STATE OF CALIFORNIA

DEPARTMENT OF CONSUMER AFFAIRS

Biennial Report to the Legislature on the Status of

The Arbitration Certification Program

2011 – 2012

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State of California

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Introduction

Pursuant to Business and Professions Code §472.4(e), the Department of Consumer Affairs' (DCA) Arbitration Certification Program (ACP) is required to submit a biennial report to the California State Legislature. This is ACP's twelfth biennial report, covering calendar years 2011 and 2012.

Background

The ACP was created pursuant to AB 2057 (Tanner, Chapter 1280, Statutes of 1987) to certify and monitor "lemon law" arbitration programs sponsored by new vehicle manufacturers. The Song Beverly Consumer Warranty Act, also known as the California Lemon Law, in effect, protects the buyers and lessees of new motor vehicles from having to endure endless attempts to repair serious warranty defects by demanding that manufacturers repurchase or replace vehicles that they are unable to fix. By defining when a "reasonable" number of repair attempts have occurred, AB 2057 addressed consumer groups' concerns that some arbitration programs were not operating in compliance with Federal statutes and regulations and were biased in favor of the manufacturers. AB 2057 required the ACP to promulgate regulations setting forth standards for certification of new vehicle warranty arbitration programs, review applications for certification submitted by such programs, and monitor certified programs for continued compliance with regulatory and statutory requirements.

New car manufacturers are not required to provide consumers with a warranty dispute resolution process; however, if a manufacturer chooses to operate a certified arbitration process, the manufacturer's liability is limited. Furthermore, consumers are required to use a certified process prior to asserting certain rights, specifically the "Lemon Law Presumption", in court.

The ACP is a special-funded program within the DCA. All of the ACP's expenses are covered by fees collected from each vehicle manufacturer for each new vehicle sold in California. The New Motor Vehicle Board (NMVB) collects the fees on the ACP's behalf and deposits these fees into the Certification Account. The NMVB is authorized by Business and Professions Code §472.5(b) to collect an amount not to exceed one dollar ($1) for each motor vehicle sold, leased, or distributed in, by, or for manufacturers in California, during the preceding calendar year. The fee collected by the NMVB during fiscal year 2010-2011 averaged approximately $1 per vehicle and was the same for fiscal year 2011-2012. This fee remained constant at $1 per vehicle in fiscal year 2012-2013.

The arbitration programs regulated by the ACP returned approximately $8.2 million to consumers in 2011 and $10.1 million to consumers in 2012. The ACP believes that these returns demonstrate the immense benefits that these arbitration programs offer to California consumers.

Mission Statement

The ACP's mission is to protect California's new car owners by ensuring that state-certified arbitration programs provide fair and expeditious resolution of lemon law disputes (Source: 7/2012 ACP Strategic Plan). Its goals and objectives during 2011-2012 were:

- Inform and educate consumers
- Develop a productive and well-informed workforce
- Promote consumer access and assistance
- Develop and maintain partnerships with public and private organizations that share common interests
- Enhance oversight of certified arbitration programs
- Evaluate and make recommendations for consumer protection and industry regulation

To ensure substantial compliance with the statutes and regulations governing the arbitration process and to accomplish its mission, the ACP certifies and continually monitors the operation of third-party dispute resolution (arbitration) programs.

The ACP works with the state-certified arbitration programs and the sponsoring vehicle manufacturers to identify areas of improvement for the certified programs. In addition, the ACP seeks opportunities to increase consumer awareness of the state-certified arbitration programs by distributing educational materials. The ACP has incorporated social media into its strategy for educating consumers. The ACP posts relevant Lemon Law communications, as well as vehicle recalls, effective car buying strategies, tools for getting vehicle repairs, safety information, and consumer guides. The ACP believes that these measures have helped make the ACP more consumer-centric and has helped to raise the visibility of the ACP and its presence on the Internet. These strategies are also responsible for directing consumer's to the ACP's website, where they are empowered by gaining a better understanding of their legal rights and protections under California's Lemon Law.

