



# 2009 Annual Report



## Lemon Law Arbitration Program



Office of Attorney General Bill McCollum

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Dear Floridians:

Florida's Lemon Law Arbitration Program provides a fair and inexpensive means of resolving disputes between consumers and manufacturers via arbitration before the New Motor Vehicle Arbitration Board. Since the inception of the Program in 1989, consumers have recovered more than \$396 million in refunds and vehicle replacements as a result of settlements between consumers and manufacturers or relief awarded by the New Motor Vehicle Arbitration Board.

Calendar Year 2009 saw 444 consumer claims approved for arbitration, with engine complaints topping the list of defects resulting in vehicle buy backs. The caseload in 2009 was down by 214 claims from the prior year.

This report focuses on disputes approved for arbitration before the New Motor Vehicle Arbitration Board for Calendar Year 2009, including a summary comparison with information from previous years. Included is a report of the number of motor vehicles the manufacturers identified as having been repurchased in 2009.

Consumers can obtain information about Florida's Lemon Law and search a list of vehicles repurchased by motor vehicle manufacturers on the home page of the Office of the Attorney General at [www.myfloridalegal.com/lemonlaw](http://www.myfloridalegal.com/lemonlaw).

Sincerely,



Bill McCollum  
Attorney General



# INTRODUCTION

Florida's "Lemon Law," Chapter 681 of the Florida Statutes, allows consumers to receive replacement motor vehicles or purchase price refunds when their new or demonstrator motor vehicles are subjected to repeated, unsuccessful warranty repairs for the same defect or are constantly in the shop for repair of one or more different defects. The defects must substantially impair the use, value or safety of the vehicle, and must first be reported to the manufacturer or its authorized service agent during a specified period after the consumer takes delivery of the vehicle. If the manufacturer fails to provide the remedy required by statute, the consumer can arbitrate his or her claim before the New Motor Vehicle Arbitration Board, which is housed within the Department of Legal Affairs.

The board consists of members appointed by the Attorney General and conducts arbitration hearings throughout the state. Arbitration is an "all-or-nothing" proposition for the consumer who will either win an award of a refund or replacement or have their claim dismissed. Section 681.1095, Florida Statutes, requires the Attorney General to compile annual statistics for all disputes submitted to the board. The information contained in this report was derived from the records of the Lemon Law Arbitration Program, which is administered by the Office of the Attorney General. This report covers claims approved for arbitration from January 1 through December 31, 2009.

Disputes are reported by manufacturer. In cases involving some conversion vehicles, a single claim could involve multiple manufacturers. In those instances, approval of the claim for arbitration is credited to the "nameplate" manufacturer, the name of the manufacturer under which the vehicle was sold. In reporting the dollar values of the arbitration awards, all manufacturers found liable by the board in each case are listed; however, the per-case dollar amount of the award is not pro-rated. For example, if two manufacturers were found liable to pay the consumer in one case a refund of \$30,000, only the total amount of the award is reflected in this report, along with the names of both liable manufacturers. The law does not give the board the authority to pro-rate awards in multiple manufacturer cases.



