

**2016 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 Act¹ and disputes under state lemon laws – through mediation and arbitration. The program is administered by the Council of Better Business Bureaus (“CBBB”), located in Arlington, VA, together with local Better Business Bureau offices.

Under the Magnuson-Moss Act, manufacturers can insist that consumers use a “mechanism” like the BBB AUTO LINE if the mechanism meets standards set out in the statute and its implementing regulation, FTC Rule 703.² Key provisions of the statute and rule 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 CBBB maintain certain records and arrange for an annual audit; the audit, in turn, must include a consumer survey that serves, in part, as a check on its records. 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.
- The manufacturers who were audited previously – those who participate on a national basis -- substantially comply with their obligations under applicable laws and rules. However, the auditor notes a variety of reservations and questions, ranging from technical to more substantial, about various aspects of compliance.
- Additionally, this year’s audit was expanded to several manufacturers who participate in BBB AUTO LINE only in certain states (specifically, those who participate in at least eight states or in either Florida or Ohio). Of the five manufacturers who were audited for the first time, only one submitted responsive materials, and that firm was in substantial compliance with its obligations (albeit with a qualification).
- When manufacturers don’t require prior recourse to BBB AUTO LINE before consumers can pursue other remedies under the Magnuson-Moss Act, they raise issues discussed further in Chapter 1, Section II.A.

While this audit includes some recommendations, and while some findings of substantial compliance are qualified by reservations or questions, 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.

¹ 15 U.S.C. § 2301 et seq.

² 16 C.F.R. § 703.

Manufacturers participating in BBB AUTO LINE exceed Federal (and some state) requirements in a profoundly important way: although the consumer isn't bound by the results of arbitration, manufacturers *are* bound so long as consumers accept those results.

Also, the results of the program are impressive. Using CBBB's national figures for ease of presentation (the thrust of what follows extends to Ohio and Florida figures as well), BBB AUTO LINE processed nearly 4,707 complaints in 2016 that it didn't reject as ineligible at the outset and that consumers didn't withdraw. Of these, over 54% were resolved, at least initially, through mediation. Mediated settlements didn't all result in satisfied consumers – some settlements provided for repairs, for example, and roughly one in four consumers with a repair remedy later returned for a further proceeding because they were dissatisfied with the result. But some 930 complaints, about 20% 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 619 were awarded repurchase or replacement remedies (though some consumers rejected such remedies, perhaps preferring to seek broader relief in court). These 619 represent over 28% of arbitrated cases and over 13% of all eligible and non-withdrawn complaints. So, adding the complaints that led to repurchase or replacement through mediation to those that produced such results through arbitration, some 33% of these complaints led to repurchase or replacement settlements or awards, and they did so more often through mediation than arbitration.

This doesn't mean that the process is a slam-dunk for consumers. 1,253 complaints nationally, some 58% of those that went to arbitration, resulted in no award for the consumer. But the more relevant figure, in the auditor's view, is that the "no awards" represented some 27% of all eligible and non-withdrawn complaints. Viewed together with the 33% figure for repurchase and replacement remedies, and the remaining consumers who got some other remedy, this suggests a fair and well-balanced program. (The other remedies generally included extended service plans 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, while they won't always satisfy consumers' concerns when implemented, they often provide useful relief and always leave the door open for further proceedings.)

Given the auditor's focus on these numbers, one further factor, detailed in Chapters IV.G, V.G, and VI.G, does impact the results sufficiently to merit note here. Roughly one in five consumers used attorneys for the BBB AUTO LINE process, and those consumers were substantially less successful than those without lawyers. Since many consumers can't get into court without first using BBB AUTO LINE, it seems reasonable to speculate that some lawyers (though certainly not all) may be "going through the motions" in using the process. In any event, the differences are striking. Attorneys tended to disproportionately spurn mediation (and remedies like repairs that disproportionately result from mediation), and they tended to disproportionately lose in arbitration. So, while 64% of all eligible and non-withdrawn complaints filed by consumers with counsel ended in no relief, for consumers who represented themselves the figure was closer to 15%. And, while the number of repurchase or replacement remedies for consumers with counsel was 24%, for consumers who represented themselves the figure was 36%.

Overview of the audit. The audit provision of Federal law (additional provisions of Florida and Ohio law are noted in the text) includes a general requirement in subsection (a) and set 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 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 relevant 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 and the insights it offers (as well as the auditor's thoughts about improving future surveys). The chapters are interconnected, however, because Chapter 2 notes, in appropriate cases, the CBBB records and survey results that Chapter 3 scrutinizes in greater detail.

In undertaking this audit, the auditor has worked with TechnoMetrica Market Intelligence (and obtained insights from the CBBB) to undertake a survey with a revised survey instrument. The auditor has also done the following:

- Reviewed manufacturers' submissions to evaluate manufacturers' efforts to tell consumers about BBB AUTO LINE and otherwise comply with provisions applicable to manufacturers;

- Examined the web page from which consumers can file a complaint;
- Reviewed audio recordings of three hearings, including one from Florida and one from Ohio.
- Reviewed aspects of over 170 individual case files, using the survey results (for the first time) to target specific files that were most likely to reveal underlying problems, if such problems existed.

The auditor previously reviewed print and some video materials used to train arbitrators. He also previously visited the office of the BBB of West Florida in Clearwater, Florida, but did not do so again this year.³

³ 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 last year, and this year 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, 46 in-persons arbitration hearings in Ohio, roughly one per week, 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 previous audit. Indeed, though the auditor's predecessor did visit Ohio for the 2014 audit, no hearing took place during the visit.)

**CHAPTER 1:
MANUFACTURER
WARRANTY MATERIALS**

I. Introduction

As noted in the introduction to the report as a whole, the auditor finds, for 2016, that all manufacturers who were audited previously are in substantial compliance with the applicable rules. However, last year he noted several areas where there were deficiencies (some clearer than others) and this year he adds reservations or questions, keyed to specific subsections of the rule, to his findings of substantial compliance for specific manufacturers.

Additionally, the audit was extended this year to manufacturers who either participated in eight or more states, or who participated in either Ohio or Florida. Among the five, only BMW provided materials demonstrating substantial compliance, albeit with a question. Since the others didn't provide responsive materials, the auditor doesn't know if they require prior resort to BBB AUTO LINE before consumers can pursue other rights and remedies under Federal law. And, as described in Section II.A, that could determine whether they're subject to warrantor's disclosure obligations, at least under what the auditor considers the better view of the Magnuson-Moss Act.

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

A. FTC Rule 703.2

The core of FTC Rule 703,⁴ a rule that was issued pursuant to the consumer product warranty provisions of the Magnuson-Moss Warranty – Federal Trade Commission Improvement Act,⁵ 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 but not all participants in BBB AUTO LINE do so), but only if the program complies with other provisions of the rule.

The rest of rule 703.2 focuses on the obligations of warrantors. Rules 703.2(b) through (e), in particular, focus on mandatory disclosures and communications about the program, while one of these provisions (Rule 703.2(d)) also contains a prohibition on certain statements. While disclosure issues aren't the sole focus of Rule 703.2,⁶ they're the primary focus of the auditor's

⁴ 16 C.F.R. § 703.2.

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

⁶ 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 of BBB AUTO LINE's work, 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

review of manufacturer's 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.⁷

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."

⁷ 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:

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;

(2) Rule 703.2(d) requires manufacturers to take “reasonable steps to make consumers aware” of the program when consumers “*experience warranty disputes.*”⁸

(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” that consumers do so.

Most of the auditor’s analysis of manufacturers’ disclosure obligations appears in a chart below. Before turning to the chart, though, he turns to a preliminary inquiry – does Rule 703.2(b) apply to manufacturers who don’t require prior resort to BBB AUTO LINE before consumers pursue other rights and remedies under the Act – and then to two interconnected issues dealing primarily with Rule 703.2(d): When does a consumer “experience” a warranty dispute? And to what extent do warranty and owner’s manuals (collectively “consumer-facing manuals”) provide the requisite notice when they do experience a dispute?

*A preliminary question: 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?*⁹ One previously audited company – General Motors – doesn’t require prior resort to BBB AUTO LINE before consumers pursue other rights or remedies under the Magnuson-Moss Act. This may also be the case for four manufacturers who participate only in selected states, who were queried for the first time this year, and who declined to respond.

Are manufacturers who don’t require prior resort subject to Rule 703.2 at all? In the auditor’s view, the better (but not entirely clear) answer is no.

The Magnuson-Moss Act, which broadly defines a “warrantor,”¹⁰ seems to key

(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.

⁸ Under the FTC rules, an evaluation of the warrantors’ efforts in this regard is a mandatory component of this audit. Rule 703.7(b)(1).

⁹ This issue wasn’t raised in last year’s audit (or, to the auditor’s knowledge, in prior audits).

¹⁰ 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.”

warrantor’s obligations to their insisting on prior resort.¹¹ Most importantly, though, there’s limiting language in Section 2310(a)(4).¹² That provision 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 doesn’t include “prior resort” language,¹³ the quoted text seems to contemplate that the FTC will oversee only “mechanisms” to which some 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, for purposes of rule 703.2 (“Duties of warrantor,”) only those manufacturers who require prior resort. Further, this in turn suggests that Rule 703 only reaches as far as the contemplated oversight authority extends.

¹¹ 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].

¹² 15 U.S.C. § 2310(a)(1)(4).

¹³ 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).

Consistent with this reading of the statute, Rule 703.1 intertwines its definition of a “warrantor”¹⁴ with that for a “mechanism.”¹⁵ 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.”¹⁶

There could well be sound reasons why a participating manufacturer should have greater flexibility if it doesn’t require prior resort. For example, if a manufacturer offers a dispute settlement program that’s in multiple respects optional to the consumer,¹⁷ 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,¹⁸ therefore, the

¹⁴ 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.

¹⁵ 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.

¹⁶ 40 Fed. Reg. 60190, 60193 (1975).

¹⁷ 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.

¹⁸ 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 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. An argument of this nature could also point to Rule 703.2(b)(3), which 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; . . .”; this language 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 even these manufacturers to the provision that they actually perform “obligations” that they’ve agreed to perform during dispute settlement. Rule 703.2(f)(3). (Continued.)

auditor believes the better view is that Rule 703.2 doesn't apply to warrantors unless they require prior resort.

In light of this conclusion, tempered by some element of uncertainty, the auditor doesn't make findings of substantial compliance for manufacturers that don't require prior resort but do provide responsive materials; he does, however, note the extent to which he would find substantial compliance if they were subject to the rule. For the future, the auditor will continue to seek responsive materials from such manufacturers, but will make clear that a statement that they don't require prior recourse will end his inquiry unless they choose (as he would hope they do) to provide materials that would be "responsive" if the regulator disagreed with his interpretation.

Finally, a manufacturer that isn't subject to Rule 703.2 might still be required to make disclosures, perhaps even the same or comparable disclosures, by the laws and regulations of Florida, Ohio, or other states..

When does a consumer "experience" a warranty dispute? An initial question in applying these provisions is this: When do consumers, in the terms of the second category, "experience warranty disputes"? Is it only after they submit a dispute to the manufacturer? Or can they experience a dispute while they're still trying to resolve an issue with the dealer?

As explained below, one way that manufacturers comply with Rule 703.2(d) is through the same consumer-facing manual that sets forth the warranty (and thus must comply with Rules 703.2(b) and (c)). To the extent that such manuals also "make consumers aware" of the program when they experience a warranty dispute, moreover, it's in a sense irrelevant when the dispute is "experienced"; since the manuals are available to consumers at any time, a sufficiently prominent reference to the program in a manual could fulfill its notification function under Rule 703.2(d) at any time. To the extent the manuals aren't enough, though, the question of when consumers experience a dispute becomes more important. If consumers "experience warranty disputes" earlier, 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.

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

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 the other 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.

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 Rule 703.2(d) as well.

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 that the disclosure under subsection (d) is required earlier than the disclosure under subsection (e).

Further insights into the role of consumer-facing manuals in providing notice under Rule 703.2(d). As noted above, consumer-facing manuals are, at a minimum, an important component for providing the notice required by Rule 703.2(d) (in addition to being the vehicle 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.”¹⁹ These “use and instruction manuals” (more commonly called “owners’ manuals” today) are thus, 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 manufacturer and dealership employees are familiar with these manuals, the manuals perform some “employee education” as well as “consumer education” functions, and the employees thus “educated” might pass the information along to consumers.

Consumer-facing manuals can thus constitute, by themselves, at least some level of substantial compliance with subsection (d), although the auditor has also looked at the prominence of the discussion in evaluating the extent to which they do so.²⁰ However, the Commission in 1975 also seemed to contemplate that manufacturers would take further steps to supplement these manuals.²¹ And it’s certainly arguable that the Commission contemplated

¹⁹ 40 Fed. Reg. 60190 (1975).

²⁰ 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”?

²¹ *Id.* at 60197-99.

more additional steps than the notice already required by 703.2(e), which applies when the manufacturer tells the consumer about its resolution of a dispute submitted directly to the manufacturer.

Further, the consumer survey discussed in detail in Chapter 3 highlights the potential significance of further communications from dealerships or manufacturer representatives. When asked how they learned of BBB AUTO LINE, 24% of consumers reported that they relied on the internet (other than the BBB's own web site), a source the Commission obviously couldn't have contemplated in 1975. But among those who learned of the program from a dealership or manufacturer communication, 12% cited the warranty documents discussed previously, but 17% cited manufacturers' representatives or dealerships.²² In other words, dealers and manufacturers, collectively, were more frequent sources of information about BBB AUTO LINE than were owners' manuals and similar publications – and this suggests the importance, as sources of information about BBB AUTO LINE, of post-sale communications from dealers and manufacturers.

In other words, 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 “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 all dealers to tell consumers, at least after multiple unsuccessful attempts to satisfy a consumer, about the existence of BBB AUTO LINE (at which time, for reasons noted above, the dealers could also tell consumers about any internal review process with the manufacturer and encourage the consumer to use those processes first, so long as they don't expressly require the consumer to first use the internal processes). 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 alert consumers about the availability of BBB AUTO LINE.

Nonetheless, given the uncertainty in this area, the auditor continues, *at least for this year*, 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 certain steps with findings that specific manufacturers made commendable or highly commendable efforts in achieving substantial compliance.

B. The Auditor's Criteria for Applying the Federal Standards

The manufacturers who submitted materials for this year's audit all provided consumer-facing manuals containing the warranty and describing the BBB AUTO LINE program.²³ And

²² Chapter 3, Section III.A.

²³ As noted above four manufacturers who were included in this audit for the first time didn't

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 specific recurring issues that arise under one or more provisions of 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(b), but to note “reservations” or “questions” on certain findings.

-- A “reservation” is used for the issues the auditor consider more straightforward. For example, was information omitted that Rule 703(b) or (c) expressly requires to be disclosed? Was information covered by subsection (b) placed on the face of the warranty, as expressly required?

-- A “question” is used when the matter isn’t as clear, generally because the determination is essentially fact-specific. Taking into account a range of factors (placement, content, headings, and references in the table of contents), is a discussion of BBB AUTO LINE in a warranty manual sufficiently prominent to meet the standard of Rule 703.2(d)? If the discussion is sufficiently hard to locate, it might raise a reservation; with a closer call, there might be a question. Also, when a manufacturer tells a consumer that BBB AUTO LINE is available “if” it has first used the manufacturer’s internal review, the auditor treats as a “question” whether it “expressly requires” the use of that review in violation of that same subsection.

The difference between a reservation and a question is one of relative *clarity*, not of relative *importance*, and a “question” could well be more important than a “reservation.” For example, the overall prominence of a discussion of BBB AUTO LINE might raise only a “question” because of its fact-specific nature, although the underlying issue is whether, taking into account the content, placement, and highlight of the discussion, the consumer is likely to see the discussion. In contrast, the failure to include certain information on the first page of the warranty discussion will likely rate a “reservation,” possibly qualified as a technical reservation, even though the precise location of specific information may be far less important.

Further, as suggested above, the auditor has fine-tuned some findings of reservations and questions, identifying some as “substantial,” for example, and others as “technical.”

And, finally, the auditor recognizes that some changes, particularly changes to manuals, can take time to implement. To that end, the auditor invited manufacturers to include, in this year’s submissions, any information about changes that were underway but not yet reflected in the submitted documents. The auditor intends to repeat this invitation next year.

provide any information.

DISCLOSURES IN A CONSUMER-FACING MANUAL: CONTENT

<p>1. Disclosures under Rule 703.2(b) and (c)</p>	<p>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). (Possible reservation.)</p> <p>(The auditor also notes BBB AUTO LINE and the manufacturers have agreed to exclude certain types of claims from BBB AUTO LINE’s processes. Rule 703.2(b)(1) requires “a statement of the availability of the informal dispute resolution mechanism.” It would be prudent, in the auditor’s view, for the statement to reference exclusions in general terms, <i>e.g.</i>, to note that “age mileage, and other restrictions” may apply.)</p>
<p>2. Prohibition on “expressly requiring” use of manufacturer’s internal processes before using the program. Rule 703.2(d)</p>	<p>Some texts describe the manufacturer’s internal review procedures, and then use language to the effect that BBB AUTO LINE is available <i>if</i> other efforts have failed. Such language raises significant concerns about whether the text “expressly requires” consumers to use the earlier processes first. (Possible question.)</p>

DISCLOSURES IN A CONSUMER-FACING MANUAL: PLACEMENT

<p>3. Specific information required by Rule 703.2(b)</p>	<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 warranty text. (<i>See</i> Rules 703.1(h)(2) and 703.2(b).) Some manufacturers who require that a consumer resort to the program before pursuing other remedies under the Act disclose such requirements, as required by Rule 703(2)(b)(3), but do so belatedly. (Possible reservation.)</p>
<p>4. Descriptions in manuals as a “step [] reasonably calculated to make consumers aware of the Mechanism’s existence at the time consumers experience warranty disputes.” Rule 703.2(d)</p>	<p>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 that draws attention to the discussion? Does the heading appear, preferably with some prominence, in the table of contents? (Possible question or, if the deficiency is sufficiently glaring, possible reservation.)</p>

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) 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)

The rule requires warrantors to disclose anew the information covered by Rules 703.2(b) and (c). (Possible reservation.)

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) **Contact information:** The current mailing address for BBB AUTO LINE is:

BBB AUTO LINE
Council of Better Business Bureaus
3033 Wilson Boulevard, Suite 600,
Arlington, VA 22201.²⁴

Also, while the statute and rules don't mention the BBB AUTO LINE's web site as a source of information, most consumers now file their complaints via that web site. As at least one manufacturer now does, manufacturers might therefore consider providing information about the BBB AUTO LINE's web site as well. The optimal web link appears to be:

www.bbb.org/autoline/

(2) **Need to use BBB AUTO LINE's mediation services before using arbitration.**

Contrary to language in some warranty booklets, consumers aren't required to use BBB AUTO LINE's mediation services before they can use arbitration. (This mischaracterization should be quickly clarified when a consumer contacts BBB AUTO LINE).

(3) **Role of local BBB offices.** Contrary to language in one text, the program isn't administered by local BBB offices. However, these offices are important to the program – they're widely distributed throughout the country, they provide venues for BBB AUTO LINE arbitration hearings, and their staffs help to facilitate the conduct of arbitration hearings.

(4) **The Magnuson-Moss Act and prior resort.** Contrary to language in some 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.

(5) **Non-binding nature of arbitration.** One warranty manual describes BBB AUTO LINE arbitration as “non-binding,” without clarifying that it *is* binding on the manufacturer if the consumer accepts the result. (This is more substantive than the other points noted above.)

²⁴ Mail sent to its former address will be forwarded to the current address.

III. Obligations under Florida Provisions

Preliminarily, Florida has a Lemon Law²⁵ 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, after the functions were transferred, the former agency repealed its regulations.²⁶ Although the Department of Legal Affairs has not issued replacement regulations, BBB AUTO LINE is continuing to file (though now with the Department of Legal Affairs) the report that would have been required by those regulations. Further, BBB AUTO LINE is treating all of the applicable regulations as if they were still operative.

Also preliminarily, the following manufacturers were certified for participation in BBB AUTO LINE in Florida during 2016:

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 Florida Lemon Law, like other state's lemon laws, contains important provisions that don't appear in the federal law. Like other states, for example, Florida specified the number of repairs, and the time a vehicle can be out of service, before the lemon law's presumption of a reasonable number of repair attempts becomes available.²⁷ 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 attempt at repair.²⁸ Florida law requires resort to BBB AUTO LINE if it is certified as a complying mechanism. Additionally, Florida has a New Motor Vehicle Arbitration Board. The Board offers consumers a second arbitration process, to which (among others) consumers who are dissatisfied with the results of a BBB AUTO LINE arbitration can turn. Indeed, Florida has a three-step process in which consumers

²⁵ FLA. STAT. § 681.

²⁶ See 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).

²⁷ Florida Lemon Law Section 681.104(1)(a) and (b). On the Federal level, the Magnuson-Moss Warranty Act – Federal Trade Commission Improvement Act appeared to authorize the FTC to prescribe similar standards, 15 U.S.C. § 2304(b)(3), but the Commission has not done so.

²⁸ Florida Lemon Law Section 681.104(1)(a) and (b). BBB AUTO LINE doesn't treat failure to give this notice as a bar to arbitration under its program.

must use BBB AUTO LINE where it's a certified mechanism before they can use state arbitration,²⁹ and must use state arbitration before they can start a civil action.³⁰ In essence, then, Florida has a prior resort requirement.³¹

Initially, Florida requires the distribution of a booklet prepared by the Attorney General's office, with the manufacturer obtaining a signed acknowledgement of receipt from the dealers and the dealers obtaining signed acknowledgment from the consumer.³² The auditor hasn't reviewed whether the parties have the requisite acknowledgements, which his predecessor noted was within the province of the state.³³

As to the sorts of disclosure issues on which this chapter focuses,³⁴ Section 681.103(3) of Florida's lemon law requires manufacturers with a certified procedure in the state, at the time a consumer acquires a car, to "inform the consumer clearly and conspicuously in writing how and where to file a complaint. . ."³⁵ Section 681.108(1) arguably goes further, and incorporates all the disclosure requirements under Federal Rule 703.2 into Florida law.³⁶ For purposes of this

²⁹ Florida Lemon Law § 681.109(1) ("If a manufacturer has a certified procedure, a consumer claim arising during the Lemon Law rights period must be filed with the certified procedure no later than 60 days after the expiration of the Lemon Law rights period. If a decision is not rendered by the certified procedure within 40 days after filing, the consumer may apply to the department to have the dispute removed to the board for arbitration."), (2) ("If a manufacturer has a certified procedure, a consumer claim arising during the Lemon Law rights period must be filed with the certified procedure no later than 60 days after the expiration of the Lemon Law rights period. If a consumer is not satisfied with the decision or the manufacturer's compliance therewith, the consumer may apply to the department to have the dispute submitted to the board for arbitration. . .").

³⁰ *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.").

³¹ This issue wasn't raised in last year's audit (or, to the auditor's knowledge, in prior audits).

³² *Id.* at § 681.103.

³³ 2014 Audit, Chapter 1, page 5.

³⁴ This issue is treated differently in this year's audit than it was last year.

³⁵ Florida Lemon Law § 681.103(3) ("At the time of acquisition, the manufacturer shall inform the consumer clearly and conspicuously in writing how and where to file a claim with a certified procedure if such procedure has been established by the manufacturer pursuant to s. 681.108").

³⁶ Florida Lemon Law § 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

audit, the auditor assumes that the “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 Federal Rule 703.2(d) as a reasonable surrogate for compliance with Florida Section 681.103(3).³⁷

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.³⁸ 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 compliant 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.³⁹

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.⁴⁰ The information is also included in BBB AUTO LINE’s lemon law summary for Florida.

IV. Obligations under Ohio Provisions

The following manufacturers were certified to use BBB AUTO LINE in Ohio during 2016:

1. American Honda Motor Company, Inc. (Honda/Acura)⁴¹

Federal law doesn’t apply because the manufacturer doesn’t require prior resort.

³⁷ 2014 Audit, Chapter 1, page 5.

³⁸ Florida Lemon Law § 681.103(2), (3).

³⁹ Former Rule 5J-11.006(2)(e).

⁴⁰ Former Rule 5J-11.004.

⁴¹ Honda doesn’t participate in BBB AUTO LINE for cars manufactured after 2012 and wasn’t included in this audit.

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)

Ohio law tracks essential aspects of the applicable federal provisions, but also includes additional substantive provisions and imposes additional disclosure obligations. Ohio Rule 109:4-4-03 generally parallels Federal Rules 703.2(b) and (c), although it differs in minor respects.⁴² An Ohio statutory provision that requires a specified disclosure about the existence of lemon law rights, seems to apply to all manufacturers, whether or not they're certified in the state.⁴³ Other Ohio provisions are prefaced by language that a warrantor must comply with the specified obligations "in order to qualify a board to hear its warranty disputes,"⁴⁴ and "qualification" appears to refer to certification. Thus, the better view appears to be that Ohio's specific disclosure requirements (other than the statutory requirement described above) don't apply to manufacturers who aren't certified in Ohio but who nonetheless offer the program in the state.⁴⁵

Other Ohio provisions go beyond Federal requirements in more significant ways. One significant difference is that Ohio *requires* consumers to use arbitration before asserting remedies in court if BBB AUTO LINE is certified as the manufacturer's dispute resolution

⁴² 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).

⁴³ 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.

⁴⁴ Ohio Administrative Code 109:4-4-03(A).

⁴⁵ This seems particularly reasonable because the most important addition that Ohio makes to the Federal disclosure requirements is a mandated disclosure focusing on the need to use a qualified mechanism before the consumer pursues litigation under the lemon law. (Note that the alternative argument is that manufacturers who aren't certified in Ohio can't offer alternative dispute resolution in the state.)

mechanism in the state and the consumer has proper notice.⁴⁶ This differs from Federal law, which allows manufacturers to insist that consumers first use dispute settlement,⁴⁷ but parallels some other state laws.⁴⁸

Some Ohio provisions deal with disclosure. As noted above, the Ohio Code requires a written disclosure of a notice to consumers, in capital letters, that state law provides replacement or compensation remedies for defective vehicles.⁴⁹ Ohio also requires that some of the information covered by the Federal disclosure rule be disclosed, in Ohio, both 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.”⁵⁰ Further, where Federal Rule 703.2(b) requires notice *if* a manufacturer insists that consumers use a certified mechanism before they go to court to seek remedies under the Magnuson-Moss Warranty Act, the Ohio analog affirmatively requires that consumers use arbitration before they sue under the Ohio lemon law – although the disclosure component of this provision appears to require this disclosure either on a sign *or* in a separate written form.⁵¹

As noted above, the FTC’s regulations provide that a warrantor that offers a program for consumers to seek relief directly from the warrantor (manufacturer) cannot expressly require consumers to use that mechanism. Ohio goes further. Its regulation requires (in a provision that the FTC expressly declined to adopt⁵²) that the warrantor clearly and conspicuously disclose to the consumer “that the process of seeking redress directly from the warrantor is optional and may

⁴⁶ 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.

⁴⁷ 15 U.S.C. 2310(a)(3)(C).

⁴⁸ *E.g.*, California Civil Code § 1793.22(c).

⁴⁹ Ohio Revised Code 1345.74(A).

⁵⁰ Ohio Administrative Code 109:4-4-03(C).

⁵¹ Ohio Administrative Code 109:4-4-03(C)(3).

⁵² 40 Fed. Reg. at 60199 (1975).

be terminated at any time by either the consumer or warrantor;”⁵³ Ohio also requires that decisions of a “board” like BBB AUTO LINE must bind the warrantor (and manufacturers participating in BBB AUTO LINE agree to this condition even where it’s not required by state law), and that consumers be told this is the case and be told that a “decision will be rendered within forty days from the date that the board first receives notification of the dispute.”⁵⁴

The auditor has reviewed manufacturers’ submissions for Ohio-specific issues, and the manufacturer-by-manufacturer chart that follows looks to two issues about Ohio. First, where a manufacturer is certified in Ohio, does it’s manual expressly contradict Ohio’s law requiring that consumers use alternative dispute resolution before they go to court? And, second, have manufacturers complied with Ohio-specific disclosure requirements?

