

**DIVISION OF CONSUMER SERVICES’  
ANNUAL LEMON LAW REVIEW OF  
CERTIFIED INDEPENDENT DISPUTE SETTLEMENT PROCEDURES  
IMPLEMENTED THROUGH BETTER BUSINESS BUREAU – AUTO LINE  
January 1, 2009 through December 31, 2009**

**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 (“F.S.”); and Chapter 5J-11, Florida Administrative Code (“F.A.C.”).

**B. Audit**

Section 681.108(5), F.S., requires the 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. (“Lemon Law”), and rules adopted thereunder. The staff of the Division’s Lemon Law Section conducts the review and prepares the annual evaluation report. This report is compiled for the calendar year beginning January 1, 2009, and ending December 31, 2009. The data gathering process includes an evaluation of hearings, an office audit of the procedures’ records, a review of data that is electronically submitted to the Division on a weekly basis by the procedures, a review of

the procedures' arbitrator training processes, and a review of surveys sent to consumers who have participated in the procedures.

## **II. CERTIFIED PROCEDURES ADMINISTERED BY BETTER BUSINESS**

### **BUREAU - AUTOLINE**

#### **A. Manufacturers**

Several manufacturers have established dispute settlement procedures since the enactment of the Magnuson-Moss Act. Below are the manufacturers that have established a certified procedure with the Division, implemented through the Better Business Bureau – Auto Line (“BBB”) program. The listing below reflects the manufacturers implementing programs through the BBB 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
Mazda	December 21, 2007
Nissan/Infiniti	January 22, 1990
Volkswagen/Audi	November 7, 1989

Divisions under the General Motors Program Summary include Chevrolet, Buick, Pontiac, GMC, Cadillac, Oldsmobile, Saab, Saturn, and Hummer H2. Ford's certification is only for Ford, Lincoln, and Mercury.

On March 31, 2009, the Division recertified all procedures until March 31, 2010.

#### **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").

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 of 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 BBB office transmits the arbitration case file data to the CBBB office in Arlington via electronic transfer.

The Division has been provided access to all case files through the BBB website. The files are accessible by manufacturer and consumer name. The Florida files are segregated from other governmental jurisdictions files pursuant to § 5J-11.009, F.A.C.

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. This information is uploaded into the database maintained by the Division and is readily accessible.

On November 19, 2009, the Division staff visited the BBB office in Orlando (Longwood) to review the retention of records and to discuss the arbitration procedures implemented by the office. It was noted that the office staff was very knowledgeable regarding the dispute resolution procedures. The records were maintained in an orderly and accurate manner.

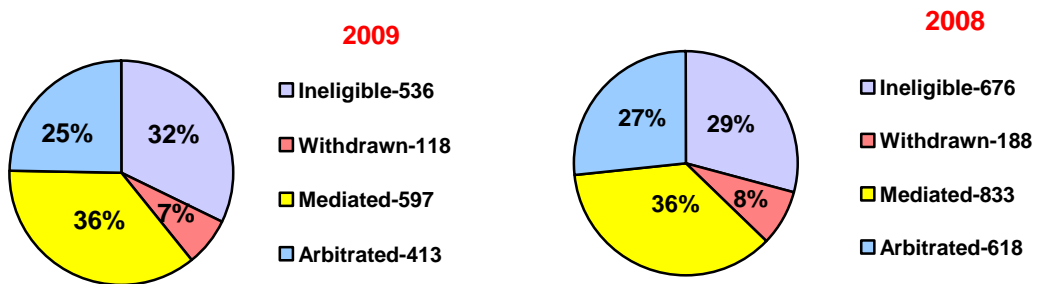
## **B. Disputes/Claims**

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.

A call to BBB's 800 number from a consumer that provides the data required by § 5J-11.005, F.A.C., initiates a claim with the BBB. If a claim form is completed from BBB's website by the consumer, the submission of the electronic form initiates a claim with BBB. Likewise, a form mailed to BBB initiates a claim upon receipt by BBB.

One application submitted to the BBB during the audit period was reviewed by the Division, indicating the consumer's submission date to BBB and the start date noted by BBB were inconsistent. The Division expressed its concerns regarding this discrepancy as it could affect a consumer's timely filing of a request for arbitration with the Division. BBB stated that their system did not automatically open a case unless all information had been verified. BBB immediately corrected this concern by generating cases upon receipt of information and verifying information as additional documentation was submitted by the consumer.

BBB submitted details to the Division for 1,664 claims processed for Florida consumers in 2009, compared to the previous year when 2,315 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 2009 audit year and the previous audit year of 2008. The percentage of categorized dispositions for 2009 remained comparable to 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.

