

**DIVISION OF CONSUMER SERVICES’
ANNUAL LEMON LAW REVIEW OF
CERTIFIED INDEPENDENT DISPUTE SETTLEMENT PROCEDURES
IMPLEMENTED THROUGH BETTER BUSINESS BUREAU – AUTO LINE
January 1, 2003 through December 31, 2003**

I. BACKGROUND

A. Legislative Authority

Chapter 681, Florida Statutes, effective January 1, 1989, provides the authority for the Division of Consumer Services of the Department of Agriculture and Consumer Services (Department) to certify a manufacturer’s procedure for dispute settlement that substantially complies with Title 16 C.F.R. Part 703.1 et seq. (Magnuson-Moss Act), effective October 1, 1983; Chapter 681, Florida Statutes, (Motor Vehicle Warranty Enforcement Act); and Chapter 5J-11, Florida Administrative Code.

B. Audit Process

Section 681.108(5), F.S., requires the Department to review each certified procedure at least annually and prepare an annual report evaluating the operations of each certified procedure for compliance with the provisions of Title 16 C.F.R. Part 703 and Chapter 681, F.S., and rules adopted thereunder. The Staff of the Department of Agriculture and Consumer Services, Lemon Law Section, conducts the review and prepares the annual evaluation report. This report is compiled for the fiscal year beginning January 1st and ending December 31st. The data gathering process includes an evaluation of hearings, a review of the office records, including data that is

electronically submitted to the Division on a monthly basis, a review of the training process, and a review of surveys sent to consumers who participated in the process.

Title 16 C.F.R. Part 703.7(a) requires each manufacturer currently participating in a certified program to have an audit prepared at least annually by an independent auditor to ensure compliance with the provisions of federal law. Section 681.108(4), F.S., and Chapter 5J-11, F.A.C., require that each manufacturer file with the Division a copy of the independent audit report by July 1st of the following year.

II. CERTIFIED DISPUTE SETTLEMENT PROCEDURES

A. Dispute Settlement Procedures

Several manufacturers have established dispute settlement procedures since the enactment of the Magnuson-Moss Act. Below are the manufacturers that have established certified procedures with the Department, implemented through the Better Business Bureau – Auto Line (BBB) program. The listing indicates the manufacturer, the initial date of the certification of their current procedure, and the termination date, if any, with the implementing program.

<u>Manufacturer</u>	<u>Certification Date</u>	<u>Expiration Date</u>
• A.M. General	August 23, 1994	December 31, 2003
• General Motors	August 14, 1989	December 31, 2003
• Honda/Acura	December 22, 1990	December 31, 2003
• Hyundai	August 23, 1994	December 31, 2003
• Isuzu	August 23, 1994	December 31, 2003
• Kia	June 30, 1995	December 31, 2003

- Lexus April 2, 1996 November 7, 2003
- Nissan/Infiniti January 22, 1990 December 31, 2003
- Porsche July 1, 2003 April 7, 2003
- Rolls Royce/Bentley November 7, 1994 December 31, 2003
- Saab-Scania August 21, 1989 December 31, 2003
- Saturn October 20, 1994 December 31, 2003
- WorkHorse Custom Chassis October 18, 1999 December 31, 2003
- Volkswagen/Audi November 7, 1989 December 31, 2003

Porsche had a program implemented by Better Business Bureau – Auto Line (BBB) that was effective through December 31, 2003. The Department was notified by BBB that the contractual relationship between BBB and Porsche terminated on April 7, 2003. The BBB stated no Porsche case would be accepted by BBB after April 7, 2003; however, claims received prior to that date would be processed to completion.

The Department was notified by BBB that Lexus terminated its contract with BBB effective November 7, 2003, and no claims from Lexus consumers would be accepted after November 7, 2003. Claims received prior to that date would be processed to completion.

B. Better Business Bureau - Auto Line

The Better Business Bureau – Auto Line is headquartered at the offices of the Council of Better Business Bureau in Arlington, Virginia, and is administered by the Alternative Dispute Resolution section (ADR).

