

S274625

**IN THE
SUPREME COURT OF CALIFORNIA**

EVERARDO RODRIGUEZ et al.,
Plaintiffs and Appellants,

v.

FCA US, LLC,
Defendant and Respondent.

AFTER A DECISION BY THE COURT OF APPEAL, FOURTH APPELLATE DISTRICT, DIVISION TWO
CASE NO. E073766

**EXHIBITS TO MOTION FOR JUDICIAL NOTICE
Volume 9 of 16 • Pages 368 – 553 of 1937**

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FCA US, LLC

VOLUME 1
CALIFORNIA LEGISLATURE
AT SACRAMENTO
1981-82 REGULAR SESSION
1981-82 FIRST EXTRAORDINARY SESSION

ASSEMBLY FINAL HISTORY

SYNOPSIS OF
ASSEMBLY BILLS, CONSTITUTIONAL AMENDMENTS, CONCURRENT,
JOINT, AND HOUSE RESOLUTIONS

Assembly Convened December 1, 1980	
Recessed December 2, 1980	Reconvened January 5, 1981
Recessed April 9, 1981	Reconvened April 20, 1981
Recessed July 7, 1981	Reconvened July 10, 1981
Recessed July 10, 1981	Reconvened August 10, 1981
Recessed September 15, 1981	Reconvened January 4, 1982
Recessed April 1, 1982	Reconvened April 12, 1982
Recessed June 30, 1982	Reconvened August 2, 1982
Adjourned September 1, 1982	
Adjourned Sine Die November 30, 1982	
Legislative Days.....	248

HON. WILLIE L. BROWN, JR.
Speaker

HON. LEO T. MCCARTHY
Speaker pro Tempore

HON. TOM BANE
Assistant Speaker pro Tempore

HON. MIKE ROOS
Majority Floor Leader

HON. ROBERT W. MAYLOR
Minority Floor Leader

Compiled Under the Direction of
JAMES D. DRISCOLL
Chief Clerk

GUNVOR ENGLE
History Clerk

A.B. No. 1787—Tanner, Alatorre, Cramer, Elder, Kapiloff, Katz, Martinez, Moorhead, Robinson, Roos, Rosenthal, Tucker, Farr, Lockyer, Johnston, Lehman, Torres, and Maxine Waters (Senators Roberti, Sieroty, and Watson, coauthors).

An act to amend Section 1793.2 of the Civil Code, relating to warranties.

1981

- Mar. 27—Introduced To print
- Mar. 30—Read first time
- Mar. 31—From printer
- April 7—Referred to Com. on CP & TM
- April 9—Art IV, Sec 8(s) of the Constitution dispensed with and Joint Rule 55 suspended
- April 22—From committee chairman, with author's amendments Amend, and re-refer to Com. on CP & TM Read second time and amended.
- April 23—Re-referred to Com. on CP & TM
- April 27—From committee chairman, with author's amendments Amend, and re-refer to Com. on CP & TM. Read second time and amended
- April 29—Re-referred to Com. on CP & TM.
- April 30—From committee: Do pass (Ayes 5 Noes 3.) (April 28)
- May 4—Read second time To third reading
- May 18—To inactive file on motion of Mrs. Tanner
- May 28—From inactive file To third reading
- June 11—Made special order for 10:30 a.m. Monday, June 15.
- June 15—Read third time, passed, and to Senate (Ayes 48 Noes 22 Page 4860)
- June 16—In Senate Read first time. To Com. on RLS for assignment.
- June 22—Referred to Com. on JUD
- July 7—From committee chairman, with author's amendments Amend, and re-refer to committee Read second time, amended, and re-referred to Com. on JUD
- Aug. 11—In committee Set, first hearing Hearing canceled at the request of author
- Aug. 25—In committee Hearing postponed by committee
- Aug. 26—In committee Hearing postponed by committee

1982

- May 24—From committee chairman, with author's amendments Amend, and re-refer to committee Read second time, amended, and re-referred to Com. on JUD
- June 2—From committee Amend, and do pass as amended. (Ayes 6 Noes 0.)
- June 3—Read second time, amended, and to third reading.
- June 17—Made special order for 10 a.m. Thursday, June 24.
- June 24—Read third time, passed, and to Assembly (Ayes 28 Noes 4 Page 11356)
- June 24—In Assembly Senate amendments concurred in. To enrollment (Ayes 58 Noes 6 Page 15676.)
- June 25—Enrolled and to the Governor at 5 p.m.
- July 7—Approved by the Governor.
- July 7—Chaptered by Secretary of State—Chapter 388, Statutes of 1982

ASSEMBLY BILL

No. 1787

Introduced by Assemblywoman Tanner

March 27, 1981

An act to amend Section 1793.2 of the Civil Code, relating to warranties.

LEGISLATIVE COUNSEL'S DIGEST

AB 1787, as introduced, Tanner. Warranties.

Under existing law, a manufacturer who is unable to service or repair goods to conform to applicable express warranties after a reasonable number of attempts must either replace the goods or reimburse the buyer, as specified.

This bill would provide that it shall be presumed that a reasonable number of attempts have been undertaken to conform a new motor vehicle to the applicable express warranties if (1) the same nonconformity has been subject to repair 3 or more times by the dealer, and one time by the manufacturer; or (2) the vehicle is out of service by reason of a nonconformity which has, since the delivery of the vehicle to the buyer, been subject to repair by the dealer for a cumulative total of more than 20 days, to be calculated as specified.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1793.2 of the Civil Code is
- 2 amended to read:
- 3 1793.2. (a) Every manufacturer of consumer goods
- 4 sold in this state and for which the manufacturer has
- 5 made an express warranty shall:

(1) Maintain in this state sufficient service and repair facilities reasonably close to all areas where its consumer goods are sold to carry out the terms of such warranties or designate and authorize in this state as service and repair facilities independent repair or service facilities reasonably close to all areas where its consumer goods are sold to carry out the terms of such warranties.

As a means of complying with paragraph (1) of this subdivision, a manufacturer shall be permitted to enter into warranty service contracts with independent service and repair facilities. The warranty service contracts may provide for a fixed schedule of rates to be charged for warranty service or warranty repair work, however, the rates fixed by such contracts shall be in conformity with the requirements of subdivision (c) of Section 1793.3. The rates established pursuant to subdivision (c) of Section 1793.3, between the manufacturer and the independent service and repair facility, shall not preclude a good-faith discount which is reasonably related to reduced credit and general overhead cost factors arising from the manufacturer's payment of warranty charges direct to the independent service and repair facility. The warranty service contracts authorized by this paragraph shall not be executed to cover a period of time in excess of one year.

(2) In the event of a failure to comply with paragraph (1) of this subdivision, be subject to the provisions of Section 1793.5.

(b) Where such service and repair facilities are maintained in this state and service or repair of the goods is necessary because they do not conform with the applicable express warranties, service and repair shall be commenced within a reasonable time by the manufacturer or its representative in this state. Unless the buyer agrees in writing to the contrary, the goods must be serviced or repaired so as to conform to the applicable warranties within 30 days. Delay caused by conditions beyond the control of the manufacturer or his representatives shall serve to extend this 30-day requirement. Where such delay arises, conforming goods

1 shall be tendered as soon as possible following
2 termination of the condition giving rise to the delay.

3 (c) It shall be the duty of the buyer to deliver
4 nonconforming goods to the manufacturer's service and
5 repair facility within this state, unless, due to reasons of
6 size and weight, or method of attachment, or method of
7 installation, or nature of the nonconformity, such
8 delivery cannot reasonably be accomplished. Should the
9 buyer be unable to effect return of nonconforming goods
10 for any of the above reasons, he shall notify the
11 manufacturer or its nearest service and repair facility
12 within the state. Written notice of nonconformity to the
13 manufacturer or its service and repair facility shall
14 constitute return of the goods for purposes of this section.
15 Upon receipt of such notice of nonconformity the
16 manufacturer shall, at its option, service or repair the
17 goods at the buyer's residence, or pick up the goods for
18 service and repair, or arrange for transporting the goods
19 to its service and repair facility. All reasonable costs of
20 transporting the goods when, pursuant to the above, a
21 buyer is unable to effect return shall be at the
22 manufacturer's expense. The reasonable costs of
23 transporting nonconforming goods after delivery to the
24 service and repair facility until return of the goods to the
25 buyer shall be at the manufacturer's expense.

26 (d) Should the manufacturer or its representative in
27 this state be unable to service or repair the goods to
28 conform to the applicable express warranties after a
29 reasonable number of attempts, the manufacturer shall
30 either replace the goods or reimburse the buyer in an
31 amount equal to the purchase price paid by the buyer,
32 less that amount directly attributable to use by the buyer
33 prior to the discovery of the nonconformity.

34 *It shall be presumed that a reasonable number of*
35 *attempts have been undertaken to conform a new motor*
36 *vehicle to the applicable express warranties if (1) the*
37 *same nonconformity has been subject to repair three or*
38 *more times by the dealer, and one time by the*
39 *manufacturer; or (2) the vehicle is out of service by*
40 *reason of a nonconformity which has, since the delivery*

1 of the vehicle to the buyer, been subject to repair by the
2 dealer for a cumulative total of more than 20 days. In
3 computing the 20 days pursuant to this section, a day shall
4 mean a calendar day or any portion thereof that the
5 dealer's service shop is open for business. The 20 days
6 shall commence on the day when, after the defect is first
7 reported or known, a written estimate of the cost of
8 repairing such defect is first prepared.

O

AMENDED IN ASSEMBLY APRIL 22, 1981

CALIFORNIA LEGISLATURE—1981-82 REGULAR SESSION

ASSEMBLY BILL

No. 1787

Introduced by Assemblywoman Tanner

March 27, 1981

An act to amend Section 1793.2 of the Civil Code, relating to warranties.

LEGISLATIVE COUNSEL'S DIGEST

AB 1787, as amended, Tanner. Warranties.

Under existing law, a manufacturer who is unable to service or repair goods to conform to applicable express warranties after a reasonable number of attempts must either replace the goods or reimburse the buyer, as specified.

This bill would provide that it shall be presumed that a reasonable number of attempts have been undertaken to conform a new motor vehicle to the applicable express warranties if (1) the same nonconformity has been subject to repair 3 4 or more times by the dealer, and one time by the manufacturer or its agents; or (2) the vehicle is out of service by reason of repair for a nonconformity which has, since the delivery of the vehicle to the buyer, been subject to repair by the dealer for a cumulative total of more than 20 days since the delivery of the vehicle to the buyer, the 20 days to be calculated as specified.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1793.2 of the Civil Code is
- 2 amended to read:

1 1793.2. (a) Every manufacturer of consumer goods
2 sold in this state and for which the manufacturer has
3 made an express warranty shall:

4 (1) Maintain in this state sufficient service and repair
5 facilities reasonably close to all areas where its consumer
6 goods are sold to carry out the terms of such warranties
7 or designate and authorize in this state as service and
8 repair facilities independent repair or service facilities
9 reasonably close to all areas where its consumer goods are
10 sold to carry out the terms of such warranties.

11 As a means of complying with paragraph (1) of this
12 subdivision, a manufacturer shall be permitted to enter
13 into warranty service contracts with independent service
14 and repair facilities. The warranty service contracts may
15 provide for a fixed schedule of rates to be charged for
16 warranty service or warranty repair work, however, the
17 rates fixed by such contracts shall be in conformity with
18 the requirements of subdivision (c) of Section 1793.3. The
19 rates established pursuant to subdivision (c) of Section
20 1793.3, between the manufacturer and the independent
21 service and repair facility, shall not preclude a good-faith
22 discount which is reasonably related to reduced credit
23 and general overhead cost factors arising from the
24 manufacturer's payment of warranty charges direct to
25 the independent service and repair facility. The warranty
26 service contracts authorized by this paragraph shall not
27 be executed to cover a period of time in excess of one
28 year.

29 (2) In the event of a failure to comply with paragraph
30 (1) of this subdivision, be subject to the provisions of
31 Section 1793.5.

32 (b) Where such service and repair facilities are
33 maintained in this state and service or repair of the goods
34 is necessary because they do not conform with the
35 applicable express warranties, service and repair shall be
36 commenced within a reasonable time by the
37 manufacturer or its representative in this state. Unless
38 the buyer agrees in writing to the contrary, the goods
39 must be serviced or repaired so as to conform to the
40 applicable warranties within 30 days. Delay caused by

1 conditions beyond the control of the manufacturer or his
2 representatives shall serve to extend this 30-day
3 requirement. Where such delay arises, conforming goods
4 shall be tendered as soon as possible following
5 termination of the condition giving rise to the delay.

6 (c) It shall be the duty of the buyer to deliver
7 nonconforming goods to the manufacturer's service and
8 repair facility within this state, unless, due to reasons of
9 size and weight, or method of attachment, or method of
10 installation, or nature of the nonconformity, such
11 delivery cannot reasonably be accomplished. Should the
12 buyer be unable to effect return of nonconforming goods
13 for any of the above reasons, he shall notify the
14 manufacturer or its nearest service and repair facility
15 within the state. Written notice of nonconformity to the
16 manufacturer or its service and repair facility shall
17 constitute return of the goods for purposes of this section.
18 Upon receipt of such notice of nonconformity the
19 manufacturer shall, at its option, service or repair the
20 goods at the buyer's residence, or pick up the goods for
21 service and repair, or arrange for transporting the goods
22 to its service and repair facility. All reasonable costs of
23 transporting the goods when, pursuant to the above, a
24 buyer is unable to effect return shall be at the
25 manufacturer's expense. The reasonable costs of
26 transporting nonconforming goods after delivery to the
27 service and repair facility until return of the goods to the
28 buyer shall be at the manufacturer's expense.

29 (d) Should the manufacturer or its representative in
30 this state be unable to service or repair the goods to
31 conform to the applicable express warranties after a
32 reasonable number of attempts, the manufacturer shall
33 either replace the goods or reimburse the buyer in an
34 amount equal to the purchase price paid by the buyer,
35 less that amount directly attributable to use by the buyer
36 prior to the discovery of the nonconformity.

37 It shall be presumed that a reasonable number of
38 attempts have been undertaken to conform a new motor
39 vehicle to the applicable express warranties if (1) the
40 same nonconformity has been subject to repair ~~three~~ four

1 or more times by the dealer, and one time by the
2 manufacturer; more times by the manufacturer or its
3 agents; or (2) the vehicle is out of service by reason of a
4 noneconformity which has, since the delivery of the
5 vehicle to the buyer, been subject to repair by the dealer
6 for a cumulative total of more than 20 days. In reason of
7 repair for a cumulative total of more than 20 days since
8 the delivery of the vehicle to the buyer. In computing the
9 20 days pursuant to this section, a day shall mean a
10 calendar day or any portion thereof that the dealer's
11 service shop is open for business. The 20 days shall
12 commence on the day when, after the defect is first
13 reported or known, a written estimate of the cost of
14 repairing such defect is first prepared.

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AMENDED IN ASSEMBLY APRIL 27, 1981

AMENDED IN ASSEMBLY APRIL 22, 1981

CALIFORNIA LEGISLATURE—1981-82 REGULAR SESSION

ASSEMBLY BILL

No. 1787

Introduced by Assemblywoman Tanner

(Coauthors: Assemblymen Alatorre, Cramer, Elder, Kapiloff, Katz, Martinez, Moorhead, Robinson, Roos, Rosenthal, and Tucker)

(Coauthor: Senator Sieroty)

March 27, 1981

An act to amend Section 1793.2 of the Civil Code, relating to warranties.

LEGISLATIVE COUNSEL'S DIGEST

AB 1787, as amended, Tanner. Warranties.

Under existing law, a manufacturer who is unable to service or repair goods to conform to applicable express warranties after a reasonable number of attempts must either replace the goods or reimburse the buyer, as specified.

This bill would provide that it shall be presumed that a reasonable number of attempts have been undertaken to conform a new motor vehicle to the applicable express warranties if (1) the same nonconformity has been subject to repair 4 or more times by the manufacturer or its agents; or (2) the vehicle is out of service by reason of repair for a cumulative total of more than 20 days since the delivery of the vehicle to the buyer, the 20 days to be calculated as specified.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1793.2 of the Civil Code is
2 amended to read:

3 1793.2. (a) Every manufacturer of consumer goods
4 sold in this state and for which the manufacturer has
5 made an express warranty shall:

6 (1) Maintain in this state sufficient service and repair
7 facilities reasonably close to all areas where its consumer
8 goods are sold to carry out the terms of such warranties
9 or designate and authorize in this state as service and
10 repair facilities independent repair or service facilities
11 reasonably close to all areas where its consumer goods are
12 sold to carry out the terms of such warranties.

13 As a means of complying with paragraph (1) of this
14 subdivision, a manufacturer shall be permitted to enter
15 into warranty service contracts with independent service
16 and repair facilities. The warranty service contracts may
17 provide for a fixed schedule of rates to be charged for
18 warranty service or warranty repair work, however, the
19 rates fixed by such contracts shall be in conformity with
20 the requirements of subdivision (c) of Section 1793.3. The
21 rates established pursuant to subdivision (c) of Section
22 1793.3, between the manufacturer and the independent
23 service and repair facility, shall not preclude a good-faith
24 discount which is reasonably related to reduced credit
25 and general overhead cost factors arising from the
26 manufacturer's payment of warranty charges direct to
27 the independent service and repair facility. The warranty
28 service contracts authorized by this paragraph shall not
29 be executed to cover a period of time in excess of one
30 year.

31 (2) In the event of a failure to comply with paragraph
32 (1) of this subdivision, be subject to the provisions of
33 Section 1793.5.

34 (b) Where such service and repair facilities are
35 maintained in this state and service or repair of the goods
36 is necessary because they do not conform with the
37 applicable express warranties, service and repair shall be
38 commenced within a reasonable time by the

1 manufacturer or its representative in this state. Unless
2 the buyer agrees in writing to the contrary, the goods
3 must be serviced or repaired so as to conform to the
4 applicable warranties within 30 days. Delay caused by
5 conditions beyond the control of the manufacturer or his
6 representatives shall serve to extend this 30-day
7 requirement. Where such delay arises, conforming goods
8 shall be tendered as soon as possible following
9 termination of the condition giving rise to the delay.

10 (c) It shall be the duty of the buyer to deliver
11 nonconforming goods to the manufacturer's service and
12 repair facility within this state, unless, due to reasons of
13 size and weight, or method of attachment, or method of
14 installation, or nature of the nonconformity, such
15 delivery cannot reasonably be accomplished. Should the
16 buyer be unable to effect return of nonconforming goods
17 for any of the above reasons, he shall notify the
18 manufacturer or its nearest service and repair facility
19 within the state. Written notice of nonconformity to the
20 manufacturer or its service and repair facility shall
21 constitute return of the goods for purposes of this section.
22 Upon receipt of such notice of nonconformity the
23 manufacturer shall, at its option, service or repair the
24 goods at the buyer's residence, or pick up the goods for
25 service and repair, or arrange for transporting the goods
26 to its service and repair facility. All reasonable costs of
27 transporting the goods when, pursuant to the above, a
28 buyer is unable to effect return shall be at the
29 manufacturer's expense. The reasonable costs of
30 transporting nonconforming goods after delivery to the
31 service and repair facility until return of the goods to the
32 buyer shall be at the manufacturer's expense.

33 (d) Should the manufacturer or its representative in
34 this state be unable to service or repair the goods to
35 conform to the applicable express warranties after a
36 reasonable number of attempts, the manufacturer shall
37 either replace the goods or reimburse the buyer in an
38 amount equal to the purchase price paid by the buyer,
39 less that amount directly attributable to use by the buyer
40 prior to the discovery of the nonconformity.

1 It shall be presumed that a reasonable number of
2 attempts have been undertaken to conform a new motor
3 vehicle to the applicable express warranties if (1) the
4 same nonconformity has been subject to repair four or
5 more times by the manufacturer or its agents; or (2) the
6 vehicle is out of service by reason of repair for a
7 cumulative total of more than 20 days since the delivery
8 of the vehicle to the buyer. In computing the 20 days
9 pursuant to this section, a day shall mean a calendar day
10 or any portion thereof that the dealer's service shop is
11 open for business. The 20 days shall commence on the day
12 when, after the defect is first reported or known, a
13 written estimate of the cost of repairing such defect is
14 first prepared.

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AMENDED IN SENATE JULY 7, 1981
AMENDED IN ASSEMBLY APRIL 27, 1981
AMENDED IN ASSEMBLY APRIL 22, 1981

CALIFORNIA LEGISLATURE—1981-82 REGULAR SESSION

ASSEMBLY BILL

No. 1787

Introduced by Assemblywoman Tanner
(Coauthors: Assemblymen Alatorre, Cramer, Elder, Kapiloff,
Katz, Martinez, Moorhead, Robinson, Roos, Rosenthal, ~~and~~
~~Tucker~~ *Tucker, Farr, Lockyer, Johnston, Lehman, Torres,*
and Maxine Waters)
(Coauthor: Senator Sieroty)

March 27, 1981

An act to amend Section 1793.2 of the Civil Code, relating to warranties.

LEGISLATIVE COUNSEL'S DIGEST

AB 1787, as amended, Tanner. Warranties.

Under existing law, a manufacturer who is unable to service or repair goods to conform to applicable express warranties after a reasonable number of attempts must either replace the goods or reimburse the buyer, as specified.

This bill would provide that it shall be presumed that a reasonable number of attempts have been undertaken to conform a new motor vehicle to the applicable express warranties if (1) the same nonconformity has been subject to repair 4 or more times by the manufacturer or its agents; or (2) the vehicle is out of service by reason of repair for a cumulative total of more than 20 days since the delivery of the vehicle to the buyer, the 20 days to be calculated as specified.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1793.2 of the Civil Code is
2 amended to read:

3 1793.2. (a) Every manufacturer of consumer goods
4 sold in this state and for which the manufacturer has
5 made an express warranty shall:

6 (1) Maintain in this state sufficient service and repair
7 facilities reasonably close to all areas where its consumer
8 goods are sold to carry out the terms of such warranties
9 or designate and authorize in this state as service and
10 repair facilities independent repair or service facilities
11 reasonably close to all areas where its consumer goods are
12 sold to carry out the terms of such warranties.

13 As a means of complying with paragraph (1) of this
14 subdivision, a manufacturer shall be permitted to enter
15 into warranty service contracts with independent service
16 and repair facilities. The warranty service contracts may
17 provide for a fixed schedule of rates to be charged for
18 warranty service or warranty repair work, however, the
19 rates fixed by such contracts shall be in conformity with
20 the requirements of subdivision (c) of Section 1793.3. The
21 rates established pursuant to subdivision (c) of Section
22 1793.3, between the manufacturer and the independent
23 service and repair facility, shall not preclude a good-faith
24 discount which is reasonably related to reduced credit
25 and general overhead cost factors arising from the
26 manufacturer's payment of warranty charges direct to
27 the independent service and repair facility. The warranty
28 service contracts authorized by this paragraph shall not
29 be executed to cover a period of time in excess of one
30 year.

31 (2) In the event of a failure to comply with paragraph
32 (1) of this subdivision, be subject to the provisions of
33 Section 1793.5.

34 (b) Where such service and repair facilities are
35 maintained in this state and service or repair of the goods
36 is necessary because they do not conform with the
37 applicable express warranties, service and repair shall be
38 commenced within a reasonable time by the

1 manufacturer or its representative in this state. Unless
2 the buyer agrees in writing to the contrary, the goods
3 must be serviced or repaired so as to conform to the
4 applicable warranties within 30 days. Delay caused by
5 conditions beyond the control of the manufacturer or his
6 representatives shall serve to extend this 30-day
7 requirement. Where such delay arises, conforming goods
8 shall be tendered as soon as possible following
9 termination of the condition giving rise to the delay.

10 (c) It shall be the duty of the buyer to deliver
11 nonconforming goods to the manufacturer's service and
12 repair facility within this state, unless, due to reasons of
13 size and weight, or method of attachment, or method of
14 installation, or nature of the nonconformity, such
15 delivery cannot reasonably be accomplished. Should the
16 buyer be unable to effect return of nonconforming goods
17 for any of the above reasons, he shall notify the
18 manufacturer or its nearest service and repair facility
19 within the state. Written notice of nonconformity to the
20 manufacturer or its service and repair facility shall
21 constitute return of the goods for purposes of this section.
22 Upon receipt of such notice of nonconformity the
23 manufacturer shall, at its option, service or repair the
24 goods at the buyer's residence, or pick up the goods for
25 service and repair, or arrange for transporting the goods
26 to its service and repair facility. All reasonable costs of
27 transporting the goods when, pursuant to the above, a
28 buyer is unable to effect return shall be at the
29 manufacturer's expense. The reasonable costs of
30 transporting nonconforming goods after delivery to the
31 service and repair facility until return of the goods to the
32 buyer shall be at the manufacturer's expense.

33 (d) Should the manufacturer or its representative in
34 this state be unable to service or repair the goods to
35 conform to the applicable express warranties after a
36 reasonable number of attempts, the manufacturer shall
37 either replace the goods or reimburse the buyer in an
38 amount equal to the purchase price paid by the buyer,
39 less that amount directly attributable to use by the buyer
40 prior to the discovery of the nonconformity.

1 It shall be presumed that a reasonable number of
2 attempts have been undertaken to conform a new motor
3 vehicle to the applicable express warranties if (1) the
4 same nonconformity has been subject to repair four or
5 more times by the manufacturer or its agents; or (2) the
6 vehicle is out of service by reason of repair for a
7 cumulative total of more than 20 days since the delivery
8 of the vehicle to the buyer. In computing the 20 days
9 ~~pursuant to~~ *under* this section, a day shall mean a
10 calendar day or any portion thereof that the service shop
11 is open for business. The 20 days shall commence on the
12 day when, after the defect is first reported or known, a
13 written estimate of the cost of repairing such defect is
14 first prepared.

AMENDED IN SENATE MAY 24, 1982

AMENDED IN SENATE JULY 7, 1981

AMENDED IN ASSEMBLY APRIL 27, 1981

AMENDED IN ASSEMBLY APRIL 22, 1981

CALIFORNIA LEGISLATURE—1981-82 REGULAR SESSION

ASSEMBLY BILL

No. 1787

Introduced by Assemblywoman Tanner
(Coauthors: Assemblymen Alatorre, Cramer, Elder, Kapiloff,
Katz, Martinez, Moorhead, Robinson, Roos, Rosenthal,
Tucker, Farr, Lockyer, Johnston, Lehman, Torres, and
Maxine Waters)
(Coauthor: Senator Sieroty)

March 27, 1981

An act to amend Section 1793.2 of the Civil Code, relating to warranties.

LEGISLATIVE COUNSEL'S DIGEST

AB 1787, as amended, Tanner. Warranties.

Under existing law, a manufacturer who is unable to service or repair goods to conform to applicable express warranties after a reasonable number of attempts must either replace the goods or reimburse the buyer, as specified.

This bill would provide that it shall be presumed that a reasonable number of attempts have been undertaken to conform a new motor vehicle, *excluding motorcycles, motorhomes, and off-road vehicles*, to the applicable express warranties if *within one year or 12,000 miles* (1) the same nonconformity has been subject to repair 4 or more times by the manufacturer or its agents; or (2) the vehicle is out of service by reason of repair for a cumulative total of more than

~~20~~ 30 days since the delivery of the vehicle to the buyer ; ~~the~~
~~20 days to be calculated as specified.~~ *The bill would provide*
that the presumption may not be asserted by the buyer until
after the buyer has resorted to an existing qualified third
party dispute resolution process, as defined. The bill would
also provide that a manufacturer shall be bound by a decision
of the third party process if the buyer elects to accept it, and
that if the buyer is dissatisfied with the third party decision
the buyer may assert the presumption in an action to enforce
the buyer's rights, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1793.2 of the Civil Code is
2 amended to read:

3 1793.2. (a) Every manufacturer of consumer goods
4 sold in this state and for which the manufacturer has
5 made an express warranty shall:

6 (1) Maintain in this state sufficient service and repair
7 facilities reasonably close to all areas where its consumer
8 goods are sold to carry out the terms of such warranties
9 or designate and authorize in this state as service and
10 repair facilities independent repair or service facilities
11 reasonably close to all areas where its consumer goods are
12 sold to carry out the terms of such warranties.

13 As a means of complying with paragraph (1) of this
14 subdivision, a manufacturer shall be permitted to enter
15 into warranty service contracts with independent service
16 and repair facilities. The warranty service contracts may
17 provide for a fixed schedule of rates to be charged for
18 warranty service or warranty repair work; however, the
19 rates fixed by such contracts shall be in conformity with
20 the requirements of subdivision (c) of Section 1793.3. The
21 rates established pursuant to subdivision (c) of Section
22 1793.3, between the manufacturer and the independent
23 service and repair facility, shall not preclude a good-faith
24 discount which is reasonably related to reduced credit
25 and general overhead cost factors arising from the

1 manufacturer's payment of warranty charges direct to
2 the independent service and repair facility. The warranty
3 service contracts authorized by this paragraph shall not
4 be executed to cover a period of time in excess of one
5 year.

6 (2) In the event of a failure to comply with paragraph
7 (1) of this subdivision, be subject to the provisions of
8 Section 1793.5.

9 (b) Where such service and repair facilities are
10 maintained in this state and service or repair of the goods
11 is necessary because they do not conform with the
12 applicable express warranties, service and repair shall be
13 commenced within a reasonable time by the
14 manufacturer or its representative in this state. Unless
15 the buyer agrees in writing to the contrary, the goods
16 must be serviced or repaired so as to conform to the
17 applicable warranties within 30 days. Delay caused by
18 conditions beyond the control of the manufacturer or his
19 representatives shall serve to extend this 30-day
20 requirement. Where such delay arises, conforming goods
21 shall be tendered as soon as possible following
22 termination of the condition giving rise to the delay.

23 (c) It shall be the duty of the buyer to deliver
24 nonconforming goods to the manufacturer's service and
25 repair facility within this state, unless, due to reasons of
26 size and weight, or method of attachment, or method of
27 installation, or nature of the nonconformity, such
28 delivery cannot reasonably be accomplished. Should the
29 buyer be unable to effect return of nonconforming goods
30 for any of the above reasons, he shall notify the
31 manufacturer or its nearest service and repair facility
32 within the state. Written notice of nonconformity to the
33 manufacturer or its service and repair facility shall
34 constitute return of the goods for purposes of this section.
35 Upon receipt of such notice of nonconformity the
36 manufacturer shall, at its option, service or repair the
37 goods at the buyer's residence, or pick up the goods for
38 service and repair, or arrange for transporting the goods
39 to its service and repair facility. All reasonable costs of
40 transporting the goods when, pursuant to the above, a

1 buyer is unable to effect return shall be at the
2 manufacturer's expense. The reasonable costs of
3 transporting nonconforming goods after delivery to the
4 service and repair facility until return of the goods to the
5 buyer shall be at the manufacturer's expense.

6 (d) Should the manufacturer or its representative in
7 this state be unable to service or repair the goods to
8 conform to the applicable express warranties after a
9 reasonable number of attempts, the manufacturer shall
10 either replace the goods or reimburse the buyer in an
11 amount equal to the purchase price paid by the buyer,
12 less that amount directly attributable to use by the buyer
13 prior to the discovery of the nonconformity.

14 It shall be presumed that a reasonable number of
15 attempts have been undertaken to conform a new motor
16 vehicle to the applicable express warranties if (1) the
17 same noneonformity has been subject to repair four or
18 more times by the manufacturer or its agents; or (2) the
19 vehicle is out of service by reason of repair for a
20 cumulative total of more than 20 days since the delivery
21 of the vehicle to the buyer. In computing the 20 days
22 under this section, a day shall mean a calendar day or any
23 portion thereof that the service shop is open for business.
24 The 20 days shall commence on the day when, after the
25 defect is first reported or known, a written estimate of
26 the cost of repairing such defect is first prepared.

27 (e) (1) It shall be presumed that a reasonable number
28 of attempts have been made to conform a new motor
29 vehicle, excluding motorcycles, motor homes and
30 off-road vehicles, to the applicable express warranties if,
31 within one year from delivery to the buyer, or 12,000
32 miles, whichever occurs first, the same nonconformity
33 has been subject to repair four or more times by the
34 manufacturer or its agents; or the vehicle is out of service
35 by reason of repair of nonconformities for a cumulative
36 total of more than 30 calendar days since delivery of the
37 vehicle to the buyer. This presumption shall be a
38 rebuttable presumption affecting the burden of proof in
39 any action to enforce the buyer's rights under subdivision
40 (d) and shall not be construed to limit those rights.