<b>Manufacturer</b>	<b>Ineligible</b>	<b>Withdrawn</b>	<b>Mediated</b>	<b>Arbitrated</b>	<b>Total</b>
<b>Acura/Honda</b>	46	14	39	62	161
<b>Bentley</b>	1	0	2	3	6
<b>Ford</b>	132	29	72	118	351
<b>General Motors</b>	177	36	254	106	573
<b>Hyundai</b>	34	4	55	29	122
<b>Isuzu</b>	0	0	1	0	1
<b>Kia</b>	32	5	33	24	94
<b>Mazda</b>	6	4	14	2	26
<b>Nissan/Infiniti</b>	72	15	95	47	229
<b>Volkswagen/Audi</b>	36	11	32	22	101
<b>Total</b>	536	118	597	413	1164

**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 or lemon law rights 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 1,664 claims filed with BBB, there were 536 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. Those reasons included the consumer decided to trade the vehicle, the consumer decided not to pursue the dispute for personal reasons, or the consumer determined the problem had been corrected. 118 claims were withdrawn by consumers during the audit period.

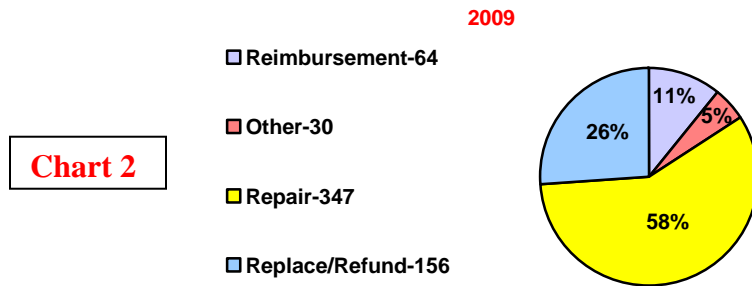
## **3. Mediated**

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 597 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 156 cases. 347 consumers accepted an additional repair attempt. In 64 cases, the disputes

were settled through offers of reimbursement for repairs. 30 cases were settled through other remedies, such as extended warranties or trade allowances.

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



The following table (see Table 2) provides a breakdown of the awards received through mediation. These awards are a result of an agreement reached between the manufacturer and consumer, assisted by BBB.

Manufacturer	Reimbursement	Repair	Other	Replace/Refund	Total
<b>Acura/Honda</b>	2	32	1	4	39
<b>Bentley</b>	1	1	0	0	2
<b>Ford</b>	11	45	9	7	72
<b>General Motors</b>	22	118	10	104	254
<b>Hyundai</b>	3	44	1	7	55
<b>Isuzu</b>	0	1	0	0	1
<b>Kia</b>	1	19	1	12	33
<b>Mazda</b>	4	9	1	0	14
<b>Nissan/Infiniti</b>	17	61	7	10	95
<b>Volkswagen</b>	3	17	0	12	32
<b>Total</b>	64	347	30	156	597

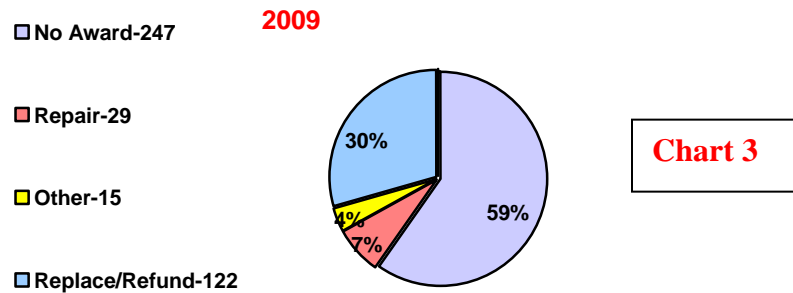
**Table 2**

#### 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 413 cases closed through arbitration during the audit period.

BBB arbitrators awarded a replacement vehicle or a refund to 122 consumers. 247 consumers were granted no relief. 29 consumers were awarded additional repair attempts, and there were 15 cases in which miscellaneous decisions were rendered. Miscellaneous decisions included awards of reimbursement for repairs, extended warranties, or partial refunds.

Chart 3 shown below provides a breakdown of the arbitrated cases. The values by percentage remain approximately the same as the previous year.



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

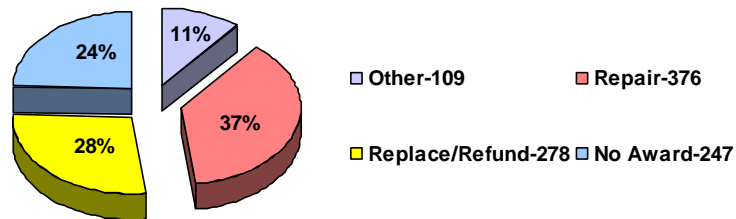
Manufacturer	No Award	Repair	Replace/Refund	Other	Total
<b>Acura/Honda</b>	44	5	13	0	62
<b>Bentley</b>	2	0	1	0	3
<b>Ford</b>	63	10	34	11	118
<b>General Motors</b>	65	7	32	2	106

