



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

2019–2020



Table of Contents

Executive Summary	3
Background.....	3
Strategic Plan	5
Manufacturer Certifications and Program Updates	6
Monitoring Activities	8
Arbitrator Training.....	9
Program On-Site Inspections	10
Manufacturer On-Site Inspections	10
Complaints	10
Consumer Satisfaction Survey	12
Consumer Assistance and Information.....	14
Public Education.....	15
Current Issues.....	15

Executive Summary

Pursuant to Business and Professions Code section 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 evaluating the effectiveness of the certification of third-party dispute resolution processes for new motor vehicles. This is ACP's 16th biennial report, covering calendar years 2019 and 2020.

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. ACP monitors arbitration programs, manufacturers, arbitration meetings, dealerships, and audits arbitrator training sessions. In addition to monitoring activities, ACP also reviews dispute files, educates the public, verifies performance of settlements and arbitration decisions, investigates complaints, and conducts a consumer satisfaction survey.

A few of the key highlights are noted below:

- The arbitration programs regulated by ACP returned in excess of \$30.9 million to consumers.
- In March 2020, COVID-19 guidelines were implemented in California, as well as most states across the nation. ACP worked closely with manufacturers and arbitration programs to determine what services were impacted and monitored temporary alternative solutions.
 - ACP conducted on-site visits with each of its certified manufacturers during 2019. Due to the COVID-19 guidelines in 2020, the ACP conducted visits with each of its certified manufacturers via teleconference or video conference.
 - In 2020, ACP was limited in visiting dealerships due to COVID-19 guidelines, however, ACP was able to monitor twice as many arbitration meetings in 2020 (38%) compared to 2019 (13%).

Background

The ACP was created pursuant to the Tanner Consumer Protection Act 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 they are unable to fix. By defining when a "reasonable" number of repair attempts have occurred, the Tanner Consumer Protection Act addressed consumer groups' concerns that some manufacturer run arbitration programs were not

operating in compliance with federal statutes and regulations and were biased in favor of the manufacturers. ACP's regulations set forth standards for state certification of new vehicle warranty arbitration programs, review of applications for certification submitted by such programs, and monitoring of certified programs for continued compliance with regulatory and statutory requirements.

In California, it is not mandatory for new car manufacturers to participate in a state-certified arbitration process. However, if a manufacturer chooses to participate in one, then ACP certifies that arbitration process. This certification may limit manufacturer's civil liabilities. Furthermore, if the manufacturer participates in the state-certified program, consumers are required to use an existing certified process prior to asserting certain rights, specifically the "Lemon Law Presumption," in court. The "Lemon Law Presumption" assumes a vehicle is a lemon if during the first 18 months or 18,000 miles after the purchase or lease of the new vehicle, any of the following occurred:

1. The vehicle is repaired at least two times for a serious safety defect that can cause serious bodily injury or death; or
2. The vehicle is repaired at least four times for the same warranty problem; or
3. The vehicle is out of service for a total of more than 30 days while being repaired for any number of warranty problems.

If any of the scenarios are demonstrated, the consumer is presumed to be entitled to a replacement vehicle or a refund of the lemon vehicle's purchase price. However, this presumption is rebuttable. The consumer would still need to complete the arbitration process.

ACP's role is to serve as a state regulator and ensure all California state-certified vehicle arbitration programs remain in substantial compliance with the regulations governing the arbitration process. ACP verifies that manufacturers' California state-certified arbitration programs comply with federal and state regulations and arbitrations are conducted in a fair and expeditious manner.

ACP is a special-fund program within the DCA that has eight civil service positions. All of ACP's expenses are provided for by fees collected from each vehicle manufacturer for each new vehicle sold in California. The New Motor Vehicle Board (NMVB) collects the fees on ACP's behalf and deposits them into the Certification Account. The NMVB is authorized by Business and Professions Code section 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. ACP sends the NMVB its estimated budget for the fiscal year and the NMVB then determines the fee that will be assessed. The fee collected by the NMVB during fiscal year 2017–18 was

58.6 cents per vehicle. The fee increased to 68.9 cents per vehicle in fiscal year 2018-19. The fee increased in fiscal year 2019–20 to 77.8 cents per vehicle, due to fewer vehicles sold during this period.

