

***United States Federal Trade
Commission***

***Dispute Settlement Board
Audit***

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***Prepared by:
Claverhouse Associates
937 Roxburgh Avenue
East Lansing, Michigan 48823***

Table of Contents

	PAGE
INTRODUCTION	3
I. COMPLIANCE SUMMARY	4
II. DETAILED FINDINGS	6
III. INTERVIEW WITH THE DSB PROCESS MANAGER	25
IV. ON-SITE AUDIT OF DSB OPERATIONS FOR THREE REGIONS	32
A. KANSAS CITY	32
B. PITTSBURGH	37
C. LOS ANGELES	42
V. ARBITRATION TRAINING	48
VI. SURVEY AND STATISTICAL INDEX COMPARATIVE ANALYSES	52
VII. AUDIT RELATED REGULATORY REQUIREMENTS	70
VIII. CODEBOOK	71

Introduction

This 2004 annual audit of Ford Motor Company's Dispute Settlement Board (DSB) is performed pursuant to the 1975 federal warranty law, the Magnuson-Moss Act, and Part 703, Informal Dispute Settlement Mechanisms (Rule 703).

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

Claverhouse Associates was asked to perform this audit of the Dispute Settlement Board (DSB) in January of 2005. Discussions took place thereafter, and the project preliminaries were initiated with submission by Ford Motor Company of a Purchase Notification in the winter of 2005. Field audits and surveys were carried out during the winter and spring of 2005.

On-site field inspections of the program as it operates relative to three Boards in three regions selected for this year's audit (Kansas, City, Kansas; Pittsburgh, Pennsylvania; and, Los Angeles, California) were all performed by Claverhouse Associates in 2005. The national board member training we audited was conducted in New Orleans, Louisiana, December 5-7, 2004. The findings of the field audit, the regional specific case files, and board meetings do not, technically speaking, always reflect operations as they existed in the audit year. Performing the field audits during the actual audit year would require initiating the audit much earlier and using a two-phased format: one commencing during the period to be audited and the other in the following year, after all annual statistics had been compiled. For purposes of the audit, it is assumed that the on-site visits are reflective of operations during the designated audit period.¹ All case files inspected were generated during the audit year as required.

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

SECTION I

Compliance Summary

This audit report (2004 report completed in 2005) constitutes the twenty-second independent annual audit of the Ford Motor Company sponsored third-party informal dispute resolution mechanism, the Dispute Settlement Board (DSB)².

OVERALL DISPUTE SETTLEMENT BOARD EVALUATION

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

In our field audit of the independent administrator, DeMars & Associates, including a review of a sample of regional office files for Kansas, City, Kansas; Pittsburgh, Pennsylvania; and, Los Angeles, California, we found that DeMars & Associates administers the DSB in compliance with Rule 703. The arbitrator training and arbitrator recruiting process, conducted by Professor James Brown, is also performed consistent with Magnuson-Moss and Rule 703 requirements. The DSB-related data gathering functions are provided by Minacs. Their functions are conducted in accord with all requirements. Details of the field audits and any minor irregularities found are discussed in detail throughout the report, but especially in Section V.

Our random sample survey confirmed, where possible, the validity of the DSB statistical indexes. Our survey sample consisted of 750 closed cases. From that sample, we eventually received responses from 362 customers. Consistent with all our previous DSB/FCAB audits, surveyed customers tend to report that they are pleased with the program when the results of their cases are, in their view, positive. Conversely, those who receive no award, or receive less than they expected, are more likely to report dissatisfaction with the DSB program.

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

² The initial audit was conducted for the calendar year 1983.

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

Calendar Year	Average Days DSB Cases Open	Percent Open Beyond 40 Days	Prior Resolved*
1998	34	9.3%	17%
1999	35	11.6%	17%
2000	33	20.4	27.8
2001	30	9%	26.1%
2002	33	23.4 ³ %	22%
2003	35	32%	24%
2004	33	26.3%	16.3%

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

DSB has continued to use several independent contractors⁴ to carry out the functions of its program. In this way, Ford seeks to maintain an appropriate degree of insulation between the manufacturer and the arbitration program.⁵

³ This percentage determined by dividing the number of in-jurisdiction cases (6,460) into the number reported being closed beyond the requisite 40 day period (1,702) which does not not include the “pending cases” category.

⁴ The contractors used by Ford to carry out the program requirements are: DeMars & Associates, Ltd.; Engineering Analysis Associates, Inc.; Minacs; Spike Lawrence, Inc.; Professor James Brown, University of Wisconsin-Milwaukee; Claverhouse Associates; and, Research Data Analysis.

⁵ While this was true during the audit year (2004), the DSB program is now defunct and replaced by the BBB AUTOLINE arbitration program effective in mid-2005.

SECTION II

Detailed Findings

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

This audit covers the calendar year 2004. An important component of the audit is the survey of a randomly selected sample of Dispute Settlement Board (DSB) applicants whose cases were closed in 2003 and found to be within the DSB's jurisdiction. The sample is comprised of 362 applicants and was drawn from the national universe of DSB applicants whose cases were closed in 2004.⁶

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

Claverhouse Associates performed field audits of the case files for these areas: Kansas, City, Kansas; Pittsburgh, Pennsylvania; and, Los Angeles, California. In addition we monitored board meetings (hearings) and interviewed arbitrators (board members) and DeMars & Associates' board administrators. We examined DSB operations and reviewed a random sample of 150 current case files for accuracy and completeness. A random sample of case files was drawn from all case files for the years 2001-2004 and inspected to ensure that these records are maintained for the required four-year period. During our on-site visits in various regions, we surveyed a few selected dealerships⁷ to determine the degree to which they carry out the information dissemination strategy developed by the manufacturer to assist them in making customers aware of the DSB program.

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

In addition, we monitored board member training held at the Omni Royal Orleans Hotel, December 5-7, 2004, in New Orleans, Louisiana. The information we relied on for this portion of the audit is from the actual training itself; before and after interviews with trainees; conversations with the training staff; and educational materials that were used during the training session.

REQUIREMENT: § 703.7 (a) [Audits]

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

FINDINGS:

⁶ Ford does not offer an DSB program for New York residents; thus, there are no cases in the sample from New York.

⁷ Our dealership reviews only encompass three or four dealerships out of perhaps hundreds of dealers in any given state. In no way is this a representative sample, but it can give a useful impression when viewed over time.

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

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

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

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

- (1) Name, address, telephone number of the consumer;**
- (2) Name, address, telephone number and contact person of the warrantor;**
- (3) Brand name and model number of the product involved;**
- (4) The date of receipt of the dispute and the date of disclosure to the consumer of the decision.**

FINDINGS:

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

The program provided us with access to all pertinent information, which is maintained as required. The individual case file inspection of randomly selected cases from each of the on-site inspection locations validated these findings. The review of randomly selected cases drawn from the four-year period 2001-2004 had the same positive results.

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

DISCREPANCIES:

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

REQUIREMENT: § 703.6 (a) [continued]

- (5) All letters or other written documents submitted by either party;**
- (6) All other evidence collected by the mechanism relating to the dispute including summaries of relevant and material portions of telephone calls and meetings between the mechanism and any other person (including consultants described in 703.4 (b));**

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

FINDINGS:

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

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

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

...we believe that a copy should be maintained in each case file because it can be an important check on the accuracy of the *Decision* letter in conveying the board's decision.⁹ The more complex the decision, the greater the chance the *Decision* letter might vary from what was intended. We suggest[ed] that having both the form and the letter in the same file would facilitate comparison should any question arise. A customer who requests a copy of the case file pursuant to Rule 703, § 703.8 (e) [access to records], would be unlikely to know that the original decision

⁸ Arbitration decisions come in vastly different forms depending, in part, on the arbitration format. In an arbitration panel format, an audio tape of the meeting would reveal a result similar to U.S. Supreme Court decisions wherein members indicate their, sometimes widely divergent, views. The final result in this context, however, is a single decision. In the DSB process, the essence of the decision is reflected on the *Agenda/Decision Summary* form. The administrator's notes on the decision are then crafted into a draft decision. The draft, upon approval and signature of the board chair, is sent to the parties (i.e., the customer and the manufacturer).

⁹ We are informed by a manufacturer's representative that since 1999, the language contained on this form has been entered into the MORS III [now CuDL] computer system by Minacs, which is an important record-keeping procedure, but, notwithstanding Minacs's honorable intent, one that is not easily verifiable for accuracy by someone who doesn't know that an original, handwritten set of notes exists. [As of 2002 this no longer true, but included here because it is language drawn from the 2001 audit report and it demonstrates the appropriate changes made by the DSB.]

notes were kept in a separate file. Thus, the customer would not have access to a potentially important document for ascertaining the degree to which the reported decision is identical to what the board members intended. Despite good intentions, the possibility of such an event is too great to ignore.