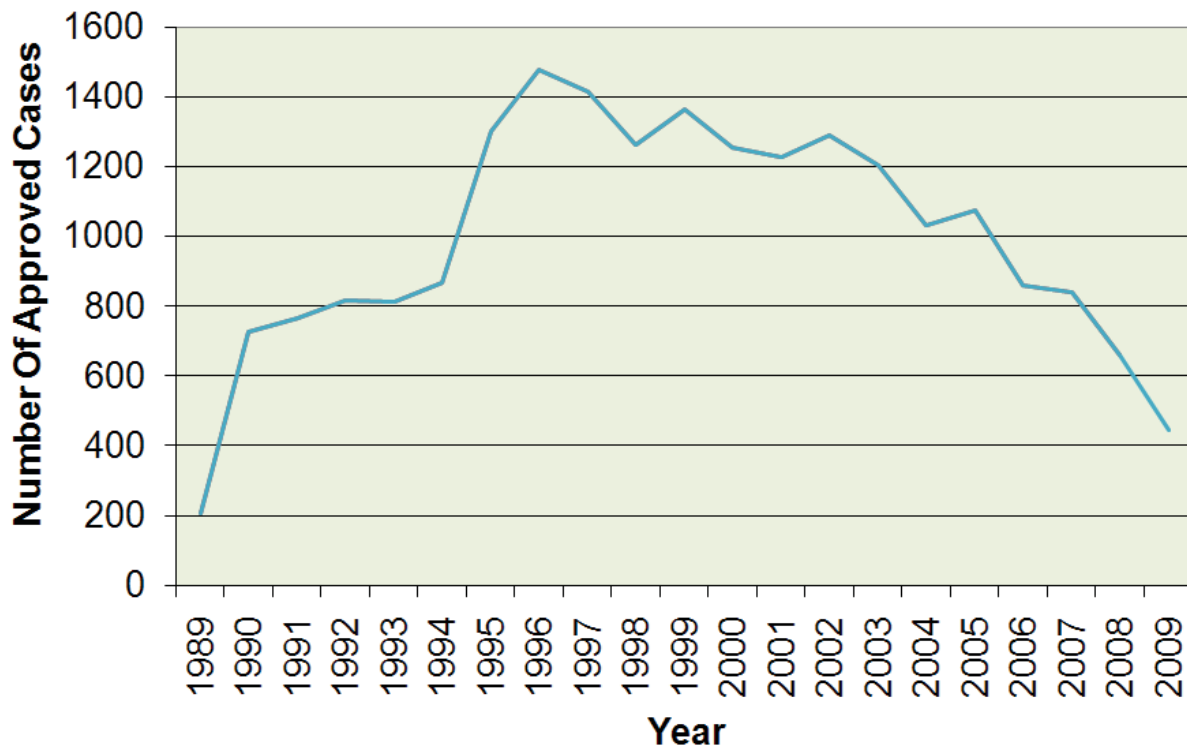
## EXECUTIVE PROGRAM SUMMARY

The number of cases approved for arbitration decreased from 658 in 2008 to 444 in 2009. The dollar amount of relief obtained was approximately \$4.5 million less than the prior year. Some 31 consumers withdrew their claims prior to resolving them in arbitration or by settlement. There were a few “deficit” refund awards where the amounts of the consumers’ portions of the awards were less than zero.

The prehearing settlement rate, which increased in 2008 (from 40 percent in 2007 to 48.2 percent), decreased slightly in 2009 to 43.7 percent. Full refunds or replacement vehicles, consistent with what the Lemon Law provides, were 159 of the settlements, with the remaining 35 being partial settlements, meaning the consumers accepted something less than a full refund or replacement. The arbitration board heard 214 cases, with 95 resulting in awards and 119 being dismissed. The rate of arbitration board decisions appealed in 2009 was higher than 2008, with 27 of the 214 (12.6 percent) decisions appealed to the courts.

Graph A below tracks the cases approved from 1989 to 2009.

**GRAPH A: CASES APPROVED FOR ARBITRATION**



## CASES APPROVED FOR ARBITRATION

Consumers can request arbitration of their Lemon Law disputes by the New Motor Vehicle Arbitration Board by calling the Lemon Law hotline and asking for a Request for Arbitration form. There is also a link to the form on the Attorney General's website, enabling consumers to obtain the form without waiting. The completed form must be submitted to the Division of Consumer Services of the Department of Agriculture and Consumer Services, which screens the form for eligibility under a process governed by statute. If a request is determined eligible, it is forwarded to the Office of the Attorney General for further processing and the scheduling of a hearing.

Consumers filing for arbitration are asked to indicate on the arbitration request form whether they prefer a refund or a replacement vehicle. Refunds were requested by 84 percent (373) of the consumers, while 16 percent (71) requested replacement vehicles.

Claims were approved against 26 manufacturers in 2009. The number and percentage of cases approved for each manufacturer is reflected in **Table 1**. Claims withdrawn by consumers for reasons other than settlement are also depicted in **Table 1**. Withdrawals in 2009 were 7 percent of the approved claims for that year. **Table 1** identifies the manufacturers by the nameplate under which the vehicles were sold.



