

**United States Federal Trade Commission**  
**National Center for Dispute Settlement (NCDS)**  
**Non-Binding Automobile Warranty Arbitration Program**  
**2021 Audit National Report**  
**(January – December 2021)**

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TABLE OF CONTENTS

I. Introduction ..... 1

II. Compliance Summary ..... 3

III. Participating Manufacturers’ Consumer-Facing Materials  
and Compliance Levels – § 703.2..... 5

    A. FCA US LLC ..... 9

    B. Acura ..... 12

    C. Honda .....13

    D. Lexus ..... 15

    E. Mitsubishi..... 17

    F. Toyota..... 19

    G. Tesla..... 21

IV. Mechanism Operations and Compliance Levels – §§ 703.3 – 703.8 ..... 24

    A. Statutory Requirements of the Mechanism Organization – § 703.3..... 24

    B. Statutory Requirements of Members’ Qualifications – § 703.4..... 26

    C. Statutory Requirements of the Mechanism’s Operations – § 703.5 .....28

    D. Statutory Requirements of Recordkeeping – § 703.6 ..... 32

    E. Statutory Requirement of Conducting an Annual Audit – § 703.7..... 35

    F. Statutory Requirement of Open Records and Proceedings – § 703.8 ..... 36

V. Field Audit of Select Geographic Areas ..... 38

    A. California ..... 38

    B. Ohio ..... 70

    C. Florida ..... 97

VI. Audit of Arbitrator Training and Materials ..... 129

VII. Survey and Statistical Index: Comparative Analysis of  
Consumer Responses ..... 133

VIII. Audit Regulatory Requirements..... 170

IX. Appendix ..... 171

    A. Magnuson-Moss Warranty–Federal Trade Commission  
    Improvement Act of 1975..... 172

    B. 16 C.F.R. § 703..... 185

    C. Consumer Surveys Used in National Audit ..... 194

## Section I

### Introduction of Audit Performed Under Magnuson-Moss Warranty–Federal Trade Commission Improvement Act of 1975

The National Center for Dispute Settlement (“NCDS”), incorporated in the late 1990s, is a firm that specializes in offering binding and non-binding ADR processes to the general public. Its primary focus is the non-binding resolution of auto warranty disputes governed by the Magnuson-Moss Warranty–Federal Trade Commission Improvement Act of 1975 (“Magnuson-Moss”)<sup>1</sup> and the companion Rule on Informal Dispute Settlement Procedures, 16 C.F.R. § 703 (“Rule 703”).<sup>2</sup>

Magnuson-Moss imposes a panoply of minimum requirements for informal dispute resolution to achieve statutory legitimacy. One requirement is an annual audit “to determine whether the Mechanism (“NCDS”) and its implementation are in compliance” with standards of consumer awareness, fairness, and time efficiency.<sup>3</sup> The audit also must include a consumer survey that assesses satisfaction levels with the program.<sup>4</sup>

The 2021 audit of NCDS was performed by Mary A. Bedikian, an attorney and arbitration specialist. The audit covers seven substantive areas: Compliance Summary (Section II), Participating Manufacturers’ Consumer-Facing Materials and Compliance Levels (Section III), Mechanism Operations and Compliance Levels (Section IV), Field Audits of Select Geographic Areas (Section V), Arbitrator Training for Members (Section VI), Federal Trade Commission Survey and Statistical Index: Comparative Analysis of Consumer Responses (Section VII), and Audit Regulatory Requirements (Section VIII).

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<sup>1</sup> P.L. No. 93-637, 88 Stat. 2183 (1975) (codified at 15 U.S.C. §§ 2301–2312 (2012)). Magnuson-Moss was passed by Congress in 1975. Title 1 of the Act, which governs consumer product warranties, requires manufacturers and sellers of consumer products to provide consumers with clear, conspicuous, and specific information about warranty coverage. To resolve breach of warranty claims more efficiently, the Act also encourages the use of informal dispute settlement procedures.

<sup>2</sup> Section 110(a)(2) of the Magnuson-Moss Warranty–Federal Trade Commission Improvement Act, directs the Federal Trade Commission to prescribe rules that set forth minimum standards for an informal dispute settlement mechanism that is incorporated into a manufacturer’s written warranty. Rule 703 derives from this mandate. *See* Disclosure of Written Consumer Product Warranty Terms and Conditions, Pre-Sale Availability of Written Warranty Terms, and Informal Dispute Settlement Mechanisms (Rules, Regulations, Statements and Interpretations Under Magnuson-Moss Warranty Act), 40 FED. REG. 60168, 60190 (Dec. 31, 1975).

<sup>3</sup> Rule 703.7(a).

<sup>4</sup> Rule 703.7(b)(3) requires an analysis of a random sample of disputes in order to measure the adequacy of the Mechanism’s complaint process, investigation efforts, mediation and follow-up, and the accuracy of the Mechanism’s statistical compilations.

Manufacturers participating in the NCDS automobile warranty arbitration program in 2021 include Acura, FCA US LLC,<sup>5</sup> Honda, Lexus, Mitsubishi, Tesla, and Toyota.

The audit assesses both the warrantors' ("manufacturers") obligations and the Mechanism's ("NCDS") obligations under Magnuson-Moss. With respect to the manufacturers' obligations, the audit focuses on the requirement of informing consumers of the availability of NCDS' dispute resolution mechanism when a warranty dispute arises.

The statistical survey and comparative analysis are based on a defined universe of cases drawn from data provided to the auditor by NCDS. The intent behind this aspect of the audit is to validate the accuracy of the Mechanism's statistical compilations through "oral or written contact with the consumers involved in each of the disputes in the random sample."<sup>6</sup> Further details, including specific statutory requirements for assessments, appear in Section VII.

To complete the 2021 audit, the auditor:

- Reviewed 100 case files and arbitration decisions;
- Reviewed participating manufacturers' warranty and glovebox materials;
- Participated as "observer" in 15 arbitration hearings (to preserve confidentiality, recordings of hearings are not permitted under NCDS rules);
- Conducted field audits of three geographic areas – California, Ohio, and Florida; and
- Observed 9 national arbitrator training programs, conducted via zoom.

For purposes of this year's audit, pandemic restrictions continued. Hearing observations occurred by teleconference during the months of April through October 2022. The findings and conclusions are reflected in this year's report. Audits of arbitration hearings and field audits, which include dealership visits, are typically conducted in the current calendar year rather than in the audit year. To avoid a two-phased format, and to ensure continuity between this audit, the Bedikian NCDS FTC Audit (2020), and prior audits by Claverhouse & Associates, this practice was continued.

All case files randomly selected for review were initiated in 2021 as required.

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<sup>5</sup> As noted in the Bedikian NCDS FTC Audit (2020), the Company changed its legal name from Chrysler Corporation to FCA US LLC, effective 2014.

<sup>6</sup> Rule 703.7(b)(3).

## Section II

### Compliance Summary

This audit is conducted by Mary A. Bedikian,<sup>7</sup> an arbitration specialist. The audit assesses the performance of the National Center for Dispute Settlement (“NCDS”) in the administration of warranty disputes filed under the Magnuson-Moss Warranty–Federal Trade Commission Improvement Act of 1975 (“Magnuson-Moss”). For this audit, most of the prior auditor’s terminology will be maintained to ensure consistency in the transition.

#### *Overall NCDS Dispute Settlement Program Evaluation*

The NCDS third-party dispute settlement mechanism, Auto Warranty Arbitration Program (“AWAP”) is, in the auditor’s opinion, in substantial compliance with the statutory requirements of Magnuson-Moss, pursuant to 16 C.F.R. § 703, Informal Dispute Settlement Procedures. Operational details are discussed more fully in Section IV.

Participating manufacturers – Acura, FCA US LLC, Honda, Lexus, Mitsubishi, Tesla, and Toyota – are also in substantial compliance with 16 C.F.R. § 703. Findings of substantial compliance, however, are tempered by auditor reservations. Prior NCDS audits opined that audit reviews have reached the point where cumulatively manufacturers have failed to carry out the mandate circumscribed in Rule 703, *i.e.*, informing consumers of the availability of the NCDS program and how to access it. Rule 703.2(d), in part, states: “The warrantor shall take steps reasonably calculated to make consumers aware of the Mechanism’s existence at the time consumers experience warranty disputes.” This provision reflects the concern that dispute resolution mechanisms can be useful only if their existence is known.<sup>8</sup> Thus, manufacturers must provide this information to their dealership agents. They do not. Recognizing that some warrantors can exercise control over product distribution and marketing while others cannot, the Federal Trade Commission (“FTC”) chose not to impose specific mandates on dealerships and service centers, leaving the question of compliance to the auditor.<sup>9</sup> Manufacturers’ compliance efforts and respective deficiencies, captured as reservations, are explained in greater detail in Section III.

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<sup>7</sup> Ms. Bedikian is an attorney with over 30 years of experience in arbitration. She is the former Vice-President of the American Arbitration Association (1975-2003), a private 501(c)(3) entity dedicated to the peaceful resolution of conflict. Since 2003, Ms. Bedikian is Professor of Law in Residence at Michigan State University Law School, where she teaches commercial arbitration, labor and employment law, and ADR. In addition to her teaching and neutral work, Ms. Bedikian has trained hundreds of judges and advocates in ADR. Prior to assuming the auditor role for NCDS/CDSP, she served on the arbitrators’ training team from 2005-2020.

<sup>8</sup> Disclosure of Written Consumer Product Warranty Terms and Conditions, Pre-Sale Availability of Written Warranty Terms, and Informal Dispute Settlement Mechanisms (Rules, Regulations, Statements and Interpretations Under Magnuson-Moss Warranty Act), 40 FED. REG. 60168, 60197 (Dec. 31, 1975).

<sup>9</sup> Accountability is achieved through the audit. “Audit reports indicating a lack of reasonable efforts by the warrantor would provide the Commission with a means to enforce compliance with the Rule.” *Id.* at 60199.

For this year’s audit, the auditor focused on three regions of the NCDS program – California, Ohio, and Florida. Section V of the audit provides an assessment of each state’s compliance levels. All regions functioned in accordance with the requirements of Rule 703, with the caveats and discrepancies noted above.

Arbitrators, program personnel, and regulators that were interviewed for purposes of this audit consider training an essential component of the informal dispute settlement program, even though such training is not required under Magnuson-Moss. The training advances the program’s objectives by ensuring that arbitrators are familiar with their role, understand the difference between Magnuson-Moss proceedings and lemon law proceedings,<sup>10</sup> appreciate the need for objectivity and fairness in all aspects of evidence gathering and decision-making, and commit to a timely decision within the 40-day time frame specified by Magnuson-Moss. By incorporating arbitrator training into their administrative practices, NCDS enhances the opportunity for fair and expeditious resolution of warranty disputes, a central function of their statutory mandate. NCDS training is addressed in Section VI.

The consumer survey confirms the overall validity of the statistical indices created by the National Center for Dispute Settlement.<sup>11</sup> The original survey sample, which includes National, California, Florida, and Ohio, consisted of 1377 “in jurisdiction” cases,<sup>12</sup> with 189 responses. The surveys were structured to coincide with case outcomes, *i.e.*, mediated cases, awarded cases, and awarded cases with no action. In general, consumers who settled through mediation reported positive experiences. Arbitration outcomes were predictably split. Consumers who received a remedial award reported more favorable experiences over those whose claims were denied. An amplified breakdown of consumer responses and their significance is found in Section VII. The survey instrument used to elicit consumer responses is included in the Appendix.

The drafters of Magnuson-Moss envisioned the availability of an informal dispute resolution mechanism that would provide consumers with an efficient remedy to redress warranty rights without curtailing recourse to litigation. The NCDS arbitration program, as currently administered, meets this purpose.

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<sup>10</sup> Although Magnuson-Moss governs the informal dispute settlement program, arbitrators are encouraged to apply the presumptions of the applicable state lemon law in making their decisions.

<sup>11</sup> As noted in prior audit reports, any discrepancies are either of no meaningful consequence or are understandable and without significant regulatory implications.

<sup>12</sup> The universe of available cases, which represents the number of cases actually filed was 2,439. Five-hundred and seventy-four (574) cases were deemed ineligible. One-hundred and seventy-seven cases (177) were withdrawn. The dip in case numbers, when compared to the cases filed in 2020 (2,864), continue to be pandemic-related. Manufacturers also have augmented their practice of employing mediation, pre-filing, to resolve consumer complaints. This trend is validated by the auditor’s dealership visits.

## Section III

### Participating Manufacturers' Consumer-Facing Materials and Compliance Levels – § 703.2

#### Introduction

This section of the audit focuses on the requirements vehicle manufacturers must meet if they participate in the NCDS arbitration program. The auditor evaluated how each of the manufacturers fulfilled their statutory obligation to provide information to consumers at the point of sale or when a warranty dispute arises.<sup>13</sup> The seven current participating manufacturers in the NCDS arbitration program are Acura, FCA US LLC, Honda, Lexus, Mitsubishi, Tesla, and Toyota.

Under Magnuson-Moss, manufacturers are not required to include an informal dispute settlement mechanism (“IDSM”) in their warranty materials. If they do, their program must be Mag-Moss compliant.<sup>14</sup> Assuming compliance, as part of their protocols, manufacturers may insist on “prior resort,” which requires consumers to use the informal dispute resolution program before seeking other remedies under the Act.<sup>15</sup> A number of states incorporate prior resort under their respective states’ lemon laws as a

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<sup>13</sup> Auditor consensus, based on a reasonable construction of the Federal Trade Commission’s commentary to Rule 703 titled, “Proceedings,” is that manufacturers’ warranty manuals alone are not enough to communicate the information that Mag-Moss requires. Additional procedures must be in place, which extends to dealerships and service centers, to make sure that consumers receive clear and accurate information about informal dispute settlement options at the time a warranty dispute arises. *See* Disclosure of Written Consumer Product Warranty Terms and Conditions, Pre-Sale Availability of Written Warranty Terms, and Informal Dispute Settlement Mechanisms (Rules, Regulations, Statements and Interpretations Under Magnuson-Moss Warranty Act), 40 FED. REG. 60168, 60197 (Dec. 31, 1975) (stating that “placing more detailed information regarding the Mechanism at a location where consumers would be likely to turn in case of a product malfunction or defect would serve as a valuable guide to consumers on procedures to follow for remedying such complaints.”).

<sup>14</sup> Rule 703.2(a) states:

The warrantor shall not incorporate into the terms of a written warranty a Mechanism that fails to comply with the requirements contained in §§ 703.3 through 703.8 of this part. This paragraph shall not prohibit a warrantor from incorporating into the terms of a written warranty the step-by-step procedure which the consumer should take in order to obtain performance of any obligations under the warranty as described in section 102(a)(7) of the Act as required by part 701 of this subchapter.

<sup>15</sup> Rule 703.2(b)(3) states:

A statement of any requirement that the consumer resort to the Mechanism before exercising rights or seeking remedies created by Title I of the Act; together with the disclosure that if a consumer chooses to seek redress by pursuing rights and remedies not created by Title I of the Act, resort to the Mechanism would not be required by any provision of the Act.

prerequisite to filing in court or invoking a state-based arbitration program. Florida<sup>16</sup> and Ohio<sup>17</sup> are such examples.

### Obligations Under Federal Law and Promulgated Rules

Under § 703.7(b)(1),<sup>18</sup> the auditor must assess manufacturers' compliance levels with the provisions of § 703.2(d).<sup>19</sup> This section of Magnuson-Moss imposes on participating manufacturers the obligation to "take steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes." A dispute does not arise until the consumer has attempted, and failed, to get warranty performance.<sup>20</sup>

The warrantors' obligations under § 703.2 extends to dealerships and service centers.<sup>21</sup> Although not explicit in Mag-Moss, it is clear from the accompanying Federal Trade Commission interpretations of Mag-Moss that the regulators intended for warrantors to include dealerships and service centers as part of the consumer information process. Engaging dealerships and service centers is usually accomplished

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<sup>16</sup> FLA. STAT. § 681.108(1), F.S.

<sup>17</sup> OHIO REV. CODE ANN. §§ 1345.77(B).

<sup>18</sup> Rule 703.7(b)(1) states:

Each audit provided for in paragraph (a) of this section shall include at a minimum the following:

- (1) Evaluation of warrantors' efforts to make consumers aware of the Mechanism existence as required in § 703.2(d) of this part.

<sup>19</sup> Rule 703.2(d) states:

The warrantor shall take steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes. Nothing contained in paragraphs (b), (c), or (d) of this section 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 to the warrantor.

<sup>20</sup> Disclosure of Written Consumer Product Warranty Terms and Conditions, Pre-Sale Availability of Written Warranty Terms, and Informal Dispute Settlement Mechanisms (Rules, Regulations, Statements and Interpretations Under Magnuson-Moss Warranty Act), 40 FED. REG. 60168, 60193 (Dec. 31, 1975).

<sup>21</sup> The FTC declined to mandate dealer incentive requirements, recognizing that such a mandate may impose unreasonable financial burdens on manufacturers, discouraging them from including an informal dispute settlement mechanism in their warranty materials. Instead, the Commission opted to encourage voluntary efforts and to make explicit that such efforts would be evaluated by the auditor during the annual audit process. *Id.* at 60197.



by consumer relations programs and education initiatives to ensure that consumers with warranty disputes receive accurate information about options they may have should their dispute remain unresolved.

The auditor’s assessment in this section is dictated by the following two provisions of Magnuson-Moss, specifically §§ 703.2(b) and 703.2(c):

**§ 703.2 Duties of Warrantor**

(b) The warrantor shall disclose clearly and conspicuously at least the following information on the face of the written warranty:

- (1) A statement of the availability of the informal dispute settlement mechanism;
- (2) The name and address of the Mechanism, or the name and a telephone number of the Mechanism which consumers may use without charge;
- (3) A statement of any requirement that the consumer resort to the Mechanism before exercising rights or seeking remedies created by Title 1 of the Act; together with the disclosure that if a consumer chooses to seek redress by pursuing rights and remedies not created by Title I of the Act, resort to the Mechanism would not be required by any provision of the Act; and
- (4) A statement, if applicable, indicating where further information on the Mechanism can be found in materials accompanying the product, as provided in § 703.2(c).

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(c) The warrantor shall include in the written warranty or in a separate section of materials accompanying the product, the following information:

- (1) Either (i) a form addressed to the Mechanism containing spaces requesting the information which the Mechanism may require for prompt resolution of warranty disputes; or (ii) a telephone number of the Mechanism which consumers may use without charge;
- (2) The name and address of the Mechanism;
- (3) A brief description of Mechanism procedures;
- (4) The time limits adhered to by the Mechanism; and
- (5) The types of information which the Mechanism may require for prompt resolution of warranty disputes.

