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Complaint

IN THE MATTER OF

SUPERMARKET DEVELOPMENT CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 7 OF
THE CLAYTON AND SEC. 5 OF THE FEDERAL TRADE COMMISSION ACTS

Docket C-3224. Complaint, Mar. 17, 1988—Decision, Mar. 17, 1988

This consent order requires, among other things, Furr's, a wholly owned subsidiary of Supermarket Development Corporation, to divest supermarkets in 12 towns and cities in Texas and New Mexico, to obtain prior Commission approval for future acquisitions by Furr's of grocery stores located in the geographic area covered by the El Paso division, and to hold separate the El Paso division until the required divestitures are completed.

Appearances

For the Commission: *Joan Greenbaum.*

For the respondents: *Joseph A. DeFrancis, Latham & Watkins, Washington, D.C. Joushua F. Greenberg and Michael Malina, Kay, Scholer, Fierman, Hays & Handler, New York City.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that respondents, Supermarket Development Corp. ("SDC" or "Furr's") and SSI Associates, L.P. ("Safeway"), entities subject to the jurisdiction of the Federal Trade Commission, have entered into an agreement, described in paragraph 10 herein, that, if consummated, would violate the provisions of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45; that said agreement and the actions of the respondents to implement that agreement constitute violations of Section 5 of the FTC Act, 15 U.S.C. 45; and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. DEFINITIONS

1. For the purposes of this complaint, the following definition shall apply:

Supermarket means any full-line retail food store with annual sales

of not less than \$1.5 million, and which sells primarily a wide variety of canned or frozen foods; dry groceries; non-edible grocery items; fresh meat, poultry and produce (vegetables and fruits). In addition, these stores often sell delicatessen items, bakery items, fresh fish, or other specialty items.

II. SUPERMARKET DEVELOPMENT CORP.

2. Respondent, Supermarket Development Corp., is a corporation organized and existing under the laws of the State of Texas, with executive offices located in Dallas, Texas.

3. SDC owns one hundred percent of the voting securities of Furr's, Inc. and controls the operations of Furr's, Inc.

4. Furr's, Inc. is a corporation organized and existing under the laws of the state of Texas, with its principal place of business in Lubbock, Texas.

5. For the year ending December 31, 1986, SDC had net sales of \$906,331,507.

6. Furr's is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

III. SSI ASSOCIATES, L.P.

7. SSI Associates, L.P. ("Safeway"), is a limited partnership organized and existing under the laws of the State of Delaware, with its principal place of business in San Francisco, California.

8. Safeway owns 96.4 percent of the voting securities of Safeway Stores, Inc. and controls the operations of Safeway Stores, Inc.

9. Safeway Stores, Inc. is a corporation organized and existing under the laws of the state of Delaware, with its principal place of business in Oakland, California.

10. For the year ending January 3, 1987, Safeway had net sales of \$20,311,480,000.

11. Safeway is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

IV. THE ACQUISITION

12. On or about April 9, 1987, SDC entered into an agreement with Safeway whereby SDC will purchase the El Paso Division of Safeway ("El Paso Division"), which comprises one closed and 59 open conven-

tional supermarkets; one food warehouse; a milk plant; and an ice cream plant. Almost half of the El Paso Division's stores are in Albuquerque, New Mexico, and El Paso, Texas. The rest of the Division's stores are in smaller metropolitan areas and towns in New Mexico and Texas. All are operated under the "Safeway" trade name and are conventional supermarkets. In 1986, the El Paso Division had grocery sales of \$530 million. There are nineteen cities and towns in which SDC's Furr's stores and Safeway both operate grocery stores.

V. TRADE AND COMMERCE

A. *Relevant Line of Commerce*

13. A relevant line of commerce in which to analyze Furr's acquisition of the El Paso Division is the retail sale and distribution of food and grocery items in supermarkets.

B. *Relevant Section of the Country*

14. Relevant sections of the country are individual cities and towns in the portions of West Texas and New Mexico served by the El Paso Division.

VI. MARKET STRUCTURE

15. Retail sale and distribution of food and grocery items in supermarkets in each of the following relevant sections of the country is extremely concentrated, whether measured by Herfindahl-Hirschman Indices ("HHI") or by two-firm and four-firm concentration ratios: Fort Stockton and Pecos in Texas; and Alamogordo, Artesia, Clovis, Espanola, Hobbs, Las Vegas, Lovington, Portales, Roswell and Silver City in New Mexico.

VII. BARRIERS TO ENTRY

16. Entry into the markets set out in paragraph 15 herein, in the event of substantial price rises, is unlikely.

VIII. ACTUAL COMPETITION

17. SDC and Safeway are actual competitors in the markets alleged herein.

IX. EFFECT

18. The effect of the acquisition, if consummated, may be substantially to lessen competition in relevant product markets in relevant sections of the country in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, in the following ways, among others:

- a. by eliminating direct competition between SDC and Safeway;
 - b. by increasing the likelihood that SDC will unilaterally exercise market power; and
 - c. by increasing the likelihood of, or facilitating, collusion where the acquisition would significantly increase already high concentration;
- all of which increase the likelihood that firms will increase prices and restrict the output of food and groceries both in the near future and for a longer period of time.

X. VIOLATIONS CHARGED

19. The proposed acquisition of Safeway stores in the twelve markets described above in paragraph 15 would, if consummated, violate Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

20. The Acquisition agreement set forth in paragraph 12 herein constitutes a violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the acquisition of certain assets of SSI Associates, L.P. ("Safeway") by Furr's, Inc., a wholly owned subsidiary of Supermarket Development Corporation (hereinafter collectively "Furr's"), and Furr's and Safeway, having been furnished with a copy of a draft complaint that the Bureau of Competition proposed to present to the Commission for its consideration, and which, if issued by the Commission, would charge Furr's and Safeway with violations of the Clayton Act and Federal Trade Commission Act; and

Respondents Furr's and Safeway, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the com-

ments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

SDC, which owns 100 percent voting securities and controls Furr's, Inc., is a corporation organized and existing under the laws of the State of Texas with its executive offices located at 1500 Diamond Shamrock Tower, Dallas, Texas;

Furr's, Inc., is a corporation organized and existing under the laws of the State of Texas with its executive offices located at 1708 Avenue G., Lubbock, Texas (hereinafter, SDC and Furr's will be referred to as "Furr's");

SSI Associates, L.P., which owns 96.4 percent of the voting securities of Safeway and controls Safeway, is a limited partnership organized and existing under the laws of the State of Delaware with its executive offices located c/o Kohlberg Kravis Roberts & Company, 101 California Street, San Francisco, California;

Safeway is a corporation organized and existing under the laws of the State of Delaware, with its executive offices located at 201 Fourth Street, Oakland, California (hereinafter, SSI and Safeway will be referred to as "Safeway").

The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Furr's and Safeway, and the proceeding is in the public interest.

ORDER

I.

As used in this order, the following definitions shall apply:

(A) "*Furr's*" means Furr's, Inc., its predecessors, subsidiaries, divisions, groups and affiliates controlled by Furr's and their respective directors, officers, employees, agents and representatives and their respective successors and assigns, and Supermarket Development Corporation, its predecessors, subsidiaries, divisions, groups and affiliates controlled by Supermarket Development Corporation and their respective directors, officers, employees, agents and representatives and their respective successors and assigns.

(B) "*Safeway*" means Safeway, its predecessors, subsidiaries, divisions, groups and affiliates controlled by Safeway and their respective directors, officers, employees, agents and representatives and their respective successors and assigns and SSI Associates, L.P., its prede-

cessors, subsidiaries, divisions, groups and affiliates controlled by SSI Associates, L.P. and their respective directors, officers, employees, agents and representatives and their respective successors and assigns.

(C) "Acquisition" means Furr's acquisition of the assets of Safeway's El Paso Division.

(D) "El Paso Division" means the sixty grocery stores of Safeway in its El Paso Division, inventory, an administrative building, a distribution center and all related real property and facilities, excluding the dairy and ice cream plants.

(E) "Assets to be divested" means the assets described in paragraph II (A), also known as "II (A) properties."

(F) "To be acquired store" means a retail grocery store in the El Paso Division.

II.

It is ordered, That:

(A) Furr's shall divest, absolutely and in good faith, within nine months from the date this order becomes final, either a store to be acquired or a grocery store presently operated by Furr's in each of the following locations: (a) Alamogordo, New Mexico; (b) Artesia, New Mexico; (c) Clovis, New Mexico; (d) Espanola, New Mexico; (e) Fort Stockton, Texas; (f) Hobbs, New Mexico; (g) Las Vegas, New Mexico; (h) Lovington, New Mexico; (i) Pecos, Texas; (j) Portales, New Mexico; (k) Roswell, New Mexico; and (l) Silver City, New Mexico.

(B) Furr's and Safeway shall maintain the viability and marketability of the assets required to be divested and shall not cause or permit the destruction, removal or impairment of any assets or business to be divested except in the ordinary course of business and except for ordinary wear and tear.

(C) The divestitures required by paragraph II (A) shall be divested to an acquirer or acquirers, and only in a manner, that receives the prior approval of the Commission. The purpose of the divestiture and agreements is to ensure the continuation of the assets as ongoing, viable enterprises engaged in the retail sale of groceries and to remedy the lessening of competition resulting from the acquisition as alleged in the Commission's complaint.

(D) If Furr's has not secured approval from the Commission of a divestiture of all the properties within the nine-month period specified in paragraph II (A), Furr's consents to the appointment by the Commission of a trustee to divest the properties. In the event that the Commission brings an action pursuant to Section 5 (l) of the Federal

Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, Furr's consents to the appointment of a trustee in such action. The appointment of a trustee shall not preclude the Commission from seeking civil penalties and other relief available to it for any failure by Furr's to comply with this order.

(E) If a trustee is appointed by the Commission or a court pursuant to paragraph II (D) of this order, Furr's consents to the following terms and conditions regarding the trustee's duties and responsibilities:

1. The Commission shall select the trustee, subject to Furr's consent, which shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

2. The trustee shall have the power and authority to divest any properties listed in paragraph II (A) in any location listed therein in which a store has not been divested or for which a contract of sale has not been approved by the Commission within the time period for divestiture in paragraph II (A). The trustee shall have six months from the date of appointment to accomplish the divestiture, which shall be subject to the prior approval of the Commission and, if the trustee is appointed by a court, subject also to the prior approval of the court.

3. If, at the end of the six-month period, the trustee has not secured approval of divestiture as required by paragraph II (A), the trustee may, if the Commission requires in order to accomplish the divestiture, add such other assets acquired pursuant to the acquisition as are required to effectuate the divestiture of the II (A) properties.

4. The trustee shall have full and complete access to the personnel, books, records and facilities of any store that the trustee has the duty to divest, and Furr's shall develop such financial or other information relevant to the assets to be divested as such trustee may reasonably request. Furr's shall cooperate with the trustee, and shall take no action to interfere with or impede the trustee's accomplishment of the divestiture.

5. The power and authority of the trustee to divest shall be at the most favorable price and terms available consistent with the order's absolute and unconditional obligation to divest and the purposes of the divestiture as stated in paragraph II (C).

6. The trustee shall serve at the cost and expense of Furr's on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission or the court of the account of the trustee, including fees for his or her

services, all remaining monies shall be paid to Furr's and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee divesting the trust property.

7. Within 20 days of the appointment of the trustee, Furr's shall, subject to the Commission's prior approval, and consistent with provisions of this order, transfer to the trustee all rights and powers necessary to permit the trustee to cause divestiture and sign agreements for the divestiture of the trust properties.

8. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed.

9. The trustee shall report in writing to the Commission and Furr's every sixty days concerning the trustee's efforts to accomplish divestiture.

(F) The Agreement to Hold Separate shall continue in effect until such time as a store in each of the locations listed in paragraph II (A) has been divested either by Furr's or a trustee.

III.

It is further ordered, That within sixty days after the date of service of this order, and every sixty days thereafter until Furr's and Safeway have fully complied with the provisions of paragraph II of this order, Furr's and Safeway shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying with, or have complied with that provision. Furr's and Safeway shall include in compliance reports, among other things that are required from time to time, a full description of contacts or negotiations for the divestiture of the II (A) properties, including the identity of all parties contacted. Furr's and Safeway also shall include in compliance reports copies of all written communications to and from such parties, and all internal memoranda, reports and recommendations concerning divestiture.

IV.

It is further ordered, That for a period commencing on the date of service of this order and continuing for ten years from and after the date of service of this order, Furr's shall cease and desist from acquiring, without the prior approval of the Federal Trade Commission, directly or indirectly, through subsidiaries or otherwise, any retail grocery store, including any facility that has been operated as a retail grocery store within six months of the date of the offer to purchase the facility, or any interest in a retail grocery store or any interest in

any individual, firm, partnership, corporation or other legal or business entity that directly or indirectly owns or operates a retail grocery store in the following cities or towns: Albuquerque, New Mexico; Alamogordo, New Mexico; Artesia, New Mexico; Carlsbad, New Mexico; Clovis, New Mexico; El Paso, Texas; Espanola, New Mexico; Fort Stockton, Texas; Hobbs, New Mexico; Las Cruces, New Mexico; Las Vegas, New Mexico; Lovington, New Mexico; Midland, Texas; Odessa, Texas; Pecos, Texas; Portales, New Mexico; Roswell, New Mexico; Santa Fe, New Mexico; and Silver City, New Mexico.

Provided, however, That these prohibitions shall not relate to the construction of new facilities by Furr's or the leasing of a facility by Furr's not presently a grocery store in those locations.

One year from the date of service of this order and annually thereafter, Furr's shall file with the Commission a verified written report of its compliance with this paragraph.

V.

For the purposes of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Furr's or Safeway made to their principal offices, Furr's and Safeway shall permit any duly authorized representatives of the Commission:

1. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts and correspondence, memoranda and other records and documents in the possession or under the control of Furr's or Safeway relating to any matters contained in this order; and

2. Upon five days' notice to Furr's or Safeway and without restraint or interference from them, to interview officers or employees of Furr's or Safeway, who may have counsel present, regarding such matters.

It is further ordered, That Furr's shall notify the Commission at least thirty days prior to any change in its corporate structure that may affect compliance obligations arising out of this order including but not limited to dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change.

CONCURRING STATEMENT OF CHAIRMAN DANIEL OLIVER

This case concerns an effort by Supermarket Development Corporation—and Furr's, a wholly owned subsidiary—to acquire the El Paso Division of Safeway Stores, including sixty grocery stores and a vari-

ety of other assets. The order the Commission has accepted requires Furr's, *inter alia*, to divest one store in each of twelve towns in Texas and New Mexico, and creates an elaborate mechanism to ensure that those divestitures are made. In particular, the order requires Furr's to hold the entire Safeway El Paso Division separate from its own operations until it makes the twelve divestitures. Moreover, if Furr's fails to make the divestitures within nine months, a trustee will be appointed to assume that responsibility. The order also requires Furr's to seek Commission approval—over a ten year period—of any acquisition of a retail grocery store in any of nineteen areas in Texas and New Mexico, including Albuquerque and Santa Fe, New Mexico; and El Paso, Odessa, and Midland, Texas.¹

As a consequence of these provisions, the consent order process has prevented Furr's from immediately integrating the El Paso Division into its own operations. As a result, Furr's has not yet been able to take advantage of the efficiencies associated with the acquisition, and consumers have not yet received the benefits of the acquisition, in the form of lower prices, better service, and other advantages.

Consent orders frequently have adverse effects of this sort, but those effects are usually outweighed by the need to prevent or undo the anticompetitive aspects of the mergers they address. In this matter, however, there is good reason to think that the order need not have been imposed. In its earlier consultations with the Commission staff, Furr's evinced a willingness to remedy all of the possibly anticompetitive aspects of the acquisition *prior* to its consummation. If the Commission had accepted that approach, the consent order would not have been necessary. Moreover, Furr's would have been able to take advantage of the efficiencies the acquisition offers immediately, and to begin offering lower prices and other advantages to consumers immediately, instead of many months later. In short, in my view, the public interest would have been better served by accepting the Furr's "fix-it-first" approach.

I regret that the Commission chose instead—in July 1987—to authorize our staff to seek to enjoin the entire acquisition. I opposed that decision because I felt that it was premature in light of the proposals that Furr's had made. I have nevertheless voted to accept the consent order because that course is preferable to the litigation alternative.

¹ In addition to the concerns with the consent order noted in the text, I do not believe that the prior approval provision in the order should apply to any markets other than the twelve in which divestitures are required. The Commission has determined that the appropriateness of prior approval provisions depends on "industry market structure and market conditions." *American Medical International*, 104 FTC 1, 224 (1984); accord, *Hospital Corp. of America*, 106 FTC 361, 514-15 (1985), *aff'd*, 807 F.2d 1381 (7th Cir. 1986), *cert. denied*, No. 86-1492 (U.S. May 3, 1987). It is not clear from the record that "market conditions and market structure in [the seven additional markets] are such that all such acquisitions . . . necessarily [would be] anticompetitive." See *American Medical International*, 104 FTC at 225; see also *Hospital Corp. of America*, 106 FTC at 513-17.

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Interlocutory Order

IN THE MATTER OF

DETROIT AUTO DEALERS ASSOCIATION, INC., ET AL.

Docket 9189. Interlocutory Order, April 8, 1988

ORDER

Counsel for General Motors respondents, having informed the Commission of the death of respondent William M. Packer, Jr., moved for dismissal of the complaint against Mr. Packer. Complaint counsel had no objection to the motion. Therefore,

It is ordered, That the complaint against Mr. Packer be, and it hereby is, dismissed.

Commissioner Bailey not participating.

Complaint

110 F.T.C.

IN THE MATTER OF

THE SILVER GROUP, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SECS. 5 &
12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3225. Complaint, April 13, 1988—Decision, April 13, 1988*

This consent order prohibits, among other things, a San Francisco-based marketer of artificial tanning devices from misrepresenting that its devices do not pose for users a risk of any harmful side effect associated with sun exposure. Respondent is required to have reliable and competent scientific evidence for any health or safety claim it makes in any advertisement.

Appearances

For the Commission: *Brinley H. Williams.*

For the respondent: *Eugene I. Lambert, Covington & Burling, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that The Silver Group, Inc., a corporation, ("respondent") has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent is a California corporation, with its office and principal place of business located at 379 Oyster Point Boulevard, South San Francisco, California.

PAR. 2. Respondent has advertised, offered for sale, sold and distributed tanning devices and related products for the artificial tanning of humans, including tanning beds, facial units, and overhead lamp systems, and other products to the public. Respondent's tanning devices are marketed under such trade names as Silver Solarium.

PAR. 3. The acts or practices of respondent alleged in this complaint have been in or affecting commerce.

PAR. 4. Respondent has disseminated and caused the dissemination of advertisements and promotional materials for its tanning devices published in magazines and broadcasted on television across state lines, and disseminated in product brochures and other sales literature directly to consumers or to distributors for display or distribution to consumers. Typical of respondent's advertisements, but not neces-

sarily all - inclusive thereof, are the attached Exhibits A through D. The aforesaid advertisements contain the following statements or depictions:

1. "new way to tan indoors with absolutely no harmful side effects associated with the sun." (Exhibit A)
2. "absolutely no burning, no drying and no sun damage." (Exhibit A)
3. "Silver system will tan you deeper and more safely than anything under the sun." (Exhibit B)
4. "SILVER SOLARIUM bans burns and sun damage to deliver the perfect tan." (Exhibit C)
5. "For the perfect tan, get the perfect solution to the sun, SILVER SOLARIUM." (Exhibit C)
6. "Safer Than The Sun!" (Exhibit A)
7. "Will my skin age faster? No. Unlike the sun, the harmful rays that cause elastosis are not present in the Silver System." (Exhibit D).

PAR. 5. Through the use of the statements and depictions referred to in paragraph four and others in advertisements not specifically set forth herein, respondent has represented, directly or by implication, that:

1. Use of respondent's tanning devices cannot contribute to skin aging.
2. Respondent's tanning devices can be used without the risk of any harmful side effect associated with the sun.
3. Use of respondent's tanning devices cannot increase the risk of skin cancer.

PAR. 6. In truth and in fact:

1. Use of respondent's tanning devices can contribute to skin aging.
2. Respondent's tanning devices cannot be used without the risk of any harmful side effect.
3. Use of respondent's tanning devices can increase the risk of developing skin cancer.

Therefore, the representations set forth in paragraph five were, and are, false and misleading.

PAR. 7. Through the use of the representations referred to in paragraphs four and five and others not specifically set forth herein, respondent has represented, directly or by implication, that at the time it made the representations it possessed and relied upon a reasonable basis consisting of competent and reliable scientific evidence for said representations.

PAR. 8. In truth and in fact, respondent did not possess and rely upon a reasonable basis for making such representations. Therefore,

respondent's representations as set forth herein were and are false and misleading.

PAR. 9. In the advertising and sale of its tanning devices, respondent has, as alleged in paragraph four, used terms such as "safer than the sun" and "no harmful side effects" without disclosing that the use of such devices poses an increased risk of skin cancer and skin aging. These facts would be material to consumers. The failure to disclose these facts, in light of the representations made as alleged in paragraph five, is a deceptive practice.

PAR. 10. The acts and practices of respondent as alleged in this complaint, and the placement in the hands of others of the means and instrumentalities by and through which others may have used said acts and practices, constitute unfair or deceptive acts or practices in or affecting commerce and the dissemination of false advertisements in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

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EXHIBIT A

TRAINING TRAINING TRAINING

For Immediate Release

Safer Than The Sun!

We've waged war on the sun and won! It's no longer necessary to spend long hours in the sun to tan. Silver Solarium's innovative tanning center introduces an entirely new way to tan indoors with absolutely no harmful side effects associated with the sun.

Consider the facts: Doctors world-wide are against the dangers of direct exposure of skin to sunlight. Too much sun burns, dries out and permanently damages the skin. The damage is done by ultraviolet rays emitted by the sun, particularly UV-B rays. UV-B rays work with UV-A rays to tan you by stimulating the melanin (pigmentation) in your skin. Too many UV-B rays cause burning and ultimately damage your skin. The problem is how to control the amount of UV-B rays while allowing the gentle UV-A rays to tan you.

The solution is to block out the burning UV-B rays. Sunscreens do it to a limited extent but skin damage still occurs. Silver Solarium's state-of-the-art tanning beds effectively filter out the burning UV-B rays while intensifying the healthful UV-A tanning rays. You'll tan faster and darker with absolutely no burning, no drying and no sun damage! Your tan will look better longer and so will your skin!

For more information visit the Silver Tanning Center nearest you:

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EXHIBIT B

TRAINING TRAINING TRAINING

**Radio Ad
Silver Tanning Center**

:60

Here's something you really should know if you're searching for that perfect suntan! Doctors the world over warn constantly against over exposing your skin to sunlight! The sun sears, bakes and burns the skin. It adds wrinkles and creases, and even the finest sunscreens can't protect you from that! So how do you avoid skin damage? Drop into NAME. NAME takes you out of the sun and tans you in minutes, not hours! NAME, using the Silver system, will tan you deeper and more safely than anything under the sun. The Silver tanning system filters out the UV-B rays the sun emits, the rays that scorch the skin, and intensifies the UV-A rays that tan the skin! Want the perfect tan? Introduce yourself to the Silver tanning system at NAME! Or call NAME at PHONE NUMBER! That's NAME! There's nothing like it under the sun!

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EXHIBIT C

FACE FACTS

Silver Solarium works! It works better, safer and faster than the most sophisticated and effective sunscreens. Tanning in the sun without a sunscreen causes damage. Burning UVB rays tear the skin resulting in painful sunburns and premature aging and wrinkling. Sunscreens can help block (reflect) the burning rays but skin damage still occurs. SILVER SOLARIUM bans burns and skin damage to deliver the perfect tan. SILVER effectively screens out the burning UVB rays inside the tubes. At the same time the gentle UVA tanning rays are provided for the deepest, richest tan ever! For the perfect tan, get the perfect solution to the sun, SILVER SOLARIUM.

**HOW IT WORKS**

You'll see the results after your first session, and after six to eight half hour sessions you'll be sporting a glorious tan. Now, it's important to remember this is not an artificial tan. The light from the machine is stimulating your body's natural tanning ability. Each person has a different amount of pigmentation in their skin. You'll find yourself tanning at a different rate than your friends or spouse. This is quite normal. People with dark complexions will tan faster than those who have a fair complexion. However, even most people with red hair and freckles will tan, many times it's their first tan ever! To maintain your tan, one to two sessions weekly should suffice. Depending on how dark you want to be, more or fewer sessions may be taken.

THE SILVER SYSTEM AND YOU**1. Will I burn?**

No. The system is designed to stimulate your body's natural tanning ability without causing any burning.

2. Will all people get the same tan in the same number of sessions?

No. Skin tans at its own rate and all skin types are different. Generally the fairer your complexion the longer it takes to tan. However, feel comfortable, you will not burn. For many people it is the first tan of their life. With olive skin you'll look fabulous.

