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 13 of 16 • Pages 1150 – 1387 of 1937

HORVITZ & LEVY LLP
LISA PERROCHET (BAR NO. 132858)
JOHN A. TAYLOR, JR. (BAR NO. 129333)
*SHANE H. MCKENZIE (BAR NO. 228978)
3601 WEST OLIVE AVENUE, 8TH FLOOR
BURBANK, CALIFORNIA 91505-4681
(818) 995-0800 • FAX: (844) 497-6592
lperrochet@horvitzlevy.com
jtaylor@horvitzlevy.com
smckenzie@horvitzlevy.com

CLARK HILL LLP
DAVID L. BRANDON (BAR NO. 105505)
555 SOUTH FLOWER STREET, 24TH FLOOR
LOS ANGELES, CALIFORNIA 90071
(213) 891-9100 • FAX: (213) 488-1178
dbrandon@clarkhill.com

CLARK HILL LLP
GEORGES A. HADDAD (BAR NO. 241785)
505 MONTGOMERY STREET, 13TH FLOOR
SAN FRANCISCO, CALIFORNIA 94111
(415) 984-8500 • FAX: (415) 984-8599
ghaddad@clarkhill.com

ATTORNEYS FOR DEFENDANT AND RESPONDENT
FCA US, LLC

3/5/86

ASSEMBLY COMMITTEE ON CONSUMER PROTECTION

ROBERT C. FRAZEE, CHAIRMAN

MAR - 6 1986

Bill Analysis Work Sheet

(Please return at least 10 working days prior to hearing date)

DATE: 3-5 , 1986 TO: ASSEMBLYPERSON Jaspew

BILL NO.: AB 3611 HEARING DATE: 4/3/86

IS THIS BILL PROPOSED TO BE AMENDED? YES ? NO

AUTHOR'S AMENDMENTS PRIOR TO HEARING:
An Author may amend a bill at any time prior to a hearing; however, author's amendments shall be submitted to the committee secretary at least three (3) working days prior to the hearing at which the bill is set. For a Thursday hearing, amendments shall be submitted to the committee secretary **(IN LEGISLATIVE COUNSEL FORM)** prior to 2:00 PM on Friday. This procedure will enable committee staff to reanalyze the bill and to have the amended version in print before the hearing. **NOTE:** Please inform and, if possible provide even non-legislative Counsel form drafts to the committee consultant as soon as possible.

If it is necessary for an author to submit amendments within three (3) working days of the hearing, the author shall clear such amendments with the Chairman.

When amendments which have not been cleared by the Chairman are submitted within three (3) working days of the hearing, the bill will be held over until the next regularly scheduled hearing of the Committee.

CONTACT PERSON(S)
YOUR OFFICE

Arnie Peters 50991

CONTACT PERSON(S)
SPONSOR'S OFFICE

Please return to : Assembly Consumer Protection Committee
Betty Johnson, Committee Secretary
1100 J Street, Room 570
324-2721

Principal Consultant, Jay J. DeFuria
Associate Consultant, David H. Grafft

rev.1/86

3/5/86

ASSEMBLY COMMITTEE ON CONSUMER PROTECTION
Robert C. Frazee, Chairman

BACKGROUND INFORMATION REQUEST

Measure: AB 3611
Author : Assemblywoman Tanner

1. Origin of the bill:

   a. Who is the source of the bill? What person, organization, or governmental entity requested introduction?

      Assemblywoman Tanner

   b. Has a similar bill been before either this session or a previous session of the legislature? If so, please identify the session, bill number and disposition of the bill.

      AB 1787, Chapter 388, 1982

   c. Has there been an interim committee report on the bill? If so, please identify the report.

      No

2. What is the problem or deficiency in the present law which the bill seeks to remedy? Disciplines present administration of auto manufacturer-run arbitration programs under the "lemon law" by requiring they be certified and by creating a competing state-run arbitration process. Ensures that owners of "lemon" cars will be reimbursed their sales tax and unused license and registratio

3. Please attach copies of any background material in explanation of the bill, or state where such material is available for reference by committee staff.

   Jay DeFuria probably has more background material than we do.

4. Please attach copies of letters of support or opposition from any group, organization, or governmental agency who has contacted you either in support or opposition to the bill.

5. If you plan substantive amendments to this bill prior to hearing, please explain briefly the substance of the amendments to be prepared.

   Don't know at this time

6. List the witnesses you plan to have testify.

   Don't know at this time (Probably Donna Selnick)

RETURN THIS FORM TO: ASSEMBLY COMMITTEE ON CONSUMER PROTECTION
Phone 324-2721

from Sara Michael
George Steffes
414-6034

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

BUREAU OF
CONSUMER PROTECTION

August 28, 1985

Mr. Dean W. Determan
Vice President, Mediation/Arbitration Division
Council of Better Business Bureaus, Inc.
1515 Wilson Boulevard
Arlington, Virginia 22209

Dear Mr. Determan:

Thank you for your letter of May 7, 1985, requesting Commission staff to review the forms, brochures, rules, and procedures of AUTO LINE, the Better Business Bureau's informal mechanism for resolving automotive disputes. We have completed our examination of the materials submitted with your request, the materials provided by Richard Warren on July 3 and July 15, 1985, and the document provided by Francine Payne on August 13, 1985. We now provide an informal opinion regarding compliance of AUTO LINE's written procedures with the Commission's Rule on Informal Dispute Settlement Procedures, 16 C.F.R. Part 703 ("the Rule").[1]

A brief chronology of the AUTO LINE process will be helpful. According to the procedures described in the materials you have provided, when a consumer telephones a local Bureau with an automotive complaint, an AUTO LINE staff member fills out sections A-O of an Automotive Case Record ("ACR") form. A copy of this form is then sent to the consumer, together with a BBB brochure entitled "A National Program of Mediation/Arbitration for Automotive Disputes" (the "Brochure") and a memorandum from "BBB AUTO LINE" to "The Consumer" regarding "Our Handling of Your Complaint" (the "Memo"). The consumer completes the remaining sections of the ACR form and returns it to the Bureau, which transfers the information to the remaining copies of the ACR and sends one of the copies to the warrantor. At this stage, AUTO LINE staff may attempt to mediate the dispute. If mediation is unsuccessful (or deemed inappropriate, or rejected by the consumer), the Bureau sends the consumer and the manufacturer an

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[1] Please note that the opinions expressed in this letter are those of the staff of the Bureau of Consumer Protection and do not necessarily represent the views of the Commission or any individual Commissioner. This opinion is intended solely to assist you in meeting the requirements of the Commission's Rule, and may not be used for purposes of advertising your program to consumers.

Agreement to Arbitrate form, a list of potential arbitrators, and a pamphlet entitled "Modified Rules for the Arbitration of Automotive Disputes" (the "Modified Rules"). When both parties return the Agreement to Arbitrate form, the case proceeds to arbitration. After arbitration, the consumer receives a notarized Decision and an Acceptance or Rejection of Decision ("A/R") form. Finally, the arbitrator files a separate Reasons for Decision form with the BBB.

Please note that our review of the AUTO LINE program is based upon the brochures, forms, and other documents you have submitted.[2] Our analysis extends only to the question whether the procedures described in these written materials satisfy the requirements of the Rule. Moreover, we express no opinion in this letter regarding the warranties or the practices of warrantors who participate in the AUTO LINE program. As a result, we do not address issues of compliance with Section 703.2 of the Rule, which sets forth warrantors' duties under the Rule. Nor do we express any view on the recordkeeping or auditing of the AUTO LINE mechanism. The materials you have submitted do not describe the methodology for keeping AUTO LINE records, compiling statistics, or conducting the required audit. As a result, we do not address compliance with Sections 703.6 and 703.7 of the Rule.

In short, our review addresses the compliance of your procedures with Sections 703.3, 703.4, 703.5, and 703.8 of the Rule. With the exceptions noted below, we find that AUTO LINE's written procedures comply with these portions of the Rule.

Section 703.3 - Mechanism organization

Section 703.3 of the Rule sets forth general principles governing the structure of informal dispute settlement mechanisms that are subject to the Rule. Section 703.3(a) requires that the mechanism be adequately funded and staffed, and that consumers not be charged any fee for its use. You have submitted financial statements for the Council of Better Business Bureaus, Inc. ("CBBB") indicating that the automobile manufacturers who participate in the AUTO LINE program contributed over $11.6

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[2] The materials we have reviewed are listed in an Appendix to this letter.

million to the program in 1984. This amount was used to reimburse local Bureaus for case processing costs and to cover CBBB administrative expenses (for program materials, training, data processing, salaries, etc.). As of the last quarter of 1984, the CBBB had 29 employees who spent some or all of their time directly administering the AUTO LINE program. During the first three months of 1985, approximately 429 individuals in 136 participating Bureaus closed 29,191 AUTO LINE cases which consumed over 57,400 standard man-hours, or almost 2 man-hours per case. Given the significant allocation of resources reflected in these statistics, AUTO LINE appears to be adequately funded and staffed.

AUTO LINE also is in compliance with the requirement that the mechanism be free for consumers. The Brochure states on page 9 that the manufacturer must pay the costs of AUTO LINE, and that the consumer will have no costs other than those he may choose to undertake on his own (e.g., retaining an attorney, hiring expert witnesses, or having the hearing transcribed). Rule 6 of the Modified Rules similarly provides that the consumer is responsible for expenses voluntarily incurred in producing a transcript of the hearing or in bringing a lawyer or paid witnesses. The Statement of Basis and Purpose for the Rule makes it clear that the Rule allows such voluntary costs to be left to consumers. See Statement of Basis and Purpose, 40 Fed. Reg. 60190, 60204 (December 31, 1975). Thus, the AUTO LINE procedures are consistent with Section 703.3(a).

Section 703.3(b) of the Rule requires that the warrantor and the sponsor of the mechanism (if other than the warrantor) take all steps necessary to ensure that mechanism members and staff are insulated from the influence or control of the warrantor or the sponsor.[3] The Rule provides that "necessary steps" shall

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[3] The BBB is not the "sponsor" of AUTO LINE. Although the term "sponsor" is not defined in the Rule, the Statement of Basis and Purpose appears to equate the term "sponsor" with the warrantor or warrantors who establish the mechanism or who financially support it. See 40 Fed. Reg. at 60204. In this case, the automobile manufacturers who participate in AUTO LINE are the sponsors of the mechanism. The Rule also envisions that groups encompassing more than one warrantor, such as an industry trade association, could arrange for the establishment of a mechanism.

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. The AUTO LINE procedures comply with this provision. First, as we understand it, the manufacturers who participate in the AUTO LINE program make quarterly payments to the Council of Better Business Bureaus based on a projection of the number of cases to be handled in the coming quarter. Second, you have informed us that the hiring and promotion of AUTO LINE staff persons is based solely on each individual's qualifications and performance. Third, AUTO LINE staff persons do not have conflicting warrantor duties, because they are employees of the BBB, not of the participating automobile manufacturers. Accordingly, the AUTO LINE procedures satisfy the requirements of Section 703.3(b) of the Rule.

Section 703.3(c) states that the mechanism shall impose any other reasonable requirements necessary to ensure that the members and staff act fairly and expeditiously in each dispute. Although we do not here determine what additional steps, if any, might be "necessary," we note that the AUTO LINE procedures include measures designed to ensure fairness to consumers. For example, AUTO LINE arbitrators are community volunteers who are employed by neither the warrantors nor the BBB. We believe that such measures satisfy any additional requirements imposed by Section 703.3(c).

Section 703.4 - Qualification of members

Section 703.4 of the Rule specifies the characteristics required of the person or persons who actually decide disputes for the mechanism. Section 703.4(a) prohibits persons who have or may have a direct interest in the dispute, or in any legal action which may arise out of the product or complaint in dispute, from serving as decisionmakers for the mechanism. AUTO LINE complies with this provision. According to the Brochure, AUTO LINE arbitrators are chosen from a pool of community volunteers who have been trained in arbitration by the BBB. Under Rules 8 and 9 of the Modified Rules, the person or persons chosen must sign an oath pledging to make a fair decision. Before doing so, however, they are required to disclose any financial, commercial, professional, social, or familial relationship they may have with either of the parties. Under Rule 9, the arbitrator will refuse to serve, or a party or the BBB may reject the arbitrator, if the relationship is such that a

fair decision cannot be made. This procedure appears to identify and exclude those persons who may have a direct interest in the outcome of the dispute. Thus, the procedure satisfies Section 703.4(a).

Section 703.4(b) presents a more complicated issue. That section provides that when three or more persons act as decisionmakers for the mechanism, at least two-thirds of them must have "no direct involvement in the manufacture, distribution, sale or service of any product." If only one or two persons act as decisionmaker, none may have such "direct involvement." Three years ago, you asked for a staff opinion on whether the method used by the BBB to select arbitrators is consistent with this standard.[4] In a letter to you dated August 12, 1982, the staff expressed its opinion that the Rule does permit the use of such an arbitrator selection process. As reflected in Section (C)(3)(c) of the "Guide" (see Appendix) and page 8 of the Brochure, the staff took the position that Section 703.4(b) of the Rule would be satisfied as long as no more than one-third of the persons on the list of potential arbitrators submitted to the parties are persons having "direct involvement" with any product. This interpretation was based on the following language from the Statement of Basis and Purpose:

> [The Better Business Bureau] recommended use of a system similar to the one now in use to select arbitrators. They allow the business and the consumer in each case to choose the arbitrator from a list that is sent out prior to the hearing. The list contains the names of a group of arbitrators together with information as to their

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[4] Page 8 of the Brochure and Rule 5 of the Modified Rules describe the selection method. From its pool of community volunteers, the BBB prepares a short list of potential arbitrators, with brief biographies of each, and sends the list to both the consumer and the warrantor. Each party removes from the list any person with whom the party may have a social, financial or business relationship, and then ranks the remaining names in order of preference. In the case of a single arbitrator, the highest-priority choice the parties have in common will serve. If a panel of three is to be used, each party's first choice will serve, along with a third person whose name has not been crossed off the list.

> backgrounds and affiliations. . . . The Rule does not prohibit a Mechanism from using this method to select members to decide a dispute from among the persons that satisfy the requirements of Section 703.4.

40 Fed. Reg. at 60206 (footnote omitted).

The next section of the Rule, Section 703.4(c), requires that mechanism decisionmakers be persons "interested in the fair and expeditious settlement of consumer disputes." According to the Brochure and the Modified Rules, AUTO LINE arbitrators represent a cross-section of the community, including professionals, educators, retirees, and housewives. Significantly, these persons volunteer their services to the BBB; presumably, they would not donate their time and energy if they were not genuinely interested in resolving consumer disputes. Thus, the AUTO LINE procedures comply with Section 703.4(c).

Section 703.5 - Operation of the Mechanism

Section 703.5 of the Rule sets forth specific procedures the mechanism must follow in handling each individual dispute. Section 703.5(a) directs the mechanism to establish and to make available upon request written operating procedures that address the requirements of Sections 703.5(b)-(j). Since the Brochure, Modified Rules, Memo, Guide, ACR form, and A/R form address Sections 703.5(b)-(j) of the Rule, Section 703.5(a) is satisfied.

Section 703.5(b) provides that, upon receiving notification of the dispute, the mechanism must inform the warrantor and consumer of its receipt of the dispute. The AUTO LINE procedures comply with this provision. As noted above in the brief chronology of the AUTO LINE process, and as indicated on the flow chart submitted to us (see Appendix), after a consumer contacts AUTO LINE, the BBB sends the consumer the Brochure, the Memo, and a copy of the partially-completed ACR form. After the consumer completes and returns the form, the information is transferred to the remaining copies of the ACR, one of which is sent to the manufacturer's zone office. This procedure satisfies Section 703.5(b).

Section 703.5(c) sets forth the mechanism's investigative responsibilities. This section mandates that the mechanism undertake whatever investigation is necessary to render a fair and expeditious decision. In particular, whenever the mechanism

receives evidence "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," the mechanism must investigate those issues.[5]

AUTO LINE's procedures for gathering information are consistent with Section 703.5(c). The primary means of gathering information for AUTO LINE decisions is to obtain it from the parties themselves, both by direct request and by holding a hearing (usually in person but, at the consumer's option, by conference call or in writing). In addition, under Rule 11 of the Modified Rules, the BBB may require an inspection of the automobile. The Statement of Basis and Purpose for the Rule anticipated that mechanisms would fulfill much of their information-gathering responsibility by obtaining information directly from the parties. See 40 Fed. Reg. at 60207. Moreover, it is appropriate for a mechanism to reserve the right to require an inspection. The last sentence of Section 703.5(c) states that the mechanism may not require any information "not reasonably necessary to decide the dispute." By implication, the mechanism can require information which is "reasonably necessary." The BBB, then, may require an inspection of the automobile if the inspection is "reasonably necessary" in order for the arbitrator to render a fair decision.[6] Rule 11 of the Modified Rules is appropriately qualified; it states that an inspection may be

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[5] The mechanism's responsibility with respect to consequential damages is discussed below.

[6] The AUTO LINE procedures are not inconsistent with the Rule in providing, as they do in Section (C)(4)(b) of the Guide, that if the consumer refuses to make the vehicle available for inspection, the case will be closed as "not pursuable." As noted above, Section 703.5(c) implicitly permits mechanisms to require consumers to provide the mechanism with information "reasonably necessary to decide the dispute," and an inspection of an automobile may be required if it is likely to yield such information. The failure of the consumer to permit an inspection where one is reasonably required deprives the mechanism of necessary information and thereby relieves it of the obligation to render a decision.

required "if a fair decision requires one."

Besides providing for the solicitation of information from the parties and, if necessary, an inspection of the automobile, the AUTO-LINE materials provide for the assistance of neutral technical advisors. Rule 12 of the Modified Rules states that such experts will be provided by the BBB at the request of the arbitrator. Section 703.4(b) of the Rule specifically permits mechanism decisionmakers to consult with persons knowledgeable in the technical, commercial or other areas relating to the product which is the subject of the dispute. Thus, Rule 12 of the Modified Rules is consistent with the Rule.[7]

In addition to its investigative requirements, Section 703.5(c) requires that the mechanism give each party an opportunity to rebut contradictory information provided by the other party or by a technical consultant. The Modified Rules address this obligation in a number of ways. Rule 11 states that a party who is unable to attend an inspection of the automobile will nevertheless be given a chance to comment on any of the observations made at the inspection. Rule 12 ensures that each party will have an opportunity to evaluate and comment on the qualifications and findings of any technical advisor brought into the case. Rule 20 provides that, at the hearing, each party "may question the other parties, their witnesses and their evidence."[8] Rule 20 also provides that if either party prepares any part of its case for the arbitration in writing, the other party will have an opportunity to see the written submission and submit a response to the arbitrator. These procedures satisfy the Section 703.5(c) requirement of an opportunity for rebuttal.

Sections 703.5(d) and (e) set forth the time limits for mechanism decisionmaking. Section 703.5(d) states that the mechanism must render a decision within 40 days of the date the consumer submitted his or her claim to the mechanism. However, a

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[7] The State of Connecticut and the BBB have jointly asked the Commission for an advisory opinion on the question of whether the Rule requires mechanisms to call in technical experts in each case involving automobile warranty disputes. Since this issue is still pending, we express no view at this time on that issue.

[8] The Brochure contains similar language on pages 8 and 10.

limited exemption from Section 703.5(d) granted by the Commission to the BBB on July 2, 1984 extends the 40-day time limit to 60 days.[9] Under condition (3) of this exemption, the BBB must clearly and conspicuously disclose to the consumer that AUTO LINE has up to 60 days to render a decision if the consumer agrees to participate in mediation, but that the consumer may reject or terminate mediation and demand an arbitration decision within 40 days.[10] The Memo sent to consumers with the Brochure and the ACR form fulfills this obligation. The Memo states that the BBB "will make every effort to mediate and arbitrate (if necessary) so you get a decision within 60 days of the time the clock begins" (emphasis in original).[11] It continues:

> Most automotive complaints are resolved by you negotiating a settlement with the dealer or manufacturer or by us mediating such a settlement. But if you think such negotiating or mediating is a waste of everyone's time in your case, please tell us in writing and we will try to get a decision in your case within 40 (47) days.

The Memo advises that if these deadlines are not met, the consumer can drop out of AUTO LINE and exercise other remedies. It also tells the consumer that the 60-day time period will not start until the consumer has provided the make, model, and year of his or her vehicle, the vehicle identification number, the delivery date, the odometer reading at the time the consumer

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[9] 49 Fed. Reg. 28397 (July 12, 1984).

[10] Id. at 28398. In a letter to you dated April 5, 1985, we clarified that the exemption does not require manufacturers who participate in AUTO LINE to amend their existing warranties to reflect the time frame established by the exemption. This interpretation, however, was expressly based on the condition (3) requirement that the mechanism make the necessary disclosure.

[11] Consistently with Section 703.5(e)(2), the Memo adds that the time limit will be extended by one week if the consumer has not sought redress directly from the warrantor prior to contacting AUTO LINE.

contacted AUTO LINE, and a statement of the complaint.[12] The latter statement is consistent with Sections 703.5(c) and (e)(1), which allow the mechanism to require information which is "reasonably necessary" to decide the dispute and to delay performance of its duties until it receives this information. These provisions comply with the Rule as modified by the Commission's exemption.

Besides establishing a time limit for the arbitration decision, Section 703.5(d) sets substantive requirements for the decision rendered. An issue is raised under this Section by the paragraph on page 7 of the Brochure discussing the types of claims manufacturers must arbitrate and those that are optional. According to that paragraph, a manufacturer is not obligated to arbitrate claims for incidental or consequential damages, although it may agree to do so on a case-by-case basis.[13] The BBB and the State of Connecticut have jointly asked the Commission to issue an advisory opinion on whether a Rule 703 mechanism must have the authority to award consequential damages. Since this advisory opinion is pending, we express no view at this time regarding the compliance of the language on page 7 of the Brochure and in Rule 1(E) of the Modified Rules with Rule 703.

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[12] The Brochure and Rule 26 of the Modified Rules provide that the 60-day period does not begin until the consumer has submitted all "necessary information" to process the case. The ACR form and the Brochure define "necessary information" to include the same items mentioned in the Memo.

[13] Similarly, Rule 1(E) of the Modified Rules provides:

> "Disputes" that may be arbitrated under these rules . . . do not include: 1) reimbursement for such things as loss of wages, depreciation or loss of value, replacement transportation, or any other incidental or consequential damages, unless all parties agree specifically in writing that the Arbitrator may consider such an item. . . .

The Agreement to Arbitrate form contains a statement to the same effect.

Section 703.5(d) further provides that the mechanism must ascertain whether, and to what extent, the warrantor will abide by the decision (if the decision would require any action by the warrantor) and must pass this information along to the consumer. Under Rule 27(F) of the Modified Rules, automobile manufacturers are committed to abide by an AUTO LINE decision once the consumer has accepted the decision. The disclosure of this commitment in the Modified Rules and on page 12 of the Brochure satisfies the BBB's obligation under Section 703.5(d) to inform the consumer of the warrantor's intended action, because the consumer knows from the outset that if he or she accepts the decision, the manufacturer agrees to perform it.

Finally, Section 703.5(d) also addresses case settlements. The Section states that a dispute shall be deemed settled when the mechanism has ascertained from the consumer (1) that the dispute has been settled to his or her satisfaction, and (2) that the settlement contains a specified reasonable time for performance. The AUTO LINE materials are consistent with this provision. The Brochure, on page 6, instructs the consumer that if the BBB is successful in mediating a resolution, or if the consumer negotiates his own settlement, the consumer should "be sure that [he is] completely satisfied with it and that the time for performing the adjustment is reasonable to [him]." Moreover, the consumer is to "be sure to let us at the BBB know when such an adjustment is to be performed."[14] These procedures satisfy the requirements of Section 703.5(d) with respect to settlements.

Section 703.5(f) sets forth the circumstances in which the mechanism may allow oral presentations by the parties. Under that section, no oral presentation may occur unless both parties agree to it. In addition, before obtaining the consumer's agreement, the mechanism must disclose (1) that if one party fails to appear at the agreed-upon time and place, the presentation of the other party may still be allowed; (2) that the members will decide the dispute whether or not oral presentations are made; (3) the time and place for the presentation; and (4) a description of what will occur at the presentation, "including, if applicable, parties' rights to bring

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[14] The ACR form asks the consumer to check a box if a settlement has been reached, to fill in the date of the promised performance, and to return the form to the BBB.

witnesses and/or counsel."

According to Rule 14 of the Modified Rules and to pages 2, 4, and 8 of the Brochure, a consumer using AUTO LINE may choose to present his or her case in person, by telephone, or in writing, and whichever option the consumer selects, the manufacturer will be required to present its case in the same manner. As noted above, under Section 703.5(f), the manufacturer cannot be required to participate in an oral hearing. Manufacturers who participate in the AUTO LINE program, however, have agreed in advance to submit to whatever form of hearing the consumer chooses. On that basis, we find that the AUTO LINE procedure is consistent with, and in some ways goes beyond, the Section 703.5(f) requirement that both parties agree to an oral hearing.

The AUTO LINE hearing procedure also complies with the other requirements of Section 703.5(f). Rule 16 of the Modified Rules warns consumers that an oral hearing may proceed despite their absence if they have received proper notice of the hearing. The consumer's right to choose the type of hearing makes it clear that a decision will be rendered whether or not oral presentations are made. Rule 13 of the Modified Rules provides that the BBB will set a time and place "with due regard to [the parties'] convenience and that of the Arbitrator" and will give the parties at least 8 days' notice of the hearing. It also invites the parties to contact the BBB immediately if there is any objection to the time and place. Rule 10 states that the parties may be represented by counsel, and Rule 20 describes the hearing procedure, including the parties' right to present witnesses.[15] Finally, in accordance with Section 703.5(f)(3), Rule 14 assures the parties that "you always have the right to be present for any oral hearing of your case." These provisions disclose all of the information required by Section 703.5(f).

Section 703.5(g) requires that, when reporting its decision to the consumer, the mechanism also make certain specified disclosures. The AUTO LINE materials comply with this provision. The A/R form sent to the consumer with the AUTO LINE

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[15] The section headed "How Do You Prepare for an Arbitration?" beginning on page 9 of the Brochure gives an even more detailed description of the hearing procedure.

Decision form states that, if the consumer rejects the decision, the consumer may pursue other legal remedies under state or federal law, and that the mechanism decision may be admissible in evidence in a subsequent court proceeding.[16] Page 9 of the Brochure, Rule 17 of the Modified Rules, and Section (C)(4)(i) of the Guide provide that all mechanism records of the dispute will be made available to the consumer at any time and at reasonable cost. These provisions, taken together, disclose all of the information called for by Section 703.5(g).

Section 703.5(h) states that if, as a result of a settlement or a mechanism decision, the warrantor has agreed to take any action, the mechanism must ascertain from the consumer within 10 working days of the date for performance whether performance has occurred. The AUTO LINE procedures also fulfill this obligation. Rules 27(D) and 27(G) of the Modified Rules provide that in the case of a settlement or decision, the BBB will contact the consumer to verify performance within two weeks of the time performance is promised.[17] Because "two weeks" is equivalent to "10 working days," the AUTO LINE procedures comply with Section 703.5(h).

Section 703.5(i) states that any requirement for the consumer to resort to the mechanism before commencing an action under the Magnuson-Moss Warranty Act is satisfied when the mechanism has rendered a decision or when 40 days have passed since the mechanism received notification of the dispute, whichever occurs first. The Memo, Rule 26 of the Modified Rules, page 7 of the Brochure, and Section (C)(4)(f) of the Guide make it clear that the consumer is free to drop out of the AUTO LINE process and proceed directly to court if the case exceeds the time limits of Rule 703 and the exemption granted to the BBB in July

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[16] Rule 27(F) of the Modified Rules and page 13 of the Brochure contain the same information.

[17] The Brochure contains the same information for settlements on page 6, but makes no explicit statement regarding follow-up of arbitrations. The Guide provides in Section (C)(3)(b) that "in the case of a negotiated, mediated or arbitrated conclusion, the Bureau must check to be sure the promised performance, if any, was in fact carried out. This must be done by phone or mail two weeks after the performance date" (emphasis in original).

1984. These provisions are consistent with Section 703.5(i).

Section 703.5(j) provides that mechanism decisions shall not be legally binding on any person. The A/R form, Rule 27(F) of the Modified Rules, and pages 12-13 of the Brochure explicitly state that the consumer is free to accept or reject the AUTO LINE decision, and that the consumer (and the manufacturer) will be legally bound by the decision only if the consumer accepts the decision. Although Rule 703 prohibits the mechanism from imposing its decision on a party against that party's will, nothing in the Rule prevents a manufacturer from voluntarily agreeing in advance to be bound by the decision if the consumer accepts it. Thus, the AUTO LINE procedures comply with, and in fact go beyond, the requirements of Section 703.5(j).

Section 703.8 - Openness of records and proceedings

Section 703.8 of the Rule contains various provisions designed to enhance public monitoring of Rule 703 mechanisms, while simultaneously balancing that scrutiny against the warrantors' and mechanisms' need for confidentiality. See 40 Fed. Reg. at 60214. Section 703.8(a) requires the mechanism to make publicly available the statistical summaries the mechanism must compile under Section 703.6(e). You have advised us that these statistical summaries are, in fact, publicly available. Thus, the AUTO LINE procedures are in compliance with Section 703.8(a).

Sections 703.8(b) and (c) deal with confidential treatment of mechanism records. Section 703.8(b) gives the mechanism the option of keeping confidential or making available all records other than those which the Rule specifies must be released. Section 703.8(c) states that the mechanism's policy regarding records made available at its option must be set forth in the written operating procedures required under Section 703.5(a). The last paragraph of the Brochure fulfills this requirement by describing BBB policy on the release of AUTO LINE records other than those whose release is required under the Rule.

Section 703.8(d) provides that meetings of mechanism decisionmakers to hear and decide disputes must be open to observers on reasonable and nondiscriminatory terms. The AUTO LINE materials comply with this requirement. Rule 15 of the Modified Rules states:

> Unless the customer or Arbitrator objects, observers may attend arbitration hearings to the extent the BBB determines that reasonable accommodations are available. To conduct a proper hearing, the Arbitrator shall enforce appropriate rules of conduct for all observers. Media will be subject to the same limitations imposed by federal courts, unless all parties and the Arbitrator agree to other arrangements.[18]

Because Section 703.8(d) provides that the identities of the parties and the product in dispute need not be disclosed at hearings, it is permissible for the consumer or Arbitrator, in accordance with Rule 15, to be given a veto power over the attendance of observers at oral hearings. In fact, the Statement of Basis and Purpose reasons that, in the case of oral hearings, where the parties personally appear, "a Mechanism might reasonably exclude nonparty observers in the interest of confidentiality." 40 Fed. Reg. at 60215. In this case, the mechanism has merely delegated its power to exclude nonparty observers to the consumer and Arbitrator. The other terms imposed on the attendance of observers, including the media, likewise appear to be "reasonable and nondiscriminatory." Thus, Rule 15 is consistent with Section 703.8(d).

Section 703.8(e) requires the mechanism to give both parties access to, and (at reasonable cost) copies of, records relating to the dispute. The provisions in the AUTO LINE materials relating to this requirement, which have already been discussed above in connection with Section 703.5(g), are consistent with the Rule.

Finally, Section 703.8(f) requires the mechanism to make publicly available information relating to the qualifications of mechanism staff and members. You have advised us by letter that biographical information for each AUTO LINE arbitrator is available upon request. However, you also advised us that the BBB does not regularly make available information concerning the qualifications of AUTO LINE staff. In order to fully comply with Section 703.8(f), this information also should be made available upon request.

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[18] Section (C)(4)(d) of the Guide contains similar provisions.

One further issue requires attention in our review of the AUTO LINE program, but does not arise under any particular provision of the Rule. Rather, the issue involves the classification of disputes as Rule 703 or non-Rule 703 cases. Section (B) of the Guide provides that, in order for the BBB to treat a consumer complaint as a "true 703" case:

1) AUTO LINE must be written into the warranty; and

2) The consumer must be complaining about something that is covered by the warranty and still within stated warranty coverage at the time of the complaint.

(Emphasis in original.) The Guide goes on to clarify the meaning of "at the time of the complaint," saying: "For purposes of 'true 703' coverage, the consumer must actually have an ACR on record which indicates neither time nor mileage is beyond warranty coverage" (emphasis in original). This standard has been modified, however, in a memorandum from you to the chief executive officers and AUTO LINE administrators of all local Bureaus in the United States (see Appendix). The memorandum states that the Guide is incorrect in limiting "true 703" cases to those in which the warranty is still in effect at the time the consumer contacts AUTO LINE. The memorandum makes it clear that as long as the problem complained of by the consumer arose while the warranty was in effect, the case must be handled as a "703" case even if the warranty's time and mileage limitations have since run out.

This revised standard for Rule 703 coverage appears to be consistent with the warranty case law. The cases indicate that the test for warranty coverage (and therefore Rule 703 coverage) is whether (1) the defect arose within the stated warranty period (time or mileage), and (2) the warrantor was given notice of the defect within a reasonable time thereafter.[19] If these two

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[19] Under Section 2-607(3) of the Uniform Commercial Code, the buyer must notify a warrantor of a defect constituting a breach of warranty "within a reasonable time after he discovers or should have discovered [the] breach . . . ." Note that, under this standard, notice may actually be given after the expiration of the warranty as long as it is given within a reasonable time after the breach. Of course, the warrantor could draft its (FOOTNOTE CONTINUED)

conditions are met, the problem is covered by the warranty even if the time and mileage limitations have since expired. Because the memorandum you have transmitted to the local Bureaus states that the Rule applies to any case in which the consumer's problem arose within the warranty period, the AUTO LINE procedure for classifying disputes is in conformance with the Rule.

With the exceptions noted above and with the exception of the issue under consideration by the Commission, we find that the AUTO LINE forms, brochures, rules, and procedures you have submitted comply with 16 C.F.R. Part 703. Again, we caution you that this conclusion reflects only the view of the staff of the Bureau of Consumer Protection. Nevertheless, we hope this letter provides you with guidance that will be helpful to you.

Please contact us again if you have any further questions regarding Rule 703.

Sincerely,

Carol T. Crawford

Carol T. Crawford
Director

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warranty to require that defects be brought to its attention within a specified time period, but we are not aware of any warranty issued by an AUTO LINE participant that so provides.

APPENDIX

The following is a list of the materials we have reviewed in connection with your request for a staff opinion:

1. A BBB brochure entitled "A National Program of Mediation/Arbitration for Automotive Disputes" (referred to in the letter as the "Brochure"). This publication, intended for consumers, contains a detailed but non-legalistic description of the AUTO LINE process.

2. A BBB pamphlet entitled "Modified Rules for the Arbitration of Automotive Disputes" (referred to as the "Modified Rules"). As the title indicates, this publication contains the rules governing arbitration of AUTO LINE cases.

3. A memorandum from "BBB AUTO LINE" to "The Consumer" regarding "Our Handling of Your Complaint" (referred to as the "Memo"). This document describes the time-restrictions on AUTO LINE cases that are subject to the Rule. The Memo is accompanied by a cover memo to local Better Business Bureaus instructing them on how to implement the limited exemption from the Rule's 40-day requirement granted to the BBB by the Commission on July 2, 1984.

4. A typewritten document entitled "What is a '703' Case and How is it Handled?" (referred to as the "Guide"). This is an internal document used by the BBB to train AUTO LINE personnel. Among other things, the Guide describes how to distinguish Rule 703 from non-Rule 703 cases, sets forth some of the key provisions of the Rule, and instructs BBB personnel in complying with those provisions. The Guide has also been included in the Operations Manual used by local Bureaus.

5. A typewritten document entitled "Operation of the Mechanism As Per Title 16, Code of Federal Regulations Part 703, Section 5" (referred to as the "Outline"). This is a brief legal guide which tracks the provisions of 16 C.F.R. § 703.5, the section of the Rule that relates to operation of the informal dispute settlement mechanism. The Outline is distributed upon request to persons who make general inquiries about AUTO LINE.

6. Several forms used in initiating and processing AUTO LINE cases, entitled "Automotive Case Record" (referred to as the "ACR"), "Automotive Arbitration Record," "Started Over Case Record," "Agreement to Arbitrate," "Acceptance or Rejection of Decision" (referred to as the "A/R" form), "Decision," "Reasons for Decision," and "Correction Form."*

7. December 31, 1984 financial statements for the Council of Better Business Bureaus, Inc. ("CBBB").

8. Flow charts illustrating the steps in the internal handling of AUTO LINE cases by the BBB and the organizational structure of CBBB personnel in charge of the AUTO LINE program.

9. A letter to Commission staff attorney David W. Koch from CBBB staff attorney Richard F. Warren, containing clarifications of some of the other materials submitted.

10. A memorandum from Dean W. Determan to the chief executive officers and AUTO LINE administrators of all local Bureaus in the United States. This document modifies the definition in the Guide of the cases that are subject to Rule 703.

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* You also submitted forms for automotive disputes involving specified General Motors Corporation components, which the BBB has agreed to arbitrate pursuant to a Consent Order between the FTC and GM in Docket No. D-9145. We have not reviewed the latter forms, as they are outside the scope of Rule 703.

Box 862
Palos Verdes Estates,
Ca. 90274-0214
Jan. 18, 1986

Mr. William Fritz, CEO
Better Business Bureau
639 So. New Hampshire Ave
Los Angeles, Ca. 90005

Certified Mail
P 006 866 567

Mr. Gregory Drapac
Director, Auto Line
3407 West 6th St., Suite 620
Los Angeles, Ca. 90005

Certified Mail
P 006 866 568

Ms. Carolyn Bolling
Executive Assistant to the Director
Better Business Bureau
639 So. New Hampshire Ave
Los Angeles, Ca. 90005

Certified Mail
P 316 366 194

Mr. Dean Determan
Head of Arbitration
Better Business Bureau
1515 Wilson Blvd.
Arlington, Va. 22209

Certified Mail
P 316 366 195

My file: BBB5

Dear Officers of the Better Business Bureau:

This is to inform you that I am requesting an investigation by the Federal Trade Commission (FTC) and by the Attorney General of the State of California regarding the legality and manner in which arbitration has been conducted in Cases 85-403 and 85-404 involving my two 1979 Diesel Oldsmobiles. In addition to these requests, I am planning to consult an attorney to determine the adviseablity of filing a civil suit against the Better Business Bureau to seek both real and punitive damages, not only for the excessive delays in processing these two cases, but also for failing to follow proper legal procedure.

The first questionable act that I observed at the arbitration hearing on December 13, 1985 at the BBB office was when Ms. Bolling asked Mr. Ruderman to sign a blank arbitration decision form. Mr. Ruderman signed this blank form in the presence of myself and Mr. Mark Templin, who represented GMC/Oldsmobile. I thought this highly improper at the time. Now I have observed that the decision ostensibly made by Mr. Ruderman at some date after December 13, 1985 was typed in above Mr. Ruderman's signature and no date was shown when Mr. Ruderman actually made the decision. At some time after my letter to Ms. Bolling, dated Jan. 1, 1986 was received, an addendum was inserted above Mr. Ruderman's signature, again with no date. These actions are, not only very deceiving, but also illegal. This procedure makes it very easy for the BBB to modify a decision made by the Arbitrator without his checking the decision for accuracy, seeing the printed wording to verify that he concurs with the change and the wording and it also makes it very easy for an employee of the BBB to change the intent of the decision.

Quoting from the Better Business Bureau Auto Line booklet entitled, Modified Rules for the Arbitraton of Automotive Disputes, Item 27E, Form and Filing: "The Arbitrator will make the final decision in writing and it will be notarized before the BBB duplicates it and sends a copy, together with reasons for the decision, to you and any other party." In Case No. 85-404 Mr. Ruderman signed a blank form and the question now arises as to whom actually wrote the arbitration decision and on what date was the decision actually made?

The arbitration procedure becomes even more suspect since the addendum was added above Mr. Ruderman's signature with no new date indicating when he signed the addendum. Moreover, the addendum statements indicate that whoever wrote it has very little knowledge of the component parts of the diesel engine. He writes of replacing "fuel injectors (to include metal flex rings)". The fuel injectors do not have metal flex rings. There is a metal flex ring in the fuel injection pump but he does not even address this item even though this item has been the part that has failed most frequently in all Oldsmobile diesel engines. He writes of replacing "glo plug injectors". I cannot locate a component called a "glo plug injector" in my copy of the Oldsmobile Service Manual.

In the original decision ostensibly written by Mr. Ruderman, he states: "instruct GMC/Oldsmobile to replace the engine power train assembly with new components ...". In the addendum Mr. Ruderman ostensibly states: "the aforementioned engine replacement (not to include the transmission) will consist of a re-manufactured 350 cubic inch diesel engine." He then goes on to say: "according to GMC/Oldsmobile Division, Ron F. Spangler-Customer Service Coordinator), a re-manufactured engine is defined as: "an engine with used main parts (e.g. block, crankshaft, heads, camshaft, etc.) and new wear parts (e.g. barrings, seals, pistons, piston rings, etc.)." There is no component called "barrings".

