

IN THE MATTER OF

FLOWERS INDUSTRIES, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF THE CLAYTON ACT

Docket 9148. Complaint, Dec. 12, 1980—Decision, Nov. 3, 1983

This consent order requires a Thomasville, Georgia food processor, among other things, to timely divest to a Commission-approved buyer, its bakery plants located in High Point, North Carolina and Gadsden, Alabama, together with specified assets. Further, under certain conditions, the company must transfer its rights to the Sunbeam, Buttermaid and Hometown tradenames and trademarks to a qualified acquirer or to another qualified baker. Pending divestiture, respondent must keep the bakeries in operation and use reasonable efforts to retain the respective shelf space and position of the Sunbeam, Buttermaid and Hometown tradenames and trademarks.

Appearances

For the Commission: *Arnold C. Celnicker, Chris M. Couillou and Sarah K. Walls.*

For the respondent: *Kent E. Mast, Hansell, Post, Brandon & Dorsey, Atlanta, Ga.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondent has violated and is now violating the provisions of Section 7 of the amended Clayton Act (15 U.S.C. 18) and Section 5 of the amended Federal Trade Commission Act (15 U.S.C. 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating as follows:

DEFINITIONS

For the purposes of this complaint, the following definitions shall apply:

1. *Flowers* refers to the respondent, Flowers Industries, Inc., and its subsidiaries.
2. *Wholesale bakeries* refers to bakeries which sell at wholesale to other establishments, including grocery stores, restaurants, hotels and institutions. It does not refer to grocery chain bakeries.
3. *Grocery chain bakeries* refers to bakeries operated by grocery

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store companies who generally distribute their product through retail grocery stores owned by the same company. It does not include in-store bakeries.

4. *In-store bakeries* refers to bakeries operated by grocery store companies within their grocery stores.

RESPONDENT

5. Respondent, Flowers Industries, Inc., is a corporation with its principal place of business located in Thomasville, Georgia. Its mailing address is P. O. Drawer 1338, Thomasville, Georgia.

6. Respondent is a food processor operating its business in three divisions which produce: (1) bread and bread-type rolls; (2) snack foods; and (3) convenience foods.

7. Respondent had sales of approximately \$330,195,000 in the fiscal year ended June 30, 1979.

PRODUCT MARKET

8. The relevant product market for each acquisition described in Counts I through VI is the manufacture and sale of bread and bread-type rolls produced by wholesale bakeries, grocery chain bakeries, and in-store bakeries.

9. A relevant submarket for each acquisition described in Counts I through VI is the manufacture and sale of bread and bread-type rolls produced by wholesale bakeries and grocery chain bakeries.

10. A relevant submarket for each acquisition described in Counts II through VI is the manufacture and sale of bread and bread-type rolls produced by wholesale bakeries.

11. A relevant submarket for each acquisition described in Counts II through VI is the manufacture and sale of white pan bread and hamburger and hot dog buns produced by wholesale bakeries.

JURISDICTION

12. At all times relevant herein, respondent was engaged in the purchase or sale of products in or affecting commerce and was a corporation engaged in commerce or in activity affecting commerce as "commerce" is defined in the Clayton Act, as amended, and was a corporation whose business was in or affecting commerce within the meaning of the Federal Trade Commission Act, as amended.

13. At all times relevant herein, the corporations described hereafter in Counts I through VI, from which Flowers acquired assets whose stock Flowers acquired, were engaged in the purchase or sale of products in or affecting commerce and were corporations engaged in commerce or in activity affecting commerce, as "commerce" defined in the Clayton Act, as amended, and were corporations who

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businesses were in or affecting commerce within the meaning of the Federal Trade Commission Act, as amended.

COUNT I

14. In August, 1977, Flowers acquired the assets of the bakery operated by The Grand Union Company (hereinafter "Grand Union") that was located in Miami, Florida.

15. Grand Union is a Delaware corporation with its principal office located in Elmwood Park, New Jersey.

16. The relevant geographic market for purposes of Flowers' acquisition of the assets of the bakery formerly operated by Grand Union in Miami is southern Florida including, but not limited to, the cities of Miami, Fort Lauderdale, West Palm Beach, Fort Pierce, and Fort Myers.

COUNT II

17. In December, 1978, respondent purchased the plant and assets of the bakery of American Bakeries Co. (hereinafter "American") that was located in Miami, Florida.

18. American is a Delaware corporation with its principal place of business located in Chicago, Illinois.

19. The relevant geographic market for purposes of respondent's acquisition of the plant and assets of the bakery formerly operated by American in Miami is the same as that described in paragraph 16.

COUNT III

20. In January, 1977, respondent purchased the plant and assets of the bakery of Ward Baking Company, Inc. (hereinafter "Ward") that was located in High Point, North Carolina.

21. Ward is a Delaware corporation with its principal place of business located in New York City, New York.

22. The relevant geographic market for purposes of respondent's acquisition of the plant and assets of the bakery formerly operated by Ward in High Point is central North Carolina and central Virginia including, but not limited to, the cities of High Point, Winston-Salem, Greensboro, and Durham, North Carolina, and Charlottesville, Lynchburg, Roanoke, and Danville, Virginia.

23. A relevant geographic submarket of the foregoing market is central North Carolina including, but not limited to, the cities of High Point, Winston-Salem, Greensboro, and Durham.

COUNT IV

24. In January, 1978, Flowers acquired the plant and assets of a

bakery of Kern's Bakery of Virginia, Inc. (hereinafter "Kern's") that was located in Lynchburg, Virginia.

25. Kern's is a Virginia corporation with its principal place of business in Knoxville, Tennessee.

26. A relevant geographic market for purposes of Flowers' acquisition of the plant and assets of the bakery formerly operated by Kern's in Lynchburg is the same as that described in paragraph 22.

27. A relevant geographic submarket of the foregoing market is central Virginia including, but not limited to, the cities of Charlottesville, Lynchburg, Roanoke, and Danville.

COUNT V

28. In August, 1973, respondent acquired all of the stock of the McGough Bakeries Corporation (hereinafter "McGough"), an Alabama corporation.

29. McGough was a food processor operating bakery plants in Birmingham and Decatur, Alabama.

30. The relevant geographic market for purposes of Flowers' acquisition of the stock of McGough is northern and central Alabama including, but not limited to, the cities of Birmingham, Montgomery, Tuscaloosa, Huntsville, and Gadsden.

COUNT VI

31. In July, 1980, respondent acquired all of the stock of Schott's Bakery, Inc. (hereinafter "Schott's"), a Texas corporation.

32. Schott's was a food processor operating a bakery plant in Houston, Texas.

33. In July, 1980, respondent purchased the plant and assets of the bakery of American that was located in Houston, Texas.

34. Paragraph 18 is hereby incorporated by reference.

35. The relevant geographic market for purposes of respondent's acquisition of the plant and assets of the bakery formerly operated by American in Houston and of the stock of Schott's is the city of Houston and surrounding counties.

EFFECTS OF ACQUISITIONS

36. The effect of each of the acquisitions set forth in Counts I through VI may be to substantially lessen competition or to tend to create a monopoly in the relevant geographic and product markets or submarkets thereof, in the following ways, among others:

a) actual competition between Flowers and the acquirees has been eliminated;

- b) actual competition between competitors generally may be lessened;
 - c) concentration has been increased;
 - d) existing barriers to new entry may be increased substantially;
- and,
- e) additional acquisitions and mergers may be encouraged.

VIOLATIONS

37. Each acquisition described in Counts I through VI constitutes a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. 18), and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45).

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondent named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and Section 7 of the amended Clayton Act and the respondent having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 3.25 of its Rules, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and orders the following order:

1. Respondent Flowers Industries, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the

State of Delaware, with its office and principal place of business located as P. O. Drawer 1338, in the City of Thomasville, State of Georgia.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

For the purposes of this Order, the following definitions shall apply:

(A) *Flowers* shall mean Flowers Industries, Inc., its divisions and subsidiaries; its officers, directors, agents and employees acting as such; and its successors and assigns.

(B) *Bakery* shall mean any concern, corporate or noncorporate, that is or was during any of the twelve (12) months preceding any event or transaction subject to this Order, engaged in whole or in substantial part in the business of baking Bread or Bread-type Rolls.

(C) *Bakery Plant* shall mean a facility that is or was during any of the twelve (12) months preceding any event or transaction subject to this Order, used by a Bakery in whole or in substantial part for the baking of Bread or Bread-type Rolls.

(D) *Bread* shall mean white, wheat, rye, dark or variety baked bread products.

(E) *Bread-type Rolls* shall mean hamburger and hot dog rolls, brown and serve rolls, English muffins, hearth rolls, and similar products.

(F) *Eligible Person* shall mean any person, corporation, partnership or other entity approved by the Commission. No person shall be considered for status as an Eligible Person unless such person has the capacity and intention to operate the facilities acquired as a Bakery Plant.

(G) *Total Net Sales* shall mean sales of Bread and Bread-type Rolls, net of discounts, allowances and stale returns, regardless of the labels under which the Bread or Bread-type Rolls are sold.

(H) *High Point Bakery Plant* shall mean the Bakery Plant operated by Flowers Baking Co. of High Point, Inc., a wholly-owned subsidiary of Flowers, and located in High Point, North Carolina.

(I) *Gadsden Bakery Plant* shall mean the Bakery Plant operated by Flowers Baking Company of Gadsden, Inc., a wholly-owned subsidiary of Flowers, and located in Gadsden, Alabama.

(J) *High Point Trade Area* shall mean the area composed of the following counties: Alleghany, Surry, Wilkes, Yadkin, Alexander, Iredell, Davie, Cabarrus, Anson, Stanly, Rowan, Davidson, Forsyth, Stokes, Rockingham, Guilford, Randolph, Montgomery, Richmond, Scotland, Moore, Chatham, Alamance, Orange, Caswell, Person, Dur-

ham, Lee, Hoke, Robeson, Cumberland, Harnett, Wake, Johnston, Franklin, Nash, Vance, and Granville, North Carolina.

(K) *Gadsden Trade Area* shall mean the area composed of the following counties: Shelby, Jefferson, Walker, Winston, Cullman, Blount, St. Clair, Talladega, Clay, Randolph, Calhoun, Cleburne, Etowah, Cherokee, DeKalb, Marshall, Jackson, Madison, Morgan, Limestone, and Lawrence, Alabama; Giles, Lincoln, Moore, Franklin, Marion, Sequatchie, Hamilton, and Bradley, Tennessee; Dade, Walker, Catoosa, Whitfield, Chattooga, Gordon, Pickens, Floyd, Bartow, Cherokee, Forsyth, Polk, Paulding, Cobb, Gwinnett, Haralson, Carroll, Douglas, Fulton, DeKalb, Rockdale, Henry, Clayton, Fayette, Coweta, and Heard, Georgia.

(L) *Full-line Wholesale Bakery* shall mean a Bakery that sells at wholesale to establishments, including retail grocery stores (other than bakery thrift stores) which are not owned, directly or indirectly, by the same company which owns the Bakery, and that during its most recent fiscal year derived at least fifteen percent (15%) of its Total Net Sales from the sale of white pan bread.

(M) *White Pan Bread* shall mean white bread baked in a pan but shall not include hamburger and hot dog buns, or breads such as French Bread and Italian Bread.

I

It is ordered, That:

(A) Within thirty (30) months from the date the Order becomes final, Flowers shall divest itself absolutely and in good faith of the High Point Bakery Plant to an Eligible Person including, without limitation, land, buildings, fixtures attached thereto, machinery and equipment.

(B) The purpose of the divestiture is the ongoing and continued use of the High Point Bakery Plant in the baking industry.

(C) The divestiture shall include trucks and other vehicles, depots or warehouses, and thrift stores utilized by the High Point Bakery Plant in connection with the sale of Bread or Bread-type Rolls to wholesale or retail customers of such plant to the extent desired by the acquirer and consistent with the purpose of the divestiture. Flowers need not divest trucks and other vehicles, depots or warehouses, and thrift stores which do not meet the above criteria because the Order contemplates circumstances that reasonably permit Flowers to continue as a competitor, to the extent practicable, in the baking industry with respect to the area served by the divested facility.

(D) Divestiture of the High Point Bakery Plant need not include any trademarks or trade names except as follows:

(1) If divestiture is to an entity which is eligible for and desires membership in Quality Bakers of America, Flowers shall transfer through QBA to the acquirer all rights and interests in trade names and trademarks owned by QBA, including without limitation "Sunbeam," for the license territory currently assigned by QBA to Flowers Baking Co. of High Point, Inc., and shall use all reasonable efforts to assist the acquirer in obtaining all rights and interests in trade names and trademarks owned by QBA for the license territory currently assigned by QBA to Flowers Baking Co. of High Point, Inc.

(2) If divestiture is to an entity which is not eligible for or does not desire membership in QBA, Flowers shall assign to the acquirer, if desired by the acquirer, a perpetual, royalty-free, exclusive license to use the Buttermaid trademark, design and trade dress in the High Point Trade Area, and Flowers shall cease using the Buttermaid trademark, design and trade dress in the High Point Trade Area when the licensee commences its use; *provided, however*, the license agreement may include appropriate provisions for the protection of the integrity of the trademark and for the termination of such license if, for a period of ninety (90) consecutive days, the licensee fails to make good faith and reasonable use of the Buttermaid trademark, design and trade dress for the purpose of selling bread products in the High Point Trade Area.

(3) If divestiture is to an entity which is not eligible for or does not desire membership in QBA, and which does not desire a license to use the Buttermaid trademark, design and trade dress, and if, within twelve (12) months after divestiture of the High Point Bakery Plant, an entity which is eligible for and desires membership in QBA, or is a member of QBA, desires to serve the license territory with products carrying the trade names and trademarks owned by QBA, Flowers shall divest itself of all rights and interests in trade names and trademarks owned by QBA, including without limitation "Sunbeam," for the territory currently assigned by QBA to Flowers Baking Co. of High Point, Inc. to such entity and shall use all reasonable efforts to assist such entity to obtain said QBA trade names and trademarks; *provided, however*, that if divestiture of the High Point Bakery Plant pursuant to this Paragraph I is to an Eligible Person that intends to operate the plant as a Full-line Wholesale Bakery, then this subpart (D)(3) of Paragraph I shall not apply.

(E) Flowers shall use all reasonable efforts to ensure an orderly transfer of an ongoing bakery to the acquirer and in that regard shall provide to the acquirer upon divestiture copies of all route books,

customer lists, and other records used by the High Point Bakery Plant in its day-to-day operation and which would reasonably be needed by the acquirer to carry on the operation with the assets or assets and trademarks referred to in subparts (A), (C), (D)(1), and (D)(2) of Paragraph I.

(F) In the event that Flowers is required to divest itself of QBA trademarks and trade names pursuant to subpart (D)(3) of Paragraph I, Flowers shall use all reasonable efforts to ensure an orderly transfer of such trademarks and trade names to the new licensee thereof and shall provide thereto copies of all customer lists and other records, including route books or portions thereof, of the High Point Bakery Plant which would be reasonably needed by the new licensee to identify and solicit sales of products bearing the QBA trademarks and trade names to customers in the territory currently licensed to Flowers Baking Co. of High Point, Inc.

II

It is further ordered, That:

(A) Within thirty (30) months from the date the Order becomes final, Flowers shall divest itself absolutely and in good faith of the Gadsden Bakery Plant to an Eligible Person including, without limitation, land, buildings, fixtures attached thereto, machinery and equipment.

(B) The purpose of the divestiture is the ongoing and continued use of the Gadsden Bakery Plant in the baking industry.

(C) The divestiture shall include trucks and other vehicles, depots or warehouses, and thrift stores utilized by the Gadsden Bakery Plant in connection with the sale of Bread or Bread-type Rolls to wholesale or retail customers of such plant to the extent desired by the acquirer and consistent with the purpose of the divestiture. Flowers need not divest trucks and other vehicles, depots or warehouses, and thrift stores which do not meet the above criteria because the Order contemplates circumstances that reasonably permit Flowers to continue as a competitor, to the extent practicable, in the baking industry with respect to the area served by the divested facility.

(D) Divestiture of the Gadsden Bakery Plant need not include any trademarks or trade names except as follows:

(1) Flowers shall grant to the acquirer, if desired by the acquirer, a perpetual, royalty-free, assignable, exclusive license to use the Hometown trademark, design and trade dress in the Gadsden Trade Area, and Flowers shall cease using the Hometown trademark, design

and trade dress in the Gadsden Trade Area when the licensee commences its use in the Gadsden Trade Area.

(2) If the acquirer of the Gadsden Bakery Plant does not desire a license to use the Hometown tradename, design and trade dress, and, if within twelve (12) months after divestiture of the Gadsden Bakery Plant an entity desires and intends to use said license in the Gadsden Trade Area, Flowers shall grant a perpetual, assignable, exclusive license to use the Hometown trademark, design and trade dress in the Gadsden Trade Area to such entity and Flowers shall cease using the Hometown trademark, design and trade dress in the Gadsden Trade Area when the licensee commences its use in the Gadsden Trade Area; *provided, however,* that if divestiture of the Gadsden Bakery Plant pursuant to Paragraph II is to an Eligible Person that intends to operate the plant as a Full-line Wholesale Bakery, then this subpart (D)(2) of Paragraph II shall not apply.

(3) The license agreement entered into pursuant to subparts (D)(1) or (D)(2) of Paragraph II may include appropriate provisions for the protection of the integrity of the trademark and for the termination of such license if, for a period of ninety (90) consecutive days, the licensee fails to make good faith and reasonable use of the Hometown trademark, design and trade dress for the purpose of selling bread products in the Gadsden Trade Area.

(E) Flowers shall use all reasonable efforts to ensure an orderly transfer of an ongoing bakery to the acquirer and in that regard shall provide to the acquirer upon divestiture copies of all route books, customer lists, and other records used by the Gadsden Bakery Plant in its day-to-day operation and which would reasonably be needed by the acquirer to carry on the operation with the assets or assets and trademark referred to in subparts (A), (C), and (D)(1) of Paragraph II.

(F) In the event that Flowers is required to license the Hometown trademark, design and trade dress pursuant to subpart (D)(2) of Paragraph II, Flowers shall use all reasonable efforts to ensure the orderly transfer of such trademark to the licensee and shall provide to such licensee copies of all customer lists and other records, including route books or portions thereof, of the Gadsden Bakery Plant which would be reasonably needed by the licensee to identify and solicit sales of products bearing the Hometown trademark, design and trade dress in the Gadsden Trade Area.

III

It is further ordered, That Flowers shall not be required to divest

any plant that, as a result of events beyond the control of Flowers, has ceased to exist.

IV

It is further ordered, That all divestiture and licensing required by Paragraphs I and II shall be subject to the prior approval of the Federal Trade Commission.

V

It is further ordered, That an Eligible Person may give and Flowers may accept and enforce any bona fide lien, mortgage, deed of trust or other form of security on all or any portion of any one or more of the assets or businesses divested subject to the terms and provisions of this Order. If a security interest is accepted, in no event should such security interest be interpreted to mean that Flowers has a right to participate in the operation or management of such assets. In the event that Flowers, as a result of the enforcement of any bona fide lien, mortgage, deed of trust or other form of security interest, reacquires possession of the assets divested, then Flowers shall divest the reacquired assets and business in accordance with the terms of this Order within eighteen (18) months of such reacquisition.

VI

It is further ordered, That:

(A) Pending the divestiture required by the Order, Flowers shall not cause or permit, and shall use all reasonable efforts to prevent, the deterioration of the assets and properties specified in Paragraphs I and II in a manner that impairs the viability or marketability of any such assets and properties, normal use, wear and tear excepted. Flowers may but shall not be required to make capital expenditures for the improvement of any such assets and properties or for the reconstruction or repair of material destruction thereof resulting from events beyond the control of Flowers.

(B) Pending the licensing of trademarks by Flowers and/or QBA contemplated by the Order, Flowers shall use all reasonable efforts to retain the shelf space and position currently provided for Bread and Bread-type Rolls sold under the trademarks referenced in Paragraphs I and II, with the exception of shelf space and position for Bread and

Bread-type Rolls distributed by Flowers' bakery plants in Alabama other than the Gadsden Bakery Plant.

VII

It is further ordered, That:

(A) For a period of ten (10) years from the date the Order becomes final, Flowers shall cease and desist from acquiring, or acquiring and holding, directly or indirectly, through subsidiaries or otherwise, without prior approval of the Federal Trade Commission, the whole or any part of the stock, share capital, assets, routes, or any other interest in any Bakery;

(B) *Provided, however,* That prior approval of the Commission will not be required if:

(1) Flowers' nearest Bakery Plant is outside a radius of 200 miles measured from the selling Bakery Plant;

or

(2) Flowers had, for the twelve (12) months preceding the acquisition, combined Total Net Sales of less than \$700,000 on those routes which served at least one customer location that the selling Bakery Plant also served within one year prior to the acquisition;

or

(3) The selling Bakery Plant distributes its products primarily by a route system of distribution and the selling Bakery Plant had, for the twelve (12) months preceding the acquisition, combined Total Net Sales of less than \$700,000 on those routes which served at least one customer location that Flowers also served within one year prior to the acquisition;

or

(4) The selling Bakery Plant distributes its product primarily by a distribution system other than routes and the selling Bakery Plant had, for the twelve (12) months preceding the acquisition, combined Total Net Sales of less than \$475,000 to customer locations that Flowers also served within one year prior to the acquisition;

or

(5) The acquisition includes only used equipment and the Bakery Plant from which the equipment is acquired remains in the bakery business;

(C) *Provided further, however,* That if the selling Bakery Plant sells

only to restaurants, subparts (B)(2), (B)(3) and (B)(4) of Paragraph VII shall not apply.

VIII

It is further ordered, That nothing in this Order shall be deemed or construed to affect or modify any rights of Flowers to confidential treatment of documents or information provided to the Commission by Flowers as provided by the Commission's Rules, the Federal Trade Commission Improvements Act of 1980, or other statute.

IX

It is further ordered, That Flowers shall, within ninety (90) days from the date the Order becomes final, and every ninety (90) days thereafter until Flowers has accomplished the divestitures and licensing required by Paragraphs I and II of this Order, submit in writing to the Federal Trade Commission a verified report setting forth in detail the manner and form in which Flowers intends to comply, is complying, or has complied with Paragraphs I, II, III, IV and VI of the Order. All such reports shall include, among other things that may be from time to time required, a summary of all contacts or negotiations with anyone for the specified assets, the identity of all such persons, and copies of all written communications to and from such persons.

X

It is further ordered, That annually on the anniversary of the date the Order becomes final, for a period of ten (10) years, Flowers shall submit in writing to the Federal Trade Commission a verified report setting forth in detail the manner and form in which Flowers intends to comply, is complying, or has complied with Paragraphs V and VII of the Order.

XI

It is further ordered, That for a period of ten (10) years from the date on which the Order becomes final, Flowers shall notify the Federal Trade Commission at least thirty (30) days prior to any change in the organization, corporate structure or business operation of Flowers which may affect compliance with the obligations arising from this Order.

IN THE MATTER OF
EMERGENCY DEVICES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-3123. Complaint, Nov. 3, 1983—Decision, Nov. 3, 1983

This consent order requires a San Francisco, Ca. corporation and two corporate officers, among other things, to cease disseminating advertisements which represent that the "Extra Margin Emergency Escape Mask" provides protection from carbon monoxide gas; will permit a person to breathe normally, or for an express amount of time; or has been endorsed or approved by any municipal, state or federal agency, unless such claims are true and are substantiated by competent and reliable scientific evidence. Any representation that an emergency escape mask will protect a person from the hazards associated with fire must be accompanied by the statement, "The mask does not filter carbon monoxide—a lethal gas associated with fire." Additionally, should the company continue to market any emergency escape mask in its current packaging, it is required to affix to such packaging a permanent adhesive label advising users of the mask's inability to filter out lethal carbon monoxide gas. Further, respondents must retain documentation substantiating or contradicting advertising claims for a period of three years; notify the Commission of any change in their business status; and provide all present and future sales, advertising and policy-making personnel with a copy of the order and an acknowledgement form.