3. Do I need to use sunscreens, oils or moisturizer?

No, it's not necessary. Just maintain your regular skin care routine. Do not under any circumstances use sunscreens, it serves no purpose and only damage the tanning equipment.

4. How long will it take to get a tan?

You'll see the results after your first session. To get a good base tan schedule 4-6 consecutive sessions. Then 1 or 2 sessions weekly will maintain your tan.

5. How long does a session last?

An average of 20-25 minutes. Scheduling for your session is very important. Please be on time to utilize your entire session.

6. Will it help my holiday tan if I use it before I go on holiday?

Yes, because you will go with a tan, instead of milky white skin. However, we strongly encourage you to use a very good sunscreen to protect your skin from sun damage while outdoors.

7. Will my skin get an aged weathered look like it does in the sun?

Sunscreens are designed to control the damaging effects of sun can cause. And Silver Solarium is more effective than sunscreens. It is considered the ultimate sunscreen.

8. Can I take medications in conjunction with tanning?

There are some medications which are considered to be photo sensitive. For complete listing consult your physician. Common light sensitive drugs include Tetracyclines, Phenytoins, and heart medications.

Money Back Guarantee.

Join any of the different plans available. And if you are not completely satisfied after your session, your money will be refunded.

EXHIBIT D



silver solarium

110135

Your skin deserves careful attention and protection. That's why you should know all about the tanning effects of ultraviolet rays - those of the sun as well as those of man-made light. Both can be either harmful or very beneficial.

We feel confident that the more you know, the better you'll feel about the Silver Solarium.

The Silver System, Ultraviolet Light, and Your Health

The life-sustaining sun dispenses light, heat and ultra-violet rays to every living thing on earth. The light controls life's rhythm - day and night. Heat rays create the vital temperature changes that make up our climate, and stimulate the metabolic functions. And the UV rays stimulate the life processes and, in men, if the combination is right, produces a healthful, aesthetic tan.

All living creatures need the energy of the sun. A lack of sun can lead to illness in man and an unhealthy degenerative appearance. But too much sun is also damaging. Who has not experienced a red, uncomfortable sunburn? The UV-B rays (short as well as made longer) are responsible for this condition. UV-B rays do have numerous positive features - they stimulate the metabolic functions, improve the quality of the blood through increased production of red corpuscles, make a respiration more efficient and make one more resistant to infection. For these health supporting effects, a minimal dosage of UV-B is mandatory and sufficient. What overdose leads to sunburn is a drying of the skin, a small amount of UV-B is essential to life and to obtaining a tan. The trick, up to now, has been how to get just the right amount of UV-B to the body - enough for the benefits of health and tanning but not enough to burn. The Silver System has achieved this goal.

How Tanning Occurs

In the skin, composed of epidermis, dermis and endodermis there are special cells called melanocytes. These cells are unevenly distributed over the body and are activated by the short UV-B rays to produce pigmentation - melanin. It is these particles of pigmentation which, when they encounter the proper intensity of UV-A light, oxidize and produce the desired brown color for a tan.

Therefore, it takes a small amount of UV-B to start the process of tanning and a far greater amount of UV-A to produce the tan. This is exactly the output of the Silver UV-A Tanning System. The long UV-A rays are gentle. They tan without burning. Only an extremely high dosage of UV-A, a dosage that is practically impossible with our system, could result in even a mild sunburn. It is natural for a tan to fade. The pigment particles naturally rise to the surface and are shed with the skin's cells. To maintain a tan permanently UV exposure must be repeated at certain intervals. Depending on the individual one or two times a week. The Silver Tanning System does this.

The Silver System vs. The Sun

The Silver System emits the same type of rays as the sun, and we've improved on nature's own tanning process.

Due to its energy spectrum, natural sunlight is unable to tan the skin without the risk of sunburn. For every part UV-B (burning rays) about 100 parts UV-A (tanning rays) reach the same area.

The Silver vs. The Tanning Booth

Until now the only way to get an indoor "tan" was the sunbath. These systems give off 60 times more UV-B than the Silver System. If you stand in a booth too long, even a couple of minutes, it means the difference between a healthy "tan" and a painful sunburn.

With the Silver Tanning System you lie down. The subtle warmth from our lamps soothes your body. Within a few short treatments, you'll have a beautiful golden tan, without the fear of sunburn.

Pre-Vacation Skin Protection

The Silver System will also help you enjoy a sun-filled vacation because pre-tanned skin is its own best protection. No need to arrive pale and then suffer through the first week with the discomfort of sunburn. As few as four 20 minute sessions will prepare you and are probably the best insurance for a truly pleasurable vacation.

Money Back Guarantee

Join any of the different plans available. And, after your first session if you are not completely satisfied your money will be refunded.

The Silver System, and You

1. Will the Silver System cause sunburn under normal use?
No.
2. Will all skin types react the same?
Sun types tan at different rates.
3. Do I need to use oils or moisturizers?
No, it's not necessary.
4. How long does a treatment last?
20-25 minutes depending on your complexion.
5. How often can I use the machine?
One treatment a day for 4 days, then 1 or 2 times per week to maintain your tan.
6. Will it help my holiday tan if I use it before I go on vacation?
Yes. Avoid painful sunburn during the first days of vacation in the sun.
7. Will it help me keep my vacation tan after I'm back?
Yes. A one or two treatment per week maintenance program will help you keep your tan.
8. Do I have to protect my eyes?
We recommend that you do.
9. Will my skin age faster?
No. Unlike the sun, the harmful rays that cause discoloration are not present in the Silver System.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent The Silver Group, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California. The Silver Group has its offices and principal place of business at 379 Oyster Point Boulevard, South San Francisco, California.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent and the proceeding is in the public interest.

ORDER

DEFINITION

For the purpose of this order, the following definition shall apply:

"Tanning device" means any product designed to incorporate one or more ultraviolet lamps and intended for irradiation of any part of the living human body by ultraviolet radiation to induce skin tanning.

I.

It is ordered, That respondent The Silver Group, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any tanning device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting directly or by implication that:

- a. Use of any such device does not pose a risk of the harmful side effects associated with exposure to the sun's radiation;
- b. Use of any such device does not increase the risk of developing skin cancer;
- c. Use of any such device does not contribute to skin aging.

II.

It is further ordered, That for one year after the date of service of this order respondent The Silver Group, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any tanning device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to prominently disclose in any print advertisement, film, video tape or any other promotional material the following statement:

NOTICE - Read the mandatory FDA warning label found on every tanning machine for important information on potential eye injury, skin cancer, skin aging and photosensitive reactions.

The above-required language shall be included in printed material printed in a typeface and color that are clear and conspicuous, and, in multipage documents, shall appear on the cover or first page; and in any film, video tape, or slide promotional material shall be included either orally or visually in a manner designed to ensure clarity and prominence; provided, further, that nothing contrary to, inconsistent with, or in mitigation of the above-required statement shall be used in any advertising or promotional materials.

III.

It is further ordered, That commencing one year after the date of service of this order respondent The Silver Group, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any tanning device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making in any print advertisement, film, video tape or any other promotional material any representation, directly or by implication, that the tanning device is safe or safer than other devices or methods of tanning or that the device has health benefits unless the following statement is given:

NOTICE - Read the mandatory FDA warning label found on every tanning machine for important information on potential eye injury, skin cancer, skin aging and photosensitive reactions.

The above-required language shall be included in printed material printed in a typeface and color that are clear and conspicuous, and, in multipage documents, shall appear on the cover or first page; and in any film, video tape, or slide promotional material shall be included either orally or visually in a manner designed to ensure clarity and prominence; provided, further, that nothing contrary to, inconsistent with, or in mitigation of the above-required statement shall be used in any advertising or promotional materials.

IV.

It is further ordered, That respondent The Silver Group, Inc., its successors and assigns and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale, or distribution of any product for personal or household use, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making directly or by implication, any health or safety representation, unless, at the time of such representation, respondent possesses and relies upon a reasonable basis for each such representation, consisting of reliable and competent scientific evidence that substantiates such representation; provided however, that to the extent such evidence of a reasonable basis consists of scientific or professional tests, analyses, research, studies or any other evidence based on expertise of profes-

sionals in the relevant area, such evidence shall be "reliable and competent" only if those tests, analyses, research, studies, or other evidence are conducted and evaluated in an objective manner by persons qualified to do so, and using procedures generally accepted in the profession to yield accurate and reliable results.

V.

It is further ordered, That respondent shall distribute a copy of this order to each current officer, employee, agent and or representative having sales or promotional responsibilities with respect to the subject matter of this order, and to each current dealer, distributor and purchaser or lessee for commercial use, of its tanning devices, such as health clubs, tanning salons, beauty salons, catalogue houses, and tanning device retailers. A dealer, distributor, purchaser, or lessee is "current" for purposes of this paragraph if it holds a device on consignment for sale; purchased a device for resale or other commercial purpose within the two-year period preceding service of this order; received from respondent, within that two-year period, either directly or indirectly, any promotional or advertising material for the sale or other commercial use of the devices or to whom respondent directly or indirectly provided financial advertising support; or leases a device for commercial purposes from respondent.

VI.

It is further ordered, That for three (3) years from the date that the representations to which they pertain are last disseminated, respondent, its successors and assigns shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials relied upon to substantiate any claim or representation covered by this order; and

B. All test reports, studies, surveys, or other materials in its possession or control or of which it has knowledge that contradict, qualify, or call into question such representation or the basis upon which respondent relied for such representation, including complaints from consumers.

VII.

It is further ordered, That for ten (10) years after the date of service of this order respondent, its successors and assigns shall maintain for

three (3) years from the last date of dissemination of the material a copy of each nonidentical form of promotional and training material disseminated by respondent and upon request make such material available to the Federal Trade Commission or its staff for inspection and copying.

VIII.

It is further ordered, That for ten (10) years after the date of service of this order respondent, its successors and assigns shall maintain for three (3) years and upon request make available to the Federal Trade Commission for inspection and copying records of the name and last known address of each dealer, distributor and purchaser or lessee for commercial use of respondent's tanning devices to whom respondent provided, directly or indirectly through a distributor or other representative, any promotional or advertising material for the sale or other commercial use of the devices or to whom respondent directly or indirectly provided financial advertising support.

IX.

It is further ordered, That respondent, its successors and assigns, shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the order.

X.

It is further ordered, That respondent shall, within sixty (60) days after service of this order upon it and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied or intends to comply with this order.

Commissioner Bailey not participating.

Complaint

110 F.T.C.

IN THE MATTER OF

VOLKSWAGEN OF AMERICA, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT*Docket 9154. Complaint, April 1, 1981—Decision, April 13, 1988*

This consent order requires, among other things, a Troy, Mich. automobile company to offer an arbitration program to owners of certain Volkswagen and Audi automobiles with faulty valve seals and other oil consumption-related problems.

Appearances

For the Commission: *Robert M. Doyle.*

For the respondents: *Herbert Rubin, Herzfeld & Rubin, P.C., New York City.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Volkswagen of America, Inc., a corporation subject to the Commission's jurisdiction, hereinafter sometimes referred to as respondent VWoA, and Volkswagenwerk Aktiengesellschaft, a corporation subject to the Commission's jurisdiction, hereinafter sometimes referred to as respondent VWAG, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Volkswagen of America, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business located at 27621 Parkview Road, Warren, Michigan. Respondent VWoA is a subsidiary of respondent VWAG.

Respondent Volkswagenwerk Aktiengesellschaft is a corporation organized, existing and doing business under and by virtue of the laws of the Federal Republic of Germany, with its principal office and place of business located at 3180 Wolfsburg, West Germany. VWAG dominates or controls the acts and practices of its subsidiary, respondent VWoA.

PAR. 2. Respondent VWoA is now and has been engaged in the

production, distribution, offering for sale or sale of vehicles or vehicle parts.

PAR. 3. Respondent VWAG is now and has been engaged in the production, distribution, offering for sale or sale of vehicles or vehicle parts delivered to purchasers in the United States. [2]

PAR. 4. Respondent VWAG, directly or through its subsidiaries, maintains and has maintained a substantial course of business, including some of the acts and practices alleged in this complaint, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

Respondent VWoA maintains and has maintained a substantial course of business, including some of the acts and practices alleged in this complaint, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Respondents cooperate and act together in effecting some of the acts and practices as hereinafter set forth.

PAR. 6. An abnormally high number of Volkswagen and Audi vehicles sold in the United States beginning in the 1974 model year and continuing at least through the 1979 model year and equipped with water-cooled engines have experienced, are experiencing, or are likely to experience one or more of the following conditions:

a. engine problems which may require expensive engine repairs when high rates of oil consumption are experienced; these repairs may include, but are not limited to, replacement of valve stem seals, replacement of cylinder heads, or other valve repairs;

b. engine failures related to lack of oil;

Such conditions are costly to correct or may significantly affect the quality, reliability, durability, or performance of the vehicles.

PAR. 7. Respondents knew or should have known that the conditions described in paragraph six above exist.

PAR. 8. Respondents have failed and are failing to disclose to owners or to prospective purchasers of Volkswagen and Audi vehicles equipped with water-cooled engines facts which relate to the existence, nature, extent, prevention, diagnosis, or proper repair of the conditions described in paragraph six above.

PAR. 9. The facts described in paragraph eight above are material to many prospective purchasers because such facts, if known, would be likely to affect their decisions concerning the purchase of Volkswagen and Audi vehicles.

PAR. 10. The facts described in paragraph eight above are material to many owners because such facts, if known, would be likely to affect their decisions concerning the maintenance, repair, use or care of Volkswagen and Audi vehicles.

PAR. 11. Respondents have failed and are failing to disclose material facts to prospective purchasers and to owners of Volkswagen and Audi vehicles. [3]

PAR. 12. The acts and practices of respondents in failing to disclose material facts have had and continue to have the capacity and tendency to mislead many members of the public, particularly those who may consider purchasing, or who own, Volkswagen and Audi vehicles.

PAR. 13. The acts and practices of respondents also have caused or continue to cause substantial economic harm to many members of the public who have paid or continue to pay for goods and services which they might not otherwise have purchased if respondents had adequately disclosed such material facts. The goods and services may include, but are not limited to, those sold by respondents for the repair or replacement of components installed in Volkswagen and Audi vehicles.

PAR. 14. The acts and practices of respondents have caused or continue to cause substantial economic harm to many members of the public who do not take preventive measures which they might take if such material facts were adequately disclosed.

PAR. 15. The acts and practices of respondents in failing to disclose material facts as alleged herein were and are all to the prejudice and injury of the public and constitute unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent Volkswagen of America, [2] Inc., of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter and having there-

upon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure described in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Volkswagen of America, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 888 West Big Beaver, in the City of Troy, State of Michigan. [3]

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of respondent Volkswagen of America, Inc., and the proceeding is in the public interest.

ORDER

DEFINITIONS

For the purposes of this order, the following definitions shall apply:

A. "VWoA" - Volkswagen of America, Inc., and its successors and assigns, and their officers, representatives, agents, and employees.

B. "Covered Vehicle" - A 1974-1979 model year gasoline powered Volkswagen or Audi vehicle equipped with a water-cooled engine, that was:

1) distributed for sale in the United States by VWoA,

2) warranted in writing by VWoA, or [4]

3) certified by the manufacturer to the National Highway Traffic Safety Administration and Environmental Protection Agency as meeting Federal safety and emissions standards.

C. "Specified Claims" - Claims made at any time prior to the expiration date of this order by present or former owners or lessees (unless the lessor bore the cost of the claim) of covered vehicles concerning excessive oil consumption or engine damage due to lack of lubrication in covered vehicles other than claims for personal injury, damage to property other than the vehicle itself, or consequential damages such as lost value, profits, wages, or business opportunities. Specified claims do not include claims for which the owner or lessee has executed a release in consideration of settlement of an individual lawsuit. Specified claims also do not include claims that are covered by a binding final judgment on the merits in an individual lawsuit.

D. "Dealer" - Any person, partnership, firm or corporation which, pursuant to a Volkswagen or Audi Dealer Agreement with VWoA or any of its independent distributors, purchases or receives on consign-

ment from VWoA or its independent distributors vehicles for resale or lease to the public, [5] including persons, partnerships, firms, or corporations owned or operated by VWoA or its independent distributors.

E. "*Internal engine components*" - All gasoline and diesel engine parts, components, and subassemblies included within the complete short block and cylinder head assemblies, including short blocks and cylinder heads, camshafts, valve train components, timing gears, flywheels, pistons, piston rings, crankshafts, connecting rods, and bearings, oil pumps, and associated fasteners, seals and gaskets.

F. "*Product Service Publication*" ("*PSPs*") - "Product Circulars," "Service Circulars," "Technical Bulletins," and other documents substantially the same in content and purpose issued from time to time by VWoA to dealers, to regional offices or to independent distributors, or individual articles, notices, entries or the like in such documents, which describe, or recommend or discuss:

- (1) diagnostic, repair, or maintenance procedures; or
- (2) additional parts or upgrades or different replacement parts; or [6]
- (3) non-repair information regarding the use and care of vehicles.

If a publication contains more than one subject which is considered a PSP, then each such subject shall be considered to be an individual PSP. PSPs do not include publicly available repair manuals, parts catalogs, price lists or supplements thereto.

G. "*Product Condition*" - The condition of a vehicle that gives rise to any repair, maintenance, use and care or diagnostic procedures or the use of additional, upgraded or different parts, that is or would be described in PSPs.

H. "*PSP Index*" - A document, clear and comprehensible to prospective purchasers and vehicle owners, which contains entries for all PSPs published during the term of this order by VWoA.

(1) Each index shall contain an introductory section, which shall include the following information clearly and conspicuously stated:

- (a) an explanation of the PSP Index and the "PSP [7] Highlights" section;
- (b) how to obtain PSPs from VWoA and how to review PSPs at VWoA's dealers;
- (c) how to locate the "PSP Highlights" section; and
- (d) the PSP prepared and issued pursuant to paragraph G(1) of section V.

(2) For each entry in the PSP Index, the following information will be clearly and conspicuously stated:

(a) the particular model(s), model year(s), and Vehicle Identification Numbers (if the PSP does not apply to the entire model year) to which the entry applies or potentially applies;

(b) the subject of the PSP;

(c) the major component or system of components to which the PSP relates;

(d) the identifying number of the PSP to which the entry relates; and [8]

(e) whether there is an entry in the "PSP Highlights" section of the PSP index for the PSP;

(3) The PSP Index shall contain a separate section, readily accessible, entitled "PSP Highlights."

I. "PSP Highlights" - Information related to a particular PSP, that includes all of the following items as applicable:

(1) a description of the product condition;

(2) a description of the principal symptoms of the product condition;

(3) the steps or possible steps that can be taken to minimize or avoid the product condition;

(4) a statement that additional, upgraded or different parts are called for to address the product condition;

(5) a statement that the diagnostic, repair or maintenance procedure discussed in the PSP has to be repeated; [9]

(6) a statement of the immediate and long-range performance consequences of the product condition; and, if avoidance of repair costs is a reason for undertaking the procedure, a statement of the estimated repair costs, if known, or, if not known, a characterization of such costs of not performing the procedures in a timely manner;

(7) the following statement: "The estimated cost of repairing this condition is [less than \$150][approximately \$150-\$250][approximately \$250-\$400][approximately \$400-\$800][more than \$800]." The cost range included shall be based on the cost calculated according to the formula set forth in Definition J(2);

(8) a description of the underlying PSP(s) sufficient to permit an interested person to identify and order the PSP(s) from VWoA or review it at a dealer; and

(9) to the extent not apparent from the foregoing, a disclosure of the primary intended benefit(s) of this information. [10]

J. "Costs" -

(1) "Reference cost" in paragraph D of section I means one hundred sixty-five dollars (\$165), adjusted in the month when this order is served and annually thereafter, by a ratio, the numerator of which is the most recently published quarterly "Implicit Price Deflator" (IPD) for the Gross National Product, and the denominator of which is the

IPD for the second quarter of 1985, adjustments to be rounded to the nearest dollar. IPDs used in these annual adjustments shall have been computed using the same base year.

(2) "Cost(s)" other than "reference cost" in paragraph D of section I shall be calculated by adding the suggested retail price for parts which are or may be required and the applicable national average dealer warranty labor rate charges multiplied by the time required to effectuate the repair, replacement, diagnosis or maintenance as determined by the applicable Suggested Repair Times Manual or other labor time guide used by VWoA in the calculation of warranty reimbursement rates.

K. "*Background Statements*" - The documents attached hereto as Attachments A, and A100, B, and B100. [11]

L. "*Claimant*" - Any person, partnership, corporation, or other entity, other than

(1) a dealer, or

(2) any other entity which is engaged in the business of repairing, servicing, selling, leasing or trading motor vehicles or motor vehicle engines, or

(3) a commercial enterprise which operates a fleet of more than fifteen vehicles.

M. "*United States*" - The fifty states, the District of Columbia, and all commonwealths, territories, and possessions.

N. "*Independent distributor*" - World-Wide Volkswagen, Inc., Riviera Motors, Inc., Volkswagen Mid-America, Inc., and any other person, partnership, firm or corporation that distributes VWoA's vehicles to dealers on a regular basis.

O. "*Engine damage due to lack of lubrication*" - Claims of damage to internal engine components caused by insufficient lubrication. [12]

P. "*MQ Service Action Program*" - The recall and reimbursement campaign initiated by VWoA beginning in February 1982 which included offers to replace valve stem seals and to reimburse prior valve stem seal replacement up to \$125 in 1977 through 1979 Volkswagen Rabbit and Scirocco vehicles equipped with gasoline engines.

Q. "*Arbitration agreement*" - The form that sets out issues to be arbitrated concerning claims relating to internal engine components as described in Rule 4 of Attachment C.

I.

It is ordered, That respondent Volkswagen of America, Inc., its successors and assigns, and their officers, representatives, agents, and employees, acting directly or through any subsidiary, division, or

other device in connection with the advertising, offering for sale, sale, or distribution of any vehicle in or affecting commerce in the United States, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Failing to continue VWoA's program of issuing PSPs in a manner comparable to the program as it existed in the years 1980 through the date of service of this order, with such [13] program to continue to take into account current criteria used for issuing PSPs, such as the frequency with which the product condition has occurred and is expected to occur, the repair costs to the consumer, and the significance to the consumer of the product condition; and failing to utilize information sources such as internal corporate testing and engineering programs, marketing and other surveys purchased or used by VWoA, information from the manufacturer(s) of affected vehicles or vehicle parts, and reports from customers, dealers, and independent distributors.

B. Within 30 days after the date of service of this order, failing to prepare and issue PSP Indexes for the 1985 model year and thereafter failing to prepare and issue PSP Indexes for PSPs issued in each model year after the 1985 model year.

C. Failing to prepare and issue an entry in the PSP Index for each PSP issued, to include each such entry in an updated PSP Index, and to update cumulatively each quarter all PSP Index entries for all PSPs issued by VWoA, with each such updated PSP index to be forwarded to dealers and be available from VWoA within four months after issuance to dealers of any PSP that was not included in a prior index. [14]

D. Failing to prepare and include an entry in the "PSP Highlights" section of the PSP Index, and reference it appropriately in the PSP Index, whenever:

(1) the PSP describes repair, maintenance, or diagnostic procedures not specifically covered in previously applicable repair manuals, either (i) where the cost of such procedures to a customer is reasonably expected to exceed the reference cost, or (ii) where the procedures are intended and designed to prevent future repair or replacement costs to a customer reasonably expected to exceed the reference cost; or

(2) the PSP describes revisions to repair, maintenance, or diagnostic procedures in an existing repair manual where the revisions are intended and designed either (i) to prevent future repair or replacement costs to a customer reasonably expected to exceed the reference cost, or (ii) to reduce such costs by an amount reasonably expected to exceed the reference cost; or

(3) the PSP describes modified (including additional, different, or

upgraded) parts recommendations, where the modification is intended and designed (i) to prevent future repair or replacement costs to a customer reasonably expected to exceed the reference cost, or (ii) to reduce such costs by an amount reasonably expected to exceed the reference cost; [15] or

(4) the PSP describes (i) information revising or updating information contained in owner's manuals or maintenance schedules or (ii) non-repair information regarding the use and care of vehicles by vehicle owners or operators.

E. Beginning with the next model year commencing after the date of service of this order, failing to disclose for each model year, in a clear and conspicuous manner, in each vehicle owner's manual or warranty booklet (where it shall be itemized in the Table of Contents and Index) for each of its vehicle lines,

(1) the following statement in the exact language set forth below:

Updated Service Information You Can Obtain

Volkswagen of America monitors product performance in the field and regularly sends to dealers the latest service information about [VW] [Audi] vehicles. Now, you too can get these bulletins. [16]

Bulletins cover a wide variety of subjects: the proper use and care of your car; costly repairs; inexpensive repairs or adjustments which, if done early may avoid costly future repairs. Some bulletins describe repairs about new or unexpected conditions. Others describe improved repair procedures or parts improvements. All of this information can also help a qualified mechanic better service your vehicle.

