



CONSUMER ARBITRATION PROGRAM
Administered by DeMars & Associates, Ltd.

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CONSUMER ARBITRATION PROGRAM FOR MOTOR VEHICLES (PCNA) GUIDE AND RULES FOR CALIFORNIA

I. GENERAL INFORMATION

Introduction

This guide provides important information about the arbitration program for motor vehicles ("Program") under the Magnuson-Moss Warranty Act ("Magnuson-Moss Act") and the California Song Beverly Consumer Warranty Act (the "Lemon Law"). This guide is designed to help you, the consumer, prepare for arbitration under the Program. You should read this guide in its entirety. Otherwise, you may not fully understand your rights and responsibilities under the Program.

Administration of the Program

DeMars & Associates, Ltd. ("Administrator") administers the Program. The Administrator is responsible for the overall administration of the Program, including collecting necessary documents, scheduling the arbitration hearing and providing you with an impartial, qualified Arbitrator. The Administrator does not decide cases. The Administrator provides a forum for hearing and resolving disputes using impartial Arbitrators.

The Administrator's Program fees and the Arbitrator fees are paid by the involved manufacturer(s). No Program fees will be charged to you.

The Administrator and Arbitrators are exempt from civil liability as a result of any act or omission in connection with the arbitration held under the Program. In accordance with California Evidence Code Section 703.5, the parties may not call the Arbitrator or any employee or agent of the Administrator as a witness or expert. This includes any informal proceeding or legal action involving the parties related to a dispute subject to this Program. In addition, they may not subpoena any notes or other materials created by the Arbitrator. Parties are entitled to receive copies of all the Program's records related to the dispute, at a reasonable cost.

The Arbitration Certification Program in the California Department of Consumer Affairs monitors the Program to verify it complies with certification regulations.

Program Timeline

The Mag-Moss Act and California regulations expect an arbitration hearing of an eligible consumer claim to take place within forty (40) days from when the Administrator receives a claim. The 40-day timeline can be extended in any of the following circumstances:

- 1) For a seven day period if the consumer has not attempted to seek resolution directly from the Manufacturer;
- 2) If the delay is due to the consumer's failure to promptly provide:
 - his or her name,
 - address,
 - make and model information,
 - vehicle identification number, and
 - a statement summarizing the defect or concern being reported;
- 3) For a period not to exceed thirty (30) days to permit the Program the opportunity to respond to an Arbitrator's request for additional information, including a vehicle inspection.

II. SETTLEMENT

If the parties reach an agreement to settle their dispute at any time after the dispute has been submitted to the Program, either directly with the manufacturer or through the Administrator, the settlement terms must be detailed in writing in a settlement agreement. The settlement agreement must be signed by the parties and filed with the Administrator. If a settlement agreement is reached, the manufacturer has thirty (30) calendar days after the agreement is signed to perform the terms of the agreement.

Pursuant to Section 3398.12 of the California Civil Code, if a manufacturer is required to carry out an award as part of a settlement, the Administrator will contact the consumer within 10 days after the date set for compliance to verify that the award has been implemented. If the manufacturer fails to carry out the terms of a settlement agreement within the specified time frame, or if the consumer asserts that the further repair attempt has not resolved the concern(s), the consumer may contact the Administrator to request arbitration. The Administrator will investigate the dispute and treat it as a new dispute, however all phases of the process will be expedited to the extent practical.

III. ARBITRATION PROCESS

What is Arbitration?

In Arbitration a dispute is given to an impartial person to make a final decision. Pursuant to California law, you are required to use this arbitration process before resorting to the rights and remedies available under California Civil Code Section 1793.22, where applicable. You may also use this program if the vehicle is still covered by the New Car Limited Warranty, Certified Pre-Owned Warranty or Porsche Approved Limited Warranty or within six months after that warranty's expiration when the application is received. Arbitration is a less formal process than litigation; however, the decision of the Arbitrator is binding on the manufacturer once the consumer accepts that decision. The Manufacturer must act in good faith in carrying out the terms of the decision.

