2019 AUDIT OF
BBB AUTO LINE

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

Marc Winerman
mwinerman@gmail.com

INTRODUCTION AND SUMMARY

BBB AUTO LINE is an informal dispute settlement process that offers mediation and arbitration services to resolve automobile warranty disputes – including disputes subject to the Federal Magnuson-Moss Warranty Act[1] and disputes under state lemon laws. The program is administered by BBB National Programs, Inc., located in McLean, VA. Until June 1, 2019, it was administered by the Council of Better Business Bureaus and, until October 2020, BBB National Programs, Inc. was located in Arlington, VA.

Like its predecessor, BBB National Programs, Inc. works with local Better Business Bureau offices.

Under the Magnuson-Moss Act, if a "mechanism" like BBB AUTO LINE meets standards set out in the statute and its implementing regulation, FTC Rule 703,[2] manufacturers can insist on "prior resort" – in other words, they can insist that consumers use the mechanism before they pursue judicial remedies under the Act.[3] Key elements of these standards require warrantors to take steps to alert consumers to the program, and require the program to meet standards for fairness and efficacy. The regulations further require that the mechanism maintain certain records and arrange an annual audit "to determine whether the Mechanism and its implementation are in compliance with this part"; among other things, this audit must include a consumer survey that serves, in part, as a check on its records, as well as scrutiny of efforts by "warrantors" (manufacturers) to alert consumers to the program.[4] State lemon laws impose further requirements and two states – Florida and Ohio – impose their own audit requirements.

The auditor concludes that:

- BBB AUTO LINE itself substantially complies with the requirements of Federal, Florida, and Ohio law applicable to "mechanisms." He offers recommendations to BBB AUTO LINE itself,[5] but none warrant a qualification to the finding of substantial compliance.

- Sixteen manufacturers – Bentley, BMW (including Mini Cooper), Ferrari, Ford, General Motors, Hyundai (including Genesis), Jaguar (including Land Rover), Kia, Lamborghini, Lotus, Maserati, Mazda, Mercedes-Benz (as to consumers in

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1 15 U.S.C. § 2301 et seq.

2 16 C.F.R. § 703.

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

4 16 C.F.R. § 703.6.

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

California), Nissan (including Infiniti), Rolls Royce, and Volkswagen (including Audi) – are in substantial compliance for purposes of each applicable audit.[6]

- Many findings of substantial compliance for manufacturers are qualified by questions and reservations, but only a few (and far fewer than last year) are subject to *noteworthy* qualifications. Among manufacturers and problems identified before, the sole remaining noteworthy reservation for this year's Federal audit is for Ferrari, which didn't submit documents to show compliance with a key rule.[7] Bentley also has an ongoing problem for purposes of the Florida audit, which it has now committed to correct.

  The auditor also has two noteworthy reservations for Rolls Royce, which wasn't audited before.[8] Finally, Hyundai's latest submission raises novel and noteworthy issues with respect to compliance with Federal regulations vis-à-vis consumers in California, because its warranty now incorporates a binding arbitration program for California that's unrelated to BBB AUTO LINE.

* * *

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

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

[7] FTC Rule 703.2(e) requires that:

> Whenever a dispute is submitted directly to the warrantor, the warrantor shall, within a reasonable time, decide whether, and to what extent, it will satisfy the consumer, and inform the consumer of its decision. In its notification to the consumer of its decision, the warrantor shall include the information required in § 703.2 (b) and (c) of this section.

Rules 703.2(b) and (c), in turn, require nine disclosures about an "informal dispute settlement mechanism" that the manufacturer incorporates into a warranty, including "the availability of the program."

[8] Rolls Royce also tells its consumers that it participates in twelve states, including Ohio; the BBB AUTO LINE website, though, omits Ohio. The auditor treats this as a noteworthy reservation as to consumers in Ohio.

consumers accept the results that they're bound, and, by virtue of a consumer's decision, the manufacturer is bound as well.

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

- BBB AUTO LINE processed 4734 complaints in 2019 that weren't found ineligible at the outset or subsequently withdrawn.[9] Of these, 62.5% were resolved (at least initially) through mediation. While not all of these consumers were ultimately satisfied, some 1166 complaints, about 24.6% of the total of all eligible and non-withdrawn complaints, ended in repurchase or replacement remedies *through mediation*. Further, of those consumers who went to arbitration, another 638 were awarded repurchase or replacement remedies (though some consumers rejected such awards, perhaps preferring to seek broader relief, including attorney's fees, in court). These 638 represent 35.9% of arbitrated cases and 13.5% of all eligible and non-withdrawn complaints. Combining the complaints that led to repurchase or replacement through mediation and those that produced such results through arbitration, 38.1% led to repurchase or replacement settlements or awards through the program – and they did so far more often through mediation than through arbitration.

- The national results showed a rising trend for repurchase/replacement remedies from 2016 (32.9%) to 2017 (35.8%) through 2018 (41.5%). This year's figure dropped back a bit (to 38.1%), but is still higher than in two of the three preceding years.[10]

- While consumers overall rate of securing repurchase or replacement remedies dropped a bit this year, their rate of obtaining replacements or repurchases in arbitrated cases alone improved (to 35.9%), while their rate of such success in mediation dropped (to 39.4%), from an unusual high (of 47.3%) in 2018.[11]

This doesn't mean that the process is a slam-dunk for consumers. 953 complaints nationally, or 53.7% of those that went to arbitration, yielded "denials" for consumers. But more relevant, in the auditor's view, is that the "no awards" represented 20.1% of all eligible and non-withdrawn complaints. Viewed together with the 38.1% figure for repurchase and replacement remedies, and the remaining consumers who got some other remedy (albeit not necessarily a remedy that ultimately satisfied them[12]), this suggests a fair and well-balanced program.[13]

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

10 Chapter 3, Table III-7A.

11 Chapter 3, Tables III-9A and III-11A.

12 Chapter 2, Section II.D.

13 The other remedies generally included extended service plans, reimbursement of past repair expenses, cash settlements, and, most commonly, repairs. Repairs are specifically recognized as an appropriate form of remedy by the Magnuson-Moss Act as well as Florida and Ohio, and a fuller

As a gloss on the above statistics, Chapters III.G, IV.G, and V.G compare the results in cases brought by attorneys to cases where consumers didn't have lawyers. The discussion in that section, moreover, now includes further breakouts, for arbitrated cases, by the consumer's mode of participating in the arbitration.[14]

* * *

The audit provision of Federal law (Florida and Ohio have similar provisions[15]) includes a general requirement in subsection (a) and sets forth several specific mandates in subsection (b):

> (a) The Mechanism shall have an audit conducted at least annually, to determine whether the Mechanism and its implementation are in compliance with this part. All records of the Mechanism required to be kept under § 703.6 of this part shall be available for audit.
>
> (b) Each audit provided for in paragraph (a) of this section shall include at a minimum the following:
>
> > (1) Evaluation of warrantors' efforts to make consumers aware of the Mechanism's existence as required in § 703.2(d) of this part;
> >
> > (2) Review of the indexes maintained pursuant to § 703.6(b), (c), and (d) of this part; and
> >
> > (3) Analysis of a random sample of disputes handled by the Mechanism to determine the following:
> >
> > > (i) Adequacy of the Mechanism's complaint and other forms, investigation, mediation and follow-up efforts, and other aspects of complaint handling; and
> > >
> > > (ii) Accuracy of the Mechanism's statistical compilations under § 703.6(e) of this part. (For purposes of this subparagraph "analysis" shall include oral or written contact with the consumers involved in each of the disputes in the random sample.)

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

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discussion of the issues posed by repair remedies appears at Ch. 2, Section II.D.

[14] Was the hearing conducted in person, by phone, or in writing?

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

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

- Reviewed manufacturers' submissions;

- Reviewed certain materials available on the BBB AUTO LINE website;

- Reviewed recordings of six hearings, including two from Florida and two from Ohio.

- Reviewed aspects of over 200 individual case files, and, for non-attorney cases, using the survey to target particular files for scrutiny.

The targeted file reviews, for reasons discussed further below, provide a nuanced way to evaluate BBB AUTO LINE's record-keeping and performance, and are key to much of the audit. Even with 401 "national" interviews and over 600 for all three populations, some questions were inevitably directed to a relatively small subset of the total – leading to relatively large margins of error.[16] When margins of error reach 20%, for example, a 50% "yes" response (on a question with a "yes" or "no" answer) would be consistent with reported BBB AUTO LINE figures ranging anywhere from 30% to 70%. While a "macro" comparison of the survey's results to BBB AUTO LINE's aggregate figures can be very useful for some questions, on others, particularly those directed to relatively few consumers, the macro analysis can become a rather blunt instrument. But the auditor's "micro" analysis – looking at "consumer agreement" figures showing the rate of concordance, together with targeted reviews of seemingly discordant files – enables a more pointed analysis even on "small-number" questions.[17]

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

[17] In addition to the materials he reviewed this year, the auditor previously reviewed training materials for arbitrators. He also visited the office of the BBB of West Florida in Clearwater, Florida in 2015; through 2019, that office played a different role in the program than other local BBB offices, with several staff focusing on BBB AUTO LINE cases in the region.

CHAPTER 1:
MANUFACTURER
WARRANTY MATERIALS

I. Introduction

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

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

A. FTC Rule 703.2

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

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

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[18] 16 C.F.R. § 703.2.

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

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

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

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

Rule 703.2(g) requires warrantors to act in good faith in determining whether, and to what

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

Disclosure obligations can arise at three specified times.

(1) Rules 703.2(b) and (c) require certain disclosures at the time of sale, and Rule 703.2(b) disclosures must appear in the warranty itself.[22]

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extent, they will abide by the program's decision. Finally, Rule 703.2(h) requires warrantors to "comply with any reasonable requirements imposed by the Mechanism to fairly and expeditiously resolve warranty disputes."

[22] Rule 703.2(b) provides:

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

Rule 703.2(c) provides:

> The warrantor shall include in the written warranty or in a separate section of materials accompanying the product, the following information:
>
> (1) Either
>
> > (i) A form addressed to the Mechanism containing spaces requesting the information which the Mechanism may require for prompt resolution of warranty disputes; or
> >
> > (ii) A telephone number of the Mechanism which consumers may use without charge;
>
> (2) The name and address of the Mechanism;
>
> (3) A brief description of Mechanism procedures;
>
> (4) The time limits adhered to by the Mechanism; and
>
> (5) The types of information which the Mechanism may require for prompt resolution of warranty disputes.

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

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

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

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

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

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

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

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

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

[25] This section has been revised and refined this year.

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

[27] There's no separate statutory definition of an IDSM.

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

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[28] 15 U.S.C. § 2310(a) provides:

> **(a) Informal dispute settlement procedures; establishment; rules setting forth minimum requirements; effect of compliance by warrantor; review of informal procedures or implementation by Commission; application to existing informal procedures**
>
> (1) Congress hereby declares it to be its policy to encourage warrantors to establish procedures whereby consumer disputes are fairly and expeditiously settled through informal dispute settlement mechanisms.
>
> (2) The Commission shall prescribe rules setting forth minimum requirements for any informal dispute settlement procedure which is incorporated into the terms of a written warranty to which any provision of this chapter applies. Such rules shall provide for participation in such procedure by independent or governmental entities.
>
> (3) One or more warrantors may establish an informal dispute settlement procedure which meets the requirements of the Commission's rules under paragraph (2). If—
>
> > (A) a warrantor establishes such a procedure,
> >
> > (B) such procedure, and its implementation, meets the requirements of such rules, and
> >
> > (C) he incorporates in a written warranty a requirement that the consumer resort to such procedure before pursuing any legal remedy under this section respecting such warranty,
>
> then (i) the consumer may not commence a civil action (other than a class action) under subsection (d) of this section unless he initially resorts to such procedure; and (ii) [provisions applicable to class actions]. In any civil action arising out of a warranty obligation and relating to a matter considered in such a procedure, any decision in such procedure shall be admissible in evidence.
>
> (4) The Commission on its own initiative may, or upon written complaint filed by any interested person shall, review the bona fide operation of any dispute settlement procedure resort to which is stated in a written warranty to be a prerequisite to pursuing a legal remedy under this section. If the Commission finds that such procedure or its implementation fails to comply with the requirements of the rules under paragraph (2), the Commission may take appropriate remedial action under any authority it may have under this chapter or any other provision of law.

[29] 15 U.S.C. § 2310(b) provides:

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

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

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

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

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

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

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

31 See notes 28, 29.

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

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

Further, the Commission subsequently reasserted its authority to proscribe references to binding arbitration in a warranty in 1999 and 2015.[34] Assuming (as the auditor does) that the Commission had authority to issue such a rule,[35] this may well suggest that the notice

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

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

> When the Commission first promulgated Rule 703.5(j) in 1975, it did so based on the MMWA's language, legislative history, and purpose: to ensure that consumer protections were in place in warranty disputes. The Commission explained that ''reference within the written warranty to any binding, non-judicial remedy is prohibited by the Rule and the Act.'' The Commission's underlying premise was that its authority over Mechanisms encompassed all nonjudicial dispute resolution procedures referenced within a written warranty, including arbitration.
>
> During the 1996–97 rule review, some commenters asked the Commission to deviate from its position that Rule 703 bans mandatory binding arbitration in warranties. The Commission, however, relying on its previous analysis and the MMWA's statutory language, reaffirmed its view that the MMWA and Rule 703 prohibit mandatory binding arbitration. As the Commission noted, Section 2310(a)(3) of the MMWA states that, if a warrantor incorporates an IDSM provision in its warranty, ''the consumer may not commence a civil action (other than a class action) . . . unless he initially resorts to such procedure.'' The Commission concluded ''Rule 703 will continue to prohibit warrantors from including binding arbitration clauses in their contracts with consumers that would require consumers to submit warranty disputes to binding arbitration.''

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

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

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

requirements in Rule 703.2 also apply, under the Commission's reading, to any arbitration process mentioned in a warranty, either voluntary or mandatory, and either with or without reference to prior resort [36]

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Finally, the auditor notes two related issues.

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

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

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

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

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

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

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

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

2. When does a consumer "experience" a warranty dispute?

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

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

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

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

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

[38] See the discussion that immediately follows.

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

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

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

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

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[39] 40 Fed. Reg. 60190 (1975).

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

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

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

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

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

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

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

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

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

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participating in T.V. 'talk' shows or by providing materials for use by consumer columnists." *Id.* at 60199.

[44] Chapter 3, Table III-4.

4. Rule 703.2(e) Notice

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

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

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

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

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

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

information, the auditor finds, not a "question," but a more clear-cut "reservation."[48]

5. Federal Prohibition and State Mandates (and Prohibitions)

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

- Rule 703.2(d) *permits* manufacturers to "encourage consumers to seek redress directly from the warrantor." And Rule 703(e)(5) even allows the program to extend the 40-day time limit to complete a case for seven additional days "in those cases where the consumer has made no attempt to seek redress directly from the warrantor."

- But Rule 703.2 (d) *forbids*, for purposes of Magnuson-Moss Act relief, "expressly requir[ing] consumers to seek redress directly from the warrantor."[49]

- Some state lemon laws, meanwhile, *require* (or allow manufacturers to require) a species of such resort, in providing for notice to manufacturers and the opportunity for a final repair opportunity before consumers can pursue remedies (or benefit from presumptions) under the state's lemon law. Florida, among other, has such a requirement.[50]

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

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

[50] Florida's lemon law provides:

> § 681.104 Nonconformity of motor vehicles.—
>
> (1)(a) After three attempts have been made to repair the same nonconformity, the consumer shall give written notification, by registered or express mail to the manufacturer, of the need to repair the nonconformity to allow the manufacturer a final attempt to cure the nonconformity. The manufacturer shall have 10 days, commencing upon receipt of such notification, to respond and give the consumer the opportunity to have the motor vehicle repaired at a reasonably accessible repair facility within a reasonable time after the consumer's receipt of the response. The manufacturer shall have 10 days, except in the case of a recreational vehicle, in which event the manufacturer shall have 45 days, commencing upon the delivery of the motor vehicle to the designated repair facility by the consumer, to conform the motor vehicle to the warranty. If the manufacturer fails to respond to the consumer and give the consumer the opportunity to have the motor vehicle repaired at a reasonably accessible repair facility or perform the repairs within the time periods prescribed in

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

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

6. Limitations in Manufacturer-Specific Program Summaries

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

Roughly half the manufacturers that were audited include language in their warranty materials signaling that access was limited by age and mileage, with some noting that there might be other limits as well. In the auditor's view, a relatively precise description of the

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

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

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

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

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

[55] Some program summaries make the program available for only part of the time covered by the basic limited warranty (or "bumper-to-bumper" warranty). Others extend to the end of the basic limited warranty, but don't extend beyond that for parts with longer warranties.

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

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

* * * *

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

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

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

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

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

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

The opinion identified, as remedies that didn't have to be made available, "consequential damages, diminution of value, attorney's fees and costs"[60] – a list that didn't include repurchase (refund)[61] or replacement remedies. These remedies *typically* aren't available under a manufacturer's written warranty and *sometimes* (at least today[62]) aren't available for non-lemon law warranty claims under a program summary. However, in addition to its broad reference that IDSMs needn't have available "remedies provided by state law," the opinion expressly addressed repurchase or replacement remedies in another passage. It explained that the Magnuson-Moss Act allowed warrantors to offer a "full warranty," whose terms, defined by the Act,[63] *do* include "replacement or refund." In the context of a full warranty, this was an example of something "deemed by the Act to be part of the warranty and . . . therefore capable of 'cure' by order of an IDSM decision."[64] In other words, a replacement or refund remedy would be deemed to be incorporated into the warranty for purposes of the FTC rule (and thus would need to be available for relief in the Mechanism's proceedings) *if* the manufacturer offered a full warranty.

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

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which the manufacturers aren't bound even if the consumers accepted the results.

[59] Advisory Opinion, at 2.

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

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

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

[63] 15 U.S.C. § 2304.

[64] Advisory Opinion, at 5.

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

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

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

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

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

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

"Reservations" are reserved for seemingly straightforward issues. For example, was information omitted that Rule 703.2(b) or (c) expressly requires to be disclosed? Was information covered by subsection (b) placed on the face of the warranty, as expressly required? Did the manufacturer provide any evidence of compliance with subsection (d)?

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

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

- ***Some violations seem less likely to harm consumers than others.*** While the auditor hesitates to downplay any violations, he notes that some seem more likely to harm consumers than others. For example, among the items whose disclosure is required by Rules 703.2(b) and (c), manufacturers most commonly omit the item in Rule 703.2(c)(5) – "the types of information which the Mechanism may require for prompt resolution of warranty disputes." Consumers who get the other required information, though, will soon learn (when they contact BBB AUTO LINE) what information they need to provide.[66]

- ***Raising the bar***. The auditor has "raised the bar" over the years when certain reservations have been (repeatedly) highlighted to manufacturers in past audits (which BBB AUTO LINE then sent to them).

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

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

TABLE 1

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

ALERTING CONSUMERS TO THE PROGRAM WHEN THEY EXPERIENCE WARRANTY DISPUTES	
5. Additional "steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes." Rule 703.2(d)	In addition to a prominent reference to the program in an owner's or warranty manual, further steps are appropriate (and may well be necessary) to satisfy the rule. To this end, some manufacturers have submitted, for example, signage provided to dealerships, sometimes with accompanying materials explaining where to post them. Some have provided training materials or service manuals for dealership or manufacturer staff; these materials bear on Rule 703.2(d), particularly to the extent that they evidence policies to tell consumers about the program. Information required by Rule 703.2(e) (see below) is also relevant to Rule 703.2(d). But such information isn't sent until the consumer submits a dispute directly to the manufacturer and the manufacturer responds, and the obligations under Rule 703.2(d) may well arise sooner. As explained in the text, the auditor doesn't treat evidence of additional steps as essential to finding substantial compliance, though a strong argument could be made that such evidence *is* essential. Rather, he recognizes such efforts by finding that a manufacturer has made "commendable" or "highly commendable" efforts to comply with Rule 703.2(d), and thus provides to regulators the information to inform their own judgments about individual manufacturer's compliance.
DISCLOSURES WHEN A MANUFACTURER RESOLVES A DISPUTE SUBMITTED DIRECTLY TO IT	
6. Providing information when consumers are told of the manufacturer's decision in a dispute submitted directly to the manufacturer. Rule 703.2(e)	See Section A.4 of this chapter.

NOTES

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

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

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

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

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

III. Obligations under Florida Provisions

Preliminarily, Florida has a Lemon Law[68] that, until 2011, was administered by the Department of Agriculture and Consumer Services. Administration was then transferred to the Department of Legal Affairs in the Office of the Attorney General, and the former agency repealed its regulations.[69] Although the Department of Legal Affairs hasn't issued replacement regulations, BBB AUTO LINE continues to file (though now with the Department of Legal Affairs) the report that would have been required by those regulations. Further, BBB AUTO LINE treats the applicable regulations as if they were still operative.

As set forth on the web page of the Florida Attorney General, the following manufacturers were certified for participation in BBB AUTO LINE in Florida during 2018[70]:

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

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

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[68] FLA. STAT. § 681.

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

[70] *See* http://myfloridalegal.com/pages.nsf/Main/7629400e4ef8a25285256cc9005c5a5b. (examined periodically by the auditor). Florida has been issuing six-month provisional certifications; covering the months of April through September and October through March, so the 2018 calendar year was covered by three such certifications for each manufacturer. *See* FLA. STAT. § 681(5)(a) (providing for renewals "for a period not to exceed 1 year").

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

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

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

Section 681.108(1) incorporates into Florida law all the disclosure (and other) requirements under Federal Rule 703.2.[77] For purposes of this audit, the auditor assumes that the "substantial compliance" required by Section 681.108(1) would be satisfied, even if the warrantor's obligations under Federal Rule 703.2 were fully incorporated into Florida law, by compliance with Florida's more specific disclosure provision. And the current auditor, like his

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

[73] FLA STAT. § 681.104(1)(a) and (b).

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

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

[76] *Id. at* § 681.103(3).

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

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

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

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

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

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

[79] FLA STAT. § 681.103(2), (3).

[80] Former Rule 5J-11.006(2)(e).

[81] Former Rule 5J-11.004.

IV. Obligations under Ohio Provisions

The following manufacturers were certified to use BBB AUTO LINE in Ohio in 2019:

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

Again, the applicable Federal provisions in many respects create a framework on which state regulation builds,[82] and Ohio law tracks essential aspects of those federal provisions. But Ohio also includes additional substantive provisions and imposes additional disclosure obligations, both minor[83] and more substantial.

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

As to prior resort, while federal law allows manufacturers to insist on prior resort if they have a qualifying arbitration program, Ohio requires manufacturers to obtain state certification in order to do so – consumers have to use BBB AUTO LINE before pursuing remedies if (and only if) the manufacturer is certified and the consumer gets prior notice.[86]

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82 See note 71.

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

84 OHIO REVISED CODE § 1345.74(A) provides:

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

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

86 OHIO REVISED CODE § 1345.77(B) provides:

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

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

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

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

(1) A statement of the availability of the board;

(2) The board's name, address, and a telephone number which consumers may use without charge;

(3) A statement of the requirement that the consumer resort to a qualified board before initiating a legal action under the act, together with a disclosure that, if a consumer chooses to seek redress by pursuing rights and remedies not created by the act, resort to the board would not be required by any provision of the act. This statement will be deemed to be disclosed if the warrantor or the warrantor's agent either posts a sign in a conspicuous place, or gives the consumer a separate form at the time of the initial face-to-face contact, which clearly and conspicuously contains the following language in boldface ten point type:

"NOTICE

OHIO LAW REQUIRES YOU TO USE A QUALIFIED ARBITRATION PROGRAM BEFORE SUING THE MANUFACTURER OVER NEW CAR WARRANTY DISPUTES. FAILURE TO ARBITRATE YOUR CLAIM MAY PRECLUDE YOU FROM MAINTAINING A LAWSUIT UNDER SECTION

Taken together, these provisions appear to require:

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

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

* * *

1345.75 OF THE REVISED CODE."

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

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

89 OHIO REVISED CODE § 1345.74(A).

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

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

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

As noted above, the auditor has previously noted deficiencies among manufacturers in complying with some of these Ohio-specific requirements, but those deficiencies have now (to the best of the auditor's ability to detect) been remedied.

V. Audit results

A. Introductory Observations and Summary of Findings

1. Summary of Findings

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

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

2. Manufacturer Submissions

The discussion that follows analyzes manufacturers' submissions, including consumer-facing materials (the bulk of most submissions) and internal materials. The key manufacturer submissions were warranty and owner's manuals, and the auditor's findings are presented in manufacturer-specific charts.[95] In reviewing other materials, such as training materials or

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

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

[95] When manufacturers presented multiple warranty manuals for different models and years, the auditor generally focused on one of the most recent ones, with glances at others (particularly those with substantially different files sizes) to confirm uniformity. When manufacturers provided separate warranty and owners' manuals, the auditor focused on one of each. Some manufacturers also submitted lemon law or dispute resolution supplements, with detailed state-by-state breakouts, and the auditor reviewed provisions applicable to Federal, Ohio, and Florida law. Also, manufacturers

dealer's manuals, the auditor's initial screen was on whether they describe the program in a way that might inform dealer or manufacturer staff who in turn might inform consumers.[96] Of particular interest to the auditor were passages that describe *when* consumers should be told about BBB AUTO LINE.

typically included California-specific sections in their "core" warranty manual; the auditor examined these as well, but only for compliance with Federal standards.

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

B. Bentley Motors, Inc.

Bentley participates in all states, with certification in Florida.

1. Consumer-Facing Materials

Bentley's consumer-facing submissions included five Owners' Manuals, which include warranty materials. Page references in the text below are to the Flying Spur Manual.

Federal Disclosure Provisions	
(1) Rule 703.2 (b) (and Rule 703.1(h) to define "the face of the warranty")	The "WARRANTY AND SERVICE" section starts on page 356, with a subheading for "Warranty" on page 358. A further subheading of "Consumer Protection Information" appears on page 367. These passages include most of the information required by subsection (b), although the first fails to cross-reference the fuller discussion that follows on page 367. (Reservation.) The placement raises some question about conspicuousness. (Question.) There's an initial reference to BBB AUTO LINE on page 358 (before the "Warranty" subheading), and the information required by subsection (b) appears at top of page 359. If pages 358 and 359 are visible simultaneously, the auditor believes the combined pages can reasonably be treated, collectively, as the first "page" (the "face") of the warranty, and thus satisfying the placement requirement. Otherwise, there could be a violation – but seemingly a somewhat technical one – of the rule. (Possible technical reservation.)
(2) Rule 703.2(c)	The required information appears at page 367.[97]
(3) Rule 703.2(d) – "steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes"	Bentley's notice to consumers after they file complaints with the manufacturer (discussed under item (5)) is a factor in assessing compliance with Rule 703.2(d). As to disclosure *before* consumers contact Bentley, though, the first mention of BBB AUTO LINE is relatively late in its manual. There's a references to "Consumer protection information" in the table of contents, but it appears at the end of a long table of contents and

[97] Also, Bentley imposes age, mileage, and other limits on the availability of the program, but only signals the age and mileage limits. (See Section II.A.6 of this chapter.). On some technical matters that the auditor doesn't believe merit a question or reservation, Bentley obscures the optional nature of mediation, and sometimes uses problematic text about "agree[ing]" with a mediated solution. See Section II.B of this chapter, Notes to Table 1I.

	doesn't expressly mention BBB AUTO LINE or informal dispute resolution. (Question.)
(4) Rule 703.2(d) – prohibition on requiring that consumers use manufacturer's review processes before filing with BBB AUTO LINE	The text says that BBB AUTO LINE is available if "we are unable to resolve" an issue at the manufacturer level (page 359). But the previous sentence "request[s]" (in language that's permissive but not obligatory) consumers to first bring their concerns to the manufacturer. (Question.)
(5) Rule 703.2(e)	Bentley has provided templates of letters telling consumers about BBB AUTO LINE *both* when a complaint is received and when it's resolved. Though the letters don't contain all the information required by Rule 703.2(e) (including all the information listed under subsections (b) and (c)), they do direct consumers to BBB AUTO LINE, and, when they contact BBB AUTO LINE, they'll get most of the required information. Even then, though, they likely won't get information about prior resort obligations under Magnuson-Moss that Bentley includes in its manuals. (Question.)
Florida Disclosure	
(F1) Section 681.103(3) – Clear and conspicuous disclosure of how and where to file a claim	For reasons discussed in Items(1) and (3) under Federal disclosure provisions, the placement of Bentley's discussion of BBB AUTO LINE towards the back of the owner's manual raises some question as to whether the disclosures are sufficiently clear and conspicuous. (Question.)
Note on prior resort	Bentley tells consumers that some states require consumers to use BBB AUTO LINE (pages 358 and 368), but, on separate pages and in separate sections (although in somewhat close proximity), it sends a different message. On page 359, it describes two circumstances where consumers must first resort to BBB AUTO LINE, but says that, otherwise, "[y]ou are not required to use BBB AUTO LINE." (Page 359.) The latter statement is in tension both with the earlier text and with Florida law for certified manufacturers. Bentley has indicated that it views the latter statement as an "inaccuracy" and will act to remove it. (Noteworthy reservation.)

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

In addition to the letters noted in the discussion of Rule 703.2(e), Bentley has noted that its customer service center has a small staff whose members are "aware of and can advise"

customers about the availability of BBB AUTO LINE. While it would be useful to know what specific triggers will prompt disclosures about the program to consumers who didn't independently raise it, this still indicates a policy of an additional disclosure when complaints reach the manufacturer level.

Bentley also provided an internal manual this year, but the manual doesn't advise dealers about when to alert consumers to BBB AUTO LINE.

3. Conclusion

Bentley is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal and Florida law, with the qualifications, including a noteworthy reservation, that are noted above.[98]

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

C. BMW (with Mini Cooper)

BMW (with Mini Cooper) participates in eleven states: Arkansas, California, Georgia, Kentucky, Iowa, Idaho, Massachusetts, Maryland, Minnesota, Pennsylvania, and Virginia. In those states, it requires prior resort for consumers to pursue Magnuson-Moss remedies[99] and, thus is clearly subject to audit by Rule 703.

1. Consumer-Facing Materials

BMW provided copies of 2019 warranty manuals for BMW cars and, though it didn't provide a Mini Cooper manual, the auditor retrieved one from the manufacturer's web site.[100] The discussion of BBB AUTO LINE in the Mini Cooper manual is substantially similar to the discussion in the BMW manual, and references to "BMW" in the chart that follows include Mini Cooper.

Federal Disclosure Provisions	
(1) Rule 703.2 (b) (and Rule 703.1(h) to define "the face of the warranty")	BMW provides the required information, but it appears *after* the warranty text and not on the face of the warranty. (Reservation.) When the text does appear, it's under a heading of "BBB Auto Line" and the description of prior resort is highlighted by the word "IMPORTANT."
(2) Rule 703.2(c)	BMW provides the required information.[101]
(3) Rule 703.2(d) – "steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes"	The relevant (and parallel) discussions begin on page 35 of the manual. The discussions are under a prominent heading naming BBB AUTO LINE, and the program's name also appears, in bold-faced text, in the table of contents. The auditor believes this is a reasonably prominent disclosure, although its separation from the actual warranty text might raise some question about its prominence. (Possible question.)

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99 2018 Manual, at 36.

100 https://www.miniusa.com/content/dam/mini/PDF/warranties/2020_All_Models.pdf

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

(4) Rule 703.2(d) – prohibition on requiring that consumers use manufacturer's review processes before filing with BBB AUTO LINE	After describing procedures to contact the manufacturer, BMW provides that BBB AUTO LINE is available "if your concern is still not resolved to your satisfaction." (Question.)
(5) Rule 703.2(e)	Material provided for BMW but not for Mini Cooper. For the current year, given the similarity between BMW's and Mini Cooper's documentation and their use of a common post office box to receive consumer complaints, the auditor assumes that Mini Cooper also uses the same correspondence as BMW. However, while the material contains much of the required information, and most importantly alerts consumers that BBB AUTO LINE is available, it doesn't mention prior resort. (Reservation.)

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

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

3. Conclusion

BMW (with Mini Cooper) is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal law, with the qualifications noted above.[102]

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

D. Ferrari

Ferrari participates only in California and Florida, but isn't certified in Florida. Although Ferrari was asked for materials previously, it didn't respond until 2018.

1. Consumer-Facing Materials .

Federal Disclosure Provisions	
(1) Rule 703.2 (b) (and Rule 703.1(h) to define "the face of the warranty")	Ferrari provides the required information with the proper placement. However, except for a California-specific discussion, the manual describes BBB AUTO LINE's availability in general terms and doesn't make explicit that it's available in Florida. (Question.)[103]
(2) Rule 703.2(c)	Except in a section directed exclusively to California, Ferrari omits most of the relevant information. (Reservation).
(3) Rule 703.2(d) – "steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes"	A brief discussion of BBB AUTO LINE is set off in a box, and the capitalized words "BBB AUTO LINE" appear repeatedly in the box.
(4) Rule 703.2(d) – prohibition on requiring that consumers use manufacturer's review processes before filing with BBB AUTO LINE	The auditor doesn't believe that there's a problem. The California-specific discussion does provide, but in text that the auditor views as permissive rather than an express requirement, "If you have a problem arising under a Ferrari written warranty, we *encourage* you to bring it to our attention. If we are unable to resolve it, you may file a claim with BBB AUTO LINE."
(5) Rule 703.2(e)	None provided. (Noteworthy reservation; see discussion in Section I.A.4).

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

None provided.

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[103] The text refers to "certain states where BBB AUTO LINE is available."

3. Conclusion

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

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

E. Ford Motor Co.

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

1. Consumer-Facing Materials

Federal Disclosure Provisions	
(1) Rule 703.2 (b) (and Rule 703.1(h) to define "the face of the warranty")	Ford provides the required information, though some of it isn't properly placed. Thus, there's a reference to BBB AUTO LINE on page 2 of the warranty manual, in an introduction that precedes the section (starting on page 5) that's headed "limited warranty." The auditor considers this placement of the first reference at a spot that isn't precisely the first page of the booklet or the first page of the "limited warranty" section to warrant at most a technical reservation. But even that discussion doesn't mentioned prior resort, as required in the initial discussion by Rule 703.2(b) – although prior resort is later mentioned in a discussion at page 7. (Reservation.) In addition to discussions of BBB AUTO LINE in warranty manuals, the program is also discussed in Ford's owners' manuals. Somewhat confusingly, though, a reference to BBB AUTO LINE in the owners' manuals (e.g., at page 217 of the 2020 Mustang manual), describes participation as an "option," albeit in a paragraph that might imply that it's actually mandated.[105]
(2) Rule 703.2(c)	Ford addresses the subjects required by the rule.[106]

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[105] The text provides:

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

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

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

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

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

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

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

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

3. Conclusion

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

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

F. General Motors Co.

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

In the discussion that follows, the pages noted on the chart are based on the 2020 "Cadillac Limited Warranty and Owner Assistance Information."

1. Consumer-Facing Materials

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

[110] On a more technical matter, the introductory text describes the BBB AUTO LINE process as non-binding, and it would be more precise to communicate that an arbitrated decision *is* binding on the manufacturer if the consumer accepts it. Also, GM imposes age, mileage, and other limits on the availability and scope of the program, and doesn't signal this in their manuals. (See Section II.A.6 of this chapter.)

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

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

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

3. Conclusion

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

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

G. Hyundai Motor America (including Genesis)

Hyundai participates in all states, and is certified in Florida and Ohio. This year, it submitted warranty manuals, for both Hyundai and Genesis, for the 2019 and 2020 model years.[112] It also submitted other documents for Hyundai alone, including an "Owner's Handbook Supplement" with three subheadings on the cover; "State Disclosure Notices," "Consumer Assistance Process," and "Alternative Dispute Resolution Program." As to documents submitted for Hyundai only, the auditor assumes, for the current year, that there were similar documents for Genesis.[113] In the discussion that follows, references to Hyundai, unless the context specifically indicates otherwise, should be understood to refer to Genesis as well.

Before turning to the standard table format used for all submitting manufacturers, the auditor notes that Hyundai's manuals continued this year to tell consumers about BBB AUTO LINE; indeed, they continue to tell consumers that they *must* use BBB AUTO LINE before pursuing other remedies under the Magnuson-Moss Act.[114] But, in prominent discussions,[115] Hyundai also tells California consumers that, if they accept warranty services and haven't exercised an opt-out within thirty days of buying or leasing a car, they've agreed to use a *binding* arbitration program, with a $250 cost to consumers, that's administered by JAMS Mediation, Arbitration, and ADR services.[116]

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

[113] A factor that underlies the assumption is that, while Hyundai submitted a supplement only for Hyundai vehicles for the 2019 audit, it submitted parallel versions of the supplement, for both Hyundai and Genesis, for the 2018 audit. Additionally, the 2020 basic warranty manual that it submitted for Genesis this year refers consumers, at page 9, to the supplement that it didn't submit.