V. Audit results

This section discusses the ten firms that were audited previously, as well as the newly audited firm (BMW) that submitted responsive materials. The auditor has “raised the bar” a bit in the current audit, since the firms were all provided copies of last year’s audit, and thus were aware in advance of the issues that the auditor would be examining this year.

Many manufacturers submitted multiple manuals this year. In general, the auditor focused this year primarily on a single warranty manual (or a single “owners and warranty manual”) for each manufacturer. He also examined all non-manual materials that submitters provided, with a primary focus on a single question: How do they bear on notice to the consumer?

Because the auditor recognized that some changes may take time to implement, manufacturers were invited to supplement their submissions with information about changes that are currently making or that they plan to make. One did so this year, and all manufacturers will receive a similar invitation next year.

Non-responsive manufacturers. Neither Ferrari, Maserati, Mini Cooper, nor Subaru, each of whom was newly audited this year, provided responsive materials. It’s possible that none of them require prior resort under the Magnuson-Moss Act, which (for reasons explained above) could impact their compliance obligations under Federal law.⁵⁵ In any event, the auditor has not made any findings, even conditional findings, about their compliance.

⁵³ Ohio Administrative Code 109:4-4-03(E)(1).

⁵⁴ Ohio Administrative Code 109:4-4-03(E)(2).

⁵⁵ As to obligations under Florida and Ohio law, only Subaru participates in Ohio, but BBB AUTO LINE isn’t a certified mechanism for Subaru in the state. Similarly, only Ferrari and Maserati participate in Florida, but BBB AUTO LINE isn’t a certified mechanism for either in the state.

A. Bentley Motors, Inc. (NATIONAL and certified in FLORIDA)

1. Consumer-Facing Materials

Bentley submitted multiple service manuals for the 2016 and 2017 model years. Specific references in the chart below are to the sole submission for the 2017 model year, a combined 2017 owner’s and warranty manual. The combined approach raises issues, particularly of prominence, that didn’t arise before.

Federal Disclosure Provisions	
(1) Rule 703.2 (b) (and Rule 703.1(h) to define “the face of the warranty”)	Bentley provides the required information, but without the required placement. (Reservation.)
(2) Rule 703.2(c)	Bentley provides the required information.
(3) Rule 703.2(d) – Prominence of disclosures to alert consumers to the existence of BBB AUTO LINE	Bentley mentions BBB AUTO LINE at the start of the manual’s “warranty” section and provides detailed information under the heading “Consumer protection information.” But these aren’t particularly prominent. The “Warranty and Service” section of the handbook begins on page 470 and the first mention of BBB AUTO LINE is on page 472 Further, there’s no reference to the program, or even to the discussion of “consumer protection information,” in the table of contents. (Substantial question.)
(4) Rule 703.2(d) – Expressly requires that consumers use manufacturer’s review processes before filing with BBB AUTO LINE?	Bentley provides that BBB AUTO LINE is available only “if” the consumer first used Bentley’s internal processes. Manual, page 482. However, there are two unusual twists with Bentley. First, the text “requests” that consumers bring the matter to Bentley; it doesn’t use compulsory language. Second, based on templates of letters discussed below, consumers who do take a case to the manufacturer are <i>then</i> told, before it’s resolved, that they may immediately use BBB AUTO LINE. (Possible question.)
(5) Rule 703.2(e)	As noted above, Bentley provided templates of letters sent to consumers who bring a complaint to the company, and these are apparently sent when consumers submit their claims, not when Bentley resolves them. While this is impressive, the letters don’t contain all the information required by Rule 703.2(e) (a technical reservation), and they’re not a substitute for repeating the information, as required by the rule, when Bentley decides the case. (Possible reservation; Bentley wasn’t specifically asked if they have separate templates for letters sent to consumers after the matter is resolved at the manufacturer level.)

Florida Disclosure⁵⁶	
Section 681.103(3) – Clear and conspicuous disclosure of how and where to file a claim	For the reasons discussed in Item (3) under Federal disclosure provisions, it’s not clear that Bentleys’ disclosures are sufficiently clear and conspicuous. (Possible question.)

2. Additional Materials

Bentley provided a cover letter, selections from an “Aftersales Policy and Procedures Manual,” and materials developed by the California Department of Consumer Affairs, and the Florida Attorney General’s office.

Bentley’s customer service manager, in a 2016 letter, pointed to the templates described in item (5), and noted that Bentley’s customer service center has a small staff whose members are “aware of and can advise” customers about the availability of BBB AUTO LINE. Assuming this reflects the same policy as the text in item (5) (see the preceding page), it points to a strong policy of disclosure when a complaint reaches the manufacturer level.

3. Conclusion

Bentley is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal and Florida law, with a reservation and a question.

Based on the information described in section 2, Bentley is commended for taking two additional steps, at least after the customer contacts Bentley, to alert them to BBB AUTO LINE.⁵⁷

⁵⁶ Bentley’s manual includes a prior resort requirement that’s expressly limited to the Magnuson-Moss Act and California law, without indicating (as most manufacturers do) that other state lemon laws may require prior resort for relief under those laws. See Section III.A (discussing Florida law).

⁵⁷ 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. Also, although Bentley isn’t certified in Ohio, it appears to be subject to the disclosure requirement, in Ohio Revised Code § 1345.74(A), to provide a written statement on a separate sheet of paper alerting consumers to the lemon law.

B. BMW (NATIONAL, included this year by virtue of its participation in eleven states⁵⁸)

1. Consumer-Facing Materials

BMW provided several warranty and service manuals for 2016. One of these is the basis for the auditor’s review.

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 just before the warranty discussion in its Service and Warranty Information booklet.
(2) Rule 703.2(c)	BMW provides the required information.
(3) Rule 703.2(d) – Prominence of disclosures to alert consumers to the existence of BBB AUTO LINE.	BMW discussed BBB AUTO LINE at pages 16-18 of the manual in a section prominently headed “BBB Auto Line.” “BBB Auto Line” also appears, in bold-faced text, in the table of contents.
(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, Bentley 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. (Reservation.)

2. Additional Materials

None provided.

3. Conclusion

BMW is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal law, with a reservation and a question.⁵⁹

⁵⁸ The states are Arkansas, California, Georgia, Kentucky, Iowa, Idaho, Massachusetts, Maryland, Minnesota, Pennsylvania, and Virginia. BMW requires prior resort in these states.

⁵⁹ 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. Also, although BMW doesn't participate in BBB AUTO LINE in Ohio, it appears to be subject to the disclosure requirement, in Ohio Revised Code § 1345.74(A), to provide a written statement on a separate sheet of paper alerting consumers to the lemon law.

C. Ford Motor Co. (NATIONAL and certified 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. The page numbers used below comes from the 2016 Ford warranty manual.

Federal Disclosure Provisions	
(1) Rule 703.2 (b) (and Rule 703.1(h) to define “the face of the warranty”)	Ford provides the required information, but, for some of the information, without the proper placement. (Reservation.)
(2) Rule 703.2(c)	Ford addresses the subjects required by the rule, except for the “types of information” the mechanism may require. (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.	The previously-noted reference at the start of the manual is in a section highlighted “Important information you should know,” with a subheading “If you need consumer assistance”; the headings don’t mention BBB AUTO LINE or alternative dispute resolution. But 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. Ford also provides basic information about the program in a short stand-alone document entitled “Our Commitment to You.”
(4) Rule 703.2(d) – Expressly requires that consumers use manufacturer’s review processes before filing with BBB AUTO LINE?	Ford’s text indicates, in potentially problematic language, that BBB AUTO LINE may be available “if” internal procedures haven’t resolved the issue. (Question.)
(5) Rule 703.2(e) notice	Not provided. (Reservation.)
Florida Disclosures	
(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, Ford provides the required disclosures.

Additional Ohio Provisions	
(O1) Additional notices provided in warranty documents, separate sheets of papers, or signs	Ford provided a separate sheet containing information required by Ohio law, but not signs for distribution to dealerships. (Reservation)

b. Additional Materials

The “Our Commitment to You” document noted in Item (3) of the table on the preceding page.

c. Conclusion

Ford is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal, Florida, and Ohio law, with reservations and a question. Based on the “Our Commitment to You” text, Ford is commended for taking an additional step to alert consumers to the program.⁶⁰

⁶⁰ 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. General Motors Co. (NATIONAL and certified in FLORIDA and OHIO)

General Motors provided multiple owner’s manuals and warranty manuals, covering various 2015 and 2016 vehicles. The discussion that follows focuses on the 2016 Chevy Limited Warranty and Owner Assistance Manual.

1. Consumer-Facing Materials

<p>Federal Disclosure Provisions -- General Motors doesn’t require prior resort to BBB AUTO LINE before a consumer can pursue other rights and remedies under the Magnuson-Moss Act. For reasons explained previously, the auditor has concluded that the better view is that GM therefore is <i>not</i> subject to Rule 703.2. Since the matter isn’t entirely clear and since GM has provided responsive materials, though, the auditor has evaluated them.</p>	
<p>(1) Rule 703.2 (b) (and Rule 703.1(h) to define “the face of the warranty”)</p>	<p>GM provides the covered information, but without the proper placement. (Reservation.)</p>
<p>(2) Rule 703.2(c)</p>	<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.)</p>
<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 is reasonably prominent. The initial reference to the program on page 1 of the warranty booklet doesn’t mention BBB AUTO LINE by name. (BBB AUTO LINE is named and described in a later discussion that’s cross-referenced.) But the discussion is highlighted by a heading – which also appears in the table of contents – that says “GM Participation in an Alternative Dispute Resolution Program.”</p> <p>GM also provided wall plaques that were presumably provided to dealerships in California; to the extent these were conspicuously placed, they further alerted consumers to the program.</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 indicates, in potentially problematic language, 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>Not provided. (Reservation.)</p>

Florida Disclosures	
(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, General Motors provides the required disclosures
Additional Ohio Provisions	
(O1) Additional notices provided in warranty documents, separate sheets of papers, or signs	General Motors has provided appropriate signs and separate sheets of paper, with accompanying instructions to dealers.

2. Additional Materials

GM has provided several internal documents. Based on these materials and GM’s responses to questions posed by the auditor, it doesn’t appear that GM raises the subject of BBB AUTO LINE, except through the point-of-sale manuals and plaques discussed above, unless the consumer raise the subject first.

3. Conclusion

Although GM doesn’t appear to be subject to Rule 703.2, it would be substantially compliant with the rule, with reservations and a question, if it were.

GM is substantially compliant with Ohio and Florida laws and regulations.

GM is commended for the wall plaques developed for use in California, an additional step apparently used to alert consumers to the program.⁶¹

⁶¹ 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. Hyundai Motor America (NATIONAL and certified in FLORIDA and OHIO)

1 Consumer-Facing Materials

The auditor has reviewed Hyundai’s 2016 warranty handbook.

Federal Disclosure Provisions	
(1) Rule 703.2 (b) (and Rule 703.1(h) to define “the face of the warranty”)	Hyundai makes the required disclosures. The information appears in a section of the warranty booklet (prominently labelled “Consumer Information”) just before the warranty discussion.
(2) Rule 703.2(c)	Hyundai addresses the subjects required by the rules, except for the types of information that consumers will need to provide to BBB AUTO LINE. (Reservation) Hyundai indicates that access to BBB AUTO LINE may be limited by the vehicle’s age and mileage, but should consider noting that there may be other bases to exclude claims.
(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 discussion of “Consumer Information” includes a boldfaced section on “Alternative Dispute Resolution.” The only heading in the table of contents, though, is to “Consumer Information,” not “Alternative Dispute Resolution” or “BBB AUTO LINE.” (Possible question.)
(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	Not provided. (Reservation.)
Florida Disclosures	
(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 possible question as to whether Hyundai’s disclosure is sufficiently clear and conspicuous.

Additional Ohio Disclosure Provisions	
(O1) Additional notices provided in warranty documents, separate sheets of papers, or signs.	None provided. (Reservation.)

2. Additional Materials

None provided.

3. Conclusion

Hyundai is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal, Florida, and Ohio law, with reservations and a possible question.⁶²

⁶² 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. Jaguar Land Rover North America, LLC (NATIONAL)

1. Consumer-Facing Materials

The auditor reviewed Jaguar’s “Passport to Service” and “Dispute Resolution Supplement” for 2015, as well as letters sent to consumers who have pursued a dispute through the manufacturer’s internal processes.

Federal Disclosure Provisions	
(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.)
(2) Rule 703.2(c)	Jaguar addresses the required subjects.
(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.
(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). ⁶³ (Technical reservation.)

⁶³ The letter 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.

2. Additional Materials

In addition to the notice required by Rule 703.2(e) at the manufacturer level, Jaguar has highlighted 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.

3. Conclusion

Jaguar is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal law, with reservations and a question.⁶⁴ Additionally, Jaguar is to be highly commended for efforts to tell consumers about BBB AUTO LINE at the manufacturer and dealer level.

⁶⁴ 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. Also, although Jaguar isn't certified in Ohio, it appears to be subject to the disclosure requirement, in Ohio Revised Code § 1345.74(A), to provide a written statement on a separate sheet of paper alerting consumers to the lemon law.

G. Kia Motors America, Inc. (NATIONAL and certified in FLORIDA and OHIO)

1. Consumer-Facing Materials

The auditor reviewed Kia’s Warranty and Consumer Information Manual for 2016. manual.

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 not with the required placement. (Reservation.)
(2) Rule 703.2(c)	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 relatively late in the booklet. Moreover, there’s no reference to BBB AUTO LINE, or even alternative dispute resolution, in the table of contents. (Substantial question.)
(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	None provided. (Reservation.)
Florida Disclosures	
(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 substantial question as to whether Kia’s disclosure is sufficiently clear and conspicuous. (Substantial question.)
Additional Ohio Provisions	
(O1) Additional notices provided in warranty documents, separate sheets of papers, or signs	Kia provides the required information in an Ohio-specific page in its Warranty and Consumer Information Manual. However, it hasn’t provided the auditor with information on a separate sheet of paper to be provided to consumers, or with evidence of signage. (Reservation.)

2. Additional Materials

Kia 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.

3. Conclusion

Kia is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal, Florida, and Ohio law, with reservations and questions. Kia is to be commended for the additional efforts indicated by section 2.

H. Automobili Lamborghini (NATIONAL)

1. Consumer-Facing Materials

Lamborghini provided an undated warranty manual.

Federal Disclosure Provisions (Lamborghini appears to require prior resort to BBB AUTO LINE for purposes of Magnuson Moss rights and remedies only in California. This is sufficient, however, to trigger the rule’s disclosure requirements.)	
(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. Although they don’t appear on page 3, where the warranty text begins, they do appear soon after; all the information required by Rule 703.2(b) appears on pages 6-7, which face each other and are visible simultaneously. (Technical reservation.)
(2) Rule 703.2(c)	Lamborghini addresses the subjects required by the rule, except for the types of information that consumers will need to provide to BBB AUTO LINE. (Reservation). Lamborghini indicates that access to BBB AUTO LINE may be limited by the vehicle’s age and mileage, but should consider noting that there may be other bases to exclude claims.
(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?	Lamborghini indicates, in potentially problematic language, that BBB AUTO LINE may be available “if” previously described internal procedures have not resolved the issue. (Question.)
(5) Rule 703.2(e) notice	Not given. (Reservation.)

2. Additional Materials

None provided.

3. Conclusion

Lamborghini is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal law, with a reservation and possible questions.⁶⁵

⁶⁵ 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. Also, although Lamborghini isn't certified in Ohio, it appears to be subject to the disclosure requirement, in Ohio Revised Code § 1345.74(A), to provide a written statement on a separate sheet of paper alerting consumers to the lemon law.

I. Mazda North America Operations (NATIONAL and certified in FLORIDA and OHIO)

1. Consumer-Facing Materials

Mazda provided a warranty booklet dated February 2016, as well as an owner’s manual. The chart that follows focuses on the warranty booklet.

Federal Disclosure Provisions	
(1) Rule 703.2 (b) (and Rule 703.1(h) to define “the face of the warranty”)	Mazda provides the required information. It appears early in the booklet, just preceding the warranty text.
(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.)
(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 discussion of BBB AUTO LINE in Mazda’s warranty booklet is under a subheading that says “Contact Better Business Bureau (BBB).” 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.)
(4) Rule 703.2(d) – Expressly requires that consumers use manufacturer’s review processes before filing with BBB AUTO LINE?	In potentially problematic language, Mazda describes the BBB AUTO LINE program as a “final step” available when mutual agreement is not possible. (Question.)
(5) Rule 703.2(e) notice	Mazda submitted templates of the requisite 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). (Technical reservation.)
Florida Disclosures	
(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, there’s a possible question as to whether Mazda’s disclosure is sufficiently clear and conspicuous.

Additional Ohio Provisions	
(O1) Additional notices provided in warranty documents, separate sheets of papers, or signs	None provided. (Reservation.)

b. Additional Materials

Mazda provided a training module, but the text doesn't indicate a policy of telling consumers about BBB AUTO LINE.

c. Conclusion

Mazda is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal, Florida, and Ohio law, with reservations and questions.⁶⁶

⁶⁶ 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.

J. Nissan North America (Nissan/Infiniti) (NATIONAL and 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 2017 Warranty Information Booklet; a 2016 edition of a supplemental booklet, captioned in part “Consumer Care and Lemon Law Information”; and a handout entitled “Our Commitment to You.”

Federal Disclosure Provisions	
(1) Rule 703.2 (b) (and Rule 703.1(h) to define “the face of the warranty”)	Nissan provides the required information, beginning on page 3 of the warranty booklet, just before the actual warranty text.
(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. ⁶⁷ (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	The discussion is prominently placed in both booklets, including a booklet that mentions lemon laws in its title. Nissan also describes the program in a handout entitled “Our Commitment to You.”
(4) Rule 703.2(d) – Expressly requires that consumers use manufacturer’s review processes before filing with BBB AUTO LINE?	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. The “Our Commitment to You” handout contains language that might be less problematic, but still provides that BBB AUTO LINE is available in case of an “impasse.” (Question.)

⁶⁷ Nissan indicates that BBB AUTO LINE is not available in all state, 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.

(5) Rule 703.2(e) notice	Nissan has templates of a letter that contains the core information about filing a complaint, with references to consumer-facing manuals for more information.
Florida Disclosures	
(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, Nissan provides the required disclosures.
Additional Ohio Provisions	
(O1) Additional notices provided in warranty documents, separate sheets of papers, or signs	Nissan advises that they provide the required letters and signage.

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. (Curiously, the information provided at the manufacturer level doesn’t appear to describe as strong a policy.)

3. Conclusion

Nissan (with Infiniti) is in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal, Florida, and Ohio law, with a reservation and a question.⁶⁸ The company is to be highly commended for additional efforts, beyond disclosure in consumer-facing manuals, to alert consumers to the program.

⁶⁸ 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. Volkswagen Group of America, Inc. (with Audi) (NATIONAL and 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 2016 Audi.

Federal Disclosure Provisions	
(1) Rule 703.2 (b) (and Rule 703.1(h) to define “the face of the warranty”)	The manual includes only some of the required information, and that information isn’t placed as required. For example, except in a California-specific section of the manual, the text doesn’t give consumers information about how to contact BBB AUTO LINE. Also, the “prior resort” information is an easily-missed section titled “Warranty Period.” (Substantial reservation.)
(2) Rule 703.2(c)	Volkswagen and Audi address the subjects required by the rule. The booklet indicates that access to BBB AUTO LINE may be limited by the vehicle’s age and mileage, but the manufacturer should consider noting that there may be other bases to exclude a claim. ⁶⁹
(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	BBB AUTO LINE is first mentioned well into the warranty discussion. A reference to “Consumer Protection Information” in the table of contents does draw some more attention to the discussion, but neither “BBB AUTO LINE” nor “alternative dispute resolution” is mentioned there. (Substantial question.)
(4) Rule 703.2(d) – Expressly requires that consumers use manufacturer’s review processes before filing with BBB AUTO LINE?	The manual indicates that BBB AUTO LINE may be available as the third step of a process “if” a dealer or “customer advocate” have failed to resolve the problem. This language is potentially problematic, although perhaps less so because it is not presented in the context of a three-step process; also, the reference to a dealer is connected to the reference to a customer advocate by an “or,” perhaps suggesting that the BBB AUTO LINE process is available without going beyond the dealer level. (Question.)

⁶⁹ A small problem is that the manual talks of a consumer who doesn’t “agree with” a mediated solution. In fact, there can be no mediated solution without agreement.

(5) Rule 703.2(e) notice	Volkswagen provided a letter, containing substantial information about BBB AUTO LINE, that appears to be sent when a consumer request through the manufacturer's internal process is denied.
Florida Disclosure	
(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.
Additional Ohio Provisions	
(O1) Additional notices provided in warranty documents, separate sheets of papers, or signs	Volkswagen provided separate sheets of paper and signs, and apparently provides dealers with quarterly supplies of these materials.

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) in SUBSTANTIAL COMPLIANCE with the applicable provisions of Federal, Florida, and Ohio law, with a reservation and questions.⁷⁰ The company is to be highly commended for additional efforts, beyond disclosure in consumer-facing manuals, to alert consumers to the program.

⁷⁰ 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 of BBB AUTO LINE and its sponsor, the CBBB. The applicable Federal rules, which in many respects create a framework on which state regulation builds,⁷¹ essentially require the processes to be fair, thorough, and efficient. Furthering these ends, the rules specifically requires 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 is in substantial compliance with the applicable Federal, Florida, and Ohio regulations. Although the auditor offers four recommendations, none of these 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,⁷² sent to consumers after their initial contact, and the same in all states except California.⁷³ He also reviewed its arbitrator training manual and talked with staff. His review of how these policies are *implemented* draws in part on further discussions with staff, in part on the statistics detailed at length in Chapter 3, and in part on case files that he examined.

I. Fairness

Among the specific 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 staff duties can’t be imposed on BBB AUTO LINE staff.

While Rule 703.3 focuses primarily on staff operations, Rule 703.4 focuses on “members” – defined by Rule 703.1(f) as the actual decision-makers (the arbitrators). 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.”

⁷¹ 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.

⁷² <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/>.

⁷³ California has its own rules. Unless otherwise specified, references to specific rules should be understood as a reference to the rules for states other than California.

With regard to another aspect of fairness, moreover, Rule 703.5(f)(3) essentially bans *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 described above, again with the caveat that they don't reflect provisions, like those governing personnel decision, 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 . . . ⁷⁴

Additionally, BBB AUTO LINE's training manual for arbitrators highlights the mechanism's concern with preserving impartiality and fairness (and the appearance of both). For example, arbitrators are told to avoid being in a room with one party. And specific instructions explain how to handle a test drive. If a car has only two seats and both parties are present, arbitrators are told, 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, neutral sites that are 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

⁷⁴ <http://www.bbb.org/council/about/vision-mission-and-values/>

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 developed such procedures and incorporated them 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 every consumer who files a complaint.

A. Starting the Complaint Process

Consumers can initiate a BBB AUTO LINE case by telephone, by a written complaint, or online. 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 a consumer complaint form. In Florida and California, though, it occurs as soon as 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. Last year, the auditor noted that some manufacturers participate only in selected states,⁷⁵ and that, for entries involving those manufacturers, the portal initially turned away those who identified a “location” where the manufacturer didn’t participate. However, the “location” was presumably the state where the consumer lived, and state lemon law rights and access to the program can turn on other factors: most frequently the state of purchase, but perhaps (if the lemon law speaks to the subject at all) another factor or an array of alternative factors. While the percentage of consumers thus turned away was likely well under 1%,⁷⁶ and the absolute number was perhaps in the lower double digits, at least some consumers with potentially meritorious complaints might have been summarily told not to file.

As later modified, the web portal’s initial screen still focuses on a single factor, but now uses the state of purchase, while is more likely to be a defining attribute. More importantly, the

⁷⁵ Three firms participate in 8 to 11 states; six participate in 1 to 4 states.

⁷⁶ Based on sales figures reported by the Wall Street Journal last year, for example, “state-by-state” participants likely accounted for fewer than 10% of the sales by participating manufacturers. See http://online.wsj.com/mdc/public/page/2_3022-autosales.html (visited July 24, 2016). Even among those, the issue would have impacted only consumers who weren’t qualified at their “location,” were qualified elsewhere, and could have overcome practical problems in pursuing out-of-state claims. (Further, it’s possible that the issue was limited to Internet complaints and, as noted above, some complaints are filed in writing or by phone.)

message to disqualified consumers now advises:

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.

While the approach is very well-conceived, though, it's imperfect in execution. The text focuses consumers on the state of *purchase*, but that's the same factor that brought them to the "disqualified" page in the first place. While a confused consumer might well call the BBB AUTO LINE to clarify the point, some consumers with arbitrable claims may be dissuaded from proceeding further. Assuming that the program continues to use this general approach, the auditor recommends that the disclosure text be revised.

Recommendation 1: The auditor recommends that BBB AUTO LINE take further steps to avoid turning away consumers – however small their number may be – with potentially meritorious complaints.

B. Resolving a Complaint

After the initial contact, BBB AUTO LINE sends consumers a detailed consumer complaint form that incorporates information provided during the initial contact, along with its explanation of how BBB AUTO LINE works. 96% of consumers who were surveyed recalled receiving these materials, and about half of the remainder had returned signed copies of the forms, so they presumably forgot that they had received and returned them. Further, most consumers, again focusing on the national sample, found the materials to be clear and easy to understand or somewhat clear and easy to understand (97%) and most found them very or somewhat helpful (83%).⁷⁷

BBB AUTO LINE cannot begin to address a complaint in earnest until the consumer returns a consumer complaint form with supporting documents, a process that CBBB staff suggests averages about ten days. As noted above, 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 (a requirement under Rule 703.5(b)) when the file is opened. The manufacturer's representative may then contact the consumer directly to resolve the issue.⁷⁸

If this doesn't occur or doesn't succeed, the case will be investigated, a process covered by Rule 703.5(c). Before the arbitrator is appointed, a dispute resolution specialist generally relies on facilitating the exchange of information between the parties, often by actively questioning the 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

⁷⁷ Chapter 3, Section III.F.

⁷⁸ This has sometimes been identified as a separate "conciliation" phase of the process.

particular position. The consumer generally receives information submitted by the manufacturer before the distribution of the notice of hearing. BBB AUTO LINE is currently developing a nationwide consumer website portal with the intention of providing consumers with real-time access to case documents.

Rule 703.5(d) then provides for the arbitration itself, with the goal of producing a fair decision within 40 days of the complaint, unless an exception under Rule 703.5(e) allows longer. Rule 703.5(f) governs oral presentations, and Rule 703.5(g) provides that the consumer must be told that she can reject the decision. If she does reject the decision, it might still be admitted as evidence in a subsequent court action. However, the apparent indifference of at least some attorneys to getting adverse decisions (see Chapter 3, section IV.G) suggests that, at least to some, this isn't a significant concern.

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 car⁷⁹ and about the use of technical experts in arbitrations.⁸⁰

⁷⁹ 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.

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 starting, "The arbitrator may request an inspection of the vehicle involved in your dispute."

⁸⁰ Rule 8 of the Rules applicable outside California 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

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. However, the BBB AUTO LINE rules don't allow the manufacturer to block a consumer's request for an in-person hearing.

As the process proceeds, mediation remains possible; the BBB AUTO LINE's rules even provide for settlements after an arbitration hearing but before a decision.⁸¹ An arbitrator won'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) issue 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, and the arbitrator retains the discretion to decide the case as she deems fit.

In the three hearing tapes he reviewed – including one from Florida and one from Ohio – the auditor observed the regulatory protections observed scrupulously.

From the case files he reviewed, which are discussed in greater detail in Chapter 3, the auditor found generally that the process worked effectively and was solidly documented.⁸²

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.

⁸¹ Rule 20; California Rule 21.

⁸² Indeed, as show in Chapter 3, the auditor's principal finding from that examination was that most apparent discordances between consumers' survey responses and BBB AUTO LINE's records either were reasonably explicable (as where each was interpreting the same underlying facts in a reasonable manner) or involved irreconcilable differences where BBB AUTO LINE's position was very well documented (as where consumers said they hadn't received a document but BBB AUTO LINE records contained a signed copy that they not only received, but also returned).

