required by Rule 703.2(c)(3)) is somewhat problematic in its discussion of mediation. It provides that “the staff will facilitate negotiations between the parties in an effort to bring your claim to a mutually acceptable resolution. If you do not agree with the solution, you may request an arbitration hearing.” First, this suggests that the parties must use mediation, although in fact they can refuse it. Second, it implies that there can be a “solution” without the consumer's agreement; in fact, under the mediation process, the consumer's agreement is an intrinsic aspect of any solution.

	<p>California, Florida, and Ohio.</p> <p>It also provided a transmittal document to Dealership Service Managers providing a supply of the cards, asking service managers to “please let” consumers know about BBB AUTO LINE if a service-related issue hasn’t been resolved to their satisfaction,; to place copies on a countertop, standalone, or wall-mounted literature holder in the service area, and to provide a copy to customers who “express frustration or dissatisfaction with their repair experience.” However, the title of the file indicates that it’s intended for Ohio dealers.</p> <p>Volkswagen also provided training manual, and advised that training is directed to field service and dealership personnel. The training includes information about BBB AUTO LINE, and curiously tells the trainees that Audi is obligated to notify consumers about BBB AUTO LINE at the time of a warranty dispute, but confines the obligation to California, Florida, and Ohio.</p> <p>Finally, consumers may be drawn by the “BBB” name to the BBB’s or BBB National Programs’ web site, and both discuss BBB AUTO LINE. To the extent these web-based disclosures can be attributed to the manufacturers who chose to use BBB AUTO LINE, these disclosures (and oral disclosures to consumers call a BBB) would constitute a further disclosure by all warrantors who use BBB AUTO LINE.<sup>194</sup></p> <p>(Reservation as to compliance with the rule in all states.)</p>
<p>(4) Rule 703.2(d) – prohibition on requiring that consumers use manufacturer’s review processes before filing with BBB AUTO LINE.<sup>195</sup></p>	<p>Although Volkswagen says that BBB AUTO LINE is available “if we are unable to resolve” a problem, it only “requests” that consumers first bring the matter to the manufacturer for review.</p>

<sup>194</sup> See the last paragraph of Section II.A.3 of this chapter.

<sup>195</sup> Rule 703.2(d) provides that the rule doesn’t “limit the warrantor's option to encourage consumers to seek redress directly from the warrantor as long as the warrantor does not expressly require consumers to seek redress directly from the warrantor.” Further, the auditor doesn’t construe this language to preclude accurate description of notice provisions and provisions for a manufacturer’s final repair attempt under state lemon laws.

<p>(5) Rule 703.2(e) - in telling consumers whether and to what extent the warrantor will satisfy a consumer request submitted directly to the warrantor, “the warrantor shall include the information required in § 703.2(b) and (c) of this section.”</p>	<p>Volkswagen provided a letter with most of the required information, but with no mention of prior resort requirements. (Reservation.)</p> <p>More broadly, the rule by its terms isn’t limited to consumers whose request for a repurchase is denied.<sup>196</sup> However, for the 2021 audit, the auditor didn’t seek clarification from most manufacturers of how far their disclosure policies extended, which he believes is the better approach going forward.</p>
<b>Additional Florida Provision</b>	
<p>(F1) Section 681.103(3) – Clear and conspicuous disclosure of how and where to file a claim, accomplished through the distribution of a booklet prepared by the Florida Attorney General’s office</p>	<p>Volkswagen provides the Consumer Guide prepared by the Attorney General’s office.</p>
<b>Additional Ohio Provisions</b>	
<p>(O1) Code § 1345.74(A) – Lemon law disclosure on a separate sheet of paper.</p>	<p>Volkswagen provides the required information in a document that it ships to dealers quarterly and instruct them to include the document in each car’s Warranty booklet.</p>
<p>(O2) Rule 109:4-4-03(C) (1), (2), and (4)—several disclosures on the “face of the written warranty” and on a sign.</p>	<p>Volkswagen provides the required information in the previously referenced document, which is also distributed in the form of sign that it asks dealers to display in their customer service area.</p>

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<sup>196</sup> By its terms, for example, the rule would apply when a manufacturer denies other requested relief (such as a request for repairs), where it offers an alternative remedy to requested relief (such as a cash settlement or an extended service plan in lieu of a repurchase); or even, arguably, when the manufacturer grants the consumer’s request (where, particularly for repair remedies, the information would be useful if the consumer isn’t satisfied with the implementation of the remedy).

<p>(O3) Rule 109:4-4-03(C)(3)— Prior resort disclosure, with specified text, on a sign <i>or</i> a separate sheet of paper provided to the consumer “at the time of the initial face-to-face contact.”</p>	<p>See prior responses,</p>
<p>(O4) Rule 109:4-4-03(E) Taking steps “reasonably calculated to make consumers aware of the existence of the board at the time consumers experience warranty disputes.”</p>	<p>See (3), (O1) and (O2). The quarterly distribution to Ohio dealers also asks dealerships to ensure that sales staff is familiar with the requirements of the Ohio lemon law.</p>
<p>(O5) Rule 109:4-4-03(E) Prohibition on requiring that consumers use manufacturer’s review processes before filing with BBB AUTO LINE (paralleling item (4)) <i>and</i> requirement of affirmative disclosures to consumers that the use of such process is optional and may be terminated at any time by either the consumer or warrantor.</p>	<p>The warranty booklet uses the potentially problematic language noted in Item (4). (Question).  Volkswagen does not make the affirmative disclosure in its signage.</p>

### **C. Manufacturer Submissions: Newly Audited Manufacturers**

The auditor has previously expanded his review to include most manufacturers who participate in selected states but not nationwide. This year he reached out to two manufacturers that participate in only one state. Winnebago, which participates only in Kentucky, provided a warranty book that didn't mention BBB AUTO LINE and advised that they have no materials that mention BBB AUTO LINE. As such, it would seem to fall outside the scope of Rule 703.2(a), which applies to manufacturers that "incorporate into the terms of a written warranty." The second firm, Aston Martin, participates only in California. Aston Martin did provide materials for the auditor's review, and those materials are discussed below.

Additionally, two manufacturers who first participated in BBB AUTO LINE in 2021 – Koenigsegg and Pagani – provided warranty manuals. A third, McLaren, is working with staff to develop such materials and otherwise comply with the rule.

## 1. Aston Martin

Aston Martin participates only in California. Aston Martin is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal law but with *noteworthy reservations that could impact any future findings of substantial compliance*. Going forward, however, Aston Martin has now committed to take steps to address these noteworthy reservations.

*Binding arbitration.* In addition to the matters covered in the chart below, Aston Martin’s owner’s manual (which contains its warranty terms), has a binding arbitration provision. The reference appears just before the text telling consumers that BBB AUTO LINE is available in California. Aston Martin tells consumers generally that, if they aren’t satisfied with the firm’s efforts, they can go in of two possible routes. The first is to seek arbitration. The second is that “[i]f your dispute is in the state of California, contact the Better Business Bureau.” Aston Martin’s binding arbitration provision (unlike Hyundai’s binding arbitration provision<sup>197</sup>) thus may apply everywhere *but* California. Also (again unlike Hyundai’s provision), Aston Martin’s provision doesn’t specify an organization under whose auspices the arbitration will be conducted; rather, it just identifies the rules that will apply in arbitration.<sup>198</sup>

For reasons discussed in Section II.A.2 of this chapter, the auditor finds a noteworthy reservation on this point, while noting that the FTC interpretation on which this finding is based has received mixed reviews from courts. In any event, Aston Martin has advised that it will remove the binding arbitration provision from future manuals. Further, Aston Martin has advised by email that it would “inform any customer who believes that arbitration is “binding” that the warranty materials were incorrect and that they do not have to pursue binding arbitration to pursue a warranty claim.” Aston Martin has also advised that it wouldn’t seek to compel consumers who bring law suits to go to binding arbitration.

(1) Rule 703.2(b) (and Rule 703.1(h) to define “the face of the warranty”)	Aston Martin provides the required information but without the proper placement. The warranty begins towards the end of a long document, in Appendix B and starting at a page number B.6. BBB AUTO LINE isn’t mentioned until page B.23. (Reservation.)  The text notes that consumers whose concerns haven’t been satisfied otherwise (see item (4)) “may” be eligible for BBB AUTO LINE. This would seem to convey that there are limits on program eligibility, although it might be preferable
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<sup>197</sup> See Section V.B.6 of this chapter.

<sup>198</sup> The Rules of Commercial Arbitration of the American Arbitration Association including its Supplementary Procedures for Consumer Related Disputes.



	to note that there are age, mileage, and other limits.
(2) Rule 703.2(c)	Aston Martin provides the required information. <sup>199</sup>
(3) Rule 703.2(d) – “steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes”	<p>Aston Martin reported that the warranty booklet is the only information provided to consumers about BBB AUTO LINE.</p> <p>However, consumers may be drawn by the “BBB” name to the BBB’s or BBB National Programs’ web site, and both discuss BBB AUTO LINE. To the extent these web-based disclosures can be attributed to the manufacturers who chose to use BBB AUTO LINE, these disclosures (and oral disclosures to consumers call a BBB) would constitute a further disclosure by all warrantors who use BBB AUTO LINE.<sup>200</sup></p> <p>(Noteworthy reservation, with a mitigating factor based on Aston Martin’s commitment to address the deficiency under item (5)).</p>
(4) Rule 703.2(d) – prohibition on requiring that consumers use manufacturer’s review processes before filing with BBB AUTO LINE <sup>201</sup>	The manual says that BBB AUTO LINE may be available after the consumer completes three prior steps (raising concern with the Authorized dealer service manager, then contacting dealership ownership or general manager, then contacting an official associated with Aston Martin Lagonda of North America, Inc.

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<sup>199</sup> As to timing, Aston Martin provides that “[d]isputes submitted to the BBB AUTO LINE program are usually decided within 40 days after you file your claim with the BBB.” For a discussion of issues raised by BBB AUTO LINE’s substantial compliance with deadlines in arbitration, see Ch. 2, Section III.H.

Also, the text doesn’t make clear the optional nature of mediation; this seems like a relatively minor flaw, since BBB AUTO LINE’s materials explain that mediation is voluntary.

<sup>200</sup> See the last paragraph of Section II.A.3 of this chapter.

<sup>201</sup> Rule 703.2(d) provides that the rule doesn’t “limit the warrantor's option to encourage consumers to seek redress directly from the warrantor as long as the warrantor does not expressly require consumers to seek redress directly from the warrantor.” Further, the auditor doesn’t construe this language to preclude accurate description of notice provisions and provisions for a manufacturer’s final repair attempt under state lemon laws.

<p>(5) Rule 703.2(e) - in telling consumers whether and to what extent the warrantor will satisfy a consumer request submitted directly to the warrantor, “the warrantor shall include the information required in § 703.2(b) and (c) of this section.”</p>	<p>Aston Martin did not provide this notice to consumers during the audit year, but reported that, going forward, it would provide the relevant information from the operating manual. (Noteworthy reservation as to past conduct)</p> <p>The rule by its terms isn’t limited to consumers whose request for a repurchase is denied.<sup>202</sup> However, for the 2021 audit, the auditor didn’t seek clarification from most manufacturers of how far their disclosure policies extended, which he believes is the better approach going forward.</p>
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<sup>202</sup> By its terms, for example, the rule would apply when a manufacturer denies other requested relief (such as a request for repairs), where it offers an alternative remedy to requested relief (such as a cash settlement or an extended service plan in lieu of a repurchase); or even, arguably, when the manufacturer grants the consumer’s request (where, particularly for repair remedies, the information would be useful if the consumer isn’t satisfied with the implementation of the remedy).

## 2. Koenigsegg

Koenigsegg is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal law but with *noteworthy reservations that could impact future findings of substantial compliance*.

(1) Rule 703.2(b) (and Rule 703.1(h) to define “the face of the warranty”)	Koenigsegg provides the required information but without the proper placement,
(2) Rule 703.2(c)	Koenigsegg provides the required information. <sup>203</sup>
(3) Rule 703.2(d) – “steps reasonably calculated to make consumers aware of the Mechanism’s existence at the time consumers experience warranty disputes”	<p>Apart from the warranty booklet, Koenigsegg submitted no materials or responses showing efforts to tell consumers about BBB AUTO LINE.</p> <p>However, consumers may be drawn by the “BBB” name to the BBB’s or BBB National Programs’ web site, and both discuss BBB AUTO LINE. To the extent these web-based disclosures can be attributed to the manufacturers who chose to use BBB AUTO LINE, these disclosures (and oral disclosures to consumers call a BBB) would constitute a further disclosure by all warrantors who use BBB AUTO LINE.<sup>204</sup></p> <p>(Noteworthy reservation.)</p>

<sup>203</sup> As to timing, the manual provides that “[a] decision should be rendered within 40 days of BBB AUTO LINE’s receipt of your properly completed Customer Claim Form.” The California-specific text (which applies to Magnuson Moss as well as lemon law claims in California) is similar. For a discussion of issues raised by BBB AUTO LINE’s substantial compliance with deadlines in arbitration, see Ch. 2, Section III.H.

<sup>204</sup> See the last paragraph of Section II.A.3 of this chapter.

<p>(4) Rule 703.2(d) – prohibition on requiring that consumers use manufacturer’s review processes before filing with BBB AUTO LINE.<sup>205</sup></p>	<p>Koenigsegg doesn’t expressly require consumers to use its internal procedures</p>
<p>(5) Rule 703.2(e) - in telling consumers whether and to what extent the warrantor will satisfy a consumer request submitted directly to the warrantor, “the warrantor shall include the information required in § 703.2(b) and (c) of this section.”</p>	<p>Not provided. (Noteworthy reservation.)</p> <p>If Koenigsegg provide notice in the future, that auditor notes that notice is required whenever a manufacturer tells a consumer whether and to what extent a consumer’s request will be satisfied, and isn’t limited to cases where the consumer requests a repurchase or replacement and is offered nothing.<sup>206</sup></p>

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<sup>205</sup> Rule 703.2(d) provides that the rule doesn’t “limit the warrantor's option to encourage consumers to seek redress directly from the warrantor as long as the warrantor does not expressly require consumers to seek redress directly from the warrantor.” Further, the auditor doesn’t construe this language to preclude accurate description of notice provisions and provisions for a manufacturer’s final repair attempt under state lemon laws.

<sup>206</sup> By its terms, for example, the rule by its terms would seem to apply when a manufacturer denies other requested relief (such as a request for repairs), where it an alternative remedy to requested relief (such as a cash settlement or an extended service plan in lieu of a repurchase); or even when the manufacturer grants the consumer’s request (where, particularly for repair remedies, the information would be useful if the consumer isn’t satisfied with the implementation of the remedy).

### 3. Pagani

Pagani is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal law but *with noteworthy reservations that, unless clarified or addressed, may make any finding of substantial compliance, even with qualifications, tenuous going forward.*

(1) Rule 703.2(b) (and Rule 703.1(h) to define “the face of the warranty”)	Pagani provides the required information with the proper placement,
(2) Rule 703.2(c)	Pagani provides the required information. <sup>207</sup>
(3) Rule 703.2(d) – “steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes”	<p>Apart from the warranty booklet, Pagani submitted no materials or responses showing efforts to tell consumers about BBB AUTO LINE.</p> <p>However, consumers may be drawn by the “BBB” name to the BBB’s or BBB National Programs’ web site, and both discuss BBB AUTO LINE. To the extent these web-based disclosures can be attributed to the manufacturers who chose to use BBB AUTO LINE, these disclosures (and oral disclosures to consumers call a BBB) would constitute a further disclosure by all warrantors who use BBB AUTO LINE.<sup>208</sup></p> <p>(Noteworthy reservation)</p>
(4) Rule 703.2(d) – prohibition on requiring that consumers use manufacturer’s review processes before filing with BBB AUTO LINE. <sup>209</sup>	Pagani tells consumers, in capital letter, that they may use BBB AUTO LINE at any time.

<sup>207</sup> As to timing, Pagani states that a “decision is normally rendered within 40 days.” For a discussion of issues raised by BBB AUTO LINE’s substantial compliance with deadlines in arbitration, see Ch. 2, Section III.H

<sup>208</sup> See the last paragraph of Section II.A.3 of this chapter.

<sup>209</sup> Rule 703.2(d) provides that the rule doesn’t “limit the warrantor's option to encourage consumers to seek redress directly from the warrantor as long as the warrantor does not expressly require consumers to seek redress directly from the warrantor.” Further, the auditor doesn’t construe this language to preclude accurate description of notice provisions and provisions for a manufacturer’s final repair attempt under state lemon laws.

<p>(5) Rule 703.2(e) - in telling consumers whether and to what extent the warrantor will satisfy a consumer request submitted directly to the warrantor, “the warrantor shall include the information required in § 703.2(b) and (c) of this section.”</p>	<p>Not provided. (Substantial reservation).</p> <p>If Pagani does provide notice in the future, that auditor notes that notice is required whenever a manufacturer tells a consumer whether and to what extent a consumer’s request will be satisfied, and isn’t limited to cases where the consumer requests a repurchase or replacement and is offered nothing.</p>
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**CHAPTER 2**  
**BBB AUTO LINE'S**  
**ORGANIZATION**  
**AND OPERATIONS**

The previous chapter focused on the obligations, under Federal, Florida, and Ohio rules, of the warrantors (manufacturers) who use BBB AUTO LINE. The rest of this report focuses primarily on the obligations imposed on BBB AUTO LINE and BBB National Programs, Inc., under whose auspices it operates. The applicable provisions (and state provisions that build on their Federal counterparts<sup>210</sup>) generally require fair and efficient processes. Furthering these ends, the rules also require certain recordkeeping and an audit that includes consumer input.

In reviewing BBB AUTO LINE's *policies*, the auditor drew on its published rules, which are available on the web,<sup>211</sup> provided to consumers after their initial contact with BBB AUTO LINE, and the same in all states except California<sup>212</sup>; three arbitrator training manuals (including a Florida-specific and a California-specific manuals); recordings of previously held courses to train Florida and California arbitrators; and discussions with BBB AUTO LINE staff. His review of how these policies are *implemented* draws on discussions with staff; statistics derived from surveys discussed in Chapters 3 (Federal), 4 (Florida), and 5 (Ohio); case files discussed primarily in this chapter (some targeted by specific consumer responses to the survey, some selected randomly from surveyed consumers; and some identified by consumers' use of a California-specific process to appeal an ineligibility determination to an arbitrator); follow-up calls with some consumers who had already been interviewed by TechnoMetrica; and recordings of six arbitration hearings.<sup>214</sup>

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<sup>210</sup> 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](https://www.ftc.gov/sites/default/files/documents/public_comments/16-cfr-parts-239-700-701-702-and-703-request-comments-concerning-interpretations-Magnuson%20Moss/00012-80822.pdf).

<sup>211</sup> [https://assets.bbbprograms.org/docs/default-source/auto-line/how\\_bbb\\_auto\\_line\\_works.pdf?sfvrsn=5455bf1b\\_14&\\_ga=2.69672856.925880935.1659944920-1448767679.1638161025&\\_gac=1.229568750.1656985632.Cj0KCQjwn4qWBhCvARIsAFNAMih7JVJ1ScD1k0oYmQdQP9oVfj3bm4-DkI2cvqZY5wTDr\\_c\\_8YOw7ssaAr-0EALw\\_wcB&\\_gl=1\\*13vanqs\\*\\_ga\\*MTQ0ODc2NzY3OS4xNjM4MTYxMDI1\\*\\_ga\\_FXP6NWPNYM\\*MTY2MDA3NjMxNi4yNzIuMS4xNjYwMDC2NDE1LjA](https://assets.bbbprograms.org/docs/default-source/auto-line/how_bbb_auto_line_works.pdf?sfvrsn=5455bf1b_14&_ga=2.69672856.925880935.1659944920-1448767679.1638161025&_gac=1.229568750.1656985632.Cj0KCQjwn4qWBhCvARIsAFNAMih7JVJ1ScD1k0oYmQdQP9oVfj3bm4-DkI2cvqZY5wTDr_c_8YOw7ssaAr-0EALw_wcB&_gl=1*13vanqs*_ga*MTQ0ODc2NzY3OS4xNjM4MTYxMDI1*_ga_FXP6NWPNYM*MTY2MDA3NjMxNi4yNzIuMS4xNjYwMDC2NDE1LjA).

<sup>212</sup> For the California-specific rules, see <https://bbbnp-bbbp-stf-use1-01.s3.amazonaws.com/docs/default-source/auto-line/bbb-auto-line-ca-rules-booklet-2019.pdf>. Unless otherwise specified, references to specific rules refer to the rules applicable in all states but California.

<sup>214</sup> These include two from Florida and two from Ohio. At the auditor's request, one of the hearings was a case where an attorney appeared to represent the consumer.



## **I. Mechanism Organization (Rule 703.3)**

Rule 703.3(a) requires that the BBB AUTO LINE be funded and competently staffed at a level to ensure fair and expeditious resolution of all disputes. The auditor finds that this provision has been substantially satisfied. There were some warning flags in problematic cases discussed throughout this chapter and the next, and BBB AUTO LINE is taking steps to address some of these issues. Despite problems in specific cases, and while the auditor doesn't assess the performance of individual staff members, the problems don't indicate, in his view, a problem with competent staffing.<sup>215</sup>

BBB AUTO LINE previously designated staff members as claim intake specialists (who take information from consumers who call in their complaints), dispute resolution specialists, and managers; the first two are now designated DRS-1s and DRS-2s. (The auditor uses DRS-1 and "claim intake specialist" interchangeably, and he uses DRS-2 and "dispute resolution specialist" interchangeably)

At the end of 2021, there were four claims input specialists and ten dispute resolution specialists. There were also six senior managers,<sup>216</sup> and, as noted previously, BBB AUTO LINE is currently hiring a manager for compliance. The program effectively had its own attorney, with a Senior Counsel of Dispute Resolution Programs.

Staff members may be hired as DRS-1s and move up the ladder, as positions become available, if they demonstrate the skills to take on further challenges. Others may be hired as DRS-2s. BBB National Programs and BBB AUTO LINE used to operate in an open office environment with its main office in Virginia and it had a second office in Clearwater, Florida. Currently, its sole office remains in Virginia and staff may telework full-time or part-time.

BBB AUTO LINE explained that a newly hired DRS-1 receives two weeks of basic training, including database training. The DRS-1 also has a closing script to read to consumers and, if a novel or challenging matter comes along, the DRS-1 can escalate it to a DRS-2 or a manager.

When DRS-1s advance to DRS-2 positions, they would get an intensive two-week training course. For weeks three and four, they would get further training, in one-hour individual sessions and two-hour group sessions; they would also "shadow" experienced case handlers as they go through various stages of the case handling process, including eligibility determinations and the various stages of BBB AUTO LINE's mediation, including conference calls with the parties. The new DRS-2 would begin to get cases, with the assignments starting off reasonably

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<sup>215</sup> Questions of timing are discussed in Section III.H of this chapter.

<sup>216</sup> These include a senior dispute resolution specialist (who in 2021 also handled some cases); a quality assurance manager, a manager and a senior manager for customer service and policy, a manager for dispute resolution operations, and a senior manager for policy and compliance.

limited in scope as well as geographically focused (e.g., a single manufacturer in two states). Also, some of the newly promoted staff member's calls would now be monitored, using technology that allows the monitoring staff to speak to new DRS-2 without being heard by the consumers.<sup>217</sup> If and when the DRS-2 is ready, the monitoring will be cut back and, later, the routine debriefing will stop. In some cases, managers may conclude that the DRS-2 isn't working out in that position and will make other arrangements.

If a DRS-2 is hired from the outside, rather than getting an internal promotion from a DRS-1, the training will be similar, but would also include the database training that a DRS-1 being promoted would have already received.

Finally, these are BBB AUTO LINE's current procedures. Past procedures included similar training (although the training program itself was previously handled by managers, while it's now done primarily by the staff that also trains arbitrators). Further, while there was some monitoring, it wasn't as extensive as under the current system. However, the auditor is advised that, in the former open office environment in which staff routinely worked, managers could often hear a discussion needed intervention; also, the auditor is advised that consumers unhappy with a case handler often ask to speak to a manager.

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Rule 703.3(a) also doesn't allow consumers to be charged for the use of BBB AUTO LINE. They aren't.

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Rule 703.3(b) provides that,

The warrantor and the sponsor of the Mechanism (if other than the warrantor) shall take all steps necessary to ensure that the Mechanism, and its members [arbitrators] and staff, are sufficiently insulated from the warrantor and the sponsor, so that the decisions of the members and the performance of the staff are not influenced by either the warrantor or the sponsor. Necessary steps shall include, at a minimum, committing funds in advance, basing personnel decisions solely on merit, and not assigning conflicting warrantor or sponsor duties to Mechanism staff persons.

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<sup>217</sup> Under new protocols, managers will periodically monitor some calls for all staff, and not just for newly hired or promoted staff. Even with the new protocols, though, recently hired staff would be monitored more frequently.

The auditor didn't find a definition of "sponsor" in the statute, the rules or the 1975 Federal Register notice accompanying the initial promulgation of the rules, but he understands it to reference an outside party that contributes financially to the program.<sup>218</sup>

Turning first to the necessary minimum steps identified in the rule, *first*, BBB AUTO LINE's funding is committed in advance, on a case-by-case basis. The actual payments are made for the previous quarter (or other relevant time period), but the formula for calculating those payments has been set in advance, primarily on a per-case basis but also including certain expenses (such as the costs of hiring technical experts under BBB AUTO LINE Rule 8) that are passed through to the manufacturer. The per-case rate is based on how far the case advances. The lowest charge is for cases where the consumer made an initial filing but didn't return a signed consumer complaint form, and the highest charge is for cases that reach an arbitration hearing or close shortly before a scheduled hearing.

*Second*, while the auditor doesn't see a practical way to monitor BBB AUTO LINE's personnel decisions, he is told that they are based solely on merit.

*Third*, the final listed indicia requires insulation of "Mechanism staff persons" from "conflicting warrantor or sponsor duties." BBB AUTO LINE staff are independent of the manufacturers that fund the program. When they come to BBB National Programs, Inc. all employees (and temps) must sign an employee handbook – they're also given a copy – that contains the following text:

#### 6-7. Conflict of Interest and Business Ethics

Employees must avoid any relationship or activity that might impair - or even appear to impair - their ability to make objective and fair decisions when performing their jobs.

At times, an employee may be faced with situations in which the employee's actions taken on behalf of BBB National Programs may conflict with the employee's own personal interests. Employees with a conflict-of-interest question should seek advice from management. Before engaging in any activity, transaction or relationship that might give rise to a conflict of interest, employees must seek review by the CEO, CFO/COO, HR, or the ethics hotline.

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<sup>218</sup> This is consistent with some suggestions in the 1975 Federal Register notice promulgating the rule. For example, the notice describes a "Major Appliance Consumer Action Panel: as "sponsored by the Association of Home Appliance Manufacturers" and several other groups. 40 Fed. Reg. 60168, 60169 (1975). An argument could be made that BBB National Programs is the sponsor of BBB AUTO LINE, but, in the auditor's view, the better reading of the rule wouldn't create a line between BBB National Program staff and BBB AUTO LINE staff.

1. BBB National Programs employees shall avoid both the fact and appearance of any actual or potential conflict between the employee's interests (including interests of immediate family members) and BBB National Programs' interests.
2. BBB National Programs employees may not accept extravagant meals or entertainment purchased by BBB National Programs customers, stakeholders, or vendors unless approved in advance by the CEO or CFO/COO. (Note: This restriction does not preclude participation in reasonably priced business meals.)
3. BBB National Programs employees may not hold (directly or indirectly) a financial interest in an outside concern from which BBB National Programs purchases goods or services. Owning five percent (5%) or less of stock in a publicly traded company with which BBB National Programs does business is not a violation of this policy.
4. BBB National Programs employees may not accept personal compensation for job-related speaking engagements or other activities.
5. BBB National Programs employees may not represent BBB National Programs in any transaction in which the employee or a member of the employee's immediate family has a substantial interest.
6. BBB National Programs employees must avoid any relationship or activity that might impair, or even appear to impair, their ability to make objective and fair decisions when performing their jobs

*Recommendation: BBB AUTO LINE might consider sending periodic reminders about the policy described in the handbook. BBB AUTO LINE advises that it will do this.*

More broadly, the program results summarized in the introduction support the conclusion that the program doesn't have a pro-manufacturer bias. As noted in that discussion, for example, 42.7% of the cases closed in 2021 through either arbitration or mediation ended with repurchase or replacement resolutions, and they did so far more often through mediation than through arbitration.

*Arbitrator independence.* Under the auditor's construction of "sponsor," the reference to the independence of "members" (arbitrators) in Rule 703.3 doesn't itself require that BBB AUTO LINE not "influence" arbitrator decisions, nor is that required by Rule 703.4, discussed below. In the auditor's view, this properly allows BBB AUTO LINE to maintain a limited "quality control" review to the extent that it's consistent with arbitrators' independence. Indeed, particularly when BBB AUTO LINE brings on new arbitrators without prior arbitration experience, it would seem irresponsible *not* to subject their decisions to a quality control review. And, to that end, BBB AUTO LINE's rules and policies provide for such review, in some cases allowing changes without the arbitrator's prior sign-off and in others providing for feedback to

the arbitrator before a decision is sent to the parties.

The provision for changes without the arbitrator's sign-off appears in BBB AUTO LINE Rule 22.G, which reserves to BBB AUTO LINE "the right to correct obvious mathematical errors in the decision and/or obvious errors in the description of any person, thing or monetary amount." California Rule 23.D addresses the issue in more limited fashion, addressing only mathematical errors. The auditor is advised by the staff member who conducts such reviews (although he hasn't independently confirmed this) that the "mathematical errors" and "monetary amounts" provisions are invoked only in states where the arbitrator doesn't merely make discretionary decisions about some aspects of a repurchase or replacement decision,<sup>219</sup> but rather calculates (to the extent the figures can be known at the time) precise monetary figures for the overall transaction.) Staff identified Florida, Indiana, and Tennessee as states where this detail is included in the decision, and where the quantitative provisions are most likely to be applied.<sup>220</sup>

This isn't unreasonable, in the auditor's view, and it can expedite proceedings. But the auditor suggests great caution in making changes, even though they're non-discretionary, without the arbitrator's prior consent. It certainly appears reasonable to correct purely arithmetic errors (17+4=25) or to fix such minor matters as changing an incorrect reference to a model year 2021 car to reflect that the car was a 2020 model year vehicle. Beyond that, the auditor considers the proper *de facto* boundaries to be hazy. One precaution, in making these changes, might be to send them to the arbitrator with a very short turnaround, and advise that she needs to contact staff within that time frame if she has problems with the changes.<sup>221</sup> Essentially, this would be a negative option approach with a short time frame to respond, and it might be conveyed both by email and, to the extent the arbitrator can be reached, by a call.

More broadly, BBB AUTO LINE's internal review process is described in an arbitrators' training manual as follows:

#### **REVIEW OF DECISION AND REASONS FOR DECISION**

In most instances, the [BBB AUTO LINE ] Manager of Decision Review will review the *Reasons for Decision* and *Decision* before they are sent to the parties.

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<sup>219</sup> For example, was an incidental expense for which the consumer sought reimbursement "reasonable"?

<sup>220</sup> In other states, the manufacturer will provide the consumer with a statement of amounts before the transaction is finalized; if there's a dispute about the figures, the consumer can seek clarification under Rule 22.C.

<sup>221</sup> Although it seems unlikely to happen, the arbitrator would need to explain the decision if the parties sought clarification under Rule 22.C or a modification under Rule 22.D.

In this review, he/she will check for the following:

- incorrect information;
- errors in spelling, grammar or arithmetic;
- the omission of any required information;
- exceeding your scope of authority;
- libelous language;
- consistent rationale;
- appropriate consideration of applicable law; and
- use of appropriate forms.

If the review shows any concerns in these areas, DRC staff will discuss this with you or send you an email asking that you re-examine your decision. However, the final decision regarding any changes to the decision is left to you.

Keep in mind [BBB AUTO LINE] staff have reviewed thousands of *Decisions* and *Reasons for Decision*, and if they indicate a concern, they do so in the best interest of you, the parties, and the integrity of the program. *No effort is made to alter the intent of your decision; but rather, staff may make suggestions for any problems or shortcomings noticed in the decision and rationale you submit.* (Emphasis added.)

Again, in light of the last line, the auditor believes that these sorts of comments are appropriate and, arguably, particularly for an arbitrator with little prior experience in the role, it would be irresponsible *not* to provide such feedback. A BBB AUTO LINE staff member (generally the same person for all cases) undertakes this review, and the auditor doesn't recall any cases where the review strayed beyond the topical parameters outlined above. The auditor noted, however, that comments often had a more peremptory tone than the policy would seem to warrant. For example, one comment told an arbitrator that "you will want to address" an issue rather than something along the lines of "please consider addressing" the issue or "you have failed to address" an issue.<sup>222</sup> BBB AUTO LINE advises that these notes don't capture ongoing relations between the reviewing staff member and members of the arbitrator pool, and, that, based on this history, arbitrators are well aware that it's up to their discretion to make any revisions. Even if they didn't have ongoing relations with BBB AUTO LINE, it seems unlikely, moreover, that an arbitrator will ignore an observation that his decision ignored a significant issue. Still, the auditor believes that a more deferential tone would be preferable.

*Recommendation: In connection with the limited review by BBB AUTO LINE the BBB National Programs Manager of Decision Review staff, staff should consider the appropriate parameters for changes made without the arbitrator's consent.*

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<sup>222</sup> A slightly different approach would be to note the issues the reviewer identified, and ask the arbitrator to make changes that he considers appropriate.

*Also, comments to arbitrators should be phrased with sufficient deference to make clear that the arbitrator has discretion to reject them.*

*Other reasonable requirements.* Rule 703.3(c) provides that the Mechanism “shall impose any other reasonable requirements necessary to ensure that the members and staff act fairly and expeditiously in each dispute.” The audit discusses these issues below, with specific reference to timing questions in Section III.I of this Chapter.

## **II. Qualifications of “Members” (Arbitrators)**

Rule 703.4 includes several requirements to ensure that arbitrators resolve disputes fairly and on the merits.<sup>223</sup> BBB AUTO LINE reflects these standards in Rule 4 of its arbitration

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<sup>223</sup> The rule provides:

§ 703.4 Qualification of members.

(a) No member deciding a dispute shall be:

(1) A party to the dispute, or an employee or agent of a party other than for purposes of deciding disputes; or

(2) A person who is or may become a party in any legal action, including but not limited to class actions, relating to the product or complaint in dispute, or an employee or agent of such person other than for purposes of deciding disputes. For purposes of this paragraph (a) a person shall not be considered a “party” solely because he or she acquires or owns an interest in a party solely for investment, and the acquisition or ownership of an interest which is offered to the general public shall be prima facie evidence of its acquisition or ownership solely for investment.

(b) When one or two members are deciding a dispute, all shall be persons having no direct involvement in the manufacture, distribution, sale or service of any product. When three or more members are deciding a dispute, at least two-thirds shall be persons having no direct involvement in the manufacture, distribution, sale or service of any product. “Direct involvement” shall not include acquiring or owning an interest solely for investment, and the acquisition or ownership of an interest which is offered to the general public shall be prima facie evidence of its acquisition or ownership solely for investment. Nothing contained in this section shall prevent the members from consulting with any persons knowledgeable in the technical, commercial or other areas relating to the product which is the subject of the dispute.

(c) Members shall be persons interested in the fair and expeditious settlement of consumer disputes.

rules.<sup>224</sup> BBB AUTO LINE also has Standards of Professional Responsibility for arbitrators that include an “appearance of impropriety” standard.<sup>225</sup> The arbitrator appointment and oath

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<sup>224</sup> Rule 4 (“Selecting your arbitrator”) provides::

BBB AUTO LINE maintains a pool of individuals who are interested in the fair and expeditious resolution of consumer disputes. These persons have been trained and certified by BBB AUTO LINE, a division of BBB National Programs. They do not necessarily have mechanical or legal expertise but can call upon the assistance of an expert when necessary. Based on the parties’ preferred date for the arbitration hearing, BBB staff will randomly obtain an arbitrator from the pool of arbitrators available on the designated date.

The arbitrator(s) will be selected in an impartial manner that ensures the arbitrator does not have a financial, competitive, professional, family or social relationship with any party (unless, pursuant to Rule 6, all parties are aware of any such relationship and specifically agree that the arbitrator may serve).

We shall select the arbitrator in a procedure designed to avoid any conflict of interest and to provide the parties with a neutral arbitrator to resolve the dispute. If a financial, competitive, professional, family or social relationship exists with any party (even if the arbitrator believes the relationship is so minor that it will have no effect on the decision), it shall be revealed to the parties, and either may decide whether this arbitrator should serve in the case.

If the arbitrator believes he or she cannot make an impartial decision, he or she shall refuse to serve. BBB National Programs reserves the right to reject an arbitrator for any reasons it believes will affect the credibility of the program

<sup>225</sup> The standards provide that:

1. Arbitrators shall not accept appointment for a case that is beyond their competence or abilities. Arbitrators shall withdraw from a case if at any time they determine the case is beyond their competence and abilities.
2. Arbitrators shall not accept appointment for a case if the arbitrator cannot make an impartial decision in the case, or if there are any facts that might reasonably create an appearance of partiality or bias on the part of the arbitrator. Arbitrators shall withdraw from a case if, at any time, the arbitrator determines that he or she cannot make an impartial decision, or that there are any facts that might reasonably create an appearance of partiality or bias on the part of the arbitrator.
3. Arbitrators shall immediately disclose to the BBB AUTO LINE staff, as soon as it is known to them, any existing or past financial, competitive, professional, family or social relationship with a party to the arbitration or a party’s representative.
4. Arbitrators shall not, either during or after an arbitration, establish a relationship with any party to the arbitration under circumstances that would raise questions regarding the integrity of the arbitrator or the arbitration process.



requires arbitrators in individual cases to commit to applying a broad standard in addressing possible conflicts, real or potentially perceived.<sup>226</sup>

Rule 5 of BBB AUTO LINE's rules also imposes strict standards on communications

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5. Arbitrators shall abide by the arbitration rules and all other established rules, policies and procedures of the BBB AUTO LINE program
6. Arbitrators shall hold confidential all information presented during the course of an arbitration hearing, except as needed to share with employees or staff of the Better Business Bureau system or as required pursuant to administrative or judicial proceedings.
7. Arbitrators shall, in accordance with program rules and in a timely manner, issue a decision within the scope of the arbitrator's authority. The decision shall be accompanied by reasons that provide a clear explanation in support of the arbitrator's decision.
8. Arbitrators shall conduct hearings in a neutral and impartial manner and in accordance with established BBB AUTO LINE hearing procedures.
9. Arbitrators shall act in a professional manner and refrain from any action that may reflect negatively on the Better Business Bureau system or the BBB AUTO LINE program.
10. Arbitrators shall maintain and improve their professional skills, including review of updates provided by BBB AUTO LINE and participation in any required refresher training.

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The document provides:

You have been selected to serve as Arbitrator in a dispute involving the above parties. Unless you are not able to accept this responsibility or feel you cannot give an impartial decision in this matter, please sign this Arbitrator's Oath. With this form you will receive a copy of the Agreement to Arbitrate, which outlines the dispute and establishes the limits within which you must make your decision. To maintain the integrity of this entire process, please disclose any relationship you may have had with any of the parties named above or with their attorneys (if any). Financial, professional, commercial, competitive, social, or family relationships, no matter how remote, should be revealed.

Oath

I, \_\_\_, hereby accept appointment as Arbitrator of the dispute concerning the Parties named above. I swear/affirm that I will act faithfully and impartially, to the best of my ability, to hear and examine the issues in dispute, and conduct the proceedings and render a decision pursuant to the Rules of the Better Business Bureau AUTO LINE Arbitration Program and, to the best of my ability, within the time allotted.

between the parties and an arbitrator.<sup>227</sup> Further, BBB AUTO LINE’s arbitrator training manuals highlight the program’s focus on preserving impartiality, fairness, and the appearance of both. Further, while BBB AUTO LINE hasn’t been conducting hearings in which the arbitrator and either party were in the same room since March 2020, it’s worth noting the precautions they took when they were conducting such hearings. For example, the hearings were held in neutral locations (local BBB offices) and not a manufacturer’s place of business or a dealership. Second, arbitrators were told to avoid being in a room with one party. Third, for test drives, if a car had only two seats and both parties were present, arbitrators were told that the parties should drive the vehicle together, and the arbitrator should either go alone or with a BBB staff person if available.

BBB AUTO LINE has thus taken multiple steps to address arbitrator impartiality. However, based on his review of the FTC’s rule and the training manual, the auditor has two relatively minor suggestions.

*Recommendation: BBB AUTO LINE should consider incorporating “class action” language from FTC Rule 703.4(1)(a) into its Standards of Professional Responsibility, to make explicit that there would be a conflict if the arbitrator might become a party to a class action involving the product.*

### **III. Operations (Including Rule 703.5)**

Rule 703.5 addresses the operation of the Mechanism. The auditor here describes BBB AUTO LINE’s case processing procedures sequentially, addressing individual subsections of the rule as they arise during the discussion.

#### **A. Written Operating Procedures**

Rule 703.5(a) requires the program to establish written operating procedures covering the items covered elsewhere in Rule 703.5. and to provide them to any person on request.

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<sup>227</sup> Rule 5 (“Communicating with the arbitrator”) provides:

You or anyone representing you shall not communicate in any way with the arbitrator about the dispute except (1) at an inspection or hearing for which the other party has received notice, or (2) when all other parties are present or have given their written permission.

All other communication with the arbitrator must be sent through the Dispute Resolution Specialist.

Violation of this rule compromises the impartiality of the arbitration process and may result in your case being discontinued

To clarify, the focus of the current discussion isn't on the substance of BBB AUTO LINE's compliance with other provisions of the rule; it's on BBB AUTO LINE's compliance with the *disclosure* requirement under Rule 703.5(a).

BBB AUTO LINE has established *rules* for arbitrations. Other written operating procedures are set out in text on the web and, in California only, in text accompanying the arbitration rules.<sup>228</sup> This reflects a recent reorganization of these materials; previously the national rules booklet, as well as its California counterpart booklet, included a fuller description of BBB AUTO LINE's written operating procedures. Under the current organization, the materials may not be provided to consumers without web access. The auditor suggests that BBB AUTO LINE rectify this situation; as a compliance matter, though, BBB AUTO LINE need only provide its written operating procedures "upon request." BBB AUTO LINE has committed to addressing this.

Substantively, the auditor notes several omissions in BBB AUTO LINE's compliance with Rule 703.5(a)'s disclosure requirements. *First*, and perhaps somewhat trivially, the current presentation mentions that, upon receipt of a complaint, the BBB AUTO LINE will notify the manufacturer, but it doesn't mention that it will also notify the consumer that his complaint was received, as required by Rule 703.2(b). *Second*, the current presentation of the National (non-California) written operating procedures doesn't mention the collection of information from the manufacturer, part of the investigation required by Rule 703.5(c). *Third*, the written operating procedures don't mention disclosures to be made to the consumer, under Rule 703.5(g), when the consumer receives an arbitrator's decision.<sup>229</sup> *Fourth*, they don't mention, that, as addressed in Rule 703.5(i), prior resort requirements under Magnuson Moss will be satisfied, if the matter

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<sup>228</sup> <https://bbbnp-bbbp-stf-use1-01.s3.amazonaws.com/docs/default-source/auto-line/bbb-auto-line-ca-rules-booklet-2019.pdf> (California booklet, including additional text); [https://assets.bbbprograms.org/docs/default-source/auto-line/how\\_bbb\\_auto\\_line\\_works.pdf?sfvrsn=5455bf1b\\_14&\\_ga=2.249036929.788019855.1661062582-1448767679.1638161025&\\_gl=1\\*\\_hehmw9\\*\\_ga\\*MTQ00Dc2NzY3OS4xNjM4MTYxMDI1\\*\\_ga\\_FXP6NWPNYM\\*MTY2MTIyMTEyMTE4OS4zMDQuMS4xNjYxMjIyNDc0LjAuMC4w](https://assets.bbbprograms.org/docs/default-source/auto-line/how_bbb_auto_line_works.pdf?sfvrsn=5455bf1b_14&_ga=2.249036929.788019855.1661062582-1448767679.1638161025&_gl=1*_hehmw9*_ga*MTQ00Dc2NzY3OS4xNjM4MTYxMDI1*_ga_FXP6NWPNYM*MTY2MTIyMTEyMTE4OS4zMDQuMS4xNjYxMjIyNDc0LjAuMC4w) (national booklet); <https://bbbprograms.org/programs/all-programs/bbb-AUTO LINE/how-bbb-auto-line-works>; (additional national information); <https://bbbprograms.org/programs/all-programs/bbb-AUTO LINE/lemon-laws-by-state/california> (additional California information). The auditor notes that, using the current web pages, a consumer might easily think that the national rules applied in California.

<sup>229</sup> The rule clearly applies to settlements, even though it's focused on arbitration and one of the required disclosures involves the admissibility of the Mechanism's decision, which could only apply to an arbitrated proceeding. Subsection (g) disclosures are triggered by subsection (d) disclosures, and subsection (d) explicitly addresses settlements as well as arbitrated decisions.

hasn't already been decided or settled, 40 days after notification to BBB AUTO LINE of the dispute.

*Recommendation: BBB AUTO LINE should address the omissions noted above. Also, and though it goes beyond the requirements of the rule, he suggests that BBB AUTO LINE take steps to ensure that consumers outside California who don't use BBB AUTO LINE's online interface get full access to its written operating procedures without making a request.*

## **B. Starting the Process**

Consumers can initiate a case by telephone, by a written complaint, or online. Except for certain complaints filed by attorneys on behalf of consumers, the information isn't initially submitted on a complaint form; rather, the consumer responds to a series of questions, and her responses are incorporated onto a form that's sent to the consumer, either electronically or by regular mail, at the consumer's choice. He's then asked to edit, sign, and return it, along with supporting documents.

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

## **C. Opening a Case**

As noted above, during an initial phone or online contact, BBB AUTO LINE collects information that it incorporates into a consumer complaint form. The form is then sent to the consumer, together with materials about the program,<sup>230</sup> and, as noted above, the consumer is invited to update, edit, supplement, and sign the form. Among consumers surveyed in the 2021 national sample, 88.5% recalled receiving these materials.<sup>231</sup> And, among those, 96.6% said the explanatory materials were very or somewhat clear and easy to understand,<sup>232</sup> and 85.0% said

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<sup>230</sup> These documents include, for example, the program summary for the relevant manufacturer and state. When the complaint form is sent electronically, BBB AUTO LINE transmits some documents by sending links to its web site.

<sup>231</sup> As detailed in Section III.F of this chapter, in some cases where consumers who *didn't* recall getting the document, the auditor found copies of a form that they'd signed and returned to BBB AUTO LINE.

<sup>232</sup> 65.7% said they were very clear and easy to understand.

they were very or somewhat helpful.<sup>233</sup>

In states other than Florida and California, a case doesn't actually open until after the consumer returns the signed form. Rule 703.2(b) requires notice to the consumer and the manufacturer at that point, and BBB AUTO LINE provides such notice.

*The online interface.* During the initial contact, either online or by phone, BBB AUTO LINE asks consumers if they would prefer to receive future communications by mail or email. If they choose email, BBB AUTO LINE now relies *exclusively* on electronic transmittals to the consumer (and, at the consumer's discretion, from the consumer). These are transmitted via an online account; BBB AUTO LINE sends an initial email explaining to consumers how to access the account, and, once an account is open, subsequent emails alert them when new communications appear in their accounts.

While it's a *very* tentative measure, the net effect of the new online system may well be positive. In 2018, the ratio of initial filings to closed cases was 58.5%. Then, as BBB AUTO LINE implemented and improved the online system, the ratio was 63.5% in 2019; 63.1% in 2020; and 67.8% in 2021. This is a highly imperfect measure for several reasons,<sup>234</sup> but the *trend* nevertheless suggests an increased rate of consumers going forward. And, with 12,841 initial filings, this suggests that as many as 1200 additional consumers may have pursued cases, although this calculation quite likely overstates the figure.

Even if the net effect is positive, though, some consumers appear to be deterred by the online transmittal process. The problem previously emerged in responses to a question in the TechnoMetrica survey about whether consumers had received specified documents. Further, it's particularly concentrated in Florida and California – the two states where a case is routinely opened before the consumer returns a signed consumer complaint form, and thus the only states where a file needs to be closed if the consumer doesn't return a signed form. There could well have been problems in other states, but, if the consumer didn't return a signed consumer complaint form, a case number generally wouldn't have been assigned; the case wouldn't have shown on the spread sheet that BBB AUTO LINE prepares for the audit and that lists all cases closed during the year; in most cases, there wouldn't have been a file on the spread sheet from which the auditor worked; and, thus, the incident would have escaped his notice.<sup>235</sup>

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<sup>233</sup> 63.5% said they were very helpful.