Appearances

For the Commission: *Wendy Kloner.*

For the respondents: *Richard B. Satz, Lurie and Satz, San Francisco, Ca.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Emergency Devices, Inc., a corporation, Steven Weiss, individually and as an officer of said corporation, and Michael Weiss, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Emergency Devices, Inc., is a corpora-

tion organized, existing and doing business under and by virtue of the law of the State of California, with its offices and principal place of business at 3132 Laguna Street, San Francisco, California.

Respondent Steven Weiss is President of Emergency Devices, Inc. ("EDI"). He directs and controls the acts of EDI, including the acts and practices hereinafter set forth. His business address is the same as that of said corporation.

Respondent Michael Weiss is Vice President of EDI. He directs and controls the acts of EDI, including the acts and practices hereinafter set forth. His business address is the same as that of said corporation.

PAR. 2. Respondents are now, and for sometime past have been, engaged in the purchasing, offering for sale, sale and distribution to the public of the "Extra Margin Emergency Escape Mask", an over-the-head mask with a built-in air filter. The mask is manufactured under the name Nakagawa Escape Mask by Nihon Saibohgu Company, Ltd., of Japan.

PAR. 3. In the course and conduct of their said business, respondents are now causing, and for sometime in the past have caused, the Extra Margin Emergency Escape Mask, when sold, to be shipped from their place of business to purchasers thereof located in the various States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said Extra Margin Emergency Escape Mask in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the purchase of the Extra Margin Emergency Escape Mask, respondents have at all times mentioned herein made numerous statements, orally and in writing, in various promotional and advertising materials prepared and/or disseminated by respondents for use in selling respondents' product. Illustrative and typical but not inclusive of the statements employed as aforesaid are the following:

(1) The Extra Margin Emergency Escape Mask "provides filtered breathing for up to 20 minutes or more in dense, poisonous smoke."

(2) "With the Extra Margin Emergency Escape Mask you breathe safely even in choking smoke."

(3) The Extra Margin Emergency Escape Mask enables you to "breathe normally for 20 minutes."

(4) The Extra Margin Emergency Escape Mask "protects your nose, throat and lungs from noxious gases and low concentrations of lethal gases most frequently associated with fires—hydrogen chloride, hydrogen cyanide and carbon monoxide."

(5) Tests by a chemical testing laboratory "re-confirm the device's

excellent gas-filtering capabilities and lifesaving value in a fire disaster.”

(6) “Tested and Approved! In the U.S. and Canada, the mask has undergone vigorous testing by fire officials.”

(7) “The filtering system was evaluated by an independent chemical testing lab, approved by OSHA and the California State Health Department.”

PAR. 5. Through the use of the aforesaid statements, and others of similar import and meaning not expressly set out herein, respondents have represented and continue to represent, directly or by implication, that:

(1) The Extra Margin Emergency Escape Mask provides twenty (20) minutes escape time in the event of fire.

(2) The Extra Margin Emergency Escape Mask screens lethal gases associated with fire, including carbon monoxide.

(3) The Extra Margin Emergency Escape Mask permits normal breathing in the event of fire.

(4) The Extra Margin Emergency Escape Mask has been endorsed or approved by state and federal government agencies.

PAR. 6. In truth and in fact:

(1) The Extra Margin Emergency Escape Mask does not provide twenty (20) minutes escape time in the event of fire. The mask user can be overcome by gases associated with fire in less than twenty (20) minutes.

(2) The Extra Margin Emergency Escape Mask is incapable of screening out carbon monoxide.

(3) The Extra Margin Emergency Escape Mask does not permit normal breathing. The mask’s filter creates inhalation and exhalation breathing resistance.

(4) The Extra Margin Emergency Escape Mask has not been endorsed or approved by any state or federal agency.

Therefore, the statements and representations set forth in Paragraphs Four and Five were and are unfair, false, misleading and deceptive.

PAR. 7. In the course and conduct of their business, respondents have represented in promotional literature and in the product’s packaging the asserted advantages of the Extra Margin Emergency Escape Mask but have failed to disclose that the mask does not filter carbon monoxide, a lethal gas associated with fire.

PAR. 8. In light of the representations described in Paragraphs Four and Five, respondents’ failure to disclose the facts described in Paragraph Seven is misleading in a material respect, in that the disclosure of these facts to consumers would be likely to affect their purchase

decisions. Therefore, failure to disclose these material facts renders the sales and packaging materials referred to in Paragraph Seven unfair, false, misleading and deceptive.

PAR. 9. In the course and conduct of their business, and at all times mentioned herein, respondents have been, and now are, in substantial competition with corporations, firms and individuals engaged in the sale of merchandise of the same general kind and nature as merchandise sold by respondents.

PAR. 10. The use by respondents of the aforesaid unfair, false, misleading and deceptive statements, representations, acts and practices, and their failure to disclose the aforesaid material facts has had, and now has, the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations were, and are, true and complete, and to induce purchases of substantial quantities of respondents' products by reason of said erroneous and mistaken beliefs.

PAR. 11. The acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act. The acts and practices of respondents, as herein alleged, are continuing.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its

charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Emergency Devices, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 3132 Laguna Street, in the City of San Francisco, State of California.

Respondents Steven Weiss and Michael Weiss are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation, and their principal office and place of business is located at the above stated address.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

For the purpose of this Order, the following definitions shall apply:

(1) *The Extra Margin Emergency Escape Mask* shall mean the over-the-head vinyl mask with a built-in mouthpiece and filter manufactured by Nihon Saibohgu Company, Ltd., of Japan.

(2) *Competent and reliable scientific test* shall mean a test in which persons with skill and expert knowledge in the field to which the test pertains conduct the test and evaluate its results in an objective manner using testing, evaluation, and analytical procedures that ensure accurate and reliable results.

I

It is ordered, That respondents Emergency Devices, Inc., a corporation, its successors and assigns, and its officers, and Steven Weiss, individually and as an officer of said corporation, and Michael Weiss, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of the Extra Margin Emergency Escape Mask or any other emergency escape mask, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Disseminating, or causing or permitting the dissemination of, any advertisement or other representation, express or implied, that an emergency escape mask provides protection from carbon monoxide gas unless at the time the representation is made, the representation is true and respondents possess and rely upon a competent and reliable scientific test substantiating the representation.

2. Disseminating, or causing or permitting the dissemination of, any advertisement or other representation, express or implied, that an emergency escape mask provides twenty (20) minutes of breathable air or that an emergency escape mask provides any express amount of time of breathable air unless at the time the representation is made, the representation is true and respondents possess and rely upon a competent and reliable scientific test substantiating the representation.

3. Disseminating, or causing or permitting the dissemination of, any advertisement or other representation, express or implied, that an emergency escape mask permits normal breathing unless at the time the representation is made, the representation is true and respondents possess and rely upon a competent and reliable scientific test substantiating the representation.

4. Disseminating, or causing or permitting the dissemination of, any advertisement or other representation, express or implied, that an emergency escape mask has been endorsed or approved by any municipal, state or federal agency unless at the time the representation is made, the representation is true and the respondents possess and rely upon a reasonable basis for the claim consisting of a verified statement from the agency that endorsed or approved the mask. When referring to any test conducted by or on behalf of the aforesaid agency as a basis for the agency's endorsement or approval, the results of such test must be fairly and accurately disclosed in conjunction with the representation or claim.

II

It is further ordered, That respondents Emergency Devices, Inc., a corporation, its successors and assigns, and its officers, and Steven Weiss, individually and as an officer of said corporation, and Michael Weiss, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of the Extra Margin Emergency Escape Mask or any other emergency escape mask, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from

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Decision and Order

representing, directly or by implication, that an emergency escape mask protects the user from the hazards associated with fire without disclosing in close conjunction therewith the following statement in print at least as large as the print in which the representation is made, with nothing to the contrary or in mitigation of this statement:

The mask does not filter carbon monoxide—a lethal gas associated with fire.

III

It is further ordered, That should respondents Emergency Devices, Inc., a corporation, its successors and assigns, and its officers, and Steven Weiss, individually and as an officer of said corporation, and Michael Weiss, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, continue to market the Extra Margin Emergency Escape Mask, or any other emergency escape mask, in its current packaging, the respondents shall affix a white permanent-adhesive label to all its current packaging. This label shall remove all references on the current packaging relating to the emergency escape mask's ability to provide protection from carbon monoxide and its effectiveness for up to twenty (20) minutes. The first line of this label shall state "The mask does not filter carbon monoxide—a lethal gas associated with fire." As shown in Attachment A of this Order, this sentence shall appear on the label in ten-point bold type.

IV

It is further ordered, That respondents distribute a copy of this Order to all present and future personnel, agents or representatives having sales, advertising, or policy responsibilities with respect to the subject matter of this Order and that respondents secure from each such person a signed statement acknowledging receipt of said Order.

V

It is further ordered, That respondents, for a period of three year after respondents last disseminate the advertisements for product covered by this Order, shall retain all test results, data, and other documents or information on which they relied for their representations or any documentation which contradicts, qualifies or calls in serious question any claim included in such advertisements which

were in their possession during either their creation or dissemination. Such records may be inspected by the staff of the Commission upon reasonable notice.

VI

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the Order.

VII

It is further ordered, That the individual respondents promptly notify the Commission of the discontinuation of their present business or employment. In addition, for a period of five (5) years from the date of service of this Order, the respondents shall promptly notify the Commission of each affiliation with a new business or employment whose activities include the offering for sale, sale or distribution of emergency escape masks or of their affiliation with a new business or employment in which their duties and responsibilities involve the offering for sale, sale or distribution of emergency gas masks. Each such notice shall include the respondents' new business address and a statement of the nature of the business or employment in which the respondents are newly engaged, as well as a description of the respondents' duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this Order.

VIII

It is further ordered, That respondents shall within sixty (60) days after service upon them of this Order, file with the Commission a report, in writing, setting forth in detail, the manner and form in which they have complied with this Order.

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Decision and Order

ATTACHMENT A

**THE MASK DOES NOT FILTER
CARBON MONOXIDE—A LETHAL
GAS ASSOCIATED WITH FIRE.**

Complaint

102 F.T.C.

IN THE MATTER OF

MONTE PROULX

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-3124. Complaint, Nov. 3, 1983—Decision, Nov. 3, 1983

This consent order requires Monte Proulx to, among other things, cease disseminating advertisements which represent that the "Extra Margin Emergency Escape Mask" provides protection from carbon monoxide gas; will permit a person to breathe normally, or for an express amount of time; or has been endorsed or approved by any municipal, state or federal agency, unless such claims are true and are substantiated by competent and reliable scientific evidence. Any representation that an emergency escape mask will protect a person from the hazards associated with fire must be accompanied by the statement, "The mask does not filter carbon monoxide—a lethal gas associated with fire." Additionally, should he continue to market any emergency escape mask in its current packaging, he is required to affix to such packaging a permanent adhesive label advising users of the mask's inability to filter out lethal carbon monoxide gas. Further, respondent must retain documentation substantiating or contradicting advertising claims for a period of three years; notify the Commission of any change in his business status; and provide all present and future sales, advertising and policy-making personnel with a copy of the order and an acknowledgement form.

Appearances

For the Commission: *Wendy Kloner.*

For the respondent: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Monte Proulx, an individual, hereinafter sometimes referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Monte Proulx is an individual; his address is 50300 Highway 245, Badger, California.

PAR. 2. Respondent is now, and for sometime past has been, engaged in the purchasing, offering for sale, sale and distribution to the public of the "Extra Margin Emergency Escape Mask", an over-the-head

mask with a built-in air filter. The mask is manufactured under the name Nakagawa Escape Mask by Nihon Saibohgu Company, Ltd., of Japan.

PAR. 3. In the course and conduct of his said business, respondent is now causing, and for sometime in the past has caused, the Extra Margin Emergency Escape Mask, when sold, to be shipped from his place of business to purchasers thereof located in the various States of the United States, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said Extra Margin Emergency Escape Mask in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of his business, and for the purpose of inducing the purchase of the Extra Margin Emergency Escape Mask, respondent has at all times mentioned herein made numerous statements, orally and in writing, in various promotional and advertising materials prepared and/or disseminated by respondent for use in selling respondent's product. Illustrative and typical but not inclusive of the statements employed as aforesaid are the following:

(1) The Extra Margin Emergency Escape Mask "provides filtered breathing for up to 20 minutes or more in dense, poisonous smoke."

(2) "With the Extra Margin Emergency Escape Mask you breathe safely even in choking smoke."

(3) The Extra Margin Emergency Escape Mask enables you to "breathe normally for 20 minutes."

(4) The Extra Margin Emergency Escape Mask "protects your nose, throat and lungs from noxious gases and low concentrations of lethal gases most frequently associated with fires—hydrogen chloride, hydrogen cyanide and carbon monoxide."

(5) Tests by a chemical testing laboratory "re-confirm the device's excellent gas-filtering capabilities and lifesaving value in a fire disaster."

(6) "Tested and Approved! In the U.S. and Canada, the mask has undergone vigorous testing by fire officials."

(7) "The filtering system was evaluated by an independent chemical testing lab, approved by OSHA and the California State Health Department."

PAR. 5. Through the use of the aforesaid statements, and others of similar import and meaning not expressly set out herein, respondent has represented and continues to represent, directly or by implication, that:

(1) The Extra Margin Emergency Escape Mask provides twenty (20) minutes escape time in the event of fire.

(2) The Extra Margin Emergency Escape Mask screens lethal gases associated with fire, including carbon monoxide.

(3) The Extra Margin Emergency Escape Mask permits normal breathing in the event of fire.

(4) The Extra Margin Emergency Escape Mask has been endorsed or approved by state and federal government agencies.

PAR. 6. In truth and in fact:

(1) The Extra Margin Emergency Escape Mask does not provide twenty (20) minutes escape time in the event of fire. The mask user can be overcome by gases associated with fire in less than twenty (20) minutes.

(2) The Extra Margin Emergency Escape Mask is incapable of screening out carbon monoxide.

(3) The Extra Margin Emergency Escape Mask does not permit normal breathing. The mask's filter creates inhalation and exhalation breathing resistance.

(4) The Extra Margin Emergency Escape Mask has not been endorsed or approved by any state or federal agency.

Therefore, the statements and representations set forth in Paragraphs Four and Five were and are unfair, false, misleading and deceptive.

PAR. 7. In the course and conduct of his business, respondent has represented in promotional literature and in the product's packaging the asserted advantages of the Extra Margin Emergency Escape Mask but has failed to disclose that the mask does not filter carbon monoxide, a lethal gas associated with fire.

PAR. 8. In light of the representations described in Paragraphs Four and Five, respondent's failure to disclose the facts described in Paragraph Seven is misleading in a material respect in that the disclosure of these facts to consumers would be likely to affect their purchase decisions. Therefore, failure to disclose these material facts renders the sales and packaging materials referred to in Paragraph Seven unfair, false, misleading and deceptive.

PAR. 9. In the course and conduct of his business, and at all times mentioned herein, respondent has been, and now is, in substantial competition, in or affecting commerce with corporations, firms and individuals engaged in the sale of merchandise of the same general kind and nature as merchandise sold by respondent.

PAR. 10. The use by respondent of the aforesaid unfair, false, misleading and deceptive statements, representations, acts and practices, and his failure to disclose the aforesaid material facts has had, and now has, the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and rep-

representations were, and are, true and complete, and to induce purchases of substantial quantities of respondent's products by reason of said erroneous and mistaken beliefs.

PAR. 11. The acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act. The acts and practices of respondent, as herein alleged, are continuing.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Monte Proulx is an individual whose address is 50300 Highway 245, Badger, California.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

For the purpose of this Order, the following definitions shall apply:

(1) *The Extra Margin Emergency Escape Mask* shall mean the over-the-head vinyl mask with a built-in mouthpiece and filter manufactured by Nihon Saibohgu Company, Ltd., of Japan.

(2) *Competent and reliable scientific test* shall mean a test in which persons with skill and expert knowledge in the field to which the test pertains conduct the test and evaluate its results in an objective manner using testing, evaluation, and analytical procedures that ensure accurate and reliable results.

I

It is ordered, That respondent Monte Proulx, an individual, his agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of the Extra Margin Emergency Escape Mask or any other emergency escape mask, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Disseminating, or causing or permitting the dissemination of, any advertisement or other representation, express or implied, that an emergency escape mask provides protection from carbon monoxide gas unless at the time the representation is made, the representation is true and respondent possesses and relies upon a competent and reliable scientific test substantiating the representation.

2. Disseminating, or causing or permitting the dissemination of, any advertisement or other representation, express or implied, that an emergency escape mask provides twenty (20) minutes of breathable air or that an emergency escape mask provides any express amount of time of breathable air unless at the time the representation is made, the representation is true and respondent possesses and relies upon a competent and reliable scientific test substantiating the representation.

3. Disseminating, or causing or permitting the dissemination of, any advertisement or other representation, express or implied, that an emergency escape mask permits normal breathing unless at the time the representation is made, the representation is true and respondent possesses and relies upon a competent and reliable scientific test substantiating the representation.

4. Disseminating, or causing or permitting the dissemination of, any advertisement or other representation, express or implied, that

an emergency escape mask has been endorsed or approved by any municipal, state or federal agency unless at the time the representation is made, respondent possesses and relies upon a reasonable basis for the claim consisting of a verified statement from the agency that endorsed or approved the mask. When referring to any test conducted by or on behalf of the aforesaid agency as a basis for the agency's endorsement or approval, the results of such test must be fairly and accurately disclosed in conjunction with the representation or claim.

II

It is further ordered, That respondent Monte Proulx, an individual, his agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of the Extra Margin Emergency Escape Mask or any other emergency escape mask, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that an emergency escape mask protects the user from the hazards associated with fire without disclosing in close conjunction therewith the following statement in print at least as large as the print in which the representation is made, with nothing to the contrary or in mitigation of this statement:

The mask does not filter carbon monoxide—a lethal gas associated with fire.

III

It is further ordered, That should respondent Monte Proulx, an individual, his agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, continue to market the Extra Margin Emergency Escape Mask, or any other emergency escape mask, in its current packaging, the respondent shall affix a white permanent-adhesive label to all its current packaging. This label shall remove all references on the current packaging relating to the emergency escape mask's ability to provide protection from carbon monoxide and its effectiveness for up to twenty (20) minutes. The first line of this label shall state "The mask does not filter carbon monoxide—a lethal gas associated with fire". As shown in Attachment A of this Order, this sentence shall appear on the label in ten-point bold type.

IV

It is further ordered, That respondent distribute a copy of this Order to all present and future personnel, agents or representatives having sales, advertising, or policy responsibilities with respect to the subject matter of this Order and that respondent secure from each such person a signed statement acknowledging receipt of said Order.

V

It is further ordered, That respondent, for a period of three years after respondent last disseminates the advertisements for products covered by this Order, shall retain all test results, data, and other documents or information on which he relied for his representations or any documentation which contradicts, qualifies or calls into serious question any claim included in such advertisement which were in his possession during either their creation or dissemination. Such records may be inspected by the staff of the Commission upon reasonable notice.

VI

It is further ordered, That respondent promptly notify the Commission of the discontinuation of his present business or employment. In addition, for a period of five (5) years from the date of service of this Order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment whose activities include the offering for sale, sale or distribution of emergency escape masks or of his affiliation with a new business or employment in which his duties and responsibilities involve the offering for sale, sale or distribution of emergency gas masks. Each such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged, as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this Order.

VII

It is further ordered, That the respondent shall within sixty (60) days after service upon him of this Order, file with the Commission a report, in writing, setting forth in detail, the manner and form in which he has complied with this Order.

MONTE PROULA

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Decision and Order

ATTACHMENT A

**THE MASK DOES NOT FILTER
CARBON MONOXIDE—A LETHAL
GAS ASSOCIATED WITH FIRE.**

Interlocutory Order

102 F.T.C.

IN THE MATTER OF
CHAMPION SPARK PLUG COMPANY

Docket 9141. Interlocutory Order, Nov. 10, 1983

ORDER GRANTING IN PART RESPONDENT'S MOTION TO STRIKE

Respondent has moved to strike a footnote and a sentence of text from complaint counsel's appeal brief. Complaint counsel have filed a reply. Respondent has offered a further reply, and has filed a motion under Rule 3.22 for leave to file the reply.

The footnote and the sentence appear in a paragraph in which complaint counsel argue that evidence of a post-acquisition drop in market share is entitled to little weight because an acquiring firm may exercise restraint pending challenge of the acquisition. They support their argument by citation to legal authority and to record evidence. In addition, their argument contains the disputed sentence, which reads, "Furthermore, it is likely that Champion did not fully promote Anco pending the conclusion of this litigation."

The disputed footnote appears as authority for the disputed sentence. The footnote quotes an article in a June 6, 1983, trade publication. The article in turn purports to quote an Anco spokesman, stating that Anco will conduct a more aggressive marketing strategy after the pending litigation is completed. The spokesman is neither named nor otherwise identified in the quoted passage.

Respondent objects that this material is improper, extra-record hearsay. Respondent also asserts that the use of this material violates an order of the Administrative Law Judge, which set December 31, 1980 as the cut-off date for all discovery and record evidence.

Complaint counsel respond that the material was not introduced as evidence about respondent's own behavior. Rather, they assert, it was non-evidentiary material, used to illustrate a generally accepted proposition concerning post-acquisition behavior. As to the ALJ's order setting a cut-off date, complaint counsel assert that the material merely makes the point that post-acquisition data was probably manipulated as a matter of course. Thus, they argue, the date of the article is irrelevant, and the article can be cited without violating the order.

The disputed sentence will not be stricken from complaint counsel's brief. The sentence is a portion of complaint counsel's general argument about post-acquisition behavior, during a period when an acquisition is under challenge.

However, the disputed footnote will be stricken from the brief.

Complaint counsel assert that this material is intended to evidence a general pattern of business behavior, which respondent presumably followed.

As complaint counsel notes, the use of non-evidentiary illustrative material to support a generally accepted proposition has been a proper practice in appellate briefs for nearly three quarters of a century. The well-known "Brandeis brief" submitted in *Muller v. Oregon*, 208 U.S. 412, 420 (1908), illustrates the use of such material. That brief, accepted and relied upon by the Supreme Court, contained substantial extra-record evidence, including citations to ninety published reports. The Commission, like the courts, can rely upon extra-record sources. In one case, for example, the court held that a Commission decision properly included 85 citations to 43 extra-record writings, dealing with economic, social, and political concepts. *Proctor & Gamble Co. v. FTC*, 358 F.2d 74 (6th Cir. 1966), *rev'd on other grounds*, 386 U.S. 568 (1967).

The particular material which complaint counsel cite, however, is highly unreliable. The material contains hearsay within hearsay: a non-record statement by a reporter, describing a non-record statement by a company official. Moreover, the material appears even less reliable because the company official is not identified.

In addition, complaint counsel argue that they were offering the disputed footnote as a factual illustration of how businesses in general (and, by implication, respondent in particular) behave. However, the factual material does not describe business behavior in general, nor does it even describe the behavior of a number of business firms. Rather, it only describes a single firm, the respondent in the proceeding before us. Complaint counsel ask us to consider material concerning a single firm, the respondent, reach conclusions about business practices generally, and then turn around and apply these generalizations to respondent. We reject this as inappropriate.

We are not now addressing complaint counsel's position that post-acquisition market shares are entitled to little weight. We will consider the argument and its legal support at an appropriate time. However, we will not consider the disputed factual illustration, unreliable and limited to respondent's own behavior, to support an argument about general business behavior. For these reasons, we conclude that the disputed footnote contains unreliable and inappropriate material, and we grant respondent's motion to strike the footnote.

Therefore, *it is ordered*, that respondent's motion for leave to file a reply be granted;

It is further ordered, That footnote 3 on page 26 of complaint counsel's appeal brief be stricken.

Complaint

102 F.T.C.

IN THE MATTER OF

FORD MOTOR COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT*Docket 9113. Complaint, July 19, 1978—Decision, Nov. 16, 1983*

This consent order dismisses Count I of the complaint charging Ford Motor Co., a Dearborn, Mich. motor vehicle manufacturer, with alleged violations of Section 2(d) of the Clayton Act, and requires the manufacturer, among other things, to cease paying anything of value to daily rental companies or daily rental systems for advertising furnished by such firms or systems, unless advertising payments are made available to competing independent daily rental companies in accordance with terms set forth in the order. Within 90 days from the effective date of the order, and annually thereafter, Ford is required to inform those daily rental companies having no joint advertising agreement with respondent or any other automobile manufacturer, of advertising programs available to daily rental companies that agree to feature Ford products in their advertising and fleets. The order further requires that Ford make a good faith effort to negotiate advertising agreements with such companies. Provisions of the order are to remain in effect for a period of ten years and apply only to agreements relating to daily rental advertising within the United States.