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

DISCREPANCIES:

None

REQUIREMENT: § 703.6 (a) [continued]

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

FINDINGS:

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

The information set forth in items 11 and 12 was not audited for accuracy and completeness because of the impracticality of such a review.¹⁰ The examination of the case file contents revealed few instances of this type of information included in the file, and yet nothing indicated that information was missing.

DISCREPANCIES:

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

¹⁰ For an explanation, see the first paragraph in the "Findings" section of Requirement 703.6 (a)(5).

REQUIREMENT: § 703.6 (b)

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

FINDINGS:

These tabulations are maintained by Minacs. The audit includes a review and assessment of a data printout for the calendar year 2004. The *Index of Disputes* identifies 8,538 total disputes for 2004. Of these, 6,460 were eligible for DSB review and were determined to be out-of-jurisdiction. Preliminary out-of-jurisdiction determinations was recently transferred to DeMars & Associates using the same standards as were applied by their predecessors, Minacs. It should be noted, however, that in some cases the board that receives a case that is initially determined to be within its jurisdiction will subsequently rule it out-of-jurisdiction. For example, the board may determine that the vehicle is the subject of warranty-related litigation or discover that it has been involved in an accident affecting the warranty dispute, both cases are outside the program's jurisdiction. Likewise, the board may overrule a preliminary out-of-jurisdiction determination made by DeMars & Associates and then hear and decide the dispute. In so doing, they are exercising the authority on such matters that is ultimately theirs.

This *Index of Disputes* lists three brand categories: Ford (15 models [two less than in 2003]), Lincoln (7 models), and Mercury (7 models [one less than in 2003]).

DISCREPANCIES:

NONE

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

REQUIREMENT: § 703.6

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

FINDINGS:

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

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

DISCREPANCIES:

NONE

REQUIREMENT: § 703.6 (d)

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

FINDINGS:

Ford's national statistical index for 2004 reports a total of 1,1702 DSB cases delayed beyond 40 days. For this audit, the DSB coordinator provided a comprehensive report of all individual cases delayed beyond 40 days during the year of the audit (2004). This report includes the customer's name, address, telephone number, and case file number. It also contains the date the case was opened, the date of the board meeting, the date of the decision, the performance date, and whether the decision was accepted or rejected by the customer. Our analysis indicates that this report exceeds the above requirement.

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:

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

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

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

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

DISCREPANCIES:

NONE

REQUIREMENT: § 703.6 (f)

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

FINDINGS:

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

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

(b) [Complaints by brand name/model] The DSB Process Manager provided for audit the warrantor's "Disputes under Brand Name and Product Model" index for 2004. The indexes for the previous four years are maintained in the audit reports for those years and are available from a variety of sources, including the DSB Coordinator in the Ford Consumer Affairs Office in Dearborn, Michigan.

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

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

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

DISCREPANCIES:

NONE

REQUIREMENT: § 703.7 (b)

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

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

FINDINGS:

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

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

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

- The *Dispute Settlement Board* brochure is a fairly detailed reference document that explains the DSB process and how to file an application and contains an application form for accessing the DSB program. The brochure is distributed in a variety of ways, but the principal methods are by way of the Customer Relationship Center (CRC) and through the Ford dealerships.¹¹ Dealers may provide the brochure as part of the initial information packet given to new customers and may also make brochures available in display holders typically placed in the service waiting area. In prior audit reports, we said: "Our random audits of dealerships in the areas surrounding the inspection sites found neither consistent nor significant commitment by dealers to maintaining and distributing these brochures." The 2004 findings differ from recent past reports in that improvements have been found in several areas. Some locales, however, continue to fall short of the program's objectives. Details are discussed in other sections of the report.

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

- Ford's *Warranty Information Booklet* for 2004 model cars and light trucks refers to the DSB and provides the address for requesting additional information. In addition, a detailed description of the DSB and its operation is provided in the Owner's Guide.
- Ford publishes *Dealership Guide*, which explains the dealers' role and responsibility concerning the DSB.

¹¹ Dealerships access the DSB pamphlets and pamphlet display holders via FMCDealer.com, an electronic e-store, maintained by a non-DSB related Ford vendor.

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

We said in our 2001 Report issued in 2002, "Note: In response to our less than stellar findings concerning some dealerships' assistance in carrying out the regulatory requirement concerning manufacturer responsibility to make customers aware of the availability of the DSB at the time a warranty dispute arises, Ford initiated a campaign to address the problem. In addition to sending communications directly to the dealerships setting forth their responsibilities, the company reminds dealers of the availability of pertinent materials and the procurement process." We noted in our 2002 report, "This year's findings indicate their efforts have had some efficacy. Ford continues to require its field staff to visit dealerships to reinforce this information. As has been the case for some years, notwithstanding the dealerships' performance, many Ford customers have learned about the DSB and managed to make use of it, as is discussed in greater detail elsewhere in this report." As for this year's findings, there was continued improvement in California and Ohio, but outside these two jurisdictions, dealers were commonly of little assistance in providing useful information about DSB arbitration options for those with a warranty dispute.

FINDINGS:

Our 2004 assessment of this aspect of the DSB program is, like those in other recent reports, mixed, albeit better. On one hand, the several strategies employed by Ford, together with the number of applications filed in 2004 (8,538), demonstrate that many Ford customers are obviously aware of the DSB program. For these customers, access is obvious and their numbers are considerable.

During our dealer visits in several regions of the country, we found ample evidence of a general lack of knowledge on the part of some dealer employees about the DSB program. In many of our earlier experiences, a sizable number of employees demonstrated extensive knowledge of the DSB program. In 2004, as in 2003, there were few dealership employees who appeared knowledgeable, and few dealerships had brochures on display. We said in several recent reports, "The information dissemination strategy, outside of California and Ohio, as previously envisioned and administered by the manufacturer, has clearly slipped and needs continued action to remedy the situation." That finding has not changed.

Manufacturer's actions in 2004 were similar to those actions taken in 2003. The DSB distribution program continued sending out, as was the case last year, nearly 18,000 DSB applications to Ford customers. Nevertheless, there remains a concern about DSB information dissemination at the dealership level.

In the Kansas City Region we visited three dealerships:

Suntrup Ford Westport
2020 Kratky Rd.
St. Louis, Missouri 63114

Valley Ford
675 Dunn Rd.
St. Louis, Missouri 6304

Suntrup Ford, Kirkwood
10340 Manchester Rd.
Kirkwood, Missouri 63122

Of the three dealerships we visited, none had brochure holders on display. The person we interviewed at one dealership, a service advisor, offered some exceedingly erroneous information. When prompted about arbitration, he informed our secret shopper that you have to have had their vehicle out of service for 30 days in order to go to arbitration.

In the Pittsburgh area, we visited the following dealerships:

Glenn Bush Ford
Rt. 56E
Apollo, Pennsylvania 15613

Noel Ford
151 Walnut St. .
Kittanning, Pennsylvania 16201

Charrapp Ford North
110-112 Route 908
Natrona, Heights, Pennsylvania 15065

Our dealership experiences in the Pittsburgh area, were mixed but, mostly disappointing. Only one of the three dealerships we visited gave us accurate and complete information about the DSB. At one dealership, a service advisor informed us, " Years ago, there was a board, but no longer." At the third dealership, the service advisor admitted he knew nothing about the program.

In the greater Los Angeles Region, we visited the following dealerships:

Puente Hills Ford
17340 E. Gale
City of Industry, California 91748

Clippinger Ford
116 San Bernadino Rd.
Covina, California

Power Ford
3311 Pacific Coast Highway
Torrance, California 90505

Our dealer visits in the greater Los Angeles area were similar as concerns the program for DSB information dissemination to last year's review. All three of the three Los Angeles area dealerships we visited appeared to know about arbitration generally and made specific reference to the Dispute Settlement Board. The Los Angeles review is contained in the California audit report, but the results were much better than many recent audits in California

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

- The toll-free phone number to the Customer Relationship Center (CRC) is not specifically designed to facilitate the DSB program, and as has been true in the past, the program was not helpful in obtaining information about the DSB. They insisted on being allowed to work on the problem and insisted on obtaining a vehicle identification number as a precursor to providing any information about the DSB. Although its customer relations focus is on maintaining an open line of communication between the servicing dealer or the manufacturer and the customer, the CRC nonetheless distributed 10,133 DSB brochures to customers in 2004. In addition, Minacs distributed 6,807 applications, while DeMars & Associates sent out 657. That amounts to 17,597 DSB applications distributed. The clear and stated objective of the CRC, however, is to keep the customer and the manufacturer or dealer working together to resolve their warranty-related problems. This program operates consistent with § 703.2(d) which allows:

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

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

Despite these limited reservations, Ford Motor Company's multi-faceted strategy for "making customers aware" appears, once again, to be having a measurable impact. Consider for example, the nearly 80,000 customers who made application to the program in the last six years (i.e., 1999-2004). Our audit cannot determine what specific strategy or combination of strategies should receive the credit, but the fact remains that many Ford customers have been **made aware of the DSB program** and have made use of it in considerable numbers to assist them in resolving warranty disputes.

