

*United States Federal Trade  
Commission*

*Dispute Settlement Board  
Audit*

**January - December 2002**

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## *Introduction*

This annual audit of Ford Motor Company's Dispute Settlement Board (DSB) is performed pursuant to the 1975 federal warranty law, the Magnuson-Moss Act, and Part 703, Informal Dispute Settlement Mechanisms (Rule 703).

The audit was performed by Claverhouse Associates, a firm specializing in arbitration, mediation, and program auditing. Kent S. Wilcox, President and Senior Auditor, supervised the audit. The Center for Survey Research, a division of the Institute for Public Policy and Social Research, Michigan State University, conducted the survey of DSB customers used in the survey and statistical index comparative analysis section of the report.

Claverhouse Associates was asked to perform this audit of the Dispute Settlement Board (DSB) in January of 2003. Discussions took place thereafter, and the project preliminaries were initiated with submission by Ford Motor Company of a Purchase Notification in the winter of 2003. Field audits and surveys were carried out during the winter and spring of 2003.

On-site field inspections of the program as it operates relative to three Boards in three regions selected for this year's audit (Denver, Colorado; Orlando, Florida; and, San Francisco, California) were all performed by Claverhouse Associates in 2003. The national board member training we audited was conducted in New Orleans, Louisiana, December 8-10, 2002. The findings of the field audit, the regional specific case files, and board meetings do not, technically speaking, always reflect operations as they existed in the audit year. Performing the field audits during the actual audit year would require initiating the audit much earlier and using a two-phased format: one commencing during the period to be audited and the other in the following year, after all annual statistics had been compiled. For purposes of the audit, it is assumed that the on-site visits are reflective of operations during the designated audit period.<sup>1</sup> All case files inspected were generated during the audit year as required.

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<sup>1</sup> This convention has been in operation for several years and is used to avoid the unduly high costs that would be associated with an audit that was on-going during a good part of two calendar years.

## SECTION I

# *Compliance Summary*

This audit report (2002 report completed in 2003) constitutes the twentieth independent annual audit of the Ford Motor Company sponsored third-party informal dispute resolution mechanism, the Dispute Settlement Board (DSB)<sup>2</sup>.

### **OVERALL DISPUTE SETTLEMENT BOARD EVALUATION**

Ford Motor Company's third-party dispute mechanism, Dispute Settlement Board (DSB), is in substantial compliance with the requirements of the Magnuson-Moss Warranty, Federal Trade Commission Improvement Act, and Rule on Informal Dispute Settlement Procedures, 16 C.F.R. Part 703.

In our field audit of the independent administrator, DeMars & Associates, including a review of a sample of regional office files for Denver, Colorado; Orlando, Florida; and, San Francisco, California, we found that DeMars & Associates administers the DSB in compliance with Rule 703. The arbitrator training and arbitrator recruiting process, conducted by Professor James Brown, is also performed consistent with Magnuson-Moss and Rule 703 requirements. The DSB-related functions provided by Minacs are those previously provided by Phoenix Group Division of Moore<sup>3</sup>. Their functions are conducted in accord with all requirements. Details of the field audits and any minor irregularities found are discussed in detail throughout the report, but especially in Section V.

Our random sample survey confirmed, where possible, the validity of the DSB statistical indexes.<sup>4</sup> Our survey sample consisted of 700 closed cases. From that sample, we eventually received responses from 302 customers. Consistent with all our previous DSB/FCAB audits (1992-02), surveyed customers tend to report that they are pleased with the program when the results of their cases are, in their view, positive. Conversely, those who receive no award, or receive less than they expected, are more likely to report dissatisfaction with the DSB program.

Arbitrators, Ford personnel, and regulators at both the state and federal levels continue to view training for DSB arbitrators as an important component of the program. We determined that the training provided for DSB arbitrators advances the program's objectives and is consistent with the broad regulatory requirement for fairness.

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<sup>2</sup> The initial audit was conducted for the calendar year 1983.

<sup>3</sup> Minacs is made up primarily of the same staff as Phoenix Group Division-of-Moore.

<sup>4</sup> The national survey we conduct is designed and supervised using the appropriate professional standards to ensure the scientific integrity and reliability envisioned by Federally mandated rules and regulations. For details, see the survey section of the report.

Continuing the established precedent for assessing case processing time, the chart below covers the current and previous four audit periods.

Calendar Year	Average Days DSB Cases Open	Percent Open Beyond 40 Days*	Prior Resolved*
1998	34	9.3%	17%
1999	35	11.6%	17%
2000	33	20.4	27.8
2001	30	9%	26.1%
2002	33	23.4 <sup>5</sup>	22.1

\*This percentage is based on the number of “eligible” cases resolved prior to a hearing.  
 \* Prior Resolved is a program-specific term that means the case was “mediated” as that term is used in the applicable regulations in rule 703. It does not mean a neutral third part mediator is used. A better descriptive term would be, *a negotiated settlement*.

DSB has continued to use several independent contractors<sup>6</sup> to carry out the functions of its program. In this way, Ford seeks to maintain an appropriate degree of insulation between the manufacturer and the arbitration program.

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<sup>5</sup> This percentage determined by dividing the number of in-jurisdiction cases (i.e., 5,295) into the number reported s being closed beyond the requisite 40 day period (i.e., 1242).

<sup>6</sup> The contractors used by Ford to carry out the program requirements are: DeMars & Associates, Ltd.; Engineering Analysis Associates, Inc.; Minacs; Spike Lawrence, Inc.; Professor James Brown, University of Wisconsin-Milwaukee; Claverhouse Associates; and, Research Data Analysis.

## SECTION II

### *Detailed Findings*

This section addresses the requirements set forth in 16 C.F.R. Para 703, Public Law 93-637 (The Magnuson-Moss Warranty Act, 15 U.S.C. 2301. et seq.). For each regulatory requirement set forth, the audit's findings are recorded and appropriate discrepancies and/or recommendations are made.

This audit covers the calendar year 2002. An important component of the audit is the survey of a randomly selected sample of Dispute Settlement Board (DSB) applicants whose cases were closed in 2002 and found to be within the DSB's jurisdiction. The sample is comprised of 302 applicants and was drawn from the national universe of DSB applicants whose cases were closed in 2002.<sup>7</sup>

We also analyzed several Ford-generated statistical reports covering each DSB operation in the United States. Those reports are available from Mr. Mark Loftus, DSB Process Manager, Ford Motor Company, 16800 Executive Plaza Drive, Room 3NE-234, Dearborn, MI 48126.

Claverhouse Associates performed field audits of the case files for these areas: Denver, Colorado; Orlando, Florida; and San Francisco, California. In addition we monitored board meetings and interviewed arbitrators (board members) and DeMars & Associates' board administrators. We examined DSB operations and reviewed a random sample of 150 current case files for accuracy and completeness. A random sample of case files was drawn from all case files for the years 1999-2002 and inspected to ensure that these records are maintained for the required four-year period. During our on-site visits in various regions, we surveyed a few selected dealerships<sup>8</sup> to determine the degree to which they carry out the information dissemination strategy developed by the manufacturer to assist them in making customers aware of the DSB program.

We reviewed the centralized processing program maintained by the independent contractor, Minacs. The statistical indices used for analyzing the DSB program were produced by Minacs, which develops these indices from the Customer Data Link system, CUDL.

In addition, we monitored board member training held at the Omni Royal Orleans Hotel, December 8-10, 2002, in New Orleans, Louisiana. The information we relied on for this portion of the audit is from: the actual training itself; before and after interviews with trainees; conversations with the training staff; and educational materials that were used during the training session.

REQUIREMENT: § 703.7 (a) [ Audits]

**(a) The mechanism shall have an audit conducted at least annually to determine whether the mechanism and its implementation are in compliance with this part. All records of the mechanism required to be kept under 703.6 shall be available for audit.**

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<sup>7</sup> Ford does not offer an DSB program for New York residents; thus, there are no cases in the sample from New York.

<sup>8</sup> Our dealership reviews only encompass three or four dealerships out of perhaps hundreds of dealers in any given state. In no way is this a representative sample, but it can give a useful impression when viewed over time.

FINDINGS:

Records pertaining to the DSB that are required to be maintained by 703.6 (Record-keeping) are being kept and were made available for our review. All case files of our random sample of 50 for each region were located and provided for our review.

The DSB program provides that all files be kept for four years following the case's closing date, but DeMars & Associates elects to keep them for five years. These files are kept at the headquarters of DeMars & Associates in Waukesha, Wisconsin. This program requirement is consistent with the regulatory requirement for maintaining records for four years.

REQUIREMENT: § 703.6 (a) (1-12) [Record keeping]

- (a) The mechanism shall maintain records on each dispute referred to it which shall include:**
- (1) Name, address, telephone number of the consumer;**
  - (2) Name, address, telephone number and contact person of the warrantor;**
  - (3) Brand name and model number of the product involved;**
  - (4) The date of receipt of the dispute and the date of disclosure to the consumer of the decision.**

FINDINGS:

The primary repository of the information required by subsections 1-4 is the CUDL computer system, operated under the direction of the independent contractor Minacs. In addition, all pertinent data are maintained in the individual case file folders housed with DeMars & Associates. Most of the required information is in these files, including the *Customer Application* form, which is normally the richest source of the required information outside the CUDL system.

The program provided us with access to all pertinent information, which is maintained as required. The individual case file inspection of randomly selected cases from each of the on-site inspection locations validated these findings. The review of randomly selected cases drawn from the four-year period 1999-2002 had the same positive results.

The detailed worksheets used in this aspect of the auditing process are not published as part of the report but are available for inspection by regulators upon request. These worksheets are stored by Claverhouse Associates at its Michigan office.

DISCREPANCIES:

As we found in past audits, there are, predictably, a few minor administrative oversights, which are detailed in the field audit section of this report. The few irregularities, while appropriately noted, do not seriously undermine the program's *substantial compliance* status. The DSB program, as administered by DeMars & Associates, exceeds virtually every aspect of the requirement.

REQUIREMENT: § 703.6 (a) [continued]

- (5) All letters or other written documents submitted by either party;**
- (6) All other evidence collected by the mechanism relating to the dispute including summaries of relevant and material portions of telephone calls and**

- meetings between the mechanism and any other person (including consultants described in 703.4 (b));**  
**(7) A summary of any relevant and material information presented by either party at an oral presentation;**  
**(8) The decision of the members including information as to date, time and place of meeting, and the identity of members voting; or information on any other resolution;**

FINDINGS:

Documents submitted by the disputing parties, in addition to the standard file entries, were found in many files. The audit revealed nothing to suggest that any material submitted by a party was not included in the file, and every indication is that the files were complete in this regard. We made no attempt to validate the existence of "summaries of relevant and material telephone calls" and other such information since there is no way to determine whether such telephone calls took place. The same is true of information such as follow-up letters. A review of this type may be theoretically possible, but it is not practical without having some objective measure against which to compare the contents of the file. This assumes customers keep exact files of all correspondence, notes, and phone calls pertaining to their DSB cases. To validate this dimension, the audit would entail retrieving all such files as a first step. The obvious impracticality of that places such a review beyond the scope of the audit.

Oral presentations were introduced into the DSB program in 1993, and the oral presentation summaries are being maintained as required. We have reviewed the record-keeping method concerning oral summaries, and in our view, it substantially complies with the requirements of Rule 703 pertaining to oral presentations.

The board's decision and related information as set forth in subsection 8 can be found on the *Agenda/Decision Summary* form. The decision can also be found in the case file folder in an edited version,<sup>9</sup> the *Decision* letter. The essence of each decision is logged into the CUDL System, and a copy of the *Agenda/Decision Summary* form is now kept in each individual case file folder. This constitutes a change from the past and probably is in response to our previous audits. We said in prior audits that:

...we believe that a copy should be maintained in each case file because it can be an important check on the accuracy of the *Decision* letter in conveying the board's decision.<sup>10</sup> The more complex the decision, the greater the chance the *Decision* letter might vary from what was intended. We suggest[ed] that having both the form and the letter in the same file would facilitate comparison should any question arise. A customer who requests

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<sup>9</sup> Arbitration decisions come in vastly different forms depending, in part, on the arbitration format. In an arbitration panel format, an audio tape of the meeting would reveal a result similar to U.S. Supreme Court decisions wherein members indicate their, sometimes widely divergent, views. The final result in this context, however, is a single decision. In the DSB process, the essence of the decision is reflected on the *Agenda/Decision Summary* form. The administrator's notes on the decision are then crafted into a draft decision. The draft, upon approval and signature of the board chair, is sent to the parties (i.e., the customer and the manufacturer).

<sup>10</sup> We are informed by a manufacturer's representative that since 1999, the language contained on this form has been entered into the MORS III [now CUDL] computer system by Minacs, which is an important record-keeping procedure, but, notwithstanding Minacs's honorable intent, one that is not easily verifiable for accuracy by someone who doesn't know that an original, handwritten set of notes exists.[As of 2002 this no longer relevant, but included here because it is the 2001 audit]

a copy of the case file pursuant to Rule 703, § 703.8 (e) [access to records], would be unlikely to know that the original decision notes were kept in a separate file. Thus, the customer would not have access to a potentially important document for ascertaining the degree to which the reported decision is identical to what the board members intended. Despite good intentions, the possibility of such an event is too great to ignore.

As of November 1999, DeMars & Associates places a copy of the portion of the *Agenda/Decision Summary* form that pertains to a particular case in the case file. This innovation adequately addresses the above outlined concern. In our opinion, it also constitutes a significant improvement and an important step in maintaining the program's long-standing substantial compliance status.

DISCREPANCIES:

None

REQUIREMENT: § 703.6 (a) [continued]

- (9) A copy of the disclosure to the parties of the decision;**
- (10) A statement of the warrantor's intended action(s);**
- (11) Copies of follow-up letters ( or summaries of relevant and material portions of follow-up telephone calls) to the consumer, and responses thereto; and**
- (12) Any other documents and communications (or summaries of relevant and material portions of oral communications) relating to the dispute.**

FINDINGS:

The information set forth in item 9 is maintained in each individual case file folder. As such, the information was readily accessible for audit. There were no material exceptions. Because the DSB program policies provide that Ford Motor Company will abide by all DSB arbitration decisions, there is no need to have the information included in item 10 in each case file folder.

The information set forth in items 11 and 12 was not audited for accuracy and completeness because of the impracticality of such a review.<sup>11</sup> The examination of the case file contents revealed few instances of this type of information included in the file, and yet nothing indicated that information was missing.

DISCREPANCIES:

None. Any minor exceptions were merely of a perfunctory or clerical nature.

REQUIREMENT: § 703.6 (b)

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<sup>11</sup> For an explanation, see the first paragraph in the "Findings" section of Requirement 703.6 (a)(5).

**(b) The mechanism shall maintain an index of each warrantor's disputes grouped under brand name and subgrouped under product model.**

FINDINGS:

These tabulations are maintained by Minacs. The audit includes a review and assessment of a data printout for the calendar year 2002. The *Index of Disputes* identifies 7,482 total disputes for 2002.<sup>12</sup> Of these, 5,295 were eligible for DSB review (70.7% of all cases filed) and 2,187 (29.2% of all cases filed) were determined to be out-of-jurisdiction.<sup>13</sup> Preliminary out-of-jurisdiction determinations was recently transferred to DeMars & Associates using the same standards as were applied by their predecessors, Minacs. It should be noted, however, that in some cases the board that receives a case that is initially determined to be within its jurisdiction will subsequently rule it out-of-jurisdiction. For example, the board may determine that the vehicle is the subject of warranty-related litigation or discover that it has been involved in an accident affecting the warranty dispute, both cases that are outside the program's jurisdiction. Likewise, the board may overrule a preliminary out-of-jurisdiction determination made by DeMars & Associates and then hear and decide the dispute. In so doing, they are exercising the authority on such matters that is ultimately theirs.

This *Index of Disputes* lists three brand categories: Ford (21 models [one more than in 2001]), Lincoln (6 models [one more than in 2001]), and Mercury (8 models [one less than in 2001]).

DISCREPANCIES:

NONE

Indices are complete and consistent with all requirements. The information is available from the DSB Coordinator at the Ford Consumer Affairs Office in Dearborn, Michigan. Some of the data included in these reports are compared with the findings of our sample survey (see Survey Section).