## Individual Participating Manufacturers' Efforts and Compliance Assessment

For the 2021 report, the auditor interviewed NCDS staff and inquired as to any changes from the previous year in each manufacturers' efforts to ensure their customers were being made aware of the availability of the arbitration program for resolving their customers' warranty disputes. Any new information provided is distinguished.

In completing this section, the auditor examined the substantive content of the information provided, including placement in the warranty booklet or supplemental materials, and assessed clarity, accuracy, and inclusiveness. The following explains the auditor's approach.

- **Notice/Conspicuous Placement** – Rule 703.2(b) of Mag Moss requires a clear and conspicuous notice of the availability of an informal dispute settlement mechanism “on the face of the written warranty.” To meet this requirement, the auditor considered whether the information required was highlighted or in different, larger font, to draw in consumers. Clarity requires that the information provided not be ambiguous and capable of being understood by the average consumer. Pursuant to the FTC, such notice may be featured in an electronic medium.<sup>22</sup>
- **Required Disclosures** – For this requirement, the auditor evaluated the content of the disclosures to make certain that the consumer was informed of the existence of the Mechanism, its operating procedures, eligibility parameters, time limits for processing a claim under the arbitration program, and any statement requiring that the consumer resort to the Mechanism before they exercised other rights or remedies created by Title 1 of Mag-Moss. Failure to provide all required disclosures resulted in an auditor's reservation.
- **Steps Reasonably Calculated to Make Consumers Aware** – This requirement of Mag-Moss directs the auditor to assess whether the information in the warranty manuals is sufficient to satisfy the requisite steps of making consumers aware of the existence of the informal dispute settlement mechanism “at the time consumers experience warranty disputes.” The determination requires the auditor to assess the quality and quantity of information while also considering the extent to which, if at all, manufacturers have implemented media campaigns that would integrate the dealerships and service centers into the information funnel.
- **Prohibition Requiring Direct Redress** – While Mag-Moss permits direct redress, § 703.2(d) of Mag-Moss prohibits manufacturers from requiring consumers to seek direct redress before they can exercise their right to file a claim with the Mechanism. This provision was modified in the comments period to preserve the right of a warrantor to *encourage consumers* to seek redress. The rationale for this provision appears in the Staff Report.<sup>23</sup>

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<sup>22</sup> In the absence of explicit language in the Warranty Disclosure Rule, the FTC opined that a written warranty communicated through visual text on Web sites is no different than paper versions and would qualify as being “provided with” or as “accompanying” the product.” Federal Trade Commission Opinion Letter 0901 (February 17, 2009).

<sup>23</sup> The underlying concern was that warrantors would want to minimize Mechanism costs by handling the disputes internally. To prevent consumers “from electing in good faith to undergo a warranty dispute settlement process which delays and frustrates rather than expedites dispute settlement, the proposed rule included a general requirement that warrantor complaint handling mechanisms operate fairly and expeditiously.” Disclosure of Written Consumer Product Warranty Terms and Conditions, Pre-Sale

A. FCA US LLC

The following table captures, in abbreviated form, FCA US LLC’s compliance levels with §§ 703.2(b) and 703.2(c).

FCA US LLC - Summary of Compliance

Statutory Citation	Compliance Findings
§ 703.2(b)(1)	Yes, subject to the noted reservations
§ 703.2(b)(2)	Yes
§ 703.2(b)(3)	Yes
§ 703.2(b)(4)	Yes
§ 703.2(c)(1)	Yes
§ 703.2(c)(2)	Yes
§ 703.2(c)(3)	Yes
§ 703.2(c)(4)	Yes
§ 703.2(c)(5)	Yes

FINDINGS

*Notice Requirement and Disclosures*

FCA US LLC uses several means to communicate dispute resolution program information. The “Warranty Information Booklet,” updated in 2021 and available electronically on the FCA website, references the “FCA US LLC Dispute Resolution Program.” The notification to consumers begins on page 4, and states:

FCA US LLC offers a dispute settlement program under two options for customers. First, you may submit your claim to the National Center for Dispute Settlement (NCDS). For more information on the NCDS program, please see “section 7.1.” Second, if you prefer not to submit your claim to NCDS, or if you are not satisfied with the result from NCDS, then you agree to resolve your dispute with FCA US LLC through binding arbitration as defined in “section 1.3.”

Three features of this language are problematic. First, in referencing the NCDS program, there is no mention of the program as non-binding. Therefore, a consumer has no way of immediately comparing the program options without referring to the more specific sections of the warranty manual. Second, the explanation of the binding arbitration program offered through the American Arbitration Association is placed ahead of NCDS’ non-binding arbitration program. Finally, FCA offers consumers both types of programs *in the same warranty manual*. The decision to offer two options simultaneously, while

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Availability of Written Warranty Terms, and Informal Dispute Settlement Mechanisms (Rules, Regulations, Statements and Interpretations Under Magnuson-Moss Warranty Act), 40 FED. REG. 60168, 60197 (Dec. 31, 1975).

presumably intended to enhance available remedies to consumers, is potentially violative of FTC Rule 703.5(j).<sup>24</sup> Although this FTC Rule speaks to “decisions of the Mechanism,” the 1975 Federal Register that accompanied the rule explained:

. . . there is nothing in the Rule which precludes the use of any other remedies by the parties following a Mechanism decision. The warrantor, the Mechanism, or any other group can offer a binding arbitration option to consumers who are dissatisfied with mechanism decisions or warrantor decision. However, reference within the written warranty to any binding, non-judicial remedy is prohibited by the Rule and the Act.<sup>25</sup>

In reviewing the “Voluntary Binding Arbitration Provision,” on page 5, the language makes clear that the program does not affect any rights the consumer may have to participate in any of FCA US LLC’s non-binding programs “or any voluntary arbitration programs sponsored by any state or government agency.” Although FCA characterizes this offering as “voluntary,” once a consumer agrees to arbitrate, unless they opt out of arbitration within 30 days of “taking delivery of the vehicle and signing the Arbitration Acknowledgement Form at the dealer,” they will be bound to arbitrate under the Consumer Arbitration Rules of the American Arbitration Association.

The information with respect to the NCDS non-binding arbitration program begins on page 23. The initial section satisfies the requirements of §§ 703.2(b)(1) and (2) – a clear and conspicuous notice of the availability of an informal dispute settlement mechanism and contact information. The next page of the manual explains the general arbitration process:

- Initiation requirements
- Settlement opportunities
- Oral hearing \*dealership or teleconference)
- Documents only hearing – reviewed by a panel
- Decision formalities, with clear notice that the decision is only binding on FCA if consumer accepts

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<sup>24</sup> Rule 703.5(j) states:

Decisions of the Mechanism shall not be legally binding on any person. However, the warrantor shall act in good faith, as provided in § 703.2(g) of this part. In any civil action arising out of a warranty obligation and relating to a matter considered by the Mechanism, any decision of the Mechanism shall be admissible in evidence, as provided in section 110(a)(3) of the Act, 15 U.S.C. 2310(a)(3).

<sup>25</sup> 40 FED. REG. at 60211 (1975). The legislative history sheds light on what Congress intended when it passed Mag-Moss, mainly that all informal dispute settlement mechanisms would be non-binding. *See* Report to Accompany H.R. 7917, H.R. Rep. No 93-1107, at 41 (1974) (report of the House Committee on Interstate and Foreign Commerce); *see also* S. Rep.. No. 93-151, at 3 (1973) (report of the Senate Committee on Commerce) (stating that “[I]f the consumer is not satisfied with the results obtained in any informal dispute settlement proceeding, the consumer can pursue his legal remedies in a court of competent jurisdiction . . .”).

- Time frame for case processing, *i.e.*, 40 days
- Notice that the dispute resolution process does not replace any other state or federal legal remedies available to the consumer.

Finally, a conspicuous notice appears following the above explanations to state that the consumer is free to pursue other legal remedies. “Note: This language is contradictory to the language in the *“Customer Care, Arbitration, & Lemon Law”* booklet.”

A separate and distinct document, independent of the electronically accessed warranty, is found in the glovebox materials. This booklet, titled, *“Customer Care, Arbitration, & Lemon Law Rights,”* describes the NCDS customer arbitration process under Step 3, beginning on page 2. The information which follows parallels what is found in the *“Warranty Information Booklet”* and satisfies the requirements of § 703.2(b). Notably, this information explains the requirements for filing a claim, length of process (*i.e.*, 40 days), hearing protocols, decision parameters, and a statement that if the consumer is not satisfied with the arbitrator’s decision, they may reject it, and pursue any legal remedies available under state or federal law.

On page 19 of the *“Customer Care, Arbitration, & Lemon Law Rights”* booklet is the NCDS claim form and arbitration agreement. The arbitration agreement at the end of the form is clear that by signing the agreement, the consumer is not bound by the decision of the arbitrator unless they accept it. Further, if they accept it, the manufacturer is bound to accept it and to perform the terms of the decision within the time frame prescribed. An additional caveat states that the decision is admissible in any subsequent legal proceeding concerning the dispute. The placement of this form raises a concern with respect to whether or not it is sufficiently conspicuous. A consumer would have to filter through multiple pages of non-applicable disclosures relative to states’ lemon laws before they would locate the claim form and accompanying disclaimers.

### ***Dealership and Service Center Engagement***

At present, FCA US LLC does not have a cohesive and intentional program in place to involve its dealerships in the information dissemination process. This perpetuates the problem observed by the prior auditor, Claverhouse & Associates, when they concluded, in the 2019 audit, “Our field investigator was informed by the service department that FCA US LLC has no third-party independent Mechanism and that customers with unresolved warranty disputes should simply contact the manufacturer’s customer assistance line (*i.e.*, 1-800-992-1997).”<sup>26</sup>

### **RESERVATIONS**

Although FCA has rectified one major compliance issue from the prior audit,<sup>27</sup> two significant concerns remain. The first is that while the NCDS program is mentioned in the new *“Warranty Information*

<sup>26</sup> Claverhouse & Associates, NCDS National Audit, pg. 15 (2019). The 2018 and 2017 audits found the same statutory discrepancies.

<sup>27</sup> The Bedikian NCDS FTC Audit (2020) observed that the *“Warranty Information Booklet”* did not mention the NCDS national program in place since 2015. This deficiency also was pointed out in the 2019 audit by Claverhouse & Associates. The 2021 updates address and cure this deficiency.

*Booklet*” (2021), it is not conspicuous. What is conspicuous is the offer of a binding arbitration program under the auspices of the American Arbitration Association. This program, while characterized as “voluntary” is misleading in that an acknowledgement form is executed by the consumer at point of sale. There is an opt-out feature that allows the consumer to extricate themselves from the arbitration agreement if they notify FCA in writing within 30 days of their signature. The reality is that for most consumers, non-conformity issues do not reveal themselves immediately. Thus, by the time a consumer is likely to realize what they have signed and the availability of an opt-out provision, it is too late.

The second major issue is the fact that FCA has placed information with respect to the NCDS non-binding program into the same warranty manual as the binding arbitration program. This is confusing to consumers, and as stated previously, it may run afoul of the dictates of FTC Rules 703.5(j). While auditor consensus on this issue is not 100% clear (the legislative language speaks in term of a mandatory binding arbitration program), elsewhere in the legislative history the word “mandatory” is not mentioned. The obvious fear of Congress was that consumers might be lured to a binding arbitration program based on the prominence of information in the warranty manual. Mag-Moss was never intended to feature a binding program.

**RESERVATION**

FCA US LLC should remove the language with respect to **binding** arbitration from its warranty materials. They may offer this option in a separate stand-alone set of documents.

**CONCLUSION**

FCA US LLC’s confusing consumer-facing materials represents a serious compliance issue, especially given the non-conspicuous nature of the NCDS non-binding arbitration program. In addition, their continued failure to include dealerships and service centers in providing information to consumers indicates they are not taking necessary reasonable steps to promote the arbitration program..

**For purposes of this audit, the auditor finds FCA US LLC to be in substantial compliance with the warrantor requirements of § 703.2, subject to the reservations noted above.**

**B. ACURA**

The following table captures, in abbreviated form, Acura’s compliance levels with §§ 703.2(b) and 703.2(c).

**ACURA - Summary of Compliance**

Statutory Citation	Compliance Findings
§ 703.2(b)(1)	Yes
§ 703.2(b)(2)	Yes
§ 703.2(b)(3)	Yes
§ 703.2(b)(4)	Yes
§ 703.2(c)(1)	Yes

§ 703.2(c)(2)	Yes
§ 703.2(c)(3)	Yes
§ 703.2(c)(4)	Yes
§ 703.2(c)(5)	Yes

**FINDINGS**

*Notice Requirement and Disclosures*

Acura makes customers aware of the dispute resolution mechanism by providing information that is located in the “Owner’s Manual” in the Introduction of the Table of Contents. It is prominently located as the first entry of the Table of Contents. The next page identifies the three steps customers must follow if they have warranty repair issues. Step 3 is clear, and includes, as required, the contact information for filing a claim with the NCDS. On the subsequent page of the “Owner’s Manual,” customers view a detailed explanation of the NCDS dispute resolution program, including the non-binding nature of the decision, eligibility requirements, ease of consumer access (free of charge), and a clear statement that rejection of a decision will not preclude judicial access.

Acura’s written materials communicating the availability of the NCDS dispute resolution program are excellent and comply with the federal disclosure requirement.

*Dealership and Service Engagement*

As with other certified manufacturers, Acura continues to be deficient in engaging dealerships. Complete compliance with Mag-Moss requires more than placing accurate and conspicuous information in warranty materials. As noted in the Bedikian NCDS FTC Audit (2020), one aspect of the independent audit included in Rule 703 was to ensure that adequate consumer awareness by sponsor manufacturers actually occurs. Although the Federal Trade Commission declined to mandate any form of national media campaign does not exonerate manufacturers from complying with the spirit of the legislation. In this respect, Acura must improve its communication protocols with its dealerships.

**CONCLUSION**

**Acura is in substantial compliance with the warrantor requirements of § 703.2.**

**C. HONDA**

The following table captures, in abbreviated form, Honda’s compliance levels with §§ 703.2(b) and 703.2(c).

**HONDA - Summary of Compliance**

Statutory Citation	Compliance Findings
§ 703.2(b)(1)	Yes
§ 703.2(b)(2)	Yes

§ 703.2(b)(3)	Yes
§ 703.2(b)(4)	Yes
§ 703.2(c)(1)	Yes
§ 703.2(c)(2)	Yes
§ 703.2(c)(3)	Yes
§ 703.2(c)(4)	Yes
§ 703.2(c)(5)	Yes

**FINDINGS**

*Notice Requirement and Disclosures*

NCDS information is located in the “*Owner’s Manual*” (revised in 2020) in the Introduction to the Table of Contents, where it is prominently located on page 2. On the pages that follow, Honda informs customers of the three required steps. Step 3 specifically references NCDS:

If you disagree with the decision reached by the staff of Honda Automotive Customer Service, you may request to have your case reviewed in an independent forum run by the National Center for Dispute Settlement (NCDS).

In the next paragraph, the manual describes the purpose of NCDS, which “is to resolve disputes between vehicle manufacturers and their customers” and affirms the independence of NCDS’ decision-makers.

A detailed explanation of the program follows on page 3. Of particular note are the following disclosures:

- Non-binding nature of decision
- 40-day resolution period (47 days if the consumer has not first contacted Honda)
- Availability of mediation before arbitration
- Type of information required to process a claim
- Non-mandatory prior resort

Honda’s written materials communicating the availability of the NCDS dispute resolution program are clear, accurate, and transparent and comply with all federal disclosure requirements.

*Dealer and Service Center Engagement*

On March 4, 2022, the auditor visited Westshore Honda, located at 2522 North Dale Mabry Highway, Tampa, Florida 33607. The service manager was aware that an informal dispute resolution process existed, but he had no knowledge of its specifics. This exchange confirms, consistent with prior audits, that service department personnel are not sufficiently informed about NCDS and the availability of a non-binding arbitration program. This information vacuum leaves consumers in a precarious position – accept the recourse the dealership offers or seek remedies within the traditional litigation framework. While this may not be representative of all Honda dealerships, it does demonstrate that



information is not being disseminated uniformly across the board, leaving dealerships to rely on past practices not consistent with the requirements of Magnuson-Moss,

**CONCLUSION**

**Honda is in substantial compliance with the warrantor requirements of § 703.2.**

**D. LEXUS**

The following table captures, in abbreviated form, Lexus’ compliance levels with §§ 703.2(b) and 703.2(c).

**LEXUS - Summary of Compliance**

<b>Statutory Citation</b>	<b>Compliance Findings</b>
§ 703.2(b)(1)	<b>Yes, subject to the noted reservations</b>
§ 703.2(b)(2)	<b>Yes</b>
§ 703.2(b)(3)	<b>Yes</b>
§ 703.2(b)(4)	<b>Yes</b>
§ 703.2(c)(1)	<b>Yes</b>
§ 703.2(c)(2)	<b>Yes</b>
§ 703.2(c)(3)	<b>Yes</b>
§ 703.2(c)(4)	<b>Yes</b>
§ 703.2(c)(5)	<b>Yes</b>

**FINDINGS**

*Notice Requirement and Disclosures*

Lexus informs customers of the availability of the NCDS arbitration program through a manual titled, “*Lexus Warranty and Services Guide*.” In addition, Lexus distributes to new car buyers a pamphlet titled, “*Lemon Law Guide*” which cross-references the required NCDS arbitration information including their toll-free number. The “*Lexus Warranty and Services Guide*” includes four pages of accurate information about the NCDS arbitration program, which explain the following aspects of the arbitration program:

- Eligible disputes
- Warranty exclusions
- Timing of arbitration
- Procedures for requesting arbitration
- Procedural protocols
- Types of decision
- Compliance requirements
- Limits to the scope of NCDS decisions
- Other recourse, including the availability of small claims court.

There is a detachable Customer Claim Form included in the "*Lemon Law Guide*."

One qualification is that the information described above is organized as part of a multi-step process. A customer with a warranty dispute, however, is not required to go through steps 1 and 2; they may go directly to step 3 and activate arbitration. By organizing the information in this manner, consumers may incorrectly conclude that they must follow the sequential steps before they can pursue NCDS arbitration.

