

**2018 AUDIT OF  
BBB AUTO LINE**

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

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## **INTRODUCTION AND SUMMARY**

BBB AUTO LINE is an informal dispute settlement process that handles automobile warranty disputes – including disputes subject to the Federal Magnuson-Moss Warranty Act<sup>1</sup> and disputes under state lemon laws – through mediation and arbitration. The program was administered throughout 2018 and until June 1, 2019 by the Council of Better Business Bureaus, located in Arlington, VA, together with local Better Business Bureau offices. (Since June 1, it has been administered by BBB National Programs, Inc. together 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,<sup>2</sup> 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.<sup>3</sup> Key elements of these standards require warrantors to take steps to alert consumers to the program, and require the program to meet certain 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.<sup>4</sup> State lemon laws impose further requirements and two states – Florida and Ohio – have 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.” Although he offers several recommendations to BBB AUTO LINE itself, none warrant a reservation or question to the finding of substantial compliance.
- Fifteen manufacturers – Bentley, BMW, Ferrari, Ford, General Motors, Hyundai (including Genesis), Jaguar (including Land Rover), Kia, Lamborghini, Lotus, Maserati, Mazda, Mercedes-Benz, Nissan (including Infiniti) and Volkswagen (including Audi) – are in substantial compliance for purposes of each applicable audit. Most findings of substantial compliance, however, are subject to questions and reservations discussed in Chapter 1.

As to the questions and reservations noted above, the difficulty is to balance specific deficiencies against a manufacturer’s participation in a program that (as describe below) offers

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<sup>1</sup> 15 U.S.C. § 2301 et seq.

<sup>2</sup> 16 C.F.R. § 703.

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

<sup>4</sup> 16 C.F.R. § 703.6.

substantial benefit to consumers. On balance, the auditor has determined that no deficiencies warrant more than a “noteworthy” (and sometimes ongoing) reservation on this year’s overall finding of substantial compliance. But, particularly in the absence of mitigating factors, the question becomes closer each year.

- For the Federal audit, noteworthy (and previously highlighted) concerns involve FTC Rule 703.2(e), which requires manufacturers, when deciding matters submitted for their review, to provide consumers with information about BBB AUTO LINE.<sup>5</sup> BMW, Ferrari, Kia, Maserati, and Mercedes didn’t submit materials showing compliance with the rule.
- Since Florida and Ohio to some extent incorporate federal standards,<sup>6</sup> issues under the Federal audit could also impact state audits for certified manufacturers. Beyond that, the most noteworthy state-specific concerns are the failure by Kia and Mazda to show compliance with Ohio-specific disclosure mandates,<sup>7</sup> and a Florida-specific concern involving Bentley.<sup>8</sup>

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The auditor also notes that (as explained in greater detail below) he construes disclosures about the program in a warranty manual, supplemented by compliance with Rule 703.2(e), as sufficient, in and of themselves, to substantially comply with a requirement that manufacturers take reasonable steps to alert consumers to the program when a warranty dispute arises. However, the FTC may well have contemplated more (although it seemed to set a low threshold as to how much more might be needed),<sup>9</sup> so the auditor provides details about other steps that manufacturers have taken. Thus, regulators will have these facts to make their own assessment if they disagree with the auditor’s premise.

Also, on a question that goes to the extent to which FTC Rule 703.2 has *any* applicability

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<sup>5</sup> Among the reasons the auditor has particularly highlighted s Rule 703.2(e), previously and in the current audit, are the provision’s potential utility, the ongoing nature of the problem, and his specific mandate under FTC Rule 703.7(b)(1). Rule 703.7(b)(1) expressly requires the auditor to examine compliance with Rule 703.2(d) (informing consumer about BBB AUTO LINE when “consumers experience warranty disputes”), and, as explained below, the auditor treats compliance with subsection 703.2(e) as one aspect of compliance with subsection (d).

<sup>6</sup> OHIO REVISED CODE § 1345.77; FLA. STAT. § 681.108(1).

<sup>7</sup> While the auditor has noted the Ohio-specific issue in the past, he hasn’t highlighted it to the same extent that he highlighted the Rule 703.2(e) issue noted above.

<sup>8</sup> See Chapter 1, Section V.B.

<sup>9</sup> See Ch. 1, Sec. II.A.3.

to certain manufacturers, the auditor previously concluded that the better view is that manufacturers are subject to the “warrantor” provisions only if they require prior resort, although he tempered the conclusion with an element of uncertainty and, consistent with language in last year’s audit, manufacturers who didn’t require prior resort were invited to provide materials that would be “responsive” if a regulator disagreed with his interpretation.<sup>10</sup>

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While this audit includes some recommendations, and while some findings of substantial compliance are qualified by questions or reservations, including noteworthy reservations, it is 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 consumers accept the results that they are bound, and, by virtue of the consumer’s decision, the manufacturers are bound as well.

Also, the results of the program are impressive. For example:

- Using CBBB’s national figures), BBB AUTO LINE processed 4288 complaints in 2018 that weren’t rejected as ineligible at the outset or subsequently withdrawn.<sup>11</sup> Of these, 64.7% were resolved (at least initially) through mediation. Mediated settlements didn’t all result in satisfied consumers in the first instance; some consumers are satisfied only after further proceedings and some are never satisfied. But some 1311 complaints, about 30.6% 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 468 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 468 represent 30.9% of arbitrated cases and 10.9% 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, 41.4% of these complaints led to repurchase or replacement settlements or awards through the program, and they did so far more often through mediation than arbitration.
- From a multi-year perspective, results in arbitrated cases have stayed relatively consistent over the past few years. Consumers’ overall success rates have risen, though, because they have fared better in mediation

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<sup>10</sup> This year, Subaru determined, in accordance with this “better view,” not to provide responsive materials. Volvo did provide some materials, but those materials neither showed compliance with Rule 703.2 nor referenced prior resort; thus, it appears that Volvo may also be relying on the “better view.”

<sup>11</sup> These numbers draw on the “A1” figures in Tables III-5, III-7, III-9, and III-11.

This doesn't mean that the process is a slam-dunk for consumers. 860 complaints nationally, 56.7% of those that went to arbitration, resulted in no award for the consumer. But at least equally 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 41.4% figure for repurchase and replacement remedies, and the remaining consumers who got some other remedy, this suggests a fair and well-balanced program.<sup>12</sup>

As a gloss on the above statistics, Chapters III.G, IV.G, and V.G compare the results in cases brought by attorneys (including roughly 14.6% of all cases from across the country) to cases where consumers didn't have lawyers. Among other findings, the auditor found that a disproportionate amount of this year's improvement in consumer fortune under the program came from cases brought by attorneys.

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The audit provision of Federal law (Florida and Ohio have similar provisions<sup>13</sup>) 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

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<sup>12</sup> The other remedies generally included extended service plans, reimbursement of past repair expenses, 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 discussion of the issues posed by repair remedies appears at Ch. 2, Section II.C.

<sup>13</sup> FLA STAT. § 681.108(4); OHIO ADMIN CODE § 109:4-4-04(E).

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. The primary (though not exclusive) focus in Chapter 2 involves questions about the program’s operation; the primary (though not exclusive) focus in Chapter 3 involves questions about its record-keeping.

In undertaking this audit, the auditor has worked with TechnoMetrica Market Intelligence (and obtained insights from the CBBB) 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 175 individual case files and, as last year, the auditor used survey results to target specific files that were most likely, if underlying problems existed, to reveal them.

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 often the key to parts of Chapter 3. Even with 407 “national” interviews and 614 for all three populations,<sup>14</sup> some questions were inevitably directed to a relatively small subset of the total – leading to relatively large margins of error.<sup>15</sup> 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

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<sup>14</sup> This adjusts for 22 Ohio consumers who, for reasons discussed in Chapter 3, were included in both the national and Ohio populations.

<sup>15</sup> For example, in the Ohio survey, only 17 consumers were asked the questions targeted for consumers who used arbitration.

showing the rate of concordance, together with targeted reviews of seemingly discordant files – enables a pointed analysis even on “small-number” questions.<sup>16</sup>

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<sup>16</sup> 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. Local BBB offices provide an important service for consumers who use BBB AUTO LINE, insofar as these offices are widely distributed through the country and provide reasonably local venues for arbitration hearings. Further, their staffs help facilitate the conduct of hearings. Except for Clearwater, though, their role is essentially limited to providing venues for hearings and facilitating them. Given BBB AUTO LINE’s centralized recordkeeping and complaint handling processes, the availability of recordings from arbitrations, and difficulties in scheduling out-of-state visits to coincide with hearings, the auditor visited only the Clearwater office in 2015, and since then dealt with even that office solely by phone conversations.

As to the difficulty of scheduling visits to coincide with a hearing, there were, for example, 63 in-persons arbitration hearings in Ohio in 2018 – fewer than six per month – and these were spread among eight local offices. Hearings aren’t scheduled far in advance, and those that are scheduled can settle at the last minute – as happened with one hearing that the auditor hoped to attend in Clearwater during the 2015 audit. Indeed, though the auditor’s predecessor visited Ohio for the 2014 audit, no hearing took place during the visit.



**CHAPTER 1:  
MANUFACTURER  
WARRANTY MATERIALS**

## **I. Introduction**

As noted above, the auditor finds, for 2018, that fifteen manufacturers are substantially compliant with their disclosure obligations, although with reservations and questions for most and noteworthy (and sometimes ongoing) reservations for some. 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.<sup>17</sup>

However, as in prior years, the auditor notes several areas where there were deficiencies (some clearer than others); further, in the 2016 audit, he began to add to the manufacturer-specific charts reservations or questions, keyed to specific subsections of the rule, to his findings of substantial compliance. Particularly where those concerns involve unambiguous problems that have yet to be addressed, the auditor's concerns are heightened by the passage of time. As noted above, the auditor's biggest concern in this regard involves the continued failure of some manufacturers to submit materials addressing compliance with a clear and potentially quite useful mandate in FTC Rule 703.2(e). That provision requires manufacturers, when disputes are submitted directly to them, to tell consumers about BBB AUTO LINE when they tell consumers their decisions.

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

### **A. FTC Rule 703.2**

The core of FTC Rule 703.2,<sup>18</sup> a rule that was issued pursuant to the consumer product warranty provisions of the Magnuson-Moss Warranty – Federal Trade Commission Improvement Act,<sup>19</sup> appears in Rule 703.2(a). Manufacturers can insist that consumers use an alternative dispute resolution mechanism 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 provides no procedure whereby the FTC gives advance approval – or “certification” – for a manufacturer to insist on prior resort.<sup>20</sup>

The rest of Rule 703.2 focuses on the obligations of warrantors. Rules 703.2(b) through

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<sup>17</sup> Additionally, the audit didn't reach review materials for Honda. Honda last made BBB AUTO LINE available for the 2012 model year and stopped all participation in the program in April 2018.

<sup>18</sup> 16 C.F.R. § 703.2.

<sup>19</sup> 15 U.S.C. § 2301 *et seq.* (“Magnuson-Moss Act”). The provisions governing informal dispute resolution mechanisms appear in section 2310.

<sup>20</sup> The Commission declined to create such a process. 64 Fed. Reg. 19700, 19707-08 (1999).

(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,<sup>21</sup> they're the primary focus of the auditor's review of 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, in the warranty itself.<sup>22</sup>

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<sup>21</sup> 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.

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 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."

<sup>22</sup> 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:

(2) Rule 703.2(d) requires manufacturers to take “reasonable steps to make consumers aware” of the program when consumers “experience warranty disputes.”<sup>23</sup>

(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.<sup>24</sup>

Most of the auditor’s analysis of manufacturers’ compliance appears in a chart below, a lightly revised version of the chart included with last year’s audit. Before turning to the chart, though, the auditor addresses a few issues.

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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.

<sup>23</sup> An evaluation of warrantors’ efforts in this regard is a mandatory component of this audit. Rule 703.7(b)(1).

<sup>24</sup> For a discussion of how these provisions interact with state laws, see Ch. 1, Section II.A.4.

## 1. Application of Warrantor Provisions to Warrantors That Don't Require Prior Resort

Does Rule 703.2 apply to warrantors who don't require prior resort to BBB AUTO LINE before consumers pursue other rights and remedies under the Act? As the auditor concluded previously, the better (but not entirely clear) answer is no.

The Magnuson-Moss Act, which broadly defines a “warrantor,”<sup>25</sup> seems to key warrantors' obligations to their insisting on prior resort.<sup>26</sup> Most importantly, though, limiting language in Section 2310(a)(4)<sup>27</sup> authorizes the Commission to:

*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.*

(Emphasis added.)

While the matter is a bit muddled by a second enforcement provision (Section 2310(b)) that

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<sup>25</sup> 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.”

<sup>26</sup> 15 U.S.C. § 2310(a)(1)(3) provides:

One or more warrantors may establish an informal dispute settlement procedure which meets the requirements of the Commission's rules . . . . 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) [language applicable to class actions].

<sup>27</sup> 15 U.S.C. § 2310(a)(1)(4).

doesn't include "prior resort" language,<sup>28</sup> the quoted text seems to contemplate that the FTC will oversee only "mechanisms" to which a manufacturer requires prior resort. And this suggests that, if some manufacturers require prior resort to a particular mechanism and others don't, the FTC will oversee under Rule 703.2 (and the auditor's oversight will similarly extend to) only those that do.

Consistent with this reading of the statute, Rule 703.1 intertwines its definition of a "warrantor"<sup>29</sup> with that for a "mechanism."<sup>30</sup> Also, Rule 703.2(a) provides 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 the 1975 Federal Register notice limits the "obligation to disclose minimal information about the availability of an informal dispute mechanism" to warrantors "incorporating a complying Mechanism into a written warranty."<sup>31</sup>

There could well be sound reasons why a participating manufacturer needn't be subject to all of the Rule's mandates and prohibitions if it doesn't require prior resort. For example, if a manufacturer offers a dispute settlement program that's optional to the consumer,<sup>32</sup> it doesn't seem unreasonable that it might (despite Rule 703.2(d)) insist that consumers use its internal review processes before advancing to dispute resolution. While the matter isn't certain,<sup>33</sup>

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<sup>28</sup> 15 U.S.C. § 2310(b) provides:

It shall be a violation of section 45(a)(1) of this title [the prohibition on unfair or deceptive acts or practices] 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 prohibition contained in this chapter (or a rule thereunder).

<sup>29</sup> Rule 703.1(d), which defines the term more narrowly than does the statute, provides:

Warrantor means any person who gives or offers to give a written warranty which incorporates an informal dispute settlement mechanism.

<sup>30</sup> Rule 703.1(e) provides:

Mechanism means an informal dispute settlement procedure which is incorporated into the terms of a written warranty to which any provision of Title I of the Act applies, as provided in section 110 of the Act, 15 U.S.C. 2310.

<sup>31</sup> 40 Fed. Reg. 60190, 60193 (1975).

<sup>32</sup> That is, the consumer suffers no legal consequences if she bypasses dispute resolution, but can go directly to court. Also, if she goes to arbitration and doesn't like the results, she's free to reject them.

<sup>33</sup> For example, the auditor has already noted that Section 2310(b) of the Act could provide a statutory basis for enforcing Rule 703.2 against warrantors whether or not they require prior resort. At that point, there's an argument that the Commission intended to use such authority and preclude

therefore, the auditor believes the better view is that Rule 703.2 doesn't apply to warrantors unless they require prior resort. In soliciting materials this year, manufacturers were told that they "may" not be subject to the Federal audit if they didn't require prior resort, and provided the full analysis in last year's report. The decision of how to proceed was left to each manufacturer.

Similarly, except to the extent that manufacturers were certified in Florida and Ohio, they don't appear to be subject to state-specific audits and, consistent with his own past practice and that of his predecessor, the auditor hasn't undertaken such an audit.<sup>34</sup>

## 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 a dispute 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

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manufacturers, even those who don't require prior resort, from offering *any* noncomplying dispute resolution program. The language of Rule 703.2(a) could be read that way. ("The 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 the prior resort language of the statute and rules (together with the applicable definitions) could be read to create a prior resort provision that's independent of the question of whether warrantors must comply with the rule. When Rule 703.2(b)(3) requires manufacturers to include in the warranty "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; . . .", the language arguably leaves open the possibility that a manufacturer could be subject to the rule even if it didn't impose such a requirement. Further, as a matter of policy, the argument that manufacturers should only be able to offer a complying mechanism isn't untenable. For example, the Commission might have wanted to hold all manufacturers to the provision that they actually perform "obligations" to which they've agreed during dispute settlement. Rule 703.2(f)(3).

This interpretation is also consistent with language in the Federal Register notice, which provides, for example, that "if a warrantor incorporates an informal mechanism into the terms of a warranty, then the mechanism, and its implementation, must comply with minimum requirements to be prescribed by Federal Trade Commission rules." 40 Fed. Reg. at 60191. And it would put a gloss on language from the Federal Register notice, noted above, that "those warrantors incorporating a complying Mechanism into a written warranty are required to include minimal information discussing the availability of an informal dispute settlement mechanism . . ." The gloss is that this would take on a different hue if the *only* Mechanism they could offer were a complying mechanism.

<sup>34</sup> 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.

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,<sup>35</sup> 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 arguments 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).

### **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.”<sup>36</sup> 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

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<sup>35</sup> See the discussion that immediately follows.

<sup>36</sup> 40 Fed. Reg. 60190 (1975).



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.<sup>37</sup>

Consumer-facing manuals can thus constitute, by themselves, at least a component of substantial compliance with subsection (d). This would be subject, in the auditor’s view, to a fact-specific determination concerning prominence: Would a consumer who looked at their booklet (and the accompanying glove-compartment packet) likely find the references to BBB AUTO LINE?<sup>38</sup>

However, the Commission in 1975 also seemed to contemplate that manufacturers would take further steps to supplement these manuals.<sup>39</sup> 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).<sup>40</sup> In any event, it’s 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, 34.2% cited the internet (including the BBB web site but not government web sites), a source the Commission obviously didn’t contemplate in 1975. But among those who learned of the program from a dealership or manufacturer communication, 12.2% of the national sample cited the warranty documents, but 23.3% cited manufacturers’ representatives or dealerships.<sup>41</sup> In

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<sup>37</sup> 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.

<sup>38</sup> 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”?

<sup>39</sup> 40 Fed. Reg. 60190, 60197-99 (1975).

<sup>40</sup> For example, the notice seemed to contemplate that a warrantor might meet its obligation “by participating in T.V. ‘talk’ shows or by providing materials for use by consumer columnists.” *Id.* at 60199.

<sup>41</sup> Chapter 3, Table III-4. 35.4% cited either warranty documents, communications from the manufacturer or dealer, or (for two consumers) both.

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 highly credible argument 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 Rule 703.2(d), he recognizes the argument to the contrary – which, as noted above, 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.

#### **4. Rule 703.2(e) Notice**

As noted in the introduction, the auditor is particularly concerned with the failure by some manufacturers to submit materials bearing on compliance with Rule 703.2(e), which 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 submitted to it.<sup>42</sup> This issue has been highlighted by the auditor in past audits, and all manufacturers audited this year have received at least two of these.<sup>43</sup> Further, manufacturers have been invited to submit, for the auditor's consideration, even materials that they began to use after the audit year ended, and even to advise if they intend to take steps in the future to address

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<sup>42</sup> 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).

<sup>43</sup> Manufacturers are routinely sent the latest completed audit when asked for submissions for the next year's audit.

past problems.

Some manufacturers this year did submit, for the first time, materials or information addressing compliance with subsection (e). Among these, two advised that they communicate the results of their internal reviews to consumers orally, and during the discussion, the consumers are also told about BBB AUTO LINE and referred to the warranty manual for details. This was a novel response in the auditor's experience, but, since nothing in the rule requires that the underlying communications be in writing, the auditor believes that oral communications can satisfy the rule – although he would prefer that any manufacturers relying on oral communications provide (as one did this year) some detail about how the policy is communicated to their own staffs.

Also, some manufacturers apparently tell consumers about BBB AUTO LINE when the consumer first files a complaint with the manufacturer. This could certainly be helpful to consumers, and it's relevant to compliance with Rule 703.2(d), but it's not a true substitute for complying with subsection (e). On the other hand, to the extent a finding of substantial compliance is potentially in jeopardy, this "on-receipt" notice would seem to be a mitigating factor.

Finally, as with the manufacturers who communicate the results of their internal review orally, some manufacturers who provide written notice don't include in that notice all the information required by the rule, but rather tell consumers about BBB AUTO LINE, provide contact information, and direct them for detail to other sources, such as warranty materials or the BBB AUTO LINE web site, that are presumably readily available to most. To the extent the materials cited are readily available, the auditor treats this as a warranting only a "question," and not a noteworthy reservation, on his findings of substantial compliance.

What of the manufacturers who haven't provided any indication of compliance – even the "on-receipt" notification discussed above? As noted above, it's difficult to balance a single deficiency against a manufacturer's participation in a program that (as discussed below) offers substantial benefit to consumers. And, indeed, for consumers who don't submit their claims to the manufacturer for review, Rule 703.2(e) is essentially irrelevant. After some reflection, therefore, the auditor has concluded that the balance still requires no more than a noteworthy and (sometimes) ongoing reservation at this point. Still, a reasonable argument could be made that manufacturers aren't in substantial compliance (and thus shouldn't benefit from prior resort provisions) if, absent mitigating circumstances, they don't even mention BBB AUTO LINE, much less provide contact information and other detail required by the rule, when they tell the consumers their decisions in disputes submitted directly to them.

## **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.”
- But the rule also *forbids*, for purposes of Magnuson-Moss Act relief, “expressly requir[ing] consumers to seek redress directly from the warrantor.”
- State lemon laws, meanwhile, sometimes *require* (or allow manufacturers to require) a species of such resort, in providing for notice to manufacturers and a final repair opportunity before consumers can pursue remedies (or benefit from presumptions) under a state’s lemon law. Florida, for example, has such a requirement.<sup>44</sup>
- But not all state laws take this approach. Indeed, Ohio doesn’t require notice and a final repair attempt, but rather expands on the prohibition in Rule 703.2(d); it requires a clear and conspicuous disclosure that the manufacturer’s process is optional and can be terminated at any time by either party.<sup>45</sup>

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.<sup>46</sup> But at the dealership level, even if only a single state law is

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<sup>44</sup> The Florida 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 this subsection, the requirement that the manufacturer be given a final attempt to cure the nonconformity does not apply.

<sup>45</sup> OHIO ADMIN CODE §109:4-4-03(E)(1). The provision is discussed in more detail in Section IV of this chapter.

<sup>46</sup> 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

involved, it's not clear to the auditor that it's reasonable to expect a typical employee to meaningfully convey all these nuances orally.<sup>47</sup>

## 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,<sup>48</sup> 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.<sup>49</sup>

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 "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,<sup>50</sup> 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.<sup>51</sup>

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

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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.

<sup>47</sup> 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.

<sup>48</sup> The summaries are all within a few links of <https://www.bbb.org/autoline/bbb-auto-line-process/participating-auto-manufacturers/>.

<sup>49</sup> 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.

<sup>50</sup> 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").

<sup>51</sup> If they raised such a challenge, it would presumably fail.

warranty manuals require prior resort under Magnuson-Moss) to provide for warranty coverage coextensive with the qualifying standards for 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.

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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,<sup>52</sup> and characterized such programs as “a warrantor’s opportunity to cure a possible breach of warranty.”<sup>53</sup> The staff advised that the Act shouldn’t be 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.”<sup>54</sup>

The opinion identified, as remedies that didn’t have to be made available, “consequential damages, diminution of value, attorney’s fees and costs”<sup>55</sup> – a list that didn’t include repurchase

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<sup>52</sup> 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.

<sup>53</sup> *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 which the manufacturers aren’t bound even if the consumers accepted the results.

<sup>54</sup> Advisory Opinion, at 2.

<sup>55</sup> 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)

(refund)<sup>56</sup> or replacement remedies. These remedies *typically* aren't available under a manufacturer's written warranty and *sometimes* (at least today<sup>57</sup>) 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. The opinion explained that the Magnuson-Moss Act allowed warrantors to offer a "full warranty," whose terms, defined by the Act,<sup>58</sup> *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."<sup>59</sup> 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 at least a contrary argument that these remedies were neither the focus of the decision nor directly addressed by it.<sup>60</sup>

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

Disclosures prescribed by Rule 703.2(b)<sup>61</sup> need to be made both "on the face of the

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that's within the specific examples under the rule.

<sup>56</sup> 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.

<sup>57</sup> 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. The program summaries for manufacturers who don't offer these remedies are all dated after the advisory opinion.

<sup>58</sup> 15 U.S.C. § 2304.

<sup>59</sup> Advisory Opinion, at 5.

<sup>60</sup> As pointed out above, see note 57, the auditor hasn't been able to ascertain if this would have been an issue at the time of the advisory opinion, because he isn't certain if any manufacturers at the time excluded such relief while requiring prior resort under Magnuson-Moss. Further, it's at least possible that the FTC assumed that manufacturers did routinely offer such relief.

<sup>61</sup> The text is quoted in note 22.

warranty” and “clearly and conspicuously.” As first noted in the 2017 audit, 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 (both required by Rule 703.2(b)) 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 that arise 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,” in other words, 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 “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.<sup>62</sup> 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 do 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.<sup>63</sup> (Moreover, in at least some manuals, the description of BBB AUTO LINE is preceded by a discussion of the manufacturer’s internal review process, and a description of the relevant information may appear in *that* discussion.)
- ***Raising the bar.*** The auditor has “raised the bar” as certain reservations have been highlighted to manufacturers (through copies of past audits), so they were clearly aware of issues that the auditor has been examining.

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<sup>62</sup> Perhaps the second page is even the facing page, visible together with the first page when the consumer reads the manual.

<sup>63</sup> 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 retain them to have documentation 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**

<b>TEXT CONTENT</b>	
<b>1. Disclosures under Rule 703.2(b) and (c)</b>	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.)
<b>2. Prohibition on “expressly requiring” use of manufacturer’s internal processes before using the program. Rule 703.2(d)</b>	Some texts describe the manufacturer’s internal review procedures, and then use language to the effect that BBB AUTO LINE is available if other efforts have failed. Such language raises significant concerns about whether the text “expressly requires” consumers to use the earlier processes first. (Question, whose substantiality depends on specific facts.)
<b>TEXT PLACEMENT AND PROMINENCE</b>	
<b>3. Specific information required by Rule 703.2(b)</b>	<p>When a warranty appears in a manual (as it routinely does), information required by Rule 703.2(b) should appear on the first page of the separate warranty manual or, when it appears as part of a longer manual, the first page of the warranty text. (See Rules 703.1(h)(2) and 703.2(b).) Some manufacturers properly place most of the required information, but delay the description of prior resort requirements (whose disclosure is required by Rule 703.2(b)(3)). (Reservation.)</p> <p>Additionally, the rule requires that disclosures 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.</p>
<b>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)</b>	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 findings 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 generally based on language in one or more manuals.

**(1) Optional nature of mediation within the program.** Contrary to language in some warranty booklets, consumers aren't required to use BBB AUTO LINE's mediation services before they can use arbitration. Such mischaracterizations, however, should be quickly clarified when a consumer contacts BBB AUTO LINE; they are addressed, for example, in the pamphlet consumers are sent describing how BBB AUTO LINE works.

**(2) "Agree with mediated solution" text.** Several manuals tell consumers that arbitration can follow if they don't "agree with a mediated solution." Although the phrase is typically preceded by a reference to a "mutually agreeable resolution," it's at best imprecise – there can't be a mediated solution unless consumers agree with it. And it could potentially create some problems if it confuses consumers about the nature of mediation, perhaps by suggesting that BBB AUTO LINE staff might negotiate a mediated solution for them.

**(3) The Magnuson-Moss Act and prior resort.** Contrary to some language in warranty booklets, 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.

### III. Obligations under Florida Provisions

Preliminarily, Florida has a Lemon Law<sup>64</sup> 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.<sup>65</sup> 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<sup>66</sup>:

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).

The applicable Federal regulations in many respects create a framework on which state regulation builds.<sup>67</sup> However, the Florida Lemon Law, like other states' lemon laws, contains

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<sup>64</sup> FLA. STAT. § 681.

<sup>65</sup> See [https://www.flrules.org/Gateway/View\\_notice.asp?id=14913185](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).

<sup>66</sup> <http://myfloridalegal.com/pages.nsf/Main/7629400e4ef8a25285256cc9005c5a5b>. The auditor has examined this page (and its predecessors) in prior years as well. After receiving various submissions from the CBBB (including the annual audits prepared by the current auditor and his predecessor), the state has been issuing six-month provisional certifications; these covered 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").

<sup>67</sup> 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](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).

important provisions that don't appear in the federal law. Like other states, for example, Florida specifies the number of repair attempts, and the time a vehicle can be out of service, before the lemon law imposes a presumption of a reasonable number of repair attempts.<sup>68</sup> 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.<sup>69</sup> 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,<sup>70</sup> and also as a predicate to use a state-run arbitration program administered by Florida's New Motor Vehicle Arbitration Board.<sup>71</sup>

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.<sup>72</sup> 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.<sup>73</sup> For purposes of this audit, the auditor assumes that the

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<sup>68</sup> 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.

<sup>69</sup> FLA STAT. § 681.104(1)(a) and (b).

<sup>70</sup> *Id.* at § 681.108(1) (limiting application of provisions of section 681.104(2)).

<sup>71</sup> *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.”).

<sup>72</sup> *Id.* at § 681.103(3).

<sup>73</sup> 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 law 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.

“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 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).<sup>74</sup>

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.<sup>75</sup> 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.<sup>76</sup>

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.<sup>77</sup> This information appears in the above-referenced booklet prepared by the state.

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<sup>74</sup> 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.

<sup>75</sup> FLA STAT. § 681.103(2), (3).

<sup>76</sup> Former Rule 5J-11.006(2)(e).

<sup>77</sup> Former Rule 5J-11.004.

#### IV. Obligations under Ohio Provisions

The following manufacturers were certified to use BBB AUTO LINE in Ohio for at least part of 2018:

1. American Honda Motor Company, Inc. (Honda/Acura)<sup>78</sup>
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)

Again, the applicable Federal regulations in many respects create a framework on which state regulation builds,<sup>79</sup> and Ohio law tracks essential aspects of the applicable federal provisions. But Ohio law also includes additional substantive provisions and imposes additional disclosure obligations, both minor<sup>80</sup> and more substantial.

Thus, the Ohio Code requires a written disclosure about lemon law rights generally, and the disclosure must be made in prescribed form and on a “separate sheet of paper.”<sup>81</sup> Ohio also requires that decisions of a “board” like BBB AUTO LINE *must* bind the warrantor<sup>82</sup> (and manufacturers participating in BBB agree to be thus bound even where it’s not required by state law.)

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<sup>78</sup> Honda stopped participating in April (and last made BBB AUTO LINE available for the 2012 model year).

<sup>79</sup> See note 67.

<sup>80</sup> 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).

<sup>81</sup> 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.**

<sup>82</sup> OHIO ADMINISTRATIVE CODE § 109:4-4-03(F)(3).



As to prior resort, while Ohio and federal law both allow manufacturers to insist on prior resort if they have an arbitration program, Ohio requires the manufacturer 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 receives prior notice.<sup>83</sup>

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 the rule 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.<sup>84</sup>

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<sup>83</sup> OHIO REVISED CODE § 1345.77(B) provides:

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.

<sup>84</sup> 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

Taken together, these provisions appear to require

- Disclosure 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).<sup>85</sup>
- Disclosure on a separate sheet of paper of a prescribed statement with basic information about the Ohio lemon law.<sup>86</sup>
- 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.”<sup>87</sup> 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

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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 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.

<sup>85</sup> OHIO ADMINISTRATIVE CODE § 109:4-4-03(C)(1), (2), and (4).

<sup>86</sup> OHIO REVISED CODE § 1345.74(A).

<sup>87</sup> OHIO ADMINISTRATIVE CODE § 109:4-4-03(E)(1). The FTC declined to adopt a similar provision. 40 Fed. Reg. at 60199 (1975).

receives notification of the dispute.”<sup>88</sup> The rule doesn’t specify where these disclosures need be clearly and conspicuously made.<sup>89</sup>

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Ohio’s statutory and regulatory requirements are often quite explicit and detailed, although not without some complexity. Further, as to those disclosures addressing the basic availability of BBB AUTO LINE, Ohio’s audit requirement, paralleling its federal counterpart, specifically focuses on an “[e]valuation of warrantor's efforts to make consumers aware of the board's existence as required by paragraph (E) of rule 109:4-4-03 of the Administrative Code.”<sup>90</sup> Yet several manufacturers have provided no evidence of compliance with any of Ohio’s detailed requirements to accomplish such disclosure, and particularly the requirements for disclosures on signs about the availability of the program. Further, though not among the specified mandatory portions of the audit, several manufacturers have failed to show evidence of compliance with the “separate sheet” requirements – for disclosure about lemon law rights generally or prior resort provisions applicable to BBB AUTO LINE – that the auditor has noted in multiple past reports.

What of manufacturers who don’t show evidence of such compliance? As the auditor noted in Section A.4, it’s difficult to balance some deficiencies against a manufacturer’s participation in a program that (as discussed below) offers substantial benefit to consumers. Further, while the auditor has noted deficiencies respecting these provisions previously, he hasn’t highlighted these deficiencies to the same extent as he did for deficiencies under Federal Rule 703.2(e). After some reflection, therefore, the auditor has concluded that the balance still requires no more than a noteworthy and (sometimes) ongoing reservation at this point.

As with Rule 703.2(e), though, if the manufacturer’s overall substantial compliance is deemed to be in jeopardy, there may be mitigating circumstances. For example, what if a manufacture complied with the requirements above except that, in lieu of a separate form, it made the “separate form” disclosures in a dispute resolution supplement that includes detailed state-by-state information about each state’s lemon laws? Assuming that the supplement is sufficiently prominent, perhaps the consumer might be more likely to retain it (together with her other manuals) than she is to retain a separate form. In the auditor’s view, this substitution warrants only a “question.” Still, the auditor explains where such circumstances arise, in the event a regulator disagrees.

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<sup>88</sup> OHIO ADMINISTRATIVE CODE § 109:4-4-03(E)(2).

<sup>89</sup> 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.

<sup>90</sup> OHIO ADMINISTRATIVE CODE § 109:4-4-04(E)(2)(a).

## **V. Audit results**

### **A. Introductory Observations and Summary of Findings**

#### **1. Summary of Findings.**

Seventeen firms were contacted this year, including all firms certified in Florida or in Ohio.

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

The firms not in this list include Volvo (which provided limited materials that don't show substantial compliance, but that also suggest that Volvo doesn't require prior resort and doesn't appear subject to the audit);<sup>91</sup> and Subaru, which advised that they don't require prior resort and declined to submit responsive materials.<sup>92</sup> The auditor also has a unique, Florida-specific concern as to Bentley, and he notes geographical limits on his findings of substantial compliance by Mercedes with Magnuson-Moss requirements.

Further, the auditor notes noteworthy reservations, by virtue of failure to show compliance with Federal Rule 703.2(e), for BMW, Ferrari, Kia, Maserati, and Mercedes. To the extent that Florida and Ohio incorporate the Federal rule, these noteworthy and sometimes ongoing reservations would apply to those states as well. Additionally, the auditor notes further noteworthy and ongoing reservations as to Ohio-specific requirements for Kia and Mazda, although these bear on disclosures that the auditor hasn't highlighted as strongly in prior audits.

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<sup>91</sup> Volvo participates only in Arkansas, Idaho, Kentucky, and Minnesota. It provided a warranty supplement this year that describes state lemon laws, but doesn't mention the Magnuson-Moss Act or BBB AUTO LINE. It didn't provide a copy of a warranty manual, and the auditor assumes that Volvo 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. Basically, with no reference to prior resort, BBB AUTO LINE, or the Magnuson-Moss Act, there's nothing more to say in the audit.

<sup>92</sup> 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 CBBB, 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.

## 2. Manufacturer Submissions

The conclusions in the charts that follow are based primarily on manufacturer submissions, including consumer-facing materials and internal materials.

The charts themselves focus on consumer-facing materials, primarily warranty or owner's manuals.<sup>93</sup> (Most submissions were consumer-facing.) In reviewing non-consumer-facing materials, such as training materials or dealer's manuals, the auditor's initial screen was on whether they describe the program in a way that might provide recipients with information that they in turn might pass along to consumers.<sup>94</sup> Of particular interest to the auditor were passages that describe *when* consumers should be told about BBB AUTO LINE. To the extent that the materials provided information that might be conveyed to consumers, directly or indirectly, the auditor also reviewed them for substantive accuracy.