The arbitration hearing is managed in a way to encourage a full and complete review of the facts and to give each party a full and equal opportunity to present their case. The Arbitrator conducts the hearing and takes whatever action is necessary to ensure that the hearing is fair orderly and efficient. All parties must abide by the Arbitrator's rulings regarding the conduct of the hearing.

Arbitration Procedures

- 1. Beginning Arbitration.** To be eligible for the Program, your vehicle must be covered by the New Car Limited Warranty, Certified Pre-Owned Warranty or Porsche Approved Limited Warranty at the time of application. You have up to six months after expiration of the warranty to apply to the program, although only concerns that occurred within the warranty period may be addressed. You may also apply to the program if your vehicle is still covered by the emissions warranty and your concern involves components covered by that warranty. The Administrator will determine whether or not your case is eligible for the Program. Should your case be determined ineligible for the Program, you have thirty (30) days to send a written appeal, contesting the decision, for review by an arbitrator.

When a case is eligible, the Administrator assigns a case number and sets a date for the hearing. The arbitration hearing will take place unless the Administrator is notified that a settlement agreement has been reached. If the manufacturer fails to perform its part of a settlement agreement the consumer may, within ten (10) days after the deadline, request an arbitration hearing be scheduled.

The Administrator provides the parties with the following information:

- (a) the identity and biography of the assigned Arbitrator;
 - (b) the scheduled arbitration hearing date, time and location;
 - (c) a notice that if one party fails to appear at the agreed upon time and place, the presentation by the other party may still be allowed;
 - (d) a reminder to the consumer that the vehicle may be brought to the arbitration hearing if it is capable of being safely operated, along with current proof of insurance.
 - (e) the applicable Program forms.
- 2. Pre-Arbitration Hearing Information Form.** Each party is required to complete a Pre-Arbitration Hearing Information Form and send it to the Administrator. The Form requests information necessary to resolve the dispute such as:
 - (a) whether the party will be represented by an attorney;
 - (b) whether the consumer will be using an interpreter;
 - (c) any change or additional information to the consumer's written statement regarding the defect or other complaint being reported;
 - (d) any change or additional information to the manufacturer's written summary of its position;
 - (e) any witnesses to be called by the party;
 - (f) any documents the parties want the Arbitrator to review that have not already been included.

The Administrator must receive the signed Pre-Arbitration Hearing Information Form at least seven (7) days prior to the arbitration hearing. If the Form is not received by the deadline, the hearing will still take place and the Arbitrator will take into consideration the fact that the Form was not received.

The parties must provide a written list of witnesses, other than rebuttal witnesses, at least five (5) days prior to the arbitration hearing. Except for rebuttal evidence, any document not

attached to the Pre-Arbitration Hearing Information Form, or supplied to the Administrator at least seven (7) days prior to the arbitration hearing, may be excluded from evidence. The Arbitrator makes this decision.