Most bulletins apply to conditions affecting a small number of vehicles. Your dealer or a qualified mechanic may have to determine if a specific bulletin applies to your vehicle.

You can order any or all of these bulletins direct from Volkswagen of America or look at them at a [VW] [Audi] dealer. You can purchase a subscription to the bulletins which apply to a particular model and receive them as they are issued, or you can order an index which lists and identifies these bulletins and summarizes the most important ones. You also can order individual bulletins. However, the index is necessary to identify them.

(2) The above statement shall in addition provide at least the following information in clear and comprehensible [17] language:

(a) concerning indexes -

(i) Indexes list each PSP, provide ordering information for individual PSPs, and are cumulatively updated quarterly.

(ii) Indexes contain plain-language highlights and summaries of PSPs describing costly repairs and designed to help prevent major repairs or containing owner use and care information.

(iii) If there is a charge for PSP indexes, it shall be credited against any charge for PSPs ordered.

(iv) When consumers order any index, they will receive the latest applicable index for the model year of the car unless they request an index for a different model year. [18]

(b) concerning PSPs -

(i) The charge for individual PSPs, if any, and how to order them.

(c) concerning subscriptions -

(i) The charge for subscriptions and how to order them.

(ii) That subscribers are entitled to all PSPs published for a model and model year.

(3) The following statement in the exact language set forth below, which shall be made in conjunction with the statement described above, but which shall not precede disclosure of the information described in paragraphs E (2)(a)(i) and (ii) of section I:

CAUTION:

These bulletins are intended for qualified mechanics. They are not meant for the casual do-it-yourselfer. Qualified mechanics have the equipment, tools, safety instructions, and know-how to do a job properly and safely. Improperly performed repairs or maintenance can adversely affect the safety of your vehicle, possibly [19] leading to accident or injury. They may also impair the economy, durability or reliability of your vehicle and may void the warranty on your car. If you are not sure that you can perform a job properly and safely, you should not risk trying to do so.

F. Beginning with the next model year commencing after the date of service of this order,

(1) failing to include for each model year, in each vehicle owner's manual, warranty booklet, or similar literature provided with the vehicle at the time of delivery to the original retail customer a postage-paid ordering coupon to obtain a properly identified PSP index (including PSP Highlights), a PSP, or subscription; or

(2) failing to maintain a toll-free telephone system, which number shall be clearly and conspicuously disclosed in close proximity to the information set out in paragraph E of section I, to enable members of the public to order PSP indexes (including PSP Highlights, PSPs, or a subscription to PSPs). [20]

G. Failing to furnish each dealer with:

(1) each PSP Index (including PSP Highlights) on paper or through such other medium as approved by designated representatives of the Federal Trade Commission, related to the vehicles represented by that dealership; and

(2) each PSP; and

(3) an adequate supply of postage-paid ordering coupons for PSPs, PSP subscriptions and PSP indexes.

H. Beginning with the date of service of this order, and once in each 6-month period thereafter, failing to recommend and urge, in writing, that each dealer shall:

(1) provide information on how to order PSPs to anyone who requests such information;

(2) provide members of the public with ready access to the PSPs and PSP Indexes (including PSP Highlights) furnished to such dealers, including any equipment needed to enable members of the public to read PSPs at dealerships; and [21]

(3) update PSP Indexes (including PSP Highlights) immediately upon receipt.

I. Beginning with the next model year after the date of service of this order, failing to include the following statement, in the exact language set out below, clearly and conspicuously on the face of the label required by the "Automobile Information Disclosure Act," 15 U.S.C. 1231 *et seq.*, (1980) (as amended) on each vehicle distributed by VWoA in the United States:

"UPDATED SERVICE INFORMATION—NOW YOU CAN GET USEFUL BULLETINS AND EASY-TO-READ SUMMARIES TO SERVICE YOUR CAR BETTER AND HELP AVOID COSTLY REPAIRS. THESE ARE THE SAME BULLETINS WE SEND YOUR DEALER. SEE YOUR DEALER'S INDEX OF PRODUCT CIRCULARS FOR DETAILS."

J. Beginning with the next model year after the date of service of this order, failing to include the following statement, in the exact language set out below, clearly and conspicuously, in each principal point of sale catalog distributed by Volkswagen of America for each of its vehicle lines: [22]

A Word About Updated Service Information

[Volkswagen] [Audi] regularly sends its dealers useful service information about our products. [Volkswagen] [Audi] monitors product performance in the field. We then prepare bulletins for servicing our products better and helping to avoid costly repairs. Now you can get these bulletins, too. To get ordering information, see a local [VW] [Audi] dealer.

K. Failing to include detailed information regarding the third-party arbitration program described in sections III and IV, and the PSP program described in this section, in all ongoing and future training programs and in materials disseminated to dealers on subjects related to customer relations, beginning not later than one hundred eighty (180) days after service of this order and continuing for the duration of this order.

II.

It is further ordered, That:

A. Beginning with the date of service of this order, upon [23] written request by any person, VWoA shall mail or cause to be mailed, by first class mail, the following:

(1) information describing PSPs, PSP Indexes, and PSP subscriptions, as well as how to obtain PSPs, PSP Indexes and PSP subscriptions;

(2) the most current PSP Index, *provided that*, the "PSP Highlights" in the PSP Index may be limited to the particular vehicle make, model and model year identified in the request;

(3) any specifically identified PSPs;

(4) subscriptions to all PSPs.

B. Subject to the limitations of this section, VWoA may, at its option, impose a reasonable charge for PSPs, PSP Indexes and PSP subscriptions. Any charge for a PSP Index must be credited toward the initial purchase of PSPs themselves. The maximum charges shall be as follows:

(1) For PSP Indexes ordered:

(a) model years prior to 1988, no charge; [24]

(b) through 1990, a charge not to exceed two dollars (\$2.00) for any PSP Index;

(c) for years 1991 and thereafter, a charge not to exceed three dollars (\$3.00) for any PSP Index.

(2) For individual PSPs, a charge not to exceed four dollars (\$4.00) for the first PSP requested in each order and two dollars (\$2.00) for each additional PSP requested in that order;

(3) For PSP subscriptions, a charge not to exceed the lower of the reasonable cost or the charge (if any) to dealers.

C. VWoA may offer subscriptions of any duration, *provided that*, VWoA offers the option of a subscription with a one-year duration.

III.

It is further ordered, That:

A. VWoA shall make available in the United States to claimants [25] an arbitration program, which shall be administered through an independent and impartial third party, to resolve expeditiously and fairly (1) each specified claim regardless of time in service, mileage, or whether the claimant still owns or leases the vehicle; and (2) each

claim made or renewed after the date of service of this order by owners and lessees (unless the lessor bore the cost of the claim) of any Volkswagen or Audi vehicle distributed by VWoA, warranted in writing by VWoA, or certified by the manufacturer to the responsible federal agencies as meeting applicable federal safety and emission standards involving the claimed failure, malfunction, repair or replacement of internal engine components while the claimant owns or leases the vehicle, regardless of time in service or mileage.

Provided, however, That VWoA need not make the arbitration program described above available to claimants:

(1) for claims involving repairs required to place in operating condition an engine which was not operable when the vehicle was purchased or leased by an owner or lessee, other than the original retail purchaser or original lessee; or [26]

(2) for claims involving internal engine components:

(a) whose claims were the subject of a claim by a prior owner or lessee which was settled or resulted in an arbitration award which the prior owner or lessee accepted, or

(b) if the claimant sells the vehicle prior to sixty days after the claimant notified the independent and impartial third party administrator of the claim, unless the claimant does the following:

(i) notifies VWoA in writing at least ten days before the vehicle is disposed of; and

(ii) gives VWoA an opportunity to inspect the vehicle at a mutually convenient time and place.

B. The decision of the arbitrator shall be binding on VWoA, but non-binding on the claimant, unless the claimant elects to accept an arbitration award. [27]

C. (1) With respect to specified claims, such third-party arbitration program shall be conducted in accordance with the Modified Rules for Arbitration published by the Council of Better Business Bureaus as specially modified and set forth in Attachment D, and

(2) With respect to claims relating to internal engine components, such third-party arbitration program shall be conducted in accordance with the Modified Rules for Arbitration published by the Council of Better Business Bureaus as specially modified and set forth in Attachment C.

Provided, however, The Rules for Arbitration may be modified only with the written approval of designated representatives of the Federal Trade Commission.

D. For two years after the date of service of this order, such third-

party arbitration program shall be conducted at no charge to the claimant by VWoA or the independent and impartial third-party administrator. Thereafter, no charges shall be imposed on claimants by VWoA or the independent and impartial third-party administrator that exceeds charges specified in the Modified Rules for Arbitration published by the Council of Better Business Bureaus. [28]

E. No settlement of or judgment on the merits in a class action lawsuit shall affect a claimant's right to request arbitration of a specified claim or claim relating to internal engine components under this order, *provided that*, a specified claim or claim relating to internal engine components is not eligible for arbitration if:

(1) the claimant received actual notice of the pendency or settlement of the class action; and

(2) the notice of pendency and, if applicable, settlement of such class action was approved by designated representatives of the Federal Trade Commission prior to submission of the notice to the court by VWoA, as fully, accurately, clearly and conspicuously disclosing the availability of the arbitration program described in sections III and IV; and

(3) the claimant did not request exclusion from the class action or settlement, or the claimant received payment pursuant to the class action settlement or judgment on the merits; [29]

Provided, however, That arbitration shall continue to be available during the pendency of the class action proceeding until settlement or judgment is entered on the merits, regardless of whether the claimant requested exclusion from the proceeding.

F. Such third-party arbitration program shall be fully operational pursuant to the terms of this order no later than forty-five (45) days after the date of service of this order, and thereafter expanded as demands on the program may require to resolve consumer complaints expeditiously.

G. VWoA shall, by first class mail, mail or cause to be mailed Attachment G in response to any claimant with a claim relating to internal engine components, within thirty days after receipt of such claim, unless the claimant's request for repair or reimbursement or other compensation is fully met.

H. Notwithstanding any other provision of this order, the mediation and arbitration program described in sections III and IV shall be available to members of the armed forces stationed at military installations located outside the United States and their dependents, *provided, however*, that only arbitration by mail must be available as long as such claimants are located outside the United States. [30]

IV.

It is further ordered, That:

A. Prior to sixty (60) days after the date of service of this order, VWoA shall contact, by first-class mail, each attorney general's office (or such other office as may be appropriate) of the fifty states, the District of Columbia, commonwealths, territories and possessions, and shall:

(1) Provide each such office with a copy of this order.

(2) Describe in such mailing VWoA's third-party arbitration program.

(3) Describe in such mailing the PSPs and PSP Indexes and explain how consumers can obtain them.

(4) Inform each such office that VWoA will, if the appropriate office wishes, within fifteen days after receipt from such office or sixty days after the date of service of this order, whichever is later, notify by first-class mail each person who has complained to that [31] office about a specified claim, and that VWoA will provide that person in the same mailing envelope with:

(a) information about the availability of VWoA's third-party arbitration program; and

(b) one or more of the appropriate Background Statements as required to be distributed pursuant to paragraph B of section IV in connection with any specified claim.

(5) Request that each such office provide VWoA with (a) a copy of each complaint that may include a specified claim; or, at the option of that office, (b) the owner's name and address, and the nature of the specified claim.

(6) Inform each such office that VWoA will also send, by first-class mail, a notice to any person who has complained to any other state or local law enforcement or consumer affairs office about a specified claim, and urge such office to encourage state and local law enforcement or consumer affairs offices to forward to VWoA either copies of such complaints, or, at the option of the forwarding office, a list of the names, and addresses of persons with specified claims and the amount and nature of each such claim, if known. [32]

B. For purposes of paragraph B of section IV only:

- a "claim" has been made if, for any oral or written request for reimbursement or repair, a document was created or received by VWoA or any of its independent distributors, including, but not limited to, warranty records, consumer letters, dealer reports, or records of telephone complaints;

- "open or unsatisfactorily resolved" claims are any claims for which the claimant did not receive all payments or free repairs claimed or requested.

VWoA shall send by first class mail Attachments A(or A100, if the vehicle was an Audi 100), B (or B100 if the vehicle was an Audi 100), E (2) and F, and a postage-paid return envelope, or, if VWoA wishes to make an initial settlement offer, Attachments A(or A100 if the vehicle was an Audi 100), B (or B100 if the vehicle was an Audi 100), E(1) and F, and a postage-paid return envelope to the following:

(1) every claimant who, prior to the date of service of this order, had made a specified claim to VWoA that is open or unsatisfactorily resolved or who, prior to the [33] date of service of this order notified VWoA's independent distributors of such claim(s);

(2) every claimant who has received reimbursement of \$125 under VWoA's MQ service action program, and who submitted repair orders or other documentation showing that one or more of the following repairs occurred at a total expense of more than \$125.00 which has not been fully reimbursed as of the date of service of this order:

- (a) cylinder head replacement;
- (b) any repair involving cylinder head removal and valve repair;
- (c) replacement of the engine short block;
- (d) replacement of any one or more of the following: (i) crankshaft; (ii) connecting rod(s); (iii) main bearing(s); (iv) connecting rod bearing(s); (v) pistons; (vi) piston rings. [34]

(3) every claimant with a specified claim whose name had been supplied to VWoA by the offices referred to in paragraph A of section IV, the Federal Trade Commission, or any other consumer affairs office or any third party, and whose specified claim remains open or unsatisfactorily resolved prior to the date of service of this order.

(4) every claimant with a specified claim which is open or unsatisfactorily resolved whose name will have been supplied to VWoA after the date of service of this order by the offices referred to in paragraph A of section IV, the Federal Trade Commission, or any other consumer affairs office or any third party; and

(5) every claimant with a specified claim which is open or unsatisfactorily resolved who, orally or in writing, contacts VWoA, any office of the independent and impartial third party administrator, or VWoA's independent distributors after April 15, 1987, the date the Commission accepted this order for comment.

Provided, however, That for any mailing made pursuant to this section which is returned to the sender as being undeliverable, VWoA shall make a reasonable attempt to obtain [35] the claimant's current

address, and shall send the mailing by first class mail to the claimant's current address; *provided, further*, Attachments A and B or Attachments A100 and B100, as applicable, shall be fastened or otherwise physically attached with Attachment B (or Attachment B100) on top of Attachment A (or Attachment A100).

C. The following deadlines shall apply:

(1) For initially mailing the materials specified in paragraph B of section IV:

(a) With respect to claimants included in paragraphs B(1), (2) and (3) of section IV, all materials shall be mailed according to the following schedule:

(i) not less than 25% of the total number shall be mailed within 15 days of the date of service of this order;

(ii) not less than 50% of the total number shall be mailed within 45 days of the date of service of this order; [36]

(iii) not less than 75% of the total number shall be mailed within 75 days of the date of service of this order; and

(iv) 100% of the total number shall be mailed within 90 days of the date of service of this order.

(b) With respect to claimants included in paragraphs B(4) and (5) of section IV, whose claims are not included in paragraphs B(1), (2) or (3) of section IV, all materials shall be mailed within fifteen days after receipt by VWoA, the independent and impartial third party administrator, or VWoA's independent distributors of the name and address of the claimant, or sixty days after the date of service of this order, whichever is later.

(2) For the handling of specified claims:

(a) (i) claimants who accept settlement offers shall be sent the applicable monetary amount within forty-five (45) days after the settlement offer acceptance is received by VWoA; [37]

(ii) claimants who accept arbitration awards shall be sent the applicable monetary amount within forty-five (45) days after the arbitration award acceptance is received by the independent and impartial third party administrator.

(b) (i) any applicable repair shall be performed within thirty (30) days after the settlement offer acceptance is received by VWoA; (ii) any applicable repair shall be performed within thirty (30) days after the arbitration award acceptance is received by the independent and impartial third party administrator, except as otherwise ordered by the arbitrator for good cause shown.

(c) Claimants who request to participate in the independent and impartial third party arbitration program by returning the "RE-

SPONSE TO VOLKSWAGEN MEDIATION AND ARBITRATION PROGRAM" form included with Attachment E(1) or (2), shall have an arbitration hearing completed within 60 days after the "RESPONSE TO VOLKSWAGEN MEDIATION AND ARBITRATION PROGRAM" form [38] included in Attachment E(1) or (2) is received by VWoA, regardless of whether the claimant requests mediation services.

Provided, however, That delays attributable solely to the claimant shall not be included in the calculation of deadlines. The burden of proving that the delay is attributable solely to the claimant shall be on VWoA;

(3) For claims involving internal engine components that do not involve specified claims:

(a) an arbitration hearing shall be completed within sixty (60) days after the claimant provides the independent and impartial third party administrator with the model, model year, and Vehicle Identification Number of the vehicle and a statement describing the nature of the complaint, regardless of whether the claimant requests mediation services.

Provided, however, That delays attributable solely to the claimant shall not be included in the calculation of deadlines. The burden of proving that the delay is attributable solely to the claimant shall be on VWoA; [39]

(b) (i) (1) claimants who accept settlement offers shall be sent the applicable monetary amount within forty-five (45) days after the settlement offer acceptance is received by VWoA; (2) claimants who accept arbitration awards shall be sent the applicable monetary amount within forty-five (45) days after the arbitration award acceptance is received by the independent and impartial third party administrator; (ii) (1) any applicable repair shall be performed within thirty (30) days after the settlement offer acceptance is received by VWoA; (2) any applicable repair shall be performed within thirty (30) days after the arbitration award acceptance is received by the independent and impartial third party administrator, except as otherwise ordered by the arbitrator for good cause shown. [40]

D. Claimants with specified claims may not be required to fill out any other form to request an arbitration hearing once they have checked Choice 2 or 3 on the form included with Attachment E (1) or Choice 1 or 2 on the form included with Attachment E (2).

E. VWoA may not request a claimant who accepts an offer to settle a specified claim to execute a statement releasing VWoA from further liability if the statement purports to release VWoA from liability

that, at the time the claim was settled, would not have been subject to arbitration as described in sections III and IV.

F. Within thirty (30) days of service of this order, VWoA shall provide to its independent distributors and appropriate employees of VWoA, including employees who have responsibility for receiving and responding to consumer complaints, written instructions stating that all consumers who make a specified claim in any oral or written communication received after the date of service of this order must be sent, by first-class mail, a letter providing the documents specified in paragraph B of section IV, above, within fifteen days, or sixty days after the date of service of this order, whichever is later. [41]

G. VWoA may make an immediate binding settlement of a specified claim prior to the initiation of mediation or arbitration, *provided that*, prior to the settlement, the claimant received all of the materials required to be sent to the claimant pursuant to paragraph B of section IV (either Attachments E (1) or E (2) (Cover letter) and Attachments A (or A100, as applicable), B (or B100, as applicable) (Background Statements), and F (BBB specified claim brochure)).

H. All envelopes sent pursuant to paragraph B of section IV shall bear no marking, other than the name and address of VWoA and the addressee, and the words "IMPORTANT REIMBURSEMENT INFORMATION" disclosed conspicuously on the front.

I. VWoA shall offer to each claimant at the outset of each arbitration hearing all of the materials required to be sent to the claimant pursuant to paragraph B of section IV (either Attachments E (1) or E (2) (Cover letter) and Attachments A (or A100, as applicable), B (or B100, as applicable) (Background Statements), and F (BBB specified claim brochure)). [42]

J. VWoA shall obtain, maintain, and retain for a period of three (3) years from the date of resolution of each claim, records sufficient to show to the satisfaction of designated representatives of the Federal Trade Commission:

(1) For each specified claim:

(a) the following dates as applicable:

(i) the date VWoA received the claimant's name and address, if the specified claim was received by VWoA pursuant to paragraph B (4) and B (5) of section IV.

(ii) the date the materials described in paragraph B of section IV were mailed;

(iii) the date each written response was received by VWoA from the addressee of Attachment E(1) or E(2);

(iv) the date an arbitration hearing was scheduled;

- (v) the date the arbitration hearing was completed; [43]
 - (vi) the date the arbitrator's decision was received by the independent and impartial third-party administrator;
 - (vii) the date(s) VWoA made each offer to settle the claim;
 - (viii) the date the claimant accepted or rejected each settlement offer;
 - (ix) the date the claimant accepted or declined the arbitrator's award;
 - (x) the date a check was sent to satisfy an arbitration award or settlement agreement;
 - (xi) the date scheduled for any repair offered as a result of an arbitration award or settlement agreement;
 - (xii) the date any repair offered as a result of an arbitration award or settlement agreement was actually performed.
- (b) the following documents and information, as [44] applicable:
- (i) the vehicle model;
 - (ii) the vehicle model year;
 - (iii) the vehicle identification number;
 - (iv) a brief description of the alleged problem, including whether the claimant included information suggesting that excessive oil consumption or engine damage due to lack of lubrication might be involved;
 - (v) the resolution(s) sought by the claimant: repair, cash reimbursement or vehicle repurchase;
 - (vi) the amount, if any, of cash reimbursement sought;
 - (vii) the terms of each offer, if any, made by VWoA to settle the claim;
 - (viii) the response of the claimant to each settlement offer; [45]
 - (ix) a copy of each arbitrator's decision including the amount of any cash reimbursement;
 - (x) whether the claimant accepted the arbitrator's award;
 - (xi) the name and address of each claimant who owned or leased a covered vehicle, and requested to participate in the mediation and arbitration program set forth in sections III and IV, and was refused the opportunity to participate in the mediation and arbitration program;
 - (xii) the reason(s) each claimant described in paragraph J (1)(b)(xi) of section IV was determined not to have a specified claim;
 - (xiii) the reason(s) known to VWoA or the independent and impartial third party administrator for the failure to resolve a claim other than by settlement or an arbitration decision; [46]
 - (xiv) if the claim is settled, whether a third-party mediator actively participated in settlement discussions;

(xv) a copy of the "RESPONSE TO VOLKSWAGEN MEDIATION AND ARBITRATION PROGRAM" form completed by the claimant.

(c) the name and address of each claimant who contacts orally VWoA, the independent and impartial third-party administrator, or VWoA's independent distributors and states facts that suggest that the claimant may have a specified claim.

(2) For each mediation or arbitration of a claim involving an internal engine component:

(a) the following dates, as applicable:

(i) the date VWoA mailed Attachment G, described in paragraph G of section III;

(ii) the date the claimant first contacted the independent and impartial third-party administrator; [47]

(iii) the date the independent and impartial third-party administrator received from the claimant the model, model year, Vehicle Identification Number of the vehicle and a statement describing the nature of the claim;

(iv) the date VWoA was notified by the independent and impartial third-party administrator that a claim involving internal engine components had been lodged;

(v) the date the arbitration agreement was sent to the claimant;

(vi) the date the arbitration agreement was received from the claimant by the independent and impartial third-party administrator;

(vii) the date the initial arbitration hearing was scheduled;

(viii) the date the initial arbitration hearing was completed; [48]

(ix) the date the arbitration decision was mailed to the claimant;

(x) the date the claimant accepted or rejected each settlement offer from VWoA;

(xi) the date the claimant accepted or rejected an arbitration award.

(b) the following information:

(i) the vehicle model;

(ii) the vehicle model year;

(iii) the vehicle identification number;

(iv) a brief description of the problem alleged;

(v) the resolution(s) sought by the claimant: repair, cash reimbursement or vehicle repurchase;

(vi) the amount, if any, of cash reimbursement sought; [49]

(vii) the terms of each offer, if any, by VWoA to settle the claim before the claimant contacted the independent and impartial third-party administrator;

(viii) the terms of each offer, if any, by VWoA to settle the claim

after the claimant contacted the independent and impartial third-party administrator;

(ix) the response of the claimant to each settlement offer;

(x) a copy of each arbitrator's decision including the amount of any cash reimbursement;

(xi) whether the claimant accepted or rejected the arbitrator's award;

(xii) the reason(s) for the failure to resolve a claim other than by settlement or an arbitration decision; [50]

(xiii) if the claim is settled, whether a third-party mediator actively participated in settlement discussions;

(xiv) a copy of the arbitration agreement;

(xv) the name and address of each claimant, who requested the opportunity to participate in the third-party mediation and arbitration program set forth in sections III and IV, and was refused the opportunity to participate in said mediation and arbitration program;

(xvi) the reasons each claimant specified in paragraph J (2)(b)(xv) was determined not to be eligible to participate in the mediation and arbitration program set forth in sections III and IV.

(3) Computer disks, tapes or other computer-readable media created or maintained by VWoA, on behalf of VWoA, or by the independent and impartial third party administrator that contain any information specified in paragraphs J(1) and J(2) of section IV, and necessary relevant programming and other [51] explanatory data sufficient to enable the Federal Trade Commission to read and analyze the data contained on such media.