## 3. Survey Results and Other Sources

For purposes of the manufacturer-specific audits that are the subject of this chapter, the auditor derived some insights from the consumer survey discussed in Chapter 3. In a change from last year (when consumers were asked how they *first* learned of the program), this year they were asked "How did you find out that you could file a complaint with BBB AUTO LINE?" The new text was conducive to multiple responses and, where a consumer gave more than one response, the interviewer recorded them all. Specifically, the interviewer placed them into one of nine specific "silos," silos that have been refined and expanded a bit to reflect past results. If a response didn't fit into a silo, the interviewer recorded "other," and then noted the specific response that the consumer gave.

The categories included "Manufacturer Materials/other warranty documents," and 14.5% of the consumers in the national survey gave an answer along these lines. Another category was

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<sup>93</sup> Many manufacturers submitted multiple manuals this year. In general, the auditor focused primarily on a single manual, which for most manufacturers was a standalone warranty document; where there was a stand-alone warranty document, though, the auditor also searched an owner's manual (if provided) for references to BBB AUTO LINE, and examined those as well. Some manufacturers also submitted a detailed supplement, with state-by-state breakouts, that they provided to consumers as well. In these, the auditor reviewed the general information with nationwide applicability, as well as the state-specific information for Florida and Ohio. Manufacturers typically included California-specific sections in their "core" warranty manual; the auditor examined these as well, but only for compliance with Federal standards. When manufacturers submitted multiple service manuals for different models or model years, the auditor generally focused on one from the most recent year. However, he also sampled some others (particularly those with a substantially different file size) to confirm that they took essentially the same approach; if they didn't, the chart focuses on multiple manuals for the same manufacturer.

<sup>94</sup> 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."

“Dealer or manufacturer representative,” and 23.7% gave a response in this category. 38.2% of consumers gave one or the other of these answers.<sup>95</sup>

This analysis didn’t necessarily identify all firms with relatively effective notification programs through dealers and manufacturer representatives. For example, for firms with lower shares of the U.S. market, the survey might not have picked enough consumers to provide useful information.<sup>96</sup> Also, the auditor can’t dismiss the possibility the consumers of certain manufacturers’ cars are more likely to turn to certain resource (like warranty manuals) when they experience problems, although the auditor can’t see a practical way to measure this. The auditor therefore hesitates to draw wide-ranging conclusions when this limited analysis *doesn’t* show an above-average performance, but he does note, on the charts that follow, firms with above-average results. Interestingly, some firms for which the survey found good numbers didn’t submit any training materials, dealer’s manuals, or comparable materials. In other words, for some firms it’s not clear *what* they’re doing to disseminate this information about BBB AUTO LINE, but it seems they’re doing something right.

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<sup>95</sup> No consumer in the national sample gave both answers.

<sup>96</sup> The auditor used numbers from the Wall Street Journal that include sales through April 2018. [http://www.wsj.com/mdc/public/page/2\\_3022-autosales.html#autosales](http://www.wsj.com/mdc/public/page/2_3022-autosales.html#autosales). When market shares are sufficiently small, there’s a chance that a process that included 407 completed interviews might not reach *any* consumers for some manufacturers.

**B. Bentley Motors, Inc.**

Bentley participates in all states and is certified in Florida (though not Ohio). It's therefore subject to the national and Florida audits.

**1. Consumer-Facing Materials**

Bentley's newly submitted materials included 2019 Owner's Handbooks for Bentleyga and Mulsanne; it has now transitioned to a single manual approach in which warranty (and dispute resolution) information appears towards the end of an extended manual. The numbering above refers to pagination in the Mulsanne manual.

<i>Federal Disclosure Provisions</i>	
(1) Rule 703.2 (b) (and Rule 703.1(h) to define "the face of the warranty").	The "WARRANTY AND SERVICE" section begins on page 369. The first reference to BBB AUTO LINE is on page 372, in a section on "Bentley corporate assistance." A further subheading of "New vehicle limited warranty" starts on page 373, and includes most of the information required by subsection (b), except for a cross reference to the fuller discussion that follows on page 382. (Reservation)  The auditor believes it to be reasonable (although not entirely beyond doubt) to consider page 372 to be the first page (the "face") of the warranty itself, and thus to satisfy the placement requirement.
(2) Rule 703.2(c)	Bentley provides the required information. <sup>97</sup>

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<sup>97</sup> On some technical matters that the auditor doesn't believe merit a question or reservation, Bentley materials don't consistently make clear the optional nature of mediation, and they sometimes use problematic text about "agree[ing]" with a mediated solution. See Section II.B of this chapter, Notes to Table 1.

Also, Bentley's program summary speaks of warranty claims but essentially applies lemon law standards; the program extends to "certain warranty claims covered by the applicable state lemon law," with specific exclusions set forth in the program guide. (See Section II.A.6 of this chapter for a discussion of such limits.) The manual signals some but not all of these limitations by noting narrowly that "some vehicle age and mileage" provisions limit availability; that text might be broadened.

<p>(3) Rule 703.2(d) – Prominence of disclosures to alert consumers to the existence of BBB AUTO LINE, including placement of the text and references in the table of contents.</p>	<p>Bentley’s apparent compliance with Rule 704.2(e), discussed below, is a factor in assessing compliance with Rule 703.2(d) as well. Bentley also provided templates of letters sent to consumers when they first bring their complaints to Bentley for manufacturer-level review (and <i>before</i> Bentley has decided the matter), in which consumers are told upon filing with the manufacturer about BBB AUTO LINE.</p> <p>As to disclosure before consumers contact Bentley, though, the first mention of BBB AUTO LINE is relatively late in the manual. There are references to “Consumer satisfaction and assistance” and “Consumer protection information,” in the table of contents, but they appear at the tenth page of a detailed table of contents and don’t expressly mention BBB AUTO LINE or informal dispute resolution, so these references do little to compensate for the less prominent placement. (Question.)</p>
<p>(4) Rule 703.2(d) – Expressly requires that consumers use manufacturer’s review processes before filing with BBB AUTO LINE?</p>	<p>The text indicated that BBB AUTO LINE is available if, for example, “we are unable to resolve” the issue at the manufacturer level (page 373). 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 are given when they do pursue those processes. (Question.)</p>
<p>(5) Rule 703.2(e)</p>	<p>Bentley has provided template of letters telling consumers about BBB AUTO LINE <i>both</i> when a complaint is received and when it’s resolved. While the letter will likely accomplish all that it’s supposed to accomplish, particularly because it tells consumers how to get more information, it doesn’t provide all the detail required by Rule 703.2(e). (Question.)</p>
<p><b><i>Florida Disclosure</i></b></p>	
<p>(F1) Section 681.103(3) – Clear and conspicuous disclosure of how and where to file a claim</p>	<p>For the reasons discussed in Item (3) under Federal disclosure provisions, it’s not clear that the disclosures in the manual are sufficiently clear and conspicuous. (Question).</p>
<p><i>Note on prior resort</i></p>	<p>Although Bentley notes that consumers may have to use BBB AUTO LINE under some state laws before pursuing other remedies (and advises owners “to research and follow the laws in their state”) (page 383), it also states that, except for obtaining relief under the Magnuson-Moss Act or asserting a provision under the California Civil Code, “[y]ou are not required to use BBB AUTO LINE” (page 373, 382) – a statement seemingly in tension with Florida law for certified manufacturers. (Noteworthy reservation).</p>



## **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 whether any specific triggers will prompt disclosures about BBB AUTO LINE to consumers who didn’t independently raise it, this still indicates a policy of disclosure when complaints reach the manufacturer level.

## **3. Conclusion**

Bentley is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal and Florida law, with the reservations and questions, including a noteworthy reservation specific to the Florida audit, noted above.

Based on the information described in section 2, Bentley is commended for taking additional steps, at least after the customer contacts Bentley, to alert them to BBB AUTO LINE.<sup>98</sup>

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<sup>98</sup> 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)

### 1. Consumer-Facing Materials

BMW participates in eleven states,<sup>99</sup> and in those states requires prior resort for consumers to pursue Magnuson-Moss remedies.<sup>100</sup> BMW is therefore subject to the audit requirement of Rule 703. It neither participates nor has certification in Florida or Ohio, and isn't subject to audit in those states.

Last year, BMW provided, and the auditor reviewed, manuals for BMW and Mini Cooper cars for the 2018 model year. This year, BMW advised that there were no substantial changes to the relevant materials. In the chart below, references to "BMW" 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 <i>after</i> 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. <sup>101</sup>
(3) Rule 703.2(d) – Prominence of disclosures to alert consumers to the existence of BBB AUTO LINE, including placement of the text and references in the table of contents.	The relevant (and parallel) discussions begin on page 35 of the BMW manual and page 24 of the Mini Cooper 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,)

<sup>99</sup> The states are Arkansas, California, Georgia, Kentucky, Iowa, Idaho, Massachusetts, Maryland, Minnesota, Pennsylvania, and Virginia.

<sup>100</sup> 2018 Manual, at 36.

<sup>101</sup> On a more technical matter, BMW imposes age, mileage, and other limits on the availability of the program, and doesn't signal this in their manuals. The issue is discussed generally in Section II.A.6 of this chapter.

(4) Rule 703.2(d) – Expressly requires 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)	None provided. (Noteworthy and ongoing reservation; see discussion in Section I.A.4)

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

No such materials were provided. However, based on the auditor’s review of the survey results (the nature and limitations of which are discussed in Section V.A.3 of this chapter), a relatively high percentage of BMW consumers who were surveyed learned about the program through BMW’s dealers or manufacturer representatives.

**3. Conclusion**

BMW is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal law, with the questions and reservations – including a noteworthy and ongoing reservation – that are noted above.<sup>102</sup> It appears to be making successful efforts, beyond the disclosures in the warranty manual, to alert consumers to BBB AUTO LINE’s existence.

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<sup>102</sup> 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

### 1. Consumer-Facing Materials

Ferrari participates in California and Florida, though it isn't certified in Florida. Although Ferrari was asked for materials previously, this is the first time that it's provided responsive materials. These include numerous owners' manuals and warranty manuals.

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. I
(2) Rule 703.2(c)	Except in a section directed exclusively to California, Ferrari omits most of the relevant information. Thus, the information about Magnuson-Moss remedies isn't made available to Florida consumers. (Reservation).
(3) Rule 703.2(d) – Prominence of disclosures to alert consumers to the existence of BBB AUTO LINE, including placement of the text and references in the table of contents.	A brief discussion of BBB AUTO LINE is set off in a box, and the capitalized words "BBB AUTO LINE" appears eight times within the box.
(4) Rule 703.2(d) – Expressly requires that consumers use manufacturer's review processes before filing with BBB AUTO LINE?	No.
(5) Rule 703.2(e)	None provided (Noteworthy reservation; see discussion in Section I.A.4 <sup>103</sup> ).

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<sup>103</sup> The auditor doesn't characterize the noteworthy reservation as "ongoing" because this is the first year Ferrari provided responsive materials. The auditor recognizes that this is a somewhat incongruous result, though, since he would have noted the problems previously had Ferrari responded previously.

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

None provided.

**3. Conclusion**

Ferrari is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal law, with the reservations and qualifications – including a noteworthy reservation – noted above.<sup>104</sup>

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<sup>104</sup> 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**

Ford re-submitted some previously submitted manuals, an Ohio Lemon Law notice, and a short document, titled “Ford: Our Commitment to You,” describing the BBB AUTO LINE program. This analysis also draws on the latest manuals provided during in this year’s submission: a 2018 warranty manual and 2019 owners’ manuals.

<b>Federal Disclosure Provisions</b>	
(1) Rule 703.2 (b) (and Rule 703.1(h) to define “the face of the warranty”).	<p>Ford provides the required information, but some of the information 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 the 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.</p> <p>Even that discussion, however, doesn’t include contact information or reference to prior resort, as expressly required by Rule 703.2(b). (Reservation.)</p> <p>(A discussion of prior resort does appear on page 7 of the warranty manual. There’s also a discussion of BBB AUTO LINE in the owner’s manual – which increases the likelihood that consumers will see one of the references, but isn’t relevant to Rule 703.2(b) compliance. Somewhat confusingly, though, a reference to BBB AUTO LINE in the owners’ manual (e.g., at page 212 of the Mustang manual), describes participation as an “option.” That’s at best in tension with text elsewhere requiring prior resort.)</p>
(2) Rule 703.2(c)	Ford addresses the subjects required by the rule. <sup>105</sup>

<sup>105</sup> On a more technical matter, Ford’s materials don’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. This is discussed generally in Section II.A.6 of this chapter.

<p>(3) Rule 703.2(d) – Prominence of disclosures to alert consumers to the existence of BBB AUTO LINE, including placement of the text and references in the table of contents.</p>	<p>Consumers are told that the program exists in a section at the start of the warranty manual, highlighted 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 name “BBB AUTO LINE” stands out. Further, the more extensive discussion that follows later in the manual is highlighted by a reference to “BETTER BUSINESS BUREAU (BBB) AUTO LINE PROGRAM” on the second page of the table of contents.<sup>106</sup></p> <p>Ford also provides basic information about the program in a short stand-alone document entitled “Our Commitment to You,” and, as noted above, in owner’s manuals.</p>
<p>(4) Rule 703.2(d) – Expressly requires that consumers use manufacturer’s review processes before filing with BBB AUTO LINE?</p>	<p>Ford’s text indicates, in potentially problematic language for a Magnuson-Moss analysis, that BBB AUTO LINE may be available “if” internal procedures haven’t resolved the issue. (Question.)</p>
<p>(5) Rule 703.2(e) notice</p>	<p>Ford advised this year that consumers are told orally about the results of its internal review, and are further told during that discussion about BBB AUTO LINE and referred to the owners and warranty manuals for further information. While that auditor would prefer to see some documentation of this policy, he does not believe that the absence of documentation this year warrants any sort of reservation.</p> <p>The notice doesn’t directly provide all the information in subsections (b) and (c). (Question.)</p>
<p><b>Florida Disclosures</b></p>	
<p>(F1) Section 681.103(3) – Clear and conspicuous disclosure of how and where to file a claim</p>	<p>For reasons described in items (1) and (3) of this chart, Ford provides the required disclosures.</p>

<sup>106</sup> The reference is boldfaced and capitalized in the table of contexts, but that doesn’t make it stand out more because the same applies to the rest of the table of contents.

<b>Additional Ohio Provisions</b>	
(O1) Additional notices provided in warranty documents, separate sheets of paper, or signs, as described in Section IV of this Chapter.	<p>Ford provided a separate sheet with information required by Ohio law, including language telling consumers that the use of Ford’s internal processes “is optional and may be terminated at any time by you or by Ford.”</p> <p>In light of the information on the separate sheet of paper, Ford could satisfy the Ohio signage requirement by having posted as a sign, in Ohio dealerships, the “Our Commitment to You” document. However, Ford doesn’t instruct dealers do so.</p> <p>It does appear that Ford provides these documents to dealers and tells dealers to give them to consumers who experience disputes at the dealership level, Ford also believes that dealers most likely make the documents available in common areas in service departments. Further, as noted below, a relatively high percentage of Ford consumers in this year’s survey learned of BBB AUTO LINE from the manufacturer and its dealers, suggesting that Ford’s efforts are bearing fruit. Still, this doesn’t constitute a sign, and, despite these mitigating factors, the auditor notes a reservation. (Reservation.)</p>

**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. And, based on his review of the survey results (the nature and limitations of which are discussed in Section V.A.3 of this chapter), a relatively high percentage of Ford consumers who were surveyed said they learned of the program through Ford’s dealers or manufacturer representatives.

**3. Conclusion**

Ford is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal, Florida, and Ohio law, with the reservations and questions 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.<sup>107</sup>

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<sup>107</sup> 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. Although GM has previously advised that it doesn't require prior resort to BBB AUTO LINE before a consumer can pursue rights and remedies under the Magnuson-Moss Act, a California-specific notice indicates that purchasers in that state are told that they must use BBB AUTO LINE to pursue Magnuson-Moss warranties. That suffices to subject GM to the mandatory federal audit, as well as the Ohio and Florida audits.

**1. Consumer-Facing Materials**

<b>Federal Disclosure Provisions</b>	
(1) Rule 703.2 (b) (and Rule 703.1(h) to define "the face of the warranty").	<p>There's a prominent mention of "alternative dispute resolution" on page 1, but it doesn't mention BBB AUTO LINE by name or include any of the details required by Rule 703.2(b).</p> <p>The initial reference does direct consumers to a later discussion that references most of the required information, but not the prior resort provision for Magnuson-Moss claims in California that's described above. (Reservation.)</p>
(2) Rule 703.2(c)	<p>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.)<sup>108</sup></p>
(3) Rule 703.2(d) – Prominence of disclosures to alert consumers to the existence of BBB AUTO LINE, including placement of the text and references in the table of contents.	<p>The above-cited notice on page 1 does prominently reference alternative dispute resolution, although not BBB AUTO LINE. (Question).</p> <p>(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.)</p>

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<sup>108</sup> On a more technical matter, the introductory text describes the BBB AUTO LINE process as non-binding, though, 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. See Notes to Table 1, Section II.B of this chapter.

<p>(4) Rule 703.2(d) – Expressly requires that consumers use manufacturer’s review processes before filing with BBB AUTO LINE?</p>	<p>The text indicates that BBB AUTO LINE may be available “if” previously described internal procedures have not resolved the issue. (Question.)</p>
<p>(5) Rule 703.2(e) notice</p>	<p>GM advised this year that the consumer is told orally about the results of its internal review, and the consumer is further told during that discussion about the availability of BBB AUTO LINE and referred to the owners and warranty manuals for further information. GM quoted specific text referring consumers to their owner’s manual and the BBB AUTO LINE website. (Question, because the notice doesn’t directly repeat all the information in subsections (b) and (c).)</p>
<p><b>Florida Disclosures</b></p>	
<p>(F1) Section 681.103(3) – Clear and conspicuous disclosure of how and where to file a claim</p>	<p>For reasons described in items (1) and (3) of this chart, General Motors provides the required disclosures</p>
<p><b>Additional Ohio Provisions</b></p>	
<p>(O1) Additional notices provided in warranty documents, separate sheets of paper, or signs, as described in Section IV of this Chapter.</p>	<p>General Motors has provided signs and separate sheets of paper, with accompanying instructions to dealers.</p> <p>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.).<sup>109</sup></p>

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<sup>109</sup> On relatively minor matters, one of the documents uses an outdated BBB AUTO LINE address (any mail will be forwarded to its new address) and mistakenly states that calls to the BBB AUTO LINE 800 number from Ohio will be directed to Ohio.

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

General Motors has provided several internal documents. None of these set forth a policy of alerting consumers to the existence of BBB AUTO LINE.

## **3. Conclusion**

General Motors is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal, Florida, and Ohio law, with the reservations and questions noted above.

GM is commended for the wall plaques developed for use in California, an additional step apparently used to alert consumers to the program.<sup>110</sup>

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<sup>110</sup> 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. It provided sample manuals, including a Genesis manual.

**1. Consumer-Facing Materials**

The auditor has reviewed Hyundai’s 2019 warranty handbook, as well as a 2018 supplement with discussions of applicable requirements under various state laws.

<b>Federal Disclosure Provisions</b>	
(1) Rule 703.2 (b) (and Rule 703.1(h) to define “the face of the warranty”). (For context, see Section II.A.6 of this chapter.)	Hyundai makes the required disclosures. The information appears in a section of the warranty booklet (prominently labelled “CONSUMER INFORMATION” with a subheading “ALTERNATIVE DISPUTE RESOLUTION (BBB AUTO LINE)”). The capitalized titles are both highlighted, as well, in the single-paged table of contents. Also, a description of prior resort is highlighted by the word “IMPORTANT.” There is yet a further discussion on the first textual page of the “Warranty” section.
(2) Rule 703.2(c)	Hyundai makes the required disclosures.
(3) Rule 703.2(d) – Prominence of disclosures to alert consumers to the existence of BBB AUTO LINE, including placement of the text and references in the table of contents.	The disclosures described above are quite prominent. Further, in the consumer survey when consumers were asked how they learned that they could file a complaint with BBB AUTO LINE, an above-average percentage of Hyundai consumers who filed cases cited manufacturer warranty materials
(4) Rule 703.2(d) – Expressly requires that consumers use manufacturer’s review processes before filing with BBB AUTO LINE	Hyundai encourages consumers to seek internal review of their complaints from the company. However, before describing BBB AUTO LINE, the text only “recommend[s]” that consumers follow a series of internal steps.
(5) Rule 703.2(e) notice	Materials with explanatory text provided.
<b>Florida Disclosures</b>	
(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, Hyundai provides the required disclosures

<b>Additional Ohio Disclosure Provisions</b>	
(O1) Additional notices provided in warranty documents, separate sheets of paper, or signs, as described in Section IV of this Chapter.	<p>The above-noted supplement includes the required language, and Hyundai has provided signage and separate sheets of paper.</p> <p>However, the submitted texts don't include the affirmative disclosure required by Ohio, at the time consumers experience a warranty dispute, that resort to Hyundai's internal review process is optional and can be terminated at any time. (Reservation.).</p>

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

While Hyundai provided no such material, based on his review of the survey results (the nature and limitations of which are discussed in Section V.A.3 of this chapter), the auditor notes that a relatively high percentage of Hyundai consumers who were surveyed said they learned of the program through Hyundai's dealers or manufacturer representatives.

**3. Conclusion**

Hyundai is in COMPLIANCE with the applicable disclosure provisions of Federal and Florida law, and in SUBSTANTIAL COMPLIANCE (because of the reservation noted above) with applicable provisions of Ohio law. Hyundai also appears to be making successful efforts, beyond the disclosures in the warranty manual, to alert consumers to BBB AUTO LINE's existence.

**H. Jaguar Land Rover North America**

Jaguar and Land Rover participate in all states, but aren't certified in Florida or Ohio. Thus, the auditor has reviewed their materials solely for the national audit.

**1. Consumer-Facing Materials**

The auditor reviewed Jaguar's 2019 "Passport to Service" and 2018 "Dispute Resolution Supplement", as well as letters sent to consumers who have pursued a dispute through the manufacturer's internal processes.

<b>Federal Disclosure Provisions</b>	
(1) Rule 703.2 (b) (and Rule 703.1(h) to define "the face of the warranty").	Jaguar provides only limited information about dispute resolution in its warranty booklet, but it provides substantial information (including detailed state-by-state information) in a dispute resolution supplement to which the warranty booklet refers. Despite the quality and prominence of the dispute resolution supplement, Jaguar doesn't comply with the placement requirements of Rule 703.2(b). (Reservation; perhaps merely a technical reservation.)
(2) Rule 703.2(c)	Jaguar addresses the required subjects. <sup>111</sup>
(3) Rule 703.2(d) – Prominence of disclosures to alert consumers to the existence of BBB AUTO LINE, including placement of the text and references in the table of contents.	The disclosure is highly prominent, with a "Dispute Resolution Supplement" that's referenced in other manuals. Within the supplement, the discussion of BBB AUTO LINE is prominently placed and prominently listed near the top of the table of contents.  Further, in the consumer survey when consumers were asked how they learned that they could file a complaint with BBB AUTO LINE, an above-average percentage of

<sup>111</sup> On a very technical matter (it's not something that could harm consumers), Jaguar indicates, at page 3 of the dispute resolution supplement, that the Magnuson-Moss Act requires prior resort. In fact, the act allows manufacturers to impose such a requirement. See Notes to Table 1, Section II.B of this chapter.

On a potentially less technical matter, Jaguar limits relief in non-lemon law claims to repairs and reimbursements for past repairs. The issues raised by such provisions where manufacturers require prior resort are discussed at Section II.A.6 of this chapter.

	Jaguar and Land Rover consumers who filed cases cited manufacturer warranty materials.
(4) Rule 703.2(d) – Expressly requires that consumers use manufacturer’s review processes before filing with BBB AUTO LINE?	Potentially problematic language in the Dispute Resolution Supplement refers to the availability of BBB AUTO LINE “in the unlikely event” that previously described procedures to address the matter at the dealer or manufacturer level have not satisfactorily resolved 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) notice	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 information specified by Rules 703.2(b) and (c). <sup>112</sup> (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 current audit that it continues to use these materials.

These efforts seem to have borne fruit. Based on his review of the survey results (the nature and limitations of which are discussed in Section V.A.3 of this chapter), a relatively high percentage of Jaguar/Land Rover consumers who were surveyed said they learned of the program through Jaguar’s dealers or manufacturer representatives.

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<sup>112</sup> 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. See Notes to Table 1, Section II.B of this chapter.

### 3. Conclusion

Jaguar is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal law, with the qualifications noted above.<sup>113</sup> Additionally, assuming that the other materials provided by Jaguar continue to be used, Jaguar is to be highly commended for efforts to tell consumers about BBB AUTO LINE at the manufacturer and dealer level – efforts that, as noted above, appear to have borne fruit.

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<sup>113</sup> 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.



## 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 2019.

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 nor with the proper prominence. <sup>114</sup> (Reservation.)
(2) Rule 703.2(c) <sup>115</sup>	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.)
(3) Rule 703.2(d) – Prominence of disclosures to alert consumers to the existence of BBB AUTO LINE, including placement of the text and references in the table of contents.	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 45-109 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. (Question.)

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<sup>114</sup> Consistent with the practice of many manufacturers, the auditor recommends that Kia take steps to make the prior resort language more prominent.

<sup>115</sup> 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 (and not only a lemon law claim), it might be introduced as evidence in every state.

The auditor notes that, while Kia imposes various limits on the availability of BBB AUTO LINE, it expressly signals to consumers that "age, mileage, and other contributing factors" may affect availability.

(4) Rule 703.2(d) – Expressly requires 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 have not resolved an issue. (Question.)
(5) Rule 703.2(e) notice	Not provided. (Noteworthy and ongoing reservation; see discussion in Section I.A.4)
<b>Florida Disclosures</b>	
(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, there’s a question as to whether Kia’s disclosure is sufficiently clear and conspicuous – though the auditor’s concern is mitigated by extensive nature of the dispute resolution supplement. (Question.)
<b>Additional Ohio Provisions</b>	
(O1) Additional notices provided in warranty documents, separate sheets of paper, or signs, as described in Section IV of this Chapter.	<p>Kia provides most of the required information in an Ohio-specific page in its Warranty and Consumer Information Manual. However, it hasn’t provided materials that meet the placement requirements, including signage or a separate form. (Noteworthy and ongoing reservation as to signage; question as to separate form.)</p> <p>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.)</p>

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

Kia has previously 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, although it doesn’t appear to provide for notice before consumers have used the manufacturers’ internal processes. However, it didn’t confirm this year that those materials are still in use.

## 3. Conclusion

Kia is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal, Florida, and Ohio law, with the qualifications – including the noteworthy and ongoing reservations – that are noted above. To the extent the materials noted in Section 2 are still in use, Kia is to be commended for the additional efforts indicated by section 2.

## J. Automobile Lamborghini

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

### 1. Consumer-Facing Materials

Lamborghini provided an undated warranty manual and an "Important Notice to Consumers."<sup>116</sup>

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. However, although the warranty begins on page 5, BBB AUTO LINE isn't mentioned in text until page 7, and the California-specific prior resort provision doesn't appear until page 8. <sup>117</sup> (Reservation.)  Further, its warranty booklet doesn't mention prior resort in the initial discussion (which applies nation-wide), but only in a California-specific discussion. However, in a separate "Important Notice to Consumers," it declares that it imposes a prior resort requirement in every state where it participates in BBB AUTO LINE. (Significant reservation as to consumers outside California.)
(2) Rule 703.2(c)	Lamborghini addresses the subjects required by the rule. <sup>118</sup>

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<sup>116</sup> Lamborghini didn't respond to a request to clarify how the "Important Notice to Consumers" is distributed.

<sup>117</sup> Consistent with the practice of many manufacturers, the auditor recommends that Lamborghini also take steps to make the prior resort language more prominent.

<sup>118</sup> On more technical matters, Lamborghini's material only 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 proceed to arbitration after attempting mediation.

Also, Lamborghini indicates that access to BBB AUTO LINE may be limited by the vehicle's age and mileage. It would be preferable to note that other limitations may apply as well. See Section II.A.6 of this chapter.

<p>(3) Rule 703.2(d) – Prominence of disclosures to alert consumers to the existence of BBB AUTO LINE, including placement of the text and references in the table of contents.</p>	<p>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.</p>
<p>(4) Rule 703.2(d) – Expressly requires that consumers use manufacturer’s review processes before filing with BBB AUTO LINE?</p>	<p>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 are given when they do pursue those processes. (Question)</p>
<p>(5) Rule 703.2(e) notice</p>	<p>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 all that it’s supposed to accomplish, particularly because it tells consumers how to get more information, it doesn’t directly provide all the detail required by Rule 703.2(e). (Question).</p> <p>Further, the letter doesn’t comply with the requirement for notice when the internal review is completed. (Reservation.)</p>

## 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.<sup>119</sup>

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<sup>119</sup> 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**

Lotus provided a warranty manual and a supplemental document distributed to consumers.<sup>120</sup>

<b>Federal Disclosure Provisions</b>	
(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 noted above. The placement in a separate supplement isn't inherently problematic, since the rule allows these disclosures in the written warranty or “a separate section of materials accompanying the product.” The omission of a reference to Federal remedies on the cover page of the supplement, though, could raise an issue. (Possible question.)
(3) Rule 703.2(d) – Prominence of disclosures to alert consumers to the existence of BBB AUTO LINE, including placement of the text and references in the table of contents.	Although the cover page problematically references only “state” repair and replacement, the supplement seems sufficiently prominent to catch consumers' attention.
(4) Rule 703.2(d) – Expressly requires that consumers use manufacturer's review processes before filing with BBB AUTO LINE?	Lotus describes state provisions requiring notice to the manufacturer and an opportunity for the manufacturer to have a final repair attempt. Each is addressed in its own paragraph, but in neither paragraph does the language make clear that this provision is only relevant to state lemon law remedies, but not to federal remedies. (Question).
(5) Rule 703.2(e) notice	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.

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<sup>120</sup> Lotus provided a copy of the supplement last year. It didn't confirm in 2018 that it continues to use the same supplement, but, for the current audit, the auditor treats it as such.

	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.)
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**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 qualifications noted above.<sup>121</sup>

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<sup>121</sup> 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. Although Maserati has been contacted before, this is the first year that it submitted responsive materials.

### 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. <sup>122</sup>
(3) Rule 703.2(d) – Prominence of disclosures to alert consumers to the existence of BBB AUTO LINE, including placement of the text and references in the table of contents.	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) – Expressly requires 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) notice	Not provided. (Noteworthy and ongoing reservation; see discussion in Section I.A.4 <sup>123</sup> )

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<sup>122</sup> On more technical matters, Maserati failed to indicate that access to BBB AUTO LINE may be limited by the vehicle's age, mileage, or other factors. See Section II.A.5 of this chapter.

<sup>123</sup> The auditor doesn't characterize the noteworthy reservation as "ongoing" because this is the first year that Maserati provided responsive materials. He recognizes that this is a somewhat incongruous result, though, since he would have noted the problems previously had it responded previously.

## **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 – including a noteworthy reservation – noted above.<sup>124</sup>

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<sup>124</sup> 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 provided a copy of its 2019 warranty booklet. This year it provided only selected pages with the discussion of BBB AUTO LINE and, although the auditor didn't see this year's pages in the overall setting of the warranty booklet, the pagination appears comparable.

<b>Federal Disclosure Provisions</b>	
(1) Rule 703.2 (b) (and Rule 703.1(h) to define “the face of the warranty”).	Mazda provides the required information in a warranty booklet. 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 <i>before</i> the warranty text. The auditor construes this as compliance with the “face of the warranty” placement requirement, even though the text doesn't appear <i>on</i> the first page of the warranty text. The discussion is further highlighted by sixteen all-cap references to BBB AUTO LINE by name (including eleven in a California-specific discussion). <sup>125</sup>
(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.) <sup>126</sup>

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<sup>125</sup> Consistent with the practice of many manufacturers, the auditor recommends that Mazda take steps to make the prior resort language more prominent.

<sup>126</sup> 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, the California-specific discussion lists an outdated address for BBB AUTO LINE (although letters sent to that address should still be forwarded to BBB AUTO LINE's current address).

Also, the Mazda program summary imposes age, mileage, and other limits on the program's availability, but nothing in the warranty booklet signals that such limits exist. The issue is discussed generally in Section II.A.6 of this chapter.

<p>(3) Rule 703.2(d) – Prominence of disclosures to alert consumers to the existence of BBB AUTO LINE, including placement of the text and references in the table of contents.</p>	<p>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 appears in the table of contents. (Possible question.)</p>
<p>(4) Rule 703.2(d) – Expressly requires that consumers use manufacturer’s review processes before filing with BBB AUTO LINE?</p>	<p>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.)</p>
<p>(5) Rule 703.2(e) notice</p>	<p>Mazda has previously submitted templates of the requisite letters, and, although it didn’t confirm this year that it continues to use the letters, the auditor assumes for the current year that this is the case. The letters provide the core information about the existence of BBB AUTO LINE with clear contact information, although they don’t provide all the information specified by Rules 703.2(b) and (c). (Question.)</p>
<p><b>Florida Disclosures</b></p>	
<p>(F1) Section 681.103(3) – Clear and conspicuous disclosure of how and where to file a claim.</p>	<p>For reasons described in items (1) and (3) of this chart, there’s a possible question as to whether Mazda’s disclosure is sufficiently prominent. (Possible question.)</p>
<p><b>Additional Ohio Provisions</b></p>	
<p>(O1) Additional notices provided in warranty documents, separate sheets of paper, or signs, as described in Section IV of this Chapter.</p>	<p>As detailed in Section IV of this Chapter, Ohio requires certain disclosures on a sign, another on a separate sheet of paper (or “form”), and seems to deem one of the “sign” disclosures to be satisfied by the use of prescribed text on a sign <i>or</i> a separate form.</p> <p>Some of these disclosures provide Ohio-specific information, and Mazda hasn’t provided evidence of these disclosures. (Noteworthy and ongoing reservation). Others involve general information about BBB AUTO LINE, and this information appears on a Consumer FAQ that Mazda provided. If the form is used as a sign – Mazda hasn’t made this clear – it could satisfy part of the signage requirement.</p>

## **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.<sup>127</sup> Mazda also provided FAQ's for consumers, although it's not clear how these are distributed or used. Although they don't suggest specific triggers that should routinely prompt employees to volunteer information about BBB AUTO LINE, the auditor commends these significant efforts 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 – including a noteworthy and ongoing reservation as to Ohio – noted above.<sup>128</sup>

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<sup>127</sup> It's not clear if these materials are for Mazda's own staff, dealership staff, or both.

<sup>128</sup> 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.

**N. Mercedes-Benz**

Mercedes-Benz participates in Arkansas, California, Kentucky and Minnesota, and requires prior resort for Magnuson-Moss remedies (as well as state remedies) in California. This suffices to subject it to the Rule 703 audit. Mercedes this year provided a warranty booklet (which it hadn't provided before) and an "IMPORTANT NOTICE" directed to California consumers.

Mercedes directs all its notices to California consumers, appears to require prior resort only for such consumers, and hasn't shown steps to alert consumers outside California to the program's availability. In essence, Mercedes seems to take the position that, even with respect to Magnuson-Moss claims, Mercedes isn't subject to Rule 703.2 for consumers outside California. This is consistent with the "better view" of the rule's reach,<sup>129</sup> and, consistent with that reading, the auditor's findings regarding substantial compliance for the Federal audit extend only to California consumers.

**1. Consumer-facing Materials**

<b>Federal Disclosure Provisions</b>	
(1) Rule 703.2 (b) (and Rule 703.1(h) to define "the face of the warranty").	Mercedes Benz provides the specified information, but only in the section of the warranty manual addressed to California consumers and in the "IMPORTANT NOTICE" similarly directed to California consumers.  Even as to California consumers, the information lacks the proper placement. (Reservation).
(2) Rule 703.2(c)	Mercedes Benz addresses the subjects required by the rule.
(3) Rule 703.2(d) – Prominence of disclosures to alert consumers to the existence of BBB AUTO LINE, including placement of the text and	The discussion of BBB AUTO LINE in Mercedes Benz's warranty booklet starts on page 92. The notice might be more prominent, so long as the consumer didn't lose the insert. <sup>130</sup> (Question.)

<sup>129</sup> See Section II.A.1 of this Chapter.

<sup>130</sup> As noted above, the auditor assumes here that Mercedes doesn't require prior resort under the Magnuson-Moss Act outside California.

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

On a potentially less technical matter, Mercedes-Benz limits relief in non-lemon law claims to repairs and reimbursements for past repairs. The issues raised by these provisions where

references in the table of contents. (For context, see Section II.A.4 of this chapter.).	
(4) Rule 703.2(d) – Expressly requires 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.)
(5) Rule 703.2(e) notice	Not provided. (Noteworthy and ongoing reservation; see discussion in Section I.A.4)

## 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. Based on his review of the survey results (the nature and limitations of which are discussed in Section V.A.3 of this chapter), a relatively high percentage of Mercedes consumers who were surveyed said they learned of the program through Mercedes’s dealers or 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 reservations and questions – including a noteworthy reservation as to Rule 703.2(e) – noted above. Mercedes is also commended for steps to notify consumers about BBB AUTO LINE at the dealership level.<sup>131</sup>

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manufacturers require prior resort are discussed in Section II.A.6 of this chapter.