Appearances

For the Commission: *Robert W. Rosen* and *Paul Kane*.

For the respondent: *Richard E. Carlton*, New York City and *Charles E. Dorkey, III*, Washington, D.C., of *Sullivan & Cromwell*, and *William A. Zolbert* and *John R. Phillips*, in-house counsel, Dearborn, Mich.

COMPLAINT

The Federal Trade Commission, having reason to believe that respondent, Ford Motor Company [hereinafter referred to as Ford], has violated and is now violating the provisions of Section 2(d) of the Clayton Act, as amended (15 U.S.C. 13), and of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45), and that a proceeding by it in respect thereof is in the public interest, hereby issues its complaint charging as follows:

PARAGRAPH 1. Ford is a corporation organized, existing and doing business under the laws of the State of Delaware, with its principal office and place of business located at The American Way, Dearborn, Michigan.

PAR. 2. Ford is the second largest manufacturer of automobiles in the United States. In 1977, Ford sold approximately 3.9 million automobiles and trucks in the United States. During 1977, Ford's net sales exceeded \$37,841,000,000. Ford's net income during 1976 exceeded \$1,672,000,000.

PAR. 3. In the course and conduct of its business, Ford has been and is now engaged in commerce, as "commerce" is defined in the Clayton Act, as amended, and Ford's methods of competition are now and have been in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended.

The acts and practices herein described in connection with Ford's offers and grants of advertising allowances and other expenses [hereinafter collectively referred to as programs] are and have been in commerce, as "commerce" is defined in the Clayton Act, as amended, and are now and have been in or affecting commerce as the term "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. Ford sells its automobiles and trucks [hereinafter referred to as vehicles] to dealers which, in turn, sell the vehicles to rental and leasing companies [hereinafter referred to as Ford customers]. As more particularly described herein, Ford deals directly with Ford customers in administering its programs in connection with the sale of its vehicles.

PAR. 5. In the course and conduct of its business, Ford has paid or contracted for the payment of something of value to or for the benefit of some of its Ford customers, as compensation or in consideration for services or facilities furnished or agreed to be furnished by or through such Ford customers in connection with the distribution of vehicles sold by Ford. Ford has not made or offered to make such payments for services or facilities available on proportionally equal terms to all of its other Ford customers competing with such favored Ford customers.

For instance, Ford has engaged in programs with certain Ford customers, including but not limited to, Hertz Corporation, whereby payments have been made for advertisements linking vehicles sold by Ford with the vehicles offered for rent or lease by Ford customers to the value and benefit of said customers. Typical, are advertisements placed by Hertz corporation which include phrases such as: "Hertz rents Fords and other fine cars." Payments for these programs have been made by Ford to Ford customers, or their agents. Ford has not offered to pay, has not paid, or otherwise made payments available on proportionally equal terms to all of its Ford customers competing with the favored Ford customers.

COUNT I

Alleging violation of Section 2(d) of the Clayton Act, as amended.

PAR. 6. The allegations of Paragraphs One through Five are incorporated by reference herein as if fully set forth verbatim.

PAR. 7. The acts and practices of respondent, as alleged above, are in violation of subsection (d) of Section 2 of the Clayton Act, as amended (15 U.S.C. 13).

COUNT II

Alleging violation of Section 5 of the Federal Trade Commission Act, as amended.

PAR. 8. The allegations of Paragraph One through Five are incorporated by reference herein as if fully set forth verbatim.

PAR. 9. The aforesaid acts and practices of respondent Ford violate the policy of Section 2(d) of the Clayton Act, as amended; are all to the prejudice of the public; have the tendency and effect of preventing and hindering competition and may tend to create a monopoly in the vehicle rental or leasing businesses; and constitute unfair methods of competition in commerce and unfair acts or practices in or affecting commerce, within the intent and meaning and in violation of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45).

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondent named in the caption hereof with violation of Section 2(d) of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, as amended, and the respondent having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such

agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 3.25 of its Rules, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Ford Motor Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at The American Way, in the City of Dearborn, State of Michigan.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

For purposes of this order, the following definitions apply:

(a) A *daily rental company* is an entity, other than one affiliated with a franchised new car dealer of any manufacturer or distributor of automobiles, engaged primarily in the business of renting current model-year automobiles to the public on the basis of a flat rate for hourly, daily, weekly or monthly use or on the basis of a combination of a flat rate and a mileage rate.

(b) A *daily rental system* is any group of daily rental companies affiliated by ownership, by licensor-licensee, franchisor-franchisee or agency relationship, or similar arrangement, or operating under a common trade name, trademark or logo or through a common or shared reservation system.

(c) An *independent daily rental company* is a daily rental company that operates during any model year not more than one thousand (1000) automobiles for use in daily rental service and that is not affiliated with a daily rental system. Calculation of fleet size shall be made by averaging the number of automobiles in the fleet in daily rental service at quarterly or other regular intervals during the relevant model year.

(d) An *independent daily rental system* is a daily rental system that operates during any model year not more than one thousand (1000) automobiles in daily rental service. Calculation of fleet size shall be made by averaging the number of automobiles in the fleet in daily rental service at quarterly or other regular intervals during the relevant model year.

(e) *Ford products* refers to automobiles manufactured, assembled, distributed or sold by Ford Motor Company.

(f) *Model year* is the period between October 1 and September 30 of the following year, and shall be determined for particular vehicles by reference to the vehicle identification number.

I

It is ordered, That Count I of the Complaint be, and the same hereby is, dismissed.

II

It is further ordered, That respondent, Ford Motor Company, a corporation, its officers, directors, agents, representatives, employees, successors and assigns, directly or indirectly, through any corporate or other device in connection with the furnishing of advertising by or through daily rental companies or daily rental systems in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith:

Cease and desist from paying or contracting to pay anything of value to or for the benefit of any daily rental company or any daily rental system as compensation or consideration for any advertising furnished by or through such daily rental company or daily rental system, unless the payment, compensation or consideration is made available by Ford on terms as provided in Paragraph III hereof to all independent daily rental companies and independent daily rental systems competing with such daily rental company or daily rental system.

III

It is further ordered, That Ford shall be in full compliance with Paragraph II of this order if it offers or causes to be offered to all independent daily rental companies and independent daily rental systems an advertising program for the joint promotion of Ford products and the services of the independent daily rental company or the independent daily rental system, which contains the following provisions:

A. Ford shall reimburse any independent daily rental company or independent daily rental system agreeing to feature current model year Ford products in its advertising and fleet fifty (50) percent (unless that percentage is modified in accordance with the provisions of Paragraph III.G. of this order) of the cost of a yellow pages display advertisement featuring Ford products up to one quarter page (double

half column) in size, under the classification "Automobile Renting and Leasing," to appear in the hometown telephone directory or directories where the main rental offices of the independent daily rental company or independent daily rental system are located.

B. Any independent daily rental company or independent daily rental system accepting the offer described in Paragraph III.A. of this order shall be offered the option of participating in additional advertising featuring Ford products and the services of the independent daily rental company or independent daily rental system, for which Ford will reimburse the independent daily rental company or the independent daily rental system fifty (50) percent (unless that percentage is modified in accordance with the provisions of Paragraph III.G. of this order) of the cost of advertising featuring Ford products. The criteria for determining what advertisements and what advertising costs are reimbursable for independent daily rental companies and independent daily rental systems participating in joint advertising programs with Ford shall be the same as for all other daily rental companies and daily rental systems participating in joint advertising programs with Ford.

C. To be eligible for the advertising program set forth in Paragraphs III.A. or III.B. of this order an independent daily rental company or independent daily rental system must agree to feature Ford products in its fleet and to purchase at least twenty (20) Ford products of the model year during which the advertising featuring Ford products appears.

D. Ford may require that the independent daily rental company or independent daily rental system substantiate its purchases of Ford products and its fleet size. Ford may also require substantiation, similar to the substantiation required of other daily rental companies and daily rental systems, from the independent daily rental company or independent daily rental system of its expenditures for advertising featuring Ford products, through the submission of bills, invoices, copies of advertisements or other reasonable documentation and other procedures for verification of such expenditures.

E. Ford may provide for termination or nonrenewal of joint advertising programs for cause. Such cause may include, for example, false or deceptive advertising or claims for payments, advertising which, or in media which, reflect negatively on Ford, its products or its goodwill or failure to maintain reasonable standards of automobile maintenance, safety or cleanliness. Without limitation of Ford's other rights under this order, Ford may decline to enter into a joint advertising program where it reasonably appears such affiliation would negatively reflect on Ford, its products or its goodwill. Any decision by Ford to decline to enter into, decline to renew, or terminate a joint advertis-

ing program under the provisions of this subparagraph shall be made on the basis of standards which are consistent for all daily rental companies and daily rental systems. Where Ford exercises its right hereunder to decline to enter into, to terminate or not to renew a joint advertising program on the basis that such an affiliation would negatively reflect on Ford, its products or its goodwill, it shall maintain a written record of the specific basis for such exercise and the relevant dates relating thereto. Such records shall be retained for two years following exercise of such right or until expiration of this order, whichever is sooner, and shall be made available to the Commission upon request following reasonable notice.

F. Ford shall, within ninety (90) days after service of a final order and annually thereafter commence reasonable action, in good faith, to inform all independent daily rental companies and independent daily rental systems of the availability of the advertising program contemplated by this order.

G. In the event Ford or any of its divisions agrees to reimburse more or less than fifty (50) percent of the type of advertising expenditures described in Paragraphs III.A. and III.B. above for any daily rental company or any daily rental system, then Ford or, in the case of a particular division of Ford, that division shall offer to reimburse to all independent daily rental companies and independent daily rental systems the highest percentage of reimbursement offered to any daily rental company or daily rental system by Ford or that particular division of Ford.

IV

It is further ordered, That:

A. Ford shall within ninety (90) days after service of a final order and annually thereafter advise all daily rental systems and daily rental companies not affiliated with a daily rental system, which do not have a joint advertising agreement with Ford and which are not independent daily rental companies or independent daily rental systems, of the existence of advertising programs for daily rental companies and daily rental systems agreeing to feature Ford products in their advertising and fleets.

B. Ford shall in good faith seek to negotiate an agreement with: (1) any daily rental company or daily rental system that is advised pursuant to Paragraph IV A. hereof of the existence of Ford advertising programs and that does not have a joint advertising agreement with any other manufacturer or distributor of automobiles; and (2) any daily rental system, or any daily rental company that is not affiliated

with a daily rental system, other than an independent daily rental system or independent daily rental company, that already has a joint advertising agreement with Ford which is due to expire on or before the last day of that model year. Failure to reach agreement after good faith efforts to do so shall not constitute a violation of this Order.

V

It is further ordered, That nothing herein contained shall prevent Ford from carrying out the provisions of any advertising agreement with any daily rental company or daily rental system that shall have been entered into prior to January 1, 1982.

VI

It is further ordered, That the provisions of this order shall remain in effect for a period of ten (10) years after service of a final order, and shall apply only to agreements relating to daily rental advertising within the United States.

VII

It is further ordered, That nothing herein shall preclude Ford from offering or participating in an advertising program on terms intended in good faith to meet a bona fide offer received by a daily rental company or daily rental system from another manufacturer or distributor of automobiles, *provided* that Ford shall have the burden of proving that it was acting in good faith to meet such a bona fide offer, and the provisions of paragraphs II, III and IV of this order shall not apply to such offer or program.

VIII

It is further ordered, That in the event the proceeding against General Motors Corporation, respondent in Docket No. 9114, results in a final adjudicated order in accordance with Section 5(g)-(k) of the Federal Trade Commission Act, 15 U.S.C. 45, or in a consent order, prescribing less restrictive standards or less demanding obligations than any corresponding provision of this order, then Ford shall be bound only by the less restrictive standards and less demanding obligations set forth in such order. In the event the aforesaid proceeding against General Motors Corporation is dismissed, then Ford shall no longer be bound by the provisions of this order. In the event the Commissioner issues a final Trade Regulation Rule prescribing less restrictive stan

dards or less demanding obligations on any manufacturer, assembler or distributor of automobiles than any corresponding provision of this order, then Ford shall only be bound by the standards set forth in such Rule.

IX

It is further ordered, That respondent shall within one hundred and twenty (120) days after service of a final order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order and shall file such other reports as may, from time to time, be required to assure compliance with the terms and conditions of this order.

X

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergency of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

IN THE MATTER OF
GENERAL MOTORS CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT

Docket 9145. Complaint, Aug. 7, 1980—Decision, Nov. 16, 1983

This consent order requires a Detroit, Mich. motor vehicle manufacturer, among other things, to provide all interested persons with service bulletins (Product Service Publications) and indexes which describe both current and potential problems and update repair procedures. GM must also advertise the existence, availability and benefits of these publications in national magazines and through direct-mail notices. The indexes will list each service bulletin, provide ordering information and contain plain language summaries of certain bulletins. Additionally, GM must establish a nationwide arbitration program for car owners with unsatisfied complaints about engine or transmission failures.

Appearances

For the Commission: *William W. Jacobs, John M. Mendenhall, Richard H. Gately, Brenda W. Doubrava and Robert P. Weaver.*

For the respondent: *Otis M. Smith, Thomas B. Leary, Francis H. Dunne, David A. Collins and Robert C. Weinbaum, in-house counsel, Detroit, Mich.*

COMPLAINT

The Federal Trade Commission, having reason to believe that General Motors Corporation, respondent, has violated the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, issues this complaint.

1. Respondent is a Delaware corporation with its executive offices at 3044 West Grand Boulevard, Detroit, Michigan.
2. Respondent is now, and has been, engaged in the production advertising, sale, and distribution of motor vehicles.
3. Respondent maintains, and has maintained, a substantial course of business, including the acts or practices alleged in this complaint in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.
4. For the purpose of the allegations in this complaint, *serious problem or defect or serious problems or defects* means the occurrence or likely occurrence of an abnormal number of failures or malfun

tions of a component, group of components or system, where such failures or malfunctions are costly to correct or may substantially affect the quality, reliability, durability, or performance of a motor vehicle.

5. From time to time, a serious problem or defect arises in motor vehicles produced by or for respondent. Typical and illustrative of some, but not all, of the components, groups of components or systems which are or have been subject to serious problems or defects include:

(a) Automatic transmissions, particularly THM 200 transmissions produced by respondent's Hydra-Matic Division since 1975.

(b) Camshafts or lifters in gasoline engines, particularly 305 or 350 cubic inch displacement (CID) engines produced by respondent's Chevrolet Division since 1974.

(c) Fuel injection pumps or fuel injectors in diesel engines, particularly 350 CID engines produced by respondent's Oldsmobile Division since 1977.

6. Respondent knows or should know of the fact that serious problems or defects exist and of facts concerning the nature, extent, prevention or proper repair of failures or malfunctions associated with each such serious problem or defect. For example, respondent knew or should have known of the fact that serious problems or defects existed and of facts concerning the nature, extent, prevention or proper repair of failures or malfunctions associated with each such serious problem or defect affecting the components, groups of components or systems identified in paragraph 5.

7. Respondent is failing or has failed to disclose the fact that serious problems or defects exist and facts concerning the nature, extent, prevention or proper repair of failures or malfunctions associated with each such serious problem or defect to owners or to prospective purchasers of motor vehicles that contain a component, group of components or system subject to a serious problem or defect.

8. These facts are material to many prospective purchasers because such facts, if known, would be likely to affect their decisions concerning the purchase of motor vehicles produced by respondent. Such facts are also material to many owners because such facts, if known, would be likely to affect their decisions concerning the maintenance, repair, use or care of motor vehicles produced by respondent.

Therefore, respondent is failing, and has failed, to disclose material facts to prospective purchasers and to owners of its motor vehicles.

9. Respondent's acts and practices in failing to disclose material facts has had, and now has, the capacity and tendency to mislead any members of the public, particularly those who may consider purchasing, or who own, a motor vehicle produced by respondent.

Such acts and practices also cause substantial economic harm to many members of the public who make payments of money for goods or services which they might not make or fail to take preventative measures which they might take if respondent adequately discloses such material facts.

10. Respondent's acts and practices in failing to disclose material facts as alleged herein were and are all to the prejudice and injury of the public and constitute unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act, as amended.

SEPARATE STATEMENT OF COMMISSIONER PERTSCHUK

The comments from consumers and consumer groups across the country provide eloquent testimony that case-by-case arbitration, in place of automatic redress to injured consumers, is a bitterly unpopular as well as unfair feature of this settlement. Consumer fury and frustration over the felt injustice of this burdensome remedy explodes from the letters. The hundreds of consumer comments that we received, most of them spontaneous expressions of outrage from unorganized individuals, are to my knowledge unprecedented in Commission history. Over 70% of them are opposed to the arbitration agreement, which they view as a repudiation of their right to automatic redress (only 14% favor it, while a like percent take no clear position). Moreover, many despair that they will ever recover their losses under this deal, since they feel individual arbitration with an adversary like GM could never be a fair fight. One person, an attorney from Michigan experienced in dealing with GM, summed up the consumer's chances this way:

It will be like sending a team of Chinese, who have never seen or studied or played the game of football, into a contest with the Dallas Cowboys!

Comments from consumer groups, such as the Center for Auto Safety and Consumers Against GM, passionately criticized the arbitration settlement as unjust. The most jarring comment from any organized interest may have come from the nation's state law enforcement officers, who have been dealing with the GM transmission and diesel problem on the front lines. State attorneys general collectively voiced "grave reservations" about the fairness and workability of the Better Business Bureau arbitration system under the agreement. In a letter signed by 29 of them, they complained that "similarly situated consumers could get a whole loaf, a half a loaf or no loaf at all. Arbitrary arbitrations are not the answer to resolving this case."

Only a handful of individuals and organizations—*e.g.*, GM and the BBB themselves, the American Arbitration Association, and two Attorneys General—took exception to this overwhelming expression of public opposition by favoring the settlement.

All in all, this extraordinary outcry hardens my conviction that case-by-case arbitrations of a *common* defect, in which each consumer has to prove a right to redress, is wrong in concept and in operation. Arbitration without clear, binding rules for establishing responsibility will still be little more than a “roll of the dice”—some truly deserving consumers will win, many won’t. The only rational and equitable remedy for the common injury suffered in a case like this is automatic compensation for damages, not standardless mini-trials pitting individual consumers against the largest company in the world!

As *Automotive News* correspondent Helen Kahn wrote about the arbitration plan: “Dissatisfaction with the proposal has risen to such great heights as to almost demand a second look—even though final approval of a consent agreement after a public comment period is usually a mere rubber-stamping.”

I couldn’t agree more, but the public reaction regrettably has not moved the Commission majority in favor of the settlement to change their votes. And, in fairness to them, the many negative comments really raised no new fundamental objections to the agreement that did not exist when the Commission made its original decision to accept the consent last April.

Thus, with the settlement now an “on the ground” reality, it is time for those who have sought more for injured owners to help them get what they can from mediation and arbitration of their complaints. If nothing else, this controversy has reaffirmed the health of “populist democracy” in America, spawning any number of grass-roots “victims” networks determined to get economic justice from GM. While the CAS, CAGM, Lemons on Wheels, and all the others bitterly opposed the Commission settlement, they also have been preparing for the inevitable by organizing GM owners, centrally planning mediation/arbitration strategy, and disseminating self-help arbitration manuals. In addition, an article in the November issue of *Consumer Reports* provides an excellent guide through the GM/BBB arbitration program which will help consumers seeking an adequate award. GM owners thinking about entering the process should take full advantage of all this expert and organized support. If they confront GM *together* rather than alone, they can *make* the program work better, in spite of itself.

SEPARATE STATEMENT OF COMMISSIONER PATRICIA P. BAILEY

The Commission's final acceptance of the consent agreement with General Motors Corporation (GM) brings to a close one of the most important and difficult cases the Commission has prosecuted in this decade. Because I am satisfied that the settlement resolves the GM litigation in a fair and equitable way and provides consumers with the opportunity to obtain redress that would otherwise not be available, or would only be available after years of uncertainty, I have voted in favor of its final acceptance.

I have studied carefully the points made by those opposing this settlement: that direct redress is preferable to arbitration as a remedy; that the fact sheets and other elements of the arbitration process may place consumers at a disadvantage; and that the Better Business Bureau (BBB) may be overwhelmed by its responsibilities under the program. The settlement here would clearly be more acceptable to these critics, and preferable to me, if it provided direct redress, or if the fact sheets were modified, or if a number of other changes were made. The plain fact is that altering the order in these various ways is simply not an alternative available to us in the context of a settlement. This settlement is not perfect, but despite its imperfections, I am persuaded that it represents an immediate, fair, and certain means of compensating the class of GM owners whose interests we represent. Failure to accept this order as it now stands would require that we pursue a course which could provide no consumer relief for years, and possibly no relief at all, ever.

All of the parties involved in this settlement—the Commission, GM, and the BBB—are participating in an experiment, and all participants have a strong incentive to make the experiment succeed. The use of a case-by-case arbitration approach to redress departs from the traditional direct relief measures contained in prior Commission "defects" cases. Whether the Commission would ever again consider adopting the arbitration approach depends to a large degree on the results of the GM/BBB program. The Commission will be monitoring this program very carefully in the months ahead.

SEPARATE STATEMENT OF COMMISSIONER GEORGE W. DOUGLAS

In reviewing the public comments on the Commission's settlement with General Motors, it is noteworthy that many of the issues discussed by the public were the same as those that had commanded the attention of both the staff and the Commission in this matter.

Although a number of comments praised the settlement as an equitable, effective, and expeditious means of providing relief to injured

consumers, many were either negative or expressed reservations about the settlement. Given the circumstances surrounding the settlement and several public pronouncements criticizing the Commission's handling of the case, this is not surprising. Virtually by definition, a negotiated settlement cannot fulfill all of the demands of either party. Also to be considered is the innovative nature of the agreement: The Commission, in lieu of pursuing protracted and risky litigation, has embarked upon what it believes to be a highly promising but admittedly somewhat novel means of effectuating prompt consumer redress. Particularly noteworthy in this regard, the Better Business Bureau reported as early as June that it had received on the order of 20,000 complaints from consumers who believe they qualified under the settlement, 48 percent of which reported situations that would not be eligible for arbitration under GM's current program. This suggests a much higher degree of public support for the program than might be inferred from the initial public comments.

In view of the number of skeptical comments—which any new or innovative procedure might be expected to elicit—it is especially troublesome that the pattern of those comments indicates widespread public misinformation as to the settlement's terms and the Commission's authority. The public's misperceptions appear to derive in large part from several misleading statements widely quoted in the press. As a consequence, we received many comments reflecting a serious misunderstanding of the Commission's ability to require direct consumer redress, the tradeoffs between arbitration and litigation, and the magnitude and importance of the required changes in the existing arbitration program, as well as virtually complete lack of awareness of the important prospective relief aspects of the settlement.

Among the 164 unfavorable comments filed by individuals, 55 could be interpreted as favoring direct reimbursement over arbitration; and 39 went so far as to call for a settlement that would require GM to pay consequential and/or punitive damages. Many cited the redress provisions in previous cases brought against automakers such as Chrysler, Honda, Ford, and GM itself in the "engine switch" case, and betrayed the impression that the Commission could unilaterally force GM to provide immediate direct redress.

Given the choice between arbitration and direct redress, most people would favor the latter. The most vociferous public critics of the settlement knew full well, however, that there was absolutely no chance of obtaining a settlement calling for direct redress in this case and that the Commission had absolutely no power or authority to impose such a settlement on GM.

Thus, even while Commissioner Pertschuk's statement noted that the Commission's hands were tied by GM's absolute refusal to agree

to any direct redress program, in the portion of his statement that was most widely publized, the Commissioner was quoted as stating that "only direct automatic refunds to consumers, which is the redress remedy the Commission has always used before" could provide a sufficiently strong remedy. Considered standing alone, this statement is clearly misleading. While it is true that in certain previous matters the FTC has been able to negotiate direct consumer redress, it cannot *require* direct redress by virtue of an administrative order. Here it might be noted that the settlement is the product of lengthy and intense negotiations between GM and what is widely regarded as the best and most experienced litigating team for auto industry consumer protection matters in the Commission—the Cleveland Regional Office. After months of negotiations, this team, the same that negotiated direct consumer redress in several previous auto defect cases, concluded that it had gotten as much as it could from GM and thus recommended against further negotiation—for fear of losing what it had already gained—and against litigation—because of the years of delay and uncertain outcome.