Mr. Ruderman now changes his decision from the replacement of the engine power train assembly with new components and is now substituting inferior used parts. He also claims that the power train assembly does not include the transmission. I have a copy of the November 1983 Consumer Reports which states: "The power train covers all major parts of the engine and transmission." I also have a copy of a BBB publication entitled: IMPORTANT NOTICE FOR GM DIESEL OWNERS, wherein it states for purposes of the settlement, the diesel engine is defined as: "Cylinder block and heads and all internal engine lubricated parts, manifolds, timing gears and timing gear chain or belt, automatic transmission, flywheel, valve covers, oil pan, oil pump, radiator fan and fan clutch, alternator, glow plugs and controller, pulleys and belts, fuel filter, water pump, fuel pump, fuel sender unit, fuel injection pump, fuel tank, fuel lines, fuel injectors, starter, and all other engine seals and gaskets." Furthermore, I have copies of two GM warranties wherein the transmission is listed as part of the power train assembly. I therefore expect all of these parts to be replaced with new parts.

I believe that, it is neither legal for Mr. Ruderman to downgrade his original decision, nor is it keeping within the rules of arbitration for Mr. Ruderman to communicate with representatives of

GMC/Oldsmobile in my absence or without having been furnished a written copy of the communication that took place. I believe that Mr. Ruderman's decision has been unduly downgraded because of conversation with a party to the arbitration and/or employees of the BBB who influenced his decision. Under Item 28 in the previously quoted BBB Modified Rules of Arbitration, it states: "The BBB will not advise the Arbitrator or make any statement on matters relating to the merits of your case or the reasonableness of the decision."

Mr. Ruderman has taken, what could have been a simple buy back decision and has created a very complicated decision to execute. He states: "and all other areas should be sealed to avoid any particles from entering the passenger compartment". This is a vague and difficult order, not only to perform, but also for the owner to verify that it has been done. Mr. Ruderman will have to spell out just what particular areas he is ordering to be sealed. The hollow ventilated auto body is impregnated with diesel soot and I believe that it is impossible to keep the existing soot from being blown into the passenger compartment.

Mr. Ruderman states: "Upon completion of said work, the customer is to test drive the vehicle for a period of 30 calendar days". This is not a long enough period of time to determine whether Mr. Ruderman's ordered remedy has solved the problem. Because the cloth upholstery of the car is so impregnated with soot, it is going to be very difficult to determine whether the new engine is emitting soot, or the discolored interior is from the previous soot-emitting engine. In the 30 day test period proposed, I would normally make seven round trips to the Los Angeles Airport, a distance of 26 miles per trip and total of 182 miles. In the car in question, the soot began soiling the upholstery as seen by the naked eye after about 2,500 miles.

In conformance with Item 27C of the Modified Rules for Arbitration, I am hereby notifying the BBB of the imperfectness and unreasonableness of Mr. Ruderman's order. In addition, during the arbitration hearing, Mr. Templin, the GMC/Oldmobile representative offered to replace the cloth upholstery in this car in addition to installing a new engine so that the unsightliness of the greyish black (formerly white) soot impregnated cloth would be removed. Mr. Ruderman fails to address this problem.

I believe that the BBB is remiss in its duty by permitting an Arbitrator, who is lacking in the understanding of the component parts of the diesel engine and the associated problems in carrying out his order to arbitrate a case of a technical nature.

I filed the complaint on this car on Jan. 30, 1985 and I agreed to arbitrate on April 11, 1985. A hearing date was for July 12, 1985 and after the swearing in process, the Arbitrator, Ms. Lisa Rosen announced that she was an employee of Hughes Aircraft, a subsidiary of General Motors. I refused to have her hear the case. On August 19, 1985, Martin Ruderman heard the complaints on Case No. 85-403, the white Oldsmobile and all of the common data on Case No. 85-404, the blue Oldsmobile. On that date Mr. Ruderman stated that I would not have to again present all of the data a second time, when Case No. 85-404 would be heard but that I would have to bring the car in to be inspected.

Mr. Ruderman ordered GMC/Oldsmobile to buy back the white Oldsmobile (Case No. 85-403). I accepted his decision and immediately called Ms. Bolling to see when Mr. Ruderman could inspect the blue car. Ms. Bolling stated that she would have to see when Mr. Ruderman would be available. An unusual length of time passed and I then called Mr. Draypac to see if I could get this case concluded. Mr. Draypac stated that the case could not be heard until November at the earliest. I protested and Mr. Draypac stated that if I didn't like it, I could withdraw from arbitration and take the case to court. This case was not heard until December 13, 1985. On the date of the hearing I informed Mr. Ruderman that I was told that he had not been available until December 1985. Mr. Ruderman stated that no one contacted him regarding a hearing until November 1985 and that he did have a vacation scheduled and asked for a delay at that time.

I placed a long distance call to Mr. Determan on July 13, 1985 complaining about the delays and the lack of the screening of Arbitrators. The call was taken by a Mr. Rod Davis. No action was taken.

I wrote two letters to Mr. Determan, Head of Arbitration for the BBB, dated July 23, 1985 and Sept. 25, 1985 complaining about the lack of screening of Arbitrators and the long delays in hearing my cases. Mr. Determan did not respond. A Ms. Loader of the Arlington, Va. office did write a letter dated Sept. 10, 1985, but she completely missed the point of my correspondence. There was no substance to her reply and the information contained in her letter was erroneous. She states in her letter that my hearing was originally scheduled for April 8, 1985. I did not sign the agreement to arbitrate until April 11! She also stated that I was indecisive as to whether I would request a second arbitration hearing but the fact is that I had called Ms. Bolling on Sept. 3, 1985 requesting that a hearing date be set with Mr. Ruderman as soon as possible.

On Monday, January 20, 1986, I must inform the Better Business Bureau as to whether I am going to accept the decision of Mr. Martin Ruderman regarding Case 85-404. There are so many unresolved issues in this decision as well as being impractical that I am requesting an extension of time in accepting or rejecting the decision.

I believe there have been so many violations of legal as well as arbitration procedures, that the whole process is now suspect. I have no confidence that Mr. Ruderman was not unduly influenced by both a representative of GM and representatives of the BBB.

I have retained ownership of and have held in storage the car described in Case No. 85-404 for almost a year waiting to have this case resolved. I believe that I have been wronged by the BBB and I have been damaged to an extent to be determined by my attorney. The BBB has violated the mandate set by the court decision when the suit against GM was dropped and a provision made for the BBB to settle these claims out of court in a resonable period of time.

It appears that there are three possible alternatives to resolving this case. I have wasted countless hours of my time trying to use the system set up by the FTC and it has not worked. After all of this

wasted time and energy, I do not want to wait five years to have this case heard in a court of law. The first alternative would be to determine whether General Motors will agree to installing a new engine with all new components as described herein, including a new transmission and to agree to replacing the soot impregnated upholstery so that a valid test of the new engine and body seals can be made over a reasonable period of time, such as 6 months and 6,000 miles. A second alternative would be for GM to agree to a buyback for approximately the same amount of money as was ordered in Case 85-403. A third alternative would be to select a competent, well-informed Arbitrator with an engineering background to rehear the case and make a new decision.

I would prefer not to waste another day and spend three hours again presenting this data which I have now twice previously presented because of the two Oldsmobiles involved.

Very truly yours,

Norman E. Witt, Sr.

Cc. Federal Trade Commission
Attorney General, State of California
Clarence Ditlow, Center for Auto Safety

Box 862
Palos Verdes Estates,
Ca. 902740-0214
Feb. 24, 1986

Mr. William Fritz, President
Better Business Bureau of Los Angeles
639 So. New Hampshire Ave
Los Angeles, Ca. 90005

Certified Mail #
P 540 865 891

File: FRITZ2

Dear Mr. Fritz:

You have not responded to my Certified Mail Letter #P 006 866 567 dated Jan. 18,1986, which was received by your office on Jan. 21 and signed for by Carolyn Bolling. Over 30 days have elapsed and I believe that you have had a reasonable time to respond and to state what action you are planning to take. This case, #85-404 has been in the Arbitration Process for over a year. I have had the financial burden of retaining ownership of this vehicle for over a year so that the arbitration process can be concluded. This vehicle cannot be used because it is undependable for transportation and as a result it was not relicensed for use when the 1985 license expired.

The staff of your Los Angeles office has violated many of the rules set forth in the BBB publication "Modified Rules for the Arbitration of Automotive disputes" which I called to your attention in my previous letter. In that publication, item 27C: Modifying the Decision, states: "If you believe the final decision is impossible to perform, that it contains a mistake of fact or miscalculation, or that it is otherwise imperfect in form you should notify the BBB immediately in writing." This was done in my Jan. 18, 1986 letter addressed to you, Gregory Draypac, Carolyn Bolling and Dean Determan. None of you has responded. The same section states: "If your claim is valid, the BBB will share your observation with the other parties and forward it, together with their views, to the arbitrator who may accept it in whole or in part or reject it altogether.

A very disturbing and suspicious procedure was used by Carolyn Bolling, wherein she requested Mr. Ruderman, the Arbitrator, to sign a blank decision form, which she notarized at the beginning of the hearing on Dec. 13, 1985. Since then, the arbitration decision was changed twice and the decision form still reflects a date of Dec.13, 1985. This is in clear violation of Item #27E: Form and Filing.

The BBB of Los Angeles has used various illegal procedures and there is no reason for me to have confidence in the honesty of the staff of the BBB, however this case must be resolved. The Federal Trade Commission in the consent order, agreed to have the BBB arbitrate the General Motors complaints and I am demanding that the BBB abide by the rules set forth. Because of the apparent collusion between certain staff members of the BBB and Mr. Ruderman, the Arbitrator, I am requesting that a new Arbitrator be assigned to the case and that it be reheard with a different BBB staff member present. Furthermore, I am demanding that the Arbitrator follow the rules and state his decision in writing before he signs the decision and also

that the date of the decision be shown and his signature notarized at that time.

I have received correspondence from Mr. Clarence Ditlow and Mr. Evan Johnson of the Center for Auto Safety indicating that my complaint against the BBB is not an isolated case. Wisconsin Attorney General Bronson LaFollette has had hearings regarding this problem. In addition, the House Commerce Committee will be holding hearings on the abuses in the FTC-BBB settlement and the General Accounting Office will also be investigating.

The BBB appears to hold itself out as a friend of the consumer but as I see it, the BBB is a wolf in sheep's clothing who is an umbrella organization to shelter offending businesses from the complaints of consumers. The Los Angeles office has done just that very thing by preventing me from having a prompt arbitration hearing, falsifying the actual decision dates and then modifying the arbitrator's decision twice with the net result of lessening the value of the original award.

Since neither you nor your subordinates have responded to my letter, I will plan to proceed with legal action so that I will have the full weight of the court behind me in the discovery process. After you receive an interrogatory, you will have 30 days to answer under oath. You can only "stonewall" it for a limited period of time. On the other hand, I urge you to try to get this arbitration case resolved in a fair and honest manner.

Very truly yours,

Norman E. Witt, Sr.

Cc: Federal Trade Commission
Attorney General of California
Wisconsin Attorney General Bronson LaFollette
U. S. House of Representatives Commerce Committee; Members:
Rep. Tim Wirth, Al. Swift, James Florio
Center for Auto Safety: Clarence Ditlow, Evan Johnson

Box 862
Palos Verdes Estates,
Ca. 90274-0214
March 24, 1986

Mr. William Fritz, CEO
Better Business Bureau
639 So. New Hampshire Ave
Los Angeles, Ca. 90005

Certified Mail
#P 540 865 893

Mr. Gregory Drapac
Director, Auto Line
3407 West 6th St., Suite 620
Los Angeles, Ca. 90005

Ms. Carolyn Bolling
Director of Automotive Arbitration
Better Business Bureau
639 So. New Hampshire Ave
Los Angeles, Ca. 90005

Mr. Dean Determan
Head of Arbitration
Better Business Bureau
1515 Wilson Blvd.
Arlington, Va. 22209

Certified Mail
#P 540 865 894

My file: BBB6P1

Dear Ms. Bolling, Mr. Fritz, Mr. Draypac and Mr. Determan:

This letter is in response to a letter from Ms. Bolling dated March 21, 1986 sent to me by regular mail which I received on 3/22/86. Since none of you gentlemen have chosen to respond to my letters, I am also directing this letter to you.

First of all I am deeply disturbed that it took almost two months to get any response out of any officer of the Better Business Bureau, yet the whole arbitration procedure is supposed to take,only 40 days. I should not have to remind you that I filed the BBB Automotive Case Record and Consumer Claim forms on 1/30/85 and I have a receipt showing that Auto Line of the BBB in Los Angeles received these on 1/31/85. A period of time of 13 months and 3 weeks have now passed. I have continued to own this unreliable diesel Oldsmobile since filing in order to get this case resolved. The Better Business Bureau officers have continued to violate the Federal Trade Commission consent order and the Better Business Bureau's own Rules for Arbitration during this period of time and have caused me to spent hundreds of hours of time in going through an arbitration process that was supposed to be simple and fast. The staff members of the BBB have made very flimsy excuses for these delays, none of which can justify the long delays, particularly from the time my first case was heard on 9/19/85 and the time the second case was heard on 12/13/85.

Now to respond to Ms. Bolling's letter: I have documented most of the chain of events and my complaints about how Case 85-404 was mis-administered in my letter dated 1/18/86, my letter to Mr. Fritz dated

2/24/86 and my letter to Ms. Bolling dated 1/1/86. I will therefore not repeat all of those facts. I will address the issues and statements that Ms. Bolling raised or discussed in Ms. Bolling's letter.

In answer to your comments about volunteer arbitrators, I have this to say: I am aware that these people are volunteers. I do not believe that has anything to do with this issue. General Motors and the Better Business Bureau agreed to settle these automotive disputes in this manner and the Better Business Bureau is being paid for their services as are you and other staff members. If you believe it is fair to have these people volunteer their time without pay, that is your judgement. I do not think it is fair. Here we have General Motors a corporation which makes millions of dollars of profit, some of it by swindling consumers like myself and they expect people to volunteer their time while everyone except the consumer and the volunteer gets paid and these cases go on and on without regard for time. This does however provide job security for those of you employed by the BBB, for when these cases are settled, it would appear that your office will be over-staffed and some people will be out of jobs. If Mr. Ruderman wishes to do charity work for General Motors and save them attorney's fees by avoiding court, that is Mr. Ruderman's decision.

I do believe that the Better Business Bureau has a resonsibility to screen these people so that these cases can be handled both quickly and fairly. When you permit Lisa Rosen, who is employed by a General Motors subsidiary, Hughes Aircraft to appear in a case where General Motors is involved, you have not done your work properly. With that gross misjudgement of fairness, I wasted my time coming to a hearing set for 7/12/85 and then had to wait another month until 8/19/85 to have my first case heard by Mr. Ruderman. In your letter, you appear to blame me for the delay since I refused to have someone with a possible conflict of interest be the arbitrator.

In your second paragraph on page one, you are not stating the facts. At the hearing of the first case on 8/19/85, Mr. Ruderman stated that he had been assigned to both cases, 85-403 and 85-404. He stated that I would not have to again go through the three hour presentation that I had just made but he would have to see the second car. I contacted you immediately after I received your letter on 9/3/85 informing me of Mr. Ruderman's decision. I requested that a new date be set as quickly as possible so that Mr. Ruderman could view the blue 1979 Oldsmobile involved in case 85-404 and we could get this case settled. You stated that you would check to see when Mr. Ruderman would be available. On 9/24/85, when no date had been set, I called Mr. Draypac and asked that a date be set. Mr. Draypac stated a date would not be set until November and if I didn't like it, I should pursue this in the courts. All of this is documented in a letter to Mr. Determan dated 9/25/85 in which I asked that this case be expedited. Mr. Determan did not answer my letter. On 12/13/85, the date of the hearing with Mr. Ruderman, I asked Mr. Ruderman when he was contacted to set a date for hearing case 85-404. He stated that no one contacted him until in November 1985. It is obvious that Mr. Draypac carried out his threat.

Now I shall turn to addressing the second to last paragraph on page 5 of your letter and go on from there. You are now giving me what appears to be an ultimatum: I have 15 days from March 21, 1986 to accept or reject Mr. Ruderman's decision. I do not wish to file a suit against General Motors at this time since both the BBB and General Motors know that it will take 3 to 5 years for the case to come to trial. General Motor's lawyers will "paper" me with interrogatories, depositions and court manuevers which will make the cost of litigation so high that General Motors with its almost unlimited funds will try to force me to drop the case because of the cost.

As I see it there are two possible choices by which to resolve this case through arbitration:

(1) Disqualify Mr. Ruderman because of the many violations of the arbitration rules and agree on a new arbitrator and date, or

(2) Even though I object to retaining Mr. Ruderman as arbitrator because of all of the violations, have every particular of his award defined in writing so that General Motors and I are well aware of exactly what has to be done and how it is going to be enforced. Also have Mr. Ruderman state as to how he is going to determine whether the General Motors mechanic actually sealed all of the various body vents some of which are very probably inaccessible.

I object to Mr. Ruderman's continuing as arbitrator for the following reasons:

(1) Mr. Ruderman signed a blank Decision form in my presence and I will testify to that in a court of law. I went to see the State of California Attorney General's assistant, on 1/29/86. I spoke with Susan Giesberg of that office and she stated that she had spoken with a person at the BBB office and that person explained that the BBB had the Arbitrator sign a blank Decision form the day of the hearing so that the Arbitrator would not have to go back to the BBB office to have his signature notarized and cause him inconvenience. This is clearly in violation of Arbitration Rule 27E. This is also not in conformance with accepted law and legal procedure. You indicated that Mr. Ruderman may have written the decision on 12/13/86 before he left. I do not believe that was the case. If it was, why did you wait 10 days before you notified me of his decision? In a phone conversation with you, Ms. Bolling, about the first week in January after receiving my letter dated 1/1/86, you were quick to inform me that the Engine Power Train Assembly does not include the transmission. You later called Mr. Ruderman. I strongly suspect that you were instrumental in causing Mr. Ruderman to decide that the transmission was not to be included. I therefore have no confidence that the decision made was that of Mr. Ruderman's. To further support my belief, no new decision form was prepared with the date of the addendum and no new date to show that Mr. Ruderman had his signature notarized after he wrote the addendum. That change was conveyed to me in a cover letter dated 1/10/86. A second change to his decision was made with no new date or notarized signature. This was conveyed to me in a letter dated 1/17/86. All of these changes are in violation of Rule 27E. I have no confidence that Mr. Ruderman made any of the decisions without being influenced by you or other

employees of the BBB.

(2) Mr. Ruderman is not technically qualified to render such a complicated decision. You have stated that the arbitrator does not need to have any technical or legal background. Rule 12 provides for technical assistance where needed and I certainly believe that it should be provided if you are going to insist upon keeping Mr. Ruderman as an arbitrator.

(3) I am further challenging Mr. Ruderman's decision under Rule 27C, Modifying the Decision. I believe that the final decision is impossible to perform without more conflict. I believe it contains a mistake of fact or miscalculation and that it is imperfect in form.

I have notified you of this and you have not addressed this issue. My observation that it is not possible after the used engine is installed, (1) to determine whether any soot particles are coming from the new engine or whether the particles are those lodged in the hollow ventilated auto body; (2) whether the soiling of the upholstery is from the previous engine or the newly installed used engine without installing new upholstery.

(4) Originally Mr. Ruderman's decision was for replacement of the engine power train assembly. I presented evidence that I had ordered a 350 transmission and a 200 transmission was installed. At no time did the GM representative argue or defend the manufacturer's actions at the hearing. I believe that Mr. Ruderman originally intended to have the transmission replaced since by definition, engine power train assembly does include the transmission. I believe that you, Ms. Bolling, had preconceived ideas about the definition of engine power train assembly and caused Mr. Ruderman to change his mind and thus exclude the replacement of the inferior 200 transmission.

(5) A trial period of 30 days does not give me enough time to test the car to see if the mechancial work was effective.

Now if you insist that I have to accept the foolhardy decision with all of the illegal procedures, I will do that rather than to drop this arbitration case after so much time has been invested. If you insist, (and I do not think it is your prerogative since under Rule 28, the Council of Better Business Bureaus (CBBB) is to make the decision) then in order to protect myself from further abuse and cheating by General Motors, these items need to be accomplished:

(1) Before the used (so-called remanufactured) engine is installed, I want to see the engine to observe whether it appears to have been previously installed in another car and used since its so-called remanufacture and to check the serial number.

(2) I want Mr. Ruderman to specifically identify just where General Motors is to seal the auto body and to state how I am going to identify just where these places are and how I am going to know whether the work was actually done.

(3) I want Mr. Ruderman to explain how he is going to determine after the engine is replaced whether the soot on the upholstery is from the so-called remanufactured engine or from the old engine.

(4) If the soot continues to come into the passenger compartment what Mr. Ruderman is going to do next to correct the problem?

I believe that I have addressed the major issues raised in your letter. I am requesting that you inform Mr. Ruderman that I wish for him to withdraw from this case because of the rule violations and that I do not believe that he made the arbitration decision without influence from you and possibly other BBB employees. If Mr. Ruderman insists on remaining and the BBB does not rehear this case, then I expect Mr. Ruderman to explain in detail how his arbitration decision is going to be implemented.

I believe that you should notify the General Motors representative of my objections and my concern for the implementation of Mr. Ruderman's decision.

I not only want Mr. Ruderman to withdraw as Arbitrator, but I am also requesting that since you, Ms. Bolling, having been a party to this dispute and the violation of rules, that you disassociate yourself from any future arbitration proceedings involving this case.

Very truly yours,

Norman E. Witt

Norman E. Witt, Sr.

Cc: Federal Trade Commission
Attorney General Bronson LaFollette of Wisconsin
U.S. House Members Tim Wirth, Al Swift, James Florio
Center for Auto Safety Clarence Ditlow and Evan Johnson
Public Citizen

Lemon Law Mtg. sponsor: AIA

1/29/86

I Introduction of attendees

Susan Diamond – L.A. Times reporter – "lemon" auto article

Richard Elbrecht – DCA

II Overview of Dispute Settlement Programs

a. Dean Determan – BBB Nat'l BBB Autoline program

Auto Dispute programs predate Lemon law

BBB since 1972 arb. binding

19 car & truck lines participate via BBB prog.

14 BBB offices in Calif.

Most hearings "in-person"

" " single arbitrator, 3 in some buy-back cases.

1985 model year – Oct 1, 84 – Sept 30, 1984

Calif: 12,716 cases

9,977 mediated to successful.

2,739 arb. held

Not nec. FTC Consent order cases

Based on "samplings" (via computer criteria)

Based on 1 out of 5 in which a buy-back was requested

2200 sought a buy back

33.7% successful in getting a buy back (or refund)

578

2200
579
1622

other – repair dealer
– factory mfg

Determan to participants

78% { accepted a-b. dec.
22% { non accept – reject

578

124: – (1 in 5) car bought back at orig. purchase price (mostly Mexico models)

(Other 454): 2,158 ded. for usage

12,854.46 avg. purchase price

23,123 mi on odometer on av

avg. ded. for usage < 10K mi

X → 69% of Ca. buybacks wouldn't qualify under the lemon law.
beyond 12,000/12 mo.

Because many people come in w/o meeting presumptive criteria.

X Conclusion: Mfg. have greater exposure under BBB rather than

Consumers would lose if state arb. limited to lemon law cases only.

anecdote:
1 dealer had already bought back 35 cars (Minnesota)

Repair decision - average cost? - $350 (old figure)

Tax, license fees etc are optional - mfg aren't precommitted

Generally mfg will say it's a relatively new vehicle.

"Performance awards" - "repair decision"
Old uniform arb. rule - had to reopen
1 1/2 yr ago - repair decision wasn't final but an interim decision - to test repair over period of time. selected by arbitrator.
→ Further repair
→ Buy back.

? Cost of BBB to mfg: $76/case to mfg.
FTC required Cooper & Lybrand prepayment
Average length of time for arb. - 60-70 days avg.

FTC ruled is ... [illegible]

✳→ Rule 703 is up for renegotiation at Tokenhouse

73% acceptance ::
74% – have "good" or "excellent" rating for procedures

Elbrecht

Query re: Lack of direct notice to mfg
Lack of method ~~for tracking~~ a vehicle repairability

1/3 cases
$200 per case for in person CALIF arbitrator
7 1/2 hrs staff time for BBB staff

6. Allan 7 1/2 hr for GM : Chevrolet Chrysler Customer Satisfaction

1st 6 mo of '98 467 cases heard in Calif
182 north
285 south
58 still pending in June
88 adverse
32% – cust rec'd some or all what they asked for

Glove box stuffer in car
written into the warranty

Desk arbitration – not an in-person
"better", faster
85% of cases involve actual veh. insp.
inspector is indep. of Chrysler
Avg. length of time : 38 days to CKs.
Participate in FTC permitted ~~30~~ 20 day mediation
1) If customer has not personally contacted Chrysler
2) Zone office agrees w/ customer
43% of cases are mediated
(most due to non-contact of mfg)

Board can reach any decision
Buy back material or arrange that (illegible)
per the Board's decision
Board can do any

% accepted : of 1985 audit

* { # of buy backs :— proprietary info.
# per buy back :— "
cost per case ? : ? No way to accurately tell.
Administrative costs — covered by the zone office budget }

C. Lou Plummer owner-retailer-gets FORD

5 members
3 consumer rep — (1 is 1 technician)
1 Ford dealer
1 Lincoln mercury dealer.

Dealer's don't vote on
Ford provider
Local dist owner-retailer act
as Sec.

Product performance, service prob
not > 4 yrs / 50,000 miles

Decisions binding on Ford + dealer
not on cons —
Virtually all Ford dealers
96% nationally
1X use / 50 cases

Bases: written statements provided to Bd.
"Outside" experts called to cover specific disputes.
Before or after Bd meeting (& generally after Bd hearing - a/c debate)

Toll free # access
Info. contained in owner guide, warranty booklets & promo. material
Introduced 1977 "Customer satisfaction"
mid 1979 CA.
3 Bds running CA 2 in LA, 1 with CA
31 Bds nationally
7 yr. period
8,000 cases
53% customer rec'd 100% or partial refund
1985 2200 FCAB Calif - case close
55% customer rec'd refund.

→ Program is costly, particularly in terms of human time

→ { Intermittent failure problems:
↳ Difficult to diagnose
→ substantial # of cases }

Processing days - avg < 40 days - national CALIF.?
Guess 1/4 run past 40 days.

350-400,000 cars sold each year in CA/CA.
1.4 - 1.5 million

Elwadt

Contradictory information brought before panel
w/o consumers presence.

FORD:

→ Cost of ~~Ford Cons~~ FCAB program, per case: $ _____

→ Average $ cost of FCAB decision (buy backs): $ _____

→ Total $ cost of FCAB decision (buy-backs): $ _____

(1 million new cars sold in Calif. per yr.?)

15,000 cases handled nationwide (last 2 yrs (Chrysler)
800 warranty lawsuits -

BBB again.

(Dellmuth suggestion:
State should send a questionnaire to all
who went through the program)

B.B.B. - doesn't like any one arbitrator to rule in case
w/ same mfg. more than once.

Typical hearing takes 90 mins — guy up
Buy back cases - always involves insp & test drive.
Prior to arbitration - arbitrator only gets
agreement to arbitrate

Elwadt questions:

? Incidental/Consequential damages
BBB calls mfg. to gain acceptance to arbitrate
80% include such

Lemon cases: w/, realm of arbitrate
Further insp.: arbitrator can order
hearing is continued -

Customer's interest on the contract
Complicated – what about when forgiveness rolling in costs of prior trade-in used car
Exaggerated loan payment consolidated

Auto CAP:
Interest :
Tax :
License :
Use of vehicle :

d. Steve Snow : AUTOCAP

Don Fouts
AAA

Panel approach – no longer in product mix.
In N. Calif.

started 1913
got out of product part – 2 years later
Very expensive to trade ins
Primarily doing work for mfg / distributors
who did not constitute all of
dealer assn members.

1983 :
Technical expertise : critical
attend : panel meeting every 6 wks
17 cases
all but 4 were lemon
workload on staff due to absorb
violations

1984 – 300 cases
→ WHAT ABOUT AUTOCAP south ?
BBB = men technical expert : 15%

BBB :
Consumers bring lawyer or another rep in about 5%
of cases.

Allocation South

1485

245

105 → dealer/mfg
79 → cars
22 → consolidated
8 → litigation
31 → arbitration

31 arbitration

10 dealer/mfg
12 consumer
9 pending

Federal advisory Committee Mfg. →

III MAJOR ISSUES

2. Mandated State/Independent Program

Connecticut
Texas
Montana

Reaction to Tanner proposal

1. Certification
   - Needs to be a cannot for mfg.

STATISTICS

Harvard Business Journal article: Incidence of patent warranties

Connecticut General Assembly

JOINT COMMITTEE ON LEGISLATIVE MANAGEMENT
OFFICE OF LEGISLATIVE RESEARCH
(203) 566-8400

LAN GREEN
DIRECTOR

18-20 TRINITY STREET
HARTFORD, CONNECTICUT 06106

February 4, 1986

86-R-0037

TO: Honorable John J. Woodcock, III

FROM: Office of Legislative Research
Mark E. Ojakian, Research Analyst

Lemon Law Arbitration

RE: Lemon Law Arbitration Cases

You asked:

1. how many pending lemon law arbitration cases exceed the 60-day limit,

2. what the Department of Consumer Protection perceives to be problem areas if there are delays in holding arbitration hearings, and

3. what steps the department is taking to rectify any problems in scheduling hearings.

SUMMARY

Of the 32 lemon law arbitration cases scheduled for hearings through March 5, 31 exceed the 60-day limit. The Department of Consumer Protection indicates that the basic problem areas are staffing, the prescreening process, and the pool of technical experts. To reduce the current backlog of arbitration cases, the department has proposed hiring additional consumer information representatives, prescreening cases on weekends, and hiring a technical expert.

ARBITRATION CASES

The law requires an arbitration panel to render a decision after a hearing in a lemon law case within 60 days of a consumer's filing a request for arbitration, CGS § 42-181(c). The department currently has 32 cases scheduled for a hearing from January 28 to March 5. Of these cases, 31

exceed the 60-day limit by an average of about 25 days. Enclosed is a copy of the current docket of lemon law cases.

DEPARTMENT RESPONSE TO DELAYS

The department has identified three basic problem areas which have caused scheduling delays.

Staffing Levels

The department indicates that the lemon law unit does not have adequate staff to monitor all the deadlines throughout the process. If deadlines are not met at various stages, the hearings will probably not be held within the statutory time limit.

The department has hired a temporary consumer information representative effective December 31, 1985 through June 5, 1986. His responsibilities will include scheduling and staffing of hearings and monitoring cases throughout the process. They have also included an additional consumer information representative as a budget option in the governor's FY 1986-87 budget.

Prescreening Process

The law requires a panel of three arbitrators to review a consumer's request for arbitration and determine eligibility within five days of the filing date, Conn. Agencies Reg. § 42-102-8. This prescreening panel is distinct from the arbitration panel that hears the case. The department indicates that the prescreening process is very time consuming due to the number of cases and the availability of arbitrators and it is difficult to complete this process within the five days. A delay in the initial stage leads to a delay in the entire process.

The department has begun scheduling arbitrators on Saturdays to review all cases received during that week.

Technical Experts

The law requires that a pool of volunteer technical experts be available to assist arbitration panels in lemon law cases. According to the department, the pool has diminished causing difficulty in scheduling. Some of the original pool of technical experts has indicated that they will not serve without compensation thereby eliminating them from consideration.

The department has suggested paying technical experts for their services to ensure an adequate number and help alleviate scheduling difficulties. Toward this end they have

included the hiring of a technical expert as a budget option in the governor's FY 1986-87 budget. This technical expert would replace the volunteer pool of experts.

MEO:npp
8

Enclosure

The Hartford Courant 2/18/86 P. 40

'Lemon law' claims bogged down: study

By PHIL BLUMENKRANTZ
Staff Reporter

Consumers are waiting about three months to have "lemon law" claims heard by a state-run arbitration panel charged with speedy settlement of recurring, major auto problems, according to a report prepared for legislators.

The state Department of Consumer Protection is taking an average 25 days longer than allowed by law to hold hearings, according to the report prepared by the state office of legislative research. The report says the DCP's lemon law arbitration unit, in 31 of 32 cases awaiting hearings, has exceeded a 60-day limit for decisions prescribed by the General Assembly.

DCP officials would not comment on the report.

But state Rep. John J. Woodcock III, D-Windsor, author of the Connecticut lemon law and the legislator who had requested the OLR study, said he is considering asking legislators to strip the DCP of its responsibility.

"It's an embarassment," said Woodcock, who said other states have modeled their lemon laws on Connecticut's, which was the first in the country.

The DCP last year was assigned responsibility for arbitrating lemon law cases so that consumers, who previously had to go to court or through manufacturers' programs, could get quick resolutions of problems.

But the state is now the one tying up consumers, said Woodcock, who said the DCP appears unwilling to take corrective measures.

Wendy Cobb, director of the DCP's lemon law unit, said she could not discuss the report. Neither Joan Jordan, acting division chief of the DCP division of product safety, nor Dorothy Quirk, executive assistant to the DCP commissioner, returned several phone calls on Friday.State offices were closed Monday because of Presidents Day.

The OLR report said DCP officials claim they don't have enough workers to keep track of deadlines, and that they are having trouble assembling panels needed to screen complaints for eligibility. Once things get off to a slow start, other deadlines are missed, said the report.

The DCP, the report said, also was apparently having trouble finding technical experts to assist arbitrators. The experts, who originally worked as volunteers, are in some cases now refusing to work without money.

The report says the Consumer Protection Department has proposed hiring extra help, working on weekends and hiring a paid, technical expert to move cases more quickly.

Consumers are being kept waiting an average 85 days for hearings and up to 10 days beyond that for decisions, according to Mark E. Ojakian, a research analyst who prepared the report.

One consumer requested a hearing on Nov. 21, 1985, entitling him to a decision by Jan. 21. But his case isn't scheduled to be heard until Tuesday — a wait of 96 days just for the hearing.

Sour report on Lemon Law draws tart

By Phil Blumenkrantz
Staff Reporter

The state Department of Consumer Protection is failing its legal mandate to hear consumers' Lemon Law claims expeditiously, the author of the law says.

State Rep. John J. Woodcock III, D-Windsor, said a new state report, prepared at his request, shows the consumer department is taking an average of 25 days more than legally allowed to hold arbitration hearings. Woodcock said the department must either speed up the process or be stripped of Lemon Law responsibility.

Woodcock based his remarks on a report by the state Office of Legislative Research, which found that the consumer department's Lemon Law arbitration unit exceeded a 60-day legal limit for decisions in 31 of 32 cases awaiting hearings.

The report said consumers are waiting an average of 85 days to have Lemon Law claims heard by the unit, which was created to speed up settlements and to relieve the need for consumers to go to court or to manufacturers with their problems.

One consumer requested a hearing Nov. 21. But according to the report, his case isn't scheduled to be heard until Feb. 25.

Woodcock is considering asking the General Assembly to transfer responsibility to the American Arbitration Association.

"The department is not meeting the standards under the law," said Woodcock. "It's an embarrassment."

Long waits increase both the costs and the frustrations of consumers with major car problems, said the state representative.

Wendy Cobb, director of the Lemon Law unit, said she could not discuss the report. Neither Joan Jordan, acting division chief of the consumer department's product safety unit, which oversees the arbitration panels, nor Dorothy Quirk, executive assistant to the commissioner of the department, could be contacted.

In November the Department of Consumer Protection released its own "report card," saying consumers almost always won in disputes with automakers in its auto dispute settlement program and that the Lemon Law was generally working.

But the research office's report said consumer department officials claim they don't have enough workers to keep track of deadlines and that the consumer department is having trouble assembling panels to screen complaints for eligibility. Once things get off to a slow start, other deadlines are missed, the report said.

The Department of Consumer Protection, the report said, apparently also was having trouble finding technical experts required under state law to assist arbitrators. The experts, who originally worked as volunteers, are in some cases now refusing to work without money. State law allows volunteers only.

The report says the consumer department has proposed hiring additional help, working on weekends and hiring a paid, technical expert to move cases more quickly.

But Woodcock said the backlog is inexcusable because under state law, the consumer department can refer extra cases to the regional office of the American Arbitration Association, a private, non-profit organization.

He said he has repeatedly suggested the option to the department. But no cases have been referred, according to the association's regional director, Karen Jalkut. Jalkut said her organization could meet the 60-day deadline unless it were flooded with complaints from the consumer department.

Until last year consumers either had to

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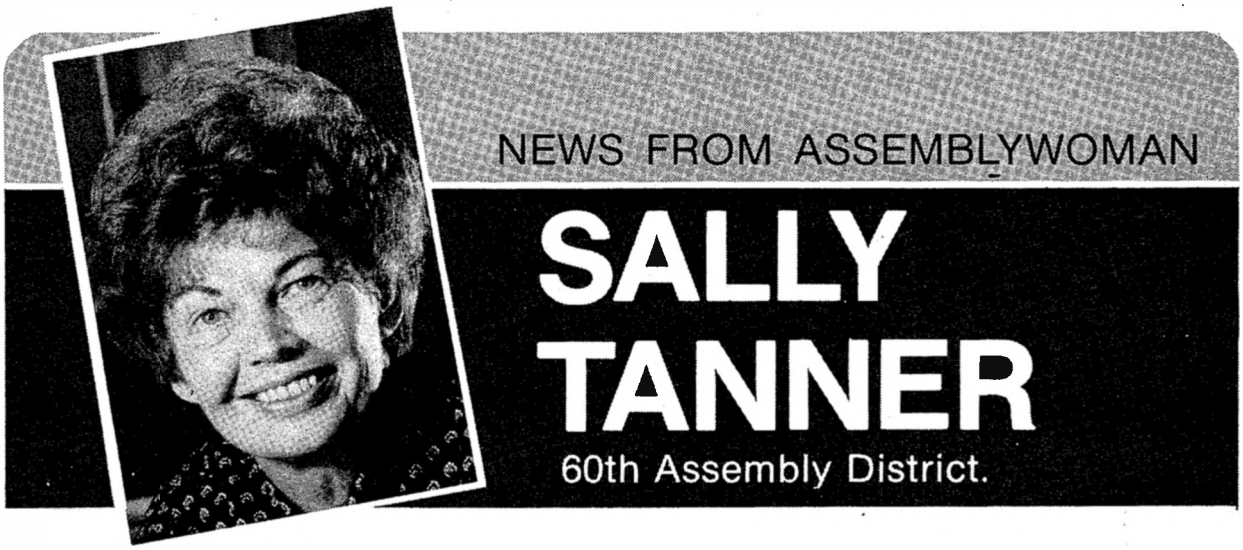
Until last year consumers either had to go to court or to an automaker for the refund or replacement of a new, faulty vehicle not fixed after four or more repair efforts. Since last spring under a revision in the law, consumers have been able to take their claims to the consumer department's arbitration panels.

Consumers are waiting up to 95 days for decisions, according to Mark E. Ojakian, a research analyst who prepared the research unit's report at Woodcock's request.

Woodcock fears the backlog will continue to grow as consumers begin filing a new round of Lemon Law complaints on 1986 vehicles.

The Consumer Protection department has come under criticism during the past year from state legislators, particularly over reports of a six-to-eight-week backlog in handling certain types of general retail complaints. That backlog has been reduced in recent months.



CONTACT: ARNIE PETERS
(916) 445-0991

FOR IMMEDIATE RELEASE
FEBRUARY 20, 1986

TANNER INTRODUCES NEW LEMON LAW

Assemblywoman Sally Tanner (D-El Monte) today announced the introduction of legislation designed to provide additional protections to new car buyers who are sold "lemon" automobiles. The legislation is intended to strengthen California's "lemon law," originally enacted in 1982, iron out inequities that have become evident in the implementation of the 1982 bill, and ensure that owners of "lemon" cars are given a fair, impartial and speedy hearing on their complaints against auto manufacturers.

"In the two and one half years since the first 'lemon law' went into effect," Tanner said, "I have received numerous complaints from new car buyers about the operation of the law. Many persons who are sold 'lemons' have complained that they have not been treated fairly by the auto manufacturers. Much of the trouble appears to stem from the fact that the 'lemon' car dispute resolution process, which is administered by arbitration boards financed by the auto manufacturers, is not run impartially. The arbitration boards fail to decide disputes in a timely manner and the decisions often do not provide fair and reasonable reimbursement when a manufacturer buys a 'lemon' back from the purchaser."

The legislation introduced today, Assembly Bill 3611, has the following key provisions:

- Requires that auto manufacturer-run arbitration boards must be certified by the state as meeting the requirements of

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The legislation introduced today, Assembly Bill 3611, has the following key provisions:

- Requires that auto manufacturer-run arbitration boards must be certified by the state as meeting the requirements of state law and federal regulations.