3. **Additional Parties.** Any party may request the Administrator to bring a new party into the dispute if it believes that the new party is, or may be, liable under the applicable law for all or part of the claim. The request to add an additional party must be submitted in writing to the Administrator, with copies to the other parties. In the event that a new party needs more time to prepare for the hearing, the Arbitrator may postpone the hearing up to 30 days.
4. **Appointment of Arbitrator.** A single Arbitrator will be assigned by the Administrator to hear and decide the arbitration dispute. The Administrator will provide the Arbitrator with all relevant documents submitted to the Administrator by the parties before the arbitration hearing.
5. **Arbitrator Disclosure and Challenge Procedure.** A person appointed as an Arbitrator shall disclose to the Administrator any circumstance likely to affect impartiality. This may include any bias or any financial or personal interest in the result of the arbitration. This may also include any past or present relationship with the parties or their representatives. If this information is received from the Arbitrator or another source, the Administrator shall communicate the information to the parties and the Arbitrator. If a party objects to the assigned Arbitrator, it must send a letter stating the objection within seven (7) days from the date of the letter assigning the Arbitrator. If the Administrator receives a written objection about the assigned Arbitrator, the Administrator shall determine whether the Arbitrator should be disqualified and shall inform the parties of its decision. This decision shall be final and binding.
6. **Arbitrator Vacancies.** If for any reason the Arbitrator becomes unwilling or unable to perform his or her duties, the Administrator may declare the position vacant and appoint a new Arbitrator.
7. **Date, Time and Place of Arbitration Hearing.** The Administrator shall set the date, time, and place for each hearing upon consulting with the Arbitrator. The arbitration hearing is held at a site reasonably convenient to the consumer. The vehicle may be brought to the arbitration hearing if it is capable of being safely operated and you bring current proof of insurance.
8. **Withdrawal of Consumer's Claim.** You may withdraw your claim up to five (5) days prior to the arbitration hearing date. If the claim is withdrawn, the case file will be closed and submitted to the Administrator. If you decide to file another claim, you should contact the Administrator, who will determine if you are eligible to file another claim.
9. **Representation by Attorney.** Any party may be represented by an attorney. The attorney's name, address and telephone number must be included on the Pre-Arbitration Hearing Information Form. All parties must be represented by individuals with settlement authority.

- 10. Discovery.** When one party wants to obtain information from the other party, the procedure is called “discovery.” Discovery is not allowed unless permitted by the Lemon Law, this guide, or the Arbitrator.

The Arbitrator may decide to order discovery or limit discovery to manage the process. Responses to motions for discovery shall be provided to the requesting party at least ten (10) days prior to the arbitration hearing date, unless otherwise directed by the Arbitrator. The Arbitrator has no authority to impose sanctions, find a party in contempt or award attorneys' fees if a party fails to comply with a discovery order.

A party should not request documents that have already been provided by the Administrator or the other party.

- 11. Evidence.** The parties may give testimony and documents related to the dispute. The parties shall give any evidence the Arbitrator may decide is necessary to understanding and deciding the dispute. The Arbitrator may receive and consider the statements of witnesses by affidavit, a signed, written statement. The Arbitrator shall give the information the weight the Arbitrator decides is appropriate after considerations of any objection about relevancy made by the other side.

The Arbitrator shall judge the relevance of the evidence presented. Legal rules of evidence do not apply. Evidence shall be taken in the presence of all the parties. An exception will be made where a party does not attend after being notified of the date, time, and place of the hearing, or has waived the right to attend. The hearing may proceed under these circumstances. All documents submitted by the parties to the Administrator and each other prior to the hearing shall be made a part of the case file, unless excluded by the Arbitrator as irrelevant or redundant.

Whenever possible, evidence submitted at the hearing is labeled and placed in the case file. The Arbitrator will include a written summary of any other evidence in the case file. All evidence included in the case file will be sent to the Administrator following the hearing.

The vehicle may be brought to the arbitration hearing if it is capable of being safely operated and you bring current proof of insurance. The Arbitrator may inspect your vehicle if requested by a party or if the Arbitrator decides it is necessary. Additionally, the Arbitrator may test-drive or ride in the vehicle. The parties must be present and accompany the Arbitrator on such inspection or ride unless a party waives its right to be present. The Arbitrator will include information from the test drive in the case file.

- 12. Communication with Arbitrator.** There shall be no direct communication between the parties and Arbitrator other than at the oral hearing, except as specifically permitted within this guide. Any other oral or written communication from the parties to the Arbitrator shall be sent to the Administrator. The Administrator will forward the communication to the Arbitrator.

- 13. Attendance at the Arbitration Hearing.** Arbitration hearings shall be open to the public as required by the Magnuson-Moss Act and California law. Although these hearings are open and informal, Arbitrators can exclude anyone who is disrupting the hearing.
- 14. Oral Presentations and Arbitration in the Absence of a Party.** The Program allows for oral presentations by both parties to the dispute. Each party has the right to be present for the other party's oral presentation. If one party fails to appear at the time set for the hearing, the Arbitrator may still allow the presentation by the other party.

