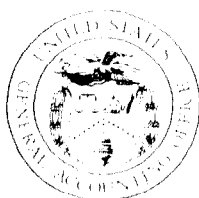


March 1989

MAGNUSON-MOSS WARRANTY ACT

FTC's and Better Business Bureau's Handling of Automobile Warranty Complaints



RESTRICTED—Not to be released outside the
General Accounting Office unless specifically
approved by the Office of Congressional
Relations.

RELEASED

544847

Human Resources Division

B-231329

March 14, 1989

The Honorable Ernest F. Hollings
United States Senate

Dear Senator Hollings:

This is in response to your August 1988 request and later discussions with your office to provide information on how the Federal Trade Commission (FTC) and the Council of Better Business Bureaus, Inc., handled a constituent's claims under an automobile manufacturer's written warranty. The constituent, Mr. Paul Curry of Clemson, South Carolina, had submitted the claims through the Council's AUTO LINE program. AUTO LINE is an informal dispute resolution program under which the Council or its local Better Business Bureaus (BBBs) try to resolve automobile warranty problems through mediation or arbitration by local, neutral, independent arbitrators.

The Magnuson-Moss Warranty Act of 1975, administered by FTC, is the federal law covering warranties on consumer products. Under the act, businesses, such as automobile manufacturers, may offer written warranties that require consumers to use an informal dispute resolution program, such as AUTO LINE, before bringing suit in a federal or state court under the act.

If businesses' written warranties contain such a requirement, the program must comply with FTC's rules on informal dispute settlement programs in 16 C.F.R. Part 703. This part, commonly known as "Rule 703," establishes minimum standards to protect consumers' rights under warranties and requires, among other things, (1) that cases be processed promptly—within 40 days—since the consumer may be required to use the warranty within a specified time period and (2) that the program have follow-up procedures to assure that the warrantor's promised action is completed.

Results in Brief

Mr. Curry purchased a new automobile from a Nissan Motor Corporation dealer in South Carolina in February 1986 and received a written warranty. At that time, the warranty required Mr. Curry to use AUTO LINE before seeking legal remedies in a state or federal court. After unsuccessfully trying to obtain repairs that he believed were needed under the dealer's warranty, in February 1987 Mr. Curry submitted a claim under AUTO LINE in an attempt to resolve the dispute. Although AUTO LINE's arbitrator decided the initial claim in his favor, the local BBB

did not use Rule 703 procedures because Nissan had, in November 1986, discontinued the requirement that Mr. Curry use AUTO LINE before seeking legal recourse. Mr. Curry was not satisfied with the subsequent repairs made to his vehicle or with the fact that his case was not handled as a Rule 703 case.

After further negotiation failed to settle the dispute, in March 1988, Mr. Curry requested that the first claim be reheard. At that time he also submitted a second claim under AUTO LINE requesting that the local BBB use Rule 703 procedures and that Nissan resolve his problems by repurchasing the vehicle.

In April 1988, the Council rejected Mr. Curry's request and asserted that no basis existed for rehearing the initial decision because the local BBB in South Carolina had followed the Council's rules. As of January 15, 1989, Mr. Curry's second claim was still pending.

The FTC staff had also reviewed Mr. Curry's case after receiving letters on his behalf from a U.S. senator and a congressman from South Carolina. In May 17, 1988, responses, FTC stated that it does not have the authority to intervene in individual consumer disputes. As a result, FTC did not take action directly on Mr. Curry's behalf. However, the responses stated that on the basis of its review, the FTC staff concluded that the Council was correct in not treating Mr. Curry's claims under Rule 703 because Nissan did not, at the time both claims were filed, require consumers to use AUTO LINE before seeking legal remedies in a state or federal court.

The FTC staff also noted that if Mr. Curry is still dissatisfied with the AUTO LINE arbitrator's decision on his second claim, he has legal recourse, because such decisions are not binding on consumers. Therefore, the agency indicated that Mr. Curry could take legal action against Nissan under the Magnuson-Moss Act, and if successful, he could recover his attorney's fees and court costs and the damages or other relief awarded by the courts.

On the basis of our review, we agree with the FTC staff's conclusion that the standards of Rule 703 do not apply to Mr. Curry's claims. Accordingly, we believe that the Council and the local BBB were correct in not handling Mr. Curry's claim as a Rule 703 case.

