

**MASSACHUSETTS
NEW AND LEASED VEHICLE LEMON LAW
CONSUMER ARBITRATION MANUAL**



Commonwealth of Massachusetts
Office of Consumer Affairs and Business Regulation

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TABLE OF CONTENTS

	Page (s)
Table of Contents	2
I. CONTACTING THE LEMON LAW ARBITRATION PROGRAM	3
II. PREPARING YOUR CASE	4-5
A. Evidence checklist	4
B. Financial information	5
III. QUESTIONS AND ANSWERS ABOUT LEMON LAW ARBITRATION	6-20
A. PRE-HEARING	6-12
1. Arbitration	6
2. Manufacturer's Response and Defenses	7
4. Negotiating a Settlement with the Manufacturer	7
5. Withdrawal of Request for Arbitration.	8
6. Rescheduling.	8-9
7. Preparing for a Hearing.	9-12
9. Manufacturer's View/Inspection of the Vehicle	12
B. THE HEARING	12-14
1. Attendance at the Hearing.	12
2. The Arbitrator	13
3. Hearing Procedures	13-14
5. Default	14
C. AFTER THE HEARING	15-20
1. The Decision	15-19
2. Late Awards and Manufacturer's Right to Appeal	19-20

The New and Leased Vehicle Lemon Law Arbitration Program is administered by the Office of Consumer Affairs and Business Regulation (OCABR). This manual is designed to answer the most frequently asked questions consumers have about the arbitration process.

I. Lemon Law Arbitration Program Addresses and Phone Numbers

For general information about the New and Leased Vehicle Lemon Law and arbitration:

Office of Consumer Affairs and Business Regulation Consumer Hotline:
(617) 973-8700, or toll free at (888) 283-3757, or

The Office of Consumer Affairs and Business Regulation
Attention: Consumer Hotline
10 Park Plaza, Suite 5170
Boston, MA 02116

To submit your application for arbitration:

Office of Consumer Affairs and Business Regulation
Attention: Lemon Law Arbitration Program Coordinator
10 Park Plaza, Suite 5170
Boston, MA 02116

For information about your hearing, your award, or for other procedural questions:

The Office of Consumer Affairs and Business Regulation Lemon Law Program
(617) 973-8700

The Office of Consumer Affairs and Business Regulation
Attention: Lemon Law Arbitration Program Coordinator
10 Park Plaza, Suite 5170
Boston, MA 02116

NOTE: You will talk directly to the arbitrator only at the arbitration hearing.

II. PREPARING YOUR CASE

The better organized you are at the hearing, the more quickly and easily a decision can be made. You should gather any evidence that you think will help your case, but concentrate on proving these points:

- (1) Repair Attempts for a substantial defect(s): You must show that during the term of protection, your vehicle was either:
 - (a) repaired three or more times for one substantial defect, OR
 - (b) out of service for fifteen or more business days, not necessarily all at one time, for one or more substantial defects,

AND the defect continues to exist or recurred within the term of protection. The law defines term of protection as one year or 15,000 miles from delivery, whichever comes first.

- (2) Substantial impairment: You must show that the use, market value, or safety of your vehicle is substantially impaired. You only need to prove one of these, but it is wise to try to prove all that are applicable.

- (3) Final Repair Attempt: You must demonstrate that you offered the manufacturer a final repair attempt, and that the vehicle was still substantially impaired after the manufacturer's final repair attempt.

Document Checklist

A. Evidence: This is a list of evidence we suggest that you bring to the hearing. Remember, it is important to support any oral testimony you give with written information. *This list is a suggestion only.* You may bring more or less than the items we list.