REQUIREMENT: § 703.6 (c)

**(c) The mechanism shall maintain an index for each warrantor as will show: (1) All disputes in which the warrantor has promised some performance (either by settlement or in response to a mechanism decision) and has failed to comply; and (2) All disputes in which the warrantor has refused to abide by a mechanism decision.**

FINDINGS:

Ford Motor Company is supplied with status information on all DSB cases awaiting performance in a monthly report entitled, *Volume and Activity Report*. This report is generated by Minacs based on data extrapolated from the CUDL system. Thus, performance time lines are constantly monitored. These reports were made available for audit and were in compliance.

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<sup>12</sup> This number represents 592 more cases than last year's reported total of DSB cases.

<sup>13</sup> The numbers reported in this section are quite similar to those reported in the 2001 report.

Concerning subsection 2, the auditors are advised that there is no reported incidence in which Ford failed or refused to abide by a board's decision. As a matter of general corporate policy, Ford agrees to comply with all DSB decisions. This information is also supplied as part of the *Index of Disputes*.

DISCREPANCIES:

NONE

REQUIREMENT: § 703.6 (d)

**(d) The Mechanism shall maintain an index as will show all disputes delayed beyond 40 days.**

FINDINGS:

Ford's national statistical index for 2002 reports a total of 1,242 DSB cases [23.4% of the 5,295 total in-jurisdiction DSB disputes<sup>14</sup>] delayed beyond 40 days. For this audit, the DSB coordinator provided a comprehensive report of all individual cases delayed beyond 40 days during the year of the audit (2002). This report includes the customer's name, address, telephone number, and case file number. It also contains the date the case was opened, the date of the board meeting, the date of the decision, the performance date, and whether the decision was accepted or rejected by the customer. Our analysis indicates that this report exceeds the above requirement.<sup>15</sup>

DISCREPANCIES:

NONE

REQUIREMENT: § 703.6 (e)

**(e) The Mechanism shall compile semi-annually and maintain statistics which show the number and percent of disputes in each of the following categories:**

- (1) Resolved by staff of the Mechanism and warrantor has complied;**
- (2) Resolved by staff of the Mechanism and time for compliance has occurred, and warrantor has not complied;**
- (3) Resolved by staff of the Mechanism and time for compliance has not yet occurred;**
- (4) Decided by members and warrantor has complied;**
- (5) Decided by members, time for compliance has occurred, and warrantor has not complied;**

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<sup>14</sup> We said last year, "The percentage of cases beyond 40 days [in 2001] is an admirable 8% reduction in cases delayed beyond the 40 day limit reported in 2000," but this year the percentage of cases that were reported as having taken more than 40 days [23.4%] is more than twice the amount reported in 2001 [9%]. Of course the case load was also larger, but the increase in case load was only slight. The reason for this sizable increase is beyond the parameters of this audit. It is, of course, noteworthy and appropriate for further scrutiny should the future indicate a pattern.

<sup>15</sup> The anticipated disparity between the index reports and the random survey of DSB applicants regarding the time a case is opened could be compared on a case-by-case basis using these detailed reports. Such a task far exceeds the scope of this audit. Other such reviews have demonstrated that customers' memories on this point are generally not as reliable as the DSB's reports.

- (6) Decided by members and time for compliance has not yet occurred;
- (7) Decided by members adverse to the consumer;
- (8) No jurisdiction;
- (9) Decision delayed beyond 40 days under 703.5 (e) (1) ;
- (10) Decision delayed beyond 40 days under 703.5 (2);
- (11) Decision delayed beyond 40 days for any other reason;
- and
- (12) Pending decision.

FINDINGS:

Ford's computer system for compiling and maintaining the information necessary to meet the above requirement is designated CUDL. Maintenance of these data is the responsibility of their independent contractor, Minacs. The index is available for inspection and is complete in all important respects.

Ford compiles the required statistics on the required semi-annual basis, but our report refers exclusively to the annual *Index of Statistics*.

DSB Process Manager provides detailed information regarding data maintained by the DSB program in Section III. These comments provide useful insight into the DSB database set-up for maintaining the required statistical information.

The figures reported in this index are analyzed and discussed in further detail in the Survey Section. The survey addresses most of the issues dealt with in the section above.

DISCREPANCIES:

NONE

REQUIREMENT: § 703.6 (f)

**THE MECHANISM SHALL RETAIN ALL RECORDS SPECIFIED IN PARAGRAPHS (a) - (e) of this section for at least 4 years after final disposition of the dispute.**

FINDINGS:

(a) All of the information listed in the 12 subsections detailed in the previous section is maintained for the required four years. The few administrative irregularities are discussed in the field audit of regional offices section of this report.

An inspection was made of all case files at DeMars & Associates office, and a random selection of case files from the recent four-year period was inspected and evaluated for completeness. Each case file bearing the randomly selected case number was pulled from storage and inspected. The files were all appropriately maintained and readily available for audit.

(b) [Complaints by brand name/model] The DSB Process Manager provided for audit the warrantor's "Disputes under Brand Name and Product Model" index for 2002. The indexes for the previous four years are maintained in the audit reports for those years and are available from a variety of sources, including the DSB Coordinator in the Ford Consumer Affairs Office in Dearborn, Michigan.

(c) [Two non-compliance categories] The information required by subsection (1) is maintained in the Ford Consumer Affairs Office in Dearborn, Michigan, and is available from the DSB Process Manager. Subsection (2) is not applicable since Ford, as a matter of corporate policy, always complies with DSB decisions.

(d) [Complaints beyond 40 days] This information is stored on computer in the CUDL system and is housed with the independent contractor, Minacs. Any required report can be obtained from this system via the DSB Process Manager. The information is maintained as required.

(e) [Includes 12 categories of statistics] The information referenced in this section is available from the DSB Process Manager. All data pertaining to this requirement are also available from the DSB Process Manager. The 12 categories of statistics required to be maintained have been incorporated into the CUDL system and are being kept as required.

DISCREPANCIES:

NONE

REQUIREMENT: § 703.7 (b)

**Each audit provided for in paragraph (a) of this section shall include at minimum the following (1) evaluation of warrantor's efforts to make consumers aware of the Mechanism's existence as required in 703.2 (d);**

**(d) The warrantor shall take steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes.**

FINDINGS:

It is helpful to review the two regulatory requirements cited above as one because the essential feature of both is timing. Particular attention is given to efforts that would inform customers and ensure that they know about the existence of the DSB at all times. The audit also examines the manufacturer's strategies to alert customers to the availability of the DSB when the customer's disagreement rises to the level that the regulations consider a "dispute."

The "notice" requirement seeks to ensure that the program, which is designed to provide a measure of relief to stalemated consumers, is actually usable by them. To make effective use of it, the customer must first know of its existence and then be able to access it at the opportune time.

Ford uses several means by which to meet this important requirement. They are as follows:

- The *Dispute Settlement Board* brochure is a fairly detailed reference document that explains the DSB process and how to file an application and contains an application form for accessing the DSB program. The brochure is distributed in a variety of ways, but the principal methods are by way of the Customer Relationship Center (CRC) and

through the Ford dealerships.<sup>16</sup> Dealers may provide the brochure as part of the initial information packet given to new customers and may also make brochures available in display holders typically placed in the service waiting area. In prior audit reports, we said: “Our random audits of dealerships in the areas surrounding the inspection sites found neither consistent nor significant commitment by dealers to maintaining and distributing these brochures.” The 2002 findings do not differ significantly from recent past reports.

Ford is responsible for regularly monitoring dealer performance and supplying dealers with plastic DSB brochure holders and additional brochures as needed.

- Ford's *Warranty Information Booklet* for 2002 model cars and light trucks refers to the DSB and provides the address for requesting additional information. In addition, a detailed description of the DSB and its operation is provided in the Owner's Guide.
- Ford publishes *Dealership Guide*, which explains the dealers' role and responsibility concerning the DSB.
- Ford's new vehicle Delivery Checklist includes a Florida-specific check-off affirming dealer delivery of the state's Lemon Law Rights booklet, "Preserving your Rights under the Florida Lemon Law."
- Ford created and distributes an acknowledgment portion of the required *Notice of Lemon Law Rights Notification & Acknowledgment* card in applicable states to verify that dealers comply with notice requirements.
- Ford maintains (via a vendor) a Ford-to-Dealer website, qcdealer.com, which is used for all company to dealer communication. At the “Customer Satisfaction” location on this site, there is a “Lemon Law Rights” section providing consumer rights notification.
- The qcdealer.com website allows dealers to place orders for DSB brochures, which include a DSB application form, brochure holders and Lemon Law acknowledgment forms.
- The qcdealer.com website includes a roadmap, which outlines the dealership role in the DSB process. It also provides information on how customers can contact Ford via e-mail, letter, or telephone to receive DSB information.
- Ford provides an owner's packet at the point of sale that includes: the *Owner's Guide*, *Warranty Guide*, *Maintenance Guide*. The packet provides a brief description of the DSB and its address.
- Ford staffs a toll-free customer assistance line. The phone number, 1-800-392-3673, is listed on the inside cover of the *Warranty Information Booklet* and the *Vehicle Owner Guide*. A TDD number for the hearing impaired is also listed (1-800-232-5952).
- *Ford's Warranty Guide* refers to the DSB on page 26 and provides the address for requesting the additional information. In addition, the booklet refers consumers to the *Owner's Guide* for further details.

We said last year (2001 Report issued in 2002) “Note: In response to our less than stellar findings concerning some dealerships’ assistance in carrying out the regulatory

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<sup>16</sup> Dealerships access the DSB pamphlets and pamphlet display holders via Qcdealer.com an electronic e-store, maintained by a non-DSB related Ford vendor.

requirement concerning manufacturer responsibility to make customers aware of the availability of the DSB at the time a warranty dispute arises, Ford initiated a campaign to address the problem. In addition to sending communications directly to the dealerships setting forth their responsibilities, the company reminds dealers of the availability of pertinent materials and the procurement process.” This year’s findings indicate their efforts have had some efficacy. Ford continues to require its field staff to visit dealerships to reinforce this information. As has been the case for some years, notwithstanding the dealerships’ performance, many Ford customers have learned about the DSB and managed to make use of it, as is discussed in greater detail elsewhere in this report.

#### FINDINGS:

Our 2002 assessment of this aspect of the DSB program is, like those in other recent reports, mixed, albeit better. On one hand, the several strategies employed by Ford, together with the number of applications filed in 2002 (7,930), demonstrate that many Ford customers are obviously aware of the DSB program. For these customers, access is obvious and their numbers are considerable.

During our dealer visits in several regions of the country, we found, as in 2001, ample evidence of a general lack of knowledge on the part of some dealer employees about the DSB program. In many of our earlier experiences, a sizable number of employees demonstrated extensive knowledge of the DSB program. This year, as in 2001, there were few dealership employees who appeared knowledgeable, and few dealerships had brochures on display. We said in several recent reports, “The information dissemination strategy, as previously envisioned and administered by the manufacturer, has clearly slipped and needs some clear action to remedy the situation.” This year we found a slight improvement.

Manufacturer’s actions in 2002 were similar to what we noted above. The DSB distribution program continued on track sending out, as was the case last year, approximately 18,000 DSB applications to Ford customers. Nevertheless, there remains a concern about DSB information dissemination at the dealership level.

In the Denver, Colorado, area we visited three dealerships.

John Elway - Ford  
3625 East Colfax Avenue  
Denver, Colorado

Landmark Lincoln/Mercury Ford  
9200 W. Colfax Avenue  
Denver, Colorado

McCarthy Ford Land  
11000 W. Colfax Avenue  
Denver, Colorado

Of the three dealerships we visited, two had brochure holders on display. One dealer had two holders with brochures prominently displayed. The person we interviewed at the remaining dealership, a service advisor, was able to provide almost no information. He did refer to a “dealer settlement board” but was unable to provide us with information about arbitration. Overall, our Denver experience was reasonably consistent to the established Ford policy as well as the underlying intent of federal requirements of Rule 703.

Our dealership experiences in the Orlando, Florida, area, however, were uniformly disappointing. None of the three dealerships we visited gave us accurate information about the DSB. At the Palm Bay Ford dealership, a service advisor informed us that there was “no private arbitration program, but if a customer has three unsuccessful repair attempts which involve safety, then they can go to the manufacturer, but it does not involve the dealer.” This erroneous response is difficult to comprehend.

In Vero Beach, the Lincoln - Mercury dealer gave us a booklet entitled, *Consumer Guide to the Florida Lemon Law*, which involves the state-run program that is unrelated to the DSB program.

In the Orlando, Florida area we visited the following dealerships:

Palm Bay Ford  
1202 Malabar Rd.  
Palm Bay, Florida

Vero Beach Lincoln - Mercury  
1066 U.S. 1  
Vero Beach, Florida

Kelly Ford Inc.  
776 Magnolia Avenue  
Melbourne, Florida

Our dealer visits in the greater San Francisco area were, compared to some years, quite discouraging as concerns the program for DSB information dissemination.<sup>17</sup> Not one of the three San Francisco area dealerships we visited appeared to know about arbitration generally and none referred specifically to the Dispute Settlement Board. At one dealership, a service employee told us, that “there is a buy-back program, but you would have to see the selling dealer’s manager.” This, unfortunately, is inconsistent with the regulatory requirements and the manufacturer’s information dissemination program.

In the San Francisco Region (Pleasanton Board), we visited the following dealerships:

Towne Ford  
1601 El Camino Real  
Redwood City, California

Santa Maria Ford  
1035 E. Battle Road  
Santa Maria, California

Peninsula Ford  
601 El Camino Real  
San Bruno, California

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<sup>17</sup> This mirrors our experience in the greater Los Angeles region last year (2001 report done in 2002). It was also true in the Los Angeles area this year with one exception. We visited four dealers in the Los Angeles area and only one dealer, Puente Hills Ford, in the City of Industry, provided useful information. (See 2002 California-specific audit report)

It continues to be the case in 2003 (2002 report) that customers who seek assistance from their salespersons are unlikely to receive useful information about the DSB program. Few of the salespeople we interviewed could provide any information at all about the DSB. This continuing problem of salespeople having little or no knowledge of the DSB is clearly at odds with the manufacturer's objectives and efforts as well as the regulation's intent.

The toll-free phone number to the Customer Relationship Center (CRC) is not specifically designed to facilitate the DSB program, and as has been true in the past, the program was not helpful in obtaining information about the DSB. They insisted on being allowed to work on the problem and insisted on obtaining a vehicle identification number as a precursor to providing any information about the DSB. Although its customer relations focus is on maintaining an open line of communication between the servicing dealer or the manufacturer and the customer, the CRC nonetheless distributed 11,788 DSB brochures to customers in 2002. The clear and stated objective of the CRC, however, is to keep the customer and the manufacturer or dealer working together to resolve their warranty-related problems. This program operates consistent with § 703.2(d) which allows:

**703.2 (d)... Nothing contained in paragraphs (b), (c), or (d) of this section [notice requirements] shall limit the warrantor's option to encourage consumers to seek redress directly from the warrantor as long as the warrantor does not expressly require consumers to seek redress directly from the warrantor. The warrantor shall proceed fairly and expeditiously to attempt to resolve all disputes submitted directly to the warrantor.**

We believe that dealers' failing to provide information about the DSB when a customer requests information about warranty dispute options appears to be inconsistent with the program's policies, which say, among other things, "The Dispute Settlement Board Brochure/Application is to be provided to anyone upon request for information or application to the program."

Despite these limited reservations, Ford Motor Company's multi-faceted strategy for "making customers aware" appears to be having a measurable impact. Consider for example, the nearly 60,000 customers who made application to the program in the last five years (i.e., 1999-2002). Our audit cannot determine what specific strategy or combination of strategies should receive the credit, but the fact remains that many Ford customers have been **made aware of the DSB program** and have made use of it in considerable numbers to assist them in resolving warranty disputes.

In some respects, the manufacturer's difficulty in carrying out this requirement relates directly to the issue of uncertainty as to the regulation's intent about when the customer is to be informed. A better information dissemination strategy could be developed if regulators provided manufacturers with a clear operational definition of the phrase, **"... at the time consumers experience warranty disputes."** As it stands, the Ford Motor Company program meets the basic requirement insofar as their new efforts have the anticipated results.

It is noted that the party who is in the best position to communicate with customers at most junctures in the warranty repair context is the servicing dealer. In the main, dealers who wish to ignore their role in facilitating "fair and expeditious" warranty dispute resolution may do so with regulatory impunity, notwithstanding the many demonstrated efforts of Ford Motor Company.

Ford Motor Company representatives have informed us that they continue to work on improving their information dissemination program as we have discussed elsewhere in this report. Moreover, we have discussed the current activities carried out by Ford to ensure that more dealers have readily available DSB pamphlets and display holders. Our review did reveal a modest increase in the use of the display pamphlet holders by dealers.