<sup>131</sup> 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 participates in all states, and is certified 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 2018 Warranty Information Booklet; a 2019 edition of a supplemental booklet, captioned in part “Customer Care and Lemon Law Information”; and a placard entitled “Our Commitment to You.”

<b>Federal Disclosure Provisions</b>	
(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 will need to provide to BBB AUTO LINE. <sup>132</sup> (Reservation.)
(3) Rule 703.2(d) – Prominence of disclosures to alert consumers to the existence of BBB AUTO LINE, including placement of the text and references in the table of contents. (For context, see Section II.A.4 of this chapter.)	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 in the supplemental booklet.

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<sup>132</sup> Nissan indicates that BBB AUTO LINE is not available in all states, perhaps because it hasn’t been certified in all states that have certification processes. It’s not clear to the auditor that this is consistent with information on the BBB AUTO LINE web site, which lists Nissan as a national participant.

On a more technical matter, the Nissan program summary imposes age, mileage, and other limits on the program’s availability, but nothing in the warranty booklet signals that such limits exist. See Section II.A.5 of this chapter.

(4) Rule 703.2(d) – Expressly requires that consumers use manufacturer’s review processes before filing with BBB AUTO LINE?	<p>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.</p> <p>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.)</p>
(5) Rule 703.2(e) notice	<p>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)</p>
<b>Florida Disclosures</b>	
(F1) Section 681.103(3) – Clear and conspicuous disclosure of how and where to file a claim.	<p>As described in items (1) and (3) of this chart, Nissan provides the required disclosures.</p>
<b>Additional Ohio Provisions</b>	
(O1) Additional notices provided in warranty documents, separate sheets of paper, or signs, as described in Section IV of this Chapter.	<p>Nissan has provided signage about the program. And, though it doesn’t include Ohio-specific information).</p> <p>The Ohio-specific information does appear in the supplement (and this includes disclosures about the optional nature about the manufacturer’s internal review processes). However, this doesn’t precisely satisfy Ohio’s requirements for disclosures on a separate form. (Question.)</p>

## 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.

Based on the auditor’s review of the survey results (the nature and limitations of which are discussed in Section V.A.3 of this chapter), Nissan’s efforts to inform consumers about the program have borne fruit; a relatively high percentage of Nissan consumers who were surveyed said they learned of the program through Nissan’s dealers or manufacturer representatives.

### **3. Conclusion**

Nissan (with Infiniti) is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal, Florida, and Ohio law, with the qualifications noted above.<sup>133</sup> The company is to be highly commended for additional efforts, beyond disclosure in consumer-facing manuals, to alert consumers to the program.

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<sup>133</sup> 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. 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. The auditor focuses on the manual for a 2018 Volkswagen “Warranty and Maintenance” Manual.

<b>Federal Disclosure Provisions</b>	
(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, and with boldfaced type to increase its prominence.
(2) Rule 703.2(c)	Volkswagen and Audi address the subjects required by the rule. <sup>134</sup>
(3) Rule 703.2(d) – Prominence of disclosures to alert consumers to the existence of BBB AUTO LINE, including placement of the text and references in the table of contents.	<p>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 Audi manual. The auditor understands that Volkswagen is taking steps to make the placement more prominent.</p> <p>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.</p>
(4) Rule 703.2(d) – Expressly requires 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. (Possible question,)
(5) Rule 703.2(e) notice	Volkswagen provided a letter, with substantial information

<sup>134</sup> 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 the preceding text refers to a “mutually agreeable resolution,” which might well mitigate any confusion that the “mediated solution” language may raise. See Notes to Table 1, Section II.B of this chapter.

Also, the Volkswagen program summary imposes age, mileage, and other limits on the program’s availability, but nothing in the warranty booklet signals that such limits exist. The issue is discussed generally in Section II.A.6 of this chapter

	about BBB AUTO LINE, that appears to be sent when a consumer request through the manufacturer’s internal process is denied.
<b>Florida Disclosure</b>	
(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.
<b>Additional Ohio Provisions</b>	
(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).

## 3. Conclusion

Volkswagen (with Audi) is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal, Florida, and Ohio law, with the qualifications noted above.<sup>135</sup>

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<sup>135</sup> 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, the CBBB. The applicable Federal regulations, which in many respects create a framework on which state regulation builds,<sup>136</sup> 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”).

On the basis of 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,<sup>137</sup> sent to consumers after their initial contact, and the same in all states except California.<sup>138</sup> 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 at length in Chapter 3, case files that he examined (most of them targeted by consumer responses to the TechnoMetrica survey), and recordings of seven hearings (including two from Florida and two from Ohio).<sup>139</sup>

## I. Fairness

Among the provisions directed towards fairness, Rule 703.3(b) requires that the CBBB 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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<sup>136</sup> 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](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).

<sup>137</sup> <https://www.bbb.org/autoline/bbb-auto-line-process/how-bbb-auto-line-works/>;  
<https://www.bbb.org/autoline/bbb-auto-line-process/how-bbb-auto-line-works-california/>.

<sup>138</sup> Unless otherwise specified, references to specific rules refer to those for states other than California.

<sup>139</sup> 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 CBBB’s promotion practices, for example), the auditor has seen no problems in CBBB’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 such a document, again with the caveat that they don’t reflect provisions, like those governing personnel decisions, that wouldn’t be expected in a consumer-facing document.

This is also consistent with the CBBB’s broader role. The CBBB is a not-for-profit organization, and characterizes its mission and vision, in part, thus:

**Our Vision:**

An ethical marketplace where buyers and sellers trust each other.

**Our Mission:**

BBB’s mission is to be the leader in advancing marketplace trust. We do this by

- Setting standards for marketplace trust
- Encouraging and supporting best practices by engaging with and educating consumers and businesses
- Celebrating marketplace role models
- Calling out and addressing substandard marketplace behavior
- Creating a community of trustworthy businesses and charities

BBB sees trust as a function of two primary factors – integrity and performance. Integrity includes respect, ethics and intent. Performance speaks to a business’s track record of delivering results in accordance with BBB standards and/or addressing customer concerns in a timely, satisfactory manner.<sup>140</sup>

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<sup>140</sup> <http://www.bbb.org/council/about/vision-mission-and-values/>.

Additionally, BBB AUTO LINE's training manual for arbitrators highlights the mechanism's focus on preserving impartiality and fairness (and the appearance of both). For example, arbitrators are told to avoid being in a room with one party. During 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 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 to correct, supplement, 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* 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.* As noted in prior audits, some manufacturers participate only in selected

states,<sup>141</sup> and the BBB AUTO LINE web portal initially screens eligibility by asking consumers where they bought the car. Those who bought a car in a state where the manufacturer doesn't participate aren't directed to the complaint submission page; rather, they're told that they don't appear to be eligible but "may be able to participate" if the vehicle was *purchased* in another state.<sup>142</sup> The approach of alerting consumers that eligibility can turn on multiple factors (and, implicitly, that some consumers' claims could be considered under the laws of multiple states) is well-conceived; while the state of purchase (or lease<sup>143</sup>) is often the key to coverage, some states rely, alternatively or additionally, on other factors.<sup>144</sup> The current text is potentially confusing, though. Since consumers reached the page because they *weren't* eligible by virtue of their state of purchase, the second page isn't clear when it refers to that very factor as an alternative basis for coverage. The BBB AUTO LINE has previously indicated that it would address this issue and, though it hasn't yet done so, the auditor understands that it will be done this year.

Further, at least some consumers might be confused about the availability of BBB AUTO LINE for leased vehicles. Many state lemon laws expressly cover leases, and others have been found to cover at least some leases by courts. 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<sup>145</sup> or by virtue of program summaries that extend beyond legal mandates.

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<sup>141</sup> Three firms participate in 8 to 11 states; six participate in 1 to 4 states.

<sup>142</sup> The message provides:

Your vehicle does not appear to be eligible to participate in BBB AUTO LINE.

You may still be eligible to participate if you purchased your vehicle in a different state. Please call 1 800 955 5100 to discuss your eligibility with a BBB AUTO LINE Dispute Resolution specialist.

You are being redirected to the main BBB complaint site.

<sup>143</sup> See below.

<sup>144</sup> 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).

<sup>145</sup> 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. . . .

Consumers with leasing arrangements aren't express told that they're *not* eligible when they follow links on BBB AUTO LINE's web portal to file a complaint. Indeed, when consumers use the portal, they might find references to leased vehicles if they follow links to the relevant program summary; further, the "claim intake" page contains a reference to a "lease" as well as a purchase.

But BBB AUTO LINE's availability for certain lessees won't always be clear. First, the reference to "lease" on the claim intake page (noted above) appears only in a dropdown menu that isn't immediately visible to the consumer; indeed, it's next to a heading whose language ("*Purchase type*") might confuse consumers. Second, the "Purchase type" question immediately follows a question that asks "Are you the *ONLY* titled owner?" a query that doesn't mesh well with a leasing arrangement. Third, consumers generally won't reach the claim intake page without first going through the "complaint form" page,<sup>146</sup> and *that* page mentions only purchasers. Finally, meticulous consumers who review state lemon law summaries might find statements that a particular law doesn't appear to cover a lease,<sup>147</sup> and, while these pages only purport to summarize *state* provisions, the consumer might not understand that coverage might still be available by virtue of the relevant program summaries or by virtue of federal law.

Ameliorating all of this are repeated invitations, on both the initial BBB AUTO LINE page<sup>148</sup> and the claim input page, to call or email BBB AUTO LINE for further information. A confused consumer should thus have ample opportunity to clarify any doubts about the coverage of leased vehicles. Still, at least some consumers with leased vehicles that are eligible for the program might be deterred from proceeding by the web page. Thus, the auditor concludes it would be prudent to address these matters and, at a minimum, to include more prominent references to lessees on the "complaint form" and "complaint input" pages.

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The Commission does not agree with the view held by a minority number of courts 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).

<sup>146</sup> <https://www.auto.bbb.org/lemon-law-complaint-form>.

<sup>147</sup> *E.g.*, <https://www.auto.bbb.org/docs/lemon-law-summaries/AL-LLsummary.pdf>.

<sup>148</sup> <https://www.bbb.org/autoline>.



*Recommendation: The auditor recommends that BBB AUTO LINE take steps to address the web portal issues noted above.*

## **B. Resolving a Complaint**

After an initial contact by phone or online, BBB AUTO LINE sends complainants a printed “consumer complaint form” that incorporates information provided during the initial contact, along with its explanation of how BBB AUTO LINE works. Among the consumers who were surveyed in the national sample, 91.0% recalled receiving these materials. And, among those who didn’t, the auditor found signed complaint forms in BBB AUTO LINE’s files for 41.2%, so they presumably forgot that they had received and returned them.<sup>149</sup> Further, again drawing on the national sample, most consumers found the materials to be clear and easy to understand or somewhat clear and easy to understand (97.9%) and most found them very or somewhat helpful (86.5%).<sup>150</sup>

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 CBBB staff suggests averages about ten days. In Florida and California, 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, although 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. BBB AUTO LINE also has a nationwide consumer website portal, for consumers who have already filed claims, with the intention of providing consumers with real-time access to case documents.

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<sup>149</sup> In addition to the submitter’s signature, these forms typically contain uniform type of the sort expected for computer-generated printouts (and, in many cases, handwritten annotations added by the consumer). This is fully consistent that these are forms generated by BBB AUTO LINE and sent to the consumer for supplementation, modification, and signature.

<sup>150</sup> Chapter 3, Section III.F. As further discussed in that section, in some cases where consumers didn’t recall receiving a complaint form and there wasn’t a signed form in the file, the file was closed precisely because the consumer hadn’t returned the form (and the consumer was so advised in a closing letter).

Mediation is optional; the consumer is supposed to be free to insist on proceeding directly to arbitration. While this is made explicit in the printed explanation of how BBB AUTO LINE works, the auditor has previously observed a few case handler notes indicating that the process was described to some consumers in ways that suggested otherwise. However, he recommended last year that BBB AUTO LINE highlight to its staff that they should convey to consumers the optional nature of mediation in the program. He understands that they have done so, and he found no problems in this respect in the current audit.

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. 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,<sup>151</sup> or can reach a post-decision settlement.<sup>152</sup> An arbitrator can't engage in mediation herself, but, if the parties seem to be moving in that direction, she can temporarily remove herself from the process, allow the parties to negotiate, and (if negotiations succeed) sign a consent decision. Absent a consent settlement, BBB AUTO LINE policy provides for the arbitrator to run her decision through BBB AUTO LINE staff first, but BBB AUTO LINE staff's role is intended to be limited.

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<sup>153</sup> and about the use of technical experts in

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<sup>151</sup> Rule 20; California Rule 21.

<sup>152</sup> This might occur, for example, if the consumer wants to substitute a repurchase for a replacement remedy. They can also provide extensions of deadlines

<sup>153</sup> 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.

arbitrations.<sup>154</sup>

The auditor also reviewed recordings from two Florida hearings, two Ohio hearings, and three 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.

Through his review of the recordings, the auditor this year detected no significant

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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."

<sup>154</sup> 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.

California Rule 9 is briefer but similar.

problem at the hearing stage.<sup>155</sup>

From his file review, though, the auditor noted cases where 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.<sup>156</sup> 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,<sup>157</sup> but it doesn’t make another disclosure (seemingly less important) about the availability, at reasonable cost, of copies of BBB AUTO LINE records.<sup>158</sup>

*Recommendation: Although the auditor doesn’t believe these go to the heart of substantial compliance, BBB AUTO LINE should make all the required disclosures.*

### **C. 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 fulfills this obligation primarily through a performance verification letter that asks consumer, among other questions (and in the language used for performance

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<sup>155</sup> The only minor problem he detected was that, in a case where the consumer had a lawyer (whose client wasn’t present), the arbitrator administered an oath to the attorney; the arbitrator training manual expressly notes that attorneys needn’t take oaths.

<sup>156</sup> 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.

<sup>157</sup> 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.

<sup>158</sup> Section 109:4-4-04(C)(7)(b).

verification letters for settlements):

- On what date was the settlement performed?
- Was the performance satisfactory?
- On what date was the settlement performed?

The letter further tells the consumer that, if the staff member has “not heard from you **within eight days** from the date of this letter, I will assume that performance was satisfactory and will close your case.” (Emphasis in original.)

This process may well understate compliance problems, since consumers who don’t want to continue the process 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.

However, the auditor does make a recommendation on one aspect of the letter’s text. The questions quoted above seem to treat “satisfactory” performance as separate from questions of timing. Particularly in light of the possibility that a consumer may see a difference between the two, the auditor offers the following recommendation.

*Recommendation: Performance verification letters sent to consumers to check on manufacturer compliance should tell the consumers that, unless they return the form, performance will be assumed to be both satisfactory and timely.*

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 would prefer more precise records.

*Suggestion: When a consumer doesn’t return a performance verification letter and BBB assumes compliance on that basis, it should explain in its subsequent letter to the manufacturer that this is the basis on which it assumed compliance.*

\* \* \*

The options presented to consumers also highlight a distinction between “compliance” and consumer satisfaction. A consumer may be dissatisfied with the implementation of a remedy because of a dispute with the manufacturer. 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 someone on the manufacturer’s staff followed by the correction of any warrantable problems that she finds, the parties might disagree if, for

example, she finds that no repairs are needed or warranted.

How, then, to record such disputes? In the auditor's view, even if the consumer wasn't satisfied with the result, it would be problematic to deem the manufacturer's performance as non-compliant – particularly when the manufacturer's position could prevail if, as the consumer is invited to do, the consumer returns to BBB AUTO LINE. On the other hand, it could instead be the consumer who prevails in a later proceeding. Given a binary choice between “compliant” and “non-compliant,” the auditor believes the former designation is appropriate.

But the situation is more nuanced than a binary choice can capture, and certain figures can cast some light on this. Through some suggestive if imprecise analysis, the auditor has examined the number of follow-on cases – which are identifiable because they have an “R” suffix affixed to the original case number. The cases that *precede* an “R” case are all mediated,<sup>159</sup> and nearly half of repair settlements seem to lead to 1R (or higher<sup>160</sup>) cases.<sup>161</sup> But this tells only part of the story. Thus:

-- FTC, Ohio, and former Florida regulations all recognize repair remedies as an appropriate resolution of dispute.<sup>162</sup>

-- 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 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 remedies. And about 2/3 of *those* cases reached that resolution through mediation.<sup>163</sup>

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<sup>159</sup> If the original resolution was an arbitrator's decision, the arbitration would be reconvened as part of the original case file.

<sup>160</sup> In the discussion that follows, “1R” should be understood to include 2R, etc.

<sup>161</sup> Using the spread sheet BBB AUTO LINE provided, the auditor found, for 2018, 565 “R” cases (mostly 1R, but sometimes 2R or higher). The auditor then found about 438 pairs (or more) of cases where multiple cases closed during the audit year – and the 438 cases were 78% of the 565 cases. (In the other “R” cases, the pre-R” case presumably closed in 2017.) Among these 438, roughly 95% stem from settlements that originally provided for repairs. Applying this 95% ratio to the full 565 cases these numbers suggest that roughly 535 mediated repair cases were associated with follow-on cases. Since there were 1081 mediated repair cases during the year, this suggests that somewhat less than half eventually lead to follow-ons.

<sup>162</sup> 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).

<sup>163</sup> Focusing on the 438 cases referenced in note 161 (cases where an original and a follow-on case both closed in 2018), roughly 184 (42%) resulted in repurchase or replacement remedies,

-- Repair remedies are sometimes 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 and the car remains under warranty, they may be the only remedy available to consumers by the terms of the program summary.<sup>164</sup>

-- And, 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 repair remedy can essentially provide the final repair opportunity that consumers should have afforded the manufacturer previously – and without which consumers in many states couldn’t avail themselves of lemon law remedies or presumptions.

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*Documentation of extensions.* On questions of timeliness, the parties sometimes agree to extend the compliance date initially set by a settlement or by an arbitrator’s order. They might agree to an extension, for example, to enable a manufacturer to obtain a custom-order vehicle or a hard-to-procure part for a repair. When the parties do agree to an extension, it’s often reflected in a new “settlement letter” to the consumer and manufacturer confirming that they agree to its terms. But these letters aren’t always sent. In some cases where a letter wasn’t sent, there’s a reference in the DRS’s notes, but that isn’t always the case.

*Recommendation: BBB AUTO LINE should take steps to ensure that, when one party requests an extension of compliance deadlines, the DRS obtain affirmative consent from the other and document that consent, preferably in a written communication to the parties. Failing that, the “extension” shouldn’t be considered in determining whether compliance was timely.*

The auditor understands that BBB AUTO LINE has already addressed with its staff the need to document extensions.

#### **D. 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 the BBB AUTO LINE to maintain certain records in

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including roughly 120 cases (29% of the 438) that resulted in such relief through mediation. Roughly 92 cases (21%) led to arbitrated denials; the rest led to other relief.

<sup>164</sup> See Chapter 1, Section II.A.5.

specific cases.<sup>165</sup> To the extent it's possible to tell from a review of the files,<sup>166</sup> the auditor saw no systematic problems on compliance with this provision, or with analogous provisions from Florida<sup>167</sup> or Ohio.<sup>168</sup>

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<sup>165</sup> 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 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.

<sup>166</sup> There's no way to tell, for example, if "all" written documents from all parties are included.

<sup>167</sup> Florida requires the submission of certain aggregate figures not required by Federal law (and these are reported discussed in Chapter 3), but does not require additional records to be kept in individual cases.



The auditor has observed, though, that there were occasional, if rare, cases where consumers said 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 cases further in Chapter 3, Section I.A.3.

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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,

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<sup>168</sup> 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;
  - (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.

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 (as noted above) are discussed in Chapter 3.

### **E. Openness of Records and Proceedings**

Rule 703.8 governs the extent to which records and proceeding 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.<sup>169</sup>

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 FTC Rule 703.8(c) and BBB AUTO LINE Rule 24. And, in the context of the twenty-first century's second decade, data security is an essential component of confidentiality. Without discussing the issue in great detail in a public filing, the auditor noted that BBB AUTO LINE had addressed important issues after the matter was originally 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.

The auditor did note one outstanding issue: BBB AUTO LINE has retained case files that are well over a decade old. He understands that BBB AUTO LINE is currently formulating and implementing changes to address data retention.

And, the auditor again notes that, while he has felt qualified to make recommendations on certain matters and noted BBB AUTO LINE's subsequent actions, he's not an expert on the

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<sup>169</sup> 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 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.

subject. 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.

## **CHAPTER 3**

### **SURVEY**

## 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.<sup>170</sup> 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. As in the past, the survey was accomplished through a telephone survey, which since 2015 has been conducted by TechnoMetrica Marketing Intelligence. The survey reached out to consumers who used the program and met certain other criteria (discussed below), and it includes a national sample and separate Florida and Ohio samples. Based on issues that emerged in the 2015 survey (the first by the current auditor and TechnoMetrica), the survey instrument was substantially revised for 2016; it’s been fine-tuned since then, but with relatively minor changes.<sup>171</sup>

On questions exploring process<sup>172</sup> and remedy, consumers are now told how BBB AUTO LINE recorded their cases, and asked to confirm or correct those records. This approach facilitates a “macro” analysis that compares aggregates from the survey sample to aggregates compiled, for the whole population, by BBB AUTO LINE. And it facilitates a related “micro” analysis, by which individual consumer responses are compared to BBB AUTO LINE records.

The micro analysis first looks to a different aggregate – how often do consumers disagree with BBB AUTO LINE records about their case? At this initial level, some discordance rates are on the order of 5% or higher. And, while a 5% figure, standing alone, isn’t very impressive, the second part of the micro analysis then looks to individual case files and provides important correctives and context. First, in many cases (some categories of which are detailed below), the auditor found reasonable explanations for reported discordances; in essence, because of artifacts of the survey process<sup>173</sup> or consumer confusion about how BBB AUTO LINE treated an event,

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<sup>170</sup> Rule 703.7(b)(3).

<sup>171</sup> For example, one question originally asked consumers, in open-ended form, how they first learned about BBB AUTO LINE. The question invited a single answer, and the interviewer either classified that answer into one of a series of pre-set categories, or reported it under “other” and noted the specifics of the consumer’s response. As the auditor identified certain responses that consumers made repeatedly, he has added them to the pre-set categories. And, this year, the question was reworded to ask the consumer about any sources from which she learned about BBB AUTO LINE before she filed her complaint. This wording allowed multiple responses, and, if a consumer gave multiple responses, all of her answers were reported.

<sup>172</sup> Was the complaint arbitrated, mediated, ineligible, or withdrawn?

<sup>173</sup> Most commonly, some cases that closed during the audit year but had a follow-on that began or extended into the following year. For example, a consumer might have reached a settlement that provided for a repair remedy during the audit year, but wasn’t satisfied with the result and filed another case that *didn’t* close during the audit year. The spread sheets on which the survey was based didn’t reflect the later developments, but the consumers’ responses often did.

*both* party's responses were reasonably consistent with the underlying files. In others, it quite possible, though less certain, that the survey response reflected a misunderstanding. In still others, it seems likely that there was a real disagreement, and (though the auditor reaches this conclusion with considerable caution) the consumer was wrong. This generally left a "true" discordance rate of at most 1-2%, and quite possibly less than that – including rare instances where the BBB AUTO LINE record is inconsistent with its own underlying files, and (somewhat more frequently) cases where communications broke down and the consumer and the program each attributed the breakdown to the other.

The focus on individual files, described above as part of the "micro" analysis, isn't new; the auditor's predecessor had examined specific files before the current auditor began with the 2015 audit. But since 2016 the file examination has been integrated with the survey. As one component of his review of individual files, the auditor targeted files where the consumer's survey response highlighted a potential issue.

- (1) 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 consumers who reported substantial delays in resolving their complaints.
- (3) Consumers who reported that manufacturers hadn't complied, or had complied belatedly, with obligations under settlement or arbitrators' awards.
- (4) Selected consumers who reported withdrawing a complaint.
- (5) Consumers who reported that they hadn't received one of several specified communications from BBB AUTO LINE.

These categories were similar to last year's, although this year the auditor more systematically examined files where consumers reported delays. Once the auditor identified a file, he explored any question that caught his attention; however, his initial, primary, and sometimes exclusive focus was to explore the issue that drew him there in the first place.<sup>174</sup>

Further, as discussed below,<sup>175</sup> the survey doesn't reach, and thus can't identify files for,

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<sup>174</sup> The questions that drew him to the files were sometimes fundamental issues about the case. (Why did the consumer say the case was arbitrated when there was no sign of arbitration?) And sometimes, as with questions about whether the consumer received a consumer complaint form, they focused on a relatively narrow point. Unless something leapt out at the auditor, he often, in the latter cases, looked at information relevant to whether the document was sent or received.

<sup>175</sup> Section II.C.2 of this chapter.

consumers who used lawyers. So, starting in the 2017 audit, the auditor has also examined selected cases in which consumers used counsel. Ninety were examined this year: for each population, 10 arbitrated cases, 10 withdrawn cases, 5 arbitrated cases, and 5 mediated cases.<sup>176</sup>

*Third*, the auditor has also looked at anomalies in the original spread sheet that BBB AUTO LINE prepared for TechnoMetrica, and that included all cases closed during the audit year, for facial problems. Last year there were about 40: arbitrated or mediated cases without a remedy; ineligible or withdrawn cases with a remedy; and arbitrated cases that didn't show whether or not the consumer had accepted the decision. Together, these 40 cases had accounted for about 0.4% of all reported cases. The auditor recommended the CBBB subsequently use the spread sheet as a screening device and fix errors *before* the survey was conducted and its own aggregate statistics were developed. To the CBBB's credit, it took significant steps in this direction for 2018.

Still, among over 9000 cases closed in 2018, some anomalies remained. There were fifteen, and they included cases that were reported as both withdrawn and arbitrated; cases using the term "other" in a sense other than its intended use<sup>177</sup>; arbitrated cases with no record of whether the consumer accepted the decision; cases reported as mediated and showing no remedy that were actually arbitrated; and entries with no information. Collectively, these anomalies impacted fewer than 1 in 600 cases, and they don't meaningfully affect the audit's broad results. But they may explain some relatively small discrepancies between in some comparisons of aggregate figures.

*Recommendation: The auditor commends BBB AUTO LINE's efforts, when they developed this year's spread sheet, to isolate and correct anomalies on its original spread sheet before they provided it for TechnoMetrica's use in the survey, and before they calculated Rule 703 statistics. To the extent that lingering problems remained, the auditor recommends that they take further steps to address them for future audits.*

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<sup>176</sup> The cases were examined alphabetically by *first* name. The auditor chose a different first letter to start for each population. "Withdrawn" cases were sampled at the highest rate because, for reasons discussed in Sections III.G, IV.G, and V.G., they had offered important insights in the past.

<sup>177</sup> The term is intended to be reserved for remedies, such as extended service plans, other than repurchase/replacement, repair, or (in a rarely used category) restitution.

## **A. Micro Analysis Summary**

### **1. Introduction**

As noted above, the audit serves to evaluate both BBB AUTO LINE's processes and 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, certain "discordances" between BBB AUTO LINE records and consumer survey responses. In providing this context, the examination largely alleviated possible concerns about that record-keeping. One exception – which BBB AUTO LINE has already acted to address – involves some concerns about BBB AUTO LINE's measurement of timely compliance.

As to the auditor's conclusions that many discordant responses were reasonably explicable or otherwise didn't point to a problem for BBB AUTO LINE, consider, for example, Table III-V. The table reports the responses, for the national sample, to a seemingly straightforward question: By what process was the consumer's complaint resolved or file closed?<sup>178</sup> This doesn't involve details about which a consumer might be uncertain,<sup>179</sup> or quantitative measures about which his memory might be fuzzy. So it seems surprising that the discordance rate was 5.2% – which, if projected to over 9300 cases this year, suggests possible issues with roughly 480 cases.

However, the auditor's review of the underlying files, along with the details of the consumer's survey responses,<sup>180</sup> shows that potential problems are actually far less widespread than the 5.2% figure might suggest. In essence, about half of the discordances are clearly false negatives (for reasons discussed below), and many of the remainder are likely false negatives as well. The entries on BBB AUTO LINE's spread sheets, on such metrics as process and remedy, are almost always backed up by its underlying files (but for the roughly 1 in 600 files, noted above, that contain an anomalous entry). Additionally, several consumers reported in the survey that BBB AUTO LINE staff didn't return their calls – generally with contradictory indications in the BBB AUTO LINE files – and the auditor can't and doesn't dismiss these concerns out of hand.

The auditor's detailed analytic framework builds on and refines the framework used over recent years. It explores the extent to which discordant cases reflect real disagreements. If there were, it further explores the extent to which there was an apparent or demonstrable error by BBB

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<sup>178</sup> Was the complaint ineligible, withdrawn, mediated, or arbitrated?

<sup>179</sup> In contrast, for example, consumers might more likely forget whether they received certain documents during a proceeding that might have ended more than a year before.

<sup>180</sup> Some questions included an "other" category, and interviewers recorded explanations that consumers in the "other" category provided.



AUTO LINE, an irreconcilable conflict that might (but needn't necessarily) point to a record-keeping or substantive problem, or (in a category that the auditor approaches with great care) whether there appears to be consumer error.

## **2. Cases Where BBB AUTO LINE Error Is Highly Unlikely**

This section describes recurring patterns that the auditor has observed since he began the targeted case file review in 2016. (These include patterns that have emerged over three years; not every scenario was prevalent or even present in 2018.)

These are all categories where BBB AUTO LINE records are quite likely “right” in the sense that they’re reasonable readings of the underlying files. These include, moreover, some situations where BBB AUTO LINE’s treatment reflects nuances that consumers don’t fully grasp, often despite efforts to clarify matters in the survey questions.<sup>181</sup>

### **a. Reasonably Explicable Discordances: 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 audit year because a case was originally closed during that year, but, subsequently, either the original case was reopened or a related case was filed that *didn't* close during the audit year.<sup>182</sup> The spread sheet (and thus the answers available to TechnoMetrica) didn't, and often couldn't, reflect the later developments that the consumer reported – which sometimes occurred within days of the survey.<sup>183</sup>

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<sup>181</sup> While efforts have been made to clarify some complex situations in the survey, potential clarifications can involve trade-offs. For example, one category discussed below involves details about how BBB AUTO LINE treats settlements that the party's reach after arbitration begins. This doesn't affect many consumers, and an explanation would require some detail. The problem is that this detail wouldn't be relevant to most consumers, and providing the requisite detail for specific questions could make the survey somewhat unwieldy. And this in turn could undermine a process that relies on the consumer's good will to complete surveys that, for some, could extend to more than twenty questions.

<sup>182</sup> If the original case was resolved through arbitration, subsequent developments would be handled by reopening the original file; otherwise, a new file would open, which in some but not all cases would be a 1R (or 2R, etc.) file.

<sup>183</sup> Consumers were interviewed during the second week of March, so that TechnoMetrica could prepare its analysis and leave the auditor sufficient time to expand on that analysis for a June filing date. In that context, consider the following scenario. A consumer filed a complaint in late December and was told on December 31 that he wasn't eligible for lemon law relief, or can't benefit from a statutory presumption, because he hadn't provided the dealer and manufacturer with sufficient opportunities, as required by state law, to fix the car. The consumer withdraws the complaint and provides the dealer and then the manufacturer with the requisite repair opportunities. If the consumer then files a new complaint in early February, BBB AUTO LINE would have had 40 days from the

In the national sample, straddles accounted this year for 4 of the 21 discordant cases on process (19%), and, during the past three years, they have accounted 12 of the 61 (20%) such cases. So, this one factor, where it's clear that the discordance *doesn't* show a real disagreement, consistently accounts for a substantial number of the purported discrepancies.

**b. Reasonably Explicable Discordances: Settlements That Aren't "Mediations"**

Consumers sometimes resolve their complaints directly with the manufacturer in ways that BBB AUTO LINE doesn't record as a "settlement." Or they settle a matter with the dealer, and such settlements are inherently outside the BBB AUTO LINE process. BBB AUTO LINE reports these cases as withdrawn (by virtue of the settlement) and notes in its closing letter that the consumer chose not to pursue it in BBB AUTO LINE. Still, BBB AUTO LINE staff may have done some work with the parties, and some consumers describe the process as "mediated."

**c. Reasonably Explicable Discordances: Settlements after an Arbitration Hearing Begins**

Some consumers are confused when matters settle after arbitration began. If there's a settlement after a hearing is scheduled but before it begins, it's reported as mediated. If a matter settles after the hearing begins but before the arbitrator issues a decision, the agreement is embodied in a "consent decision," prepared by BBB staff, that becomes effective when the parties and the arbitrator sign it – 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, this is the best way to handle a situation with no optimal solution,<sup>184</sup> but it's hardly a resolution that would be intuitively obvious to a consumer taking the survey.<sup>185</sup>

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time of filing to resolve the matter – which could extend past the survey date.

<sup>184</sup> The arbitrator had heard and decided the case and, the auditor believes, the program needs to report an arbitrated case. Once that's done, though, it would seem misleading to associate with an arbitration decision a different remedy than the remedy found appropriate. To do otherwise would muddy the waters when BBB AUTO LINE develops aggregate statistics that show regulators the relief (if any) that arbitrators collectively found appropriate.

<sup>185</sup> Further, it's not practicable to clarify all these nuances in survey questions, without bogging down the survey with details that, to most consumers, would be complex and even annoying minutia.

**d. Reasonably Explicable Discordances: Confusion about Ineligibility and Withdrawals**

In several cases, consumers withdrew a complaint when told they were ineligible for the program or for specific remedies under the program. The BBB AUTO LINE characterizes these matters as withdrawn, though it doesn't routinely use the word "withdrawn" in its closing letter, but some consumers have described these matters as ineligible. Other consumers have classified a withdrawn case as "other," but then described facts supporting BBB AUTO LINE's recording as "withdrawn."

**e. Reasonably Explicable Discordances: Consumers Dissatisfied with Execution of Repair Remedy**

Another recurring situation involved consumers who received a mediated repair remedy, weren't happy with the result but didn't follow up with BBB AUTO LINE, and who either described their complaint was ineligible or withdrawn, or replied "other" and clarified that the matter wasn't resolved to their satisfaction. As noted previously, mediated repair remedies typically provided that the manufacturer's representative would examine the car for warranted problems, and not infrequently the representative reports that there was no warranted issue. In essence, consumers (not unreasonably) confused a determination that they didn't qualify *for relief* (usually a determination by the manufacturer representative that they could have challenged) as a determination of ineligibility *for the program*.

**f. Reasonably Explicable Discordances: Consumers Who Reported Developments that Occurred After a File Was Closed**

Some consumers who responded "other" to the process question then described later developments, such as settlements with the dealer after they returned their performance verification letter. Others gave status reports regarding their case; some said, for example, that a matter was never resolved even though there's no sign in the BBB AUTO LINE files that they returned a performance verification letter alerting the BBB AUTO LINE to a problem. These are similar to straddle cases, but don't involve later developments within the program or BBB AUTO LINE's purview.

**g. Consumers Who Don't Remember**

Various questions include a "not sure" option, including several to which the option was added this year. Consumers who chose that option weren't counted in the discordance analysis.

**h. Branching Issues**

This is something of a flip side to subsection g, 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 previous entry, didn't record one.<sup>186</sup> Consider, for

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<sup>186</sup> This doesn't include cases where BBB AUTO LINE *mistakenly* failed to record an entry, as

example, the consumer in subsection b who withdrew a complaint because she settled the matter with the dealer. On the process question, BBB AUTO LINE records these cases 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 mediated settlement, she *was* asked about her remedy. Thus, there's essentially a reasonably explicable discordance on remedy (although it's arguable that there isn't a true discordance on the remedy metric).

**i. Highly Likely Consumer 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-on phone call) for consumers. Further, seeming discordances aren't necessarily inconsistencies; even if BBB AUTO LINE sent a communication, for example, that doesn't necessarily establish that the consumer received it. Still, sometimes consumer error seems highly likely, and sometimes to the point of near-certainty, based on apparently clear documentation.

Consider a case where the latest document in BBB AUTO LINE's files reports a matter as ineligible because of the car's age and the underlying file includes an ineligibility letter. Subject to the auditor's check for a multiple complaints by the same customer (where the consumer might have been describing an earlier or later case)<sup>187</sup> consumer error seems highly likely.

Similarly, when a consumer uses arbitration, the files necessarily contain a notice of hearing (or inspection), an arbitrator's decision, and other documents. Again subject to the auditor's check for multiple complaints by the same customer, the matter again seems reasonably clear.<sup>188</sup>

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

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with some of the anomalous cases noted above.

<sup>187</sup> Multiple complaints that were closed during different years are "straddle cases" and discussed in subsection a of this section, above. Multiple complaints about the same vehicle during the *same* year are discussed in Section B.3, below.