- _____ Copy of your Request for Arbitration form (for your reference)
- _____ Copies of work orders (you may request these from the dealer)
- _____ Odometer reading of the vehicle on the hearing date
- _____ Copies of correspondence with dealer and/or manufacturer
- _____ Statements from mechanics or other experts, concerning the seriousness of your vehicle's problem(s) and how the problem(s) affects use, safety, and/or market value
- _____ Statements from people who have witnessed the problem
- _____ Appraisals or estimates of the resale value of your vehicle with its defects (You can check the yellow pages of your telephone book or the internet for listings of appraisers. Compare this estimate with the current book value of your vehicle or an appraisal of the resale value of your vehicle without its defects to prove substantial impairment of market value.)
- _____ Your written records

B. Financial Information: Additionally, it is essential to bring three copies of all your receipts for costs you are claiming to your hearing if you have not submitted these with your request for Arbitration. **DO NOT ASSUME THAT A PHOTOCOPIER WILL BE AVAILABLE DURING THE HEARING.** Here are examples of some financial documents you should bring:

_____ Motor vehicle purchase contact

_____ Bill of sale/invoice

_____ Registration (or other proof of sales tax paid)

_____ Receipts for any unreimbursed repair costs related to the defect

_____ Financing agreement (retail installment contract with your lender)

_____ Statement from lender of finance charges paid to date on your loan

_____ Receipts for unreimbursed rental, towing, and other incidental costs related to the defect

_____ Documentation of the cost of any dealer added options not included in total contract price

III. Questions And Answers About Lemon Law Arbitration

A. Before the Hearing

Arbitration

What is arbitration?

Arbitration is the informal resolution of a dispute without going to court. Both parties present their side of the story in a structured, but less formal manner than in a courtroom. After the hearing, the arbitrator will make a decision based on information presented at the hearing. Generally, a decision is mailed within 45 days from the date your case was accepted.

The decision is an “all or nothing” decision. If your vehicle is declared a lemon, the manufacturer is required to refund your money. (See information on page 17 regarding refunds.) If both parties agree to a replacement, you may be offered a replacement vehicle. If your vehicle is not determined to be a lemon, you will not be entitled to any award through the Lemon Law Arbitration Program. However, you may have other rights under other laws or programs, and you may wish to consult with an attorney to discuss these possible alternatives.

Note: Although an arbitration hearing is meant to be less formal than a court hearing, either party or both may choose to have an attorney present.

When will the hearing be held, and how long does it take before a decision is made?

Generally, the arbitrator will hold a hearing and decide the case within 45 days of your acceptance date. OCABR will notify you and the manufacturer of the date, time and location of your hearing at least seven days before the hearing.

You will have at least three weeks to prepare your case, as a hearing will be scheduled no earlier than 21 days after your application is accepted.

Should I continue to make loan payments?

We suggest you do. To seek state-sponsored arbitration, you must still own the vehicle in question. Although other laws may allow you to withhold payment for defective goods, if the car is repossessed you will not be able to return the vehicle to the manufacturer, and thus you will not be eligible for arbitration.

Should my car be registered and insured?

The manufacturer and/or arbitrator may request an inspection and/or road test of your vehicle. Therefore, your vehicle should be registered and insured for legal road use.

Manufacturer’s Response and Defenses

What is the manufacturer’s response?

Within 10 days of the date of the notice of acceptance of your Request for Arbitration, you should receive a response from the manufacturer to your complaint. In its response, the manufacturer may dispute or deny the claims you made in your request for arbitration.

What happens if I do not receive a manufacturer's response or if I receive it late?

There is no specific penalty imposed on the manufacturer for not issuing a manufacturer's response or for issuing it late. You may notify the arbitrator or OCABR that a response was not received or was received late, but that will not change your case. You still have a right to go to arbitration and you must prove that the requirements of the Lemon Law have been met.

What is the manufacturer likely to claim?

The manufacturer is likely to make one or more of the following claims in its manufacturer's response or at the hearing:

1. The defect does not exist or was repaired before or during the manufacturer's final opportunity;
2. The defect is the result of something not covered by the law, such as your negligence, accident, vandalism, unauthorized repair or modification;
3. The defect does not substantially impair the vehicle's use, market value, or safety;
4. There were not 3 repair attempts for the same substantial defect or 15 or more business days out of service within the Lemon Law term of protection, or
5. The manufacturer was never offered a final repair opportunity.

Negotiating a Settlement

Can I settle with the manufacturer before the hearing?

When your Request for Arbitration is accepted, the manufacturer receives a copy. The manufacturer may contact you and offer a settlement. If you settle with the manufacturer, **you must withdraw your Request for Arbitration** (see page 8). However, you should not withdraw your Request for Arbitration until you fully understand the terms of your settlement agreement. The manufacturer can offer whatever it feels is a reasonable settlement. You may wish to read the Refund section of this kit for information about the refund you would receive if the arbitrator decided in your favor.