SACRAMENTO ADDRESS
State Capitol
Sacramento, CA 95814
(916) 445-7783

DISTRICT ADDRESS
11100 Valley Boulevard, No. 106
El Monte, CA 91731
(213) 442-9100

- Requires that the California New Motor Vehicle Board establish a state-run arbitration process to hear "lemon" cases.
- Gives the consumer the choice of submitting a "lemon" car dispute to either the state-run or the manufacturer-run arbitration process.
- Gives the consumer the option of replacement or refund when his or her car is found to be a "lemon."
- Requires that refunds include the sales tax, license and registration fees paid on the "lemon" car. On the average new automobile, sales tax and license fees amount to $800 - $1,000. Under the present law, taxes and fees paid on the purchase of a new care are not refunded when the manufacturer buys a "lemon" back.

"I believe" Assemblywoman Tanner said, "that these revisions to the original "lemon law" will give the consumer a fairer shake than he or she presently gets. I expect a hard fight on this bill but I also expect that the bill will become law. The issue is nothing more than fairness. The buyer of a defective automobile should get a speedy and impartial hearing when the car performs like a "lemon" and a decision should be made promptly. Owners of "lemon" cars should get a fair refund, including a refund of the sales tax and other fees they paid. Complaints from "lemon" car owners show that this is not happening now. This bill will improve the situation and give the new car buyer the protection he or she deserves and expects."

End

GA-1097-F(1-74)
LEGISLATIVE BILL ANALYSIS

State Board of Equalization
Department of Business Taxes

Bill Number Assembly Bill 3611 Date February 20, 1986

Author Tanner Tax Sales and Use

Board Position Related Bills

BILL SUMMARY:

This bill would add Section 6902.2 to the Revenue and Taxation Code to require the board to refund the sales tax to the vehicle manufacturer upon receipt of satisfactory proof that the sales tax has been paid to the state on the sale of a new motor vehicle, and that the new motor vehicle has been replaced by the manufacturer or that the manufacturer has made restitution to the buyer, as provided in paragraph (2) of subdivision (d) of Section 1793.2 of the Civil Code.

Section 1793.2 of the Civil Code would be amended to add paragraph (2) to subdivision (d) to provide that if the manufacturer or its representative in this state is unable to service or repair a new motor vehicle to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer is required, at the option of the buyer, either to replace the new motor vehicle or make restitution to the buyer. Any restitution made to the buyer can be reduced by that amount directly attributable to use by the buyer prior to the discovery of the nonconformity.

ANALYSIS

In General

Existing law provides that the amount upon which tax is computed does not include the amount charged for merchandise returned by customers if the full sales price, including that portion designated as "sales tax" is refunded either in cash or credit and the customer, in order to obtain the refund or credit, is not required to purchase other property at a price greater than the amount charged for the property that is returned. Refund or credit of the entire amount is deemed to be given when the purchase price, less rehandling and restocking costs, is refunded or credited to the customer.

Existing law also provides that the amount upon which the tax is computed does not include the amount credited or refunded by the seller to the consumer on account of defects in merchandise sold to the consumer. If, however, defective merchandise is accepted as part payment for other merchandise and an additional allowance or credit is given on account of its defective condition, only the amount allowed or credited on account of defects may be excluded from taxable gross receipts. The amount allowed as the "trade in" value must be included in the measure of tax.

In addition, existing law provides that any overpayment of sales taxes must be refunded to the person who paid those taxes to the state.

BACKGROUND

Effective January 1, 1983, the Legislature amended Section 1793.2 of the Civil Code to incorporate legislation commonly known as the California "Lemon Law". The law provides an arbitration process for disputes between manufacturers and consumers of new cars purported to have major manufacturing defects. If the mediator rules in favor of the consumer, the manufacturer is required by law to either replace the automobile or reimburse the purchase price less an amount attributable to use prior to the discovery of the defect.

This arbitration process raises sales and use tax questions as to the availability of the deduction for returned merchandise and/or defective merchandise. The dealer who sold the defective motor vehicle to the buyer may not be eligible for either of the deductions if the defective motor vehicle is returned to the manufacturer or some other dealer and the manufacturer or some other dealer replaces the motor vehicle or reimburses the buyer for the purchase price, assuming of course that the dealer and the manufacturer are separate legal entities.

COMMENTS

a. This bill would conflict with Section 6901, which requires any overpayment of taxes to be refunded to the person who paid them. That is, in a situation covered under the California "Lemon Law", this bill would grant the manufacturer the right to recover reimbursement of the sales tax from the state for sales tax refunded to the buyer, even though the manufacturer did not make the original sale and did not pay the sales tax on that sale to the state.

The basic foundation of the Sales and Use Tax Law is that sales tax is imposed upon retailers for the privilege of selling tangible personal property at retail in this state. This has been and currently remains a sensitive issue since past litigation has attempted and would probably continue to attempt to overturn this basic concept. Enactment of Section 6902.2 could be that necessary tool to overturn this basic concept.

b. Enactment of this legislation would also be expensive to administer since the board would have to examine both the dealer's and the manufacturer's records to verify that the sales tax on the sale of the motor vehicle found to be

defective was remitted by the dealer to the state and that the manufacturer had refunded similar amount to the buyer. This would require special efforts outside the normal audit procedure, resulting in extra time expended by the board staff.

Analysis Prepared by: Rey Obligacion 322-7086 March 28, 1986
Contact: Margaret Shedd Boatwright 322-2376 0053F

CalPIRG CALIFORNIA PUBLIC INTEREST RESEARCH GROUP

MAR 11 1986

MAR 17 1986

10 March 1986

Honorable Sally Tanner
California State Assembly
State Capitol
Sacramento, CA 95814

Dear Assembly Member Tanner:

We are very pleased to see you are once again introducing a bill to protect consumers of new automobiles. We too have received a number of complaints about the operation of the original lemon law, and believe that new legislation is essential to solving the serious problems that have arisen.

As you requested, we have reviewed AB 3611 and have the following comments and suggestions.

A. Allowing for Consumer's Use of Vehicle

Section 1793.2(d)(1) states that when a manufacturer reimburses a buyer for a nonconforming product in an amount equal to the purchase price paid by the buyer, the manufacturer is entitled to offset that amount directly attributable to use by the buyer prior to the discovery of the nonconformity.

The definition of "use by the buyer prior to discovery of the nonconformity," is the subject of much disagreement, and is consequently one the greatest problem areas for consumers seeking fair restitution.

In order to avoid the current problems with the lack of definition, we recommend this portion of the law be amended to specifically state a formula for calculating the amount of offset for use. A fair formula would be: multiply the total contract price of the vehicle by a fraction having as its denominator 100,000 miles and its numerator the number of miles the vehicle traveled prior to the time buyer first notified the manufacturer's agent of the problem which gave rise to the nonconformity.

B. Refund of Consumer's Costs

Section 1793.2(d)(2)(A) and Section 1793.2(d)(2)(B) both address several very important problems by giving the buyer the option to elect either refund or replacement, and by specifying the manufacturer's responsibility to pay for sales tax, license fees, registration fees and other official fees.

However, there are two other out-of-pocket expenses, towing fees and rental car charges, which the consumer often bears as a result of the inoperative vehicle. These incidental damages are not being clearly defined in this section causes disputes over the manufacturer's responsibility to pay for

Bay Area Regional Office
46 Shattuck Square, #11
Berkeley, CA 94704
(415) 642-9952

Los Angeles Regional Office
1660 Corinth Avenue
West Los Angeles, CA 90025
(213) 473-8491

San Diego Regional Office
2187 Ulric Street, Suite B
San Diego, CA 92111
(619) 279-5552

Legislative Office
909 Twelfth Street, Suite 205
Sacramento, CA 95814
(916) 448-4516

them. We recommend that the bill explicitly provide for the consumer to be compensated for towing and rental car charges as well as incidental damages.

C. Manufacturer Notification

Section 1793.2(e)(1) allows a car manufacturer, in some situations, to require direct notice to the manufacturer in the event of a defect or malfunction that cannot be repaired.

The current provisions do not define when the buyer must give direct notice to the manufacturer. This has caused buyers to be denied refund or replacement awards because some arbitration boards have claimed the manufacturer did not receive adequate notice of its agent's repeated failure to effect repairs. The buyer is then required to submit to additional repairs to allow the manufacturer the opportunity to repair the vehicle.

This lack of clarification often causes the buyer to go through yet one other repair in a long list of attempts. At what point direct notice to the manufacturer should occur needs to be defined in order to ensure that the manufacturer has adequate notice and that the buyer has to go through no more than four repair attempts or have his/her vehicle out of service for longer than 30 days.

We recommend this section be amended to: "...the buyer directly notify the manufacturer of the need for the repair of the nonconformity after 3 repair attempts or 15 calendar days out of service." Bad idea

D. Definition of New Motor Vehicle

Section 1793.2(e)(4)(B) clarifies the definition of a new motor vehicle. Specifically including dealer owned and demonstrator vehicles solves an important problem with the current lemon law.

E. Arbitration Criteria

Vehicle Code Sections 3050(e) and 3050(f) discuss the certification process of third party dispute programs and arbitration by the New Motor Vehicle Board.

We would like to commend your innovative use of an existing agency to set up a state run arbitration program as well as a procedure for ensuring other third party dispute programs comply with the law.

However, since the arbitration boards have been, by far, the most serious problem with the original lemon law, we would like to see further protections written into the statute. In addition to the qualifications for third party dispute programs as set forth in the FTC 703 regulations, we believe it is imperative that any arbitrator expected to make decisions about new car warranty disputes, be adequately trained in and take into account the lemon law amendment to the Song Beverly Warranty Act.

One of the most common complaints about the arbitration decisions is that

arbitrators do not use "four or more repair attempts or repair service longer than 30 days for the same major defect" as a criteria for awarding refund or buy back to the consumer. In fact, according to the Attorney General's Consumer Division, the Better Business Bureau has a policy which purposely does not include lemon law as a part of its training of arbitrators.

A policy such as this, or simply lack of lemon law information to the arbitrators defeats one of the purposes of the lemon law, which is to clarify what is meant by a "reasonable number of attempts" to repair a new motor vehicle. Arbitration becomes another hurdle to cross, rather than a final resolution of the problem. For these reasons, we recommend an amendment making training in and use of the lemon law by the arbitration programs explicit.

Further, in response to the "fairness" complaint by consumers, we recommend that each and every third party dispute program be required to utilize an independent technical automotive expert to review complaints and be available for consultation and examination of the vehicles in question.

F. Record Keeping

With respect to record keeping by the New Motor Vehicle Board in its role certifying third party dispute resolution programs, we recommend that the records include:

1. An index of disputes by brand name and model.
2. At intervals of no more than six months, the Board compile and maintain statistics indicating the record of manufacturer compliance with arbitration decisions.
3. The number of refunds or replacements awarded.

A summary of these statistics should be available as public record.

G. Funding

Vehicle Code Section 3050.8(a) establishes a fee to be paid by the buyer for filing an arbitration application. While such a fee appears necessary in order to adequately fund a state run program, we suggest that a cap of $50 be placed on any arbitration fee to the consumer.

I am currently looking into the various ways that the arbitration can be funded (including cases without merit), and will comment fully on this issue at a later date.

H. Used Lemons

Finally, AB 3611 has no provisions for what the manufacturers are allowed to do with vehicles that they buy back from the consumer because they are defective. Without any regulation, a manufacturer may resell the same vehicle, with conceivably the same major defects, only this time as a used car. An unsuspecting used car buyer may not only be stuck with a lemon, but with a vehicle that is unsafe.

The law should be amended to include: "No motor vehicle which is returned to the manufacturer and which requires replacement or refund shall be resold without clear and conspicuous written disclosure that the vehicle was returned. In addition, no motor vehicle may be resold until the New Motor Vehicle Board determines that the vehicle is no longer defective."

I would like to close by thanking you for your dedication to this important consumer issue. We would be very interested in working with you closely to pass a strong Lemon Law II, and would be glad to help draft the language necessary to add our recommendations to the bill.

Sincerely,

Carmen Gonzalez

Carmen Gonzalez
Statewide Consumer Program Director

Honorable

MAR 12

CONWAY H. COLLIS
MEMBER, STATE BOARD OF EQUALIZATION

March 10, 1986

APP 2 1986

Assemblywoman Sally Tanner
Room 4146, State Capitol
Sacramento, CA 95814

Dear Ms. Tanner,

I have reviewed Assembly Bill 3611, and strongly support it.

I am particularly interested in testifying on the sales tax refund aspect of your bill, if that would be helpful to you.

Sincerely,

Conway H. Collis
Vice-Chairman
State Board of Equalization

CHC:rmc

cc: State Senator Gary Hart
Mr. Joe Caves
John Meade

3/25/86
Gretchen called to say Mr. Collis in meeting in S.F. on 4/3 & unable to come to testify

☐ LOS ANGELES 8-639-5024
901 WILSHIRE BOULEVARD, SUITE 210
SANTA MONICA, CA 90401
(213) 451-5777

☐ SACRAMENTO
1020 N STREET, SUITE 107
P.O. BOX 1799
SACRAMENTO, CA 95808
(916) 445-4154

☐ SAN FRANCISCO
350 MC ALLISTER STREET, SUITE 2056
SAN FRANCISCO, CA 94102
(415) 557-1699

cc amif Sally

Sup. 1209

SACRAMENTO ADDRESS
STATE CAPITOL
SACRAMENTO 95814
(916) 445-7783

DISTRICT OFFICE ADDRESS
11100 VALLEY BOULEVARD
SUITE 106
EL MONTE, CA 91731
(818) 442-9100

Assembly
California Legislature

SALLY TANNER
ASSEMBLYWOMAN, SIXTIETH DISTRICT
CHAIRWOMAN
COMMITTEE ON CONSUMER PROTECTION AND TOXIC MATERIALS

COMMITTEES:
CONSUMER PROTECTION AND TOXIC MATERIALS
EDUCATION
GOVERNMENTAL ORGANIZATION
LABOR AND EMPLOYMENT

CHAIRWOMAN:
HAZARDOUS WASTE MANAGEMENT COUNCIL

MEMBER:
JOINT COMMITTEE ON FIRE POLICE EMERGENCY AND DISASTER SERVICES
SELECT COMMITTEE ON PLASTIC PIPE OVERSIGHT
SELECT COMMITTEE ON INTERNATIONAL WATER TREATMENT AND RECLAMATION
STATEWIDE TASK FORCE ON COMPARABLE WORTH

1984

Dear Friend:

Thank you for your recent inquiry concerning AB 1787, the automobile "lemon" bill, which went into effect January 1, 1983.

In 1982 the Legislature responded to the many complaints from purchasers of defective new cars by passing Assembly Bill 1787 which I authored. AB 1787 provides standards for when it is appropriate for a buyer of a <u>new</u> car to obtain a refund or replacement.

I am enclosing a copy of the bill along with a fact sheet outlining its major provisions which I hope will be helpful to you.

Generally, a buyer who has problems with his or her new car should first contact the dealer to have it corrected. If that proves to be unsatisfactory, then the buyer should next contact the automobile manufacturer in writing. The address of the manufacturer's nearest "zone" office or customer relations office should be listed in your owner's manual or be available from the dealer.

There are two state agencies which can assist you in obtaining satisfactory repairs or warranty service from both the manufacturer and the dealer. The first is the Department of Motor Vehicles which licenses both auto dealers and manufacturers and which has offices throughout the State. The other is the New Motor Vehicle Board located in Sacramento. The Board's address is 1507 21st Street, Suite 330, Sacramento, CA 95814 - 916/445-1888. You may obtain a written complaint form from these two agencies to fill out and return to them for investigation.

-continued-

You may also wish to contact the State Department of Consumer Affairs, Complaint Assistance Unit, at 1020 N Street, Room 586, Sacramento, CA 95814 - 916/445-0660 (10 AM to 3 PM) with help on questions and for additional assistance.

Also, most auto manufacturers and dealers have established dispute resolution programs to resolve customer disputes which have not been satisfactorily resolved by either the dealer or the manufacturer. These programs are free to the consumer and you may want to file a complaint with them to resolve your problem. Information about which program your manufacturer or dealer belongs to and how to contact them should be available from either the dealer itself or the manufacturer's offices in California. I have attached a sheet listing the various programs currently available to auto owners.

Since various state and federal laws give a buyer specific legal rights, you may also want to contact an attorney about your problems and these rights.

Thank you again for your interest and I trust this information will be helpful to you.

Sincerely,

Sally Tanner

SALLY TANNER
Assemblywoman, 60th District

ST:mb
Enclosures

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.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1787, 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.

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.

o

FACT SHEET

CALIFORNIA'S - NEW AUTO "LEMON" LAW

AB 1787 (Tanner) - Chapter 388, Statutes of 1982

California warranty law, the Song-Beverly Consumer Warranty Act (Civil Code Sections 1790 et seq.,) governs the rights and obligations of the parties involved in a purchase of warranted "consumer goods" (purchased primarily for "personal, family, or household purposes"). That law entitles a buyer to a refund or a replacement from the manufacturer when a product is not successfully repaired after a "reasonable" number of attempts.

The new auto "lemon" law (which took effect January 1, 1983):

- Adds to the Song-Beverly Act a new provision which applies only to warranted new (not used) motor vehicles (excluding motorcycles, motorhomes, and off-road vehicles) used primarily for personal family or household purposes.

- Specifies that within the first year of ownership or 12,000 miles, whichever comes first, either 4 repair attempts on the same nonconformity (defect) or a cumulative total of 30 calendar days out of service because of repairs of any defect(s), will be presumed to be "reasonable".

  "Nonconformity" is defined as one which substantially impairs the use, value or safety of the vehicle.

  The buyer is required to directly notify the manufacturer for repair of the same nonconformity once out of the 4 times if the manufacturer includes information about that required notice and the buyer's refund/replacement and "lemon" law rights with the warranty and owner's manual.

  The 30-day limit can be extended only if repairs can't be performed because of conditions beyond the manufacturer's control.

- Requires a buyer to first resort to a third-party dispute resolution program before he or she can use the "lemon" presumption if a program meeting specified criteria has been established by the manufacturer of the buyer's vehicle.

- The criteria for the dispute resolution program incorporate those specified by federal consumer warranty law, the Magnuson-Moss Consumer Warranty Act (15 United States Code, Sections 2301-2310) and its Federal Trade Commission (FTC) regulations (16 Code of Federal Regulations Part 703).

The law's minimum criteria for a dispute resolution program include requirements for:

(1) Notifying a buyer about the existence, location and method for using the program, both at the time of sale (in the warranty itself) and later, if a dispute arises.

(2) Insulating the program from the influence of the manufacturer over any decision making - including adequate funding for the program and qualifications for the program's decision makers.

(3) The program to be free to the buyer.

(4) The operation of the program, including that:

  (a) A decision generally be reached within 40 days from receipt of a complaint.

  (b) The decision is <u>not</u> binding on the <u>consumer</u> if he or she rejects it, but would be on the manufacturer if the consumer chooses to accept it.

  (c) A party to the dispute be given the opportunity to refute contradictory evidence offered by the other and offer additional information.

  (d) The manufacturer complete any work required within 30 days.

  (e) The time limits on a buyer's right to sue are extended during the period he or she is involved in the dispute program.

(5) Maintaining specified records of the program's operation.

(6) An annual independent audit of the program and its implementation - which is to be sent to the Department of Motor Vehicles.

(7) The availability of statistical summaries concerning the program upon request.

##########

AUTOMOBILE MANUFACTURERS' INFORMAL DISPUTE RESOLUTION PROGRAMS

Chrysler Corporation - Customer Satisfaction Board

Northern California:
John Billings, Customer Relations Manager
P.O. Box 1414
Pleasanton, CA 94566
415/484-0646

Southern California:
T.W. Alley, Coordinator
P.O. Box 4120
Fullerton, CA 92634
714/870-4000

Ford - Ford Consumer Appeals Board

Northern California:
Ford Consumer Appeals Board of Northern California
P.O. Box 909
Milpitas, CA 95035

Southern California:
Ford Consumer Appeals Board of Southern California
P.O. Box 4630-P
Anaheim, CA 92803

TOLL FREE NUMBER: (800)241-8450

General Motors/Volkswagen of America/Nissan(Datsun) - Better Business Bureau

Northern California:
For area codes 916, 707, 415, 408, and 209: Call your nearest Better Business Bureau office or 1-800-772-2599

Southern California:
For area codes 213, 619, 714, 805: Call your nearest Better Business Bureau office or 1-800-252-0410

-over-

American Motors & all Foreign Automobile Manufacturers, except Volkswagen of American (VW, Porsche, Audi) and Mercedes-Benz; and participating dealers for dealer related disputes:

AUTOCAP (Automotive Consumer Action Program) Sponsored by the National Automobile Dealers Association

Northern California:
AUTOCAP
1244 Larkin Street
San Francisco, CA 94109
415/673-2151

Southern California:
(Except San Diego Area)
AUTOCAP
5757 West Century Boulevard
Suite 310
Los Angeles, CA 90045
(800)262-1482 (Toll Free calls from 213, 619, 714, and 805 Area Codes)
213/776-0054

San Diego:
AUTOCAP
2333 Camino Del Rio South
Suite 265
San Diego, CA 92108
714/296-2265

RELEVANT CALIFORNIA STATE AGENCIES

New Motor Vehicle Board (NMVB)
1507 21st Street
Suite 330
Sacramento, CA 95814
916/445-1888
(Authorized to investigate activities of licensed auto dealers and manufacturers)

Department of Motor Vehicles (DMV)
Complaint form available by calling or visiting your nearest DMV office.
(Licenses auto dealers and manufacturers)

Department of Consumer Affairs
Complaint Assistance Unit
1020 N Street, Room 579
Sacramento, CA 95814
916/445-0660 (10 AM - 3 PM)
(For general information about consumer rights and remedies)

(7) 3611

ELECTRONIC REPRESENTATIVES ASSOCIATION

NORTHERN CALIFORNIA CHAPTER

all mail to
POBOX 321 SFRAN
94101

March 10, 1986

MAR 12 1986

Hon. Sally Tanner
State Capitol
Sacramento Ca. 95814

MAR 2[illegible]

Dear Assemblywoman Tanner:

Thank you for the copy of AB 3611.

Ihave written the following copy into our newsletter this month:

> The Chinese Calendar does not have a "Year of the Lemon". In Sacramento, the year of the lemon is 1986. Assemblywoman Tanner has brought a new Lemon Law revision to the Legislature.
>
> We should support her. She is setting up better ways to handle new car problems for us.

Our Chapter consists of 275 small businesses in the sales & marketing business. We are on the road 95% of thetime. We have trouble enough with our technical products helping engineers manufacture tomorrows new computers in Silicon Valley. We don't need defective automobiles to impede us, or cause needless expenses.

What you are mandating the auto firms to do, we have been doing as a standard practice within our industry.

Thank you for AB 3611.

Very sincerely,

S.S. Fishman
Government Affairs Committee

cc annie
Sally

Support

EDWARD J. STONE

P.O. BOX 10736
ANAHEIM HILLS, CA. 92817-7036
WK (213) 591-0501 HM (714) 991-6069

17 March 1986

Assemblyman Robert C. Frazee
Chairman, Consumer Protection Commitee
State Capitol
Sacramento, Ca. 95814

RE: Lemon Law - AB 3611

Dear Assemblyman Frazee,

I have spent a great deal of time in investigating the California Lemon Law and have found there to be many serious flaws. I purchased a vehicle in 1984 and to this date I have still not had the vehicle problems corrected. My arbitration (if you can call it that) lasted over 18 months. This is far more than the law allows and even now after my case has been decided the manufacturer will not honor the decision, and now the board defends the manufacturers position. In my case I clearly meet the requirements of replacement or refund but Chrysler and their "Customer Satisfaction Board" refuse to honor the current law. The satisfaction board refuses to even enforce the arbitrated decisions and now per Chrysler the board will no longer answer my letters...

You may feel these are bold statements, however I hold documentation that more than points to the illegal and bias operation of the current system. This information is available in transcript form and is supported by hundreds of documents should you desire more on my case. I am willing to speak to your committee and present my evidence at your request.

I strongly urge you to consider the pending changes as written as AB 3611 as they will eliminate many of the current laws shortcomings. Please do not allow the BIG CORPORATE auto manufacturers buy votes and thus allow the current law to be ignored as it is at the present time. Please give the consumers in California a system of enforcement of the current law, this being AB 3611.

Please feel free to contact me if you have any questions.

Sincerely,

Edward J. Stone

CC: Assemblywoman Sally Tanner
KNBC-TV

AB 3611

MAR 19 1986

March,17,86
3002 Janae Way
Hemet, Ca. 92343

To whom it May Concern:

I am writing to request you vote for AB 3611.

I have never before written for anything political but this time I finally have had it.

I am sixty seven years old and trying to live on social Security, and as an end result do not have the money for attorneys.

I purcjased a new olds two years ago from my Local Dealer who is Mike Reade of Hemet. As it turned out after the first three miles I was in trouble and owned a pure "LEMON". After twenty seven trips in fourteen months with all kinds off problems, some of them as much ten times repeated I finally tried the "LEMON LAW".

Just as I was leaving on a vacation the Arbitration came up for review. Then G.M. decided there was trouble with the vehicle and then wanted to fix it. As I didn't want to cancell my plans I was reluctant to let them start then after waiting fourteen months. So then the G. M. representative nastilly told me he would have to tell the Arbitrator that I woudn't let them fix the car. Whcih he did at the Arbitation. This of course went against me and the Arbitator refused a buy back or replacement even though the car was well within that catagory as the law is written.

He only made G. M. repair car . I was assured the car would not break down and could use it for my trip. I then was towed in twenty five miles in Oregon and had to make four long distance phone calls to get it repaired.

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I now have Thirty Four shop orders on this car and continued repeat problems which keep returning. I returned to Arbitration again and then Arbitrator got mad at me because I told him he was not enforcing the law as it was written. He then let G. M. off the hook completely and wrote me off.

Now the warranty has run out and I now have to pay for all repairs and then try and get my money back from and extended warranty. I now find my warranty was not G. M. as I thougt I was being sold by the dealer/. I paid five hundred and ninety five dollars for this contract and then found the outfit didn't even have there name or address on the contract. Only a phone number and a Post Office box number. I now Find it almost impossibl to collect from them. They are New Dealer Associates, Box 2649 ,Oakland Ca. 94614. I tride to cancell the contract before I used and get my money back and was refused. Then the first time I tried to use it I received a form letter with ten different reasons on for non payment. I was refused payment because ther were no parts insatalled only adjustments. These parts where insalled, (in six weeks), previously by another dealer and as I said did not stay in adjustment for the forth time and I tried another dealer.

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time, oil leaks for third time. Cruise control was worked on ten times. Also had replaced valve assemblys on transmission and diferential, power steering pump, steering coloum parts, gasgets, engine mounts repaced, car actually had bent wheels and all four wheels replaced, (yellow) dash, for check engine replaced four times, chimes replaced, paint peeled from hood repaintd three times to correct it, power door lock control replaced, occasionally chimes ring when blowing horn never corrected, solonoid relaced three times.

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I am sending a copy of this to all on the consumer protection committee so Assembly woman, or Assemblyman as it may be I request you vote as I mentioned before. I am also requesting you to make an addition to the law, if possible, or to pass some form of legislation to have a committee to review all the cases in the Lemon law that the consumers have lost in the last three years to see if the law was enforced by the poorly traind arbitators and if not have the decisions reversed to correct it as the law was written and stop the Mfgs. from getting around the law . For once lets one law that is enforced as it should be.

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Respectfully yours
Harry A. Shaw.

Harry A. Shaw.

P. S., EVEN MR. GOODWRECH COULDN'T FIX THIS CAR.

3/12/86

Assemblyman Robert C. Frazee, Chairman
Consumer Protection Committee
State Capitol
Sacramento, CA 95814

MAR 14 1986

Dear Sir:

As the owner of a true "lemon" I have discovered how totally ineffective current laws are when it comes to protecting the interests of new car buyers. I have been forced to initiate legal suit as an effort to obtain satisfaction.

I truly hope you will support the new lemon law legislation — AB 3611. We "little guys" need all the help we can get.

Sincerely,
Karen J Peterson
713 Dover Av
Modesto, Ca 95351

SACRAMENTO ADDRESS
STATE CAPITOL
SACRAMENTO 95814
(916) 445-7783

DISTRICT OFFICE ADDRESS
11100 VALLEY BOULEVARD
SUITE 106
EL MONTE, CA 91731
(818) 442-9100

Assembly
California Legislature

SALLY TANNER
ASSEMBLYWOMAN, SIXTIETH DISTRICT
CHAIRWOMAN
COMMITTEE ON ENVIRONMENTAL SAFETY & TOXIC MATERIALS

COMMITTEES:
AGING AND LONG TERM CARE
ENVIRONMENTAL SAFETY & TOXIC MATERIALS
GOVERNMENTAL ORGANIZATION
TRANSPORTATION
MEMBER:
SELECT COMMITTEE ON INTERNATIONAL WATER TREATMENT AND RECLAMATION
JOINT COMMITTEE ON FIRE POLICE EMERGENCY AND DISASTER SERVICES
SUBCOMMITTEE ON SPORTS AND ENTERTAINMENT

March 1986

Dear Friend:

I wish to thank each of you for your calls and letters, albeit generally of a dissatisfied nature with the way the "lemon law" worked for you.

In 1982, I authored Assembly Bill 1787, California's first "lemon law." That law has been in effect for three years. Judging from the letters I have received, consumers of new automobiles have many complaints about its operation. Because of these complaints I decided to introduce legislation to revise the administration of the original law.

Enclosed is a copy of Assembly Bill 3611 which was introduced on February 20, 1986. Although the bill would not help past occurrences, I feel it would definitely strengthen the present law for consumers in the future. Briefly, the bill would make the following changes to the "lemon law:"

1) Require that the present arbitration processes that have been established by auto manufacturers to resolve disputes with buyers must be certified by the New Motor Vehicle Board as meeting the requirements of California law and the Federal Trade Commission regulations for third party dispute resolution processes.

2) Authorize the New Motor Vehicle Board to establish a state-run arbitration process to resolve disputes with new motor vehicle manufacturers. A buyer of a new motor vehicle would have the option of using the state-run arbitration program or a certified program run by a manufacturer, but not both.

3) If the buyer opts for a manufacturer-run arbitration and the arbitration panel fails to meet the procedural requirements of law or FTC regulations, the buyer can ask the New Motor Vehicle Board to take over the arbitration.

4) If the buyer opts for arbitration by the New Motor Vehicle Board, the dispute must first be handled by informal mediation. If mediation fails to resolve the dispute, the buyer may request arbitration.

5) When a new motor vehicle is found to be a "lemon" the buyer has the option of replacement or refund.

6) If the buyer opts for refund, the purchase price plus sales tax, and unused license and registration fees must be refunded by the manufacturer. If the buyer opts for replacement, the manufacturer must pay the sales tax and license and registration fees for the replacement vehicle.

7) Provisions are added to the Revenue and Taxation Code and the Vehicle Code that allow the manufacturer to recover refunded sales tax and unused license and registration fees from the state.

While the bill has not yet been scheduled for hearing, I expect that it will be heard by the Assembly Consumer Protection Committee the first part of April. Any support letters for this bill would be welcome.

Sincerely,

Sally Tanner

SALLY TANNER
Assemblywoman, 60th District

ST:amh

STAN NAPARST
ATTORNEY AT LAW

901-A Santa Fe Avenue
Albany, California 94706
(415) 525-2086

March 12, 1986

Assemblyman Tom Bates
State Capitol
Sacramento, CA 95814

MAR 26 [illegible]

Dear Tom:

SUBJECT: AB 3611 (Tanner)

I am writing you to urge you to support AB 3611 which will be heard in the Assembly Consumer Protection Committee, on April 3, 1986 at 1:30 p.m.

This bill strengthens the existing car lemon law by providing, among other things, that:

1. The State will set up an arbitration program in addition to the presently existing ones that some car manufacturers have set up. Existing law allows the manufacturers to set up an arbitration program, but these programs often are worthless. If the new motor vehicle is found to be a lemon the buyer will have the option of replacement or refund. Now the manufacturers screw around and people have to go to court and wait for years before they get any satisfaction. Most people cannot afford to pay lawyers and court costs to litigate their just claims. The manufacturers know this and they stretch things out to get rid of the claims.

2. Motorcycles and motor homes, used for personal use, that have to be brought in for repair for 4 or more times or are out of service for 30 days or more are presumed to be lemons. This provision is necessary because existing law exempts these vehicles. They are used for personal transportation and there is no reason for the exclusion.

I think that you might propose an amendment that would make it explicit that

cc Annie

1225

Support

lessees of vehicles have a right to refund or replacement. Existing law provides that leased cars are covered by Song-Beverly. Notwithstanding this, in one of my cases GM refused to arbitrate. They said that they are not required to arbitrate and therefore they refused to do so. Therefore, my client had to sue them. She has to continue to make monthly payments even though she has to store the car because it is not safe to drive.

Sincerely yours,

STANLEY NAPARST

c.c. Assemblywoman Tanner

MAR 2[illegible] 1986

MR. AND MRS. HARRY A. SHAW
3002 JANAE WAY
HEMET, CA 92343

March, 17,86

Assemblywoman Tanner:

Thank you for your recent letters in answer to my previous letter. My first letter to you was neat and without errors. That was because I had help with the typing and spelling. Please forgive all the errors but here goes.

Enclosed please find a copy of a letter being sent to all the consumer Protection Committee as you requested. As you will see there are lots of errors. However it will show how I was treated by the Mfg. and the poor results I received from a poorly trained Arbitrator. In my case I feel I was treated very badly by the Mfg. and the Arbritrator. On My second trip to Arbitration the Arbitrator admitted to me that he was not a mechanic but just sitting and riding in my car he was able to tell me there was nothing wrong with my car and wrote it all off. I have been an Aircraft mechanic and a precicion machinist all my life and I feel I can determine when something mechanical is working correctly or not. However the arbitrater who was not a mechanic at all could tell more than I could wothout even driving the car. I wish I was that good I'de be a lot richer than I am now.

Also please note the part I have underlined in the last paragraph of the letter.

Hope this will be of some help and anything else I can do to help please call on me and if I can I will.

Thank You
Harry A. Shaw

Harry A. Shaw

Oc and
Sally -

Supp 1227

March,17,86
3002 Janae Way
Hemet, Ca. 92343

To whom it May Concern:

I am writing to request you vote for AB 3611.

I have never before written for anything political but this time I finally have had it.

I am sixty seven years old and trying to live on social Security, and as an end result do not have the money for attorneys.

I purcjased a new olds two years ago from my Local Dealer who is Mike Reade of Hemet. As it turned out after the first three miles I was in trouble and owned a pure "LEMON". After twenty seven trips in fourteen months with all kinds of problems, some of them as much ten times repeated I finally tried the "LEMON LAW".

Just as I was leaving on a vacation the Arbitration came up for review. Then G.M. decided there was trouble with the vehicle and then wanted to fix it. As I didn't want to cancell my plans I was relactant to let them start then after waiting fourteen months. So then the G. M. representative nastilly told me he would have to tell the Arbitrator that I woudn't let them fix the car. Whcih he did at the Arbitation. This of course went against me and the Arbitator refused a buy back or replacement even though the car was well within that catagory as the law is written.

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G. M. has spent Hundreds of dollars and possibly thousands to fight me all the way rather than exchange this car or give in to the "LEMON" law. They paid seven hundred dollars rental car fees, Hundreds of dollars for parts and completely replaced some smaller units. Most of these where all worked on over four times, and one ten times. Transmission and diferential now loosening up for fourth time. Dasbord now coming loose fo

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I am sending a copy of this to all on the consumer protection committee so Assembly woman, or Assemblyman as it may be I request you vote as I mentioned before. I am also requesting you to make an addition to the law, if possible, or to pass some form of legislation to have a committee to review all the cases in the Lemon law that the consumers have lost in the last three years to see if the law was enforced by the poorly traind arbitators and if not have the decisions reversed to correct it as the law was written and stop the Mfgs. from getting around the law . For once lets one law that is enforced as it should be.

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Respectfully yours
Harry A. Shaw.

Harry A. Shaw.

P. S., EVEN MR. GOODWRECH COULDN'T FIX THIS CAR.

JOHN K. VAN DE KAMP
Attorney General

State of California
DEPARTMENT OF JUSTICE

P. O. Box 944255
Sacramento 94244-2550

1515 K STREET, SUITE 511
SACRAMENTO 95814
(916) 445-9555

March 18, 1986

MAR 20

Honorable Sally Tanner
Assemblywoman, 60th District
State Capitol, Room 4146
Sacramento, CA 95814

Dear Assemblywoman Tanner:

AB 3611 - Consumer

The Attorney General's Office has no position on AB ~~4146~~ 3611 at this time. I am, however, forwarding the enclosed analysis for your information. If we can be of further assistance, please let me know.

Very truly yours,

JOHN K. VAN DE KAMP
Attorney General

ARLEN SUMNER
Senior Assistant Attorney General
(916) 324-5477

AS:nt

D.O.
cc Sally
Genie

No Position

1230

State of California

Department of Justice

Memorandum

To : Jeff Fuller
Legislative Unit
Sacramento

Date : 2/4/86

File No.:

Herschel T. Elkins
Assistant Attorney General
Consumer Law Section

Telephone: ATSS 677-2097
(213) 736-2097

From : Office of the Attorney General
LOS ANGELES

Subject: In Re: Bill Analysis

BILL NO. AB3611
AUTHOR: Tanner

ANALYST: Herschel T. Elkins
Assistant Attorney General
Consumer Law Section
ATSS 677-2097 - (213) 736-2097

I. Summary of Bill and Existing Law

California's present Lemon Law provides for certain remedies to consumers when defects cannot be fixed in a reasonable time. AB3611, sometimes called Lemon Law II, proposes a number of changes. Since there are so many changes, I will discuss them by paragraph and make a comment as to each (or "no comment" if I have no relevant information):

Civil Code section 1793.2(d) - Gives the consumer the option of replacement of a motor vehicle or restitution. Some consumers lose faith in an automobile or a manufacturer when chronic problems occur. With those consumers, only restitution is meaningful. Others prefer replacement since the consumer anticipates purchasing a new car after receiving restitution. That new car might cost more and, under restitution, the consumer would have to pay for use of the automobile prior to discovery of the defect. The requested change is reasonable.

When the buyer exercises the option of replacement, the manufacturer is to replace with a new vehicle "substantially identical" to the vehicle replaced. That could create a problem if there is a new model year and automobiles of the previous year are not available. Perhaps, the term "substantially identical" should be further defined.

Civil Code section 1793.2(e) - Under present law, a third party dispute resolution process is one that complies with the FTC's minimum requirements. The new proposal requires that the new Motor Vehicle Board certify that those dispute resolution

processes qualify. Some of the resolution processes presently operating do not appear to qualify. However, it does not cost the consumer any money to seek arbitration under such procedures and it is only binding upon the manufacturer. The effect of the non-certification is discussed below.

There is a new definition of "new motor vehicle" which appears to add motorcycles and some motor homes to the definition. It also clarifies that "new motor vehicle" includes demonstrators and dealer owned vehicles. Adding motorcycles and some motor homes appears to be a good idea. I am not aware of any manufacturers who are not presently including dealer owned vehicles and demonstrators but a clarification could be worthwhile.

Revenue and Taxation Code section 6902.2 - This provides that the Franchise Tax Board refund sales tax to the vehicle manufacturer when a vehicle has been replaced following arbitration. Without this provision, it could be argued that sales tax would be obtained twice on what is basically the same transaction. I understand that manufacturers have been told informally by the Franchise Tax Board that they need not pay double sales tax under present law. However, that issue is not certain and AB3611 should certainly help.

Revenue and Taxation Code section 10902 - Seeks to avoid double license fees and is certainly warranted.

Vehicle Code section 3050(e) - This section allows the new Motor Vehicle Board to arbitrate disputes under the Lemon Law. Under this section, the arbitration is available to a consumer in lieu of other third party arbitration. It is unclear whether this arbitration is binding on the consumer. It is also unclear where the arbitration is to take place but it appears to contemplate that the board itself, minus the new motor vehicle dealers who are on the board, are to be the arbitrators. I seriously doubt that the members would have the time to do this, and I presume they would appoint hearing officers and review the recommendations, also a time consuming process.

Vehicle Code section 3050(f) - Provides for the board's certification of third party dispute resolution processes and states that certification is a condition precedent for application of the requirement that the consumer seek arbitration before litigation in order to take advantage of the presumptions in the Lemon Law. That is basically the same as present law's requirement for compliance with FTC standards except for the certification process.

Vehicle Code section 3050.8 - This new section sets forth the procedure for use of the board's arbitration process. Presently, the consumer pays no fee for arbitration. If, however, the consumer chooses the board, there will be a fee, perhaps a substantial one. Of course, the consumer need not choose board arbitration.