V.

It is further ordered, That:

A. At least two times, at least one month apart, within 120 days after the date of service of this order, VWoA shall place and cause to be disseminated the advertisement attached as Attachment H(1) in national magazines as full-page advertisements. At least two times, at least one month apart, within 120 days after the date of service of this order, VWoA shall place and cause to be disseminated the advertisement attached as Attachment H(2) in national magazines as full-page advertisements. Each time Attachment H(1) is placed and each time Attachment H(2) is placed, the magazines must have a combined total non-duplicated readership ("net reach") of at least seventy-five million adults as measured by an outside organization generally recognized as competent and experienced in this field and used by VWoA or its advertising agencies for other advertising research. The

demographic characteristics for the combined total readership of the magazines selected for [52] such advertisements must be generally representative of the demographic characteristics of the population of owners and potential purchasers of Volkswagen vehicles (for Attachment H(1)) and Audi vehicles (for Attachment H(2)).

B. Beginning with the next model year commencing after the date of service of this order, VWoA shall annually include in any edition of each proprietary magazine sent by VWoA to a primary target audience of VWoA's vehicle owners:

(1) the statements set forth in paragraph J of section I set forth clearly and conspicuously; and

(2) a full page reproduction of Attachment H(1) for Volkswagen owners, or Attachment H(2) for Audi owners, as applicable.

C. Within thirty days after the date of service of this order, VWoA shall furnish to each of its dealers three display posters, with the form and content of Attachment I(1) (for Volkswagen dealers) or I(2) (for Audi dealers), each at least 24" × 36". Thereafter, VWoA shall furnish additional copies of these posters upon request by any dealer. [53]

D. Beginning with the date of service of this order, and once in each 6-month period thereafter, VWoA shall recommend and urge, in writing, that each dealer shall:

1) place the display poster, described in paragraph C of section V, in conspicuous and accessible locations within:

- (a) service waiting areas; and
- (b) parts departments; and
- (c) service payment areas.

E. (1) Within five (5) days after the date of service of this order, VWoA shall establish and maintain a toll-free telephone system which will elicit information to enable current and former owners and current and former lessees to enter the independent and impartial third-party arbitration programs set forth in sections III and IV. The toll-free telephone system shall have sufficient capacity to enable each call made by owners and lessees to be answered reasonably promptly. Each caller shall be requested to furnish the the following information, [54] which shall be documented:

- (a) name, address and telephone number of the caller;
- (b) model and model year of the vehicle;
- (c) nature of the claim, including sufficient information to ascertain whether a specified claim is alleged, and, if so, whether the specified claim includes an allegation of engine damage from lack of lubrication.
- (d) the date of the call.

(2) Each caller to the toll-free number described in paragraph E (1) of section V shall also (a) be informed that, if the caller states facts suggesting that a specified claim may be involved, that VWoA will mail a letter describing the third-party arbitration program to the caller; or b) if the caller states no facts suggesting that the claim may be a specified claim, the caller shall be informed of the toll-free telephone number (or "call collect" number, as applicable), of the local office of the independent and impartial third-party administrator. [55]

F. Beginning with the next model year commencing after the date of service of this order, VWoA shall include the following information, in a clear and conspicuous manner, in each vehicle owner's manual or warranty booklet (where it shall be itemized in the Table of Contents and Index):

(1) a description of the mediation and arbitration program for internal engine components required by sections III and IV;

(2) an explanation of how the owner or lessee can enter the mediation and arbitration program;

(3) a description of applicable time deadlines as set forth in paragraph C (3) of section IV;

(4) the toll-free telephone number described in paragraph E of section V.

(5) a statement that there is no charge to the consumer for participating in the program, if such is the case, or a statement of any charges to the consumer for participating in the program; and [56]

(6) a statement that the arbitration award is binding on VWoA, but is not binding on the consumer, unless the consumer elects to accept the arbitration award.

G. (1) Within 30 days after the date of service of this order, VWoA shall prepare and issue a PSP which includes the following information:

(a) a description of the mediation and arbitration program for internal engine components required by sections III and IV;

(b) an explanation of how the owner or lessee can enter the mediation and arbitration program;

(c) a description of applicable time deadlines as set forth in paragraph C (3) of section IV;

(d) the toll-free telephone number described in paragraph E of section V;

(e) a statement that there is no charge to the consumer for participating in the program, if such is the case, or a statement of any charges to the consumer for participating in the program; and [57]

(f) a statement that the arbitration award is binding on VWoA, but

is not binding on the consumer, unless the consumer elects to accept the arbitration award.

(2) The PSP referred to in paragraph G (1) of section V shall, during the term of this order, be included with each PSP index ordered.

VI.

It is further ordered, That sections I, II, III, IV, and V of this order shall expire eight years after the date of service hereof; *provided,* that if at any time during which said sections remain in effect, the Commission issues a final trade regulation rule imposing obligations on the automobile industry comparable to those imposed under any such section(s), such section(s) shall terminate upon the effective date of such rule, and, in such event, VWoA shall advise the Commission of its intention to rely upon any such rule as having terminated and superseded such section(s) of this order thirty (30) days in advance of reliance thereon: *provided further,* that if at any time during which such section(s) remain in effect the Commission issues a final guide under Sections 1.5 and 1.6 of the Commission's Rules of Practice [58] imposing obligations on the automobile industry comparable to those imposed under any such section(s), then the Commission shall, upon VWoA's motion or upon the Commission's own motion, reopen this proceeding within one hundred twenty (120) days of such motion, and, within a reasonable time thereafter, vacate any such section(s) of this order, unless the Commission finds that such action is not required by changed conditions of law or fact or is not in the public interest; and *provided further,* that nothing herein shall preclude VWoA at any time from moving the Commission to alter, modify, or set aside this order under the Commission's Rules of Practice.

VII.

It is further ordered, That:

A. VWoA shall, within one hundred twenty (120) days after the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

B. VWoA shall, within one hundred twenty (120) days after the implementation of the PSP program described in sections I and II of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which VWoA has complied with sections I and II of this order. [59]

C. VWoA shall, upon request of designated representatives of the

Federal Trade Commission, but no more frequently than every one-hundred eighty days, while sections III and IV of this order are in effect, file with the Commission a report compiling and summarizing data describing settlements, mediations, and arbitrations and accompanying deadlines undertaken pursuant to sections III and IV which have occurred since the previous such report had been completed. Such report shall include accurate summaries of the data required to be kept pursuant to paragraph J of section IV. VWoA shall also transmit to the Commission upon request the computer media and explanatory and programming information required by paragraph J(3) of section IV.

D. VWoA shall retain and transmit to the Commission upon reasonable request:

(1) a copy of each PSP Index required by section I, and a copy of each PSP;

(2) a copy of each poster furnished to dealers pursuant to paragraph C of section V. [60]

E. VWoA shall, on a bi-annual basis beginning 6 months after the date of service of this order, monitor and document, based on the personal observations of VWoA or independent distributor employees, each dealer's compliance with the items set forth in paragraph H of section I above and paragraph D of section V above, *provided, however*, that VWoA shall not be required to monitor and document the compliance with paragraph H of section I and paragraph D of section V by a dealer if no employee of VWoA or an independent distributor has visited that dealer within the previous six-month-period to review the dealer's sales, service, or customer relations activities.

F. VWoA shall retain records relative to the manner and form of its continuing compliance with sections I, II, III, IV, V and VI for a period of three (3) years, and shall make said records available for inspection upon reasonable notice by the Federal Trade Commission. If copies of any such records are requested, VWoA may, at its option, either make such records available for copying purposes or provide copies at either (1) rates the Commission charges for copies of records released pursuant to the Freedom of Information Act, or (2) VWoA's costs, whichever is lower. [61]

G. Upon request by the Federal Trade Commission, VWoA shall obtain and make available to the Federal Trade Commission in the English language within forty-five days after the request any records relevant to paragraph A of section I in the possession of the manufacturer of any vehicles, engines, or transmissions which VWoA imports or distributes; *provided, however*, that submission of such records

shall neither constitute nor be deemed an admission by any entity from which they are obtained of *in personam* jurisdiction of the Commission over such entity; *provided further*, that nothing in this section shall be construed to affect the Commission's access to any records, documents, or other information pursuant to compulsory process or other means.

H. VWoA shall take all necessary legal and equitable action to enforce promptly and in good faith its contractual or other rights to obtain records requested by the Federal Trade Commission pursuant to paragraph G of section VII.

I. During the time that sections I, II, III, IV and V remain in effect, VWoA shall notify the Commission prior to any change in VWoA's corporate structure, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this order. [62]

VIII.

It is further ordered, That the provisions of this order shall be limited in their application to the United States.

IX.

It is further ordered, That the complaint against Volkswagen AG, a corporation, is hereby dismissed.

ATTACHMENT A

BACKGROUND STATEMENT

OIL USAGE

BACKGROUND

This case may involve an owner's complaint about excessive oil use in a gasoline-fueled 1974-1979 [Volkswagen water-cooled engine] [Audi Fox or 5000].

Since 1981, the Federal Trade Commission (FTC) and [Volkswagen (VW)] [Volkswagen of America, the importer of Audi vehicles (Audi)] have been involved in an administrative lawsuit about allegations of excessive oil use in 1974 to 1979 [VW cars with water-cooled gasoline engines] [Audi Fox and 5000 vehicles]. The FTC has alleged that VW failed to tell consumers about an "abnormally high" number of en-

gine problems related to excessive oil consumption in these vehicles. [VW] [Audi] has denied this claim and has stated that it has at all times provided owners with more than sufficient information to operate and maintain their vehicles safely and economically. [VW] [Audi] and the FTC have now agreed to settle this dispute without further litigation.

As part of their settlement of this dispute, [VW] [Audi] and the FTC have agreed to allow such complaints to be submitted to mediation and arbitration. They have prepared this information sheet to give consumers, mediators and arbitrators potentially useful background facts. Some of these facts may not be widely known.

OIL USAGE

Like all automobile engines, the water-cooled engines in 1974-1979 [Volkswagen] [Audi] vehicles use lubricating oil to perform several vital functions. The rate of oil usage may vary widely, generally depending on several factors, including the design of the engine, its age and mechanical condition, the viscosity (or thickness) and quality of oil used, the maintenance and care given to the vehicle and the driving habits of the operator. [2]

Internal oil consumption in gasoline-powered automobile engines usually occurs in one or more of three areas: past the "valve stem seals," past the piston rings, or through the "crankcase breather system." Sometimes, internal oil burning is evidenced by smoke coming from the tailpipe, but at other times no smoke is visible. At other times, tailpipe smoke may result from causes unrelated to oil consumption.

Automobile engineers do not agree on what precise rate of oil consumption is acceptable. Usually, however, gasoline automobile engines use slightly more oil during the initial break-in period of 5,000 to 10,000 miles than they will later. Then, until at least 50,000 miles, engines in good condition should have a roughly even rate of oil consumption, which can increase gradually because of normal wear and tear on internal engine parts. A sudden increase in oil consumption, or a substantial increase when the car has been driven less than 50,000 miles, usually means that a component has failed, the operator's driving habits have changed, or that maintenance or care habits have been altered.

In controlled engineering tests conducted by [Volkswagen] [Audi] and others on prototype and production engines and complete vehicles, mechanically sound engines, tested over 50,000 miles or more used one quart or less of oil every 1,000-2,000 miles. Nevertheless, some water-cooled engines in 1974-1979 [VW] [Audi] vehicles have experienced higher rates of oil consumption in actual customer use.

The FTC claims that "high rates of oil consumption" were abnormally frequent in water-cooled gasoline fueled 1974-1979 [VW] [Audi] vehicles and that in cases where substantially increased rates of oil use have occurred at less than 50,000 miles in such vehicles, the most common cause of such increase has been leakage past failed valve stem seals.

[VW] [Audi] denies this claim and states that these vehicles in customer hands have experienced, on a worst case basis, a fleet average oil consumption rate, from whatever causes, of several thousand miles per quart.

In mid-1979, [VW] [Audi] introduced a new valve stem seal using an improved material [in the Fox and 5000]. As is customary, the improved part was used for both original equipment and replacement parts.

The FTC contends that [VW's] [Audi's] 1979 valve stem seal change was made to alleviate the alleged excessive oil consumption in these vehicles. [3]

[VW] [Audi] denies that this change was in any way different from the thousands of upgrades and improvements continually made to its vehicles on an ongoing basis.

If increased oil consumption in an individual vehicle does occur past the valve stem seals, replacement of the seals is the appropriate repair. Valve stem seals can be replaced alone. Valve stem seals are also replaced routinely, whenever a cylinder head is replaced or if a "valve job" is performed. Cylinder head replacement and valve jobs are more extensive repairs than valve stem seal replacement, alone. [Volkswagen] [Audi] dealers and independent mechanics have replaced cylinder heads and performed valve jobs in some cases in response to owner complaints of excessive oil usage on 1974-1979 [VW] [Audi Fox and 5000] vehicles.

The FTC claims that excessive oil consumption was abnormally frequent on these vehicles, and most often resulted from failed valve stem seals, and that VW did not inform consumers and dealers of this problem. The FTC also contends that consumers and dealers were not told that valve stem seal replacement, alone, usually corrected the increased oil consumption. The FTC further claims that because mechanics had not been told this information, competent mechanics may have performed cylinder head replacements and valve jobs when valve stem seal replacement, alone, would have corrected the problem.

[VW] [Audi] denies that oil consumption or valve stem seal performance in its engines was in any way abnormal. VW further states that its owner's and service publications have at all times provided customers with specific guidelines for identifying potential problems and dealers with the latest and most cost-effective procedures to diagnose and repair them properly. [VW] [Audi] therefore denies that competent mechanics have ever either misdiagnosed or deliberately overrepaired minor and simple conditions such as valve stem seal replacement, except in isolated cases.

Normally, it is reasonable to expect valve stem seals in a properly maintained and used engine to provide reliable, durable service sub-

stantially beyond the warranty period. Claims of oil consumption related to alleged valve stem seal failure most often have occurred, in fact, after the expiration of the warranty. [4]

Proper maintenance and use of a vehicle are important to the durability and reliability of all parts of an automobile engine, including valve stem seals. The manufacturer spells out in the owner's manual recommended maintenance procedures, and discloses driving habits which should be avoided. However, valve stem seals have failed prematurely on some 1974-1979 [VWs] [Audi Foxes and 5000s] even with proper maintenance and use.

[Volkswagen's] [Audi's] limit for maximum permissible oil consumption in these vehicles is [Volkswagen: 2.5 qts./1,000 miles] [Audi: 2.5 qts./1000 miles for the Audi Fox and 2.9 qts./1000 miles for the Audi 5000]. The owner's manuals for 1977-1979 model year water-cooled [VW vehicles stated that "oil consumption can be up to 2.5 U.S. quarts per 1000 miles."] [Audi Fox vehicles stated that "oil consumption can be up to 2.5 qts./1000 miles (2.9 qts./1000 miles for the 5000)."] These figures, however, are not a statement of expected normal or average oil consumption in these vehicles.

[VOLKSWAGEN'S] [AUDI'S] WARRANTY

[Volkswagen] [Audi] provides a limited warranty with each new [Volkswagen] [Audi] vehicle sold by one of its dealers. The warranty generally covers any repair and adjustment needed to correct defects in materials and workmanship within the warranty period. However, complaints may occur after the warranty. A manufacturer's warranty is not necessarily the manufacturer's only responsibility, and should not determine the outcome of this case. Likewise, [Volkswagen's] [Audi's] field guide for maximum permissible oil consumption need not dictate the outcome of this case.

ATTACHMENT A100

BACKGROUND STATEMENT

OIL USAGE

BACKGROUND

This case may involve an owner's complaint about excessive oil use in a gasoline-fueled 1974-1977 Audi 100LS vehicle.

Since 1981, the Federal Trade Commission (FTC) and Volkswagen of America, the importer of Audi vehicles, (Audi) have been involved in an administrative lawsuit about allegations of excessive oil use in 1974 to 1979 Audi cars with water-cooled gasoline engines. The FTC

has alleged that Audi failed to tell consumers about an "abnormally high" number of engine problems related to excessive oil consumption in these vehicles. Audi has denied this claim and has stated that it has at all times provided owners with more than sufficient information to operate and maintain their vehicles safely and economically. Audi and the FTC have now agreed to settle this dispute without further litigation.

As part of their settlement of this dispute, Audi and the FTC have agreed to allow such complaints to be submitted to mediation and arbitration. They have prepared this information sheet to give consumers, mediators and arbitrators potentially useful background facts. Some of these facts may not be widely known.

OIL USAGE

Like all automobile engines, the water-cooled engines in 1974-1977 Audi 100 vehicles use lubricating oil to perform several vital functions. The rate of oil usage may vary widely, generally depending on several factors, including the design of the engine, its age and mechanical condition, the viscosity (or thickness) and quality of oil used, the maintenance and care given to the vehicle and the driving habits of the operator. [2]

Internal oil consumption in gasoline-powered automobile engines usually occurs in one or more of three areas: past the valve guides and the "valve stem seals," past the piston rings, or through the "crank-case breather system." Sometimes, internal oil burning is evidenced by smoke coming from the tailpipe, but at other times no smoke is visible. At other times, tailpipe smoke may result from causes unrelated to oil consumption.

Automobile engineers do not agree on what precise rate of oil consumption is acceptable. Usually, however, gasoline automobile engines use slightly more oil during the initial break-in period of 5,000 to 10,000 miles than they will later. Then, until at least 50,000 miles, engines in good condition should have a roughly even rate of oil consumption, which can increase gradually because of normal wear and tear on internal engine parts. A sudden increase in oil consumption, or a substantial increase when the car has been driven less than 50,000 miles, usually means that a component has failed, the operator's driving habits have changed, or that maintenance or care habits have been altered.

In controlled engineering tests conducted by Audi and others on prototype and production engines and complete vehicles, mechanically sound engines, tested over 50,000 miles or more used one quart or less of oil every 1,000-2,000 miles. Nevertheless, some water-cooled

engines in 1974–1977 Audi 100LS vehicles have experienced higher rates of oil consumption in actual customer use.

The FTC claims that “high rates of oil consumption” were abnormally frequent in water-cooled gasoline fueled 1974–1977 Audi 100LS vehicles, at less than 50,000 miles.

Audi denies this claim and states that these vehicles in customer hands have experienced, on a worst case basis, a fleet average oil consumption rate, from whatever causes, of several thousand miles per quart.

When increased oil consumption occurred in individual Audi 100LS vehicles, various different repair operations were performed depending on the precise cause of the problem and the skill and judgment of the mechanic. These repairs included replacement of the cylinder head, of valve stem seals, of piston rings or a “valve job”.

The FTC claims that excessive oil consumption was abnormally frequent on these vehicles and that Audi did not inform consumers and dealers of this problem. The [3] FTC also contends that consumers and dealers were not told that repairs were available to respond to this problem.

Audi denies that oil consumption in Audi 100LS vehicles was in any way abnormal, or that consumers or mechanics required any special information to identify and address any oil usage issues arising with respect to any Audi 100LS vehicle. Audi further states that it has at all times provided specific guidelines for identifying potential problems with the latest and most cost-effective procedures to diagnose and repair them properly.

Proper maintenance and use of a vehicle are important to the durability and reliability of all parts of an automobile engine. The manufacturer spells out in the owner’s manual recommended maintenance procedures, and discloses driving habits which should be avoided. However, high rates of oil consumption have been encountered on some 1974–1977 Audi 100LS vehicles even with proper maintenance and use.

Audi’s limit for maximum permissible oil consumption in these vehicles is 2.9 qts./1000 miles for the Audi 100LS. The owner’s manuals for 1977 model year water-cooled Audi 100LS vehicles stated that “oil consumption can be up to 2.9 qts./1000 miles.” This figure, however, is not a statement of expected normal or average oil consumption in these vehicles.

AUDI’S WARRANTY

Audi provides a limited warranty with each new Audi vehicle sold by one of its dealers. The warranty generally covers any repair and adjustment needed to correct defects in materials and workmanship within the warranty period. However, complaints may occur after the warranty. A manufacturer’s warranty is not necessarily the manufac-

turer's only responsibility, and should not determine the outcome of this case. Likewise, Audi's field guide for maximum permissible oil consumption need not dictate the outcome of this case.

ATTACHMENT B

BACKGROUND STATEMENT

ENGINE DAMAGE FROM LACK OF OIL

NOTICE: Please read the attached "Oil Usage" Background Statement, if this case also involves a claim of excessive oil usage or consumption. It may contain useful facts for this case.

BACKGROUND

This case may involve an owner's complaint about engine damage from lack of oil in a gasoline-fueled 1974-1979 [Volkswagen] water-cooled engine] [Audi Fox or 5000].

Since 1981, the Federal Trade Commission (FTC) and [Volkswagen (VW)] [Volkswagen of America, Inc., the importer of Audi vehicles (Audi)] have been involved in an administrative lawsuit which includes allegations of excessive oil consumption and engine damage from lack of oil in 1974 to 1979 [VW cars with water-cooled gasoline engines] [Audi Fox and 5000 vehicles]. The FTC has alleged that [VW] [Audi] failed to tell consumers about an "abnormally high" number of engines damaged from lack of oil in these vehicles. [VW] [Audi] has denied this claim and has stated that it has at all times provided owners with more than sufficient information to operate and maintain their vehicles safely and economically. [VW] [Audi] and the FTC have now agreed to settle this dispute without further litigation.

As part of their settlement of this dispute, [VW] [Audi] and the FTC have agreed to allow such complaints to be submitted to mediation and arbitration. They have prepared this statement and the attached statement to give consumers, mediators and arbitrators potentially useful background facts. Some of these facts may not be widely known.

ENGINE DAMAGE FROM LACK OF OIL

Like other automobile engines, the [Volkswagen water-cooled] [Audi] engine will be severely damaged if it is run without sufficient lubricating oil circulating within the engine. Engine components which can be damaged in this manner include connecting rods, crankshaft, bearings and the engine block itself. [2]

Whether a particular automobile engine is damaged from lack of oil depends on three factors: the engine's rate of oil consumption, its effective crankcase capacity, and the intervals at which its oil level is checked and replenished.

Over the life of the engine (100,000 miles or more), the amount of oil consumed by individual 1974-1979 [VW] [Audi] vehicles has varied widely at various times from less than one quart per 7,500 miles (the oil change interval), to more than one quart per 400 miles ([VW's] [Audi's] maximum usage figure (345 miles for the 5000), which was published in 1977-1979 model year vehicle owner's literature).

[Starting with a full crankcase, Rabbit and Scirocco engines can consume approximately three quarts of oil (Dasher - 2.5 quarts) without checking and refilling the oil before engine damage becomes an immediate risk. The maximum cruising range of these vehicles per tankful of gasoline, based on EPA mileage estimates, is approximately 275 miles.]

[Starting with a full crankcase, the Audi vehicles can consume approximately the following amounts of oil without checking and refilling the oil before engine damage becomes an immediate risk:

Fox	2.5 quarts
5000	4.1 quarts

The approximate maximum distance which these vehicles can be driven per tankful of gasoline, based on EPA mileage estimates, is as follows:

Fox	335 miles
5000 (1978)	290 miles
(1979)	380 miles

During the period 1974-1979 and thereafter, [Volkswagen] [Audi] received reports that a number of engines in its vehicles had been damaged from insufficient oil.

Between 1974 and 1979, [Volkswagen] [Audi] modified the recommendations in its owner's literature that operators of its vehicles check the oil level at periodic intervals as follows:

- 1974-76 owner's manuals stated "the engine oil level should be checked from time to time";
- 1977-78 owner's manuals stated: "make it a habit to have the engine oil level checked with every second fuel filling"; [3]
- 1979 owner's manuals stated: "make it a habit to have the engine oil level checked with every fuel filling";
- 1978-1979 Warranty and Maintenance booklets repeated the above advice on oil checking intervals and included statements as to the consequences of lack of sufficient engine oil.

[Volkswagen only: Volkswagen sent a letter to owners of 1975-1979 Rabbits and Sciroccos (Dasher owners did not receive this letter) to remind them to check the oil level with every fuel filling. The letter was sent to owners of standard transmission cars in approximately August 1979 and to owners of automatic transmission cars in approximately June 1980. Dealers were also told in August 1979 to attach a sticker reading "Check Engine Oil" around the fuel filler neck under the gas cap of each vehicle they serviced.]

The FTC claims that the information contained in the owner's manuals, [and] maintenance booklets [.] [letter to consumers, and sticker] was insufficient to alert owners to the risk of serious engine damage from lack of oil. The FTC says that oil consumption in 1974-1979 water-cooled gasoline engines could unexpectedly increase because of deteriorating valve stem seals, and that [VW] [Audi] did not inform owners of this fact. The FTC also says that such an oil consumption increase, if undetected, could lead to severe engine damage from lack of oil, and the FTC claims that [VW] [Audi] did not tell consumers of these facts as well.