Withdrawing Your Case

Can I withdraw my Request for Arbitration?

You may withdraw your request for arbitration at any time prior to the mailing of the arbitrator's decision to you and the manufacturer. Certain penalties apply, however, if your withdrawal is not received by OCABR at least one business day before the scheduled hearing date. (See the next two questions.)

As part of a settlement, the manufacturer may ask you to sign a waiver of any future claims you may bring against it. You should read and understand any agreement you sign. Such a waiver may be legally binding on both parties and may prevent you from filing a claim under the Lemon Law Arbitration Program.

If I withdraw my request for arbitration, am I still eligible to request state-run arbitration for the same vehicle?

If you withdraw from arbitration at least one business day before the hearing, you remain eligible for arbitration. You are eligible for 18 months from the date that you took possession of the vehicle, or for two months after you withdraw, whichever comes later. If you wish to re-enter your case in the Lemon Law program, you should send a written request to the OCABR.

What if I withdraw my case on or after the day of the hearing?

If you withdraw on or after the day of the hearing, you withdraw with prejudice and your right to re-enter is **not** automatically preserved. After you withdraw with prejudice, you may only participate in the state's arbitration program if the manufacturer voluntarily agrees to attend a hearing.

Rescheduling a Hearing

How do I ask for a different hearing date?

The hearing will only be rescheduled under extraordinary circumstances. You should make every effort to attend the hearing on the date it is scheduled. If you can show extraordinary circumstances, you should request a new hearing date as soon as possible, and contact OCABR at least one business day before the scheduled hearing.

What if something comes up on the day of the hearing which prevents me from attending?

A request for rescheduling received on the day of the hearing is considered a default unless the OCABR decides that you have an acceptable, extraordinary reason for the last minute request.

What happens if I just don't show up at the hearing?

Failure to appear at the hearing is considered a default. (See page 14 for information on defaults.)

When will a rescheduled hearing take place?

If possible a new hearing will be set within the original 45-day period. If this is not a possible, a new hearing date will be set within a new 45-day period that begins with the date you asked to reschedule.

How will I know the new hearing date?

OCABR will notify you and the manufacturer of the date, time and place of the hearing at least seven days before the new hearing.

Preparing for a Hearing

What do I have to prove to have my vehicle declared a "lemon"?

You must prove that you have given the manufacturer or dealer a reasonable number of repair attempts within the Lemon Law term of protection to cure a defect which substantially impair the vehicle's use, market value, or safety. A reasonable number of repair attempts is three or more repair attempts for the same substantial defect, or substantial defects. The Lemon Law term of protection is one year or 15,000 miles from the date of delivery.

In addition, you must prove that you offered the manufacturer a final opportunity to repair the defect or combination of defects.

Finally, and most importantly, you must show that after the final repair opportunity, your vehicle continued to be substantially impaired. (If your vehicle was fixed during the final repair attempt, and the problem has not recurred, you are not eligible for arbitration and should withdraw your case.)

What is a business day?

A business day is any day that the service department of an authorized dealer is open for business. A portion of a day is counted as one day. If, for example, your car goes in at 9 a.m. and is out at 12 p.m., you may count that as one business day toward the 15 business day requirement.

What if my work orders do not show the mileage at the time of repair?

You need to prove to an arbitrator that you had 3 repair attempts or 15 business days within the first year or 15,000 miles. If your current mileage is near, but not over 15,000 miles, you may wish a written statement signed by you and a witness. You may also wish to have the statement notarized.

How should I explain the nature and extent of my vehicles problem?

Describe to the arbitrator what happened to your vehicle, the number of repairs it had, the number of days it has been in the shop, what the manufacturer and/or dealer did or did not do about it, and the performance of the vehicle after the repair attempts. Support your statements with copies of repair bills, mechanics' letters or testimony, your correspondence with the manufacturer, etc.

How can I prove a "substantial impairment"?

To show substantial impairment you must prove that the defect(s) does at least ONE of the following"

- (1) USE - significantly interferes with the use of the vehicle;
OR
- (2) MARKET VALUE - reduces the current value of the vehicle by at least 10%;
OR
- (3) SAFETY - creates, or has the potential to create, a substantial danger to occupants, others, or to property.