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

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

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

DISCREPANCIES:

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

REQUIREMENT: § 703.7 (b) (3)(I)

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

FINDINGS:

The FINDINGS for this section are arranged as follows:

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

1) Forms

The auditors reviewed most of the forms used by each component of the DSB, including those used by Minacs, DeMars & Associates,¹² Professor James Brown,¹³ Director for the Center for Consumer Affairs, University of Wisconsin-Milwaukee, and Ford Motor Company.

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

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

DSB forms designed to be used only in certain states because of unique regulatory requirements in those states¹⁴ were audited for the limited purpose of ensuring that they do not conflict with the requirements of the Magnuson Moss-Warranty Act or Rule 703. In summary, no irregularities or inconsistencies were identified with respect to these state-specific forms.

DISCREPANCIES:

NONE

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

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

2) Investigation

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

The audit discovered only a small number of requests by arbitration boards for technical information, and such information appears to have been provided where requested. This

¹² DeMars & Associates is an independent contractor that served as the independent national administrator of the DSB.

¹³ Professor James Brown provided national and California-specific training for arbitrators.

¹⁴ States for which Ford or DSB provided unique forms are Arkansas, California, Georgia, Montana, Ohio, Wisconsin, and West Virginia.

was confirmed by field audits, monitoring of board meetings, and interviews with board members and administrators.

It is common for boards to request independent inspections of vehicles. Independent inspections can appropriately be done to confirm or deny one party's representations; however, monitoring of board meetings suggests that some board members still do not understand the appropriate purpose of an independent inspection, which is to attempt to gain clarification in cases where the parties have presented conflicts of fact. For example, one party may represent that a certain mechanical problem exists and the other party deny that representation. In such a case, the view of an independent certified mechanic can often resolve this dispute. Some members' comments continue to demonstrate that their objective in requesting an independent inspection is to diagnose the true nature of the vehicle's mechanical problem. Diagnosing vehicle repair problems is, generally speaking, beyond the intended scope of the DSB. The most likely exception to this limitation is the case wherein a customer is specifically asking the board to assist in "just getting my car fixed." Even so, it is entirely appropriate for the board to expect that a customer who applies for arbitration has obtained an inspection from a qualified mechanic in order to supply some degree of verification of the claim. This is especially so when the customer asserts an intermittent problem that he/she acknowledges has not been duplicated in the presence of their dealership's repair facility personnel. There is no regulatory requirement for regulated warranty dispute settlement mechanisms to assist either of the parties in preparing or supporting their cases. The board's responsibility is limited to *hearing* and *deciding* the matter in dispute. The primary responsibility for case preparation belongs to the disputing parties.

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

Other areas to be investigated include:

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

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

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

Even if the subject of possible misuse or abuse is not raised by the company or dealer on their statement forms, the board's discussion sometimes addresses it. If misuse is openly asserted or questioned in the company or dealer statements, the customer's right to submit supplemental information is well established. Customers receive copies of these statements in advance of the board meeting and have the opportunity to submit additional information challenging any such suggestion. Unfortunately, however, the subject of possible misuse or abuse of the vehicle may emerge in the course of the deliberations without its having been asserted in either the dealer or manufacturer statements. In such cases, while "misuse" may not be the deciding factor in the board's final disposition, it can still be a significant factor in the board's decision as to what remedy may be appropriate. The remedy question may, of course, have significant financial implications for the disputing parties. Moreover, because misuse or abuse of the vehicle may be of secondary importance, it may not be referenced in the Decision Letter. Therefore, a customer who may have at his/her disposal important rebuttal information on the subject of suspected misuse or abuse of the vehicle would be unlikely to be aware that it had become an issue in the board's decision. If the program, or the board, solicited the same information from both parties, it would be far less open to criticism in this regard. In those cases in which an oral presentation is being made, the board has a unique opportunity to ask each applicant whether he/she would like to address this issue before the board begins its deliberations.

FINDINGS:

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

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

3) Mediation¹⁵

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

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

FINDINGS:

After Minacs opens a case, the manufacturer's Consumer Affairs office personnel (in many cases, Dispute Resolution Specialists who are contractors) generally intercede in an attempt

¹⁵ We operationally define the term *mediation*, (in the context of this audit) so as to include any actions by the parties to the dispute that resolve the dispute prior to the arbitrators' rendering a decision. Successfully mediated disputes in the DSB context are referred to as "Prior Resolved" dispositions. The DSB process does not use third-party neutrals as facilitators. Attempts to mediate disputes during the DSB process involve voluntary discussions between the parties.

to resolve the dispute to the customer's satisfaction prior to any board action. Detailed records are kept as required by § 703.6. This information is contained in the case files maintained by the DSB program's principal administrator.

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

4) Follow-up

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

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

When a customer accepted a "prior resolve" (i.e., mediation) offer or a board decision, the DSB Dispute Resolution Specialist (DRS) monitored the promised performance,¹⁶ but DeMars & Associates was responsible for maintaining the records.¹⁷ In addition, Minacs mailed a questionnaire to the customer to determine that the promised performance has taken place.

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

In earlier reports we included the statement below:

We verified the recording and maintenance of performance procedure by our on-site inspections of case files in the regional offices audited. As we found in earlier reports, few completed questionnaires were located in the case files either because questionnaires were not returned by customers, or because the old MORS III system had interrupted the mailing of questionnaires. This suggests that, despite the reinstatement of the questionnaire program, the performance verification process has not been getting the desired results. The program may need to consider alternative methods, including the use of a negative option addition to the questionnaire that says something to the effect of:

¹⁶ In cases in which the DSB board awards a repair, a refund, or a replacement vehicle, the Dispute Resolution Specialist has been responsible for ensuring that the awards are completed.

¹⁷ This function was performed exclusively by DeMars & Associates (the independent national DSB administrator). Once performance of a settlement or award was verified and the facts related to the performance were logged in by the independent administrator, the case was closed and the performance date was logged for inclusion in the CuDL system.

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

Importantly, Minacs incorporated such language in the survey which it sent to customers in order for the case file to be completed. It allows the customer a reasonable opportunity to record performance verification information. Thus, the negative option device appeared to reasonably meet the regulations intent.

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

DISCREPANCIES:

NONE

5) **Dispute Resolution**

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

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

The four arbitrators on each board consisted of: two consumer members; a technical member (who is also considered by the program a consumer member); and a Ford dealer member. Three members constituted a quorum.¹⁸ The program's operating procedures provided that in cases involving a board evenly divided on a proposed decision, the customer's interest was to prevail. Generally, disagreements were resolved by discussion, which is driven by an objective of reaching consensus.

The parties were sent copies of the case file contents before the board meets and are informed that they may submit additional information if they chose to clarify or contradict

¹⁸ The program requires that this quorum consist of a majority of consumer (i.e., non-manufacturer or dealer-related) members.

information in the file. In addition, customers were informed that they may make an oral presentation to the board. Information received subsequent to the initial filing of a DSB application was provided to the board prior to its deliberations. The parties were also able to provide contrasting testimony during their oral presentations.

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

FINDINGS:

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

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

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

Monitoring board meetings and interviewing arbitrators and board meeting administrators underscored the importance of ongoing training. It is readily apparent that, without regular input and feedback mechanisms, the board members can occasionally be uncertain about their scope of authority and their responsibilities. Because arbitrators are volunteers who meet infrequently, a mistake made in one meeting can easily become, in short order, an institutionalized error. The institutionalized error subjects the program to a possible noncompliance determination. Regular input from the program administrator, as well as the newsletter, *The Dispute Dispatch*, and from experienced board meeting administrators can minimize these risks.