1 (2) If a qualified third party dispute resolution process
 2 exists, and the buyer receives timely notification in
 3 writing of the availability of a third party process with a
 4 description of its operation and effect, the presumption
 5 in paragraph (1) of this subdivision may not be asserted
 6 by the buyer until after the buyer has initially resorted to
 7 the third party process as required in paragraph (3) of
 8 this subdivision. Notification of the availability of the
 9 third party process is not timely if the buyer suffers any
 10 prejudice resulting from any delay in giving the
 11 notification. If a qualified third party dispute resolution
 12 process does not exist, or if the buyer is dissatisfied with
 13 the third party decision, or if the manufacturer or its
 14 agent neglects to promptly fulfill the terms of such third
 15 party decision, the buyer may assert the presumption
 16 provided in paragraph (1) of this subdivision in an action
 17 to enforce the buyer's rights under subdivision (d). The
 18 record in the dispute resolution proceeding, including
 19 the buyer's written complaint, all other documents and
 20 evidence received or considered by the third party and
 21 the findings and decision of the third party, shall be
 22 admissible in evidence in the action without further
 23 foundation. Any period of limitation of actions under any
 24 federal or California laws with respect to any person shall
 25 be extended for a period equal to the number of days
 26 between the date a complaint is filed with a third party
 27 dispute resolution process and the date of its decision or
 28 the date before which the manufacturer or its agent is
 29 required by the decision to fulfill its terms, whichever
 30 occurs later.

31 (3) A qualified third party dispute resolution process
 32 shall be one that complies with the Federal Trade
 33 Commission's minimum requirements for informal
 34 dispute settlement procedures as set forth in the
 35 Commission's regulations in effect on January 1, 1982, at
 36 16 Code of Federal Regulations Part 703; that is governed
 37 by a board, at least half of whose members consist of
 38 representatives of consumers or consumer organizations;
 39 whose decisions shall be binding on the manufacturer or
 40 its agents if the buyer elects to accept the decision; whose

1 decisions include any remedies appropriate under the
2 circumstances including repair, replacement, refund of
3 the purchase price, reimbursement for expenses,
4 compensation for consequential and incidental damages,
5 and any other remedies available under the
6 manufacturer's express warranty or under any applicable
7 federal or state law; that prescribes a reasonable time not
8 to exceed 30 days, within which the manufacturer or its
9 agents must fulfill the terms of those decisions, and that
10 prior to April 1 of each year prepares, publishes and
11 submits to the Department of Motor Vehicles an annual
12 report for the preceding calendar year, which describes
13 the process and summarizes the substance of the
14 complaints filed and the decisions rendered (without
15 identifying the names of any individual buyers without
16 their express written consent) and which includes a copy
17 of the audit required by the Commission's regulations on
18 informal dispute resolution procedures.

AMENDED IN SENATE JUNE 3, 1982
AMENDED IN SENATE MAY 24, 1982
AMENDED IN SENATE JULY 7, 1981
AMENDED IN ASSEMBLY APRIL 27, 1981
AMENDED IN ASSEMBLY APRIL 22, 1981

CALIFORNIA LEGISLATURE—1981-82 REGULAR SESSION

ASSEMBLY BILL

No. 1787

Introduced by Assemblywoman Tanner
(Coauthors: Assemblymen Alatorre, Cramer, Elder, Kapiloff,
Katz, Martinez, Moorhead, Robinson, Roos, Rosenthal,
Tucker, Farr, Lockyer, Johnston, Lehman, Torres, and
Maxine Waters)

~~(Coauthor: Senator Sieroty)~~ (Coauthors: Senators Roberti,
Sieroty, and Watson)

March 27, 1981

An act to amend Section 1793.2 of the Civil Code, relating
to warranties.

LEGISLATIVE COUNSEL'S DIGEST

AB 1787, as amended, Tanner. Warranties.

Under existing law, a manufacturer who is unable to service
or repair goods to conform to applicable express warranties
after a reasonable number of attempts must either replace the
goods or reimburse the buyer, as specified.

This bill would provide that it shall be presumed that a
reasonable number of attempts have been undertaken to
conform a new motor vehicle, *as defined*, excluding
motorcycles, motorhomes, and off-road vehicles, to the
applicable express warranties if within one year or 12,000
miles (1) the same nonconformity, *as defined*, has been

subject to repair 4 or more times by the manufacturer or its agents *and the buyer has directly notified the manufacturer of the need for repair, as specified*; or (2) the vehicle is out of service by reason of repair for a cumulative total of more than 30 *calendar* days since the delivery of the vehicle to the buyer. The bill would provide that the presumption may not be asserted by the buyer until after the buyer has resorted to an existing qualified third party dispute resolution process, as defined. The bill would also provide that a manufacturer shall be bound by a decision of the third party process if the buyer elects to accept it, and that if the buyer is dissatisfied with the third party decision the buyer may assert the presumption in an action to enforce the buyer's rights, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1793.2 of the Civil Code is
2 amended to read:

3 1793.2. (a) Every manufacturer of consumer goods
4 sold in this state and for which the manufacturer has
5 made an express warranty shall:

6 (1) Maintain in this state sufficient service and repair
7 facilities reasonably close to all areas where its consumer
8 goods are sold to carry out the terms of such warranties
9 or designate and authorize in this state as service and
10 repair facilities independent repair or service facilities
11 reasonably close to all areas where its consumer goods are
12 sold to carry out the terms of such warranties.

13 As a means of complying with paragraph (1) of this
14 subdivision, a manufacturer shall be permitted to enter
15 into warranty service contracts with independent service
16 and repair facilities. The warranty service contracts may
17 provide for a fixed schedule of rates to be charged for
18 warranty service or warranty repair work, however, the
19 rates fixed by such contracts shall be in conformity with
20 the requirements of subdivision (c) of Section 1793.3. The
21 rates established pursuant to subdivision (c) of Section
22 1793.3, between the manufacturer and the independent

1 service and repair facility, shall not preclude a good-faith
2 discount which is reasonably related to reduced credit
3 and general overhead cost factors arising from the
4 manufacturer's payment of warranty charges direct to
5 the independent service and repair facility. The warranty
6 service contracts authorized by this paragraph shall not
7 be executed to cover a period of time in excess of one
8 year.

9 (2) In the event of a failure to comply with paragraph
10 (1) of this subdivision, be subject to the provisions of
11 Section 1793.5.

12 (b) Where such service and repair facilities are
13 maintained in this state and service or repair of the goods
14 is necessary because they do not conform with the
15 applicable express warranties, service and repair shall be
16 commenced within a reasonable time by the
17 manufacturer or its representative in this state. Unless
18 the buyer agrees in writing to the contrary, the goods
19 must be serviced or repaired so as to conform to the
20 applicable warranties within 30 days. Delay caused by
21 conditions beyond the control of the manufacturer or his
22 representatives shall serve to extend this 30-day
23 requirement. Where such delay arises, conforming goods
24 shall be tendered as soon as possible following
25 termination of the condition giving rise to the delay.

26 (c) It shall be the duty of the buyer to deliver
27 nonconforming goods to the manufacturer's service and
28 repair facility within this state, unless, due to reasons of
29 size and weight, or method of attachment, or method of
30 installation, or nature of the nonconformity, such
31 delivery cannot reasonably be accomplished. Should the
32 buyer be unable to effect return of nonconforming goods
33 for any of the above reasons, he shall notify the
34 manufacturer or its nearest service and repair facility
35 within the state. Written notice of nonconformity to the
36 manufacturer or its service and repair facility shall
37 constitute return of the goods for purposes of this section.
38 Upon receipt of such notice of nonconformity the
39 manufacturer shall, at its option, service or repair the
40 goods at the buyer's residence, or pick up the goods for

1 service and repair, or arrange for transporting the goods
2 to its service and repair facility. All reasonable costs of
3 transporting the goods when, pursuant to the above, a
4 buyer is unable to effect return shall be at the
5 manufacturer's expense. The reasonable costs of
6 transporting nonconforming goods after delivery to the
7 service and repair facility until return of the goods to the
8 buyer shall be at the manufacturer's expense.

9 (d) Should the manufacturer or its representative in
10 this state be unable to service or repair the goods to
11 conform to the applicable express warranties after a
12 reasonable number of attempts, the manufacturer shall
13 either replace the goods or reimburse the buyer in an
14 amount equal to the purchase price paid by the buyer,
15 less that amount directly attributable to use by the buyer
16 prior to the discovery of the nonconformity.

17 (e) (1) It shall be presumed that a reasonable number
18 of attempts have been made to conform a new motor
19 vehicle, excluding motoreycles, motor homes and
20 off-road vehicles, to the applicable express warranties if,
21 within one year from delivery to the buyer, or 12,000
22 miles, whichever occurs first, the same noneconformity
23 has been subject to repair four or more times by the
24 manufacturer or its agents, or the vehicle is out of service
25 by reason of repair of noneconformities for a cumulative
26 total of more than 30 calendar days since delivery of the
27 vehicle to the buyer.

28 (e) (1) It shall be presumed that a reasonable number
29 of attempts have been made to conform a new motor
30 vehicle to the applicable express warranties if, within one
31 year from delivery to the buyer or 12,000 miles,
32 whichever occurs first, either (A) the same
33 nonconformity has been subject to repair four or more
34 times by the manufacturer or its agents and the buyer has
35 at least once directly notified the manufacturer of the
36 need for the repair of the nonconformity, or (B) the
37 vehicle is out of service by reason of repair of
38 nonconformities by the manufacturer or its agents for a
39 cumulative total of more than 30 calendar days since
40 delivery of the vehicle to the buyer. The 30-day limit shall

1 *be extended only if repairs cannot be performed due to*
 2 *conditions beyond the control of the manufacturer or its*
 3 *agents. The buyer shall be required to directly notify the*
 4 *manufacturer pursuant to subparagraph (A) only if the*
 5 *manufacturer has clearly and conspicuously disclosed to*
 6 *the buyer, with the warranty or the owner's manual, the*
 7 *provisions of this subdivision and that of subdivision (d),*
 8 *including the requirement that the buyer must notify the*
 9 *manufacturer directly pursuant to subparagraph (A).*
 10 This presumption shall be a rebuttable presumption
 11 affecting the burden of proof in any action to enforce the
 12 buyer's rights under subdivision (d) and shall not be
 13 construed to limit those rights.

14 (2) If a qualified third party dispute resolution process
 15 exists, and the buyer receives timely notification in
 16 writing of the availability of a third party process with a
 17 description of its operation and effect, the presumption
 18 in paragraph (1) ~~of this subdivision~~ may not be asserted
 19 by the buyer until after the buyer has initially resorted to
 20 the third party process as required in paragraph (3) ~~of~~
 21 ~~this subdivision~~. Notification of the availability of the
 22 third party process is not timely if the buyer suffers any
 23 prejudice resulting from any delay in giving the
 24 notification. If a qualified third party dispute resolution
 25 process does not exist, or if the buyer is dissatisfied with
 26 the third party decision, or if the manufacturer or its
 27 agent neglects to promptly fulfill the terms of such third
 28 party decision, the buyer may assert the presumption
 29 provided in paragraph (1) ~~of this subdivision~~ in an action
 30 to enforce the buyer's rights under subdivision (d). The
 31 ~~record in the dispute resolution proceeding, including~~
 32 ~~the buyer's written complaint, all other documents and~~
 33 ~~evidence received or considered by the third party and~~
 34 the findings and decision of the third party; shall be
 35 admissible in evidence in the action without further
 36 foundation. Any period of limitation of actions under any
 37 federal or California laws with respect to any person shall
 38 be extended for a period equal to the number of days
 39 between the date a complaint is filed with a third party
 40 dispute resolution process and the date of its decision or

1 the date before which the manufacturer or its agent is
2 required by the decision to fulfill its terms, whichever
3 occurs later.

4 (3) A qualified third party dispute resolution process
5 shall be one that complies with the Federal Trade
6 Commission's minimum requirements for informal
7 dispute settlement procedures as set forth in the
8 Commission's regulations in effect on January 1, 1982, at
9 16 Code of Federal Regulations Part 703; that is governed
10 by a board, at least half of whose members consist of
11 representatives of consumers or consumer organizations;
12 whose decisions shall be that renders decisions which are
13 binding on the manufacturer or its agents if the buyer
14 elects to accept the decision; whose decisions include any
15 remedies appropriate under the circumstances including
16 repair, replacement, refund of the purchase price,
17 reimbursement for expenses, compensation for
18 consequential and incidental damages and any other
19 remedies available under the manufacturer's express
20 warranty or under any applicable federal or state law;
21 that prescribes a reasonable time not to exceed 30 days,
22 within which the manufacturer or its agents must fulfill
23 the terms of those decisions; ; and that prior to April 1 of
24 each year prepares, publishes and submits each year
25 provides to the Department of Motor Vehicles an a
26 report of its annual report for the preceding calendar
27 year, which describes the process and summarizes the
28 substance of the complaints filed and the decisions
29 rendered (without identifying the names of any
30 individual buyers without their express written consent)
31 and which includes a copy of the audit required by the
32 Commission's regulations on informal dispute resolution
33 procedures.

34 (4) For the purposes of this subdivision the following
35 terms have the following meanings:

36 (A) "Nonconformity" means a nonconformity which
37 substantially impairs the use, value, or safety of the new
38 motor vehicle.

39 (B) "New motor vehicle" means a new motor vehicle
40 which is used or bought for use primarily for personal,

- 1 *family, or household purposes, but does not include*
- 2 *motorcycles, motorhomes, or off-road vehicles.*

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Volume 2

STATUTES OF CALIFORNIA

AND DIGESTS OF MEASURES

1982

Constitution of 1879 as Amended

**Measures Submitted to Vote of Electors,
Primary Election, June 8, 1982
and General Election, November 2, 1982**

**General Laws, Amendments to the Codes, Resolutions,
and Constitutional Amendments passed by the
California Legislature**

**1981-82 Regular Session
1981-82 First Extraordinary Session**



Compiled by
BION M. GREGORY
Legislative Counsel

In order to ensure that restaurants which provide whole Chinese-style roast duck may continue to do so without interruption, it is necessary that this act take effect immediately.

CHAPTER 388

An act to amend Section 1793.2 of the Civil Code, relating to warranties.

[Approved by Governor July 7, 1982. Filed with
Secretary of State July 7, 1982.]

The people of the State of California do enact as follows:

SECTION 1. Section 1793.2 of the Civil Code is amended to read:

1793.2. (a) Every manufacturer of consumer goods sold in this state and for which the manufacturer has made an express warranty shall:

(1) Maintain in this state sufficient service and repair facilities reasonably close to all areas where its consumer goods are sold to carry out the terms of such warranties or designate and authorize in this state as service and repair facilities independent repair or service facilities reasonably close to all areas where its consumer goods are sold to carry out the terms of such warranties.

As a means of complying with paragraph (1) of this subdivision, a manufacturer shall be permitted to enter into warranty service contracts with independent service and repair facilities. The warranty service contracts may provide for a fixed schedule of rates to be charged for warranty service or warranty repair work, however, the rates fixed by such contracts shall be in conformity with the requirements of subdivision (c) of Section 1793.3. The rates established pursuant to subdivision (c) of Section 1793.3, between the manufacturer and the independent service and repair facility, shall not preclude a good-faith discount which is reasonably related to reduced credit and general overhead cost factors arising from the manufacturer's payment of warranty charges direct to the independent service and repair facility. The warranty service contracts authorized by this paragraph shall not be executed to cover a period of time in excess of one year.

(2) In the event of a failure to comply with paragraph (1) of this subdivision, be subject to the provisions of Section 1793.5.

(b) Where such service and repair facilities are maintained in this state and service or repair of the goods is necessary because they do not conform with the applicable express warranties, service and

repair shall be commenced within a reasonable time by the manufacturer or its representative in this state. Unless the buyer agrees in writing to the contrary, the goods must be serviced or repaired so as to conform to the applicable warranties within 30 days. Delay caused by conditions beyond the control of the manufacturer or his representatives shall serve to extend this 30-day requirement. Where such delay arises, conforming goods shall be tendered as soon as possible following termination of the condition giving rise to the delay.

(c) It shall be the duty of the buyer to deliver nonconforming goods to the manufacturer's service and repair facility within this state, unless, due to reasons of size and weight, or method of attachment, or method of installation, or nature of the nonconformity, such delivery cannot reasonably be accomplished. Should the buyer be unable to effect return of nonconforming goods for any of the above reasons, he shall notify the manufacturer or its nearest service and repair facility within the state. Written notice of nonconformity to the manufacturer or its service and repair facility shall constitute return of the goods for purposes of this section. Upon receipt of such notice of nonconformity the manufacturer shall, at its option, service or repair the goods at the buyer's residence, or pick up the goods for service and repair, or arrange for transporting the goods to its service and repair facility. All reasonable costs of transporting the goods when, pursuant to the above, a buyer is unable to effect return shall be at the manufacturer's expense. The reasonable costs of transporting nonconforming goods after delivery to the service and repair facility until return of the goods to the buyer shall be at the manufacturer's expense.

(d) Should the manufacturer or its representative in this state be unable to service or repair the goods to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either replace the goods or reimburse the buyer in an amount equal to the purchase price paid by the buyer, less that amount directly attributable to use by the buyer prior to the discovery of the nonconformity.

(e) (1) It shall be presumed that a reasonable number of attempts have been made to conform a new motor vehicle to the applicable express warranties if, within one year from delivery to the buyer or 12,000 miles, whichever occurs first, either (A) the same nonconformity has been subject to repair four or more times by the manufacturer or its agents and the buyer has at least once directly notified the manufacturer of the need for the repair of the nonconformity, or (B) the vehicle is out of service by reason of repair of nonconformities by the manufacturer or its agents for a cumulative total of more than 30 calendar days since delivery of the vehicle to the buyer. The 30-day limit shall be extended only if repairs cannot be performed due to conditions beyond the control of the manufacturer or its agents. The buyer shall be required to

directly notify the manufacturer pursuant to subparagraph (A) only if the manufacturer has clearly and conspicuously disclosed to the buyer, with the warranty or the owner's manual, the provisions of this subdivision and that of subdivision (d), including the requirement that the buyer must notify the manufacturer directly pursuant to subparagraph (A). This presumption shall be a rebuttable presumption affecting the burden of proof in any action to enforce the buyer's rights under subdivision (d) and shall not be construed to limit those rights.

(2) If a qualified third party dispute resolution process exists, and the buyer receives timely notification in writing of the availability of a third party process with a description of its operation and effect, the presumption in paragraph (1) may not be asserted by the buyer until after the buyer has initially resorted to the third party process as required in paragraph (3). Notification of the availability of the third party process is not timely if the buyer suffers any prejudice resulting from any delay in giving the notification. If a qualified third party dispute resolution process does not exist, or if the buyer is dissatisfied with the third party decision, or if the manufacturer or its agent neglects to promptly fulfill the terms of such third party decision, the buyer may assert the presumption provided in paragraph (1) in an action to enforce the buyer's rights under subdivision (d). The findings and decision of the third party shall be admissible in evidence in the action without further foundation. Any period of limitation of actions under any federal or California laws with respect to any person shall be extended for a period equal to the number of days between the date a complaint is filed with a third party dispute resolution process and the date of its decision or the date before which the manufacturer or its agent is required by the decision to fulfill its terms, whichever occurs later.

(3) A qualified third party dispute resolution process shall be one that complies with the Federal Trade Commission's minimum requirements for informal dispute settlement procedures as set forth in the Commission's regulations at 16 Code of Federal Regulations Part 703; that renders decisions which are binding on the manufacturer if the buyer elects to accept the decision; that prescribes a reasonable time not to exceed 30 days, within which the manufacturer or its agents must fulfill the terms of those decisions; and that each year provides to the Department of Motor Vehicles a report of its annual audit required by the Commission's regulations on informal dispute resolution procedures.

(4) For the purposes of this subdivision the following terms have the following meanings:

(A) "Nonconformity" means a nonconformity which substantially impairs the use, value, or safety of the new motor vehicle.

(B) "New motor vehicle" means a new motor vehicle which is used or bought for use primarily for personal, family, or household purposes, but does not include motorcycles, motorhomes, or off-road vehicles.

CHAPTER 389

An act to amend Sections 700.01 and 700.02 of the Insurance Code, relating to insurance.

[Approved by Governor July 7, 1982. Filed with
Secretary of State July 7, 1982.]

The people of the State of California do enact as follows:

SECTION 1. Section 700.01 of the Insurance Code is amended to read:

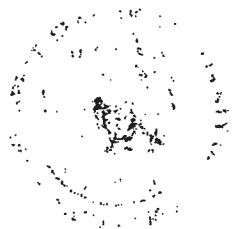
700.01. In addition to any or all of the classes of insurance which it is permitted to transact by all other applicable provisions of this code, any incorporated insurer admitted or hereafter admitted for one or more of the classes of insurance stated in Section 100, except life, title, mortgage, or mortgage guaranty shall (subject to any limitations contained in its articles of incorporation or charter) be admitted after October 1, 1953, for any or all of the following classes, upon making application therefor and complying with all applicable requirements of law, if its paid-in capital is not less than one million three hundred thousand dollars (\$1,300,000) or the aggregate of the amounts hereinafter set forth opposite the classes transacted by it in the United States if an alien insurer, or in any jurisdiction if other than an alien insurer, whichever is lower; provided, that the paid-in capital of incorporated insurers not transacting either fire, marine or surety insurance making application under this section shall be at least one hundred fifty thousand dollars (\$150,000) in excess of such aggregate amount. In no event shall any incorporated insurer, as a condition for its admission, be permitted to have a paid-in capital of less than five hundred thousand dollars (\$500,000) or be required to have a paid-in capital in excess of one million three hundred thousand dollars (\$1,300,000) for any or all of the classes of insurance hereinafter set forth.

DISTRICT ATTORNEY

701 OCEAN STREET
(408) 425-2071

ARTHUR DANNER III
DISTRICT ATTORNEY

RAY BELGARD
CHIEF INSPECTOR



COUNTY OF SANTA CRUZ

P. O. Box 1159
SANTA CRUZ, CALIFORNIA 95061

April 14, 1981

APR 16 1981

Assemblywoman Tanner
Assembly Consumer Protection
and Toxic Materials Committee
State Capitol Room 2016
Sacramento, CA 95814

Dear Assemblywoman Tanner:

AB 1787 will be heard in the Assembly Consumer Protection and Toxic Materials Committee on Tuesday afternoon, April 28, 1981. This bill if enacted would provide consumers in California with a recourse for lemon automobiles.

Last year our Consumer Affairs people testified in support of improving the automobile warranty laws in the area of "lemon" vehicles.

The consumer affairs division receives between 50-60 complaints annually regarding recurring problems in new vehicles that seem to be unrepairable. Technically the Department of Motor Vehicles (DMV) had jurisdiction on warranty complaints, otherwise the number of complaints would be higher in my office. The Consumer Affairs staff specializes in these problems that are beyond the jurisdiction of DMV. This bill will provide a recourse for consumers and your constituents who have purchased lemon vehicles.

It is also my feeling that this bill will assist the auto industry in the following ways:

1. It will force them to evaluate and improve their quality control.
2. It will strengthen the relationship between the dealer and the factory representative.
3. The manufacturer will have to produce replacement parts at the time a vehicle is manufactured. (My office has been told that replacement parts are not manufactured until after the initial new car production rush is completed.)

I appreciate your attention on this matter and encourage your "aye" vote.

Please don't hesitate to call me if I can be of assistance.

Sincerely,


Arthur Danner III
District Attorney

DISTRICT ATTORNEY
CONSUMER AFFAIRS



COUNTY OF SANTA CRUZ

701 OCEAN STREET
(408) 425-2054

SANTA CRUZ, CALIFORNIA 95060

ARTHUR DANNER III
DISTRICT ATTORNEY

April 14, 1981

RAY BELGARD
CHIEF ADMINISTRATOR

Assemblywoman Tanner
Assembly Consumer Protection
and Toxic Materials Committee
State Capitol Room 2016
Sacramento, CA 95814

APR 16 1981

Dear Assemblywoman Tanner:

Santa Cruz County Consumer Affairs urges your support of AB 1787, which will be heard for a vote on Tuesday, April 28, 1981 in Labor, Employment and Consumer Affairs.

Annually we receive 50-60 complaints about recurring problems with defects in new cars that seem unrepairable. These defects are often related to major components that affect the health and safety of passengers in the automobile as well as other vehicles on the road. In the 9 years of complaint mediation in this office, we have yet to hear of dealer or manufacturer taking a lemon car back.

With the cost of new cars today, a "lemon" automobile is something none of your constituents should have to live with.

We would appreciate your "aye" vote on AB 1787.

Please don't hesitate to call me if I can be of assistance.

Cordially,

Gloria Lorenzo
Consumer Coordinator

GL/db

APR 15 1981

California
Manufacturers Association



923 12th Street, P.O. Box 1138, Sacramento, California 95805 (916) 441-5420

April 10, 1981

*cc-Kathi
Mary
Mike*

The Honorable Sally Tanner
Member of the California Assembly
State Capitol, Room 2016
Sacramento, California 95814

Dear Sally:

This letter confirms the conversation between yourself and our Transportation Director, Jess Butcher, regarding our opposition to AB 1787.

The auto industry has made substantial progress in settling buyer disputes through establishment of consumer councils. We believe this approach should be given a fair chance and legislation implemented only as a last resort.

Jess Butcher will follow AB 1787. He will be available to you or your staff at anytime to discuss this legislation.

Sincerely,

ROBERT T. MONAGAN
President

RTM:nr

cc: Members, Assembly Consumer Protection &
Toxic Materials Committee

April 7, 1981

Mr. Richard Dugally
925 L Street, Suite 260
Sacramento, CA 95814

Dear Mr. Dugally:

As you remember during the past legislative session, I introduced a measure designed to help eliminate some of the problems associated with defective or "Lemon" automobiles. This measure was AB 2705. I have reintroduced a similar bill this session, AB 1787.

During the course of the bill's hearings, ~~was~~ frequently stated that there were various industry dispute resolution mechanisms available to the public to help deal with such problems. It is my understanding that the Ford Consumer Appeals Board administers such a program.

Since Ford Motor Company claims that they are effectively dealing with many consumer problems through your organization, I would like to know more about how your program operates.

I would certainly appreciate it if you would answer the following questions:

1. How many complaints does the Ford Consumer Appeals Board hear each year?
2. Typically, what is the subject matter of the complaints?
3. How much money is generally in dispute?
4. How long does it take for a complaint to be heard by the Ford Consumer Appeals Board?

5. Who determines which cases are to be heard by the Ford Consumer Appeals Board?
6. What kind of investigations are conducted?
7. How often does the Board meet to review these complaints?
8. Where are the hearings held? Who attends? Is there any public notice?
9. What are the hearing procedures?
10. How are these complaints usually resolved? How many favor the consumer? How many favor business?

Thank you very much for your cooperation and assistance in this matter. I look forward to hearing from you in the near future..

Sincerely,

SALLY TANNER
Assemblywoman, 60th District

ST:mb

April 7, 1981

Mr. Ned Smith
Owner Relation Manager
Ford Parts and Service Division
3000 Shaefer
Dearborn, Michigan 48121

Dear Mr. Smith:

As you remember during the past legislative session, I introduced a measure designed to help eliminate some of the problems associated with defective or "Lemon" automobiles. This measure was AB 2705. I have reintroduced a similar bill this session, AB 1787.

During the course of the bill's hearings, you frequently stated that there were various industry dispute resolution mechanisms available to the public to help deal with such problems. It is my understanding that the Ford Consumer Appeals Board administers such a program.

Since Ford Motor Company claims that they are effectively dealing with many consumer problems through your organization, I would like to know more about how your program operates.

I would certainly appreciate it if you would answer the following questions:

1. Is Ford Motor Company the only company you represent?
2. How many consumers contact your office with complaints annually?
3. How many complaints does the Ford Consumer Appeals Board hear each year?
4. Typically, what is the subject matter of the complaints?

5. How much money is generally in dispute?
6. How long does it take for a complaint to be heard by the Ford Consumer Appeals Board?
7. Who determines which cases are to be heard by the Ford Consumer Appeals Board?
8. What kind of investigations do you conduct?
9. How often do you meet to review these complaints?
10. Where are your hearings held? Who attends? Is there any public notice?
11. What are your hearing procedures?
12. How are these complaints usually resolved? How many favor the consumer? How many favor business?

Thank you very much for your cooperation and assistance in this matter. I look forward to hearing from you in the near future.

Sincerely,

SALLY TANNER
Assemblywoman, 60th District

ST:mb

AMENDMENTS TO ASSEMBLY BILL NO. 1787

AS AMENDED IN SENATE JULY 7, 1981

AMENDMENT 1

Delete page 4 and insert:

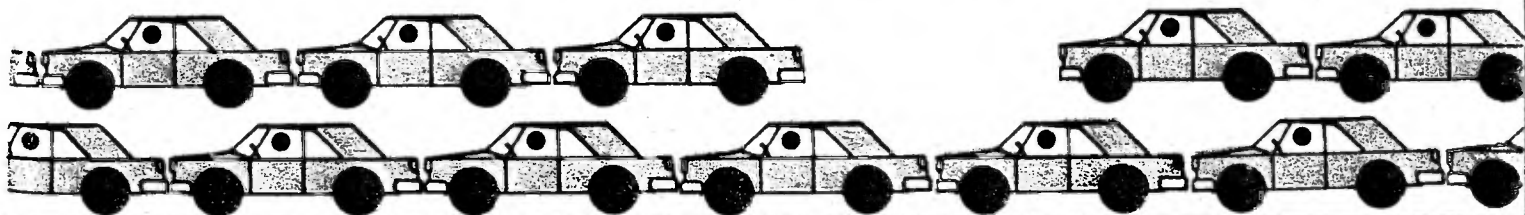
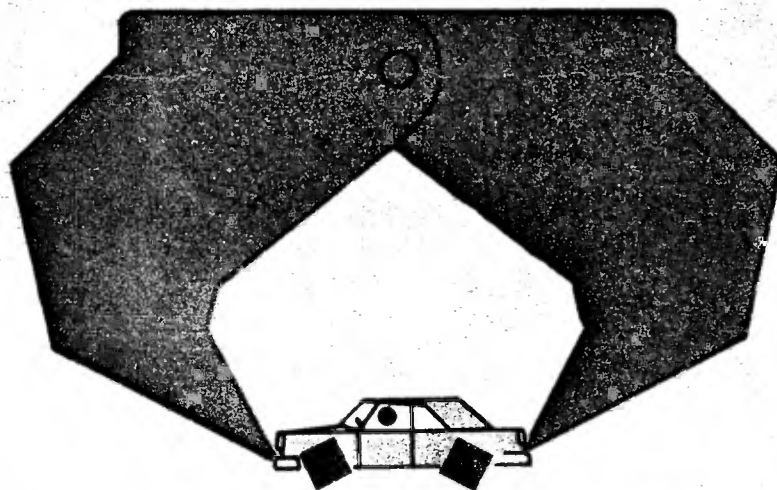
(e) It shall be presumed that a reasonable number of attempts have been undertaken to conform a new motor vehicle, excluding motorcycles and motor homes, to the applicable express warranties if, within one year from delivery to the buyer, (1) the same nonconformity has been subject to repair four or more times by the manufacturer or its agents; or (2) the vehicle is out of service by reason of repair for a cumulative total of more than 30 calendar days since the delivery of the vehicle to the buyer. If (1) the same nonconformity has been subject to repair four or more times by the manufacturer or its agents, or (2) the vehicle is out of service by reason of repair for a cumulative total of more than 30 calendar days since the delivery of the vehicle to the buyer, the manufacturer shall promptly replace the vehicle or reimburse the buyer as required by subdivision (d), unless the manufacturer or its agent is able to show by clear and convincing evidence (1) that there was and is no nonconformity, or (2) that the vehicle's nonconformity, if any, has been cured, or (3) that the nonconformity, if any, was and is a minor nonconformity that does not and will not affect the vehicle's performance or safety and an offer to provide fair compensation in money has been communicated to the buyer, or (4) that the nonconformity, if any, was the proximate result of

unauthorized or unreasonable use of the vehicle following sale, or
(5) that the delay, if any, was caused by conditions beyond the
control of the manufacturer or its representative.

January 1, 1978 to December 31, 1978

DOT HS-803 964

Safety Related Recall Campaigns for Motor Vehicles and Motor Vehicle Equipment, Including Tires



Reported to the National Highway Traffic Safety Administration
By Domestic and Foreign Vehicle Manufacturers

U.S. Department of Transportation • National Highway Traffic Safety Administration

INTRODUCTION

Section 151 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended, requires that: If a manufacturer—

“(1) obtains knowledge that any motor vehicle or item of replacement equipment manufactured by him contains a defect and determines in good faith that such defect relates to motor vehicle safety; or

“(2) determines in good faith that such vehicle or item of replacement equipment does not comply with an applicable Federal motor vehicle safety standard prescribed pursuant to section 103 of this Act;

he shall furnish notification to the Secretary and to owners, purchasers, and dealers, in accordance with section 153, and he shall remedy the defect or failure to comply in accordance with section 154.”

The required notification is to be by first class mail to the first purchaser and by certified mail or more expeditious means to the dealer or dealers of the manufacturers.