Even though you need only prove one of these to show substantial impairment, we suggest you try to prove as many as exist in your case. That way, if an arbitrator rejects your claim of market value, he or she might accept your claim of safety impairment.

How can I show substantial impairment of market value?

If you are claiming substantial impairment of market value, you should attempt to show 10% reduction in market value based on:

A. Re-Sale Value of the Vehicle

You may use a current appraisal of the vehicle with its defect(s) and compare that appraisal to either (1) the current book value for the same make, model and year. (The "Blue Book" is usually available at banks and insurance companies and contains the book value. You can also find information online), or (2) to a current appraisal of what the vehicle would be worth without the defect(s). An appraisal could be from either another dealership or a professional

appraiser. Check the telephone book or online for a listing of appraisers. You may have to pay for a professional appraisal. Estimates from the dealer or professional appraiser should be at least 10% less than the book value of the vehicle.

B Cost to Repair

If you have difficulty getting an appraisal of your vehicle's value, you may wish to get an estimate of the cost of repairing the defect to show that it would cost at least 10% of the current book value of the vehicle to fix.

NOTE:

The 10% reduction in market value is not based on what you paid for the vehicle.

The current value of your vehicle in its defective condition is compared to the current market value of the vehicle if it were in good condition.

What if my defect is intermittent?

Intermittent defects can be the most difficult to prove. An arbitrator needs evidence that the defect does exist and that it is substantial. If no mechanic at the dealership has ever identified the problem, you may wish to bring the statements from people who have witnessed the defect, or bring witnesses to the hearing.

If the manufacturer claims that the defect(s) was caused by me, do I have to prove that I did not cause my vehicle's problem?

The manufacturer cannot simply state that your vehicle's defect(s) was caused by your negligence, by accident or vandalism, or by unauthorized attempts to repair or modify the vehicle. The manufacturer should support that allegation with evidence or documentation. However, you should be prepared to show that you did not cause the defect.

What if I get into an accident or my vehicle is damaged?

You should notify the OCABR and the manufacturer that there has been an accident. **If you withhold information concerning an accident or damage, you may cause delays or other problems with your case.** The manufacturer may argue that the accident caused the defect in your vehicle. Be prepared to show that the accident did not cause or worsen the defect you are complaining about.

I do not have receipts for all the repairs done on my car. What can I do?

You may ask the dealer or repair shop to give you copies of work orders, diagnosis, bills, or other information. Dealers are required by regulation of the Attorney General to give you this information. You also have the right to ask the manufacturer or dealer for information necessary to prepare your case.

If your dealer refuses to give you copies of work orders, you should send a letter to the service manager at the dealership and to the zone office of the manufacturer. Bring copies of these letters to your hearing and any other documentation of repair attempts.

You may also contact your local consumer program for assistance. If you do not know the address for your local consumer program, check the Self-Help section in the front of your telephone book, the Attorney General's website or hotline at (617) 727 – 8400, or call the OCABR consumer hotline toll free at 1-888-283-3757.

If you are unable to get work orders, you may wish to present other evidence of repairs, such as long distance calls to the dealer/manufacturer, car rental receipts, statements from witnesses who provided alternate transportation, employer statement of time off from work, etc. This documentation may add credibility to your oral testimony. **NOTE:** The arbitrator may give oral testimony as much weight as written records. However, with little written back-up, oral testimony can be less credible. In all cases, the arbitrator will judge the credibility of the people giving oral testimony.

Can the manufacturer ask me for information or can I ask for information from it?

Yes. You and the manufacturer are required to respond to a request for information. Either party can request information of the other to help prepare for the hearing. An information request must allow a reasonable amount of time for a response. A response to an information request should be received by the requesting party no later than 3 business days before the hearing.

NOTE: In some cases the manufacturer will send a lengthy request for documentation. You should respond to a request for such information and include any relevant information about your case which the manufacturer does not have. If you believe that the manufacturer already has some of the documents it is requesting, such as your Request for Arbitration form, you should send the manufacturer a letter stating this. Bring copies of your response to the manufacturer's request for information to the hearing, particularly if it was sent to the manufacturer just prior to the hearing.