**DISCREPANCIES:**

The four categories of warranty information required by Rule 703 to be on the face of the warranty are provided elsewhere, but not on the warranty's face. This appears to be technically inconsistent with the regulation despite the regulation's unusual definition of the term, "on the face of the warranty," which is discussed elsewhere in this report.

**REQUIREMENT:** § 703.7 (b) (3)(I)

**Analysis of a random sample of disputes handled by the Mechanism to determine the following: (I) Adequacy of the Mechanism's complaint and other forms, investigation, mediation and follow-up efforts, and other aspects of complaint handling; and (ii) Accuracy of the Mechanism's statistical compilations under 703.6 (e). (For purposes of this subparagraph "analysis" shall include oral or written contact with the consumers involved in each of the disputes in the random sample.)**

**FINDINGS:**

The FINDINGS for this section are arranged as follows:

- (1) **Forms**
- (2) **Investigation**
- (3) **Mediation**
- (4) **Follow-up**
- (5) **Dispute Resolution**

**1) Forms**

The auditors reviewed most of the forms used by each component of the DSB, including those used by Minacs, DeMars & Associates,<sup>18</sup> Professor James Brown,<sup>19</sup> Director for

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<sup>18</sup> DeMars & Associates is an independent contractor that serves as the independent national administrator of the DSB.

<sup>19</sup> Professor James Brown provides national and California-specific training for arbitrators.

the Center for Consumer Affairs, University of Wisconsin-Milwaukee, and Ford Motor Company.

The forms used by the DSB have been modified several times in attempts to refine their utility and consistency with regulatory requirements. As such, they are exceptionally "user friendly." They are also well balanced in providing enough information to properly advise the parties without overwhelming them with unnecessary paperwork. Overall, the DSB forms promote efficiency and assist the program in meeting the stated objective of facilitating fair and expeditious resolution of disputes.

The *DSB Agenda/Decision Summary* form is a valuable tool for record keeping and facilitating more thorough decision letters. Its layout was modified recently to improve the recording of board decisions by providing more space for the details necessary to craft a complete decision with an appropriate accompanying rationale.

DSB forms designed to be used only in certain states because of unique regulatory requirements in those states<sup>20</sup> were audited for the limited purpose of ensuring that they do not conflict with the requirements of the Magnuson Moss-Warranty Act or Rule 703. In summary, no irregularities or inconsistencies were identified with respect to these state-specific forms.

#### DISCREPANCIES:

NONE

DeMars & Associates has established a comprehensive manual, *Dispute Settlement Board Procedure Manual*, that serves as a procedures guide. Professor James Brown provides to arbitrator (Member) trainees a loose-leaf notebook entitled *DSB Manual*, which is a useful source for board members to turn to for direction when questions arise. These manuals are critical components for ensuring that the program continues to operate in substantial compliance with the requirements of Magnuson-Moss and Rule 703.

In summary, we found the manuals to be in substantial compliance with regulatory requirements.

#### **2) Investigation**

This facet of the arbitration program is governed by section 703.5(c) (Mechanism's Duty to Aid in Investigation).

The audit discovered only a small number of requests by arbitration boards for technical information, and such information appears to have been provided where requested. This was confirmed by field audits, monitoring of board meetings, and interviews with board members and administrators.

It is common for boards to request independent inspections of vehicles. Independent inspections can appropriately be done to confirm or deny one party's representations; however, monitoring of board meetings suggests that some board members still do not understand the appropriate purpose of an independent inspection, which is to attempt to gain clarification in cases where the parties have presented conflicts of fact. For example, one party may represent that a certain mechanical problem exists and the other

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<sup>20</sup> States for which Ford or DSB provides unique forms are Arkansas, California, Georgia, Montana, Ohio, Wisconsin, and West Virginia.

party deny that representation. In such a case, the view of an independent certified mechanic can often resolve this dispute. Some members' comments continue to demonstrate that their objective in requesting an independent inspection is to diagnose the true nature of the vehicle's mechanical problem. Diagnosing vehicle repair problems is, generally speaking, beyond the intended scope of the DSB. The most likely exception to this limitation is the case wherein a customer is specifically asking the board to assist in "just getting my car fixed." Even so, it is entirely appropriate for the board to expect that a customer who applies for arbitration has obtained an inspection from a qualified mechanic in order to supply some degree of verification of the claim. This is especially so when the customer asserts an intermittent problem that he/she acknowledges has not been duplicated in the presence of their dealership's repair facility personnel. There is no regulatory requirement for regulated warranty dispute settlement mechanisms to assist either of the parties in preparing or supporting their cases. The board's responsibility is limited to *hearing* and *deciding* the matter in dispute. The primary responsibility for case preparation belongs to the disputing parties.

When the subject of Technical Service Bulletins (TSBs) arises in the context of arbitration board meetings, it is customary for technical members (frequently instructors in auto mechanics or dealer members) to know whether a bulletin exists. Boards rarely request that the manufacturer provide a copy of a TSB and then delay action on the case pending receipt of the bulletin. Whether a TSB *exists* is apparently more likely to be central to a board's determination than any information contained therein. The existence of a TSB may increase, in the minds of some members, the likelihood that a customer's otherwise unverified concern is real.

Other areas to be investigated include:

**...number of repair attempts; length of repair periods; and possibility of unreasonable use of the product.**

The program solicits information on these subjects from the customer via the DSB application and any oral presentation they may make, from the dealer via the questionnaire, "Dealers Statement," and from Ford Motor Company via the questionnaire, "Company Statement."

The customer application form does not request information about the issue of possible misuse or abuse of the vehicle. It may be argued that the request for maintenance records addresses this issue, at least in part, but the question of whether the manner in which the vehicle has been driven, or maintained, might contribute to the asserted problem is not specifically addressed. The dealer questionnaire, however, does solicit this information. The result is that the board is likely to receive information on this important subject from only one of the parties. While there is no specific regulatory requirement to solicit this information from either of the parties, to have a procedure in place that specifically solicits the information from only one of the disputing parties raises a fundamental fairness question.

Even if the subject of possible misuse or abuse is not raised by the company or dealer on their statement forms, the board's discussion sometimes addresses it. If misuse is openly asserted or questioned in the company or dealer statements, the customer's right to submit supplemental information is well established. Customers receive copies of these statements in advance of the board meeting and have the opportunity to submit additional information challenging any such suggestion. Unfortunately, however, the subject of possible misuse or abuse of the vehicle may emerge in the course of the deliberations without its having been asserted in either the dealer or manufacturer statements. In such cases, while "misuse" may not be the deciding factor in the board's

final disposition, it can still be a significant factor in the board's decision as to what remedy may be appropriate. The remedy question may, of course, have significant financial implications for the disputing parties. Moreover, because misuse or abuse of the vehicle may be of secondary importance, it may not be referenced in the decision letter. Therefore, a customer who may have at his/her disposal important rebuttal information on the subject of suspected misuse or abuse of the vehicle would be unlikely to be aware that it had become an issue in the board's decision. If the program, or the board, solicited the same information from both parties, it would be far less open to criticism in this regard. In those cases in which an oral presentation is being made, the board has a unique opportunity to ask each applicant whether he/she would like to address this issue before the board begins its deliberations.

#### FINDINGS:

The investigatory methods employed by the DSB are generally well known to regulators and have been deemed acceptable. Moreover, the processes envisioned when Magnuson-Moss was enacted were understood to be abbreviated in comparison to litigation. Ultimately, the question comes down to "How much investigation is enough?"

It is clear that the DSB methods currently employed result in a valuable collection of pertinent information, and it is equally clear that there is often a potential for gathering significantly more useful information.

#### RECOMMENDATION:

The program provides a checklist of issues, modeled after the regulatory requirement, to be considered in each case. This checklist is discussed during arbitrator training. We recommended in the past that the board should use the checklist as a mental guide, and when confronted with insufficient information on the subjects on the checklist, the members should request that such information be provided. If certain types of information are regularly absent from case files, the board should request that the program systematically provide it. To do otherwise is to operate in a manner inconsistent with board training. We noted in our field investigations that some boards have adopted the essence of our suggestion.

### 3) Mediation<sup>21</sup>

This facet of the arbitration program is carried out exclusively by the manufacturer or its agents, including dealers. The mediation function is governed, at least in part, by section 703.2(d) which allows:

**... Nothing contained in this subchapter shall limit the warrantor's option to encourage consumers to seek redress directly from the warrantor as long as the warrantor does not expressly require consumers to seek redress directly from the warrantor. The warrantor shall proceed fairly and**

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<sup>21</sup> We operationally define the term *mediation*, (in the context of this audit) so as to include any actions by the parties to the dispute that are designed to resolve the dispute prior to the arbitrators' rendering a decision. Successfully mediated disputes in the DSB context are referred to as "Prior Resolved" dispositions. The DSB process does not use third-party neutrals as facilitators. Attempts to mediate disputes during the DSB process involve voluntary discussions between the parties.

**expeditiously to attempt to resolve all disputes submitted directly to the warrantor.**

**FINDINGS:**

After Minacs opens a case, the manufacturer's Consumer Affairs office personnel (in many cases, Dispute Resolution Specialists who are contractors) generally intercede in an attempt to resolve the dispute to the customer's satisfaction prior to any board action. Detailed records are kept as required by § 703.6. This information is contained in the case files maintained by the DSB program's principal administrator.

This audit is concerned with the mediation function only in terms of its impact on the requirement to facilitate fair and expeditious resolution of disputes. All indications are that the mediation function meets, in the main, the minimum requirements for fair and expeditious resolution of disputes. Mediation is voluntary and in no way delays a customer's access to arbitration. The degree to which performance of mediated resolutions conforms with time limit requirements is reviewed in the survey section of this report.

**4) Follow-up**

There are several sections of Rule 703 that relate to follow-up and manufacturer compliance with DSB awards. In addition, follow-up is one of the very specific factors that is to be reviewed in the annual audit. In the main, follow-up in this context refers to efforts to assure that DSB awards have actually been performed. This requires that each case file contain specific information about when performance occurred and whether performance was to the customer's satisfaction. It is, of course, entirely possible that the manufacturer and the customer could disagree about whether performance has occurred as envisioned by the DSB decision. When such an eventuality occurs, and it is known to the program, it is imperative that the case file reflects this important fact.

The DSB Dispute Resolution Specialist (DRS) continues to monitor this facet of the program. In California, it is the responsibility of the DSB's independent administrator, DeMars & Associates.

When a customer accepts a "prior resolve" (i.e., mediation) offer or a board decision, the DSB Dispute Resolution Specialist (DRS) monitors the promised performance,<sup>22</sup> but DeMars & Associates is responsible for maintaining the records.<sup>23</sup> In addition, Minacs now mails a questionnaire to the customer to determine that the promised performance has taken place.

The completed questionnaire, if returned, is placed in the case file folder at DeMars & Associates headquarters office, where it is maintained for four years.

Our 1999 report (issued in 2000) included the statement below:

We verified the recording and maintenance of performance procedure by our on-site inspections of case files in the regional offices audited. As we found in

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<sup>22</sup> In cases in which the DSB board awards a repair, a refund, or a replacement vehicle, the Dispute Resolution Specialist is responsible for ensuring that the awards are completed.

<sup>23</sup> This function is performed exclusively by DeMars & Associates (the independent national DSB administrator). Once performance of a settlement or award has been verified and the facts related to the performance have been logged by the independent administrator, the case is closed and the performance date is logged for inclusion in the CUDL system.

2000 for our 1999 report, few completed questionnaires were located in the case files either because questionnaires were not returned by customers, or because the fairly new MORS III system had interrupted the mailing of questionnaires. This suggests that, despite the reinstatement of the questionnaire program, the performance verification process has not been getting the desired results. The program may need to consider alternative methods, including the use of a negative option addition to the questionnaire that says something to the effect of:

***If this questionnaire is not returned, we will assume that the board's decision was satisfactorily performed and record it in this manner.***

Minacs now sends the customer a survey that does contain such negative option language which allows for the case file to be completed with performance follow-up information while allowing the customer a reasonable opportunity to place in the file any performance verification information they deem pertinent.

There were more returned questionnaires this year (2003 for the 2002 report) than in the recent past, but the negative option device appears to reasonably meet the regulations intent.

For each region selected for inspection, we reviewed a random sample of approximately 50 case files. The sample is drawn from the computer system CUDL maintained by Minacs. The files are reviewed at the headquarters of DeMars & Associates in Waukesha, Wisconsin.

#### DISCREPANCIES:

NONE

#### 5) **Dispute Resolution**

The DSB resolution system uses a panel of four arbitrators, each of whom is provided, in advance of the board meeting, a case file that contains pertinent facts gathered by the program. The arbitrators meet to discuss the facts, take testimony where applicable, and render a decision. In some cases, the board requests additional information, usually in the form of an independent inspection conducted by a specialist in auto mechanics. Occasionally, the board asks for Technical Service Bulletin information, although technical questions can often be answered by the board's technical member.

DeMars & Associates hires a contractor who functions as a hearing/meeting administrator. The administrator is not to participate in the board's deliberations except to clarify administrative questions. The administrator takes comprehensive notes during the board meeting and, from these notes, prepares a draft of the decision. This draft is approved by the board chair and used to develop the decision letter. In addition, the administrator prepares any necessary independent inspection request forms and, where appropriate, an oral presentation summary for the case file. The administrator also functions, in many cases, as the liaison between the board and DeMars' main office. As such, they may carry communications between the board and DeMars' supervisory personnel. In addition, experienced administrators may debrief a meeting with the board chair or the entire board, sharing with them observations concerning efficiency, possible violations of board policies, etc. In this way they serve as a vital quality control mechanism.

The four arbitrators on each board consist of: two consumer members; a technical member (who is also considered by the program a consumer member); and a Ford dealer member. Three members constitute a quorum.<sup>24</sup> The program's operating procedures provide that in cases involving a board evenly divided on a proposed decision, the customer's interest is to prevail. Generally, disagreements are resolved by discussion, which is driven by an objective of reaching consensus.

The parties are sent copies of the case file contents before the board meets and are informed that they may submit additional information if they choose to clarify or contradict information in the file. In addition, customers are informed that they may make an oral presentation to the board. Information received subsequent to the initial filing of a DSB application is provided to the board prior to its deliberations. The parties may also provide contrasting testimony during their oral presentations.

DSB policies provide that decisions of the board are binding on Ford Motor Company but not on the consumer.

#### FINDINGS:

The DSB's meeting process is in substantial compliance with the regulation and provides for fair and expeditious resolution of warranty disputes. Overall, the program meets, and often exceeds, the minimum requirements of Rule 703.

In comparison with the early days of the DSB, there has been a marked increase in board member awareness of federal and state regulations that govern the program. In addition, most newer board members demonstrate a substantially greater degree of understanding of such things as the board's scope of authority. We attribute these improvements in board member knowledge and understanding to the professional training of board members (i.e., arbitrators) and the regular feedback the board receives from experienced meeting administrators.

Board members are unpaid volunteers who are not required to have previous expertise in the complexities of automobile warranty law. Fairness, as envisioned by state and federal policy makers, however, suggests that board members have at least a moderate level of knowledge of the state and federal regulations and legal doctrines that set forth the basic rights and responsibilities of the parties to a warranty dispute. To meet this fairness test, the DSB has initiated a national training program for all arbitrators. In addition, the program procedures provide for a state-specific training component for California, focusing the unique requirements of that state. The training session we attended in New Orleans confirmed the arbitrators receptivity to, and desire for, ongoing input regarding the issues of automobile warranty arbitration.

Monitoring board meetings and interviewing arbitrators and board meeting administrators underscored the importance of ongoing training. It is readily apparent that, without regular input and feedback mechanisms, the board members can occasionally be uncertain about their scope of authority and their responsibilities. Because arbitrators are volunteers who meet infrequently, a mistake made in one meeting can easily become, in short order, an institutionalized error. The institutionalized error subjects the program to a possible noncompliance determination. Regular input from the program administrator, as well as the newsletter, *The Dispute Dispatch*, and from experienced board meeting administrators can minimize these risks. In our audits of board meetings, we witnessed several situations in which members operated under significant misconceptions. This is not surprising; judges in the state

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<sup>24</sup> The program requires that this quorum consist of a majority of consumer (i.e., non-manufacturer or dealer-related) members.

court systems make similar mistakes every day. Most judicial systems today, however, provide for continuing education in the form of regular judicial training seminars and periodic publications that highlight areas in which the courts are operating in error.