<sup>188</sup> The auditor has also spoken to some consumers over the years who reported arbitrations where BBB AUTO LINE records didn't show an arbitration proceeding, and found that the consumers to whom he spoke were confused about what constitutes arbitration. For example, when one consumer was asked to describe his arbitration proceeding, it became clear that he was describing an inspection by a field service engineer under a mediated repair remedy.

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*.<sup>189</sup> Perhaps not surprisingly, demonstrable consumer error is most common on document receipt questions, where there are clear indicia of such error and where the question involves events of secondary import to the consumer that might date back more than a year before TechnoMetrica posed the question to him.<sup>190</sup> Thus, for example, 34 of 407 consumers in the national sample said they didn't receive a complaint form, and the auditor found signed forms in 13 (39%) of the case files.<sup>191</sup>

#### **j. Consumer Error Shown by a Subsequent Call**

Consumers who gave discordant responses on process or remedy during the survey were asked if they would take a follow-up call. In several cases where the consumer said "yes" and the answers weren't easily explicable (as where a consumer said his case was arbitrated but the files contained no sign of arbitration), the auditor attempted (not always successfully<sup>192</sup>) to contact the consumer for clarification. In some cases over the years, a discussion made clear that there *was* a conflict between the consumer's response and BBB AUTO LINE's records. In others, the discussion clarified that the case involved something akin to a "reasonably explicable discordance" described above. And in still others, the consumer essentially corrected his earlier response.<sup>193</sup>

### **3. Breakdowns of Communications**

In a few cases each year, there's a discordance involving a breakdown in communications that the auditor can't explain or resolve. These are cases where the BBB AUTO LINE records and the consumer each attribute the breakdown to the other.

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<sup>189</sup> Further, these documents routinely contain consistent printing of certain answers, indicating the sort of computer-generated printout that BBB AUTO LINE would produce, often with additions to certain answers in the same handwriting as the signature. Thus, a visual inspection of the document supports the explanation assumed by the auditor.

<sup>190</sup> For example, a consumer interviewed in March 2019 might have been asked about a case that closed in January 2018, where the initial package had been sent a month or more before that. .

<sup>191</sup> All 33 cases are discussed further in Section III.F.

<sup>192</sup> In one case last year, for example, the auditor attempted in April to call the same number that TechnoMetrica had used in March, and it was disconnected.

<sup>193</sup> For example, one consumer to whom the auditor spoke this year, who had a mediated repair settlement with an inspection by a manufacturer representative. mistook the representative's determination for an "arbitration."

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.<sup>194</sup> For the consumer, though, the auditor generally has only survey responses, although there was an unusual case this year where he had more. As part of his review of cases selected cases brought on behalf of consumers by lawyers, the auditor found a letter from an attorney who was replying 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 left on at least one) and one by email. And, in essence, this adds more weight to a conclusion that BBB AUTO LINE may sometimes share responsibility for breakdowns in communications – although such breakdowns are, all in all, relatively uncommon.

In this and other cases that aren't as well-documented on the consumer's end, there's no way to evaluate decisively what happened, and it could be that both parties missed attempts at communication. Still, particularly when it seems that a file might need to close because staff hasn't reached a consumer, it would be preferable from the auditor's perspective to have some detail in the BBB AUTO LINE's letters or the DRS's notes documenting calls (or attempted calls) to the consumer or her attorney.

#### **4. Micro Analysis: Broad Conclusions**

Without delving into too much detail here – the detail appears in the rest of the report – the micro analysis 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. On the process metric for the national sample, for example, they matched 94.8% of the time and, on the remedy metric for the national sample, they matched 99.5% of the time. More 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 that. 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, this 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 these records were substantially accurate as well.

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<sup>194</sup> The auditor has seen files with as many as two separate letters, referencing as many as four other attempts to reach the consumers.

## 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 the 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 has sought to minimize potential errors.

*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, certain cases were omitted from the sampling frame: those where consumers had lawyers and 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 the cases that were included,<sup>195</sup> and the audit would have compared apples to oranges. To address this, the auditor developed aggregates of his own from the *modified* spread sheets that TechnoMetrica generated and used to place calls – the spread sheet that eliminated both attorney cases and earlier cases where there were 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.<sup>196</sup>

*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, 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.<sup>197</sup> 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 became apparent from the 2016 audit, the auditor worked with TechnoMetrica to refine the

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<sup>195</sup> For example, in situations involving multiple complaints about the same vehicle, the earlier (omitted) cases mostly involved mediations. As to complaints by consumers who had lawyers, the differing profiles included, for example, a greater tendency to mediate rather than arbitrate. See Chapters III.G, IV.G, and V.G.

<sup>196</sup> 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.

<sup>197</sup> Consumers who aren't eligible often learned that that was the case within a day; perhaps they were less vested in the program and less willing to complete a detailed survey.

questionnaire to address some confusion, but they haven't been able to fully eliminate it.<sup>198</sup> 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.<sup>199</sup> And, even if discordances are, for example, reasonably explicable, they'll still impact the macro comparisons – although, fortunately, some will effectively cancel each other out.<sup>200</sup>

*Fourth*, there's a *sampling error* that's inherent in projecting to the whole population survey results from a subset of that population.<sup>201</sup> This is the error measured by the “margin of error,” and, for the current survey, the margin of error was least when dealing with the largest populations – for example, in projecting from 407 consumers interviewed in the national survey to the adjusted the “sampling frame” of 7175 from which they were drawn. Even here, margin of error was +/-4.7%. But it grew to +/-7.5% for the (smaller) Florida sample and to +/- 9.7% 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 +/-20% (a range of at least 40%) for questions posed to only some of the interviewed consumers.<sup>202</sup> 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 occasional comparisons can reasonably be expected to fall outside the margin.

When the range of errors reaches the realm of 20% (+/-10%) or even 40% (+/-20%), 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 (407) and Florida survey

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<sup>198</sup> 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 2108. It's hardly a surprise, though, that some consumers still report on follow-on cases from 2019.

<sup>199</sup> For example, if one consumer said that a mediated case was arbitrated while another said that an arbitrated case was mediated, the discordances would balance out in aggregate calculations whose base included both mediated and arbitrated cases.

<sup>200</sup> In the simplest example, if one case is reported by the 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 figures will cancel out.

<sup>201</sup> Such projection is unavoidable; even in Ohio, where TechnoMetrica attempted to contact every consumer in the sampling frame, they completed interviews with only 27%.

<sup>202</sup> For example, while 76 Ohio consumers completed a survey, only the 17 who said they used arbitration were asked if they accepted the arbitrator's decision.



(153), 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 solid B+, with grades of 3.35 (national), 3.38 (Florida) and 3.17 (Ohio).
- (2) Grades for arbitrators varied, although overall grades were somewhat higher for Florida than for the other populations. Not surprisingly, though, consumers who got more favorable decisions were more impressed with their arbitrators' virtues. Thus, composite grades from consumers with repurchase or replacement remedies were 3.72 (national), 3.73 (Florida) and 3.59 (Ohio); grades from those with no award were 1.26 (national), 1.22 (Florida) and 1.50 (Ohio).
- (3) When asked if they would recommend BBB AUTO LINE to friends and family, 70% in the national sample said yes, as did 74% in Florida and 77% in Ohio. Among consumers who used mediation or arbitration, the numbers rose to 88% for the national sample, 87% for Florida, and 86% for Ohio. Even among consumers who went to arbitration and lost, roughly half of those who responded said they would recommend BBB AUTO LINE to friends and family.

## II. Conducting the Survey

### A. TechnoMetrica

As noted last year, the auditor lacks the capacity to conduct a survey himself and, as was done since 2015, CBBB contracted with TechnoMetrica Market Intelligence<sup>203</sup> to conduct the study and help the auditor in designing and analyzing it.<sup>204</sup> 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 solicited input from the CBBB, 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, audits since 2015 cover cases *closed* between January and December of the audit year, regardless of when they opened. This is a consistent standard, applied year-to-year, and eliminates a previous issue with double counting.<sup>205</sup>

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<sup>203</sup> 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.

<sup>204</sup> The auditor spoke to TechnoMetrica before the 2015 survey and agreed to work with them, and each year since has again agreed to the use of TechnoMetrica.

<sup>205</sup> Before 2015, consumers whose cases were opened in one year and closed in another were potentially contacted for both years (and BBB AUTO LINE, in calculating aggregate statistics, included these cases for both years).

## 2. Consumers Represented by Counsel

One issue posed by the survey was how to handle consumers who had counsel in a BBB AUTO LINE proceeding. When consumers had lawyers representing them, their point of contact for phone calls and other communication was through their attorney. 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, as discussed in Section III.G, three firms accounted for at least 57% of the 1364 attorney cases in 2018.

However, there were also problems with directly contacting consumers who had counsel. For example, 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 be cleared 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 15% of consumers from the national sample, 20% from the Florida sample, and about 18% from the Ohio sample. But, though he didn't survey these consumers, the auditor did review, for each population, thirty case files for consumers who used counsel.

## 3. Multiple Complaints about the Same Vehicle (MCSVs)

This year's survey also took the same approach that the auditor has previously used for MCSVs. Most of these were “1R” cases,<sup>206</sup> where a settlement<sup>207</sup> produces a remedy (usually an inspection under the auspices of a manufacturer representative and a repair if the representative finds a problem); the manufacturer undertakes to perform; the consumer isn't satisfied; and the consumer, in a timely fashion, tells BBB AUTO LINE that she wants to proceed further.<sup>208</sup>

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<sup>206</sup> “1R” also includes “2R” cases (and beyond).

<sup>207</sup> 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 original case is reconvened before the arbitrator.

<sup>208</sup> Other MCSVs might also include, for example, a situation where the consumer withdrew a

TechnoMetrica identified MCSVs, including but not limited to 1R cases, by finding cases with the same contact phone number.<sup>209</sup>

The BBB AUTO LINE’s general approach – to open a new “R” case when a consumer with a mediated settlement isn’t satisfied with its implementation – has a sound basis. “R” cases are most often preceded by mediated repair settlements, and the FTC, Florida, and Ohio all recognize repair remedies as appropriate outcomes to dispute resolution.<sup>210</sup> With the participation of a manufacturer representative, moreover, a repair resulting from a BBB AUTO LINE settlement might well resolve the consumer’s concerns where past attempts have failed; further, a repair remedy provides an alternative to an “all-or-nothing” approach in the face of ambiguous evidence. Yet repair remedies may not resolve consumers’ concerns, and the process can take time; the manufacturer will generally arrange an inspection and perhaps attempt a repair; and, particularly when 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 auditor’s review, it seems reasonable to restart the clock for a “1R” case.<sup>211</sup>

Yet starting a new case poses complications of its own, both for the survey and for calculating aggregate statistics. 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 be confused in distinguishing events in the original case from 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.<sup>212</sup> So, using the phone number screen to identify MCSVs, 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

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complaint because she was travelling abroad, and refiled when she returned.

<sup>209</sup> This would also have screened out the earlier case if a consumer filed cases involving different vehicles in a single year, but that’s very rare. A single phone number could also be associated with multiple cases when a case is brought by a lawyer and contact number as the attorney’s number. But attorney cases were already excluded from the survey.

<sup>210</sup> 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).

<sup>211</sup> Further, while the discussion above focused on cases reopened after an initial settlement failed to resolve the issue to the consumer’s satisfaction, in other cases a consumer might withdraw and refile a complaint, often with new evidence and sometimes having filed little evidence before withdrawing. Here, a new start seems particularly appropriate.

<sup>212</sup> In Ohio, where TechnoMetrica needed to call every eligible consumer, this annoyance and futility would have reached every consumer with MCSVs.

complaints during the year.<sup>213</sup>

MCSVs would also create an apples and oranges problem if the auditor compared BBB AUTO LINE's aggregate calculations to the survey results without making appropriate adjustments. As noted above, consumers who filed MCSVs were queried only about the last case that they filed. Looking only at the non-attorney cases on the spread sheet that BBB AUTO LINE developed, the auditor found 545 "R" cases, roughly 7% of all non-attorney cases.<sup>214</sup> These cases, excluded from the survey process, have a different profile from the typical case; most significantly, about 33% of complaints filed with BBB AUTO LINE ended in mediation, but pre-1R cases are *always* mediations. If the omitted cases were excluded from the survey but included in CBBB's aggregates, the impact might well create a difference between the two of several percent on the process metric. To address this *coverage error*,<sup>215</sup> the auditor (as noted above) compared the survey results to aggregates developed from the abbreviated spread sheet created by TechnoMetrica.

### 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 7,175 records. According to TechnoMetrica,

TechnoMetrica then randomized the sampling frame and divided it into a total of 15 replicates: 14 replicates of 500 records each and 1 with 175 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 2018 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 15. Due to limited Ohio sample, any available records remaining from the National sample replicates were utilized as well. The

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<sup>213</sup> In any event, the final resolution in a BBB AUTO LINE proceeding is the resolution that consumer is likeliest to describe.

<sup>214</sup> For the 1R cases, for example, these would be "non-R" cases; for 2R cases, these would be 1R cases. Note that the analysis on the current point would be slightly complicated by straddle cases (where the follow-on case closed in a later year). In essence, the analysis is a rough approximation because it assumes that the number of straddles doesn't vary substantially from year-to-year, so the number of "R" cases from 2018 whose predecessor straddled back into 2017 was equivalent to the number of "pre-R" cases in 2018 with follow-ons straddling into 2019.

<sup>215</sup> See Section I.B of this chapter.

sampling frames for Florida and Ohio were 767 and 302 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 attempts per respondent.

A total of 407 completes were obtained in the National survey, 153 in Florida and 76 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 <sup>†</sup>
<b>National</b>	7,175	2,750	2,544	407	16.0%	+/- 4.72
<b>Florida</b>	1,377	767	697	153	22.0%	+/- 7.47
<b>Ohio</b>	302	302	282	76	27.0%	+/- 9.74

*\*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 as many as four phone calls per consumer) to contact every Ohio consumer that BBB AUTO LINE identified and that provided 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 76.<sup>216</sup>

**E. Identifying the Relevant State**

The auditor has learned that, for each case filed, BBB AUTO LINE records both a contact address, including a state, and, separately, the state under whose program the complaint was handled. For consumers without lawyers, the two states are usually the same; for those with

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<sup>216</sup> Given the larger sampling frame in Florida, it wasn't necessary to do this for that state.

lawyers, they often differ. And this impacts the current (and past) state-specific audits for Florida and Ohio<sup>217</sup> -- but, as explained below, the impact is quite limited.

*First*, BBB AUTO LINE has apparently focused, in compiling aggregate statistics, on the proper state – the state under whose program the case was processed. The auditor has confirmed this by reviewing two “two-state” spread sheets that he asked BBB AUTO LINE to prepare – one for 2018 and, as a check on past practice, another for 2017.

*Second*, TechnoMetrica did use a BBB AUTO LINE spread sheet with the contact state to prepare the sampling frame from which it randomly selected consumers to call. And, to the extent that the contact state wasn’t the state under whose program the case was processed, cases were therefore classified under the wrong state for calling and for analytic purposes in the state-specific surveys. Further, this problem continued into 2018 – the issue was discovered too late to correct for the current survey – and thus to some extent impacted the results for this year’s state surveys.

But the resulting impact was relatively limited. As detailed above, the consumer survey didn’t extend to consumers who had counsel, so TechnoMetrica excluded these cases from its sampling frame. And, as shown by the charts below, these are precisely the cases where the “different states” issue was likely to arise.

<b>Florida</b>	<b>Non-Attorney cases</b>	<b>Attorney cases</b>
Properly included cases with a contact address in Florida that were processed under the Florida program	1547	188
Cases inadvertently <i>excluded</i> from the sampling frame because the contact address was elsewhere, although the case was processed under the Florida program.	35 (2.3%)	258 <sup>218</sup> (137.2%)
Cases inadvertently <i>included</i> in the sampling frame because the contact address was in Florida, although the case was processed elsewhere	15 (1.0%)	127 (67.6%)

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<sup>217</sup> The state information doesn’t impact the substance of the national audit, although TechnoMetrica uses the information it was provided (identifying the contact state) to determine the consumer’s time zone when making calls.

<sup>218</sup> This includes numerous Florida cases handled by lawyers in Florida for a large firm headquartered elsewhere, because the firm routinely lists its out-of-state headquarters as the contact address.

<b>Ohio</b>	<b>Non-Attorney cases</b>	<b>Attorney cases</b>
Properly included cases with a contact address in Ohio that were processed under the Ohio program	333	60
Cases inadvertently <i>excluded from</i> the sampling frame because the contact address was elsewhere, although the case was processed under the Ohio program.	8 (2.4%)	13 (21.7%)
Cases inadvertently <i>included in</i> the sampling frame because the contact address was in Ohio, although the case was processed elsewhere	4 (1.2%)	3 (5.0%)

For purposes of the survey, which included only non-attorney cases, it would thus be surprising if “wrong state assignments” had a significant impact. Further, the auditor confirmed this empirically. In tables such as Table IV-5 and IV-7 (for Florida) and V-5 and V-7 (for Ohio), covering key process and remedy aggregates, he compared BBB AUTO LINE’s aggregate figures to figures that he derived with reference to *both* the contact state and the processing state. The numbers proved quite comparable.

*Third*, the auditor in 2017 began to systematically review files, as part of the Florida and Ohio audits, roughly 30 randomly selected Florida cases and 30 randomly selected Ohio cases that were brought by attorneys. And it now appears that many of these cases were drawn from the pool with improperly included and excluded cases. While the auditor’s review of attorney-specific files last year produced meaningful insights, though, the Florida-specific (and Ohio-specific) results weren’t significantly different from those for the national sample.<sup>219</sup> Thus, while the auditor in 2017 drew the “attorney case sample” from a somewhat mismatched population for the state populations, the “different state” issue doesn’t change his broad conclusions from last year. And, as to the selection of attorney cases chosen for review for purposes of the *current* survey, the auditor drew on the proper state population.

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<sup>219</sup> Perhaps this reflects, in part, that so many cases are brought by firms with multi-state practices.



## IIA. Survey Results – Some Preliminary Notes

### A NOTE ON TABLE NUMBERING

The auditor has used consistent table numbering in the three audits included in this report, and has also maintained consistency in table numbering in this year's audit and prior audits since 2016. Thus, Table III-1 in the 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. And the same numbering extends to other recent audits.

The auditor sometimes skips a table in an audit, perhaps because it involves a question posed to a narrow category of consumers and no consumers in the relevant population responded to the question. When this occurs, the auditor also skips the table's number. Comparably, when the auditor has added a table that wasn't included in past years, he has given it an "A" number, such as "Table VIIA." Again, he has taken all these steps to simplify comparisons between different audits in a single year, and different audits in different years.

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

(1) **“Not sure” responses.** As was done previously, the audit excludes not sure responses in calculating percentages and, for questions measuring consumer satisfaction, in calculating the mean grades. The auditor was concerned, for example, that counting the “not sure” responses in calculating mean grades was tantamount to treating them as failing grades.<sup>220</sup> For practical and other reasons, the auditor consistently excludes these responses, and the auditor believes this provides a more meaningful measure of BBB AUTO LINE's performance.

(2) **Gendered pronouns in describing consumers.** Throughout this report, references to consumer files don't identify the parties involved. To add an extra layer of anonymity, the auditor doesn't necessarily use the appropriate gender-specific pronouns.

(3) **Characterization of the bases for targeted questions.** Some questions were directed only to some consumers, e.g., those who used arbitration or those who reported that their cases took more than forty days to resolve. When the table describes the base for a question, such as “arbitrated cases” it means “cases identified by the consumer as ‘arbitrated.’”

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<sup>220</sup> The survey asked consumers to grade arbitrators and BBB AUTO LINE staff on a scale from A to F, then converted those answers to a 4.0 scale to facilitate numerical calculations. When “not sure” responses were included in the basis for making aggregate calculations, they added zero points to the numerator while raising the denominator – thus having the same impact as an F.

(4) **“Imported” results.** Similarly, in tables comparing consumer responses to BBB AUTO LINE records, the term “imported” refers to results “imported” from BBB AUTO LINE records.

(5) **“Fully adjusted” results.** This refers to aggregate figures that were adjusted both to exclude cases where a consumer had an attorney, as well as, in an MCSV situation, the earlier case that had a subsequent follow-on.

### III. SURVEY RESULTS – NATIONAL SAMPLE

#### A. GENERAL INFORMATION

Table III-1: Vehicle Year

	<b>2018 Cases</b>
<b>TOTAL</b>	407
	100.0%
<b>2003</b>	1
	0.2%
<b>2004</b>	-
	-
<b>2005</b>	1
	0.2%
<b>2006</b>	1
	0.2%
<b>2007</b>	1
	0.2%
<b>2008</b>	8
	2.0%
<b>2009</b>	3
	0.7%
<b>2010</b>	7
	1.7%
<b>2011</b>	12
	2.9%
<b>2012</b>	17
	4.2%
<b>2013</b>	20
	4.9%
<b>2014</b>	24
	5.9%
<b>2015</b>	32
	7.9%
<b>2016</b>	78
	19.2%
<b>2017</b>	152
	37.3%
<b>2018</b>	50
	12.3%

**Table III-2:**

**The BBB AUTO LINE's records show they closed a complaint in 2018 about your <year><make> vehicle. Is that correct?**

	<b>2018 Survey</b>	<b>2017 Survey</b>	<b>2016 Survey</b>
<b>TOTAL</b>	407	408	401
	100.0%	100.0%	100.0%
<b>Yes</b>	396	406	397
	97.3%	99.5%	99.0%
<b>No</b>	11	2	4
	2.7%	0.5%	1.0%

The “no” responses increased this year, but were mostly corrections to the model name or minor changes to the model year, although one curious case involved a 13-year difference. While these seem minor, BBB AUTO LINE might point out to its staff that such changes aren’t always being captured in the database entries.

**Table III-3: Repair attempts**

	<b>2018 Survey</b>	<b>2017 Survey</b>	<b>2016 Survey</b>
<b>BASE: All respondents, “not sure” excluded</b>	398	397	392
	100.0%	100.0%	100.0%
<b>None</b>	56	74	74
	14.1%	18.6%	18.9%
<b>One</b>	40	23	34
	10.1%	5.8%	8.7%
<b>Two</b>	31	24	21
	7.8%	6.0%	5.4%
<b>Three</b>	64	71	55
	16.1%	17.9%	14.0%
<b>Four or more</b>	207	205	208
	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)**

	<b>2018 Survey</b>	<b>2017 Survey</b>	<b>2016 Survey</b>
<b>BASE: All respondents, excluding those who responded “not sure” to this question</b>	<b>395</b>	401	392
	<b>100.0%</b>	100.0%	100.0%
<b>Manufacturer's manuals/other warranty documents</b>	<b>48</b>	49	48
	<b>12.2%</b>	12.0%	12.2%
<b>Dealer or manufacturer representative</b>	<b>92</b>	63	65
	<b>23.3%</b>	15.7%	16.6%
<b>BBB/BBB Website</b>	<b>54</b>	31	55
	<b>13.7%</b>	7.7%	14.0%
<b>Internet website (NOT BBB or government website)</b>	<b>81</b>	112	94
	<b>20.5%</b>	27.9%	24.0%
<b>Lawyer</b>	<b>22</b>	10	10
	<b>5.6%</b>	2.5%	2.6%
<b>Friend/family/word of mouth</b>	<b>71</b>	92	88
	<b>18.0%</b>	22.9%	22.4%
<b>TV/Radio/Newspaper</b>	<b>3</b>	7	4
	<b>0.8%</b>	1.7%	1.0%
<b>Government website, office, or official</b>	<b>14</b>	9	9
	<b>3.5%</b>	2.2%	2.2%
<b>Had used the BBB AUTOLINE previously</b>	<b>17</b>	17	3
	<b>4.3%</b>	4.2%	0.8%
<b>General knowledge</b>	<b>16</b>		
	<b>4.1%</b>		
<b>Other</b>	<b>3</b>	11	16
	<b>0.7%</b>	2.7%	4.1%

Consumers had previously been asked how they *first* learned about BBB AUTO LINE. The new formulation permitted multiple responses. This tended to raise the numbers a bit, but not by much; only 24 consumers gave two responses, and only one gave three.

Nineteen consumers were originally reported as responding “other,” but sixteen of them gave responses that the auditor moved into a new category of “general knowledge.” In some cases, the consumer may have been speaking about general knowledge of Better Business Bureaus and, with probing, the survey might have found that consumers know about BBB’s generally but learned of BBB AUTO LINE *specifically* from the BBB website.

## B. PROCESS QUESTIONS

**Table III-5: Aggregate “process” responses**

	2018 BBB AUTO LINE					2018 Survey (B1)	Same, adjusted for response rate (see below) (B2)
	BBB AUTO LINE stats from 703 report (A0)	BBB AUTO LINE stats from spread sheet (A1)	Same, excluding attorney cases (A2)	Auditor’s stats from original spread sheet, excluding att’y cases (A3)	Auditor’s stats from “fully adjusted” spread sheet (A4)		
<b>TOTAL</b>	9301	9318	7953	7954	<b>7175</b>	407	
	100.0%	100.0%	100.0%	100.0%	<b>100.0%</b>	100.0%	<b>100.0%</b>
<b>Mediation</b>	2769	2773	2600	2601	<b>2151</b>	141	
	29.8%	29.8%	32.7%	32.7%	<b>30.0%</b>	34.6%	<b>28.9%</b>
<b>Arbitration</b>	1508	1515	822	825	<b>809</b>	57	
	16.2%	16.3%	10.3%	10.4%	<b>11.3%</b>	14.0%	<b>11.9%</b>
<b>Withdrawn</b>	5024 54.1%	766	657	654	<b>606</b>	24	
		8.2%	8.2%	8.2%	<b>8.4%</b>	5.9%	<b>7.6%</b>
<b>Ineligible</b>	(for both)	4,264	3,874	3874	<b>3609</b>	173	
		45.8%	48.7%	48.7%	<b>50.2%</b>	42.5%	<b>51.6%</b>
<b>Other</b>						12	
						2.9%	

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

	2018	2017	2016
<b>TOTAL</b>	9318	10615	9748
	100.0%	100.0%	100.0%
<b>Mediation</b>	2773	2828	2547
	29.8%	26.6%	26.1%
<b>Arbitration</b>	1515	2010	2160
	16.3%	18.9%	22.2%
<b>Withdrawn</b>	766	963	866
	8.2%	9.1%	8.8%
<b>Ineligible</b>	4,264	4814	4175
	45.8%	45.3%	42.8%

**Table III-6: Comparisons of individual “process” responses**

	<b>Mediated</b>	<b>Arb.</b>	<b>Withdrawn</b>	<b>Ineligible</b>	<b>Other</b>
<b>TOTAL</b>	141	57	24	173	12
	100.0%	100.0%	100.0%	100.0%	100.0%
<b>Mediation (Imported)</b>	140	2	2	-	6
	99.3%	3.5%	8.3%	-	50.0%
<b>Arbitration (Imported)</b>	-	54	-	-	-
	-	94.7%	-	-	-
<b>Withdrawn (Imported)</b>	1	1	21	2	4
	0.7%	1.8%	87.5%	1.2%	33.3%
<b>Ineligible (Imported)</b>	-	-	1	171	2
	-	-	4.2%	98.8%	16.7%

**Concordance: 386/407 = 94.8%**

**Discordance: 21/407 = 5.2% (see below)**

### **1. Micro analysis.**

Table III-6, the core of the micro analysis, reports a “concordance” of 94.8%, which is a reasonable if not particularly impressive figure. With over 9300 files on the original spread sheet, this would suggest a fundamental error in over 480 cases.

However, most of the 21 “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 the process or with record-keeping or are otherwise reasonably explicable. Four were straddle cases, where the consumer described case-related developments (often in a follow-on case) that occurred in 2019 (category a). Five consumers appeared to confuse ineligible with withdrawn complaints or, because of a similar confusion, to describe a withdrawn or ineligible complaint as “other” (category d).<sup>221</sup> Three consumers described later developments (category f).<sup>222</sup> Two consumers said their cases were arbitrated even though the file contained no sign of arbitration and the auditor found no indication of a related case (such as a straddle case) that might have created

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<sup>221</sup> These include a case where the consumer’s proceeding closed when she entered a class action suit; another where the files quote a consumer email in which she said she wasn’t pursuing the case because she didn’t think she could get the desired resolution; and a case from California (where the file opens before the consumer returns a signed consumer complaint form) that was closed because of the consumer’s failure to return a signed consumer complaint form.

<sup>222</sup> In all three cases, BBB AUTO LINE reported the case as mediated. But, looking to later events, one consumer said the process was “other” because she learned that the problem was that the car disabled certain features when the door was ajar; another said he hired an attorney; and yet another reported that he traded in the car and never withdrew it with BBB AUTO LINE.

confusion (category i).<sup>223</sup> Other cases involved somewhat complicated fact patterns but don't seem to involve errors on the part of BBB AUTO LINE.<sup>224</sup>

In another two cases, consumers insisted that their calls weren't returned. The BBB AUTO LINE records in both cases were well-documented,<sup>225</sup> but the auditor still can't dismiss the consumers' assertions.<sup>226</sup>

As is usually the case with as many as 21 reported discordances, the auditor can't pinpoint precisely the number of "true" discordances is debatable. Nonetheless, with 407 cases in the sample, it appears that the true discordance rate is likely in the 1-2% range, and probably the lower end (perhaps even below) that range.

*Attorney cases.* As noted above, the auditor also examined 30 case files where the consumer had counsel, including ten arbitrated cases, five mediated cases, ten withdrawn cases, and five ineligible cases.<sup>227</sup> 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.

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<sup>223</sup> The auditor also asked BBB AUTO LINE to confirm that no other cases were filed under different names for the same VIN, and BBB AUTO LINE provided the confirmation.

<sup>224</sup> Thus, one case involved a consumer who accepted a mediated repair settlement, filed a 1R case before it was resolved, but (according to the DRS's notes) later called to report that the repair was finished satisfactorily. BBB AUTO LINE reported the case as withdrawn and the consumer said "other." The consumer didn't want to be called back, but her responses on the satisfaction questions – straight "A" grades – are consistent with the DRS's notes.

<sup>225</sup> In one case, the consumer insisted that he left fifteen messages and the complaint was never resolved. The BBB files contain a letter to the consumer reporting two prior attempt by BBB AUTO LINE to call (both documented in the DRS's notes), after which the consumer agreed to a mediated repair settlement. The BBB AUTO LINE files also report that a performance verification letter that was sent and never returned.

In the second case, the consumer said that she called BBB AUTO LINE several times and never got a call back; the last note by the DRS reports that the consumer hadn't given the manufacturer a final repair attempt pursuant to state law, and that she chose to withdraw the case, provide the manufacturer with opportunity for a final repair attempt, and return to BBB AUTO LINE if needed.

<sup>226</sup> For example, in the second case described in the previous footnote, the auditor can't dismiss the possibility that the consumer eventually did try to return to BBB AUTO LINE after the final repair attempt, and got no response.

<sup>227</sup> The auditor alphabetized the all the cases where consumers had attorneys, and then took the first five or ten in each category, alphabetically by *first* name.



## 2. Macro analysis

*The “A” columns of Table III-5.* As in prior reports, 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 more cases through mediation than arbitration. The figures in Column A are taken from spread sheets that are also used, directly or indirectly, to compute columns A2, A3, and A4.

In order to simplify these calculations and make them more transparent to the auditor, BBB AUTO LINE this year based its own aggregate reports on process (and certain other variables) directly from the same spread sheet. It didn’t do the same for the Rule 703 statistics themselves, however, and, on metrics reported on both the Rule 703 statistics and the tables that BBB AUTO LINE provided the auditor for inclusion in the report, this led to small discrepancies. BBB AUTO LINE is attempting to identify the source of these divergences for next year’s audit. For now, though, the auditor lists the actual “Rule 703 statistics” in Column A0 (newly added this year); Column A1, in contrast, draws on tables prepared by BBB AUTO LINE each year. The differences between columns A0 and A1 are sufficiently small that they don’t affect the auditor’s conclusions.

While columns A0 and A1 show 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 85.4% of the “total” cases in column A1. There’s more detail in Section III.G about these figures (and how consumers with counsel reportedly fared compared to those without).

Column A3 also measures the numbers of non-attorney cases closed during the audit year by each process, but was developed *by the auditor* from the spread sheet that BBB AUTO LINE produced as the basis for TechnoMetrica’s calls. Significantly, though not unexpectedly, columns A2 and A3 are nearly identical.

While columns A2 and A3 both omit cases where the consumer had a lawyer, column A4 was based on TechnoMetrica’s actual sampling frame, and 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 omissions are necessary to avoid the “comparing apples and oranges” problem noted above.<sup>228</sup>

Thus, column A4 is the appropriate calculation to compare directly to the survey results. But, as discussed next, some initial 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

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<sup>228</sup> See Section II.B.3. Most significantly, a very high percentage of these cases involve mediations, while none involve arbitrations.

previously,<sup>229</sup> 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, data from TechnoMetrica showed response rates of:

- 18.8% for those who resolved their case through mediation;
- 18.5% for consumers who used arbitration;
- 12.9% for those deemed ineligible to participate in BBB AUTO LINE; and
- 12.1% for consumers who withdrew their complaints.

Thus, consumers who used mediation were over 55% more likely to complete the survey than those who withdrew their complaints.<sup>230</sup> Column B2 thus weights the responses in each category to simulate a scenario where all categories of consumers responded at the same rate.<sup>231</sup>

Thus, for purposes of Table III-5, the relevant comparison is between Columns A4 and B2. And, looking at those columns, all the differences between the two are well within the margin of error. In other words, for cases covered by the survey – non-attorney cases with only the latest counted where 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 30 attorney case files, as well as his review of the omitted MCSV cases during his review of case files,<sup>232</sup> and finds no systematic

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<sup>229</sup> See Section I.B of this chapter.

<sup>230</sup>  $(18.8\%) / (12.1\%)$ .

<sup>231</sup> Thus, for example, to compensate for the differing responses rates in the national sample of 18.8% for consumers who used arbitration and 12.1% for those who withdrew their complaints, the auditor multiplied the 24 withdrawn complaints by 155.4 (18.8%/12.1%). After similarly adjusting the figures for ineligible and arbitrated cases (there’s no need to adjust the figures for mediated cases), the auditor used these weighted numbers to calculate new percentages. (The nature of this calculation was such that the auditor reported only percentages in column B2.)

On a technical matter, TechnoMetrica’s response rate figures were (necessarily) based on BBB AUTO LINE’s classification of a case as arbitrated, mediated, etc., and those figures were the basis for calculating the weighting factor. (Since BBB AUTO LINE classifies all cases into four categories, there were no “other” responses in the weighted figures.) Once calculated, though, the weighting factor was applied to the aggregates based on consumer responses.

<sup>232</sup> When the auditor was reviewing targeted case files, as described above, he also examined earlier cases in the series (whether the closed in 2018 or earlier).

problems with the “restored” BBB AUTO LINE records.

\* \* \*

Finally, Table III-5A’s multi-year comparisons show some shift from arbitration to mediation this year. However, the auditor considers the results in this table too limited (both temporally and in terms of percentages) to point to a pattern.

## B. 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.<sup>233</sup>

### 1. Combined Results for Mediated and Arbitrated Cases

The auditor first turns to 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 that typically starts with mediation (unless the consumer doesn’t want it). 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 far more consumers got a repurchase or replacement through mediation (1163) than through arbitration (571), although some consumers didn’t get the mediated repurchase/replacement remedy until they brought a follow-on case.<sup>234</sup>

**Table III-7: Remedies in Cases Identified by Consumers as Mediated and Arbitrated**

	2018 BBB AUTO LINE				2018 Survey (B)
	BBB AUTO LINE stats (A1)	Same, excluding attorney cases (A2)	Auditor’s stats from original spread sheet, excluding att’y cases (A3)	Auditor’s stats from “fully adjusted” spread sheet (A4)	
<b>BASE: med. &amp; arb. cases</b>	4288	3422	3422	<b>2960</b>	<b>196</b>
	100.0%	100.0%	100.0%	<b>100.0%</b>	<b>100.0%</b>
<b>Replacement/ Repurchase</b>	1779	1436	1436	<b>1407</b>	<b>102</b>
	41.5%	42.0%	42.0%	<b>47.5%</b>	<b>52.0%</b>
<b>Repair</b>	1253	1188	1188	<b>776</b>	<b>41</b>
	29.2%	34.7%	34.7%	<b>26.2%</b>	<b>20.9%</b>
<b>Other</b>	396	376	376	<b>364</b>	<b>23</b>
	9.2%	11.0%	11.0%	<b>12.3%</b>	<b>11.7%</b>
<b>No Award</b>	860	422	422	<b>413</b>	<b>30</b>
	21.0%	12.3%	12.3%	<b>14.0%</b>	<b>15.3%</b>

<sup>233</sup> There were small variations in wording depending on whether the consumer had identified the case as mediated or arbitrated.