Should a party fail to appear at the scheduled time, the Arbitrator may either decide the dispute or give the absent party an opportunity to rebut any contradictory evidence or submit additional information before a decision is made. The Arbitrator has the authority to make a decision whether or not an oral presentation is made.

In compliance with CCR § 3398.8(c), the Manufacturer shall take all steps necessary to ensure that the Program, the Administrator and Arbitrators, are sufficiently insulated from the Manufacturer, so that the decision of the Arbitrator and the performance of the Administrator are not influenced by the Manufacturer.

- 15. Preparation for Arbitration Hearing.** All parties should come to the hearing prepared to present testimony, documents and other evidence about the dispute. This will include information about what you are asking the arbitrator to award. You should bring with you to the hearing your copies of all documents you have submitted to the Program and to the other side, and all documents you have received from the Program and the other side.
- 16. Order of Proceedings at the Arbitration Hearing.**

- a. The arbitration hearing will be opened by:
 - the recording of the date, time and place of the hearing,
 - the name of the case, and
 - the names and addresses of parties, attorneys and witnesses present.

The arbitrator will record a description of the exhibits. The Administrator will send a copy of the case file to you approximately one week before the hearing. You should bring your copy of this case file to the hearing.

- b. The Arbitrator may, at the beginning of the hearing, ask for statements clarifying the issues involved and condition of the vehicle.
- c. The Arbitrator shall administer an oath or affirmation to all persons who will give testimony.
- d. The Arbitrator will limit the oral presentation to two hours for each side of the dispute for a total of four hours. The Arbitrator may extend the oral presentation time at his/her discretion.

- e. You or your attorney will present testimony and documents to support your claim.
- f. The manufacturer's representative(s) or attorney(s) will have the opportunity to question the consumer and the consumer's witnesses about their testimony after each one testifies.
- g. The manufacturer(s) will then present testimony and documents supporting its defense.
- h. You or your attorney will have the opportunity to question the manufacturer's witnesses about their testimony after each one testifies.
- i. The Arbitrator may question any witness at any time during the hearing.
- j. After all testimony, the Arbitrator will decide whether he/she will inspect and/or test-drive the vehicle, if the vehicle is capable of being safely operated. After the inspection and/or test-drive is conducted, and all persons have returned to the hearing room, the parties will have the opportunity to offer additional testimony about it on the record.
- k. Each party shall then have an opportunity to make a brief closing statement.

The Arbitrator has the discretion to vary this procedure but shall give a full and equal opportunity to all parties for the presentation of any material and relevant evidence.

- 17. Post-hearing Filing of Documents or Other Evidence.** If the Arbitrator directs that documents or other evidence be submitted to the Arbitrator after the arbitration hearing, they shall be filed with the Administrator. The Administrator will send the documents to the Arbitrator. The Arbitrator shall set a deadline for the documents to be submitted.
- 18. Closing of Arbitration Hearing.** The Arbitrator shall specifically ask all parties whether they have any additional evidence to offer or witnesses to be heard. Upon receiving negative replies or, if satisfied that the record is complete, the Arbitrator shall declare the arbitration hearing closed.
- 19. Scope of Decision.** The Arbitrator will render a fair decision based upon the information gathered by the Program and upon any information provided by the parties. In addition, the Arbitrator will take into account all legal and equitable factors, including but not limited to the written warranty, the provisions of the Magnuson-Moss Act, this guide, and any other appropriate equitable factors. The decision is based solely upon the case file, documents and testimony presented during the hearing, and test-drive, if any.
- 20. Available Remedies.** The arbitrator may award the following:
 - Refund of vehicle purchase price;
 - A new, substantially identical replacement vehicle;
 - A further repair;
 - Reimbursement for incidental expenses;

- No further action.

The arbitrator is not authorized to award attorney's fees or consequential damages such as lost wages.