The arbitration programs regulated by ACP returned in excess of \$16.6 million to consumers in 2019 and \$14.3 million to consumers in 2020. ACP believes these returns demonstrate the significant benefits certified vehicle arbitration programs and the ACP offer to California's consumers.

Strategic Plan

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. ACP's vision is that California will have a model arbitration process that encourages manufacturer participation and ensures consumer confidence. ACP values accountability, communication, consumer protection, employees, and professionalism. Its strategic goals are:

- **Enforcement:** enhances oversight of certified arbitration programs by effectively investigating consumer complaints and violations.
- **Legislation and Policy:** supports legislation and adopts regulations, policies, and procedures that reinforce ACP's mission, vision, and goals.
- **Communication and Education:** informs and educates consumers and stakeholders on the laws and regulations that govern the arbitration process by increasing awareness of ACP and state-certified arbitration programs.
 - **Administration:** continues to build and maintain an excellent organization with effective governance and strong leadership through the development of staff and management.

To ensure substantial compliance with the statutes and regulations governing the arbitration process, and to accomplish its mission, ACP certifies and continually monitors the operation of arbitration programs.

ACP works with the state-certified arbitration programs and the sponsoring vehicle manufacturers to identify areas of improvement for the certified programs. In addition, ACP seeks opportunities to increase consumer awareness of the state-certified arbitration programs by distributing educational materials. ACP has incorporated social media into its strategy for educating consumers, including the use of Twitter, Facebook, and YouTube. ACP posts relevant Lemon Law communications and resources to aid consumers with various vehicle problems. ACP believes these measures have helped make ACP more consumer-centric, raised the visibility of ACP, and enhanced consumer awareness of state-certified arbitration programs. These strategies are also responsible for directing consumers to ACP's website, where they gain a better understanding of their legal rights and protections under California's Lemon Law.

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

- Reviews vehicle manufacturers' applications for certification
- Certifies arbitration programs found to be in substantial compliance with federal and state statutes and regulations
- Conducts biannual inspections of the state-certified programs
- Conducts frequent audits of arbitration meetings
- Conducts audits of certified manufacturers' dealerships to ensure the proper Lemon Law disclosures are provided to consumers
- Conducts audits of state-certified arbitration programs' dispute files
- Investigates complaints against state-certified arbitration programs
- Publishes and disseminates educational information
- Educates consumers on their rights under California's Lemon Law using Internet technology, including social media
- Prepares annual reviews of state-certified arbitration programs to determine if the programs continue to operate in substantial compliance with the standards for certification
- Notify the Department of Motor Vehicles of the failure of a manufacturer to honor a decision of a qualified third-party dispute resolution process
- Decertifies arbitration programs found noncompliant with the standards for certification
- Prepares annual statistical reports based on data collected by ACP, as well as data received from the state-certified arbitration programs
- Conducts an annual Consumer Satisfaction Survey to gauge the satisfaction of consumers who have utilized the state-certified arbitration programs and to identify areas of improvement
- Reviews, revises, and implements regulations as needed
- Reviews and proposes legislation as needed
- Reports biennially to the California Legislature on the effectiveness of ACP

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

Manufacturer Certifications and Program Updates

For the years 2019 and 2020, ACP noted only one significant certification change occurred:

In April 2019, the Better Business Bureau (BBB) AUTO LINE provided ACP with the option to monitor telephone arbitration meetings, in addition to in-person arbitration meetings.

As of December 31, 2020, 20 vehicle manufacturers, encompassing more than 40 vehicle brands, maintain state certification of their arbitration programs. Three arbitration programs are currently used in California; BBB AUTO LINE, Consumer Arbitration Program (CAP) Motors; and the California Dispute Settlement Program (CDSP). These arbitration programs act as a third-party decision maker for a dispute between the consumer and the manufacturer.

These California state-certified arbitration programs train arbitrators in the fair and expeditious resolution of consumer disputes, ensure timelines are adhered to, and facilitate arbitration meetings to decide disputes. These programs also create an environment that maintains both the fact and appearance of impartiality for both parties.

