

*United States Federal Trade
Commission
National Center for Dispute Settlement
Automobile Warranty Arbitration
Program*

Audit

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Introduction

This 2006 audit of NCDS' Arbitration Process is performed pursuant to the 1975 federal warranty law, the Magnuson-Moss Warranty Federal Trade Commission Improvement Act and Rule on Informal Dispute Settlement Procedures, 16 C.F.R. Part 703 (hereafter referred to as Rule 703).

Claverhouse Associates, a firm specializing in arbitration, mediation, and program auditing, performed the audit, which was conducted under the supervision of Kent S. Wilcox, President and Senior Auditor. The statistical survey was conducted by the Center for Survey Research, a division of the Institute for Public Policy and Social Research at Michigan State University.

Arrangements to conduct the audit were initiated by an invoice submitted in late 2006. Claverhouse Associates coordinated field audits, statistical survey planning, and arbitration training with the program's independent administrator, the National Center for Dispute Settlement (NCDS). This year's report was performed as a review of the National Center for Dispute Settlement as an independent administrator for multiple automobile manufacturers. The manufacturers participating in the NCDS automobile warranty arbitration program included in this national audit are: Toyota, Lexus, DaimlerChrysler,¹ Mitsubishi, and Porsche. There are a few exceptions, wherein our review is manufacturer-specific, such as the requirement for manufacturers to inform consumers of the availability of the dispute resolution program whenever a warranty dispute arises.

Hearings held in North Carolina, Illinois, and Ohio were included in the on-site field inspections. Visits to these locations were arranged to coordinate with scheduled arbitration hearings. In addition, we audited arbitrator training conducted in Grapevine, Texas, May 18 - 20, 2007. Thus, field audits of the arbitration hearings and arbitrator training are sometimes conducted in the current calendar year rather than in the audit year but are assumed to reflect operations as they existed in the audit year (2006). 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 actual audit period and the other in the following year, after all annual statistics had been compiled. All case files inspected were generated during 2006 as required.

¹ DaimlerChrysler offers arbitration in only four states (Arkansas, Idaho, Kentucky, and Minnesota.)

SECTION I

Compliance Summary

This is the fourth Claverhouse Associates independent annual audit of the National Center for Dispute Settlement's (NCDS) national third-party informal dispute resolution mechanism, called the Automobile Warranty Arbitration Program (AWAP), as it is administered by the National Center for Dispute Settlement. We have conducted several prior audits of the NCDS administered warranty arbitration program, but these reviews were manufacturer centered and manufacturer-specific.

Overall NCDS Dispute Settlement Program Evaluation

The NCDS third-party dispute mechanism, Automobile Warranty Arbitration Program (AWAP) is, in our view, 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.

The three regions audited, North Carolina, Illinois, and Ohio, all function in compliance with FTC Rule 703. Details of the field audits and any minor irregularities found are discussed in Section III of this report.

Our random sample survey confirmed the overall validity of the statistical indexes created by the National Center for Dispute Settlement.² Our original survey sample consisted of 643 closed cases³, of which we completed surveys for 341 customers. As we have found in other audits, surveyed customers tended to report favorably on the program when the results of their cases were, in their view, positive. Conversely, those who received no award, or received less than they expected, were more likely to report dissatisfaction with the AWAP. As has been true in most audits we have conducted for various programs, the few statistically significant differences between the figures reported by the AWAP and the survey findings were deemed to be easily understandable and do not suggest unreliable reporting by the program. For a detailed discussion, see the survey section of this report.

Arbitrators, AWAP personnel, and regulators we interviewed at both the state and federal jurisdictions viewed training for arbitrators as an important component of the program. The training provided for the AWAP arbitrators advances many of the AWAP objectives. Providing such training is, in our view, consistent with the broad regulatory requirement for fairness. The training component, in our view, comports with the substantial compliance requirements for a fair and expeditious process pursuant to the federal requirements.

² There were, of course, discrepancies in some areas, as we have come to expect, but those we identified are either of no real consequence or are very understandable and without significant regulatory implications. Discrepancies are detailed in the survey section of the report.

³ The sample was drawn from a universe of 1,836 cases.

SECTION II

Detailed Findings

This section addresses the requirements set forth in 16 C.F.R. Para 703.7, of Public Law 93-637 (The Magnuson-Moss Warranty Act, 15 U.S. C. 2301. et seq.).

After each regulatory requirement is set forth, the audit's findings are recorded, discrepancies are noted, and recommendations are made where appropriate.

This audit covers the full calendar year 2006. An important component of the audit is the survey of a randomly selected sample of 643 NCDS' Dispute Settlement Program applicants whose cases were closed in 2006 and found to be within the AWAP's jurisdiction.

We analyzed several NCDS generated statistical reports covering the AWAP operations in the United States. The reports were provided to us by the National Center for Dispute Settlement, Dallas, Texas.

We performed field audits of the AWAP as it operates in North Carolina, Illinois, and Ohio. We also examined a random sample of current (i.e., 2006) case files for accuracy and completeness. A random sample of case files was drawn from all case files for the years 2003-2006 and inspected to ensure that these records are maintained for the required four-year period. In the areas covered by each region, we surveyed several dealerships to see how effectively they carry out the information dissemination strategy developed by manufacturers to assist them in making customers aware of the AWAP.

In addition, we monitored arbitration hearings in Asheville, North Carolina ; Elgin, Illinois; and Miamisburg, Ohio, and interviewed arbitrators and AWAP/NCDS administrative personnel.

To assess arbitrator training, we monitored the NCDS-sponsored training session held in Dallas/Ft. Worth, Texas, in May of 2007. In addition to monitoring the training itself, we interviewed the trainees (both before and after the training), the training staff, and reviewed the training materials.

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.

FINDINGS:

This is the fourth (2006) Claverhouse Associates annual audit of NCDS AWAP informal dispute settlement program.

Records pertaining to the NCDS' AWAP that are required to be maintained by 703. 6 (Recordkeeping) are being kept and were made available for our review.

REQUIREMENT: § 703.6 (a) [Recordkeeping]

- (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 information referenced in subsections 1 through 4 is available from the staff of the National Center for Dispute Settlement, who provided us with access to all pertinent information, which is maintained as required. Our inspection of randomly selected case files for each of the three regions validated these findings. The inspections of case files took place at the Detroit [Clinton Township.] office of the program's independent administrators. Our review of randomly selected cases drawn from the four-year period (2003-2006) demonstrated that the case files were maintained in 2006, as required.

DISCREPANCIES:

The few administrative irregularities found, while appropriately noted, are relatively inconsequential and do not pose any serious undermining of the program's *substantial compliance* status. The AWAP meets this regulatory requirement and any inconsistencies we found were of the minor and inconsequential variety likely to be found in any large administrative program. The minor inconsistencies are highlighted in the appropriate sections of the report.

REQUIREMENT: § 703.6 (a) (5)

- (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:

Some case files contained, in addition to the various standard file entries, other communications submitted by the parties. Nothing in our findings suggests that any material submitted by a party was not included in the file, and every indication is that the files were complete. We made no attempt, however, to validate the existence of "summaries of relevant and material telephone calls" and other such information since we had no way of knowing whether such telephone calls took place. This is also true for documents 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. Even in the theoretical sense, such a review assumes customers keep exact files of all correspondence, notes, and phone calls pertaining to their AWAP 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.

Information required in subsection 8 can be found on the *Arbitration Data Entry* form used by NCDS. This form also contains the essence of the decision along with most other information pertinent to the case.

DISCREPANCIES:

None

The required records were all available, appropriately maintained, and properly kept. Any exceptions were merely incidental and have no significant bearing on the program's compliance with the regulations.

REQUIREMENT: § 703.6 (a) (9-12)

- (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 items 9 and 10 is maintained as required.⁴ As such, the information was readily accessible for audit.

The information set forth in items 11 and 12 was not audited for accuracy and completeness because of the impracticality of such a review. 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

REQUIREMENT: § 703.6 (b)

⁴ The warrantor's intended actions are a basic part of the program and are generally applicable to all cases. All decisions rendered by arbitrator(s) will be honored by all NCDS' AWAP participating manufacturers, thereby negating any necessity for providing a document in each individual file.

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

FINDINGS:

These indices are currently [2007] maintained by the NCDS staff at the NCDS headquarters in Detroit [Clinton Township], Michigan.

The audit includes a review and assessment of a data printout for the calendar year 2006.

The *AWAP Statistics* identifies 3,317 AWAP disputes filed for 2006. Of these, 2,446 were eligible for AWAP review, and 871 were determined by the AWAP to be out-of-jurisdiction. Of the in-jurisdiction closed cases, NCDS reports that 1,888 were arbitrated⁵ and 415 were mediated.⁶ There were 1,525 arbitrated decisions which were reported as “adverse to the consumer” per § 703.6 (E) representing 80.7% of all arbitrated cases.

Each of the participating manufacturers submitted an index of their disputes grouped under brand name and subgrouped under product model as required.

Indices are complete and consistent with all requirements. Some of the data included in these reports are compared with the findings of our sample survey discussed in the Survey Section of this report.

DISCREPANCIES:

None

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:

⁵ This number is not aggregated in the statistical reports provided for the audit. We arrived at this number by summing the “decided” items (4-7) listed on the AWAP mandated statistical report.

⁶ The term “mediation” in the AWAP context does not necessarily imply that a neutral third-party assisted the parties in resolving a warranty dispute, but rather that the dispute was settled prior to an arbitrator rendering a decision. The number provided above is not aggregated in the statistical reports provided for the audit. We arrived at this number by summing the “Resolved” items (1-3) listed on the AWAP mandated statistical report.

AWAP reports that there were no such cases in 2006. Concerning subsection 2, the auditors are advised by NCDS that there is no reported incidence in which a NCDS AWAP participating manufacturer failed or refused to abide by a panel or arbitrator decision. As a matter of general corporate policy, all AWAP participating manufacturers agree to comply with all AWAP decisions. This information is supplied as part of NCDS' Annual FTC -703.6 (c) (1) and (2) Report.

DISCREPANCIES:

None

REQUIREMENT: § 703.6 (d)

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

FINDINGS:

According to AWAP statistical index reports, as of December 2006, a total of 155 AWAP cases were delayed beyond 40 days. The National Center for Dispute Settlement provided a comprehensive report of all individual cases delayed beyond 40 days during the 2006 period of the audit. This report includes the customer's name, case file number, and the number of days the case has been in process as of the date of the generation of the report. Our analysis indicates that this report meets the above requirement. Our review, however, is not designed to test the accuracy of the report. We merely determine that the mandated report is being generated. At the same time, we found nothing during our assessment review that calls into question the accuracy of any of the required statistical indexes.

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;**
- (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:

NCDS collects and maintains the information required by § 703.6 (e) in the AWAP Statistics Report supplied to us by NCDS.

The information is available for inspection and is complete in all respects.

The figures reported in this index are analyzed in further detail in the Survey Section of this report.

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 [§ 703.6 (e)] is maintained for the required four years. Any inconsistencies found would be addressed in the Survey Section of this report.

We inspected the collection of all case files for each region during our on-site visit to the NCDS headquarters in Detroit, Michigan [Clinton Township] and inspected and evaluated a random selection of case files from the four-year period for completeness. The files were appropriately maintained and readily available for audit.

(b) NCDS provided us with the various 2006 indices and statistical reports required by Rule 703. The corresponding reports for the previous four years are not available from some NCDS participating manufacturers because they did not administer the manufacturer's program during that period. The records are probably available from each of those manufacturers directly.

(c) [The two potential "non-compliance" categories] The information required by subsection (1) is, when applicable, maintained by NCDS. Subsection (2) is not applicable since all participating manufacturers, as a matter of corporate policy, always comply with AWAP decisions.

(d) [Complaints beyond 40 days] This information is stored on computer in the NCDS Detroit [Clinton Township], office. Any required report can be obtained from Debbie Lech Manager, Case Administration, at the NCDS headquarters. The information is maintained as required.

(e) [Includes 12 categories of statistics] The information referenced in this section, as well as any data pertaining to this requirement, is available from NCDS. The 12 categories of statistics to be maintained are being kept as required.

DISCREPANCIES:

None

REQUIREMENT: § 703.7 (b)

Each audit provided 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:

The essential feature of both regulatory requirements cited above is timing. In our review, therefore, we give emphasis to efforts that would inform customers and ensure that they know about the existence of the AWAP at all times, as well as examining the manufacturer's strategies to alert customers to the availability of the AWAP when the customer's disagreement rises to the level that the regulations consider a "dispute."

Regardless of the excellence of a program, it is only effective if the customer knows of its existence and can access it. The "notice" requirement seeks to ensure that the program is actually usable by customers by informing them of its existence and making it readily accessible when they need it.

Individual Participating Manufacturer's Efforts and Assessment

[Note: In this section of the audit report, we review each of the five participating manufacturer's programs for meeting this requirement. Readers will note that we repeat regulatory language and some pertinent comments in each division for the various manufacturers because some readers will be focused strictly on a given manufacturer and to make their reading easier, we repeat the applicable regulatory language rather than requiring such readers to engage in cross-referencing and searching for such language in some other section of the report.]

For the 2006 report, we interviewed NCDS staff and inquired as to any changes from last year in each manufacturer's efforts to ensure their customers were being made aware of the availability of the NCDS arbitration program for resolving any of their customers' warranty disputes that might exist. Where we have new information supplied, we review and assess that information.

I. TOYOTA :

Toyota uses the following means by which to meet this important requirement:

- Toyota publishes a 32-page booklet, entitled *Owner's Warranty Information*, that briefly explains, among many other things, the NCDS process and how and where to file an application. The pamphlet is distributed in a variety of ways, but the principal method is by way of the dealer. Dealers are to provide the brochure as part of the initial information packet given to new customers as well as making them available in the dealership. Note: Our random audits of dealerships conducted for the national audit found no consistent and significant commitment

by dealers to educate their employees about providing NCDS information to customers who make warranty-related inquiries or, assert warranty related disputes.

- Toyota publishes a 51-page booklet, entitled *Owner's Warranty Rights Notification* booklet, that contains state-specific, warranty-related regulatory information (lemon law provisions) and an application form for accessing the NCDS. The booklet provides useful and accurate information. (DATED 5/04). Like the *Owner's Warranty Information* booklet, it is distributed, in the main, by dealership sales personnel at the point of sale/delivery as part of the glove box kit.
- There is a NCDS pamphlet (one-page tri-fold) published by Toyota that is reasonably informative about the NCDS and how to access it. The pamphlet cross-references the *Owner's Warranty Rights Notification* booklet as one of two sources for obtaining a *Customer Claim Form*.⁷ Those interested in knowing about the program are referred to a toll-free telephone number where they can request a NCDS pamphlet. This one-page document is distributed primarily by the Toyota Customer Assistance Center.

[This information is based on the findings of last year's audit as we are not in receipt of information from Toyota indicating any material change from last year's submission.]

Despite the manufacturer's efforts, there remains a concern about NCDS information dissemination at the dealership level where most warranty disputes arise.

For the 2006 report, we visited several Toyota dealerships.⁸

Bryan Easler Toyota
1409 Spartanburg Hwy.
Henderson, NC 28792

Elgin Toyota
1200 E. Chicago St.
Elgin, Illinois

Allan Nott Toyota
3500 Elida Road
Lima, Ohio 45807

Lehman Toyota
19390 NW 2nd Avenue
Miami, Florida 33169

⁷ The Toyota *Dispute Settlement Program* pamphlet actually refers here to the Toyota *Owner's Manual Supplement*, but it appears they mean the *Owner's Warranty Rights Notification* booklet. It's a mere administrative oversight, but customers could easily be confused. Fortunately the theoretical problem is mitigated by virtue of the second reference to a toll-free telephone number to Toyota's Customer Assistance Center where customers may obtain a *Customer Claim Form*.

⁸ As is the case with several dimensions to the audit we carried out this aspect in the year 2006.

The results of our review of dealership personnel we interviewed during our Toyota dealership visits this year provided no useful information about the Toyota warranty dispute mechanism in response to our inquiries concerning customer options when the customer is experiencing warranty disputes. Unlike last year, the one Toyota dealership in Ohio we visited failed to display the required poster about NCDS arbitration that should include a contact toll-free telephone number. In addition, we were incorrectly told that to go to arbitration we need to hire an attorney. At an Illinois Toyota dealership, the service department representative incorrectly represented that as a condition of going to arbitration, "you have to have your vehicle in for service for 30 days for the same problem." At a North Carolina Toyota dealership we were told that they [several service department personnel] believe you have to bring in the vehicle for repair 3 or 4 times before going to arbitration and then you have to get an attorney." "These dealership employees provided no useful information about the program and never mentioned NCDS. These 2006 findings are inconsistent with the underlying intent of the federal requirements of Rule 703.

We said in prior reports that:

Clearly, one of the principal reasons that the annual independent audit requirement was included in Rule 703 was to ensure that adequate consumer awareness was provided for by sponsoring manufacturers. That the original draft of Rule 703 was modified so as to require this audit was an outcome fostered by manufacturers who complained that the proposed alternatives were too onerous and in fact, "draconian." The Federal Trade Commission declined to mandate the national media campaigns and dealer incentives requirements, opting instead for voluntary efforts by the manufacturers, or their agent dealers, which would then be audited annually to ensure compliance with the stated objective of ensuring consumer awareness of the availability of the program. In any event, it is abundantly clear that no audit findings are complete without an evaluation of this aspect of the arbitration program since it is specifically set forth in the administrative Rule requirements in that section identified as the "Proceedings." This extensive Federal Trade Commission commentary was promulgated as a fundamental part of the Rule, as is the case with all promulgated FTC Rules.

Because of the varied and heavy responsibilities of service managers, they were not always available during our "secret shopper" visits to dealerships. It is predictable that the customers of dealerships whose employees are completely unaware of the NCDS will be less likely to be informed of the availability of NCDS, a situation "at variance" with the regulation's intent.

There is a toll-free phone number to the Toyota Customer Assistance that offers assistance to customers in terms of the "making customers aware" requirement. This office is designed to facilitate an open line of communication between the servicing dealer, Toyota, and the customer. The toll-free line facilitates the NCDS by providing NCDS information to those who specifically request information about arbitration. We contacted the number and were referred to the glove box packet and the specific manual which contains a NCDS application form. The primary objective of the Toyota Customer Assistance Center is to keep the customer and Toyota working together to resolve warranty-related problems. This facet of the 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.

The information dissemination methods employed by Toyota together with the number of applications filed nationally in 2006 (2,138) demonstrate that, unquestionably, many Toyota customers were made aware of the program, and for these customers, at least, access is obvious.