In our audits of board meetings, we witnessed several situations in which members operated under significant misconceptions. This is not surprising; judges in the state court systems make similar mistakes every day. Most judicial systems today, however, provide for continuing education in the form of regular judicial training seminars and periodic publications that highlight areas in which the courts are operating in error.

To expect complete comprehension of the abundant and complex training information under the circumstances of a two-day session is unrealistic. It is equally unrealistic to expect long-term retention of all this information without some form of regular reinforcement. The training materials given to the board members provide a significant

measure of reinforcement and, together with the DSB newsletter,¹⁹ should result in a marked improvement. The continuing education effort was an integral part of the DSB program. Professor Brown was the editor of this publication.

In interviews, board members again this year (i.e., year 2005 for the 2004 report) expressed their appreciation of the continuing education efforts, which are designed to reinforce their initial training and focus on the areas in which mistakes are most likely to be made. Board members continue to be receptive to this ongoing flow of information that aims to improve their understanding.

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

DISCREPANCIES:

NONE

¹⁹ This valuable continuing education tool was a newsletter/bulletin aimed specifically at current DSB arbitrators. Introduced in November 1992 as the Dispute Settlement Board *Bulletin*, it was re-named *The Dispute Dispatch* in 1993.

SECTION III

Interview with the DSB Process Manager

Ms Kristine Cravens, the current (i.e. 2004) Dispute Settlement Board (DSB) Process Manager (appointed 5/1/03), in Ford's Customer Service Division, is the Ford Motor Company manager most directly involved with the ongoing administrative requirements of the DSB. This interview format was developed for use in the 1993 national (FTC) audit we conducted of the DSB program as it operates nationally. [NOTE: As noted earlier in this report the DSB defunct as of 2005.]

Because the DSB has been supplanted by the Better Business Bureaus' BBB AUTOLINE, this section replicates, in the main, the interview conducted for the 2003 report and is applicable to the 2004 program.

INTERVIEW WITH Ms KRISTINE CRAVENS, DISPUTE SETTLEMENT BOARD PROCESS MANAGER, FORD CUSTOMER SERVICE DIVISION

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

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

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

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

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

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

observe the meetings and some Boards have honored requests from members of the media.

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

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

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

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

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

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

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

Answer: There are several attempts to follow-up by the Board. The first is the decision letter from the Board Chairperson. If the Board made an award, an Acceptance or Rejection of Decision form accompanies the decision letter. The customer is asked to sign and return it within a specific period of time (14 days unless otherwise required by State Certification rules) indicating whether he/she accepts or rejects the Board's decision. If the customer accepts the decision, a Dispute Resolution Specialist (DRS) contacts the customer and works with them to complete the award performance.

We also send a DSB customer survey to any customer who received an award from the DSB process. The purpose of the survey is twofold: 1) to ensure the DSB award was

completed and 2) to determine the customer loyalty based on the handling of their DSB case.

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

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

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

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

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

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

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

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

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

Answer: Ford has a centralized Dispute Resolution Specialist (DRS) position

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

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

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

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

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

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

Answer: The Board is comprised of four unpaid volunteers. There are three consumer representatives, one of whom is a technical member, and a Ford, Lincoln or Mercury dealership representative.²⁰ If a case happens to involve the dealer member's own dealership, he or she is excluded from reviewing/participating on the case.

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

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

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

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

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

²⁰ Some states withhold voting rights from the dealer member.

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

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

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

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

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

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

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

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

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

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

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

the Board. In 2003, the Board requested 302 independent inspections, or 6% of the cases reviewed.

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

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

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

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

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

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

b) *Do they feel adequately rewarded?*

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

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

c) *Do dealers vote on warranty cases?*

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

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

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

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

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

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

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

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

Answer: Board members occasionally have a scheduling conflict preventing them from participating in the meeting. If this results in a lack of quorum, it can cause the case to go over 40 days. Additionally, meeting the 40 day deadline can be challenging for Ford due to the fact that DSB case handling time is, in reality, 22 business days. In 2001, DeMars began to arrange interim teleconference board meetings to review any information that may have been requested by the board from a previous meeting. This expedited the case review and final decision by the board and prevented the case from being delayed for another month. Also, 3 new board meetings were established in 2003 due to the increasing volume of eligible DSB cases and customer awareness of the DSB program. Finally, the institution of a "regionalization" process occurred in 2003, which allows for lower volume board meetings to handle overflow cases from higher volume boards. This also assists with the 40-day deadline for cases to be reviewed by a board.

SECTION IV

On-Site Audit of DSB Operations for Three Regions

The calendar year 2004 (January - December) audit involved a field inspection of the DSB component of the Ford Customer Service Division in the Kansas, City, Kansas; Pittsburgh, Pennsylvania; and Los Angeles, California Regions.

The Kansas City Region has responsibility for Missouri, Illinois, Iowa, Kansas, and Nebraska. .

I. Kansas City Region (St. Louis), Ford Customer Service Division, 14000 Marshall Drive, Lenexa, Kansas.

A. Personnel and Case Load

Ford reports that the Kansas City Region received 331 DSB applications in 2004. Of this total, 90 are reported as "not-in-jurisdiction" cases. Ford reported 32 mediated (i.e., "Prior Resolved") cases for this region, and 209 arbitrated cases. There were 28 cases reported as having exceeded the 40 day time limit for resolution of the dispute. The average time for handling a case in the Seattle Region was 32 days, one day less than the national average of 33 days for resolving cases.

B. Record Keeping, Accuracy and Completeness

We drew a random sample of 50 cases that were closed during 2004 and examined them to determine whether they were complete and available for audit.

The results of the inspection of the random sample of 50 Kansas City Region cases from 2004 are detailed below.

§ 703.6 (a) (1-12)

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

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

FINDINGS:

The auditor examined 50 case files extracted from the reported 241 "in-jurisdiction" case files. All files were maintained as is appropriate. Of those files reviewed, most were arbitrated cases, and some were prior resolved (mediated) cases. A few files were re-opened cases that had been assigned new case numbers.

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

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

§ 703.6 (a) [continued]

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

FINDINGS:

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

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

FINDINGS:

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

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

FINDINGS:

The warrantor's intended action(s) and performance are inextricably linked. As such, we validate this item in terms of performance verification.²¹ Of the case files examined, most files with decisions that contained an award contained the appropriate performance verification information. That responsibility is held by Minacs who sends out performance questionnaires with Minacs return address. The returned questionnaires are eventually stored in the case file at DeMars' office in Waukesha, Wisconsin. Performance is assumed if the questionnaire is not returned.

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

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

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

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

C. Case File Records (4 years 2001-2004)

§ 703.6(f)

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

A random sample of 50 case numbers from the years 2001-04 was drawn by Minacs, and the field audit involved checking the sample case files for the region to verify that they were being maintained per requirement § 703.6(f). In addition, a visual inspection was made of the entire four-year accumulation of case files required by the same section. We found all cases maintained as required.

The closed files for the years 2001-2004 are stored at the DeMars & Associates headquarters in a room on the third floor set aside for that purpose. All current (i.e., 2004) files appeared intact and were readily available for inspection. The random sample inspection validated the apparent completeness suggested by the visual inspection.

D. Board Records

i. Agenda/Decision Summaries

All information required to be kept is maintained and available for inspection. The board's administrator completes a separate *Agenda/Decision Summary* form for each board

²¹ The "warrantor's intended actions" also relates to how they intend to respond to an arbitrator's decision/award. Since Ford's policy is to abide by all board decisions as part of the program they sponsor (i.e., The Dispute Settlement Board) there is no need to have any information about the policy in each case file folder.

meeting. The administrator provides a copy of this form to DeMars & Associates, which maintains the copies at their headquarters. Information on each form includes: a) meeting place, date, and time; b) arbitrator's name; c) agenda by customer name and case number; and d) the decisions and reasons for the decisions.

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

ii. Arbitrator Biographies

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

E. Board Operations

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

By and large, the board meeting in Seattle operated according to the *DSB Written Operating Procedures*. The deliberations demonstrated that members were familiar with the facts as presented in the case files, indicating that they had all studied the files prior to the meeting. The board typically failed to begin each case by having someone provide a thorough overview of the facts of the case. The chair afforded the customers an ample opportunity to present most anything they chose.

i. Physical Description of Board Meeting

The DSB board meeting was held at the Frontenac Hilton Hotel, St. Louis, Missouri. The meeting began at 9:00 a.m. The meeting room was large enough to accommodate any reasonably anticipated number of attendees. Time and location of the meeting were prominently displayed in the hotel lobby. The meeting room was equipped with a speaker phone to accommodate oral presentations by telephone.

ii. Openness of Meeting

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

iii. Efficiency of Meeting

All administrative functions at the board meeting were performed by the administrator, who is an agent of the independent administrator, DeMars & Associates. The arrangements

for the meeting and the general administration of the meeting were very efficient. The administrator did a professional job in assisting the board in carrying out its duties and she did so without crossing the fine line that separates the administrative from substantive participation in the hearing process.

iv. Board Process

This board, like all others we audited in 2005 for the 2004 audit report, is clearly committed to fair and expeditious resolution of warranty disputes. The deliberations indicated a general awareness of many of the federal and state regulations.