The following chart lists the California state-certified arbitration program and their associated manufactures:

ARBITRATION PROGRAM	MANUFACTURERS
BETTER BUSINESS BUREAU AUTO LINE	Aston Martin North America, Bentley Motors, Inc., Automobili Lamborghini America, LLC, BMW of North America, LLC (includes Mini Cooper and Rolls Royce), Ferrari North America, Inc., Ford Motor Company (includes Lincoln, Mercury, Ford motorhome Chassis), General Motors, LLC (includes Buick, Cadillac, Chevrolet and GMC), Hyundai Motor America (includes Genesis Motor America), Jaguar Land Rover North America, LLC, KIA Motors America, Inc., Lotus Cars USA, Inc., Maserati North America, Inc., Mazda North American Operations, Mercedes-Benz USA, LLC, Nissan North America, Inc. (also INFINITI Division), and Volkswagen Group of America, Inc. (also Audi of America, Inc.)
CONSUMER ARBITRATION PROGRAM MOTORS	Porsche Cars North America, Inc.
CALIFORNIA DISPUTE SETTLEMENT PROGRAM	FCA US, LLC (includes Alfa Romeo, Chrysler, Dodge, Fiat, Jeep, Mopar, Ram and SRT), Tesla Motors, Inc., and Toyota Motor Sales U.S.A., Inc. (includes Scion)

To increase the number of state-certified arbitration programs available to consumers, ACP continues to encourage, via networking at conferences and direct communication, vehicle manufacturers that do not currently offer certified programs to submit applications for certification. At this time there are

approximately 10 manufacturers that do not have a California state-certified arbitration program.

Monitoring Activities

Maintaining state certification is based on the applicants' continued substantial compliance with the governing statutes and regulations. The focus of ACP's monitoring activities is on ensuring that certified programs implement and abide by the written operating procedures that were approved by ACP during the certification process. In addition to monitoring arbitration meetings, 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.

In 2019, ACP faced logistical challenges in monitoring the activities of three dispute resolution programs involving 20 manufacturers due to the considerable number of arbitration meetings conducted daily throughout the entire state. In 2020, due to COVID-19 guidelines, in-person arbitration meetings were not able to be conducted. These arbitration meetings took place via telephone or in-writing. ACP was able to monitor 38% of the arbitration meetings, compared to 13% monitored in 2019 since ACP was not required to be in-person.

The following charts offer a breakdown of ACP's monitoring activities for all programs in 2019 and 2020:

ARBITRATION PROGRAM	2019 ARBITRATION MEETINGS			2020 ARBITRATION MEETINGS		
	HELD	MONITORED*	%	HELD	MONITORED*	%
BBB AUTO LINE	301	55	18%	267	111	42%
CAP—MOTORS	3	0	0%	2	0	0%
CDSP	497	52	10%	334	116	35%
Totals	801	107	13%	603	227	38%

Some consumers voluntarily elect to have their arbitration meeting held by documents only. In these disputes, while reflected as an arbitration meeting held, no physical arbitration meeting occurs that could be monitored. These types of disputes accounted for 5.8% of arbitration meetings held in both 2019 and 2020.

ARBITRATION PROGRAM	2019 DEALERSHIPS			2020 DEALERSHIPS		
	OPERATING IN CA	VISITED	%	OPERATING IN CA	VISITED	%
BBB AUTO LINE	1,005	124	12%	984	3	>1%
CAP—MOTORS	25	6	24%	28	0	0%
CDSP	314	58	18%	340	8	2%
Totals	1,344	188	14%	1,352	11	>1%

Due to COVID-19 guidance, ACP was unable to visit dealerships to verify compliance.

ARBITRATION PROGRAM	2019 DISPUTE FILES			2020 DISPUTE FILES		
	TOTAL DISPUTES	REVIEWED	%	TOTAL DISPUTES	REVIEWED	%
BBB AUTO LINE	2,454	121	5%	2,163	168	8%
CAP—MOTORS	11	8	62%	9	1	11%
CDSP	754	109	14%	583	129	22%
Totals	3,219	238	7%	2,755	298	10%

Arbitrator Training

Pursuant to California Code of Regulations, Title 16, section 3398.2, the arbitration programs are required to provide arbitrators with relevant training, including periodic updates and a refresher course. ACP reviews all training materials and provides corrections, updates, and additional information for incorporation.