### *Dealership and Service Center Engagement*

Particular attention is given to efforts that inform customers and ensure that they know about the existence of the AWAP at all times. The audit also evaluates the manufacturers' strategies to alert customers to the availability of the AWAP when the customer's disagreement rises to the level that the regulations consider a "dispute." The "notice" requirement seeks to ensure that the program, which is designed to provide appropriate and early redress to consumers, is actually usable by them. To make effective use of it, the consumer must first know of its existence.

On March 4, 2022, the auditor visited Lexus of Tampa Bay, 5852 North Dale Mabry, Tampa, Florida, 33614. When asked what happens when a customer brings in the vehicle for a warranty non-conformity, the service manager stated that the vehicle undergoes a diagnostic check. A repair attempt may follow. If the problem cannot be duplicated, the dealership will elevate to the next step of the Lexus trajectory. In the early months of the warranty, Lexus may buy back the vehicle. Lexus' decision to voluntarily propose this remedy is contingent upon the nature of the alleged non-conformity and the relationship with the customer. The service manager was not aware that a non-binding arbitration program is available to consumers who remain unsatisfied with dealership efforts at making repairs.

The auditor also re-visited Lexus of Toledo, located at 7505 W. Central Ave., Toledo, Ohio 43617 to assess the scope of dealership involvement and knowledge of the arbitration program. The auditor could obtain no information about whether an arbitration program exists and how consumers are notified about NCDS should their warranty dispute require escalation to the next step. The service manager implied that all claims are handled internally.

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

Federal Trade Commission commentary was promulgated as a fundamental part of the Rule, as is the case with all promulgated FTC Rules.”<sup>28</sup>

The primary issue with respect to Lexus’ and its relationship with dealers is that incorrect or insufficient information is being provided to consumers. Lexus’ response to the auditor in multiple visits are at odds with what the regulators intended with the strictures of Magnuson-Moss. The prior auditor’s summary on this point is re-captured here, given the prevalence of the problem.

“Overall, the Lexus findings were negative and suggest that Lexus review their training of service advisors as concerns warranty dispute mechanisms. Together with previous report findings, including the misrepresentation of one dealer, demonstrates the need for continuing oversight by regulators. While this finding is problematic, it does not, by itself, rise to the level of a risk to Lexus’ compliance status but it does constitute a significant regulatory problem.”<sup>29</sup>

**RESERVATIONS**

With the notable exception above, Lexus’ compliance level is unchanged from prior years. While Lexus in all other material respects meets its statutory obligations under Mag-Moss, its consistently inadequate results in making customers aware of the NCDS dispute resolution program at the time a warranty dispute arises is problematic. Moreover, its written materials suggest that consumers must exhaust prior steps before they can activate arbitration. Including a statement that the consumer may file for arbitration without completing the first set of steps would rectify this deficiency.

**CONCLUSION**

**Lexus is in substantial compliance with the warrantor requirements of § 703.2, subject to the reservations noted above.**

**E. MITSUBISHI**

The following table captures, in abbreviated form, Mitsubishi’s compliance levels with §§ 703.2(b) and 703.2(c).

**MITSUBISHI - Summary of Compliance**

<b>Statutory Citation</b>	<b>Compliance Findings</b>
§ 703.2(b)(1)	<b>Yes, subject to the noted reservations</b>
§ 703.2(b)(2)	<b>Yes</b>
§ 703.2(b)(3)	<b>Yes</b>
§ 703.2(b)(4)	<b>Yes</b>

<sup>28</sup> Claverhouse & Associates, NCDS National Audit, pg. 19 (2019).

<sup>29</sup> *Id.* at pg. 20.

§ 703.2(c)(1)	Yes
§ 703.2(c)(2)	Yes
§ 703.2(c)(3)	Yes
§ 703.2(c)(4)	Yes
§ 703.2(c)(5)	Yes

**FINDINGS**

*Notice Requirement and Disclosures*

Mitsubishi notifies its consumers of the existence of auto warranty program through its “Warranty Information Manual” on its website. The information is placed on page 5, with a bold reference: **NOTICE TO CONSUMERS – MMNA is committed to assuring your satisfaction with your Vehicle.** A three-step process is outlined, beginning with dealership contact and concluding with the informal dispute settlement program under NCDS. Step 3 is clear to point out that resort to the NCDS program is encouraged, not mandated. Contact information for NCDS is provided. The section which follows accurately describes the arbitration process and notes that consumers have the option of a single arbitrator or a board hearing, documents only. A separate notice informs consumers that they must use NCDS prior to seeking remedies through court. This notice also states that consumers must resort to the NCDS process if seeking remedies under state law which mandates prior resort.

*Dealership and Service Center Engagement*

The Bedikian NCDS FTC Audit (2020) and prior Claverhouse & Associates audits have focused on Mitsubishi’s deficiency in establishing a commitment by dealers to educate their employees in providing dispute resolution program information to customers making general inquiries about warranty-related disputes. In addressing the concern noted above, Mitsubishi initiated a program by which they announced to all dealerships the rollout of the Dispute Resolution Program. Included in this communication were three 11 x 7 posters and a cover letter. The cover letter explained the Dispute Resolution Process rollout and included a cautionary note that service managers display the posters in areas that are clearly visible to customers who bring in their vehicles for warranty repairs. This letter also included the following stringent message:

You may be aware that the FTC conducts a yearly audit of our Dispute Resolution Process through NCDS. The audit will be commencing in the next few weeks – and part of the audit includes “mystery shop” visits to retailers. Unfortunately, last year, the majority of dealerships visited by the auditor could not accurately describe the Dispute Resolution Process.”

Irrespective of this initiative and associated admonition, the auditor’s experience in this audit year was similar to previous audit experiences. The auditor again contacted Mitsubishi Motors located at 5900 Highland Road, Waterford Michigan 48327 and spoke with the service manager. He was not aware of the existence of the dispute resolution program nor did he have any knowledge of NCDS. When asked what he would do if a consumer complained about a warranty dispute, he said complaints or problems would be referred to Customer Relations. Although this dealership posts Mitsubishi posters and Carfax posters within the service center, there are no posters informing consumers of the availability of an

informal dispute resolution mechanism. Also, the service manager had no familiarity with the terms “mediation” or “arbitration.” This exchange represents a serious information vacuum that needs to be addressed holistically.

**RESERVATIONS**

Mitsubishi’s efforts while laudable also fall short of communicating with dealerships about the availability of the NCDS arbitration program and the required disclosures that should be made should a customer arrive at the dealership with a warranty issue. The FTC mandates that if a manufacturer participates in an informal dispute resolution process, the customer must be given information about the existence of alternative dispute remedies. It is not enough to include information in the owner’s manual or in glovebox materials. More consistent effort should be made by Mitsubishi to fulfill this statutory requirement.

**CONCLUSION**

**Mitsubishi is in substantial compliance with the warrantor requirements of § 703.2, subject to the reservations noted above.**

**F. TOYOTA**

The following table captures, in abbreviated form, Toyota’s compliance levels with §§ 703.2(b) and 703.2(c).

**TOYOTA - Summary of Compliance**

<b>Statutory Citation</b>	<b>Compliance Findings</b>
§ 703.2(b)(1)	<b>Yes, subject to the noted reservations</b>
§ 703.2(b)(2)	<b>Yes</b>
§ 703.2(b)(3)	<b>Yes</b>
§ 703.2(b)(4)	<b>Yes</b>
<b>§ 703.2(c)</b>	
§ 703.2(c)(1)	<b>Yes</b>
§ 703.2(c)(2)	<b>Yes</b>
§ 703.2(c)(3)	<b>Yes</b>
§ 703.2(c)(4)	<b>Yes</b>
§ 703.2(c)(5)	<b>Yes</b>

**FINDINGS**

*Notice Requirement and Disclosures*

To meet the notice requirement, Toyota publishes a 32-page booklet entitled, “*Owner’s Warranty Information,*” that explains in general the NCDS process, and how and where to file an application. The dissemination method is through the dealer as part of the initial information packet given to new customers at the point of sale. The brochure also is available to customers when they visit the dealership.

Toyota also publishes an 89-page booklet, entitled, "*Owner's Warranty Rights Notification*" booklet. This booklet is comprehensive and contains state-specific warranty-related regulatory information for all 50 states. On page 2, the booklet outlines the three steps to customer satisfaction, which includes a prominent Step 3 reference to **ARBITRATION**. California residents are directed to page 86. The notice is bolded and appears under the reference to **ARBITRATION**. Subsequent pages describe the NCDS informal dispute settlement program in detail, *i.e.*, types of eligible disputes, length of the arbitration process, and costs associated with initiating arbitration (free to the consumer).

The booklet was last revised in January 2021. As with the "*Owner's Warranty Information*" booklet, it is primarily distributed by the dealership sales personnel at the point of sale.

### *Dealership and Service Center Engagement*

On March 4, 2022, the auditor visited Stadium Toyota, located at 5088 North Dale Mabry Highway, Tampa, Florida 33614. Although the service lane manager had some familiarity with mediation, he was not aware of NCDS or the availability of the non-binding arbitration program. When asked how consumer repairs are handled, the auditor was informed that all repair attempts are subject to a diagnostic check to determine if the problem can be duplicated. Repeated customer complaints are directed to an 800 number. The service lane manager did not know if, once the call center was engaged, whether the consumer would be directed to the NCDS dispute resolution program. The auditor toured the service center and did not notice any signage concerning NCDS or how Toyota handles disputes, repair requests or complaints.

The information dissemination methods employed by Toyota nationally establish that many Toyota customers are being made aware of the program. For these customers, at least, access is obvious. Moreover, the national statistics show that many customers' cases were processed through the NCDS program in 2021, and these cases were processed in accordance with the statutory requirements.

On the other hand, the auditor dealer assessments continue to confirm a general lack of knowledge on the part of many dealer service department employees about the NCDS and, in some cases, ignorance of its very existence. This includes both service managers and sales employees.

As noted in prior audits, the entity in the best position to communicate with customers, in the warranty repair context, is the servicing dealer. Unfortunately, dealers who wish to ignore or minimize their role in facilitating "fair and expeditious" warranty dispute resolution may do so with regulatory impunity, notwithstanding the efforts of Lexus and Toyota.

### **RESERVATIONS**

Toyota remains deficient in including dealerships and service centers in the information dissemination process. Dealer inspections during this audit period establish that dealerships, including front line personnel, do not know of the existence of an informal dispute resolution process. Failure to be informed undermines the regulatory intent behind Mag-Moss and prevents consumers, for whom the legislation was targeted, from availing themselves of remedies that could promptly cure alleged vehicle non-conformities.

### **CONCLUSION**

Toyota is in substantial compliance with the warrantor requirements of § 703.2, subject to the reservations noted above.

**G. TESLA**

The following table captures, in abbreviated form, Tesla’s compliance levels with §§ 703.2(b) and 703.2(c).

**TESLA - Summary of Compliance**

Statutory Citation	Compliance Findings
§ 703.2(b)(1)	Yes, subject to the noted reservations
§ 703.2(b)(2)	Yes
§ 703.2(b)(3)	Yes
§ 703.2(b)(4)	Yes
§ 703.2(c)(1)	Yes
§ 703.2(c)(2)	Yes
§ 703.2(c)(3)	Yes
§ 703.2(c)(4)	Yes
§ 703.2(c)(5)	Yes

**FINDINGS**

*Notice Requirement and Disclosures*

Tesla, which joined the NCDS network of manufacturers in 2013, provides information to their customers through their “*Owner’s Warranty Manual, New Vehicle Limited Warranty for Model S, Model X, Model 3, and Model Y.*” The document was last updated on March 22, 2021.

On page 14, for disputes originating in the United States, Tesla states:

Any dispute, claim, or controversy between you and Tesla arising out of, or related, this new Vehicle Limited Warranty is subject to binding arbitration on an individual basis in accordance with the terms of the Agreement to Arbitrate in your Vehicle Order Agreement and reproduced in the section Warranty Enforcement Laws and Dispute Resolution in this New Vehicle Limited Warranty.

Further down on the same page, Tesla explains direct redress from the warrantor, qualifying such recourse “[t]o the fullest extent allowed by the law of your jurisdiction . . . .” This statement is accurate as stated. Federal law does not require consumers to present their concerns to the manufacturer before arbitration. However, a “final repair attempt” may be mandated by state lemon laws, in which case FTC Rule 703.2(e) may be triggered.<sup>30</sup>

<sup>30</sup> Rule 703.2(e) permits an extension the 40-day time frame “where the consumer has made no attempt to seek redress directly from the warrantor.” For purposes of Mag-Moss relief however, FTC Rule 703.2(d)

In the next paragraph, Tesla describes its dispute resolution program in two steps. The first is an optional step through NCDS. The second is binding arbitration or small claims court, whichever the consumer elects. The non-binding dispute resolution process through NCDS is described in detail and is highlighted for ease of reference. Eligibility requirements are also highlighted, as is a specific time frame for filing for arbitration, *i.e.*, within 60 days (or 6 months in certain jurisdictions) of the expiration of the applicable warranty period, provided written notice has been furnished to Tesla of the alleged defect *during* the warranty period. Class action arbitrations are explicitly prohibited.

Tesla also makes the following mandated disclosures:

- Availability of oral hearing
- Admissibility of evidence
- Settlement option throughout the course of the entire process
- Non-binding nature of decision
- Compliance requirement of 30 days after notice of acceptance of decision
- Available remedies
- Excluded remedies

One feature of the disclosures, however, is highly problematic. It appears in the final sentence of the section dealing with non-binding arbitration:

If you are not satisfied with the arbitrator’s decision or Tesla’s compliance, you may pursue your claim in binding arbitration on an individual basis in accordance with the Agreement to Binding Arbitration provided below.

The Agreement to Binding Arbitration follows on page 16. The preamble to the Agreement is misleading. It states, “Under that Agreement [referring to the Agreement to Arbitrate in the Vehicle Order Agreement], you agreed to resolve disputes with Tesla by arbitration rather than by litigation in court.” Tesla goes on to indicate that the consumer may circumvent NCDS entirely and proceed to binding arbitration or small claims court. Finally, the actual Arbitration Agreement gives the consumer an opportunity to “opt-out” of arbitration within 30 days after signing the Agreement. This opt-out must be sent to Tesla in writing.

The combination of a two-step non-binding and binding arbitration process, while unique to Tesla, is confusing, conflicting, and potentially violative of FTC Rule 703.5(j).<sup>31</sup>

### *Dealership and Service Center Engagement*

Due to fiscal restraints and the continuation of the pandemic, the auditor neither visited nor contacted a Tesla dealership during this audit year.

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explicitly precludes requiring consumers to seek redress from the warrantor first before initiating arbitration.

<sup>31</sup> 40 FED. REG. at 60211 (1975). *See also* FN 25 for explanation of legislative history supporting auditor’s conclusion.



## RESERVATION

Tesla should remove the language with respect to **binding** arbitration from its warranty materials

## CONCLUSION

Tesla is in substantial compliance with the warrantor requirements of § 703.2, subject to the reservation noted above.

## Section IV

### Mechanism Operations and Compliance Levels

This chapter deals specifically with the statutory obligations imposed on the National Center for Dispute Settlement. The primary federal regulations and interpretations<sup>32</sup>, which parallel state frameworks under lemon laws and are explicitly set forth in 16 C.F.R. § 703, require that all administrative processes be fair, thorough, and efficient. Moreover, the rules mandate certain recordkeeping functions and an annual audit that includes consumer assessments. Thus, this section focuses primarily on § 703.3 (“Mechanism Organization”), § 703.4 (“Qualification of Members,” the arbitrators), § 703.5 (“Operation of the Mechanism”), § 703.6 (“Recordkeeping”), § 703.7 (“Audits”), and § 703.8 (“Openness of Records and Proceedings”).

Based on information in this section, the auditor finds that NCDS is in substantial compliance of its statutory mandate. The auditor’s conclusions are drawn from a review of its published rules (national and California-certified), the Arbitrator Training Manual, Arbitrator Bulletins, Frequently Asked Questions (“FA@s”), and other materials on the NCDS website, discussions with staff, a randomly selected review of 100 cases, and participation as observer in 15 hearings.

#### A. STATUTORY REQUIREMENTS OF THE MECHANISM ORGANIZATION – § 703.3

Rule 703.3 establishes the funding and staffing protocols “to ensure fair and expeditious resolution of all disputes.”<sup>33</sup> Access to the Mechanism is without charge, an attempt to motivate manufacturers to incorporate an informal dispute settlement option in their warranties,<sup>34</sup> and to encourage consumers to avail themselves of the option, if available. As written, the Rule requires the

<sup>32</sup> See <https://www.govinfo.gov/content/pkg/FR-2015-07-20/pdf/2015-14065.pdf>.

Final Action Concerning Review of Interpretations of Magnuson-Moss Warranty Act; Rule Governing Disclosure of Written Consumer Product Warranty Terms and Conditions; Rule Governing Pre-Sale Availability of Written Warranty Terms; Rule Governing Informal Dispute Settlement Procedures; and Guides for the Advertising of Warranties and Guarantees. 80 FED. REG. 42710 (July 15, 2015).

<sup>33</sup> Rule 703.3(a) states:

The Mechanism shall be funded and competently staffed at a level sufficient to ensure fair and expeditious resolution of all disputes and shall not charge consumers any fee for use of the Mechanism.

<sup>34</sup> The rationale behind this provision is explained in the Senate Report as follows: . . . [T]he consumer should be notified of his ability to seek redress through . . . any informal dispute settlement mechanism that the warrantor may offer. Furthermore, if the warrantor is required to inform the consumer of his rights in the event the warrantor fails to perform, the Committee believes that the warrantor will have greater incentive to perform as promised.” Disclosure of Written Consumer Product Warranty Terms and Conditions, Pre-Sale Availability of Written Warranty Terms, and Informal Dispute Settlement Mechanisms (Rules, Regulations, Statements and Interpretations Under Magnuson-Moss Warranty Act), 40 FED. REG. 60168, 60176 (Dec. 31, 1975).

warrantors to initially fund the Mechanism at a level sufficient to permit the Mechanism to execute its statutory obligations. This Rule recognizes the malleability of funding. For example, if a Mechanism were to incorporate a mediation procedure in its informal dispute resolution process, the inclusion of this step is likely to increase its budget. The language is intended to be flexible enough to permit the Mechanism to carry out its prescribed functions, per Magnuson-Moss.

Rule 703.3<sup>35</sup> also requires that the warrantor and the Mechanism remain sufficiently insulated from each other. NCDS meets this statutory obligation in several different ways. Manufacturers do not have direct access to case administrators since they confer regularly with manufacturers' representatives during the administrative process. Regulatory and compliance issues are handled separately by Ms. Debi Lech, the Regulatory and Compliance Manager, who is segregated from the administrative process.