The manufacturer is further required to furnish the Secretary of Transportation a true or representative copy of all notices, bulletins, and other communications to dealers or purchasers regarding defects in motor vehicles or motor vehicle equipment.

The National Highway Traffic Safety Administration has received numerous requests for information on defects in motor vehicles. In answer to these requests, the Administration publishes quarterly summary reports on defect campaigns conducted by domestic and foreign manufacturers. These summary reports are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, at a price established by the Superintendent of Documents. Annual cumulative editions of the reports will be published at the beginning of each calendar year.

Detailed reports of specific recall campaigns listed in the summary reports are available from the National Technical Information Service, Springfield, Virginia 22161. (For details on ordering from the NTIS, see p. ix.)

Since manufacturers are not required to report to the Administration specific serial numbers of vehicles involved in recall campaigns, any information concerning defects on specific serial-numbered vehicles must be obtained from the dealer or manufacturer.

ORDERING DATA

Detailed reports of the recall campaigns listed in this publication are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161. NTIS sells publications in two forms—full-size paperbacks and miniature-size copies (4" x 6") microfiche.

If only one particular detailed report of a recall is required, it can be obtained by contacting the Chief, Technical Reference Service, Technical Services Division. (Code N48-41), National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

DOMESTIC SAFETY DEFECT RECALL CAMPAIGNS

NHTSA Ident. No.	Make and Model	Model Year	No. of Pages on File	No. of Vehicles Recalled	Brief Description of Defect (Manufacturer's Corrective Action)
Date of Co. Notification					

Ford Motor Company—Continued

78V-108 5-11-78	Ford Thunderbird Ford 4-Dr Ford station wagon LTD II 4-Dr Mercury Cougar	1978 1978 1978 1978 1978	3	110,000	condition may prevent cam plate from exerting force sufficient to engage parking pawl with park gear when selector lever is placed in "Park" position. Should an operator not apply parking brake on vehicle in which parking pawl has not engaged park gear, vehicle could roll free under certain conditions and cause property damage or personal injury. (Correct by inspecting and replacing transmission housing and modifying park cam plate return spring.) Mfg. Campaign No. 289. System-Seat belt/retractors shoulder. Possibility vehicles manufactured with American Safety Equipment Corporation front outboard seat belt assemblies may be equipped with shoulder harness retractors that may not lock, with result that upon sudden vehicle deceleration or impact, outboard front seat occupant may not be restrained by shoulder harness portion of three-point seat belt system. Also, in some cases, shoulder harness retractors may not allow extraction of shoulder belt webbing due to pre-locked condition. Further, these conditions could cause retractors not to meet emergency locking retractor performance requirements of Section 4.3 (j) of Federal Motor Vehicle Safety Standard No. 209 or seat belt assemblies equipped with such retractors not to meet assembly performance requirements of Section 4.4 (b) (2) of Standard No. 209. (Correct by inspecting and replacing seat belt assemblies.)
78V-109 5-11-78	Ford F100, 150, 250, 350	1978	2	77	Mfg. Campaign No. 290. System-Steering/drag link. Light trucks. Possibility that vehicles may be equipped with steering linkages on which cotter pins may not have been installed on castleluted nuts that secure steering drag link and tie-rod connections. Further, attaching nuts without cotter pins may not have been torqued to specification. Inadequate nut torque and absence of cotter pin can permit linkage separation. Separation at pitman arm to drag link connection can result in loss of steering control; separation of drag link or tie-rod at its attachment to front wheel spindle can result in vehicle steering pull or, under certain operating conditions, loss of steering control. (Correct by inspecting and making necessary corrections to starting linkage attachments.)
78V-143 6-15-78	Ford Pinto Mercury Bobcat	1971 1972 1973 1974 1975 1976 1975 1976	2	1,400,000	Mfg. Campaign No. 293. System-Fuel/tank. Possibility that fuel tanks and filler necks installed on these vehicles are subject to failure when vehicles are struck from rear. Such failure can result in fuel leakage, which in presence of external ignition sources can result in fire, and "based on our investigation, it has been initially determined that defect which relates to motor vehicle safety exists in these 1971-1976 Ford Pintos and 1975-1976 Mercury Bobcats (except station wagons)." (Correct by replacing existing fuel

DOMESTIC SAFETY DEFECT RECALL CAMPAIGNS

<i>NHTSA Ident. No.</i>	<i>Make and Model</i>	<i>Model Year</i>	<i>No. of Pages on File</i>	<i>No. of Vehicles Recalled</i>	<i>Brief Description of Defect (Manufacturer's Corrective Action)</i>
<i>Date of Co. Notification</i>					
Ford Motor Company—Continued					
					filler pipe and seal with longer pipe and improved seal. Also, install polyethylene shield on front of fuel tank.)
78V-144 6-16-78	Ford Fairmont Mercury Zephyr	1978 1978	3	358	Mfg. Campaign No. 294. System-Transmission/ shift linkage. Possibility that vehicles equipped with automatic transmissions and steering column-mounted shift controls were produced with transmission shift control rods which were intended for use with steering columns of prior design level. Attachment of shift control rod within steering column shift lever grommet will allow relative movement between these parts and result in grommet wear that could, with use, deteriorate shift control function with potential for starting in gear or inability to engage "Park" position. If condition were to occur on vehicle in which driver had not engaged parking brake, vehicle movement may be initiated and may cause property damage or personal injury. (Correct by inspecting and replacing transmission shift linkage parts.)
78V-150 6-21-78	Ford Fairmont Mercury Zephyr	1978 1978	2	180	Mfg. Campaign No. 295. System-Transmission/linkage. Possibility that vehicles equipped with automatic transmissions and steering column-mounted shift controls were produced with revised design shift controls which can contact intermediate fuel hose. Specifically, new bellcrank support bracket can contact fuel hose and cause abrasive damage that may result in fuel leakage and possible accumulation of fuel on surface beneath parked vehicle. If source of ignition were present, potential fire hazard may exist. (Correct by inspecting and replacing transmission shift linkage parts to preclude fuel hose abrasion.)
78V-153 6-28-78	Ford F, B, LN Ford L-800	1975 1976 1977 1978 1970 1971 1972 1973 1974 1975 1976 1977	2	335,000	Mfg. Campaign No. 296. System-Cooling fan. Heavy duty trucks. Possibility that blades of cooling fan may crack, resulting in separation of portions of fan blade from remainder of fan assembly. If this happens, separation creates risk of damage to underhood components and, if hood is open at the time, also poses hazard of personal injury to persons in vicinity of vehicle. (Correct by replacing cross-blade engine cooling fan with one of heavy duty steel spider aluminum blade design.)
78V-161 7-19-78	Ford F-Series	1978	2	16	Mfg. Campaign No. 292. System-Windshield/weatherstrip. F-Series trucks. Possibility that windshield may not meet retention requirement of Federal Motor Vehicle Safety Standard No. 219, "Windshield Zone Intrusion." (Correct by installing weatherstrip lower retainer as required to meet Standard No. 219.)

WRITTEN TESTIMONY TO THE FEDERAL TRADE COMMISSION REGARDING
DISCLOSURE AND OTHER REGULATIONS CONCERNING THE SALE OF
USED MOTOR VEHICLES

I am Shirley Goldinger, the Director of the Los Angeles County Department of Consumer Affairs. Our department was created by the Board of Supervisors in July 1975 and is charged with responsibility for, among other things, investigating consumer complaints and representing County consumers before regulatory bodies such as the Federal Trade Commission. It is in assumption of this mandated responsibility that we submit testimony today.

By way of background, our doors were officially opened for business in April of 1976. Our department currently has an investigative staff of nine individuals. Since April we have investigated more than 5,000 complaints and have saved consumers nearly one-half million dollars. We are presently the only independent Consumer Affairs Agency in Los Angeles.

In presenting our views on the Commission's Used Car proposal, I will first make a general position statement and follow it with specific comments and suggestions as well as a statistical analysis of related consumer complaints.

Automobile related problems traditionally generate the largest volume of consumer complaints in all sectors. Virginia Knauer reports this is true on a national basis, as does the Council of Better Business Bureaus. Our experience in Los Angeles County bears this out. Certainly it is self-evident that the business producing more consumer dissatisfaction than any other merits scrutiny and regulation.

In Southern California, where a car is a necessity, used car sales are a significant factor in the total consumer transaction picture. Many consumers purchase used autos every day, and many consumers complain about those purchases.

The volume of such complaints reveals the average consumer's inability to properly assess the condition of used cars, to negotiate a meaningful contract and to obtain satisfaction when problems occur. Complaints often involve actual mechanical defects. For this reason, our department favors the concept of defect disclosure. It is our contention that responsibility for the condition of consumer goods rests with the retailer of those goods. Further, we believe that consumers have a fundamental right to know the condition of all items that they purchase.

Used cars sold with mechanical defects are often unsafe for normal use. Because of the gravity of such a condition, we favor the establishment of uniform safety standards and a requirement that vehicles be inspected and certified for safety compliance prior to sale.

In California, it is illegal for a dealer to sell a car for road use which is unsafe, but because of no pre-sale inspection requirement this law is often enforced after a mishap occurs. The California Vehicle Code adopts the standards of the federal National Traffic and Motor Vehicle Safety Act of 1966. The California Highway Patrol advises us that this means that no car may be sold with any mechanical condition which may render the vehicle unsafe for operation.

We would also favor the inclusion of diagnostic inspection provisions in any Rule regarding auto sales. In our opinion, consumers ought to be allowed to have any car inspected, prior to the completion of a sale.

Many consumer complaints involve used auto sale contracts and oral misrepresentation. It is a prevailing practice in Los Angeles to tell someone purchasing a vehicle on an "as-is" basis that the "as-is" doesn't mean anything and that if anything goes wrong with the car the seller will take care of it. The terms and conditions of contracts and warranties are so commonly misrepresented by sellers that we fully support the Federal Trade Commission's interest in curbing such flagrant abuse.

With regard to the proposed Defect Disclosure sticker, we support the concept but feel that the sticker is more detailed than necessary.

We suggest an alternative.

Last year in California a bill was introduced in the State legislature dealing with used car warranties. The bill has not yet passed, but after reviewing many types of proposals, we feel that it represents the best method for dealing with such transactions. It is consistent with the full and limited warranty concepts adopted by the Federal Trade Commission thus far and includes a defect disclosure provision. It is our recommendation that the Commission adopt the provisions of Assemblyman Richard Alatorre's bill as its own Used Car Warranty Rule.

This proposal does the following:

1. Prohibits a vehicle dealer from selling a used automobile for more than \$1,000 unless it is accompanied by a minimum warranty.

2. Defines "minimum warranty" to mean that the used automobile is fully warranted by the dealer to be free from mechanical defects for sixty days or 2,000 miles, whichever occurs first.
3. Defines "fully warranted" to mean that during the term of the warranty the dealer will promptly make all repairs necessary to cure any mechanical defect so that the automobile will be in safe and operable condition, considering its age.
4. Provides for a "defect disclosure notice" in which the dealer may describe any mechanical defect in the automobile which the dealer wants to exclude from the coverage of the required minimum warranty. A dealer who provides this defect notice must also give the automobile purchaser a written estimate from a repair facility of the cost to repair the defects excluded from the warranty.
5. Specifies the dealer's responsibilities to perform warranty-related repairs and the purchaser's rights and remedies if the automobile does not conform to the warranty.

If a purchased automobile covered by a limited or full warranty is found to have defects not disclosed and exempted from the warranty, the seller must decide within two days to either repair the vehicle or rescind the contract.

If repairs are elected they must be completed within five days under most circumstances. In the event of certain unusual circumstances, or if needed parts are not available in five days, the dealer may take up to 30 days to repair if he provides adequate substitute transportation for the purchaser. Failure to consummate repairs entitles the consumer to rescission of the contract.

If the dealer decides to rescind the contract he must return all money paid by the consumer, including the amount allowed in trade-in or the fair market value of the trade-in, whichever is greater.

6. Allows for an "as-is" sale on cars costing less than \$1,000 but suggests this "as-is" language in disclosing the lack of warranty:

"This automobile is for sale "AS-IS" and WITH ALL FAULTS. If this automobile needs repair or breaks down YOU THE BUYER AND NOT THE DEALER WILL HAVE TO PAY THE ENTIRE COST OF ANY SERVICING OR REPAIRS."

This proposal has a critical feature which is lacking in the Commission's current proposal, and that is the requirement that an estimated cost of repair statement accompany all disclosed defects. As automobiles are highly complex mechanical instruments, simple disclosure of defects is not sufficient to the consumer who cannot judge the severity of the defect. Accompanied by an estimated cost of repair, however, such disclosure becomes meaningful and helpful in purchase decision making.

I also believe that the provisions for proper execution of warranties are critical to the actual impact of any promulgated rule. It is not enough to regulate performance at the time of sale. There must also be clearly defined follow-through obligations so that effective use can be made of the information provided at the outset. The inclusion of specific time periods allowed for performance, as well as sanctions for non-compliance must be included in the rule.

The argument is always advanced that consumer protection labeling disclosure, etc. will generate higher prices. Consumer prices will continue to rise because of inflation and the business community's obvious goal to realize increased profits. But this rate of increase is always mitigated by the practical limitations of the consumer's pocketbook.

If a consumer good is too expensive it won't sell. Further, the rising cost of new automobiles insures an increasing market for used cars. I believe that prices will go up with or without increased regulation, and in that case we might as well have effective regulation.

As our department does not employ a staff attorney, I cannot discuss the issue of incurred warranty obligation by defect disclosure authoritatively. However, my understanding of California's implied warranty statute--the Song-Beverly Act--is that an implied warranty on used goods exists only when there is an express warranty on the item. I do not know if simple defect disclosure would constitute an express warranty, but I doubt it. If our minimum and full warranty suggestion was adopted however, all cars selling for over \$1,000 would necessarily be covered by our State implied warranty statute until such time as a federal pre-emption decision is made.

I believe the very simple check-off form proposed for relating a used car's prior use is adequate and clear. I am not able to relate the need for such disclosure to actual complaints because in the absence of such a prior use disclosure requirement, we have not been able to determine

how prior use correlates to actual after sale performance. While it seems to be an accepted fact that professionally used cars accrue more mileage than privately used cars, I have not been able to locate any survey or study that has actually been conducted in this area.

I have, however, determined that government used cars subsequently sold to the public do record more mileage per year than the average privately used car.

Privately owned cars accrue 12,000 miles a year on the average. California State cars accrue between 17,000 and 21,000 miles a year. A seven year old privately owned car would probably have approximately 84,000 miles on it, whereas a State car at that point would have a minimum of 120,000 miles.

Los Angeles County driven cars must be sold when they are either five years old or have 70,000 miles on an "as-is" basis. Since the average five year old privately owned car would have approximately 60,000 miles, County cars also accrue additional mileage.

Presumably, higher than average mileage means more than the usual mechanical wear has occurred. For many reasons, the prior use statement would be of interest to a car purchaser. A consumer ought to know how mileage was earned, and consider this in making a purchase decision.

Lastly, I would like to describe our complaint experience as it relates to the sale of used cars. This statistical evidence clearly demonstrates overwhelming consumer problems in this area and the need for the specific types of regulation proposed by the FTC.

The largest single area of consumer complaints handled in our department are auto related. Of the 4,764 complaints handled in 1976, 653 concerned cars. Within this category, 148 were specifically related to the sale of used cars. An additional 238 complaints concerned repairs, many of which occurred in relation to a used car purchase. Of those complaints specifically directed to used car sellers, the largest amount, 33, concerned warranty problems. 24 of the complaints alleged misrepresentation, 20 involved unsatisfactory repairs, 21 alleged a failure to perform at all, and 12 concerned defective cars. These figures are not conclusive, however, because our present statistical system allows for recording only a single cause of complaint.

Many complaints are generated by more than one problem. My personal review of 82 of these complaints indicates the presence of defects in 53 cases. On the average these defects were reported within 40 days of the sale, and in one-third of the cases sampled within one or two days. In 31 instances there is alleged misrepresentation with regard to the auto's condition and/or warranty. Many of the defects brought to our attention involve safety items such as brakes, steering and tires. Other mechanical problems consistently mentioned are batteries, turn signals, stalling, leaking, burning, regulators, transmissions, overheating, air conditioning, radiators, lights and engines. The average cost of needed repairs in these cases was \$316.00. This significantly increases the "actual" purchase price.

In most of these cases the sales approach was fast and hard, complete with asides not to worry about as-is or limited warranties, negotiation shuffles, and in one case the specific remark that the car had never been hit when subsequent body work revealed it probably had been. Used cars are consistently described in glowing terms and interested shoppers told that any problems will be taken care of. It is a common practice for shoppers to be told a car has a warranty, only to have this sale accountment disappear during the final negotiations.

Consumers seem to have an abiding trust that they will not be sold shoddy merchandise. They have no choice but to believe this when purchasing mechanically complex consumer goods such as cars, because they cannot possibly possess enough technical knowledge to assess the true condition of such goods for themselves.

Because it is unreasonable to expect consumers to be well versed in the technical intricacies of the many goods they must buy, because they must have technical information to make intelligent purchases, and because the dealers have such information, it stands to reason that the retailer has a responsibility to share accurate information with his customer, in the interest of marketplace ethics.

Further, it is an accepted standard in other industry areas that retailed goods must be fit for their intended purpose. It is time for this standard to be applied to used automobiles as well.

Thank you for allowing this opportunity for me to share the views of the Los Angeles County Department of Consumer Affairs with you.

KB:kj
2-14-77

MEMO TO: Sally

August 13, 1981

FROM: Kathi

RE: Meeting with auto industry - AB 1787

This morning Bert, Michael and I met for nearly two hours with various representatives of the auto industry (Lee Ridgeway, Jim Austin, Loren Smith, Dick Dugally and Al Davis). Jay De Furia of the Department of Consumer Affairs was also present.

We reviewed the various issues of contention that were raised during the Senate Judiciary Committee hearing, as well as others. The following points were made:

I. The industry is absolutely opposed to the notion of quantifying a "reasonable number of repair attempts" at all. No number will ever be acceptable to them.

II. The only amendment that would remove their opposition is an exemption for those firms that offer a dispute resolution program.

There are several problems with that idea:

A. It would effectively exempt all domestic cars, so the bill would be largely meaningless.

B. In order to statutorily deprive consumers of right to the "lemon" provision, it would seem that to qualify for the exemption, the dispute resolution programs should have to meet some minimum standard.

Examples of problem features in current programs include the following:

1. Ford's program has serious due process problems.

- (a) Consumers aren't notified of hearings
- (b) Consumers aren't permitted to attend hearings
- (c) Consumers aren't permitted to see the dealer and manufacturers' responses to their complaints, are given no opportunity to rebut.

2. General Motors' program is binding arbitration, and while that procedure is adequate from a "due process" point of view, it is binding on the consumer. Consumers may not go to court after binding arbitration.

3. Chrysler's program prohibits use of legal counsel. The industry is reluctant to change the features of their respective programs to comply with a statutory standard, although they did not absolutely preclude the possibility. The Federal Trade Commission for years has been unsuccessful in establishing dispute resolution program standards. The larger problem with allowing an unstandardized voluntary program to supersede legislation is the abdication of decision making by the elected to a special interest group. (This is similar to what was being tried in Congress with the Consumer Product Safety Commission).

There does not seem to be an acceptable way to give industry this amendment. (Therefore, there does not appear to be a way to remove their opposition).

III. The industry is adamantly opposed to the creation of a conclusive presumption on any basis. (They rejected Presley's suggestion emphatically).

IV. The industry agrees that it is not necessary to spell out a rebuttal based on abuse by the car buyer. They agree that that is clear elsewhere in the act and that it is also specified in the terms of their express warranties.

V. The industry would like to see additional clarification of the types of vehicles covered by the bill. They suggest adding the word "passenger" to new motor vehicle, and specifically exempting motorcycles and motor homes.

I believe that can be accomplished easily without harming the bill.

(Also, for your information, Presley apparently has motor home dealers in his district - exempting motor homes might help his position).

VI. The industry supports the inclusion of intent language in the bill (They had no specific thought to offer, however).

VII. The industry agreed that spelling out major component parts covered by the bill was not a good idea; they agreed it would be cumbersome, need constant review and probably be incomplete. (This was requested by Roberti).

They did suggest that the bill pertain only to the power train, or drive train. Each domestic representative read a list of parts which are included in the power train.

It is comprehensive, but there is a serious question of whether or not consumers might actually lose ground with this kind of restriction.

My inclination is to recommend against it (especially since they'll stay opposed).

VIII. The industry agreed that it is unnecessary to spell out that the manufacturer is only liable for warranty repairs performed by their authorized representatives. (This clarification was asked for by Roberti).

The Song-Beverly Act pertains throughout to designated repair facilities, and AB 1787 specifically refers to the manufacturer or its agents.

IX. There remains a very fundamental disagreement on the results of the bill with regard to litigation and the success of their dispute programs. They insist consumers will go court crazy, and the industry will be financially forced to shut down their complaint programs.

You can accurately argue that if their programs are as good as they say, then that's their own best answer to litigation; this bill does nothing to impair the success of their programs. Further, by removing the need for case by case determination of "reasonable," AB 1787 should reduce litigation.

In response to industry's expectation of voluminous litigation, I suggested that we each had an opposite guess as

to consumer response to the lemon bill, and that maybe we should consider a provision to monitor what really happens. The notion of a sunset provision was raised by me, but elicited no particular response from industry.

I believe serious consideration should be given to a sunset provision, which includes some assessment of resulting litigation and utilization of industry programs.

X. After the meeting, I talked with Lee Ridgeway (on the phone) about Marks' questions on extending the warranty period. Marks apparently did not understand that the 60-day extension provision in Hayes' bill from last year can be repeated. The import representative told Marks the bill only provided for a 1-time, 60-day warranty extension; in fact, if the problem remains uncorrected in that 60-day period, the consumer gets another 60 days, and another, and another, if necessary.

Once Marks understands the scope of the current law, I don't believe he'll push for an amendment. (Note on Marks: I believe he's particularly responsive to labor . . . those folks should be encouraged to talk to him . . .)

SO... possible amendments to consider offering include:

1. Coauthors (see Bert)
2. 20 shop days to 30 calendar days
3. More specific definition of "new motor vehicle" (passenger cars for highway use); exempt motorcycles and motor homes.
4. Intent language
5. Sunset/reporting provision.



NEWS FROM ASSEMBLYWOMAN

SALLY TANNER

60th Assembly District.

FACT SHEET

AB 1787 (TANNER) - "LEMON" BILL

Last year, in response to hundreds of letters from consumers who had experienced serious and frustrating problems with defective new automobiles, Assemblywoman Sally Tanner introduced AB 2705. The bill became known as the "lemon" bill because it offered specific protections to purchasers of cars that repeatedly defy repair of defects. The bill was passed by the Assembly, but was defeated in the Senate Judiciary Committee by a single vote.

In spite of the bill's narrow defeat, the outcry from the consuming public for this kind of protection became more and more pronounced as the bill moved through the Legislature. For that reason, Assemblywoman Tanner reintroduced the "lemon" bill on March 27, 1981.

WHAT THE BILL DOES

- Amends the Song-Beverly Warranty Act, Civil Code Section 1793.2
- Pertains only to new motor vehicles which are purchased for "personal, household or family use"
- Adds simple language to existing warranty law. Current law states that a consumer is entitled to a refund or replacement if a warranted product is not repaired after "a reasonable number of repair attempts."
- Specifies that a "reasonable number of attempts" shall be three times by the dealer and one time by the manufacturer - or 20 cumulative days out of service.

AB 1787 is offered as a simple and reasonable solution to the very real problem experienced by car buyers when - for whatever reason - their new cars don't function properly.

For more information, contact Mike Ross in Assemblywoman Tanner's Capitol office at 916/445-7783.

PEANUTS

By Charles Schulz



MY NAME IS SHIRLEY GOLDINGER. I AM THE DIRECTOR OF THE LOS ANGELES COUNTY DEPARTMENT OF CONSUMER AFFAIRS. OUR DEPARTMENT REPRESENTS THE CONSUMER PROTECTION INTERESTS OF SEVEN MILLION CITIZENS OF LOS ANGELES COUNTY. ONE OF THE MANY FUNCTIONS THE DEPARTMENT PERFORMS IN CARRYING OUT THOSE RESPONSIBILITIES IS TO RECEIVE, INVESTIGATE AND MEDIATE CONSUMER COMPLAINTS.

MANY LOS ANGELES COUNTY CONSUMERS CALL OUR DEPARTMENT TO COMPLAIN THAT THEY ARE UNABLE TO GET HELP IN CORRECTING DEFECTS AND PROBLEMS IN THEIR NEW CARS DESPITE THEIR REPEATED EFFORTS. THEY REPORT TO US THE FRUSTRATION ENGENDERED BY THEIR EFFORTS TO HAVE REPAIRS DONE: ENDLESS TELEPHONE CALLS (OFTEN LONG-DISTANCE AT THE CONSUMER'S EXPENSE) TO SET UP AN APPOINTMENT FOR REPAIR WHICH MAY OR MAY NOT BE KEPT BY THE SERVICE PERSONS; REPEATED TRIPS TO THE DEALER FOR REPAIRS THAT DON'T CORRECT THE DEFECT, AND PROMISES OF DOING THE WORK CORRECTLY BY A CERTAIN DATE WHICH ARE NOT FULFILLED. FREQUENTLY, TIME AND MONEY IS LOST FROM EMPLOYMENT BY THE ADDED PENALTY OF NOT HAVING THE USE OF A CAR DURING THE TIME

IT IS IN THE SHOP. THIS CAN ADD UP TO CONSIDERABLE TIME AND EXPENSE.

I HAVE NOT PROVIDED YOU WITH FIGURES OF THE EXACT NUMBER OF COMPLAINTS OUR DEPARTMENT RECEIVES CONCERNING NEW CAR LEMONS BECAUSE EXISTING LAW LEAVES OUR DEPARTMENT LITTLE CHOICE BUT TO RESPOND TO MANY COMPLAINTS ABOUT NEW CAR "LEMONS" BY SAYING THAT SHORT OF FILING A CIVIL SUIT, CONSUMERS MUST CONTINUE TO HOPE THAT THE SELLER WILL SUCCEED IN REPAIRING THE DEFECT. THE DEALER AND THE MANUFACTURER ARE TRULY IN THE "DRIVER'S SEAT" IN THESE SITUATIONS.

I WOULD LIKE TO ILLUSTRATE THE DILEMMA FACED BY THOSE UNFORTUNATE ENOUGH TO BE STUCK WITH A LEMON BY SHARING ONE OR TWO OF THE COMPLAINTS WE'VE RECEIVED WITH YOU.

READ COMPLAINTS

CONSUMERS BELIEVE THAT WHEN THEY PURCHASE A NEW PRODUCT, IT WILL LIVE UP TO ITS ADVERTISING. THEY ARE LOOKING FORWARD TO AN EXCITING, SLEEK, POWERFUL NEW CAR. BUYERS KEEP THEIR END OF THE BARGAIN BY PAYING FOR WHAT BOTH BUYER AND SELLER AGREE, AT THE TIME OF THE SALE, SHOULD BE A DEFECT-FREE PRODUCT.

THEY ARE ENTITLED TO NO LESS, WHETHER THE PRODUCT BE A TOASTER OR A NEW CAR.

3-3-3-3-3

WHEN IT IS NOT, IT IS ONLY REASONABLE TO EXPECT THAT THE DEFECT BE REMEDIED IN A TIMELY FASHION.

AB 1787 IS A FAIR AND EQUITABLE EXTENSION OF EXISTING WARRANTY LAW. IT PROVIDES A NUMBER OF OPPORTUNITIES FOR A SELLER TO MAKE A GOOD FAITH EFFORT TO REPAIR DEFECTS. AT THE SAME TIME, IT PROTECTS THE BUYER FROM ENDURING ENDLESS AND FRUITLESS REPAIR ATTEMPTS BY CLEARLY STATING THE POINT AT WHICH HE WILL BE ENTITLED TO REIMBURSEMENT FOR, OR REPLACEMENT OF, A DEFECTIVE NEW CAR.

THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY.

###



Regional Governmental Affairs Office
Ford Motor Company

Suite 260 - 925 L Street
Sacramento, California 95814
Telephone: 916/442-0111

RELEASE ON INQUIRY

Following is a statement by Richard L. Dugally, Western Regional Manager, Governmental Affairs Office, Ford Motor Company:

Ford Motor Company strongly opposes passage of AB 1787 relating to new motor vehicle warranties. There are sufficient avenues of recourse now available to consumers and numerous governmental organizations which assure customer satisfaction without the necessity of involving the courts in each repair dispute.

We believe this proposed legislation will greatly increase the number of frivolous and unmeritorious lawsuits filed against motor vehicle manufacturers. Inevitably, an increased dependence upon the over-burdened court system will lead to increased costs for Ford, and, subsequently its customers.

Ford, and its dealers, have taken great strides in establishing a speedy, inexpensive and fair system to resolve product disputes as an effective alternative to lengthy and costly dependence on the courts.

3-30-81

(e) (1) It shall be presumed that a reasonable number of attempts have been made to conform a new motor vehicle to the applicable express warranties if, within one year from delivery to the buyer or 12,000 miles, whichever occurs first, either (i) the same nonconformity has been subject to repair four or more times by the manufacturer or its agents, which shall include a minimum of one direct notification for repair by the buyer to the manufacturer of the nonconformity, or (ii) the vehicle is out of service by reason of repair of nonconformities by the manufacturer or its agents for a cumulative total of more than 30 calendar days since delivery of the vehicle to the buyer. The 30-day limit shall be extended only if repairs cannot be performed due to the conditions beyond the control of the manufacturer or its agents. The buyer shall be required to directly notify the manufacturer pursuant to subparagraph (i) only if the manufacturer has clearly and conspicuously disclosed to the buyer, with the warranty and the owner's manual, the provisions of subdivisions (d) and (e) of this section, including the requirement that the buyer must notify the manufacturer directly pursuant to subdivision (e) (1) (i).

No P

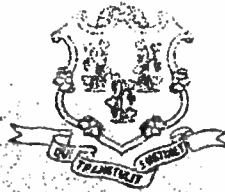
This presumption shall be a rebuttable presumption affecting the burden of proof in any action to enforce the buyer's rights under subdivision (d) and shall not be construed to limit those rights.

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(3) A qualified third party dispute resolution process shall be one that complies with the Federal Trade Commission's minimum requirements for informal dispute settlement procedures as set forth in the Commission's regulations at 16 Code of Federal Regulations Part 703; whose decisions shall be binding on the manufacturer if the buyer elects to accept the decision; that prescribes a reasonable time not to exceed 30 days, within which the manufacturer or its agents must fulfill the terms of those decisions, and that each year provides to the Department of Motor Vehicles a report of its annual audit required by the Commission's regulations on informal dispute resolution procedures.

(e) (4) For purposes of this subdivision:

(i) a "nonconformity" is one which substantially impairs the use, value, or safety of the new motor vehicle; (ii) a "new motor vehicle" is one which is used or bought for use primarily for personal family or household purposes, but excluding motorcycles, motorhomes, and off-road vehicles.



State of Connecticut
HOUSE OF REPRESENTATIVES
STATE CAPITOL
HARTFORD, CONN. 06115

REPRESENTATIVE JOHN J. WOODCOCK
FOURTEENTH DISTRICT

P.O. BOX 684

SOUTH WINDSOR, CONNECTICUT 06074

HOME PHONE: 289-3545

Office Tel. No. 203-644-2431

MEMBER
ENERGY AND PUBLIC UTILITIES COMMITTEE
FINANCE, REVENUE AND BONDING COMMITTEE
JUDICIARY COMMITTEE
STATE CAPITOL PHONE: 566-8650

June 25, 1982

Department of Consumer Affairs
1020 N Street
Sacramento, California 95814

RE: Connecticut "Lemon Law"

Gentlemen:

The Connecticut General Assembly, on April 30, 1982, approved a far-reaching proposal which affords legal protection to new car buyers who find themselves with chronically defective cars. Connecticut is the first state to adopt such a law. Governor William A. O'Neill, on June 4, 1982, signed this measure into law.

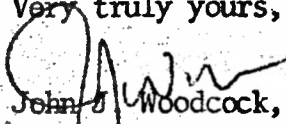
As the author and sponsor of the "Lemon Law," I have been in contact with legislators, consumer groups, media and attorneys from around our country. There has been, and will be, a very significant and substantive response to Connecticut's action.

For your information, I am enclosing a copy of the "Lemon Law" together with a Legislative Research analysis as to same.

If you have any thoughts, questions or comments, please do not hesitate to contact me.

Thank you for your courtesy.

Very truly yours,


John J. Woodcock, III
State Representative

JJW:ca

Enclosures

AN ACT CONCERNING AUTOMOBILE WARRANTIES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

(NEW) (a) As used in this act: (1) "Consumer" means the purchaser, other than for purposes of resale, of a motor vehicle, any person to whom such motor vehicle is transferred during the duration of an express warranty applicable to such motor vehicle, and any other person entitled by the terms of such warranty to enforce the obligations of the warranty; and (2) "motor vehicle" means a passenger motor vehicle or a passenger and commercial motor vehicle, as defined in subdivisions (35) and (36) of section 14-1 of the general statutes, as amended, which is sold in this state.

