

**DIVISION OF CONSUMER SERVICES’  
ANNUAL LEMON LAW REVIEW OF  
CERTIFIED INDEPENDENT DISPUTE SETTLEMENT PROCEDURES  
IMPLEMENTED THROUGH BETTER BUSINESS BUREAU – AUTO LINE  
January 1, 2004 through December 31, 2004**

**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**

Section 681.108(5), F.S., requires the Department to review each manufacturer’s 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, 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 1<sup>st</sup> and ending December 31<sup>st</sup>. The data gathering process includes an evaluation of hearings, a review of office records, including data that is

electronically submitted to the Division on a weekly basis, a review of the procedure's arbitrator training process, and a review of surveys sent to consumers who have participated in the process.

## **II. CERTIFIED PROCEDURES ADMINISTERED BY BBB AUTO-LINE**

### **A. Manufacturers**

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

- AM General August 23, 1994
- Acura/Honda December 22, 1990
- Bentley<sup>1</sup> November 7, 1994
- General Motors August 14, 1989
- Hyundai August 23, 1994
- Isuzu August 23, 1994
- Kia June 30, 1995
- Nissan/Infiniti January 22, 1990
- Saab August 21, 1989
- Saturn October 20, 1994

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<sup>1</sup> Previous audits indicate a certification date for Rolls Royce/Bentley. Notification received by the Department from BBB and Bentley Motors states that Rolls Royce is now owned by BMW and does not participate in BBB program. BBB stated Bentley is now owned by Volkswagen and does participate in BBB program. BBB noted that it currently handles cases for Rolls Royce vehicles purchased prior to January 1, 2003

- Volkswagen/Audi November 7, 1989
- WorkHorse Custom Chassis<sup>2</sup> October 18, 1999

The expiration date for each of the certified procedures listed above is December 31, 2004.

**B. Better Business Bureau - Auto Line Headquarters**

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 Virginia.

**C. Florida Offices**

The BBB maintains five offices in Florida. 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. The Florida offices are maintained at the following locations:

- Clearwater, Better Business Bureau of West Florida
- 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 Southeast Florida.

**III. BBB EVALUATION**

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<sup>2</sup> Certification for WorkHorse Custom Chassis expired December 31, 2004. Department received notice from BBB that WorkHorse Custom Chassis chose not to utilize a certified procedure in Florida; therefore, they will not be considered in the future.

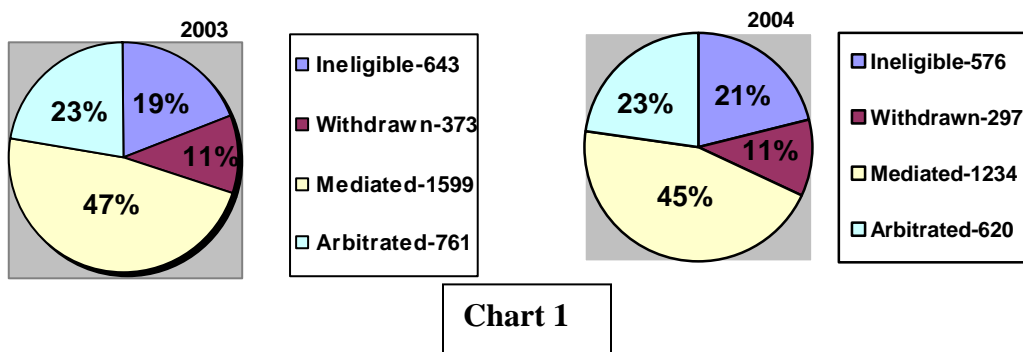
## A. Recordkeeping

The individual Florida 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 arbitration case file data to the CBBB office in Arlington via electronic transfer.

The CBBB office in Arlington submits a weekly claims report via electronic transfer to the Department. This report provides the pertinent information regarding disposition of each claim processed by Auto Line for that week.

## B. Disputes/Claims

The BBB Auto Line submitted details to the Department for 2,727 claims processed for 2004 in Florida, a decrease of 649 claims compared to the previous year when 3,376 were submitted. The claims processed by BBB were categorized as ineligible, withdrawn, mediated, or arbitrated. The charts below (see Chart 1) provide a comparison of the number of claims and percentage of the total claims that were processed by BBB for the 2004 audit year and the previous year.



Even though the number of claims filed with BBB declined, the percentage of how claims were closed remained constant for the years 2003 and 2004. Approximately half the claims resulted in a settlement through mediation and approximately one fourth have been settled through the arbitration process.

The following table (see Table 1) provides the number of claim dispositions by type that was processed for each certified program implemented by BBB during the current audit year.

