STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

1987 MAY 1 PM 2:37

CHARLIE BROWN
ATTORNEY GENERAL

NOTICE OF AGENCY ADOPTION

PROCEDURAL RULE: Procedural rule pertaining to the qualification and approval of motor vehicle manufacturers' informal dispute settlement mechanisms.

The attached procedural rule constitutes the official rule adopted by the Attorney General's office, effective on June 1, 1987, and filed with the West Virginia Secretary of State.

THOMAS L. HINDES, DIRECTOR
DEPUTY ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

WEST VIRGINIA PROCEDURAL RULES
ATTORNEY GENERAL
CHAPTER 46A-6A
SERIES ~~5~~ 7

Title: Procedural rule pertaining to the qualification and approval of motor vehicle manufacturers' informal dispute settlement mechanisms.

Title 142

~~WEST VIRGINI~~A PROCEDURAL RULE
ATTORNEY GENERAL
~~CHAPTER 46A-6A~~
SERIES ~~5~~ 7

FILED
1987 MAY 1 PM 2:37
SECRETARY OF STATE

Title: Procedural rule pertaining to the qualification and approval of motor vehicle manufacturers' informal dispute settlement mechanisms.

Section 1. General

1.1 Rule Designation--This rule is procedural.

1.2 Scope and Purpose--This procedural rule specifies the process and requirements for the issuance of a declaratory ruling on the qualification of motor vehicle manufacturers' informal dispute settlement mechanisms and is intended to supplement and be read together with the Legislative Rule pertaining to the establishment and qualification of third-party dispute mechanisms for the resolution of new motor vehicle warranty disputes between the consumer and the manufacturer, its agents, or its authorized dealer, Title 142, Rules of the Attorney General, Chapter 46A-6A, Series 3 (hereinafter the Legislative Rule, Series 3.)

1.3 Authority--W. Va. Code § 46A-6-103 and Code § 46A-6A-8.

1.4 Filing Date-- May 1, 1987

1.5 Effective Date--June 1, 1987

1.6 Construction--This rule shall be liberally construed to effectuate the purposes of the West Virginia New Motor Vehicle Warranties Act, W. Va. Code §§ 46A-6A-1 *et seq*.

1.7 Severability--If, for any reason, any section, subsection, sentence, clause, phrase, or provision of this Rule or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other sections, subsections, sentences, clauses, phrases, or provisions or its application to any other person or circumstance, and to this end each and every section, subsection, sentence, clause, phrase, or provision of this rule is hereby declared severable.

Section 2. Definitions

2.1 "The Act" means the Consumer Protection-New Motor Vehicle Warranties Act, W. Va. Code §§ 46A-6A-1 *et seq*.

2.2 "Manufacturer" means a person engaged in the business of manufacturing, assembling, or distributing motor vehicles, who will, under normal business conditions during the year, manufacture, assemble or distribute to dealers at least ten new motor vehicles.

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

2.4 "Consumer" means the purchaser, other than for purposes of resale, of a new motor vehicle purchased in this State used primarily for personal, family or household purposes, a person to whom the new motor vehicle is transferred for the same purposes during the duration of an express warranty applicable to the motor vehicle and any other person entitled by the term of the warranty to enforce the obligation of the warranty.

2.5 "Mechanism" means the organization, persons, or entity which conducts the decision-making processes under an informal dispute settlement procedure which is incorporated into the terms of a written warranty.

2.6 "Members" mean the person or persons within a Mechanism actually deciding disputes.

2.7 "Qualified Mechanism" means a third-party dispute settlement Mechanism which has been reviewed by the Director of the Consumer Protection Division, Office of the Attorney General, and certified and approved as meeting the requirements specified in the Act, W. Va. Code § 46A-6A-8, and the requirements of the Legislative Rule, Series 3.

2.8 "Provisionally Qualified Mechanism" means a third-party dispute settlement Mechanism which is not able to submit a complete application under the requirements of this Rule and is granted a one year approval under the terms of Section 5 of this Rule.

Section 3 <u>Application for Qualification</u>

3.1 Application by a Mechanism for certification as a Qualified Mechanism shall be made to the Director of the Consumer Protection Division, Office of the Attorney General, and shall include the following information unless specific exceptions are provided in this Rule:

3.1.1 Name, address, and telephone number of the Mechanism. In the event that the applicant does not maintain one or more West Virginia addresses and telephone numbers at the time of application, the application shall set forth the specific plans for making the Mechanism accessible to West Virginia consumers.

3.1.2 The Manufacturers, vehicle makes and vehicle models for which the Mechanism is authorized to hear disputes.

3.1.3 Copies of all warranty documents and disclosure information used to alert consumers to the Mechanism and the warranty proffered by the Manufacturer for each vehicle make and model, together with any other informational material, advertising copy or other notices used to inform consumers concerning warranties, the availability and operation of the Mechanism and any other Manufacturer dispute resolution procedures.

3.1.4 Copies of all written operating standards and procedures promulgated by the Mechanism, as required by Legislative Rule, Series 3, Section 5.3.1, or which are distributed to consumers.

3.1.5 The names, addresses and qualifications of all Members of the Mechanism, together with a list of all other persons employed by the Mechanism and a description of the duties of each such person and Member.

3.1.6 Copies of the operating budget of the Mechanism during the two preceding fiscal years and the anticipated budget if approval is granted. Provided that, to the extent the mechanism does not have actual or anticipated budgets broken down so as to reflect expenditures occasioned by arbitration involving West Virginia consumers, the budgets must be supplemented by appropriate explanatory statements describing the extent of budgetary commitment to such local arbitration.

3.1.7 A description of all training programs conducted for Mechanism Members, and the plans for any such programs should approval be granted.

3.1.8 Copies of the Indexes required by the Legislative Rule, Series 3, Sections 5.4.2, 5.4.3, and 5.4.4 for the record year preceding the application.

3.1.9 Copies of the semiannual statistical compilations, required by the Legislative Rule, Series 3, Section 5.4.5, for the preceding year.

3.1.10 Copies of all annual audits previously compiled pursuant to the Legislative Rule, Series 3, Section 5.5.

3.1.11 Copies of ten percent, but not in any event less than twenty-five, of the written decision documents issued by the Mechanism to West Virginia consumers during the preceding year, representing a randomly selected cross-section of such decisions. The Director of the Consumer Protection Division may, upon notice, have these opinions selected by personnel from his office or under his direction. These written decisions will be reviewed in order to ascertain the extent to which the substantive and remedial requirements of the Act were applied in such decisions.

3.1.12 Statistics for the previous record year showing the number of oral presentations under the Legislative Rule, Series 3, Section 5.3.6, conducted for each Warrantor served by the Mechanism, the number of times such a presentation was requested by a consumer and rejected by the Warrantor and the number of times such a presentation was requested by the Warrantor and rejected by the consumer.

3.1.13 Such other or additional information as the Director of the Consumer Protection Division might request after initial review of the application.

Section 4. <u>Review of Application</u>

4.1 Upon receipt of a completed application, the Director of the Consumer Protection Division shall direct his staff to prepare a report, reviewing the operation of the Mechanism in view of the requirements of the Act and the Legislative Rule, Series 3, and to recommend an appropriate ruling on the application.

4.2 After receipt of the staff report and independent review of the application, the Director shall announce his declaratory ruling, certifying the applicant as a Qualified Mechanism, granting Provisional Qualification for such time and upon such conditions as may be specified, or rejecting the application.

4.3 A final report will be prepared to accompany the Director's ruling, setting forth the basis therefor.

Section 5. <u>Provisionally Qualified Mechanisms</u>

5.1 Provisional Qualification shall be available only for those Mechanisms which have not conducted sufficient operations in West Virginia under the terms of the Act and the Legislative Rule, Series 3, prior to submitting an application, so as to permit the submission of a complete application.

5.2 Applicants for Provisional Qualification shall complete so much of the application submission as possible, supplementing West Virginia information and records with comparable documents and statistics from one or more other states, if available. All applicants for Provisional Qualification shall clearly so state on the face of the application.

5.3 In the event Provisional Qualification is granted, it shall continue for a period of one year. Following nine months of operation as a Provisionally Qualified Mechanism, such Mechanism shall update its original application with the statistics and materials required in an application under this Rule, reflecting the nine-month operating period, and reapply for approval as a Qualified Mechanism.

5.4 After review of the application as provided in Section 4, the Director may approve or reject the application or grant one additional year of Provisional Qualification. This ruling will be reflected in a report, as provided in Section 4.3.

Section 6. Continuing Obligations of Qualified Mechanisms

6.1 A Qualified Mechanism shall promptly inform the Consumer Protection Division of any changes in the information submitted in its application pursuant to Sections 3.1.1, 3.1.3, 3.1.4, and 3.1.5, and supply copies of such changes or requisite information.

6.2 A Qualified Mechanism shall submit to the Consumer Protection Division, annually, copies of its budget, the annual audit required by the Legislative Rule, Series 3, Section 5.5, and an annual cross-section of opinions as required by Section 3.1.11 of this Rule.

6.3 A Qualified Mechanism shall supply for review, upon request of the Director, any additional statistics, records or documents which must be compiled or prepared pursuant to the Legislative Rule, Series 3.

Section 7. Revocation of Qualification

7.1 In the event that the Director has probable cause to believe that a Qualified or a Provisionally Qualified Mechanism is operating in contravention of the requirements of the Act, the Legislative Rule, Series 3, or this Rule, written notification shall be sent to the Mechanism, outlining the perceived deficiencies, fixing a time within which to respond and identifying any additional information which may be required.

7.2 Upon receipt of the Qualified or Provisionally Qualified Mechanism's reply, the Director shall determine whether the approval granted should be revoked, continued as before or continued for a period contingent upon compliance with such conditions as may be set forth in the declaratory ruling. This ruling will be reflected in a report, as provided in Section 4.3. Failure of the Mechanism to comply with conditions so stated shall result in the automatic revocation of approval, as of the date provided in the declaratory ruling.

7.3 After revocation of approval, a Mechanism may reapply, pursuant to the application procedures in Section 3 of this Rule, following one year after the date of such revocation.

Section 8. Unqualified Mechanisms

8.1 There is no obligation on the part of a consumer with a warranty dispute governed by the Act to refer such dispute to a Mechanism under W. Va. Code § 46A-6A-8(b) if the Mechanism has not obtained Qualified or Provisionally Qualified status, or has had such status revoked.

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CHARLIE BROWN
ATTORNEY GENERAL

Title: Procedural rule pertaining to the qualification and approval of motor vehicle manufacturers' informal dispute settlement mechanisms.

PROMULGATION HISTORY ABSTRACT

Date	Action
January 13, 1987	Original Filing of Proposed Rule for Inclusion in State Register
February 25, 1987	First Public Hearing
February 25, 1987	Close of Initial Public Comment Period
March 11, 1987	Filing in State Register of Extension of Public Comment Period and Notice of Second Public Hearing
March 24, 1987	Second Public Hearing
April 13, 1987	Close of Second Public Comment Period
May 1, 1987	Filing of Notice of Agency Adoption in Secretary of State's office
June 1, 1987	Effective Date of Procedural Rule

For more information, please contact Thomas L. Hindes, Deputy Attorney General, Office of the Attorney General, Consumer Protection Division, 812 Quarrier Street, Sixth Floor, Charleston, West Virginia 25301 (304) 348-8986, or in West Virginia 1-800-368-8808.

WEST VIRGINIA PROCEDURAL RULE
ATTORNEY GENERAL
CHAPTER 46A-6A
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Title: Procedural rule pertaining to the qualification and approval of motor vehicle manufacturers' informal dispute settlement mechanisms.

SUMMARY OF PROPOSED PROCEDURAL RULE

The Attorney General is required by W. Va. Code § 46A-6A-8(a) to "promulgate rules and regulations for the establishment and qualification" of third-party dispute mechanisms employed to resolve warranty disputes between consumers and new motor vehicle manufacturers. A Legislative Rule, effective August 1, 1985, established the operating requirements applicable to such third-party arbitration panels. This Rule did not, however, create a procedure whereby mechanisms might apply to the Attorney General's office and thereby be "qualified." The present rule provides such a procedure.

The Rule is divided into eight sections. The first, entitled "General," addresses the scope, purpose, authority, filing date, effective date, construction and severability of the Rule. The second section provides relevant definitions.

Section three provides a detailed list of the information which must be contained in an application for qualification. Section four speaks to the review process in the Attorney General's Office, and describes the types of qualified status which may be offered applicants after review.

Section five establishes an application process for mechanisms which are not able to complete the entire application package and which seek "provisional qualification" only. Section six sets forth the continuing obligations of qualified mechanisms, and section seven provides for the revocation of qualification. Section eight speaks to the status of mechanisms which are not "Qualified" or "Provisionally Qualified."

For more information, please contact Thomas L. Hindes, Deputy Attorney General, Office of the Attorney General, Consumer Protection Division, 812 Quarrier Street, Charleston, West Virginia 25301 (304) 348-8986, or in West Virginia 1-800-368-8808.

WEST VIRGINIA PROCEDURAL RULE
ATTORNEY GENERAL
CHAPTER 46A-6A
SERIES 5

Title: Procedural rule pertaining to the qualification and approval of motor vehicle manufacturers' informal dispute settlement mechanisms.