Prior to arbitration, the board is to establish informal mediation. If the mediation fails, the board, without a hearing and without any testimony, makes a preliminary statement as to whether the buyer's position in unresolved disputes is meritorious, not meritorious or as yet undetermined. I do not understand the purpose of that proposal. Since it is the board that will make the determination following the arbitration, a preliminary statement as to the merits of the controversy would seem to be unwarranted.

The consumer can request arbitration by the board if he or she has not previously used a third party resolution process (hopefully, the section refers to previous use of a third party resolution process regarding the same automobile) or, if the consumer has used such a process and has convinced the board that the process did not qualify for certification. Thus, if a manufacturer continues to use a present process which does not qualify for certification, it knows in advance that the consumer can seek two sets of arbitration prior to any litigation.

Vehicle Code section 3050.9(a) - Although the consumer is charged a fee, the board is to establish a schedule of fees to be charged to fund fully the costs associated with the arbitration. The schedule fees shall include a fixed annual fee to be charged to manufacturers and distributors. It is unclear what portion of the total fees are to be funded by the annual fee and there is no direct provision which requires manufacturers and distributors to pay (the bill states they will be charged but there is no section stating they must pay). If manufacturers and distributors are to be charged, and required to pay, a fee even if they have established a certified arbitration procedure, I believe the bill should set forth justification for a double arbitration and some criteria for the fee. Is each manufacturer or distributor to pay the same amount? Are the amounts to depend upon the number of arbitrations against each or the number of sales by each?, etc.

Vehicle Code section 3050.9(b) - This section provides that if the manufacturer or distributor has been unreasonable with respect to a consumer's claim, the board may require reimbursal of fees and if the board determines that the consumer's position was without merit and brought in bad faith, the consumer may be required to reimburse the manufacturer for "any fees paid to the board as a result of the filing of the request for arbitration".

Since I do not know what fee will be paid by the manufacturer or distributor apart from the annual fee, it is difficult to determine whether this would have a chilling effect on consumers. Certainly, the threat of such payment might chill consumers if the board, prior to any testimony, has already classified the buyer's position as not meritorious. The board may take the position that once it determines, without a hearing, that there is no merit in the buyer's position, the request for arbitration may be regarded by the board as bad faith.

Vehicle Code section 42234.5 - Relates to the division of registration fees between the buyer and the manufacturer who replaces a vehicle or makes restitution.

II. Background Information

Some consumers have been dissatisfied with the present arbitration processes in automobile cases, particularly since some of those operated by the manufacturers (or by organizations set up and controlled by the manufacturers) have procedures that may not be equitable. In addition, some consumers distrust organizations which are controlled or set up by the manufacturers against whom they are complaining. Hence, in several states, there have been discussions concerning the possibility of setting up an arbitration organized by independent party, a state agency. In another subject matter covered by this bill, some consumers have argued that they should have the right, and not the manufacturer, to determine whether a car should be replaced or a refund made.

III. Impact of the Bill

The bill would probably increase the work load of the new Motor Vehicle Board and may cause some manufacturers to abandon recourse to a separate arbitration mechanism.

IV. Recommendation

W.

I believe that further study need be made. The Consumer Law Section has been investigating present third party arbitration mechanisms. The procedure to be used by the new Motor Vehicle Board is rather sketchy and it is difficult to determine whether this would be a preferable system. For example, we do not know how much will be paid by the consumer for arbitration (at present the consumer pays nothing). We do not know whether live testimony will be permitted, whether hearings can be obtained

within a reasonable distance from the consumer's home, whether the board will appoint a hearing officer to recommend decisions to the board or whether the board will hear the matter itself, whether the board will hire mechanics to test the automobiles (some present arbitration procedures utilize mechanics), whether hearings will be actually conducted by individuals or by panels and whether the arbitration decision is binding (at present, the arbitration is only binding on the manufacturer). Since the consumer would have the option as to the arbitration procedure chosen, the bill would not harm the consumer unless manufacturers chose to abandon their own efforts in favor of the new procedure.

Since we do have substantial information concerning the arbitration process, our section would be happy to share that information at any meeting involving the proponents and opponents.

HERSCHEL T. ELKINS
Assistant Attorney General

HTE/pt

MAR 20 1986

Regional Governmental Affairs Office
Ford Motor Company

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

March 19, 1986

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

Re: Assembly Bill 3611
OPPOSE

Dear Assemblywoman Tanner:

Ford Motor Company opposes passage of your Assembly Bill 3611, relating to new motor vehicle warranties. We wish to specifically comment on two provisions of your proposal:

- state-run arbitration boards
- the option given to owners for either the state-run program or the manufacturer's program

Performance of State Boards

The presence of state-run arbitration boards, in addition to the manufacturer's arbitration board creates confusion for the consumer; unnecessary delays in resolving concerns; additional workload for field offices; and adds financial burden to both the manufacturer as well as the consumer. Experience to date has shown that state-run programs are unable to handle the volume of cases received on a timely basis. A good example is the Texas board which is currently running a backlog of over 200 cases. State filing fees required could impose significant financial considerations. We do not see the necessity to establish or expand a state agency to handle what we are already doing at no cost to the taxpayers.

Assembly Bill 3611

Option for Both Programs

We think giving owners the option for both programs leads to confusion of the public in general, as well as increasing a customer's expectation with the arbitration process. Which program's decision is the final one? Who's program has more clout, authority, etc.? What are the requirements of each? How does one apply for either? Who's procedures are simpler? In an already complicated process, two programs add to the confusion and may be increasing owner expectations as well.

Thank you for the opportunity to comment on this proposal.

Sincerely,

RICHARD L. DUGALLY
Regional Manager
Governmental Affairs

RLD:cme

cc: Assembly Consumer Protection Committee
Governor's Office

FACT SHEET

CALIFORNIA'S - NEW AUTO "LEMON" LAW

AB 1787 (Tanner) - Chapter 388, Statutes of 1982

California warranty law, the Song-Beverly Consumer Warranty Act (Civil Code Sections 1790 et seq.,) governs the rights and obligations of the parties involved in a purchase of warranted "consumer goods" (purchased primarily for "personal, family, or household purposes"). That law entitles a buyer to a refund or a replacement from the manufacturer when a product is not successfully repaired after a "reasonable" number of attempts.

The new auto "lemon" law (which took effect January 1, 1983):

- Adds to the Song-Beverly Act a new provision which applies only to warranted new (not used) motor vehicles (excluding motorcycles, motorhomes, and off-road vehicles) used primarily for personal family or household purposes.

- Specifies that within the first year of ownership or 12,000 miles, whichever comes first, either 4 repair attempts on the same nonconformity (defect) or a cumulative total of 30 calendar days out of service because of repairs of any defect(s), will be presumed to be "reasonable".

  "Nonconformity" is defined as one which substantially impairs the use, value or safety of the vehicle.

  The buyer is required to directly notify the manufacturer for repair of the same nonconformity once out of the 4 times if the manufacturer includes information about that required notice and the buyer's refund/replacement and "lemon" law rights with the warranty and owner's manual.

  The 30-day limit can be extended only if repairs can't be performed because of conditions beyond the manufacturer's control.

- Requires a buyer to first resort to a third-party dispute resolution program before he or she can use the "lemon" presumption if a program meeting specified criteria has been established by the manufacturer of the buyer's vehicle.

- The criteria for the dispute resolution program incorporate those specified by federal consumer warranty law, the Magnuson-Moss Consumer Warranty Act (15 United States Code, Sections 2301-2310) and its Federal Trade Commission (FTC) regulations (16 Code of Federal Regulations Part 703).

The law's minimum criteria for a dispute resolution program include requirements for:

(1) Notifying a buyer about the existence, location and method for using the program, both at the time of sale (in the warranty itself) and later, if a dispute arises.

(2) Insulating the program from the influence of the manufacturer over any decision making - including adequate funding for the program and qualifications for the program's decision makers.

(3) The program to be free to the buyer.

(4) The operation of the program, including that:

  (a) A decision generally be reached within 40 days from receipt of a complaint.

  (b) The decision is <u>not</u> binding on the <u>consumer</u> if he or she rejects it, but would be on the manufacturer if the consumer chooses to accept it.

  (c) A party to the dispute be given the opportunity to refute contradictory evidence offered by the other and offer additional information.

  (d) The manufacturer complete any work required within 30 days.

  (e) The time limits on a buyer's right to sue are extended during the period he or she is involved in the dispute program.

(5) Maintaining specified records of the program's operation.

(6) An annual independent audit of the program and its implementation - which is to be sent to the Department of Motor Vehicles.

(7) The availability of statistical summaries concerning the program upon request.

##########

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.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1787, 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.

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.

O

BETTER BUSINESS BUREAU

March 21, 1986

Mr. Norman E. Witt, Sr.
P.O. Box 862
Palos Verdes Estates, CA 90274-0214

Dear Mr. Witt:

Per your letters of January 18, 1986 and February 24, 1986, I first wish to address the question of volunteer arbitrators, specifically in this case Martin Ruderman. All arbitrators in the bureau pool are unpaid, citizen volunteers who perform their duties as a public service. They are not paid by the BBB, nor are they required to have any specific technical or legal background. They do go through a special training program that focuses on procedures to be followed, but the judgemental abilities they bring to each hearing are their own. It is the belief of the Better Business Bureau that each person has a fund of life experiences that makes he or she a potential arbitrator as individuals are making judgements every day of their lives. Additionally, the BBB strives to recruit a pool of arbitrators that reflects a cross-section of the community, hopefully with every ethnic, social, political, religious, and economic background represented, men as well as women.

In the case of your first hearing, Mr. Ruderman, who was brought in as a replacement for Lisa Rosen whom you declined to have arbitrate your hearing, decided on a repurchase of one of your two vehicles, which decision you accepted. At that time, before the judgement was rendered, you requested that the BBB hold off scheduling the second hearing until you had received and reviewed the written award by the arbitrator, which request we honored. You subsequently insisted that Mr. Ruderman be the arbitrator for the second hearing, which he was. The fact that Mr. Ruderman chose not to award a repurchase on the second vehicle, along with his decision being written in very general terms, seem to be your main points of contention.

We at the BBB encourage the arbitrators to be as specific as possible in the drafting of their awards, but this does not always happen. We can conjole, suggest, request, but we cannot force an arbitrator to write his award in such a way as it meets the approval of the disputants who may already have their own ideas of what constitutes a good, concise award. An arbitrator may not be as exact in the details of his award as the parties, and even the BBB Tribunal, feel he should be. But it is his award, and he can phrase it as he pleases as long as he does not exceed his authority as arbitrator.

Secondly, I want to point out that any additions to the award were the result of your request for clarification of the award, and this request was presented to the arbitrator for his consideration. Not being a technical expert, and not being required to be one, Mr. Ruderman, or any other arbitrator for that matter, may deign to keep his award as simple as possible, couched in very general terms. In this instance, Mr. Ruderman attempted to address certain technical elements you brought to his attention, specifically such items as the "glo plugs", "fuel injectors", etc. He further requested that this BBB Tribunal contact the manufacturer as to the matter of the engine replacement for additional information as to what constituted such (the "re-manufactured 350 cubic inch diesel engine" statement of your January 18th letter). This procedure is correct in that the arbitrator cannot contact either party directly should he need some point clarified. If Mr. Ruderman at that time felt that the engine did not meet the requirements of what he had in mind when he drafted his award, he could have changed it or thrown it out entirely.

Thirdly, I must address the issue of modifying an award since you seem to have confused your request for clarification of the award with a petition to modify the award. They are not the same, and the grounds for modifying an award are extremely narrow, the general wording of rule 27 notwithstanding. To modify an award means to change the substance of the award in some degree, and only the arbitrator can alter his own award. To clarify an award means to address wording that is perceived as too vague or general or confusing without changing the basic substance of the award. Again, only the arbitrator can expand on the wording of his award.

The interim award which the arbitrator made in your second case may, in the final determination, be changed by the arbitrator if he feels the company did not perform as he requested in the decision. This can only come about, of course, after you have accepted the award, the company has performed the repairs/replacements, and you have subsequently inspected and tested the vehicle during the allotted time period, in this case, 30 days after receipt of the vehicle by you. You should inform the BBB in writing during that 30 day test period of any continuing problems, which information is then forwarded to the arbitrator for his review. The interim becomes the final award should the 30 day test period come and go with no written statement from you to this BBB.

That Mr. Ruderman decided that the "engine powertrain assembly" in this award should exclude the transmission is his own decision, regardless of what the November 1983 CONSUMER REPORTS states. That Mr. Ruderman decided against a

repurchase altogether or decided not to instruct the company to replace the upholstery in his interim award is, again, his own judgement. You can reject whatever decision he renders, and he has a wide range of possibilities, from a full repurchase, to anything in between, to nothing.

As to reviewing your request for clarification, an arbitrator may, as with a petition to modify, "accept it in whole or in part or reject it altogether". The bottom line in all this is that the arbitrator may choose not to be as technical in his approach to the award as either the customer or business would like, and, in matters of repairs/replacements, may exclude items that both of, or one of, the parties feel should be included.

Finally, there are just a few other issues which I feel warrant comment, the first being the time taken to arrange for your arbitration hearing. With the crush of cases this BBB is faced with, it behooves us to move them through the system as quickly as possible. Delays mean an ever-increasing backlog. As mentioned previously, you chose not to have Lisa Rosen oversee the July 12th hearing because of General Motors recent acquisition of Hughes Aircraft. Lisa Rosen is just one of a number of arbitrators who have heard cases for the BBB the last 4 years and who work for Hughes Aircraft, a company that takes community involvement very seriously and actively encourages its employees to become involved in the type of community service the bureau offers, even to the point of allowing its employees to perform this service during business hours. Since you preferred not to use her, we then rescheduled your hearing for August 19, 1985 with Mr. Ruderman presiding, suggesting as before that you bring both cars to the hearing so that both issues could be addressed at the same time. With a repurchase case, it is mandatory that an inspection be conducted. However, you declined to bring both vehicles which meant, in effect, that another hearing had to be scheduled. This, along with BBB Automotive Mediation and Arbitration merging at this time, may account for the delay in scheduling the second hearing. Whatever the reason for the delay, I was no longer directly involved in the day-to-day scheduling of the cases. All these factors probably contributed to the delay in scheduling your second hearing.

You also stated that at the second hearing, Mr. Ruderman signed a blank arbitration decision form in front of you and Mr. Mark Templin of GMC/ Oldsmobile Division. The only forms an arbitrator signs in the presence of the disputants is his oath and their oaths. Like the decision, the arbitrator's oath is notarized by the BBB Tribunal. The arbitrator does not sign his decision until it is typed, more often than not by a BBB Tribunal. We encourage the arbitrators to remain after the hearing, review the evidence, and draft

their awards at that time, if they feel they can, so we may type them up and mail them out as soon as possible. An arbitrator does have 10 days though to write his decision, and a few elect to utilize all 10. Mr. Ruderman customarily stays to write his award.

As to the allegation of collusion between Mr. Ruderman and certain BBB Staff Members, and I do not know exactly what kind of collusion is being insinuated, I can only say that Mr. Ruderman is an unpaid, citizen volunteer who owes no particular allegiance to the BBB and who has offered to rule on disputes between businesses and consumers when the occasions arise. I am certain he would be most disturbed to learn of such an allegation.

Also, you mentioned that the BBB "appears to hold itself out as a friend of the consumer", a consumer advocate of sorts. The truth-of-the-matter is that the BBB is a non-profit corporation supported by business memberships, and, as a part of its service to business, sponsors a complaint handling program that attempts to mediate disputes between businesses and consumers. The final step in that process, arbitration, utilizes citizen volunteers for the very purpose of maintaining impartiality in the rendering of decisions. This use of unpaid, citizen volunteers lends credibility to our program and encourages active participation by community members looking to take part in a program that offers solutions to disputes. The BBB takes no sides in arbitration issues and certainly does not favor one disputant over the other. Neither do the arbitrators, who are judges and juries combined compared to the BBB Tribunals who are just administrators. And that's all a BBB Tribunal is, an administrator, providing scheduling and secretarial services along with securing a time, date, and place for the hearing, appropriating the necessary forms, and advising on any questions about procedure.

The clarifications of the award you requested were reviewed by the arbitrator and added to the decision, and, as such, should have been proofed more carefully as (1.) they should have been dated even though they were addendums to the original award and (2.) the errors in spelling, along with the run-ons should have been caught (i.e. "barrings" instead of "bearings", "glo plug injector" instead of "glo plug" and "injectors").

As to the items you wished included, the replacement of the transmission and the upholstery, Mr. Ruderman declined to include these in his interim award, which again is his perogative as arbitrator and within the parameters of his authority.

Finally, I believe your statement that "Mr. Ruderman has taken what could have

been a simple buy-back decision and has created a very complicated decision to execute." is the crux of all this back-and-forth correspondence, both verbal and written. You wanted a repurchase on this second vehicle, did not get it, and are now unhappy. As such, you can reject the arbitrator's award and proceed to court for which arbitration is an alternative, but not a substitute. Perhaps this individual case is better suited to the forum of court instead of arbitration after all. It is not a given that customers will always win in arbitration, nor that arbitration is the best forum for all cases, even automotive, which is one reason why automotive cases are non-binding until the decision is formally accepted by the customer.

In any event, you must decide whether to accept the arbitrator's decision or reject it, and soon. If I do not hear from you one way or the other within 15 days from the date of this letter, I will assume that you have rejected Mr. Ruderman's decision, and this case will be closed. At that point, you may wish to proceed to court.

I thank you again for your kind patience and attention in this matter.

Sincerely,

Carolyn Bolling
Director of Automotive Arbitration

CB/mp

Mrs. Michael L. (Christina)Brummett
1829 Granite Creek Road
Santa Cruz, California 95065-9735

MAR 27 1986

March 23, 1986

MAR 26 1986

Assemblywoman Sally Tanner
State Capitol, Room 4146
Sacramento, California 95814

Dear Assemblywoman Tanner;

Thank you for sending me a copy of Assembly Bill 3611. I have read it thoroughly several times, and am very empressed! I only wish it was in effect now, so that I would not have had to go through all this tremendous frustration trying to get the **LEMON LAW** to work for me. I truly believed that our problems could be solved without going through civil litagation, and I sure tried everything I could think of to make it happen, I only wish **Ford** had wanted it resolved as badly as I did! AB 3611 covers every problem we have found with the current law.

I would also like to thank you for contacting Mr. Richard Dugally, Ford's representative in Sacramento, on our behalf, and sending me copies of those letters. I must admit, his response in March, and his lack of response in August, is exactly the kind of thing we have dealt with, with Ford all along. In my opinion, Ford hoped by ignoring us, we would go away. But how can we? We have been left with a car that is unsaleable! The dirt in the 3rd bad paint job, has begun to flake off and is beginning to rust. The severe stumble/hesitation still exists after having had 3 processors replaced, a MAP sensor replaced, an EGR valve replaced, Throttle Position sensor replaced, and a new distributor installed. I am scheduled to take our car in for warranty service one more time tomorrow morning, and the dealer has told me if I will bring my car in with an empty gastank, they will fill it with their gas and set the engine timing to factory specifications. The dealer is trying to put the blame on all our problems on our gas, because they cannot fix our car. Since we fill our car up at a local station, they are aware of all the problems we have had with Ford, and have assured us no problems exist with the gas! I am growing very tired of the psycological warfare our dealer is using on us!!

I also received your letter with the names of the Consumer

cc Jay Sally

Protection Committee members. I will be sending each member, our complete package. I also plan on attending the Consumer Protection Committee hearings on Assembly Bill 3611, on April 3rd at 1:30 pm.

Assemblyman Sam Farr has supplied me with a copy of the California roster, and I am in the hopes of sending each member of the California Legislature a brief history of our case, in the hopes that any member of the legislature not convinced how important Bill 3611 is, our case may help convince them. You need to understand that I am afraid after our experience with a new car and the current Lemon Law, to buy another new car! I talked my husband into purchasing a new vehicle, rather than a used one, "because it would be more dependable!!" Was I ever wrong!

I am sending you a copy of a letter I received from Aaron H. Bulloff Attorney at Federal Trade Commission, Cleveland Regional Office. I plan on sending him further information on the Ford Consumer Appeals Board, in the hopes that the Federal Trade Commission will do a thorough investigation of Ford's dispute mechanism system.

I am sending my attorney's name, address and phone number. He does handle **LEMON LAW** cases.

Attorney Mark Hasey
Fox & Hasey, An Association of Professional Corporations
313 Soquel Avenue, (P.O. Box 99)
Santa Cruz, California 95063
(408) 427-2112

I would like to bring to your attention, a very interesting thing we have discovered in our dealings with the Ford Organization. I made a call to the Ford Consumer Appeals Board number on March 5, concerning the two letters written the Board, and received by them on 2-14 and 2-24, reguarding a rereview of our case dealing with only the safety problems. I was told that they had not even been opened, or read, at that time, but I would be responded to by **mail**, once they were opened. I called Ford National offices, after my call to FCAB numbe to make sure that Ford was actually aware of my problems. I have spoken several times to a Mr. Mike Kolin, a supervisor in Owner/ Manager relations. I was told I should have been contacted by Ford's Milpitas office some time back. He put me on hold, and reached Liz Talbott, head of Owner/Manager relations at the regional office in Milipitas. She told him I had been contacted. I assured him I had not. He assured me I would be contacted by her, the minute we hung

up. Some 2½ hours later, I was called by Liz Talbott. She had taken the opportunity to get my latest letters to the FCAB, and review them. She asked me if we had filed suit, I said yes, that we were nearing our time limit for filing, but that the FCAB was the speediest way to resolve our problems. I desperately needed a **safe** and **dependable** vehicle. She told me that the Appeals Board will not hear my case since we have filed suit. This amazes me. She has called me as a representative for Ford. She is, however, the Ford Consumer Appeals Board Executive Secretary, but this gives her neither a vote or **voice** on the Appeals Board, atleast that's the way it is suppost to be! This seems to me to be a conflict of interest, wouldn't you say?

This past week, I was contacted by Michael Mercer, regional Ford Factory representative. I was told by him, that he had review our file but would not be making any decisions on our case, his supervisor would be handling it. I ask who is supervisor is and **Liz Talbott's** name comes up one more time.

I have yet to be contacted by the Ford Consumer Appeals Board stating that my case would not be reviewed.

My Black Ford Mustang LX Convertible, has some sixty 3"X5" bright yellow **LEMONS** on it. Each one with a date spent at the local dealers body or service department. It has caused quite a stir in numerous parking lots, but the response is always the same...wishes of support and good luck. It makes a very vivid picture and the condition of the car speaks for itself! I hope to have pictures of it made soon.

Thank you for AB 3611, it is greatly needed!

Sincerely,

Christina R. Brummett

Christina R. Brummett

Federal Trade Commission

Cleveland Regional Office

Suite 500
The Mall Building
118 St. Clair Avenue
Cleveland, Ohio 44114
Area Code (216) 522-4207

August 7, 1985

Michael L. & Christina R. Brummett
1829 Granite Creek Road
Santa Cruz, California 95065

Dear Mr. & Mrs. Brummett:

Your file was referred to this office because our region encompasses Detroit. As you probably know, the Federal Trade Commission cannot act as private counsel for individuals in private disputes. I have read your materials, however, and wish to offer the following thoughts.

Primarily, I think you should consider hiring a lawyer to represent you. First, as noted, you are not bound in any way by the decision of Ford's Consumer Appeals Board. Second, a lawyer can advise you as regards your rights under California law, on areas in which the Commission cannot properly claim any expertise. Third, it strikes me that notwithstanding the existence of any state lemon law, you would have two posible courses of action. One would be a breach of contract action based upon a repainted car's being delivered to you as opposed to one with an original finish. You contracted for the latter, and I assume there is a substantial difference. The difference the in delivered product must be substantial and material in order for a breach to have occurred, but I believe it can be fairly argued that the appearance of a car is a substantial and material part of the creation of a contract to buy a car.

The other would be a violation of the Magnuson-Moss Act. Please note carefully Section 104(a)(4) [15 U.S.C. 2304(a)(4)]. It strikes me that three inadequate paint jobs can be fairly argued to constitute a reasonable number of efforts. Note that under Section 110(d)(2) [15 U.S.C. 2310(d)(2)] a successful plaintiff can recover cost and expenses, including attorney's fees.

The fourth reason to consider hiring an attorney is that your efforts, as perserving as they have been, have not resulted in a resolution satisfactory to you. An attorney's assistance might be helpful. The final reason is that you have over $17,000 invested in this matter, more when finance charges are added. That is surely a substantial investment worth protecting that justifies some expense for legal representation.

COMMENTS ON AB 3611 - March 24, 1986

1) State warranty law requirement for state certification for a 3rd party arbitration program to be a qualified program under the State Warranty Law (Lemon Law)

2) Redefinition to clarify vehicles covered by, or excluded from the "Lemon Law" provisions

3) Sales tax refund

4) Prorata refund of unused portion of vehicle license fee.

5) State New Motor Vehicle Board arbitration of lemon cases.

6) State New Motor Vehicle Board certification of 3rd party arbitration program.

7) Authority for New Motor Vehicle Board to assess fees to fund its arbitration program.

8) Authority for New Motor Vehicle Board to determine "bad faith" and thus provide basis for one party or the other to pay all of the filing fees for arbitration (i.e., pay for both parties.)

9) Prorata refund of unused portion of years registration fee vehicle registration fee prorata refund.

(The above is a listing of what the bill's provisions provide for.)

George R. Steffes

1010 11TH STREET SUITE 202

LEGISLATIVE ADVOCATES

SACRAMENTO CALIFORNIA 95814

TELEPHONE 916 444-6034

March 27, 1986

MAR 31 1986

Honorable Sally Tanner
Room 4146
State Capitol
Sacramento, CA. 95814

Subject: Opposition to AB 3611 being heard in Assembly Consumer Protection Committee on April 3, 1986.

Dear Sally,

On behalf of our client, the Automobile Importers of America (AIA), we are opposed to your AB 3611 which amends California's New Car Lemon Law. As you know, AIA members include most of the foreign automobile manufacturers in Europe and Japan.

We are strongly opposed to the provisions in AB 3611 which create a state-run arbitration program. This we feel would duplicate the various manufacturers' arbitration programs which currently serve thousands of consumers. While not all consumers are totally satisfied, and some problems have occurred in the administration of the mechanisms, in general, we believe that the programs are working well enough to continue to warrant the significant manufacturers' costs associated with them. Other points of opposition to AB 3611 are:

o The need for a state-run arbitration program has not been demonstrated and is premature. Currently, the Department of Consumer Affairs is undertaking an evaluation of California lemon law process. AIA members have agreed to work cooperatively with the Department as well as your office in those areas where changes may be needed. AB 3611, we feel, circumvents this cooperative government-industry approach to improve upon current programs.

o Experience in the states of Connecticut and Texas has demonstrated that state-run programs are unable to handle lemon law cases on a timely basis. Attached is a study done by the Connecticut Office of Legislative Research which indicates that 31 out of 32 pending cases before its Department of Consumer

Protection exceed the 60-day limit. In Texas there is a backlog of more than 200 cases pending before its state-run arbitration program.

o AIA is also opposed to provisions in AB 3611 which require that the automobile manufacturers' programs be certified by the New Motor Vehicle Board as meeting the requirements of the Federal Trade Commission regulations. Any standards or regulations are subject to different interpretations. It would be impossible to administer a federal program that was subject to interpretations by 50 different states. Because of this potential and confusingly no-win situation, we would oppose any action which would have the State of California certifying compliance with a federal standard.

o In addition, AIA is opposed to the section in AB 3611 as currently written which allows a consumer full discretion over whether he receives a replacement vehicle or refund if the manufacturer cannot repair a particular problem within the terms of the lemon law. Not only is the term vague with regards to what it means to replace the buyer's vehicle "with a new motor vehicle substantially identical", no consideration is given to the amount directly attributable to use by the buyer prior to the time of nonconformity. As written, this section also precludes other options for settlement which may be mutually satisfactory to both the buyer and the manufacturer.

On January 29, 1986, AIA organized a meeting of both domestic and foreign manufacturers to meet with your staff and representatives from the Department of Consumer Affairs to discuss our programs and to indicate a willingness to review the kinds of complaints that your office, the Department and others have received about our lemon law arbitration programs. We also stated that we are willing to work with you on making any changes which may be needed. Again, we would like to reiterate our request for a cooperative approach to look at these problems.

Sincerely,

Sarah C. Michael

Sarah C. Michael
Automobile Importers of America

cc: Members, Assembly Committee on Consumer Protection
Department of Consumer Affairs

Connecticut General Assembly

JOINT COMMITTEE ON LEGISLATIVE MANAGEMENT
OFFICE OF LEGISLATIVE RESEARCH
(203) 566-8400

LAN GREEN
DIRECTOR

18-20 TRINITY STREET
HARTFORD, CONNECTICUT 06106

February 4, 1986

86-R-0037

TO: Honorable John J. Woodcock, III

FROM: Office of Legislative Research
Mark E. Ojakian, Research Analyst

Lemon Law Arbitration

RE: Lemon Law Arbitration Cases

You asked:

1. how many pending lemon law arbitration cases exceed the 60-day limit,

2. what the Department of Consumer Protection perceives to be problem areas if there are delays in holding arbitration hearings, and

3. what steps the department is taking to rectify any problems in scheduling hearings.

SUMMARY

Of the 32 lemon law arbitration cases scheduled for hearings through March 5, 31 exceed the 60-day limit. The Department of Consumer Protection indicates that the basic problem areas are staffing, the prescreening process, and the pool of technical experts. To reduce the current backlog of arbitration cases, the department has proposed hiring additional consumer information representatives, prescreening cases on weekends, and hiring a technical expert.

ARBITRATION CASES

The law requires an arbitration panel to render a decision after a hearing in a lemon law case within 60 days of a consumer's filing a request for arbitration, CGS § 42-181(c). The department currently has 32 cases scheduled for a hearing from January 28 to March 5. Of these cases, 31

exceed the 60-day limit by an average of about 25 days. Enclosed is a copy of the current docket of lemon law cases.

DEPARTMENT RESPONSE TO DELAYS

The department has identified three basic problem areas which have caused scheduling delays.

Staffing Levels

The department indicates that the lemon law unit does not have adequate staff to monitor all the deadlines throughout the process. If deadlines are not met at various stages, the hearings will probably not be held within the statutory time limit.

The department has hired a temporary consumer information representative effective December 31, 1985 through June 5, 1986. His responsibilities will include scheduling and staffing of hearings and monitoring cases throughout the process. They have also included an additional consumer information representative as a budget option in the governor's FY 1986-87 budget.

Prescreening Process

The law requires a panel of three arbitrators to review a consumer's request for arbitration and determine eligibility within five days of the filing date, Conn. Agencies Reg. § 42-102-8. This prescreening panel is distinct from the arbitration panel that hears the case. The department indicates that the prescreening process is very time consuming due to the number of cases and the availability of arbitrators and it is difficult to complete this process within the five days. A delay in the initial stage leads to a delay in the entire process.

The department has begun scheduling arbitrators on Saturdays to review all cases received during that week.

Technical Experts

The law requires that a pool of volunteer technical experts be available to assist arbitration panels in lemon law cases. According to the department, the pool has diminished causing difficulty in scheduling. Some of the original pool of technical experts has indicated that they will not serve without compensation thereby eliminating them from consideration.

The department has suggested paying technical experts for their services to ensure an adequate number and help alleviate scheduling difficulties. Toward this end they have

included the hiring of a technical expert as a budget option in the governor's FY 1986-87 budget. This technical expert would replace the volunteer pool of experts.

MEO:npp
8

Enclosure

The Hartford Courant 2/18/86 P. 40

'Lemon law' claims bogged down: study

By PHIL BLUMENKRANTZ
Staff Reporter

Consumers are waiting about three months to have "lemon law" claims heard by a state-run arbitration panel charged with speedy settlement of recurring, major auto problems, according to a report prepared for legislators.

The state Department of Consumer Protection is taking an average 25 days longer than allowed by law to hold hearings, according to the report prepared by the state office of legislative research. The report says the DCP's lemon law arbitration unit, in 31 of 32 cases awaiting hearings, has exceeded a 60-day limit for decisions prescribed by the General Assembly.

DCP officials would not comment on the report.

But state Rep. John J. Woodcock III, D-Windsor, author of the Connecticut lemon law and the legislator who had requested the OLR study, said he is considering asking legislators to strip the DCP of its responsibility.

"It's an embarassment," said Woodcock, who said other states have modeled their lemon laws on Connecticut's, which was the first in the country.

The DCP last year was assigned responsibility for arbitrating lemon law cases so that consumers, who previously had to go to court or through manufacturers' programs, could get quick resolutions of problems.

But the state is now the one tying up consumers, said Woodcock, who said the DCP appears unwilling to take corrective measures.

Wendy Cobb, director of the DCP's lemon law unit, said she could not discuss the report. Neither Joan Jordan, acting division chief of the DCP division of product safety, nor Dorothy Quirk, executive assistant to the DCP commissioner, returned several phone calls on Friday.State offices were closed Monday because of Presidents Day.

The OLR report said DCP officials claim they don't have enough workers to keep track of deadlines, and that they are having trouble assembling panels needed to screen complaints for eligibility. Once things get off to a slow start, other deadlines are missed, said the report.

The DCP, the report said, also was apparently having trouble finding technical experts to assist arbitrators. The experts, who originally worked as volunteers, are in some cases now refusing to work without money.

The report says the Consumer Protection Department has proposed hiring extra help, working on weekends and hiring a paid, technical expert to move cases more quickly.

Consumers are being kept waiting an average 85 days for hearings and up to 10 days beyond that for decisions, according to Mark E. Ojakian, a research analyst who prepared the report.

One consumer requested a hearing on Nov. 21, 1985, entitling him to a decision by Jan. 21. But his case isn't scheduled to be heard until Tuesday — a wait of 96 days just for the hearing.

rt on Lemon Law draws tart remarks

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In November the Department of Consumer Protection released its own "report card," saying consumers almost always won in disputes with automakers in its auto dispute settlement program and that the Lemon Law was generally working.

But the research office's report said consumer department officials claim they don't have enough workers to keep track of deadlines and that the consumer department is having trouble assembling panels to screen complaints for eligibility. Once things get off to a slow start, other deadlines are missed, the report said.

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But Woodcock said the backlog is inexcusable because under state law, the consumer department can refer extra cases to the regional office of the American Arbitration Association, a private, non-profit organization.

He said he has repeatedly suggested the option to the department. But no cases have been referred, according to the association's regional director, Karen Jalkut. Jalkut said her organization could meet the 60-day deadline unless it were flooded with complaints from the consumer department.

Until last year consumers either had to go to court or to an automaker for the refund or replacement of a new, faulty vehicle not fixed after four or more repair efforts. Since last spring under a revision in the law, consumers have been able to take their claims to the consumer department's arbitration panels.

Consumers are waiting up to 95 days for decisions, according to Mark E. Ojakian, a research analyst who prepared the research unit's report at Woodcock's request.

Woodcock fears the backlog will continue to grow as consumers begin filing a new round of Lemon Law complaints on 1986 vehicles.

The Consumer Protection department has come under criticism during the past year from state legislators, particularly over reports of a six-to-eight-week backlog in handling certain types of general retail complaints. That backlog has been reduced in recent months.

Sour report on Lemon Law draws tart

By Phil Blumenkrantz
Staff Reporter

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ROGER B. SMITH, *Chairman*
THOMAS H. HANNA, *President and Chief Executive Officer*

C/P

March 27, 1986

MAR 31 1986

The Honorable Sally Tanner
California Assembly
State Capitol, Room 4146
Sacramento CA 95814

Dear Assemblywoman Tanner:

The Motor Vehicle Manufacturers Association of the United States, Inc. (MVMA)* appreciates this opportunity to express its views about Assembly Bill 3611.

As you know, the members of MVMA have in recent years put forth a tremendous effort to resolve consumer complaints. A key element to the resolution of consumer problems has been the operation of informal dispute settlement mechanisms which have gone a long way toward resolving complaints in an expeditious manner. The establishment of an additional mechanism, in the form of a state-run arbitration program, would serve to impose additional costs and administrative burdens on the dispute resolution costs while being of dubious benefit to consumers who presently have access to manufacturers' informal dispute resolution systems.

Moreover, other states' efforts to conduct dispute resolution programs have been unsuccessful and in some instances have resulted in greater confusion and inconvenience to consumers. A Connecticut newspaper article describing some of that state's problems with its arbitration system is attached.

Currently manufacturers make every effort to satisfy California customers and accommodate their particular interests if and when there is a need to replace a vehicle or reimburse a consumer. MVMA believes that

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an arbitration system run by the state will only create an additional layer of bureaucracy between consumers and their satisfaction. The purpose of an informal dispute program is to help consumers expedite their motor vehicle problems. These proposed amendments could lead to greater frustration and delay to the consumer.

Sincerely,

James W. Austin
Public Affairs Manager
Pacific Coast Region

JWA/eb

cc: Members, Assembly Consumer Protection Committee
Jay DeFuria, Consultant

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The Consumer Protection department has come under criticism during the past year from state legislators, particularly over reports of a six-to-eight-week backlog in handling certain types of general retail complaints. That backlog has been reduced in recent months.

A E D
A. E. Davis and Company
925 L Street, Suite 390 • Sacramento, CA 95814 • (916) 441-4140

c/p

March 27, 1986

MAR 31

The Honorable Sally Tanner
California State Assembly
State Capitol
Sacramento, CA 95814

Dear Sally:

Re: Your AB 3611

A month ago you wrote a thoughtful and comprehensive letter concerning the introduction of your AB 3611 to amend the current so-called "Lemon Law", originally enacted in 1982. As you recall, Al Davis and Chrysler Corporation worked diligently with you and your staff to create a workable Arbitration Board program.

Over these intervening years Chrysler people have strived to improve the Chrysler arbitration system so that it complies with both the Federal and State laws and regulations and implements basic principles of fairness for the consumer.

The large percentage of cases that come to the Board's attention are success-fully settled. Only a small proportion result in letters or phone calls to their legislators. We certainly would not claim that the system is working perfectly, but we do maintain that it is working satisfactorily and that the law really does not need significant change.

Surely, creating a new state bureau or agency to perform the arbitration board function would only serve to confuse the public, if it is designed to serve as an alternative choice. Two parallel systems seem not very efficient, and certainly more costly. If a state-run system is to supplant the private sector system, one should be aware of the comparative slowness and inefficiency of this approach. In at least one state with a state-run dispute resolution process, the backlog of cases has exceeded one full year.

Sally, we appreciate your conscientious concern for California consumers and we of Chrysler share that concern. We will have two of our top spokesmen out from Detriot to explain our evaluation of the various changes proposed in your bill. In the bill's present form we must register Chrysler's opposition.

Thank you for your consideration.

Very truly yours,

LeRoy

LeRoy E. Lyon, Jr.

MAR 28 1986

Box 862
Palos Verdes Estates,
Ca. 90274-0214
Mar. 26, 1986

Assemblywoman Sally Tanner
State Capitol
Sacramento, Ca. 95814
Attn: Marty Hinman

Dear Ms. Hinman:

When I returned last night, I received the messages that you left on my answering machine. I must leave again this morning for a trip to Denver so I am trying to get the most pertinent information to you as soon as possible so that you may digest it before the hearing on April 3.

My complaints are not only against General Motors and the defective cars, but also against the local and head offices of the BBB as you will read in my detailed letters.

I have only a few minutes to write, copy the letters and get them in the mail so I cannot write you a one or two page summary. According to Mr. Ditlow of the Center for Auto Safety, my case is not an isolated one. The BBB arbitration process is totally unsatisfactory. I pity the average citizen who would try to go through what I have. I have invested hundreds of hours on these cases. It took me over 100 hours just to write up the two cases and prepare over 50 exhibits.

Very truly yours,

Norman E. Witt

Norman E. Witt, Sr.

Fax.
cc Annie

A E D
A. E. Davis and Company
925 L Street, Suite 390 • Sacramento, CA 95814 • (916) 441-4140

March 26, 1986

MAR 27 1986

Mr. David Grafft
Consultant, Consumer Affairs Comm.

Dear David: Re: AB 3611-Tanner

Following up on our telephone conversation yesterday afternoon, I am writing to advise you of the opposition position of Chrysler Corporation on AB 3611-Tanner, as written.

The bill has two major flaws in our judgment. One is the creation of either parallel or alternative arbitration board programs, one of the private sector and the other a State function. That would lead to considerable confusion, and/ or duplication. The second is the reference of the present system to the New Motor Vehicle Board. We do not view that as an improvement or a step forward..

An official of Chrysler Corporation from Detroit, Michigan will be attending the hearing to testify in detail.

Fundamentally, we subscribe to the present system of arbitration and have done much to make it work. The vast bulk of the criticism and allegations of inadequacy come from a very small percentage of complainants who, in most cases, are not capable of being satisfied.

Very truly yours,

LeRoy E. Lyon, Jr.

P.S. Please excuse my typing — Secretaries are out this week.