(b) If a new motor vehicle does not conform to all applicable express warranties, and the consumer reports the nonconformity to the manufacturer, its agent or its authorized dealer during the term of such express warranties or during the period of one year following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date, the manufacturer, its agent or its authorized dealer shall make such repairs as are necessary to conform the vehicle to such express warranties, notwithstanding the fact that such repairs are made after the expiration of such term or such one-year period.

(c) If the manufacturer, or its agents or authorized dealers are unable to conform the motor vehicle to any applicable express warranty by repairing or correcting any defect or condition which substantially impairs the use and value of the motor vehicle to the consumer after a reasonable number of attempts, the manufacturer shall replace the motor vehicle with a new motor vehicle or accept return of the vehicle from the consumer and refund to the consumer the full purchase price including all collateral charges, less a reasonable allowance for the consumer's use of the vehicle. Refunds shall be made to the consumer, and lienholder if any, as their interests may appear. A reasonable allowance for use shall be that amount directly attributable to use by the consumer prior to his first report of the nonconformity to the manufacturer, agent or dealer and during any subsequent period when the

vehicle is not out of service by reason of repair. It shall be an affirmative defense to any claim under this act (1) that an alleged nonconformity does not substantially impair such use and value or (2) that a nonconformity is the result of abuse, neglect or unauthorized modifications or alterations of a motor vehicle by a consumer.

(d) It shall be presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable express warranties, if (1) the same nonconformity has been subject to repair four or more times by the manufacturer or its agents or authorized dealers within the express warranty term or during the period of one year following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date, but such nonconformity continues to exist or (2) the vehicle is out of service by reason of repair for a cumulative total of thirty or more calendar days during such term or during such period, whichever is the earlier date. The term of an express warranty, such one-year period and such thirty-day period shall be extended by any period of time during which repair services are not available to the consumer because of a war, invasion, strike or fire, flood or other natural disaster.

(e) Nothing in this act shall in any way limit the rights or remedies which are otherwise available to a consumer under any other law.

(f) If a manufacturer has established an informal dispute settlement procedure which complies in all respects with the provisions of title 16 Code of Federal Regulations Part 703, as from time to time amended, the provisions of



CONNECTICUT
GENERAL ASSEMBLY

SPECIAL ANALYSIS

File No. 789 (Previously
File No. 362)
4/28/82

SHB 5729 (as amended by House "A" and Senate "A")*
General Law Committee

AN ACT CONCERNING AUTOMOBILE WARRANTIES

AMENDED BILL SUMMARY: This bill would require a manufacturer of a new passenger carrying car, van or truck or the manufacturer's agent or authorized dealer to repair all defects covered by a written warranty if reported by the purchaser during the warranty period or within one year of the vehicle's delivery date, whichever is earlier. If these vendors are unable to repair a defect which substantially impairs the vehicle's use and value after a reasonable number of attempts, the bill would require the manufacturer to either replace the vehicle or refund the full purchase price and collateral charges, less an allowance for the consumer's use. A refund would be made to the consumer and to anyone holding a lien on the vehicle. If a manufacturer has established an informal dispute settlement mechanism that complies in all respects with relevant Federal Trade Commission regulations, the bill would require a consumer to attempt to settle the dispute through this mechanism before the bill's provisions requiring a refund or replacement would apply. The bill would specify that the manufacturer would have the following affirmative defenses in any suit to have a vehicle replaced or to recover the cost of a vehicle:

1. The defect does not substantially impair the vehicle's use and value.
2. The defect was caused by the consumer's abuse, neglect or unauthorized modification of the vehicle.

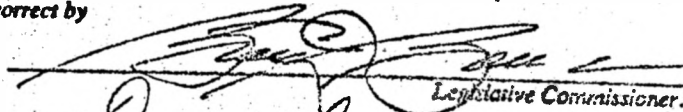
The bill would specify that a "reasonable number of attempts" have been undertaken when:

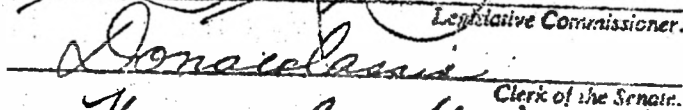
- 1) the same problem has been subject to repair four or more times during the warranty period or within one year of the vehicle's delivery date, whichever is earlier; or
- 2) the vehicle has been out of service for repair for a cumulative total of 30 calendar days during the same period.

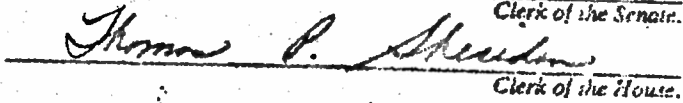
Substitute House Bill No. 5729

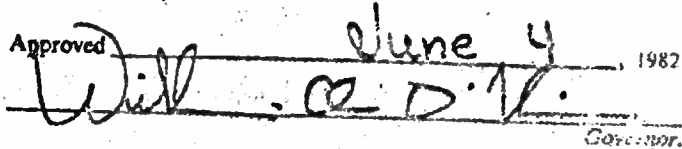
subsection (c) of this section concerning refunds or replacement shall not apply to any consumer who has not first resorted to such procedure.

Certified as correct by


Legislative Commissioner.


Clerk of the Senate.


Clerk of the House.

Approved  June 4, 1982
Governor.

In addition, the bill would extend the term of a written warranty, the one-year period following the vehicle's delivery and the 30-day period for repair for the period of time during which repair services are unavailable due to war, invasion, strike or fire, flood or other natural disasters.

Finally, the bill would not limit other rights or remedies available to a consumer under any other law.

*House Amendment "A" eliminates everything after the enacting clause and rewrites the bill as summarized above. The Amendment differs from the original bill by:

- 1) requiring replacement or refund only for defects which substantially impair the vehicle's use and value;
- 2) increasing the allowance for the customer's use of the vehicle from the consumer's use before to the first report of a defect to the consumer's use before this first report and during any subsequent period when the vehicle is not out of service for repair;
- 3) changing the amount of time the vehicle must be out of service for repair from 20 business days to 30 calendar days;
- 4) allowing the extension of the warranty period, one-year period following delivery and the 30-day period because of natural or other disasters; and
- 5) establishing the affirmative defenses for manufacturers in any claim arising under the bill's provisions.

*Senate Amendment "A" adds the provision concerning the informal dispute settlement mechanism.

EFFECTIVE DATE: October 1, 1982

COMMENT

Informal Dispute Settlement Mechanisms

The Federal Trade Commission regulations were issued under the authority of the Magnuson-Moss Warranty Act. They must be complied with only if the manufacturer refers to such a mechanism in the warranty. The mechanism's provide a means to mediate disputes between consumers and warrantors. The regulations:

- 1) establish requirements for consumer notification;
- 2) require the mechanism to be insulated from the manufacturer's influence; and that the decision-makers not be associated in any way with a party to a dispute;
- 3) require that the mechanism be free to the consumer; and
- 4) generally require that a dispute be settled within 40 days

DD:dkl:sra

January 15, 1982

MEMORANDUM

TO: Members of the Assembly Committee on Consumer
Protection and Toxic Materials

FROM: Assemblywoman Sally Tanner, Chairwoman

SUBJECT: FEBRUARY 9, 1982 COMMITTEE MEETING - SPECIAL ORDER
OF BUSINESS -- "AUTOMOBILE DISPUTE RESOLUTION PROGRAMS"

*dispute
new*

This is to advise you that there will be a special order of business at the February 9th meeting of this committee to hear testimony concerning automobile dispute resolution programs. As the testimony is expected to be extensive, I do not plan to have the committee take up any legislative bills at this hearing.

The purpose of this hearing is to obtain accurate and detailed information concerning the various third-party dispute resolution programs. These programs are offered by the automobile industry to resolve customer complaints concerning new cars (e.g., Ford Consumer Appeals Board, General Motors/Better Business Bureau arbitration, Chrysler Customer Satisfaction Arbitration Board, AUTO-CAP).

Problems with new automobiles rank very high as a source of consumer complaints. The automobile industry has responded to this situation by developing dispute resolution programs beyond their traditional dealer/manufacturer, in-house, customer relations programs. Despite the advent of these programs, customer dissatisfaction still remains very high.

-continued-

Specifically, we want to know how these programs operate, their jurisdiction, membership, funding, procedural mechanisms, time frames, and the types of relief they can provide. We will also examine the number and type of complaints received by these programs, the number and type rejected or referred elsewhere and why, the number accepted and their outcomes. In particular, we want to know how automobile owners who have had problems with their new cars assess the effectiveness of these programs.

For the past two years I have carried legislation, commonly referred to as the auto "lemon" bill, to provide purchasers of new cars with better legal protection against being stuck with a defective vehicle that isn't or can't be fixed. The automobile industry has strongly opposed this legislation and offered these dispute resolution programs as an alternative for providing consumers with such protection. However, information about these programs has been incomplete and contradictory. This committee's hearing is intended to obtain detailed information in order to assess what further efforts and legislation may be needed to adequately protect new car purchasers.

I think this hearing will be very informative about an issue that is of vital concern to a great many California consumers. I hope you will make every effort to attend.

Please contact Jay J. DeFuria, Committee Consultant, at 916/445-0991, for further details.

ASSEMBLY BILL

No. 1778

Introduced by Assemblyman Katz

March 27, 1981

An act to amend Sections 7065.5, 7067, 7067.6, 7068, 7068.1, 7068.2, 7069, 7071.8, 7074.5, 7076, 7096, 7121, 7137, and 7138 of the Business and Professions Code, relating to contractors.

LEGISLATIVE COUNSEL'S DIGEST

AB 1778, as introduced, Katz. Contractors: responsible managing employees.

Under existing law, an applicant for a contractor's license is required to qualify with respect to licensing requirements regarding experience and knowledge as follows:

- (1) If an individual, by personal appearance or by the appearance of a responsible managing employee;
- (2) If a partnership, by the appearance of a general partner or by the appearance of a responsible managing employee;
- (3) If a corporation, by the appearance of a responsible managing officer or by the appearance of a responsible managing employee.

This bill would eliminate the authority for any individual, partnership, or corporation to use a responsible managing employee to qualify for a contractor's license and would make conforming changes throughout the Contractors License Law.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 7065.5 of the Business and
- 2 Professions Code is amended to read:

AB 1787 (Tanner)
As amended May 24
Civil Code
RT

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MOTOR VEHICLE WARRANTIES
-REPLACEMENT OR REFUND-

HISTORY

Source: Author

Prior Legislation: AB 2705 (1980) - held in
this committee

Support: Los Angeles City Attorney; KPIX; KABC;
Long Beach Independent Press-Telegram;
Santa Barbara News Press; State Consumer
Advisory Council; Department of Consumer
Affairs; California Consumer Affairs
Association; Cal-Pirg San Diego; National
Council of Senior Citizens; Motor Voters,
San Diego; AFL-CIO, State Federation;
State Building and Construction Trades
Council of California; United Steelworkers
of America; Baldwin Park Chamber of
Commerce; Santa Cruz County District
Attorney; Consumer Union, San Francisco;
San Francisco Consumer Action; County of
Los Angeles, Department of Consumer
Affairs; California Federation of Women's
Clubs, Orange District; Consumer Aid of
Shasta County; Colusa County Board of
Supervisors; Stanislaus County, Office of
Consumer Affairs; Los Angeles Private
Investigation & Patrol Service; California
Teamsters Public Affairs Council; Center
for Auto Safety; Chico Consumer Protection
Agency; Lemon-Aid, San Diego; Consumer
Federation of California; Legal Aid
Society of San Mateo County; Consumer
Coalition

(More)

Opposition: Ford; Chrysler; General Motors;
California Auto Dealers Ass'n;
California Manufacturers Ass'n; Motor
Vehicles Manufacturers Ass'n; American
Honda Motor Co.; Calif. Conference of
Machinists

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Assembly floor vote: Ayes 48 - Noes 22.

KEY ISSUE

SHOULD THERE BE A PRESUMPTION THAT A NEW MOTOR VEHICLE WHICH, WITHIN ITS FIRST YEAR, HAS BEEN REPAIRED UNDER AN EXPRESS WARRANTY FOUR OR MORE TIMES FOR THE SAME DEFECT OR WHICH HAS BEEN OUT OF SERVICE FOR WARRANTY REPAIR MORE THAN 30 CALENDAR DAYS SHOULD BE REPLACED OR THE PURCHASER REIMBURSED BY THE MANUFACTURER?

PURPOSE

The Song-Beverly Consumer Warranty Act provides a mechanism whereby a consumer can enforce the terms of an express (written) warranty issued by a manufacturer. The Act provides that a manufacturer who is unable to service or repair goods to conform to his express warranty after a "reasonable" number of attempts must either replace the goods or reimburse the buyer, as specified.

This bill would create a rebuttable presumption that a reasonable number of attempts have been undertaken if, within one year or 12,000 miles, the same defect had been subject to repair four or more times by the manufacturer, or if the vehicle had been out of service for warranty repair for more than 30 calendar days since its delivery to the buyer.

(More)

The presumption could not, however, be asserted where
a qualified (as defined) third party dispute
resolution process existed until the buyer attempted
to resolve his dispute through that process.

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The purpose of the bill is to provide an effective
remedy for the automobile buyer who purchases a
"lemon."

COMMENT

1. Limited by the Song-Beverly Act

This bill would amend the Song-Beverly Consumer
Warranty Act, and would apply only to those
transactions covered by the Act.

(a) Not applicable to commercial vehicles

The Song-Beverly Act applies only to
"consumer goods," defined as products "used
or bought for use primarily for personal,
family, or household purposes"

Thus, vehicles used for commercial purposes
are not subject to the Act, and would not
be subject to this bill.

(b) Only applicable to terms of express warranty

The purpose of the Song-Beverly Act is to
provide a consumer with a means of
enforcing the terms of the manufacturer's
own warranty. Nothing which is not covered
by that warranty is subject to the
provisions of the Act.

(More)

Thus, this bill would apply only to those vehicles or parts of vehicles covered by the manufacturer's warranty. If the vehicle was sold "as is," or the vehicle was warranted but the defect arose in a part of the vehicle not covered by the warranty, the bill would not apply.

2. Excluded vehicles

The bill's provisions would not cover motorcycles, motor homes or off-road vehicles, even though they were "consumer goods" as defined by the Song-Beverly Act and were subject to the other provisions of the Act.

3. Nature of remedy

(a) Rebuttable presumption of reasonable number

The Song-Beverly Act imposes the duty of replacement or reimbursement on the warrantor who fails to repair the defect in the goods as promised by his warranty after a "reasonable number of attempts."

This bill would create a rebuttable presumption affecting the burden of proof that a reasonable number of attempts for a new motor vehicle would be four or 30 calendar days -- within one year after delivery or 12,000 miles, whichever came first. The presumption could be overcome by a showing on the part of the warrantor that four attempts or 30 days were not reasonable in that particular case.

(More)

(b) Replacement or reimbursement

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Under the Song-Beverly Act if the warrantor fails to repair the goods after a reasonable number of attempts, he shall either replace the goods or reimburse the buyer in an amount "equal to the purchase price paid by the buyer, less that amount directly attributable to use by the buyer" prior to the discovery of the defect.

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(c) Enforcement by litigation

The Song-Beverly Act is not enforced by any government agency. If a warrantor fails to meet the terms of the Act, the consumer's only remedy is to go to court.

4. Need for bill

Proponents state that current law does not protect consumers who purchase defective vehicles, because dealers and manufacturers never admit, perhaps because of the cost of the vehicle, that they have made a "reasonable number" of attempts to repair it and are now willing to replace it or reimburse the consumer.

Proponents say that the clear standard proposed in this bill would offer a more effective remedy to the consumer, and would encourage improved quality control by manufacturers and improved repair service by dealers.

5. Resorting to dispute resolution process

The presumption created by this bill could not be asserted where a qualified (as defined) third party dispute resolution process was available until after the buyer "resorted" to that process.

(More)

(a) Federal requirement of resorting
to process

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Federal law regulating consumer warranties - the Magnuson-Moss Act - requires a consumer, before he can sue under that Act, to resort to a qualified dispute resolution process if one is available.

AB 1787 would impose a similar requirement on a person wishing to take advantage of presumption in the bill, and would incorporate by reference the federal definitions of a qualified dispute resolution process and of what constitutes "resorting."

(b) Definition of qualified dispute resolution
process

The bill incorporates by reference eight columns of federal regulations describing the procedures of a qualified dispute resolution process, including such matters as the composition of the decision-making panel (no more than one-third connected with the warrantor), the duties of the process to collect information from the disputing parties, the rights of the parties to make an oral presentation, etc.

In addition the bill would require that the process be governed by a board at least one-half of whose member would be consumers, that the decision of the process be binding on the warrantor, and that the warrantor be required to fulfill the terms of the decision within 30 days.

(More)

SHOULD THE BILL ADOPT ALL OF THE
COMPLEXITIES OF THE FEDERAL REGULATIONS IN
ITS DEFINITION OF A QUALIFIED PROCESS?
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(c) Definition of "resort"

The federal regulations provide that the process must act to resolve the dispute within 40 days after the time the buyer has notified it of the dispute. That period may be extended only if the buyer failed to provide adequate information about the complaint, or if the buyer had made no attempt to seek redress directly from the warrantor.

The requirement that the buyer resort to the process is satisfied 40 days after the dispute has been submitted (unless the time has been legally extended) or when the process has made a decision, whichever occurs first.

The bill incorporates this definition by reference.

(d) Exceptions to this requirement

The bill would excuse the buyer from resorting to a dispute resolution process before asserting the presumption if no qualified process was available or if the buyer failed to receive timely notification of the availability of the process.

In addition the buyer could assert the presumption if he were dissatisfied with the decision of the dispute resolution

(More)

process or if the warrantor failed to
fulfill promptly the terms of that
decision.

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6. Manufacturers' dispute resolution processes

Ford, Chrysler, General Motors all oppose the bill
and state that consumer problems are being handled
by their own appeal procedures.

(a) Ford

Ford has an appeal board composed of two
dealers and three consumer
representatives. A consumer with a service
problem must first go to the dealer, and
then contact the Ford Motor Company. If
the problem is not resolved, he makes his
case in writing to the appeals board. A
decision of the board is binding on the
dealer and on Ford, but not on the
consumer.

(b) Chrysler

Chrysler has arbitration boards covering
all 50 states. The boards are composed of
a mechanic, a consumer advocate, a member
of the general public, a dealer, and a
Chrysler employee, but only the first three
vote on decisions. The decisions are
binding on Chrysler and the dealer, but not
on the consumer.

(c) General Motors

General Motors has had a third-party
arbitration and mediation program through
the Better Business Bureau in the Bay Area

(More)

since 1979. It has heard 383 complaints, 1
and GM has bought 6 cars. The same 7
procedure is being established in Los 8
Angeles, Sacramento, and Fresno. 7

The Chrysler program may meet all of the standards for a dispute resolution process set out in this bill, but the programs of Ford and GM would apparently not.

7. Same non-conformity

The bill would define "reasonable number" as four attempts to repair the "same non-conformity" or defect.

Ford Motor Company proposed last year that the term "same non-conformity" be defined as a non-conformity caused by the failure of the same part. Ford argued that a vehicle may experience a similar condition (such as an inability to start) at different times during the warranty period due to totally different causes. However, an inability to start because of a defective starter and a similar failure from a defective battery would not be considered to be the same non-conformity under either Ford's warranty or the Song-Beverly Act.

Proponents state that a more accurate example would be a defective transmission which could result from the failure of one of a number of transmission parts. They say that four attempts to produce a working transmission should be the limit of reasonableness, regardless of how many transmission parts were defective.

(More)

AB 1787 (Tanner)
Page 10

A
B

8. Technical amendment

1
7
8
7

On page , line , strike out "required" and
insert: defined

CHAIRWOMAN'S STATEMENT

HEARING ON "NEW AUTOMOBILES - CONSUMER DISPUTE RESOLUTION PROGRAMS"

Tuesday, February 9, 1982, 1:30 p.m.
Room 4202, State Capitol

GOOD AFTERNOON!

WE ARE HERE TODAY ON A FACT-FINDING ~~MISSION~~ ^{hearing} TO LEARN ABOUT THE SCOPE, OPERATION, AND SUCCESS OF THE VARIOUS DISPUTE RESOLUTION PROGRAMS WHICH THE AUTOMOBILE INDUSTRY HAS ESTABLISHED TO RESOLVE NEW CAR PROBLEMS AND CUSTOMER COMPLAINTS.

A NEW CAR PURCHASE IS THE SECOND LARGEST INVESTMENT A CONSUMER WILL MAKE AND YET, IT IS ONE OF THE MOST FREQUENT SOURCES OF CONSUMERS' COMPLAINTS. IN THE COURSE OF HEARINGS ON MY AB 1787 - KNOWN AS THE AUTO "LEMON" BILL - THE AUTOMOBILE INDUSTRY REPEATEDLY SUGGESTED THAT NEW LEGISLATIVE REMEDIES FOR CONSUMERS WITH COMPLAINTS ABOUT NEW AUTOMOBILES WERE UNNECESSARY. THE INDUSTRY HAS POINTED TO THEIR OWN INTERNAL EFFORTS, IN PARTICULAR, THEIR DISPUTE OR ARBITRATION BOARDS, AS A BETTER SOLUTION.

SINCE THERE WASN'T SUFFICIENT TIME DURING THE REGULAR COMMITTEE HEARINGS ON THE BILL TO FULLY DISCUSS AND EXPLORE THE RAMIFICATIONS OF THESE DISPUTE PROGRAMS, WE HAVE SCHEDULED THIS SPECIAL ORDER OF BUSINESS TO DO SO TODAY. WE WILL BE HEARING FROM NEW AUTOMOBILE OWNERS, FROM INDUSTRY STAFF WHO ADMINISTER THESE PROGRAMS, FROM INDIVIDUALS WHO HAVE SERVED ON DISPUTE BOARDS, AND FROM OTHERS WITH PERTINENT EXPERIENCE AND KNOWLEDGE TO SHARE WITH US.

-continued-

I WANT TO THANK ALL OF YOU FOR BEING HERE TODAY. I BELIEVE THIS WILL BE AN IMPORTANT INFORMATION GATHERING SESSION WHICH WILL HELP US ASSESS WHETHER FURTHER EFFORTS OR LEGISLATION, SUCH AS MY CURRENT "LEMON" BILL, ARE NEEDED TO REDUCE THE PROBLEMS ENCOUNTERED BY NEW CAR BUYERS. WE HAVE A NUMBER OF WITNESSES TO HEAR FROM BY 4:00 P.M. SO I WOULD LIKE TO ASK EACH OF YOU TO BE AS CONCISE AS POSSIBLE TO GIVE EVERYONE AN EQUAL OPPORTUNITY TO SPEAK.

WITH THAT LET'S GET STARTED. OUR FIRST SET OF WITNESSES TODAY ARE SEVERAL NEW AUTOMOBILE PURCHASERS. IF YOU WILL ALL PLEASE COME FORWARD NOW TO THE TABLE, WE'LL HEAR FROM YOU IN AGENDA ORDER.

MEMBERS

DON SEBASTIANI, Vice Chairman
BYRON SHER
PETER CHACON
RICHARD KATZ
DAVID ELDER
ERNEST KONNYU
CATHIE WRIGHT



CALIFORNIA LEGISLATURE ASSEMBLY COMMITTEE

MARTHA VALDES
SENIOR CONSULTANT
JAY J. DeFURIA
SENIOR CONSULTANT
MARGARET H. MARR
ASSOCIATE CONSULTANT
MARY VASOS
COMMITTEE SECRETARY

on

CONSUMER PROTECTION AND TOXIC MATERIALS

ROOM 4146 STATE CAPITOL
(916) 445-0991

CHAIRWOMAN
SALLY TANNER

January 19, 1982

MEMORANDUM

TO: All Interested Parties

FROM: Assemblywoman Sally Tanner, Chairwoman - Assembly
Committee on Consumer Protection & Toxic Materials

SUBJECT: FEBRUARY 9, 1982 COMMITTEE HEARING "NEW AUTOMOBILES -
CONSUMER DISPUTE RESOLUTION PROGRAMS"

As Chairwoman of the Assembly Committee on Consumer Protection and Toxic Materials, I have scheduled a special order of business for the February 9th meeting of the committee to hear testimony concerning automobile dispute resolution programs. The hearing will begin at 1:30 P.M. in Room 447 of the restored Capitol in Sacramento.

The purpose of this hearing is to obtain accurate and detailed information concerning the various third-party dispute resolution programs. These programs are offered by the automobile industry to resolve customer complaints concerning new cars (e.g., Ford Consumer Appeals Board, General Motors/Better Business Bureau arbitration, Chrysler Customer Satisfaction Arbitration Board, AUTO-CAP).

Problems with new automobiles rank very high as a source of consumer complaints. The automobile industry has responded to this situation by developing dispute resolution programs beyond their traditional dealer/manufacturer, in house customer relations programs. Despite the advent of these programs, customer dissatisfaction still remains very high.

-continued-

Specifically, we want to know how these programs operate, their jurisdiction, membership, funding, procedural mechanisms, time frames, and the types of relief they can provide. We will also examine the number and type of complaints received by these programs, the number and type rejected or referred elsewhere and why, the number accepted and their outcomes. In particular, we want to know how automobile owners who have had problems with their new cars assess the effectiveness of these programs.

For the past two years I have carried legislation, commonly referred to as the auto "lemon" bill, to provide purchasers of new cars with better legal protection against being stuck with a defective vehicle that isn't or can't be fixed. The automobile industry has strongly opposed this legislation and offered these dispute resolution programs as an alternative for providing consumers with such protection. However, information about these programs has been incomplete and contradictory. This committee's hearing is intended to obtain detailed information in order to assess what further efforts and legislation may be needed to adequately protect new car purchasers.

I think this hearing will be very informative about an issue that is of vital concern to a great many California consumers. I hope you will make every effort to attend.

Please contact Jay J. DeFuria, Committee Consultant, at 916/445-0991, for further details.

MEMBERS

DON SEBASTIANI, Vice Chairman
BYRON SHER
PETER CHACON
RICHARD KATZ
DAVID ELDER
ERNEST KONNYU
CATHIE WRIGHT

MARTHA VALDES
SENIOR CONSULTANT
JAY J. DeFURIA
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MARGARET H. MARR
ASSOCIATE CONSULTANT
MARY VASOS
COMMITTEE SECRETARY

CALIFORNIA LEGISLATURE ASSEMBLY COMMITTEE

on

CONSUMER PROTECTION AND TOXIC MATERIALS

ROOM 4146 STATE CAPITOL
(916) 445-0991

CHAIRWOMAN
SALLY TANNER

A G E N D A

HEARING ON "NEW AUTOMOBILES - CONSUMER DISPUTE RESOLUTION PROGRAMS"

Tuesday, February 9, 1982, 1:30 p.m.
Room 4202, State Capitol

CHAIRWOMAN SALLY TANNER - OPENING REMARKS

AUTOMOBILE OWNERS

1. Ms. Courtney Turman
2. Mr. Julian A. Smariga
3. Ms. Arlene Schaeffer
4. Mr. John Barros

AUTOMOBILE INDUSTRY/DISPUTE PROGRAM REPRESENTATIVES

A. Chrysler Customer Satisfaction Arbitration Program

5. Mr. A. E. Davis - Chrysler Corporation
6. Mr. Donald Dayton - Manager, Field Operations,
Customer Relations, Chrysler Corporation (Detroit)

B. AUTOCAP

7. Mr. Jay Gorman - Executive Vice President, Motor Car
Dealers of Southern California
8. Mr. Milton Andrews - Automobile Importers of America

C. Better Business Bureau

9. Mr. Dean Determan - Vice President, Council of Better
Business Bureaus

D. Ford Consumer Appeals Board

10. Mr. Richard L. Dugally - Regional Manager, Government
Affairs, Ford Motor Company
11. Mr. William J. Boultas - Executive Secretary, Ford
Consumer Appeals Board of Northern California

(continued)

CONSUMER BOARD MEMBERS

12. Ms. Mary Solow - President, Consumer Federation of California (Ford Consumer Appeals Board)
13. Ms. Ann Stargardter - Chrysler Board

CONSUMER REPRESENTATIVES

14. Ms. Rosemary Shahan-Dunlap - Motor Voters
15. Ms. Donna L. Selnick - Associate Professor,
California State University at Sacramento,
Attorney
16. Ms. Kathleen Hamilton

BACKGROUND/QUESTIONS

To assess the usefulness or effectiveness of these programs in providing valid recourse to consumers, certain issues and questions seem particularly relevant.

ISSUES

APPLICABILITY AND COVERAGE OF PROGRAM

(e.g. types of complaints which are covered; and not covered?

AVAILABILITY AND CAPACITY OF PROGRAM

(e.g. How and when is consumer informed of program; number of consumers that can be handled?

IMPARTIALITY

(e.g. who decides what cases will be heard and who decides the cases themselves? Who supplies staff support? Can consumer appear before board to testify and respond?

TIMELINESS

(e.g. How quickly is consumer's complaint processed and a final decision reached?

TYPES OF RELIEF OR REMEDIES

(e.g. What can consumer be awarded? What types of damages aren't available?

DECISIONS/ENFORCEMENT

(e.g. How are decisions reached, and how communicated?
What enforcement is available to make sure decision
is carried out?

(Detail)

SCREENING: Most programs only accept certain types of
complaints.

QUESTIONS:

1. What limitations are there on the types
of complaints handled by the program
(e.g. must the customer still own the
car, must it still be under warranty,
manufacturing defects, dealer misrepair,
can the customer seek damages, what about
"cosmetic" problems - paint, upholstery,
etc?)
2. How many customers have applied to the
program? How many have actually been
through the whole process?

LOCALE OF PROGRAM: Some programs are only available in
certain areas of the state.

QUESTIONS: What portion(s) of the state is (are)
served by the program? How far must
customer travel to reach the board?

PROCESS: Programs vary regarding the procedures and rules used to administer the program.

QUESTIONS:

1. How is customer informed of the programs availability? Is this information available in the owners manual, at the dealer or zone office? When is the customer told?
2. How do customers file a request for a hearing?
3. What happens after the customer files a complaint (hearing request)?
4. How long does the average dispute take to resolve?
5. Can the customer collect consequential damages, such as costs for rental cars, towing, independent mechanic inspection, loss of work, related repairs?
6. Who serves as members on the board? What training do they receive?
7. Where and when are hearings held?
8. Are the customers notified of the hearings?
9. Can customer attend the hearing and speak, bring legal counsel, expert witness (mechanic)?
10. How is the actual hearing conducted?
Does the Board inspect the vehicle or seek independent inspection by an outside mechanic?

DECISION: Some programs are binding on the parties;
others are not.

QUESTIONS:

1. How is the decision rendered (majority vote?)
 2. Is the decision binding on either party?
 3. Is there any basis for appealing the decision?
 4. What is the average dollar value of awards?
 5. How is the consumer notified of the decision?
 6. What enforcement is available if a party fails to abide by a decision (e.g. what if a repair is ordered and it isn't performed or it doesn't cure the problem?)
- Will the Board take additional action in these situations?

AUTO CONSUMER DISPUTE RESOLUTION PROGRAM HEARING
2/9 1:30 pm Rm 447 RICHMOND CAPITOL
SACRAMENTO

Re: "3RD PARTY" Programs beyond normal "in-house"
customer service operations

These programs are raised by industry as their
answer for ^{difficult} customer complaints (e.g. "lemons")
~~Industry says "lemon" bill is unnecessary, won't~~
~~work & will hurt these programs.~~
Hearing is to find out more about them,
how they operate, details, procedures
how consumers evaluate them.
see what problems may be there.

Testimony from:

- Those who operate these programs
- Consumers who have had car problems &
have (or have tried) to use them
(or those who should have been informed
about them but weren't)
- Consumer representatives who have
been involved with these programs
(e.g. who were members of the Ford Bd)
- Consumer representatives who handle car
complaints - concerning their knowledge
& efforts to work with these programs
- AUTO INDU () representatives



SOUTHERN CALIFORNIA

AUTOCAP

Automotive Consumer Action Program

5757 West Century Boulevard • Suite 310 • Los Angeles, California 90045
1-800-262-1482 or (213) 776-0054

Dear Consumer:

Thank you for calling AUTOCAP. If you have a complaint involving a new car dealership AND if you have already spoken to the owner without results, we will be happy to investigate the matter on your behalf.

AUTOCAP is an informal agency, sponsored by the Motor Car Dealers Association of Southern California, that strives to resolve complaints by improving communication between consumer and new car dealer. Our experience demonstrates that most problems can be solved through improved communication and impartial mediation. Since AUTOCAP is an informal agency, we cannot become involved in a complaint where legal action is underway.