REPORT ON PUBLIC HEARING AND PUBLIC COMMENT PERIOD

The initial Public Comment Period with respect to the above-referenced Procedural Rule was scheduled to expire on February 25, 1987, and a Public Hearing on the proposed Rule was held in Charleston on that date, all pursuant to notice sent to the Secretary of State's office for publication in the State Register on January 13, 1987. In order to afford interested persons additional opportunity to participate in the rulemaking process, the Public Comment Period was extended, by notice sent to the State Register on March 11, 1987, until April 13, 1987, and a Public Hearing was held in Wheeling on March 24, 1987. Both Public Hearings were conducted by Attorney General Charles G. Brown.

Attendance at the Charleston Public Hearing:

Michael McIntyre, Manager of Automotive Consumer Programs, American Automobile Association
Darele E. Kennedy, Consumer
Milton Hamarick, Consumer
Ethel Fizer, Consumer
Joe Poniatowski, Consumer
Jack Fuentes, Automobile Dealer
Ruth Lemon, Executive Vice President, West Virginia Automobile and Truck Dealers Association
Charlene Hamrick, Consumer

Attendance at the Wheeling Public Hearing:

Al Jolson, Sr., Dean, Wheeling College
John Markowitz, Consumer
Louise Schmitz, Consumer
Rita Mulvey, Consumer
James M. Jordan, Consumer
Bernard M. Olako, Consumer
Deloris S. Wallace, Consumer
Ron Kasserman, Jr., Consumer
Lois Dennis, Consumer
Kathy Hoover, Consumer Mediator

Most of the comments received at the respective Public Hearings were sympathetic with the purpose of the proposed Rule, but were not directed toward its terms or content. There were a number of consumers who spoke, expressing dissatisfaction with arbitration mechanism programs as currently operated by or on behalf of motor vehicle manufacturers. Excessive delays and inadequate remedies were common complaints. Existing uncertainty as to whether recourse to arbitration is a prerequisite to litigation was also pointed out.

A number of questions were also raised about arbitrator compliance with the operating guidelines established under the previously adopted Legislative Rule. One speaker also offered several additional comments about particular aspects of this earlier Rule.

With reference to the present proposed Rule, there were a few specific comments and questions. A question was raised concerning Section 3.1.6, which requires applicants to supply certain budgetary information. Since many mechanisms operate across state lines and also utilize different cost formulas, a question was raised as to the purpose and reliability of separate West Virginia budget information.

Section 3.1.11's requirement that a representative sample of written decisions be supplied was also questioned. One commentator felt that the proposed language placed too much emphasis on remedies other than repair orders, while another, who commented by telephone, believed that the opinions should be chosen on a random basis in order to secure a more representative sample.

Section 3.1.12 was questioned in that it "implicitly" guarantees consumers the right to an oral hearing. The commenter suggested, however, that it was difficult to comply with the forty-day decision deadline if an oral hearing was granted.

Complete transcripts of both Public Hearings and copies of all written comments are attached herewith.

For more information, please contact Thomas L. Hindes, Deputy Attorney General, Office of the Attorney General, Consumer Protection Division, 812 Quarrier Street, Charleston, West Virginia 25301 (304) 348-8986, or in West Virginia 1-800-368-8808.

WEST VIRGINIA PROCEDURAL RULE
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DISCUSSION OF AMENDMENTS

There were several amendments made to the proposed Procedural Rule as a result of comment from interested parties and continuing review by this Office.

Section 3.1.6 was amended by the addition of a proviso requiring those mechanisms which lack budgetary information broken down to reflect West Virginia expenditures, to attach an additional explanation, describing the budgetary commitment to West Virginia related arbitration.

Section 3.1.11 was amended to require the applicant to furnish this Office with ten percent of its West Virginia arbitration decisions during the preceding year, but no less than twenty-five. These decisions are to be randomly selected, and the Director of the Consumer Protection Division can oversee or conduct the selection. The section indicates that these decisions will be reviewed to determine the extent to which the requirements of the West Virginia New Motor Vehicle Warranty Act were utilized in fixing liability and remedy.

For more information, please contact Thomas L. Hindes, Deputy Attorney General, Office of the Attorney General, Consumer Protection Division, 812 Quarrier Street, Charleston, West Virginia 25301 (304) 348-8986, or in West Virginia 1-800-368-8808.

PUBLIC HEARING

SUBJECT: Proposed Procedural Rule - Pursuant to West Virginia Code, Chapter 29-a, Article 3.

TRANSCRIPT OF PROCEEDINGS had and testimony adduced in a public hearing on the above-stated matter, before the Attorney General of West Virginia, on the 25th day of February, 1987, at the Cultural Center, State Capitol Building, Charleston, West Virginia, beginning at 10:00 a.m.

Action Court Reporting
C. Jessica Ferrell
879 Chappell Road
Charleston, West Virginia 25304
304/925-5588

BEFORE: Attorney General Charles Brown

Deputy Attorney General Thomas Hinds

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ATTORNEY GENERAL BROWN: I'm going to convene this hearing on the "lemon law" arbitration ruling. To my left is Deputy Attorney General Thomas Hinds, who is the Director of Consumer Protection for the Attorney General, and who will be conducting with me this public hearing on the "lemon law".

Also members of my Staff who are present: Jane Thieling, Director of Consumer Education; Clay McDaniel, who is our investigator; and our car expert, Tim Tickle, investigator of Consumer Protection. We also have Charleston's Consumer Advocate, Director of Consumer Protection for the City.

We want to welcome people from AAA; from the auto Dealer Association; we have people here from the Credit Union League; we have a number of consumers here, who have bought cars, and who are here to observe, and I hope to participate, as well, because this hearing is for everybody.

This is a public hearing held pursuant to West Virginia Code, Chapter 29-a, Article 3, to receive comments from the public and interested persons.

The subject of this hearing is proposed procedural rule promulgated by the office of the Attorney General.

The rule will establish the process, whereby this office can review and act upon applications by organizations seeking approval to serve as arbitration mechanisms under the West Virginia new motor vehicle warranty law, better known as the "lemon law," named for Ruth Lemon.

This proposed rule was filed with the Secretary of State for entry in the State Register for January 23rd, 1987.

I want to stress what we're trying to accomplish, what Deputy Attorney General Hinds and I, in this work, are trying to accomplish, and that is, we're trying to have an arbitration mechanism that would be fair and would be open to everybody who has a problem with a new car. By having an approval system for arbitration, we accomplish the goal of making sure that the arbitration system is fair, that it meets my standards of fairness, so people know, when they file for arbitration, they will anticipate fair hearings from the arbitration board.

Second, our goal is to take this matter out of the litigation process and not have the uncertainty and costs of litigation, so that everybody will start with arbitration, which will be less costly, hopefully, no cost to the consumer, ideally. They would be able to present their -- It should be no cost, of course, someone can hire a lawyer if they want, but this would be the process to solve the problem outside of the courtroom. The consumer who loses and feels they weren't rightly treated in the arbitration system can still appeal, can still go to court.

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The manufacturer, if it loses, cannot. So we think it's an arbritation system that can be made to work, and can avoid litigation, so we solve our problems outside of the courtroom, and solve our car problems in a way that is fair to the manufacturer and dealer, but also one that promotes the consumer interest and public interest by getting them the benefits they deserve under the West Virginia Lemon Law.

I think people ought to come up here and make statements, because we do have a court reporter taking all this down. State your name, spell your name, give your address, any affiliation, if you have any, the reason you're here, and any statement you'd like to make. The first name is Michael McIntyre, he is the AAA's expert on the lemon law. He's here from Washington, from the national AAA, and we've very delighted Mike's joined us here for this hearing.

MR. McINTYRE: Thank you General Brown.

My name is Mike McIntyre, and I am the manager of Automotive Consumer Programs for the American Automobile Association. I am accompanied today by Gerald Martin, who is President of the Southern West Virginia Automobile Club. His club, as well as eight other affiliated AAA clubs in the state, who work together on these projects as a national, and as a state enterprise.

AAA represents over 145,000 members in West Virginia, who are also car consumers. Our concern today is to speak in their interest and in the interest of the general motoring public.

We support the intent of your proposed procedural rule changes. An essential step in making an effective lemon law is to ensure that all third-party mechanisms are properly qualified, and that their operating standards protect and guarantee consumer rights.

Today, I want to address three issues raised in your proposed procedural changes. These issues are all found in Section 3, Application for Qualification.

First, your proposed rule 3.1.6 seeks to require copies of the operating budget of the mechanism during the proceeding fiscal years, and the anticipated budget, if approval is required. As we see it at AAA, this requirement will need some further refining.

Many mechanisms operate across state boundaries as national programs, so it's not always possible to determine how much of a given program cost should be assigned to a particular state. It's not a simple matter of dividing the costs by the number of states you're in.

Additionall, different mechanisms assign their costs by different formulas. AAA, for instance, operates on a case-by-case cost at a preassigned fee.

Other mechanisms operate with a budget, based on the total number of cars produced by a given manufacturer, with a per unit cost per car as the basis for their fee structure. Still others use an average case cost incurred on an annual basis. What happens when these costs which are figured by all different formulas are compared against each other, based only on that reported bottom line cost mechanism?

Unless those formulas are very clearly drawn and explained and differentiated, inaccurate conclusions can be drawn about cost effectiveness. For example, third-pary arbitration systems, which stress the necessity of a correct field technical investigation of a reported problem, will always appear to be less cost effective than mechanisms which operated only on the basis of filed documents and papers.

I should also add that non-manufacturer mechanisms, like AAA's or BBB's, working on a contractual basis, have to consider the confidentiality of a manufacturer's pricing formula for third-party arbitration. Customer satisfaction systems all have a price tag; it's not up to the mechanism to disclose that fact.

It's not immediately clear what would be gained from such cost disclosure. Federal Trade Commission Rule 703 already specifies semi-annual and annual performance audits. Rule 703 keeps the focus on the main issue: timely handling of consumer complaints.

In my view, your proposed procedural rule change needs to spell out specific reasons why this cost information is needed and how it shall be used. There is potential misinterpretation built-in from the beginning in this section. Your proposed regulation runs a definite risk of comparing apples and oranges.

(2) Your proposed point 3.1.11 would require the third party mechanism to provide copies of twenty-five written decision documents issued to West Virginia consumers.

Your recommended rule attempts to track refunds and replacements. The boundaries are drawn narrowly here. Sometimes the customer is wrong; sometimes compromises are reaches; sometimes the dealer is wrong. Your section does call for a cross section of cases, but it leaves the impression that you're looking for an index of buybacks. Let me suggest that there is another way of looking at the mechanism's fairness.

AAA holds the view that refunds and replacements are not the only reliable index for third-party arbitration mechanism. In fact, they are only a small percentage of the total case handling.

A better index can be found in the performance by the car manufacturer, once the problem passes from the dealer's jurisdiction to the manufacturer's jurisdiction, along with the mechanism.

The manufacturer/dealer relationship is not a simple command and control relationship. Dealers are private entrepreneurs, and are able to operate their businesses as they see fit. Manufacturers have various sanctions and incentives to use as they work with those dealers. Most manufacturers have instituted customer satisfaction systems through which they can take joint responsibility with dealers for repair reliability.

AAA suggests that your regulatory rule should acknowledge the transfer of jurisdiction involved when a manufacturer, under the supervision of a mechanism, takes over direct responsibility for a repair problem.

Refunds and replacements should be options for a mechanism after it has supervised one final repair effort performed primarily by the manufacturer.

You might consider the creation of a category called, "Manufacturer/Mechanism Supervised Final Repair, and define that as a prior resort to a refund or replacement. It would be a realistic index, and would address the greater need of the consumer to have his or her vehicle repaired correctly.

Finally, your proposed rule change numbered 3.1.12 implicitly guarantees the right to the consumer for oral presentation. This is an important criterion for the

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safeguarding of consumer rights, and it should be offered by manufacturers, in our view.

Manufacturers with a significant case volume, however, note that they would not be able to adhere to a 40-day decision timeline, if every consumer were given a right to an oral presentation. Sheer logistical problems make this a nearly impossible burden on the manufacturer, and there is some validity to this claim.

AAA has addressed this issue in its arbitration program for Toyota Motor Sales, USA, by including the customer in the field investigation conducted by our technical experts. The customer is invited to be present at the time of the inspection, and is free to make any point he or she wishes to make. AAA stresses the value of field inspection, and recommends it as the central part, an indispensable part, of the mechanism's decision.

Moreover, we offer the right to an oral hearing, as well, and Toyota has agreed in advance to permit the hearings to be held. We believe it's a policy to be followed, and certainly one to be recommended.

We have no further comments on the proposed text itself.

We do, however, commend you for your efforts to keep evolving a lemon law that stays abreast of the newest understandings in this changing field. We hope you will

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take account of the regulatory negotiation now occurring in the Federal Trade Commission for the revision of FTC Rule 703.

We suggest that growing dealer participation in the various manufactueres' customer satisfaction system is a trend that could have an impact on the way your regulation is written and the way it evolves.

Dealers will be first to tell you that a satisfied customer is apt to be a repeat customer. It is in their vested interest to repair vehicles right the first time.