If the arbitrator requests information from me before or at the hearing, when must I respond?

The arbitrator may ask for additional information from either party. Such information must be provided within the time period that the arbitrator indicates. If a time period is not specified, you should provide the information within 7 days.

Manufacturer's View and Inspection

Can the manufacturer ask to examine my car or take a test drive before the hearing?

Yes. The manufacturer does have the right to inspect your vehicle and/or take it for a test drive. **THIS IS NOT AN ADDITIONAL REPAIR ATTEMPT.** If the manufacturer asks to examine your car, you should comply. You may delay or jeopardize your case if you refuse.

The manufacturer may examine your car for the purpose of preparing its case, but not to attempt repair. A view or inspection of the vehicle should be at your convenience and at the manufacturer's expense, if any. You have the right to be present during the inspection and test drive.

B. The Hearing

Attending the Hearing

Will I need an attorney?

The hearing will be conducted less formally than a court proceeding. However, the manufacturer may be represented by an attorney. Although you do not need an attorney, you may have an

attorney or any other person represent you at the hearing. Attorney fees are not recoverable through arbitration.

Do I have to attend the hearing?

Usually both parties attend the hearing. However, this may not always be possible. If, for example, you live out of state and cannot be present, notify the OCABR and the manufacturer as far in advance as possible, but no later than the day before the hearing. You may then present your case by telephone. All costs for holding a telephone hearing must be paid by you.

The Arbitrator

How many arbitrators will there be at the hearing?

There will be one arbitrator at the hearing.

Who chooses the arbitrator?

Arbitrators are chosen by the OCABR from a pool of Lemon Law-trained arbitrators. The choice is not subject to approval by either you or the manufacturer. The arbitrators are not paid by either party or the OCABR.

How can I be sure of the impartiality of the arbitrator?

Arbitrators cannot have a personal interest in the outcome of any hearing while they serve on Lemon Law cases. Therefore, arbitrators are required to file a disclosure form with the OCABR stating any reasons which could affect their impartiality in hearing Lemon Law cases. Additionally, an arbitrator cannot know any of the participants involved in the scheduled hearing, except through the hearing process. Any other familiarity must be disclosed to you and the manufacturer.

What should I do if I believe the arbitrator did not follow proper procedures?

The arbitrator's decision is final, but all claims concerning errors in the application of the law or in the conduct of a hearing, or other complaints should be made in writing to the Lemon Law Arbitration Program. A claim in error in the application of the statute or in the conduct of a hearing **cannot** be considered an appeal of any kind.

Hearing Procedures

How long is a hearing?

Generally, hearings last approximately two hours.

What is the order of presentation at the hearing?

You present your case first, and the manufacturer follows.

May I ask questions at the hearing?

Yes. Each party may question the other after his presentation, and may question each witness after his/her testimony. The arbitrator may question either party or a witness at any time.

Will a record be made of the proceedings?

The arbitrator will record the hearing. The parties may request copies of hearing recordings from the OCABR for a small fee.

What will be considered evidence at the hearing?

The formal rules of evidence **do not** apply in an arbitration hearing. An arbitrator may accept or reject any evidence that he/she believes is or is not helpful in making a decision. However, each party is expected to make a brief and focused presentation so that the hearing may be conducted in a timely fashion.

What if the manufacturer claims that it can repair the defect(s) if given another opportunity?

Evidence that the problem can now be repaired is irrelevant. The arbitrator must determine whether the vehicle was still substantially impaired at the end of the manufacturer's 7-business day final repair opportunity. If you prove that after the final repair the problem substantially impaired the vehicle's use, market value, or safety, and all other requirements of the Lemon Law have been met, you are entitled to a refund or replacement.

Do I have to bring the vehicle to the hearing for the arbitrator to examine it or ride in it?

Yes. You should bring your vehicle to the hearing unless it is inoperable or unsafe to drive. It is the sole option of the arbitrator whether to examine or ride in the vehicle.

Defaults

What is a default?

If a party does not show up on the day of the hearing or asks to reschedule the hearing on the day of the hearing, that is considered a default. In addition, after a warning, the arbitrator may end any hearing that becomes unmanageable due to the behavior of one of the parties; the arbitrator may issue a default against the party whose behavior became unmanageable.