To carry out its statutory and regulatory mandates, the ACP engages in the following activities:

- Reviews vehicle manufacturers' applications for certification
- Certifies arbitration programs found to be in substantial compliance with governing statutes and regulations
- Conducts annual inspections of the state-certified programs
- Conducts frequent audits of arbitration hearings
- Conducts audits of certified manufacturer's dealerships to ensure the proper Lemon Law disclosures are provided to consumers
- Conducts audits of state-certified arbitration programs' case files
- Investigates complaints against state-certified arbitration programs
- Publishes and disseminates educational information
- Utilizes Internet technology, including social media, to educate consumers on their rights under California's Lemon Law
- Prepares annual reviews of state-certified arbitration programs to determine if they continue to operate in substantial compliance with California regulations
- Coordinates with Department of Motor Vehicles to ensure that re-acquired vehicles' titles are properly branded
- Decertifies arbitration programs found noncompliant with California laws and regulations
- Prepares annual statistical reports based on data collected by the ACP, as well as data received from the state-certified arbitration programs

- Conducts an annual survey (Consumer Satisfaction Survey) to gauge the satisfaction of consumers who utilized the state-certified arbitration programs during the preceding year
- Reviews, revises, and implements regulations as needed
- Reviews, revises, and proposes legislation as needed
- Reports biennially to the California Legislature on the effectiveness of the ACP

The ACP continues to establish and maintain relationships with consumer and public interest groups, business and professional communities, and law enforcement agencies. The ACP also strives to persuade non-participating manufacturers to operate or sponsor state-certified arbitration programs for use by consumers.

Legislative History

The Tanner Consumer Protection Act (AB 2057) promotes the use of state-certified arbitration programs to resolve new vehicle warranty disputes by providing participation incentives to both manufacturers and consumers. To encourage manufacturers to offer state certified arbitration programs, the law protects participating manufacturers by limiting their civil penalty liability. To encourage the use of arbitration by consumers, the law provides that before consumers can use the "Lemon Law Presumption" in court, they must first resort to the manufacturer's state-certified arbitration program. The California Lemon Law Presumption states that if a manufacturer or its agents cannot repair a substantial warranty defect after a specified number of repair attempts within a specified period, the consumer is presumed to be entitled to a replacement vehicle or a refund of the lemon vehicle's purchase price. The law further encourages consumers to use arbitration by providing them with a free and expeditious alternative to litigating warranty disputes. Also, the arbitration process is conditionally binding in that the manufacturer is bound by the arbitrator's decision, if the consumer accepts it. However, if the consumer rejects the arbitrator's decision, the consumer is free to pursue any recourse otherwise available to them, including, but not limited to, re-applying for arbitration after a subsequent warranty related repair.

No new legislation was enacted in 2011 or 2012. In February 2011, Assembly Member Mike Eng introduced AB 1061, which would have required every manufacturer, distributor, or retailer making express warranties with respect to a new vehicle also to fully set forth, in simple and readily understood language, a detailed list of items that are not covered under the warranty. The bill died pursuant to Art. IV, Sec. 10(c) of the Constitution.

Manufacturer Certifications and Program Updates

For the years 2011 and 2012, the ACP noted the following significant certification changes:

- On January 20, 2011, Automobili Lamborghini America, LLC was certified in a joint undertaking with the Council of Better Business Bureaus, Inc. (CBBB), and began using BBB AUTO LINE

- On June 30, 2011, Workhorse Custom Chassis, LLC voluntarily withdrew its program, which had been administered by the BBB AUTO LINE

- On October 31, 2011, Workhorse Custom Chassis, LLC was certified in a joint undertaking with DeMars and Associates, Ltd. and began using the Consumer Arbitration Program for Motor Vehicles (CAP-Motors)

- On November 3, 2011, Ferrari North America, Inc. was certified in a joint undertaking with the CBBB and began using BBB AUTO LINE

- On November 3, 2011, Maserati North America, Inc. was certified in a joint undertaking with the CBBB and began using BBB AUTO LINE

- On May 1, 2012, American Honda Motor Company, Inc. (including Acura vehicles) was certified in a joint undertaking with the National Center for Dispute Settlement (NCDS) and began using the California Dispute Settlement Program (CDSP)

- On May 11, 2012, AM General Sales Corporation voluntarily withdrew its BBB AUTO LINE administered program

- On June 4, 2012, Winnebago Industries, Inc. voluntarily withdrew its Consumer Arbitration Program for Recreational Vehicles (CAP-RV) administered program

- On September 20, 2012, Jaguar Land Rover North America, LLC extended their existing certification to include Jaguar vehicles and continued using BBB AUTO LINE

- On December 7, 2012, Tesla Motors, Inc. was certified in a joint undertaking with the NCDS and began using the CDSP as an administrator

The following update occurred in February 2013:

- On February 11, 2013, the CBBB stopped providing services to Isuzu Motors America, Inc. through the BBB AUTO LINE program

In all, as of May 2013, a total of 22 vehicle manufacturers, encompassing over 37 different vehicle brands, maintain state certification of their arbitration programs. The following is a chart of these manufacturers and their state-certified arbitration program administrators:

ARBITRATION PROGRAM ADMINISTRATOR	MANUFACTURER
BBB AUTOLINE	Aston Martin North America, Bentley Motors, Inc., Automobili Lamborghini America, LLC BMW of North America, LLC (includes Mini Cooper), Ferrari North America, Inc., Ford Motor Company (includes Lincoln, Mercury, Ford motor home Chassis), General Motors (includes Buick, Cadillac, Chevrolet, GMC, Geo, Oldsmobile, Pontiac, Saab, and Saturn), American Honda Motor Company, Inc. (also Acura Motor Divisions)*, Hyundai Motor America, Jaguar Land Rover North America, LLC, KIA Motors America, Inc., Lotus Cars USA, Inc., Maserati North America, Inc., Mazda North American Operations, Nissan North America, Inc. (also INFINITI Division), and Volkswagen of America, Inc. (also Audi of America, Inc.)
CDSP	American Honda Motor Company, Inc. (also Acura Motors Divisions)**, Tesla Motors, Inc., and Toyota Motor Sales U.S.A., Inc. (includes Scion)
CAP - RV	Airstream, Inc. and Thor Motor Coach, Inc.
CAP - MOTORS	Porsche Cars North America, Inc. and Workhorse Custom Chassis, LLC

* American Honda Motor Company, Inc. and Acura Motor Division's certification of BBB AUTO LINE encompasses all vehicle model years 2012 and earlier
** American Honda Motor Company, Inc. and Acura Motor Division's certification of CDSP encompasses all vehicle model years 2013 and newer

To increase the number of state-certified arbitration programs available to consumers, the ACP continues to encourage all vehicle manufacturers who do not currently offer certified programs to submit applications for certification.

Monitoring Activities

Maintaining state certification is based on the applicant's continued substantial compliance with the governing statutes and regulations; therefore, the focus of the ACP's monitoring activities is on ensuring that certified programs implement and abide by their written operating procedures that were approved by the ACP during the certification process. In addition to monitoring arbitration hearings, the ACP's oversight of the programs includes the auditing of arbitrator training programs, review of certified programs' records, investigation of consumer complaints regarding the programs' operations, monitoring the programs' consumer information toll-free numbers, auditing manufacturers' dealerships for proper disclosures, and conducting annual inspections of the certified programs' facilities.

Due to the programs' vast number of hearings conducted at various locations statewide, the ACP faces challenges in monitoring the activities of four dispute resolution program administrators involving 22 manufacturers. 2011 and 2012 were very successful monitoring years for the ACP. The ACP achieved historic highs in hearings monitored, dealerships audited, and case files reviewed in 2012. The following charts are a breakdown of the ACP's monitoring activities for all programs in 2011 and 2012:

PROGRAM	2011 HEARINGS			2012 HEARINGS		
	HELD	MONITORED	%	HELD	MONITORED	%
BBB AUTO LINE	443	89	20%	332	106	32%
CAP - RV	0	0	-	0	0	-
CAP - MOTORS	6	6	100%	7	7	100%
CDSP	181	57	31%	138	70	51%
Totals	**630**	**146**	**24%**	**477**	**183**	**38%**

PROGRAM	2010 DEALERSHIPS			2012 DEALERSHIPS		
	OPERATING IN CA	AUDITED	%	OPERATING IN CA	AUDITED	%
BBB AUTO LINE	1,054*	164	16%	1,054	230	22%
CAP - RV	34	7	21%	34	1	3%
CAP – MOTORS	56	19	34%	56	11	20%
CDSP	302*	53	18%	302*	75	25%
Totals	1,284	**243**	19%	1,284	**317**	25%

* Honda/Acura dealerships (162) are reflected in both the BBB AUTO LINE and CDSP numbers, as Honda/Acura maintains certification for 2012 and earlier vehicles with BBB AUTO LINE, and 2013 and newer vehicles with CDSP. However, Honda/Acura dealerships are only counted once in the totals line