In another misleading quotation, the Center for Auto Safety's Clarence M. Ditlow III criticized the settlement a "gross consumer abuse and sellout because it offers consumers nothing they would not obtain in any event." A particular shortcoming, he asserted, was that "the biggest economic loss to consumers, excess depreciation of thousands of dollars per vehicle for the one million diesels covered by the settlement," was not included. What Mr. Ditlow ignored (aside from the fact that there was insufficient evidence to expand the complaint beyond diesel fuel injectors/pumps) is that redress for "excess depreciation" has not only never been provided in any previous Commission settlement, but also has rarely (if ever) been awarded by a court in a litigated proceeding.

The critics of the settlement would apparently prefer that the Commission had taken this case to court in an attempt to make all injured consumers in this matter whole once again. What they have failed to point out is that this is much easier said than done. Due to the way that Congress has delegated authority to the Commission to enforce the consumer protection laws, the Commission would have had to file *two successive* suits against GM and win each (as well as all of the inevitable appeals) before any money could be reimbursed to consumers.

First, the Commission would have to file an administrative complaint naming the three areas of controversy—transmissions, carshafts, and diesel components—and charging that GM had acted in an unfair and deceptive manner by failing to disclose that it knew those components were defective. Assuming that complaint counsel won

the decision at the administrative hearing level, GM could appeal, first to the full Commission, then to an appellate court, and finally to the Supreme Court.

Second, assuming that we won each of the first round of cases, the Commission would then have to initiate a second case, this time in federal district court, and prove that GM had acted in a dishonest *and* fraudulent manner by failing to disclose the defects in the three components to consumers. Of course, if the Commission had only been able to convince the courts that GM had acted in an unfair and deceptive manner with respect to one of the components (say, transmissions) in the previous round of court cases, the complaint in the second round would be limited to that component as well. Thus, consumers with camshaft or diesel problems might be completely out of luck.

Only if the Commission could prove that GM had acted dishonestly and fraudulently with respect to each component, and only after GM had exhausted all appeals, would consumers be eligible for redress. A reasonable estimate of the length of time involved would be eight to ten years; that is, as late as 1993. How many injured consumers might be expected to be around and to possess sufficient evidence to collect that redress in ten years? Many consumers suffered losses on the order of \$400 as early as 1976 and few would have had the foresight to retain the records necessary to document their claims. How many of those people would feel that justice had been served by a payment of \$400 in 1993 dollars—assuming that the courts found them to be entitled to anything at all? Just what dimension of equity would be fulfilled by pursuing a virtually intractable course of litigation that is not only highly risky, but which at best would only redress the most tenacious and persevering of complainants with a settlement paid in dollars worth far less than those shelled out by the consumer as much as seventeen years earlier? If any of the choices faced by the Commission in this matter could be characterized as a “roll of the dice,” it would be litigation, and the dice would be loaded against the consumer.

Clearly, if we were to pursue such a course, the only sure winners would be the army of lawyers who would be employed to litigate this matter for the next eight to ten years.

By contrast, the negotiated settlement confers numerous benefits that consumers would not otherwise obtain. The settlement locks GM into the arbitration program, yet makes it non-binding on consumers. Moreover, it requires GM to make the program available anywhere in the country (currently it is limited to 39 cities) and to commit a substantial amount of resources to a consumer awareness/advertising campaign, including direct mail contact with every consumer who

has registered a complaint with GM, the FTC, or a state's attorney general. If one of the three listed defects is involved, the settlement calls for GM to enter into arbitration within 60 days of a consumer's request and for the award to be delivered no later than ten days after arbitration. The settlement also ensures that consumers suffering injuries from defects not listed in the complaint will also be guaranteed a chance of recovery. This is especially relevant to GM diesel owners who have had problems in addition to those involving the fuel injectors and pumps.

Finally, the settlement calls for a major expansion of GM's PSP program, through which Product Service Publications providing information relating to repair, maintenance, and use and care procedures will be made available to the general public—consumer groups as well as individuals.

In summary, while the settlement is not perfect—as is true of any negotiated agreement—it nevertheless provides an immediacy of relief and a far higher degree of certainty for a much wider range of injured consumers than the Commission could expect to secure through litigation. According to my estimates, the value to consumers in terms of redress by arbitration will approach \$95 million—approximately six times the expected value of the consumer redress that could be anticipated through litigation. To reject this settlement, which affords redress far beyond that which would likely be gained through protracted litigation, in order to posture as “tough protectors of consumers” would be at the expense, not for the benefit, of consumers.

DECISION AND ORDER

The Commission having heretofore issued its Complaint charging the respondent named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and the respondent having been served with a copy of that Complaint, together with a notice of contemplated relief; and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing a Consent Order, an admission by the respondent of all the jurisdictional facts set forth in the Complaint, a statement that the signing of said Agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such Complaint, and waivers and other provisions as required by the Commission's Rules; and

The Secretary of the Commission having thereafter withdrawn this

matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter and having thereupon accepted the executed Consent Agreement and placed such Agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent General Motors Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 3044 West Grand Boulevard in the City of Detroit, State of Michigan.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

Definitions

For the purposes of this Order, the following definitions shall apply:

A. *General Motors* – General Motors Corporation, and its successors, assigns, officers, representatives, agents, and employees, acting directly or through any corporation, subsidiary, division, or other device.

B. *Vehicle* – A General Motors passenger car or light truck with a gross vehicle weight rating no greater than 10,000 pounds.

C. *Specified Components* – The following components manufactured through the date the Commission accepts this agreement pursuant to Section 3.25(f) of the Commission's Rules of Practice:

- (1) THM 200 automatic transmissions;
- (2) camshafts or lifters in 305 or 350 cubic-inch-displacement ("CID") gasoline engines produced in plants operated by General Motors Chevrolet Division since 1974;
- (3) fuel injection pumps or fuel injectors in 350 CID diesel engines produced in plants operated by General Motors Oldsmobile Division.

D. *Dealer* – Any person, partnership, firm, or corporation which, pursuant to a Dealer Sales and Service Agreement with General Motors, purchases or receives on consignment from General Motors vehicles for resale or lease to the public, including persons, partnerships, firms, or corporations owned or operated by General Motors.

E. *Product Service Publication (PSP or Bulletin)* – A document or

an article in a document issued from time to time by General Motors car or truck divisions to their dealers or to dealers' employees, which describes or recommends:

- (1) diagnostic, repair, or maintenance procedures;
- (2) additional parts or upgraded or different replacement parts;
- (3) non-repair information regarding the use and care of vehicles.

Examples of PSPs are: "Dealer Service Technical Bulletins," "Dealer Technical Bulletins;" and some articles in "Service Guild," "Service News," and "Dealer Service Information Bulletins," depending on the practice of the division issuing the PSP. The term *PSPs* includes other documents bearing different titles, but which are substantially the same in content and purpose. If a document (such as "Service News" and "Service Guild") contains several articles, any one of which describes unrelated diagnostic, repair, or maintenance procedures, then each such article shall be considered to be an individual PSP. PSPs do not include shop service manuals or parts manuals.

F. Product Condition - The condition of a vehicle that gives rise to any repair, maintenance, or diagnostic procedures, or that gives rise to the use of additional parts, described in PSPs.

G. PSP Index - A document, clear and comprehensible to prospective purchasers and vehicle owners, which has entries for all PSPs published each model year by the applicable General Motors car or truck divisions.

(1) For each entry in the PSP Index, the following information will be readily understandable:

- (a) the particular model(s) and model year(s) to which the entry applies or potentially applies;
- (b) the subject of the PSP;
- (c) the major component or system of components to which the PSP relates;
- (d) the identifying number of the PSP to which the entry relates;

and

- (e) how to obtain that PSP from General Motors and its dealers.

(2) The PSP Index shall contain PSP Explanatory Information, subject to the provisions of paragraph D(2) of section I, and the PSP Explanatory Information shall be appropriately referenced in the PSP Index entry, when any of the following criteria is met:

- (a) the PSP describes repair, maintenance, or diagnostic procedures not previously specifically covered in the applicable shop service manual, either (i) where the cost of such procedures to a customer is reasonably expected to exceed the reference cost, or (ii) where the

procedures are intended and designed to prevent future repair or replacement costs reasonably expected to exceed the reference cost; or

(b) the PSP describes revisions to repair, maintenance, or diagnostic procedures in the existing shop service manual where the revisions are intended and designed either (i) to prevent future repair or replacement costs reasonably expected to exceed the reference cost, or (ii) to reduce such costs by an amount reasonably expected to exceed the reference cost; or

(c) the PSP describes modified (including additional, different, or upgraded) parts recommendations, where the modification is intended and designed either (i) to prevent future repair or replacement costs reasonably expected to exceed the reference cost, or (ii) to reduce such costs by an amount reasonably expected to exceed the reference cost; or

(d) the PSP describes (i) information revising or updating owner's manuals or maintenance schedules or (ii) non-repair information regarding the use and care of vehicles by vehicle owners and operators.

H. *PSP Explanatory Information* – Information related to a particular PSP, that includes all of the following items as applicable:

(1) a description of the product condition and the engine size and transmission type (automatic or manual);

(2) a description of the major symptoms indicating the product condition;

(3) the steps or possible steps that can be taken to minimize or avoid the product condition;

(4) a statement that upgraded or different parts are called for to correct the product condition, if such is the case; if no such parts are involved, a statement that the repair or maintenance procedure discussed in the PSP has to be repeated if such is the case;

(5) a statement of the immediate and long-range performance consequences; and if avoidance of repair costs is a reason for undertaking the procedure, a statement of the estimated repair costs if known, or, if not known, a characterization of the costs of not performing the procedures in a timely manner;

(6) where available, the estimated labor time and an estimated range of retail labor rates, as well as a list of the major parts required to correct the product condition;

(7) a description of the underlying PSP(s) sufficient to permit an interested person to identify and order the PSP(s) from General Motors; and

(8) a disclosure of the primary benefit(s) of this information, if the PSP contains information not related to a product condition, such as

some PSPs meeting the criteria set forth in paragraph G(2)(d) of this Definition section.

Provided, however, That for PSPs relating to use and care information or to product conditions about which General Motors notifies all affected owners directly and in writing, the owner letter may be used in lieu of PSP Explanatory information.

I. *Costs* -

1. *Reference cost* in paragraph G(2) of this Definition section means one hundred fifty dollars (\$150), adjusted in the month when this Order is served and, annually thereafter, by a ratio, the numerator of which is the most recently published quarterly "Implicit Price Deflator" for the Gross National Product (IPD), and the denominator of which is the IPD for the last quarter of 1982, adjustments to be rounded to the nearest dollar. IPDs used in these annual adjustments shall have been computed using the same base year.

2. *Cost(s)* other than "reference cost" in paragraph G(2) of this Definition section shall be calculated by adding the suggested retail price for parts which are or may be required and the applicable national average dealer warranty labor rate charges multiplied by the time required to effectuate the repair, replacement, diagnosis or maintenance as determined by the labor time guide for the applicable General Motors division.

J. *Third-party Arbitration Program* - The program by which General Motors, through an impartial third-party administrator, permits any individual vehicle owner in the United States to submit an unresolved complaint for resolution by mediation, and, if mediation efforts fail, by arbitration administered by the third-party administrator.

K. *Powertrain Components* -

(1) *Gasoline and diesel engines.* Cylinder blocks and heads, and all internal parts, including camshafts and lifters, manifolds, timing gears, timing gear chains or belts and covers, flywheels, harmonic balancers, valve covers, oil pans, oil pumps, engine mounts, seals and gaskets, water pumps and fuel pumps, and diesel injection pumps; also, turbocharger housings and internal parts, turbocharger valves, seals and gaskets.

(2) *Transmissions.* Cases and all internal parts, torque converters, vacuum modulators, seals and gaskets, and transmission mounts; also, transfer cases and all internal parts, seals and gaskets.

L. *Background Statements* - Those statements included in the Special Implementing Provisions to the General Motors Zone Handbook For Third-Party Arbitration (Attachment B to this Order), titled

"Background Statement THM 200 Transmissions," "Background Statement Diesel Fuel Injection Systems," and "Background Statement Camshafts and Lifters."

I

It is ordered, That respondent General Motors, its successors, assigns, officers, representatives, agents, and employees, acting directly or through any corporation, subsidiary, division, or other device, (elsewhere in the Order, "respondent" or "General Motors"), in connection with the advertising, offering for sale, sale, or distribution of any vehicle in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. By January 1984, or by the date of service of this Order, whichever is later, failing to prepare and issue PSP Indexes for the 1982 and 1983 model years, and thereafter failing to prepare and issue PSP Indexes for each model year.

B. Beginning with the 1984 model year, failing to disclose for each model year, in a clear and conspicuous manner, in each vehicle owner manual (where it shall be itemized in the Table of Contents) published by General Motors for each of its vehicle lines:

(1) the following statement—

Updated Service Information You Can Obtain

(Division) regularly sends its dealers useful service bulletins about (Division) products. (Division) monitors product performance in the field. We then prepare bulletins for servicing our products better. Now, you can get these bulletins, too.

Bulletins cover various subjects. Some pertain to the proper use and care of your car (truck). Some describe costly repairs. Others describe inexpensive repairs which, if done timely, with the latest parts, may avoid future costly repairs. Some bulletins tell a mechanic how to repair a new or unexpected condition. Others describe a quicker way to fix your car (truck). They can help a mechanic service your car (truck) better.

Most bulletins apply to conditions affecting a small number of cars (trucks). Your (Division) dealer or a qualified mechanic may have to determine if a specific bulletin applies to your car (truck).

You can subscribe to all (Division) bulletins. This way you'll get them as they come out. You can wait a while and get an index to the bulletins. The index summarizes some of the more important bulle-

tins. You can also get individual bulletins. However, you'll need the index to identify them.

(2) the above statement shall in addition provide at least the following information in clear and comprehensible language—

(a) concerning indexes—

(i) Indexes list each PSP, provide ordering information for individual PSPs, and are cumulatively updated quarterly for each model year.

(ii) Indexes contain plain-language highlights and summaries of PSPs describing costly repairs, designed to prevent costly repairs, or containing owner use and care information.

(iii) They are free for model years 1982–1985; if there is a charge thereafter, it shall be credited against any charge for PSPs ordered.

(iv) Most PSPs applicable to a new car will be listed in the last quarter's index for that car's model year. Some may also appear in indexes for the next model year; and a few may appear in subsequent years.

(v) When consumers order any index, they will receive the latest applicable index for the model year of their car unless they request an index for a different model year.

(b) concerning PSPs—

(i) The cost of individual PSPs, if any, and how to order them.

(c) concerning subscriptions—

(i) The cost of subscriptions and how to order them.

(ii) The subscriber is entitled to all PSPs published by a division during a model year.

(d) concerning ordering—

(i) An ordering coupon to obtain a properly identified index, PSP, or subscription.

(ii) The toll-free telephone number described in paragraph C of section II.

(iii) A statement that informs owners that they can inspect copies of the indexes and individual PSPs at a participating dealership.

(3) the following statement, which shall be made in conjunction with the statement described above, but which shall not precede disclosure of the information described in paragraphs B(2)(a)(i) and B(2)(a)(ii)—

These bulletins are meant for mechanics. They are NOT meant for the do-it-yourselfer. Mechanics have the equipment, tools, safety instructions, and know-how to do a job quickly and safely.

C. Beginning with the 1984 model year, failing to disclose, for each

model year, in a clear and conspicuous manner in the principal point-of-sale catalog published by General Motors for each of its vehicle lines the following statement:

A Word About Updated Service Information

(Division) regularly sends its dealers useful service bulletins about (Division) products. (Division) monitors product performance in the field. We then prepare bulletins for servicing our products better. Now you can get these bulletins, too. Ask your dealer. To get ordering information, call toll-free ____.

D. Failing to mail, or cause to be mailed, upon written request accompanied by any applicable fee specified in section II, any of the following:

(1) information describing PSPs, PSP Indexes, and PSP subscriptions, as well as how to obtain each;

(2) the most current PSP Index for the particular General Motors vehicle division and model year identified in the request, provided that the PSP Explanatory Information in the PSP Index may be limited to the particular vehicle make, model and model year identified in the request; or

(3) in accordance with the terms of paragraph A of section II, any specifically identified PSPs, or a subscription to all PSPs for a current model year.

Provided, That, General Motors need not make available a PSP or PSP Index issued in a model year four (4) or more years prior to the model year in which the request is received.

E. Failing to mail, or cause to be mailed, upon oral request received pursuant to a toll-free telephone procedure of the kind described in paragraph C of section II, information describing (1) PSPs, (2) PSP Indexes, and (3) PSP subscriptions, as well as ordering materials or coupons which can be used to order each.

F. Failing to furnish each dealer with each PSP and all PSP Indexes, and with binders, containers, index tabs, or other materials which enhance the accessibility of such materials at each dealership. General Motors need only furnish each dealer with the PSPs and PSP Indexes related to the vehicles manufactured by the division(s) represented by that dealership.

G. Beginning with the 1984 model year, and once in each 6-month period thereafter, failing to recommend and urge, in writing, that each dealer:

(1) place the display posters, referenced in paragraph B of section II, in conspicuous and accessible locations within the dealers' show-

rooms, service waiting areas, service payment areas or parts departments, and request replacement posters from General Motors, as needed;

(2) provide to requestors, in a form which may be retained, the PSP Index for a particular vehicle, make, model, and model year, and provide specifically identified PSPs and information how to order subscriptions to all PSPs for a particular model year, free or on reasonable terms; and

(3) provide members of the public with ready access to the PSPs and PSP Indexes furnished to those dealers.

H. Failing to include detailed information regarding General Motors third-party arbitration program described in section IV, and the PSP program described in this section, in ongoing training programs and training materials for dealers on subjects related to service and customer relations, beginning not later than one hundred eighty (180) days after service of this Order and continuing for the duration of this Order.

I. Failing to continue General Motors program of issuing PSPs in a manner comparable to the program as it existed during the period 1976 through 1981. Such program shall continue to take into account criteria for issuing PSPs such as frequency, repair, cost, and significance of product conditions.

J. Failing to prepare and issue an entry in the PSP Index for each PSP issued, and to include such entry in an updated PSP Index. PSP Indexes must be cumulatively updated quarterly for each model year, and must include no less than all PSP Index entries for all PSPs issued between the start of the model year and one month prior to the update, provided that there must be one PSP Index for each model year that includes an entry for every PSP issued in that model year. The updated PSP Indexes must be forwarded to dealers and be available from General Motors within four months after issuance to dealers of any PSP which was not included in a prior Index.

II

It is further ordered, That:

A. Beginning with the 1984 model year, General Motors shall implement a program whereby each person may obtain specified PSP Indexes, individual PSPs, or yearly subscriptions to all PSPs issued for a particular General Motors division in a model year. Subject to the limitations of this section, General Motors may, at its option, impose a reasonable charge. Any charge for a PSP Index must be

credited toward the initial purchase of PSPs themselves. The maximum charges shall be as follows:

(1) For PSP Indexes ordered in

- (a) model years prior to 1986, no charge;
- (b) model years 1986 through 1988, a charge not to exceed two dollars (\$2.00) per any PSP Index;
- (c) model years 1989 and thereafter, a charge not to exceed three dollars (\$3.00) per any PSP Index.

(2) For individual PSPs ordered in

- (a) model years prior to 1986, a charge not to exceed three dollars (\$3.00) for the first PSP requested in each order and one dollar (\$1.00) for each additional PSP requested in that order;
- (b) model years 1986 and thereafter, a charge not to exceed four dollars (\$4.00) for the first PSP requested in each order and two dollars (\$2.00) for each additional PSP requested in that order.

(3) For PSP subscriptions for a given model year, a charge not to exceed reasonable cost or equal to the charge (if any) to dealers.

B. In the 1984 model year, General Motors shall furnish to each of its dealers three display posters at least 24" × 36" in size promoting the existence, availability, and benefits of General Motors PSPs and PSP Indexes. Thereafter, General Motors shall furnish additional copies of these posters upon request by any dealer.

C. Within thirty (30) days after the date of service of this Order, General Motors shall establish and maintain a toll-free telephone system designed to accommodate the volume of telephone calls which result from the disclosures made pursuant to this Order. Said system shall provide that, after obtaining the caller's name and address, the person receiving the call shall cause to be mailed to the caller the materials described in paragraph E of section I or paragraph E of section IV as appropriate. If the materials described in paragraph E of section I are to be sent, General Motors shall instruct the person receiving the call to state that the caller's dealer may have PSPs and PSP Indexes available for the caller's convenience.

III

It is further ordered, That:

A. At least four (4) times in the 1984 model year and two (2) times in each model year thereafter, General Motors shall place and cause to be disseminated four-color, full-page advertisements in national magazines. Each time such advertisements are placed, the magazines must have a combined total non-duplicated readership (*i.e.*, "net

reach") of at least seventy-five million (75,000,000) adults, as measured or verified by an outside organization generally recognized as competent and experienced in this field and used by General Motors or its advertising agencies for other advertising research. The demographic characteristics for the combined readership of the magazines selected for such advertisements must be generally representative of the demographic characteristics of the population of owners and potential purchasers of General Motors vehicles. Such advertisements may be tied into existing advertising themes, but must be devoted exclusively to explaining and promoting the existence, availability and benefits of PSPs and PSP Indexes. In addition, such advertisements must disclose that PSP Indexes are free, if such is the case; must prominently show the toll-free telephone number required by paragraph C of section II; and must include an order form to obtain PSP Indexes.

B. At least two (2) times in the 1984 model year, two (2) times in the 1985 model year, and three (3) times in each model year thereafter, General Motors shall place and cause to be disseminated full-page advertisements in national magazines. Each time such advertisements are placed, the magazines must have a combined total non-duplicated readership (*i.e.*, "net reach") of at least seventy-five million (75,000,000) adults as measured or verified by an outside organization generally recognized as competent and experienced in this field and used by General Motors or its advertising agencies for other advertising research. The demographic characteristics for the combined total readership of the magazines selected for such advertisements must be generally representative of the demographic characteristics of the population of owners and potential purchasers of General Motors vehicles. Such advertisements must contain a principal message devoted to explaining and promoting the existence, availability, and benefits of General Motors third-party arbitration program provided for in sections IV and V, and must conspicuously disclose the toll-free number required by paragraph C of section II. Each advertisement placed after the date of execution of this Order and before the date of service of this Order, if such advertisements meet all the requirements of this paragraph but for the fact that the advertisements were placed prior to the date of service of this Order, shall reduce on a one-for-one basis the requirement to place advertisements during the last three (3) years of the duration of this Order.

C. (1) Prior to the placement of the first advertisement required by paragraph A, and prior to the placement of any subsequent advertisements differing substantially in content or format from that first advertisement, General Motors shall conduct copy testing of such advertisement(s). The copy testing shall be based on monadic inter-

views (such as the "mall intercept" procedure) of subjects screened and selected so as to be representative of owners of General Motors vehicles purchased new, and shall be designed and implemented in accordance with General Motors usual procedures for such testing under the direction of an outside research organization or consultant generally recognized as competent and experienced in this field and used by General Motors for other advertising research. Said organization or consultant shall submit to General Motors a report on the effectiveness of the tested advertisement, and said advertisement shall meet General Motors obligations under this section if said report concludes that the advertisement, measured in relation to advertisements for comparable automotive product information, effectively communicates:

(a) that General Motors makes information available to consumers, for 1982 and subsequent model years, which describes or recommends diagnostic, repair, or maintenance procedures for product conditions, or contains information about the use and care of vehicles; and

(b) how consumers can obtain PSP subscriptions and PSP Indexes.

Unless otherwise specified by this Order, the testing of advertisements described in this paragraph shall adhere to the standards set forth in "PACT: Positioning Advertising Copy Testing (A Consensus Credo representing the views of leading American Advertising Agencies)," dated January 1982.