However, there were a few cases and situations where the record-keeping, and perhaps the underlying contacts between BBB AUTO LINE and consumers, might have been improved. Thus, in a small number of cases, consumers said that BBB AUTO LINE hadn't contacted them or hadn't returned their calls before a case was closed. In some of those, the BBB AUTO LINE contained particularly solid documentation of the case handler's efforts to reach the consumer. In one scenario he saw repeated in multiple files, for example, the case handler's notes reported four voice mail messages and two follow-up letters; one letter was sent a week before closing, the other at the time of closing, and both mentioned prior attempts at contact. With a record of this nature, the auditor felt comfortable concluding that BBB AUTO LINE's position was very well-documented, and it seems highly unlikely that the case handler would have had better results had she done more.⁸³ Without suggesting that this is the minimum that would be needed to make so strong an impression, the auditor offers the following recommendation, much of which, he understands, already reflects routine (though informal) practice.⁸⁴

Recommendation 2: At least after the consumer has filed a signed consumer complaint form, the auditor recommends that BBB AUTO LINE establish protocols governing the nature and number of attempts that case handlers should make to contact a consumer before closing a case. A particularly strong protocol, in the auditor's view, would include multiple modes of communications (selected, perhaps, from email, mail, and phone with voicemail).

C. Compliance

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. The letter informs the consumer that compliance will be assumed unless the consumer replies within eight days after it was sent. In the auditor's view, it's not unreasonable to assume compliance should the consumer fail to respond. Otherwise, the measure of manufacturer compliance could depend on the consumer's whims or attentiveness. However, the auditor did observe that, when informing manufacturers of the consumer responses, BBB AUTO LINE sometimes (though not always) reported that performance verification was "received" when in fact it was assumed because the consumer failed to respond. While it's not clear that this causes any harm, the auditor prefers more precise records, and offers the following recommendation.

Recommendation 3: When compliance is assumed because a consumer failed to return a performance verification letter, manufacturers should

⁸³ Of course, he can't entirely preclude the possibility that a consumer did return such calls and didn't get a response.

⁸⁴ Although the records available to the auditor didn't always identify the mode of communications used to send a letter, he is advised that BBB AUTO LINE always uses standard mail and, if the consumer requests email, it uses email as well.

be so advised.

A separate issue arises when manufacturers undertook performance but the results didn't satisfy the consumer. For example, a typical "repair" settlement provides that the manufacturer would arrange an inspection by a field service engineer and then correct any warranted problems; the consumer might well be dissatisfied if the FSE concluded that the car was acting properly, perhaps because a noise that bothered the consumers was, in the FSE's judgment, normal for the car. In these situations, the consumer can return to BBB AUTO LINE. If she does so and the original resolution was a mediated settlement, BBB AUTO LINE will treat the reopened cases as a "-1R" case (or "-2R", etc.), with the "R" designation appended to the original case number.⁸⁵

For current purposes, the auditor notes that, even if the consumer wasn't satisfied with the result, it would be problematic to deem the manufacturer's initial performance as non-compliant – particularly when the manufacturer's position might still prevail if the consumer returned to BBB AUTO LINE. On the other hand, the consumer might also prevail in a later proceeding. Given a binary choice between "compliant" and "non-compliant," the auditor believes a compliance designation is appropriate. But the situation is more nuanced than a binary choice can capture.

Last year, the auditor suggested that BBB AUTO LINE create a new recording category, perhaps termed something like "compliant but consumer unsatisfied," to capture the nuances more accurately. On reflection, he notes that the number of 1R cases (including 2R's and 3R's) can be readily identified. BBB AUTO LINE counted 654 of them in this year's national population, and they constitute about 7% of all cases, or roughly one in four mediated cases. And, while these figures don't capture every nuance of the situation, it provides a reasonable and easily obtained surrogate for that total.

D. Recordkeeping for Individual Cases and by Manufacturer and Model

Rule 703.6(a) requires the BBB AUTO LINE to maintain certain records in specific cases.⁸⁶ To the extent it's possible to tell from a review of the files,⁸⁷ the auditor saw no

⁸⁵ If the original resolution was an arbitrator's decision, the arbitration would be reconvened. These cases are discussed at greater length in Chapter 3, Section II.C.3, and references below to "1R" cases included, even if not specifically noted, 2R (and beyond) cases as well.

⁸⁶ 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;

problems on compliance with this provision, or with analogous provisions from Florida⁸⁸ or Ohio.⁸⁹

- (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.

⁸⁷ There's no way to tell, for example, if "all" written documents from all parties are included.

⁸⁸ Florida requires the submission of certain aggregate figures not required by Federal law (and these are discussed in the Chapter 3), but does not require additional records to be kept in individual cases.

⁸⁹ 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

Rule 703.6(b) requires that the BBB AUTO LINE maintain an index of case grouped under brand name and product model. The auditor has seen this index, although, consistent with past practice, it does not appear in this report. Rules 703.6(c), (d), and (e) require BBB AUTO LINE to maintain certain indices and undertake certain aggregate calculations, which 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.⁹⁰

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.

⁹⁰

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

Last year's 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. 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 notes that BBB AUTO LINE has addressed important issues in the past year. Most importantly, the CBBB has 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 has 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 does note one outstanding issue: BBB AUTO LINE has retained case files that are more than a decade old. Consistent with FTC guidance on document retention, he therefore offers the following recommendation.

Recommendation 4: The auditor recommends that BBB AUTO LINE update its document retention policy.

As a final note on this subject, while the auditor feels qualified to offer the recommendation above, he's not an expert in data security. He's very impressed that BBB AUTO LINE's own efforts to maintain data securely will now be supplemented by a firm that has greater technical expertise, but the auditor isn't in a position to fully evaluate BBB AUTO LINE's data handling.

CHAPTER 3

SURVEY

I. Introduction and General Analysis

As noted above, 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.⁹¹ This part of the audit 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 aggregates required by Federal or state law. As in the past, this part of the audit was implemented through a nationwide telephone survey, now conducted by TechnoMetrica Marketing Intelligence, that reached out to consumers who used the program and met certain other criteria, discussed below. In addition to the national sample, separate studies, using the same questionnaire, honed in on Florida and Ohio consumers.

This year’s questionnaire, however, expanded in significant respects on its predecessor. On two key factors – process (was the complaint arbitrated, mediated, ineligible, or withdrawn) and remedy – consumers were now told how BBB AUTO LINE records reported their cases, and asked to confirm or correct those records. This facilitated analysis on both a “macro” and a “micro” level. On the macro level (previously the exclusive mode of analysis), the auditor compared aggregate results from the survey to aggregates compiled by the CBBB. On the micro level, the new format enabled the auditor to examine how frequently consumers agreed with BBB AUTO LINE records specific to their cases.⁹²

Additionally, while the audit has previously included (in addition to the survey) an examination of individual case files, the selection of those files was previously independent of the survey.⁹³ This year, though, the auditor used the “micro” survey results to identify files for review. Specifically, he examined files from consumers who either:

- (1) disagreed with BBB AUTO LINE records reporting on the process used; the remedy, if any, under a settlement or arbitration decision; or whether an arbitration decision was accepted⁹⁴;

⁹¹ Rule 703.7(b)(3).

⁹² Among other things, the micro analysis would have been useful to isolate the source of the problem had substantial problems emerged in the macro analysis. If the aggregate “macro” numbers didn’t reasonably match, for example, the “micro” analysis would have shown if the underlying problem was (at least in part) in the classification of individual cases.

⁹³ Last year, for example, the auditor sequenced BBB AUTO LINE’s spread sheet listing all consumer complaints alphabetically. He then examined the first 50 files in the national, Florida, and Ohio samples that began with the letter “L.”

⁹⁴ For cases where the consumer disagreed about whether an arbitration decision was accepted, the auditor found a pattern after he examined a handful of cases and skipped the examination of those comparable cases.

- (2) reported, in cases where the consumer had previously said that they reached a settlement or accepted an arbitration award, that the manufacturer hadn't complied, even belatedly, with its obligations;
- (3) withdrew a complaint; or
- (4) said they hadn't received a description of their mediated settlement, a copy of their arbitration decision, or a copy of the consumer complaint form generated at the outset of the case.

The auditor also examined several files for cases that weren't resolved within 40 days. Applying these criteria, the auditor reviewed files for about 25% of the consumers that TechnoMetrica sampled.⁹⁵ While the auditor explored any question in the file that caught his attention, his initial, primary, and sometimes exclusive focus was to explore the issue that drew him there in the first place.⁹⁶ Additionally, as discussed below, the survey (and thus the file review described above) didn't reach consumers who used lawyers. The auditor therefore supplemented his file review with additional cases, focusing on Ohio and Florida, where the consumer had a lawyer.

For the reasons discussed below, the auditor finds that BBB AUTO LINE processes and recordkeeping are in substantial compliance with Rule 703.

A. Micro Analysis Summary

1. Introduction

As noted above, the audit serves both to evaluate the adequacy of BBB AUTO LINE procedures and to substantiate the accuracy of its record-keeping. With respect to the former, the new processes honed in on potentially problematic files, and thus made it more likely that the auditor would find systematic problems if such problems existed. In essence, the new approach was more likely to identify potential problems. And, despite the tightly focused search, the actual problems identified (as discussed in the previous chapter and below) were relatively few and limited.

Further, with respect to the adequacy of BBB AUTO LINE's record-keeping, the case file review provided context to understand differences ("discordances") between BBB AUTO LINE's records and consumer survey responses and, in doing so, to a large extent alleviated

⁹⁵ Excluding attorney cases (which focused on cases from Florida and Ohio), there were roughly 100 reviews from the national sample; 40 from Florida, and 15 from Ohio.

⁹⁶ 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? Why did the consumer say he had a repurchase remedy when BBB AUTO LINE reported that he had a repair?) In other instances, such as questions about whether the consumer received a consumer complaint form, they focused on a narrow point.

possible concerns about BBB AUTO LINE's record-keeping. In one unusual situation, discussed in connection with Tables III-13 through 15, an unusual discrepancy followed by a file review led the auditor to recalculate the tables using a different base.⁹⁷ More frequently, the auditor's review of targeted files found, for numerous metrics, that the discordances identified by TechnoMetrica overstated the likelihood or frequency of underlying problems. And this is quite significant for the auditor's analysis. For example, on a question as fundamental as "what remedy did the consumer get," a discordance of 5% between BBB AUTO LINE's records and the individual consumers' responses could be potentially troublesome. But the landscape changes when, as discussed below, (1) a significant majority of the discordances are reasonably explicable (2) the underlying files in many other cases contain sufficient information to show either that (a) a consumer was almost certainly wrong (as where he said the he hadn't received a form that he actually signed and returned) or (b) in cases where BBB AUTO LINE and the consumer each reported that the other didn't return communications, the documented BBB AUTO LINE actions show sufficient effort that it's hard to see how they might have done more.

2. Reasonably Explicable Discordance

First, after reviewing various underlying files where consumers' responses and BBB AUTO LINE records were discordant, the auditor found several types of cases where a seeming dissonance was reasonably explicable. In most cases where the consumer's response differed from the BBB AUTO LINE response, both appeared to be understandable interpretations of the underlying facts. Moreover, most of these cases showed recurring patterns.

a. Straddle Cases

Many cases "straddled" two years, with developments (usually in a related case rather than the original case) that extended into 2017. In straddle cases, because of limitations in the survey process that would be difficult and sometimes impossible to correct, some consumer responses to TechnoMetrica reflected developments that weren't picked up by the spread sheet that BBB AUTO LINE prepared and TechnoMetrica used. To give a sense of the order of magnitude of this issue, in the national survey, 22 of 401 consumers disagreed with BBB AUTO LINE's record about the process used to resolve their cases. Of that 22, though, 5 (23% of the discordant files) were straddle case where the consumer described events from 2017 that were reflected in a later BBB AUTO LINE file.⁹⁸

⁹⁷ Basically, the problem was that consumers who lost in arbitration were asked if they had accepted the arbitrator's award. Many of them initially said "no" (perhaps because they had been told that they had to say no to preserve other options for relief). When contacted by TechnoMetrica months later, and perhaps having taken no further action in the interim, a substantial percentage changed their answers to "yes."

⁹⁸ The later file wasn't included in the spread sheet BBB AUTO LINE prepared because that spread sheet included only cases that closed in 2017.

b. Cases Where Discordant Views Both Reasonably Reflected Seemingly Undisputed Facts

Also, in numerous cases the consumer's response and BBB AUTO LINE's records both were reasonable reflections of seemingly undisputed facts. While some cases raise unique issues, some recurring patterns also emerged. These include, for example:

Settlements that weren't "mediated." As noted in Chapter 2, some consumers resolved complaints directly with the manufacturer (or dealer) and withdrew their complaints. BBB AUTO LINE reported these cases as withdrawn, while some consumers called them mediated.⁹⁹

Settlements during or after arbitrations. If the parties plan to go to arbitration but settle before the hearing begins, BBB AUTO LINE records a mediation. However, if the hearing has begun but the arbitrator hasn't yet issued a decision, their agreement is embodied in a "consent decision" prepared by staff. The agreement becomes effective when the parties and arbitrator sign it, and, to the apparent confusion of some consumers, BBB AUTO LINE reports these as arbitrations.

If the parties settle *after* the arbitrator issues a decision, the settlement supersedes the decision, but BBB AUTO LINE still records the process as an arbitration and the remedy as what the arbitrator ordered (which, in the auditor's view, is the best way to handle a situation that has no optimal solution¹⁰⁰). Whether the settlement precedes or follows the decision, though, the consumer may well be confused in responding to the survey.¹⁰¹

Confusion about "ineligibility." In other instances, consumers seemed to read "ineligible" more broadly than did BBB AUTO LINE. The program restricts the

⁹⁹ This might be a situation where BBB AUTO LINE could improve their recordkeeping; it would be useful if case handler's expressly mentioned in their case notes, on a routine basis, that the consumer had declined the BBB AUTO LINE's further services.

¹⁰⁰ Although the arbitrator's decision was superseded, the arbitrator still issued a decision and, the auditor believes, the program needs to report this as an arbitrated case. Once that's done, though, it would seem misleading to associate with an arbitration decision a remedy other than the remedy that the arbitrator 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. (The problem only arises, though, when post-decision settlements change the remedy from one category to another; it doesn't arise, among other instances, when the settlement only extends the time for compliance.)

¹⁰¹ Further, it's not practicable to clarify the nuances to affected consumers during the survey without bogging down the survey with details that, to most consumers, would be complex and even annoying minutia.

term to complaints found ineligible *to participate in the program*. But some consumers seemed to use it, for example, because they weren't eligible for a replacement or repurchase, although they might have obtained other relief (such as a repair) under the program. Another consumer seems to have used the term because the manufacturer didn't find a problem when it inspected the car pursuant to a repair remedy. (The auditor accounted for this case by presenting the number of reasonably explicable cases as a range, the lower mark of which excluded the case and the upper mark of which included it.)

Finally, a different sort of confusion arose in some cases where consumers were told that their cars were ineligible for the program and withdrew the complaints, BBB AUTO LINE's closing letter to the consumer cited the withdrawal, but some consumers later told TechnoMetrica the complaint was ineligible.¹⁰²

3. Very Well Documented Cases

a. Apparent Consumer Error

Preliminarily, the auditor is extremely hesitant to characterize a consumer response as inaccurate.¹⁰³ He is well aware, for example, of the asymmetry in this audit process; consumers were invited only to respond to survey questions, but the auditor had broad access to BBB AUTO LINE's underlying records. And the auditor is also aware that seeming discordances aren't necessarily inconsistencies; even if BBB AUTO LINE sent a communication, for example, that doesn't necessarily mean that the consumer received it.

Still, there are cases where consumer error seems highly likely, sometimes to the point of virtual certainty. Some examples follow.

Files containing returned copies, signed by consumers, of documents that the consumers said they never received. Consumer memory lapse seems particularly likely on document receipt questions. Consider the consumer complaint form

¹⁰² The auditor believes that confusion about ineligibility might be mitigated by a small tweak to next year's survey instrument, explaining more precisely to consumers the narrow meaning of the term.

¹⁰³ When the BBB AUTO LINE records say that a matter was closed because the consumer didn't return the BBB AUTO LINE's calls and the consumer says that BBB AUTO LINE didn't return her calls, there are steps that BBB AUTO LINE could take by including supporting details in its records that make it highly probable that BBB AUTO LINE took all reasonable steps. (For example, as case handlers often do, they might document multiple calls in their notes and summarize voice mails left with each call; they might also, again as case handlers often do, reference those calls in a closing letter sent to the consumer.) Still, the auditor would hesitate to say that the consumer was wrong in a particular case, particularly because the consumer was less likely than BBB AUTO LINE to maintain detailed records and, even had she maintained them, she was never asked to produce them.

generated from a consumer's initial contact, which is sent to the consumer to correct, supplement, sign and return. Consumer memory about this early stage in the process might well be fuzzy and, among consumers who said they didn't receive a form, the auditor found that about half had returned a signed form.

Other situations. Some situations seem relatively straightforward, as where a consumer reported that a case was arbitrated but the underlying file includes none of the extensive documentation that accompany an arbitration, or where the consumers says it was mediated but the file fully documents an arbitration. In another case, the consumer was a no-show at an arbitration hearing. Following BBB AUTO LINE procedures, the hearing went forward without him and he was invited to submit additional written materials after the hearing. (He declined). The arbitrator issued a decision, again consistent with the program's procedures, but the consumer told TechnoMetrica that the case wasn't arbitrated.¹⁰⁴

b. Other Very Well Documented Cases

A somewhat different situation arises when there was a breakdown in communications, for which BBB AUTO LINE's records point to the consumer while the consumer points to BBB AUTO LINE and its staff. Despite the considerations noted above (including the asymmetric information available from the consumer and from BBB AUTO LINE) the auditor was struck by cases where BBB AUTO LINE documented, for example, six attempts to reach the consumer, including four voicemails and two letters, one a week before the closing and one at the time of closing, with both letters referencing the voice mails. Even here, the auditor can't fully discount the possibility that the consumer *did* return calls and their return calls were somehow neglected. On balance, the auditor decided to deal with these through a means noted for one of the "reasonably explicable discordances" – by reporting a range whose lower mark excludes the case and whose upper mark includes it.

4. Other Cases

On attributes like remedy and process (and using numbers from the national survey, which drew on the largest sample) roughly 5% of the consumers surveyed disagreed with a BBB AUTO LINE record. On examination, as noted above, most of these seem to be cases where there's a reasonably explicable discordance, while some of the rest were sufficiently well documented by BBB AUTO LINE that it seems highly likely that BBB AUTO LINE's records were right. While the auditor can't dismiss the possibility that there's a different explanation for a discordance in a case or two, it seems highly likely that these situations accounted, in the national sample, at least 3%, and probably closer to 4%, of the 5% discordant replies.

The remaining cases have a greater element of ambiguity; they include, for example, cases where communications seem to have broken down and BBB AUTO LINE's records

¹⁰⁴ The consumer in this case identified the process as "other."

weren't quite as thorough as in the cases above. In this case, it's hard to judge, even tentatively, whether the breakdown resulted from a problem at BBB AUTO LINE's end, the consumer's end, or both. These few cases are the basis for Recommendation 3, in Chapter 2, that BBB AUTO LINE establish more detailed procedures for documenting "endgame" communications, so that, in the future, cases will more consistently meet the high standard of documentation that most files already meet.

5. Some Illustrative Findings

Improvements to the survey instrument and to the process used to identify cases for file reviews thus facilitated new modes of "micro" analysis, and this, in turn, substantially improved the audit process. Additionally, the auditor worked with TechnoMetrica to better the survey instrument in other ways. For example, consumers who had settled their cases were asked last year if they had received a "letter" describing the settlement. The analogous question this year asked if they received a description "by letter or email."¹⁰⁵

Focusing for the moment on the national survey, some examples follow of the results that can likely be attributed, at least in part, to these changes.

-- In the 2015 audit, when asked if they had received a consumer complaint form, 6% of those who replied yes or no (rather than "not sure") said no. This year that dropped to 4% – 15 consumers. But through a micro analysis, the auditor found signed consumer complaint forms in eight of the underlying files.

-- When consumers were told how BBB AUTO LINE recorded whether their cases were ineligible, withdrawn, mediated, or arbitrated (the "process"), 95.5% agreed with those records. And, of the 4.5% (22 cases) where consumers didn't agree, the auditor concluded (among other things) that 15-16 were "reasonably explicable discordances" (as discussed above) and another 2-3 were very well documented cases.

Somewhat impressionistically, it appears that, on certain key metrics like process and remedy, BBB AUTO LINE records match consumer's responses about 95% of the time – but they likely match the underlying facts (taking account of situations where the consumer and BBB AUTO LINE are both in a sense "correct," as well as situations where the consumer was demonstrably wrong or very likely wrong) more likely 98-99% or more of the time.

Conclusion:

Based on the micro analysis in this year's audit, the auditor concludes, with a high degree of confidence, that: (1) in the vast majority of cases, BBB AUTO LINE's records mirror consumers' responses; and (2) in most cases where the

¹⁰⁵ Also, the "document received" questions were all grouped together, which in the auditor's view made the survey flow better and reinforced the reference to email in various questions.

responses don't match, either (a) the discordance is reasonably explicable, or (b) support for BBB AUTO LINE's records is very well documented.

B. Macro Analysis Summary

The micro analysis above shows that BBB AUTO LINE's records in individual cases, as reported in the spread sheets used by TechnoMetrica for its survey, matched consumer's responses with a reasonable degree of accuracy, and matched the underlying facts (actual or highly likely) with a very high degree of accuracy. But what of the accuracy of BBB AUTO LINE's aggregate calculations, which built on the same data base from which the spread sheets were derived? That's the subject of the macro analysis.

1. Comparing Survey Aggregates to BBB AUTO LINE's Calculated Aggregates

Prior audits of BBB AUTO LINE have presented the core of their "macro" analyses (though without using that term) by comparing aggregate figures from the survey to BBB AUTO LINE's calculated aggregates. The discussion that follows explains, however, why the auditor believes it was sometimes important to supplement these comparisons.

Preliminarily, there were two sorts of survey errors for which the auditor corrected: *coverage errors*, and, to some extent, *non-response errors*.

A coverage error arises when the sampling frame, from which consumers were called, differs systematically from the overall population.¹⁰⁶ As explained below, certain cases (those where consumers used attorneys and those that were followed by a later related case) weren't included in the survey. To the extent that parallel adjustments weren't made to BBB AUTO LINE's aggregate figures, there would have been a coverage error – essentially, the audit would have compared apples to oranges.¹⁰⁷ To address this, the auditor used, as one source for comparing the survey results, a modified version of the BBB AUTO LINE spreadsheet that TechnoMetrica generated to identify consumers to call. This list omitted precisely the cases that the auditor needed to omit.¹⁰⁸

A non-response error arises when certain types of consumers are less likely to respond to the survey than others. The auditor was struck, in particular, by one result in Table III-6: fewer than 37% of consumers in the national survey said their complaint was "ineligible," while the adjusted aggregates (using the same spread sheet that was the basis for the survey) reported a figure higher than 47%. Was it possible that consumers who weren't eligible – 60% of whom

¹⁰⁶ This is the sort of issue raised, for example, when surveyors only call landlines, and miss consumers (who tend to be younger) who have only cell phones.

¹⁰⁷ The possible magnitude of one such error is explored in Section II.C.2, below.

¹⁰⁸ As explained below, the auditor relied on this list only after he confirmed that a fuller version of the spreadsheet generated aggregates substantially identical to those calculated by BBB AUTO LINE.

were identified as ineligible a day after filing a complaint – had so little contact with the program that they were less vested in it than other consumers? And might they therefore have been less willing to take the survey in the first place? TechnoMetrica did a quick analysis for the national and Florida samples and found that this was in fact the case – among the consumers who were called in the national sample, for example, about 17% of “ineligibles” took the survey, compared to 21% of consumers who withdrew their complaints, 24% of those whose cases were resolved in mediation, and 28% of consumers who used arbitration. These numbers help explain (among other things) the low percentage of “ineligible” responses in the survey.

The nature of this survey created yet another form of error, a *measurement error*, because of some of the branching built into the survey. For example, if a consumer said his case was arbitrated when this wasn't the case, he would still have been asked if he accepted the arbitrator's award – and, if he gave a reply, there would have been no entry in BBB AUTO LINE's records to which his answer could be compared.

Another issue is that the survey standing alone could identify *possible* problems, by showing, for example, where consumers' descriptions of their experiences diverged from BBB AUTO LINE's records. But the deeper purposes were to determine whether there were *actual* problems with BBB AUTO LINE's record-keeping or its underlying processes. In this respect, the micro analysis suggested that, for various metrics, most discordant responses didn't point to a possible problem, or at most pointed to a limited problem (and thus prompted a recommendation in Chapter 2). For purposes of the macro analysis, though, they would still show up as differing responses, and could thus increase the differential between consumer responses and BBB AUTO LINE records.¹⁰⁹

Finally, as further explored in Section II.E, there's an inevitable sampling error in this sort of survey. The sampling error goes to the precision that can be hoped for in projecting from a random sample of consumers to a larger population – for example, in projecting from the 401 consumers interviewed in the national survey to the adjusted population of 7031, the “sampling frame” from which the 401 interviewees were drawn. As noted in Section II.E, the smallest margin of error would apply to questions posed to the most consumers, specifically, those posed to all 401 consumers in the national sample; that margin of error is +/- 4.8%. The margin grows to +/- 7.3% for the (smaller) Florida sample and to +/- 10.4% for the (even smaller) Ohio sample. Moreover, those numbers are even higher when specific questions weren't directed to all consumers who were surveyed, but only, for example, to those who used arbitration. For some questions, particularly in the Ohio sample, it rises above 20%.

The FTC expressly declined to require that the audit include a “statistically valid” sample as part of the audit, but in doing so seemed to contemplate that “*primary emphasis*” could then be placed on the “analysis of a random sample of disputes handled by the Mechanism to determine the ... (i) Adequacy of the Mechanism's complaint and other forms, investigation,

¹⁰⁹ The impact of such divergences was reduced, however, to the extent that some “errors” cancelled out. For example, if one consumer said that a mediated case was arbitrated while another said that an arbitrated case was mediated, the errors would balance out in the aggregate calculations.

mediation and follow-up efforts, and other aspects of complaint handling.”¹¹⁰ In essence, this is what the auditor has done. He did compare the BBB AUTO LINE’s aggregates figures to figures based on the survey. And in many cases, particularly for the larger national and Florida samples, and particularly after weighting certain responses to account for non-response errors, the results *were* within the range of statistical significance and that range wasn’t unduly high. But these quantitative comparisons were also backed up by the micro analysis (discussed above in Section I.A) as well as other quantitative comparisons that relied on that micro analysis (as explained in Section I.B.2, below). Taken together, these results provide strong bases for findings of substantial compliance – even where, as in the Ohio sample, the margin of error is relatively large and/or numbers fall outside that range.

2. Comparing the Survey Aggregates to Other Aggregates

For all of these reasons, the auditor draws somewhat limited conclusions by comparing the survey results to BBB AUTO LINE’s aggregates calculations. But the auditor found another route that, for at least some metrics, permits stronger conclusions.

Essentially, the micro analysis showed that, for the 401 consumers surveyed, BBB AUTO LINE records matched consumer responses reasonably well. On metrics such as process and remedy, for example, they matched about 95% of the time. More importantly, the records matched the underlying circumstances even more frequently (because of the reasonably explicable discordances and the very well documented cases discussed above). Again focusing on the process and remedy entries, they matched the underlying circumstances with certainty, or at least a very high likelihood, at least 98-99% of the time.

This gave the auditor substantial confidence (despite a random selection factor¹¹¹) that the overall spread sheet was a similarly accurate representation for the broader sampling frame. In essence, the micro analysis to a substantial extent “vouched for” the spread sheet as a whole, in which event it also vouched for certain aggregates that the auditor obtained from that spread sheet. And then, when the “vouched-for” aggregates that the auditor himself obtained proved nearly identical to the aggregates that BBB AUTO LINE produced, they gave the auditor a stronger reasons to trust the BBB AUTO LINE figures.

