



# Biennial Report to the Legislature on the Status of **The Arbitration Certification Program**

**2013 – 2014**



Edmund G. Brown Jr., Governor  
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 thirteenth biennial report, covering calendar years 2013 and 2014.

## 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 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's role is to serve as State regulators and to comply with the statutory mandate to ensure all California state-certified vehicle programs remain in substantial compliance with the regulations governing the arbitration process. The ACP works closely with the manufacturers' California state-certified arbitration programs comply with federal and state regulations, and that arbitrations are conducted in a fair and expeditious manner.

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 ACP sends the NMVB its estimated budget for the fiscal year, and the NMVB then determines the fee that will be collected. In the last biennial report for fiscal year 2012-2013, the ACP mistakenly reported this fee as \$1 per vehicle; however the actual fee collected was \$0.891 per vehicle. The fee collected by the NMVB during fiscal year 2013-2014 was \$0.685 per vehicle. This fee decreased to \$0.647 per vehicle in fiscal year 2014-2015. The ACP anticipates a

continued decrease of this fee in fiscal year 2015-2016 as the National Automobile Dealers Association's chief economist has predicted that new car sales would approach an all-time high in 2015 and set a new record in 2016. As new car sales in California rise, the per-vehicle fee necessary to fund the ACP's operations will decrease.

The arbitration programs regulated by the ACP returned approximately \$8.3 million to consumers in 2013 and \$8.6 million to consumers in 2014. 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 consumers whose vehicles are covered by their manufacturer's original warranty by providing a fair and timely state-certified arbitration program. The ACP's vision is that California will have a model arbitration process that encourages manufacturer participation and ensures consumer confidence. The ACP values consumer protection, service, accountability, fairness and integrity. Its strategic goals are:

- Enforcement: enhance oversight of certified arbitration programs
- Legislation and Policy: evaluate and make recommendations for consumer protection and industry regulation
- Communication: inform and educate consumers while continuing to partner with public and private organizations that share common interests
- Administration: provide services in a prompt, courteous, accurate and cost-effective manner

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, including the use of Twitter, Facebook, Google+ and YouTube. 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 the availability of state-certified arbitration programs. These strategies are also responsible for directing consumers 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 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. If a buyer establishes a violation of the requirement to repair, replace, or reimburse a non-conforming vehicle, the buyer may recover a civil penalty of up to two times the amount of damages; however, if the manufacturer maintains a qualified third-party dispute resolution process, the manufacturer shall not be liable for any such civil penalty. To encourage the use of arbitration by consumers, the law also

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 with regard to the ACP or the Song-Beverly Consumer Warranty Act was proposed or enacted in 2013 or 2014.

### **Manufacturer Certifications and Program Updates**

For the years 2013 and 2014, the ACP noted the following significant certification changes:

- On February 11, 2013, the Council of Better Business Bureaus, Inc. (CBBB) voluntarily stopped providing services to Isuzu Motors America, Inc. through the BBB AUTO LINE program. Isuzu Motors America, Inc. had stopped manufacturing passenger vehicles in 2007
- On July 24, 2013, Airstream, Inc. voluntarily withdrew its certification of the DeMars and Associates, Ltd. (DeMars) Consumer Arbitration Program for Recreational Vehicles (CAP-RV) administered program
- On July 25, 2013, Thor Motor Coach, Inc. voluntarily withdrew its certification of the DeMars’ CAP-RV administered program
- On October 4, 2013, DeMars stopped providing services to Workhorse Custom Chassis, LLC through the Consumer Arbitration Program for Motors (CAP-Motors) program. Workhorse Custom Chassis, LLC had shut down operations in October 2012
- On January 1, 2014, American Honda Motor Company, Inc. (including Acura vehicles) voluntarily withdrew its certification of the CBBB’s BBB AUTO LINE administered program
- On January 1, 2014, American Honda Motor Company, Inc. (including Acura vehicles) voluntarily withdrew its certification of the National Center for Dispute Settlement’s (NCDS) California Dispute Settlement Program (CDSP) administered program

In all, as of May 2015, a total of 18 vehicle manufacturers, encompassing over 34 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 AUTO LINE	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, Hummer, Pontiac, Saab, and Saturn), 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	Tesla Motors, Inc., and Toyota Motor Sales U.S.A., Inc. (includes Scion)
CAP - MOTORS	Porsche Cars North America, Inc.