On the other hand, our dealer inspections in several parts of the country showed a general lack of knowledge on the part of many dealer service department employees about the NCDS, and in some cases, ignorance of its very existence.

As with most programs, our visits to dealerships suggested that customers who seek assistance from their salespersons are also unlikely to receive any useful information about the NCDS. Few of the salespeople we interviewed appeared to have any knowledge of the NCDS or arbitration options in general.

We feel obligated to reiterate 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. Unfortunately, dealers who wish to ignore their role in facilitating "fair and expeditious" warranty dispute resolution may do so with regulatory impunity, notwithstanding the efforts of Toyota.

We note here that manufacturer's difficulties in complying with this requirement are related in some respects to 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 an operational definition of the phrase, "**... at the time consumers experience warranty disputes.**"

DISCREPANCIES:

None, with the same qualifier given immediately above.

II. LEXUS:

- Lexus publishes a manual entitled, *2005 Lexus Owner's Manual Supplement*.⁹ The manual references NCDS on pages 10 - 13. Included is a toll-free telephone number for NCDS.
- We were provided a copy of the NCDS tri-fold, *Rules & Procedures for the Informal Resolution of Automobile Warranty Disputes* pamphlet. This document is distributed to Lexus customers after the customer has filed an application.
- Lexus publishes a booklet entitled *Lemon Law Guide* which includes the word "arbitration" in the *Table of Contents* which appears as page one.

⁹ We actually used a Lexus 2006 manual for this review.

Notwithstanding the commentary below, Lexus has vastly improved their information program which is designed to make customers aware of the availability of the 703 Mechanism's program for resolving warranty disputes.

We note here that manufacturer's difficulties in complying with this requirement are related in some respects to 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 an operational definition of the phrase, " ... **at the time consumers experience warranty disputes.**"

[This information is based on the findings of last year's audit because we received no information from Toyota indicating any material change from last year's submission.]

We visited an Illinois Lexus dealership for the 2006 audit.

Woodfield Lexus
350 E. Golf Rd.
Schaumburg, Illinois

To reiterate past findings regarding Lexus, we included the following comments:

For a newly created program this limited information may be provisionally acceptable, but in our view it falls short of what Rule 703 intends as regards informing customers of the availability of the arbitration program at the time a warranty dispute arises. There are, of course, many different strategies for accomplishing this mandated information dissemination program, but a mere passive casual reference to NCDS in an owner's manual is likely to find many customers with a warranty dispute unaware of the availability of arbitration. That was clearly not the intent of the Federal Trade Commission when Rule 703 was promulgated as evidenced by the rule's lengthy discussion in the *Statement of Basis and Purpose*, published and promulgated as part of the rule (see Federal Register, 60215, Dec. 31, 1973). The FTC afforded great flexibility to manufacturers, at their request, as an alternative to far more draconian measures being proposed at the time including the requirement that manufacturers engage in a national media campaign each year to announce the program's availability. The FTC opted instead to afford manufacturers the opportunity to use their own creative methods to achieve the objective and provided for an annual audit to ensure that manufacturers were carrying out effective strategies for ensuring that their customers were likely to be informed about the programs *at the time a warranty disputes arises* [FTC's emphasis.]

The above commentary is included primarily for historical reference purposes. Our dealer visit this year was a disappointment. While pleasant and courteous, the dealership service personnel gave us no useful information about a customer's arbitration options or about NCDS.

DISCREPANCIES:

None, with the important and limiting qualifier given immediately above as a caveat. Nevertheless, the program's innovations noted above represent an improvement from the past.

III. PORSCHE:

- Porsche publishes a *Warranty and Customer Information* booklet with references to arbitration on various pages. There is information identifying the National Center for Dispute Settlement (NCDS) as the arbitration provider to be used by Porsche customer (pages 6 and 7). Included is a toll-free telephone number for contacting NCDS.

What we said in our 2005 audit bears repeating here because there have been significant changes from our Porsche-specific findings of last year. Last year's comments are as follows:

“For a newly created program, this limited information may be provisionally acceptable but, in our view it falls short of what Rule 703 intends as regards informing customers of the availability of the arbitration program at the time a warranty dispute arises. There are, of course, many different strategies for accomplishing this mandated information dissemination program, but a casual reference to NCDS in an owner’s manual is likely to find many customers with a warranty dispute unaware of the availability of arbitration. That was clearly not the intent of the Federal Trade Commission when Rule 703 was promulgated as evidenced by the rule’s lengthy discussion in the Statement of Basis and Purpose, published and promulgated as part of the rule (see Federal Register, 60215, Dec. 31, 1973). Great flexibility was afforded the manufacturers, at their request, as an alternative to far more draconian measures being proposed at the time including the requirement that manufacturers engage in a national media campaigns each year to announce the program’s availability. The FTC opted instead to afford manufacturers the opportunity to use their own creative methods to achieve the objective and provided for an annual audit to ensure that manufacturers were carrying out effective strategies for ensuring that their customers were likely to be informed about the programs at the time a warranty disputes arises [FTC’s emphasis.]”

The changes we point out in the paragraph immediately preceding the above language from last year's audit report, constitute a very positive remedial effort by Porsche.

As with most programs, our visits to dealerships typically find that customers who seek assistance from their salespersons are also unlikely to receive any useful information about the NCDS.

We feel obligated to reiterate 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. Unfortunately, dealers who wish to ignore their role in facilitating "fair and expeditious" warranty dispute resolution may do so with regulatory impunity, notwithstanding any demonstrated efforts of the manufacturer.

We note here that manufacturer's difficulties in complying with this requirement are related in some respects to 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 an operational definition of the phrase, " ... **at the time consumers experience warranty disputes.**"

DISCREPANCIES:

None, with the qualifier given immediately above as a caveat.

IV. MITSUBISHI:

Mitsubishi uses the following means by which to meet this important requirement:

- Mitsubishi, has addressed many of the concerns we raised in our last two audits. Below, in italics, are some of the comments from our prior audits.

Our 2003 [conducted] random audits of dealerships in the areas surrounding the field audit sites again found no consistent and significant commitment by most dealers to educate their employees to provide DRP information to customers making general inquiries about warranty-related dissatisfactions or disputes.

In addressing the concern outlined above, Mitsubishi initiated a program described in the communication below which was sent to various Mitsubishi executive employees:

Good Morning Gentlemen, We are pleased to announce the rollout of our Dispute Resolution Process posters. Three 11x17 posters and a cover letter will be shipped to the attention of each Dealer Service Manager in today's weekly drop. I've attached a copy of the cover letter for your review. In addition, we will be shipping 75 posters to each of the Regions so that your AWAPMs have some on hand for dealer visits. There is also a small supply of posters at Standard Register that can be ordered (Form # DR00204).

It's extremely important that each Service Manager displays the posters in areas that are clearly visible to customers who bring in their vehicles for warranty repairs. Please make sure that your DPSMs are checking for the posters when they conduct their dealer visits!

You may be aware that the FTC conducts a yearly audit of our Dispute Resolution Process through NCDS. The audit will be commencing in the next few weeks - and part of the audit includes "mystery shop" visits to retailers. Unfortunately, last year, the majority of dealerships visited by the auditor could not accurately describe the Dispute Resolution Process. Per Joan Smith's email to you dated 1/14/04 please ensure DPSMs are training their dealer personnel on our Dispute Resolution Process.

It is a requirement of the FTC, that if a manufacturer participates in an informal dispute resolution process, the customer must be made aware of how they can go about pursuing arbitration. In addition, to the Dispute Resolution Process booklets in each new

owner's glove box - the posters should increase the awareness of the Dispute Resolution Process that is available at the time a customer is not satisfied with repairs completed under warranty.

In addition, Mitsubishi has replaced and updated the manual to address several prior concerns. The new Warranty and Maintenance Manual [2006] now specifically references the National Center for Dispute Settlement along with a toll-free telephone number to contact for assistance in obtaining resolution of their dispute.

We also said at the time,

Claverhouse Associates has not reviewed the actual cover letter sent to each Dealer Service Manager. This e-mail copy, supplied to us by NCDS, strongly suggests that important steps are being taken to bring Mitsubishi into compliance with this aspect of Rule 703.

We continue to view these innovations as clear evidence of intent to comply with the applicable rule, for which Mitsubishi should be given credit.

In 2007, we visited the following Mitsubishi dealerships for the 2006 audit:

Skyland Mitsubishi
255 Smokey Park Hwy.
Asheville, North Carolina 28816

Schaumburg Mitsubishi
660 E. Golf Rd.
Schaumburg, Illinois 60173

Walker Mitsubishi
8445 Springboro Pike
Miamisburg, Ohio 45342

Our Mitsubishi dealership experience this year resulted in mixed findings. In two of three cases, the dealerships responses were grossly inadequate. In Miamisburg, Ohio the dealer had no state required poster on display and they provided our inspector no useful information about arbitration or NCDS. Similarly, in Asheville, North Carolina the service department claimed complete ignorance and did not provide us with useful information. In Schaumburg, Illinois, however, the dealership we visited applied the direction that was provided by Mitsubishi as discussed above and consequently they provided useful, complete and accurate information. The service department employee we interviewed took us to the poster with all the pertinent arbitration information. This dealer's performance is consistent with the underlying intent of federal requirements of Rule 703. The other two dealerships responses were at odds with this important requirement of Rule 703.

We said in last year's report that:

Clearly, one of the principal reasons that the annual independent audit requirement was included in Rule 703 was to ensure that adequate consumer awareness was provided for by sponsoring manufacturers. That the original draft of Rule 703 was modified so as to require this audit was an outcome fostered by manufacturers who complained that the proposed alternatives were too onerous and in fact, "draconian."

The Federal Trade Commission declined to mandate the national media campaigns and dealer incentives requirements, opting instead for voluntary efforts by the manufacturers, or their agent dealers, which would then be audited annually to ensure compliance with the stated objective of ensuring consumer awareness of the availability of the program. In any event, it is abundantly clear that no audit findings are complete without an evaluation of this aspect of the arbitration program since it is specifically set forth in the administrative Rule requirements in that section identified as the "Proceedings." This extensive Federal Trade Commission commentary was promulgated as a fundamental part of the Rule, as is the case with all promulgated FTC Rules.

Because of the varied and heavy responsibilities of service managers, they were not always available during our "secret shopper" visits to dealerships. It is predictable that the customers of dealerships whose employees are completely unaware of the AWAP will be less likely to be informed of the availability of AWAP, a situation "at variance" with the regulation's intent.

Overall, the Mitsubishi information program represents a slight retreat from last year's experience. This year's findings underscore the importance of our comments last year:

"Still, these positive efforts can easily be undermined if dealership employees misrepresent important information about the arbitration program. Mitsubishi will need to regularly monitor this aspect of the program."

DISCREPANCIES:

None, with the qualifier given immediately above as a caveat.

V. DAIMLERCHRYSLER:

DaimlerChrysler uses several means by which to meet this important requirement; they are as follows: [**Note: This information only applies in the four states wherein the program is offered (Arkansas, Idaho, Kentucky, and Minnesota)**].

- The 2006 *Warranty Information* booklet, supplied with each new vehicle references the "Customer Arbitration Process" (CAP) now administered by the National Center for Dispute Settlement (NCDS). The *booklet* provides a toll-free phone number and mailing address for contacting NCDS.
- The booklet *Owner's Rights Under State Lemon Laws, Supplement to Owner's & Warranty Manual* is provided with each new vehicle. This booklet does not give the CAP address, but at page four it refers customers with unresolved disputes to the CAP brochure that accompanies the *Owner's Manual* and *Warranty Manual*, which are shipped as part of the Glove Box Kit in the applicable states. It also refers customers to the DaimlerChrysler toll-free customer relations (Customer Center) number where the customer can request the address of the CAP.

DISCREPANCIES:

None, with the qualifier given immediately above as a caveat.

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) **Investigations**
- (3) **Mediation**
- (4) **Follow-up**
- (5) **Dispute Resolution**

FINDINGS:

1) Forms

The auditors reviewed most of the forms used by each regulated component of the dispute settlement program administered by the National Center for Dispute Settlement (AWAP).

The many forms used by AWAP comprise an important aspect of the arbitration program. The forms we reviewed are "user friendly," well balanced, and provide sufficient information to properly inform the parties without overwhelming them with non-essential paperwork. Overall, the AWAP forms promote efficiency and assist the program in meeting the stated objective of facilitating fair and expeditious resolution of disputes. We found the forms used by NCDS' AWAP program that we reviewed well within the regulatory expectations.¹⁰

DISCREPANCIES:

NONE

¹⁰ We note that the *Customer Claim Form* solicits some information that raises questions, in our minds, about the purpose and applicability to the arbitration process. For example, "Are your loan payments current? Yes - No." We are hard-pressed to see what this question might have to do with the arbitrator's ability to render a decision or on NCDS' ability to process the matter. Moreover, § 703.5 (c) says: "The Mechanism shall not require any information not reasonably necessary to decide the dispute."

NCDS general policies for the AWAP are set forth in the pamphlet provided to each applicant for arbitration. Some additional policies are printed in the arbitrator training manual and appropriately arranged in sections which are indexed by subject matter.

In summary, the numerous forms used by the AWAP are in substantial compliance with the federal regulatory requirements.

2) Investigations

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

Field audits, monitoring of arbitration hearings, and interviews with arbitrators and AWAP staff found only a limited number of requests by arbitrators for technical information, but such information is provided by the applicable manufacturer on request.

We included arbitrator requests for Technical Assessment under this investigative category. In the past, arbitrators in many arbitration programs, have sometimes relied inappropriately on the manufacturer's technical experts' intervention or on manufacturer reports, losing sight of the fact that this information is provided by manufacturer employees who, despite any expertise they may possess, are nonetheless a party to the dispute. Thus, their representations cannot generally be given the same value as that provided by an independent neutral source. Because this problem has surfaced in many of our reviews of various automobile warranty arbitration programs, we believe it is important that the training of arbitrators continue to stress this as a potential problem that should generally be avoided. This will help avoid a problem that many such programs have experienced. Conflicts between the parties on questions of fact may, in some limited circumstances, be best resolved by an independent inspection conducted by a neutral ASE-certified mechanic.

The manufacturer provides cooperation in responding to arbitrator requests for independent inspections. It appears to be rare for arbitrators to request that the manufacturer provide a copy of a Technical Service Bulletin (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 an arbitrator(s) determinations than any information contained therein. The existence of a TSB may increase, in the minds of some arbitrators, the likelihood that a customer's otherwise unverified concern is real. The program would be well served by having TSBs included in the case file whenever the company knows that there is a TSB that could very likely address the central concerns set forth in the customer's application and related documentation submitted to the AWAP.

Occasionally, independent inspections are conducted to confirm or deny one party's representations or to resolve conflicts between the representations of the parties. Our monitoring of arbitration hearings in the past suggests that many arbitrators do not understand the real purpose of these inspections, inappropriately viewing them as a means by which to diagnose the vehicle's alleged mechanical problem rather than as a means to resolve conflicts of fact between the parties. This orientation suggests that arbitrators may inappropriately become involved in efforts to achieve customer satisfaction rather than seeing themselves as arbiters of disputes.

Arbitrators would be greatly aided by continued emphasis at arbitrator training on the appropriate use of independent inspections and technical assistance. The AWAP has developed and implemented a national training program that, of necessity, addresses so many issues in a short period of time that it is understandable why arbitrators often lose sight of some of the trainers' admonitions. *This underscores the importance of an*

efficient, on-going feedback loop that provides regular reminders from program staff to arbitrators.

Other areas to be investigated include:

number of repair attempts;

length of repair periods; and

possibility of unreasonable use of the product.

Customers provide some information on these subjects on the AWAP application and the applicable manufacturer provides it on their own forms entitled, *Manufacturer's Response Form*.

The customer application form, unfortunately, does not ask for information about the issue of possible misuse or abuse of the vehicle. Customers should know that the possibility of abuse or misuse of the vehicle may become a significant issue in the arbitrator's decision process so that they can present information accordingly. The company reports may include information on this topic whenever they think it is appropriate, but the customer has no way of knowing that this is a subject they would be well advised to address in the information they present to the board or an individual arbitrator.

In the event that misuse is asserted or suggested as a possibility in the *Manufacturer Response Form*, the customer is able to submit supplemental information challenging or explaining his/her perspective on the issue. Rather than delay the process or put the customer in the position of having to present a response on short notice, customers could be advised at the onset of the process that the issue might come up in the arbitrator(s)/board's deliberations. The fact that customers receive copies of the statements from the company in advance of the hearings, allowing them the opportunity to challenge any such suggestion is not in itself sufficient to address our concern. Unfortunately, not all questions of possible misuse arise in response to the *Manufacturer Response Form*. The subject of abuse or misuse of the product may only emerge during the arbitrator(s)/board's deliberations. Based on our interviews with arbitrators, an arbitrator may suspect the possibility of abuse or misuse without its having been asserted in the paperwork. In such cases, "misuse" may not be the primary or deciding factor but can still be a significant factor. Because of its secondary importance, however, it may not be detailed in the decision and not necessarily reflected in the fairly brief communications announcing the board's or arbitrator's decision. Thus, a customer who may have important rebuttal information on the subject of suspected abuse, would be unlikely to be aware that it had become an issue.

FINDINGS:

The investigation methods used by the AWAP are well known to regulators and appear to be acceptable to them. Moreover, the processes envisioned when Magnuson-Moss was enacted were understood to be substantially abbreviated in comparison to litigation. Ultimately, the question comes down to, "How much investigation is enough?" In our view, more inquiries in the initial phase of the arbitration process would enhance the process, but we are unwilling to assert that this concern threatens compliance.

The methods currently employed by the AWAP clearly result in a useful collection of pertinent information, but it is also clear that there is opportunity to gather significantly more valuable information at virtually no extra cost.

3) **Mediation**¹¹

This facet of the arbitration program was historically carried out exclusively by the manufacturer or its dealers. The NCDS process attempts to mediate the case prior to arbitration by having a trained staff person contact the customer and the applicable manufacturer where the facts as they receive them appear to warrant. When mediation fails to result in a settlement, the matter is arbitrated and a decision rendered.

The mediation function envisioned by rule 703 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 expeditiously to attempt to resolve all disputes submitted directly to the warrantor.

FINDINGS:

After a case is opened, the manufacturer generally intercedes in an attempt to resolve the dispute to the customer's satisfaction prior to arbitration. Detailed records are kept as required by § 703.6. This information is contained in the case files maintained by NCDS.

This audit assesses 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 the minimum requirements for fair and expeditious resolution of disputes. Mediation is voluntary and in no way is intended to impede or delay 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**

NCDS is responsible for verifying performance of decisions or mediated settlements.