What happens if the manufacturer defaults?

The arbitrator will hold the hearing anyway and make a decision based on your evidence and any evidence already submitted by the manufacturer. The manufacturer has 3 business days to give a good cause reason for defaulting. If the OCABR determines that the manufacturer has a good cause reason, a new hearing date will be set and the evidence already heard be disregarded. If the manufacturer does not show good cause, the arbitrator will issue a decision.

What happens if I default?

The hearing will be canceled and your Request for Arbitration will be withdrawn with prejudice. You have three business days to give a good cause reason for defaulting. If the OCABR determines that you have a good cause reason, a new hearing date will be set.

What happens when both parties default?

The hearing will be canceled and your Request for Arbitration will be withdrawn with prejudice.

C. After The Hearing

The Decision

What will an arbitrator decide?

The arbitrator can only decide whether or not the vehicle meets the standards for refund or replacement under the Lemon Law. An arbitrator cannot order additional repairs, extended warranty, a partial refund or other remedy.

When will I receive the decision?

Generally, a written decision is mailed within 45 days from the acceptance date of your Request for Arbitration.

What is included in a written decision?

A decision will include a summary of the evidence presented, a finding of facts, a conclusion of whether or not the vehicle meets the standards for refund or replacement, and, if appropriate, a calculation of the monetary award and an order. The decision does not have to detail every point made by you or the manufacturer.

If the arbitrator decides my vehicle is not a lemon, will I receive anything?

If the arbitrator decides that your vehicle is not a lemon as defined by the Lemon Law, you will not receive an award through this program. However, you may have rights under other laws.

If your manufacturer has its own arbitration program, you may qualify for relief under that program. Also, you may wish to consult with an attorney to consider filing a lawsuit if you are dissatisfied with the arbitrator's decision. However, an arbitrator's finding against you may make further legal action more difficult.

What action can I take if I am dissatisfied with the decision?

An arbitrator's decision is final.

However, either party may request a *technical correction* in writing within 14 days of the mailing of the decision. Technical corrections are defined as computational corrections, typographical corrections or other minor corrections. Technical corrections do not constitute an appeal of the decision.

If you lose your case at arbitration, you may file a claim against the manufacturer in court for violation of Massachusetts General Laws Chapter 93A, the Consumer Protection Act. Under this law, you may be entitled to double or triple damages, plus court costs and reasonable attorney's fees if the case is decided in your favor. **NOTE:** In such a lawsuit, the manufacturer may present the decision of the arbitrator as evidence that the requirements for a refund or replacement under the Lemon Law have not been met.

If your manufacturer participates in any other arbitration program, you may contact that office for more information. Your owner's manual may provide an address for the manufacturer's own arbitration program.

What happens if the arbitrator decides in my favor?

Within 21 days of the mailing date listed on the decision, the manufacturer must either pay the award ordered by the arbitrator, offer a replacement vehicle, or appeal the decision to the Massachusetts Superior Court. Unless the case is appealed, you should contact the manufacturer before the 21-day due date to set up a time to make the exchange. If you are not able to reach the manufacturer, contact the Lemon Law Program Coordinator at OCABR. In addition, OCABR will contact the parties prior to the 21-day due date to inquire about the award.

How do I get my award and what do I do with my vehicle?

If the case is decided in your favor, you should be prepared to give up the vehicle within the 21-day period. You should contact the manufacturer if you have any particular problem meeting with a representative within the 21-day period. If the vehicle was financed, you and the manufacturer may meet at your bank, during normal business hours. If the vehicle was not financed, the meeting may take place at the selling dealership or the manufacturer's zone office.

The manufacturer must pay you and, if there is a loan on your vehicle, must also pay your lien holder. In exchange for your award, the manufacturer will expect the title to your vehicle. Your bank loan must be paid before the bank will release the title.

Some manufacturers will issue one check, made payable to you and the lien holder. You sign that check over to the bank who will issue a check to you for the remainder of the money. Other manufacturers may issue two checks--one payable to your lien holder for the outstanding loan balance and one to you for the remainder of the money.