**TABLE 1. CASES APPROVED FOR ARBITRATION AND CASES WITHDRAWN**

Manufacturer	Cases Approved	Cases Withdrawn	Percentage of Total Approved
AMERICAN HONDA	21	2	4.73%
AMERICAN SUZUKI	9	2	2.03%
ASTON MARTIN	2		0.45%
BENTLEY	1		0.23%
BMW	25	2	5.63%
CHRYSLER LLC	157	12	35.36%
FORD	33	2	7.43%
GENERAL MOTORS	56	3	12.61%
GLOBAL ELECTRIC	1		0.23%
HYUNDAI	5		1.13%
ISUZU	2		0.45%
JAGUAR	1		0.23%
JH GLOBAL SERVICES	1		0.23%
KIA	6		1.35%
LAND ROVER	7	1	1.58%
MAZDA	4		0.90%
MERCEDES-BENZ	26	3	5.86%
MINI	6		1.35%
NISSAN	13		2.93%
PORSCHE	3		0.68%
ROLLS ROYCE	1		0.23%
SAAB	1	1	0.23%
SUBARU	3		0.68%
TOYOTA	45	3	10.14%
VOLKSWAGEN	10		2.25%
VOLVO	5		1.13%
<b>Totals</b>	<b>444</b>	<b>31</b>	<b>100.00%</b>



## PREHEARING SETTLEMENTS

Consumer claims were resolved by settlement between the parties in 43.7 percent (194) of the 444 approved cases for 2009. “Full” settlements, or settlements for the same full refund or vehicle replacements consumers would have obtained had they prevailed in arbitration, numbered 159, while the remaining 35 cases were settled for something less than full relief. Generally, these partial settlements were for such things as additional repairs, extended warranties, or partial cash payments. The prehearing settlement rate for 2009 was slightly lower than the 2008 rate of 48.2 percent. The result of this decrease in settlements was that a slightly higher percentage of cases went to hearing in 2009 than in the previous year, 48.2 percent in 2009 compared to 46.8 percent in 2008.

**Tables 2 and 3** identify the manufacturers entering into partial and full settlements with consumers, and the dollar values of the full settlements. The nature of most partial settlements prevents assignment of dollar values to them.

**TABLE 2. 2009 NUMBER OF “PARTIAL” SETTLEMENTS**

Manufacturer	Number
BMW	5
CHRYSLER LLC	15
FORD	2
GENERAL MOTORS	3
ISUZU	1
MAZDA	1
MERCEDES-BENZ	1
NISSAN	3
SUBARU	1
TOYOTA	1
VOLKSWAGEN	2
Totals	35



**TABLE 3. 2009 NUMBER, PERCENT, AND VALUE OF FULL SETTLEMENTS**

Manufacturer	Full Settlements	Percentages of All Settlements	Value of Full Settlements
AMERICAN HONDA	1	0.63%	\$ 27,179.00
AMERICAN SUZUKI	1	0.63%	\$ 20,336.00
ASTON MARTIN	1	0.63%	\$ 133,445.00
BMW	7	4.40%	\$ 379,039.00
CHRYSLER LLC	80	50.31%	\$2,382,622.00
FORD	5	3.14%	\$ 201,153.00
GENERAL MOTORS	23	14.47%	\$ 828,733.00
GLOBAL ELECTRIC	1	0.63%	\$ 11,131.00
HYUNDAI	3	1.89%	\$ 80,239.00
JAGUAR	1	0.63%	\$ 83,861.00
JH GLOBAL SERVICES	1	0.63%	\$ 10,969.00
LAND ROVER	4	2.52%	\$ 267,567.00
MERCEDES-BENZ	7	4.40%	\$ 296,452.00
MITSUBISHI	1	0.63%	\$ 28,930.00
NISSAN	4	2.52%	\$ 101,660.00
TOYOTA	13	8.18%	\$ 358,220.00
VOLKSWAGEN	2	1.26%	\$ 41,336.00
VOLVO	4	2.52%	\$ 117,040.00
Totals	159	100.00%	\$5,342,733.00



## DECISIONS BY THE ARBITRATION BOARD

Cases that were not withdrawn or settled went to hearings before the Florida New Motor Vehicle Arbitration Board. In 2009, as many as 79 Florida citizens served as members of the statewide Arbitration Board. Board members have diverse backgrounds in the legal profession, education, automotive mechanical, engineering, alternative dispute resolution, business and homemaking. They perform a very valuable public service for very little compensation. Cases are assigned according to geographical regions from Pensacola to Miami, depending upon the residence address of the approved consumer.