A E D
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925 L Street, Suite 390 • Sacramento, CA 95814 • (916) 441-4140

MAR 27 1986

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cc Arnie
Sally

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Staff Reporter

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STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY

NEW MOTOR VEHICLE BOARD
1507 - 21st Street, Suite 330
Sacramento, CA 95814
(916) 445-1888

MAR 28 1986

March 26, 1986

The Honorable Sally Tanner
Assemblywoman, Sixtieth District
State Capitol
Sacramento, CA 95814

Re: AB 3611

Dear Assemblywoman Tanner:

On behalf of the New Motor Vehicle Board, I would like to express the Board's support of AB 3611. In particular, the Board supports sections 4, 5, and 6 of the bill, which contain provisions which relate to the establishment of a process whereby the Board will arbitrate new motor vehicle warranty disputes.

If I can be of any assistance in this regard, please do not hesitate to contact me.

Sincerely,

SAM W. JENNINGS
Chief Administrative Law Judge/
Executive Secretary

SWJ:ht

cc: Assembly Consumer Protection Committee

MAR 28 1986

FACT SHEET from Jennings

AB 3611

The concern has been raised that the problem of delays encountered by the Connecticut Department of Consumer Protection (DCP) in administering the provisions of the Connecticut "Lemon Law" will also plague the New Motor Vehicle Board should AB 3611 be enacted into law.

According to recent reports, it is taking an average of 25 days more than the legal maximum of 60 days for the Connecticut DCP to hold these arbitration hearings. This delay is due to a tremendous backlog of cases awaiting hearing. There is considerable concern and consternation in Connecticut that this backlog will continue to grow and thus frustrate the intent of the legislation, which was to provide an expeditious and viable remedy for purchasers of defective vehicles.

The Connecticut backlog is due, at least in part, to the structure of the law itself. Under Connecticut law, any consumer who wishes to utilize the DCP formal arbitration process can do so simply by placing a telephone call or requesting an arbitration hearing in writing.

The legislation proposed by AB 3611 has a provision which will ensure that a backlog of disputes awaiting hearing does not occur in California. Pursuant to the provisions of AB 3611, a consumer who seeks to utilize the New Motor Vehicle

cc Sally
Craig

Board's arbitration process must first submit the dispute to the staff of the Board for informal mediation. Mediation of these types of disputes is an activity in which the Board is currently engaged by application of Vehicle Code section 3050(c)(2). It is the Board's experience that the vast majority of such disputes are settled amicably during this mediation phase. Under AB 3611, a consumer whose dispute is not settled at the mediation phase may then and only then request formal arbitration.

It is expected that requiring mediation of disputes prior to formal arbitration will significantly reduce the number of these matters that actually go to arbitration. As such, the backlog of cases with which Connecticut is confronted should not occur in California should AB 3611 be enacted into law.

A concern has also been raised about section 3050.9, which is added to the Vehicle Code by AB 3611. Section 3050.9(a) requires that the Board establish a schedule of fees to fund the arbitration program which includes a fixed annual fee to be charged each manufacturer, manufacturer branch, distributor, and distributor branch. The concern which has been raised by some domestic manufacturers is that this provision will require that they pay a large annual fee to fund the Board's program as well as funding their own industry program, if one exists. These manufacturers contend that such a fee structure would therefore result in an undue and excessive burden on them.

During the first year of operation of the program, should the provisions of AB 3611 be enacted, the fixed annual fee which will be charged the manufacturers and distributors will be sufficient to provide funding adequate to cover the start-up costs associated with the program. The start-up costs for the first year are estimated to be approximately $610,000 with an additional $649,000 per year for operational costs. In subsequent years, funds generated by fees charged with respect to each request for arbitration filed with the Board are expected to be sufficient to cover the operational costs of the program.

During 1984, gross sales for domestic manufacturers and foreign distributors in California alone were approximately $11.6 Billion. The annual fee charged of each manufacturer, distributor, and branch which will be used to fund the activities associated with certification by the Board the industry arbitration programs, will be completely insignificant as compared to the profits these licensees are making from sales in California. As such, the manufacturers' concerns with respect to this annual fee are not well founded.

DISTRICT ATTORNEY

ARLO SMITH
DISTRICT ATTORNEY

ROBERT M. PODESTA
CHIEF ASSISTANT
DISTRICT ATTORNEY

SAN FRANCISCO

880 BRYANT STREET, SAN FRANCISCO 94103 TEL. (415) 553-1752

March 28, 1986

MAR 31 1986

Assemblyman Robert C. Frazee
State Capitol
Sacramento, CA 95814

Dear Assemblyperson Frazee

We are writing to lend our support to Assembly Bill 3611 which will strengthen the effectiveness of the Lemon Law. As this office frequently receives complaints from consumers regarding new car purchases, we have been greatly aware of the difficulty in resolving these complicated problems in a fair and timely manner.

Several staff members who have participated in the arbitration programs sponsored by Autocap and the Better Bussiness Bureau have reported their concerns: that due to heavy caseloads, the arbitration panels often did not get the complaints within the time guidelines currently established; that panelists were often confused about terminology such as what really constituted a "major defect"; and that certain manufactueres stalled in buying back cars after the panel had arbitrated in the consumer's favor.

With the establishment of a New Motor Vehicle Board run by the state and the other changes recommended by AB 3611, consumers will be afforded the chance to resolve their grievances in a now thorough and equitable manner consistent with California Law and Federal Trade Commission Regulations. We believe that AB3611 will have a substantial effect in offering uniformity and impartiality to the treatment of consumer new car complaints.

Sincerely,

ARLO SMITH
District Attorney

Robert H. Perez
Attorney In Charge
Consumer & Environmental
Protection Unit

AS/RHP/tgb/pd
05777/46

MAR 3 1 1986

Consumer Federation of California

P.O. Box 27066, Los Feliz Station, Los Angeles, California 90027

March 28, 1986

Jay De Furia
Committee Consultant
Assembly Consumer Protection Committee
State Capitol
Sacramento, CA 95814

LEGISLATIVE ADVOCATE
Harry Snyder
1535 Mission Street
San Francisco, Calif. 94103
(415) 431-6747

Re: Support for A.B. 3611 (Tanner)

Dear Mr. De Furia,

The Consumer Federation of California representing 150 organizations and millions of Californians urges you to support A.B. 3611 (Tanner) when it is heard by the Assembly Consumer Protection Committee on April 3, 1986. This bill will strengthen our current "lemon law," and provide additional protections to new car buyers.

Presently, when manufacturers are unable to repair a defective car, they must either replace the car, or give the buyer a refund. However, buyers are not given the right to choose which remedy they prefer. A.B. 3611 explicitly allows the buyer to choose whether he wants a replacement car, or a refund.

The bill also ensures that the manufacturer, not the buyer, bears the loss of any increase in cost of a replacement vehicle. It also explicitly provides that the manufacturer pays the sales tax, license fees, and registration fees for the replacement.

This bill protects new car buyers' rights to full and fair compensation for defective cars. We urge your support of this important measure.

Sincerely,

Harry M. Snyder

Harry M. Snyder, Legislative Advocate
Consumer Federation of California

cc: Assemblywoman Sally Tanner
Consultant, Assembly Consumer Protection Committee
Committee Members

Consumer Federation of California

P.O. Box 27066, Los Feliz Station, Los Angeles, California 90027

March 28, 1986

LEGISLATIVE ADVOCATE
Harry Snyder
1535 Mission Street
San Francisco, Calif. 94103
(415) 431-6747

Jay De Furia
Committee Consultant
Assembly Consumer Protection Committee
State Capitol
Sacramento, CA 95814

Re: Support for A.B. 3076 (Frazee)

Dear Mr. De Furia,

The Consumer Federation of California representing 150 organizations and millions of Californians urges you to support A.B. 3076 (Frazee) when it is heard by the Assembly Consumer Protection Committee on April 3, 1986. This bill would update consumer protections in mail order transactions, to protect those who order by telephone and pay by credit card.

The existing mail order provisions do not address the rights of consumers or businesses who order and pay by telephone with credit cards, since when the existing statute was passed, such transactions did not take place. In order to ensure that consumer protections keep pace with this new transaction technology, A.B. 3076 explicitly brings these types of transactions within the coverage of our mail order statutes.

This bill also eliminates the confusion that has been created by the present statute's divergence from federal regulations. Currently, the FTC requires mail order businesses to respond to orders within 30 days, while California statutes allow six weeks. A.B. 3076 makes the time frame uniform, by altering the present response time to conform to the federal standard.

A.B. 3076 provides needed updates in protection for consumers and business who order by mail. We urge your support of this important measure.

Sincerely,

Harry Snyder
Legislative Advocate
Consumer Federation of California

cc: Assemblyman Robert Frazee
Consultant, Assembly Consumer Protection Committee
Committee Members

Consumers Union

Publisher of Consumer Reports

MAR 31 1986

March 28, 1986

Jay De Furia
Committee Consultant
Assembly Consumer Protection Committee
State Capitol
Sacramento, CA 95814

Re: Support for A.B. 3611 (Tanner)

Dear Mr. De Furia,

Consumers Union, nonprofit publishers of Consumer Reports magazine, urges you to support A.B. 3611 when it is heard by the Assembly Consumer Protection Committee on April 3, 1986. This bill would strengthen the existing "lemon" law, to provide additional protections to new car buyers.

While present law provides that manufacturers unable to repair defects must either replace the vehicle or reimburse the buyer, A.B. 3611 explicitly allows buyers to choose which remedy they prefer. The bill also provides for arbitration through the New Motor Vehicle Board, so that disputes between buyers and manufacturers can be efficiently resolved, and the buyer's interest protected.

These measures would put buyers on more equal footing with manufacturers in the bargaining process, and help ensure that buyers get what they pay for. We urge your support of this important strengthening of our "lemon law."

Sincerely,

Judith Bell

Judith Bell
Policy Analyst
West Coast Regional Office
Consumers Union of U.S., Inc.

cc: Assemblywoman Sally Tanner
Consultant, Assembly Consumer Protection Committee
Committee Members

1535 Mission Street, San Francisco, Ca. 94103
(415) 431-6747

Consumers Union
Publisher of Consumer Reports

March 28, 1986

Jay De Furia
Committee Consultant
Assembly Consumer Protection Committee
State Capitol
Sacramento, CA 95814

Re: Support for A.B. 3076 (Frazee)

Dear Mr. De Furia,

Consumers Union, nonprofit publishers of Consumer Reports magazine, urges you to support A.B. 3076 (Frazee) when it is heard by the Assembly Consumer Protection Committee on April 3, 1986. This bill would update consumer protections in mail order sales, explicitly protecting those who order by phone and pay with credit cards.

Existing law does not address mail order transactions paid for over the telephone with credit cards, since it was drafted before such transactions were used. Provisions also conflict with applicable federal regulations.

A.B. 3076 will bring sales made by telephone and paid by credit cards explicitly within the coverage of our consumer protection mail order statutes. It will also alter time frames to coincide with federal regulations, requiring that mail order businesses respond to orders within 30 days, rather than six weeks.

We urge your support of this important protective measure.

Sincerely,

Judith Bell

Judith Bell
Policy Analyst
West Coast Regional Office
Consumers Union of U.S., Inc.

cc: Assemblyman Robert Frazee
Consultant, Assembly Consumer Protection Committee
Committee Members

1535 Mission Street, San Francisco, Ca. 94103
(415) 431-6747

Consumers Union
Publisher of Consumer Reports

APP 2 1986

March 31, 1986

Jay DeFuria
Committee Consultant
Consumer Protection Committee
State Capitol
Sacramento, CA 95814

Dear Jay:

Due to a secretarial error you were not sent the proper copies of our letters of support for A.B. 3611(Tanner) and A.B. 3076(Frazee). Enclosed are copies of the letters which were sent to committee members. I hope this didn't cause any inconvenience.

Sincerely,

Judith Bell, Policy Analyst
West Coast Regional Office
Consumers Union of U.S., Inc.

CalPIRG CALIFORNIA PUBLIC INTEREST RESEARCH GROUP

March 31, 1986

Assembly Committee on Consumer Protection
The Honorable Robert Frazee, Chairman
State Capitol
Sacramento, CA 95814

Dear Assemblyman Frazee:

California's new car Lemon Law needs a tune-up, and I am writing to ask you to be the mechanic by supporting AB 3611 (Tanner) and strengthening amendments suggested in the attached fact sheet. The bill will be considered in the Consumer Protection Committee on Thursday, April 3.

If you're not already convinced by the numerous stories in the newspapers and on television that the Lemon Law needs reform, then read the following true story (the names have been changed):

Gary and Rebecca Kirchner purchased their new car in March, 1984 for $13,000.

After having various defects repaired (for instance, the fuel pump was replaced four times), the Kirchners found that when driving along the freeway at 55 miles per hour, their $13,000 new car stalled--lost power, just like that--for 6-10 seconds. This happened intermittently, sometimes on the freeway, and sometimes when decelerating. They were told that it was a faulty computer part. But even after "repairs," the problem recurred.

These weren't the only problems. Various malfunctions required the Kirchners to take their new car into the shop, on warranty, to have much of the engine replaced (the manifold was replaced twice).

It was clear to the Kirchners that they had a lemon, and they read that the state had a law which, they thought, gave them some rights as lemon owners: if four or more repair attempts are made on the same problem on a new car, or if the car is out of service for a total of 30 days (for any number of problems), then the owners could get a refund or replacement.

As required by the law, they asked for arbitration. Though the law says the arbitration hearings must occur within 40 days, the Kirchners had to wait three months.

Finally, a year after they bought the car, they got an arbitration hearing. It seemed like a pretty clear case: the car had been in the shop more than 100 days, and it was still stalling on the freeway. They expected a refund or replacement.

Bay Area Regional Office
46 Shattuck Square, #11
Berkeley, CA 94704
(415) 642-9952

Los Angeles Regional Office
1660 Corinth Avenue
West Los Angeles, CA 90025
(213) 473-8491

San Diego Regional Office
2187 Ulric Street, Suite B
San Diego, CA 92111
(619) 279-5552

Legislative Office
909 Twelfth Street, Suite 205
Sacramento, CA 95814
(916) 448-4516

But the arbitrator, who was purposely not trained in the specifics of the Lemon Law, allowed the manufacturer to deduct an amount for the time the Kirchners owned the car. Even though the law says the consumer is to be charged for "use" only until the defects in the car first surfaced, the arbitrator used the current blue book value of the car--nearly a year after the Kirchners first took the car in for repairs.

Feeling slighted by the law, the Kirchners refused the offer of $5000--less than half the purchase price. ("We paid $8000 to use a defective car for a year?" they thought). The manufacturer made a new offer: an extended warranty to fix the car "one more time" with a new "miracle part" that would stop the stalling. Lacking the time or money to go to court, the Kirchners finally gave in and accepted the offer.

Ninety days after the miracle fix, the car started stalling on the freeway again. The Kirchners gave up and traded the car in.

If this was an isolated incident--just one couple's experience with the Lemon Law--it would be a horror story. But this is a common experience. That makes it a disaster.

AB 3611, and the strengthening amendments in the attached fact sheet, would address many of the problems consumers are having with the Lemon Law. CalPIRG asks for your support when this bill is heard in the Consumer Protection Committee on Thursday.

If you have any questions, feel free to call me in the Los Angeles office, or Bob Shireman at the Legislative office.

Sincerely,

Carmen Gonzalez
Consumer Program Director

cc: Assemblywoman Tanner
Members of the Consumer Protection Committee.

FACT SHEET: IMPROVING THE NEW CAR LEMON LAW

BACKGROUND

California's warranty law, the Song-Beverly Warranty Act, applies to all consumer products that are sold with written warranties. While the written warranty is in effect, manufacturers are responsible for making any necessary repairs, and are required to refund the purchase price or replace the product if it cannot be repaired after a "reasonable number of attempts."

In 1982, legislation authored by Assemblywoman Sally Tanner amended the Song-Beverly Warranty Act to clarify what is meant by a "reasonable number of attempts" to repair a new motor vehicle. This amendment is known as the "Lemon Law" and establishes remedies for the consumer whose newly purchased vehicle is substantially impaired.

The Lemon Law amendment went into effect in January, 1983 and applies to new motor vehicles that are primarily for personal or family use. The Lemon Law does not apply to used cars.

The Lemon Law requires consumers and manufacturers to use arbitration through a "qualified" third party dispute resolution program before resorting to costly, protracted litigation in resolving their disputes.

However, the Lemon Law is not providing consumers with a fair and speedy remedy for their lemon car problems. There are a number of problems with the law, some of which are addressed by reform legislation:

PROBLEM #1: ARBITRATION PANELS DO NOT ABIDE BY LEMON LAW PROVISIONS

Many decisions take much longer than the 40 day limit written in the Lemon Law. Arbitration programs often do not use the criteria set forth in the law (i.e. four or more repair attempts or service longer than 30 days) as a basis for awarding refund or replacement. Some arbitration programs do not even train their arbitrators in the Lemon Law, which means they are making decisions without taking into consideration state law. Finally, many programs do not fully comply with the Federal Trade Commission's guidelines for third party dispute resolution programs, despite provisions in the Lemon Law requiring them to do so.

AB 3611 (Tanner) requires that arbitration programs be certified by the New Motor Vehicle Board as meeting the requirements of the Lemon Law, including the FTC arbitration guidelines. The bill provides for the Board to establish its own arbitration program. Consumers would have the option of using a certified program or the Board's program, but not both. If a certified program fails to meet the procedural requirements of the law, a consumer could ask the Board to take over the arbitration.

In addition, the bill should be amended to require arbitrators to use the

Lemon Law criteria in making their decisions. In order to evaluate the programs' effectiveness, arbitration boards should be required to keep detailed records, open to public inspection.

PROBLEM #2: 'DEDUCTION FOR USE' PROVISION ABUSED.

When the manufacturer reimburses the consumer the purchase price of the vehicle, the manufacturer is entitled to deduct an amount directly attributable to use of the car by the consumer prior to discovery of the problem. The calculation of this deduction has been a major source of disagreement between manufacturers and new car buyers. Manufacturers often seek an unreasonably high deduction by using commercial car rental rates. Furthermore, the time at which the deduction for use ends often is decided unfavorably against the consumer.

AB 3611 does not address this problem.

The bill should be amended to limit the deduction to no more than an amount equal to the fraction of the number of miles drived by the consumer before the consumer first notified the dealer of the problem, over an assumed car life of 100,000 miles.

PROBLEM #3: CONSUMERS' COSTS NOT REIMBURSED.

After ruling for the consumer, some arbitration boards insist that the consumer take a replacement car even though they would prefer a refund, or vice-versa. Furthermore, consumers often must pay such costs as sales taxes and license fees on the lemon car, or must pay rental car charges and towing fees because of a defect that was the responsibility of the manufacturer.

AB 3611 gives the buyer the option of choosing either a replacement or a refund. If the buyer opts for a refund, the purchase price plus sales tax and unused license and registration fees must be refunded by the manufacturer. If the buyer opts for a replacement, the manufacturer must pay the sales tax and license and registration fees for the replacement vehicle. Provisions are added to tax and vehicle license law to allow the manufacturer to recover refunded sales tax and unused license and registration fees from the state.

The bill should be amended to ensure that consumers also are reimbursed for towing and rental car charges, as well as any other incidental damages necessitated by the defective automobile.

PROBLEM #4: ARBITRATORS RELY ON MANUFACTURER'S EXPERTS

Because arbitrators generally do not have expertise in auto mechanics, they often rely on mechanics supplied by the manufacturer to provide an evaluation of the supposed lemon car. These mechanics obviously have a conflict of interest.

AB 3611 does not address this problem.

The bill should be amended so that independent technical experts, who do not have an interest in any party in the proceeding, are used.

PROBLEM #5: CONSUMER NOT AWARE MANUFACTURER MUST BE NOTIFIED.

Current law requires the consumer to directly notify the manufacturer of the problem with the automobile, but the law does not say how or when to do so. This has caused buyers to be denied refund or replacement because some arbitration programs have claimed the manufacturer did not receive adequate notice of its dealer's repeated failure to repair the vehicle. The buyer is then required to submit to still more repairs in order to allow the manufacturer additional opportunities to repair the vehicle.

AB 3611 does not address this problem.

It is unrealistic to expect the consumer to know how and when to notify the manufacturer. Instead, the bill should be amended to require the dealer--who is the one doing the repairs--to notify both the consumer and the manufacturer once the car has been in the shop three times for the same problem or 15 days for any number of problems (during the one year/12,000 mile period). The dealer's failure to notify the manufacturer should not in any way jeopardize the consumer's rights under the law.

PROBLEM #6: CONSUMERS NOT PROTECTED FROM USED LEMONS.

There are no provisions in current law for what manufacturers may do with lemon vehicles which have been bought back from consumers. Without regulation, a manufacturer may resell the same vehicle as a used car without fixing or informing the consumer of the major defects.

AB 3611 does not address this problem.

The bill should be amended to prohibit the resale of unrepaired lemons, and to require disclosure that the car was a lemon.

Improve that lemon law

SAN FRANCISCO EXAMINER, November 17, 1985

AFTER THREE YEARS of mixed results, California's "lemon law," designed to protect buyers of defective automobiles, is in need of a tuneup. The law is by no means a total failure, but it has loopholes large enough to drive, say, a subcompact through.

Assemblywoman Sally Tanner, D-El Monte, who wrote the bill, plans to submit revisions to the Legislature in January. She says such changes are needed to ensure that consumers who buy "lemons" will get their vehicles fixed or replaced, or receive cash value — and in a reasonable amount of time.

The law now entitles the buyer of a new car to a replacement or refund if the vehicle is less than a year old or has been driven fewer than 12,000 miles; if the malfunction is covered by warranty and significantly reduces the auto's value or safety; and if four or more attempts have been made to correct the problem or the auto has been out of service more than 30 days for repairs.

Those provisions seem reasonable, but there is a further requirement that has caused some problems: Buyers must go through arbitration before they can use the lemon law or seek redress in the courts. There are four arbitration panels statewide, all funded by car manufacturers.

Consumers have complained that the panels allow the manufacturer too many chances to repair the vehicles, that claims have been unfairly denied and that panel decisions are reached too slowly. Moreover, there is no state agency to monitor the panels' compliance with pertinent federal guidelines.

We commend Tanner's efforts to revise the law, and particularly her suggestion that a state-operated arbitration program is in order. The current panels, run in large degree by auto manufacturers, are unlikely to enjoy the full confidence of the consumers they are supposed to protect.

DEPARTMENT OF Consumer Affairs

DIVISION OF CONSUMER SERVICES
LEGAL SERVICES UNIT
1020 N STREET
SACRAMENTO, CALIFORNIA 95814
TELEPHONE: (916) 445-5126

SYNOPSES OF RESPONSES TO AUTOMOBILE WARRANTY REPORT AND QUESTIONNAIRE

March 1986

Following are synopses of the responses to the department's New Car Lemon Law Report and Questionnaire (September 1985). Copies of the responses are available for inspection at the department's offices in Sacramento. The full names of the respondents appear on the last page of this document. Those who would like to inspect the responses or receive a copy of the Report and Questionnaire should contact the department's Consumer Liaison Section at (916) 445-~~5740~~. 7450

1.0 GENERAL CONCEPTS

The California State Automobile Association reported that it receives about 50 to 60 telephone inquiries per month regarding the New Car Lemon Law. Those who inquire typically request general information about the law. Responses are based upon the department's pamphlet, Lemon-Aid For New Car Buyers. "Consultation with an attorney is recommended to those callers who feel that they may be entitled to a refund or replacement."

The California State Automobile Association said that it has no first hand information to indicate whether or not the New Car Lemon Law is actually providing the recourse that was intended for new car buyers. It went on to state that:

> "The California State Automobile Association believes new car buyer protection of this nature is very important. We support and encourage any revisions to the existing law that will strengthen the law for the new car buyer and make it more understandable and usable."

Consumer's Aid said that during the past year, it had received 70 inquiries about the New Car Lemon Law, that these indicated the law ought to be tightened, that the department's suggestions for fine-tuning the law appeared to be good ones, and that the respondent was unable to add anything further to what the department had offered.

Los Angeles Consumer Affairs said that its overall opinion of the New Car Lemon Law is that it is working well, although, as with any new legislation, there is a need for amendments and fine-tuning to make it work even better.

KCRA-TV Call 3 said that it was delighted when the New Car Lemon Law was adopted. Based on its attempt to help consumers resolve new car warranty problems, however, it now believes that some changes are needed to clarify the law and to carry out its intent.

KCRA-TV Call 3 said that it is imperative that the consumer have a relatively simple, precise opportunity for the resolution of a warranty dispute. It said that the department's draft, in general, has addressed the need for accountability on the part of auto manufacturers' informal dispute settlement programs in a "precise and understandable mode." "Most of the omissions of the original law have been cured."

KCRA-TV Call 3 noted that as cars become more complex, it is ever more important that service personnel be adequately trained and equipped. It said that an overriding need is for manufacturers to bring personnel with expertise to bear upon new car problems, and, in particular, on problems which remain unresolved after two repair attempts. It said that the law should make clear the manufacturer's duty to properly reimburse dealers for warranty work.

Attorney Gelman said that the New Car Lemon Law does not yet fully accomplish its intended functions.

2.0 MANUFACTURER'S DUTY TO REPLACE VEHICLE OR REFUND PRICE

2.1 Basic Legal Standard (Report, pages 10-11, 26-28, 83)

In its Report and Questionnaire, the department concluded that while the New Car Lemon Law's presumption is an appropriate device, the language is in need of minor fine-tuning.

The Los Angeles District Attorney said that while the manufacturer should be given a reasonable number of attempts to cure a defect that only affects the vehicle's value (e.g., a defective paint job), the manufacturer should have but a single opportunity, of not more than one week's duration, to repair a defect that affects a vehicle's use or safety. The reason is that "automobile travel is a necessity of life in California" and that any delay in honoring a warranty ties up resources of the buyer that could be used to purchase alternative transportation. Allowing multiple repair attempts

merely encourages dealer repair facility negligence and makes it difficult for manufacturers to distinguish competent facilities from those that are incompetent.

The Los Angeles District Attorney pointed out that the New Car Lemon Law is already complicated and difficult for non-lawyers (and, as well, many lawyers) to understand, and that one can properly question the overall utility of incremental changes to this already-complicated body of law.

The California Attorney General said that too few new car buyers are aware of their rights under the New Car Lemon Law, and that one arbitration program endeavors to keep its arbitrators uninformed about the New Car Lemon Law's standards.

2.2 Time to Replace Vehicle or Refund Price
(Report, pages 11, 28-29, 83)

The department observed that the present law does not state when the manufacturer is required to offer a replacement or price refund, and the department recommended that the law should be made more specific.

CalPIRG said that the department's draft, which would require the manufacturer to replace a defective vehicle or make full restitution "promptly," is too vague. Providing an incentive, as the draft does, however, is a good idea, it said.

The California Bankers Association questioned the use of the term "promptly." It suggested that it offers manufacturers no real guidance.

Consumers Union questioned the portion of the department's draft which would give the manufacturer the option if the manufacturer acts promptly, arguing that the buyer should have the option in all cases.

Ford Motor Company said that the manufacturer who elects to provide a replacement may need from 45 to 60 days to locate and deliver it. Penalizing the manufacturer for not acting "promptly" is unrealistic and may be unfair, it said.

2.3 Who Makes the Election?
(Report, pages 11, 29-30, 83)

The department pointed out that the present law does not state whether it is the manufacturer or the buyer who is entitled to make the election between a replacement or price refund, and the department recommended that the law should specify who has the right to decide.

Attorney Gelman said that giving the manufacturer the option makes it difficult for attorneys to provide legal representation on a contingent fee basis.

Attorney Anderson recommended that the buyer always be given the option to elect a replacement or price refund.

2.4 Character of the Replacement Goods
(Report, pages 11-12, 30-32, 83-84)

The present law does not describe the characteristics of the replacement goods. The department recommended that the issue should be addressed.

Consumers Union questioned the draft's suggestion that (1) where the price of the replacement vehicle has increased and the manufacturer elects to replace a defective vehicle, the manufacturer should bear the burden of the price increase, and (2) the buyer should bear the burden instead of the manufacturer if it is the buyer who exercises the option and elects a replacement. Consumers Union argued that the manufacturer should bear the burden of the price increase in either event.

Toyota Motor Sales said that the draft's allocation to the manufacturer of the burden of a price increase in the case of a replacement elected by the manufacturer raises a host of related issues, such as the effect of additional options, change of model, depreciation, etc.

2.5 Payment of Related Losses
(Report, pages 12, 32-33, 83-84)

The department observed that the mere replacement of a nonconforming product with a new product will not always make the buyer whole, and the department concluded that a better definition of the manufacturer's duty to pay related costs may be needed.

KCRA-TV Call 3 stated that the manufacturer should be responsible for all losses resulting from the failure of the vehicle, including but not limited to the increased costs of the replacement, as well as sales taxes, license fees and expenses of all kinds.

The California Attorney General stated while some arbitration panels include sales taxes and registration fees in their awards of restitution, an amendment that would mandate this would appear to be appropriate.

Consumers Union endorsed the language of the draft that expresses the obligation of the manufacturer to make the buyer whole by reimbursing collateral expenses including sales taxes and license fees. Consumers Union pointed out that on a $10,000 vehicle, the sales tax alone is $600. Any towing fees, repair costs, auto rental charges and other out-of-pocket costs should also be reimbursed, it said.

The Los Angeles District Attorney said that the New Car Lemon Law should be amended to assure that whenever a replacement or refund is ordered, the buyer must be made whole by including an award of sales taxes, license fees, finance charges, towing charges, rental charges and repair charges.

CalPIRG said that two additional kinds of out-of-pocket expenses that the manufacturer should be required to reimburse are towing fees and the costs of a rental vehicle.

The California Bankers Association suggested that the scope of any required reimbursement include "all financing costs," including prepayment charges and any additional costs associated with the use of the Rule of 78's.

The California Bankers Association pointed out that requiring a "pro-rata" refund of credit insurance premiums was insufficient, because some insurers calculate rebates using the Rule of 78's. Instead, reimbursement should be at least equal to the burden that the consumer will be required to bear.

Toyota Motor Sales questioned whether the manufacturer should be responsible for reimbursement of collateral charges that are not imposed by the manufacturer, such as non-factory required retail preparation, dealer installed options, and service contracts.

The California Bankers Association pointed out that the financing agency's sole relationship is with the seller, and that the financing agency ordinarily has no relationship whatsoever with the manufacturer; yet, the present law, and the draft of amendments, both contemplate a relationship between the financing agency and the manufacturer. It said that while it may be necessary to live with this ambiguity, perhaps something should be done to clear it up.

2.6 Duty to Refund Purchase Price (Report, pages 12-13, 33-35, 84)

The present law does not clearly require restitution of other losses suffered by the buyer as a result of the manufacturer's inability to repair the vehicle. The department observed that some modification appears to be needed.

Consumers Union endorsed the clarification suggested in the department's draft. However, instead of a pro-rata refund, Consumers Union offered the text of legislative language that would mandate a full refund of many of the charges (e.g., sales taxes and extended service contracts):

> "(3) The amount of restitution referred to in paragraph (1) shall equal the full contract price paid or payable by the buyer, including any documentary fees or charges for retailer preparation, any charges for transportation and installed options, the full amount of any charges for a service contract or extended warranty, a full refund of sales taxes and other one-time official fees, a pro-rata portion of recurring charges such as license fees, registration fees and other annual official fees, a pro-rata portion of any amounts paid or payable under the contract of sale for life, disability and collision insurance, plus any incidental damages to which the buyer is entitled under Section 1794, including any reasonable repair costs actually incurred by the buyer. The buyer shall also be entitled to restitution in full for any finance charge paid in connection with the purchase of the nonconforming vehicle, except that the refund or finance charge shall be limited to pro-rata only if the lender has agreed to accept a lien on a vehicle purchased with the restitutionary funds without imposition of another finance charge."

Subaru of America pointed out that manufacturers do not control the prices charged by dealers for new motor vehicles. It suggested that if the dealer sells a vehicle above the manufacturer's list price, the dealer and not the manufacturer should be required to reimburse the excess. The same rule should apply to dealer-installed options and accessories which are obtained from sources other than from the manufacturer.

KCRA-TV Call 3 stated that the use in the department's draft of the word "restitution" instead of "refund" more aptly describes what is required to be paid to the buyer in order to meet the buyer's real needs.

2.7 Restoration of Possession and Security Interests (Report, pages 13, 35-37, 84)

The present law does not define the buyer's responsibility to restore possession of the nonconforming product to the manufacturer or its dealer. Nor does it cover satis-

faction of liens against the nonconforming product. The department concluded that the resulting uncertainties lay the groundwork for dispute.

Consumers Union said that the department's draft was a "sensible approach."

The California Bankers Association expressed concern that merely requiring the manufacturer to pay the creditor "the unpaid balance of the secured obligation" might not fully satisfy the obligation of the buyer (or the seller) to the financing agency. It suggested that perhaps the language should read "the amount of the buyer's obligation under the contract." In a transaction in which the buyer has procured 100% financing, the offset may actually exceed the buyer's equity in the property, the CBA said. In that situation, it said, the financing agency will need to be paid more than the present draft requires the manufacturer to pay before the vehicle will be released.

Attorney Gelman stated that the present law is unclear as to whether the buyer can sell a defective car during the pendency of the dispute; as things stand now, he said, the buyer may need to hold the defective (and perhaps inoperable) vehicle until the dispute is decided, both because the manufacturer may elect to receive it back, and also because of any security interest.

2.8 Offset for Buyer's Beneficial Use (Report, pages 13, 37-38, 85)

The department observed that the calculation of the offset is a major source of disagreement between new car manufacturers and new car buyers. A frequent complaint is that a manufacturer seeks reimbursement equal to commercial car rental rates (which would be excessive and unfair to the buyer). The department concluded that the rules should be more specific.

CalPIRG agreed that this was a subject of frequent disagreement, but said that the department's draft response was confusing and unclear. A more specific formula is needed. For example:

> "Multiply the total contract price of the vehicle by a fraction having as its denominator 100,000 and its numerator the number of miles the vehicle traveled prior to the time the problem was first called to the attention of the dealer."

The California Bankers Association expressed the view that both the existing law and the proposed revision was too vague. The CBA was also concerned about the case in which the buyer has procured 100% financing and the offset exceeds the buyer's equity in the property, with the result that the amount which the manufacturer is required to pay is less than the unpaid balance which the buyer owes to the financing agency. The question is: If the buyer returns the vehicle to the manufacturer, and the manufacturer's payment is less than the unpaid balance owing to the financing agency, what happens? Is the financing agency required to release the vehicle to the manufacturer? Is the manufacturer required to pay the difference to the financing agency?

Attorney Anderson recommended that a limit be placed on the charges per mile, such as 10% per mile.

3.0 WHEN CAN A CAR NOT BE REPAIRED?

3.1 Basic Legal Standard (Report, pages 14, 38-40, 85)

The department concluded that while the Song-Beverly Act's presumption has been the subject of both praise and condemnation, the basic concept of the New Car Lemon Law -- the creation of a presumption upon the occurrence of certain well-defined events -- appears to be sound. The department felt that many closely related provisions, however, seem to need fine-tuning.

Ford Motor Company registered its opposition to the new sentence in the department's draft that covers multiple attempts to repair the same problem that extend beyond one year, arguing that the multiple repair attempts should not all be deemed to have occurred during the first year as suggested. "In effect, this would extend the warranty to two years and 24,000 miles to a select group of customers. The manufacturer should be expected to exercise judgment and discretion in those cases just beyond warranty through goodwill adjustments."

3.2 Direct Notice to the Manufacturer (Report, pages 14-15, 40-42, 86)

The present law does not require the buyer to give direct notice to the manufacturer where the event that triggers the presumption is 30 calendar days out of service; and where the event that triggers the presumption is four or more repair attempts, the direct notice to the manufacturer can occur as early as the first repair attempt, which would fail to give notice to the manufacturer or its agents' repeated failure to

effect repairs. As a result, the department pointed out that some buyers of defective automobiles are being denied relief, because arbitration panels sometimes decline to order "buy backs" where they believe that the manufacturer has not had a reasonable opportunity to make the needed repairs. The department concluded that some fine-tuning is needed.

Subaru of America emphasized the importance of direct notice to the manufacturer of a dealer's inability to resolve a problem. Such notice, it said, should be required in the case of repeated inability to effect repairs and also when the vehicle is out of service for more than 30 days. After receiving such notice, the manufacturer should have at least 15 days to effect repairs; seven days, as proposed in the department's draft, is not enough.

As support for its position on notice, Subaru of America cited "its experience that few, if any, cars are unrepairable." It said that --

> "All too frequently ..., SOA first learns of vehicle problems only after four unsuccessful repair attempts have been undertaken by a dealer and/or a consumer's vehicle has been out of service for in excess of thirty days. Once it has become aware of such situations in the past, SOA has immediately become involved only to find that a mechanical problem has either been misdiagnosed or improperly repaired by the dealer. In other cases, the fault lies with the unavailability of a part needed to effect the repair either due to a temporary part shortage or improper dealer part ordering procedures. Cars involved in such situations are not 'lemons'. On the contrary, those cars can be and are repaired once SOA is made aware that a problem exists. SOA has found that direct notice from the consumer is the best method available to create that awareness."

Subaru of America also recommended that the New Car Lemon Law be amended to include dealers among those subject to the law:

> "Many lemon law situations which SOA encounters would never become problems in the first place if the dealer had sought needed assistance when, for whatever reason, it was unable to properly repair a consumer's car on a timely basis. In order to provide an incentive for dealers to communicate with the 'manufacturer' about seemingly intractable repair problems, the law should be amended to provide

that dealers can be held responsible to the 'Manufacturer' in lemon law actions if they fail to follow any notification procedures established by the 'manufacturer', provided those notice procedures are found to be reasonable."

CalPIRG agreed that it seemed reasonable for the manufacturer to be entitled to notice of its agents' repeated failure to effect repairs, but that the department's draft was not fair to the buyer, because its effect would be to increase the number of authorized repair attempts before the lemon law presumption takes hold. Instead, CalPIRG said, the law should be amended to require the dealer to notify the manufacturer after three repair attempts or 15 calendar days out of service, and then give the manufacturer one final opportunity to effect repairs.

The Better Business Bureau registered its opposition to the portion of the department's draft which would give the manufacturer one additional repair attempt before the presumption takes affect. It objected on the basis that this would permit manufacturers to delay or avoid the New Car Lemon Law's presumption. At the very least, the Better Business Bureau recommended an upgraded disclosure of the revised provision.

KCRA-TV Call 3 said that the draft "sounds great, except the consumer may be out a car another two-three weeks."

3.3 Extension of the 30-Day Period (Report, pages 15, 42-44, 86)

The department observed that extending the 30-day period when there are "conditions beyond the control of the manufacturer or its agents" gives rise to considerable dispute, including disputes regarding the application of the presumption, where it's existence may hinge on the application of this concept. The department concluded that the present rule needs to be fine-tuned. There were no comments on the department's draft.

3.4 Effect of the Presumption (Report, pages 15-16, 44-45, 86)

The department observed that the concept of a "presumption" or "rebuttable presumption" is a difficult one for lawyers, judges and non-lawyers alike. It acknowledged that the application of the presumption has given rise to a great deal of dispute. The department recommended that the description of the presumption, and its legal effect, should be improved.

Toyota Motor Sales said that creating a conclusive presumption in certain situations, as the department proposed, could actually add to consumer frustration by making repair facilities more cautious and less open in diagnosing and discussing problems and in providing repairs.

CalPIRG did not understand the department's draft. It found it "extremely confusing."

3.5 Definition of "Nonconformity" (Report, pages 16, 45-47, 87)

The department pointed out that the concept of "nonconformity" has given rise to a considerable amount of dispute in its practical application. The department said that like all general concepts, the concept of "nonconformity" requires the applications of judgment and common sense. The department concluded that a better definition would help avoid disputes.

KCRA-TV Call 3 said that the suggested language was good.

Toyota Motor Sales said that the sentence declaring the effect of a series of nonconformities needs to be clarified to indicate whether it applies to continuing problems or unrelated problems.

3.6 Definition of "New Motor Vehicle" (Report, pages 16, 47-48, 82)

The department said that some car buyers are being denied the benefits of the presumption on the basis that the vehicle is capable of being used as an "off-road" vehicle; and some buyers have been denied the benefits of the presumption where the subject of the purchase is a "demonstrator" sold with a manufacturer's new car warranty. The department pointed out that such exclusions conflict with the spirit of the law, and it concluded that a better definition seems to be needed.

CalPIRG agreed that the New Car Lemon Law should apply to all vehicles normally used for personal, family or household purposes, including dealer-owned and demonstrator vehicles.

KCRA-TV Call 3 agreed that dealer-owned vehicles and demonstrators should be included, but recommended that motor homes and motorcycles also be expressly included.