[114] *E.g.*, Hyundai 2020 Handbook, at 10, 13; Hyundai 2020 Supplement, at 5, 19 (California-specific discussion). There's also a Georgia-specific issue discussed below.

[115] The discussions appear towards the front of the manuals, and are highlighted in the tables of contents.

[116] The discussion appears at pages 13-15 of the "Hyundai 2020 Owner's Handbook and Warranty Information," immediately after the second reference to BBB AUTO LINE noted in the previous footnote. It also appears at pages 8-9 of the Supplement, after a general discussion of BBB AUTO LINE but before a series of state-specific discussions that generally reference BBB AUTO LINE.

Quoting from the Owner's Handbook, the discussion provides:

> **BINDING ARBITRATION FOR CALIFORNIA VEHICLES ONLY**
>
> PLEASE READ THIS SECTION IN ITS ENTIRETY AS IT AFFECTS YOUR RIGHTS
>
> If you purchased or leased your Hyundai vehicle in the State of California, you and we each agree that any claim or disputes between us (including between you and any

The manuals don't explain the relation between BBB AUTO LINE arbitration and JAMS arbitration. However, Hyundai has told BBB AUTO LINE that binding arbitration isn't intended to displace BBB AUTO LINE arbitration; rather, it's meant for consumers who either want to bypass BBB AUTO LINE or who reject a decision by a BBB AUTO LINE arbitrator.

This raises two sets of questions for the Magnuson-Moss audit. Does Hyundai's failure to clarify to consumers the intent that's described above undercut the disclosures it makes to comply with Rule 703.2? And, even if it now clarifies these matters to consumers, is the existence of a separate binding arbitration program inherently problematic, under Rule 703.5(j), for purposes of this audit?

1. Ambiguity about How the Arbitration Programs Relate to Each Other

Hyundai's discussions about binding arbitration may obscure the availability of BBB

> of our affiliated companies) related to or arising out of your vehicle purchase, use of your vehicle, the vehicle warranty, representations in the warranty, or the duties contemplated under the warranty, including without limitation claims related to the failure to conform a vehicle to warranty, failure to repurchase or replace your vehicle, or claims for a refund or partial refund of your vehicle's purchase price (excluding personal injury claims), shall be resolved by binding arbitration at either your or our election, even if the claim is initially filed in a court of law. If either you or we elect to resolve our dispute via arbitration (as opposed to in a court of law), such binding arbitration shall be administered by and through JAMS Mediation, Arbitration and ADR Services (JAMS) under its Streamlined Arbitration Rules & Procedures.
>
> We will pay all JAMS fees for any arbitration except for the initial filing fee of $250.* * *
>
> This agreement to arbitrate is intended to be broadly interpreted and to make all disputes and claims between us (including our affiliated companies) relating to or arising out of your vehicle purchase, use of your vehicle, or the vehicle warranty subject to arbitration to the maximum extent permitted by law. * * *
>
> Notwithstanding the above, you may file a lawsuit in small claims court for any claims that otherwise require binding arbitration. This agreement evidences a transaction involving interstate commerce and shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 - 16. * * *.
>
> IF YOU PURCHASED OR LEASED YOUR VEHICLE IN CALIFORNIA, YOUR WARRANTY IS MADE SUBJECT TO THE TERMS OF THIS BINDING ARBITRATION PROVISION. BY ACCEPTING BENEFITS UNDER THIS WARRANTY, INCLUDING HAVING ANY REPAIRS PERFORMED UNDER WARRANTY, YOU AGREE TO BE BOUND BY THESE TERMS. IF YOU DO NOT AGREE WITH THESE TERMS, PLEASE CONTACT US AT OPT-OUT@GMA.COM WITHIN THIRTY (30) DAYS OF YOUR PURCHASE OR LEASE TO OPT-OUT OF THIS ARBITRATION PROVISION.

AUTO LINE to California consumers, and this in turn might undercut Hyundai's compliance with: (1) Rule 703.2(b)(1), which requires a "statement" on the face of the written warranty about "the availability of the informal dispute settlement mechanism," and (2) Rule 703.2(d), which requires manufacturers to "take steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes."

In evaluating whether the ambiguity obscures matters and jeopardizes substantial compliance, the auditor looks, particularly with respect to Rule 703.2(d), to the "entire mosaic" of Hyundai's manuals – including both language indicating that the program is available to California consumers and other language that may suggest that the program was displaced.[117] Using information provided by BBB AUTO LINE at his request, it's clear that some consumers haven't been deterred from filing BBB AUTO LINE complaints for 2020 Hyundai vehicles, but it's very possible that others may have been.[118] Thus, the auditor finds noteworthy qualifications, with respect to California consumers, about Hyundai's substantial compliance with Rules 703.2(b)(1) and 703.2(d). More precisely, he finds a noteworthy question with respect to Rule 703.2(b)(1), and a noteworthy reservation with respect to Rule 703.2(d).[119]

Hyundai advises that it plans to revise future manuals, and will presumably address the ambiguity discussed in this subsection. Of course, such changes won't help California consumers who have the current manual and who might be deterred from using BBB AUTO LINE because they mistakenly believe that the program isn't available to them.

2. Intrinsic Problems with References to Binding Arbitration

What if the Hyundai manuals had clarified its expressed intent (and, going forward, what if future manuals do so?) Would there still be a problem?

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[117] The auditor believes that, in determining whether Hyundai has met at least some disclosure requirements of Rule 703.2, he should apply the sort of test the FTC uses in deception cases. "[T]he Commission will evaluate the entire advertisement, transaction, or course of dealing in determining how reasonable consumers are likely to respond. Thus, in advertising the Commission will examine 'the entire mosaic, rather than each tile separately.'" FTC Policy Statement on Deception, 103 F.T.C. 174, 175 (1984) (appended to *Cliffdale Assocs., Inc.*, 103 F.T.C. 110 (1984)) (quoting *FTC v. Sterling Drug*, 317 F.2d 669, 674 (2d Cir. 1963)).

There's arguably a distinction between Rule 703.2(b)(1) and Rule 703.2(d). Rule 703.2(b)(1) requires a "statement" about the program's availability, and there is such a statement notwithstanding potentially contradictory information. Rule 703.3(d), though, requires "steps reasonably calculated to make consumers aware of the Mechanism's existence," language that seems to more strongly invoke scrutiny of the "entire mosaic."

[118] During a 14-month period after the first case was filed with BBB AUTO LINE about a 2020 Hyundai, 8.2% of Hyundai's cases nationally involved 2020 vehicles; in California, though, only 3.0% of case involved 2020 vehicles.

[119] This reflects the difference discussed in note 117.

As noted previously,[120] FTC Rule 703.5(j) provides in part that "[d]ecisions of the Mechanism shall not be legally binding on any person," and, while the rule only speaks of decisions by "the Mechanism" (here, BBB AUTO LINE), the 1975 Federal Register notice announcing the original rule explained:

> … there is nothing in the Rule which precludes the use of any other remedies by the parties following a Mechanism decision. The warrantor, the Mechanism, or any other group can offer a binding arbitration option to consumers who are dissatisfied with Mechanism decisions or warrantor intentions. *However, reference within the written warranty to any binding, non-judicial remedy is prohibited by the Rule and the Act.*[121]

The Commission revisited Rule 703.5(j) in 1999 and 2015, and, on both occasions, it reaffirmed that the rule prohibits references in the warranty to binding arbitration.[122]

For reasons somewhat similar to those discussed before, though, the matter of an intrinsic problem is arguably beyond the auditor's purview. However, the issue discussed before was whether, in light of references to prior resort in some oversight provisions, the auditor's purview extended to manufacturers who don't require prior resort. Since Hyundai does require prior resort, that's not the precise issue here. Although the audit clearly extends to some conduct by warrantors,[123] the question now raised is the *extent* of the auditor's oversight of Hyundai's conduct. Assuming that Hyundai made clear to consumers that JAM arbitration didn't displace BBB AUTO LINE arbitration (a step that it hasn't yet taken), would the audit of "the Mechanism and its implementation" extend to Hyundai's overall compliance with section 703? Or would it extend only to Hyundai's compliance vis-à-vis its participation in BBB AUTO LINE?

The auditor thinks the better view is that, even assuming (as the auditor does) that the prohibition of binding arbitration in warranties is within the Commission's authority, the auditor's purview doesn't reach Hyundai's overall conduct. And, for this reason, he doesn't qualify his finding of substantial compliance by Hyundai based on intrinsic problems stemming from its program providing for non-BBB AUTO LINE binding arbitration for California consumers. But the question is sufficiently uncertain that the auditor isn't comfortable dismissing the issue without noting it in this audit.[124]

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120 *See* Section II.B of this chapter.

121 40 Fed. Reg. at 60211 (1975) (emphasis added).

122 See note 34, *supra.*

123 Indeed, after Rule 703.7(a) provides that "the Mechanism shall have an audit conducted at least annually, to determine whether *the Mechanism and its implementation* are in compliance with this part," Rule 703.7(b)(1) requires an "[e]valuation of warrantors' efforts to make consumers aware of the Mechanism's existence as required in Section 703.2(d) of this part."

124 As the Commission also noted, though, several courts have questioned its authority to issue

3. Consumer-Facing Materials

Federal Disclosure Provisions	
(1) Rule 703.2 (b) (and Rule 703.1(h) to define "the face of the warranty")	Hyundai makes the required disclosures with the required placement. As explained above, though, the existing text for 2020 model cars obscures the availability of BBB AUTO LINE for consumers in California. (Noteworthy Question.) There's also some inconsistency in the descriptions of how BBB AUTO LINE operates in Georgia. (Reservation.)[125]
(2) Rule 703.2(c)	Hyundai makes the required disclosures.
(3) Rule 703.2(d) – "steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes"	The disclosures in the warranty book are prominent – and are reinforced by a long supplement with a general introduction and state-specific breakdowns, most of which – though not the Georgia-specific discussion – mention BBB AUTO LINE. Although it didn't provide details about how the document is distributed, Hyundai also provided a short brochure, with front and back printing, entitled, "Let Hyundai help you." One side of the document briefly describes the program, and the other includes detailed FAQs. As explained above, though, Hyundai's messages about the existence of BBB AUTO LINE appear to be undercut, in California, by passages discussing the binding arbitration program unrelated to BBB AUTO LINE. (Noteworthy reservation.)
(4) Rule 703.2(d) – prohibition on requiring that consumers use	Before describing BBB AUTO LINE, Hyundai "recommend[s]" (in permissive rather than mandatory terms)

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so broad a rule. See note 35, *supra.* Nonetheless, in reporting to the Commission on Hyundai's compliance with "this part" (*i.e.*, the agency's rules), the auditor treats the relevant rules as valid.

[125] The owner's manual exempts Georgia from the prior resort requirement (Manual at 11, 13), but the supplement omits this exemption language from its general discussion of prior resort (Supplement at 5), and omits any reference to BBB AUTO LINE in the Georgia-specific discussion (Supplement at 32-33).

manufacturer's review processes before filing with BBB AUTO LINE	that consumers follow a series of internal steps.
(5) Rule 703.2(e)	Material provided. The sample letter contains the general notice and the details required by the rule, except for information about prior resort requirements. (Reservation.)[126]
Florida Disclosures	
(F1) Section 681.103(3) – Clear and conspicuous disclosure of how and where to file a claim	Hyundai makes the required disclosures.
Ohio Disclosures	
(O1) Additional notices provided in warranty documents, separate sheets of paper, or signs, as described in Section IV of this chapter	The supplement includes the required language, and Hyundai has provided signage and separate sheets of paper. However, the materials don't include the affirmative disclosure, required by Ohio, that resort to Hyundai's internal review process is optional and can be terminated at any time. (Reservation.)

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

None provided.

5. Conclusion

Hyundai is in SUBSTANTIAL COMPLIANCE with the applicable disclosure provisions of Federal, Florida, and Ohio law, with the qualifications, including noteworthy qualifications, hat are highlighted above.[127]

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[126] This issue wasn't noted previously.

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

H. Jaguar Land Rover North America

Jaguar and Land Rover participate in all states, but aren't certified in Florida or Ohio.

1. Consumer-Facing Materials

Jaguar submitted two documents this year: an owner's manual and a separate booklet, containing the warranty, titled "Passport to Service." The auditor also discusses a previously-submitted (from 2018) "Dispute Resolution Supplement."[128]

Federal Disclosure Provisions	
(1) Rule 703.2 (b) (and Rule 703.1(h) to define "the face of the warranty")	Jaguar provides only limited information about BBB AUTO LINE in its warranty booklet, but it provides substantial information (with state-by-state breakouts) in a dispute resolution supplement to which the warranty booklet refers. Still, despite the quality and prominence of the supplement, Jaguar doesn't comply with the placement requirements of Rule 703.2(b). (Reservation, with a possible mitigating factor.)
(2) Rule 703.2(c)	Jaguar addresses the required subjects.[129]

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

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

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

(3) Rule 703.2(d) – "steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes"	The multi-source disclosure, including the clearly labelled "Dispute Resolution Supplement," is quite prominent. Within the supplement, moreover, the discussion of BBB AUTO LINE is prominently placed and prominently listed near the top of the table of contents.
(4) Rule 703.2(d) – prohibition on requiring that consumers use manufacturer's review processes before filing with BBB AUTO LINE	Potentially problematic language in the Supplement refers to the availability of BBB AUTO LINE "in the unlikely event" that efforts at both the dealer and manufacturer level don't resolve a consumer's concern. The impact of this text may be mitigated, however, by information that, according to the internal documents described below, may be provided to the consumer by other means. (Question.)
(5) Rule 703.2(e)	Jaguar provided the auditor with templates of the required letters. The letters provide the core information about the existence of BBB AUTO LINE with clear contact information, although they don't provide all the detail specified by Rules 703.2(b) and (c).[130] (Question.)

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

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

3. Conclusion

Jaguar is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal law, with the qualifications noted above.[131] Additionally, assuming that the other materials provided by Jaguar continue to be used, Jaguar is to be highly commended for efforts to tell

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

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

consumers about the program at the manufacturer and dealer level.

I. Kia Motors America, Inc.

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

1. Consumer-Facing Materials

The auditor reviewed Kia's Warranty and Consumer Information Manual for 2020.

Federal Disclosure Provisions	
(1) Rule 703.2 (b) (and Rule 703.1(h) to define "the face of the warranty")	Kia makes the required disclosures, but neither with the required placement (it's not on the "face" of the warranty) nor (arguably) with the proper prominence.[132] (Reservation.)
(2) Rule 703.2(c)	Kia addresses the subjects required by the rule, except for the types of information that consumers will need to provide to BBB AUTO LINE. (Reservation.)[133]
(3) Rule 703.2(d) – "steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes"	Kia's Warranty booklet uses "Consumer Information" in its title, but BBB AUTO LINE isn't mentioned until page 39. There's no reference to BBB AUTO LINE, or even alternative dispute resolution, in the table of contents. On the other hand, in a 112- page book, pages 44-109 are devoted to state-specific notices, which typically mention (often multiple times, and highlighted with capital letters) BBB AUTO LINE. With over 100 references to BBB AUTO LINE in the booklet, there's a good chance that a consumer might see one of them. (Possible question.)

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

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

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

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

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

3. Conclusion

Kia is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal, Florida, and Ohio law, with the qualifications noted above. Kia is to be commended for the additional efforts indicated by section 2. [134]

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

J. Automobile Lamborghini

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

1. Consumer-Facing Materials

Lamborghini provided a warranty manual and an "Important Notice to Consumers." Page references refer to the English-language portion of the manual.[135]

Federal Disclosure Provisions	
(1) Rule 703.2 (b) (and Rule 703.1(h) to define "the face of the warranty")	Lamborghini makes the required disclosures in its warranty booklet, but without the proper placement. Although the warranty begins on page 9, BBB AUTO LINE isn't mentioned in text until page 12 (mentioning prior resort), with an extended discussion beginning on page 24. (Reservation.) Somewhat confusingly, prior resort under the Magnuson-Moss Act is mentioned on page 12; prior resort under state warranty laws is mentioned on page 25, and there's a California-specific reference to prior resort under the Magnuson-Moss Act (as well as California law) on page 26.
(2) Rule 703.2(c)	Lamborghini addresses the subjects required by the rule.[136]
(3) Rule 703.2(d) – "steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes"	Information about BBB AUTO LINE appears early in the manual, and it's highlighted, in the text and the table of contents.

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

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

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

(4) Rule 703.2(d) – prohibition on requiring that consumers use manufacturer's review processes before filing with BBB AUTO LINE	Lamborghini indicates, in potentially problematic language, that BBB AUTO LINE may be available "if" previously described internal procedures haven't resolved the issue. However, any concern that consumers are told that they must first use internal processes may be somewhat mitigated by the notice, discussed under Rule 703.2(e), that they're given when they do pursue those processes. (Question.)
(5) Rule 703.2(e)	Lamborghini has provided a template of a letter alerting consumers to BBB AUTO LINE at the time a dispute submitted directly to Lamborghini is *received*. However, while the letter will likely accomplish much of what it's supposed to accomplish, particularly because it tells consumers how to contact BBB AUTO LINE, BBB AUTO LINE won't necessarily convey all of the information required by the rule; specifically, it may not explain prior resort requirements under Magnuson-Moss. Further, there's a question as to whether such indirect disclosure satisfies the rule. (Reservation; question). Further, the letter sent upon receipt of the consumer's claim doesn't strictly comply with the requirement for notice when the internal review is completed. (Reservation, with a possible mitigating factor.)

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

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

3. Conclusion

Lamborghini is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal law, with the qualifications noted above.[137]

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

K. Lotus

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

1. Consumer-Facing Materials

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

Federal Disclosure Provisions	
(1) Rule 703.2 (b) (and Rule 703.1(h) to define "the face of the warranty")	Lotus makes the required disclosures with the proper placement.
(2) Rule 703.2(c)	Lotus addresses the types of information required by the rule in the supplement. (Rule 703.3(c) disclosures can be made in the written warranty or "a separate section of materials accompanying the product.")[138]
(3) Rule 703.2(d) – "steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes"	The supplement seems sufficiently prominent to catch consumers' attention.
(4) Rule 703.2(d) – prohibition on requiring that consumers use manufacturer's review processes before filing with BBB AUTO LINE	Lotus doesn't expressly require consumers to use its internal review process before advancing to BBB AUTO LINE.
(5) Rule 703.2(e)	Lotus routinely offers a repair remedy with a manufacturer representative upon receipt of a consumer complaint. The auditor construes this as a decision that triggers Rule 703.2(e) notice, and they provide the notice at that point. The auditor notes, however, that if the manufacturer representative finds no problem that could be construed as a further "decision" that again triggers Rule 703.2(e) notice. (Question.)

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

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

None provided.

3. Conclusion

Lotus is in SUBSTANTIAL COMPLIANCE with applicable provisions of Federal law, with the qualification noted above.[139]

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

L. Maserati

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

1. Consumer-Facing Materials

Maserati provided a series of manuals as well as a "warranty card." The warranty card contains the information about BBB AUTO LINE.

Federal Disclosure Provisions	
(1) Rule 703.2 (b) (and Rule 703.1(h) to define "the face of the warranty")	Maserati provides the required information with the required placement.
(2) Rule 703.2(c)	Maserati provides the required information.[140]
(3) Rule 703.2(d) – "steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes"	As noted above, information about BBB AUTO LINE appears early in the warranty booklet. It's also highlighted, in the text and the table of contents, where "CONSUMER PROTECTION INFORMATION" appears as a boldfaced heading and "BBB AUTO LINE DISPUTE RESOLUTION PROGRAM" as a subheading.
(4) Rule 703.2(d) – prohibition on requiring that consumers use manufacturer's review processes before filing with BBB AUTO LINE	Maserati doesn't require prior resort for access to Magnuson-Moss remedies, except in the discussion of California processes, where it says (without omitting reference to the Federal program) that BBB AUTO LINE is available "if" the manufacturer hasn't been able to resolve a problem. (Question.)
(5) Rule 703.2(e)	A Maserati document provides for disclosures, but it contains at least one contingency (consumer's belief that he has an unresolved dispute about their vehicle). (Reservation.) Maserati didn't respond to the auditor's request for clarification, and this issue needs to be revisited.

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

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	Also, the process doesn't directly provide the consumer with all the information required to be disclosed by Rule 703.2(e), although consumers will get some of that information if they contact BBB AUTO LINE. (Question.)

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

Maserati provided a notice to dealers, with signage for posting in the service department, applicable in the three states where it participates.

3. Conclusion

Maserati is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal law, with the qualifications noted above.[141]

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

M. Mazda North America

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

1. Consumer-Facing Materials

Mazda previously provided its 2019 warranty booklet. This year it provided selected pages from the 2020 booklet. Although the auditor didn't see this year's pages in the overall setting of the warranty booklet, the pagination appears comparable to last year's.

Federal Disclosure Provisions	
(1) Rule 703.2 (b) (and Rule 703.1(h) to define "the face of the warranty")	Mazda provides the required information. It appears early in the booklet and, assuming the rest of the booklet is comparable to last year's, it appears just after such material as a summary chart but *before* the warranty text. The auditor construes this as compliance with the "face of the warranty" placement requirement, even though the text doesn't appear *on* the first page of the warranty text. The discussion is further highlighted by multiple all-cap references to BBB AUTO LINE by name.[142]
(2) Rule 703.2(c)	Mazda addresses the subjects required by the rule, except for the types of information that consumers will need to provide to BBB AUTO LINE. (Reservation.)[143]
(3) Rule 703.2(d) – "steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes"	The discussion of BBB AUTO LINE in Mazda's warranty booklet is under a subheading that says "Contact Better Business Bureau (BBB)." And, as noted above, the discussion contains numerous all-cap references to BBB AUTO LINE by name. However, the main heading is "When you need to talk to Mazda," and that's the only heading that

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

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

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

	appears in the table of contents. (Possible question.)
(4) Rule 703.2(d) – prohibition on requiring that consumers use manufacturer's review processes before filing with BBB AUTO LINE	In potentially problematic language for a Magnuson-Moss analysis, Mazda describes the BBB AUTO LINE program as a "final step" available when mutual agreement is not possible. (Question.)
(5) Rule 703.2(e)	Mazda has submitted a template of the requisite letter. The template provides the core information about the existence of BBB AUTO LINE with clear contact information, but doesn't directly provide all the information specified by Rules 703.2(b) and (c). (Question.)
Florida Disclosures	
(F1) Section 681.103(3) – Clear and conspicuous disclosure of how and where to file a claim	For reasons described in item (3) of this chart, there's a possible question as to whether Mazda's disclosure is sufficiently prominent. (Possible question.)
Ohio Disclosures	
(O1) Additional notices provided in warranty documents, separate sheets of paper, or signs, as described in Section IV of this chapter.	It doesn't appear that Mazda fulfilled the signage requirement this year, but the company indicated that they will be doing so going forward. (Reservation.)

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

Mazda has previously provided training and internal web-based materials that educate staff.[144] Mazda also provided FAQ's for consumers, which it distributes to dealers and manufacturer representatives. The auditor commends these steps to get information about the program to consumers.

. 3. Conclusion

Mazda is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal, Florida, and Ohio law, with the qualifications noted above.[145]

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

145 All manufacturers are referred, as well, to the full text of this chapter, with particular

N. Mercedes-Benz

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

1. Consumer-facing Materials

Federal Disclosure Provisions	
(1) Rule 703.2 (b) (and Rule 703.1(h) to define "the face of the warranty")	Mercedes-Benz provides the specified information in the section of the warranty manual addressed to California consumers, and in an "IMPORTANT NOTICE" similarly directed to California consumers. While it appears in the warranty manual, however, it lacks the proper placement. (Reservation).
(2) Rule 703.2(c)	Mercedes-Benz addresses the subjects required by the rule.
(3) Rule 703.2(d) – "steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes"	The discussion of BBB AUTO LINE in Mercedes-Benz's warranty booklet starts on page 68, which is relatively far back in the booklet. But it also appears in the important notice.[146]
(4) Rule 703.2(d) – prohibition on requiring that consumers use manufacturer's review processes before filing with BBB AUTO LINE	In potentially problematic language, Mercedes-Benz describes the BBB AUTO LINE program as available to California consumers, even for purposes of federal remedies, only "if" a dispute can't be otherwise resolved. (Question.)

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reference, for Federal law, to the chart and accompanying notes that immediately follow.

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

(5) Rule 703.2(e)	Mercedes-Benz alerts consumers to the availability of BBB AUTO LINE when the consumer files a complaint seeking review by the manufacturer, but they haven't provided materials showing that they again alert consumers to the program, much less provide the detail required by Rule 703.2(e), at the time required by the rule. (Question.)

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

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

3. Conclusion

Mercedes Benz is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal law with respect to disclosure to California consumers, and with the qualifications noted above. Mercedes is also commended for other steps that it's taken to notify consumers about BBB AUTO LINE at the dealership level.[147]

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

O. Nissan North America (with Infiniti)

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

1. Consumer-Facing Materials

Nissan (together with Infiniti) submitted multiple variants of warranty manuals and warranty manual supplements for differing models. The discussion that follows is based on Nissan's 2020 Warranty Information Booklet; a 2020 edition of a supplemental booklet, captioned in part "Customer Care and Lemon Law Information"; and a placard entitled "Our Commitment to You."

Federal Disclosure Provisions	
(1) Rule 703.2 (b) (and Rule 703.1(h) to define "the face of the warranty")	The warranty manual includes the required information in the required placement, and uses a text box to increase its prominence.
(2) Rule 703.2(c)	Nissan addresses the subjects required by the rule, except for the types of information that consumers need to provide to BBB AUTO LINE.[148] (Reservation.)
(3) Rule 703.2(d) – "steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes"	Discussions of BBB AUTO LINE are prominently placed in both booklets, and the supplemental booklet even mentions lemon laws in its title. Nissan also describes the program in a handout entitled "Our Commitment to You." Further, BBB AUTO LINE is prominently mentioned in state-specific discussions throughout the supplemental booklet.
(4) Rule 703.2(d) – prohibition on requiring that consumers use manufacturer's review processes before filing with BBB AUTO LINE	Nissan indicates, in potentially problematic language, that BBB AUTO LINE may be available as the third step of a process "in the event that" previously described internal procedures have not resolved the issue. The "Our Commitment to You" placard contains language that might be less problematic, but still provides that BBB AUTO LINE is available in case of an "impasse." (Question.)

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

(5) Rule 703.2(e)	Nissan has templates of a letter that contains the core information about filing a complaint, with references to consumer-facing manuals for more information. However, it doesn't directly set forth all of the information described in subparts (b) and (c). (Question.)
Florida Disclosures	
(F1) Section 681.103(3) – Clear and conspicuous disclosure of how and where to file a claim	As described in items (1) and (3) of this chart, Nissan provides the required disclosures.
Additional Ohio Provisions	
(O1) Additional notices provided in warranty documents, separate sheets of paper, or signs, as described in Section IV of this chapter.	Nissan has provided signage about the program. And, though the signage doesn't include Ohio-specific information, it does provide basic information about contacting BBB AUTO LINE. The Ohio-specific information does appear in the supplement (and this includes disclosures about the optional nature of Nissan's internal review processes). However, this doesn't precisely satisfy Ohio's requirements for disclosures on a separate form. (Question.)

2. Additional Materials

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

3. Conclusion

Nissan (with Infiniti) is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal, Florida, and Ohio law, with the qualifications noted above.[149] The company is to be highly commended for additional efforts, beyond disclosure in consumer-facing manuals, to alert consumers to the program.

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

P. Rolls Royce

1. Consumer-Facing Materials

This is the first audit to cover Rolls Royce, which wasn't listed as a participating manufacturer on BBB AUTO LINE's web site during prior audits.

According to Rolls Royce's 2021 manual, which it provided for the auditor's review, it participates in twelves states (Arkansas, California, Georgia, Kentucky, Iowa, Idaho, Massachusetts, Maryland, Minnesota, Ohio, Pennsylvania, and Virginia). In provides for prior resort for consumers to pursue Magnuson-Moss remedies where required by a state's lemon law.[150]

Federal Disclosure Provisions	
(1) Rule 703.2 (b) (and Rule 703.1(h) to define "the face of the warranty")	Rolls Royce provides the required information, which appears shortly before the warranty text; it's under a heading of "BBB Auto Line" and the description of prior resort is highlighted as "IMPORTANT." Rule 703.2(b) requires disclosure of the availability of the warranty, and the auditor construes this to require an accurate description of its availability. As noted above, Rolls Royce tells consumers that it participates in 12 states; according to the BBB AUTO LINE web site, though, it *doesn't* participate in Ohio. (Noteworthy reservation.[151])
(2) Rule 703.2(c)	Rolls Royce provides the required information.[152]
(3) Rule 703.2(d) – "steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes"	The relevant discussion begins on page 28 of the manual with a prominent heading referring to "BBB Auto Line" on five consecutive pages. (The program's name doesn't appear, however, in the table of contents.)

150 Manual, at 28.

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

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

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

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

No such materials were provided.

3. Conclusion

Rolls Royce is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal law, with the qualifications, including noteworthy reservations, noted above.[153]

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

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

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

1. Materials Distributed to Consumers at the Time of Sale

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

Federal Disclosure Provisions	
(1) Rule 703.2 (b) (and Rule 703.1(h) to define "the face of the warranty")	The manuals include the required information with the required placement, including a heading that refers to "informal dispute resolution."
(2) Rule 703.2(c)	Volkswagen and Audi address the subjects required by the rule.[154]
(3) Rule 703.2(d) – "steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes"	The manuals include multiple references to BBB AUTO LINE. BBB AUTO LINE is prominently referenced on the table of contents for the Volkswagen manual, although it doesn't appear in the table of contents for the Audi manual. Volkswagen also provided a template of a letter by its consumer advocate, which seems to inform consumers about the program after they contact the company but before they've gone through the company's internal processes.
(4) Rule 703.2(d) – prohibition on requiring that consumers use manufacturer's review processes before filing with BBB AUTO LINE	Although Volkswagen says that BBB AUTO LINE is available "if we are unable to resolve" a problem, it only "requests" that consumers first bring the matter to the manufacturers for review.

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

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

(5) Rule 703.2(e)	Volkswagen provided a letter, with substantial information about BBB AUTO LINE, that appears to be sent when a consumer request through the manufacturer's internal process is denied.
Florida Disclosure	
(F1) Section 681.103(3) – Clear and conspicuous disclosure of how and where to file a claim	As described in items (1) and (3) of this chart, Volkswagen provides the required disclosures.[155]
Ohio Disclosures	
(O1) Additional notices provided in warranty documents, separate sheets of paper, or signs, as described in Section IV of this chapter.	Volkswagen provided separate sheets of paper and signs, and apparently provides dealers with quarterly supplies of these materials. However, Volkswagen hasn't made the affirmative disclosure required by Ohio, at the time consumers experience a warranty dispute, that resort to its internal review process is optional and can be terminated at any time. (Reservation.)

2. Additional Materials

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

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[155] The auditor notes, though, that there's some seemingly contradictory text about prior resort The text provides:

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

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

3. Conclusion

Volkswagen (with Audi) is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal, Florida, and Ohio law, with the qualifications noted above.[156]

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

CHAPTER 2
BBB AUTO LINE'S ORGANIZATION AND OPERATIONS

The previous chapter focused on Rule 703.2(b), and comparable provisions of Florida and Ohio law, which describe the obligations of manufacturers who participate in BBB AUTO LINE. In this chapter and the next, the primary focus shifts to the obligations imposed on BBB AUTO LINE and its sponsor, BBB National Programs, Inc. The applicable Federal regulations, which in many respects create a framework on which state regulation builds,[157] essentially require the processes to be fair, thorough, and efficient. Furthering these ends, the rules also require certain recordkeeping and an audit that includes consumer input. This Chapter focuses primarily on Rules 703.3 ("Mechanism Organization"), 703.4 ("Qualifications of members," *i.e.*, arbitrators), 703.5 ("Operation of the Mechanism"), aspects of Rule 703.6 ("Recordkeeping"), and Rule 703.8 ("Openness of Records and Proceedings").

Based on information in this chapter and the next, the auditor finds that BBB AUTO LINE substantially complies with the applicable Federal, Florida, and Ohio provisions. Although the auditor offers recommendations, none raise an issue that would require even a qualification on the finding of substantial compliance.

The auditor's understanding of BBB AUTO LINE's *policies* draws on its published rules, which are available on the web, [158] sent to consumers after their initial contact, and the same in all states except California.[159] He has also reviewed its arbitrator training manual and talked with staff. His review of how these policies are *implemented* draws on further discussions with staff, statistics detailed in Chapter 3, case files that he examined (most targeted by consumer responses to the survey), and recordings of six hearings (including two from Florida and two from Ohio).[160]

I. Fairness

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

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

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

159 Unless otherwise specified, references to specific rules refer to those for states other than California.

160 See Chapter 3, Section I.

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

Within the confines that an audit permits (the auditor obviously didn't examine BBB AUTO LINE's promotion practices, for example), the auditor has seen no problems in the program's compliance with either the general fairness mandate or specific provisions set out in the rules. To the contrary, the introductory text and Rules 4 and 5 of "How BBB AUTO LINE Works" (and a comparable variant for California) reflect most of the FTC requirements that would be appropriate for a consumer-facing document.[161]

Additionally, BBB AUTO LINE's training manual for arbitrators highlights the mechanism's focus on preserving impartiality, fairness, and the appearance of both. For example, arbitrators are told to avoid being in a room with one party. For test drives, if a car has only two seats and both parties are present, arbitrators are told that the parties should drive the vehicle together, and the arbitrator should either go alone or with a BBB staff person if available.

Further, in an aspect of BBB AUTO LINE arbitrations that goes beyond any regulatory requirements, arbitrations are held at local BBB offices, which are neutral sites independent of the manufacturer and its dealership. Whether or not this is essential to ensuring impartiality, fairness, and the appearance of both, it can certainly contribute to the consumer's perception that the process is free from improper influence.

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

II. Operations

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

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

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161 Thus, they don't reflect provisions, like those governing personnel decisions, that wouldn't be expected in a consumer-facing document.

provides them to consumers who file complaints.

A. Starting the Complaint Process

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

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

The web portal. Some manufacturers participate only in selected states,[162] and BBB AUTO LINE's web portal does a limited eligibility screen by first asking consumers where they bought or leased their car – but then inviting the consumer, if he isn't eligible in the state of purchase or lease, to call BBB AUTO LINE to determine whether he might be eligible elsewhere.[163] The auditor has previously questioned whether the web site adequately serviced consumers who might be eligible in multiple states or who leased rather than purchased their vehicles,[164] but, with one loose thread, those problems have now been fixed.[165]

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[162] Four firms participate in 8 to 11 states; six participate in 1 to 4 states.

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

[164] Many state lemon laws expressly cover leases or have been found by courts to cover at least some leases. And even when they aren't covered by state lemon laws, some lessees might be eligible for BBB AUTO LINE by virtue of the Magnuson-Moss Act or by virtue of program summaries that extend beyond legal mandates.

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

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

As for the loose thread, while the entry page of the online portal now asks consumers to identify the "Purchase/Lease State," there's still some ambiguity on the *next* page about the program's applicability to leased vehicles. One question, for example, asks about the vehicle's "titled owner(s)," a phrase that doesn't square with leasing.[166] The auditor recommends that BBB AUTO LINE fix such loose threads, although the thread that remains seems unlikely to deter lessees from pursuing potentially valid claims.

> *Recommendation: The auditor recommends that BBB AUTO LINE address the limited web portal issue that remains.*

Case summaries. The auditor noted that, for Ohio (among other states), the BBB AUTO LINE web site includes a summary of cases construing the state's lemon law. While an up-to-date summary might be a net plus for some consumers,[167] the available summary isn't up-to-date. Unless it's updated and then kept up to date, the auditor recommends that it be deleted.

> *Recommendation: The auditor recommends that BBB AUTO LINE remove the Ohio case summary from its web page unless it keeps the summary current. He understands that BBB AUTO LINE is taking steps to do so.*

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

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

[165] The consumer is initially asked to identify the state for the "purchase/lease state." If the manufacturer doesn't participate in that state, she gets the message,

> You have selected a state in which the manufacturer does not participate in the BBB AUTO LINE program. In order to determine whether you are eligible to pursue your claim in another state, please call 1-800-955-5100 to speak with a BBB AUTO LINE representative.

[166] Also, another line asks for "Purchase Type," and a drop-down menu that includes a "lease" option isn't visible until the consumer properly places her cursor.

[167] It's also possible that a consumer could be confused by the relative authorities of decisions by the Ohio Supreme Court, its appellate courts, and Federal courts construing Ohio state law.

B. Opening a Case

During an initial phone or online contact, BBB AUTO LINE collects information with which it produces a "consumer complaint form," along with materials that explain the program.[168] The consumer is invited to update, edit, supplement, and sign the form.