[VW] [Audi] says that the information and recommendations in its owner's literature [and communications] were significantly more detailed than those of any other manufacturer and were more than sufficient to prevent any engine damage. [VW] [Audi] denies that oil consumption or valve stem seal performance in its engines was in any way abnormal. [VW] [Audi] says that lubrication-related engine failures were not caused by oil consumption, but by insufficient oil level maintenance, compounded by a large increase in self-service gas stations in the 1970's.

The oil pressure warning light in automobiles is not specifically designed to measure oil level. Therefore, under some operating conditions, the engine may be damaged from low oil level before the oil pressure drops sufficiently to activate the dashboard light. [4]

During the late 1970's, [Volkswagen] [Audi] received reports that some customers who complained of engine damage from lack of oil may have in fact been relying on their dashboard warning lights, rather than their oil dipsticks, to monitor the crankcase oil levels in their cars.

Prior to 1979, all [VW] [Audi] owner's manuals stated that, if the oil pressure warning light comes on while driving, the driver should stop at once, turn the engine off, check the oil level and replenish, if necessary, and not operate the vehicle if the warning light remains on while the engine is restarted. In the 1979 model year, Volkswagen first included additional language, which had not previously appeared in its owner's manuals. This new language stated specifically that the oil pressure warning light is not an oil level indicator and that the dipstick is the proper means of checking the oil level.

[VOLKSWAGEN'S] [AUDI'S] WARRANTY

[Volkswagen] [Audi] provides a limited warranty with each new [Volkswagen] [Audi] vehicle sold by one of its dealers. The warranty generally covers any repair and adjustment needed to correct defects in materials and workmanship within the warranty period. However, complaints may occur after the warranty, including complaints of engine damage from lack of oil. A manufacturer's warranty is not necessarily the manufacturer's only responsibility, and should not determine the outcome of this case.

ATTACHMENT B100

BACKGROUND STATEMENT

ENGINE DAMAGE FROM LACK OF OIL

NOTICE: Please read the attached "Oil Usage" Background Statement, if this case also involves a claim of excessive oil usage or consumption. It may contain useful facts for this case.

BACKGROUND

This case may involve an owner's complaint about engine damage from lack of oil in a gasoline-fueled 1974-1977 Audi 100LS water-cooled engine.

Since 1981, the Federal Trade Commission (FTC) and Volkswagen of America, the importer of Audi vehicles (Audi) have been involved in an administrative lawsuit which includes allegations of excessive oil consumption and engine damage from lack of oil in 1974 to 1979 Audi cars with water-cooled gasoline engines. The FTC has alleged that Audi failed to tell consumers about an "abnormally high" number of engines damaged from lack of oil in these vehicles. Audi has denied this claim and has stated that it has at all times provided owners with more than sufficient information to operate and maintain their vehicles safely and economically. Audi and the FTC have now agreed to settle this dispute without further litigation.

As part of their settlement of this dispute, Audi and the FTC have agreed to allow such complaints to be submitted to mediation and arbitration. They have prepared this statement and the attached statement to give consumers, mediators and arbitrators potentially useful background facts. Some of these facts may not be widely known.

ENGINE DAMAGE FROM LACK OF OIL

Like other automobile engines, the Audi 100LS engine will be severely damaged if it is run without sufficient lubricating oil circulating within the engine. Engine components which can be damaged in this manner include connecting rods, crankshaft, bearings and the engine block itself. [2]

Whether a particular automobile engine is damaged from lack of oil depends on three factors: the engine's rate of oil consumption, its effective crankcase capacity, and the intervals at which its oil level is checked and replenished.

Over the life of the engine (100,000 miles or more), the amount of oil consumed by individual 1974-1977 Audi 100LS vehicles has varied widely at various times from less than one quart per 7,500 miles (the oil change interval), to more than one quart per 345 miles (Audi's maximum usage figure, which was published in the 1977 model year vehicle owner's literature).

Starting with a full crankcase, the Audi 100LS engine can consume approximately 3.1 quarts of oil without checking and refilling the oil before engine damage becomes an immediate risk. The maximum cruising range of these vehicles per tankful of gasoline, based on EPA mileage estimates, is approximately 350 miles.

During the period 1974-1977 and thereafter, Audi received reports that a number of engines in its vehicles had been damaged from insufficient oil.

Between 1974 and 1977, Audi modified the recommendations in its owner's literature that operators of its vehicles check the oil level at periodic intervals as follows:

- 1974-76 owner's manuals stated "the engine oil level should be checked from time to time";
- 1977 owner's manuals stated: "make it a habit to have the engine oil level checked with every second fuel filling".

The FTC claims that the information contained in the owner's manuals was insufficient to alert owners to the risk of serious engine damage from lack of oil. The FTC says that oil consumption in 1974-1977 Audi 100 LS water-cooled gasoline engines could unexpectedly increase, and that Audi did not inform owners of this fact. The FTC also says that such an oil consumption increase, if undetected, could lead to severe engine damage from lack of oil, and the FTC claims that Audi did not tell consumers of these facts as well.

Audi says that the information and recommendations in its owner's literature were significantly more detailed than those of any other manufacturer and were more than sufficient to prevent any engine damage. Audi denies [3] that oil consumption performance in its engines was in any way abnormal. Audi says that lubrication-related engine failures were not caused by oil consumption, but by insufficient oil level maintenance, compounded by a large increase in self-service gas stations in the 1970's.

The oil pressure warning light in automobiles is not specifically designed to measure oil level. Therefore, under some operating conditions, the engine may be damaged from low oil level before the oil pressure drops sufficiently to activate the dashboard light.

During the late 1970's, Audi received reports that some customers who complained of engine damage from lack of oil may have in fact been relying on their dashboard warning lights, rather than their oil dipsticks, to monitor the crankcase oil levels in their cars.

Prior to 1979, all Audi owner's manuals stated that, if the oil pressure warning light comes on while driving, the driver should stop at once, turn the engine off, check the oil level and replenish, if necessary, and not operate the vehicle if the warning light remains on while the engine is restarted.

AUDI'S WARRANTY

Audi provides a limited warranty with each new Audi vehicle sold by one of its dealers. The warranty generally covers any repair and adjustment needed to correct defects in materials and workmanship within the warranty period. However, complaints may occur after the warranty, including complaints of engine damage from lack of oil. A manufacturer's warranty is not necessarily the manufacturer's only responsibility, and should not determine the outcome of this case.

ATTACHMENT C

SPECIAL MODIFIED RULES FOR THE ARBITRATION OF VOLKSWAGEN AND AUDI INTERNAL ENGINE COMPONENT CLAIMS.

1. DEFINITIONS

A. "*Arbitration*" is a process in which two or more persons agree to let an impartial person or panel decide their dispute. This decision becomes legally binding when the consumer accepts the decision, subject to any state law that may provide a limited right of appeal. You may compel compliance with the decision under any applicable state law.

B. "*You*", as used in these Rules, means one of the parties involved in the dispute being arbitrated.

C. "*BBB*" means the Better Business Bureau which is administering the Arbitration. "*CBBB*" is the Council of Better Business Bureaus.

D. "*Arbitrator*" refers to the individual or panel selected to conduct your arbitration and make a decision on your dispute.

E. "Days", as referred to in these rules, shall mean calendar days.

F. "Shall", as used in these Rules is mandatory; "may" is discretionary.

G. "Decision" means the written document signed by the arbitrator and mailed to the consumer.

1) "Final Decision" might award a repurchase, a replacement, a reimbursement for past repairs, or nothing at all. In these cases, an Arbitrator has no further authority over the execution of the decision.

2) "Interim Decision" - When the decision requires action to be performed, an interim decision may be written. In these cases, Arbitrators maintain continuing authority over the execution of their decisions until the actions are completed to their satisfaction. All decisions directing repairs shall be interim. [2]

H. "Disputes" that may be arbitrated under these special rules are limited to disagreements between the manufacturer and a customer involving the claimed failure, malfunction, repair, or replacement of internal engine components in a Volkswagen or Audi vehicle distributed by Volkswagen of America, warranted in writing by Volkswagen of America, or certified by the manufacturer as meeting applicable federal safety and emissions standards. These disputes do not include: 1) reimbursements for such things as loss of wages, business income, depreciation or loss of value, permanent replacement transportation, or any other consequential damages, unless all the parties agree specifically in writing that the arbitrator may consider such an item; 2) claims which exceed the cash purchase price of the product involved in the dispute, (plus expenses for towing, storage fees, rental car costs, telephone and hotel bills) unless all parties agree specifically in writing that the Arbitrator may consider other costs of purchase; 3) claims involving cars or trucks which are no longer owned or leased by the consumer at the time the claim was referred to the BBB (*if you plan to sell the car before the hearing is held, you must follow the special procedures described in Rule 29*); 4) claims covered by insurance, punitive damages, or claims for mental anguish or personal injury. Expenses for towing, storage fees, rental car costs, telephone and hotel bills may be included in the claim to be arbitrated. The Arbitrator has no authority to decide that a party or parties violated any law or to consider matters which cannot be arbitrated under the law. In making any award for reimbursement, repair or repurchase, the Arbitrator may consider requests for deductions based on such factors as owner usage, mileage, overall condition of the product and optional equipment. The decision as to whether your dispute or any part of your dispute is arbitrable under these rules, or is within the scope of your "Agreement to Arbitrate" rests with either

BBB and CBBB, subject to the terms of the agreement between Volkswagen and the FTC under which this program is being conducted.

I. "*Internal Engine Components*" means all gasoline and diesel engine parts, components, and subassemblies included within the complete short block and cylinder head assemblies, including short blocks and cylinder heads, camshafts, valve train components, timing gears, flywheels, pistons, piston rings, crankshafts, connecting rods, and bearings, oil pumps, and associated fasteners, seals and gaskets. [3]

2. APPLICATION OF THESE RULES

These special rules apply to any dispute described under the definition of "Disputes" which you agree to arbitrate through the BBB. You must accept these rules when you sign the "Agreement to Arbitrate" form.

3. THE LEGAL BASIS FOR BBB AUTO LINE

BBB AUTO LINE is an informal forum based on the United States Arbitration Act, 9 U.S.C. 1-14, and administered under procedures consistent with state law. The BBB at all times reserves the right to discontinue administration of arbitration for any case(s) due to a conflict with any state or federal law or regulation.

To the extent that any party wants to challenge or enforce an Arbitrator's decision, a court of competent jurisdiction shall be the proper forum. The BBB accepts no responsibility for costs incurred by either party in challenging or enforcing any decision.

4. AGREEMENT TO ARBITRATE

The BBB shall prepare an Agreement to Arbitrate, briefly describing the "nature of the dispute" and "decision sought" as viewed by you and any other party.

This Agreement to Arbitrate is intended to be a general outline of the dispute and is not an argument of your case.

If you agree with the general description of your side of the dispute and the decision you seek, sign the Agreement to Arbitrate and return it to the BBB within five (5) days of receiving it. If you disagree with the general description of your case, contact the BBB at once. You should not contact the BBB if you think the description of the other party's case is in error; that is an issue for your Arbitrator to decide.

5. SELECTING YOUR ARBITRATOR

The BBB will maintain a pool of individuals who have volunteered to serve, at no pay, as Arbitrators in this program. These volunteers have been trained to conduct a hearing and make a decision in accordance with these rules; but they do not necessarily have mechanical or

legal expertise. Arbitrators will be selected from this pool in the following way:

The BBB will provide the customer with a list of Arbitrators chosen from the volunteer pool, together with brief biographies of each. After receiving this list, the [4] customer will have five days to cross off any name with whom a financial, competitive, professional or social relationship exists and assign priorities to those remaining (# 1, # 2, # 3, etc.). If you do not return the list within five days the BBB will assume all names are satisfactory to you and assign one of the Arbitrators on your list to hear your case.

This selection process may take place in a phone call from the BBB to the consumer, unless the consumer requests that the procedure prescribed in the preceding paragraph be used instead. If by telephone, the BBB will read the names and biographies of a list of volunteer Arbitrators, check for potential conflicts of interest and the customer will then assign priorities to the list of volunteer Arbitrators.

Whether the selection process is conducted by telephone or in writing, every effort will be made to provide the customer with the highest choice available. Once an Arbitrator selected has been confirmed with the parties, any substitute must either be approved by the customer or the selection process must be conducted again.

The BBB may use variations of this selection process; however, any alternative procedure shall be designed to avoid any conflict of interest, provide the customer a selection and be approved by the CBBB. VWoA will take no part in the selection of the Arbitrator.

6. COMMUNICATING WITH THE ARBITRATOR

You or anyone representing you shall not communicate in any way with the Arbitrator about your dispute except at the inspection or hearing where the other party has received notice, or unless all other parties are present or have given us their written permission. All other communications about your case with the Arbitrator must be sent through the BBB, which must share them with the other parties. Any communications with the Arbitrator not directed through the BBB will be a violation of this rule and your case may be discontinued.

7. QUALIFYING THE ARBITRATOR

The Arbitrator shall sign a special oath, pledging to make an unbiased decision in your dispute.

If a financial, competitive, professional, family or social relationship exists and no impartial decision is possible, the Arbitrator shall refuse to serve. Even if the Arbitrator believes the relationship is so

minor as to have no effect on the decision, it shall be revealed to everyone; and you may decide [5] against this Arbitrator serving in your case. The BBB reserves the right to reject any Arbitrator for any conflict which it believes will affect the program's credibility.

8. YOUR REPRESENTATIVE

In any arbitration procedure, you may present your own case or have someone represent you. If your representative is a lawyer, you must give the lawyer's name and address to the BBB at least eight (8) days before the hearing. The BBB will notify the other parties so they have an opportunity to obtain a lawyer if they want. Your failure to give the BBB advance notice may result in a rescheduling of your hearing. You are responsible for any fees charged by your representatives.

9. INSPECTION BY THE ARBITRATOR

You or the Arbitrator may request an inspection of the product or service involved in your dispute. The BBB will *always* schedule an inspection when a consumer seeks a repurchase or replacement of their vehicle, unless all parties agree in writing that such an inspection is not necessary. If possible, the inspection will be performed as part of the hearing, otherwise, the inspection will be scheduled for a later date and all parties will receive at least eight (8) days notice unless waived by all parties.

If the BBB has scheduled an inspection and the vehicle is not available, no decision shall be made in your case.

10. TECHNICAL ADVISERS

At the request of the Arbitrator, the BBB will make every effort to obtain a neutral technical adviser to inspect your car. At the BBB's option, the adviser's findings will be presented in writing or in person either before, during, or after the hearing. In any case, you will have an opportunity to evaluate and comment on the qualifications and findings of the adviser. You also have the right to get your own technical adviser to serve as your witness at your own expense.

11. HEARING NOTICE

The BBB will set a time (during normal business hours) and place for your arbitration hearing, with due regard for your convenience, and that of the Arbitrator, and will notify you *in writing at least eight (8) days in advance of the hearing*. Contact the BBB at once if you cannot attend. If you object to the time or place stated in your notice, contact the BBB immediately and let them know. If you do not object or if you attend the hearing, your acceptance of the notice will be

assumed. If our offices are very far from your home, we will [6] arrange for a hearing facility as close to your home as is reasonably possible.

12. WRITTEN OR TELEPHONE HEARINGS

Although most arbitrations involve in-person hearings, the BBB, at your request, may arrange to have your statement and evidence presented by telephone or in writing. If you appear in person, Volkswagen may present its case in person, by telephone, or in writing. If you present your case by telephone, Volkswagen may present its case by telephone or in writing. If you present your case in writing, Volkswagen must also present its case in writing. You always have the right to be present at your arbitration hearing. You also have the right to review and respond to any information submitted by Volkswagen.

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The BBB has the option to arrange for volunteers from our pool of Arbitrators or for governmental representatives to attend arbitration hearings.

For any other observer to attend a hearing, the BBB will first determine that reasonable accommodations exist and then make sure that neither the customer nor the Arbitrator objects to the presence of an observer. If there is room and no objection, the observer shall be subject to the BBB's directions regarding proper conduct.

14. MEDIA PRESENCE IN THE HEARING

Media shall be permitted access to arbitration hearings on the same basis as other observers. *Unless there is approval of all parties and the Arbitrator*, neither media representatives nor any other observer may be permitted to bring cameras, lights, recording, or any other equipment into the hearing. Under these circumstances, all observers, including media representatives, shall be limited to *note* taking, and shall be subject to the BBB's directions regarding observers' proper conduct that will not affect your right to present your case.

15. YOUR ABSENCE FROM THE HEARING

If you do not attend a hearing after receiving proper notice from the BBB, the Arbitrator may decide to go ahead with the hearing in your absence. Your absence does *not* mean an automatic decision against you, and you shall be given an opportunity to present your case in a time and manner set by the Arbitrator. If you *then* fail to present your case, the Arbitrator may make a decision without your presentation.

[7]

16. RECORD OF HEARING

The BBB will maintain basic file information on your arbitration hearing, such as the witnesses' names and documents presented as evidence at the hearing. Copies of this and other official arbitration forms relating to your case will be given to you on request. A reasonable copying fee may be charged.

If you give the BBB at least 5 days advance notice, the BBB will arrange for a court reporter at your expense or will audio tape your hearing and, for reasonable copying and transmittal costs, give you a copy. Copies shall also be given to other parties and to the Arbitrator *at your expense*. The Arbitrator may request the BBB tape a hearing at any time.

All taping or other records of an arbitration hearing are the BBB's sole responsibility and no other person shall make such a record at any time.

17. INTERPRETERS

If you need an interpreter for your arbitration and can not provide your own, contact the BBB and it will make every effort to find a volunteer interpreter.

18. OATH OF PARTICIPANTS

You and your witnesses shall be placed under oath at the hearing.

19. HEARING PROCEDURES

The Arbitrator will decide on the order and procedures for you to present your side of the dispute. You will be given an opportunity to make a personal presentation of your case, as well as present any witnesses and evidence in support of your case. You may also question the other parties, their witnesses and their evidence. After everyone has given their presentation, you will be given an opportunity to make a closing statement. When the Arbitrator is satisfied that all testimony and evidence have been presented, your hearing will be closed. If you prepare any part of your case in writing for the arbitration, the other party will have an opportunity to see your statement and submit a response to the BBB which will forward both statements to the Arbitrator.

20. ADMISSION OF EVIDENCE AT THE HEARING

Legal rules of evidence do not apply to an arbitration. However, you should be sure your evidence is true and relevant to your case. [8]

The Arbitrator can limit your presentation if it is repetitious or irrelevant.

21. ABSENTEE STATEMENTS

If you have a witness who cannot attend the hearing, you may present that person's written statement to the Arbitrator. You must make a copy for the other party to read and use for response. Before the Arbitrator makes a decision, you may ask the Arbitrator to give you a reasonable number of days to respond to a written statement presented by the other party, and the Arbitrator may grant that request at his discretion.

22. SUBPOENA POWERS

If you have a reason to believe the other side will not present certain witnesses or evidence which you consider important to a full and fair consideration or dispute, you may send the BBB a request that the Arbitrator subpoena these witnesses or evidence. If the Arbitrator agrees with your request, a subpoena will be sent according to state law.

23. POST-HEARING ADMISSION OF EVIDENCE

Prior to a decision, an Arbitrator may schedule new or additional hearings or otherwise request or allow new or additional evidence in order to get all possible facts relating to your dispute.

Before a decision is made, you may send the BBB new information that was impossible to present at your original hearing and request that it be considered. The BBB will share it with the other parties for their response and forward it to the Arbitrator. After the Arbitrator has made a decision in your case, no more arguments or evidence may be presented, even if newly discovered or not available at the time of the hearing.

24. SETTLEMENT

If you and the other parties voluntarily decide to settle your dispute before the hearing, the settlement will end your dispute and no hearing will be held. You should be sure you are satisfied with the settlement. If Volkswagen agrees to pay you money as part of a voluntary settlement, it must send you a check within 45 days; any repair agreed to under a voluntary settlement must be completed within 30 days. Be sure to let the BBB know about it so the BBB can verify it was done within the time promised. If your voluntary settlement occurs during the hearing, the Arbitrator shall include the settlement in the final decision. If your settlement occurs after the hearing but before [9] the Arbitrator's final decision, be sure to notify the BBB at once.

25. TIME LIMITS

The BBB shall complete an arbitration hearing within 60 days after receipt of "all information" necessary for the BBB to process your complaint, regardless of whether you try mediation first. (For automotive complaints, "all information" is the make, model, year, vehicle identification number, description of the problem, and your requested solution to the problem). These time deadlines may only be extended for delays caused by you.

26. THE DECISION

A. *Time*

The Arbitrator will forward to the BBB a final decision, or an interim decision where appropriate, within ten (10) days of closing your hearing. In cases where an interim decision has been rendered, and the consumer notifies BBB that the repair ordered in the interim decision was not performed or was performed unsatisfactorily, the Arbitrator will have 30 days from the date the consumer notifies the BBB of that fact to forward a final decision. Upon the Arbitrator's request, the BBB may extend this time for special circumstances.

If you have been asked or allowed by the Arbitrator to furnish additional evidence in support of your case, the Arbitrator will set a time for you to send it to the BBB which shall seek a response to your evidence from the other party and send everything to the Arbitrator. Receipt of these additional materials by the Arbitrator shall signal the start of the ten-day decision period. The BBB will mail you a copy of the Arbitrator's decision but will not read a decision to you over the telephone.

B. *Scope*

A decision shall be one that:

- 1) the Arbitrator considers fair; and
- 2) falls within the scope of your "Agreement to Arbitrate".

The decision may order an action to be performed, money to be paid, or any combination of these remedies. It may give you all or part of what you seek. Or it may be a decision in which the Arbitrator feels fairness requires no payment or performance at all. [10]

C. *Clarifying or Correcting the Decision*

If you do not understand what the Arbitrator has written, you should immediately inform the BBB in writing to request clarification. If you believe the decision contains a mistake of fact, a miscalculation of figures, or exceeds the Arbitrator's authority, inform the BBB in writing of your position immediately.

A "mistake of fact" is not a conclusion of the Arbitrator with which you disagree; it is a true error in such things as a date, time, place, or name, and may only justify a clarification or correction if it concerns the essence of the decision.

A "miscalculation of figures" is not a dollar figure you consider to be unfair; it is an arithmetic error. The "Arbitrator's authority" is limited to the scope of the Agreement to Arbitrate.

The BBB will not accept a clarification or correction request attempting to reargue your case, or based upon your disagreement or disappointment with the decision. If your written statement to the BBB is a valid request for clarification or correction of the decision, the BBB will share your position with the other party, solicit their views and send it to the Arbitrator, who may accept it in whole, in part, or reject it altogether. The Arbitrator may only clarify the intent or correct mistakes in the original decision, *not* change the substance of that decision.

D. Decision is Impossible to Perform

If you believe you cannot perform the Arbitrator's decision within the established time limit or at all, this should be put in writing at once and sent to the BBB. We shall handle your submission in the same manner as a request for correction or clarification. The Arbitrator may request additional evidence, may request another hearing, or may do anything necessary to confirm or deny your allegation of impossibility of performance. If the CBBB confirms such impossibility the original decision may then be changed.

If the manufacturer has exceeded the time for performance specified in the Decision, notify the BBB in writing. The BBB will immediately contact the manufacturer and Arbitrator. If the Arbitrator determines that the manufacturer is performing in good faith and that the delay is reasonable, the manufacturer's time performance may be extended. If the consumer contests this determination, they are free to go to court to challenge or confirm the award. [11]

E. Suspending the Time to Perform

If you submit to the BBB a written statement to the BBB relating to correction, clarification, or impossibility to perform the decision, the time for acceptance and performance of a decision shall be suspended until the issue is resolved by the Arbitrator or by the BBB.

F. Reasons for Decision

An Arbitrator shall include reasons for a decision, either in the decision or in an accompanying form, and the BBB will forward the reasons to all parties along with the decision.

Your written request for clarification or correction of a decision may not be based upon the reasons for the decision, but must be based on the decision alone.

G. Acceptance or Rejection of the Decision

The BBB will send the Arbitrator's decision to you, the consumer, for acceptance or rejection. If you accept the decision, Volkswagen will be legally bound to abide by the decision. If Volkswagen is ordered to pay you money, it must send you a check within 45 days; any repair that is ordered must be completed within 30 days except that the Arbitrator may modify the deadline for repair for good cause shown at the hearing.

You, too, will be legally bound, which means you give up any right to sue Volkswagen in court on any claim that fails within the scope of your arbitration, unless Volkswagen fails to perform according to the Arbitrator's decision. (If this should happen, first notify the BBB; however, you may legally enforce the decision or pursue other legal remedies under state or federal law should such a failure occur.)

