Turning Lemons into Lemonade: The Pros and Cons of Automobile Arbitration

Donald Kendig
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Introduction

In 1993 alone more than 150,000 Americans will experience new-car buyer's remorse when they come to the understanding that they bought a lemon. "Their cars will visit the repair shop again and again, as mechanics try, without success, to fix them" (*CR*, 40). I was one of those buyers mentioned above when I purchased a new Nissan pickup with my life savings. "Ten years ago, such unfortunate car owners [like myself] could only take their case to court-- a long and costly process" (*CR*, 40). Thanks to the alternative dispute resolution (ADR) movement, every state except Arkansas and South Dakota has had a lemon law enacted since 1982 which establishes arbitration procedures designed to make it easier for owners of hopelessly defective automobiles to get a replacement car or refund (*CR*, 40). Furthermore, today, all states have some sort of lemon law enacted. This paper will focus on the Pros and Cons of automobile arbitration programs-- manufacturer, private, and state-run.

This paper will begin with an extensive background of the evolution of the Auto Arbitration process and the current condition of California's lemon law. To Follow will be a detailed discussion of the many benefits (or Pros) associated with the creation of the auto arbitration option and a discussion of its less desirable aspects (the Cons) of the state-run lemon law arbitration process. Also included in the discussion of the cons will be the communication of the overwhelming problems associated with industry-sponsored arbitration programs. Incorporated in the discussions of the two positions will be various perspectives from that of regulator, participant, and statistical study. To follow the discussions and citable sources will be my opinion and, having experienced it, personal

testimony regarding the auto arbitration process and the conclusion that it offers consumers a viable alternative but still needs some improving.

Background

Consumer dissatisfaction with automobiles has been an issue since they began mass production by Henry Ford, and it has been a major issue as close to a decade after the first model T rolled off the production line. Consumer dissatisfaction has been consistently higher for autos than any other consumer product (Adams, 36). The main reason for the "post decision dissonance" can be traced to the fact that there are many alternatives to choose from which are distinctly qualitative in nature and of consequence to the individual (Adams, 36). Aside from the psychological factors of the dissatisfaction, there are also the objective factors such as mechanical defects and repeated repairs.

Prior to 1982, the consumers inability to receive relief from a defective new car was considered "one of the saddest episodes in responsible consumer relations" (Abrams, 36). The manufactures' strategy of overwhelming the consumer with meaningless correspondence and arrangements for repeated "fruitless" repair attempts was simple and "worked all to well" (Abrams, 36). When the manufacture got tired of dealing with the frazzled consumer, it advised him/her that he/she was being unreasonable and there was nothing wrong with the car. If the consumer disagreed, the only option was litigation which was costly, time consuming, and out of reach for many (Abrams, 37). In the end

the large Manufactures got their wish, and the consumer was left with a defective car usually never to be heard from again.

One attempt to tackle the above problem was made in 1975 with the passing of the Magnuson-Moss/Federal Trade Commission Improvement Act (Warranty Act). It tackled the warranty aspects of car purchases requiring clear warranty language and explicit statements regarding whether a warranty was "full" or limited" (Adams, 36). Requirements for full warranties were stipulated; however, manufactures were not required to provide full warranties on auto sales (Adams, 37). There was an "anti-lemon" provision of the law that applied to full warranties which permitted the consumer to request a refund or replacement after a reasonable number of unsuccessful repair attempts (Abrams, 37). Not surprisingly many manufactures only offered limited warranties. And when they did offer a full warranty on an automobile, the act did not define what was a reasonable amount of attempts. The Federal Trade Commission (FTC) was authorized to define what was reasonable, but they never acted (Abrams, 37). In addition, the courts were inadequately equipped for providing relief for purchasers and their situations remained intolerable. Obviously, something more had to be done.

Thus, starting in 1982 with Connecticut being the first, lemon laws began to emerge in an attempt to empower the disillusioned car buyer (Adams, 37). New York and Florida followed in 1983 (Abrams, 37) (Adams, 38), and Massachusetts did the same in 1986 (Gold, 48). The initial lemon laws enacted criteria for which the purchaser is entitled to a full refund or replacement. For example, in Massachusetts:

> The vehicle must be substantially impaired in use, market value, or safety. The manufacturer or its agent is provided a reasonable number of

> attempts to fix the vehicle. The law defines a 'reasonable number of attempts' as either 3 or more repairs for the same substantial defect or at least 15 business days out of service for repair of any substantial defects within the law's term of protection (the first year or 15,000 miles of use whichever comes first). The law also gives the manufacturer an additional opportunity of no more than 7 business days to repair the defect(s). The additional opportunity begins when the manufacturer first knows or should have known that the 'reasonable number of attempts' limits have been met or exceeded.
>
> If a defect continues to exist after the final repair opportunity, the consumer is entitled to a refund or replacement vehicle. If the manufacture does not voluntarily refund the consumer's money or offer a replacement vehicle, the consumer can file for state-run arbitration (Gold, 49).