4.0 INFORMAL DISPUTE SETTLEMENT PROGRAM STANDARDS

4.1 Access to the Program (Report, pages 16, 48-50, 82-83)

The department reported that some new car buyers do not receive adequate notice of the availability of the manufacturer's informal dispute settlement program. The department said that one reason may be that the manufacturer has not established an informal dispute settlement program; another may be that the manufacturer has established a program, but does not require that it be used as a condition of the assertion of the presumption. The department concluded that more should be done to make buyers aware of the existence of a program, where one exists.

KCRA-TV Call 3 stated that the up-front disclosure to the new car buyer suggested in the department's draft "beautifully fills the voids of the original law." It said that consumers need easily readable and accessible warranty information, both formal and informal notification of a manufacturer's informal dispute settlement program, and an outline of the consumer's responsibilities.

CalPIRG suggested that the department's pamphlet on the New Car Lemon Law, Lemon-Aid for New Car Buyers, should be reproduced by manufacturers and included with all new car warranties.

4.2 Adherence to FTC Requirements (Report, pages 17-18, 50-52, 90)

The department reported that informal dispute settlement programs offered by new car manufacturers do not always comply with the requirements of either the Federal Trade Commission's standards or the Song-Beverly Act, and that some of the programs do not even intend to comply, and it concluded that compliance needs to be upgraded.

CalPIRG argued that automobile arbitration programs ought to be upgraded to provide an effective "stand-alone" dispute resolution process:

> "The arbitration panels should be more than a major alternative to the court process. Consumers should be able to expect a fair resolution of their problem, rather another hurdle to cross. Consumers should be able to resolve their lemon car problem at the arbitration level, and avoid use of attorneys and the courts."

4.3 Definition of "Qualified Program" (Report, pages 18, 52-56, 90-92)

The department said that while dispute resolution programs are new, and most are endeavoring to upgrade and refine their procedures to realize the goals set by the FTC and the Song-Beverly Act, additional legal standards may be needed to supplement those contained in the existing law to assure the ready availability to new car buyers of a viable dispute resolution process.

KCRA-TV Call 3 said that it was important that the law set forth the major "do's" and "don'ts" for automobile arbitration programs, as suggested by the department's draft.

Toyota Motor Sales said that the rules governing automobile arbitration should be uniform in all states. Its goal, it said, is to maintain a qualified program which is national in scope, is available to all car owners and provides for fair and expeditious resolution of their complaints. If the standards are not uniform throughout the states, it said, operating problems will arise. It noted that the FTC is now engaging in negotiations to update Rule 703.

Los Angeles Consumer Affairs spoke approvingly of the Southern California AUTOCAP Panel, which is composed of four car dealers, four consumer representatives (including a representative of the Los Angeles County Department of Consumer Affairs) and two experts:

> "The panel collectively possesses great expertise and hears hundreds of cases each year. Because of the volume of cases heard, the panel can quickly spot patterns of vehicle problems of which a sole arbitrator would be unaware. Also, we have the benefit of a technical expert's presence on every case. When we buy a car back, we include tax and license in every instance, and incidental expenses where appropriate. When a repair or buy back decision is rendered, we require the manufacturer to provide a loaner car of comparable worth to the customer. Based on this experience, it is my belief that every third party mechanism should contain the components of the AUTOCAP system."

The Better Business Bureau registered its opposition to a requirement that arbitration decisions "be based in substantial part, upon federal and state laws, regulations and decisions applicable to the subject in dispute." The Better Business Bureau said that this would eliminate the concept of

equity in arbitration proceedings and would require consumers to either know the law or hire attorneys to present their cases, which would put consumers at a relative disadvantage in arbitration proceedings. It would also complicate and lengthen the process and require arbitrators to receive legal training. Even if arbitrators received legal training, they still would not on a par with attorneys representing the manufacturer. A related effect would also be to deter non-lawyers from volunteering to serve as arbitrators.

KCRA-TV Call 3 said that it was important that arbitration programs inform their staff investigators about the relevant law.

Ford Motor Company said that the provision of the draft requiring programs to consider "incidental" damages should define that term, and that the kinds of "consequential" damages that are excluded should also be defined.

Ford Motor Company said that where additional repair attempts are needed, it is essential to communicate information about the repair attempts by telephone or in person. Written communications are unworkable if the process is to be speedy.

KCRA-TV Call 3 expressed the need to require arbitration programs to offer a loaner car whenever a decision authorizes or requires additional repair attempts.

Ford Motor Company said that providing loaners is costly in terms of vehicle maintenance, insurance and administrative control. The option of providing a loaner should continue to be an option, exercised by the manufacturer or its dealer in those cases where it is justified.

KCRA-TV Call 3 said that arbitration programs do not presently follow-up their decisions, and that there is a need to require this, as proposed in the department's draft. KCRA-TV Call 3 also asked how soon should the program wait before it conducts a follow-up.

Ford Motor Company said that if the decision provides for one or more additional repair attempts by the manufacturer, it would be impractical to reconvene the arbitration panel to evaluate the results of the additional repair attempt; instead, the adequacy of the work should be considered at the next regularly scheduled meeting of the arbitration panel.

Ford Motor Company said that the time allowed for complying with arbitration panel decisions should be realistic. The ordering, sourcing, building and delivery process will normally take more than 30 days, perhaps as much as 60 days, and the law should recognize this.

KCRA-TV Call 3 questioned the adequacy of the language in the department's draft that would require arbitration programs to operate "reasonably close" to the places where vehicles are sold.

KCRA-TV Call 3 expressed the need for a better method to discipline arbitration programs whose processes do not comply with the law.

CalPIRG criticized the department's draft for not providing some method to enforce compliance by automobile arbitration program with the legal standards that apply:

> "Although specifically defining the standards a program must meet is important and necessary, the proposed legislation does nothing to ensure the existing programs comply with such standards. Some suggestions for creating some assurances that consumers across the state have access to consistent, fair and impartial arbitration are:
>
> "1. Define specifically what constitutes a qualified program. The definition should include the standards set forth in the FTC 703 rules, especially sections 703.3 to 703.6. In addition, the definition should incorporate some of the important features that exist in other dispute programs such as American Arbitration Association and the Los Angeles AUTOCAP. Two key elements which should be included in any definition of a qualified program would be: adequate training of arbitrators in the Song-Beverly Warranty Act, specifically the lemon law amendment; and that the composition of any arbitration panel include an automotive expert.
>
> "2. Provide a penalty for those arbitration programs which do not meet prescribed minimum standards, and/or provide consumers with an alternative which does meet the above criteria. That can be accomplished by allowing the current arbitration programs one year to begin operating complying programs. If the programs do not meet the required standards in that time period, an independent state run arbitration panel, which would be funded by the manufacturers, automatically kicks in."

4.4 Program Reporting Requirements
(Report, pages 18, 56-59, 92-93)

The department pointed out that there is now no way to determine whether a program complies, or even intends to comply, with the Federal Trade Commission's and the Song-Beverly Act's standards. Data concerning programs are not readily available to the members of the public. The reports submitted to the Department of Motor Vehicles are not readily available to consumers. There is too little information readily available to the public regarding the actual operation of the programs, including the statistics required by the FTC's regulations.

KCRA-TV Call 3 said that the statistics which the department's draft proposes should prove helpful in program monitoring and enforcement, provided that the department allocate sufficient resources to the task.

Ford Motor Company said that most of the statistics are now already being provided on an annual basis, and that requiring quarterly statistics as proposed would not only be costly to automobile manufacturers but would be less conclusive than annual statistics in analyzing the effectiveness of a dispute resolution program.

CalPIRG said that the department's draft should be amended to require the submission of information about arbitration panel members' qualifications, as specified in FTC Rule 703.4.

KCRA-TV Call 3 suggested that the panel members be required to furnish conflict-of-interest data to the department and the public.

4.5 American Arbitration Program
(Report, pages 19, 59-61, 94-95)

The department reported that the present law does not give the buyer of a new motor vehicle the right to institute arbitration, except to the extent where the manufacturer offers an informal dispute settlement program. The department asked: If the manufacturer has not established such a program, should the buyer have the right to secure arbitration under the rules of the American Arbitration Association?

The American Arbitration Association compared and contrasted arbitration, mediation and litigation and shared other relevant observations:

"Arbitration is a process whose purpose is to provide an informed, just and reasonable end to a dispute. It is an alternative to both litigation on the one hand, and simply allowing the dispute to go unresolved on the other. Arbitration generally saves time and money, and is less disruptive to other work than litigation. It can even be faster than mediation or other forms of dispute resolution.

"An arbitration system which is just and fair to both sides of an issue should contain the following provisions which are all a part of the procedures of the American Arbitration Association:

"1. The arbitration panel should consist of a single neutral person selected by an appropriate body such as the AAA. There should be a provision allowing either party the ability to object to an arbitrator for good cause. Alternatively, the parties could each select an arbitrator and the AAA could appoint a neutral. In addition, a proposed list of arbitrators could be submitted to the disputants in advance, on each case, although this would greatly increase the cost.

"2. The procedures should provide for a speedy hearing.

"3. The hearing should be oral unless waived by both parties. Or, there should be an opportunity to respond if the matter is submitted solely in writing.

"4. There should be a provision which requires the arbitrators to render the award within a reasonable period of time.

"5. Generally in consumer cases, the cost of the process should be borne, in major part, by the company rather than the individual consumer.

"If a hearing should require more than one day, there should be a nominal per diem for the neutral. Other costs involved are a minor case fee to the administrator and reasonable out-of-pocket expenses.

"Under the AAA's procedures, hearings can be held virtually anywhere in the state."

The Better Business Bureau registered its opposition to utilizing the American Arbitration Association's program because the American Arbitration Association is not subject to the reporting and other requirements that apply to the Better Business Bureau. Further, consumers would find it difficult to complete the American Arbitration Association's forms. Finally, it said, consumers would be vulnerable to overreaching by manufacturers in that event. It is better, the Better Business Bureau said, to establish rules that apply uninformally to all automobile arbitration programs.

4.6 Review by the Department of Consumer Affairs (Report, pages 19, 61-62, 94)

The department observed that the Song-Beverly Act does not now confer specific powers or responsibilities on the Department of Consumer Affairs to review the operation of informal dispute settlement programs. The department asked: Should the Department of Consumer Affairs be authorized to receive information by informal dispute settlement programs and communicate its conclusions and other information to the public?

CalPIRG said that the department should be both authorized and required to take the steps that the department's draft authorizes.

KCRA-TV Call 3 supported this concept, provided that the department actually makes use of the information and powers that are provided. It questioned, however, whether sufficient staff and other resources would be available. Hopefully, KCRA-TV Call 3 said, the new powers would be used frequently and swiftly.

Toyota Motor Sales asked whether the state is considering setting up a state-run automobile arbitration program. It asked: "What incentive is there for the manufacturer to improve existing mechanisms or even to continue to participate, if the State elects to provide the service?" The company also expressed concern about involvement by multiple state agencies.

The Los Angeles District Attorney said that since important legal rights may be conditioned upon an aggrieved buyer's use of the manufacturer's arbitration program, some public agency should have the responsibility to review the operation of such programs and make public its findings about their adequacy and fairness, as well as to propose any needed legislative changes.

CalPIRG recommended that the Department of Consumer Affairs be required to notify the National Highway Traffic Safety Administration of any pattern of safety complaints of which it became aware by virtue of the information it received.

5.0 MISCELLANEOUS PROVISIONS

5.1 Manufacturer's Obligation to the Financing Agency (Report, pages 19-20, 63-64, 84)

The department pointed out that the present law does not define the manufacturer's duty to pay a financing agency that has financed the purchase of a car whose purchase price is refunded, and it concluded that there was a need to address this issue. There were no comments on the department's draft.

5.2 Buyer's Right to Assert Sale-Related Defenses (Report, pages 20-21, 64-66, 95-96

The department observed that the Song-Beverly Act does not deal with the buyer's right to assert sale-related defenses against a financing agency. A variety of other statutes and regulations, however, apply. Where a buyer has rightfully exercised the option to obtain a replacement of the vehicle or a refund of the purchase price on the basis that the vehicle is defective and cannot be repaired, some creditors nevertheless report or threaten to report the account as delinquent to a credit reporting agency unless the buyer continues making payments for the defective vehicle. The effect is to deter the buyer from exercising his or her right to revoke acceptance or seek a replacement or a refund of the price. The department felt that steps should be taken to preserve the buyer's right to assert sales related defenses against the creditor.

Consumers Union endorsed the addition of language that would deter creditors from making adverse credit reports when a buyer justifiably asserts a sale-related claim or defense. Consumers Union argued, however, that the department's draft does not go far enough. It offered legislative language that would also cover threats to make adverse credit reports; and it argued that the rule should also apply when the creditor has constructive knowledge of the buyer's assertion of the right to assert a sale-related claim or defense.

The California Bankers Association pointed out that the credit reporting process is automated. Defaults in making payments are automatically reported to the credit reporting agency. The process, it said, cannot be modified to prevent the reporting of defaults in those instances when the default represents the decision of the buyer to withhold payment

because of an alleged breach of warranty. It suggested, however, that the law be amended to require that the credit bureau expunge the report if the buyer has filed a court action or has filed a complaint with an arbitration program alleging breach of warranty.

5.3 Extension of Warranty Periods
(Report, para. 6.1, pages 20-21. 66-69, 88-90)

The department pointed out that the Song-Beverly Act's provision on "tolling" or extension of warranty periods does not clearly indicate whether the statute is referring to the extension of warranty periods, or the extension of the statute of limitation, or both. The department said that the language also is complex and does not totally carry out the rules set out in the required disclosures, and it concluded that some fine-tuning is needed.

KCRA-TV Call 3 said that sellers are often uncertain as to whether a warranty period is extended under the law, and that the draft proposed by the department seems to cover all of the possibilities.

Ford Motor Company expressed its opposition to any state-law extension of the duration of a manufacturer's express or implied warranty.

5.4 Small Claims Court Powers
(Report, para. 6.2, pages 21, 69-71, 98)

The department observed that the rules that govern the small claims court process do not clearly state that the court has jurisdiction to grant relief based upon a buyer's exercise of the right to a replacement or price refund under the Song-Beverly Act, or to appoint an expert mechanic to advise the court in a case in which the buyer asserts that the vehicle cannot be repaired. The department asked: Should the applicable rules be clarified?

The California Attorney General said that except for actions involving substantial claims involving personal injuries, litigation is usually too expensive for the consumer unless the action can be filed in the small claims court. However, the small claims court is often not effective in cases involving application of the New Car Lemon Law. Use of a special master or a court-recognized mechanic might help. It has been argued that a small claims court judge has no power to appoint an expert mechanic; there is a need, therefore, to clarify that such a power exists. There is also a need to clarify that rescission can be granted without regard to the value of the vehicle, provided only that the damages portion of the judgment does not exceed $1,500.

The Los Angeles District Attorney said that the small claims court is not now being used to resolve disputes under the New Car Lemon Law. Moreover, it said, it is doubtful whether the small claims court can be used for that purpose. For one thing, the jurisdictional limit of $1,500 is too low to accomodate most restitution claims; and even if the jurisdictional limit were raised, buyers would still be incapable of pursuing their warranty remedies without a lawyer. This is because the New Car Lemon Law procedure is complicated and has numerous pitfalls for the unwary. Without simplifying the warranty law procedure, the small claims court is not equipped to handle such cases.

5.5 Admissibility of Arbitration Decision
(Report, para. 6.3, pages 21, 71-72, 87)

The department felt that some parties to an arbitration proceeding (both warrantors and buyers) conduct themselves with undue regard for the impact of their remarks and other acts upon anticipated litigation. The department said that such "posturing" can undermine the effectiveness of the program, and the department concluded that the fact that many informal dispute settlement programs are offering mediation as an additional consumer option may be added reason to make the entire proceedings inadmissible in any later court action.

Toyota Motor Sales registered its opposition to the suggestion that arbitration proceedings should be made inadmissible in court. It could defeat the purpose of using the arbitration procedure, it said, because it would diminish the "worth" of arbitration. The extra expense involved in re-establishing evidence already presented in the arbitration proceeding was another reason to retain the present rule.

Ford Motor Company said that arbitration decisions should be admissible in court because they have resulted from a review process that is fair to both parties and relevant to any further proceedings.

5.6 Refund of Sales Taxes and Registration Fees
(Report, para. 6.4, pages 22, 72-75, 96-97)

The department reported that the Song-Beverly Act does not specifically state that where the manufacture takes back a vehicle that cannot be repaired, the manufacturer has an obligation to restore any sales taxes and registration fees paid by the buyer, and the department concluded that fair and workable rules need to be adopted.

The Board of Equalization did not oppose including the amount of any sales taxes paid by the buyer as part of the restitution required by the manufacturer, but it opposed giving the manufacturer a right to recovery of any part of the sales tax from the state. First, it said, it is the dealer, and not the manufacturer, that has paid the tax. Second, existing rules already permit the dealer (and, through the dealer, the manufacturer) to obtain a refund of sales taxes in cases where the full purchase price of a vehicle has been refunded to the buyer. Third, however, allowing refunds of sales taxes for less than full refunds of the purchase price would invite wholesale invasion of the sales tax by dealers and customers desirous of conducting annual trade-ins of new vehicles. Accordingly, the burden of the sales tax is one that the manufacturer should bear, except in those cases in which the buyer receives a full refund of the purchase price, and the dealer applies for the sales tax refund and remits it to the manufacturer.

The Department of Motor Vehicles said that while the amount which the manufacturer is required to restore to the buyer of a defective vehicle ought to include all vehicle registration and license fees paid by the buyer, such fees should not be recoverable from the state. The reason is that such fees are immediately due and payable upon a new vehicle's first operation following sale. Moreover, they become part of the value of the vehicle and need not be repaid when the returned vehicle is later repaired and re-sold to a new purchaser. As a practical matter, the manufacturer can recover all or a portion of the fees at that time. The Department of Motor Vehicles also pointed out that the major portion of the fees that are collected in the case of sales of passenger vehicles constitute a property tax, and not a tax linked to use. The extent of the use of the vehicle, therefore, is not relevant. The remaining portion of the tax, it said, consists of $22.00 as reimbursement to the DMV for the cost of processing the registration paperwork, and $1.00 to the California Highway Patrol for enforcement.

5.7 Role of the New Motor Vehicle Board (Report, para. 6.5, pages 22-23, 75-77, 97-98)

The department asked: Should the New Motor Vehicle Board have jurisdiction to consider the sufficiency of a new motor vehicle manufacturer's service and repair program, as well as its informal dispute settlement program, if any, and should it have jurisdiction to mediate warranty disputes, if resources permit?

KCRA-TV Call 3 expressed a "grave concern" about assigning responsibilities in the same subject area to two or more state agencies. It said that ideally, there should be a single monitoring and regulatory agency with sufficient permanent funding, and staffed by competent, interested and caring personnel.

5.8 Substantive Warranty Law

KCRA-TV Call 3 suggested that the consumer warranty law ought to be amended to protect subsequent owners of warranted products.

Attorney Anderson recommended that the warranty law's protections ought to be extended to subsequent owners.

Attorney Anderson recommended that the consumer warranty law be amended to apply to both consumer and business purchasers.

Attorney Anderson recommended that the New Car Lemon Law's presumption ought to be extended to all big ticket items including boats and airplanes.

Attorney Anderson recommended that the act's limitations on the duration of implied warranties be eliminated.

Attorney Anderson recommended that the required disclosures of the terms of service contracts ought to be upgraded.

Attorney Anderson recommended that the act ought to be amended to cover used car sales, which are now excluded unless the sale is accompanied by a written warranty, and that the used car buyer should be given appropriate remedies against the manufacturer.

Attorney Anderson recommended that disclaimers of warranties in used car sales ought to prohibited, and that all used car buyers should receive a 90-day implied warranty on at least the key components of the vehicle.

5.9 Other Remedies

KCRA-TV Call 3 said that instead of sending the consumer back to the seller, the department should endeavor to expedite solutions, such as by helping consumers proceed to the next step in the warranty enforcement process.

Attorney Anderson recommended that the act be amended to permit the recovery of a penalty in the event the seller willfully neglects to cure a breach of an implied warranty.

Attorney Anderson recommended that if the consumer prevails in a lawsuit, an award of attorney's fees ought to be mandatory, not discretionary, as at present.

Subaru of America recommended that the New Car Lemon Law be amended to deal with bad faith claims by consumers. It recommended enactment of the Florida statute, which states:

> "Any claim by a consumer which is found by the court to have been filed in bad faith, or solely for the purpose of harassment, or in complete absence of a justiciable issue of either law or fact raised by the consumer shall result in the consumer being liable for all costs and reasonable attorney's fees incurred by the manufacturer, or its agent, as a direct result of the bad faith claim."

5.10 Resale of Returned Vehicle

Los Angeles Consumer Affairs registered its concern regarding the disposition of motor vehicles that are returned to the manufacturer. Presently, it said, most manufacturers resell these vehicles through wholesale auctions, and the cars are ultimately sold again as used cars with the same defects for which they were originally bought back.

CalPIRG recommended that the New Car Lemon Law be amended to provide that no motor vehicle that is returned to the manufacturer may be re-sold to a member of the public unless the Department of Motor Vehicles has first determined that its defects have been cured, and then only if the buyer is informed in writing of the car's history.

RESPONDENTS

1. American Arbitration Association

   American Arbitration Association (Charles A. Cooper, Regional Director, San Francisco)

2. Attorney Anderson

   Mark F. Anderson, Attorney at Law, San Francisco

3. Attorney Gelman

   David R. Gelman, Attorney at Law, San Francisco

4. Better Business Bureau

   Better Business Bureau of Inland Cities, Inc. (William G. Mitchell, President)

5. Board of Equalization

   California State Board of Equalization (Lawrence A. Augusta, Acting Executive Officer; Glenn A. Bystrom, C.P.A., Principal Tax Auditor; Bruce E. Henline, Supervising Tax Auditor)

6. California Attorney General

   California Attorney General, Consumer Law Section (Herschel T. Elkins, Assistant Attorney General)

7. California Bankers Association

   California Bankers Association (Stanley E. Weig, Senior Legislative Counsel; James Clark, Counsel; William F. Henle)

8. California State Automobile Association

   California State Automobile Association (Virgil P. Anderson, Manager, Department of Governmental Affairs)

9. CalPIRG

   California Public Interest Research Group (Carmen Gonzales, Statewide Consumer Advocate, Los Angeles Regional Office)

10. Consumer's Aid

Consumer's Aid of Shasta, Inc. (Jean Clemens, Co-Director)

11. Consumers Union

Consumers Union of U.S., Inc., West Coast Regional Office (Gale K. Hillebrand, Attorney; Judith Bell, Policy Analyst)

12. Department of Motor Vehicles

State of California, Department of Motor Vehicles (George E. Meese, Director; William Cather, Legislative Unit; Timothy Pavelchik, Investigative Services Unit)

13. Ford Motor Company

Ford Motor Company, Ford Parts and Service Division (L.R. Plummer, Manager, Owner Relations Operations)

14. KCRA-TV Call 3

KCRA-TV Call 3 (Myrna Powell, Coordinator, KCRA-TV Call 3)

15. Los Angeles Consumer Affairs

County of Los Angeles, Department of Consumer Affairs (Timothy R. Bissell, Chief Investigator)

16. Los Angeles District Attorney

County of Los Angeles, Office of the District Attorney, Consumer Protection Division (Thomas A. Papageorge, Acting Head Deputy; James R. Hickey, Deputy Director Attorney)

17. Subaru of America

Subaru of America, Inc. (Charles H. Melville, National Service Operations Manager)

18. Toyota Motor Sales

Toyota Motor Sales, U.S.A., Inc. (Carol Morales, Customer Relations Administrator)

from Marty Hinman (Tanner's office)

APR 9 1986

HUFFAKER, HUFFAKER & STEPHENS
ATTORNEYS AT LAW
1407 "A" STREET
SUITE D
ANTIOCH, CALIFORNIA 94509

JEFFREY D. HUFFAKER
RANDY L. STEPHENS

MICHAEL N. HUFFAKER
OF COUNSEL

TELEPHONE
(415) 757-0771

April 1, 1986

APP 10 1986

Sally Tanner (District 60)
State Capital, Room 2016
Sacramento, CA 95814

RE: "Lemon-Law" (Song-Beverly Act)
1790 et. seq. of the Civil Code

Dear Ms. Tanner:

I am an attorney operating in East Contra Costa County, California. I am one of the few attorneys in East Contra Costa County that is familar with this particular legislation. Therefore, I receive a majority of the referrals regarding this statutory remedy.

I read with interest a story regarding new legislation proposed by you, in the Recorder, March 11, 1986. The problems stated within that article are all problems I also notice that consumers experience. You may be interested in some of the specific instances that I have encountered.

One client who came to me after attempting arbitration with Chrysler, complained about the unnecessary delays. Apparently, nobody from the Chrysler panel had picked up their mail from the Post Office Box in over thirty days, according to a Post Office Official in Sacramento. Moreover, according to that client, one of the members of the Board was an automobile mechanic employed by a dealership, another had some relationship by marriage to a car dealer, and a third member was apparently the wife of a doctor. None of the individuals seem competent to serve on the panel either because of conflict of interest reasons or lack of experience. The net affect of his attempt at arbitration was to delay settlement of the case.

Another common complaint I receive is that the Board always requires the consumer to pay a sum such as twenty cents a mile for the use of the vehicle, if they order rescission. Apparently in many instances, they are forced by the current statutes to order rescission. But to get around that, they demand the consumer to come up with a substantial sum of money in order to affect the rescission. In addition, they charge the mileage not to the time the

Sam, Annie Jay

complaint arose, or the defect was found, but rather to the time that the agreement is rescinded. Often the consumers have put considerable mileage on the vehicle since they started the complaint process. Even if he or she hasn't, the typical mileage factor of 10,000 miles would compute into a $2,000.00 penalty on the consumer. You should try explaining this to some individual who has been paying $375.00 a month car payments for an automobile that has been in the shop for six months. This is especially true if the vehicle never ran properly while the 10,000 miles were being accumulated.

My first problem with the twenty cents a mile charge is that it does not accurately reflect the depreciation on the automobile. While it is true that the Internal Revenue Service allows a similar figure for mileage deduction on employee business expense forms, their figure is based on all of the expenses of operating an automobile including depreciation, gas, oil, tires, maintenance, and other incidental expenses, including insurance, etc. Certainly then, a figure that does not accurately reflect actual depreciation cannot be justified.

The second problem that I have with the twenty cent charge is that I believe it creates a penalty upon the consumer. If any penalty should be assessed, it should be absorbed by the manufacturer of the defective vehicle. We must realize that these individuals who qualify for rescission are people who have been without their vehicle for a period exceeding thirty days, or have brought their vehicle in for four or more repairs, and repairs cannot be effected. Many of the consumers have been through a lot more than that. Moreover, it would encourage competent and prompt repairs, as well as early settlement of disputes.

Another problem with manufacturers regards the "zone" offices of the manufacturers which are supposed to assist consumers in resolving complaints short of the arbitration or legal process. These individuals are now less responsive to the consumer than they were before this legislation was passed. I have yet to have one of them contact me on any of my cases. This is despite the fact that before I ever initiate suit in any of these cases, the very first step I take with the manufacturer is to send a letter demanding repair or rescission. I always send a letter to the dealer, and to the zone office. Not once has the zone office attempted to avoid the litigation. I have represented dozens of consumers regarding automobile

complaints. I have filed approximately eight lawsuits based on this Song-Beverly Act. Out of all of these contacts with the public, I can only think of two individuals who were ever contacted by the zone office. Both of them state that they feel that the manufacturer representative made no effort to resolve the problem. In neither incident did the manufacturer representative inspect the vehicle. In one instance, the representative told the dealer, "if its broken, fix it". That was the extent of his involvement. He did not inspect the vehicle and he did not check back with the consumer to see if the repairs were effective. Obviously, one would think that this would be the minimum duty imposed upon any manufacturer's representative.

As to the good features of the present statute, I think the two key provisions involve attorney's fees and punitive damages. I believe this creates one effective lever a consumer can use against a manufacturer: The possibility that litigation will take approximately two years after which the manufacturer will be stuck with attorneys fees and will have to face a potential treble damage clause. It allows the attorney to press for an early settlement of a dispute so that the manufacturer can avoid ending up with a vehicle that is three or more years old, to avoid paying his own attorneys fees, and to avoid paying the consumer's attorneys fees. Therefore, these provisions have become effective in promoting the settlement of some cases at an early point.

However, you should see some of the extremes the enlightened dealers have gone to to avoid punitive damages, as a result of intentionally refusing to honor the warranty. Originally, there were a some dealers foolish enough to actually tell clients to "get the hell off my lot". Assuming the case was otherwise meritorious, the dealer found himself looking down the barrel of treble damages. Often his attorney was able to convince him of the advisability of early settlement and avoiding trial. Now, though, many are too clever for that. Some of the ruses: (1) Some dealers have had service managers with bad hearing and eye sight. If the consumer tries to bring a noise to their attention, they claim they can't hear it. If the consumer shows them leaking oil, they swear they can't see it. And if they drive the vehicle, and it lurches, they claim they don't feel it. (2) Another favorite, is to be extremely courteous to the consumer thanking him very much for bringing his automobile in, and then failing to repair the vehicle, instead just moving it from one side of the lot to the

other. Apparently the strategy of this method is to discourage the consumer after several returns. It is especially effective if the problem is otherwise not too serious (i.e. an oil leak, a funny sound, or intermittent problem).

I believe the proposals outlined in the story about your proposed legislation sounds good. I have not read the bill, so I am unsure of all of the changes you intend to make. However, I would suggest these:

(1) Where a car is adjudged a lemon during the period of the expressed warranty, I believe no penalty should be assessed the consumer, (i.e. twenty cents per mile). The rationale would be that if the vehicle encounters problems while that new, the consumer should not be penalized. The mileage that accrues is simply not "quality" mileage. It is enough that the consumer has to take the vehicle in numerous occasions and suffer with the insecurity of a vehicle that can't be depended upon.

(2) When a rescission is ordered, the full contract price on the Installment Purchase Agreement, less unearned interest, should be refunded. In other words, in addition to the principal amount, taxes and fees, the consumer should be refunded the interest he or she has paid. The rationale behind this is that the interest was a consequential damage recognized by the parties when the agreement was made. If the dealer or manufacturer charges eighteen percent interest on a defective automobile, they should have to buy the automobile back at eighteen percent interest.

(3) I believe the consumer should be allowed to appear, either personally or through counsel, at the arbitration hearings. The rationale behind this suggestion is that most consumers feel when dealing with the arbitration panel, that they have not had a fair chance to be heard or to rebutt the dealer's position.

(4) I believe that when a dealer or manufacturer attempts to repair the vehicle while it is in warranty, they should nevertheless account to the consumer for what repairs are made. In other words, they should show them the portion of their repair ticket that shows what parts were replaced and what labor was expended. This copy should be given to the consumer at the time the repair is made. The rationale behind this suggestion is that too often a consumer drives the car in and signs an invoice, and

then when they pick up the vehicle they have no way of knowing what repairs were effected. Therefore, if it becomes necessary to return the vehicle several times, they do not know if the same part is being replaced, or, as in one example listed above, they do not know that any parts are ever actually replaced. Moreover, this track of evidence would become more effective if the matter became arbitrated or litigated later.

Thank you for this opportunity to express my opinions.

Sincerely,

HUFFAKER, HUFFAKER & STEPHENS

Randy L. Stephens

RLS:ch

APP 2 1986

499 Vine Hill Rd.
Santa Cruz, CA.
March 31, 1986

Assemblyman Robert C. Frazee, Chairman
Assembly Consumer Protection Committee
1100 J Street, Room 404
Sacramento, CA.

ATTN: Jay J. DeFuria

Dear Sir:

My'85 Oldsmobile Custom Cruiser has had 10 more repairs since my January 14th letter to you.

My Arbitration hearing was set for March 20th. The time limit for mediation/arbitration is supposed to be 60 days including time for the arbitrator to make a decision. My hearing date was 87 days from the day I filed with the BBB.

I was never able to get any response from Oldsmobile. Every time I wrote to either of the addresses, they sent it back to the dealer. This experience is typical, I am told. It doesn't make sense to me, especially if the problem has not been solved at the dealership level.

To make a very long story as short as possible, Oldsmobile offered to exchange my car on an '86 if I would pay tax, license, and the difference in sticker price. I called the factory and was insistent, so they put a Gary Tuntland in Oakland in touch with me. During an accusatory phone call by me, he told me that they couldn't possibly respond to all the communications they get. I wanted to know why someone hadn't been in touch with me to try to solve my car problems--he said he didn't know that was an option in my case.

I have no idea why this offer was made to me. Consumer Affairs and the BBB were amazed. Tuntland said it was to "keep you as a satisfied Oldsmobile customer." The concensus seems to be that my car must have really been a lemon, and Olds was afraid that the arbitrator would order a buy-back.

In any case, I still do not feel that I got a fair shake in all this. I wanted my car fixed, not to spend another $3500.00. Apparently, I have set a precedent and won with GM. Why don't I feel like I won?

If the car manufacturers actually felt that they might have to take these cars back, they would probably build them better or at least make some arrangements for cars with real problems to be gone over very thoroughly.

I thought I was protected by the "Lemon Law" when I bought this car. I wondered why the dealership didn't get on it when I started talking lemon. Now I know. The present process does not work like Magnusson-Moss and Song-Beverly present it. We consumers need AB 3611 to spell out exactly what will happen to the auto makers. They're so big, I don't think they care. Olds kept sending me things telling me customer satisfaction was the most important thing to them, but I never could even get a reply other than a computer "sorry you're not satisfied" letter.

Sincerely,

Mary Mills

Mary Mills

A E
D

A. E. Davis and Company

925 L Street, Suite 390 • Sacramento, CA 95814 • (916) 441-4140

April 1, 1986

APP 2 1986

Mr. Jay DeFuria
Consultant
Consumer Protection Committee
1100 J Street, Room 570

Dear Jay:

Re: AB 3611 (Tanner)

On behalf of our client, the Recreation Vehicle Industry Association I wish to advise you that they oppose AB 3611 in its present form. The new language, coupled with the strikeout in Section (B) at lines 32 and following on page 6 and 7, seems to repeal the exemption that recreational vehicles have experienced since the inception of the Lemon Law. If our interpretation is incorrect, then we'd suggest that the language needs clarification to make it clear that the exemption is not being terminated.

This is an addendum to our letter to David Grafft on March 26, 1986, which was sent pursuant to my telephone conversation with him.

Very truly yours,

LeRoy E. Lyon, Jr.

bill # ?

AB 3611

State of California — Department of Ju

Memorandum

To : Jeff Fuller
Legislative Unit
Sacramento

Date : 4/2/86

File No.:

Telephone: ATSS 677-209
(213) 736-20

From : Office of the Attorney General
LOS ANGELES
Herschel T. Elkins
Assistant Attorney General
Consumer Law Section

APP 7 1986

Subject: In Re: Lemon Law Arbitration

We have recently conducted an examination of the arbitration procedures now taking place pursuant to the Song-Beverly Consumer Warranty Act. Civil Code section 1793.2(e) provided for an arbitration mechanism which would avoid court battles for most consumers in lemon law cases. It had been assumed that the major automobile manufacturers would attempt to utilize a qualified third party dispute resolution procedure pursuant to such statute. Alas, such is not the case. Since there have been legislative suggestions that lemon law procedures be changed, you may be interested in our findings.

There are four current automobile third party dispute mechanisms in California: The Better Business Bureau, Autocap, Chrysler Customer Arbitration Board and the Ford Appeals Board. The Better Business Bureau is the largest dispute resolution procedure. It has stated that it is not a lemon law mechanism. The Better Business Bureau carefully avoids any training of volunteer arbitrators in the lemon law; reference is not made to the lemon law and no change in this training is anticipated. Despite the fact that section 1795.4 of the Civil Code includes leased vehicles in lemon law procedures, the BBB will not arbitrate cases in which there are requests for buy backs on leased vehicles. The Southern California Ford Appeals Board also will not handle buy back requests on leased vehicles. The Chrysler Customer Arbitration Board does handle requests for buy backs in leases but awards such an insignificant amount of buy backs generally that this inclusion is not significant. The New York Attorney General has found that the Chrysler Board does not comply with FTC arbitration standards. Our examination supports that position. The Chrysler procedure is totally unacceptable and was a shocking experience for our representatives who watched the proceeding. We have not yet reviewed Autocap. Thus, in the majority of cases, there does not appear to be an adequate lemon law arbitration procedure in California.

HERSCHEL T. ELKINS
Assistant Attorney General

HTE/ot

Date of Hearing: April 3, 1986 AB 3611

ASSEMBLY COMMITTEE ON CONSUMER PROTECTION
ROBERT C. FRAZEE, Chairman

AB 3611 (Tanner) - As Introduced: February 20, 1986

ASSEMBLY ACTIONS:

COMMITTEE	CON. PRO.	VOTE	COMMITTEE	VOTE
Ayes:			Ayes:	
Nays:			Nays:	

SUBJECT

Vehicle warranties: defective ("lemon") new cars.

DIGEST

Existing law, the California Song-Beverly Consumer Warranty Act, generally provides that a manufacturer who is unable to service or repair consumer goods, including motor vehicles, so that they conform to the applicable express warranties after a reasonable number of attempts - must either replace those goods or reimburse the buyer in an amount equal to the purchase price, less the amount directly attributable to the buyer's use prior to the discovery of the nonconformity (defect).

In 1982, those provisions of the Song-Beverly Act were amended by AB 1787 (Tanner), commonly referred to as the "lemon bill" or "lemon law." That legislation specified that with respect to defined new motor vehicles, a "reasonable number of attempts" would be presumed to be either 4 or more repair attempts on the same major defect or more than 30 days out of service for service/repair of one or more major defects, within the first year or 12,000 miles of use.

That bill also enacted provisions which, under specified circumstances, required a buyer to directly notify the manufacturer of a continuing defect and to utilize a dispute resolution program meeting specified minimum standards, prior to asserting the "lemon presumption" (4 times/30 days = "reasonable number of repair attempts") in a legal action to obtain a vehicle replacement or refund.

This bill would amend that law and related laws to:

- continued -

1) Expressly provide that the vehicle buyer gets to choose whether she or he receives a replacement vehicle or a refund;

2) Specifically provide, for new motor vehicles, what is included in the replacement option and the refund option, as follows:

   a) If a replacement vehicle is chosen by the buyer, it must be a new vehicle substantially identical to the vehicle replaced, accompanied by all normal new vehicle express and implied warranties. The manufacturer must bear the cost of any vehicle price increases and any sales tax, license and registration fees incurred as a result of the replacement.

   b) If a refund is chosen by the buyer, it must consist of the full contract price paid or payable by the buyer, together with charges for transportation, installed options, sales tax, and license, registration and other official fees - less the amount directly attributable to a buyer's use of the defective vehicle prior to discovery of the defect.

3) Add statutory provisions to require the Board of Equalization and the Department of Motor Vehicles to refund the sales tax and the unused portion (pro rata) of the vehicle registration and license fees, respectively, to a manufacturer who has either replaced the vehicle or made the refund provided for under the bill's new warranty law provisions. The bill's provisions would also authorize both the Board and the Department to adopt whatever rules and regulations they deem necessary or appropriate to carry out these refund requirements.

4) Require the California New Motor Vehicle Board to certify each dispute resolution process used to arbitrate "lemon" vehicle disputes as complying with the state's prescribed minimum standards before that process could be used to fulfill the requirement for its use under the "lemon" law's provisions. The dispute resolution process would be required to provide the Board with any information the Board deemed necessary in order for it to perform its certification responsibility. The bill's provisions would permit the Board to suspend or revoke its certification when it determines a process does not comply with the state's minimum standards.

5) Require the New Motor Vehicle Board to provide arbitration itself, which meets the state's minimum standards for resolving disputes arising between a new motor vehicle purchaser and its manufacturer, or distributor. Provide that this state arbitration provision does not limit any of the buyer's other legal remedies except that the buyer is not entitled to a second qualified arbitration.

- continued -

6) Provide that a new motor vehicle buyer may request formal arbitration of vehicle disputes with manufacturers by the New Motor Vehicle Board and that specified conditions must be met prior to the Board's granting of an arbitration request.

7) Authorize the New Motor Vehicle Board to establish filing fees for cases when the Board arbitrates disputes, including a fixed annual fee to be charged to the Board's regulated vehicle manufacturers and distributors. Also, authorize the Board to order a party to a state arbitration to pay the other party's filing fees under specified circumstances.

8) Amend the definition of a "new motor vehicle" which is covered by the "lemon law", to specifically include dealer-owned vehicles and "demonstrators" sold with a manufacturers' new car warranties, and to substitute a more specific definition for excluded "off-road" vehicles.

FISCAL EFFECT

Unknown. This is a fiscal committee measure. The bill provides for sales tax refunds and pro-rata refunds of unused portions of vehicle license and registration fees, and for certification and arbitration by the New Motor Vehicle Board. The Board estimates first year start-up costs of approximately $610,000 with an ongoing $649,000 operational cost per year thereafter. The Board expects to fund these costs through its authority to assess annual fees from its regulated manufacturers and distributors and the filing fees for conducting arbitrations.