To expect complete comprehension of the abundant and complex training information under the circumstances of a two-day session is unrealistic. It is equally unrealistic to expect long-term retention of all this information without some form of regular reinforcement. The training materials given to the board members provide a significant measure of reinforcement and, together with the DSB newsletter,<sup>25</sup> should result in a marked improvement. The continuing education effort is now an integral part of the DSB program. Professor Brown is the editor of this publication.

In interviews, board members again this year (i.e., year 2003 for the 2002 report) expressed their appreciation of the continuing education efforts, which are designed to reinforce their initial training and focus on the areas in which mistakes are most likely to be made. Board members continue to be receptive to this ongoing flow of information that aims to improve their understanding.

Overall, the boards demonstrate their clear ability and commitment to provide fair and expeditious resolution of warranty disputes. The fundamental objective of Magnuson-Moss and Rule 703 is met.

**DISCREPANCIES:**

NONE

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<sup>25</sup> This valuable continuing education tool is a newsletter/bulletin aimed specifically at current DSB arbitrators. Introduced in November 1992 as the Dispute Settlement Board *Bulletin*, it was re-named *The Dispute Dispatch* in 1993.

### SECTION III

## *Interview with the DSB Process Manager*

Mr. Mark P. Loftus, the current Dispute Settlement Board (DSB) Process Manager (appointed 3/1/00), in Ford's Customer Service Division, is the Ford Motor Company manager most directly involved with the ongoing administrative requirements of the DSB. This interview format was developed for use in the 1993 national (FTC) audit we conducted of the DSB program as it operates nationally.

Ford Motor Company's third-party arbitration mechanism became national in 1983 and there are currently 37 Dispute Settlement Boards nationally. During the 2002 audit period, 419 Board hearings were conducted with 4,214 cases arbitrated. The mechanism reviewed 7,930 cases for eligibility of which 5,742 individual consumer appeals were processed under the guidelines of the program.

#### INTERVIEW WITH Mr. Mark P. Loftus, DISPUTE SETTLEMENT BOARD PROCESS MANAGER, FORD CUSTOMER SERVICE DIVISION

Question 1: *How detailed is the Board's explanation of its decisions?*

Answer: Each customer who applies to the Board receives a written statement as to which specific warranty coverage applies to the vehicle in question. We have retained an independent consulting firm to process DSB applications. The firm acknowledges the customers' eligibility for arbitration and sends a written statement as soon as a case is determined to be within the Board's jurisdiction. This step also lets the customer know what to expect, so that the ultimate Board decision statement is easy to understand. The independent contractor's case-opening staff members select from among 450 symptom codes to inform the customer of his/her specific warranty eligibility coverage.

Another independent contractor recruits, selects, and trains DSB members. The formal Board Training Program instructs Board members on the rationale for clear decision statements. Whether it's a simple award, a vehicle replacement/repurchase, or no award, all of the essential details are clearly stated in the Board's decision letter. Board administrators, in turn, are always alert to opportunities for further improvement in decision letter content and clarity.

Question 2: *Does anyone other than Board members attend hearings? Who? What role do they play?*

Answer: The DSB Board Administrator who is an employee of DeMars & Associates is there only to provide administrative support, and to record decisions in order to prepare the decision letters for the Board chairperson's signature. In practice, Ford Motor Company observers rarely attend Board meetings. Exceptions might include a newly appointed Office Operations Manager, Office Operations Specialist (from the local FCSD Regional Office) or someone like myself auditing process quality. We are sensitive to the need for insulation at all levels. However, Ford Motor Company reserves the right to attend and make oral presentations on a limited basis.

Consumers who have elected to make an oral presentation attend during their portion of the review. Occasionally, prospective Board members may attend (observe) a meeting for orientation. State regulatory personnel periodically observe the meetings and some Boards have honored requests from members of the media.

Question 3: Have the Board members received any training in dispute resolution, consumer law, or automotive technology? What instructions have been given to the board members by Ford?

Answer: Board members are all volunteers, identified, selected and trained by an independent outside agency. Member recruitment, selection, appointment, and retirement are coordinated primarily through Professor James L. Brown, Professor of Law and the Director of the Center for Consumer Affairs, University of Wisconsin-Milwaukee. (Dealer members are identified by Ford regional offices, with the exception of California.) Board member selection is usually based on education and experience in the area of consumer affairs. Members normally serve for a three-year period.

Professor Brown also coordinates training for the Board members. The training program and its contents have been developed completely independently from Ford by Professor Brown and his staff, who conduct training sessions in hotel facilities around the country.

Attendees are reimbursed for out-of-pocket costs such as transportation, lodging, meals, etc. Major facets of the training include:

- Distribution of training and reference manuals.
- Techniques for running effective meetings.
- Mediation and arbitration techniques.
- Detailed explanations of DSB procedures, operations, policies, activities and responsibilities.
- Familiarization with available remedies and their implications for equity for all parties.
- Thorough assessment of case documents and inspections.
- Role-playing situations.
- Promotions of objective decision-making.
- Use of board members' abilities, skills, and objectivity.
- Efficiency of time, material review, and deliberations.
- Dynamics of group interaction and hands-on experience.
- Instruction in provisions of federal and respective state laws.

During 2002, 62 consumer board members and 21 dealer members received this training. Additionally, Professor Brown conducted a California-specific "refresher" training program in 2002, per California regulations that included a total of 8 attendees.

Every Board member attendee receives a nine-page DSB Guide, which describes the workings of the DSB process in condensed form.

Question 4: *What, if any, follow-up is made to customers after a Board decision?*

Answer: There are several attempts to follow-up by the Board. The first is the decision letter from the Board Chairperson. If the Board made an award, an Acceptance or Rejection of Decision form accompanies the decision letter. The customer is asked to sign and return it within a specific period of time (14 days unless

otherwise required by State Certification rules) indicating whether he/she accepts or rejects the Board's decision. If the customer accepts the decision, a Dispute Resolution Specialist (DRS) contacts the customer and works with them to complete the award performance.

We also send a DSB customer survey to any customer who received an award from the DSB process. The purpose of the survey is twofold: 1) to ensure the DSB award was completed and 2) to determine the customer loyalty based on the handling of their DSB case.

Question 5: *What are the procedures for monitoring placement of brochures and posters in dealer service areas?*

Answer: This is an ongoing monitoring responsibility for all Ford Customer Service Division (FCSD) dealer contact personnel. In addition, Ford has an Internet website, QCDealer.com, that is our primary means of communication with our dealers. The site has a section dedicated to DSB that explains the process and the dealer responsibilities under state and Federal laws. It also directs dealers to the Dealer e-Store, an internet website for dealers to order needed brochures, holders, posters and other materials at no charge. In addition, this system has the capability for dealers to place a monthly "subscription" for materials to ensure an ongoing supply of materials.

Each dealership, upon appointment, is required to sign a Dealer Participation Agreement for the DSB, which includes an agreement to display DSB materials.

Question 6: *What kind of reporting data are maintained at any given point in time?*

Answer: The database containing DSB information is created and updated through electronic entries made by the independent contractors, Minacs and DeMars & Associates, as well as the Ford Dispute Resolution Specialists (DRS). This data is used to generate the following reports:

1. Monthly Volume Activity Report. This report provides a complete accounting of all DSB cases for the current month and year-to-date periods. Region and national composites are provided. The following categories are tallied:

- Statements Received
- Cases Opened
- Cases Resolved Prior (Mediated)
- Board Decisions
- Total Case Closings
- Average Days Handling
- Cases in Inventory
- Number Over 40 Days

The DSB Statistical Summary Report. This report is maintained by Minacs and used to fulfill various state and Federal reporting requirements. The report lists DSB activity by FCSD Region or by state. The supporting documentation to this report contains a list of all the DSB cases by case number, customer name, address, city, state and by vehicle make and model.

Question 7: *What mediation/conciliation procedures, if any, are used after a complaint has been filed with the Board, before actual board review? How are these recorded?*

Answer: Ford has a centralized Dispute Resolution Specialist (DRS) position on location in Dearborn, MI. The DRS reviews each case for a possible resolution prior to Board involvement. We believe that the DRS involvement helps to optimize customer satisfaction and reduce caseload burden on the Board. These cases are recorded as successfully mediated, and appear under the "prior resolve" portion of our Volume and Activity Report if resolution occurs before Board review.

Question 8: *Where are the records kept? Who keeps them?*

Answer: In August, 2001, Ford introduced a new online customer database called the Customer Data Link (or CuDL). All DSB cases are entered into this database by DeMars & Associates (previously entered by Minacs through 8/02). All original case file documents are kept for five years at DeMars & Associates, our DSB Administration office in Waukesha, Wisconsin. All Board records, such as meeting agendas and decisions, are also retained for five years at DeMars & Associates.

Question 9: *Which dealers do not participate in the DSB program? Why don't they?*

Answer: When a new dealer is appointed by the Ford, Lincoln, or Mercury Division, a DSB participation agreement is a required part of the appointment package, so DSB is a highly visible process among our dealers. Very few dealers withdraw participation. The non-participants may be uncomfortable with the DSB process or simply uncomfortable with the prospect of being bound by the decisions of the Board. All dealers are strongly encouraged to participate in the program.

Question 10: *Who participates at meetings? What role do they play? How often are meetings held?*

Answer: The Board is comprised of four unpaid volunteers (three consumer representatives, one of whom is a technical member, and a Ford, Lincoln or Mercury dealership representative<sup>26</sup>). If a case happens to involve the dealer member's own dealership, he or she is excluded from reviewing/participating on the case.

The Board chairperson (who is one of the three consumer members), is voted to chairperson by the other members. The dealer member is never the chairperson. All members participate on an equal basis in the hearings. The decision letter is prepared for the chairperson's review, modified if needed, and signed by the chairperson before it is mailed to the customer. The DSB Board Administrator acts only as an observer/recorder.

Meetings are generally held once a month, but the schedule can vary with the volume of cases at a particular board.

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<sup>26</sup> Some states withhold voting rights from the dealer member.

Question 11: *In what circumstances, if any, would the board seek additional information from customers regarding their complaints? What is the procedure used for obtaining this information?*

Answer: If the Board feels it does not have enough information to render a decision, it can defer the case and ask for the information it wants. The Board will occasionally defer a case to allow a customer to provide additional information or to make the vehicle available for inspection by the Board.

More frequently, the Board may defer the case until Engineering Analysis Associates (EAA), an independent engineering agency, can perform an independent inspection.

Question 12: *What procedures are followed if a customer petitions the warrantor directly, rather than the board? At what point is the customer informed of the board?*

Answer: The Customer Relationship Center (CRC) features a toll-free 800 number to ensure that Ford Motor Company is accessible and responsive to the needs of our growing body of vehicle owners. We have a dedicated toll-free line for the hearing impaired (TDD) and a language line for non-English speaking customers.

We try diligently to resolve most concerns first through our normal customer handling process at the dealership or, if requested by the customer, with CRC assistance. If a customer is still not satisfied and asks the CRC about mediation, arbitration or dispute settlement procedures, the Customer Service Representative will advise the caller of the DSB process and arrange for our independent source to send a brochure and application form.

In addition, the DSB is explained in the Warranty Guide and Owner's Guide found in every vehicle's glove box. The guides provide a toll free phone number and address to obtain an application/brochure. Finally, all Ford, Lincoln, and Mercury dealers also have the brochures available and are required to display them openly.

Question 13: *How is contradictory information handled? What procedure is followed? How often does this happen? Is the Company and the customer offered a chance to rebut any contradictory evidence? How?*

Answer: Every customer is sent a copy of the case file that is sent to the Board before the scheduled hearing. This is sent at least five (5) days in advance. Thus, every customer has the opportunity to refute, in writing, the statements from the warrantor or the dealer. Should they do so, their written response becomes part of the documentation presented to the board. The DSB Policy Manual states:

DeMars & Associates will provide the consumer a copy of the DSB documents to be reviewed at least five (5) days prior to the hearing. The customer will be invited to refute the statements/comments in writing to the DSB address. Additional correspondence from the customer must be carried to the meeting and incorporated with documents previously provided to the members. With this procedure, we believe the customers' concerns are fairly represented.

The customer is also provided the opportunity to make an oral presentation directly to the Board. This can be done in person or by telephone conference. Ford Motor Company and the dealer each provide a written report to the Board. These reports are part of the original case file that is sent to the Board and to the customer prior to the meeting date. Ford does not, as a rule, make an oral

presentation or attempt to rebut any additional information provided by the customer.

In practice, when there is a disagreement, the board often calls for an independent inspection of the vehicle before rendering a decision.

Question 14: *What procedures are followed for Board inspections? How often are they requested?*

Answer: The Board will occasionally want to inspect a customer's vehicle and will do so if it is available when the customer makes an oral presentation. More frequently, the Board will ask the administrator to make arrangements with Engineering Analysis Associates (EAA), an independent inspection firm, to have the vehicle inspected. EAA submits their findings to the Board. In 2002, the Board requested approximately 310 independent inspections, or 7% of the cases reviewed.

Question 15: *How far in advance of a Board meeting are cases made available to Board members?*

Answer: Board members receive them at least five (5) days in advance.

Question 16: a) *Do Board members feel independent of Ford?*

Answer: Very much so. The independent training program conducted, by Professor James Brown, has been very successful in letting new Board members know their responsibilities. The training stresses the Board members' insulation and independence from Ford Motor Company.

Professor Brown does an excellent job and is a valuable resource and sounding board for Board members. He is always available to hear their concerns. As a result, he is able to offer us suggestions for further improvement or training based on the feedback he receives from the Board members.

*The Dispute Dispatch* newsletter, which Professor Brown initiated for Board members, is an informative and timely resource and training aid. It fosters discussion and defines or reinforces key practice points for the board members. *The Dispute Dispatch* adds an important dimension to Board member training, confidence, and independence.

b) *Do they feel adequately rewarded?*

Answer: DSB members serve voluntarily for a three-year term without any direct compensation from Ford for the many hours of service they provide on their respective boards. We are proud of the fact that they willingly do so, though we have no opportunity to tell them so directly.

The feedback we get from contractors such as Professor Brown, DeMars & Associates and others makes it clear that DSB members are proud of the opportunity to use their experience and judgment in a voluntary process that is increasingly recognized for its quality and independence. They clearly take pride in what they're doing. They enjoy it and look forward to the meetings.

c) *Do dealers vote on warranty cases?*

Answer: Yes. The dealer is one of the four voting members, except in Ohio Lemon Law eligible cases and Arkansas (see question #10, dealer members are excluded from participating in cases involving their own dealerships).

d) *Are copies of arbitration procedures made available by Ford? In what form?*

Answer: Yes. A DSB Guide is provided, which describes the operations of the program. This is distributed with the DSB training materials in a special three-ring reference binder at the formal training sessions. The material is updated annually to reflect lemon law changes and other procedural changes in the various states.

Question 17: *Does the Board operate in a fair and expeditious manner at all times?*

Answer: Yes. All cases must be processed within 40 days and according to the guidelines established by FTC 703.

The Board member training conducted by Jim Brown and the Dispute Dispatch stress the importance of making a “fair and equitable” decision.

We limit attendance of Ford employees at Board meetings to the rare occasions when Ford makes an oral presentation. This is done in an effort to avoid any perception of Ford attempting to influence the Board decisions.

Question 18: *What obstacles, if any, do you see to the performance of the DSB?*

Answer: Board members occasionally have a scheduling conflict preventing them from participating in the meeting. If this results in a lack of quorum, it can cause the case to go over 40 days. Additionally, meeting the 40 day deadline can be challenging for Ford due to the fact that DSB case handling time is, in reality, 22 business days. In 2001, DeMars began to arrange interim teleconference board meetings to review any information that may have been requested by the board from a previous meeting. This expedited the case review and final decision by the board and prevented the case from being delayed for another month.

Question 19: *What enhancements to the program occurred during 2002?*

Answer: In 2002 we continued to review the DSB process to identify ways to improve the process. We have come to value the help of Professor Brown, DeMars & Associates and others whose insights and experience have helped over the years. Among highlights for 2002 are:

- Renewed certification in Georgia, Ohio and Arkansas (informational only requirement)
- Ford sent an Electronic Field Communication (EFC) to all dealers in all states providing step-by-step instructions for ordering DSB brochures, holders and lemon law acknowledgements through our e-store at [qcdealer.com](http://qcdealer.com). The Ford Customer Service Managers (CSM) were required to review DSB compliance requirements with dealers and to ensure dealers are following compliance procedures and understanding compliance

materials. CSMs also were required to encourage dealers to order a subscription for required DSB materials via the e-store.