If you reject the decision: you may pursue other legal remedies under state or federal law; Volkswagen will not be obligated to perform any part of the decision; and depending on federal or state law the decision may be introduced as evidence by you or Volkswagen in any civil court action relating to any matter considered in your arbitration hearing. [12]

NOTE: Your failure to accept or reject the decision within 14 days will be considered a rejection.

H. Confidentiality of Proceedings

It is BBB policy that the mediation and arbitration process is private and confidential. The BBB will not release the results of your individual case to the media or any other group or organization. The BBB may release records when all parties agree or when such release is required by law or pertinent to judicial or governmental administrative proceedings. The Federal Trade Commission may also receive records of arbitration proceedings.

I. Verification of Performance

If a decision is accepted, Volkswagen must do what the decision requires within the time limits stated. Unless otherwise stated in the decision, the time for performance begins when the BBB received written notice of the acceptance. When this time limit is up, the BBB must contact the consumer within two weeks of when VW was supposed to perform to be sure Volkswagen has performed.

27. FAILURE TO COMPLY WITH RULES

Any failure to follow these rules that may significantly affect the independence, impartiality, fairness or expeditiousness of the mediation or arbitration process should be raised with the Better Business Bureau at the earliest opportunity. Any party raising such objections should attempt to document the specific harm caused by the failure to follow these rules. The BBB may request that you put your objection in writing. If the BBB rules against your objection, it may continue processing your case. If you are not satisfied with the BBB's ruling, you may contact the Federal Trade Commission, Division of Enforcement, Washington, D.C. 20580.

28. INTERPRETATION OF RULES

The BBB will not advise the Arbitrator or make a statement on matters relating to the merits of your case or the reasonableness of the decision. The CBBB will make the decision on procedural questions, the scope of the agreements, and other questions concerning the application and interpretation of these rules, subject to the terms of the agreement between Volkswagen and the Federal Trade Commission under which this program is being conducted. [13]

29. SPECIAL REQUIREMENTS IF VEHICLE SOLD BEFORE HEARING

If you decide to sell your vehicle after you file your claim with the BBB, but before the hearing, the following special provisions apply:

- A. You must notify Volkswagen at least ten days in advance of the sale that you intend to sell the vehicle;
- B. You must give Volkswagen an opportunity to inspect the vehicle before it is sold;
- C. If you sell the vehicle before the problem that prompted the claim is repaired, your recovery will be limited to the estimated repair costs (plus expenses for towing, storage fees, rental car costs, telephone and hotel bills);
- D. If you arbitrate a claim for an unrepaired problem on a car that you sold, the party that bought the car is not eligible for arbitration for that problem. Likewise, you may not arbitrate a claim for which a previous owner has already accepted an arbitration award.

ATTACHMENT D

SPECIAL MODIFIED RULES FOR THE ARBITRATION OF
VOLKSWAGEN AND AUDI OIL RELATED CLAIMS1. DEFINITIONS

A. "*Arbitration*" is a process in which two or more persons agree to let an impartial person or panel decide their dispute. This decision becomes legally binding when the consumer accepts the decision, subject to any state law that may provide a limited right of appeal. You may compel compliance with the decision under any applicable state law.

B. "*You*", as used in these Rules, means one of the parties involved in the dispute being arbitrated.

C. "*BBB*" means the Better Business Bureau which is administering the arbitration. "*CBBB*" is the Council of Better Business Bureaus.

D. "*Arbitrator*" refers to the individual or panel selected to conduct your arbitration and make a decision on your dispute.

E. "*Days*", as referred to in these Rules, shall mean calendar days.

F. "*Shall*", as used in these Rules is mandatory; "*may*" is discretionary.

G. "*Decision*" means the written document signed by the Arbitrator and mailed to the consumer.

1) "*Final Decision*" might award a repurchase, a replacement, a reimbursement for past repairs, or nothing at all. In these cases, an Arbitrator has no further authority over the execution of the decision.

2) "*Interim Decision*" - When the decision requires action to be performed, an interim decision may be written. In these cases, Arbitrators maintain continuing authority over the execution of their [2] decisions until the actions are completed to their satisfaction. All decisions directing repairs shall be interim.

H. "*Disputes*" that may be arbitrated under these special rules are limited to disagreements between the manufacturer and a customer relating to complaints involving allegations of excessive oil consumption or engine damage due to lack of oil in a 1974-1979 Volkswagen or Audi vehicle with a water-cooled gasoline engine distributed by Volkswagen of America, warranted in writing by Volkswagen of America, or certified by the manufacturer as meeting applicable federal safety and emissions standards. These disputes do not include: 1) reimbursements for such things as loss of wages, business income, depreciation or loss of value, permanent replacement transportation, or any other consequential damages, unless all the parties agree

specifically in writing that the arbitrator may consider such an item; 2) claims which exceed the cash purchase price of the product involved in the dispute, (plus expenses for towing, storage fees, rental car costs, telephone and hotel bills) unless all parties agree specifically in writing that the Arbitrator may consider other costs of purchase; 3) claims covered by insurance, punitive damages, or claims for mental anguish or personal injury. The vehicle need not be currently owned or leased by the consumer. Expenses for towing, storage fees, rental car costs, telephone and hotel bills may be included in the claim to be arbitrated. The Arbitrator has no authority to decide that a party or parties violated any law or to consider matters which cannot be arbitrated under the law. In making any award for reimbursement, repair or repurchase, the Arbitrator may consider requests for deductions based on such factors as owner usage, mileage, overall condition of the product and optional equipment. The decision as to whether your dispute or any part of your dispute is arbitrable under these rules, or is within the scope of your "Response to Volkswagen Mediation and Arbitration Program" form, rests with either BBB and CBBB, subject to the terms of the agreement between Volkswagen and the FTC under which this program is being conducted.

2. APPLICATION OF THESE RULES

These special rules apply to any dispute described under the definition of "Disputes" which you agree to arbitrate through the BBB. You must accept these rules when you sign the "Response to Volkswagen Mediation and Arbitration Program" form. [3]

3. THE LEGAL BASIS FOR BBB AUTO LINE

BBB AUTO LINE is an informal forum based on the United States Arbitration Act, 9 U.S.C. 1-14, and administered under procedures consistent with state law. The BBB at all times reserves the right to discontinue administration of arbitration for any case(s) due to a conflict with any state or federal law or regulation.

To the extent that any party wants to challenge or enforce an arbitrator's decision, a court of competent jurisdiction shall be the proper forum. The BBB accepts no responsibility for costs incurred by either party in challenging or enforcing any decision.

4. BEGINNING ARBITRATION

You may complete the "Response to Volkswagen Mediation and Arbitration Program" form and indicate you wish to begin arbitration proceedings immediately; or

You may complete the "Response to Volkswagen Mediation and Arbitration Program" form and indicate you wish to try mediation.

If no settlement is reached, you will be notified of the date of the arbitration hearing at least 8 days in advance of the hearing.

The answers to the questionnaire included with the "Response to Volkswagen Mediation and Arbitration Program" will determine the issues to be arbitrated.

5. SELECTING YOUR ARBITRATOR

The BBB will maintain a pool of individuals who have volunteered to serve, at no pay, as Arbitrators in this program. These volunteers have been trained to conduct a hearing and make a decision in accordance with these rules; but they do not necessarily have mechanical or legal expertise. Arbitrators will be selected from this pool in the following way:

The BBB will provide the customer with a list of Arbitrators chosen from the volunteer pool, together with brief biographies of each. After receiving this list, the customer will have five days to cross off any name with whom a financial, competitive, professional or social relationship exists and assign priorities to those remaining (#1, #2, #3, etc.). If you do not return the list within five days the BBB will assume all names are satisfactory to you and assign one of the Arbitrators on your list to hear your case. [4]

This selection process may take place in a phone call from the BBB to the consumer, unless the consumer requests that the procedure prescribed in the preceding paragraph be used instead. If by telephone, the BBB will read the names and biographies of a list of volunteer Arbitrators, check for potential conflicts of interest and the customer will then assign priorities to the list of volunteer Arbitrators.

Whether the selection process is conducted by telephone or in writing, every effort will be made to provide the customer with the highest choice available. Once an Arbitrator selected has been confirmed with the parties, any substitute must either be approved by the customer or the selection process must be conducted again.

The BBB may use variations of this selection process; however, any alternative procedure shall be designed to avoid any conflict of interest, provide the customer a selection and be approved by the CBBB. VWoA will take no part in the selection of the Arbitrator.

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The Arbitrator shall sign a special oath, pledging to make an unbiased decision in your dispute.

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[7]

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If you give the BBB at least 5 days advance notice, the BBB will arrange for a court reporter at your expense or will audio tape your hearing and, for reasonable copying and transmittal costs, give you a copy. Copies shall also be given to other parties and to the Arbitrator *at your expense*. The Arbitrator may request the BBB tape a hearing at any time.

All taping or other records of an arbitration hearing are the BBB's sole responsibility and no other person shall make such a record at any time.

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The Arbitrator will decide on the order and procedures for you to present your side of the dispute. You will be given an opportunity to make a personal presentation of your case, as well as present any witnesses and evidence in support of your case. You may also question the other parties, their witnesses and their evidence. After everyone has given their presentation, you will be given an opportunity to make a closing statement. When the Arbitrator is satisfied that all

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Legal rules of evidence do not apply to an arbitration. However, you should be sure your evidence is true and relevant to your case. [8]

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21. ABSENTEE STATEMENTS

If you have a witness who cannot attend the hearing, you may present that person's written statement to the Arbitrator. You must make a copy for the other party to read and use for response. Before the Arbitrator makes a decision, you may ask the Arbitrator to give you a reasonable number of days to respond to a written statement presented by the other party, and the Arbitrator may grant that request at his discretion.

22. SUBPOENA POWERS

If you have a reason to believe the other side will not present certain witnesses or evidence which you consider important to a full and fair consideration or dispute, you may send the BBB a request that the Arbitrator subpoena these witnesses or evidence. If the Arbitrator agrees with your request, a subpoena will be sent according to state law.

23. POST-HEARING ADMISSION OF EVIDENCE

Prior to a decision, an Arbitrator may schedule new or additional hearings or otherwise request or allow new or additional evidence in order to get all possible facts relating to your dispute.

Before a decision is made, you may send the BBB new information that was impossible to present at your original hearing and request that it be considered. The BBB will share it with the other parties for their response and forward it to the Arbitrator. After the Arbitrator has made a decision in your case, no more arguments or evidence may be presented, even if newly discovered or not available at the time of the hearing.

24. SETTLEMENT

If you and the other parties voluntarily decide to settle your dispute before the hearing, the settlement will end your dispute and no hear-

ing will be held. You should be sure you are satisfied with the settlement. If Volkswagen agrees to pay you money as part of a voluntary settlement, it must send you a check within 45 days; any repair agreed to under a voluntary settlement must be completed within 30 days. Be sure to let the BBB know about it so the BBB can verify it was done within the time promised. If your voluntary settlement occurs during the hearing, the Arbitrator shall include the settlement in the final decision. If your settlement occurs after the hearing but before [9] the Arbitrator's final decision, be sure to notify the BBB at once.

25. TIME LIMITS

If you contact the BBB or Volkswagen about an oil consumption or engine damage from lack of oil complaint on an eligible 1974-1979 VW or Audi, you will be sent an information packet within fifteen days or before 60 days after the program goes into effect, whichever is later.

After you return the form indicating you wish to participate in the program, an arbitration hearing must be completed within 60 days after Volkswagen receives your form, regardless of whether you try mediation first. This time deadline may only be extended for delays caused by you.

26. THE DECISION

A. *Time*

The Arbitrator will forward to the BBB a final decision, or interim decision where appropriate, within ten (10) days of closing your hearing. In cases where an interim decision has been rendered, and the consumer notifies BBB that the repair ordered was not performed or was performed unsatisfactorily, the Arbitrator will have 30 days from the date the consumer notifies the BBB of that fact to forward a final decision. Upon the Arbitrator's request, the BBB may extend this time for special circumstances.

If you have been asked or allowed by the Arbitrator to furnish additional evidence in support of your case, the Arbitrator will set a time for you to send it to the BBB which shall seek a response to your evidence from the other party and send everything to the Arbitrator. Receipt of these additional materials by the Arbitrator shall signal the start of the ten-day decision period. The BBB will mail you a copy of the Arbitrator's decision but will not read a decision to you over the telephone.

B. *Scope*

A decision shall be one that:

- 1) the Arbitrator considers fair; and
- 2) falls within the scope of your "Response to Volkswagen Mediation and Arbitration Program" form. [10]

The decision may order an action to be performed, money to be paid, or any combination of these remedies. It may give you all or part of what you seek. Or it may be a decision in which the Arbitrator feels fairness requires no payment or performance at all.

C. Clarifying or Correcting the Decision

If you do not understand what the arbitrator has written, you should immediately inform the BBB in writing to request clarification. If you believe the decision contains a mistake of fact, a miscalculation of figures, or exceeds the arbitrator's authority, inform the BBB in writing of your position immediately.

A "mistake of fact" is not a conclusion of the Arbitrator with which you disagree; it is a true error in such things as a date, time, place, or name, and may only justify a clarification or correction if it concerns the essence of the decision.

A "miscalculation of figures" is not a dollar figure you consider to be unfair; it is an arithmetic error. The "Arbitrator's authority" is limited to the scope of the "Response to Volkswagen Mediation and Arbitration" Form.

The BBB will not accept a clarification or correction request attempting to reargue your case, or based upon your disagreement or disappointment with the decision. If your written statement to the BBB is a valid request for clarification or correction of the decision, the BBB will share your position with the other party, solicit their views and send it to the Arbitrator, who may accept it in whole, in part, or reject it altogether. The Arbitrator may only clarify the intent or correct mistakes in the original decision, *not* change the substance of that decision.

D. Decision is Impossible to Perform

If you believe you cannot perform the Arbitrator's decision within the established time limit or at all, this should be put in writing at once and sent to the BBB. We shall handle your submission in the same manner as a request for correction or clarification. The Arbitrator may request additional evidence, may request another hearing, or may do anything necessary to confirm or deny your allegation of impossibility of performance. If the CBBB confirms such impossibility, the original decision may then be changed. [11]

If the manufacturer has exceeded the time for performance specified in the Decision, notify the BBB in writing. The BBB will immediately contact the manufacturer and Arbitrator. If the Arbitrator

determines that the manufacturer is performing in good faith and that the delay is reasonable, the manufacturer's time performance may be extended. If the consumer contests this determination, they are free to go to court to challenge or confirm the award.

E. Suspending the Time to Perform

If you submit to the BBB a written statement to the BBB relating to correction, clarification, or impossibility to perform the decision, the time for acceptance and performance of a decision shall be suspended until the issue is resolved by the Arbitrator or by the BBB.

F. Reasons for Decision

An Arbitrator shall include reasons for a decision, either in the decision or in an accompanying form, and the BBB will forward the reasons to all parties along with the decision.

Your written request for clarification or correction of a decision may not be based upon the reasons for the decision, but must be based on the decision alone.

G. Acceptance or Rejection of the Decision

The BBB will send the Arbitrator's decision to you, the consumer, for acceptance or rejection. If you accept the decision:

Volkswagen will be legally bound to abide by the decision; if Volkswagen is ordered to pay you money, it must send you a check within 45 days; any repair that is ordered must be completed within 30 days except that the Arbitrator may modify the deadline for repair for good cause shown at the hearing; and

You, too, will be legally bound, which means you give up any right to sue Volkswagen in court on any claim that falls within the scope of your arbitration, unless Volkswagen fails to perform according to the Arbitrator's decision. (If this should happen, first notify the BBB; however, you may legally enforce the decision or pursue other legal remedies under state or federal law should such a failure occur.) [12]

If you reject the decision: you may pursue other legal remedies under state or federal law; Volkswagen will not be obligated to perform any part of the decision; and depending on federal or state law the decision may be introduced as evidence by you or Volkswagen in any civil court action relating to any matter considered in your arbitration hearing.

NOTE: Your failure to accept or reject the decision within 14 days will be considered a rejection.

H. Confidentiality of Proceedings

It is BBB policy that the mediation and arbitration process is private and confidential. The BBB will not release the results of your individual case to the media or any other group or organization. The BBB may release records when all parties agree or when such release is required by law or pertinent to judicial or governmental administrative proceedings. The Federal Trade Commission may also receive records of arbitration proceedings.

I. Verification of Performance

If a decision is accepted, Volkswagen must do what the decision requires within the time limits stated. Unless otherwise stated in the decision, the time for performance begins when the BBB received written notice of the acceptance. When this time limit is up, the BBB must contact the consumer within two weeks of when VW was supposed to perform to be sure Volkswagen has performed. [13]

27. FAILURE TO COMPLY WITH RULES

Any failure to follow these rules that may significantly affect the independence, impartiality, fairness or expeditiousness of the mediation or arbitration process should be raised with the Better Business Bureau at the earliest opportunity. Any party raising such objections should attempt to document the specific harm caused by the failure to follow these rules. The BBB may request that you put your objections in writing. If the BBB rules against your objections, it may continue processing your case. If you are not satisfied with the BBB's ruling, you may contact the Federal Trade Commission, Division of Enforcement, Washington, D.C. 20580.

28. INTERPRETATION OF RULES

The BBB will not advise the Arbitrator or make a statement on matters relating to the merits of your case or the reasonableness of the decision. The BBB will make the decision on procedural questions, the scope of the agreements, and other questions concerning the application and interpretation of these rules, subject to the terms of the agreement between Volkswagen and the Federal Trade Commission under which this program is being conducted.

ATTACHMENT E1

[SETTLEMENT OFFER]

Dear [VW] [Audi] owner:

You have expressed concern about unsatisfactory oil consumption or engine damage from lack of oil on your gasoline-fueled [brand, model, model year, with VIN, if known].

We are writing to tell you about a FREE claim settlement program which we are offering to you and other owners who may have experienced these conditions. The program may result in a REFUND, FREE REPAIR, or both. We are offering you this program under a settlement of a lawsuit with the Federal Trade Commission (FTC).

You do not still have to own or lease the car to be eligible. *But, you must fill out the enclosed form to take advantage of this free program.*

Under this program, we can resolve your problem in one of three ways:

1. If you agree, we will settle with you immediately, on the basis of an offer which is attached to this letter and is entitled "Statement of Settlement Offer".
2. If our settlement offer is not acceptable to you, you can use the mediation services of your local BBB office, before proceeding to arbitration.
3. Or, you may want to use the arbitration services of your local BBB, without trying mediation.

If you want to resolve your complaint now, check the first box on the enclosed form. We will settle your claim for the amount stated on the enclosed form. If you accept, you will receive a check within 45 days.

If you want to use the BBB's mediation services before going to arbitration, check the second box on the enclosed form and fill out the brief questionnaire on the back of the form. If mediation efforts are not successful, the BBB will arrange a date for arbitration within 60 days from when we receive this form. If the case is settled, or the arbitrator makes an award in your favor, you will then receive a check within 45 days, or your car will be repaired in most cases, within 30 days.

If you want to use the BBB's arbitration services without trying mediation, check the third box on the enclosed form and [2] fill out the brief questionnaire on the back of the form. The BBB will set an arbitration hearing to be held within 60 days. If the arbitrator makes a decision in your favor, you will receive a check within 45 days, or your car will be repaired in most cases, within 30 days.

If you want to use mediation or arbitration, please include copies of as much documentation as you can with your claim form. This will expedite processing and may help us negotiate a settlement with you directly.

Under the mediation program, a BBB employee will try to help Volkswagen and you to agree on a settlement. With arbitration, a volunteer from the community will conduct an informal hearing where you and VW will present the facts. The volunteer arbitrator will then decide what relief to award you, if any. The arbitrator's decision is legally binding only if you decide to accept it. [A "legally binding" decision means that we must do what the arbitrator says and that you will be unable to pursue your claim in further legal proceedings]. If you reject the decision then you have the option of pursuing further legal proceedings that might be available to you under applicable laws. However, once you have rejected an arbitrator's decision, you will not be able to arbitrate your claim again or to reinstate the arbitrator's award.

We have enclosed a brochure which describes the BBB program and other special provisions in detail.

We also have enclosed "Background Statements," prepared jointly by the FTC and Volkswagen, to give you some useful facts about oil usage and engine damage from lack of oil. You should read these documents carefully before deciding whether to accept our settlement offer described in this letter or preparing your claim for the mediation and arbitration programs. If you take your case to the BBB, you may give the Background Statements to the mediator or arbitrator, or otherwise use them in preparing your arguments.

You are free to accept our offer, to reject it and take your complaint immediately to

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Decision and Order

the Better Business Bureau program for mediation and then arbitration. Or, you can reject our offer and begin the arbitration process immediately, omitting further mediation efforts. Just fill out the enclosed form "Response to Volkswagen Mediation and Arbitration Program" and send it to us in the enclosed postage pre-paid envelope. [3]

We look forward to hearing from you soon.

Sincerely,

Volkswagen of America [4]

[SETTLEMENT OFFER MADE]

**RESPONSE TO VOLKSWAGEN
MEDIATION AND ARBITRATION PROGRAM**

[] 1. I accept Volkswagen of America's settlement offer in the amount of \$__00. Volkswagen of America will send me a check for this amount within 45 days of receipt of this response. I understand that by accepting this settlement I release Volkswagen [insert language specifying release that comports with Paragraph E of Section IV].

[] 2. I want to use the BBB mediation and arbitration procedures. I understand that if mediation efforts are not successful, my local BBB will set an arbitration hearing date for less than 60 days after you receive this form. I have also read the enclosed brochure describing the BBB mediation and arbitration program, and the enclosed Background Statement(s).

[] 3. I want to proceed to an arbitration hearing without using BBB's mediation services first. I understand that my local BBB will set an arbitration date for less than 60 days after you receive this form. I have also read the enclosed brochure describing the BBB mediation and arbitration program, and the enclosed Background Statement(s).

If you checked 2. or 3., please fill out the brief questionnaire on the back of this form. **Be sure to fill out the form carefully. The arbitrator will not be able to decide any issues not set out in the form, and will be able to give you only what you asked for on the form.**

Signature

Please print your name, address and telephone number where you can be reached during the day:

NAME: _____

ADDRESS: _____

CITY: _____ STATE _____

ZIP: _____

DAYTIME

PHONE () _____

EVENING

PHONE () _____ [5]

Be sure to fill out the form carefully, because it will determine what issues the arbitrator can decide.

PLEASE DESCRIBE BRIEFLY THE PROBLEM YOU HAD WITH YOUR CAR:

WHAT IS THE RESOLUTION YOU SEEK?

(The issues which can be arbitrated and the remedies available are explained in the paragraphs entitled "Beginning the AUTO LINE Program" and "The Arbitration Process" which you will find on pages XX and YY of the enclosed "BROCHURE FOR CLAIMANTS DESCRIBING THE AUTO LINE PROGRAM FOR OIL RELATED CLAIMS ON 1974 - 1979 VOLKSWAGEN AND AUDI VEHICLES." The remedies available are governed by Rule 26. B. and Rule 1. H. of the "SPECIAL MODIFIED RULES FOR THE ARBITRATION OF VOLKSWAGEN AND AUDI OIL RELATED CLAIMS." You may request a copy of these rules by calling the company at (800) ***-****.)

WHAT HAS THIS PROBLEM COST YOU?

(Please do not include any costs from loss of business, wages or personal injury.)

Repairs	\$ _____	Telephone calls	\$ _____
Rental Cars	\$ _____	Other direct costs	\$ _____
Towing	\$ _____	(Please specify.)	\$ _____
Storage fees	\$ _____		\$ _____
		TOTAL	\$ _____

(NOTE: The arbitrator will not be allowed to award you more than what you ask for on the claim form.)

DOES THE CAR STILL NEED REPAIRS FOR EXCESSIVE OIL CONSUMPTION OR FOR ENGINE DAMAGE FROM LACK OF OIL? YES ___ NO ___

IF YOU KNOW, WHAT REPAIRS DOES IT NEED? _____

WHAT IS THE APPROXIMATE CURRENT MILEAGE, IF YOU STILL OWN THE CAR? _____

VEHICLE IDENTIFICATION NO. (if known): _____

MODEL: _____ MODEL YEAR _____

PLEASE SEND IN COPIES OF ANY RECORDS, IF YOU HAVE THEM, OF THE AMOUNT OF YOUR CLAIM—BILLS, CHECKS, RECEIPTS, ETC. THIS WILL EXPEDITE PROCESSING AND POSSIBLE SETTLEMENT OF YOUR CLAIM.

ATTACHMENT E2

[NO SETTLEMENT OFFER]

Dear [VW] [Audi] owner:

You have expressed concern about unsatisfactory oil consumption or engine damage from lack of oil on your gasoline-fueled [brand, model, model year, with VIN, if known].

We are writing to tell you about a FREE claim settlement program which we are offering to you and other owners who may have experienced these conditions. The program may result in a REFUND, FREE REPAIR, or both. We are offering you this program under a settlement of a lawsuit with the Federal Trade Commission (FTC).