BBB AUTO LINE sends these materials via mail or electronically, at the consumer's choice. For consumers who choose electronic communications, BBB AUTO LINE now relies *exclusively* on electronic transmittals to (and from) the consumer, using an online account. BBB AUTO LINE sends an initial email explaining how to access the account, and subsequent emails alert consumers when new communications appear in the account.

Among the consumers in the national sample, 87.8% recalled receiving the (unsigned) consumer complaint form as part of an initial transmittal.[169] Among these, 94.9% said the program's explanatory materials were very or somewhat clear and easy to understand;[170] 85.7% said they were very or somewhat helpful.[171]

Still, there were warning flags in this year's survey, most notably in responses by Florida and California consumers to document receipt questions. Thus, among 151 consumers who completed the Florida survey, 11 reported, in cases that BBB AUTO LINE had closed for failure to return a signed consumer complaint form, that they hadn't received the packet containing the form that they were to review and sign. A similar pattern was found for six consumers in the national survey, including two from Florida and four from California. Further, while this precise problem can't arise outside Florida and California,[172] there may be analogous situations elsewhere, perhaps resulting in claims that don't turn into cases at all (and thus can't be detected by the auditor), or an ineligibility determination that a consumer never receives.[173]

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

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

[170] 65.7% said they were very clear and easy to understand. See Table III-24.

[171] 63.5% said they were very helpful. See Table III-24.

[172] Outside Florida and California, cases generally don't "open" until the consumer returns a signed form – in which event a consumer's initial submission wouldn't mature into a "case" that would be reported to the auditor (or counted in BBB AUTO LINE's aggregates) in the first place.

[173] Even outside Florida and California, BBB AUTO LINE will sometimes open (and close) a case, without waiting for the signed consumer complaint form, if the claim is clearly ineligible, usually because of age or mileage restrictions. In these cases, by quickly telling the consumer that he's ineligible, BBB AUTO LINE spares him a presumably futile effort of assembling additional

There's actually another layer of complexity here, though. Among the 17 Florida and California consumers who reported a problem through the "document receipt" question, six seem to have at least accessed their online accounts – indicating that they had received the initial email communication explaining how to do so.

Still, for all 17 of these consumers (including those who accessed their accounts), the basic question remains: Did some impediment deter them from filing claims for which BBB AUTO LINE might have been available? Were some deterred, perhaps, because they didn't get the original email explaining how to set up an account? Were others perhaps deterred because the system was too complicated for them? They still could have called BBB AUTO LINE for help – but is there a significant chance that some were too intimidated or frustrated to make such a call, or even unaware that they could do so?

To the extent that consumers didn't pursue complaints that might have been eligible for the program, several factors may have contributed to the problem.

(1) Before an impending deadline to return a signed consumer complaint form, BBB AUTO LINE sends reminders to consumers outside Florida and California. They haven't previously done so for consumers in Florida or California, although they plan to do so going forward.

(2) The initial and reminder letters haven't invited consumers to call for help if they have trouble with the system.

(3) Consumers who do call may be invited to shift from email communications to regular mail, but this option hasn't been presented unless and until they call.

(4) Consumers are told that their files will be closed if they don't return a signed complaint form in timely fashion, with a short deadline, but they're not told that they could later file a new claim (albeit with age and mileage limits on relief based on the timing of the new filing).

(5) The initial email to consumers telling them about their online accounts comes from a "no-reply" address, which might trigger spam filters on some consumers' computers. The reminder is sent from an account to which the consumer *can* reply and that won't present this problem. But the reminder doesn't alert consumers that there might have been a problem with receiving the initial communication and that, unless the consumer corrects the problem, it might recur for future emails from the "no-reply" address.

Recommendation: BBB AUTO LINE should take steps to decrease the chance that consumer confusion, or email blockers, may deter consumers from pursuing complaints that are eligible for the program.

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information.

C. Resolving a Case

BBB AUTO LINE can start to address a complaint in earnest after the consumer returns a consumer complaint form with supporting documents, a process that BBB AUTO LINE staff suggests averages about ten days. In Florida and California, as noted above, the complaint file opens with the original contact; elsewhere, it opens when the consumer complaint form is returned. Applying the appropriate standard for the jurisdiction in question, the manufacturer is told about the complaint (as required by Rule 703.5(b)) when the file is opened. The manufacturer may then contact the consumer directly to resolve the issue.

If such efforts don't occur and succeed, the case will be investigated, a process covered by Rule 703.5(c). Before the arbitrator is appointed, a dispute resolution specialist (DRS) generally relies on facilitating the exchange of information between the parties, often by actively questioning both parties. At the same time, she explores mediation possibilities, at a minimum by facilitating the document exchange; however, mediators do not, for example, advocate for a particular position. The consumer generally receives information submitted by the manufacturer before the distribution of the notice of hearing. Mediation is optional; the consumer can insist on proceeding directly to arbitration.

Rule 703.5(d) then provides for the arbitration itself, with the goal (unless an exemption under Rule 703.5(e) allows longer) of producing a fair decision within 40 days.[174] Rule 703.5(f) governs oral presentations, and Rule 703.5(g) provides for the consumer to be told that she can reject the decision. If she does so, it might still be admitted as evidence in a later court action.

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

As the process proceeds, settlements remain possible; the parties can even settle after an arbitration hearing but before a decision,[175] or can reach a post-decision settlement.[176] An arbitrator can't engage in mediation herself, but, if the parties seem to be moving towards a settlement, she can temporarily remove herself from the process, allow the parties to negotiate; then, if negotiations succeed, she and the parties can sign a consent decision. Absent a consent settlement, BBB AUTO LINE policy provides for the arbitrator to run her decision though BBB AUTO LINE staff first, but BBB AUTO LINE staff's role is intended to be limited.

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[174] See Chapter 3, Sections III.E, IV.E, and V.E.

[175] Rule 20; California Rule 21.

[176] This might occur, for example, if the consumer wants to substitute a repurchase for a replacement remedy. Post-decision settlements can also provide extensions of deadlines for compliance.

The auditor has examined the BBB AUTO LINE rules, which provide far more detail than the regulatory provisions about how the case will be developed and resolved, but which appear fully consistent with those rules. The BBB AUTO LINE rules include, for example, details about the arbitrator's inspection of the car[177] and about the use of technical experts in arbitrations.[178]

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[177] Rule 7 of the rules applicable outside California provides:

> We will always schedule an inspection of the vehicle by the arbitrator when the consumer seeks any remedy other than reimbursement for past repairs, unless all parties agree that such an inspection is not necessary.
>
> If an inspection is scheduled and the vehicle is not available for inspection, your case will be closed and no decision will be made unless state law or regulation provide otherwise.
>
> The arbitrator will determine whether a test drive will be taken in the vehicle. A test drive may not be taken unless the consumer has liability insurance that satisfies the state's minimum requirements. The consumer's liability insurance will apply during any test drive.
>
> During the test drive, all laws will be observed and reasonable safety precautions will be taken.

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

[178] Rule 8 of the non-California Rules provides:

> At the request of the arbitrator or by agreement of both parties, we will make every effort to obtain an impartial technical expert to inspect the vehicle involved in the dispute. In some cases, to the extent permitted by state law, we will automatically appoint an impartial technical expert to examine your vehicle prior to the arbitration. (Please check the manufacturer's Program Summary to see if a mandated technical inspection will apply to your case.)
>
> If there is an inspection by an impartial technical expert, the consumer will be contacted by the technical expert to arrange the inspection. To maintain the technical expert's impartiality, the consumer should not speak with the expert, except to arrange access to the vehicle for inspection, nor accompany the technical expert on the test drive of the vehicle.
>
> The impartial technical expert's findings will be presented in writing before, during or after the hearing as appropriate to the process. Both parties will have an opportunity to evaluate and comment on the qualifications and findings of the technical expert. The parties agree that they will not contact the impartial technical expert at any time, including after the arbitration case has closed, in relation to the impartial technical expert's findings. You also have the right to have your own technical expert serve as a witness at your own expense.

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

From his review of the hearing recordings, the auditor this year detected no significant problem at the hearing stage. He does, however, have one suggestion.

> *Suggestion: As part of a standard opening statement, when the arbitrator tells consumers about the confidentiality provisions that bind the arbitrator, she might also note that BBB AUTO LINE has a confidentiality rule that governs disclosures by the program.*[179]

From his review of case files, the auditor also noted again that BBB AUTO LINE failed to make disclosures required by the Ohio Code when a "board" like BBB AUTO LINE gets written notification of a dispute.[180] Later, when it tells the consumers its decision, BBB AUTO LINE does tell the consumer about their right to pursue relief under the Ohio Lemon Law,[181] but it doesn't make another disclosure (seemingly less important) about the availability, at reasonable cost, of copies of BBB AUTO LINE records.[182]

California Rule 9 is briefer but similar.

[179] See Section E, below.

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

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

[181] Section 109:4-4-04(C)(7) of the Code requires a board, when it tells the consumer it's decision, to also inform the consumer that:

> (a) If he or she is dissatisfied with its decision or if the warrantor, its agent, or its authorized dealer fails to promptly fulfill the terms of the board's decision, the consumer may seek redress by other rights and remedies, including asserting a cause of action under section 1345.75 of the Revised Code.

[182] Section 109:4-4-04(C)(7)(b).

Recommendation: BBB AUTO LINE should make all the required disclosures.

Based on his analysis in Chapters III, IV, and V, the auditor offers other recommendations as well. Most importantly:

Recommendation: The auditor recommends that BBB AUTO LINE explore ways to expedite arbitrations.

D. Compliance (and Satisfaction)

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

BBB AUTO LINE does so primarily through performance verification letters that ask consumers, among other questions (and in the version used for settled cases), whether the settlement was performed, when it was performed, whether performance was satisfactory, and (if not) if the consumer wants to further pursue the claim. The letter further tells the consumer that, if a timely response isn't received, "I will assume that performance was satisfactory . . ."

This process could understate compliance problems, since consumers who don't want to continue may simply neglect to return the form even if performance hadn't been satisfactory. In the auditor's view, however, it's not unreasonable to assume compliance when a consumer, after such notice, fails to respond; otherwise, the measure of manufacturer compliance could depend on the whims or attentiveness of consumers or their lawyers. Further, the results of this year's consumer survey suggests that, after accounting for reasonably explicable discordances addressed in Chapter 3, BBB AUTO LINE's records appear to reflect consumer's reports about compliance with reasonable accuracy.

However, the auditor has previously made a recommendation on one aspect of the letter's text. The timeliness of performance is a separate question from its quality. The auditor therefore recommended that BBB AUTO LINE make explicit that, if consumers don't return the performance verification letter, BBB AUTO LINE will treat compliance as both satisfactory *and timely*. BBB AUTO LINE is now modifying their verification letter letters accordingly.[183]

* * *

[183] Further, the auditor observed that, when telling *manufacturers* of the consumer responses in cases where compliance was assumed because the form wasn't returned, BBB AUTO LINE usually reports that performance verification was "received." It's not clear that this causes any harm, although it might confuse manufacturers if the consumer at issue contracted them and told them the problem in fact wasn't resolved. In any event, the auditor has previously noted that the better course would appear to be to include a more accurate statement in letters to manufacturers and here, too, BBB AUTO LINE is now revising its communications accordingly.

In the past, the auditor has noted the distinction between compliance and consumer satisfaction, and this year, BBB AUTO LINE produced statistics that permit a more precise presentation of the issue. In essence, a consumer may be dissatisfied with the implementation of a remedy where the manufacturer reports that it's complied. With a repurchase or replacement remedy, for example, the parties might dispute how the car's condition affected its value. With a repair remedy, which often provides for an inspection by a member of the manufacturer's staff and the correction of any warrantable problems that she finds, the parties might disagree if the she finds no problem.

How, then, should such disputes be treated for purposes of the audit? In the auditor's view, given a binary option (compliant or noncompliant), BBB AUTO LINE has acted properly in reporting them as "compliant." After all, the manufacturer could be vindicated in a follow-on proceeding, so it seems problematic to attach the stigma of "noncompliant" to its performance. On the other hand, it's also possible that the consumer will be vindicated, so a simple report of "compliance" doesn't really capture the nuances of the situation.

The auditor has previously attempted some rough calculations that suggested that consumers are dissatisfied in about half of all cases with repair remedies, with many moving on to further proceedings in BBB AUTO LINE. At the auditor's request, though, BBB AUTO LINE this year provided the actual compliance codes on its spread sheet; using the last version of the spread sheet that BBB AUTO LINE provided to him, the auditor found 43.9% dissatisfaction in repair cases. (This compares to 3.3% dissatisfaction with a repurchase/replacement remedy). But this tells only part of the story. To provide more context:

(1) FTC, Ohio, and former Florida regulations all recognize repair remedies as an appropriate resolution of disputes.[184]

(2) With the participation of a manufacturer representative, repair remedies can resolve a problem and, when they don't, the performance verification letter invites the consumer to pursue the matter further – and consumers who do so often obtain repurchase or replacement remedies at that point. As noted above, the auditor estimates that roughly half of mediated repair remedies don't resolve the problem to the consumer's satisfaction. But when the consumer pursued a follow-on "R" case, about 42% of those cases resulted in a repurchase or replacement remedy. And about 57% of *those* cases reached that resolution through mediation.

(3) Repair remedies are often a "second-best" resolution for a consumer who hoped for a repurchase or replacement. But sometimes, as when a car's age or mileage falls outside lemon law limits but the car remains under warranty, they may be the only remedy available to consumers by the terms of the program summary.

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[184] 16 C.F.R. § 703.2(d); OHIO ADMINISTRATIVE CODE § 109:4-4-04(5)(A); FORMER FLORIDA ADMINISTRATIVE CODE § 5J-11.010(2)(C).

(4) Also, in cases where consumers haven't complied with lemon law provisions that require notice to the manufacturer and a chance for the manufacturer (as opposed to the dealer) to address the issue, a mediated repair remedy may essentially overlap a final repair attempt ("FRA") that the consumer must afford the manufacturer under state law to obtain benefits and presumptions under the lemon law. In these cases – which appear to include many of the mediated repair cases – the repair remedy doesn't even slow the process; it merely incorporates into the program a step the consumer could have taken before filing his complaint.

* * *

Documenting extensions. The parties sometimes extend, by agreement, the compliance date initially set by a settlement or by an arbitrator's order. They might do so, for example, so that the manufacturer can custom-order a car or obtain a hard-to-procure part for a repair. When the parties agree to an extension, BBB AUTO LINE's policy is to document it in a new settlement letter, sent to the parties to confirm that both agree to its terms. The auditor noted last year, though, that these letters weren't always sent. In the auditor's view, BBB AUTO LINE should rely on an extension in reporting timeliness only if both parties' agreement was documented – preferably by a settlement agreement or, at a bare minimum and in rare cases, by the case handler's notes. BBB AUTO LINE has since emphasized to its staff the importance of documenting extensions, and the problem this year was substantially reduced but not entirely eliminated.

E. Recordkeeping Provisions

Among the record-keeping provisions, much of this audit focuses on the statistical provisions in Rule 703.2(e); this is a principal subject of Chapters III, IV, and V, and the auditor noted one of his findings in the previous section.

In addition, Rule 703.6(a) requires BBB AUTO LINE to maintain certain records in specific cases.[185] To the extent it's possible to tell from a review of the files,[186] the auditor saw

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[185] Rule 703.6 provides:

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

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

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

(3) Brand name and model number of the product involved;

(4) The date of receipt of the dispute and the date of disclosure to the consumer of the decision;

(5) All letters or other written documents submitted by either party;

(6) All other evidence collected by the Mechanism relating to the dispute, including summaries of relevant and material portions of telephone calls and meetings between

no systematic problems in compliance with this provision, or with analogous provisions from Florida[187] or Ohio.[188] There were, however, occasional, though rare, cases where consumers said

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the Mechanism and any other person (including consultants described in § 703.4(b) of this part);

(7) A summary of any relevant and material information presented by either party at an oral presentation;

(8) The decision of the members including information as to date, time and place of meeting, and the identity of members voting; or information on any other resolution;

(9) A copy of the disclosure to the parties of the decision;

(10) A statement of the warrantor's intended action(s);

(11) Copies of follow-up letters (or summaries of relevant and material portions of follow-up telephone calls) to the consumer, and responses thereto; and

(12) Any other documents and communications (or summaries of relevant and material portions of oral communications) relating to the dispute.

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

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

[188] Section 109:4-4-04(D)(1) provides:

(1) The board shall maintain records on each dispute referred to it which shall include:

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

(b) Name, address, and telephone number of the contact person designated by the warrantor under paragraph (F)(1) of rule 109:4-4-03 of the Administrative Code;

(c) Makes, models and vehicle identification numbers of the motor vehicles;

(d) The date of receipt of the dispute and the date of disclosure to the consumer of the decision;

(e) All letters or other written documents submitted by either party;

(f) All other evidence collected by the board relating to the dispute, including summaries of relevant and material portions of telephone calls and meetings between the board and any other person (including neutral consultants described in paragraph (B)(4) or (C)(4) of this rule);

(g) A summary of any relevant and material information presented by either party at an oral presentation;

(h) The decision of the arbitrators, including information as to date, time and place of meeting and the identity of arbitrators voting, or information on any other resolution;

that BBB AUTO LINE hadn't contacted them or hadn't returned their calls before it closed a case, while the BBB AUTO LINE records report unsuccessful efforts to reach consumers; the auditor discusses these below.[189]

* * *

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

* * *

Finally, consistent with the auditor's prior recommendation and with security practices recommended by the FTC,[190] BBB AUTO LINE this year deleted older case files from its data base. Unfortunately, the contractor erroneously deleted more recent materials, particularly some performance verification letters used to monitor compliance. While unfortunate, and while this in some instances impacted the auditor's review, he doesn't consider this a serious matter or a matter that warrants a critique of BBB AUTO LINE.

F. Openness of Records and Proceedings

Rule 703.8 governs the extent to which records and proceedings are open or, conversely, confidential. Rule 703.8(b) allows the mechanism to keep certain records confidential, and Rule 703.8(c) requires it to set out a confidentiality policy. Rule 24 of the BBB AUTO LINE's arbitration rules does so, promising (with specified limits) privacy and confidentiality.[191]

(i) A copy of the disclosure to the parties of the decision;

(j) Copies of follow-up letters (or summaries of relevant and material portions of follow-up telephone calls) to the consumer and responses thereto; and

(k) Any other documents and communications (or summaries of relevant and material portions of oral communications) relating to the dispute.

189 Chapter 3, Section I.A.5.

190 FEDERAL TRADE COMMISSION, START WITH SECURITY, A GUIDE FOR BUSINESS (available at www.ftc.gov/system/files/documents/plain-language/pdf0205-startwithsecurity.pdf), at 2.

191 The rule provides:

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

We will not release the results of an individual case to any person or group that is not a party to the arbitration unless all parties agree or unless such release is required by

The 2015 audit alluded to issues with data handling, the specifics of which, the auditor observed, would be premature to discuss at the time but would be addressed subsequently. As described in the 2016 audit, the issues concerned confidentiality, the subject of the above-noted rules. And, in a modern context, data security is an essential component of confidentiality. Without discussing the issue in great detail in a public filing, the auditor noted in 2016 that BBB AUTO LINE had addressed important issues after the matter was brought to its attention. Most importantly, it had contracted with a third party vendor to assess, detect and block threats to applications and other workloads by integrating advanced full-stack detection techniques. And it had acted to increase a culture of security, for example, by allocating full time staff to compliance and ethics oversight, consolidating data security standards across the BBB system, and increasing their participation in privacy groups such as the International Association of Privacy Professionals. Further, while the auditor noted one outstanding issue as late as last year – BBB AUTO LINE had never purged older files from its system – it has now done so.

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

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state law or regulation or pertinent to judicial or governmental administrative proceedings.

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

CHAPTER 3

SURVEY AND ANALYSIS

I. Introduction and General Analysis

As noted previously, the audit must include a survey of "a random sample of disputes handled by the mechanism," including written or oral contact with each consumer surveyed.[192] This serves two purposes: to evaluate the adequacy of BBB AUTO LINE's procedures, and to substantiate the accuracy of its record-keeping and reporting, particularly with respect to certain aggregate statistics required by Federal or state law. This year's survey was again conducted by phone, and was again conducted by TechnoMetrica Marketing Intelligence. The survey reached out to consumers who had used the program and met certain other criteria (discussed below), and includes a national sample and separate Florida and Ohio samples.[193]

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

The macro analysis can be quite useful with large populations; for questions posed to 401 consumers in the national sample, for example, comparisons between the survey results and aggregates calculated by BBB AUTO LINE have a margin of error of +/- 4.5%. But when questions are posed to small groups (sometimes eight or less), the margin of error can increase to +/-30%, or more, and the macro analysis becomes a *very* blunt tool. Further, the macro analysis is an inherently blunt tool when asking consumers about a quantitative measure (how long did it take to resolve a case?) or about details about which they may well be fuzzy (did they get a particular form fifteen months earlier?[194]).

To this end, the auditor has created and refined a *targeted* micro-analysis to explore individual cases. The audit has also long included a "micro" analysis that examined randomly selected files from each population.[195] Since 2016, though, the current auditor has created and refined a targeted micro analysis that builds on the survey.

In the first part of the micro-analysis, TechnoMetrica Market Intelligence, who conducts the survey, develops tables with a second type of aggregate figures. These aggregates report the

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[192] Rule 703.7(b)(3).

[193] After a substantial revision in 2016, later changes to the survey instrument have been relatively minor.

[194] The survey was conducted in March 2020. It addressed cases that *closed* as early as January 1, 2019.

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

numbers and percentages of *individual* consumers whose replies differed from those in BBB AUTO LINE's spread sheet. These numbers are often, but not always, quite low.

The second part of the micro analysis, conducted by the auditor, looks at cases identified as potentially problematic by the survey,[196] and provides important context and correctives about the discordances noted above. This part of the analysis identifies cases where BBB AUTO LINE's records were demonstrably wrong; cases where (though he takes great care in reaching such conclusions) consumer responses were clearly or likely wrong; and occasional cases (mostly involving breakdowns in communication that each party attributes to the other) where the situation is ambiguous. But most discordances appear to be *reasonably explicable*, in the sense that both party's responses were reasonably consistent with the underlying files. These are detailed in the section that follows, but, broadly speaking, most fall into two classes: cases where the consumer didn't grasp nuances (often subtle nuances) behind BBB AUTO LINE's classification, and cases where divergences are an artifact of the survey process itself.[197] Taking all these factors into account, and with particular reference to the remedy and process metrics, the auditor rarely found a "true" discordance rate above 1-2% – a figure that includes some ambiguous cases and some cases of clear or likely consumer error.

Consumers with counsel. As discussed below,[198] the survey doesn't reach consumers who used lawyers, and thus doesn't highlight specific "attorney cases" for review. To address this omission, the auditor has also examined 75 files for consumers who used counsel.[199]

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196 These include, among others:

(1) Files for consumers who disagreed with BBB AUTO LINE records about the process used, the remedy obtained, and, if the consumer received an award in arbitration, whether she accepted it.

(2) Selected files for consumers who reported substantial delay, or for whom BBB AUTO LINE reported substantial delay.

(3) Consumers who reported noncompliance with settlement or arbitration awards, or for whom BBB AUTO LINE reported such noncompliance.

(4) Consumers who reported that they hadn't received one of several specified communications from BBB AUTO LINE.

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

197 The latter includes so-called "straddle cases," discussed in Section I.A.2.a of this chapter, and "branching issues," discussed in Section I.A.7.

198 Section II.C.2 of this chapter.

199 For each population, the auditor this year sorted the cases alphabetically by the consumer's *first* name, and then examined the first 25 attorney cases.

Facial anomalies. In recent years, the auditor has also used the full BBB AUTO LINE spread sheet to identify a small number of facial anomalies, such as mediations and arbitrations where the spread sheet didn't show a remedy; ineligible or withdrawn cases where it did; and arbitrated decisions where it didn't show whether the consumer accepted the arbitrator's decision. BBB AUTO LINE now addresses these before turning over the spread sheet (essentially using the spread sheet as an internal diagnostic tool), and the rate of these cases has dropped from 0.4% (40 cases) in 2017 to zero for 2019.

At the auditor's request, the spread sheet this year includes a new column showing the number of days to resolve a case, and through this column, the auditor found a trivial number (3 out of 10,345) of new facial anomalies – cases that "closed" before they opened. He noted these to BBB AUTO LINE, and BBB AUTO LINE fixed the problematic entries before providing the spread sheet to TechnoMetrica or compiling its aggregates.

Finally, the spread sheet this year also added, and refined the process for adding, compliance codes from BBB AUTO LINE's data base. The auditor noted that there wasn't a compliance code for some mediations and arbitrations, and he initially characterized these as *potential* facial anomalies (since it may have been premature to record a compliance code for some cases closed in 2019 when the spread sheet was created in February 2020). In any event, the auditor has highlighted to BBB AUTO LINE staff the potential utility of correcting any such anomalies that might be identified from these figures, as well, before providing the spread sheet to the auditor and TechnoMetrica, and before compiling aggregate compliance figures.

A. Micro Analysis Summary

1. Introduction

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

Consider, for example, Table III-V. The table reports the responses, for the national sample, to a seemingly straightforward question: Was the case closed by arbitration, mediation, withdrawal, or a finding of ineligibility? This doesn't involve details about which a consumer might be uncertain, such as whether a particular document was received, or quantitative measures about which his memory might be fuzzy, such as the time to process his complaint. So it seems surprising that the discordance rate was 8.0% – which, if projected to over 10,300 cases this year, suggests possible issues with over 800 cases on this metric. But, as touched on above and detailed below, the number of true discordances is likely a small percentage of this number (and likely includes some consumer error as well).

2. Reasonably Explicable Discordances

This section describes recurring patterns that the auditor has observed in four years of targeted micro analyses. These represent recurring patterns, and the auditor and TechnoMetrica have refined the survey a bit to address them. Unfortunately, though, efforts to refine the survey can involve trade-offs, and providing the level of detail that might provide useful clarifications for some consumers might in some instances frustrate others, perhaps even leading some of them to abandon the survey before they finish it.[200]

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

In a straddle case, an entry appears on the spread sheet for the audit year because a case was closed during that year, but, subsequently, either the original case was reopened or a related case was filed – and the reopened or related case *didn't* close during the audit year. The spread sheet (and thus the answers available to TechnoMetrica) didn't, and often couldn't, reflect the later developments that the consumer reported – events that sometimes occurred within days of the survey.[201]

In this year's national survey, straddles explained 9 of the 32 discordant cases on process (36%), and, during the past three years, they've explained 21 of the 93 such cases (23%). So, this one factor, where it's clear that the discordance *doesn't* show a real disagreement, consistently accounts for a substantial percentage of these reported discrepancies.

b. Settlements that Consumers Reach Outside the Program

Consumers sometimes resolve complaints directly with the manufacturer in ways that BBB AUTO LINE doesn't record as a "settlement."[202] Or they settle a matter with the *dealer,*

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

201 Consumers were interviewed in March, to allow TechnoMetrica to write its initial report and the auditor to write his report in time for the anticipated filing date in June. In that context, consider the following scenario. A consumer files a complaint in late December and learns on December 31 that he doesn't qualify for a statutory presumption under the applicable lemon law because he didn't provide the dealer and manufacturer with a final repair opportunity. The consumer then withdraws the complaint and provides the dealer and manufacturer with the requisite opportunities. If the consumer *then* files a new complaint in early February, BBB AUTO LINE would have 40 days from the time of filing to resolve the matter – which could extend well past the survey date.

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

and such settlements are inherently outside the BBB AUTO LINE process. BBB AUTO LINE reports these cases as withdrawn or ineligible, depending on the circumstances. Still, BBB AUTO LINE staff may have done some work with the parties, and some consumers describe such cases as "mediated."

c. Complications in Arbitrations

Settlements Reached After Arbitrations Begin. If a case settles after a hearing is scheduled but before it begins, it's reported as mediated. If it settles after the hearing begins but before the arbitrator issues a decision, though, the agreement is embodied in a "consent decision," prepared by BBB staff, that's signed by the parties and arbitrator – and, to the apparent confusion of some consumers, BBB AUTO LINE reports an arbitrated case.

Even more confusingly, if the parties settle *after* the arbitrator issues a decision, the settlement supersedes the decision, but BBB AUTO LINE still records the process as arbitration and the remedy as what the arbitrator ordered. In the auditor's view, BBB's practice is the best way to handle a situation with no optimal solution[203] – but it's hardly a resolution that would be intuitively obvious to surveyed consumers.[204]

Reconvened Arbitrations. When a case settles with a repair remedy (generally providing for the manufacturers to inspect the vehicle and fix it *if* the manufacturer finds a warranted defect), and when the consumer isn't satisfied with the remedy's implementation and later wants to pursue the matter further, BBB AUTO LINE opens a new case.

When the same thing happens in arbitration, though, the original case "reconvenes" before the arbitrator. And, in that event, there are two separate decisions in a single case: the initial repair decision and a second decision, generally a repurchase or replacement decision or a denial. Based on a number of reconvened cases that the auditor has reviewed, it appears that, in those matters, BBB AUTO LINE records the original repair decision (even though it's called an "interim" decision) as the resolution. Further, it records that decision as accepted by the consumer, since the consumer had to "accept" the initial decision to start a reconvened hearing in the first place. It's not clear why recording one or the other decision would be preferable, and

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

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

the auditor sees no problem with the BBB AUTO LINE's treatment of these cases.[205] Again, though, BBB AUTO LINE's resolution about how to treat these cases won't necessarily be clear to the consumer, who, if surveyed, may well focus on the final decision.

d. Confusion about Ineligibility and Withdrawals

Some consumers withdrew complaints early in the process, perhaps because they were told that they weren't eligible for specific remedies or presumptions under the program.[206] The BBB AUTO LINE characterizes these complaints as withdrawn (though it doesn't routinely use that word in its closing letter), but some surveyed consumers have described them as ineligible. Other consumers have classified ineligible cases as withdrawn, or cases that were either ineligible or withdrawn as "other" (and then provided details consistent with BBB AUTO LINE's treatment of the case).

e. Consumers Dissatisfied with the Performance of a Remedy

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

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

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

Consumers who didn't agree with BBB AUTO LINE's description of the process used to resolve their case were then asked if the case was arbitrated, mediated, ineligible, withdrawn, or "other."[207] Consumers who responded "other" were then invited to explain their responses.

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[205] The BBB AUTO LINE could create new remedy subcategories for reconvened cases, such as "Repair – Reconvened – Denial" and "Repair – Reconvened – Repurchase/Replacement" to clarify their record. This could be helpful to the auditor and perhaps to BBB AUTO LINE itself, although there are enough possible combinations that it would require a dozen now categories to cover the landscape.

[206] A consumer might withdraw a complaint, for example, if she hadn't yet afforded the manufacturer a final repair attempt under state law and had travel plans that prevented her from doing so expeditiously.

[207] More precisely, each consumer was initially asked to choose among four of the five possible responses. If BBB AUTO LINE recorded a case as arbitrated and the consumer disagreed, she was asked if it was mediated, ineligible, withdrawn, or "other." The process she had already rejected

Many consumers then provided details that were actually consistent with the original BBB AUTO LINE record. In a case with a mediated repair remedy, for example, the consumer might report a later settlement with the dealer, or report that the manufacturer had fixed the problem.[208] In essence, many chose the "other" option to provide clarification and supplementation consistent with BBB AUTO LINE's record.

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

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

h. Confusion about Timing

As explained in Chapter 2, when the implementation of a mediated repair settlement doesn't satisfy the consumer and the consumer wants to pursue the matter further, BBB AUTO LINE opens a new proceeding, whose case number has an "R" suffix.[209] In dealing with timing questions, some consumers (not unreasonably) merge two separate but related cases into one. Also, while the questionnaire focused on the time to *secure* a remedy, some consumers may have included in their response the time to *implement* it.

3. Consumer Error

a. Demonstrable Error Shown by a Subsequent Call

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

b. Highly Likely Error Shown by BBB AUTO LINE Records

The auditor hesitates to characterize specific consumer responses as wrong. There's an asymmetry in the audit process, since he has full access to the underlying BBB AUTO LINE documentation but only survey responses, sometimes supplemented by a follow-up call, for consumers. Further, seeming discordances aren't necessarily inconsistencies; even if BBB AUTO LINE records that consumers were *sent* a communication, for example, that doesn't necessarily establish that the consumer *received* it. Still, sometimes consumer error seems

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(arbitration in this example) wasn't included among the options in the follow-up.

[208] These are similar to straddle cases (category 2.a), but don't involve later developments *within* the BBB AUTO LINE program. Also, they're similar to category 2.b, except they involve developments after a matter closed.

[209] An initial reopened case uses a "1R" suffix. Occasional cases have a 2R suffix and, less often, the numbering goes higher.

highly likely, and sometimes, based on apparently clear documentation, it seems likely to the point of near-certainty. This would be the case, for example, when a consumer reports using arbitration, but the underlying case files (including a check for a follow-on case) contain none of the extensive documentation that would accompany arbitration.

Or consider a document receipt question. Some consumers said they didn't receive an initial packet of documents from BBB AUTO LINE. But, when a consumer files an online or phone complaint, BBB AUTO LINE sends an initial packet that includes a consumer complaint form incorporating the information the consumer had provided; the consumer is asked to correct, supplement, sign and return the form. The auditor can point to consumer error, with a high degree of confidence, when consumers say that they didn't receive these documents, but BBB AUTO LINE's files contain signed documents that they *returned*.[210]

4. Demonstrable BBB AUTO LINE error

In some cases, data on the BBB AUTO LINE spread sheet is inconsistent with BBB AUTO LINE's own underlying files. The auditor has found some such inconsistencies by facial anomalies[211] and others by his targeted file examination. These include, for example, occasional cases (less frequent this year than last) where BBB AUTO LINE counted a case as timely by relying on an extension requested by the manufacturer for which it hadn't documented the consumer's assent.[212]

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

In occasional cases, there's a discordance involving a breakdown in communications that the auditor can neither explain nor resolve. These are cases where the BBB AUTO LINE records and the consumer each attribute the breakdown to the other. And, as noted before, though, there's a fundamental asymmetry in the audit here. The auditor has access to BBB AUTO LINE's case files, and these typically include a letter that references other attempts to reach the consumer, sometimes with some detail and, sometimes, with further documentation in the DRS's notes. But for the consumer, the auditor generally has only survey responses.[213]

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[210] Further, these documents generally contain annotations in the same handwriting as the signature.

[211] See Section I of this chapter.

[212] Chapter 2, Section II.D.

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

In such cases, there's no way to evaluate decisively what happened. Did one or the other party drop the ball? Did both? While the auditor obviously prefers more detail in BBB AUTO LINE's files than less, moreover, added detail can't erase the asymmetry noted above. Thus, the auditor hesitates to discount the consumer's representations to the effect, for example, that the consumer *did* return BBB AUTO LINE's calls and didn't get a response.

6. Treatment of "Not Sure" Response

Various questions include a "not sure" option. Consumers who chose that option weren't included, for purposes of the specific response, in either the micro or the macro portions of the analysis.[214] To illustrate, consider a yes/no question posed to 100 people, with 45 responding "yes," 45 "no," and 10 "not sure." The chart would report a base of 90, with 45 affirmative and 45 negative replies.[215]

7. Branching Issues

This is something of a flip side to the preceding section, where BBB AUTO LINE recorded a specific result but the consumer couldn't recall the answer. Here, the consumer gives a specific response, but BBB AUTO LINE, because of a prior entry, didn't record one.[216] Consider, for example, the consumer in subsection 2.b who withdrew a complaint because she reached a settlement with the dealer. On the process question, BBB AUTO LINE records the case as withdrawn and (in what the auditor characterized as a reasonably explicable discordance on the process metric) consumers often report them as settlements. But now consider the remedy metric. Since BBB AUTO LINE showed the matter as withdrawn, it didn't record a remedy; but, since the consumer described a settlement, she *was* asked about her remedy. Thus, there's essentially a reasonably explicable discordance on remedy, as well, but the second discordance flows directly from the first. Indeed, it's arguable that there isn't a true discordance on the remedy metric at all.

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reportedly left on at least one), as well as another attempt to reach BBB AUTO LINE by email.

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

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

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

8. Micro Analysis: Broad Conclusions

Without delving into great detail here – the detail appears in the rest of the report – the micro analyses for the three populations draws on responses by over 600 consumers who completed surveys, and, for these consumers, BBB AUTO LINE records usually matched consumer responses on key metrics.

Also importantly, the records matched the underlying circumstances even more frequently, since many of the discordances reflected the reasonably explicable discordances and other considerations discussed above. Again focusing on the process and remedy entries, actual discordances on the (higher) process metric appear to be no more than 1-2%, and likely below 1%. In other words, the micro analysis shows that BBB AUTO LINE records accurately report the underlying circumstances on these metrics in the vast majority of cases.