<b>Manufacturer</b>	<b>Ineligible</b>	<b>Withdrawn</b>	<b>Mediated</b>	<b>Arbitrated</b>	<b>Total</b>
<b>AM General</b>	2	2	16	6	26
<b>Acura/Honda</b>	44	20	73	69	206
<b>Bentley</b>	1				1
<b>General Motors</b>	277	153	692	260	1382
<b>Hyundai</b>	42	8	56	36	142
<b>Isuzu</b>	22	9	9	14	54
<b>Kia</b>	57	20	109	39	225
<b>Nissan/Infiniti</b>	44	41	158	112	355
<b>Saab</b>	7	4	10	4	25
<b>Saturn</b>	7	3	45	15	70
<b>Volkswagen/Audi</b>	67	35	64	64	230
<b>Others<sup>3</sup></b>	6	2	2	1	11

**Table 1**

<sup>3</sup> Data submitted by BBB includes manufacturers that are not certified with the Department, such as Land Rover. Since that data is a part of the information received by the Department, it is included.

The disposition of claims are categorized as those that were declared ineligible to participate in the program, withdrawn by the consumer from the program, settled through mediation by the program, or arbitrated by the program. Following is a description of each claim disposition category and the awards provided in that disposition category:

### **1. Ineligible**

These are disputes in which BBB lacked contractual jurisdiction to process the case. There is no award available when a dispute is declared ineligible as the program is not required to process the claim, and the file is closed immediately. Examples of cases that are deemed ineligible include claims that are filed in an untimely manner or beyond the warranty period, claims where the vehicle was purchased or leased by the consumer as “used”, claims in which the gross vehicle weight of the vehicle exceeded 10,000 pounds, or claims where the vehicle was purchased or leased by the consumer outside the state of Florida.

Of the total 2,727 claims filed with the BBB, there were 576 cases categorized as ineligible. Division staff reviewed these files to ensure that adequate documentation supporting the BBB’s determination of non-jurisdiction was evident.

### **2. Withdrawn**

These are claims that were withdrawn by the consumer. Since the claim was withdrawn by the consumer, no determination was made by the program. The disputes were withdrawn by the consumer for various reasons, including the consumer decided to trade the vehicle; the consumer decided not to pursue the

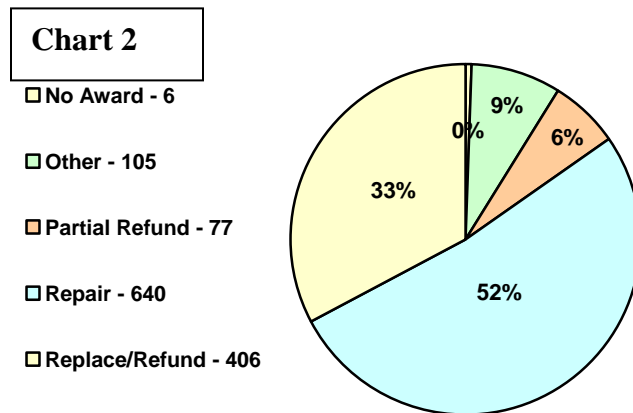
dispute for personal reasons; and the consumer determined the problem had been corrected. 297 claims were withdrawn by the consumer during the audit period.

### 3. Mediated

These are disputes in which the consumer filed a claim with the BBB, and the manufacturer and consumer subsequently entered into an agreement resolving the dispute prior to the BBB conducting an arbitration hearing. There were 1,234 BBB case files closed through mediation. This process is typically completed within 7-10 days of the consumer filing a claim.

The manufacturer agreed to repurchase or replace the vehicle in 406 cases. 640 consumers accepted an additional repair attempt. In 182 cases, the disputes were settled through offers of trade assistance, trade allowances, reimbursement for repairs, or extended warranties. In the remaining 6 cases, the attempt at mediation resulted in no award for the consumers.

The chart below (see Chart 2) shows the breakdown of mediated cases:



The following table (see Table 2) provides a breakdown by manufacturer of the awards received through mediation. These awards are directly attributed to the manufacturer as the settlement is an agreement reached between the manufacturer and consumer without any outside intervention.

<b>Manufacturer</b>	<b>No Award</b>	<b>Repair</b>	<b>Partial Refund</b>	<b>Replace</b>	<b>Refund</b>	<b>Other</b>	<b>Total</b>
<b>AM General</b>		6	1	4	5		16
<b>Acura/Honda</b>		45	4	14	10		73
<b>General Motors</b>	2	349	32	75	142	92	692
<b>Hyundai</b>	1	36	7	7	3	2	56
<b>Isuzu</b>		8		1			9
<b>Kia</b>	1	47	14	23	24		109
<b>Nissan/Infiniti</b>	2	111	13	6	16	10	158
<b>Sabb</b>		1			9		10
<b>Saturn</b>		9	2	7	26	1	45
<b>Volkswagen</b>		27	4	12	21		64
<b>Other<sup>4</sup></b>		1			1		2
<b>TOTAL</b>	6	640	77	149	257	105	1,234

**Table 2**

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<sup>4</sup>Data submitted by BBB includes manufacturers that are not certified with the Department, such as Land Rover. Since that data is a part of the information received by the Department, it is included.