<sup>234</sup> See Ch. II, Section II.C.

**Table III-7A: Multi-Year Comparisons**

	A1 Figures		
	2018	2017	2016
<b>BASE: med. &amp; arbitrated cases</b>	4288	4838	4707
	100.0%	100.0%	100.0%
<b>Replacement/ Repurchase</b>	1779	1734	1549
	41.5%	35.8%	32.9%
<b>Repair</b>	1253	1487	1400
	29.2%	30.7%	29.7%
<b>Other</b>	396	456	505
	9.2%	9.4%	10.7%
<b>No Award</b>	860	1161	1253
	21.0%	24.0%	26.6%

Beginning here with the macro analysis, in Table III-7, the key comparison is between columns A4 and B, both of which exclude consumers who used attorneys and, for MCSV’s, all but the last complaint filed during the audit year.<sup>235</sup> The margin of error for questions posed to all 407 consumers who completed the survey in the national sample was +/- 4.7%, and it’s notably higher for this question, which was posed only to 196 consumers who used arbitration or mediation.<sup>236</sup> But the differential between the A4 and B figures is never more than 5.3%.

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. (And, as there, the auditor’s review of relevant cases – 10 arbitrated cases and 5 mediated cases – shows no problem with BBB AUTO LINE’s records on remedies).

\* \* \*

Turning to more substantive matters: Assuming the numbers in columns A1 through A4 of Table III-7 are substantially accurate – an assumption supported by the micro and macro analyses – 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), 41.5% ended with a

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<sup>235</sup> The auditor didn’t use weighted averages and create a column B2 for the remedy metric. There seemed good reason, theoretically and empirically from the 2016 data, to anticipate that some categories of consumers would be more likely to respond to the survey than others. There didn’t seem a comparable concern about differing response rates between consumers who got replacements and consumers whose claims were denied.

<sup>236</sup> In a straightforward case where 196 consumers were selected from a sample of 2960, the margin of error would be 6.8%.

repurchase or replacement remedy, 38.4% ended with some other relief, and 21.0% ended in no relief.

And, comparing the 2018 figure to those from the last few years, there appears to be a rising pattern for consumers; the percentage of all cases ending in repurchase or replacement remedies (the A1 figures) has grown from 32.9% in 2016 to 41.5% in 2018. The auditor will explore these results in more depth in the remainder of Section III.C, which breaks out mediated from arbitrated cases (and finds most of the increase comes from mediated rather than arbitrated cases), and Chapter III.G, which does further breakouts for attorney vs. non-attorney cases.<sup>237</sup>

All of this – and particularly the fact that improved consumer performance has been coming from mediation rather than arbitration, suggests a process that’s fair to consumers but not a “slam-dunk” that wouldn’t be fair to manufacturers

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

	<b>Replacement/ Repurchase</b>	<b>Repair</b>	<b>Other</b>	<b>No Award</b>
<b>BASE=med. &amp; arb. cases</b>	102	41	23	30
	100.0%	100.0%	100.0%	100.0%
<b>Replacement/Repurchase (Imported)</b>	101	-	-	-
	99.0%	-	-	-
<b>Repair (Imported)</b>	1	41	-	-
	1.0%	100.0%	-	-
<b>Other (Imported)</b>	-	-	23	-
	-	-	100.0%	-
<b>No Award (Imported)</b>	-	-	-	30
	-	-	-	100.0%
<b>None on File- Ineligible/Withdrawn Cases (Imported)</b>	-	-	-	-
	-	-	-	-

**Concordance: 195/196 = 99.5%**

**Discordance: 1/196<sup>238</sup> = 0.5%**

For the micro analysis, there was a single discordant case, where the BBB AUTO LINE files reported a mediated repair, with a performance verification letter to which the consumer didn’t respond, and the consumer (during the survey) reported a replacement/repurchase remedy. It’s not clear what happened, but, particularly given the “improved” performance reported by the

<sup>237</sup> Column A2 and A3, above, do give figures for non-attorney cases. The tables in Chapter III.G, though, also include breakouts of *attorney* cases.

<sup>238</sup> Two cases were missing consumer remedy information in the survey.

consumer, perhaps there were later developments that weren't reported to BBB AUTO LINE.

## 2. Relief in Mediated Cases Only

**Table III-9: Final Remedy in Mediated Cases**

	2018 BBB AUTO LINE				Survey
	BBB AUTO LINE statistics (A1)	Same, excluding attorney cases (A2)	Auditor's statistics from original spread sheet, excluding att'y cases (A3)	Auditor's statistics from "fully adjusted" spread sheet (A4)	2018 Survey (B)
<b>BASE: med. cases</b>	2,773	2601	2601	<b>2152</b>	<b>140</b>
	100.0%	100.0%	100.0%	<b>100.0%</b>	<b>100.0%</b>
<b>Replacement/ Repurchase</b>	1311	1165	1165	<b>1140</b>	<b>81</b>
	47.3%	44.8%	44.8%	<b>53.0%</b>	<b>57.9%</b>
<b>Repair</b>	1081	1070	1070	<b>656</b>	<b>36</b>
	39.0%	41.1%	41.1%	<b>30.5%</b>	<b>25.7%</b>
<b>Other</b>	381	366	365	<b>356</b>	<b>23</b>
	13.7%	14.1%	14.1%	<b>16.5%</b>	<b>16.4%</b>
<b>No Entry for remedy</b>			1		
			0.0%		

With a margin of error of +/-4.7% for questions posed to all 407 consumers in the national sample, and a substantially higher margin for responses from 140 consumers to a follow-up question,<sup>239</sup> the figures in column A4 are quite comparable to those in column B.<sup>240</sup>

<sup>239</sup> If this were a straightforward case where 140 consumers were selected from a sample of 2152, the margin of error would be 8.0%.

<sup>240</sup> See note 236.



**Table III-9A: Multi-Year Comparisons**

	<b>A1</b>		
	<b>2018</b>	<b>2017</b>	<b>2016</b>
BASE: med. cases	2773	2828	2547
	100.0%	100.0%	100.0%
Replacement/Repurchase	1311	1163	930
	47.3%	41.1%	35.5%
Repair	1081	1262	1174
	39.0%	44.6%	46.1%
Other	381	403	443
	13.7%	14.2%	17.4%

The multi-year comparisons also show that the previously-noted increase in replacement or repurchase remedies reflects (at least to a substantial extent) manufacturers’ apparently increased willingness to *settle* cases by agreeing to replacement and repurchase remedies. For all mediated cases (with and without attorneys representing consumers), the percentage of settlements ending in repurchase or replacement remedies has risen, among all cases (the A1 figures) from 35.5% in 2016 to 41.1% in 2017 and 47.3% in 2018.

**Table III-10: Consumer Agreement with BBB AUTO LINE Records**

	<b>Replacement Repurchase</b>	<b>Repair</b>	<b>Other</b>
<b>BASE: =MEDIATED CASES</b>	81	36	23
	100.0%	100.0%	100.0%
<b>Replacement/Repurchase (Imported)</b>	80	-	-
	98.8%	-	-
<b>Repair (Imported)</b>	1	36	-
	1.2%	100.0%	-
<b>Other (Imported)</b>	-	-	23
	-	-	100.0%
<b>None on File-Ineligible/Withdrawn Cases (Imported)</b>	-	-	-
	-	-	-

**Concordance: 139/140 = 99.3%**

**Discordance: 1/140<sup>241</sup> = 0.7%**

The sole discordant case is the previously-noted straddle case.

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<sup>241</sup> TechnoMetrica used n=140 because of 1 case missing remedy information.

### 3. Relief in Arbitrated Cases

**Table III-11: Final Remedy in Arbitrated Cases**

	2018 BBB AUTO LINE				2018 Survey (B)
	BBB AUTO LINE statistics (A1)	Same, excluding attorney cases (A2)	Auditor's statistics from original spread sheet, excluding att'y cases (A3)	Auditor's statistics from "fully adjusted" spread sheet (A4)	
<b>BASE: arb. cases</b>	1,515	821	821	<b>809</b>	<b>56</b>
	100.0%	100.0%	100.0%	<b>100.0%</b>	<b>100.0%</b>
<b>Replacement /Repurchase</b>	468	271	271	<b>267</b>	<b>21</b>
	30.9%	33.0%	33.0%	<b>33.0%</b>	<b>37.5%</b>
<b>Repair</b>	172	118	118	<b>119</b>	<b>5</b>
	11.3%	14.4%	14.4%	<b>14.7%</b>	<b>8.9%</b>
<b>Other</b>	15	10	10	<b>9</b>	-
	1.0%	1.2%	1.2%	<b>1.1%</b>	-
<b>No award</b>	860	422	422	<b>413</b>	<b>30</b>
	56.7%	51.4%	51.4%	<b>51.1%</b>	<b>53.6%</b>
<b>No Entry for remedy</b>					

The margin of error for this question, analyzing responses from only 56 consumers who were drawn from a population that included some 809 consumers, is far higher than the 4.7% figure for the populations as a whole.<sup>242</sup> A comparison of column A4 to column B shows numbers within a reasonable margin.

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<sup>242</sup> If this were a straightforward case where 56 consumers were selected from a sample of 809, the margin of error would be 12.6%.

**Table III-11A: Multi-year comparisons**

	<b>A1</b>		
	<b>2018</b>	<b>2017</b>	<b>2016</b>
<b>BASE: arb cases</b>	1,515	2010	2160
	100.0%	100.0%	100.0%
<b>Replacement/ Repurchase</b>	468	571	619
	30.9%	28.4%	28.7%
<b>Repair</b>	172	225	226
	11.3%	11.2%	10.5%
<b>Other</b>	15	53	62
	1.0%	2.6%	2.9%
<b>No Award</b>	860	1161	1253
	56.7%	57.8%	58.0%

The multi-year comparisons show a substantial drop in the *number* of overall arbitrations this year, but relative consistency in the distributions of remedies among those that were brought. While consumers seem to be getting better results each year from the program, their increased success seems to come primarily from mediated rather than arbitrated cases.

Further, and 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. And, in that context, for example, the 56.7% "no award" rate for all consumers doesn't seem unreasonable – particularly since these constitute only 35.8% of all consumers who used either mediation or arbitration. As noted previously, the large number of cases that ended in mediation thus provides an important gloss that the arbitration (or mediation) numbers don't provide individually. And, here, too, the auditor will revisit some of these matters in subsection III.G, where he presents breakouts of attorney and non-attorney cases.

**Table III-12: Consumer Agreement with BBB AUTO LINE Records**

	<b>Replacement /Repurchase</b>	<b>Repair</b>	<b>Other</b>	<b>No Award</b>
<b>BASE: arb. cases</b>	21	5	-	30
	100.0%	100.0%	-	100.0%
<b>Replacement/Repurchase (Imported)</b>	21	-	-	-
	100.0%	-	-	-
<b>Repair (Imported)</b>	-	5	-	-
	-	100.0%	-	-
<b>Other (Imported)</b>	-	-	-	-
	-	-	-	-
<b>No Award (Imported)</b>	-	-	-	30
	-	-	-	100.0%
<b>None on File- Ineligible/Withdrawn Cases (Imported)</b>	-	-	-	-
	-	-	-	-

**Concordance: 56/56 = 100.0%**

**Discordance: 0/56 = 0.0%**<sup>243</sup>

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<sup>243</sup> TechnoMetrica used n=140 because of 1 case missing remedy information.

**Table III-13: Did you return a form accepting the arbitrator's decision?<sup>244</sup>**

	<b>2018 Survey</b>	<b>2017 Survey</b>	<b>2016 Survey</b>
<b>BASE: Arb. cases with award to consumers, “not sure” responses to this question excluded</b>	26	37	51
	100.0%	100.0%	100%
<b>Yes</b>	25	30	42
	96.2%	81%	82%
<b>No</b>	1	8	9
	3.8%	19%	18%

**Table III-14: Acceptance of different types of remedies**

	<b>Total</b>	<b>Replacement/ Replacement</b>	<b>Repair</b>	<b>Other</b>
<b>BASE: Arb. cases with award to consumers, “not sure” excluded</b>	25	21	4	-
	100.0%	100.0%	100.0%	-
<b>Yes</b>	24	21	3	-
	96.0%	100.0%	75.0%	-
<b>No</b>	-	-	-	-
	-	-	-	-
<b>No entry<sup>245</sup></b>	1	-	1	-
	4.0%	-	35.0%	-

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<sup>244</sup> This question was reworded from “Did you accept the arbitrator’s decision?” to draw attention to a more concrete act of returning a form.

<sup>245</sup> BBB AUTO LINE recorded the case as mediated, so there was no entry for whether the consumer accepted an arbitration award.

**Table III-15: Consumer Agreement with BBB AUTO LINE Records**

	Survey Responses	
	Accepted	Rejected
<b>BASE: Arbitrated cases, with award, “not sure” excluded</b>	24	1
<b>Accepted (Imported)</b>	<b>23</b>	
<b>Rejected (Imported)</b>		<b>1</b>
<b>No entry (Recorded by BBB AUTO LINE as mediated)</b>	1	

**Concordance: 24/25 (96%)**

**Discordance: 1/25 (4%)**

As noted, the sole discordant case was a case that BBB AUTO LINE recorded as mediated, and for which there was, therefore, no entry for remedy.

**4. Withdrawn Cases**

**Table III-16: Reasons for withdrawal**

	2018 Audit	2017 Audit	2016 Audit
<b>BASE: withdrawn cases</b>	24 100.0%	36 100.0%	28 100%
<b>You settled the matter or your car was fixed</b>	10 41.7%	18 50.0%	11 39%
<b>You sold the car</b>	2 8.3%	1 2.8%	1 4%
<b>Some other reason</b>	12 50.0%	17 47.2%	16 57%

Among the 12 consumers who cited “some other reason,” one was a case where there seems to have been a settlement for an extended warranty before the complaint was filed, and it was closed on that basis; while the situation isn’t entirely clear, the consumer did give BBB AUTO LINE four “1” ratings on the satisfaction questions, suggesting a satisfactory resolution.

### C. COMPLIANCE QUESTIONS

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

2018 Results						
	Mediated		Arbitrated		Med/Arbitrated Combined	
	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE
<b>BASE: *</b>	138	2769	23	422	161	3191
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
<b>Carried out the remedy within the time specified, including any extension to which you agreed</b>	111	2673	15	403	126	3076
	80.4%	96.5%	65.2%	95.5%	78.3%	96.4%
<b>Carried out the remedy after the time specified, including any extension to which you agreed</b>	19	1	6	2	25	3
	13.8%	0.0%	26.1%	0.5%	15.5%	0.1%
<b>Has not yet carried out the remedy, but the time to do so has not yet expired</b>	6	25	-	10	6	35
	4.3%	0.9%	-	2.4%	3.7%	1.1%
<b>Has not yet carried out the remedy and the time to do so has expired</b>	2	68	2	7	4	75
	1.4%	2.5%	8.7%	1.7%	2.5%	2.4%
<b>(Failure to comply was the fault of the consumer)<sup>246</sup></b>	0	(36)	0	(7)	0	(43)
	0.0%	(1.3%)	0.0%	(1.7%)	0.0%	(1.3%)
<b>Time for compliance has expired, performance not verified</b>		2				2
		0.1%				0.1%

\* *BASE: For mediation, all cases reported by the consumer as mediated. For arbitration, all cases where the consumer reported that they used arbitration, the arbitrator awarded them relief, and they accepted the award. "Not sure" replies to this question were excluded.*

*Consumers reporting non-compliance after the time for compliance had expired.* According to the BBB AUTO LINE's statistics, manufacturers didn't comply with settlement agreements or arbitration orders 2.4% of the time. And the survey result – a 2.5% figure – was quite similar.

BBB AUTO LINE also reports that 43 of 75 instances of noncompliance (57%), were the fault of the consumer – so that, in a sense, a "truer" rate of manufacturer noncompliance is 1%.

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<sup>246</sup> Consumers who reported non-compliance were asked about this in a follow-up question.

Among the surveyed consumers, the four consumers in the survey who reported non-compliance were asked if it was their fault, and all said no. Thus, the survey doesn't back up this adjustment, although the numbers are so small and the margins of error so large that this doesn't allow meaningful projections.

Looking at the underlying files in the four cases referenced above, two had ongoing developments that seemed to be resolved after consumer was surveyed in March; in a third, the consumer didn't return a performance verification letter to alert BBB AUTO LINE to her dissatisfaction. The fourth involved somewhat more complex facts and perhaps should have been recorded as non-compliant.<sup>247</sup>

*Consumers reporting delayed compliance.* The number of *surveyed* consumers reporting delayed compliance in this year's survey again exceeded the total BBB AUTO LINE reported having done so in the entire relevant population. Among the 25 consumers reporting delayed compliance, though, the files in 4 cases contain performance verification letters that indicate timely performance,<sup>248</sup> and, in another 16, the files contained no returned performance verification letter to alert BBB AUTO LINE to the consumer's dissatisfaction.

The auditor did, however, find a number of cases where the manufacturer requested an extension and it's unclear if the consumer agreed. As noted in Chapter 2, the auditor doubts that BBB AUTO LINE should rely on an extension as a basis for timeliness absent documentation that the consumer agrees with it.

*Comparative analysis.* Turning now to some comparative figures, the numbers for the last three years show reasonable consistency in the survey results and reasonable consistency in the BBB AUTO LINE figures – and a reasonably consistent differential between the two. It's possible that consumers are systematically overestimating the time for compliance, particularly if they don't factor in extensions that they granted or if they treat an initial case and a follow-on 1R case as a single proceeding. Still, at least from this year's audit, it appears that BBB AUTO LINE may also be underestimating the rate of delayed compliance by counting "extensions" where the consumer's acquiescence, even if granted, wasn't documented.

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<sup>247</sup> In this case, the parties initially reached a consent settlement for repairs at an arbitration hearing. However, they didn't connect to do the repairs, and there may have been some ambiguity in who should have taken the initiative. The consumer then brought the case back to arbitration, and the arbitrator awarded a repurchase or repair remedy – which the consumer, on the advice of an attorney, rejected.

<sup>248</sup> One of the consumers did note an ongoing frustration with a notary fee on his performance verification letter.



**Table III-17A: Comparative analysis on compliance (mediated and arbitrated combined)**

	2018		2017		2016	
	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE
<b>BASE: *</b>	161	3191	151	3408	163	3134
	100.0%	100.0%	100.0%	100.0%	100%	100%
<b>Carried out the remedy within the time specified, including any extension to which you agreed</b>	126	3076	115	3319	130	3020
	78.3%	96.4%	76.2%	97.4%	79.8%	96.4%
<b>Carried out the remedy after the time specified, including any extension to which you agreed</b>	25	3	17	2	21	4
	15.5%	0.1%	11.3%	0.1%	12.9%	0.1%
<b>Has not yet carried out the remedy, but the time to do so has not yet expired</b>	6	35	12	0	5	16
	3.7%	1.1%	7.9%	0.0%	3.1%	0.5%
<b>Has not yet carried out the remedy and the time to do so has expired</b>	4	75	7	85	7	91
	2.5%	2.4%	4.6%	2.5%	4.3%	2.9%
<b>(Failure to comply was the fault of the consumer)</b>	(4)	(43)	-	(53)	-	(63)
	(2.5%)	(1.3%)	-	(1.6%)	-	(2.0%)
<b>Time for compliance has expired, performance not verified</b>		2			-	1
		0.1%	.-	0.0%		

*\*BASE: Same as for mediation/arbitration in Table III-17 above*

**Table II-18: Which of the following best applies to your case? The manufacturer...**

	Mediated	Arbitrated	Med/Arb Combined
<b>BASE: non-compliant repair remedies</b>	-	1	1
	-	100.0%	100.00%
<b>Didn't examine your car</b>	-	1	1
	-	100.0%	100.0%
<b>Examined your car and decided that no repair was needed</b>	-	-	-
	-	-	-
<b>Tried to fix your car, but the repair didn't solve the problem</b>	-	-	-
	-	-	-
<b>Something else</b>	-	-	-
	-	-	-

This question probed a bit to develop the underlying facts, as understood by the consumer, where the consumer said that the manufacturer hadn't complied with a mediated repair remedy. If the consumer reported that the manufacturer examined her car and found that no repair was needed, for example, it would point to *manufacturer compliance* even if it didn't lead to *consumer satisfaction*. The results this year, though, show no cases this year where manufacturers in fact took steps that could have constituted compliance.

**Table III-18A: Had you taken some action, like selling the car, that prevented the manufacturer from complying?**

	Mediated	Arbitrated	Med/Arb Combined
<b>BASE: Same</b>	2	2	4
	100.0%	100.0%	100.00%
<b>Yes</b>	-	-	-
	-	-	-
<b>No</b>	2	2	4
	100.0%	100.0%	100.0%

## E. TIMING QUESTIONS

As in past years, BBB AUTO LINE’s timing figures report the timing of mediated and arbitrated cases, and the auditor’s scrutiny focuses primarily on those cases. The analysis in this section is thus based on 198 mediated or arbitrated cases from a survey sample of 407 total cases. BBB AUTO LINE is to be commended for focusing on these 198 cases; the 209 cases that were excluded were, on average, far *more* likely to be resolved quickly, so the reporting basis used by BBB AUTO LINE likely lowered their measure of performance.<sup>249</sup> Table III-19 presents timing data from the survey for mediated and arbitrated cases combined, and includes similar data from prior years. The results are rather close and, as Table III-19A shows, relatively consistent with last year’s figures.

**Table III-19: Time to Resolve Cases**

	Survey			BBB AUTO LINE report
	Mediated	Arbitrated	Med/Arb Combined	
<b>BASE: mediated or arb. cases</b>	141	57	<b>198</b>	<b>4288</b>
	100.0%	100.0%	<b>100.0%</b>	<b>100.0%</b>
<b>Within 40 days</b>	121	25	<b>146</b>	<b>3340</b>
	85.8%	43.9%	<b>73.7%</b>	<b>71.7%</b>
<b>41 or more</b>	20	32	<b>52</b>	<b>948</b>
	14.2%	56.1%	<b>26.3%</b>	<b>28.3%</b>

**Table III-19A: Comparative analysis on timing (mediated and arbitrated cases combined)**

	2018		2017		2016	
	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE
<b>BASE: mediated or arbitrated cases</b>	198	4288	201	4838	219	4707
	100.0%	100.0%	100.0%	100.0%	100%	100%
<b>Within 40 days</b>	146	3340	139	3783	155	3519
	73.7%	71.7%	69.2%	78.2%	71%	75%
<b>41 or more</b>	52	948	62	1055	64	1188
	26.3%	28.3%	30.8%	21.8%	29%	25%

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<sup>249</sup> Of the 201, 165 (81%) reported that their cases were ineligible – and ineligible cases are usually resolved quickly, most often within a day or two.

In appraising BBB AUTO LINE's compliance, Table III-20 shows that ten of the surveyed consumers who said the process took more than 40 days also acknowledged that the delays resulted from their own actions.<sup>250</sup> Even if this doesn't affect the legal standard for timeliness, it does provide a significant gloss on the reported delay figures; if we were to treat as timely the "consumer's own fault" respondents, BBB AUTO LINE resolved the case within 40 days in:

- 127/141 (90%) of mediated cases;
- 29/57 (51%) of arbitrated cases; and
- 156/198 (79%) of mediated and arbitrated cases combined.

After examining some of the more time consuming cases identified by BBB AUTO LINE, it seems that factors contributing to delay include arbitrator requests for technical expert reports, particularly when they make the request after a hearing; difficulties in scheduling a hearing date that accommodates both the arbitrator's and consumer's schedule (presumably accounting for some of the figures just above); and consumer delays in providing requested documents. There were also some occasional, if rare, matters that slipped between administrative cracks, as where a 37-day delay resulted (in a case tried on the papers) because the arbitrator appeared not to have received the relevant papers.<sup>251</sup> And, where *consumers* reported long cases but BBB AUTO LINE didn't, an additional factor was sometimes that they had treated as one a series of cases that BBB AUTO LINE treated as two or more.

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<sup>250</sup> There were three "not sure" responses to the question whose results Table III-20 reports; hence the base for that question is 59 rather than 62.

<sup>251</sup> Although they didn't come from the files of the 407 consumers surveyed, the auditor also looked at the fifteen anomalous cases (out of over 9000 cases) that were noted previously. Two of these cases involved arbitrators, both in matters submitted in writing, who failed to keep their commitments. Both were attorney cases, and both were eventually withdrawn. These represent roughly one in 750 arbitrated cases, and BBB AUTO LINE acted quickly to ensure that the arbitrators in question didn't get any more cases.

**Table III- 20: Did it take more than 40 days because of some action you took?**

	Mediated	Arbitrated	Med/Arb Combined
<b>BASE: Mediated or arbitrated cases more than 40 days, “not sure” to this question excluded</b>	20	29	49
	100.0%	100.0%	100.0%
<b>Yes</b>	6	4	10
	30.0%	13.8%	20.4%
<b>No</b>	14	25	39
	70.0%	86.2%	79.6%

**Table III-22: Consumer Agreement with BBB AUTO LINE**

	Consumer replies	
	Within 40 Days	41+ Days
<b>BASE: Mediated or arbitrated cases</b>	146	52
	100.0%	100.0%
<b>Within 40 Days (Imported)</b>	144	12
	98.6%	23.1%
<b>41+ Days (Imported)</b>	2	40
	1.4%	77.9%

**Concordance: 184/198 = 92.9%**

**Discordance: 14/198 = 7.1%**

Given the quantitative nature of this metric, the auditor considers the 92.9% concordance rate to be reasonably good. The auditor notes, though, that matters of timing might be muddled in consumers’ minds by the nuances of when the clock started, although the questionnaire tried to make these matters clear. That is, the case begins in Florida and California with the initial submission; it begins elsewhere when the consumer returns the signed complaint form; and it ends when the parties reach a settlement or the arbitrator issues a decision – *not* when the manufacturer complies with the decision.

**2. Withdrawn Cases**

**Table III-23: Days until complaints were withdrawn, as reported by consumers who reported withdrawing their complaints**

<b>BASE: Withdrawn cases</b>	24
	100.0%
<b>Within 40 days</b>	21
	87.5%
<b>41 or above</b>	3
	12.5%

## 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?<sup>252</sup>**

	2018	2017	2016
<b>BASE: answering, , “not sure” excluded</b>	376	385	380
	100.0%	100.0%	100%
<b>Yes</b>	342	348	365
	91.0%	90.4%	96.1%
<b>No</b>	34	37	15
	9.0%	9.6%	3.9%

Excluding consumers who replied “not sure,” 9.0% of consumers – a total of 34 – reported that they hadn’t received the claim forms. But the auditor examined the underlying files for those consumers, and 13 (39%) contained complaint forms signed and returned by the consumer.<sup>253</sup>

Among the other 21, most were from Florida or California, where cases are opened with the consumers’ initial contact (before a consumer complaint form is returned). In 5 Florida or California cases, the file was closed precisely *because* the consumer hadn’t returned a signed complaint form.<sup>254</sup> In another 8 Florida or California cases, and 5 from other states, the consumer was found ineligible for the program based on the information provided in their initial contact; this is significant because, when the initial contact is via phone or the BBB AUTO LINE’s online portal, the consumer provides the information from which an unsigned consumer complaint form is generated and sent to the consumer for signing. And, if 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 aren’t eligible. Further, in yet another California case, the consumer withdrew his case almost immediately, presumably before

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<sup>252</sup> The document questions this year mentioned not only mail and email, but also faxes and (for the first question) UPS or Fedex.

<sup>253</sup> 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.

<sup>254</sup> Of course, the auditor can’t dismiss the possibility that one or more of these consumers didn’t receive *either* the consumer complaint form for signing or the letter telling them that the file was closed for failure to return the consumer complaint form. If that happened, though, it would seem likely that she would follow up to find out why nothing was happening with her complaint.

returning a signed consumer complaint form. Taken together, these cases account for all but 2 of those where the consumer reported not receiving an initial package.

**Table III-25: How clear and understandable were these documents?**

	2018	2017	2016
<b>BASE: responding “yes” to prior question, excluding “not sure” responses to this question</b>	340	343	361
	100.0%	100.0%	100%
<b>Very</b>	223	234	236
	65.6%	68.2%	65%
<b>Somewhat</b>	110	98	113
	32.4%	28.6%	31%
<b>Not at all</b>	7	11	12
	2.1%	3.2%	3%

**Table III-26: And how helpful were they?**

	2018	2017	2016
<b>BASE: responding “yes” in Table III-24, excluding “not sure” responses to this question</b>	340	344	354
	100.0%	100.0%	100%
<b>Very</b>	186	187	174
	54.7%	54.4%	49%
<b>Somewhat</b>	108	105	121
	31.8%	30.5%	34%
<b>Not at all</b>	46	52	59
	13.5%	15.1%	17%

As shown above, an overwhelming majority of consumers (97.9%) found them at least somewhat clear and understandable, while a substantial majority (86.5%) found them at least somewhat helpful. Not surprisingly, the 2018 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?**

	2018	2017	2016
<b>BASE: mediated cases, “not sure” responses excluded</b>	135	117	121
	100.0%	100.0%	100%
<b>Yes</b>	130	105	114
	96.3%	89.7%	94%
<b>No</b>	5	12	7
	3.7%	10.3%	6%

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 (including copies of letters sometimes supplemented by notes) reporting that the documents were *sent*.<sup>255</sup> Given the likelihood 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 or email telling you when and where to go for your hearing or vehicle inspection?**

	2018	2017	2016
<b>BASE: Arbitrated cases, “not sure” responses excluded</b>	55	71	93
	100.0%	100.0%	100%
<b>Yes</b>	53	68	93
	96.4%	95.8%	100%
<b>No</b>	2	3	-
	3.6%	4.2%	-

The consumers who said “no” all 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.

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<sup>255</sup> Further, after the manufacturer has time to implement the settlement, BBB AUTO LINE routinely sends a performance verification letter asking if the settlement had been performed, and one file contains a signed letter that the consumer returned.

**Table III- 29: Did you get a copy by letter or email of the arbitrator's decision?**

	2018	2017	2016
<b>BASE: Arbitrated cases, “not sure” responses excluded</b>	57	71	92
	100.0%	100.0%	100%
<b>Yes</b>	57	70	89
	100.0%	98.6%	97%
<b>No</b>	-	1	3
	-	1.4%	3%

**Table II- 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?**

	Mediated cases	Arb. Cases w/award that consumer accepted	Combined figures for 2018	Combined figures for 2017	Combined figures for 2016
<b>BASE: See top row (“not sure” replies to this question excluded)</b>	132	25	157	151	167
	100.0%	100.0%	100.0%	100.0%	100%
<b>The staff contacted me by letter or email</b>	45	4	49	52	48
	34.1%	16.0%	31.2%	34.4%	29%
<b>The staff spoke to me</b>	21	5	26	29	22
	15.9%	20.0%	16.6%	19.2%	13%
<b>Both of those</b>	58	13	71	57	75
	43.9%	52.0%	45.2%	37.7%	45%
<b>Neither of those</b>	7	3	10	12	12
	5.3%	12.0%	6.4%	7.9%	7%
<b>Something else</b>	1	-	1	1	10
	0.8%	-	0.6%	0.6%	6%

In all ten cases where consumers said they hadn’t been contacted by staff, BBB AUTO LINE’s records report that performance verification letters were sent. They were returned in two of these and, in two others – both involving goodwill reimbursement – staff called the manufacturers and recorded that, according to the manufacturers, the checks had been issued.

**G. COMPARING CLAIMS FILED BY CONSUMERS WHO HAVE COUNSEL  
WITH CLAIMS FILED DIRECTLY BY CONSUMERS**

This section explores the differing profiles of cases brought by attorneys on behalf of consumers and those brought directly by consumers.

**Table III-32: Comparisons on process for resolving complaints**

	<b>Claims filed by attorneys on behalf of consumers (2018)</b>	<b>Claims filed directly by consumers (2018)</b>
<b>TOTAL</b>	1365	7953
	100.0%	100.0%
<b>Mediation</b>	173	2600
	12.7%	32.7%
<b>Arbitration</b>	693	822
	50.8%	10.3%
<b>Ineligible</b>	390	3874
	28.6%	48.7%
<b>Withdrawn</b>	109	657
	8.0%	8.3%

	<b>Claims filed by attorneys on behalf of consumers (2017)</b>	<b>Claims filed directly by consumers (2017)</b>
<b>TOTAL</b>	2030	8585
	100.0%	100.0%
<b>Mediation</b>	135	2693
	6.7%	31.4%
<b>Arbitration</b>	905	1105
	44.6%	12.9%
<b>Ineligible</b>	759	4055
	37.4%	47.2%
<b>Withdrawn</b>	231	732
	11.4%	8.5%

**Table III-33: Comparison on remedies**

**1. Combined Mediation and Arbitration**

	2018			2017	
	Claims filed by attorneys on behalf of consumers	Claims filed directly by consumers		Claims filed by attorneys on behalf of consumers	Claims filed directly by consumers
<b>TOTAL</b>	865	3422		1029	3809
	100.0%	100.0%		100.0%	100.0%
<b>Repurchase/ Replacement</b>	343	1436		279	1455
	39.6%	41.9%		27.1%	38.2%
<b>Repair</b>	64	1188		75	1412
	7.4%	34.7%		7.3%	37.1%
<b>Other award</b>	20	376		34	422
	2.3%	11.0%		3.3%	11.1%
<b>No award</b>	438	422		641	520
	50.6%	12.3%		62.3%	13.7%

**2. Mediation only**

<b>TOTAL</b>	172	2601		124	2704
	100.0%	100.0%		100.0%	100.0%
<b>Repurchase/ Replacement</b>	146	1165		109	1054
	84.9%	44.8%		87.9%	39.0%
<b>Repair</b>	11	1070		9	1253
	6.4%	41.1%		7.3%	46.3%
<b>Other award</b>	15	366		6	397
	8.7%	14.0%		4.8%	14.7%

**3. Arbitration only**

<b>TOTAL</b>	693	821		905	1105
	100.0%	100.0%		100.0%	100.0%
<b>Repurchase/ Replacement</b>	197	271		170	401
	28.4%	33.0%		18.8%	36.3%
<b>Repair</b>	53	118		66	159
	7.6%	14.4%		7.3%	14.4%
<b>Other award</b>	5	10		28	25
	0.7%	1.2%		3.1%	2.3%
<b>No award</b>	438	422		641	520
	63.2%	51.4%		70.8%	47.0%

According to BBB AUTO LINE statistics, consumers nationwide used lawyers in 1365 cases, or 14.6% of 9310 cases that were closed in 2018. These cases had a very different profile than cases without lawyers, although certain gaps between attorney and non-attorney cases were narrowed (or even largely closed) this year. For example, while consumers who used attorneys were 23.8% less likely in 2017 to have a denial in arbitration than consumers without attorneys (70.8 to 47.0%), this year the differential dropped to 12.8%. Also, consumers who used attorneys were, in 2018, almost as likely as those who didn't to obtain repurchase or replacement remedies through the program – although, among the 196 consumers with lawyers who got such awards through arbitration, 109 (55.6%) rejected the award

These numbers need to be treated with some caution, particularly since the number of attorney cases dropped by 32.8% this year (while the number of non-attorney cases dropped by a far lower 8.4%). Still, a theme to which the auditor keeps returning is that the best measure of the program is shown by the results of arbitrated and mediated cases combined. Looking at all consumers whose complaints weren't ineligible or withdrawn (*i.e.*, those who used either arbitration or mediation) 50.6% of consumers who had attorneys ended the process with arbitrated “no award” decisions, compared to 12.3% of consumers who didn't use attorneys.<sup>256</sup> But the major factor accounting for this wasn't that consumers with attorneys fared much worse than those without attorneys in arbitration. They did do *somewhat* worse, but the major factor is that aggregate figures for *all* consumers showed worse results in arbitration than in mediation,<sup>257</sup> and consumers with attorneys were far more likely to use arbitration.

These numbers have some significance from the *program's* point of view, since the higher percentage of denial decisions in attorney cases tends to inflate the overall denial rate both for arbitrated cases and for mediated and arbitrated cases combined.<sup>258</sup>

But the analysis above focuses on the rates of denial (“no award”) decisions. Looking instead to repurchase or replacement decisions, the figures tell a different story. Consumers with attorneys largely closed the gap this year for repurchase and replacement remedies; the former got such repurchase or replacement awards in 39.6% of cases, compared to 41.9% by their counterparts without attorneys.<sup>259</sup>

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<sup>256</sup> The differential was somewhat less this year than last.

<sup>257</sup> This is hardly surprising, since a consumer who reaches a settlement has to get some relief.

<sup>258</sup> Perhaps one reason for attorneys' performance in litigation is that they more often request a hearing on the papers rather than in person or by telephone. In cases with in-person hearings, the consumer obtained a repurchase or replacement decision 35.3% of the time, with denials in 48.3% of cases. In cases handled on the papers, the consumer obtained a repurchase or replacement decision 26.6% of the time, with denials in 66.2% of cases.