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

B. Overview of the Macro Analysis

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

First, the auditor addressed *coverage errors.* These arise when the sampling frame, the list from which consumers were selected for calling, differs systematically from the overall population. Thus, as explained below, the sample frame didn't include cases where consumers had lawyers, as well as those that were followed by a related case that also closed during the audit year. Absent parallel adjustments to BBB AUTO LINE's aggregate figures, there would have been a coverage error. In essence, the cases that were omitted had different profiles than those that were included,[217] and the audit would have compared apples to oranges. And this was particularly important for the process and remedy variables, where the auditor's analysis relied most heavily on comparisons between aggregate statistics based on BBB AUTO LINE's records and aggregates based on the survey.

To address these problems for certain key metrics, the auditor developed aggregates of his own from the *modified* spread sheets that TechnoMetrica generated and used to place calls – a modified spread sheet that eliminated both attorney cases and earlier cases where there were

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

multiple complaints about the same vehicle. The auditor then compared the survey results to aggregates based on the precise "sampling frame" from which the surveyed consumers were randomly selected – so the survey became a direct test of the accuracy of the sampling frame.[218]

Second, the auditor took steps to address, in the area where it seemed to matter the most, the possibility of a *non-response error*. These arise when some types of consumers are less likely to respond to the survey than others. Specifically (and not surprisingly), the auditor has found that consumers who weren't eligible for the program were less likely to complete a survey than those who used mediation or arbitration.[219] As detailed below, the auditor essentially "weighted" the survey numbers on the process question to account for disparate response rates, and this has largely corrected some apparent discrepancies.

Third, another issue is *measurement error.* These arise, for example, from the various "reasonably explicable discordances" described above. Once the nature of these discordances started to become apparent with the 2016 audit, the auditor worked with TechnoMetrica to refine the questionnaire to address some confusion, but they haven't been able to fully eliminate it.[220] Indeed, there's a trade-off here. TechnoMetrica calls consumers at home or on cell phones and asks them to complete an extended survey. At some point, adding greater precision to the questions could lead to such detailed inquiries as to, in a worst case scenario, lower response rates. While the auditor has continued to work with TechnoMetrica to further reduce measurement errors, therefore, some will likely remain. And, even if discordances are, for example, reasonably explicable, they'll still impact the macro comparisons – although some will effectively cancel each other out.[221]

Fourth, there's a *sampling error* that's inherent in projecting to the whole population survey results from a subset of that population.[222] This is measured by the "margin of error," and that margin was least when dealing with the largest populations; for example, in projecting from

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

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

[220] For example, to address the straddle case issue discussed in Section A.1.2, the survey repeatedly asks consumers, if they filed multiple complaints during the year, to focus on the last case closed in 2019. It's hardly a surprise, though, that some consumers still report on follow-on cases from 2020.

[221] In the simplest example, if one case is reported by a consumer as ineligible and BBB AUTO LINE as withdrawn, and a second case is reported by the consumer as withdrawn and BBB AUTO LINE as ineligible, the net effect on the aggregate macro figures will cancel out.

[222] Such projection is unavoidable; even in Ohio, where TechnoMetrica attempted to contact *every* consumer in the sampling frame, they completed interviews with only 24.5%.

401 consumers interviewed in the national survey to the "sampling frame" of 7804 from which they were drawn. Even here, margin of error was +/-4.5%. But it grew to +/-7.3% for the (smaller) Florida sample and to +/- 10.4% for the (even smaller) Ohio sample – notwithstanding TechnoMetrica's efforts to contact every consumer in the Ohio sample. And *those* numbers grow even further, sometimes into the range of +/-30% (a total range of at least *60%*) for questions posed to only some of the interviewed consumers.[223] On top of that, the margin of error has a "confidence interval," usually, as here, set at 95%. While the precise statistical implications are complex, this means broadly that, even if there were no problem with BBB AUTO LINE's records, occasional comparisons can reasonably be expected to fall outside the margin.

When the range of errors reaches the realm of 20% (+/-10%) or higher, the survey provides rather limited support to conclude that the underlying aggregates are accurate. Despite a well-designed survey instrument, administered by a professional survey firm, despite reasonably large numbers of completed surveys in the national survey (401) and Florida survey (151), and, despite efforts to reach *every* Ohio consumer who didn't use an attorney, the auditor might find some results problematic *if he had to rely on the macro analysis alone*. It's in those instances that the micro analysis, sometimes further reinforced by historical data, can provide the support that the macro analysis doesn't.

C. Satisfaction Rates

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

(1) Consumers who used mediation or arbitration gave BBB AUTO LINE staff a B/B+, with grades of 3.18 (national), 3.33 (Florida) and 3.02 (Ohio).

(2) In grading arbitrators, not surprisingly, consumers who got more favorable decisions were more impressed with their arbitrators' virtues. Thus, composite grades from consumers with repurchase or replacement remedies were 3.78 (national), 3.72 (Florida) and 3.59 (Ohio); grades from those with no award were 1.31 (national), 0.86 (Florida) and 0.63 (Ohio).

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[223] For example, while 67 Ohio consumers completed a survey, only eight reported using arbitration and were asked if the accepted the arbitration award. (Further, the audit only focuses on responses for consumers who accepted or rejected an award, not those who accepted or rejected a decision that denied their claim. For many consumers, the question of whether they "accepted" a denial decision wasn't particularly important – since they weren't getting any relief and didn't plan to go to court. The auditor thus focused in his acceptance/rejection analysis on cases where the arbitrator's decision granted consumers an award – and only *five* consumers were considered in the base.)

(3) When asked if they would recommend BBB AUTO LINE to friends and family, 74.9% in the national sample said yes, as did 69.9% in Florida and 68.3% in Ohio. Among consumers who used mediation or arbitration, the numbers rose to 86.9% for the national sample, 88.0% for Florida, and 84.53% for Ohio. Even among consumers who went to arbitration and lost, nearly half of those who responded said they would recommend BBB AUTO LINE to friends and family.

II. Conducting the Survey

A. TechnoMetrica

The auditor lacks the capacity to conduct a survey himself and BBB National Programs, Inc. contracted with TechnoMetrica Market Intelligence[224] to conduct the study and help the auditor in designing and analyzing it; this is essentially the process used since 2015.[225] The auditor participated in the selection process, and, once TechnoMetrica was chosen, he worked directly with TechnoMetrica and took the lead in deciding the broad outline of the survey's approach. He worked closely with TechnoMetrica in creating the survey instrument, and, while he has solicited input from the BBB AUTO LINE, the auditor made the final decisions on questions about the survey's approach and content.

B. The Population That Was Sampled

1. Temporal Scope

Consistent with prior audits by the current auditor, the audit covers cases *closed* between

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[224] TechnoMetrica describes itself as follows:

> Incorporated in 1992, TechnoMetrica Market Intelligence is a full-service firm offering enterprise-class research to a wide variety of industries. For over 25 years, we've served our clients an extensive menu of customizable research options backed by skilled personnel with a broad knowledge base spanning a wide variety of industries and research techniques.
>
> In addition to our market research expertise, our nationally recognized polling arm, TIPP (TechnoMetrica Institute of Policy and Politics), achieved Most Accurate Pollster status for the last 4 consecutive Presidential elections (2004, 2008, 2012 and 2016).
>
> TechnoMetrica is a certified MBE/DBE/SBE in the state of New Jersey and is a member of a number of industry organizations, including AAPOR and the American Marketing Association.

[225] Prior to 2015, the contract was arranged by the Council of Better Business Bureaus. The auditor spoke to TechnoMetrica before the 2015 survey and agreed to work with them, and each year since has requested the use of TechnoMetrica.

January and December of the audit year, regardless of when they opened. This is a consistent standard, applied year-to-year, and avoids double-counting a case in two separate years.

2. Consumers Represented by Counsel

When consumers had lawyers representing them, their point of contact for phone calls and correspondence was through their attorneys. But the FTC rule doesn't seem to contemplate calls to attorneys – the audit rule specifies contacts with "consumers." And attorneys were in any event unlikely to respond to a multi-question, case-specific survey. The likely problems were exacerbated by firms that handled a large number of cases – sometimes hundreds of them. Indeed, of the 1458 cases brought by attorneys during the audit year, over 60% were brought by three firms.

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

As in past audits by the current auditor (and, to the best the auditor could determine, in prior audits as well), the auditor excluded consumers with counsel from the survey. He thus omitted about 13.7% of consumers from the national sample, 23.0% from the Florida sample, and about 14.1% from the Ohio sample. But, though TechnoMetrica didn't survey these consumers, the auditor did review, for each population, 25 case files for consumers who used counsel.

3. Multiple Complaints about the Same Vehicle (MCSVs)

This year's survey also repeated the auditor's prior approach to MCSVs. Most of these were "1R" cases,[226] where a settlement[227] produces a remedy (usually an inspection under the auspices of a manufacturer representative followed by a repair if the representative finds a problem); the manufacturer undertakes to perform; the consumer isn't satisfied; and the

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[226] "1R" also includes "2R" cases (and beyond).

[227] 1R case numbers are used only in the aftermath of settlements; if a consumer isn't satisfied with the implementation of an *arbitrated* remedy, the case is reconvened before the arbitrator.

consumer, in a timely fashion, tells BBB AUTO LINE that she wants to proceed further.[228] TechnoMetrica identified MCSVs, including but not limited to 1R cases, primarily by finding cases with the same contact phone numbers.[229]

The BBB AUTO LINE's general approach – to open a new "R" case when a consumer isn't satisfied with the implementation of a remedy – has a sound basis. "R" cases are most often preceded by mediated repair settlements, and, as noted previously, the FTC, Florida, and Ohio all recognize repair remedies as appropriate outcomes to dispute resolution, which can (although they don't always) resolve an issue. [230] Yet the process can take time; the manufacturer and consumer must coordinate an inspection and possible repair, and, if the underlying problem manifests itself only intermittently, the consumer may need to drive the car for weeks before deciding whether the repair satisfies his concerns. Yet the time to process the initial complaint and attempt a repair will likely exhaust much of the time allotted for the original complaint. So, from BBB AUTO LINE's perspective, and from the perspective of this review, it seems reasonable to restart the clock for a "1R" case.

Yet starting a new case poses complications of its own, both for the survey and for calculating aggregates. As a practical matter, for example, in the unlikely event that a consumer who was called twice about the same vehicle was willing to do the survey twice, he might well confuse events in the original case with those in the 1R case. But more fundamentally, a consumer who was called twice about the same vehicle could be annoyed and likely *wouldn't* repeat the survey.[231] So, at the auditor's request and in the face of MSCVs, TechnoMetrica scrubbed all but the latest case from the list. And, when consumers were called, they were asked to focus solely on the *last* case they filed if they filed multiple complaints during the year (the result they would likely have focused on in any event).

MCSVs would also create an apples and oranges problem – on the order of several percent – if the auditor compared BBB AUTO LINE's aggregate calculations to the survey results without making appropriate adjustments. To address this *coverage error*,[232] the auditor (as noted above) compared the survey results to aggregates developed from the abbreviated spread sheet created by TechnoMetrica.

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

[229] This would also screen out the rare case where a consumer filed multiple cases involving *different* vehicles in a single year. A single phone number could also be associated with multiple cases when a consumer has counsel, but attorney cases are already excluded from the survey.

[230] 16 C.F.R. § 703.5(d); former Florida Rule 5J-11-010(2)(C); Ohio Administrative Code 109:4-4-04(C)(5)(A).

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

[232] See Section I.B of this chapter.

C. Sampling

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

> TechnoMetrica then randomized the sampling frame and divided it into a total of 16 replicates: 15 replicates of 500 records each and 1 with 304 records. Sample for data collection was released in replicates – that is, a fresh replicate was only released upon completion of the prior replicate. This sampling method ensured that the National sample was truly representative of the population of 2019 cases. The National data collection used six replicates (five full replicates and part of the sixth).
>
> Sample for the supplemental Florida and Ohio surveys was taken from the remaining replicates 7 to 16. Due to limited Ohio sample, any available records remaining from the National sample replicates were utilized as well. The sampling frames for Florida and Ohio were 949 and 279 records, respectively.
>
> Note that due to extremely limited sample, Ohio completes in the National survey were counted under both National and Ohio surveys.

D. Fielding and Margin of Error

Again quoting from TechnoMetrica,

Interviews were conducted on weeknights between 3/7/19 and 3/14/19, with up to 4 call Interviews were conducted on weeknights between 3/11/20 and 3/17/20, with up to 4 call attempts per respondent.

A total of 401 completes were obtained in the National survey, 151 in Florida and 67 in Ohio. The following table shows the response rate and margin of error for each of the surveys.

	Sampling Frame	All Used Sample	Valid Used Sample*	Completes	Response Rate	Margin of Error†
National	7804	2821	2536	401	15.8%	+/- 4.53
Florida	949	949	855	151	17.7.%	+/- 7.24
Ohio	279	279	273	67	24.5%	+/- 10.42

**Excludes sample without currently valid contact information*
†Note that MOE is larger for subgroups and based questions

* * *

To make explicit one aspect of this summary: Given the limited number of Ohio complaints, attempts were made (with up to four phone calls per consumer) to contact *every* Ohio consumer that BBB AUTO LINE identified and for which it provided currently valid contact information. Further, *every* Ohio consumer who was surveyed was included in the Ohio results, even if the consumer was initially contacted as part of the national survey. This was all done to maximize the Ohio responses, although in the final tally there were only 67.[233]

E. Identifying Florida and Ohio Cases for the State Audits

BBB AUTO LINE's records identify both the state for the consumer's contact address *and* the state under whose program the program was processed. The two states often diverge when a consumer has an attorney, because multi-state law firms often use an out-of-state address for contact purposes. For consumers *without* attorneys – the only consumers contacted in the survey – the two states are generally the same.[234] In any event, the audit uses the processing state to identify Florida and Ohio consumers for the state audits.

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[233] Given the larger sampling frame in Florida, it wasn't necessary to do this for that state.

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

IIA. Survey Results – Some Preliminary Notes

A NOTE ON MISSING TABLE NUMBERS

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

To maintain this consistency, the auditor may skip a number when he omits a table or consolidates multiple tables into one. Similarly, when the auditor adds a table that wasn't included before, he gives in an interstitial number, such as "Table VIIA."

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

(1) Use of gendered pronouns in discussing consumers. To add an extra layer of anonymity when the auditor refers to specific cases, the auditor doesn't necessarily use the appropriate gender-specific pronoun.

(2) Characterization of the bases for targeted questions. Many questions were directed only to some consumers, e.g., those who used mediation weren't asked about whether they accepted an arbitrator's award, nor were they asked to evaluate their arbitrator. When the table describes the base for a question, such as "arbitrated cases" it means "cases identified *by the consumer* as 'arbitrated.'"

(3) "Imported" results. In tables comparing consumer responses to BBB AUTO LINE records, the term "imported" refers to results "imported" from BBB AUTO LINE records.

(4) "Fully adjusted" results. This refers to aggregate figures that are adjusted to exclude: (1) cases where a consumer had an attorney, and (2) where a consumer filed multiple complaints about the same vehicle during the audit year, all but the latest case to close.

(5) Restitution. In a few cases from California this year, arbitrated decisions provided for payments to a consumer who no longer owned the car. BBB AUTO LINE reports these as "restitutions."[235] The auditor treats them as interchangeable with "repurchase/replacement."

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

III. SURVEY RESULTS – NATIONAL SAMPLE

A. GENERAL INFORMATION

Table III–1: Vehicle Year (Surveyed Consumers)

TOTAL	**401**
	100.0%
2008	**4**
	1.0%
2009	**1**
	0.2%
2010	**3**
	0.7%
2011	**4**
	1.0%
2012	**7**
	1.7%
2013	**19**
	4.7%
2014	**31**
	7.7%
2015	**31**
	7.7%
2016	**42**
	10.5%
2017	**91**
	22.7%
2018	**98**
	24.4%
2019	**69**
	17.2%
2020	**1**
	0.2%

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

TOTAL	401
	100.0%
Yes	399
	99.5%

In both of the "no" responses, the consumer agreed with the year and make; in one, the consumer expressly disagreed with the model shown in BBB AUTO LINE's records, in the other, the recorded response doesn't indicate why the consumer disagreed.

Table III–3: Repair attempts

	2019 Survey	2018 Survey	2017 Survey	2016 Survey
BASE: All respondents, "not sure" excluded	391	398	397	392
	100.0%	100.0%	100.0%	100.0%
None	53	56	74	74
	13.6%	14.1%	18.6%	18.9%
One	31	40	23	34
	7.9%	10.1%	5.8%	8.7%
Two	45	31	24	21
	11.5%	7.8%	6.0%	5.4%
Three	72	64	71	55
	18.4%	16.1%	17.9%	14.0%
Four or more	190	207	205	208
	48.6%	52.0%	51.6%	53.1%

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

	2019 Survey	2018 Survey	2017 Survey	2016 Survey
BASE: All respondents, except those who responded "not sure" to this question	394	395	401	392
	100.0%	100.0%	100.0%	100.0%
Manufacturer's manuals/other warranty documents	57	48	49	48
	14.5%	12.2%	12.0%	12.2%
Dealer or manufacturer representative	71	92	63	65
	18.0%	23.3%	15.7%	16.6%
BBB/BBB Website	49	54	31	55
	12.4%	13.7%	7.7%	14.0%
BBB/BBB AUTOLINE Website	49	Previously included with BBB/BBB website		
	12.4%			
Government website, office, or official	13	14	9	9
	3.3%	3.5%	2.2%	2.2%
Other Website (not BBB, BBB AUTO LINE, or government	65	81	112	94
	16.5%	20.5%	27.0%	24.0%
Lawyer	15	22	10	10
	3.8%	5.6%	2.5%	2.6%
Friend/family/word of mouth	66	71	92	88
	16.8%	18.0%	22.9%	22.4%
TV/Radio/Newspaper	-	3	7	4
	-	0.8%	1.7%	1.0%
Had used the BBB AUTOLINE previously	14	17	17	3
	3.6%	4.3%	4.2%	0.8%
General knowledge	25	16		
	6.3%	4.1%		
Other	4[236]	3	11	16
	1.0%	0.7%	2.7%	4.1%

Until 2017, consumers were asked how they *first* learned about BBB AUTOLINE. The revised formulation allows for multiple responses. This raised the number of responses a bit, but not too much; relatively few consumers gave two or more responses.

Nine responses were coded as both "BBB/BBB website" and "BBB AUTOLINE website. The total coded for either *or both* of these was 89 (22.6%).

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

B. PROCESS

Table III–-5: Aggregate "process" responses

	BBB AUTO LINE stats (A1)	Same, excluding att'y cases (A2)	Fully adjusted[237] (A3)	Survey (B1)	Survey adjusted for response rate (see below) (B2)
TOTAL	10351	8892	**7804**	401	
	100.0%	100.0%	**100.0%**	100.0%	**100.0%**
Mediation	2959	2815	**2187**	117	
	28.6%	31.6%	**28.0%**	29.2%	**26.4%**
Arbitration	1775	1070	**1053**	83	
	17.2%	12.0%	**13.4%**	20.7%	**14.4%**
Withdrawn	870	735	**681**	22	
	8.4%	8.3%	**8.7%**	5.5%	**7.0%**
Ineligible	4747	4272	**3883**	161	
	45.9%	48.0%	**49.7%**	40.1%	**51.6%**
Other				18	
				4.5%	

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

	2019	2018	2017	2016
TOTAL	10351	9318	10615	9748
	100.0%	100.0%	100.0%	100.0%
Mediation	2959	2773	2828	2547
	28.6%	29.8%	26.6%	26.1%
Arbitration	1775	1515	2010	2160
	17.2%	16.3%	18.9%	22.2%
Withdrawn	870	766	963	866
	8.4%	8.2%	9.1%	8.8%
Ineligible	4747	4,264	4814	4175
	45.9%	45.8%	45.3%	42.8%

[237] See below; also Section II.A of this Chapter.

Table III–6: Comparisons of individual "process" responses

	Mediated	Arbitrated	Withdrawn	Ineligible	Other
TOTAL	117	83	22	161	18
	100.0%	100.0%	100.0%	100.0%	100.0%
Mediation (Imported)	**111**	3	-	-	10
	94.9%	3.6%	-	-	55.6%
Arbitration (Imported)	-	**78**	-	-	-
	-	**94.0%**	-	-	-
Withdrawn (Imported)	2	-	**21**	2	3
	1.7%	-	**95.5%**	1.2%	16.7%
Ineligible (Imported)	4	2	1	**159**	5
	3.4%	2.4%	4.5%	**98.8%**	27.8%

Concordance: 369/401 = 92.0%
Discordance: 32/401 = 8.0%[238]

1. Micro analysis

Table III-6, the core of the micro analysis, reports a "concordance" of 92.0%, which is higher than comparable figures in the past and, at best, a reasonable if not particularly impressive figure.[239] However, most of the 32 "discordances" fall into one of the categories noted in Section I.A.2 of this chapter, and, on examination, don't appear to reflect problems with either the process or BBB AUTO LINE's record keeping. And most involve reasonably explicable differences

- Nine were straddle cases, where the consumer described case-related developments that occurred after the audit year. (Category 2.a.)
- Four were cases where the consumer apparently reached a settlement outside the program. (Category 2.b.)
- Three were cases where, reflecting confusion about the terms, the consumer and BBB AUTO LINE diverged on whether a case was ineligible or withdrawn. (Category 2.d.)
- One involved a consumer who appeared dissatisfied with the execution of a repair remedy. (Category 2.e.)

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238 As explained below, this substantially overstates the number of true discordances.

239 With over 10300 files on the original spread sheet, this would suggest a fundamental error in over 820 cases.

- Ten involved consumers who replied "other" to the question, and then gave details that were consistent with BBB AUTO LINE's characterization.[240] (Category 2.f.)
- Two cases weren't clear, including one where BBB AUTO LINE reported that the car wasn't eligible for the program because it was too old, but the consumer said that the case was arbitrated.

The remaining three cases involve failures to communicate, but of two different sorts. Two were claims that BBB AUTO LINE found ineligible due to age, and the consumers said that they never heard from BBB AUTO LINE.[241] In the last case (a complaint involving tires), the consumer reported leaving several unreturned messages for BBB AUTO LINE – while BBB AUTO LINE reported multiple unsuccessful attempts to call the consumer, including several calls with voicemail messages, and two letters. The case appears to be well-documented in BBB AUTO LINE's files, although the auditor recognizes, again, the basic asymmetry that he has access to BBB AUTO LINE's files but not to records that the consumer might have maintained.

All in all, the 32 reported discordances reflected an unusually high rate of discordant responses. But, on examination, nearly all appear to be reasonably explicable discordances.

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

2. Macro analysis

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

Column A2, developed by screening BBB AUTO LINE's spread sheet to exclude attorney cases, reports only cases where consumers appeared without counsel. These constitute about 85.9% of the cases in column A1. There's more detail in Section III.G about these figures.

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[240] For example, in a case with a mediated repair settlement, a consumer disagreed with BBB AUTO LINE's characterization of a mediation and substituted "other" – and then explained that the manufacturer had fixed the problem. In another case where the consumer with a mediated inspection-and-repair remedy, the manufacturer said there was no problem, and the consumer explained that she sold the car (though she could have pursued the case further in BBB AUTO LINE). In yet another case, reported by BBB AUTO LINE as ineligible and the consumer as "other," the car was totaled in an accident shortly before the arbitration.

[241] As discussed in Chapter 2, Section 2.B, some consumers this year may had problems using online accounts on which BBB AUTO LINE began to rely more heavily in 2019. These two consumers, though, successfully accessed their accounts and also submitted signed consumer complaint forms (so they successfully received at least one communication from BBB AUTO LINE).

Column A3, based on TechnoMetrica's actual sampling frame, omits *both* cases where the consumer had counsel and, where the consumer filed MCSVs during the year, it omits all but the last.[242] Both omissions are needed to avoid *coverage errors*, essentially "comparing apples and oranges."[243] This column has the appropriate figures to compare to the survey results.

The "B" columns. On the process question, the auditor also adjusted the survey results to account for *non-response error*.[244] Here, the B columns report those results, with column B1 reporting the actual results and column B2 adjusting them with a weighting factor. As in prior audits, TechnoMetrica this year reported the responses rate for consumers who used different processes. The rates were:

- 16.1% for those whose cases were resolved through mediation;
- 21.1% for those who used arbitration;
- 12.2% for those deemed ineligible to participate in BBB AUTO LINE; and
- 11.5% for consumers who withdrew their complaints.

Thus, consumers who used arbitration were over 73% more likely to complete the survey than those who were deemed ineligible.[245] Column B2 thus weights the responses in each category to simulate a scenario where all categories of consumers responded at the same rate.

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

* * *

At this point, it's necessary to add back in the MCSV omissions to get back to columns A2, and then to add back in the "attorney case" omissions to get back to column A1. For these, the auditor relies on his systematic examination of 25 attorney case files, as well as his review of the omitted MCSV cases during his review of case files.[246] In neither did he find systematic

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

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

244 See Section I.B of this Chapter.

245 This comes from dividing 21.1% by 12.2%.

246 When the auditor was reviewing targeted case files, as described above, he also examined

problems with the “restored” BBB AUTO LINE records.

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

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earlier cases in the series.

C. RELIEF

The relief questions were posed to consumers who identified their cases as arbitrated or mediated. As with the process questions, consumers were told how BBB AUTO LINE reported the relief they received, and asked to confirm or correct the records.[247]

1. Combined Results for Mediated and Arbitrated Cases

The auditor starts with the combined results for mediated and arbitrated cases. These, in his view, present the most significant insights into the program as a whole – and point to advantages in a program that, unless the consumer rejects it, typically starts with mediation. From the consumer's perspective, as noted above, a repurchase obtained through mediation is no less valuable than one obtained through arbitration – and far more consumers got a repurchase or replacement through mediation (1166) than through arbitration (638).

Table III–7: Remedies in Mediated and Arbitrated Cases

	BBB AUTO LINE stats (A1)	Same, excluding attorney cases (A2)	Stats from "fully adjusted" spread sheet (A3)	Survey (B)
BASE: med/arb	4734	3885	**3255**	**200**
	100.0%	100.0%	**100.0%**	**100.0%**
Replacement/ Repurchase	1804	1453	**1427**	**88**
	38.1%	37.4%	**43.8%**	**44.0%**
Repair	1563	1500	**929**	**52**
	33.0%	38.6%	**28.6%**	**26.0%**
Other	414	394	**373**	**25**
	8.8%	10.1%	**11.5%**	**12.5%**
No Award	953	538	**526**	**35**
	20.1%	13.8%	**16.2%**	**17.5%**

Starting with the macro analysis in Table III-7, the key comparison is between columns A3 and B, both of which exclude consumers who used attorneys and, for MCSVs, all but the last complaint filed during the audit year.[248] The margin of error for questions posed to all 401

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

[248] The auditor didn't use weighted averages and create a column B for the remedy metric. This year, TechnoMetrica provided response rate figures based on remedies as well as process and, as the auditor had anticipated, the response rates didn't vary significantly by remedy. (The figures were 15.7% for consumers with a replacement or refund; 19.8% for those with a repair remedy; 18.1% for

consumers who completed the survey in the national sample was +/- 4.5%, and it's higher for this question, which was posed only to 200 consumers who used arbitration or mediation.[249] The highest differential between the A3 and B figures never exceeds 2.6%, well within the margin of error.

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

Table III–7A: Multi-Year Comparisons (A1 Figures)

	2019	2018	2017	2016
BASE: med. & arbitrated cases	4734	4288	4838	4707
	100.0%	100.0%	100.0%	100.0%
Replacement/ Repurchase	1804	1779	1734	1549
	38.1%	41.5%	35.8%	32.9%
Repair	1563	1253	1487	1400
	33.0%	29.2%	30.7%	29.7%
Other	414	396	456	505
	8.8%	9.2%	9.4%	10.7%
No Award	953	860	1161	1253
	20.1%	21.0%.	24.0%	26.6%

The multi-year comparison shows a consistent drop-off, though a very small one this year, in the percentage of cases where a consumer (using arbitration) got no award. The percentage getting full relief – a replacement/repurchase remedy – dropped a bit this year, but that followed a year (2018) when consumers had an unusually high success rate.

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those who received another remedy; and 19.4% for those who used arbitration and received no remedy.

[249] In a straightforward case where 200 consumers (the number of surveyed consumers who used mediation or arbitration) were selected from a sample of 4734, the margin of error would be 6.9%.

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

	Replacement/ Repurchase	Repair	Other	No Award
BASE = med/arb	88	52	25	35
	100.0%	100.0%	100.0%	100.0%
Replacement/Repurchase (Imported)	**80**	-	1	-
	90.9%	-	4.0%	-
Repair (Imported)	2	**50**	1	1
	2.3%	**96.2%**	4.0%	2.9%
Other (Imported)	-	-	**22**	-
	-	-	**88.0%**	-
No Award (Imported)	-	1	-	**34**
	-	1.9%	-	**97.1%**
No entry (Imported)[250]	6	1	1	-
	6.8%	1.9%	4.0%	-

Concordance: 186/200 = 93.0%
Discordance: 14/200 = 7.0%

Eight of the reported discordances were cases that the consumer had reported as mediated or arbitrated, but BBB AUTO LINE showed as ineligible or withdrawn. Because BBB AUTO LINE didn't show an arbitration or mediation, it didn't record a remedy. And, since the auditor's prior analysis shows that BBB AUTO LINE's characterization of a case as ineligible or withdrawn was always or almost always correct, it follows that the omission of a "remedy" entry for these cases was similarly correct.

The other six discordances include two straddle cases (category 2.a), two cases where BBB AUTO LINE reported an initial decision by an arbitrator that called for a repair while the consumer reported the result of a reconvened proceeding (category 2.c), and another case where the responses appear likely to be consistent (category 2.f).

In the final case, there was a BBB AUTO LINE error in coding the results; the coding doesn't match the information in the underlying file. So the true discordance appears to be at most 1%.

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

3. Relief in Mediated Cases Only

Table III-–9: Remedy in Mediated Cases

	BBB AUTO LINE stats (A1)	Same, excluding attorney cases (A2)	Stats from "fully adjusted" spread sheet (A3)	Survey (B)
BASE: med. cases	2959	2815	2201	117
	100.0%	100.0%	100.0%	100.0%
Replacement/ Repurchase	1166	1056	1035	57
	39.4%	37.5%	47.0%	48.7%
Repair	1399	1381	807	38
	47.2%	49.0%	36.7%	32.5%
Other	394	378	359	22
	13.3%	13.4%	16.3%	18.8%

With a margin of error of +/-4.5% for questions posed to all 401 consumers in the national sample, and a substantially higher margin for responses from 117 consumers to a follow-up question,[251] the figures in columns A3 and B are well within the margin of error.

Table III-9A: Multi-Year Comparisons (A1 figures)

	2019	2018	2017	2016
BASE: med. cases	2959	2773	2828	2547
	100.0%	100.0%	100.0%	100.0%
Replacement/ Repurchase	1166	1311	1163	930
	39.4%	47.3%	41.1%	35.5%
Repair	1399	1081	1262	1174
	47.2%	39.0%	44.6%	46.1%
Other	394	381	403	443
	13.3%	13.7%	14.2%	17.4%

Compared to last year, there was a noticeable shift from replacement/repurchase remedies to repair remedies for mediated cases. Examining the trend over four years, though, perhaps the 2018 results were an aberration, with the results for 2019 possibly returning to the norm.

[251] If this were a straightforward case where 117 consumers (the number surveyed) were selected from a sample of 2201, the margin of error would be 8.8%.

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

	Replacement Repurchase	Repair	Other
BASE: med. cases	57	38	22
	100.0%	100.0%	100.0%
Replacement/Repurchase (Imported)	52	-	-
	91.2%	-	-
Repair (Imported)	1	37	1
	1.8%	97.4%	4.5%
Other (Imported)	-	-	20
	-	-	90.9%
No entry (Imported)[252]	4	1	1
	7.0%	2.6%	4.5%

Concordance: 109/117 = 93.2%
Discordance: 8/117 = 6.8%

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

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

3. Relief in Arbitrated Cases

Table III–11: Remedy in Arbitrated Cases

	BBB AUTO LINE stats (A1)	Same, excluding att'y cases (A2)	Stats from fully adjusted spread sheet (A3)	Survey (B)
BASE: ARBs	1775	1070	1053	83
	100.0%	100.0%	100.0%	100.0%
Replacement /Repurchase	638	397	392	31
	35.9%	37.1%	37.2%	37.3%
Repair	164	119	122	14
	9.2%	11.1%	11.6%	16.9%
Other	20	16	13	3
	1.1%	1.5%	1.2%	3.6%
No award	953	538	526	35
	53.7%	50.3%	50.0%	42.2%

The margin of error for this question, analyzing responses from only 83 consumers who were drawn from a population that included some 1053 consumers, is far higher than the 4.5% figure for the populations as a whole.[253] A comparison of column A3 to column B shows numbers within a reasonable margin.

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

	2019	2018	2017	2016
BASE: ARB	1775	1,515	2010	2160
	100.0%	100.0%	100.0%	100.0%
Replacement/ Repurchase	638	468	571	619
	35.9%	30.9%	28.4%	28.7%
Repair	164	172	225	226
	9.2%	11.3%	11.2%	10.5%
Other	20	15	53	62
	1.1%	1.0%	2.6%	2.9%
No Award	953	860	1161	1253
	53.7%	56.7%	57.8%	58.0%

The multi-year comparisons show that, according to BBB AUTO LINE figures, consumers in 2019 did somewhat better in arbitrations than they had in past years (thought this is

[253] If this were a straightforward case where 83 consumers were selected from a sample of 1053, the margin of error would be 10.3%.

somewhat counterbalanced by the lesser percentages of replacement/repurchase remedies that they obtained in mediations).

Further, consistent with his earlier remarks, the auditor highlights that these tables can't be viewed in a vacuum, but should be examined together with Tables III-7 and III-8 (arbitrated plus mediated cases). Because BBB AUTO LINE has a vibrant mediation program, the cases that go to arbitration may well be those that pose the most difficult fact situations to resolve. So, for example, the auditor considers the 53.7% "no award" rate for all consumers in arbitration far telling than the fact that these cases constitute only 20.1% of all consumers with eligible, non-withdrawn complaints.[254]

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

	Replacement/ Repurchase	Repair	Other	No Award
BASE: ARB	31	14	3	35
	100.0%	100.0%	100.0%	100.0%
Replacement/Repurchase (Imported)	28	-	1	-
	90.3%	-	33.3%	-
Repair (Imported)	1	13	-	1
	3.2%	92.9%	-	2.9%
Other (Imported)	-	-	2	-
	-	-	66.7%	-
No Award (Imported)	-	1	-	34
	-	7.1%	-	97.1%
No entry (Imported)[255]	2	-	-	-
	6.5%	-	-	-

Concordance: 77/83 = 92.8%
Discordance: 6/83 = 7.2%

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

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

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

Table III–13: Did you return a form accepting the arbitrator's decision?[256]

	2019	2018	2017	2016
BASE: ARB, with award, not sure excluded	43	26	37	51
	100.0%	100.0%	100.0%	100%
Yes	38	25	30	42
	88.4%	96.2%	81%	82%

Table III–14: Acceptance of different types of remedies

	Total	Replacement/ Repurchase	Repair	Other
BASE: Same as Table III-13	47	30	14	3
	100.0%	100.0%	100.0%	100.0%
Yes	41	29	10	2
	87.2%	96.7%	71.4%	66.7%

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

	Survey Responses	
	Accepted	Rejected
BASE: ARB, w/ award, "not sure" excluded	41	6
	100.0%	100.0%
Accepted (Imported)	**37**	-
	90.2%	
Rejected (Imported)	1	**5**
	2.4%	**83.3%**
No entry (Not recorded by BBB AUTO LINE as an ARB case)	3	1
	7.3%	16.7%

Concordance: 42/47 = 89.4%
Discordance: 5/47 = 10.6%

Four of the discordant cases resulted from the fact that BBB AUTO LINE didn't include *any* entry because it didn't show that there was an arbitrated proceeding in the first place. The earlier analysis suggests that these were all reasonably explicable divergences on the process entry, and, by extension, they were reasonably explicable on the remedy entry as well.

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

The remaining divergence was also a reasonably explicable divergence. The consumer initially got a repair remedy, which he accepted, but then reconvened the case and got no relief. The BBB AUTO LINE record focused on the first hearing; the consumer focused on the second.