The ADR Director is Mr. Charles Underhill, the Deputy General Council is Mr. Alan Cohen, and Counsel for the CBBB is Mr. Richard Wood. The Auto Line program Supervisor is Mr. Rod Davis. These individuals are located in the offices in Arlington, Virginia. Mrs. Karen

Nalven is the Coordinator for the Auto Line functions for all offices in the State of Florida. She is located in Clearwater, Florida.

1. Florida Offices/Hearing Locations

The BBB maintains offices and hearing sites in Florida at the following locations:

- Clearwater, Better Business Bureau of Clearwater
- Pensacola, Better Business Bureau of Northwest Florida
- Jacksonville, Better Business Bureau of Northeast Florida
- Orlando, Better Business Bureau of Central Florida
- West Palm Beach, Better Business Bureau of Palm Beach
- Tallahassee, Better Business Bureau of Northeast Florida
- Pembroke Pines, Better Business Bureau of Palm Beach
- Fort Myers, Better Business Bureau of Clearwater

2. Florida Dispute Resolution Records

The individual BBB offices are responsible for organizing and maintaining the case file information relative to each office's activities. The Bureau offices of the BBB transmit the information to the Clearwater BBB office after the file is closed. The Clearwater office is responsible for maintaining all hard copy records for each consumer dispute filed in Florida and records are accessible by manufacturer and vehicle model. The Clearwater BBB office also transmits the case file data to the CBBB office in Arlington via electronic transfer.

A total of 3,376 consumer disputes were processed through the BBB's Auto Line program during the audit period. This represents a reduction of 367 disputes, or approximately 10%, handled by the BBB last year when 3,743 were reported to the Department. A breakdown of all disputes filed with BBB by manufacturer is as follows:

<u>Manufacturer</u>	<u>Disputes</u>	<u>Disputes Previous Year</u>	<u>% Change</u>
AM General	10	3	+ 233%
General Motors	1,713	2,032	-16%
Honda/Acura	198	186	+ 7%
Hyundai	264	264	0
Isuzu	99	103	- 4%
Kia	359	400	- 10%
Lexus	42	36	+ 17%
Nissan/Infiniti	280	261	+ 7%
Porsche	8 ¹	13	- 38%
Rolls Royce/Bentley	1	7	- 86%
Saab	9	10	- 10%
Saturn	67	46	+ 46%
Volkswagen/Audi	318	339	-6%
Workhorse Custom Chassis	1	0	+100%
TOTAL FILES	3,376²	3,743³	- 10%

The BBB closes each consumer claim after one of the following actions: (1) they determine they have no jurisdiction over the dispute; (2) the claim was withdrawn by the consumer; (3) after mediation was completed and the consumer did not pursue further action; or

¹ Porsche terminated the relationship with BBB on April 7, 2003. Claims for current year reflect approximately 4 months.

² Total reflects 7 claims for Land Rover that is not certified by Department; therefore, it is not shown in the listing.

³ Total reflects 36 claims for Daewoo. Daewoo filed Chapter 11 bankruptcy prior to the current audit period; therefore, these are not shown in listing as no claims were filed in current review period.

(4) after the finalization of the arbitration process. A breakdown of disputes filed with the BBB is as follows:

a. Non-Pursuable Disputes

These are disputes in which the consumer withdrew their claim or where the BBB lacked jurisdiction to process the case. Examples of non-pursuable cases include: the dispute was filed in an untimely manner; the vehicle purchased or leased by the consumer was “used”; the gross vehicle weight of the vehicle exceeded 10,000 pounds; or the vehicle was purchased or leased by the consumer outside the state of Florida.

Of the total 3,376 cases filed with the BBB, there were 643 cases categorized as non-pursuable. Division staff reviewed these files to ensure that adequate documentation supporting the BBB’s determination of non-jurisdiction was evident. 373 cases were voluntarily withdrawn by the consumer.

b. Mediated Disputes

The first efforts of the BBB are to attempt to mediate consumer claims prior to the case proceeding to arbitration. These are disputes in which the manufacturer and consumer enter into an agreement resolving the dispute before the BBB conducts an arbitration hearing.