You should not be forced to take out a second loan to deliver clear title of the vehicle, unless the award amount is less than your loan.

What if I have an accident after the hearing?

If your vehicle is in an accident, you should notify the manufacturer and the OCABR immediately. You will be responsible for repairing the damage to the vehicle and returning the vehicle to the manufacturer in reasonable condition. In some cases, the manufacturer may allow you to assign your insurance rights to the manufacturer, or deduct an agreed-upon amount for repairs from the award.

Can I demand a replacement vehicle instead of a refund?

No. You can request a replacement vehicle, but you will only receive a replacement vehicle if the manufacturer agrees to give you one and it is acceptable to you. If the manufacturer offers a replacement vehicle, you can reject it and demand a refund. **HOWEVER, YOU CANNOT REJECT A REFUND AND DEMAND A REPLACEMENT.**

Can I reject an arbitrator's decision in my favor?

If you win, but for some reason decide to reject an arbitrator's decision, you should inform the manufacturer in writing and mail a copy of that letter to the Lemon Law Arbitration Program. The manufacturer will not be penalized for your failure to accept the award.

What is included in a refund?

The following costs are included: (1) the full contract price, including any trade-in, minus a reasonable allowance for use; (2) sales tax; (3) registration fees; (4) finance charges paid to date on your loan; (5) cost of options added by an authorized dealer; (6) reasonable towing and vehicle rental costs if these were not made available to you free of charge; (7) reasonable cost of

non-dealer added options only if they cannot be removed without damaging the vehicle; (8) and other incidental costs related to the defect. BRING THREE COPIES OF RECEIPTS FOR THESE COSTS TO THE HEARING.

What costs are deducted from an award?

1. Reasonable Allowance For Use

The use allowance is a deduction for the total mileage you have driven your vehicle, from the date of purchase to the date the award is made. Keep in mind that your use allowance will not be based on miles driven at the time you file for arbitration or miles driven at the time of your hearing. It will be based on miles driven through the day you actually return the vehicle to the manufacturer.

The reasonable allowance for use is calculated by dividing the total contract price of the vehicle by 100,000 and multiplying that amount by the mileage driven since delivery. (For motorcycles, the use allowance is calculated by dividing the contract price of the vehicle by 25,000.)

For example, if a vehicle was purchased with 25 miles and has 10,000 miles at the time the award exchange is made:

The mileage that is used to determine the use allowance is:

$$\text{Current miles: } \underline{10,000} - \text{Beginning miles } \underline{25} = \underline{9,075} \text{ miles}$$

If the total contract price of the same vehicle is \$10,000, the use allowance would be 10 cents for every mile, for a total of \$907.50:

$$\frac{\$ 10,000}{100,000} = .10 \text{ per mile} \times 9,075 \text{ miles} = \$907.50 \text{ deduction}$$

2. Overallowance/Dealer Discount

An overallowance is a trade-in allowance that is more than the actual cash value of the trade-in vehicle. It is not a cost you have paid; therefore, you are not entitled to receive it in your refund. For example, the dealer may list the trade-in allowance as \$1,500 for your trade-in vehicle and a credit over-allowance (or dealer discount) of \$500. The actual trade-in vehicle is worth only \$1,500, not \$2,000. Because the \$500 credit overallowance/dealer discount is deducted from the purchase price, you do not pay the cost of a credit overallowance/dealer discount.

The overallowance will be deducted from your refund **if** the amount of the overallowance is clearly and separately listed on your copy of the motor vehicle purchase contract, bill of sale, or other documents given to you at the time of sale.

3. Rebates Or Settlements

Rebates are usually received as a purchase incentive through the selling dealership or manufacturer. You have not paid the cost of the rebate and therefore, you are not entitled to receive it in your refund.

Any cash settlements you have received through the manufacturer in an attempt to resolve the dispute will be deducted from the award.

What costs are not part of a refund?

Costs that are not recoverable include: (1) lawyer's fees; (2) excise tax; (3) state automobile insurance; (4) time lost from work; (5) emotional distress and other consequential damages.

NOTE: Massachusetts excise tax is reimbursed by the local city or town on a pro-rated basis for unused portion. In Massachusetts, to cancel the excise tax on your vehicle (if you win your case), contact your local city or town hall for an appropriate form and more specific information.