Conclusion:

Based on the macro analysis, the auditor concludes that BBB AUTO LINE’s aggregate calculations are fully consistent with the survey’s results. Based on the extension of the micro analysis described above, his confidence in numerous measures is significantly increased.

¹¹⁰ Rule 703.7(b)(3); 40 Fed. Reg. 60190. 60213 (1975) (“primary emphasis” language).

¹¹¹ The random selection error isn’t the same as, though it’s mildly analogous to, a margin of error.

C. Satisfaction Rates

Additionally, the survey continues to include questions about consumer satisfaction and, starting last year, the audit began to report satisfaction rates as a grade on a 4.0 scale. In this year's audit, two of the three key metrics showed a substantial improvement.¹¹²

(1) When consumers were asked to grade BBB AUTO LINE staff for three measures and the measures were combined into a single grade, the composite grade in the national sample rose to 3.29 (essentially a B+) from last year's 2.85 (essentially a B/B-). There was also a small increase in the composite grade for Ohio (from 2.94 to 3.01), and a small decrease (from 3.20 to 3.10) in the composite grade for Florida, which previously reported a higher satisfaction rate than the other samples.

(2) When asked whether they would recommend BBB AUTO LINE to friends and family, 74% of consumers in the national sample who used mediation or arbitration said yes; this year, that number rose to 82%.¹¹³

II. Conducting the Survey

A. TechnoMetrica

As noted last year, the auditor lacks the capacity to conduct a survey himself and, as was done last year, CBBB contracted with TechnoMetrica Market Intelligence¹¹⁴ to help the auditor

¹¹² For purposes of these and other percentage figures, and for reasons discussed below, consumers who said "not sure" were consistently excluded from the percentage calculations. To the extent necessary, the auditor recalculated applicable percentages from 2015.

¹¹³ The arbitrator satisfaction grades were more ambiguous. In the national sample, last year's audit broke out the grades from consumers who got a favorable result from those who got no relief; not surprisingly, there was a substantial variation between the two. This year, the ratings from consumers in the national sample who get a favorable decision rose even higher (to 3.40 from 3.21); the ratings from those who didn't win went even lower (from 1.14 to 1.12); and the disparity between the two therefore grew. This seems intriguing, but the auditor notes that a comparable "polarization" didn't appear in the Florida or Ohio results.

¹¹⁴ 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 20 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,

in designing, conducting, and analyzing the study.¹¹⁵ Once that contract was signed, TechnMetrica worked directly with the auditor, and the auditor took the lead in deciding on the survey's approach (including the use of the new "micro" analysis). He worked closely with TechnMetrica 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. Survey Timing

Last year's survey, which as noted above was conducted exclusively on the "macro" level, found several disparities between the aggregate consumer responses and BBB AUTO LINE statistics; additionally, it found a fair number of consumers reporting that they hadn't received certain documents, a result seemingly at variance with BBB AUTO LINE records showing the document were sent. In his report, the auditor suggested that one explanation for these responses might have been that consumers were surveyed as late as April 2016 about cases that had closed as much as sixteen months earlier. With the passage of time, he speculated, some consumers might have forgotten (for example) that they had received certain documents. To address this concern, the auditor had initially hoped to conduct this year's survey in multiple "waves,"¹¹⁶ and perhaps to begin it a bit earlier. However, in part because of the expense of doing multiple waves, the timing this year was comparable to the timing last year.

Based on the results, though, the auditor now believes that timing was *not* a sufficient concern to warrant different (and more costly) procedures. First, this year's results showed far fewer discordances, so the need for explanation is correspondingly reduced. Second, on the "document receipt" questions, where memory lapse seems most likely, the auditor asked TechnMetrica to break out this year's results by quarters. If a lengthening time lag were an issue, the auditor would have expected that consumers surveyed in April 2017 about cases that closed in early 2016 would have systematically reported substantially fewer "receipts" than consumers surveyed about cases closed later in the year. As shown below, though, any such affect was limited, and, in the auditor's view, does not warrant a substantial and costly change in procedure.

TIPP (TechnMetrica Institute of Policy and Politics), achieved Most Accurate Pollster status for the last 4 consecutive Presidential elections (2004, 2008, 2012 and 2016).

TechnMetrica is certified by the State of New Jersey as a Minority Business Enterprise (MBE) and is a member of a number of industry organizations, including AAPOR and the American Marketing Association.

¹¹⁵ The auditor spoke to TechnMetrica before last year's survey and agreed to work with them, and this year again agreed to the use of TechnMetrica.

¹¹⁶ For example, consumers whose cases had been closed in the first half of 2016 might have been surveyed around October 2016, and those whose cases had closed in the second half of 2016 around March or April 2017.

C. The Population That Was Sampled

1. Temporal Scope

Consistent with the 2015 audit, the 2016 audit covered 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.¹¹⁷

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 was through their attorney. But the FTC rule doesn't seem to contemplate calls to attorneys – the audit rule specified contacts with “consumers.” And attorneys were unlikely to respond to a multi-question survey, particularly about specific cases. The likely problems were exacerbated by firms that handled a large number of cases – in some cases hundreds of them. Indeed, as discussed in Section III.G, three firms accounted for over 58% of the 1800 cases where consumers had lawyers.

However, there were also problems with directly contacting consumers who had counsel. For example, these consumers hadn't provided their personal phone numbers as contact information, so it would have taken some effort to develop that contact information – and some consumers may have 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. Consumers with counsel were more likely to use arbitration, but far less likely to appear at arbitration hearings in person. Perhaps concomitantly, they experienced a relative lack of success. When they did succeed in arbitration, moreover, they were more likely to reject arbitration awards, even those providing repurchase or replacement remedies. In general, consumers with attorneys 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 of their attorneys might have viewed it) as a hurdle to be cleared so they could go to court under a state lemon law.

As in last year's audit (and, to the best the auditor could determine, in prior audits), the auditor excluded consumers with counsel from the survey. The result was to omit about 19% of consumers from the national sample, about 20% from the Florida sample, and in Ohio, where consumers used lawyers more frequently, to omit about 35% of consumers.

¹¹⁷ Before last year, 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).

And this raised a potential “apples and oranges” problem. Given the percentages of consumers who used attorneys, and the differing profiles of those cases, omitting them significantly impacted the results of the survey. Having excluded them from the survey, a comparison to BBB AUTO LINE’s aggregates wouldn’t have been valid if the aggregates weren’t (for the limited purpose of this computation) similarly adjusted. As shown below, the auditor developed a separate mode of analysis that allowed him to adjust both for the omission of attorney cases, discussed in this section, and for multiple complaints about the same vehicle, discussed in the next.

3. Multiple Complaints about the Same Vehicle (MCSVs)

This year’s survey also took the same approach as did last year’s to MCSVs. These include so-called “1R” cases,¹¹⁸ where a remedy (usually an inspection under the auspices of a Field Service Engineer followed by a repair if the FSE finds a problem) results from a settlement;¹¹⁹ the manufacturer undertakes to perform; the consumer isn’t satisfied; and the consumer, in a timely fashion, tells the BBB AUTO LINE that she wants to proceed further. TechnoMetrica identified MCSVs, including but not limited to 1R cases,¹²⁰ by finding cases with the same contact number.¹²¹

As noted last year, the BBB AUTO LINE’s general approach is to open a new case when a consumer with a mediated settlement isn’t satisfied with its implementation. And, as also noted last year, this approach has a sound basis. The FTC, Florida, and Ohio all recognize a repair remedy as an appropriate outcome to the dispute resolution process.¹²² A repair resulting from a BBB AUTO LINE case might well resolve the consumer’s concerns where past attempts have failed, particularly because it likely involves an inspection by a FSE. Despite the potential for some delay, a repair remedy also 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; even before the consumer returns to BBB AUTO LINE, the manufacturer will have arranged an inspection and perhaps attempted a repair; and, when the underlying problem manifests itself only intermittently, the consumer may have needed to drive

¹¹⁸ The term “1R” also includes “2R” cases (and beyond).

¹¹⁹ 1R cases 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.

¹²⁰ Other MCSVs might also include, for example, a situation where the consumer withdrew a complaint because she was travelling abroad, and refiled when she returned.

¹²¹ This could be over-inclusive 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.

¹²² 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).

the car for a time before deciding whether he's satisfied. Yet the time to process the initial complaint and to attempt a repair will likely have exhausted 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 new "1R" case.¹²³

Yet starting the clock anew 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 would likely be annoyed and refuse to repeat the survey.¹²⁴ (As noted below, only 23% of the consumers contacted in the national sample were willing to go through the survey even once.) So, when the same phone number appeared more than once on the spread sheet that BBB AUTO LINE provided, 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 complaints during the year.

MCSVs would also create an apples and oranges problem, if the auditor compared BBB AUTO LINE's aggregate calculations to the survey results, absent appropriate adjustments to the aggregate figures (again, for the limited purpose of facilitating these comparisons). As noted above, consumers who filed MCSVs were queried only about the latest case that they filed. Most of the MCSVs were 1R cases (a rough estimate suggests these were nearly 70% of the MCSVs, and the cases that preceded 1R cases (the "pre-1R cases") accounted for roughly 7% of the non-attorney cases.¹²⁵ Further, the cases preceding the 1R case (which are the cases excluded from the survey process) have a different profile than the average BBB AUTO LINE case; most significantly, about 30% of the complaints filed with BBB AUTO LINE end in mediation, but pre-1R cases are *always* mediations. If the omitted cases were excluded from the survey but included in the CBBB's aggregates, the impact might well create a difference between the two on the order of 5%.¹²⁶ And this, as discussed above, would be a *coverage error*. As explained in

¹²³ 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.

¹²⁴ In Ohio, where TechnoMetrica needed to call every eligible consumer, this annoyance and futility would have reached every consumer with MCSVs.

¹²⁵ By sorting the spread sheets provided by BBB AUTO LINE, the auditor found 7944 non-attorney cases. Of these, 647 were either 1R or 2R cases; 634 of these were non-attorney cases, constituting 8% of the 7944. While straddle cases add further complications (some of the pre-1R cases had closed in 2015 and wouldn't have shown up in the 2016 spread sheet anyway) the auditor estimates that over 7% of the cases excluded from the survey *were* 1R cases.

¹²⁶ Roughly speaking, assume 600 1R cases (slightly less than 634 noted above). 600 "typical" BBB AUTO LINE cases would include about 180 mediations (30% of the total), while 600 pre-1R cases would include 600 mediations. The difference (420) is over 5% of the total non-attorney cases.

Chapter I.B.2, however, the auditor was able to control for virtually all questions raised by the omitted cases in MCSV situations, including but not limited to questions raised by pre-1R cases, by using the abbreviated spread sheet prepared by TechnoMetrica.

D. Sampling

As noted above, TechnoMetrica cleaned the lists provided by BBB AUTO LINE before sampling. Using the phone number as the key field, any multiple complaints from the same consumer were identified and removed, as were any records with no contact phone number. The size of the national sampling frame after cleaning was 7,034 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 34 records. Sample for data collection was released in replicates – that is, a fresh replicate was only released upon completion of the prior replicate. The National data collection used five replicates (4 full replicates and part of the 5th). This sampling method ensured that the National sample was truly representative from the standpoint of inclusion of Florida and Ohio records.

For Florida and Ohio, we used all available records in replicates 6 to 15 in addition to any unused in the national sample. The sampling frames for Florida and Ohio were 912 and 228 records, respectively. Note that due to extremely limited sample, Ohio completes in the National survey were counted under both National and Ohio surveys.

E. Fielding and Margin of Error

Again quoting from TechnoMetrica,

Interviews were conducted on weeknights between 4/12/17 and 4/25/17, with up to 6 call attempts per respondent.

A total of 401 completes were obtained in the National survey, 151 in Florida and 64 in Ohio. The following table shows the response rate and margin of error for each of the surveys.

	Sampling Frame	Used Sample*	Completes	Response Rate	Margin of Error [†]
National	7031	1,841	401	21.8%	+/- 4.8
Florida	912	745	151	20.3%	+/- 7.3
Ohio	228	209	64	30.6%	+/- 10.4

*Excluding sample with outdated contact information

[†]Note that MOE is larger for subgroups and based questions

This is an important point. The sampling error, quantified as a margin of error, is an inherent limitation of using a sample rather than a comprehensive census. To use numbers from the national sample, and although the technical definition is rather complex, the point is this: If you sample 401 consumers from a population of 7031, the mere fact that you aren't posing questions to the whole population introduces an element of error into the findings.

The margin of error is lowest for the federal survey, where the number of completes was highest, and highest for Ohio, where the number of completes was lowest. To limit the margin of error for Ohio, TechnoMetrica tried to contact all consumers on the eligible list. It made six attempts to reach a consumer before giving up on reaching that consumer and, where a consumer provided multiple contact numbers, it attempted to call all of those numbers as part of each attempt. TechnoMetrica also counted Ohio consumers who were interviewed in the national survey towards the Ohio results as well. But they still couldn't drive the response rate above 30.6%, and they couldn't drive the margin of error below 10.2%.

Further, as the second note attached to the margin of error table highlights, these are the margin of errors for questions posed to all the surveyed consumers in the relevant population. When a question was directed only to the consumers who used mediation or arbitration, the margin of error rose. As the population grew even smaller (e.g., consumers who used arbitration), it rose further. By the time a question was posed only to a handful of consumers or less, the margin of error eventually became so high that the results have little value in projecting to the larger population.

While margin of error is an important concept for the analysis, though, it isn't relevant everywhere. It *is* relevant to the aggregate calculations considered in the macro analysis, where the margin of error helps interpret (for example) a difference between the combined survey responses showing the percentage of complaints that led to arbitration and BBB AUTO LINE's calculation of the same measure. It *isn't* relevant, though, to conclusions from the micro analysis, such as conclusions that, in roughly 5% of individual cases (or, by the auditor's adjusted figures, in roughly 1-2% of such cases), the consumers' descriptions of how their cases were resolved differed from the records in their individual case files.

II. Survey Results – Some Preliminary Notes

The next three sections present and analyze the survey results for the National, Florida, and Ohio populations. Preliminarily, though, the following notes may help the reader in understanding the tables in those analyses.

(1) **“Not sure” responses.** For last year’s survey, TechnoMetrica included not sure responses in calculating percentage figures and, for questions measuring consumer satisfaction, the mean grades. However, the auditor thought that result was problematic in numerous cases, and did alternative calculations by hand that excluded the “not sure” responses. He was concerned, for example, that counting the “not sure” responses in calculating mean grades was tantamount to treating them as failing grades.¹²⁷ For practical and other reasons, the auditor thought it appropriate to apply a consistent approach in treating these responses, and he concluded that omitting “not sure” responses provides a more meaningful measure of BBB AUTO LINE’s performance.

(2) **Gendered pronouns in describing consumers.** The analysis that follows (as well as the summary above) references various consumer case files in summary form, without identifying 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 base 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, e.g. “arbitrated case,” it means “cases identified by the consumer as “arbitrated.”

(4) **“Imported” results.** In a similar manner, in tables comparing consumer responses to BBB AUTO LINE records, the term “imported” refers to the characterization “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(s) that had subsequent follow-on.

¹²⁷ 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.

III. SURVEY RESULTS – NATIONAL SAMPLE

A. GENERAL INFORMATION

Table III - 1: Vehicle Year

	2016 Audit		2016 Audit
TOTAL	401 100.0%	TOTAL	401 100.0%
2000	1 0.2%	2009	5 1.2%
2001	2 0.5%	2010	7 1.7%
2002	2 0.5%	2011	20 5.0%
2003	1 0.2%	2012	30 7.5%
2004	4 1.0%	2013	62 15.5%
2005	1 0.2%	2014	81 20.2%
2006	5 1.2%	2015	115 28.7%
2007	3 0.7%	2016	52 13.0%
2008	7 1.7%	2017	3 0.7%

Table III - 2:
The BBB AUTO LINE's records show they closed a complaint in 2016 about your <year><make> vehicle. Is that correct?

	2016 Audit
TOTAL	401
	100.0%
Yes	397
	99.0%
No	4 ¹²⁸
	1.0%

Table III - 3: Repair attempts

	2016 Audit
TOTAL	401
BASE: same, "not sure" excluded	392
	100.0%
One	34
	8.7%
Two	21
	5.4%
Three	55
	14.0%
Four or more	208
	53.1%
None	74
	18.9%

¹²⁸ Of the four consumers who said no, three specifically disagreed with the year (and one of these also disagreed with the type of General Motors car that the complaint involved). The fourth consumer said that nothing happened after BBB AUTO LINE received her complaint but then stated (consistent with BBB AUTO LINE records) that the complaint was deemed ineligible.

**Table III – 4: How did you first learn about BBB AUTO LINE?
(Asterisked figures adjusted manually by the auditor.)**

	2016 Audit
TOTAL	401
BASE: same, “not sure” excluded	392 100.0%
Warranty documents*	48 12.2%
Dealer or manufacturer representative	65 16.6%
BBB/BBB Website	55 14.0%
Other internet website (Other than BBB website)	94 24.0%
Lawyer	10 2.6%
Friend/family/word of mouth*	88 22.4%
TV/Radio/Newspaper	4 1.0%
Other*	28 7.1%

This was an open-ended question. Consumers weren’t given a list of options, but rather gave their unprompted responses, which TechnoMetrica’s staff either (1) placed in one of the “silos” described above, or (2) recorded as “other” and also reported the substance of the response.

The auditor has reviewed the “other” responses – TechnoMetrica reported 37 of them – and concluded that 8 should have been reported as “warranty documents.” These were cases where consumers cited user manuals and TechnoMetrica hadn’t realized that user manuals that discuss BBB AUTO LINE essentially *are* the warranty documents.¹²⁹ Another clearly should have been classified as “friend/family/word of mouth.” The auditor adjusted the above tables to reflect these classifications.

Among the 28 remaining “other” responses, nine consumers cited state Attorney General offices, and three replied that they had used BBB AUTO LINE previously.

¹²⁹ For next year, the auditor intends to change the “warranty document” silo, so the language makes clear that it includes owner’s manuals. And he intends to create new silos “state Attorneys General Offices and other officials” and “used BBB AUTO LINE previously.”

B. PROCESS QUESTIONS

Preliminarily, the “survey responses” were developed by combining the results of a series of questions. Consumers were told how BBB AUTO LINE reported their cases, asked if they agreed, and, if they disagreed, were asked to select from the other possibilities.¹³⁰ Thus, for example, the 125 mediated cases reported above included 118 consumers who confirmed BBB AUTO LINE records saying that their cases were mediated, and 7 who corrected BBB AUTO LINE records showing that some other process was used.

Table III - 5: Comparisons of individual “process” responses

	Survey Responses				
	Mediated	Arbitrated	Withdrawn	Ineligible	Other
TOTAL	125 100.0%	94 100.0%	28 100.0%	148 100.0%	6 100%
Mediation (Imported)	118 94.4%	2 2.1%	1 3.6%	3 2.0%	2 33.3%
Arbitration (Imported)	1 0.8%	91 96.8%	-	-	1 16.7%
Withdrawn (Imported)	5 4.0%	-	26 92.9%	1 0.7%	2 33.3%
Ineligible (Imported)	1 0.8%	1 1.1%	1 3.6%	144 97.3%	1 16.7%

Concordance: 379/401 = 94.5%

Discordance as calculated by TechnoMetrica: 22/401 = 5.5%

Auditor’s observations: Of the 22 discordant cases identified by TechnoMetrica, the auditor estimates that at least 15 involve a reasonably explicable discordance, and 2-3 other files contain very strong documentation supporting BBB AUTO LINE’s position.

For this section (unlike comparable sections that follow), the auditor starts with the comparison of individual process response and the micro analysis, and then turns to the comparison of overall process responses and the macro analysis. As shown above, 379 of 401 consumers agreed with BBB AUTO LINE’s records describing the process used before their case was closed, while 22 (including the six who responded “other” in the table above) disagreed. This resulted in a 94.5% rate of “concordance.” This figure is somewhat impressive but not overwhelmingly so; if projected onto the total files in BBB AUTO LINE’s original spread sheet (more than 9700), it suggests that BBB AUTO LINE’s records might be

¹³⁰ The survey instrument (Appendix A) was constructed so the other possibilities didn’t include the one that the consumer had already rejected.

problematic in over 500. On examination, though, most of the 5.5% “discordant” cases – probably on the order of 4% or more – don’t involve a problem with BBB AUTO LINE processes or record keeping.¹³¹

Overall, the “micro” analysis of discordant cases doesn’t point to systematic problems with the BBB AUTO LINE processes or record-keeping. At most, there were some case files that might have provided more useful detail; these were already discussed in Chapter 2.

Table III - 6: Aggregate “process” responses

	Survey	BBB AUTO LINE, all cases	BBB AUTO LINE, excluding attorney cases	Auditor aggregate from original spread sheet, excluding attorney cases	Auditor aggregate from “fully adjusted” spread sheet
TOTAL	401	9748	7936	7943	7032
	100.0%	100.0%	100.0%	100.0%	100.0%
Mediation	125	2547	2476	2482	1969
	31.2%	26.1%	31.2%	31.2%	28.0%
Arbitration	94	2160	1094	1098	1088
	23.4%	22.2%	13.8%	13.8%	15.5%
Withdrawn	28	866	685	685	619
	7.0%	8.8%	8.6%	8.6%	8.8%
Ineligible	148	4175	3681	3678	3355
	36.9%	42.8%	46.4%	46.3%	47.7%
Other	6	-			
	1.5%	-			
MED/ARB COMBINED	219	4707	3570	3580	3057
	54.6%	48.3%	45.0%	45.1%	43.5%

This chart, the core of the macro analysis of “process,” begins with the survey results. The rest of the chart, in one sense, all leads to the fifth column -- the fully adjusted aggregates to which those survey results can be compared. But the intermediate columns do more as well.

Specifically, the second column shows the aggregate statistics that BBB AUTO LINE reported for all cases. As such, it presents important information about the full BBB AUTO LINE program. It shows, for example, the balance among varying types of resolution, as reported by BBB AUTO LINE, for all cases closed in 2016; more specifically, it shows, for

¹³¹ These include, for example, five “straddle” cases where the consumer accurately described information from the next calendar year; five cases where the consumers settled the matter on their own and BBB AUTO LINE records show a withdrawal but the consumer described a mediation, and five cases involving confusion about the term “ineligible” (for example, a consumer with a mediated repair settlement, who sold the car before the inspection, said the car was “ineligible” because it wasn’t eligible for a replacement or repurchase remedy).

example, that BBB AUTO LINE cases are resolved through mediation more frequently than through arbitration.

The third and fourth columns address the same metrics, but are limited to cases where consumers didn't have a lawyer. These columns hint at (but don't fully convey) the dramatic differences between attorney and non-attorney cases that will be explored further in Section G. For the moment, though, the auditor focuses on another element of the columns. Basically, the third column is drawn directly from the underlying data base; the fourth column is drawn from a spread sheet derived from that data base; and the results are nearly identical, with differences on the order of one entry per thousand.

In a way, the analysis could stop here. The substantial accuracy of the aggregates that the auditor identified was derived from a data base whose trustworthiness was shown by the micro analysis. Subject to some uncertainty because of random sampling issues, that trustworthiness extends to the aggregates derived from the data base. Since those aggregates are themselves virtually identical to the aggregates BBB AUTO LINE produced, *this substantial identity of columns 3 and 4 provides, by itself, a strong indication that BBB AUTO LINE's aggregates accurately reflect the situations in the underlying cases.*

However, the results described so far are also intermediate steps to a different analysis. For the reasons described above, column 4 is a reasonable surrogate for column 3. But column 4 was developed by the auditor from the same spread sheet that TechnoMetrica used to develop column 5, which adjusts not only for attorney cases but also for MCSVs. And column 5 contains all the adjustments that the auditor needs to compare the overall aggregates to the survey results, basically, to compare apples to apples.

As previously noted, though, in comparing those columns, the auditor was struck that only 36.9% of consumers described themselves as ineligible in the survey, while BBB AUTO LINE reported a 47.7% ineligibility rate. He speculated that perhaps "ineligible" consumers weren't as vested in the process as others – most of their cases were closed within a day – and might have been less likely to respond affirmatively when asked to participate in the survey. The auditor raised the question with TechnoMetrica, who went back to the data and advised that this was in fact the case. Roughly 21% of all consumers contacted took the survey, but the number was about 17% for consumers who weren't eligible, 21% for consumers who withdrew their complaints, 24% for consumers whose cases were mediated, and 28% for consumers whose cases were arbitrated.

And these results largely explain arguable discrepancies in the chart. To begin with the issue that the auditor initially identified, the number of "ineligible" survey responses was essentially suppressed by lower participation by ineligible consumers – and the percentage of mediated and arbitrated cases was consequently inflated. Had the participation rate among the various categories been equal, this would have moved various survey numbers closer to those reported in column 5. Further, the auditor was struck by the relative frequency of mediated and arbitrated cases. In the survey, consumers reported mediation in 125/219 (57%) of the cases where they reported either mediation or arbitration. Among the fully adjusted aggregates, though, the ratio was 1969/3957 (64%). But this difference, too, can be explained in part by

response rates; consumers who resolved their cases through mediation were less likely to take the survey. Indeed, while these figures don't admit of great precision, the auditor tried adjusting the survey responses to reflect the varying response rates, and recalculating the percentages with these adjusted numbers.¹³² The results proved a close match to the "fully adjusted" numbers in column 5 – 28% mediated, 18% arbitrated, 7% withdrawn, and 47% ineligible.

Further taking into account the margin of error for this question (+/- 4.8%), these numbers are fully consistent with the relevant aggregates. And, as noted above, the auditor finds it even more convincing that the aggregates that he derived from the spread sheets, whose substantial accuracy was confirmed by the micro analysis, were essentially the same as the aggregates that BBB AUTO LINE calculated directly from its data base.

¹³² Thus, for example, the response rate was 28% for consumers who used arbitration but only 17% for consumers who were ineligible. To compensate, the auditor multiplied the 148 ineligible responses by 28/17. The resulting total (244) is an approximation of the number of "ineligible" responses that the survey would have reported if ineligible consumers responded at the 28% rate found for consumers who used arbitration. Similar adjustments were made to the numbers of withdrawn cases (multiplied by 28/21) and mediated cases (multiplied by 28/24). The auditor then recalculated percentages using these adjusted numbers.

C. RELIEF QUESTIONS

As with the process questions, consumers in these questions were told what BBB AUTO LINE records showed about the relief they received, and asked to confirm or correct the results. The questions were posed only to consumers who had previously identified their cases as mediated or arbitrated with wording depending slightly on which process was used. Tables III – 7, 9, and 11 each summarize the responses to multiple questions; for example, the 101 cases identified in that table as repurchase/replacement included 94 where BBB AUTO LINE records showed such relief, and seven where the consumer corrected BBB AUTO LINE records that showed other results.

The auditor begins with (and includes most of his commentary in the context of) the combined results for mediated and arbitrated cases; he then presents the separate results for each. The combined results, in his view, provide particularly important insights into the overall BBB AUTO LINE program, and help vindicate BBB AUTO LINE’s commitment to a meaningful mediation component in the program. 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 got a repurchase or replacement through mediation (930) than through arbitration (619).