Arbitration hearings are conducted by three-member panels of the Board in public locations throughout the state. If the consumer prevails, a refund or replacement motor vehicle is awarded. If the manufacturer prevails, the case is dismissed. It is neither necessary nor required for parties to have attorneys to participate in arbitrations before the New Motor Vehicle Arbitration Board, and the Board is not empowered by the Legislature to award attorney fees to parties who prevail in arbitration.

The Board conducted 214 arbitration hearings for cases approved in 2009. Consumers prevailed in 95 (44.4 percent) of these cases, while manufacturers prevailed in 119 (55.6 percent). Comparatively, in 2008, the Board conducted 311 hearings, with consumers prevailing in 120 (38.6 percent) of these cases, while manufacturers prevailed in 191 (61.4 percent).

When the consumer prevails at a hearing, the Arbitration Board awards either a refund of all amounts paid to acquire the vehicle or a replacement motor vehicle, at the option of the consumer. If a refund is awarded and the “lemon” vehicle was purchased with financing, the consumer and lienholder are refunded according to their interests. Generally, such awards direct the manufacturer to pay the consumer a specified amount consisting of all expenses incurred to acquire the vehicle (e.g. cash down payment, government fees, options and accessories, extended service agreements, etc.), and where applicable, the net allowance for any trade-in vehicle, all periodic principal and interest payments made as of the date the vehicle is repurchased and any reasonable costs caused by the substantial defect(s). The manufacturer is directed to pay to the lienholder the balance owed on the loan as of the repurchase date.

If the vehicle was leased, the consumer is awarded all amounts paid at lease signing, the net allowance for any trade-in vehicle, all lease payments made as of the date the vehicle is repurchased and any reasonable costs caused by the substantial defect(s). The lessor is paid according to a formula set forth in the statute, and is prohibited from charging any penalty for early termination of the lease.



If a replacement motor vehicle is awarded, the replacement vehicle must be identical or reasonably equivalent to the vehicle being replaced, and it must be acceptable to the consumer. Additionally, the consumer is refunded costs paid to acquire the “lemon” vehicle (e.g. options and accessories, sales tax, extended service agreements, interest paid on the loan or rental charge paid on the lease as of the date of replacement, if applicable) and costs incurred as a result of the substantial defect(s).

Whether the award is a refund or a replacement vehicle, a “reasonable offset for use” is charged to the consumer. The offset for use is calculated according to a statutory formula (purchase price multiplied by mileage attributable to the consumer up to the date of an arbitration hearing, divided by 120,000).

In some instances, high mileage or high debt on a trade-in vehicle resulted in the amount refunded to the consumer being less than zero, exclusive of any amounts for loan or lease payoffs. In other instances, where mileage was very low, or where the net allowance on the trade-in vehicle was higher utilizing the statutory alternative, the result was to increase the amount refunded to the consumer, exclusive of loan or lease payoffs.

**Table 4** shows the number, percentage and dollar values of award decisions by the Arbitration Board for 2009. Dollar values are based upon the total amount of the awards, including the loan and lease pay-offs, and any additional amounts awarded, reduced by the statutory offsets. In multiple manufacturer cases, one or several of the participating manufacturers could have been found liable for the award. If liability was assessed jointly against several participating manufacturers, these are listed separately. **Table 5** shows the number of cases dismissed per manufacturer and the percentages of the total number for 2009.