- Through the institution of the online dealer e-Store, Ford is now able to track the number of DSB brochures and DSB materials (ie. posters, brochure holders) ordered and supplied in 2003. The order quantity is tracked by the supplier, Budco and provided to Ford on a quarterly basis. The totals for 1st quarter 2003 exceed 35,000 DSB brochures and 17,000 DSB materials ordered and supplied.
- In 2003 Ford is sending a follow-up EFC to remind dealer's of the DSB process and the dealer's responsibility to provide this information to their customers.
- Funded compliance audits for FTC 703, which included National, Ohio, and California specific audits.
- Met accurate and timely compliance with required statistical filings, questionnaires and related special requests.
- Conduct ongoing training of DRSs to improve their understanding of FTC 703
- Ford converted to an on-line database computer system called Customer Data Link (CuDL), which replaced the previous MORS database system.
- The DSB eligibility determination responsibility switched from Minacs to DeMars & Associates in August, 2002. The DSB process is now handled at one central office in Wisconsin by one specific vendor.

Renewed contracts with supporting entities and/or vendors including

Claverhouse Associates  
DeMars & Associates, Ltd.  
SPX - Engineering Analysis Associates, Inc.  
Minacs  
Spike Lawrence, Inc.  
University of Wisconsin-Milwaukee  
Research Data Analysis  
Budco

## SECTION IV

### *On-Site Audit of Case Opening/Closing Facilities*

The case opening and closing process is administered by an independent contractor, Minacs, located in Farmington Hills, Michigan. The contractor receives all applications to DSB and reviews them for preliminary jurisdiction determination. The centralization of this responsibility with Minacs provides for standardized and consistent determinations concerning jurisdiction. In addition, Minacs compiles and maintains the DSB statistics that are included in the Rule 703 mandated reports.

In reviewing this facet of the DSB program, we follow the previous audit format. With the exception of implementation of computerized statistics compilation and maintenance, the procedures are fundamentally identical to those described in the 2001 audit. The contents of the *Agenda/Decision Summary* form completed by the board administrator are now logged into the CUDL computer system. This assures that the critical information related to each board decision is available for each case file.

Minacs continues to operate as before and is in substantial compliance with all DSB-related regulatory requirements.

We said in last year's report:

***“NOTE: This dimension of the process has been changed. The case opening function will now be administered by DeMars & Associates. Nevertheless, the new changes were not fully implemented during the year covered by this report.”***

What we should have said is:

NOTE: This dimension of the process is being changed in mid-year (i.e., 2002). The case opening function will now be administered by DeMars & Associates. Nevertheless, the new changes were not implemented during the year covered by this report.

Since our current report covers the calendar year 2002, the process described above is accurate for the first half of 2002, but the case receipt and opening function has been transferred to DeMars & Associates with the case closing function being assumed by the Dispute Resolution Specialist at Ford Motor Company in all states but California (see, California-specific audit report).

## SECTION V

### ***On-Site Audit of DSB Operations for Three Regions***

The calendar year 2002 (January - December) audit involved a field inspection of the DSB component of the Ford Customer Service Division in the Denver, Colorado; Orlando, Florida; and San Francisco, California Regions.

The Denver Region has responsibility for Colorado, Wyoming, Utah, Idaho, New Mexico, Nevada, Oregon, Montana, South Dakota, and Nebraska. The Orlando Region has responsibility for Florida, Alabama, and Georgia. The San Francisco Region covers California, Nevada, Hawaii, and Oregon. In many cases, regions have jurisdictions which do not necessarily follow state boundaries, and in California there are two regions within the state.

**I. Denver Region**, Ford Customer Service Division, 6312 Fiddler's Green Circle, Englewood, Colorado.

**A. Personnel and Case Load**

Ford reports that the Denver Region received 205 DSB applications in 2002. Of this total, 69 are reported as "not-in-jurisdiction" cases. Ford reported 25 mediated (i.e., "Prior Resolved") cases for this region, and 111 arbitrated cases. The average time for handling a case in the Denver Region was 39 days. This is six more days than the national average of 33 days for resolving cases.

**B. Record Keeping, Accuracy and Completeness**

We drew a random sample of 50 cases that were closed during 2002 and examined them to determine whether they were complete and available for audit.

The results of the inspection of the random sample of 50 cases from 2002 are detailed below.

§ 703.6 (a) (1-12)

**(a) The Mechanism shall maintain records on each dispute referred to it which shall include:**

- 1) Name, address and telephone number of the consumer.**
- 2) Name, address and telephone number of the contact person of the Warrantor.**
- 3) Brand name and model number of the product involved.**
- 4) The date of receipt of the dispute and date of disclosure to the consumer of the decision.**
- 5) All letters and other written documents submitted by either party.**

**FINDINGS:**

The auditor examined 50 case files extracted from the reported 136 "in-jurisdiction" case files. All files were maintained as is appropriate. Of those files reviewed, most were arbitrated cases, and some were prior resolved (mediated) cases. A few files were re-opened cases that had been assigned new case numbers.

We examined each of the 50 sample files located with respect to the items enumerated in subsections 1 through 5, with the following results:

- 1) All case files we reviewed contained the customer's name, address, and telephone number. There was one case that was a duplicate that had been opened the second time with a different case number, but otherwise all was in order.
- 2) The requirement is met. The name and address of the independent administrator who receives the application, DeMars & Associates, is provided in the DSB brochure and is so generally known as to not require it to be placed in each individual case file.
- 3) All case files inspected contained the make and vehicle identification number (VIN) of the vehicle. It is generally found in the customer application as well as in any number of other documents in the file. The independent contractor Minacs receives the initial filing and then opens cases as is appropriate. They routinely send applications back to customers who have failed to include the VIN and explain that they cannot open the case until the VIN is supplied.
- 4) All case files inspected contained this information where appropriate. Not all cases necessitated a decision letter, but where a decision was rendered, the appropriate notification letter was present.
- 5) Many files contained letters and additional documents, but since there is no standard by which to measure this item, we determined this subsection to be "not applicable."

§ 703.6 (a) [continued]

- 6) All other evidence collected by the Mechanism relating to the dispute, including summaries of relevant and material portions of telephone calls and meetings between the Mechanism and any other person (including consultants described in section 703.4(b) of this part);**
- 7) A summary of any relevant and material information presented by either party at an oral presentation;**
- 8) The decision of the members including information as to date, time and place of meeting, the identity of the members voting; or information on any other resolution;**

FINDINGS:

All case files we reviewed and that involved arbitrated cases contained the information required by sections 6-8.

- 9) A copy of the disclosure to the parties of the decision.**

FINDINGS:

All applicable (i.e., arbitrated) case files contained copies of decision letters sent to the customer. This letter serves as both the decision and the disclosure of the decision.

**10) A statement of the warrantor's intended action(s);**

FINDINGS:

The warrantor's intended action(s) and performance are inextricably linked. As such, we validate this item in terms of performance verification.<sup>27</sup> Of the case files examined, most files with decisions that contained an award contained the appropriate performance verification information. Performance verification record-keeping is a function that involves both Minacs and DeMars & Associates. Minacs sends out a performance questionnaire, where appropriate, with DeMars & Associates' return address. Performance is assumed if the questionnaire is not returned.

Of the 50 case files examined, several did not contain performance verification information in the file, but all mediated and arbitrated cases had performance verification information registered on the *DSB Action Status* reports. Of course, in some situations the board's decision is for "no further action" and, in such cases, performance verification is not applicable.

**11) Copies of follow-up letters (or summaries of relevant and material portions of follow-up telephone calls) to the consumer and responses thereto; and**

**12) Any other documents and communications (or summaries of relevant and material portions of oral communications) relating to the dispute.**

The two sections above are not applicable for purposes of the audit because there is no practical means by which to verify the completeness and accuracy of such possible additions to the files.

**C. Case File Records (4 years 1999-2002)**

§ 703.6(f)

**The Mechanism shall retain all records specified in paragraph (a) through (e) of this section for at least 4 years after final disposition of the dispute.**

A random sample of 50 case numbers from the years 1999-02 was drawn by Minacs, and the field audit involved checking the sample case files for the region to verify that they were being maintained per requirement § 703.6(f). In addition, a visual inspection was made of the entire four-year accumulation of case files required by the same section. We found all cases maintained as required.

The closed files for the years 1999-2002 are stored at the DeMars & Associates headquarters in a room on the third floor set aside for that purpose. All current (i.e., 2002) files appeared

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<sup>27</sup> The "warrantor's intended actions" also relates to how they intend to respond to an arbitrator's decision/award. Since Ford's policy is to abide by all board decisions as part of the program they sponsor (i.e., The Dispute Settlement Board) there is no need to have any information about the policy in each case file folder.

intact and were readily available for inspection. The random sample inspection validated the apparent completeness suggested by the visual inspection.

## **D. Board Records**

### **i. Agenda/Decision Summaries**

All information required to be kept is maintained and available for inspection. The board's administrator completes a separate *Agenda/Decision Summary* form for each board meeting. The administrator provides a copy of this form to DeMars & Associates, which maintains the copies at their headquarters. Information on each form includes: a) meeting place, date, and time; b) arbitrator's name; c) agenda by customer name and case number; and d) the decisions and reasons for the decisions.

Since all records of the program that relate to a case are available to the parties upon request, it is important to point out that this particular record is a very important one because it contains the administrator's interpretation of the board's decision at the meeting in question. Since both parties are to be treated equally, it is imperative that this record be available to the parties only after the letters to the parties announcing the board's decisions have been mailed. Because Minacs logs the contents of the *Agenda/Decision Summary* form that relates to the decision into the CUDL system, it is important that Minacs receive this form only after the decision has been mailed to the parties. Thus, the information from the form does not appear in the CUDL system before the decision letters have been mailed, and Ford staff who have access to CUDL do not receive information about the decision before customers receive it.

### **ii. Arbitrator Biographies**

The arbitrator biographies are maintained by the independent contractor, Professor James Brown, who selects and trains the DSB board members. The biographies are available for review and copies can be obtained from Professor Brown, from DeMars & Associates, or from the Ford Motor Company's Consumer Affairs Office in Dearborn, Michigan. The biographies are adequate and current. The aggregate list of arbitrators for each region includes the dates of their appointments, together with the dates and coded type of DSB training.

## **E. Board Operations**

The audit included a brief interview with the board's administrator. The auditor monitored a complete board meeting and informally interviewed selected board members.

By and large, the board meeting in Denver operated according to the *DSB Written Operating Procedures*. The deliberations demonstrated that members were familiar with the facts as presented in the case files, indicating that they had all studied the files prior to the meeting. The board typically failed to begin each case by having someone provide a thorough overview of the facts of the case. The chairperson, in our view, failed to provide the customer an adequate opportunity to present an unfettered case in an efficient way. Instead, the chair attempted to guide the oral presentation to suit the chair's need to have the presentation given in the way the chair wanted it presented. To accomplish this, the chair interposed questions at the outset of the customer's oral presentation. Fortunately, the chair afforded the customers an opportunity to present most anything they chose during their allocated closing comment

period. We note, however, that customers have informed us in the past that they are nervous to start with and interruptions during their presentations often cause them to lose track of their thought process resulting in their not presenting important information. Once interrupted, they are often unable to recall what they had already said and, to avoid repetition, may leave out points they had intended to present. We disagree with the chair's approach in this regard but do not believe it necessarily raises questions of fairness as it relates to decisions.

i. Physical Description of Board Meeting

The DSB board meeting was held at the Renaissance Denver Hotel, Denver, Colorado. The meeting began at 9:00 a.m. The meeting room was large enough to accommodate any reasonably anticipated number of attendees. Time and location of the meeting were not prominently displayed in the hotel lobby, but the oversight was a direct result of recent discussions between DeMars & Associates and the hotel, which resulted in a breakdown in their mutual understandings. The problem was not indicative of the normal operating procedures and is of no regulatory concern.. The meeting room was equipped with a speaker phone to accommodate oral presentations by telephone.

In one case, there was substantial discussion of the case prior to phoning the customer who was going to be making an oral presentation. This raises serious questions about the board's sensitivity to the open meetings regulatory requirements. In a follow-up interview with the board's administrator, she assured the auditor that this was a unique circumstance and that she would discuss the matter with the board. We recommend that DeMars & Associates communicate with all their administrators to ensure that this practice is not repeated.

ii. Openness of Meeting

The administrator stated that observers are allowed at all DSB meetings.

iii. Efficiency of Meeting

All administrative functions at the board meeting were performed by the administrator, who is an agent of the independent administrator, DeMars & Associates.<sup>28</sup> The arrangements for the meeting and the general administration of the meeting were very efficient. The administrator did a professional job in assisting the board in carrying out its duties and she did so without crossing the fine line that separates the administrative from substantive participation in the hearing process.

iv. Board Process

This board, like all others we audited in 2003 for the 2002 audit report, is clearly committed to fair and expeditious resolution of warranty disputes. The deliberations indicated a general awareness of many of the federal and state regulations.

Generally, most pertinent issues identified on the customer's application were addressed by the board. In some cases, the board's discussion failed to appropriately focus on the main issues in dispute, which we attributed to the chair's failure to provide an adequate overview of the central issues at the onset of their review of the case. While this does not, in and of itself,

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<sup>28</sup> At this hearing, Jo DeMars, the President of DeMars & Associates, substituted for the regular administrator.

undermine the program's compliance status with Rule 703, it does affect the program's performance quality.

While the board's reasoning appeared to be generally acceptable, it would be helpful if, in some cases, they would more clearly specify their reasoning on important and fundamental issues. Having the board's reasoning better defined would also help auditors, observers, and customers to better understand the board's decision.

#### v. Board Decisions

The board's decisions were generally rendered in a manner consistent with federal regulations as well as the DSB's *Written Operating Procedures*. Any exceptions are programmatic errors or inconsistencies, which are being corrected and have been noted at other points in the audit report. In no case are such errors or inconsistencies sufficient in themselves to pose a threat to the program's substantial compliance status with federal requirements. In one case, however, the board discussion indicated a misunderstanding of DSB policy. The board was of the impression that they should not conclude by providing "specific" repair decisions. Such decisions are, however, specifically envisioned in the federal law as one of several listed remedies. Moreover, to give a repair decision without specificity invites anew the past problem<sup>29</sup> of granting repairs as deemed appropriate by a field service engineer. It transfers the board's authority to one of the parties to the dispute. The absurdity of such a decision becomes more clear perhaps, if, for example, we consider the possibility of the board's deciding to grant repairs "as deemed appropriate by the customer."

#### CONCLUSION:

In general, the Denver board process functioned well within the federal and state regulatory requirements. Our review of case files suggests that records are being created and maintained as required.

Overall, the review of the DSB program as it operates in Denver, Colorado, is "Good."

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<sup>29</sup> In the past, boards would frequently grant repairs and give supervising authority to Ford field service engineers. This, in effect, transferred the board's authority to a Ford employee who was free to repair or not repair as he or she deemed appropriate. The program discontinued this practice for a host of obvious reasons. To obviate specific repairs in favor of general directions to repair is the same thing since the decision-making authority would again fall to a Ford employee.

II. **Orlando, Florida, Region**, Ford Customer Service Division, 101 Southhall Lane, Maitland, Florida.

**A. Personnel and Case Load**

We interviewed the DSB board members and the DeMars & Associates administrator.

The Regional received 345 DSB applications in 2002. Of the cases filed, 233 were determined to be "in-jurisdiction" and 112 were determined to be "not-in-jurisdiction" cases. The Dispute Resolution Specialist who covers this region mediated 60 cases; the board arbitrated 173 cases. The number of cases in this region that were not decided within the allowable 40 days was 41. The average number of days for handling an Orlando Region case in 2002 was 32. This compares with 33 days nationally.

The Dispute Resolution Specialist who attempts pre-arbitration mediation and deals with post arbitration award implementation is adequately housed and provided with up-to-date equipment. Similarly, DeMars and Associates is appropriately staffed and has adequate equipment to support the board process in this region.

**B. Record Keeping Accuracy and Completeness**

We drew a random sample of 50 cases that were closed during 2002 and examined them to determine whether they were complete and available for audit.

The results of the inspection of the random sample of 50 cases from 2002 are detailed below.

§ 703.6 (a)(1-12)

**(a) The Mechanism shall maintain records on each dispute referred to it which shall include;**

- 1) Name, address and telephone number of the consumer;**
- 2) Name, address and telephone number the contact person of the Warrantor;**
- 3) Brand name and model number of the product involved;**
- 4) The date of receipt of the dispute and date of disclosure to the consumer of the decision;**
- 5) All letters or other written documents submitted by either party.**

**FINDINGS:**

We reviewed these files for the items enumerated in subsections 1-5 with the following results:

- 1) All case files reviewed contained the customer's name, address, and telephone number.
- 2) The requirement is met in that the name and address of the independent administrators who receives the application, DeMars & Associates, is provided in the DSB brochure. It is so generally known as to not require it to be placed in each individual case file.