We hope your lemon law will continue to evolve and that it will expand positive incentives for dealers to take a stronger role in handling customer problems when they get into the complaint area.

In the end, dealers, manufacturers, mechanisms, and most of all consumers, will benefit from a growing and changing system for customer satisfaction.

Thank you.

ATTORNEY GENERAL BROWN: Mike, thank you very much for those comments. There's a lot of helpful suggestions in there. AAA has a real field record in doing arbitration and other new car programs, particularly the Toyota. So thank you for the benefit of your experience and your ideas.

Mr. Kennedy is next, Darrell Kennedy, who I've already talked to at length this morning. And he's a consumer of a car, and is here to testify.

MR. KENNEDY: My name is Darrell Kennedy. I bought an automobile from Moses in Huntington in August of '86. Since then, I've had it back to Moses on eight different occasions. I sent Mr. Brown -- Filled this paperwork on the consumer complaint questionaire, and I received a statement back, and I thought I had made a settlement. It says, "The Attorney General's Consumer Protection Division is pleased to inform you that the business has agreed to make a partial adjustment." The adjustment was that I could take the vehicle to another dealer. And I did. And I've taken it twice to the other dealer, and they have fixed all the problems except one. And I've had the same complaint on ten different occasions to the same dealer.

I would like to see the Attorney General -- They put a note in here, it says, "There appears to be a disagreement." There's a disagreement between the dealer and the consumer.

I bought an Isuzu pick-up. I don't know really where to go from here. Out of my office, eight out of ten have dealt with Moses. Eight out of ten will never go back.

It's not the automobile, I feel that it's the dealer itself.

I've lost camera -- I've had camera equipment damaged due to water. I bought a kingcab and I carry equipment, and I carry clothes. And if I happen to park the vehicle and go off and leave it, I might have an inch of water in the car. I take it into the dealer and he says, "Well, I just don't know where it's coming from." But yet, these are all bills that I have, although I didn't pay for them, but someone did. And I would just like to see more teeth in this lemon law.

That's the only statement I have to make.

ATTORNEY GENERAL BROWN: Thank you, sir. Hopefully, that's where we're headed with this proposal. Mrs. Milton Hamarick from Lumberport.

MR. HAMARICK: I'm Milton Hamarick. I'm from Lumberport, West Virginia.

I bought an Aries K Dodge stationwagon. It has been in the shop over twenty times, as high as ten days at a time. It has never been fixed right. The hood don't fit. If you make it fit the fenders, it won't fit the grill. The air-conditioner leaks inside and gets your feet wet in the summertime. And they tell me there's nothing they can do.

When it goes in front of the arbritration board, Chrysler Corporation sends a representative down here. But when I ask for my lawyer, "Hell, no." That's the words

I get.

I want to know is something fair? I paid cash for my damn car. And you talk about bills, I've got them. Everything's been replaced but the motor and transmission, and part of its been replaced.

Would you like to have a copy of this?

ATTORNEY GENERAL BROWN: Yes.

MR. HAMARICK: That's the most of the things that's wrong with it, and it's sitting right out there. It's been in there three times over the air-conditioning; you get your feet wet. They say there's nothing they can do with it. I'd probably been better off if I'd financed it. I could give it to a big finance company. But when they won't let me or my lawyer appear before the arbitration board, I'm stuck.

ATTORNEY GENERAL BROWN: Let me just comment. One of our proposals is to guarantee the consumer the right to participate orally in the arbitration hearings from here on. That's one of the ways we're going to structure the arbitration boards in the future. So in the future, under the proposal we have, they're going to qualify under our procedures, and they would have to have right to an oral hearing. Thank you, sir.

Ethel Pheiser is next, from Fayetteville.

MR. PHEISER: I'm Ethel Pheiser from Fayetteville, West Virginia. I bought a car from Montgomery Motors in October. The converter on it has been busted four times, and the hose on it has a hole in it and was about to catch afire. I can't go anyplace. And it's been three weeks since I talked to them up there, and they don't call me back on the phone or nothing, and they've put it on there three times, this will be the fourth time; a converter. And it's cracked, and it sounds like a truck, and I'm not supposed to drive it. And I don't have anything else.

I called Detroit, and they was going to get back to me a week ago, and I haven't heard from them. And the lady up at the garage, she kind of got a little made when I talked to her about it, and I don't blame the mechanics up there, because me and my husband, we've bought five cars, Pontiacs, and they treated us good. But new hands has taken it over.

This will be the fourth time for the same thing; the converter's busted in it. It sounds like a truck. It's a Park Pontiac and it's just about four and a half months old.

ATTORNEY GENERAL BROWN: Thank you for coming in from Fayetteville to testify, Mr. Pheiser.

Joe Poniatowski, listed as "taxpayer".

MR. PONIATOWSKI: I can identify with Milton Hamarick, the man from Lumberport whose vehicle has been in the shop so many times he's becoming frustrated. I'm a victim, myself, and am aware of the effect.

I purchased a vehicle, a new vehicle, in November of 1984. I paid $17,300 for it; top of the line Olds.

Today, that vehicle is sitting in my yard. It's sitting in my yard. I'm paying $100 a year storage insurance, and I fear to drop it. I had to pay $1,500 up front for litigation purposes; for court costs. And even if I do get a settlement, the attorney gets 40% of it. I don't think I'll ever recoup the $17,000.

Sure, I'm here to vent some steam and hostilities. The fact is, I was able to afford $17,300 and in six months paid cah, okay? Not many people in the state are. I was able to afford to go and borrow $1,500 to give an attorney to handle my case, after forced arbitration didn't work.

Now, this is November, '84 that I purchased this vehicle. And here it is February, 1987, and it's projected to take at least another year. And I am still not guaranteed of any relief.

The lemon law, Mr. Attorney General, is fine. It's good that we have something.

There are two provisions in there that the man from Lumberport can identify with, as well as I; that's three or more times for the same defect; 30 or more dates; all this within a year.

I don't know your particulars, sir, but my vehicle has been in the shop -- I have fourteen repair tickets. It's been in the shop over 40 days; this was in the first year. No co-operation from the manufacturer. The dealer was fine, they tried, but they couldn't.

Now, I can afford to take time on those 14 days, and take leave time and go down there and take the vehicle; I can afford to borrow money to do this, because I'm not going to let this rest, but what about the rest of my fellow taxpayers that can't afford to do this?

The law is fine; the provisions are fine. As I see it, whether you have an arbitration panel; whether you have commissions, or whatever, you need someone to say, "FIne, here are the situations; here is the criteria, they're met, buy the darn thing back; give the people their money," and just profit by it. They can afford to send attorneys down here, as was mentioned by previous people, with flowing legal ease, and I'm no match for these people.

Three volunteers on an arbitration panel, all they can do -- they cannot consider the <u>Code</u>, that's what I was told. They said, "Yeah, we see your car's been in the shop, and we see that one thing had been tried to be repaired more than four times, but we can't go anything about it with a reasonable and prudent person." So it was just going through the motions, going to the arbitration panel. And an attorney's eyes lit up when I showed him the case, because he knows he's got a good deal. He's going to get 40% of whatever I win. But look at all the time and expense, depreciation on the vehicle, that I have.

My problem is not unique. It's only that I'm not effected by this wear-down syndrome. I'll take it all the way through, and I'll spend money just for the purpose; that's why I came here today. And today it's happening with consumers.

I always wanted a brand-new vehicle. I'd never had one. I purchased one, and I purchased an American-made vehicle. Never again. I never will, I'm sorry to say that. If this is going to be on the news, that's fine. People say, "Hey, that guy's going to buy foreign products." You're darn right I will, because the people I talk to, they buy foreign products; they have co-operation from the manufacturer.

Maybe I'm getting off the point about the law, but we need someone to say, "Here it is. This car has a high rate of incidents, buy the darn thing back and let him go on his way."

The only decision I got out of forced arbitration after two years, was that GM agrees to repair vehicle to the manufacturer's specs. I didn't want that. I asked for a buyback. Thank you.

ATTORNEY GENERAL BROWN: Thank you. Mr. Poniatowski, I appreciate that. And one reform we have is that we will require the manufacturer to apply West Virginia law, and surprisingly, we found that that wasn't happening, and you found out that wasn't happening. And one of the changes we have is that West Virginia law will have to be applied. It's going to be applied in the courts anyway,

We have Jack Fontis from the Chrysler dealer in South Charleston and with the Auto Dealers Association.

MR. FONTIS: I'm almost afraid to identify myself after the last individual got up. I'm also a taxpayer and an automobile dealer, Chrysler, Plymouth and Dodge dealer.

I've been on the Chrysler arbitration board since its inception as an advisor.

I'd just like to let you know that the board, from my view point, fand from my customer's view point, has worked very well. We've gotten a lot of cars fixed we couldn't get fixed otherwise. And we've even gotten a few cars bought back.

The only other comment I'd like to make is that you're making a recommendation that the consumer is able to make oral presentation at the arbitration The arbitration meetings now consumer a lot of time. If the consumer is allowed to come in and make oral presentations, it's going to be a real long process. If that does happen, I think that the dealers, if they should decide to, should also allowed to appear and make oral presentation. The way the rules are set up now, and the reason Mr. Hamarick couldn't come in and his lawyer couldn't come in, because the rules say that all the evidence has to be presented in written form for review.

But again, if the consumer is to be allowed oral presentation, I believe we need to give some consideration that the dealer be allowed also to give his side of the story.

MRS. PHEISER: Can I say something else?

ATTORNEY GENERAL BROWN: Yes.

MRS. PHEISER: What I wanted to say, I bought this through Montgomery Motors, but they were changing the name to Prestige, and that goes into Ford someway. It's Prestige. He didn't have the name up there, but they was changing it.

ATTORNEY GENERAL BROWN: Thank you. I'm going to submit, which I haven't yet, Mr. McIntyre's written comments to be attached to the record, although I think they're close to his oral comments, and Mr. Hamarick's listing of all the problems with his car. And I did put up there his name and address at the top.

MR. HAMARICK: That's not all of them, that's just most of them.

ATTORNEY GENERAL BROWN: We have Ruth Lemon of the West Virginia Auto Dealers Association.

MS. LEMON: Tom, Charlie, thank you for giving us the opportunity to speak today.

My name is Ruth Lemon, and I'm the Executive Vice President of the West Virginia Automobile and Truck Dealers Association.

Our Association represents the new car and truck dealers of West Virginia. And contrary to Charlie's comments, the law really wasn't named for me, I just kind of happened by about the same time.

Our office has a program which we call "Auto Cap." This program is sponsored by the manufacturers. It's a voluntary program. The panel is made up of citizens of West Virginia, consumer protection, people such as Jane and Paul. And I might comment, these folks do an excellent job. Mr. McDaniel, from the Attorney General's Office, serves on this panel also. And again, I'd like to compliment Mr. McDaniel because he does an outstanding job of arbitrating, if you will, for the consumer. He works very closely with the dealers and the consumer.

I cannot offer "Auto Cap" as an arbitration board today.

I certainly appreciate the comments that Mr. McIntyre made, and I think his suggestions are something that all of us in the industry need to consider very strongly.

We, the industry, do not want unsatisfied customers. West Virginia has less than two million citizens and I have 270 automobile dealers in this state. Just the law of average tells you we canot offend our customers. We try very, very hard. There are situations that are not resolved, and I'm sorry to say that, but it is a fact.

Our "Auto Cap" panel has not met for the last year because the complaints that we have received have been resolved prior to going to the panel. That doesn't mean, and certainly, Mr. Hamarick and the other folks in this room, they do not have a problem. I don't mean to insinuate that. But we do need a mechanism.

I would be very, very happy to work in any capacity at all with the Attorney General's Office and with the manufacturers, or any other group that wants to sit together on an arbritration board.

I, for one, am dead set against litigation. As the gentleman with the Oldsmobile said, no one makes out; the attorney will get 40% of what he makes.

There are cars out there that cannot be repaired, and I'll be the first to admit to that. There are customers that cannot be repaired, and I'll be the first to tell you that. So I think it behooves everyone from the industry, from the consumer sector, and certainly from Charlie's office, to get together and set up a good arbitration board that will benefit the citizens of West Virginia; that will give the dealers an opportunity to protect themselves in situations. And my office is available to any person that purchases a new car from a dealer in West Virginia. We work directly with the dealer, and I cannot promise you 1000% result, and wouldn't attempt to, but I can promise you one thing, that an honest effort will be made to reach an agreement that is satisfactory to both. And I thank you for the opportunity to appear.

ATTORNEY GENERAL BROWN: Thank you, Ruth, for appearing today and your testimony.

MR. HAMARICK: I have no case, whatsoever, against the car dealer. Everything that Chrysler told them to do, plus they have done other things, and the car still is not right.

ATTORNEY GENERAL BROWN: We have Charlene Hamarick who is going to testify. That's the last secheduled speaker on the list, unless someone else wants to speak.

MS. HAMARICK: My name is Charlene Hamarick. I'm from Lumberport, West Virginia. I bought the car on December 5th of '85, a brand new Dodge Aries K stationwagon. I loved the car, and I still do, but the car does not work right.

We called Chrysler Corporation in Landover, Maryland. They sent a field representative down, her name was Christy Peters. All we got from her was the run-around. She couldn't tell us nothing. She looked at the car, and she said it was running all right. And she went out and test drove it, and she said it was running all right. I drive the car every day; I know the car's not running right.