**TABLE 4. 2009 DECISION AWARDS BY LIABLE MANUFACTURER**

Liabile Manufacturer	Number of Decision Awards	Percentages	Value of Awards
AMERICAN HONDA	8	8.42%	\$ 249,266.00
ASTON MARTIN	1	1.05%	\$ 120,168.00
BENTLEY	1	1.05%	\$ 226,552.00
BMW	5	5.26%	\$ 238,828.00
CHRYSLER LLC	15	15.79%	\$ 385,257.00
FORD	12	12.63%	\$ 348,330.00
GENERAL MOTORS	17	17.89%	\$ 641,980.00
HYUNDAI	1	1.05%	\$ 30,975.00
KIA	3	3.16%	\$ 70,849.00
LAND ROVER	2	2.11%	\$ 91,193.00
MAZDA	2	2.11%	\$ 30,893.00
MERCEDES-BENZ	7	7.37%	\$ 377,795.00
MITSUBISHI	3	3.16%	\$ 71,904.00
NISSAN	4	4.21%	\$ 90,525.00
PORSCHE	1	1.05%	\$ 124,455.00
SUBARU	1	1.05%	\$ 26,646.00
TOYOTA	9	9.47%	\$ 307,290.00
VOLKSWAGEN	2	2.11%	\$ 53,943.00
VOLVO	1	1.05%	\$ 22,293.00
<b>Totals</b>	<b>95</b>	<b>100.00%</b>	<b>\$3,509,142.00</b>



**TABLE 5. 2009 CASES DISMISSED**

<b>Manufacturer</b>	<b>Number</b>	<b>Total Percentages</b>
AMERICAN HONDA	11	9.24%
BMW	6	5.04%
CHRYSLER LLC	35	29.41%
FORD	12	10.08%
GENERAL MOTORS	10	8.40%
HYUNDAI	1	0.84%
ISUZU	1	0.84%
KIA	3	2.52%
MAZDA	1	0.84%
MERCEDES-BENZ	8	6.72%
MITSUBISHI	2	1.68%
NISSAN	2	1.68%
PORSCHE	2	1.68%
ROLLS ROYCE	1	0.84%
SUBARU	1	0.84%
TOYOTA	19	15.97%
VOLKSWAGEN	4	3.36%
<b>Totals</b>	<b>119</b>	<b>100.00%</b>