Generally, most pertinent issues identified on the customer's application were addressed by the board.

While the board's reasoning appeared to be generally acceptable, it would be helpful if, in some cases, they would more clearly specify their reasoning on important and fundamental issues. In addition, the Board indicated a lack of understanding about the use of Field Service Engineers, an issue discussed repeatedly over the years we have conducted audits. Having the board's reasoning better defined would also help auditors, observers, and customers to better understand the board's decision.

v. Board Decisions

The board's decisions were generally rendered in a manner consistent with federal regulations as well as the DSB's *Written Operating Procedures*. Any exceptions, other than the inappropriate use of Field Service Engineers, are programmatic errors or inconsistencies, which are being corrected and have been noted at other points in the audit report. In no case are such errors or inconsistencies sufficient in themselves to pose a threat to the program's substantial compliance status with federal requirements.

CONCLUSION:

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

Overall, the review of the DSB program as it operates in Kansas, City, Kansas, Region is "Good," excepting the noted inappropriate use of Field Service Engineers (FSE).

II. Pittsburgh, Pennsylvania, Ford Customer Service Division, Foster Plaza 9, 750 Holiday Drive, Pittsburgh, Pennsylvania

A. Personnel and Case Load

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

The Pittsburgh region received 471 DSB applications in 2004. Of the cases filed, 340 were determined to be "in-jurisdiction" and 131 were determined to be "not-in-jurisdiction" cases. The Dispute Resolution Specialist who covers this region mediated 59 cases; the board arbitrated 281 cases. The number of cases in this region that were not decided within the allowable 40 days was 53. The average number of days for handling a Pittsburgh Region case in 2004 was 32. This compares with 33 days nationally.

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

B. Record Keeping Accuracy and Completeness

We drew a random sample of 50 cases that were closed during 2004 and examined them to determine whether they were complete and available for audit.

The results of the inspection of the random sample of 50 cases from 2004 are detailed below.

§ 703.6 (a)(1-12)

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

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

FINDINGS:

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

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

documents in the file. As a result, cases are rarely delayed simply because the customer fails to include the VIN in the application.

4) All case files inspected contain this information. Not all cases necessitate a decision letter, but where a decision was rendered, the appropriate notification letter was present.

5) Many files contained letters and additional documents, but since there is no standard by which to measure this item, we determined this subsection to be "not applicable."

§ 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 and the identity of members voting; or information on any other resolution;

FINDINGS:

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

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

FINDINGS:

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

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

FINDINGS:

The warrantor's intended action(s) and performance are inextricably linked. As such, we validate this item in terms of performance verification.²² Of the case files examined, most files with decisions that contained an award contained the appropriate performance verification information. That changed recently with responsibility being transferred to the Dispute Resolution Specialist at-Ford Motor Company who sends out performance questionnaires with Ford's return address. Performance is assumed if the questionnaire is not returned.

²² The "warrantor's intended actions" also relates to how they intend to respond to an arbitrator's decision/award. Since Ford's policy is to abide by all board decisions as part of the program they sponsor (i.e., The Dispute Settlement Board) there is no need to have any information about the policy in each case file folder.

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

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

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

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

C. Case File Records (4 years 2001-2004)

§ 703.6(f)

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

A random sample of 50 case numbers from the years 2001-04 was drawn by Minacs, and the field audit checked the sample case files to verify that they were being maintained per requirement § 703.6(f). In addition, a visual inspection was made of the entire four-year accumulation of case files required by the same section.

The closed files for the years 2001-2004 are stored at the DeMars & Associates headquarters in a room on the third floor set aside for that purpose. All current (i.e., 2004) files appeared intact and were readily available for inspection. The random sample inspection validated the apparent completeness suggested by the visual inspection.

D. Board Records

i. Agenda/Decision Summaries

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

ii. Arbitrator Biographies

The arbitrator biographies are available for review and can be provided by either DeMars & Associates, Professor James Brown, or the DSB Process Manager at the Consumer Affairs Office in Dearborn, Michigan. The biographies are thorough and current. The list of arbitrators/board members for each region includes the dates of each arbitrator's appointment and DSB training.²³

E. Board Operations

i. Physical Description of Board Meeting

The DSB board meeting on February 11, 2004, began at 9:00 a.m. at the Holiday Inn, Monroeville, Pennsylvania (suburb of Pittsburgh) 2750 Moss Side Boulevard, Monroeville, Pennsylvania. The meeting room was adequate for those in attendance and for any likely number of visitors. Notice of the meeting was appropriately posted in the hotel lobby.

ii. Openness of Meeting

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

iii. Efficiency of Meeting

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

iv. Board Process

Overall, the board's performance very good. It was clear that the process was generally fair, impartial, and exceedingly efficient.

In one case, however, a customer ambled into the room and the administrator escorted them back out. This, of course, is contrary to the open meetings requirements. The problem was subsequently rectified. The chair provided a thorough case opening statement in each case.

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

v. Board Decisions

²³ The document codes the subject of training on the third entry line as follows: the Arabic numeral represents the year of training (i.e., 2=1992); the letter C = California-specific training; and the letters CR = California Refresher training.

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

CONCLUSION:

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

III. **Los Angeles, California**, Ford Customer Service Division, Ford Customer Service Division, 20990 S. State College Blvd., Suite 660, Anaheim, California.

A. Personnel and Case Load

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

The Los Angeles Region received 1480 DSB applications in 2004. Of the cases filed, 275 were reported to be "not-in-jurisdiction" cases. The Dispute Resolution Specialist who covers this region mediated 185 cases; the DSB boards arbitrated 1020 cases. The average number of days for handling a Los Angeles Region case in 2004 was 32. This compares with 33 days nationally. There were no cases handled in 2004 wherein the decision was not rendered within the allowable 40-day time period. This constitutes a dramatic and somewhat inexplicable change from the numbers reported in our last audit. There were no cases in which Ford refused to abide by the Mechanism's decision.

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

B. Record Keeping Accuracy and Completeness

We drew a random sample of 50 cases that were closed during 2004 and examined them to determine whether they were complete and available for audit.

The results of the inspection of the random sample of 50 cases from 2004 are detailed below.

§ 703.6 (a)(1-12)

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

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

FINDINGS:

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

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

§703.6 (a) [continued]

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

FINDINGS:

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

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

FINDINGS:

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

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

FINDINGS:

The warrantor's intended action(s) and performance are inextricably linked. As such, we validate this item in terms of performance verification.²⁴ Of the case files examined, most files with decisions that contained an award contained the appropriate performance verification information. Performance verification record-keeping is a function that used to be carried out by DeMars & Associates. That changed recently with responsibility being transferred to the Dispute Resolution Specialist at Ford Motor Company who sends out performance questionnaires with Ford's return address. Performance is assumed if the questionnaire is not returned.

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

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

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

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

C. Case File Records (4 years 2001-2004)

§ 703.6(f)

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

²⁴ The "warrantor's intended actions" also relates to how they intend to respond to an arbitrator's decision/award. Since Ford's policy is to abide by all board decisions as part of the program they sponsor (i.e., The Dispute Settlement Board) there is no need to have any information about the policy in each case file folder.

A random sample of 50 case numbers from the years 2001-2004 was drawn by Minacs and the field audit checked the sample case files to verify that they were being maintained per requirement § 703.6(f). In addition, a visual inspection was made of the entire four-year accumulation of case files required by the same section.

The closed files for the years 2001-2004 are stored at the DeMars & Associates headquarters in a room on the third floor set aside for that purpose. All current (i.e., 2004) files appeared intact and were readily available for inspection. The random sample inspection validated the apparent completeness suggested by the visual inspection.