The auditor is without sufficient knowledge to be able to comment on whether personnel decisions are based on merit. From observation, however, personnel at NCDS are hired by the CEO of the organization, using objective hiring and promotion criteria NCDS has established over the years. Manufacturers do not have any input into this process.

Finally, Rule 703.3 imposes on the Mechanism the obligation to establish "any other reasonable requirements necessary to ensure that the members and staff act fairly and expeditiously in each dispute."<sup>36</sup> This mandate is carried out by NCDS, in part, through its Arbitrator's Manual, which sets forth the fairness standards by which arbitrators are expected to comply. Page 1 of the Manual states:

Manufacturers have selected NCDS to administer their warranty dispute settlement programs because of our experience and reputation for quality and service in administering an informal dispute resolution program. NCDS is obligated to maintain substantial compliance with all of the requirements of the process as set forth in the Magnuson-Moss Warranty Act. Accordingly, NCDS relies on its Arbitrators to remain unbiased and impartial at all times before, during and after the process. In line with this duty, you must contact your Case Administrator IMMEDIATELY when circumstances impair your ability to operate as an impartial third-party.

Both arbitrators and NCDS staff are also committed to ensuring that all disputes are resolved within the 40-day time frame established by Magnuson-Moss. (*See* pg. 31 of the audit, which confirms that the average number of days from case initiation to case closure is 35). Staff must initiate a case within

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<sup>35</sup> Rule 703.3(b) states:

The warrantor and the sponsor of the Mechanism (if other than the warrantor) shall take all steps necessary to ensure that the Mechanism, and its members and staff, are sufficiently insulated from the warrantor and the sponsor, so that the decisions of the members and the performance of the staff are not influenced by either the warrantor or the sponsor. Necessary steps shall include, at a minimum, committing funds in advance, basing personnel decisions solely on merit, and not assigning conflicting warrantor or sponsor duties to Mechanism staff persons.

<sup>36</sup> Rule 703.3(c).

48 hours of the claim being filed, provided it meets eligibility requirements. Arbitrators are appointed within a day or so, or on the same date as initiation if the consumer has expressed preference for an oral hearing or a board hearing, which is documents only.

Staff do not interface with arbitrators, except at arbitrator training programs. Required insulation exists.

## FINDINGS

Within the parameters of a Magnuson-Moss audit, the auditor finds that NCDS personnel is dedicated to ensuring a proper relationship between NCDS, the warrantor, and its members, thus ensuring a fair process – both in perception and in reality.

## CONCLUSION

**The Mechanism is in substantial compliance with § 703.3.**

### B. STATUTORY REQUIREMENTS OF MEMBERS' QUALIFICATIONS – § 703.4

Rule 703.4 focuses on “members” as defined by Rule 703.1(f),<sup>37</sup> nomenclature unique to the informal dispute resolution program. Rule 703.4<sup>38</sup> is clear to establish that arbitrators cannot have “direct involvement in the manufacture, distribution or sale or service of any product.” This insulation is critical in preserving arbitrator impartiality. To this end, during all training programs observed by the auditor during 2021, the arbitrators were cautioned to disclose ANY connection to the manufacturer, included cars driven by them or someone in their immediate family and whether they have arbitrated before with that particular manufacturer’s representative. The disclosures are intended to enhance the confidence level that participants have in the arbitrator and, ultimately, in the decision-making process.

Hearings conducted by a board, typically a three-person panel, also have rigid and similarly structured requirements for service and disclosure. As with a single arbitrator, NCDS arbitrators are duty bound to make disclosures at the earliest possible point in the arbitration process, generally at the time the appointment is confirmed. A random review of files indicates that to the extent this issue surfaces, arbitrators are in full compliance.

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<sup>37</sup> Rule 703.1(f) states:

Members mean the person or persons within a Mechanism actually deciding disputes.

<sup>38</sup> This rule specifies the level of insulation required for members (*i.e.*, arbitrators to serve) and essentially precludes a member from serving if they are a party to the dispute, an employee or agent of a party, “a person who is or may become a party in any legal action, including class actions.” However, a member is not disqualified simply because they own an investment interest in the party. Of course, all arbitrators are admonished to disclose this information to the parties at the hearing, if not before, to ensure full transparency. If a party objects to the service of the arbitrator, the arbitrator is removed by NCDS and a new arbitrator is appointed within 48 hours.

The requirement of early and specific disclosure of disqualifying circumstances is further circumscribed in Rule 4 of the “*Rules & Procedures for the Informal Non-Binding Resolution of Automobile Warranty Disputes.*” This Rule states:

**QUALIFICATIONS AND IMPARTIALITY OF ARBITRATOR(S)**

All persons on the NCDS National Panel are deemed competent to hear and decide automobile warranty disputes. An arbitrator selected to serve under these Rules must, at the time of appointment or as soon afterwards as it becomes known, disclose to NCDS any information likely to affect impartiality or create an appearance of partiality or bias. Such information includes past and present financial, business, personal or professional relationships with any of the parties, their representatives or witnesses, or employees of NCDS or the vehicle manufacturer. Upon receipt of such information from the arbitrator or any other source, NCDS shall decide whether the arbitrator should be disqualified. If the disclosure of information occurs at the oral hearing, and either party objects, the arbitrator shall be disqualified and a new arbitrator shall be appointed promptly by NCDS. Any determination on arbitrator disqualification shall be conclusive.

Thus, arbitrators are required to conduct a preliminary investigation into whether conflicts – business, professional, financial, personal – exist. Arbitrators must disclose whether they have previously arbitrated cases involving the manufacturer or its representative. If a disclosure is made, and it is waived by all parties, the arbitrator may proceed to conduct the hearing.

If the disclosure is not waived, NCDS must determine whether the arbitrator should be disqualified. In making recusal determinations, NCDS staff assess whether there is a direct and substantial relationship which to a reasonable person might give rise to an impression of partiality. Any doubts concerning an arbitrator’s ability to remain neutral is resolved in favor of removal. This outcome assures the integrity of the process and the ability of NCDS to comply with federal and state regulations.

Other rules which reflect NCDS’ compliance with notions of fairness and impartiality include Rule 9 (Arbitration in the Absence of a Party)<sup>39</sup> and Rule 12 (Communication with the Arbitrator).<sup>40</sup>

The Arbitrator’s Training Manual includes an entire section dedicated to explaining the interface between NCDS and the auto warranty arbitrator, and the continued commitment to neutrality. On page 1, the Manual states, “The relationship between the Manufacturer and NCDS is an “arms-length” contractual relationship. In order to provide truly neutral dispute settlement services, it is important that NCDS, and you, the third party neutral, have no interest in the outcome of any case.”

Additional caveats are found in the Arbitrator’s Manual. For example, the Manual states that arbitrators should avoid being in a room with one party to avoid the possibility of an extemporaneous exchange, however innocuous. With respect to test drives (suspended since the beginning of the 2020 pandemic), if a car has two seats, and the consumer and representative are both in attendance, the

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<sup>39</sup> Rule 9 permits *ex-parte* hearings only after assurance of proper notice to all parties.

<sup>40</sup> Rule 12 prohibits communication with the arbitrator except at the oral hearing.

arbitrator will go on the test drive after the consumer takes the manufacturer’s representative on the initial drive. This is to prevent the consumer from refusing to take the car on a second test drive, erroneously concluding that the arbitrator would already have been privy to the evidence obtained from the drive. Under NCDS protocols, an arbitrator cannot drive the vehicle as doing so would create evidence, thus casting a cloud on the arbitrator’s impartiality.

Finally, § 703.4(c) requires that members “be persons interested in the fair and expeditious settlement of consumer disputes.” To this end, it is relevant that virtually all disputes processed in 2021 were concluded well within the 40-day time frame required by Magnuson-Moss.

## FINDINGS

Arbitrators operate at the highest levels of fairness and impartiality. Rules are in place (reinforced by information in the Arbitrator’s Training Manual) that assures no arbitrator will serve without making an investigation of disqualifying events or circumstances and disclosing such information when found. Adequate protocols also exist to insulate arbitrators from warrantors and staff.

## CONCLUSION

**The Mechanism is in substantial compliance with § 703.4.**

### C. STATUTORY REQUIREMENTS OF THE MECHANISM’S OPERATIONS – § 703.5

Rule 703.5 includes a number of operational dimensions, aimed at protecting the 40-day time frame while not jeopardizing the quality of the case administration process. Under this Rule, the Mechanism must establish written protocols for the submission and processing of disputes, which includes items specified in paragraphs (b) through (j) of the section.<sup>41</sup> All of this information is available to consumers through booklets on the NCDS website. They also are sent to consumers if requested directly by contact with an NCDS representative.

Rule 703.5(b) requires the Mechanism, once notified of a dispute, to immediately inform both the warrantor and the consumer that it has received the dispute. Before NCDS initiates the claim, it will check for eligibility.<sup>42</sup> A dedicated point person at NCDS handles all eligibility issues.

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<sup>41</sup> Items include the “investigative role” of NCDS, notice of the 40-day timeline for case processing and disclosure of the decision, oral presentation protocols and logistics, including *ex-parte* hearings, settlement obligations, prior resort, and the non-binding nature of the arbitral determination unless accepted by the consumer.

<sup>42</sup> Related to the question of eligibility is whether a leased vehicle is covered under the terms of Magnuson-Moss. In 2015, the Federal Trade Commission declined to issue an interpretation of the application of Mag-Moss to leases specifically, stating that the issue was sufficiently clear. It opined: “The majority of courts have found that a lessee meets the definition of “consumers” in the MMWA because warranty rights are transferred to lessees, or the lessees are permitted to enforce the contract under state law, among other reasons.” *See e.g., Am. Honda Motor Co. v. Cerasani*, 955 So.2d 543 (Fla. 2007)(holding that a long term lessee who is entitled to enforce a warranty under Florida’s Lemon Law also has a claim under the Magnuson-Moss Warranty Act). Final Action Concerning Review of Interpretations of

### *Filing of the Claim*

Cases are initiated in the NCDS process by the filing of a claim form. The claim form is accessed electronically, or it is found in the Owner's Manual of the participating manufacturer.<sup>43</sup>

Step one of the initiation process occurs when a consumer submits a claim form to NCDS under the terms of the Manufacturer's New Vehicle Warranty. NCDS uses an e-file system that is easily accessed by the consumer, if they prefer to file a claim electronically. Consumers can also mail, fax, or email their claim. At the time of filing, the dispute must be under warranty. Once eligibility is determined, the case is initiated within 24 to 48 hours.

The claim is then assigned to an arbitrator, who is chosen from the National Panel. This selection is random, based on a rotation and also consideration of geographic limitations. Every effort is made to appoint an arbitrator within 25 miles or less of the consumer's location. The appointment process is handled entirely by NCDS. The parties, unlike traditional arbitration, do not have input into this process. An Assignment Notification is sent out to the parties, and the parties are informed which case administrator has been assigned to manage the case. Arbitrators may be able to withdraw from a case for good cause and the decision for recusal, if any, is to be made by NCDS solely, after consulting with the parties and seeking written submissions.

As part of the Mechanism's investigatory function,<sup>44</sup> the case administrator collects all evidence that is received, including the Manufacturer's Response Form and any other documents. This evidence is subsequently forwarded to the arbitrator before the scheduled hearing.

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Magnuson-Moss Warranty Act; Rule Governing Disclosure of Written Consumer Product Warranty Terms and Conditions; Rule Governing Pre-Sale Availability of Written Warranty Terms; Rule Governing Informal Dispute Settlement Procedures; and Guides for the Advertising of Warranties and Guarantees. 80 FED. REG. 42710, 42715 (July 15, 2015).

<sup>43</sup> For example, FCA US LLC includes this form in the middle of their "*Customer Care, Arbitration & Lemon Law Rights*" booklet which is found in the glovebox of their vehicles.

<sup>44</sup> Rule 703.5(c) states:

The Mechanism shall investigate, gather and organize all information necessary for a fair and expeditious decision in each dispute. When any evidence gathered by or submitted to the Mechanism raises issues relating to the number of repair attempts, the length of repair periods, the possibility of unreasonable use of the product, or any other issues relevant in light of Title I of the Act (or rules thereunder), including issues relating to consequential damages, or any other remedy under the Act (or rules thereunder), the Mechanism shall investigate these issues. When information which will or may be used in the decision, submitted by one party, or a consultant under § 703.4(b) of this part, or any other source tends to contradict facts submitted by the other party, the Mechanism shall clearly, accurately, and completely disclose to both parties the contradictory information (and its source) and shall provide both parties an opportunity to explain or rebut the information and to submit additional materials. The Mechanism shall not require any information not reasonably necessary to decide the dispute.

### *Case Processing – Settlements Through “Mediation” and Hearings*

Once the case is initiated, which means that the warrantor has received notice pursuant to § 703.5(c), the parties receive a notice of hearing within ten days of the hearing date. If a party does not receive such a notice, the hearing date is rescheduled. During the pendency of the hearing, the manufacturer can contact the consumer directly and attempt to resolve the dispute. If a formal offer of settlement is made, the NCDS administrator will discuss the offer. Should either party prefer a more traditional form of mediation, with an outside neutral, NCDS will accommodate, without disturbing the arbitration hearing date.

After hearings commence, the arbitrator is foreclosed from serving as a mediator. If a party makes a settlement overture during the hearing, the arbitrator will suspend the proceedings for a short period of time to facilitate dialogue between the parties. This protocol is in place to ensure that arbitrators are not influenced by settlement offers which might be rejected. If the case settles, the manufacturer will deal directly with the consumer and NCDS will be immediately contacted and notified of the settlement. If the case does not settle, the arbitrator will move forward with the case, hear the evidence, and decide the matter on the merits.

### *Investigations*

NCDS rules permit the arbitrator, before making a decision to both inspect the car and also to obtain the use of technical experts.<sup>45</sup> While inspections and test drives are fairly common, the use of technical experts is not. In the 100 randomly-selected case files reviewed, not a single arbitrator or board decision identified the use of a technical expert. This finding is consistent with prior audit reports, where the auditor determined that only a limited number of requests occur by arbitrators for technical information.

Independent inspections are conducted generally to confirm or deny one of the party’s representations or to resolve conflicts in testimony between the parties. The issue with independent inspections, while permitted under Mag-Moss, is that arbitrators may rely on them as a basis for making their decisions. As noted in the Claverhouse & Associates 2019 audit, “many arbitrators do not understand the real purpose of these inspections, inappropriately viewing them as a means by which to diagnose the vehicle’s alleged mechanical problem rather than as a means to resolve conflicts of fact between the parties. This orientation suggests that arbitrators may inappropriately become involved in efforts to achieve customer satisfaction rather than seeing themselves as arbiters of disputes.”<sup>46</sup>

### *Case Determinations*

In the absence of case settlement, § 703.5(d) requires arbitrators to render a fair decision, which takes into account all evidence submitted at the oral hearing. This provision applies even if a consumer waives oral hearing and elects instead a board determination. A decision rendered by the arbitrator or

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<sup>45</sup> See Rule 11, “Rules & Procedures for the Informal Non-Binding Resolution of Automobile Warranty Disputes” and Rule 13, “California Dispute Settlement Program Hearing Process Rules.” Also, see § 703.5(c), **Mechanism’s Duty to Aid in Investigation.**

<sup>46</sup> Claverhouse & Associates, NCDS National Audit, pg. 29 (2019).



board must include any remedies available under the statute – specifically, repair, replacement, refund, reimbursement for expenses, and compensation for damage. A time frame for performance also must be included. Based on random case reviews, arbitrators fully complied.

Rule 703.5(d) also imposes on the Mechanism the obligation, unless cause is established,<sup>47</sup> to process cases as expeditiously as possible but within 40 days of notification of the dispute. All disputes in 2021 were handled and processed to closure well within the 40-day time frame. Listed below is a breakdown by manufacturer.

**Average Days to Close – by Participating Manufacturer  
January 1, 2021 – December 31, 2021**

<b>Manufacturer</b>	<b>Days to Close</b>
Lexus	35
Toyota Motor Sales, USA, Inc.	35
Mitsubishi Motors North American	34
FCA US LLC	35
Honda	35
Acura	34
Tesla	35
<b>Average Days to Close/NCDS Totals</b>	<b>35</b>

*Compliance with Arbitral Determinations*

FTC Rule 703.6(h) requires that the Mechanism ascertain from the consumer within ten working days of the date for performance whether in fact performance has occurred. The Mechanism has a protocol in place for making this assessment. If an award includes a remedy, the consumer is asked to fill out a form that confirms performance within the prescribed time frame. Often, the letter is not returned. Only a handful of case files the auditor reviewed had signed forms in the file. This approach suggests that compliance with respect to performance is being assumed without proper notification to the consumer.

**RECOMMENDATION**

The letter from NCDS should be clear to indicate that barring a response from the consumer, NCDS will assume that performance has been completed timely and to the satisfaction of the consumer.

**FINDINGS**

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<sup>47</sup> Under § 703.5 of Magnuson-Moss, the Mechanism may delay performance if the delay is due solely to the failure of a consumer to provide the required information during the intake process, or if the consumer has not made an attempt to seek redress directly from the warrantor, assuming prior resort.

NCDS administration overall is excellent. Case diary notes track the development of each case. Form letters are used to process most cases, thus ensuring predictability and consistency in the case administration process.

## CONCLUSION

**The Mechanism is in substantial compliance with § 703.5.**

### D. STATUTORY REQUIREMENTS OF RECORDKEEPING – § 703.6

Rule 703.6 requires the Mechanism to maintain certain records<sup>48</sup> and, upon request, to turn the records over to the auditor during the audit period.

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<sup>48</sup> Rule 703.6 (a)(1)-(12) states:

(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.
- (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) 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;
- (9) A copy of the disclosure to the parties of the decision;
- (10) A statement of the warrantor's intended actions(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

## FINDINGS

The information required in subsections 1 through 4 is maintained as mandated by Magnuson-Moss. Subsections 5 and 6 are more problematic. Some files contain other forms of communications submitted by the parties. The case diary form only tracks information in the file. Thus, validation of all information necessitated by subsections 5 and 6 of the Rule is not practical without having some objective measure against which to compare the contents of the file. Even in the theoretical sense, such a review assumes customers keep exact files of all correspondence, notes, exhibits, and phone calls pertaining to their cases. To validate this dimension, the audit would entail retrieving all such files as a first step, a function beyond the scope of this audit.