<sup>259</sup> The differential this year was only 2.3%; last year it was 11.1%.

Moreover, as the auditor noted last year, many “withdrawals” in attorney cases reflect settlements outside the program. The auditor examined ten withdrawn cases brought by attorneys as part of this year’s national audit, and, in three of these, the DRSs noted indicated that the parties had settled.<sup>260</sup> Of course, it wasn’t only consumers with attorneys who withdrew cases for this reason, but it seemed to the auditor that, for consumers with attorneys, this occurred with greater frequency. There’s no easy way to quantify the impact of withdrawals reflecting settlements outside the program; even when the DRSs report a settlement, they don’t describe its nature (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). And, while precise quantification isn’t possible, this suggests that consumers with attorneys may well have fared somewhat better this year than consumers without attorneys.<sup>261</sup>

A further caveat is in order, though. A fuller examination of the differences between attorney and non-attorney cases would need to account for all the factors above (including the 55.6% of consumers with attorneys who *rejected* repurchase or replacement decisions), and also account for other factors that aren’t available to the auditor. Precisely what had happened in the withdrawn cases noted above? 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?

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<sup>260</sup> Another five had no explanation.

<sup>261</sup> Compared to last year, fewer cases brought by attorneys were withdrawn (109 vs. 231), and the sample reviewed by the auditor suggests that a smaller percentage might have been withdrawn because of a settlement outside the program. (Last year the auditor found that the attorney had reached a settlement in 4 of the 5 cases he examined). Since there were more settlements within the program this year, a possible explanation is that attorneys were more likely to settle cases within BBB AUTO LINE rather than handle settlements outside the program.

## H. SATISFACTION

The final portion of these sections examines questions by which consumers graded arbitrators and BBB AUTO LINE staff, and advised whether they would recommend BBB AUTO LINE.

For each question, the tables report the grades from all consumers (total), and then break the results out to show the results from consumers with awards and consumers with no awards. The results for consumers with awards are further broken out to distinguish grades from consumers who got a replacement or repurchase remedy, and consumers who got a repair or other remedy

One explanatory note: Looking at Table III-34 as an example, the table reports 57 total cases, broken down into 26 cases with awards and 30 without. The sum (56) is less than the total because one consumer gave a “not sure” response on the remedy question, and thus isn’t counted either for the “award” or “no award” figure. Put another way, consumer who responded “not sure” to *this* question don’t appear in *any* column of Table III-34; consumers who said “not sure” to the remedy question are counted in the first column, but not in the later columns.

### 1. Satisfaction with Arbitrator

**Table III-34: How would you grade the arbitrator on understanding the facts of your case?**

	All Cases	Cases with Award	Award: Replace-ment/ Repurchase	Award: Repair/ Other	No Award
<b>BASE: arbitrated cases , “not sure” excluded</b>	57	26	21	5	30
	100.0%	100.0%	100.0%	100.0%	100.0%
<b>A=Excellent</b>	22	18	16	2	3
	38.6%	69.2%	76.2%	40.0%	10.0%
<b>B=Good</b>	6	4	3	1	2
	10.5%	15.4%	14.3%	20.0%	6.7%
<b>C=Average</b>	12	2	1	1	10
	21.1%	7.7%	4.8%	20.0%	33.3%
<b>D=Poor</b>	7	1	-	1	6
	12.3%	3.8%	-	20.0%	20.0%
<b>F=Failing Grade</b>	10	1	1	-	9
	17.5%	3.8%	4.8%	-	30.0%
<b>MEAN</b>	<b>2.40</b>	<b>3.42</b>	<b>3.57</b>	<b>2.80</b>	<b>1.47</b>

**Table III-35: How would you grade the arbitrator on objectivity and fairness?**

	All Cases	Cases with Award	Award: Replacement/Repurchase	Award: Repair/Other	No Award
<b>BASE: arbitrated cases, “not sure” excluded</b>	56	26	21	5	29
	100.0%	100.0%	100.0%	100.0%	100.0%
<b>A=Excellent</b>	25	22	20	2	2
	44.6%	84.6%	95.2%	40.0%	6.9%
<b>B=Good</b>	5	1	-	1	4
	8.9%	3.8%	-	20.0%	13.8%
<b>C=Average</b>	6	1	-	1	5
	10.7%	3.8%	-	20.0%	17.2%
<b>D=Poor</b>	13	2	1	1	11
	23.2%	7.7%	4.8%	20.0%	37.9%
<b>F=Failing Grade</b>	7	-	-	-	7
	12.5%	-	-	-	24.1%
<b>MEAN</b>	<b>2.50</b>	<b>3.65</b>	<b>3.86</b>	<b>2.80</b>	<b>1.41</b>

**Table III-36: How would you grade the arbitrator on reaching an impartial decision?**

	All Cases	Cases with Award	Award: Replacement/Repurchase	Award: Repair/Other	No Award
<b>BASE: arbitrated cases, “not sure” excluded</b>	57	26	21	5	30
	100.0%	100.0%	100.0%	100.0%	100.0%
<b>A=Excellent</b>	23	21	19	2	1
	40.4%	80.8%	90.5%	40.0%	3.3%
<b>B=Good</b>	4	2	1	1	2
	7.0%	7.7%	4.8%	20.0%	6.7%
<b>C=Average</b>	7	1	-	1	6
	12.3%	3.8%	-	20.0%	20.0%
<b>D=Poor</b>	10	-	-	-	10
	17.5%	-	-	-	33.3%
<b>F=Failing Grade</b>	13	2	1	1	11
	22.8%	7.7%	4.8%	20.0%	36.7%
<b>MEAN</b>	<b>1.93</b>	<b>2.95</b>	3.63	2.22	<b>0.92</b>



**Table III-37: How would you grade the arbitrator on coming to a reasoned & well thought-out decision?**

	All Cases	Cases with Award	Award: Replacement/ Repurchase	Award: Repair/ Other	No Award
<b>BASE: arbitrated cases, "not sure" excluded</b>	56	26	21	5	29
	100.0%	100.0%	100.0%	100.0%	100.0%
<b>A=Excellent</b>	23	20	18	2	2
	41.1%	76.9%	85.7%	40.0%	6.9%
<b>B=Good</b>	5	3	2	1	2
	8.9%	11.5%	9.5%	20.0%	6.9%
<b>C=Average</b>	4	1	-	1	3
	7.1%	3.8%	-	20.0%	10.3%
<b>D=Poor</b>	12	-	-	-	12
	21.4%	-	-	-	41.4%
<b>F=Failing Grade</b>	12	2	1	1	10
	21.4%	7.7%	4.8%	20.0%	34.5%
<b>MEAN</b>	2.27	3.50	3.71	2.60	1.10

**Table III-38: ARBITRATOR SATISFACTION COMPOSITE**

	All cases	Cases with Award	Award: Replacement/Repurchase	Award: Repair/Other	No Award
<b>Understanding facts</b>	2.40	3.42	3.57	2.80	1.47
<b>Objectivity and fairness</b>	2.50	3.65	3.86	2.80	1.41
<b>Reaching and impartial decision</b>	2.25	3.54	3.76	2.60	1.07
<b>Coming to a reasoned &amp; well thought-out decision</b>	2.27	3.50	3.71	2.60	1.10
<b>AVERAGE</b>	<b>2.36</b>	<b>3.52</b>	<b>3.72</b>	<b>2.70</b>	<b>1.26</b>

**Table III-38A  
ARBITRATOR SATISFACTION COMPOSITE (BY YEAR)**

	All Cases	Cases with Award	Award: Replacement/Repurchase	Award: Repair/Other	No Award
<b>Composite (2018)</b>	2.36	3.52	3.72	2.70	1.26
<b>Composite (2017)</b>	2.03	2.97	3.58	2.33	1.07
<b>Composite (2016)</b>	2.34	3.40	3.69	2.30	1.02
<b>Composite (2015)</b>	2.31	3.21	--	--	1.10

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 could well represent, in substantial part, fluctuations in the success of the consumers surveyed.<sup>262</sup>

To this end, the current auditor has provided separate breakouts for consumers with awards and consumers who were denied awards since 2015, and has also developed further breakouts based on the *types* of awards received since 2016. 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.

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<sup>262</sup> 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.

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. The auditor notes, though, that the “grades” from consumers who *didn't* get repurchase or replacement remedies did increase this year. The 1.26 grade from consumers whose claims were denied was an underwhelming D+, but this is the first year since the current auditor began when it exceeded 1.10.

2. Satisfaction with BBB AUTO LINE staff

Table III-39: How would you grade BBB AUTO LINE staff on objectivity and fairness?

	2017 Audit
<b>BASE: Arbitrated or mediated cases," not sure" responses to this question excluded</b>	196
	100.0%
<b>A=Excellent</b>	124
	63.3%
<b>B=Good</b>	45
	23.0%
<b>C=Average</b>	15
	7.7%
<b>D=Poor</b>	5
	2.6%
<b>F=Failing Grade</b>	7
	3.6%
<b>MEAN</b>	3.40

Table III-40: How would you grade BBB AUTO LINE Staff on efforts to assist you in resolving your claim?

	2017 Audit
<b>BASE: Arbitrated or mediated cases ," not sure" responses to this question excluded</b>	197
	100.0%
<b>A=Excellent</b>	134
	68.0%
<b>B=Good</b>	28
	14.2%
<b>C=Average</b>	17
	8.6%
<b>D=Poor</b>	10
	5.1%
<b>F=Failing Grade</b>	8
	4.1%
<b>MEAN</b>	3.37

**Table III-41: Overall, what grade would you give BBB AUTO LINE?**

	<b>2017 Audit</b>
<b>BASE: BASE: Arbitrated or mediated cases, “not sure” responses to this question excluded</b>	198
	100.0%
<b>A=Excellent</b>	124
	62.6%
<b>B=Good</b>	36
	18.2%
<b>C=Average</b>	18
	9.1%
<b>D=Poor</b>	9
	4.5%
<b>F=Failing Grade</b>	11
	5.6%
<b>MEAN</b>	3.28

**Table II-42**  
**BBB AUTO LINE STAFF EFFORTS-SATISFACTION COMPOSITE**  
**FOR CONSUMERS WHO USED MEDIATION OR ARBITRATION**

	Mean
<b>Objectivity and fairness</b>	3.40
<b>Efforts to resolve claim</b>	3.37
<b>Overall grade</b>	3.28
<b>AVERAGE</b>	3.35

Composite mean (2018)	3.35 <sup>263</sup>
Composite mean (2017)	3.24
Composite mean (2016):	3.29
Composite mean (from 2015 audit)	2.85

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<sup>263</sup> The auditor notes that consumer’s satisfaction with staff also varied based on how their case was resolved. Still, as might be expected, even consumers who eventually were denied relief in arbitration didn’t feel as negatively about the staff as they did about the arbitrator who made the decision. In a question that asked for an overall grade, they gave staff a mean grade of 2.13, substantially better than the 1.26 grade that they gave to the arbitrator.

**Table III – 43: Would you recommend BBB AUTO LINE to friends or family?**

	Total	Med/Arb
<b>BASE: total, not sure responses to this question excluded</b>	397	195
	100.0%	100.0%
<b>Yes</b>	278	172
	70.0%	88.2%
<b>No</b>	119	23
	30.0%	11.8%

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 30 consumers in the survey who went to arbitration and lost, 14 (46.7%) nonetheless said they'd recommend the program.

#### **IV. SURVEY RESULTS – FLORIDA**

The preliminary note in Section IIA, addressing such matters as table numbering, “not sure” responses, and gender-specific pronouns, applies to the Florida discussion as well. The reader is referred to that section for background.

The Florida sampling frame included 19% of the consumers from the national sampling frame.<sup>264</sup> Although individual Florida consumers were substantially more likely to be called than consumers from other states (excluding Ohio), the margin of error for questions posed to all 153 consumers in the Florida sample was still +/-7.5%, substantially higher than the +/-4.7% for questions posed to all 407 consumers in the national sample. Further, as observed before, some questions were posed only to certain consumers, *e.g.*, the 21 who used arbitration. For those questions, the Florida margin of error grows substantially.<sup>265</sup>

Still, the *micro* analysis for Florida consumers substantially alleviates any concern that might be posed by survey results with low sample sizes and high margins of error. Although the “discordances” on the process question exceeded 7% (an unusually high number in the auditor’s experience), by examining the underlying files, the auditor concluded that the vast majority of the discordances fell into the categories describe in Section II.B.1 or otherwise didn’t point a problem in substance or recordkeeping. 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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<sup>264</sup> The sampling frame includes all cases involving the relevant population, excluding attorney cases and allowing only one case per consumer (thus excluding the earlier cases when multiple complaints about the same vehicle (MCSVs) were closed in the audit year).

<sup>265</sup> 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.



**A. GENERAL INFORMATION**

**Table IV-1: Vehicle Year**

	<b>2018 Cases</b>
<b>TOTAL</b>	153
	100.0%
<b>2004</b>	1
	0.7%
<b>2005</b>	-
	-
<b>2006</b>	-
	-
<b>2007</b>	1
	0.7%
<b>2008</b>	-
	-
<b>2009</b>	2
	1.3%
<b>2010</b>	1
	0.7%
<b>2011</b>	2
	1.3%
<b>2012</b>	2
	1.3%
<b>2013</b>	9
	5.9%
<b>2014</b>	8
	5.2%
<b>2015</b>	16
	10.5%
<b>2016</b>	39
	25.5%
<b>2017</b>	55
	35.9%
<b>2018</b>	16
	10.5%
<b>2019</b>	1
	0.7%

**Table IV-2: The BBB AUTO LINE's records show they closed a complaint in 2017 about your <make> vehicle. Is that correct?**

	<b>2018 Audit</b>	<b>2017 Audit</b>	<b>2016 Audit</b>
<b>TOTAL</b>	153	158	151
	100.0%	100.0%	100.0%
<b>Yes</b>	146	158	151
	95.4%	100.0%	100.0%
<b>No</b>	7	-	-
	4.6%	-	-

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**

	<b>2018 Audit</b>	<b>2017 Audit</b>	<b>2016 Audit</b>
<b>BASE: all respondents, “not sure” excluded</b>	149	154	147
	100.0%	100.0%	100.0%
<b>One</b>	11	18	15
	7.4%	11.7%	10.2%
<b>Two</b>	6	6	9
	4.0%	3.9%	6.1%
<b>Three</b>	24	26	21
	16.1%	16.9%	14.3%
<b>Four or more</b>	87	89	76
	58.4%	57.8%	51.7%
<b>None</b>	21	15	26
	14.1%	9.7%	17.7%

**Table IV-4: How did you first learn about BBB AUTO LINE?**

	<b>2018 Audit</b>	<b>2017 Audit</b>	<b>2016 Audit</b>
<b>BASE: all respondents, “not sure” excluded</b>	151 100.0%	157 100.0%	148 100.0%
<b>Manufacturer's manuals/other warranty documents</b>	29 19.2%	23 14.6%	21 14.2%
<b>Dealer or manufacturer representative</b>	23 15.2%	22 14.6%	20 13.5%
<b>BBB/BBB Website</b>	16 10.6%	11 7.0%	22 14.9%
<b>Internet website (NOT BBB or government website)</b>	36 23.8%	48 30.6%	44 29.7%
<b>Lawyer</b>	3 2.0%	1 0.6%	4 2.7%
<b>Friend/family/word of mouth</b>	28 18.5%	31 19.7%	29 19.6%
<b>TV/Radio/Newspaper</b>	- -	- -	2 1.4%
<b>Government website, office, or official</b>	18 11.9%	16 9.6%	3 2.0%
<b>Had used the BBB AUTOLINE previously</b>	3 2.0%	4 2.5%	
<b>General knowledge</b>	3 2.0%		
<b>Other</b>	4 2.6%	0 0.0%	3 2.0%

In past audits, consumers were asked how they *first* learned about BBB AUTO LINE. The new formulation permitted multiple responses. This tended to raise the numbers a bit, but not by much; of 151 consumers who answered this question, only 8 gave multiple responses.

Seven consumers originally responded “other,” but three of them gave elaborations that, in the auditor’s view, fit into a new category of “general knowledge.”<sup>266</sup>

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<sup>266</sup> In some cases, the consumer may have been speaking about general knowledge of Better Business Bureaus and, with probing, the survey might have found that consumers know about BBB’s generally but learned of BBB AUTO LINE specifically from the BBB website.

## B. PROCESS QUESTIONS

**Table IV–5: Aggregate Process Response**

	2018 BBB AUTO LINE						2018 Survey (B1)	Same, adjusted for response rate (see below) (B2)
	BBB AUTO LINE stats from 703-type report (A0)	BBB AUTO LINE stats from spread sheet (A1)	Same, excluding attorney cases (A2)	Auditor’s stats from original spread sheet, excluding att’y cases (A3) (Process State)	Auditor’s stats from original spread sheet, excluding att’y cases (A3) (Contact State)	Auditor’s stats from “fully adjusted” spread sheet (A4)		
<b>TOTAL</b>	2027	2028	1582	1582	1562	<b>1377</b>	153	
	100.0%	100.0%	100.0%	100.0%	100.0%	<b>100.0%</b>	100.0%	
<b>Mediation</b>	622	621	542	542	540	<b>460</b>	68	
	30.7%	30.6%	34.2%	34.2%	34.6%	<b>33.4%</b>	44.4%	<b>35.6%</b>
<b>Arbitration</b>	358	357	148	148	145	<b>142</b>	21	
	17.7%	17.6%	9.4%	9.4%	9.3%	<b>10.3%</b>	13.7%	<b>11.7%</b>
<b>Withdrawn</b>	1047 (51.7%)	143	120	120	117	<b>100</b>	10	
		7.1%	7.6%	7.6%	7.5%	<b>7.3%</b>	6.5%	<b>8.4%</b>
<b>Ineligible</b>	907	772	772	760	<b>675</b>	50		
		44.7%	48.8%	48.8%	48.8%	<b>49.0%</b>	32.7%	<b>44.2%</b>
<b>Other</b>						4		
						2.6%		

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 A4 and B2.

**Table IV–5A: Further multi-year comparisons**

	<b>A1 Figures</b>		
	<b>2018</b>	<b>2017</b>	<b>2016</b>
<b>TOTAL</b>	2028	2195	2030
	100.0%	100.0%	100.0%
<b>Mediation</b>	621	648	493
	30.6%	29.5%	24.3%
<b>Arbitration</b>	357	441	523
	17.6%	20.1%	25.8%
<b>Withdrawn</b>	143	145	156
	7.1%	6.6%	7.8%
<b>Ineligible</b>	907	961	856
	44.7%	43.8%	42.7%

**Table IV– 6: Comparisons of individual “process” responses**

	<b>Verified Case Type</b>				
	<b>Mediated</b>	<b>Arbitrated</b>	<b>Withdrawn</b>	<b>Ineligible</b>	<b>Other</b>
<b>TOTAL</b>	68	21	10	50	4
	100.0%	100.0%	100.0%	100.0%	100.0%
<b>Mediation (Imported)</b>	<b>63</b>	1	1	-	2
	<b>92.6%</b>	4.8%	10.0%	-	50.0%
<b>Arbitration (Imported)</b>	-	<b>20</b>	-	-	-
	-	<b>95.2%</b>	-	-	-
<b>Withdrawn (Imported)</b>	-	-	<b>9</b>	-	-
	-	-	<b>90.0%</b>	-	-
<b>Ineligible (Imported)</b>	5	-	-	<b>50</b>	2
	7.4%	-	-	<b>100.0%</b>	50.0%

**Concordance: 142/153 = 92.8%**

**Discordance: 11/153 = 7.2%**

### **1. Micro Analysis**

Table IV-6, the core of the micro analysis, reports a “concordance” of 92.8%, one of the higher such figures the auditor has observed.

However, three of the eleven recorded discordances were straddle cases (category a). Two were reports from consumers (neither of whom had returned a performance verification letter) describing developments that either might have been expected to appear in a performance

verification letter or that post-dated the closing of the file (category h). Five cases involved clear ineligibility determinations (category i), although the consumers didn't agree with the characterization.

The final case was a bit more complex. There was no straddle case or MCSV, and the underlying file shows a mediated repair remedy. Although the DRS's notes suggest some unusual problems in implementation, the file doesn't contain a returned performance verification letter to alert BBB AUTO LINE staff that the problem hadn't been resolved. BBB AUTO LINE's spread sheet (consistent with its underlying files) reports mediation; the consumer said "other"; and it appears that the BBB AUTO LINE's characterization was likely correct.<sup>267</sup>

All in all, the 7.2% discordance rate initially reported seems highlight overstated, and the actual discordance might well be a fraction of 1%, or even zero.<sup>268</sup>

*Attorney cases:* As noted above, the auditor also examined 30 case files where the consumer had counsel, including ten arbitrated cases, five mediated cases, ten withdrawn cases, and five ineligible cases.<sup>269</sup> On the process variable for the Florida attorney cases, there was complete concordance.

## 2. Macro analysis

*The "A" columns of Table IV-5.* Column A0 records the information on a Florida-specific version of the BBB's Rule 703 statistics. It's essentially the same as Column A1, which shows aggregate "process" statistics, as reported by BBB AUTO LINE, for all cases closed in 2018; the figures in Column A1 come from a BBB AUTO LINE spread sheet that lists key aggregate features. Each of these near-identical columns provides important information about the full range of cases filed in the program; for example, Columns A0 and A1 highlight that BBB AUTO LINE closed more cases through mediation than arbitration.

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<sup>267</sup> This unusual problem in implementation (noted in the text) was that the representative sent by the manufacturer found a problem stemming from service performed by the dealership – which the dealership denied. Perhaps BBB AUTO LINE staff might have given the consumer more guidance about processes to resolve this unusual case where the consumer was caught between the manufacturer and its dealer. (Another unusual aspect of this case is that it was one of the relatively infrequent "two-state" cases where the consumer's personal contact information pointed to Florida, but the case was processed under a different state's program. Thus, it didn't properly belong in the Florida sample in the first place. See Section II.E of this chapter.)

<sup>268</sup> Based on his review of the files, though, the auditor observed that, in some cases that seem ineligible on multiple bases, the ineligibility letter cites only one. In one case, for example, the consumer seemed ineligible for age, for mileage, and because she sought recovery for an accident.

<sup>269</sup> The auditor alphabetized the all the cases where consumers had attorneys, and then took the first five or ten in each category, alphabetically by surname and starting with the letter "B."

Column A2 provides comparable figures, also as reported by BBB AUTO LINE, but only for cases where the consumer appeared without counsel. Column A3 provides similar comparable figures derived by the auditor (rather than BBB AUTO LINE staff) from the BBB AUTO LINE spread sheet.

As noted previously, the auditor this year learned that BBB AUTO LINE records identify both the address that the consumer or his attorney listed for contact purposes, *and* the state under whose program the claim was processed. For purposes of the survey, moreover, the BBB AUTO LINE spread sheet has identified the contact state rather than the processing state, so the wrong state was used to identify the Florida sampling frame. However, the auditor also concluded that this wasn't likely to have much effect on the survey. For most cases the two states were the same, and, where they differed, the differences were usually in attorney cases (where the contact address could be an out-of-state lawyer's office) that were systematically excluded from the survey. To test his expectation that the remaining cases ("two-state non-attorney") didn't significantly affect the survey's merits, the auditor this year developed two versions of Column A3 – one identifying Florida cases by contact information (as was done in the survey) and the other identify Florida cases (properly) by the processing state. As an examination of the chart shows, the substitution made a very limited difference.

While columns A2 and both versions of column A3 are similar to each other in that both measure cases where the consumer didn't have a lawyer, both differ from the surveyed population in that they include multiple complaints about the same vehicle. In other words, if a consumer filed, for example, an initial case that ended in a repair remedy and a later case because they weren't satisfied with the result, both cases were picked up in columns A2 and A3 (as well as A0 and A1). Thus, comparing either or both to the survey results would raise an apples and oranges problem. And the differences between the apples and the oranges would appear far from trivial. The MSCV files that were omitted from the survey sample tend to be mediated cases, and thus have a different "process" profile than other cases.

As explained previously, though, the auditor used a variant of the original spread sheet to develop another column, A4, that addressed this issue. Specifically, TechnoMetrica scrubbed the BBB AUTO LINE spread sheet (the basis for column A3) to eliminate both attorney cases *and* MCSVs. The auditor used this scrubbed spread sheet to develop aggregate figures that, like the survey, excluded both attorney cases and MCSVs. This enabled apples-to-apples comparison. Essentially, the scrubbed spread sheet *was* the sampling frame, so the auditor was comparing aggregates based directly on the sampling frame (the A4 figures) to survey results involving consumers selected from that sampling frame.

*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 in Chapter III.B.2, some categories of consumers are more likely than others to complete a survey. For the Florida survey, the rates were:

- 26.0% for those who resolved their case through mediation;
- 24.4% for consumers who used arbitration;
- 15.4% for those deemed ineligible to participate in BBB AUTO LINE; and

- 16.1% for consumers who withdrew their complaints.

Thus, for example, consumers who used mediation were over 69% more likely to complete the survey than those found ineligible. Column B2 thus weights the responses in each category to simulate a scenario where all consumers responded at the same rate.

Thus, for purposes of Table IVI-5, the relevant comparison is between Columns A4 and B2. And, looking at those columns, all the differences between the two are well within the margin of error. In other words, for cases covered by the survey – non-attorney cases with only the latest counted where 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. To provide checks on the cases thus restored to the aggregate figures, he relies on his systematic examination of 30 attorney case files, as well as his review of the omitted MCSV cases during his review of case files.<sup>270</sup>

\* \* \*

Finally, Table IV-5A’s multi-year comparisons show some shift from arbitration to mediation this year. For the national survey, the auditor considered a possible trend to be too limited (both temporally and in terms of percentages) to point to a pattern. For Florida alone, the pattern is somewhat more pronounced.

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<sup>270</sup> When the auditor was reviewing targeted case files, as described above, he also examined earlier cases in the series (whether they closed in 2018 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.<sup>271</sup>

#### 1. Combined Results for Mediated and Arbitrated Cases

As noted previously, the auditor concludes that the combined results for mediated and arbitrated cases provide the best picture of BBB AUTO LINE’s overall operation; from the consumer’s perspective, a replacement vehicle obtained in mediation is no less valuable than a similar replacement obtained in arbitration – and far more consumers in the Florida program got a repurchase or replacement through mediation (374) than through arbitration (138). The auditor thus begins with those combined results, although, as with the national survey, he later turns to the separated results for mediation and arbitration for further insights.

**Table IV – 7: Remedies in Cases Identified by Consumers as Mediated or Arbitrated**

	2018 BBB AUTO LINE					2018 Survey (B)
	BBB AUTO LINE stats (A1)	Same, excluding attorney cases (A2)	Auditor’s stats from original spread sheet, excluding att’y cases (A3) (contact state)	Auditor’s stats from original spread sheet, excluding att’y cases (A3) (program state)	Auditor’s stats from “fully adjusted” spread sheet (A4)	
<b>BASE: med. &amp; arb. cases</b>	978	690	685	690	<b>602</b>	<b>84</b>
	100.0%	100.0%	100.0%	100.0%	<b>100.0%</b>	<b>100.0%</b>
<b>Replacement/ Repurchase</b>	512	366	363	366	<b>358</b>	<b>52</b>
	52.3%	53.0%	53.0%	53.0%	<b>59.4%</b>	<b>61.9%</b>
<b>Repair</b>	207	191	192	191	<b>118</b>	<b>19</b>
	21.2%	27.7%	28.0%	27.7%	<b>19.6%</b>	<b>22.6%</b>
<b>Other</b>	70	67	66	68	<b>64</b>	<b>6</b>
	7.2%	9.7%	9.6%	9.9%	<b>10.6%</b>	<b>7.1%</b>
<b>No Award</b>	189	66	64	64	<b>62</b>	<b>7</b>
	19.3%	9.6%	9.3%	9.3%	<b>10.3%</b>	<b>8.3%</b>

<sup>271</sup> There were small variations in wording depending on whether the consumer had identified the case as mediated or arbitrated.

The key comparison in Table IV-7 is between columns A4 and B, because both exclude consumers who used attorneys and, for MCSV's, all but the last complaint filed in 2018.<sup>272</sup> The margin of error for questions posed to all 158 participants in the Florida sample was +/-7.5%; it's substantially higher for these tables, for questions posed only to the 84 consumers who were questioned about remedies in arbitrations or mediation, (Table IV-7), the 63 consumers who were questioned about remedies in mediation (Table IV-9), and the 21 who were questioned about remedies in arbitration (Table IV-11).<sup>273</sup>

As discussed in the previous section, column A1 lists the aggregate BBB AUTO LINE statistics for all cases and column A2 does the same for all non-attorney cases. Two variants of Columns A3 show the auditor's calculations, based on both the "contact" state and "processing state," and, as the auditor anticipated, the two "A3" figures are similar both to each other and to the A2 calculations. This result is consistent with the auditor's view that the use of contact states in past surveys, and the current survey, didn't significantly affect the survey results.

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 MCSV cases that the sampling frame omitted. Column A3, derived from the same spread sheet as Column A4, adds back in the multiple complaints about the same vehicle. There's no reason to expect a lower degree of accuracy for the cases previously omitted than for the cases included in column A4. Further, while the auditor didn't systematically examine the cases omitted because they involved MCSVs, he did, when reviewing later cases included in an MCSV context, glance back at the earlier cases, and found no significant problems in the "omitted" cases.

While column A2 covers the same cases as column A3 – all but attorney cases – these figures were developed by BBB AUTO LINE directly from the underlying data base. And the A2 figures are substantially the same as the A3 figures, whose credibility has already been established.

The last step is the extension back to the A1 figures, which add back the attorney cases. Here, the auditor relies on his previously-noted examination of 30 case files for consumers who used lawyers. On the remedy as well as the process metric, there was complete concordance.

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<sup>272</sup> The auditor didn't use weighted averages and create a column B2 for the remedy metric. There seemed good reason, theoretically and empirically from the 2016 data, to anticipate that, e.g., ineligible consumers might be less likely to complete the survey than consumers who used arbitration. There didn't seem a comparable concern, for example, about differing response rates between consumers who got replacements and consumers whose claims were denied.

<sup>273</sup> If TechnoMetrica had simply used as the sampling frame only the 602 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 +/- 9.9%. Similarly, for Table IV-9, had the sampling frame been 460 consumers and the number interviewed 63, the margin of error would have been +/- 115%. And, for Table IV-11, had the sampling frame been 142 consumers and the number interviewed 21, the margin of error would have been +/- 19.8% – a range of nearly 40%.

\* \* \*

**TABLE IV- 7A: Multi-Year Comparisons**

	<b>A1 Figures</b>		
	<b>2018</b>	<b>2017</b>	<b>2016</b>
<b>BASE: med. &amp; arb. cases</b>	978	1089	1016
	100.0%	100.0%	100.0%
<b>Replacement/ Repurchase</b>	512	529	423
	52.3%	48.6%	41.6%
<b>Repair</b>	207	211	235
	21.2%	19.4%	23.1%
<b>Other</b>	70	93	81
	7.2%	8.5%	8.0%
<b>No Award</b>	189	245	277
	19.3%	23.5%	27.3%

**Table IV-8: Consumer Agreement with BBB AUTO LINE Records on Remedies**

	<b>Repurchase/ Replacement</b>	<b>Repair</b>	<b>Other</b>	<b>No Award</b>
<b>BASE: med. &amp; arb. cases</b>	52	19	6	7
	100.0%	100.0%	100.0%	100.0%
<b>Repurchase/Replacement (Imported)</b>	52	-	-	-
	100.0%	-	-	-
<b>Repair (Imported)</b>	-	19	-	-
	-	100.0%	-	-
<b>Other (Imported)</b>	-	-	6	-
	-	-	100.0%	-
<b>No Award (Imported)</b>	-	-	-	7
	-	-	-	100.0%

**Concordance: 84/84 = 100.0%**

**Discordance: 0/84\* = 0.0%**

\* \* \*

At this point, the auditor turns to the substantive analysis. Assuming the figures in columns A1 through A4 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), 52.3% ended with a repurchase or

replacement remedy, 28.4% ended with some other relief, and 19.3% ended in no relief. Further, excluding cases brought by attorneys, column A2 reports that 53.0% of cases ended with a repurchase or replacement remedy; 37.4% ended with some other relief; and only 9.6% ended with no award.

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.

Third, having gotten our bearings with the totals 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. While consumers have been increasingly successful in Florida, *their increased success comes almost entirely from mediated cases*. Looking forward to Table IV-11A, there's no substantial changing pattern among arbitrated cases for repurchase and replacement remedies, which have fluctuated over the years. Similarly, there's no substantial changing pattern among arbitrated cases for "no award" decisions. But Table IV-9A shows a very different story for mediation. Among mediated cases, repurchase or replacement remedies have risen from 44.2% in 2016 to 60.2% in 2018.

All of this – and particularly the fact that improved consumer performance has been coming from mediation rather than arbitration, suggests a process that's fair to consumers but not a "slam-dunk" that wouldn't be fair to manufacturers.

## 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**

	2018 BBB AUTO LINE					2018 Survey (B)
	BBB AUTO LINE stats (A1)	Same, excluding attorney cases (A2)	Auditor's stats from original spread sheet, excluding att'y cases (A3) (contact state)	Auditor's stats from original spread sheet, excluding att'y cases (A3) (program state)	Auditor's stats from "fully adjusted" spread sheet (A4)	
<b>BASE: med. cases</b>	621	542	540	542	<b>460</b>	<b>63</b>
	100.0%	100.0%	100.0%	100.0%	<b>100.0%</b>	<b>100.0%</b>
<b>Replacement/ Repurchase</b>	374	301	299	301	<b>295</b>	<b>41</b>
	60.2%	55.6%	55.4%	55.5%	<b>64.1%</b>	<b>65.1%</b>
<b>Repair</b>	182	178	179	178	<b>105</b>	<b>16</b>
	29.3%	32.8%	33.1%	32.8%	<b>22.8%</b>	<b>25.4%</b>
<b>Other</b>	65	63	62	63	<b>60</b>	<b>6</b>
	10.5%	11.6%	11.5%	11.6%	<b>13.0%</b>	<b>9.5%</b>

**Table IV--9A: Further Multi-Year Comparison**

	A1 Figures		
	2018	2017	2016
<b>BASE: med. &amp; arb. cases</b>	621	648	493
	100.0%	100.0%	100.0%
<b>Replacement/ Repurchase</b>	374	367	218
	60.2%	56.6%	44.2%
<b>Repair</b>	182	197	207
	29.3%	30.4%	42.0%
<b>Other</b>	65	84	68
	10.5%	13.0%	13.8%

**Table IV-10: Consumer Agreement with BBB AUTO LINE**

	<b>Repurchase/ Replacement</b>	<b>Repair</b>	<b>Other</b>
<b>BASE: med cases</b>	41	16	6
	100.0%	100.0%	100.0%
<b>Repurchase/Replacement (Imported)</b>	<b>41</b>	-	-
	<b>100.0%</b>	-	-
<b>Repair (Imported)</b>	-	<b>16</b>	-
	-	<b>100.0%</b>	-
<b>Other (Imported)</b>	-	-	<b>6</b>
	-	-	<b>100.0%</b>
<b>None on File- Ineligible/Withdrawn Cases (Imported)</b>	-	-	-
	-	-	-

**Concordance: 63/63\* = 100.0%**

**Discordance: 0/63\* = 0.0%**

\*Note the base n=63 is used because of 5 cases missing remedy

### 3. Arbitrated Cases

**Table IV-11: Final Remedy in Cases Identified by Consumers as Arbitrated**

	2018 BBB AUTO LINE					2018 Survey (B)
	BBB AUTO LINE stats (A1)	Same, excluding attorney cases (A2)	Auditor's stats from original spread sheet, excluding att'y cases (A3) (contact state)	Auditor's stats from original spread sheet, excluding att'y cases (A3) (program state)	Auditor's stats from "fully adjusted" spread sheet (A4)	
<b>BASE: arb. cases</b>	357	148	145	148	<b>142</b>	<b>21</b>
	100.0%	100.0%	100.0%	100.0%	<b>100.0%</b>	<b>100.0%</b>
<b>Replacement/ Repurchase</b>	138	65	64	66	<b>63</b>	<b>11</b>
	38.7%	43.9%	44.1%	44.6%	<b>44.4%</b>	<b>52.4%</b>
<b>Repair</b>	25	13	13	13	<b>13</b>	<b>3</b>
	7.0%	8.8%	9.0%	8.8%	<b>9.2%</b>	<b>14.3%</b>
<b>Other</b>	5	4	4	4	<b>4</b>	-
	1.4%	2.7%	2.8%	2.7%	<b>2.8%</b>	-
<b>No Award</b>	189	66	64	65	<b>62</b>	<b>7</b>
	52.9%	44.6%	44.1%	43.9%	<b>43.7%</b>	<b>33.3%</b>
<b>No entry</b>						

Again, the relevant comparison is between columns A4 and B. And, for that comparison, even the 10.4% discrepancy in the "no entry" column is within the relevant margin of error.<sup>274</sup>

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<sup>274</sup> See note 273. To highlight how small sample size can impact the margin of error, though, consider that, with only 21 consumers in the relevant population, a changed response by a single consumer would change the column B figure by 4.8%.