1. Combined Results for Mediated or Arbitrated Cases

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

	Survey	BBB AUTO LINE	BBB AUTO LINE, excluding attorney cases	Auditor aggregate from original spread sheet, excluding attorney cases	Auditor aggregate from “fully adjusted” spread sheet
BASE: mediated and arbitrated cases	219	4707	3570	3580	3057
	100.0%	100.0%	100.0%	100.0%	100.0%
Repurchase/ Replacement <small>133</small>	101	1549	1275	1286	1259
	46.1%	32.9%	35.7%	35.9%	41.2%
Repair	43	1400	1290	1291	815
	19.6%	29.7%	36.1%	36.1%	26.7%
Other	33	505	479	475	459
	15.1%	10.7%	13.4%	13.3%	15.0%
None	42	1253	526	528	524
	19.2%	26.6%	14.7%	14.7%	17.1%

For many of the same reasons that the auditor found that BBB AUTO LINE’s composites are highly credible on the process question, he finds the composites on the remedy question to be credible as well. Here, Table III-8, along with the auditor’s observations based on reviewing potentially problematic case files, shows that individual consumer responses on BBB AUTO LINE’s spread sheet matched consumers’ responses about 95% of the time, and almost all of the other 5% of cases can be reasonably explained.¹³⁴ Thus, the BBB AUTO LINE spread sheet appears highly accurate on these measures, and column 4 of Table III-7 is derived directly from that spread sheet (with attorney cases omitted). And, since column 4 of Table III-7 substantially matches BBB AUTO LINE’s aggregate figures as shown in Column 3, this provides one basis to confirm the substantial accuracy of BBB AUTO LINE’s figures.

Further, and independently, given the substantial accuracy of the original spread sheet and the figures in column 4 derived from that spread sheet, the auditor also has substantial

¹³³ BBB AUTO LINE generally uses the term “repurchase” rather than “refund.” The survey used the term “refund,” which appears, among other places, in 16 C.F.R. 703.5(d)(1).

¹³⁴ In reviewing the eleven “discordant” files on remedies (seven of which were also discordant on process), the auditor found that ten were reasonably explicable discordance. These included three straddle cases, and five where the consumer withdrew a complaint after reaching a resolution with the dealer or manufacturers, and later described the resolution as “mediated.” In the other two, the consumer seems to have misunderstood the term “reimbursement,” which this year’s survey applied to cases where the manufacturer repurchased the car, while the consumer in question received only reimbursement of certain expenses. (This aspect of the survey will be fixed next year.)

confidence in Column 5, which adjusts for MCSVs as well as attorney cases, and which thus enables an “apples-to-apples” comparison to the survey results. The match isn’t perfect, but it seems reasonable where, as here, the margin of error is well in excess of 4.8%. And, again, there are two separate processes used to check the figures, with the process described in the first paragraph the more persuasive of the two.

At this point, the auditor turns to the substantive analysis. Assuming the figures in columns 2 through 5 are all substantially accurate, what do they tell us? In the auditor’s view, the overall distribution is revealing: among cases that were either mediated or arbitrated, 32.9% ended with a repurchase or replacement remedy, 40.4% ended with some other relief, and 26.6% ended in no relief. Further, excluding cases brought by attorneys (whose profile is discussed in Section G), column 4 (which is substantially identical to column 3) reports that 35.7% of cases ended with a repurchase or replacement remedy; 49.3% ended with some other relief; and only 14.7% ended with no award.¹³⁵ 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.

¹³⁵ These figures include arbitration awards (including arbitration awards providing for repurchase or replacement) even if consumers rejected them.

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

	Survey Responses			
	Repurchase/ Replacement	Repair	Other	No Award
BASE: mediated and arbitrated cases	101 100.0%	43 100.0%	33 100.0%	42 100.0%
Repurchase/Replacement (Imported)	94 93.1%	- -	- -	- -
Repair (Imported)	- -	41 95.3%	1 3.0%	- -
Other (Imported)	2 2.0%	1 2.3%	31 93.9%	- -
No Award (Imported)	- -	- -	- -	42 100.0%
None on File¹³⁶	5 5.0%	1 2.3%	1 3.0%	- -

Concordance: 208/219 = 95.0%

Discordance: 11/219 = 5.0%

Auditor’s observations: Of the 11 discordant cases identified by TechnoMetrica, the auditor estimates that 10 involve a reasonably explicable discordance

As with the process analysis of Table III-5, the most significant figure is the rate of “concordance” (95%), and again, on further examination the 95% figure actually doesn’t fully reflect the situation. The auditor also notes that seven of the cases that were discordant on remedy, seven (including two straddle cases and five other reasonably explicable cases) were discordant on process as well. Indeed, that’s why the cases appear in the “none on file” column of the chart; because BBB AUTO LINE didn’t report a mediation or arbitration, it didn’t report a remedy from a mediation or arbitration.

¹³⁶ Some cases identified by consumers as arbitrated or mediated were identified in BBB AUTO LINE records as ineligible or withdrawn – and, as such, showed no remedy.

2. “Mediated” Cases Only

Table III-9: Final Remedy in Cases Identified by Consumers as Mediated

	Survey	BBB AUTO LINE	BBB AUTO LINE, attorney cases excluded	Auditor aggregate from original spread sheet, excluding attorney cases	Auditor aggregate from “fully adjusted” spread sheet
BASE:	125	2547	2476	2482	1969
mediated cases	100.0%	100.0%	100.0%	100.0%	100.0%
Repurchase/ Replacement	59	930	866	871	846
	47.2%	35.5%	35.0%	35.1%	43.0%
Repair	35	1174	1168	1169	697
	28.0%	46.1%	47.2%	47.1%	35.4%
Other	31	443	442	442	426
	24.8%	17.4%	17.8%	17.8%	21.6%

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

	Survey Responses		
	Repurchase/ Replacement	Repair	Other
BASE: mediated cases	59	35	31
	100.0%	100.0%	100.0%
Repurchase/Replacement (Imported)	53	-	-
	89.8%	-	-
Repair (Imported)	-	33	1
	-	94.3%	3.2%
Other (Imported)	2	1	29
	3.4%	2.9%	93.5%
None on file	4	1	1
	6.8%	2.9%	3.2%

Concordance: 115/125 = 92%

Discordance: 10/125 = 8.0%

Auditor’s observations: Of the 10 discordant cases identified by TechnoMetrica, the auditor estimates that 9 involve a reasonably explicable discordance

The cases at issue were all among those discussed in Section 1, above.

3. Arbitrated Cases Only

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

	Survey	BBB AUTO LINE	BBB AUTO LINE, att’y cases excluded	Auditor aggregate from original spread sheet, excluding attorney cases	Auditor aggregate from “fully adjusted” spread sheet
BASE: arbitrated cases	94 100.0%	2160 100.0%	1094 100.0%	1098 100.0%	1088 100.0%
Repurchase/ Replacement	42 44.7%	619 28.7%	409 37.4%	415 37.8%	413 38.0%
Repair	8 8.5%	226 10.5%	122 11.1%	122 11.1%	118 10.8%
Other	2 2.1%	62 2.9%	37 3.4%	33 3.0%	33 3.0%
No Award	42 44.7%	1253 58.0%	526 48.1%	528 48.1%	524 48.2%

Consistent with his earlier remarks, the auditor highlights that this chart can’t be viewed in a vacuum, but should be examined together with Tables III - 7 (arbitrated plus mediated cases) and III – 9 (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 48.1% “no award” rate for consumers without lawyers doesn’t seem unreasonable.

But far more non-attorney cases are resolved through mediation than arbitration, and the “loss rate” takes on a very different hue when, as shown in Table III-7, that number constitutes only 14.7% of consumers without attorneys who used *either* mediation or arbitration. As the auditor noted previously, the large number of cases that ended in mediation provides an important gloss that the arbitration (or mediation) numbers don’t provide individually.

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

	Survey Responses			
	Repurchase/ Replacement	Repair	Other	No Award
BASE: arbitrated cases	42 100.0%	8 100.0%	2 100.0%	42 100.0%
Repurchase/Replacement (Imported)	41 97.6%	-	-	-
Repair (Imported)	-	8 100.0%	-	-
Other (Imported)	-	-	2 100.0%	-
No Award (Imported)	-	-	-	42 100.0%
None on file (see note __)	1 2.4%	-	-	-

Concordance: 93/94 = 98.9%

Discordance: 1/94 = 1.1%

Auditor’s observations: The single discordant case was a reasonably explicable discordance.

- - -

The next three tables are based on responses to a single question: Did you accept the arbitrator’s award? As noted in the introduction to this chapter, the survey posed this question to all consumers who used arbitration, including those whose claims were denied, and the consumers whose claims were denied often gave discordant replies.¹³⁷ In fact, the question is best limited to consumers who obtained some relief, and the auditor thus recalculated the tables with the more limited base.

¹³⁷ Of the 42 consumers in that position, 17 told BBB AUTO LINE that they rejected the decision (the response they were told they had to give to preserve other rights) and later, perhaps because they hadn’t taken further action in the interim, they told TechnoMetrica they had accepted it.

Table III - 13: Did you accept the arbitrator's decision?

	Survey
TOTAL	52
BASE: arbitrated. received award, not sure excluded	51
	100%
Yes	42
	82%
No	9
	18%

Table III - 14: Acceptance of different types of remedies

	Total	Repurchase/ Replacement	Repair	Other
BASE: arbitrated cases, not sure on remedy excluded	52	41	8	2
	100%	100%	100%	100%
Accepted decision	42	37	4	1
	82%	90%	50%	50%

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

	Survey Responses	
	Accepted	Rejected
BASE: arbitrated cases, not sure excluded	42	9
	100%	100%
Accepted (Imported)	41	2
	98%	22%
Rejected (Imported)	-	5
	-	56%
No entry to import¹³⁸	1	2
	2%	22%

Concordance: 47/51 = 92.2%

Discordance: 22/92 = 7.8%

Auditor's observations: The auditor estimates that four of the five discordant cases had a reasonably explicable discordance, while the fifth is very well documented.

¹³⁸ These were cases where the consumer said a complaint was arbitrated but BBB AUTO LINE records said otherwise. (This could happen, for example, if the arbitration was in a straddle case that extended into 2017.) Since the program's records didn't show an arbitration, they couldn't show an arbitration decision or the consumer's response to an arbitration decision.

The auditor examined both cases where the consumer said that she rejected an award but BBB AUTO LINE records said she accepted it. One involved a consent decision during the arbitration and the other a post-decision settlement that superseded the arbitrator's ruling. As noted above, both raise complexities that can well confuse consumers.

All three cases with "no entry to import" were straddle cases, where the hearing that closed in 2016 didn't include arbitration. Two of those cases were followed by an arbitration that closed in 2017, while, in the third, neither the original case nor the later case showed any sign of arbitration.

Comparison to BBB AUTO LINE figures. According to BBB AUTO LINE, consumers accepted awards in 64% of cases where the arbitrator didn't reject their claim. However, the BBB AUTO LINE figure includes cases where the consumer had a lawyer and the survey doesn't and, as discussed in Section G, consumers who had lawyers showed a very different profile from those who didn't. Therefore, the auditor didn't attempt a direct comparison.

Table III – 16: Reasons for withdrawal

BASE: withdrawn cases	28 100%
You settled the matter or your car was fixed	11 39%
You sold the car	1 4%
Some other reason	16 57%

As the table points out, 11 cases were withdrawn because the consumer got some relief, presumably outside the BBB AUTO LINE process and perhaps from the dealer rather than the manufacturer. TechnoMetrica also reported the responses by consumers who cited “some other reason,” and these include one consumer who said the car was “working for now,” one who told TechnoMetrica that “they bought the car back,” and another who reported getting several years of free oil changes. In another case involving a used car, the consumer’s initial complaint seems to have been resolved, but the consumer had a further complaint against the dealer who sold him the car. Aside from the “free oil changes,” whose relation to the underlying consumer complaint isn’t clear, this suggests that half (14/28) of the 28 had satisfactory resolutions to their complaints..

The remaining cases include three where consumers told BBB AUTO LINE they would refile when their schedules permitted them to attend an arbitration hearing, and then didn’t follow through. In another, the consumer failed to appear after scheduling an arbitration hearing, and told TechnoMetrica that he felt that he had no chance against the large auto manufacturer. In an odd case, the consumer walked out of a hearing when told he was allowed to have counsel, although consumers are asked if they have a lawyer when filing their complaints and told of their right to counsel in various other documents.

Not surprisingly, the “withdrawn” cases show some frustrated consumers, including but not limited to consumers whose files were already problems (such as problems with eligibility or commercial use). Beyond the documentation issues addressed in Section III.B, though, the auditor has no separate recommendations based on these files.

D. COMPLIANCE QUESTIONS

Table III-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
BASE: *	124	2547	39	587	163	3134
	100%	100%	100%	100%	100%	100%
Carried out remedy within the time specified, including extensions to which you agreed	99	2457	31	563	130	3020
	79.8%	96.5%	79.5%	95.9%	79.8%	96.4%
Carried out remedy after the time specified, including any extension to which you agreed	17	3	4	1	21	4
	13.7%	0.1%	10.3%	0.2%	12.9%	0.1%
Has not yet carried out the remedy, but the time to do so has not yet expired	3	9	2	7	5	16
	2.4%	0.4%	5.1%	1.2%	3.1%	0.5%
Has not yet carried out the remedy and the time to do so has expired	5	77	2	14	7	91
	4.0%	3.0%	5.1%	2.4%	4.3%	2.9%
(Failure to comply was the fault of the consumer)	(0)	(50)	(0)	(13)	(0)	(63)
	(0%)	(2.0%)	(0%)	(2.2%)	(0)	(2.0%)
Time for compliance has expired, performance not verified.	-	-	-	1	-	1
	-	-	-	0.2%	.-	0.0%

* *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.*

Auditor’s observations: See below

Based on the auditor’s review, it appears that, in four or five of the seven cases where consumers reported non-compliance, there was no such failure (although in one case there was a delay).¹³⁹ Of the other two, one involved a repair remedy where it’s not clear if the consumer

¹³⁹ In two cases, the consumer got a repair remedy in 2016, wasn’t satisfied with the result, and went on to arbitration in 2017. (One won; the other lost.) In both cases, the consumers’ responses in the survey focused on the mediated repair case from 2016, and both consumers seem to have treated the manufacturer’s failure to find a problem as non-compliance. In the third case, a repair case, the

was told the results of the manufacturer's inspection,¹⁴⁰ and the other involved a repurchase remedy.

Of the 21 cases where consumers reported delays, two were cases where the consumer settled outside the BBB AUTO LINE process and withdrew their complaints, so BBB AUTO LINE didn't have a role in monitoring compliance. Two others contained extensions of the time for compliance, and one contained a signed performance verification letter indicating timely compliance.¹⁴¹ Of the sixteen remaining cases, there are signs of delay in the case handler's notes in some files, but others contain only a record that the performance verification letter was sent and not returned.¹⁴²

All in all, if the survey figures were adjusted to reflect the cases where the file review suggests there isn't a problem, the number of "noncompliance" cases reported in the survey would drop (even adjusting for only four of the cases noted above) to 1.8% -- and that's actually *lower* than the number reported by BBB AUTO LINE, at least before adjusting the BBB AUTO LINE figures for cases where the delay was attributed to the consumer. The number of "delayed compliance" cases would also drop, but only to 9.8%, which is probably outside -- but not by far -- the margin of error for a question posed to only 167 consumers.¹⁴³ In any event, it's certainly possible that the BBB AUTO LINE's reliance on unreturned performance verification letters, however reasonable,¹⁴⁴ might understate the extent to which compliance was performed in a timely fashion. But it's also possible that consumers' recollections on a quantitative question of this nature might be imprecise.

consumer didn't accept the arbitrator's decision in time, and the manufacturer refused to waive the failure. In the fourth, the remedy included an extended service plan and the consumer discovered, when she later tried to use the plan, that the manufacturer hadn't created it. There's no indication that the consumer was harmed, though, and the manufacturer subsequently provided the plan; this seems better classified as delayed performance than nonperformance.

In the fifth and more ambiguous case (in its ultimate resolution), the consumer brought a straddle case in 2017 and accepted a repurchase decision, but there were ongoing discussions about dollar figures when the survey was conducted in April. (The parties had actually agreed to extend the time for compliance until later in the month). Compliance was assumed in May, after the extension expired and the consumer failed to return the performance verification letter.

¹⁴⁰ Notes in the file suggest that she was, but the consumer said she wasn't.

¹⁴¹ Two of the remaining cases were straddle cases, where the consumer was effectively asserting delayed compliance for a remedy ordered in 2017.

¹⁴² Nine of the seventeen cases involved repurchase or replacement remedies, six involved repairs, and two involved other remedies.

¹⁴³ These include the 163 in the chart and 4 who responded "not sure".

¹⁴⁴ Chapter 2, Section II.C.

Finally, as the auditor noted in Section II.C of Chapter 2, there's a difference between "compliance" and consumer satisfaction. The difference is particularly highlighted with repair remedies, where a manufacturer might inspect a car and conclude that no repair is needed, or attempt a repair that doesn't satisfy the consumer. In that case, BBB AUTO LINE would report that the manufacturer has complied (although Table III – 18 and the discussion above suggest that consumers won't always see it that way), but the consumer might well remain unsatisfied; the earlier discussion suggested that this seems likely in roughly one in four mediated cases.

That said, though, Table III – 17 measures compliance – and the numbers, while consistent with the possibility that that BBB AUTO LINE figures might overstate the number of cases with timely performance, are also generally consistent with BBB AUTO LINE's records on all the aspects of performance.

Table III – 18: Which of the following best applies to your case? The manufacturer...

	Mediated	Arbitrated	Med/Arb Combined
BASE: those reporting non-compliant repair remedies	4	1	5
	100%	100%	100%
Didn't examine your car	-	-	-
	-	-	-
Examined your car and decided that no repair was needed	1	-	1
	25%	-	20%
Tried to fix your car, but the repair didn't solve the problem	1	1	2
	25%	100%	40%
Something else	2	-	2
	50%	-	40%

E. TIMING QUESTIONS

1. Mediated and Arbitrated Cases

Consistent with the figures the CBBB has long provided to auditors and regulators, the “timing” analysis focuses on mediated and arbitrated cases. The analysis in this section is thus based on 219 cases from a survey sample of 401. BBB AUTO LINE is to be commended for focusing on these 219 cases; the 182 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.¹⁴⁵

Table III – 19: Time to Resolve their Cases

	Mediated	Arbitrated	Med/Arb Combined	BBB AUTO LINE figures, Med/Arb combined
BASE: mediated and arbitrated cases	125	94	219	4707
	100%	100%	100%	100%
Within 40 days	108	47	155	3519
	86%	50%	71%	75%
41 or more	17	47	64	1188
	14%	50%	29%	25%

Initially, the aggregate consumer responses (column 3) are quite comparable to the BBB AUTO LINE figures (column 4).

Second, in appraising BBB AUTO LINE’s compliance, Table III – 20 shows that 13 of the 64 consumers who reported that their cases weren’t resolved within 40 days also acknowledged that delays resulted from their own actions. 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:

- 114/125 (91%) of mediated cases;
- 50/94 (57%) of arbitrated cases; and
- 168/219 (77%) of mediated and arbitrated cases combined.

Additionally, Table III – 21 explores whether BBB AUTO LINE can rely on a slight extension, applicable where the consumer hadn’t contacted the manufacturer about the problem before filing the complaint, which extends the time for compliance to 47 days.¹⁴⁶ BBB AUTO LINE relied on this provision in 52 (2.4%) of arbitrated cases. And the response from one

¹⁴⁵ Of the 182, 148 (81%) reported that their cases were ineligible – and ineligible cases are usually resolved quickly, most often within a day or two.

¹⁴⁶ *E.g.*, FTC Rule 703.5(e)(2)).

consumer, in an arbitrated case that took 42 days to finalize, seems to warrant that extension, effectively increasing the “within 40” count for arbitrated cases to 59%. In many cases, particularly those where the arbitrator decides that she needs the input of a technical expert to resolve a dispute, there seems good reasons for some delay; it takes time to arrange for such an expert to participate. All in all, the auditor concludes that BBB AUTO LINE is substantially compliant with the statutory standard on timeliness.

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

	Mediated	Arbitrated	Med/Arb Combined
Mediated and arbitrated cases that consumers said took more than 40 days to resolve	17	47	64
BASE: same, not sure responses excluded	17	42	59
	100%	100%	100%
Yes	6	7	13
	35%	17%	22%
No	11	35	46
	65%	83%	78%

Table III - 21: Did you contact the manufacturer -- not just the dealer-- before you filed your complaint?

	Mediated	Arbitrated	Med/Arb Combined
Mediated and arbitrated cases that consumers said took between 41 and 47 days to resolve	4	14	18
BASE: same (not sure excluded)	3	14	17
	100%	100%	100%
Yes	3	13	16
	100%	93%	94%
No	-	1	1
	-	7%	6%

Table III – 22: Consumer Agreement with BBB AUTO LINE Records

	Within 40 Days	More than 41 Days
BASE: same as above	155 100%	64 100%
Within 40 Days (Imported)	155 100%	16 25%
41 or more (Imported)	- -	48 7%

Concordance: 203/219 = 92.7%

Discordance: 17/219 = 7.3%

The auditor notes that it doesn't seem surprising to get a lower concordance rate on a quantitative metric (days to process complaint) than on a qualitative metric (relief obtained, processed 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 7.3% discordance rate, in the auditor's view, is thus quite reasonable.

2. Withdrawn Cases

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

	2016 Audit
BASE: withdrawn cases	28 100%
Within 40 days	24 86%
41 or more	4 14%

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?

	Total	Jan-Mar	Apr-Jun	Jul-Sep	Oct-Dec
Total	401	108	85	98	110
	100%	100%	100%	100%	100%
BASE: answering, not sure excluded	380	100	80	96	104
	100%	100%	100%	100%	100%
Yes	365	94	76	94	101
	91%	87%	89%	96%	92%
No	15	6	4	2	3
	4%	6%	5%	2%	3%

The consumer complaint forms are generated from information entered by the consumer at the BBB AUTO LINE web site or, if the consumer files a complaint by telephone, from information entered by BBB AUTO LINE staff during the phone call. The form is then sent to the consumer for verification, supplementation, and signature.

Excluding the 21 consumers who replied “not sure,” 4% of consumers – a total of 15 – reported that they hadn’t received the claim forms. But the auditor examined the underlying files for the 15 consumers who reported that they hadn’t received complaint forms, and found that 8 contained complaint forms signed and returned by the consumer. The 7 remaining cases were all in California or Florida, the only states where a case is opened before the consumer returns the signed form. So, *at most*, among the 380 consumers who responded with a “yes” or “no” to this question, only 7 consumers (2%) raise an issue. Further, in some of those cases, the information originally submitted by phone or over the internet appeared to show a car well outside the program’s jurisdictional limits, and it’s possible that, in such cases, a case handler was reluctant to press the consumer to return a *signed* form when it seemed clear that the case wouldn’t go forward anyway. In addition, two files contain notes by the case handler reporting multiple attempts to contact the consumer through multiple means.

Finally, as noted above, many consumers in last year’s audit reported that they hadn’t received one or more of the documents about which the survey asked. The auditor speculated that a reason for the prior low response rates (and the rates were lower on other questions than on this one¹⁴⁷) was that some consumers might have forgotten receiving specific documents. And he further speculated that the high numbers may have reflected the long delay before some consumers were asked about what, to them, may have appeared a technical issue. As further noted in that introduction, to test whether that was a substantial concern, the auditor asked

¹⁴⁷ If last year’s numbers were adjusted to reflect this year’s treatment of “not sure” responses (they’re omitted from the calculations), the non-receipt number for the consumer complaint form was 6%; for other documents described below, it was higher.

TechnoMetrica to break out the results on “document received” questions by quarter; if the passage of time was a factor, presumably “non-receipt” responses would be higher for earlier cases, where the passage of time was the greatest. The auditor discusses these breakouts at the end of this section.

Before turning to more “document received” questions, though, the auditor briefly detours to a series of questions (posed only for the introductory materials) about how clear and helpful the materials were. As shown below, an overwhelming majority of consumers (97%) found them at least somewhat clear and understandable, while a substantial majority (83%) found them at least somewhat helpful.

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

	Total
Consumers who reported receiving the documents	365
BASE: Same, not sure excluded	361 100%
Very	236 65%
Somewhat	113 31%
Not at all	12 3%

Table III – 26: And how helpful were they?

	Total
Same as above	365
BASE: Same, not sure excluded	354 100%
Very	174 49%
Somewhat	121 34%
Not at all	59 17%

The rest of this section returns to questions about whether consumers received *other* documents, as well as more detailed analysis of the quarterly breakouts.

Table III – 27: After you reached a settlement, did you get an explanation by letter or email describing the terms of the settlement?

	Total	Jan-Mar	Apr-Jun	Jul-Sep	Oct-Dec
Total mediated cases	125	38	24	28	35
	100%	100%	100%	100%	100%
BASE: same (not sure excluded)	121	38	21	28	34
	100%	100%	100%	100%	100%
Yes	114	38	18	26	32
	94%	100%	86%	93%	94%
No	7	0	3	2	2
	6%	0%	14%	7%	6%

As with the previous question about document receipt, the percentage of consumers reporting problems is substantially less than last year’s number.¹⁴⁸ At least one factor in the improved results, the auditor believes, is that last year’s question asked whether consumers had received a “letter,” which may have confused consumers who asked to be contacted by email.

Further, the auditor has examined the underlying files for the seven consumers who didn’t recall getting a description of the settlement. Two of them indicate that the consumer resolved the case outside the BBB AUTO LINE process and withdrew their complaints; in such cases, the BBB didn’t have a mediated settlement to send out.

As to the other five, 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 all five files contain entries (including copies of letters sometimes supplemented by notes) showing the documents were *sent*.¹⁴⁹ 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.

¹⁴⁸ Last year there were 57 positive responses, 16 negative, and 12 not sure. Among those who gave a positive or negative response, only 78% said yes, compared to 94% this year.

¹⁴⁹ 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 – 28: Did you get a notice by letter or email telling you when and where to go for your hearing or vehicle inspection?

	Total	Jan-Mar	Apr-Jun	Jul-Sep	Oct-Dec
Arbitrated cases	94	25	23	22	24
BASE: same, with “not sure” responses to the current question excluded	93	24	23	22	24
	100%	100%	100%	100%	100%
Yes	93	24	23	22	24
	100%	100%	100%	100%	100%
No	-	-	-	-	-
	-	-	-	-	-

These numbers obviously show no problem. (Last year, 23 of 111 consumers who replied yes or no (21%) said they hadn’t received the notice.)

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

	Total	Jan-Mar	Apr-Jun	Jul-Sep	Oct-Dec
Same	94	25	23	22	24
BASE: same, with “not sure” responses to the current question excluded	92	24	23	21	24
	100%	100%	100%	100%	100%
Yes	89	22	23	20	24
	97%	92%	100%	95%	100%
No (<i>see below for adjustment</i>)	3	2	-	1	-
	3%	8%	-	5%	-

Here, too, the auditor has reviewed the files for the consumers – three in number – who said they hadn’t received the arbitrator’s decision. One of them returned a signed letter accepting the decision (which he would only have received if he also received the decision itself). And another reached a settlement at the hearing that was incorporated into a consent decision, in which event the consumer may have been less focused on the formality of a decision, and perhaps was more likely to forget if it had been received. In any event, in all three of the cases where the consumer reported non-receipt, BBB AUTO LINE records report that the decision was mailed, and it seems unlikely that a consumer who went to the trouble of arbitration wouldn’t have followed up with BBB AUTO LINE if they didn’t get a decision. In any event, these results don’t seem to point to a problem with the process.¹⁵⁰

¹⁵⁰ Further, as with the other document receipt questions, these numbers are much better than last year’s, when 22 of 110 consumers who replied yes or no (21%) reported that they hadn’t

Table III – 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?

	Arb/Med	Med only	Arb only
BASE: See below	167	125	42
	100%	100%	100%
The staff contacted me by letter or email	48	34	14
	29%	27%	33%
The staff spoke to me	22	16	6
	13%	13%	14%
Both of those	75	56	19
	45%	45%	45%
Neither of those	12	11	1
	7%	9%	2%
Something else	10	8	2
	6%	6%	4%

The base for this chart (which was recalculated by the auditor to change to this base), includes cases characterized by the consumer as mediated, as well as cases that the consumer characterized as arbitrated *if* the consumer also reported obtaining a favorable decision and accepting an award.

received the arbitrator’s decision; perhaps the reference to email accounts, at least in large part, made a difference. In any event, this year’s results are also more in line with the auditor’s expectations, given the auditor’s expectation, noted above, that a consumer who went through the arbitration process wouldn’t have likely followed up with BBB AUTO LINE if they didn’t receive a decision.