How do I cancel my credit life/disability insurance and extended warranty plans, and am I entitled to a refund?

You are entitled to a refund of only the unused, pro-rated amount of any money paid for extended warranty, credit life, or disability insurance. These costs may be recovered directly from the company from which you purchased the plan(s). You should cancel these plans when your loan is paid and follow the company's procedures for refund of the unused portion.

In cases where the insurance/warranty plans have not been paid in full, but have been financed through the life of the loan, you may not be entitled to a refund. For more information on the terms of your loan, contact your lender.

NOTE: The full amount of plans may appear on your decision because the pro-rated amount cannot be calculated until you pay off your loan. If the manufacturer is reasonably sure you can recover the money from the company which issued the plan, this amount may not be directly included in your refund. The amount of the plan is only written in the award in the event that you cannot get a refund from the company involved. Therefore, you may be receiving your refund of these canceled plans directly from the company who issued the plans in a separate check. However, some manufacturers may agree to pay these costs and have you assign your rights to any refund under these plans to the manufacturer.

What if there are mathematical mistakes or other minor errors in the decision?

The OCABR may issue a technical correction for an omission in your award of a paid, recoverable cost such as sales tax, or for other minor errors such as mathematical mistakes. OCABR must receive a written request for a technical correction of an award within 14 days of the mailing date of the arbitrator's decision. Your written request should be specific and include any receipts or documentation for the changes you are requesting.

Please note that generally a technical correction does not need to be issued for continuing costs such as additional finance charges because you are entitled to these costs up to the date of the exchange. OCABR or the arbitrator cannot make substantial changes to the decision, such as reversal of a decision.

What if I have additional costs after the hearing?

The arbitrator's award allows for "plus or minus continuing costs." If you have additional finance charges after the hearing, ask your lender for documentation and forward that documentation to the manufacturer as soon as possible. The manufacturer will be responsible for reimbursing you, in a separate check if necessary.

If the manufacturer offers a replacement vehicle and I accept the offer, what costs are included as part of the replacement award?

The manufacturer must provide you with replacement vehicle and reimburse you for: (1) transfer of registration fees, (2) any sales tax on the replacement vehicle, and (3) unreimbursed towing and rental charges. If the vehicle was financed through the manufacturer, the payment provisions of your loan should remain the same. There is no “reasonable allowance for use” calculated when a vehicle is replaced and you do not have to pay the difference between prices for different model years, unless you request a different model year. The manufacturer can charge you for the cost of options which you request that are not on your “lemon” vehicle.

What should I do when I receive my refund or replacement vehicle?

Please send a written notice to the OCABR. Please confirm the award amount and delivery date, so we can close your case.

Late Awards and Manufacturer’s Right to Appeal

What happens if the manufacturer fails to pay an award or file an appeal within 21 days of the decision mailing date?

If the 21 days have expired and you have not received your award contact the OCABR. If the manufacturer does not issue a refund, offer a replacement, or file an appeal within 21 days, you may sue the manufacturer for double damages in court under Massachusetts General Laws Chapter 93A. However, the manufacturer would have the opportunity to prove that the delay was beyond its control. The manufacturer can also be fined \$5000 per day by the Commonwealth of Massachusetts for every day the award is late, up to a maximum of \$50,000. Money paid for state fines is credited to a general state fund, not to the consumer or the OCABR. The Attorney General may seek to recover the required fines in Superior Court.

What happens if the manufacturer appeals the arbitrator’s decision?

If the manufacturer is dissatisfied with the arbitrator’s decision, it may appeal the case to Superior Court within 21 days of the mailing date of the decision. If the manufacturer does file an appeal, you will need to hire an attorney if you decide to oppose the manufacturer’s appeal in court. The OCABR cannot represent individuals in court. Your attorney may contact the OCABR for information on other appealed cases.

If the court eventually decides against the manufacturer, you could be awarded double or triple damages. Should the court decide in favor of the manufacturer, you would have to pay for your own attorney’s fees.

If you have any questions not answered by this kit, please contact the Office of Consumer Affairs at the numbers listed on page three. Please be prepared to provide your OCABR case number which is listed on your hearing notice.