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Mastering lemon-law mediation and the binding arbitration of attorney fees under AB 1755

THE LAW HAS CHANGED THE WAY LEMON-LAW CLAIMS ARE HANDLED IN CALIFORNIA

If you've been to court recently, you've likely noticed there are significantly more lemon-law cases on the docket than there used to be. In just over a decade, there has been a five-fold increase in lemon-law filings, going from approximately 4,500 claims filed in 2015 to over 25,000 in 2024. To address the strain being placed on the court system by this massive influx of lemon-law claims, the Legislature passed AB 1755, found at Code of Civil Procedure sections 871.20 – 871.28, and in doing so fundamentally changed the way lemon-law claims are handled in California.

The "Lemon Law"

The Song-Beverly Consumer Warranty Act, more commonly known as the "lemon law," is the statute in California that sets forth legal obligations for manufacturers, distributors, and warrantors of consumer goods and new motor vehicles. Beginning at California Civil Code section 1790, this statute lays the foundation for the most common lemon-law causes of action which include breach of implied warranty, breach of express warranty, failure to promptly repurchase or replace the vehicle after being unable to conform the new motor vehicle after a reasonable number of attempts, and failure to commence repairs within a reasonable time and complete them within 30 days.

If a consumer can prove a violation of the act, the most common remedies are restitution (also known as a buyback or repurchase) or replacement of the vehicle. In addition to actual damages, if the consumer can prove the violation was willful, they may be eligible for a civil penalty of up to two times the actual damages. If the potential for recovery of damages was not enticing enough, perhaps what makes the lemon law so appealing to practitioners and consumers alike is the one-way fee-shifting provision that allows consumers to recover their reasonable attorney's fees and costs if they are the prevailing party.

When it comes to Alternative Dispute Resolution in the lemon law space, AB 1755 implemented several key changes affecting both mandatory mediation for litigation cases as well as arbitration requirements for pre-litigation fee disputes.

The new mediation requirements

Although mediation has long been common in Song-Beverly cases, the new statutory structure effectively institutionalizes mediation as a central component of case resolution. California Code of Civil Procedure section 871.26, subdivision (d), now makes timely mediation a mandatory requirement instead of an option. There are two deadlines to be aware of: The first requires scheduling of the mediation within 90 days after the filing of the answer or other responsive pleading; the second deadline then requires mediation to be completed within 150 days after the filing of the answer or other responsive pleading with a court-appointed or private mediator. Section 871.26 subdivision (d)(1) also clarifies that while costs shall be distributed equally by the parties in the mediation, Plaintiff's mediation costs may still be recoverable as part of the final settlement or judgment pursuant to Song-Beverly's one-way fee-shifting provision.

Preparing for mediation

Preparation is critical. Experienced lemon-law practitioners understand that mediation success often depends less on the session itself and more on the organization and preparation completed beforehand.

Mediator selection

Mediator selection matters. The pool of experienced lemon-law mediators remains relatively small, and many mediators are former defense attorneys or work at firms that currently represent manufacturers in lemon-law claims. That reality does not necessarily prevent fair outcomes, but practitioners should understand the mediator's background, approach, and prior experience handling Song-Beverly disputes.

Scheduling can also present significant challenges. Highly sought-after ADR providers frequently book several months in advance, which has led to many defense firms often scheduling a dozen or more lemon law mediations in one day. Practice tip: Be ready to schedule your mediation as soon as the answer is filed to increase the likelihood that you will be able to work with your preferred ADR provider.

Prepare settlement calculations in advance

Settlement calculations should be organized before mediation begins. You do not want to be bumbling around with numbers in a pressured environment during the mediation. Many practitioners find it helpful to create shared spreadsheets or settlement worksheets identifying multiple settlement scenarios, including:

- Statutory repurchase;
- Cash-and-keep options;
- Civil penalty ranges that include client take-home amounts;
- Payoff calculations that include per diem interest amounts;
- Mileage-offset calculations;
- Incidental and consequential damages; and
- Attorney's fees and costs projections.