When the customer accepts a settlement offer or an arbitration decision, NCDS monitors the promised performance. NCDS logs the performance information into the file. Once a decision mandating some action on the part of the applicable manufacturer has been rendered and NCDS has received notice that the customer has accepted the decision, a performance survey is mailed to the customer to determine that:

- a) the promised performance has taken place, and
- b) the performance that has taken place is satisfactory.

If the survey is returned, it is placed in the case file folder.

The recording of performance and maintenance of the AWAP records were reviewed by our on-site inspection of case files in Detroit, [Clinton Township] Michigan. We

¹¹ Mediation does not necessarily imply the use of a neutral third-party mediator, but rather means the case has been settled prior to the arbitrator rendering a decision.

reviewed a random sample of case files for each region selected for the audit. The sample is drawn from the computer system maintained by NCDS.

NCDS has developed a policy to ensure that performance verification information is maintained in an electronic case file which may be reviewed by anyone reviewing the case file and, importantly, a note to that effect will appear in the hard copy case file folder.

DISCREPANCIES:

None

5) Dispute Resolution

The AWAP uses three arbitration formats. The three formats are: a) a board consisting of three arbitrators; b) individual arbitrators or, c) a panel of three arbitrators for Lexus cases. Customers, other than Lexus and Porsche, may opt to use either a) or b) formats. Importantly, the board process is one wherein the decisions are made after considering only documentary evidence and excludes oral presentation. Of course, customers may opt for a one-member (arbitrator) hearing, wherein oral presentations may be made by the parties. When using a board, the “Members” (i.e., arbitrators) are each provided with a case file that contains pertinent facts gathered by the program. The three arbitrators include: a consumer advocate, a technical member, and a member of the general public. Two members constitute a quorum and the board relies on documents provided by the parties. The arbitrators meet to discuss the facts presented to them and then render a decision. Most board decisions are arrived at by consensus, but sometimes the members resort to a vote to close the matter. The board may request 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.¹²

In the AWAP formats using a documents only board and single arbitrators, hearings are open, as required by Rule 703, to observers, including the disputing parties. The Lexus panel process is not open to observers. We said in last year's report:

It should be noted however, that we audited a Lexus hearing in Houston, Texas as part of the national Rule 703 audit report and discovered that Lexus has elected to have their cases heard by a three-member panel which takes testimony/evidence from each of the parties and then dismisses the parties while they deliberate and decide the case. We believe this approach is inconsistent with the requirements of Federal Trade Commission Rule 703.8 (d) which provides that meetings of the members to hear and decide disputes shall be open to observers on reasonable and nondiscriminatory terms. Further, the Rule's, *Statement of Basis and Purpose* (pp. 60215, Federal Register Vol. 40, no. 251) explains that the one case where they allow for the exclusion of persons to the meeting is limited to non-party

¹² Each facet of the AWAP has Automotive Service Excellence (ASE) certified mechanics available to provide independent inspections to resolve conflicts of facts as presented by the parties. ASE is a private association that tests applicants to ascertain whether they possess a specified degree of expertise in automotive mechanics.

observers. The FTC further emphasizes the importance of the parties being present to provide the scrutiny function intended. Lexus and NCDS will need to re-visit this aspect of their program to ensure compliance. [NOTE: NCDS has interpreted the regulatory language differently and administers the program so that actual deliberation is conducted by the arbitrators without the presence of the parties.]

Nothing has changed since we issued last year's report referencing the Lexus process as regards the open meetings provision [§ 703.8 (d)].

The parties are sent copies of the case files before the board meets and are informed that they may submit additional information if they choose to clarify or contradict information in the file. Any additional information is then provided to the board prior to its deliberations.

In most cases, the NCDS process involves a single arbitrator. In such instances, the hearing is conducted solely by the arbitrator with no administrative assistance. Moreover, it is typically held outside of an NCDS office so the only support services (e.g., copy or fax machines) are those that may exist at the place selected for the hearing. Most often the site selected is a participating manufacturer's dealership.

Decisions of the arbitrator(s) are binding on participating manufacturers but not on the consumer.

FINDINGS:

The AWAP's meeting process is in substantial compliance with the federal regulation and provides for fair and expeditious resolution of warranty disputes. Overall, the program meets the requirements of Rule 703. The exception pertains to the Lexus panel process as regards open meetings as discussed elsewhere in this report.

We have noted continued improvement in awareness of important legal principles and various warranty doctrines among established arbitrators who have been provided arbitrator training. Arbitrators' increased awareness of their scope of authority, the essential components of a decision, and factors that may be important when considering whether to apply a mileage deduction in repurchase or replacement decisions are clearly attributable to the professional training program NCDS provides for its arbitrators.

Arbitrators are volunteers whose only compensation is a nominal per diem and mileage expense allowance.¹³ Arbitrators are not required by the program to have any established expertise in the complexities of automobile warranty law at the time of their appointment. Fairness, as envisioned by state policy makers, however, requires that arbitrators have some level of knowledge of the state and federal regulations that set forth the basic rights and responsibilities of the parties to a warranty dispute.

Our monitoring of arbitration hearings and interviewing of arbitrators in virtually all such programs has continually underscored the importance of on-going arbitrator training. Without regular input and feedback mechanisms, arbitrators are occasionally uncertain about their rights and responsibilities. Since the AWAP hearings/meetings are rarely attended by people other than the parties and a manufacturer representative, the

¹³ Currently, NCDS arbitrators are provided a per diem allowance of \$100.00 a hearing plus reimbursement for any mileage expenses incurred.

arbitrators operate in a kind of self-imposed vacuum, without direct access to a feedback mechanism other than an occasional independent vehicle inspection report. In addition, because arbitrators are volunteers who usually participate in the AWAP process infrequently, a mistake made at one hearing can easily become an institutionalized error that could subject the program to a possible compliance review. On-going training would greatly alleviate these concerns for arbitrators.

The NCDS program has also informed us that they continue their efforts to address the “boilerplate” problem, alluded to in previous reports, including explanations provided at arbitrator training to ensure that arbitrators understand that the “Lemon Law” thresholds for establishing presumptions do not serve as a threshold for their awarding “buy back” relief. At our review of arbitrator training in May of 2006, we confirmed that these efforts continue and are having some noteworthy effects.

Overall, the AWAP members demonstrate a clear commitment to providing fair and expeditious resolution of warranty disputes.

DISCREPANCIES:

None

SECTION III

Field Audit of Three Geographical Areas

I. North Carolina

A. Case Load and Basic Statistics

In North Carolina, NCDS handled 98 AWAP cases¹⁴ in 2006 of which 22 (22.4%) were "no-jurisdiction" cases. There were 36 cases arbitrated¹⁵ (64.4% of the 76 in-jurisdiction cases), and 13 (17.1% of in-jurisdiction cases) were mediated¹⁶. The average number of days for handling a 2006 case in North Carolina was 37 days. This compares with an average of 38 days handling nationwide.

B. Recordkeeping, Accuracy and Completeness

We requested a random sample of 25 case files drawn from all cases closed during the audit period and examined them to determine whether they were complete and available for audit. Generally, the records were complete and available for audit.

The results of the inspection of the random sample of case file folders 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:

¹⁴ These statistics include cases for Toyota, Lexus, Mitsubishi, DaimlerChrysler, and Porsche.

¹⁵ The number of arbitrated cases is determined here by our summing the four categories of statistics that reference the word "Decided" (items 4-7) included in the 2006 statistical report for North Carolina provided to Claverhouse Associates by NCDS.

¹⁶ The number of mediated cases is determined here by our summing the three categories of statistics that reference the term "resolved by staff" (items 1-3) included in the 2006 statistical report for North Carolina provided to Claverhouse Associates by NCDS.

The auditor examined the case file folders extracted from all 2006 "in-jurisdiction" case files. We examined each sample file with respect to the items enumerated in subsections 1 through 5, with the following results:

- 1) All case files contained the customer's name, address, and telephone number.
- 2) The requirement is met. The name and address of the warrantor's contact person is included with the initial correspondence that the customer receives from the program. In addition, the various regional office contact addresses and phone number is included in each Owner's Manual that accompanies all new vehicles when they are delivered. The contact person is so generally known as to not require it to be placed in each individual case file.
- 3) All case files inspected contain the make and vehicle identification number (VIN) of the vehicle. It is usually found in the customer application form, the richest source of information within most files, but the vehicle make and VIN is often located in documents throughout the file. As a result, cases are seldom, if ever, delayed because the customer has failed to provide the VIN when filing their application.
- 4) All case files inspected contain this information.
- 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) (1-12) [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 files for cases that were arbitrated contained the information required by sections six and eight. Oral presentations are a basic component of the NCDS program in this jurisdiction, and section seven requires summaries of the oral presentations to be placed in the case file. In the case files we reviewed for this region, the record-keeping requirements were met.

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

Each applicable case file contained a copy of the decision letter 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. Thus, we validate this item in terms of performance verification. Performance verification is a function carried out by NCDS. This office sends a survey to the customer following receipt of the customer's acceptance of those decisions mandating some action on the part of the manufacturer to ask, among other things, whether any required performance has taken place. Customers are asked to return the survey to the office of NCDS. As noted elsewhere, we found few returned survey forms in the case files. In the past, we have stated that the absence of performance verification forms in the case file does not constitute a regulatory inconsistency since performance verification information may not be available from the customer. By mailing a performance verification survey NCDS goes as far as can be expected in determining whether arbitration decisions are, in fact, being performed. It seems entirely appropriate for the program to assume performance of the decision has taken place when the customer performance survey is not returned. For those who may be skeptical about such important assumptions, it should be remembered that even if a manufacturer engaged in a programmatic attempt to avoid performing arbitration decisions, that fact would, of course, emerge in the context of our national random survey of customers who have used the program. Performance verification status should and does appear in the case file as is indicated by sections 11 and 12 below.

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:

Section 11 above is 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. Section 12, however, appears to mandate that a summary form be created whenever the arbitrator receives an oral communication that may have any bearing on the matter in dispute from either party. Of course, most such communications come in the form of oral presentations by the parties at the hearing, in which case the communications are summarized in the arbitrator's decision. All summaries are now included in the case file.

CONCLUSIONS:

The NCDS program's record keeping policies and procedures, with the alluded to necessary modifications, are in substantial compliance with the federal Rule 703 requirements.

C. Case File Records (4 yrs. 2003-2006)¹⁷

A random sample of 25 case numbers from the years 2003 through 2006 was drawn from NCDS' data base program, and in our field inspection, we checked the sample case files at the NCDS national office in Detroit, Michigan, to verify that they were being maintained per requirement § 703.6(f).

The closed files are stored at an off-site record storage facility in the NCDS Detroit, Michigan, office. We did not inspect the off-site facility for this year's audit having not anticipated that eventuality. That aspect will be on the audit agenda for any future reviews. The files we viewed appeared intact and were readily available for inspection. The random sample inspection of 25 case files drawn from all cases in the four-year universe of cases validated the program's maintenance of these records as required.

D. Arbitration/Hearing Records

i. Case file folders

Most information that is required to be maintained is found on a series of forms found in the case files maintained at the NCDS headquarters in Detroit, Michigan.

ii. Arbitrator Biographies

The arbitrator biographies for the national program are available for review from Debbie Lech, the Manager for Case Administration for NCDS at their headquarters in Detroit, Michigan [Clinton Township]. The biographies are thorough and current. The list of arbitrators for each district includes the dates of their appointments.

E. Hearing Process

The hearing was scheduled at the principal dealership in question after a consultation with each of the parties. The hearing involved one arbitrator who briefly interviewed the parties, provided a summary explanation of the hearing process, and then took testimony. The hearing was held at Jim Barkley Toyota 77 Brevard Road, Asheville, North Carolina. The hearing began at 1:00 pm as scheduled .

i. Physical Description of Hearing [i.e., Meeting]

The hearing was conducted in a room of adequate size and configuration. Attendees included the customer, the Toyota representative, a dealership service department representative, an auditor, and the arbitrator.

The hearing was efficiently conducted consistent with the regulatory requirements for a fair hearing. The customer and Toyota were provided an

¹⁷ Since some of the participating manufacturers have not been administered by NCDS for four years, we could not render any judgment in that regard. Still, we have seen how the files were maintained in other audits we have conducted, and as a result, we have confidence the files are being stored as required. Moreover, we saw no substantive inconsistency in how NCDS maintains files between manufacturers so we feel comfortable in assuming that what is true in this regard for Toyota, DaimlerChrysler, and Mitsubishi will be seen to also be true for the Porsche and Lexus aspects of the national AWAP.

equal opportunity to present their case. The arbitrator appropriately confirmed what the customer was seeking in the form of relief, and then took closing statements of the parties prior to concluding the hearing.

ii. Openness of Hearing/Meeting

The room was adequate to accommodate observers interested in attending the hearing. The arbitrator communicated to the auditor his understanding that the hearings are open and can be attended by observers who agree to abide by the program's rules.

iii. Efficiency of Meeting

The hearing was efficiently conducted.

iv. Hearing

This arbitrator appeared to be committed to the fair and expeditious resolution of warranty disputes in the hearing process. She treated the parties equally in every regard. The hearing covered everything the program envisions. The arbitrator misspoke at one point and suggested that in refund/replacement cases the manufacturer has a "right" to a mileage offset. Based on my post hearing interview with the arbitrator it was clear that this was merely a misstatement and she understood such offsets were completely permissive and applicable only as the arbitrator sees fit in light of the pertinent facts, evidence, and applicable law.

Otherwise, the hearing was professionally conducted affording all parties an opportunity to present their respective cases to the arbiter.

v. Board/Arbitrator Decisions

We reviewed numerous decisions for this region while conducting our on-site visit to the Detroit, headquarters of NCDS. In the Compliance Summary (Section I of this report), we discuss and will not reiterate the important issue of boilerplate language. Otherwise, the decisions we reviewed were generally quite sound in both form and substance.

In addition, we subsequently reviewed the decision rendered in the case and found it to be thorough, well reasoned, and complete.

CONCLUSION:

The AWAP, as it operates in North Carolina is, in our view, in substantial compliance with Rule 703. The NCDS administrative staff and the NCDS program demonstrated a clear commitment to ensuring fair and expeditious resolution of warranty disputes. The administrative staff is clearly dedicated to the program's mission and demonstrates a high degree of professionalism.

II. Illinois

A. Case Load and Basic Statistics

In Illinois, NCDS handled 95 AWAP cases in 2006 of which 24 (25.2%) were "no-jurisdiction" cases. There were 58 cases arbitrated (33.8% of 71 in-jurisdiction cases), and 6 cases (8.4% of 71 in-jurisdiction cases) were mediated. The average number of days for handling a 2006 case in Iowa was 36 days. This compares with 38 days handling nationwide.

The Illinois field audit includes a review of a hearing held in Elgin, Illinois, and interviews with the principal people involved in the hearing. In addition, we reviewed case files for the region, which are stored at the national headquarters of the National Center for Dispute Settlement (NCDS), in Detroit, Michigan, [Clinton, Township].

During our on-site review at the Detroit, Michigan, headquarters, we did not visually inspect the warehousing of all AWAP case files for the required four-year period.¹⁸ The four-year accumulation of case files was available for inspection, where applicable, per all regulatory requirements.

We requested a random sample of 25 cases drawn from all cases closed during the audit period and examined all the cases provided to determine whether they were complete and available for audit. These files were reviewed for accuracy and completeness. The findings of that review are set forth below.

The staff at NCDS were efficiently housed and provided with up-to-date equipment.

B. Recordkeeping Accuracy and Completeness

§ 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.**

¹⁸ See 16 C.F.R., § 703.6 (f). Since some of the participating manufacturers have not been administered by NCDS for four years, we could not render any judgement in that regard. Still, we have seen how those files were maintained in other audits we have conducted. As a result, we have confidence the files are being stored as required. Moreover, we saw no substantive inconsistency in how NCDS maintains files between manufacturers so we feel comfortable in assuming that what has been true in this regard for Toyota, Lexus, Porsche, DaimlerChrysler, and Mitsubishi for each of the last several years they will be seen to also be true at the new headquarters in Detroit. [Note: We visually inspected these files last year [2006] and also reviewed a random sample of all NCDS files. All files will be inspected again next year at the new site near Detroit.

FINDINGS:

We examined the case files extracted from all "in-jurisdiction" regional case files closed during the audit period. We reviewed these files for the items enumerated in subsections 1-5 with the following results:

- 1) All case files contained the customer's name, address, and telephone number.
- 2) The requirement is met. The name and address of the warrantor's contact person is included with the initial correspondence that the customer receives from the program. In addition, the various manufacturer's contact address and phone number is included in each Owner's Manual that accompanies all new vehicles when they are delivered. The contact person is so generally known as to not require it to be placed in each individual case file.
- 3) All case files inspected 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)

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 files for cases that were arbitrated contained the information required by sections six and eight. Oral presentations are a basic component of the NCDS program in this jurisdiction, and section seven requires summaries of the oral presentations to be placed in the case file. It is NCDS policy that the arbitrator conducting the hearing must summarize all significant information presented orally by either party during any facet of the hearing. We noted such language in the case files we reviewed in Detroit, but we did not allocate sufficient time to conduct a qualitative review of that portion of each case's decision. We offer no judgement then on whether these summaries are

consistently detailed and/or accurate depictions. At the same time, we saw no particular reason to question the sufficiency of this method.

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

FINDINGS:

All files for cases that were arbitrated contained the required information.

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

FINDINGS:

The warrantor's intended action(s) and performance are inextricably linked. Thus, we validate this item in terms of performance verification. Performance verification is a function carried out by NCDS. This office sends a survey to the customer following receipt of the customer's acceptance of those decisions mandating some action on the part of Toyota to ask, among other things, whether any required performance has taken place. Customers are asked to return the survey to the office of NCDS. As noted elsewhere, we found few returned survey forms in the case files. In the past, we have stated that the absence of performance verification forms in the case file does not constitute a regulatory inconsistency since performance verification information may not be available from the customer. By mailing a performance verification survey NCDS goes as far as can be expected in determining whether arbitration decisions are, in fact, being performed. It seems entirely appropriate for the program to assume performance of the decision has taken place when the customer performance survey is not returned. For those who may be skeptical about such important assumptions, it should be remembered that even if a manufacturer engaged in a programmatic attempt to avoid performing arbitration decisions, that fact would, of course, emerge in the context of our national random survey of customers who have used the program. Performance verification status should and does appear in the case file as is indicated by sections 11 and 12 below.

- 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.

Section 11 above is 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. Section 12, however, appears to mandate that a summary form be created whenever the arbitrator receives an oral communication that may have any bearing on the matter in dispute from either party. Of course, most such communications come in the form of oral presentations by the parties at the hearing, in which case the communications are summarized in the arbitrator's decision. All summaries are now included in the case file.