Information set forth in subsections 7 through 10 is also appropriately maintained. However, the information in subsections 11 and 12 were not audited for accuracy and completeness because of the impracticability of such a review. The examination of the case file contents revealed few instances of this type of information in the file, yet nothing indicated that such information was missing.

Under Rule 703.6,<sup>49</sup> each of the participating manufacturers must submit a semi-annual index of their disputes grouped under brand name and grouped under product model as required. Indices are complete and consistent with all requirements. Collectively, the arbitration program's statistics identify 2,439 disputes filed in 2021. Of these, 1,688 cases were eligible for AWAP review, 177 were withdrawn after filing, and 574 cases were determined by the AWAP to be out-of-jurisdiction.<sup>50</sup> Of the in-jurisdiction closed cases, NCDS reports that 1513 were arbitrated and 175 were mediated.<sup>51</sup> There were 1,193 arbitrated decisions which were reported as "adverse to the consumer" per § 703.6(e), which represents 79% of all arbitrated cases. While on its face this may appear to be a high percentage, it is important to note that under Magnuson-Moss, the threshold for recovery is a *substantial* non-conformity with use, value, or safety. Two points are noteworthy. First, consumers may and often do employ mediation, which favors a win-win resolution for the parties. In meetings with regulators and service center directors, it is clear that the use of internal mediation, which may obviate the need to file a formal claim with NCDS, is on the rise. Second, the informal dispute settlement mechanism is intended to be part of a panoply of options, not exclusive. Consumers dissatisfied with the arbitral outcome may pursue other state and federal remedies outside of Magnuson-Moss.

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

<sup>49</sup> Rule 703.6(b) states:

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

<sup>50</sup> Typically, a case which is deemed ineligible is due to the consumer exceeding the terms of the warranty.

<sup>51</sup> This number represents 10.4% of all in jurisdiction and closed cases for 2021, a significantly higher number of cases with mediated outcomes when compared to the number of cases mediated in the prior year (96 cases out of 2,864 eligible cases). This increase may be attributed to more concerted efforts by NCDS administrators to promote the use of mediation, particularly since empirical data suggest that mediated outcomes are preferable to imposed decisions.

Pursuant to Rule 703.6,<sup>52</sup> NCDS also must document disputes in which the warrantor has refused to abide by a decision. As a matter of general corporate policy, all participating manufacturers agree to comply with arbitration decisions at the time they agree to offer the informal dispute settlement program. This information is supplied as part of NCDS' Annual FTC § 703.6(c)(1) and (2) Report.

Magnuson-Moss imposes a tight time frame for case processing. As such, NCDS is mandated to ensure that all complaints are processed and concluded within 40-days.<sup>53</sup> According to the statistical index reports, as of December 2021, all cases were processed within the 40-day time frame required by statute. NCDS typically provides a comprehensive report of all individual cases delayed beyond 40 days during the period of the audit. Such reports include the customer's name, case file number, and the number of days the case has been in process on the date the report was generated.

Although a review of the report indicates compliance with this statutory requirement, the auditor did not test its accuracy. The requirement is for NCDS to maintain an index, which it does, to show whether any cases filed during the calendar year exceed the 40-day processing time frame. All reports under this section are available for review by the regulatory agencies.

Finally, Magnuson-Moss requires that records be maintained for a period of four years, and that such records be reviewed as an annual feature of the audit.<sup>54</sup> All information listed in the 12 subsections detailed in the previous section is maintained for the required four years. The auditor inspected a collection of case files for each region, and also inspected and evaluated a random selection of case files from the four-year period for completeness. All files were appropriately maintained and readily available for audit.

## CONCLUSION

### **The Mechanism is in substantial compliance with § 703.6.**

<sup>52</sup> Rule 703.6(c) states:

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 of each warrantor's disputes grouped under brand name and subgrouped under product model.
- (2) All disputes in which the warrantor has refused to abide by a mechanism decision.

<sup>53</sup> Rule 703.6(d) states:

The mechanism shall maintain an index as will show all disputes delayed beyond 40 days.

<sup>54</sup> Rule 703.6(f) states:

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

## E. STATUTORY REQUIREMENT OF CONDUCTING AN ANNUAL AUDIT – § 703.7

Rule 703.7 mandates a yearly audit.<sup>55</sup> The nature of the audit is explained in detail in the rule. It includes an evaluation of the warrantors' efforts to make consumers aware of the mechanism's existence, a review of the indices maintained pursuant to § 703.6(b), (c), and (d), and an analysis of a random sample of disputes administered by the Mechanism to determine the adequacy of their investigation efforts, mediation usage, and follow-up. In terms of prescribed methodology, "paragraph (b)(3)(i) permits primary emphasis to be placed on analysis by the auditor of the experiences of a sample of consumers who have utilized the Mechanism."<sup>56</sup> This analysis includes oral or written contact with consumers who filed disputes.

### FINDINGS

This is the second audit conducted by Bedikian but follows 17 prior annual audits conducted by Claverhouse & Associates in which the AWAP informal dispute settlement program was evaluated for compliance with Magnuson-Moss requirements. The auditor reviewed the last several prior audits to

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<sup>55</sup> Rule 703.7 states:

- (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."
- (b) Each audit provided for in paragraph (a) of this section shall include at a minimum the following:
  - (1) Evaluation of warrantors' efforts to make consumers aware of the Mechanism's existence as required in § 703.2(d) of this part;
  - (2) Review of the indexes maintained pursuant to § 703.6(b), (c), and (d) of this part; and,
  - (3) Analysis of a random sample 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.)

<sup>56</sup> Disclosure of Written Consumer Product Warranty Terms and Conditions, Pre-Sale Availability of Written Warranty Terms, and Informal Dispute Settlement Mechanisms (Rules, Regulations, Statements and Interpretations Under Magnuson-Moss Warranty Act), 40 FED. REG. 60168, 60213 (Dec. 31, 1975).

assure for completeness and comprehensiveness. Records pertaining to the NCDS' AWAP that are required to be maintained by § 703.6 (record-keeping) are being kept and were made available for review.

## CONCLUSION

**The Mechanism is in substantial compliance with § 703.7.**

### F. STATUTORY REQUIREMENT OF OPEN RECORDS AND PROCEEDINGS – § 703.8

Rule 703.8 speaks to the nature of the proceedings,<sup>57</sup> and “it is intended to strike a balance between the warrantor and Mechanism’s need for confidentiality and the competing need for public access and scrutiny of Mechanism operations that is implicit in Section 110(a)(4) of the Act.”<sup>58</sup>

## FINDINGS

The above statutory requirement is memorialized in the *“Rules & Procedures for the Informal Non-Binding Resolution of Automobile Warranty Claims,”* placing all parties on sufficient notice that hearings may involve non-parties to the dispute. Rule 11 states:

### ATTENDANCE AT HEARINGS – OPEN PROCEEDINGS

All parties to the dispute, and their representatives if any, are entitled to attend the hearing. Unless excused by the arbitrator, the registered owner of the vehicle shall be present. Witnesses may attend the hearing subject to the arbitrator’s authority to limit attendance or sequester witnesses during all or part of the hearing. The arbitrator shall determine whether any other person may attend the hearing, and such determination is conclusive. Under federal law, arbitrations conducted under these rules are open proceedings. This means that a member of the general public, or a state or federal regulator, may attend and observe the hearing.

While the limits of privacy and confidentiality are subject to the requirements of § 703.8, NCDS data security is an essential part of confidentiality. The NCDS internal processes are set up to provide multiple layers of protection. In addition, the segregation of task, with dedicated point persons assigned to discrete administrative tasks with virtually no cross-over, assures compliance and ethics oversight.

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<sup>57</sup> The relevant language is § 703.8(b), which states:

Except as provided under paragraphs (a) and (e) of this section, and paragraph (c) of § 703.7 of this part, all records of the Mechanism may be kept confidential, or made available only on such terms and conditions, or in such form, as the Mechanism shall permit.

<sup>58</sup> Disclosure of Written Consumer Product Warranty Terms and Conditions, Pre-Sale Availability of Written Warranty Terms, and Informal Dispute Settlement Mechanisms (Rules, Regulations, Statements and Interpretations Under Magnuson-Moss Warranty Act), 40 FED. REG. 60168, 60214 (Dec. 31, 1975).

NCDS does not retain files in excess of four years. Physical files are either shredded or, if electronically stored, they have an automatic destruction date.

**CONCLUSION**

**The Mechanism is in substantial compliance with § 703.8.**

## Section V

### Field Audit of Three Geographic Areas

For this year’s audit, three geographic areas were reviewed – California, Ohio and Florida, Ohio and Florida administer state-certified programs, and California has a consumer-centric set of regulations that invite review of the NCDS program. In California, the NCDS program is referred to as “CDSP.” However, to maintain consistency throughout this audit document, NCDS will be used as the acronym.

#### California

##### A. CASE LOAD AND BASIC STATISTICS, AND CONSUMER SURVEY RESPONSES

The survey for California consisted of 287 closed NCDS cases.<sup>59</sup> From this universe, we surveyed 32 customers.<sup>60</sup> Consistent with prior audits conducted by Claverhouse & Associates, surveyed customers’ level of program satisfaction, including arbitrator performance, is often tied inextricably to whether or not they achieved the desired outcome in arbitration.

The average number of days for handling a case in California in 2021 was 36 days, which is similar to the number of days cases resolved, specifically, 36.

The following table breaks down the sample size and response rate based on case outcome, followed by a breakdown of consumer responses.<sup>61</sup>

Survey	Population	Sample Size	Response Rate %
California - Arbitrated Awarded	86	10	12%
California - Arbitrated Awarded No Action	190	22	12%
California - Mediated	11	0	0%
<b>Total</b>	<b>287</b>	<b>32</b>	<b>11%</b>

#### CALIFORNIA ARBITRATED CASES AWARDED SURVEY RESULTS<sup>62</sup>

**Pre-filing experience with dealer or manufacturer.** To understand the consumers’ pre-filing experience, respondents were asked general questions related to their pre-filing contacts with either the dealer or the manufacturer. The results show before filing a claim with NCDS, 70% of the participants

<sup>59</sup> Statistics being referenced may appear to be at odds with one another. This is largely due to data being collected and reported based on different regulatory mandates using different terminology for similar concepts. Important distinctions are noted.

<sup>60</sup> Again, the response rate on the overall universe of cases is lower than prior years, due to the pandemic and also greater use of mediation by manufacturers, pre-filing.

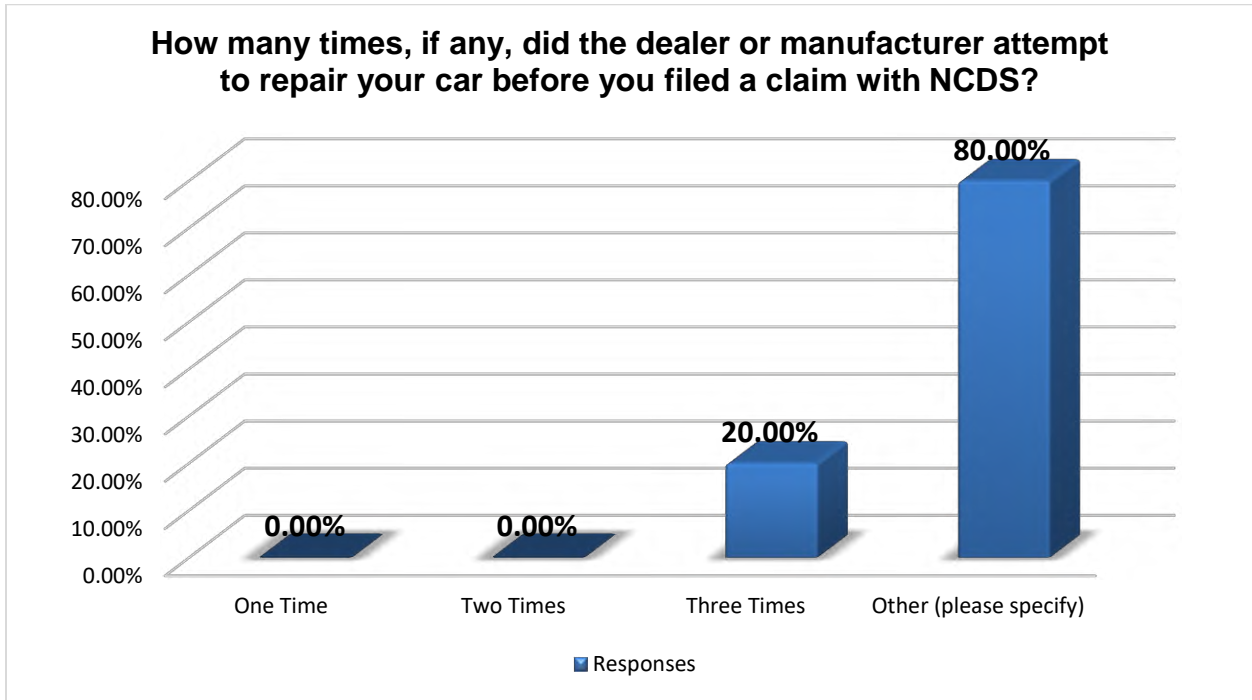
<sup>61</sup> The methodology used in all consumer surveys appears in Section VII and it is explained in greater detail.

<sup>62</sup> California Audit Survey Results are found on pages 56-69.



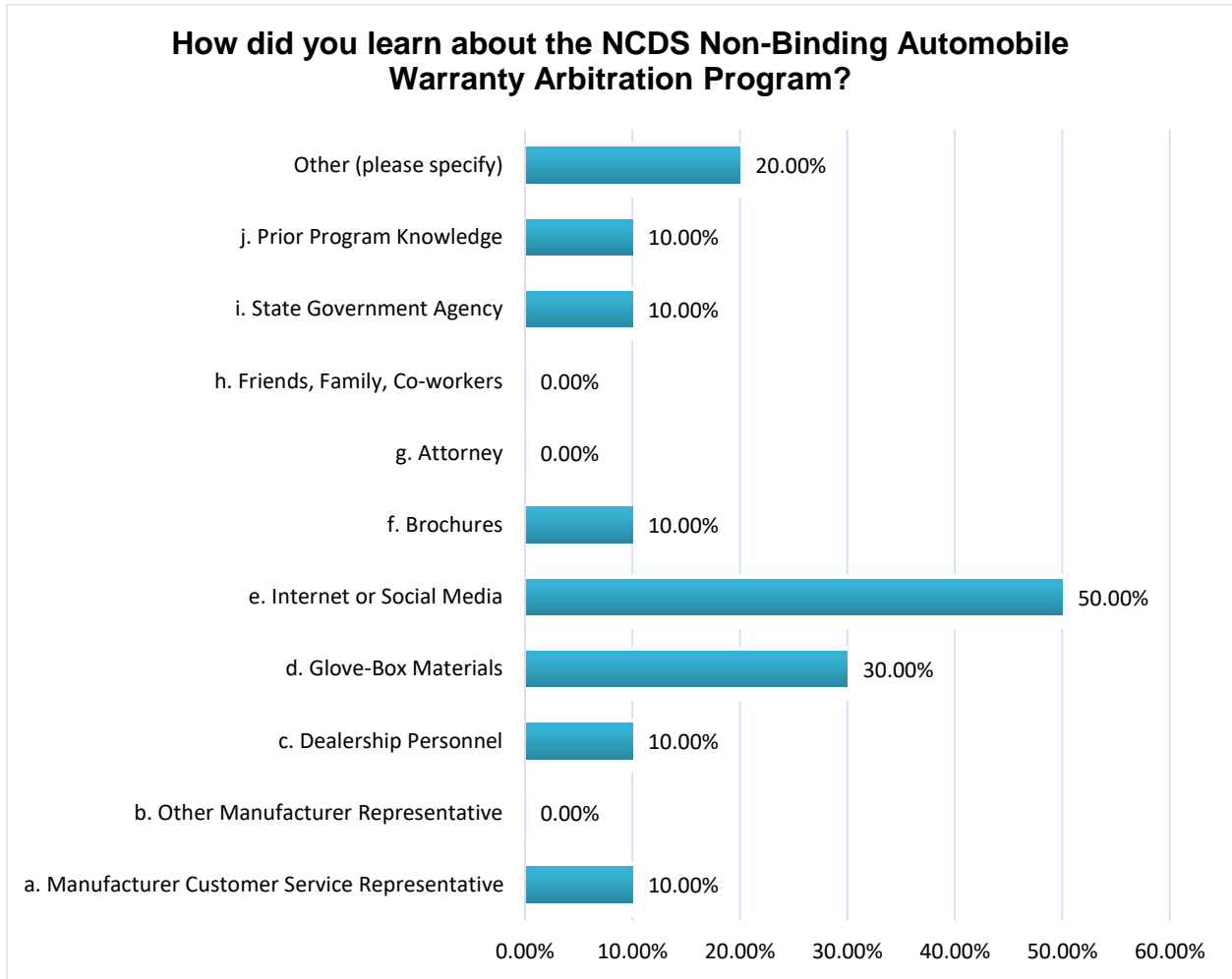
indicated they attempted to discuss their concerns with the manufacturer directly. When asked how many times the dealer or manufacturer attempted to repair their vehicle, 80% of respondents stated “other” and 20% stated “three times.” (Graph 1) The majority of participants reported they learned about the NCDS Arbitration Program through Internet or Social Media (50%), Glove-Box Materials (30%), and Other (20%). There were other resources participants noted as outlined in Graph 2 but were not as prevalent. Fifty percent (50%) of the participants stated they were informed of the Arbitration Program from the manufacturer or dealer through mailed or emailed communications. The other 50% indicated “other” sources. These sources were not identified by the participants.

.GRAPH 1 – ARBITRATED CASES AWARDED SURVEY RESULTS



The results in Graph 1 confirm that consumers attempt multiple repairs (3+) on their vehicle, either for the same or different non-conformity, before they file their case in arbitration.