To increase the number of state-certified arbitration programs available to consumers, the ACP continues to encourage, via networking at conferences and direct communication, 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 three dispute resolution program administrators involving 18 manufacturers. 2013 and 2014 were very successful monitoring years for the ACP. In 2011, the ACP set a goal of auditing all state-certified manufacturers' dealerships by January 2015. The ACP achieved this goal. The following charts are a breakdown of the ACP's monitoring activities for all programs in 2013 and 2014:

<b>PROGRAMS</b>	<b>2013 HEARINGS HELD</b>	<b>2013 HEARINGS MONITORED</b>	<b>2013 HEARINGS %</b>
BBB AUTO LINE	323	98	30%
CAP—MOTORS	10	8	80%
CDSP	189	97	51%
<b>Totals</b>	<b>522</b>	<b>203</b>	<b>39%</b>

<b>PROGRAMS</b>	<b>2014 HEARINGS HELD</b>	<b>2014 HEARINGS MONITORED</b>	<b>2014 HEARINGS %</b>
BBB AUTO LINE	380	120	32%
CAP—MOTORS	8	3	38%
CDSP	188	64	34%
<b>Totals</b>	<b>576</b>	<b>187</b>	<b>32%</b>

\*Some consumers voluntarily elect to have their hearing held by documents only. In these cases, while reflected as a hearing held, no physical hearing occurs that can be monitored. These types of cases account anywhere from 20% to 35% of total hearings held. In addition, hearings are held every day throughout the entire State.

<b>PROGRAM</b>	<b>2013 DEALERSHIPS OPERATING IN CA</b>	<b>2013 DEALERSHIPS AUDITED</b>	<b>2013 DEALERSHIPS %</b>
BBB AUTO LINE	1,128*	242	21%
CAP—MOTORS	24	6	25%
CDSP	302*	120	40%
<b>Totals</b>	<b>1,292*</b>	<b>368</b>	<b>28%</b>

<b>PROGRAM</b>	<b>2014 DEALERSHIPS OPERATING IN CA</b>	<b>2014 DEALERSHIPS AUDITED</b>	<b>2014 DEALERSHIPS %</b>
BBB AUTO LINE	958	410	43%
CAP—MOTORS	24	1	4%
CDSP	149	25	17%
<b>Totals</b>	<b>1,131</b>	<b>436</b>	<b>39%</b>

\* Honda/Acura dealerships (162) are reflected in both the BBB AUTO LINE and CDSP numbers for 2013, as these dealerships must meet both BBB AUTO LINE and CDSP disclosure requirements. However, there is only one physical dealership, therefore Honda/Acura dealerships are only counted once in the totals line.



PROGRAM	2013 CASE FILES TOTAL DISPUTES	2013 CASE FILES REVIEWED	2013 CASE FILES %
BBB AUTO LINE	2,132	270	13%
CAP—MOTORS	14	3	21%
CDSP	281	87	31%
<b>Totals</b>	<b>2,427</b>	<b>360</b>	<b>15%</b>

PROGRAM	2014 CASE FILES TOTAL DISPUTES	2014 CASE FILES REVIEWED	2014 CASE FILES %
BBB AUTO LINE	1,903	307	16%
CAP—MOTORS	16	3	19%
CDSP	276	51	18%
<b>Totals</b>	<b>2,195</b>	<b>361</b>	<b>16%</b>

Historical averages have typically been about 20%. In 2013 and 2014, the ACP emphasized its monitoring of hearings and dealership audits, including achieving its goal of auditing all California certified manufacturer's dealerships. This focus resulted in historic highs in audited hearings and dealerships.

### 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 seminar style training sessions for its arbitrators. In 2013 and 2014, the CDSP held two in-person training sessions each year for California arbitrators, all four of which the ACP 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

Business & Professions Code §472.4(c)(1) requires the ACP to perform onsite inspections of each qualified third-party dispute resolution process not less frequently than twice annually.