D. Board Records

i. Agenda/Decision Summaries

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

ii. Arbitrator Biographies

The arbitrator biographies are available for review and can be provided by either DeMars & Associates, Professor James Brown, or the DSB Process Manager at the Consumer Affairs Office in Dearborn, Michigan. The biographies are thorough and current. The list of arbitrators/board members for each region includes the dates of each arbitrator's appointment and DSB training.²⁵

E. Board Operations

i. Physical Description of Board Meeting

The DSB board meeting on March 22, 2004, began at 9:00 a.m. at the office DeMars & Associates in Fullerton, California.²⁶ The meeting room size and accommodations were adequate for those in attendance and for any likely number of visitors.

ii. Openness of Meeting

²⁵ The document codes the subject of training on the third entry line as follows: the Arabic numeral represents the year of training (i.e., 2=1992); the letter C = California-specific training; and the letters CR = California Refresher training.

²⁶ The address of the DeMars & Associates California office is: 680 Langsdorf Drive, Fullerton, California.

The meeting was open to observers and were in compliance with FTC rule 703.8 (d) concerning open meetings in that the board recognized that the parties may stay and observe the entire meeting if they choose to do so. It should be noted however, that there were not enough chairs in the room to accommodate a reasonable number of observers had any appeared.

iii. Efficiency of Meeting

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

iv. Board Process

The board members were clearly committed to fair and expeditious resolution of warranty disputes, but their deliberations were in some cases problematic, as outlined above. In most cases, the board chair provided a fairly thorough case opening statement setting forth the particulars of the dispute.

Overall, the board addressed most of the important issues in the cases reviewed, but sometimes failed to state the customer's requested relief. Most exceptions appeared to result from the members' tacit agreement that certain issues need not be reviewed because of the unique facts of the case.

In one case the board made informal comments about the next case to be decided. The problem was that the customer was there to make an oral presentation and had not been invited into the hearing room which may be a technical violation of the open meeting requirement.

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

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

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

We also said in those reports:

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

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

We interviewed selected board members either during or immediately following the meeting.²⁷ Those we talked to, as is usually the case, rated their training very high. Overall, board members appear to be pleased with the program and believe the program provides customers with a fair process. As in the past, board members indicate concerns about case file preparation. The most common concerns are incomplete and/or illegible portions of files and nonexistent dealer or company statements. Customers also often fail to provide certain important information on the application. This can deprive the board of a clear view of the matter prior to their more deliberations, which can clearly affect the quality of the analysis. This concern may be alleviated by those customers opting to make oral presentations.

The board operated well within the regulatory requirements in respect to all but the one possible technical violation concerning the open meeting requirement previously discussed.

v. Board Decisions

We found no substantive problems with any of the decisions rendered by this board.

CONCLUSION:

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

²⁷ Sometimes, between consideration of cases, there is an opportunity to query the board about issues that may have arisen from their discussion of the previous case.

SECTION V

Arbitration Training

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

The arbitration training component of the DSB training was conducted and monitored on December 5 - 7, 2004, at the Omni Royal Orleans Hotel in New Orleans, Louisiana. The arbitration training program's attendees stayed at the hotel where the training exercises were conducted. Professor James Brown, Director of the Center for Consumer Affairs, University of Wisconsin-Milwaukee, conducted the training, assisted by Mr. Clay White. Mr. R. Joseph Bichanich, of DeMars & Associates, provided additional training information.

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

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

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

Trainers also clarified the new role of DeMars & Associates in opening cases.²⁸ It was stressed that DeMars & Associates' initial determination is just that and that final determination is the sole province of the board. Much attention was given to the topic of

²⁸ In the recent past, receiving the DSB application and reviewing the case for initial jurisdiction determination was handled by the independent contractor, Minacs.

establishing jurisdiction of a DSB application. In cases of an ambiguous "jurisdiction appeal" to the board, trainees were encouraged to decide in favor of customers.

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

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

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

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

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

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

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

Professor Brown explained that Ford had recently decided to warrant tires which is a significant departure from the manufacturer's express exclusion of tires for several years.

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

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

ARBITRATION TRAINING RATING SYSTEM

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

SECTION VI

Survey and Statistical Index Comparative Analyses

FORD MOTOR COMPANY DISPUTE SETTLEMENT BOARD PROGRAM INDICES

The Federal Trade Commission (FTC) regulates informal dispute resolution programs, such as those operated by the Ford Motor Company, under FTC Rule 703.6(e). The rule mandates disclosure of statistics about the outcomes of warranty disputes and warrantor compliance with settlements and awards. The purpose of this section of this audit is to verify the statistics provided by the company for the year 2004.

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

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

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

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

To determine the accuracy of the DSB’s warranty dispute statistics and to gather evaluation information about the program, Claverhouse Associates contracted with the Office for Survey Research (OSR) of the Institute for Public Policy and Social Research at Michigan State University (IPPSR) to conduct a survey of a randomly selected national sample of customers who filed disputes with the DSB during 2004. The primary focus of the survey is to determine whether consumers’ recollections or records of what happened in their cases match the data compiled by the DSB. The question is not whether an individual’s recollections match the data in the DSB’s records but rather whether the aggregate proportion of consumers’ recollections agree with the outcomes reported to the FTC.

ABOUT THE STUDY

The Claverhouse study is based on 362 respondents from a sample of 750 cases randomly drawn from the universe of 6,460 cases that were “in-jurisdiction” and closed nationally in 2004. The method of data collection was a mailed, self-administered questionnaire. OSR used a methodology for self-administered surveys that was 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 reminder, and a second full mailing to non-responders. Since its inception, OSR has used this methodology for all of its self-administered survey projects. If a customer who was sampled had filed more than one case, he or she was asked to refer to the most recent case when answering the survey.

The initial mailing which contained the survey, a cover letter, and a postage-paid return envelope was sent on May 31, 2005. The cover letter explained the purpose of the survey, how the respondent was selected to participate, and how the results would be used. The letter also indicated that participation was voluntary, but extremely valuable to a complete and thorough audit. Respondents were also told of their rights as a research participant. Each respondent was also assigned a unique identification number that was used to track who returned their questionnaire and who did not.

One week after the initial mailing on June 7, 2005, a combination thank you/reminder postcard was sent to the entire sample. Using the unique identification number, OSR staff was able to determine who had completed and returned their questionnaire and which questionnaires were returned by the post office because of invalid addresses.

On June 28, 2005, OSR staff mailed another cover letter, questionnaire, and postage-paid envelope to those who had not returned a completed questionnaire. Data collection was ended on July 29, 2005. Of the 750 questionnaires that were originally sent, 362 were completed and 27 were returned by the post office as undeliverable. The statuses of the remaining questionnaires are unknown, but can be assumed that the selected respondents chose not to participate in the study. The completion rate for the study is 50.0 percent. The questionnaire data were then entered, proofed, and coded by OSR staff.

A threat to the validity of any sample study is non-response bias. That is, if there is any systematic reason that certain consumers selected for the study are unavailable or choose not to participate, the results can be biased. For example, if those who did not receive awards were more likely to refuse participation than those who did receive awards, the study would underestimate the percentage of decisions adverse to consumers. The practices of sending follow-up postcards and second mailings are designed to encourage high cooperation among those selected to participate. Because the sample of cases is a simple random sample, the sampling error is ± 5.0 percent.²⁹

Method of Resolution

²⁹ 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 ± 5.0 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 $\pm 4.3\%$.

Table 1 compares the method of resolution of disputes in the Claverhouse sample with the figures reported to the FTC. Since the Claverhouse survey contained only in-jurisdiction cases, out-of-jurisdiction cells in the Claverhouse section of the table are blank, and the subtotal (representing in-jurisdiction cases) is equal to total disputes. In this case, we compare only FTC in-jurisdiction cases with the Claverhouse sample. There is no difference between the Claverhouse statistics, (16.3 percent mediated and 83.7 percent arbitrated) and the DSB indices (16.3 percent mediated and 83.7 percent arbitrated). The percentages are an exact match, therefore, they are in agreement.

Table 1
Method of Resolution of Warranty Disputes
Comparison between Claverhouse Survey and DSB Indices 2004

Resolution	Claverhouse		DSB		
	Number	Percent	Number	Percent of in-jurisdiction cases	Percent of all cases
Mediation	59	16.3%	1,058	16.3%	12.4%
Arbitration	303	83.7%	5,402	83.7%	63.3%
Subtotal (in-jurisdiction)	362	100.0%	6,460	100.0%	75.7%
Out-of jurisdiction	-	-	2,078	-	24.3%
Total disputes	362	-	8,538	-	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 from which the Claverhouse sample was drawn includes only closed cases, the aforementioned statistic is not include in the results shown in Table 2.