Background

The Magnuson-Moss Warranty Act, enacted by the Congress in January 1975, allows a business to determine whether to provide a written warranty on a consumer product. But, once a business decides to offer a written warranty, it must comply with the act's provisions.

The act creates a federal cause of action for breach of written warranty permitting consumers to take legal action in state or federal court against businesses that fail to satisfy their promises or guarantees. If consumers prevail, the act allows recovery of costs and expenses, including attorney's fees. It also encourages businesses to use less formal and less costly dispute resolution programs to settle warranty disputes, as an alternative to legal proceedings.

FTC's Bureau of Consumer Protection is responsible for enforcing the Magnuson-Moss Act and implementing warranty regulations, including Rule 703. The rule provides that if businesses' written warranties require use of informal dispute settlement programs before consumers resort to legal action, the programs must comply with Rule 703. The rule requires also that such programs (1) handle complaints at no charge to the consumer; (2) have decisions on complaints made by a neutral, independent person generally within 40 days from the complaint date; and (3) inform consumers that, if dissatisfied, they may file a lawsuit against the businesses.

FTC's Rule 703 procedures are designed to

- make it easy for the consumer to process a complaint;
- ensure that the consumer's case is not "dropped" because the program did not completely follow up on the complaint and its progress;
- guarantee prompt decisions by the program, since a consumer may be obligated to use the program before filing suit; and
- assure a neutral decision.

The AUTO LINE Program

AUTO LINE is an informal dispute settlement program operated by the Council's headquarters in Arlington, Virginia, through 141 local BBBS nationwide. BBBS are business-sponsored, nonprofit organizations, promoting ethical standards of business practices for the protection of the consuming public through voluntary self-regulation and monitoring activities.

Under AUTO LINE, when a consumer complains about an automotive problem, the local BBB acts as the intermediary between the parties to resolve

the dispute. Should efforts to mediate the dispute fail, the BBB offers arbitration. In arbitration, an impartial, neutral arbitrator—a community volunteer, not a BBB employee—will review the facts of the case, conduct hearings, and render a decision.

The Council trains arbitrators to conduct hearings and make decisions based on the facts and their own sense of fairness. If needed, the BBB will provide the arbitrators with automotive experts to consult with on individual complaints. To ensure the arbitrators' neutrality, they must sign an oath and appointment form agreeing that they will make an unbiased decision and that no conflict of interest exists with the parties.

The Council's Alternative Dispute Resolution Programs Division in Arlington, which is responsible for the AUTO LINE program, has issued rules and procedures for BBBs to follow. In the summer of 1985 the FTC staff reviewed the division's rules and procedures and determined that they generally complied with applicable sections of FTC's Rule 703.

Some participating automobile manufacturers require consumers to use AUTO LINE to settle disputes before taking legal action by including such a requirement in their written guaranties. Under the Council's rules, the BBBs must give these complaints priority—handle them generally in 40 days—and in accordance with Rule 703. However, such complaints, called Rule 703 cases, must meet the following criteria: (1) the consumer's written warranty must require the use of AUTO LINE at the time the complaint is filed, (2) the complaint or problem must be covered by the warranty, and (3) the warranty must still be in effect or have been in effect when the problem first occurred and was reported.

According to a Council guide on its rules, the advantages to an AUTO LINE case being handled under Rule 703 include: time limits for disputes resolution are adhered to strictly; the consumer may proceed directly to arbitration without exhausting steps that otherwise may be required by the manufacturer or dealer; a case cannot be closed without the BBB's verification that the promised performance or action, if any, was in fact carried out; and the consumer must be mailed a brochure describing AUTO LINE procedures.

Also, participating automobile manufacturers not requiring consumers to use AUTO LINE in their written warranties may, nevertheless, encourage them to use it. According to a Council official, the BBBs handle such complaints in accordance with the Council's rules, but they are not given priority handling as a Rule 703 case.

The Request

On February 17, 1986, Mr. Curry purchased a new automobile from a Nissan dealer in Mauldin, South Carolina. He was provided a written warranty that included a 12-month or 12,500-mile general warranty and a 24-month or 25,000-mile power-train warranty. At that time, Nissan's warranty required that Mr. Curry use AUTO LINE to resolve any warranty dispute before seeking a legal remedy in a federal or state court.