(2) Prior to the placement of the first advertisement required by paragraph B, and prior to the placement of any subsequent advertisements differing substantially in content from that first advertisement, General Motors shall conduct, or cause to be conducted, copy testing of said advertisement(s) using a population representative of owners and potential purchasers of General Motors vehicles, and employing a so-called "Group-Depth Interview" or "Focus Group" method of copy testing, designed and implemented in accordance with General Motors usual procedures for such research under the direction of an outside research organization or consultant generally recognized as competent and experienced in this field and used by General Motors for other advertising research. Said organization or consultant shall submit to General Motors a report on the effectiveness of the tested advertisement(s), and the advertisement(s) shall meet General Motors obligations under this paragraph if, on the basis of said report and applying criteria customarily applied to General Motors service advertising or advertising for comparable complaint resolution programs, the advertisement(s) effectively communicates:

(a) that General Motors is offering to submit complaints concerning its vehicles to a third-party arbiter; and

(b) how consumers can obtain information about the third-party arbitration program.

D. Beginning with the 1984 model year, in any proprietary magazine sent by General Motors vehicle divisions to a primary target audience of division vehicle owners, General Motors shall annually include a full-page advertisement containing the disclosure statements set forth in paragraph B of section I, or the substantial equivalents thereof, concerning the same information.

IV

Is is further ordered, That:

A. General Motors shall implement a nationwide third-party arbitration program to settle complaints of individual owners relating to powertrain components.

B. Such third-party arbitration program shall be binding on General Motors, but non-binding on consumers unless a consumer elects to accept an arbitration award.

C. Such third-party arbitration program shall be conducted in accordance with (1) the Uniform Rules for Arbitration published by the Better Business Bureau; (2) the Zone Handbook for Third-Party Arbitration (Attachment A to this Order), as modified by the special implementing provisions (Attachment B to this Order); and (3) the General Motors Consumer Arbitration Handbook (Attachment C to this Order). The special implementing provisions (Attachment B to this Order) shall not be modified without prior Commission approval insofar as the provisions apply to arbitration involving specified components. For two years after date of service of this Order, such third-party arbitration program shall be conducted at no charge to the consumer by General Motors or the third-party arbitrator. Thereafter, no charge shall be imposed on consumers by General Motors or the third-party arbitrator that exceeds charges specified in the Uniform Rules of Arbitration published by the Better Business Bureau. The General Motors Consumer Arbitration Handbook (Attachment C to this Order) shall effectively communicate that if a consumer accepts an arbitration award, the consumer cannot seek reimbursement from General Motors for the same problem through the use of other legal proceedings.

D. Such third-party arbitration program shall be fully operational in the cities identified in Attachment D no later than sixty (60) days after the date of service of this Order, and thereafter expanded as

demands on the program may require to resolve consumer complaints expeditiously. The expansion shall be designed and implemented so that owners who elect to arbitrate complaints about specified components can obtain their arbitration hearing within sixty (60) days of their election (exclusive of periods of delay attributable to the consumer) unless extraordinary circumstances justify a longer period in individual instances.

E. General Motors shall mail or cause to be mailed, either upon written request or oral request received pursuant to a toll-free telephone procedure of the kind described in paragraph C of section II, a handbook explaining the details of General Motors third-party arbitration program (Attachment C to this Order).

F. General Motors shall include in a letter to each dealer, once in each 6-month period, a clear and conspicuous reminder to dealers regarding disclosure of the availability of General Motors third-party arbitration program.

V

It is further ordered, That:

A. Within sixty (60) days after the date of service of this Order, General Motors shall contact, by first-class mail, each attorney general's office (or such other office as may be appropriate) of the fifty states and the District of Columbia, and shall:

- (1) Provide each such office with a copy of this Order.
- (2) Describe General Motors third-party arbitration program.
- (3) Describe the PSPs and PSP Indexes and explain how consumers can obtain them.
- (4) Inform each such office that General Motors will, if the appropriate office wishes, notify by first-class mail each person who has complained to that office about a specified component, and that General Motors will provide that person with:
 - (a) information about the availability of General Motors third-party arbitration program;
 - (b) one or more of the appropriate Background Statements when any specified component has been identified; and
 - (c) information about PSPs and PSP Indexes and how to obtain them.
- (5) Request that each such office provide General Motors with (a) a copy of each complaint concerning a specified component; or, at the option of that office, (b) the owner's name and address, and the identity of the specified component or components.

(6) Inform each such office that General Motors will also send, by first-class mail, a notice to any person who has complained to any other state or local law enforcement or consumer affairs office about a specified component, and urge such office to encourage state and local law enforcement or consumer affairs offices to forward to General Motors either copies of such complaints, or, at the option of the forwarding office, a list of the names, addresses, and the identity of the specified component or components.

B. Within sixty (60) days after receipt of any complaint or the complainant's name and address, from any office solicited pursuant to paragraph A of section V, or any complaint concerning a specified component or the complainant's name and address from the Federal Trade Commission, General Motors shall send to that complainant, by first-class mail:

(1) one or more of the appropriate Background Statements when any specified component has been identified;

(2) a statement which clearly and conspicuously discloses information about the availability of General Motors third-party arbitration program, including the statements contained in Attachment E;

(3) a statement which clearly and conspicuously discloses information about the availability of PSPs and PSP Indexes.

C. Within sixty (60) days after the date of service of this Order, General Motors shall send by first-class mail to any person who has an open or unsatisfactorily resolved complaint and who, prior to the date of service of this Order, had notified General Motors about a specified component, and whose name and address have been retained by General Motors, the information contained in paragraphs B(1), (2), and (3) above.

D. Within thirty (30) days of service of this Order, General Motors shall provide to appropriate General Motors employees, including employees at the zone offices and headquarters of the car and truck divisions who have responsibility for receiving and responding to consumer complaints, written instruction stating that all consumers who identify a specified component in any oral or written complaint received after the date of service of this Order must be sent, by first-class mail, a letter providing the information contained in paragraphs B(1), (2), and (3) above.

E. General Motors shall obtain, maintain, and retain for a period of four (4) years from the date of service of this Order, the following records for specified components:

(1) the results of each mediation pursuant to the procedure described in section IV including the terms of any settlement and, where available, the terms of any proposed settlement of a complaint;

(2) copies of each arbitration decision, including, where available, the reasons for the decision; and

(3) documents showing all requests for arbitration made by vehicle owners, the dates of such requests, and the dates of all arbitration hearings.

VI

It is further ordered, That sections I, II, III, IV and V of this Order shall expire eight (8) years after the date of service of this Order; *provided,* that if at any time during which said sections remain in effect, the Commission issues a final trade regulation rule imposing obligations on the automobile industry comparable to those imposed under any such section(s), such section(s) shall terminate upon the effective date of such rule, and, in such event, General Motors shall advise the Commission of its intention to rely upon any such rule as having terminated and superseded such section(s) of this Order thirty (30) days in advance of reliance thereon; *provided further,* that if at any time during which such section(s) remain in effect, the Commission issues a final guide under Sections 1.5 and 1.6 of the Commission's Rules of Practice imposing obligations on the automobile industry comparable to those imposed under any such section(s), then the Commission shall, upon General Motors motion or upon the Commission's own motion, re-open this proceeding within one hundred twenty (120) days of such motion, and, within a reasonable time thereafter, vacate any such section(s) of this Order, unless the Commission finds that such action is not required by changed conditions of law or fact or is not in the public interest; and *provided further,* that nothing herein shall preclude General Motors at any time from moving the Commission to alter, modify, or set aside this Order under the Commission's Rules of Practice.

VII

It is further ordered, That:

A. General Motors shall, within sixty (60) days after the date of service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

B. General Motors shall, within one hundred twenty (120) days after the implementation of the PSP program pursuant to section I of this Order, file with the Commission a report, in writing, setting

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forth in detail the manner and form in which General Motors has complied with this Order.

C. During the time that sections I, II, III, IV and V remain in effect, General Motors shall retain and transmit to the Commission upon reasonable request:

(1) a copy of each PSP Index required by paragraphs A and J of section I, and a copy of each PSP;

(2) copy-test results of advertisements disseminated pursuant to section III; and

(3) a copy of each poster furnished to dealers pursuant to paragraph B of section II.

D. Once during the term of this Order, General Motors shall file with the Commission a report, in writing, setting forth in good faith its best estimates of:

(1) the costs and benefits, to General Motors and to the public, of the obligations imposed by this Order; and

(2) the extent to which dealers have displayed posters furnished to them pursuant to paragraph B of section II and have provided access to PSPs and PSP Indexes furnished by General Motors as required by paragraphs A and J of section I.

Said report shall be filed within six (6) months of General Motors receipt of a request therefor from the Commission or its staff, and shall cover the period from the date of service of this Order until the date of said request. General Motors shall make available for inspection upon reasonable notice by authorized representatives of the Federal Trade Commission, all underlying documents and data relating to the "cost and benefits" portion of said report and used in the preparation of said report. If copies of any such materials are requested by Commission representatives, General Motors may, at its option, either make such materials available to such representatives for copying purposes, or provide copies at either (a) rates the Commission charges for copies of materials released pursuant to the Freedom of Information Act, or (b) General Motors costs, whichever is lower.

E. General Motors shall retain records relative to the manner and form of its continuing compliance with sections I, II, III, IV and V for a period of three (3) years, and make said records available for inspection upon reasonable notice by authorized representatives of the Federal Trade Commission. If copies of any such records are requested by such representatives, General Motors may, at its option, either make such records available for copying purposes or provide copies at either (a) rates the Commission charges for copies of records released pursuant

ant to the Freedom of Information Act, or (b) General Motors costs, whichever is lower.

F. During the time that sections I, II, III, IV and V remain in effect, General Motors shall notify the Commission prior to any change in General Motors corporate structure, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this Order.

VIII

It is further ordered, That the provisions of this Order shall be limited in their application to the United States.

Commissioner Pertschuk voted in the negative.

ATTACHMENT A

General Motors Zone Handbook for Third-Party Arbitration



**ZONE HANDBOOK
FOR THIRD PARTY ARBITRATION**

This "Zone Handbook For Third-Party Arbitration" shall be supplemented to include the provisions of Attachment B to the "Agreement Containing Consent Order to Cease and Desist" (FTC Docket No. 9145). Underscored passages herein shall be deleted or modified as necessary to conform this handbook with the requirements of the Consent Order.

INTRODUCTION

For the past few years, the National Football League has wrestled with the subject of providing some form of appeal on official judgment decisions in close calls. To this date, the experts are saying that football is a sport and the breaks and calls will average out over the course of a game or season. To question the official's judgment, they say, would create havoc on the field. No one has disputed the fact that some calls, although sound in judgment at the time, are in fact incorrect when viewed from a different angle. Our position in Consumer Relations is not totally unlike the situation in this country's favorite spectator sport. The consumer expects and is now more than ever demanding avenues of appeal on decisions that do not appear to the consumer to be fair or in keeping with what he or she feels is General Motors obligation. Unlike football, vehicle ownership and maintenance is not a sport and our consumer handling cannot be averaged over the course of the season.

General Motors and the Better Business Bureau have developed a program for third party arbitration. You are possibly aware that the Magnuson-Moss Act recommends an arbitration system. Some very interesting results have been obtained from our pilot tests and while we resist considering any consumer contact on a win or loss basis, we feel that the additional time that has been spent by the dealers and divisional personnel has made winners of us all. During the period of the arbitration tests to date, consumer complaints reaching the divisional central offices have either declined more sharply than the divisional average or have bucked the trend and decreased while the divisional average increased. Obviously, the consumer's need for an avenue of appeal has been answered.

TWENTY QUESTIONS (AND ANSWERS) ABOUT CONSUMER ARBITRATION



THE COUNCIL OF BETTER BUSINESS BUREAUS, INC.
1150 17th STREET, N.W., WASHINGTON, D.C. 20036

1

What is consumer arbitration?

Consumer arbitration is a simple and economical procedure whereby a businessman and his customer may submit their dispute to an impartial third party for resolution. Arbitration is an alternative to lengthy, costly court action, but it is available only when all other means of settling the disagreement, such as mediation by a Better Business Bureau, have failed. BBBs will not arbitrate criminal violations, damages which go beyond the actual service or product involved, and issues that may not be arbitrated under the law.

2

How does consumer arbitration work?

When all informal attempts to resolve a customer's complaint have been futile, the BBB may suggest arbitration, or one of the parties may initiate a request for arbitration. If both the business and the customer agree, the Bureau will take the administrative steps necessary for arbitration.

3

Who will actually perform the arbitration?

The Bureau maintains a pool of volunteer arbitrators chosen from all segments of the community. Members of this pool will serve as Arbitrators. A list of possible Arbitrators, plus biographical sketches, will be sent to both Parties to the arbitration. Each party will cross off names of those considered unacceptable and assign a priority to those remaining. The preference of the Parties will determine who is chosen to arbitrate, and no Arbitrator will be selected if rejected by either Party. For some low-cost disputes utilizing a preselected arbitration panel, the Parties may object to individual members of the panel if there is reason to believe they will not act impartially.

4

What if the Parties cannot agree on who shall arbitrate?

If no Arbitrator is acceptable to both Parties, each will select one Arbitrator who then will select a third, who shall serve as chairman. When there are three arbitrators, the majority shall decide all questions.

5

Are the Arbitrators impartial?

Nobody can ensure the impartiality of any person, but the process of arbitration is time-tested to assure optimum impartiality. The Arbitrators are not paid for their efforts. They perform their duties as a public service. Not only will each Party receive a biographical sketch of each Arbitrator, but all Arbitrators are required to disclose, as a condition of accepting appointment, any financial, commercial, professional, social or familial relationships with any of the Parties or their counsel. Although the BBB receives the bulk of its funding from local businesses, the arbitration process is conducted independent of the BBB, which has only an administrative role.

6

Would the Customer or Business be better off going to court?

In many areas, courts suffer from over-loaded dockets, and there is delay in resolving any dispute. Arbitration is a speedy procedure. It can be instituted in a short period of time, with most hearings usually lasting no more than an hour. Going to court may require hiring an attorney, but anyone can represent himself in arbitration. One may be represented by a lawyer in an arbitration proceeding, but the non-legal, informal nature of such a proceeding usually makes a lawyer unnecessary. Most important, an arbitration proceeding gives a better forum than most small claims courts; it is a private matter with no onlookers (unless the Parties permit it), a judge chosen by the Parties, and a flexible process throughout.

7

What does arbitration cost?

The administrative costs of arbitration, including inspection and technical witnesses, will be borne by the Better Business Bureau, although in some cases a refundable performance bond will be required to assure the presence of the Parties. The costs of other witnesses, attorneys' fees, and a transcript or recording of the proceedings, if desired, will be borne by the Party requesting same.

8

Where and when will the arbitration be held?

The arbitration hearing will be held at a time and place convenient to the Parties and Arbitrator, such as an evening or weekend. Often the BBB maintains a room that is appropriate for conducting arbitration hearings. Hearings have been conducted at the site of a home improvement job and in a garage where an auto repair issue was in dispute.

9**What is an inspection and why should an inspection be advantageous?**

An inspection is an added feature of arbitration whereby the repair job, construction site, product or service is actually seen and evaluated by the Arbitrator, usually with both Parties present. This procedure is particularly suited to disputes involving the quality of workmanship and is not usually available in court.

10**What if the subject matter of the dispute is highly technical?**

For disputes requiring technical expertise beyond the capacity of the Arbitrator, an expert witness is called in to the inspection or hearing, or the product is submitted to an independent testing laboratory. In such cases, the normal and reasonable costs will be borne by the BBB.

11**Once the arbitration agreement is signed and returned, can either Party back out?**

Under most state laws an agreement to arbitrate is binding on both parties, with either party given the right to compel the other by bringing court action, to go through with the arbitration. However, it is the policy of the BBB to encourage the performance of voluntary agreements to arbitrate and to conduct its arbitration program as a community service. The emphasis is placed on the voluntariness of the proceedings.

12**What if the dispute is settled after the arbitration agreement is signed, but before the Award is rendered?**

A fundamental purpose for establishing a consumer arbitration program is to resolve disputes. Thus, if the Parties settle their case before an Award is rendered, even if a hearing has been held, the arbitration process is suspended. Upon written notice signed by each party that an agreement has been reached the proceedings are terminated. In a typical program, it is not unusual for the parties to settle their case after they have agreed to arbitrate.

13**What is the nature of an arbitration hearing?**

The arbitration hearing is conducted in an informal manner with each party given full opportunity to present his arguments and evidence. All Parties and witnesses are sworn to tell the truth by the Arbitrator who may, in most states, administer oaths. The Arbitrator, too, is often sworn in prior to the hearing, often by a Notary Public. Parties are encouraged to limit their proofs to reliable and relevant materials. Where possible, original copies of contracts and other documents should be brought along, together

with eye-witnesses, if any. Cross-examination of witnesses will be permitted. Although the atmosphere is informal, decorum and proper courtesy are required at all times. The hearings are not restricted as to time, and the Parties are encouraged to tell their full story without necessary repetition.

14**Who can attend the hearing?**

Only those persons having a direct interest in the controversy may attend a hearing, although the Parties may agree to allow the presence of others. Arbitration is a private proceeding, unlike a court hearing.

15**Can the Parties contact the Arbitrator outside the hearing?**

No communication between the Parties and the Arbitrator is allowed except at the hearing or inspection. All other communication regarding the case must be directed to the BBB, which will transmit it to an Arbitrator and the other Party. This rule is to ensure that no Party attempts to persuade or influence an Arbitrator without the knowledge of the other party.

16**What is an Award?**

An Award is the decision of the Arbitrator. Unlike most small claims court decisions, it is in writing and it disposes of all issues in a manner to achieve a final wrap-up of the dispute. A "split award" is one that decides in part for and against both Parties.

17**How is an arbitration Award enforced?**

In most states an arbitration Award is enforced by the court. This means that a written Award signed by the Arbitrator may be taken to court, filed and enforced as if it were a judgment or order of the court, all without a rehearing of the case.

18**May an Award be attacked in court?**

In rare circumstances, an Award may be subject to successful attack in court. To set aside an Award one must show that it was procured by corruption, fraud, misconduct, or gross partiality on the part of the Arbitrator. If an Award goes beyond the issues in dispute, it may be set aside also.

19**Can an Award be modified or corrected without going to court?**

Yes. When the Arbitrator deems it necessary, an Award may be corrected or modified where there was an evident miscalculation or mistake of fact not learned until after the Award was initially rendered.

20**Are there any advantages for businesses to include arbitration clauses in their contracts?**

Numerous businesses have arbitration clauses in their customer contracts and many other businesses have precommitted themselves to arbitration if they or the BBB cannot resolve a dispute. Contractors have found, for example, that an arbitration clause in their home improvement contract is a good selling tool. Many businesses want to advertise their participation in a BBB program and they may not do so unless they are precommitted to arbitration. Also, reports given to the public by the BBB will indicate which businesses are precommitted to arbitration.

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ARBITRATION**A NATIONAL PROGRAM OF DISPUTE
RESOLUTION**

NATIONAL PROGRAM OF CONSUMER ARBITRATION
THROUGH THE BETTER BUSINESS BUREAUS

**UNIFORM RULES FOR BETTER
BUSINESS BUREAU ARBITRATION****1****Definitions**

- A. **"Arbitration"** is a legal process in which two or more persons agree to let an impartial person finally decide their dispute.
- B. **"You,"** as used in these rules, means one of the parties involved in the dispute being arbitrated.
- C. **"BBB"** means the Better Business Bureau which is administering the arbitration.
- D. **"Arbitrator"** refers to the individual or panel selected to conduct the arbitration and make a final decision in the dispute.
- E. **"Disputes"** which may be arbitrated under these rules include any disagreements between a business and its customer relating to a transaction in the marketplace. These disputes do not include alleged criminal violations or matters which may not be arbitrated under the law. Unless you otherwise agree, these disputes also will not include claims that go beyond the actual price of the product or service involved such as loss of

wages, mental anguish, personal injuries, punitive damages or consequential damages relating to the sale or service transaction. A decision as to whether your dispute or any part of your dispute is arbitrable under these rules or is one within the scope of your agreement to arbitrate rests solely with the BBB.

2**Application of These Rules**

These rules apply to any dispute which you agree to arbitrate through the BBB. You must accept these rules when you sign an agreement to arbitrate; however, the BBB will not arbitrate your dispute until its normal complaint handling procedures have been exhausted.

3**The State Law**

The law of the state where your dispute is arbitrated shall apply.

4**Beginning Arbitration**

If the BBB's efforts to resolve your dispute have been exhausted, the BBB may suggest arbitration to you, or you may request the BBB to start an arbitration, or you may already have signed a prior agreement with the BBB to arbitrate a dispute that cannot be resolved by other means. The BBB will prepare an arbitration agreement stating the issues to be arbitrated for you and the other parties to the dispute to sign. If you agree with the issues to be arbitrated under this agreement, you should sign the agreement and return it to the BBB within five days of receiving it unless the BBB gives you additional time. If you disagree with the issues as stated in the agreement, let the BBB know and it will try to resolve any conflicts. Your failure to return the arbitration agreement within five days will be considered a rejection of arbitration. **Exception:** If you have signed a prior agreement to arbitrate with the BBB, your failure to mail the agreement in five days will be considered an acceptance of the stated issues. When the BBB has received the agreement from all parties to a dispute it will begin the arbitration process.

5**Selecting Your Arbitrator**

The BBB will maintain a pool of volunteers, who reflect to the extent possible the total community. The Arbitrator will be selected from this pool in the following manner:

A. The Single Arbitrator

The BBB will provide you and the other parties with an identical list of five Arbitrators chosen from the volunteer pool, together with brief biographies of each. After receiving this list you will have five days to cross off any name considered unacceptable and to assign priorities (#1, #2, #3, etc.) to those remaining. If you do not mail the list in five days, the BBB will assume all names are satisfactory to you. The BBB will select the Arbitrator on the basis of the highest priority common choice of the parties and availability. If no Arbitrator on the list is acceptable to all the parties, the BBB normally will send out a new list.

B. Three-Person Panel

At the option of the BBB or where the state law requires, a panel of three Arbitrators may decide your dispute. The selection process is the same as above, except your first choice, if available, and the first choice of any other party will pick a third Arbitrator who has not been rejected by you. The person so selected will chair the hearing, and the decision in your dispute will be by a majority vote of the panel. If your first choice is the same person chosen first by the other parties, that individual will chair the panel and the second or third choices of the parties will constitute the other two panel members.

C. Alternate Procedures

When state law permits, variations of these selection procedures may be used by the BBB; however, any alternate procedure must give you a choice of the Arbitrator.

6 Facilities and Costs of Arbitration

The BBB will provide or arrange for facilities to hold your arbitration hearing and it will maintain all of your arbitration records. If you want a record of proceedings or if you bring your own lawyer or witnesses, you are responsible for these costs.

7 Communicating with the Arbitrator

You may not have any direct communication with the Arbitrator about your dispute unless all other parties are present or have given written permission for you to do so. Any communications for the Arbitrator must be sent through the BBB, which will relay them to the Arbitrator with copies to the other parties to the dispute. Except for your notice of hearing or inspection, all BBB communications to you will be by regular mail or by other reasonable means, subject to state law requirements.

8 The Arbitrator's Appointment and Oath

The BBB will send the Arbitrator a notice of appointment, together with a copy of your agreement, these rules, and any other appropriate material relating to your dispute. The Arbitrator must sign a special oath and give this to the BBB together with a disclosure of relationships with any parties to the dispute.

9 Disqualifying Arbitrators; Filling Vacancies

Before signing the oath pledging to make a fair decision in your dispute, the Arbitrator must disclose any financial, competitive, professional, family or social relationship, however remote, with you or any other party to your dispute. If the relationship is such that a fair decision cannot be made, the Arbitrator will refuse to serve. All other disclosures should be given by the Arbitrator to the BBB which will let you know about them and give you an opportunity to accept or reject the Arbitrator, depending on how you believe the disclosure might affect the Arbitrator's decision. The BBB, too, may reject an Arbitrator on the basis of such disclosures. If the Arbitrator is rejected, the selection process described in Rule 5 will be repeated.