- 3) All case files contain the make and vehicle identification number (VIN) of the vehicle. This information is generally found in the customer application and in a number of other documents in the file. As a result, cases are rarely delayed simply because the customer fails to include the VIN in the application.
- 4) All case files inspected contain this information. Not all cases necessitate a decision letter, but where a decision was rendered, the appropriate notification letter was present.
- 5) Many files contained letters and additional documents, but since there is no standard by which to measure this item, we determined this subsection to be "not applicable."
- 6) All other evidence collected by the Mechanism relating to the dispute, including summaries of relevant and material portions of telephone calls and meetings between the Mechanism and any other person (including consultants described in section 703.4(b) of this part;**
- 7) A summary of any relevant and material information presented by either party at an oral presentation;**
- 8) The decision of the members including information as to date, time and place of meeting and the identity of members voting; or information on any other resolution;**

FINDINGS:

All case files that were arbitrated contained the information required by subsections 6 and 8. The oral summaries required by section 7 are created by the DeMars administrator and later placed in the computer file by Minacs in an electronic file format. The source used to create the summary is the *Agenda/Decision Summary* form filled out by the board administrator at the time of the board meeting.

- 9) A copy of the disclosure to the parties of the decision.**

FINDINGS:

All applicable case files (i.e., arbitrated cases) contained decision letters.

- 10) A statement of the warrantor's intended action(s);**

FINDINGS:

The warrantor's intended action(s) and performance are inextricably linked. As such, we validate this item in terms of performance verification.<sup>30</sup> Of the case files examined, most files with decisions that contained an award contained the appropriate performance verification information. Performance verification record-keeping is a function that used to be carried out by DeMars & Associates. That changed recently with responsibility being transferred to the Dispute Resolution Specialist at Ford Motor Company who sends out performance questionnaires with Ford's return address. Performance is assumed if the questionnaire is not returned.

Of the 50 case files examined, several did not contain performance verification information in the file, but all mediated and arbitrated cases had performance verification information registered on the *DSB Action Status* reports. Of course, in some situations the board's decision is for "no further action" and, in such cases, performance verification is not applicable.

**11) Copies of follow-up letters (or summaries of relevant and material portions of follow-up telephone calls) to the consumer, and responses thereto; and**

**12) Any other documents and communications (or summaries of relevant and material portions of oral communications) relating to the dispute.**

The two sections above are not applicable for purposes of the audit because there is no practical means by which to verify the completeness and accuracy of such possible additions to the files. However, based on our extensive experience with this and other arbitration programs, we have no reason to believe that any required information is not contained in case file folders

### **C. Case File Records (4 years 1999-2002)**

§ 703.6(f)

**The Mechanism shall retain all records specified in paragraph (a) through (e) of this section for at least 4 years after final disposition of the dispute.**

A random sample of 50 case numbers from the years 1999-02 was drawn by Minacs, and the field audit checked the sample case files to verify that they were being maintained per requirement § 703.6(f). In addition, a visual inspection was made of the entire four-year accumulation of case files required by the same section.

The closed files for the years 1999-2002 are stored at the DeMars & Associates headquarters in a room on the third floor set aside for that purpose. All current (i.e., 2002) files appeared intact and were readily available for inspection. The random sample inspection validated the apparent completeness suggested by the visual inspection.

### **D. Board Records**

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<sup>30</sup> The "warrantor's intended actions" also relates to how they intend to respond to an arbitrator's decision/award. Since Ford's policy is to abide by all board decisions as part of the program they sponsor (i.e., The Dispute Settlement Board) there is no need to have any information about the policy in each case file folder.

#### i. Agenda/Decision Summaries

The four-year accumulation of *Agenda/Decision Summary* forms was kept in one location and was complete and readily available for audit. The board administrator completes a separate form for each board meeting and provides a copy of this form to DeMars & Associates at which point it becomes a permanent record. Information included on each form includes: a) meeting place, date, and time; b) arbitrators' names; c) agenda by customer name and case number; and, d) the decisions and reasons. That portion of this form pertaining to a given case is copied and placed in the customer's case file. This is important because as a part of the file a customer may review it and compare the decision letter they received with the notes taken at the time of the hearing to ensure that they are consistent.

#### ii. Arbitrator Biographies

The arbitrator biographies are available for review and can be provided by either DeMars & Associates, Professor James Brown, or the DSB Process Manager at the Consumer Affairs Office in Dearborn, Michigan. The biographies are thorough and current. The list of arbitrators/board members for each region includes the dates of each arbitrator's appointment and DSB training.<sup>31</sup>

### **E. Board Operations**

#### i. Physical Description of Board Meeting

The DSB board meeting on March 20, 2002, began at 9:00 a.m. at the Embassy Suites, Orlando North, 225 East Altamonte Drive, Altamonte Springs, Florida. The meeting room was adequate for those in attendance and for any likely number of visitors. Notice of the meeting was appropriately posted in the hotel lobby.

#### ii. Openness of Meeting

The meeting was open to observers in compliance with FTC rule 703.8 (d) concerning open meetings in that the board recognized that the parties may stay and observe the entire meeting if they choose to do so.

#### iii. Efficiency of Meeting

The case files were well prepared and arranged in an orderly fashion. The DSB administrator took detailed notes on each decision, thereby reducing the likelihood of decision letter error.

#### iv. Board Process

Overall, the board's performance was very good. It was clear that the process was fair and impartial, but that this board, like most others, would benefit from refresher arbitration training. This is especially true concerning the degree to which modification of a vehicle may

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<sup>31</sup> The document codes the subject of training on the third entry line as follows: the Arabic numeral represents the year of training (i.e., 2=1992); the letter C = California-specific training; and the letters CR = California Refresher training.

or may not void the warranty,<sup>32</sup> as well as the state statutory presumption issue and its place in the DSB process. They could also benefit from advanced training about the arbitrators' scope of authority, the replacement vs. refund decisions, and the appropriate use of a refund/replacement customer option.

In the first case, the customer made an oral presentation by telephone. The chair provided a good case opening statement which was consistent with each case. It is noteworthy that following the customer's presentation, the chair informed the customer that she was welcome to remain on the line during the board's deliberations. She accepted the offer and the board deliberated without incident.

It appeared that the board members were generally well prepared and had reviewed the case files prior to oral presentations or final deliberations.

#### v. Board Decisions

We found the decisions made during the board meeting rendered in a manner reasonably consistent with the requirements of Rule 703. As is true of the other regions audited, more in-depth explanations and reasons for the decision should be reflected in the decision statement.

#### CONCLUSION:

The DSB program, as it operates in this region, is administered in compliance with Rule 703. The board's commitment to ensure fair and expeditious resolution of warranty disputes is evident throughout the program. The staff is clearly dedicated to the program's mission and demonstrates an appropriate degree of professionalism. Such a policy should, in our view, be applicable to all observers, parties, and board members. Overall, however, the program as it operates in this region is rated as "Very Good."

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<sup>32</sup> This issue is somewhat problematic where the modifications are fairly substantial and made by the dealer prior to the sale of the vehicle. In such cases, it is difficult for a customer who is unfamiliar with the product line to sort out what is, or is not, a post-manufacture modification and whether it voids the vehicle's warranty in whole, or in part, or not at all.

**III. San Francisco, California, Region (Pleasanton Board), Ford Customer Service Division, 12677 Alcosta Blvd., San Ramon, California.**

**A. Personnel and Case Load**

We interviewed the DSB board members and the DeMars & Associates administrator.

The San Francisco Region received 594 DSB applications in 2002. Of the cases filed, 126 were reported to be "not-in-jurisdiction" cases. The Dispute Resolution Specialist who covers this region mediated 136 cases; the DSB boards arbitrated 332 cases. The average number of days for handling a San Francisco Region case in 2002 was 30. This compares with 33 days nationally. There were 64 cases handled in 2002 wherein the decision was not rendered within the allowable 40-day time period. Such delays are frequently the result of a board decision requesting an independent inspection which puts the decision off until the board's next meeting. This year the statistical report supplied to us indicated that all 64 of the reported cases that exceeded the 40 days allowable for handling a case are attributed to Ford's having refused to abide by the Mechanism's decision. We knew that was not correct and attributed this reporting error to an administrative oversight. We later verified that this reporting was indeed a clerical error. In fact, there were no cases delayed beyond 40 day because the manufacturer never refuses to abide by a board's decision.<sup>33</sup>

The various Dispute Resolution Specialists who attempt pre-arbitration mediation and deal with post arbitration award implementation are adequately housed and provided with up-to-date equipment. Similarly, DeMars and Associates is appropriately staffed and has adequate equipment to support the board process in this region.

**B. Record Keeping Accuracy and Completeness**

We drew a random sample of 50 cases that were closed during 2002 and examined them to determine whether they were complete and available for audit.

The results of the inspection of the random sample of 50 cases from 2002 are detailed below.

§ 703.6 (a)(1-12)

**(a) The Mechanism shall maintain records on each dispute referred to it which shall include;**

- 1) Name, address and telephone number of the consumer;**
- 2) Name, address and telephone number the contact person of the Warrantor;**
- 3) Brand name and model number of the product involved;**
- 4) The date of receipt of the dispute and date of disclosure to the consumer of the decision;**
- 5) All letters or other written documents submitted by either party.**

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<sup>33</sup> Of course, this proviso is a conditional one based on the assumption that all board decisions are rendered consistent with the DSB program policies.

FINDINGS:

We reviewed these files for the items enumerated in subsections 1-5 with the following results:

- 1) All case files reviewed contained the customer's name, address, and telephone number.
- 2) The requirement is met in that the name and address of the independent contractor who receives the application, Minacs, is provided in the DSB brochure. It is so generally known as to not require it to be placed in each individual case file.
- 3) All case files reviewed contain the make and vehicle identification number (VIN) of the vehicle. This information is generally found in the customer application and in a number of other documents in the file. As a result, cases are rarely delayed simply because the customer fails to include the VIN in the application.
- 4) All case files inspected contain this information. Not all cases necessitate a decision letter, but where a decision was rendered, the appropriate notification letter was present.
- 5) Many files contained letters and additional documents, but since there is no standard by which to measure this item, we determined this subsection to be "not applicable."

§703.6 (a) [continued]

- 6) All other evidence collected by the Mechanism relating to the dispute, including summaries of relevant and material portions of telephone calls and meetings between the Mechanism and any other person (including consultants described in section 703.4(b) of this part;**
- 7) A summary of any relevant and material information presented by either party at an oral presentation;**
- 8) The decision of the members including information as to date, time and place of meeting and the identity of members voting; or information on any other resolution;**

FINDINGS:

All case files that were arbitrated contained the information required by subsections 6 and 8. The oral summaries required by section 7 are created by the DeMars administrator and later placed in the computer file by Minacs in an electronic file format. The source used to create the summary is the *Agenda/Decision Summary* form filled out by the board administrator at the time of the board meeting.

- 9) A copy of the disclosure to the parties of the decision.**

FINDINGS:

All applicable case files (i.e., arbitrated cases) contained decision letters.

**10) A statement of the warrantor's intended action(s);**

**FINDINGS:**

The warrantor's intended action(s) and performance are inextricably linked. As such, we validate this item in terms of performance verification.<sup>34</sup> Of the case files examined, most files with decisions that contained an award contained the appropriate performance verification information. Performance verification record-keeping is a function that used to be carried out by DeMars & Associates. That changed recently with responsibility being transferred to the Dispute Resolution Specialist at Ford Motor Company who sends out performance questionnaires with Ford's return address. Performance is assumed if the questionnaire is not returned.

Of the 50 case files examined, several did not contain performance verification information in the file, but all mediated and arbitrated cases had performance verification information registered on the *DSB Action Status* reports. Of course, in some situations the board's decision is for "no further action" and, in such cases, performance verification is not applicable.

**11) Copies of follow-up letters (or summaries of relevant and material portions of follow-up telephone calls) to the consumer, and responses thereto; and**

**12) Any other documents and communications (or summaries of relevant and material portions of oral communications) relating to the dispute.**

The two sections above are not applicable for purposes of the audit because there is no practical means by which to verify the completeness and accuracy of such possible additions to the files. However, based on our extensive experience with this and other arbitration programs, we have no reason to believe that any required information is not contained in case file folders.

**C. Case File Records (4 years 1999-2002)**

§ 703.6(f)

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<sup>34</sup> The "warrantor's intended actions" also relates to how they intend to respond to an arbitrator's decision/award. Since Ford's policy is to abide by all board decisions as part of the program they sponsor (i.e., The Dispute Settlement Board) there is no need to have any information about the policy in each case file folder.

**The Mechanism shall retain all records specified in paragraph (a) through (e) of this section for at least 4 years after final disposition of the dispute.**

A random sample of 50 case numbers from the years 1999-2002 was drawn by Minacs and the field audit checked the sample case files to verify that they were being maintained per requirement § 703.6(f). In addition, a visual inspection was made of the entire four-year accumulation of case files required by the same section.

The closed files for the years 1999-2002 are stored at the DeMars & Associates headquarters in a room on the third floor set aside for that purpose. All current (i.e., 2002) files appeared intact and were readily available for inspection. The random sample inspection validated the apparent completeness suggested by the visual inspection.

#### **D. Board Records**

##### **i. Agenda/Decision Summaries**

The four-year accumulation of *Agenda/Decision Summary* forms was kept in one location and was complete and readily available for audit. The board administrator completes a separate form for each board meeting and provides a copy of this form to DeMars & Associates at which point it becomes a permanent record. Information included on each form includes: a) meeting place, date, and time; b) arbitrators' names; c) agenda by customer name and case number; and, d) the decisions and reasons. That portion of this form pertaining to a given case is copied and placed in the customer's case file. This is important because it allows the customer to review it and compare the decision letter they received with the notes taken at the time of the hearing to ensure that they are consistent.

##### **ii. Arbitrator Biographies**

The arbitrator biographies are available for review and can be provided by either DeMars & Associates, Professor James Brown, or the DSB Process Manager at the Consumer Affairs Office in Dearborn, Michigan. The biographies are thorough and current. The list of arbitrators/board members for each region includes the dates of each arbitrator's appointment and DSB training.<sup>35</sup>

#### **E. Board Operations**

##### **i. Physical Description of Board Meeting**

The DSB board meeting on March 3, 2002, began at 9:00 a.m. at the Sheraton Four Points Hotel, 5115 Hopyard, Pleasanton, California. The meeting room size and accommodations were adequate for those in attendance and for any likely number of visitors.

##### **ii. Openness of Meeting**

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<sup>35</sup> The document codes the subject of training on the third entry line as follows: the Arabic numeral represents the year of training (i.e., 2=1992); the letter C = California-specific training; and the letters CR = California Refresher training.

The meeting was technically open to observers and possibly in compliance with FTC rule 703.8 (d) concerning open meetings in that the board recognized that the parties may stay and observe the entire meeting if they choose to do so. It appeared, however, that the board was attempting to possess both sides of the proverbial coin in this regard. Their stated acceptance of the openness of the meeting did not square with the manner in which the board elected to conduct its meeting. Customers who had chosen to attend the meeting/hearing to make oral presentations discovered that the board did not decide their cases at the conclusion of their taking testimony/evidence, but rather delayed their decision making. As a result, a customer who had concluded his/her testimony would have to wait for an undetermined amount of time in order to observe the decision making process. If this board conducted its hearing as most boards do, the customer would benefit by having to stay only an additional few minutes to learn the outcome of the case. In addition, board members would have the obvious benefit of deciding the case while the issues were fresh in their minds. This is an important benefit because many of the facts pertaining to these kinds of cases are very much alike (e.g., a series of repair orders, statement forms of the dealers and manufacturer as well as the customer claim form) and to confusing facts from different cases is quite likely when the board does not decide each case immediately upon having received the testimony and reviewed together the basic facts of the case.

We have witnessed on a few occasions some board members becoming confused as to which case was actually before them when they had delayed a case decision in order to avoid keeping another customer waiting at home for a telephone call that would allow for them to make an oral presentation. Such confusion casts doubts on the professionalism of the board proceedings. For that reason, we have suggested that the DSB not schedule such calls on a strict time frame but rather inform the customers that they would be called "in the morning," or, between certain hours as the processing of other cases. In our view, this process involving the hearing of multiple cases on a given day by the same board members, cannot be considered a fair process if they delay making decisions until later in the meeting. The likelihood of someone confusing facts from one case with those of another, or forgetting germane points previously made when there is a lengthy delay separated by other oral presentations is obvious. Moreover, it is a problem we have actually observed in other venues, although not in such a systematic manner. Delaying decisions in this manner does, in fact, result in more unintentional mistakes by the board in reaching decisions than is either necessary or acceptable. In our view, it is a practice that cannot continue if the program is to be in compliance with the fairness standard of Rule 703 of the Magnuson Moss Warranty Act.