<sup>234</sup> For one thing, the bases are different; cases often open in one year and close in another. Also, cases from Florida and California are opened upon receipt of the initial filing, so cases from these states won't show up as "non-pursued" in the auditor's calculations; rather, they'll show up as cases that opened and closed. The "non-pursued" cases are limited to other states, where a case file isn't opened, for purposes of BBB AUTO LINE's statistical calculations and the underlying charts on which the auditor relies, unless and until the consumer returns a signed consumer complaint form.

<sup>235</sup> In some instances in other states, BBB AUTO LINE may quickly open and close a case

The auditor focused on Florida, where TechnoMetrica conducts a separate state survey and this year attempted to contact *every* Florida consumer whose case closed in 2021 and who wasn't represented by counsel. The Florida survey, which now includes Florida consumers who were contracted during the national survey as well as those contacted solely for the Florida-specific survey, included 204 consumers. Among these, there were 14 cases – 6.8% – where files were closed because consumers didn't return signed consumer complaint forms but the consumers reported that they never received the packet that transmitted to them the form that had to be signed. Further, and not surprisingly, calls to some consumers confirmed that they abandoned the process because they gave up on the system.<sup>236</sup> Among the 93 California consumers who were part of the national sample, 4.8%, a somewhat lower figure than in Florida, reported a comparable problem.

Splitting the difference between the California and the Florida figure, and applying a 5.8% rate to 12,841 initial filings nationally, this suggests – and this is a very rough estimate – that 740 consumers might have been deterred from using the online system.

Moreover, this includes only clear-cut cases where consumers reported that they hadn't received the initial packet and BBB AUTO LINE closed on the basis that the consumers hadn't returned a signed consumer complaint form. There were twelve other cases where consumers reported that they hadn't received an initial packet and BBB AUTO LINE closed because the car fell outside applicable age and mileage limits; these are somewhat more ambiguous; some may have been problematic, but the auditor focuses on the more clear-cut examples.<sup>237</sup>

The auditor suggested steps to address the problem in the 2019 audit and, in the 2020 audit, BBB AUTO LINE reported taking some steps. To explore the matter further and from a different direction this year, the auditor set up “dummy” cases for Virginia, California and Florida (to test the national practice and any special practices in California and Florida). In each

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where the car clearly falls outside the program because of its age or mileage. This spares the consumer the effort of compiling documents, including repair records, for a complaint that won't go forward anyway. (Whatever merit this approach may have, though, these cases are still subject to the auditor's recommendation that closing letters should routinely provide case-specific details and make clear that the consumer may contact BBB AUTO LINE if the consumer disagrees).

<sup>236</sup> Of the 14 consumers, the auditor tried to reach the nine whose cases closed during the second half of the year. Of the four that he reached and who were willing to talk, one consumer reported not receiving any communication and three reported that they couldn't successfully use the system.

<sup>237</sup> Paralleling its practices in other states, see note 235, BBB AUTO LINE may quickly close a Florida case that falls outside age and mileage limits before the consumer goes to the trouble of collecting documents for a case that won't be eligible in any event. In some of the twelve cases noted in the text, consumers may also have had problems with the online portal.

case, he filled out the online complaint form but didn't submit anything else. The results of the dummy cases show some improvements in the process, but BBB AUTO LINE could do more.

**(1) Preliminary observations.** Working on a desktop computer, the auditor found the account relatively easy to create. However, it's not clear that all consumers would find it equally user-friendly, and, indeed, the survey results suggests, and the auditor's calls confirms, that some didn't. One possibility, as noted above, is that they took literally the description of an "email" option and didn't expect to have to access an online account.

Even if they did successfully access their accounts, they may have experienced further surprises. For one thing, when consumers file their complaints online, BBB AUTO LINE solicits the information via a series of questions asked and answered on the web page. But the next step in the process involves printing out a form that incorporates the consumer's initial responses and that, as noted above, the consumer the needs to supplement (usually), edit (as needed), sign, and return along with documents. In this connection, many consumers may have problems if, for example, they access the internet only through a smartphone (as many consumers do<sup>238</sup>) and don't have readily available printing and scanning capabilities. To the extent that consumers experience problems, the key, in the auditor's view, is to help them resolve those problems and work with the system. But, if the problems can't be resolved, they need to know that, at any point, they can shift away from online communications to communications by mail, FedEx, etc.

**(2) Follow-through by BBB AUTO LINE.** In the dummy case for Virginia, BBB AUTO LINE did substantial follow-through. In his capacity as a purported consume, the auditor received two email reminders, the first of which was also transmitted by regular mail and the second of which was accompanied by a phone call.<sup>239</sup> Neither email included the signed consumer complaint form or other materials from the introductory packet; the consumer couldn't

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<sup>238</sup> In a 2019 study by the Pew Research Center, for example, 17% of surveyed US adults reported that the used the internet only on a smartphone. See <https://www.pewresearch.org/internet/2019/06/13/mobile-technology-and-home-broadband-2019/>. Further, there were significant differences among populations. Only 12% of "white" respondents reported using smartphones only, but the rate was 23% for African American respondents and 25% for Hispanic respondents. Also, 26% of respondents reporting incomes less than \$30,000 reported using smartphones only.

<sup>239</sup> The auditor filed a claim on May 23, and received an acknowledgement email that day. A second email, on May 25, provided a case number and a link to set up an online account. When the auditor didn't use the link, BBB AUTO LINE sent a reminder by both email and regular mail on June 6. Then, on June 23, the auditor received another email and, following a procedure that he understands to have been recently implemented, a phone call (via a message answering machine) and another email, again asking him to return the documents. By viewing BBB AUTO LINE's file for the case, he found that the case was closed on June 28.

access these without opening an account or contacting BBB AUTO LINE to make other arrangements.

In the dummy cases for Florida and California, the initial email did include introductory packets, including the initial consumer complaint form for review, supplementation, editing, signing and resubmission. However, the follow-through was less extensive. There were no email reminders, and the auditor didn't receive a phone call, although this might have been because the name on the consumer complaint form made clear that it was a test case. Further, the auditor reviewed the reports of his case in through both the online consumer interface and the internal BBB AUTO LINE interface, and neither reported that a communication was sent by regular mail.<sup>240</sup>

**(3) No-Reply email addresses.** The auditor has previously noted that BBB AUTO LINE sent some emails from a "no-reply" email address and observed that this could be a problem because no-reply addresses are particularly likely to trigger spam filters. BBB AUTO LINE reported last year that it no longer used such addresses and, while they have implemented a new approach, they've done it incompletely. Most of the emails in the dummy cases didn't come from a "no-reply" address, but the second reminder in the Virginia case did (although any problem from using that address would have been mitigated by a phone call made the same day).

**(4) Providing technical support and clearly offering consumers who choose to receive communications by "email" the option to change.** As noted above, consumers filing complaints are asked whether they prefer communications to be sent by email or mail. And, as further noted, consumers who select email might not realize that they'll actually be using an online portal, with email communications inviting them to set up an account and, later, alerting them when new materials are available that they can access via the portal. Some subsequent communications do make clear that that the consumer can *submit* materials by other means.<sup>241</sup> However, this doesn't seem to have been sufficient to address consumer problems.

The auditor thus recommends that BBB AUTO LINE take further steps. For example, it might specifically invite consumers to contact BBB AUTO LINE for technical support, and highlight the invitation in its written communications. Also, the auditor believes that it would be useful to make clear in all the initial communications to consumers that, if they initially chose

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<sup>240</sup> The auditor wouldn't have received a letter sent by regular mail, because he used fictitious addresses for these files. On the other hand, any such communication should have shown on the consumer's online portal and BBB AUTO LINE's internal portal, both of which the auditor could access, and neither reported on a mailed communication.

<sup>241</sup> The first reminder letter in the Virginia case mentioned online submission or fax, but not regular mail. Consumers will likely understand that they can use regular mail, as well, although they might be concerned because BBB AUTO LINE seemed to invite only quickly transmitted modes of communication.



the electronic option, they can later shift and both send and receive communications by regular mail.<sup>242</sup> Further, the initial complaint page, rather than offering an “email” option, might clarify that the electronic option will involve the use of an online portal.

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On a related point, the auditor recommends that BBB AUTO LINE review the forms used for its initial communications (as well as other forms used later in the process) to ensure that they don’t in other ways deter consumers from pursuing potentially arbitrable claims. The auditor’s principal concern is that some documents may convey an unnecessary sense of urgency and finality, by giving the consumer a firm deadline but later moving the deadline back (repeatedly) if the consumer doesn’t meet it. Also, the initial communications didn’t make clear that, if the case was eventually closed while the consumer was gathering material, the consumer could simply refile; BBB AUTO LINE has advised that it is in process of updating these communications, although the process is delayed awaiting the filling of the compliance manager slot.

For example, materials sent to California consumers after their initial contact includes this highlighted text:

**PLEASE NOTE: Per Rule 2D of the BBB AUTO LINE arbitration rules, your case will not be arbitrated unless we receive a signed “*Customer Complaint Form*.” If we have not received this within ten days from the date of this letter, your case will be closed.**

Aside from a potentially intimidating legalistic tone, the text doesn’t make clear that that the consumer could refile if the case was closed while they were collecting all the materials they were asked to provide.<sup>243</sup> Similar issues arise in Florida<sup>244</sup> and, less starkly, in other states.<sup>245</sup> In

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<sup>242</sup> As noted above, consumers who chose the electronic option are told that they can submit materials by other means; they aren’t told that they could shift to regular mail for communications from BBB AUTO LINE.

<sup>243</sup> California consumers, for example, are asked to provide their sales or lease agreement; proof of transfer of ownership if the vehicle is no longer in their possession; current vehicle registration, work orders, including proof of payment if the consumer seeks reimbursement, and other relevant documents.

<sup>244</sup> The Florida packet didn’t address the transfer of ownership papers. (California is an outlier in providing relief if the consumer no longer owns the car.) Also, the boldfaced text in the Florida letter omitted the reference to Rule 2D, a California-specific rule.

<sup>245</sup> In the dummy case the auditor set up for Virginia, BBB AUTO LINE’s first email announced a ten-day timeframe to return the signed consumer complaint form and other needed materials. After

California, moreover, the auditor has on occasion sent a closing letter explaining, where a case was closed because the consumer hadn't returned signed documents, the consumer's recourse was to file a California jurisdictional appeal within 30 days. This may be the only viable option for a consumer in unusual cases,<sup>246</sup> but, as a general rule, the consumer could simply refile. BBB AUTO LINE has advised that it will address this.

Turning to another subject raised by the initial communications, the cover letter to the original package sent to Florida consumers advises them that the consumer's prior resort obligation is satisfied if BBB AUTO LINE hasn't resolved the matter in 40 days.<sup>247</sup> The Magnuson Moss Act and the Ohio code have similar provisions,<sup>248</sup> and the auditor recommends that BBB AUTO LINE prominently signal that fact.<sup>249</sup>

Also, on the subject of prior resort, in certain states prior resort requirements apply only to manufacturers certified by the states. However, BBB AUTO LINE doesn't appear to identify, in materials sent to consumers filing cases or on its web site, which manufacturers are certified in Florida or Ohio.

*Recommendations:*

*(1) BBB AUTO LINE should take further steps to address problems that some consumers experience with the online system and to address the concern that some consumers may be deterred from using BBB AUTO LINE because of the system. The auditor is advised that BBB AUTO LINE is in the process of getting a new system that, pursuant to contract, should be completed within six months.*

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ten days had passed, though, the reminder email gave 14 (additional) days to respond – and, when those 14 days had passed, though, BBB AUTO LINE's second reminder that didn't specify a time for responding.

<sup>246</sup> This might be the case if the consumer filed returned a form during California's lemon law filing period, but, by the time the consumer got the closing letter reporting that the form hadn't been received, the time had expired.

<sup>247</sup> In Florida, they can proceed to the state's arbitration program.

<sup>248</sup> 16 C.F.R. 703.5(i); OHIO CODE § 109:4-4-04 (C)(11).

<sup>249</sup> Since states other than Ohio and Florida have comparable provisions (although some with longer timeframes), this might be done, for example, by a specific reference to Magnuson Moss accompanied by a general reference to state provisions in the cover letter that directs consumers to state-specific provisions elsewhere in the introductory packet.

(2) *BBB AUTO LINE should review its communications with consumers to address (at a minimum) text that conveys an unnecessary sense of urgency.*

(3) *In its initial communication to consumers, the auditor recommends that BBB AUTO LINE advise them that prior resort requirements under Magnuson Moss, as well as under Ohio's lemon law, are satisfied if 40 days pass without a decision or settlement;<sup>250</sup> and*

(4) *Prior resort provisions under Florida's and Ohio's lemon laws apply only to certified manufacturers, and, though there is no legal requirement that it do so, the auditor recommends that BBB AUTO LINE identify for consumers which manufacturers are certified in Florida and Ohio.<sup>251</sup>*

#### **D. The Initial Screen: Ineligibility (Jurisdictional) Determinations**

Once a case opens, a DRS-2 level dispute resolution specialist reviews it for eligibility under the applicable program summary. In California and Florida, where cases are opened at the time of filing, the DRS does this soon after the case is filed and without awaiting the return of a signed (and edited) consumer complaint form. Moreover, in other states where a claim is clearly ineligible, the DRS, to spare the consumer the effort of collecting materials needed for a full submission in a case that won't go forward anyway, may open and quickly close the case.<sup>252</sup> Except in these situations, though, a case doesn't open until the consumer returns a signed consumer complaint form with accompanying documents.

Each DRS is assigned specific categories of cases (such as Ford and General Motor cases in California), so the DRS becomes familiar with specific program summaries, lemon laws, and, where appropriate, warranty terms. Also, BBB AUTO LINE has an internal escalation procedure whereby novel or complex questions can be addressed by program managers.

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<sup>250</sup> The letter to Florida consumers already provides such notice. The auditor notes that this needn't require a separate letter for each state; the letter might, for example, alert the consumer that prior resort requirements *may* be satisfied after 40 days, and direct them to a source that describes state-specific provisions.

<sup>251</sup> As noted previously, the auditor limits his comments on state law disclosure issues to Florida and Ohio. The information for Florida is available on the Florida Attorney General's web site, <https://myfloridalegal.com/pages.nsf/Main/7629400e4ef8a25285256cc9005c5a5b>, but consumers may not look there, and, for Ohio, it isn't available on any public source that the auditor has located.

<sup>252</sup> The auditor sees no inherent problem with this, but notes his recommendation, below, that ineligibility letters contain case-specific details and invite the consumer to contact BBB AUTO LINE if they disagree with the DRS's assessment.

In 2021, BBB AUTO LINE rejected as ineligible 3693 of 8700 (42.4%) submitted claims that led to opened case files.<sup>253</sup> There were generally three categories of ineligibility determinations, discussed in more detail below.

- Most determinations were based on age and mileage considerations.
- Others were based on exclusions in program summaries, such as an exclusion for claims covered by other insurance, or an effective “exclusion” of claims against a dealer (since only manufacturers participate in the program).<sup>254</sup>
- Finally, still others were based on the consumer’s failure to provide the manufacturer with a reasonable opportunity to repair a problem, a basis for ineligibility, as explained below, only in limited circumstances.

The discussion in this section and throughout this chapter draws on the auditor’s examination of specific case files.

- Most of the “ineligible” cases that the auditor examined were drawn from consumers surveyed by TechnoMetrica in the national, Florida, and Ohio surveys, including some consumers who were selected randomly (using an alphabetical pattern) and others who were targeted based on the consumers’ responses to specific questions.<sup>255</sup>
- Also, for purposes of reviewing ineligibility determinations, the auditor looked at a *highly* targeted sample. As noted previously, BBB AUTO LINE allows jurisdictional appeals to an arbitrator in California cases, and the auditor examined the 23 appealed cases (out of 67 jurisdictional appeals and 1258 ineligibility determinations in California) where either: (1) a “jurisdictional arbitrator” disagreed with staff’s ineligibility determination (even if a second arbitrator who heard the full case essentially agreed with staff’s position); (2) the manufacturer settled before a jurisdictional arbitrator could decide the matter, or (3) the consumer withdrew the appeal.<sup>256</sup>

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<sup>253</sup> This excludes cases outside Florida or California in which the consumer didn’t return a signed consumer complaint form.

<sup>254</sup> Claims against the dealer would include, for example, problems with dealer-installed accessories.

<sup>255</sup> For example, did they disagree with BBB AUTO LINE’s characterization on key metrics such as the process used to resolve a case and the remedy (if any) resulting from the case.

<sup>256</sup> As noted, there were 1258 ineligible determinations in California and 67 jurisdictional appeals. In 44 of those 67, the arbitrator agreed with the finding of ineligibility. Among the other 23, an arbitrator found jurisdiction in 11 cases, 10 cases settled, and two were withdrawn. (One of the

Preliminarily, the auditor offers some recommendations with broad applicability. Many ineligibility letters use templates with little or no adaptation of the template's text; they provide general information about the reason for ineligibility, but little or no case-specific information that the consumer could use to question the determination if the consumer disagrees with the ineligibility decision.<sup>257</sup> In general, the use of little-modified templates may be quite useful, but, in the auditor's view, that's not the case here. And, on a related matter, the auditor notes that BBB AUTO LINE provides a process for a jurisdictional appeal to an arbitrator in California, and closing letters in California cases explain this process. In non-California cases, ineligibility letters often, but not always, invite the consumer to call if the consumer questions the ineligibility determination. To address these issues, and another issue related to cases discussed below, the auditor begins with some general recommendations and then, after discussing specific kinds of ineligibility determinations, offers some recommendations as to each following.

*General recommendations:*

*(1) Ineligibility letters should consistently provide case-specific information to explain the decision and facilitate questioning by the consumer if the consumer believes that the claim was eligible. Further, except where a California-specific*

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withdrawals was effectively a settlement; the consumer was represented by counsel and accepted a settlement outside the program, presumably including attorney's fees that wouldn't have been available under the program.)

The auditor hesitates to draw statistical projections from these figures for several reasons. There's an under-counting issue, since some problematic determinations presumably weren't appealed, but there's a countervailing over-counting issue, because some of the 23 cases don't point to a problem with staff's determination. A manufacturer might have settled even if an issue was outside of warranty, for example, because the manufacturer had instituted a buyback program, outside the express warranty period, that covered the car in question. Also, some of the 12 jurisdictional reversals don't necessarily represent problems. In one case, for example, the consumer raised a problem on appeal that wasn't in the initial filing. In others, the jurisdictional arbitrator might have been mistaken (and the staff's position vindicated), as in cases where a second arbitrator who heard the full case essentially rejected the reasoning of the jurisdictional arbitrator and essentially reinstated staff's determination.

Further, even if the figures could somehow be projected to all California cases, the California projections couldn't be extended to cases elsewhere. As will be seen below, most cases with age-and-mileage problems involved issues that couldn't arise in most other states; also, most "reasonable opportunity" cases involved a very specific issue, discussed below, under California case law.

<sup>257</sup> Thus, for example a typical letter might note that a claim is ineligible because it exceeds the warranty's age limits, without explaining that the problem would only be covered under the bumper-to-bumper warranty and that the bumper-to-bumper warranty expires after a specified number of months.

*letter discussing jurisdictional appeals is used, ineligibility letters should consistently invite consumers to contact staff with questions about the determination. BBB AUTO LINE is in the process of updating these letters to invite consumers to call if they believe that BBB AUTO LINE has made an incorrect determination.*

(2) *There appear to be some instances where a case was dismissed as ineligible without clarifying all the relevant facts, and BBB AUTO LINE should emphasize to its staff the need to limit ineligibility determinations to cases where the facts are clear.*

**Age and mileage limits.** Eligibility standards for consumers' participation in the program are set forth in program summaries. In California, the state-specific rules applicable to most cases also double, effectively, as program summaries for most California cases. Outside California, all program summaries are *manufacturer-specific*, although they have varying degrees of *state* specificity. Thus, some manufacturers use a single program summary for all cases outside California; others have some state-specific program summaries and a "default" program summary that applies elsewhere; and some have a state-specific program summary for each state in which they participate.

Almost every program summary covers all lemon law claims within the covered state(s). (They also allow the arbitrator to award any relief available under the lemon law with a range of exclusions.<sup>258</sup> The underlying lemon laws, in turn, typically contain precise quantitative age limits, and sometimes mileage limits, that specify when a matter must be brought to the manufacturers' attention and/or when a claim must be filed.<sup>259</sup>

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<sup>258</sup> For example, the Nissan Program Summary provides that:

- ◆ The award will not include any manufacturer rebate the customer received or used as a downpayment or capitalized cost reduction.
- ◆ The arbitrator will decide whether the applicable lemon law permits an adjustment to the award for any trade-in over-allowance or debt from a previous transaction.
- ◆ The award will be reduced for the customer's use of the vehicle in accordance with the applicable lemon law.
- ◆ The customer may be required to pay for damage to the vehicle exceeding normal wear and tear.

<sup>259</sup> For example, Florida's lemon law defines the "lemon law rights period" as "the period ending 24 months after the date of the original delivery of a motor vehicle to a consumer," requires that the consumer report the defect to the manufacturer or its authorized service agent within that period, and further requires that a claim be filed with a certified "procedure" (like BBB AUTO

Many program summaries also cover non-lemon law warranty claims, and most of the non-lemon-law coverage provisions incorporate precise quantitative age-and-mileage standards.<sup>260</sup> These standards may parallel the manufacturer’s bumper-to-bumper warranty, but they don’t extend to the full duration of extended warranties that manufacturers may offer for specific systems, such as a power train warranty or a warranty for an emissions system; further, even to the extent that they *parallel* the manufacturer’s warranty terms, they don’t actually *incorporate* those terms.

Other program summaries, though, do precisely that. The most prominent example of such incorporation is in the California rules, which, as noted, essentially double as program summaries. California Rule 2.A thus extends coverage to claims under “a participating manufacturer’s new vehicle warranty,” so long as the claim is also covered under California’s lemon law, while Rule 2.B provides that “[c]laims must be received by BBB AUTO LINE within six months of the expiration of the applicable warranty”.<sup>261</sup>

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LINE) no later than 40 days after the expiration of the lemon law rights period. FL. STAT. §§ 681.101(9), 681.103(1), 681.109(1). Ohio’s lemon law requires notice to the manufacturer within one year of the original delivery or 18,000 miles, whichever comes first. OH. CODE § 1345.72(A).

<sup>260</sup> For example, the Hyundai program summary provides that:

Claims must be received by BBB AUTO LINE within the Hyundai New Vehicle Limited Warranty period of five years from the date of the vehicle’s original retail delivery or 60,000 miles, whichever occurs first.

<https://BBB National Programs-bbbp-stf-use1-01.s3.amazonaws.com/docs/default-source/auto-line/program-summaries/hyundai/hyundai-us-progsum-022007.pdf>.

<sup>261</sup> Some other program summaries fully incorporate the terms of a manufacturer’s express warranties, including those that reach beyond the bumper-to-bumper warranty. For example, the Ford program summary for states other than California and Arkansas provides, with emphases omitted, that:

Claims seeking repurchase or replacement of a Ford or Mercury vehicle must be filed with BBB AUTO LINE within three years or 36,000 miles – whichever occurs first – after the vehicle’s warranty start date.

Claims seeking repurchase or replacement of a Lincoln vehicle must be filed with BBB AUTO LINE within four years or 50,000 miles – whichever occurs first – after the vehicle’s warranty start date.

Claims seeking any other remedy listed below must be filed with BBB AUTO LINE before the expiration of the applicable Ford U.S. New Vehicle Limited Warranty coverage period.

Turning now to the auditor's specific findings, among the cases he examined that *didn't* involve a California-type incorporation of warranty terms, the auditor found a single problem. This was an unusual case where the consumer reached a typical repair settlement with the manufacturer, providing that the manufacturer would inspect the vehicle and do a repair if warranted, but, for various reasons, didn't bring in the car for service until some time had passed. When she did bring in the car, the service center told her that it was outside applicable warranty limits, and BBB AUTO LINE accepted this even though the consumer complaint form reported that the car was the within warranty when the case was filed.

Through the California appeals review, though, the auditor found three problematic age-and-mileage determinations where the DRS missed an applicable extended warranty, such as a powertrain or an emissions warranty, that extended beyond the bumper-to-bumper. As noted above, California's lemon law defines the timetable for lemon law relief with reference to the manufacturers' written warranties. (Other cases that turned on age and mileage issues seemed less problematic. One involved a warranty extension that wasn't reflected in the warranty book, about BBB AUTO LINE was unaware, and where the jurisdictional arbitrator may well have been wrong in relying on an extension not reflected in the warranty book. In another, the appeal was based on a problem that wasn't reflected in the initial consumer complaint form, and, in two, the jurisdictional arbitrators were essentially reversed, in the auditor's view properly, when the full case was subsequently heard.<sup>262</sup> Also, another case raised an unusual issue and, whatever the merits of the appeal, the manufacturer settled before it was decided.<sup>263</sup>

*Recommendation: BBB AUTO LINE should consider ways to reduce errors in age-and-mileage determinations, particularly where lemon laws or program summaries incorporate warranty terms by reference.*

*Tolling issues.* Some lemon laws specifically provide for tolling in one situation, extending an applicable period for time when a car is awaiting repairs. The California statute

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<sup>262</sup> In one, the question was whether the powertrain warranty extended to consumers who bought the car used; the jurisdictional arbitrator said yes; the arbitrator who heard the case on the merits (properly) disagreed, based on the terms of the express warranty. In another case, the jurisdictional arbitrator let the case go forward because the consumer had given timely notification of a problem to a repair shop that wasn't connected with the manufacturer; the second arbitrator (properly) held that that didn't constitute the requisite notice.

<sup>263</sup> The case at issue had already gone to arbitration, and the arbitrator in the earlier case had issued a denial decision. The consumer later filed a new case (the case at issue) that the consumer described as involving the same issue, and asserted that age and mileage at the time of the earlier (denied) case should be used to determine eligibility for the later case.



provides for some such tolling,<sup>264</sup> for example, while Florida’s statute provides for tolling for warranty purposes but not for lemon law purposes.<sup>265</sup> (Ohio’s lemon law is silent on the subject.)

*Recommendation: Where statutes provide a tolling period for time when a vehicle being repaired or awaiting repairs at a dealership, case handlers should routinely consider possible extensions in appropriate cases. BBB AUTO LINE advises that it will provide training to dispute resolution specialists on this subject matter.*

As to other tolling, the auditor understands that BBB AUTO LINE’s view is that, absent a statutory provision within the lemon law itself (and tolling based on the time the car was in the shop appears in other lemon laws), there’s no further tolling of time/mileage limits in express warranties. Second, there’s no further tolling under lemon laws, all of which, to the best of BBB AUTO LINE’s knowledge, either set forth their own limits for reporting a defect and/or filing a claim, or [as in California] incorporate by reference terms from the manufacturer’s express warranties. Third, there’s no further tolling for program summaries. For lemon law claims, under the program, these summaries usually incorporate by reference lemon law limits although some program summaries set their own deadlines. For non-lemon law claims under the program, the program sometimes incorporate by reference express warranty limits, but usually set their own.<sup>266</sup>

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<sup>264</sup> For example (and omitting text applicable to hearing aids only), Section 1795.6(a) of The Song Beverly Act provides for tolling of warranty periods

for the period from the date upon which the buyer either (1) delivers nonconforming goods to the manufacturer or seller for warranty repairs or service or (2), pursuant to subdivision (c) of Section 1793.2 or Section 1793.22, notifies the manufacturer or seller of the nonconformity of the goods up to, and including, the date upon which (1) the repaired or serviced goods are delivered to the buyer, (2) the buyer is notified the goods are repaired or serviced and are available for the buyer’s possession or (3) the buyer is notified that repairs or service is completed, if repairs or service is made at the buyer’s residence.

<sup>265</sup> Section 681.103(1) of the Florida statute provides that manufacturers have a duty to complete warranty repairs after the warranty expires if the problem was reported before the period expires, but adds that “[n]othing in this paragraph shall be construed to grant an extension of the Lemon Law rights period or to expand the time within which a consumer must file a claim under this chapter.”

<sup>266</sup> If BBB AUTO LINE did allow tolling for matters such as latent defects, DRS’s would still be applying a straightforward standard in making ineligibility determinations – only it would be a different straightforward standard.

**Exclusions from the program and disputes with dealerships.** Another source of apparent staff error is the application of exclusions from the program<sup>267</sup>; such exclusions appear in the California rules and some version of them appears in every program summary.<sup>268</sup> On a

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<sup>267</sup> This is different from the point raised above, which involved exclusions from the relief awarded in a case.

<sup>268</sup> California Rule 2.D. which as noted previously doubles as a program summary, lists the following as disputes that will not be arbitrated.

- Claims for which BBB AUTO LINE does not receive a Customer Claim Form signed by at least one titled owner/lessee, or signed by the customer's authorized representative if the representative also submits evidence of the customer's authorization
- Claims that include a request for punitive damages or damages for personal injury or mental anguish
- Claims that include allegations of fraud or other violations of law
- Claims involving a vehicle that is the subject of a lawsuit brought against the manufacturer or its authorized dealer
- Claims involving a vehicle if the consumer alleges or has alleged that a vehicle defect has caused personal injury
- Claims involving a vehicle if the consumer alleges or has alleged that a vehicle defect has caused property damage where the damage is greater than \$500
- Claims that have been previously resolved by settlement or arbitration unless there have been substantive changes (such as a further repair attempt) after the resolution or a repair decision that has not remedied the problem.

Outsider California, a typical program summary contains comparable but not identical exclusions. For example, Volkswagen's Florida program summary excludes the following:

- Claims involving salvaged or "total loss" vehicles, or vehicles otherwise not covered by a Volkswagen USA Warranty.
- Claims alleging that an airbag failed to deploy or deployed when it should not have.
- Claims involving a vehicle defect if the customer alleges – either as part of the BBB AUTO LINE claim or at any other time – that the vehicle defect has caused an accident or fire that resulted in damage to any vehicle or damage to property.
- Claims involving a vehicle defect if the customer alleges – either as part of the BBB AUTO LINE claim or at any other time – that the vehicle defect has caused bodily injury.
- Allegations of fraud or other violations of law.

similar matter, lemon laws typically apply to manufacturers (warrantors) only, and not to dealers, and the BBB AUTO LINE program addresses only disputes with manufacturers; dealers don't participate. Consistent with this, BBB AUTO LINE essentially "excludes" claims against a dealer, where, for example, the issue involves a dealer-installed accessory.<sup>269</sup>

Turning now to specific cases, in one Florida case the DRS closed the case, apparently based solely on the manufacturer's representation that it had offered a repurchase. The closing was clearly wrong; the manufacturer didn't even represent that the consumer had accepted the offer and, even if the consumer had, the auditor is told that the closing contravened BBB AUTO LINE policy, which requires that the manufacturer provide a copy of the signed agreement, although there may be exceptions in cases where staff confirms the information with the consumer.

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- Claims covered by insurance or by warranties of other manufacturers.
  - Claims seeking compensation for legal fees or loss of wages.
  - Claims seeking compensation for personal injury or mental anguish.
  - Claims seeking punitive damages.
  - Claims identical to any claim that was resolved by a previous mediation or arbitration, court action, settlement, or agreement between the customer and Volkswagen.

<sup>269</sup> For example, Section 1345.72(a) of the Ohio revised code creates a duty to repair for lemon law purposes where "a new motor vehicle does not conform to any applicable express warranty." Section 681.103(1) of the Florida Statutes uses the term "warranty," and Section 681.102(22) defines warranty as "any written warranty issued by the manufacturer, or any affirmation of fact or promise made by the manufacturer, excluding statements made by the dealer, in connection with the sale of a motor vehicle to a consumer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is free of defects or will meet a specified level of performance."

These texts don't refer to manufacturing defects, but the warranties to which they refer typically do. For example, the 2022 Ford Warranty manual provides coverage for malfunctions or failures "due to a manufacturing defect in factory-supplied materials or factory workmanship." 2022 Model Year Ford Warranty Guide, available at [https://www.ford.com/cmslibs/content/dam/brand\\_ford/en\\_us/brand/resources/general/pdf/warranty/2022-Ford-Car-Lt-Truck-Hybrid-Warranty-version-2\\_frdwa\\_EN-US\\_12\\_2020.pdf](https://www.ford.com/cmslibs/content/dam/brand_ford/en_us/brand/resources/general/pdf/warranty/2022-Ford-Car-Lt-Truck-Hybrid-Warranty-version-2_frdwa_EN-US_12_2020.pdf), at 5.

As to non-lemon law claims, manufacturers' program summaries typically contain similar language. For example, see the Ford Program Summary, available at <https://BBB National Programs-bbbp-stf-use1-01.s3.amazonaws.com/docs/default-source/auto-line/program-summaries/ford/ford-program-summary-2020.pdf> (Claims must be based on a defect in the vehicle's factory-supplied material or workmanship covered by the applicable Ford U.S. New Vehicle Limited Warranty.)

In another case, BBB AUTO LINE deemed a claim involving rust, apparently present but not detectable when the consumer first got the car, to be ineligible because the problem was caused by the dealer. This was a California decision that went to a jurisdictional arbitrator, who held that the case could go forward and that the question of dealer versus manufacturer responsibility could be addressed in arbitration. This issue here is addressed by a previous recommendation, that staff allow a case to go forward if eligibility turns on a factual issue that isn't clear.

In yet another California case,<sup>270</sup> staff assumed that a component on the vehicle (a “fifth wheel hitch”) was installed by the dealer. The consumer appealed, asserting that the VIN number indicated that it was factory installed. The appeal then went to an arbitrator. In the auditor's view, this is a case where the DRS should have contacted the consumers to explore the facts, although it might be argued that this was a close call and the appeal process served as a backstop to address errors. Still, the backstop involved an appeal to a jurisdictional arbitrator that proved to be time-consuming. And, also with reference to this case, the auditor believes that BBB AUTO LINE should consider whether a California jurisdictional appeal can be bypassed if staff reviews the consumer's submission and concludes that BBB AUTO LINE has jurisdiction, or at least has raised a factual issue that should be explored in arbitration.

Another case, this one from Florida, was closed as covered by other insurance. The consumer complaint form, however, didn't indicate whether the insurance company had paid out on the claim. This case suggests that program management should clarify for staff how specific exclusions apply.

In one California case, which turned on the two-or-more repair attempt standard discussed below, the staff concluded that the standard wasn't met because the consumer had a question mark on the consumer complaint form in the space for repair attempts. There's no indication that the DRS attempted to contact the consumer for clarification.

The auditor also notes a case that raises a more general question. In that case, the consumer submitted a pharmaceutical prescription that could be read to suggest that the consumer was claiming mental anguish within the meaning of California Rule 2.D. The issue is this. The auditor understands that, if a case seeks attorneys' fees that aren't available under the program,<sup>271</sup> BBB AUTO LINE will process the claim but won't include attorneys fees among the available remedies.<sup>272</sup> It's not clear to the auditor that a similar approach couldn't be taken to

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<sup>270</sup> The jurisdictional decision in this case was issued in 2022, but it's part of the audit because a related case was closed in 2021.

<sup>271</sup> *See, e.g.*, California Rule 2.D.

<sup>272</sup> There's a limited exemption in the Ford program summary, which allow arbitrators to award attorney's fees up to the amount that could be awarded in a state-run arbitration program or, if no

claims where the consumer seeks relief for mental anguish – or, for that matter, if it seeks punitive damages or some of the other remedies for which claims aren't allowed under the exemptions. The auditor believes BBB AUTO LINE should address this issue, perhaps with a consistent policy across different exclusions.

*Recommendations:*

*(1) BBB AUTO LINE should consider ways to reduce the sorts of errors noted above.*

*(2) BBB AUTO LINE should consider whether other program exclusions should receive the same treatment as the exclusion for attorney's fees – allowing the case to go forward but limiting the relief that can be awarded in arbitration (though not necessarily in settlements).<sup>273</sup> BBB AUTO LINE advises that it is starting to do this.*

*Suggestion: BBB AUTO LINE might monitor California jurisdictional appeals, to better identify problems as they emerge.*

**Reasonable opportunity to repair issues.** Preliminarily, claims should only be closed on the basis that the manufacturer hadn't had sufficient opportunities to fix a problem only if any applicable lemon law prevents a case from going forward *and* if the program summary wouldn't allow a case to go forward on non-lemon law grounds (to which the lemon law standard didn't apply).

With regard to specific ineligibility decisions, the auditor noted a recurring problem that's specific to California ineligibility determinations (which are relevant to this audit because, under the California rules, such a determination precludes consideration of Magnuson Moss issues as well as state claims.) There's California case law holding that, in claims based on express warranties, a manufacturer reasonable opportunity to attempt repairs must, with limited exceptions, entail two or more repair attempts. BBB AUTO LINE's current position is that the California program is limited to express warranty claims,<sup>274</sup> which would preclude a workaround

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such program exists, up to \$1500.

<sup>273</sup> The program summary, of course, doesn't bind the manufacturer. For example, in some cases – perhaps to induce a consumer to shift from a replacement to a repurchase decision when supply chain issues limit the stock of available replacement vehicles – a manufacturer may waive a usage adjustment by which the value of the car is adjusted to reflect usage.

<sup>274</sup> This reverses earlier policies set out in the California training program, which indicated that California was an unusual state where arbitrators could address implied claims. See CA Civil Code 793.2(d)(1) (referencing conformance to “the applicable express warranties.”)

under California case law that allows claims based on an implied warranty of merchantability to go forward without multiple repair attempts.<sup>275</sup>

The auditor does not attempt to resolve the issue here, but notes that 11 of the 23 California jurisdictional appeals noted above involve ineligibility determinations based on the two-or-more attempt standard. In five of these, the manufacturer settled with a repurchase or replacement remedy. In the other six, the jurisdictional arbitrator found that the ineligibility determination was wrong, generally ignoring or rejecting the two-or-more standard – a standard that led to odd results in finding a single repair attempt in two cases where the car was in the shop for nine months.

*Recommendation: The auditor recommends that BBB AUTO LINE consider take steps to better address the confusion about California’s two-or-more repair attempt standard, which affects the availability of Magnuson Moss remedies for California consumers. He understands that the standard has been incorporated*

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<sup>275</sup> See Judicial Council of California Civil Jury Instructions 3202 (2022 edition, available at <https://www.justia.com/trials-litigation/docs/caci/3200/3202/>). The standard provides

Each time the [consumer good/new motor vehicle] was given to [name of defendant][or its authorized repair facility] for repair counts as an opportunity to repair, even if [it/they] did not do any repair work.

In determining whether [name of defendant] had a reasonable number of opportunities to fix the [consumer good/new motor vehicle], you should consider all the circumstances surrounding each repair visit. [Name of defendant] [or its authorized repair facility] must have been given at least two opportunities to fix the [consumer good/new motor vehicle] [unless only one repair attempt was possible because the [consumer good/new motor vehicle] was later destroyed or because [name of defendant] [or its authorized repair facility] refused to attempt the repair].

The cited authority provides,

Section 1793.2(d) requires the manufacturer to afford the specified remedies of restitution or replacement if that manufacturer is unable to repair the vehicle “after a reasonable number of attempts.” “Attempts” is plural. The statute does not require the manufacturer to make restitution or replace a vehicle if it has had only one opportunity to repair that vehicle.” (Silvio v. Ford Motor Co. (2003) 109 Cal.App.4th 1205, 1208 [135 Cal.Rptr.2d 846].)

This instruction applies only to claims under Civil Code [the lemon law]and not to other claims, such as claims for breach of the implied warranty of merchantability. (See Mocek v. Alfa Leisure, Inc. (2003) 114 Cal.App.4th 402, 406-407 [7 Cal.Rptr.3d 546].) . . .

into the California arbitrator training and refresher training.<sup>276</sup>

Finally, some issues are specific to California, where, as noted previously jurisdictional thresholds based on the state's lemon law also control access to Magnuson-Moss relief.

In one California case that's already been discussed, the consumer didn't return a signed consumer complaint form, which in California means that a case that's already open needs to be closed. In one case, a California consumer who didn't return a signed consumer complaint form was told that, in order to proceed, she would have to file a jurisdictional appeal; in fact, all she needed to do was file a new consumer complaint form, which would be a problem only if the lemon law rights period ran out between the first consumer complaint form and the second.

Also, in case noted previously<sup>277</sup> where the merits of the jurisdictional appeal seemed clear (at the least, the consumer raised an issue that could be resolved in arbitration, staff nonetheless sent the case through the appeal process.

*Recommendation: Staff should address the California-specific issues raised by these cases, which affect access to the program for Magnuson Moss purposes.*

#### **E. Investigation (Rule 703.5(c))**

FTC Rule 703.5(c) provides for an investigation by "the Mechanism,"<sup>278</sup> which includes

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<sup>276</sup> A particularly strong approach would be to incorporate the standard into the California rules, which would effectively bind arbitrators.

<sup>277</sup> See text accompanying note 270.

<sup>278</sup> Rule 703.5(c) provides:

The Mechanism shall investigate, gather and organize all information necessary for a fair and expeditious decision in each dispute. When any evidence gathered by or submitted to the Mechanism raises issues relating to the number of repair attempts, the length of repair periods, the possibility of unreasonable use of the product, or any other issues relevant in light of Title I of the Act (or rules thereunder), including issues relating to consequential damages, or any other remedy under the Act (or rules thereunder), the Mechanism shall investigate these issues. When information which will or may be used in the decision, submitted by one party, or a consultant under § 703.4(b) of this part, or any other source tends to contradict facts submitted by the other party, the Mechanism shall clearly, accurately, and completely disclose to both parties the contradictory information (and its source) and shall provide both parties an opportunity to explain or rebut the information and to submit additional materials. The Mechanism shall not require any information not reasonably necessary to decide the dispute.

BBB AUTO LINE staff and the arbitrators (“members”) who work with BBB AUTO LINE.<sup>279</sup>

In practice, the investigation begins when the 40-day clock starts to run, which is upon receipt of the initial contact in California and Florida and upon the consumer’s return of a signed form elsewhere. In states other than California and Florida, BBB AUTO LINE alerts the manufacturer to the complaint before the signed form is returned and tells the manufacturer that it may contact the consumer; at the same time, it alerts the consumer that the consumer may be contacted by the manufacturer, and asks the consumer to tell BBB AUTO LINE if the cases settles outside the program.

The auditor has one concern about this process, which BBB AUTO LINE’s correspondence with consumers and manufacturers essentially facilitates. Lemon laws typically extend the time period for filing a complaint when the matter is before an independent dispute settlement mechanism, but they won’t get that benefit if they settle outside the program. This could be important, particularly for repair settlements where the consumer is most likely to be dissatisfied with the results.

*Recommendation: While the auditor doesn’t believe that BBB AUTO LINE needs to give consumers definitive advice on settlements outside the program that its correspondence facilitates, he recommends that BBB AUTO LINE alert consumers in Florida and Ohio that such settlements might not have the same effect on lemon law periods as settlements within the program.<sup>280</sup>*

The initial communication to the consumer asks her to provide sales agreements/purchase contracts or lease agreement; current vehicle registration, work orders, including proof of payment if the consumer seeks reimbursement; and other relevant documents, although the consumer is asked not to send photographs or video/audio recordings, presumably because BBB AUTO LINE can’t easily forward copies to the manufacturer and arbitrator. Also, BBB AUTO LINE staff informs the auditor that a consumer can easily obtain comprehensive repair records by going to any dealership and providing their vehicle identification number.

*Recommendations: The correspondence to consumers should better explain how the consumer can get pictures and audio or video materials into her file, and that they may be able to retrieve their full repair history by visiting a dealership and providing their vehicle identification number.*

At that point (and with the initial filing in Florida and California), staff also solicits

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<sup>279</sup> This is consistent with the phrasing of Rule 703.3(b), which refers to “the Mechanism, and its members and staff.”

<sup>280</sup> The recommendation is limited to Florida and Ohio because those or the only states included in this audit.



materials and submissions from manufacturers. In California, the cover letter asks for:

Copies of any documents relevant to the dispute, including the following:

- Technical service bulletins (if any)
- Recall notices (if any)
- Vehicle repair records; and
- Purchase/lease contracts with respect to this vehicle.<sup>281</sup>

Also in California, the attached response form for manufacturers to return lists each of these items with a box to check if the manufacturer provides them. Consistent with these texts, BBB AUTO LINE's written operating procedures as set forth in the California rules book provide:

BBB AUTO LINE staff will request from the manufacturer any pertinent documents in its possession or under its control, such as technical service bulletins, recall or parts replacement notices, U.S. Department of Transportation publications, a vehicle's repair history, and any other documents which it is reasonable that the manufacturer should provide.<sup>282</sup>

Outside California, the apparently standard cover letter – it's used in both Florida and Ohio – simply asks the manufacturer to provide “any documentation you may have pertaining to this claim as soon as possible.” The text is sufficiently broad to encompass all the materials specifically requested in the California texts, but doesn't include the detail that's in the California letter. The form for the manufacturer to return outside California, moreover, makes no mention of documents at all, but rather asks the manufacturer to address such questions as the status of any settlement offer and whether the manufacturer is prepared to make a new offer; also the manufacturers position on the eligibility and merits of the claim.

In practice, manufacturers sometimes provide documents in the listed categories, and, when they don't, they may have no pertinent documents in one or more categories. However, some provide no documents, even though they almost certainly have a repair history. If the manufacturer provides nothing, though, BBB AUTO LINE doesn't appear to pursue the matter, except to the extent that the arbitrator chooses to do so via a request for additional information. BBB AUTO LINE sometimes presses a manufacturer for a response if it delays submitting any materials; however, if it submits *anything* – even a brief statement of its position – staff does not appear to press for more.

As noted above, the arbitrator does provide a backstop. The arbitrator has broad authority to

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<sup>281</sup> Some of these examples also appear in California state regulations. Cal. Code of Regulations, Title 16, § 3397.4.

<sup>282</sup> Somewhat confusingly, the heading reads “BBB AUTO LINE MAY REQUEST INFORMATION FROM MANUFACTURER.” (Emphasis added.)

request additional information if needed, and this may well suffice to satisfy BBB AUTO LINE's investigative obligations. The arbitrator also has other tools. When BBB AUTO LINE was still conducting in-person hearings with at least the consumer in a room with the arbitrator, a vehicle inspection was mandatory, except in California, Florida, and Wisconsin, unless both parties agreed that it wasn't necessary.<sup>283</sup> When an inspection was done, moreover, the arbitrator could also do a test drive at her discretion. Further, the opportunity for an inspection extended to cases otherwise handled on documents alone.<sup>284</sup> Whether or not the arbitrator inspected the vehicle (and there have been no inspections since the pandemic began<sup>285</sup>), the arbitrator could request that a technical expert to

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<sup>283</sup> The California provision appears in the separate California rules. For Florida and Wisconsin, BBB AUTO LINE bases the differing procedure on the text of Rule 7:

Inspection by the arbitrator 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*. 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.

(Emphasis added.) . The former Florida rules provide:

5J-11.008 Motor Vehicle Inspections.

(1) A decisionmaker or manufacturer may request an inspection of the consumer's motor vehicle. An inspection shall be conducted at a mutually agreeable time and at a location reasonably convenient to the consumer. In the event an inspection is requested, the consumer shall be informed in writing that the inspection is voluntary. The failure of a consumer to provide the motor vehicle for inspection shall not extend the 40-day time period a certified dispute-settlement procedure has to render a decision.

(2) In the event a consumer rejects a request for an inspection, such rejection *may be considered for purposes of rendering a determination pursuant to a certified dispute-settlement procedure*.

(Emphasis added.)

<sup>284</sup> BBB AUTO LINE Rule 7; BBB AUTO LINE California Rule 8.

<sup>285</sup> The auditor has recommended that the rules and practice be conformed in all respects.

evaluate the vehicle.<sup>286</sup> The arbitrator could also request additional information.<sup>287</sup> Further, while the rule governing technical experts doesn't specify *when* the arbitrator can request a technical expert, and the "additional information" provision focuses on post-hearing requests, staff advises that arbitrators can make these requests before hearings as well as after. The principal downside of technical examiners and requests for additional information is delay; few hearing are held more than a few days before the 40-day clock runs, so a post-hearing requests is almost certain to entail some delay – particularly since the rules afford the parties an opportunity to comment on a technical expert's report or on additional evidence submitted in response to an arbitrator's request.

In considering the possibility of additional requests by staff, it's also relevant that Rule 703.5(b) provides that the Mechanism shall gather needed materials, but not information that's "not reasonably necessary to decide the dispute." BBB AUTO LINE might therefore consider whether the sorts of information cited in the California letter, to the extent that they're pertinent to the dispute, are "reasonably necessary" to decide it. If so, it might take further steps to obtain documentary submissions by manufacturers. It might, for example, incorporate the documentary description and check-off boxes in the California cover letter into the cover letter used elsewhere. Further, it might add two check boxes instead of one for each item, so that, if a manufacturer doesn't provide documents in a category, it must check a box affirmatively representing that there are no pertinent documents in the category. Staff might also set a specific response date when it requests documents, and do follow-ups when a manufacturer doesn't provide, at a minimum, repair records.

*RECOMMENDATION: BBB AUTO LINE should review its investigative processes.*

## **F. Mediation**

The next step, if the consumer chooses to attempt it, is BBB AUTO LINE's optional mediation process. As BBB AUTO LINE describes the process to consumers:<sup>288</sup>

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<sup>286</sup> BBB AUTO LINE Rule 8; BBB AUTO LINE California Rule 9.