You do not still have to own or lease the car to be eligible. *But, you must fill out the enclosed form to take advantage of this free program.*

Under this program, we can resolve your problem in one of two ways:

1. You can use the mediation services of your local Better Business Bureau (BBB) office, followed by arbitration, if necessary.

2. Or, you may want to use the arbitration services of your local BBB, without trying mediation.

If you want to use the BBB's mediation service before going to arbitration, check the first box on the front of the enclosed form, fill out the brief questionnaire on the back and mail it in. If mediation does not resolve the matter, the BBB will arrange a date for arbitration within 60 days from when we receive this form. If the case is settled, or the arbitrator makes an award in your favor which you accept, you will then receive a check within 45 days, or your car will be repaired in most cases within 30 days.

If you want to use the BBB's arbitration services without trying mediation first, check the second box on the enclosed form, and fill out the brief questionnaire on the back and mail it in. The BBB will set an arbitration hearing to be held within 60 days from when we receive this form. If the arbitrator makes a decision in your favor which you accept, you will receive a check within 45 days, or your car will be repaired in most cases within 30 days after your acceptance is received.

If you want to use mediation or arbitration, please include copies of as much documentation as you can with your claim form. [2] This will expedite processing and may help us to negotiate a settlement with you directly.

Under the mediation program, a BBB employee will try to help Volkswagen and you to agree on a settlement. With arbitration, a volunteer from the community will conduct an informal hearing where you and VW will present the facts. The volunteer arbitrator will then decide what relief to award you, if any. The arbitrator's decision is legally binding only if you decide to accept it. [A "legally binding" decision means that we must do what the arbitrator says and that you will be unable to pursue your claim in further legal proceedings.] If you reject the decision then you have the option of pursuing further legal proceedings that might be available to you under applicable laws. However, once you have rejected an arbitrator's decision, you will not be able to arbitrate your claim again or to reinstate the arbitrator's award.

We have enclosed a brochure which describes the BBB program and other special provisions in detail.

We also have enclosed "Background Statements," prepared jointly by the FTC and Volkswagen, to give you some useful facts about oil usage and engine damage from lack of oil. You should read these documents carefully before preparing your claim for the mediation and arbitration programs. If you take your case to the BBB, you may give the Background Statements to the mediator or arbitrator, or otherwise use them in preparing your arguments.

You are free to take your complaint immediately to the Better Business Bureau program for mediation and then arbitration. Or, you can begin the arbitration process immediately, omitting further mediation efforts. Just fill out the enclosed form "Response to Volkswagen Mediation and Arbitration Program" and send it to us in the enclosed postage pre-paid envelope.

We look forward to hearing from you soon.

Sincerely,

Volkswagen of America [3]

[NO SETTLEMENT OFFER MADE]

**RESPONSE TO VOLKSWAGEN
MEDIATION AND ARBITRATION PROGRAM**

1. I want to use the BBB mediation and arbitration procedures. I understand that if mediation efforts are not successful, my local BBB will set an arbitration hearing date for less than 60 days after you receive this form. I have also read the enclosed brochure describing the BBB mediation and arbitration program, and the enclosed Background Statement(s).

2. I want to proceed to an arbitration hearing without using BBB's mediation services first. I understand that my local BBB will set an arbitration date for less than 60 days after you receive this form. I have also read the enclosed brochure describing the BBB mediation and arbitration program, and the enclosed Background Statement(s).

If you checked 1. or 2., please fill out the brief questionnaire on the back of this form. **Be sure to fill out the form carefully. The arbitrator will not be able to decide any issues not set out in the form, and will be able to give you only what you asked for on the form.**

Signature

Please print your name, address and telephone number where you can be reached during the day:

NAME: _____

ADDRESS: _____

CITY: _____ STATE _____

ZIP: _____

DAYTIME

PHONE () _____

EVENING

PHONE () _____

[4]

Be sure to fill out the form carefully, because it will determine what issues the arbitrator can decide.

PLEASE DESCRIBE BRIEFLY THE PROBLEM YOU HAD WITH YOUR CAR:

WHAT IS THE RESOLUTION YOU SEEK?

(The issues which can be arbitrated and the remedies available are explained in the paragraphs entitled "Beginning the AUTO LINE Program" and "The Arbitration Process" which you will find on pages XX and YY of the enclosed "BROCHURE FOR CLAIMANTS DESCRIBING THE AUTO LINE PROGRAM FOR OIL RELATED

CLAIMS ON 1974 - 1979 VOLKSWAGEN AND AUDI VEHICLES." The remedies available are governed by Rule 26. B and Rule 1. H. of the "SPECIAL MODIFIED RULES FOR THE ARBITRATION OF VOLKSWAGEN AND AUDI OIL RELATED CLAIMS." You may request a copy of these rules by calling the company at (800) ***-****.)

WHAT HAS THIS PROBLEM COST YOU?

(Please do not include any costs from loss of business, wages or personal injury.)

Repairs	\$ _____	Telephone calls	\$ _____
Rental Cars	\$ _____	Other direct costs	\$ _____
Towing	\$ _____	(Please specify.)	\$ _____
Storage fees	\$ _____		\$ _____
		TOTAL	\$ _____

(NOTE: The arbitrator will not be allowed to award you more than what you ask for on the claim form.)

DOES THE CAR STILL NEED REPAIRS FOR EXCESSIVE OIL CONSUMPTION OR FOR ENGINE DAMAGE FROM LACK OF OIL? YES ___ NO ___

IF YOU KNOW, WHAT REPAIRS DOES IT NEED? _____

WHAT IS THE APPROXIMATE CURRENT MILEAGE, IF YOU STILL OWN THE CAR? _____

VEHICLE IDENTIFICATION NO. (if known): _____

MODEL: _____ MODEL YEAR _____

PLEASE SEND IN COPIES OF ANY RECORDS, IF YOU HAVE THEM, OF THE AMOUNT OF YOUR CLAIM—BILLS, CHECKS, RECEIPTS, ETC. THIS WILL EXPEDITE PROCESSING AND POSSIBLE SETTLEMENT OF YOUR CLAIM.

ATTACHMENT F

**BROCHURE FOR CLAIMANTS DESCRIBING THE
AUTO LINE PROGRAM FOR OIL-RELATED CLAIMS
ON 1974 - 1979 VOLKSWAGEN AND AUDI VEHICLES**

WHAT IS AUTO LINE?

AUTO LINE is an out-of-court program run by Better Business Bureaus to settle disputes between consumers and certain automobile manufacturers who agree to arbitrate complaints about their products and repairs. It includes a mediation service to settle claims voluntarily.

AUTO LINE is being used to implement a settlement of a 1981 lawsuit between Volkswagen of America and The Federal Trade Commission (FTC). Because some special provisions apply, this brochure only describes the AUTO LINE program for problems involving excessive oil consumption and engine damage from lack of oil in 1974 to 1979 Volkswagen and Audi vehicles equipped with water-cooled, gasoline-powered engines distributed by Volkswagen of America, warranted in writing by Volk-

swagen of America, or certified by the manufacturer as meeting applicable federal safety and emissions standards. These vehicles were the subject of that lawsuit.

The FTC/Volkswagen/Audi settlement provides that any consumer who has a claim involving one of the oil-related problems noted above may use AUTO LINE to resolve it. This mediation and arbitration process is free of charge to the consumer. If efforts at mediation fail, or if the consumer elects to bypass the mediation phase, the BBB-appointed arbitrator will conduct a fact-finding hearing and make a decision in the matter. If the consumer accepts the decision, Volkswagen must do as the arbitrator directs.

This booklet describes the *BBB Auto Line* program and tells you how to participate in the arbitration process.

To participate in this AUTO LINE program, consumers are not required to presently own or lease their car. Volkswagen and the FTC have agreed that previous owners or consumers who leased these cars may seek to resolve oil problem claims through the AUTO LINE programs. In addition, Volkswagen has agreed with the FTC to use AUTO LINE to resolve any complaint that involves an engine component on one of its previous, current, or future model year vehicles. Also, VW has voluntary programs that [2] provide for arbitrating certain complaints for other parts of the car. However, if the dispute does not concern an oil-related problem with the 1974 to 1979 vehicles noted on page 1, you must write to Volkswagen or call your local Better Business Bureau to receive a different brochure about these programs.

The AUTO LINE Program offers:

- * A mediated resolution of the dispute by BBB staff;
- * Arbitration of claims if mediation has been unsuccessful or if the consumer elects to bypass mediation;
- * A broad-based pool of trained volunteers from the local community who, as neutral arbitrators, decide the case;
- * Arbitrators who are chosen by the consumer;
- * Procedures that are informal and allow consumers to present their own cases.

Under the AUTO LINE Program:

- * Mediation is voluntary;
- * The arbitration hearing must be completed within 60 days after the consumer enters the program;
- * Consumers can present their case in person, by telephone, or in writing;
- * Hearings are private unless the consumer agrees to have public observers;
- * An on-site vehicle inspection by an independent technical adviser to the arbitrator is available, if necessary;
- * Consumers can pursue other available remedies if they do not accept the arbitrator's decision;
- * Mediation and arbitration will be monitored by the Federal Trade Commission.

How Long Does Auto Line Take?

Volkswagen and the FTC have agreed that specific deadlines shall govern the mediation and arbitration process.

- * Whether or not you elect to mediate your claim, mediation and the arbitration hearing, if necessary, shall be completed within 60 days from the day Volkswagen receives [3] your request for arbitration and your completed forms. You will be notified in writing at least 8 days in advance of the date scheduled for the arbitration hearing.
- * If the arbitrator orders Volkswagen to give you a money settlement, it must be paid within 45 days of the date you accept the decision.
- * If the arbitrator orders Volkswagen to repair your car, the repair must be performed within 30 days of the date you accept the arbitrator's decision, unless the

arbitrator shortens or lengthens the deadline for good cause shown. If a repair is ordered, and you notify the BBB that the repair ordered was not performed or was performed unsatisfactorily, the arbitrator will have 30 days from the date you notify the BBB of that fact to forward a final decision.

- * These 45- and 30-day deadlines also apply to any settlement you may reach with Volkswagen during the mediation process.

If any of these deadlines are missed, Volkswagen may have violated the agreement between it and the FTC. If this happens, you may inform the FTC (Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 6th and Pennsylvania Ave., N.W., Washington, D.C. 20580). However, if a delay is caused by you (for example, if you request an extension of time in which to prepare for your hearing or if you ask that the hearing be rescheduled for a later, more convenient date), that time is not counted.

BEGINNING THE AUTO LINE PROGRAM

When you receive the form entitled "**Response to Volkswagen Mediation and Arbitration Program**" from Volkswagen, decide whether you wish to enter the AUTO LINE program. If you have not received "**Response to Volkswagen Mediation and Arbitration Program**" from Volkswagen, contact the company. Volkswagen's toll-free number is (800) 822-8987, or you can write to Volkswagen of America at 888 West Big Beaver Road, Troy, Michigan 48007. Tell Volkswagen your name, address, telephone number, the make and model year of your car, and whether your claim involves oil consumption, engine damage due to lack of oil or both.

When Volkswagen sends you the AUTO LINE program form, it may offer to settle your claim without requiring either mediation or arbitration. You must decide whether to take Volkswagen's initial settlement offer, or to proceed with participation in the arbitration program. [4]

If you decide to enter the *Auto Line* program, complete the form from Volkswagen with as much information as possible and promptly return it to Volkswagen. Try to include the make, model, year and, the Vehicle Identification Number (VIN) of the car, together with a statement describing your problem. These are the most critical pieces of information, but other parts of the form are also important, including what you want VW to do. This must be stated because the arbitrator's decision-making authority is limited to what you write on the form. (For example, if you request a refund of \$100, the arbitrator cannot award you more than the amount you have requested.) Remember, also, to enclose *copies* of any documents you have that may help prove your case. If you no longer have copies of repair bills or cancelled checks, you might contact the repair shop or your bank or credit card company for copies.

THE MEDIATION STAGE

If you choose to participate in mediation, the BBB will review your claim and then review the position of Volkswagen. The BBB will try to achieve an informal resolution by serving as an intermediary between you and Volkswagen. If you negotiate a settlement with Volkswagen yourself, let the BBB know, so such a settlement can be verified.

Should the BBB mediation efforts fail, an arbitration hearing will be scheduled automatically within 30 days of Volkswagen's receipt of your request for mediation and arbitration.

If at any time, you decide that you do not want the BBB to continue seeking a mediated settlement of your complaint, or if you prefer not to try mediation, notify the BBB in writing. In either case, the agreement between the FTC and Volkswagen requires that the arbitration hearing be scheduled and held within 60 days of Volkswagen's receipt of your request for mediation or arbitration.

THE ARBITRATION PROCESS

It is important for you to know what issues Volkswagen will arbitrate and those which it need not arbitrate. Volkswagen **must** arbitrate your claims for the cost of completed repairs, of needed repairs and for expenses related to your complaint of oil consumption or engine damage from lack of oil. Such expenses also include the cost of towing, rental cars, telephone calls, storage fees for your car, and hotel bills, and any amount by which you claim that the resale price of your car was reduced because of oil consumption or engine damage which had not been [5] repaired when the car was sold. The maximum amount you may claim is what you paid for the car plus related expenses.

Issues that may **not** be arbitrated in the BBB program include punitive damages, loss of business income, insurance claims, personal injury and property damage claims, and allegations of fraud or other violations of criminal law. Such issues are best dealt with in a court of law, and you are free to pursue such claims outside the context of arbitration.

Who Are The Arbitrators?

Thousands of volunteers from all walks of life serve the BBB as arbitrators—decision makers—in these cases. They include professionals, educators, retirees, lawyers, housewives, and others, who have gone through a special training program. Arbitrators are not employed by the BBB, nor are they paid for their services. They perform this duty as a public service. All arbitrators are required to disclose, as a condition of hearing a case, any financial, commercial, professional, social or familial relationship—no matter how remote—with any of the parties or their counsel. No more than one-third of the arbitrators on the selection list sent to you by the BBB may be persons at a supervisory level in a company that makes, services, or sells a product. In all cases, your dispute will be decided by someone who is completely independent and has no vested interest in the outcome.

Choosing An Arbitrator

Although state law and BBB policies offer various means of choosing arbitrators, normally you will be given a list of trained community volunteers together with a brief biography of each. You will be asked to cross off any arbitrator with whom you may have a business, financial, or social relationship, to select the arbitrator who is your first choice, and to indicate your priority preference ("1", "2," "3," etc.) for the remaining names. Where state law requires it, a panel of three arbitrators may decide your case. VWoA will take no part in the selection of the arbitrator.

After you have returned your arbitrator choices to the BBB, along with an indication of the times when you will *not* be available to attend a hearing, the BBB will tell you when and where the hearing is to be held. If you have chosen to present your case in writing or by telephone, you also must make that choice known to the BBB. [6]

What Does Arbitration Cost?

The agreement between Volkswagen and the FTC requires Volkswagen to pay the costs of AUTO LINE. You will have no costs unless you choose to bring your own paid witnesses or retain an attorney. Copies of records and documents that are a part of the hearing will be available to you at any time for a reasonable cost. Also, if you want a recording of the entire proceedings, you must pay recording expenses.

The Hearing

The actual hearing is an informal session. It is designed to ensure that you and Volkswagen's representative get a full opportunity to describe the dispute to the arbitrator.

Normally, arbitration hearings are held at the BBB during regular working hours; however, the BBB will schedule a time and place convenient to you and to the others involved.

The hearings usually feature in-person presentations, during which each side presents its case to an arbitrator and all have an opportunity to ask questions, including the arbitrator. Most consumers choose to have in-person hearings, and the BBB believes this is the best way of getting all the facts before the arbitrator. However, you also have the option of presenting your case by telephone or in writing.

A Volkswagen representative usually will attend the hearing to present its case. However, Volkswagen, at its option, also may present its case by telephone or mail (if you appear in person), or by mail (if you present your case by telephone). You always may present your case in person, even if Volkswagen does not.

You may be represented by an attorney or other spokesperson, bring witnesses and present documents, bills, and any other information to prove your case. If you are being represented by a lawyer, tell the BBB as soon as possible so that Volkswagen can be given an opportunity to get legal counsel.

At no time may you or your representative, or Volkswagen or its representative contact the arbitrator without the other party being present. All communications relating to the arbitration must be directed through the BBB. It will forward all information and make sure the other side gets copies when necessary. [7]

When Are Inspections And Technical Advisers Involved?

Sometimes the arbitrator will want to see the car or the repair work to get a full understanding of the facts. The BBB will send you a notice of the inspection time and place. You should be present for such an inspection, and you have a right to bring your own expert if you wish. Should the arbitrator request a technical adviser, the BBB will identify experts in the community who have no relationship with any party and are not potential competitors of Volkswagen.

If you no longer own or lease the car for which the claim is made, you will not be penalized in any way because the car is unavailable for inspection.

HOW TO PREPARE FOR ARBITRATION?

Before coming to the hearing, you should prepare an outline of your argument to help you in your presentation. In that way, you won't forget important points in your favor. To assist you in your preparation, a checklist is given at the end of this section.

Also, before coming to the hearing, you should prepare a list of questions you want to ask Volkswagen. A careful reading of the Background Statements provided to you by VW and the FTC with the letter informing you of the program's availability should assist you in your preparation. During the hearing, you can add to your list of questions. Include anything new that occurs to you when you hear what the other side has to say.

After you state the facts as you see them, Volkswagen has a right to ask you questions. After Volkswagen has stated the facts as they see them, you have the same right to ask them questions. To clarify uncertain areas and to gain a fuller understanding of the dispute, the arbitrator also is trained to ask questions.

After each side has presented its case and the questioning is completed, you should be prepared to give a summary of your position. Try to describe the weak points in Volkswagen's case, deal with any questions that have not otherwise been answered, and tell the arbitrator exactly what kind of decision you want and why.

Remember that the sole purpose of the hearing is to allow the arbitrator to gather and sort the facts and thus make a fair decision. You should be prepared to convince the arbitrator that your position is right and that your opponent's is wrong. [8]

A friendly, sincere approach works best. You are there because you and Volkswagen have a disagreement, but keep that disagreement factual and within the bounds of normal courtesy and conventional language. Bombarding an arbitrator with technical jargon will not be productive, nor will rudeness, arguing with the arbitrator, or belittling your opponent. Put yourself in the arbitrator's position—a volunteer whose only purpose is to help you resolve your dispute. Use common sense about how to proceed.

An Arbitration Checklist

Given here is a checklist to help you prepare for your arbitration hearing. Use whatever items are appropriate to your case; some may not apply.

1. Collect and bring to the hearing all available written information relating to the car and your dispute, especially those noted below. Bring original documents, if possible, and copies for the arbitrator and for the Volkswagen representative. If you do not have documents, sometimes you can get copies from your repair shop, bank, or credit card company. Remember that, although documents are helpful, you are still eligible for a hearing even if you do not have them. Documents that might be useful include:

- * purchase contract/finance agreements; purchase date, price, etc.;
- * vehicle repair, service, or maintenance records;
- * warranties or service contracts which may be applicable;
- * proof of repair or maintenance payments;
- * correspondence between you and the dealer or manufacturer;
- * copies of the Background Statements which Volkswagen sent you regarding "Oil Usage" or "Engine Damage From Lack of Oil." You may find these fact sheets useful in preparing your presentation. If you have not received the appropriate Background Statements, be sure to get them before the hearing from Volkswagen or from the FTC. (Federal Trade Commission, Division of Enforcement, 6th and Pennsylvania Ave., N.W., Washington, D.C. 20580)

2. List any witnesses who may have information about your complaint, such as mechanics or sales personnel. Try to contact them, if you want them to testify in person or to submit written information. You are responsible for your [9] witnesses' submission of information. If you want them to testify in person, keep them informed about the time and place of the hearing.

3. List in chronological order the actions you took to resolve this dispute. Clearly state what the problem is, and why you think the company is responsible.

- * To whom did you first speak?
- * When did this happen?
- * What did they tell you, and/or what action did they take?
- * Were other business/service persons involved?
 - Who?
 - When?
 - Why?
 - What did they tell you and/or what action did they take?

(Written statements or the presence of witnesses are preferable to your statements, if these are important to your case.)

WHAT HAPPENS AFTER THE ARBITRATOR MAKES A DECISION?

The arbitrator may take up to 10 days after the hearing to make a decision. The written decision and the arbitrator's reasons for the judgment will be sent to you. With that decision will be a form which asks you to accept or reject it.

If you accept it, Volkswagen is legally bound to comply. If the arbitrator's decision awards you money, Volkswagen must pay you that amount within 45 days of the date you accept the decision. If the arbitrator orders Volkswagen to repair your car, that repair must be performed within 30 days of the date you accept the arbitrator's decision, unless the arbitrator modifies the deadline for good cause shown. If you notify the BBB that the repair ordered was not performed or was performed unsatisfactorily, the arbitrator will have 30 days from the date you notify the BBB of that fact to forward a final decision.

If you do not think the manufacturer has complied with the decision, you first should contact the BBB or the FTC (Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 6th and Pennsylvania Ave., N.W., Washington, D.C. 20580 (202) 326-3037). However, you also may take the award to an appropriate court and have it enforced as if it were a judgment or order of the court—without a rehearing of the case.

If either party believes the final decision contains errors of fact or is unclear, the party may petition the BBB to request [10] the arbitrator to modify or clarify the matter. This is done by making a written request to the BBB which, if it finds the request to have merit, will make a copy for the other party's response, and then will send both documents to the arbitrator. The arbitrator's response to such a request is final.

Of course, if you reject the arbitrator's decision, Volkswagen is not obligated to do anything. You then are free to pursue other legal courses of action.

CONFIDENTIALITY OF PROCEEDINGS

It is BBB policy that the mediation and arbitration process is private and confidential. The BBB will not release results of your case to the media or to any other group or organization. It may, however, release records when this is required by law, by the Federal Trade Commission, or by judicial or governmental administrative proceedings. Records are maintained by the BBB to comply with the audit and record-keeping requirements of the FTC, which will monitor this program.

If you have any problems or complaints about the arbitration process, contact the Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 6th and Pennsylvania Ave., N.W., Washington, D.C. 20580.

ATTACHMENT G

BROCHURE FOR CLAIMANTS DESCRIBING THE AUTO LINE PROGRAM FOR INTERNAL ENGINE COMPONENT CLAIMS ON VOLKSWAGEN AND AUDI VEHICLES

WHAT IS AUTO LINE?

AUTO LINE is an out-of-court program run by Better Business Bureaus to settle disputes between consumers and certain automobile manufacturers who agree to arbitrate complaints about their products and repairs. It includes a mediation service to settle claims voluntarily.

AUTO LINE is being used to implement a settlement of a 1981 lawsuit between Volkswagen of America and The Federal Trade Commission (FTC). As part of that settlement, Volkswagen will mediate and arbitrate consumer complaints involving the failure, malfunction, repair or replacement of internal engine components on any Volkswagen of Audi vehicle, regardless of model year distributed by Volkswagen of America, warranted in writing by Volkswagen of America, or certified by the manufac-

turer as meeting applicable federal safety and emissions standards. The engine components subject to the AUTO LINE program consist of all gasoline and diesel engine parts, components, and subassemblies included within the complete short block and cylinder head assemblies, including the short block and cylinder head, camshafts, valve train components, timing gears, flywheels, pistons, piston rings, crankshafts, connecting rods, and bearings, oil pumps, and associated fasteners, seals and gaskets. Because some special provisions apply, this brochure only describes the AUTO LINE program for problems involving engine components on Volkswagen and Audi vehicles.

The FTC/Volkswagen/Audi settlement provides that anyone who owns or leases one of those vehicles at the time the claim is referred to the BBB who has a claim involving one or more of the engine components noted above may use AUTO LINE to resolve it. **If the consumer sells the car before the hearing, though, some special procedures must be followed. SEE page 7 for these important instructions.** This mediation and arbitration process is free of charge to the consumer. If efforts at mediation fail, or if the consumer elects to bypass the mediation phase, the BBB-appointed arbitrator will conduct a fact-finding hearing and make a decision in the matter. If the consumer accepts the decision, Volkswagen must do as the arbitrator directs. This booklet [2] describes the BBB AUTO LINE program and tells you how to participate in the arbitration process.

In addition, Volkswagen has agreed with the FTC to use AUTO LINE to resolve problems involving excessive oil consumption and engine damage due to lack of oil in 1974-1979 Volkswagen and Audi vehicles equipped with water-cooled, gasoline-powered engines. Also, VW has a voluntary program to arbitrate certain complaints for other parts of the car. If your dispute concerns an oil-related problem with the 1974 to 1979 vehicles or a problem with another component (such as the brakes), you must write to Volkswagen or call your local Better Business Bureau to receive a different brochure about these programs.

