

**DIVISION OF CONSUMER SERVICES’
ANNUAL LEMON LAW REVIEW OF
CERTIFIED INDEPENDENT DISPUTE SETTLEMENT PROCEDURES
IMPLEMENTED THROUGH BETTER BUSINESS BUREAU – AUTO LINE
January 1, 2006 through December 31, 2006**

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 (Division) 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, a.k.a. Lemon Law); and Chapter 5J-11, Florida Administrative Code.

B. Audit

Section 681.108(5), F.S., requires Division 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 Division’s Lemon Law Section conducts the review and prepares the annual evaluation report. This report is compiled for the fiscal year beginning January 1, 2006, and ending December 31, 2006. The data gathering process includes an evaluation of hearings, a review of office records, including data that is electronically submitted to 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 BETTER BUSINESS BUREAU - 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 with the Division, implemented through the Better Business Bureau – Auto Line (BBB) program. The listing below reflect the manufacturers and their initial date of certification.

- AM General August 23, 1994
- Acura/Honda December 22, 1990
- Bentley November 7, 1994
- Ford Motor Company May 27, 2005
- 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
- Volkswagen/Audi November 7, 1989

The expiration date for each of the certified procedures listed is December 31, 2006.

B. Better Business Bureau - Auto Line Headquarters

BBB is headquartered at the offices of the Council of Better Business Bureau (CBBB) in Arlington, Virginia, and is administered by the Dispute Resolution section (DR).

VP and General Counsel for CBBB is Mr. Alan Cohen, Associate General Counsel for CBBB is Mr. Richard Woods, and Mr. Rodney Davis is VP of DR. These individuals are located in the offices in Virginia.

C. Florida Offices

BBB maintains five offices in 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.

Mrs. Karen Nalven is the Coordinator for BBB functions for all offices in the State of Florida. She is located in Clearwater, Florida.

III. BBB EVALUATION

A. Recordkeeping

The individual Florida BBB offices are responsible for organizing and maintaining the case file information relative to each office's activities. Each of the Florida offices of BBB transmits 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 Division. This report provides the pertinent information regarding disposition of each claim processed by BBB for that week.

B. Disputes/Claims

Consumers may file claims with BBB by calling their 800 phone number, completing a claim form from their website, or completing a claim form received from other sources.

At the beginning of the audit year Division staff noted that claims for Ford Motor Company when called into the 800 line could not be initiated, even if the information required by 5J-11.005, F.A.C., was available from the consumer, without being mailed a claims form. It was also noted that that the form provided on BBB's website did not allow for the information required by 5J-11.005, F.A.C., to be entered. Division staff expressed its concerns regarding the detrimental effect this may have on timely filing by the consumer. Ford and BBB immediately addressed and corrected these concerns. All claims are now processed in the same manner regardless of the medium used to submit a claim.

During the audit period BBB submitted proposed changes to its claims process whereby a claim would not be deemed opened until a signed claim form was received by BBB. Staff informed BBB that these proposals exceeded the requirements of 5J-11.005, F.A.C., thereby prolonging the initiation date of a claim and were not acceptable for

certification compliance. BBB immediately withdrew the proposals.

BBB submitted details to Division for 2,698 claims processed in Florida for 2006, a decrease of 206 claims compared to the previous year when 2,904 claims 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 2006 audit year and the previous year.

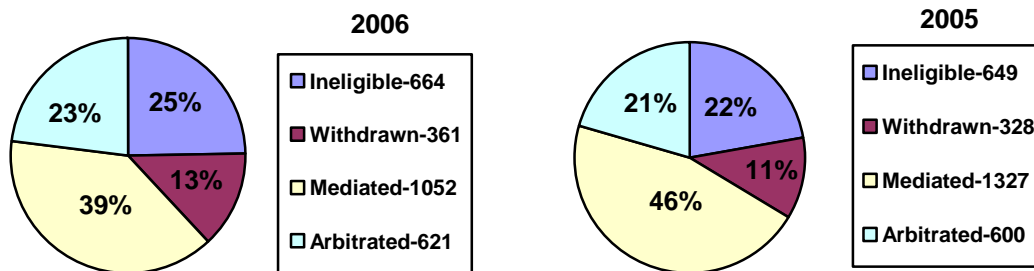


Chart 1

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

Manufacturer	Ineligible	Withdrawn	Mediated	Arbitrated	Total
AM General	2	3	16	1	22
Acura/Honda	56	18	41	62	177
Bentley	0	0	0	2	2

Ford Motor Company	36	11	76	38	161
General Motors	248	172	463	239	1121
Hyundai	48	19	58	13	138
Isuzu	7	0	5	9	21
Kia	37	18	47	21	123
Nissan/Infiniti	91	48	221	122	482
Saab	6	2	4	6	18
Saturn	13	6	25	1	45
Volkswagen/Audi	59	20	42	49	170
Others¹	8	7	2	4	21
Total	664	361	1052	621	2698

Table 1

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.