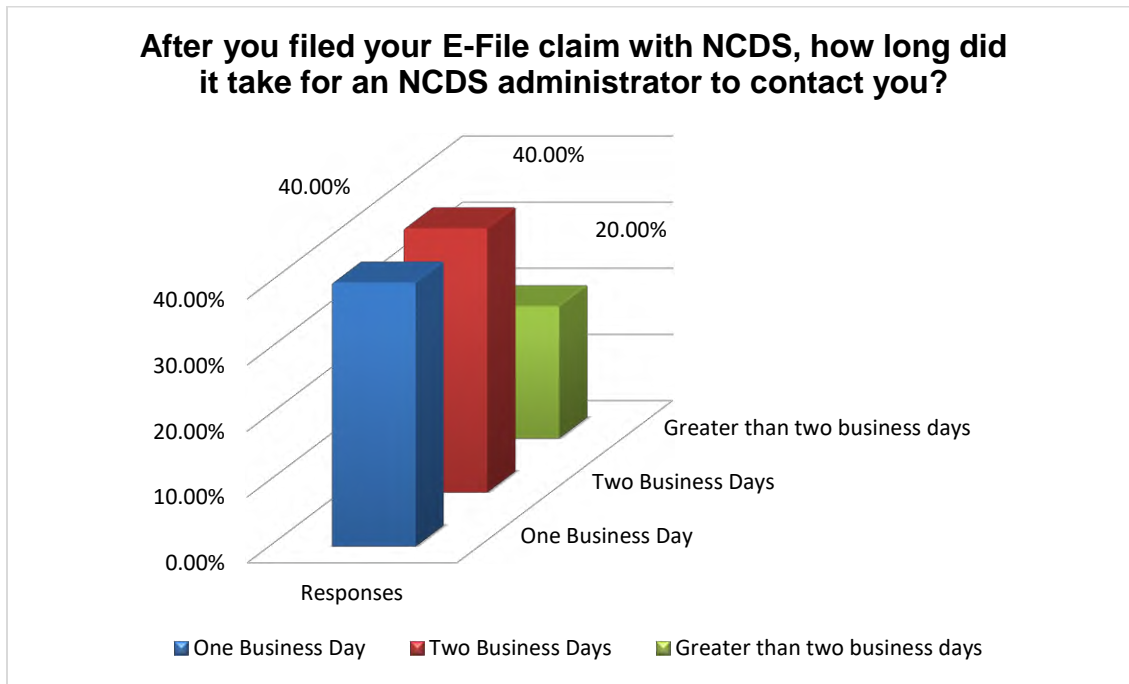
GRAPH 2 – ARBITRATED CASES AWARDED SURVEY RESULTS



**PLEASE NOTE:** Participants were allowed to select multiple choices.

**Filing of the claim with NCDS.** To identify consumers’ experience related to the actual filing of their claim with NCDS, participants were asked questions associated with the filing method, clarity of instructions, and style of hearing. One-hundred percent (100%) of the participants reported they used an E-file method to file their claim. The respondents were then asked how clear the instructions were for filing their claim of which 90% indicated the instructions on the claim form were “*very clear*,” and 10% stated that the instructions were “*somewhat clear*.” Once the participants filed their claim with NCDS, 80% reported it took between one-to-two business days for NCDS to acknowledge their claim and initiate the administrative process. The remaining 20% stated it took greater than two business days. **(Graph 3)**

GRAPH 3 – ARBITRATED CASES AWARDED SURVEY RESULTS

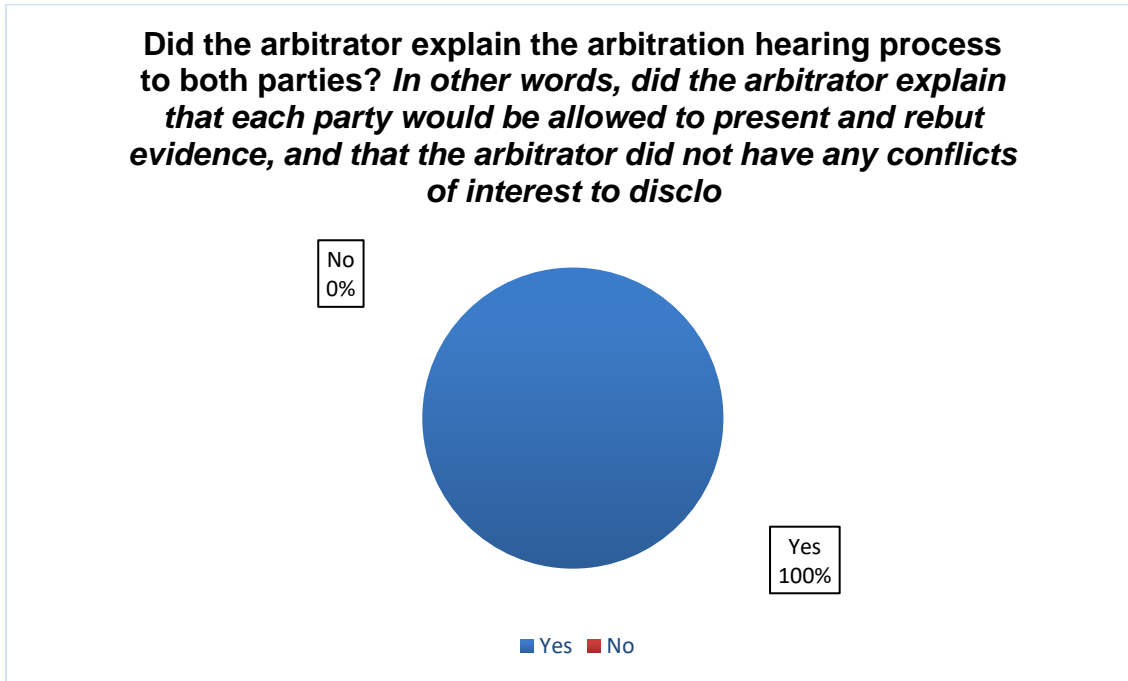


**Experience after filing a claim with NCDS.** To capture the pre-hearing process, respondents were asked to rate their experience after they filed their claim with NCDS. Based on the results, it was found that 90% of participants received or reviewed the Frequently Asked Questions (“FAQs”) packet at [www.ncdsusa.org](http://www.ncdsusa.org) and 10% reported they did not receive the packet. The information presented in the FAQs was “*very clear*” as reported by 70% of the respondents and “*somewhat clear*” by 20% of respondents. Half (50%) of the participants stated the information presented in the FAQs was “*very helpful*” while 40% reported it was “*moderately helpful*.”

When asked if participants received or reviewed the Non-Binding Arbitration Program Rules at [www.ncdsusa.org](http://www.ncdsusa.org), 100% respondents reported “*yes*.” The Program Rules were “*very clear*” to 50% of participants and “*somewhat clear*” to the remaining 50% of participants. The respondents were then asked if the Program Rules were helpful in explaining the arbitration process of which 50% stated they were “*very helpful*” and 50% acknowledged they were “*moderately helpful*.” All (100%) of the respondents stated they received a hearing notice from NCDS, and 100% reported before or after they received their hearing notice, they did not hire an attorney to represent them or to be present at the hearing. Based on the results, 70% of participants did not request a “documents only” hearing after filing their claim and 30% did request a “documents only” hearing. Of the 30% requesting a “documents only” hearing, the most common reason given was “*convenience*.”

**The evidentiary hearing process.** To assess the actual evidentiary process, participants were asked to convey their experience with different phases of the hearing process. All (100%) of the participants indicated that the arbitrator started the hearing on time, explained the evidentiary hearing process, re-affirmed his/her impartiality (**Graph 4**), and allowed both parties a full and fair opportunity to present their proofs during the actual hearing. Not a single respondent requested a third-party independent technical inspection of their vehicle.

GRAPH 4 – ARBITRATED CASES AWARDED SURVEY RESULTS

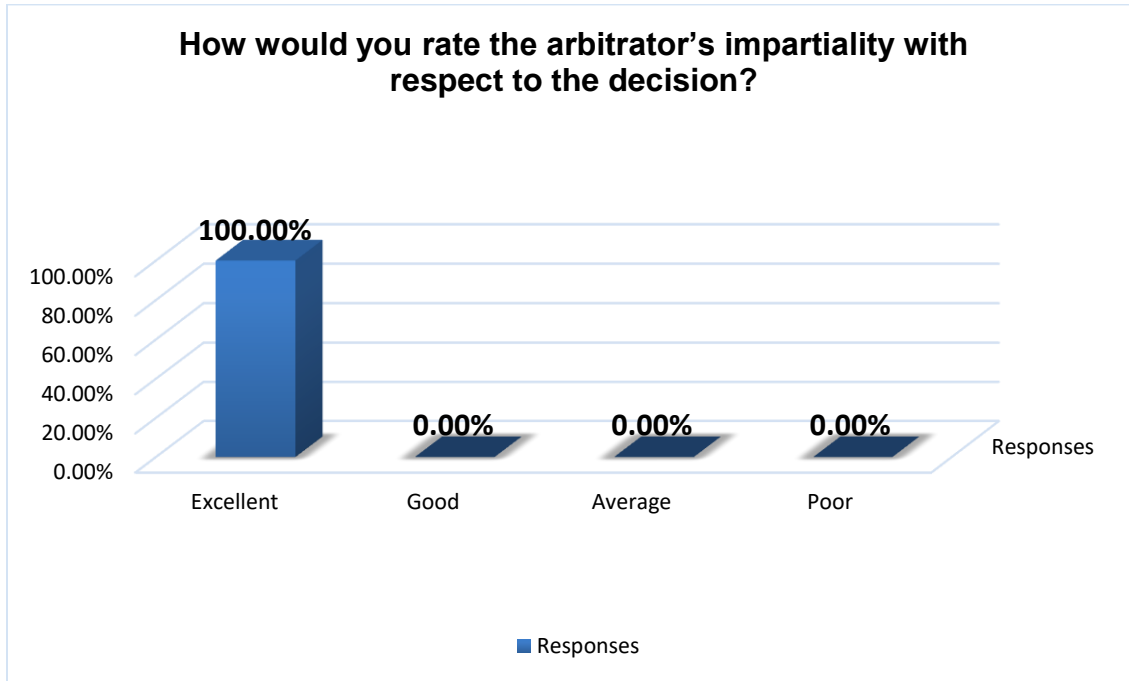


**Post-award experience.** Next, it was important to evaluate the consumers’ experience after they received their award. When it was time to communicate the award to the consumer, 90% of the sample population stated the arbitrator communicated this award by email, and 10% reported it was by written submission. Forty percent (40%) of the consumers reported that the relief awarded to them was a replacement remedy, where the manufacturer would replace the existing car with a new car, 30% reported they received a refund, where the manufacturer would give money for their vehicle, 20% stated they received a repair, and 10% stated they received a reimbursement, where the manufacturer would reimburse them for the incidental costs associated with the repair of their car.

All (100%) of the participants stated the arbitrator accurately identified the nature of the non-conformity alleged in their claim. After identifying the non-conformity, 100% of participants stated that the arbitrator included a summary of the testimony at the hearing. All (100%) of the participants stated that the arbitrator’s award was clear and included a “reasoned decision.” One-hundred percent of the participants returned to NCDS the Decision Acceptance/Rejection Form.

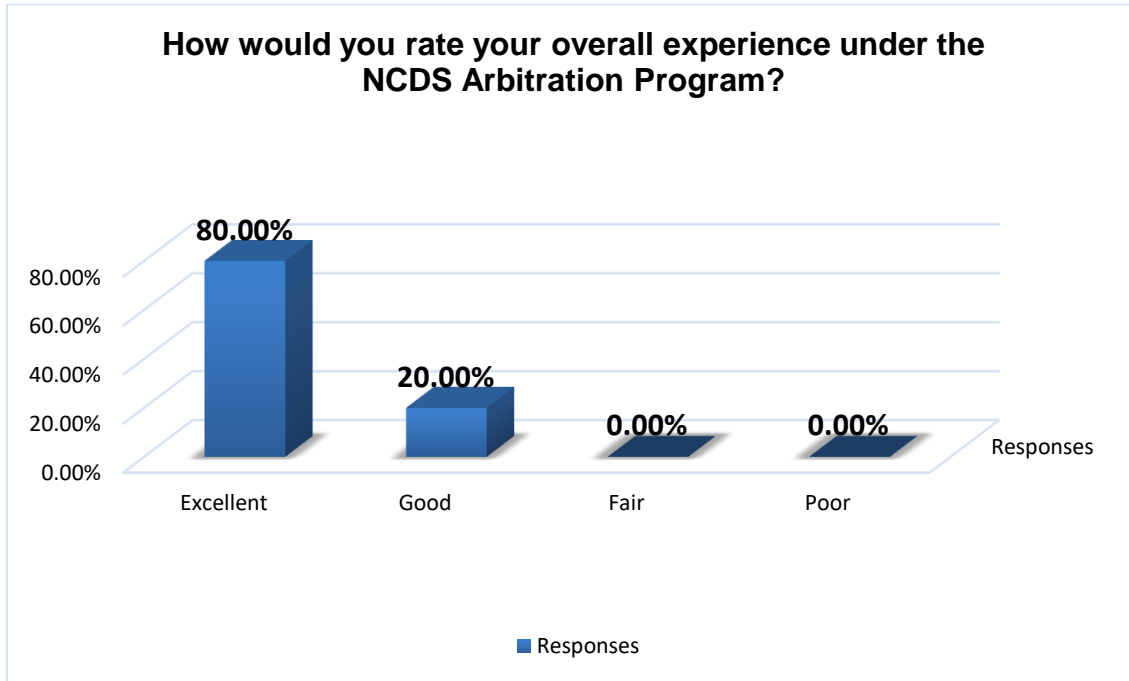
**Arbitrator satisfaction.** To understand arbitrator satisfaction among the consumers, the participants were asked how well the arbitrator understood their case. One-hundred percent (100%) of the participants rated the arbitrator’s understanding of the case as “*excellent*,” the arbitrator’s objectivity and fairness as “*excellent*,” and the arbitrator’s impartiality during the hearing and in the decision-making process as “*excellent*.” (Graph 5 – Impartiality in Decision-Making)

GRAPH 5 – ARBITRATED CASES AWARDED SURVEY RESULTS



**Satisfaction with NCDS processing claim.** To measure consumers’ satisfaction with NCDS processing their claims, respondents were asked to rate NCDS in four different areas. Respondents were asked to rate the timeliness of the communications between them and NCDS staff. Seventy-percent (70%) rated the timeliness aspect of the communications as “*excellent*,” and 30% rated the timeliness as “*good*.” Next, participants were asked to rate the helpfulness of the NCDS staff. Ninety percent (90%) of the participants rated the helpfulness of the staff as “*excellent*,” and 10% rated the staff as “*good*.” To help gauge consumers’ experience with the arbitration program, participants were asked to rate their overall participation in the NCDS Arbitration Program. For this question, 80% of the participants rated NCDS as “*excellent*,” and 20% rated NCDS as “*good*.” **(Graph 6)** Finally, respondents were asked if they would recommend the Arbitration Program to friends and family. All (100%) of the participants responded “*yes*.”

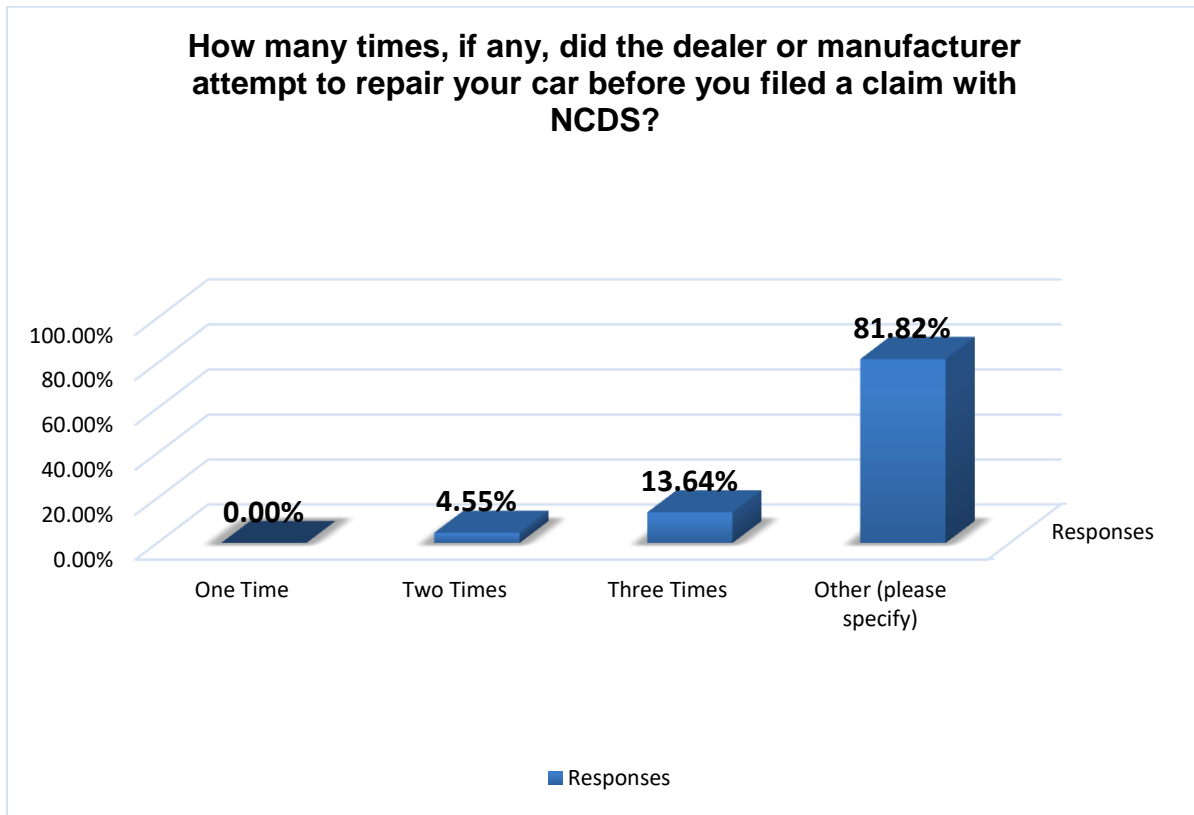
GRAPH 6 – ARBITRATED CASES AWARDED SURVEY RESULTS