In order to prevent any unnecessary delays, please complete the complaint form, keeping the following steps in mind:

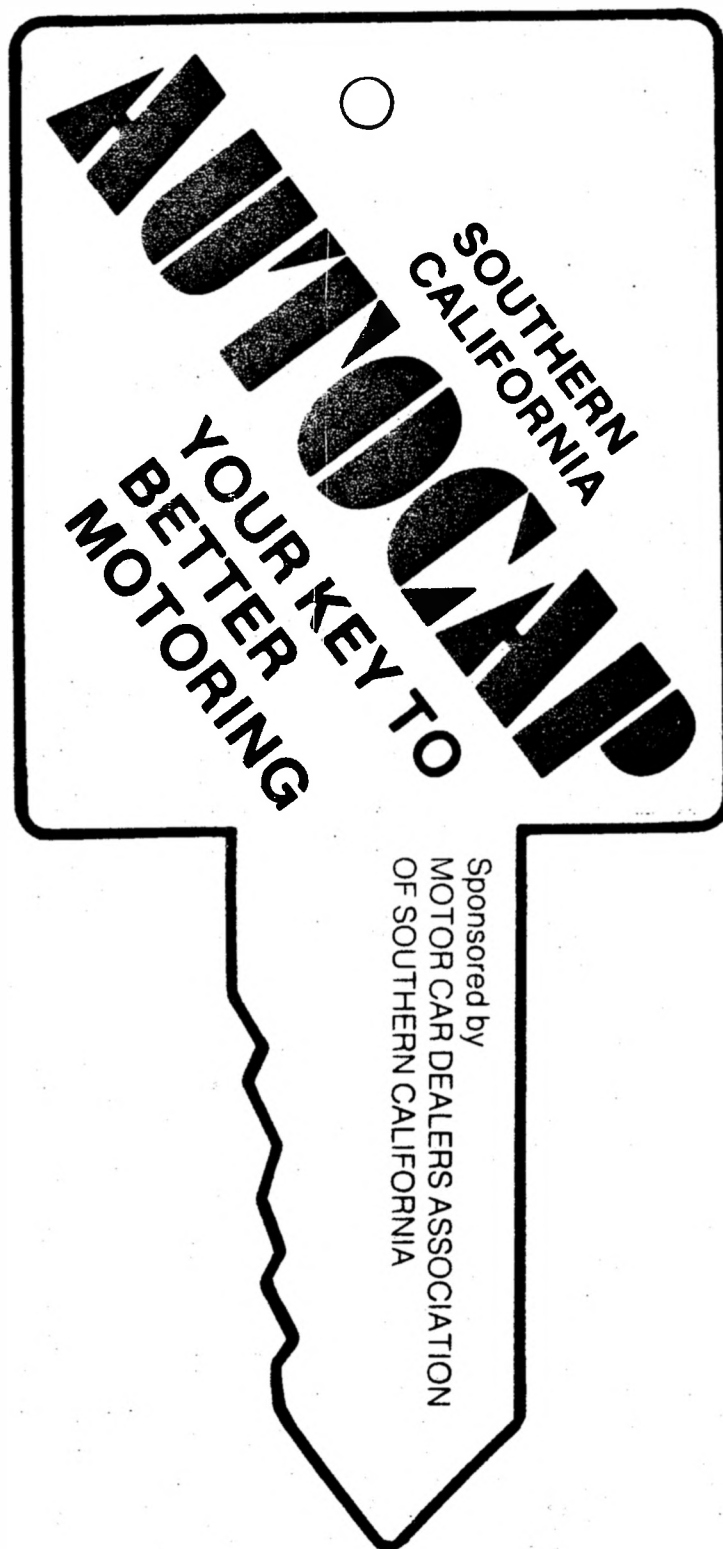
1. Be brief and to the point. If you must use extra pages, be sure to submit 3 copies.
2. Stick to the facts.
3. Be clear about what it is you want now.
4. Type or print legibly.
5. Send good copies of relevant documents (3 copies of each). Do not send the originals as they cannot be returned.
6. Retain the last page of the complaint form for your records and mail the remaining copies to AUTOCAP.

Upon receipt of your complaint form, you will be notified of your case number. Please refer to this case number whenever communicating with AUTOCAP.

When your situation is resolved, please notify our office.

Thank you for your cooperation. We look forward to a constructive resolution to your problem.

Sincerely,



TESTIMONY OF
Jay Gorman
Executive Vice-President
Motor Car Dealers Association
of Southern California

February 9, 1982

My name is Jay Gorman, Executive Vice-President of the Motor Car Dealers Association of Southern California. Accompanying me today is Penelope Longbottom, Director of Media and Consumer Affairs of the National Automobile Dealers Association, and Curtis Raynor, AUTOCAP Manager for the Southern California AUTOCAP.

At the outset, I would like to thank Chairwoman Sally Tanner, and the members of the Committee for inviting those involved in third-party dispute mechanisms to appear and report on the effectiveness of those programs.

Our subject is AUTOCAP.

AUTOCAP PANEL

Page One

The Southern California AUTOCAP is sponsored by the Motor Car Dealers Association of Southern California, in conjunction with the National Automobile Dealers Association (NADA) and the National AUTOCAP Council and is designed to assist franchised new car and truck dealers and their customers in resolving questions and disputes arising from sales and service through third party intervention and informal mediation.

AUTOCAP is a program that provides complaint review for consumers with automotive problems unresolved at the dealer level, and the opportunity for impartial mediation of the problem by a panel of dealers and consumer representatives.

More simply stated, the Southern California AUTOCAP Provides a toll-free WATS line (1-800-262-1482) for consumers in the eleven southern-most counties of California, along with a local line (1-213-776-0054) in the Los Angeles Area.

Upon receipt of a telephone complaint, consumers are invited to put their complaint in writing, and upon receipt of same a copy is immediately forwarded to the dealer in question.

AUTOCAP PANEL

Page Two

An attempt is made to resolve the problem administratively via our AUTOCAP Staff, by bringing the complainant and the dealer together. Failing resolution at that level, the complaint may be submitted to the AUTOCAP panel for their consideration.

The AUTOCAP program is unique in that panel decisions are binding upon the dealer, but not upon the consumer.

The Southern California AUTOCAP operates in the following California Counties; Imperial, Inyo, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara and Ventura.

All members of the Motor Car Dealers Association of Southern California are members of the AUTOCAP program, however, upon the advice of counsel, we require each member to sign an agreement (Appendix "C") agreeing to be bound by panel decisions. To date, approximately 475 of our members have signed these agreements.

The Southern California AUTOCAP receives all of its funding from the Motor Car Dealers Association of Southern California with an annual budget of about \$60,000.

AUTOCAP PANEL

Page Three

Administrative resolution of complaints is achieved in 95% of the written complaints received.

The remainder of the cases are referred to our AUTOCA? Panel consisting of five consumers and five Dealers. A list of panelists is attached to this presentation as Appendix "A".

Since the inception of this program in November 1979, more than 3,000 consumers have contacted AUTOCAP regarding our program. Of these, 1,200 submitted written complaints, and 59 were mediated by our panel. Of the panel mediated cases 23 were decided in favor of the consumer, and 25 were decided in favor of the dealer/manufacturer.

A compromise settlement was reached in 5 cases, and 6 cases remain unresolved because the panel felt the available information did not provide for a reasonable decision.

The effectiveness of the AUTOCAP program really lies in the eyes of the consumer. From our point of view, the day when complaints cease to exist will show the ultimate effectiveness of this, and other third party programs.

AUTOCAP PANEL

Page Four

A list of unsolicited testimonials from satisfied consumers is attached, and I don't want to take up your valuable time by reading them all, but if I may read just a couple extracts, I think you may judge for yourself:

"Thank you so much for all your time and assistance..... I don't know what I would have done without your help and your organization to turn to. I am incredibly impressed with AUTOCAP, its employees, and tenacity. I am grateful too."

N.C.

"I first heard of your agency through a brief by-line on a television news program. Frankly, although I held out little hope that my unresolved automobile problem could or would be rectified, I decided to give it one last try.

"Well, to my amazement and total gratification, the problem has been rectified. The manner in which both you and (Dealership) handled the matter deserve the unqualified praise of an unsolicited thank you letter.

"On your part, my complaint was processed in a most rapid and diligent fashion. (Dealership) responded in a similarly concerned and courteous manner.

"Granted, I would have preferred solving the problem on a direct dealer-to-consumer basis three years ago: yet, in fairness, I could never prove that my autos third gear had a tendency to disengage - they only had my word for it.

"And here is the result: I am satisfied; AUTOCAP should be satisfied.... Case Closed. Thank you."

L.A.S.

AUTOCAP PANEL

Page Five

"We want to thank you and your AUTOCAP team for helping us. You were able to bring about to a successful conclusion in just about 3 weeks what my efforts and also those of the (other consumer program) had been working on for over ten months!"

"We wish you and your group much success in your efforts to assist the public..... We need you - keep it up! Thanks a million!"

Mr. & Mrs. A.K.

"How can we ever thank you for what you have done for us?"

"We had so much trouble with our (Make) truck, and nobody would listen to us..... the repairs (were) done right away and perfect. Also, they were so pleasant and extra nice towards me. I am so happy and I thank you from the bottom of my heart. God be with you always, for having someone to help people like us with our problems.

"P.S. Our truck is running perfect."

J.B.D.

In closing, the dealers of Southern California have made a committment to better consumer customer relations in the establishment of the Southern California AUTOCAP. And come August 1, 1982 the Northern California AUTOCAP will be in full operation.

Thank you again for the opportunity to appear here today, and we will be pleased to respond to any questions you may have on AUTOCAP.

APPENDIX "A"

AUTOCAP PANEL

Peter Mann, Chairman
Foothill Chevrolet
La Canada

Timothy Bissell, Chief Investigator
Los Angeles County Department of Consumer Affairs

Alan Fels, Volunteer Staff Member
KFWB Call For Action

Joan Henry, Instructor in Consumer and Family Studies
Los Angeles Community College

Don LaMar
Moothart Chrysler/Plymouth, Inc.
Lakewood

Sam Robinson, Automotive Department Chairman
Citrus College

Evelyn Sebel, Mayors Council on the Aged,
Legislative and Advocacy Committee
City of Los Angeles

John Walker
Walker Brothers, Inc.
Los Angeles

Dave Whittlesey
Whittlesey Motors, Inc.
Torrance

Bob Wondries
Bob Wondries Ford
Alhambra

APPENDIX "B"

EXCERPTS FROM

CONSUMER THANK YOU LETTERS

TO SOUTHERN CALIFORNIA AUTOCAP

"I want to express my thanks to your organization for the excellent support given me due to your organization I was able to achieve a satisfactory settlement of my action against this dealer.... I feel that the existence of your organization should be more broadly established to the general public to let them know of your presence and of your good efforts to bridge the latent mistrust between consumer and auto dealer."

A.M.S.

"Thank you so much for all your time and assistance.... I don't know what I would have done without your help and your organization to turn to."

"I am incredibly impressed with AUTOCAP, its employees, and tenacity. I am grateful too."

N.C.

"This is to advise that we have finally received a check from the dealership in the amount of \$130 as requested. This now closes the case and I wish to thank you for all the cooperation you have shown me. It certainly has been appreciated."

S.M.H.

"I wish to thank you at AUTOCAP for your help.... I am pleased to advise you that this dealer contacted me yesterday and is cancelling the repair bill in question.... Again, thank you very much for your effective help."

R.J.M.

"I first heard of your agency through a brief by-line on a television news program. Frankly, although I held out little hope that my unresolved automobile problem could or would be rectified, I decided to give it one last try.

"Well, to my amazement and total gratification, the problem has been rectified. The manner in which both you and the Dealership handled the matter deserve the unqualified praise of an unsolicited thank you letter.

AUTOCAP THANK YOU LETTERS

Page 2

"On your part, my complaint was processed in a most rapid and dilligent fashion. (The Dealership) responded in a similarly concerned and courteous manner.

"Granted, I would have preferred solving the problem on a direct dealer-to-consumer basis three years ago: yet, in fairness, I could never prove that my (vehicle's) third gear had a tendency to disengage - they only had my word for it.

"And here is the result: I am satisfied; AUTOCAP should be satisfied.... Case closed. Thank you."
L.A.S.

"Thank you so much for your efforts in my behalf. It is so nice to know there is help available when a situation such as the one I experienced arises. You've been most kind, and I appreciate all that was done."

T.H.

"The complaint on the above case seems to have been corrected thanks to your intervention."

J.D.M.

"I wish to thank you for your assistance in solving my recent problem.... Because of your recommendation, my (Vehicle) has been repainted on both sides, where a black stripe had become streaked and faded. The work has been completed to my satisfaction and a loaner vehicle was provided until the job was finished.

"I appreciate the decision by your panel, which resulted in the dealer follow-up. I also commend your panel for the opportunity it provides consumers.

"Once again my many thanks are extended to you."

A.M.

"As you can see (The Dealership) has refunded my \$85.00.... Thank you for the great job you have done this far. The immediate response was surprising."

C.L.S.

"Thank you so much for your prompt attention to my complaint.... Again, many thanks for you help."

M.H.

"You have helped me and I am grateful."

I.E.W.

AUTOCAP THANK YOU LETTERS

Page 3

"This is to tell you that I received my check for \$77.00 from (The Dealership) today.

"It was a wonderful feeling! Not only because I received the money, for which I'm very grateful, but basically because of the fact that I know there is someone out there helping me out. A very unusual thing these days. Especially when you realize that the AUTOCAP Panel is made up of the automobile retailers themselves. These are the very people we customers have our difficulties with. It's nice to know that the dealers finally realize that they will get more business from satisfied customers rather than from disgruntled ones.

"Again.... my deepest appreciation and I shall spread the word about your good work."

W.C.

"Thanks to everyone at AUTOCAP."

J.M.B.

"We want to thank you and your AUTOCAP team for helping us. You were able to bring about to a successful conclusion in just about 3 weeks what my efforts and also those of the (other consumer group) had been working on for over ten months!

"We wish you and your group much success in your efforts to assist the public..... We need you - keep it up! Thanks a million!"

Mr. & Mrs. A.K.

"I received a \$200 check from (The Dealership) on the day after I spoke with you.....AUTOCAP works!!

"You are very good at your job. Thank you much."

J.R.S.

"I would like to thank you on your fast and accurate service. After months of trying, your action on this case made (The Dealership) look deeper for the problem of my transmission. The answer was an oil made for the Polar regions by (The Manufacturer) to fix problems such as mine.

"Again it was your fast action that finally solved my problem and I thank you again very much."

S.B.

AUTOCAP THANK YOU LETTERS

Page 4

"After filing my complaint with you, (The Dealership) contacted me. He offered to repair the (Vehicle) to our satisfaction and issue us a loaner while the repairs were being made.

"We took (him) up on his offer, and the car was repaired to our satisfaction of which we are most appreciative. Consequently, there is no reason to continue with any further action.

"I would like to thank you very much for your rapid response to our problem. It is indeed comforting to know that there are agencies in our government concerned enough to take direct action."

G.B.

"Thanks - AUTOCAP convinced (The Dealership) that fair play is good business."

W.S.M.

"New stripes were put on the (Vehicle) all around.... Many thanks to AUTOCAP and your special interest in (the) car buying public."

R.E.C.

"Thank you very much for interceding with us on (The Dealership). We really appreciate it.

"They gave us a check for \$57.60. Thanks again."

S.G.

"How can we ever thank you for what you have done for us?

".... the repairs were done right away and perfect. Also, they were so pleasant and extra nice towards me. I am so happy and I thank you from the bottom of my heart. God be with you always, for having someone to help people like us with our problems.

"P.S. Our truck is running perfect."

J.B.D

"We cannot express our thanks enough for your help in solving our problem...(we) could not seem to get a refund until you helped us.... Many thanks for your support and help, it was a job well done."

Mrs. J.D.

APPENDIX "C"

**MOTOR CAR DEALERS ASSOCIATION OF SOUTHERN CALIFORNIA AUTOCAP DEALER
MEMBER PARTICIPATION AGREEMENT**

To facilitate greater customer confidence in our product and service, I agree to participate in the Motor Car Dealers Association of California AUTOCAP program, and to abide by and be bound by the decision of the Consumer Panel organized under said program. It is agreed that such decisions will be binding on the undersigned, but not on the customer. It is further understood that the undersigned will have a first opportunity to resolve the matter before it is considered by the Consumer Panel. It is further understood that the Panel will not consider any consumer complaint currently in litigation, or which has either been litigated or in which litigation appears to be inevitable, and that the Consumer Panel will not make recommendations as to the legality of any case under consideration. The participation of this dealership in the program commences with the date of this agreement, and will continue until 30 days after this dealership or the Association gives the other party notice of intention to terminate such participation, it being agreed that decisions by the Consumer Panel on cases heard previous to the date of termination shall be binding, as hereinbefore provided.

Dated: _____, 19____.

(Name of Dealership)

(City)

By _____
(Name and Office of Authorized Signatory)

CONCURRENCE IN SENATE AMENDMENTS

AB 1787 (Tanner) As Amended: June 3, 1982

ASSEMBLY VOTE 48-22 (June 15, 1981) SENATE VOTE _____ (June 24, 1982)

Original Committee Reference: C. P. & T. M.

DIGEST

Under existing law, a manufacturer who is unable to service or repair goods to conform to applicable express warranties after a reasonable number of attempts must either replace the goods or reimburse the buyer, as specified.

As passed by the Assembly, this bill required automobile warrantors to either replace a vehicle or reimburse the buyer if a defect on a new vehicle is not repaired within four attempts, or if the car is out-of-service for more than 20 days since the delivery of the vehicle to the buyer. In computing the 20 days, a day would have meant a calendar day or any portion of a calendar day that the service shop is open for business. The 20 days would have begun on the day when, after the defect is first reported or known, a written estimate of the cost of repairing the defect is first prepared.

The Senate amendments:

- 1) Exclude motorcycles, motorhomes, off-road vehicles and commercial vehicles.
- 2) Limit the manufacturer's liability to correcting defects discovered during the first year or 12,000 miles after purchase of the vehicle.
- 3) Increase the out-of-service provisions from 20 to 30 calendar days.
- 4) Adopt the requirement that before a buyer can receive replacement or reimbursement he or she must submit to any available qualified third party dispute resolution process. This process must follow Federal Trade Commission requirements.

FISCAL EFFECT

None. According to the Legislative Analyst, the Department of Motor Vehicles, which licenses vehicle dealers, anticipates no additional cost as a result of this bill.

- continued -

COMMENTS

The Assembly-Committee on Labor, Employment and Consumer Affairs conducted an interim hearing in December 1979 on the subject of automobile warranties. Testimony at the hearing revealed a high level of consumer frustration with defective new cars and warranty performance. A specific problem was the practical ineffectiveness of current law in responding to a situation involving repeated repairs and continuing problems with new cars. Although current law states that a manufacturer must provide either a refund or a replacement if goods are not repaired after a "reasonable number of attempts," it is not clear what "reasonable" means, and refunds and replacements of new cars are rare.

This bill establishes a standard for when a "reasonable" number of repair attempts has been undertaken by a new car warrantor. Consumer groups maintain that current law is not useful because auto dealers and manufacturers want endless opportunities to correct defects. Proponents of the bill argue that the clear standard proposed in this bill offers a reasonable and meaningful remedy to car buyers, will reduce litigation, and will encourage improved quality control by manufacturers and improved repair service by dealers.

ASSEMBLY COMMITTEE ON CONSUMER PROTECTION AND TOXIC MATERIALS
ASSEMBLYWOMAN SALLY TANNER, Chairwoman

BILL: AB 1787, as amended April 22, 1981 HEARING DATE: April 28, 1981

AUTHOR: Assemblywoman Sally Tanner

SUBJECT: Automobile Warranties

WHAT THE BILL DOES:

AB 1787 would require automobile warrantors to either replace a vehicle or reimburse a buyer if a defect on a new vehicle is not repaired within four repair attempts, or if the car is out of service for more than 20 days.

BACKGROUND:

In December 1979 the Assembly Committee on Labor, Employment and Consumer Affairs conducted a two-day interim hearing on the subject of automobile warranties. Testimony recorded at that hearing revealed, among other things, a high level of consumer frustration with defective new cars and warranty performance. A specific problem noted by the Committee was the practical ineffectiveness of current law in responding to a situation involving repeated repairs and continuing problems with new cars. Although current law states that a manufacturer must provide either a refund or a replacement, if goods aren't repaired after a "reasonable number of attempts," it is unclear what "reasonable" means. Refunds and replacements of new cars are rare.

AB 2705 (Tanner) was introduced last year in response to that reported problem. The bill was passed by the Assembly but was defeated in the Senate Judiciary Committee by one vote. AB 2705 offered a range of specific remedies, including a proposed "standard" for defining "reasonable."

PURPOSE:

To establish a standard for when a "reasonable number of repair attempts" has been undertaken by a new car warrantor.

ANALYSIS

AB 1787 adds language to existing product warranty law to specify when a "reasonable number of attempts" to repair has occurred with regard to new motor vehicles. The proposed standard is:

1. Four attempts by the manufacturer or its agents to repair a single defect; or
2. Twenty days out of service by reason of repair.

Current law permits the warrantor to reduce the value of the refund or replacement by an "amount directly attributable to use by the buyer prior to the discovery of the nonconformity."

Proponents of the legislation maintain that the current law is not useful to consumers who purchase defective vehicles, because auto dealers and manufacturers want endless opportunities to correct defects. Consumer groups argue that the clear standard proposed in AB 1787 offers a reasonable and meaningful remedy to car buyers, will reduce litigation, and will encourage improved quality control by manufacturers and improved repair service by dealers.

Opponents of the measure argue that current law is adequate, that the measure will increase the number of "frivolous and unmeritorious" lawsuits, and that the automotive industry has developed its own dispute resolution mechanisms to deal with complaints.

SUPPORT

Department of Consumer Affairs
Consumers Union
California Consumer Affairs Association
San Francisco Consumer Action
Santa Cruz County District Attorney
Santa Cruz County Consumer Affairs
Los Angeles County Department of Consumer Affairs
Consumers Aid of Shasta, Inc.
Center for Auto Safety
Stanislaus County Department of Consumer Affairs
State Consumer Advisory Council

OPPOSE:

Motor Vehicle Manufacturers Association
Chrysler
General Motors Corporation
California Manufacturers Association
Ford Motor Company

PREPARED BY:
Kathleen Hamilton
April 27, 1981

INSTRUCTIONS FOR COMPLETING THE FORD CONSUMER APPEALS BOARD CUSTOMER STATEMENT

BEFORE COMPLETING THIS STATEMENT MAKE SURE THAT YOU HAVE COMPLETED STEPS 1 AND 2 BELOW:

- Step 1.** Review your complaint with your dealer or his representative. If the dealer is unable to resolve your complaint to your satisfaction, proceed to Step 2.
- Step 2.** Contact a District Office of the Ford Parts and Service Division - addresses are listed in the Owner's Guide which is provided with all new Ford Motor Company vehicles.

IT IS IMPORTANT THAT YOU COMPLETE THESE FIRST TWO STEPS BEFORE YOU FILL OUT AND MAIL THE CUSTOMER STATEMENT. THE FORD CONSUMER APPEALS BOARD WILL NOT REVIEW YOUR COMPLAINT UNLESS YOU HAVE COMPLETED STEP 1 AND STEP 2.

SUGGESTIONS FOR COMPLETING THE CUSTOMER STATEMENT

PLEASE NOTE — THE BOARD REVIEWS ALL SERVICE COMPLAINTS EXCEPT THOSE INVOLVING:

- A non-Ford product
- A non-Ford dealership
- A vehicle sales transaction
- Requests for consequential expenses
- Alleged personal injury or property damage
- Cases currently in litigation

- Step 3.** Complete the information at the top of the statement concerning your name, address, dealer's name and city and the information about your vehicle.
- Step 4.** Briefly describe what your unresolved complaint is about. Any additional background information may be attached on a separate sheet.
- Step 5.** Briefly describe what you want done to resolve your complaint.
- Step 6.** Attach all documents and maintenance or repair orders which you believe are important to the unresolved complaint(s).

WHERE TO SEND:

Mail the original and two copies of the completed statement to the Executive Secretary, Ford Consumer Appeals Board, at the address shown on the front of the form. Keep the last copy for your records. An acknowledgment postcard will be mailed to you when your case is opened.

*Customer Satisfaction
Board
Operating Procedures*

A. Participants:

To ensure customer satisfaction, Chrysler Corporation and Chrysler Corporation dealers, referred to collectively hereafter as 'warrantor', offer a Customer Satisfaction Board which supplements the other Chrysler Corporation customer relations handling procedures, as described in the Customer Satisfaction Board brochure.

B. Covered Products:

Any Chrysler Corporation vehicle and/or a Chrysler Mopar part covered by Chrysler Corporation's Limited Warranties.

C. Notice to Consumers:

Chrysler Corporation shall take steps reasonably calculated to make its consumers aware of the Board's existence at the time consumers experience warranty disputes. Principally, this will consist of a brochure placed in the glove box of each Chrysler Corporation vehicle at time of delivery, as well as posters and brochures located in the service department which explain the Customer Satisfaction Board.

D. Operating Procedure:

1. **Covered disputes.** All disputes regarding a service-related problem under Chrysler Corporation's Limited Warranty are suitable for arbitration. Not suitable for arbitration and not within the jurisdiction of the Board are disputes which are already the subject of litigation, disputes regarding accidents, sales-related disputes, disputes regarding non-Chrysler Corporation products, disputes regarding alleged design defects, or disputes concerning alleged obligations under an implied warranty. Boards shall consider only disputes involving dealerships located within the state boundaries or geographic area served by the Board.

2. **Submission of dispute.** A consumer may submit a covered dispute directly to the Board serving his area or to the warrantor.

a. If the dispute is submitted to the warrantor, the warrantor shall proceed fairly and expeditiously to attempt to resolve the dispute. In its notification to the consumer of its decision, the warrantor shall inform the consumer of the existence of the Board, the name and address of the Board, a brief description of Board procedures, the time limits adhered to by the Board, and the types of information which the Board may require for prompt resolution of warranty dispute.

b. **Cases submitted to the Board.** Upon notification by a consumer of a dispute for submission to the Board (whether the dispute is submitted directly to the Board or after submission to the warrantor), the Board secretary shall immediately send the consumer a complaint form (containing spaces requesting the information which the Board may require for prompt resolution of warranty disputes and requesting information which the Board may require in order to ascertain whether it has jurisdiction over the warranty dispute).

3. **Notice of Board Procedures.** A brief description of Board procedures shall accompany the complaint form, as shall an outline of the time limits adhered to by the Board and a description of the Board members. The consumer will also be informed that any Board decision will be binding upon the warrantor if the consumer accepts it. The consumer may reject the Board decision and pursue other avenues of redress, including legal remedies. The Board procedure does not take the place of any state or federal legal remedies available. The consumer shall also be informed that the Board's decision shall be admissible evidence in any subsequent legal proceeding regarding the dispute.





1020 N STREET, SACRAMENTO, CALIFORNIA 95814



OVERVIEW OF THE
FEDERAL MAGNUSON-MOSS CONSUMER WARRANTY ACT

By: Richard A. Elbrecht
Supervising Attorney
Legal Services Unit
Division of Consumer Services
January 10, 1982

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OVERVIEW

- A. [§4.41] Introduction

The federal Magnuson-Moss Consumer Warranty Act, 15 USC §§2301-2312, became effective on July 4, 1975. The Act's primary role has been to establish warranty labeling and disclosure standards. The Act also confers substantive rights in the case of "full warranties," and limits the disclaimer of state law implied warranties whenever any written warranty is given. Finally, it confers a full range of buyer remedies for breach of written warranties, service contracts, and state law implied warranties and establishes remedies for

violations of the warranty disclosure standards. The Act does not require that written warranties be given.

B. Scope and Definitions

1. [§4.42] General Scope of Coverage

The Magnuson-Moss Consumer Warranty Act applies in general to consumer products distributed in commerce and sold with a written warranty. "The Act applies to written warranties on tangible personal property which is normally used for personal, family, or household purposes." Federal Trade Commission Interpretations, 16 CFR §700.1(a). See 15 USC §2301; 16 CFR §§701.1, 701.2. The Act applies only to products manufactured after July 4, 1975.

Most written affirmations of fact or written promises that look to the future (e.g., the future performance of the product, or future conduct by the warrantor) constitute written warranties within the meaning of the Act. See 15 USC §2301(6), and Interpretations, 16 CFR §§700.3, 700.11; compare the definition of express warranty in the Song-Beverly Act at CC §1791.2, and in the California Commercial Code at Com C §2313.

The Act does not apply to warranted products costing \$15 or less.

2. [§4.43] Products Covered

The Act applies only to written warranties on consumer products. The term consumer product is defined at 15 USC §2301(1), as "any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes."

This definition does not include real property, but it does include property which is intended to be attached to or installed in any real property without regard to whether it is so attached or installed.

The percentage of sales or the use to which a product is put by any individual buyer is not determinative. For example, products such as automobiles and typewriters which are used for both personal and commercial purposes come within the definition of consumer product. Where it is unclear whether a particular product is covered under the definition of consumer product, any ambiguity will be resolved in favor of coverage. Interpretations, 16 CFR §700.1(2).

Warranties on replacement parts and components used to repair consumer products are covered. Warranties on services are not covered. Where a written agreement warrants both the

parts provided to effect a repair and the workmanship in making that repair, the warranty must comply with the Act. Interpretations, 16 CFR §700.1(h).

Many consumer products are covered by warranties which are not intended for consumers. A common example is a warranty given by a component supplier to a manufacturer of consumer products. The component supplier's warranty is generally given solely to the product manufacturer. These warranties are not subject to the Act. However, the Act applies to a component supplier's warranty in writing which is given to the consumer. An example is a supplier's written warranty to the consumer covering a refrigerator that is sold installed in a boat or recreational vehicle. The supplier of the refrigerator relies on the boat or vehicle assembler to convey the written agreement to the consumer. In this case, the supplier's written warranty is to a consumer, and is covered by the Act. Interpretations, 16 CFR §700.3(c).

3. [§4.44] Written Warranty

The Act imposes specific duties and liabilities on suppliers who offer written warranties on consumer products. The Act, 15 USC §2301(6), defines the term written warranty to mean:

(A) any written affirmation of fact or written promise made in connection with the sale of a consumer product by a supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time, or

(B) any undertaking in writing in connection with the sale by a supplier of a consumer product to refund, repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking.

Certain representations, such as energy efficiency ratings for electrical appliances, care labeling of wearing apparel, and other product information disclosures may be express warranties under the Uniform Commercial Code. However, these disclosures alone are not written warranties under this Act. A written affirmation of fact or a written promise of a specified level of performance must relate to a specified period of time in order to be considered a written warranty. A product information disclosure without a specified time period to which the disclosure relates is therefore not a written warranty.

4. [§4.45] Service Contracts

The Act recognizes two types of agreements which may provide similar coverage of consumer products, the written warranty, and the service contract. A written warranty must be "part of the basis of the bargain." This means that it must be conveyed at the time of sale of the product and the consumer must not give any consideration beyond the purchase price of the product in order to benefit from the agreement. An agreement which calls for some consideration in addition to the purchase price of the consumer product, or which is entered into at some date after the purchase of the consumer product to which it applies is a service contract. An agreement which relates only to the performance of maintenance and/or inspection services and which is not an undertaking, promise, or affirmation of a specified level of performance or absence of defects in materials or workmanship is a service contract.

An agreement to perform periodic cleaning and inspection of a product over a specified period of time, even when offered at the time of sale and without charge to the consumer is an example of such a service contract. Interpretations 16 CFR §700.11.

According to 15 USC §2306(b), nothing in the Act shall prevent a supplier or warrantor from entering into a service contract with the consumer in addition to or instead of a written warranty if the contract discloses its terms and conditions in simple language.

The distinction between written warranties and service contracts is made less important by virtue of the inclusion of breaches of service contracts among the acts and omissions giving rise to the Act's provisions and remedies. See 15 USC §2310(d)(1), discussed at §§4.59-4.65.

C. Disclosure of Warranty Terms

1. [§4.46] In General

The Federal Trade Commission has issued regulations establishing standards for the disclosure of written consumer product warranty terms and conditions. These regulations became effective on December 31, 1976, and are codified at 16 CFR pt 701. They are reprinted at 4 CCH Trade Reg Rep ¶40,012. The FTC's Statement of Basis and Purpose of the disclosure regulations, published at 40 Fed Reg 60,168-60,182 (1975), includes a comprehensive explanation.

The FTC's disclosure regulations are consistent with the disclosure provisions of the California Song-Beverly Consumer Warranty Act (CC §1793.1), which are very general. The FTC's

regulations fill in the gaps and provide guidance that will promote the purposes of the Song-Beverly Act and enhance the worth and legitimacy of warranties if the rules are observed. On the subject of pre-emption of California warranty law by the Magnuson-Moss Act, see 42 Fed Reg 54,004 (1977); 42 Fed Reg 57,154 (1977) reprinted at 4 CCH Trade Reg Rep ¶40,018.