PROGRAM	2011 CASE FILES REVIEWED			2012 CASE FILES REVIEWED		
	TOTAL DISPUTES FILED	REVIEWED	%	TOTAL DISPUTES FILED	REVIEWED	%
BBB AUTO LINE	2,124	411	19%	1,545	425	28%
CAP - RV	0	0	-	0	0	-
CAP - MOTORS	11	6	55%	18	3	17%
CDSP	269	76	28%	203	95	29%
Totals	**2,404**	**493**	**21%**	**1,766**	**523**	**30%**

Arbitrator Training

The majority of arbitration programs certified by the ACP have transitioned away from the in-person classroom style settings for their arbitrator training sessions. These programs now utilize new methods, including e-mails, conference calls, and webinars, to train their arbitrators pursuant to Title 16 of the California Code of Regulations §3398.2. The ACP reviews all training materials, regardless of whether they are provided in-person or not, and provides corrections, updates, and additional information for incorporation. Once approved by the ACP, these materials are presented to the arbitrators as training.

A notable exception to this transition is the CDSP, which continues to hold yearly classroom style training sessions for its arbitrators. In 2011, the CDSP held two in-person training sessions, both of which the ACP attended and monitored. In 2012, the CDSP held one in-person training session, which the ACP also attended and monitored.

The ACP will continue to review, monitor, and approve all training materials and sessions in order to ensure that arbitration programs are sufficiently training arbitrators in applicable law, the principles of arbitration, and the right and responsibilities of arbitrators.

On-Site Inspections

On-Site Inspections:	2011	2012
Better Business Bureau AUTO LINE	2	0
California Dispute Settlement Program	1	2
Consumer Arbitration Program for Recreational Vehicles	1	0
Consumer Arbitration Program for Motor Vehicles	1	0

Out-of-state travel is budgeted and authorized on a fiscal year basis. As a result, there may be a discrepancy when applying to calendar years. In addition, during 2011 and 2012, the ACP was obliged to substitute out-of-state, on-site inspection trips in order to certify new manufacturers. Consequently, the ACP was unable to perform all on-site inspections. Also, the ACP's out-of-state budget continues to be reduced, which has created challenges in meeting the ACP's mandates.

Complaints

Complaints Received by ACP:	2011	2012
Better Business Bureau AUTO LINE	3	7
California Dispute Settlement Program	8	5
Consumer Arbitration Program for Recreational Vehicles	0	0
Consumer Arbitration Program for Motor Vehicles	0	0

The following table contains information on complaints on specific manufacturers:

2011	
MANUFACTURER	**# OF COMPLAINTS**
Ford	2
Toyota	8
Volkswagen/Audi	1
TOTAL	**11**

2012	
MANUFACTURER	**# OF COMPLAINTS**
BMW	1
Hyundai	1
Isuzu	2
Mazda	1
Nissan/Infiniti	1
Toyota	5
Volkswagen/Audi	1
TOTAL	**12**

In comparison to historical measurements, the ACP has seen significant reductions in the number of complaints filed against manufacturers and arbitration programs. The ACP anticipates that sustaining its oversight activities and emphasizing public education and awareness will maintain complaint levels below historical thresholds.

Consumer Satisfaction Survey

As mandated by the Business and Professions Code §472.4 (b), the ACP must conduct an annual survey of consumers who utilized the state-certified arbitration programs during the previous year. The annual survey has proven a valuable tool for evaluating the performance of the certified programs from the consumer's perspective. Through the results of the Survey, the ACP is in a better position to evaluate the effectiveness of the dispute resolution process, and the participating manufacturers are able to make adjustments to improve the process. The ACP achieved significant cost savings in 2011 and 2012 by administering, compiling, and reporting the responses to the Consumer Satisfaction Survey on its own, without the services of an outside vendor. This measure is one of many proactive approaches the ACP has taken in order to maintain both budgetary and operational efficiency.

The ACP also implemented changes in the administration of the Consumer Satisfaction Survey. Consumers were surveyed immediately following the arbitration hearing, prior to receiving the decision. The ACP believes that the timing of this survey allows consumers to express unbiased sentiment about their experiences with the process, as they are not influenced by whether they "won" or "lost." In addition, the ACP continues to survey all consumers at the conclusion of the entire arbitration process. This post-decision survey includes the same questions, as well as additional inquiries, as the pre-decision survey. This also allows the ACP to compare the results of the pre-decision and post-decision surveys and control for the decision's impact on the other

components of the process. Through these controls, the ACP is able to more accurately capture consumer's satisfaction with the process, independent of the process' outcome. In these ways, the ACP improved the quality of the Consumer Satisfaction Survey in 2011 and 2012 by providing a more accurate reflection of consumer satisfaction with the certified dispute resolution processes.