It has been in the shop 23 or 24 times. It's a little over a year old.

I think it's a darn shame that Chrysler Corporation cannot get together with us. I've even wrote a letter directly to Lee Iacocca. I got a letter back from a special investigator out of his office, and I think it's a shame I have not heard no more from him since I wrote my letter about three or four weeks ago.

I'm very fed-up with the car. I will never, ever buy another Chrysler product again of any sort.

When this first started, I was willing to go half-way with Chrysler. If they could fix it, fine, I'd keep the car or trade it in and get another car; the same kind of car, except maybe soemthing that would work a lot better. But right now, no, I will never, ever have another Chrysler Corporation product again.

I've very disappinted.

The lemon law -- I called -- I had a lawyer, he charged me $210, which I couldn't afford, to help battle against Chrysler Corporation. He said that if I took them to court, then I would have to sue Chrysler, plus the dealer. That's all right with me, but it would take two years to take them to court, and by that time my car has depreciated. I paid almost $11,000 for the car, cash, and what would I get back out of it after two years?

I'm very disappointed that people like us has to go through something like this and not get any satisfaction.

ATTORNEY GENERAL BROWN: Thank you very much, Ms. Hamarick, for coming all the way here to Charleston to testify on your concerns. If there's no one else on the written list -- Is there anyone else who wants to make a statement?

(No response)

ATTORNEY GENERAL BROWN: I want to note the appearance of Jose Alonzo, for the West Virginia Credit Union League. Of course, they play a major role in terms of financing for all kinds of consumers, they have all the credit unions in the state, of which there are 188. Thank you for coming from Parkersburg.

I'd like to also note the appearance of Ms. Diller from the Consumer Protection Office in Charleston; Delores Martin of AAA.

I'm going to conclude the oral hearing, but at the conclusion of the oral hearing, we'll have a question and answer period. For the next two weeks, let's say until Monday, March 16th, we will accept any more comments that you would want to submit. Send them to Deputy Attorney General Thomas Hinds, Attorney General's Office, State Capitol Building, Charleston, West Virginia, 25305.

The informal comments may also be made by calling Mr. Hinds or Tim Tickle at 348-8986, or our toll-free number, 800-348-8808; that number is listed in every directory in the state of West Virginia.

I appreciate very much you people coming, and if there's no more comments for the public record, I'm going to conclude the public record and that will be the end of the public hearing.

(WHEREUPON, the public hearing was concluded.)

REPORTER'S CERTIFICATE

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, to-wit;

I, C. Jessica Ferrell, Staff Reporter for V. Ann Woofter, hereby certify that the foregoing is, to the best of my skill and ability, a true and accurate transcript of the proceedings had and evidence adduced at a public hearing held in the afore-styled matter on the 25th day of February, 1987.

C. Jessica Ferrell

C. Jessica Ferrell, Staff Reporter

A.C.R.

AMERICAN AUTOMOBILE ASSOCIATION
COMPLAINT ARBITRATION SERVICES OFFICE

REMARKS FOR LEMON LAW HEARING
STATE OF WEST VIRGINIA
25 FEBRUARY 1987

MY NAME IS MICHAEL McINTYRE AND I AM MANAGER OF AUTOMOTIVE CONSUMER PROGRAMS FOR THE AMERICAN AUTOMOBILE ASSOCIATION. I AM ACCOMPANIED TODAY BY REPRESENTATIVES OF THE SOUTHERN WEST VIRGINIA AUTOMOBILE CLUB WHO REPRESENT THEIR OWN AAA CLUB AS WELL AS THE EIGHT OTHER AFFILIATED AAA CLUBS IN THE STATE.

AAA REPRESENTS MANY THOUSANDS OF MEMBERS IN WEST VIRGINIA WHO ARE ALSO AUTOMOBILE CONSUMERS. OUR CONCERN TODAY IS TO SPEAK IN THEIR INTEREST AND THE INTEREST OF THE GENERAL MOTORING PUBLIC.

WE SUPPORT THE INTENT OF YOUR PROPOSED PROCEDURAL RULE CHANGES. AN ESSENTIAL STEP IN MAKING AN EFFECTIVE LEMON LAW IS TO ENSURE THAT ALL THIRD PARTY ARBITRATION MECHANISMS ARE PROPERLY QUALIFIED AND THAT THEIR OPERATING STANDARDS PROTECT AND GUARANTEE CONSUMER RIGHTS.

TODAY I WANT TO ADDRESS THREE ISSUES RAISED IN YOUR PROPOSED PROCEDURAL CHANGES. THESE ISSUES ARE FOUND IN SECTION 3, APPLICATION FOR QUALIFICATION.

(1) PROPOSED RULE 3.1.6 SEEKS TO REQUIRE COPIES OF THE OPERATING BUDGET OF THE MECHANISM DURING THE TWO PRECEDING FISCAL YEARS AND THE ANTICIPATED BUDGET IF APPROVAL IS GRANTED. AS WE SEE IT AT AAA, THIS REQUIREMENT NEEDS SOME REFINEMENT.

MANY MECHANISMS OPERATE ACROSS STATE BOUNDARIES AS NATIONAL PROGRAMS. IT IS NOT ALWAYS POSSIBLE TO DETERMINE HOW MUCH OF A GIVEN PROGRAM COST SHOULD BE ASSIGNED TO A PARTICULAR STATE. IT IS NOT A SIMPLE MATTER OF DIVIDING COSTS BY THE NUMBER OF STATES SERVED.

ADDITIONALLY, DIFFERENT MECHANISMS ASSIGN THEIR COSTS BY SEVERAL FORMULAS. AAA, FOR INSTANCE, OPERATES ON A CASE BY CASE COST AT A PREASSIGNED FEE. OTHER MECHANISMS OPERATE WITH A BUDGET BASED ON THE TOTAL NUMBER OF CARS PRODUCED BY A GIVEN MANUFACTURER WITH A PER UNIT COST PER CAR AS THE BASIS FOR THEIR FEE STRUCTURE. STILL OTHERS USE AN AVERAGE CASE COST BASED ON ANNUAL COST INCURRED. WHAT HAPPENS WHEN THESE COSTS ARE COMPARED AGAINST EACH OTHER BASED ONLY ON THE REPORTED BOTTOM LINE?

UNLESS THE FORMULAS ARE CLEARLY EXPLAINED AND DIFFERENTIATED, INACCURATE CONCLUSIONS CAN BE DRAWN ABOUT COST EFFECTIVENESS. FOR EXAMPLE, THIRD PARTY ARBITRATION SYSTEMS WHICH STRESS THE NECESSITY OF A CORRECT FIELD TECHNICAL ASSESSMENT OF A REPORTED PROBLEM MAY APPEAR TO BE LESS COST EFFECTIVE THAN MECHANISMS WHICH USE ONLY FILED DOCUMENTS.

I SHOULD ALSO ADD THAT NON-MANUFACTURER MECHANISMS WORKING ON A CONTRACTUAL BASIS HAVE TO CONSIDER THE CONFIDENTIALITY OF A MANUFACTURER'S PRICING FORMULA FOR THIRD PARTY ARBITRATION. CUSTOMER SATISFACTION SYSTEMS ALL HAVE A PRICE TAG; IT'S NOT UP TO A MECHANISM TO DISCLOSE THESE FACTS.

IT IS NOT IMMEDIATELY CLEAR WHAT WOULD BE GAINED FROM COST DISCLOSURE. FEDERAL TRADE COMMISSION RULE 703 ALREADY SPECIFIES SEMIANNUAL AND ANNUAL PERFORMANCE AUDITS. RULE 703 KEEPS THE FOCUS ON THE MAIN ISSUE: TIMELY HANDLING OF CONSUMER COMPLAINTS.

IN MY VIEW, YOUR PROPOSED PROCEDURAL RULE CHANGE NEEDS TO SPELL OUT SPECIFIC REASONS WHY THIS INFORMATION IS NEEDED AND HOW IT SHALL BE USED. THERE IS POTENTIAL MISINTERPRETATION BUILT IN FROM THE BEGINNING IN THIS SECTION. YOUR PROPOSED REGULATION RUNS A DEFINITE RISK OF COMPARING APPLES AND ORANGES.

(2) YOUR PROPOSED POINT 3.1.11 WOULD REQUIRE THE THIRD PARTY MECHANISM TO PROVIDE COPIES OF TWENTY-FIVE WRITTEN DECISION DOCUMENTS ISSUED TO WEST VIRGINIA CONSUMERS.

YOUR RECOMMENDED RULE ATTEMPTS TO TRACK REFUNDS AND REPLACEMENTS. THE BOUNDARIES ARE DRAWN NARROWLY HERE. SOMETIMES THE CUSTOMER IS WRONG; SOMETIMES COMPROMISES ARE REACHED. YOUR SECTION DOES CALL FOR A CROSS SECTION, BUT IT LEAVES THE IMPRESSION YOU ARE REALLY LOOKING FOR BUYBACKS. LET ME SUGGEST THAT THERE IS ANOTHER WAY OF LOOKING AT THE MECHANISM'S FAIRNESS.

AAA HOLDS THE VIEW THAT REFUNDS AND REPLACEMENTS ARE NOT THE ONLY RELIABLE INDEXES FOR A THIRD PARTY ARBITRATION MECHANISM. IN FACT, THEY ARE ONLY A SMALL PERCENTAGE OF THE TOTAL CASE HANDLING.

A BETTER INDEX CAN BE FOUND IN THE PERFORMANCE BY THE CAR MANUFACTURER ONCE THE PROBLEM PASSES FROM THE DEALER'S JURISDICTION TO THAT OF THE MANUFACTURER AND THE MECHANISM.

THE MANUFACTURER/DEALER RELATIONSHIP IS NOT A SIMPLE COMMAND AND CONTROL RELATIONSHIP. DEALERS ARE PRIVATE ENTREPRENEURS AND ARE ABLE TO OPERATE THEIR BUSINESSES AS THEY SEE FIT.

MANUFACTURERS HAVE VARIOUS SANCTIONS AND INCENTIVES TO USE AS THEY WORK WITH THEIR DEALERS.

MOST MANUFACTURERS HAVE INSTITUTED CUSTOMER SATISFACTION SYSTEMS THROUGH WHICH THEY CAN TAKE JOINT RESPONSIBILITY WITH DEALERS FOR REPAIR RELIABILITY.

AAA SUGGESTS THAT YOUR REGULATORY RULE SHOULD ACKNOWLEDGE THE TRANSFER OF JURISDICTION INVOLVED WHEN A MANUFACTURER, UNDER THE SUPERVISION OF A MECHANISM, TAKES OVER DIRECT RESPONSIBILITY FOR A REPAIR PROBLEM.

REFUNDS AND REPLACEMENTS SHOULD BE OPTIONS FOR A MECHANISM <u>AFTER</u> IT HAS SUPERVISED ONE FINAL REPAIR EFFORT PERFORMED PRIMARILY BY THE <u>MANUFACTURER</u>.

YOU MIGHT CONSIDER THE CREATION OF A CATEGORY CALLED "MANUFACTURER/MECHANISM SUPERVISED FINAL REPAIR" AND DEFINE IT AS A PRIOR RESORT TO A REFUND OR REPLACEMENT. IT WOULD BE A REALISTIC INDEX AND WOULD ADDRESS THE GREATER NEED OF THE CONSUMER TO HAVE HIS/HER VEHICLE REPAIRED CORRECTLY.

(3) YOUR PROPOSED RULE CHANGE NUMBERED 3.1.12 IMPLICITLY GUARANTEES THE RIGHT OF ORAL PRESENTATION.

THIS IS AN IMPORTANT CRITERION FOR THE SAFEGUARDING OF CONSUMER RIGHTS AND IT SHOULD BE OFFERED BY MANUFACTURERS.

MANUFACTURERS WITH A SIGNIFICANT CASE VOLUME NOTE THAT THEY WOULD NOT BE ABLE TO ADHERE TO A 40 DAY DECISION TIMELINE IF EVERY CONSUMER WERE GIVEN A RIGHT TO AN ORAL PRESENTATION. SHEER LOGISTICAL PROBLEMS MAKE THIS A BURDEN ON THE MANUFACTURER. THERE IS SOME VALIDITY TO THIS CLAIM.

AAA HAS ADDRESSED THIS ISSUE IN ITS ARBITRATION PROGRAM FOR TOYOTA MOTOR SALES, USA, BY INCLUDING THE CUSTOMER IN THE FIELD INVESTIGATION CONDUCTED BY OUR TECHNICAL EXPERTS. THE CUSTOMER IS INVITED TO BE PRESENT AT THE TIME OF THE INSPECTION AND IS FREE TO MAKE ANY POINT HE OR SHE WISHES TO MAKE. AAA STRESSES THE VALUE OF FIELD EVALUATION AND RECOMMENDS IT AS THE CENTRAL PART OF A MECHANISM'S DECISION.

MOREOVER, WE OFFER THE RIGHT TO AN ORAL HEARING AS WELL AND TOYOTA HAS AGREED IN ADVANCE TO PERMIT THE HEARINGS TO BE HELD. WE BELIEVE IT'S A POLICY TO BE FOLLOWED.