10 Representation by a Lawyer

In an arbitration hearing you may argue your own case or have someone represent you. If your representative is a lawyer, you must give the lawyer's name and address to the BBB at least seven days before the hearing so the BBB can inform other parties in the dispute and give them an opportunity to get a lawyer if they wish.

11 Inspection

Before the hearing, either you or the Arbitrator may request an inspection of the product or service involved in the dispute. The Arbitrator will have the final decision on whether or not to conduct an inspection. If the Arbitrator decides an inspection is desirable, the BBB will be informed and a notice of inspection will be sent to you at least seven days in advance by certified mail (return receipt requested) or by other methods permitted under state law. If you or your representative cannot attend, you will be given an opportunity to comment on any of the observations made at the inspection.

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Decision and Order

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Experts

At the request of the Arbitrator, the BBB will make every effort to obtain a neutral volunteer expert to inspect the product or service at issue in your dispute. At the BBB's option, the expert's findings will be presented in writing or in person at your arbitration hearing. At the hearing, you will have an opportunity to evaluate and comment on the qualifications of the expert and any findings made by the expert.

13

Hearing Dates; Notice of Hearing

When the Arbitrator has agreed to serve, the BBB will set a time and place for your convenience and that of the Arbitrator. Notice of your hearing will be sent to you at least seven days in advance by the BBB by certified mail (return receipt requested) or by other methods approved by state law. If you object to the time or place stated in your notice, contact the BBB immediately and let them know. If you do not object or if you come to the hearing, your acceptance of the notice will be assumed.

14

Waiver of Oral Hearing

If you decide not to appear personally or to be represented by someone else at your hearing, you may send the BBB a written statement of your case together with any written evidence you may have. Or the BBB, at its option, may make other arrangements to have your statement and evidence presented. In any arbitration where you do not appear personally, the Arbitrator will set deadlines for you to send to the BBB your written statement and any evidence. The Arbitrator's final decision will be made within ten days of this deadline.

15

Attendance at Hearings

Unless you otherwise agree in writing, only those with a direct interest in your dispute, including your lawyer and witnesses, may attend the hearing. The Arbitrator has the option of either permitting your witnesses to be present for the entire hearing or to appear only for their testimony.

16

Absence of a Party

If you fail to come to a hearing after accepting notice, the Arbitrator may decide to hold the hearing in your absence. Your absence does not mean the Arbitrator will automatically decide against you. The Arbitrator may, however, give you the right to present your statement and any evidence in writing within a set time.

17

Transcript of Hearing

If you pay all costs, the BBB will arrange to make a transcript of the hearing; however, the other parties and the Arbitrator must be given access to this transcript. At the request of the Arbitrator and at no cost to you, the BBB may record the proceedings and provide a tape to the Arbitrator to assist in making a decision.

18

Interpreters

If you need an interpreter for your arbitration and cannot provide your own, contact the BBB and it will make every effort to find a volunteer interpreter. You would be responsible for interpreter fees, if any.

19

Oaths

The Arbitrator will sign a special notarized oath before your hearing. You and your witnesses may be placed under oath at the hearing, except in instances where this procedure is not required by the BBB and state law.

20

Hearing Procedures

The Arbitrator will decide on the order and procedures for you to present your side of the dispute. You will be given an opportunity to make a personal presentation of your case, as well as present any witnesses and evidence in support of your case. You also may question the other parties, their witnesses and their evidence. After everyone has given their presentation, you will be given an opportunity to make a closing statement. When the Arbitrator is satisfied that all testimony and evidence have been presented, your hearing will be closed.

21

Admission of Evidence

You may give your presentation and evidence in an arbitration hearing without being restricted by the usual rules of evidence, and the Arbitrator will decide how relevant or meaningful it is in making a final decision. The Arbitrator may restrict your presentation if it is repetitious or not related to the dispute.

22**Incomplete Hearings**

If the Arbitrator considers it necessary for a fair decision, new or additional hearings may be scheduled in your dispute. After your hearing has been closed by the Arbitrator, you may request that it be reopened to consider matters not raised at the original hearing. If the Arbitrator has not yet made a decision. Your request must be sent to the BBB, and copies will be sent to any other parties. The Arbitrator will make the final decision on whether to reopen the hearing or not.

23**Subpoena Powers; Depositions**

If you have a reason to believe the other side will not bring to the hearing certain witnesses or evidence which you consider important to a full and fair consideration of your dispute, you may send the BBB a request that the Arbitrator subpoena or direct the bringing of such witnesses or evidence. If the Arbitrator agrees with your request, such a subpoena or directive will be sent according to state law. Where state law permits, the Arbitrator may also authorize the taking of depositions, by which you may ask questions of other parties' witnesses who cannot attend the hearing; however, you must pay for the cost of such depositions.

24**Affidavits**

The Arbitrator also may permit written statements, made under oath and notarized, instead of oral statements.

25**Waiver of Rules**

If you believe that any part of these rules has not been followed, you must object in writing to the BBB before the Arbitrator makes a final decision, or your objection will not be considered.

6**Change of Time**

You and any other parties to your dispute may agree to change any period of time stated in these rules.

The Decision

Time. The Arbitrator must write a final decision no later than ten days after your hearing is closed and the BBB may request this time to be reduced in some cases. If you

have been asked to furnish or wish additional materials relating to your dispute, the Arbitrator will set a time for these materials to be sent to the BBB and a final decision will be made ten days after they are received. The BBB will send you a copy of this decision by certified mail or by other means permitted by state law.

- B. Scope.** The Arbitrator may make any decision, which the Arbitrator deems to be fair and equitable within the scope of your agreement to arbitrate, provided state law does not prohibit all or part of that decision.
- C. Modifying the Decision.** If you believe the final decision is impossible to perform, or that it contains a mistake of fact or miscalculation, or that it is otherwise imperfect in form, you should notify the BBB in writing. The BBB will share your observation with the other parties and forward it, together with their views, to the Arbitrator who may accept it in whole or in part or reject it altogether.
- D. Settlement.** If you and the other parties voluntarily decide to settle your dispute before the hearing, the settlement will end your dispute and no hearing will be held. If your voluntary settlement occurs during the hearing, you may ask the Arbitrator to reflect the settlement in the final decision. If your settlement occurs after the hearing but before the Arbitrator's final decision, be sure to notify the BBB at once.
- E. Form and Filing.** The Arbitrator will make the final decision in writing and it will be notarized before the BBB duplicates it and sends a copy to you and any other party. If state law so requires, the BBB will also assist you in filing a copy of the decision with the proper court if you wish. The Arbitrator and the BBB will not make any public disclosure of the decision unless you and all other parties agree in writing.

28**Interpretation of Rules**

The Arbitrator will interpret these rules and your agreement to arbitrate on all matters relating to the powers and duties of the Arbitrator. On all other questions about these rules, the BBB will make the final decision.



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MEETING FOLLOW-UP

The General Motors Third Party Arbitration Program's effectiveness can be substantially enhanced by obtaining the dealer's pledge to arbitrate complaints arising out of retail transactions. The pledge to arbitrate would apply to any disagreement between the dealer and his customer regarding the sale or rental of any product or service.

Much of the success or failure of the program will depend on the degree of participation by dealers.

Accordingly, attached is a suggested letter which your zone manager may wish to adapt for a follow-up meeting with your business management contact dealers.

SUGGESTED LETTER

Dealer:

We have now officially begun the Third Party Arbitration Program in the (CITY) area.

I would just like to reiterate my personal commitment to having this program be a sincere demonstration of (Division's) intention that every customer should be treated fairly and that he shall be convinced that he has been treated fairly.

Accordingly, I will appreciate it if you will make certain that all of your customer contact people are aware of the details of the program. They should make certain that the zone office is made aware of any serious difference of opinion with a customer, and that we have the opportunity to try to resolve it with your help. The customer should not be discouraged from using the mechanism because that would defeat its purpose. I repeat, however, in the best interest of all concerned, and especially in the retention of owner goodwill, the best way to resolve any dispute is among ourselves at the earliest possible moment.

I am hopeful that many dealers will agree to pledge to arbitration as General Motors has. This would greatly strengthen the program. However, other dealers may decide to consider arbitration of dealer/customer disputes on a case-by-case basis, and I again encourage you to carefully consider any case which may be brought to your attention by the Better Business Bureau or even to volunteer this resolution mechanism to the customer when it is apparent that a serious difference of opinion exists.

A key part of the Arbitration Program is the selection of a specific individual at each dealership who will have the authority to react responsibly to consumers or Better Business Bureau personnel on consumer complaints. If you have not selected an individual to assume these duties, I encourage you to do so and advise the Better Business Bureau of the name and telephone number of your selection as soon as possible.

If everyone involved enters into this program in the spirit in which it is intended, I am convinced it can be a very positive forward step in our relations with our customers.

Zone Manager

PLEDGE TO ARBITRATE

This company is pledged to arbitrate through the Better Business Bureau all disputes, except as limited in this agreement, involving us and our customers, provided that we have first had an opportunity to resolve any such dispute; however, we will not consider ourselves bound to arbitrate unless all reasonable efforts to resolve the matter informally by the Bureau have proved unsuccessful and all other necessary parties have agreed to arbitrate.

Our pledge applies to any disagreement between us and our customers regarding the sale or rental of any of our products or services. Our pledge does not extend to disputes alleging criminal violations and demands for damages for personal injuries or other claims which go beyond the cost of the product or service involved, as well as to disputes which may not be arbitrated under the law.

This pledge applies to all disputes received by the Better Business Bureau while it is in effect and to disputes received within thirty days of our written notice to discontinue our pledge to arbitrate.

Signed _____
(Authorized Agent of Company)

Print Name _____

Date _____

Company Name _____

Address _____

Our principal contact for the Better Business Bureau for purposes of handling
any customer dispute is _____ telephone _____
and our alternate contact is _____

Past experience has shown that the Arbitration Program is improved with an open line of communication between the Better Business Bureau and zone personnel. In an effort to obtain the best possible working relationship, zone management is requested to establish periodic meetings with Better Business Bureau personnel in their area. Initially, these meetings should be held monthly, and as frequently as necessary after the lines of communication are firmly established.

For all dissatisfied closings of Consumer Relations cases which are within the parameters of this program, the consumer should be advised in writing of the Arbitration option. The suggested letter contained in this handbook should be used for that notification (See "Consumer Letter" Section).

REPORTS & PROCEDURES

In order for General Motors to assess the effectiveness of the Arbitration Program, the results of the mediation and arbitration proceedings need to be tabulated uniformly so as to be useful and meaningful to various levels of management.

We have tried to develop a simple uniform reporting system which is to be used by all of the Bureaus.

Attached are three pages labeled (A), (B), and (C).

Pages (A) and (B) are instructions which should be reviewed carefully by each individual involved in the program. Page (B) provides instructions and it outlines the common format to be used in showing the status of General Motors arbitration cases. Page (C) is the monthly update of the General Motors arbitration cases.

At the end of each month, Page (C) and a detailed "Status of General Motors Arbitration Cases Report" using the format outlined on (B) is to be mailed to the Director of Consumer Relations, 8-151, General Motors Building, Detroit, Michigan, with copies to the General Motors divisional zone offices.

GENERAL MOTORS ARBITRATION UPDATE
THRU MONTH ENDING _____

BETTER BUSINESS BUREAU OF _____ REPORT
(location)

(Note to Better Business Bureau: This report must be mailed immediately at month-end to the Director of Consumer Relations, 8-151 GM Bldg., 3044 West Grand Boulevard, Detroit, Michigan 48202. Also, a copy is to be mailed to the zone office of the GM Car and Truck Division in the test area.)

1. FORMAL COMPLAINTS BY DIVISION:

(This is the total opened with each division since the start of the program. A copy of each complaint must be forwarded to the appropriate zone on the day the complaint is opened. An information copy should be sent to the Director of Consumer Relations, GM Detroit with this report at the end of the month.)

CHEVROLET	_____
PONTIAC	_____
OLDSMOBILE	_____
BUICK	_____
CADILLAC	_____
GMC TRUCK	_____
TOTAL	=====

2. STATUS OR DISPOSITION OF COMPLAINTS:

A) Closed in mediation	_____
B) Currently in mediation	_____
C) Closed in arbitration (see attached details)	_____
D) Currently in arbitration (see attached details)	_____
TOTAL	=====

(Total of A, B, C, and D must equal totals of formal complaints by division shown above.)

*Note: Copies of Final Award for each case should have been forwarded to Detroit simultaneously with forwarding to the zone.

*Note: Copies of all documents must be forwarded to the Detroit address as shown above simultaneously with forwarding to divisional zone offices.

BBB Reports and Procedures

BETTER BUSINESS BUREAU OF _____
 STATUS OF GM ARBITRATION CASES MONTH ENDING _____

<u>DIVISION & OWNER</u>	<u>CASE NO.</u> (1)	<u>DATE OFFERED TO ARBITRATION</u> (2)	<u>ARBITRATOR</u> (3)	<u>DATE OF HEARING</u> (4)	<u>DATE CLOSED</u> (5)
CHEVROLET Smith, J. Jones, T.	1 4	5-1-79 * #	Lang, F.		
PONTIAC Thompson, R.	3				
OLDSMOBILE Brown, L.	2				
BUICK					
CADILLAC					
GMCTRUCK					

- NOTE:
- (1) Establish a sequential numbering system to identify all cases beginning with the first case encountered. (It is not necessary to identify cases already closed by number. Merely pick up the numbering system with cases now appearing in Column (2) above.)
 - (2) Show date case is offered to the parties for arbitration.
 - (3) Provide arbitrator's name in this column; however, if a case is settled after it is "offered," but prior to arbitration, show "settled" in this column, and the "settled" date in Column (5). Show arbitrator's name where available.
 - (4) This is the date agreed upon for the hearing.
 - (5) Show the date the final award is dated. When a case has appeared in this column for one month, it should be dropped from future listings.

KEY: * Denotes arbitration agreement returned by company.
 # Denotes arbitration agreement returned by customer.

BETTER BUSINESS BUREAU OF _____
 GENERAL MOTORS ARBITRATION UPDATE MONTH ENDING _____

1. FORMAL COMPLAINTS BY DIVISION:	2. STATUS OR DISPOSITION OF COMPLAINTS
CHEVROLET _____	A. Closed in mediation _____
PONTIAC _____	B. Currently in mediation _____
OLDSMOBILE _____	C. Closed in arbitration _____
BUICK _____	D. Currently in arbitration _____
CADILLAC _____	TOTAL _____
GMCTRUCK _____	
TOTAL _____	

Completed form should be mailed at the end of each month to:
 Director of Consumer Relations, 8-151 GM Bldg., Detroit, Michigan
 48202, with copies to GM Zone Offices.

**ZONE
REPORTS & PROCEDURES**

It is our intention to keep the procedures for Arbitration as simple as possible, and to minimize additional record keeping for the zone offices. Obviously, however, we must have certain records to determine the effectiveness of the program and its cost.

GENERAL MOTORS CORP.

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Decision and Order

ARBITRATION
AWARD REPORTING

The Award Report (sample provided) is to be completed immediately upon receipt of an Arbitration Award. One copy is to be forwarded directly to the Divisional Central Office, Consumer Relations Department, and an additional copy forwarded directly to the General Motors Corporation, Consumer Relations Section (Attention: The Administrator of Third Party Arbitration).

The Award Report is a summary of the complaint and should be a brief concise synopsis of:

- A) The owner's complaint and demands.
- B) The Division's position and offer, if any.
- C) The arbitrator's Decision and Award.

Attached to this report should be a copy of the Award and Finding of Facts, a copy of the owner's complaint, and any zone correspondence and write-ups.

— S A M P L E —

DATE: 2-15-80

LOCATION: Minneapolis

OWNER: John S. Customer
6064 Berkley Drive
Somewhere, MN

DIVISION: CHEVROLET

PRODUCT YEAR: 1976
MODEL: Caprice
MILEAGE: 48,621

DELIVERY DATE: 11-21-75

COMPLAINT:

Owner alleges auto-transmission failure was result of manufacturing defect in valve body.

DEMAND:

Reimburse \$681.00 for transmission repairs performed by independent transmission shop.

DIVISION POSITION:

Zone claims vehicle beyond time and mileage limitations of New Vehicle Warranty and repairs not performed by franchised dealer.

DIVISION OFFER:

Division offered \$268.99 "parts only" adjustment for owner "goodwill."

DECISION:

The arbitrator ruled in favor of the Division.

AWARD TO CUSTOMER (Check one)

- No Award
- Award Equal to Divisional Offer
- Award Greater Than Divisional Offer

HEARING DATE: 2-20-80

ARBITRATOR: John Q. Arbitrator
Attorney at Law

ARBITRATION
ZONE GUIDE

Please adhere strictly to the following procedures so that we may have accurate information concerning the impact of the Arbitration Program and the number of cases which reach the Better Business Bureau.

- Make a write-up sheet on every call or letter where the customer indicates his contact is a result of knowledge of the Arbitration Program. Existing zone complaint forms or other detailed complaint forms will suffice, but the top of the form should be clearly marked to identify it as having resulted from the Arbitration Program.

The form must contain the owner's name, address, and telephone number, details of the nature of the complaint, the complete action taken, and how it was concluded (either satisfied or dissatisfied).

- A separate and complete history file of all "Arbitration Program" cases should be maintained for whatever analyses may be desired.
- If the complaint is closed dissatisfied, and falls within the criteria of the Arbitration Program, the zone will write the owner a letter (sample provided). The letter offers the owner the option of arbitration if he desires to pursue the matter through the Better Business Bureau. If the final decision is given verbally to the customer, his options should be fully explained to him following the language and intent of the sample letter.

Judgment will be used in the mailing of this letter, but in general it should be used in any instance where the customer's complaint had any real substance to it; it should be used in any case of the type where a customer might consider litigation; and it should be used in any type of complaint where an owner might write to a legislator or a consumer agency. The letter need not be used in instances of minor disagreements, or where a partial adjustment has been agreed upon with the owner.

- When a customer is advised of the arbitration option, the zone should provide the local Better Business Bureau Office with a copy of the letter to the owner along with an explanation of the zone's position on the matter. This procedure should be periodically reviewed with the Better Business Bureau to determine its advisability. Bureau notification may be discontinued if it is ineffective or causing an undue burden on the Better Business Bureau Staff. The transmittal to the Bureau should include any pertinent zone write-up sheets and a full explanation of the zone's position. NOTE: It is imperative that the Better Business Bureau be provided sufficient detail of the zone's position so that they may adequately represent that position to the customer. This represents the zone's best and last opportunity to convince the customer of the strength of the zone's position, and permit the customer to evaluate the likelihood of his prevailing in an arbitration procedure.

It is the sincere intent of Divisional and Corporate management that the broadest possible interpretation be placed on the Arbitration guidelines, and that owners shall be advised by the zones of the availability of arbitration if the customer obviously is dissatisfied with the decision on his complaint.

It is also the intent of the program that owners shall be advised of the arbitration option even if he has not voluntarily raised the question of arbitration.

Obviously, every effort will be made to resolve every complaint satisfactorily and, in any event, the division's position should be stated so clearly and completely that the customer will be fully aware of our valid reasons for rejecting his claim.

ARBITRATION**GUIDE****Dealer and Customer Contact Personnel**

This area has been selected for Third Party Arbitration which may prove vitally important to the future course of General Motors Consumer Relations. It is essential that the integrity of this program be maintained or the credibility of General Motors will suffer a more severe blow than any goodwill which might come from the program.

The people charged with the responsibility for contacting dealers and, especially customers, will be the most important factor in the success or failure of the program. Accordingly, it seemed appropriate to publish these guidelines for you.

LIMITATIONS ON ARBITRATION

This program will handle any complaint, regardless of the referral source, about any covered General Motors vehicle owned by a person residing in the area or involving a General Motors dealer located in the area. For the purpose of this program, the amount to be arbitrated may not exceed the amount of the sales or service transaction(s) that is (are) the subject of the dispute without the express approval of the General Motors Division.

GMC agrees to enter binding arbitration pursuant to BBB rules: 1) in all disputes arising out of written warranties on vehicles manufactured by GM, and 2) in all disputes involving issues of alleged manufacturer's responsibility on any GM vehicle. GM will encourage its dealers to arbitrate, but will not consider itself committed to arbitrate those disputes based only on dealer sales practices or consumer-pay services. However, in all other disputes in which GM's dealer or the vehicle owner asserts responsibility by the manufacturer, GM agrees to review these cases carefully and apply the broadest possible criteria for agreeing to arbitrate on a case-by-case basis.

It is especially important that no customer be drawn into a dispute between the zone and the dealer as to whose responsibility a problem may be, particularly if it involves a comeback on warranty work for which the division has previously paid the dealer. In any such instance, if a problem still exists, it is still the clear-cut obligation of the division. The customer must be taken care of with no discussion with him. If this requires the use of the facilities of another dealership, the fact remains that we have the obligation to the customer.

In the event of the allegation of fraud, or of a violation of law, or of a class action, or of a product liability involving personal injury or property damage, it should be explained to the customer (if he mentions arbitration) that the classifications are not eligible for arbitration.

If a customer expresses a desire to take a case to arbitration, do not attempt to discourage him except through your sincerest efforts at a prompt and satisfactory resolution of the complaint. If you feel you have exhausted every effort in this report, remember that only the zone manager has the authority to sign a dissatisfied closing. His knowledge of the complaint and his agreement with the action is all the more important in view of the arbitration program. Also, any cases which you are unable to satisfy on casual contacts with the customer at dealerships, should also be considered to be called to the zone manager's attention. These cases, too, may be eligible for arbitration.

CONSUMER LETTER

Attached is a sample of a letter to be used to advise of the Arbitration Program where a customer is not satisfied with the decision rendered by the zone office or representative and otherwise fits the parameters of the program.

Consumer Letter

GENERAL MOTORS CORP.

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If you are concluding a case with a customer, and you know he is dissatisfied, you should consider suggesting a third-party opinion to him. This is the essence of a third-party mechanism.

In that event, the diplomatic tone of voice and manner of the offer are of critical importance. If and when such an occasion arises, in a friendly manner we should express a sincere regret that we have been unable to come to a mutually satisfactory resolution of the complaint. Point out that we feel very sincerely that our position is a correct one, but he obviously feels the same about his position. Accordingly, and in the interest of making certain he has been treated fairly, we are willing to have an objective decision rendered by an unbiased third party. Point out that in addition to the normal options which a customer always has, the Better Business Bureau has agreed to mediate and, if necessary, arrange for arbitration of such disputes. Suggest that the customer can contact the Better Business Bureau if he wishes to pursue the matter. In every instance, the Better Business Bureau must be advised in accordance with the zone office procedural guidelines which have been issued.

For your guidance, the arbitration process should be offered in any instance where the complaint has any real substance to it; it should be offered in any case of the type where a customer might consider litigation; and it should be offered in any type of complaint where an owner might write to a legislator or a consumer agency. The offer would not be suggested in instances of minor disagreements, or where a partial adjustment has been agreed upon with the owner.

To reiterate, the success or failure, and therefore the credibility of the Corporation and your Division, will depend upon how this program is administered at the customer contact level. We know we can count on you to do your part.

Thank you.

PROPOSED CUSTOMER LETTER

(USE IN ANY CASE WHERE CUSTOMER HAS BEEN DENIED
A CLAIM AND HAS NOT ACCEPTED A COMPROMISE OFFER.)

DEAR _____:

WE ARE SORRY THAT YOU HAVE CONTINUED TO BE DISSATISFIED WITH
THE DECISION THAT WAS MADE CONCERNING YOUR _____.

WE KNOW THAT YOU ARE SINCERE IN THE POSITION YOU HAVE TAKEN,
AND WE HOPE THAT YOU CAN ALSO UNDERSTAND OUR POINT OF VIEW AS IT
RELATES TO THE MANUFACTURER'S OBLIGATION AND WE BELIEVE WE MADE
A CORRECT DECISION IN YOUR CASE.

AS YOU PERHAPS KNOW, GENERAL MOTORS, THROUGH THE LOCAL
BETTER BUSINESS BUREAU, PROVIDES A SERVICE OF VOLUNTARY
MEDIATION ARBITRATION FOR CONSUMER COMPLAINT DISAGREEMENTS.
GENERAL MOTORS HAS COMMITTED ITSELF TO ACCEPT AND ABIDE BY
DECISIONS MADE IN THIS ARBITRATION PROCESS.