<b>On-Site Inspections:</b>	<b><u>2013</u></b>	<b><u>2014</u></b>
BBB AUTO LINE	2	2
CDSP	2	2
CAP-Motors	2	2

## Complaints

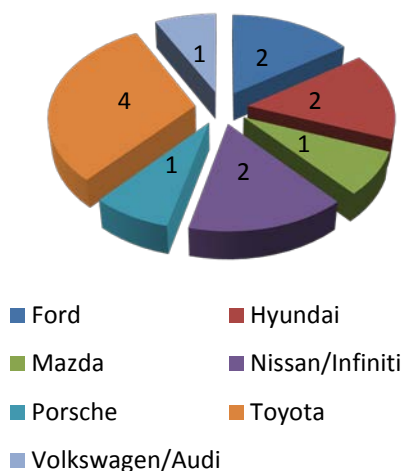
Business & Professions Code §472.4(c)(2) charges the ACP with the investigation of complaints from consumers regarding the operation of qualified third-party dispute resolution processes.

Complaints Received by ACP: 2013 & % of Total Disputes    2014 & % of Total Disputes

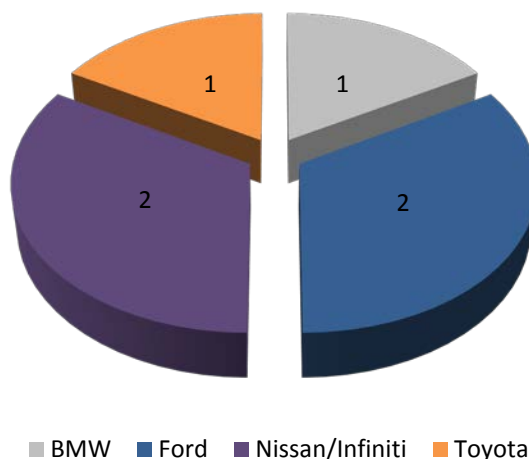
BBB AUTO LINE	8 (0.4%)	5 (0.3%)
CDSP	4 (1%)	1 (0.4%)
CAP-Motors	1 (7%)	0

The following charts contain information on complaints on specific manufacturers:

**2013 Complaints (13)**



**2014 Complaints (6)**



The ACP believes that sustained oversight activities and an emphasis on public education will result in continued low complaint levels.

## 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.

Consumers are 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.

The following is a summary of the significant findings of the 2013 survey:

- 93% of all respondents to the pre-decision survey rated their satisfaction with the arbitration program's staff as either "excellent" or "acceptable," compared to 71% 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 65% 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 56% of all respondents to the post-decision survey

The following is a summary of the significant findings of the 2014 survey:

- 97% of all respondents to the pre-decision survey rated their satisfaction with the arbitration program's staff as either "excellent" or "acceptable," compared to 59% of all respondents to the post-decision survey
- 97% of all respondents to the pre-decision survey rated their satisfaction with the arbitrator as either "excellent" or "acceptable," compared to 46% of all respondents to the post-decision survey
- 96% of all respondents to the pre-decision survey rated their satisfaction with the entire arbitration process as either "excellent" or "acceptable," compared to 49% of all respondents to the post-decision survey

These results, along with other analysis the ACP has performed with this survey and the decisions rendered by the program, strongly suggests that consumer satisfaction with the process is largely tied to the outcome of their case.

## **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

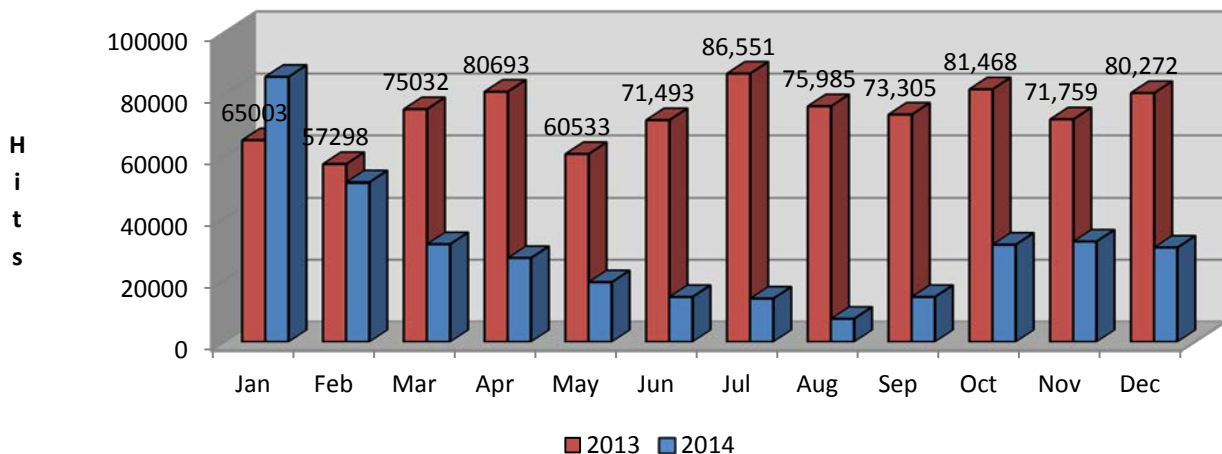
from consumers expressing appreciation for prompt responses, helpful resources, and valuable next steps.