2. [§4.47] Disclosure Requirements

The FTC's warranty disclosure rules provide that any warrantor of a consumer product costing more than \$15 must disclose clearly and conspicuously in a single document, and in readily understood language (16 CFR pt 701.3(a)), the following items of information:

(a) Designation as a full or limited warranty. The warranty must be designated either a full warranty or a limited warranty. If designated a full warranty, it must include a statement of its duration, e.g., "full 60-month warranty." 15 USC pt 2030(a).

The heading should appear clearly and conspicuously as a caption or prominent title separate from the text of the warranty.

If a warrantor designates its warranty as a full warranty, it is deemed to incorporate the federal minimum standards for full warranties set forth in 15 USC §2304(a). See §4.53.

(b) Warrantor's and buyer's basic rights and duties. The warranty must describe the basic rights and duties of the warrantor and the buyer and other relevant provisions of the warranty in simple and readily understood language. This document must include the following information:

(1) The warranty must state precisely what parts, components, characteristics or properties the warranty covers, and precisely what the warranty excludes. 16 CFR §701.3(a)(2); see 15 USC §2302(a)(3), (6).

(2) It must state what things the warrantor will do in case of defect or failure. 16 CFR §701.3(a)(3); see 15 USC §2302(a)(4).

(3) The warranty must disclose what items or services the warrantor will pay for, and what items or services the warrantor will not pay for. 16 CFR §701.3(a)(3); see 15 USC §2302(a)(4).

(4) The warranty must explain the procedure the buyer must follow in order to secure warranty performance, including payment of any expenses. 16 CFR §701.3(a)(5); see 15 USC §2302(a)(5).

(5) The warranty must specify whom to contact to have warranty service performed, including names, addresses, telephones, etc. Compare CC §1793.1(b) and 16 CFR §701.3(a)(5); see 15 USC §2302(a)(7).

(6) It must state the duration of the warranty measured, e.g., by time or mileage. 16 CFR §701.3(a)(4); see 15 USC §2302(a)(4).

(7) It must state the point of time or event when the warranty term begins, if other than the date of purchase. 16 CFR §701.3(a)(4).

(8) If the warranty does not protect all owners of the product during the warranty term (i.e., if it protects only the original purchaser), it must identify the persons who are protected. 16 CFR §701.3(a)(1); see 15 USC §2302(a)(2).

(9) The name and address of the warrantor or warrantors must be stated in the warranty. 16 CFR §701.3(a)(5); see 15 USC §2302(a)(1).

(c) Modification in state law protections. The FTC's warranty disclosure rules also require the warrantor to disclose the ways in which it has sought to modify certain state law protections:

(1) The warranty must state any limitation which the warrantor has placed on the duration of state law implied warranty rights. To accommodate states like California that prohibit such modifications the warranty must state that "some states do not allow limitations on how long an implied warranty lasts, so that above limitation may not apply to you." 16 CFR §701.3(a)(7); see 15 USC §2302(a)(6).

(2) The warranty must state any exclusions or limitations which the warrantor has placed on the buyer's legal right to relief such as a state law right to incidental or consequential damages resulting from the warrantor's breach of warranty. This statement must be accompanied by a statement that "some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you." 16 CFR §701.3(a)(8); see 15 USC §2302(a)(6).

(d) Statement of buyer's remedies. The FTC's warranty disclosure rules also require disclosures to help the buyer secure redress against a warrantor who fails to honor its warranty. These disclosures consist of the following:

(1) Statement of the availability of any informal dispute settlement mechanism established under 16 CFR pt 703. 16 CFR §701.3(a)(6); see 15 USC §2302(a)(8).

(2) A statement, in the following language, of availability of legal remedies: "This warranty gives you specific legal rights, and you may have other rights which vary from state to state." 16 CFR §701.3(a)(9); see 15 USC §2302(a)(9).

A warranty may not state or suggest that a decision of the warrantor or any other person regarding warranty coverage, is final or binding on the consumer against his will. That is the function of the courts. See Interpretations, 16 CFR §700.8.

3. [§4.48] Form and Manner of Disclosure

The Magnuson-Moss Act very specifically requires that all of the elements of formal written warranties must be set forth in the warranty "in words or phrases which would not mislead a reasonable, average consumer as to the nature or scope of the warranty." 15 USC §2302(a)(13).

If the buyer suffers damage because of a misunderstanding resulting from the warrantor's failure to comply with any of these standards, then without regard to the technical language of the warranty, presence of a defect, or other failure to conform, the buyer will have a legal right to recover the resulting damages and any other appropriate relief under 15 USC §2310(a)(1).

A warrantor's liability for issuing a deceptive warranty can be characterized as a strict liability, under which proof of the fact and reasonableness of the buyer's lack of understanding is sufficient.

4. [§4.49] Special Rules for Service Contracts

The disclosure requirements apply to written warranties. A service contract, defined at 15 USC §2301(8), is not covered, provided that the service contract fully, clearly, and conspicuously discloses its terms. 15 USC §2306(b); see §4.45.

5. [§4.50] Promise of Satisfaction

A statement of the warrantor's unqualified guaranty that the buyer will be satisfied with a product is not subject to the Act's disclosure requirements. 15 USC §2303(b). However, this statement usually will constitute a warranty (15 USC §2301(6)) enforceable under 15 USC §2310(d)(1). A buyer who is not satisfied presumably will have the full range of the California Commercial Code remedies for breach. With the performance of Commercial Code duties, a buyer enforcing an unqualified guaranty is subject to the obligation of good faith. Com C §1203.

6. [§4.51] Presale Availability

The federal Magnuson-Moss Act also requires that the terms of any written warranty on a consumer product be made available to the prospective consumer before sale. 15 USC §2302(b)(1)(A). The rules on presale availability apply to products costing more than \$15 and are codified at 16 CFR pt

702. The seller can either display a copy of the warranty near the product, display a package of the product with a clearly visible warranty, or maintain binders containing copies of warranties for products sold. The warrantor (typically the manufacturer) is in turn required to provide retail sellers with the materials needed to comply with the presale availability rules. 16 CFR §702.3(b).

Special rules apply to catalog sales (16 CFR §702.3(c)) and door-to-door sales (16 CFR §702.3(d)).

7. [§4.52] Advertising of Warranty Terms

The FTC is given power under the Magnuson-Moss Act to prescribe rules on deception in the display of warranty terms in advertising, labeling, point-of-sale material, and other written materials. 15 USC §2302(b)(1)(B). These rules have not yet been issued, and the FTC's Guides Against Deceptive Advertising of Guaranties (16 CFR pt 239) are still in effect. See also Bus & P C §§17200, 17500-17572; CC §1770(n); 15 USC §45 (Federal Trade Commission Act).

Deceptive advertising of motor vehicle warranty terms by motor vehicle dealers in California may be subject to Veh C §11713(a) and 13 Cal Adm C §402.00.

D. Warrantor's Substantive Legal Duties

1. [§4.53] Full Warranties

Most formal written warranties will be limited warranties, with the result that only state law (e.g., the California Song-Beverly Act) will impose on the warrantor a legal duty to service the product. If the warrantor designates its warranty a full warranty (see §4.47), the federal Magnuson-Moss Consumer Warranty Act creates a statutory legal duty to repair. See 15 USC §§2303(a), 2304(a), 2305. The warrantor must honor all of the written terms of the warranty, and "must as a minimum remedy such consumer product within a reasonable time and without charge, in the case of a defect, malfunction, or failure to conform with such written warranty." 15 USC §2304(a)(1).

In case of a defect, malfunction, or failure to conform with written warranty, the warrantor has the option to choose either repair, replacement, or refund. 15 USC §2301(10).

If the warrantor chooses to replace the product, it must furnish a new product which is identical or reasonably equivalent to the warranted product. 15 USC §2301(11). The warrantor is not permitted to force the buyer to accept a refund, unless repair is not commercially feasible or cannot

be made within a reasonable time, and the warrantor is unable to provide a satisfactory replacement. 15 USC §2301(10). On the other hand, the Act does not expressly give the buyer the power to force the seller to refund the price, when the seller is willing to furnish a replacement. See 15 USC §2304(a)(1).

If the warrantor cannot repair a product after a reasonable number of attempts, the buyer can choose either a replacement or refund. 15 USC §2304(a)(4). However, the warrantor can require the consumer to restore possession of the defective product free of liens, i.e., not subject to a security interest. 15 USC §2304(b)(2).

If a refund is made, the amount to be refunded is the actual purchase price. 15 USC §2301(12). The FTC is authorized to adopt rules permitting a warrantor to deduct from the refund reasonable depreciation based on actual use. 15 USC §2301(12). Proposed rules were issued in May, 1976 at 41 Fed Reg 22099 (1976).

The buyer also has a right to recover incidental expenses, but only if the expenses were incurred because the warrantor did not act promptly, or the warrantor imposed some unreasonable requirement on the buyer as a prerequisite to providing a remedy. 15 USC §2304(d).

The duties under a full warranty extend to both the original buyer and to any person to whom the product is transferred during the warranty period. See 15 USC §§2301(3), 2304(b)(4). However, if the duration of the warranty period is measured not by time or mileage, etc., but solely in terms of first-purchaser ownership, the rights of the subsequent transferee will be cut off. An example would be a "full warranty for as long as you own your car." The text of the warranty must also state this unambiguously.

A full warranty will always protect the buyer against any defect, malfunction, or failure to conform with the written warranty. 15 USC §2304(a)(1). A full warranty, in general, may not limit coverage to particular kinds of defects, malfunctions, or other failures, or to defects, malfunctions, and failures that result from particular causes other than the buyer's unreasonable use. For example, a full warranty may not cover manufacturing defects only. A warranty whose coverage is limited to specific defects will fail to qualify as a full warranty under 15 USC §2303(a)(1) unless coverage is clearly and conspicuously limited by the text and heading of the warranty. 15 USC §2305; 16 CFR §701.3(a)(2).

If a failure is caused by damage while in the possession of the consumer or unreasonable use (including failure to provide reasonable and necessary maintenance), and if the warrantor is able to prove this, the failure is outside the coverage of the warranty. 15 USC §2304(c).

The warrantor may not impose any duty on the buyer, as a condition of securing a remedy, other than notification, unless the duty is reasonable. 15 USC §2304(b)(1). In its proposed rules under 15 USC §2304(b)(1), the FTC has indicated that the following duties may be unreasonable (see proposed 16 CFR pt 705; 45 Fed Reg 37,386 (1980): (1) Requiring a consumer to return any product to a warranty service point; (2) requiring a consumer to remove, return for warranty service, or install, a built-in product; (3) requiring a consumer to pay for mailing or shipping of a product to or from a warranty service point; (4) requiring a consumer to return a product in its original packaging; (5) requiring a consumer to obtain warranty service from the selling or the installing dealer only; (6) requiring a consumer to prove that a product is covered by a warranty; (7) requiring a consumer to give notice of a defect in writing; and (8) requiring a consumer to give notice of a defect prior to the expiration of the warrant period.

In determining whether a requirement is in fact reasonable or unreasonable, the proposed rule sets forth a series of questions that must be addressed by the warrantor in formulating its policy on the servicing of products covered by full warranties. See Appendix to proposed 16 CFR pt 705.

The Act itself establishes a further limitation. The warrantor may not assess the consumer for any costs the warrantor or its representative incur in connection with providing a required remedy. See 15 USC §2304(d).

2. [§4.54] Limited Warranties

The Magnuson-Moss Act does not impose new or additional noncontractual legal responsibilities on manufacturers, retail sellers, or other suppliers who extend written warranties that are not designated as full warranties. The obligations of warrantors who designate their warranties as "limited warranties" are essentially those set forth in the text of the warranties. See §§4.41 and 4.53. However, limited warranties must comply with the Act's disclosure standards. See §§4.46-4.52. The warrantor's breach of a limited warranty will give rise to the Act's remedies. See §§4.59-4.65. In addition, if a limited warranty is given, the warrantor's power to disclaim implied warranties is limited. See §4.56.

3. [§4.55] Service Contracts

The Magnuson-Moss Act does not impose new or additional noncontractual legal responsibilities on manufacturers, retail sellers, and other suppliers who enter into service

contracts with their customers. The obligations of those parties to the retail buyer are essentially those set forth in the text of the service contract. However, certain disclosure standards do apply (see §4.49), and breach of the service contract by the party promising service will give rise to the Act's remedies. See §§4.59-4.65.

E. [§4.56] Warranties Implied by Law

The Magnuson-Moss Act does not create implied warranties, except in the sense that it establishes certain minimum legal duties in the case of full warranties only. See §4.53. However, the Act does make the state law implied warranty a much more effective and useful consumer benefit.

The Magnuson-Moss Act defines implied warranty as "an implied warranty arising under State law." 15 USC §2301(7). It limits disclaimer (see 15 USC §§2304(a)(2), 2308; §§4.57-4.58); and provides for enforcement (15 USC §2310(d)(1); §§4.59-4.65).

When a written warranty is given, certain implied warranties created by state law such as the implied warranties of merchantability or fitness for a particular purpose may apply. See §§4.23-4.31, 4.78-4.80.

F. Disclaimer of Legal Responsibility

1. [§4.57] Full Warranties

In the case of a full warranty subject to the federal minimum standards at 15 USC §2304, no warrantor may disclaim, modify, or limit the duration of any implied warranty as defined at 15 USC §2301(7). See 15 USC §§2308, 2304(a)(2). Any attempted disclaimer, modification or limitation made in violation of the Act is void. 15 USC §2308(c). The prohibition is absolute. Compare the Song-Beverly Act at CC §1793. However, a limited right to limit remedies remains. See §4.66.

2. [§4.58] Limited Warranties

If the warrantor gives a limited warranty, the warrantor may not totally disclaim or modify any implied warranties created by state law in the same transaction. However, the warrantor may limit the duration of any implied warranties to the duration of the limited warranty. 15 USC §2308. The power to limit the duration of implied warranties exists only to the extent that the duration of the limited warranty is

reasonable and then, only if the limitation is "conscionable" and clearly displayed. 15 USC §2308(b). While there is nothing in the Act that explicitly prohibits a warrantor from limiting the buyer's remedies in the case of a limited warranty, it is probable that there is no unqualified power to modify or exclude remedies for the reasons stated at §4.67.

G. Buyer's Legal Remedies

1. [§4.59] Introduction

Only when the warrantor declines to provide an effective solution to a warranty problem is it necessary for an aggrieved buyer to consider filing a court action. Congress has explicitly provided that a consumer may bring suit (15 USC §2310(d)(1)) and that the buyer may be allowed by the court to recover as part of the judgment litigation costs, expenses, and attorneys' fees (15 USC §2310(d)(2)).

A warranty may not state or suggest that a decision of the warrantor or any other person regarding warranty coverage is final or binding on the consumer against his will. This is the function of the courts.

2. [§4.60] Bases for Relief

The elements of the private cause of action under the Magnuson-Moss Act are set forth at 15 USC §2310(d)(1).

In order for a private right of action to exist, the consumer-plaintiff must show the failure of a supplier, warrantor, or service contractor to comply with any one of four categories of duties. 15 USC §2310(d)(1). Suit can be brought for (1) breach of any obligation under the Act, (2) breach of any obligation resulting from the terms and conditions of the warranty, (3) breach of any duties under any service contract, or (4) breach of any duties under a state-law implied warranty. *Breach of a Commercial Code express warranty that it is not also a breach of one of the duties NOT give rise to a private right of action under the Magnuson-Moss Act. Stelton v. General Motors Corp. (7th Cir. 1987), 660 F.2d 311.*

3. [§4.61] Prerequisites to Suit

(a) Injury to buyer. In order for a private cause of action to exist, the consumer-plaintiff must be damaged by failure to perform an obligation. A breach in the abstract, without a resulting injury to a buyer, will not give rise to a private cause of action, 15 USC §2310(d)(1).

(b) Informal settlement procedure. The buyer may not commence a civil action under 15 USC §2310 unless the buyer

initially resorts to any informal dispute settlement procedure (1) that has been established, (2) that complies with FTC's rules, (3) that is incorporated into the terms of the written warranty, and (4) that is expressly made a prerequisite to suit. 15 USC §2310(a)(2)-(3).

(c) Opportunity to cure default. Before filing suit, the buyer must give the warrantor an opportunity to cure, i.e., to honor its obligations voluntarily. 15 USC §2310(d).

This means that before suit, the buyer, in all cases, should make a detailed complaint in a letter sent to the manufacturer, seller, any other warrantor, and any other person who is involved in the transaction. Without documentation of that kind, it may be difficult to prove the buyer's compliance with the requirement that the other parties have been given a chance to cure.

Note that 15 USC §2310(e) does not give the warrantor a chance to cure violations of the Act that are not also violations of the terms of the written or implied warranty. For example, if the language of the warranty is not simple and readily understood, the violation, if it caused injury, would be actionable without the need to provide an opportunity to cure. However, if the warrantor maintained a dispute settlement procedure, the buyer would still have to resort to the informal procedure before filing suit, even if there was a violation of the Act.

4. [§4.62] Parties to Suit

(a) Plaintiff. In the case of a limited warranty, the warrantor has the power to exclude subsequent purchasers from the benefits of the warranty. However, the warranty must clearly identify the party or parties to whom the warranty is extended. It is, in general, those persons who may file suit for breach.

The duties under a full warranty extend to both the original buyer and to any person to whom the product is transferred during the warranty period. See 15 USC §§2301(3), 2304(b)(4); §4.53.

(b) Defendants. The aggrieved buyer will typically join as a defendant every person making the warranty. For instance, when the only warranty is one given by the seller, for example, the seller of a used car, suit will be brought against the seller alone. In a case involving other potential defendants, 15 USC §2310(f) states that

for purposes of this section, only the warrantor actually making a written (warranty) shall be deemed to have created a written warranty, and any rights arising thereunder may be enforced

under this section only against such warrantor and no other person.

The key words are "actually making." However, this section must be read in conjunction with the definition of warrantor at 15 USC §2301(5) where the term warrantor is defined to mean "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."

Can a Magnuson-Moss cause of action be asserted against a manufacturer of a nonwarranted mechanical device on the sole basis of the implied warranty of merchantability conferred under the Song-Beverly Act? Under CC §1792, such a sale is accompanied by the manufacturer's implied warranty that the goods are merchantable. The answer is suggested by the language of the House-Senate Conference Committee report, which states that "[i]f under State law a warrantor or other person is deemed to have made a written affirmation of fact, promise or undertaking he would be treated for purposes of Section 110 as having made such affirmation of fact, promise or undertaking." See US Code Cong & Ad News 7702, 7759. It may be concluded that the manufacturer may be joined as a party defendant in a Magnuson-Moss action despite the fact that it is not formally a party to a written warranty.

It also would be permissible to join a separate Song-Beverly cause of action in the same complaint in which the Magnuson-Moss cause of action was asserted, in order to assert against a nonwarranting manufacturer of a new mechanical device the implied warranty of merchantability under CC §1792. A Song-Beverly cause of action clearly could be joined in a state court suit and the doctrine of pendent jurisdiction might also allow joinder of the Song-Beverly cause of action in a suit filed in a federal district court under the Magnuson-Moss Act.

Assume, on the other hand, a warranty in which the manufacturer is the only warrantor and in which the manufacturer alone assumes duties to the buyer. In determining whether a particular seller has actually made a written warranty, 16 CFR §700.4 will be helpful. This states the opinion of the FTC that a seller will be outside of the coverage of the Act if the seller does no more than merely "distribute or sell a consumer product covered by a written warranty offered by another person or business and which identifies that person or business as the warrantor...." A chain store, for example, that carries a variety of products supplied by a variety of warrantors, and makes no special effort to sell a particular product by advertising its trade name, its qualities, or its warranty arguably may not be covered.

If the seller does more, e.g., makes written and oral representations in connection with the offer or sale, the

Interpretations state that the seller may be obligated under the Act. Also, if under state law, the supplier is deemed to have "adopted" the written affirmation, promise, or undertaking of the manufacturer or other warrantor, then the retailer or other supplier is also obligated under the Act. FTC Interpretations, §700.4. The FTC has stated that it is necessary to consult state law to determine who may be a cowarrantor. FTC Interpretations, §700.4.

When does a seller adopt a manufacturer's warranty? If the seller is, under state law, an ostensible agent of the manufacturer by reason of the seller's use of the manufacturer's trade name, an argument can be made that the seller has also adopted the manufacturer's warranty and should have direct obligations to the buyer.

The application of these principles is particularly important to a buyer who desires to reject or revoke acceptance and cancel. If the seller is not legally responsible, then the only effective relief will be to retain the product and seek damages against the manufacturer. A rejection or revocation of acceptance will be denied on the theory that there was no sale relationship between the manufacturer and the buyer. This is what the Connecticut Supreme Court held in Conte v Dwan Lincoln-Mercury, Inc. (1976) 20 UCC Rep 899, 908. In that case, the court determined that the buyer's revocation of acceptance was valid against the seller on the basis of the seller's breach of warranty, but not against the manufacturer. Other courts take a different view of the matter.

If a written warranty is explicitly made jointly by two or more parties, then it is clear that all are responsible and that all could be joined in a Magnuson-Moss cause of action. In an advertisement, Ford Motor Company stated that in its warranties, "Ford and Selling Dealer jointly agree with the first individual retailer...." A failure to observe such a warranty would clearly entitle the buyer to join both the manufacturer and the dealer as codefendants.

5. [§4.63] Proper Court

Not all Magnuson-Moss causes of action can be asserted in a federal court. In order to qualify as a federal suit, the amount in controversy in an individual (nonclass) action must equal \$50,000 or more in recoverable claims. 15 USC §2310(d)(3)(B); Barr v General Motors Corp. (SD Ohio 1978) 80 FRD 136; Beal v General Motors Corp. (D Del 1973) 354 F Supp 423; Novosel v Northway Motor Car Corp. (ND NY 1978) 460 F Supp 542; Pratt v Winnebago Industries, Inc. (WD Pa 1979) 463 F Supp 709.

The \$50,000 lower limit for federal court jurisdiction can be met by joining the claims of two or more named plaintiffs. For example, 25 named plaintiffs could join in a single action to enforce individual claims of \$3000 each, totalling \$75,000. The purpose of this limit is to relieve the federal courts of the burden of having to process numerous Magnuson-Moss claims. That burden, however, is shifted to the state courts, but without the financial help required to actually pay the cost. 15 USC §2310(d)(3).

Most disputes will be actionable only in the state court system. In California, claims up to \$750 can be filed in the small claims court, disputes involving up to \$15000 will be the subject of a municipal court action, and disputes involving \$15000 or more will be the subject of a superior court action.

As a practical matter, the Magnuson-Moss claim or claims will most often be joined with claims under the Song-Beverly Act and the California Commercial Code.

It will be desirable, nevertheless, to characterize a claim as one arising under the Magnuson-Moss Act, even if the right originates in the Song-Beverly Act. That is because the private cause of action for violation of the Song-Beverly Act is limited to breaches that are willful. CC §1794.

In addition, by proceeding under the Magnuson-Moss Act, the attorney for the buyer will be able to cite numerous federal court cases defining what amounts of attorneys' fees are reasonable. There is virtually no California case support for liberal attorneys' fees awards in consumer cases.

6. [§4.64] Class Actions

The \$50,000 lower limit for federal court actions can be satisfied by filing a class action on behalf of named and unnamed plaintiffs whose claims are \$50,000 or more.

A class action can be used, however, only if the individual claims equal \$25 or more and the number of named plaintiffs equals 100 or more. 15 USC §2310(d)(3)(C); In re General Motors Corp. Engine Interchange (7th Cir 1979) 594 F2d 1106; Barr v General Motors Corp. (SD Ohio 1978) 80 FRD 136; Watts v Volkswagen (WD Ark 1980) 488 F Supp 1233.

These limitations only apply to class actions filed in federal court. They would not apply to Magnuson-Moss rights in a state class action. 15 USC §2310(d)(3).

It is not necessary to resort to a dispute settlement mechanism (where one exists) before filing a class action. 15 USC §2310(a)(3). However, the named plaintiffs must still "resort to such procedure" before proceeding with the action. 15 USC §2310(a)(3). The Act further provides that the result of the use of the informal procedure will be admissible in evidence. 15 USC §2310(a)(3).

If the warrantor has not established a dispute settlement procedure, the named plaintiffs in a class action must nevertheless give the warrantor the same right to cure that the individual litigant in nonclass actions must provide. 15 USC §2310(a)(3). The opportunity to cure may be granted either before or after filing the action.

7. [§4.65] Scope of Relief

The Act provides for five basic kinds of relief in federal or state-court actions under the Magnuson-Moss Act: (1) general damages, (2) other legal and equitable relief, (3) litigation expenses, (4) attorneys' fees, and (5) costs.

(a) Damages. The Magnuson-Moss Act establishes a right, without limitation, to recover damages. 15 USC §2310(d)(1). It does not establish the measure of damages to be applied. Since one of the Act's purposes is to cure shortcomings in state warranty law, particularly remedies, limitations by state law should not be automatically applied without evaluating their legitimacy. One court, however, has held that "a resort to state law is proper in determining the applicable measure of damages under the Act." MacKenzie v Chrysler Corp. (5th Cir 1979) 607 F2d 1162, 1166. In most instances, however, the traditional contract measure of damages articulated in the California Commercial Code will provide a full measure of relief to the aggrieved buyer. Com C §§2711-2724.

(b) Cancellation or other relief. Under the Magnuson-Moss Act, the court may award other legal and equitable relief. 15 USC §2310(d)(1). An example of equitable relief potentially available to the buyer would be outright cancellation of the transaction, or an order under 15 USC §§2302(a)(4), 2304(a)(1) mandating the performance of repairs to a product, or an order under 15 USC §2304(a)(4) requiring the warrantor to replace, without charge, a consistently malfunctioning product.

(c) Litigation expenses. The Magnuson-Moss Act is unique in providing for an award of expenses that are not technically allowable costs. 15 USC §2310(a)(2). To be recoverable, such expenses must "have been reasonably incurred ... for or in connection with the commencement and prosecution of such action." An example of expenses would be the cost of an analysis of a defective product made to support the buyer's contentions. In order for such expenses to be recoverable, the buyer must prevail. 15 USC §2310(d)(2). Reimbursement of expenses is subject to the court's discretion. 15 USC §2310(d)(2). Expenses sought to be recovered should not be incurred until the suit has been filed and the court's approval has been given.

(d) Attorneys' fees. The Act states that if the buyer prevails, the buyer may be allowed to recover costs and expenses including attorneys' fees based on actual time expended. 15 USC §2310(d)(2).

The exact procedure for determining fees should be settled at the outset of the trial on motion of the attorney. In most cases, the question of fees should be determined in a separate proceeding following the trial on the merits. If the buyer does not prevail, no court time will have been wasted on the question.

(e) Court costs. The Act also provides for an award of costs. 15 USC §2310(d)(2). This refers to allowable court costs, including filing fees, witness fees, the cost of depositions, etc.

8. Modification of Buyer Remedies

a. [§4.66] Full Warranties

In the case of full warranties, the Magnuson-Moss Act contains several limitations on the warrantor's power to limit the buyer's remedies. First and foremost, the Act does not allow the warrantor to limit its duties to mere repair or replacement only. See §4.53. In addition, the warrantor may not limit damages for breach of any written or implied warranty unless the limitation conspicuously appears on the warranty. 15 USC §2304(a)(3). It may be expected that most warrantors will routinely make a conspicuous disclosure of an exclusion of the Commercial Code created right to recover consequential damages. Nevertheless, it may be that the power does not exist for breach of a Song-Beverly created right. See §4.40.

b. [§4.67] Limited Warranties

The warrantor in a limited warranty is not expressly prohibited from attempting to modify or exclude a buyer's remedies. However, the warrantor might not have power to unilaterally repeal the right of action conferred by 15 USC §2310(d)(1). At the very least, the Commercial Code limitations on the right to modify remedies could be inferred.

The warrantor may argue that, in 16 CFR §701.3(a)(8), the FTC expressly contemplated the existence of a power to modify or exclude remedies, and that some benefits conferred under full warranties would be meaningless if they were present in limited warranties too. The buyer may respond that the

language of 15 USC §2310(d)(1) conferring a private right of action under a written warranty is not qualified by an exception.

H. Informal Dispute Settlement Process

1. [§4.68] Legal Remedy versus Informal Settlement

Despite the availability of formal legal remedies, the individual buyer's best remedy will almost always be a resolution by both parties acting voluntarily. The interests of both warrantors and individual buyers would be served if manufacturers and sellers that choose to warrant their products establish informal dispute settlement mechanisms. If this view is correct, it follows that consumers ought to persuade manufacturers and sellers to establish informal dispute settlement systems, and to operate these systems in conformance with standards set by the FTC.

It is clear from the text of the Act (15 USC §2310(a)(1)) that Congress intended that manufacturers and sellers who decide to warrant their products should set up the procedures needed to resolve disputes involving warranties both fairly and expeditiously.

2. [§4.69] The FTC Dispute Settlement System

In 15 USC §2310(a)(2), Congress directed the FTC to prescribe rules setting forth minimum requirements for informal dispute settlement procedures. The FTC has responded by adopting a set of rules bearing the title "Informal Dispute Settlement Mechanism." These rules are found at 16 CFR pt 703.

A dispute settlement mechanism that complies with the FTC's rules must be funded and competently staffed. It must have the resources necessary to ensure fair resolution of all disputes. 16 CFR §703.3(a). No fee may be imposed on particular consumers. The cost will be borne by all of the buyers of the products covered. 16 CFR §703.3(a). Personell who operate the mechanism must be insulated from the warrantor and any other sponsor of the mechanism. 16 CFR §703.3(b). Decisions must be based solely on merit. 16 CFR §703.3(b), (c). Decisions in general, must be rendered in 40 days. 16 CFR §703.5(d)(1). The reasons must be disclosed to both sides of the dispute. 16 CFR §703.5(d)(2), (4).

The buyer may not commence a civil action under 15 USC §2310(d), unless he initially resorts to the informal dispute settlement mechanism. This limitation does not apply, however, if the warrantor has not set up a settlement mechanism,

if the mechanism is not in the terms of the written warranty, or if the warranty terms do not expressly require the buyer to first resort to the procedure before filing suit. See 15 USC §2310(a)(3).

It would be possible to file suit without first resorting to the informal procedure if there were evidence that the procedure did not comply with the FTC's standards. One function of the suit would be to test the adequacy of the settlement procedure offered by the warrantor.

If a buyer who has resorted to an informal dispute settlement mechanism does not prevail, and is not satisfied with the results, he can still file an ordinary court action. However, the adverse results in the informal procedure will be admissible in evidence in the formal civil action. See 15 USC §2310(a)(3).