4. Withdrawn Cases (Survey Responses)

Table III–16: Reasons for withdrawal

	2019	2018	2017	2016
BASE: withdrawn cases, "not sure" excluded	21	24	36	28
	100.0%	100.0%	100.0%	100%
You settled the matter or your car was fixed	14	10	18	11
	66.7%	41.7%	50.0%	39%
You sold the car	-	2	1	1
	-	8.3%	2.8%	4%
Some other reason	7	12	17	16
	33.3%	50.0%	47.2%	57%

D. COMPLIANCE

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

	Mediated		Arbitrated		Med + Arb	
	Survey	**BBB AUTO LINE, all cases**	**Survey**	**BBB AUTO LINE, all cases**	**Survey**	**BBB AUTO LINE, all cases**
BASE: MED cases *and* ARB cases with an award that consumer accepted. "Not sure" excluded from survey figures	114	2959	40	582	154	3541
	100.0%	100.0%	100.0%	100.0%	100%	100%
Carried out remedy within the time specified, including any extension to which you agreed	89	2815*	28	568*	117	3383*
	78.1%	95.1%	70.0%	97.6%	76.0%	95.5%
Carried out remedy after the time specified, including any extension to which you agreed	11	4	9	1	20	5
	9.6%	0.1%	22.5%	0.2%	13.0%	0.1%
Hasn't yet carried out remedy, time to do so hasn't expired[257]	3		1		4	
	2.6%		2.5%		2.6%	
Hasn't yet carried out remedy, time to do so has expired	11	92	2	4	13	96
	9.6%	3.1%	5.0%	0.7%	8.4%	2.7%
(Failure to comply was the fault of the consumer)[258]		(50)		(4)		(54)
		(1.6%)		(0.7%)		(1.5%)
Time for compliance has expired, performance not verified		48		9		57
		1.6%		1.6%		1.6%

* As noted in Chapter 2, Section II.D, "compliance" doesn't necessarily ensure consumer satisfaction. Thus, a manufacturer who agrees to inspect a car and repair any warranted defects that it finds "complies" if it does the inspection and finds no warranted defects, even if the consumer doesn't accept that result and pursues the matter (perhaps successfully, perhaps not) in BBB AUTO LINE.

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[257] BBB AUTO LINE's figures on compliance reflect the situation in June 2020, when BBB AUTO LINE updated them. BBB AUTO LINE's update didn't compromise comparisons to the already completed survey, since TechnoMetrica hadn't used BBB AUTO LINE's compliance code in conducting the survey. Further, at the time of the update, the auditor hadn't asked BBB AUTO LINE about specific cases where the consumer's understanding diverged from BBB AUTO LINE's records, so BBB AUTO LINE didn't rely on the survey to correct the records.

[258] For the survey, this is based on consumers' responses to a follow-up question. No consumers accepted fault on the compliance question (through some did so, as reported in the next section, for delays in resolving cases in the first place).

As noted in that earlier discussion, about 20% of consumers, mostly those with repair remedies, were dissatisfied with "compliant" steps taken by manufacturers, and generally continued their cases in BBB AUTO LINE.

Cases recorded as non-compliant by BBB AUTO LINE. In the process and remedy sections, the auditor focused exclusively on cases where the survey showed a disparity between BBB AUTO LINE records and consumers' survey responses. For compliance, though the auditor adds an alternative screen. Since all cases of noncompliance are inherently problematic, and since the total noncompliant cases reported by BBB AUTO LINE's was a manageable number, the auditor begins with all cases *where the full BBB AUTO LINE spread sheet* – showing 3541 cases that merited a compliance code[259] – reported noncompliance. And, rather than scatter the narrative throughout the audit, the auditor here touches on some state lemon law issues as well as Federal warranty issues. Given the auditor's focus on *all* cases reported as non-compliant by BBB AUTO LINE, moreover, he used the BBB AUTO LINE statistics for all cases closed during the audit year – including attorney cases and multiple complaints about the same vehicle.

BBB AUTO LINE reported 96 cases of non-compliance (2.7%),[260] including 54 cases (1.5% of the total) where it attributed fault to the consumer.[261] Among the other 42 (1.2% of the total), the compliance code in all but one indicates that the consumer continued the case in BBB AUTO LINE.

The auditor reviewed these 42 cases, 3 involving repurchase/replacement remedies[262] and

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[259] These include: (1) mediated cases, and (2) arbitrated cases where the consumer received, and accepted, an award.

[260] These were cases where the consumer reported to BBB AUTO LINE, generally in a performance verification letter, that the manufacturer hadn't complied. However, BBB AUTO LINE won't necessarily find non-compliance based solely on the consumer's characterization. Rather, since BBB AUTO LINE sometimes finds *compliance* even though a consumer isn't *satisfied*, it may look to other information, either from the consumer or the manufacturer, to evaluate a consumer's characterization of non-compliance.

[261] The auditor examined some but not all of the underlying files. As examples, one was a mediated settlement that overlapped with an opportunity for a final repair attempt; the final repair attempt, however, required the consumer to send notice to the manufacturer via certified mail (to comply with state law), and the consumer didn't do so. In another case, the consumer didn't want to proceed without modifying the original remedy, and the manufacturer wouldn't accept the change.

[262] The other three involved repurchase or replacement remedies. In one case, the manufacturer offered a limited color selection that wasn't acceptable to the consumer, wouldn't agree to order a new vehicle, and offered to switch to a repurchase remedy (an offer the consumer declined). In a second, where the consumer had an attorney, the attorney asked to drop the matter when the manufacturer was apparently prepared to complete the transaction somewhat beyond the 60-day time

39 involving repairs.[263] These 39 constitute 2.8% of the 1399 cases with mediated repair remedies.

Digging deeper, in at least 11 of the 39 cases, it appears that the manufacturer didn't contact the consumer to follow through with the promised inspection and repair, or made an initial contact and promised a further call that never came.

Further, 22 of the 39 cases seem to be situations where the consumer started the BBB AUTO LINE process before affording the manufacturer the opportunity for a final repair attempt ("FRA") under state lemon law, and, in essence, the settlement incorporated the FRA into the BBB AUTO LINE proceeding.[264] And the no-contact problem was particularly common in these cases, with consumers reporting such problems in 10 of the 22 cases. Again, this isn't a high percentage of the total mediated repair cases; indeed, its's only 0.7% of such cases. But, from the perspective of the 42 non-compliant cases where BBB AUTO LINE didn't attribute fault to the consumer, it accounts for 23.8% of the total. This suggests that some manufacturers may not always appreciate that, when the *opportunity* to attempt a final repair under state law is incorporated into a repair settlement under BBB AUTO LINE, it becomes an obligation. So, perhaps, in an effort to reduce the numbers of reported non-compliances, it may bear emphasizing to manufacturers that failure to respond to a notice of a final repair opportunity, when that opportunity is incorporated into a mediated repair settlement, will be reported by BBB AUTO LINE as "non-compliance."

Finally, in addition to cases where the manufacturer didn't respond to an FRA notice that the consumer sent pursuant to the terms of a mediated repair agreement, there are scattered instances where a manufacturer affirmatively refused to honor the commitment it made in the settlement. While consumers can of course proceed to arbitration at that point, in these rare instances it seems worth highlighting to manufacturers that their actions are being reported as non-compliant.

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frame allowed by the settlement. In the third, a key document was corrupted in the data base and it's not clear what happened. See Chapter II, Section 2.E

[263] Given BBB AUTO LINE's distinction between compliance and consumer satisfaction, see note accompanying Table III-17, at least one of these might have been better classified as "manufacturer complied, consumer not satisfied." However, it's certainly appropriate for BBB AUTO LINE to take a cautious approach in counting cases as compliant if there's any ambiguity about the matter.

[264] The auditor identified these cases in three ways. Often, the settlement letter used the phrase "final repair attempt" (or, in Florida, "final motor vehicle defect notification"). Also, mediated repair settlements that overlap with FRAs often recite that the consumer will send the manufacturer a notice by certified mail, which wouldn't be necessary (since the manufacturer already know about the problem from the BBB AUTO LINE proceeding) unless required by a lemon law. Finally, in a few cases, there's no reference to FRA in the settlement agreement, but the term is used in the case handler's notes. .

Non-compliance reported by surveyed consumers. As noted before, the auditor this year asked BBB AUTO LINE to include compliance data on its spread sheet, which substantially facilitated the analysis already presented in this section. Also, to increase transparency (and to simplify the reporting process), BBB AUTO LINE drew this year's aggregate figures, including compliance aggregates, directly from the spread sheet.

The survey provides a check on the aggregates that were calculated by BBB AUTO LINE, and consumers surveyed this year reported a higher rate of non-compliance than did BBB AUTO LINE. While BBB AUTO LINE reported a 2.7% non-compliance rate, 8.4% of surveyed consumers – 13 out of 154 – reported such problems. And none of the 13 indicated that the fault was theirs.[265]

Consumers who reported non-compliance on a repair remedy, however, were also asked whether the manufacturer had inspected or even attempted a repair on the car, and five responded that the manufacturer had done one or the other. And, as noted before, BBB AUTO LINE policy is to report such cases as compliant.

Among the other eight cases, one was apparently resolved the week after the survey, according to a signed letter in BBB AUTO LINE's files. In another and rather unusual case, the consumer got a replacement car but later filed a case asserting problems with *that* vehicle. In two cases, consumers couldn't get financing to finalize a repurchase or replacement remedy. Another case involved a straddle-like situation,[266] In yet another case, BBB AUTO LINE's finding of compliance rested on an unreturned performance verification letter. The other two are less clear.[267]

Taking account of all these situations, it seems that the survey, with allowances for reasonably explicable discordances and other factors, is generally consistent with the 2.7% non-compliance rate comparable to the 2.7% reported by BBB AUTO LINE.

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Consumers reporting delayed compliance. Among the 20 consumers reporting delayed compliance, BBB AUTO LINE didn't record a remedy, and thus didn't check on compliance, in three. Two of these were essentially straddle cases where the consumer got no relief in the first

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[265] Of the thirteen, eight were cases where no performance verification letter was returned, so that compliance was assumed.

[266] The 2019 case was a follow-on to an earlier case where the consumer wasn't satisfied with the execution of the remedy. The consumer then withdrew the second case until he had time to schedule a hearing, and then, apparently, never refiled.

[267] One of these involved an elderly consumer who, according to the case handler's notes, reported that he had memory problems.

case (on which BBB AUTO LINE reported) but did so in the second case.[268] In the third of these cases, the arbitrator denied relief.

Among the other 17 cases, BBB AUTO LINE initially reported delayed compliance in one and now agrees that it should have reported delayed compliance in a second. In another, it appears that the consumer had granted an extension of the time to comply. In ten, BBB AUTO LINE assumed timely compliance because the consumer hadn't returned the performance verification letter. In three, the auditor can't tell what happened because of this year's inadvertent file deletions by a contractor,[269] and the final case isn't clear.

Looking beyond that, moreover, the auditor has noted that the performance verification letter BBB AUTO LINE has been using tells consumers that BBB AUTO LINE would assume *successful* compliance if they didn't return the form, but doesn't make explicit that compliance would also be assumed to be timely. So there's a chance that at least some consumers didn't bother to return the form because they didn't realize that would be essentially confirming timeliness. BBB AUTO LINE is now changing the performance verification letter text to address this point.

Determinations of timeliness in individual cases sometimes rely on extensions that the manufacturer requested and to which the consumer agreed, and the auditor has previously noted that BBB AUTO LINE had sometimes reported timely compliance where the manufacturer had *requested* an extension but the files didn't show that the consumer had *agreed* to it. Those situations were substantially reduced, but not entirely eliminated, this year. BBB AUTO LINE's policy, usually but not always applied, is to document an extension to which both parties agree with a revised settlement letter.[270]

Comparative analysis. The numbers for recent years (Table III-17A) show a high degree of consistency in the reported BBB AUTO LINE aggregates over the years, notwithstanding the new procedure, noted above, by which the 2019 compliance figures were derived directly from the BBB AUTO LINE spread sheet. The *survey*, however, showed a curious uptick in reported instances of noncompliance for 2019. However, the problems were based on 13 consumers who reported problems, and the auditor's analysis of the files in those cases (described above) suggests that there wasn't a substantial problem this year.

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[268] Both were Florida cases, where the initial case was opened before the consumer returned a signed consumer complaint form, and then closed for failure to return such a form.

[269] Chapter 2, Section 2.E.

[270] Revised *settlements* are used even if the original terms were set by an arbitrator's decision.

Table III–17A: Comparative analysis on compliance (MED plus ARB)

	2019		2018		2017		2016	
	Survey	**BBB AUTO LINE**	**Survey**	**BBB AUTO LINE**	**Survey**	**BBB AUTO LINE**	**Survey**	**BBB AUTO LINE**
BASE: MED case *and* ARB cases with an award that the consumer accepted. "Not sure" responses excluded from the survey figures.	147	3541	161	3191	151	3408	163	3134
	100%	100%	100.0%	100.0%	100.0%	100.0%	100%	100%
Carried out the remedy within the time specified, including any extension to which you agreed	113	3383	126	3076	115	3319	130	3020
	76.9%	95.5%	78.3%	96.4%	76.2%	97.4%	79.8%	96.4%
Carried out the remedy after the time specified, including any extension to which you agreed	18	5	25	3	17	2	21	4
	12.2%	0.1%	15.5%	0.1%	11.3%	0.1%	12.9%	0.1%
Has not yet carried out the remedy and the time to do so has expired	12	96	4	75	7	85	7	91
	8.2%	2.7%	2.5%	2.4%	4.6%	2.5%	4.3%	2.9%
(Failure to comply was the fault of the consumer)		(54)	(4)	(43)	-	(53)	-	(63)
		(1.5%)	(2.5%)	(1.3%)	-	(1.6%)	-	(2.0%)
Has not yet carried out the remedy, but the time to do so has not yet expired	4		6	35	12	0	5	16
	2.8%		3.7%	1.1%	7.9%	0.0%	3.1%	0.5%
Time for compliance has expired, performance not verified		57		2			-	1
		I.6%		0.1%	.-	0.0%		

**BASE: For 2019, inclusions and exclusions as show in Table III-17 above. The earlier figures don't include all these adjustments, and thus draw on a somewhat different base.*

E. TIMING

Consistent with FTC rules, BBB AUTO LINE reports the numbers and percentages of cases that were resolved within 40 days.[271] BBB AUTO LINE's statistics, and the auditor's analysis, focus on arbitrated and mediated cases.[272]

Tables III–19 (1):[273] Time to Resolve Cases

	Mediated	Arbitrated	Combined
BASE: MED/ARB, excluding "not sure" for this question	117	83	200
	100.0%	100.0%	100.0%
Within 40 days	97	20	117
	82.9%	24.1%	58.5%
Within 40 days *or* consumer acknowledged responsibility for delay	104	26	**130**
	88.9%	24.1%	**65.0%**

Table III–19 (2a): Time to Resolve Cases (BBB AUTO LINE; All cases)

	Mediated	Arbitrated	Combined
BASE: MED/ARB	2959	1775	**4734**
	100.0%	100.0%	**100.0%**
Within 40 days	2796	648	**3444**
	94.5%	36.5%	**72.8%**

Table III–-19 (2b): Time to Resolve Cases (BBB AUTO LINE; fully adjusted cases)

	Mediated	Arbitrated	Combined
BASE: MED/ARB	2201	1053	**3254**
	100.0%	100.0%	**100.0%**
Within 40 days	2052	300	**2352**
	93.2%	28.4%	**72.3%**

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[271] FTC Rule 703.6(e)(11) (figures showing delay to be maintained by "number and percent").

[272] Most of the omitted cases were ineligible cases – and most of *those* were resolved in short order, often a day or two. Thus, excluding these cases *lowered* the reported rate of timely compliance.

[273] To maintain consistency with table numbering in prior audits, there is no Table III-18. See Section II.A of this chapter.

Table III–-19A: Comparative analysis on timing (Combined cases)

	2019		2018		2017		2016	
	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE
BASE: MED/ARB, excluding "not sure"	190	4734	198	4287	201	4838	219	4707
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100%	100%
Within 40 days	108	3444	146	3339	139	3783	155	3519
	56.8%	72.8%	73.7%	77.9%	69.2%	78.2%	71%	75%

For comparative purposes, the auditor first focuses on the "fully adjusted" cases aggregates. Table III-19 (2b) shows a 72.3% rate of timely compliance reported by BBB AUTO LINE, and Table III-19 (1) shows a 58.5% rate reported by consumers. In the auditor's view, though, the discrepancy is reasonably explicable, and BBB AUTO LINE's figures are likely reasonably accurate.

Because of the structure of the survey question and the quantitative nature of the consumers' replies, the auditor has used a somewhat different mode of analysis to explore discordances on timeliness than he's used for other metrics. During the survey, consumers were first asked to confirm whether the BBB AUTO LINE timing figure were accurate. Among the 200 consumers who reported that their cases were resolved through mediation or arbitration, 157 agreed with BBB AUTO LINE's records, 33 didn't agree, and 10 weren't sure (and, for this chart, the auditor assumed that BBB AUTO LINE's records were right unless the consumer affirmatively corrected them). Among the 33 consumers who disagreed, though, 12 agreed that compliance was timely even though they disagreed about the precise duration.[274]

Among the other 21 cases, 16 consumers had filed MCSVs and, not surprisingly, the consumer didn't always account for separate proceedings.[275] Two cases involved relatively minor differences that didn't affect the timeliness calculations.[276] The other three are less clear, though at least one might have included the time to implement a remedy.

Thus, allowing for elements of likely consumer confusion about what BBB AUTO LINE

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[274] Indeed, in all ten of these cases, the consumer reported completion in 30 days or less.

[275] In other words, the consumer seems to have attempted to include the time from the filing of the first case to the resolution of the second case.

[276] BBB AUTO LINE's records showed 45 days to complete one case and 47 to finish the other; in both cases, the consumer said it took 60 days.

is measuring, it seems that the BBB AUTO LINE statistics are likely reasonably accurate.

Further, the figures in Tables III-19 (2a) and (2b), such as the 72.8% timeliness rate that BBB AUTO LINE reported for all mediated and arbitrated cases, don't account for cases that missed the 40 day deadline because of the consumer's fault – and, in the survey, where 79 consumers reported delay, 13 of them (16.5% of those reporting delay and 6.1% of all consumers) attributed the fault to themselves. So, the 72.3% timeliness figure might well be boosted by a few percentage points if the BBB AUTO LINE figures were similarly adjusted to reflect cases where the consumer caused the delay.[277]

Still, particularly after this year's survey results highlighted a timing issue, the auditor scrutinized separately the timing results for arbitrated cases and those for mediated cases. *He did this, though, for essentially diagnostic purposes.* It seems clear that the combined results for mediations-plus-arbitrations is far more important than the results for either type of process individually; as noted before, consumers who use the program are seeking a resolution to their complaints, and there's no reason to think they'd be less satisfied if they obtained a result through mediation rather than through an adversarial proceeding.

With these caveats, the auditor turns to the breakout figures. And, since his primary aim here is to focus on overall performance, he uses the aggregate figures from the "all cases" table rather than the "fully adjusted" table.[278]

Not surprisingly, delays are far less likely in mediated cases (94.5% timely) than in arbitrations (36.5% timely), with neither of these figures making adjustment for consumer fault. Further, any delays in resolving arbitrations under BBB AUTO LINE are, to some extent, the flip side of an often-successful mediation program that likely delays, at least somewhat, the arbitration hearing.[279]

While all these factors provide important context for the BBB AUTO LINE figures, the auditor still suggests that BBB AUTO LINE consider ways to improve timeliness – and he understands that they're already seeking ways to do so. To that end, moreover, the auditor notes a few points that he's observed.

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[277] It also bears noting that BBB AUTO LINE doesn't rely on certain extensions that are allowed under FTC rules. For example, FTC Rule 703.5(e) allows seven additional days "where the consumer has made no attempt to seek redress directly from the warrantor."

[278] The auditor suspects that the lower timeliness rate for the "fully adjusted" figures is because the adjustments deleted cases brought by an attorney, which tend to be tried on written submissions, which may allow a faster turnaround.

[279] Further, the auditor has reviewed BBB AUTO LINE's spread sheet from 2018, and found a timelines rate of completion for arbitrated cases of 45.8% -- and, without another year of "normal" statistics (which 2020 certainly won't provide), it's possible that the 2019 results were an aberration.

First, while Table III-19(1) shows that only 36.5% of cases were resolved in 40 days, the auditor found that 49.7% of cases were resolved within 44 days. Thus, a small speed-up in resolving arbitrations would substantially raise the rate of timely decision-making.

Second, again starting with the 36.5% rate of timely completions within 40 days, further scrutiny shows that 81.3% are resolved within 60 days, and 94.6% are resolved within 80 days. A very impressionistic survey by the auditor suggests that most of the more extended cases included technical examinations, which are most frequently requested by the arbitrator after the hearing, and routinely delay resolution beyond 40 days.[280]

Recommendation: BBB AUTO LINE should consider ways to improve its case processing time..[281]

2. Withdrawn Cases

Table III–23[282]: Days until complaints were withdrawn, as reported by consumers who reported withdrawing their complaints

BASE: Withdrawn cases	22 100.0%
Within 40 days	17 77.3%

[280] Since most technical examinations are requested by arbitrators, one question is whether those arbitrators overestimate its likely value. As BBB AUTO LINE notes in its training guide, these examinations, which can be time-consuming, don't include major diagnostic work or component disassembly; the technical expert doesn't have sophisticated diagnostic equipment available during the inspection; and the expert's report is ultimately only an opinion. Since BBB AUTO LINE has already made these points to arbitrators, though, and since it could be problematic to limit the arbitrator's discretion to request a technical inspection, it's not clear that they can do more. Perhaps one possibility, though, might be to make available to arbitrators copies of carefully anonymized and redacted reports previously submitted by technical examiners

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[281] Thus, for example, BBB AUTO LINE apparently hasn't told arbitrators when the 40-day timetable for a case will be reached. Though arbitrators could in theory derive this information from the case file, it seems unlikely that they routinely do so – and, knowing the deadline might encourage some small improvement that brings more cases within the deadline. BBB AUTO LINE now plans to provide arbitrators with this information.

[282] `To maintain consistent numbering table in in past audits, there is no Table III-20, III-21 or III-22. See Section IIA.

F. DOCUMENTS AND CONTACTS

Table III–24: After you first contacted BBB AUTO LINE, did you get a claim form and an explanation of the program by mail, email, fax, UPS, or FedEx?

	2019	2018	2017	2016
BASE: ALL, "not sure" excluded	361	376	385	380
	100.0%	100.0%	100.0%	100%
Yes	317	342	348	365
	87.8%	91.0%	90.4%	96.1%

Excluding those who replied "not sure," 12.2% of consumers – a total of 44 – reported that they hadn't received the claim forms. But the auditor examined the underlying files for those consumers, and 19 files (43.2% of the 44) contained complaint forms signed and returned by the consumer.[283]

Among the other 25 consumers, the files for 13 were ineligible by reason of age and mileage. Where staff has sufficient information to determine that the car isn't eligible for the program (generally based on the car's age or mileage), they may be reluctant to press a consumer to return a signed consumer complaint form before they tell the consumer that they can't use the program any further,

Notably, though, there were six cases from Florida and California that were rejected for failure to return a signed consumer complaint form, where the consumers said they never received the form. These reinforce the results observed in the Florida state survey, where 151 consumers were surveyed and 11 whose cases were rejected for failure to return a signed form said they never received the form.[284] And all of these results accompany the exclusive reliance, starting in 2019, of online consumer accounts to transmit documents to consumers. The matter is discussed further in Chapter 2, where it forms the basis for a recommendation by the auditor.

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[283] As noted previously, moreover, these documents routinely contain consistent printing of certain answers, indicating the sort of computer-generated printout that BBB AUTO LINE would produce, often accompanied by handwritten additions in the same handwriting as the signature. Thus, a visual inspection of the document is consistent with the explanation assumed by the auditor.

[284] Chapter 3, Section IV.F.

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

	2019	2018	2017	2016
BASE: responding "yes" to prior question, excluding "not sure" responses to this question	311	340	343	361
	100.0%	100.0%	100.0%	100%
Very	198	223	234	236
	63.7%	65.6%	68.2%	65%
Somewhat	97	110	98	113
	31.2%	32.4%	28.6%	31%
Not at all	16	7	11	12
	5.1%	2.1%	3.2%	3%

Table III–26: And how helpful were they?

	2019	2018	2017	2016
BASE: Same	314	340	344	354
	100.0%	100.0%	100.0%	100%
Very	168	186	187	174
	53.5%	54.7%	54.4%	49%
Somewhat	101	108	105	121
	32.2%	31.8%	30.5%	34%
Not at all	45	46	52	59
	14.3%	13.5%	15.1%	17%

As shown above, an overwhelming majority of consumers (94.9%) found them at least somewhat clear and understandable, while a substantial majority (85.7%) found them at least somewhat helpful. Not surprisingly, the numbers are comparable to those for prior years, which evaluated the same materials.

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

	2019	2018	2017	2016
BASE: MED, "not sure" responses excluded	112	135	117	121
	100.0%	100.0%	100.0%	100%
Yes	104	130	105	114
	92.9%	96.3%	89.7%	94%

BBB AUTO LINE doesn't ask consumers to return the settlement letter if they agree with its description, so (unlike with the consumer complaint form) there aren't signed documents in

the files reflecting that any consumers actually *received* the documents. But the files for consumers who said they didn't receive them all contain entries reporting that the documents were *sent*. Given the possibility that some consumers simply didn't focus on whether they received these documents (which memorialized agreements about which they already knew) the auditor doesn't see a problem here.

Table III–28: Did you get a notice by letter, fax, or email telling you when and where to go for your hearing or vehicle inspection?

	2019	2018	2017	2016
BASE: ARB, "not sure" responses excluded	83	55	71	93
	100.0%	100.0%	100.0%	100%
Yes	79	53	68	93
	95.2%	96.4%	95.8%	100%

Three consumers who said "no" attended a hearing or vehicle inspection, and the underlying files all report that a notice was sent. Still, the auditor can't dismiss the possibility that these consumers didn't receive the written notice, but, perhaps, were told by phone where to report.

The other consumer, according to BBB AUTO LINE records, didn't have an arbitration in the first place.

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

	2019	2018	2017	2016
BASE: ARB, "not sure" responses excluded	81	57	71	92
	100.0%	100.0%	100.0%	100%
Yes	80	57	70	89
	98.8%	100.0%	98.6%	97%

The sole consumer who noted a problem (who also said "no" to the notice of hearing question) said that he called the BBB AUTO LINE to get the decision. According to notes in the case file, the consumer told the DRS that he wasn't familiar with how to use his online account. It's unclear how the consumer advanced so far in the process with such a problem, but his response may further reinforce concerns that some consumers may have problems with the system.

Table III–30: After you accepted the arbitrator's award/agreed to a settlement, which of the following best describes your later contacts with BBB AUTO LINE staff to discuss whether the manufacturer was doing what it promised/what the order required?

	2019	2018	2017	2016
BASE: (1) MED and (2) ARB where the consumer received and accepted an award. "Not sure" responses excluded.	148	157	151	167
	100.0%	100.0%	100.0%	100%
The staff contacted me by letter or email	44	49	52	48
	29.7%	31.2%	34.4%	29%
The staff spoke to me	24	26	29	22
	16.2%	16.6%	19.2%	13%
Both of those	65	71	57	75
	43.9%	45.2%	37.7%	45%
Neither of those	11	10	12	12
	7.4%	6.4%	7.9%	7%
Something else	4	1	1	10
	2.7%	0.6%	0.6%	6%

Among the 11 cases reporting "neither of these," the files in 10 cases report that a performance verification letter was sent to the consumer and, in one case the file contains a returned letter signed by the consumer. Among the four consumers who said "something else," three indicated that they needed to contact BBB AUTO LINE, though there's no indication of such contact in the files; none of the three, moreover, contains a returned performance verification letter. The fourth case involves somewhat confusing responses.[285]

[285] The consumer's earlier answers indicate that he agreed with BBB AUTO LINE's description of a mediated repair settlement, but then said he hadn't reached a settlement. The likeliest explanation is probably that he wasn't happy with the results of the manufacturer's inspection.

G. CLAIMS FILED BY CONSUMERS WITH COUNSEL COMPARED TO CLAIMS FILE DIRECTLY BY CONSUMERS; ALSO, MODE OF PRESENTATION AS A FACTOR

Table III–-32[286]: Comparisons on process for resolving complaints

	With Attorneys (2019)	No Attorneys (2019)
TOTAL	1459	8892
	100.0%	100.0%
Mediation	144	2815
	9.9%	31.6%
Arbitration	705	1070
	48.3%	12.0%
Ineligible	475	4272
	32.6%	48.0%
Withdrawn	135	735
	9.2%	8.3%

	With Attorneys (2018)	No Attorneys (2018)
TOTAL	1365	7953
	100.0%	100.0%
Mediation	173	2600
	12.7%	32.7%
Arbitration	693	822
	50.8%	10.3%
Ineligible	390	3874
	28.6%	48.7%
Withdrawn	109	657
	8.0%	8.3%

[286] To maintain consistent numbering with tables in past audits, there is no Table III-31. See Section IIA.

Tables III–33: Comparison on remedies

1. Combined Mediation and Arbitration

	2019			2018	
	With att'ys	**No att'ys**		**With att'ys**	**No att'ys**
TOTAL	849	3885		865	3422
	100.0%	100.0%		100.0%	100.0%
Repurchase/ Replacement	351	1453		343	1436
	41.3%	37.4%		39.6%	41.9%
Repair	63	1500		64	1188
	7.4%	38.6%		7.4%	34.7%
Other award	20	394		20	376
	2.4%	10.2%		2.3%	11.0%
No award	415	538		438	422
	48.9%	13.8%		50.6%	12.3%

2. Mediation only

TOTAL	144	2815		172	2601
	100.0%	100.0%		100.0%	100.0%
Repurchase/ Replacement	110	1056		146	1165
	78.4%	37.5%		84.9%	44.8%
Repair	18	1381		11	1070
	12.5%	49.0%		6.4%	41.1%
Other award	16	378		15	366
	11.1%	13.4%		8.7%	14.0%

3. Arbitration only

TOTAL	705	1070		693	821
	100.0%	100.0%		100.0%	100.0%
Repurchase/ Replacement	241	397		197	271
	34.2%	37.1%		28.4%	33.0%
Repair	45	119		53	118
	6.4%	11.1%		7.6%	14.4%
Other award	4	16		5	10
	0.6%	1.5%		0.7%	1.2%
No award	415	538		438	422
	58.9%	50.3%		63.2%	51.4%

According to BBB AUTO LINE statistics, consumers nationwide used lawyers in 1459 cases, or 14.1% of 10,351 cases that closed in 2019. These cases had a different profile than cases without lawyers. Focusing on the first table in Table III-33, these consumers are somewhat

more likely to get a repurchase or replacement remedy, far less likely to get a repair remedy, and far more likely to end the process with an arbitrated denial (mainly because they're far more likely to use arbitration in the first place).

Still, these numbers are at most suggestive. For example, many "withdrawals" in attorney cases reflect settlements outside the program. Of course, it wasn't only consumers with attorneys who withdrew cases for this reason, but this seemed to the auditor to occur far more frequently when consumers had lawyers. Further, there's no easy way to quantify the impact of withdrawals reflecting such settlements outside the program; even when the DRSs report a settlement, they don't necessarily describe its nature. Still, from the cases that did report the remedy that the consumer obtained outside the program, it seemed that many got repurchases or replacements.

And a fuller examination of the differences between attorney and non-attorney cases would need to account for the 54.4% of consumers with attorneys who *rejected* repurchase or replacement decisions that were awarded in arbitration in 2019, as well as other factors that aren't available to the auditor. How did consumers with attorneys who lost in arbitration, and those who rejected awards in arbitration, fare subsequently? Did they get more favorable resolutions than BBB AUTO LINE processes had afforded them? And to what extent were more favorable resolutions balanced by attorneys' fees that went to lawyers instead of consumers?

Table III–33A: Mode of Presentation

	In Writing		Telephone		In Person	
	#	%	#	%	#	%
REMEDIES: ARB CASES						
Repurchase/replace	214	32.6%	56	33.9%	368	38.6%
Repair	39	5.9%	21	12.7%	104	10.9%
Other or Reimbursement	4	0.6%	5	3.0%	11	1.2%
Denial	400	60.9%	83	50.3%	470	49.3%
Total	657	100.0%	165	100.0%	953	100.0%
REMEDIES -- ARB W ATTY						
Repurchase/replace	210	32.3%	8	53.3%	23	57.5%
Repair	39	6.0%	1	6.7%	5	12.5%
Other or Reimbursement	4	0.6%	0	0.0%	0	0.0%
Denial	397	61.0%	6	40.0%	12	30.0%
Total	650	100.0%	15	100.0%	40	100.0%
REMEDIES – ARB, NO ATTY						
Repurchase/replace	4	57.1%	48	32.0%	345	37.8%
Repair	0	0.0%	20	13.3%	99	10.8%
Other or Reimbursement	0	0.0%	5	3.3%	11	1.20
Denial	3	42.9%	77	51.3%	458	50.2%
Total	7	100.0%	150	100.0%	913	100.0%

Consumers with attorneys were far more likely than those without attorneys to undertake arbitration in writing. At the auditor's request, BBB AUTO LINE this year provided the data in Table III-33A. This table breaks out the awards granted in arbitrations conducted in writing, by telephone, and in person, and further breaks each of these out for attorney cases and non-attorney cases. Although some of the categories involve too few cases to illuminate meaningful patterns,[287] the results indicate some differences between in-writing and in-person cases (32.6% compared to 38.6% for repurchase and replacement remedies; 60.9% compared to 49.3% for denials). But those differences, which appear to show some benefit to consumers in having an in-person hearing, are sufficiently limited to suggest that consumers got fair hearings, and not merely cursory reviews, in cases that were brought in writing – the vast majority of which were also brought by counsel.

[287] Even in the national sample, the auditor is particularly skeptical of categories with fewer than 25 cases. With a sample size of 25, a change in a single case would change the relevant percentage by 4%. When the sample drops to 7, a shift of a single case's resolution would change the relevant percentages by over 14%.

H. SATISFACTION

The last portion of the "national-survey" analysis concerns consumer satisfaction. For most of these questions, consumers were asked to grade BBB AUTO LINE staff and (for consumers who said they used arbitration) the arbitrators. Grades are presented for all consumers, and then broken out to show grades from consumers who reported that they got awards (with further breakouts based on the nature of the award) and from those who said their claims were denied.

Not surprisingly, consumers who got better results were more impressed with the virtues of the program.

1. Satisfaction with Arbitrator

Table III–-34: How would you grade the arbitrator on understanding the facts of your case?

	Total	Award	No Award	Repurchase/ Replacement	Repair/ Other
BASE: ARB, "not sure" excluded	83	48	35	31	17
	100.0%	100.0%	100.0%	100.0%	100.0%
A=Excellent	39	36	3	25	11
	47.0%	75.0%	8.6%	80.6%	64.7%
B=Good	13	6	7	4	2
	15.7%	12.5%	20.0%	12.9%	11.8%
C=Average	10	3	7	-	3
	12.0%	6.3%	20.0%	-	17.6%
D=Poor	9	3	6	2	1
	10.8%	6.3%	17.1%	6.5%	5.9%
F-Failing Grade	12	-	12	-	-
	14.5%	-	34.3%	-	-
MEAN	**2.70**	**3.56**	**1.51**	**3.68**	**3.35**

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

	Total	Award	No Award	Repurchase/ Replacement	Repair/ Other
BASE: ARB, "not sure" excluded	82	48	34	31	17
	100.0%	100.0%	100.0%	100.0%	100.0%
A=Excellent	43	9	4	28	11
	52.4%	81.3%	11.8%	90.3%	64.7%
B=Good	7	3	4	1	2
	8.5%	6.3%	11.8%	3.2%	11.8%
C=Average	11	3	8	1	2
	13.4%	6.3%	23.5%	3.2%	11.8%
D=Poor	8	2	6	1	1
	9.8%	4.2%	17.6%	3.2%	5.9%
F=Failing Grade	13	1	12	-	1
	15.9%	2.1%	35.3%	-	5.9%
MEAN	**2.72**	**3.60**	**1.47**	**3.81**	**3.24**

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

	Total	Award	No Award	Repurchase/ Replacement	Repair/ Other
BASE: ARB, "not sure" excluded	83	48	35	31	17
	100.0%	100.0%	100.0%	100.0%	100.0%
A=Excellent	41	38	3	28	10
	49.4%	79.2%	8.6%	90.3%	58.8%
B=Good	3	2	1	1	1
	3.6%	4.2%	2.9%	3.2%	5.9%
C=Average	12	3	9	1	2
	14.5%	6.3%	25.7%	3.2%	11.8%
D=Poor	13	4	9	1	3
	15.7%	8.3%	25.7%	3.2%	17.6%
F=Failing Grade	14	1	13	-	1
	16.9%	2.1%	37.1%	-	5.9%
MEAN	**2.53**	**3.50**	**1.20**	**3.81**	**2.94**

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

	Total	Award	No Award	Repurchase/ Replacement	Repair/ Other
BASE: ARB, "not sure" excluded	81	48	33	31	17
	100.0%	100.0%	100.0%	100.0%	100.0%
A=Excellent	39	38	1	28	10
	48.1%	79.2%	3.0%	90.3%	58.8%
B=Good	6	4	2	1	3
	7.4%	8.3%	6.1%	3.2%	17.6%
C=Average	12	3	9	1	2
	14.8%	6.3%	27.3%	3.2%	11.8%
D=Poor	9	2	7	1	1
	11.1%	4.2%	21.2%	3.2%	5.9%
F=Failing Grade	15	1	14	-	1
	18.5%	2.1%	42.4%	-	5.9%
MEAN	**2.56**	**3.58**	**1.06**	**3.81**	3.18

Table III–38: ARBITRATOR SATISFACTION COMPOSITE

BASE: ARB, "not sure" excluded	Total	Award	No Award	Repurchase/ Replacement	Repair/ Other
Understanding the facts of your case	2.70	3.56	1.51	3.68	3.35
Objectivity and fairness	2.72	3.60	1.47	3.81	3.24
Reaching an impartial decision	2.53	3.50	1.20	3.81	2.94
Coming to a reasoned & well thought-out decision	2.56	3.58	1.06	3.81	3.18
AVERAGE	**2.63**	**3.56**	**1.31**	**3.78**	**3.18**

Table III-38A
ARBITRATOR SATISFACTION COMPOSITE (BY YEAR)

	Total	Award	No Award	Repurchase/ Replacement	Repair/ Other
Composite (2019)	2.63	3.56	1.31	3.78	3.18
Composite (2018)	2.36	3.52	1.26	3.72	2.70
Composite (2017)	2.03	2.97	1.07	3.58	2.33
Composite (2016)	2.34	3.40	1.02	3.69	2.30

The auditor has previously expressed skepticism about composites that measure satisfaction rates for arbitrators without adjusting for how well consumers did in arbitration. The auditor suspected that consumers' satisfaction with arbitrators was highly correlated to their success in arbitration – and, therefore, year-to-year fluctuations in satisfaction might reflect, in substantial part, fluctuations in the success of the consumers surveyed.[288]

To this end, the current auditor includes various breakouts shown on the chart. Not surprisingly, consumers who got relief in arbitration tend to view their arbitrators far more favorably than those who didn't, and, the better they fared, the more impressed they were with the arbitrator's virtues.