CONCLUSIONS:

The NCDS program's record keeping policies and procedures are in substantial compliance with the federal Rule 703 requirements.

C. Case File Records (4 yrs. 2003-2006)

§ 703.6 (f)

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

The closed files are stored at an off-site record storage facility in the NCDS Detroit, Michigan, office. We did not inspect the off-site facility for this year's audit having not anticipated that eventuality. That aspect will be on the audit agenda for any future reviews. The files we viewed appeared intact and were readily available for inspection. The random sample inspection of 25 case files drawn from all cases in the four-year universe of cases validated the program's maintenance of these records as required.

D. Arbitration/Hearing Records

i. Case file folders

Most information that is required to be maintained is found on a series of forms found in the case files maintained at the NCDS headquarters in Detroit, Michigan.

ii. Arbitrator Biographies

The arbitrator biographies for the national program are available for review from Debbie Lech, the Manager for Case Administration for NCDS at their headquarters in Detroit, Michigan. The biographies are thorough and current, and the list of arbitrators for each district includes the dates of their appointments.

E. Hearing Process

i. Physical Description of Hearing (i.e., Meeting)

The AWAP hearing was held at the Biggers Mitsubishi Dealership, 1325 E. Chicago, Street, Elgin, Illinois. February 28, 2007, at 10:00 a.m. The meeting room was of adequate size for accommodating its attendees. The parties included the customer, a Toyota manufacturer's representative, the arbitrator, and the auditor.

ii. Openness of Hearing

This arbitrator said that he allows all observers at AWAP meetings (hearings).

iii. Efficiency of Meeting

The arbitrator's case file was complete with all requisite documents. The arbitrator demonstrated that he generally knows how to properly conduct a hearing. He began by announcing that he was a bit nervous as a result of the

presence of the auditor. He then gave a brief overview of the process and explained the oath of neutrality. The meeting began at 10:00 a.m. as scheduled.

iv. Hearing

The hearing was properly conducted. Both parties were afforded an uninterrupted opportunity to present their versions of the case. Following each party's presentation, the opposing party was given an opportunity to clarify or challenge, as was appropriate.

v. Board/Arbitrator Decisions

We reviewed this case's decision and a sample of decisions for the region while conducting our on-site visit at the Detroit, Michigan, headquarters of NCDS. The decision in this case was consistent with the regulatory requirements. Further, the decision in this case was thorough and complete, setting forth sufficient rationale for his findings.

Conclusion:

The AWAP, as it operates in Illinois, is in "substantial compliance" with Rule 703. The NCDS administrative staff demonstrated a clear commitment to ensuring fair and expeditious resolution of warranty disputes. The administrative staff is clearly dedicated to the program's mission and generally demonstrates a high degree of professionalism. The arbitrator demonstrated a commitment to fair and expeditious resolution of warranty disputes.

III. Ohio

A. Case Load and Basic Statistics

The 2006 Ohio Statistical compilations identifies 99 total disputes closed for 2006. Of these, 14 (14 % of all disputes) were beyond jurisdiction for NCDS' arbitration program review. Of the remaining cases, 10 (11.7%¹⁹) were mediated and 75 (88.2%) were arbitrated. The average number of days for handling a 2006 case in Ohio was 36 days. This compares with 38 days handling nationwide.

B. Recordkeeping Accuracy and Completeness

§ 703.6 (a)(1-12)

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

- 1) Name, address and telephone number of the consumer;**
- 2) Name, address and telephone number the contact 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:

We examined a sample of 25 case files extracted from all "in-jurisdiction" case files closed during the audit period. We reviewed these files for the items enumerated in subsections 1-5 with the following results:

- 1) All case files contained the customer's name, address, and telephone number.
- 2) The requirement is met. The name and address of the warrantor's contact person is included with the initial correspondence that the customer receives from the program. In addition, the manufacturer's contact address and phone number is included in each Owner's Manual that accompanies all new vehicles when they are delivered. The contact person is so generally known as to not require it to be placed in each individual case file.
- 3) All case files inspected 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.

¹⁹ Our calculation here is based only on the 85 cases within the program's jurisdiction.

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 with information as to date, time and place of meeting, the identity of members voting; or information on any other resolution;

FINDINGS:

All files for cases that were arbitrated contained the information required by sections six, seven, and eight.

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

FINDINGS:

All applicable case files contain a letter from the arbitrator announcing his/her decision.²⁰

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

FINDINGS:

The warrantor's intended action(s) and performance are inextricably linked. Thus, we validate this item in terms of performance verification. Performance verification is a function carried out by NCDS. This office sends a survey to the customer following receipt of the customer's acceptance of those decisions mandating some action on the part of the respective manufacturer to ask, among other things, whether any required performance has taken place. Customers are asked to return the survey to the office of NCDS. As noted elsewhere, we found few returned survey forms in the case files. In the past, we have stated that the absence of performance verification forms in the case file does not constitute a regulatory inconsistency since performance verification information may not be available from the customer. By mailing a performance verification survey NCDS goes as far as can be expected in determining whether arbitration decisions are, in fact, being performed. It seems entirely appropriate for the program to assume performance of the decision has taken place when the customer performance survey is not returned. For those who may be skeptical about such important assumptions, it should be remembered that even if a manufacturer engaged in a programmatic attempt to avoid performing arbitration decisions, that fact would, of

²⁰ Some cases do not result in a decision. The case may end in a mediated settlement that came about after the case had been received by the AWAP but prior to the hearing to decide the matter.

course, emerge in the context of our national random survey of customers who have used the program. Performance-verification status should and does appear in the case file as is indicated by sections 11 and 12 below.

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.

Section 11 above is 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. Section 12, however, appears to mandate that a summary form be created whenever the arbitrator receives an oral communication that may have any bearing on the matter in dispute from either party. Of course, most such communications come in the form of oral presentations by the parties at the hearing, in which case the communications are summarized in the arbitrator's decision. All summaries are now included in the case file.

CONCLUSIONS:

The NCDS AWAP record keeping policies and procedures are in substantial compliance with the federal Rule 703.

C. Case File Records (4 yrs. 2003-2006)²¹

A random sample of 25 case numbers from the years 2003 through 2006 was drawn from NCDS' data base program, and in our field inspection, we checked the sample case files at the NCDS national office in Detroit [Clinton Township], Michigan, to verify that they were being maintained per requirement § 703.6(f).

The closed files are stored at an off-site record storage facility in the NCDS Detroit, Michigan, office. We did not inspect the off-site facility for this year's audit having not anticipated that eventuality. That aspect will be on the audit agenda for any future reviews. The files we viewed appeared intact and were readily available for inspection. The random sample inspection of 25 case files drawn from all cases in the four-year universe of cases validated the program's maintenance of these records as required.

²¹ Since some of the participating manufacturers have not been administered by NCDS for four years, we could not render any judgment in that regard. Still, we have seen how the files were maintained in other audits we have conducted, and as a result, we have confidence the files are being stored as required. Moreover, we saw no substantive inconsistency in how NCDS maintains files between manufacturers so we feel comfortable in assuming that what is true in this regard for Toyota, DaimlerChrysler, and Mitsubishi will be seen to also be true for the Porsche and Lexus aspects of the national AWAP.

D. Arbitration/Hearing Records

i. Case file folders

Most information that is required to be maintained is found on a series of forms found in the case files maintained at the NCDS headquarters in Detroit, Michigan.

ii. Arbitrator Biographies

The arbitrator biographies for the national program are available for review from Debbie Lech, the Manager for Case Administration for NCDS at their headquarters in Detroit, Michigan [Clinton Township]. The biographies are thorough and current. The list of arbitrators for each district includes the dates of their appointments. C. Case File Records (4 yrs. 2003-2006)

§ 703.6 (f)

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

The older case files are stored at the NCDS headquarters office in Detroit, Michigan. The closed files are now stored at a remote location with a commercial storage facility, and are available for review.

E. Hearing Process

The AWAP hearing was held at the Walker Toyota dealership in Miamisburg, Ohio, March 19, 2007, at 11:00 am.

i. Physical Description of Hearing [i.e., Meeting]

The hearing was conducted in room of adequate size and was reasonably arranged for the purposes of the hearing. Attending were the customer, a Toyota representative, a Toyota dealer representative, the auditor, and the arbitrator.

The audit included interviews with the customer and the Toyota representatives either before or after the hearing.

ii. Openness of Meeting

The room at the dealership was adequate to accommodate all attendees. The arbitrator communicated to the auditor his understanding that the hearings are open and can be attended by observers who agree to abide by the program's rules.

iii. Efficiency of Meeting

The arbitrator's case file was complete with all requisite documents. The arbitrator demonstrated throughout the hearing that he generally knew how to properly conduct a hearing. The arbitrator addressed the parties at the beginning of the hearing and gave a brief overview of the hearing process. He then proceeded to

allow each party to present their case. The meeting began at 11:00 am as scheduled.

iv. Hearing

The hearing was efficiently and properly conducted. The parties were afforded an uninterrupted opportunity to present their case. Following each party's presentation, the other party was given an opportunity to clarify or challenge, as was appropriate. The arbitrator did conduct a test drive toward the conclusion of the hearing. After the test drive was concluded, all those participating in the test drive returned to the hearing room.

v. Board/Arbitrator Decisions

We inspected a sample of Ohio decisions rendered in 2006 while conducting our on-site visit to the Detroit, Michigan, headquarters of NCDS. In addition, we reviewed the decision rendered in the case referred to above. By and large, the decisions we reviewed were reasonable and consistent with the facts of the case, at least insofar as the case file is concerned. The decision in this particular case was also reasonably consistent with the facts in the case file as well as those that were presented during the hearing.

CONCLUSION:

The AWAP, as it operates in the state of Ohio, is in substantial compliance with Rule 703, while recognizing the important caveat discussed elsewhere regarding the need to clarify and modify the panel hearing policy concerning the open meetings requirement of rule 703. The NCDS administrative staff and the NCDS program demonstrated a clear commitment to ensure fair and expeditious resolution of warranty disputes. The administrative staff is clearly dedicated to the program's mission and demonstrates a high degree of professionalism.

SECTION IV

Arbitration Training

There is no specific language in Rule 703 requiring the training of arbitrators, but there is in the Florida governing statute and its related administrative rule. In addition, there are 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.

Arbitration training is currently seen by most regulators as fundamental to ensuring that a program is fair to all sides. Consequently, all current arbitration programs have initiated the training process even in states that do not specifically require it. Because such training has become a basic part of the NCDS program, it is incorporated into this report as part of the program's efforts to provide for fair and expeditious resolution of disputes.

FINDINGS:

The arbitration training session we monitored was conducted at the DFW Lakes Hilton in Grapevine, Texas, May 18- 20, 2007. As noted in the introduction, certain facets of the audit are conducted in the year following the audit period; otherwise, there would sometimes be no means available for review.

This training was conducted by NCDS staff as well as Ms Mary Bedikian, an arbitration expert with the Michigan State University College of Law. One presenter dealt primarily with legal matters, another with hearing process issues, and an NCDS staff person addressed the program's procedural issues. These presentations were augmented by the trainees being given several opportunities to engage in role playing exercises.

In the matter of scheduling hearings, the program typically takes advantage of applicable dealerships for holding hearings with the important caveat that using the dealership is not required if either of the parties objects. Moreover, it is emphasized that, where necessary, the program will pay for alternate space.

The importance of reviewing the basic facts of the case at the beginning of deliberations was discussed, including each dimension of the customer's complaint as well as the degree to which the parties are in disagreement on central facts. Presenters also discussed the importance of addressing each dimension of the customer's concerns when writing the decision.

Trainees engaged, at various intervals, in practical problem solving centering around scenarios that are likely to arise within the NCDS arbitration program. Role-playing material was appropriately interspersed among lecture material with emphasis on conducting the arbitration hearing.

There was a detailed discussion concerning common problems associated with repurchases (i.e., refunds) and replacements of automobiles, including the issue of whether to apply mileage offsets and how to handle demonstration vehicles with more than a few miles registered on the odometer at time of purchase.

Important clarification was provided concerning test drives of vehicles about which the parties are in dispute. It was also explained that arbitrators in most states are not

indemnified by NCDS if they elect to drive the customer's vehicle. Moreover, arbitrator trainees were told that they need not go for a test drive in cases wherein the parties are in agreement about issues which would be addressed by the test drive.

The presentation of the legal issues was professional and accurate. Particular emphasis was given to this critical subject area again this year, and the result was very positive as regards trainees' understanding of their role. Again this year there was emphasis placed on the importance of arbitrators' neutrality and the related issue of making appropriate disclosures when applicable. Emphasis was given to disclosures that may be important but are not necessarily disqualifying.

Overall, the training gives trainees an opportunity to develop a good grasp of their responsibilities as arbitrators. As was true at last year's training, trainees were presented with clear information that customers who purchase a new vehicle with a substantial non-conformity and one in which the manufacturer fails to cure the non-conformity in a reasonable number of attempts should normally receive the relief they appear to be entitled to under the terms of the Magnuson-Moss Warranty Act or the appropriate state automobile warranty statute. Caveats and exceptions were also discussed in detail.

The invaluable role-playing demonstrations have become a standard feature of NCDS training. Some exercises involve trainees simply observing role-playing by staff. A major component of training involves trainees themselves in role play exercises.

An important and thorough presentation centered around the Federal Magnuson-Moss Warranty Act²² and its relationship to the Uniform Commercial Code. Our field experience suggests that some greater emphasis on the arbitrators' scope of authority and the related available remedies under federal law would also be beneficial.

An appropriate degree of emphasis was given to writing decisions and providing adequate underlying rationales for those decisions. This included a careful presentation on leased vehicles and the sometimes complicated differences between providing relief in these cases as opposed to providing relief in cases in which vehicles are purchased outright.

Also discussed was the appropriate use of independent technical inspections and their limitations. Emphasis was given to the arbitrator's duty to not accede his or her authority in relation to the independent inspection but to simply accept the independent inspection report as yet another piece of evidence.

There was a useful discussion of the participating manufacturers' warranty parameters and how they fit into the process. This discussion was sufficiently detailed to give arbitrators enough information without overwhelming them with minutiae.

Finally, the training session provided a clear discussion of issues surrounding jurisdiction of the program to hear and decide cases. In this program, the NCDS staff makes a preliminary determination, but where customers disagree with the initial determination, the matter is presented to the program's three-member panel for their review and final determination.

²² Also addressed was the Act's related administrative rules commonly known as Rule 703.

CONCLUSION:

The NCDS national arbitrator training program for participating manufacturers is a good one that operates in substantial compliance with Magnuson-Moss and Rule 703. We have observed many important additions to the national training program since 2002 and the substance has, as was last year, been carried over into this year's program. The entire program clearly demonstrates a commitment to quality arbitrator training.

ARBITRATION TRAINING RATING SYSTEM

- | | |
|---|-----------|
| 1) Adequacy of training materials | VERY GOOD |
| 2) Accuracy of informational materials | VERY GOOD |
| 3) Thoroughness of material | VERY GOOD |
| 4) Quality of presentation | VERY GOOD |
| 5) Apparent understanding and likely comprehension of the information | GOOD |
| 6) Utility of materials for later referencing | EXCELLENT |

*Survey and Statistical Index Comparative
Analyses*

SECTION V

National (FTC) Survey and Statistical Index Comparative Analyses

NATIONAL CENTER FOR DISPUTE SETTLEMENT AUTOMOTIVE WARRANTY PROGRAM PROGRAM INDICES

The Federal Trade Commission (FTC) regulates informal dispute resolution programs, such as those operated by the National Center for Dispute Settlement 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 the audit is to verify the statistics provided by the company for the calendar year 2006.

A consumer who wants to have a dispute settled by the Automobile Warranty Arbitration Program (AWAP) conducted by the National Center for Dispute Settlement (NCDS) must: (1) be the owner of a vehicle that meets certain specific age and mileage requirements; and, (2) agree to forego any legal action while the case is open with the AWAP. 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 a three-member arbitrator board.

If a consumer who files with the AWAP is able to reach an agreement with the automaker prior to an arbitration hearing, the dispute is said to have been “mediated” by the staff. If the consumer and the automaker cannot reach an agreement, the case is arbitrated by the AWAP. Arbitration cases can result in the granting of an award requiring the automaker to repair or replace the vehicle, to issue a cash reimbursement, to extend the warranty, or to terminate the lease. 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 AWAP 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: 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 and the reasons for those delays.

To determine the accuracy of the AWAP’s warranty dispute statistics and to gather evaluation information about the program, Claverhouse Associates contracted with the Office for Survey (OSR) of the Institute for Public Policy and Social Research (IPPSR) at Michigan State University to conduct a survey of consumers nationwide who filed disputes with the AWAP during the calendar year 2006.

The primary focus of the survey is to gather data to verify the statistics by comparing data collected from consumers to the statistics reported to the FTC by the AWAP. The question is not whether an individual’s recollections match the data in the AWAP’s records, but rather whether the aggregate proportion of consumers’ recollections agree with the outcomes reported to the FTC.

In addition to containing questions to gather the information needed to verify the statistics, the questionnaire also contained several items used to evaluate several aspects of the program and to measure customer satisfaction.

ABOUT THE STUDY

The Claverhouse study is based on data collected from 341 of the 1,836 users²³ of the program nationally in 2006 whose cases were “in jurisdiction” and closed. Closed cases are defined as those where a decision has been made and the time for compliance has occurred. A customer who had filed more than one case was asked to refer to the most recent case when answering the questionnaire.

The data was collected using a mailed self-administered questionnaire. To ensure that everyone who was randomly selected had an equal opportunity to participate and to increase the overall response rate, OSR used a methodology designed by Professor Donald Dilman of the University of Washington, a nationally known expert in the field of survey research. His method involves an initial mailing, a postcard thank-you/reminder, and a second full mailing to non-responders.

On March 19, 2007, a packet containing the questionnaire, a cover letter, and a postage-paid return envelope was sent to 643 randomly selected users of the AWAP program nationwide who were eligible to participate in the research. The cover letter explained the purpose of the research, why the customer was selected, and how the results would be used. It also explained their rights in the research process and gave them contact information for OSR staff in case they had questions about the survey instrument itself or how the results would be used. The letter also explained that OSR was hired for its expertise in survey research and data analysis and was not affiliated with the AWAP or the auto manufacturers in any way.

One week after the initial mailing on March 26, 2007, a combination thank-you/reminder postcard was sent to everyone who had received the initial mailing. Often, receiving the postcard adds legitimacy to the research and will prompt those who may have initially decided not to participate to reconsider their decision.