The majority of arbitration programs certified by ACP have transitioned away from the in-person classroom style setting for their arbitrator training sessions. These programs now use new methods, including emails, conference calls, and webinars to train their arbitrators.

CDSP is an exception to this trend, as they continue to do yearly classroom style training in addition to monthly bulletins and web-based trainings. CDSP continues this style of training to allow arbitrators to have open conversations with each other, learning best practices from the other arbitrators in a classroom style learning environment. During these trainings, CDSP gets a chance to assess arbitrators through the conversations and behavior exhibited during the in-

person training sessions. CDSP also uses this training method to evaluate whether arbitrators are grasping concepts better with in-person training rather than solely web-based training.

ACP will continue to review and monitor 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 rights and responsibilities of arbitrators consistent with the requirements of the California Code of Regulations. At this time, no specific method of training (i.e., in-person versus webinars) is preferred.

Program On-Site Inspections

Business and Professions Code section 472.4(c)(1) requires the ACP to perform on-site inspections of each qualified third-party dispute resolution process at least twice annually, which provides ACP an opportunity to inspect the program's facilities, records and operations, including the records of individual disputes, interviews of program staff, discussion of violations, and current trends and issues. The ACP conducted the required program on-site inspections in 2019, and all were found to be in compliance. In 2020, due to the COVID-19 guidance, only one on-site inspection was conducted for each arbitration program. This on-site inspection took place via teleconference or video conference, therefore ACP was not able to inspect the program's facilities or records and operations.

Manufacturer On-Site Inspections

The manufacturer on-site inspections conducted in 2019 and 2020 allowed ACP regulators to personally meet with the manufacturer's principal administrator in charge of the California state-certified arbitration program. The inspections also provide opportunities to engage with other key personnel familiar with the day to day operations, and with attorneys from their legal team. During these on-sites, ACP reviewed operations to ensure the program remains in substantial compliance with California law and regulations. In 2019, ACP was also able to inspect the program's facilities, records, and operations, including the record of individual disputes as well as conduct interviews of program staff and discuss violations, current trends and issues. In 2020, due to the COVID-19 guidance, these inspections took place via teleconference or video conference, therefore ACP was not able to inspect the manufacturer's facilities or records and operations.

Complaints

Business and Professions Code section 472.4(c)(2) charges ACP with the investigation of consumer complaints regarding the operation of qualified third-party dispute resolution processes. Complaints received typically concern dissatisfaction with the arbitrator's decision or noncompliance by the manufacturer with the 30-day requirement to respond to the arbitrator's

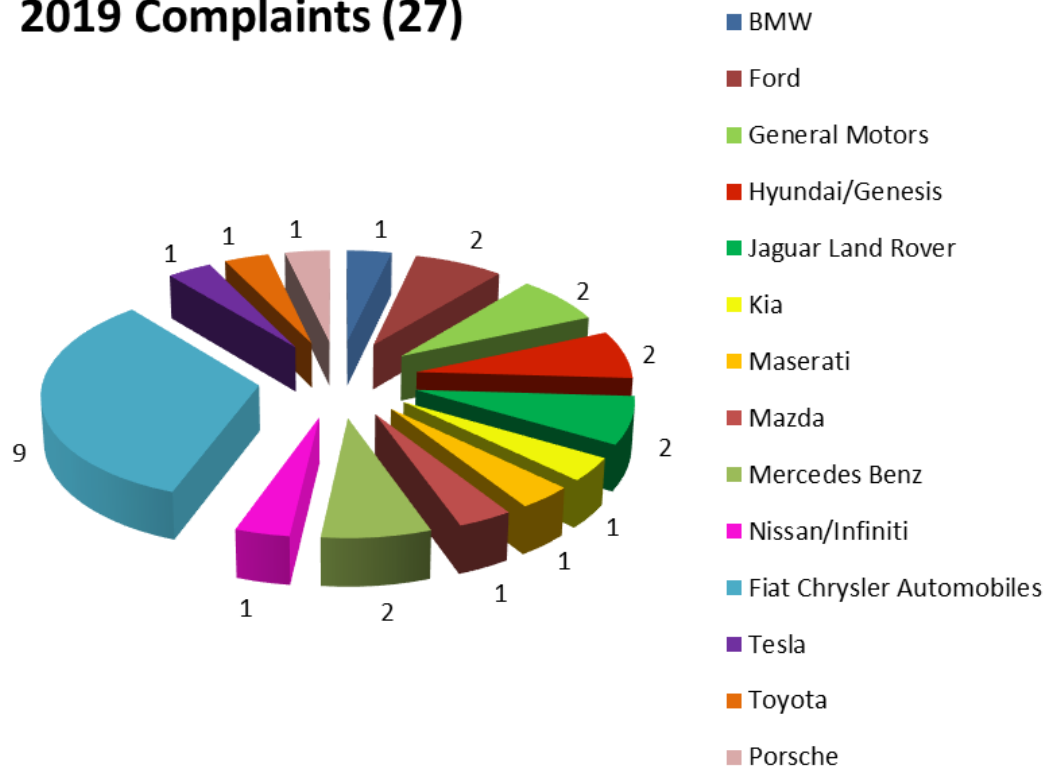
decision. ACP acknowledges all complaints and inquiries within 24 hours and attempts to resolve complaints within 21 days. ACP has received positive remarks from consumers expressing appreciation for prompt responses, helpful resources, and valuable next steps. All complaints received during the given period were resolved.