WE HAVE NO FURTHER COMMENTS ON THE PROPOSED TEXT ITSELF.

WE DO, HOWEVER, COMMEND YOU FOR YOUR EFFORTS TO KEEP EVOLVING A LEMON LAW THAT STAYS ABREAST OF THE NEWEST UNDERSTAND-

INGS IN THIS CHANGING FIELD. WE HOPE YOU WILL TAKE ACCOUNT OF THE REGULATORY NEGOTIATION NOW OCCURRING IN THE FEDERAL TRADE COMMISSION FOR THE REVISION OF FTC RULE 703.

WE SUGGEST THAT GROWING DEALER PARTICIPATION IN THE VARIOUS MANUFACTURERS' CUSTOMER SATISFACTION SYSTEMS IS A TREND THAT COULD HAVE AN IMPACT ON THE WAY YOUR REGULATION IS WRITTEN AND THE WAY IT EVOLVES.

DEALERS WILL BE FIRST TO TELL YOU THAT A SATISFIED CUSTOMER IS APT TO BE A REPEAT CUSTOMER. IT IS IN THEIR VESTED INTEREST TO REPAIR VEHICLES RIGHT THE FIRST TIME.

WE HOPE YOUR LEMON LAW WILL CONTINUE TO EVOLVE AND THAT IT WILL EXPAND POSITIVE INCENTIVES FOR DEALERS TO TAKE A STRONGER ROLE IN HANDLING CUSTOMER PROBLEMS.

IN THE END, DEALERS, MANUFACTURERS, MECHANISMS, AND MOST OF ALL, CONSUMERS, WILL BENEFIT FROM A GROWING AND CHANGING SYSTEM FOR CUSTOMER SATISFACTION.

Milton Hamarick
Box 1525
Lumberport WV

9/25/86

1. Battery replaced
2. Hood didn't fit - still doesn't
3. Rug replaced. - Didn't fit & still don't
4. air - condition leaks inside Car. Still does 2nd rug mildewed & musty
5. Replaced fronts struts
6. Replaced rear shocks
7. Exaust fell off
8. Windshield not glued in. water ran in car when it rained
9. Chrome came loose & had to be put back
10. At 11,000 miles car started blowing black smoke & surging. Was in the shop as high as 10 days at a time. In shop 7 diffe times for same thing.
11. Was getting 35-36 M.P.H. when car first brought. Now at 19 M went as low as 12 M.P.H.
12. Breaks lights went out. Repla rent at a price of $93.00 which

we paided. Went out again
Wireup wrong at factory.

13. Replaced fuel tank
14. " " pump
15. " " Regulator
16. " " Injection
17. P.S.I on fuel pump is standard at 14 - 14.5 P.S.I. Was 32 P.S.I.
18. Big pieces of Charcoal found in fuel injection system
19. Drove to New Orleans & back, gas mileage 12 M.P.H.
20. Drove to Ft. Jackson. S.C & car stop on us and had to be towed back.
21. Trim fell off doors
22. Cann't adjust seat, parts had been ordered for about a month. Claim they cann't get them.
23. Car still stalls out & surge. Stop for traffic light & car shakes the Hell out you.

24. Mirror fell off windshield

Customer Arbitration Board Operating Procedures

A. Participants:

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

B. Covered Products

Any Chrysler Motors vehicle and/or a Chrysler Mopar part covered by Chrysler Motors Limited Warranties.

C. Notice To Consumers:

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

D. Operating Procedure:

1. ***The Mechanism.*** The mechanism, as defined by Rule 703, shall be the Chrysler Customer Arbitration Program, headed by the National Coordinator. Within the Program, all decisions pertaining to individual cases and disputes shall be rendered by the Board serving the area in which the customer lives.

2. ***Covered disputes.*** All disputes regarding a service-related problem under Chrysler Motors Limited Warranty are suitable for arbitration. Not suitable for arbitration and not within the jurisdiction of the Program are non-warranty related disputes, including disputes arising under a related service contract, or disputes which are already the subject of litigation, disputes regarding fires, accidents, sales-related disputes, disputes regarding non-Chrysler Motors products, disputes regarding design of a vehicle or part, or disputes concerning alleged obligations under an implied warranty. Boards shall consider only disputes involving customers located within the state boundaries or geographic areas served by the Board.

3. ***Submission of dispute.*** A customer should submit a covered dispute directly to the Board serving his/her area or to the warrantor.

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

b. ***Cases submitted to the Board.*** Upon notification by a customer of a dispute for submission to the Board (whether the dispute is submitted directly to the Board or after submission to the warrantor), if the information submitted by the customer is insufficient the Executive Secretary shall immediately send the customer a form containing spaces requesting the information which the Board may require for prompt resolution of warranty disputes, or requesting information which the Board may require in order to ascertain whether it has jurisdiction over the warranty dispute (a complaint form may be sent if not used by the customer).

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

5. ***Acknowledgement of Receipt of Complaint.*** The Executive Secretary shall acknowledge receipt of a customer's completed complaint form within ten (10) days of receipt of said form. If the Executive Secretary believes that the Board has jurisdiction over the matter, said acknowledgement shall advise the customer of the probable jurisdiction of the Board over the matter. In that case, the Secretary shall schedule the matter for a prompt hearing and promptly advise the customer.

If the Board's jurisdiction is not apparent from the information contained in the complaint, the Executive Secretary shall solicit further necessary information and/or pertinent data prior to the Board's review.

If the Executive Secretary, after receipt of all information requested from the customer, does not believe the Board has jurisdiction over a submitted matter based upon the jurisdictional guidelines to which Chrysler has agreed, the Secretary shall inform the customer within ten (10) days of the date upon which the last communication from the customer is received.

6. ***Board Investigation.*** Upon receipt of a complaint, the Executive Secretary shall solicit all relevant information from Chrysler and the dealer. If in the opinion of the Executive Secretary the customer has submitted insufficient relevant information, the Executive Secretary will also solicit additional information from the customer prior to the Board's review. If conflicting or inconsistent information is supplied, the Executive Secretary will inform the customer of this fact, and allow the customer an opportunity to respond prior to the Board's meeting. Each Board Member shall be furnished with the complete file, including all correspondence, on the matter at least five (5) days prior to the scheduled hearing in the matter. If a Member of the Board, upon inspection of the file (include adverse information requirements), desires inspection of the affected vehicle, the Executive Secretary shall arrange to make the vehicle available for inspection (a loaner vehicle shall be provided to the customer, if necessary, without charge). If, in the Executive Secretary's opinion, the customer cannot present his or her case adequately or completely because of an inability to express the problem in writing and/or a language barrier exists, the customer should be contacted and the suggestion offered that he or she seek aid from either a friend, relative, or one of the many agencies that exist to provide this type of public service.

7. ***Board Organization.*** The Board shall not charge customers any fee for use of the Board. The Board shall consist of three voting members: **one consumer advocate, one person from the general public, and one ASE (Automotive Service Excellence) certified technician.** An Executive Secretary shall be selected from and by the voting members of the Board. **A Chrysler dealer may serve as a dealer observer,** provided, however, that if the dealer observed is involved in a dispute, he/she shall not sit in with the Board during the Board's consideration of that dispute. The **Zone Coordinator** shall serve to coordinate the procedural aspects of case handling. Board members shall be paid reasonable expenses

for their participation on the Board, including costs of necessary investigation, or on a per diem basis in lieu of actual expenses. Board members will **serve for a period of one year** by mutual agreement with the Zone Coordinator, a Board member **would be allowed to serve a consecutive term. No more than three (3) terms shall be served by any Board member. No two (2) terms shall end within any four-month period.**

E. Board Operation:

1. The Board or one of its members shall investigate, gather and organize all information necessary for a fair and expeditious decision in each dispute. Both the warrantor and customer shall fully cooperate with the Board's investigation. When any evidence gathered by or submitted to the Board 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 relevant issues, the Board shall investigate these issues. When information which is submitted to the Board tends to contradict any information submitted by a party to the dispute, the Board shall clearly, accurately, and completely disclose to both parties the contradictory information (and its sources) and shall provide both parties an opportunity to explain or rebut the information and to submit additional materials. The Board shall not require any information not reasonably necessary to decide the dispute.

2. *Mediation.* If the customer has not previously contacted Chrysler concerning a problem, or if there is no dispute concerning the customer's request (including the relief requested), then the matter may be referred to the Zone for mediation. The customer may then be contacted by Chrysler to try to reach a satisfactory resolution. If the customer and Chrysler reach agreement concerning the dispute, no further Board action is required. If an agreement cannot be reached, then the matter may be referred by the customer back to the Board for hearing and decision.

3. If the parties do not settle the dispute prior to Board consideration, the Board shall, as expeditiously as possible, but at least within forty (40) days of notification of the dispute:

   i. render a fair decision based upon relevant information (each decision of the Board shall include remedies appropriate under the circumstances and shall state a specified reasonable time for performance of said remedy):

   ii. disclose to the warrantor its decision and the reasons therefor; and

   iii. disclose to the customer its decision, the reasons therefor, and inform the customer that if he or she is dissatisfied with the Board's decision or warrantor's eventual performance, legal remedies may be pursued; inform the customer that the Board's decision is admissible as evidence in any subsequent legal proceeding regarding the dispute; and inform the customer that he or she may obtain, at reasonable cost, copies of all Board records relating to the customer's dispute.

4. The Board may delay the performance of its duties beyond the forty (40) day time limit where the period of delay is due solely to failure of the customer to provide promptly his or her name and address, brand name and model number of the product involved, a statement as to the nature of the defect or other complaint, and other relevant information requested by the Board.

5. The Board shall not allow any oral presentations, except when specifically mandated by state law, (for example: Kentucky Rev. Stat. §367.867), but may, if necessary, inspect the product involved.

The Board shall be empowered to investigate fully the facts it deems relevant to the decision on the dispute.

6. If the warrantor is obligated to perform any obligations, either as a party to a settlement with the customer reached subsequent to the submission of the dispute to the Board or as a result of the decision of the Board, the mechanism shall ascertain from the customer within ten (10) working days of the date for said performance whether said performance has occurred.

7. The warrantor shall at all times act in good faith.

8. Decisions of the Board shall be decided by majority vote of the voting members.

F. Record Keeping

1. The Zone Coordinator shall maintain the records of each dispute submitted to the Board, which shall be made available to the Board as requested, and which shall include:

i. the name, address, and telephone number of the customer;

ii. the name, the address, telephone number, and contact person of the warrantor;

iii. brand name and model number of the product involved;

iv. the date of receipt of the dispute and the date of disclosure to the customer of the decision;

v. all letters or other written documents submitted by either party; all other evidence collected by the Board relating to the dispute, including summaries of relevant and important portions of telephone calls and meetings between the Board and any other person;

vi. the decision of the members, including information as to date, time, and place of the meeting, and the identity of members voting; a copy of the disclosure to the parties of the decision; copies of follow-up letters (or summaries of relevant and important portions of follow-up telephone calls) to the customer and responses thereto;

vii. any other documents and communications (or summaries of relevant and important portions of oral communications) relating to the dispute; and, if a settlement of the dispute is reached prior to the Board's decision, information regarding said settlement.

2. The Zone Coordinator shall be responsible for maintaining an index of each dispute grouped under brand name and subgrouped under product model.

3. The Zone Coordinator shall maintain an index which will demonstrate all disputes in which the warrantor has failed to comply with the Board's decision.

4. The Zone Coordinator shall maintain an index which will show all disputes in which the decision was delayed beyond forty (40) days.

5. The Zone Coordinator shall semi-annually compile and maintain statistics which show the number and percent of disputes in each of the following categories:

i. decided by the Board and Chrysler has complied;

ii. decided by the Board, time for compliance has passed, and Chrysler has not complied;

iii. decided by the Board and time for compliance has not yet occurred;

iv. decided by the Board adverse to customer;

v. no jurisdiction;

vi. decision delayed beyond forty (40) days because of customer's failure to submit required information in a timely manner;

vii. decision delayed beyond forty (40) days for any other reason;

viii. pending decision.

6. The Zone Coordinator shall retain all records specified in this paragraph for at least four (4) years after the final disposition of the dispute.

G. Audits

At least once a year, the Mechanism will have an audit (random sampling technique) conducted which meets the requirements of 16 CFR 703.7 and the report of such audit shall be submitted to the Federal Trade Commission and shall be made available to any person at reasonable cost. The auditor shall delete names of the parties to the disputes, and identity of products involved, from the audit report. No auditor may be involved with a Board or the Program, as a warrantor, sponsor or member, or employee or agent thereof, other than for purposes of the audit.

H. Openness of Records and Proceedings:

The statistical summaries specified in paragraph F and audits specified in paragraph G shall be available to any person for inspection and copying. All other records of the mechanism shall be kept confidential. Meetings of the members to hear and decide disputes shall be open to observers, but cameras and/or recording equipment shall not be permitted. The identity of the parties and products involved in disputes shall not be disclosed at meetings if other than board members are present. Upon request the Program shall provide, to any party to a dispute, access to all records relating to the dispute. Copies of any records relating to the dispute shall be made available to a party to the dispute at a reasonable cost. Upon request by any person, a Board or the Program shall make available information relating to the qualifications of Board members and the Program's staff.