Feb. 8, 1982

Juliah Alex Smariga
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(213)-660-4365

Automobile: 1980 Porsche 924 Turbo
Purchased New on 10/31/1979
Dealer: Park Porsche/Audi
16700 Manchester Blvd.
Buena Park, California

SYNOPSIS OF PROBLEMS

DATE	MILEAGE	PROBLEM	RESOLUTION
10/31/79	0	Car purchased	
11/09/79	1171	1000 mile maintenance Car won't start when cold Vibration in dashboard Electric window erratic	Done Not resolved Not resolved Fixed
11/21/79	1322	Car won't start when cold	Not resolved
11/26/79	1492	Car won't start when cold	Reversed wires on Thermal switch
01/08/80	4488	Headlight won't raise Car pulls to right Exhaust leaks when cold	Order new motor Adjust tire pressure Order parts
01/22/80	5494	Replace headlight motor Replace rear exhaust pipe/muff Weld front pipe Car won't start when cold	Faulty factory weld Not resolved
02/21/80	7720	7500 mile service Exhaust leaks Gas door hard to open Rattle in dash	Done Replace exhaust studs/repair leaks Repaired Not resolved

DATE	MILEAGE	PROBLEM	RESOLUTION
02/25/80	7974	Engine sputters/power loss	Replace fuel filters Clean fuel lines
03/11/80	?	Repair flat tire	
03/26/80	9985	Exhaust leaks and noise Heat shield noise	Replace exhaust studs on manifold Fix front exhaust
04/29/80	12197	Rattling noise in engine Poor performance	Order new exhaust Not resolved
05/21/80	13159	Replace ordered parts	Replace exhaust
cross over pipes		Car runs hot Radiator fan doesn't come on	Not resolved Not resolved
05/29/80	13633	Install missing bolt on roof Oil leak Exhaust rattles and leaks	Fixed Order new Turbo unit Replace studs on manifold
06/09/80	14237	Fix oil leak Engine overheats	Install new Turbo Check for cooling leaks. Hose leaking- replaced. Replace suction and pressure pipes.
07/10/80	15316	15000 mile service Repair fender and suspension Replace front brakes Engine runs hot	Done Done Done Not resolved
07/22/80	15500	No radio	Replace ignition sw
08/20/80	17210	Engine runs hot Exhaust noise and leaks Muffler rattles Car won't start when cold	Replace engine to body ground Repair turbo studs Replace muffler post Not resolved
09/12/80	18000	Car won't start when cold Idles too low Cuts out under acceleration	Not resolved Fixed Not resolved

DATE	MILEAGE	PROBLEM	RESOLUTION
09/29/80	18645	Road vibration Exhaust noise and leaks Oil leaks onto exhaust Car won't start when cold Vibration in console	Balance front tires Order exhaust pipes Order parts Not resolved Not resolved
10/09/80	19181	Install ordered parts Car won't start when cold Vibration in console Exhaust noise and leaks	Replace crossover studs Not resolved Not resolved Tighten studs
10/14/80	19408	Car won't start when cold Turbo miss under acceleration	Not resolved Not resolved
10/22/80	20000	Turbo miss under acceleration Oil smell when hot Exhaust noise and leaks Fuel system check Car won't start when cold Rattle in console	Replace wastegate and lines Not resolved Replace crossover Drain tank and take gas samples Replace microswitch and throttle valve Not resolved
11/10/80	21000	Car won't start when cold Using 1 quart oil every 200 miles	Not resolved Not resolved - added oil
11/14/80	21289	Car won't start when cold	Not resolved
03/19/81	21822	Exhaust noise and leaks Excessive oil use Car won't start when cold	Weld exhaust Replace valves and guides - Overhaul engine Not resolved
07/10/81	22000	Left at dealers	

Chronology of Problem Resolution

DATE	AGENCY	CONTACT SYNOPSIS
12/15/80	NMVB	Initial complaint filed
01/30/81	NMVB	Documentation sent to NMVB
02/24/81	NMVB	Initial letter of complaint sent by NMVB to dealer and Volkswagen of America
03/16/81	FightBack	Complaint sent to Fight Back with David Horowitz
03/18/81	Park Porsche	Dealer letter to NMVB denying any problems
03/24/81	FightBack	Complaint rejected but notice of AutoCAP included in return material
04/06/81	NMVB	Letter from NMVB and dealer rejecting complaint on basis that problem was fixed
04/07/81	AutoCAP	Filed Complaint outlining problem
04/13/81	NMVB	Filed second complaint that problems have not been resolved
04/14/81	NMVB	I filed a second complaint that the car was not fixed as stated by the dealer
04/22/81	BankAmerica	Complaint filed
04/30/81	NMVB	Second followup to VoA on the complaint. They never responded
04/30/81	NMVB	Letter to dealer outlining second complaint
05/07/81	Porsche/Audi	Sent letter identifying problems with car and dealer

NMVB - New Motor Vehicle Board

AutoCAP - Auto Consumer Action Program of So Cal Motor Vehicle

Volkswagen - Volkswagen of America Western Region

Park Porsche - Park Porsche/Audi, Dealer

FightBack - David Horowitz's FightBack TV show

BankAmerica - Bank of America, the lender

NHTSA - National Highway Traffic Safety Agency

FTC - Federal Trade Commission

Julian Alex Smariga
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05/12/81	Volkswagen	Letter from VoA to NMVB stating their involvement in the problem
05/14/81	Volkswagen	Letter of acknowledgement of problem filed with VoA/National. Statement that the dealer and the region will resolve
05/15/81	AutoCAP	First contact on the problem. Sent documents
05/15/81	NHTSA	Filed complaint with DoT Auto Safety Hotline
06/12/81	NHTSA	Recieved response to complaint - Referred to Federal Trade Commission
06/18/81	AutoCAP	Telephone contact by AutoCAP to dealer
06/23/81	FTC	Complaint denied - Not within juristriction
06/15/81	NMVB	Response to second complaint where the dealer denied any problems
07/01/81		Filed lawsuit
08/10/81	Volkswagen	Car investigated by VoA
09/06/81	AutoCAP	Telephone contact to dealer on problem. Because of suit, AutoCAP declined to continue
10/19/81	Park Porsche	Filed complaint with DMV to remove car from premises

NMVB - New Motor Vehicle Board

AutoCAP - Auto Consumer Action Program of So Cal Motor Vehicle

Volkswagen - Volkswagen of America Western Region

Park Porsche - Park Porsche/Audi, Dealer

FightBack - David Horowitz's FightBack TV show

BankAmerica - Bank of America, the lender

NHTSA - National Highway Traffic Safety Agency

FTC - Federal Trade Commission

Customer Satisfaction Survey Results

A total of 664 Surveys were mailed to consumers who had been through the General Motors Third Party Arbitration Program in March through November, 1981. These results are from consumers in the following states: Michigan, Tennessee, Pennsylvania, New York, Kentucky, Massachusetts, California, Iowa, Minnesota, Wisconsin, Colorado, Texas, North Carolina, Oregon, Washington, DC, Louisiana, New Mexico, Arizona, Ohio and Utah. Of the 664 surveys sent, 419 were received representing a 63% return rate.

1) How did you hear about the General Motors Arbitration Program? (asked from March - November)

CA - 16%	12% - 55 -- through the dealer
27%	20% - 92 -- from General Motors
0%	3% - 13 -- advertisement
19%	21% - 96 -- write-up in the newspaper
8%	6% - 25 -- television
11%	11% - 47 -- Better Business Bureau*
19%	27% - 120 -- Other

*this category added in September

2) On an overall basis, how would you rate the General Motors Arbitration Program for handling complaints? (asked from March - November)

CA - 31%	28% - 115 -- Excellent
24%	23% - 94 -- Very Good
9%	17% - 69 -- Good
12%	12% - 48 -- Fair
9%	6% - 24 -- Poor
15%	14% - 59 -- Very Poor

3) How would you describe your entire experience with this program? (asked from September - November)

CA - 93%	48% - 78 -- Better than I expected
7%	27% - 43 -- Just as I expected
0%	25% - 40 -- Less than I expected

4) Please check how satisfied you were with the following parts of the program:

a)	Total Program (asked from March - August)
CA - 45%	54% - 128 -- Very Satisfied
33%	30% - 71 -- Somewhat Satisfied
22%	16% - 39 -- Not at all Satisfied
b)	Length of Time (asked from March - November)
CA - 49%	56% - 228 -- Very Satisfied
39%	33% - 136 -- Somewhat Satisfied
12%	11% - 43 -- Not at all Satisfied
c)	Fairness of Decision (asked from March - August)
CA - 37%	40% - 97 -- Very Satisfied
21%	20% - 49 -- Somewhat Satisfied
42%	40% - 99 -- Not at all Satisfied

4) d)	Arbitrator Selection Process (asked from September - November)
CA - 86%	65% - 106 -- Very Satisfied
14%	25% - 40 -- Somewhat Satisfied
0%	10% - 16 -- Not at all Satisfied
e)	The Award (asked from March - May)
CA - 33%	39% - 42 -- Very Satisfied
22%	25% - 27 -- Somewhat Satisfied
45%	36% - 38 -- Not at all Satisfied
f)	Decision of the Arbitrator (asked from June - November)
CA - 58%	39% - 114 -- Very Satisfied
17%	19% - 54 -- Somewhat Satisfied
25%	42% - 122 -- Not at all Satisfied
g)	Better Business Bureau (asked from March - November)
CA - 85%	80% - 327 -- Very Satisfied
12%	15% - 62 -- Somewhat Satisfied
3%	5% - 21 -- Not at all Satisfied
h)	Decision binding on both parties (asked from September - November)
CA - 93%	60% - 90 -- Very Satisfied
0%	19% - 29 -- Somewhat Satisfied
7%	21% - 31 -- Not at all Satisfied
i)	Mediation Process (asked from March - August)
CA - 44%	58% - 123 -- Very Satisfied
37%	27% - 58 -- Somewhat Satisfied
19%	15% - 31 -- Not at all Satisfied
j)	BBB Mediation Efforts (asked from September - November)
CA - 93%	74% - 112 -- Very Satisfied
7%	17% - 26 -- Somewhat Satisfied
0%	9% - 14 -- Not at all Satisfied
k)	Arbitration Process (asked from March - November)
CA - 65%	65% - 256 -- Very Satisfied
29%	23% - 92 -- Somewhat Satisfied
6%	12% - 49 -- Not at all Satisfied

5) In any process for handling unresolved automobile complaints, how important are the following factors to you: (asked from March - November)

a)	Privacy
CA - 41%	29% - 120 -- Very Important
18%	33% - 133 -- Somewhat Important
41%	38% - 153 -- Not at all Important
b)	Impartial Arbitrator
CA - 97%	95% - 391 -- Very Important
3%	4% - 16 -- Somewhat Important
0%	1% - 4 -- Not at all Important
c)	Convenient Location
CA - 64%	54% - 219 -- Very Important
36%	42% - 172 -- Somewhat Important
0%	4% - 18 -- Not at all Important

5) d)	To be present when your case is being reviewed
CA - 100%	93% - 383 -- Very Important
0%	5% - 19 -- Somewhat Important
0%	2% - 7 -- Not at all Important

e)	Fast Decision
CA - 76%	63% - 255 -- Very Important
24%	32% - 130 -- Somewhat Important
0%	5% - 22 -- Not at all Important

f)	Impartial Mediation
CA - 94%	91% - 353 -- Very Important
6%	7% - 27 -- Somewhat Important
0%	2% - 6 -- Not at all Important

g)	No cost to owner
CA - 79%	79% - 321 -- Very Important
21%	19% - 79 -- Somewhat Important
0%	2% - 8 -- Not at all Important

6) Was the decision of the arbitrator . . . (asked from September - November)

CA - 72%	38% - 62 -- In my favor
7%	40% - 67 -- In company's favor
21%	22% - 36 -- Split decision

GENERAL MOTORS CONSUMER ARBITRATION PROGRAM EXPERIENCE

CALIFORNIA - FEBRUARY 1979 THROUGH NOVEMBER 30, 1981

Established February, 1979 - San Francisco/Oakland
Bay Area, San Mateo and
Santa Clara Valley area

Established May, 1981 - - - Los Angeles, Orange County,
Sacramento, Northern California

I. Formal Complaints

Nationally		11,562
Northern California	944	
Los Angeles Area	369	
	<u>1,313</u>	

II. Status or Disposition of Complaints

A. Northern California

944 Total Complaints
81.7% or 713 settled in mediation
55 still in mediation
18.3% or 160 settled in arbitration
16 still in arbitration

Of those cases that went to arbitration:
43.1% resulted in a greater settlement for the consumer
33.3% upheld the manufacturer's offer
23.6% resulted in no award

B. Southern California

369 Total Complaints
90.9% or 279 settled in mediation
27 still in mediation
9.1% or 28 settled in arbitration
35 still in arbitration

Of those cases that went to arbitration:
75% resulted in a greater award for the consumer
25% resulted in no award for the consumer

III. Buy Back Awards

Nationally		44
Northern California	17	
Southern California	<u>3</u>	
	20	

Although California represents roughly 10% of G.M.'s market, 20 of the 44 national buy-backs, or 45.4%, were made in the state.

Customer Satisfaction Survey Results

A total of 664 Surveys were mailed to consumers who had been through the General Motors Third Party Arbitration Program in March through November, 1981. These results are from consumers in the following states: Michigan, Tennessee, Pennsylvania, New York, Kentucky, Massachusetts, California, Iowa, Minnesota, Wisconsin, Colorado, Texas, North Carolina, Oregon, Washington, DC, Louisiana, New Mexico, Arizona, Ohio and Utah. Of the 664 surveys sent, 419 were received representing a 63% return rate.

1) How did you hear about the General Motors Arbitration Program? (asked from March - November)

CA - 16%	12% - 55 -- through the dealer
27%	20% - 92 -- from General Motors
0%	3% - 13 -- advertisement
19%	21% - 96 -- write-up in the newspaper
8%	6% - 25 -- television
11%	11% - 47 -- Better Business Bureau*
19%	27% - 120 -- Other

*this category added in September

2) On an overall basis, how would you rate the General Motors Arbitration Program for handling complaints? (asked from March - November)

CA - 31%	28% - 115 -- Excellent
24%	23% - 94 -- Very Good
9%	17% - 69 -- Good
12%	12% - 48 -- Fair
9%	6% - 24 -- Poor
15%	14% - 59 -- Very Poor

3) How would you describe your entire experience with this program? (asked from September - November)

CA - 93%	48% - 78 -- Better than I expected
7%	27% - 43 -- Just as I expected
0%	25% - 40 -- Less than I expected

4) Please check how satisfied you were with the following parts of the program:

a)	Total Program (asked from March - August)
CA - 45%	54% - 128 -- Very Satisfied
33%	30% - 71 -- Somewhat Satisfied
22%	16% - 39 -- Not at all Satisfied

b)	Length of Time (asked from March - November)
CA - 49%	56% - 228 -- Very Satisfied
39%	33% - 136 -- Somewhat Satisfied
12%	11% - 43 -- Not at all Satisfied

c)	Fairness of Decision (asked from March - August)
CA - 37%	40% - 97 -- Very Satisfied
21%	20% - 49 -- Somewhat Satisfied
42%	40% - 99 -- Not at all Satisfied

- 4) d) Arbitrator Selection Process (asked from September - November)
- | | |
|----------|----------------------------------|
| CA - 86% | 65% - 106 -- Very Satisfied |
| 14% | 25% - 40 -- Somewhat Satisfied |
| 0% | 10% - 16 -- Not at all Satisfied |
- e) The Award (asked from March - May)
- | | |
|----------|----------------------------------|
| CA - 33% | 39% - 42 -- Very Satisfied |
| 22% | 25% - 27 -- Somewhat Satisfied |
| 45% | 36% - 38 -- Not at all Satisfied |
- f) Decision of the Arbitrator (asked from June - November)
- | | |
|----------|-----------------------------------|
| CA - 58% | 39% - 114 -- Very Satisfied |
| 17% | 19% - 54 -- Somewhat Satisfied |
| 25% | 42% - 122 -- Not at all Satisfied |
- g) Better Business Bureau (asked from March - November)
- | | |
|----------|---------------------------------|
| CA - 85% | 80% - 327 -- Very Satisfied |
| 12% | 15% - 62 -- Somewhat Satisfied |
| 3% | 5% - 21 -- Not at all Satisfied |
- h) Decision binding on both parties (asked from September - November)
- | | |
|----------|----------------------------------|
| CA - 93% | 60% - 90 -- Very Satisfied |
| 0% | 19% - 29 -- Somewhat Satisfied |
| 7% | 21% - 31 -- Not at all Satisfied |
- i) Mediation Process (asked from March - August)
- | | |
|----------|----------------------------------|
| CA - 44% | 58% - 123 -- Very Satisfied |
| 37% | 27% - 58 -- Somewhat Satisfied |
| 19% | 15% - 31 -- Not at all Satisfied |
- j) BBB Mediation Efforts (asked from September - November)
- | | |
|----------|---------------------------------|
| CA - 93% | 74% - 112 -- Very Satisfied |
| 7% | 17% - 26 -- Somewhat Satisfied |
| 0% | 9% - 14 -- Not at all Satisfied |
- k) Arbitration Process (asked from March - November)
- | | |
|----------|----------------------------------|
| CA - 65% | 65% - 256 -- Very Satisfied |
| 29% | 23% - 92 -- Somewhat Satisfied |
| 6% | 12% - 49 -- Not at all Satisfied |
- 5) In any process for handling unresolved automobile complaints, how important are the following factors to you: (asked from March - November)
- a) Privacy
- | | |
|----------|-----------------------------------|
| CA - 41% | 29% - 120 -- Very Important |
| 18% | 33% - 133 -- Somewhat Important |
| 41% | 38% - 153 -- Not at all Important |
- b) Impartial Arbitrator
- | | |
|----------|--------------------------------|
| CA - 97% | 95% - 391 -- Very Important |
| 3% | 4% - 16 -- Somewhat Important |
| 0% | 1% - 4 -- Not at all Important |
- c) Convenient Location
- | | |
|----------|---------------------------------|
| CA - 64% | 54% - 219 -- Very Important |
| 36% | 42% - 172 -- Somewhat Important |
| 0% | 4% - 18 -- Not at all Important |

5) d)	To be present when your case is being reviewed
CA - 100%	93% - 383 -- Very Important
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CA - 79%	79% - 321 -- Very Important
21%	19% - 79 -- Somewhat Important
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6) Was the decision of the arbitrator . . . (asked from September - November)

CA - 72%	38% - 62 -- In my favor
7%	40% - 67 -- In company's favor
21%	22% - 36 -- Split decision



Consumer Federation of California

P.O. Box 27940 Los Feliz Station • Los Angeles, California 90027 • (213) 736-1316

TESTIMONY OF
MARY SOLOW, PRESIDENT
CONSUMER FEDERATION OF CALIFORNIA

BEFORE THE
ASSEMBLY COMMITTEE ON
CONSUMER PROTECTION AND TOXIC MATERIALS
SACRAMENTO, CALIFORNIA
February 9, 1982

President
Mary Solow

Secretary
Dora "Mitzi" Rodriguez

Treasurer
Jackie Walsh

Vice Presidents
Albin J. Gruhn
Regene Mitchell
Gerald Rubin

Policy Board
Joe Belardi
Frank Brown
Steven Brown
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Shirley Goldinger
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C. Annette Grajeda
Ruth Jernigan
Michele Husson-Jones
Roy Kiesling
John B. Kinnick
Robert Medina
Max Mont
Barbara Nardella
James L. Quillin
Belva Roberts
Geri Stone
Dan Swinton
Jeane Thom
Jerry Vercruse

Madame Chairman. Members of the Assembly Committee on
Consumer Protection and Toxic Materials, Ladies and
Gentlemen:

My name is Mary Solow and I'm president of the
Consumer Federation of California, a statewide non-
profit federation of more than 80 state and local organi-
zations and numerous individuals representing more than
a million Californians working for better programs of
consumer protection and education. Among our members are
consumer cooperatives, credit unions, and agricultural,
consumer and labor organizations.

I also have served as a former consumer representative
on the Southern California Ford Consumer Appeals Board.

I welcome this opportunity to come before you today
to discuss a very painful subject to most consumers,
the problem of a new car which doesn't behave the way
it should, and some of the ways consumers, governmental
leaders and the automotive industry have tried to improve
the climate of confusion now existing between seller and
customer.

In particular, I want to talk about the establishment of third-party mechanisms to settle repair and warranty disputes for new car owners. Programs such as the Ford Consumer Appeals Board, AutoCAP of the Motor Dealers Assn., the Better Business Bureau's Arbitration Program and Crysler's Customer Satisfaction Arbitration Board have provided some help to consumers and redress in the marketplace not available just a few years ago.

This programs aren't perfect, not by a long shot, but they do provide a welcome alternative to lawsuits and our overloaded courts.

In 1979, after extensive talks with Esther Peterson, formerly the Director of the U.S. Office of Consumer Affairs, and state consumer leaders, I consented to join in a new Ford-Lincoln Mercury program aimed at improving the general relations between consumers and franchised automobile and truck dealers. The Ford Consumer Appeals Board was designed to mediate unresolved service complaints in a fair and equitable manner through the use of a third-party appeals mechanism. The purpose of the Consumer Appeals Boards was to make sure that customers got a fair hearing on service complaints from an impartial board whose members were independent of Ford Motor Company.

Our panel was made up of three consumer representatives and two automobile dealers, and our decisions were binding upon all affected area dealers, with the consumer free to accept or reject the mediation effort. So far, so good.

To alert the public to the program, our pictures were taken and soon advertisements started appearing in Time, Sunset, the National Geographic, and other publications. I was concerned about this promotional campaign, and my fears deepened when I learned that Ford planned to run a follow-up advertisement with the signatures

of board members. I was uncomfortable with the use of my picture, my organization and my name in Ford's advertising. Our attempts to insert consumer mediation material in the owner's manual were not encouraged.

From the beginning of my service on the Ford board, and I served in this capacity for six months, I was deeply unhappy about a number of procedural matters which Ford wouldn't correct.

Telephone calls overloaded the system in Pico Rivera and when customers did get through and leave messages, they got no response.

When the case came before the Consumer Appeals Board, the meetings were closed to the public, and to the principals; the only people present were members of the board and Ford Motor Company.

Consumers never were notified of the hearings, nor were they given copies of the statements prepared by Ford Motor Company and the dealer. If new facts were brought up by the dealer, the consumer was not allowed to rebut those statements.

As for the cases we handled, we heard a wide variety of automotive problems, covering a tangled mixture of unclear, limited warranties, hidden warranties and confusion. I remember we had a number of rust cases, and if the cars came from other parts of the country or from Canada, the confusion grew. What became very clear was that the same justice can never be dispensed by these boards, as long as the law remains unclear.

These complaint-handling mechanisms do not always settle the case in favor of the consumer, nor should they. But they do offer a significant opportunity to the consumer and to the dealer by providing a fresh look at the problem and ways of solving it.

I might mention that other mechanisms might serve the consumer better -- a local office of Consumer Affairs, the Bureau of Auto

Repair, the Small Claims Court or the regular Courts.

The Consumer Federation of California wants to work with the representatives of the automotive industry to develop effective and fair dispute resolution mechanisms for the public to deal with automobile problems.

However, I was distressed to hear of Ford Motor Company's strong opposition, along with other auto lobbyists, to the lemon bill, using the consumer appeals boards as arguments against this vital legislation.

If one thing has become clear from my service with Ford, it is that consumers, manufacturers and the courts need to know specifically what the law requires, and we need to develop better definitions of "lemon," "reasonable period of time," etc.

The most common complaint consumers have continues to be with automobiles. There has not been any major problem with pen and pencil sets, radios or toasters. It has consistently been with automobiles, and, to a lesser extent, major home appliances.

Consumers are enormously frustrated and exasperated with lemon or near-lemon automobiles, particularly in realizing they had paid many thousands of dollars for a vehicle they reasonably expected to perform. If it were defective, they had the reasonable expectation that they could take it to the dealer and have it repaired expeditiously, or get a refund, or obtain a well-performing replacement.

In summary, the Consumer Federation of California believes there must be a significant commitment in Sacramento by lawmakers to improve product performance, consumer education and enforcement. Until this happens, consumers and industry will continue to experience a great deal of frustration.

Quality products backed by quality service.

At Toyota, we're proud of our total commitment to quality design and workmanship. Every Toyota vehicle is manufactured to meet exacting specifications for your driving comfort and enjoyment. Today's automobiles are extremely complex, with approximately fifteen thousand parts! Occasionally a failure of one of these parts can occur. Should you experience a problem, we think you will find your Toyota Dealer equipped and prepared to provide the same high quality service that went into manufacturing your Toyota.

Every Toyota Dealership has the tools, equipment, and training needed to service and repair your Toyota. In the event a problem arises, we suggest you follow the procedures outlined below in the sequence listed, for the fastest possible response.

Step 1: Talk to your Toyota Dealer.

This is the most direct way to solve your problem. Every Toyota Dealership is ultimately responsible for providing the service and repairs you may need. Your Toyota Dealer is located closest to you, and has the knowledge, tools and resources available to keep your Toyota in top condition.



First, talk to the dealer service or sales manager. Explain the problem fully. Then, if you feel that your problem has not been resolved, or that your questions have not been answered, ask to discuss them with the dealership's owner. Since it is his business, he will be most interested in your continued satisfaction and patronage.

Step 2: Contact your distributor.

If your Toyota Dealer is unable to provide a solution, contact the Customer Relations Department at the Toyota Distributor serving your area, see page 15. Each of the Toyota Distributors will investigate and assist in resolving your problem. Toyota distributors employ field staff members who maintain contact with the dealerships. These people are knowledgeable in areas of warranty policies and procedures for the servicing and repair of Toyota vehicles.

Step 3: Write to our National Office.

If you have additional comments or questions after you have discussed the problem with your Toyota Dealer and Distributor, write to our national office. In an attempt to resolve your problem, we will work with your local distributor to review and verify the information and facts. Based on these facts, we will advise or consult with the distributor as appropriate.

Address your correspondence to:

National Customer Relations Department
Toyota Motor Sales, U.S.A., Inc.
Post Office Box 2991
Torrance, CA 90509

If you find it necessary to contact your Region/Distributor office or our National Customer Relations Department, please be prepared to provide us with your name, address, and telephone number(s), as well as:

- Vehicle year and model.
- Vehicle serial number.
- Date of purchase.
- Present mileage.
- Selling and servicing dealer.

Step 4: AUTOCAP

We want you to feel that you have been treated fairly and equitably. Our commitment to this goal includes complaint resolution

TOYOTA'S COMMITMENT TO QUALITY

through the NADA AUTOCAP mediation/arbitration program. Should you be dissatisfied with the way a problem is handled by your dealer, region/distributor, or our National office, we encourage you to contact Autocap as an additional step to problem resolution.

AUTOCAP (Automotive Consumer Action Panels) is a third party complaint handling program sponsored by the National Automobile Dealers Association and endorsed by Toyota, the U.S. Office of Consumer Affairs, and the Automobile Importers of America. A voluntary program, it provides an inexpensive, timely alternative for owners outside the court system. It is an impartial appeal mechanism for difficult consumer complaints that cannot be resolved through existing channels provided by the dealer and the manufacturer. Your dealer or local region/distributor can provide contact information for the Autocap program nearest you.*

If you need further assistance, contact:
National Autocap Director
National Automobile Dealers Association
8400 Westpark Drive
McLean, Virginia 22102
(723) 821-7144

*Not yet available in all areas.

PORTLAND
REGIONAL OFFICE
Toyota Motor Distributors, Inc.
Portland, Oregon

CHICAGO
REGIONAL OFFICE
Toyota Motor Distributors, Inc.
Catal Stream, Illinois

NEW YORK
REGIONAL OFFICE
Toyota Motor Distributors, Inc.
West Caldwell, New Jersey

KANSAS CITY
REGIONAL OFFICE
Toyota Motor Distributors, Inc.
Kansas City, Missouri

CINCINNATI
REGIONAL OFFICE
Toyota Motor Distributors, Inc.
Cincinnati, Ohio

BOSTON
REGIONAL OFFICE
Toyota Motor Distributors, Inc.
Mansfield, Massachusetts

DENVER
REGIONAL OFFICE
Toyota Motor Distributors, Inc.
Englewood, Colorado

LOS ANGELES
REGIONAL OFFICE
Toyota Motor Distributors, Inc.
Newport Beach, California

SAN FRANCISCO
REGIONAL OFFICE
Toyota Motor Distributors, Inc.
San Francisco, California

GULF STATES TOYOTA, INC.
Houston, Texas

SOUTHEAST TOYOTA
Jacksonville, Florida

MID-ATLANTIC TOYOTA
Glen Burnie, Maryland

AUTOMOBILE IMPORTERS OF AMERICA, INC.

Alfa Romeo, Inc.

American Honda Motor Company, Inc.

BMW of North America, Inc.

De Lorean Motor Company

Fiat Motors of North America, Inc.

Isuzu Motors Limited

Jaguar Rover Triumph, Inc.

Lotus Cars Limited

Mazda Motors of America, Inc.

Nissan Motor Corporation in U.S.A.

Peugeot Motors of America, Inc.

Rolls-Royce Motors, Inc.

Saab-Scania of America, Inc.

Subaru of America, Inc.

Toyota Motor Sales, U.S.A., Inc.

Volvo of America Corporation

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DANIEL F. BAMBERG
DANIEL L. ABBOTT
FRED C. JAMES

(714) 298-5077
TIMOTHY H. FLANIGAN
OF COUNSEL

February 8, 1982

California Assembly Committee on
Consumer Protection & Toxic Materials
Room 4146 State Capitol
Sacramento, California 95814

Dear Members:

I have practiced law in the consumer protection field in California for over five years. I consider myself quite knowledgeable in the field of consumer law based on my experiences as a Deputy City Attorney for the City of San Diego's Consumer Protection Unit and as an Adjunct Professor of Law at California Western School of Law teaching "Consumer Law."

For the past three years, I have engaged in the private practice of law, concentrating a significant amount of my practice in the representation of California consumers in disputes involving a myriad of subjects. A significant number of my "consumer" clients have experienced legal problems relating to automobile repair and automobile sales.

In almost every "automobile case" I have handled, my client has attempted to mediate a resolution of his/her problem with the auto repairperson, automobile dealer and automobile manufacturer. My clients' mediation efforts have left them bitter, frustrated and "mad as hell." In almost every instance, my clients have complained about the callous, indifferent attitudes of the automobile industry representatives they have dealt with in attempting to resolve their dispute.

Although I have experienced a fair amount of success in negotiating satisfactory settlements of my clients' complaints, I firmly believe that the vast majority of such settlements were reached only because my client had taken the initiative [and incurred the expense] of hiring an attorney. Not one of my clients was ever advised of the availability of automobile dispute resolution programs. While I have a general familiarity with several third-party mediation programs, such as those offered by AUTO-CAP, and the Better Business Bureau, I do not feel that such programs, or industry sponsored appeal boards, offer a viable solution to the problem of devising a quick, inexpensive and informal forum for resolving automobile-related disputes.

RAMBERG, ABBOTT & JAMES

California Assembly Committee on
Consumer Protection & Toxic Materials
February 8, 1982
page 2

I offer the following observations and perceptions about such programs:

1. Most consumers believe that industry-sponsored mediation programs, such as the Ford Consumer Appeals Board, are "industry-dominated" and are, therefore, unacceptable to them [consumers].

2. Third-party arbitration programs, such as that offered by the BBB, are often a waste of time and money because of the non-binding nature of the arbitration results.

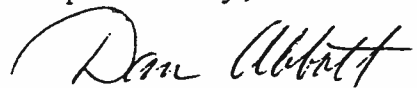
3. Because of the extreme polarization of attitudes in automobile cases, e.g., "all automobile industry representatives are liars and cheats"..."all consumers abuse their vehicle and then try to take advantage of the automobile industry reps;" I doubt that any arbitration program which is sponsored, controlled or influenced in any way by automobile industry or consumer groups, will be perceived as being impartial by either party.

While I totally support the concept of providing dispute resolution programs for handling automobile complaints which will eliminate the necessity of costly and time-consuming litigation, I believe, for the above reasons, that the present arbitration programs are almost totally ineffectual and unsuccessful in achieving such desired result.

I also personally believe that the automobile industry has not, until recently, perceived a great need for arbitration programs. I feel that most auto industry representatives are acutely aware that 9 out of 10 consumers, when faced with a problem with their vehicle, will not pursue their legal rights because of the time and expense involved in pursuing same.

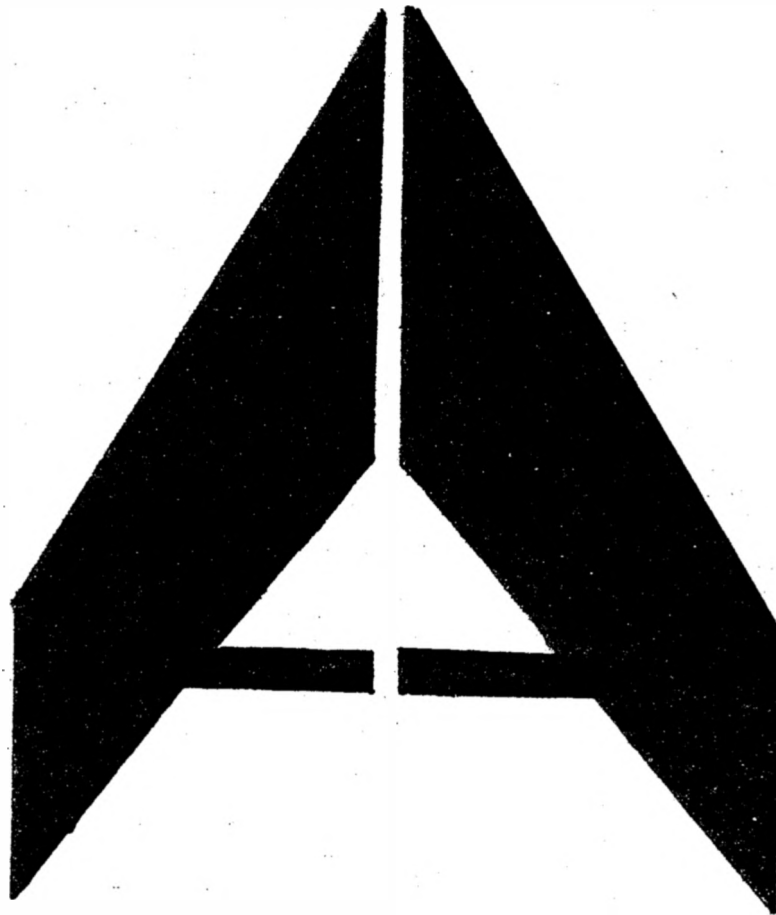
I believe, further, that the establishment of an impartial binding arbitration forum would greatly benefit California consumers and would likely decrease the necessity of litigating automobile-related disputes in our already over-crowded court system.