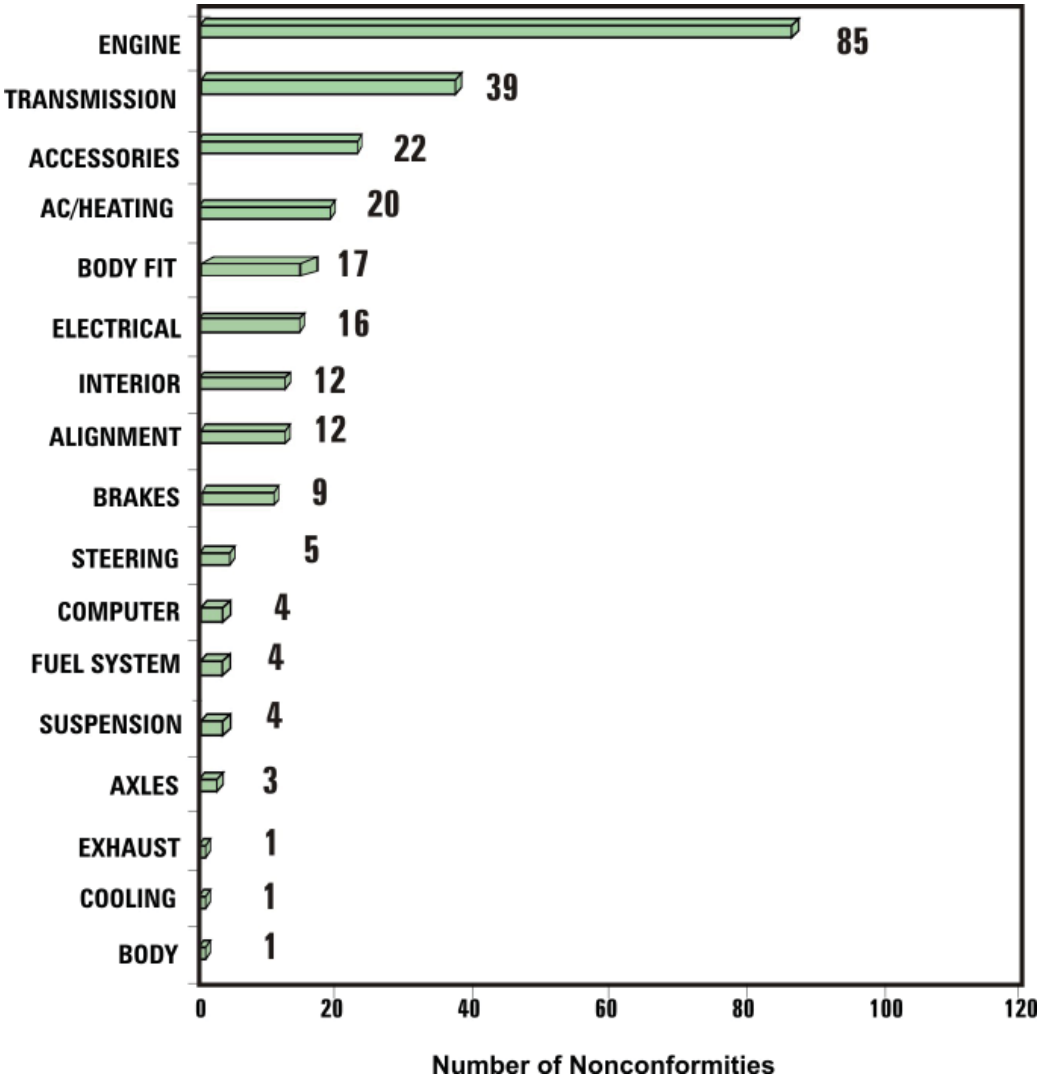


# SUBSTANTIAL DEFECTS FOUND

The Lemon Law requires that the problems complained of by the consumer be “nonconformities,” meaning defects or conditions that substantially impair the use, value or safety of the vehicle and that are not the result of abuse, neglect, modification or alteration by persons other than the manufacturer or its authorized service agent.

**Graph B** illustrates the number of substantial defects found by the Arbitration Board in 2009, in the major vehicle systems or components listed. Engine defects, which topped the list in 2008, were again the number one nonconformity in 2009, with defective transmissions second and accessories third.

**GRAPH B: SUBSTANTIAL DEFECTS FOUND**



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## APPEALS

Parties not satisfied with decisions of the Arbitration Board can appeal them to the circuit court. In 2008, the rate of appeals, which began increasing in 2006, started to decrease; however the rate of appeals was up for 2009. Manufacturers filed one appeal – it was filed by BMW of North America and was settled. Consumers filed 26 appeals, which are all still pending. The total number of cases appealed represented 12.6 percent of the 214 cases that were decided by the Board. This percentage rate of appeals is higher than the 6.8 percent of 311 decisions in 2008, but lower than the 2007 percentage, which was 16.9 percent of 427 decisions.