In November 1986, however, Nissan dropped this requirement from its warranty, so owners no longer were required to use AUTO LINE before filing a warranty suit in state or federal court. Nissan continued to encourage owners to use AUTO LINE as an expeditious way of resolving warranty repair disputes. According to a Council official, all Nissan owners who filed AUTO LINE claims with local BBBs after November 5, 1986, were to be informed of this change in Nissan policy.

During 1986, Mr. Curry experienced problems with his automobile, and the dealer was unable to correct the problems to his satisfaction. Mr. Curry filed his initial claim with AUTO LINE on February 2, 1987. Although the BBB arbitrator in his initial claim ruled in Mr. Curry's favor and the ordered repairs were made to his car, Mr. Curry was not satisfied, believing that the repairs had not corrected his problems. In March 1988 he submitted a second claim under AUTO LINE. Subsequently, Mr. Curry complained to your office about his claims under AUTO LINE. (A chronology of events relating to Mr. Curry's claims is in app. I.)

In discussions with the staff at your state office in Columbia, we agreed to determine how FTC and the Council handled Mr. Curry's claims. To accomplish this objective, we obtained and reviewed information on Mr. Curry's claims under AUTO LINE and on FTC's, the Council's, and local BBBs' attempts to resolve Mr. Curry's problems. We performed our work at the Washington headquarters of FTC and the Arlington headquarters of the Council.

At FTC, we concentrated our work in the Bureau of Consumer Protection, where we reviewed (1) the Magnuson-Moss Warranty Act and Rule 703; (2) records on FTC's enforcement efforts, including enforcement of Rule 703; and (3) the FTC's staff review of Mr. Curry's claims under AUTO LINE performed in response to two congressional inquiries. We also discussed FTC's actions on Mr. Curry's claims with agency officials.

At the Council, we reviewed records on the Council's and the local BBBs' handling of Mr. Curry's claims and complaints under AUTO LINE. We discussed the claims with officials in the Alternative Dispute Resolution Programs Division.

Mr. Curry's Claims Under AUTO LINE

Mr. Curry's complaint, received by the BBB in Greenville, South Carolina, on February 2, 1987, alleged that his automobile had problems with excessive vibration and poor alignment. The Greenville BBB attempted to mediate the dispute between Mr. Curry and Nissan, but the mediation was not successful. The case was sent to an arbitrator.

On March 4, 1987, the arbitrator heard evidence from Mr. Curry and Nissan and, on April 10, issued an interim decision in Mr. Curry's favor. The decision required the Nissan dealer to replace two rear tires, balance all four wheels, and check the front and rear alignment. On June 18, 1987, the arbitrator rendered a final decision that required Nissan to reinspect the vehicle and verify that the corrective measures outlined in the interim decision were carried out.

The Council's records show that Nissan made the repairs in accordance with the arbitrator's decision, but Mr. Curry was dissatisfied. He indicated that the repairs did not solve his automobile's problems.

During the last half of 1987 and in early 1988, Mr. Curry, the Council, and the Greenville BBB attempted to resolve his complaint with Nissan and his problems with AUTO LINE. These efforts were unsuccessful.

Consequently, on March 8, 1988, Mr. Curry wrote to the Council alleging that administrative errors had been made and that his case was not out of warranty and should have been treated as a Rule 703 case. He requested that either the hearings be reopened because of the gross errors or the first hearings be voided and a new arbitration hearing initiated under Rule 703.

On March 21, 1988, Mr. Curry submitted a second claim under the AUTO LINE program with the Greenville BBB. He requested that a hearing be held in conformity to Rule 703 and that Nissan resolve his problem by repurchasing the vehicle. According to Mr. Curry, the original problems reported to Nissan at 2,050 miles still existed despite numerous repair attempts and requests from him and the Greenville BBB.

The Council's Actions

In a letter dated April 13, 1988, a communications coordinator in the Council's Alternative Dispute Resolution Programs Division commented on Mr. Curry's allegations and second complaint. The coordinator stated that her review of the first claim disclosed that (1) the Greenville BBB official who handled the case was familiar with AUTO LINE policies and procedures and (2) no prejudicial or administrative errors, which would necessitate a rehearing, had occurred.