<sup>287</sup> BBB AUTO LINE Rule 19; BBB AUTO LINE California Rule 20.

<sup>288</sup> <https://bbbprograms.org/programs/all-programs/bbb-AUTO LINE/how-bbb-auto-line-works>.

## **The Settlement Process**

Once your claim is open with BBB AUTO LINE, the first step is to see if your dispute can be resolved in the settlement process. The settlement process is entirely voluntary, and you may proceed to arbitration (if eligible) at any point.

- Once the manufacturer receives information about your case from BBB AUTO LINE, a representative from the manufacturer may contact you to discuss settlement options. In these discussions, you will discuss your vehicle's problems and explore possibilities for a mutually agreed settlement of your claim.
- You and the manufacturer representative may explore settlement options directly, or you may be assisted by your BBB AUTO LINE Dispute Resolution Specialist.
- In some instances, the Dispute Resolution Specialist will receive a position or settlement offer from the manufacturer which they will then relay to you for consideration.
- The role of the Dispute Resolution Specialist assigned to your case is to open lines of communication between you and the manufacturer.
- The BBB AUTO LINE team will not comment on whether an offer made to you by the manufacturer is "fair" or "unfair" because to do so would compromise our neutral role in this process. Only you can determine if an offer is satisfactory.
- If you and the manufacturer representative agree to a settlement without the support of the Dispute Resolution Specialist, please be sure to inform BBB AUTO LINE as soon as possible.

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

This discussion omits references to settlement conferences that appear in BBB AUTO LINE's written operating procedures in California, but such conferences can also be used in other states.

In some cases, a pre-hearing "settlement conference" will be held by telephone if all parties are willing to do so. During that telephone conference—which will include you, a manufacturer representative and a BBB AUTO LINE Dispute Resolution Specialist—you will discuss the specific vehicle problems that you wish to arbitrate, hear the other party's position and explore possibilities for a mutually-agreed settlement of your claim.

In essence, the mediation process begins with shuttle diplomacy, although the auditor is advised that BBB AUTO LINE may also tell consumers about the maximum relief they could obtain in arbitration, which might influence their decision-making if, for example, they have a high-mileage vehicle in states where the lemon law allows a usage adjustment and they have substantial outstanding loans on the car.

In reviewing various settlement agreements, the auditor found one case where the manufacturer offered the consumer a repurchase but, because of the negative equity, the consumer didn't want to accept it.<sup>289</sup> In lieu of the repurchase, the manufacturer offered a cash settlement, but required a waiver as part of that settlement. However, the settlement letter left out that key term. (The consumer then wrote back that he wasn't accepting the settlement, at which point the auditor questions whether BBB AUTO LINE should have continued to report the case as a settlement.)

Also, as discussed below, Rule 703.5(g)(1) requires that, when BBB AUTO LINE tells the consumer of an arbitrated decision, it should note that, if the consumer accepts but is eventually dissatisfied with the manufacturer's performance, the consumer can seek other remedies, including remedies in small claims court. Although BBB AUTO LINE tells consumers in settlement letters that they can pursue the matter further *through BBB AUTO LINE* if dissatisfied with the manufacturer's performance, the letters don't alert consumers to the possibility that they, too, might be able to pursue remedies outside BBB AUTO LINE if dissatisfied with the manufacturer's performance.

Finally, a Florida repurchase settlement raised an unusual issue. For the repurchase to take place, the consumer had to provide the manufacturer with certain documents and figures, and then, once they were received, the manufacturer had to prepare a repurchase sheet. The time for compliance began 45 days after the consumer approved the repurchase worksheet. The problem with the settlement was that there was no limit on the time that for the manufacturer to prepare the worksheet after it received the consumer's documents – so, in a real sense, there was no deadline.

*Recommendation: BBB AUTO LINE should address the issues noted in the three preceding paragraphs.*

## **G. Arbitration**

To begin with the FTC's rules, rule 703.5(d) provides that the Mechanism shall, "as expeditiously as possible but at least within 40 days of notification of the dispute, render a fair decision; disclose the decision and the reasons behind it to the warrantor and the consumer; determine the extent to which the manufacturer will comply; and make certain disclosures. The disclosures, specified in Rule 703.5(g), are that:

(1) If he or she is dissatisfied with its decision or warrantor's intended actions, or eventual performance, legal remedies, including use of small claims court, may be pursued;

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<sup>289</sup> Negative equity can result from outstanding car loans combined with usage fees.

(2) The Mechanism's decision is admissible in evidence as provided in section 110(a)(3) of the Act, 15 U.S.C. 2310(a)(3); and

(3) The consumer may obtain, at reasonable cost, copies of all Mechanism records relating to the consumer's dispute.

Rule 703.5(e) provides an exemption to the 40-day deadline on which BBB AUTO LINE doesn't rely. Rule 703.5(f) provides for an oral presentation by a party with the agreement of both parties, and requires that certain procedural be met.

\* \* \*

Turning to BBB AUTO LINE's practices, in addition to requesting information about the vehicle and the problem, as well as making certain documentary requests, the consumer complaint form asks consumers whether they would prefer that their hearing be in-person, by telephone, or in writing. Manufacturers have essentially agreed to use the process the consumer chooses, although the manufacturer doesn't necessarily participate the same way the consumer does.<sup>290</sup>

As noted above, though, BBB AUTO LINE hasn't held in-person hearings since the pandemic started, and a footnote to Rule 9 of the National Rules, as well as text in the introduction to its California rules, makes this clear.<sup>291</sup> However it appears that BBB AUTO LINE may be changing its procedures for the longer term and, particularly if this is the case, it should conform its rules to its actual practice. Also, the rules should address video-conferencing, which has emerged as a new way of conducting hearings; perhaps consumers might be offered four options – and in-person hearing where the consumer and arbitrator are in the same room, a videoconference, a phone conference, or resolving the issue based on documentary submissions). Absent a return to the pre-pandemic procedures, this would involve changes to the rules. It will also require considering the extent to which videoconferencing (or even telephone conferencing) can satisfy constitute the “oral presentation” to which the consumer is entitled (given the manufacturer's blanket consent) by FTC Rule 703.5(f). Further, BBB AUTO LINE will have to consider whether videoconferencing should be treated differently for Ohio lemon law cases than for other cases, because Ohio requires an “oral presentation either in person or by telephone conference call at the consumer's request”.<sup>292</sup>

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<sup>290</sup> If the consumer selects an in-person hearing, for example, the manufacturer can participate by phone or video connection.

<sup>291</sup> As noted above, though, BBB AUTO LINE has advised that, notwithstanding the text noted above, it would accommodate requests for in-person hearings if they were made.

<sup>292</sup> Ohio Administrative Code 109:4-4-04. Interestingly, the Ohio formulation assumes that a telephone conference call is an “oral presentation, a not unreasonable assumption.

From his review of case files, the auditor notes that BBB AUTO LINE still doesn't consistently make disclosures required by the Ohio Code when a board like BBB AUTO LINE gets written notification of a dispute.<sup>293</sup> These would seem to require an Ohio-specific letter.

*Recommendation: BBB AUTO LINE should conform its rules and its practice for oral presentations and for vehicle inspections and should address videoconferencing. Any changes should conform to Federal rules and, for cases under the Ohio program, to Ohio's rules.*

*In its initial responses in Ohio cases, BBB AUTO LINE should include the information required by Ohio regulations.*

\* \* \*

The auditor has reviewed, though video or audio files, six hearings. These include two from Ohio, two from Florida, and one in which the consumer was represented by an attorney. He did not see deficiencies in the arbitrator's preparation for any of these hearings, or in the arbitrator's conducting of the hearing.

\* \* \*

The auditor also reviewed numerous arbitration decisions, and, while his role isn't to second-guess the arbitrators' judgment calls, he did find one case where the lemon law included a standard for the consumer to benefit from a presumption and, after finding that the consumer hadn't met the standard, the arbitrator didn't consider whether the consumer could nonetheless prevail without benefit of a presumption. He also noted lemon law cases where the program summaries provided for non-warranty relief and the arbitrator denied the claim solely on a lemon law analysis, without expressly addressing the non-lemon-law claim – though the arbitrators in these cases typically found that the defect didn't substantially impair the use, value, or safety of the car (a typical lemon law standard),<sup>294</sup> and, where the consumer requested a repurchase or replacement under any theory, it's highly unlikely the arbitrator would have decided on a

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<sup>293</sup> Section 109:4-4-04(C)(2) of the Code requires a "board" like BBB AUTO LINE, on getting written notification of a dispute, to tell the consumer and (somewhat curiously) the warrantor, in ten point boldface type, that:

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

<sup>294</sup> See FL STAT. § 681.102 (15) (defining "nonconformity"); OHIO CODE § 1345.71(E).

replacement remedy with such a finding on substantiality. Still, BBB AUTO LINE has standard forms that arbitrators use to write decisions, and those forms could expressly provide for a non-lemon-law as well as a lemon law decision when the program summary allows both. Further, the matter could be picked up in BBB AUTO LINE's quality control review.<sup>295</sup>

*Recommendation: Arbitration decisions should consistently and explicitly address non-lemon-law as well as lemon law claims. On a sometimes-parallel matter, when a consumer fails a presumption standard on a lemon law claim, arbitrators should consistently, and explicitly, address whether the claim can stand without benefit of the presumption.*

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Turning to what's generally the final stage of the arbitration process, Rule 703.5(g) quoted above, requires certain disclosures to consumers when they're sent the decision, BBB AUTO LINE provides the required disclosures in letters to California consumers.<sup>296</sup> In Florida, it makes some disclosures required in lemon law complaints, telling consumers that if they want to pursue a lemon law case in the state, they must next go to a state arbitration board. Even this, however, doesn't directly address all the issues covered by Rule 703.5(g) for Magnuson-Moss claims.

In most if not all other states, BBB AUTO LINE doesn't make the required disclosures.

*Recommendation: The Commission should make the disclosures required by Rule 703.5(g) in all states.*<sup>297</sup>

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As noted, after an arbitrated decision is provided to the consumer, the arbitrator generally won't be involved further. However, that's not always the case. Under the national rules, a party can request correction on the basis that a decision misstates facts, miscalculates figures, or

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<sup>295</sup> See Section I of this chapter.

<sup>296</sup> The California text makes certain changes that the auditor believes consistent with the rule. For example, while Rule 4.10(g)(1) provides that the consumer can pursue other remedies if the consumer is dissatisfied with the manufacturer's eventual performance, the letter provides that the consumer can take such action if the manufacturer doesn't "promptly comply" with the decision.

<sup>297</sup> There's a separate issue as to whether at least some of these disclosures should be made in a settlement, but the Commission specifically declined to adopt such a requirement in 1975, 40 Fed. Reg. 60168, 60208, but arguably that was because of subsection (2) and it would be appropriate to make a disclosure like that in subsection (1).



exceeds the scope of the arbitrator’s authority.<sup>298</sup> Also, while parties can’t seek clarification of the *reasons* for the decision, they can seek clarification if they don’t understand the *actions* required by the decision or if the parties disagree with each other about required actions.<sup>299</sup> The national rules also allow for further review by the arbitrator if a party believes a decision is impossible to perform at all, or to perform in the required time.<sup>300</sup>

Finally, there are special procedures for arbitrated repair decisions. Under the national rules, repair decisions are “interim” decisions and the arbitrator retains “continued authority over the decision during the time periods specified in the decision” (including a test-drive period of at least 30 days). Everywhere but California, the matter will be reconvened upon written request<sup>301</sup>; in California, “If a repair decision is rendered and accepted by the consumer, the consumer should notify BBB AUTO LINE in writing if the repair has not occurred to the consumer’s satisfaction. In that case, the arbitrator will be informed of all pertinent facts and may decide to reconsider the decision.”<sup>302</sup>

*Suggestion: BBB AUTO LINE might consider whether the California rules should address some issues covered in the national rules: mistakes of fact, miscalculations of figures, decisions exceeding the scope of the arbitrator’s authority, and impossible-to-perform situations.*

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A somewhat different scenario (indeed, a set of scenarios) involves settlements in connection with arbitrations. Even when a case moves into the arbitration phase and a hearing is scheduled, the parties can still settle. They can settle after a hearing is scheduled but before it begins; after it begins but before the arbitrator issues a decision; and even after the arbitrator issues a decision.<sup>303</sup> Arbitrators can’t engage in mediation themselves, but, if the parties seem to be moving towards a settlement, they can temporarily remove themselves from the process and allow the parties to negotiate; if negotiations succeed, the arbitrator and the parties can sign a consent decision.

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<sup>298</sup> National Rule 22.D.

<sup>299</sup> Rule 22.C; California Rule 23.E.

<sup>300</sup> Rule 23.E.

<sup>301</sup> Rule 22.B.2.

<sup>302</sup> California Rule 23.C.

<sup>303</sup> Rule 20; California Rule 21. Post-decision settlements most often modify the date by which the manufacturer needs to comply with the order, but might also incorporate substantive changes, as where the consumer wants to substitute a repurchase for a replacement remedy.

These opportunities, all quite reasonable, can raise complexities for record-keeping. If a case settles after a hearing is scheduled but before it begins, BBB AUTO LINE reports the case as mediated. If it settles during the hearing (a “consent settlement”), BBB AUTO LINE reports the case as arbitrated. And, if the parties settle *after* the arbitrator issues a decision, the settlement supersedes the decision, but BBB AUTO LINE still records the process as arbitration, and reports the *remedy* that the arbitrator ordered even though the settlement modified that remedy. While hardly an intuitive result, BBB AUTO LINE’s practice may well be the best way to handle a situation with no optimal solution.<sup>304</sup>

## H. Timing

The discussion that follows draws on case reviews, BBB AUTO LINE’s spread sheets, and the survey results and quantitative analysis reported in Chapter 3.

BBB AUTO LINE reports, for cases closed in 2021, that it completed within 40 days:

- 73.5% of mediated and arbitrated cases combined,
- 92.2% of mediated cases alone, and
- 40.3% of arbitrated cases alone.<sup>305</sup>

***In evaluating the program as a whole, the auditor believes the first figure is by far the most important. A remedy obtained by settlement is no less valuable to the consumer than a remedy obtained in arbitration.*** The auditor notes that all of these figures may understate BBB AUTO LINE’s performance to some extent; FTC Rule 703.5(e)(2) allows an extension of the 40-day period “[f]or a 7 day period in those cases where the consumer has made no attempt to seek redress directly from the warrantor,” and BBB AUTO LINE doesn’t take advantage of such extensions; if it did so, its timeliness rate would presumably improve.<sup>306</sup>

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<sup>304</sup> Once an arbitrator has heard and decided the case, for example, the program needs to report an arbitrated case even if there’s a superseding settlement. And, once a case is reported as arbitrated, it would seem incongruous to associate with an arbitration decision a different remedy than that which the arbitrator found appropriate. To do so would muddy the waters when BBB AUTO LINE develops aggregate statistics that show regulators the relief (if any) that arbitrators collectively found appropriate.

<sup>305</sup> Among the 4351 cases that were either mediated or arbitrated, 2781 (63.9%) were mediated and 1570 (36.1%) were arbitrated.

<sup>306</sup> The auditor recognizes that the matter would be complicated by differing extension provisions under state lemon laws. For example, Florida doesn’t allow the FTC’s exemption, while Ohio Admin. Code § 109:4-4-04(C) incorporates the FTC’s extension and also allows further

These statistics, and others reported in this section, are based on reporting by BBB AUTO LINE and not survey results. The rates reported by the consumer survey were below those reported by BBB AUTO LINE, with surveyed consumers reporting a 61.6% timeliness rate for mediated and arbitrated cases combined, 72.2% of mediated cases alone, and 30.0% of arbitrated cases alone. However, there are multiple sources of possible consumer confusion as to how BBB AUTO LINE reports timing.<sup>307</sup> Further, using BBB AUTO LINE's records allows consideration of all the mediated and arbitrated cases reported as closed during the year, including cases that aren't captured by the survey.<sup>308</sup> Additionally, as the discussion below shows, it allows some nuanced analyses of timing for specific types of cases.<sup>309</sup> In any event,

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extensions:

- (c) For a fourteen-day period for delays due solely to compliance with the requirement contained in paragraph (C)(3) of this rule that the board provide the parties with an opportunity to explain or rebut contradictory information;
- (d) For a fourteen-day period for delays due to consumer requests for hearing postponement, consumer failure to submit adequate information which the arbitrator(s) feel(s) is needed to render a decision, arbitrator unavailability, or acts of God.
- (e) For a fourteen-day period at the discretion of the arbitrator(s). The reason for any such discretionary delay shall be disclosed and reported with the other information required by paragraphs (C)(5) and (C)(6) of this rule.

<sup>307</sup> As noted previously, for example, outside Florida and California, the clock doesn't start until the consumer returns a signed consumer complaint form, so the time between the initial contact and the return of a signed form by the consumer doesn't count towards the 40 days. Although the question explains this, the consumer may not "properly" exclude the time it took them to return their forms. Also, again despite an attempt to explain in the survey instrument that the clock ends with the settlement agreement or arbitrated decision, some consumers include the time for compliance in their figures. And, quite understandably, a consumer may not understand the nuances of 1R cases, and may (not unreasonably) report the time from filing the initial case to the resolution of the 1R case in their reporting. As a less common problem, they may not understand the nuances, discussed above, of BBB AUTO LINE's treatment of reconvened cases. On top of all that, surveyed consumers rarely if ever consult records during the survey and, in a survey conducted in March, they could be asked about events as much as fourteen months back, so their off-the-cuff responses about the timing of a case that might have closed a year before might not be particularly reliable. This last concern may have been dampened, though, by the construction of the survey instrument; consumers were told how BBB AUTO LINE reported the timing of their case (which focused them on that figure) and asked to them to confirm or correct BBB AUTO LINE's figure. In any event, even though the consumers reported a somewhat higher "41+" rate, the BBB AUTO LINE numbers suffice to highlight the issue.

<sup>308</sup> These are attorney cases and multiple cases involving the same vehicle.

<sup>309</sup> Thus, for example, it allows breakouts showing whether the type of remedy impacts the time

the numbers reported by BBB AUTO LINE are sufficient to provide the basis for the detailed recommendations that follow, as they have provided the basis for similar but less detailed recommendations in the past.

To provide further context, the auditor this year determined the median (midpoint) for certain categories of cases.

For mediated cases, it was 19 days – so over half of BBB AUTO LINE’s settlements were reached in less than three weeks. For non-attorney cases, it was 19 days; for attorney cases, 28 days. And, focusing on the two most common remedies, the median was 19 days for both repurchase/replacement cases and repair cases. In other words, the “typical” mediation is resolved in less than three weeks, as are the “typical” settlement in most of the listed subcategories.

For arbitrated cases, the medians were 43 days for all cases, 43 days for non-attorney cases, and 41 days for attorney cases.<sup>310</sup> The difference between attorney and non-attorney cases is also reflected in the 40-day completion rates. For attorney cases, the rate was 46.7%; for non-attorney cases, it was 33.6%.

Looking towards areas of possible improvement, there may be some room for improvement on the timing for mediations, although 92.2% of those are currently resolved within 40 days and the median time for a resolution is 19 days. There’s far more room for improvement in arbitrated cases, where there’s a 40.3% timeliness and the median time to resolution was 43 days. And as to arbitrations, the auditor sees two largely separate issues.

The first is *short-term* delays. While only 40.3% of arbitrated cases were resolved in 40 days, 55.3% of such cases were resolved within 45 days.<sup>311</sup> Thus, a relatively small speed-up in resolving arbitrations would substantially raise the rate of timely decision-making.

The second involves *longer delays*. Again starting with the 40.3% rate of timely completions within 40 days, further scrutiny shows that 78.0% of arbitrated cases were resolved within 60 days and 90.6% were resolved within eighty days.

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to reach a settlement.

<sup>310</sup> Perhaps curiously, there was some variation in the time to reach different types of arbitrated resolutions: the median was 42 days for denials, 45 days for repurchase/replacement remedies, and 49 days for repair remedies.

<sup>311</sup> Among non-attorney cases, with a 40-day rate of 33.6%, the 45-day rate rises to 48.4%. Among attorney cases, it rises from 46.7% to 61.8%.

The auditor this year also looked at the *sources* of delay.

Clearly one factor in many cases were requests (usually by the arbitrator) for a technical expert to examine the car and requests for additional information. Among 111 cases reported to the auditor to have had a technical examiner, only 5 (4.5%) were completed within 40 days and only 48 (43.2%) were completed within 80 days. Among 222 reported cases where the arbitrator made a request for additional information, only 21 (9.5%) were completed in 40 days, and only 98 (44.1%) were completed within 80 days.

As to other causes, the auditor scrutinized numerous case files involving surveyed consumers with long times to completion. These cases are not typical of BBB AUTO LINE's practice; on the other hand, they're hardly unique. The point of the listing below is to identify further sources of delay.

- Some cases had relatively long gaps at one or more points. One case sat with no activity for sixty days, awaiting the manufacturer's response after the consumer indicated a willingness to settle for a goodwill payment. Another was opened and sat for 42 days, at which point the consumer called.
- In some cases, it took a long time to schedule an arbitration hearing. In one case, for example, the consumer requested a hearing on May 19 and it still hadn't been scheduled on June 7. In another, a consumer requested a hearing on Day 23 of a case. There were several delays, in part because of problems with arbitrator selection, and a notice of hearing was sent out on Day 43, with the actual hearing set for Day 61.<sup>312</sup>
- Sometimes arbitrators were responsible for delays. In one case, it took 25 days to return the decision. In a case where the consumer had an attorney and wanted the case resolved on documents alone, the arbitrator was appointed on July 26, at which point documents were transmitted to him. He submitted a request for additional information (a straightforward request for a legible sales agreement) on September 13. At that point, the consumer's attorney took 46 days to respond (so the fault was in part due to the attorney), and the arbitrator chose to wait for the response before issuing his decision.
- Sometimes a series of small delays can add up. In a California jurisdictional appeal that was discussed previously and that was decided on documents alone, the appeal was filed on February 10 and sent to the manufacturer with a five-day response time. The staff didn't press the matter for 11 days, though, and the manufacturer responded that day. The response was sent to the consumer on February 24, and he was given five days to respond. He spoke to staff on March 2 but didn't submit anything further. An arbitrator was assigned to the case on March 15 and submitted a decision, dated March 21, that was sent to the consumer on March 28. As a result, the consumer waited 46 days to receive a response to his appeal. On top of that, the delay appears to have been unnecessary; the

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<sup>312</sup> The consumer cancelled the day before the hearing.

appeal letter clearly raised a point that couldn't be resolved without arbitration, so it's not clear why BBB AUTO LINE staff couldn't have simply reversed the initial ineligibility determination, bypassed the jurisdictional arbitration process for California, and proceeded directly to full arbitration on the merits. .

The auditor suggests that BBB AUTO LINE might address these problems in a number of ways.

***To address short-term delays:***

- BBB AUTO LINE should review its timetables for completing cases (there's one for Florida, one for California, and one for everywhere else), and consider, in doing so:
  - (1) At least in cases where consumers use the online portal, and assuming the portal results in time savings, can the existing timetables be revised, at least for online cases, to take advantage of those savings?
  - (2) Does videoconferencing enable time savings, since the arbitrator, consumer, and manufacturer can be in separate locations? If so, do the existing timetables reflect those savings?
  - (3) In Florida and California, where a case starts with the initial filing, the 40-day completion rate might be expected to be particularly low. This doesn't appear to be the case, though; the Florida completion rates, in particular, not only match the national numbers – they're notably better.<sup>313</sup> It's not entirely fair to compare the rest of the country to Florida and California, since BBB AUTO LINE requests materials from the manufacturer more quickly than in cases elsewhere. Still, does this hold lessons for other states?
- When staff requests documents from any party in the investigative phase of a case, it might specify (realistic) deadlines that will keep the case on track.
- An arbitrator assigned to a case should be told when the 40-day deadline will expire, or has expired, and staff should emphasize the importance of timeliness.

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<sup>313</sup> Focusing on the Florida numbers, staff's 40-day completion rate for Florida mediations is nearly as high as its rate elsewhere; its 40-day completion rate for Florida arbitrations is notably higher than its rate elsewhere (47.8% in Florida, 40.3% elsewhere), its 40-day completion rate for Florida non-attorney arbitrations is also notably higher than its rate elsewhere (43.8% in Florida, 33.6% elsewhere), and its 40-day completion rate for attorney cases is somewhat higher than elsewhere (49.8% for Florida, 46.7% elsewhere).

- If BBB AUTO LINE is still unable to improve its rate of 40-day completions, particularly for arbitrations, it should consider whether case handlers have too high a caseload.

***To address lengthy delays:***

- To prevent long-term delays from developing, managers should routinely review cases that haven't been resolved after a specified number of days, perhaps 50.
- BBB AUTO LINE might explore whether managers should get an alert when there are no developments for some time after a case opens.
- BBB AUTO LINE might consider if it's possible, in cases where an arbitrator is likely to need a technical examiner, whether it might, perhaps at the arbitrator's request, schedule the examination before the hearing. This could avoid a potentially lengthy process, likely frustrating to the consumer who expected a decision rather than further steps in the case, whereby the arbitrator holds the hearing, then requests the technical examination, then waits for the examination to be done, and then give the parties an opportunity to comment on the examiner's report. The same goes for a request by the arbitrator for additional information. While sometimes the need for additional materials won't become apparent until the hearing, there may be cases where the arbitrator could identify gaps and request additional materials before the hearing, so the parties can address them at the hearing.
- The auditor understands that BBB AUTO LINE already has a process to deal with arbitrators with problematic response times, although he didn't pursue the details.

***To address special situations:***

- The auditor noted above that BBB AUTO LINE's treatment of 1R cases for reporting purposes seemed reasonable, although he expressed some concern about BBB AUTO LINE's treatment of California jurisdictional appeals. But that discussion went to the question of how timing should be *reported* in these cases.
- Irrespective of how BBB AUTO LINE reports timing for 1R cases, it should consider that, by the time a consumer gets to a 1R case, the consumer has already been working through BBB AUTO LINE for some time. Further, where a repair remedy has failed or a field service engineer from the manufacturer has inspected the car and reported no problems, the issues between the parties will likely have crystallized. In such cases, therefore, the auditor recommends that BBB AUTO LINE establish a fast track, perhaps 20 or 25 days to a decision. The same concern extends to consumers who went through the California jurisdictional appeal process; although the issues might not have fully crystallized during the appeal process, a consumer who succeeds in a jurisdictional appeal has already been working through BBB AUTO LINE for some time.

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**Notice of prior resort expiration.** All of this is intended to speed up cases. To the extent that they aren't sped up, though, and in light of the frequency with which BBB AUTO LINE misses the deadline, the auditor offers a further recommendation.

*Recommendation: The auditor recommends that BBB AUTO LINE provide to consumers, in plain English and in its first written communication to the consumer, the information that Rule 703.5(i) requires to appear in its written procedures.<sup>315</sup> In other words, consumers should be told that prior resort requirements under Magnuson Moss are satisfied after 40 days. In Florida, BBB AUTO LINE already provides notice to this effect concerning state lemon law claims (although the Florida text doesn't address Magnuson Moss claims), but it doesn't do so for Ohio, which has a similar provision.<sup>316</sup>*

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**Reporting issues.** Preliminarily, the auditor notes how BBB AUTO LINE measures timing.

- *Starting the clock.* As noted before, outside Florida and California, the 40 day clock starts to run after a consumer contacts BBB AUTO LINE, provides information that's incorporated into a consumer complaint form, receives the consumer complaint form, and returns, together with documents, a version that he's edited and supplemented (as needed) and signed. In Florida and California, the clock starts to run with the initial contact.
- *Stopping the clock.* The time ends when there's either an arbitrator's decision or a settlement. The settlement is memorialized in a letter that describes the substantive terms and specifies a time for performance that meets appropriate criteria.<sup>317</sup> The letter also invites the parties to contact BBB AUTO LINE if it doesn't capture the terms as each party understood them.

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<sup>315</sup> Omitting references to a provision on which the FTC doesn't rely, the text reads,

A requirement that a consumer resort to the Mechanism prior to commencement of an action under section 110(d) of the Act, 15 U.S.C. 2310(d), shall be satisfied 40 days after notification to the Mechanism of the dispute or when the Mechanism completes all of its duties under paragraph (d) of this section, whichever occurs sooner.

<sup>316</sup> This needn't necessarily require separate notices for Ohio (or other specific states).

<sup>317</sup> FTC Rule 703.5(d), former Florida rule 5J-11.006(2)(b) (same), and Ohio Admin. Code 109:4-4-04(C)(5)(a) (all requiring only that the time be reasonable); BBB AUTO LINE Rule 22.B



*Accuracy of reporting.* Although it appears that the vast majority of start dates and close dates are reported accurately (thus leading to an accurate report of the time to complete a case), the auditor noted several cases this year where a consumer complaint form wasn't acted on for some time, and the reported start date – a basis for determining how long a case took – was reported as the day that BBB AUTO LINE first acted on the filing. Although the auditor doesn't believe these cases substantially impacted BBB AUTO LINE's reports of timing, they are a matter of some concern.

*Recommendation: BBB AUTO LINE should take steps to avoid inaccurate reporting of a case's starting time; it advises that a new platform will significantly help with this.*

*Timing issues where a consumer's pursuit of a claim moves into a second phase.* If the parties to an arbitration disagree about the actions required by a decision,<sup>318</sup> they can seek clarification from the arbitrator.<sup>319</sup> More commonly, consumers may not be satisfied with the execution of arbitrated repair awards, and, in that event, they can have the matter reconvened (or, in California, request that the arbitrator reconsider the matter).<sup>320</sup> Irrespective of any later developments, BBB AUTO LINE reports the date of the initial decision as the closing date.

When a consumer isn't satisfied with the execution of a repair *settlement*, though, BBB AUTO LINE uses a different approach – a new case is opened, with the original case number followed by “-1R.”<sup>321</sup> And a new 40-day clock begins.

The auditor believes that BBB AUTO LINE's approaches are reasonable. To take the most extreme case, suppose that an arbitrator issues a timely repair decision on Day 40. This is the day the decision issues (albeit an “interim” decision), and the manufacturer typically has 30 days to perform the repair and the consumer has a 30-day test drive period. If the full times were used (they normally wouldn't be), the consumer might request reconvening on Day 100. With a

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(providing specified times for compliance in arbitrated matters: 30 days for repurchases and repairs, 45 days for replacements), (BBB AUTO LINE's California rules require performance of all remedies within 30 days, with extensions allowed for various reasons, including delay attributable to an act or omission of the consumer.)

<sup>318</sup> This could involve, for example, disagreements about dollar figures in the execution of a repurchase remedy.

<sup>319</sup> BBB AUTO LINE Rule 22.C.

<sup>320</sup> BBB AUTO LINE Rule 22.B.2; California Rule 23.C.

<sup>321</sup> As needed, there could also be a 2R (and, on rare occasions, beyond).

decision issued on Day 40, the auditor believes BBB AUTO LINE acts reasonably in reporting the case as closed on Day 40. What the statistics don't capture, though, is that, from the consumer's point of view, the ultimate resolution is delayed beyond the reported time. (And, in light of this delay, the auditor recommends above that BBB AUTO LINE establish expedited timetables for 1R cases.)

These problems are intrinsic to repair settlements, but, while not always successful, repair remedies do succeed in many cases. Based on some rough estimates, repair settlements do appear to work nearly half the time.<sup>322</sup> Further, the FTC, Florida, and Ohio all recognize as an appropriate outcome to dispute resolution,<sup>323</sup> there may be good reasons for repair remedies,<sup>324</sup> and the remedies typically provide something new: an inspection by one of the manufacturer's field service engineers.

Again, though, the auditor highlights that the current analysis goes only to the manner by which BBB AUTO LINE reports timing; as noted below, there's a separate question raised by the fact that, from the consumer's point of view, the overall process has taken longer than the numbers might suggest.

*California jurisdictional appeals.* As his analysis of ineligibility determinations led the auditor to hone in this year on California jurisdictional appeals, the auditor also noted questions on the timing reporting in these cases. When such an appeal is filed, BBB AUTO LINE opens a new case file. Then, in reporting timing, it appears to start the clock running when the appeal is *decided*. And, if the jurisdictional arbitrator supports staff's conclusion that the complaint is ineligible, the second case is reported as opened and closed on the same day.

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<sup>322</sup> According to a spread sheet that BBB AUTO LINE prepared listing all cases closed during 2021, 988 had repair settlements. In 537 of these (54.4%), consumers either reported compliance or failed to return a form that BBB AUTO LINE sent, after they were told that compliance (or timely compliance) would be assumed if the form wasn't returned. Further, a separate analysis by the auditor suggests, when the consumer didn't return a performance verification letter, the manufacturer actually did comply (although not necessarily in a timely fashion). See discussion in Section III.I.

<sup>323</sup> 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).

<sup>324</sup> As noted above, for example, many lemon laws require an opportunity for a final repair attempt or allow the consumer the benefit of a presumption only if it provides such an attempt; where the consumer has otherwise met the other statutory requirements but hasn't afforded the manufacturer this opportunity before approaching BBB AUTO LINE, BBB AUTO LINE may consolidate the final repair opportunity into a BBB AUTO LINE settlement. Also, once a car is outside the applicable lemon law rights period, some program summaries allow consideration of certain non-lemon law claims but only allow arbitrators to award repair (or reimbursement) relief.

This is somewhat problematic, but it's not clear that there's a better approach. The jurisdictional issue may take some time to resolve, since the manufacturer can reply to the appeal and the arbitrator then needs to decide it. Further, the process is available in California, which starts the case on the day of filing.

In any event, there were 44 cases in which the arbitrator agreed with the report of ineligibility (and for which a zero-day turnaround was reported). Even if these reports were problematic, these 44 cases were a relative drop in the bucket in the context of 4351 mediated and arbitrated cases, and these cases didn't affect those statistics. Further, there were only 22 jurisdictional appeals in which the consumer either prevailed or obtained a settlement,<sup>325</sup> and these could affect at most 0.5% of the relevant cases. While the auditor considers the reporting protocols here somewhat curious, then, the principal problem he sees is that they obscure the total time a consumer's matter is before BBB AUTO LINE. One approach might be to report in a separate table the time taken to resolve California jurisdictional appeals; on the other hand, this doesn't appear to be a statistic that BBB AUTO LINE is required to report.

*Suggestion: BBB AUTO LINE should consider keeping and reporting timing statistics for California jurisdictional appeals.*

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*Representations about timing in warranty manuals.* In footnotes to the manufacturer-specific discussions about BBB AUTO LINE in Chapter 1, the auditor noted the text by which various manufacturers describe BBB AUTO LINE's timing. Many descriptions of the program by manufacturers report that the arbitrator will usually (or some comparable term) issue a decision within 40 days. Since BBB AUTO LINE only meets that target for arbitrated cases 40.3% of the time, such statements appear problematic. On the other hand, since BBB AUTO LINE closes mediated and arbitrated cases *combined* within 40 days in 73.5% of cases, it would be more accurate, even under current conditions, to make a statement that encompasses mediated as well as arbitrated cases.

*Recommendation: Either BBB AUTO LINE should substantially improve its rate for timely completion of arbitrations, or manufacturers should adjust their texts to reflect the facts reported in this audit.*

## **I. Compliance**

Rule 703.6(h) requires BBB AUTO LINE to ascertain, within ten working days of the manufacturer's compliance date, whether the manufacturer has, in fact, complied. BBB AUTO LINE does so primarily through "performance verification letters" that generally ask consumers,

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<sup>325</sup> Two cases were withdrawn, in one of which the consumer had an attorney and settled outside the program.

among other questions, if and when the settlement was performed, whether performance was satisfactory and when it occurred, and (if unsatisfactory) whether the consumer wants to further pursue the claim. The letters also tell consumers that, if a timely response isn't received, performance would be assumed to be satisfactory and timely. The text was changed last year to make explicit that performance would be assumed timely as well as satisfactory if the letter weren't returned; before that, it only mentioned that it would be assumed to be satisfactory.

Where consumers don't return a performance verification letter, staff assumes timely compliance.<sup>326</sup> Since most reports of timely compliance are based on unreturned performance verification letters, the auditor analyzed survey responses and found that the assumption of compliance is quite reasonable, and the assumption of timely compliance is reasonable but somewhat less so. There were 102 cases in the national survey where (1) BBB AUTO LINE assumed timely compliance on the basis of an unreturned performance verification letter and (2) the consumer was asked about compliance and didn't respond "not sure" or indicate that the compliance date was still in the future.<sup>327</sup> Among these 102 cases, 76 consumers (74.5%) told TechnoMetrica that the manufacturer had complied in timely fashion, 24 (23.5%) reported delayed compliance, and 2 (2.0%) reported non-compliance.<sup>328</sup> Among this sample, then, 98.0% of those who hadn't returned performance verification letters reported compliance, while 74.5% reported timely compliance.<sup>329</sup>

While BBB AUTO LINE can reasonably rely on unreturned performance verification letters to find compliance, if not necessarily timely compliance, it would clearly be preferable if more consumers actually provided the information. Particularly for those using the online portal, though, the current process is cumbersome; BBB AUTO LINE asks consumers to print out a form, complete it, and either mail it or scan it and transmit it electronically. For consumers who don't want more help from BBB AUTO LINE (either because their cases were satisfactorily resolved or because they've decided not to use the program), this might not seem worth the

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<sup>326</sup> Consumers are told that BBB AUTO LINE will do so, although performance verification letters for part of 2020 only mentioned that BBB AUTO LINE would assume compliance, and didn't mention that it would also assume timely compliance.

<sup>327</sup> Consumers likely know whether the manufacturer performed, so "not sure" responses are most likely to reflect uncertainty about timing.

<sup>328</sup> Of the remaining four, two reported non-compliance, and two others gave a response to a different question indicating that the matter hadn't been resolved by BBB AUTO LINE to their satisfaction.

<sup>329</sup> The auditor also tested for the possibility that specific remedies had substantially different profiles. Among 21 consumers in the sample above who had repair remedies, 17 (81.0%) reported timely compliance, 3 (14.2%) reported delayed compliance, and 1 (4.8%) reported non-compliance. Since the 4.8% figure for non-compliance represents a single case, the figure doesn't seem troubling.

effort. Indeed, it appears that, by the time of the survey, many consumers forget about the document.<sup>330</sup>

*Recommendation: Unless and until BBB AUTO LINE can create a simple questionnaire that consumers can fill out online, such as the questionnaire used to collect information for the consumer complaint form, BBB AUTO LINE should simply invite consumers to use the messaging feature of the interface to address the compliance questions.*

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For the analysis in this section, the auditor focuses primarily on BBB AUTO LINE's statistics, which, even if to some degree flawed, provide a useful benchmark for year-to-year comparisons without raising "margin of error" questions that are inherent in a survey.<sup>331</sup> Also, while BBB AUTO LINE's reports of delayed compliance and non-compliance are understated, survey results may be influenced, in any given consumer's use of a different standard in repair remedies than BBB AUTO LINE employs; if a manufacturer inspects the consumer's vehicle but reports no problem and if the consumer disagrees, BBB AUTO LINE reports compliance, but also notes the consumer's dissatisfaction (and offers the consumer the opportunity, which she usually takes, to continue a case in BBB AUTO LINE).<sup>332</sup> There are other possibilities as well.<sup>333</sup>

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<sup>330</sup> This seems to be increasingly common now that the performance verification letters are sent to many consumers electronically. The auditor examined files for consumers who said that BBB AUTO LINE never contacted them to see if BBB AUTO LINE's files report that a performance verification letter was sent. Between 2019 and 2021, the numbers rose from (6.1% of the relevant population) 17 (9.8% of the relevant population). (Of course, even if the documents were sent, this doesn't show that they were received – but, while communications may sometimes be lost, this doesn't prove that the document was received, the auditor assumes that it was received in most cases at this late stage. If the consumer was having problems with the online system, it should have been resolved by the time the case reaches the compliance phase.

<sup>331</sup> While it's not entirely due to margin of error issues, for example, the auditor notes that the non-compliance rates reported in the survey, between 2018 and 2021, were 2.5%, 8.2%, 8.8%, and 4.0%. So the rate actually *halved* since 2019, but, from 2018 to 2019, it had more than tripled.

<sup>332</sup> See Chapter 3, Section I.A.4.

<sup>333</sup> For example, if the resolution of a suit was with the *dealer* and not the manufacturer, BBB AUTO LINE would treat it as a settlement outside the program. But if the consumer reports it as a settlement within the program, he would be asked about compliance and, if the outside settlement was delayed, it would be attributed to BBB AUTO LINE.

Turning then to *compliance* with settlements and arbitration awards, BBB AUTO LINE reports total non-compliance figures, but also reports a separate category for “consumer did not allow performance.” Of the 212 total non-compliances, 139 (65.6%) fall into this category.

Breaking this down a bit, 96 cases involved non-compliant repurchase or replacement remedies, and 84 (87.5%) of these were classified “consumer did not allow performance.” The auditor didn’t systematically examine these cases, but he saw some and they typically involve a consumer who gets the award but, after accounting for outstanding loans and usage fees allowed under many lemon laws, can’t make the transaction work financially or concludes that there’s a better option.<sup>334</sup> In any event, nine of the twelve cases which weren’t classified as “consumer did not allow performance” were repurchase decisions, so supply chain issues weren’t the problem.

The situation is different with non-compliant repair remedies. There were 108 such cases, 50 of which were listed as “consumer didn’t allow performance.” There may be some problems with the “didn’t allow performance category” here; it would apply, for example, in any case where the consumer sold the car before the compliance date, and there could be a big difference between a consumer who took a repair settlement on Day 2 and sold the car 3 days later and a consumer who accepted a repair remedy in arbitration on Day 40 and sold the car, 20 days later, with no contact with the manufacturer.

For purposes of his analysis, the auditor puts to the side any question about “consumer did not allow compliance” category and does a year-to-year comparison using, as his pool, cases where the consumer accepted an award or settlement but didn’t allow performance. There were 73 such cases and, as noted above, 58 (79.4%) of these involved repair remedies. And, among the repair cases, the non-compliance rate rose from 2.7% to 5.4% between 2019 (the last pre-pandemic year) and 2021. The rate rose for the non-repair cases as well, but only from 0.2% to 0.7%. And these figures are at least somewhat understated for two reasons. First, the analysis above suggests that consumers may perceive non-compliance in 2% of cases where performance verification letters aren’t return, and some of these would presumably add to the non-compliant figures.<sup>335</sup> Second, when BBB AUTO LINE updated their compliance statistics in May 2022, it reported that the time for compliance hadn’t yet passed in 4.7% of cases that closed no later than December 31, 2021; some of these will likely provide more non-compliances.<sup>336</sup>

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<sup>334</sup> Some high-usage consumer would even *owe* money if they went through with the transaction. Or the consumer might find that he could get the same or nearly the same result by simply trading in the car, without waiting for a compliance period to pass under a lemon law award or settlement agreement.

<sup>335</sup> As explained above, consumers may perceive non-compliance where BBB AUTO LINE doesn’t.

<sup>336</sup> This would include cases where the consumer granted repeated extensions to get the remedy that she wanted. However, it could also include other cases where the compliance clock didn’t start

The question the auditor doesn't answer, and this may be a matter for the compliance manager that BBB AUTO LINE is in the process of hiring, is how much of the increased non-compliance is the result of pandemic conditions – particularly in light of the fact that some of these problems arose in early 2021, and, as of mid-January, only 2.5% of the population had had a single Covid shot.<sup>337</sup>

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The rate of *delayed compliance* reported by BBB AUTO LINE is minimal, but it did rise from 0.1% to 0.2%. However, these numbers are understated to the extent that they sometimes rely, improperly, on “extensions” that the manufacturer requested but as to which there's no record of consumer consent nor, as there should be, is there a revised settlement letter. Even with proper documentation, moreover, the reported figures don't pick up certain types of cases, particularly cases where consumers *did* grant repeated extensions, or, as in one case, gave up on the repurchase before the compliance date and agreed to a revised settlement providing for a repurchase<sup>338</sup>; whether not the consumer grants extensions, he doubtlessly feels frustration at the delay in implementing is remedy.

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Finally, the auditor found some problems with BBB AUTO LINE's compliance monitoring. Although there's survey data on the subject, the auditor doesn't use that survey data directly. For most consumers who reported no compliance contact, the auditor found in BBB AUTO LINE's files reports that a performance verification letter was sent, and, while that doesn't prove it was received in every case, it likely was in most cases.<sup>339</sup> While the auditor thus

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running until later, such as a case that closed with an interim repair remedy in late 2021 but reconvened in February 2022.

<sup>337</sup> See note 16.

<sup>338</sup> While BBB AUTO LINE's reports thus understate the extent of delayed compliance, consumer survey results overstate them. While the survey questions offer them cues – they're even told what BBB AUTO LINE reported and asked to agree or disagree – consumers might still not account for the fact that, outside Florida and California, a case doesn't open until they return a signed consumer complaint form; they might include compliance time in their responses; and, if they weren't satisfied with the result of a repair settlement and came back with a 1-R case, they might (not unreasonably) include the time from the start of the first case until the end of the second.

<sup>339</sup> The auditor noted previously that some consumers had problem with the online interface. But the time a matter gets to the compliance phase, though, the consumer has likely used the interface successfully in the past.

concludes that aggregate figures are overstated, the survey did identify seven cases where the contact was delayed,<sup>340</sup> with delays ranging from 15 days or less (two cases) to approximately nine months (two cases), by which point the delayed performance verification letter is essentially useless except as a record-keeping device.

Further, in one particularly unfortunate case, staff delayed sending the performance verification letter roughly four months, and, when the consumer responded that he wanted to pursue the matter further, staff took roughly two months to act on that request.

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Based on these findings, the auditor recommended above that BBB AUTO LINE make it easier for consumers to report on compliance. He also offers the following recommendations.

*Recommendations:*

(1) *The new compliance monitor should attempt to pinpoint the sources of the problems noted above, and should consider ways to address them. For example, the monitor might routinely check on cases that don't have a compliance code once 20 days have passed after the compliance due date.*

(2) *BBB AUTO LINE should consider how to avoid situations where a dispute resolution specialist doesn't act on a consumer's request to reopen or continue a proceeding, or does so belatedly.*

(3) *BBB AUTO LINE should again emphasize to DRSs the need to obtain consumers' consent to extensions requested by the manufacturer, and to document the parties' agreement in a revised settlement letter. Unless consent is documented for all extensions in a case, BBB AUTO LINE shouldn't report timely performance.*

(4) *Performance verification letters are required to be sent ten days after the compliance date, but consumers with repair remedies may be in the midst of a 30-day test drive period at that point. In these cases, the auditor believes that the DRS should check on compliance within 10 days of the original compliance date, ignoring any test drive periods. However, among the options from which consumers are asked to select in a performance verification letter, BBB AUTO LINE should add something to the effect of "premature to respond fully; currently in a test drive period." In those cases, BBB AUTO LINE could ask when the test-drive period ends and follow up again at that point.*

(5) *When staff doesn't send a timely performance verification letter after a specified time, the auditor recommends staff will not only send out the performance verification*

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<sup>340</sup> Six of these came from consumers who reported no contact. One came from a consumer who reported non-compliance, where the auditor found a delayed performance verification letter issue.



*letter but also attempt to call the consumer. This might be as early as 20 days after the compliance date, which is 10 days later than the letter should have gone out – and 10 days later than the date promised to a consumer in typical cases.*

*(6) BBB AUTO LINE should seek ways to have manufacturers prioritize compliance with BBB AUTO LINE settlements and arbitration awards. Particularly for replacement vehicles in a time of supply chain problems, the auditor understands that there may be complexities to the process, in part because new vehicles may have been previously allocated to dealers. However, the compliance manager should convey to manufacturers the need to explore ways to prioritize replacement obligations under BBB AUTO LINE over new sales. Further, in the auditor’s view, BBB AUTO LINE settlements and arbitration awards should be prioritized within the manufacturers processes if necessary. This extends to repair remedies as well. If a manufacturer fails to contact any consumer who gave it a final repair opportunity under a state lemon law, it’s squandered an opportunity to resolve the matter without invoking lemon law remedies. If the final repair opportunity was encompassed within a BBB AUTO LINE settlement, though, it’s also failed to comply with an obligation owed to BBB AUTO LINE and, though BBB AUTO LINE, to the consumer using its processes.*

*(7) On a relatively minor matter, the auditor again recommends that, when telling a manufacturer about a consumer’s performance verification, the auditor recommends (he had previously suggested) that the manufacturer be told when compliance has been assumed because the letter wasn’t returned.*

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*Reconvened cases.* In the previous section, the auditor discussed the impact of reconvened cases on BBB AUTO LINE’s measurement of the time BBB AUTO LINE takes to complete a case. A related issue arises because these reconvened cases can have two compliance events, one for an initial repair remedy and the other for a further remedy if found appropriate by the arbitrator.