THIS SERVICE IS AVAILABLE TO YOU IF YOU DESIRE IT. THERE IS NO FEE
FOR THE CUSTOMER WHO WISHES TO HAVE A CLAIM CONSIDERED, AND THE
MEDIATION AND ARBITRATION PROCESS IS NOT A LONG ONE.

IF YOU CARE TO AVAIL YOURSELF OF THIS SERVICE, CALL OR WRITE
(NAME) , AT THE (AREA) BETTER BUSINESS BUREAU OFFICE,
(ADDRESS-PHONE NUMBER) . YOU WILL BE FURNISHED WITH FULL
DETAILS OF THE PROGRAM.

VERY TRULY YOURS,

(THE ZONE MAY ELECT TO FORWARD A COPY TO BBB WITH A SHORT
STATEMENT OF THE NATURE OF THE COMPLAINT AND THE DIVISION'S
POSITION, AFTER CONFERRING WITH BBB.)

Following are some quotes from the various divisions and an impartial observer of the arbitration process. "The binding arbitration process in the Minneapolis Zone has given the consumer in the test area a better opportunity to get personal attention to his automotive grievance. In the many cases where arbitration was discussed as an available process, the complaint was concluded satisfactorily."

"In addition to the zone's report, we feel that the test indicates that although the owners have not always benefited financially, they are appreciative of the opportunity to be heard and have their complaints investigated in detail and reviewed by a third party."

"The last area I want to discuss is the attitude of the company as it was evidenced at this particular hearing.

Two instances come to mind which should adequately serve as illustrations. First, the company representatives failed to provide specific evidence requested by the arbitrator in advance of the hearing. Substitutions of other evidence were made, with no explanation of why they were made.

This action, in itself, was enough to give me the impression that the company had a rather condescending attitude toward this customer, this case, and this arbitrator. This attitude was confirmed at the hearing, in my opinion, when the arbitrator asked about this and was given an insufficient answer.

The second instance also occurred during the hearing. The company's representatives had prepared a file of their evidence and an outline of their testimony. Attractively packaged copies of this file were conspicuously handed to the arbitrator and the BBB observers, but not to the customer. "Evidentiary packages" such as this are useful, and are appreciated by the BBB staff as well as the arbitrators. Not providing a copy to the customer is, however, not only impolite, but hints again at an unwillingness to play fair. These packages typically contain nothing more than the bare outlines of the case, and I can see no reason to withhold this information from the customer. My point is underscored by the fact that when customer-complainants have prepared such files they have invariably given a copy to the company, as well as the arbitrator and the BBB.

In conclusion, this was a case the company should probably not have lost. In a similar case involving a different division, the company did in fact win; that is, the customer received no award on similar facts, and asking for similar relief. A variety of factors influence the arbitrator, however, and in this case, it appears that most of those factors influenced him in the customer's favor. While my observations and comments are highly subjective, I think they are accurate and may illustrate some of the possible reasons for the result in this case."

PREPARE — PREPARE — PREPARE

Make sure you have all of the information on the situation in question.

Don't take anything for granted. For example, if you previously inspected the car and found it beautiful, but the customer is now complaining again about the paint, don't rely on that earlier inspection. One of our divisions did that in Minneapolis and was absolutely shocked when they got to the hearing and, in the company of the arbitrator, made an inspection which they should have made when they were first advised of the complaint by the Better Business Bureau. The paint had deteriorated badly, and the arbitrator ordered a paint job so extensive that it cost the division over \$1,500 to comply. If they hadn't been complacent, they might have corrected the paint to the customer's satisfaction far less expensively.

Don't rely on the dealer's word concerning the service history. Get out there and examine the dealer's records and documents yourself. Further, if the customer makes a statement concerning the service history which is not in agreement with what you have found in the dealer's records, ask the customer for the additional documentation because, you should tell him, this will help you to evaluate the problem and do everything you can to help him. He may well have some documentation that is not in the dealer's records.

Most of the above comments are designed to help you prevent walking into any surprises at arbitration hearing.

Try to strike a balance. You must be careful in going into an arbitration hearing that you don't overwhelm everybody with factory expertise, documentation, and jargon.

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BE LIBERAL IN YOUR INTERPRETATION OF THE PARAMETERS OF THE PROGRAM. YOU DO HAVE THE OPPORTUNITY TO EXAMINE THE PROPOSED ISSUES TO BE BROUGHT UP AT THE HEARING. AT THAT TIME YOU CAN POINT OUT ANY AREAS WHICH ARE BEYOND OUR PARAMETERS IF YOU SO WISH AND HAVE AN UNDERSTANDING THAT THOSE PARTICULAR ISSUES ARE NOT SUBJECT TO ARBITRATION. AGAIN, HOWEVER, DON'T BE TOO HARD TO GET ALONG WITHIN THAT REGARD.

ONE FINAL WORD: WHATEVER THE DECISION, NO MATTER HOW WRONG YOU MAY THINK IT IS, ACCEPT IT GRACIOUSLY. CONCLUDE EVERY HEARING ON THE FRIENDLIEST POSSIBLE BASIS. INDICATE TO THE CUSTOMER THAT REGARDLESS OF THE DECISION, WE STILL VALUE HIM OR HER AS A CUSTOMER.

AS STATED EARLIER, DON'T HESITATE TO BRING THE DEALER OR A DEALER REPRESENTATIVE TO THE HEARING IF YOU THINK IT WILL HELP THE ARBITRATOR TO EVALUATE THE SITUATION PROPERLY. BRING WITH YOU WHATEVER BACKUP DOCUMENTS OR INFORMATION MAY BE APPROPRIATE. BE SURE TO BRING COPIES FOR EVERYONE WHO WILL BE INVOLVED IN THE HEARING. DON'T OVERWHELM THEM WITH TECHNICAL MATERIAL, SUCH AS SHOP MANUALS, AND SO ON, BUT BRING SIMPLE, CLEAR, INFORMATIONAL THINGS THAT WILL HELP EVERYONE TO DECIDE THE ISSUES FAIRLY.

WE URGE YOU TO KEEP A RECORD OF THE TIME YOU SPEND ON THESE CASES. IT WILL BE IMPORTANT IN OUR OVERALL EVALUATION OF THE PROGRAM.

WE WILL ASK EACH ZONE FOR A MONTHLY REPORT ON THE ACTIVITY. A COPY OF THE REPORT FORM WILL BE GIVEN TO YOU, ALONG WITH INSTRUCTIONS FOR COMPLETING IT. IT IS VERY SIMPLE AND WILL REQUIRE A MINIMAL AMOUNT OF YOUR TIME.

AS SOON AS YOU KNOW THAT A CASE IS PROBABLY GOING TO ARBITRATION, SEND A COPY DIRECTLY TO THE CONSUMER RELATIONS MANAGER AT YOUR HOME OFFICE AND A COPY TO THE DIRECTOR, GM CONSUMER RELATIONS.

GENERAL MOTORS WILL AGREE TO ARBITRATE ANY INSTANCE OF A DISPUTE WITH A CUSTOMER WITH RESPECT TO THE APPLICATION, ADMINISTRATION, OR INTERPRETATION OF OUR NEW VEHICLE WARRANTY. WE WILL ALSO COVER DISPUTES OR QUESTIONS CONCERNING ALLEGED MANUFACTURER'S RESPONSIBILITY OF GM VEHICLES BEYOND THE NEW VEHICLE WARRANTY PERIOD; HOWEVER, THIS IN NO WAY ALTERS OUR STANDARD NEW VEHICLE WARRANTY.

GENERAL MOTORS WILL NOT BE COMMITTED TO ARBITRATE COMPLAINTS ARISING OUT OF RETAIL TRANSACTIONS BETWEEN THE DEALER AND HIS CUSTOMER.

LET'S TAKE AN EXAMPLE WHERE SOMEONE HAS GONE TO AN INDEPENDENT SHOP AND HAD WORK PERFORMED AND THEN ASKS US TO PAY THE BILL. UNDOUBTEDLY THE CAR WILL HAVE BEEN BEYOND WARRANTY OR THE CUSTOMER WOULD HAVE GONE TO AN AUTHORIZED DEALERSHIP, AS REQUIRED UNDER THE WARRANTY. SINCE CUSTOMERS ARE AWARE THAT THEY MUST PRESENT THEIR CARS TO AN AUTHORIZED DEALER FOR WARRANTY SERVICE, THEY WOULD CERTAINLY EXPECT TO FOLLOW THAT SAME PROCEDURE IF THEY EXPECT ANY KIND OF CONSIDERATION AFTER THE WARRANTY EXPIRES. WE DID NOT HAVE AN OPPORTUNITY TO DETERMINE WHETHER OR NOT WE ACTUALLY HAD RESPONSIBILITY IN THIS CASE. WE DIDN'T KNOW THE EXTENT OF OUR RESPONSIBILITY, IF THERE WAS ANY AT ALL. WE NEVER TRY TO EVADE OUR RESPONSIBILITY, BUT BEFORE SOMEONE ASKS US TO ASSUME THAT RESPONSIBILITY WE DO ASK THE OPPORTUNITY TO EVALUATE IT. I'M SURE YOU CAN THINK OF EVEN BETTER APPROACHES, BUT ABOVE ALL, BE LOGICAL, BE FRIENDLY, AND BE VERY SINCERE IN INDICATING THAT OUR ONLY DESIRE IS TO BE HELPFUL AND TO BE FAIR.

DON'T TALK DOWN TO ANYBODY. DON'T BE CONDESCENDING.

BE JUST AS FRIENDLY AND HUMAN AND HELPFUL AS IT IS POSSIBLE TO BE. REMEMBER, THE ARBITRATOR IS HUMAN, JUST AS IS THE CUSTOMER.

DO NOT USE THE ARBITRATOR'S FIRST NAME. THIS GIVES THE CUSTOMER THE IMPRESSION THAT HE HAS ENTERED A "KANGAROO COURT."

IF THE ARBITRATOR ASKS FOR SOME INFORMATION IN ADVANCE, GIVE IT TO HIM UNHESITATINGLY. REMEMBER, HE IS MERELY TRYING TO COME TO A FAIR DECISION. IF, FOR EXAMPLE, HE ASKS WHAT A CAR IS WORTH (SUCH AS WHERE THE CUSTOMER HAS ASKED FOR A REPURCHASE OF THE CAR) DO YOUR BEST TO PROVIDE HIM WITH THE BEST CURRENT WHOLESALE AND RETAIL PRICES. ONE OF OUR DIVISIONS MADE THE MISTAKE OF GIVING THE ARBITRATOR THE LOWEST WHOLESALE PRICE IN RESPONSE TO SUCH A REQUEST, AND THAT, AMONG SEVERAL OTHER ITEMS, PROBABLY HELPED INFLUENCE THE ARBITRATOR TO A VERY ADVERSE DECISION FOR THE DIVISION.

IF YOU HAVE INSPECTED THE CAR AND ROAD TESTED IT, AND IF YOU ARE SATISFIED THAT THE CAR WOULD BE ACCEPTABLE TO ANY REASONABLE PERSON, URGE VERY STRONGLY THAT YOU WOULD LIKE THE ARBITRATOR TO LOOK AT THE CAR. IF IT'S A PAINT OR APPEARANCE COMPLAINT, IF IT'S A PERFORMANCE COMPLAINT OF ANY KIND, STRONGLY INVITE THE ARBITRATOR TO GO FOR A RIDE IN THE CAR ON THE GROUNDS THAT THIS IS REALLY THE ONLY WAY FOR ALL OF US TO HAVE A CLEAR UNDERSTANDING AS TO WHETHER OR NOT THE CAR IS ACCEPTABLE.

IF YOU KNOW THERE ARE SOME SHORTCOMINGS, BE PERFECTLY HONEST ABOUT THEM; BUT VERY CANDIDLY DESCRIBE PRECISELY WHAT YOU ARE WILLING TO DO TO HELP RESOLVE THE MATTER, OR DESCRIBE VERY FULLY WHY YOU ARE NOT PREPARED TO DO ANYTHING IF YOU FEEL THE PROBLEM IS ENTIRELY THE CUSTOMER'S RESPONSIBILITY.

DO'S AND DON'TS OF THE ARBITRATION PROCESS

DO'S

- 1) Be prepared. Keep your cool.
- 2) Be a good listener to plaintiff and arbitrator. Take notes.
- 3) When asked to present our case, be brief and concise as to our position.
- 4) Be sure you have a warranty folder and Owner's Manual.
- 5) Be sure that you ask owner if he has received a warranty folder and understands it.
- 6) When the owner is complaining of a paint or appearance item, be sure arbitrator is willing to inspect the vehicle with the owner.
- 7) Water leak — take the car through a car wash.
- 8) Driveability case — have the owner drive it with the arbitrator and a divisional representative.
- 9) Gas mileage — prior to arbitration, make sure that a gas-per-mile test has been performed with the dealer personnel and the owner. Also, make sure that a report has been made out and the owner verifies this.
- 10) Independent repairs — if no opportunity has been made for a divisional inspection of the vehicle, bring up the fact that under the terms of the warranty, the division should have been able to make an inspection.
- 11) If owner claims he properly maintained vehicle, ask owner to provide proof of such maintenance.
- 12) It is important that the full service file be available and reviewed by zone.
- 13) Establish position on any adjustment based on complete knowledge of probable cause of failure.
- 14) Prepare case carefully to prevent surprises during the hearing. Customers are usually well prepared.
- 15) Establish a rapport with customer prior to the hearing so that the best possible feelings can be realized after conclusion of the hearing — win or lose.
- 6) Be positive, friendly, and confident about your case and the position you have taken.
- 7) If appropriate, the service manager of each dealership involved should attend the hearing.

- 18) Discuss each case eligible for arbitration with other member(s) of zone staff in order to get different viewpoints.
- 19) Do contemplate any possible objections and have answers ready.
- 20) Do be factual and concise in your presentation.
- 21) Do be sure the issues of the arbitration are clearly stated in the agreement. These issues are all the arbitrator is empowered to act upon.
- 22) Do contact the dealer in arbitration if the complaint on the vehicle is relative to poor dealer workmanship.
- 23) Reinspect all complaint vehicles immediately before the arbitration day.
- 24) Be sure to persuade the customer you are sincerely interested in solving his service problem.
- 25) If customer has a bonafide service problem, clear it up without going to arbitration.
- 26) Ask the customer early in the handling for his/her experiences with the vehicle including copies of repair orders, etc.
- 27) Include the consumer in the results of evaluations, tests, and inspections performed.
- 28) Provide copies of evidence or supporting material to all parties involved in an arbitration hearing, including the customer.
- 29) Evaluate your position from the viewpoint of the consumer and other observers.
- 30) Provide exactly the material, answers, or information requested by the arbitrator or provide a complete explanation for all diversions from those requests.
- 31) Provide alternate solutions to the problem — as many as possible.
- 32) Provide all available support for the specific areas of contradiction.
- 33) Offer demonstrations to support your position.
- 34) Try to resolve the difference, not to "win the case."

DON'TS

- 1) Don't appear to be angry.
- 2) Don't argue with owner or arbitrator.
- 3) Don't interrupt owner or arbitrator when either is talking.
- 4) Don't get caught with doubtful issues (appearance or performance problems).
- 5) Don't be doubtful, uncertain, or tentative.
- 6) Don't leave doubt in anyone's mind on technical questions that must be understood in layman's language.
- 7) Don't hurry your presentation or introduce key facts until appropriate time.
- 8) Don't let a case get to arbitration unless you are 100% sure that all possible steps have been taken to satisfy the customer. Remember, these arbitrators know nothing of the automobile business other than what they have read, heard, or experienced.
- 9) Don't try to overpower the hearing with unnecessary personnel.
- 10) Don't leave any questions or complaints by the owner unanswered.
- 11) Don't let your customer think you are not sincerely interested in handling his service problem even when you are taking it to arbitration.
- 12) Don't go to arbitration unprepared.
- 13) Don't assume that one arbitration finding sets a precedent.
- 14) Don't assume a position that would reflect insincerity or the attitude that we are absolute.
- 15) Don't assume that everyone knows the facts that we take for granted.
- 16) Don't forget that the intent and reason for arbitration is consumer satisfaction.
- 17) Don't think of the arbitration process as a win-lose proposition.
- 18) Don't assume a position based on someone else's opinion.

ATTACHMENT B

Special Implementing Provisions to be Included in
General Motors Zone Handbook for Third-Party Arbitration[B-1] 1. Zone Handbook, Page 8, *et seq.*

SPECIAL GENERAL MOTORS PROVISIONS

- A dissatisfied customer with a complaint claiming General Motors responsibility for defects, problems, failures or malfunctions relating to powertrain components must be advised of the arbitration option even if the customer has not raised the question of arbitration or has not contacted the Customer Services Representative for the vehicle's division.
- The notice *must* be in writing (see example letter at page _____).
- Powertrain components, for purposes of arbitration, are:
 1. *Gasoline and diesel engines.* Cylinder blocks and heads, and all internal parts, including camshafts and lifters, manifolds, timing gears, timing gear chains or belts and covers, flywheels, harmonic balancers, valve covers, oil pans, oil pumps, engine mounts, seals and gaskets, water pumps and fuel pumps, and diesel injection pumps; also, turbocharger housings and internal parts, turbocharger valves, seals and gaskets.
 2. *Transmissions.* Cases and all internal parts, torque converters, vacuum modulators, seals and gaskets, and transmission mounts; also, transfer cases and all internal parts, seals and gaskets.
- If the customer complaint may involve, or if the customer states that the complaint involves one or more of the following components manufactured [through the date the Commission accepts this agreement pursuant to Section 3.25(f) of the Commission's Rules of Practice]: (1) THM 200 automatic transmissions; (2) camshafts or lifters in 305 or 350 cubic-inch-displacement ("CID") gasoline engines produced in plants operated by General Motors Chevrolet Division since 1974; or (3) fuel injection pumps or fuel injectors in 350 CID diesel engines produced in plants operated by General Motors Oldsmobile Division, the following special provisions must be followed: [B-2]
 - The General Motors Arbitration Program is ordinarily limited to owners who still possess the General Motors car which had a mechanical problem or failure. However, when the complaint involves one of the components identified in this paragraph, customers must be given the opportunity to arbitrate their disputes even if they no longer possess the car.
 - Under typical Better Business Bureau procedures, the BBB usually gives the General Motors zone representative an opportunity to cross off unacceptable names from the list of possible arbitrators. If the appropriate zone representative has knowledge that any of the arbitrators have heard three or more disputes involving any of the components identified in this paragraph, the zone representative must cross off such arbitrators' names from the list.
 - At the time the customer elects to arbitrate, the Zone must provide the customer with one or more (as appropriate) of the following Background Statements:

BACKGROUND STATEMENT
THM 200 TRANSMISSIONS

NOTICE TO OWNERS: You may wish to provide this Background Statement to the Arbitrator at the time of your hearing.

This arbitration case may involve an owner's complaint about a General Motors THM 200 transmission. As part of the settlement of their dispute involving THM 200 transmissions, General Motors and the Federal Trade Commission have prepared this information sheet to provide arbitrators with potentially useful background facts about THM 200 transmissions. Some of these facts may not be widely known.

Arbitration is appropriate to resolve complaints about THM 200 transmissions because, while some complaints are similar, each case is by its nature individual and must be resolved on its own merits. [B-3]

To assist arbitrators who may be considering an owner's complaint about a THM 200 transmission, General Motors and the Federal Trade Commission are providing the following compilation of facts. These may or may not be relevant to the dispute in a particular case.

1. Automatic transmissions are complex devices comprised of hundreds of inter-related parts—THM 200 models have over 600 parts. An automatic transmission transmits and multiplies the turning force of the engine in order to drive the vehicle. It automatically changes gears for the driver at different speeds and under different conditions.

2. Transmissions designated "THM 200" comprise one series of automatic transmissions from a broad line of General Motors automatic transmissions. Each series, including the THM 200 series, has a number of different models, and each model is specifically designed for a particular vehicle, engine, and drive axle match-up.

3. The THM 200 series has been used in a wide variety of different car lines since the 1976 model year. It has only been used in rear-wheel-drive vehicles. One way to determine whether a particular vehicle is equipped with a THM 200 transmission is to examine the transmission oil pan. The word "metric" appears on the oil pans of vehicles equipped with the THM 200.

4. Development of the THM 200 series began in the early 1970's. By late 1973, prototypes were undergoing vehicle testing in 5,200-pound cars with 350-cubic-inch V8 engines. Careful and thorough testing of the THM 200 series continued not just until the time of its introduction midway through the 1976 model year, but, in line with General Motors' usual practice, continued thereafter and continues today.

5. THM 200 transmissions are mass-produced. Where a product is being mass-produced, it is possible that from time to time a particular item may be completed and yet contain a defect in material or workmanship. Recognizing this fact about mass production, General Motors provides a limited warranty with each new General Motors vehicle sold by one of its dealers. The warranty generally covers any repair and needed adjustments to correct defects in materials and workmanship within the warranty period. However, complaints may occur after the warranty. A manufacturer's warranty is not necessarily the limit of the manufacturer's responsibility, and need not control the outcome of arbitration.

6. Normally, it is reasonable to expect General Motors automatic transmissions to provide reliable, dependable service beyond the warranty period. Many transmissions do not require replacement during the life of the car. [B-4]

7. Failures in THM 200 transmissions can occur for several reasons. These failures can be related to defects in material or workmanship which do not evidence themselves

during the manufacturer's warranty period. They can also be related to individual driving habits or improper maintenance. The manufacturer spells out in the owner's manual proper maintenance procedures, and discloses driving habits which should be avoided. The owner's manual for each model car can differ. To determine the proper maintenance procedures or driving habits, you must look at the specific manual or maintenance schedule for the vehicle which is the subject of this arbitration.

BACKGROUND STATEMENT CAMSHAFTS AND LIFTERS

NOTICE TO OWNERS: You may wish to provide this Background Statement to the Arbitrator at the time of your hearing.

This arbitration case may involve a complaint about the camshaft and/or lifters in a General Motors 305 or 350 CID gasoline engine produced in plants operated by the Chevrolet Division since 1974. As part of the settlement of their dispute involving camshafts and lifters in these engines, General Motors and the Federal Trade Commission have prepared this information sheet to provide potentially useful background facts. Some of these facts may not be widely known.

Arbitration is appropriate to resolve complaints about camshafts and lifters because, while some complaints are similar, each case is by its nature individual and must be resolved on its own merits. [B-5]

To assist arbitrators who may be considering an owner's complaint about camshafts and lifters in these 305 or 350 CID engines, General Motors and the Federal Trade Commission are providing the following compilation of facts. These may or may not be relevant to the dispute in a particular case.

1. In a four-cycle internal combustion engine, the camshaft and accompanying lifters (sixteen in an eight-cylinder engine) mechanically operate a series of valves which allow a gasoline and air mixture to enter, and exhaust gases to be forced out of, the engine cylinders.

2. Since 1974, these 305 and 350 CID gasoline engines have been used in a wide variety of different General Motors car and truck lines and models.

3. These engines are mass-produced. When a product is mass-produced, it is possible that from time to time a particular item may be completed and yet contain a defect in material or workmanship. Recognizing this fact about mass production, General Motors provides a limited warranty with each new General Motors vehicle sold by one of its dealers. The warranty generally covers any repair and needed adjustments to correct defects in materials and workmanship within the warranty period. However, complaints may occur after the warranty. A manufacturer's warranty is not necessarily the limit of the manufacturer's responsibility, and need not control the outcome of arbitration.

4. It is reasonable to expect camshafts and lifters in these engines to provide reliable, dependable service beyond the warranty period; they can and often do last for many years. However, in order to maintain the life of camshafts and lifters and to prevent excessive wear, they must be properly lubricated at all times; the engine oil must be maintained at the proper level; the oil and filter must be changed in accordance with the owner's manual and maintenance schedule recommendations; and the proper engine oil must be used.

5. One important part of choosing oil for lubrication is to use oil of the categories or

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ratings recommended by the manufacturer in the owner's manual and maintenance schedule. Oils have various categories or ratings. Oils for gasoline engines are designated SA, SB, SC, SD, SE, or SF. Oils for diesel engines are designated CA, CB, CC, or CD. An oil can be assigned more than one category if it will work in more than one kind of engine—for example, "SE/CD" or "SF/CD." These are called "multi-purpose" oils.