As shown by the above summary, there *was* in fact a substantial difference in satisfaction between consumers who got repurchase/replacement awards and those who got other awards.

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[288] Even if consumers had the identical success from one year to the next, it's unlikely (given sampling errors) that the consumers *surveyed* would have had similarly identical success.

The auditor notes, though, that the "grades" from consumers who *didn't* get repurchase or replacement remedies continued to rise this year. The 1.31 grade from consumers whose claims were denied was an underwhelming D+, but the score has been substantially higher during the past two audits than in the three previous audits.

2. Satisfaction with BBB AUTO LINE staff

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

	2019 Cases
BASE: ARB/MED, "not sure" excluded	197
	100.0%
A=Excellent	114
	57.9%
B=Good	46
	23.4%
C=Average	23
	11.7%
D=Poor	9
	4.6%
F=Failing Grade	5
	2.5%
MEAN	3.29

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

	2019 Cases
BASE: ARB/MED, "not sure" excluded	198
	100.0%
A=Excellent	108
	54.5%
B=Good	45
	22.7%
C=Average	21
	10.6%
D=Poor	11
	5.6%
F=Failing Grade	13
	6.6%
MEAN	3.13

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

	2019 Cases
BASE: ARB/MED, "not sure" excluded	199
	100.0%
A=Excellent	104
	52.3%
B=Good	47
	23.6%
C=Average	27
	13.6%
D=Poor	7
	3.5%
F=Failing Grade	14
	7.0%
MEAN	3.11

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

	Mean
Objectivity and fairness	3.29
Efforts to resolve claim	3.13
Overall grade	3.11
AVERAGE	3.18

Composite Mean (2019)	3.18
Composite mean (2018)	3.35
Composite mean (2017)	3.24
Composite mean (2016):	3.29

Table III–43: Would you recommend BBB AUTO LINE to friends or family?

	Total	Med/Arb
BASE: total, not sure responses to this question excluded	387	198
	100.0%	100.0%
Yes	288	172
	74.4%	86.9%

Composite Means (2019)
- All consumers 74.4%
- Consumers with mediations or arbitrations 86.9%

Composite Means (2018)
- All consumers: 70.0%
- Consumers with mediations or arbitrations: 88.2%

Composite Means (2017)
- All consumers: 70.9%
- Consumers with mediations or arbitrations: 82.9%

Composite Means (2016)
- All consumers: 69%
- Consumers with mediations or arbitrations: 82%

Composite Means (2015)
- All consumers: 65%
- Consumers with mediations or arbitrations: 74%

Interestingly, among the 34 consumers in the survey who went to arbitration and lost (and who didn't respond "not sure" to this question), 15 (44.1%) nonetheless said they'd recommend the program.

IV. SURVEY RESULTS – FLORIDA

Preliminarily, the notes in Section IIA, addressing such matters as table numbering and gender-specific pronouns, apply here as well.

Among the 10,351 cases that BBB AUTO LINE closed during the audit year, 2365 (22.8%) were from Florida. And, although individual Florida consumers were far more likely to be called by TechnoMetrica than were consumers from any other state except Ohio, the margin of error for questions posed to all 151 consumers in the Florida sample was still +/-7.2%, substantially higher than the +/-4.5% for questions posed to all 401 consumers in the national sample. Further, as noted before, most question were posed only to certain consumers, such as the 35 consumers in the Florida survey who used arbitration. For those questions, the Florida margin of error grows substantially[289]; when it gets well into the double-digits, the macro comparisons become a very blunt instrument.

Still, the *micro* analysis for Florida consumers substantially alleviates any concern that might be posed by heightened differentials, even those within the margins of error. For example, although the "discordances" on the process question exceeded 9% (an unusually high number in the auditor's experience), the underlying files show that a substantial majority of these involved reasonable discordances or (though the auditor reaches such conclusions with caution) consumer error.[290] Then, through a chain of comparisons described previously, the auditor was able to extend his confidence in the BBB AUTO LINE spread sheets to confidence in their aggregate calculations.

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[289] Some questions were directed to even more select groups of consumers, e.g., consumers who said that a repair remedy failed. While these questions probed issues of interest to the audit, they weren't used for projections to the larger population; the margin of error would have made such projections to all intents useless.

[290] See Section II.B.1 of this chapter.

A. GENERAL INFORMATION

Table IV–1: Vehicle Year

	2019 Cases
TOTAL	151
	100.0%
2008	-
	-
2009	1
	0.7%
2010	3
	2.0%
2011	2
	1.3%
2012	3
	2.0%
2013	-
	-
2014	4
	2.6%
2015	6
	4.0%
2016	14
	9.3%
2017	48
	31.8%
2018	48
	31.8%
2019	22
	14.6%
2020	-
	-

Table IV–2: The BBB AUTO LINE's records show they closed a complaint in 2019 about your <make> vehicle. Is that correct?

	2019
TOTAL	151
	100.0%
Yes	149
	98.7%

The "no" responses involved corrections to the car's model or year. While not ideal, and perhaps something BBB AUTO LINE could note to its staff, the auditor doesn't consider this a significant problem.

Table IV–3: Repair Attempts

	2019	2018	2017	2016
BASE: all respondents, not sure" excluded	145	149	154	147
	100.0%	100.0%	100.0%	100.0%
One	13	11	18	15
	9.0%	7.4%	11.7%	10.2%
Two	13	6	6	9
	9.0%	4.0%	3.9%	6.1%
Three	20	24	26	21
	13.8%	16.1%	16.9%	14.3%
Four or more	81	87	89	76
	55.9%	58.4%	57.8%	51.7%
None	18	21	15	26
	12.4%	14.1%	9.7%	17.7%

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

	2019 Audit	2018 Audit	2017 Audit	2016 Audit
BASE: all respondents, "not sure" excluded	147	151	157	148
	100.0%	100.0%	100.0%	100.0%
Manufacturer's manuals/other warranty documents	26	29	23	21
	17.7%	19.2%	14.6%	14.2%
Dealer or manufacturer representative	18	23	22	20
	12.2%	15.2%	14.6%	13.5%
BBB/BBB Website	10	16	11	22
	6.8%			
BBB AUTO LINE website	5	10.6%	7.0%	14.9%
	3.4%			
Internet website (NOT BBB or government website)	33	36	48	44
	22.4%	23.8%	30.6%	29.7%
Lawyer	3	3	1	4
	2.0%	2.0%	0.6%	2.7%
Friend/family/word of mouth	32	28	31	29
	21.8%	18.5%	19.7%	19.6%
TV/Radio/Newspaper	1	-	-	2
	0.7%	-	-	1.4%
Government website, office, or official	12	18	16	3
	8.2%	11.9%	9.6%	2.0%
Had used the BBB AUTOLINE previously	7	3	4	
	4.8%	2.0%	2.5%	
General knowledge	10	3		
	6.8%	2.0%		
Other		4	0	3
		2.6%	0.0%	2.0%

Until 2019, consumers were asked how they *first* learned about BBB AUTO LINE. The new formulation allows multiple responses. This tended to raise the numbers a bit, but not by much; of 151 consumers who answered this question, only 10 gave multiple responses.

B. PROCESS QUESTIONS

Table IV–5: Aggregate "process" responses

	BBB AUTO LINE stats (A1)	Same, excluding att'y cases (A2)	Fully adjusted[291] (A3)	Survey (B1)	Survey, adjusted for response rate (see below) (B2)
TOTAL	2365	1820	**1546**	151	
	100.0%	100.0%	**100.0%**	100.0%	**100.0%**
Mediation	531	487	**379**	43	
	22.4%	26.8%	**24.5%**	28.5%	**27.2%**
Arbitration	588	294	**292**	35	
	24.9%	16.2%	**18.9%**	23.2%	**20.6%**
Withdrawn	196	157	**129**	8	
	8.3%	8.6%	**8.3%**	5.3%	**8.1%**
Ineligible	1050	882	**746**	58	
	44.4%	48.5%	**48.3%**	38.4%	**44.1%**
Other				18	
				4.5%	

As explained below, the key comparison, for purposes of using the survey results to check the accuracy of the BBB AUTO LINE spread sheet, is between columns A3 and B2.

[291] See below; also Section II.A of this Chapter.

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

	2019	2018	2017	2016
TOTAL	2365	2028	2195	2030
	100.0%	100.0%	100.0%	100.0%
Mediation	531	621	648	493
	22.4%	30.6%	29.5%	24.3%
Arbitration	588	357	441	523
	24.9%	17.6%	20.1%	25.8%
Withdrawn	196	143	145	156
	8.3%	7.1%	6.6%	7.8%
Ineligible	1050	907	961	856
	44.4%	44.7%	43.8%	42.7%

Table IV- 6: Comparisons of individual "process" responses

	Mediated	Arbitrated	Withdrawn	Ineligible	Other
TOTAL	43	35	8	58	7
	100.0%	100.0%	100.0%	100.0%	100.0%
Mediation (Imported)	40	-	1	1	1
	93.0%	-	12.5%	1.7%	14.3%
Arbitration (Imported)	-	34	-	-	-
	-	97.1%	-	-	-
Withdrawn (Imported)	-	1	6	-	1
	-	2.9%	75.0%		14.3%
Ineligible (Imported)	3	-	1	57	5
	7.0%	-	12.5%	98.3%	71.4%

Concordance: 137/151 = 90.7%
Discordance: 14/151 = 9.3%

1. Micro Analysis

Table IV-6, the core of the micro analysis, reports a "concordance" of 90.7%, one of the lowest such figures the auditor has observed. The second step of the micro analysis, though, substantially alleviates any concerns – providing clear explanations for most divergences, and likely explanations (with various degrees of confidence) for others.

Of the fourteen reported discordances, and using categories discussed in section I.A of this chapter, three were essentially straddle cases, where the consumer brought a second case and the BBB AUTO LINE's records reported on the first case while the consumer focused on the

second (category 2.a[292]). Another case, which the consumer reported as arbitrated although she never returned a consumer complaint form, may have involved a settlement outside the program (category 2.b).[293] Yet another involved confusion as to whether a case was ineligible or withdrawn (category 2.d),[294] while another seems to have involved a consumer dissatisfied with the performance of a repair remedy (category 2.e). In five cases reported by BBB AUTO LINE as ineligible, one reported as withdrawn, and one reported as mediated, consumers replied "other" on process but then gave details that were consistent with BBB AUTO LINE's characterization (category 2.f).[295] In another, a consumer described her claim as "ineligible" after she had accepted a cash payment rather than the stronger relief she had originally sought (category 2.g); another case may have been a variation on that theme, with the consumer reporting that he withdrew the complaint after accepting a cash settlement.

Attorney cases: As noted above, the auditor also examined 25 case files where the consumer had counsel. On the process variable for the Florida attorney cases, there was complete concordance.

2. Macro analysis

The "A" columns of Table IV-5. Column A1 shows aggregate "process" statistics, as reported by BBB AUTO LINE, for all cases closed in the audit year. These provide important information about the full range of cases filed in the program; for example, Column A1 highlights that BBB AUTO LINE closed nearly as many cases through mediation as through arbitration. The figures in Column A are taken from spread sheets that are also used, directly or

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[292] These are almost invariably "straddles" over two years, with the first case but not the second closed during the audit year. The three Florida cases, though, include a rare case where TechnoMetrica left in the survey two cases from the same consumer during the same year.

[293] The consumer explained in response to a survey question that the dealer had bought back the vehicle. He also describe the case as arbitrated, though, which is inconsistent with his own description; BBB AUTO LINE reported the case as withdrawn, which is consistent with the consumer's description.

[294] This consumer filed two complaints in short order, and both were closed for failure to return a signed complaint form. (As noted in discussing the "document receipt" question, see section IV.F of this chapter, it's possible some consumers may have had problems using online accounts on which BBB AUTO LINE relied exclusively to transmit documents to consumers who requested electronic communications.) In a more curious case, BBB AUTO LINE found the complaint ineligible due to mileage, and the consumer reported that "they" (it's not clear if he was describing the manufacturer of the dealer) took back his car and gave him a new one.

[295] For example, in a case that BBB AUTO LINE found ineligible because the claim was accident-related, the consumer said "other" and explained that he never accepted the decision. In another where BBB AUTO LINE reported that no consumer complaint form was returned and closed the case as ineligible, the consumer said that she traded in the car to the original dealership.

indirectly, to compute columns A2 and A3.[296]

While column A1 shows BBB AUTO LINE's calculated aggregates for *all* cases closed during the year, column A2 provides comparable figures for cases where consumers appeared without counsel; these constitute about 77.0% of the "total" cases in column A1. There's more detail in Section IV.G about these figures (and how consumers with counsel reportedly fared compared to those without).

And, while column A2 omits only cases where the consumer had a lawyer, column A3 (based on TechnoMetrica's modified version of the spread sheet) *both:* (1) omits cases where the consumer had a lawyer, and (2) where a consumer filed multiple complaints about the same vehicle that closed during the year, omits the earlier of those cases. Both types of omission are needed to avoid the "comparing apples and oranges" problem noted above.[297]

Thus, column A3 reports the appropriate figures to compare to the survey results. But, as discussed next, adjustments are also appropriate for the survey results.

The "B" columns. The B columns report the survey results, with column B1 reporting the actual results and column B2 adjusting them with a weighting factor. As explained previously,[298] past audits have found that some consumers – particularly those who were deemed ineligible – are less likely than others to finish a questionnaire than those who used mediation or arbitration. This year, for example, TechnoMetrica reported the following responses rates for consumers, based on the process by which, according to BBB AUTO LINE's records, their cases were resolved.

- 14.6% for those whose cases were resolved through mediation;
- 19.0% for those who used arbitration;
- 14.9% for those deemed ineligible to participate in BBB AUTO LINE; and
- 11.0% for consumers who withdrew their complaints.

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

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[296] In order to simplify these calculations and make them more transparent to the auditor, BBB AUTO LINE in 2019 began calculating virtually all of its aggregate statistics directly from the spread sheet prepared for TechnoMetrica's use.

[297] See Section II.B.3. Most significantly, a very high percentage of the cases omitted under prong (2) involved mediations.

[298] See Section I.B of this chapter.

So, for purposes of Table IV-5, the relevant comparison is between Columns A3 and B2. And, looking at those columns, all the differences between the two are within the margin of error (+/- 7.2%). In other words, for cases covered by the survey – non-attorney cases with only the latest counted if there were MCSVs – the survey reasonably reflects the BBB AUTO LINE's calculated aggregates. The macro analysis covered thus provides further support to validate the accuracy of BBB AUTO LINE's records and calculations.

* * *

At this point, it's necessary to add back in the MCSV omissions to get back to columns A2 and A3, and to add back in the "attorney case" omissions to get back to column A1. For these, the auditor relies on his systematic examination of 25 attorney case files, as well as his review of the omitted MCSV cases during his review of case files.[299] In neither did he find systematic problems with the "restored" BBB AUTO LINE records.

* * *

Finally, Table IV-5A's multi-year comparisons show relatively consistent results over the years, particularly over the last four years; the relative percentage of cases resolved through mediation rather than arbitration had risen in 2017 and again in 2018, but this year reverted back to percentages more like those from 2016.

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[299] When the auditor was reviewing targeted case files, as described above, he also examined earlier cases in the series (whether the earlier case closed during the audit year or earlier).

C. RELIEF

The relief questions were posed only to consumers who identified their cases as arbitrated or mediated. As with the process questions, consumers were told how BBB AUTO LINE reported the relief they received, and asked to confirm or correct the results.[300]

1. Combined Results for Mediated and Arbitrated Cases

The auditor starts with the combined results for mediated and arbitrated cases. These, in his view, present the most significant insights into the program as a whole – and point to advantages in a program that, unless the consumer rejects it, typically starts with mediation. From the consumer's perspective, as noted above, a repurchase obtained through mediation is no less valuable than similar relief obtained through arbitration. And, as reported below, almost as many consumers got repurchase or replacement through mediation (236) as through arbitration (266).[301]

Table IV–7: Remedies in Mediated and Arbitrated Cases

	BBB AUTO LINE stats (A1)	Same, excluding attorney cases (A2)	Stats from "fully adjusted" spread sheet (A3)	Survey (B)
BASE: med. & arb. cases	1119	781	**671**	**78**
	100.0%	100.0%	**100.0%**	**100.0%**
Replacement/ Repurchase	502	345	**342**	**43**
	44.9%	44.2%	**51.0%**	**55.1%**
Repair	250	230	**132**	**13**
	22.3%	29.4%	**19.7%**	**16.7%**
Other	76	75	**69**	**8**
	6.8%	9.6%	**10.3%**	**10.3%**
No Award	291	131	**128**	**14**
	26.0%	16.8%	**19.1%**	**17.9%**

The key comparison in Table IV-7 is between columns A3 and B, because both exclude consumers who used attorneys and, for MCSVs, all but the last complaint filed in 2019. The margin of error for questions posed to all 158 participants in the Florida sample was +/-7.3%; it's substantially higher for these tables, for questions posed only to the 78 consumers who were

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

301 See Tables IV-9 and IV-11.

questioned about remedies in arbitrations or mediation, (Table IV-7), the 43 consumers who were questioned about remedies in mediation (Table IV-9), and the 35 who were questioned about remedies in arbitration (Table IV-11).[302]

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

* * *

TABLE IV- 7A: Multi-Year Comparisons (A1 figures)

	2019	2018	2017	2016
BASE: med. & arb. cases	1119	978	1089	1016
	100.0%	100.0%	100.0%	100.0%
Replacement/ Repurchase	502	512	529	423
	44.9%	52.3%	48.6%	41.6%
Repair	250	207	211	235
	22.3%	21.2%	19.4%	23.1%
Other	76	70	93	81
	6.8%	7.2%	8.5%	8.0%
No Award	291	189	245	277
	26.0%	19.3%	23.5%	27.3%

[302] If TechnoMetrica had simply used as the sampling frame only the 671 Florida consumers reported to have used arbitration or mediation on the fully adjusted spread sheet, and if it had interviewed 84 consumers from that base (a situation somewhat comparable to that reported above), the margin of error would have been +/- 10/4%. Similarly, for Table IV-9, had the sampling frame been 378 consumers and the number interviewed 43, the margin of error would have been +/- 14.1%. And, for Table IV-11, had the sampling frame been 292 consumers and the number interviewed 35, the margin of error would have been +/- 15.6% – a range of over 30%.

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

	Replacement/ Repurchase	Repair	Other	No Award
BASE = med/arb	43	13	8	14
	100.0%	100.0%	100.0%	100.0%
Replacement/Repurchase (Imported)	41	-	-	-
	95.3%	-	-	-
Repair (Imported)	-	12	-	-
		92.3%	-	-
Other (Imported)	-	-	7	-
	-	-	87.5%	-
No Award (Imported)	-	-	-	14
	-	-	-	100.0%
No entry (Imported)[303]	2	1	1	-
	4.7%	7.7%	12.5%	-

Concordance: 74/78 = 94.9%

In all four cases with a divergence on remedy, the remedy divergence was a byproduct of a process divergence discussed in the previous section; in other words, BBB AUTO LINE had no entry on remedy because it didn't report the case as arbitrated or mediated in the first place. BBB AUTO LINE's records seem correct on process on all four of these, three of which were unambiguous, straddle or straddle-like cases. Thus, the discordances on remedy were derivative of reasonably explicable discordances on process.

* * *

At this point, the auditor turns to the substantive analysis. Assuming the figures in columns A1 through A3 of Table IV-7 are all substantially accurate, what do they tell us?

First, the overall distribution is revealing: among cases that were either mediated or arbitrated (and taking the figures from columns A1), 44.9% ended with a repurchase or replacement remedy, 29.1% ended with a repair remedy or some other relief, and 26.0% ended in no relief. Further, excluding cases brought by attorneys, column A2 reports that 44.2% ended with a repurchase or replacement remedy; 39.0% ended with a repair remedy some other relief; and only 16.8% ended with no award.[304]

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

304 The divergences between attorney and non-attorney cases are explored further in Section IV.G.

Second, the multi-year comparison for cases under the Florida program, like the multi-year comparison for the national population, shows a rising pattern of consumer performance until 2018, with something of a drop-back (though still above 2016 levels) during the current audit year.

Third, having presented figures for arbitrated and mediated cases combined, it's now useful to point to some results from the totals for arbitrated cases and mediated cases separately. The auditor noted last year that, while consumers had been increasingly successful in Florida, their increased success had come almost entirely from mediated cases. Looking forward to Table IV-9A and IV-11A, there was something of a reversal this year; consumer performance wasn't as strong in mediated cases, but improved somewhat in arbitration.

All of this suggests a process that's fair to consumers but not a "slam-dunk" that wouldn't be fair to manufacturers.

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2. Mediated Cases

Most of this section and the next are presented without commentary; the key commentary appears in Section 1.

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

	BBB AUTO LINE stats (A1)	Same, excluding att'y cases (A2)	Stats from "fully adjusted" spread sheet (A3)	2019 Survey (B)
BASE: MED	531	487	**378**	**43**
	100.0%	100.0%	**100.0%**	**100.0%**
Replacement/Repurchase	236	198	**194**	**26**
	44.4%	40.6%	**51.3%**	**60.5%**
Repair	220	215	**115**	**10**
	44.4%	44.2%	**30.4%**	**23.3%**
Other	75	74	**69**	**7**
	14.1%	15.2%	**18.3%**	**16.3%**

Table IV–9A: Further Multi-Year Comparison (A1 figures)

	2019	2018	2017	2016
BASE: MED	531	621	648	493
	100.0%	100.0%	100.0%	100.0%
Replacement/ Repurchase	236	374	367	218
	44.4%	60.2%	56.6%	44.2%
Repair	220	182	197	207
	44.4%	29.3%	30.4%	42.0%
Other	75	65	84	68
	14.1%	10.5%	13.0%	13.8%

Table IV-10: Consumer Agreement with BBB AUTO LINE

	Replacement Repurchase	Repair	Other
BASE: MED	26	10	7
	100.0%	100.0%	100.0%
Replacement/Repurchase (Imported)	24	-	-
	92.3%	-	-
Repair (Imported)	-	9	-
	-	90.0%	
Other (Imported)	-	-	7
	-	-	100.0%
No entry (Imported)[305]	2	1	-
	7.7%	10.0%	-

Concordance: 40/43 = 93.0%

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

3. Arbitrated Cases

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

	BBB AUTO LINE stats (A1)	Same, excluding att'y cases (A2)	Stats from "fully adjusted" spread sheet (A3)	Survey (B)
BASE: arb. cases	588	294	**292**	**35**
	100.0%	100.0%	**100.0%**	**100.0%**
Replacement/Repurchase	266	147	**147**	**17**
	45.2%	50.0%	**50.3%**	**48.6%**
Repair	30	15	**17**	**3**
	5.1%	5.1%	**5.8%**	**8.6%**
Other	1	1	**0**	**1**
	0.2%	0.2%	**0%**	**2.9%**
No Award	291	131	**128**	**14**
	49.5%	44.6%	**43.9%**	**40.0%**

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

	2019	2018	2017	2016
BASE: arb. cases	588	357	441	523
	100.0%	100.0%	100.0%	100.0%
Replacement/ Repurchase	266	138	162	205
	45.2%	38.7%	36.7%	39.2%
Repair	30	25	14	28
	5.1%	7.0%	3.2%	5.4%
Other	1	5	9	13
	0.2%	1.4%	2.0%	2.5%
No Award	291	189	256	277
	49.5%	52.9%	58.0%	53.0%

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

	Replacement /Repurchase	Repair	Other	No Award
BASE: ARB	17	3	1	14
	100.0%	100.0%	100.0%	100.0%
Replacement/Repurchase (Imported)	17	-	-	-
	100.0%	-	-	-
Repair (Imported)	-	3	-	-
	-	100.0%	-	-
Other (Imported)	-	-	-	-
	-	-	-	-
No Award (Imported)	-	-	-	14
	-	-	-	100.0%
No entry (Imported)[306]	-	-	1	-
	-	-	100.0%	-

Concordance: 34/35 = 97.1%

Table IV–13: Did you return a form accepting the arbitrator's decision?

BASE: ARB, with award, "not sure" excluded	19
	100.0%
Yes	17
	89.5%

Table IV–14: Acceptance of different types of remedies

	Total	Repurchase/ Replacement	Repair	Other
BASE: ARB with award, "not sure" excluded	19	17	2	-
	100.0%	100.0%	100.0%	-
Yes	17	17	-	-
	89.5%	100.0%	-	-

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

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

	Survey	
	Accepted	**Rejected**
BASE: See below	17	2
	100.0%	100.0%
Accepted (Imported)	17	-
	100.0%	-
Rejected (Imported)	-	2
	-	100.0%

Concordance: 19/19: 100.0%

4. Withdrawn Cases

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

	2019 Cases
BASE: Withdrawn cases	8
	100.0%
You settled the matter or your car was fixed	5
	62.5%
You sold the car	1
	12.5%
Some other reason	2
	25.0%

Pursuant to a requirement specific to Florida, BBB AUTO LINE has provided the following breakout:

	All Manufacturers		Certified Manufacturers	
All filed claims:	2,365	100.0%	2,337	100.0%
Mediated	531	22.4%	528	22.6%
Arbitrated	588	24.9%	580	24.8%
No jurisdiction	1,050	44.7%	1,037	44.4%
Withdrawn	196	8.3%	192	8.2%
All arbitrations:	588	100.00%	584	100.00%
Full repurchase	226	38.4%	224	38.4%
Partial repurchase	7	1.2%	7	1.2%
Replacement	33	5.6%	33	5.6%
Repair	30	5.1%	30	5.1%
Trade assist	0	0.0%	0	0.0%
Other award	1	0.2%	1	0.2%
No award	291	49.5%	289	49.5%

The seven cases reporting a partial repurchase were all non-lemon law cases.

D. COMPLIANCE QUESTIONS

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

	Mediated		Arbitrated		Med + Arb	
	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE
BASE: MED cases *and* ARB cases with an award that consumer accepted. "Not sure" excluded from survey figures	42	531	17	216	59	747
	100.0%	100.0%	100.0%	100.0%	100%	100.0%
Carried out remedy within the time specified, including any extension to which you agreed	35	516	14	215	49	731
	83.3%	97.2%	82.4%	99.5%	83.1%	97.8%
Carried out remedy after the time specified, including any extension to which you agreed	2	0	3	0	5	0
	4.8%	0.0%	17.6%	0.0%	8.5%	0.0%
Hasn't yet carried out remedy, time to do so hasn't expired[307]	2				2	
	4.8%				3.4%	
Hasn't yet carried out remedy, time to do so has expired	3	9		1	3	10
	7.1%	1.7%		0.2%	5.1%	1.4%
(Failure to comply was the fault of the consumer)[308]		(1)		(1)		(2)
		(0.2%)		(0.2%)		(0.3%)
Time for compliance has expired, performance not verified		6				6
		1.1%				0.8%

* As noted in Chapter 2, Section II.D, "compliance" doesn't necessarily ensure consumer satisfaction. Thus, a manufacturer who agrees to inspect a car and repair any warranted defects that it finds "complies" if it does the inspection and finds no warranted defects, even if the consumer doesn't accept that result and pursues the matter (perhaps successfully, perhaps not) in BBB AUTO LINE. As noted in that earlier discussion, about 20% of consumers, mostly those with repair remedies, were dissatisfied with "compliant" steps taken by manufacturers, and generally continued their cases in BBB AUTO LINE.

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[307] The BBB AUTO LINE statistics describe the situation in June 2020, when it last updated the compliance figures. See note 257, supra.

[308] For the survey, this is based on consumers' responses to a follow-up question. No consumers accepted fault on the compliance question (through some did so, as reported in the next section, for delays in resolving cases in the first place).

Cases recorded as non-compliant by BBB AUTO LINE. In the process and remedy sections, the auditor focused exclusively on cases where the survey showed a disparity between BBB AUTO LINE records and consumers' survey responses. For compliance, though the auditor adds an alternative screen. Since all cases of noncompliance are inherently problematic, and since the total noncompliant cases reported by BBB AUTO LINE was a manageable number, the auditor begins with all cases *where the full BBB AUTO LINE spread sheet* reported noncompliance. Given the auditor's focus on *all* cases reported as non-compliant by BBB AUTO LINE, moreover, he used the BBB AUTO LINE statistics for all cases closed during the audit year – which includes attorney cases and multiple complaints about the same vehicle.[309]

BBB AUTO LINE reported ten cases of non-compliance (1.4%), including two cases where it attributed fault to the consumer. Another case seems to have been misclassified and, pursuant to BBB AUTO LINE's standard practice, should have been recorded as "manufacturer complied, consumer not satisfied."

Among the other seven (0.9% of the total) all were mediated repair cases, and the compliance codes consistently indicate that the consumer continued the case in BBB AUTO LINE. These seven cases constitute 3.2% of the 220 Florida cases with mediated repair remedies, but a high percentage of BBB AUTO LINE's reported non-compliances. And this suggests that manufacturers may not always appreciate that, when the opportunity to attempt a final repair under state law is incorporated into a repair settlement under BBB AUTO LINE, it becomes an obligation. So, perhaps, in an effort to reduce the numbers of reported non-compliances, it may bear emphasizing to manufacturers that failure to respond to a notice of a final repair opportunity, when that opportunity is incorporated into a mediated repair settlement, will be reported by BBB AUTO LINE as "non-compliance."

Non-compliance reported by surveyed consumers. Preliminarily, the auditor this year asked BBB AUTO LINE to include compliance data on its spread sheet, and this substantially facilitated his analysis. Also, to increase transparency (and simplify the reporting process), BBB AUTO LINE drew this year's aggregate figures, including compliance aggregates, directly from the spread sheet.

The survey provides a check on these aggregates, and consumers surveyed this year reported a higher rate of non-compliance than did BBB AUTO LINE. While BBB AUTO LINE reported a 1.4% non-compliance rate, 5.1% of surveyed consumers reported such problems. However, this was based on only 3 consumers (out of a base of 60. And, in two of these cases, the BBB AUTO LINE files report that a performance verification letter was sent but not returned (so BBB AUTO LINE wouldn't have known about the compliance problem); in the third, BBB AUTO LINE's files report that the sole case brought by the consumer in 2019 was closed because the consumer didn't return a signed consumer complaint form (so, based on BBB AUTO LINE records, there wouldn't have been any compliance to check on).

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[309] The Florida cases examined in this section were also among those examined in Section III.D, the parallel section of the national analysis.

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Consumers reporting delayed compliance. Five of the surveyed consumers reported delayed compliance. In two of these cases, BBB AUTO LINE reported that the consumer hadn't returned the performance verification letter, so satisfactory and timely performance was assumed. Another case contain a returned performance verification letter, which reported that the transaction was completed 37 days after the decision was sent; unfortunately, the consumer's acceptance of the decision, the relevant factor for timing, was in a corrupted file.[310]

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

	2019	2018	2017	2016
BASE: Same as Table IV-17	747	727	787	677
	100.0%	100.0%	100.0%	100.0%
Carried out remedy within the time specified, including any extension to which you agreed	731	702	766	658
	97.8%	96.6%	97.3%	97.2%
Carried out remedy after the time specified, including any extension to which you agreed	-	1	1	1
	-	0.1%	0.1%	0.1%
Hasn't yet carried out remedy, time to do so hasn't expired[311]	-	12	6	2
	-	1.7%	0.8%	0.3%
Hasn't yet carried out remedy, time to do so has expired	10	12	14	16
	1.4%	1.7%	1.8%	2.3%
(Failure to comply was the fault of the consumer)[312]	(2)	(9)	(7)	(11)
	(0.3%)	(1.2%)	(0.9%)	(1.6%)
Time for compliance has expired, performance not verified	6			
	0.8%			

310 See Chapter II, Section 2.E.

311 The BBB AUTO LINE statistics describe the situation in June 2020, when it last updated the compliance figures. See note 257, *supra.*

312 For the survey, this is based on consumers' responses to a follow-up question. No consumers accepted fault on the compliance question (through some did so, as reported in the next section, for delays in resolving cases in the first place).

E. TIMING QUESTIONS

1. Mediated and Arbitrated Cases

As in past years, BBB AUTO LINE reported the numbers and percentages of cases that were resolved within 40 days. These statistics, and the auditor's analysis, focus exclusively on arbitrated and mediated cases.[313]

Tables IV–19(1):[314] Time to Resolve Cases (Survey)

	Mediated	Arbitrated	Combined
BASE: MED/ARB	43	35	**78**
	100.0%	100.0%	**100.0%**
Within 40 days	36	18	**54**
	83.7%	51.4%	**69.2%**
Within 40 days *or* consumer acknowledged responsibility for delay	37	21	**58**
	86.0%	60.0%	**74.4%**

Table IV–19(2a): Time to Resolve Cases (BBB AUTO LINE; All cases)

	Mediated	Arbitrated	Combined
BASE: MED/ARB	531	577	**1108**
	100.0%	100.0%	**100.0%**
Within 40 days	503	263	**766**
	94.7%	44.7%	**69.1%**

Table IV–19(2b): Time to Resolve Cases (BBB AUTO LINE; fully adjusted cases)

	Mediated	Arbitrated	Combined
BASE: MED/ARB	379	292	**671**
	100.0%	100.0%	**100.0%**
Within 40 days	365	105	**470**
	96.3%	36.0%	**70.0%**

313 Most of the omitted cases were ineligible cases – and most ineligible cases were resolved in short order, often a day or two. Excluding these cases thus *lowered* the reported rate of timely compliance.

314 To maintain consistency with numbering in past audits, there is no Table IV-18. See Section IIA.

BBB AUTO LINE didn't provide a breakout of the extent to which consumers were responsible for delays in resolving cases. The survey figures, though, suggest that some of the "untimely" cases resulted from delay caused by the consumers.

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

	2019		2018		2017	
	Survey	**BBB AUTO LINE**	**Survey**	**BBB AUTO LINE**	**Survey**	**BBB AUTO LINE**
BASE: MED/ARB	78	1108	89	1189	78	1089
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Within 40 days	54	766	66	978	55	875
	69.2%	69.1%	74.2%	78.5%	70.5%	80.4%

For comparative purposes, the auditor first focuses on the "fully adjusted" cases aggregates in Table IV–19(2b). BBB AUTO LINE shows a 70.0% rate of timely compliance and the survey reports a 69.2% rate, a particularly close correlation.