The matter is addressed further in Chapter 3, at Table III-21A and the accompanying text. The key takeaway, though, is that, with a fair amount of work (the current programming of BBB AUTO LINE’s data base didn’t allow the information to be easily retrieved), staff identified as of mid-May (when some reconvened cases were still pending) thirteen cases with two compliance codes, two of which were potentially problematic, reporting non-compliance because the consumer didn’t allow performance. With a total of 3217 relevant cases,<sup>341</sup> and 212 non-

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<sup>341</sup> These would be cases with settlements or with arbitration awards that the consumer accepted – the only cases that, absent unusual circumstances, could have a compliance code. (The unusual cases would be cases where the manufacturer won in litigation but still agreed to a post-decision settlement).

compliances of which 139 are reported as “consumer did not allow performance,” these numbers seem relatively small. Still, the auditor doesn’t think they should be ignored.

*Recommendation: BBB AUTO LINE should consider how to handle the small number of cases with two compliance codes going forward. It might, for example, continue to develop the figures by hand; if possible, it might have the programming in the database adjusted to capture this information; or it might acknowledge that its compliance report doesn’t capture both compliance events in the small number of arbitrations with two compliance events.*<sup>342</sup>

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## **J. Recordkeeping Provisions (Rule 703.6)**

Rule 703.6(a) requires BBB AUTO LINE to maintain certain records in specific cases.<sup>343</sup>

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<sup>342</sup> In California, the procedure is somewhat different; California Rule 23.C, which is limited to repair decisions, allows the arbitrator to “reconsider” the decision. But even in California, if the arbitrator grants reconsideration and substitutes a new remedy, there could be measures of compliance for both the original and the substituted remedies.

<sup>343</sup> 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;
- (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);

To the extent it's possible to tell from a review of the files,<sup>344</sup> the auditor saw no systematic problems in compliance with this provision, or with analogous provisions from Florida<sup>345</sup> or Ohio.<sup>346</sup> There have been, however, occasional (though rare) cases where consumers said that

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(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.

<sup>344</sup> There's no way to tell, for example, if "all" written documents from all parties are included. Similarly, there's no way to tell of records are made of every oral communication.

<sup>345</sup> Florida requires the submission of certain aggregates not required by Federal law (as discussed in Chapter 3, Section IV.C), but doesn't require additional records in individual cases.

<sup>346</sup> Section 109:4-4-04(D)(1) provides:

(1) The board shall maintain records on each dispute referred to it which shall include:

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

(b) Name, address, and telephone number of the contact person designated by the warrantor under paragraph (F)(1) of rule 109:4-4-03 of the Administrative Code;

(c) Makes, models and vehicle identification numbers of the motor vehicles;

(d) The date of receipt of the dispute and the date of disclosure to the consumer of the decision;

(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.

BBB AUTO LINE hadn't contacted them or hadn't returned their calls before it closed a case, while the BBB AUTO LINE records report unsuccessful efforts to reach consumers; the auditor discusses these below.<sup>347</sup>

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Additionally, rule 703.6(b), (c), and (d) require that BBB AUTO LINE maintain certain indices, including indices of disputes grouped by brand name and product number, disputes in which the warrantor hasn't complied with a "promised" performance and where a manufacturer has "refused to abide by" a decision, and disputes that extended beyond 40 days. BBB AUTO LINE has shown the auditor an index of warrantor disputes grouped under brand name and sub-grouped under model number.

More generally, this rule appears to have been developed before these records were routinely recorded in a computerized data base from which spread sheets can be developed. Through simple sorting processes, the spread sheet that BBB AUTO LINE provides to the auditor annually can be used to generate most of the required information.

With respect to one element of the reporting requirements, it's not quite clear what "plus factor," if any, distinguishes a refusal to abide from a failure to comply. However, manufacturers participating in the program agree to be bound by arbitrator's decisions, and BBB AUTO LINE believes that there are no "refusal to abide" cases.<sup>348</sup>

### **K. Openness of Records and Proceedings**

Rule 703.8<sup>349</sup> governs the extent to which records and proceedings are open or, conversely, confidential. Rule 703.8(b) allows the mechanism to keep certain records confidential, and Rule 703.8(c) requires it to set out a confidentiality policy. Rule 24 of the BBB AUTO LINE's arbitration rules does so, promising (with specified limits) privacy and confidentiality.<sup>350</sup>

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<sup>347</sup> Chapter 3, Section I.C.3/

<sup>348</sup> Additionally, Rule 703.6(e) requires that BBB AUTO LINE maintain certain statistics. That information (and more) appears in Chapter 3.

<sup>349</sup> The auditor jumps from Rule 703.6 to Rule 703.8 because Rule 703.7 addresses the audit itself.

<sup>350</sup> 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

There's an internal tension within Rule 703.8(d), which provides that:

Meetings of the members to hear and decide disputes shall be open to observers on reasonable and nondiscriminatory terms. The identity of the parties and products involved in disputes need not be disclosed at meetings.

It's not clear how meetings can be open to the public *and* protect the identity of the products or parties involved. BBB AUTO LINE navigates this tension with a rule that the auditor considers reasonable, although it would seem more consistent with the FTC rule to eliminate the "reasonable accommodations" language. In any event, as a practical matter, there's no way for members of the general public to know when and where a meeting will take place (even if and when BBB AUTO LINE again holds in-person meetings).

### **11. Attendance at hearings**

We have the option to arrange for BBB staff, other arbitrators or government representatives to attend arbitration hearings.

For any other observer to attend a hearing, we will first determine if reasonable accommodations exist, and then make sure the consumer and arbitrator have no objection to the presence of an observer. If there is room and there are no objections, the observer may attend subject to proper behavior (i.e., observers will not interfere with or participate in the hearing).

### **12. Media presence at hearings**

Media shall be permitted access to arbitration hearings on the same basis as other observers.

Unless there is approval by all parties and the arbitrator, no one other than BBB staff shall be permitted to bring cameras, lights, recording devices or any other equipment into the hearing. Media representatives shall be subject to proper behavior during the hearing (i.e., media representatives will not interfere with or participate in the hearing).

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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.

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The 2015 audit alluded to issues with data handling, the specifics of which, the auditor observed, would be premature to discuss at the time but would be addressed subsequently. As described in the 2016 audit, the issues concerned confidentiality, the subject of the above-noted rules. And, in a modern context, data security is an essential component of confidentiality. Without providing great detail in a public filing, the auditor noted in 2016 that BBB AUTO LINE had addressed important issues after the matter was brought to its attention. Most importantly, it had contracted with a third party vendor to assess, detect and block threats to applications and other workloads by integrating advanced full-stack detection techniques. And it had acted to increase a culture of security, for example, by allocating full time staff to compliance and ethics oversight, consolidating data security standards across the BBB system, and increasing their participation in privacy groups such as the International Association of Privacy Professionals. BBB AUTO LINE has also acted to purge older files from its system, and, while it may still be keeping records longer than necessary, BBB AUTO LINE advises that it has implemented the first phase of its document retention policy.

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

*Recommendation: BBB AUTO LINE should review its schedule for deleting older materials from its database and undertake the deletion process periodically.*

## **CHAPTER 3**

### **SURVEY AND ANALYSIS: NATIONAL**

As required by the FTC's rules, the audit includes a survey of "a random sample of disputes handled by the mechanism," including written or oral contact with each consumer surveyed.<sup>351</sup> This serves two purposes: to evaluate the adequacy of BBB AUTO LINE's procedures and to substantiate the accuracy of its record-keeping and reporting, particularly with respect to certain aggregate statistics that it's required to produce by Federal or state law. This year's survey was again conducted by phone by TechnoMetrica Marketing Intelligence, who reached out to consumers who had used the program and hadn't used an attorney. It includes a national sample, as well as Florida and Ohio samples that, to some extent, overlap with the national sample.<sup>352</sup>

As in prior audits, the analysis includes a "macro" component, comparing aggregates from the survey to aggregates compiled by BBB AUTO LINE. At the auditor's request, BBB compiles its aggregates directly from the spread sheet that it produces for TechnoMetrica and that TechnoMetrica uses to conduct the survey.

The macro analysis can be quite useful with large populations; for questions posed to 402 consumers in the national sample, for example, comparisons between the survey results and aggregates calculated by BBB AUTO LINE have a margin of error of +/- 4.7%. But when questions are necessarily posed to smaller groups, the margin of error can increase substantially, and the macro analysis becomes a very blunt tool. Further, the macro analysis is inherently blunt when exploring a quantitative measure (how long did it take to resolve a case?) or details about which consumers may understandably be fuzzy (the receipt of a form perhaps fifteen months before<sup>353</sup>). On top of that, and as discussed below, the margin of error is often accompanied by largely unavoidable "measurement errors," where consumers don't grasp aspects, sometimes quite subtle, about how BBB AUTO LINE classifies a case.

So what can be done to supplement the macro analysis comparing BBB AUTO LINE's aggregate statistics to aggregates based on survey responses? Fortunately, the auditor has other tools at his disposal.

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

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<sup>351</sup> Rule 703.7(b)(3).

<sup>352</sup> See Section II.E for a discussion of the composition of the state samples. After a substantial revision in 2016, later changes to the survey instrument have been relatively minor.

<sup>353</sup> The survey was conducted in March of the current year, and addresses cases that *closed* as early as January of the previous year (and may have opened before that).



*Second*, he has created and refined a *targeted* microanalysis that explores discordances in individual cases. In addition to randomly selected cases, the audit includes a targeted analysis on all cases. For example, for questions exploring the process used to resolve the case,<sup>354</sup> the resolution (specific remedies or denials), and acceptance of arbitration awards, TechnoMetrica Market Intelligence, which conducts the survey, develops tables with a second type of aggregate figures. Whereas the macro analysis compares aggregates from the survey to aggregates developed by BBB AUTO LINE, the micro analysis reports the numbers and percentages of *individual* consumers whose replies differed from those reported by BBB AUTO LINE. Then, on these and other metrics, the auditor looks at underlying case files to explore the sources of specific disagreements.<sup>355</sup>

The resulting analysis provides important context and correctives. Most discordant responses appear to be reasonably explicable divergences or, to put it another way, reasonably explicable *misunderstandings*. Recurring patterns are catalogued below, but, to give one example, BBB AUTO LINE can resolve a case only with a manufacturer, not with a dealer. When a consumer files a case but then works directly with the dealer to resolve it, therefore, any

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<sup>354</sup> Was the case resolved by arbitration or mediation? Or was it withdrawn or deemed ineligible?

<sup>355</sup> The auditor reviewed well over 100 files, most of which he reviewed thoroughly though some of which (particularly on document receipt questions) he reviewed with a narrower focus. In addition to randomly selected files, the auditor examined:

- (1) Files where surveyed consumers disagreed with BBB AUTO LINE records about the process by which their cases were resolved or otherwise closed (mediated, arbitrated, ineligible or withdrawn).
- (2) For mediated and arbitrated cases, files where surveyed consumers disagreed with BBB AUTO LINE records about the resolution of their cases (repurchase/replacement, repair, other remedy, denial in arbitration).
- (3) Selected files for consumers who reported substantial delays in processing their cases or for whom BBB AUTO LINE reported substantial delay.
- (4) Files for surveyed consumers who reported that manufacturers complied with a remedy;
- (5) Files for surveyed consumers who reported that they hadn't received one of several specified communications from BBB AUTO LINE; and
- (6) Files selected from certain consumers who responded "other" to a question and were invited to elaborate.
- (7) Files for consumers who appealed ineligibility determinations pursuant to a process available in California, and who either succeeded on the appeal or whose cases settled for substantive relief after the appeal was filed.

such “settlement” falls outside the program; BBB AUTO LINE isn’t a part of it and doesn’t report it. But a surveyed consumer, perhaps having had talks with BBB AUTO LINE staff, might see things differently and report a settlement. Then, having reported a settlement, the consumer will be asked about remedies and compliance, contacts from BBB AUTO LINE to document the settlement, and contacts from BBB AUTO LINE to monitor compliance. BBB AUTO LINE, of course, won’t have metrics on any of these, since it didn’t report a settlement in the first place. So this single misunderstanding could yield apparent discordances on multiple metrics. And, as detailed below, there are many other types of misunderstandings that lead to apparent (but not true) discrepancies – and some will have similar downstream effects.

Still, while most divergences tend to be reasonably explicable, this isn’t so with all of them. Sometimes discordances can’t be explained or resolved, as where BBB AUTO LINE records report numerous unreturned calls to a consumer but the consumer reports numerous unreturned calls to BBB AUTO LINE. Sometimes they point to errors in BBB AUTO LINE recordkeeping, which are discussed in this chapter, and sometimes they point to substantive problems on BBB AUTO LINE’s part, which are primarily addressed in Chapter 2. And, though the auditor takes care in assuming consumer error, sometimes that is clear, as when a consumer reports that the consumer never received a document sent for completion and signing, but the underlying file contains a signed document that the consumer returned.

*Consumers with counsel.* As discussed below,<sup>356</sup> the survey doesn’t reach consumers who used lawyers. To provide some review of attorney cases, the auditor examined 25 files selected randomly, then supplemented them with additional Ohio and Florida cases so there were 20 from each state.<sup>357</sup>

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

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<sup>356</sup> Section II.C.B of this chapter.

<sup>357</sup> There happened to be many Florida cases in the original selection, so only seven additional cases were needed to reach 20 for Florida.

## **I. Discordances**

### **A. Process and Remedy**

#### **1. Reasonably Explicable Discordances**

##### **a. Consumers Who Respond “Other” but Provide Details Consistent with BBB AUTO LINE’s Characterization of the Case**

Consumers who disagreed with BBB AUTO LINE’s description of the process used to resolve their case were then asked if the case was arbitrated, mediated, ineligible, withdrawn, or “other.”<sup>358</sup> Those responding “other” were invited to explain their responses, and many gave details that were consistent with the BBB AUTO LINE records; indeed, some consumers essentially supplemented the BBB AUTO LINE categorization. This is by far the most common type of reasonably explicable discordance, and accounted, for example, for 15 of 24 reported discordances in this year’s national survey (62.5%).

##### **b. Straddle Cases Where Consumers Reported Developments within the Program but Outside the Audit Year**

In a straddle case, one or more entries on the spread sheet for the audit year reflect development in a case that closed during that year, but, later, either the original case was reopened or a related case was filed – and the consumer reported on developments that occurred after the audit year. In this year’s national survey, such straddles explained 4 of the 24 discordant cases on process (16.7%).

##### **c. Settlements Outside the Program**

Consumers sometimes resolve complaints directly with the manufacturer in ways that BBB AUTO LINE doesn’t record as a “settlement.” (Although excluded from the survey, this often happens when consumers have counsel.) Or they settle a matter with the *dealer*, and, as noted above, such settlements are inherently outside the BBB AUTO LINE process. BBB AUTO LINE reports these cases as withdrawn or ineligible, depending on the circumstances, but, particularly if staff had done some work on the case, consumers may report mediation.<sup>359</sup>

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<sup>358</sup> More precisely, each consumer was initially asked to choose among four of the five possible responses. If BBB AUTO LINE recorded a case as arbitrated and the consumer disagreed, she was asked if it was mediated, ineligible, withdrawn, or “other.” The process she had already rejected (arbitration in this example) wasn’t included among the options in the follow-up.

<sup>359</sup> Some consumers who reach settlements with dealers also report “other,” bringing them within category a.

**d. Confusion about Ineligibility and Withdrawals**

There's sometimes confusion about ineligibility and withdrawal. For example, if a consumer file a complaint but then learned from BBB AUTO LINE staff that it couldn't benefit from a statutory presumption unless the consumer gave the dealer and manufacturer additional repair opportunities, the consumer might withdraw the complaint and mistakenly report, many months later, that the case was ineligible.

**e. Consumers Dissatisfied with the Performance of a Remedy**

Repair settlements typically provide that the manufacturer will send a field service engineer to inspect the vehicle, and then to correct warranted defects if the FSE finds any. When FSEs do such an inspection and report no warranted defects, some surveyed consumers confuse an FSE determination that there wasn't a warranted repair (which allows them to continue with the program if they aren't satisfied) with a determination that they weren't eligible for program.

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

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

**g. Misunderstanding of "Arbitration"**

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

**h. Branching Issues**

Here, the consumer gives a specific response, but BBB AUTO LINE, because of a prior entry, didn't record one. Consider, for example, the consumer in subsection c who withdrew a complaint after settling with the dealer. On the process metric, BBB AUTO LINE would record the case as withdrawn or ineligible and (in what the auditor characterized as a reasonably explicable discordance on that metric) consumers may report a settlement. But now consider the remedy metric. Since BBB AUTO LINE showed the matter as withdrawn, it didn't record a remedy; but, since the consumer described a settlement, the consumer was asked to identify the remedy. Thus, the discordance or remedy flowed directly from the reasonably explicable discordance on process.<sup>360</sup>

TechnoMetrica's reports identify a divergence where BBB AUTO LINE reports on a

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<sup>360</sup> Indeed, it's arguable that there isn't a true discordance, even a reasonably explicable discordance, on the remedy metric at all.

metric and the consumer, because of a prior response, doesn't. The survey report doesn't pick up on the converse situation, where BBB AUTO LINE doesn't report on the metric and the consumer, because of a prior survey response, does.<sup>361</sup>

#### **i. Settlement During and After Arbitrations**

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

Also, if the parties settle *after* the arbitrator issues a decision, the settlement supersedes the decision, but BBB AUTO LINE still records the process as arbitration – and, to the confusion of some consumers, its practice is to record the *remedy* that from the arbitrator's decision, rather than the modified remedy to which the parties agreed. Some of these cases are now picked up in additional data that the auditor asked BBB AUTO LINE to provide for these "two-stage cases." For purposes of the audit, though, a single repair remedy needs to be reported as the primary remedy and used in the survey. And, while BBB AUTO LINE's intended practice may well be the best way to handle a situation with no optimal solution,<sup>362</sup> it's not a resolution that's proven intuitively obvious to all surveyed consumers.<sup>363</sup>

#### **j. Reconvened cases.**

As discussed in Chapter 2,<sup>364</sup> a consumer dissatisfied with the execution of an "interim

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<sup>361</sup> This would be the case, for example, where the consumer disagrees with BBB AUTO LINE's report that a case was settled, responds "other," but then provides details consistent with BBB AUTO LINE's records. Because the consumer responded "other" on the process question, the consumer wouldn't be asked about remedies, compliance, and so forth.

<sup>362</sup> Once an arbitrator has heard and decided the case, for example, the program needs to report an arbitrated case even if there's a superseding settlement. And, once a case is reported as arbitrated, it would seem incongruous to associate with an arbitration decision a different remedy than that which the arbitrator found appropriate. To do so would muddy the waters when BBB AUTO LINE develops aggregate statistics that show regulators the relief (if any) that arbitrators collectively found appropriate.

<sup>363</sup> As noted above, it's also impractical to clarify these nuances in survey questions, without bogging down the survey with details that, to most consumers, would be complex and even annoying minutia.

<sup>364</sup> Chapter 2, Section II.H.

repair remedy” can ask for the case to reconvene or, in California, can seek reconsideration. BBB AUTO LINE’s normal practice has been to report the arbitrator’s second decision as the “remedy,” with the logical, if confusing, nuance that a denial on reconsideration (the process outside California) is to be reported as a denial, while a denial of a request to reconvene (the process within California) leaves intact the original repair decision. This raises reporting issues that the auditor has asked BBB AUTO LINE to consider how to address,<sup>365</sup> but, again, a single remedy needs to be reported in the spread sheet provided to TechnoMetrica for purposes of conducting the survey. In any event, consumers may well be confused about the treatment of denials, but, otherwise, this doesn’t appear to be a significant source of consumer confusion.

#### **k. Compliance and Satisfaction**

There’s a difference between manufacturer compliance (or “performance”) and consumer satisfaction. Even if a consumer isn’t satisfied, for example, BBB AUTO LINE reports “compliance” if a settlement provided that the manufacturer would inspect the car and correct any warranted defects, and the manufacturer did an inspection and reported that there wasn’t a problem.<sup>367</sup>

#### **B. Confusion about Timing**

In addition to the misunderstandings discussed above, which can affect responses to the process and remedy questions, there are also several sources of potential confusion on questions about timing for the original case. For example, surveyed consumers except those in Florida and California are specifically told that, for purposes of measuring the duration of their case, the case doesn’t begin until they returned detailed information about their cars to BBB AUTO LINE; it’s not clear, though, that all consumers applied this standard. Also, as explained in Chapter 2, when a consumer isn’t satisfied with the implementation of a mediated repair settlement and wants to pursue the matter further, a new case is opened.<sup>368</sup> In dealing with timing questions, some consumers (not unreasonably) may merge separate but related cases into one. And, while the survey focused on the time to *secure* a remedy, some consumers may have included in their responses the time to *implement* it.

As to the timing of *compliance*, BBB AUTO LINE may obtain extensions from both

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<sup>365</sup> Where an interim remedy is followed by another remedy, there can also be two compliance codes.

<sup>367</sup> While the auditor thinks this approach is reasonable, it would be preferable if BBB AUTO LINE revisited this determination if a subsequent decision by the arbitrator is inconsistent with the original characterization.

<sup>368</sup> An initial reopened case uses a “1R” suffix added to the original case number. Occasional cases have a 2R suffix and, infrequently, the numbering goes higher.

parties if the manufacturer can't comply in a timely fashion, perhaps because it can't obtain a part needed for a repair, or perhaps because the consumers' specific demands for a replacement car require a special order. Although the survey asks consumers to consider extensions to which they've agreed in assessing whether compliance was timely, it's not clear that all consumers do so.

## **C. Errors**

### **1. Demonstrable or Highly Likely Consumer Error**

The auditor sometimes calls consumers to clarify a seemingly incongruous response, and sometimes consumers have essentially retracted their earlier responses.<sup>369</sup> There's also demonstrable consumer error when consumers report that they didn't receive a document but the files contain signed documents that they *returned*; of course, they couldn't have returned a signed copy of the document if they hadn't received the document in the first place.

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

### **2. Demonstrable BBB AUTO LINE error**

In some cases, data on the BBB AUTO LINE spread sheet is inconsistent with BBB AUTO LINE's own underlying files. These include, for example, occasional cases where BBB AUTO LINE counted a case as timely by relying on an extension requested by the manufacturer for which it hadn't documented the consumer's assent.<sup>370</sup> In one case the auditor reviewed this year, BBB AUTO LINE's dispute resolution specialist inadvertently closed a case after the consumer returned a performance verification letter asking that it move forward.

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<sup>369</sup> For example, although the questions include short explanations of "settlements" and "arbitration," some consumers confuse the two. Thus, a consumer who described a settlement as an "arbitration" might correct the response after the auditor explained in more detail the difference between the two.

<sup>370</sup> Chapter 2, Section II.H.

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

In audits over the last six years, the auditor has found occasional discordances during some (but not all) of his audits that involve breakdown in communications that the auditor can't explain or resolve. These are cases where the BBB AUTO LINE records and the consumer each attribute the breakdown to the other. And, as noted before, there's a fundamental asymmetry in the audit here. The auditor has access to BBB AUTO LINE's case files, and these typically include a letter that references other attempts to reach the consumer, sometimes with some detail and, sometimes, with further documentation in the DRS's notes. But for the consumer, the auditor generally has only survey responses.<sup>371</sup>

#### **D. Treatment of "Not Sure" Response**

Some questions include a "not sure" option. Consumers who chose that option weren't included, for purposes of the specific response, in either the micro or the macro analyses.<sup>372</sup> To illustrate, consider a question posed to 100 people, with 45 responding "yes," 45 "no," and 10 "not sure." The chart would report a base of 90, with 45 affirmative and 45 negative replies.<sup>373</sup>

#### **E. Micro Analysis: Broad Conclusions**

Without delving into great detail here – the detail appears in the rest of the report – the micro analyses for the three populations draws on responses by over 500 consumers who completed surveys,<sup>374</sup> and, for these consumers, BBB AUTO LINE records usually matched

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<sup>371</sup> The auditor has at most encountered a few of these cases each year, but, among those few, he did find one unusual case, in the 2018 audit, where the consumer's contacts were documented. This was an "attorney" case. The files contained a letter from the attorney, responding to an earlier letter from BBB AUTO LINE reporting that BBB AUTO LINE was unable to reach him. In his response the attorney reported, by dates, two attempts to reach BBB AUTO LINE by phone (with a message reportedly left on at least one), as well as another attempt to reach BBB AUTO LINE by email.

<sup>372</sup> One area where the problem with including "not sure" responses is particularly stark involves satisfaction questions. Since "not sure" responses don't add any points to the arbitrator satisfaction calculations, counting them in calculating average grades would be tantamount to treating them as failing grades.

<sup>373</sup> To pursue this example a bit further, if the 10% "not sure" responses were reported separately, then the affirmative and negative responses would only total 90%. However, the BBB AUTO LINE total would be 100% – so the reduced figure for the survey would introduce an apparent error that wasn't really there.

<sup>374</sup> There were 402 completed surveys in the national sample, 204 in the Florida sample, and 62 in the Ohio sample. As explained in Section I.D, below, Florida and Ohio consumers who were



consumer responses on key metrics.

Also importantly, given the large number of reasonably explicable discordances, the records matched the underlying circumstances even more frequently. Together with the macro analysis discussed below, these results in the micro analysis gave the auditor substantial confidence that the spread sheet from which BBB AUTO LINE made its calls was accurate. Further, some additional scrutiny of the cases omitted from that spread sheet (cases where consumers had attorneys and those that preceded a further case involving the same vehicle) supports the conclusion that those records were substantially accurate as well.

## **F. Overview of the Macro Analysis**

The auditor has already addressed *sampling errors*, although he didn't use that term. These errors are inherent in projecting to the whole population survey results from a subset of that population,<sup>375</sup> and they're measured by the "margin of error." As noted before, the margin of error in the survey is at least +/-4.7% for the national survey, +/-6.2% for the Florida survey, and +/- 10.9% for the Ohio survey.<sup>376</sup> Further, the margin grows for questions posed to only a subset of those surveyed; for example, questions about compliance with arbitration awards could be posed only to consumers who received and accepted such awards. On top of that, the margin of error has a "confidence interval," usually, as here, set at 95%. While the precise statistical implications are complex, this means broadly that, even if there were no other problems, occasional comparisons between BBB AUTO LINE's records and the survey's results can reasonably be expected to fall outside the margin.

The reasonably explicable discordances discussed above create another kind of error, a *measurement error*.

The auditor also addresses the two other kinds of survey errors. A *coverage error* arises when there's a systematic difference between the overall population and the sampling frame from which consumers were selected for calling. Thus, as explained below, the sample frame didn't include cases where consumers had lawyers, as well as cases that were followed by a related case that also closed during the audit year. Absent parallel adjustments to BBB AUTO LINE's aggregate figures, there would have been a coverage error. In essence, the cases that

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included in the national sample were also included in the state-specific samples.

<sup>375</sup> Such projection is unavoidable; even in Ohio, where TechnoMetrica attempted to contact every eligible consumer, they completed interviews with only 29%.

<sup>376</sup> And, despite the high margin for Ohio, there was no practical way to reduce it; the survey wasn't a sample of selected consumers, it was a census, meaning that TechnoMetrica tried to call every consumer in the sampling frame (and didn't give up on reaching a consumer until it made four attempts).

were omitted had different profiles than those that were included.<sup>377</sup> To address these problems for certain key metrics, the auditor developed aggregates of his own from the *modified* spread sheets that TechnoMetrica generated and used to place calls, after omitting cases in the categories discussed above. The auditor then compared the survey results to aggregates based on the precise “sampling frame” from which the surveyed consumers were randomly selected – so that the survey became a direct test of the accuracy of the sampling frame.<sup>378</sup> In essence, under this protocol, coverage errors aren’t an issue.

Also, for one metric, the auditor took steps to address to account for a *non-response error*. These arise when some types of consumers are less likely to respond to the survey than others. Specifically (and not surprisingly), consumers who weren’t eligible for the program have been consistently less likely to complete a survey than those who used mediation or arbitration.<sup>379</sup> As detailed below, and on this metric, the auditor essentially “weighted” the survey numbers on the process question to account for disparate response rates.

Another curious twist is that two errors in the macro (but not the micro) analysis may effectively cancel each other out.<sup>380</sup> Further, all of these errors can have a cumulative effect. As discussed further below, though the survey does more than allow a macro analysis. It also identifies cases that bear further scrutiny in the micro analysis, discussed above, which provides another critical leg to the auditor’s analysis.

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<sup>377</sup> For example, in situations involving multiple complaints about the same vehicle, the earlier (omitted) cases mostly involved mediations.

<sup>378</sup> Of course, this required some further steps to restore the cases that had been omitted from the spread sheet that comprised the sampling frame. The auditor addresses below how this was done.

<sup>379</sup> Consumers who aren’t eligible were often told so within a day; perhaps they were less vested in the program and less willing to complete a detailed survey.

<sup>380</sup> In the simplest example, if one case is reported by a consumer as ineligible and BBB AUTO LINE as withdrawn, and a second case is reported by the consumer as withdrawn and BBB AUTO LINE as ineligible, there’s no net effect on the aggregate macro figures.

## **G. Satisfaction Rates**

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

- (1) Consumers who used mediation or arbitration gave BBB AUTO LINE staff a B/B+, with grades of 3.22 (national), 2.94 (Florida), and 3.04 (Ohio).
- (2) In grading arbitrators, not surprisingly, consumers who got more favorable decisions were more impressed with their arbitrators' virtues. Thus, composite grades from consumers with repurchase or replacement remedies were 3.41 (national), 3.33 (Florida) and 3.44 (Ohio); grades from those with no award were 0.87 (national), 0.92 (Florida) and 0.90 (Ohio).
- (3) When asked if they would recommend BBB AUTO LINE to friends and family, 63.2% in the national sample said yes, as did 65.8% in Florida and 64.5% in Ohio. Among consumers who used mediation or arbitration, the numbers rose to 82.2% for the national sample, 76.9% for Florida, and 81.1% for Ohio. Even among consumers who went to arbitration and lost, nearly half of those who responded said they would recommend BBB AUTO LINE to friends and family.

## **II. Conducting the Survey**

### **A. TechnoMetrica**

The auditor lacks the capacity to conduct a survey himself and BBB National Programs, Inc. contracted with TechnoMetrica Market Intelligence<sup>381</sup> to conduct the study and help the

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<sup>381</sup> 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 25 years, we've served our clients an extensive menu of customizable research options backed by skilled personnel with a broad knowledge base spanning a wide variety of industries and research techniques.

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

TechnoMetrica is a certified MBE/DBE/SBE in the state of New Jersey and is a

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

## **B. The Population That Was Sampled (Sampling Frame)**

### **1. Temporal Scope**

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

### **2. Consumers Represented by Counsel**

When consumers used lawyers, their point of contact was through their attorneys. But the FTC rule doesn't seem to contemplate calls to attorneys – the audit rule specifies contacts with “consumers.” And attorneys were in any event unlikely to respond to a multi-question, case-specific survey. The likely problems were exacerbated by firms that handled a large number of cases – sometimes hundreds of them. Indeed, the auditor has previously found, for example, that as many as 60% of cases with attorneys were brought by three firms. And there are separate problems with contacting consumers who had counsel, including the fact that many lawyers demanded that BBB AUTO LINE have no direct contact with their clients. In any event, these consumers hadn't provided personal phone numbers as contact information, so it would have taken some effort to develop that information. In any event, the information available from consumers who had lawyers would, in many respects, have been less useful than the information from other consumers.

As in past years, the current auditor excluded consumers with counsel from the survey. He thus omitted about 16.2% of consumers from the national sample, 29.3% from the Florida sample, and about 21.5% from the Ohio sample. But, though TechnoMetrica didn't survey these consumers, the auditor did review 46 files in cases where consumers had attorneys, including a random selection of 25 nationally and then sufficient additional cases from Florida and Ohio to provide 20 from each of those states.

### **3. Multiple Complaints about the Same Vehicle (MCSVs)**

This year's survey also repeated the auditor's prior approach to MCSVs. Most of these

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member of a number of industry organizations, including AAPOR and the American Marketing Association.

were “1R” cases,<sup>382</sup> where a settlement<sup>383</sup> produces a remedy (usually an inspection under the auspices of a manufacturer representative followed by a repair if the representative finds a problem); the manufacturer undertakes to perform; the consumer isn’t satisfied; and the consumer, in timely fashion, tells BBB AUTO LINE that she wants to proceed further.<sup>384</sup> TechnoMetrica identified MCSVs, including but not limited to 1R cases, primarily by finding cases with the same contact phone numbers.<sup>385</sup>

The BBB AUTO LINE’s general approach – to open a new “R” case when a consumer isn’t satisfied with the implementation of a remedy – has a sound basis. “R” cases are most often preceded by mediated repair settlements, and, as noted previously, the FTC, Florida, and Ohio all recognize repair remedies as appropriate outcomes to dispute resolution, and there are good reasons to do so.<sup>386</sup> Yet the process can take time. The manufacturer and consumer must coordinate an inspection a repair, if the manufacturer agrees that a repair is warranted; then, if the manufacturer does attempt a repair, the consumer can drive the car for 30 days before deciding whether the repair satisfies his concerns.<sup>387</sup> These multiple steps can easily absorb most if not all of the 40 days generally allotted to process a claim. So, from BBB AUTO LINE’s perspective, and from the perspective of this review, it seems reasonable to restart the clock for a “1R” case.

Yet starting a new case poses complications of its own, both for the survey and for calculating aggregates. As a practical matter, for example, in the unlikely event that a consumer who was called twice about the same vehicle was willing to do the survey twice, the consumer might well confuse events in the original case with those in the 1R case. But more

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<sup>382</sup> “1R” also includes “2R” (and beyond).

<sup>383</sup> 1R case numbers are used only in the aftermath of settlements; if a consumer isn’t satisfied with the implementation of an *arbitrated* remedy, the case is reconvened before the arbitrator.

<sup>384</sup> 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.

<sup>385</sup> This would also screen out the rare case where a consumer filed multiple cases involving *different* vehicles in a single year. A single phone number could also be associated with multiple cases when consumers have counsel and the given number is the attorney’s, but attorney cases are already excluded from the survey.

<sup>386</sup> Chapter 2, Section II.D. *See also* 16 C.F.R. § 703.5(d), former Florida Rule 5J-11-010(2)(C), and Ohio Administrative Code 109:4-4-04(C)(5)(A) (all recognizing repair remedies as appropriate for the resolution of a dispute).

<sup>387</sup> BBB AUTO LINE Rule 24.B.2. California Rule 23.A similarly provides the manufacturer thirty days to comply with the arbitrator’s decision.

fundamentally, a consumer who was called twice about the same vehicle could be annoyed and likely *wouldn't* repeat the survey.<sup>388</sup> So, at the auditor's request and in the face of MCSVs, TechnoMetrica scrubbed all but the latest case from the list. Then, when consumers were called, they were asked to focus solely on the *last* case they filed if they filed multiple complaints during the year (the result they would likely have focused on in any event).

MCSVs would also create an apples and oranges problem – on the order of several percent – if the auditor compared BBB AUTO LINE's aggregate calculations to the survey results without making appropriate adjustments. To address this *coverage error*,<sup>389</sup> the auditor (as noted above) compared the survey results to aggregates developed from the abbreviated spread sheet created by TechnoMetrica.

### **C. Sampling**

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

The sampling frame was then randomized and divided it into a total of 14 replicates: 13 replicates of 500 records each and 1 with 44 records. Sample for data collection was released in replicates – that is, a fresh replicate was only released upon completion of the prior replicate. This sampling method ensured that the National sample was truly representative of the population of 2021 cases. The National data collection touched 9 of the 14 replicates.

Because of sample limitations for the supplemental surveys in Florida and Ohio, a census approach was taken whereby as many completes as possible were obtained from remaining sample across all replicates, and those were then combined with completes obtained in the National survey.

### **D. Fielding and Margin of Error**

Again quoting from TechnoMetrica,

Telephone interviews were conducted nightly between 3/5/22 and 3/14/22, with up to 4 call attempts per respondent.

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<sup>388</sup> In Ohio, where TechnoMetrica needed to call every eligible consumer, this annoyance and likely futility would have reached every consumer with MCSVs.

<sup>389</sup> See Section I.B of this chapter.

A total of 402 completes were obtained in the National survey, 204 in Florida and 62 in Ohio. The following table shows the response rate and margin of error for each of the surveys.

	<b>Sampling Frame</b>	<b>All Used Sample</b>	<b>Valid Used Sample*</b>	<b>Completes</b>	<b>Response Rate</b>	<b>Margin of Error<sup>†</sup></b>
<b>National</b>	6544	2949	2670	402	15.1%	+/- 4.7
<b>Florida</b>	1101	1101	924	204	22.1%	+/- 6.2
<b>Ohio</b>	264	264	238	62	26.0%	+/- 10.9

*\*Excludes sample without currently valid contact information*

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

*\* \* \**

To make explicit one aspect of this summary: Given the total numbers of Ohio and Florida complaints, attempts were made (with up to four phone calls per consumer in Ohio) to contact *every* consumer in those states that BBB AUTO LINE identified and for which it provided currently valid contact information. Still, at the end of the day, it was only possible to obtain completed surveys from 62 Ohio consumers.

### **E. Identifying Florida and Ohio Cases for the State Audits**

BBB AUTO LINE’s records identify both the state for the consumer’s contact address *and* the state under whose program the claim was processed. The two states often diverge when a consumer has an attorney, because multi-state law firms often use a central address, often an out-of-state address, for contact purposes. For consumers *without* attorneys – the only consumers contacted in the survey – the two states are generally the same.<sup>390</sup> In any event, the audit uses the processing state to identify Florida and Ohio consumers for the state audits.

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<sup>390</sup> The auditor analyzed this in the 2018 audit. Among consumers who didn’t use attorneys, 2.3% of those whose cases were processed in Florida lived elsewhere, for example, while roughly 2.0% of consumers with Florida contact information had cases processed elsewhere. For Ohio, the comparable figures were 2.4% and 1.2%.

## IIA. Survey Results – Some Preliminary Notes

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

- (1) **Use of gendered pronouns in discussing consumers.** To add an extra layer of anonymity when the auditor refers to specific cases, the auditor doesn't necessarily use an accurate gendered pronoun.
- (2) **Characterization of the bases for targeted questions.** Many questions were directed only to some consumers, e.g., those who used mediation weren't asked about whether they accepted an arbitrator's award, nor were they asked to evaluate their arbitrator. When the table describes the base for a question, such as "arbitrated cases" it means "cases identified *by the consumer* as 'arbitrated.'"
- (3) **"Imported" results.** In tables comparing consumer responses to BBB AUTO LINE records, the term "imported" refers to results "imported" from BBB AUTO LINE records.
- (4) **"Fully adjusted" results.** This refers to aggregate figures that are adjusted to exclude: (1) cases where a consumer had an attorney, and (2) where a consumer filed multiple complaints about the same vehicle during the audit year, all but the latest case to close.
- (5) **Repurchase, Replacement, Reimbursement, Restitution.**

BBB AUTO LINE, the Magnuson Moss Act, state lemon laws, and manufacturers don't always use the same terms for remedies. The auditor follows BBB AUTO LINE's use. The core remedies are as follows:

- A *repurchase* takes place when the manufacturer buys back the car.
- A *replacement* takes place when the consumer returns the car to the manufacturer in exchange for a new one.
- *Reimbursement* refers to reimbursement of expenses. This would apply, for example, if a manufacturer or dealer refused to do a repair under warranty and the consumer paid to have it done elsewhere.
- *Restitution* is a California-specific term, whereby the manufacturer makes a payment for a car that the consumer no longer owns. For purposes of the tables that follow, the auditor treats restitution as a form of repurchase.



### III. SURVEY RESULTS – NATIONAL SAMPLE

#### A. GENERAL INFORMATION

**Table III-1: Vehicle year (Surveyed Consumers)**

	<b>2021 Cases</b>
<b>TOTAL</b>	<b>402</b>
	<b>100.0%</b>
2008 or older	1
	0.2%
2009	2
	0.5%
2010	-
2011	2
	0.5%
2012	12
	3.0%
2013	5
	1.2%
2014	10
	2.5%
2015	16
	4.0%
2016	14
	3.5%
2017	37
	9.2%
2018	39
	9.7%
2019	84
	20.9%
2020	112
	27.9%
2021	62
	15.4%
2022	6
	1.5%

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

<b>TOTAL</b>	402
	100.0%
<b>Yes</b>	400
	99.5%

In one of the “no” responses, the consumer clarified that her General Motors car was a Cadillac; in the other, the consumer agreed with the year and make, but corrected the model.

**Table III–3: Repair attempts**

	<b>2021 Survey</b>	<b>2020 Survey</b>	<b>2019 Survey</b>	<b>2018 Survey</b>
<b>BASE: All respondents, “not sure” excluded</b>	397	398	391	398
	100.0%	100.0%	100.0%	100.0%
<b>None</b>	90	34	53	56
	22.7%	8.5%	13.6%	14.1%
<b>One</b>	33	30	31	40
	8.3%	7.5%	7.9%	10.1%
<b>Two</b>	54	58	45	31
	13.6%	14.6%	11.5%	7.8%
<b>Three</b>	51	213	72	64
	12.8%	53.5%	18.4%	16.1%
<b>Four or more</b>	169	63	190	207
	42.6%	15.8%	48.6%	52.0%

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

	2021	2020	2019	2018
<b>BASE: All respondents, except those who responded “not sure”</b>	398	398	394	395
	100.0%	100.0%	100.0%	100.0%
<b>Manufacturer's manuals/warranty documents</b>	35	33	57	48
	8.8%	8.3%	14.5%	12.2%
<b>Dealer or manufacturer representative</b>	90	69	71	92
	22.6%	17.3%	18.0%	23.3%
<b>BBB AUTO LINE, BBB, or their websites</b>	66	90	49	54
	16.6%	22.6%	12.4%	13.7%
<b>Gov't website, office, or official</b>	17	26	13	14
	4.3%	6.5%	3.3%	3.5%
<b>Other Website (not BBB, BBB AUTO LINE, or government)</b>	96	55	89	81
	24.1%	13.8%	22.6%	20.5%
<b>Lawyer</b>	15	19	15	22
	3.8%	4.8%	3.8%	5.6%
<b>Friend/family/word of mouth</b>	50	86	66	71
	12.6%	21.6%	16.8%	18.0%
<b>TV/Radio/Newspaper</b>	2	1	-	3
	0.5%	0.3%	-	0.8%
<b>Used the program previously</b>	15	11	14	17
	3.8%	2.8%	3.6%	4.3%
<b>General knowledge</b>	21	14	25	16
	5.3%	3.5%	6.3%	4.1%
<b>Other</b>	6	11	4	3
	1.5%	2.8%	1.0%	0.7%

TechnoMetrica presents this as an open-ended question, and either places the consumer’s responses into one or more existing silos, or places it in an “other” silo and reports the consumer’s answer. On this question, the auditor then reviews the “other” responses” and reclassifies some of them into one of the existing silos; sometimes, when a new pattern emerges, he asks TechnoMetrica to add a new silo in future surveys.

As discussed in Chapter 1, it’s noteworthy that the percentage of consumers who learned of BBB AUTO LINE from warranty manuals dropped substantially in 2020 and 2021.

Among the consumers who cited “other website,” four specifically mentioned Facebook and one mentioned an online car forum.

## B. PROCESS

**Table III--5: Aggregate “process” responses**

	<b>BBB AUTO LINE stats (A1)</b>	<b>Same, excluding att’y cases (A2)</b>	<b>Fully adjusted<sup>391</sup> (A3)</b>	<b>Survey (B1)</b>	<b>Survey adjusted for response rate (see below) (B2)</b>
<b>TOTAL</b>	8700	7290	<b>6544</b>	402	
	100.0%	100.0%	<b>100.0%</b>	100.0%	
<b>Mediation</b>	2781	2598	<b>2201</b>	151	
	32.0%	35.6%	<b>33.6%</b>	37.6%	<b>33.5%</b>
<b>Arbitration</b>	1570	776	<b>763</b>	60	
	18.0%	10.6%	<b>11.5%</b>	14.9%	<b>12.6%</b>
<b>Withdrawn</b>	656	558	<b>517</b>	30	
	7.5%	7.7%	<b>7.9%</b>	7.5%	<b>7.5%</b>
<b>Ineligible</b>	3693	3358	<b>3063</b>	143	
	42.4%	46.1%	<b>46.8%</b>	35.6%	<b>46.3%</b>
<b>Other</b>				18	
				4.5%	

**Table III--6: Multi-year comparisons (A1 Figures)**

	<b>2021</b>	<b>2020</b>	<b>2019</b>	<b>2018</b>
<b>TOTAL</b>	8700	9044	10351	9318
	100.0%	100.0%	100.0%	100.0%
<b>Mediation</b>	2781	2416	2959	2773
	32.0%	26.7%	28.6%	29.8%
<b>Arbitration</b>	1570	1878	1775	1515
	18.0%	20.8%	17.2%	16.3%
<b>Withdrawn</b>	656	820	870	766
	7.5%	9.1%	8.4%	8.2%
<b>Ineligible</b>	3693	3930	4747	4,264
	42.4%	46.5%	45.9%	45.8%

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<sup>391</sup> See below; also Section IIA of this Chapter.

**Table III-7: Comparisons of individual “process” responses**

	Mediated	Arbitrated	Withdrawn	Ineligible	Other
<b>TOTAL</b>	151	60	30	143	18
	100.0%	100.0%	100.0%	100.0%	100.0%
<b>Mediation (Imported)</b>	149	1	1	1	7
	98.7%	1.7%	3.3%	0.7%	38.9%
<b>Arbitration (Imported)</b>	-	58	-	-	-
	-	96.7%	-	-	-
<b>Withdrawn (Imported)</b>	-	-	29	-	4
	-	-	96.7%	-	22.2%
<b>Ineligible (Imported)</b>	2	1	-	142	7
	1.3%	1.7%	-	99.3%	38.9%

**Concordance: 378/402 = 94.0%**

### 1. Micro analysis

As a general note, the auditor focuses systematically in Chapter 2 on substantive issues raised by his file examination, while the discussion here focuses primarily on record keeping. However, it’s not possible to draw a clean line, so some substantive problems are touched on here, and some specific cases are analyzed here as well.

Table III-7, the core of the micro analysis, reports a concordance of 94.0%, a rather unimpressive figure for so clear-cut a metric. However, most of the discordances fall into categories noted in Section I.A.1 of this chapter, and, on examination, don’t appear to show problems with either the process or BBB AUTO LINE’s record keeping.

In the auditor’s view, there was one case among the process discrepancies where BBB AUTO LINE’s records were probably wrong. In that case, BBB AUTO LINE sent the parties a settlement letter, but the letter didn’t disclose that the consumer would have to sign a waiver. When the consumer learned about the undisclosed term, he balked, and insisted that there wasn’t a settlement because he hadn’t agreed to the terms. BBB AUTO LINE, however, reported the case as a settlement in its records.<sup>392</sup>

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<sup>392</sup> This case also comes up in some other contexts, it was previously discussed in chapter 2, and the auditor discusses subsequent events here. The consumer had been offered a repurchase, but wouldn’t accept it because of negative equity. He also didn’t want a cash payment that the manufacturer offered in lieu of a repurchase, because the manufacturer insisted that he sign a waiver if he kept a car that the manufacturer was willing to repurchase. He later indicated that he would hold off on resuming the claim, an action that he interpreted as a withdrawal (since he didn’t accept

As to the other discordances, and using the categories set out in Section I.A of this chapter:

- 15 were cases where the consumer responded “other” and then gave an explanation, usually providing more detail than BBB AUTO LINE’s one-word description, that was consistent with BBB AUTO LINE’s records.<sup>393</sup> (Category a.)
- 4 were straddle cases. (Category b.)
- 1 appears to be a settlement outside the program. (Category c.)
- 1 appears to be a consumer dissatisfied with the performance of a repair remedy, in a situation where the manufacturer inspected the vehicle and concluded that there was no warrantable repair, and the consumer reported the case as ineligible. (Category e.)
- 1 consumer, seemingly treating the whole BBB AUTO LINE process as “arbitration,” reported an arbitrated denial when BBB AUTO LINE reported that the case was ineligible as a claim against the dealer. (Category g.)
- 1 was a post-arbitration settlement. (Category i.)

## 2. Macro analysis

*The “A” columns of Table III-5.* Column A1 shows aggregate “process” statistics, as reported by BBB AUTO LINE, for all cases closed in the audit year. These provide important information about the full range of cases filed in the program; for example, they highlight that BBB AUTO LINE closed more cases through mediation than arbitration (and Table III-6 shows that this is a recurring pattern).

Column A2 reports similar figures, but only for consumers who appeared without counsel. These constitute about 83.8% of the cases in column A1.

Column A3, based on TechnoMetrica’s actual sampling frame, omits *both* cases where the consumer had counsel and, where the consumer filed multiple complaints during the audit year, it omits all but the last. Both omissions are needed to avoid *coverage errors*, essentially

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that there was a settlement in the first place). BBB AUTO LINE, having reported a settlement, left the “mediation” categorization stand while reporting the consumer didn’t allow performance.

<sup>393</sup> In one matter, for example, the consumer’s first case was closed for failure to return a signed consumer complaint form. A second case was then ineligible. The consumer said that BBB AUTO LINE closed the case.

In another case, the consumer told BBB AUTO LINE on day 28 after filing that she had sold the car to the dealer. BBB AUTO LINE reported this as ineligible, because the consumer no longer owned the car; the consumer reported it as other and described the settlement.