The following is a summary of the significant findings of the 2011 survey:

- 89% of all respondents to the pre-decision survey rated their satisfaction with the arbitration program's staff as either "excellent" or "acceptable," compared to 63% of all respondents to the post-decision survey

- 83% of all respondents to the pre-decision survey rated their satisfaction with the arbitrator as either "excellent" or "acceptable," compared to 50% of all respondents to the post-decision survey

- 82% of all respondents to the pre-decision survey rated their satisfaction with the entire arbitration process as either "excellent" or "acceptable," compared to 45% of all respondents to the post-decision survey

The following is a summary of the significant findings of the 2012 survey:

- 96% of all respondents to the pre-decision survey rated their satisfaction with the arbitration program's staff as either "excellent" or "acceptable," compared to 68% of all respondents to the post-decision survey

- 92% of all respondents to the pre-decision survey rated their satisfaction with the arbitrator as either "excellent" or "acceptable," compared to 52% of all respondents to the post-decision survey

- 91% of all respondents to the pre-decision survey rated their satisfaction with the entire arbitration process as either "excellent" or "acceptable," compared to 50% of all respondents to the post-decision survey

Consumer Assistance and Information

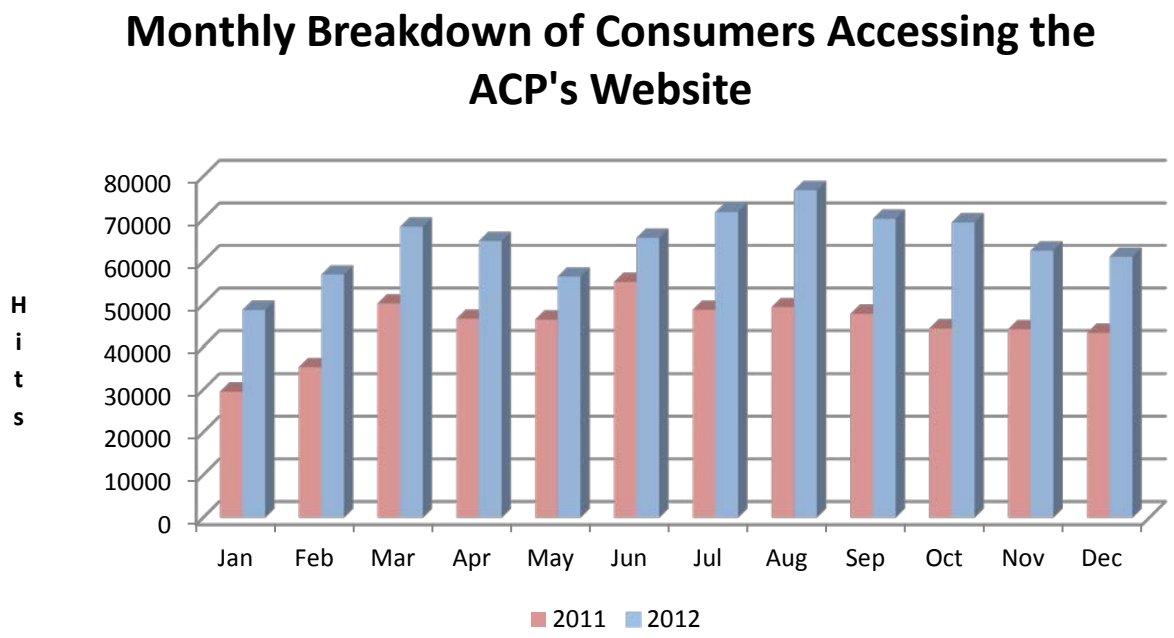
The ACP staff responds to consumer phone, fax, mail and e-mail inquiries by providing information on the state-certified arbitration programs, referrals to appropriate agencies, and/or other information designed to help consumers resolve vehicle warranty disputes. In addition, the ACP strives to ensure that all complaints and inquiries are acknowledged within 24 hours and resolved within 11 days. The ACP has received positive remarks from consumers expressing appreciation for prompt responses, helpful resources, and valuable next steps.