Table III - 31
Summary Table for Receipt of Four Documents
(Consumer Complaint Forms, Descriptions of Settlements,
Notice of Arbitrations Hearings, and Receipt of Arbitration Decisions)
Reported by Quarters

	Total	Jan- Mar	Apr- Jun	Jul- Sep	Oct- Dec
Total for the four documents	686	186	147	167	186
	100%	100%	100%	100%	100%
Reported that documents were received	661	178	140	162	181
	96%	96%	97%	97%	100%
Reported that documents were <i>not</i> received.	25	8	7	5	5
	4%	4%	3%	3%	100%

This chart, which the auditor generated from the responses covered in four preceding charts, arguably shows that forgetfulness played a limited role in consumer responses to document receipt questions; the non-receipt numbers are a bit higher for cases from the first half of 2016 than for cases from the second half. But the effect was small, at best, and even that small effect may be illusory.

All in all, the results showed little if any effect with increasing memory lapse over time – even though, if such lapse were a problem, it would most likely appear in these questions. As such, these results vindicate the decision to proceed with a single wave this year, and suggest that there’s likely to be little if any advantage to changing this approach going forward.

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

This first part of this section, similar to a discussion in prior audits, explores the differing profiles of cases brought by attorneys on behalf of consumers.

Table III – 32: Comparisons on process for resolving complaints

	Claims filed by attorneys on behalf of consumers	Claims filed directly by consumers
Mediation	71	2476
	3.9%	31.2%
Arbitration	1066	1094
	58.8%	13.8%
Ineligible	494	3681
	27.3%	46.3%
Withdrawn	181	685
	10.0%	8.6%
TOTAL	1812	7936
	100.0%	100.0%

.

Table III – 33: Comparison on remedies

In mediation

	Claims filed by attorneys on behalf of consumers	Claims filed directly by consumers
TOTAL	71 100.0%	2476 100.0%
Repurchase/Replacement	64 90.1%	866 35.0%
Repair	6 8.5%	1168 47.2%
Other award	1 1.4%	442 17.8%

In arbitration

TOTAL	1066 100.0%	1094 100.0%
Repurchase/Replacement	210 19.7%	409 37.4%
Repair	104 9.8%	122 11.1%
Other award	25 2.3%	37 3.4%
No award	727 68.2%	526 48.1%

Combined Mediation and Arbitration

TOTAL	1137 100.0%	3570 100.0%
Repurchase/Replacement	274 24.1%	1275 35.7%
Repair	110 9.7%	1290 36.2%
Other award	26 2.2%	479 13.4%
No award	727 63.9%	526 14.7%

According to BBB AUTO LINE statistics, complaints filed by lawyers who represent consumers constitute, nationally, 18.6% of total complaints – but 49.4% of arbitrations. On the whole, consumers with lawyers are far less likely than others to reach mediated settlements, particularly settlements that provide for less than a repurchase or replacement. Further, through mediation and arbitration combined, consumers with lawyers are less likely to obtain a repurchase or replacement (24.1% vs. 35.7%), far less likely to obtain a repair or “other” award¹⁵¹ (12.0% vs. 49.6%), and far more likely to go to arbitration and have their claims rejected (63.9% vs. 14.7%).

With respect to the poorer performance of consumers with attorneys in arbitration, the auditor can’t dismiss a range of possibilities – perhaps attorneys would argue that arbitrators hold them to a higher standard in hearings than they apply to consumers who represent themselves, or perhaps they might argue that they get the harder cases. At least one factor appears to be that cases presented in writing – the vast majority of which are cases brought by lawyers – are far less successful than others.¹⁵² And consumers with attorneys may prefer to go into court, where stronger remedies may be available (including attorney’s fees) that are rarely available in BBB AUTO LINE proceedings. Perhaps some attorneys can identify specific cases where, based on the issues involved, a hearing isn’t likely to help their cause. Still, from the perspective of the program, it seems unfortunate that at least some attorneys may take a perfunctory approach to the BBB AUTO LINE process, perhaps viewing it as a little more than a necessary impediment to getting to court, and fail to avail themselves of the full possibilities of BBB AUTO LINE services.

Combined results of the three firms who filed the most complaints. This year, the auditor also undertook some further analysis. As a general matter, some attorneys represent a single client in a year, while some represent hundreds and hundreds. And, while the figures provided by CBBB have long shown a different profile for attorney cases than for non-attorney cases, the auditor wanted to explore whether there were further differences, among attorney cases, between attorney cases generally and those handled by the most frequent participants in the program.

To this end, the auditor removed the non-attorney cases from BBB AUTO LINE’s spread sheet and found, among the 1818 attorney cases, that three firms accounted for 1062 cases, over 58% of all attorney cases. Of those cases:

8.5%	(90)	were withdrawn
28.3%	(301)	were ineligible
1.1%	(12)	were mediated
62.1%	(659)	were arbitrated.

¹⁵¹ These would include, for example, an extended service plan or reimbursement of expenses.

¹⁵² These cases often include an inspection, perhaps with a test drive, but communications with the arbitrator are strictly limited during these meetings. In any event, the relative lack of success in hearings held on papers shouldn’t be surprising; however hard they try to be fair, these proceedings are on the same timetable as other BBB AUTO LINE proceedings, and, in dealing with some types of issues, arbitrators may be handicapped if they can’t easily question the consumer and manufacturer representative and benefit from a real-time discussion with both parties.

In comparing these results to Table III -31, the auditor is most struck by the limited use of mediation. Among cases brought directly by consumers, 31.2% are resolved by mediation. Among all cases brought by attorneys, 3.9% are resolved by mediation (and, among those brought by attorneys outside the three firms examined here, the figure rises to 7.8%). But for attorneys in these firms, it drops to 1.1%.

Returning to the original figures for the 1062 cases brought by three firms, among the 12 mediated cases, 10 settled with a repurchase or replacement remedy; the other 2 with other remedies.

Among the 659 arbitrated cases,

13.7%	(90)	decisions awarded a repurchase or replacement remedy
14.4%	(95)	decisions awarded some other remedy
71.9%	(474)	were denial decisions.

Among the 95 decisions awarding a remedy short of repurchase or replacement, all (100%) rejected the decision. Among the 90 cases awarding a repurchase or replacement:

76.7%	(69)	rejected the award
22.2%	(20)	accepted the award
1.1%	(1)	was resolved by a post-decision settlement.

In sum, among 1062 cases brought by the three most frequent participants in the program, 33 (3%) resulted in either a settlement or in an arbitration award that the consumer accepted.

H. SATISFACTION

1. Satisfaction with Arbitrator

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

	Total	Award	No Award
Total arbitrated cases	94	52	42
Base: arbitrated cases (not sure excluded)	94	52	42
	100.0%	100.0%	100.0%
A=Excellent	38	37	1
	40.4%	71.2%	2.4%
B=Good	17	7	10
	18.1%	13.5%	23.8%
C=Average	8	3	5
	8.5%	5.8%	11.9%
D=Poor	14	1	13
	14.9%	1.9%	31.0%
F=Failing Grade	17	4	13
	18.1%	7.7%	31.0%
SATISFACTORY GRADE - A OR B OR C	63	47	16
	67.0%	90.4%	38.1%
MEAN	2.48	3.38	1.36

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

	Total	Award	No Award
Total arbitrated cases	94	52	42
Base: arbitrated cases (not sure excluded)	93	52	41
	100.0%	100.0%	100.0%
A=Excellent	40	40	-
	43.0%	76.9%	-
B=Good	10	4	6
	10.8%	7.7%	14.6%
C=Average	9	2	7
	9.7%	3.8%	17.1%
D=Poor	13	3	10
	14.0%	5.8%	24.4%
F=Failing Grade	21	3	18
	22.6%	5.8%	43.9%
SATISFACTORY GRADE - A OR B OR C	59	46	13
	63.4%	88.5%	31.7%
MEAN	2.38	3.44	1.02

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

	Total	Award	No Award
Total arbitrated cases	94	52	42
Base: arbitrated cases (not sure excluded)	91	51	40
	100.0%	100.0%	100.0%
A=Excellent	37	37	-
	40.7%	72.5%	-
B=Good	9	5	4
	9.9%	9.8%	10.0%
C=Average	11	4	7
	12.1%	7.8%	17.5%
D=Poor	10	1	9
	11.0%	2.0%	22.5%
F=Failing Grade	24	4	20
	26.4%	7.8%	50.0%
SATISFACTORY GRADE - A OR B OR C	57	46	11
	62.6%	90.2%	27.5%
MEAN	2.27	3.37	0.88

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

	Total	Award	No Award
Total arbitrated cases	94	52	42
Base: arbitrated cases (not sure excluded)	93	51	42
	100.0%	100.0%	100.0%
A=Excellent	38	38	-
	40.9%	74.5%	-
B=Good	8	4	4
	8.6%	7.8%	9.5%
C=Average	11	4	7
	11.8%	7.8%	16.7%
D=Poor	9	1	8
	9.7%	2.0%	19.0%
F=Failing Grade	27	4	23
	29.0%	7.8%	54.8%
SATISFACTORY GRADE - A OR B OR C	57	46	11
	61.3%	90.2%	26.2%
MEAN	2.23	3.39	0.81

**Table III - 38
ARBITRATOR SATISFACTION COMPOSITE**

BASE: arbitrated cases (not sure excluded)	A	B	C	D	F	TOTAL
understanding the facts of your case	38	17	8	14	17	94
	40.4%	18.1%	8.5%	14.9%	18.1%	100.0%
objectivity and fairness	40	10	9	13	21	93
	43.0%	10.8%	9.7%	14.0%	22.6%	100.0%
reaching an impartial decision	37	9	11	10	24	91
	40.7%	9.9%	12.1%	11.0%	26.4%	100.0%
coming to a reasoned & well thought-out decision	38	8	11	9	27	93
	40.9%	8.6%	11.8%	9.7%	29.0%	100.0%
COMPOSITE	153	44	39	46	89	371
	41.2%	11.9%	10.5%	12.4%	24.0%	100.0%

Composite mean (2016)

All consumers using arbitration: 2.34
Consumers who received awards: 3.40
No award: 1.02

Composite mean (from 2015 report)

All consumers using arbitration: 2.31
Consumers who received awards: 3.21
No award: 1.14

The auditor calculated the composite means for consumers who got awards and those who didn't from the tables on the preceding pages.

While the overall rate of satisfaction basically remained constant, the auditor believes that separating out consumers who received awards from those who didn't is far more revealing. Consumers who secured some relief gave the arbitrator roughly a B+ grade, while those who didn't get relief gave arbitrators a D, although there was some limited saving grace: among those who didn't get relief, 15% of the individual grades were A's or (mostly) B's; over 30% of the grades from consumers who got no awards were "satisfactory" grades of A, B, or C. ¹⁵³

¹⁵³ It's somewhat intriguing that this year's results show a heightened disparity between consumers who received an award, whose "arbitrator composite" rose from 3.21 to 3.40, and those who didn't, whose "arbitrator composite" dropped from 1.14 to 1.02. However, a similar polarization didn't appear in the Florida or Ohio sample.

2. Satisfaction with BBB AUTO LINE staff

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

Total arbitrated or mediated cases	219
BASE: same, not sure excluded	215 100.0%
A=Excellent	141 65.6%
B=Good	43 20.0%
C=Average	15 7.0%
D=Poor	9 4.2%
F=Failing Grade	7 3.3%
SATISFACTORY GRADE - A OR B OR C	199 92.6%
MEAN	3.40

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

	2016 Audit
Total arbitrated or mediated cases	219
	.
Base: same, not sure excluded	216 100.0%
A=Excellent	137 63.4%
B=Good	36 16.7%
C=Average	21 9.7%
D=Poor	11 5.1%
F=Failing Grade	11 5.1%
SATISFACTORY GRADE - A OR B OR C	194 89.8%
MEAN	3.28

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

	2016 Audit
Total arbitrated or mediated cases	219
Base: same, not sure excluded	217 100.0%
A=Excellent	133 61.3%
B=Good	33 15.2%
C=Average	23 10.6%
D=Poor	15 6.9%
F=Failing Grade	13 6.0%
SATISFACTORY GRADE - A OR B OR C	189 87.1%
MEAN	3.19

**Table III – 42
BBB AUTO LINE STAFF EFFORTS-SATISFACTION COMPOSITE**

Base: arbitrated or mediated cases (not sure excluded)	A	B	C	D	F	TOTAL
objectivity and fairness	141	43	15	9	7	215
	65.6%	20.0%	7.0%	4.2%	3.3%	100.0%
efforts to assist you in resolving your claim	137	36	21	11	11	216
	63.4%	16.7%	9.7%	5.1%	5.1%	100.0%
overall grade	133	33	23	15	13	217
	61.3%	15.2%	10.6%	6.9%	6.0%	100.0%
COMPOSITE	411	112	59	35	31	648
	63.4%	17.3%	9.1%	5.4%	4.8%	100.0%

Composite mean (2016): 3.29
Composite mean (from 2015 audit) 2.85

The auditor notes that this year’s composite was substantially higher than last year’s, essentially moving from a B/B- to a B+.

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

	Total	Med/Arb
Total	401	219
Base: same (not sure excluded)	385	214
	100%	100%
Yes	264	176
	69%	82%
No	121	38
	31%	18%

Last year, 65% of all consumers who responded yes or no said they would recommend BBB AUTO LINE to friends and family, and that number rose to 69% this year. Similarly, 74% of consumers who weren’t deemed ineligible and didn’t withdraw their complaint (a population comparable to this year’s “med/arb” figure) gave a positive response last year. That number rose to 82% this year.

IV. SURVEY RESULTS – FLORIDA

The preliminary note in Section II, addressing “not sure” responses, gender neutral pronouns, and other matters, apply to the Florida discussion as well.

A. GENERAL INFORMATION

Table IV – 1: Vehicle Year

	2016 Audit		2016 Audit
TOTAL	151	TOTAL	151
	100.0%		100.0%
2004	2	2013	13
	1.3%		8.6%
2005	1	2014	33
	0.7%		21.9%
2006	2	2015	40
	1.3%		26.5%
2007	-	2016	33
	-		21.9%
2008	3	2017	2
	2.0%		1.3%

Table IV - 2

The BBB AUTO LINE's records show they closed a complaint in 2016 about your <make> vehicle. Is that correct?

	2016 Audit
TOTAL	151
	100.0%
Yes	151
	100.0%
No	-
	-

Table IV-3: How many times, if any, did the manufacturer or dealer try to repair your vehicle before you filed the complaint?

TOTAL	151
BASE: same, not sure excluded	147
	100.0%
One	15
	10.2%
Two	9
	6.1%
Three	21
	14.3%
Four or more	76
	51.7%
None	26
	17.7%

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

TOTAL	151
BASE: same, not sure excluded	148
	100.0%
Warranty documents	21
	14.2%
Dealer or manufacturer representative	20
	13.5%
BBB/BBB Website	22
	14.9%
Other internet website	44
	29.7%
Lawyer	4
	2.7%
Friend/family/word of mouth	29
	19.6%
TV/Radio/Newspaper	2
	1.4%
Other	6
	4.1%

Among the six “other” responses, two consumers mentioned the Florida Attorney General’s Office, one mentioned the Department of Motor Vehicles, one mentioned the state’s lemon law, and two mentioned familiarity with the BBB or BBB AUTO LINE.

B. PROCESS QUESTIONS

Table IV – 5: Case Type as Identified by Consumer

	Survey	BBB AUTO LINE, all cases	BBB AUTO LINE, excluding att’y cases	Auditor aggregates from original spread sheets, excluding att’y cases	Auditor aggregates from “fully adjusted” spread sheets
TOTAL	151	2030	1631	1630	1410
	100.0%	100.0%	100.0%	100.0%	100.0%
Mediation	45	493	468	463	372
	29.8%	24.3%	28.7%	28.4%	26.4%
Arbitration	42	523	293	296	296
	27.8%	25.8%	18.0%	18.2%	21.0%
Withdrawn	10	156	134	134	106
	6.6%	7.8%	8.2%	8.2%	7.5%
Ineligible	52	856	736	737	636
	34.4%	42.7%	45.1%	45.2%	45.1%
Other	2				
	1.3%				
MED/ARB COMBINED	87	1016	761	759	668
	57.6%	50.0%	46.7%	46.6%	47.3%

Table IV – 6: Consumer Agreement with BBB AUTO LINE Records

	Mediated	Arbitrated	Withdrawn	Ineligible	Other
TOTAL	45	42	10	52	2
	100.0%	100.0%	100.0%	100.0%	100%
Mediation (Imported)	43	2	-	-	1
	95.6%	4.8%	-	-	50%
Arbitration (Imported)	-	37	-	-	-
	-	88.1%	-	-	-
Withdrawn (Imported)	1	1	9	-	-
	2.2%	2.4%	90.0%	-	-
Ineligible (Imported)	1	2	1	52	1
	2.2%	4.8%	10.0%	100.0%	50%

Concordance: 141/151 = 93.4%

Discordance: 10/151 = 6.7%

Auditor observations: Of the ten discordant cases the auditor estimates that at least six had a reasonably explicable discordance, and two were very well documented.

The analysis here is similar to that for the national sample, and the discussion here builds on the discussion in Section III.B.

First, Table IV – 6 is the starting point for the micro analysis. It shows over a 93% concordance between BBB AUTO LINE records in individual cases and consumers’ responses when asked to confirm those records. But, after supplementing the data in the table with a review of the “discordant” files, the auditor found that at least six were reasonably explicable discordances, including four relatively straightforward straddle cases.¹⁵⁴ In another case, the consumers said the case was mediated when the files show two related cases with neither ending through mediation,¹⁵⁵ and in another the consumer said the case was arbitrated when there was no sign in the files of BBB AUTO LINE arbitration under the consumer’s name.¹⁵⁶ Based on the above findings, the auditor concludes that the BBB AUTO LINE spread sheet contains substantially accurate information.

Second, the auditor then obtained aggregates using that substantially accurate spread sheet. These aggregates, as shown in column 4 of Table IV – 5, report on the frequency of various processes in cases brought directly by consumers (without an attorney). BBB AUTO LINE had computed aggregates of this as well, shown in column 3, and the two columns (one of which had been validated by the process above) were substantially identical. This provides one source to validate BBB AUTO LINE’s aggregate calculations.

Third, having used the micro analysis essentially to vouch for BBB AUTO LINE’s spread sheet, the auditor used a variant of that spread sheet – which TechnoMetrica had produced both to omit attorney cases and all but the latest case in MCSV situations – to compare to the spread sheet. The adjustments in column 5 parallel the adjustments in the survey itself, as reported in column 1, so this addresses the “apples and oranges” problem.

In comparing columns 1 and 5, the patterns seen in the comparable exercise for the national sample appeared again. Most strikingly, the survey again significantly understated the number of ineligible claims. It also somewhat understated the ratio of mediations to arbitrations although the effect was less pronounced than in the national survey.

¹⁵⁴ An unusual twist in one of the straddle cases is that the straddle was from a 2015 case to a 2016 case, rather than from a 2016 case to a 2017 case; the consumer described the 2015 case. . In one of the non-straddle cases, the consumer decided to pursue the matter on his own before submitting a signed consumer complaint form; BBB AUTO LINE treated it as ineligible and the consumer called it mediated. In the other, the consumer sold the car and BBB AUTO LINE then deemed her ineligible; the consumer said the complaint was withdrawn. (In yet another case, BBB AUTO LINE reported a mediated repair remedy; the consumer seems to have given up and sold the car, and reported it as “other.”)

¹⁵⁵ This was an unusual fact pattern where the consumer asked to withdraw the original case because he obtained a lawyer and wanted to pursue the resolution outside the program. The second case went to arbitration.

¹⁵⁶ In the final case, the car was quickly deemed ineligible because of mileage and a letter was sent to the consumer, but the consumer said she never heard back.

As with the national sample, though, TechnoMetrica checked the response rates of consumers whose cases closed in various manners. For Florida, roughly 15% of consumers identified by BBB AUTO LINE as ineligible responded; 21% of those who withdrew their complaints, and 23% of consumers identified as arbitrated or mediated. By the auditor's calculations, this essentially accounts for the disparities between column 1 (the survey results) and column 5 (the fully adjusted aggregates).¹⁵⁷ Thus, the match was close even before taking account of margin of error in the Florida study (+/- 7.3% for questions posed to all consumers interviewed as part of the study). Thus, the auditor finds the study results fully compatible to the BBB AUTO LINE aggregates on process, and yet another basis for validating BBB AUTO LINE's aggregate figures..

¹⁵⁷ In essence, the auditor boosted the number of "ineligible" responses in the survey by 50%, reflecting the approximate difference between the 23% response rate for mediated and arbitrated cases and the 15% response rate for ineligibles. Similarly, he boosted the "withdrawn" numbers by 10%. Then he recalculated the percentages, and found 23% arbitrated, 26% mediated, 45% ineligible, and 6% withdrawn (with the fully adjusted BBB AUTO LINE records showing 21% arbitrated, 26% mediated, 45% ineligible, and 8% withdrawn).

C. RELIEF QUESTIONS

1. Combined Results for Cases Identified by Consumers as Mediated or Arbitrated

As with the national and Ohio samples, the auditor begins here with the combined relief in arbitration and mediation.

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

	Survey	BBB AUTO LINE, all cases	BBB AUTO LINE, excluding att’y cases	Auditor aggregates from original spread sheets, excluding att’y cases	Auditor aggregates from “fully adjusted” spread sheets
BASE: Med/ Arb Cases	87 100.0%	1016 100.0%	761 100.0%	760 100.0%	668 100.0%
Repurchase/ Replacement	36 41.4%	423 41.6%	329 43.2%	330 43.4%	322 48.2%
Repair	19 21.8%	235 23.1%	222 29.2%	217 28.6%	135 20.2%
Other	8 9.2%	81 8.0%	76 10.0%	79 10.4%	77 11.5%
None	24 27.6%	277 27.3%	134 17.6%	134 17.6%	134 20.1%

Here, as with Table IV – 5, the micro analysis (discussed below) shows that BBB AUTO LINE’s spread sheet is substantially accurate. And, with that as a predicate, the close match between columns 3 and 4 of the above table provides a strong indication that BBB AUTO LINE’s aggregates are substantially accurate.

Comparing the aggregates in Columns 1 and 5 (the apples to apples comparison), some of the numbers don’t match closely. But the margin of error for questions posed to all 151 consumers in the Florida sample is +/-7.8%, and, since the question here was posed to only 87 consumers, it would rise even higher. Thus, the results are well within the survey’s margin of error, although the inherent problems with survey margins of error leave the alternative basis for validation, discussed in the prior paragraph, more convincing.

At this point, the auditor turns to the substantive analysis. Assuming the figures in columns 2 through 5 are all substantially accurate, what do they tell us? In the auditor’s view, the overall distribution is revealing: among cases that were either mediated or arbitrated, 41.6% ended with a repurchase or replacement remedy, 31.1% ended with some other relief, and 27.3% ended in no relief. Further, excluding cases brought by attorneys (whose profile is discussed in Section G), column 4 reports that only 14.7% 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 might suggest unfairness to manufacturers.

Table IV – 8: Consumer Agreement with BBB AUTO LINE Records

	Refund/ Replacement	Repair	Other	No Award
BASE: Mediated and Arbitrated Cases	36 100.0%	19 100.0%	8 100.0%	24 100.0%
Refund/Replacement (Imported)	34 94.4%	- -	- -	- -
Repair (Imported)	- -	19 100.0%	- -	- -
Other (Imported)	- -	- -	8 100.0%	- -
No Award (Imported)	- -	- -	- -	21 87.5%
None on File- Ineligible/Withdrawn Cases (Imported)	2 5.6%	- -	- -	3 12.5%

Concordance: 82/87 = 94.3%

Discordance: 5/87 = 5.7%

Auditor Observations: Of the five discordant cases identified by TechnoMetrica, the auditor estimates that four had a reasonably explicable discordance, and the other contains strong documentation supporting BBB AUTO LINE’s characterization.

For the Florida sample, all of the cases that were discordant on remedy were discordant on process as well, and were thus included in the “process” discussion. Further, in none of these cases did BBB AUTO LINE’s records *affirmatively* disagree with consumers on remedy; all were cases where they disagreed on process, and, since BBB AUTO LINE showed neither arbitration nor mediation in the case, it didn’t show a remedy.

2. Mediated Cases

Table IV – 9: Remedies Identified by Consumers

	Survey	BBB AUTO LINE, all cases	BBB AUTO LINE, excluding att’y cases	Auditor aggregates from original spread sheets, excluding att’y cases	Auditor aggregates from “fully adjusted” spread sheets
BASE:	45	493	468	463	372
Mediated Cases	100.0%	100.0%	100.0%	100.0%	100.0%
Refund/ Replacement	23	218	198	196	189
	51.1%	44.2%	42.3%	42.3%	50.8%
Repair	15	207	206	200	118
	33.3%	42.0%	44.0%	43.2%	31.7%
Other	7	68	64	67	65
	15.6%	13.8%	13.7%	14.5%	17.5%

Table IV – 10: Consumer Agreement with BBB AUTO LINE

	Verified Remedy		
	Refund/ Replacement	Repair	Other
BASE: Mediated Cases	23	15	7
	100.0%	100.0%	100.0%
Refund/Replacement (Imported)	21	-	-
	91.3%	-	-
Repair (Imported)	-	15	-
	-	100.0%	-
Other (Imported)	-	-	7
	-	-	100.0%
None on File- Ineligible/Withdrawn Cases (Imported)	2	-	-
	8.7%	-	-

Concordance: 43/45 = 95.6%

Discordance: 2/45 = 4.4%

Auditor Observations: Of the two discordant cases identified by TechnoMetrica, the auditor estimates that one has a reasonably explicable discordance, and the other contains strong documentation supporting BBB AUTO LINE’s position.

These results are a subset of the results in section 1.

3. Arbitrated Cases

Table IV – 11: Remedies Identified by Consumers

	Survey	BBB AUTO LINE, all cases	BBB AUTO LINE, att’y cases excluded	Auditor aggregates from original spread sheets, excluding att’y cases	Auditor aggregates from “fully adjusted” spread sheets
BASE: arb cases	42	523	293	296	296
	100.0%	100.0%	100.0%	100.0%	100.0%
Repurchase/ Replacement	13	205	131	133	133
	31.0%	39.2%	44.7%	44.9%	44.9%
Repair	4	28	16	17	17
	9.5%	5.4%	5.5%	5.7%	5.7%
Other	1	13	12	12	12
	2.4%	2.5%	4.1%	4.1%	4.1%
No Award	24	277	134	134	134
	57.1%	53.0%	45.7%	45.3%	45.3%

Table IV – 12: Consumer Agreement with BBB AUTO LINE Records

	Verified Remedy			
	Refund/ Replacement	Repair	Other	No Award
BASE: same	13	4	1	24
	100.0%	100.0%	100.0%	100.0%
Refund/Replacement (Imported)	13	-	-	-
	100.0%	-	-	-
Repair (Imported)	-	4	-	-
	-	100.0%	-	-
Other (Imported)	-	-	1	-
	-	-	100.0%	-
No Award (Imported)	-	-	-	21
	-	-	-	87.5%
None on File- Ineligible/Withdrawn Cases (Imported)	-	-	-	3
	-	-	-	12.5%

Concordance: 39/42 = 92.9%

Discordance: 3/42 = 7.1%

Auditor Observations: Of the three discordant cases identified by TechnoMetrica, the auditor estimates that all had a reasonably explicable discordance, and the other contains strong documentation supporting BBB AUTO LINE’s position.

These results are the remaining subset of the results in Section 1.

Consistent with his earlier remarks, the auditor highlights that this chart can't be viewed in a vacuum, but should be examined together with Tables IV - 7 (arbitrated plus mediated cases) and IV - 9 (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 45.7% "no award" rate for consumers without lawyers doesn't seem unreasonable.

But far more non-attorney cases are resolved through mediation than arbitration, and the "loss rate" takes on a very different hue when, as shown in Table IV - 7, that number constitutes only 17.6% of consumers without attorneys who used either mediation or arbitration. As the auditor noted previously, the large number of cases that ended in mediation provides an important gloss that the arbitration (or mediation) numbers don't provide individually.