“comparing apples and oranges.”<sup>394</sup> This column has the appropriate figures to compare to the survey results.

*The “B” columns.* On the process question, the auditor also adjusted the survey results to account for *non-response error*.<sup>395</sup> Here, the B columns report those results, with column B1 reporting the actual results and column B2 adjusting them with a weighting factor. As in prior audits, TechnoMetrica this year reported the responses rate for consumers who used different processes. The differences in response rates based on the process used (as reported by BBB AUTO LINE) were notable, although the variation was less than during past years:

- 16% for those whose cases were resolved through mediation;
- 17% for those who used arbitration;
- 11% for those deemed ineligible to participate in BBB AUTO LINE; and
- 14% for consumers who withdrew their complaints.

Thus, consumers who used arbitration were over 54% more likely to complete the survey than those whose complaints were found ineligible.<sup>396</sup> Column B2 thus weights the responses in each category to simulate a scenario where all categories of consumers responded at the same rate.<sup>397</sup>

So, for purposes of Table III-5, the relevant comparison is between Columns A3 and B2. Looking at those columns, the differences are within the margin of error (+/- 4.7%). In other words, for cases covered by the survey, the adjusted survey aggregate closely reflects the BBB AUTO LINE’s calculated aggregate.

\* \* \*

At this point, it’s necessary to add back in the MCSV omissions to get back to columns

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<sup>394</sup> See Section II.B. of this chapter. The broad question posed by coverage errors is whether the population that’s covered by the BBB AUTO LINE statistics, but not by the survey, has a different profile than the population covered by both. On the process metric, it clearly does. For example, most of the “earlier” cases omitted by the MCSV screen had been resolved by mediation, and none were resolved by arbitration.

<sup>395</sup> See Section II.F of this chapter.

<sup>396</sup> This comes from dividing 17% by 11%.

<sup>397</sup> During some past audits, this weighting brought larger errors down, and within the margin of error. This year, it actually increased several of the differences between the survey results and calculated aggregates.

A2, and then to add back in the “attorney case” omissions to get back to column A1. For these, the auditor relies on his systematic examination of 25 attorney case files, as well as his review of the omitted MCSV cases during his review of case files.<sup>398</sup> In neither did he find systematic problems with the BBB AUTO LINE’s records.

Finally, Table III-6’s multi-year comparisons show relatively consistent results over the last four years.

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<sup>398</sup> When the auditor was reviewing targeted case files, as described above, he also examined earlier cases in the series.



## C. RELIEF

The relief questions were posed to consumers who identified their cases as either arbitrated or mediated.<sup>399</sup> As with the process questions, consumers were told how BBB AUTO LINE reported the relief they received, and they were invited to confirm or correct the records.<sup>400</sup>

### 1. Combined Mediated and Arbitrated Cases

The auditor starts with the combined results for mediated and arbitrated cases. These, in his view, present the most significant insights into the program as a whole – and point to advantages in a program that, unless the consumer rejects it, typically starts with mediation. From the consumer’s perspective, as noted above, a repurchase obtained through mediation is no less valuable than one obtained through arbitration – and far more consumers got a repurchase or replacement through mediation (1363) than through arbitration (497).

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<sup>399</sup> Thus, the questions aren’t posed to consumers for whom BBB AUTO LINE reports an arbitration or mediation unless the consumer agrees, while it does report an arbitration or mediation if the consumer identifies the case as such, even if BBB AUTO LINE’s records show no sign of such a process.

Also, as noted in the process discussion, some consumers reported “other” when asked to confirm BBB AUTO LINE’s records on process, and then gave details consistent with BBB AUTO LINE’s response. Unfortunately, this took consumers who used arbitration or mediation off the track to get questions relating to those processes.

<sup>400</sup> There were small variations in wording depending on whether the consumer had identified the case as mediated or arbitrated.

**Table III-8: Remedies in mediated and arbitrated cases**

	<b>BBB AUTO LINE stats (A1)</b>	<b>Same, excluding attorney cases (A2)</b>	<b>Stats from “fully adjusted” spread sheet (A3)</b>	<b>Survey (B)</b>
<b>BASE: Med plus Arb</b>	4351	3374	<b>2964</b>	<b>211</b>
	100.0%	100.0%	<b>100.0%</b>	<b>100.0%</b>
<b>Replacement/ Repurchase</b>	1860	1487	<b>1468</b>	<b>120</b>
	42.7%	44.1%	<b>49.5%</b>	<b>56.9%</b>
<b>Repair</b>	1120	1084	<b>722</b>	<b>48</b>
	25.7%	32.1%	<b>24.4%</b>	<b>22.7%</b>
<b>Other</b>	463	424	<b>403</b>	<b>22</b>
	10.6%	12.6%	<b>13.6%</b>	<b>10.4%</b>
<b>No award</b>	908	379	<b>371</b>	<b>21</b>
	20.9%	11.2%	<b>12.5%</b>	<b>10.0%</b>

Starting with the macro analysis in Table III-8, the key comparison is between columns A3 and B, both of which exclude consumers who used attorneys and exclude, for MCSVs, all but the last complaint filed during the audit year. The margin of error for questions posed to all 402 consumers who completed the survey in the national sample was +/- 4.7%, and it’s higher for this question, which was posed only to 189 consumers who used arbitration or mediation. The disparities between columns A3 and B are well within that margin .<sup>401</sup>

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

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<sup>401</sup> In a straightforward case where 189 consumers (the number of surveyed consumers who used mediation or arbitration) were selected from a sample of 4294, the margin of error would be 7.0%.

**Table III–9: Multi-year comparisons (A1 Figures)**

	2021	2020	2019	2018
<b>BASE: med/arb cases</b>	4351	4294	4734	4288
	100.0%	100.0%	100.0%	100.0%
<b>Replacement/Repurchase</b>	1860	1664	1804	1779
	42.7%	38.8%	38.1%	41.5%
<b>Repair</b>	1120	1183	1563	1253
	25.7%	27.6%	33.0%	29.2%
<b>Other</b>	463	472	414	396
	10.6%	11.0%	8.8%	9.2%
<b>No Award</b>	908	975	953	860
	20.9%	22.7%	20.1%	21.0%

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

**Table III–10: Consumer agreement with BBB AUTO LINE records**

	Replacement/Repurchase	Repair	Other	No Award
<b>BASE = med/arb</b>	120	48	22	21
	100.0%	100.0%	100.0%	100.0%
<b>Replacement/Repurchase (Imported)</b>	117	1	1	-
	97.5%	2.1%	4.5%	-
<b>Repair (Imported)</b>	1	44	1	-
	0.8%	91.7%	4.5%	-
<b>Other (Imported)</b>	1	1	20	-
	0.8%	2.1%	90.9%	-
<b>No Award (Imported)</b>	-	1	-	20
	-	2.1%	-	95.2%
<b>No entry (Imported)<sup>402</sup></b>	1	1	-	1
	0.8%	2.1%	-	4.8%

**Concordance: 201/211 (95.3%)**

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<sup>402</sup> These are cases that BBB AUTO LINE reported as ineligible or withdrawn on process. As such, they didn't list a remedy.

There were 10 cases where the consumer reported a remedy and BBB AUTO LINE's record didn't reflect that remedy.

In one case, the consumer disagreed with BBB AUTO LINE's characterization of remedy, but responded "other" and gave an answer consistent with BBB AUTO LINE's records. (Category a.) Three were straddle cases, and one was straddle-like.<sup>403</sup> (Category b.) Three others involved branching issues. (Category h.)<sup>404</sup>

Among the other three, in one case the consumer reported a repair remedy and BBB AUTO LINE a repurchase; the consumer clarified to the auditor that the consumer decided to accept a repair because the repurchase figures, taking account of usage fees and other factors, didn't work out. In another, BBB AUTO LINE reported an arbitrated denial, but the manufacturer agreed to honor an earlier repair offer despite its success in arbitration. The third apparently involves developments outside the program; the files clearly show that the consumer accepted a goodwill cash offer and that there were no subsequent developments for the vehicle; the consumer reported a repurchase.

Thus, all of the discordances appear to be reasonably explicable.

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<sup>403</sup> In the straddle-like case, the consumer first got a repair remedy and then a certificate and extended service plan. Both were in the same year. BBB AUTO LINE reported one; the consumer reported the other.

<sup>404</sup> These were cases where the apparent divergence in remedy actually resulted from an earlier divergence on process. In one case, for example, BBB AUTO LINE denied the claim as ineligible, but the consumer reported an arbitration and was thus asked about the remedy – which the consumer, consistent with BBB AUTO LINE's broad conclusion that the consumer didn't get relief, said was a denial.

## 2. Mediated Cases Only

**Table III--11: Remedies in mediated cases**

	<b>BBB AUTO LINE stats (A1)</b>	<b>Same, excluding attorney cases (A2)</b>	<b>Stats from “fully adjusted” spread sheet (A3)</b>	<b>Survey (B)</b>
<b>BASE: med. cases</b>	2781	2598	<b>2201</b>	151
	100.0%	100.0%	<b>100.0%</b>	100.0%
<b>Replacement/ Repurchase</b>	1363	1217	<b>1200</b>	93
	49.0%	46.8%	<b>54.5%</b>	61.6%
<b>Repair</b>	988	980	<b>620</b>	38
	35.5%	37.7%	<b>28.2%</b>	25.2%
<b>Other</b>	430	401	<b>381</b>	20
	15.5%	15.4%	<b>17.3%</b>	13.2%

With a margin of error of +/-4.7% for questions posed to all 402 consumers in the national sample, and a substantially higher margin for responses from 120 consumers to a follow-up question,<sup>405</sup> the figures in columns A3 and B are well within the margin of error.

**Table III-12: Multi-year comparisons (A1 figures)**

	<b>2021</b>	<b>2020</b>	<b>2019</b>	<b>2018</b>
<b>BASE: med. cases</b>	2781	2416	2959	2773
	100.0%	100.0%	100.0%	100.0%
<b>Replacement/ Repurchase</b>	1363	991	1166	1311
	49.0%	41.0%	39.4%	47.3%
<b>Repair</b>	988	992	1399	1081
	35.5%	41.1%	47.2%	39.0%
<b>Other</b>	430	433	394	381
	15.5%	17.9%	13.3%	13.7%

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

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<sup>405</sup> If this were a straightforward case where 120 consumers (the number surveyed) were selected from a sample of 1870, the margin of error would be 8.7%.

**Table III-13: Consumer agreement with BBB AUTO LINE records**

	<b>Replacement Repurchase</b>	<b>Repair</b>	<b>Other</b>
<b>BASE: med. cases</b>	93	38	20
	100.0%	100.0%	100.0%
<b>Replacement/Repurchase (Imported)</b>	91	1	-
	97.8%	2.6%	-
<b>Repair (Imported)</b>	-	35	-
	-	92.1%	-
<b>Other (Imported)</b>	1	1	20
	1.1%	2.6%	100.0%
<b>No entry (Imported)<sup>406</sup></b>	1	1	-
	1.1%	2.6%	-

**Concordance: 146/151 = 96.7%**

**Discordance: 5/151 = 3.3%**

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

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<sup>406</sup> These are cases that BBB AUTO LINE reported as ineligible or withdrawn on process. As such, they didn't list a remedy.

### 3. Arbitrated Cases Only

**Table III–14: Remedies in arbitrated cases**

	<b>BBB AUTO LINE stats (A1)</b>	<b>Same, excluding att’y cases (A2)</b>	<b>Stats from fully adjusted spread sheet (A3)</b>	<b>Survey (B)</b>
<b>BASE: ARBs</b>	1570	776	<b>763</b>	60
	100.0%	100.0%	<b>100.0%</b>	100.0%
<b>Replacement /Repurchase</b>	497	270	<b>268</b>	27
	31.7%	34.8%	<b>35.1%</b>	45.0%
<b>Repair</b>	132	104	<b>102</b>	10
	8.4%	13.4%	<b>13.3%</b>	16.7%
<b>Other</b>	33	23	<b>22</b>	2
	2.1%	3.0%	<b>2.9%</b>	3.3%
<b>No award</b>	908	379	<b>371</b>	21
	57.8%	48.8%	<b>48.6%</b>	35.0%

The margin of error for this question, analyzing responses from only 60 consumers who were drawn from a population that included 763 consumers who used arbitration, is far higher than the 4.3% figure for the populations as a whole. Further, while the nature of the population here suggests a margin of error on the order of 12.2% ,<sup>407</sup> one disparity between column A3 and column B – the percentage of decisions resulting in no award – falls somewhat outside that range. This is a curious result, particularly because it suggests that BBB AUTO LINE is *understating* the success consumers achieve through the program. Nonetheless, the auditor doesn’t find an occasional set of numbers outside the margin of error a problem; indeed, the “margin of error” has a 95% “confidence interval,” suggesting that occasional results will fall outside the margin.

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<sup>407</sup> If this were a straightforward case where 60 consumers were selected from a sample of 763, the margin of error would be 12.2%.

**Table III–15: Multi-year comparisons (A1 figures)**

	<b>2021</b>	<b>2020</b>	<b>2019</b>	<b>2018</b>
<b>BASE: ARB</b>	1570	1878	1775	1,515
	100.0%	100.0%	100.0%	100.0%
<b>Replacement/ Repurchase</b>	497	673	638	468
	31.7%	35.8%	35.9%	30.9%
<b>Repair</b>	132	191	164	172
	8.4%	10.2%	9.2%	11.3%
<b>Other</b>	33	39	20	15
	2.1%	2.1%	1.1%	1.0%
<b>No Award</b>	908	975	953	860
	57.8%	51.9%	53.7%	56.7%

The multi-year comparisons show that, according to BBB AUTO LINE figures, consumers in 2021 didn’t do quite as well in arbitration as they had in 2019 and 2020, although, focusing specifically on repurchase/repair awards and “no award” decisions, the numbers were quite similar to those from 2018.

Further, consistent with his earlier remarks, the auditor highlights that these tables can’t be viewed in a vacuum, but should be examined together with Tables III-8 and III-9 (arbitrated plus mediated cases). Because BBB AUTO LINE has a vibrant mediation program, the cases that go to arbitration may well be those that pose the most difficult fact situations to resolve. So, for example, the auditor considers the 57.8% “no award” rate for all consumers in arbitration far less telling than the fact that these cases constitute only 20.9% of all consumers with eligible, non-withdrawn complaints.<sup>408</sup>

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<sup>408</sup> If the 57.8% “no award” figure in Table III-15 overstates consumer “failure,” though, the 20.9% figure in a sense understates it, to the extent that it includes consumers who got relief but weren’t satisfied with its execution.



**Table III–16: Consumer agreement with BBB AUTO LINE records**

	<b>Replacement/ Repurchase</b>	<b>Repair</b>	<b>Other</b>	<b>No Award</b>
<b>BASE: ARB</b>	27	10	2	21
	100.0%	100.0%	100.0%	100.0%
<b>Replacement/Repurchase (Imported)</b>	26	-	1	-
	96.3%	-	50.0%	-
<b>Repair (Imported)</b>	1	9	1	-
	3.7%	90.0%	50.0%	-
<b>Other (Imported)</b>	-	-	-	-
	-	-	-	-
<b>No Award (Imported)</b>	-	1	-	20
	-	10.0%	-	95.2%
<b>No entry (Imported)<sup>409</sup></b>	-	-	-	1
	-	-	-	4.8%

**Concordance: 55/60 = 91.7%**

The discrepancies were among those discussed in connection with Table III-10.

**Table III–17: Did you accept the arbitrator's decision by returning a form that BBB AUTO LINE provided to you?<sup>410</sup>**

	<b>2021</b>	<b>2020</b>	<b>2019</b>	<b>2018</b>
<b>BASE: ARB, with award, not sure excluded</b>	38	44	43	26
	100.0%	100.0%	100.0%	100.0%
<b>Yes</b>	34	42	38	25
	89.5%	95.5%	88.4%	96.2%

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<sup>409</sup> These are cases that BBB AUTO LINE reported as ineligible or withdrawn on process. As such, they didn't list a remedy.

<sup>410</sup> This question was reworded from prior versions.

**Table III–18: Acceptance of different types of remedies**

	Total	Replacement/ Repurchase	Repair	Other
<b>BASE: Same as Table III-17</b>	38	26	10	2
	100.0%	100.0%	100.0%	100.0%
<b>Yes</b>	34	24	8	2
	89.5%	92.3%	80.0%	100.0%

**Table III–19: Consumer agreement with BBB AUTO LINE records**

	Survey Responses	
	Accepted	Rejected
<b>BASE: ARB, w/award, “not sure” excluded</b>	34	4
	100.0%	100.0%
<b>Accepted (Imported)</b>	29	2
	85.3%	50.0%
<b>Rejected (Imported)</b>	3	2
	8.8%	50.0%
<b>No entry (Generally, not recorded by BBB AUTO LINE as an ARB case)</b>	2	-
	34	4

**Concordance: 31/38 = 81.6%**

The seven discordances reported here were an unusually high number but, in the auditor’s view, only one clearly points to a problem with the handling and the care by BBB AUTO LINE staff, although the problem didn’t appear to have any adverse consequences.

In that case, BBB AUTO LINE’s files show that a repair decision, with a 30-day return date for the accept/reject decision, was sent to the consumer three days after the hearing. According to the consumer, though, she didn’t receive the decision and had to call BBB AUTO LINE about it. (There’s no record of the call in the case notes.) In any event, she apparently did get the decision and returned the form, but the returned form wasn’t dated and it wasn’t entered into the system until eight days after the return date – by which date staff had already told the manufacturer that the consumer hadn’t accepted. Assuming the accept/reject form was belatedly received, there’s no sign that staff did anything, such as possibly facilitating a waiver of the return deadline by the manufacturer. Nonetheless, the consumer reported timely compliance. .

In another case where BBB AUTO LINE reported a rejection and the consumer an acceptance, the consumer was sent the decision which provided a 14 day return date for receipt of the returned form by BBB AUTO LINE, the letter also advised the consumer to call and confirm its receipt. The number of days was actually misaligned on the document, but the case notes indicated that the DRS called the consumer two days later and told the consumer (who wasn't sure about whether to accept the decision) that he had to decide before the 14 days expired. The consumer apparently believed that he had accepted the decision, but BBB AUTO LINE's records didn't show its receipt. The auditor attempted to contact the consumer for clarification, but her contact number no longer worked.

In the final such case, the manufacturer had offered a repurchase before arbitration. The consumer also got a repurchase award in arbitration, but failed to accept it by the stated date. At the consumer's request, BBB AUTO LINE sought a waiver of the deadline, but the manufacturer reported that the consumer had already accepted the prior offer outside BBB AUTO LINE. The situation was confusing, but the consumer also reported timely compliance with the "accepted" decision when asked about compliance in the survey.

As to the cases where consumers reported that they hadn't accepted a decision but BBB AUTO LINE said they had, one was a case where the consumer had used a BBB AUTO LINE procedure for seeking clarification of a decision from the arbitrator; there was apparently some confusion as to whether there had been an acceptance, and the consumer corrected his response in a call with the auditor. Another case likely reflected an imprecision in the survey instrument; the consumer signed a consent settlement at the hearing, and then replied "no" when asked a question that didn't account for consent settlements. ("And did you accept the arbitrator's decision, by returning a form that BBB AUTO LINE provided to you?")<sup>411</sup>

Finally, one of the remaining two cases was a straddle case, with arbitration in 2022 but a repair settlement in 2021. Since BBB AUTO LINE's records reflected the mediation, BBB AUTO LINE didn't have an "accept/reject" entry. And the other case involved an unusual fact situation; the consumers hadn't accepted or rejected the decision, but had sought a modification on the basis (in part) that he had advertently supplied incomplete information. The matter was still in flux at the time of the survey, so BBB AUTO LINE did not have an "accept/reject" entry, while the consumer reported an acceptance.

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<sup>411</sup> The auditor has noted to TechnoMetrica that the survey question will need to be modified going forward with this contingency in mind.

## C1. WITHDRAWALS

**Table III–20: Reasons for withdrawal**

	2021	2020	2019	2018
<b>BASE: withdrawn cases, “not sure” excluded</b>	30	25	21	24
	100.0%	100.0%	100.0%	100.0%
<b>You settled the matter or your car was fixed</b>	18	12	14	10
	60.0%	48.0%	66.7%	41.7%
<b>Some other reason</b>	12	13	7	14
	40.0%	52.05	33.3%	58.3%

The auditor didn’t examine cases where the consumer settled the matter (outside the program) or the car was fixed. He did, however, examine the other twelve cases.<sup>412</sup> Some cases had relatively long gaps between staff’s contacts with the consumer, but in two of them, the consumer had filed a final repair attempt notice and the case was kept open while awaiting the result. However, in two cases, delays that don’t seem explicable may have discouraged the consumer from using the process.

- In one, the consumer first contacted staff on April 27 and she returned a signed consumer complaint form three days later, opening the case. She hadn’t afforded the manufacturer an opportunity for a final repair attempt, though; and, on May 13, the parties reached a settlement for a repair remedy, with a 30-day compliance period, that gave the manufacturer its final repair attempt. She contacted BBB AUTO LINE at the end of the 30-day period, on June 14, to reopen the case. BBB AUTO LINE didn’t respond until June 28, though. Then, although it set a hearing date on July 1, the date wasn’t until July 21. On July 15, the consumer withdrew her complaint; she told TechnoMetrica that she had hired an attorney.
- In the second, the consumer fist contacted BBB AUTO LINE on December 29, but didn’t return a signed consumer complaint form (and thus open the case) until January 19 Staff asked for a missing document (to support an element of showing jurisdiction). After that, there’s no record of contact between BBB AUTO LINE and the consumer until February 8, when she informed staff that she’d hired an attorney.

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<sup>412</sup> These include cases where the consumer reported that the car was sold. The auditor examines those on a case-by-case basis, because the consumer’s decision to sell the car might have reflected impatience or dissatisfaction with the BBB AUTO LINE process.

The third problematic case was discussed in note 392 and the accompanying text.

The other cases seem less problematic.<sup>413</sup>

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<sup>413</sup> One case, for example, was withdrawn on day 3; another on day 13 (after the consumer got a request for repair orders on day 2) and a third was withdrawn on day 16, when staff was ready to arrange a hearing.

## D. COMPLIANCE

The discussion below complements the discussion of compliance (which includes a series of recommendations) in Section III.I of Chapter 2. That discussion also includes the auditor’s recommendations.

**Table III–21: Compliance<sup>414</sup>**

	Mediated		Arbitrated		Med + Arb	
	Survey	BBB AUTO LINE, all cases	Survey	BBB AUTO LINE, all cases	Survey	BBB AUTO LINE, all cases
<b>BASE: MED cases and ARB cases with an award that consumer accepted. “Not sure” excluded from survey figures</b>	145	2777	31	440	176	3217
	100.0%	100.0%	100.0%	100.0%	100.0 %	100.0%
<b>Carried out remedy within the time specified, including any extension to which you agreed</b>	104	2456	20	388	124	2844
	71.7%	88.4%	64.5%	88.2%	70.5%	88.4%
<b>Carried out remedy after the time specified, including any extension to which you agreed</b>	29	2	3	5	32	7
	20.0%	0.1%	9.7%	1.2%	18.2%	0.2%
<b>Hasn’t yet carried out remedy, time to do so has expired</b>	6	187	7	25	13	212
	4.1%	6.7%	22.6%	5.6%	7.4%	6.6%
<b>(Customer did not allow performance)<sup>415</sup></b>	(2)	(123)	-	(16)	(2)	(139)
	(1.4%)	4.4%		(3.6%)	(1.1%)	(4.3%)
<b>Hasn’t yet carried out remedy, time to do so hasn’t expired<sup>416</sup></b>	6	132	1	22	7	154
	4.1%	4.8%	3.2%	5.0%	4.0%	4.8%

<sup>414</sup> As noted previously, “compliance” doesn’t necessarily ensure consumer satisfaction. Thus, a manufacturer who agrees to inspect a car and repair any warranted defects that it finds “complies” if it does the inspection and finds no warranted defects, even if the consumer doesn’t accept that result and pursues the matter (perhaps successfully, perhaps not) in BBB AUTO LINE.

<sup>415</sup> This might happen, for example, if a consumer decides not to go through with the transaction because the consumer is unable to get financing for the new car.

<sup>416</sup> The consumer responses were reported in early March; BBB AUTO LINE’s statistics reflect developments though mid to late May.

To begin, Table II-21 reports mediated figures alone, arbitrated figures alone, and combined figures. While the process for addressing compliance problems is different in arbitration (a reconvening) and mediation (opening a 1R case), the nature of the underlying compliance question is the same; there's no difference in carrying out a repair remedy in a mediated case or an arbitrated case. Thus, the auditor focuses on the compliance figures for mediated and arbitrated cases combined.

Focusing on these combined figures, then, consumer's perceptions (as reported in the survey) suggest that the rate of non-compliance and delayed compliance is higher than BBB AUTO LINE's figures report. In large part, though not entirely, this may represent different perceptions of compliance and timely compliance. There are several situations where a consumer might see non-compliance even though BBB AUTO LINE doesn't report it that way.

- If a manufacturer agrees to inspect a vehicle and correct any warranted problems, and does the inspection and reports that it found nothing, BBB AUTO LINE reports the matter as “manufacturer complied, consumer not satisfied.”<sup>417</sup> (In most cases, the consumer will pursue further relief with BBB AUTO LINE.) The consumer might report non-compliance.
- If, before the end of the compliance period on a replacement remedy, the consumer agrees to accept a repurchase because the manufacturer couldn't obtain the desired car, there's technically no non-compliance, because the deadline for compliance didn't pass with the matter unresolved.
- BBB AUTO LINE often bases findings of timely compliance on consumers' failure to return a performance verification letter, and, while this generally reflects actual timely compliance, it doesn't always do so (and, in Chapter 2, Section II.I, the auditor offered some suggestions to address this issue).<sup>419</sup>
- Further, consumer reports of *delayed* compliance may not fully account for properly documented extensions to which the consumer agreed, although the wording of the question is designed to address this. On the other hand, BBB AUTO LINE's figures on timeliness are sometimes based on “extensions” that weren't properly documented to reflect the consumer's assent. If the agreement of both parties to an “extension” isn't documented, preferably in a revised settlement agreement, there is no extension.<sup>420</sup>

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<sup>417</sup> This is shown in internal coding; not all of the detail in the internal coding is captured in BBB AUTO LINE's compliance report.

<sup>419</sup> See Chapter 2, Section III.I.

<sup>420</sup> An extension of the time for compliance should be documented by a letter sent to both parties

In any event, the auditor is inclined to think that BBB AUTO LINE's figures, while somewhat overstating the extent of timely compliance, also somewhat more accurately reflect manufacturers' timely compliance, delayed compliance, and non-compliance (as defined by BBB AUTO LINE) than do the survey results. But BBB AUTO LINE's figures themselves understate the rates of non-compliance and delayed compliance. As noted in Chapter 2, Section III.I, most reports of compliance are based on unreturned performance verification letters, and, while the prior analysis suggested that there was in fact compliance in 98% of those, there was another 2% in which consumers perceived non-compliance (although their perceptions wouldn't necessarily line up with BBB AUTO LINE's reporting protocols). Further, when BBB AUTO LINE updated their compliance statistics in May 2022, it reported that the time for compliance hadn't yet passed in 4.7% of cases that closed no later than December 31, 2021; some of these will likely provide more non-compliances and delayed compliances.<sup>421</sup> Finally, to the extent that there's no documentation of the consumer's consent to a requested extension – preferably in the form of a modified settlement agreement, the auditor doesn't believe that the extension exists, so a report of timely compliance based on the “extension” is erroneous.

On balance, the rates of non-compliance and delayed compliance likely fall somewhere between that reported by consumers and that reported by BBB AUTO LINE, and, in the auditor's view, it's likely to be closer to BBB AUTO LINE's figures.

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describing the extension and inviting a response if the letter misstates their intent. This could be a revised settlement agreement in a case that was originally settled by the parties, or a modification to the terms of the arbitration decision to which the parties agree.

<sup>421</sup> This would include cases where the consumer granted repeated extensions to get the remedy that she wanted. However, it could also include other cases where the compliance clock didn't start running until later, such as a case that closed with an interim repair remedy in late 2021 but reconvened in February 2022.



**Table III-22: Compliance as reported by BBB AUTO LINE**

	<b>2021</b>	<b>2020</b>	<b>2019</b>	<b>2018</b>
<b>BASE: MED case and ARB cases with an award that the consumer accepted. “Not sure” responses excluded from the survey figures.</b>	3217	3066	3541	3191
	100.0%	100.0%	100%	100.0%
<b>Carried out the remedy within the time specified, including any extension to which you agreed</b>	2844	2871	3383	3076
	88.4%	93.6%	95.5%	96.4%
<b>Carried out the remedy after the time specified, including any extension to which you agreed</b>	7	16	5	3
	0.2%	0.5%	0.1%	0.1%
<b>Has not yet carried out the remedy and the time to do so has expired</b>	212	159	96	75
	6.6%	5.2%	2.7%	2.4%
<b>(Customer did not allow performance)</b>	(139)	(71)	(54)	(43)
	(4.3%)	2.3%	(1.5%)	(1.3%)
<b>Has not yet carried out the remedy, but the time to do so has not yet expired</b>	154	9		35
	4.8%	0.4%		1.1%
<b>Time for compliance has expired, performance not verified</b>	0	11	57	2
	0.0%	0.4%	1.6%	0.1%

**Table III–23: Compliance as reported by surveyed consumers**

	2021	2020	2019	2018
<b>BASE: MED case <i>and</i> ARB cases with an award that the consumer accepted. “Not sure” responses excluded from the survey figures.</b>	176	159	147	161
	100.0%	100%	100%	100.0%
<b>Carried out the remedy within the time specified, including any extension to which you agreed</b>	124	108	113	126
	70.5%	67.9%	76.9%	78.3%
<b>Carried out the remedy after the time specified, including any extension to which<sup>422</sup> you agreed</b>	32	28	18	25
	18.2%	17.6%	12.2%	15.5%
<b>Has not yet carried out the remedy and the time to do so has expired. (See note below).</b>	7	14	12	4
	4.0%	8.8%	8.2%	2.5%
<b>Has not yet carried out the remedy, but the time to do so has not yet expired</b>	13	9	4	6
	7.4%	5.7%	2.8%	3.7%

As noted above, the auditor has doubts about compliance problems – non-compliance, delayed compliance, and failure by BBB AUTO LINE to monitor compliance. The auditor’s analysis of these cases supports his concerns. The discussion that follows examines consumers’ reports of problems, and finds that, in many cases, the files didn’t show the problems the consumers reported. However, the auditor also had a second goal in reviewing these cases, to identify where problems exist, whether or not the consumer properly characterized the problem (or at least characterized it the same way as did BBB AUTO LINE).

### **1. Consumers Reporting Non-Compliance**

The auditor looked first at the seven cases where consumers reported non-compliance, including four with repurchase/replacement remedies and three with repair remedies.

- In a replacement case involving supply chain problems, BBB AUTO LINE’s records agree with the consumer’s report of non-compliance. After the consumer reported non-compliance with a replacement remedy, BBB AUTO LINE opened a 1R case at the consumer’s request. The second case also included a replacement remedy, and the consumer later reported compliance.<sup>423</sup>

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<sup>422</sup> Compounding the problem, staff did contact the consumer months later, during the course of this audit, and the consumer indicated that he still wanted to follow through. Staff didn’t respond to that request, though, for another two months.

<sup>423</sup> The auditor left two unreturned messages for the consumer to clarify what led to the second replacement settlement after non-compliance with the first.

- Another replacement case, which provided for compliance within 60 days, involves some confusing facts. About seven weeks into the process, the manufacturer reported to staff that the consumer hadn't yet placed an order for a replacement vehicle. Then, towards the end of the compliance period, the consumer accepted a repurchase settlement in place of the original replacement settlement. She told TechnoMetrica in March that there was no compliance.<sup>424</sup> To the extent there was a compliance problem here (and the indication that the consumer hadn't placed a new vehicle order clouds the matter), the second settlement essentially hid any problem as to compliance with the first; the auditor has previously identified this as a situation where statistics, even if accurately kept, don't capture the full situation.
- In another replacement case, BBB AUTO LINE closed the case on the basis of an unreturned performance verification letter, albeit a performance letter sent a month late.
- In the fourth case, BBB AUTO LINE's files didn't show that the consumer had accepted the award in the first place, so there was no compliance issue.<sup>425</sup>

The other three cases involve repair remedies, and the files show that, in one, the consumer reported that she had cancelled her appointment for a final repair attempt and wasn't pursuing her case "at this time"; another involved a consumer who was dissatisfied with the execution of a repair remedy (reflecting the distinction BBB AUTO LINE draws between manufacturer compliance and consumer satisfaction); in the last, BBB AUTO LINE relied on an unreturned performance verification letter. So these cases do not involve problems with regard to compliance.<sup>426</sup>

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<sup>424</sup> In May, she didn't return a performance verification letter to BBB AUTO LINE for the repurchase settlement, so staff assumed timely compliance. The auditor left two unreturned messages for the consumer to find out how the case finally resolved.

<sup>425</sup> During a discussion with staff soon after the decision, the consumer reported that she was exploring an alternative solution that might work better for her financially. According to the notes, staff emphasized the importance, if she decided to accept the award, of returning a timely acceptance form; the letter accompanying the decision went further, and advised her, if she sent an acceptance, to contact BBB AUTO LINE and confirm its receipt. As noted, BBB AUTO LINE's records don't show receipt of an acceptance letter, and BBB AUTO LINE reported that the decision was rejected.

<sup>426</sup> As discussed below, two of them did involve problems with compliance monitoring.

## 2. Consumers reporting delayed compliance.

Among the 32 cases in which consumers reported delayed compliance, BBB AUTO LINE reported 25 as timely (and satisfactory) closings by virtue of an unreturned performance verification letter.

However, several of the 25 cases were problematic, and not only as a matter of reporting. In one (which is also discussed below), the unreturned performance verification letter on which staff relied was delayed for nine months.<sup>427</sup> In the other, the parties agreed to a settlement encompassing a final repair opportunity under the state's lemon law, and BBB AUTO LINE closed the case on the basis of an unreturned BBB AUTO LINE closed performance verification letter. Six days later, though, the consumer called to report a problem. Apparently, following the inspection, she and the manufacturer had agreed to a replacement remedy outside of BBB AUTO LINE's processes. Now, though, she wasn't satisfied with the pace of the remedy's implementation. At that point, it seems that staff should have changed the compliance designation in the existing case and opened a 1-R case. Instead, staff never formally reopened the case, at first attempting to have the matter resolved outside processes. But, five months later, staff had gotten sufficiently involved to draft a new settlement agreement. This was all reported under the original case number, so, aside from the substantive problems, the case was reported as a timely closing on the basis of the unreturned performance verification letter, and the time to closing left as two days.

Among the other seven, there were four cases (in three of which BBB AUTO LINE had no compliance code) that evidenced a problem that the auditor has noted in the past. BBB AUTO LINE staff appears to have granted manufacturer's requests for extensions without getting, or at least documenting, the consumers' agreement.

\* \* \*

As previously discussed in the compliance discussion in Chapter 2 last year, the auditor began in the 2020 audit to explore compliance in arbitrations with multiple compliance events, concerned that some non-compliance might be hidden.<sup>430</sup> The auditor felt it important to get a sense of the frequency with which this occurs, and asked BBB AUTO LINE to identify as many such cases as practicable and report on compliance with both remedies in those cases. Unfortunately, the exercise had to be completed by hand; BBB AUTO LINE couldn't retrieve this data through an electronic search. To identify cases where the consumer accepted two remedies at different phases of an arbitration, either by virtue of a reconsideration or a post-

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<sup>427</sup> The consumer, notwithstanding his report of delayed performance, gave BBB AUTO LINE top grades in response to satisfaction questions.

<sup>430</sup> Unlike settlements, arbitrations that the consumer asks to reopen (or, in California, asks the arbitrator to reconsider) stay under the original case number, so there can be two remedies in a case.

decision settlement, the auditor asked BBB AUTO LINE to examine post-acceptance developments in (1) cases with compliance codes reporting that the manufacturer didn't comply with any arbitrated remedy and intended to pursue the matter further, and (2) all cases with an arbitrated repair remedy.<sup>431</sup> Taken together, these two searches were likely to pick up most if not all multiple-remedy cases with multiple compliance codes. The results are reported below.

**Table III – 22A: Second compliance code in arbitrations with two compliance codes**

<b>BASE: Arbitrations with multiple remedies</b>	14
	100.0%
<b>Carried out remedy within the time specified, including any extension to which you agreed</b>	9
	64.3%
<b>Carried out remedy after the time specified, including any extension to which you agreed</b>	0
	0.0%
<b>Hasn't yet carried out remedy, time to do so has expired</b>	2
	14.3%
<b>(Customer did not allow performance)</b>	(2)
	(14.3%)
<b>Hasn't yet carried out remedy, time to do so hasn't expired</b>	3
	21.4%

Further analysis of this issue appears in Chapter 2, Section III.I.

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<sup>431</sup> There was substantial overlap between these categories, but each might pick up cases that the other missed. For example, it was possible that, in a case where the manufacturer didn't comply with an initial repair award but did comply with a later replacement award, the compliance column would have reported on compliance with the second award rather than non-compliance with the first.

### 3. Consumers Reporting Problems with Compliance Monitoring

**Table III–24: 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?**

	2021	2020	2019	2018
<b>BASE: (1) MED and (2) ARB where the consumer received and accepted an award. “Not sure” responses excluded.</b>	173	159	148	157
	100.0%	100.0%	100.0%	100.0%
<b>The staff contacted me by mail, email, or my online account</b>	50	35	44	49
	28.9%	22.0%	29.7%	31.2%
<b>The staff spoke to me</b>	26	31	24	26
	15.0%	19.5%	16.2%	16.6%
<b>Both of those</b>	70	74	65	71
	40.5%	46.5%	43.9%	45.2%
<b>Neither of those</b>	24	16	11	10
	13.9%	10.1%	7.4%	6.4%
<b>Something else</b>	3	3	4	1
	1.7%	1.9%	2.7%	0.6%

The auditor has examined the 27 cases where the consumer replied “neither” or “something else.” Three of these (including two with “something else” responses) aren’t relevant to the current analysis because there was no compliance issue.<sup>432</sup> Additionally, in a case previously discussed because the consumer reported manufacturer non-compliance, the problem actually BBB AUTO LINE’s follow up.

Among the 25 cases left after excluding those with no compliance issue, one wasn’t a monitoring issue; BBB AUTO LINE’s records report that a timely performance verification letter was sent in 17 cases. Another wasn’t a monitoring problem; BBB AUTO LINE knew there was a problem and reported non-compliance. (The consumers subsequently entered another settlement, and later reported timely compliance on that settlement). In the other seven, though, BBB AUTO LINE reported that it sent out the performance verification letter belatedly, with four ranging from delays of 9 to 39 days and the others reporting delays of 3, 4, and 8 months. The auditor notes, though, that three of the consumers reported timely performance, two reported delayed performance, one reported that the time for compliance hadn’t passed, and for the other (noted above as the case that wasn’t really a monitoring problem), both BBB AUTO LINE and the consumer did report non-compliance.

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<sup>432</sup> For example, one case appeared to involve a settlement outside the program.

## E. TIMING

### 1. Mediations and Arbitrations

Consistent with FTC rules, BBB AUTO LINE reports the numbers and percentages of cases that were resolved within 40 days.<sup>433</sup> BBB AUTO LINE’s statistics, and the auditor’s analysis, focus on arbitrated and mediated cases.<sup>434</sup>

The auditor focuses here on the survey results and some quantitative analysis of BBB AUTO LINE’s statistics. In Chapter 2,<sup>435</sup> which drew on these results, he also discussed individual cases (to explore the sources of delay) and offered recommendations.

**Tables III–25: Time to resolve cases (Survey responses)**

	Mediated	Arbitrated	Combined
<b>BASE: MED/ARB, excluding “not sure” for this question</b>	151	60	211
	100.0%	100.0%	100.0%
<b>Within 40 days</b>	105	17	122
	69.5%	28.3%	57.8%
<b>Within 40 days <i>or</i> consumer acknowledged responsibility for delay</b>	109	21	130
	72.2%	30.0%	61.6%

**Table III–26: Time to resolve cases (BBB AUTO LINE; All cases)**

	Mediated	Arbitrated	Combined
<b>BASE: MED/ARB</b>	2781	1570	4351
	100.0%	100.0%	100.0%
<b>Within 40 days</b>	2565	632	3197
	92.2%	40.3%	73.5%

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<sup>433</sup> FTC Rule 703.6(e)(11) (figures showing delay to be maintained by “number and percent”).

<sup>434</sup> Most of the omitted cases were ineligible cases – and most of *those* were resolved in short order, often a day or two. Thus, excluding these cases *lowered* the reported rate of timely compliance.

<sup>435</sup> Section III.H.

**Table III-27: Comparative analysis on timing (Combined cases)**

	2021		2020		2019		2018	
	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE
<b>BASE: MED/ARB, excluding “not sure”</b>	211	4351	189	4304	190	4734	198	4287
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
<b>Within 40 days</b>	122	3197	106	2822	108	3444	146	3339
	57.8%	73.5%	56.1%	65.5%	56.8%	72.8%	73.7%	77.9%

**Table III-28: Consumer Agreement with BBB AUTO LINE**

	BBB AUTO LINE statistics	
	Within 40 Days	41 + Days
<b>BASE: MED/ARB, excluding “not sure”</b>	122	89
	100.0%	100.0%
<b>Within 40 Days (Imported)</b>	121	40
	99.2%	44.9%
<b>41+ Days (Imported)</b>	1	49
	0.8%	55.1%

**Concordance: 170/211 = 80.6%**

Preliminarily, there are numerous points in calculating timing that might reasonably confuse some consumers. They might treat the start date as the date of their initial contact which, outside Florida and California, isn’t how BBB AUTO LINE reports it. If they had a 1R case (or beyond), they might include the time for the entire process – from the filing of the initial case to the resolution of the last – in their reporting.<sup>436</sup> They might count the time for compliance in their reporting. And, since they were asked in March 2022 about cases that closed as early as January 2021, their memories of quantitative figures might have been fuzzy.

On the other hand, BBB AUTO LINE’s own figures – 73.5% timeliness in arbitrations and mediations combined and a 40.3% rate for arbitrations alone – show sufficient problems in themselves. The central issue isn’t to determine whether BBB AUTO LINE’s “timeliness” rate is actually lower than the 73.5% figure that BBB AUTO LINE reports (although the auditor does

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<sup>436</sup> Among consumers reporting delay when BBB AUTO LINE did not, seven had 1R cases and one had a 2R case,



note in Chapter 2 some cases where BBB AUTO LINE understated timing), but rather to identify sources of delay and ways to address it.

That said, the auditor does report here on some further quantitative analysis, which has already been noted in Chapter 2.

*First*, while Table III-25 shows that only 40.3% of arbitrated cases were resolved in 40 days, the auditor found that 55.3% of cases were resolved within 45 days. Thus, a small speed-up in resolving arbitrations would substantially raise the rate of timely decision-making.

*Second*, again starting with the 40.3% rate of timely completions within 40 days, further scrutiny shows that 78.0% were resolved within 60 days and 90.6% within eighty days.

The auditor also requested from BBB AUTO LINE a list of cases with technical examinations (usually requested by the arbitrator) and requests from the arbitrator for additional information. The list appears incomplete, but it still provides some suggestive results. Among 111 cases shown to have had a technical examiner, only 5 (4.5%) were completed within 40 days and only 48 (43.2%) were completed within 80 days. Among 222 cases where the arbitrator made a request for additional information, only 21 (9.5%) were completed in 40 days, and only 98 (44.1%) were completed within 80 days.

## F. DOCUMENTS AND CONTACTS

Preliminarily, the wording of document receipt questions was modified in 2020 to mention the possibility of communications by an online account.

**Table III–29: Next I'm going to ask a few questions about various documents that BBB AUTO LINE sends to consumers--whether by email, an online account that they created for you, or by mail, UPS or FedEx.<sup>437</sup>**

**After you first contacted BBB AUTO LINE, did you get a claim form and an explanation of the program?**

	2021	2020	2019	2018
<b>BASE: ALL, “not sure” excluded</b>	365	377	361	376
	100.0%	100.0%	100.0%	100.0%
<b>Yes</b>	323	333	317	342
	88.5%	88.3%	87.8%	91.0%

As discussed in Chapter 2, the net effect of the online consumer interface that BBB AUTO LINE has implemented (while allowing consumers to choose communications by regular mail) has been positive – but the system has also been problematic for some consumers. The auditor does not repeat that discussion here; the discussion below focuses on aggregate measures, looking to individual cases primarily to assess the accuracy of specific records.

**Table III–30: How clear and understandable were these documents?**

	2021	2020	2019	2018
<b>BASE: responding “yes” to prior question, excluding “not sure” responses to this question</b>	319	329	311	340
	100.0%	100.0%	100.0%	100.0%
<b>Very</b>	188	185	198	223
	58.9%	56.2%	63.7%	65.6%
<b>Somewhat</b>	120	112	97	110
	37.6%	34.0%	31.2%	32.4%
<b>Not at all</b>	11	32	16	7
	3.4%	9.7%	5.1%	2.1%

<sup>437</sup> The wording of this and various document receipt questions was revised for 2020 to reflect the use of online accounts for communications with most consumers.

**Table III–31: And how helpful were they?**

	2021	2020	2019	2018
<b>BASE: Same</b>	321	329	314	340
	100.0%	100.0%	100.0%	100.0%
<b>Very</b>	154	143	168	186
	48.0%	43.5%	53.5%	54.7%
<b>Somewhat</b>	119	113	101	108
	37.1%	34.3%	32.2%	31.8%
<b>Not at all</b>	48	73	45	46
	15.0%	22.2%	14.3%	13.5%

As shown above, an overwhelming majority of consumers (90.3%) found them at least somewhat clear and understandable, while a substantial majority (77.8%) found them at least somewhat helpful.

**Table III–32: After you reached a settlement, did you get an explanation either by mail, email or your online account, describing the terms of the settlement?**

	2021	2020	2019	2018
<b>BASE: MED, “not sure” responses excluded</b>	145	113	112	135
	100.0%	100.0%	100.0%	100.0%
<b>Yes</b>	128	102	104	130
	88.3%	90.3%	92.9%	96.3%

BBB AUTO LINE doesn’t ask consumers to return the settlement letter if they agree with its description, so (unlike with the consumer complaint form) there aren’t signed documents in the files reflecting that any consumers actually *received* the documents. But the files for consumers who said they didn’t receive them at all contain entries reporting that the documents were *sent*. Given the possibility that some consumers simply didn’t focus on whether they received these documents (which memorialized agreements about which they already knew) the auditor doesn’t see a problem here. The auditor does note that the numbers have dropped in recent years, but, while this bears monitoring, it may be that the electronic communications now used are less memorable than a letter.

**Table III–33: Did you get a notice either by mail, email, or your online account, telling you when and where to go for your hearing or vehicle inspection?**

	2021	2020	2019	2018
<b>BASE: ARB, “not sure” responses excluded</b>	59	66	83	55
	100.0%	100.0%	100.0%	100.0%
<b>Yes</b>	52	63	79	53
	88.1%	95.5%	95.2%	96.4%

**Table III–34: Did you get a copy either by mail, email or your online account, of the arbitrator’s decision?**

	2021	2020	2019	2018
<b>BASE: ARB, “not sure” responses excluded</b>	59	67	81	57
	100.0%	100.0%	100.0%	100.0%
<b>Yes</b>	55	66	80	57
	93.2%	98.5%	98.8%	100.0%

According to the figures above, four consumers reported that they didn’t get copies of the arbitrator’s decision. One was a case that BBB AUTO LINE found ineligible as a claim against the dealer, which the consumer reported as an arbitrated denial. One was a straddle case, although that doesn’t entirely explain the consumer’s responses.<sup>438</sup>

The other two were more problematic. In one (already discussed in the accept/reject discussion after Table III-19 as problematic), the consumer said that she had to call BBB AUTO LINE to find out about the decision. (The dispute resolution specialist’s notes don’t mention a call.<sup>439</sup>) In the other, where the consumer reported making multiple calls before getting the

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<sup>438</sup> The earlier case, from 2020, was a repair settlement in late December. At the time of the survey, the consumer was awaiting an arbitration hearing on the 1R case, and that hearing would result in a repurchase decision. Curiously, the consumer reported an arbitrated repurchase/replacement remedy during the survey, even though he had yet to be awarded that remedy. At the least, though, the answer explains why he hadn’t received an arbitration decision at the time of the survey.

<sup>439</sup> Another issue in that case, as discussed in the discussion after Table III-19, is that the files contain a returned acceptance, but it wasn’t dated and wasn’t uploaded into BBB AUTO LINE’S data base until eight days after the due date – by which date staff had already told the manufacturer that the consumer hadn’t accepted. As noted in the earlier discussion, assuming the accept/reject form was received belatedly, there’s no sign that staff did anything, such as possibly facilitating a waiver of the return deadline by the manufacturer. However, any problems don’t appear to have

decision, he was apparently referring to a decision on reconvening in which sixteen days passed between the hearing date and the decision date.