**Table IV-11A – Multi-year comparisons**

	<b>A1 Figures</b>		
	<b>2018</b>	<b>2017</b>	<b>2016</b>
<b>BASE: arb. cases</b>	357	441	523
	100.0%	100.0%	100.0%
<b>Replacement/ Repurchase</b>	138	162	205
	38.7%	36.7%	39.2%
<b>Repair</b>	25	14	28
	7.0%	3.2%	5.4%
<b>Other</b>	5	9	13
	1.4%	2.0%	2.5%
<b>No Award</b>	189	256	277
	52.9%	58.0%	53.0%

**Table IV-12: Consumer Agreement with BBB AUTO LINE Records**

	<b>Repurchase/ Replacement</b>	<b>Repair</b>	<b>Other</b>	<b>No Award</b>
<b>BASE: ARBITRATED CASES</b>	8	2	2	22
	100.0%	100.0%	100.0%	100.0%
<b>Repurchase/Replacement (Imported)</b>	<b>8</b>	-	-	1
	<b>100.0%</b>	-	-	4.5%
<b>Repair (Imported)</b>	-	<b>1</b>	-	-
	-	<b>50.0%</b>	-	-
<b>Other (Imported)</b>	-	1	<b>2</b>	-
	-	50.0%	<b>100.0%</b>	-
<b>No Award (Imported)</b>	-	-	-	<b>21</b>
	-	-	-	<b>95.5%</b>
<b>None on File- Ineligible/Withdrawn Cases (Imported)</b>	-	-	-	-
	-	-	-	-

**Concordance: 32/34 = 94.1%**

**Discordance: 2/34 = 5.9%**

\* \* \*



Pursuant to a requirement specific to Florida, BBB AUTO LINE also provided the following breakdown:

	<b>All Manufacturers</b>		<b>Certified Manufacturers</b>	
All filed claims:	2,027	100.00%	1,994	100.00%
Mediated	620	30.59%	615	30.84%
Arbitrated	358	17.66%	351	17.60%
No jurisdiction	906	44.72%	891	44.68%
Withdrawn	143	7.05%	137	6.87%
All arbitrations:	358	100.00%	351	100.00%
Full repurchase	116	32.40%	113	32.19%
Partial repurchase	10	2.79%	10	2.85%
Replacement	13	3.63%	13	3.70%
Repair	24	6.70%	25	7.12%
Trade assist	3	0.84%	3	0.77%
Other award	2	0.56%	2	0.51%
No award	190	53.07%	185	52.71%

The “all manufacturer numbers are reasonably consistent with those in Tables IV-9 and IV-11, and the auditor suggests that BBB AUTO LINE explore for next year whether they can be made more consistent.”<sup>275</sup>

The auditor again highlights a point he had made before: to view the remedy numbers in a more complete context, the tables showing combined relief in mediation plus arbitration combined give a far fuller picture of the program.

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<sup>275</sup> The auditor also can’t explain why the table shows more repair remedies among certified manufacturers than among “all manufacturers.”

**Table IV – 13: Did you return a form accepting the arbitrator's decision?<sup>276</sup>**

	2018 Survey
<b>BASE: Arb. cases with awards to consumers; “not sure” responses excluded</b>	14
	100.0%
<b>Yes</b>	9
	64.3%
<b>No</b>	5
	35.7%

**Table IV-14: Acceptance of different types of remedies**

	Total	Repurchase/ Replacement	Repair	Other
<b>BASE: Arb. cases with awards to consumers; “not sure” responses excluded</b>	14	11	3	-
	100.0%	100.0%	100.0%	-
<b>Yes</b>	9	9	-	-
	64.3%	81.8%	-	-

**Table IV-15: Consumer Agreement with BBB AUTO LINE Records**

	Verified Accepted/Rejected	
	Accepted	Rejected
<b>BASE: See below</b>	9 <sup>277</sup>	4
	100.0%	100.0%
<b>Accepted (Imported)</b>	9	-
	100.0%	-
<b>Rejected (Imported)</b>	-	4
	-	100.0%

**Concordance: 13/13: 100.0%**

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<sup>276</sup> This question was reworded from “Did you accept the arbitrator’s decision,” to draw attention to a more concrete act of returning a form.

<sup>277</sup> Omits one case where BBB AUTO LINE record shows the case as mediated and thus doesn’t have the relevant entry.

In the sole discordant case, BBB AUTO LINE records (and files) indicate that the matter was a settlement. While there were a number of complications (including a straddle case), there was no sign of arbitration, and thus BBB AUTO LINE didn't record an acceptance or rejection in either the initial case or the 1R case.

**4. Withdrawn Cases**

**Table IV – 16: Which of the following best describes why you withdrew your complaint?**

	2018 Cases
<b>BASE: Withdrawn cases</b>	12 100.0%
<b>You settled the matter or your car was fixed</b>	6 50.0%
<b>You sold the car</b>	2 16.7%
<b>Some other reason</b>	4 33.3%

## D. COMPLIANCE QUESTIONS

**Table IV-17: Which of the following applies to your case? The manufacturer...**

	Mediated		Arbitrated*		Med/Arb Combined	
	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE
<b>BASE: *</b>	65	622	9	105	74	727
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
<b>Carried out remedy within the time specified, including extensions to which you agreed</b>	48	601	6	101	54	702
	73.8%	96.6%	66.7%	96.2%	73.0%	96.6%
<b>Carried out remedy after the time specified, including any extension to which you agreed</b>	13	1	2	0	15	1
	20.0%	0.2%	22.2%	0.0%	20.3%	0.1%
<b>Has not yet carried out the remedy, but the time to do so has not yet expired</b>	2	10	1	2	3	12
	3.1%	1.6%	11.1%	1.9%	4.1%	1.7%
<b>Has not yet carried out the remedy and the time to do so has expired</b>	2	10		2	2	12
	3.1%	1.6%		1.9%	2.7%	1.7%
<b>(Failure to comply was the fault of the consumer)</b>		(7)		(2)		(9)
		(1.1%)		(1.9%)		(1.2%)
<b>Time for compliance has expired, performance not verified.</b>		-		-		
		-		-		

\* *BASE: For mediation, all cases reported by the consumer as mediated. For arbitration, all cases where the consumer reported that they used arbitration, the arbitrator awarded them relief, and they accepted the award. "Not sure" replies to this question were excluded in calculating percentages for the survey results.*

*Non-compliance.* Two consumers in the survey reported non-compliance. In one case, though, the file doesn't include a returned performance verification letter, so staff could assume that compliance was satisfactory. (Even more curiously, the consumer gave the staff straight "A" grades on satisfaction.) The second case was a straddle case, and (contrary to the consumer's assertion), the time for compliance hadn't yet passed when the consumer was surveyed in early March.

*Delayed compliance.* The number of *surveyed* consumers reporting delayed compliance in this year's survey again exceeded the total BBB AUTO LINE reported having done so in the entire relevant population. Among the 15 consumers reporting delayed compliance, though, the files in 1 case contains a performance verification letters that indicate timely performance,<sup>278</sup> In another 7, the files contained no returned performance verification letter to alert BBB AUTO LINE to the consumer's dissatisfaction. And in yet another case, though the consumer reported mediation, the BBB AUTO LINE reported (consistent with the underlying files) that the consumer's complaint was ineligible.

The auditor did, however, find a number of cases where the manufacturer requested an extension and it's unclear if the consumer agreed. As noted in Chapter 2, the auditor doubts that BBB AUTO LINE should rely on an extension as a basis for timeliness absent documentation that the consumer agrees with it.

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<sup>278</sup> One of the consumers did note an ongoing frustration with a notary fee on his performance verification letter.

**Table IV-17A: Comparative analysis on compliance (mediated and arbitrated combined)**

	2018		2017		2016	
	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE
<b>BASE: *</b>	74	727	50	787	58	677
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
<b>Carried out the settlement/terms of decision within the time specified, including any extension to which you agreed</b>	54	702	40	766	52	658
	73.0%	96.6%	80.0%	97.3%	89.7%	97.2%
<b>Carried out the settlement/terms of decision after the time specified, including any extension to which you agreed</b>	15	1	8	1	3	1
	20.3%	0.1%	16.0%	0.1%	5.2%	0.1%
<b>Has not yet carried out the settlement/terms of decision, but the time to do so has not yet expired</b>	3	12	2	6	1	2
	4.1%	1.7%	4.0%	0.8%	1.7%	0.3%
<b>Has not yet carried out the remedy and the time to do so has expired</b>	2	12		14	2	16
	2.7%	1.7%		1.8%	3.4%	2.3%
<b>(Failure to comply was the fault of the consumer)</b>		(9)		(7)		(11)
		(1.2%)		(0.9%)		(1.6%)
<b>Time for compliance has expired, performance not verified</b>						

*\*BASE: Same as for mediation/arbitration in Table IV-17 above*

## E. TIMING QUESTIONS

### 1. Mediated and Arbitrated Cases

As in past years, BBB AUTO LINE’s timing figures report on the timing of mediated and arbitrated cases only, and the auditor’s scrutiny similarly focuses on those cases. The analysis in this section is thus based on responses by the 89 consumers surveyed who said they used arbitration or mediation. BBB AUTO LINE is to be commended for focusing on arbitrated and mediated cases only; the cases that were excluded were, on average, far *more* likely to be resolved quickly, so the reporting basis used by BBB AUTO LINE probably lowered their measure of performance.<sup>279</sup>

**Table IV – 19: Time to resolve their cases (Survey results, with year-by-year comparison)**

	Survey			BBB AUTO LINE report
	Mediated	Arbitrated	Med/Arb Combined	
<b>BASE: med. &amp; arb. cases</b>	68	21	89	<b>1189</b>
	100.0%	100.0%	100.0%	<b>100.0%</b>
<b>Within 40 days</b>	58	8	66	<b>978</b>
	85.3%	38.1%	74.2%	<b>78.5%</b>
<b>41 or more</b>	10	13	23	<b>211</b>
	14.7%	61.9%	25.8%	<b>21.5%</b>

**Table IV – 19A: Comparative analysis of timing, mediated and arbitrated cases combined.**

	2018		2017		2016	
	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE
<b>BASE: med. &amp; arb. cases</b>	89	1189	78	1089	87	1016
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
<b>Within 40 days</b>	66	978	55	875	58	712
	74.2%	78.5%	70.5%	80.4%	66.7%	70.8%
<b>41 or more</b>	23	211	23	214	29	304
	25.8%	21.5%	29.5%	19.6%	33.3%	29.2%

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<sup>279</sup> Most of the 64 excluded cases were ineligible – and ineligible cases are usually resolved quickly, most often within a day or two.

**Table IV-20: Did it take more than 40 days because of some action you took?**

	Mediated	Arbitrated	Med/Arb Combined
<b>BASE: med. &amp; arb. cases, more than 40 days, “not sure” responses to this question excluded</b>	10	11	21
	100.0%	100.0%	100.0%
<b>Yes</b>	1	-	1
	10.0%	-	4.8%
<b>No</b>	9	11	20
	90.0%	100.0%	95.2%

**Table IV-21: Did you contact the manufacturer--not just the dealer--before you filed your complaint?**

	Mediated	Arbitrated	Med/Arb Combined
<b>BASE: med. &amp; arb/ cases, between 41 and 47 days, “not sure” responses to this question excluded</b>	4	4	8
	100.0%	100.0%	100.0%
<b>Yes</b>	3	3	6
	75.0%	75.0%	75.0%
<b>No</b>	1	1	2
	25.0%	25.0%	25.0%

**Table IV–22: Consumer agreement with BBB AUTO LINE records**

	Within 40 Days	41 + Days
<b>BASE: mediated or arbitrated cases</b>	66	23
	100.0%	100.0%
<b>Within 40 Days (Imported)</b>	<b>66</b>	9
	<b>100.0%</b>	39.1%
<b>41 + Days (Imported)</b>	-	<b>14</b>
	-	<b>61.9%</b>

**Concordance: 80/89 = 89.9%**

**Discordance: 9/89=10.1%**

It isn’t surprising to get a lower concordance rate on a quantitative metric (days to process complaint) than on a qualitative metric (relief obtained, process used). Further, the timing might be muddled in consumers’ minds by the nuances of when the clock started, although the questionnaire tried to make these matters clear. That is, the case begins in Florida



and California with the initial submission; it begins elsewhere when the consumer returns the signed complaint form; and it ends when the parties reach a settlement or the arbitrator issues a decision – *not* when the manufacturer complies with the decision. Given all of these nuances, the 10.3% discordance rate, in the auditor’s view, is not unreasonable.

**2. Withdrawn Cases**

**Table IV–23: Days until complaints were withdrawn, as reported by consumers who reported withdrawing their complaints**

<b>BASE: withdrawn cases</b>	10
	100.0%
<b>Within 40 days</b>	9
	90.0%
<b>41 or above</b>	1
	10.0%

**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?**

	2018	2017	2016
<b>BASE: answering, “not sure” responses excluded</b>	136	149	143
	100.0%	100.0%	100.0%
<b>Yes</b>	122	141	132
	89.7%	94.6%	92.3%
<b>No</b>	14	8	11
	10.32%	5.4%	7.7%

Among the fourteen consumers who reported that they hadn’t received a claim form and explanation of the program:

- 1 had returned a signed consumer complaint form, indicating that she had in fact received it.
- 1 withdrew his case a day after filing it.
- 4 cases were closed precisely because the consumer hadn’t returned a signed consumer complaint form. This is a situation that can arise only in Florida and California, because, elsewhere, the file isn’t even opened (so there’s nothing to close) before the signed consumer complaint form is returned. The consumers in question were all advised, moreover, that a new case would be opened if they did return a signed consumer complaint form.
- The rest were all told that their complaints weren’t eligible within a week or less one had returned a signed document. When a complaint is clearly ineligible, staff apparently doesn’t ask consumers to submit further paperwork. .

**Table IV–25: How clear and understandable were these documents?**

	<b>2018</b>	<b>2017</b>	<b>2016</b>
<b>BASE: receiving docs, “not sure responses excluded</b>	120	137	128
	100.0%	100.0%	100.0%
<b>Very</b>	76	103	87
	63.3%	75.2%	68.0%
<b>Somewhat</b>	38	30	34
	31.7%	21.9%	26.6%
<b>Not at all</b>	6	4	7
	5.0%	2.9%	5.5%

**Table IV-26: And how helpful were they?**

	<b>2018</b>	<b>2017</b>	<b>2016</b>
<b>BASE: Same</b>	121	138	126
	100.0%	100.0%	100.0%
<b>Very</b>	59	71	73
	48.8%	51.4%	57.9%
<b>Somewhat</b>	41	49	36
	33.9%	35.5%	28.6%
<b>Not at all</b>	21	18	17
	17.4%	13.0%	13.5%

Table IV-25 shows that 95.0% of the consumers surveyed found BBB AUTO LINE’s documents at least somewhat understandable, with 63.3% reporting that they were very understandable. Table IV-26 shows that 82.6% reported that they were at least somewhat helpful, with 48.8% finding them very helpful.

**Table IV-27: After you reached a settlement, did you get an explanation by letter or email describing the terms of the settlement?**

	2018	2017	2016
<b>BASE: med. cases, “not sure” excluded</b>	64	42	40
	100.0%	100.0%	100.0%
<b>Yes</b>	61	41	38
	95.3%	97.6%	95.0%
<b>No</b>	3	1	2
	4.7%	2.4%	5.0%

As to the “no” response in the current audit, BBB AUTO LINE doesn’t ask consumers to return the settlement letter if they agree with its content, so (unlike with the consumer complaint form) there aren’t signed documents in the files reflecting that any consumers actually *received* the documents. But BBB AUTO LINE’s files report that the document was *sent*.<sup>280</sup> Given the likelihood 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 strong evidence of even a single problem here.

**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?**

	2018	2017	2016
<b>BASE: arb. cases, “not sure” excluded</b>	21	34	41
	100.0%	100.0%	100.0%
<b>Yes</b>	20	33	40
	95.2%	97.1%	97.6%
<b>No</b>	1	1	1
	4.8%	2.9%	2.4%

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<sup>280</sup> Further, after the manufacturer has time to implement the settlement, BBB AUTO LINE routinely sends a performance verification letter asking if the settlement had been performed, and one file contains a signed letter that the consumer returned.

**Table IV – 29: Did you get a copy by letter or email of the arbitrator's decision?**

	2018	2017	2016
<b>BASE: Arb. cases, “not sure” excluded</b>	18	32	40
	100.0%	100.0%	100.0%
<b>Yes</b>	18	31	38
	100.0%	96.9%	95.0%
<b>No</b>	-	1	2
	-	3.1%	5.0%

**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?**

	Mediated cases	Arbitrated cases; accepted award	Combined figures for 2018		Combined Figures for 2017	Combined figures for 2016
<b>BASE: med. cases</b>	61	7	68		61	60
	100.0%	100.0%	100.0%		100.0%	100.0%
<b>The staff contacted me by letter or email</b>	10	4	14		17	14
	16.4%	57.1%	20.6%		27.9%	23.3%
<b>The staff spoke to me</b>	9	1	10		13	10
	14.8%	14.3%	14.7%		21.3%	16.7%
<b>Both of those</b>	36	2	38		26	32
	59.0%	28.6%	55.9%		42.6%	53.3%
<b>Neither of those</b>	5	-	5		3	3
	8.2%	-	7.4%		4.9%	5.0%
<b>Something else</b>	1	-	1		2	1
	1.6%	-	1.5%		3.3%	1.7%

**G. COMPARING CLAIMS FILED BY CONSUMERS WHO HAVE COUNSEL  
WITH CLAIMS FILED DIRECTLY BY CONSUMERS**

**Table IV-32: Comparisons on process for resolving complaints**

	<b>Claims filed by attorneys on behalf of consumers (2018)</b>	<b>Claims filed directly by consumers (2018)</b>
<b>TOTAL</b>	446	1582
	100.0%	100.0%
<b>Mediation</b>	79	542
	17.7%	34.3%
<b>Arbitration</b>	209	148
	46.9%	9.4%
<b>Ineligible</b>	135	772
	30.3%	48.8%
<b>Withdrawn</b>	23	120
	5.2%	7.6%

**Table IV-33: Comparisons on Remedies**

**1. Combined Mediation and Arbitration**

	<b>Claims filed by attorneys on behalf of consumers</b>	<b>Claims filed directly by consumers</b>
<b>TOTAL</b>	288	690
	100.0%	100.0%
<b>Repurchase/ Replacement</b>	146	366
	50.7%	53.0%
<b>Repair</b>	16	191
	5.6%	27.7%
<b>Other award</b>	3	67
	1.0%	9.7%
<b>No award</b>	123	66
	42.7%	9.6%

**2. Mediation only**

<b>TOTAL</b>	79	542
	100.0%	100.0%
<b>Repurchase/ Replacement</b>	73	301
	92.4%	55.5%
<b>Repair</b>	4	178
	5.1%	32.8%
<b>Other award</b>	2	63
	2.5%	11.6%

**3. Arbitration only**

<b>TOTAL</b>	209	148
	100.0%	100.0%
<b>Repurchase/ Replacement</b>	73	65
	34.9%	43.9%
<b>Repair</b>	12	13
	5.7%	8.8%
<b>Other award</b>	1	4
	0.5%	2.7%
<b>No award</b>	123	64
	58.8%	44.6%

According to BBB AUTO LINE statistics, consumers who brought claims under the Florida program used lawyers in 446 cases, or 22.0% of 2028 cases reported on the spread sheet as closed in 2018. 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 last year, moreover, many “withdrawals” in attorney cases reflect settlements outside the program. The auditor examined 10 withdrawn cases brought by attorneys this year, and 8 of them noted that the parties had settled. Of course, it wasn’t only consumers with attorneys who withdrew cases for this reason, but it seemed to the auditor that, for consumers with attorneys, this occurred with greater frequency. 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. And, while precise

quantification isn't possible, this suggests that consumers with attorneys may well have fared better this year than consumers without attorneys.<sup>281</sup>

The numbers in Table IV-33 still show meaningfully different profiles from the *program's* point of view, and in particular they show that, when consumers go to arbitration, those with attorneys are more likely to lose – and the losses in attorney cases tends to inflate the overall denial rate for arbitrated cases, as well as for arbitrated plus mediated cases combined. (Perhaps one reason for attorneys' performance in litigation is that they more often request a hearing on the papers rather than in person or by telephone.)

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<sup>281</sup> Compared to last year, fewer cases brought by attorneys were withdrawn (109 vs. 231), and the sample reviewed by the auditor suggests that a smaller percentage might have been withdrawn because of a settlement outside the program. (Last year the auditor found that the attorney had reached a settlement in 4 of the 5 cases he examined). Since there were more settlements within the program this year, a possible explanation is that attorneys were more likely to settle cases within BBB AUTO LINE rather than handle settlements outside the program.



## 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
<b>BASE: arb. cases, “not sure” excluded</b>	21	14	11	3	7
	100.0%	100.0%	100.0%	100.0%	100.0%
<b>A=Excellent</b>	10	9	8	1	1
	47.6%	64.3%	72.7%	33.3%	14.3%
<b>B=Good</b>	3	3	2	1	-
	14.3%	21.4%	18.2%	33.3%	-
<b>C=Average</b>	3	1	1	-	2
	14.3%	7.1%	9.1%	-	28.6%
<b>D=Poor</b>	1	-	-	-	1
	4.8%	-	-	-	14.3%
<b>F=Failing Grade</b>	4	1	-	1	3
	19.0%	7.1%	-	33.3%	42.9%
<b>MEAN</b>	2.67	3.36	3.64	2.33	1.29

**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
<b>BASE: arb. cases, “not sure” excluded</b>	20	13	11	2	7
	100.0%	100.0%	100.0%	100.0%	100.0%
<b>A=Excellent</b>	10	9	8	1	1
	50.0%	69.2%	72.7%	50.0%	14.3%
<b>B=Good</b>	3	3	3	-	-
	15.0%	23.1%	27.3%	-	-
<b>C=Average</b>	3	-	-	-	3
	15.0%	-	-	-	42.9%
<b>D=Poor</b>	1	-	-	-	1
	5.0%	-	-	-	14.3%
<b>F=Failing Grade</b>	3	1	-	1	2
	15.0%	7.7%	-	50.0%	28.6%
<b>MEAN</b>	2.80	3.46	3.73	2.00	1.57

**Table IV-36: How would you grade the arbitrator on reaching an impartial decision?**

	Total	Award	Repurchase/ Replace	Repair/ Other	No Award
<b>BASE: arb. cases, “not sure” excluded</b>	19	12	11	1	7
	100.0%	100.0%	100.0%	100.0%	100.0%
<b>A=Excellent</b>	11	10	9	1	1
	57.9%	83.3%	81.8%	100.0%	14.3%
<b>B=Good</b>	2	2	2	-	-
	10.5%	16.7%	18.2%	-	-
<b>C=Average</b>	1	-	-	-	1
	5.3%	-	-	-	14.3%
<b>D=Poor</b>	1	-	-	-	1
	5.3%	-	-	-	14.3%
<b>F=Failing Grade</b>	4	-	-	-	4
	21.1%	-	-	-	57.1%
<b>MEAN</b>	2.79	3.83	3.82	4.00	1.00

**Table IV-37: How would you grade the arbitrator on coming to a reasoned & well thought-out decision?**

	<b>Total</b>	<b>Award</b>	<b>Repurchase/ Replace</b>	<b>Repair/ Other</b>	<b>No Award</b>
<b>BASE: arb. cases, “not sure” excluded</b>	21	14	11	3	7
	100.0%	100.0%	100.0%	100.0%	100.0%
<b>A=Excellent</b>	11	10	9	1	1
	52.4%	71.4%	81.8%	33.3%	14.3%
<b>B=Good</b>	1	1	1	-	-
	4.8%	7.1%	9.1%	-	-
<b>C=Average</b>	3	2	1	1	1
	14.3%	14.3%	9.1%	33.3%	14.3%
<b>D=Poor</b>	2	1	-	1	1
	9.5%	7.1%	-	33.3%	14.3%
<b>F=Failing Grade</b>	4	-	-	-	4
	19.0%	-	-	-	57.1%
<b>MEAN</b>	2.62	3.43	3.73	2.33	1.00

**Table IV – 38:  
ARBITRATOR SATISFACTION COMPOSITE**

	Total	All Award	Award: Replacement/Repurchase	Award: Repair/Other	No Award
<b>Understanding facts</b>	2.67	3.36	3.64	2.33	1.29
<b>Objectivity and fairness</b>	2.80	3.46	3.73	2.00	1.57
<b>Reaching and impartial decision</b>	2.79	3.83	3.82	4.00	1.00
<b>Coming to a reasoned &amp; well thought-out decision</b>	2.62	3.43	3.73	2.33	1.00
<b>AVERAGE</b>	<b>2.72</b>	<b>3.52</b>	<b>3.73</b>	<b>2.66</b>	<b>1.22</b>

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

Composite Means (2015)

Consumers who received awards	3.40
Consumers with no awards	0.79

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 0.57% 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?

<b>BASE: arb. or med. cases, “not sure” excluded</b>	86
	100.0%
<b>A=Excellent</b>	58
	67.4%
<b>B=Good</b>	16
	18.6%
<b>C=Average</b>	2
	2.3%
<b>D=Poor</b>	8
	9.3%
<b>F=Failing Grade</b>	2
	2.3%
<b>MEAN</b>	3.40

Table IV-40: How would you grade BBB AUTO LINE Staff on efforts to assist you in resolving your claim?

<b>BASE: arb. or med. cases, “not sure” excluded</b>	87
	100.0%
<b>A=Excellent</b>	65
	74.7%
<b>B=Good</b>	8
	9.2%
<b>C=Average</b>	3
	3.4%
<b>D=Poor</b>	7
	8.0%
<b>F=Failing Grade</b>	4
	4.6%
<b>MEAN</b>	3.41

**Table IV-41: Overall, what grade would you give BBB AUTO LINE?**

<b>BASE: arb. or med. cases, “not sure” excluded</b>	87 100.0%
<b>A=Excellent</b>	62 71.3%
<b>B=Good</b>	9 10.3%
<b>C=Average</b>	4 4.6%
<b>D=Poor</b>	8 9.2%
<b>F=Failing Grade</b>	4 4.6%
<b>MEAN</b>	3.34

**Table IV – 42  
BBB AUTO LINE STAFF EFFORTS-SATISFACTION COMPOSITE  
FOR CONSUMERS WHO USED MEDIATION OR ARBITRATION**

	Mean
<b>Objectivity and fairness</b>	3.40
<b>Efforts to resolve claim</b>	3.41
<b>Overall grade</b>	3.34
<b>AVERAGE</b>	3.38

Composite mean (2018)	3.38
Composite mean (2017)	3.33
Composite mean (2016):	3.10
Composite mean (from 2015 audit)	3.20

**Table IV-43: Would you recommend BBB AUTO LINE to friends or family?**

	Total	Med/Arb
<b>BASE: answering, “not sure” excluded</b>	149	86
	100.0%	100.0%
<b>Yes</b>	110	75
	73.8%	87.2%
<b>No</b>	39	11
	26.2%	12.8%

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 7 consumers in the survey who said they went to arbitration and lost, 6 answered this question, and half of them said they would recommend BBB AUTO LINE.



## **V. SURVEY RESULTS – OHIO**

The preliminary note in Section IIA, addressing such matters as table numbering, “not sure” responses, and gender-specific pronouns, applies to the Ohio discussion as well. The reader is referred to that section for background.

The most significant difference between the Ohio sample and the national (and Florida) sample is the far smaller size of the former. The Ohio sampling frame included only 4.2% of the national sampling frame. Although TechnoMetrica made multiple attempts to call every Ohio consumer in the sampling frame, and further boosted the Ohio numbers by including in the state sample Ohio consumers who were initially contacted as part of the national sample, only 76 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 +/-9.7% compared to +/-4.7% 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 16 Ohio consumers said they used arbitration and thus were asked arbitration-specific questions.<sup>282</sup>

Nevertheless, 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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<sup>282</sup> For example, how did the arbitrator decide the case? Did the consumer accept the decision?

**A. GENERAL INFORMATION**

**Table V-1: Vehicle Year**

	2018 Cases
<b>TOTAL</b>	76
	100.0%
<b>2008</b>	1
	1.3%
<b>2009</b>	-
	-
<b>2010</b>	-
	-
<b>2011</b>	1
	1.3%
<b>2012</b>	3
	3.9%
<b>2013</b>	1
	1.3%
<b>2014</b>	4
	5.3%
<b>2015</b>	7
	9.2%
<b>2016</b>	19
	25.0%
<b>2017</b>	29
	38.2%
<b>2018</b>	11
	14.5%
<b>2019</b>	-
	-

**Table V-2: The BBB AUTO LINE's records show they closed a complaint in 2016 about your <make> vehicle. Is that correct?**

	<b>2018 Audit</b>	<b>2017 Audit</b>	<b>2016 Audit</b>
<b>TOTAL</b>	76	91	64
	100.0%	100.0%	100.0%
<b>Yes</b>	74	91	64
	97.4%	100.0%	100.0%
<b>No</b>	2	-	-
	2.6%	-	-

**Table V-3: Repair Attempts**

	<b>2018 Cases</b>	<b>2017 Audit</b>	<b>2016 Audit</b>
<b>BASE: all respondents, “not sure” excluded</b>	74	84	61
	100.0%	100.0%	100.0%
<b>One</b>	4	8	4
	5.4%	9.5%	6.6%
<b>Two</b>	7	-	2
	9.5%	-	3.3%
<b>Three</b>	8	11	8
	10.8%	13.1%	13.1%
<b>Four or more</b>	49	56	41
	66.2%	66.7%	67.2%
<b>None</b>	6	9	6
	8.1%	10.7%	9.8%

**Table V-4: How did you first learn about BBB AUTO LINE?**

	<b>2018 Cases</b>	<b>2017 Audit</b>	<b>2016 Audit</b>
<b>BASE: all respondents, excluding those who said “not sure” to this question</b>	76	90	62
	100.0%	100.0%	100.0%
<b>Manufacturer's manuals/other warranty documents</b>	11	9	8
	14.5%	10.0%	12.5%
<b>Dealer or manufacturer representative</b>	18	16	11
	23.7%	17.8%	17.7%
<b>BBB/BBB Website</b>	10	10	8
	13.2%	11.1%	12.9%
<b>Internet website (NOT BBB or government website)</b>	7	17	13
	9.2%	18.9%	21.0%
<b>Lawyer</b>	4	5	3
	5.3%	5.6%	4.8%
<b>Friend/family/word of mouth</b>	12	24	15
	15.8%	26.7%	24.2%
<b>TV/Radio/Newspaper</b>	-	-	-
	-	-	-
<b>Government website, office, or official</b>	4	3	1
	5.3%	3.3%	1.6%
<b>Had used the BBB AUTOLINE previously</b>	5	5	
	6.6%	5.6%	
<b>General Knowledge</b>	7		
	9.2%		
<b>Other</b>		1	3
		1.1%	4.8%

In past audits, consumers were asked how they *first* learned about BBB AUTO LINE. The new formulation permitted multiple responses. This tended to raise the numbers a bit, but not by much; of the 76 consumers who answered this question, only 2 gave multiple responses.

Seven consumers were originally recorded as “other,” but, after reviewing their explanations (which TechnoMetrica described), the auditor moved them all into the new category of “general knowledge.”<sup>283</sup>

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<sup>283</sup> In some cases, the consumer may have been speaking about general knowledge of Better Business Bureaus and, with probing, the survey might have found that consumers know about BBB’s generally but learned of BBB AUTO LINE specifically from the BBB website.

## B. PROCESS QUESTIONS

**Table V-5: Aggregate Process Responses**

	2018 BBB AUTO LINE						2018 Survey (B1)	Same, adjusted for response rate (see below) (B2)
	BBB AUTO LINE stats from 703-type report (A0)	BBB AUTO LINE stats from spread sheet (A1)	Same, excluding attorney cases (A2)	Auditor's stats from original spread sheet, excluding att'y cases (A3) (Process State)	Auditor's stats from original spread sheet, excluding att'y cases (A3) (Contact State)	Auditor's stats from "fully adjusted" spread sheet (A4)		
<b>TOTAL</b>	414	414	341	341	337	<b>302</b>	76	
	100.0%	100.0%	100.0%	100.0%	100.0%	<b>100.0%</b>	100.0%	
<b>Mediation</b>	166	166	153	153	152	<b>125</b>	33	
	40.1%	40.1%	44.5%	44.5%	45.1%	<b>41.4%</b>	43.4%	<b>39.6%</b>
<b>Arbitration</b>	108	107	62	62	60	<b>59</b>	17	
	26.1%	25.8%	18.2%	18.2%	17.8%	<b>19.5%</b>	22.4%	<b>21.1%</b>
<b>Withdrawn</b>	140 33.8%	41	31	31	30	<b>26</b>	4	
		9.9%	9.1%	9.1%	8.9%	<b>8.6%</b>	5.3%	<b>6.7%</b>
<b>Ineligible</b>	(for both)	100	95	95	95	<b>92</b>	21	
		24.2%	27.9%	27.9%	28.2%	<b>30.5%</b>	27.6%	<b>32.5%</b>
<b>Other</b>							1	
							1.3%	

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 A4 and B2.

**Table V-5A: Multi-year comparisons (A1 Figures)**

	A1 Figures		
	2018	2017	2016
<b>TOTAL</b>	414	469	394
	100.0%	100.0%	100.0%
<b>Mediation</b>	166	102	114
	40.1%	21.8%	28.9%
<b>Arbitration</b>	107	167	141
	25.8%	35.6%	35.8%
<b>Withdrawn</b>	41	55	48
	9.9%	11.7%	12.2%
<b>Ineligible</b>	100	145	91
	24.2%	30.9%	23.1%

**Table V-6: Consumer Agreement with individual “process” responses**

	Mediated	Arbitrated	Withdrawn	Ineligible	Other
<b>TOTAL</b>	33	17	4	21	1
	100.0%	100.0%	100.0%	100.0%	100.0%
<b>Mediation (Imported)</b>	33	1	-	1	-
	100.0%	5.9%	-	4.8%	-
<b>Arbitration (Imported)</b>	-	16	-	-	-
	-	94.1%	-	-	-
<b>Withdrawn (Imported)</b>	-	-	4	-	1
	-	-	100.0%	-	100.0%
<b>Ineligible (Imported)</b>	-	-	-	20	-
	-	-	-	95.2%	-

**Concordance: 73/76 = 96.1%**

**Discordance: 3/76 = 3.9%**

### 1. Micro Analysis

Table V-6, the core of the micro analysis, reports a “concordance” of 96.1%, 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 3.9% discordance rate reflects responses from only three consumers. And, in one of these cases, the consumer seemed

confused about the term “withdrawn.”<sup>284</sup> In a second case, the consumer said she used arbitration, but the files show mediation and include none of the extensive paperwork that would accompany arbitration. Finally, the third case is a confusing matter with an angry consumer, but it appears that, over a month after BBB AUTO LINE sent a settlement letter, the consumer said that he hadn’t actually agreed to a settlement; consistent with the position he took at that time, he later reported to TechnoMetrica that he’d withdrawn his case.

Based on his review of the files, it appears that the “true” discordance was lower than the reported figure, and probably 1.3%.

*Attorney cases:* As noted above, the auditor also examined 30 case files for Ohio consumers who used counsel. These included ten arbitrated cases, five mediated cases, ten withdrawn cases, and five ineligible cases.<sup>285</sup> On the process variable, the characterization in BBB AUTO LINE’s records was fully consistent with the underlying files.

However, the Ohio attorney cases did include one case (noted previously<sup>286</sup>) that was unusual in that it reported a breakdown of communications where the consumer’s lawyer, as well as BBB AUTO LINE, documented specific calls. The auditor found a letter from the attorney, sent in response to an earlier letter from BBB AUTO LINE reporting that the program’s 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 left on at least one) and one by email. In essence, this lends more weight to a conclusion that BBB AUTO LINE may sometimes share responsibility for breakdowns in communications – although such breakdowns are, all in all, relatively uncommon.

## 2. Macro analysis

*The “A” columns of Table V-5.* Column A0 records the information on an Ohio-specific version of the BBB’s Rule 703 statistics. It’s essentially the same as Column A1, which shows aggregate “process” statistics, as reported by BBB AUTO LINE, for all cases closed in 2018; the figures in Column A1 come from a BBB AUTO LINE spread sheet that lists key aggregate measures. Each of these near-identical columns provides important information about the full range of cases filed in the program; for example, Columns A0 and A1 highlight that BBB AUTO LINE closed more cases through mediation than arbitration.