CALIFORNIA ARBITRATED CASES NO ACTION SURVEY RESULTS

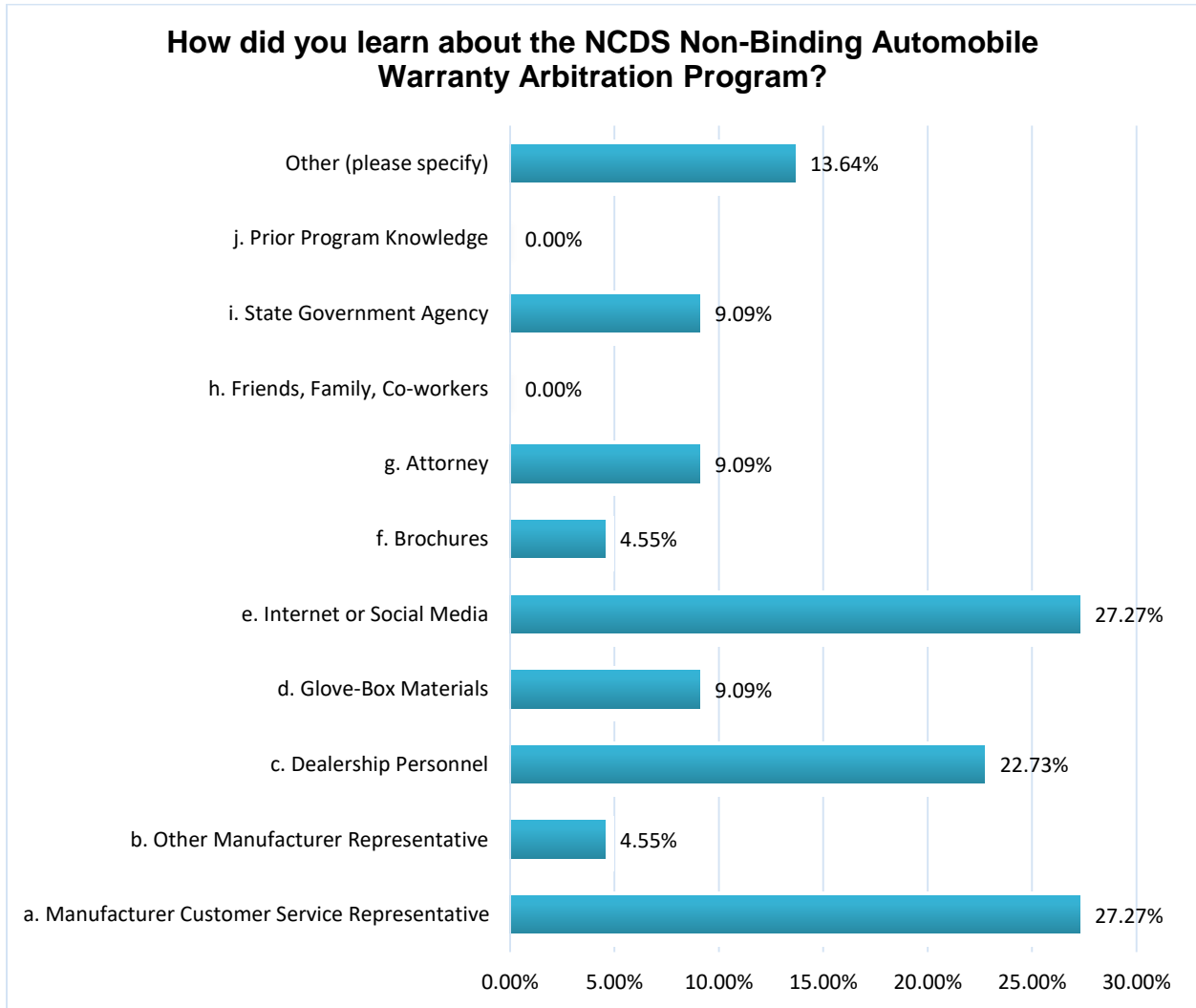
**Pre-filing experience with dealer or manufacturer.** To understand the consumers’ pre-filing experience, respondents were asked general questions related to their pre-filing contacts with either the dealer or the manufacturer. The results show before filing a claim with NCDS, 100% of the participants indicated they attempted to discuss their concerns with the manufacturer directly. When asked how many times the dealer or manufacturer attempted to repair their vehicle, 14% stated at least “three times,” and 82% stated “more than three times.” (Graph 7) The majority of the participants reported they learned about the NCDS Arbitration Program through the Manufacturer Customer Service Representative (27%), Internet or Social Media (27%), or Dealership Personnel (23%). There were other resources participants noted as outlined in Graph 8 but were not as prevalent. Eighty-two percent (82%) of the participants stated they were informed of the Arbitration Program from the manufacturer or dealer through conversations over the phone.

GRAPH 7 – ARBITRATED CASES NO ACTION SURVEY RESULTS



The results in **Graph 7** confirm that consumers attempt multiple repairs (3+) on their vehicle, either for the same or different non-conformity, before they file their case in arbitration.

GRAPH 8 – ARBITRATED CASES NO ACTION SURVEY RESULTS

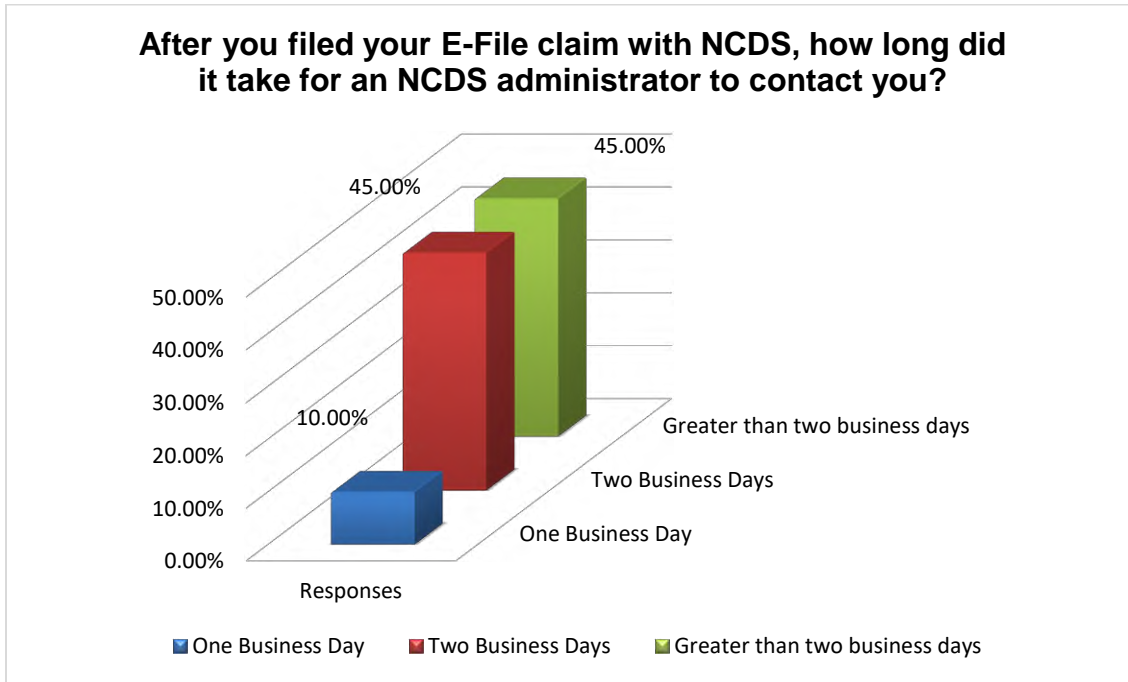


**PLEASE NOTE:** Participants were allowed to select multiple choices.

**Filing of the claim with NCDS.** To identify consumer’s experience related to the actual filing of their claim with NCDS, participants were asked questions associated with the filing method and the clarity of the instructions. Ninety-one percent (91%) of the participants reported they used an E-file method to file their claim. The respondents were then asked how clear the instructions were for filing their claim of which 32% of the participants indicated the instructions on the claim form were “*very clear*,” and 59% stated that the instructions were “*somewhat clear*.” Once the participants filed their claim with NCDS, 55% reported it took one-to-two business days for NCDS to acknowledge their claim and initiate the administrative process. The remaining 45% stated it took more than two business days. (Graph 9)



GRAPH 9 – ARBITRATED CASES NO ACTIONS SURVEY RESULTS



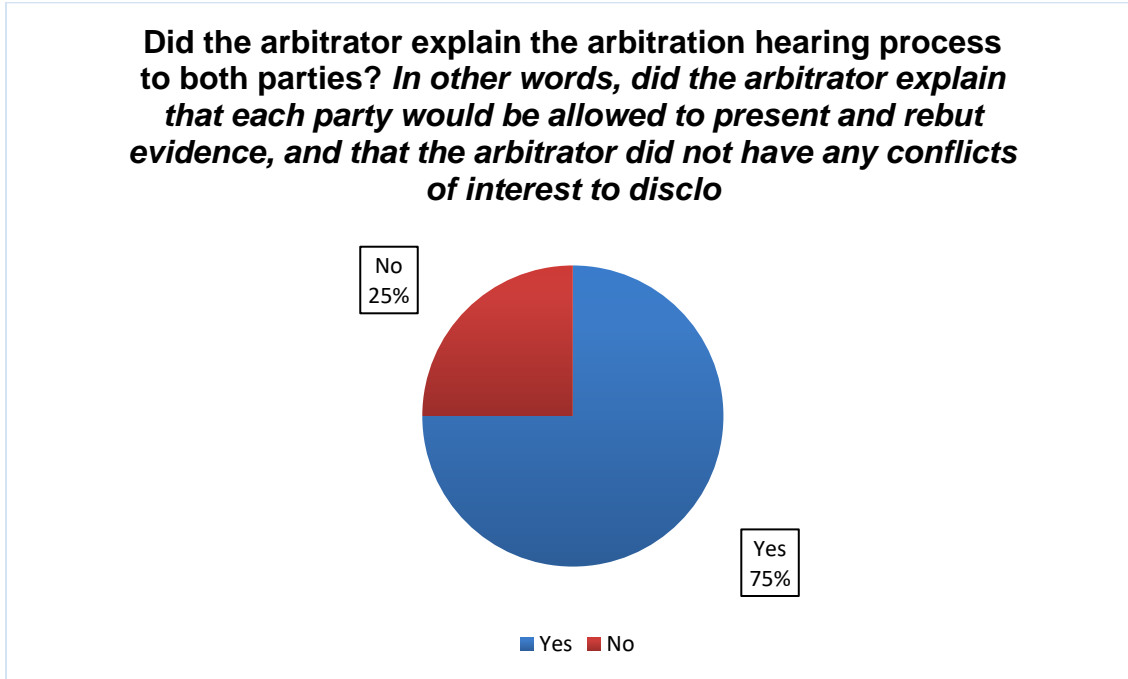
**Experience after filing a claim with NCDS.** To capture the pre-hearing process, respondents were asked to rate their experience after they filed their claim with NCDS. Based on the results, it was found that 82% of participants received the Frequently Asked Questions (FAQs) at [www.ncdsusa.org](http://www.ncdsusa.org), of which 77% indicated they reviewed this information. Eighteen percent (18%) reported they did not receive the packet. The information presented in the FAQs was “*very clear*” as reported by 45% of the respondents and “*somewhat clear*” by 36%. Twenty-seven percent (27%) of the participants stated the information presented in the FAQs was “*very helpful*” while 36% reported it was “*moderately helpful*.”

When asked if participants received or reviewed the Non-Binding Arbitration Program Rules at [www.ncdsusa.org](http://www.ncdsusa.org), 77% reported “*yes*,” however, 86% stated they had **reviewed** the Rules. (This result is inconsistent with the percentage of participants who claimed they did not receive a copy of the Rules, which is 23% of those who responded to the survey). The Program Rules were “*very clear*” to 27% of participants and “*somewhat clear*” to 55% of participants. The respondents were then asked if the Program Rules were helpful in explaining the arbitration process of which 32% stated they were “*very helpful*” and 46% acknowledged they were “*moderately helpful*.” Ninety-one percent (91%) of the respondents stated they received a hearing notice from NCDS, and 91% reported before or after they received their hearing notice, they did not hire an attorney to represent them or to be present at the hearing. Based on the results, 55% of participants did not request a “documents only” hearing after filing their claim and 45% did request a “documents only” hearing.

**The evidentiary hearing process.** To assess the actual evidentiary process, participants were asked to convey their experience with different phases of the hearing process. Fifty-eight percent (58%) indicated that the arbitrator started the hearing on time, 75% reported that the arbitrator explained the evidentiary hearing process including re-affirmation of impartiality (**Graph 10**), and 42% indicated that

the arbitrator allowed both parties a full and fair opportunity to present their proofs. At least 16% of the respondents indicated that they requested a third-party independent technical inspection of their vehicle.

GRAPH 10 – ARBITRATED CASES NO ACTION SURVEY RESULTS



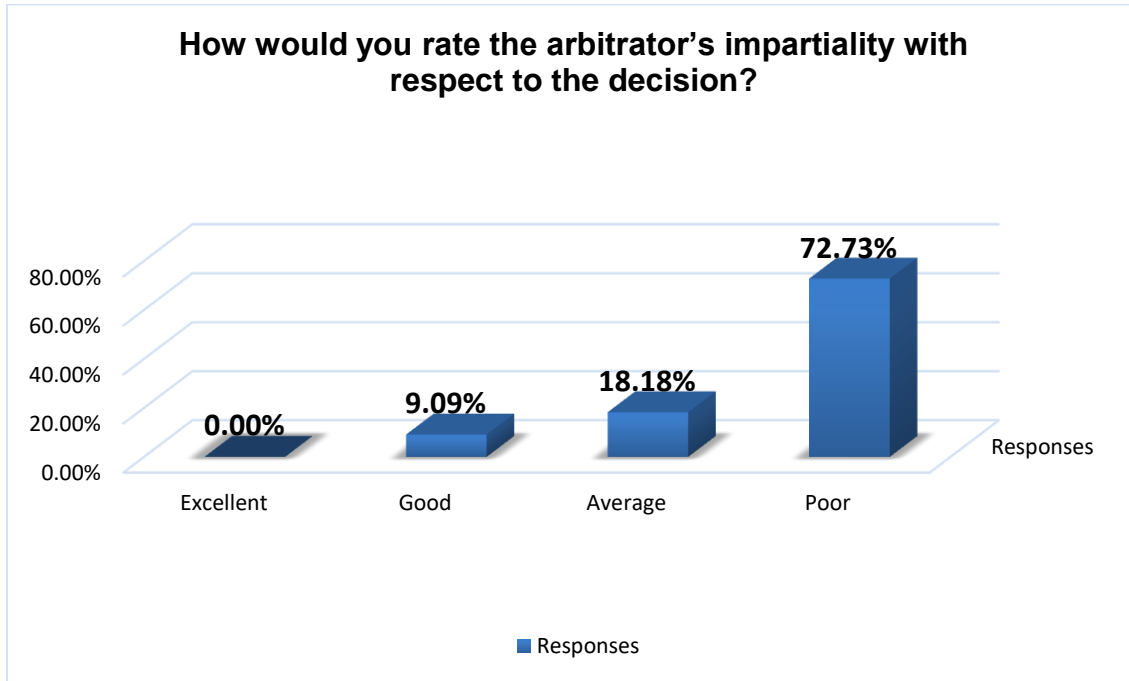
**Post-award experience.** Next, it was important to evaluate the consumers’ experience after they received their award. When it was time to communicate the award to the consumer, 68% of the participants indicated that the arbitrator’s decision was communicated by e-mail, in which a remedy was not provided. Fourteen-percent (14%) of the participants indicated that the arbitrator awarded them a “repair.” Technically, this is a remedy that would fall into the “awarded” category. These participants viewed their award as a non-award because the arbitrator did not award them what they requested.

Fourteen percent (14%) of the participants stated that the arbitrator accurately identified the nature of the non-conformity alleged in their claim and 86% reported that the arbitrator did not accurately identify the non-conformity. After identifying the non-conformity, 68% stated that the arbitrator included a summary of the testimony at the hearing. Sixty-four percent (64%) stated that the arbitrator’s decision was clear. Finally, participants were asked to assess whether the arbitrator rendered a reasoned decision. This meant whether or not the participant agreed with the award, the arbitrator explained the rationale for why the decision was reached. Twenty-three percent (23%) of the participants responded “yes” to this question, and 77% of the participants responded “no.”

**Arbitrator satisfaction.** To understand arbitrator satisfaction among the consumers, the participants were asked how well the arbitrator understood the facts of their case. Seventy-three percent (73%) rated the arbitrator’s understanding as “poor,” 18% as “average,” and 9% as “excellent.” Seventy-three (73%) rated the arbitrator’s objectivity and fairness as “poor,” 18% as “average,” and 9% either as

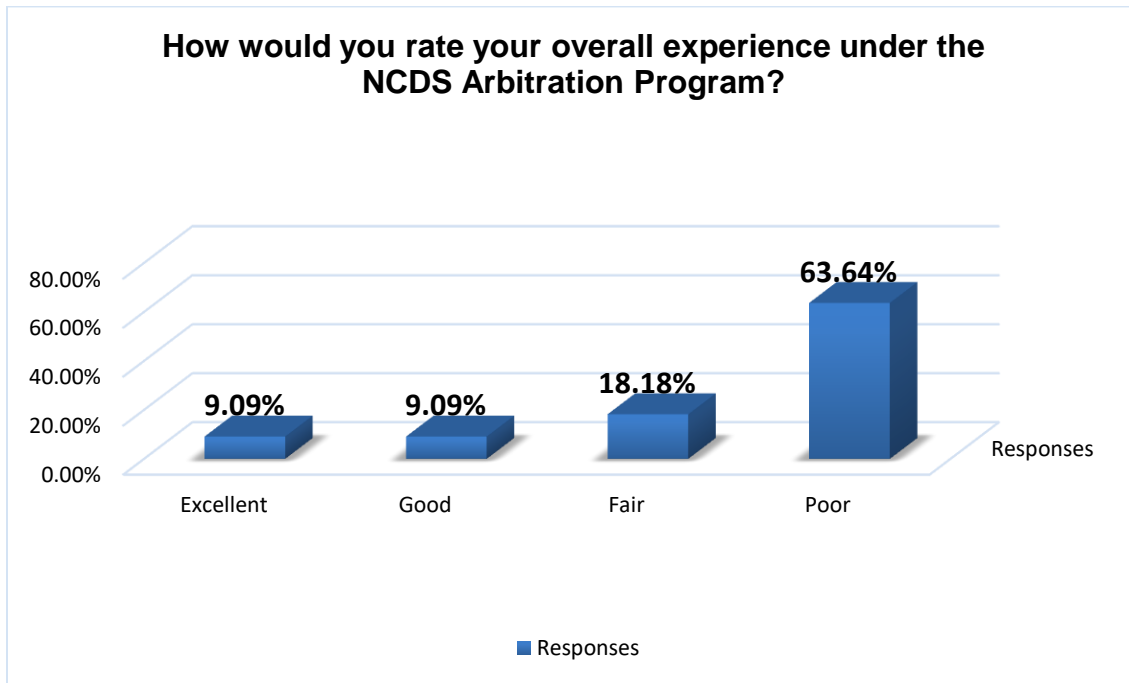
“excellent” or “good.” As to the arbitrator’s impartiality during the hearing, 14% rated the arbitrator “good,” “23% rated the arbitrator “average,” and 64% rated the arbitrator as “poor.” (Graph 11)

GRAPH 11 – ARBITRATED CASES NO ACTION SURVEY RESULTS



**Satisfaction with NCDS processing claim.** To measure consumers’ satisfaction with NCDS processing their claims, respondents were asked to rate NCDS in four different areas. Respondents were asked to rate the timeliness of the communications between them and NCDS staff. Twenty-seven percent (27%) rated the timeliness aspect of the communications as “excellent,” 23% rated timeliness as “good,” 27% rated timeliness as “fair,” and 23% rated timeliness as “poor.” Next, participants were asked to rate the helpfulness of the NCDS staff. Twenty-seven percent (27%) rated the helpfulness of the NCDS staff as “excellent,” 18% rated helpfulness as “good,” 32% rated helpfulness as “fair,” and 23% rated helpfulness as “poor.” In terms of the consumers’ overall experience under the NCDS Arbitration Program, 9% rated their experience as “excellent,” 9% rated their experience as “good,” 18% rated their experience as “fair,” and 64% rated their experience as “poor.” (Graph 12) Finally, respondents were asked if they would recommend the Arbitration Program to friends and family. Nine percent (9%) of the participants responded “yes” and 91% responded “no.”