### iii. Efficiency of Meeting

The case files were well prepared and arranged in an orderly fashion. The DSB administrator took detailed notes on each decision, thereby reducing the likelihood of decision letter error.

### iv. Board Process

The board members were clearly committed to fair and expeditious resolution of warranty disputes, but their deliberations were in some cases problematic, as outlined above. In most cases, the board chair provided a fairly thorough case opening statement setting forth the particulars of the dispute. Unfortunately, when the board came back to decide cases after having delayed their decisions, the board chair did not review the previous opening statement so as to at least attempt to re-create the context of the case. The board members did, however, indicate a general awareness of most federal and state regulations discussed in arbitrator training.

Overall, The board addressed most of the important issues in the cases reviewed, but sometimes failed to state the customer's requested relief. Most exceptions appeared to result

from the members' tacit agreement that certain issues need not be reviewed because of the unique facts of the case.

One case left us with an indelible impression insofar as it appeared to lack any precedent in our 20-year experience. The dealer, as a function of their warranty repair status, elected to "pass the ball," as it were, and referred the customer to a non-Ford specialty shop to fix the manufacturer-installed radio. The outside repair facility appeared to have created more problems than it had solved and, as a consequence, the dealer was disclaiming any responsibility. We make no final judgement in the matter, but only raise the issue as one for careful consideration.

We have said in the recent past some things we believe worthy of being re-stated.

***It would be most helpful to observers if the board took the time to verbalize its thinking on fundamental issues. For example, in a case in which the customer asserts more than four trips to the dealer for a single problem, the board's reasoning on the statutory threshold issue should be discussed. This would help auditors, observers, and customers to better understand the decision. In addition, it would be helpful if the board chair were to briefly describe, in the customer's presence, the nature of the case prior to any oral presentation. This would help the board members by providing a context in which the customer's comments could be assessed and would demonstrate to the customer the board's awareness of the basic facts of the case. Such a procedure might also reduce the likelihood of unnecessary comments and would establish an appropriate sense of the board's independence and interest in the cases being reviewed.***

The above recommendation was adopted by this board and the improvements were impressive.

We also said in those reports:

***We found troubling the fact that the board discussed cases substantively prior to the customers being escorted into the room. Case opening statements and substantive discussions should only take place while the parties are present unless he/she elects to absent themselves from the meeting.***

The board we reviewed this year had, like last year's, corrected this problem.

We interviewed selected board members either during or immediately following the meeting.<sup>36</sup> Those we talked to, as is usually the case, rated their training very high. Overall, board members appear to be pleased with the program and believe the program provides customers with a fair process. As in the past, board members indicate concerns about case file

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<sup>36</sup> Sometimes, between consideration of cases, there is an opportunity to query the board about issues that may have arisen from their discussion of the previous case.

preparation. The most common concerns are incomplete and/or illegible portions of files and nonexistent dealer or company statements. Customers also often fail to provide certain important information on the application. This can deprive the board of a clear view of the matter prior to their more deliberations, which can clearly affect the quality of the analysis. This concern may be alleviated by those customers opting to make oral presentations.

The board operated well within the regulatory requirements in respect to all but the one previously discussed area of concern.

v. Board Decisions

See comments in the Openness of Meeting section above.

**CONCLUSION:**

The DSB program as it operates in this region, is administered, by and large, in compliance with Rule 703. The board's commitment to ensure fair and expeditious resolution of warranty disputes is evident throughout most of the program. The staff is clearly dedicated to the program's mission and demonstrates an appropriate degree of professionalism. Overall, the program as it operates in this region is rated as "Fair."

## SECTION VI

### *Arbitration Training*

There is no specific language in Rule 703 requiring the training of arbitrators. There are, however, several general requirements for ensuring that the program do whatever is necessary to provide customers with an opportunity for fair and expeditious resolution of warranty disputes.

The arbitration training component of the DSB training was conducted and monitored on December 8 - 10, 2002, at the Omni Royal Orleans Hotel in New Orleans, Louisiana. The arbitration training program's attendees stayed at the hotel where the training exercises were conducted. Professor James Brown, Director of the Center for Consumer Affairs, University of Wisconsin-Milwaukee, conducted the training, assisted by Mr. Clay White. Mr. R. Joseph Bichanich, of DeMars & Associates, provided additional training information.

The training addressed a number of issues: independence of all DSB vendors was stressed as a stated objective of Ford Motor Company; historical perspective of federal Magnuson-Moss Act and state Lemon Law statutes was presented; regulatory concepts and practical implications were discussed; the professional roles of various contractors associated with the arbitration process were reviewed; professional and practical skill development was initiated; reference materials and maintenance techniques were introduced; the concept of fairness was emphasized; and considerations and practical details as they relate to decisions and the options of board members were made available. In this sense, the training was modeled on prior sessions.

Arbitrators were introduced to many important legal principles that are familiar to professionals in consumer affairs, to regulators, and to industry lawyers but are not subjects commonly understood by most volunteer arbitrators. These concepts, such as the doctrines (Implied Warranties under the Uniform Commercial Code) of "merchantability" and "fitness for purpose," can be of critical importance in the context of alternative dispute resolution.

The Uniform Commercial Code, The Magnuson-Moss Warranty Act, and The Doctrine of Revocation of Acceptance were all presented and discussed in detail. The historical development of state laws that followed the enactment of Magnuson-Moss was presented, and the various state lemon law presumption threshold requirements were also addressed. The importance of state statutory "buy back" presumptions concerning what constitutes a reasonable number of repair attempts and/or time-out-of-service for repair was presented, but field audits suggest that more attention may be necessary in order to adequately address these important issues.

Trainers also clarified the new role of DeMars & Associates in opening cases.<sup>37</sup> It was stressed that DeMars & Associates' initial determination is just that and that final determination is the sole province of the board. Much attention was given to the topic of establishing jurisdiction of a DSB application. In cases of an ambiguous "jurisdiction appeal" to the board, trainees were encouraged to decide in favor of customers.

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<sup>37</sup> In the recent past, receiving the DSB application and reviewing the case for initial jurisdiction determination was handled by the independent contractor, Minacs.

The auditor observed that the training incorporated sufficient emphasis on the practical skill development necessary to efficiently and appropriately conduct board meetings. A good balance of practical and regulatory information was provided to attendees. Regulatory concepts were well selected and professionally presented.

The lecture format was enhanced by printed reference materials which can be placed in a referenced loose-leaf binder that is mailed to each participant following the training. Reference materials stored in the loose-leaf binder are updated as new information is released. This reference book serves as the board members' essential reference tool. The reference materials are customized to the state requirements of each board member and constitute a well organized tool.

Trainers also employed group interaction and role playing exercises. The several training exercises included: case studies in arbitration problem solving; repeated discussions focusing on the arbitrator's scope of remedies; and, review of the different types of inspections and corresponding circumstances, as well as the related procedures available for arbitrators. The interactive training practice appears to be an effective training method and one that is appreciated by the attendees.

The board chair's responsibilities were emphasized in detail. In addition, trainers discussed the significance of the program's providing "fairness" consistently in all their practices and were reminded that, as arbitrators, their responsibilities do not include "finding and fixing repair problems." Field audits suggests that even greater attention be given to the importance of the chair, or someone, providing a brief, but thorough, thumbnail sketch of each case's particulars prior to taking direct evidence from the parties and before any board deliberations begin. It is sometimes apparent that one or more board members is operating on inaccurate assumptions about important particulars that would normally be addressed in a good opening statement provided by either the board's administrator or one of the board members.

Mr. Clay White provided a session about the forms that typically appear within the case file provided to each board member prior to the hearing at which the board renders a decision. The information gave trainees an enhanced understanding of the many documents included. In addition, Mr. White explained the numerous acronyms associated with these documents (e.g. OASIS reports & FSE reports).

Mr. Joseph Bichanich of DeMars & Associates explained the various DSB roles played by DeMars & Associates. He further explained how DeMars & Associates provides administrative support to the various boards and board members.

The auditor further observed that the discussion covering repurchases and replacements provided a good basis of understanding as it relates to calculating the economic considerations involved in these situations. This area is quite complex, and the efforts to provide ongoing training are essential for those involved in this process. It is clear that many of these practical procedures are well understood by the Dispute Resolution Specialist (DRS), but understanding by board members is not so evident. Continued training and practice exercises should enhance the arbitrators' level of confidence in these matters.

A period was set aside for Professor Brown to offer additional California-specific training to those attendees who would be serving in California, where there are requirements in addition to those set forth in the federal Rule 703.

The training seminar was comprehensive, well organized, professionally presented, and well received by its attendees.

## ARBITRATION TRAINING RATING SYSTEM

- |   |           |
|---|-----------|
| 1) Adequacy of training materials                                     | EXCELLENT |
| 2) Accuracy of informational materials                                | EXCELLENT |
| 3) Thoroughness of material   | EXCELLENT |
| 4) Quality of presentation  | EXCELLENT |
| 5) Apparent understanding and likely comprehension of the information | VERY GOOD |

## *SECTION VII*

# *Survey and Statistical Index Comparative Analyses*

### *FORD MOTOR COMPANY DISPUTE SETTLEMENT BOARD PROGRAM INDICES*

The Federal Trade Commission (FTC) regulates informal dispute resolution programs, such as those operated by the Ford Motor Company, under FTC Rule 703.6(e). The rule mandates disclosure of statistics about the outcomes of warranty disputes and warrantor compliance with settlements and awards. The purpose of this section of this audit is to verify the statistics provided by the company for the year 2002.

A consumer who wants to have a dispute settled by the Dispute Settlement Board (DSB) must: (1) be the owner of a vehicle that meets certain specified age and mileage requirements; and, (2) agree to forego any legal action while the case is open with the DSB. If a customer applies to the program but does not meet these requirements, the case is considered to be “out-of-jurisdiction.” Cases that are “out-of-jurisdiction” are counted as “closed.” A consumer who is not satisfied with the jurisdiction decision of the program can request that the case be reviewed by the board, but the board is not obligated to hear the request.

If a consumer who files with the DSB is able to reach an agreement with Ford Motor Company prior to an arbitration hearing, the dispute is said to have been “mediated” or “prior resolved” by the staff. If the consumer and Ford Motor Company cannot reach an agreement, the case is arbitrated by the DSB. Arbitration cases can result in the granting of an award requiring Ford to repair or replace the vehicle, to issue a cash reimbursement, or to extend the warranty. On the other hand, the consumer may receive an adverse decision in which there is no award of any kind.

FTC regulations require arbitration decisions to be rendered within 40 days from the date the DSB office receives the application. Manufacturers must comply with both mediated and arbitrated decisions within 30 days of the decision.

FTC Rule 703.6(e) requires warrantors to report statistics (also referred to as indices) in 13 areas. These include such things as: the number of mediated and arbitrated warranty disputes in which the warrantor has complied with a settlement or award; the number of cases in which the warrantor did not comply; the number of decisions adverse to the consumer; the number of “out-of-jurisdiction” disputes; and the number of cases delayed beyond 40 days. In addition to questions designed to assess the validity of DSB statistics, our survey includes questions that allow consumers to evaluate various aspects of the program.

To determine the accuracy of the DSB’s warranty dispute statistics and to gather evaluation information about the program, Claverhouse Associates contracted with the Survey Research Division of the Institute for Public Policy and Social Research (IPPSR) to conduct a survey of a randomly selected national sample of consumers who filed disputes with the DSB during 2002. The primary focus of this survey is to determine whether consumers’ recollections or records of what happened in their cases match the data compiled by the DSB. The question is not whether an individual’s recollections match the data in the DSB’s records but rather whether the aggregate proportion of consumers’ recollections agrees with the outcomes reported to the FTC.

## ABOUT THE STUDY

The Claverhouse study is based on 302 respondents from a sample of 692 cases randomly drawn from the universe of 3,303 cases closed nationally in 2002. A customer who had filed more than one case was asked to refer to the most recent case in answering the survey.

The data was collected through a mailed, self-administered questionnaire. IPPSR used methodology designed by Professor Donald Dilman of the University of Washington, a nationally known expert in the field of self-administered questionnaires. Since its inception, IPPSR has used this methodology for all of its self-administered survey projects.

The initial mailing, on March 25, 2003, contained the survey, a cover letter, and a postage-paid return envelope. The cover letter explained the purpose of the survey and the random selection process. It also explained that participation was voluntary but encouraged the recipient to participate. One week later, a combination thank-you and reminder postcard was sent to the entire sample.

Each respondent was assigned a unique number to allow the project staff to monitor the status of each survey. Thus, IPPSR staff was able to determine who had returned completed questionnaires and which questionnaires were returned by the post office because of invalid addresses.

On April 22, 2003, IPPSR staff mailed another questionnaire to those who had not returned completed questionnaires. Of the 692 questionnaires, 302 were returned completed; the completion rate for the study was 43.5 percent. The questionnaire data were entered, proofed, and coded by IPPSR staff.

A threat to the validity of any sample study is non-response bias. That is, if there is any systematic reason that certain consumers selected for the study are unavailable or choose not to participate, the results can be biased. For example, if those who did not receive awards were more likely to refuse participation than those who did receive awards, the study would underestimate the percentage of decisions adverse to consumers. The practices of sending follow-up postcards, second mailings, and reminder phone calls are designed to ensure high cooperation among those selected to participate. Because the sample of 302 cases is a simple random sample, the sampling error is  $\pm 5.4$  percent.<sup>38</sup> The number of responses varies from question to question, not only because, for example, some questions refer to mediated settlements and others to arbitrated cases, but also because not all respondents answered all appropriate questions.

### Method of Resolution

Table 1 compares the method of resolution of disputes in the Claverhouse sample with the figures reported to the FTC. Since the Claverhouse survey contained only in-jurisdiction cases, out-of-jurisdiction cells in the Claverhouse section of the table are blank, and the subtotal (representing in-jurisdiction cases) is equal to total disputes. In this case, we compare only FTC in-jurisdiction cases with the Claverhouse sample. The difference between the 29.8 percent of cases mediated in the Claverhouse sample and the 22.2 percent of cases mediated in the DSB figures is statistically significant at the 95 percent confidence interval. Likewise, the difference between the 70.2 percent of cases arbitrated in the Claverhouse sample and the 77.8 percent of cases mediated in the DSB figures is statistically significant at the 95 percent confidence interval. We have no explanation for this difference, but we should keep in mind that not all customers differentiate between “mediation” and “arbitration” even though the questionnaire

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<sup>38</sup> This is the sampling error when the responses divide roughly 50-50 on a given question and when there are 302 cases, given a 95 percent confidence interval (i.e., there is a 1-in-20 chance that the actual proportion in the population falls outside the range of  $50 \pm 5.4$  percent). The magnitude of the sampling error is determined primarily by sample size (a larger sample size yields a smaller sampling error) and also, to some extent, on how evenly responses are divided among alternative answers.

provides a brief explanation. Another explanation might be response bias; that is, those whose cases were mediated might have been more likely to return their survey questionnaires.

**Table 1**  
**Method of Resolution of Warranty Disputes**  
**Comparison between Claverhouse Survey and DSB Indices 2002**

Resolution	Claverhouse		DSB		
	Number	Percent	Number	Percent of in-jurisdiction cases	Percent of all cases
Mediation	90	29.8%	1,173	22.2%	
Arbitration	212	70.2%	4,122	77.8%	
Subtotal (in-jurisdiction)	302	100.0%	5,295	100.0%	70.8%
Out-of jurisdiction	-	-	2,187	-	29.2
Total disputes	302	100.0%	7,482		100.0%

### Mediated Cases

FTC Rule 703.6(e) requires the reporting of the proportion of mediated settlements with which warrantors have complied, the proportion with which warrantors have not complied, and the proportion in which the period for compliance has not yet passed. Since our universe of cases from which the sample was drawn includes only closed cases, we do not include cases in which the period has not yet passed. Although 90 of the surveyed consumers stated that their cases had been mediated, only 76 reported on the timing of warrantor compliance.