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resulted in harm to the consumer, who reported timely compliance to BBB AUTO LINE.

**G. CLAIMS FILED BY CONSUMERS WITH COUNSEL COMPARED TO  
CLAIMS FILED DIRECTLY BY CONSUMERS**

**TABLE III-35: Process and remedy**

	All cases		Cases without att'ys		Cases with att'ys	
	#	%	#	%	#	%
<b>PROCESS</b>						
<b>Mediated</b>	2,781	32.0%	2,598	35.6%	183	13.0%
<b>Arbitrated</b>	1,570	18.0%	776	10.6%	794	56.3%
<b>Ineligible</b>	3,693	42.4%	3,358	46.1%	335	23.8%
<b>Withdrawn</b>	656	7.5%	558	7.7%	98	7.0%
<b>Total</b>	8,700	100%	7,290	100%	1,410	100%

	All cases		Cases without att'ys		Cases with att'ys	
	#	%	#	%	#	%
<b>REMEDIES: MED</b>						
<b>Repurchase/replace</b>	1,363	49.0%	1,217	46.8%	146	79.8%
<b>Repair</b>	988	35.5%	980	37.7%	8	4.4%
<b>Other</b>	430	15.5%	401	15.4%	29	15.8%
<b>Total</b>	2,781	100%	2,598	100%	183	100%
<b>REMEDIES: ARB</b>						
<b>Repurchase/replace</b>	497	31.7%	270	34.8%	227	28.6%
<b>Repair</b>	132	8.4%	104	13.4%	28	3.5%
<b>Other</b>	33	2.1%	23	3.0%	10	1.3%
<b>No award</b>	908	57.8%	379	48.8%	529	66.6%
<b>Total</b>	1,570	100%	776	100%	794	100%
<b>REMEDIES: MED+ARB</b>						
<b>Repurchase/replace</b>	1,860	42.7%	1,487	44.1%	373	38.2%
<b>Repair</b>	1,120	25.7%	1,084	32.1%	36	3.7%
<b>Other</b>	463	10.6%	424	12.6%	39	4.0%
<b>No Award</b>	908	20.9%	379	11.2%	529	54.1%
<b>Total</b>	4,351	100%	3,374	100%	977	100%

Clearly, and not surprisingly, consumers represented by counsel are less likely to use mediation than consumers without counsel; they're also far less likely to settle for repair remedies. Also, while it doesn't show in the charts, and while the rate of withdrawals for attorney and non-attorney cases is comparable, the nature of withdrawals tends to be different in

the two types of cases. Attorneys often negotiate settlements outside the program while pursuing arbitration under the program, and many of the withdrawals in cases with counsel appear to represent settlements outside the program – which, unlike most arbitrated decisions in BBB AUTO LINE cases, can’t include attorney’s fees.<sup>440</sup>

**Table III-35A – Mode of presentation**

	In Writing		Telephone		In Person	
	#	%	#	%	#	%
<b>REMEDIES: ARB</b>						
<b>Repurchase/replace</b>	200	27.7%	297	35.1%	0	0%
<b>Repair</b>	24	3.3%	108	12.8%	0	0%
<b>Other</b>	9	1.2%	24	2.8%	0	0%
<b>Denial</b>	490	67.8%	418	49.4%	0	0%
<b>Total</b>	200	27.7%	297	35.1%	0	0%
<b>REMEDIES: ARB WITH ATTY</b>						
<b>Repurchase/replace</b>	196	27.5%	31	38.3%	0	0%
<b>Repair</b>	22	3.1%	6	7.4%	0	0%
<b>Other</b>	9	1.3%	1	1.2%	0	0%
<b>Denial</b>	486	68.2%	43	53.1%	0	0%
<b>Total</b>	713	100%	81	100%	0	0%
<b>REMEDIES – ARB WITHOUT ATTY</b>						
<b>Repurchase/replace</b>	4	40.0%	266	34.7%	0	0%
<b>Repair</b>	2	20.0%	102	13.3%	0	0%
<b>Other</b>	0	0.0%	23	3.0%	0	0%
<b>Denial</b>	4	40.0%	375	49.0%	0	0%
<b>Total</b>	10	100%	766	100%	0	0%

Consumers with attorneys were far more likely than those without attorneys to undertake arbitration in writing. This table breaks out the awards granted in arbitrations conducted in writing and by telephone (which includes video-and-audio platforms as well). Until the pandemic, most hearings were held in person.

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<sup>440</sup> As noted previously, an important aspect of the Magnuson Moss Act is that it provides for attorney’s fees in cases brought in court under the act.

## **H. SATISFACTION**

The last portion of the “national-survey” analysis concerns consumer satisfaction. For most of these questions, consumers were asked to grade BBB AUTO LINE staff and (for consumers who said they used arbitration) the arbitrators. Grades are presented for all consumers, and then broken out to show grades from consumers who reported that they got awards (with further breakouts based on the nature of the award) and from those who said their claims were denied.

Not surprisingly, consumers who got better results were more impressed with the virtues of the program.



1. Satisfaction with Arbitrator

Table III-36: How would you grade the arbitrator on understanding the facts of your case?

	Total	Award	No Award	Refund/ Replacement	Repair/ Other
<b>BASE: ARBITRATED CASES, NOT SURE EXCLUDED</b>	60	39	21	27	12
	100.0%	100.0%	100.0%	100.0%	100.0%
<b>A=Excellent</b>	28	26	2	20	6
	46.7%	66.7%	9.5%	74.1%	50.0%
<b>B=Good</b>	3	3	-	3	-
	5.0%	7.7%	-	11.1%	-
<b>C=Average</b>	8	3	5	1	2
	13.3%	7.7%	23.8%	3.7%	16.7%
<b>D=Poor</b>	4	-	4	-	-
	6.7%	-	19.0%	-	-
<b>F-Failing Grade</b>	17	7	10	3	4
	28.3%	17.9%	47.6%	11.1%	33.3%
<b>MEAN</b>	<b>2.35</b>	<b>3.05</b>	<b>1.05</b>	<b>3.37</b>	<b>2.33</b>

Table III--37: How would you grade the arbitrator on objectivity and fairness?

	Total	Award	No Award	Refund/ Replacement	Repair/ Other
<b>BASE: Arb., "not sure" excluded</b>	60	39	21	27	12
	100.0%	100.0%	100.0%	100.0%	100.0%
<b>A=Excellent</b>	29	27	2	21	6
	48.3%	69.2%	9.5%	77.8%	50.0%
<b>B=Good</b>	4	4	-	3	1
	6.7%	10.3%	-	11.1%	8.3%
<b>C=Average</b>	5	2	3	-	2
	8.3%	5.1%	14.3%	-	16.7%
<b>D=Poor</b>	7	-	7	-	-
	11.7%	-	33.3%	-	-
<b>F-Failing Grade</b>	15	6	9	3	3
	25.0%	15.4%	42.9%	11.1%	25.0%
<b>MEAN</b>	<b>2.42</b>	<b>3.18</b>	<b>1.00</b>	<b>3.44</b>	<b>2.58</b>

**Table III-38: How would you grade the arbitrator on reaching an impartial decision?**

	<b>Total</b>	<b>Award</b>	<b>No Award</b>	<b>Refund/ Replacement</b>	<b>Repair/ Other</b>
<b>BASE: Arb., “not sure” excluded</b>	60	39	21	27	12
	100.0%	100.0%	100.0%	100.0%	100.0%
<b>A=Excellent</b>	29	27	2	21	6
	48.3%	69.2%	9.5%	77.8%	50.0%
<b>B=Good</b>	3	3	-	3	-
	5.0%	7.7%	-	11.1%	-
<b>C=Average</b>	3	2	1	-	2
	5.0%	5.1%	4.8%	-	16.7%
<b>D=Poor</b>	5	-	5	-	-
	8.3%	-	23.8%	-	-
<b>F-Failing Grade</b>	20	7	13	3	4
	33.3%	17.9%	61.9%	11.1%	33.3%
<b>MEAN</b>	<b>2.27</b>	<b>3.10</b>	<b>0.71</b>	<b>3.44</b>	<b>2.33</b>

**Table III-39: How would you grade the arbitrator on coming to a reasoned & well thought-out decision?**

	<b>Total</b>	<b>Award</b>	<b>No Award</b>	<b>Refund/ Replacement</b>	<b>Repair/ Other</b>
<b>BASE: Arb., “not sure” excluded</b>	60	39	21	27	12
	100.0%	100.0%	100.0%	100.0%	100.0%
<b>A=Excellent</b>	25	24	1	19	5
	41.7%	61.5%	4.8%	70.4%	41.7%
<b>B=Good</b>	8	7	1	5	2
	13.3%	17.9%	4.8%	18.5%	16.7%
<b>C=Average</b>	1	-	1	-	-
	1.7%	-	4.8%	-	-
<b>D=Poor</b>	6	-	6	-	-
	10.0%	-	28.6%	-	-
<b>F-Failing Grade</b>	20	8	12	3	5
	33.3%	20.5%	57.1%	11.1%	41.7%
<b>MEAN</b>	<b>2.20</b>	<b>3.00</b>	<b>0.71</b>	<b>3.37</b>	<b>2.17</b>

**Table III-40: ARBITRATOR SATISFACTION COMPOSITE**

<b>BASE: Arb., “not sure” excluded</b>	<b>Total</b>	<b>Award</b>	<b>No Award</b>	<b>Refund/ Replacement</b>	<b>Repair/ Other</b>
<b>Understanding the facts of your case</b>	2.35	3.05	1.05	3.37	2.33
<b>Objectivity and fairness</b>	2.42	3.18	1.00	3.44	2.58
<b>Reaching an impartial decision</b>	2.27	3.10	0.71	3.44	2.33
<b>Coming to a reasoned &amp; well-thought-out decision</b>	2.20	3.00	0.71	3.37	2.17
<b>AVERAGE</b>	<b>2.31</b>	<b>3.08</b>	<b>0.87</b>	<b>3.41</b>	<b>2.35</b>

**Table III-40A:  
ARBITRATOR SATISFACTION COMPOSITE (BY YEAR)**

	<b>Total</b>	<b>Award</b>	<b>No Award</b>	<b>Repurchase/ Replacement</b>	<b>Repair/ Other</b>
<b>Composite (2021)</b>	2.31	3.08	0.87	3.41	2.35
<b>Composite (2020)</b>	2.89	3.37	1.65	3.76	2.74
<b>Composite (2019)</b>	2.63	3.56	1.31	3.78	3.18
<b>Composite (2018)</b>	2.36	3.52	1.26	3.72	2.70
<b>Composite (2017)</b>	2.03	2.97	1.07	3.58	2.33
<b>Composite (2016)</b>	2.34	3.40	1.02	3.69	2.30
<b>Composite (2015)</b>	2.59	3.40	0.79		

The auditor has previously expressed skepticism about composites that measure satisfaction rates for arbitrators without adjusting for how well consumers did in arbitration. The auditor suspected that consumers' satisfaction with arbitrators was highly correlated to their success in arbitration – and, therefore, year-to-year fluctuations in satisfaction might reflect, in substantial part, fluctuations in the success of the consumers surveyed.

To this end, the current auditor included some breakouts in his first (2015) audit, and added more in 2016. Not surprisingly, consumers who got relief in arbitration tend to view their arbitrators far more favorably than those who didn't, and, the better they fared, the more impressed they were with the arbitrator's virtues. As shown by the above summary, there was in fact a substantial difference in satisfaction between consumers who got repurchase/replacement awards and those who got other awards.

2. Satisfaction with BBB AUTO LINE staff

Table III-41: How would you grade BBB AUTO LINE staff on objectivity and fairness?

<b>BASE: ARB/MED, “not sure” excluded</b>	209
	100.0%
<b>A=Excellent</b>	139
	66.5%
<b>B=Good</b>	34
	16.3%
<b>C=Average</b>	15
	7.2%
<b>D=Poor</b>	12
	5.7%
<b>F=Failing Grade</b>	9
	4.3%
<b>MEAN</b>	<b>3.35</b>

Table III-42: How would you grade BBB AUTO LINE staff on efforts to assist you in resolving your claim?

<b>BASE: ARB/MED, “not sure” excluded</b>	207
	100.0%
<b>A=Excellent</b>	116
	56.0%
<b>B=Good</b>	43
	20.8%
<b>C=Average</b>	27
	13.0%
<b>D=Poor</b>	11
	5.3%
<b>F=Failing Grade</b>	10
	4.8%
<b>MEAN</b>	<b>3.18</b>

**Table III-43: Overall, what grade would you give BBB AUTO LINE?**

<b>BASE: ARB/MED, “not sure” excluded</b>	209
	100.0%
<b>A=Excellent</b>	120
	57.4%
<b>B=Good</b>	36
	17.2%
<b>C=Average</b>	29
	13.9%
<b>D=Poor</b>	9
	4.3%
<b>F=Failing Grade</b>	15
	7.2%
<b>MEAN</b>	<b>3.13</b>

**Table III-44**  
**BBB AUTO LINE STAFF EFFORTS**  
**SATISFACTION COMPOSITE**  
**FOR CONSUMERS WHO USED MEDIATION OR ARBITRATION**

	Mean
<b>Objectivity and fairness</b>	3.35
<b>Efforts to resolve claim</b>	3.18
<b>Overall grade</b>	3.13
<b>AVERAGE</b>	<b>3.22</b>

Composite Mean (2021)	3.22
Composite Mean (2020)	3.12
Composite Mean (2019)	3.18
Composite mean (2018)	3.35
Composite mean (2017)	3.24
Composite mean (2016):	3.29
Composite mean (2015)	3.20

**Table III-45: Would you recommend BBB AUTO LINE to friends or family?**

	<b>Total</b>	<b>Med/Arb</b>
<b>BASE: total, not sure responses to this question excluded</b>	393	208
	100.0%	100.0%
<b>Yes</b>	264	171
	67.2%	82.2%

Composite Means (2021)

All consumers 63.2%  
 Consumers with mediations or arbitrations 82.28%

Composite Means (2020)

All consumers 63.7%  
 Consumers with mediations or arbitrations 82.8%

Composite Means (2019)

All consumers 74.4%  
 Consumers with mediations or arbitrations 86.9%

Composite Means (2018)

All consumers: 70.0%  
 Consumers with mediations or arbitrations: 88.2%

Composite Means (2017)

All consumers: 70.9%  
 Consumers with mediations or arbitrations: 82.9%

Composite Means (2016)

All consumers: 69%  
 Consumers with mediations or arbitrations: 82%

Composite Means (2015)

All consumers: 65%  
 Consumers with mediations or arbitrations: 74%



#### **IV. SURVEY RESULTS – FLORIDA**

Preliminarily, this section complements Chapter 2 for Florida cases.<sup>441</sup> The general discussion of survey-related issues in Sections I and II of this chapter applies here as well.

Among the 8700 cases that BBB AUTO LINE closed during the audit year, 1814 (20.0%) were from Florida. For reasons discussed earlier in this chapter, however, there were only 1101 cases in the “sampling frame” used for the survey.<sup>442</sup>

This year’s Florida survey also ran into the steep decline in response rates that have been affecting telephone surveys generally.<sup>443</sup> TechnoMetrica therefore attempted to reach *all* of these 1101 and, for consumers in the Florida-specific survey, TechnoMetrica didn’t give up on any consumer until four attempted calls; at least in part for this reason, TechnoMetrica’s response rate was far above that for surveys generally. Still, for the first time for the Florida survey, interviews completed by Florida consumers in the *national* survey were also included as part of the Florida survey.<sup>444</sup> Without this change, the number of completed surveys in the Florida sample would have dropped to 132, below the annual target of 150; with the change, the number of consumers in the Florida survey rose to 204.<sup>445</sup>

Even with 204 completed interviews, though, the number of completed interviews for

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<sup>441</sup> Chapter 2, Section III.C. Indeed, a key part of Chapter 2, the discussion of some consumers’ problems with BBB AUTO LINE’s web portal, draws primarily on Florida cases.

<sup>442</sup> See Chapter 3, Section II.B. Consumers who used attorneys were excluded from the survey; also, if consumers filed multiple complaints about the same vehicle that closed during the audit year, only the last case closed during the audit year was included. The most typical case of “multiple complaints about the same vehicle” was where a case ended with a repair settlement, the consumer wasn’t satisfied with the implementation of the settlement, and brought a new case that generally sought a repurchase or replacement.

<sup>443</sup> See <https://www.pewresearch.org/fact-tank/2019/02/27/response-rates-in-telephone-surveys-have-resumed-their-decline/> (reporting a decline from a 36% response rate in 1997 to 6% in 2018); <https://aspe.hhs.gov/sites/default/files/private/pdf/255531/Decliningresponserates.pdf>. TechnoMetrica’s response rate in Florida was 22.1%, far above the typical response rate for telephone surveys generally.

<sup>444</sup> In other words, Florida consumers counted in the survey results reported in Section 3 of this Chapter are also counted in the survey results in the current section. This has previously been done for Ohio. (Note that consumers were selected for the national survey first, so Florida would be appropriately reflected in the national sample.)

<sup>445</sup> There were 585 total interviews for all three surveys, and 204 (34.9%) were with consumers with Florida cases.

Florida was smaller than the number completed for the national survey. And this means a higher margin of error. Whereas the margin of error for questions posed to all consumers in the national survey was +/- 4.7%, the comparable rate for Florida was +/-6.2%. Further, the margin of error was as low as +/-6.2% only for questions that were posed to all 204 consumers who completed a Florida survey. It was far higher for questions posed only to subsets of the population; for example, questions about remedies in arbitration could be posed only to the 42 Florida consumers who used arbitration; for such questions, the margin of error rose to +/- 12.8, a band of over 25%. With margins of error that high, the survey becomes, at best, a very blunt instrument, particularly given that, since the survey seeks only a 95% confidence level, some measures would be expected to fall outside that range.

Still, other parts of the analysis, as described below, substantially alleviate any concerns that might be posed by high margins or error – or by occasional figures outside the applicable margin of error. These include multi-year comparisons, but, even more importantly, and for reasons discussed above, they include the *micro* analysis for the relevant population.

## A. GENERAL INFORMATION

**Table IV-1: Vehicle Year (Survey)**

	2021Cases
<b>TOTAL</b>	204
	100.0%
2008 or older	-
	-
2009	-
	-
2010	1
	0.5%
2011	1
	0.5%
2012	2
	1.0%
2013	-
	-
2014	6
	2.9%
2015	3
	1.5%
2016	5
	2.5%
2017	16
	7.8%
2018	25
	12.3%
2019	37
	18.1%
2020	54
	26.5%
2021	50
	24.5%
2022	4
	2.0%

**Table IV–2: The BBB AUTO LINE's records show they closed a complaint in 2019 about your <make> vehicle. Is that correct?**

<b>TOTAL</b>	204
	100.0%
<b>Yes</b>	202
	99.0%

One consumer corrected the vehicles year; another corrected the model number (from G80 to GB8).

**Table IV–3: Repair Attempts**

	<b>2021</b>	<b>2020</b>	<b>2019</b>	<b>2018</b>
<b>BASE: all, not sure” excluded</b>	201	153	145	149
	100.0%	100.0%	100.0%	100.0%
<b>One</b>	21	11	13	11
	10.4%	7.2%	9.0%	7.4%
<b>Two</b>	12	9	13	6
	6.0%	5.9%	9.0%	4.0%
<b>Three</b>	40	25	20	24
	19.9%	16.3%	13.8%	16.1%
<b>Four or more</b>	97	98	81	87
	48.3%	64.1%	55.9%	58.4%
<b>None</b>	31	10	18	21
	15.4%	6.5%	12.4%	14.1%

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

	<b>2021</b>	<b>2020</b>	<b>2019</b>	<b>2018</b>
<b>BASE: All, “not sure” excluded</b>	199 <sup>446</sup>	154	147	151
	100.0%	100.0%	100.0%	100.0%
<b>Manufacturer's manuals/warranty documents</b>	16	21	26	29
	8.0%	13.6%	17.7%	19.2%
<b>Dealer or manufacturer representative</b>	55	22	15	16
	27.6%	14.3%	12.2%	10.6%
<b>BBB AUTO LINE, BBB, or their websites</b>	38	31	14	11
	19.1%	20.1%	9.5%	7.0%
<b>Gov’t website, office, or official</b>	22	9	12	18
	11.1%	5.8%	8.2%	11.9%
<b>Other Website (not BBB, BBB AUTO LINE, or government)</b>	34	28	33	36
	17.1%	18.2%	22.4%	23.8%
<b>Lawyer</b>	2	8	3	3
	1.0%	5.2%	2.0%	2.0%
<b>Friend/family/word of mouth</b>	25	27	32	28
	12.6%	17.5%	21.8%	18.5%
<b>TV/Radio/Newspaper</b>	1	-	1	-
	0.5%	-	0.7%	-
<b>Used the program previously</b>	10	3	7	3
	5.0%	1.9%	4.8%	2.0%
<b>General knowledge</b>	11	14	10	3
	5.5%	9.1%	6.8%	2.0%
<b>Other</b>	1 <sup>447</sup>	-		4
	0.5%	-		2.6%

<sup>446</sup> As noted above, the number increased substantially this year because, for the first time, Florida consumers who were interviewed during the national survey are also included in the Florida survey.

<sup>447</sup> One consumer’s response was reported as “Florida lemon law.” TechnoMetrica reported more “other” responses, but the auditor determined that most of them could be included in another category, and modified TechnoMetrica’s chart.

## B. PROCESS

**Table IV–5: Aggregate “process” responses**

	<b>BBB AUTO LINE stats (A1)</b>	<b>Same, excluding att’y cases (A2)</b>	<b>Fully adjusted<sup>448</sup> (A3)</b>	<b>Survey (B1)</b>	<b>Survey, adjusted for response rate (see below) (B2)</b>
<b>TOTAL</b>	1814	1280	<b>1101</b>	204	
	100.0%	100.0%	<b>100.0%</b>	100.0%	<b>100.0%</b>
<b>Mediation</b>	484	406	<b>328</b>	64	
	26.7%	31.7%	<b>29.8%</b>	31.4%	<b>29.8%</b>
<b>Arbitration</b>	473	146	<b>143</b>	42	
	23.9%	11.4%	<b>13.0%</b>	20.6%	<b>14.8%</b>
<b>Withdrawn</b>	115	79	<b>68</b>	5	
	6.3%	6.3%	<b>6.2%</b>	2.5%	<b>5.6%</b>
<b>Ineligible</b>	782	649	<b>562</b>	81	
	43.1%	50.7%	<b>51.0%</b>	39.7%	<b>49.8%</b>
<b>Other</b>				12	
				5.9%	

**Table IV–6: Multi-year comparisons (A1 Figures)**

	<b>2021</b>	<b>2020</b>	<b>2019</b>	<b>2018</b>
<b>TOTAL</b>	1814	1834	2365	2028
	100.0%	100.0%	100.0%	100.0%
<b>Mediation</b>	484	44	531	621
	26.7%	22.0%	22.4%	30.6%
<b>Arbitration</b>	473	515	588	357
	23.9%	28.1%	24.9%	17.6%
<b>Withdrawn</b>	115	153	196	143
	6.3%	8.4%	8.3%	7.1%
<b>Ineligible</b>	782	762	1050	907
	43.1%	41.6%	44.4%	44.7%

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<sup>448</sup> See below; also Section IIA of this Chapter.

**Table IV-7: Consumer agreement with BBB AUTO LINE records**

	Mediated	Arbitrated	Withdrawn	Ineligible	Other
<b>TOTAL</b>	64	42	5	81	12
	100.0%	100.0%	100.0%	100.0%	100.0%
<b>Mediation (Imported)</b>	62	1	1	2	2
	96.9%	2.4%	20.0%	2.5%	16.7%
<b>Arbitration (Imported)</b>	-	40	-	-	-
	-	95.2%	-	-	-
<b>Withdrawn (Imported)</b>	-	-	4	-	2
	-	-	80.0%	-	16.7%
<b>Ineligible (Imported)</b>	2	1	-	79	8
	3.1%	2.4%	-	97.5%	66.7%

**Concordance: 185/204 = 90.4%**

### 1. Micro Analysis

Table IV-7, the core of the micro analysis, reports a “concordance” of only 90.4%, a distinctly unimpressive figure. The second step of the micro analysis, though, substantially alleviates any concerns about the accuracy of BBB AUTO LINE’s records – providing clear explanations for most divergences, and likely explanations (with various degrees of confidence) for others. However, at least three cases involved document receipt issues and, while these don’t point to a record-keeping problem (the principal focus of the current discussion), they do point to a substantive problem that the auditor addresses, with recommendations, in Chapter 2.<sup>449</sup>

Of the nineteen reported discordances (and using categories discussed in section I.A of this chapter), six appear to be situations where the consumer corrected BBB AUTO LINE’s records by responding “other” and then giving an explanation that was consistent with BBB AUTO LINE’s records. (Category 1.a.)<sup>450</sup> Four were straddle cases, where a case or series of cases spanned two years, and BBB AUTO LINE reported on the last process used in 2021 while the consumer, interviewed in March 2022, described events from 2022. (Category 1.b.) Three more appear to be cases (not included in a prior category) where the consumer reached a settlement outside the program. (Category 1.c.) One appears to be a case where the

<sup>449</sup> Chapter 2, Section III.C.

<sup>450</sup> In one case, for example, BBB AUTO LINE reported that the case was ineligible because the consumer no longer owned the vehicle; when told that BBB AUTO LINE records reported that her case was ineligible, she disagreed, said “other,” and then explained that the dealership swapped out the car.

manufacturer inspected the car and reported no warranted repairs, and the consumer described the car as “ineligible.”<sup>451</sup> (Category 1.f.) Another appears to reflect confusion about the meaning of arbitration; the claim was found ineligible, and the consumer described it as “arbitration,” apparently considering the whole BBB AUTO LINE process as arbitration. (Category 1.g.)

In a case involving a repair settlement, BBB AUTO LINE reported mediation (with the matter assumed to be resolved because the consumer failed to return a performance verification letter). The consumer told TechnoMetrica that he withdrew the case without a resolution to his problem, perhaps because of dissatisfaction with the results of the inspection and possible repair.

In two cases, in which consumers reported process as “other” and explained to TechnoMetrica that BBB AUTO LINE never got back to them, BBB AUTO LINE closed the cases as ineligible due to age or mileage; although the consumers presumably couldn’t have used BBB AUTO LINE in any event, these may reflect failures in communication of the sort discussed in Chapter 2, which the auditor recommends that BBB AUTO LINE address.<sup>452</sup>

Finally, in the last case, in which BBB AUTO LINE reported a repair settlement and the consumer said that the case was closed without his consent, there appears to have been a breakdown in communications.<sup>453</sup>

*Attorney cases:* The auditor also examined 25 Florida cases where the consumer had counsel. The auditor saw no problem on process recording. Indeed, the only notable issue that auditor found went to timing, in a case that the arbitrator took an unduly long time to resolve.

## **2. Macro analysis**

*The “A” columns of Table IV-5.* Column A1 shows aggregate “process” statistics, as reported by BBB AUTO LINE, for all cases closed in the audit year. These provide important information about the full range of cases filed in the program. Drawing on the figures in Column A1 and A3, for example, 52.8% of cases resolved through either mediation or arbitration, and 73.6% of such cases brought by consumers who didn’t use attorneys, were resolved through

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<sup>451</sup> The consumer in question declined to talk to the auditor.

<sup>452</sup> They’re somewhat different because, although the consumer’s comments on the process question reports that BBB AUTO LINE never got back to them, on the document receipt question one reported that he received the initial packet and the other wasn’t sure.

<sup>453</sup> BBB AUTO LINE’s records report that the consumer called 39 days after a repair settlement to report that the vehicle was working as designed but that he still wanted to go to arbitration. Staff reports telling him that a repurchase wasn’t a given, and that he said that he’d let staff know how he wanted to proceed. There’s no indication that the consumer followed up. Twenty-nine days later, staff sent a performance verification letter that the consumer didn’t return.



mediation.<sup>454</sup>

While column A1 shows BBB AUTO LINE's calculated aggregates for *all* cases closed during the year, column A2 is limited to cases where consumers appeared without counsel; these constitute about 70.6% of the "total" cases in column A1.<sup>455</sup> There's more detail in Section IV.G about these figures (and how consumers with counsel reportedly fared compared to those without).

And, while column A2 omits only cases where the consumer had a lawyer, column A3 (which the auditor developed based on TechnoMetrica's modified version of the spread sheet) *further* omits all but the last case where the consumer filed two (or more) cases about the same vehicle that closed during the year. Both types of omission are needed to avoid the problem of "comparing apples and oranges," since this was the population that TechnoMetrica attempted to contact for the survey.

Thus, column A3 reports the appropriate figures to compare to the survey results. And, as discussed next, adjustments are also appropriate for the survey results.

*The "B" columns.* The B columns report the survey results, with column B1 reporting the actual results and column B2 adjusting them with a weighting factor. As explained above,<sup>456</sup> some consumers – particularly those who were deemed ineligible – are less likely than others to finish a questionnaire than those who used mediation or arbitration. This year, for example, TechnoMetrica reported the following response rates for consumers, based on the process by which, according to BBB AUTO LINE's records, their cases were resolved.

- 21% for those whose cases were resolved through mediation;
- 28 % for those who used arbitration;
- 16% for those deemed ineligible to participate in BBB AUTO LINE; and
- 9% for consumers who withdrew their complaints.

Column B2 thus weights the responses in each category and simulates a scenario where all categories of consumers responded at the same rate.

So, for purposes of Table IV-5, the relevant comparison is between Columns A3 and B2. And, looking at those columns, all the differences between the two were well within the margin of error for the Florida survey (+/- 7.2%). In other words, for cases covered by the survey – non-attorney cases with only the latest counted if there were multiple complaints about the same vehicle – the survey reasonably reflects aggregates calculated directly from BBB AUTO LINE's

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<sup>454</sup> These figures don't appear directly in the table, but are calculated from figures on that table.

<sup>455</sup> The auditor calculated this using the figures on the chart.

<sup>456</sup> See Section II.F of this chapter (non-response errors).

spread sheet. The macro analysis covered thus provides further support to validate the accuracy of BBB AUTO LINE's records and calculations.

\* \* \*

At this point, it's necessary to add back in the MCSV omissions to get back to columns A2 and A3, and to add back in the "attorney case" omissions to get back to column A1. For these, the auditor relies on his systematic examination of 20 attorney case files, as well as his review of the omitted MCSV cases during his review of case files.<sup>457</sup> In neither did he find systematic problems with the "restored" BBB AUTO LINE records.

\* \* \*

Finally, Table IV-6's multi-year comparisons show relatively consistent results over the years, although the figures fluctuate from year to year.

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<sup>457</sup> When the auditor was reviewing targeted case files, as described above, he also examined earlier cases in the series (whether the earlier case closed during the audit year or earlier).

## C. RELIEF

The relief questions were posed only to consumers who identified their cases as arbitrated or mediated. As with the process questions, consumers were told how BBB AUTO LINE reported the relief they received, and asked to confirm or correct the results.<sup>458</sup>

### 1. Combined Mediated and Arbitrated Cases

The auditor starts with the combined results for mediated plus arbitrated cases. These, in his view, present key insights into the program as a whole – and point to advantages in a program that typically starts with mediation. From the consumer’s perspective, as noted above, a repurchase obtained through mediation is no less valuable than similar relief obtained through arbitration.

Among all Florida cases BBB AUTO LINE reported as closed during 2021, 236 got repurchase/replacement remedies through mediation, while 142 got them through arbitration. For consumers who didn’t use attorneys, 169 got repurchase or replacement remedies through mediation, while 68 got them through arbitration.<sup>459</sup> In other words, 62.4% of repurchase/replacement awards were obtained through mediation, and, among consumers who didn’t use attorneys, the figure rose to 71.3%.

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<sup>458</sup> There were small variations in wording depending on whether the consumer had identified the case as mediated or arbitrated.

<sup>459</sup> See Tables IV-8, 11, and 14. Based on BBB AUTO LINE’s spread sheet, among the 378 consumers with repurchase/replacement remedies, 49 received those awards in arbitration and rejected the award. 38 of these 49, though, were cases where consumers had attorneys; in such situations, it may be the case that the consumer rejected an award that didn’t include attorney’s fees and negotiated separately for relief that included such fees. In non-attorney cases, consumers sometimes reject awards when they realize the impact of usage fees and existing loans on their awards.

**Table IV-8: Relief in mediated and arbitrated cases**

	<b>BBB AUTO LINE stats (A1)</b>	<b>Same, excluding attorney cases (A2)</b>	<b>Stats from “fully adjusted” spread sheet (A3)</b>	<b>Survey (B)</b>
<b>BASE: med. &amp; arb. cases</b>	917	552	<b>471</b>	<b>106</b>
	100.0%	100.0%	<b>100.0%</b>	<b>100.0%</b>
<b>Replacement/ Repurchase</b>	378	237	<b>231</b>	<b>57</b>
	41.2%	42.9%	<b>49.0%</b>	<b>53.8%</b>
<b>Repair</b>	195	181	<b>114</b>	<b>17</b>
	21.3%	32.8%	<b>24.1%</b>	<b>16.0%</b>
<b>Other</b>	82	70	<b>63</b>	<b>12</b>
	8.9%	12.7%	<b>13.3%</b>	<b>11.3%</b>
<b>No Award</b>	262	64	<b>63</b>	<b>20</b>
	28.6%	11.6%	<b>13.3%</b>	<b>18.9%</b>

The key comparison in Tables IV-8 (for mediated plus arbitrated cases), IV-11 (for mediated cases alone ), and IV-14 (for arbitrated cases alone) is between columns A3 and B, because (1) both exclude consumers who used attorneys and, (2) for multiple complaints about the same vehicle, both exclude all but the last complaint filed during the audit year. The margin of error for questions posed to all 204 participants in the Florida sample was +/-6.2%; it’s substantially higher for these tables, for questions posed only to the 106 consumers who said they used arbitration or mediation, the 64 consumers who said they used mediation , and the 42 who said they used arbitration.<sup>460</sup> The reported differentials in Tables IV-8, IV-11 and IV-14 all fit within the relevant margins of error for each table.

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

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<sup>460</sup> As to table IV-8, if TechnoMetrica had simply used as the sampling frame only the 471 Florida consumers reported to have used arbitration or mediation on the fully adjusted spread sheet, and if it had interviewed 106 consumers from that sampling frame (a situation somewhat comparable to that reported above), the margin of error would have been +/- 8.4%. Similarly, for Table IV-11, had the sampling frame been 328 consumers and the number interviewed 64, the margin of error would have been +/- -11.0% . And, for Table IV-14, had the sampling frame been 143 consumers and the number interviewed 42, the margin of error would have been +/- 12.8%.

**Table IV- 9: Multi-year comparisons (2018-2021) (A1 figures)**

	<b>2021</b>	<b>2020</b>	<b>2019</b>	<b>2018</b>
<b>BASE: med. &amp; arb. cases</b>	917	919	1119	978
	100.0%	100.0%	100.0%	100.0%
<b>Replacement/ Repurchase</b>	378	394	502	512
	41.2%	42.9%	44.9%	52.3%
<b>Repair</b>	195	212	250	207
	21.3%	23.1%	22.3%	21.2%
<b>Other</b>	82	60	76	70
	8.9%	6.5%	6.8%	7.2%
<b>No Award</b>	262	253	291	189
	28.6%	27.5%	26.0%	19.3%

Table IV-9 shows a significant drop in the rate of repurchase/replacement remedies from 2018 to 2019, with smaller drops since. The broad pattern appears to result primarily from a steep decline in repurchase/replacement settlements from 2018 to 2019.<sup>461</sup> Indeed, between 2018 and 2019, when the rate of repurchase/replacement remedies in arbitrated and mediated cases combined showed its steepest drop, the rate of repurchase/replacement awards in arbitration *alone* rose – and it rose again in 2020, though it dropped significantly by 2021.<sup>462</sup>

Also, to provide additional context, the auditor looked back further, to 2016 and 2017, and he reproduces in Table IV-9A a chart from the 2018 audit.

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<sup>461</sup> The rates of repurchase/replacement resolutions in settlements, from 2018 through 2021, are 60.2%, 44.4%, 42.8%, and 43.8%. Table IV-12.

<sup>462</sup> The rates of repurchase/replacement resolutions in arbitrations, from 2018 through 2021, are 38.7%, 45.2%, 42.9%, and 32.8%. Table IV-15.

**Table IV- 9A: Multi-year comparisons 2016-2018**

	<b>2018</b>	<b>2017</b>	<b>2016</b>
<b>BASE: med. &amp; arb. cases</b>	978	1089	1016
	100.0%	100.0%	100.0%
<b>Replacement/ Repurchase</b>	512	529	423
	52.3%	48.6%	41.6%
<b>Repair</b>	207	211	235
	21.2%	19.4%	23.1%
<b>Other</b>	70	93	81
	7.2%	8.5%	8.0%
<b>No Award</b>	189	245	277
	19.3%	23.5%	27.3%

Looking at the six-year pattern, it appears that the numbers of repurchase/replacement remedies rose substantially from 2016-2018, and has since reverted to its earlier rate. (There was a concomitant drop in the “no award” rate, followed by a subsequent reversion to its earlier rate). While the longer perspective doesn’t explain the fluctuations, it does cast them in a somewhat different light.

**Table IV-10: Consumer agreement with BBB AUTO LINE records**

	<b>Replacement/ Repurchase</b>	<b>Repair</b>	<b>Other</b>	<b>No Award</b>
<b>BASE = med/arb</b>	57	17	12	20
	100.0%	100.0%	100.0%	100.0%
<b>Replacement/Repurchase (Imported)</b>	55	-	1	-
	96.5%	-	8.3%	-
<b>Repair (Imported)</b>	2	15	-	-
	3.5%	88.2%	-	-
<b>Other (Imported)</b>	-	1	10	-
	-	5.9%	83.3%	-
<b>No Award (Imported)</b>	-	-	-	19
	-	-	-	95.0%
<b>No entry (Imported)<sup>463</sup></b>	-	1	1	1
	-	5.9%	8.3%	5.0%

**Concordance: 99/106 = 93.4%**

In examining the seven discordant responses on remedies, three were actually cases where BBB AUTO LINE and the consumer disagreed on process (so that BBB AUTO LINE reported no mediated or arbitrated remedy). These cases were covered in the previous section, as matters where consumers reported that they got relief even though BBB AUTO LINE rejected their claims as ineligible, so there was presumably some resolution outside the program.

Among the other four, one was a straddle case, with BBB AUTO LINE reporting the last resolution during the audit year and the consumer describing events in 2022. In one, where BBB AUTO LINE reported a repurchase/replacement, the consumer disagreed and said “other,” but, in clarifying the “other” response, said the vehicle was repurchased. In another, where BBB AUTO LINE reported a repair and the consumer repurchase/replacement, the case notes show a report by the manufacturer, reportedly confirmed by a call with the consumer, that there was a swap by the dealer (and resolutions with dealers fall outside the program). In the last, BBB AUTO LINE’s files contain a settlement letter providing for an extended service plan and the consumer reported that the document was successfully repaired, which presumably reflects development after the extended service plan was issued.<sup>464</sup>

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<sup>463</sup> These are cases that BBB AUTO LINE reported as ineligible on process. As such, they didn’t list a remedy.

<sup>464</sup> On compliance, BBB AUTO LINE reported that the consumer didn’t return a performance verification letter (so compliance was assumed). The consumer reported compliance with the repair remedy that she identified.

## 2. Mediated Cases

Most of this section and the section that follows are presented without commentary; the key commentary appears in Section 1.

**Table IV–11 Relief in mediated cases**

	<b>BBB AUTO LINE stats (A1)</b>	<b>Same, excluding att’y cases (A2)</b>	<b>Stats from “fully adjusted” spread sheet (A3)</b>	<b>Survey (B)</b>
<b>BASE: MED</b>	484	406	<b>328</b>	<b>64</b>
	100.0%	100.0%	<b>100.0%</b>	<b>100.0%</b>
<b>Replacement/Rep urchase</b>	236	169	<b>164</b>	<b>37</b>
	43.8%	41.6%	<b>50.0%</b>	<b>57.8%</b>
<b>Repair</b>	176	172	<b>106</b>	<b>16</b>
	36.4%	42.4%	<b>32.3%</b>	<b>25.0%</b>
<b>Other</b>	72	65	<b>58</b>	<b>11</b>
	14.9%	16.0%	<b>17.6%</b>	<b>17.2%</b>

**Table IV–12: Multi-year comparison (A1 figures)**

	<b>2021</b>	<b>2020</b>	<b>2019</b>	<b>2018</b>
<b>BASE: MED</b>	484	404	531	621
	100.0%	100.0%	100.0%	100.0%
<b>Replacement/ Repurchase</b>	236	173	236	374
	43.8%	42.8%	44.4%	60.2%
<b>Repair</b>	176	175	220	182
	36.4%	43.3%	44.4%	29.3%
<b>Other</b>	72	56	75	65
	14.9%	13.9%	14.1%	10.5%



**Table IV-13: Consumer agreement with BBB AUTO LINE records**

	<b>Replacement Repurchase</b>	<b>Repair</b>	<b>Other</b>
<b>BASE: MED</b>	37	16	11
	100.0%	100.0%	100.0%
<b>Replacement/Repurchase (Imported)</b>	36	-	-
	97.3%	-	-
<b>Repair (Imported)</b>	1	14	-
	2.7%	87.5%	-
<b>Other (Imported)</b>	-	1	10
	-	6.3%	90.9%
<b>No entry (Imported)<sup>465</sup></b>	-	-	-
	-	-	-

**Concordance: 60/64 = 93.8%**

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<sup>465</sup> These are cases that BBB AUTO LINE reported as ineligible or withdrawn on process. As such, it didn't list a remedy.

### 3. Arbitrated Cases

**Table IV–14: Relief in arbitrated cases**

	<b>BBB AUTO LINE stats (A1)</b>	<b>Same, excluding att’y cases (A2)</b>	<b>Stats from “fully adjusted” spread sheet (A3)</b>	<b>Survey (B)</b>
<b>BASE: ARB</b>	433	146	<b>143</b>	<b>42</b>
	100.0%	100.0%	<b>100.0%</b>	<b>100.0%</b>
<b>Replacement/ Repurchase</b>	142	68	<b>67</b>	<b>20</b>
	32.8%	46.6%	<b>46.8%</b>	<b>47.6%</b>
<b>Repair</b>	19	9	<b>8</b>	<b>1</b>
	4.4%	6.2%	<b>5.6%</b>	<b>2.4%</b>
<b>Other</b>	10	5	<b>5</b>	<b>1</b>
	2.3%	3.4%	<b>3.5%</b>	<b>2.4%</b>
<b>No Award</b>	262	64	<b>63</b>	<b>20</b>
	60.5%	43.8%	<b>44.0%</b>	<b>47.6%</b>

The relevant comparison is between columns A3 and B, and, particularly given the high margin of error here,<sup>466</sup> the percentage figures are very close.

**Table IV–15: Multi-year comparisons (A1 figures)**

	<b>2021</b>	<b>2020</b>	<b>2019</b>	<b>2018</b>
<b>BASE: ARB</b>	433	515	588	357
	100.0%	100.0%	100.0%	100.0%
<b>Replacement/ Repurchase</b>	142	221	266	138
	32.8%	42.9%	45.2%	38.7%
<b>Repair</b>	19	37	30	25
	4.4%	7.2%	5.1%	7.0%
<b>Other</b>	10	4	1	5
	2.3%	0.8%	0.2%	1.4%
<b>No Award</b>	262	253	291	189
	60.5%	49.1%	49.5%	52.9%

<sup>466</sup> See note 460, *supra*. (Margin of error on the order of 12.8%)

**Table IV–16: Consumer agreement with BBB AUTO LINE records**

	Replacement /Repurchase	Repair	Other	No Award
<b>BASE: ARB</b>	20	4	-	13
	100.0%	100.0%	-	100.0%
<b>Replacement/Repurchase (Imported)</b>	20	-	-	-
	100.0%	-	-	-
<b>Repair (Imported)</b>	-	3	-	-
	-	75.0%	-	-
<b>Other (Imported)</b>	-	-	-	-
	-	-	-	-
<b>No Award (Imported)</b>	-	-	-	13
	-	-	-	100.0%
<b>No entry (Imported)<sup>467</sup></b>	-	1	-	-
	-	25.0%	-	-

**Concordance: 34/35 = 97.1%**

**Table IV–17: Did you accept the arbitrator's decision by returning a form that BBB AUTO LINE provided to you?**

<b>BASE: ARB, with award, “not sure” excluded</b>	20
	100.0%
<b>Yes</b>	19
	95.0%

The sole divergence was a confusing straddle situation.<sup>468</sup>

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<sup>467</sup> These are cases that BBB AUTO LINE reported as ineligible or withdrawn on process. As such, they didn’t list a remedy.

<sup>468</sup> The consumer wasn’t satisfied with an arbitration award because of the usage fee and, according to BBB AUTO LINE’s records, he never returned the accept/reject form; further, a note by the case handler reports that the consumer told the case handler, before the deadline, that he wasn’t willing to accept the repurchase decision with the usage fee. Months later, the consumer brought a new case, which settled for a repurchase award that included a usage fee. The consumer apparently construed this as an “acceptance” of the original decision.

**Table IV–18: Acceptance of different types of remedies**

	Total	Repurchase/ Replacement	Repair	Other
<b>BASE: ARB with award, “not sure” excluded</b>	22	20	1	1
	100.0%	100.0%	100.0%	100.0%
<b>Yes</b>	20	18	1	1
	90.9%	90.0%	100.0%	100.0%

**Table IV–19: Consumer agreement with BBB AUTO LINE records**

	Survey	
	Accepted	Rejected
<b>BASE: ARBITRATED CASES WITH AWARD (NOT SURE EXCLUDED)</b>	19	1
	100.0%	100.0%
<b>Accepted (Imported)</b>	17	-
	89.5%	-
<b>Rejected (Imported)</b>	1	1
	5.3%	100.0%
<b>No Entry</b>	1	-

**Concordance: 18/20: 90.0%**

The two disparities were straddle cases, with BBB AUTO LINE reporting on the last development in 2021 and the consumer apparently reporting a subsequent development.<sup>469</sup>

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<sup>469</sup> One of the cases was discussed in note 468.

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Pursuant to a requirement specific to Florida, BBB AUTO LINE has provided the following breakout:

	<b>All Manufacturers</b>		<b>Certified manufacturers</b>	
All filed claims:	1,814	100.00%	1,780	100.00% <sup>470</sup>
Mediated	484	26.68%	481	27.02%
Arbitrated	433	23.87%	419	23.54%
Ineligible	782	44.72%	770	43.26%
Withdrawn	115	6.34%	110	6.18%
All arbitrations:	433	100.00%	419	100.00%
Full repurchase	115	26.56%	110	26.25%
Partial repurchase	10	2.31%	10	2.39%
Replacement	14	3.23%	14	3.34%
Repair	19	4.39%	19	4.53%
Trade assist	3	0.69%	3	0.64%
Other award	10	2.31%	10	2.39%
No award	262	60.51%	254	60.62%

The ten cases reporting a partial repurchase were all non-lemon law cases.

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<sup>470</sup> 98.1% of Florida cases involved certified manufacturers.

## C1. Withdrawn Cases

**Table IV–20: Which of the following best describes why you withdrew your complaint?**

<b>BASE: Withdrawn cases</b>	5
	100.0%
<b>You settled the matter or your car was fixed</b>	1
	20.0%
<b>You sold the car</b>	1
	20.0%
<b>Some other reason</b>	3
	60.0%

Among the five consumers who reported withdrawals, Table IV-20 reports that one replied, in response to a multiple-choice follow-up question in the survey, that he had either settled the matter or that his car was fixed.<sup>471</sup> Another reported, consistent with BBB AUTO LINE records, that he was told the car was ineligible due to mileage. A third consumer withdrew on day 14 to allow the manufacturer a final repair opportunity outside the program and never got back to BBB AUTO LINE. A fourth consumer reached a “final repair opportunity” settlement within the program on day 6; according to BBB AUTO LINE’s notes, a performance verification letter and a separate email were sent in timely fashion and the consumer didn’t respond.

In the last case, the consumer reported that the car was already undergoing repairs and the case handler’s notes indicated that the case handler told her that the case would be temporarily withdrawn but could be reopened if necessary after the repair attempt, adding “consumer understood”; there’s some confusion here, though, because the consumer reported to TechnoMetrica that she was told that the vehicle would need to have three repair attempts.

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<sup>471</sup> BBB AUTO LINE’s files report multiple efforts to contact the consumer.

## D. COMPLIANCE

The discussion below complements the discussion of compliance (which includes a series of recommendations) in Chapter 2.<sup>472</sup>

**Table IV–21: Compliance**<sup>473</sup>

	Mediated		Arbitrated		Med + Arb	
	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE
<b>BASE: MED cases and ARB cases with an award that consumer accepted. “Not sure” excluded from survey figures</b>	62	484	17	101	79	585
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
<b>Carried out remedy within the time specified, including any extension to which you agreed</b>	51	417	8	88	59	505
	82.3%	86.2%	47.1%	87.1%	74.7%	86.3%
<b>Carried out remedy after the time specified, including any extension to which you agreed</b>	8	0	5	0	13	0
	12.9%	0.0%	29.4%	0.0%	16.5%	0.0%
<b>Hasn’t yet carried out remedy, time to do so hasn’t expired</b>	1	16	3	7	4	23
	1.6%	3.3%	17.6%	6.9%	5.1%	3.9%
<b>Hasn’t yet carried out remedy, time to do so has expired</b>	2	51	1	6	3	57
	3.2%	10.5%	5.9%	5.9%	3.8%	9.7%
<b>(Customer did not allow performance)</b>		(30)		(2)		(32)
		(6.2%)		2.0%		(5.5%)
<b>Time for compliance has expired, performance not verified</b>						

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<sup>472</sup> Chapter 2, Section III.I.