Complaints Received by ACP:

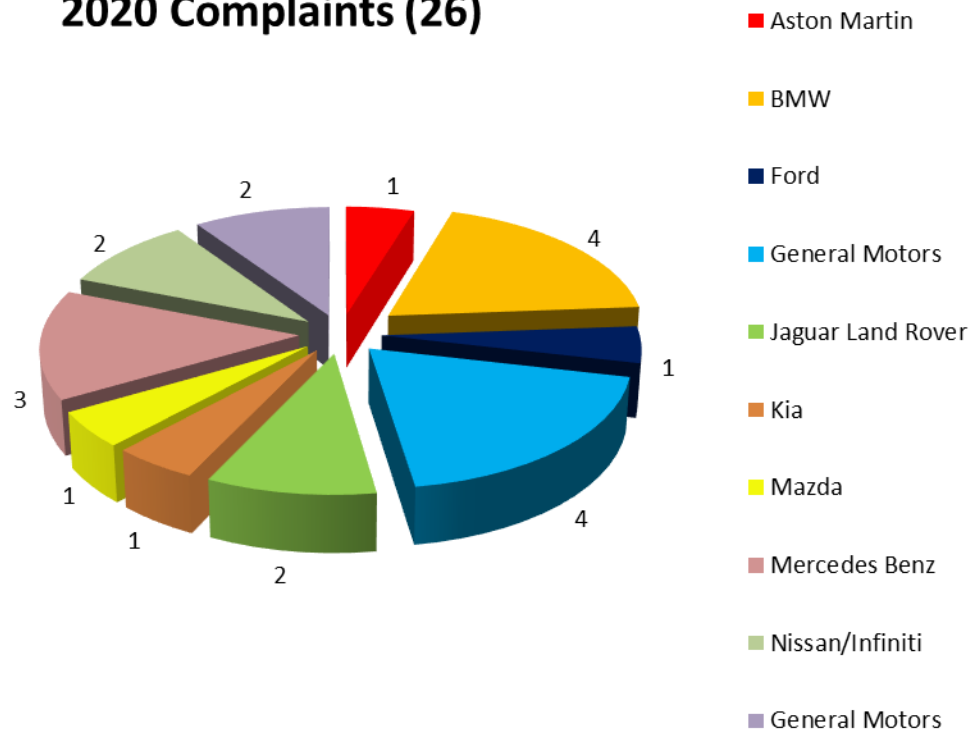
	2019 Complaints (Percentage of Total Disputes)	2020 Complaints (Percentage of Total Disputes)
BBB AUTO LINE	15 (0.006%)	20 (0.009%)
CAP Motors	1 (0.091%)	0 (0%)
CDSP	11 (0.015%)	6 (0.010%)

The following charts break down complaints by specific manufacturer:

2019 Complaints (27)

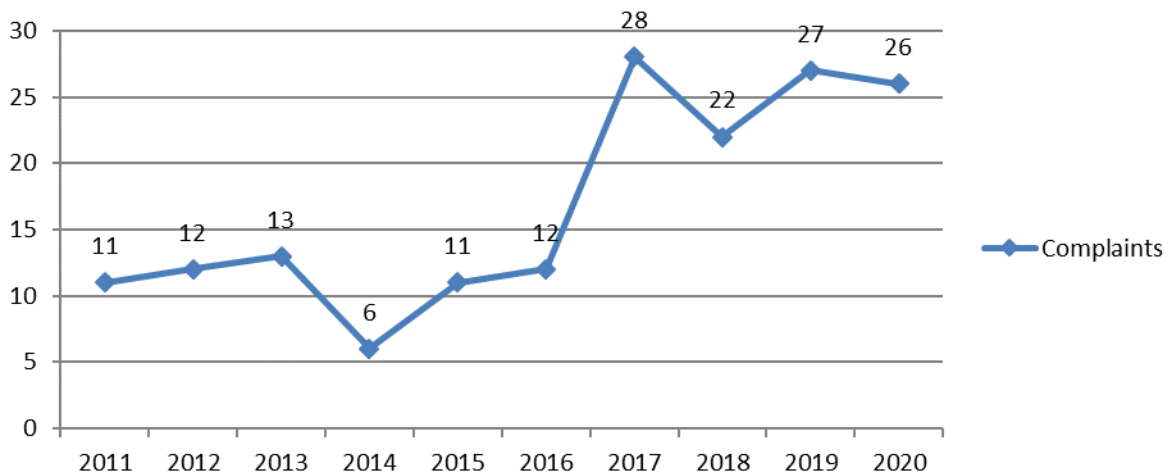


2020 Complaints (26)



The following chart illustrates the number of complaints ACP has received over the last decade:

Complaints Received by ACP



Consumer Satisfaction Survey

As mandated by Business and Professions Code section 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 Consumer Satisfaction Survey (Survey) has proven to be a valuable tool for evaluating the performance of the certified programs from the consumer's perspective.

Through the results of the Survey, 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.

ACP surveys consumers immediately following the arbitration meeting, prior to receiving the decision. ACP also began mailing the Survey to consumers prior to their arbitration meeting to ensure they are provided the opportunity to participate if ACP is unable to attend the arbitration meeting. ACP believes this allows consumers to express unbiased opinions about their experience with the process, as they are not yet influenced by whether they “won” or “lost.” In addition, ACP continues to survey all consumers at the conclusion of the entire arbitration process. This post-decision Survey includes the same questions as the pre-decision Survey, as well as additional inquiries. This also allows 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, ACP more accurately captures consumers’ satisfaction with the process, independent of the processes’ outcome.

The following is a summary of the key findings of the 2019 Survey:

- The response rate was 13% for the pre-decision and 11.8% for the post-decision surveys.
- A total of 92% of 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.
- A total of 87% of respondents to the pre-decision Survey rated their satisfaction with the arbitrator as either “excellent” or “acceptable,” compared to 60% of all respondents to the post-decision Survey.
- A total of 85% of respondents to the pre-decision Survey rated their satisfaction with the entire arbitration process as either “excellent” or “acceptable,” compared to 53% of all respondents to the post-decision Survey.

The following is a summary of the key findings of the 2020 Survey:

- The response rate was 18.3% for the pre-decision and 18% for the post-decision surveys.
- A total of 91% of respondents to the pre-decision Survey rated their satisfaction with the arbitration program’s staff as either “excellent” or “acceptable,” compared to 62% of all respondents to the post-decision

Survey.

- A total of 79% of respondents to the pre-decision Survey rated their satisfaction with the arbitrator as either “excellent” or “acceptable,” compared to 59% of all respondents to the post-decision Survey.
- A total of 83% of respondents to the pre-decision Survey rated their satisfaction with the entire arbitration process as either “excellent” or “acceptable,” compared to 55% of all respondents to the post-decision Survey.

These results, along with other analyses ACP has performed in conjunction with the Survey, and the decisions rendered by the specific program, suggest that consumer satisfaction with the process is largely tied to the outcome of their dispute.