Because of the structure of the survey question and the quantitative nature of the consumers' replies, the auditor has used a somewhat different mode of analysis to explore discordances on timeliness than he's used for other metrics. During the survey, consumers are first asked to confirm whether the BBB AUTO LINE timing figure is accurate. Among the 78 consumers who reported that their cases were resolved through mediation or arbitration, 61 agreed with BBB AUTO LINE's records, 14 disagreed, and 3 weren't sure.[315]

Among the 14 consumers who disagreed with the specific timing reported by BBB AUTO LINE, though, five agreed that compliance was timely even though they disagreed about the precise duration.[316] In another three, curiously, consumers corrected BBB AUTO LINE records showing untimely compliance to report that compliance was timely.[317] Two cases were straddle cases. The others were less clear, but might have included the time to implement the remedy. Thus, allowing for elements of likely consumer confusion about precisely what BBB

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[315] For this analysis, the auditor included "not sure" cases, where the consumer wasn't sure if the precise number of days that BBB AUTO LINE reported was right. In other words, BBB AUTO LINE's records were treated as being accurate unless the consumer affirmatively corrected them.

[316] Indeed, in all five of these cases, the consumer reported completion in 31 days or less.

[317] In some of these cases, the consumer requested a delay because of travel plans, and may not have counted the delays that they requested towards the time to resolve the case.

AUTO LINE was measuring, the micro analysis suggests that the BBB AUTO LINE records, and the aggregates derived from those records, are reasonably accurate.

Further, the figures in Tables IV-19(2a) and (2b), such as the 69.1% timeliness rate that BBB AUTO LINE reported for all mediated and arbitrated cases, don't account for cases that missed the 40 day deadline because of the consumer's fault – and, in the survey, where 54 consumers reported delay, 4 of them (7.4% of those reporting delay) attributed the fault to themselves. So, the reported timeliness figure might well be boosted by a few percentage points if the figures were similarly adjusted to reflect cases where the consumer caused the delay.[318]

Still, particularly after this year's survey results highlighted a timing issue, the auditor scrutinized separately the timing results for arbitrated cases and those for mediated cases. *He did this, though, for essentially diagnostic purposes.* It seems clear that the combined results for mediations-plus-arbitrations is far more important than the results for either type of process individually; as noted before, consumers who use the program are seeking a resolution to their complaints, by whatever process is used.

With these caveats, the auditor turns to the breakout figures. And, since his primary aim here is to focus on overall performance, he uses the aggregates from the "all cases" table (Table IV–19(2a)) rather than the "fully adjusted" table.

Not surprisingly, delays are far less likely in mediated cases (94.7% timely) than in arbitrations (44.7% timely), with neither of these figures making adjustment for consumer fault. Further, any delays in resolving arbitrations under BBB AUTO LINE are, to some extent, the flip side of an often-successful mediation program, which likely delays the start of arbitration at least somewhat.

While all these factors provide important context for the BBB AUTO LINE figures, the auditor still suggests that BBB AUTO LINE consider ways to improve timeliness – and he understands that they're already seeking ways to do so. To that end, moreover, the auditor notes a few points that he's observed.

First, while Table IV-19(2a) shows that 44.7% of arbitrations were resolved in 40 days, the auditor's analysis of BBB AUTO LINE's spread sheet shows that 59.5% of cases were resolved within 44 days. In other words, a small speed-up in resolving arbitrations (which perhaps might be accomplished by a small speed-up in attempting mediation and scheduling the arbitration), would substantially raise the rate of timely closings.[319]

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[318] It also bears noting that BBB AUTO LINE doesn't rely on certain extensions that are allowed under FTC rules. For example, FTC Rule 703.5(e) allows seven additional days "where the consumer has made no attempt to seek redress directly from the warrantor."

[319] Thus, for example, BBB AUTO LINE apparently hasn't been highlighting to arbitrators when the 40-day timetable for a case will be reached. Though arbitrators could in theory figure this out from the case file, it seems unlikely that they routinely do so – and, knowing the deadline might

Second, again starting with the point that 44.7% of arbitrations were resolved within 40 days, the auditor notes that 88.4% were resolved within 60 days, and 98.2% within 80 days. A very impressionistic survey by the auditor suggests that most of the more extended cases included technical examinations, which are most frequently requested by the arbitrator after the hearing, and thus routinely delay resolution beyond 40 days. [320]

Recommendation: BBB AUTO LINE should consider ways to improve its case processing time.

2. Withdrawn Cases

Table IV–23[321]: Days until complaints were withdrawn, as reported by consumers who reported withdrawing their complaints

BASE: withdrawn cases	8
	100.0%
Within 40 days	6
	75.0%

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encourage the small improvement that could bring more cases within the deadline. They now plan to do so.

[320] Most technical examinations are requested by arbitrators, and one question this raises is whether those arbitrators overestimate its likely value. As BBB AUTO LINE notes in its training guide, these examinations, which can be time-consuming, don't include major diagnostic work or component disassembly; the technical expert doesn't have sophisticated diagnostic equipment available during the inspection; and the expert's report is ultimately only an opinion. Since BBB AUTO LINE has already made these points to arbitrators, though, and since it could be problematic to limit the arbitrator's discretion to request a technical inspection, it's not clear that they can do more. Perhaps one possibility, though, might be to make available to arbitrators copies of carefully anonymized and redacted reports previously submitted by technical examiners.

[321] To maintain consistency with numbering in past audits, there is no Table IV-21 or IV-22.

F. DOCUMENTS AND CONTACTS

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

	2019	2018	2017	2016
BASE: answering, "not sure" responses excluded	139	136	149	143
	100.0%	100.0%	100.0%	100.0%
Yes	115	122	141	132
	82.7%	89.7%	94.6%	92.3%

Among the 24 consumers who reported that they *didn't* get an initial package, three had returned signed consumer complaint forms and, in another file, there were notes documenting communications with the consumer.

Most significantly, though, there were eleven cases where consumers said they never received documents and BBB AUTO LINE rejected their claims for failure to submit a signed consumer complaint form, a scenario that's possible only in Florida and California, the states where a file can open before the consumer complaint form is returned. *This is potentially quite significant, and it's discussed further in Chapter II, Section 2.d.* As detailed there, this was the first year when BBB AUTO LINE began to rely exclusively on email communications for consumers who selected email as their preferred mode of communication, and it's possible that some of these consumers had problems working with the online accounts that BBB AUTO LINE created for them. In the discussion referenced above, the auditor offers more detailed observations about the issue, along with a recommendation that BBB AUTO LINE take steps to rectify a possible problem.

Nine other Florida consumers whose cases were found to be ineligible within three days of submission also reported that they never received an initial packet. BBB AUTO LINE sometimes takes this step to avoid troubling consumers to submit detailed documentation when their complaints will clearly be found ineligible in any event. It's possible, though more speculative, that some of these consumers also had trouble with the online accounts,.

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

	2019	2018	2017	2016
BASE: receiving docs, "not sure" excluded	111	120	137	128
	100.0%	100.0%	100.0%	100.0%
Very	64	76	103	87
	57.7%	63.3%	75.2%	68.0%
Somewhat	39	38	30	34
	35.1%	31.7%	21.9%	26.6%
Not at all	8	6	4	7
	7.2%	5.0%	2.9%	5.5%

Table IV–26: And how helpful were they?

	2019	2018	2017	2016
BASE: Same	111	121	138	126
	100.0%	100.0%	100.0%	100.0%
Very	58	59	71	73
	52.3%	48.8%	51.4%	57.9%
Somewhat	34	41	49	36
	30.6%	33.9%	35.5%	28.6%
Not at all	19	21	18	17
	17.1%	17.4%	13.0%	13.5%

Table IV-25 shows that 92.8% of the consumers surveyed found BBB AUTO LINE's documents at least somewhat understandable, with 57.5% reporting that they were very understandable. Table IV-26 shows that 82.9% reported that they were at least somewhat helpful, with 52.3% finding them very helpful.

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

	2019	2018	2017	2016
BASE: MED, "not sure" excluded	40	64	42	40
	100.0%	100.0%	100.0%	100.0%
Yes	39	61	41	38
	97.5%	95.3%	97.6%	95.0%

The sole "no" response was a consumer who reported a mediated case although the case handler's notes report that he was told orally that his complaint wasn't eligible for relief (because it didn't involve a manufacturing defect). Because BBB AUTO LINE didn't show mediation,

there was no settlement letter.

Table IV–28: Did you get a notice by letter or email telling you when and where to go for your hearing or vehicle inspection?

	2019	2018	2017	2016
BASE: ARB, "not sure" excluded	34	21	34	41
	100.0%	100.0%	100.0%	100.0%
Yes	33	20	33	40
	97.1%	95.2%	97.1%	97.6%

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

	2019	2018	2017	2016
BASE: ARB, "not sure" excluded	35	18	32	40
	100.0%	100.0%	100.0%	100.0%
Yes	35	18	31	38
	100.0%	100.0%	96.9%	95.0%

Table IV–30: After you accepted the arbitrator's award/agreed to a settlement, which of the following best describes your later contacts with BBB AUTO LINE staff to discuss whether the manufacturer was doing what it promised/what the order required?

	2019	2018	2017	2016
BASE: (1) MED and (2) ARB where the consumer received and accepted an award. "Not sure" responses excluded.	55	68	61	60
	100.0%	100.0%	100.0%	100.0%
The staff contacted me by letter or email	16	14	17	14
	29.1%	20.6%	27.9%	23.3%
The staff spoke to me	6	10	13	10
	10.9%	14.7%	21.3%	16.7%
Both of those	26	38	26	32
	47.3%	55.9%	42.6%	53.3%
Neither of those	7	5	3	3
	12.7%	7.4%	4.9%	5.0%
Something else	-	1	2	1
	-	1.5%	3.3%	1.7%

Table IV–30 reports that seven consumers said they never heard from BBB AUTO LINE to check on the manufacturer's compliance. In five of these cases, the files reported that performance verification letters were *sent*. The two other cases were both found ineligible, according to BBB AUTO LINE records, so there wouldn't be any compliance to check on.

G. CLAIMS FILED BY CONSUMERS WITH COUNSEL COMPARED TO CLAIMS FILE DIRECTLY BY CONSUMERS; ALSO, MODE OF PRESENTATION

TABLE IV–33[322]: Comparison on Process and Remedy

	All cases		Cases without att'ys		Cases with att'ys	
	#	%	#	%	#	%
PROCESS						
Mediated	531	22.4%	487	26.8%	44	8.1%
Arbitrated	588	24.9%	294	16.2%	294	53.9%
Ineligible	1,050	44.4%	882	48.4%	168	30.8%
Withdrawn	196	8.38%	157	8.6%	39	7.2%
Total	2,365	100.0%	1,820	100.0%	545	100.0%

]

	All cases		Cases without att'ys		Cases with att'ys	
REMEDIES: MED						
Repurchase/replace	236	44.4%	198	40.6%	38	86.4%
Repair	220	41.4%	215	44.1%	5	11.4%
Other	75	14.1%	74	15.2%	1	2.3%
Total	531	100.0%	487	100.0%	44	100.0%
REMEDIES: ARB						
Repurchase/replace	266	45.2%	147	50.0%	119	40.48%
Repair	30	5.1%	15	5.1%	15	5.1%
Other	1	0.2%	1	0.4%	0	
No award	291	49.5%	131	44.6%	160	54.4%
Total	588	100.0%	294	100.0%	294	100.0%
REMEDIES: MED+ARB						
Repurchase/replace	502	44.9%	345	44.17%	157	46.45%
Repair	250	22.3%	230	29.4%	20	5.9%
Other	76	6.8%	75	9.6%	1	0.3%
No Award	291	26.0%	131	16.8%	160	47.3%
Total	1,119	100.0%	781	100.0%	338	100.0%

322 To maintain consistency with numbering in past audits, there is no Table IV-31 or IV-32.

Table IV- 33A – Mode of Presentation

	In Writing		Telephone		In Person	
	#	%	#	%	#	%
REMEDIES: ARB						
Repurchase/replace	104	38.2%	13	52.0%	149	51.2%
Repair	14	5.1%	1	4.0%	15	5.2%
Other	0		0		1	0.3%
Denial	154	56.6%	11	44.0%	126	43.3%
Total	272	100.0%	25	100.0%	291	100.0%
REMEDIES: ARB WITH ATTY						
Repurchase/replace	104	38.4%	6	54.5%	9	75.0%
Repair	14	5.2%	0		1	8.3%
Other	0		0		0	
Denial	153	56.4%	5	45.5%	2	16.7%
Total	271	100.0%	11	100.0%	12	100.0%
REMEDIES – ARB W/O ATTY						
Repurchase/replace			7	50.00%	140	50.18
Repair			1	7.1%	14	5.0%
Other			0		1	0.4%
Denial	1	100.0%	6	42.9%	124	44.4%
Total	1	100.0%	14	100.0%	279	100.0%

According to BBB AUTO LINE statistics, consumers who brought claims under the Florida program used lawyers in 545 cases, or 23.0% of 2365 cases reported s closed in 2019. Looking at the combined mediation plus arbitration figures, the percentages of consumers with repurchase or replacement remedies, for attorney compared to non-attorney cases, were relatively close this year. Consumers who used attorneys were much more likely to leave the process with "no award," a results that's not possible in mediation but only in arbitration.

Further, and this is somewhat impressionistic, withdrawals by consumers with attorneys often seem to reflect settlements outside the program, although this also occurs in some cases where consumers without attorneys withdraw certainly occasionally occurs in some cases where consumers didn't use attorneys as well. There's no easy way to quantify the impact of withdrawals reflecting settlements outside the program; even when the case handler's note report a settlement, they don't describe the nature of the settlement (although the auditor suspects that, in many cases involving withdrawals by attorneys who settled their clients' cases, the settlement provided for repurchase or replacement remedies).

* * *

The auditor also noted previously that consumers with attorneys were far more likely than those without attorneys to undertake arbitration in writing. At the auditor's request, BBB AUTO LINE this year provided the data presented in Table IV-33A.

This table breaks out the awards granted in arbitrations conducted in writing, by telephone, and in persons, with further break-outs within each for attorney and non-attorney cases. It's harder to discern patterns as the numbers get smaller, and the auditor is skeptical of aggregates based on relatively few consumers. (Even with 20 consumers, a single decision counts for 5% or more of the results.). Still, the results indicate some differences between in-writing and in-person cases (51.2% compared to 38.2% for repurchase and replacement remedies; 43.3% compared to 56.6% for denials). But those differences, which appear to show some benefit to consumers in having an in-person hearing, are sufficiently limited to further suggest that consumers get a fair hearing even when cases are brought in writing (and the vast majority of such cases are brought by counsel).

H. SATISFACTION

The final portion of these sections examines a series of questions by which consumers graded arbitrators and BBB AUTO LINE staff, and advised whether they would recommend BBB AUTO LINE.

1. Satisfaction with Arbitrator

Table IV–34: How would you grade the arbitrator on understanding the facts of your case?

	Total	Award	Repurchase/ Replace	Repair/ Other	No Award
BASE: arb. cases, "not sure" excluded	35	21	17	4	14
	100.0%	100.0%	100.0%	100.0%	100.0%
A=Excellent	16	16	14	2	-
	45.7%	76.2%	82.4%	50.0%	-
B=Good	6	2	1	1	4
	17.1%	9.5%	5.9%	25.0%	2.08.6%
C=Average	4	2	1	1	2
	11.4%	9.5%	5.9%	25.0%	14.3%
D=Poor	2	1	1	-	1
	5.7%	4.8%	5.9%		7.1%
F=Failing Grade	7	-	-	-	7
	20.0%	-	-	-	50.0%
MEAN	**2.63**	**3.57**	**3.65**	**3.25**	**1.21**

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

	Total	All Award	Award: Replace-ment/ Repurchase	Award: Repair/ Other	No Award
BASE: arb. cases, "not sure" excluded	35	21	17	4	14
	100.0%	100.0%	100.0%	100.0%	100.0%
A=Excellent	16	16	14	2	-
	45.7%	76.2%	82.4%	50.0%	-
B=Good	6	3	2	1	3
	17.1%	14.3%	11.8%	25.0%	21.4%
C=Average	4	1	-	1	3
	11.4%	4.8%	-	25.0%	21.4%
D=Poor	2	1	1	-	1
	5.7%	4.8%	5.9%	-	7.1%
F=Failing Grade	7	-	-	-	7
	20.0%	-	-	-	50.0%
MEAN	**2.63**	**3.62**	**3.71**	**3.25**	**1.14**

Table IV–36: How would you grade the arbitrator on reaching an impartial decision?

	Total	Award	Repurchase/ Replace	Repair/ Other	No Award
BASE: arb. cases, "not sure" excluded	35	21	17	4	14
	100.0%	100.0%	100.0%	100.0%	100.0%
A=Excellent	17	17	15	2	-
	48.6%	81.0%	88.2%	50.0%	
B=Good	3	2	1	1	1
	8.6%	9.5%	5.9%	25.0%	7.1%
C=Average	3	2	1	1	1
	8.6%	9.5%	5.9%	25.0%	7.1%
D=Poor	3	-	-	-	3
	8.6%	-	-	-	21.4%
F=Failing Grade	9	-	-	-	9
	25.7%	-	-	-	64.3%
MEAN	**2.46**	**3.71**	**3.82**	**3.25**	**0.57**

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

	Total	Award	Repurchase/ Replace	Repair/ Other	No Award
BASE: arb. cases, "not sure" excluded	35	21	17	4	14
	100.0%	100.0%	100.0%	100.0%	100.0%
A=Excellent	17	17	15	2	-
	48.6%	81.0%	88.2%	50.0%	-
B=Good	3	2	1	1	1
	8.6%	9.5%	5.9%	25.0%	7.1%
C=Average	1	1	-	1	-
	2.9%	4.8%	-	25.0%	-
D=Poor	4	-	-	-	4
	11.4%	-	-	-	28.6%
F=Failing Grade	10	1	1	-	9
	28.6%	4.8%	5.9%	-	64.3%
MEAN	2.37	3.62	3.71	3.25	0.50

Table IV–38:
ARBITRATOR SATISFACTION COMPOSITE

	Total	All Award	Award: Replace-ment/ Repurchase	Award: Repair/ Other	No Award
Understanding facts	2.63	3.57	3.65	3.25	1.21
Objectivity and fairness	2.63	3.62	3.71	3.25	1.14
Reaching and impartial decision	2.46	3.71	3.82	3.25	0.57
Coming to a reasoned & well thought-out decision	2.37	3.62	3.71	3.25	0.50
AVERAGE	2.52	3.63	3.72	3.25	0.86

Composite Means (2018)

All consumers with arbitration		2.52
Consumers who received awards:		3.63
Replacement/Repurchase	3.73	
Repair/other	3.25	
Consumers with no awards:		0.86

Composite Means (2018)

All consumers with arbitration		2.72
Consumers who received awards:		3.52
Replacement/Repurchase	3.73	
Repair/other	2.66	
Consumers with no awards:		1.22

Composite Means (2017)

All consumers with arbitration		1.74
Consumers who received awards:		3.17
Replacement/Repurchase	3.53	
Repair/other	2.56	
Consumers with no awards:		0.90

Composite Means (2016)

All consumers with arbitration:		2.25
Consumers who received awards		3.26
Replacement/Repurchase	3.70	
Repair/other	2.15	
Consumers with no awards		1.46

As discussed in the analysis of the national sample, the auditor has previously expressed skepticism about composites that measure satisfaction rates for arbitrators without adjusting for how well consumers did in arbitration. He suspected – and the survey breakouts show – that consumer's satisfaction with arbitrators largely correlates to their success in arbitration, so year-to-year fluctuations in satisfaction could well represent, at least in substantial part, fluctuations in the success of the consumers surveyed. And, even if consumers had the identical success from one year to the next, it's unlikely (given sampling errors) that the consumers surveyed would have had similarly identical success.

Further, for arbitrator satisfaction, at the state level in particular, the sample size is quite small. With only 7 "no award" consumers responding to the question, for example, each consumer controls 57% of the arbitrator's grade.

For all these reasons, the auditor hesitates to put much weight in minor variations from year to year. With that caveat, though, the auditor does note that satisfaction with arbitrators this year was relatively high.

2. Satisfaction with BBB AUTO LINE staff

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

BASE: arb. or med. cases, "not sure" excluded	74
	100.0%
A=Excellent	52
	70.3%
B=Good	12
	16.2%
C=Average	5
	6.8%
D=Poor	2
	2.7%
F=Failing Grade	3
	4.1%
MEAN	**3.46**

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

BASE: arb. or med. cases, "not sure" excluded	75
	100.0%
A=Excellent	49
	65.3%
B=Good	13
	17.3%
C=Average	8
	10.7%
D=Poor	1
	1.3%
F=Failing Grade	4
	5.3%
MEAN	**3.36**

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

BASE: arb. or med. cases, "not sure" excluded	77
	100.0%
A=Excellent	45
	58.4%
B=Good	15
	19.5%
C=Average	8
	10.4%
D=Poor	3
	3.9%
F=Failing Grade	6
	7.8%
MEAN	**3.17**

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

	Mean
Objectivity and fairness	3.46
Efforts to resolve claim	3.36
Overall grade	3.17
AVERAGE	3.33

Composite Mean (2019)	3.33
Composite mean (2018)	3.38
Composite mean (2017)	3.33
Composite mean (2016):	3.10

Table IV–43: Would you recommend BBB AUTO LINE to friends or family?

	Total	Med/Arb
BASE: answering, "not sure" excluded	143	75
	100.0%	100.0%
Yes	100	66
	69.9%	88.0%

Composite Means (2019)
All consumers: 69.9^%
Consumers with mediations or arbitrations: 88.0%%

Composite Means (2018)
All consumers: 73.8%
Consumers with mediations or arbitrations: 87.2%

Composite Means (2017)
All consumers: 73.2%
Consumers with mediations or arbitrations: 85.9%

Composite Means (2016)
All consumers: 73.0%
Consumers with mediations or arbitrations: 77.0%

Composite Means (2015)
All consumers: 76%
Consumers with mediations or arbitrations: 78.1%

Interestingly, among the seven consumers in the survey who said they went to arbitration and lost, six answered this question, and half of them said they would recommend BBB AUTO LINE.

V. SURVEY RESULTS – OHIO

Preliminarily, the notes in Section IIA, addressing such matters as table numbering and gender-specific pronouns, apply here as well.

Among the 10351 cases that BBB AUTO LINE closed during the audit year, 347 (3.4%) were filed in Ohio. Although TechnoMetrica made multiple attempts to call every Ohio consumer who filed a case, and further boosted the Ohio numbers by including in the state sample Ohio consumers who were initially contacted as part of the national sample,[323] only 67 consumers completed surveys in Ohio. And with the smaller numbers, the margin of error for questions posed to all consumers in the Ohio sample was +/-10.4% compared to +/-4.5% for the national sample. Further, the numbers of consumers who were asked questions posed only to subsets of consumers sometimes became quite small. For example, only eight Ohio consumers said they used arbitration and thus were asked arbitration-specific questions.

Still, the *micro* analysis for Ohio consumers substantially alleviates any concern posed by this margin of error (including a single figure that falls outside the relevant margin). Basically, the auditor used the survey to hone in on cases where consumers disagreed with BBB AUTO LINE records. On most metrics, these "discordances" were 5% or less and, by examining the underlying files, the auditor concluded that these figures overstated the real extent of consumer disagreement with BBB AUTO LINE's records. Through his micro and macro analyses, the auditor concludes that the Ohio figures compiled by BBB AUTO LINE represent the underlying records and cases with a high degree of accuracy.

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[323] This wasn't done for Florida. The issue is that the national frame needs to be sampled first and, to be representative as the whole country, Ohio consumers must have the same chance as consumers elsewhere to be selected for the national survey. In Florida, where the same situation arose, there were sufficient numbers of consumers that it was possible to fully include Florida consumers in the national sample and still complete a sample of 150 *additional* Florida consumers for the Florida sample. For Ohio, though, even with attempts (including multiple attempts as needed) to call each consumer in the state, it was only possible to complete 67 surveys.

After omitting attorney cases and all but one case where there were multiple complaints about the same vehicle, though, there were only 279 consumers to contact in the first place. In fact, TechnoMetrica completed interviews with nearly one in four Ohio consumers who filed a complaint in 2019.

A. GENERAL INFORMATION

Table V–1: Vehicle Year

	2018 Cases
TOTAL	67
	100.0%
2007	1
	1.5%
2008	-
	-
2009	-
	-
2010	7
	10.4%
2011	-
	-
2012	3
	4.5%
2013	1
	1.5%
2014	2
	3.0%
2015	2
	3.0%
2016	8
	11.9%
2017	13
	19.4%
2018	14
	20.9%
2019	16
	23.9%
2020	-
	-

Table V–2: The BBB AUTO LINE's records show they closed a complaint in 2019 about your <make> vehicle. Is that correct?

TOTAL	67
	100.0%
Yes	66
	98.5%

One consumer corrected the model name.

Table V–3: Repair Attempts

	2019	**2018**	**2017**	**2016**
BASE: ALL, "not sure" excluded	65	74	84	61
	100.0%	100.0%	100.0%	100.0%
One	3	4	8	4
	4.6%	5.4%	9.5%	6.6%
Two	4	7	-	2
	6.2%	9.5%	-	3.3%
Three	13	8	11	8
	20.0%	10.8%	13.1%	13.1%
Four or more	31	49	56	41
	47.7%	66.2%	66.7%	67.2%
None	14	6	9	6
	21.5%	8.1%	10.7%	9.8%

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

	2019	2018	2017	2016
BASE: all respondents, "not sure" excluded	67	76	90	62
	100.0%	100.0%	100.0%	100.0%
Manufacturer's manuals/other warranty documents	10	11	9	8
	14.9%	14.5%	10.0%	12.5%
Dealer or manufacturer representative	18	18	16	11
	26.9%	23.7%	17.8%	17.7%
BBB/BBB Website	3	10	10	8
	4.5%			
BBB AUTO LINE Website	2	13.2%	11.1%	12.9%
	3.0%			
Internet website (NOT BBB or government website)	1	7	17	13
	1.5%	9.2%	18.9%	21.0%
Lawyer	15	4	5	3
	22.4%	5.3%	5.6%	4.8%
Friend/family/word of mouth	2	12	24	15
	3.0%	15.8%	26.7%	24.2%
TV/Radio/Newspaper	10	-	-	-
	14.9%	-	-	-
Government website, office, or official	-	4	3	1
	-	5.3%	3.3%	1.6%
Had used the BBB AUTOLINE previously	5	5	5	
	7.5%	6.6%	5.6%	
General Knowledge	6	7		
	9.0%	9.2%		
Other	-		1	3
	-		1.1%	4.8%

Until 2019, consumers were asked how they first learned about BBB AUTO LINE. The new formulation allows multiple responses. This tended to raise the numbers a bit, but not by much; there were relatively few multiple responses.

B. PROCESS QUESTIONS

Table V-5: Aggregate Process Responses

	BBB AUTO LINE stats (A1)	Same, excluding att'y cases (A2)	Fully adjusted[324] (A3)	Survey (B1)	Survey, adjusted for response rate (see below) (B2)
TOTAL	347	298	**279**	67	
	100.0%	100.0%	**100.0%**	100.0%	**100.0%**
Mediation	151	142	**125**	27	
	43.5%	47.6%	**44.8%**	40.3%	**37.6%**
Arbitration	60	35	**34**	8	
	17.3%	11.8%	**12.2%**	11.9%	**10.3%**
Withdrawn	37	29	**28**	3	
	10.7%	9.7%	**10.0%**	4.5%	**6.7%**
Ineligible	99	92	**92**	27	
	28.5%	30.9%	**32.9%**	40.3%	**45.3%**
Other				2	
				3.0%	

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

	2019	2018	2017	2016
TOTAL	347	414	469	394
	100.0%	100.0%	100.0%	100.0%
Mediation	151	166	102	114
	43.5%	40.1%	21.8%	28.9%
Arbitration	60	107	167	141
	17.3%	25.8%	35.6%	35.8%
Withdrawn	37	41	55	48
	10.7%	9.9%	11.7%	12.2%
Ineligible	99	100	145	91
	28.5%	24.2%	30.9%	23.1%

[324] See below; also Section II.A of this Chapter.

Table V-6: Consumer Agreement with individual "process" responses

	Mediated	Arbitrated	Withdrawn	Ineligible	Other
TOTAL	27	8	3	27	2
	100.0%	100.0%	100.0%	100.0%	100.0%
Mediation (Imported)	27	-	-	1	-
	100.0%	-	-	3.7%	-
Arbitration (Imported)	-	8	-	-	-
	-	100.0%	-	-	-
Withdrawn (Imported)	-	-	3	1	-
	-	-	100.0%	3.7%	-
Ineligible (Imported)	-	-	-	25	2
	-	-	-	92.6%	100.0%

Concordance: 63/67 = 94.0%
Discordance: 4/67 = 6.0%

1. Micro Analysis

Table V-6, the core of the micro analysis, reports a "concordance" of 94.0%, a number that's perhaps reasonable, if not particularly impressive, on a fundamental aspect of each case.

Given the relatively small sample in Ohio, though, the 6.0% discordance rate reflects responses from only four consumers. One was a straddle case (category 2.b). One involved confusion between ineligible and withdrawn cases (category 2.d). And two involve consumers whose claims were ineligible for the program but who said they never heard from BBB AUTO LINE – a situation that the auditor has noted above, and which is addressed in Chapter 2. This appears to account for all discordances, although the last two replies may reinforce possible concerns that consumers are having problems accessing their online accounts.

Attorney cases: As noted above, the auditor also examined 25 case files where the consumer had counsel. On the process variable for the Ohio attorney cases, there was complete concordance.

2. Macro analysis

The "A" columns of Table V-5. Column A1 shows aggregate "process" statistics, as reported by BBB AUTO LINE, for all cases closed in the audit year. These provide important information about the full range of cases filed in the program; for example, Column A1 highlights that BBB AUTO LINE closed far more cases through mediation as through

arbitration. The figures in Column A are taken from spread sheets that are also used, directly or indirectly, to compute columns A2 and A3.[325]

While column A1 shows BBB AUTO LINE's calculated aggregates for *all* cases closed during the year, column A2 provides comparable figures, as reported by BBB AUTO LINE, for cases where consumers appeared without counsel; these constitute about 85.9% of the "total" cases in column A1. There's more detail in Section IV.G about these figures (and how consumers with counsel reportedly fared compared to those without).

And, while columns A2 omits only cases where the consumer had a lawyer, column A3 (based on TechnoMetrica's modified version of the spread sheet) omits *both* cases where the consumer had a lawyer and, where a consumer filed multiple complaints about the same vehicle that closed during the year, it also omits the earlier of those cases. Both types of omission are needed to avoid the "comparing apples and oranges" problem noted above.[326]

Thus, column A3 reports the appropriate figures to compare to the survey results. But, as discussed next, adjustments are also appropriate for the survey results.

The "B" columns. The B columns report the survey results, with column B1 reporting the actual results and column B2 adjusting them with a weighting factor. As explained previously,[327] past audits have found that some consumers – particularly those who were deemed ineligible – are less likely than others to finish a questionnaire than those who used mediation or arbitration.

The Ohio sample poses a slightly different challenge than did the Florida sample; due to the limited number of Ohio cases, TechnoMetrica obtained 67 completed surveys only by counting, in the Ohio sample, 11 cases from Ohio that had been picked up in the earlier national sample.[328] So the Ohio cases came from two different surveys, each of which had a different response rate profile. For ease of calculations, though, the auditor uses the "completion rate" for the Ohio-specific survey, which included interviews with 56 Ohio consumers . (The national sample included the other 11 Ohio consumers.) For that population in 2019, TechnoMetrica reported the following responses rates for consumers, based on the process by which, according to BBB AUTO LINE's records, their cases were resolved.

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[325] In order to simplify these calculations and make them more transparent to the auditor, BBB AUTO LINE in 2019 began calculating virtually all of its aggregate statistics directly from the spread sheet prepared for TechnoMetrica's use.

[326] See Section II.B.3. Most significantly, a very high percentage of these cases involve mediations.

[327] See Section I.B of this chapter.

[328] In other words, these cases (and only these cases) were counted in both the national survey and a state survey.

- 17.6% for those whose cases were resolved through mediation;
- 19.0% for those who used arbitration;
- 14.6% for those deemed ineligible to participate in BBB AUTO LINE; and
- 11.0% for consumers who withdrew their complaints.

Thus, consumers who used arbitration were over 30% more likely to complete the survey than those who were deemed ineligible.[329] Column B2 thus weights the responses in each category to simulate a scenario where all categories of consumers responded at the same rate.

So, for purposes of Table V-5, the relevant comparison is between Columns A3 and B2. And, looking at those columns, most of the figures are within the 10.4% margin of error. The difference on ineligible claims is a somewhat higher figure of 12.4%. As the auditor noted previously, though, it's not unexpected, as a matter of statistics, that an occasional set of numbers will fall outside the margin of error. And, particularly given the results of the micro analysis, the auditor doesn't see a cause for concern.

* * *

At this point, it's necessary to add back in the MCSV omissions to get back to columns A2 and A3, and to add back in the "attorney case" omissions to get back to column A1. For these, the auditor relies on his systematic examination of 25 attorney case files, as well as his review of the omitted MCSV cases during his review of case files.[330] In neither did he find systematic problems with the "restored" BBB AUTO LINE records.

* * *

Finally, Table IV-5A's multi-year comparisons show relatively consistent results over the years, particularly over the last three years; the relative percentage of cases resolved through mediation rather than arbitration had risen in 2017 and again in 2018, but this year reverted back to percentages more like those from 2016..

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329 (19.0%) / (14.6%).

330 When the auditor was reviewing targeted case files, as described above, he also examined earlier cases in the series (whether the earlier case closed during the audit year or earlier).

C. RELIEF QUESTIONS

The relief questions were posed only to consumers who identified their cases as arbitrated or mediated. As with the process questions, consumers were told how BBB AUTO LINE reported the relief they received, and asked to confirm or correct the results.[331]

1. Combined Results for Mediated and Arbitrated Cases

The discussion that follows presents the combined results for mediated and arbitrated cases. These, in the auditor's view, present the most significant insights into the program as a whole – and point to advantages in a program in which, unless the consumer wants to bypass mediation, a mediation process precedes arbitration. From the consumer's perspective, as noted previously, a replacement vehicle obtained in mediation is no less valuable than a similar replacement obtained in arbitration – and more consumers in the Ohio program got a repurchase or replacement through mediation (85) than through arbitration (23).

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

	BBB AUTO LINE stats (A1)	Same, excluding att'y cases (A2)	Stats from "fully adjusted" spread sheet (A3)	Survey (B)
BASE: MED/ARB	211	177	**160**	**35**
	100.0%	100.0%	**100.0%**	**100.0%**
Replacement/ Repurchase	108	92	**90**	**22**
	51.2%	52.0%	**56.2%**	**62.9%**
Repair	56	53	**40**	**7**
	26.5%	30.0%	**25.0%**	**20.0%**
Other	14	14	**13**	**3**
	6.6%	7.9%	**8.1%**	**8.6%**
No Award	33	18	**17**	**3**
	15.6%	10.1%	**10.6%**	**8.6%**

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

TABLE V–7A: Multi-Year Comparisons (A1 Figures)

	2019	2018	2017	2016
BASE: MED/ARB	**211**	274	269	255
	100.0%	100.0%	100.0%	100.0%
Replacement/ Repurchase	**108**	116	90	85
	51.2%	42.3%	33.5%	33.3%
Repair	**56**	66	53	66
	26.5%	24.1%	19.7%	25.9%
Other	**14**	30	21	20
	6.6%	11.0%	7.8%	7.8%
No Award	**33**	62	35	84
	15.6%	22.6%	39.0%	32.9%

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

	Repurchase/ Replacement	Repair	Other	No Award
BASE=MED/ARB	22	7	3	3
	100.0%	100.0%	100.0%	100.0%
Repurchase/Replacement (Imported)	22	-	-	-
	100.0%	-	-	-
Repair (Imported)	-	7	-	-
	-	100.0%	-	-
Other (Imported)	-	-	3	-
	-	-	100.0%	-
No Award (Imported)	-	-	-	3
	-	-	-	100.0%
None on File-Ineligible/ Withdrawn Cases (Imported)	-	-	-	-
	-	-	-	-

Concordance: 35/35 = 100.0%.

Turning first to Table V–7, the key comparison is between columns A3 and B, because both exclude consumers who used attorneys and, for MCSV's, all but the last complaint filed in 2019.

The margin of error for questions posed to all 67 participants in the Ohio sample was +/-10.4%; it's more on the order of 14.7% for able V–7, where the relevant questions were posed only to the 35 consumers who reported using arbitration or mediation The relevant columns are all within that margin of error.

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

* * *

At this point, the auditor turns to the substantive analysis. Assuming the figures in columns A1 through A4 of Table V-7 are all substantially accurate, what do they tell us? In the auditor's view, the overall distribution is revealing: among cases that were either mediated or arbitrated (and taking the figures from columns A1), 51.2% ended with a repurchase or replacement remedy, 33.1% ended with some other relief, and 15.6% ended in no relief. Further, excluding cases brought by attorneys, only 10.% of consumers got no award. In general, Ohio consumers fared somewhat better during the audit year than the average consumer across the country.