Table 2
Outcomes of Mediated Settlements
Comparison between Claverhouse Survey and DSB Indices 2004

Mediated Settlements	Claverhouse	DSB
	Percent (Number)	Percent ³⁰ (Number)
Warrantor has complied within the compliance period	88.1% (52)	91.0% (1,023)
Warrantor has not complied	3.4% (2)	9.0% (101)
Warrantor complied but not within the compliance period	8.5% (5)	NA
Total Mediated Cases	100.0% (59)	100.0% (1,124)

DSB indices show that the manufacturer complied with 91.0 percent of the mediation agreements within the mandated time frame. The Claverhouse study show that the manufacturer complied with 88.1 percent of the mediation agreements within the mandated time frame. These statistics are in agreement. Overall, the Claverhouse results show that compliance occurred in 96.6 percent of all mediated cases, with only 3.3 percent reported that compliance had not yet occurred. This number is slightly outside the margin of error. This should not be a cause for concern since the difference in the numbers favor the consumer and not the DSB.

When asked if they were given a reason as to why compliance did not occur within the mandated time frame, only a third (33.3 percent) said that they were given a reason by the dealer or the manufacturer.

Respondents were also asked what was the outcome of their settlement with the dealer or manufacturer. Table 3 shows these results.

³⁰ This percentage is a percentage of mediated cases.

Table 3
Specific Outcomes of Mediated Settlements
Claverhouse Survey 2004

Outcome	Number	Percent
New Vehicle	30	51.7%
Cash Settlement	16	27.6%
Extended Warranty	7	12.1%
Trade in Allowance	5	8.6%
Total	58	100.0%

Respondents were asked if they pursued their cases after working with the DSB. Of the small number that did pursue their case (9.3 percent), 14.3 percent contacted an attorney, 28.6 percent went back to the DSB to seek resolution, and 57.1 percent re-contacted the manufacturer or dealer directly.

Respondents were asked if they recalled talking to DSB staff or returning a postcard to the DBS about their settlement and their case in general. Most (44.4 percent) recalled talking to a staff member, 31.5 percent indicated that they had returned a postcard, 16.7 percent did both, and 7.4 percent said that they did not do either.

Arbitrated Cases

Before the questionnaire presented detailed questions about arbitrated cases, respondents were asked about the process leading to their hearings. Respondents were first asked whether they remembered receiving the forms that stated their claim. Of the respondents who reported having arbitration hearings, 93.9 percent of those said that they recalled receiving the forms.

Respondents were also asked a question about how accurately they felt the forms stated their claim. Close to half, 44.6 percent, said their claim was stated very accurately, 42.1 percent said somewhat accurately, and 13.3 percent said not very accurately or not at all accurately. The respondents' evaluation of how accurately their claim was stated is strongly correlated with whether they received an award in the arbitration process. Of those who said their claim was stated very accurately, 83.7 percent received an award from the arbitration process, whereas only 33.3 percent of those who said their claim was stated not very accurately or not at all accurately received an award (see Figure 1).

Respondents were then asked whether they had been notified of the time, place, and date of the arbitration hearing. Of the respondents who answered this question, 97.6 percent said they had been notified, and 25.6 percent said that they had attended their hearings in person, 43.9 percent said they participated by phone, and 30.5 percent did neither. The reasons why respondents did not attend their hearings are summarized in Table 4.

INSERT FIG 1

Table 4
Reason for Not Attending Arbitration Hearing
Claverhouse Survey 2004

Outcome	Number	Percent
Hearing too far away/not held in local area	40	48.2%
Chose not to attend/told presence was not necessary	17	20.5%
Physically unable to attend hearing/illness	14	16.8%
Unaware of hearing time and/or location	4	4.8%
Too time consuming/already spent too much time on the car and its problems	3	3.6%
Used an attorney/attorney attended hearing	3	3.6%
Chose document only hearing	2	2.4%
Total	83	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. Again, since the Claverhouse study only includes closed cases, the statistic comparing the proportion of cases for which the date of compliance has not yet passed is not included in the comparisons.

Table 5 presents the data about the outcomes of arbitrated cases.

Table 5
Outcomes of Arbitrated Cases
Comparison between Claverhouse Survey and DSB Indices 2004

Outcome	Claverhouse	DSB
	Percentage (Number)	Percentage (Number)
Arbitration Award Granted and Accepted		
Case decided by board and warrantor has complied	50.9% (145)	43.4% (2,311)
Case decided by board and warrantor has not complied	6.0% (17)	3.2% (170)
Total – award granted and accepted	56.9% (162)	46.6% (2,481)
Arbitration Award Granted and Not Accepted	9.8% (28)	10.4% (551)
Arbitration Decision adverse to consumer	33.3% (95)	43.0% (2,289)
Total arbitrated decisions	100.0% (285) ³¹	100.0% (5,321)

Survey results differ statistically from the DSB indices in only two areas: DSB indices report a slightly higher percentage of decisions adverse to the consumer than the Claverhouse survey (43.0 percent versus 33.3 percent) and a slightly lower percentage of arbitration awards granted and accepted (43.4 percent and 50.9 percent). Because this difference is in favor of the consumer, it is not a cause for concern. When asked if performance of the arbitrated decision had occurred within the time frame specified in the decision, 89.2 percent indicated that it had. Of those who said that performance did not occur within the time frame, only 39.5 percent indicated that they were given a reason.

For 36.6 percent of the respondents, the dealer or manufacturer had to buy back the vehicle; for 25.0 percent, the dealer or manufacturer had to replace the vehicle; 19.1 percent were awarded repairs; 14.9 percent were given an award but chose not to disclose it; 9.3 percent received an extended warranty; and the remaining 2.1 percent had the lease terminated.

Of those receiving arbitration decisions, 85.9 percent accepted what was awarded by the DSB. Those who rejected the awards gave the following reasons: 40.7 percent thought what was awarded would not solve the vehicle's problems, 22.2 percent did not want what the DSB offered, 11.1 percent indicated that the decision would cost them too much money, and the remaining 25.9 percent gave other reasons.

All respondents whose cases were arbitrated were asked whether they had pursued their cases further after the arbitration decision. Close to a quarter (23.8 percent), replied in the affirmative. Table 6 shows by what means they pursued their cases. Note that many respondents pursued their cases by more than one means; thus, the number of responses is greater than the number of respondents.

³¹This includes only cases for which there was no missing data.

Table 6
Methods of Pursuing Cases
Claverhouse Survey 2004

Method	Number	Percent
Contacted an attorney/legal means	36	40.0%
Recontacted the DSB	21	23.3%
Contacted a government agency	18	20.0%
Worked out a solution with the dealer	15	16.7%
Total responses	90	100.0%

When asked if they talked to the staff of the DSB or returned a postcard indicating how they felt about the decision, 29.8 percent said that they had spoken to someone, 26.7 said that they returned the postcard, 11.8 percent said they had done both, and 31.7 said they did neither.

Delays to Arbitration Decisions

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

DSB figures report 26.3 percent of all in-jurisdiction cases delayed beyond 40 days, whereas survey respondents reported 41.9 percent of cases delayed beyond 40 days (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

Respondents are asked to recall very specific information about an event that may have occurred a year or more ago. Based on the answers given to these questions by respondents, this appears to be a difficult task. When asked to recall the date their case was opened, only 37.8 percent could give a complete date, 24.0 percent could give only a month and a year, and 38.1 percent could give no date at all. When asked to give the date their case was closed, 39.0 percent could give a complete date, 22.7 percent could give only a month and year, and 38.4 percent could give no date at all.

Of the 37.8 percent of respondents who did give a complete open date, 61.3 percent of them were able to give the correct date or a date within two weeks of the date supplied by the DSB. Of the 39.0 percent who gave a closed date, only 31.0 percent of them could give the correct date or a date within two weeks of the date supplied by the DSB. In some cases, the dates given by the respondent and the dates supplied by the DSB differed by more than one year.

This data indicates that consumer recollections on whether their cases were delayed beyond 40 days may, thus, be in error, since they appear to have a difficult time recalling when their cases were opened and closed. In addition, the consumer may not be using the same specific information about when a case is "opened" as does the DSB. The DSB considers a case opened when the forms are received in the office and processed. Consumers, on the other hand, may see their cases as having been "opened" when they first contacted the DSB, when they mailed the forms, or even when they first experienced problems with the vehicle. Similar considerations apply to when a case was "closed." Therefore, we do not consider this difference in percentages to be a concern. Table 7 shows the reasons for delays as reported by the DSB indices and by survey respondents.