¹ 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.

Of the total 2,698 claims filed with BBB, there were 664 cases determined to be ineligible to participate in BBB's program. Division staff reviewed these files to ensure that adequate documentation supporting 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. 361 claims were withdrawn by the consumer during the audit period.

3. Mediated

These are disputes in which the consumer filed a claim with BBB, and the manufacturer and consumer subsequently entered into an agreement resolving the dispute prior to BBB conducting an arbitration hearing. There were 1,052 BBB case files closed through mediation. This process was typically completed within 7-10 days of the consumer filing a claim.

The manufacturer agreed to repurchase or replace the vehicle in 359 cases. 578 consumers accepted an additional repair attempt. In 112 cases, the disputes were settled through offers of trade assistance, trade allowances, reimbursement for repairs, or extended warranties. These have been noted as "Other" in the report. In the remaining 3 cases, the attempt at mediation was reported by BBB to result in no award for the consumers.

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

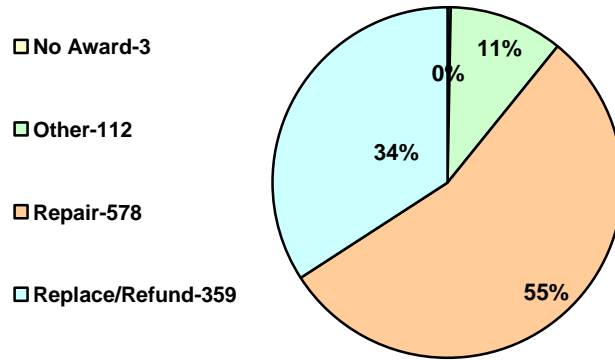


Chart 2

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, assisted by BBB.

Manufacturer	No Award	Repair	Replace/Refund	Other	Total
AM General	1	9	7	1	18
Acura/Honda	0	36	15	4	55
Ford	0	36	46	28	110
General Motors	1	238	173	51	463
Hyundai	0	26	31	1	58
Isuzu	0	4	0	1	5
Kia	0	27	16	4	47
Nissan/Infiniti	0	167	36	18	221
Sabb	0	2	2	0	4
Saturn	0	7	16	2	25
Volkswagen	0	26	14	2	42

Other²	1	0	3	0	4
Total	3	578	359	112	1,052

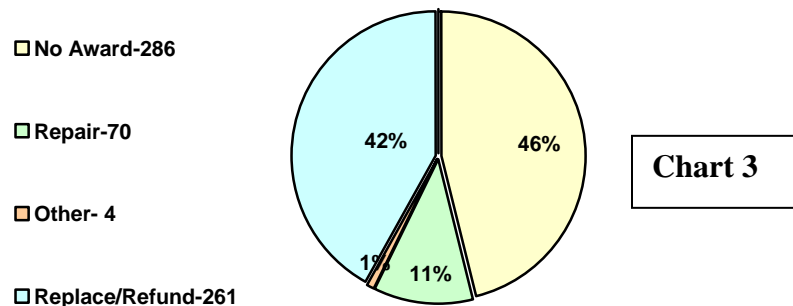
Table 2

4. Arbitration

These are disputes in which the consumer filed a claim with BBB and it conducted an arbitration hearing wherein a decision was rendered. There were 621 cases closed through arbitration during the audit period.

BBB arbitrators awarded a replacement vehicle or a refund to 261 consumers. 286 consumers were granted no relief. 70 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	Replace/Refund	Other	Total
AM General	2	0	4	0	6

²Data 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.

Acura/Honda	26	3	11	0	40
Ford	51	13	48	0	112
General Motors	99	35	102	2	238
Hyundai	7	3	3	0	13
Isuzu	3	1	5	0	9
Kia	10	1	8	2	21
Nissan/Infiniti	61	12	49	0	122
Sabb	1	0	5	0	6
Saturn	1	0	0	0	1
Volkswagen	24	2	23	0	49
Total	286	70	261	4	621

Table 3

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

2006 Awards for 1,673 Arbitrated & Mediated Claims

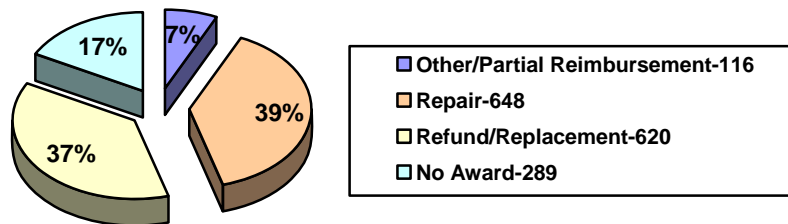


Chart 4

C. Arbitrators/Arbitrator Training

November 16-17, 2006, Division personnel attended BBB's training for new arbitrators in Clearwater, Florida. A total of 19 new arbitrators attended the training

session. Ms. Donna Rubenstein was the training instructor. She was assisted by three administrators from the West Florida office. The training in Clearwater was primarily to replenish the arbitrator pool for the West Florida office.