The other states' lemon laws are virtually the same except for the time period and number of miles covered, and whether the consumer is required to choose "state-run" or "manufacture-sponsored" arbitration programs.

Many states initially required consumers to pursue industry or manufacture-sponsored programs, if available, and encouraged manufactures to establish and operate them in order to provide for a quick resolution of lemon law disputes. This proved to be problematic an unhelpful for the consumer.

The Attorney General undertook an analysis of several of the major manufactures' programs in the state of New York and found some manufacturer programs failed to permit oral presentations by consumers (Abrams, 38). "Most importantly, it was found that none of the manufactures programs required arbitrators to apply the criteria of the

New York lemon law in deciding cases" (Abrams, 48). Customers specifically complained that cases "brought before arbitration panels, paid for by the manufacturers were too slow and provided inadequate relief" (Hinds, *NYT*). Coupled with a myriad of complaints and several Attorney General analysis caused for the amendments of many of the initial Lemon laws to provide the consumer with more protection by more strictly regulating industry-sponsored programs, and by giving consumers a choice. Yet another option provided was to require a consumer to try the manufacturer-run arbitration program and, if it proves unsatisfactory, give the option to go to a neutral arbitration board.

With the amendment of the earlier laws, state-sponsored and private-independent arbitration boards began to appear in great numbers. The arbitrators of many of these programs work on a voluntary basis usually receiving a stipend for travel expenses (Abrams, 39). Before arbitrators serve, in many states, they are required to undergo a training session on substantive issues involved with the lemon laws as well as on arbitration technique (Abrams, 39). Some state-run arbitration boards, even, have a silent legal advisor for the arbitrator. He/She has no hand in the decision making process and is there purely to give the arbitrator information regarding the legal issues (Adams, 39).

Announced at the end of December 1993, is the news that, "Six makers are now certified to settle state lemon law complaints outside of court" (Wedde, 16). Currently there are still both state and privately-run, and industry-run arbitration centers. They won't be going away any time soon; however, there has been a current trend to reverse the automakers' progress in creating their own arbitration program and opt for the state-

run format. Lemon law as required in its inception, still requires customers to use arbitration before suing for such disputes in court (Wedde, 16).

Today in California (Rechtin, 6)

"All 50 states now have lemon laws, but only 14 have state-run arbitration programs" (6). In addition 6 states have mandatory arbitration where disputes must be arbitrated before going to court (6). The remaining 44 strongly recommend arbitration.

California legislature is on its way to creating a tougher lemon law. It seeks to put the arbitration process under strictly state control (6). Having been one of the first states to incorporate the lemon law, it unfortunately now ranks in the bottom half of states in terms of consumer protection (6). I will further this argument in the description of my own experience later to come.

Should the bill pass, it could put California back in the top quarter in the ranks for consumer protection (6). To replace the programs sponsored by the manufactures, a $5 fee would be assessed on each new car purchased (6). An added plus would be its extended time period of coverage 24 month / 24,000 miles instead of 12 months / 12,000 miles.

Automakers oppose the law because it does not require arbitration before starting a lawsuit. They argue the creation of the lemon law is to avoid court and quickly settle the dispute (6). More arguments are to follow in the discussion of the pros and cons

Pros of Having an Arbitration Program as an Option

The main goal of ADR is to provide equal access and protection under the law. This is also a major benefit of arbitration programs. The cost associated with court often prevents most consumers from seeking justifiable compensation and protection. Arbitration is usually very inexpensive or is sponsored entirely by the state or manufacturers. That way, income level should not be a factor in the arbitration decision. Another benefit of arbitration is its relatively short completion time. Contrasted with a one to five year court wait-time, arbitration's average 35 day time period between initial filing and hearing date can be considered a blessing (Abrams, 43).