<sup>473</sup> As noted previously, “compliance” doesn’t necessarily ensure consumer satisfaction. Thus, a manufacturer who agrees to inspect a car and repair any warranted defects that it finds “complies” if it does the inspection and finds no warranted defects, even if the consumer doesn’t accept that result and pursues the matter (perhaps successfully, perhaps not) in BBB AUTO LINE.

**Table IV–22: Compliance as reported by BBB AUTO LINE**

	<b>2021</b>	<b>2020</b>	<b>2019</b>	<b>2018</b>
<b>BASE: MED cases and ARB cases with an award that consumer accepted, excluding “not sure” responses.</b>	585	589	747	727
	100.0%	100.0%	100.0%	100.0%
<b>Carried out remedy within the time specified, including any extension to which consumer agreed</b>	505	521	731	702
	86.3%	88.5%	97.8%	96.6%
<b>Carried out remedy after the time specified, including any extension to which consumer agreed</b>	0	4	-	1
	0.0%	0.7%	-	0.1%
<b>Hasn’t yet carried out remedy, time to do so hasn’t expired</b>	23	28	-	12
	3.9%	4.8%	-	1.7%
<b>Hasn’t yet carried out remedy, time to do so has expired</b>	57	28	10	12
	9.7%	4.8%	1.4%	1.7%
<b>(Customer did not allow performance)</b>	(32)	(14)	(2)	(9)
	(5.5%)	(2.4%)	(0.3%)	(1.2%)
<b>Time for compliance has expired, performance not verified</b>		8	6	
		1.4%	0.8%	

**Table IV–23: Compliance as reported by surveyed consumers**

	<b>2021</b>	<b>2020</b>	<b>2019</b>	<b>2018</b>
<b>BASE: MED cases and ARB cases with an award that consumer accepted. “Not sure” excluded from survey figures</b>	79	71	59	58
	100.0%	100.0%	100%	100.0%
<b>Carried out remedy within the time specified, including any extension to which consumer agreed</b>	59	55	49	52
	74.7%	77.5%	83.1%	89.7%
<b>Carried out remedy after the time specified, including any extension to which consumer agreed</b>	13	13	5	3
	16.5%	18.3%	8.5%	5.2%
<b>Hasn’t yet carried out remedy, time to do so hasn’t expired</b>	4	1	2	1
	5.1%	1.4%	3.4%	1.7%
<b>Hasn’t yet carried out remedy, time to do so has expired</b>	3	2	3	2
	3.8%	2.8%	5.1%	3.4%

To begin, Table IV-21 reports mediated figures alone, arbitrated figures alone, and combined figures. While the process for addressing compliance problems is different in arbitration (a reconvening) and mediation (opening a 1R case), the nature of the underlying



compliance question is the same; there's no difference in carrying out a repair remedy in a mediated case or in an arbitrated case, nor is non-compliance or delayed compliance a matter of greater concern in one than the other. Thus, the auditor focuses on the compliance figures for mediated and arbitrated cases combined.

Focusing on these combined figures, then, consumer's perceptions (as reported in the survey) suggest that the rate of non-compliance and delayed compliance is higher than BBB AUTO LINE's figures report. In large part, though not entirely, this may represent different perceptions of compliance and timely compliance. There are several situations where a consumer might see non-compliance even though BBB AUTO LINE doesn't report it that way.

- If a manufacturer agrees to inspect a vehicle and correct any warranted problems, and does the inspection and reports that it found nothing, BBB AUTO LINE reports the matter as “manufacturer complied, consumer not satisfied.”<sup>474</sup> (In most cases, the consumer will pursue further relief with BBB AUTO LINE.) The consumer might report non-compliance.<sup>475</sup>
- If, before the end of the compliance period on a replacement remedy, the consumer agrees to accept a repurchase because the manufacturer couldn't obtain the desired car, there's technically no non-compliance, because the deadline for compliance didn't pass with the matter unresolved.
- BBB AUTO LINE often bases findings of timely compliance on consumers' failure to return a performance verification letter, and, while this generally reflects actual timely compliance, it doesn't always do so.<sup>476</sup>
- Further, consumer reports of *delayed* compliance may not fully account for properly documented extensions to which the consumer agreed, although the wording of the question is designed to address this. On the other hand, BBB AUTO LINE's figures on timeliness are sometimes based on “extensions” that weren't properly documented to reflect the consumer's assent. If the agreement of both parties to an “extension” isn't documented, preferably in a revised settlement agreement, there is no extension.<sup>477</sup>

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<sup>474</sup> This is shown in internal coding; not all of the detail in the internal coding is captured in BBB AUTO LINE's compliance report.

<sup>475</sup> See Section II.B.4 of this chapter.

<sup>476</sup> See Chapter 2, Section III.I (including recommendations).

<sup>477</sup> An extension of the time for compliance should be documented by a letter sent to both parties describing the extension and inviting a response if the letter misstates their intent. This could be a revised settlement agreement in a case that was originally settled by the parties, or a modification to

In any event, the auditor is inclined to think that BBB AUTO LINE's figures, while somewhat overstating the extent of timely compliance, also somewhat more accurately reflects manufacturers' timely compliance, delayed compliance, and non-compliance (as defined by BBB AUTO LINE) than do the survey results. But BBB AUTO LINE's figures themselves understate the rates of non-compliance and delayed compliance. As noted in Chapter 2, Section III.I, most reports of compliance are based on unreturned performance verification letters, and, while the prior analysis suggested that there was in fact compliance in 98% of those, there was another 2% in which consumers perceived non-compliance (although their perceptions wouldn't necessarily line up with BBB AUTO LINE's reporting protocols). Further, when BBB AUTO LINE updated their compliance statistics in May 2022, it reported that the time for compliance hadn't yet passed in 4.8% of Florida cases that closed no later than December 31, 2021; some of these will likely provide more non-compliances and delayed compliances.<sup>478</sup> Finally, to the extent that there's no documentation of the consumer's consent to a requested extension, the auditor doesn't believe that the extension exists, so a report of timely compliance based on the "extension" is erroneous.

On balance, the rates of non-compliance and delayed compliance likely fall somewhere between that reported by consumers and that reported by BBB AUTO LINE, and, in the auditor's view, it's likely to be closer to BBB AUTO LINE's figures.

\* \* \*

Before turning to specific reports by surveyed consumers of non-compliance, the auditor repeats for Florida some analysis he did previously on a national scale, which highlights two points: the rate of non-compliance has been growing since the pandemic started, and, the bulk of these compliance problems involve repair remedies.

Using BBB AUTO LINE's definition, there's a measure for non-compliant cases in which the consumer didn't allow performance and, while there may be some problems with that category,<sup>479</sup> it does facilitate an analysis leading to some interesting results. Of the 25 Florida cases that BBB AUTO LINE reported as non-compliance and that weren't classified as "consumer didn't allow performance," 19 (76%) were repair cases, and these 19 non-compliant repair cases comprised 11.9% of all repair remedies.<sup>480</sup> In contrast, there were 4 comparable

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the terms of the arbitration decision to which the parties agree.

<sup>478</sup> This would include cases where the consumer granted repeated extensions to get the remedy that she wanted. However, it could also include other cases where the compliance clock didn't start running until later, such as a case that closed with an interim repair remedy in late 2021 but reconvened in February 2022.

<sup>479</sup> See Chapter 2, Section III.I.

<sup>480</sup> There were 160 total cases.

non-compliant repurchase/replacement cases,<sup>481</sup> and they comprised only 1.2% of all repurchase/replacement remedies.<sup>482</sup> In other words, the rate of such non-compliance for repair remedies for exceeds the rate for other remedies. Further, looking back to 2019, the last pre-pandemic year, these rates have grown from 2019 and 2021 from 3.5% to 11.9% for repair remedies, and from 0.0% to 1.2% for repurchase/replacement remedies.

The auditor can't determine the extent to which these increases were due to the pandemic conditions; as noted previously, at the start of the audit year, only 2.5% of the population had had a single Covid shot.<sup>483</sup> Still, it appears that, even in 2019, a disproportionate percentage of non-compliances (excluding those that BBB AUTO LINE characterizes as consumer not allowing compliance) involved repair remedies, and the figure for such non-compliance in implementing repair remedies rose strikingly from 2019 to 2021. As noted previously, many BBB AUTO LINE repair settlements incorporate an opportunity for the manufacturer to attempt a final repair under a state's lemon law, and these settlements typically provide that the consumer will (separately from the settlement) provide the manufacturer written notice of the repair opportunity in the format prescribed by state law. It may well be that some manufacturers route these requests through their normal "final repair attempt" channels, presumably without flagging them as BBB AUTO LINE settlements. When that occurs, if a manufacturer fails to reach out to any consumer who gave it a final repair opportunity under a state lemon law, it's squandered an opportunity to resolve the matter without invoking lemon law repurchase/replacement provisions. If the final repair opportunity was encompassed within a BBB AUTO LINE settlement, though, it's also failed to comply with an obligation owed to BBB AUTO LINE and, though BBB AUTO LINE, to the consumer using BBB AUTO LINE's processes. And this, in the auditor's view, is a point that should be highlighted to manufacturers.

*Consumers reporting non-compliance.* The auditor examined the files for the three consumers reporting non-compliance.

- One was a document receipt case rather than a non-compliance case; BBB AUTO LINE closed the file because the signed consumer complaint form wasn't returned but the consumer reported that he never received it. While this isn't a non-compliance issue, it's a significant concern that the auditor discusses in Chapter 2, Section III.C.
- Another replacement case involves some confusing facts. About seven weeks into a compliance process with a 60-day deadline, the manufacturer reported to staff that the

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<sup>481</sup> The two other non-compliances involved remedies other than repairs or repurchase/replacements.

<sup>482</sup> There were 317 total cases.

<sup>483</sup> The auditor found this data with a search for "coronavirus vaccine statistics" on Google, drawing on a chart that Google attributes to "Our World in Data."

consumer hadn't yet placed an order for a replacement vehicle. Then, towards the end of the compliance period, the consumer accepted a repurchase settlement in place of the original replacement settlement. She told TechnoMetrica in March that there was no compliance. To the extent there was a compliance problem here (and the indication that the consumer hadn't placed a new vehicle order clouds the matter), the second settlement essentially hid any problem as to compliance with the first; the auditor has previously identified this as a situation where statistics, even if accurately kept, don't capture the full situation.<sup>484</sup>

- Finally, the last case involved supply chain problems and, at the time of the survey, the manufacturer hadn't complied and BBB AUTO LINE didn't properly document all extensions, so there was non-compliance at the time of the TechnoMetrica survey.<sup>485</sup>

*Consumers reporting delayed compliance.* Thirteen consumers reporting delayed compliance. BBB AUTO LINE didn't report delayed compliance in any of these and, in six of them, it relied on a timely performance verification letter.

- In eight cases, BBB AUTO LINE's files report that performance verification letters were sent but not returned; however, in two of these cases, the letters were delayed for three to four weeks. Further, in one of these, the dating on the manufacturer's statement of amounts – the figures provided to the consumer before the transaction is finalized – made clear that compliance wasn't timely; in other words, notwithstanding the unreturned performance verification letter, BBB AUTO LINE had reason to know that any compliance wasn't timely.<sup>486</sup>
- In three cases, two of which had no compliance code, the files report that the manufacturers requested extensions but don't report that the consumer agreed.
- In one case, the matter was reopened 10 days after the expiration of the compliance period, and settled soon after. This is consistent with the consumer's report of delayed compliance.

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<sup>484</sup> This case was also included in the national survey, and was discussed in the notes accompanying Table III-23.

<sup>485</sup> The files do contain a manufacturer's statement of amounts, identifying a specific replacement vehicle by VIN, dated after the survey. After that, the files report that a performance verification letter was sent and not returned.

<sup>486</sup> In other words, although there was an unreturned performance verification letter on which staff relied, the files contained information that seemed to make clear that an assumption of timely compliance wasn't warranted.

- The final case, previously discussed in Chapter 2, Section III.F, is ambiguous, and problematic because of that ambiguity. It's not clear from the settlement letter when the compliance clock began to run, because the consumer first had to provide certain documents to the manufacturer to implement a repurchase, then the manufacturer had to calculate a repurchase worksheet for the transaction, then the consumer had to accept those figures, and only then did a 45-day compliance clock start to run. The matter was ambiguous because it's not clear, without information that isn't in the files, when the clock did begin to run.<sup>487</sup>

\* \* \*

Chapter 2, Section III.I included some statistical breakouts based on the auditor's analysis of all consumers in the national survey. These provided predicates for specific recommendations in Chapter 2 and, while the auditor doesn't repeat those recommendations here, he does calculate some Florida-specific breakouts.

Rule 703.6(h) requires BBB AUTO LINE to ascertain, within ten working days of the manufacturer's compliance date, whether the manufacturer has in fact complied. BBB AUTO LINE does so primarily through "performance verification letters" that generally ask consumers, among other questions, if and when the settlement was performed, whether performance was satisfactory and when it occurred, and (if unsatisfactory) whether the consumer wants to further pursue the claim. The letters also tell consumers that, if a timely response isn't received, performance would be assumed to be satisfactory and timely. (The text was changed last year to make explicit that performance would be assumed timely as well as satisfactory if the letter weren't returned; before that, it only mentioned that it would be assumed to be satisfactory).

Where consumers don't return a performance verification letter, staff assumes timely compliance.<sup>488</sup> Since most reports of timely compliance are based on unreturned performance verification letters, the auditor analyzed survey responses and found that the assumption of compliance is quite reasonable, while the assumption of *timely* compliance is reasonable but somewhat less so. There were 36 cases in the Florida survey where (1) BBB AUTO LINE assumed timely compliance on the basis of an unreturned performance verification letter and (2) the consumer was asked about compliance and didn't respond "not sure" or indicate that the compliance date was still in the future.<sup>489</sup> Among these 36 cases, 28 consumers (77.8%) told

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<sup>487</sup> In the prior discussion, the auditor noted a separate problem. There was no time limit on how long the manufacturer could take to produce a repurchase worksheet after it received the consumer's figures, so, in essence, the manufacturer could control the deadline for performance.

<sup>488</sup> Consumers are told that BBB AUTO LINE will do so, although performance verification letters for part of 2020 only mentioned that BBB AUTO LINE would assume compliance, and didn't mention that it would also assume timely compliance.

<sup>489</sup> Consumers likely know whether the manufacturer performed, so "not sure" responses are

TechnoMetrica that the manufacturer had complied in timely fashion, 8 (22.2%) reported delayed compliance, and none reported non-compliance. Among this sample, then, every consumer who hadn't returned performance verification letters reported compliance, while 77.8% reported timely compliance. Though the auditor recommends in Chapter 2, Section III.I, that BBB AUTO LINE simplify the process for reporting compliance, it appears that its current working assumptions were highly accurate as a measure of compliance in Florida cases, albeit less so as a measure of timely compliance.

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**Table IV–24: 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?**

	2021	2020	2019	2018
<b>BASE: (1) MED and (2) ARB where the consumer received and accepted an award. "Not sure" responses excluded.</b>	77	69	55	68
	100.0%	100.0%	100.0%	100.0%
<b>The staff contacted me by letter or email</b>	18	14	16	14
	23.4%	20.3%	29.1%	20.6%
<b>The staff spoke to me</b>	9	8	6	10
	11.7%	11.6%	10.9%	14.7%
<b>Both of those</b>	35	36	26	38
	45.5%	52.2%	47.3%	55.9%
<b>Neither of those</b>	14	10	7	5
	18.2%	14.5%	12.7%	7.4%
<b>Something else</b>	1	1	-	1
	1.3%	1.4%	-	1.5%

The auditor has examined the 14 cases where the consumer replied "neither." One of these isn't relevant to the current analysis because there was no compliance issue.<sup>490</sup> In another nine cases, the files report that a timely performance verification letter was sent,<sup>491</sup> although one

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most likely to reflect uncertainty about timing.

<sup>490</sup> This was a case that BBB AUTO LINE dismissed as a product liability case and thus outside the program summary. Despite the dismissal, the consumer apparently got timely relief outside the program.

<sup>491</sup> In one of these cases, the performance verification letter was supplemented with an email, the consumer got back and, at his request, the case was reopened.

of these cases was problematic because a subsequent communication from the consumer made clear that there wasn't a timely resolution.<sup>492</sup>

Four other cases involved delayed performance verification letters, with delays of up to 39 days.<sup>493</sup> In the auditor's view, sufficiently long delays cast some doubt on the assumption of timely compliance when the performance verification letter isn't returned.

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While some consumers had problems with the online interface that plagued them early in a case, by the time a case reached the compliance phase, those issues should have been resolved.

<sup>492</sup> In that case, which involved a repair settlement that paralleled a final repair opportunity under the lemon law, the consumer called after the case was closed to find out what was happening; she reported that her spouse had sent in the notice for the final repair opportunity, but couldn't recall the details. Although it appears that the consumer wanted to move forward, there's no indication in the files that BBB AUTO LINE advised the consumer that she might do so.

<sup>493</sup> In one of these, it's hard to determine whether the performance verification letter was timely. The original decision provided for a repurchase within 30 days, but didn't include some items for which the consumer requested reimbursement. A "clarification" by the arbitrator left open the possibility that some expenses might be covered if the consumer provided documentation, and the consumer accepted the decision and, two days later, provided the requested documentation. After awaiting a response from the manufacturer, the arbitrator issued a "modification" decision some three weeks later, and BBB AUTO LINE, somewhat curiously, then sent the manufacturer the acceptance the consumer had previously sent in. The performance verification letter was sent 45 days later, at least five days late and perhaps more.

## E. TIMING

### 1. Mediated and Arbitrated Cases

These analysis of timing focuses exclusively on arbitrated and mediated cases.<sup>494</sup> A general discussion of timing issues, with recommendations from the auditor, appears in Chapter II, Section III.H.

**Tables IV–25: Time to resolve cases (Survey)**

	Mediated	Arbitrated	Combined
<b>BASE: MED/ARB, excluding “not sure” responses to this question</b>	64	42	106
	100.0%	100.0%	100.0%
<b>Within 40 days</b>	45	9	54
	70.3%	21.4%	50.9%

**Table IV–26: Time to resolve cases (BBB AUTO LINE; all cases)**

	Mediated	Arbitrated	Combined
<b>BASE: MED/ARB</b>	484	433	<b>917</b>
	100.0%	100.0%	<b>100.0%</b>
<b>Within 40 days</b>	436	207	<b>643</b>
	90.1%	47.8%	<b>70.1%</b>

**Table IV–27: Comparative analysis of timing (Combined cases)**

	2021		2020		2019	
	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE
<b>BASE: MED/ARB</b>	106	917	87	919	78	1108
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
<b>Within 40 days</b>	54	643	49	569	54	766
	50.9%	70.1%	56.3%	61.2%	69.2%	69.1%

Preliminarily, there are numerous points in calculating timing that might reasonably

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<sup>494</sup> Most of the omitted cases were ineligible cases – and most ineligible cases were resolved in short order, often a day or two. Excluding these cases thus *lowered* the reported rate of timely compliance.



confuse some consumers. If they had a 1R case (or beyond), they might include the time for the entire process in their reporting<sup>495</sup> They might count the time for compliance in their reporting. And, since they were asked in March 2022 about cases that closed as early as January 2021, their memories of quantitative figures might have been fuzzy.

On the other hand, BBB AUTO LINE's own figures – 70.1% rate of timeliness in arbitrations and mediations combined and a 47.8% rate for arbitrations alone – show sufficient problems in themselves. The central issue isn't to determine whether BBB AUTO LINE's "timeliness" rate is actually lower than the 70.1% figure that BBB AUTO LINE reports (although the auditor does note in Chapter 2 some cases where BBB AUTO LINE understated timing), but rather to identify sources of delay and ways to address it.

That said, the auditor does report here on some further quantitative analysis, including some Florida-specific analysis comparable to that previously presented, for all case nationally, in Chapter 2 and in Section III of the current chapter

As data points, the *median* time to resolve Florida arbitrations is 41 days; the median time to resolve mediations is 17 days. Focusing on the latter figure, that means that half of all settlements are resolved in 17 days or less.

Looking more closely at the arbitration figures, the auditor notes the following.

*First*, while Table III-19(1) shows that only 47.8% of arbitrated cases were resolved in 40 days, the auditor found that 65.1% of cases were resolved within 45 days. Thus, a small speed-up in resolving arbitrations would substantially raise the rate of timely decision-making.

*Second*, again starting with the 47.8% rate of timely completions within 40 days, further scrutiny shows that 84.5% were resolved within 60 days and 96.1% were resolved within eighty days.

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<sup>495</sup> Among consumers reporting delay when BBB AUTO LINE did not, seven had 1R cases and one had a 2R case,

**Table IV-28: Consumer Agreement with BBB AUTO LINE**

	<b>BBB AUTO LINE Statistics</b>	
	<b>Within 40 Days</b>	<b>41 + Days</b>
<b>BASE=MEDIATED OR ARBITRATED CASES</b>	54	52
	100.0%	100.0%
<b>Within 40 Days (Imported)</b>	53	19
	98.1%	36.5%
<b>41+ Days (Imported)</b>	1	33
	1.9%	63.5%

**Concordance: 86/106 = 81.1%**

**F. DOCUMENTS AND CONTACTS**

**Table IV–29: Next I'm going to ask a few questions about various documents that BBB AUTO LINE sends to consumers--whether by email, an online account that they created for you, or by mail, UPS or FedEx.<sup>496</sup>**

**After you first contacted BBB AUTO LINE, did you get a claim form and an explanation of the program?**

	2021	2020	2019	2018
<b>BASE: answering, “not sure” responses excluded</b>	186	137	139	136
	100.0%	100.0%	100.0%	100.0%
<b>Yes</b>	156	121	115	122
	89.3%	88.3%	82.7%	89.7%

The issues posed by the consumers who reported that they didn’t get an initial package are discussed in Chapter 2, Section II.C.

**Table IV–30: How clear and understandable were these documents?**

	2021	2020	2019	2018
<b>BASE: receiving docs, “not sure” excluded</b>	152	121	111	120
	100.0%	100.0%	100.0%	100.0%
<b>Very</b>	95	78	64	76
	62.5%	64.5%	57.7%	63.3%
<b>Somewhat</b>	47	36	39	38
	30.9%	29.8%	35.1%	31.7%
<b>Not at all</b>	10	7	8	6
	6.6%	5.8%	7.2%	5.0%

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<sup>496</sup> The wording of this and various document receipt questions was revised for 2020 to reflect the use of online accounts for communications with most consumers.

**Table IV–31: And how helpful were they?**

	2021	2020	2019	2018
<b>BASE: Same</b>	153	119	111	121
	100.0%	100.0%	100.0%	100.0%
<b>Very</b>	81	66	58	59
	52.9%	55.5%	52.3%	48.8%
<b>Somewhat</b>	50	36	34	41
	32.7%	30.3%	30.6%	33.9%
<b>Not at all</b>	22	17	19	21
	14.4%	14.3%	17.1%	17.4%

Table IV-30 shows that 93.4% of the consumers surveyed found BBB AUTO LINE’s documents at least somewhat understandable, with 62.5% reporting that they were very understandable. Table IV-31 shows that 85.6% reported that they were at least somewhat helpful, with 52.9% finding them very helpful.

**Table IV–32: After you reached a settlement, did you get an explanation either by mail, email or your online account describing the terms of the settlement?**

	2021	2020	2019	2018
<b>BASE: MED, “not sure” excluded</b>	63	48	40	64
	100.0%	100.0%	100.0%	100.0%
<b>Yes</b>	54	41	39	61
	85.7%	85.4%	97.5%	95.3%

In one of the nine cases where the consumer reported not receiving settlement documents, he hadn’t returned a signed consumer complaint form, so the case was closed as “ineligible” and there was no settlement document.

As to the other eight, BBB AUTO LINE doesn’t ask consumers to return the settlement letter if they agree with its description, so (unlike with the consumer complaint form) there aren’t signed documents in the files reflecting that any consumers actually *received* the documents. But the files for consumers who said they didn’t receive them at all contain entries reporting that the documents were *sent*. Given the possibility that some consumers simply didn’t focus on whether they received these documents (which memorialized agreements about which they already knew) the auditor doesn’t see a problem here. Further, among these eight consumers who said that they didn’t receive a settlement letter, five reported timely compliance and one reported delayed compliance to TechnoMetrica, indicating that they were aware of the

settlement.<sup>497</sup>

The auditor does note that the numbers have dropped in recent years, but, while this bears monitoring, it may be that the electronic communications now used are less memorable than a letter.

**Table IV–33: Did you get a notice either by mail, email, or your online account, telling you when and where to go for your hearing or vehicle inspection?**

	2021	2020	2019	2018
<b>BASE: ARB, “not sure” excluded</b>	42	36	34	21
	100.0%	100.0%	100.0%	100.0%
<b>Yes</b>	38	33	33	20
	90.5%	91.7%	97.1%	95.2%

The files report that notices of hearing were sent in all the cases. In one case, there was a reconvening and two notices of hearing were sent. Another was a straddle case, with the arbitration scheduled in 2022, and the notice of hearing was sent after the TechnoMetrica survey.

**Table IV – 34: Did you get a copy, either by mail, email, or your online account, of the arbitrator's decision?**

	2021	2020	2019	2018
<b>BASE: ARB, “not sure” excluded</b>	42	35	35	18
	100.0%	100.0%	100.0%	100.0%
<b>Yes</b>	37	34	35	18
	88.1%	97.1%	100.0%	100.0%

In one of the five cases where a consumer reported not receiving a decision, the case was actually deemed ineligible, and the consumer apparently mistook that for an arbitrated denial.

The other four all report that the decisions were sent. One of the four consumers said that BBB AUTO LINE staff spoke to her about the decision, but the files contain a signed rejection sent back by the consumer. Another was a straddle case, where the arbitrator’s decision was reportedly sent after the survey was conducted.

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<sup>497</sup> The eighth case was more problematic, and is discussed in the last paragraph of text accompanying Table IV-24.

**G. CLAIMS FILED BY CONSUMERS WITH COUNSEL COMPARED TO CLAIMS FILED DIRECTLY BY CONSUMERS; ALSO, MODE OF PRESENTATION**

**TABLE IV–35: Comparison on process and remedy**

	All cases		Cases without att'ys		Cases with att'ys	
	#	%	#	%	#	%
<b>PROCESS</b>						
<b>Mediated</b>	484	0.0%	406	31.7%	78	14.6%
<b>Arbitrated</b>	433	23.9%	146	11.4%	287	53.7%
<b>Ineligible</b>	782	43.1%	649	50.7%	133	24.9%
<b>Withdrawn</b>	115	6.3%	79	6.2%	36	6.7%
<b>Total</b>	1814	100%	1280	100%	534	100%

	All cases		Cases without att'ys		Cases with att'ys	
	#	%	#	%	#	%
<b>REMEDIES: MED</b>						
<b>Repurchase/replace</b>	236	48.8%	169	41.6%	67	85.9%
<b>Repair</b>	176	36.4%	172	42.4%	4	5.1%
<b>Other</b>	72	14.9%	65	16.0%	7	9.0%
<b>Total</b>	484	100%	406	100%	78	100%
<b>REMEDIES: ARB</b>						
<b>Repurchase/replace</b>	142	32.8%	68	46.6%	74	25.8%
<b>Repair</b>	19	4.4%	9	6.2%	10	3.5%
<b>Other</b>	10	2.3%	5	3.4%	5	1.7%
<b>No award</b>	262	60.5%	64	43.8%	198	69.0%
<b>Total</b>	433	100%	146	100%	287	100%
<b>REMEDIES: MED+ARB</b>						
<b>Repurchase/replace</b>	378	41.2%	237	42.9%	141	38.6%
<b>Repair</b>	195	21.3%	181	32.8%	14	3.8%
<b>Other</b>	82	8.9%	70	12.7%	12	3.3%
<b>No Award</b>	262	28.6%	64	11.6%	198	54.2%
<b>Total</b>	917	100%	552	100%	365	100%

While this is somewhat impressionistic, withdrawals by consumers with attorneys often seem to reflect settlements outside the program, although this also occurs in some cases where consumers without attorneys withdraw. There's no easy way to quantify the impact of withdrawals reflecting settlements outside the program; even when the case handler's notes report a settlement, they don't describe the nature of the settlement (although the auditor suspects that, in many cases involving withdrawals by attorneys who settled their clients' cases, the settlement provided for repurchase or replacement remedies).

## 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–36: How would you grade the arbitrator on understanding the facts of your case?**

	Total	Award	No Award	Refund/ Replacement	Repair/ Other
<b>BASE: arb. cases, “not sure” excluded</b>	41	22	19	20	2
	100.0%	100.0%	100.0%	100.0%	100.0%
<b>A=Excellent</b>	17	15	2	14	1
	41.5%	68.2%	10.5%	70.0%	50.0%
<b>B=Good</b>	3	3	-	3	-
	7.3%	13.6%	-	15.0%	-
<b>C=Average</b>	5	-	5	-	-
	12.2%	-	26.3%	-	-
<b>D=Poor</b>	4	-	4	-	-
	9.8%	-	21.1%	-	-
<b>F=Failing Grade</b>	12	4	8	3	1
	29.3%	18.2%	42.1%	15.0%	50.0%
<b>MEAN</b>	<b>2.22</b>	<b>3.14</b>	<b>1.16</b>	<b>3.25</b>	<b>2.00</b>



**Table IV–37: How would you grade the arbitrator on objectivity and fairness?**

	<b>Total</b>	<b>Award</b>	<b>No Award</b>	<b>Refund/ Replacement</b>	<b>Repair/ Other</b>
<b>BASE: arb. cases, “not sure” excluded</b>	41	22	19	20	2
	100.0%	100.0%	100.0%	100.0%	100.0%
<b>A=Excellent</b>	18	17	1	16	1
	43.9%	77.3%	5.3%	80.0%	50.0%
<b>B=Good</b>	1	1	-	1	-
	2.4%	4.5%	-	5.0%	-
<b>C=Average</b>	5	-	5	-	-
	12.2%	-	26.3%	-	-
<b>D=Poor</b>	4	-	4	-	-
	9.8%	-	21.1%	-	-
<b>F=Failing Grade</b>	13	4	9	3	1
	31.7%	18.2%	47.4%	15.0%	50.0%
<b>MEAN</b>	<b>2.17</b>	<b>3.23</b>	<b>0.95</b>	<b>3.35</b>	<b>2.00</b>

**Table IV–38: How would you grade the arbitrator on reaching an impartial decision?**

	<b>Total</b>	<b>Award</b>	<b>No Award</b>	<b>Refund/ Replacement</b>	<b>Repair/ Other</b>
<b>BASE: arb. cases, “not sure” excluded</b>	41	22	19	20	2
	100.0%	100.0%	100.0%	100.0%	100.0%
<b>A=Excellent</b>	19	17	2	16	1
	46.3%	77.3%	10.5%	80.0%	50.0%
<b>B=Good</b>	1	1	-	1	-
	2.4%	4.5%	-	5.0%	-
<b>C=Average</b>	4	-	4	-	-
	9.8%	-	21.1%	-	-
<b>D=Poor</b>	2	-	2	-	-
	4.9%	-	10.5%	-	-
<b>F=Failing Grade</b>	15	4	11	3	1
	36.6%	18.2%	57.9%	15.0%	50.0%
<b>MEAN</b>	<b>2.17</b>	<b>3.23</b>	<b>0.95</b>	<b>3.35</b>	<b>2.00</b>

**Table IV–39: How would you grade the arbitrator on coming to a reasoned & well thought-out decision?**

	<b>Total</b>	<b>Award</b>	<b>No Award</b>	<b>Refund/ Replacement</b>	<b>Repair/ Other</b>
<b>BASE: arb. cases, “not sure” excluded</b>	41	22	19	20	2
	100.0%	100.0%	100.0%	100.0%	100.0%
<b>A=Excellent</b>	16	16	-	16	-
	39.0%	72.7%	-	80.0%	-
<b>B=Good</b>	3	2	1	1	1
	7.3%	9.1%	5.3%	5.0%	50.0%
<b>C=Average</b>	3	-	3	-	-
	7.3%	-	15.8%	-	-
<b>D=Poor</b>	3	-	3	-	-
	7.3%	-	15.8%	-	-
<b>F=Failing Grade</b>	16	4	12	3	1
	39.0%	18.2%	63.2%	15.0%	50.0%
<b>MEAN</b>	<b>2.00</b>	<b>3.18</b>	<b>0.63</b>	<b>3.35</b>	<b>1.50</b>

**Table IV–40:  
ARBITRATOR SATISFACTION COMPOSITE**

	<b>Total</b>	<b>Award</b>	<b>No Award</b>	<b>Refund/ Replacement</b>	<b>Repair/ Other</b>
<b>Understanding facts</b>	2.22	3.14	1.16	3.25	2.00
<b>Objectivity and fairness</b>	2.17	3.23	0.95	3.35	2.00
<b>Reaching and impartial decision</b>	2.17	3.23	0.95	3.35	2.11
<b>Coming to a reasoned &amp; well thought-out decision</b>	2.00	3.18	0.63	3.35	1.50
<b>AVERAGE</b>	<b>2.14</b>	<b>3.20</b>	<b>0.92</b>	<b>3.33</b>	<b>1.88</b>

Composite Means (2021)

All consumers with arbitration	2.14
Consumers who received awards:	3.20
Replacement/Repurchase	3.33
Repair/other	0.88
Consumers with no awards:	0.92

Composite Means (2020)

All consumers with arbitration	2.68
Consumers who received awards:	3.47
Replacement/Repurchase	3.73
Repair/other	2.19
Consumers with no awards:	1.21

Composite Means (2019)

All consumers with arbitration	2.52
Consumers who received awards:	3.63
Replacement/Repurchase	3.73
Repair/other	3.25
Consumers with no awards:	0.86

Composite Means (2018)

All consumers with arbitration	2.72
Consumers who received awards:	3.52
Replacement/Repurchase	3.73
Repair/other	2.66
Consumers with no awards:	1.22

Composite Means (2017)		
All consumers with arbitration		1.74
Consumers who received awards:		3.17
Replacement/Repurchase	3.53	
Repair/other	2.56	
Consumers with no awards:		0.90
Composite Means (2016)		
All consumers with arbitration:		2.25
Consumers who received awards		3.26
Replacement/Repurchase	3.70	
Repair/other	2.15	
Consumers with no awards		1.46

As discussed in the analysis of the national sample, the auditor has previously expressed skepticism about composites that measure satisfaction rates for arbitrators without adjusting for how well consumers did in arbitration. He suspected – and the survey breakouts show – that consumer’s satisfaction with arbitrators largely correlates to their success in arbitration, so year-to-year fluctuations in satisfaction could well represent, at least in substantial part, fluctuations in the success of the consumers surveyed. And, even if consumers had the identical success from one year to the next, it’s unlikely (given sampling errors) that the consumers *surveyed* would have had similarly identical success.

Further, for arbitrator satisfaction, at the state level in particular, the sample size is quite small. With only 13 “no award” consumers responding to the question, a one-grade drop by a single consumer (*e.g.*, from “A” to “B”) would lower the overall grade, on a 4.0 scale, by 0.7 points.

For all these reasons, the auditor hesitates to put much weight in minor variations from year to year, particularly given the fluctuations over a six-year period.

2. Satisfaction with BBB AUTO LINE staff

Table IV–41: How would you grade BBB AUTO LINE staff on objectivity and fairness?

<b>BASE: arb. or med. cases, “not sure” excluded</b>	103
	100.0%
<b>A=Excellent</b>	63
	61.2%
<b>B=Good</b>	16
	15.5%
<b>C=Average</b>	6
	5.8%
<b>D=Poor</b>	6
	5.8%
<b>F=Failing Grade</b>	12
	11.7%
<b>MEAN</b>	<b>3.09</b>

Table IV–42: How would you grade BBB AUTO LINE staff on efforts to assist you in resolving your claim?

<b>BASE: arb. or med. cases, “not sure” excluded</b>	103
	100.0%
<b>A=Excellent</b>	53
	51.5%
<b>B=Good</b>	22
	21.4%
<b>C=Average</b>	8
	7.8%
<b>D=Poor</b>	8
	7.8%
<b>F=Failing Grade</b>	12
	11.7%
<b>MEAN</b>	<b>2.93</b>

**Table IV-43: Overall, what grade would you give BBB AUTO LINE?**

<b>BASE: arb. or med. cases, “not sure” excluded</b>	105
	100.0%
<b>A=Excellent</b>	51
	48.6%
<b>B=Good</b>	24
	22.9%
<b>C=Average</b>	8
	7.6%
<b>D=Poor</b>	2
	1.9%
<b>F=Failing Grade</b>	20
	19.0%
<b>MEAN</b>	<b>2.80</b>

**Table IV-44  
BBB AUTO LINE STAFF EFFORTS-SATISFACTION COMPOSITE  
FOR CONSUMERS WHO USED MEDIATION OR ARBITRATION**

	Mean
<b>Objectivity and fairness</b>	3.09
<b>Efforts to resolve claim</b>	2.93
<b>Overall grade</b>	2.80
<b>AVERAGE</b>	<b>2.94</b>

Composite Mean (2021)	2.94
Composite mean (2020)	3.25
Composite mean (2019)	3.33
Composite mean (2018)	3.38
Composite mean (2017)	3.33
Composite mean (2016)	3.10

**Table IV-45: Would you recommend BBB AUTO LINE to friends or family?**

	Total	Med/Arb
<b>BASE: answering, “not sure” excluded</b>	199	104
	100.0%	100.0%
<b>Yes</b>	131	80
	65.8%	76.9%

Composite Means (2021)

All consumers: 65.8%  
 Consumers with mediations or arbitrations: 76.9%

Composite Means (2020)

All consumers: 69.9%  
 Consumers with mediations or arbitrations: 82.6%

Composite Means (2019)

All consumers: 69.9%  
 Consumers with mediations or arbitrations: 88.0%

Composite Means (2018)

All consumers: 73.8%  
 Consumers with mediations or arbitrations: 87.2%

Composite Means (2017)

All consumers: 73.2%  
 Consumers with mediations or arbitrations: 85.9%

Composite Means (2016)

All consumers: 73.0%  
 Consumers with mediations or arbitrations: 77.0%

Composite Means (2015)

All consumers: 76%  
 Consumers with mediations or arbitrations: 78.1%

## **V. SURVEY RESULTS – OHIO**

Preliminarily, this section complements Chapter 2 for Ohio cases.<sup>498</sup> The general discussion of survey-related issues in Sections I and II of this chapter applies here as well.

Among the 8700 cases that BBB AUTO LINE closed during the audit year, 349 (4.0%) were from Ohio. For reasons discussed earlier in this chapter, however, there were only 264 cases in the “sampling frame” used for the survey.<sup>499</sup>

Further, this year’s Ohio survey also ran into the steep decline in response rates to telephone surveys generally; Pew Research, for example, reported a decline from a 36% response rate in 1997 to 6% in 2018.<sup>500</sup> TechnoMetrica therefore attempted to reach *all* of these 264 and, for consumers in the Ohio-specific survey, it didn’t give up on any consumer until four attempted calls. At least in part due to these efforts, TechnoMetrica’s response rate of 26.0% was far above that for surveys generally. Still, it again proved necessary for the Ohio survey this year to include Ohio consumers interviewed in the national sample in the Ohio sample as well; even with this accommodation, though, there were only 62 Ohio interviews. With so small a number, the margin of error for questions posed to all Ohio consumers was +/-10.9%, at 21.8% range. And for questions posed to only a subset of the 62, the rate was much higher. For example, only nine surveyed consumers from Ohio reported that they used arbitration, and only these nine could be asked about remedies in arbitration. For this small number, the margin of error is +/-28.0%. With a 56% point range, a comparison of aggregate features in the survey to aggregate figures reported by BBB AUTO LINE is essentially meaningless. However, that’s not all that the auditor relies on, as discussed in the text that follows.

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<sup>498</sup> Chapter 2, Section III.C.

<sup>499</sup> See Chapter 3, Section II.B. Consumers who used attorneys were excluded from the survey; also, if consumers filed multiple complaints about the same vehicle that closed during the audit year, only the last case closed during the audit year was included. The most typical case of “multiple complaints about the same vehicle” was where a case ended with a repair settlement, the consumer wasn’t satisfied with the implementation of the settlement, and brought a new case that generally sought a repurchase or replacement.

<sup>500</sup> See <https://www.pewresearch.org/fact-tank/2019/02/27/response-rates-in-telephone-surveys-have-resumed-their-decline/>. See also <https://aspe.hhs.gov/sites/default/files/private/pdf/255531/Decliningresponserates.pdf>.



**A. GENERAL INFORMATION**

**Table V-1: Vehicle Year (Survey)**

<b>TOTAL</b>	62
	100.0%
<b>2008 or older</b>	-
	-
<b>2009</b>	2
	3.2%
<b>2010</b>	-
	-
<b>2011</b>	1
	1.6%
<b>2012</b>	2
	3.2%
<b>2013</b>	1
	1.6%
<b>2014</b>	2
	3.2%
<b>2015</b>	2
	3.2%
<b>2016</b>	1
	1.6%
<b>2017</b>	2
	3.2%
<b>2018</b>	5
	8.1%
<b>2019</b>	8
	12.9%
<b>2020</b>	23
	37.1%
<b>2021</b>	13
	21.0%
<b>2022</b>	-
	-

**Table V-2: The BBB AUTO LINE's records show they closed a complaint in 2020 about your <make> vehicle. Is that correct?**

<b>TOTAL</b>	62
	100.0%
<b>Yes</b>	62
	100.0%

**Table V-3: Repair Attempts**

	<b>2021</b>	<b>2020</b>	<b>2019</b>	<b>2018</b>
<b>BASE: ALL, “not sure” excluded</b>	62	76	65	74
	100.0%	100.0%	100.0%	100.0%
<b>One</b>	5	6	3	4
	8.1%	7.9%	4.6%	5.4%
<b>Two</b>	9	4	4	7
	14.5%	5.3%	6.2%	9.5%
<b>Three</b>	10	10	13	8
	16.1%	13.2%	20.0%	10.8%
<b>Four or more</b>	26	44	31	49
	41.9%	57.9%	47.7%	66.2%
<b>None</b>	12	12	14	6
	19.4%	15.8%	21.5%	8.1%

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

	<b>2021</b>	<b>2020</b>	<b>2019</b>	2018
<b>BASE: all respondents, “not sure” excluded</b>	60	77	67	76
	100.0%	100.0%	100.0%	100.0%
<b>Manufacturer's manuals/other warranty documents</b>	1	5	10	11
	1.7%	6.5%	14.9%	14.5%
<b>Dealer or manufacturer representative</b>	16	13	18	18
	26.7%	16.9%	26.9%	23.7%
<b>BBB/BBB Website</b>	11	18	5	10
	18.3%	23.4%	7.5%	13.2%
<b>Government website, office, or official</b>	9	2	-	4
	15.0%	2.6%	-	5.3%
<b>Internet website (NOT BBB or government website)</b>	13	5	1	7
	21.7%	6.5%	1.5%	9.2%
<b>Lawyer</b>	3	7	15	4
	5.0%	9.1%	22.4%	5.3%
<b>Friend/family/word of mouth</b>	4	17	2	12
	6.7%	22.1%	3.0%	15.8%
<b>TV/Radio/Newspaper</b>	-	-	10	-
	-	-	14.9%	-
<b>Had used the BBB AUTOLINE previously</b>	1	2	5	5
	1.7%	2.6%	7.5%	6.6%
<b>General Knowledge</b>	3	6	6	7
	5.0%	7.8%	9.0%	9.2%
<b>Other</b>	-	3	-	
	-	3.9%	-	

## B. PROCESS QUESTIONS

**Table V-5: Aggregate process responses**

	<b>BBB AUTO LINE stats (A1)</b>	<b>Same, excluding att’y cases (A2)</b>	<b>Fully adjusted<sup>501</sup> (A3)</b>	<b>Survey (B1)</b>	<b>Survey, adjusted for response rate (see below) (B2)</b>
<b>TOTAL</b>	349	276	<b>264</b>	62	
	100.0%	100.0%	<b>100.0%</b>	100.0%	<b>100.0%</b>
<b>Mediation</b>	148	136	<b>125</b>	28	
	42.4%	49.3%	<b>47.3%</b>	45.2%	<b>44.9%</b>
<b>Arbitration</b>	77	31	<b>31</b>	9	
	22.1%	11.2%	<b>11.7%</b>	14.5%	<b>12.9%</b>
<b>Withdrawn</b>	36	28	<b>27</b>	4	
	10.3%	10.1%	<b>10.3%</b>	6.5%	<b>8.8%</b>
<b>Ineligible</b>	88	81	<b>81</b>	16	
	25.2%	29.3%	<b>30.7%</b>	25.8%	<b>33.4%</b>
<b>Other</b>				5	
				8.1%	

**Table V-6: Multi-year comparisons (A1 Figures)**

	<b>2021</b>	<b>2020</b>	<b>2019</b>	<b>2018</b>
<b>TOTAL</b>	349	404	347	414
	100.0%	100.0%	100.0%	100.0%
<b>Mediation</b>	148	135	151	166
	42.4%	33.4%	43.5%	40.1%
<b>Arbitration</b>	77	105	60	107
	22.1%	26.0%	17.3%	25.8%
<b>Withdrawn</b>	36	51	37	41
	10.3%	12.6%	10.7%	9.9%
<b>Ineligible</b>	88	113	99	100
	25.2%	28.0%	28.5%	24.2%

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<sup>501</sup> See below; also Section II.A of this Chapter.

**Table V-7: Consumer Agreement with BBB AUTO LINE records**

	<b>Mediated</b>	<b>Arbitrated</b>	<b>Withdrawn</b>	<b>Ineligible</b>	<b>Other</b>
<b>TOTAL</b>	28	9	4	16	5
	100.0%	100.0%	100.0%	100.0%	100.0%
<b>Mediation (Imported)</b>	28	-	1	-	3
	100.0%	-	25.0%	-	60.0%
<b>Arbitration (Imported)</b>	-	9	-	-	-
	-	100.0%	-	-	-
<b>Withdrawn (Imported)</b>	-	-	3	1	1
	-	-	75.0%	6.3%	20.0%
<b>Ineligible (Imported)</b>	-	-	-	15	1
	-	-	-	93.8%	20.0%

**Concordance: 55/62 = 88.7%**

### **1. Micro Analysis**

Table V-7, the core of the micro analysis, reports a “concordance” of 88.7%, with seven discordant responses.

Using the categories of reasonably explicable discordances set out in Section I.A of this chapter, in two of these cases, the consumer disagreed with BBB AUTO LINE’s reporting and replied “other,” but then provided details consistent with BBB AUTO LINE’s reporting. (Category a). Another case involved confusion about whether a case was ineligible or withdrawn. (Category d.)

In a fourth case, BBB AUTO LINE reported a repair settlement and, according to the case handler’s notes, the consumer reported (twice) that the car was working after the repair. However, the consumer wanted to proceed even though there was no existing problem, and, after responding “other” in the TechnoMetrica survey, said the manufacturer denied the complaint. Yet another case appears to have involved a breakdown in communications, although there’s some ambiguity in the closing letter.<sup>502</sup>

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<sup>502</sup> In this case, the case handler’s notes report that the case handler conveyed an offer on day 20, subsequently made multiple calls, and, on day 26, sent a letter to the consumer advising that staff needed to hear back from the consumer to discuss the case within seven days. The consumer called on day 32 and said she’d get back to staff the next day after discussing the matter with her spouse. There’s no indication that she got back to staff and, during the next nine days, the notes report two further attempts to call her. On day 42, BBB AUTO LINE sent a closing letter indicating that the

Another case was problematic, but not for process reporting reasons. In that case, which BBB AUTO LINE reported as settled, the consumer disagreed, responded “other,” and then added “still pending.” In fact, there was a series of settlements (so BBB AUTO LINE’s reporting on that score was right), but there wasn’t a performance verification letter following up on the last. In other words, there was a compliance monitoring problem, but not a problem in BBB AUTO LINE’s report of the case as mediated.

The last case, which involved a consumer who was also included in the national survey, has been discussed previously in Chapter 2 and in Section III of this chapter. In the auditor’s view, BBB AUTO LINE’s reporting of a settlement in this case appears problematic. BBB AUTO LINE sent the parties a settlement letter, but the letter didn’t disclose that the consumer would have to sign a waiver. When the consumer learned about the undisclosed term, he balked, and insisted that there wasn’t a settlement because he hadn’t agreed to the terms. BBB AUTO LINE nonetheless reported the case as a settlement in its records and, in the auditor’s view, should have revisited that determination after getting the consumer’s response.<sup>503</sup>

*Attorney cases:* As noted above, the auditor also examined 20 Ohio case files where the consumer had counsel. On the process variable for the Ohio attorney cases, there was complete concordance, and the auditor didn’t find problems on other metrics.