Each respondent was assigned a unique identification number which appeared on the front cover of the questionnaire. This number was used to “track” the sample – to determine who had returned a completed questionnaire, and just as important, who did not, so that another complete mailing could be sent. The first mailing and postcard reminder generated 72 percent of the completed questionnaires (245).

On April 16, 2007, non-responders received another cover letter (which explained that their initial questionnaire had not been received), a questionnaire, and postage-paid envelope. In order to give everyone ample time to complete and return the questionnaire, OSR continued to accept completed questionnaires through May 11, 2007, making the data collection period approximately eight weeks. This mailing generated the remaining 96 completed questionnaires.

A threat to the validity of any study is non-response bias. That is, if there is any systematic reason why certain consumers 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

²³ A total of 2,876 cases were included in the statistics sent by the AWAP. The cases break down as follows: 319 mediated cases (24 which the time for compliance had not passed), 1,577 arbitrated cases (36 which the time for compliance had not passed), and 688 non-jurisdiction cases for a total of 2,584 cases. The data in this report is based on the closed mediated and arbitrated cases. An additional 192 pending cases were also included in the AWAP statistics for a total of 2,776. The AWAP reports a total of 2,876 cases. This number includes a figure of 155 cases that were delayed beyond 40 days. This number should **not** be included as an additional number of cases, but as a subset of the 1,836 cases that were mediated or arbitrated and closed.. Upon adding all the numbers reported by the AWAP, the total of all records is 2,931. There is still a discrepancy when the 155 delayed cases are removed from the totals by 100 cases. When the 100 cases are removed, the total is 2,776. The sample for the Claverhouse study was drawn from the 319 mediated and 1,577 arbitrated cases less the 60 cases which time for compliance had not passed for a total of 1,836 cases.

consumers. The practices of sending postcard reminders and second full mailings to non-responders are attempts to reduce non-response bias.

Of the 643 questionnaires that were initially mailed, 341 were returned completed, 16 were returned by the post office as undeliverable, and five were returned with the respondent indicating that they were choosing not to participate in the research. The status of the remaining 339 questionnaires is unknown. The completion rate for this study is 54.3 percent and the margin of error for this study is ± 4.8 percent²⁴.

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, only AWAP in-jurisdiction cases are compared with the Claverhouse sample.

The difference between the 19.4 percent of cases mediated in the Claverhouse sample and the 16.8 percent of cases mediated in the AWAP figures is not statistically significant. Likewise, the difference between the 80.6 percent of arbitrated cases in the Claverhouse sample and the 83.2 percent of arbitrated cases in the AWAP figures is also not statistically significant. Therefore, the statistics are in agreement.

Table 1
Method of Resolution of Warranty Disputes
Comparison between Claverhouse Survey and AWAP Indices 2006

²⁴ This is the sampling error when the responses divide roughly 50-50 on a given question and when there are 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 ± 4.9 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. For example, if the responses were divided 75-25 on a given question, the margin of error would be ± 4.1 %.

Resolution	Claverhouse		AWAP		
	Number	Percent	Number	Percent of in-jurisdiction cases	Percent of all cases
Mediation	66	19.4%	319	16.8%	12.3%
Arbitration	275	80.6%	1,577	83.2%	61.0%
Subtotal (in-jurisdiction)	341	100.0%	1,896	100.0%	73.3%
Out-of jurisdiction	-	-	688	-	26.7%
Total disputes	341	100.0%	2,584	100.0%	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 the universe of cases for the Claverhouse surveys only includes closed cases, cases in which the compliance period has not yet passed are not included in the research.

Table 2
Outcomes of Mediated Settlements
Comparison between Claverhouse Survey and AWAP Indices 2006

Mediated Settlements	Claverhouse	AWAP
	Percent (Number)	Percent ²⁵ (Number)
Warrantor has complied within the compliance period	52 (91.4%)	285 (96.6%)
Warrantor has not complied	3 (5.3%)	10 (3.4%)
Warrantor complied but not within the compliance period	3 (5.3%)	-
Total Mediated Cases	57 ²⁶ (100.0%)	295 (100.0%)

The survey data shows that the manufacturer complied with 91.4 percent of the mediated cases within the time frame specified in the agreement and with 96.7 percent overall. AWAP indices

²⁵This percentage is a percentage of mediated cases only and does not include the 24 cases that fall into the category “resolved by staff of the mechanism and time for compliance has not yet occurred.” The 295 cases included in the statistic plus the 24 pending equal the total of mediated cases, 319.

²⁶ There were a total of 61 mediated cases in the Claverhouse sample. Four respondents choose not to answer one or more of the questions which are used to compute these statistics.

show that the AWAP complied with 96.6 percent of mediated cases within the time frame specified in the agreement and the same percentage overall. Therefore, the statistics “resolved by the staff of the mechanism and warrantor has complied” and “resolved by the staff of the mechanism and time for compliance has occurred, and warrantor has not complied” are in agreement. Respondents were also asked about the specific outcome of their cases. Table 3 shows their responses.

**Table 3
Specific Outcomes of Mediated Settlements
Claverhouse Survey 2006**

Outcome	Number	Percent
Extended warranty	15	23.1%
Repairs	15	23.1%
Cash settlement	13	20.0%
New vehicle	12	18.5%
Nothing	7	2.1%
Trade-in allowance	3	0.9%
Total	65	100.0%

When asked if they pursued their cases any further, only 11.1 percent of the respondents indicated that they had done so. Of those who did pursue their cases, 58.3 percent said they re-contacted AWAP, 16.7 percent contacted a government agency, 16.7 percent re-contacted the dealer or manufacturer, and 8.3 percent contacted an attorney.²⁷

Respondents were then asked if they recalled talking to an AWAP staff member or returning a postcard to the AWAP about their settlement and how their cases were handled. Of those answering the question, 44.3 percent recalled talking to a staff member, 16.4 percent returned the postcard, 16.4 percent said that they did both, and 23.0 percent didn’t bother doing either.

Arbitrated Cases

Before the questionnaire presented detailed questions about the outcomes of their arbitrated cases, respondents were asked several questions about the process leading to their hearings.

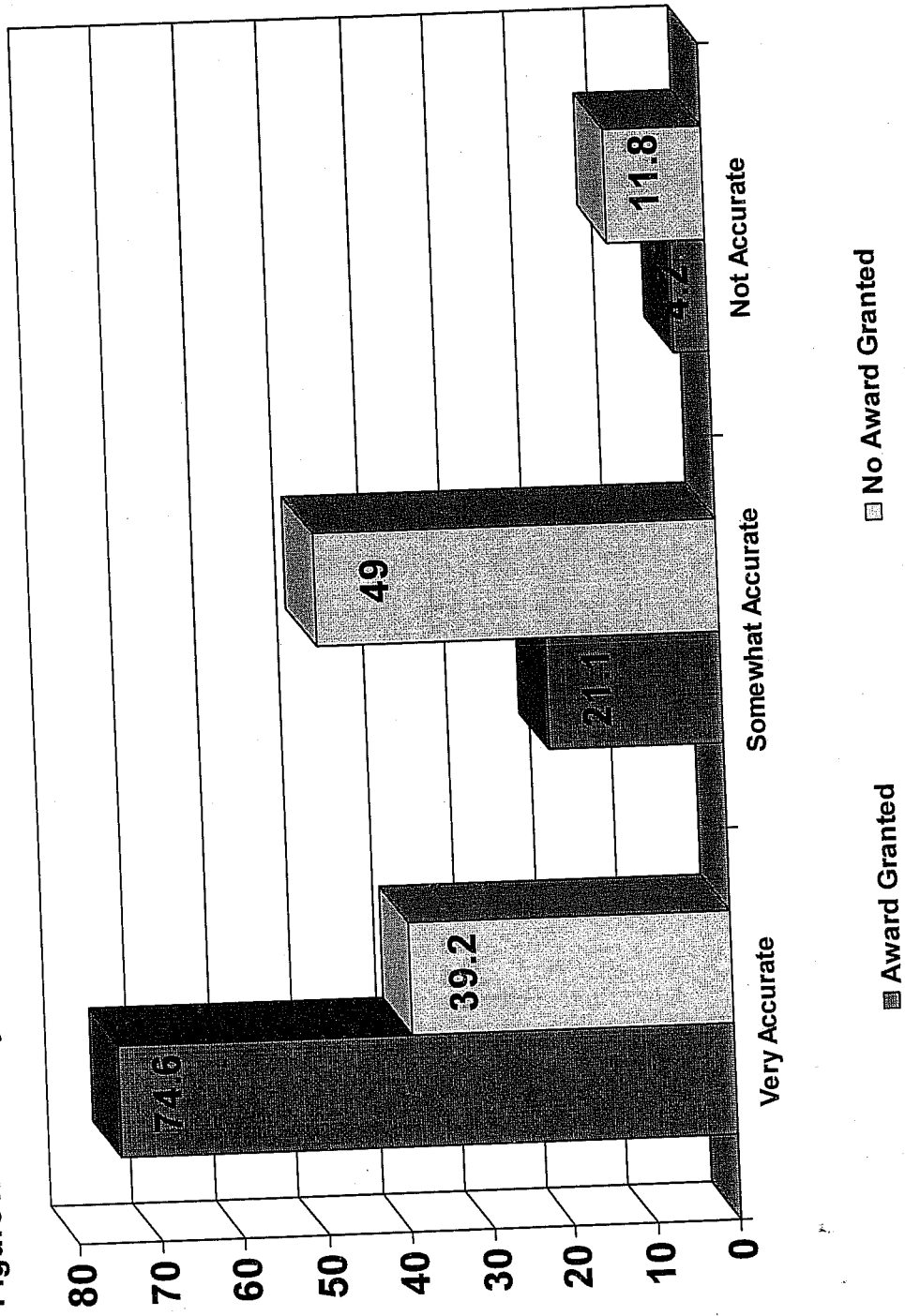
Respondents were first asked whether they remembered receiving the forms in which their claims were stated. Of the respondents who reported having arbitration hearings, 89.6 percent said that they recalled receiving the forms. Respondents were also asked a question about how accurately they felt the forms stated their claims: 50.6 percent said “very accurately,” 39.6 percent said “somewhat accurately” and, 9.8 percent said “not very accurately or not at all accurately.”

How accurately the respondent felt their case was stated is closely related to whether or not the respondent received an award. Those who said that their case was stated “very accurately” or

²⁷ This statistic is based on a total of 12 responses as respondents could indicate more than one source.

“somewhat accurately” were more likely to receive an award, a combined 95.7 percent. The percentage was much lower for those who did not receive an award. (see Figure 1)

Figure 1. Accuracy of Claim Forms Correlated with Whether an Award Was Granted



Respondents were then asked whether they had been notified of the time, place, and date of the arbitration hearing. Of those who answered this question, 94.8 percent said they had been notified, and of those who had been notified, 77.9 percent attended their hearing in person, 2.3 percent said that they participated in the hearing by phone, and 19.8 percent said that they did not attend the hearing in person or participate by phone.

The reasons respondents gave for not attending their hearings are summarized in Table 4.

Table 4
Reasons for Not Attending or Participating in Arbitration Hearing
Claverhouse Survey 2006

Outcome	Number	Percent
Hearing location too far away/not in local area	16	31.4%
Chose not to attend/told presence was not needed or necessary	9	17.6%
Other reasons	9	17.6%
Chose documents only hearing	8	15.7%
Already spent too much time on case/did not want to invest more time	3	5.9%
Was unaware of hearing location/time	3	5.9%
Total	48	100.0%

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 5 presents the data about the outcomes of arbitrated cases.

Table 5
Outcomes of Arbitrated Cases
Comparison between Claverhouse Survey and AWAP Indices 2006

Outcome	Claverhouse	AWAP
	Percentage (Number)	Percentage (Number)
Arbitration - Award Granted and Accepted		
Case decided by board and warrantor has complied	56 (22.4%)	171 (10.8%)
Case decided by board and warrantor has not complied	8 (3.2%)	1 (0.1%)
Case decided by board and time for compliance not passed	NA	36 (2.3%)
Total – award granted and accepted	64 (25.6%)	208 (13.2%)
Arbitration Decision adverse to consumer	185 (74.4%)	1,369 (86.8)
Total arbitrated decisions	249 (100.0%)	1,577 (100.0%)

Survey results differ statistically from the AWAP indices for two statistics, “case decided by board and warrantor has complied” and “decided by members, decision adverse to consumer”. These differences should not be of great concern since the difference favors the consumer and not the AWAP (a higher percentage of respondents in the Claverhouse sample reported compliance and a slightly lower percentage of respondents in the Claverhouse survey reported adverse decisions than reported by the AWAP).

These differences, in part, may be attributed to non-response bias in that those who did not receive an award might be less willing to participate in the research and conversely, those who did receive an award and the warrantor did comply might be more likely to participate in the research.

Of those who did receive an award from the AWAP, 86.2 percent indicated that they received the award within the time frame mandated by the board, which is a positive outcome for both the program and the consumer. Of the small percentage of those who did not receive their award within the time frame, over half (57.1 percent) said they were given a reason by the AWAP, again, a positive outcome for both the program and the consumer. Table 6 details the awards respondent’s reported receiving from their arbitration hearings.

Table 6
Specific Outcomes of Arbitrated Cases
Claverhouse Survey 2006

Outcome	Award Granted	Award Granted and Accepted
Cash settlement	31 (38.8%)	30 (49.2%)
Repairs	25 (31.2%)	12 (19.7%)
New vehicle (replacement)	17 (21.3%)	15 (24.6%)
Other	6 (7.5%)	4 (6.6%)
Terminate the lease	1 (1.3%)	0 (0.0%)
Total	80 (100.0%)	61 (100.0%)

The survey also asked whether or not the respondent accepted or rejected the decision and the reason why they chose to reject the decision if applicable. Of those who received an award, 76.9 percent indicated that they accepted what was awarded.

As Table 6 shows, those awarded cash settlements were the most likely group to accept the decision. Those who were awarded additional repairs were the least likely to accept the decision. Those who rejected the award (22.8 percent) gave the following reasons: 53.3 percent thought that the decision would not solve the vehicle's problems; 13.4 percent said they did not want what the AWAP offered; and 33.3 percent gave other reasons.

All respondents whose cases were arbitrated were asked whether they had pursued their cases further after the arbitration decision. Slightly more than one-quarter (26.0 percent) replied in the affirmative. Table 7 shows by what means they pursued their cases. Note that respondents could pursue their cases by more than one means; thus, the number of responses (74) is greater than the number of respondents (58) answering the questions.

Table 7
Methods of Pursuing Cases
Claverhouse Survey

Method	Number	Percent
Contacted an attorney/legal means	24	32.4%
Contacted a government agency	19	25.7%
Worked out a solution with the dealer	14	18.9%
Recontacted the AWAP	17	23.0%
Total responses	74	100.0%

When asked if they talked to the staff of the AWAP or returned a postcard indicating how they felt about their arbitration case and the decision, 20.4 percent said that they had spoken to someone, 36.2 percent said that they returned the postcard, 22.6 percent said they did both, and 20.9 percent said that they did not bother doing either.

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. The AWAP reports the reasons for such delays in three categories: (1) consumer made no attempt to seek redress directly from the manufacturer; (2) consumer failed to submit required information in a timely manner; (3) all other reasons.

AWAP indices report that only 8.4 percent of the “in-jurisdiction” cases (155 out of 1,836) were settled beyond 40 days, whereas 30.0 percent of survey respondents (90 out of the 300 answering the question) reported their cases were settled beyond 40 days (36.2 percent for those with mediated cases and 28.5 percent for those with arbitrated cases). (see Figure 2)

This percentage difference is statistically significant, but should not be of great concern. We can attribute this to error in recall and reporting on the part of the respondents.

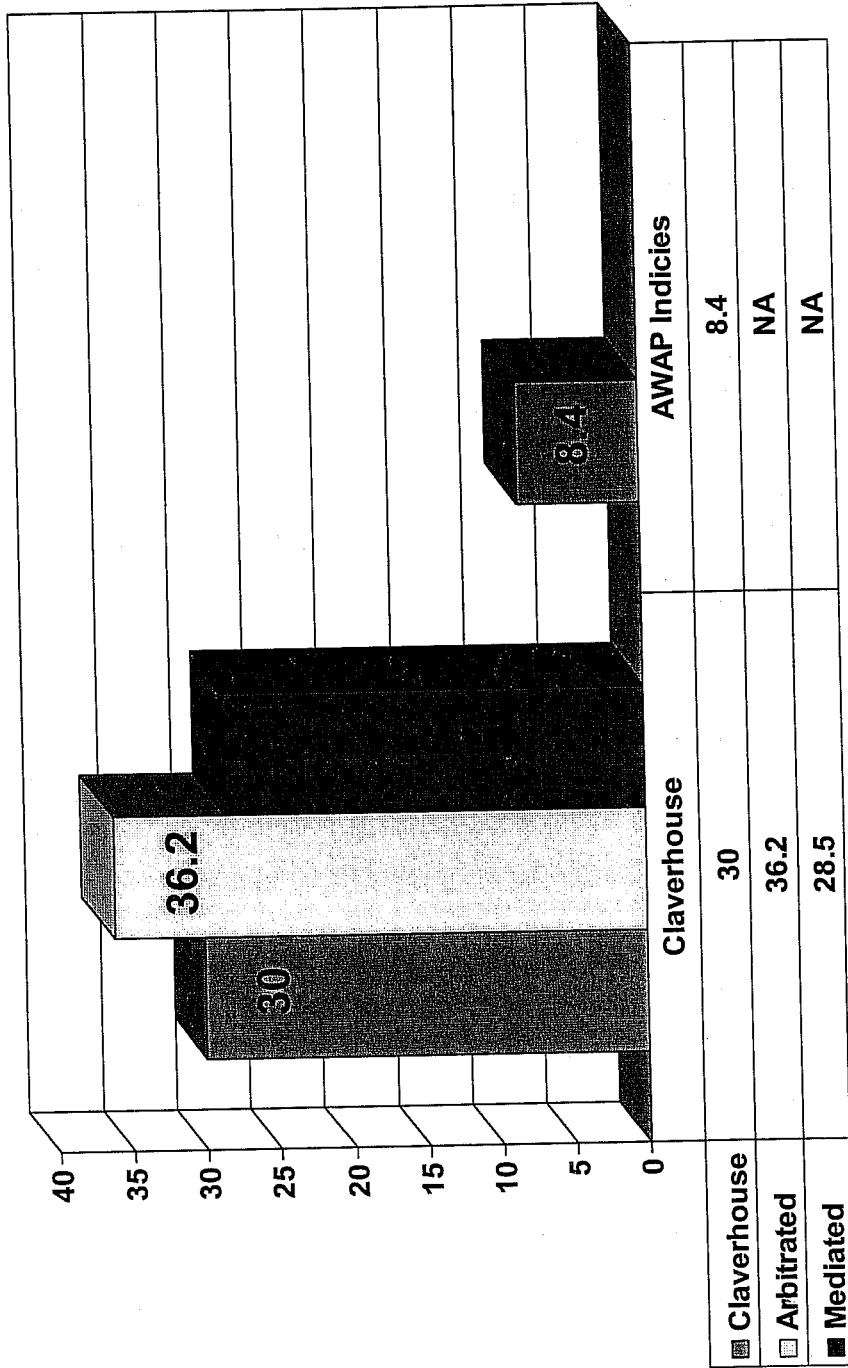
Respondents are asked to recall very specific information about an event that may have occurred a year or more ago. When asked for the date in which their case was opened, 33.1 percent could not provide any date at all; 26.7 percent could give only a month; and 40.2 percent were able to give a complete date. Of those who did give a complete date, only 22.5 percent matched the date supplied by the AWAP.