In addition, the coordinator also noted that effective November 5, 1986—3 months before Mr. Curry's first claim—Nissan no longer required consumers to use the AUTO LINE before legal action, although the company encouraged its use. Accordingly, the local BBB was not obligated to use Rule 703 procedures, but handled Mr. Curry's first claim as a regular case. It completed initial action on the claim in about 67 days and final action in about 134 days. Generally, Rule 703 cases are required to be completed in 40 days.

Regarding the second claim, the April 13 letter stated that the arbitrator of the second claim "will have authority to render a decision only on those failures which have not been previously arbitrated." The coordinator also advised Mr. Curry that although Nissan no longer required consumers to use AUTO LINE at the time he submitted his second claim, the Greenville BBB would continue to handle his case in a timely manner. The Greenville BBB handled Mr. Curry's second claim as a regular rather than a Rule 703 case. (The coordinator also sent Mr. Curry a copy of the November 5, 1986, Council memorandum sent to all BBBs noting Nissan's change regarding AUTO LINE.)

The Council's records show that the Greenville BBB set Mr. Curry's second claim for arbitration on May 13, 1988. However, Mr. Curry attempted to subpoena witnesses, and when they did not appear, he refused to participate in the hearing. As a result, the hearing was closed, unheard by the arbitrator.

The Greenville BBB reset the hearing for August 15, 1988, with another arbitrator (the original arbitrator refused further participation), but the hearing was canceled because the Nissan representatives were not available. Subsequently, Mr. Curry requested that his complaint be handled by another BBB.

In October, the Council transferred Mr. Curry's complaint to the BBB in Norfolk, Virginia; as of January 15, 1989, the claim was pending at that office.

FTC's Position

Bureau of Consumer Protection officials told us that the FTC staff had reviewed Mr. Curry's claims in response to letters from a U.S. senator and a congressman from South Carolina. The letters requested that FTC look into Mr. Curry's AUTO LINE claims and the program's operations. The FTC staff's review covered Mr. Curry's charge that his Nissan new car warranty required him to use the AUTO LINE to resolve his dispute, but the program was not operated in accordance with Rule 703.

The results of the FTC staff's review were reported in May 17, 1988, agency responses, which stated that FTC does not have the authority to intervene in individual consumer disputes. Thus, the agency stated that FTC did not take action directly on Mr. Curry's behalf.

The responses also stated that since November 1986 Nissan no longer required consumers to use AUTO LINE before seeking legal remedies in court and that FTC's Rule 703 applies only when the program is incorporated into the consumer's written warranty. Because Nissan no longer requires consumers to use AUTO LINE as a prerequisite for filing a warranty suit, the agency's responses concluded that Rule 703 standards did not apply when Nissan owners voluntarily chose to participate in AUTO LINE in an attempt to resolve a dispute, as in Mr. Curry's case.

The May 17, 1988, responses also commented that the AUTO LINE decision is binding on the manufacturer and dealer but not on the consumer. The FTC staff responses suggested that (1) Mr. Curry consider making a claim in a state or federal court under the Magnuson-Moss Warranty Act and (2) if successful, he could, under the act, recover his attorney's fees and court costs as well as the damages or other relief awarded by the court.

GAO's Conclusion

We agree that Rule 703 does not apply to Mr. Curry's case since his claims were filed after Nissan made the use of AUTO LINE voluntary. Accordingly, we believe that the Council and the local BBB had the authority to hear Mr. Curry's claim using regular, not Rule 703, procedures and that FTC staff did not err in its review of and conclusion on the case.



Mr. Curry retains his right to pursue remedies in a federal or state court under the Magnuson-Moss Warranty Act.

As requested by your office, we did not obtain agency comments on a draft of this report. We did, however, discuss its contents with FTC officials, and their comments have been included where appropriate. We also discussed the draft with officials of the Council and considered their comments in the final report.

As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of the report until 7 days after its issue date. At that time, we will send copies to the Chairman of FTC, the Director of the Council of the Better Business Bureaus, and other interested parties and make copies available to others on request.

The major contributors to this report are listed in appendix II.