**Table 2**  
**Outcomes of Mediated Settlements**  
**Comparison between Claverhouse Survey and DSB Indices 2002**

Mediated Settlements	Claverhouse	DSB
	Percent <sup>a</sup> (Number)	Percent <sup>b</sup> (Number)
Warrantor has complied within the compliance period	84.2% (64)	95.2% (1,169)
Warrantor has not complied	5.3% (4)	4.8% (59)
Warrantor complied but not within the compliance period	10.5% (8)	0.0% (0)
Total Mediated Cases	100.0% (76)	100.0% (1,228)

- a. Only 76 respondents answered this question. Percentages are percentages of those who replied.  
b. This percentage is a percentage of mediated cases.

DSB indices show that the manufacturer complied with 95.2 percent of the mediation agreements within the mandated time frame. The difference between the survey results and the DSB index is outside the margin of error (by 5.4 percent); however, survey results show a total of 94.7 percent of respondents reporting that the manufacturer has complied with the mediation agreement, regardless of timing. This figure agrees with the DSB figure. Because, as we discuss in another context, survey respondents' recollections of significant dates in their cases are often unreliable, the 10.5 percent reporting that compliance was not with the mandated time frame is not a cause for concern. Of more significance is that the total percentage of respondents reporting compliance (94.7 percent) is statistically the same as the percentage reported by the DSB (95.2 percent).

Table 3 shows the specific mediation settlement outcomes reported by the survey respondents. Eighty respondents answered this question. When asked about their level of satisfaction with the mediation outcome, 87 of the 90 respondents whose cases were mediated answered the question. Of these, 85.1 percent were satisfied (27.6 percent were initially not satisfied, but the manufacturer or dealer eventually performed to their satisfaction). Six respondents (6.9 percent) were dissatisfied and pursued their cases by contacting the DSB. Seven respondents (8.0 percent) were not satisfied and pursued their cases by other means.

**Table 3**  
**Specific Outcomes of Mediated Settlements**  
**Claverhouse Survey**

<b>Outcome</b>	<b>Number</b>	<b>Percent</b>
New Vehicle	29	36.3%
Cash Settlement	22	27.5%
Extended Warranty	9	11.3%
Paid for Repairs	5	6.3%
Voucher	3	3.8%
Trade-in Allowance	1	1.3%
Other	9	11.3%
Nothing	2	2.5%
Total	80	100.3% <sup>a</sup>

a. Total does not equal 100.0% due to rounding.

### **Arbitrated Cases**

Before the questionnaire presented detailed questions about arbitrated cases, it asked respondents about the process leading to their hearings. Respondents were first asked whether they remembered receiving the forms on which their claims were stated. Of the respondents who reported having arbitration hearings, 183 (94.3 percent) said that they recalled receiving the forms and 194 replied to a question about how accurately the forms stated their claims: 40.7 percent said "very accurately"; 41.8 percent said "somewhat accurately"; and, 17.5 percent said "not very accurately or not at all accurately". The respondents' evaluations of how accurately the forms stated their claims were strongly correlated with whether they received an award in the arbitration process. Of those who said their cases were stated very accurately, 81.6 percent

received an award from the arbitration process, whereas only 41.9 percent of those who said their claims were stated not accurately at all received an award (see Figure 1).

Respondents were then asked whether they had been notified of the time, place, and date of the arbitration hearing. Of the 212 respondents who answered the question, 193 (95.5 percent) said they had been notified. Only 39.6 percent said that they had attended their hearings; the reasons for their not attending are unknown.

FTC Rule 703.6(e)4-7 requires warrantors to report the proportion of arbitration decisions with which they have complied, the proportion with which they have not complied, and the proportion for which the date of compliance has not yet passed. They must also report the proportion of decisions adverse to the consumer.

Table 4 presents the data about the outcomes of arbitrated cases.

**Table 4**  
**Outcomes of Arbitrated Cases**  
**Comparison between Claverhouse Survey and DSB Indices 2002**

Outcome	Claverhousee	DSB
	Percentage (Number)	Percentage (Number)
Arbitration Award Granted and Accepted		
Case decided by board and warrantor has complied	51.3% (102)	46.3% (1,915)
Case decided by board and warrantor has not complied	5.0% (10)	2.1% (88)
Case decided by board and time for compliance not passed	-	
Total – award granted and accepted	56.3% (112)	48.4% (2,003)
Arbitration Award Granted and Not Accepted	11.1% (22)	11.9% (492)
Arbitration Decision adverse to consumer	32.7% (65)	39.7% (1,642)
Total arbitrated decisions	100.0% (199) <sup>a</sup>	100.0% (4,137)

a. This includes only cases for which there was no missing data.

Survey results are different from the DSB indices statistically significant degree in only one respect: DSB indices report a slightly higher percentage of decisions adverse to the consumer and, conversely, a slightly lower percentage of arbitration awards granted and accepted. Because this difference is in favor of the consumer, we do not consider it a cause for concern.

INSERT FIG 1

All respondents whose cases were arbitrated were asked whether they had pursued their cases further after the arbitration decision. Fifty-seven respondents (26.9 percent of arbitrated cases) replied in the affirmative. Table 5 shows by what means they pursued their cases. Note that many respondents pursued their cases by more than one means; thus, the number of responses is greater than the number of respondents.

**Table 5**  
**Methods of Pursuing Cases**  
**Claverhouse Survey**

Method	Number	Percent
Contacted an attorney/legal means	22	31.9%
Contacted a government agency	16	23.2%
Recontacted the DSB	17	24.6%
Worked out a solution with the dealer	14	20.3%
Total responses	69	100.0%

### **Delays to Arbitration Decisions**

Under FTC Rule 703.6(e)9-13, warrantors must report the proportion of cases in which arbitration cases were delayed beyond the 40 days allocated for arbitration decisions. Ford Motor Company reports the reasons for such delays in three categories: (1) consumer made no attempt to seek relief directly from the manufacturer; (2) consumer failed to submit required information in a timely manner; (3) and, (4) all other reasons.

DSB figures report 23.5 percent of all in-jurisdiction cases delayed beyond 40 days, whereas survey respondents reported 43.5 percent of cases delayed beyond 40 days (see Figure 2). This percentage difference is statistically significant. Such a finding is common in our research, however, because the survey asks the recall of very specific information about an event that may have occurred a year or more ago. Only 45.7 percent of respondents were able to give an exact date on which their cases were opened; whether these dates were correct or not is unknown. About a quarter (24.8 percent) gave no date at all or only a year, and 29.5 percent gave only a month and year. Survey respondents reports on when their cases were closed were similar. Slightly over half (53.3 percent) provided a complete date; 21.5% provided only a month and year; 3.0 percent gave only a year; and, 22.2 percent gave no date at all. Consumer recollections on whether their cases were delayed beyond 40 days may, thus, be in error. In addition, the consumer may not be using the same specific information about when a case is “opened” as does the DSB. The DSB considers a case opened when the forms are received in the office and processed. Consumers, on the other hand, may see their cases as having been “opened” when they first contacted the DSB, when they mailed the forms, or even when they first experienced problems with the vehicle. Similar considerations apply to when a case was “closed”. Therefore, we do not consider this difference in percentages to be a concern. Table 6 shows the reasons for delays as reported by the DSB indices and by survey respondents.

INSERT FIG 2

**Table 6**  
**Reasons for Delays in Decisions**  
**Comparison between Claverhouse Survey and DSB Indices 2002**

Reasons for Delays	Claverhouse	DSB
	Percentage (Number)	Percentage (Number)
Customer failed to submit required information in a timely manner	7.1% (8)	0.4% (5)
Consumer failed to seek relief directly from the manufacturer	0.0% (0)	5.7% (71)
Arbitrator requested information or tests	17.9% (20)	0.0% (0)
All other reasons	75.0% (84)	93.9% (1,166)
Total cases delayed beyond 40 days	100.0% (112)	100.0% 1,242

Unfortunately, the survey question about reasons for delays include the option “arbitrator requested additional information or tests,” a category not reported by the DSB. We assume that the DSB indices include cases delayed for this reason in the category “all other reasons.” If this assumption is correct, we can add the two categories in the survey information to get 92.8 percent, which is statistically the same as the figure reported by the DSB.

#### **Consumer Attitudes Toward the DSB’s Informal Dispute Settlement Procedures**

At the beginning of the questionnaire, respondents were asked how they had learned about the Dispute Settlement Board. The responses are summarized in Table 7.

**Table 7**  
**How Consumers Learned about DSB Availability**  
**Claverhouse Survey**

Source of Information	Number	Percent
Ford Dealership	96	31.8%
Ford Customer Complaints/Toll-free number	71	23.5%
Owner’s manual/warranty information	89	29.5%
Friends and family	27	8.9%
Previous knowledge of the program	14	4.6%
Brochures/other literature	19	6.3%
Attorney or other legal source	28	9.3%
Media (TV, Newspapers, etc.)	4	1.3%
Other	10	3.3%
Total	358 <sup>a</sup>	-- <sup>b</sup>

a. These figures represent responses, not respondents, because respondents were allowed to supply more than one answer.

b. Percentages represent the percentage of respondents giving each answer; therefore a total would be meaningless.

The Ford Motor Company and the dealership were the most likely sources of information about the DSB program. Of those giving these responses, 62.9 percent said that the dealer or manufacturer talked with them about the program; 49.0 percent said they were given reading material; and, 16.8 percent were shown a poster or other material posted in the showroom or repair area.

Survey respondents were also asked about the materials and forms they received from the DSB. Of those who said they recalled receiving the materials, 63.4 percent reported the materials were very clear and easy to understand; 32.2 percent said they had had some problems, but the forms were still fairly easy to understand; and, 2.5 percent said they were difficult to understand.

Ease of understanding the forms correlates with the consumers' overall level of satisfaction with the DSB program as expressed when they were asked to rate the overall program on a scale from A to E. Those who found the forms easy to understand generally gave the program higher overall grades than did those who found the form somewhat difficult or very difficult to understand, as shown in Figure 3. In examining this figure, however, one must keep in mind that the vast majority of respondents found them "very clear and easy" or "pretty easy" to understand.

- Respondents were asked to rate the DSB staff on several aspects of performance by assigning a grade of A, B, C, D, or E. Table 8 shows the respondents' ratings.

**Table 8**  
**Survey Respondents' Ratings of DSB Staff**  
**Claverhouse Survey**

Performance Item	Graded Awarded by Respondents				
	A	B	C	D	E
Objectivity and fairness	45.7%	10.0%	11.0%	12.4%	21.0%
Promptness in handling your complaint during the process	40.0%	24.1%	16.6%	9.3%	10.0%
Efforts to assist you in resolving your complaint	39.4%	12.7%	9.6%	13.4%	25.0%

Respondents were then asked to give the DSB program an overall rating using the same grading scale. They responded as follows: A = 38.4 percent; B = 12.7 percent; C = 11.0 percent; D = 14.0 percent; and E = 24.0 percent. We then analyzed these grades to see whether those whose cases were mediated graded the program differently from those whose cases were arbitrated and whether those who received awards graded the program differently from those who did not receive awards.

Of the respondents who said their cases were mediated and gave the program a grade, 75.9 percent gave a grade of A or B ("generally satisfied"), and 17.2 percent gave a grade of D or E ("generally dissatisfied"). Of the respondents who said their cases were arbitrated, 47.1 percent gave the program an A or B, and 49.1 percent gave a D or E.

As we might expect, however, those respondents who received favorable arbitration decisions were more likely to give the DSB program high grades than were those who received adverse decisions. Of those who received awards and accepted them, 71.4 percent gave the program a grade of A or B. None of those few (2) who received awards and rejected them gave the program an A or B. Of those who received no award, none gave the program an A or B, and

93.8 percent gave it a D or E. As demonstrated in Figure 4, those whose cases were mediated were slightly more likely to be satisfied with the program than those whose cases were arbitrated and received an award. Of those arbitration cases in which the consumer received no award or received an award and rejected it, no survey respondent gave the program a grade of A or B.

FIGURE 3

Another measure of consumers' satisfaction with the DSB program is whether or not they would recommend it to others. A majority (54.8 percent) of survey respondents said that they would recommend the program to others experiencing warranty problems with their vehicles. Of the remainder, 22.4 percent said it would depend on the circumstances, and another 22.7 percent said they would not recommend the program. If we break the total down by case type, however, a slightly different picture emerges (see Figure 5). Consumers with mediated cases generally said they would recommend the program (78.7 percent), and of those consumers whose cases were arbitrated and who received and accepted an award, 72.1 percent said they would recommend the program to others. Of those who received an award but rejected it, however, only 13.6 percent said they would recommend the program, and only 10.9 percent of those who received no award ("adverse decision") said they would recommend the DSB program to others. Table 9 summarizes this data.

**INSERT FIGURE 4**

**INSERT FIGURE 5**

**Table 9**  
**Would Consumer Recommend the DSB Program to Others?**  
**Claverhouse Survey**

<b>Method of Resolution and Outcome</b>	<b>Yes</b>	<b>No</b>	<b>Depends on Circumstances</b>
Mediated	78.7%	7.9%	13.5%
Arbitrated			
Award Granted and Accepted	72.1%	11.7%	16.2%
Award Granted and Rejected	13.6%	54.5%	31.8%
No Award	10.9%	48.4%	40.6%

Finally, survey respondents were given an opportunity to make comments and suggestions about DSB program changes or improvements. The comments of the 238 respondents who answered this question are summarized in Table 10.

**Table 10**  
**Consumer Suggestions for Program Improvement**  
**Claverhouse Survey**

<b>Suggestion</b>	<b>Number</b>	<b>Percent</b>
Did a good job, no complaints	64	26.9%
Arbitrators should be more consumer oriented	32	13.4%
Make dealers/manufacturers more responsive to consumer	29	12.2%
Allow for more information about history/problems of car	23	9.7%
Speed up the process for quicker decisions	13	5.5%
Need more personal contact with DSB staff/arbitrators	12	5.0%
Need better initial review of cases by staff and arbitrators	12	5.0%
Need better follow-up enforcing awards/settlements	12	5.0%
Awards/settlements and dollar amounts need to be fairer	11	4.6%
Have better qualified mechanics for inspections/repairs	9	3.8%
Make program better known/more advertising	9	3.8%
Have better/more representation at hearings	8	3.4%
Have more program locations	3	1.3%
Less paperwork/easier to understand forms	1	0.4%
Total	238	100.0%

a. Percentages are the percent agreeing with each suggestion.

## CONCLUSIONS

On the basis of the comparison of our survey results with the DSB indices, we conclude that the DSB indices are accurate for most of the important components of the warranty dispute resolution program. The major area in which there is a significant difference between the survey results and DSB indices is the proportion of arbitrated cases delayed beyond 40 days. This is a common finding in our research. We believe that the difference is adequately explained by the recall factor (i.e., consumers can rarely recall specific dates for the opening and closing of their cases) and by the fact that the DSB's definitions of a case's opening and closing dates and the consumer's definitions are not necessarily the same. Another area in which there is a slightly significant difference between survey figures and DSB indices is in the method of resolution of warranty disputes (i.e., proportion of cases mediated versus cases arbitrated). One possible explanation for this difference (approximately 2 percent greater than our margin of error) is response bias; that is, it is possible that those whose cases were mediated were slightly more likely to return their questionnaires.

Overall, consumers appear to be satisfied with the DSB program, with 51.1 percent giving the program a grade of A or B. As we might expect, those whose cases were mediated and those who received awards in the arbitration process tended to give higher grades than those who received no award or those who rejected their awards. On a second measure of consumer satisfaction, whether the consumer would recommend the DSB program to others, the majority (54.8 percent) said they would, another 22.4 percent said it would depend on circumstances, and 22.7 percent said they would not recommend the program. Again, the willingness of customers to recommend the program to others is strongly correlated with the outcomes of their cases.

In summary, we conclude that the DSB indices are in substantial agreement with the survey findings. The discrepancies noted in the "delay of arbitration" area are of no regulatory concern for reasons already stated.

*SECTION VIII*

*Audit Related Regulatory Requirements*

REQUIREMENT: § 703.7 (c) (3)(I)

**A report of each audit under this section shall be submitted to the Federal Trade Commission, and shall be made available to any person at reasonable cost. The Mechanism may direct its auditor to delete names of parties to disputes, and identity of products involved, from the audit report.**

A copy has been supplied to the Federal Trade Commission consistent with this requirement.

REQUIREMENT: § 703.7 (d)

**Auditors shall be selected by the Mechanism. No auditor may be involved with the Mechanism as a warrantor, sponsor or member, or employee or agent thereof, other than for purposes of the audit.**

The audit was conducted consistent with this requirement.

*SECTION IX*  
*Codebook*