The ACP's website is linked through the DCA's website. As discussed above, the ACP collects data from consumers about the certified programs through the Consumer Satisfaction Survey. The ACP posts the results of the Consumer Satisfaction Survey on its website. In addition to the benefits to the ACP and program administrators discussed above, the posted data assists consumers considering arbitration in understanding the arbitration process and assures those consumers that participated in the survey that their feedback was considered.

ACP Website

In 2011, a total of 540,393 consumers accessed the ACP's website, an increase of 78% from 2010. In 2012, a total of 771,965 consumers accessed the ACP's website, an increase of 43% from 2011. The ACP continues to promote the usage of its website by redesigning its format to appeal to consumers and allowing a one-stop-shop location for all California Lemon Law related topics. In 2012, the ACP launched its social media campaign, which involved the utilization of Twitter and Facebook platforms. The ACP posts relevant Lemon Law communications, as well as vehicle recalls, effective car buying strategies, tools for getting vehicle repairs, safety information, and consumer guides. In addition, the ACP interacts with various federal and state agencies and consumer organizations to educate consumers about their Lemon Law rights. The ACP believes that this approach has led to an increase in traffic to the ACP's website and greater visibility for the ACP.

In 2012, the ACP revamped its website to comply with the Governor's mandate that all state agencies design their websites to match ca.gov. The ACP used this opportunity to provide even more information and resources to California consumers.



Public Education

A major component of the ACP's education program is the *Lemon Aid for Consumers* booklet. The booklet is produced in three languages: English, Spanish, and Chinese. The booklet provides comprehensive and very easy to understand information on the California Lemon Law and the dispute resolution process, as well as a variety of other resources for complaints that fall outside of the purview of the ACP and the California Lemon Law.

To ensure wide distribution of the *Lemon Aid for Consumers* booklets, the ACP has partnered with the California Department of Motor Vehicles, the California State Automobile Association, the Council of Better Business Bureaus, Inc., the California Dispute Settlement Program and National Center for Dispute Resolution, DeMars and Associates, Ltd., and various consumer organizations to reach as many vehicle-owning

Californians as possible. In addition, booklets were supplied to other programs within the DCA with public contact units, as well as, other community organizations. The ACP has also partnered with the BBB AUTO LINE to distribute the booklets to all consumers who apply for arbitration. The ACP believes that all these partnerships have substantially increased consumers' awareness of their rights and responsibilities under the California Lemon Law.

In 2011, the ACP circulated 2,236 English, 401 Spanish, and 50 Chinese language booklets. In 2012, the ACP distributed 1,180 English and 55 Spanish language booklets. As traffic to its website increases, the ACP may experience a rapid decrease in the numbers of physical booklets distributed, as consumers are able to view and download the *Lemon aid for Consumers* booklet online.

In May 2010, the DCA ended its participation in consumer outreach events due to travel and budgetary restrictions. The lack of event outreach has had a substantial effect on the numbers of booklets supplied, primarily in the distribution of Spanish and Chinese versions. The ACP distributed the majority of its Spanish and Chinese versions at events such as the Festival de la Familia, Pacific Rim Festival, and Asian America Expo. The ACP has turned to the Internet and social media as its main source for consumer outreach.

Current Issues

Over the last three to four years the ACP has witnessed a steady decline in the total disputes filed in its certified arbitration programs. There are many possible factors that have contributed to this overall decline including: less vehicles sold as a result of a struggling economy and consumers' hesitancy to invest in new vehicles, improved customer service at the manufacturer and dealership level, and increased specialization of Lemon Law attorneys who forgo the arbitration process and opt to file directly in court. The ACP is exploring possible regulatory and legislative responses to this final issue, as the ACP firmly believes that consumers should not need to rely on the expertise of attorneys to recoup their investment on defective vehicles under California's Lemon Law. In addition, the ACP believes that all consumers should be entitled to a third party dispute resolution process, regardless of whether their vehicles' manufacturers have voluntarily chosen to offer such a program. To this end, the ACP will be exploring the possibility of mandating that vehicle manufacturers offer a certified third party dispute resolution process.

The ACP is also looking at ramping up its outreach efforts through partnerships with automobile associations, consumer groups, and private industries currently providing vehicle information to consumers. In addition, the ACP would like to increase its presence on the Internet by creating informational videos and podcasts and utilizing other forms of social media. The ACP believes that it is critical that all consumers are aware of their rights under California's Lemon Law prior to their purchase of a new vehicle.

The ACP plans to continue its mission of protecting California's new car buyers by sustaining its oversight activities and pursuing new means of consumer education.