Survey respondents’ recollections on when their cases were closed were similar – 35.5 percent could not provide any date at all; 19.4 could give only a month; and 45.2 percent were able to give a complete date, with 24.7 percent of those dates matching AWAP records.

This analysis supports the theory of error in recall and reporting.

Another theory that can explain this difference is that the consumer may not be using the same criteria for when a case is considered “opened” and “closed” as does the AWAP. The AWAP 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 AWAP, when they mailed the forms, or even when they first began to experience problems with the vehicle. Similar considerations apply to when a case was closed, especially if the case had a negative outcome. The high percentage of consumers giving incorrect dates supports this theory.

Figure 2. Percentage of Cases Delayed Beyond 40 Days Overall and by Case Type



Given this information, the difference between the AWAP indices and the Claverhouse data should not be a cause for concern.

There is a slight statistical difference between the Claverhouse data and the AWAP indices for the reasons for the case delays, but again, the difference should not be cause for concern and can be attributed to consumers interpretation of the categories. Table 7 shows the comparison between the Claverhouse survey and the AWAP indices.

Table 7
Reasons for Delays in Decisions
Comparison between Claverhouse Survey and AWAP Indices 2006

Reasons for Delays	Claverhouse	AWAP
	Percentage (Number)	Percentage (Number)
Decision delayed beyond 40 days because of customer failure to submit information in a timely manner.	4.5% (4)	0.0% (0)
Decision delayed beyond 40 days because customer had made no attempt to seek redress directly from warrantor.	6.8% (6)	0.0% (0)
Decision delayed beyond 40 days for any other reason.	88.6% (78)	100.0% (155)
Total cases delayed beyond 40 days.	100.0% (88)	100.0% (155)

Consumer Attitudes Toward the AWAP’s Informal Dispute Settlement Procedures

At the beginning of the questionnaire, respondents were asked how they had learned about the Automobile Warranty Arbitration Program. The responses are summarized in Table 8.

Table 8
How Consumers Learned about AWAP Availability
Claverhouse Survey

Sources of Information	Number	Percent
Owner's manual/warranty information	139	39.3%
Dealership	89	25.1%
Automaker Customer Complaints/Toll-free number	83	23.4%
Brochures/other literature	11	3.1%
Attorney or other legal source	11	3.2%
Friends and family	9	2.5%
Previous knowledge of the program	9	2.5%
Media - TV, radio, newspapers	3	0.8%
Total	354	100.0% ²⁸

The owner's manual was the leading source of information about the program (39.3 percent), followed by the dealership (25.1 percent), and customer complaints/toll-free number (23.4 percent). Those who reported that they had learned about the program through the dealership or the automaker were asked additional questions about the means in which they were informed of the program.

Most said that the dealer or manufacturer talked with them about the program (49.7 percent), followed by 34.7 percent who reported receiving something to read about the program. A small percentage reported that they saw a poster or other display at the dealer (3.6 percent) and 11.9 percent said they learned about the program from the dealer or manufacturer in other ways.

Survey respondents were also asked about the materials and forms they received from the AWAP. Close to all, 94.9 percent, recalled receiving the materials. Of those who said they recalled receiving the materials, 68.7 percent reported the informational materials were "very clear and easy to understand," 29.4 percent said the materials were "a little difficult, but still fairly easy to understand;" 1.9 percent said that the materials were "difficult or very difficult to understand."

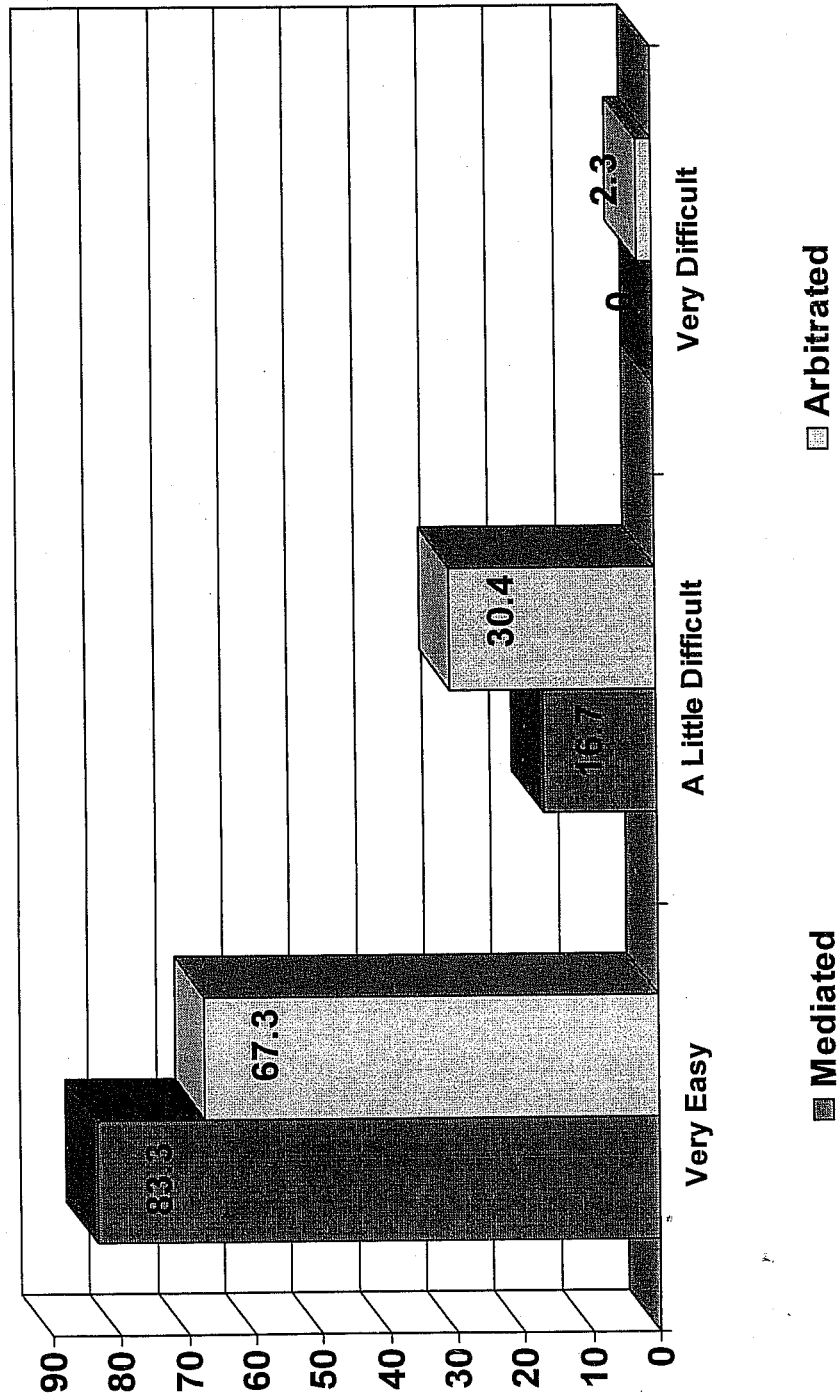
When asked about the complaint forms, 70.2 percent said they were "very clear and easy to understand"; 27.9 percent said "a little difficult but still fairly easy to understand"; and 1.9 percent said they were "difficult or very difficult to understand".

Ease of understanding the materials, both the informational materials and the complaint forms, is correlated with the type of case. For those with mediated cases, 83.3 percent said that the complaint forms were "very clear and easy to understand" compared to 67.3 percent of those whose case was arbitrated.

Those with mediated cases also found the informational materials easier to understand with 82.0 percent indicating that they found the informational materials "very clear and easy to understand" compared to 65.5 percent of those whose cases were arbitrated. (see Figure 3)

²⁸ Respondents could indicate more than one source. The percentages are based on number of responses (354) not the number of respondents (341).

Figure 3. Ease of Understanding Informational Forms Correlated with Case Outcome



At the end of the questionnaire, respondents were then asked to rate their satisfaction with the AWAP staff in three areas – objectivity and fairness, promptness, and effort – by using a five-point scale, ranging from very satisfied to very dissatisfied. Respondents were also asked to give the program an overall satisfaction rating. Table 9 shows these results.

Table 9
Survey Respondents’ Ratings of AWAP Staff
Claverhouse Survey

Performance Item	Level of Satisfaction				
	Very Satisfied	Some-what Satisfied	Neutral	Some-what Dis-satisfied	Very Dissatisfied
Objectivity and fairness	26.4%	8.1%	11.4%	11.4%	42.6%
Promptness in handling your complaint during the process	32.6%	22.5%	20.3%	9.8%	14.8%
Efforts to assist you in resolving your complaint	23.9%	10.7%	15.0%	11.6%	38.8%
Overall rating of the program	24.3%	11.2%	11.5%	11.2%	41.7%

Of the three areas, users of the program gave the highest satisfaction rating in the area of promptness, with 55.1 percent saying that they were either very or somewhat satisfied. The lowest satisfaction rating was in the area of objectivity, with only 34.5 percent reporting some level of satisfaction. Respondents felt nearly the same when it came to rating effort with only 34.6 percent saying they were satisfied to some degree with this area of the program.

When asked to give an overall satisfaction rating, 35.5 percent gave a satisfied rating (with 24.3 percent saying they were very satisfied). Over half, 52.9 percent said that they were dissatisfied to some degree with the program with 41.7 percent saying they were very dissatisfied (11.5 percent indicated they were neither satisfied or dissatisfied with the program (neutral)).

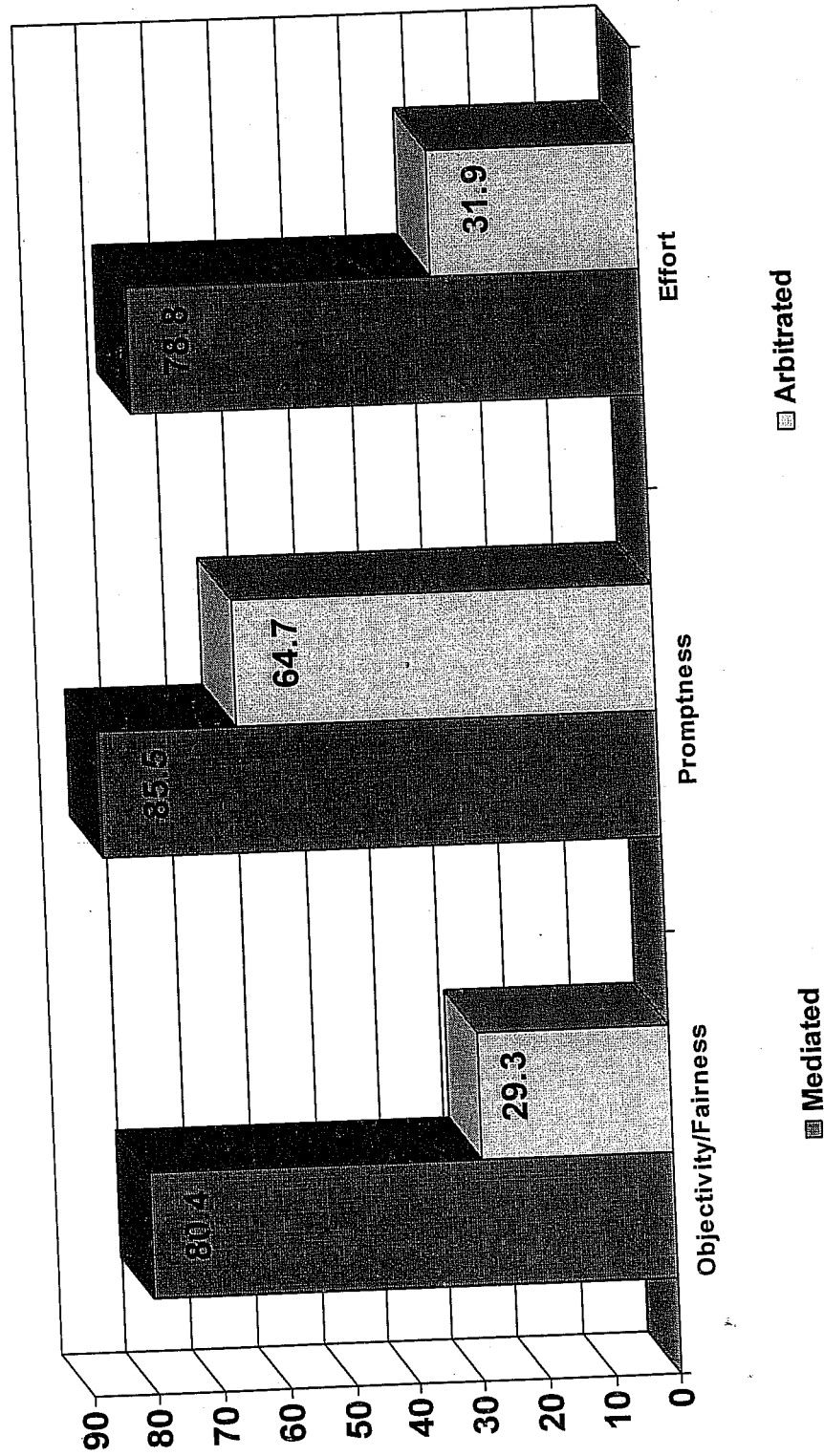
The type of case and whether or not the outcome was favorable to the consumer plays an important part in consumers satisfaction with the program. For the purpose of this analysis, the satisfaction scale is re-coded into a dichotomous variable. Those who reported being “neutral” were dropped from the variable computation.

As expected, there were differences in the program satisfaction areas (i.e. promptness, objectivity, and fairness) by type of case. Those with mediated cases were far more satisfied than those with arbitrated cases. (see Figure 4)

There were also differences by method of settlement (mediated versus arbitrated), whether an award was granted and whether the award was accepted or rejected. Again, as expected, those with mediated cases were much more likely to be satisfied than those with arbitrated cases as were those who received an award in the arbitration process and accepted it. (See Figure 5)

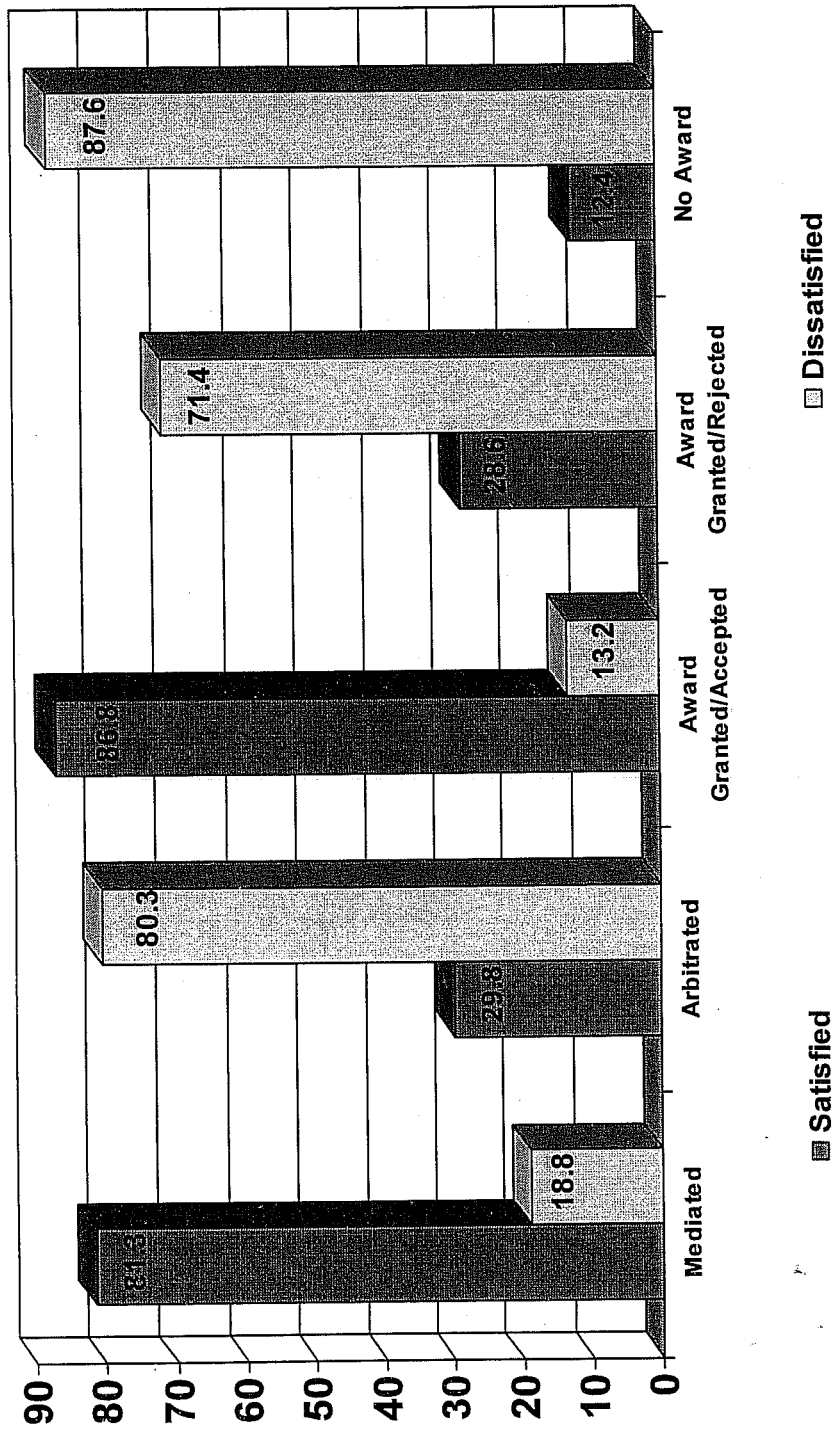
Another measure of consumers’ satisfaction or dissatisfaction with the AWAP program is whether or not they would recommend the program to others. Overall, 38.3 percent said that they would recommend the program, 40.1 percent said they would not, and 21.7 percent said that it would depend on the circumstances.