2. Mediated cases

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

	BBB AUTO LINE stats (A1)	Same, excluding att'y cases (A2)	Stats from "fully adjusted" spread sheet (A3)	Survey (B)
BASE: MED	151	142	**126**	**27**
	100.0%	100.0%	**100.0%**	**100.0%**
Replacement/Repurchase	85	77	**76**	**17**
	56.3%	54.2%	**60.3%**	**63.0%**
Repair	53	52	**38**	**7**
	35.1%	36.6%	**30.2%**	**25.9%**
Other	13	13	**12**	**3**
	8.6%	9.2%	**9.5%**	**11.1%**

Had the sampling frame been 126 consumers and the number interviewed 43, the margin of error would have been +/- 16.8%. Particularly in light of that margin of error, the differences between columns A3 and B are quite low.

Table V–9A: Multi-Year Comparisons

	A1 Figures			
	2019	**2018**	**2017**	**2016**
BASE: MED	151	125	102	114
	100.0%	100.0%	100.0%	100.0%
Replacement/ Repurchase	85	66	49	50
	56.3%	52.8%	48.0%	43.9%
Repair	53	32	39	49
	35.1%	25.6%	38.2%	42.3%
Other	13	27	53	15
	8.6%	21.6%	13.7%	13.2%

Table V–10: Consumer Agreement with BBB AUTO LINE

	Repurchase/ Replacement	Repair	Other
BASE: MEDs	17	7	3
	100.0%	100.0%	100.0%
Repurchase/Replacement (Imported)	17	-	-
	100.0%	-	-
Repair (Imported)	-	7	-
	-	100.0%	-
Other (Imported)	-	-	3
	-	-	100.0%
None on File-Ineligible/Withdrawn Cases (Imported)	-	-	-
	-	-	-

Concordance: 33/33 = 100.0%

3. Arbitrated Cases

Table V–11: Final Remedy in Cases Identified by Consumers as Arbitrated

	BBB AUTO LINE stats (A1)	Same, excluding att'y cases (A2)	Stats from "fully adjusted" spread sheet (A3)	Survey (B)
BASE: ARB	60	35	34	8
	100.0%	100.0%	100.0%	100.0%
Replacement/ Repurchase	23	15	14	5
	38.3%	42.9%	41.2%	62.5%
Repair	3	1	1	-
	5.0%	2.9%	2.9%	-
Other	1	1	1	-
	1.7%	2.9%	2.9%	-
No Award	33	18	18	3
	55.0%	51.4%	52.9%	37.5%

The margin of error here is +/-30.8%, which puts the differentials between columns A3 and B within the margin – and also makes that fact relatively meaningless. The perfect concordance shown Table V-12, though, provides additional support to check the accuracy of BBB AUTO LINE's records.

Table V-11A: Multi-Year Comparisons (A1 Figures)

	2019	2018	2017	2016
BASE: ARB	60	106	167	141
	100.0%	100.0%	100.0%	100.0%
Replacement/ Repurchase	23	37	41	35
	38.3%	34.3%	24.5%	24.8%
Repair	3	9	14	17
	5.0%	8.3%	8.4%	12.1%
Other	1	-	7	5
	1.7%	-	4.2%	3.6%
No Award	33	62	105	84
	55.0%	57.4%	62.9%	59.6%

Table V–12: Consumer Agreement with BBB AUTO LINE Records

	Repurchase/ Replacement	Repair	Other	No Award
BASE: arb. cases	5	-	-	3
	100.0%	-	-	100.0%
Repurchase/Replacement (Imported)	5	-	-	-
	100.0%	-	-	-
Repair (Imported)	-	-	-	-
	-	-	-	-
Other (Imported)	-	-	-	-
	-	-	-	-
No Award (Imported)	-	-	-	3
	-	-	-	100.0%
None on File-Ineligible/Withdrawn Cases	-	-	-	-
	-	-	-	-

Concordance: 8/8 = 100.0%

Table V-13: Did you return a form accepting the arbitrator's decision?[332]

	2019	2018	2017	2016
BASE: ARB, with award, not sure excluded	5	6	19	10
	100.0%	100.0%	100.0%	100.0%
Yes	5	6	17	7
	100.0%	100.0%	89.5%	70.0%

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

Table V–14: Acceptance of different types of remedies

	Repurchase/ Replacem't	Repair	Other	Total
BASE:	5	-	-	5
ARB, with award, not sure excluded	100.0%	-	-	100.0%
Yes	5	-	-	5
	100.0%	-	-	100.0%

Table V–15: Consumer Agreement with BBB AUTO LINE Records

	Accepted	Rejected
BASE:	5	-
ARB, with award, not sure excluded	100.0%	-
Accepted (Imported)	5	-
	100.0%	-
Rejected (Imported)	-	-
	-	-

Concordance: 5/5 (100.0%)

4. Withdrawn Cases

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

BASE: withdrawn cases	3
	100.0%
You settled the matter or your car was fixed	1
	33.3%
You sold the car	-
	-
Some other reason	2
	66.7%

D. COMPLIANCE QUESTIONS

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

	Mediated		Arbitrated		Med + Arb	
	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE
BASE: MED cases *and* ARB cases with an award that consumer accepted. "Not sure" excluded from survey figures	27	151	5	19	32	170
	100.0%	100.0%	100.0%	100.0%	100%	100.0%
Carried out remedy within the time specified, including any extension to which you agreed	22	141	4	17	26	158
	81.5%	93.4%	80.0%	89.5%	81.3%	93.0%
Carried out remedy after the time specified, including any extension to which you agreed	4	1	1	1	5	2
	14.8%	0.7%	20.0%	5.3%	15.6%	1.2%
Hasn't yet carried out remedy, time to do so hasn't expired[333]					-	
	-				-	
Hasn't yet carried out remedy, time to do so has expired	1	3		1	1	4
	3.7%	2.0%		5.3%	3.1%	2.4%
(Failure to comply was the fault of the consumer)[334]		(2)		(1)		(3)
		(1.3%)		(5.3%)		(1.8%)
Time for compliance has expired, performance not verified		6				6
		4.0%				3.6%

* As noted in Chapter 2, Section II.D, "compliance" doesn't necessarily ensure consumer satisfaction. Thus, a manufacturer who agrees to inspect a car and repair any warranted defects that it finds "complies" if it does the inspection and finds no warranted defects, even if the consumer doesn't accept that result and pursues the matter (perhaps successfully, perhaps not) in BBB AUTO LINE. As noted in that earlier discussion, about 20% of consumers, mostly those with repair remedies, were dissatisfied with "compliant" steps taken by manufacturers, and generally continued their cases in BBB AUTO LINE.

As the auditor has previously noted, Ohio consumers who were interviewed as part of the

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[333] The BBB AUTO LINE statistics describe the situation in June 2020, when it last updated the compliance figures. See note 257, *supra*.

[334] For the survey, this is based on consumers' responses to a follow-up question. No consumers accepted fault on the compliance question,

national survey were also included in the Ohio survey. The single consumer in the Ohio survey who reported noncompliance was apparently unable to complete the repurchase because it would have required her to obtain financing that she couldn't get, but she accepted a repair and, according to the notes, eventually said she was satisfied with the repair.

Among the five consumers who reported belated compliance, none appeared to have returned a performance verification letter. However, in one case, the notes indicate that compliance couldn't have been timely unless the consumer granted an extension that the manufacturer had requested, and there's no indication that the consumer granted the extension.

Table V–17A: Comparative analysis on compliance (mediated and arbitrated combined)

	2019	2018	2017	2016
BASE: Same as Table V-17	151	201	146	150
	100.0%		100.0%	100.0%
Carried out remedy within the time specified, including any extension to which you agreed	141	198	136	142
	93.4%	98.5%	93.2%	94.7%
Carried out remedy after the time specified, including any extension to which you agreed	1	1		5
	0.7%	0.5%		3.3%
Hasn't yet carried out remedy, time to do so hasn't expired[335]		2	1	
		1.0%	0.7%	
Hasn't yet carried out remedy, time to do so has expired	3		9	3
	2.0%		6.1%%	2.0%
(Failure to comply was the fault of the consumer)[336]	(2)		(7)	
	(1.3%)		(4.8%)	
Time for compliance has expired, performance not verified	6			
	4.0%			

335 The BBB AUTO LINE statistics describe the situation in June 2020, when it last updated the compliance figures. See note 257, *supra.*

336 For the survey, this is based on consumers' responses to a follow-up question. No consumers accepted fault on the compliance question (through some did so, as reported in the next section, for delays in resolving cases in the first place).

E. TIMING QUESTIONS

1. Mediated and Arbitrated Cases

As in past years, BBB AUTO LINE reported the numbers and percentages of cases that were resolved within 40 days. These statistics, and the auditor's analysis, also focus on arbitrated and mediated cases.[337]

Tables V–19 (1):[338] Time to Resolve Cases (Survey)

	Mediated	Arbitrated	Combined
BASE: MED/ARB	27	8	35
	100.0%	100.0%	100.0%
Within 40 days	22	2	24
	81.5%	25.0%	68.6%
Within 40 days *or* consumer acknowledged responsibility for delay	22	2	24
	81.5%	25.0%	68.6%

Table V–19 (2a): Time to Resolve Cases (BBB AUTO LINE; All cases)

	Mediated	Arbitrated	Combined
BASE: MED/ARB	151	60	**211**
	100.0%	100.0%	**100.0%**
Within 40 days	130	18	**148**
	86.1%	30.0%	**70.1%**

Table IV–19 (2b): Time to Resolve Cases (BBB AUTO LINE; fully adjusted cases)

	Mediated	Arbitrated	Combined
BASE: MED/ARB	126	34	**160**
	100.0%	100.0%	**100.0%**
Within 40 days	107	8	**115**
	84.9%	23.5%	**71.9%**

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337 Most omitted cases were ineligible cases – and most ineligible cases were resolved in short order, often a day or two. Excluding these cases thus *lowered* the reported rate of timely compliance.

338 To maintain consistency with numbering in past audits, there is no Table V-18, V-20, and V-21, or V-22. See Section IIA.

Table V–19A: Comparative Analysis, Mediated and Arbitrated Cases Combined

	2019		2018		2017	
	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE
BASE: MED/ARB	35	211	50	335	50	273
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Within 40 days	24	148	39	273	31	199
	68.6%	70.1%	78.0%	81.5%	62.0%	74.0%

For comparative purposes, the auditor first focuses on the "fully adjusted" cases aggregates in Table IV–19 (2b). BBB AUTO LINE shows a 71.9%. rate of timely compliance and the survey reports a 68.6% rate, a reasonably close correlation.

Because of the structure of the survey question and the quantitative nature of the consumers' replies, the auditor has used a somewhat different mode of analysis to explore discordances on timeliness than he's used for other metrics. During the survey, consumers are first asked to confirm whether the BBB AUTO LINE timing figure is accurate. Among the 35 consumers who reported that their cases were resolved through mediation or arbitration, the auditor's review of consumer's survey responses showed that 27 agreed with BBB AUTO LINE's records, three disagreed, and five weren't sure.[339]

Among the three consumers who disagreed with the specific timing reported by BBB AUTO LINE, though, two agreed that compliance was timely even though they disagreed about the precise duration.[340] It's not clear what happened in the third case, where there was a disagreement and the consumer's response reported that compliance wasn't timely.[341]

Further, the figures in Tables V-19(2a) and (2b), such as the 70.1% timeliness rate that BBB AUTO LINE reported for all mediated and arbitrated cases, don't account for cases that

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339 For this analysis, the auditor included "not sure" cases, where the consumer wasn't sure if the precise number of days that BBB AUTO LINE reported was right. In other words, BBB AUTO LINE's records were treated as being accurate unless the consumer affirmatively corrected them.

340 The consumers reported completion with 14 and 30 days.

341 In that case, which was resolved by a consent decision in arbitration, BBB AUTO LINE reported 49 days to completion and the consumer said it took 120. The case was formally opened over a week after the signature on the consumer complaint form was dated, but, even if that were a problem, it wouldn't account for the full discrepancy. The consumer may have counted the time to implement the remedy, but, according to BBB AUTO LINE records, she didn't return a signed performance verification letter.

missed the 40 day deadline because of the consumer's fault – and while none of the consumer surveyed in Ohio attributed fault to themselves, the responses in the Florida and National surveys show that consumers do cause delay in at least some cases; so, the reported timeliness figure might well be boosted by a few percentage points if the figures were similarly adjusted to reflect cases where the consumer caused the delay.

Still, particularly after this year's survey results highlighted a timing issue, the auditor scrutinized separately the timing results for arbitrated cases and those for mediated cases. *He did this, though, for essentially diagnostic purposes.* It seems clear that the combined results for mediations-plus-arbitrations is far more important than the results for either type of process individually; as noted before, consumers who use the program are seeking a resolution to their complaints, by whatever process is used.

With these caveats, the auditor turns to the breakout figures. And, since his primary aim here is to focus on overall performance, he uses the aggregates from the "all cases" table rather than the "fully adjusted" table. Not surprisingly, delays are far less likely in mediated cases (86.1% timely) than in arbitrations (30.0% timely), with neither of these figures making adjustment for consumer fault. Further, any delays in resolving arbitrations under BBB AUTO LINE are, to some extent, the flip side of an often-successful mediation program, which likely delays the start of arbitration at least somewhat.

While all these factors provide important context for the BBB AUTO LINE figures, the auditor still suggests that BBB AUTO LINE consider ways to improve timeliness – and he understands that they're already seeking ways to do so. To that end, moreover, the auditor notes a few points that he's observed.

First, while Table V-19(2a) shows that 30.0% of arbitrations were resolved in 40 days, the auditor's analysis of BBB AUTO LINE's spread sheet shows that 40.0% of cases were resolved within 44 days. In other words, a small speed-up in resolving arbitrations (which perhaps might be accomplished by a small speed-up in attempting mediation and scheduling the arbitration), would substantially raise the rate of timely closings.[342]

Second, again starting with the point that 30.0% of arbitrations were resolved within 40 days, the auditor found that 76.7% were resolved within 60 days, and 91.7% within 80 days. A very impressionistic survey by the auditor suggests that most of the more extended cases included technical examinations, which are most frequently requested by the arbitrator after the hearing, and thus routinely delay resolution beyond 40 days.

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[342] Thus, for example, BBB AUTO LINE apparently hasn't been highlighting to arbitrators when the 40-day timetable for a case will be reached. Though arbitrators could in theory figure this out from the case file, it seems unlikely that they routinely do so – and, knowing the deadline might encourage the small improvement that could bring more cases within the deadline. They now plan to do so.

Recommendation: BBB AUTO LINE should consider ways to improve its case processing time. .

2. Withdrawn Cases

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

BASE: withdrawn cases	3
	100.0%
Within 40 days	3
	100.0%

F. DOCUMENTS AND CONTACTS

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

	2019	2018	2017	2016
BASE: ALL, "not sure" excluded	62	73	84	59
	100.0%	100.0%	100.0%	100.0%
Yes	55	68	81	59
	88.7%	89.5%	89.0%	92.2%

Seven consumers reported that they hadn't received the claim forms. The auditor examined the underlying files for those consumers; one of them contained a complaint form signed and returned by the consumer, and the other six were quickly found to be ineligible, in which case BBB AUTO LINE staff's practice is not to burden the consumer with reviewing, correcting, and supplementing a complaint form.

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

	2019	2018	2017	2016
BASE: ALL, "not sure" excluded	55	67	80	58
	100.0%	100.0%	100.0%	100.0%
Very	32	42	48	44
	58.2%	62.7%	60.0%	75.9%
Somewhat	21	25	31	13
	38.2%	37.3%	38.8%	22.4%
Not at all	2	-	1	1
	3.6%	-	1.3%	1.7%

Table V–26: And how helpful were they?

	2019	2018	2017	2016
BASE: ALL, "not sure" excluded.	54	65	81	59
	100.0%	100.0%	100.0%	100.0%
Very	26	31	32	34
	48.1%	47.7%	39.5%	57.6%
Somewhat	19	32	39	15
	35.2%	49.2%	48.1%	25.4%
Not at all	9	2	10	10
	16.7%	3.1%	12.3%	16.9%

Table V-25 shows that 96.4% of the consumers surveyed found BBB AUTO LINE's documents at least somewhat understandable, with 58.2% reporting that they were very understandable. Table V–26 shows that 83.3% reported that they were at least somewhat helpful, with 48.1 finding them very helpful.

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

	2019	2018	2017	2016
BASE: MED, "not sure" excluded	24	29	18	26
	100.0%	100.0%	100.0%	100.0%
Yes	22	28	18	26
	91.7%	96.6%	100.0%	100.0%

Table V–28: Did you get a notice by letter or email telling you when and where to go for your hearing or vehicle inspection?

	2019	2018	2017	2016
BASE: ARB, "not sure" excluded	8	17	28	14
	100.0%	100.0%	100.0%	100.0%
Yes	8	16	28	14
	100.0%	94.1%	100.0%	100.0%

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

	2019	2018	2017	2016
BASE: ARB, "not sure" excluded	7	17	29	14
	100.0%	100.0%	100.0%	100.0%
Yes	7	17	29	13
	100.0%	100.0%	100.0%	92.9%

Table V–30: After you accepted the arbitrator's award/agreed to a settlement, which of the following best describes your later contacts with BBB AUTO LINE staff to discuss whether the manufacturer was doing what it promised/what the order required?

	2019	2018	2017
BASE: (1) MED and (2) ARB where the consumer received and accepted an award. "Not sure" responses excluded.	29	35	43
	100.0%	100.0%	100.0%
The staff contacted me by letter or email	2	12	12
	6.9%	34.3%	27.9%
The staff spoke to me	6	4	7
	20.7%	11.4%	16.3%
Both of those	16	15	19
	55.2%	42.9%	44.2%
Neither of those	3	3	2
	10.3%	8.6%	4.7%
Something else	2	1	3
	6.9%	2.9%	7.0%

In the three cases where consumers reported "neither of these," BBB AUTO LINE's files report that a performance verification letter was sent but not returned.

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

Table V-33[343]: Comparison on Process and Remedy

	All cases		Cases without att'ys		Cases with att'ys	
	#	%	#	%	#	%
PROCESS						
Mediated	151	43.51%	142	47.65%	9	18.37%
Arbitrated	60	17.29%	35	11.75%	25	51.03%
Ineligible	99	28.53%	92	30.87%	7	14.28%
Withdrawn	37	10.67%	29	9.73%	8	16.32%
Total	151	43.51%	142	47.65%	9	18.37%

]

	All cases		Cases without att'ys		Cases with att'ys	
REMEDIES: MED						
Repurchase/replace	85	56.30%	77	54.22%	8	88.88%
Repair	53	35.10%	52	36.62%	1	11.12%
Other	13	8.60%	13	9.16%	0	
Total	151	100.00%	142	100.00%	9	100.00%
REMEDIES: ARB						
Repurchase/replace	23	38.33%	15	42.86%	8	32.00%
Repair	3	5.00%	1	2.86%	2	8.00%
Other	1	1.67%	1	2.86%	0	
No award	33	55.00%	18	51.42%	15	60.00%
Total	60	100.00%	35	100.00%	25	100.00%
REMEDIES: MED+ARB						
Repurchase/replace	108	51.18%	92	51.98%	16	47.05%
Repair	56	26.54%	53	29.95%	3	8.83%
Other	14	6.64%	14	7.91%	0	0.00%
No Award	33	15.64%	18	10.16%	15	44.12%
Total	211	100%	177	100%	34	100%

[343] To maintain consistency with table numbers for prior audits, Tables V-31 and V-32 omitted.

Looking at the combined mediation plus arbitration figures, the percentages of consumers with repurchase or replacement remedies, for attorney compared to non-attorney cases, were relatively close this year. Consumers who used attorneys were much more likely to leave the process with "no award," a result only possible, among consumers who used arbitration or mediation, for those who arbitrated. However, this wasn't so much because consumers with lawyers did worse in arbitration (though they did do somewhat worse), but because they were far more likely to use arbitration in the first place. As the auditor noted in previous years, moreover, "withdrawals" in attorney cases, in particular, often reflect settlements outside the program. The auditor examined 10 withdrawn cases brought by attorneys under the Ohio program this

Table V- 33A: Mode of Presentation

	In Writing		Telephone		In Person	
	#	%	#	%	#	%
REMEDIES: ARB						
Repurchase/replace	8	34.78%	0	0	15	40.54%
Repair	2	8.70%	0	0	1	2.70%
Other	0		0	0	1	2.70%
Denial	13	56.52%	0	0	20	54.06%
Total	23	100%	0	0	37	100%
REMEDIES: ARB W ATTY						
Repurchase/replace	8	34.78%			0	
Repair	2	8.70%			0	
Other	0				0	
Denial	13	56.52%			2	100%
Total	23	100%			2	100%
REMEDIES – ARB W/O ATTY						
Repurchase/replace					15	42.86%
Repair	0				1	2.86%
Other	0				1	2.86%
Denial	0				18	51.42%
Total	0				35	100%

The auditor includes this table for Ohio because he included similar tables for the other jurisdictions. While the numbers are reasonably small and the auditor hesitates to put match weight on them, it appears that attorney cases in Ohio were done in writing; non-attorney cases were done in person; and the results in the two were quite similar.

H. SATISFACTION

1. Satisfaction with Arbitrator

Table V–34: How would you grade the arbitrator on understanding the facts of your case?

	Total	Award	No Award	Repurchase/ Replace	Repair/ Other
BASE: ARB, not sure excluded	8	5	3	5	-
	100.0%	100.0%	100.0%	100.0%	-
A=Excellent	5	5	-	5	-
	62.5%	100.0%	-	100.0%	-
B=Good	-	-	-	-	-
	-	-	-	-	-
C=Average	-	-	-	-	-
	-	-	-	-	-
D=Poor	2	-	2	-	-
	25.0%	-	66.7%	-	-
Failing Grade	1	-	1	-	-
	12.5%	-	33.3%	-	-
MEAN	**2.75**	**4.00**	**0.67**	**4.00**	-

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

	Total	Award	No Award	Repurchase/ Replace	Repair/ Other
BASE: ARB, not sure excluded	8	5	3	5	-
	100.0%	100.0%	100.0%	100.0%	-
A=Excellent	5	5	-	5	-
	62.5%	100.0%	-	100.0%	-
B=Good	-	-	-	-	-
	-	-	-	-	-
C=Average	1	-	1	-	-
	12.5%	-	33.3%	-	-
D=Poor	1	-	1	-	-
	12.5%	-	33.3%	-	-
F=Failing Grade	1	-	1	-	-
	12.5%	-	33.3%	-	-
MEAN	**2.88**	**4.00**	**1.00**	**4.00**	-

Table V–36: How would you grade the arbitrator on reaching an impartial decision?

	Total	Award	No Award	Repurchase/ Replace	Repair/ Other
BASE: ARB, not sure excluded	7	5	2	5	-
	100.0%	100.0%	100.0%	100.0%	-
A=Excellent	5	5	-	5	-
	71.4%	100.0%	-	100.0%	-
B=Good	-	-	-	-	-
	-	-	-	-	-
C=Average	-	-	-	-	-
	-	-	-	-	-
D=Poor	1	-	1	-	-
	14.3%	-	50.0%	-	-
F=Failing Grade	1	-	1	-	-
	14.3%	-	50.0%	-	-
MEAN	**3.00**	**4.00**	**0.50**	**4.00**	**-**

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

	Total	Award	No Award	Repurchase/ Replace	Repair/ Other
BASE: ARB, "not sure" excluded	8	5	3	5	-
	100.0%	100.0%	100.0%	100.0%	-
A=Excellent	5	5	-	5	-
	62.5%	100.0%	-	100.0%	-
B=Good	-	-	-	-	-
	-	-	-	-	-
C=Average	-	-	-	-	-
	-	-	-	-	-
D=Poor	1	-	1	-	-
	12.5%	-	33.3%	-	-
F=Failing Grade	2	-	2	-	-
	25.0%	-	66.7%	-	-
MEAN	**2.63**	**4.00**	**0.33**	**4.00**	**-**

Table V–38:
ARBITRATOR SATISFACTION COMPOSITE

	Total	All Award	Award: Replace-ment/ Repurchase	Award: Repair/ Other	No Award
Understanding facts	2.75	4.00	4.00	4.00	-
Objectivity and fairness	2.88	4.00	4.00	4.00	-
Reaching an impartial decision	3.00	4.00	4.00	4.00	-
Coming to a reasoned & well thought-out decision	2.63	4.00	4.00	4.00	-
AVERAGE	**2.82**	**4.00**	**4.00**	**4.00**	**-**

Composite Means (2019)

All consumers with arbitration		2.82
Consumers who received awards:		4.00
Replacement/Repurchase	4.00	
Repair/other	--	
Consumers with no awards:		0.63

Composite Means (2018)

All consumers with arbitration		2.34
Consumers who received awards:		3.59
Replacement/Repurchase	4.00	
Repair/other	3.08	
Consumers with no awards:		1.50

Composite Means (2017)

All consumers with arbitration		2.69
Consumers who received awards:		3.55
Replacement/Repurchase	3.83	
Repair/other	3.08	
Consumers with no awards:		1.00

Composite Means (2016)

Consumers who received awards	3.47
Consumers with no awards	1.62

As discussed in the analysis of the national and Florida samples, the auditor has expressed skepticism about composites that measure satisfaction rates for arbitrators without adjusting for how well consumers did in arbitration. He suspected – and the survey breakouts show – that consumer's satisfaction with arbitrators largely correlates to their success in arbitration, so year-to-year fluctuations in satisfaction could well represent, at least in substantial part, fluctuations in the success of the consumers surveyed. And, even if consumers overall had the identical success from one year to the next, it's unlikely (given sampling errors) that the consumers *surveyed* would have had similarly identical success.

Further, for arbitrator satisfaction at the state level in particular, the sample size is quite small. With only 3 "no award" consumers responding to a question, for example, a drop by one consumer of a single grade (e.g., from A to B) would change the overall GPA by 0.33.

For all these reasons, the auditor hesitates to put much weight in minor variations from year to year. Thus, the auditor isn't troubled that some of the aggregates dropped this year.

2. Satisfaction with BBB AUTO LINE staff

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

BASE: ARB/MED, "not sure" excluded	35
	100.0%
A=Excellent	19
	54.3%
B=Good	8
	22.9%
C=Average	4
	11.4%
D=Poor	3
	8.6%
F=Failing Grade	1
	2.9%
MEAN	**3.17**

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

BASE: ARB/MED, "not sure" excluded	35
	100.0%
A=Excellent	19
	54.3%
B=Good	5
	14.3%
C=Average	4
	11.4%
D=Poor	4
	11.4%
F=Failing Grade	3
	8.6%
MEAN	**2.94**

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

BASE: ARB/MED, "not sure" excluded	35
	100.0%
A=Excellent	17
	48.6%
B=Good	5
	14.3%
C=Average	9
	25.7%
D=Poor	2
	5.7%
F=Failing Grade	2
	5.7%
MEAN	**2.94**

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

	Mean
Objectivity and fairness	3.17
Efforts to resolve claim	2.94
Overall grade	2.94
AVERAGE	**3.02**

Composite Mean (2019)	3.02
Composite Mean (2018)	3.17
Composite mean (2017):	3.33
Composite mean (2016):	3.01

Table V-43: Would you recommend BBB AUTO LINE to friends or family?

	Total	Med/Arb
BASE: ANSWERING, NOT SURE"NOT SURE" EXCLUDED	63	33
	100.0%	100.0%
Yes	43	28
	68.3%	84.8%

Composite Mean (2019)
- All Consumers 68.3%
- Consumers with mediations or arbitrations 84.5%

Composite Means (2018)
- All consumers 76.7%
- Consumers with mediations or arbitrations 85.7%

Composite Means (2017)
- All consumers: 76.5%
- Consumers with mediations or arbitrations: 87.8%

Composite Means (2016)
- All consumers: 77.4%
- Consumers with mediations or arbitrations: 83.3%

Composite Means (2015)
- All consumers: 64%
- Consumers with mediations or arbitrations: 69%

Among the 9 consumers in the survey who said they went to arbitration, who said they lost, and who answered this question, five of nine said they would recommend BBB AUTO LINE.

Appendix

Survey Instrument

But for minor details, the survey text was essentially the same as that used last year.

General Questions

1. How many times, if any, did the dealer or manufacturer try to repair your vehicle before you filed the complaint?

2. How did you find out that you could file a complaint with BBB AUTO LINE?

Process

Now I'm going to ask about how BBB AUTOLINE addressed your case. As I mentioned before, if you filed more than one complaint about your vehicle during the year, please focus on the LAST complaint you filed in 2019.

3. BBB AUTO LINE files show that
(based on BBB AUTO LINE records, either):

-- your complaint wasn't eligible FOR THE PROGRAM. Is that correct?

-- you withdrew your complaint, without using BBB AUTO LINE to resolve your case. Is that correct?

-- you agreed with the manufacturer to settle your complaint. Is that correct?

-- your complaint went to an arbitrator to decide what remedy, if any, you should get. Arbitrators usually hold hearings, unless the consumer asks that the arbitrator simply inspect the car and review materials from the parties. Were BBB AUTO LINE's records correct when they said your case went to an arbitrator?

If the consumer says no when asked to confirm BBB AUTO LINE records:

4. Which of the following BEST describes how your complaint was resolved?

It wasn't eligible FOR THE PROGRAM
You withdrew your complaint
You agreed to a settlement
An arbitrator decided the case
Other (SPECIFY)[344]

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[344] The survey was constructed so that each consumer was given only four of the five options, omitting the option that appeared in BBB AUTO LINE records and that, in responding to Question 3,

Remedy

For consumers who said they used mediation:

5. According to the BBB AUTO LINE's records:
(*based on BBB AUTO LINE records, either*)

-- the manufacturer was supposed to TAKE YOUR CAR BACK for a full or partial REFUND[345] or for REPLACEMENT of the vehicle. Is that correct?

-- the manufacturer was supposed to REPAIR your car, or at least to examine the car again to look for a problem. Is that correct?

-- you got some remedy in a settlement, but the PRINCIPAL remedy was NOT a replacement, a refund, or a repair. Is that correct?

If the answer to Question 5 was no:

6. Which of the following best describes the relief provided in your settlement?

-- A refund or replacement, where the manufacturer would take back your car.

-- A repair, where the manufacturer would try to fix your car, or at least examine it again to look for a problem.

-- Some other remedy (SPECIFY) [346]

---

the consumer had said was wrong.

[345] Although BBB AUTO LINE uses "repurchase" for remedies where the dealer takes back the car, the auditor and TechnoMetrica, in light of some past consumer confusion, decided to use the term that consumers would most likely associate with a "buy back" remedy – and which seemed relatively unambiguous when it was tied to "tak[ing] your car back."

[346] The survey was constructed so that each consumer was given only two of the three options, omitting the option that appeared in BBB AUTO LINE records and that, in responding to Question 5, the consumer had said was wrong.

For consumers who said they used arbitration

7. According to the BBB AUTO LINE's records:
(based on BBB AUTO LINE records, either)

   -- the manufacturer was supposed to TAKE YOUR CAR BACK for a full or partial REFUND or REPLACEMENT of the vehicle. Is that correct?

   -- the manufacturer was supposed to repair your car, or at least to examine the car again to look for a problem. Is that correct?

   -- you were awarded a remedy, but the PRINCIPAL remedy was NOT a replacement, a refund, or a repair. Is that correct?

   -- you were not awarded any remedy. Is that correct?

If the answer to Question 7 was no:

8. Which of the following best describes the relief awarded by the arbitrator?

   -- A refund or replacement, where the manufacturer would take back your car

   -- A repair, where the manufacturer would try to fix your car, or at least examine it again to look for a problem

   -- Some other remedy (SPECIFY)

   -- No remedy[347]

For all consumers who used arbitration:

9. And did you accept the arbitrator's decision?

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[347] The survey was constructed so that each consumer was given only three of the four options, omitting the option that appeared in BBB AUTO LINE records and that, in responding to Question 6, the consumer had said was wrong.

Follow-up question for consumers who said they withdrew their complaints

10. Which of the following best describes why you withdrew your complaint?

You settled the matter or your car was fixed

You sold the car

Or some other reason (SPECIFY)

Compliance

For consumers who said they used mediation:

11. Which of the following applies to your case? The manufacturer:

    -- Carried out the settlement within the time specified, including any extension to which you agreed

    -- Carried out the settlement AFTER the time specified, including any extension to which you agreed

    -- Has not yet carried out the settlement, but the time to do so has not yet expired

    -- Has not yet carried out the settlement, and the time to do so has expired

If the consumer picked the fourth option to Question 11 <u>and</u> previously answered that they had a repair remedy:

12. Which of the following best applies to your case? The manufacturer:

    -- Didn't examine your car

    -- Examined your car and decided that no repair was needed

    -- Tried to fix your car, but the repair didn't solve the problem

    -- (Something else)

If the consumer picked the fourth option to Question 11:

13. Had you taken some action, like selling the car, that prevented the manufacturer from complying?

For consumers who said they used arbitration, received an award, and accepted it

Same questions as asked to consumers in mediated cases, but substitute “decision” for “settlement” in Question 11.

Timing

Now I'm going to ask you about how much time it took to DECIDE your case.

For consumers who said their cases were mediated or arbitrated:

14. Please assume that your case BEGAN when you returned detailed information to BBB AUTO LINE about your car and that it ENDED when you reached a settlement or got the arbitrator's decision. Please DO NOT INCLUDE the time it took to carry out the remedy.

    For California and Florida: Please assume that your case BEGAN when you first told BBB AUTO LINE about your complaint and that it ENDED when you reached a settlement or got the arbitrator's decision. Please DO NOT INCLUDE the time it took to carry out the remedy.

    And as I mentioned before, if you filed more than one complaint about your vehicle, please focus only on the LAST complaint you filed in 2019.

    According to BBB AUTO LINE records, it took --- days to come to a decision about your complaint. Does that seem right?

If "no":

    To the best you can recall, how many days did it take to decide your case?

If more than 40 days:

    Did it take more than 40 days because of some action you took?

If between 41 and 47 days:

    Did you contact the manufacturer -- not just the dealer -- before you filed your complaint?

For consumers who said they withdrew their complaints:

15. Please assume that your case BEGAN when you returned detailed information to BBB AUTO LINE about your car.

    For California and Florida: Please assume that your case began when you first told BBB AUTO LINE about your complaint

    And as I mentioned before, if you filed more than one complaint about your vehicle in 2018, please focus only on the LAST complaint you filed. .
    --
    According to BBB AUTO LINE records, it took <DAYS>days until you withdrew your complaint. Does that seem right?

If "no":

    To the best you can recall, how many DAYS did it take until you withdrew your complaint?

If more than 40 days:

    Did it take more than 40 days because of some action you took?

If between 41 and 47 days:

    Did you contact the manufacturer – not just the dealer – before you filed your complaint?

Documents and Contacts

Next I'm going to ask a few questions about various documents that BBB AUTO LINE sends to consumers--sometimes by mail, sometimes by UPS or FedEx, or sometimes by email if you request that.

16. After you first contacted BBB AUTO LINE, did you get a claim form and an explanation of the Program?

17. How clear and understandable were these documents? Would you say:

Very
Somewhat
Not at all
Not sure

18. And how helpful were they? Would you say:

Very
Somewhat
Not at all
Not sure

For mediated cases:

19. After you reached a settlement, did you get an explanation by letter or email describing the terms of the settlement?

For arbitrated cases:

20. Did you get a notice by letter or email telling you when and where to go for your hearing or vehicle inspection?

21, Did you get a copy by letter or email of the arbitrator's decision?

If no to question 21
:

22. How did you learn about the arbitrator's decision?

For mediated and arbitrated cases:

23. After you agreed to a settlement (OR "accepted the arbitrator's award"), which of the following best describes your later contacts with BBB AUTO LINE staff to discuss whether the manufacturer was doing what it promised:

-- The staff contacted me by letter or email
-- The staff spoke to me
-- Both of those
-- Neither of those
-- Something else (SPECIFY)

Satisfaction

OK, lastly I'd like you to rate your satisfaction with a few aspects of your experience with the BBB AUTO LINE. For each of the following, please rate your satisfaction using the familiar letter grade scale of A through F, where A is Excellent, B is Good, C is Average, D is Poor and F is a Failing grade.

For arbitrated cases:

Focusing first on the arbitrator

24. How would you grade the arbitrator on understanding the facts of your case?

25. How would you grade the arbitrator on objectivity and fairness?

26. How would you grade the arbitrator on reaching an impartial decision?

27. How would you grade the arbitrator on coming to a reasoned & well thought-out decision?

Okay, and for the next two questions, please focus on BBB AUTO LINE staff, not the arbitrator...

For all respondents:

28. How would you grade BBB AUTO LINE staff on objectivity and fairness?

29. How would you grade BBB AUTO LINE staff on efforts to assist you in resolving your claim?

30. Overall, what grade would you give BBB AUTO LINE?

31. And finally, would you recommend BBB AUTO LINE to friends or family?