The idea of hiring a costly attorney or learning the formal court process can be very discouraging. Thankfully, the informal characteristics of alternative dispute resolution is a part of the arbitration process. There is a minimal need to learn the legal terminology and you will never get lawyers bickering over objections since objections do not occur in arbitration. One might disagree over a statement; however, they will get their turn to reply. Although, attorneys are not required which will please many, they can prove helpful. I will explain the attorneys role later to follow.

Another strong feature of the arbitration process is the preservation of the consumer's right to file formal proceedings in a court of law should he/she be dissatisfied with the arbitration process. "Should a consumer feel he [she] was greatly wronged--beyond damages an arbitrator would grant -- denying him [her] further access to litigation would be unconstitutional" (Rechtin, 6).

Historically consumers have experienced great difficulty in obtaining replacements or refunds but, thanks to arbitration programs (primarily ones run by the

state) consumers and automobile manufacturers are being put on equal ground (Adams, 41). They are also putting pressure on Manufacturers to be more responsive to customer complaints. Trends of increased settlement before arbitration are becoming more prevalent. Furthermore, recent amendments in many of the states lemon laws and arbitration programs provide for strict daily fines of up to $5,000 each day late with a cap of $50,000 for manufacturer judgment noncompliance (gold, 50). Due to these fines, noncompliance has been reduced dramatically. Even further, in many states, the penalty for not complying with the award is double-compensation when later taken to court.

Massachusetts, in its study, reports, "On the whole, consumers are very satisfied with lemon law arbitration, as evidenced by their letters. . ." (Gold, 48). The letters are further supported by surveys where more than 50% of consumers gave the program a rating of "excellent" for assistance from the lemon law office, assistance from American Arbitration Association (AAA), and overall. The Massachusetts 1987 report concludes, "The program provides a fair, inexpensive, quick, and successful alternative to court action for consumers" (Gold, 54). New York's 1987 annual report on its first years of operations concluded, "[It] has been remarkably successful in providing New Yorkers with a neutral, speedy, inexpensive, and effective arbitration forum to redress their lemon law grievances" (Abrams, 47). Florida's 1989 and 1990 two year report concludes, "There is now doubt that Florida's consumers have benefited from the lemon law. Consumers are now obtaining refunds and replacements. . ." (Adams, 43).

Florida compared itself to many of the other statewide arbitration programs, and it seems there is a general consensus that state-wide arbitration programs are making a

positive difference. However, we must not forget the downside to the lemon laws and the arbitration experience. Even more so, we must consider the deficiencies are even greater when dealing with manufacturer-sponsored arbitration programs. The three listed above were operated in most part by the states.

Cons of State-Sponsored Arbitration Programs

On the whole, state run arbitration programs only have minor deficiencies. "Manufacturers forced to take back a lemon are all too willing to ship that car out of state to an unsuspecting buyer in the used car market," which is one major setback to consumers after the arbitration process ends on a positive note (*CR*, 40). The arbitration worked for the first buyer; however, the lemon laws do not apply to used car sales. In essence the buck gets passed to another unsuspecting buyer. In 1992:

> 48 people in Oregon unknowingly bought used automobiles that were lemon law buybacks. Chrysler, we discovered shipped its lemons from Washington to neighboring Oregon. In Utah, 63 used-car buyers ended up with lemons that General Motors had bought back from their owners in Washington (*CR*, 42).

This is definitely a problem that requires looking into. Many states require records of the autos' tainted past, but when they cross state lines, the rules change for the worse.

Another drawback to arbitration programs is that few states, aside from the ones I was able to obtain studies from, keep records of lemon law cases or even require reporting from the private organizations that run arbitration programs (*CR*, 41).

Some lemon buyers are currently at a disadvantage under the current arbitration construction. This occurs because many states just allow the dealer one attempt to fix

safety related items (good) while they almost always rejected complaints of water leaks, noises, bad paint, jumpy suspensions, and premature tire ware (not so good) (*CR*, 41).

I think the most easily fixable problem with state-run arbitration programs is the lack of proper training and lack of information for the consumer. "Many [programs] are lackadaisical at best about helping consumers exercise their rights . . . In Maryland, a legislative aide summed up his state program: 'Its useless, don't bother'" (*CR*, 41). Install the proper training programs or, only higher people that are properly trained and you fix the employee aspect of the problem with not giving consumers reliable support and information. A few states make sure information about their lemon law is included with the states' new car owners manuals. Not all do. Many more could.