STAFF COMMENTS

1) This bill is sponsored by its author to strengthen existing "lemon" law protections, to eliminate inequities that have occurred from that law's implementation and to ensure that owners of seriously defective new cars can obtain a fair, impartial and speedy hearing on their complaints.

   The bill is supported by the Consumer Federation of California, Consumers Union, California Public Interest Research Group (Cal PIRG), the San Francisco District Attorney, a member of the State Board of Equalization, the New Motor Vehicle Board, and several consumers and attorneys.

The author and proponents state that since the effective date of the "lemon" law over 3 years ago, there have been numerous complaints from new car buyers concerning its implementation. While these complaints reflect continued

- continued -

dissatisfaction with the manufacturer's own resolution of disputes regarding defective new vehicles, they have also alleged that the dispute resolution programs financed by the manufacturers are not operated impartially. Consumers have complained of: long delays in obtaining a hearing (beyond the prescribed 40-60 day time limit); unequal access to the arbitration process; unreasonable decisions that do not appear to even acknowledge the existence of, much less use, the "lemon" law's provisions or provide an adequate amount of reimbursement even when a refund decision is ordered.

2) The bill is opposed by Ford Motor Company, Chrysler Corporation, the Automobile Importers of America, the Motor Vehicle Manufacturers Association and the Recreational Vehicle Industry Association.

Opponents of the bill state that the number of consumers dissatisfied with the current arbitration processes is small relative to the number of arbitrations. They argue that the manufacturers have invested a large amount of money to adequately fund these arbitration processes, that they comply with the state's prescribed standards, that they feel the programs are working very well and that if additional refinements are needed that they are willing to work cooperatively to that end.

In particular, the opponents question the need for a state-operated arbitration option, as provided for in the bill. They argue that in the two other states which have state arbitration provisions (Connecticut and Texas) there are serious backlogs, supporting their view that the state is ill-equipped to perform this role. They also contend that having a state arbitration alternative which will be paid for by manufacturers, will be a disincentive for the continued operation of the programs they currently finance.

Jay J. DeFuria
324-2721
aconpro

Opposition Testimony
AB3611

1. GM
2. Chrysler
3. Automobile Importers of America
4. Nissan AUTO LINE
5. Better Business Bureau
6. Ford
7. Dealers

NO REQUIREMENT.

AB 3611

COUNCIL OF BETTER BUSINESS BUREAUS, INC.
THE INTERNATIONAL ASSEMBLY OF BETTER BUSINESS BUREAUS

TESTIMONY BY
DEAN W. DETERMAN
Vice President
Mediation/Arbitration Division
BEFORE THE
ASSEMBLY CONSUMER AFFAIRS COMMITTEE

Sacramento, CA
April 3, 1986

1515 WILSON BOULEVARD • ARLINGTON, VA 22209 • (703) 276-0100

I represent Better Business Bureau AUTO LINE, the nation's largest out-of-court dispute settlement program. We resolve new car complaints under the provisions of the federal Magnuson-Moss Warranty Act, specifically under FTC Rule 703. There are currently 12 manufacturers representing 20 car/truck lines that write BBB AUTO LINE into their warranties. They include: AMC-Jeep, Audi, all divisions of General Motors, Honda, Jaguar, Nissan, Peugeot, Porsche, Renault, Rolls-Royce-Bentley, Saab, Volkswagen, Volvo.

From October '84 to September '85 (the FTC reporting period under Rule 703), BBB AUTO LINE settled 12,716 consumer complaints through its 14 California Bureaus. This number does not include GM-FTC Consent Order which is a separate program. Of these 12,716 cases, 9,977 (78.5%) were closed through Bureau mediation while 2,739 (21.5%) were arbitrated. From October '85 to February of this year, we settled an additional 5,852 cases, 4,321 (74%) in mediation and 1,531 (26%) in arbitration.

The BBB AUTO LINE Program provides California consumers with broader coverage and greater remedies than those provided by the California Lemon Law. In fact, the manufacturers' voluntary exposure to replacement-repurchase in AUTO LINE exceeds that of any repair/replace legislation in the country.

The minimum BBB AUTO LINE coverage is 36,000 miles or 36 months from date of delivery for repairs and 24,000 miles/24 months for the buy back remedy. Many manufacturers offer their customers even broader coverage than these minimums.

The BBB AUTO LINE Program places no minimum requirements in the path of a consumer who believes he or she has a lemon. The California Lemon Law places the burden on the consumers to prove that their car has been repaired 4 times for the same failure, or was down for 30 or more days in the shop before they can assert their legal rights under the law.

Under BBB AUTO LINE, California consumers are free to request repurchase of their cars for any alleged defect, regardless of repair attempts or down time.

A survey of all California AUTO LINE arbitrations from October '85 to February '86 shows that 231 California consumers got repurchase awards through the BBB AUTO LINE Program. Based on the age and mileage of these cars, a minimum of 134 or 58% could not have qualified under the California Lemon Law.

Another survey of California buy back cases from September '85 thru November '85, reveals that 532 consumers who requested buy backs, 125 or 23% of them received buy backs. Thus, one out of four consumers got what they asked for but more than three out of four consumers got something, because 78% accepted the arbitrator's decision. These repurchased cars had been driven an average of 23,125 miles at the time of repurchase and the average repurchase price was $10,695.56. BBB AUTO LINE arbitrators assessed an average useage deduction of $2,158.90, which represents an allowance of less than 10¢ per mile. Under the Massachusetts/Connecticut Lemon Law formulas for useage, the average deduction would have been at a rate of 12.9% per mile.

The BBB AUTO LINE Program is funded entirely by business, its service is free to consumers - the California taxpayer pays nothing. A critical thing, too is that all of these decisions are made by a cross-section of California residents, all volunteers paid nothing after an in-person hearing.

In Massachusetts, Connecticut and Texas where the legislature has provided for a state-run mechanism, consumers have fared better under BBB AUTO LINE.

In Connecticut the state Office of Legislative Research found that the consumer department's Lemon Law arbitration unit exceeded the 60-day legal limit for decisions in 31 of 32 cases awaiting hearings. The reports said consumers are waiting an average of 85 days to have Lemon Law claims heard.

Our Texas Bureau reports that the state program is six months to a year behind and is referring consumers to the Better Business Bureau.

In Massachusetts, the state has failed to set up a program in over two years and is also referring cases to the Better Business Bureau.

PART 703—INFORMAL DISPUTE SETTLEMENT PROCEDURES

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(e).

(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 containing spaces requesting the information which the Mechanism may require for prompt resolution of warranty disputes; or (ii) a telephone number of the Mechanism which consumers may use without charge; (2) The name and address of the Mechanism; (3) A brief description of Mechanism procedures; (4) The time limits adhered to by the Mechanism; and (5) The types of information which the Mechanism may require for prompt resolution of warranty disputes.

(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 Qualifications 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 issue 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(c). (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(c) shall be available to any person for inspection and copying.

(b) Except as provided under paragraphs (a) and (c) 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.

[FR Doc.75-34835 Filed 12-30-75;8:45 am]

California Assembly Bill 3611

Ford Motor Company appreciates the opportunity to comment before the Consumer Protection Committee on Assembly Bill 3611. As many of you are aware, the concept of third party arbitration boards is not new to us. We have operated the Ford Consumer Appeals Board here in California since July, 1979.

Ford Motor Company would like the Committee to consider the following three points with reference to Assembly Bill 3611:

- The need for state-run arbitration (especially when the manufacturer offers a similar proven mechanism)
- Marginal performance to date of other state-run boards
- Confusion to the consumer

Need

As I said earlier, we have operated the Ford Consumer Appeals Board in California since 1979. We at this point do not recognize any consumer need for the state to begin handling what we, as a manufacturer, have handled, cost free. In addition, our boards handle cases that California arbitration would disqualify. For example, 47% of the cases we heard last year were not covered under any warranty or lemon law provision. Also, consumer board members on each FCAB are screened and selected by an outside, independent firm to ensure sufficient insulation from any manufacturers' bias.

Performance

State-run arbitration board's performance to date is marginal. For example: 1) John Woodcock (who is the father of Connecticut's lemon law) recently chastised his own state-run board for the lengthy delays in hearing cases. A newspaper article written on February 18, 1986 in the New Haven Register indicated that 31 out of 32 cases scheduled for the next hearing were over 60 days old. Our national average on warranty or lemon law cases is presently running about 36 days.

2) The State of Vermont is also experiencing a much larger volume of cases than anticipated or capable of handling. The Boston Globe reported on December 8, 1985 that those "who administer the law say they are swamped with work". "Its far busier than we ever thought it'd be" said Paul Guare, executive secretary to the arbitration board. The opening statement of this particular article included a line that states - " its become so popular that its giving headaches to state officials".

3) The State of Texas presently is carrying a backlog of over 200 cases. This may mean owners will have to wait from 12 to 18 months for a decision.

Confusion

Finally, we believe the option provided to the consumer as to which mechanism should be used will open up a 'Pandora's box' of confusion. We, as the manufacturer, wonder on what basis will the consumer make his or her decision about which board to use.

To summarize, the duplication of effort and question of need; the track records of state boards to date, and consumer confusion are three primary reasons we oppose enactment of Assembly Bill 3611.

updated otr draft 4/21

ASSEMBLY THIRD READING

AB 3611 (Tanner) - As Amended: _____

ASSEMBLY ACTIONS:

COMMITTEE	CON. PRO.	VOTE	COMMITTEE	VOTE
Ayes:			Ayes:	
Nays:			Nays:	

DIGEST

Existing law, the California Song-Beverly Consumer Warranty Act, generally provides that a manufacturer who is unable to service or repair consumer goods, including motor vehicles, so that they conform to the applicable express warranties after a reasonable number of attempts - must either replace those goods or reimburse the buyer in an amount equal to the purchase price, less the amount directly attributable to the buyer's use prior to the discovery of the nonconformity (defect).

In 1982, those provisions of the Song-Beverly Act were amended by AB 1787 (Tanner), commonly referred to as the "lemon" bill or "lemon" law. That legislation specified that with respect to defined new motor vehicles, a "reasonable number of attempts" would be presumed to be either 4 or more repair attempts on the same major defect or more than 30 days out of service for service/repair of one or more major defects, within the first year or 12,000 miles of use.

That law also conatins provisions which, under specified circumstances, required a buyer to directly notify the manufacturer of a continuing defect and to utilize a dispute resolution program meeting specified minimum standards, prior to asserting the "lemon presumption" (4 times/30 days = "reasonable number of repair attempts") in a legal action to obtain a vehicle replacement or refund.

This bill amends that law and related laws to:

1) Amend the definition of a "new motor vehicle" which is covered by the "lemon" law, to specifically include a dealer-owned vehicle and a "demonstrator" or other vehicle sold with a manufacturer's new car warranty, and to substitute a more specific definition for excluded "off-road" and commercial vehicles.

2) Expressly provide that the vehicle buyer gets to choose whether she or he receives a replacement vehicle or a refund.

3) Specifically provide, for new motor vehicles, what is included in the replacement option and the refund option, as follows:

a) If a replacement vehicle is chosen by the buyer, it must be a new vehicle substantially identical to the vehicle replaced, accompanied by all normal new vehicle express and implied warranties. The manufacturer must bear the cost of any vehicle price increases and any sales tax, license and registration fees incurred as a result of the replacement.

b) If a refund is chosen by the buyer, it must consist of the full contract price paid or payable by the buyer, together with charges for transportation, installed options, sales tax, and license, registration and other official fees - less the amount directly attributable to a buyer's use of the defective vehicle prior to discovery of the defect.

4) Require that the dispute resolution programs provide the provisions of California's "lemon" law and the provisions of federal law governing the operation of such programs to dispute decision makers, and require that those decisions include consideration of those provisions.

5) a) Add statutory provisions to require the Board of Equalization and the Department of Motor Vehicles to refund the sales tax and the unused portion (pro rata) of the vehicle registration and license fees, respectively, to a manufacturer who has either replaced the vehicle or made the refund provided for under the bill's new warranty law provisions.

b) Authorize both the Board and the Department to adopt whatever rules and regulations they deem necessary or appropriate to carry out these refund requirements.

6) a) Require the California New Motor Vehicle Board to certify each dispute resolution program that is used to arbitrate "lemon" vehicle disputes as complying with the state's prescribed minimum standards before that program can be used to meet the requirement for its use under the "lemon" law's provisions.

b) Require the vehicle manufacturer or distributor to provide the Board with any information the Board deems necessary in order for it to perform its certification responsibility.

c) Permit the Board to suspend or revoke its certification when it determines a program does not comply with the state's minimum standards.

d) Require the Board to designate a certified dispute process to arbitrate "lemon" disputes if the manufacturer or distributor does not utilize one itself.

FISCAL EFFECT

STAFF COMMENTS

1) This bill is sponsored by its author to strengthen existing "lemon" law protections, to eliminate inequities that have occurred from that law's implementation and to ensure that owners of seriously defective new cars can obtain a fair, impartial and speedy hearing on their complaints.

The bill is supported by the Consumer Federation of California, Consumers Union, California Public Interest Research Group (Cal PIRG), the San Francisco District Attorney, a member of the State Board of Equalization, the New Motor Vehicle Board, and several consumers and attorneys.

The author and proponents state that since the effective date of the "lemon" law over 3 years ago, there have been numerous complaints from new car buyers concerning its implementation. While these complaints reflect continued dissatisfaction with the manufacturer's own resolution of disputes regarding defective new vehicles, they have also alleged that the dispute resolution programs financed by the manufacturers are not operated impartially. Consumers have complained of: long delays in obtaining a hearing (beyond the prescribed 40-60 day time limit); unequal access to the arbitration process; unreasonable decisions that do not appear to even acknowledge the existence of, much less use, the "lemon" law's provisions or provide an adequate amount of reimbursement even when a refund decision is ordered.

2) The bill is opposed by Ford Motor Company, Chrysler Corporation, the Automobile Importers of America, the Motor Vehicle Manufacturers Association and the Recreational Vehicle Industry Association.

Opponents of the bill state that the number of consumers dissatisfied with the current arbitration processes is small relative to the number of arbitrations. They argue that the manufacturers have invested a large amount of money to adequately fund these arbitration processes, that they comply with the state's prescribed standards, that they feel the programs are working very well and that if additional refinements are needed that they are willing to work cooperatively to that end.

State of California

Board of Equalization

Memorandum

To : Mr. J. D. Dotson

Date : April 15, 1986

From : G. A. Bystrom

Subject : Assembly Bill 3611

You asked that I attempt to develop language that would provide for a refund of tax to the manufacturer on a defective car pursuant to the "Lemon Law", while at the same time attempting to minimize any damage that such language could cause with respect to the basic concept of whom the sales tax is upon. I suggest the following:

1. Section 2 of AB 3611 be deleted.

2. A section be added to the Civil Code to read as follows:

"1656.2. Notwithstanding the provisions of Part 1, (commencing with Section 6001), Division 2 of the Revenue and Taxation Code, the State Board of Equalization may reimburse the manufacturer of new motor vehicles for an amount equal to the sales tax which the manufacturer includes in making restitution to the buyer pursuant to subparagraph (B) of paragraph (2) of subdivision (d) of Section 1793.2 of the Civil Code, when satisfactory proof is provided that the retailer of the motor vehicle for which the manufacturer is making restitution has reported and paid the sales tax on the gross receipts from the sale of that motor vehicle. The State Board of Equalization may adopt rules and regulations that it deems necessary or appropriate to carry out, facilitate compliance with, or prevent circumvention or evasion of, this section.

"Nothing in this section shall in any way change the application of the sales and use tax to the gross receipts and the sales price from the sale, and the storage, use, or other consumption, in this state of tangible personal property pursuant to Part 1 (commencing with Section 6001), Division 2, of the Revenue and Taxation Code."

cc Sally

If these proposed amendments meet with your approval, I suggest they be forwarded to Margaret Boatwright as suggested amendments to Ab 3611.

GAB:nc
0072E

cc: Mr. Robert Nunes

for AB3611 APP 22 1986

Jay:

Here are the suggested amendments by the Board.

Many thanks for the article on the bad paint jobs.

One person who has contacted has just such a problem.... However, with a Ford car. Sent her a copy.

MARTY HINMAN
Assemblywoman Sally Tanner
Room 4146 445-7783

STATE OF CALIFORNIA

OFFICE OF LEGISLATIVE COUNSEL

COPY

MAY 9 1986

May 6, 1986

Assemblywoman Sally Tanner

A.B. 3611 - Conflict

The above measure, introduced by you, which is now Supplemental was set for hearing in the Assembly Consumer Protection Committee appears to be in conflict with the following other measure(s):

S.B. 1174-Seymour

ENACTMENT OF THESE MEASURES IN THEIR PRESENT FORM MAY GIVE RISE TO A SERIOUS LEGAL PROBLEM WHICH PROBABLY CAN BE AVOIDED BY APPROPRIATE AMENDMENTS.

WE URGE YOU TO CONSULT OUR OFFICE IN THIS REGARD AT YOUR EARLIEST CONVENIENCE.

Very truly yours,
BION M. GREGORY
LEGISLATIVE COUNSEL

cc: Committee
named above
Each lead author
concerned

Legislative Analyst
May 24, 1986

ANALYSIS OF ASSEMBLY BILL NO. 3611 (Tanner)
As Amended in Assembly May 19, 1986
1985-86 Session

Fiscal Effect:

Cost:

1. Potential cost in the range of $50,000 to $100,000 to the New Motor Vehicle Board to certify arbitration processes. Costs fully offset by fees charged to manufacturers and distributors of motor vehicles.

2. Unknown absorbable costs to the State Board of Equalization to reimburse sales tax in restitution settlements.

Revenue:

1. Unknown revenues generated by fees charged to manufacturers and distributors to offset program costs of the New Motor Vehicle Board.

2. Unknown revenue loss to the General Fund from sales tax reimbursements to vehicle manufacturers.

Analysis:

This bill changes current law pertaining to vehicle warranty procedures. Specifically, the bill:

- Requires the manufacturer of a motor vehicle, at the option of the buyer, to replace a defective motor vehicle or make restitution if the manufacturer is unable to service or repair the vehicle after a reasonable number of attempts by the buyer.

- Requires the New Motor Vehicle Board (NMVB) to certify the arbitration processes used to resolve vehicle warranty disputes. Authorizes the board to revoke or suspend any arbitration process if it does not comply with specified standards.

- Authorizes the board to charge fees to manufacturers, distributors, and their branches to fund the board's costs.

- Requires the State Board of Equalization (BOE) to reimburse the manufacturer of a new motor vehicle any sales tax returned to the buyer as part of restitution for a defective vehicle.

Fiscal Effect

Our analysis indicates that the NMVB potentially could incur annual costs in the range of $50,000 to $100,000 to certify arbitration processes. These costs, however, will be fully offset by fees collected from the manufacturers and distributors of motor vehicles.

The BOE will incur unknown costs to reimburse the sales tax to the manufacturer in vehicle restitution settlements. These costs would be absorbable.

Unknown revenue loss to the General Fund from sales tax reimbursements made to manufacturers and distributors of defective new motor vehicles.

83/s8

ASSEMBLY THIRD READING

AB 3611 (Tanner) - As Amended: May 19, 1986

ASSEMBLY ACTIONS:

COMMITTEE	CON. PRO.	VOTE	5-0	COMMITTEE	W. & M.	VOTE	20-1

Ayes:	Ayes:	Vasconcellos, Baker, Agnos, Bader, Calderon, Connelly, Eaves, Herger, Hill, Isenberg, Johnson, Johnston, Leonard, Lewis, Margolin, McClintock, O'Connell, Peace, Roos, M. Waters
Nays:	Nays:	D. Brown

DIGEST

- continued -

Existing law generally provides that a manufacturer who is unable to service or repair consumer goods, including motor vehicles, so that they conform to the applicable express warranties after a reasonable number of attempts - must either replace those goods or reimburse the buyer in an amount equal to the purchase price, less the amount directly attributable to the buyer's use prior to the discovery of the nonconformity (defect).

In 1982, the law was amended by AB 1787 (Tanner), commonly referred to as the "lemon" bill or "lemon" law. That legislation specifies that for new motor vehicles, a "reasonable number of attempts" is presumed to be either four or more repair attempts on the same major defect or more than 30 days out of service for service/repair of one or more major defects, within the first year or 12,000 miles of use.

That law also contains provisions which, under specified circumstances, require a buyer to notify the manufacturer directly of a continuing defect and to use a dispute resolution program meeting specified minimum standards, prior to asserting the "lemon presumption" (4 times/30 days = "reasonable number of repair attempts") in a legal action to obtain a vehicle replacement or refund.

This bill amends that law and related laws to:

- continued -

1) Amend the definition of a "new motor vehicle" which is covered by the "lemon" law, to specifically include a dealer-owned vehicle and a "demonstrator" or other vehicle that is sold with a manufacturer's new car warranty, and to substitute a more specific definition for excluded off-road and commercial vehicles.

2) Clarify that the vehicle buyer may assert the "lemon presumption" in any civil action, small claims court action or other formal or informal proceeding.

3) Expressly provide that the vehicle buyer has the choice of whether she or he receives a replacement vehicle or a refund for a defective "lemon" vehicle.

4) Specifically provide, for new motor vehicles, what is included in the replacement option and the refund option, as follows:

   a) If a replacement vehicle is chosen by the buyer, it must be a new vehicle substantially identical to the vehicle replaced, accompanied by all normal new vehicle express and implied warranties. The manufacturer must bear the cost of any vehicle price increases, any sales tax, license and registration fees incurred as a result of the replacement and any incidental damages to which the buyer is entitled

- continued -

under the law, such as reasonable repair, towing and rental car costs actually incurred by the buyer.

b) If a refund is chosen by the buyer, it must consist of the full contract price paid or payable by the buyer, as well as charges for transportation, installed options, sales tax, license, registration and other official fees, and specified incidental damages, such as reasonable repair, towing or rental car costs actually incurred by the buyer - less the amount directly attributable to the buyer's use of the defective vehicle prior to discovery of the defect.

5) Require that the dispute resolution programs:

a) Provide the provisions of California's "lemon" law and the provisions of federal law which govern the operation of such programs to dispute decisionmakers.

b) Render decisions which incorporate consideration of those provisions.

c) Provide for an inspection and report on a vehicle by an independent expert at no cost to the buyer, when such is requested by a majority of the program's decisionmakers.

- continued -

6) Require the Board of Equalization to reimburse the manufacturer in an amount equal to the sales tax paid for vehicles for which the manufacturer provides the specified refund to the buyer.

7) Authorize the Board of Equalization to adopt whatever rules and regulations it deems necessary or appropriate to carry out this reimbursement requirement.

8) Require the California New Motor Vehicle Board (NMVB) to certify each dispute resolution program that is used to arbitrate "lemon" vehicle disputes as complying with the state's prescribed minimum standards prior to that program's use.

9) Require the NMVB to designate a certified dispute process to arbitrate "lemon" disputes if the manufacturer or distributor does not use one itself.

10) Permit the NMVB to suspend or revoke its certification when it determines a program does not comply with the state's minimum standards.

11) Require a vehicle manufacturer or distributor that uses a dispute resolution program and seeks to have it certified to provide the NMVB with any information the NMVB deems necessary in order for it to perform its certification responsibility.

- continued -

FISCAL EFFECT

According to the Legislative Analyst, this bill will result in:

Cost:

1) Potential cost in the range of $50,000 to $100,000 to the NMVB to certify arbitration programs, fully offset by fees charged to vehicle manufacturers and distributors.

2) Unknown absorbable costs to the Board of Equalization to reimburse sales tax amounts in restitution (refund) settlements for defective vehicles.

Revenues:

1) Unknown revenues generated by fees charged to manufacturers and distributors to offset program costs of the NMVB.

2) Unknown revenue loss to the General Fund from sales tax reimbursements to vehicle manufacturers for restitution (refund) settlements on defective vehicles.

COMMENTS

1) This bill is sponsored by its author to strengthen existing "lemon" law protections, to eliminate inequities that have occurred from that law's

- continued -

implementation and to ensure that owners of seriously defective new cars can obtain a fair, impartial and speedy hearing on their complaints.

The bill is supported by the Consumer Federation of California, Consumers Union, California Public Interest Research Group (Cal PIRG), the San Francisco District Attorney, the Board of Equalization, the New Motor Vehicle Board, and several consumers and attorneys.

The author and proponents state that since the effective date of the "lemon" law over three years ago, there have been numerous complaints from new car buyers concerning its implementation. While these complaints reflect continued dissatisfaction with the manufacturer's own resolution of disputes regarding defective new vehicles, they have also alleged that the dispute resolution programs financed by the manufacturers are not operated impartially. Consumers have complained of: long delays in obtaining a hearing (beyond the prescribed 40-60 day time limit); unequal access to the arbitration process; unreasonable decisions that do not appear to even acknowledge the existence, much less the use, of the "lemon" law's provisions or provide an adequate amount of reimbursement even when a refund decision is ordered.

2) The bill is opposed by Chrysler Corporation and the Automobile Importers of America (AIA).

Jay J. DeFuria
324-2721
6/4/86:aconpro

Opponents of the bill state that the number of consumers dissatisfied with the current arbitration processes is small relative to the number of arbitrations. They argue that the manufacturers have invested a large amount of money to adequately fund these arbitration processes, the processes comply with the state's prescribed standards, they feel the programs are working very well and, if additional refinements are needed, they are willing to work cooperatively to that end.

Jay J. DeFuria
324-2721
6/4/86:aconpro

ASSEMBLY THIRD READING

AB 3611 (Tanner) - As Amended: May 19, 1986

ASSEMBLY ACTIONS:

COMMITTEE	CON. PRO.	VOTE	5-0	COMMITTEE	W. & M.	VOTE	20-1
Ayes:				Ayes:	Vasconcellos, Baker, Agnos, Bader, Calderon, Connelly, Eaves, Herger, Hill, Isenberg, Johnson, Johnston, Leonard, Lewis, Margolin, McClintock, O'Connell, Peace, Roos, M. Waters		
Nays:				Nays:	D. Brown		

DIGEST

Existing law, the California Song-Beverly Consumer Warranty Act, generally provides that a manufacturer who is unable to service or repair consumer goods, including motor vehicles, so that they conform to the applicable express warranties after a reasonable number of attempts - must either replace those goods or reimburse the buyer in an amount equal to the purchase price, less the amount directly attributable to the buyer's use prior to the discovery of the nonconformity (defect).

In 1982, those provisions of the Song-Beverly Act were amended by AB 1787 (Tanner), commonly referred to as the "lemon" bill or "lemon" law. That legislation specifies that with respect to defined new motor vehicles, a "reasonable number of attempts" is presumed to be either 4 or more repair attempts on the same major defect or more than 30 days out of service for service/repair of one or more major defects, within the first year or 12,000 miles of use.

That law also contains provisions which, under specified circumstances, require a buyer to directly notify the manufacturer of a continuing defect and to utilize a dispute resolution program meeting specified minimum standards, prior to asserting the "lemon presumption" (4 times/30 days = "reasonable number of repair attempts") in a legal action to obtain a vehicle replacement or refund.

This bill amends that law and related laws to:

- continued -

1) Amend the definition of a "new motor vehicle" which is covered by the "lemon" law, to specifically include a dealer-owned vehicle and a "demonstrator" or other vehicle that is sold with a manufacturer's new car warranty, and to substitute a more specific definition for excluded off-road and commercial vehicles.

2) Clarify that the vehicle buyer may assert the "lemon presumption" in any civil action, small claims court action or other formal or informal proceeding.

3) Expressly provide that the vehicle buyer gets to choose whether she or he receives a replacement vehicle or a refund for a defective "lemon" vehicle.

4) Specifically provide, for new motor vehicles, what is included in the replacement option and the refund option, as follows:

   a) If a replacement vehicle is chosen by the buyer, it must be a new vehicle substantially identical to the vehicle replaced, accompanied by all normal new vehicle express and implied warranties. The manufacturer must bear the cost of any vehicle price increases, any sales tax, license and registration fees incurred as a result of the replacement and any incidental damages to which the buyer is entitled under a specified provision of the Song-Beverly Act such as reasonable repair, towing and rental car costs actually incurred by the buyer.

   b) If a refund is chosen by the buyer, it must consist of the full contract price paid or payable by the buyer, together with charges for transportation, installed options, sales tax, license, registration and other official fees, and specified incidental damages such as reasonable repair, towing or rental car costs actually incurred by the buyer - less the amount directly attributable to the buyer's use of the defective vehicle prior to discovery of the defect.

5) Require that the dispute resolution programs: a) provide the provisions of California's "lemon" law and the provisions of federal law which govern the operation of such programs to dispute decision makers, b) render decisions which incorporate consideration of those provisions, and c) provide for an inspection and report on a vehicle by an independent expert at no cost to the buyer, when such is requested by a majority of the program's decision makers.

6) a) Require the Board of Equalization to reimburse the manufacturer in an amount equal to the sales tax paid for vehicles for which the manufacturer provides the specified refund to the buyer.

- continued -

b) Authorize the Board to adopt whatever rules and regulations it deems necessary or appropriate to carry out this reimbursement requirement.

7) a) Require the California New Motor Vehicle Board to certify each dispute resolution program that is used to arbitrate "lemon" vehicle disputes as complying with the state's prescribed minimum standards before that program can be used to meet the requirement for its use under the "lemon" law's provisions.

b) Require the Board to designate a certified dispute process to arbitrate "lemon" disputes if the manufacturer or distributor does not utilize one itself.

c) Permit the Board to suspend or revoke its certification when it determines a program does not comply with the state's minimum standards.

d) Require a vehicle manufacturer or distributor that utilizes a dispute resolution program and seeks to have it certified to provide the Board with any information the Board deems necessary in order for it to perform its certification responsibility.

FISCAL EFFECT

According to the Legislative Analyst, this bill will result in:

Cost: 1) Potential cost in the range of $50,000 to $100,000 to the New Motor Vehicle Board to certify arbitration programs, fully offset by fees charged to vehicle manufacturers and distributors.

2) Unknown absorbable costs to the State Board of Equalization to reimburse sales tax amounts in restitution (refund) settlements for defective vehicles.

Revenues: 1) Unknown revenues generated by fees charged to manufacturers and distributors to offset program costs of the New Motor Vehicle Board.

2) Unknown revenue loss to the General Fund from sales tax reimbursements to vehicle manufacturers for restitution (refund) settlements on defective vehicles.

- continued -

COMMENTS

1) This bill is sponsored by its author to strengthen existing "lemon" law protections, to eliminate inequities that have occurred from that law's implementation and to ensure that owners of seriously defective new cars can obtain a fair, impartial and speedy hearing on their complaints.

The bill is supported by the Consumer Federation of California, Consumers Union, California Public Interest Research Group (Cal PIRG), the San Francisco District Attorney, the State Board of Equalization, the New Motor Vehicle Board, and several consumers and attorneys.

The author and proponents state that since the effective date of the "lemon" law over 3 years ago, there have been numerous complaints from new car buyers concerning its implementation. While these complaints reflect continued dissatisfaction with the manufacturer's own resolution of disputes regarding defective new vehicles, they have also alleged that the dispute resolution programs financed by the manufacturers are not operated impartially. Consumers have complained of: long delays in obtaining a hearing (beyond the prescribed 40-60 day time limit); unequal access to the arbitration process; unreasonable decisions that do not appear to even acknowledge the existence of, much less use, the "lemon" law's provisions or provide an adequate amount of reimbursement even when a refund decision is ordered.

2) The bill is opposed by Chrysler Corporation and the Automobile Importers of America (AIA).

Opponents of the bill state that the number of consumers dissatisfied with the current arbitration processes is small relative to the number of arbitrations. They argue that the manufacturers have invested a large amount of money to adequately fund these arbitration processes, that they comply with the state's prescribed standards, that they feel the programs are working very well and that if additional refinements are needed that they are willing to work cooperatively to that end.

Jay J. DeFuria
324-2721
aconpro

ASSEMBLY THIRD READING

AB 3611 (Tanner) - As Amended: May 19, 1986

ASSEMBLY ACTIONS:

COMMITTEE	CON. PRO.	VOTE	5-0	COMMITTEE	W. & M.	VOTE	20-1

Ayes:

Ayes: Vasconcellos, Baker, Agnos, Bader, Calderon, Connelly, Eaves, Herger, Hill, Isenberg, Johnson, Johnston, Leonard, Lewis, Margolin, McClintock, O'Connell, Peace, Roos, M. Waters

Nays:

Nays: D. Brown

DIGEST

Existing law generally provides that a manufacturer who is unable to service or repair consumer goods, including motor vehicles, so that they conform to the applicable express warranties after a reasonable number of attempts - must either replace those goods or reimburse the buyer in an amount equal to the purchase price, less the amount directly attributable to the buyer's use prior to the discovery of the nonconformity (defect).

In 1982, the law was amended by AB 1787 (Tanner), commonly referred to as the "lemon" bill or "lemon" law. That legislation specifies that for new motor vehicles, a "reasonable number of attempts" is presumed to be either four or more repair attempts on the same major defect or more than 30 days out of service for service/repair of one or more major defects, within the first year or 12,000 miles of use.

That law also contains provisions which, under specified circumstances, require a buyer to notify the manufacturer directly of a continuing defect and to use a dispute resolution program meeting specified minimum standards, prior to asserting the "lemon presumption" (4 times/30 days = "reasonable number of repair attempts") in a legal action to obtain a vehicle replacement or refund.

This bill amends that law and related laws to:

1) Amend the definition of a "new motor vehicle" which is covered by the "lemon" law, to specifically include a dealer-owned vehicle and a "demonstrator" or other vehicle that is sold with a manufacturer's new car warranty, and to substitute a more specific definition for excluded off-road and commercial vehicles.

- continued -

2) Clarify that the vehicle buyer may assert the "lemon presumption" in any civil action, small claims court action or other formal or informal proceeding.

3) Expressly provide that the vehicle buyer has the choice of whether she or he receives a replacement vehicle or a refund for a defective "lemon" vehicle.

4) Specifically provide, for new motor vehicles, what is included in the replacement option and the refund option, as follows:

   a) If a replacement vehicle is chosen by the buyer, it must be a new vehicle substantially identical to the vehicle replaced, accompanied by all normal new vehicle express and implied warranties. The manufacturer must bear the cost of any vehicle price increases, any sales tax, license and registration fees incurred as a result of the replacement and any incidental damages to which the buyer is entitled under the law, such as reasonable repair, towing and rental car costs actually incurred by the buyer.

   b) If a refund is chosen by the buyer, it must consist of the full contract price paid or payable by the buyer, as well as charges for transportation, installed options, sales tax, license, registration and other official fees, and specified incidental damages, such as reasonable repair, towing or rental car costs actually incurred by the buyer - less the amount directly attributable to the buyer's use of the defective vehicle prior to discovery of the defect.

5) Require that the dispute resolution programs:

   a) Provide the provisions of California's "lemon" law and the provisions of federal law which govern the operation of such programs to dispute decisionmakers.

   b) Render decisions which incorporate consideration of those provisions.

   c) Provide for an inspection and report on a vehicle by an independent expert at no cost to the buyer, when such is requested by a majority of the program's decisionmakers.

6) Require the Board of Equalization to reimburse the manufacturer in an amount equal to the sales tax paid for vehicles for which the manufacturer provides the specified refund to the buyer.

7) Authorize the Board of Equalization to adopt whatever rules and regulations it deems necessary or appropriate to carry out this reimbursement requirement.

- continued -

8) Require the California New Motor Vehicle Board (NMVB) to certify each dispute resolution program that is used to arbitrate "lemon" vehicle disputes as complying with the state's prescribed minimum standards prior to that program's use.

9) Require the NMVB to designate a certified dispute process to arbitrate "lemon" disputes if the manufacturer or distributor does not use one itself.

10) Permit the NMVB to suspend or revoke its certification when it determines a program does not comply with the state's minimum standards.

11) Require a vehicle manufacturer or distributor that uses a dispute resolution program and seeks to have it certified to provide the NMVB with any information the NMVB deems necessary in order for it to perform its certification responsibility.

FISCAL EFFECT

According to the Legislative Analyst, this bill will result in:

Cost:
1) Potential cost in the range of $50,000 to $100,000 to the NMVB to certify arbitration programs, fully offset by fees charged to vehicle manufacturers and distributors.

2) Unknown absorbable costs to the Board of Equalization to reimburse sales tax amounts in restitution (refund) settlements for defective vehicles.

Revenues:
1) Unknown revenues generated by fees charged to manufacturers and distributors to offset program costs of the NMVB.

2) Unknown revenue loss to the General Fund from sales tax reimbursements to vehicle manufacturers for restitution (refund) settlements on defective vehicles.

COMMENTS

1) This bill is sponsored by its author to strengthen existing "lemon" law protections, to eliminate inequities that have occurred from that law's implementation and to ensure that owners of seriously defective new cars can obtain a fair, impartial and speedy hearing on their complaints.

The bill is supported by the Consumer Federation of California, Consumers Union, California Public Interest Research Group (Cal PIRG), the San Francisco District Attorney, the Board of Equalization, the New Motor Vehicle Board, and several consumers and attorneys.

- continued -

The author and proponents state that since the effective date of the "lemon" law over three years ago, there have been numerous complaints from new car buyers concerning its implementation. While these complaints reflect continued dissatisfaction with the manufacturer's own resolution of disputes regarding defective new vehicles, they have also alleged that the dispute resolution programs financed by the manufacturers are not operated impartially. Consumers have complained of: long delays in obtaining a hearing (beyond the prescribed 40-60 day time limit); unequal access to the arbitration process; unreasonable decisions that do not appear to even acknowledge the existence, much less the use, of the "lemon" law's provisions or provide an adequate amount of reimbursement even when a refund decision is ordered.

2) The bill is opposed by Chrysler Corporation and the Automobile Importers of America (AIA).

Opponents of the bill state that the number of consumers dissatisfied with the current arbitration processes is small relative to the number of arbitrations. They argue that the manufacturers have invested a large amount of money to adequately fund these arbitration processes, the processes comply with the state's prescribed standards, they feel the programs are working very well and, if additional refinements are needed, they are willing to work cooperatively to that end.

SENATE COMMITTEE ON JUDICIARY
Bill Lockyer, Chairman
1985-86 Regular Session

AB 3611 (Tanner)
As amended May 19
Civil Code/Vehicle Code
DRS

CONSUMER PROTECTION
-ARBITRATION PROCEEDINGS FOR DEFECTIVE AUTOMOBILES-

HISTORY

Source: California Public Interest Research Group (CalPIRG)

Prior Legislation: None

Support: Unknown

Opposition: No known

Assembly Floor Vote: Ayes 66 - Noes 5

KEY ISSUE

SHOULD ARBITRATION PROCEEDINGS OVER DEFECTIVE AUTOMOBILES BE SUBJECT TO STRICTER REGULATIONS DESIGNED TO ADD GREATER FAIRNESS?

SHOULD CONSUMERS WHO PURCHASE DEFECTIVE AUTOMOBILES BE ENTITLED TO RECOVER ADDITIONAL, INCIDENTAL COSTS RELATING TO THE AUTOMOBILES?

PURPOSE

California's "Lemon Laws" currently require a consumer who believes his automobile is defective

(More)

to resort first to a third party resolution process in order to recover damages from the manufacturer.

(1) Existing law requires such third part resolution processes to comply with "minimum requirements" of the Federal Trade Commission's (FTC) dispute settlement regulations.

This bill would further require third party resolution processes to (1) conform to the FTC's guidelines concerning the provision of written materials and decision making; (2) conform to the FTC's guidelines concerning rights and remedies; and (3) provide for inspection of a "lemon" by an independent automobile expert.

(2) Existing law gives the manufacturer the option of replacing a vehicle or making restitution, and it provides that such restitution may be reduced by an amount attributable to the buyer's use of the car.

This bill would provide for restitution at the option of the buyer, and would require that such restitution include incidental damages such as tax, license, and registration fees, and costs associated with repair, towing, or car rental.

The purpose of this bill is to provide for greater fairness both in automobile arbitration and in resulting restitution to the consumer.

(More)

COMMENT

1. Asserted need

According to the sponsor, CalPIRG, California's "Lemon Laws" do not provide adequate compensation to buyers of defective automobiles. They assert that some manufacturer-sponsored arbitration panels, such as Ford's Consumer Appeals Board and Chrysler's Consumer Satisfaction Board, do not offer consumers equitable treatment.

Moreover, CalPIRG states that when arbitration panels award restitution in lieu of replacement to the buyer, those panels typically deduct an inordinate amount from the award for the buyer's prior use of the car.

CalPIRG asserts that this bill would provide consumers with more equitable treatment and fairer awards from arbitration panels.

2. New requirements for arbitration panels

According to CalPIRG, existing regulations governing consumer arbitration panels are overly broad and have resulted in a lack of consistency among, and fairness by, such arbitration panels. They point out that some arbitration processes are conducted by panels comprising many members, while others are presided over by only one arbitrator. They also argue that some manufacturer-sponsored panels are unfair.