INSERT FIG 2

Table 7
Reasons for Delays in Decisions
Comparison between Claverhouse Survey and DSB Indices 2004

Reasons for Delays	Claverhouse	DSB
	Percentage (Number)	Percentage (Number)
Customer failed to submit required information in a timely manner	2.2% (3)	.3% (5)
Consumer failed to seek relief directly from the manufacturer	1.5% (2)	0.0% (0)
All other reasons	96.3% (131)	99.7% (1,697)
Total cases delayed beyond 40 days	100.0% (136)	100.0% (1,702)

There is no statistical difference between the Claverhouse data and the DSB indices for reasons for delays. All the statistics fall within the margin of error.

Consumer Attitudes Toward the DSB's Informal Dispute Settlement Procedures

At the beginning of the questionnaire, respondents were asked how they had learned about the Dispute Settlement Board. The responses are summarized in Table 8.

Table 8
How Consumers Learned about DSB Availability
Claverhouse Survey 2004

Sources of Information	Number	Percent
Ford Dealership	137	33.6%
Owner's manual/warranty information	98	24.1%
Ford Customer Complaints/Toll-free number	74	18.2%
Friends and family	31	7.6%
Attorney or other legal source	23	5.7%
Previous knowledge of the program	21	5.2%
Brochures/other literature	15	3.7%
Media (TV, Newspapers, etc.)	8	2.0%
Total	407 ³²	100.0%

The dealership (33.6 percent) and the owner's manual and warranty information (24.1 percent) were the most likely sources of information about the DSB program, followed by Ford Customer Complaints (18.2 percent). Those who indicated that they learned about the DSB through the dealer and/or from Ford Motor Company Customer Complaints were asked additional questions

³²Respondents could indicate more than one source of information on how they learned about the program, therefore, the percentages are based on number of responses not number of respondents.

about the ways in which they were informed of the program by these sources. Those results are summarized in Table 9.

**Table 9
Dealer or Manufacturer Information Sources
Claverhouse Survey 2004**

Sources of Information	Number	Percent
Dealer or manufacturer talked about the program	120	41.8%
Dealer or manufacturer showed written materials	110	38.3%
Dealer or manufacturer showed poster or other display	21	7.3%
Dealer or Manufacturer other methods	36	12.5%
Total	287 ³³	100.0%

Survey respondents were also asked about the materials and forms they received from the DSB. Most (96.2 percent) recalled receiving the materials, both program information and the arbitration complaint forms. Of those who said they recalled receiving the program informational materials, 70.0 percent reported the materials were very clear and easy to understand; 27.6 percent said they had some problems, but the materials were still fairly easy to understand; and 2.4 percent said they were difficult to understand. As for the complaint form, 73.7 percent said the form was very clear and easy to understand; 24.4 percent said it was a little difficult but still fairly easy to understand; and 1.9 percent said it was difficult or very difficult to understand.

Ease of understanding the materials, especially the complaint form, is directly correlated with the type of case (mediated or arbitrated) and whether or not they received some type of award. For those with mediated cases, 81.3 percent said that the complaint forms were very clear and easy to understand compared to 72.1 percent of those whose case was arbitrated (see Figure 3). Of the respondents who went through arbitration and received an award, 79.5 percent found the forms very clear and easy to understand compared to 57.1 percent who went through arbitration and did not receive an award.

Respondents were then asked to rate their satisfaction with the DSB staff in three areas – objectivity and fairness, promptness, and effort – and overall by using a five-point scale, which ranged from very satisfied to very unsatisfied. Table 10 shows these results.

³³Respondents could indicate more than one source of information from the dealer or manufacturer, therefore, the percentages are based on the number of responses not the number of respondents.

INSERT FIG 3

Table 10
Survey Respondents' Ratings of DSB Staff
Claverhouse Survey 2004

Performance Item	Level of Satisfaction				
	Very Satisfied	Some-what Satisfied	Neutral	Some-what Dis-satisfied	Very Dissatisfied
Objectivity and fairness	38.1%	9.3%	8.8%	7.9%	35.9%
Promptness in handling your complaint during the process	39.6%	16.0%	20.8%	6.8%	16.8%
Efforts to assist you in resolving your complaint	37.8%	10.3%	7.4%	7.4%	37.0%
Overall rating of the program	36.7%	11.8%	6.4%	6.2%	38.9%

Of the three areas, users of the program gave the highest satisfaction rating in the area of promptness, with 55.6 percent saying that they were either very satisfied or somewhat satisfied. The lowest satisfaction rating was in the area of objectivity, with 47.4 percent reporting some level of satisfaction. Respondents felt almost the same when it came to rating effort with 48.1 percent saying they were satisfied with this area of the program.

When asked to give an overall satisfaction rating, 48.5 percent said they were to some degree satisfied with the program (36.7 percent saying they were very satisfied). A slightly smaller percentage said they were dissatisfied with the program (45.1 percent) with 38.9 percent saying they were very dissatisfied.

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, each performance item and the overall satisfaction scale was re-coded into a dichotomous variable, satisfied vs unsatisfied then analyzed according to type of case (see Figure 4). Those who reported being "neutral" were dropped from the variable computation.

When looking at overall satisfaction with the program, those with mediated cases were much more likely to be satisfied (96.1 percent) than those with arbitrated cases (43.8 percent). Those who received an award in the arbitration process were also much more likely (67.0 percent) to report being satisfied than those who did not receive an award (100.0 percent reported being dissatisfied). Again, those who were granted an award and accepted the award reported higher satisfaction levels (76.4 percent) compared to those who were granted an award and then rejected the award (8.0 percent) (see Figure 5).

Another measure of consumers' satisfaction with the DSB program is whether or not they would recommend the program to others. Slightly less than half (48.6 percent) of survey respondents said that they would recommend the program to others experiencing warranty

INSERT FIG 4

FIG 5

problems with their vehicles. Of the remainder, 20.2 percent said it would depend on the circumstances, and another 31.3 percent said they would not recommend the program.

If broken down by type of case and outcome, a very different picture emerges. Table 11 summarizes this data.

Table 11
Would Consumer Recommend the DSB Program to Others?
Claverhouse Survey 2004

Method of Resolution and Outcome	Yes	No	Depends on Circumstances
Mediated	76.8%	3.6%	19.6%
Arbitrated	43.2%	36.5%	20.3%
Award Granted and Accepted	69.1%	12.7%	18.2%
Award Granted and Rejected	14.3%	67.9%	17.9%
No Award	8.5%	68.1%	23.4%

Finally, survey respondents were given an opportunity to make comments and suggestions about DSB program changes or improvements. The comments of those responding to the question are summarized in Table 12.

Table 12
Consumer Suggestions for Program Improvement
Claverhouse Survey 2004

Suggestion	Number	Percent
Arbitrators should be more consumer oriented	112	39.6%
Did a good job, no complaints	62	21.9%
Make dealers/manufacturers more responsive to consumer	19	6.7%
Awards/settlements and dollar amounts need to be fairer	16	5.7%
Speed up the process for quicker decisions	16	5.7%
Have better qualified mechanics for inspections/repairs	14	4.9%
Allow for more information about history/problems of car	10	3.5%
Need better follow-up enforcing awards/settlements	9	3.2%
Have more program locations	7	2.5%
More professional staff	6	2.1%
Make program better known/more advertising	3	1.1%
Need better initial review of cases by staff and arbitrators	2	0.7%
Need more personal contact with DSB staff/arbitrators	2	0.7%
Less paperwork/easier to understand forms	2	0.7%
Have better/more representation at hearings	2	0.7%
Total	282	100.0% ³⁴

CONCLUSIONS

On the basis of the comparison of the Claverhouse survey results with the DSB indices, it is concluded that the DSB indices are accurate for the majority of the important components of the warranty dispute resolution program. The areas in which there are significant differences, cases decided by board and warrantor has complied and, decisions adverse to the consumer, are not cause for concern due to the difference being in favor of the consumer and not the program. The other difference between the survey results and DSB indices is the proportion of arbitrated cases delayed beyond 40 days. This is a common finding in research where respondents are asked to recall information. The difference is adequately explained by the recall factor (i.e., consumers can rarely recall specific dates for the opening and closing of their cases) and by the fact that the DSB's definitions of a case's opening and closing dates and the consumer's definitions are not necessarily the same.

In summary, we conclude that the DSB indices are in substantial agreement with the Claverhouse survey findings.

³⁴Percentages are based on responses not respondents since up to three suggestions were coded for each respondent.

SECTION VII

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 VIII

Codebook