All in all, state run auto arbitration programs do a very good job. The programs consumers should be worried about are the ones sponsored and run by the industry and manufacturers. Just to come are the horrible facts.

Even More Cons of Industry-Sponsored Arbitration Programs

You may want to check your odds of winning when you compare state vs. private vs. manufacturer sponsored programs. State sponsored programs are by far the best:

> Some 55% of consumers who entered the state-run program in Florida in 1991 won a refund or a replacement car. State-run programs in New York and Connecticut awarded refunds to consumer 48% and 77% of the time respectively (*CR*, 41).

Consumers did much worse in private arbitration programs. Only 14% of cases arbitrated nationally by the Better Business Bureau resulted in full refunds or replacement cars (*CR*,

41). The situation even worsens when we look at automaker-sponsored arbitration programs. Taking Chrysler Corporation, for example, 9.6% percent of cases arbitrated (not including the ones rejected) resulted in the consumers favor (*CR*, 41).

The results of the previous paragraph should cause some concern. If all cars are manufactured consistently the same, not regarding which program owners go too, there should be very similar winning percentages. Either, state run programs award the consumer too much of the time, or I would suspect, private and auto maker-sponsored programs award too little of the time. In any case there is no real fair comparison. On a good note, I must concede Ford motor company is making an effort in some states to resolve the complaints even before they go to arbitration (*CR*, 41).

A few major arguments for state-run instead of automaker-run programs is to follow:

> Bill Ditlow [argues] that allowing manufacturer-run arbitration is tantamount to 'letting the fox run the chicken coop.' [In unison with the comparisons stated previously] studies by the Center for Auto Safety show state-run arbitration frequently gives consumers more favorable rulings. . . [In addition] Consumers Union attorney Earl Lui added that differing manufacturer guidelines result in a 'patchwork quilt' of inconsistent processes, procedures and rulings under the present system. . . (Rechtin, 6).

An even more thorough critic such as lieberman points out several major concerns with manufacturer-run complaint handling programs:

1. They are often biased against the consumer, with panels frequently comprised of volunteer arbitrators with close ties to the automobile industry.

2. They are not closely monitored to insure compliance with FTC [Federal Trade Commission] criteria.
3. Arbitrators are often poorly trained in the interpretation and administration of state lemon laws (Adams, 38).

Lieberman goes on to criticize Chrysler Corporation specifically:

1. Consumers are often diverted away from external arbitration programs and toward Chrysler's own internal procedures for handling complaints.
2. Chrysler sometimes reported to its arbitration board that repairs had been made when, in fact, they had not.
3. Dealer representatives and Chrysler customer-relations personnel often participated on the arbitration board in clear violation of FTC requirements, thus giving an unfair advantage to the manufacturer.
4. Chrysler's arbitration board often received verbal accounts from company personnel without the consumer's knowledge and without affording the buyer the same opportunity (Adams, 38).

The above paragraphs make me sick to my stomach after reading them. When I apply them to my own experiences with buying a new Nissan pickup and going through the arbitration program with the Better Business Bureau, I want to puke (pardon the expression). To follow will be my experiences with and opinion of auto arbitration.

Personal Experience and Opinion

I made the decision to buy a new Nissan pickup during December, 1991. It was a 1992 model. I was in need of a reliable mode of transportation that I hoped would last for my four year stay in college. I had checked the ratings for Nissan and it had continuously

scored fairly well in the April issue of *Consumer Reports*. I had assumed it was a Japanese made vehicle, which was expressed to me by the salesman; however, I was greatly disappointed after my first few visits to the repair shop when I found out it was put together in Tennessee. After the end of my experiences with the truck, I would only make the comment, "Americans shouldn't attempt to put together a Japanese vehicles--they only mess them up." I look back and realized I was "pissed," and I still look back in anger at what I went through.

The vehicle had 22 separate parts malfunction. The transmission was worked on four times and replaced once. The Dealer provided after market wheels which were worked on 5 times and eventually replaced the sixth time. The rear vertical window actually leaked water. The dashboard came loose almost to the point the whole thing would have fallen in the passenger's and driver's laps. The rear tailgate had to be replaced. The rear differential had to be replaced. The driver's side door had been damaged on the inside near the hinges during assembly and painted over. Not to mention the ten other things that needed to be adjusted and replaced.