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<sup>284</sup> BBB AUTO LINE reported the matter as withdrawn and the consumer disagreed and said “other.” However, she explained that the case was closed because she entered a class action lawsuit, and that’s actually consistent with “withdrawal.”

<sup>285</sup> The auditor alphabetized all the cases where consumers had attorneys, and then took the first five or ten in each category, alphabetically by surname and starting with the letter “B.”

<sup>286</sup> Section I.A.3 of this chapter.

Column A2 provides comparable figures, also as reported by BBB AUTO LINE, but only for cases where the consumer appeared without counsel. Column A3 provides similar figures derived by the auditor (rather than BBB AUTO LINE staff) from the BBB AUTO LINE spread sheet.

As noted previously, the auditor this year learned that BBB AUTO LINE records identify both the address that the consumer or his attorney listed for contact purposes, *and* the state under whose program the claim was processed. For purposes of the survey, moreover, the BBB AUTO LINE spread sheet has identified the contact state rather than the processing state, so the wrong state was used to identify the Ohio sampling frame. However, the auditor also concluded that this wasn't likely to have much effect on the survey. For most cases the two states were the same, and, where they differed, the differences were usually in attorney cases (where the contact address could be an out-of-state lawyer's office) that were systematically excluded from the survey. To test his expectation that the remaining cases ("two-state non-attorney") didn't significantly affect the survey's merits, the auditor this year developed two versions of Column A3 – one identifying Ohio cases by contact information (as was done in the survey) and the other identify Ohio cases (properly) by the processing state. As an examination of the chart shows, the substitution made a very limited difference.

While columns A2 and both versions of column A3 are similar to each other in that both measure cases where the consumer didn't have a lawyer, both differ from the surveyed population in that they include multiple complaints about the same vehicle. In other words, if a consumer filed, for example, an initial case that ended in a repair remedy and a later case because they weren't satisfied with the result, both cases were picked up in columns A2 and A3 (as well as A0 and A1). Thus, comparing either or both to the survey results would raise an apples and oranges problem. And the differences between the apples and the oranges would appear far from trivial. The MSCV files that were omitted from the survey sample tend to be mediated cases, and thus have a different "process" profile than other cases.

As explained previously, though, the auditor used a variant of the original spread sheet to develop another column, A4, that addressed this issue. Specifically, TechnoMetrica scrubbed the BBB AUTO LINE spread sheet (the basis for column A3) to eliminate both attorney cases *and* MCSVs. The auditor used this scrubbed spread sheet to develop aggregate figures that, like the survey, excluded both attorney cases and MCSVs. This enabled apples-to-apples comparison. Essentially, the scrubbed spread sheet *was* the sampling frame, so the auditor was comparing aggregates based directly on the sampling frame (the A4 figures) to survey results involving consumers selected from that sampling frame.

*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 in Chapter III.B.2, some categories of consumer are more likely than others to complete a survey. For the Ohio survey, the auditor combined the response figures for Ohio consumers who were originally reached through the national sample and those who were reached through the separate Ohio sample. The rates were:

- 28.0% for those who resolved their cases through mediation;



- 27.1% for consumers who used arbitration;
- 21.7% for those deemed ineligible to participate in BBB AUTO LINE; and
- 20.0% for consumers who withdrew their complaints.

Thus, for example, consumers who used mediation were over 40% 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 consumers responded at the same rate.

Thus, for purposes of Table V-5, the relevant comparison is between Columns A4 and B2. And, looking at those columns, all the differences between the two are well within the margin of error. In other words, for cases covered by the survey – non-attorney cases with only the latest counted where 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. To provide checks on the attorney and MCSV cases that were thus restored to the aggregates, the auditor relies on his systematic examination of 30 attorney case files, as well as his review of the omitted MCSV cases during his review of case files.<sup>287</sup>

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<sup>287</sup> When the auditor reviewed targeted case files, as described above, he also examined earlier cases in the series; thus, he generally looked at all the files in MCSV situations.

## 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.<sup>288</sup>

### 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 that 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 (79) than through arbitration (37).

**Table V-7: Remedies in Cases Identified by Consumers as Mediated or Arbitrated**

	BBB AUTO LINE stats (A1)	Same, excluding attorney cases (A2)	Auditor’s stats from original spread sheet, excluding att’y cases (A3) (contact state)	Auditor’s stats from original spread sheet, excluding att’y cases (A3) (program state)	Auditor’s stats from “fully adjusted” spread sheet (A4)	Survey Results
<b>BASE: med. &amp; arb. cases</b>	274	215	211	215	<b>184</b>	<b>50</b>
	100.0%	100.0%	100.0%	100.0%	<b>100.0%</b>	<b>100.0%</b>
<b>Replacement/ Repurchase</b>	116	91	90	91	<b>87</b>	<b>27</b>
	42.3%	42.3%	42.7%	42.3%	<b>47.3%</b>	<b>54.0%</b>
<b>Repair</b>	66	65	64	65	<b>40</b>	<b>9</b>
	24.1%	30.2%	30.3%	30.2%	<b>21.7%</b>	<b>18.0%</b>
<b>Other</b>	30	28	28	28	<b>27</b>	<b>4</b>
	11.0%	13.0%	13.3%	13.0%	<b>14.7%</b>	<b>8.0%</b>
<b>No Award</b>	62	31	29	31	<b>30</b>	<b>10</b>
	22.6%	14.4%	13.5%	14.4%	<b>16.3%</b>	<b>20.0%</b>

<sup>288</sup> There were small variations in wording depending on whether the consumer had identified the case as mediated or arbitrated.

**TABLE IV-7A: Multi-Year Comparisons**

	<b>A1 Figures</b>		
	<b>2018</b>	<b>2017</b>	<b>2016</b>
<b>BASE: med. &amp; arb. cases</b>	274	269	255
	100.0%	100.0%	100.0%
<b>Replacement/ Repurchase</b>	116	90	85
	42.3%	33.5%	33.3%
<b>Repair</b>	66	53	66
	24.1%	19.7%	25.9%
<b>Other</b>	30	21	20
	11.0%	7.8%	7.8%
<b>No Award</b>	62	35	84
	22.6%	39.0%	32.9%

**Table V-8: Consumer Agreement with BBB AUTO LINE Records on Remedies**

	<b>Verified Remedy</b>			
	<b>Repurchase/ Replacement</b>	<b>Repair</b>	<b>Other</b>	<b>No Award</b>
<b>BASE=MEDIATED AND ARBITRATED CASES</b>	27	9	4	10
	100.0%	100.0%	100.0%	100.0%
<b>Repurchase/Replacement (Imported)</b>	27	-	-	-
	100.0%	-	-	-
<b>Repair (Imported)</b>	-	9	-	-
	-	100.0%	-	-
<b>Other (Imported)</b>	-	-	4	-
	-	-	100.0%	-
<b>No Award (Imported)</b>	-	-	-	10
	-	-	-	100.0%
<b>None on File- Ineligible/Withdrawn Cases (Imported)</b>	-	-	-	-
	-	-	-	-

**Concordance: 50/50 = 100.0%**

**Discordance: 0/50 = 0.0%**

Turning first to Table V – 7, the key comparison is between columns A4 and B, because both exclude consumers who used attorneys and, for MCSV’s, all but the last complaint filed in 2017.<sup>289</sup> The margin of error for questions posed to all 76 participants in the Ohio sample was

<sup>289</sup> The auditor didn’t use weighted averages and create a column B2 for the remedy metric.

+/-9.7%; it's substantially higher for these tables, where the relevant questions were posed only to the 50 consumers who reported using arbitration or mediation (Table V-7) – and even higher when dealing only with the 33 consumers who reported using mediation (Table V-9) or the 17 who reported using arbitration (Table V-9). Here, dealing with mediated and arbitrated cases combined, the margin of error is on the order of +/-11.9%,<sup>290</sup> and the relevant comparisons are well within that range. Indeed, the largest differential is 5.5%, less than half the margin of error.

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 MCSV cases that the sampling frame omitted. Column A3, derived from the same spread sheet as Column A4, adds back in the multiple complaints about the same vehicle. There's no reason to expect a lower degree of accuracy for the cases previously omitted than for the cases included in column A4. Further, while the auditor didn't systematically examine the cases omitted because they involved MCSVs, he did, when reviewing later cases included in an MCSV context, glance back at the earlier cases, and found no significant problems in the "omitted" cases. He also went back to the original BBB AUTO LINE spread sheet and found that the results of selected "pre-1R" cases were properly recorded.

While column A2 covers the same cases as column A3 – all but attorney cases – these figures were developed by BBB AUTO LINE directly from the underlying data base. And the A2 figures are substantially the same as the A3 figures, whose credibility has already been established.

The last step is the extension back to the A1 figures, which add back the attorney cases. Here, the auditor relies on his previously-noted examination of 30 case files for consumers with lawyers. On the remedy metric for the Ohio cases, there was complete concordance. The auditor believes the BBB AUTO LINE records are highly credible in light of the survey numbers, the multi-year comparisons, the 100% concordance between consumer responses and BBB AUTO LINE records, and the auditor's examination of specific files.

\* \* \*

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

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There seemed good reason, theoretically and empirically from the 2016 data, to anticipate that, e.g., ineligible consumers might be less likely to complete the survey than consumers who used arbitration. There didn't seem a comparable concern, for example, about differing response rates between consumers who got replacements and consumers whose claims were denied.

<sup>290</sup> If TechnoMetrica had simply used as the sampling frame only the 184 Ohio consumers reported to have used arbitration or mediation on the fully adjusted spread sheet, and if it had interviewed 50 consumers from that base (a situation somewhat comparable to that reported above), the margin of error would have been +/- 11.9%. Similarly, for Table V-9, had the sampling frame been 125 consumers and the number interviewed 33, the margin of error would have been +/- 14.7%. And, for Table V-11, had the sampling frame been 59 consumers and the number interviewed 17, the margin of error would have been +/- 20/2%.

auditor's view, the overall distribution is revealing: among cases that were either mediated or arbitrated (and taking the figures from columns A1), 42.3% ended with a repurchase or replacement remedy, 35.1% ended with some other relief, and 22.6 ended in no relief. Further, excluding cases brought by attorneys (whose profile is discussed in Section G), Column A2, which is substantially identical to column A3, reports that 42.3% of cases ended with a repurchase or replacement remedy; 43.2% ended with some other relief; and only 14.4% ended with no award. As noted in the Introduction to the audit as a whole (preceding Chapter 1), this suggests a process that's fair to consumers but not a "slam-dunk" that wouldn't be fair to manufacturers.

## 2. Mediated cases

**Table V-9: Final Remedy in Cases Identified by Consumers as Mediated**

	<b>BBB AUTO LINE stats (A1)</b>	<b>Same, excluding attorney cases (A2)</b>	<b>Auditor's stats from original spread sheet, excluding att'y cases (A3) (contact state)</b>	<b>Auditor's stats from original spread sheet, excluding att'y cases (A3) (program state)</b>	<b>Auditor's stats from "fully adjusted" spread sheet (A4)</b>	<b>Survey</b>
<b>BASE: med. cases</b>	166	153	152	153	<b>125</b>	<b>33</b>
	100.0%	100.0%	100.0%	100.0%	<b>100.0%</b>	<b>100.0%</b>
<b>Replacement/ Repurchase</b>	79	68	67	68	<b>66</b>	<b>23</b>
	47.6%	44.4%	44.0%	44.4%	<b>52.8%</b>	<b>69.7%</b>
<b>Repair</b>	57	57	57	57	<b>32</b>	<b>6</b>
	34.3%	37.2%	37.5%	37.2%	<b>25.6%</b>	<b>18.2%</b>
<b>Other</b>	30	28	28	28	<b>27</b>	<b>4</b>
	18.0%	18.3%	18.4%	18.3%	<b>21.6%</b>	<b>12.1%</b>

Had the sampling frame been 125 consumers and the number interviewed 33, the margin of error would have been +/- 14.7%.<sup>291</sup> In that light, the match between columns A4 and B isn't unreasonable, although the differential on replacement and repurchase remedies falls somewhat outside that range.

However, the auditor has previously noted that the nature of a margin of error is that occasional differentials will fall outside the margin. Further, and critically, this macro analysis is also backed by the micro analysis set forth above, including both his analysis of discordant survey responses and his review of 30 cases brought by attorneys on behalf of consumers.

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<sup>291</sup> See note 290.

**Table V-9A: Multi-Year Comparisons**

	<b>A1 Figures</b>		
	<b>2018</b>	<b>2017</b>	<b>2016</b>
<b>BASE: med. cases</b>	125	102	114
	100.0%	100.0%	100.0%
<b>Replacement/ Repurchase</b>	66	49	50
	52.8%	48.0%	43.9%
<b>Repair</b>	32	39	49
	25.6%	38.2%	42.3%
<b>Other</b>	27	53	15
	21.6%	13.7%	13.2%

**Table V-10: Consumer Agreement with BBB AUTO LINE**

	<b>Refund/ Replacement</b>	<b>Repair</b>	<b>Other</b>
<b>BASE: med. cases</b>	23	6	4
	100.0%	100.0%	100.0%
<b>Refund/Replacement (Imported)</b>	23	-	-
	100.0%	-	-
<b>Repair (Imported)</b>	-	6	-
	-	100.0%	-
<b>Other (Imported)</b>	-	-	4
	-	-	100.0%
<b>None on File- Ineligible/Withdrawn Cases (Imported)</b>	-	-	-
	-	-	-

**Concordance: 33/33 = 100.0%**

### 3. Arbitrated Cases

**Table V-11: Final Remedy in Cases Identified by Consumers as Arbitrated**

	<b>BBB AUTO LINE stats (A1)</b>	<b>Same, excluding attorney cases (A2)</b>	<b>Auditor's stats from original spread sheet, excluding att'y cases (A3) (contact state)</b>	<b>Auditor's stats from original spread sheet, excluding att'y cases (A3) (program state)</b>	<b>Auditor's stats from "fully adjusted" spread sheet (A4)</b>	<b>Survey</b>
<b>BASE: arb. cases</b>	106	62	59	62	<b>59</b>	<b>17</b>
	100.0%	100.0%	100.0%	100.0%	<b>100.0%</b>	<b>100.0%</b>
<b>Replacement/ Repurchase</b>	37	23	23	23	<b>21</b>	<b>4</b>
	34.3%	37.1%	39.0%	37.1%	<b>35.6%</b>	<b>23.5%</b>
<b>Repair</b>	9	8	7	8	<b>8</b>	<b>3</b>
	8.3%	12.9%	11.9%	12.9%	<b>13.6%</b>	<b>17.6%</b>
<b>Other</b>	-	-	-	-	-	-
	-	-	-	-	-	-
<b>No Award</b>	62	31	29	31	<b>30</b>	<b>10</b>
	57.4%	50.0%	49.2%	50.0%	<b>50.8%</b>	<b>58.8%</b>

**Table V-11A: Multi-Year Comparisons**

	<b>A1 Figures</b>		
	<b>2018</b>	<b>2017</b>	<b>2016</b>
<b>BASE: med. &amp; arb. cases</b>	106	167	141
	100.0%	100.0%	100.0%
<b>Replacement/ Repurchase</b>	37	41	35
	34.3%	24.5%	24.8%
<b>Repair</b>	9	14	17
	8.3%	8.4%	12.1%
<b>Other</b>	-	7	5
	-	4.2%	3.6%
<b>No Award</b>	62	105	84
	57.4%	62.9%	59.6%



**Table V-12: Consumer Agreement with BBB AUTO LINE Records**

	<b>Refund/ Replacement</b>	<b>Repair</b>	<b>Other</b>	<b>No Award</b>
<b>BASE: arb. cases</b>	4	3	-	10
	100.0%	100.0%	-	100.0%
<b>Refund/Replacement (Imported)</b>	4	-	-	-
	100.0%	-	-	-
<b>Repair (Imported)</b>	-	3	-	-
	-	100.0%	-	-
<b>Other (Imported)</b>	-	-	-	-
	-	-	-	-
<b>No Award (Imported)</b>	-	-	-	10
	-	-	-	100.0%
<b>None on File- Ineligible/Withdrawn Cases (Imported)</b>	-	-	-	-
	-	-	-	-

**Concordance: 17/17 = 100.0%**

**Discordance: 0/17 = 0.0%**

**Table V-13: Did you return a form accepting the arbitrator's decision?<sup>292</sup>**

	2018	2017	2016
<b>BASE: Arb. cases with awards to consumers; “not sure” responses to this question excluded</b>	6	19	10
	100.0%	100.0%	100.0%
<b>Yes</b>	6	17	7
	100.0%	89.5%	70.0%
<b>No</b>	-	2	3
	-	10.5%	30.0%

**Table V-14: Acceptance of different types of remedies**

	Refund/ Replacem't	Repair	Other	Total
<b>BASE: Arb. cases with awards to consumers; “not sure” responses to this question excluded</b>	4	2	-	6
	100.0%	100.0%	-	100.0%
<b>Yes</b>	4	2	-	6
	100.0%	100.0%	-	100.0%

**Table V-15: Consumer Agreement with BBB AUTO LINE Records**

	Accepted	Rejected
<b>BASE: See below</b>	6 <sup>293</sup>	
	100.0%	
<b>Accepted (Imported)</b>	<b>6</b>	
	<b>100.0%</b>	
<b>Rejected (Imported)</b>		

**Concordance: 6/6 (100.0%)**

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<sup>292</sup> This question was reworded from “Did you accept the arbitrator’s decision,” to draw attention to a more concrete act of returning a form.

<sup>293</sup> Omits one case where BBB AUTO LINE record shows the case as mediated and thus doesn’t have the relevant entry.

#### 4. Withdrawn Cases

**Table V-16: Which of the following best describes why you withdrew your complaint?**

	<b>2017 Audit</b>
<b>BASE: withdrawn cases</b>	4
	100.0%
<b>You settled the matter or your car was fixed</b>	3
	75.0%
<b>You sold the car</b>	-
	-
<b>Some other reason</b>	1
	25.0%

**D. COMPLIANCE QUESTIONS**

**Table V-17: Which of the following applies to your case? The manufacturer...**

	Mediated		Arbitrated*		Med/Arb Combined	
	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE
<b>BASE: *</b>	32	165	6	36	38	201
	100.0%		100.0%		100.0%	
<b>Carried out remedy within the time specified, including extensions to which you agreed</b>	28	164	4	34	32	198
	87.5%	99.4%	66.7%	94.4%	84.2%	98.5%
<b>Carried out remedy after the time specified, including any extension to which you agreed</b>	3	-	1	-	4	1
	9.4%		16.7%		10.5%	0.5%
<b>Has not yet carried out the remedy, but the time to do so has not yet expired</b>	-	-	-	2	0	2
	-		-	5.6%	0.0%	1.0%
<b>Has not yet carried out the remedy and the time to do so has expired</b>	1	1	1	-	2	
	3.1%	0.6%	16.7%		5.3%	
<b>(Failure to comply was the fault of the consumer)</b>		(1)				
		(0.6%)				
<b>Time for compliance has expired, performance not verified.</b>						

\* *BASE: For mediation, all cases reported by the consumer as mediated. For arbitration, all cases where the consumer reported that they used arbitration, the arbitrator awarded them relief, and they accepted the award. "Not sure" replies to this question were excluded in calculating percentages for the survey results.*

As the auditor has previously noted, Ohio consumers who were interviewed as part of the national survey were also included in the Ohio survey. The single consumer in the Ohio survey who said the manufacturer hadn't complied with its remedial obligations was such a consumer, and was already discussed in the national survey (where the auditor concluded that the case perhaps should have been treated as non-compliant).<sup>294</sup>

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<sup>294</sup> See note 247 and accompanying text.

Among the five cases where consumer reported delays, three contained no returned performance verification letter. Two others posed more confusing facts, and the BBB AUTO LINE files may be consistent with findings of delay.

Turning now to some comparative figures that didn't fit neatly into Table V-17, the numbers for 2016 and 2017, in both cases using figures unadjusted by the auditor's review, show reasonable consistency.

**Table V-17A: Comparative analysis on compliance (mediated and arbitrated combined)**

	2018		2017		2016	
	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE
<b>BASE: *</b>	38	201	37	146	35	150
	100.0%		100.0%	100.0%	100.0%	100.0%
<b>Carried out the settlement/terms of decision within the time specified, including any extension to which you agreed</b>	32	198	32	136	28	142
	84.2%	98.5%	86.5%	93.2%	80.0%	94.7%
<b>Carried out the settlement/terms of decision after the time specified, including any extension to which you agreed</b>	4	1	4		5	5
	10.5%	0.5%	10.8%		14.3%	3.3%
<b>Has not yet carried out the settlement/terms of decision, but the time to do so has not yet expired</b>	0	2	-	1	-	
	0.0%	1.0%	-	0.7%	-	
<b>Has not yet carried out the remedy and the time to do so has expired</b>	2		1	9	2	3
	5.3%		2.7%	6.1%%	5.7%	2.0%
<b>(Failure to comply was the fault of the consumer)</b>				(7)		
				(4.8%)		
<b>Time for compliance has expired, performance not verified</b>						

- *BASE: Same as for med/arbitration in Table V-17 above.*

## E. TIMING QUESTIONS

### 1. Mediated and Arbitrated Cases

As in past years, BBB AUTO LINE’s timing figures turn on the timing of mediated and arbitrated cases, and the auditor’s scrutiny focuses primarily on those cases. The survey-based analysis in this section is thus based on 50 cases from a survey sample of 91. BBB AUTO LINE is to be commended for focusing on arbitrated and mediated cases only; the cases that were excluded were, on average, far *more* likely to be resolved quickly, so the reporting basis used by BBB AUTO LINE probably lowered their measure of performance.

**Table V-19: Time to Resolve their Cases**

	Survey			BBB AUTO LINE report
	Mediated	Arbitrated	Med/Arb Combined	
<b>BASE: med. or arb. cases</b>	33	17	50	<b>335</b>
	100.0%	100.0%	100.0%	<b>100.0%</b>
<b>Within 40 days</b>	30	9	39	<b>273</b>
	90.9%	52.9%	78.0%	<b>81.5%</b>
<b>41 or more</b>	3	8	11	<b>62</b>
	9.1%	47.1%	22.0%	<b>18.5%</b>

**Table V-19A: Comparative Analysis, Mediated and Arbitrated Cases Combined**

	2018		2017		2016	
	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE	Survey	BBB AUTO LINE
<b>BASE: mediated or arbitrated cases</b>	50	<b>335</b>	50	273	42	255
	100.0%	<b>100.0%</b>	100.0%	100.0%	100.0%	100.0%
<b>Within 40 days</b>	39	<b>273</b>	31	199	34	200
	78.0%	<b>81.5%</b>	62.0%	74.0%	81.0%	78.5%
<b>41 or more</b>	11	<b>62</b>	19	74	8	55
	22.0%	<b>18.5%</b>	38.0%	26.0%	16.7%	21.5%

**Table V-20: Did it take more than 40 days because of some action you took?**

	Mediated	Arbitrated	Med/Arb Combined
<b>BASE: med. &amp; arb., over 40 days, “not sure” responses excluded</b>	3	8	11
	100.0%	100.0%	100.0%
<b>Yes</b>	-	1	1
	-	12.5%	9.1%
<b>No</b>	3	7	10
	100.0%	87.5%	90.9%

**Table V-21: Did you contact the manufacturer – not just the dealer – before you filed your complaint?**

	Mediated	Arbitrated	Med/Arb Combined
<b>BASE: med. &amp; arb/ cases, 41-47 days, “not sure” responses to this question excluded</b>	1	3	4
	100.0%	100.0%	100.0%
<b>Yes</b>	1	2	3
	100.0%	66.7%	75.0%
<b>No</b>	-	1	1
	-	33.3%	25.0%

**Table V-22: Consumer Agreement with BBB AUTO LINE Records**

	Within 40 Days	41 + Days
<b>BASE: mediated or arbitrated cases.</b>	39	11
	100.0%	100.0%
<b>Within 40 Days (Imported)</b>	39	2
	100.0%	18.2%
<b>41 + Days (Imported)</b>	-	9
	-	81.8%

**Concordance: 48/50 = 96.0%**

**Discordance: 2/50 = 4.0%**



## 2. Withdrawn Cases

**Table V-23: Days until complaints were withdrawn, as reported by consumers who reported withdrawing their complaints**

<b>BASE: withdrawn cases</b>	4
	100.0%
<b>Within 40 days</b>	4
	100.0%
<b>41 or above</b>	-
	-

**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?**

	<b>2018</b>	<b>2017</b>	<b>2016</b>
<b>BASE: all respondents, “not sure” responses to this question excluded</b>	73	84	59
	100.0%	100.0%	100.0%
<b>Yes</b>	68	81	59
	89.5%	89.0%	92.2%
<b>No</b>	5	3	-
	6.6%	3.3%	-

Five 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 four 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?**

	<b>2018</b>	<b>2017</b>	<b>2016</b>
<b>BASE: all respondents, “not sure” responses to this question excluded</b>	67	80	58
	100.0%	100.0%	100.0%
<b>Very</b>	42	48	44
	62.7%	60.0%	75.9%
<b>Somewhat</b>	25	31	13
	37.3%	38.8%	22.4%
<b>Not at all</b>	-	1	1
	-	1.3%	1.7%

**Table V-26: And how helpful were they?**

	2018	2017	2016
<b>BASE: all respondents, “not sure” responses to this question excluded.</b>	65	81	59
	100.0%	100.0%	100.0%
<b>Very</b>	31	32	34
	47.7%	39.5%	57.6%
<b>Somewhat</b>	32	39	15
	49.2%	48.1%	25.4%
<b>Not at all</b>	2	10	10
	3.1%	12.3%	16.9%

Table V-26 shows that all the consumers surveyed found BBB AUTO LINE’s documents at least somewhat understandable, with 62.7% reporting that they were very understandable. Table V-27 shows that 96.9% reported that they were at least somewhat helpful, with 47.7% 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?**

	2018	2017	2016
<b>BASE: mediated cases, “not sure” responses to this question excluded</b>	29	18	26
	100.0%	100.0%	100.0%
<b>Yes</b>	28	18	26
	96.6%	100.0%	100.0%
<b>No</b>	1	-	-
	3.4%	-	-

**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?**

	2018	2017	2016
<b>BASE: arbitrated cases, “not sure” responses to this question excluded</b>	17	28	14
	100.0%	100.0%	100.0%
<b>Yes</b>	16	28	14
	94.1%	100.0%	100.0%
<b>No</b>	1	-	-
	5.9%	-	-

**Table V-29: Did you get a copy by letter or email of the arbitrator's decision?**

	2018	2017	2016
<b>BASE: Arbitrated cases, “not sure” responses to this question excluded</b>	17	29	14
	100.0%	100.0%	100.0%
<b>Yes</b>	17	29	13
	100.0%	100.0%	92.9%
<b>No</b>	-	-	1
	-	-	7.1%

**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?**

	Mediated cases	Arbitrated cases; accepted award	Combined figures for 2018	Combined figures for 2017
<b>BASE: See column titles</b>	30	5	35	43
	100.0%	100.0%	100.0%	100.0%
<b>The staff contacted me by letter or email</b>	12	-	12	12
	40.0%	-	34.3%	27.9%
<b>The staff spoke to me</b>	3	1	4	7
	10.0%	20.0%	11.4%	16.3%
<b>Both of those</b>	12	3	15	19
	40.0%	60.0%	42.9%	44.2%
<b>Neither of those</b>	2	1	3	2
	6.7%	20.0%	8.6%	4.7%
<b>Something else</b>	1	-	1	3
	3.3%	-	2.9%	7.0%

**G. COMPARING CLAIMS FILED BY CONSUMERS WHO HAVE COUNSEL  
WITH CLAIMS FILED DIRECTLY BY CONSUMERS**

**Table V-32: Comparisons on process for resolving complaints**

	<b>Claims filed by attorneys on behalf of consumers</b>	<b>Claims filed directly by consumers</b>
<b>Mediation</b>	13	153
	17.8%	44.9%
<b>Arbitration</b>	45	62
	61.6%	18.2%
<b>Ineligible</b>	5	95
	6.8%	27.9%
<b>Withdrawn</b>	10	31
	13.7%	9.1%
<b>TOTAL</b>	73	341
	100.0%	100.0%

**Table V-33: Comparison on remedies: Combined Mediation and Arbitration**

<b>Repurchase/Replacement</b>	25	91
	42.4%	42.3%
<b>Repair</b>	1	65
	1.7%	30.2%
<b>Other award</b>	2	28
	3.4%	13.0%
<b>No award</b>	31	31
	52.5%	14.4%
<b>TOTAL</b>	59	215
	100.0%	100.0%

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 last year, moreover, many “withdrawals” in attorney cases reflect settlements outside the program. The auditor examined 10 withdrawn cases brought by attorneys under the Ohio program this year, and 7 of the case files noted that the parties had settled. Of

course, it wasn't only consumers with attorneys who withdrew cases for this reason, but it seemed to the auditor that, for consumers with attorneys, this occurred with greater frequency. There's no easy way to quantify the impact of withdrawals reflecting settlements outside the program; even when the case handler's notes 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). And, while precise quantification isn't possible, this suggests that consumers with attorneys may well have fared better this year than consumers without attorneys during the time they were using the program (including where they obtained remedies outside the program).

The numbers in Table V-33 still show meaningfully different profiles from the *program's* point of view, and in particular they show that, when consumers go to arbitration, those with attorneys are more likely to lose – and the losses in attorney cases tends to inflate the overall denial rate for arbitrated cases, as well as for arbitrated plus mediated cases combined.

## 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 V-34: How would you grade the arbitrator on understanding the facts of your case?**

	Total	Award	No Award	Repurchase/ Replace	Repair/ Other
<b>BASE: ARBITRATED CASES, "NOT SURE" EXCLUDED</b>	17	7	10	4	3
	100.0%	100.0%	100.0%	100.0%	100.0%
<b>A=Excellent</b>	6	5	1	4	1
	35.3%	71.4%	10.0%	100.0%	33.3%
<b>B=Good</b>	3	2	1	-	2
	17.6%	28.6%	10.0%	-	66.7%
<b>C=Average</b>	2	-	2	-	-
	11.8%	-	20.0%	-	-
<b>D=Poor</b>	5	-	5	-	-
	29.4%	-	50.0%	-	-
<b>Failing Grade</b>	1	-	1	-	-
	5.9%	-	10.0%	-	-
<b>MEAN</b>	2.47	3.71	1.60	4.00	3.33

**Table V-35: How would you grade the arbitrator on objectivity and fairness?**

	Total	Award	No Award	Repurchase/ Replace	Repair/ Other
<b>BASE: ARBITRATED CASES, “NOT SURE” EXCLUDED</b>	17	7	10	4	3
	100.0%	100.0%	100.0%	100.0%	100.0%
<b>A=Excellent</b>	5	5	-	4	1
	29.4%	71.4%	-	100.0%	33.3%
<b>B=Good</b>	3	1	2	-	1
	17.6%	14.3%	20.0%	-	33.3%
<b>C=Average</b>	4	1	3	-	1
	23.5%	14.3%	30.0%	-	33.3%
<b>D=Poor</b>	5	-	5	-	-
	29.4%	-	50.0%	-	-
<b>F=Failing Grade</b>	-	-	-	-	-
	-	-	-	-	-
<b>MEAN</b>	2.47	3.57	1.70	4.00	3.00

**Table V-36: How would you grade the arbitrator on reaching an impartial decision?**

	Total	Award	No Award	Repurchase/ Replace	Repair/ Other
<b>BASE: ARBITRATED CASES, “NOT SURE” EXCLUDED</b>	17	7	10	4	3
	100.0%	100.0%	100.0%	100.0%	100.0%
<b>A=Excellent</b>	5	5	-	4	1
	29.4%	71.4%	-	100.0%	33.3%
<b>B=Good</b>	2	1	1	-	1
	11.8%	14.3%	10.0%	-	33.3%
<b>C=Average</b>	5	1	4	-	1
	29.4%	14.3%	40.0%	-	33.3%
<b>D=Poor</b>	4	-	4	-	-
	23.5%	-	40.0%	-	-
<b>F=Failing Grade</b>	1	-	1	-	-
	5.9%	-	10.0%	-	-
<b>MEAN</b>	2.35	3.57	1.50	4.00	3.00



**Table V- 37: How would you grade the arbitrator on coming to a reasoned & well thought-out decision?**

	<b>Total</b>	<b>Award</b>	<b>No Award</b>	<b>Repurchase/ Replace</b>	<b>Repair/ Other</b>
<b>BASE: ARBITRATED CASES, “NOT SURE” EXCLUDED</b>	16 100.0%	6 100.0%	10 100.0%	3 100.0%	3 100.0%
<b>A=Excellent</b>	4 25.0%	4 66.7%	- -	3 100.0%	1 33.3%
<b>B=Good</b>	2 12.5%	1 16.7%	1 10.0%	- -	1 33.3%
<b>C=Average</b>	3 18.8%	1 16.7%	2 20.0%	- -	1 33.3%
<b>D=Poor</b>	5 31.3%	- -	5 50.0%	- -	- -
<b>F=Failing Grade</b>	2 12.5%	- -	2 20.0%	- -	- -
<b>MEAN</b>	2.06	3.50	1.20	4.00	3.00

**Table V-38:  
ARBITRATOR SATISFACTION COMPOSITE**

	<b>Total</b>	<b>All Award</b>	<b>Award: Replacement/Repurchase</b>	<b>Award: Repair/Other</b>	<b>No Award</b>
<b>Understanding facts</b>	2.47	3.71	4.00	3.33	1.60
<b>Objectivity and fairness</b>	2.47	3.57	4.00	3.00	1.70
<b>Reaching an impartial decision</b>	2.35	3.57	4.00	3.00	1.50
<b>Coming to a reasoned &amp; well thought-out decision</b>	2.06	3.50	4.00	3.00	1.20
<b>AVERAGE</b>	<b>2.34</b>	<b>3.59</b>	<b>4.00</b>	<b>3.08</b>	<b>1.50</b>

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

Composite Means (2015)

Consumers who received awards	3.24
Consumers with no awards	1.45

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 "repurchase/replacement" 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?

	2018 Audit
<b>BASE: TOTAL ARBITRATED OR MEDIATED CASES (“NOT SURE” EXCLUDED)</b>	50 100.0%
<b>A=Excellent</b>	25 50.0%
<b>B=Good</b>	16 32.0%
<b>C=Average</b>	8 16.0%
<b>D=Poor</b>	- -
<b>F=Failing Grade</b>	1 2.0%
<b>MEAN</b>	3.28

Table V-40: How would you grade BBB AUTO LINE Staff on efforts to assist you in resolving your claim?

	2018 Audit
<b>BASE: TOTAL ARBITRATED OR MEDIATED CASES (“NOT SURE” EXCLUDED)</b>	50 100.0%
<b>A=Excellent</b>	28 56.0%
<b>B=Good</b>	12 24.0%
<b>C=Average</b>	7 14.0%
<b>D=Poor</b>	1 2.0%
<b>F=Failing Grade</b>	2 4.0%
<b>MEAN</b>	3.26

**Table V-41: Overall, what grade would you give BBB AUTO LINE?**

	<b>2018 Audit</b>
<b>BASE: TOTAL ARBITRATED OR MEDIATED CASES (“NOT SURE” EXCLUDED)</b>	50
	100.0%
<b>A=Excellent</b>	23
	46.0%
<b>B=Good</b>	15
	30.0%
<b>C=Average</b>	6
	12.0%
<b>D=Poor</b>	3
	6.0%
<b>F=Failing Grade</b>	3
	6.0%
<b>MEAN</b>	3.04

**Table V – 42  
BBB AUTO LINE STAFF EFFORTS –  
SATISFACTION COMPOSITE FOR CONSUMERS  
WHO USED MEDIATION OR ARBITRATION**

	<b>Mean</b>
<b>Objectivity and fairness</b>	3.28
<b>Efforts to resolve claim</b>	3.26
<b>Overall grade</b>	3.04
<b>AVERAGE</b>	3.17

Composite Mean (2018)	3.17
Composite mean (2017):	3.33
Composite mean (2016):	3.01
Composite mean (2015)	2.94

**Table V-43: Would you recommend BBB AUTO LINE to friends or family?**

	Total	Med/Arb
<b>BASE: ANSWERING, NOT SURE“NOT SURE” EXCLUDED</b>	73	49
	100.0%	100.0%
<b>Yes</b>	56	42
	76.7%	85.7%
<b>No</b>	17	7
	23.3%	14.3%

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 2018.

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)<sup>295</sup>

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<sup>295</sup> 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, the consumer had said was wrong.



## 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<sup>296</sup> 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)<sup>297</sup>

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<sup>296</sup> 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.”

<sup>297</sup> 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<sup>298</sup>

*For all consumers who used arbitration:*

9. And did you accept the arbitrator's decision?

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<sup>298</sup> 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 and 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 2018.

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. .

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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?