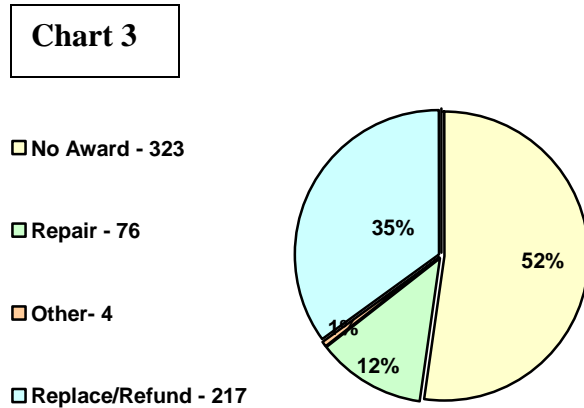
#### 4. Arbitration

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 620 cases closed through arbitration during the audit period.

BBB arbitrators awarded a replacement vehicle or a refund to 217 consumers. 323 consumers were granted no relief. 76 consumers were awarded additional repair attempts, and there were 4 cases in which miscellaneous decisions were rendered. Miscellaneous decisions included awards for reimbursement for repairs, extended warranties, or partial refunds.

Chart 3 shown below provides a breakdown of the arbitration cases:



The following table (see Table 3) provides a breakdown by manufacturer of the awards received after an arbitration hearing.

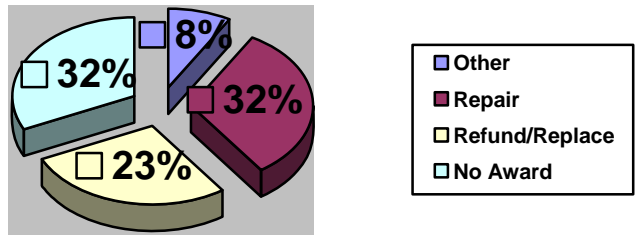
Manufacturer	No Award	Repair	Partial Refund	Replace	Refund	Other	Total
AM General	3				3		6
Acura/Honda	35	9		2	23		69

<b>General Motors</b>	141	34		16	66	3	260
<b>Hyundai</b>	21	3		2	10		36
<b>Isuzu</b>	11			1	2		14
<b>Kia</b>	20	7		2	10		39
<b>Nissan/Infiniti</b>	49	18		5	40		112
<b>Sabb</b>	1				3		4
<b>Saturn</b>	11	2		1	1		15
<b>Volkswagen</b>	31	3	1	2	27		64
<b>Others<sup>5</sup></b>					1		1
<b>TOTAL</b>	323	73	1	31	186	3	620

The chart below (see Chart 4) combines all arbitrated and mediated claims, showing a breakdown by percentage of the awards received.

**Chart 4**

**2004 Awards for 1,854 Arbitrated & Mediated Claims**



<sup>5</sup> Data submitted by BBB includes manufacturers that are not certified with the Department, such as Land Rover. Since that data is a part of the information received by the Department, it is included.

### **C. Arbitrators/Arbitrator Training**

On March 10-11, 2004, Division personnel attended BBB training for new arbitrators in Jacksonville, Florida. A total of 11 new arbitrators attended the training sessions. Division staff reviewed the content of the Arbitrator Training Manual and the instructional courses. The manual and training sufficiently covered all aspects of the Florida Lemon Law, the federal Magnuson-Moss Act and CBBB requirements.

The new arbitrator and refresher training sessions provided were intense and provided excellent coverage of the governing laws. BBB staff provided the arbitrators a constructive critique of their handling of an arbitration, where necessary. The decisions of the arbitrators meet the standards set forth by s. 481.108(2)(f), F.S., and Rule 5J-11.011(2), F.A.C.

### **D. Hearings/Hearing Locations**

Auto Line conducts hearings at the five BBB Florida offices previously cited. In addition BBB utilizes hearing sites in the following locations:

- Tallahassee, implemented by BBB of Northeast Florida, Jacksonville
- Pembroke Pines, implemented by BBB of Southeast Florida, Palm Beach
- Fort Myers, implemented by BBB of West Florida, Clearwater.

This represents eight hearing locations maintained by Auto Line in Florida.

BBB provided administrative support for the arbitrator at each arbitration hearing. Copies, telephone setup, and tape recording setup were provided by the BBB staff. BBB staff was present throughout the hearing, but was only utilized for procedural questions.