Respectfully,



Daniel L. Abbott

DLA:nsp



Arbitrator Training Outline

Council of Better Business Bureaus
1515 Wilson Boulevard
Arlington, Virginia 22209

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September 1981

I. WHAT IS ARBITRATION?

A. Definition: Arbitration is a legal process involving two or more people who agree to permit a third person (or panel) to make a final decision in a dispute between them.

B. Background and use of arbitration

- .commercial arbitration
- .labor-management disputes
- .professional sports contracts
- .divorce

II. BBB NATIONAL CONSUMER ARBITRATION PROGRAM

A. What is a Better Business Bureau?

- .philosophy/functions

B. The BBB Complaint Process

1. Consumer calls
2. Complaint form sent
3. Complaint form presented to business
4. Business responds
5. Mediation
6. Arbitration offered and accepted
7. Arbitration

C. What kinds of cases are arbitrated?

1. Marketplace disputes
 - a. products/services
 - b. average amount
 - c. home improvement
 - d. auto repair
 - e. high tag items
2. Not regulated issues
3. Nor allegations of a crime
4. Nor damages which go beyond the marketplace transaction

D. Preparing a case for arbitration

1. Agreement to arbitrate
 - .sets parameters of dispute
 - .defines arbitrator's authority
2. Selecting the arbitrator(s)
 - .selection process
 - .is there a conflict?
 - major - disqualify
 - minor - reveal
3. Set hearing date and location

III. THE ARBITRATOR

A. An arbitrator must be fair

.judge and jury

B. An arbitrator must be neutral

.in fact

.in appearance

C. An arbitrator must learn the facts

D. An arbitrator must make decisions

.don't try to be all things to all people

E. An arbitrator must wrap-up loose ends

.imagination

.creativity

IV. THE HEARING

A. Who may be present?

1. the parties
2. legal or non-legal representatives
3. witnesses
4. outside observers
 - a. trainees
 - b. government representatives
 - c. representatives from private organizations
 - d. business representatives
5. If a party is not present

B. Beginning the hearing

1. Opening statement by arbitrator or BBB representative
 - a. Process is legally binding - an alternative to litigation
 - b. Waiver of conflicts, if any
 - c. Presence of observers
 - d. BBB's role
 - e. Explanation of procedures
2. Review arbitration agreement and decisions sought
3. Administer oath of witness

C. The hearing

1. What is "typical"?
2. How should an arbitrator conduct a hearing?
3. Full presentation by parties and witnesses
4. Arbitrator's fact-finding
5. Buffer technique for angry parties
6. Kinds of evidence presented
 - a. Hearsay
 - b. court decisions
 - c. repetitious or irrelevant evidence

D. The witnesses

1. non-experts
2. experts

E. "If" situations

1. the parties are talking settlement
2. there appears to be fraud

F. Need for an inspection?

G. Need for an expert?

. arrange through BBB

H. Closing arguments

I. Holding the hearing open

V. THE AWARD

A. What goes into a decision?

1. Action
2. Cash
3. Both
4. Nothing
5. Time
6. Creativity

B. Oral or written

C. Writing the award (decision)

.must state rationale - either in decision or in separate document

D. Reopening the award

E. Court enforcement of award

F. Arbitrator's obligations

VI. CONCLUSIONS

**AGREEMENT TO ARBITRATE****DATE:** April 10, 1981**ARBITRATION NO.:** 0001**CUSTOMER:** Sam Carney
223 Lilac Lane
Anywhere, USA**BUSINESS(ES):** Schmidt Imports
123 Main Street
Anywhere, USA

This is a legal contract. Before signing, you should read it carefully to be sure it gives a fair description of the dispute to be arbitrated. You should remember that your signature on this contract means that you have decided to use this private way of settling your dispute instead of going to court. After a decision by an arbitrator, a court normally will refuse to hear the facts in a case in all but the most unusual situations.

NATURE OF DISPUTE:

Customer has a five month old Wartburg GTi and is dissatisfied with screeching sound that is emitted when the brakes are applied. Business claims that the sound emitted is slight and a normal condition for this type of brake system.

DECISION SOUGHT:

Customer is seeking new brake replacement with equivalent 36,000 mile guarantee as original brakes. Business offered after-market pads designed to lessen the noise but cautioned the customer of lesser wearability.

I agree to arbitrate the above dispute under the rules of the Better Business Bureau and appropriate state laws, and to follow the arbitrator's decision after a hearing into this dispute. I further agree that, unless otherwise waived in writing, the decision will not include damages such as loss of wages, mental anguish, punitive, consequential or incidental damages; that the decision cannot go beyond the price of the product or service involved in the dispute; and that the decision will not go into allegations of legal violations or areas of the law which cannot be arbitrated. Finally, I have read this entire agreement and I agree with everything stated in it.

Date _____

Signed _____

Print your name _____

Representing _____

I do _____ do not _____ intend to appear at the hearing.

If you intend to be represented by legal counsel, please indicate your attorney's name and address:

Facts of Hearing---Carney vs. Schmidt Imports

Customer Facts: Mr. Carney purchased his 1981 Wartburg GTi from Stephen Schmidt of Schmidt Imports on January 8, 1981 for \$22,000. He claims that before he bought the car he drove it only once around the block as no demonstrator was available. He noticed no brake noise at that time. However for a few days after he had the car at home he noticed a grating, high-pitched screeching when the brakes were applied. He took the car to the dealer to try to alleviate the problem he was having. Schmidt first told Carney that it was a likely problem due to the metal components of this particular brake system. Since Carney's car is only four months old with 4,500 miles on it he claims that he should have a new brake system installed with the original 36,000 mile guarantee. Having paid \$22,000 for the car Carney feels he is entitled to a quiet brake system.

Business Facts: Stephen Schmidt of Schmidt Imports stated that a Wartburg GTi has the following standard brake system. He contends that some noise will be found when braking due to the highly metallic content of the brake pad against the disc. Schmidt says any metal against metal will emit sound. He further went on to explain that he did offer to install after-market pads with less metallic content which he said would be quieter but that he could not guarantee them lasting as long as the original pads. He continues by saying that he advised Carney that the replacement pads would be more susceptible to fade if frequent stops from high speed were contemplated. Mr. Schmidt at the end of the hearing claimed that his Wartburg GTi, identical to Carney's except in color, also made slight noise when the brakes were applied and offered to the arbitrator to test drive it for himself.

Arbitrator Questions:

Arbitrator - Does the brake squeal at sudden or gradual stops?
Consumer - It occurs at both times.

Arbitrator - Do all Wartburg GTis have this similar brake condition?
Business - Yes, they do because of the metallic content of their brake components.

Inspection: Arbitrator drove both Carney's and Schmidt's automobiles finding a slight squeal from both when brakes applied.

Serving as the arbitrator, what additional questions would you ask the business and/or customer?

Having only the aforementioned facts of the case please render an award along with the reasons for your award on the forms provided. Please return these forms to the Bureau within 10 days. For this exercise you need not have the award notarized.



DECISION

DATE:

CUSTOMER: Sam Carney

ARBITRATION NO.: 0001

BUSINESS(ES): Schmidt Imports

I, the undersigned Arbitrator, having been selected pursuant to the arbitration rules of the Better Business Bureau and having heard the claims and considered the evidence of the above named Parties to this dispute, do give my decision as follows:

Date _____

Arbitrator's Signature _____

STATE OF
COUNTY OF

ss.:

On this _____ day of _____, 19____, before me personally came and appeared _____ to me known and known to me to be the individual(s) described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

My Commission expires: _____

(Notary Public)

REASONS FOR DECISION

DATE:

ARBITRATION NUMBER: 0001

CUSTOMER: Sam Carney

BUSINESS(ES): Schmidt Imports

Date _____

Arbitrator's Signature _____

**AGREEMENT TO ARBITRATE****DATE:** January 1, 1981**ARBITRATION NO.:** 0002**CUSTOMER:**

Mr. and Mrs. James Smith
445 Lake Road
Anytown, USA

BUSINESS(ES):

Delorio Autos
321 Grand Ave.
Anytown, USA

This is a legal contract. Before signing, you should read it carefully to be sure it gives a fair description of the dispute to be arbitrated. You should remember that your signature on this contract means that you have decided to use this private way of settling your dispute instead of going to court. After a decision by an arbitrator, a court normally will refuse to hear the facts in a case in all but the most unusual situations.

NATURE OF DISPUTE:

Customer alleges that original paint job of car was defective on the hood and car roof where purplish splotching occurs. Business claims that the problem is due to "industrial fallout", a common occurrence in this area; which will not be alleviated if the car is repainted.

DECISION SOUGHT:

Customer is seeking repainting of the car hood and roof. Business contends they are not responsible for the "industrial fallout" problem and that no additional painting is necessary.

I agree to arbitrate the above dispute under the rules of the Better Business Bureau and appropriate state laws, and to follow the arbitrator's decision after a hearing into this dispute. I further agree that, unless otherwise waived in writing, the decision will not include damages such as loss of wages, mental anguish, punitive, consequential or incidental damages; that the decision cannot go beyond the price of the product or service involved in the dispute; and that the decision will not go into allegations of legal violations or areas of the law which cannot be arbitrated. Finally, I have read this entire agreement and I agree with everything stated in it.

Date _____

Signed _____

Print your name _____

Representing _____

I do _____ do not _____ intend to appear at the hearing.

If you intend to be represented by legal counsel, please indicate your attorney's name and address:

Customer Presentation: Mr. Smith states that his dark metallic blue 1979 Star station wagon which he purchased July 19, 1979 from Delorio Autos shows small reddish-purplish spots on the hood and roof of his car. He claims that he and his wife have been meticulous with the care of washing and waxing the car. They will not even let their kids in the garage for fear of them scratching bikes and toys along the sides of the car. Mr. Smith claims that there is a manufacturer's defect in the way the metal was treated which may have caused the paint to appear spotted. He took the car in to Stephen Kay at Delorio Autos and he firmly denied that there was any manufacturer problem.

Business Presentation: Mr. Stephen Kay began his presentation by defining the term "industrial fallout" as the industrial pollution commonly found in the northeastern part of the country which can often settle on cars causing these reddish-purplish spots. He continued to say that repainting of the car may first of all result in mismatching of the paint color but more importantly there is no guarantee that the spots will not reappear again as the air is constantly filled with this type of pollution.

Arbitrator Questions:

Arbitrator - When did you first notice the spots?

Customer - In the fall of 1980. We went to the dealer 10/31/80.

Arbitrator - Is this a common complaint that you receive about cars?

Business - In this part of the country industrial fallout is very common.

Arbitrator - Where is the car parked for the most part, outside or in a garage?

Customer - It is my wife's car and is kept in a garage. She only uses her car for running errands.

Arbitrator - Would the problem be alleviated or lessened if the car were painted a different color?

Business - A non-metallic color would lessen the possibility of this occurring.

Inspection: Inspection of the vehicle took place on the day of the hearing by the arbitrator, Mr. and Mrs. Smith, and Stephen Kay of Delorio Autos. They found small reddish-purplish speckles on the roof and hood of the car.

PROPOSED CUSTOMER LETTER

(Use in any case where customer has been denied a claim and has not accepted a compromise offer.)

DEAR _____:

WE ARE SORRY THAT YOU HAVE CONTINUED TO BE DISSATISFIED WITH THE DECISION THAT WAS MADE CONCERNING YOUR _____.

WE KNOW THAT YOU ARE SINCERE IN THE POSITION YOU HAVE TAKEN, AND WE HOPE THAT YOU CAN ALSO UNDERSTAND OUR POINT OF VIEW AS IT RELATES TO THE MANUFACTURER'S OBLIGATION AND WE BELIEVE WE MADE A CORRECT DECISION IN YOUR CASE.

AS YOU PERHAPS KNOW, GENERAL MOTORS, THROUGH THE LOCAL BETTER BUSINESS BUREAU, PROVIDES A SERVICE OF VOLUNTARY MEDIATION/ARBITRATION FOR CONSUMER COMPLAINT DISAGREEMENTS. GENERAL MOTORS HAS PRE-COMMITTED ITSELF TO ACCEPT AND ABIDE BY THE DECISION MADE IN THIS ARBITRATION PROCESS.

THIS SERVICE IS AVAILABLE TO YOU IF YOU DESIRE IT. THERE IS NO FEE FOR THE CUSTOMER WHO WISHES TO HAVE A CLAIM CONSIDERED, AND THE MEDIATION AND ARBITRATION PROCESS IS NOT A LONG ONE.

IF YOU CARE TO AVAIL YOURSELF OF THIS SERVICE, CALL OR WRITE _____ (NAME), AT THE _____ (AREA) BETTER BUSINESS BUREAU OFFICE, _____ (ADDRESS-PHONE NUMBER). YOU WILL BE FURNISHED WITH FULL DETAILS OF THE PROGRAM.

VERY TRULY YOURS,

(The zone may elect to forward a copy to BBB with a short statement of the nature of the complaint and the Division's position, after conferring with BBB.)



Consumer Federation of California

P.O. Box 27940 Los Feliz Station • Los Angeles, California 90027 • (213) 736-1316

TESTIMONY OF
MARY SOLOW, PRESIDENT
CONSUMER FEDERATION OF CALIFORNIA

BEFORE THE
ASSEMBLY COMMITTEE ON
CONSUMER PROTECTION AND TOXIC MATERIALS
SACRAMENTO, CALIFORNIA
February 9, 1982

President
Mary Solow

Secretary
Dora "Mitzi" Rodriguez

Treasurer
Jackie Walsh

Vice Presidents
Albin J. Gruhn
Regene Mitchell
Gerald Rubin

Policy Board
Joe Belardi
Frank Brown
Steven Brown
Marjorie Caldwell
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William Demers
Barbara Erickson
Susan Giesberg
Shirley Goldinger
Berneice Gordon
C. Annette Grajeda
Ruth Jernigan
Michele Husson-Jones
Roy Kiesling
John B. Kinnick
Robert Medina
Max Mont
Barbara Nardella
James L. Quillin
Belva Roberts
Geri Stone
Dan Swinton
Jeane Thom
Jerry Vercruse

Madame Chairman. Members of the Assembly Committee on
Consumer Protection and Toxic Materials, Ladies and
Gentlemen:

My name is Mary Solow and I'm president of the
Consumer Federation of California, a statewide non-
profit federation of more than 80 state and local organi-
zations and numerous individuals representing more than
a million Californians working for better programs of
consumer protection and education. Among our members are
consumer cooperatives, credit unions, and agricultural,
consumer and labor organizations.

I also have served as a former consumer representative
on the Southern California Ford Consumer Appeals Board.

I welcome this opportunity to come before you today
to discuss a very painful subject to most consumers,
the problem of a new car which doesn't behave the way
it should, and some of the ways consumers, governmental
leaders and the automotive industry have tried to improve
the climate of confusion now existing between seller and
customer.

In particular, I want to talk about the establishment of third-party mechanisms to settle repair and warranty disputes for new car owners. Programs such as the Ford Consumer Appeals Board, AutoCAP of the Motor Dealers Assn., the Better Business Bureau's Arbitration Program and Crysler's Customer Satisfaction Arbitration Board have provided some help to consumers and redress in the marketplace not available just a few years ago.

This programs aren't perfect, not by a long shot, but they do provide a welcome alternative to lawsuits and our overloaded courts.

In 1979, after extensive talks with Esther Peterson, formerly the Director of the U.S. Office of Consumer Affairs, and state consumer leaders, I consented to join in a new Ford-Lincoln Mercury program aimed at improving the general relations between consumers and franchised automobile and truck dealers. The Ford Consumer Appeals Board was designed to mediate unresolved service complaints in a fair and equitable manner through the use of a third-party appeals mechanism. The purpose of the Consumer Appeals Boards was to make sure that customers got a fair hearing on service complaints from an impartial board whose members were independent of Ford Motor Company.

Our panel was made up of three consumer representatives and two automobile dealers, and our decisions were binding upon all affected area dealers, with the consumer free to accept or reject the mediation effort. So far, so good.

To alert the public to the program, our pictures were taken and soon advertisements started appearing in Time, Sunset, the National Geographic, and other publications. I was concerned about this promotional campaign, and my fears deepened when I learned that Ford planned to run a follow-up advertisement with the signatures

of board members. I was uncomfortable with the use of my picture, my organization and my name in Ford's advertising. Our attempts to insert consumer mediation material in the owner's manual were not encouraged.

From the beginning of my service on the Ford board, and I served in this capacity for six months, I was deeply unhappy about a number of procedural matters which Ford wouldn't correct.

Telephone calls overloaded the system in Pico Rivera and when customers did get through and leave messages, they got no response.

When the case came before the Consumer Appeals Board, the meetings were closed to the public, and to the principals; the only people present were members of the board and Ford Motor Company.

Consumers never were notified of the hearings, nor were they given copies of the statements prepared by Ford Motor Company and the dealer. If new facts were brought up by the dealer, the consumer was not allowed to rebut those statements.

As for the cases we handled, we heard a wide variety of automotive problems, covering a tangled mixture of unclear, limited warranties, hidden warranties and confusion. I remember we had a number of rust cases, and if the cars came from other parts of the country or from Canada, the confusion grew. What became very clear was that the same justice can never be dispensed by these boards, as long as the law remains unclear.

These complaint-handling mechanisms do not always settle the case in favor of the consumer, nor should they. But they do offer a significant opportunity to the consumer and to the dealer by providing a fresh look at the problem and ways of solving it.

I might mention that other mechanisms might serve the consumer better -- a local office of Consumer Affairs, the Bureau of Auto

Repair, the Small Claims Court or the regular Courts.

The Consumer Federation of California wants to work with the representatives of the automotive industry to develop effective and fair dispute resolution mechanisms for the public to deal with automobile problems.

However, I was distressed to hear of Ford Motor Company's strong opposition, along with other auto lobbyists, to the lemon bill, using the consumer appeals boards as arguments against this vital legislation.

If one thing has become clear from my service with Ford, it is that consumers, manufacturers and the courts need to know specifically what the law requires, and we need to develop better definitions of "lemon," "reasonable period of time," etc.

The most common complaint consumers have continues to be with automobiles. There has not been any major problem with pen and pencil sets, radios or toasters. It has consistently been with automobiles, and, to a lesser extent, major home appliances.

Consumers are enormously frustrated and exasperated with lemon or near-lemon automobiles, particularly in realizing they had paid many thousands of dollars for a vehicle they reasonably expected to perform. If it were defective, they had the reasonable expectation that they could take it to the dealer and have it repaired expeditiously, or get a refund, or obtain a well-performing replacement.

In summary, the Consumer Federation of California believes there must be a significant commitment in Sacramento by lawmakers to improve product performance, consumer education and enforcement. Until this happens, consumers and industry will continue to experience a great deal of frustration.

REGS - INFORMAL DISPUTE SETTLEMENT PROCEDURES

(16 Code of Federal Regulations, Part 703)

**PART 703—INFORMAL DISPUTE
SETTLEMENT PROCEDURES**

Sec.

703.1 Definitions.

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MINIMUM REQUIREMENTS OF THE MECHANISM

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703.8 Openness of records and proceedings.

AUTHORITY: 15 U.S.C. 2309 and 2310.

§ 703.1 Definitions.

(a) "The Act" means the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act, 15 U.S.C. 2301, *et seq.*

(b) "Consumer product" means any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes (including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed).

(c) "Written warranty" means: (1) any written affirmation of fact or written promise made in connection with the sale of a consumer product by a supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time, or

(2) any undertaking in writing in connection with the sale by a supplier of a consumer product to refund, repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking, which written affirmation, promise or undertaking becomes part of the basis of the bargain between a supplier and a buyer for purposes other than resale of such product.

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

(e) "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.

(f) "Members" means the person or persons within a Mechanism actually deciding disputes.

(g) "Consumer" means a buyer (other than for purposes of resale) of any consumer product, any person to whom such product is transferred during the duration of a written warranty applicable to the product, and any other person who is entitled by the terms of such warranty or under applicable state law to enforce against the warrantor the obligations of the warranty.

(h) "On the face of the warranty" means: (1) if the warranty is a single sheet with printing on both sides of the sheet, or if the warranty is comprised of more than one sheet, the page on which the warranty text begins;

(2) if the warranty is included as part of a longer document, such as a use and care manual, the page in such document on which the warranty text begins.

§ 703.2 Duties of warrantor.

(a) The warrantor shall not incorporate into the terms of a written warranty a Mechanism that fails to comply with the requirements contained in §§ 703.3-703.8. This paragraph shall not prohibit a warrantor from incorporating into the terms of a written warranty the step-by-step procedure which the consumer should take in order to obtain performance of any obligation under the warranty as described in section 102(a)(7) of the Act and required by Part 701 of this subchapter.

(b) 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).

(c) 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 con-

taining spaces requesting the information which the Mechanism may require for prompt resolution of warranty disputes; or (ii) a telephone number of the Mechanism which consumers may use without charge;

(2) The name and address of the Mechanism;

(3) A brief description of Mechanism procedures;

(4) The time limits adhered to by the Mechanism; and

(5) The types of information which the Mechanism may require for prompt resolution of warranty disputes.

(d) The warrantor shall take steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes. Nothing contained in paragraphs (b), (c), or (d) of this section shall limit the warrantor's option to encourage consumers to seek redress directly from the warrantor as long as the warrantor does not expressly require consumers to seek redress directly from the warrantor. The warrantor shall proceed fairly and expeditiously to attempt to resolve all disputes submitted directly to the warrantor.

(e) Whenever a dispute is submitted directly to the warrantor, the warrantor shall, within a reasonable time, decide whether, and to what extent, it will satisfy the consumer, and inform the consumer of its decision. In its notification to the consumer of its decision, the warrantor shall include the information required in § 703.2 (b) and (c).

(f) The warrantor shall: (1) respond fully and promptly to reasonable requests by the Mechanism for information relating to disputes;

(2) upon notification of any decision of the Mechanism that would require action on the part of the warrantor, immediately notify the Mechanism whether, and to what extent, warrantor will abide by the decision; and

(3) perform any obligations it has agreed to.

(g) The warrantor shall act in good faith in determining whether, and to what extent, it will abide by a Mechanism decision.

(h) The warrantor shall comply with any reasonable requirements imposed by the Mechanism to fairly and expeditiously resolve warranty disputes.

MINIMUM REQUIREMENTS OF THE MECHANISM

§ 703.3 Mechanism organization.

(a) The Mechanism shall be funded and competently staffed at a level sufficient to ensure fair and expeditious resolution of all disputes, and shall not charge consumers any fee for use of the Mechanism.

(b) The warrantor and the sponsor of the Mechanism (if other than the warrantor) shall take all steps necessary to ensure that the Mechanism, and its members and staff, are sufficiently insulated from the warrantor and the sponsor, so that the decisions of the members and the performance of the staff are not influenced by either the warrantor or the

sponsor. Necessary steps shall include, at a minimum, committing funds in advance, basing personnel decisions solely on merit, and not assigning conflicting warrantor or sponsor duties to Mechanism staff persons.

(c) The Mechanism shall impose any other reasonable requirements necessary to ensure that the members and staff act fairly and expeditiously in each dispute.

§ 703.4 Qualification of members.

(a) No member deciding a dispute shall be: (1) A party to the dispute, or an employee or agent of a party other than for purposes of deciding disputes; or

(2) A person who is or may become a party in any legal action, including but not limited to class actions, relating to the product or complaint in dispute, or an employee or agent of such person other than for purposes of deciding disputes. For purposes of this paragraph (a) a person shall not be considered a "party" solely because he or she acquires or owns an interest in a party solely for investment, and the acquisition or ownership of an interest which is offered to the general public shall be prima facie evidence of its acquisition or ownership solely for investment.

(b) When one or two members are deciding a dispute, all shall be persons having no direct involvement in the manufacture, distribution, sale or service of any product. When three or more members are deciding a dispute, at least two-thirds shall be persons having no direct involvement in the manufacture, distribution, sale or service of any product. "Direct involvement" shall not include acquiring or owning an interest solely for investment, and the acquisition or ownership of an interest which is offered to the general public shall be prima facie evidence of its acquisition or ownership solely for investment. Nothing contained in this section shall prevent the members from consulting with any persons knowledgeable in the technical, commercial or other areas relating to the product which is the subject of the dispute.

(c) Members shall be persons interested in the fair and expeditious settlement of consumer disputes.

§ 703.5 Operation of the Mechanism.

(a) The Mechanism shall establish written operating procedures which shall include at least those items specified in paragraphs (b)-(j) of this section. Copies of the written procedures shall be made available to any person upon request.

(b) Upon notification of a dispute, the Mechanism shall immediately inform both the warrantor and the consumer of receipt of the dispute.

(c) The Mechanism shall investigate, gather and organize all information necessary for a fair and expeditious decision in each dispute. When any evidence gathered by or submitted to the Mechanism raises issues relating to the number of repair attempts, the length of repair periods, the possibility of unreasonable use of the product, or any other issues relevant in light of Title I of the Act (or

rules thereunder), including issues relating to consequential damages, or any other remedy under the Act (or rules thereunder), the Mechanism shall investigate these issues. When information which will or may be used in the decision, submitted by one party, or a consultant under § 703.4(b), or any other source tends to contradict facts submitted by the other party, the Mechanism shall clearly, accurately, and completely disclose to both parties the contradictory information (and its source) and shall provide both parties an opportunity to explain or rebut the information and to submit additional materials. The Mechanism shall not require any information not reasonably necessary to decide the dispute.

(d) If the dispute has not been settled, the Mechanism shall, as expeditiously as possible but at least within 40 days of notification of the dispute, except as provided in paragraph (e) of this section: (1) render a fair decision based on the information gathered as described in paragraph (c) of this section, and on any information submitted at an oral presentation which conforms to the requirements of paragraph (f) of this section (A decision shall include any remedies appropriate under the circumstances, including repair, replacement, refund, reimbursement for expenses, compensation for damages, and any other remedies available under the written warranty or the Act (or rules thereunder); and a decision shall state a specified reasonable time for performance);

(2) Disclose to the warrantor its decision and the reasons therefor;

(3) If the decision would require action on the part of the warrantor, determine whether, and to what extent, warrantor will abide by its decision; and

(4) Disclose to the consumer its decision, the reasons therefor, warrantor's intended actions (if the decision would require action on the part of the warrantor), and the information described in paragraph (g) of this section. For purposes of this paragraph (d) a dispute shall be deemed settled when the Mechanism has ascertained from the consumer that: (i) the dispute has been settled to the consumer's satisfaction; and (ii) the settlement contains a specified reasonable time for performance.

(e) The Mechanism may delay the performance of its duties under paragraph (d) of this section beyond the 40 day time limit: (1) where the period of delay is due solely to failure of a consumer to provide promptly his or her name and address, brand name and model number of the product involved, and a statement as to the nature of the defect or other complaint; or

(2) For a 7 day period in those cases where the consumer has made no attempt to seek redress directly from the warrantor.

(f) The Mechanism may allow an oral presentation by a party to a dispute (or a party's representative) only if: (1) both warrantor and consumer expressly agree to the presentation;

(2) Prior to agreement the Mechanism fully discloses to the consumer the following information: (i) that the presentation by either party will take place only if both parties so agree, but that if they agree, and one party fails to appear at the agreed upon time and place, the presentation by the other party may still be allowed;

(ii) That the members will decide the dispute whether or not an oral presentation is made;

(iii) The proposed date, time and place for the presentation; and

(iv) A brief description of what will occur at the presentation including, if applicable, parties' rights to bring witnesses and/or counsel; and

(3) Each party has the right to be present during the other party's oral presentation. Nothing contained in this paragraph (b) of this section shall preclude the Mechanism from allowing an oral presentation by one party, if the other party fails to appear at the agreed upon time and place, as long as all of the requirements of this paragraph have been satisfied.

(g) The Mechanism shall inform the consumer, at the time of disclosure required in paragraph (d) of this section that: (1) if he or she is dissatisfied with its decision or warrantor's intended actions, or eventual performance, legal remedies, including use of small claims court, may be pursued;

(2) The Mechanism's decision is admissible in evidence as provided in section 110(a) (3) of the Act; and

(3) The consumer may obtain, at reasonable cost, copies of all Mechanism records relating to the consumer's dispute.

(h) If the warrantor has agreed to perform any obligations, either as part of a settlement agreed to after notification to the Mechanism of the dispute or as a result of a decision under paragraph (d) of this section, the Mechanism shall ascertain from the consumer within 10 working days of the date for performance whether performance has occurred.

(i) A requirement that a consumer resort to the Mechanism prior to commencement of an action under section 110(d) of the Act shall be satisfied 40 days after notification to the Mechanism of the dispute or when the Mechanism completes all of its duties under paragraph (d) of this section, whichever occurs sooner. Except that, if the Mechanism delays performance of its paragraph (d) of this section duties as allowed by paragraph (e) of this section, the requirement that the consumer initially resort to the Mechanism shall not be satisfied until the period of delay allowed by paragraph (e) has ended.

(j) Decisions of the Mechanism shall not be legally binding on any person. However, the warrantor shall act in good faith, as provided in § 703.2(g) in any civil action arising out of a warranty obligation and relating to a matter considered by the Mechanism, any decision of the Mechanism shall be admissible in evidence, as provided in section 110(a) (3) of the Act.

§ 703.6 Recordkeeping.

(a) The Mechanism shall maintain records on each dispute referred to it which shall include: (1) Name, address and telephone number of the consumer;

(2) Name, address, telephone number and contact person of the warrantor;

(3) Brand name and model number of the product involved;

(4) The date of receipt of the dispute and the date of disclosure to the consumer of the decision;

(5) All letters or other written documents submitted by either party;

(6) All other evidence collected by the Mechanism relating to the dispute, including summaries of relevant and material portions of telephone calls and meetings between the Mechanism and any other person (including consultants described in § 703.4(b));

(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.

(b) The Mechanism shall maintain an index of each warrantor's disputes grouped under brand name and subgrouped under product model.

(c) The Mechanism shall maintain an index for each warrantor as will show:

(1) All disputes in which the warrantor has promised some performance (either by settlement or in response to a Mechanism decision) and has failed to comply; and

(2) All disputes in which the warrantor has refused to abide by a Mechanism decision.

(d) The Mechanism shall maintain an index as will show all disputes delayed beyond 40 days.

(e) The Mechanism shall compile semi-annually and maintain statistics which show the number and percent of disputes in each of the following categories: (1) Resolved by staff of the Mechanism and warrantor has complied;

(2) Resolved by staff of the Mechanism, time for compliance has occurred, and warrantor has not complied;

(3) Resolved by staff of the Mechanism and time for compliance has not yet occurred;

(4) Decided by members and warrantor has complied;

(5) Decided by members, time for compliance has occurred, and warrantor has not complied;

(6) Decided by members and time for compliance has not yet occurred;

(7) Decided by members adverse to the consumer;

(8) No jurisdiction;

(9) Decision delayed beyond 40 days under § 703.5(e)(1);

(10) Decision delayed beyond 40 days under § 703.5(e)(2);

(11) Decision delayed beyond 40 days for any other reason; and

(12) Pending decision.

(f) The Mechanism shall retain all records specified in paragraphs (a)-(e) of this section for at least 4 years after final disposition of the dispute.

§ 703.7 Audits.

(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 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);

(2) Review of the indexes maintained pursuant to § 703.6(b), (c), and (d); 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). (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.)

(c) A report of each audit under this section shall be submitted to the Federal Trade Commission, and shall be made available to any person at reasonable cost. The Mechanism may direct its auditor to delete names of parties to disputes, and identity of products involved, from the audit report.

(d) Auditors shall be selected by the Mechanism. No auditor may be involved with the Mechanism as a warrantor, sponsor or member, or employee or agent thereof, other than for purposes of the audit.

§ 703.8 Openness of records and proceedings.

(a) The statistical summaries specified in § 703.6(e) shall be available to any person for inspection and copying.

(b) Except as provided under paragraphs (a) and (e) of this section, and paragraph (c) of § 703.7, all records of

the Mechanism may be kept confidential, or made available only on such terms and conditions, or in such form, as the Mechanism shall permit.

(c) The policy of the Mechanism with respect to records made available at the Mechanism's option shall be set out in the procedures under § 703.5(a); the policy shall be applied uniformly to all requests for access to or copies of such records.

(d) Meetings of the members to hear and decide disputes shall be open to observers on reasonable and nondiscriminatory terms. The identity of the parties and products involved in disputes need not be disclosed at meetings.

(e) Upon request the Mechanism shall provide to either party to a dispute: (1) access to all records relating to the dispute; and

(2) Copies of any records relating to the dispute, at reasonable cost.

(f) The Mechanism shall make available to any person upon request, information relating to the qualifications of Mechanism staff and members.

Effective: July 4, 1976.

Promulgated by the Federal Trade Commission December 31, 1975.

VIRGINIA M. HARDING,
Acting Secretary.

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Supreme Court of California

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Supreme Court of California

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/s/Shane McKenzie

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