## **2. Macro analysis**

*The “A” columns of Table V-5.* Column A1 shows aggregate “process” statistics, as reported by BBB AUTO LINE, for all cases closed in the audit year. These provide important information about the full range of cases filed in the program; for example, Column A1 highlights that BBB AUTO LINE closed far more cases through mediation than through

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case was being closed and that inviting the consumer, if she chose to do so, to proceed at a later date. (The ambiguity is that the second letter reported that the consumer hadn’t responded to the earlier letter, which wasn’t accurate; she had responded initially but then hadn’t gotten back to staff with a promised follow-up or responded to staff’s efforts to contact her.) BBB AUTO LINE reported the case as withdrawn; during the survey, the consumer replied “other” and said she was still working with the manufacturer to resolve the issue.

<sup>503</sup> This case also comes up in some other contexts within the Ohio discussion (and in multiple contexts in the national survey discussion), and the auditor provides more detail here. The consumer had been offered a repurchase, but wouldn’t accept it because of negative equity. He was also offered a cash payment in lieu of a repurchase, and it’s that offer that he purportedly accepted but at which he then balked because the manufacturer insisted that he sign a waiver if he kept a car that the manufacturer was willing to repurchase. He later indicated that he would hold off on resuming the claim, an action that he interpreted as a withdrawal (since he didn’t accept that there was a settlement in the first place). As noted in the text, BBB AUTO LINE, having reported a settlement, left the “mediation” categorization stand while reporting the consumer didn’t allow performance.

arbitration (and the differential grows even higher, as shown by Column A2, when looking solely at non-attorney cases).

While column A1 shows BBB AUTO LINE's calculated aggregates for *all* cases closed during the year, column A2 provides comparable figures, as reported by BBB AUTO LINE, for cases where consumers appeared without counsel; these constitute about 75.6% of the "total" cases in column A1. And, while column A2 omits only cases where the consumer had a lawyer, column A3 (based on TechnoMetrica's modified version of the spread sheet) omits *both* cases where the consumer had a lawyer and, where a consumer filed multiple complaints about the same vehicle that closed during the year, it also omits the earlier of those cases. Both types of omission are needed to avoid the "comparing apples and oranges" problem, since they match the criteria for calculating BBB AUTO LINE aggregates to the criteria for inclusion in the survey's sampling frame.

Thus, column A3 reports the appropriate figures to compare to the survey results. But, as discussed next, adjustments are also appropriate for the survey results.

*The "B" columns.* The B columns report the survey results, with column B1 reporting the actual results and column B2 adjusting them with a weighting factor. As explained previously,<sup>505</sup> past audits have found that some consumers – particularly those who were deemed ineligible – are less likely than others to finish a questionnaire than those who used mediation or arbitration.

TechnoMetrica this year calculated a single set of response rates for Ohio consumers included in the Ohio survey results, whether or not they were also among the Ohio consumers in the national survey.<sup>506</sup> TechnoMetrica's figures showed the following response rates:

- 26% for those whose cases were resolved through mediation;
- 29% for those who used arbitration;
- 20% for those deemed ineligible to participate in BBB AUTO LINE; and
- 19% for consumers who withdrew their complaints.

In any event, Column B2 weights the responses in each category to simulate a scenario where all categories of consumers responded at the same rate. So, for purposes of Table V-5, the relevant comparison is between Columns A3 and B2. And, looking at those columns, the figures are quite close and well within the margin of error.

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<sup>505</sup> See Section II.F of this chapter.

<sup>506</sup> As noted previously, the number of Ohio cases was sufficiently small that, to obtain 78 sets of responses for Ohio, TechnoMetrica needed to include Ohio consumers who were interviewed during the national survey. (There were 31 of them.)

\* \* \*

At this point, it's necessary to add back in the MCSV omissions to get back to columns A2 and A3, and to add back in the "attorney case" omissions to get back to column A1. For these, the auditor relies on his systematic examination of 25 attorney case files, as well as his review of the omitted MCSV cases during his review of case files.<sup>507</sup> In neither did he find systematic problems with the "restored" BBB AUTO LINE records.

\* \* \*

Finally, Table IV-5's multi-year comparisons show relatively consistent results over the years.

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<sup>507</sup> When the auditor was reviewing targeted case files, as described above, he also examined earlier cases in the series (whether the earlier case closed during the audit year or earlier).



## C. RELIEF

The relief questions were posed only to consumers who identified their cases as arbitrated or mediated. As with the process questions, consumers were told how BBB AUTO LINE reported the relief they received, and asked to confirm or correct the results.<sup>508</sup>

### 1. Combined Mediated and Arbitrated Cases

The discussion that follows presents the combined results for mediated and arbitrated cases. These, in the auditor’s view, present the most significant insights into the program as a whole – and point to advantages in a program in which, unless the consumer wants to bypass mediation, a mediation process precedes arbitration. From the consumer’s perspective, as noted previously, a replacement vehicle obtained in mediation is no less valuable than a similar replacement obtained in arbitration – and more consumers in the Ohio program got a repurchase or replacement through mediation (81) than through arbitration (31).<sup>509</sup>

**Table V–8: Remedies in combined mediated and arbitrated cases**

	<b>BBB AUTO LINE stats (A1)</b>	<b>Same, excluding att’y cases (A2)</b>	<b>Stats from “fully adjusted” spread sheet (A3)</b>	<b>Survey (B)</b>
<b>BASE: MED/ARB</b>	225	167	<b>156</b>	<b>37</b>
	100.0%	100.0%	<b>100.0%</b>	<b>100.0%</b>
<b>Replacement/ Repurchase</b>	112	80	<b>80</b>	<b>22</b>
	49.8%	47.9%	<b>51.3%</b>	<b>59.5%</b>
<b>Repair</b>	47	47	<b>37</b>	<b>6</b>
	20.9%	20.9%	<b>23.7%</b>	<b>16.2%</b>
<b>Other</b>	25	22	<b>21</b>	<b>4</b>
	11.1%	13.2%	<b>13.5%</b>	<b>10.8%</b>
<b>No Award</b>	41	18	<b>18</b>	<b>5</b>
	18,2%	10.8%	<b>11.4%</b>	<b>13.5%</b>

The key comparison is between columns A3 and B, because both exclude consumers who used attorneys and, for MCSV’s, all but the last complaint filed in 2021. The margin of error for this comparison is 14.1%, and these cases are well within that margin of error.

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<sup>508</sup> There were small variations in wording depending on whether the consumer had identified the case as mediated or arbitrated.

<sup>509</sup> Tables V-11 and 14.

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

**TABLE V–9: Multi-year comparisons (A1 figures)**

	<b>2021</b>	<b>2020</b>	<b>2019</b>	<b>2018</b>
<b>BASE: MED/ARB</b>	225	240	211	274
	100.0%	100.0%	100.0%	100.0%
<b>Replacement/ Repurchase</b>	112	98	108	116
	49.8%	40.8%	51.2%	42.3%
<b>Repair</b>	47	46	56	66
	20.9%	19.2%	26.5%	24.1%
<b>Other</b>	25	34	14	30
	11.1%	14.2%	6.6%	11.0%
<b>No Award</b>	41	62	33	62
	18.2%	25.8%	15.6%	22.6%

**Table V–10: Consumer Agreement with BBB AUTO LINE records**

	<b>Repurchase/ Replacement</b>	<b>Repair</b>	<b>Other</b>	<b>No Award</b>
<b>BASE=MED/ARB</b>	22	6	4	5
	100.0%	100.0%	100.0%	100.0%
<b>Repurchase/Replacement (Imported)</b>	22	-	-	-
	100.0%	-	-	-
<b>Repair (Imported)</b>	-	6	-	-
	-	100.0%	-	-
<b>Other (Imported)</b>	-	-	4	-
	-	-	100.0%	-
<b>No Award (Imported)</b>	-	-	-	5
	-	-	-	100.0%
<b>None on File-Ineligible/ Withdrawn Cases (Imported)</b>	-	-	-	-
	-	-	-	-

**Concordance: 37/37 = 100.0%**

\* \* \*

At this point, the auditor turns to the substantive analysis. Assuming the figures in column A1 of Table V-8 are substantially accurate, what do they tell us? In the auditor's view, the overall distribution is revealing: among consumers whose cases were either mediated or arbitrated, 49.8% ended with a repurchase or replacement remedy, 32.0% ended with some other relief, and 18.2% ended in no relief. Further, excluding cases brought by attorneys, only 10.8% of consumers got no award.

## 2. Mediated cases

**Table V–11: Remedies in mediation**

	<b>BBB AUTO LINE stats (A1)</b>	<b>Same, excluding att’y cases (A2)</b>	<b>Stats from “fully adjusted” spread sheet (A3)</b>	<b>Survey (B)</b>
<b>BASE: MED</b>	148	136	<b>125</b>	<b>28</b>
	100.0%	100.0%	<b>100.0%</b>	<b>100.0%</b>
<b>Replacement/ Repurchase</b>	81	71	<b>71</b>	<b>18</b>
	54.7%	52.2%	<b>56.8%</b>	<b>64.3%</b>
<b>Repair</b>	44	44	<b>34</b>	<b>6</b>
	29.7%	32.4%	<b>27.2%</b>	<b>21.4%</b>
<b>Other</b>	23	21	<b>20</b>	<b>4</b>
	15.5%	15.4%	<b>16.0%</b>	<b>14.3%</b>

With a margin of error of +/- 16.4%, the differences between columns A3 and B never exceed 3.5%.

**Table V–12: Multi-year comparisons (A1 figures)**

	<b>2021</b>	<b>2020</b>	<b>2019</b>	<b>2018</b>
<b>BASE: MED</b>	148	135	151	125
	100.0%	100.0%	100.0%	100.0%
<b>Replacement/ Repurchase</b>	81	68	85	66
	54.7%	50.4%	56.3%	52.8%
<b>Repair</b>	44	38	53	32
	29.7%	28.2%	35.1%	25.6%
<b>Other</b>	23	29	13	27
	15.5%	21.5%	8.6%	21.6%

**Table V-13: Consumer agreement with BBB AUTO LINE records**

	<b>Repurchase/ Replacement</b>	<b>Repair</b>	<b>Other</b>
<b>BASE: MED</b>	18	6	4
	100.0%	100.0%	100.0%
<b>Repurchase/Replacement (Imported)</b>	18	-	-
	100.0%	-	-
<b>Repair (Imported)</b>	-	6	-
	-	100.0%	-
<b>Other (Imported)</b>	-	-	4
	-	-	100.0%
<b>Ineligible/Withdrawn Cases (Imported)</b>	-	-	-
	-	-	-

**Concordance: 28/28 = 100.0%**

### 3. Arbitrated Cases

**Table V-14: Remedies in arbitration**

	<b>BBB AUTO LINE stats (A1)</b>	<b>Same, excluding att’y cases (A2)</b>	<b>Stats from “fully adjusted” spread sheet (A3)</b>	<b>Survey (B)</b>
<b>BASE: ARB</b>	77	31	31	9
	100.0%	100.0%	100.0%	100.0%
<b>Replacement/ Repurchase</b>	31	9	9	4
	40.3%	29.0%	29.0%	44.4%
<b>Repair</b>	3	3	3	-
	3.9%	9.7%	9.7%	-
<b>Other</b>	2	1	1	-
	2.6%	3.2%	3.2%	-
<b>No Award</b>	41	18	18	5
	53.2%	58.1%	58.1%	55.6%

With so few completed surveys in this category, the margin of error here is +/-28.0%. That puts the differentials between columns A3 and B well within the margin.

**Table V-15: Multi-Year Comparisons (A1 Figures)**

	<b>2021</b>	<b>2020</b>	<b>2019</b>	<b>2018</b>
<b>BASE: ARB</b>	77	105	60	106
	100.0%	100.0%	100.0%	100.0%
<b>Replacement/ Repurchase</b>	31	30	23	37
	40.3%	28.6%	38.3%	34.3%
<b>Repair</b>	3	8	3	9
	3.9%	7.6%	5.0%	8.3%
<b>Other</b>	2	5	1	-
	2.6%	4.8%	1.7%	-
<b>No Award</b>	41	62	33	62
	53.2%	59.0%	55.0%	57.4%

**Table V-16: Consumer agreement with BBB AUTO LINE records**

	<b>Repurchase/ Replacement</b>	<b>Repair</b>	<b>Other</b>	<b>No Award</b>
<b>BASE: arb. cases</b>	22	6	4	5
	100.0%	100.0%	100.0%	100.0%
<b>Repurchase/Replacement (Imported)</b>	22	-	-	-
	100.0%	-	-	-
<b>Repair (Imported)</b>	-	6	-	-
	-	100.0%	-	-
<b>Other (Imported)</b>	-	-	4	-
	-	-	100.0%	-
<b>No Award (Imported)</b>	-	-	-	5
	-	-	-	100.0%
<b>None on File- Ineligible/Withdrawn Cases</b>	-	-	-	-
	-	-	-	-

**Concordance: 34/35 = 97.1%**

**Table V-17: Did you accept the arbitrator's decision by returning a form that BBB AUTO LINE provided to you?**

	<b>2021</b>	<b>2020</b>	<b>2019</b>	<b>2018</b>
<b>BASE: ARB, with award, not sure excluded</b>	4	15	5	6
	100.0%	100.0%	100.0%	100.0%
<b>Yes</b>	4	14	5	6
	100.0%	93.3%	100.0%	100.0%

**Table V–18: Acceptance of different types of remedies**

	Repurchase/ Replacem't	Repair	Other	Total
<b>BASE:</b>	4	-	-	4
<b>ARB, with award, not sure excluded</b>	100.0%	-	-	100.0%
<b>Yes</b>	4	-	-	4
	100.0%	-	-	100.0%

**Table V–19: Consumer Agreement with BBB AUTO LINE Records**

	Accepted	Rejected
<b>BASE:</b>	4	-
<b>ARB, with award, not sure excluded</b>	100.0%	-
<b>Accepted (Imported)</b>	4	-
	100.0%	-
<b>Rejected (Imported)</b>	-	-
	-	-
<b>No entry (not listed by BBB AUTO LINE as an arbitration)</b>	-	-
	4	-



## C1. WITHDRAWN CASES

**Table V-20: Which of the following best describes why you withdrew your complaint?**

<b>BASE: withdrawn cases</b>	4
	100.0%
<b>You settled the matter or your car was fixed</b>	3
	75.0%
<b>You sold the car</b>	-
	-
<b>Some other reason</b>	1
	25.0%

Three of the consumers reporting withdrawals indicated that the matter was resolved or the car was fixed. The fourth consumer was the previously discussed case where the consumer balked at accepting a settlement agreement because the agreement didn't disclose that, if he accepted a cash payment in lieu of a repurchase/replacement remedy, he'd have to sign a waiver.<sup>510</sup>

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<sup>510</sup> See note 503 and accompanying text.

## D. COMPLIANCE QUESTIONS

The discussion below complements the discussion of compliance (which includes a series of recommendations) in Section III.I of Chapter 2. That discussion also includes the auditor’s recommendations.

**Table V-21: Compliance**<sup>511</sup>

	Mediated		Arbitrated		Med + Arb	
	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE
<b>BASE: MED cases and ARB cases with an award that consumer accepted. “Not sure” excluded from survey figures</b>	26	141	4	23	30	164
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
<b>Carried out remedy within the time specified, including any extension to which you agreed</b>	17	135	1	21	18	156
	65.4%	95.7%	25.0%	91.3%	60.0%	95.1%
<b>Carried out remedy after the time specified, including any extension to which you agreed</b>	6	0	2	0	8	0
	23.1%	0.0%	50.0%	0.0%	26.7%	0.0%
<b>Hasn’t yet carried out remedy, time to do so hasn’t expired</b>	1	0	0	0	1	0
	3.8%	0.0%	0.0%	0.0%	3.3%	0.0%
<b>Hasn’t yet carried out remedy, time to do so has expired</b>	2	6	1	2	3	8
	7.7%	4.3%	25.0%	8.7%	10.0%	5.9%
<b>(Consumer did not allow compliance)</b>		(4)		(2)		(6)
		(2.8%)		(8.7%)		(3.7%)
<b>Time for compliance has expired, performance not verified</b>						

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<sup>511</sup> As noted previously, “compliance” doesn’t necessarily ensure consumer satisfaction. Thus, a manufacturer who agrees to inspect a car and repair any warranted defects that it finds “complies” if it does the inspection and finds no warranted defects, even if the consumer doesn’t accept that result and pursues the matter (perhaps successfully, perhaps not) in BBB AUTO LINE.

**Table V–22: Comparative analysis on compliance (Survey)**

	<b>2021</b>	<b>2020</b>	<b>2019</b>	<b>2018</b>
<b>BASE: Same as Table V-21</b>	30	28	32	38
	100.0%	100.0%	100%	100.0%
<b>Carried out remedy within the time specified, including any extension to which you agreed</b>	18	17	26	32
	60.0%	60.7%	81.3%	84.2%
<b>Carried out remedy after the time specified, including any extension to which you agreed</b>	8	6	5	4
	26.7%	21.4%	15.6%	10.5%
<b>Hasn't yet carried out remedy, time to do so hasn't expired</b>	1	2	-	0
	3.3%	7.1%	-	0.0%
<b>Hasn't yet carried out remedy, time to do so has expired</b>	3	3	1	2
	10.0%	10.7%	3.1%	5.3%

**Table V–23: Comparative analysis on compliance (BBB Statistics)**

	<b>2021</b>	<b>2020</b>	<b>2019</b>	<b>2018</b>
<b>BASE: Same as Table V-21</b>	164	172	151	201
	100.0%	100.0%	100.0%	
<b>Carried out remedy within the time specified, including any extension to which you agreed</b>	156	153	141	198
	95.1%	88.9%	93.4%	98.5%
<b>Carried out remedy after the time specified, including any extension to which you agreed</b>	0	-	1	1
	0.0%	-	0.7%	0.5%
<b>Hasn't yet carried out remedy, time to do so hasn't expired</b>	0	7		2
	0.0%	4.0%		1.0%
<b>Hasn't yet carried out remedy, time to do so has expired</b>	8	5	3	
	5.9%	2.9%	2.0%	
<b>(Failure to comply was the fault of the consumer)</b>	(6)	(5)	(2)	
	(3.7%)	(2.9%)	(1.3%)	
<b>Time for compliance has expired, performance not verified</b>	164	7	6	
	100.0%	4.0%	4.0%	

**Table V–24: 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?**

	2021	2020	2019	2018
<b>BASE: (1) MED and (2) ARB where the consumer received and accepted an award. “Not sure” responses excluded.</b>	30	37	29	35
	100.0%	100.0%	100.0%	100.0%
<b>The staff contacted me by letter or email</b>	5	8	2	12
	16.7%	21.6%	6.9%	34.3%
<b>The staff spoke to me</b>	9	10	6	4
	30.0%	27.0%	20.7%	11.4%
<b>Both of those</b>	11	13	16	15
	36.7%	35.1%	55.2%	42.9%
<b>Neither of those</b>	4	5	3	3
	13.3%	13.5%	10.3%	8.6%
<b>Something else</b>	1	1	2	1
	3.3%	2.7%	6.9%	2.9%

*Non-compliance as reported by BBB AUTO LINE.* In the Florida and national surveys, the auditor found that the rates of non-compliance had risen since 2019, although it wasn’t clear how much of the increase was due to pandemic conditions. He also noted, though, that for both populations, and excluding cases where BBB AUTO LINE reported that the consumer didn’t allow performance, the problems were greatest with repair remedies. It isn’t possible to do a similar remedy-specific analysis in Ohio, because the sample size is too small.<sup>512</sup> However, it’s reasonable to be on guard for patterns in Ohio similar to those detected nationally (and specifically in Florida).

*Non-compliance as reported by surveyed consumers.* Three consumers reported non-compliance. In one, BBB AUTO LINE sent a timely performance verification letter that wasn’t returned. In another, the consumer had a repurchase settlement with BBB AUTO LINE but was apparently already working with the manufacturer’s repurchase department and, according to BBB AUTO LINE’s notes, he chose to continue working with the department. The case is somewhat problematic, though, because BBB AUTO LINE closed the case on the basis of a discussion with the consumer and didn’t send a closing letter that informed the consumer that he could start the BBB AUTO LINE process again if needed.

Finally, in the third case, the consumer reached a repurchase settlement and reported to

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<sup>512</sup> The analysis is based on cases for which BBB AUTO LINE reported non-compliance that wasn’t due to the consumer not allowing performance. In Ohio, there were only two such cases.

the auditor that the basic repurchase was accomplished but that there was an issue as to his recovery of some monthly payments, apparently to the finance company. The case notes indicate that the case handler was looking into the matter but don't report a resolution, and the consumer (who also reported unreturned calls to BBB AUTO LINE) reported that he eventually received moneys back that didn't reflect the payments in question.

*Delayed performance reported by surveyed consumers.* Eight consumers reported delayed performance. For seven of these, BBB AUTO LINE was relying on unreturned performance verification letters; however, the letters were supposed to go out within 10 days of the compliance date, but four of these were sent between one and two months after the compliance date, which makes BBB AUTO LINE's reliance somewhat more problematic. Further, in one of cases, material in BBB AUTO LINE's files seems to indicate that compliance wasn't timely.<sup>513</sup>

In the eighth case, where was no performance verification letter (although the consumer reported to TechnoMetrica that he spoke to staff), so BBB AUTO LINE had no basis to assume that compliance was timely

*Compliance monitoring problems reported by surveyed consumers.* Four consumers reported no contact with BBB AUTO LINE. In all of these cases, the files report that a performance verification letter was sent, but in one case the performance verification letter was delayed. One of these was the case, discussed under non-compliance, where the consumer didn't get back moneys that appear to have been the responsibility of his finance company.

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<sup>513</sup> The file contains a manufacturer statement of amounts (setting forth financial details of the transaction) which is dated eight days after the end of the compliance period.

## E. TIMING QUESTIONS

### 1. Mediated and Arbitrated Cases

These statistics and the accompanying analysis focus exclusively on arbitrated and mediated cases.<sup>514</sup> There's also a discussion of timing issue, with numerous recommendations, in Section III.H of Chapter 2.

**Tables V–25: Time to resolve cases (survey)**

	Mediated	Arbitrated	Combined
<b>BASE: MED/ARB</b>	28	9	37
	100.0%	100.0%	100.0%
<b>Within 40 days</b>	20	1	21
	71.4%	11.1%	56.8%

**Table V–26: Time to resolve cases (BBB AUTO LINE)**

	Mediated	Arbitrated	Combined
<b>BASE: MED/ARB</b>	148	77	<b>225</b>
	100.0%	100.0%	<b>100.0%</b>
<b>Within 40 days</b>	137	33	<b>170</b>
	95.7%	42.9%	<b>75.6%</b>

**Table V–27: Comparative analysis of timing**

	2021		2020		2019	
	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE
<b>BASE: MED/ARB</b>	37	225	48	240	35	211
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
<b>Within 40 days</b>	21	170	24	146	24	148
	56.8%	75.6%	50.0%	60.8%	68.6%	70.1%

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<sup>514</sup> Most of the omitted cases were ineligible cases – and most ineligible cases were resolved in short order, often a day or two. Excluding these cases thus *lowered* the reported rate of timely compliance.

Preliminarily, there are numerous points in calculating timing that might reasonably confuse some consumers. They might treat the start date as the date of their initial contact which, outside Florida and California, isn't how BBB AUTO LINE reports it. If they had a 1R case (or beyond), they might include the time for the entire process in their reporting. They might count the time for compliance in their reporting. And, since they were asked in March 2022 about cases that closed as early as January 2021, their memories of quantitative figures might have been fuzzy.

On the other hand, BBB AUTO LINE's own figures – 75.6% timeliness in arbitrations and mediations combined and a 42.9% rate for arbitrations alone – show sufficient problems in themselves. The central issue isn't to determine whether BBB AUTO LINE's "timeliness" rate is actually lower than the 75.6% figure that BBB AUTO LINE reports (although the auditor does note in Chapter 2 some cases where BBB AUTO LINE understated timing), but rather to identify sources of delay and ways to address it.

In the auditor's view, the most important issue is to locate the sources of delay, a matter that he addresses (for all the sampled populations) in Chapter 2. Focusing on the latter figure, half of all settlements are resolved in three weeks or less.

Looking more closely at the arbitration figures, the auditor notes the following.

First, while Table III-19(1) shows that only 42.9% of arbitrated cases were resolved in 40 days, the auditor found that 59.7% of cases were resolved within 45 days. Thus, a small speed-up in resolving arbitrations would substantially raise the rate of timely decision-making.

Second, again starting with the 42.9% rate of timely completions within 40 days, further scrutiny shows that 79.2% were resolved within 60 days and 92.2% within eighty days.

**Table V-28: Consumer Agreement with BBB AUTO LINE**

	<b>BBB AUTO LINE statistics</b>	
	<b>Within 40 Days</b>	<b>41 + Days</b>
<b>BASE: MED/ARB, excluding "not sure"</b>	21 100.0%	16 100.0%
<b>Within 40 Days (Imported)</b>	21 100.0%	7 43.8%
<b>41+ Days (Imported)</b>	- -	9 56.3%

**Concordance: 30/37 = 81.1%**

## F. DOCUMENTS AND CONTACTS

**Table V–29: Next I'm going to ask a few questions about various documents that BBB AUTO LINE sends to consumers--whether by email, an online account that they created for you, or by mail, UPS or FedEx.<sup>515</sup>**

**After you first contacted BBB AUTO LINE, did you get a claim form and an explanation of the program?**

	2021	2020	2019	2018
<b>BASE: ALL, “not sure” excluded</b>	54	73	62	73
	100.0%	100.0%	100.0%	100.0%
<b>Yes</b>	47	69	55	68
	87.0%	94.5%	88.7%	89.5%

Seven consumers reported that they hadn't received the claim forms. In six of these cases, the files report that a letter was sent telling the consumer that the vehicle wasn't eligible for the program because of age or mileage. These cases may involve the difficulties that some consumers have had with BBB AUTO LINE's online portal, a concern that the auditor discussed, with recommendations, in Chapter 2. The last case may reflect a breakdown in communications. BBB AUTO LINE closed the case after it couldn't reach the consumer, and the files report that the case handler twice attempted to reach the consumer by phone, made another attempt by text or email, and sent a closing letter that said staff couldn't reach the consumer but the consumer could contact BBB AUTO LINE to reopen the case.

**Table V–30: How clear and understandable were these documents?**

	2021	2020	2019	2018
<b>BASE: ALL, “not sure” excluded</b>	46	67	55	67
	100.0%	100.0%	100.0%	100.0%
<b>Very</b>	29	41	32	42
	63.0%	61.2%	58.2%	62.7%
<b>Somewhat</b>	16	24	21	25
	34.8%	35.8%	38.2%	37.3%
<b>Not at all</b>	1	2	2	-
	2.2%	3.0%	3.6%	-

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<sup>515</sup> The wording of this and various document receipt questions was revised for 2020 to reflect the use of online accounts for communications with most consumers.



**Table V–31: And how helpful were they?**

	2021	2020	2019	2018
<b>BASE: ALL, “not sure” excluded.</b>	47	66	54	65
	100.0%	100.0%	100.0%	100.0%
<b>Very</b>	25	39	26	31
	53.2%	59.1%	48.1%	47.7%
<b>Somewhat</b>	16	16	19	32
	34.0%	24.2%	35.2%	49.2%
<b>Not at all</b>	6	11	9	2
	12.8%	16.7%	16.7%	3.1%

**Table V–32: After you reached a settlement, did you get an explanation either by mail, email or your online account describing the terms of the settlement?**

	2021	2020	2019	2018
<b>BASE: MED, “not sure” excluded</b>	25	27	24	29
	100.0%	100.0%	100.0%	100.0%
<b>Yes</b>	23	21	22	28
	92.0%	77.8%	91.7%	96.6%

In both cases where consumers reported that they hadn’t received an explanation of their settlements, the files report that settlement letters were sent. Also, both consumers were apparently aware of the settlements, because they reported timely compliance.

**Table V–33: Did you get a notice by mail, email, or your online account telling you when and where to go for your hearing or vehicle inspection?**

	2021	2020	2019	2018
<b>BASE: ARB, “not sure” excluded</b>	9	20	8	17
	100.0%	100.0%	100.0%	100.0%
<b>Yes</b>	5	17	8	16
	55.6%	85.0%	100.0%	94.1%

Focusing again on the consumers who said “no” (four in this instance), the files for each report that a notice of hearing was sent. Further, while that doesn’t establish that it was *received*, all of the consumers involved showed up for their hearings. They thus clearly learned about the hearings in advance, although this doesn’t necessarily establish that they learned of the hearings

from the written notice of hearing

**Table V-34: Did you get a copy, either by mail, email, or your online account, of the arbitrator's decision?**

	2021	2020	2019	2018
<b>BASE: ARB, "not sure" excluded</b>	9	20	7	17
	100.0%	100.0%	100.0%	100.0%
<b>Yes</b>	9	20	7	17
	100.0%	100.0%	100.0%	100.0%

**G. CLAIMS FILED BY CONSUMERS WITH COUNSEL COMPARED TO CLAIMS FILED DIRECTLY BY CONSUMERS**

**Table V-35: Comparison on Process and Remedy**

	All cases		Cases without att'ys		Cases with att'ys	
	#	%	#	%	#	%
<b>PROCESS</b>						
<b>Mediated</b>	148	42.4%	136	49.3%	12	16.4%
<b>Arbitrated</b>	77	22.1%	31	11.2%	46	63.0%
<b>Ineligible</b>	88	25.2%	81	29.3%	7	9.6%
<b>Withdrawn</b>	36	10.3%	28	10.1%	8	11.0%
<b>Total</b>	349	100%	276	100%	73	100%
<b>REMEDIES: MED</b>						
<b>Repurchase/replace</b>	81	54.7%	71	52.2%	10	83.3%
<b>Repair</b>	44	29.7%	44	32.4%	0	0.0%
<b>Other</b>	23	15.5%	21	15.4%	2	16.7%
<b>Total</b>	148	100%	136	100%	12	100%
<b>REMEDIES: ARB</b>						
<b>Repurchase/replace</b>	31	40.3%	9	29.0%	22	47.8%
<b>Repair</b>	3	3.9%	3	9.7%	0	0.0%
<b>Other</b>	2	2.6%	1	3.2%	1	2.2%
<b>No award</b>	41	53.2%	18	58.1%	23	50.0%
<b>Total</b>	77	100%	31	100%	46	100%
<b>REMEDIES: MED+ARB</b>						
<b>Repurchase/replace</b>	112	49.8%	80	47.9%	32	55.2%
<b>Repair</b>	47	20.9%	47	28.1%	0	0.0%
<b>Other</b>	25	11.1%	22	13.2%	3	5.2%
<b>No Award</b>	41	18.2%	18	10.8%	23	39.7%
<b>Total</b>	225	100%	167	100%	58	100%

The auditor notes that “withdrawals” in attorney cases (more so than in non-attorney cases) may involve settlements that the attorney reached outside of the program.

## H. SATISFACTION

### 1. Satisfaction with Arbitrator

**Table V-36: How would you grade the arbitrator on understanding the facts of your case?**

	Total	Award	No Award	Repurchase/ Replace	Repair/ Other
<b>BASE: ARB, not sure excluded</b>	9	4	5	4	-
	100.0%	100.0%	100.0%	100.0%	-
<b>A=Excellent</b>	3	2	1	2	-
	33.3%	50.0%	20.0%	50.0%	-
<b>B=Good</b>	2	1	1	1	-
	22.2%	25.0%	20.0%	25.0%	-
<b>C=Average</b>	1	1	-	1	-
	11.1%	25.0%	-	25.0%	-
<b>D=Poor</b>	1	-	1	-	-
	11.1%	-	20.0%	-	-
<b>Failing Grade</b>	2	-	2	-	-
	22.2%	-	40.0%	-	-
<b>MEAN</b>	<b>2.33</b>	<b>3.25</b>	<b>1.60</b>	<b>3.25</b>	-

**Table V–37: How would you grade the arbitrator on objectivity and fairness?**

	Total	Award	No Award	Repurchase/ Replace	Repair/ Other
<b>BASE: ARB, not sure excluded</b>	9	4	5	4	-
	100.0%	100.0%	100.0%	100.0%	-
<b>A=Excellent</b>	3	3	-	3	-
	33.3%	75.0%	-	75.0%	-
<b>B=Good</b>	-	-	-	-	-
	-	-	-	-	-
<b>C=Average</b>	3	1	2	1	-
	33.3%	25.0%	40.0%	25.0%	-
<b>D=Poor</b>	2	-	2	-	-
	22.2%	-	40.0%	-	-
<b>Failing Grade</b>	1	-	1	-	-
	11.1%	-	20.0%	-	-
<b>MEAN</b>	<b>2.22</b>	<b>3.50</b>	<b>1.20</b>	<b>3.50</b>	-

**Table V–38: How would you grade the arbitrator on reaching an impartial decision?**

	Total	Award	No Award	Repurchase/ Replace	Repair/ Other
<b>BASE: ARB, not sure excluded</b>	9	4	5	4	-
	100.0%	100.0%	100.0%	100.0%	-
<b>A=Excellent</b>	3	3	-	3	-
	33.3%	75.0%	-	75.0%	-
<b>B=Good</b>	-	-	-	-	-
	-	-	-	-	-
<b>C=Average</b>	2	1	1	1	-
	22.2%	25.0%	20.0%	25.0%	-
<b>D=Poor</b>	1	-	1	-	-
	11.1%	-	20.0%	-	-
<b>F=Failing Grade</b>	3	-	3	-	-
	33.3%	-	60.0%	-	-
<b>MEAN</b>	<b>1.89</b>	<b>3.50</b>	<b>0.60</b>	<b>3.50</b>	-

**Table V-39: How would you grade the arbitrator on coming to a reasoned & well thought-out decision?**

	<b>Total</b>	<b>Award</b>	<b>No Award</b>	<b>Repurchase/ Replace</b>	<b>Repair/ Other</b>
<b>BASE: ARB, “not sure” excluded</b>	9	4	5	4	-
	100.0%	100.0%	100.0%	100.0%	-
<b>A=Excellent</b>	3	3	-	3	-
	33.3%	75.0%	-	75.0%	-
<b>B=Good</b>	-	-	-	-	-
	-	-	-	-	-
<b>C=Average</b>	1	1	-	1	-
	11.1%	25.0%	-	25.0%	-
<b>D=Poor</b>	1	-	1	-	-
	11.1%	-	20.0%	-	-
<b>F=Failing Grade</b>	4	-	4	-	-
	44.4%	-	80.0%	-	-
<b>MEAN</b>	<b>1.67</b>	<b>3.50</b>	<b>0.20</b>	<b>3.50</b>	-

**Table V-40:  
ARBITRATOR SATISFACTION COMPOSITE**

	<b>Total</b>	<b>All Award</b>	<b>No Award</b>	<b>Award: Replace-ment/ Repurchase</b>	<b>Award: Repair/ Other</b>
<b>Understanding facts</b>	2.33	3.25	1.60	3.25	-
<b>Objectivity and fairness</b>	2.22	3.50	1.20	3.50	-
<b>Reaching an impartial decision</b>	1.89	3.50	0.60	3.50	-
<b>Coming to a reasoned &amp; well thought-out decision</b>	1.67	3.50	0.20	3.50	-
<b>AVERAGE</b>	<b>2.03</b>	<b>3.44</b>	<b>0.90</b>	<b>3.44</b>	<b>-</b>

Composite Means (2021)

All consumers with arbitration	2.03
Consumers who received awards:	3.44
Replacement/Repurchase	3.44
Repair/other	--
Consumers with no awards:	0.90

Composite Means (2020)

All consumers with arbitration	2.87
Consumers who received awards:	3.500
Replacement/Repurchase	3.75
Repair/other	--
Consumers with no awards:	1.05

Composite Means (2019)

All consumers with arbitration	2.82
Consumers who received awards:	4.00
Replacement/Repurchase	4.00
Repair/other	--
Consumers with no awards:	0.63

Composite Means (2018)

All consumers with arbitration	2.34
Consumers who received awards:	3.59
Replacement/Repurchase	4.00
Repair/other	3.08
Consumers with no awards:	1.50

As discussed in the analysis of the national and Florida samples, the auditor has expressed skepticism about composites that measure satisfaction rates for arbitrators without adjusting for how well consumers did in arbitration. He suspected – and the survey breakouts show – that consumer’s satisfaction with arbitrators largely correlates to their success in arbitration, so year-to-year fluctuations in satisfaction could well represent, at least in substantial part, fluctuations in the success of the consumers surveyed. And, even if consumers overall had the identical success from one year to the next, it’s unlikely (given sampling errors) that the consumers *surveyed* would have had similarly identical success.

Further, for arbitrator satisfaction at the state level in particular, the sample size is quite small. With only 4 “no award” consumers responding to a question, for example, a drop by one consumer of a single grade (e.g., from A to B) would change the overall GPA by 0.20.



**2. Satisfaction with BBB AUTO LINE staff**

**Table V-41: How would you grade BBB AUTO LINE staff on objectivity and fairness?**

<b>BASE: ARB/MED, “not sure” excluded</b>	37 100.0%
<b>A=Excellent</b>	22 59.5%
<b>B=Good</b>	8 21.6%
<b>C=Average</b>	3 8.1%
<b>D=Poor</b>	2 5.4%
<b>F=Failing Grade</b>	2 5.4%
<b>MEAN</b>	<b>3.24</b>

**Table V-42: How would you grade BBB AUTO LINE staff on efforts to assist you in resolving your claim?**

<b>BASE: ARB/MED, “not sure” excluded</b>	37 100.0%
<b>A=Excellent</b>	17 45.9%
<b>B=Good</b>	7 18.9%
<b>C=Average</b>	9 24.3%
<b>D=Poor</b>	3 8.1%
<b>F=Failing Grade</b>	1 2.7%
<b>MEAN</b>	<b>2.97</b>

**Table V-43: Overall, what grade would you give BBB AUTO LINE?**

<b>BASE: ARB/MED, “not sure” excluded</b>	37 100.0%
<b>A=Excellent</b>	17 45.9%
<b>B=Good</b>	8 21.6%
<b>C=Average</b>	6 16.2%
<b>D=Poor</b>	4 10.8%
<b>F=Failing Grade</b>	2 5.4%
<b>MEAN</b>	<b>2.92</b>

**Table V-44:  
BBB AUTO LINE STAFF EFFORTS –  
SATISFACTION COMPOSITE FOR CONSUMERS  
WHO USED MEDIATION OR ARBITRATION**

	<b>Mean</b>
<b>Objectivity and fairness</b>	3.24
<b>Efforts to resolve claim</b>	2.97
<b>Overall grade</b>	2.92
<b>AVERAGE</b>	<b>3.04</b>

Composite Mean (2021)	3.04
Composite Mean (2019)	3.02
Composite Mean (2018)	3.17
Composite Mean (2017):	3.33
Composite Mean (2016):	3.01

**Table V-45: Would you recommend BBB AUTO LINE to friends or family?**

	Total	Med/Arb
<b>BASE: ANSWERING, NOT SURE“NOT SURE” EXCLUDED</b>	62	37
	100.0%	100.0%
<b>Yes</b>	40	30
	64.5%	81.1%

Composite Mean (2021)		
All Consumers		64.5%
Consumers with mediations or arbitrations		81.1%
Composite Mean (2020)		
All Consumers		80.5%
Consumers with mediations or arbitrations		89.6%
Composite Mean (2019)		
All Consumers		68.3%
Consumers with mediations or arbitrations		84.5%
Composite Means (2018)		
All consumers		76.7%
Consumers with mediations or arbitrations		85.7%
Composite Means (2017)		
All consumers:		76.5%
Consumers with mediations or arbitrations:		87.8%
Composite Means (2016)		
All consumers:		77.4%
Consumers with mediations or arbitrations:		83.3%

**Appendix**  
**Survey Instrument**

**But for minor details, the survey text was essentially the same as that used last year.**

### **General Questions**

1. How many times, if any, did the dealer or manufacturer try to repair your vehicle before you filed the complaint?
2. How did you find out that you could file a complaint with BBB AUTO LINE?

### **Process**

Now I'm going to ask about how BBB AUTOLINE addressed your case. As I mentioned before, if you filed more than one complaint about your vehicle during the year, please focus on the LAST complaint you filed in 2020.

3. BBB AUTO LINE files show that  
*(based on BBB AUTO LINE records, either):*
  - your complaint wasn't eligible for the program. Is that correct?
  - you withdrew your complaint, and didn't use BBB AUTO LINE to resolve it. Is that correct?
  - you agreed with the manufacturer to settle your complaint. Is that correct?
  - your complaint went to an arbitrator to decide what remedy, if any, you should get. The arbitration usually includes a phone or video conference, and the arbitrator also reviews documents and sometimes gets a vehicle inspection report from an independent third party.

*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)<sup>516</sup>

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<sup>516</sup> The survey was constructed so that each consumer was given only four of the five options,

## Remedy

### *For consumers who said they used mediation:*

5. According to the BBB AUTO LINE's records:  
(based on BBB AUTO LINE records, either)
- the manufacturer was supposed to TAKE YOUR CAR BACK for a full or partial REFUND<sup>517</sup> or for REPLACEMENT of the vehicle. Is that correct?
  - the manufacturer was supposed to REPAIR your car, or at least to examine the car again to look for a problem. Is that correct?
  - you got some remedy in a settlement, but the PRINCIPAL remedy was NOT a replacement, a refund, or a repair. For example, this would include reimbursements of out of pocket expenses for past repairs, a cash payout where you got cash but kept the car, an extended warranty, etc. Is that correct?

*If the answer to Question 5 was no:*

6. Which of the following best describes the relief provided in your settlement?
- A refund or replacement, where the manufacturer would take back your car.
  - A repair, where the manufacturer would try to fix your car, or at least examine it again to look for a problem.
  - Some other remedy (SPECIFY)<sup>518</sup>

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omitting the option that appeared in BBB AUTO LINE records and that, in responding to Question 3, the consumer had said was wrong.

<sup>517</sup> Although BBB AUTO LINE uses “repurchase” for remedies where the dealer takes back the car, the auditor and TechnoMetrica, in light of some past consumer confusion, decided to use the term that consumers would most likely associate with a “buy back” remedy – and which seemed relatively unambiguous when it was tied to “tak[ing] your car back.”

<sup>518</sup> The survey was constructed so that each consumer was given only two of the three options, omitting the option that appeared in BBB AUTO LINE records and that, in responding to Question 5, the consumer had said was wrong.

***For consumers who said they used arbitration***

7. According to the BBB AUTO LINE's records:

*(based on BBB AUTO LINE records, either)*

- the manufacturer was supposed to TAKE YOUR CAR BACK for a full or partial REFUND or REPLACEMENT of the vehicle. Is that correct?
- the manufacturer was supposed to repair your car, or at least to examine the car again to look for a problem. Is that correct?
- you were awarded a remedy, but the PRINCIPAL remedy was NOT a replacement, a refund, or a repair. For example, this would include reimbursements of out of pocket expenses for past repairs, a cash payout where you got cash but kept the car, an extended warranty, etc. Is that correct?
- you were not awarded any remedy. Is that correct?

*If the answer to Question 7 was no:*

8. Which of the following best describes the relief awarded by the arbitrator?

- A refund or replacement, where the manufacturer would take back your car
- A repair, where the manufacturer would try to fix your car, or at least examine it again to look for a problem
- Some other remedy (SPECIFY)
- No remedy<sup>519</sup>

*For all consumers who used arbitration:*

9. And did you accept the arbitrator's decision?

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<sup>519</sup> The survey was constructed so that each consumer was given only three of the four options, omitting the option that appeared in BBB AUTO LINE records and that, in responding to Question 6, the consumer had said was wrong.

**Follow-up question for consumers who said they withdrew their complaints**

10. Which of the following best describes why you withdrew your complaint?

You settled the matter or your car was fixed

You sold the car

Or some other reason (SPECIFY)



## Compliance

*For consumers who said they used mediation:*

11. Which of the following applies to your case? The manufacturer:
- Carried out the settlement within the time specified, including any extension to which you agreed
  - Carried out the settlement AFTER the time specified, including any extension to which you agreed
  - Has not yet carried out the settlement, but the time to do so has not yet expired
  - Has not yet carried out the settlement, and the time to do so has expired

*If the consumer picked the fourth option to Question 11 and previously answered that they had a repair remedy:*

12. Which of the following best applies to your case? The manufacturer:
- Didn't examine your car
  - Examined your car and decided that no repair was needed
  - Tried to fix your car, but the repair didn't solve the problem
  - (Something else)

*If the consumer picked the fourth option to Question 11:*

13. Had you taken some action, like selling the car, that prevented the manufacturer from complying?

*For consumers who said they used arbitration, received an award, and accepted it*

Same questions as asked to consumers in mediated cases, but substitute “decision” for “settlement” in Question 11.

## Timing

Now I'm going to ask you about how much time it took to DECIDE your case.

*For consumers who said their cases were mediated or arbitrated:*

14. Please assume that your case BEGAN when you returned detailed information to BBB AUTO LINE about your car and that it ENDED when you reached a settlement or got the arbitrator's decision. Please DO NOT INCLUDE the time it took to carry out the remedy.

*For California and Florida:* Please assume that your case BEGAN when you first told BBB AUTO LINE about your complaint and that it ENDED when you reached a settlement or got the arbitrator's decision. Please DO NOT INCLUDE the time it took to carry out the remedy.

And as I mentioned before, if you filed more than one complaint about your vehicle, please focus only on the LAST complaint you filed in 2020.

According to BBB AUTO LINE records, it took --- days to come to a decision about your complaint. Does that seem right?

*If "no":*

To the best you can recall, how many days did it take to decide your case?

*If more than 40 days:*

Did it take more than 40 days because of some action you took?

*If between 41 and 47 days:*

Did you contact the manufacturer -- not just the dealer -- before you filed your complaint?

*For consumers who said they withdrew their complaints:*

15. Please assume that your case BEGAN when you returned detailed information to BBB AUTO LINE about your car.

*For California and Florida:* Please assume that your case began when you first told BBB AUTO LINE about your complaint

And as I mentioned before, if you filed more than one complaint about your vehicle in 2018, please focus only on the LAST complaint you filed. .

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According to BBB AUTO LINE records, it took <DAYS>days until you withdrew your complaint. Does that seem right?

*If “no”:*

To the best you can recall, how many DAYS did it take until you withdrew your complaint?

*If more than 40 days:*

Did it take more than 40 days because of some action you took?

*If between 41 and 47 days:*

Did you contact the manufacturer – not just the dealer – before you filed your complaint?

## Documents and Contacts

Next I'm going to ask a few questions about various documents that BBB AUTO LINE sends to consumers--whether by email, an online account that they created for you, or by mail, UPS or FedEx.<sup>520</sup>

16. After you first contacted BBB AUTO LINE, did you get a claim form and an explanation of the Program?

17. How clear and understandable were these documents? Would you say:

- Very
- Somewhat
- Not at all
- Not sure

18. And how helpful were they? Would you say:

- Very
- Somewhat
- Not at all
- Not sure

*For mediated cases:*

19. After you reached a settlement, did you get an explanation either by mail, email or your online account, describing the terms of the settlement?

*For arbitrated cases:*

20. Did you get a notice either by mail, email, or your online account, telling you when and where to go for your hearing or vehicle inspection?

21. Did you get a copy either by mail, email or your online account, of the arbitrator's decision?

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<sup>520</sup> References to online accounts were added to the survey questions, to better reflect BBB AUTO LINE's current practice.

*If no to question 21*

:

22. How did you learn about the arbitrator's decision?

*For mediated and arbitrated cases:*

23. After you agreed to a settlement (OR “accepted the arbitrator’s award”), which of the following best describes your later contacts with BBB AUTO LINE staff to discuss whether the manufacturer was doing what it promised:

- The staff contacted me by mail, email, or my online account
- The staff spoke to me
- Both of those
- Neither of those
- Something else (SPECIFY)

## Satisfaction

OK, lastly I'd like you to rate your satisfaction with a few aspects of your experience with the BBB AUTO LINE. For each of the following, please rate your satisfaction using the familiar letter grade scale of A through F, where A is Excellent, B is Good, C is Average, D is Poor and F is a Failing grade.

*For arbitrated cases:*

Focusing first on the arbitrator

24. How would you grade the arbitrator on understanding the facts of your case?
25. How would you grade the arbitrator on objectivity and fairness?
26. How would you grade the arbitrator on reaching an impartial decision?
27. How would you grade the arbitrator on coming to a reasoned & well thought-out decision?

Okay, and for the next two questions, please focus on BBB AUTO LINE staff, not the arbitrator...

*For all respondents:*

28. How would you grade BBB AUTO LINE staff on objectivity and fairness?
29. How would you grade BBB AUTO LINE staff on efforts to assist you in resolving your claim?
30. Overall, what grade would you give BBB AUTO LINE?
31. And finally, would you recommend BBB AUTO LINE to friends or family?