The AUTO LINE Program offers:

- * A mediated resolution of the dispute by BBB staff;
- * Arbitration of claims if mediation has been unsuccessful or if the consumer elects to bypass mediation;
- * A broad-based pool of trained volunteers from the local community who, as neutral arbitrators, decide the case;
- * Arbitrators who are chosen by the consumer;
- * Procedures that are informal and allow consumers to present their own cases.

Under the AUTO LINE Program:

- * Mediation is voluntary;
- * The arbitration hearing must be completed within 60 days after the consumer enters the program;
- * Consumers can present their case in person, by telephone, or in writing;
- * Hearings are private unless the consumer agrees to have public observers;
- * An on-site vehicle inspection by an independent technical adviser to the arbitrator is available, if necessary;
- * Consumers can pursue other available remedies if they do not accept the arbitrator's decision;
- * Mediation and arbitration will be monitored by the Federal Trade Commission. [3].

How Long Does Auto Line Take?

Volkswagen and the FTC have agreed that specific deadlines shall govern the mediation and arbitration process.

- * If you elect to mediate your claim, mediation and arbitration, if necessary, shall be completed within 60 days from the day the BBB receives information stating

your model, model year, Vehicle Identification Number and a statement describing the nature of your complaint.

- * If the arbitrator orders Volkswagen to give you a money settlement, it must be paid within 45 days of the date you accept the decision.
- * If the arbitrator orders Volkswagen to repair your car, the repair must be performed within 30 days of the date you accept the arbitrator's decision, except that the 30 day deadline for repair can be shortened or lengthened at the hearing for good cause shown. If a repair is ordered, and you notify the BBB that the repair ordered was not performed or was performed unsatisfactorily, the arbitrator will have 30 days from the date you notify the BBB of that fact to forward a final decision.
- * These 45- and 30-day deadlines also apply to any settlement you may reach with Volkswagen during the mediation process.

If any of these deadlines are missed, Volkswagen may have violated the agreement between it and the FTC. If this happens, you may inform the FTC (Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 6th and Pennsylvania Ave., N.W., Washington, D.C. 20580). However, if a delay is caused by you (for example, if you request an extension of time in which to prepare for your hearing or if you ask that the hearing be rescheduled for a later, more convenient date), that time is not counted.

BEGINNING THE AUTO LINE PROGRAM

To enter the AUTO LINE program you must obtain the form entitled "Agreement to Arbitrate" from the BBB. To obtain the "Agreement to Arbitrate" from the BBB, call the BBB's toll-free number, (800-)_____, or write to the BBB at _____ . Tell the BBB your name, address, telephone number, the make and model year of your car, and whether your claim involves an engine component.

If you wish to enter the AUTO LINE program, complete the BBB form with as much information as possible and promptly return it [4] to the BBB. Try to include the make, model, year and, the Vehicle Identification Number (VIN) of the car, together with a statement describing your problem. These are the most critical pieces of information, but other parts of the form are also important, including what you want VW to do. This must be stated because the arbitrator's authority is limited to what you write on the form. (For example, if you request a refund of \$100, the arbitrator cannot award you more than the amount you have requested.) Remember, also, to enclose *copies* of any documents you have that may help prove your case. If you no longer have copies of repair bills or cancelled checks, you might contact the repair shop or your bank or credit card company for copies.

THE MEDIATION STAGE

If you choose to participate in mediation, the BBB will review your claim and then review the position of Volkswagen. The BBB will try to achieve an informal resolution by serving as an intermediary between you and Volkswagen. If you negotiate a settlement with Volkswagen yourself, let the BBB know, so such a settlement can be verified.

Should the BBB mediation efforts fail, an arbitration hearing will be scheduled automatically.

If at any time, you decide that you do not want the BBB to continue seeking a mediated settlement of your complaint, or if you prefer not to try mediation, notify the BBB in writing. In either case, the agreement between the FTC and Volkswagen requires that the arbitration hearing be completed within 60 days of your request for mediation or arbitration.

THE ARBITRATION PROCESS

It is important for you to know what issues Volkswagen will arbitrate and those which it need not arbitrate. Volkswagen **must** arbitrate your claims for the cost of completed repairs,—including the estimated cost for a repair involving internal engine components that had not been performed but that was still needed when you sold the car (**BE SURE to follow the instructions on page 7, if you decide to sell your car**), and for expenses related to your complaint. Examples of such expenses include the cost of towing, rental cars, telephone calls, storage fees for your car, and hotel bills. The maximum amount you may claim is what you paid for the car plus related expenses.

Issues that may **not** be arbitrated in the BBB program include punitive damages, loss of business income, insurance claims, personal injury and property damage claims, and allegations of fraud or other violations of criminal law. Such issues are best [5] dealt with in a court of law, and you are free to pursue such claims outside the context of arbitration.

Remember, this brochure only covers the program to resolve engine problems. If your complaint concerns another component, you may be eligible under VW's voluntary program. Call your local BBB office for details.

Who Are The Arbitrators?

Thousands of volunteers from all walks of life serve the BBB as arbitrators—decision makers—in these cases. They include professionals, educators, retirees, lawyers, housewives, and others, who have gone through a special training program. Arbitrators are not employed by the BBB, nor are they paid for their services. They perform this duty as a public service. All arbitrators are required to disclose, as a condition of hearing a case, any financial, commercial, professional, social or familial relationship—no matter how remote—with any of the parties or their counsel. No more than one-third of the arbitrators on the selection list sent to you by the BBB may be persons at a supervisory level in a company that makes, services, or sells a product. In all cases, your dispute will be decided by someone who is completely independent and has no vested interest in the outcome.

Choosing An Arbitrator

Although state law and BBB policies offer various means of choosing arbitrators, normally you will be given a list of trained community volunteers together with a brief biography of each. You will be asked to cross off any arbitrator with whom you may have a business, financial, or social relationship, to select the arbitrator who is your first choice, and to indicate your priority preference ("1", "2", "3," etc.) for the remaining names. Where state law requires it, a panel of three arbitrators may decide your case. VWoA will take no part in the selection of the arbitrator.

After you have returned your arbitrator choices to the BBB, along with an indication of the times when you will *not* be available to attend a hearing, the BBB will tell you when and where the hearing is to be held. If you have chosen to present your case in writing or by telephone, you also must make that choice known to the BBB. [6]

What Does Arbitration Cost?

The agreement between Volkswagen and the FTC requires Volkswagen to pay the costs of AUTO LINE. You will have no costs unless you choose to bring your own paid witnesses or retain an attorney. Copies of records and documents that are a part of the hearing will be available to you at any time for a reasonable cost. Also, if you want a recording of the entire proceedings, you must pay recording expenses.

The Hearing

The actual hearing is an informal session. It is designed to ensure that you and Volkswagen's representative get a full opportunity to describe the dispute to the arbitrator.

Normally, arbitration hearings are held at the BBB during regular working hours; however, the BBB will schedule a time and place convenient to you and to the others involved.

The hearings usually feature in-person presentations, during which each side presents its case to an arbitrator and all have an opportunity to ask questions, including the arbitrator. Most consumers choose to have in-person hearings, and the BBB believes this is the best way of getting all the facts before the arbitrator. However, you also have the option of presenting your case by telephone or in writing.

A Volkswagen representative usually will attend the hearing to present its case. However, Volkswagen, at its option, also may choose to present its case by telephone or mail (if you appear in person), or by mail (if you present your case by telephone). You always may present your case in person, even if Volkswagen does not.

You may be represented by an attorney or other spokesperson, bring witnesses and present documents, bills, and any other information to prove your case. If you are being represented by a lawyer, tell the BBB as soon as possible so that Volkswagen can be given an opportunity to get legal counsel.

At no time may you or your representative or Volkswagen or its representative contact the arbitrator without the other party being present. All communications relating to the arbitration must be directed through the BBB. It will forward all information and make sure the other side gets copies when necessary.

When Are Inspections And Technical Advisers Involved?

Sometimes the arbitrator will want to see the car or the repair work to get a full understanding of the facts. The BBB [7] will send you a notice of the inspection time and place. You should be present for such an inspection, and you have a right to bring your own expert if you wish. Should the arbitrator request a technical adviser, the BBB will identify experts in the community who have no relationship with any party and are not potential competitors of Volkswagen.

WHAT TO DO IF YOU WANT TO SELL YOUR CAR RIGHT AWAY

If you decide to sell your car after you notify the BBB, but before the arbitration hearing, this is what you must do to remain eligible for the arbitration program:

1. You must notify Volkswagen at least ten days in advance that you intend to sell the vehicle; and

2. You must give Volkswagen an opportunity to inspect the vehicle before it is sold;

If you sell the vehicle before the problem that prompted the claim is repaired, your recovery will be limited to the estimated repair costs (plus expenses for towing, storage fees, rental car costs, telephone and hotel bills);

If you arbitrate a claim for an unrepaired problem on a car that you sold, the party that had the problem repaired is not eligible for arbitration for that problem; likewise, you may not arbitrate a claim for which a previous owner of the car had already accepted an arbitration award.

HOW TO PREPARE FOR ARBITRATION?

Before coming to the hearing, you should prepare an outline of your argument to help you in your presentation. In that way, you won't forget important points in your favor. To assist you in your preparation, a checklist is given at the end of this section.

Also, before coming to the hearing, you should prepare a list of questions you want to ask Volkswagen. During the hearing, you can add to your list of questions. Include anything new that occurs to you when you hear what the other side has to say.

After you state the facts as you see them, Volkswagen has a right to ask you questions. After Volkswagen has stated the facts as they see them, you have the same right to ask them questions. To clarify uncertain areas and to gain a fuller understanding of the dispute, the arbitrator also is trained to ask questions. [8]

After each side has presented its case and the questioning is completed, you should be prepared to give a summary of your position. Try to describe the weak points in Volkswagen's case, deal with any questions that have not otherwise been answered, and tell the arbitrator exactly what kind of decision you want and why. Remember that the sole purpose of the hearing is to allow the arbitrator to gather and sort the facts and thus make a fair decision. You should be prepared to convince the arbitrator that your position is right and that your opponent's is wrong.

A friendly, sincere approach works best. You are there because you and Volkswagen have a disagreement, but keep that disagreement factual and within the bounds of normal courtesy and conventional language. Bombarding an arbitrator with technical jargon will not be productive, nor will rudeness, arguing with the arbitrator, or belittling your opponent. Put yourself in the arbitrator's position—a volunteer whose only purpose is to help you resolve your dispute. Use common sense about how to proceed.

An Arbitration Checklist

Given here is a checklist to help you prepare for your arbitration hearing. Use whatever items are appropriate to your case; some may not apply.

1. Collect and bring to the hearing all available written information relating to the car and your dispute, especially those noted below. Bring original documents, if possible, and copies for the arbitrator and for the Volkswagen representative. If you do not have documents, sometimes you can get copies from your repair shop, bank, or credit card company. Remember that, although documents are helpful, you are still eligible for a hearing even if you do not have them. Documents that might be useful include:

- * purchase contract/finance agreements; purchase date, price, etc.;
- * vehicle repair, service, or maintenance records;
- * proof of repair or maintenance payments;
- * correspondence between you and the dealer or manufacturer;

2. List any witnesses who may have information about your complaint, such as mechanics or sales personnel. Try to contact them, if you want them to testify in person or to submit written information. You are responsible for your [9] witnesses' submission of information. If you want them to testify in person, keep them informed about the time and place of the hearing.

3. List in chronological order the actions you took to resolve this dispute. Clearly state what the problem is, and why you think the company is responsible.

- * To whom did you first speak?
- * When did this happen?
- * What did they tell you, and/or what action did they take?
- * Were other business/service persons involved?

-Who?

-When?

-Why?

-What did they tell you and/or what action did they take?

(Written statements or the presence of witnesses are preferable to your statements, if these are important to your case.)

WHAT HAPPENS AFTER THE ARBITRATOR MAKES A DECISION?

The arbitrator may take up to 10 days after the hearing to make a decision. The written decision and the arbitrator's reasons for the judgment will be sent to you. With that decision will be a form which asks you to accept or reject it.

If you accept it, Volkswagen is legally bound to comply. If the arbitrator's decision awards you money, Volkswagen must pay you that amount within 45 days of the date you accept the decision. If the arbitrator orders Volkswagen to repair your car, that repair must be performed within 30 days of the date your acceptance of the arbitrator's decision is received by the BBB, unless the arbitrator rules, for good cause, that the 30 day deadline should be modified. If you notify the BBB that the repair ordered was not performed or was performed unsatisfactorily, the arbitrator will have 30 days from the date you notify the BBB of that fact to forward a final decision.

If you do not think the manufacturer has complied with the decision, you first should contact the BBB or the FTC (Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 6th and Pennsylvania Ave., N.W., Washington, D.C. 20580 (202) 326-3037). However, you also may take the award to an appropriate court and have it enforced as if it were a judgment or order of the court—without a rehearing of the case. [10]

If either party believes the final decision contains errors of fact or is unclear, the party may petition the BBB to request the arbitrator to modify or clarify the matter. This is done by making a written request to the BBB which, if it finds the request to have merit, will make a copy for the other party's response, and then will send both documents to the arbitrator. The arbitrator's response to such a request is final.

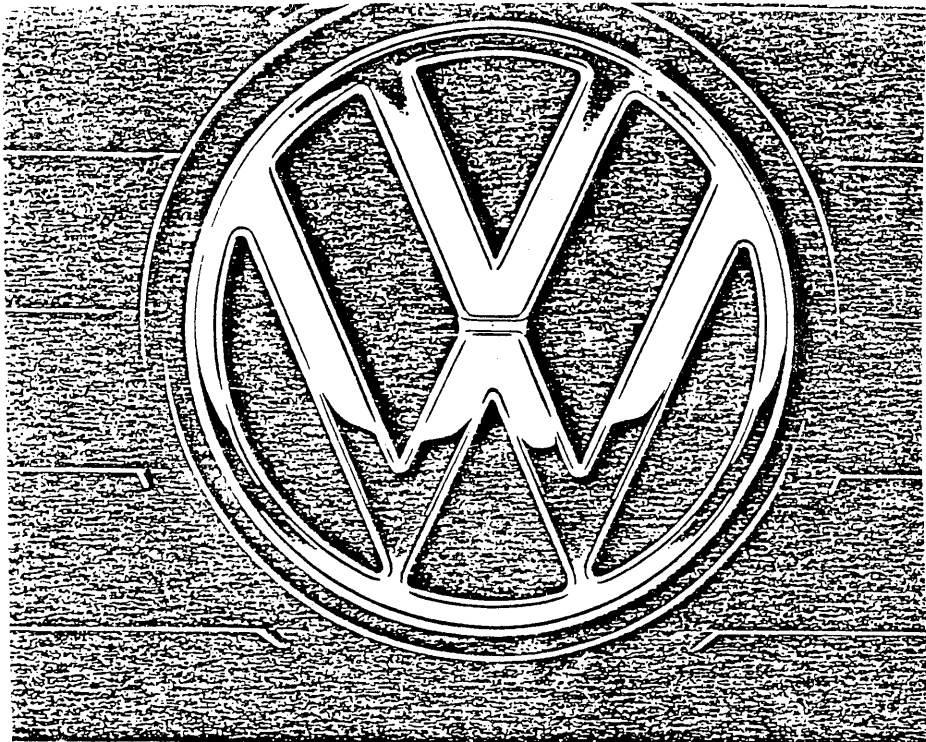
Of course, if you reject the arbitrator's decision, Volkswagen is not obligated to do anything. You then are free to pursue other legal courses of action.

CONFIDENTIALITY OF PROCEEDINGS

It is BBB policy that the mediation and arbitration process is private and confidential. The BBB will not release results of your case to the media or to any other group or organization. It may, however, release records when this is required by law, by the Federal Trade Commission, or by judicial or governmental administrative proceedings. Records are maintained by the BBB to comply with the audit and record-keeping requirements of the FTC, which will monitor this program.

If you have any problems or complaints about the arbitration process, contact the Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 6th and Pennsylvania Ave., N.W., Washington, D.C. 20580.

ATTACHMENT H(1)



Now, every Volkswagen is even more responsive.

At Volkswagen, we're proud to produce automobiles that are known for performance as well as value. Performance is important to us as a company, too.

For example, in the unlikely event a Volkswagen doesn't perform up to your expectations, we've set up a program to make sure you get a prompt response. And a fair one. In cooperation with the Council of Better Business Bureaus, we have a free

third-party arbitration program. The program benefits all current and, in some cases, former Volkswagen owners.

To resolve a problem quickly, first see your Volkswagen dealer. Or call 1-800-123-4567 to see if our problem-solving program can work for you.

We hope you'll never need this responsive program. But it's available if you do.

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Decision and Order

ATTACHMENT H (2)

That option is a special third-party arbitration program that the people of Audi have arranged with the Better Business Bureau.

At Audi, we've been consistently producing technologically advanced automobiles of the highest quality for over fifty years. And we take great pride in our tradition of excellent service.

But if, for some reason, you should ever need an extra voice in solving any product-related questions, all you

have to do is call toll-free 1-800-822-AUDI.

The program benefits all current and, in some cases, former Audi owners. Of course, the program is free. Just ask your dealer for the complete details.

Naturally, the first step in solving any problem is your owner's manual, and then your dealer.

But it never hurts to have an extra option, even if you never choose to exercise it.

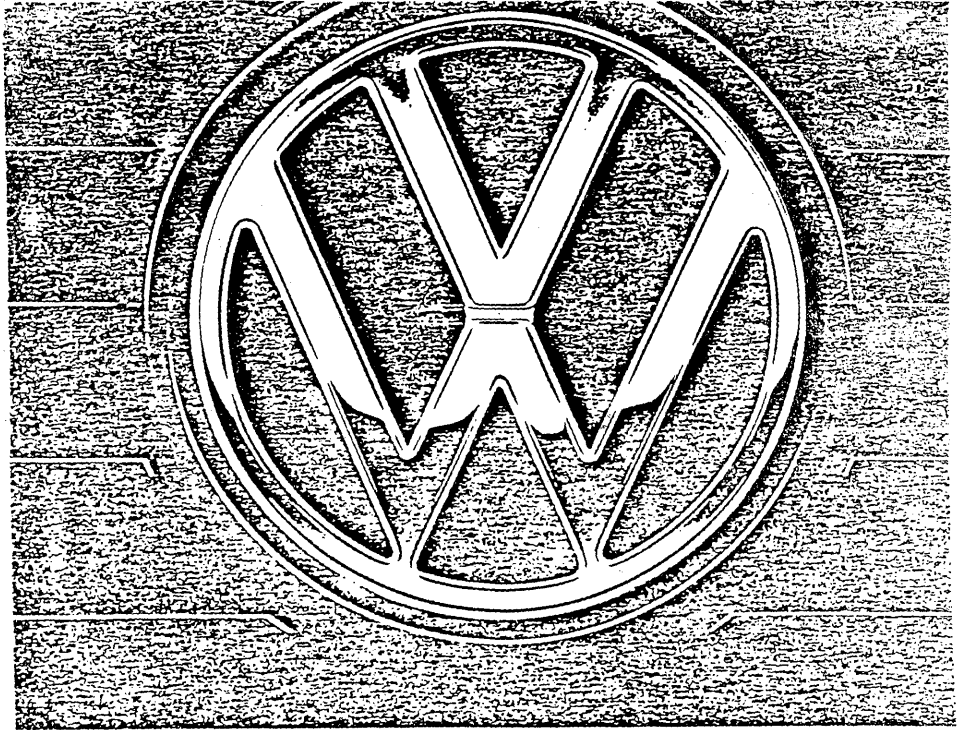


© 1987 Audi

It comes with an option
we don't think you'll ever ask for.



ATTACHMENT I (1)



Now, every Volkswagen is even more responsive.

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*Former owners of 1974-79 water-cooled Volkswagen vehicles with gasoline engines who have either unsatisfactory or consistent or engine damage from lack of lubrication are also eligible for our program.

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Decision and Order

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It comes with an option
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*Previous owners of 1974-1979 Audi vehicles with gasoline engines who have claims for unsatisfactory oil consumption or engine damage from lack of lubrication are also eligible for our program.

CONCURRING STATEMENT OF CHAIRMAN DANIEL OLIVER

The consent order in this matter contains a number of injunctive relief provisions, and provides consumer redress in the form of a Commission-supervised arbitration process administered by the Better Business Bureau. Although I believe these provisions satisfy the Commission's concerns, the negotiated order is not one I would have chosen. I am nevertheless reluctant to suggest order revisions that might throw this matter back into the costly litigation that has already consumed many years of Commission resources. Accordingly, I have voted in favor of final acceptance of the consent order.

Two aspects of the final order concern me. First, I would have preferred an order without the prospective redress provisions in the arbitration mechanism. That mechanism resolves not only consumer disputes regarding the defects cited in the complaint, but also other internal engine component problems. Although this mechanism is similar to the relief obtained from another automobile manufacturer in a related matter (see *General Motors* consent order, D-9145), I do not favor its general application.

To begin with, the arbitration mechanism is needlessly regulatory. If Volkswagen ("VWoA") wants to negotiate and resolve consumer complaints through a Better Business Bureau arbitration scheme, it should certainly be free to do so. However, active government supervision of such a scheme forces the government to maintain an active presence in the operation of a domestic auto seller for the next 8 years. Moreover, the prospective redress provisions will grant relief primarily to consumers who were not injured by the violations alleged in the complaint. In future consent orders where consumer redress is warranted, I would prefer redress provisions that confer benefits on the injured parties.

I would also have preferred to see the Commission—as an exercise of its discretion—permit VWoA to exclude members of two class actions from the coverage of the "specified claims" portion of the consent order.¹ The *Estruch* and *Nosse* class action settlements were statewide settlements—respectively filed in New York and California state courts—that established arbitration programs for repair and expense claims like those covered under the "specified claims" provisions, using procedures similar to those created by the Commission order.

¹ Three class actions have been settled or decided since VWoA signed the proposed order on April 14, 1986. A jury verdict was rendered in favor of VWoA in a North Carolina federal district court class action in *Deadwyler v. Volkswagen of America, Inc. and Volkswagen AG*, ST-C-85-38 (W.D.N.C. June 19, 1987), appeal pending (hereinafter *Deadwyler*). A class action settlement was approved by a California state court in *Nosse, et al. v. Volkswagen of America, Inc.*, No. 780024 (Cal. Supr.Ct., City and County of San Francisco, July 1, 1986) (hereinafter *Nosse*). A second settlement agreement was approved by a New York state court in *Estruch, et al. v. Volkswagen of America, Inc. et al.*, Index No. 1733/81 (N.Y. Sup.Ct., Monroe County, April 23, 1987) (hereinafter *Estruch*).

In *Estruch*, all class members were informed of the existence of the Commission's arbitration program, and the notice to that effect made it clear to class members that they had two mutually exclusive choices: they could either (1) opt out of the class and file their claims under the Commission program, or (2) remain in the class and not participate in the Commission program. Because they were able to make a knowing choice between the *Estruch* class action and the Commission order, I believe that the "specified claims" portion of the Commission order should not cover members of the *Estruch* class.²

In *Nosse*, class members were not informed of the existence of the Commission arbitration program.³ However, the *Nosse* settlement established a redress program that provides many of the same benefits available under the "specified claims" portion of the Commission order.⁴ Class members who are dissatisfied with the redress that VWoA offers in disposition of their claims may appeal through arbitration procedures similar to those incorporated into the Commission program. In short, VWoA's compliance with the terms of the *Nosse* settlement in effect satisfies its obligations under the Commission order with respect to members of the *Nosse* class.

There is no reason to require VWoA to establish a program in California to handle claims that have already been evaluated and determined. Indeed, requiring a duplicative program may mislead consumers as to the utility of participating in the Commission program. Arbitrators handling claims under the Commission order are not likely to award redress that duplicates redress already received under the *Nosse* settlement.

I have voted in favor of final acceptance of the Commission order because I believe that it is clearly preferable to the litigation alternative. However, for the foregoing reasons, I would prefer an order that more closely adhered to the contours of the complaint in this matter, and that did not duplicate the redress already available to consumers under state court settlements.

² In *Deadwyler*, the notice to class members also mentioned the Commission order. However, in my view, the notice did not make it sufficiently clear to class members that they had to choose between the class action and the Commission program. I therefore would not exclude members of the *Deadwyler* class from participation in the Commission program.

³ The notice mailed to *Nosse* class members did include a standard waiver provision stating that "[t]he settlement of this action will bar any class member from prosecuting any further claims, including contract, warranty, fraud and punitive damages, which have been or could have been asserted relating to the matters alleged in this action." It did not, however, refer to the Commission order.

⁴ For example, VWoA will automatically pay 100 percent of fully documented reimbursable repairs and incidental expenses incurred during the first 50,000 vehicle miles—and pay 50 percent of such expenses incurred between 50,000 to 75,000 vehicle miles—for claims that would be characterized as "specified claims" under the Commission order. Claims not fully documented will be rejected by VWoA only where VWoA has substantial reason to question their validity or amount.