Figure 4. Respondents Satisfaction with Program Aspects by Case Type*



* Percentages include respondents answering very or somewhat satisfied to the questions

Figure 5. Satisfaction with AWAP Program Correlated with Case Type



How individual groups responded to this question are summarized in Table 10.

Table 10
Would Consumer Recommend the AWAP Program to Others
Claverhouse Survey

Method of Resolution and Outcome	Yes	No	Depends on Circumstances
Mediated	74.2%	6.1%	19.7%
Arbitrated	29.5%	48.3%	22.1%
Award Granted and Accepted	80.3%	9.8%	9.8%
Award Granted and Rejected	35.3%	52.9%	11.8%
No Award	13.7%	59.3%	26.9%

Finally, survey respondents were given an opportunity to make comments and suggestions about AWAP program changes or improvements. These comments are summarized in Table 11.

Table 11
Consumer Suggestions for Program Improvement
Claverhouse Survey

Suggestion	Number	Percent
Arbitrators should be more-consumer oriented	105	30.9%
Did a good job, no complaints	42	12.4%
Allow for more information about history/problems of car	41	12.1%
Need better initial review of cases by staff and arbitrators	30	8.8%
Make dealers/manufacturers more responsive to consumer	29	8.5%
Have more personal contact with program	18	5.3%
Have better qualified mechanics for inspections/repairs	19	5.6%
Awards/settlements and dollar amounts need to be fairer	13	3.8%
Need better follow-up enforcing awards/settlements	11	3.2%
General positive comments	10	2.9%
Speed up the process for quicker decisions	6	1.8%
Better/more representation at hearings	6	1.8%
Need more program locations	5	1.5%
Less paperwork, less forms, forms easier to understand	5	2.5
Total	340²⁹	100.0%

CONCLUSIONS

On the basis of the comparison of the Claverhouse survey results with the AWAP national indices, it is concluded that the AWAP indices are in agreement in all but four areas, none of which should raise concerns about the program or how the program is administered. The differences are: case decided by board and warrantor has complied”, “arbitration decision adverse to consumer,” “case delayed beyond 40 days,” and “reasons for delays beyond 40 days.”

For the statistics dealing with arbitration decisions, the differences should not be cause for concern since both of the differences favor the consumer and not the program. The difference may also be attributed to non-response bias in that those who were granted awards and accepted them are probably more likely to participate than those who were not granted anything by the AWAP.

The other difference between the survey results and AWAP indices is the proportion of arbitrated cases delayed beyond 40 days. Again, this difference should not be cause for concern. The difference can be attributed to respondent error – error in recall and in reporting. This is substantiated by the facts detailed earlier in this report. There is also slight statistical difference in the reasons for the delays.

It is concluded that the AWAP indices are in agreement with the Claverhouse survey for the majority of the indices, and for those that are not, it is not be a cause for concern because the

²⁹ OSR coded up to three suggestions per respondent. Percentages are based on responses (340) not respondents (341)

differences do not indicate that the program is improperly collecting or reporting program statistics.

SECTION VI

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 VII
Appendix/Codebook

CODEBOOK

2006 NCDS Audit - National
341 cases

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CASEID case identification number

341 cases

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Decimals: 0 Max: 30641

Input location: 1/1-5

id1 Case ID

341 cases

Type: character Width: 5

Input location: 1/1-5

r1 Data Record I

PCT	N	VALUE
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341 cases

Type: character Width: 1

Input location: 1/6

sample Sample

PCT	N	VALUE
100.0	257	3 NATIONAL

341 cases

Type: character Width: 1

Input location: 1/7

cara Automobile Year

What is the year, make, and model of the automobile involved in the complaint that you filed with the National Center for Dispute Settlement.

PCT	N	VALUE	LABEL
0.9	3	99	MISSING
0.3	1	1995	YEAR
0.3	1	1999	
1.8	6	2002	
5.3	18	2003	
19.6	67	2004	
36.4	124	2005	
32.3	110	2006	
3.2	11	2007	YEAR

		341	cases

Type: numeric Min: 99 MD Codes: none
 Decimals: 0 Max: 2007

Input location: 1/24-27

carb Automobile Make

What is the year, make, and model of the automobile involved in the complaint that you filed with the National Center for Dispute Settlement.

PCT	N	VALUE	LABEL
0.3	1	1	CHRYSLER
0.0	0	2	PLYMOUTH
2.3	8	3	DODGE
83.9	286	4	TOYOTA
0.6	2	5	HONDA
8.8	30	6	LEXUS
0.9	3	7	MITSUBISHI
0.6	2	8	PORSCHE
2.6	9	10	JEEP

		341	cases

Type: numeric Min: 0 MD Codes: none
 Decimals: 0 Max: 10

Input location: 1/28-29

carc Automobile Model

What is the year, make, and model of the automobile involved in the complaint that you filed with the National Center for Dispute Settlement.

PCT	N	VALUE	LABEL
5.0	17	1	4RUNNER
10.9	37	2	AVALON
12.3	42	3	CAMRY
0.3	1	4	CAYENNE
7.9	27	5	COROLLA
3.2	11	6	ES330
0.0	0	7	GT3
2.6	9	8	MATRIX
0.3	1	9	MR2 (SPYDER)
3.8	13	10	RX300
2.9	10	11	SEQUOIA
8.5	29	12	SIENNA
7.0	24	13	TACOMA
6.5	22	14	TUNDRA
0.3	1	15	ECLIPSE
6.5	22	16	RAV4
0.0	0	17	DURANGO
0.6	2	18	WRANGLER
0.9	3	19	RAM-PICKUP
2.3	8	20	PRIUS
0.0	0	21	GS300
0.0	0	22	MONTERO
0.0	0	23	VOYAGER
0.0	0	24	LS430
0.0	0	25	LANDCRUISER
0.3	1	26	ECHO
0.0	0	27	LANCER
0.0	0	28	GALANT
0.0	0	29	DIAMANTE
2.3	8	30	SCION
0.0	0	31	PT CRUISER
0.0	0	32	GRAND CHEROKEE
0.0	0	33	LAREDO
0.0	0	34	LE
6.5	22	35	HIGHLANDER
2.3	8	36	SOLARA
0.3	1	37	LX470
0.0	0	38	TOWN AND COUNTRY
0.0	0	40	GRAND CARAVAN/CARAVAN
0.9	3	41	DAKOTA
1.2	4	42	GX470

0.0	0	43	RX330
0.0	0	50	OUTLANDER
0.0	0	51	CELICA
0.3	1	52	INTREPID
0.0	0	53	STRATUS
0.0	0	54	SEBRING
0.6	2	55	ENDEAVOR
0.3	1	56	NEON
0.6	2	57	SC-430
0.0	0	58	MIRAGE
0.0	0	59	BOXSTER
0.6	2	70	LIBERTY
1.2	4	99	MISSING

341 cases

Type: numeric Min: 0 MD Codes: none
Decimals: 0 Max: 99

Input location: 1/30-31

a2@a

Learn Program - Auto Manufacturer

How did you learn about the National Center for Dispute Settlement?

Auto manufacturer?

PCT	N	VALUE	LABEL
75.7	258	0	NO
24.3	83	1	YES

341 cases

Type: numeric Min: 0 MD Codes: none
Decimals: 0 Max: 1

Input location: 1/32

a2@b Learn Program - Dealership

How did you learn about the National Center for Dispute Settlement?

Dealership?

PCT	N	VALUE	LABEL
73.9	252	0	NO
26.1	89	1	YES

341 cases

Type: numeric Min: 0 MD Codes: none
Decimals: 0 Max: 1

Input location: 1/33

a2@c Learn Program - Owners Manual

How did you learn about the National Center for Dispute Settlement?

Owners Manual?

PCT	N	VALUE	LABEL
59.2	202	0	NO
40.8	139	1	YES

341 cases

Type: numeric Min: 0 MD Codes: none
Decimals: 0 Max: 1

Input location: 1/34

a2@d Learn Program - Attorney/Lawyer

How did you learn about the National Center for Dispute Settlement?

Attorney/Lawyer?

PCT	N	VALUE	LABEL
96.8	330	0	NO
3.2	11	1	YES

341 cases

Type: numeric Min: 0 MD Codes: none
Decimals: 0 Max: 1

Input location: 1/35

a2@e Learn Program - Brochures/Literature

How did you learn about the National Center for Dispute Settlement?

Brochures/Literature?

PCT	N	VALUE	LABEL
96.8	330	0	NO
3.2	11	1	YES

341 cases

Type: numeric Min: 0 MD Codes: none
Decimals: 0 Max: 1

Input location: 1/36

a2@f Learn Program - Media (TV, Radio, Newspaper)

How did you learn about the National Center for Dispute Settlement?

Newspaper, television, radio?

PCT	N	VALUE	LABEL
99.1	338	0	NO
0.9	3	1	YES

341 cases

Type: numeric Min: 0 MD Codes: none
 Decimals: 0 Max: 1

Input location: 1/37

a2@g Learn Program - Family/Friends

How did you learn about the National Center for Dispute Settlement?

Family, friends, co-workers?

PCT	N	VALUE	LABEL
97.4	332	0	NO
2.6	9	1	YES

341 cases

Type: numeric Min: 0 MD Codes: none
 Decimals: 0 Max: 1

Input location: 1/38

a2@h Learn Program - Previous Knowledge

How did you learn about the National Center for Dispute Settlement?

Previous knowledge of the program?

PCT	N	VALUE	LABEL
97.4	332	0	NO
2.6	9	1	YES

341 cases

Type: numeric Min: 0 MD Codes: none
 Decimals: 0 Max: 1

Input location: 1/39

a3@a Dealer/Manufacturer - Talk Program

In which of the following ways did the dealer or the manufacturer inform you about the program?

Talk with you about the program?

PCT	N	VALUE	LABEL
61.5	96	1	YES
38.5	60	2	NO
	185	.	Not Applicable

341 cases

Type: numeric Min: 1 MD Codes: 9
 Decimals: 0 Max: 2

Input location: 1/40

a3@b Dealer/Manufacturer - Written Materials

How did you learn about the National Center for Dispute Settlement?

Written materials?

PCT	N	VALUE	LABEL
42.9	67	1	YES
57.1	89	2	NO
	185	.	Not Applicable

	341		cases

Type: numeric Min: 1 MD Codes: 9
 Decimals: 0 Max: 2

Input location: 1/41

a3@c Dealer/Manufacturer - Poster/Other Display

How did you learn about the National Center for Dispute Settlement?

Poster, other display materials?

PCT	N	VALUE	LABEL
4.5	7	1	YES
95.5	149	2	NO
	185	.	Not Applicable

	341		cases

Type: numeric Min: 1 MD Codes: 9
 Decimals: 0 Max: 2

Input location: 1/42

a3@d Dealer/Manufacturer - Other

How did you learn about the National Center for Dispute Settlement?

Other ways?

PCT	N	VALUE	LABEL
14.7	23	1	YES
85.3	133	2	NO
	185	.	Not Applicable

	341		cases

Type: numeric Min: 1 MD Codes: 9
 Decimals: 0 Max: 2

Input location: 1/43

a4 Receive Informational Materials

After initially contacting the NCDS you should have received some informational materials and forms. Do you remember receiving those materials?

PCT	N	VALUE	LABEL
94.9	296	1	YES
5.1	16	2	NO
	29	9	MISSING

	341		cases

Type: numeric Min: 1 MD Codes: 9
 Decimals: 0 Max: 2

Input location: 1/44

a5a Program Information

Were the information materials very clear and easy to understand, a little difficult but still fairly easy to understand, or difficult or very difficult to understand?

PCT	N	VALUE	LABEL
68.7	217	1	VERY CLEAR AND EASY TO UNDERSTAND
29.4	93	2	A LITTLE DIFFICULT BUT STILL FAIRLY EASY TO UNDERSTAND
1.9	6	3	DIFFICULT OR VERY DIFFICULT TO UNDERSTAND
	9	9	MISSING
	16	.	Not Applicable

341 cases			

Type: numeric Min: 1 MD Codes: 9
 Decimals: 0 Max: 3

Input location: 1/45

a5b Complaint Forms

Were the complaint forms very clear and easy to understand, a little difficult but still fairly easy to understand, or difficult or very difficult to understand?

PCT	N	VALUE	LABEL
70.2	184	1	VERY CLEAR AND EASY TO UNDERSTAND
27.9	73	2	A LITTLE DIFFICULT BUT STILL FAIRLY EASY TO UNDERSTAND
1.9	5	3	DIFFICULT OR VERY DIFFICULT TO UNDERSTAND
	63	9	MISSING
	16	.	Not Applicable

341 cases			

Type: numeric Min: 1 MD Codes: 9
 Decimals: 0 Max: 3

Input location: 1/46

a6 Method of Settlement

There are two ways that a customer complaint can be settled by the National Center for Dispute Settlement.

Which one of the following best describes what happened in your case?

Your complaint was settled when you reached an agreement with the dealer or manufacturer (mediated).

Your case went through arbitration, that is, you had a hearing and the arbitrator wrote a decision (arbitrated).

PCT	N	VALUE	LABEL
19.4	66	1	MEDIATED
80.6	275	2	ARBITRATED

		341	cases

Type: numeric Min: 1 MD Codes: none
 Decimals: 0 Max: 2

Input location: 1/47

b1 Mediated - Settlement

Which of the following best describes the settlement/offer that you reached with the dealer or manufacturer?

PCT	N	VALUE	LABEL
0.0	0	0	OTHER: SOMETHING
23.1	15	1	MANUFACTURER/DEALER EXTENDED THE WARRANTY
18.5	12	2	MANUFACTURER/DEALER NEW VEHICLE
4.6	3	3	MANUFACTURER/DEALER TRADE IN ALLOWANCE
23.1	15	4	MANUFACTURER/DEALER PAID FOR REPAIRS
20.0	13	5	MANUFACTURER/DEALER CASH SETTLEMENT
0.0	0	6	MANUFACTURER/DEALER VOUCHER FOR ANOTHER VEHICLE
10.8	7	8	DID NOTHING/NO SETTLEMENT REACHED
	2	9	MISSING
	274	.	Not Applicable

		341	cases

Type: numeric Min: 1 MD Codes: 9
 Decimals: 0 Max: 8

Input location: 2/7

b2 Mediated - Received Settlement

Did you receive the settlement specified in your agreement with the dealer or manufacturer?

PCT	N	VALUE	LABEL
94.7	54	1	YES
5.3	3	2	NO
	3	9	MISSING
	281	.	Not Applicable

	341		cases

Type: numeric Min: 1 MD Codes: 9
 Decimals: 0 Max: 2

Input location: 2/8

b3a Mediated - Receive Settlement Time Frame

Did you receive the settlement within the time frame specified in your agreement with the dealer or manufacturer?

PCT	N	VALUE	LABEL
94.5	52	1	YES
5.5	3	2	NO
	2	9	MISSING
	284	.	Not Applicable

	341		cases

Type: numeric Min: 1 MD Codes: 9
 Decimals: 0 Max: 2

Input location: 2/9

b3b Mediated - Delay Settlement

Were you given any reason by the dealer or manufacturer as to why you have not yet received your settlement within the time frame specified in your agreement?

PCT	N	VALUE	LABEL
	0	1	YES
	0	2	NO
	5	9	MISSING
	336	.	Not Applicable

	341		cases

Type: numeric Min: NA MD Codes: 9
 Decimals: 0 Max: NA

Input location: 2/10

b4 Mediated - Pursue Case

Did you at any point after reaching a settlement with the dealer or manufacturer pursue your case any further?

PCT	N	VALUE	LABEL
11.1	6	1	YES
88.9	48	2	NO
	6	9	MISSING
	281	.	Not Applicable

	341		cases

Type: numeric Min: 1 MD Codes: 9
 Decimals: 0 Max: 2

Input location: 2/11

b5@a Mediated - Pursue Attorney

In what ways did you pursue the dispute?

Contacted attorney?

PCT	N	VALUE	LABEL
91.7	11	0	NO
8.3	1	1	YES
	329	.	Not Applicable

341 cases			

Type: numeric Min: 0 MD Codes: none
Decimals: 0 Max: 1

Input location: 2/12

b5@b Mediated - Pursue - Manufacturer/Dealer

In what ways did you pursue the dispute?

Worked out a solution with the dealer or manufacturer?

PCT	N	VALUE	LABEL
83.3	10	0	NO
16.7	2	1	YES
	329	.	Not Applicable

341 cases			

Type: numeric Min: 0 MD Codes: none
Decimals: 0 Max: 1

Input location: 2/13

b5@c Mediated - Pursue - Government Agency

In what ways did you pursue the dispute?

Contacted a state or government agency (Attorney General)?

PCT	N	VALUE	LABEL
83.3	10	0	NO
16.7	2	1	YES
	329	.	Not Applicable

	341		cases

Type: numeric Min: 0 MD Codes: none
 Decimals: 0 Max: 1

Input location: 2/14

b5@d Mediated - Pursue - Recontact NCDS

In what ways did you pursue the dispute?

Recontacted the NCDS?

PCT	N	VALUE	LABEL
41.7	5	0	NO
58.3	7	1	YES
	329	.	Not Applicable

	341		cases

Type: numeric Min: 0 MD Codes: none
 Decimals: 0 Max: 1

Input location: 2/15

b6 Mediated - Follow - Up

As best as you can remember, did you talk to the NCDS staff or return a postcard to the NCDS about your settlement or how your case was handled?

PCT	N	VALUE	LABEL
44.3	27	1	YES TALKED TO THE STAFF
16.4	10	2	YES, RETURNED THE POSTCARD
16.4	10	3	BOTH
23.0	14	4	DIDN'T RECEIVE POSTCARD/PAPERS/ETC
	6	9	MISSING
	274	.	Not Applicable

	341		cases

Type: numeric Min: 1 MD Codes: 9
 Decimals: 0 Max: 4

Input location: 2/16

c1 Arbitrated - Paper Work

Do you recall receiving the forms and other paperwork from the NCDS in which your claims were stated?

PCT	N	VALUE	LABEL
89.6	216	1	YES, REMEMBER RECEIVING
10.4	25	2	NO, DO NOT REMEMBER RECEIVING
	34	9	MISSING
	66	.	Not Applicable

	341		cases

Type: numeric Min: 1 MD Codes: 9
 Decimals: 0 Max: 2

Input location: 2/17

c2 Arbitrated - Accuracy of Complaint

How accurately do you think your claim was stated in the forms?