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 2013, a total of 879,392 consumers accessed the ACP's website, an increase of 14% from 2012. In 2014, a total of 359,750 consumers accessed the ACP's website. The ACP experienced a dramatic drop in traffic between May and September of 2014; however, the ACP has seen traffic return to normalized levels of traffic of 30,000 views starting in October 2014. In October 2014, the ACP released its first ever YouTube video, explaining the role of the ACP, the arbitration process, the Lemon Law, and the testimonial of a consumer who utilized the arbitration process and was awarded a repurchase of their vehicle. The ACP is working to condense this video from its current length of six minutes to approximately two minutes in order to attract more viewership. The current video has been viewed over two hundred times.

### Monthly Breakdown of Consumers Accessing the ACP's Website



## 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 September 2013, following an extensive review of its *Lemon-Aid* brochure, the ACP completely updated and revamped the brochure. The ACP decided to include more information in the revised version including: who the ACP is and its role, what the ACP regulates and its authority, information about attorneys, and information on the settlement and mediation portions of the process. In addition, the previous version of the brochure included information that was subject to frequent update, such as the current list of certified manufacturers. In the new version, the ACP has removed such information and placed it in a single page insert that can be updated at regular intervals and at reduced cost. This ensures that the current *Lemon-Aid* will not become obsolete as quickly as previous versions.

This review and update also coincided with an exhaustion of the ACP's previous reserves of *Lemon-Aid* brochures. As such, distribution of the brochure was limited in 2013 and 2014. During the first few months of 2013, 626 brochures were distributed. Due to the constraints of the contracted publisher and translator, the ACP did not receive its bulk order until January 2015. However, the *Lemon-Aid* has been available continuously through the ACP's website.

## Accomplishments and Current Issues

In 2014, the ACP successfully implemented the Court of Appeals of California, Fourth District, Division Two's decision in *Martinez v KIA Motors America, Inc.* across all certified arbitration programs. This opinion recognized the protections of California's Lemon Law as including vehicles no longer owned by consumers. Prior to the court's ruling, the statute had been interpreted as requiring the consumer to still own or possess the vehicle in order to pursue repurchase or replacement of their vehicles. This created such scenarios as consumers who were denied warranty coverage for their problems and who

could not afford to fix their vehicle, having their vehicles repossessed and then having no recourse. The court found that possession of the vehicle was not a requirement of the statute and that consumers could still seek relief under the Lemon Law after they lost possession. After various stages of review, multiple levels of correspondence including several teleconferences with participating manufacturers and arbitration programs, the ACP was able to implement these expanded protections to the informal dispute resolution process and the certified arbitration programs. The ACP worked with all stakeholders to apply this new interpretation of California law in a fair manner.

The ACP has presented a comprehensive strategic plan for the next four years, some items of which the ACP has already achieved. The ACP plans to enhance current enforcement efforts by assessing current laws and exploring the development of cite and fine authority, exploring the voluntary nature of offering state-certified arbitration programs, reviewing the current arbitrator training methods and models, expanding the protections of California's Lemon Law to include more vehicles such as motorcycles and neighborhood electric vehicles, and standardization of state-certified program guidelines and policies.

The ACP is also interested in continuing its goal of communicating with and educating consumers. The ACP would like to explore the feasibility of a lemon vehicle tracking mechanism. Also, the ACP will continue to produce content through its social media outlets.

Through these strategic efforts and goals the ACP intends to continue its mission of protecting consumers by providing fair and expeditious state-certified arbitration programs.