This bill would require arbitration panels to meet a number of new criteria, including:

(More)

(1) certification by the New Motor Vehicle Board;

(2) conformity with FTC guidelines concerning decisions, rights, and remedies; and

(3) provision, at the request of the arbitrator panel, for a car inspection by an independent automobile expert.

The bill permits the New Motor Vehicle Board to charge annual fees for certifying arbitration panels.

3. New damages

CalPIRG asserts that current provisions for recovery of damages from manufacturers are too limited. Most arbitration panels, base a restitution award only on the cars purchase price, less any amount attributable to the buyer's use of the vehicle.

This bill would permit consumers to seek restitution of tax, license and registration fees, and costs associated with towing, repair, or car rental.

The bill permits manufacturers to seek reimbursement from the Board of Equalization for any sales tax they return to a consumer.

4. Restitution at buyer's option

Under existing law, the manufacturer of a defective car may, at its discretion, either replace a defective car or make restitution to the buyer of its purchase cost. According to CalPIRG, most manufacturers prefer to replace

(More)

a car rather than make restitution. Thus, although the buyer may be reluctant to accept another car from the same manufacturer, under existing law he has no choice under arbitration.

This bill would give the buyer the option of accepting either a replacement car or restitution of the purchase price and incidental costs.

5. Appropriation

Because this bill requires the Board of Equalization to reimburse car manufacturers who make restitution of sales taxes to buyers, it would make an appropriation of amounts necessary to pay those claims.

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Legislative Analyst
August 7, 1986

ANALYSIS OF ASSEMBLY BILL NO. 3611 (Tanner)
As Amended in Senate July 9, 1986 and
As Further Amended by LCR No. 020241
1985-86 Session

Fiscal Effect:

Cost: Potential annual cost up to $150,000 to the Automobile Warranty Arbitration Program Certification Fund for the Bureau of Automotive Repair (BAR) to certify arbitration programs; fully offset by fees paid by arbitration program applicants.

Revenue:
1. Unknown annual fee revenues paid by arbitration program applicants.
2. Unknown annual revenue loss to the General Fund from sales tax reimbursements to vehicle manufacturers.

Analysis:

This bill requires the Bureau of Automotive Repair (BAR) to establish an automobile warranty certification program. This program will primarily involve vehicle manufacturers, distributors and dealers. The bill also changes current law pertaining to vehicle warranty procedures. Specifically, the bill:

- Requires BAR to (1) certify the arbitration programs for resolution of vehicle warranty disputes, (2) authorizes the board to revoke or suspend any arbitration program if it does not meet specified standards, (3) notify the Department of Motor Vehicles (DMV) of failures of manufacturer, distributor, or

their branches to comply with arbitration decisions, (4) inform the public of the arbitration program, and (5) provide the Legislature with a biennial report evaluating the effectiveness of the program.

- Directs BAR to designate an arbitration program to resolve disputes if a manufacturer, distributor, or branch does not establish a certified program.

- Requires arbitration programs to provide the bureau with specified information regarding their activities.

- Requires motor vehicle manufacturers to replace defective vehicles or make restitutions if the manufacturer is unable to service or repair the vehicles after a reasonable number of buyer requests. The buyer, however, would be free to take restitution in place of a replacement vehicle.

- Authorizes BAR to charge fees, up to $2 per new motor vehicle sold, leased or distributed by an arbitration program applicant to fund its program costs. Such fees would be deposited by the New Motor Vehicle Board (NMVB) into the Automobile Warranty and Arbitration Program Certification Fund.

- Requires the State Board of Equalization (BOE) to reimburse the manufacturer of a new motor vehicle any sales tax returned to the

buyer as part of restitution for a defective vehicle.

Fiscal Effect

Our analysis indicates that BAR could incur annual costs in the range of $100,000 to $150,000 to certify arbitration programs. These costs, however, would be fully offset by fees paid by arbitration program applicants.

The BOE would incur unknown, probably minor, absorbable costs to reimburse the sales tax to the manufacturer in vehicle restitution settlements.

Moreover, the bill would result in an unknown revenue loss to the General Fund from sales tax reimbursements made to manufacturers and distributors of defective new motor vehicles.

83/s8

Legislative Analyst
August 19, 1986

ANALYSIS OF ASSEMBLY BILL NO. 3611 (Tanner)
As Amended in Senate August 15, 1986
1985-86 Session

Fiscal Effect:

Cost: Potential costs up to $150,000 in 1987-88 (half year) and up to $300,000 annually thereafter to the Automobile Warranty Arbitration Program Certification Fund for the Bureau of Automotive Repair (BAR) to certify arbitration programs; fully offset by fees paid by arbitration program applicants.

Revenue:
1. Unknown annual fee revenues paid by arbitration program applicants.
2. Unknown annual revenue loss to the General Fund from sales tax reimbursements to vehicle manufacturers.

Analysis:

This bill requires the Bureau of Automotive Repair (BAR) to establish an automobile warranty certification program. This program will primarily involve vehicle manufacturers, distributors and dealers. The bill also changes current law pertaining to vehicle warranty procedures. Specifically, the bill:

- Requires BAR to (1) certify the arbitration programs for resolution of vehicle warranty disputes, (2) authorizes the board to revoke or suspend any arbitration program if it does not meet specified standards, (3) notify the Department of Motor Vehicles (DMV) of

failures of manufacturer, distributor, or their branches to comply with arbitration decisions, (4) inform the public of the arbitration program, and (5) provide the Legislature with a biennial report evaluating the effectiveness of the program.

- Requires arbitration programs to provide the bureau with specified information regarding their activities.

- Requires motor vehicle manufacturers to replace defective vehicles or make restitutions if the manufacturer is unable to service or repair the vehicles after a reasonable number of buyer requests. The buyer, however, would be free to take restitution in place of a replacement vehicle.

- Authorizes BAR to charge fees, up to $1 per new motor vehicle sold, leased or distributed by an arbitration program applicant to fund its program costs. Such fees would be deposited by the New Motor Vehicle Board (NMVB) into the Automobile Warranty and Arbitration Program Certification Fund.

- Requires the State Board of Equalization (BOE) to reimburse the manufacturer of a new motor vehicle any sales tax returned to the buyer as part of restitution for a defective vehicle.

Fiscal Effect

Our analysis indicates that BAR could incur half-year costs up to $150,000 in 1987-88 and full-year costs up to $300,000 annually thereafter to certify arbitration programs. These costs, however, would be fully offset by fees paid by arbitration program applicants.

The BOE would incur unknown, probably minor, absorbable costs to reimburse the sales tax to the manufacturer in vehicle restitution settlements.

Moreover, the bill would result in an unknown revenue loss to the General Fund from sales tax reimbursements made to manufacturers and distributors of defective new motor vehicles.

82/s8

Lemon Club to squeeze automakers

The American Lemon Club will hold its first meeting in Covington, Ky., next month — if the members' cars don't conk out before they reach the American Legion clubhouse.

The organization is made up of disgruntled owners who want U.S. auto manufacturers "to get back to basics — price, quality and service," said co-founder **Paul O'Connell.**

O'Connell and **Patricia Trimble** set up the non-profit club for people who owned cars that needed extraordinary amounts of repairs. Trimble recalled taking her 1983 car to the dealer for 23 times for repairs during its 12-month warranty period.

So far, Trimble said, the club has 25 members. An additional 50 to 75 people have said they will attend the Feb. 16 meeting. But if they all drive, who knows how many will make it?

The Lemon Club, Trimble said, hopes to make people aware many so-called American-made cars are American-assembled — put together in this country with parts made in foreign countries.

"We would like to force General Motors or Ford to build more plants in the United States and make the parts here," she said. "This started as lemons and has now come down to jobs."

Joe Bell
28 Jan. 1984

New York says Chrysler violating spirit of lemon law

NEW YORK (AP) — Chrysler Corp. is violating the spirit of the state's new lemon law, but neither consumers nor the government can do much about it, state Attorney General Robert Abrams says.

Abrams complained Wednesday that Chrysler's Customer Arbitration Program is a sham the company is using to deflect consumer complaints.

"The program is sorely out of sync with the spirit and intent of New York's lemon law," Abrams said in a statement.

He said that consumers "find that, realistically, they cannot bring lawsuits to enforce the lemon law."

New York's lemon law entitles consumers to a replacement car if a new car still has a substantial defect after four repairs.

Out of 200 cases submitted to Chrysler's complaint board in New York, a refund or replacement was offered only 2 percent of the time, the attorney general said.

By contrast, the Better Business Bureau ordered new cars in 37 percent of 158 recent complaints in New York City, he said.

Timothy Gilles, attorney general's spokesman, said Abrams sent a letter to Chrysler several weeks ago outlining his complaints.

Anne Lalas, Chrysler spokeswoman in Detroit, said: "Basically, Chrysler Motors believes its Customer Arbitration Program is in compliance with federal rules on arbitration programs. We are constantly reviewing the arbitration process, and actively work with the state attorneys general and consumer groups to keep our program as fair as possible."

Lacho BEE
08 Feb 1986

Sour report on Lemon Law draws tart remarks

By Phil Blumenkrantz
Staff Reporter

The state Department of Consumer Protection is failing its legal mandate to hear consumers' Lemon Law claims expeditiously, the author of the law says.

State Rep. John J. Woodcock III, D-Windsor, said a new state report, prepared at his request, shows the consumer department is taking an average of 25 days more than legally allowed to hold arbitration hearings. Woodcock said the department must either speed up the process or be stripped of Lemon Law responsibility.

Woodcock based his remarks on a report by the state Office of Legislative Research, which found that the consumer department's Lemon Law arbitration unit exceeded a 60-day legal limit for decisions in 31 of 32 cases awaiting hearings.

The report said consumers are waiting an average of 85 days to have Lemon Law claims heard by the unit, which was created to speed up settlements and to relieve the need for consumers to go to court or to manufacturers with their problems.

One consumer requested a hearing Nov. 21. But according to the report, his case isn't scheduled to be heard until Feb. 25.

Woodcock is considering asking the General Assembly to transfer responsibility to the American Arbitration Association.

"The department is not meeting the standards under the law," said Woodcock. "It's an embarrassment."

Long waits increase both the costs and the frustrations of consumers with major car problems, said the state representative.

Wendy Cobb, director of the Lemon Law unit, said she could not discuss the report. Neither Joan Jordan, acting division chief of the consumer department's product safety unit, which oversees the arbitration panels, nor Dorothy Quirk, executive assistant to the commissioner of the department, could be contacted.

In November the Department of Consumer Protection released its own "report card," saying consumers almost always won in disputes with automakers in its auto dispute settlement program and that the Lemon Law was generally working.

But the research office's report said consumer department officials claim they don't have enough workers to keep track of deadlines and that the consumer department is having trouble assembling panels to screen complaints for eligibility. Once things get off to a slow start, other deadlines are missed, the report said.

The Department of Consumer Protection, the report said, apparently also was having trouble finding technical experts required under state law to assist arbitrators. The experts, who originally worked as volunteers, are in some cases now refusing to work without money. State law allows volunteers only.

The report says the consumer department has proposed hiring additional help, working on weekends and hiring a paid, technical expert to move cases more quickly.

But Woodcock said the backlog is inexcusable because under state law, the consumer department can refer extra cases to the regional office of the American Arbitration Association, a private, non-profit organization.

He said he has repeatedly suggested the option to the department. But no cases have been referred, according to the association's regional director, Karen Jalkut. Jalkut said her organization could meet the 60-day deadline unless it were flooded with complaints from the consumer department.

Until last year consumers either had to go to court or to an automaker for the refund or replacement of a new, faulty vehicle not fixed after four or more repair efforts. Since last spring under a revision in the law, consumers have been able to take their claims to the consumer department's arbitration panels.

Consumers are waiting up to 95 days for decisions, according to Mark E. Ojakian, a research analyst who prepared the research unit's report at Woodcock's request.

Woodcock fears the backlog will continue to grow as consumers begin filing a new round of Lemon Law complaints on 1986 vehicles.

The Consumer Protection department has come under criticism during the past year from state legislators, particularly over reports of a six-to-eight-week backlog in handling certain types of general retail complaints. That backlog has been reduced in recent months.

The Hartford Courant 2/18/86 P. 90

'Lemon law' claims bogged down: study

By PHIL BLUMENKRANTZ
Staff Reporter

Consumers are waiting about three months to have "lemon law" claims heard by a state-run arbitration panel charged with speedy settlement of recurring, major auto problems, according to a report prepared for legislators.

The state Department of Consumer Protection is taking an average 25 days longer than allowed by law to hold hearings, according to the report prepared by the state office of legislative research. The report says the DCP's lemon law arbitration unit, in 31 of 32 cases awaiting hearings, has exceeded a 60-day limit for decisions prescribed by the General Assembly.

DCP officials would not comment on the report.

But state Rep. John J. Woodcock III, D-Windsor, author of the Connecticut lemon law and the legislator who had requested the OLR study, said he is considering asking legislators to strip the DCP of its responsibility.

"It's an embarassment," said Woodcock, who said other states have modeled their lemon laws on Connecticut's, which was the first in the country.

The DCP last year was assigned responsibility for arbitrating lemon law cases so that consumers, who previously had to go to court or through manufacturers' programs, could get quick resolutions of problems.

But the state is now the one tying up consumers, said Woodcock, who said the DCP appears unwilling to take corrective measures.

Wendy Cobb, director of the DCP's lemon law unit, said she could not discuss the report. Neither Joan Jordan, acting division chief of the DCP division of product safety, nor Dorothy Quirk, executive assistant to the DCP commissioner, returned several phone calls on Friday. State offices were closed Monday because of Presidents Day.

The OLR report said DCP officials claim they don't have enough workers to keep track of deadlines, and that they are having trouble assembling panels needed to screen complaints for eligibility. Once things get off to a slow start, other deadlines are missed, said the report.

The DCP, the report said, also was apparently having trouble finding technical experts to assist arbitrators. The experts, who originally worked as volunteers, are in some cases now refusing to work without money.

The report says the Consumer Protection Department has proposed hiring extra help, working on weekends and hiring a paid, technical expert to move cases more quickly.

Consumers are being kept waiting an average 85 days for hearings and up to 10 days beyond that for decisions, according to Mark E. Ojakian, a research analyst who prepared the report.

One consumer requested a hearing on Nov. 21, 1985, entitling him to a decision by Jan. 21. But his case isn't scheduled to be heard until Tuesday — a wait of 96 days just for the hearing.

Once over

Caught in an endless runaround

Al Durante, a New York City public-relations man, sent us a diary of the struggle he had last year after his 1985 *Chevrolet Cavalier's* engine caught fire. Each year we receive hundreds of letters detailing tales of woe. Usually, we just shake our heads sympathetically. We're printing Durante's diary because we think it piquantly sums up the feeling a great many car owners sometimes have—the sensation of being caught in an endless runaround.

Feb. 25: I drove my brand-new *Chevrolet Cavalier* out of the Lawrence Chevrolet dealership, Forest Hills, N.Y., after giving them a check for $9884.57.

April 18: I drove the car to White Plains, N.Y., to visit a friend. Parked in driveway. We went off to lunch in his car. Returned at 3 p.m. to find that the *Cavalier* had burst into flames, without provocation. White Plains Fire Dept. had put it out at 1:30 p.m.

April 19: Car towed to Chevrolet dealer in Scarsdale, N.Y.

April 22: Called Lawrence Chevrolet. Service manager told me the car "is completely out of our control. You should call the Parsippany, N.J., zone office."

April 23: After ten calls reached proper office at Parsippany and was told: "Sorry, but we do not cover Scarsdale, we cover Queens. You should call the Tarrytown, N.Y., zone office." [The Tarrytown zone office turned out to have moved to Purchase, N.Y. After two more calls, Durante was told that a Kevin Krychear would be sent April 29 to inspect the car.]

May 3: Called Mr. Krychear [for the third time.] Now told, "Mr. Krychear will not be in. He is a field man. There is no place to reach him." Called Charles Baker [Krychear's boss], who said, "You will hear from me when [the] examination has been analyzed. That can take weeks or months."

May 4: Received in mail "recall notice" from Chevrolet, suggesting I bring car in to Lawrence Chevrolet. Reason: "An engine fire could occur without warning." [Some 34,000 1985 *Cavaliers* were recalled because a piece of plastic used as a cover on the air cleaner could detach, fall on the exhaust manifold, and ignite.]

May 8: Received "welcome" letter from Chevrolet, Detroit, signed by R.W. Starr, general sales manager. He wrote: "Lawrence Chevrolet and Chevrolet have joined in a commitment to provide for automotive satisfaction." I wrote Mr. Starr. No reply.

May 13: Called by Baker. He said: "We have decided to buy the *Cavalier* back from you, based on the examination report. Just send in your sales slip." Sales invoice mailed immediately.

May 20: Baker called, said "I have only now seen the final analysis of the examination report on your car. It now appears that the fire in your car was not caused by any fault in the manufacturing. Therefore, there is nothing we can do for you."

May 23: Met with a lawyer.

Durante's lawsuit is still pending. Asked about the dispute, a spokesman for General Motors said, "There's no way we're going to comment on a matter in litigation." Lawrence Chevrolet also declined to comment.

Durante is seething, of course. "There's no logic to it whatsoever," he says. "I bought a car, in six weeks it burns up, and no one wants to talk to me."

Oil change: Taking it from the top

These days, changing the motor oil is one of the few auto-maintenance chores people feel competent to perform themselves—provided they are willing to crawl under the car and put up with the mess.

A new product, the *CS Automatic Oil Changer*, claims to make this part of auto care a tidy little task. The *Oil Changer* (available for $12.95 plus $3.45 shipping from Carol Wright Gifts, 3601 N.W. 15th St., P.O. Box 8504, Lincoln, Neb. 68544) is basically an electric pump that sucks the oil out through the dipstick tube and deposits it in a waste container. The car battery provides the power. You provide the waste container. The pump unit comes with electrical leads and long, flexible tubes for the oil.

The *Oil Changer* may look easy to use, but it wasn't. Working the suction tube down to the bottom of the oil pan was difficult at best, impossible on some cars. (If the pump won't work on your car, the mail-order house says you can get your money back.) When the unit was working, it begged for two hands to steady the tubes, a third to steady the pump. Otherwise, the unit tended to jump when it was turned on, pulling out the tubes and spilling oil, or jerking loose the battery leads.

Pumping out the oil took about four minutes, which shouldn't tax the car's battery much. When the *Oil Changer* worked, it did an adequate job. It left behind as much as a cup of old oil, which was no dirtier than the oil that had been pumped out.

However, the *Oil Changer* pump neatens only half the oil-change routine. With most cars, you'll still have to get under the car to change the oil filter. You might as well save the $12.95, or put it aside for a set of drive-on car ramps.

Feds begin probe of GM engine fires

WASHINGTON (AP) — The government has opened preliminary investigations into the potential for engine fires in an estimated 800,000 1984- and 1985-model cars from General Motors Corp.

The two new studies cover roughly 135,000 1984 Pontiac Fieros and about 650,000 1985 J-cars, including the Chevrolet Cavalier, Pontiac 2000, Oldsmobile Firenza, Buick Skyhawk and Cadillac Cimarron.

The National Highway Traffic Safety Administration confirmed Wednesday that it had begun the so-called "preliminary evaluations" after the private Center for Auto Safety released a copy of NHTSA's February defect investigation report, which listed new investigative actions by the agency. The center provided estimates on the numbers of vehicles involved.

The center said there have been reports of at least eight engine fires in 1984 Fieros, and at least five in 1985 J-cars. A "preliminary evaluation" is the first part of the NHTSA's three-step defect investigation process, and is opened to gather information about a possible defect and determine if further action is needed.

The NHTSA report also listed the opening of preliminary evaluations of 350,000 1980-84 Toyota Motor Corp. Tercels for loss of steering control due to control arm corrosion, and 250,000 1985-86 Ford Motor Co. Escort and Mercury Lynx vehicles whose manual transmissions may jump out of gear.

The report also showed that NHTSA had upgraded to an "engineering analysis" its evaluation of GM A-cars whose front wheels may fall off when a ball joint stud fails. The analysis covers 200,000 1982 models of the Oldsmobile Cutlass Ciera and the Buick Century.

GM spokesman John Hartnett said the automaker had just received the government's inquiries on the two new preliminary evaluations, and had not yet been notified that the A-car inquiry had been upgraded.

"We caution that just because the government makes this type of inquiry and lists a preliminary evaluation, that doesn't necessarily mean that there's a defect," Hartnett said. "It is the history of those things that most of the inquiries do not result in any sort of a recall."

Sacramento BEE
3/14/86

Bad trip

Trio say Porsche of their dreams wasn't

By Lee Fremstad
Bee Staff Writer

Q. When is a Porsche not a Porsche?

A. According to a trio of Porsche owners who sued their dealers and the distributor in Sacramento for $100 million Thursday, the answer is:

• When its engine was made for the Audi Fox . . .

• When its front suspension is from the Volkswagen Rabbit . . .

• When its rear suspension is from the Volkswagen Super Beetle . . .

• When its transmission is from the VW-Audi . . .

• And, in probably the unkindest cut of all for Porsche owners, who tend to be a proud lot, when the same engine goes into the American Motors Gremlin.

Among the complainants is Dr. Said Yassir of Sacramento, who said he paid about $25,000 late in 1979 for a 1980 Porsche from Neillo Porsche-Audi.

The other two plaintiffs bought their 1980 model 924s for about $18,000 each from dealers in Beverly Hills and Oakland.

They complained [illegible] of a scheme by [illegible] and dealers to pass off the vehicles as a genuine Porsche . . . the genuine article.

To understand such litigation it is necessary to understand Porsche (that's *Por-shuh*, please) owners.

Many of them are quintessential car cultists, automotive yuppies to whom the marque from Stuttgart and its designer, Dr. Ferdinand Porsche, are objects of veneration.

Most never accepted the Porsche 914 of the late '60s because it contained Volkswagen parts and, in fact, was marketed in Europe as a Volkswagen.

When the 356C model of 1964 was replaced by the 911, purists rejected the move from Porsche's trademark "bathtub" lines to a more modern look.

One not atypical Porsche owner was known for allowing the vehicle out of his garage only for the concours d'elegance circuit, beauty contests of the automotive world. He would get to the site by dawn if he could, in order to avoid hydrocarbons emitted from other cars that could oxidize his paint. He scrubbed his wheels with a toothbrush.

Complainants Judith Ann Zeller and Stephen Donald Levy are Nevada County residents.

Besides the three dealers who sold the vehicles, Porsche Cars North America, with headquarters in Reno, was named as a defendant.

Representatives of Neillo and Porsche of North America declined Thursday to comment on the allegations.

A Sacramento mechanic trained in Porsches said Thursday that the non-Porsche components in the 924 were well-known to those in the industry.

An executive at a Porsche dealership not involved in the suit said he thought little of the complaint.

"Any automobile is built with component parts," he said. "They all have somebody's tires, and Bosche electrical systems. The Chevy LUV was an Isuzu, the Nova is built in Japan.

"The parts are built to Porsche specifications, and if Porsche wants to put its name on it, it's a Porsche."

Sacramento attorney Morton L. Friedman, who filed the lawsuit, made it a class action on behalf of all other 924 purchasers who may have suffered a loss due to depreciation because "persons knowledgeable about Porsche automobiles and aware of the true provenance of the 924 did not buy the car . . ."

The Porsche source said that used 924s — which were not made after 1982 — actually still sell quite well. He moved one the other day for a little over $7,000.

Sacramento BEE
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New York sues Ford, using new lemon law

ALBANY, N.Y. (UPI) — New York Attorney General Robert Abrams has sued Ford Motor Co., saying the automaker violates his state's new car lemon law by charging $100 for repairs covered under its extended warranty policy.

The lawsuit, filed Tuesday in state Supreme Court and the first by Abrams since the law was enacted in 1983, seeks to halt the practice and force the car company to refund money to all New York customers who paid the charges. Abrams is also seeking $2,000 in damages.

"Ford's persistent and repeated illegality lies in the face of the clear purpose of the lemon law to provide consumer protection for purchasers of new cars," the lawsuit charges.

In a letter to Assistant Attorney General Robert Buchner last August, Ford's staff lawyer, Nancy Routzahn, said the lemon law's language did not prohibit the car manufacturer from charging the deductible.

"It is our belief that it was not the intent of the New York Legislature to abolish this requirement since language was included in the law that clearly recognizes that certain conditions could be imposed by manufacturers prior to enforcement of warranty obligations," she said.

The lawsuit stems from a complaint brought to Abrams' office last July by Leigh Sokolowski of Albany, whose 1984 Mercury Topaz developed a leak in its transmission after 15,188 miles.

Under the lemon law, all repairs for problems with a new car must be made free of charge during the first 18,000 miles or two years after purchase, whichever comes first.

However, the lawsuit said Sokolowski had to pay $107 under Ford's warranty to get the problem fixed. Ford routinely charges $100 for the cost of each repair covered after its basic 12,000-mile, 12-month warranty expires.

The deductible is required for Ford's extended warranty period, which begins from the time the basic warranty ends until the car owner has driven the car for two years or 24,000 miles, whichever comes first.

A deductible must be paid for each repair to a Ford vehicle's power train, which consists of the engine, transmission, transaxle, axle and drive components.

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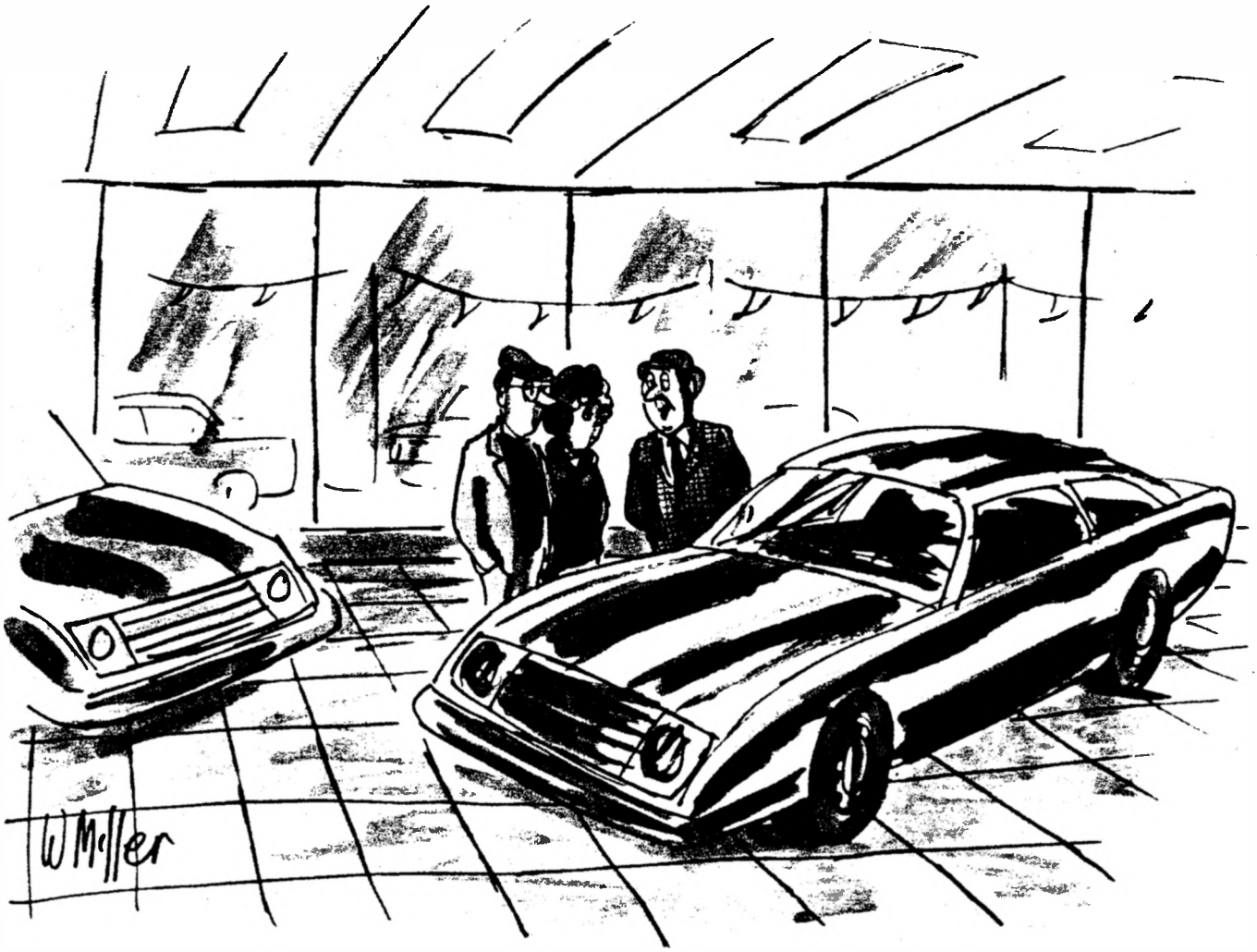

"An enormous amount of advanced engineering has gone into our latest models. That's not to say, of course, that an enormous amount of advanced engineering hasn't always gone into all our models."

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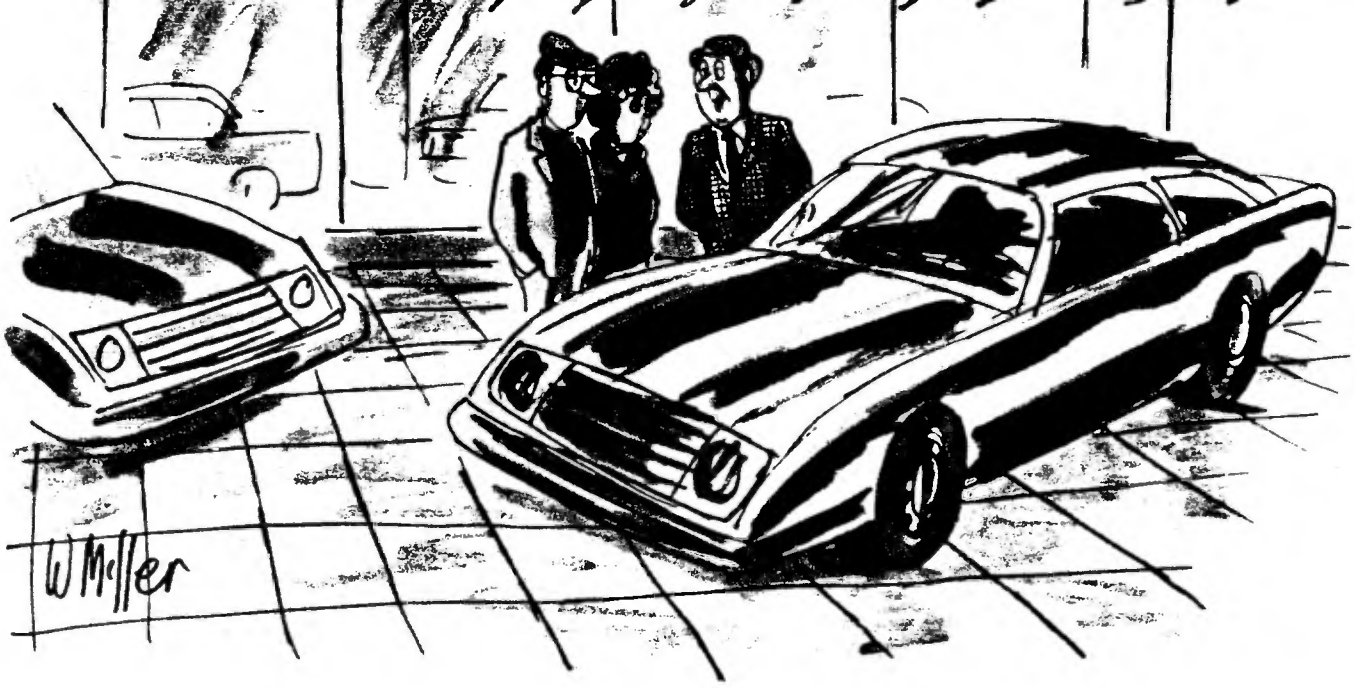


"An enormous amount of advanced engineering has gone into our latest models. That's not to say, of course, that an enormous amount of advanced engineering hasn't always gone into all our models."

• •

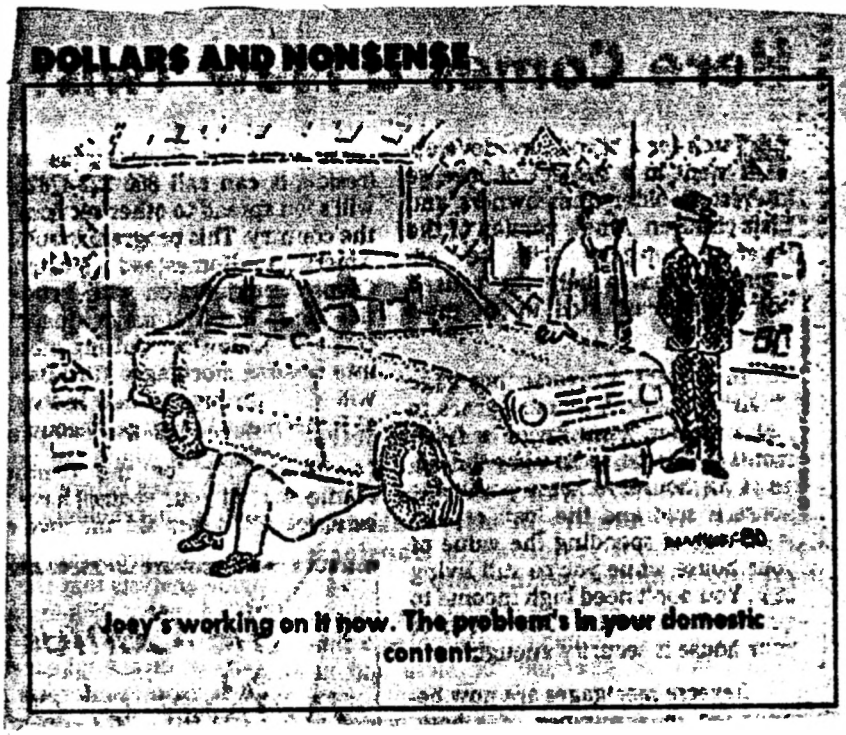
37

"I've reached that time of life when I want a car that just works."

CATHY

by Cathy Guisewite

DOLLARS AND NONSENSE

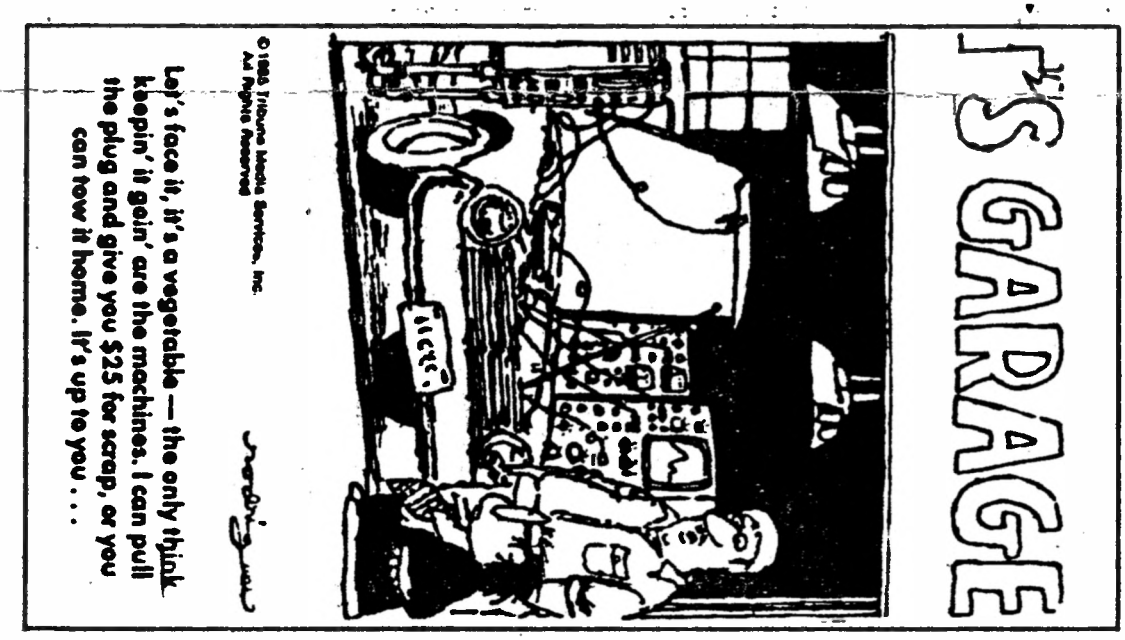


CHARLIE

SUNDAY PUNCH/MARCH


COVER THE LITTLE $200 TUBE LEADING TO THE PART.
SERVICE
THE LITTLE $200 TUBE??
MPH MODELS PURCHASED IN JUNE.
TUBE !!
LITTLE TUBES.
SERVICE
FOR THE LITTLE TUBE ??!!
SERVICE


DOLLARS AND NONSENSE
Joey's working on it now. The problem's in your domestic content.


CHARLIE
P'S GARAGE
© 1986 Tribune Media Services, Inc. All Rights Reserved.
Lay's face it, it's a vegetable — the only think keepin' it goin' are the machines. I can pull the plug and give you $25 for scrap, or you can tow it home. It's up to you . . .

Jury takes automaker to task

Buyer of lemon is compensated

VISTA (AP) — The state's lemon law for automobiles was taken seriously by a jury in northern San Diego County that awarded $7,100 to a man whose 1984 automobile spent more time in the repair shop than on the road.

General Motors Corp. and a Carlsbad auto dealership were ordered to make the payments of $6,100 for the difference between the $14,000 cost of Michael Hagerty's 1984 Oldsmobile Ciera and its actual value plus $1,000 in punitive damages.

Terry Kolkey, who represented Hagerty, said Hagerty will trade the money and his troublesome car on a new car.

During the three-day trial, attorneys for GMC and Hoehn Motors Inc. argued about whether the violations were willful and not about the validity of the case.

"We didn't argue about the amount of the repairs because the orders were in (evidence)," attorney Mary Best for GMC said.

Best said the jury weighed Hagerty's damages carefully and gave him less than the $15,000 municipal court limit. The jurors apparently considered depreciation for the 23,000 miles Hagerty had driven the car, she said.

According to court records, Hagerty's troubles began in February 1984 when he bought the station wagon. The $13,856 price included a 12-month or 12,000-mile warranty and he bought a five-year warranty.

During the next 10 months, Hagerty had transmission and engine oil leaks, problems with the cruise control and radio, loud squealing belts, excessive vibration and engine stalling, missing and smoking.

Hagerty couldn't use the car for more than 45 days during that period and missed several days work during a dozen trips to get the car fixed.

After Hoehn and GMC refused last February to replace the car, Hagerty sued on the basis of the Song-Beverly Consumer Warranty Act, effective Jan. 1, 1983.

[illegible] owners of new personal vehicles purchased after that date are generally entitled to a refund or a replacement of their warrantied vehicles if, within the first year or 12,000 miles, there are four or more unsuccessful attempts to repair the same problem; the vehicle is out of service more than 30 days while being repaired; and the problem is covered by warranty and substantially reduces the use, value or safety of the car.

OAKLAND TRIBUNE - OCTOBER 25, 1985

Man awarded $7,100 under state lemon law

The Associated Press

VISTA, Calif. — The state's lemon law for automobiles was taken seriously by a jury in northern San Diego County which awarded $7,100 to a man whose 1984 automobile spent more time in the repair shop than on the road.

General Motors Corp. and a Carlsbad auto dealership were ordered to pay $6,100 for the difference between the $14,000 cost of Michael Haggerty's 1984 Oldsmobile Ciera and its actual value. GM also was ordered to pay $1,000 in punitive damages.

The jury deliberated for five hours over two days before returning its verdict Monday.

According to court records, Hagerty's troubles began in February 1984 when he bought the station wagon, according to court records. He financed most of the $13,856 price, which included a 12-month or 12,000-mile warranty. He also bought an additional warranty that covered parts, labor and mechanical failure for 60 months or 50,000 miles, according to testimony.

During the next 10 months, Hagerty had transmission and engine oil leaks; problems with the cruise control and radio; loud squealing belts; excessive vibration; and engine stalling, missing and smoking.

Hagerty couldn't use the car for more than 45 days during that period and missed several days work during a dozen trips to get the car fixed.

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **RODRIGUEZ v. FCA US**
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Radomir Kirnos Knight Law Group, LLP 283163	rogerk@knightlaw.com	e-Serve	2/8/2023 6:13:45 PM
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Lisa Perrochet Horvitz & Levy LLP 132858	lperrochet@horvitzlevy.com	e-Serve	2/8/2023 6:13:45 PM
Rebecca Nieto Greines Martin Stein & Richland LLP	rnieto@gmsr.com	e-Serve	2/8/2023 6:13:45 PM
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Date

/s/Shane McKenzie

Signature

McKenzie, Shane (228978)

Last Name, First Name (PNum)

Horvitz & Levy LLP

Law Firm