## CONCLUSION

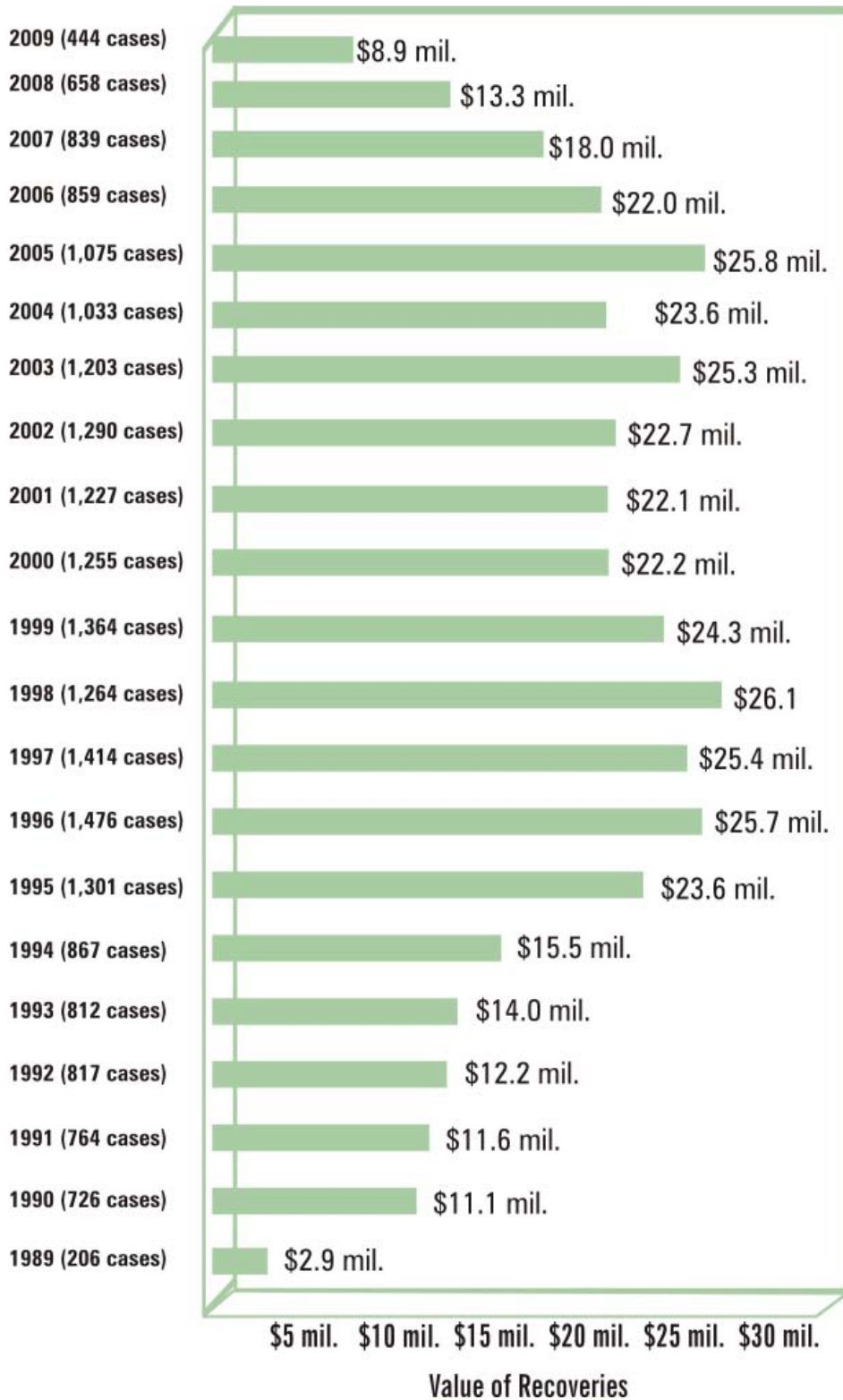
**Table 6** and **Graph C** best illustrate the consumer relief obtained during the program's 21 years. Of the 20,894 consumer claims approved for arbitration from 1989 through 2009, full relief via either prehearing settlements or decision awards was obtained in 70.1 percent (14,639), for a total dollar value of \$396.3 million.

**TABLE 6. 1989 - 2009 TOTAL CASES AND RECOVERY VALUES**

Year	Total Number of Cases	Dollar Value of Recoveries	Number of Cases with Recoveries
1989	206	\$ 2,925,943.00	145
1990	726	\$ 11,084,254.00	533
1991	764	\$ 11,645,821.00	543
1992	817	\$ 12,194,871.00	661
1993	812	\$ 13,955,116.00	603
1994	867	\$ 15,455,498.00	635
1995	1301	\$ 23,623,638.00	934
1996	1476	\$ 25,716,474.00	1076
1997	1414	\$ 25,407,219.00	1014
1998	1264	\$ 26,103,773.00	905
1999	1364	\$ 24,284,201.00	953
2000	1255	\$ 22,199,403.00	863
2001	1227	\$ 22,144,257.00	850
2002	1290	\$ 22,730,626.00	832
2003	1203	\$ 25,311,738.00	825
2004	1033	\$ 23,626,887.00	714
2005	1075	\$ 25,755,869.00	784
2006	859	\$ 22,047,619.00	611
2007	839	\$ 17,995,763.00	500
2008	658	\$ 13,266,987.00	404
2009	444	\$ 8,851,875.00	254
<b>Totals</b>	<b>20894</b>	<b>\$396,327,832.00</b>	<b>14639</b>