These shared spreadsheets can then be referenced by both client and attorney during a remote mediation, with offers and demands being updated on the spreadsheet in real time, so everyone stays on the same page despite not being in the same room. Reviewing these spreadsheets, scenarios, and strategies with your client in advance of the mediation is crucial when it comes to having a smooth, successful mediation. Without advance preparation, valuable mediation time can be wasted recalculating numbers and evaluating alternatives.

Meet with the client in advance

Clients should understand:

- The mediation process;
- The distinction between their

take-home amount on a repurchase, the amount going to the lender to pay off their vehicle, civil penalty breakdowns if applicable, and attorney's fees;
- The possible settlement structures of repurchase, replacement, or cash and keep;
- The impact of statutory deductions like mileage offsets and negative equity;
- The realistic range of outcomes;
- The negotiation strategy that will be implemented.

Many clients attend mediation expecting immediate resolution without understanding the procedural complexities and back and forth involved. For example, a client will need to be educated on negotiation strategies so that they don't get too attached to the initial settlement demand intended to anchor the negotiations at a higher point than what the ultimate bottom line is. A thorough pre-mediation meeting helps manage expectations, allows clients to make informed decisions, and empowers them to play a part in the final negotiations on their case.

Mediation briefs

Strategic use of mediation briefs has become increasingly important. Practitioners must decide whether to provide:

- A confidential brief submitted only to the mediator;
- A shared brief served on opposing counsel; or
- Separate confidential and non-confidential submissions.

Confidential briefs allow attorneys to candidly discuss weaknesses, settlement goals, and negotiation strategies without disclosing litigation strategy to the defense. Shared briefs, however, may help frame liability issues early and demonstrate preparedness, particularly where manufacturers are evaluating large numbers of mediations simultaneously. Sharing a mediation brief with the defense can also be helpful in providing the defense with something tangible for their client to review in making final decisions on settlement authority in a particular case.

When preparing mediation briefs, practitioners should strongly consider including:

- A complete chronology of the repair history for the vehicle, including the total number of days out of service and total number of repair opportunities;
- Brief summary of all foundational elements;
- Brief summary of the warranty coverage;
- Statutory repurchase calculations;
- Civil penalty analysis, including the Defendant's maximum exposure;
- Starting mediation demand; and
- Draft CCP 871.25 SBA release.

Due to the sheer number of mediations taking place any given day, concise but well-supported factual presentations are often more persuasive than lengthy argumentative submissions.

Authority issues during mediation

One recurring frustration in lemon law mediations involves settlement authority. Although California Code of Civil Procedure section 871.26, subdivision (d)(2) requires both the plaintiff and a person with settlement authority for the manufacturer to attend the mediation in person or by remote means, the reality is that many manufacturers are not fully complying with this provision.

Unsurprisingly, this is commonly seen in the context of agreements as to attorney's fees and costs as practitioners increasingly report situations where defense attorneys tentatively agree to attorney-fee amount structures during mediation only to later claim additional internal approval is required. This can create confusion and delay, particularly where the client believes a settlement has already been finalized.

To combat this practice, plaintiffs' attorneys should therefore be ready with a draft SBA release, found at California Code of Civil Procedure section 871.25, to get final approval as to all settlement terms and language at the mediation. If the manufacturer's representative is unable to resolve the issues of both the repurchase and fees during the mediation, make sure to document this in writing to all parties after the mediation, cite the requirements in section 871.26, subdivision (d)(2) regarding having a representative with complete settlement authority present at the mediation, and be ready to hold the manufacturer accountable via a motion for evidentiary sanctions pursuant to section 871.26, subdivision (j)(4).

Attorney's fees generally

Damages and the right to attorney's fees for Song-Beverly Consumer Warranty Act cases are based on Civil Code Section 1794, subdivision (d) which states: "If the buyer prevails in an action under this section, the buyer shall be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action." Although the right to attorney's fees is still rooted in section 1794(d), Code of Civil Procedure section 871.24, subdivision (f) has expanded some of those rights into the pre-litigation space.