CUSTOMER ARBITRATION BOARD APPLICATION

Did you contact dealership management regarding your complaint? Yes ☐ No ☐
Did you contact the local Chrysler Zone Office regarding your complaint? Yes ☐ No ☐
Have you met with the Factory Representative regarding your complaint? Yes ☐ No ☐

Your Name ______________________________ Date ______________

Address ____________ City ____________ State ________ Zip ________ Bus. Phone ____________

Res. Phone ____________

Name of Selling Dealer ______________________ City ____________ State ________

Name of Servicing Dealer ______________________ City ____________ State ________

Vehicle: Year ________ Make ______________ Model ______________

Identification No. ______________________________ Delivery Date ______________

Is this a leased vehicle? Yes ☐ No ☐ If yes, who owns it? ______________________

Mileage at time of dispute ______________ Current Mileage ______________

Very Important: Be very specific in describing your current unresolved problems. Include copies of any receipts, service repair orders, complaint letters to the dealer or Zone Representative and any other relevant documents.

Nature of current unresolved problem:* ______________________________

____

____

____

____

Number and dates of repair attempts (if any): (1) (2) (3)

If more, specify ______________________________

What do you feel should be done to resolve your problem? ______________________________

____

____

ARBITRATION AGREEMENT

I understand that I am not bound by the decision of the Board unless I accept it. I also understand, however, that if I accept the Board's decision, the Chrysler dealer involved and Chrysler will be bound by the Board's decision. I further understand neither I nor the dealer will attend or be represented by legal counsel at the Board hearing on this dispute. If I am dissatisfied with the Board's decision or the dealer's or Chrysler's eventual performance, I understand that I may pursue other legal remedies, including the use of small claims court. I understand, however, that whether or not I accept the Board's decision, its decision is admissible in any subsequent legal proceeding concerning the dispute. This dispute settlement procedure does not take the place of any state or federal legal remedies available to me.

Signed by ______________________________

*Please use additional sheets of paper as necessary to describe these items.

EXHIBIT A

CUSTOMER REQUEST ACKNOWLEDGEMENT

Dear (Customer)

The Customer Arbitration Board has received your request for arbitration and assigned it the case number referenced above.

Your appeal appears to fall within the jurisdiction of the Board and will be heard at the next regularly scheduled monthly meeting of the Board.

You may be contacted by the warrantor prior to the hearing date in an attempt to mediate your complaint. Your cooperation with Chrysler and the dealer in this mediation process is strictly voluntary, but it may prove to be beneficial in resolving your problem. You may decline to participate and still be within your rights to the Board's hearing and decision.

We will mail the Board's decision to you within five (5) days after the hearing. Along with the decision statement, we will include an acceptance agreement which we request you sign and return to the Board.

We appreciate having this opportunity to serve you, and trust that the conclusion will be satisfactory to all parties concerned.

Sincerely,

Executive Secretary

CUSTOMER REQUEST ACKNOWLEDGEMENT

Dear (Customer)

The Customer Arbitration Board has received your request for arbitration and assigned it the case number referenced above.

In order to determine whether the Board has jurisdiction over your complaint, we will require the following information.

1. The vehicle identification number of your vehicle ______________________.
2. The original delivery date of the vehicle ______________________.
3. The mileage on the vehicle at the time your complaint originated ______________.
4. Legible copies of all repair orders or any pertinent documents that may apply to your case. Please retain copies of all documents for your file.
5. Present mileage ______________________.
6. Telephone number where you may be reached between 8:00 AM - 5:00 PM Monday thru Friday:

   Home number ______________ Work number ______________.
7. Selling dealer ______________________.
8. Servicing dealer ______________________.

On the basis of the information requested above, the Board will make a prompt decision whether it has jurisdiction over your dispute. You will be notified of that decision within 10 days of the Board's receipt of the requested information.

Sincerely,

Executive Secretary

EXHIBIT C

CUSTOMER DISPUTES NOT WITHIN THE BOARD'S JURISDICTION

• Not suitable for arbitration and not within the jurisdiction of the Board are non-warranty related disputes. • Disputes arising under a related service contract. • Disputes which are already the subject of litigation. • Disputes regarding fires or accidents. • Sales-related disputes. • Disputes regarding non-Chrysler Corporation products. • Disputes regarding design of a vehicle or part. • Disputes concerning alleged obligations under an implied warranty. • Boards shall consider only disputes involving customers located within the state boundaries or geographic area served by the Board.

EXHIBIT D

DEALER'S RESPONSE TO REQUEST FOR ARBITRATION

Please respond to the customer's request for Arbitration using this form, and return the original to the Board within five days of its receipt. Send the duplicate to the customer at the above address at the same time. The triplicate copy is for your file.

Description of complaint: ______________________________

____

____

____

Service provided by dealership. Attach copy of repair orders and all customer correspondence: ______

____

____

Other actions taken to overcome dissatisfaction: ______________________________

____

____

____

Comments: ______________________________

____

____

____

____

____

The above information is true, correct and complete. I have sent a duplicate of this form and documents to the customer.

______________________________ DATE

______________________________ SIGNATURE/TITLE

Notice to customer: If you wish to respond to this statement, please respond to the Board within five days from its receipt.

83-100-7050

1-Board 2-Customer 3-Dealer File

EXHIBIT E

STATEMENT OF DECISION*

CUSTOMER ARBITRATION BOARD

Dear Customer:

The Customer Arbitration Board reviewed your Case Number ____________, on (date): ____________.

The Board reached the following decision:

STATEMENT OF DECISION: (To include decision and reasons; commitments, instructions, and timing, if applicable):

____

____

____

____

- Please detach the lower portion of this memo and mail it to the Board by (date): ____________
- We appreciate having this opportunity to serve you and trust that the decision of the Board is equitable to all concerned.
- You may obtain, at reasonable cost, copies of all Board records relating to your dispute.
- If you have any questions regarding the decision, please write to:

____________________, ____________________, ____________________

Sincerely,

cc: Dealer

Executive Secretary

I understand that I am not bound by the decision of the Customer Arbitration Board regarding my Case Number ____________________, reviewed on ____________________, unless I accept it, and that if I am dissatisfied with the Board's decision or the dealer's or Chrysler's eventual performance, I may pursue other legal remedies if I choose, including the use of small claims court. Whether or not I accept the Board's decision, however, its decision is admissible in any subsequent legal proceeding concerning the dispute.

I also understand that if I accept the Board's decision, the Chrysler Motors dealer involved and the Chrysler Motors will be bound by the Board's decision.

I accept the Board's decision ☐

I do not accept the Board's decision ☐

Signed: ____________________ Date: ____________________

**To be used only when a decision has been made. It is not to be used for cases out of jurisdiction.*

EXHIBIT F

CHRYSLER MOTORS

The Customer Arbitration Board, Chrysler Corporation, and your local authorized Chrysler Corporation dealer are working to resolve automotive service problems more rapidly and fairly.

As a customer who requested arbitration, you can help in evaluating our effort. We ask that you take a few minutes of your time to complete this questionnaire regarding the handling of your problem under the Chrysler program.

1. How satisfied were you with the length of time it took for the Arbitration Board to give you its decision?

Completely Satisfied	Somewhat Satisfied	Neither Nor	Somewhat Dissatisfied	Completely Dissatisfied	N/A
☐	☐	☐	☐	☐	☐

2. How satisfied were you with the Board's decision?

Completely Satisfied	Somewhat Satisfied	Neither Nor	Somewhat Dissatisfied	Completely Dissatisfied	N/A
☐	☐	☐	☐	☐	☐

3. How satisfied were you with the dealer's handling of your inquiry?

a) Before the Board made their decision?

Completely Satisfied	Somewhat Satisfied	Neither Nor	Somewhat Dissatisfied	Completely Dissatisfied	N/A
☐	☐	☐	☐	☐	☐

b) After the Board made their decision?

Completely Satisfied	Somewhat Satisfied	Neither Nor	Somewhat Dissatisfied	Completely Dissatisfied	N/A
☐	☐	☐	☐	☐	☐

How satisfied were you with Chrysler's handling of your inquiry?

a) Before the Board made their decision?

Completely Satisfied	Somewhat Satisfied	Neither Nor	Somewhat Dissatisfied	Completely Dissatisfied	N/A
☐	☐	☐	☐	☐	☐

b) After the Board made their decision?

Completely Satisfied	Somewhat Satisfied	Neither Nor	Somewhat Dissatisfied	Completely Dissatisfied	N/A
☐	☐	☐	☐	☐	☐

5. All things considered, how satisfied were you with the Arbitration process?

Completely Satisfied	Somewhat Satisfied	Neither Nor	Somewhat Dissatisfied	Completely Dissatisfied	N/A
☐	☐	☐	☐	☐	☐

6. Were you treated courteously by:

	Yes	(Please Specify) Name	No	(Please Specify) Name
Dealer Representative	☐	____________	☐	____________
Chrysler Representative	☐	____________	☐	____________

7. Do you feel the Chrysler Arbitration process is a worthwhile public service and should be continued?

Yes ☐ No ☐

8. Any additional comments you have as to how we might improve this process, as well as, your feelings about its current operation are appreciated. ________________________________

____

____

EXHIBIT G

FIELD INVESTIGATION REQUEST

CUSTOMER ARBITRATION BOARD

Date: ______________

Assigned To ____ Case No. __________

With reference to subject Customer Arbitration Board Case:

1. __________ Review attached Arbitration Board file.
2. __________ Obtain legible copies of dealer's service file and attach to your closing report.
3. __________ Obtain legible copies of dealer's sales file and attach to your closing report.
4. __________ Meet with owner and/or owner's representative and complete Mediation Report (Exhibit K 1).
5. __________ Inspect and/or road test car.
6. __________ Take appropriate action based on all available information.
7. __________ Perform gas mileage test with primary driver of vehicle: a) __________ you driving car, b) ______________ owner driving car.
8. __________ Contact me prior to making a final decision.
9. __________ Each complaint item in questionnaire must be addressed in a Vehicle Report Form.
10. __________ Document pertinent information and your handling in a Vehicle Report Form.
11. __________ Closing report must arrive in Zone Office by ______________________________

    ____

    ____

Your usual cooperation in matters of this nature will be greatly appreciated.

Sincerely,

Zone Coordinator
Chrysler Representative

EXHIBIT H

MEDIATION AND/OR AGREEMENT FORM

CUSTOMER ARBITRATION BOARD

Date: ______________________

Case No: ______________________

TO: ALL CUSTOMER ARBITRATION BOARD MEMBERS

SUBJECT: VEHICLE INSPECTION AND/OR REPAIR

VIN: ______________________

Complaints as recorded in questionnaire date ______________________

1. ______________________
2. ______________________
3. ______________________
4. ______________________
5. ______________________
6. ______________________
7. ______________________

The vehicle was inspected by ______________________ on ______________________
d the following has occurred

A. Following items were repaired prior to the vehicle's inspection:
(Circle approp. nos.) 1 2 3 4 5 6 7

B. Following items to be repaired 1 2 3 4 5 6 7
BY ______________________ AT ______________________
(Date)

C. Repair responsibility

		1	2	3	4	5	6	7
Repair responsibility	1) Chrysler	1	2	3	4	5	6	7
	2) Dealer	1	2	3	4	5	6	7
	3) Owner	1	2	3	4	5	6	7

D. Additional comments: ______________________
____
____

Check one or both ☐ and circle appropriate items:

☐ I am satisfied with the above handling or proposed resolution of my complaints (1 2 3 4 5 6 7) and **request my case be closed** by the Customer Arbitration Board on these items. Chrysler, the Dealer, and I agree the repair responsibility will be assumed as indicated above. I understand that I may file a new case with the Board if I am dissatisfied with the repairs made on my vehicle.

☐ I am dissatisfied with the above handling of my complaints (1 2 3 4 5 6 7) and request the Board's hearing to proceed as scheduled on these items.

Signed: ______________________ Signed: ______________________
CHRYSLER REPRESENTATIVE CUSTOMER

Date: ______________________ Date: ______________________

83-100-7048 **1–Board 2–Zone 3–Customer**

EXHIBIT I

NOTES

NOTES

WEST VIRGINIA LEGISLATIVE RULES
ATTORNEY GENERAL
CHAPTER 46A-6A
SERIES I

- - - - - - - - - - - - - - -X

In the matter of:

THIRD-PARTY DISPUTE
MECHANISMS

- - - - - - - - - - - - - - -X WHEELING, WEST VIRGINIA

A PUBLIC HEARING ON THE ABOVE MATTER TAKEN ON MARCH 24, 1987, COMMENCING AT 10:30 A.M. AT WEST VIRGINIA INDEPENDENCE HALL, WHEELING, WEST VIRGINIA.