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

	All manufacturers		Certified Manufacturers	
All arbitrations:	523	100.00%	483	100.00%
Full repurchase	175	33.46%	166	34.43%
Partial repurchase	13	2.49%	13	2.69%
Replacement	15	2.87%	14	2.92%
Repair	28	5.35%	26	5.33%
Trade assist	2	0.38%	2	0.39%
Other award	13	2.49%	13	2.61%
No award	277	52.96%	249	51.62%

The next three tables are based on responses to a single question: Did you accept the arbitrator's award? As noted in the introduction to this chapter, the survey posed this question to all consumers who used arbitration, including those whose claims were denied, and the consumers whose claims were denied often gave discordant replies. In fact, the question is best limited to consumers who obtained some relief, and the auditor thus recalculated the tables with the more limited base.

Table IV – 13: Did you accept the arbitrator's decision?

	Survey
TOTAL	18
BASE: Arbitrated cases, not sure excluded	18 100.0%
Yes	15 83.3%
No	3 16.7%

Table IV-14: Acceptance of different types of remedies

	Total	Refund/ Replacement	Repair	Other
BASE: Arb cases, with awards, not sure excluded	18 100.0%	13 100.0%	4 100.0%	1 100.0%
Yes	15 66.7%	12 92.3%	2 50.0%	1 100.0%

Table IV- 15: Consumer Agreement with BBB AUTO LINE Records

	Accepted	Rejected
BASE: Arbitrated cases, with awards, not sure excluded	15 100.0%	3 100%
Accepted (Imported)	13 86.7%	1 33.3%
Rejected (Imported)	2 13.3%	
No entry to import	-	2 66.7%

Concordance: 13/18 = 72.2%

Discordance: 5/18 = 27.8%

Auditor Observations: See below

Among the five discordant cases, one was a straddle case where the consumer accurately described events from 2017. Another involved a post-decision settlement and, as noted above, such settlements often confuse consumers; here, the consumer seems to have treated it as a rejection of the award that she had previously accepted. In two cases, the consumer didn't return

an acceptance but later reported to TechnoMetrica that she accepted an award. Finally, the fifth case was reported in BBB AUTO LINE records as a mediation (and the file contains no sign of arbitration); in this case, BBB AUTO LINE obviously has no record of whether the consumer accepted an arbitration award.

4. Withdrawn Cases

Table IV – 16: Which of the following best describes why you withdrew your complaint?

	2016 Audit
BASE: WITHDRAWN CASES	10 100.0%
You settled the matter or your car was fixed	3 30.0%
You sold the car	1 10.0%
Some other reason	6 60.0%

Among those reporting “other,” one said that she got a new car from the dealer (suggesting that four of the ten withdrawals ended in a satisfactory resolution).

Among the others, one got a lawyer; several expressed frustration, and one attributed the withdrawal to a hospitalization that prevented him from completing the process in time.

D. COMPLIANCE QUESTIONS

Which of the following applies to your case? The manufacturer...

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
BASE: *	43	493	15	184	58	677
	100.0%	100.0%	100.0%	100.0%	100.0%	
Carried out remedy within the time specified, including extensions to which you agreed	37	480	15	178	52	658
	86.0%	97.4%	100.0%	96.7%	89.7%	97.2%
Carried out remedy after the time specified, including any extension to which you agreed	3	0	0	1	3	1
	7.0%	0.0%	0.0%	0.5%	5.2%	0.1%
Has not yet carried out the remedy, but the time to do so has not yet expired	1	2	0	0	1	2
	2.3%	0.4%	0.0%	0.0%	1.7%	0.3%
Has not yet carried out the remedy and the time to do so has expired	2	11	0	5	2	16
	4.7%	2.2%	0.0%	0.3%	3.4%	2.3%
(Failure to comply was the fault of the consumer)	-	(6)	-	(5)		(11)
	-	(1.2%)	-	(0.3%)		(1.6%)
Time for compliance has expired, performance not verified.	-		-			
	-	-	-			

* *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.*

Auditor's observations: See below

One of the two consumers who reported non-compliance also reported (in response to the question covered by Table IV -- 18) that the manufacturer had inspected his car. This means the manufacturer satisfied the BBB AUTO LINE's test for compliance (which, as noted previously, is a reasonable one) – and it would bring the survey-based statistics for the “non-compliance” row into closer alignment with the BBB AUTO LINE's figures.

The auditor also examined the three case files where the consumer reported delayed compliance. In one of those, the files contain an email from the manufacturer asserting that the consumer had agreed to an extension, but any such agreement wasn't memorialized in a document signed by the consumer. In another, the manufacturer emailed to the case handler, asserting that the delay resulted because the consumer had to remove a toll violation before the transaction could be finished.

Finally, as previously noted in Section II.C of Chapter 2, that there's a difference between “compliance” and consumer satisfaction. The difference is particularly highlighted with repair remedies, where a manufacturer might inspect a car and conclude that no repair is needed, or attempt a repair that doesn't satisfy the consumer. In that case, BBB AUTO LINE would report that the manufacturer has complied (although Table III – 18 and the discussion above suggest that consumers won't always see it that way), but the consumer might well remain unsatisfied. The discussion of the national sample suggested that this seems likely in roughly one in four mediated cases, and this seems roughly comparable to the results for Florida: there were 114 1R cases in 2016, there were 493 mediated case, and 1R cases can only follow onto a mediated case.

That said, though, Table III – 17 measures *compliance* – and the numbers, while consistent with the possibility that BBB AUTO LINE figures might overstate the number of cases with timely performance, are also generally consistent with BBB AUTO LINE's records on all the aspects of performance.

Table IV – 18: Which of the following best applies to your case? The manufacturer:

	Mediated	Arbitrated	Med/Arb Combined
BASE: those reporting non-compliant repair remedy	2	-	2
	100.0%	-	100.0%
Didn't examine your car	1	-	1
	50.0%	-	50.0%
Examined your car and decided that no repair was needed	1	-	1
	50.0%	-	50.0%
Tried to fix your car, but the repair didn't solve the problem	-	-	-
	-	-	-
Something else	-	-	-
	-	-	-

E. TIMING

1. Mediated/Arbitrated Cases

Consistent with the figures the CBBB has long provided to auditors and regulators, the “timing” analysis focuses primarily on mediated and arbitrated cases. The analysis in this section is thus based on 87 cases from a survey sample of 151. BBB AUTO LINE is to be commended for focusing on these 87 cases. The cases that were excluded were, on average, for more likely to be resolved quickly, so the reporting basis used by BBB AUTO LINE probably lowered their measure of performance.

Table IV – 19: Time to Resolve Cases (as reported by consumers)

	Survey			BBB AUTO LINE,
	Mediated	Arbitrated	Med + Arb	Med + Arb
BASE: mediated and arbitrated cases	45	42	87	1016
	100.0%	100.0%	100.0%	100.0%
Within 40 days	38	20	58	712
	84.4%	47.6%	66.7%	70.8%
41 or more	7	22	29	304
	15.6%	52.4%	33.3%	29.2%

The percentages in columns 3 and 4 are a reasonably close match.

In appraising BBB AUTO LINE’s compliance, the table that immediately follows shows that 3 of the 29 consumers acknowledged that delays resulted from their own actions. Even if this doesn’t affect the legal standard for timeliness, it does provide a significant gloss on the reported delay figures. Treating as timely the “consumer’s own fault” respondents, BBB AUTO LINE would have resolved the case within 40 days in:

- 40/45 (89%) of mediated cases;
- 21/42 (50%) of arbitrated cases; and
- 61/87 (70%) of mediated and arbitrated cases combined.

Additionally, the second table that follows explores whether BBB AUTO LINE can rely on a slight extension, which applies when the consumer hadn’t contacted the manufacturer before filing her complaint, extending the time for compliance to 47 days. The response from one consumer, in a mediated case that according to the consumers took 45 days to finalize, would seem to warrant that extension, further increasing the “within 40” count for mediated cases to 91%. In many cases, particularly those where the arbitrator decides that he needs the input of a technical expert to resolve a dispute, there seems good reasons for some delay; it takes time to arrange for such an expert to participate. All in all, the auditor concludes that BBB AUTO LINE is substantially compliant with the statutory standard on timeliness.

Table IV – 20: Did it take more than 40 days because of some action you took?

	Mediated	Arbitrated	Med/Arb Combined
Mediated and arbitrated cases that consumers said took more than 40 days to resolve	7	22	29
Same, not sure excluded	7	21	28
	100.0%	100.0%	100.0%
Yes	2	1	3
	28.6%	4.8%	10.7%
No	5	20	25
	71.4%	95.2%	89.3%

Table IV – 21: Did you contact the manufacturer--not just the dealer--before you filed your complaint?

	Mediated	Arbitrated	Med/Arb Combined
Mediated and arbitrated cases that consumers said took more between 41 and 47 days to resolve	1	11	12
	100.0%	100.0%	100.0%
BASE: Same, not sure excluded)	1	11	12
	100.0%	100.0%	100.0%
Yes	-	11	11
	-	100.0%	91.7%
No	1	-	1
	100.0%	-	8.3%

Table IV – 22: Consumer Agreement with BBB AUTO LINE Records

	Within 40 Days	41+ Days
BASE: mediated and arbitrated cases	58 100.0%	29 100.0%
Within 40 Days (Imported)	57 98.3%	7
41-47 Days (Imported)	1 1.7%	22

Concordance: 79/87 = 90.8%

Discordance: 8/87 = 9.2%

The auditor has already noted that it doesn't seem surprising to get a lower concordance rate on a quantitative metric (days to process complaint) than on a qualitative metric (relief obtained, processed 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 with the initial submission 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 9.2% discordance rate, in the auditor's view, is thus quite reasonable

2. Withdrawn Cases

Table IV – 23: Days until complaints were withdrawn, as reported by consumers

BASE: withdrawn cases	10 100.0%
Within 40 days	8 80.0%
41-47	1 10.0%
48 or more	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?

	Total
TOTAL	151
BASE: Same, not sure excluded	143 100.0%
Yes	132 87.4%
No	11 7.3%

Of the 11 cases where consumers said they didn't receive a consumer complaint form to sign:

- three of the underlying files contained signed forms returned by the consumer;
- seven cases were closed as ineligible (due to age, mileage, product liability claims, or multiple factors) and BBB AUTO LINE apparently does not press the consumer to return a signed consumer complaint form when the claim will be deemed ineligible in any event¹⁵⁸; and
- one case was closed precisely because the consumer hadn't returned a signed consumer complaint form.

¹⁵⁸ This reflects the situation, unique to Florida and California, that cases are opened before consumers returned their signed complaint forms.

Table IV – 25: How clear and understandable were these documents?

	Total
Received documents, per previous question	132
Same, not sure excluded	128 100.0%
Very	87 68.0%
Somewhat	34 26.6%
Not at all	7 5.5%

Table IV – 26: And how helpful were they?

	Total
Total receiving documents	132
Same, not sure excluded	126 100.0%
Very	73 57.9%
Somewhat	36 28.6%
Not at all	17 13.5%

Table IV – 27: After you reached a settlement, did you get an explanation by letter or email describing the terms of the settlement?

	Total
Mediated Cases	45
BASE: Same, not sure excluded	40
	100.0%
Yes	38
	95.0%
No	2
	5.0%

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 both files for consumers who didn't recall receiving the explanation contain entries showing the documents were *sent*.¹⁵⁹ 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 IV – 28: Did you get a notice by letter or email telling you when and where to go for your hearing or vehicle inspection?

	Total
Arbitrated cases	42
	100.0%
Same, not sure excluded	41
	100.0%
Yes	40
	97.6%
No	1
	2.4%

¹⁵⁹ 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?

	Total
Arbitrated Cases	42
Same, not sure excluded	40 100.0%
Yes	38 95.0%
No	2 5.0%

One case where the consumer said “no” was a straddle case, and the final decision wasn’t sent until after the consumers spoke to TechnoMetrica.¹⁶⁰

Table IV – 30: After you 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?

	Total
BASE: mediated cases	45 100.0%
The staff contacted me by letter or email	11 24.4%
The staff spoke to me	8 17.8%
Both of those	24 53.3%
Neither of those	2 4.4%
Something else	- -

¹⁶⁰ The other case was resolved by a post-decision settlement and, though the file doesn’t contain a signed acceptance of the decision, it contains a signed copy of the settlement that followed it.

Table IV – 31: After you 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 the order required?¹⁶¹

	Total
BASE: arbitrated cases and accepted award	15 100.0%
The staff contacted me by letter or email	3 20.0%
The staff spoke to me	2 13.3%%
Both of those	8 53.3%
Neither of those	1 6.7%
Something else	1 6.7

¹⁶¹ The auditor recalculated this chart. The original chart included arbitrated cases where the consumer accepted a decision denying relief, and, in that situation, there's no reason for a follow-up communication from staff.

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

Table IV – 32: Comparisons on process for resolving complaints

	Claims filed by attorneys on behalf of consumers	Claims filed directly by consumers
Mediation	25	468
	6.3%	28.7%
Arbitration	230	293
	57.6%	18.0%
Ineligible	120	736
	30.1%	45.1%
Withdrawn	24	134
	6.2%	8.2%
TOTAL	399	1631
	100.0%	100.0%

.

Table III – 33: Comparison on remedies:

In mediation

	Claims filed by attorneys on behalf of consumers	Claims filed directly by consumers
TOTAL	25 100.0%	468 100.0%
Repurchase/Replacement	20 80.0%	198 42.3%
Repair	1 4.0%	206 44.0%
Other award	4 15%	64 13,7%

In arbitration

TOTAL	230 100.0%	293 100.0%
Repurchase/Replacement	74 32.2%	131 44.7%
Repair	12 5.2%	16 5.4%
Other award	1 0.4%	12 4.1%
No award	143 62.1%	134 45.7%

Combined Mediation and Arbitration

TOTAL	255 100.0%	761 100.0%
Repurchase/Replacement	94 36.9%	329 43.2%
Repair	13 5.1%	222 29.2%
Other award	5 1.9%	76 10.0%
No award	143 56.1%	134 17.6%

According to BBB AUTO LINE statistics, complaints filed by lawyers who represent consumers represent, in Florida, 19.6% of total complaints, but 44.0% of arbitrations.

On the whole, consumers with lawyers are far less likely than others to reach mediated settlements, particularly settlements that provide for less than a repurchase or replacement. Further, through mediation and arbitration combined, consumers with lawyers are less likely to obtain a repurchase or replacement (36.9% vs. 43.2%), far less likely to obtain a repair or “other” award¹⁶² (5.1% vs. 29.2%), and far more likely to have their claims rejected in arbitration (56.1% vs. 17.6%). These numbers are roughly comparable to the national figures (although consumers on the whole seem to do a bit better in Florida than the national norm), and the auditor refers to Section III.G for a more extended discussion of the matter.

¹⁶² These would include, for example, an extended service plan or reimbursement of expenses.

H. SATISFACTION

1. Satisfaction with Arbitrator

Table IV – 34: How would you grade the arbitrator on understanding the facts of your case?

	Total	Award	No Award
ARBITRATED CASES	42	18	24
BASE: Same, not sure excluded	40	18	22
	100.0%	100.0%	100.0%
A=Excellent	18	14	4
	45.0%	77.8%	18.2%
B=Good	4	1	3
	10.0%	5.6%	13.6%
C=Average	5	1	4
	12.5%	5.6%	18.2%
D=Poor	4	-	4
	10.0%	-	18.2%
F=Failing Grade	9	2	7
	22.5%	11.1%	31.8%
SATISFACTORY GRADE - A OR B OR C	27	16	11
	67.5%	88.9%	50.0%
MEAN	2.45	3.39	1.68

Table IV – 35: How would you grade the arbitrator on objectivity and fairness?

	Total	Award	No Award
ARBITRATED CASES	42	18	24
BASE: Same, not sure excluded	42	18	24
	100.0%	100.0%	100.0%
A=Excellent	16	13	3
	38.1%	72.2%	12.5%
B=Good	3	-	3
	7.1%	-	12.5%
C=Average	7	2	5
	16.7%	11.1%	20.8%
D=Poor	6	1	5
	14.3%	5.6%	20.8%
F=Failing Grade	10	2	8
	23.8%	11.1%	33.3%
SATISFACTORY GRADE - A OR B OR C	26	15	11
	61.9%	83.3%	45.8%
MEAN	2.21	3.17	1.50

Table IV – 36: How would you grade the arbitrator on reaching an impartial decision?

	Total	Award	No Award
ARBITRATED CASES	42	18	24
BASE: same, not sure excluded	41	18	23
	100.0%	100.0%	100.0%
A=Excellent	14	12	2
	34.1%	66.7%	8.7%
B=Good	6	3	3
	14.6%	16.7%	13.0%
C=Average	4	-	4
	9.8%	-	17.4%
D=Poor	7	1	6
	17.1%	5.6%	26.1%
F=Failing Grade	10	2	8
	24.4%	11.1%	34.8%
SATISFACTORY GRADE - A OR B OR C	24	15	9
	58.5%	83.3%	39.1%
MEAN	2.17	3.22	1.35

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

	Total	Award	No Award
ARBITRATED CASES	42	18	24
BASE: Same, not sure excluded	42	18	24
	100.0%	100.0%	100.0%
A=Excellent	15	13	2
	35.7%	72.2%	8.3%
B=Good	4	1	3
	9.5%	5.6%	12.5%
C=Average	7	2	5
	16.7%	11.1%	20.8%
D=Poor	5	-	5
	11.9%	-	20.8%
F=Failing Grade	11	2	9
	26.2%	11.1%	37.5%
SATISFACTORY GRADE - A OR B OR C	26	16	10
	61.9%	88.9%	41.7%
MEAN	2.17	3.28	1.33

**Table IV - 38
ARBITRATOR SATISFACTION COMPOSITE**

BASE: Arbitrated cases, not sure excluded	A	B	C	D	F	TOTAL
understanding the facts of your case	18	4	5	4	9	40
	45.0%	10.0%	12.5%	10.0%	22.5%	100.0%
objectivity and fairness	16	3	7	6	10	42
	38.1%	7.1%	16.7%	14.3%	23.8%	100.0%
reaching an impartial decision	14	6	4	7	10	41
	34.1%	14.6%	9.8%	17.1%	24.4%	100.0%
coming to a reasoned & well thought-out decision	15	4	7	5	11	42
	35.7%	9.5%	16.7%	11.9%	26.2%	100.0%
COMPOSITE	63	17	23	22	40	165
	38.2%	10.3%	13.9%	13.3%	24.2%	100.0%

Composite Means (2016)

All consumers with arbitration: 2.25
 Consumers who received awards 3.26
 Consumers with no awards 1.46

Composite Means (2015)

All consumers with arbitration:
 Consumers who received awards 3.40
 Consumers with no awards 0.79

While the overall rate of satisfaction basically remained constant, the auditor believes that separating out consumers who received awards from those who didn't is far more revealing. Florida consumers who secured some relief gave the arbitrator roughly a B+ grade, while this who didn't get relief gave arbitrators a D+.

2. Satisfaction With BBB AUTO LINE Staff

Table IV – 39: How would you grade BBB AUTO LINE Staff on objectivity and fairness?

TOTAL ARBITRATED OR MEDIATED CASES	87
BASE: Same, not sure excluded	83 100.0%
A=Excellent	43 51.8%
B=Good	22 26.5%
C=Average	10 12.0%
D=Poor	3 3.6%
F=Failing Grade	5 6.0%
SATISFACTORY GRADE - A OR B OR C	75 90.4%
MEAN	3.14

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

TOTAL ARBITRATED OR MEDIATED CASES	87
	100.0%
BASE: same, not sure excluded	85
	97.7%
A=Excellent	47
	55.3%
B=Good	18
	21.2%
C=Average	10
	11.8%
D=Poor	3
	3.5%
F=Failing Grade	7
	8.2%
SATISFACTORY GRADE - A OR B OR C	75
	88.2%
MEAN	3.12

Table IV – 41: Overall, what grade would you give BBB AUTO LINE?

TOTAL ARBITRATED OR MEDIATED CASES	87
	100.0%
BASE: Same, not sure excluded	87
	100.0%
A=Excellent	45
	51.7%
B=Good	24
	27.6%
C=Average	6
	6.9%
D=Poor	2
	2.3%
F=Failing Grade	10
	11.5%
SATISFACTORY GRADE - A OR B OR C	75
	86.2%
MEAN	3.06

**Table IV - 42
BBB AUTO LINE STAFF EFFORT-SATISFACTION COMPOSITE**

BASE: Arbitrated Or Mediated Cases, not sure excluded	A	B	C	D	F	TOTAL
objectivity and fairness	43	22	10	3	5	83
	51.8%	26.5%	12.0%	3.6%	6.0%	100.0%
efforts to assist you in resolving your claim	47	18	10	3	7	85
	55.3%	21.2%	11.8%	3.5%	8.2%	100.0%
overall grade	45	24	6	2	10	87
	51.7%	27.6%	6.9%	2.3%	11.5%	100.0%
COMPOSITE	135	64	26	8	22	255
	52.9%	25.1%	10.2%	3.1%	8.6%	100.0%

Composite Mean (2016): 3.10
 Composite Mean (2015): 3.20

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

	Total	Med/Arb
TOTAL	151	87
BASE: total, not sure excluded	148	87
	100.0%	100.0%
Yes	108	67
	73.0%	77.0%
No	40	20
	27.0%	23.0%

Last year, the “yes” responses were 76% (all consumers) and 81% (consumers who used arbitration or mediation).

V. SURVEY RESULTS – OHIO SAMPLE

The Ohio population is the smallest of the three populations that TechnoMetrica surveyed; indeed, after adjusting for MCSVs and attorney cases,¹⁶³ along with consumers whose contact information was outdated, there were only 209 consumers to call. TechnoMetrica therefore made repeated attempts to call each of them, beyond those made for the National and Florida samples; it didn't abandon calling a consumer until six unsuccessful attempts to call each of the consumer's contact numbers. Further, Ohio consumers who were surveyed as part of the national sample were counted in the Ohio sample as well,¹⁶⁴ so they weren't "lost" to the Ohio sample. But even with these efforts, the total population surveyed was only 64.

And, as noted in Section I.E of this chapter, the smaller number meant a larger margin of error; even for questions directed to all 64 consumers who took the survey, it was +/-10.4%. Further, most questions weren't directed to all 64 consumers. Questions about the remedy in an arbitrated case, for example, or about whether a consumer accepted an arbitration award, were directed only to the 14 consumers who said they used arbitration. For those questions, the margin of error grew to 20% or more and, for questions like those, a comparison of the BBB AUTO LINE aggregates to the survey aggregates isn't particularly probative.

However, even on these questions, the alternative approach developed by the auditor provides far more support for the substantial accuracy of BBB AUTO LINE's records. This is the two-step process described previously. First, the auditor "validated" the spread sheet provided by BBB AUTO LINE by identifying and analyzing individual "discordant" responses where the consumer's replies and BBB AUTO LINE records diverged. Then, having again "validated" the spread sheets, he found that they produced aggregates substantially similar to BBB AUTO LINE's aggregate statistics.

The preliminary note in Section II, addressing "not sure" responses, gender neutral pronouns, and other matters, apply to the Ohio discussion as well.

¹⁶³ See Section II.C.2 and 3 of this chapter.

¹⁶⁴ In other words, the representative national sample included some consumers from Ohio. To maximize the sample size for Ohio, these consumers were counted in the Ohio results as well.

A. GENERAL INFORMATION

**Table V – 1:
Vehicle Year**

	Survey		Survey
TOTAL	64	TOTAL	64
	100.0%		100.0%
2002	-	2011	3
	-		4.7%
2003	1	2012	2
	1.6%		3.1%
2004	1	2013	5
	1.6%		7.8%
2005	-	2014	15
	-		23.4%
2006	-	2015	24
	-		37.5%
2007	1	2016	7
	1.6%		10.9%
2008	1	2017	-
	1.6%		-

**Table V – 2:
The BBB AUTO LINE's records show they closed a complaint
in 2016 about your <make> vehicle. Is that correct?**

	Survey
TOTAL	64
	100.0%
Yes	64
	100.0%
No	-
	-

Table V – 3:
How many times, if any, did the dealer or manufacturer try to repair your vehicle before you filed the complaint?

	2016 Audit
TOTAL	64 100.0%
BASE: Same, “not sure” excluded	61 100.0%
One	4 6.6%
Two	2 3.3%
Three	8 13.1%
Four or more	41 67.2%
None	6 9.8%

Table V – 4:
How did you first learn about BBB AUTO LINE?
(Asterisked figures manually adjusted by auditor)

	2016 Audit
TOTAL	64
BASE: same, “not sure” excluded	62
	100.0%
Warranty documents*	8
	12.5%
Dealer or manufacturer representative	11
	17.7%
BBB/BBB Website	8
	12.9%
Other internet website (Other than BBB website)	13
	21.0%
Lawyer	3
	4.8%
Friend/family/word of mouth	15
	24.2%
TV/Radio/Newspaper	-
	-
Other*	4
	6.2%

As with the national and Florida samples, the auditor reviewed the responses from consumers whose responses were initially classified as “other” by TechnoMetrica. Of the six that TechnoMetrica had so classified, two referred to owner’s manuals, which TechnoMetrica hadn’t realized are essentially a form of warranty document. The auditor adjusted the chart to reclassify these (and next year’s survey instrument will clarify to TechnoMetrica staff who contact consumers that owner’s manuals are a form of warranty document).

B. PROCESS QUESTIONS

Table V – 5: Case Type As Identified by Consumer

	Survey	BBB AUTO LINE, all cases	BBB AUTO LINE, excluding att’y cases	Auditor aggregates from original spread sheets, excluding att’y cases	Auditor aggregates from “fully adjusted” spread sheets
BASE: All cases	64	394	257	250	228
	100.0%	100.0%	100.0%	100.0%	100.0%
Mediation	28	114	104	102	82
	43.8%	28.9%	40.4%	40.8%	36.0%
Arbitration	14	141	42	41	39
	21.9%	35.8%	16.3%	16.4%	17.1%
Withdrawn	2	48	28	26	26
	3.1%	12.2%	10.9%	10.4%	11.4%
Ineligible	18	91	83	81	81
	28.1%	23.1%	32.3%	32.4%	35.6%
Other	2				
	3.1%				

Table V – 6: Individual consumers’ agreement with BBB AUTO LINE records

	Mediated	Arbitrated	Withdrawn	Ineligible	Other
TOTAL	28	14	2	18	2
	100.0%	100.0%	100.0%	100.0%	100.0%
Mediation (Imported)	28	-	-	-	-
	100.0%	-	-	-	-
Arbitration (Imported)	-	13	-	-	-
	-	92.9%	-	-	-
Withdrawn (Imported)	-	-	2	1	2
	-	-	100.0%	5.6%	100.0%
Ineligible (Imported)	-	1	-	17	-
	-	7.1%	-	94.4%	-

Concordance: 60/64 = 93.8%

Discordance: 4/64 = 6.2%

Auditor Observations: See below.

The auditor again begins with the micro analysis. Of the four discordant cases in Table

V – 6, one was a straddle case where the consumer accurately described the follow-on case from 2017. In another, where the consumer hadn't given the manufacturer or dealer sufficient opportunity to repair the car, the consumer reported the complaint as ineligible and BBB AUTO LINE records reported it as withdrawn.¹⁶⁵ Finally, the other two cases involved disagreement about who caused a breakdown in communications; BBB AUTO LINE's records in both files, though, show multiple phone calls as well as two letters, one sent a week before closing and one at the time of closing, both of which reference the phone calls.

For the macro analysis, for reasons discussed in Sections III.B and IV.B, the auditor looked for two matches.

First, the micro analysis for Ohio, like that for the National and Florida samples, shows that the information in BBB AUTO LINE's spread sheet substantially matched that in the consumer's responses. Even more importantly, it appears to very closely match (after taking into account reasonably explicable discordances and very well documented cases) the underlying situation. The auditor thus compared the aggregates calculated by BBB AUTO LINE directly from the underlying data base (column 3) to those he found from the "vouched-for" spread sheet (after removing attorney cases from each). And, as in prior comparisons of this nature, the match was close.