One of the biggest changes in AB 1755 was the pre-litigation procedure necessary to be eligible for civil penalty damages. This new procedure was codified in the Code of Civil Procedure section 871.24, subdivision (a). Notably this new procedure also clarified the right to attorney's fees and costs in the context of pre-litigation cases in subdivision (f). While a pre-litigation dispute as to the amount of attorney's fees isn't enough to invalidate a manufacturer's statutory repurchase offer for civil penalty purposes, it can be extremely frustrating for practitioners seeking to be compensated fairly for the work they have done in obtaining a pre-litigation repurchase for their clients.

Binding arbitration requirement for pre-litigation attorney fee disputes

Whereas disputes as to attorney's fees in the litigation context have a solution in the form of a fee motion, section 871.24(f) requires disputes as to attorney's fees in the pre-litigation context to be resolved by neutral, binding arbitration.

Interestingly, Code of Civil Procedure section 871.24, subdivision (f) does not necessarily require mutual agreement as to the administrator for the fee arbitration. Instead, it requires "neutral, binding arbitration" which would put the burden on the party objecting to a particular administrator to prove that the administrator is not neutral. However, as evidence that the arbitration industry is still learning how to navigate the new influx of these pre-litigation attorney fee disputes, one administrator in particular has refused to administer these fee arbitrations as consumer arbitrations, which is the difference between a $250 filing fee for a consumer arbitration and a $2,000 filing fee.

Although there are several avenues available for fee arbitrations, one of the most used is the National Center for Dispute Settlement also known as NCDS. NCDS is already the designated ADR administrator for many auto manufacturers when it comes to pre-litigation lemon law arbitrations so it's an easy choice for many practitioners and manufacturers alike when it comes to choosing who to use for fee arbitrations. The problem, however, is that NCDS rules for pre-litigation lemon-law arbitrations have not historically encompassed a determination as to attorney's fees, leaving many arbitrators to figure out what reasonable compensation should be without much context in these new fee arbitrations.

Lack of good faith in manufacturer negotiations regarding attorney's fees

Unfortunately, this new right to attorney's fees in the context of pre-litigation repurchase requests under section 871.24 has been massively undermined by the manufacturers' widespread refusal to negotiate fees in good faith. Many manufacturers have arbitrarily drawn the line at $1,500 for attorney's fees in pre-litigation settlements, which often represents an over-60% cut on the actual fees incurred in negotiating and processing these pre-litigation settlements.

Manufacturers like General Motors have made it clear that they are prioritizing gathering data to use against lemon-law practitioners by forcing fee arbitrations and fee motions over good faith negotiations as to attorney's fees and costs. This change in strategy coincidentally followed Ford Motor Company's 2025 RICO lawsuit against a large plaintiff's lemon-law firm based in Los Angeles. Ford took data from years' worth of fee motions to find evidence of alleged fraudulent billing found, for example, in instances where multiple attorneys were billing well over 24 hours in one day on different cases, and instances where attorneys were billing for appearing at full-day depositions and trials in substantially different geographic locations on the same day. [The Ford case was dismissed without leave to amend on March 11, 2026. The court found no racketeering conspiracy.]

As an example of how General Motors is using this newly gathered data, in a pre-litigation fee arbitration from early 2026, General Motors claimed it had 218 pre-litigation fee arbitrations in Song-Beverly cases in 2025, and it used the data on the average amount of time claimed by plaintiffs' attorneys to undercut the requested fees being sought in that fee arbitration. General Motors similarly claimed in January and February of 2026 alone, they had 149 pre-litigation attorney's fee arbitrations, once again using the data on the average amount of time claimed by plaintiffs' attorneys to undercut the requested fees.

This refusal to negotiate in good faith by General Motors and several other manufacturers has led to many practitioners being stuck in a cycle of fee arbitrations and having their fees cut substantially, however several practitioners have gone on the offensive and are seeking protective orders for their billing slips on both pre-litigation fee arbitrations and litigation fee motions to combat this practice of data mining by the manufacturers.