Sincerely yours,


 Linda G. Morra
Director, Congressionally
Requested Studies

Chronology of Events Relating to Mr. Paul Curry's Claims Under Auto Line

Date	Participant(s)	Event and action taken
Feb. 17, 1986	P. Curry	Buys new car from Nissan with written warranty (1) including 12-month or 12,500-mile general warranty and 24-month or 25,000-mile power-train warranty and (2) requiring use of AUTO LINE to settle disputes before legal action.
Feb./Mar. to Dec. 1986	P. Curry/ Nissan	Mr. Curry experiences problems with new car, but Nissan is unable to correct problems to his satisfaction.
Nov. 5, 1986	Nissan/ BBB	Nissan discontinues requirement that car owners use AUTO LINE. BBB to notify Nissan owners with AUTO LINE complaints.
Feb. 2, 1987	P. Curry/ Greenville BBB	Greenville BBB receives Mr. Curry's first claim under AUTO LINE alleging excessive vibration and alignment problems. BBB does not handle as Rule 703 case.
Mar. 4, 1987	BBB arbitrator	Holds hearing to review evidence from Nissan and Mr. Curry.
Apr. 10, 1987	BBB arbitrator	Issues interim decision in Mr. Curry's favor; Nissan to replace 2 rear tires, balance all wheels, and check front and rear alignment.
May 13, 1987	The Council	Sends letter to Mr. Curry confirming his agreement to allow Nissan dealer to repair his car according to the arbitrator's interim decision.
June 16, 1987	BBB arbitrator	Issues final decision requiring Nissan to verify that corrective measures outlined in interim decision were carried out.
June 29, 1987, to Mar. 8, 1988	P. Curry/ Greenville BBB	Mr. Curry rejects repairs as unsatisfactory; he and BBB are unsuccessful in resolving his complaint with Nissan and AUTO LINE.
Mar. 8, 1988	P. Curry	Submits letter to the Council alleging (1) his car was not out of warranty and should have been a Rule 703 case and (2) administrative errors in arbitration records. Requests rehearing.
Mar. 21, 1988	P. Curry	Submits second claim to Greenville BBB under AUTO LINE requesting that (1) his claim be handled as a Rule 703 case and (2) Nissan resolve problem by buying back his car.
Apr. 13, 1988	The Council	Writes to Mr. Curry denying rehearing of first claim on basis that Greenville BBB followed AUTO LINE procedures and no prejudicial or administrative errors were found. Also states that second claim will be processed timely by Greenville BBB even though Nissan no longer requires that AUTO LINE be used.
May 13, 1988	Greenville BBB	Second claim arbitration date. Case not heard by arbitrator when Mr. Curry refuses to participate when witnesses fail to appear.
May 17, 1988	FTC	Responses to congressional inquiries state FTC does not have authority to intervene in individual consumer disputes. FTC staff review, however, concludes that because Nissan no longer requires use of AUTO LINE, Rule 703 standards do not apply to Mr. Curry's case. Staff notes that Mr. Curry can still sue Nissan under the Magnuson-Moss Warranty Act.
Aug. 15, 1988	Greenville BBB	Resets second claim arbitration date, but hearing canceled because Nissan representative cannot attend.
Nov. 1988	The Council	At Mr. Curry's request, his claim is transferred to the BBB in Norfolk. Claim pending as of January 15, 1989.

Major Contributors to This Report

**Human Resources
Division, Washington,
D.C.**

Linda G. Morra, Director, Congressionally Requested Studies,
(202) 275-1655
Larry F. Horinko, Assistant Director
Raymond J. Kowalski, Assignment Manager

**Office of the General
Counsel, Washington,
D.C.**

Barry Bedrick, Acting Associate General Counsel
Dayna Shah, Assistant General Counsel

Requests for copies of GAO reports should be sent to:

U.S. General Accounting Office
Post Office Box 6015
Gaithersburg, Maryland 20877

Telephone 202-275-6241

The first five copies of each report are free. Additional copies are \$2.00 each.

There is a 25% discount on orders for 100 or more copies mailed to a single address.

Orders must be prepaid by cash or by check or money order made out to the Superintendent of Documents.

United States
General Accounting Office
Washington, D.C. 20548

Official Business
Penalty for Private Use \$300

First-Class Mail Postage & Fees Paid GAO Permit No. G100