Division staff reviewed the content of the Arbitrator Training Manual and monitored 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 training sessions provided excellent coverage of the governing laws. BBB staff provided the arbitrators a constructive critique of their handling of the mock arbitrations, when necessary. The mock decisions of the potential 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

BBB 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
- Panama City, implemented by BBB of Northwest Florida, Pensacola.

This represents seven hearing locations maintained by BBB in Florida. Division staff attended hearings in Tallahassee, Orlando, and West Palm Beach during the audit period. The hearings monitored by Division staff were well structured and the arbitrators were in control of the hearing and did not demonstrate any bias.

BBB provided administrative support for the arbitrator at each arbitration hearing. Copies, telephone setup, and tape recording setup were provided by BBB staff. A

member of BBB staff was present throughout the hearing to address 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, Division surveys were sent to all consumers who filed a claim through BBB. 551 surveys were returned indicating that 32 consumers were required to travel more than 75 miles to participate in an arbitration hearing. Of those 32, 20 were required to travel over 100 miles. BBB does advise consumers who live in an area outside the 75 mile radius of a hearing site, verbally and through a brochure, that a telephone hearing may be held in lieu of appearing in person. Many consumers believe that their presence is necessary to convey their case; therefore, they opt to travel a greater distance than the 75 miles required by s. 5J-11.011, F.A.C. Previously, Division expressed concerns regarding the Panama City area and a portion of the Florida Keys not being offered a hearing site within a 75 mile radius of the consumer's residence. The addition of arbitrators and a hearing site in Panama City resolved a concern expressed the previous year. Consumers in the even more populous area of Ft. Myers and Naples, which is within the jurisdiction of BBB of West Florida, are now offered access to a hearing site within those areas alleviating the 75 mile concerns for that area. The office in West Palm Beach conducts hearings in Pembroke Pines that covers the Miami-Dade area. No complaints concerning the travel distance were recorded from the surveys and the requirement not to exceed 75 miles is being fulfilled by BBB with the exception of Key West.

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 21 days. Division staff identified 281 cases that were closed after 40 days. The claims that exceeded 40 days were claims arbitrated by BBB. This represents an increase over the previous year when the case load was higher. The average days to close the 281 claims that exceeded 40 days were 50 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 BBB reflected that 120 arbitrators were utilized in its arbitration hearing process. The average number of arbitrations heard by any arbitrator during the audit period was five. The most hearings heard by any arbitrator during the current audit period were 34. This indicates that the rotation among arbitrators in BBB's program is adequate and that no arbitrator is over utilized.

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 Division a copy of the independent audit report by July 1st of the following year. The 2005 audit of BBB's program for all certified manufacturers was submitted to the Division on June 30, 2006, which was timely in accordance with s. 5J-11.010(1), F.A.C.

A review of the 2004 audit revealed some inadequacies in the report. Those same inadequacies were noted in the 2005 audit.

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 Division.

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 knowledgeable 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 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. Changes made by BBB and all the manufacturers it represent ensured substantial compliance with this provision. The mediation process utilized by BBB has been instrumental in the timely completion of claims. However, the number of claims arbitrated by BBB that exceed 40 days and the increase in the number of days to resolve those claims continues to escalate. This concerns Division. BBB should implement procedures that will reduce or eliminate any barriers that result in any cases exceeding the 40-day requirement.

Records are submitted each week to Division, 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; however, these 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 area previously noted in this report. In this area, BBB offers consumers the alternative of a telephone conference hearing. It concerns Division that consumers wishing to present their vehicle at the hearing must exceed the travel requirements or participate in a conference call hearing. By providing an alternative hearing site within the described area, 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 should establish a hearing site within this last area similar to the efforts taken to correct the lack of a hearing site in other areas of Florida. BBB is again urged to address this issue.

The independent audit submitted by BBB again contained inaccuracies. BBB should ensure that all future audits include the components required by Florida law and that all the information stated in the report is accurate.

V. RECCOMENDATION

The dispute settlement procedures administered by BBB substantially comply with Chapter 681, F.S., 5J-11, F.A.C., and Title 16 C.F.R. Part 703.

Considering the documentation and information included in this report, Division staff recommends the re-certification of the informal dispute settlement procedures implemented by BBB for AM General, Acura/Honda, Bentley, Ford, General Motors, Hyundai, Isuzu, Kia, Nissan/Infiniti, Saab, Saturn, and Volkswagen/Audi through December 31, 2007, in accordance with Chapter 681, F.S.