Unfortunately, lemon-law practitioners are not only dealing with hostility from manufacturers, but many arbitrators in the fee arbitration context as well. Since fee arbitrations for pre-litigation lemon-law claims are relatively new, many arbitrators do not seem to be well versed in the lemon law process and what reasonable hourly rates and fees should be on these pre-litigation claims and have taken stances hostile to consumers and lemon law attorneys alike. This has led to massive cuts in hourly rates and total attorney's fees awarded. For example, in a recent fee arbitration through NCDS the arbitrator found that hourly rates for lemon-law practitioners should be different in pre-litigation as opposed to litigation, so they disregarded any previously approved litigation lodestar hourly rates. The arbitrator felt that pre-litigation in the lemon-law context was "very simple" and "factually non-complex."

This stance, however, completely disregards the fact that practitioners' time is not unlimited, and time spent on a pre-litigation case and time spent on a litigation case when the potential for recovery is contingent in both matters still requires time and expertise by the practitioner. A practitioner's hourly rate when they specialize in an area of law should not differ whether the case is in pre-litigation versus litigation when the standard is "attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action."

Practice tip: Make sure your retainer agreements with your clients include your hourly rate so you can include a copy of the fully executed retainer agreement you have with your client as an exhibit in the fee arbitration. Having your agreed-upon hourly rate listed in the executed retainer could have some sway with the arbitrator in their final decision regarding your hourly rate.

Ultimately, the financial viability of fair compensation on pre-litigation cases is bleak, with practitioners having to choose between accepting pennies on the dollar on negotiated fees or going to fee arbitration where arbitrators are subjectively deciding what they believe reasonable compensation should be. Many practitioners are now refusing to take on pre-litigation claims due to the difficulties associated with being paid on those cases, leaving consumers to fend for themselves with procedures they do not even know exist.

Effects on consumer claims and civil penalty damages

In the pre-litigation context, most consumers have no idea about the new procedures in Code of Civil Procedure section 871.24 that require repurchase requests to be made in writing to a specific email address or sent via certified mail to a specific address for the manufacturer in order to trigger the manufacturer's obligation to respond to the repurchase request within 30 days, process the repurchase within 60 days of the request, and trigger civil penalty damages for a failure to comply with the aforementioned timeframes.

In fact, many consumers continue to call the manufacturer's customer-service line requesting a repurchase, only to be strung along for months while their request is allegedly evaluated. In those cases, manufacturers are also strategically not communicating with consumers via the emails that trigger the section 871.24 timeframes and penalties. Ultimately, manufacturers' refusal to pay reasonable attorney's fees for pre-litigation cases is likely to have a chilling effect on consumers getting timely pre-litigation resolutions to their lemon-law claims, as well as reducing the amount of civil penalty claims available to consumers in litigation cases.

Conclusion

The ADR landscape for California lemon-law claims has changed dramatically since 2025 with mandatory mediation, binding arbitration of prelitigation attorney-fee disputes, and increasingly aggressive fee litigation transforming how practitioners must approach Song-Beverly cases.

For attorneys entering this space, success now requires more than simply understanding the lemon law as previously set forth in the Civil Code. Practitioners must also understand the new lemon-law provisions in the Code of Civil Procedure involving strict statutory compliance procedures, strategic mediation preparation and increasingly sophisticated attorney-fee litigation.

While the one-way fee-shifting provision once made lemon-law litigation especially attractive to practitioners, the reality is that obtaining fair compensation for the work required has become substantially more difficult. Nevertheless, the consumer-protection goals underlying the Song-Beverly Act remain critically important. As the courts, arbitrators, and practitioners continue adapting to the new statutory framework, effective advocacy during mediation and attorney-fee proceedings will likely become just as important as proving the underlying vehicle defect itself.

(For additional information on the new reforms to the California lemon law, it is suggested that this article be read in conjunction with the author's February 25, 2025, Advocate magazine article entitled "When life gives you lemon...law reform.")

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