**GRAPH C: 1989 - 2009 CASES AND RECOVERY VALUES**



## MANUFACTURER REPORTED VEHICLE REPURCHASES

Under Florida’s Lemon Law, when a manufacturer reacquires a new vehicle from the original owner as a result of a settlement or decision after a claim is filed either with a manufacturer-sponsored informal dispute resolution procedure, the New Motor Vehicle Arbitration Board, a court, or as a result of a similar statute in another state, the manufacturer is required to notify the Office of the Attorney General within a time specified by statute. This notification is made on a form that includes identification of the vehicle, the reason for the buy-back, and disclosure of the reported defects. A portion of the form is sent by the manufacturer to the Office of the Attorney General, with the remainder of the form required to travel with the vehicle and be provided to the retail buyer if or when the vehicle is resold.

When a disclosure form is received from a manufacturer, the information reported by the manufacturer is entered in a database maintained by the Lemon Law Arbitration Program of the Attorney General’s Office. This information also forms the basis for the searchable database of repurchased vehicles that is accessible on the Attorney General’s website.

**Table 7** lists by vehicle make the number of vehicles reported by manufacturers as having been repurchased in 2009. The total number reported was 1,274. Included in that number were vehicles bought back as a result of settlements or decisions of claims before the New Motor Vehicle Arbitration Board, along with vehicles repurchased for a variety of other reasons, including settlements or decisions of manufacturer-sponsored procedures, similar statutes of other states (a number of the reported repurchases originated in states other than Florida), court settlements or decisions, and reasons characterized as “customer goodwill.”

**TABLE 7. 2009 MANUFACTURER - REPORTED VEHICLES REPURCHASED**

Vehicle Make	Reporting Manufacturer	Number of Vehicles Repurchased
Acura	American Honda Motor Company	9
Aston Martin	Aston Martin of North America	2
Audi	Volkswagen/Audi of America, Inc.	7
Bentley	Bentley Motors, Inc.	1
BMW	BMW of North America, LLC	80
Buick	General Motors	9
Cadillac	General Motors	64



**TABLE 7. 2009 MANUFACTURER - REPORTED  
VEHICLES REPURCHASED**

Vehicle Make	Reporting Manufacturer	Number of Vehicles Repurchased
Chevrolet	General Motors	102
Chrysler	Chrysler LLC	66
Dodge	Chrysler LLC	136
Ford	Ford Motor Company	67
GMC	General Motors	40
Honda	American Honda Motor Company	24
Hummer	General Motors	24
Hyundai	Hyundai Motor America	46
Infiniti	Nissan Motor Corporation U.S.A.	10
Jeep	Chrysler LLC	91
Kia	Kia Motors America, Inc.	26
Lexus	Toyota Motor Sales, U.S.A., Inc.	73
Lincoln	Ford Motor Company	8
Maserati	Maserati North America, Inc.	1
Mazda	Mazda Motor of America, Inc.	3
Mercedes-Benz	Mercedes-Benz USA, Inc.	109
Mitsubishi	Mitsubishi Motors North America, Inc.	6
Nissan	Nissan Motor Corporation U.S.A.	35
Pontiac	General Motors	22
Porsche	Porsche Cars North America, Inc.	3
Saab	Saab Cars Usa, Inc.	4
Saturn	General Motors	31
Scion	Toyota Motor Sales, U.S.A., Inc.	3
Smart	Mercedes-Benz USA, Inc.	8
Subaru	Subaru of America, Inc.	1
Suzuki	American Suzuki Motor Corporation	10
Toyota	Toyota Motor Sales, U.S.A., Inc.	118
Volkswagen	Volkswagen/Audi of America, Inc.	21
Volvo	Volvo Cars of North America	14
<b>Totals</b>		<b>1274</b>





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