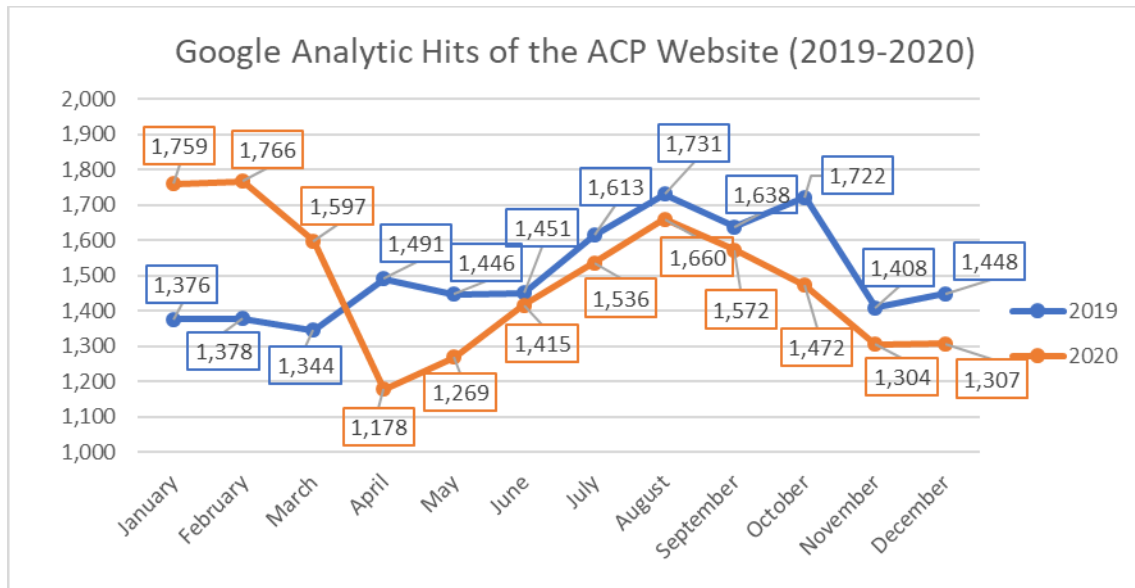
Consumer Assistance and Information

ACP staff responds to consumer phone, fax, mail, and email inquiries by providing information on the state-certified arbitration programs, referrals to appropriate agencies, and other information designed to help consumers resolve vehicle warranty disputes.

ACP collects data from consumers about the certified programs through the Survey and posts the results on its website. In addition to the benefits to ACP and program administrators discussed above, the posted data assists consumers considering arbitration in understanding the arbitration process.

ACP Website

In 2019, a total of 18,046 consumers accessed ACP’s website, while in 2020, a total of 17,835 consumers accessed ACP’s website. ACP continues to promote the usage of its website by redesigning it to appeal to consumers as a one-stop-shop for all California Lemon Law related topics. ACP posts relevant Lemon Law communications and resources to aid consumers with various vehicle problems. In addition, ACP interacts with various federal and state agencies and consumer organizations to educate consumers about their Lemon Law rights.



Public Education

A major component of ACP's education program was the *Lemon-aid for Consumers* booklet, which was produced in two languages: English and Spanish. The booklet provided comprehensive and 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 ACP and the California Lemon Law.

As a cost savings measure, in late 2019, ACP phased out these booklets and began distributing two tri-folds that provided the information in a condensed format. One tri-fold focuses on the overview of the arbitration programs, while the other is a questions and answers style tri-fold. The tri-folds are also produced in two languages: English and Spanish.

In 2019, ACP circulated approximately 1,300 English and 57 Spanish copies of the booklet. In 2019, ACP circulated 450 of each English tri-fold and seven of each Spanish tri-fold. In 2020, 2,295 of each English tri-fold and 22 of each Spanish tri-fold were sent to consumers. The tri-folds were posted to the ACP website in 2020 and the English version had 118 views, while the Spanish version was viewed 21 times.

Current Issues

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. To educate consumers, the ACP is looking at ramping up its outreach efforts to provide educational information to consumers. In addition, the ACP would like to increase its presence on social media.

Another issue is state certification of an arbitration program is voluntary on the part of the manufacturer. As a result, consumers purchasing vehicles from manufacturers that do not offer an arbitration program are not afforded the same protection, and they may have no choice but to seek legal remedies to address their lemon law rights. The ACP continues to work with non-certified manufacturers and discuss the advantages of state certification.

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.

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