PCT	N	VALUE	LABEL
50.6	119	1	VERY ACCURATELY
39.6	93	2	SOMEWHAT ACCURATELY
9.8	23	3	NOT TOO/NOT AT ALL ACCURATELY
	15	9	MISSING
	91	.	Not Applicable

341 cases			

Type: numeric Min: 1 MD Codes: 9
 Decimals: 0 Max: 3

Input location: 2/18

c3 Arbitrated - Notice of Hearing

Did you receive written notice of the scheduled date, time, and place of the arbitration hearing?

PCT	N	VALUE	LABEL
94.8	254	1	YES
5.2	14	2	NO
	7	9	MISSING
	66	.	Not Applicable

341 cases			

Type: numeric Min: 1 MD Codes: 9
 Decimals: 0 Max: 2

Input location: 2/19

c4 Arbitrated - Attend Hearing

Did you . . .

Attend the meeting/hearing in person, by phone, or did you not attend the hearing at which your case was heard?

PCT	N	VALUE	LABEL
77.9	201	1	ATTENDED THE MEETING/HEARING IN PERSON
2.3	6	2	ATTENDED THE MEETING/HEARING BY PHONE
19.8	51	3	DID NOT ATTEND THE MEETING/HEARING
	17	9	MISSING
	66	.	Not Applicable

341 cases			

Type: numeric Min: 1 MD Codes: 9
 Decimals: 0 Max: 3

Input location: 2/20

c5 Arbitrated - Reason Not Attend Hearing

Why didn't you attend the meeting/hearing?

PCT	N	VALUE	LABEL
31.4	16	1	WAS NOT IN THE AREA/TOO FAR
5.9	3	4	TAKE TOO MUCH TIME/ALREADY SPENT TOO MUCH TIME
15.7	8	5	CHOSE DOCUMENT ONLY HEARING
2.0	1	6	WAS NOT AWARE OF PHONE ONLY OPTION
3.9	2	7	WAS NOT AWARE OF HEARING TIME/LOCATION
17.6	9	8	OPTED NOT TO ATTEND/TOLD PRESCENCE WAS NOT REQUIRED/NECESSARY
17.6	9	90	MISCELLANEOUS
5.9	3	99	MISSING
	290	.	Not Applicable

341 cases			

Type: numeric Min: 1 MD Codes: none
 Decimals: 0 Max: 99

Input location: 2/21-22

c6 Arbitrated - Award

For the next set of questions, please answer for the last or final decision that was made in your case.

Which one of the following best describes the last decision made by the Dispute Settlement Board in your case?

PCT	N	VALUE	LABEL
6.6	17	1	MANUFACTURER/DEALER REPLACED VEHICLE
12.1	31	2	MANUFACTURER/DEALER BUY BACK MY VEHICLE
9.7	25	3	MANUFACTURER/DEALER HAD TO REPAIR VEHICLE
0.4	1	5	MANUFACTURER/DEALER HAD TO TERMINATE THE LEASE
71.2	183	6	MANUFACTURER/DEALER DID NOT HAVE TO DO ANYTHING
	18	9	MISSING
	66	.	Not Applicable

	341		cases

Type: numeric Min: 1 MD Codes: 9
 Decimals: 0 Max: 6

Input location: 2/23

c7 Arbitrated - Accept/Reject Decision

When this final decision was made, did you accept or reject the decision?

PCT	N	VALUE	LABEL
75.9	60	1	ACCEPTED THE DECISION
24.1	19	2	REJECTED THE DECISION
	13	9	MISSING
	249	.	Not Applicable

	341		cases

Type: numeric Min: 1 MD Codes: 9
 Decimals: 0 Max: 2

Input location: 2/24

c8 Arbitrated - Reason Reject Decision

Which of the following best describes why you rejected the decision?

Thought decision would not solve vehicles problems, the decision would cost too much money or I would lose too much money, did not want or like what the dealer or manufacturer offered?

PCT	N	VALUE	LABEL
47.1	8	1	THOUGHT DECISION WOULD NOT SOLVE PROBLEMS
0.0	0	2	DECISION WOULD COST TOO MUCH MONEY/LOSE MONEY
11.8	2	3	DID NOT WANT WHAT THE NCDS OFFERED
41.2	7	4	OTHER
	15	9	
	309	.	Not Applicable

	341		cases

Type: numeric Min: 1 MD Codes: 9
 Decimals: 0 Max: 4

Input location: 2/25

c9 Arbitrated - Performance Occurred

Has performance of your arbitration decision occurred, meaning have you received what was awarded to you by the arbitration program?

PCT	N	VALUE	LABEL
75.7	56	1	YES
24.3	18	2	NO
	18	9	MISSING
	249	.	Not Applicable

	341		cases

Type: numeric Min: 1 MD Codes: 9
 Decimals: 0 Max: 2

Input location: 2/26

c10 Arbitrated - Performance Time Frame

Did performance occur within the time frame specified in your decision?

PCT	N	VALUE	LABEL
86.2	50	1	YES
13.8	8	2	NO
	16	9	MISSING
	267	.	Not Applicable

	341		cases

Type: numeric Min: 1 MD Codes: 9
 Decimals: 0 Max: 2

Input location: 2/27

c11 Arbitrated - Reason Performance Not Occurred

Have you been given any reason as to why performance of the decision has not occurred?

PCT	N	VALUE	LABEL
52.2	12	1	YES
47.8	11	2	NO
	19	9	MISSING
	299	.	Not Applicable

	341		cases

Type: numeric Min: 1 MD Codes: 9
 Decimals: 0 Max: 2

Input location: 2/28

c12 Arbitrated - Follow Up

As best as you can remember, did you talk to the NCDS staff or return a postcard to the NCDS about how your case was handled and how you felt about the arbitration decision?

PCT	N	VALUE	LABEL
20.4	48	1	YES TALKED TO THE STAFF
36.2	85	2	YES, RETURNED THE POSTCARD
20.9	49	3	BOTH
22.6	53	4	DIDN'T RECEIVE POSTCARD/PAPERS/ETC
	40	9	MISSING
	66	.	Not Applicable

341 cases			

Type: numeric Min: 1 MD Codes: 9
 Decimals: 0 Max: 4

Input location: 2/29

c13 Arbitrated - Pursue Case

After the arbitration decision, did you pursue your case any further?

PCT	N	VALUE	LABEL
26.0	66	1	YES
74.0	188	2	NO
	21	9	MISSING
	66	.	Not Applicable

341 cases			

Type: numeric Min: 1 MD Codes: 9
 Decimals: 0 Max: 2

Input location: 2/30

c14@a Arbitrated - Pursue - Attorney/Lawyer

In what ways did you pursue the dispute?

Contacted attorney?

PCT	N	VALUE	LABEL
63.6	42	0	NO
36.4	24	1	YES
	275	.	Not Applicable

	341		cases

Type: numeric Min: 0 MD Codes: none
 Decimals: 0 Max: 1

Input location: 2/31

c14@b Arbitrated - Pursue - Dealer/Manufacturer

In what ways did you pursue the dispute?

Worked out a solution with the dealer or manufacturer?

PCT	N	VALUE	LABEL
78.8	52	0	NO
21.2	14	1	YES
	275	.	Not Applicable

	341		cases

Type: numeric Min: 0 MD Codes: none
 Decimals: 0 Max: 1

Input location: 2/32

c14@c Arbitrated - Pursue - State/Government Agency

In what ways did you pursue the dispute?

Contacted a state or government agency (attorney general, etc)?

PCT	N	VALUE	LABEL
71.2	47	0	NO
28.8	19	1	YES
	275	.	Not Applicable

341 cases

Type: numeric Min: 0 MD Codes: none
 Decimals: 0 Max: 1

Input location: 2/33

c14@d Arbitrated - Pursue - Recontact NCDS

In what ways did you pursue the dispute?

Recontact the NCDS?

PCT	N	VALUE	LABEL
74.2	49	0	NO
25.8	17	1	YES
	275	.	Not Applicable

341 cases

Type: numeric Min: 0 MD Codes: none
 Decimals: 0 Max: 1

Input location: 2/34

dl@a Date Case Opened - Month

As best as you can remember, what date do you recall sending in your completed complaint forms to the NCDS?

Month?

PCT	N	VALUE	LABEL
6.1	14	1	MONTH
7.0	16	2	
9.6	22	3	
6.1	14	4	
7.0	16	5	
6.6	15	6	
8.3	19	7	
10.1	23	8	
11.0	25	9	
12.3	28	10	
8.8	20	11	
7.0	16	12	MONTH
	113	99	MISSING

	341		cases

Type: numeric Min: 1 MD Codes: 99
 Decimals: 0 Max: 12

Input location: 2/35-36

dl@c Date Case Opened - Day

As best as you can remember, what date do you recall sending in your completed complaint forms to the NCDS?

Day?

PCT	N	VALUE	LABEL
10.7	15	1	DAY
3.6	5	2	
2.9	4	3	
0.7	1	4	
2.9	4	5	
5.0	7	6	
4.3	6	7	
2.1	3	8	
2.1	3	9	
5.0	7	10	
1.4	2	11	
2.1	3	12	
2.9	4	13	
2.1	3	14	
12.1	17	15	
2.1	3	16	
1.4	2	17	
2.1	3	18	
0.7	1	19	
5.7	8	20	
2.1	3	21	
2.9	4	22	
2.9	4	23	
0.7	1	24	
3.6	5	25	
2.1	3	26	
3.6	5	27	
2.9	4	28	
2.1	3	29	
3.6	5	30	
1.4	2	31	DAY
	201	99	MISSING

	341		cases

Type: numeric Min: 1 MD Codes: 99
 Decimals: 0 Max: 31

Input location: 2/37-38

d1@e Date Case Opened - Year

As best as you can remember, what date do you recall sending in your completed complaint forms to the NCDS?

Year?

PCT	N	VALUE	LABEL
100.0	341	2007	YEAR

341 cases

Type: numeric Min: NA MD Codes: none
 Decimals: 0 Max: NA

Input location: 2/41

d2@a Date Case Closed - Month

As best as you can remember, on what date was (your case closed) (the hearing/meeting held at which the NCDS made a decision about your case)?

Month?

PCT	N	VALUE	LABEL
5.0	11	1	MONTH
4.5	10	2	
7.3	16	3	
10.9	24	4	
9.1	20	5	
6.4	14	6	
6.4	14	7	
7.7	17	8	
8.6	19	9	
14.1	31	10	
12.3	27	11	
7.7	17	12	MONTH
	121	99	MISSING

341 cases

Type: numeric Min: 1 MD Codes: 99
 Decimals: 0 Max: 12

Input location: 2/43-44

d2@c Date Case Closed - Day

As best as you can remember, on what date was (your case closed) (the hearing/meeting held at which the NCDS made a decision about your case)?

Day?

PCT	N	VALUE	LABEL
9.5	15	1	DAY
1.3	2	2	
3.8	6	3	
5.7	9	4	
1.9	3	5	
3.8	6	6	
2.5	4	7	
1.3	2	8	
5.1	8	9	
3.8	6	10	
3.8	6	11	
3.2	5	12	
2.5	4	13	
3.8	6	14	
8.9	14	15	
2.5	4	16	
4.4	7	17	
0.6	1	19	
4.4	7	20	
1.9	3	21	
2.5	4	22	
3.2	5	23	
2.5	4	24	
3.8	6	25	
2.5	4	26	
3.8	6	27	
2.5	4	28	
0.6	1	29	
3.2	5	30	
0.6	1	31	DAY
	183	99	MISSING

	341		cases

Type: numeric Min: 1 MD Codes: 99
 Decimals: 0 Max: 31

Input location: 2/45-46

d2@e Date Case Closed - Year

As best as you can remember, on what date was (your case closed) (the hearing/meeting held at which the NCDS made a decision about your case)?

Year?

PCT	N	VALUE
98.5	336	2006
1.5	5	2007

		341 cases

Type: character Width: 2

Input location: 2/49-50

d3 Case More than 40 Days

Did your case take longer than 40 days to complete (from the date you filed to the date either you worked out a settlement with the dealer or manufacturer or a decision was made at a hearing)?

PCT	N	VALUE	LABEL
30.0	90	1	YES
70.0	210	2	NO
	41	9	MISSING

			341 cases

Type: numeric Min: 1 MD Codes: 9
 Decimals: 0 Max: 2

Input location: 2/51

d4 Reasons - Delay

Which of the following best describes why your case went beyond 40 days?

PCT	N	VALUE	LABEL
4.5	4	1	DECISION WAS DELAYED BECAUSE YOU FAILED TO PROVIDE INFORMATION
6.8	6	2	DECISION WAS DELAYED BECAUSE YOU MADE NO ATTEMPT TO SEEK REDRESS DIRECTLY
88.6	78	3	DECISION WAS DELAYED FOR SOME OTHER REASON
	43	9	MISSING
	210	.	Not Applicable

	341		cases

Type: numeric Min: 1 MD Codes: 9
 Decimals: 0 Max: 3

Input location: 2/52

d5a Objectivity - Fairness

Please rate your satisfaction with the NCDS program and staff on:

Their objectivity and fairness?

PCT	N	VALUE	LABEL
26.4	88	1	VERY SATISFIED
8.1	27	2	SOMEWHAT SATISFIED
11.4	38	3	NEUTRAL
11.4	38	4	SOMEWHAT DISSATISFIED
42.6	142	5	VERY DISSATISFIED
	8	9	MISSING

	341		cases

Type: numeric Min: 1 MD Codes: 9
 Decimals: 0 Max: 5

Input location: 2/53

d5b Promptness

Their promptness in handling your complaint during the process?

PCT	N	VALUE	LABEL
32.6	106	1	VERY SATISFIED
22.5	73	2	SOMEWHAT SATISFIED
20.3	66	3	NEUTRAL
9.8	32	4	SOMEWHAT DISSATISFIED
14.8	48	5	VERY DISSATISFIED
	16	9	MISSING

341 cases

Type: numeric Min: 1 MD Codes: 9
 Decimals: 0 Max: 5

Input location: 2/54

d5c Effort

Their efforts to assist in resolving your complaint?

PCT	N	VALUE	LABEL
23.9	78	1	VERY SATISFIED
10.7	35	2	SOMEWHAT SATISFIED
15.0	49	3	NEUTRAL
11.6	38	4	SOMEWHAT DISSATISFIED
38.8	127	5	VERY DISSATISFIED
	14	9	MISSING

341 cases

Type: numeric Min: 1 MD Codes: 9
 Decimals: 0 Max: 5

Input location: 2/55

d5d Overall Program Satisfaction

Overall, how would you rate your experience with the NCDS.

PCT	N	VALUE	LABEL
24.3	82	1	VERY SATISFIED
11.2	38	2	SOMEWHAT SATISFIED
11.5	39	3	NEUTRAL
11.2	38	4	SOMEWHAT DISSATISFIED
41.7	141	5	VERY DISSATISFIED
	3	9	MISSING

341 cases

Type: numeric Min: 1 MD Codes: 9
 Decimals: 0 Max: 5

Input location: 2/56

d6 Recommend Others

Thinking of your entire experience with the NCDS if a friend or a family member had automotive problems, would you suggest to them that they contact the NCDS?

PCT	N	VALUE	LABEL
38.3	129	1	YES
40.1	135	2	NO
21.7	73	3	DEPENDS ON CIRCUMSTANCES
	4	9	MISSING

341 cases

Type: numeric Min: 1 MD Codes: 9
 Decimals: 0 Max: 3

Input location: 2/57

d5@a

Suggestions/Improvements - 1st Mentioned

So that the NCDS can better serve customers in the future, which of the following suggestions, based on your experience with the NCDS, what do you think the NCDS can do to improve the program?

PCT	N	VALUE	LABEL
20.8	71	0	
1.2	4	2	Less paperwork, less forms, make forms easier to understand.
2.6	9	3	Make the program well known, needs more advertising.
1.5	5	4	Need more program locations.
1.5	5	5	Quicken the process, have speedier decisions.
1.8	6	6	Have better or more representation at hearings.
29.0	99	7	Arbitrators need more customer orientated, less biased
3.8	13	8	Have more personal contact with program staff/arbitrators.
4.1	14	9	Have more knowledgeable, better qualified mechanics
4.7	16	10	Need better initial review by program/staff/arbitrators.
7.3	25	11	Allow for more information about the problems, car history.
2.3	8	12	Need better follow-up enforcing awards and settlements.
3.2	11	13	The awards and settlements need to be fair
4.4	15	14	Dealers/manufacturers more responsive to customers, customer orientated.
11.7	40	16	Did a good job, no complaints

			341 cases

Type: numeric Min: 0 MD Codes: 99
 Decimals: 0 Max: 16

Input location: 2/58-59

d5@b

Suggestions/Improvements - 2nd Mentioned

So that the NCDS can better serve customers in the future, which of the following suggestions, based on your experience with the NCDS, what do you think the NCDS can do to improve the program?

PCT	N	VALUE	LABEL
	207	0	No others mentioned
1.6	1	2	Less paperwork, less forms, make forms easier to understand.
1.6	1	3	Make the NCDS program well known, needs more advertising.
1.6	1	5	Quicken the process, have speedier decisions.
9.5	6	7	Arbitrators need more customer orientated, less biased
7.9	5	8	Have more personal contact with NCDS program staff/arbitrators.
6.3	4	9	Have more knowledgeable, better qualified mechanics
20.6	13	10	Need better initial review by NCDS program/staff/arbitrators.
23.8	15	11	Allow for more information about the problems, car history.
3.2	2	12	Need better follow-up enforcing awards and settlements.
3.2	2	13	The awards and settlements need to be fair
17.5	11	14	Dealers/manufacturers more responsive to customers, customer orientated.
3.2	2	16	Did a good job, no complaints
	71	.	Not Applicable

	341		cases

Type: numeric Min: 2 MD Codes: 0
 Decimals: 0 Max: 16

Input location: 2/60-61

d5@c

Suggestions/Improvements - 3rd Mentioned

So that the NCDS can better serve customers in the future, which of the following suggestions, based on your experience with the NCDS, what do you think the NCDS can do to improve the program?

PCT	N	VALUE	LABEL
	57	0	No others mentioned
14.3	1	9	Have more knowledgeable, better qualified mechanics
14.3	1	10	Need better initial review by NCDS program/staff/arbitrators.
14.3	1	11	Allow for more information about the problems, car history.
14.3	1	12	Need better follow-up enforcing awards and settlements.
42.9	3	14	Dealers/manufacturers more responsive to customers, customer orientated.
	277	.	Not Applicable

	341		cases

Type: numeric Min: 9 MD Codes: 0
 Decimals: 0 Max: 14

Input location: 2/62-63