6. Some, but not all, "multi-purpose" oils produced prior to the 1981 model year may have provided inadequate wear protection for some gasoline engines, including these 305 and 350 CID engines. This may have caused excessive wear of camshafts or lifters, even if the owners followed the recommendations in their owner's manuals. For the most part, these "multi-[B-6]purpose" oils were available only in bulk quantities sold in drums; however, some were also available in quart-size cans from a small number of service stations and retail outlets. Most service stations offered only oils with satisfactory lubrication characteristics.

7. General Motors was aware of this problem and throughout the mid- and late 1970's tried to persuade oil companies to reformulate these oils in order to eliminate excessive wear problems. These efforts succeeded in numerous cases. However, not all of the oils which had been causing problems were reformulated, and some owners continued to experience excessive camshaft/lifter wear using these oils. General Motors therefore changed the owner's manuals in the late 1980 model year to tell owners to avoid certain categories of "multi-purpose" oils that might cause excessive wear. By the 1981 model year, with the introduction of the SF oil category, the "multi-purpose" oils that had caused excessive wear were no longer produced.

BACKGROUND STATEMENT

DIESEL FUEL INJECTION SYSTEMS

NOTICE TO OWNERS: You may wish to provide this Background Statement to the Arbitrator at the time of your hearing.

This arbitration case may involve an owner's complaint about the fuel injection system in a 350 CID diesel engine produced in a plant operated by the Oldsmobile Division. As part of the settlement of their dispute involving these engines, General Motors and the Federal Trade Commission have prepared this information sheet to provide potentially useful background facts. Some of these facts may not be widely known. [B-7]

Arbitration is appropriate to resolve complaints about diesel fuel injection systems because, while some complaints are similar, each case is by its nature individual and must be resolved on its own merits.

To assist arbitrators who may be considering an owner's complaint about the fuel injection system in 350 diesel engines, General Motors and the Federal Trade Commission are providing the following compilation of facts. These may or may not be relevant to the dispute in a particular case.

1. In diesel engines, fuel is injected directly into the cylinders instead of being first mixed with air in a carburetor as it is in many gasoline engines. Diesel engines use a high-pressure fuel injection pump to inject fuel through nozzles called "injectors." The fuel injection system injects controlled amounts of fuel into the engine's cylinders.

2. Beginning in the 1978 model year, this diesel engine has been used in a wide variety of different General Motors car lines and models.

3. Development of the 350 diesel engine began in the early 1970's. Like many complex automotive products, 350 diesel engines have undergone a number of product improvements and changes throughout its use.

4. These 350 diesel engines are mass-produced. When a product is mass-produced, it is possible that from time to time a particular item may be completed and yet contain a defect in material or workmanship. Recognizing this fact about mass production, General Motors provides a limited warranty with each new General Motors vehicle sold by one of its dealers. The warranty generally covers any repair and needed adjustments to correct defects in material and workmanship within the warranty period. However, complaints may occur after the warranty period. A manufacturer's warranty is not necessarily the limit of the manufacturer's responsibility, and need not control the outcome of the arbitration.

5. Excessive amounts of water contamination can damage the fuel injection pump and fuel injectors. For this reason, diesel fuel systems usually are designed to reduce the likelihood of engine damage caused by water contamination. The 350 diesel engine was originally designed to avoid this risk unless more than 1 to 2 gallons of water (depending on the shape of the fuel tank on the various vehicle models) was present in the fuel tank.

6. In 1979, General Motors became aware that some owners were unknowingly purchasing water-contaminated diesel fuel which caused problems with the fuel injection systems in certain 350 diesel engines. By August 1979, General Motors had determined that deterioration of the governor weight retainer ring, a part of the diesel fuel injection pump, could occur in some diesel engines. [B-8]

7. In July 1980, General Motors offered to make repairs without charge, needed as a result of deterioration of governor weight retainer rings up to 5 years or 50,000 miles, whichever occurred first, and offered reimbursement for past repairs due to water contamination (owners were informed that they could make claims for reimbursement until October 1, 1980). To protect against water contamination, General Motors offered to install a water detector kit for \$50.00, the price charged to purchasers of new vehicles equipped with the detector. This detector indicates to the driver when there is an excessive amount of water in the fuel tank. It includes several additional features. It increased the water separation capacity of the fuel system to about 4 to 7 gallons and also made it easier to remove water from the fuel tank. General Motors sent letters to owners explaining the steps it was taking. However, as with any such mailing, some owners may not have received this letter.

* * * * *

● It is the customer's option whether the arbitration decision is to be based on written, in-person, or telephone submissions. General Motors may appear only in the manner selected by the customer. When in-person submissions are made, General Motors may be represented by no more than two (2) persons, not counting non-party witnesses. Arbitration may also be conducted by conference telephone calls (at General Motors expense), if the consumer elects. [B-9]

2. Zone Handbook, Page 19

● A dissatisfied owner with a complaint involving one or more "powertrain components" must be advised of the arbitration option even if he has not raised the question of arbitration. The advice in these cases must be by letter (sample provided). See pages B-1 through B-8 (Addendum to Page 8) for more detailed discussion.

3. Zone Handbook, Page 23

● It must be offered in cases where powertrain components are involved. See page B-1 Addendum to Page 8).

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ATTACHMENT C

General Motors Consumers Arbitration Handbook

GENERAL MOTORS CONSUMER ARBITRATION PROGRAM

A THIRD PARTY CONSUMER
DISPUTE RESOLUTION MECHANISM
A COMMON SENSE APPROACH
FOR RESOLVING
CONSUMER-BUSINESS DISPUTES



A GM Corporate Program
Administered by the
Better Business Bureau

Underscored passages herein shall be
deleted or modified as necessary to
conform this handbook with the
requirements of the "Agreement
Containing Consent Order to Cease
and Desist" (FTC Docket No. 9145)



COUNCIL OF BETTER BUSINESS BUREAUS, INC.
THE INTERNATIONAL ASSEMBLY OF BETTER BUSINESS BUREAUS

As the owner of a General Motors car, your continued satisfaction and goodwill are important to us. So, in the event of any problem with the sales transaction or the operation of your vehicle, a simple three-step procedure has been established to aid in resolving misunderstandings.

STEP ONE —

Discuss your problem with your dealership's management — the Sales or Service Manager, the owner of the dealership or the General Manager.

STEP TWO —

If your problem remains unresolved, contact the Customer Services Department of your vehicle's nearest Zone Office (found in your Owner's Manual) and provide them with the necessary information. They in return will furnish you with their recommendations.

STEP THREE —

If all else fails, contact the Customer Services Representative for your vehicle's division (found in your Owner's Manual). In Canada, contact the Customer Service Representative, General Motors of Canada Limited, Oshawa, Ontario, L1J 5Z6, Telephone: 416-644-6624.

If, in your opinion, your problem has still not been resolved, there is an additional step, explained later in this booklet, called Third Party Arbitration which can be pursued.

The BBB National Consumer Arbitration Program

Since its National Consumer Arbitration Program was announced in 1972, Better Business Bureaus have instituted this process in more than 100 major metropolitan areas. Thousands of disputes each year are being arbitrated and more than 5,000 community volunteers serve as arbitrators.

Business has recognized the worth of this dispute resolution system. Large numbers of small and large businesses are pledging to arbitrate consumer disputes through the BBB system. The automotive industry and the construction industry — both involved in disputes that entail large sums of money — are more involved in the process than most, but virtually all types of marketplace disputes are being arbitrated by the BBB's.

Government is also recognizing the value of this private sector mechanism for dealing with issues which can best be resolved in a fast, fair and flexible process like BBB arbitration. Increasingly, the Federal Trade Commission, state attorneys general, as well as local district attorneys and judges, are writing BBB arbitration into consent orders or are referring disputes on a case-by-case basis to the BBB's.

Of course, none of this would be possible without an ever increasing pool of community volunteers to serve as arbitrators. We applaud these citizens for their public service.

Warren E. Burger, Chief Justice of the United States Supreme Court, put programs like BBB arbitration into perspective when he said:

"The notion that most people want black-robed judges, well dressed lawyers and fine paneled courtrooms as the setting to resolve their dispute is not correct. People with problems, like people with pains, want relief, and they want it as quickly and inexpensively as possible.

"The harsh truth is that if we do not devise substitutes for the courtroom processes, and do not do it rather quickly, we may well be on our way to a society overrun by lawyers...brigades of judges in numbers never before contemplated."

WHAT IS CONSUMER ARBITRATION?

Arbitration is a legal process in which two or more people agree to permit a third person to make a final decision in a dispute between them.

Consumer arbitration is a procedure set up by Better Business Bureaus to settle consumer-business disputes informally, privately and finally, if all efforts to resolve complaints about products or services fail the Better Business Bureau may offer this legally binding process to the business and its customer. When both voluntarily agree to arbitrate the dispute, the BBB will ask them to sign a contract which permits a community volunteer, acceptable to the business and the customer, to conduct a fact-finding hearing and make a final decision in the matter.

The basic principles of BBB arbitration -

- Strictly voluntary
- Used only when all informal efforts to resolve disputes have failed
- A broad-based pool of trained volunteer arbitrators from the local community
- Arbitrators chosen by a mutual selection process
- Private hearings with confidential results
- Hearings held at convenience of all
- Informal procedures with no formal rules of evidence so everyone can present his own case
- Availability of product or on-site inspection or a technical expert if necessary
- Consistent with state law

WHAT ARE THE STEPS IN BBB ARBITRATION?

THE COMPLAINT

First, the customer should complain to the business. Only if this fails to satisfy should the customer come to the Better Business Bureau.



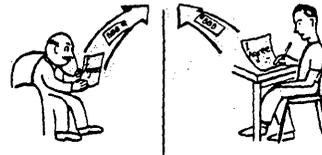
THE MEDIATION STAGE

The BBB will get the facts as seen by the customer and then seek the business response to the complaint. If informal efforts to mediate the dispute fail, arbitration is offered.



AGREEMENT TO ARBITRATE

The business and its customer sign an agreement that describes the issues being disputed. They then become the "parties" to arbitration.



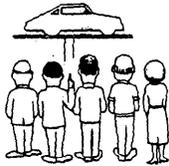
CHOOSING AN ARBITRATOR

Although state law and BBB policies offer various means of choosing arbitrators, normally the parties are given a list of five trained community volunteers together with a brief biography of each. They are asked to cross off any unacceptable arbitrator and to indicate their priorities ("1," "2," "3," etc.) for the remaining names. The highest overlapping priority choice of all parties usually becomes the arbitrator.



INSPECTIONS AND EXPERTS

If necessary, an inspection of the product or service performed will be conducted by the arbitrator, and the BBB will attempt to provide technical expertise if needed by the arbitrator.

**THE HEARING**

Informal proceedings are conducted by the arbitrator. Parties may be represented, bring witnesses and give any supporting evidence.

**THE DECISION**

After hearing all the facts, the arbitrator has ten days to make a written decision. This decision may not go beyond the limits of the original issues stated in the arbitration agreement. It may require action by one or more parties, it may require the payment of money, it may reject the customer's complaint completely, or it may be a "split" decision which recognizes a part of the customer's claim (and a part of the company's claim).

**WHEN IS ARBITRATION OFFERED?**

If all mediation efforts fail to settle a dispute the BBB may offer arbitration, or one of the parties may initiate a request for arbitration. Many businesses have pledged in advance to arbitrate any dispute which cannot be otherwise resolved, and the decision to arbitrate then becomes their customer's choice.

While the great majority of consumer-business disputes may be resolved by arbitration, it is important to note that some issues lie outside the scope of the arbitration program. Generally, these include claims that go beyond the actual value of the product or service in dispute, such as a demand for consequential or punitive damages by the consumer. For example, an arbitrator may hear a case involving the premature failure of an automobile's transmission, if, however, that failure caused the driver to miss a plane connection, which in turn prevented his completing an important deal, a demand for such losses could only be dealt with in a court of law.

Other issues which cannot be arbitrated include personal injury and property damage claims, allegations of fraud or other violations of criminal law, and any other issue which may not be arbitrated under state law.

WHEN IS IT BETTER TO GO TO COURT?

Certainly, when the issue involves alleged punitive or consequential damages that would not be arbitrated by the BBB, the customer may find a court the only alternative. Also, the customer who seeks to set a precedent for other consumers is better off in a court of record because an arbitration resolves only the issues in the case at hand and establishes no precedent at all. And certain federal or state laws passed to help the consumer make a claim could be more advantageous.

Balanced against these considerations are the disadvantages inherent in many courts: overcrowded dockets could result in delays, attorneys may be required, strict rules of evidence may be applied, and the dispute will be aired in public. Arbitration is usually faster, it does not require (although it permits) attorney representation, it has no formal rules of evidence, and it is conducted in private.

WHO ARE THE ARBITRATORS?

Thousands of volunteers from all walks of life serve the BBB as arbitrators. They include professionals, educators, retirees, lawyers, housewives, and others. Most of these volunteers have gone through a special training program. Arbitrators are not paid for their

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services; they perform their duties as a public service and are not employed by the BBB. All arbitrators are required to disclose, as a condition of hearing a case, any financial, commercial, professional, social or familial relationship - no matter how remote - with any of the parties or their counsel.

HOW IS THE ARBITRATOR CHOSEN?

A list of five possible arbitrators, with brief biographies of each, is sent to the parties. Each party may cross off any person considered unacceptable and assign a priority to those remaining. The highest common priority choice of the parties usually will be the arbitrator and no person rejected by either party will serve. In some cases the Bureau may take the first choice of each party, with these two persons choosing a third from the pool of volunteer arbitrators. This third person will then chair the panel of three and a decision will be by majority vote. Because of state law requirements or Bureau policy in some areas the selection method may vary somewhat, but in all areas the parties are given a choice of arbitrators.

WHAT DOES ARBITRATION COST?

The administrative costs of arbitration are underwritten by the Better Business Bureau, which is supported by the business community. The parties must pay for their own witnesses and attorney's fees, if any. If any one wants a transcript of the proceedings, this too must be paid by the requesting party.

WHEN AND WHERE WILL THE ARBITRATION BE HELD?

Whenever possible an arbitration hearing is held at a time and place convenient to the parties and the arbitrator. Arbitrations have been held at various times and places, including the job site in dispute and in private homes.

WHAT IS A "TYPICAL" ARBITRATION?

Of course, there is no such thing as a "typical" arbitration, just as it is impossible to locate the "average" man. But here's an actual arbitration case that shows many elements of the arbitration process:

The dispute began in the driveway of the consumer's home when the consumer noticed a flat left rear tire on her year-old domestic compact car. After jacking up the rear of the car with the factory-supplied bumper jack, she removed the flat tire and prepared to replace it with the spare. At this point, however, the tab on the jack that fit into the bumper slot broke off and the car fell, causing considerable damage to the bumper.

The field representative for the manufacturer met the consumer at the dealership and inspected the damage. He found no evidence that either the bumper or the jack had been defective and concluded that the car must have moved, causing stress on the jack. He, therefore, denied the owner's claim.

After mediation by the BBB failed to break the impasse, arbitration was offered. Both parties agreed to arbitrate and a hearing was scheduled.

At the hearing the consumer described the events leading to the incident, stressing that she had relied on the printed instruction inside the car's trunk. The field representative agreed that she had used the jack properly but, quoting from an owner's manual, contended that her failure to check the wheels as stated in the manual caused the car to move and the subsequent damage to occur. The consumer countered that the printed instruction in the trunk did not include checking the wheels, so she had not done so.

The arbitrator then suggested that they take a look at the instructions in question. The hearing moved from the BBB office to the parking lot. The arbitrator opened the trunk and read the instructions, finding no instructions to check the wheels. He found in the consumer's favor and awarded her the requested remedy: a new bumper installed by the dealer and a new jack, the costs to be borne by the manufacturer.

This was a relatively easy case. The field representative's problem was that he relied on the most recent owner's manual and assumed (incorrectly) that the instructions had not changed between model years. Had he not made this assumption, there would have been an arbitration. But the dispute did exist and was resolved by arbitration. The ability of an arbitrator, as opposed to a judge, to simply "go on and look at the car" was instrumental in arriving at a clear and fair decision.

WHEN ARE INSPECTIONS AND EXPERTS INVOLVED?

Sometimes to get a full understanding of the facts, especially when the quality of workmanship is at issue, the arbitrator must actually see the product or work involved. Both parties may be present any inspection and both parties have a right to bring their own experts if they wish. The BBB has identified volunteer experts in the community to serve as technical advisers to arbitrators. Should

arbitrator request such an expert, the Bureau will seek to obtain one who has no relationship with any party and is not a potential competitor of the business involved in the arbitration.

HOW DO YOU PREPARE FOR AN ARBITRATION?

If you have agreed to enter into a binding arbitration agreement through the BBB, in effect you have chosen this process instead of going to court.

First, you will receive by mail an arbitration agreement form to sign and return to the BBB. Read it carefully to be sure it accurately describes what the dispute is and what you are seeking in the way of a decision from the arbitrator. If you think it is not accurate, call the BBB and ask to have the agreement changed. Sign it only when you agree with it, because it is a legal document.

At the same time you may receive a list of five arbitrators with brief biographical sketches. Cross off any names that seem totally unacceptable and assign your priority to those remaining on the list. (This selection process may vary somewhat depending on state law and Bureau policies.)

Return the agreement and your arbitrator choices to the BBB, along with an indication of the most convenient times for you to attend a hearing or the times when you will not be available.

The BBB will tell you when and where the hearing is to be held. You have a right to be represented by a lawyer, but the BBB should be told as soon as possible if you plan to be represented so the other side can be notified of this fact. Of course, you have the right to represent yourself or even have a non-lawyer act as your spokesman.

At no time may you or your representative contact the arbitrator without the other party being present. All correspondence relating to the arbitration must be directed through the BBB, which will forward all information and make sure the other side gets copies when necessary.

The actual hearing is an informal session without rigid rules of evidence, and it is designed to ensure that everyone gets the fullest opportunity to describe his side of a dispute. You have the opportunity to attend the hearing or to submit your case in writing if time or distance prevents your attendance. Some Bureaus have also set up systems by which disputes can be arbitrated over the telephone.

Most people, however, find that it is in their interest to come to the hearing if possible. If you do, you should prepare an outline of your argument to help you in your presentation. That way you won't forget important points in your favor.

For you state the facts as you see them, the other side has a right to ask you questions. You have the same right. The arbitrator is trained to ask questions, too, if there still are some uncertain areas to be cleared for a full understanding of the dispute.

Prepare a list of questions you want to ask the other side before you come to the hearing. And add to your list any new questions that occur when you hear what their statement is.

After each side has presented its case, be prepared to give a summary of your position. Describe the weak points in the other side's case, deal with any questions that have not otherwise been answered, and tell the arbitrator exactly what kind of decision you want and why.

Remember that the sole purpose of the hearing is to allow the arbitrator to gather and sort out the facts and thus make a fair decision. You should be prepared to prove that your position is right and that your opponent's is wrong. But a friendly, sincere approach works best. You are there because you and the other side have a disagreement, but keep that disagreement factual and within the bounds of normal courtesy and conventional language. Bombarding an arbitrator with technical jargon will not be productive, nor will rudeness, arguing with the arbitrator, or berating your opponent. Put yourself in the arbitrator's position—a lay person whose only purpose in volunteering is to help you resolve your dispute—and use your own common sense about how to proceed.

Here is a checklist to help you prepare your case:

1. Bring to the hearing all available written information relating to your dispute. Bring original documents, if possible. Also bring copies for the arbitrator and the other party.
 - _____ sales receipt/invoices; purchase date, price, etc.
 - _____ warranty/guarantee
 - _____ contracts/service records; terms, obligations, etc.
 - _____ proof of payment/payment contracts
 - _____ correspondence between customer and business
 - _____ appropriate advertisements, if any; sales, special offers, etc.
 - _____ delivery receipt; condition at time of delivery/installation
2. List witnesses to transaction, sales/service persons involved, installation person, etc.
 - _____ You are responsible for your witnesses' submission of information, either written or in person.
 - _____ Keep your witnesses informed of the scheduled proceedings.
3. List in chronological sequence actions taken to resolve this dispute.

TO THE CUSTOMER:

Can you clearly state what the problem is, and why you think the company is responsible? _____

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To whom did you speak? _____

When did this happen? _____

What did they tell you, and/or what action did they take? _____

Were other business/service persons involved? _____

Who _____

When _____

Why _____

_____ What did they tell you and/or what action did they take?
(Their written statements or presence as witnesses are
preferable to your statements, if necessary to your case.)

TO THE BUSINESS:

Is there a problem at all? If so, why are you not responsible? When
did you learn of it? _____

From whom did you learn this? _____

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What actions did you take? _____

Were other business/service persons involved? _____

_____ Who _____

_____ When _____

_____ Why _____

_____ What did they do/or what was their role in this matter? (Their written statements or presence as witnesses are preferable to your statements, if necessary to your case.) _____

WHAT HAPPENS AFTER THE ARBITRATOR MAKES A DECISION?

In the initial agreement to arbitrate each party has given an arbitrator the right to make a final decision in the dispute. The parties may, of course, settle their own dispute at any time—after they have signed the agreement, during the hearing, or before the decision is given by the arbitrator.

But once the decision is made by the arbitrator, the parties are legally bound to follow it. In virtually all cases the parties comply with the arbitrator's decision. If necessary, the "winner" may take the award to an appropriate court and have it enforced as if it were a judgment or order of the court—without a rehearing of the case. In rare cases, either party may petition the Bureau to request the arbitrator to modify or clarify the final decision if it contains errors of fact or is unclear. This is done by making a written request to the BBB which, if it finds the request to have some merit, will make a copy for the other party to respond to and then send it to the arbitrator. The arbitrator's response to such a request is final.

ATTACHMENT D

- | | |
|------------------------------------|------------------------------|
| 1. Minneapolis/St. Paul, Minnesota | 21. Reno, Nevada |
| 2. Buffalo, New York | 22. Salt Lake City, Utah |
| 3. San Francisco, California | 23. Seattle, Washington |
| 4. Des Moines, Iowa | 24. Omaha, Nebraska |
| 5. Philadelphia, Pennsylvania | 25. Pittsburgh, Pennsylvania |
| 6. Milwaukee, Wisconsin | 26. Cleveland, Ohio |
| 7. Denver, Colorado | 27. Indianapolis, Indiana |
| 8. Louisville, Kentucky | 28. Wichita, Kansas |
| 9. Charlotte, North Carolina | 29. St. Louis, Missouri |
| 10. Memphis, Tennessee | 30. New York, New York |
| 11. Portland, Oregon | 31. Oklahoma City, Oklahoma |
| 12. Boston, Massachusetts | 32. Birmingham, Alabama |
| 13. Detroit, Michigan | 33. Miami, Florida |
| 14. Washington, D.C. | 34. Atlanta, Georgia |
| 15. Houston, Texas | 35. Jackson, Mississippi |
| 16. Dallas / Fort Worth, Texas | 36. Little Rock, Arkansas |
| 17. New Orleans, Louisiana | 37. Chicago, Illinois |
| 18. Albuquerque, New Mexico | 38. Honolulu, Hawaii |
| 19. Phoenix, Arizona | 39. Boise, Idaho |
| 20. Los Angeles, California | |

ATTACHMENT E

The General Motors Consumer Arbitration Program is ordinarily limited to owners who still possess the General Motors car which had a mechanical problem or failure. If your complaint involves one or more of the following components manufactured [through the date the Commission accepts this Consent Agreement pursuant to Section 3.25(f) of the Federal Trade Commission's Rules of Practice]: a model THM 200 transmission failure, a camshaft failure in a 305 or 350 cubic-inch-displacement V-8 gasoline engine produced in a plant operated by General Motors Chevrolet Division since 1974, or a failure in the fuel injection pump in a 350 cubic-inch-displacement diesel engine produced in a plant operated by General Motors Oldsmobile Division, General Motors is extending eligibility to you for the General Motors Arbitration Program even if you no longer have the General Motors car which had the problem.

A handbook is available that tells you more about the procedures and other eligibility rules for the Arbitration Program. This free handbook is available by calling toll-free 800-_____, or by writing:

General Motors Corporation

—Address—

—City, State, ZIP Code—

Please save this letter. If you decide to arbitrate, this letter is important to show your eligibility.