There were 1,599 BBB case files closed through mediation, a reduction from the previous year of 130 or approximately 9%. In 535 cases, an increase of 56 or 12% over the previous year, the manufacturer agreed to repurchase or replace the vehicle. This reflects that mediation efforts were successful in that, although there was a reduction in the total claims filed for the current audit year, there was a significant increase in repurchases and replacements. In 824 cases, the consumers accepted an additional repair attempt. In 233 cases, the disputes were settled through offers of trade assistance, trade allowances, reimbursement for repairs, extended warranties, or

some offer of monetary reimbursement. 7 files were closed during mediation with the consent of the consumer with no action taken.

c. Arbitrated Disputes

These are disputes in which the consumer filed a claim with the BBB, and the BBB conducted an arbitration hearing wherein a decision was rendered.

There were 761 cases closed through arbitration during the audit period. In 360 cases, the arbitrator granted no relief to the consumer. In 114 cases, the consumers were awarded additional repair attempts. In 248 cases, the consumers were awarded a replacement vehicle or refund, and there were 39 cases in which miscellaneous decisions were rendered. Miscellaneous decisions included awards for reimbursement for repairs, extended warranties, or partial refunds.

Claimants rejecting the BBB decision and filing for arbitration through the state program totaled 232. This represents a reduction of 89 cases, or 38%. A breakdown by manufacturer of consumers rejecting the BBB arbitration decision and filing for state arbitration is as follows:

<u>Manufacturer</u>	<u>Requests Filed</u>
General Motors	101
Honda/Acura	16
Hyundai	24
Isuzu	7
Kia	18
Land Rover ⁴	7
Lexus	5

⁴ Land Rover does not have a certified procedure. However, they utilize the BBB. Seven consumers available themselves of the BBB procedure, therefore these claims are included in the total.

Nissan/Infiniti	21
Saab	1
Saturn	3
Volkswagen/Audi	28
Workhorse Custom Chassis	1
TOTAL FILES	232

Title 16 C.F.R. Part 703.5(d)(1) requires consumer disputes to be processed as expeditiously as possible and that a decision be rendered within 40 days of the commencement of the action by the consumer. Data for the audit period indicates the average time for handling all cases was 19.4 days.

Division staff identified 237 of the 3,376 cases that were closed after 40 days. This reflects a reduction of 46% in total claims from the previous year when 405 cases exceeded the 40 day period. The 237 claims that exceeded 40 days were claims that were arbitrated by the BBB. This is approximately 31% of the 761 claims that were closed through arbitration. The average number of days to close a claim in which an arbitration hearing was held and exceeded 40 days was 48.8 days. These cases were extended due to the arbitrator's request for a technical report or at the consumer's request to keep the case open for various reasons.

Rule 5J-11.011, F.A.C., requires that all hearings be held no more than 75 miles from the consumer's residence. During the audit period, there were 26 cases in which the consumers were required to travel more than 75 miles to participate in an arbitration hearing. These consumers resided in either the Key West or Panama City areas. Consumers who live in an area outside the 75-mile radius were advised verbally and through a brochure that a telephone hearing could be held in lieu of appearing.

III. RECOMMENDATIONS/CONCLUSIONS

The BBB is commended for the success of its mediation process wherein the consumer received a replacement vehicle or repurchase in one third of the cases settled through mediation. The Department staff recognizes and commends the BBB on the expeditious settlement of these mediated cases.

The BBB should focus on reducing the number of arbitrated claims that exceed the 40-day requirement. It is recommended that BBB govern its arbitration process more stringently to ensure that all claims are decided within the 40 days allowed for such actions.

In addition to the telephone hearing option the BBB offers its participants who live outside the 75 mile radius of a normal hearing sight, it is recommended that an alternative hearing sight be offered within the 75-mile limit.

The Department staff recommends, based upon the data contained within this report, that re-certification of the BBB program for A.M. General, General Motors (all Divisions), Honda/Acura, Hyundai, Isuzu, Kia, Nissan/Infiniti, Rolls Royce/Bentley, Saab-Scania, Saturn, WorkHorse Custom Chassis and Volkswagen/Audi be issued for one year ending December 31, 2004, in accordance with Chapter 681, F.S.