CHARLIE BROWN, WEST VIRGINIA
ATTORNEY GENERAL
MODERATOR

SPEAKERS PRESENT:
FR. AL JOLSOM
MR. JOHN MARKOWITZ
JAMES M JORDAN
BERNARD M OLAKO
RONALD W KASSERMAN, JR., ESQUIRE
LOUISE DENNIS

Stenographically Reported by:
Ms. Cassie Jo Maynard, CCR-CSR

DATA PERFECT, INC.
COURT SUPPORT SYSTEMS
60681 RAMSEY ROAD
JACOBSBURG, OHIO 43933

INDEX

STATEMENT OF:

P R O C E E D I N G S

MR. BROWN: I want to welcome everyone to this panel. I want to convene the hearing on the Attorney General's regulations on our state lemon law. That lemon law enacted by our Legislature is for all new car buyers to get what they deserve. That is, that a car that is not a lemon, that is a car that meets the standards that the manufacturers have given us through their advertising, through their promotions, through their own summary of what their car is worth. To do that, of course, means that the consumers do not have to have lemon cars, do not have to have cars that do not meet the standards that all manufacturers have already given us.

This is an open hearing and anyone, any member of the public who wants to may come and testify. The goals I have in writing these regulations are two: One is that we have regulations that where the manufacturer will have to have an arbitration system that is fair. One that meets my standards. They will not get their arbitration system certified unless they meet my standards. The second goal is to put these complaints through the arbitration system first, all system complaints, so we avoid the courtroom, we avoid the cost, the time, the expense to the consumer and indeed the manufacturer of having the Court room as the first option. The courtroom should always be the very last option. That's the way we operate consumer protection. That's the way we want the lemon law to work. It will work faster for the consumer in a less costly way if we have an arbitration system that is fair and works.

I'm going to have Father Jolsom as our first hearing participant. And we will have Miss Hoover from my office to summarize the goals of where we're working to serve the members of the public as best we can. Father Jolsom, come here and be seated and I'll be sitting over here.

//STATEMENT OF AL JOLSOM//

DR. JOLSOM: Thank you very much, Attorney General Charlie Brown, for the opportunity to address this hearing.

My name is Father Al Jolsom, Dean of Business of Wheeling College, also a member of the Upper Ohio Valley Reindustrialization Committee that the Attorney General's office has also helped very much in the public interest on the lemon law. At the same time I would like to represent Dr. Hartung who is President of the West Virginia Consumer Protection League which happens to be ill this morning and could not be here. Myself and the organizations I represent and Dr. Hartung are very much in favor of the law, the procedures which the Attorney General has proposed. I would say that this is a typical sort of move for the protection of the consumer, of the little person. I'm especially interested because what is right is being backed up by the legal procedures because I think this is right that the consumer be protected. It's the small person who needs this sort of help and particularly in this bill, as the Attorney General mentioned in his opening remarks, I think we're very pleased about the common sense procedural rules for arbitration to eliminate the cost of litigation which in many cases the small person, the consumer is not able to do. So I'm very favorable toward this law and I appreciate very much the opportunity to give my support here at this hearing and any other way that is needed.

I thank you for this opportunity to speak.

MR. BROWN: Thank you, Father Jolsom.

DR. JOLSOM: Thank you.

MR. BROWN: I'm just going to go -- we'll just have Miss Hoover later since we've had people waiting. We'll just go right through the list and have John Markowitz. Come here and you may either sit or stand whichever you're more comfortable doing.

//STATEMENT OF JOHN MARKOWITZ//

MR. MARKOWITZ: Anyway, my name is John Markowitz and I thought we had a lemon law. Anyway, I went through this arbitration thing and I feel like somewhere there should be a dead line as to how long this kind of thing can be prolonged. I've been fighting General Motors for a year and a half about a car, a new car that I bought. My new car has a problem and it was taken back to the dealer twenty-five times. They can't fix it. I've taken my case to the arbitration and Better Business Bureau in Pittsburgh. I've taken my case to two lawyers and they recommended that I let Heneral Motors do everything possible to fix my car. I let them do it. The problem is still there. They haven't solved it. I am now awaiting a reply from the Better Business Bureau as to what they're going to do about it. I asked them for my money back or fix the car. I wrote them a letter over a month ago and still haven't heard anything. How long is a guy supposed to put up with this? I've been at this like I said for a year, year and a half.

MR. BROWN: If you're at a point I could reply I would like to do that right now because that's one of the reasons we're holding this hearing is to put the arbitration system in a time frame. Our arbitration proposal that we're having hearing on today would require the manufacturer who submits a plan to finish their work in forty days, that we will have a forty day time frame from start to finishing, and it will be over. That's one of the big complaints we're hearing now from consumers such as you, Mr. Markowitz, that the process takes too long and our message to the manufacturer is if you want our approval you've got to do it within forty days.

I might add one of the hardships we face in West Virginia is we don't even have a Better Business Bureau in our state. Fortunately there's one somewhat near by Wheeling in Pittsburgh. We have invited the Better Business Bureau to assist in complaints and set up an office in West Virginia. They haven't yet done so. We hoped they would. But our proposal tries to take care of this seeming interminable delay by having a forty day system. Logically forty days would mean -- that's why we have arbitration so we don't have to take as long as it takes in Court. Okay.

MR. MARKOWITZ: Any way, my car I feel has a life threatening system. It has a noise and whine and the thing it was in the transmission. They put two transmissions in, new ones. Then they said it was the front wheel bearings. In six months they put two front wheel bearings in that car. I'm afraid to drive that car. They won't do nothing about it.

Thank you.

MR. BROWN: Thank you, sir. I appreciate you coming in to tell us this.

(Louise Schmitz and Rita Mulvey declined to speak)

Okay. James Jordan is next.

By the way, I don't know if everybody knows this, we have a one day a month consumer office here in Wheeling. We come here the first Tuesday of the month. We go to the United Steel Workers Hall at 2084 National Road, Wheeling. So we're up here and you can see Miss Hoover or someone from our staff is there from 10 to 2 the first Tuesday of every month. Also, you can call us on our toll free line any week day, any week day of the year, any week day. But I did want you to know that we're in town at least on a monthly basis. Come on through Mr. Jordan.

//STATEMENT OF JAMES M JORDAN//

MR. JORDAN: Sir, my complaint is on a new automobile.

MR. BROWN: State your full name. And I forgot to do it with Mr. Markowitz to get his name and address and I would like to just, I can put it in the record if we get that. What's your address?

MR. MARKOWITZ: I have a mailing address Post Office Box 6414, Wheeling West Virginia.

MR. BROWN: M A R K O W I T Z.

MR. MARKOWITZ: Yes, sir.

MR. BROWN: Mr. Jordan, why don't you state your name and address?

MR. JORDAN: My name is James Jordan, 43 Stratford

Road, Wheeling, West Virginia.

MR. BROWN: Yes, sir.

MR. JORDAN: I have a problem with a new automobile that I feel is very, very dangerous because when you're driving the automobile on the highway or in town it just quits. We have come very, very close to being involved in an accident over this purpose, for this reason.

The car has been taken back to the dealer several times. At one time it was there for a period of two months. I used to drive by there once in a while to see if the car was moved. I think it sat in one place for two months. They returned the car and said it was finished, it would be all right. Well, this car has a tendency, the fact you can drive it for a thousand miles and it won't do it. Then when you're out on the road it will just quit. Like I said the car has been back several times and they either cannot or will not repair it. I'm not complaining about a noise or little jiggle or whatever. I would like to have the car repaired so it will not stall or stop when it's being driven.

MR. BROWN: All right, sir. Obviously it's a very important concern. Thank you.

MR. JORDAN: Now, I have another concern about this car. The dealer did talk to me about trading it in. What are they going to do with this car? Are they going to sell it to some other unsuspecting soul whose liable to have an accident? That is one of my big problems. So I don't know what else to say. What is my recourse?

MR. BROWN: Your recourse is both, is twofold. One is for all consumers who buy any item in West Virginia you have the general warranty law which says a product must meet the standards of merchantibility, must meet the standards that you would expect of a new car. The other is our lemon law. You can make the complaints, you can go directly to the Court or you can go directly to arbitration. We're trying to make the arbitration system work better and be the first step in solving any lemon law problem or the first step, formal step after an effort to mediate and solve the problem. If that is a recurring problem the lemon law may well fit what is a remedy available to you directly.

MR. JORDAN: Well, it stalled on me twice on the way down here today.

MR. BROWN: How long ago did you buy it?

MR. JORDAN: December of '84, it's a '85 Chrysler. Another thing is that's I believe that the Chrysler Corporation has put out some letters on this type of car because at one time somebody in a dealership tipped me off to the fact that there was a letter out that there should have been some work done on the car.

MR. BROWN: A recall letter?

MR. JORDAN: Right.

MR. BROWN: Do you think you would fit within the recall time frame? Do you know?

MR. JORDAN: They have had it back in since then and they have done some work to it to make the car run better. But it never did. It still quits.

Now, another problem I have is if I continue to drive the car and I do get, and I am involved in an accident where I am hit from the rear that's going to create a lot of hassle.

MR. BROWN: Yes. For them.

MR. JORDAN: For everybody.

MR. GROWN: For them and you both, yes.

MR. JORDAN: That's right.

MR. BROWN: Okay. Well, we'd be happy to send you the lemon law and explain to you its application to your situation. That's why I brought with me to the right our number one consumer complaints mediator and consumer representative Kathy Hoover and she'll be testifying at the conclusion of the hearing on the specific efforts that we're making to make the lemon law work better.

MR. JORDAN: Well, I'm thinking about just parking the car and waiting but that means I have to go get another vehicle and also we can't necessarily, everybody can't afford to do that, until this thing runs its course. But how long is it going to take? They had the car for over two months at one time but didn't repair it. So I think the time frame that you're trying to get into this law definitely is very, very important.

MR. BROWN: Thank you, sir, very much. Appreciate it.

Bernard Olako.

Please state your name and spell it, and your address, sir.

//STATEMETN OF BERNARD M OLAKO//

MR. OLAKO: My name is Bernie Olako. I live at Hess Avenue, 2605 Hess Avenue. I been, bought a new truck in 1984, I've had nothing but trouble with it. In fact I been coming out to see Charlie Brown out National Road three or four times. My case had been involved. But we had the first snow fall and I put my indicator on the gear shift down to the floor, from one gear; here the indicator don't want to come back and let me know what gear I'm in. That's been in the shop a couple of time. I got more coupons from up here at Kings you can shake a stick at going in and out. I had an oil change on my warranty, I had to go back and get it fixed again. This is going on too often. My warranty has run out. I got 40,000 miles on it. I think you corrected it and I think you got a letter down Charleston down there.

MR. BROWN: I'm sure we do in you've been in to see us in the Wheeling office.

MR. OLAKO: I was out there last month. I talked to the guy from Pittsburgh.

MR. BROWN: On my staff?

MR. OLAKO: Yes.

MR. BROWN: Yes. Mark Boyer.

MR. OLAKO: My problem was solved.

But when the first snow falls, the one we had here, I put it in low gear and I don't see my indicator any more. It's stuck back there. So I went down where I bought the truck. They said make an appointment. I ain't going to pay them no $27.00 an hour for it on a new truck. That should be under warranty if nobody tampered with that.

MR. BROWN: If it's something they didn't fix when it was under warranty they should fix it after the warranty has run out if it's the same problem.

MR. OLAKO: That's right, too. I think my record is down Charleston.

MR. BROWN: I'm sure it is. If you talked to Mr. Boyer on our staff we would have your records at our office.

MR. OLAKO: One more thing. I got a '80 Oldsmobile, a brand new one. We got about $13,000.00 out of it. Why does the government hook the public, they give you a baloon tire for $13,000.00. Did you ever see a vehicle going down the highway with a baloon tire on the truck? You know what I'm talking about, a baloon tire? Only takes five hundred miles on it.

MR. BROWN: Oh, okay. A baloon fire.

MR. OLAKO: Why does the government hook the public on a baloon tire when they buy new cars? Do you know what I'm talking about? A spare tire. Did you ever see one --

MR. BROWN: Are you talking about the real small spare tire?

MR. OLAKO: That's right.

MR. BROWN: Why are they allowing that spare tire? You're not supposed to drive it very far, that's right.

MR. OLAKO: I know. But did you ever see them driving down the highway?

MR. BROWN: I've driven one down the highway.

MR. OLAKO: Well, that's about all of my case. I got a lot of coupons if you want them.

MR. BROWN: If you want to submit them you're welcome to, whichever you like.

(items submitted for the record)

MR. BROWN: Delores Wallace is the next witness. She's not here. The last name I have is Ron Kasserman. Miss Wallace then Ron Kasserman, Jr. Then we'll have Miss

Hoover from our staff unless there are other members of the public.

MR. BROWN: Mr. Kasserman.

//STATEMENT OF MR. RON KASSERMAN, JR.//

MR. KASSERMAN: My name is Ron Kasserman from Wheeling, West Virginia. I practice law here in the city at 1217 Chapline Street. I've spoken with Mr. Markowitz concerning his car in the past and I'm all in favor of this dispute process with a couple of changes. The reason I'm in favor of it is people with cars that are lemons under our present lemon law you've got to hire an attorney to get some relief and if I'm going to settle the claim with G M who is going to pay me? Surely it's got to be the client because G M or Ford or somebody else, some other manufacturer is really not interested in paying my fee if they can fix the car, which they should do in first place, but obviously they're not doing IT because we have the lemon law. A lot of people are going up to Pittsburgh or the Better Business Bureau, arbitration they have there which is under the Federal Magnuson-Moss Act. This is very similar to that type of arbitration.