Second, does the apples-to-apples comparison of Column 1 to Column 5 show a reasonable match? Statistics in the National and Florida samples showed that consumers who were ineligible were substantially less likely to respond to the questionnaire, so the percentage of "ineligibles" on the survey tends to be lower than the corresponding percentages in BBB AUTO LINE's figures, while the numbers of arbitrations (and perhaps mediations) tends to be higher on the survey than in the BBB AUTO LINE statistics. While the auditor didn't obtain relative response rates for Ohio, the pattern of understating "ineligibles" in the survey appears here as well. Taking into account a likely "non-response error," as well as the margin of error of +/-10.4% (the relevant margin of error for questions asked to all participants in the Ohio sample), the auditor finds these numbers a very reasonable match.

¹⁶⁵ The consumer later filed a straddle case, but no one seemed to focus on that.

C. RELIEF QUESTIONS

1. Combined Results for Cases Mediated and Arbitrated Cases

As in section III.C.1 and IV.C.1, this section first presents the combined results for cases identified by consumers as mediated and arbitrated, and then the separate results for each. The combined results provide important insights into the overall program; as noted before, the auditor believes they provide more meaningful insights into the program than do the results for mediated or arbitrated cases alone. From the consumer’s perspective, a replacement vehicle obtained in mediation (for example) is no less valuable than a replacement obtained in arbitration, and, if consumer obtain results through a mediated BBB AUTO LINE case, that speaks as much to the overall program as if they obtain the same results through arbitration.

Table V – 7: Remedies Identified by Consumers in Mediated and Arbitrated Cases

	Survey	BBB AUTO LINE, all cases	BBB AUTO LINE, excluding att’y cases	Auditor aggregates from original spread sheets, excluding att’y cases	Auditor aggregates from “fully adjusted” spread sheets
BASE: med and arb cases	42	255	146	143	121
	100.0%	100.0%	100.0%	100.0%	100.0%
Repurchase/ Replacement	19	85	59	57	57
	45.2%	33.3%	40.4%	39.9%	47.1%
Repair	12	66	54	55	29
	28.6%	25.9%	37.0%	38.5%	24.0%
Other	7	20	16	14	19
	16.7%	7.8%	10.6%	9.8%	15.7%
None	4	84	17	17	16
	9.5%	32.9%	11.6%	11.9%	13.2%

Table V – 8: Consumer Agreement with BBB AUTO LINE Records

	Repurchase/ Replacement	Repair	Other	No Award
BASE: mediated and arbitrated cases	19 100.0%	12 100.0%	7 100.0%	4 100.0%
Repurchase/Replacement (Imported)	18 94.7%	-	-	-
Repair (Imported)	-	12 100.0%	-	-
Other (Imported)	-	-	7 100.0%	-
No Award (Imported)	-	-	-	4 100.0%
None on File (because BBB AUTO LINE reported the case as ineligible or withdrawn) (Imported)	1 5.3%	-	-	-

Concordance: 41/42 = 97.6%

Discordance: 1/42 = 2.4%

Auditor’s observations: The sole discordant case was reasonably explicable.

The sole discordant case was the case, discussed in the previous section, where the consumer hadn’t brought in the car for a sufficient number of repair attempts, and BBB AUTO LINE recorded the case as withdrawn while the consumer called it ineligible.

As to the bigger picture, here, as with the “process” discussion, the micro analysis (Table V – 8 and the accompanying file review) shows that BBB AUTO LINE’s spread sheet is substantially accurate. And, with that as a predicate, the close match between the aggregate figures calculated by BBB AUTO LINE (column 3 of Table V – 7) and comparable figures that the auditor found from the “vouched-for” spread sheet (column 4 of that table) indicates that BBB AUTO LINE’s aggregates are substantially accurate. Further, the comparison between columns 1 and 5 of Table V – 7, the apples-to-apples comparison of the survey responses to figures derived from a fully adjusted spread sheet, is yet another (though somewhat weaker) sign of support. Particularly in light of the margin of error here – it’s +/-10.4% for questions posed to all 64 in the Ohio sample, and higher here because the question was posed to only 42 of them – a comparison between Columns 1 and 5 is acceptably close.

And, at this point, the auditor turns to his substantive analysis. Assuming the figures in columns 2 through 5 of Table V-7 are substantially accurate, what do they tell us? The overall distribution is revealing: among cases that were either mediated or arbitrated, 33.3% ended with a repurchase or replacement remedy, 33.7% with some other relief, and 32.9% ended with no relief. Further, excluding cases brought by attorneys (whose profile is discussed in some detail in Section G), column 3 reports that only 11.6% 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 Only

Table V – 9: Remedies Identified by Consumers in Mediated Cases

	Survey	BBB AUTO LINE, all cases	BBB AUTO LINE, excluding att’y cases	Auditor aggregates from original spread sheets, excluding att’y cases	Auditor aggregates from “fully adjusted” spread sheets
BASE:	28	114	104	102	82
med. cases	100.0%	100.0%	100.0%	100.0%	100.0%
Repurchase/ Replacement	10 35.7%	50 43.9%	40 38.5%	39 39.2%	39 47.6%
Repair	11 39.3%	49 42.3%	49 47.1%	49 48.0%	29 35.4%
Other	7 25.0%	15 13.2%	15 14.4%	14 13.7%	14 17.1%

Table V – 10: Consumer Agreement with BBB AUTO LINE Records

	Repurchase/ Replacement	Repair	Other
BASE: arbitrated cases	10 100.0%	11 100.0%	7 100.0%
Repurchase/Replacement (Imported)	10 100.0%	- -	- -
Repair (Imported)	- -	11 100.0%	- -
Other (Imported)	- -	- -	7 100.0%

Concordance: 28/28 = 100.0%

Discordance: 0/28 = 0.0%

Table V-10 shows the individual consumer responses for this question are fully concordant with the records in the spread sheet. As noted above, the auditor finds that this, combined with the close match between columns 3 and 4 of Table V-9, indicates that BBB AUTO LINE’s aggregates are substantially accurate.

The match between columns 1 and 5 of Table IV-10 isn’t as close as in the prior questions. But these questions were only posed to the 28 consumers in the Ohio survey who said they used mediation, and the margin of error was substantially higher for this subsample than the margin of error (+/-10.4%) for questions posed to all 62 consumers in the Ohio survey. Given the margin of error that would be expected in this comparison, the results under this test indicate that BBB AUTO LINE’s calculations are consistent with the survey – and, more importantly, the accuracy of BBB AUTO LINE’s record keeping and statistics is more strongly confirmed by the previously noted similarities between Columns 3 and 4.

3. Arbitrated Cases Only

Table V – 11: Remedies Identified by Consumers in Arbitrated Cases

	Survey	BBB AUTO LINE, all cases	BBB AUTO LINE, excluding att’y cases	Auditor aggregates from original spread sheets, excluding att’y cases	Auditor aggregates from “fully adjusted” spread sheets
BASE: arbitrated cases	14	141	42	41	39
	100.0%	100.0%	100.0%	100.0%	100.0%
Repurchase/ Replacement	9	35	19	18	18
	64.3%	24.8%	45.2%	43.9%	46.2%
Repair	1	17	5	6	5
	7.1%	12.1%	11.9%	14.6%	12.8%
Other	-	5	1	-	-
	-	3.6%	2.4%	-	-
No Award	4	84	17	17	16
	28.6%	59.6%	40.4%	42.5%	41.0%

Table V – 12: Consumer Agreement with BBB AUTO LINE Records

	Repurchase/ Replacement	Repair	Other	No Award
BASE: arbitrated cases	9	1	-	4
	100.0%	100.0%	-	100.0%
Repurchase/Replacement (Imported)	8	-	-	-
	88.9%	-	-	-
Repair (Imported)	-	1	-	-
	-	100.0%	-	-
Other (Imported)	-	-	-	-
	-	-	-	-
No Award (Imported)	-	-	-	4
	-	-	-	100.0%
None on File (because BBB AUTO LINE reported the case as ineligible or withdrawn) (Imported)	1	-	-	-
	11.1%	-	-	-

Concordance: 13/14 = 92.9%

Discordance: 1/14 = 7.1%

Auditor’s observations: The discordant case was a straddle case, and the consumer described developments from 2017 that weren’t picked up in the spread sheet.

Table V – 12 shows that the individual consumer responses for this question are fully concordant with the records in the spread sheet, with allowance for the straddle case noted above. This, combined with the close match between columns 3 and 4 of Table V – 9, indicates that BBB AUTO LINE’s aggregates are substantially accurate.

The match between columns 1 and 5 of Table IV-12 isn’t particularly close. But these questions were only posed to the 14 consumers in the survey, while “fully adjusted” spread sheets suggest there were only 39 consumers who used arbitration in the fully adjusted sampling frame for Ohio, and that would drive the margin of error over 20%. Thus, the auditor concludes that these numbers are consistent – but highlights, as before that the accuracy of BBB AUTO LINE’s record keeping and statistics is more strongly confirmed by the previously noted similarities between Columns 3 and 4.

- - -

The next three tables are based on responses to a single question: Did you accept the arbitrator’s award? As noted in the introduction to this chapter, the survey posed this question to all consumers who used arbitration, including those whose claims were denied, and the consumers whose claims were denied often gave discordant replies. In fact, the question is best limited to consumers who obtained some relief, and the auditor thus recalculated the tables with the more limited base

Table V – 13: Did you accept the arbitrator's decision?

	Survey
BASE: Arb. decisions finding relief for the consumer (no “not sure” responses to exclude).	10 100.0%
Yes	7 70.0%
No	3 30.0%

Table V – 14: Breakout by the remedy

	Repurchase/ Replacement	Repair	Other	All Remedies
BASE: Same	9 100.0%	1 100.0%	- -	10 100.0%
Yes	7 77.8%	0 0%	- -	7 70.0%

Table V – 15: Consumer Agreement with BBB AUTO LINE Records

	Consumer Response	
	Accepted	Rejected
BASE: Same	7 100.0%	3 100.0%
Accepted (Imported)	6 85.7%	2 66.7%
Rejected (Imported)	- -	1 33.3%
No entry imported, because BBB AUTO didn't report case as arbitrated	1 14.3%	

Concordance: 8/14 = 57.1%

Discordance: 6/14 = 42.9%

Auditor Observations: Of the cases identified as discordant, the auditor estimates that all involved reasonably explicable discordances.

The “no entry imported” case was a straddle case where the consumer described a related case from 2017 that wasn’t reflected in the spread sheet. The other two discordant cases were variations on the issues of settlement during or after arbitrations, which, as noted previously, pose complications that often confuse consumers.

4. Reasons for Withdrawal

Table V – 16: Which of the following best describes why you withdrew your complaint?

	2016 Audit
BASE: withdrawn	2 100.0%
You settled the matter or your car was fixed	1 50.0%
You sold the car	- -
Some other reason	1 50.0%

One of the withdrawals occurred because the consumer resolved the case. In the other case, the BBB AUTO LINE records and the consumer agree that the consumer had been told that the complaint wasn't eligible.

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
BASE: *	28	113	7	37	35	150
	100.0%	100.0%	100.0%		100.0%	100.0%
Carried out remedy within the time specified, including extensions to which you agreed	22	108	6	34	28	142
	78.6%	95.6%	85.7%	91.9%	80.0%	94.7%
Carried out remedy after the time specified, including any extensions to which you agreed	5	0	-	-	5	5
	17.9%	0	-	-	14.3%	3.3%
Has not yet carried out the remedy, but the time to do so has not yet expired	-	-	-	-	-	
	-	-	-	-	-	
Has not yet carried out the remedy and the time to do so has expired	1	5	1	2	2	3
	3.6%	4.4%	14.3%	5.4%	5.7%	2.0%
(Failure to comply was the fault of the consumer)		(4)		(2)		
		(3.5%)		(5.4%)		
Time for compliance has expired, performance not verified.				1		
	-	-	-			

**BASE: All cases that were (1) reported by consumers as mediated, and (2) reported by consumers as arbitrated, if the consumers also reported that they had received an award in the arbitrator’s decision and accepted it. “Not sure” replies to this question were excluded in calculating percentages.*

Both cases reporting that the manufacturer never complied closed in December 2016. In the first, the arbitrator awarded a replacement and the consumer ordered new car with a 90-day turnaround; she confirmed receiving the car, but only after the survey was conducted. In the second, an initial case ended with a mediated repair remedy; a second case went to arbitration and the consumer lost. The consumer’s response seems to have focused on the initial case (she

identified it as a mediated repair case), but she seems to have construed the failure to find a problem to be “noncompliance.”¹⁶⁶

Thus, the survey and the auditor’s file review, taken together, point to no “non-compliant” cases, as BBB AUTO LINE uses the term.¹⁶⁷ So the survey actually shows a lower rate of non-compliance than do BBB AUTO LINE’s statistics.

As for the five “delay” responses, the file in each indicates that a performance verification letter was sent to the consumer but not returned. There was no sign of complications in four of these cases (in one of which the consumer had granted an extension). While there was delayed compliance in several cases, there thus appears to have been eventual compliance in all.

Table V – 18: Which of the following best applies to your case?

	Mediated	Arbitrated	Med/Arb Combined
BASE: those reporting non-compliant repair remedy	1	-	1
	100.0%		100.0%
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	1	-	1
	100.0%		100.0%

¹⁶⁶ The term “noncompliance” couldn’t apply to the second case, of course, because it was a denial.

¹⁶⁷ As noted above, the BBB AUTO LINE finds “compliance” where the manufacturer inspected the vehicle and determined that it didn’t need a repair.

E. TIMING QUESTIONS

1. Mediated and Arbitrated Cases

Consistent with the figures the CBBB has long provided to auditors and regulators, the “timing” analysis focuses primarily on mediated and arbitrated cases. The analysis in this section is thus based on 87 cases from a survey sample of 151. BBB AUTO LINE is to be commended for focusing on these 87 cases. The cases that were excluded were, on average, for 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 Cases (as reported by consumers)

	Mediated	Arbitrated	Med/Arb Combined
BASE: mediated and arbitrated cases	28	14	42
	100.0%	100.0%	100.0%
Within 40 days	23	11	34
	82.1%	78.6%	81.0%
41 or more days	5	3	8
	17.9%	21.4%	16.7%

As noted in Table V-21, three of the eight consumers who reported delayed compliance also reported that the delay resulted from some action that they took, which seems to be an important gloss on the situation. And, if these cases weren’t counted as delays, the timeliness rate would be 25/28 (89.2%) for mediated cases; 12/14 (85.7%) for arbitrated cases, and 37/42 (88.1%) for combined mediated and arbitrated cases.

Table V – 20: Consumer Agreement with BBB AUTO LINE Records

	Within 40 Days	41+ Days
BASE: Same	34 100.0%	8 100.0%
Within 40 Days (Imported)	34	5
	100.0%	62.5%
41 or more days (Imported)	-	3
	-	37.5%

Concordance: 37/42 = 88.1%

Discordance: 5/42 = 11.9%

As the auditor noted previously, it doesn't seem surprising to get a lower concordance rate on a quantitative metric (days to process complaint) than on a qualitative metric (relief obtained, processed 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 Ohio with the return of the signed consumer 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 11.9% discordance rate, in the auditor's view, is quite reasonable.

Table V – 21: Did it take more than 40 days because of some action you took?

	Mediated	Arbitrated	Med/Arb Combined
Total mediated or arbitrated cases more than 40 days	5	3	8
	100.0%	100.0%	100.0%
BASE: same, not sure excluded	5	3	8
	100.0%	100.0%	100.0%
Yes	2	1	3
	40.0%	33.3%	37.5%
No	3	2	5
	60.0%	66.7%	62.5%

Table V – 22: Did you contact the manufacturer--not just the dealer--before you filed your complaint?

	Mediated	Arbitrated	Med/Arb Combined
Total mediated or arbitrated cases between 41-47 days	-	1	1
		100.0%	100.0%
BASE: Same, not sure excluded	-	1	1
		100.0%	100.0%
Yes	-	-	-
No	-	1	1
		100.0%	100.0%

2. Withdrawn Cases

Table V – 23: Time until withdrawal (as reported by consumers)

	2016 Audit
BASE: Withdrawn cases	2
	100.0%
Within 40 days	1
	50.0%
41 or more	1
	50.0%

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?

	Total
TOTAL	64
BASE: Same, not sure excluded	59 100.0%
Yes	59 92.2%
No	- -

Table V – 25: How clear and understandable were these documents?

	Total
TOTAL	59
BASE: same, not sure excluded	58 100.0%
Very	44 75.9%
Somewhat	13 22.4%
Not at all	1 1.7%

Table V -26: And how helpful were they?

	Total
TOTAL receiving documents	59
BASE: same, not sure excluded	59 100.0%
Very	34 57.6%
Somewhat	15 25.4%
Not at all	10 16.9%

Table V – 27: After you reached a settlement, did you get an explanation by letter or email describing the terms of the settlement?

	Total
TOTAL mediated cases	28
BASE: same, not sure excluded	26 100.0%
Yes	26 100.0%
No	- -

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?

	Total
TOTAL arbitrated cases	14
BASE: same, not sure excluded	14 100.0%
Yes	14 100.0%
No	- -

Table 5 – 29: Did you get a copy by letter or email of the arbitrator's decision?

	Total
TOTAL arbitrated cases	14
BASE: same, not sure excluded	14 100.0%
Yes	13 92.9%
No	1 7.1%

The one consumer who said that she didn't get an arbitrator's decision – the only consumer to report a non-receipt of any document in Ohio – reached a consent settlement during the hearing. She presumably didn't recall that the settlement was embodied in a consent decision, which resides in her file.

Table V – 30: After you 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?

	Total
BASE: mediated cases	28 100.0%
The staff contacted me by letter or email	6 21.4%
The staff spoke to me	4 14.3%
Both of those	12 42.9%
Neither of those	4 14.3%
Something else	2 7.1%

Table V – 31: After you 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 the order required?¹⁶⁸

	Total
BASE: arbitrated cases and accepted award	7 100.0%
The staff contacted me by letter or email	1 14.7%
The staff spoke to me	- -
Both of those	2 28.6%
Neither of those	2 28.6%
Something else	2 28.6%

Table V – 32: After you 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/what the order required?

	Total
BASE: mediated cases and arbitrated cases that accepted award	35 100.0%
The staff contacted me by letter or email	7 20.0%
The staff spoke to me	4 11.4%
Both of those	14 40.0%
Neither of those	6 17.1%
Something else	4 11.4%

¹⁶⁸ The auditor recalculated this chart; the original chart included arbitrated cases where the consumer accepted a decision denying relief and, in that situation, there's no reason for a follow-up communication from staff.

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

Table V – 33: Comparisons on process for resolving complaints

	Claims filed by attorneys on behalf of consumers	Claims filed directly by consumers
Mediation	10	104
	7.3%	40.5%
Arbitration	99	42
	72.3%	16.3%
Ineligible	8	63
	5.8%	32.3%
Withdrawn	20	28
	14.6%	10.9%
TOTAL	137	257
	100.0%	100.0%

.

Table IV – 33: Comparison on remedies:

In mediation

	Claims filed by attorneys on behalf of consumers	Claims filed directly by consumers
TOTAL	10	104
	100%	100.0%
Repurchase/Replacement	10	40
	100%	38.5%
Repair		49
		47.1%
Other award		15
		14.4%

In arbitration

TOTAL	99	42
	100.0%	100.0%
Repurchase/Replacement	16	19
	16.2%	45.2%
Repair	12	5
	12.1%	11.9%
Other award	4	1
	4.0%	2.4%
No award	67	17
	67.7%	40.5%

Combined mediation and arbitration

TOTAL	109	146
	100.0%	100.0%
Repurchase/Replacement	26	59
	23.9%	40.4%
Repair	12	54
	11.0%	37.0% %
Other award	4	16
	3.7%	11.0%
No award	67	17
	61.5%	11.6%

According to BBB AUTO LINE statistics, complaints filed by lawyers who represent consumers represent, in Ohio, 34.7% of total complaints, but 70.2% of arbitration. On the whole, consumers with lawyers are far less likely than others to reach mediated settlements, particularly settlements that provide for less than a repurchase or replacement. Further, through mediation and arbitration combined, consumers with lawyers are less likely to obtain a repurchase or replacement (23.9% vs. 40.4%), far less likely to obtain a repair or “other” award¹⁶⁹ (14.7% vs. 48.0%) and far more likely to have their claims rejected in arbitration (61.5% vs, 11.6%). These numbers are roughly comparable to the national figures, and the auditor refers to Section III.G for a more extended discussion of the matter.

¹⁶⁹ These would include, for example, an extended service plan or reimbursement of expenses.

H. SATISFACTION

1. Satisfaction With Arbitrator

Table V – 34: How would you grade the arbitrator on understanding the facts of your case?

	Total	Award	No Award
Total arbitrated cases	14	10	4
BASE: same, “not sure” excluded	14	10	4
	100.0%	100.0%	100.0%
A=Excellent	10	9	1
	71.4%	90.0%	25.0%
B=Good	-	-	-
	-	-	-
C=Average	2	-	2
	14.3%		50.0%
D=Poor	-	-	-
	-	-	-
F=Failing Grade	2	1	1
	14.3%	10.0%	25.0%
SATISFACTORY GRADE - A OR B OR C	12	9	3
	85.7%	90.0%	75.0%
MEAN	3.14	3.60	2.00

Table V – 35: How would you grade the arbitrator on objectivity and fairness?

	Total	Award	No Award
TOTAL ARBITRATED CASES	14	10	4
BASE: arbitrated cases (not sure excluded)	14	10	4
	100.0%	100.0%	100.0%
A=Excellent	9	9	-
	64.3%	90.0%	
B=Good	1	-	1
	7.1%		25.0%
C=Average	1	-	1
	7.1%		25.0%
D=Poor	1	-	1
	7.1%		25.0%
F=Failing Grade	2	1	1
	14.3%	10.0%	25.0%
SATISFACTORY GRADE - A OR B OR C	11	9	2
	78.6%	90.0%	50.0%
MEAN	3.00	3.60	1.50

Table V – 36: How would you grade the arbitrator on reaching an impartial decision?

	Total	Award	No Award
TOTAL ARBITRATED CASES	14	10	4
BASE: arbitrated cases (not sure excluded)	13	9	4
	100.0%	100.0%	100.0%
A=Excellent	8	8	-
	61.5%	88.9%	
B=Good	1	-	1
	7.7%		25.0%
C=Average	1	-	1
	7.7%		25.0%
D=Poor	1	-	1
	7.7%		25.0%
F=Failing Grade	2	1	1
	15.4%	11.1%	25.0%
SATISFACTORY GRADE - A OR B OR C	10	8	2
	76.9%	88.9%	50.0%
MEAN	2.92	3.56	1.50

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

	Total	Award	No Award
TOTAL ARBITRATED CASES	14	10	4
BASE: arbitrated cases (not sure excluded)	13	9	4
	100.0%	100.0%	100.0%
A=Excellent	7	7	-
	53.8%	77.8%	
B=Good	2	1	1
	15.4%	11.1%	25.0%
C=Average	1	-	1
	7.7%		25.0%
D=Poor	1	-	1
	7.7%		25.0%
F=Failing Grade	2	1	1
	15.4%	11.1%	25.0%
SATISFACTORY GRADE - A OR B OR C	10	8	2
	76.9%	88.9%	50.0%
MEAN	2.85	3.44	1.50

TABLE V - 38
ARBITRATOR SATISFACTION COMPOSITE

BASE: Arbitrated cases, not sure excluded	A	B	C	D	F	TOTAL
understanding the facts of your case	10	-	2	-	2	14
	71.4%	-	14.3%	-	14.3%	100.0%
objectivity and fairness	9	1	1	1	2	14
	64.3%	7.1%	7.1%	7.1%	14.3%	100.0%
reaching an impartial decision	8	1	1	1	2	13
	61.5%	7.7%	7.7%	7.7%	15.4%	100.0%
coming to a reasoned & well thought-out decision	7	2	1	1	2	13
	53.8%	15.4%	7.7%	7.7%	15.4%	100.0%
COMPOSITE	34	4	5	3	8	54
	63.0%	7.4%	9.3%	5.6%	14.8%	100.0%

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

2. Satisfaction with BBB AUTO LINE staff

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

TOTAL arbitrated or mediated cases	64
BASE: same, not sure excluded)	62 100.0%
A=Excellent	38 61.3%
B=Good	9 14.5%
C=Average	5 8.1%
D=Poor	4 6.5%
F=Failing Grade	6 9.7%
SATISFACTORY GRADE - A OR B OR C	52 83.9%
MEAN	3.11

Table V – 40: How would you grade BBB AUTO LINE staff on efforts to assist you in resolving your claim?

TOTAL Arbitrated or mediated cases	64
BASE: Same, not sure excluded	62 100.0%
A=Excellent	35 56.5%
B=Good	9 14.5%
C=Average	7 11.3%
D=Poor	5 8.1%
F=Failing Grade	6 9.7%
SATISFACTORY GRADE - A OR B OR C	51 82.3%
MEAN	3.00

Table V – 42: Overall, what grade would you give BBB AUTO LINE?

TOTAL Arbitrated or mediated cases	64
BASE: Same, not sure excluded	63 100.0%
A=Excellent	34 54.0%
B=Good	9 14.3%
C=Average	8 12.7%
D=Poor	7 11.1%
F=Failing Grade	5 7.9%
SATISFACTORY GRADE - A OR B OR C	51 81.0%
MEAN	2.95

**TABLE V – 44:
STAFF EFFORTS-SATISFACTION COMPOSITE**

BASE: Arbitrated and mediated cases, not sure excluded	A	B	C	D	F	TOTAL
objectivity and fairness	38	9	5	4	6	62
	61.3%	14.5%	8.1%	6.5%	9.7%	100.0%
efforts to assist you in resolving your claim	35	9	7	5	6	62
	56.5%	14.5%	11.3%	8.1%	9.7%	100.0%
overall grade	34	9	8	7	5	63
	54.0%	14.3%	12.7%	11.1%	7.9%	100.0%
COMPOSITE	107	27	20	16	17	187
	57.2%	14.4%	10.7%	8.6%	9.1%	100.0%

Composite Mean (2016): 3.01
Composite Mean (2015): 2.94

Table V – 45: Would you recommend BBB AUTO LINE to friends or family?

	Total	Med/Arb
TOTAL	64	42
BASE: Same, not sure excluded	62	42
	100.0%	100.0%
Yes	48	35
	77.4%	83.3%
No	14	7
	22.6%	16.7%

Last year's rate of positive responses was 64% (for all cases) and 69 (for arbitrated and mediated cases only).

APPENDIX
THE QUESTIONNAIRE

Hello, my name is ____, and I'm calling as part of an independent audit of BBB AUTO LINE. A survey and audit are required by the Federal Trade Commission and several states. This is not a sales call..

May I speak to -- or someone who took part in the dispute resolution program in 2016 for a <YEAR><MAKE>?

We're conducting a brief survey required by the Federal Trade Commission and certain states as part of an annual audit of the BBB AUTO LINE). We're calling you because our records show that you participated in the Program in 2016. Would you have a few minutes now to take the survey?

Thank you, and can I just confirm that you personally participated in the BBB AUTO LINE Program in 2016?

(If "no")

I'm sorry. We need to speak to someone who personally participated in the Program. Can you refer me to that person?

Yes, will get them (Start from Beginning)

Yes, but not home right now (Schedule callback)

No/Refused (Thank and terminate)

Great. Before we begin I just need to inform you that this interview may be monitored for quality purposes. Also, if you filed more than one complaint that was closed in 2016, please focus on the LAST of those complaints...

Okay, first, the BBB AUTO LINE's records show they handled a complaint in 2016 about your <YEAR><MAKE >. Is that correct?

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 first learn about 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 2016 ...

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 reaching a settlement or getting a decision from an arbitrator. 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)¹⁷⁰

¹⁷⁰ 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 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 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) ¹⁷¹

¹⁷¹ 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 remedy¹⁷²

For all consumers who used arbitration:

9. And did you accept the arbitrator's decision?

¹⁷² 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. OR
 - 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 11e:

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 2016.

According to BBB AUTO LINE records, it took <DAYS> 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 2016, please focus only on the LAST complaint you filed. .

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?