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, Department surveys were sent

to all consumers who filed a claim through BBB. 335 surveys were returned indicating that 35 consumers were required to travel more than 75 miles to participate in an arbitration hearing. Although no complaints concerning the travel distance were recorded from the surveys, the requirement not to exceed 75 miles is not fulfilled. The hearing sites maintained by Auto Line do not provide 75 mile coverage for two populous areas in Florida: the Panama City area and a portion of the Florida Keys. However, consumers who lived 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 in person.

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, including ineligible, withdrawn, mediated, and arbitrated disputes, was 20.82 days. This is an increase of 1 day from the previous audit year.

Division staff identified 246 cases that were closed after 40 days. The claims that exceeded 40 days were claims arbitrated by the BBB. This represents an increase over the previous year when the case load was higher. The average days to close the 246 claims that exceeded 40 days were 49.88 days. Generally, 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.

Data received from Auto Line reflected that 135 arbitrators were utilized in its arbitration hearing process. The average number of arbitrations heard by any arbitrator

during the audit period was six. There were exceptions in that one arbitrator presided over 37 hearings and another 31.

The hearings monitored by Department staff were well structured and the arbitrators were in control of the hearing and did not demonstrate any bias.

#### **E. Independent Audit**

Title 16 C.F.R. Part 703.7(a) requires each manufacturer 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 1<sup>st</sup> of the following year. The 2003 audit of CBBB's program for all certified manufacturers was conducted by Morrison and Company.

Richard Woods, Esq., Counsel for CBBB, submitted the audit on July 1, 2004. Morrison and Company determined that all aspects of the manufacturers' certified programs were in substantial compliance with related requirements of the Magnuson-Moss Act, the Florida Lemon Law, and the Florida Administrative Code.

Upon review of the audit submitted by BBB, it was noted that Florida specific data pursuant to Chapter 681.108(4), F.S., and Rule 5J-11.010(2), F.A.C., was not included. BBB was notified by the Department that the audit would not be considered complete until the omitted requirements were met. Mr. Woods submitted an addendum to the audit on August 31, 2004, completing the independent audit requirements.

#### **IV. REPORT SUMMARY**

BBB is commended for the mediation and arbitration processes it implements. The rate of consumer satisfaction is good, as noted from consumer surveys returned to the Department.

The arbitrator pool maintained by BBB is sufficient for the Florida case load, complying with Title 16 C.F. R. Part 703.4. The arbitrators are well schooled in the applicable laws. The instruction and training materials utilized are excellent, substantially complying with 16 C.F.R. Part 703.3(a). BBB's Florida staff provides the requisite support needed to assist the arbitrators.

Title 16 C.F.R. Part 705(d) provides for the timely processing of claims to be 40 days from the implementation of the claim. Substantial compliance with this provision has been maintained by BBB. The mediation process utilized by BBB has been instrumental in the timely completion of claims. However, the increase in the number of claims arbitrated by BBB that exceed 40 days concerns the Department. BBB should implement procedures that will reduce or eliminate any barriers that result in cases exceeding the 40-day requirement.

Records are submitted each week to the Department, in compliance with Rule 5J-11.007, F.A.C. The materials include the claim initiation date, the time and place of the hearing, the name and address of the claimant, the name of the arbitrator, and the vehicle used to conduct the hearing. The records submitted do not include the names of the manufacturers' representatives, but are included in the files maintained by the Florida office.

BBB maintains adequate hearing sites in Florida to comply with the 75 mile requirement of Rule 5J-11.011(3), F.A.C., except for the two areas noted previously in this report. In those areas, BBB offers consumers an alternative of a telephone conference hearing. However, it continues to concern the Department that consumers wishing to present their vehicle at the hearing must exceed the travel requirements or participate in a conference call hearing. By providing alternative hearing sites within these areas, it would allow consumers who wish to present their vehicle to the arbitrator the opportunity to do so without exceeding the 75 mile driving rule. BBB is again urged to address this issue.

The independent audit submitted by BBB was incomplete at the time of the initial submission. BBB should ensure that its audit includes all the components required by Florida law and submit a complete independent audit in a timely manner.

## **V. RECCOMENDATION**

The dispute settlement procedures administered by the BBB substantially comply with Chapter 681, F.S., and Title 16 C.F.R. Part 703.

Considering the documentation and information included in this report, Department staff recommends the re-certification of the informal dispute settlement procedures implemented by BBB Auto Line program for AM General, Acura/Honda, Bentley, General Motors, Hyundai, Isuzu, Kia, Nissan/Infiniti, Saab, Saturn, and Volkswagen/Audi through December 31, 2005, in accordance with Chapter 681, F.S.