One or more of the manufacturers involved in the claim may be held responsible for the repurchase. A decision in favor of all participating manufacturers will close the case with no further action awarded.

The decision of the Arbitrator is final and conditionally binding upon the parties, unless judicial proceedings are initiated (See "Post Decision Proceedings" below). Requests for rehearing are not considered by the Arbitrator, or the Administrator.

- 21. Time and Form of Decision.** The decision will be made promptly by the Arbitrator, but no more than ten (10) days from the date of closing the arbitration hearing. The decision will be in writing, will include a brief statement of the reasons for the decision and will be signed by the Arbitrator. Decisions are to be made within forty (40) days of your application to the program, unless the arbitrator defers the decision for more information, which may not exceed thirty (30) additional days.
- 22. Reasonable Offset for Use of the Vehicle.** A decision ordering repurchase of a vehicle may be subject to a reasonable offset for your use of the vehicle. Under the Lemon Law, the reasonable offset for a vehicle is calculated by taking the number of miles at the time you first delivered the vehicle to the manufacturer or distributor, or its authorized service and repair facility, for correction of the problem that gave rise to the nonconformity, dividing that number by 120,000, and then this number is multiplied by the actual price of the vehicle paid or payable by you. Additional information regarding Lemon Law remedies and the offset for use can be found in "Lemon-Aid for Consumers" published by the California Department of Consumer Affairs. You may request a copy from DCA at 1-800-952-5210 or download one from the web site at www.dca.ca.gov/acp.
- 25. Delivery of Decision to Parties.** The parties will be mailed a copy of the decision via U.S. mail to the party or its attorney's last known address. If you are dissatisfied with the decision or if you are dissatisfied with the manufacturer's intended actions or performance you may pursue legal remedies including court. The Arbitrator's decision is admissible in any subsequent legal proceedings. Parties are entitled to receive copies of all the Program's records related to the dispute, at a reasonable cost.
- 26. Compliance with Arbitrator's Decision.** If the decision is in your favor, the manufacturer must comply with the decision within thirty (30) days of the date the manufacturer receives notice you accepted the decision. Compliance occurs on the date you receive the relief specified in the decision. The Administrator will contact the customer within ten (10) days after the required time, to verify that the manufacturer complied with the Arbitrator's decision.
- 27. Technical Corrections.** Either party may request that the Arbitrator make a technical correction to the decision by filing a written request with the Administrator and sending a copy

of the request to all opposing parties within ten (10) days after receipt of the written decision. Technical corrections shall be limited to mathematical errors, corrections of a party's name or information regarding the vehicle, and typographical or spelling errors. Technical correction of a decision shall not extend the time for manufacturer compliance.

- 28. Post Decision Proceedings.** The decision of the Arbitrator is binding on the manufacturer once you accept it. If you reject the decision, or the manufacturer fails to complete the terms of an accepted decision within the required timeframe, you may pursue other rights and remedies available under state or federal law. The Arbitrator's decision is admissible in any subsequent legal proceedings.

If the manufacturer fails to carry out a further repair award within the specified time frame, or if you assert that the further repair attempt has not resolved the concern(s), you may contact the Administrator to request that the Arbitrator reconsider the decision. The Administrator will investigate the dispute and treat it as a new dispute. However all phases of the process will be expedited to the extent possible, and if reasonably possible, the same Arbitrator will decide the dispute.

Administrator's Office

If you have any questions or are uncertain about any part of this Program, please contact the Administrator:

CAP-Motors
DeMars & Associates, Ltd.
P.O. Box 1015
Hurst, TX 76053
(800) 279-5343
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The parties should provide their case number on all communications.

Special Accommodations

Persons needing special accommodations to participate in the arbitration hearing should contact the Administrator no later than ten (10) days prior to the conference or hearing date. If hearing impaired, contact the Administrator via TTY Relay Service at 800-947-3529. An interpreter will be provided by the Administrator upon request.