I went through the rigorous process of arbitration, but came out a looser. My misery would have been ended much sooner than it was, had the Better Business Bureau been more effective. (Please recall the success rate of 14% earlier in the paper.) I finally drove around with a large lemon pasted to the rear window until it leaked an ruined my sticker. When the last straw was the last straw, I drove over to the dealership with a new and improved sticker and demanded a deal and said I wouldn't leave until this "piece of crap was dealt with." By that time everyone at the dealership knew my familiar face, and

I new them all by name. It was 10:00 p.m. before I left with a Nissan Sentra costing only the difference between the pickup I previously purchased. There is no way in hell I would ever recommend a Nissan pickup, not even to my mother-in-law. I, also, would not confidently recommend arbitration through the Better Business Bureau's auto arbitration program.

Now that you have a brief overview of my experiences with a lemon, let me give you my experiences with the Auto Arbitration process. I received a considerable amount of run-around from the Better Business bureau before I was directed to the Auto-Line division. It wasn't until I read *Settling Disputes* by Linda Singer that I totally understood the organization. Not surprisingly (due to the arbitration experience) I found out from Singer's book that the Auto-Line operates under contract with several manufacturers, including General Motors (Singer, 89). My case did not end with a phone conversation from the Dealer and Manufacturer like in the book. They called offering the same thing that they always did-- "we will be happy to fix your vehicle under the warranty." That would not due. I must admit arbitration is much faster and less costly than court; however, I was not totally pleased with its informality and conduct of the arbitrator. Nissan had a Manufacturer representative, and the head of the service department of the dealership I took the car for servicing with. I brought myself, a kid of 18, and a poor understanding of the lemon law and how it was supposed to help me. The arbitrator was not much help in explaining it to me, either. Everyone inspected the vehicle and I was even given the opportunity to drive everyone in it and attempt to reproduce my own

problems with it. I had been through what seemed like a million headaches, and all I wanted the arbitrator to do was refund my money so I could buy a decent vehicle.

The judgment that resulted was to fix the dent in the door and work on the transmission again. Since the tires were put on by the dealer and not the manufacturer, Nissan was not responsible for it. I had to make two more attempts with the dealer before I got them to resolve the tire problem.

The arbitration process was not particularly satisfying for me. Furthermore, I did not feel I was on a level playing field when I entered the room to do battle. I do feel with the increased number of state-run auto arbitration programs, consumers in the future will not have to go through what I did.

Conclusion

Automobile arbitration has come a long way from no laws, to warranty clarifications, to lemon laws and manufacturer sponsored arbitration programs, to privately sponsored auto arbitration programs, and finally, to state sponsored programs. I will concede it has barreled down the evolutionary process with fine strides. Yet, as shown above, it must continue to develop, evolve, and improve in order to become more beneficial to American consumers. I honestly think it may never reach perfection, but I am confident it can get even better than it already is.

Since the auto arbitration process has not yet improved enough to totally alleviate the consumer's ills, I will end this paper with tips to prevent the purchase of a lemon.

1. Refer to Frequency-of-Repair data in the buying guide issue and the April issue of *Consumer Reports* and avoid models with below-average repair histories. This should get any consumer off to a good start.
2. Before you buy, test-drive the actual car you will be purchasing, not a demo model. Make sure every instrument works, and if you hear anything unexplainable, choose another car.
3. Save all documentation, including brochures and advertisements about the car. Arbitration panels are likely to make manufacturers live up to their advertised claims.
4. When trouble does occur, start a paper trail by keeping records of servicing. Furthermore, insist the service manager prepare a written repair order, even if you are told an order is not necessary for warranty work.
5. If you suspect your new car to be a clunker, ask your state's [California] attorney general or consumer protection office for a copy of your states [CA] lemon law.
6. When you take your car in for repairs, describe the problem and the conditions under which it occurs. Furthermore, do not let the service writer interpret it for you. That should be left for the mechanic to diagnose.
7. Give the dealer and manufacturer every opportunity to make the car right. Arbitrators take a negative view of consumers that miss appointments, fail to pick up their car, or don't leave it for as long as the mechanic needs it.
8. Lastly, if you have a car loan, keep making payments, even if your car is tied up in the shop. You may have your car repossessed and credit record damaged by the finance

company before your claim is settled. Be patient, if you win, nine times out of ten you will be entitled to a refund of your car payments, plus interest.

(*Consumer Reports*, 42).

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