<b>Hyundai</b>	14	0	15	0	29
<b>Isuzu</b>	0	0	0	0	0
<b>Kia</b>	11	3	9	1	24
<b>Mazda</b>	1	0	1	0	2
<b>Nissan/Infiniti</b>	31	3	12	1	47
<b>Volkswagen</b>	16	1	5	0	22
<b>Total</b>	247	29	122	15	413

**Table 3**

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

**2009 Awards for 1,010 Arbitrated & Mediated Claims**



**Chart 4**

### C. Arbitrators/Arbitrator Training

Division staff attended the BBB's new arbitrator training held in Sarasota, Florida, August 16-17, 2009. The purpose of the training was to establish a larger arbitrator pool for the BBB West Florida office. A total of 29 new arbitrators attended the training session. Mr. Phil Bacon was the training instructor. Mr. Bacon was assisted by Mr. Eric Oglesby and Mr. Todd Eikenberry from the West Florida BBB 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 the manufacturers' programs.

The new arbitrator training sessions provided excellent coverage of the governing laws. The potential arbitrators participated in mock arbitrations. They were provided a decision checklist to guide them in their reasoning for decisions. BBB staff provided the arbitrators a constructive critique of their handling of the mock arbitrations, when necessary. The instructor's training was excellent. The mock decisions of the potential arbitrators met the standards set forth by § 481.108(2)(f), F.S., and § 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 at the following locations:

Tallahassee, implemented by BBB of Northeast Florida, Jacksonville,

Miami Lakes, implemented by BBB of Southeast Florida, Palm Beach,

Ft. Myers, implemented by BBB of West Florida, Clearwater,

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

This represents nine hearing locations maintained by BBB in Florida.

§ 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. Of the consumer surveys that were returned, 17 consumers stated they were required to travel more than 75 miles to participate in an arbitration hearing. Five of the consumers reported they were required to travel more than 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.

One of the 5 consumers reporting a requirement to travel more than 100 miles filed a complaint with the Division stating the BBB directed the consumer to travel to the Northwest Florida office in Pensacola, a distance of over 200 miles from their residence. The Division contacted BBB, expressing its concern regarding this complaint, because BBB maintained a hearing sight in Panama City, a distance of approximately 90 from the home of the consumer, and one in Tallahassee, a distance of approximately 20 miles from the home of the consumer. BBB responded that its system automatically assigned a hearing sight based on the consumer's zip code. BBB stated that the glitch noted by the Division involved the satellite offices. BBB immediately remedied the potential of a reoccurrence of this problem by modifying the auto feature of the system to allow manual input of the hearing location by its programmers to ensure the consumer being assigned to the closest sight location or selecting a sight of the consumer's choice.

Hearings in Tallahassee and Longwood (Orlando) were monitored by Division staff during the report period. 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. The arbitrators provided ample time for each party to present their case. The hearings monitored by Division staff were well structured and the arbitrators were in control of the hearing and did not appear to be biased.

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 18.5 days. Division staff identified 147 cases that were closed after 40 days. This was approximately 100 less than the previous year. Of the claims that exceeded 40 days, 64 were claims arbitrated and a decision rendered by BBB within 44 days. Other claims were extended by consumers for various reasons. The average number of days to close the 147 claims that exceeded 40 days was 49.6 days.

Data received from BBB reflected that 109 arbitrators were utilized in its arbitration hearing process. This indicates that the rotation among arbitrators in BBB's program is adequate and that no arbitrator is over utilized. Additionally, a review of the type decisions rendered by each arbitrator is consistent with all decisions provided in the BBB process. This appears to indicate that the arbitrators utilized by BBB provide decisions that fairly consider the facts of each case.

#### **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. § 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 1<sup>st</sup> of the following year. The 2008 independent audit of BBB's program for all certified manufacturers was submitted to the Division in a timely manner.

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

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

surveys returned to the Division. The BBB is also commended for promptly addressing any concerns expressed by the Division and immediately adjusting its procedures to address those concerns.

The Florida records maintained by the BBB are separate from other jurisdictions and substantially comply with the provisions of § 5J-11.009, F.A.C.

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.

The BBB maintains adequate hearing sites in Florida to substantially comply with the 75 mile requirement of § 5J-11.011(3), F.A.C.

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. The mediation and arbitration procedures utilized by BBB have been instrumental in the timely completion of claims. The BBB substantially complies with Title 16 C.F.R. Part 705(d).

Records are submitted each week to the Division, in compliance with § 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, days to resolve, the name of the arbitrator, and the vehicle VIN, decision sought, and the decision. The records submitted do not include the names of the manufacturers' representatives; however, these are included in the files maintained by BBB.

The independent audit submitted to the Division substantially complies with Title 16 C.F.R. Part 703.7(a), § 681.108(4), F.S., and Chapter 5J-11, F.A.C.

## **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, the 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, Mazda, Nissan/Infiniti, and Volkswagen/Audi through March 31, 2011, in accordance with Chapter 681, F.S.