There are some suggested changes that I would like to make to it. Even though I'm very much in favor of this because it's good for consumers, they don't have to hire an attorney, they might be able to get some relief here.

MR. BROWN: Thank you, Ron. What changes do you have?

MR. KASSERMAN: On page 3 at paragraph 3.5 the the admissibility of the mechanism decision into civil actions under 46(a) I think that they should be admissible only if they're offered by the consumer. I think that that would actually parrot the Magnuson-Moss Act law. If you allow the manufacturer to use the mechanism decision in evidence it looks like an expert opinion which is fine I think if you're doing it for our protection, the consumers protection. But if you allow the manufacturer to build their own mechanism, hire their own people, come up with a decision adverse to the consumer then the consumer goes into the Court of law and the manufacturer has the right to put that decision in to evidence, it's just not fair.

Under our West Virginia lemon law the manufacturer has got three times to fix that vehicle already. They've got three bites of the apple. We as consumers should have a couple bites of the apple. If we have to go to a mechanism then we should be the ones afforded the opportunity to either use it or not to use it in Court. If that mechanism decision is unfavorable to me I would want to get redress from the Circuit Court of Ohio County. I don't want that mechanism decision in there. It shouldn't be there. I don't think under the Federal law it is. That's a big complaint of mine that it should only be admissible if the consumer feels it should be. Under mechanism organization 5.1.2 it says --

MR. BROWN: Paragraph what, 5 point?

MR. KASSERMAN: 5.1.2 on page 6.

Regarding the warrantor and the sponsor of the mechanism 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. One of the things is how they base their personnel decisions will be based solely on merit. Well, who is going to decide merit? Is it going to be the warrantor saying well, Mr. Member of the mechanism you held against consumers fifty percent of the time you're not doing an adequate job. I think, I can't offer anything here but I think that something needs to be really addressed and having the members of the mechanism be separate and apart from the warrantors, not to be affected by am I going to get canned for holding against too many consumers or holding against the manufacturers too many times? They should have a contract for a period of years say three years or something of that nature so that they would be there and not have to worry about that particular aspect of being thrown off.

The last thing I believe I have is on page 8 under 5.3.4. Somewhere in this decision that is made by the members of the mechanism it ought to have their names on there, they should be required to put their names on there. Whoever decided the case, whether it was one, two, three, four or more members, I would like to know who decided my case. If I go to Court I can subpoena those people, discover from them what they actually thought about when they made their decision. All in all I would like to thank you. I think this is a wonderful proposal. I think it will help the consumers. I think it does need a little bit of changing around but it's a step in the right direction.

MR. BROWN: Ron. Thank you very much not only for your favorable comments but your specific improvement suggestions. If you want to, we're going to hold the record open for at least a week, a couple of weeks and you're welcome to write any of that down, too. I think your testimony covered it but if you there's anything else you wish to suggest you're welcome to write us, too. This is the way we make things better by getting specific suggestions. Let me add another thing. The Magnuson-Moss Act is like you pointed out being revised and I should put this on the record. An assistant attorney general from my staff has been working with the Federal Trade Commission in Washington to help revise Magnuson-Moss and anything in these regulations that didn't meet Magnuson-Moss standards would of course be revised. What the F T C will accomplish will make all these arbitration systems in all fifty states meet minimal standards which they aren't meeting now. But anything we don't have that doesn't meet Magnuson-Moss now or doesn't meet it under the new Magnuson-Moss rules the FTC is working on we'd have to change. But all three of these things will be considered by our consumer protection staff, deputy attorney general Thomas Hines and others as well as myself and we'll see what we can do.

MR. KASSERMAN: Okay. Let me add two more things to that.

MR. BROWN: Sure.

MR. KASSERMAN: On audits, who is going to do the audits? It doesn't say. On page 12 it says the mechanism shall have an audit conducted at least annually.

MR. BROWN: Which pargraph is that?

MR. KASSERMAN: 5.5.1. Will the mechanism be auditing itself or will the Attorney General's office be auditing them? This is specifically relating to their statistical evaluations. I think they should have an outside audit, someone we can trust in there or doing the work. Also -- I apologize but I've lost my place in here but I believe that the decision of the mechanism ought to be binding on the warrantor.

MR. BROWN: The decision of the mechanism?

MR. KASSERMAN: Sure.

MR. BROWN: Okay.

MR. KASSERMAN: I believe in here it indicates that it's not binding on either party and I --
on either party and I --

MR. BROWN: Just a minute. You mean the arbitration system itself?

NR. KASSERMAN: No. I mean the decision

MR. BROWN: The arbitration decision is binding on the manufacturer. Only the consumer can appeal. The manufacturer, if the decision is adverse to the manufacturer the decision is over, the consumer wins. If the consumer losses all or part the consumer can appeal. And only the consumer can appeal.

MR. KASSERMAN: I misread that. Thank you much.

MR. BROWN: Thank you, sir, very much. Kathy Hoover is on next, the chief complaint mediator in the consumer protection part of the Attorney General's office. She will summarize what we are doing here and I believe will have written comments to submit to the record.

//STATEMENT OF MS. KATHY HOOVER//

As Charlie said, my name is Kathy Hoover and I am the Mediation Supervisor in the Consumer Protection Division of the Attorney General's Office.

Our office has received a multitude of complaints from dissatisfied consumers regarding the proposed rule pertaining to the establishment and qualification of third-party dispute mechanisms for new motor vehicle warranty problems. Our experience has led us to recognize the need for this rule; after all, a new motor vehicle is a major purchase involving substantial sums of money, and further economic hardship or injury may result where a vehicle is defective.

The leading category of consumer complaints involve motor vehicles. During the past six months alone our division received and acted upon 1134 motor vehicle complaints. Of those 469 involved the sale or repair of new motor vehicles and 105 strictly involved lemon law problems.

Our office attempts to resolve new motor vehicle warranty complaints through mediation. The manufacturer and its dealers are advised of these complaints and encouraged to resolve them. All mediation performed by our consumer representatives is done by means of telephone and mail contact. Some complaints are resolved successfully; however others are not. When a consumer remains unsatisfied after our efforts in mediation are unsuccessful or when mediation is inappropriate, we advise consumers of their dispute alternatives, i.e. manufacturer's arbitration mechanism, or law suit.

The "Lemon Law" offers manufacturers the opportunity to establish arbitration mechanisms to resolve disputes. In situations where the dispute is settled, consumers are saved time and cost of litigation. However, if disputes are not settled within a rasonable time, consumers who cannot afford to retain an attorney become frustrated and trade the vehicle merely passing problems to other consumers.

We need to review dispute resolution mechanisms to ensure fair treatment and resolution of new motor vehicle warranty complaints. the advantages of such mechanisms are, low cost (when compared to litigation), ease of access, rapid response and further development of a fair dispute resolution process. If these mechanisms are created, developed and implemented acording to the proposed rule, it would be a step toward easing consumer frustration, reducing judicial case loads, and enhancing economy as a result.

MR. KASSERMAN: I was looking and I found my place. This really doesn't make the mechanism decision binding on the manufacturer and I'm referring to page 6 paragraph 4.7 which specifically states:

Good faith of warrantor. The warrantor shall act in good faith in determining whether and to what extent it will abide by a mechanism decision. It requires that the manufacturer consider in good faith the decision, it doesn't say it has to abide by the decision. Specifically it states the warrantor shall act in good faith to determine whether or to what extent it will abide by the mechanism decision. That does not say that they're going to be bound by it. And they should be bound. I believe under the Federal Magnuson-Moss Act they are bound. That is reiterated on page 10 at paragraph 5.3.10. It says that the decision of the mechanism shall not be legally binding on any person. That should be changed I think. It should not be legally binding on the consumer but should be legally binding on the warrantor or manufacturer.

MR. BROWN: I'm going to just have to go back to the drawing boards on that point, Ron, Mr. Kasserman. I think, it's our intention that it is binding, I think that's what our state statute says and we're of course bound in the regulations to follow the statute. I think that's what Magnuson-Moss says. I'm quite sure you're right on that. We'll just have to go back to that. You're welcome by the way to discuss that point or any of them with the chief writer of this regulation who is deputy Attorney General Thomas Hines, 800 368-8808. And I'll take that up with him when we get back this week. But I believe our intention, what you're reading to me, if we didn't accomplish that we'll try to write it so we do accomplish it. I believe that's, you know -- my understanding all along has been it's binding on them and I think that's the manufacturers understanding. But, if it doesn't say it it's going to have to say it. Thank you for pointing that out. That's definitely a problem if it's not in there now.

Okay. Well, if there's no one else to testify. Anyone want to note their presence here at the hearing as either a consumer or a member of any organization?

MS. DENNIS: Is it too late to say something?

MR. BROWN: You're welcome to come up and testify. So we have someone who is going to arbitration this week to testify. State your name and address for the record.

//STATEMENT OF LOIS DENNIS//

MS. DENNIS; My name is Lois Dennis. I reside at 385 North 20th Street in Weirton, West Virginia. We purchased a car in April of '86, a, $16,500.00. We had trouble with the fabric. It wasn't a life threatening thing but when you ride in it you get lint all over you. We took the car back. They tried to clean the car and couldn't clean it. They tried to Scotchgard it but they couldn't get it cleaned. They took it to a high vacuum place and still couldn't get it cleaned. Then they turned it over to Mr. Lane Beeken of Pittsburgh, Pennsylvania. I tried to get hold of him which I never could. I tried, finally contacted consumer protection in Charleston. One of your people from your office tried to contact him, finally did then he got in touch with us. We took the car to Pittsburgh, he looked at the car, took us to an upholstery place, said that the fabric was defective. Two days later we received a letter from him stating that in fact the fabric was not defective contradictory of what he told us to start with. We have a letter from Pontiac in Weirton, West Virginia that it was defective. We have tried since a week after we purchased the car and they have done nothing about it. We have a file folder of papers here from the garages but they still won't do anything about it. Thursday at eleven o'clock we have a meeting in Charleston to go to arbitration but after seeing these people with problems of their I guess ours is useless also.

MR. BROWN: Well, I certainly would proceed with the arbitration even though -- it's a relatively cost free mechanism.

MS. DENNIS: Why, since there is a law like this, there has been two people stated to us this is a problem. They say go through the proper channels and you'll have no problem. I must have called Pontiac, Michigan at least thirty-five to forty times, Pittsburgh, I would say probably ten to fifteen times before I finally got hold of him. And after this I still don't know anything.

MR. BROWN: Well, you're pointing again, Miss Dennis to the reason we are trying to improve the administration of the lemon law statute. We can't change the statute but we can have a regulation that makes the statute work better. That's why we're in Wheeling today to get testimony and learn how we can make the lemon law work more effective for consumers in a reasonable period and have an arbitration board that we consider both fair in its make up and one that applies West Virginia laws.

We found in our earlier hearing on this issue that the manufacturers, at least some of them do not feel bound by West Virginia law. They have a general standard they feel that's all they need to meet. That will change, of course. We feel we can make the lemon law work better and the system work better than it is today and your testimony is helping to show the need to make some changes.

MS. DENNIS: We have letters stating that the fabric is defective. Why is the manufacturer not bound to do something about it?

MR. BROWN: Well, I can't specifically answer the question except to say that we have, we have a mechanism in our office where we mediate and we quite often succeed in solving the consumers problem. There are, of course, many times we don't succeed, too, but we try to on each situation. That's why you're in an arbitration situation. That's why, you know, you have a good case to present to that arbitration board as to why the car didn't meet the standards, the advertised standards that the new car is supposed to meet.

MS. DENNIS: See, what happened, the door panels as well, in fact I don't think they can get the door panels from the manufacturer because first they sent us to another upholstery place in Steubenville, Ohio. The man who was there said no way can we replace the fabric because it is in the panels as well. And they had to have a special machine to do that. They then sent us to Pittsburgh. The man told us the same thing. You have to get door panels from the manufacturers. Mr. Lane Beeken said at the time we were there, with me and my husband, the upholstery man himself said they would have to call the manufacturer to see if they could get the door panels. Evidently he couldn't. Two days later we get a letter stating, from him, that in fact the fabric is not defective but if you do find the fabric worn we will replace it.

MS. HOOVER: It appears to me in your situation they cannot repair the vehicle. So therefore they have nothing else to offer. They perhaps don't want to buy back the car. Therefore yes, they did send you a letter, they did say the fabric is defective but it's up to you to do something to force them to repair that. And this is one of your means of forcing them to repair it is through arbitration. Of course if that fails you have the alternative of suing them.

MS. DENNIS: There's no other way, they have the option of refusing, then, right, to replace the car or the fabric.

MS. HOOVER: Except through arbitration. They can offer a decision on what they will do. It will be up to the arbitration panel to make the decision but they could offer you know, to repair it or replace it.

MS. DENNIS: Okay. Thank you.

MR. BROWN: Good luck Thursday.

Any other citizens who would like to speak?

This will be the conclusion of the hearing in Wheeling on the improvement of the administration of the state lemon law. We will hold the record open for two weeks if anyone wants to write anything down or send us any information either to supplement what they said or someone who didn't speak today can certainly write us, Charles G Brown Attorney General, State Capitol, Charleston, West Virginia, 25305. Thank you very much.

THEREUPON, the public hearing was concluded; the record to remain open.