GRAPH 12 – ARBITRATED CASES NO ACTION SURVEY RESULTS



**RECORDKEEPING, ACCURACY AND COMPLETENESS**

Rule 703.6. mandates various recordkeeping functions,<sup>63</sup> all of which were previously discussed in the context of the national audit in Section IV. For the California field audit, the auditor requested a

<sup>63</sup> Rule 703.6 (a)(1)-(12) states:

- (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.
  - (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) of this part);

random sample of case files drawn from all cases closed during the audit period and examined them to determine whether they were complete and available for audit.

## FINDINGS

The results of the random sample inspection of case file folders, confined to § 703.6(a)(1-5), confirm compliance. All case files contained the customer's name, address, and telephone number. The name and address of the warrantor's contact person were included with the initial correspondence that the customer receives from the program. In addition, the various regional office contact addresses and phone numbers were included in each Owner's Manual that accompanies all new vehicles when they are delivered to the consumer.

All case files inspected contained the make and vehicle identification number (VIN) of the vehicle, along with the date of the dispute and the date of the disclosure of the decision. Some files contained letters and additional documents, primarily filed by the consumer. However, there is no way to measure this item, thus the auditor has determined this section to be inapplicable.

The requirements for subsections 6-7 were also met. Oral presentations are a basic component of the NCDS program and § 703.6(a)(7) of Magnuson-Moss requires summaries of the oral presentations to be placed in the case file. In the case files reviewed for this region, NCDS was in full compliance.

A critical part of the NCDS program and Magnuson-Moss specifically is the disclosure of the arbitrator's decision (subsections 8-9). The statute mandates that a copy of the decision be inserted into the file and available for review during the annual audit. Unless a case was withdrawn or settled prior to hearing, all files the auditor reviewed contained this information.

Under subsection 10, the warrantor's intended action(s) and performance are linked together. The auditor validates this item in terms of performance verification, which is the responsibility of NCDS.

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(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;

(9) A copy of the disclosure to the parties of the decision;

(10) A statement of the warrantor's intended actions(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.

NCDS' protocol is to send a survey to the customer following receipt of the customer's acceptance of an arbitral award which grants a remedy. The survey asks whether the required performance has taken place. As noted elsewhere in this audit and in prior audits, few returned forms exist in the file. The absence of performance verification forms in the case file does not constitute a regulatory inconsistency since performance verification information may not be available from the customer. By mailing a performance verification survey, NCDS goes as far as can be expected in determining whether arbitration decisions are, in fact, being implemented per the award. It is appropriate to assume, in the absence of conflicting data, that performance has taken place. If a manufacturer were to attempt to avoid its statutory obligations, this fact would surface in the context of the national random survey of customers who have used the program, and it does not. Performance verification status should and does appear in the case file as is indicated by sections 11 and 12 below.

Section 11 above is not applicable for purposes of this audit because there is no practical means by which to verify the completeness and accuracy of possible additions to the files. Section 12, however, suggests that a summary form be created whenever the arbitrator receives an oral communication from either party involving the issue in dispute. This is most likely to occur at the oral hearing, in which case the communications are summarized in the arbitrator's decision. All summaries are included in the case file.

## CONCLUSION

**The NCDS program's record keeping policies and procedures, with appropriate modifications involving enhanced use of technology having been previously made, are in substantial compliance with FTC Rule 703.**

### B. CASE FILE RECORDS (4 yrs. 2018-2021)<sup>64</sup>

#### FINDINGS

A random sample of case numbers from the years 2018 through 2021 was drawn from the NCDS data base. Inspection of this sample verified that they were being maintained per requirement § 703.6(f).

Closed files are stored at an off-site record storage facility of the NCDS Dallas, Texas office. The auditor did not inspect the off-site facility for this year's audit. The files, however, were intact and readily available for inspection electronically. Cases drawn from the four-year universe were maintained in accordance with this statutory requirement.

### C. ARBITRATION/HEARING RECORDS

#### FINDINGS

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<sup>64</sup> Rule 703.6(f) states:

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

### *Case file folders*

This information, which is maintained in NCDS headquarters, is found on a series of forms in NCDS case files.

### *Arbitrator Biographies*

The arbitrator biographies for the national program are available for review in National Center for Dispute Settlement headquarters in Dallas, Texas. A random review of such biographies indicate that arbitrator biographies are thorough and current. The list of arbitrators for each district includes the dates of their appointments.

## **D. HEARING PROCESS**

The California hearing was held on May 10, 2022, per the hearing confirmation notice previously submitted to the parties.

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

The hearing was conducted via teleconference. The attendees included the arbitrator, the customer, the Toyota manufacturer representative, and the auditor.

### *Openness of Hearing*

The meeting began precisely at the scheduled hearing time of 1 PM PT. The arbitrator did not explain to the parties that the auditor would be observing the hearing. Under the “*California Dispute Settlement Hearing Process Rules*,” and consistent with § 703.8, the hearings are open and can be attended by any observers who agree to abide by the program’s rules.

### *Efficiency of Hearing*

The arbitrator’s case file appeared to be complete with all required documents. The arbitrator explained the process protocols, including order of presentation. The arbitrator also explained that to his knowledge, he did not have any conflicts that would preclude him from serving impartially on the case. The arbitrator then allowed the parties to present their evidence, starting first with the consumer. Before the hearing commenced, the did not confirm with the customer the remedy they were seeking in the arbitration.

### *Hearing*

The hearing was properly conducted from beginning to end. All parties were afforded an opportunity to present their case. Following each party’s presentation, the opposing party was given an opportunity to ask clarification questions. After all evidence was presented, the parties made closing statements, starting initially with the manufacturer’s representative, followed by the consumer. Once closing statements were completed, the arbitrator asked if either party had further proofs to offer. Each party responded negatively. The arbitrator declared the hearing closed and exited the teleconference.

During the hearing, the arbitrator asked various clarifying questions but did not exceed the scope of his authority. The arbitrator demonstrated that he knew how to conduct and manage a hearing.

*Board/Arbitrator Decisions*

The auditor reviewed the arbitrator’s decision<sup>65</sup> in this case, and a sample of California NCDS (“CDSP”) decisions rendered in 2021. The decisions were well-reasoned and consistent with the facts of the case, based on information in the case file. This particular case’s outcome also was consistent with the facts in the case file based on the evidence presented by the parties during the oral hearing.

**CONCLUSION**

**The auditor concludes that the AWAP, as it operates in California, is in substantial compliance with the Magnuson-Moss Warranty Act and FTC Rule 703. The administrative staff is unequivocally**

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<sup>65</sup> CCR 3398.5 **Investigation of Facts** requires the following to be included in all awards:

(c) When the consumer's complaint, or the manufacturer's response, or any evidence gathered by or submitted to the arbitration program, raises any of the following issues, the program shall investigate those issues:

- (1) Whether the program has jurisdiction to decide the dispute.
- (2) Whether there is a nonconformity (Section 3396.1(l)).
- (3) Whether the nonconformity is a substantial nonconformity (Section 3396.1(m))
- (4) The cause or causes of a nonconformity.
- (5) Whether the causes of a nonconformity include unreasonable use of the vehicle.
- (6) The number of repair attempts.
- (7) The time out of service for repair.
- (8) Whether the manufacturer has had a reasonable opportunity to repair the vehicle.
- (9) Factors that may affect the reasonableness of the number of repair attempts.
- (10) Other factors that may affect the consumer's right to a replacement of the vehicle or restitution under Civil Code Section 1793.2(d)(2).
- (11) Facts that may give rise to a presumption under Civil Code Section 1793.2(d)(2).
- (12) Factors that may rebut any presumption under Civil Code Section 1793.22(b).
- (13) Whether a further repair attempt is likely to remedy the nonconformity.
- (14) The existence and amount of any incidental damages, including but not limited to sales taxes, license fees, registration fees, other official fees, prepayment penalties, early termination charges, earned finance charges, and repair, towing and rental costs, actually paid, incurred or to be incurred by the consumer.
- (15) Factors that may affect the manufacturer's right to an offset for mileage under Civil Code Section 1793.2(d).
- (16) Facts for determining the amount of any offset for mileage under Civil Code Section 1793.2(d) if an offset is appropriate.
- (17) Factors that may affect any other remedy under the applicable law.
- (18) Any other issue that is relevant to the particular dispute.



dedicated to the program's mission, while maintaining a strong commitment to the fair and expeditious resolution of warranty disputes.

**OVERALL SURVEY RESULTS: KEY FINDINGS**

This section captures the overall survey results (raw) from the sample size of participants who partook in the audit surveys and compares the results found between the different outcomes of cases. The eight areas compared were the pre-filing experience with the dealer or manufacturer, filing of claim, experience after filing of claim, the evidentiary hearing process, post-award experience, arbitrator satisfaction, satisfaction with NCDS processing their claim, and settlement of claim (mediation only). The highest percentages were highlighted based on the responses for each question for ease of comparison.

**California Overall Survey Results and Comparison Between Outcomes**

California - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
Pre-filing Experience with Dealer or Manufacturer				
Survey Questions		Responses		
<b>Before filing a claim with NCDS, did you attempt to contact the manufacturer directly to discuss your concerns?</b>				
<b>Answer Choices</b>				
Yes		70.00%	100.00%	NO RESPONSES
No		30.00%	0.00%	NO RESPONSES
<b>How many times, if any, did the dealer or manufacturer attempt to repair your car before you filed a claim with NCDS?</b>				
<b>Answer Choices</b>				
One Time		0.00%	0.00%	NO RESPONSES
Two Times		0.00%	4.55%	NO RESPONSES
Three Times		20.00%	13.64%	NO RESPONSES
Other (please specify) - More than Three Times		80.00%	81.82%	NO RESPONSES

California - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
Pre-filing Experience with Dealer or Manufacturer				
Survey Questions		Responses		
<b>How did you learn about the NCDS Non-Binding Automobile Warranty Arbitration Program?</b>				
<b>Answer Choices</b>				
a. Manufacturer Customer Service Representative		10.00%	27.27%	NO RESPONSES
b. Other Manufacturer Representative		0.00%	4.55%	NO RESPONSES
c. Dealership Personnel		10.00%	22.73%	NO RESPONSES
d. Glove-Box Materials		30.00%	9.09%	NO RESPONSES
e. Internet or Social Media		50.00%	27.27%	NO RESPONSES
f. Brochures		10.00%	4.55%	NO RESPONSES
g. Attorney		0.00%	9.09%	NO RESPONSES
h. Friends, Family, Co-workers		0.00%	0.00%	NO RESPONSES
i. State Government Agency		10.00%	9.09%	NO RESPONSES
j. Prior Program Knowledge		10.00%	0.00%	NO RESPONSES
Other (please specify)		20.00%	13.64%	NO RESPONSES
<b>How did the manufacturer or dealer inform you of the NCDS Arbitration Program?</b>				
<b>Answer Choices</b>				
Talked over the phone		0.00%	81.82%	NO RESPONSES
Mailed or E-mailed Information		50.00%	9.09%	NO RESPONSES
Website		0.00%	0.00%	NO RESPONSES
Showroom Poster		0.00%	0.00%	NO RESPONSES
Other (please specify)		50.00%	9.09%	NO RESPONSES

California - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
<b>Filing of Claim</b>				
<b>What method did you use to file your claim with NCDS?</b>				
<b>Answer Choices</b>				
E-File		100.00%	90.91%	NO RESPONSES
Mail		0.00%	9.09%	NO RESPONSES
<b>After you filed your E-File claim with NCDS, how long did it take for an NCDS administrator to contact you?</b>				
One Business Day		40.00%	10.00%	NO RESPONSES
Two Business Days		40.00%	45.00%	NO RESPONSES
Greater than two business days		20.00%	45.00%	NO RESPONSES
<b>After you mailed and received an acknowledgement from NCDS that your claim had been received, how long did it take for an NCDS administrator to contact you?</b>				
One Business Day		N/A	0.00%	NO RESPONSES
Two Business Days		N/A	50.00%	NO RESPONSES
Greater than two business days		N/A	50.00%	NO RESPONSES

California - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
<b>Filing of Claim</b>				
<b>How clear were the instructions for filing the claim?</b>				
<b>Answer Choices</b>				
Very Clear		90.00%	31.82%	NO RESPONSES
Somewhat Clear		10.00%	59.09%	NO RESPONSES
Not Clear		0.00%	9.09%	NO RESPONSES
Do Not Know		0.00%	0.00%	NO RESPONSES
<b>Experience After Filing a Claim</b>				
<b>Whether you E-Filed or filed your claim by mail, did you <u>receive</u> the Frequently Asked Questions (FAQ) Packet at <a href="http://www.ncdsusa.org">www.ncdsusa.org</a>?</b>				
<b>Answer Choices</b>				
Yes		100.00%	81.82%	NO RESPONSES
No		0.00%	18.18%	NO RESPONSES
<b>Whether you E-Filed or filed your claim by mail, did you <u>review</u> the Frequently Asked Questions (FAQ) Packet at <a href="http://www.ncdsusa.org">www.ncdsusa.org</a>?</b>				
<b>Answer Choices</b>				
Yes		90.00%	77.27%	NO RESPONSES
No		10.00%	22.73%	NO RESPONSES

California - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
		Experience After Filing a Claim		
Survey Questions		Responses		
<b>How clear was the information presented in the FAQ?</b>				
Answer Choices				
Very Clear		70.00%	45.45%	NO RESPONSES
Somewhat Clear		20.00%	36.36%	NO RESPONSES
Not Clear		0.00%	0.00%	NO RESPONSES
Do Not Know		10.00%	18.18%	NO RESPONSES
<b>How helpful was the information presented in the FAQ?</b>				
Answer Choices				
Very Helpful		50.00%	27.27%	NO RESPONSES
Moderately Helpful		40.00%	36.36%	NO RESPONSES
Not At All Helpful		0.00%	13.64%	NO RESPONSES
Do Not Know		10.00%	22.73%	NO RESPONSES
<b>Did you <u>receive</u> the Non-Binding Program Rules at <a href="http://www.ncdsusa.org">www.ncdsusa.org</a>?</b>				
Answer Choices				
Yes		100.00%	77.27%	NO RESPONSES
No		0.00%	22.73%	NO RESPONSES
<b>Did you <u>review</u> the Non-Binding Program Rules at <a href="http://www.ncdsusa.org">www.ncdsusa.org</a>?</b>				
Answer Choices				
Yes		100.00%	86.36%	NO RESPONSES
No		0.00%	13.64%	NO RESPONSES

California - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
Experience After Filing a Claim				
Survey Questions		Responses		
<b>How clear were the Program Rules?</b>				
<b>Answer Choices</b>				
Very Clear		50.00%	27.27%	NO RESPONSES
Somewhat Clear		50.00%	54.55%	NO RESPONSES
Not Clear		0.00%	9.09%	NO RESPONSES
Do Not Know		0.00%	9.09%	NO RESPONSES
<b>How helpful were the Program Rules in explaining the arbitration process?</b>				
<b>Answer Choices</b>				
Very Helpful		50.00%	31.82%	NO RESPONSES
Moderately Helpful		50.00%	45.45%	NO RESPONSES
Not At All Helpful		0.00%	9.09%	NO RESPONSES
Do Not Know		0.00%	13.64%	NO RESPONSES
<b>Did you receive a hearing notice from NCDS?</b>				
<b>Answer Choices</b>				
Yes		100.00%	90.91%	N/A
No		0.00%	9.09%	N/A
<b>Either before or after you received your hearing notice, did you hire an attorney to represent you or to be present at the hearing?</b>				
<b>Answer Choices</b>				
Yes		0.00%	9.09%	N/A
No		100.00%	90.91%	N/A

California - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
<b>Experience After Filing a Claim</b>				
<b>Survey Questions</b>		<b>Responses</b>		
<p>If you filed a documents only hearing, which of the following <u>best</u> describes why you chose a documents only hearing? Otherwise, select "No, I did not file a documents only hearing" below.</p> <p style="text-align: center;"><b>Answer Choices</b></p> <p>a. More convenient to have an arbitration panel review documents</p> <p>b. Unable to get time off work</p> <p>c. Family or health conflicts</p> <p>Other (please specify)</p> <p>No, I did not file a documents only hearing</p>				
		30.00%	18.18%	N/A
		0.00%	0.00%	N/A
		0.00%	0.00%	N/A
		0.00%	27.27%	N/A
		70.00%	54.55%	N/A
<b>The Evidentiary Hearing Process</b>				
<b>Did the arbitrator start the hearing on time?</b>				
<b>Answer Choices</b>				
Yes		100.00%	58.33%	N/A
No		0.00%	41.67%	N/A
<b>Did the arbitrator explain the arbitration hearing process to both parties? In other words, did the arbitrator explain that each party would be allowed to present and rebut evidence, and that the arbitrator did not have any conflicts of interest to disclose?</b>				
<b>Answer Choices</b>				
Yes		100.00%	75.00%	N/A
No		0.00%	25.00%	N/A



California - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
<b>The Evidentiary Hearing Process</b>				
<b>Survey Questions</b>		<b>Responses</b>		
<b>Did the arbitrator allow both parties a full and fair opportunity to present their proofs?</b>				
<b>Answer Choices</b>				
Yes		100.00%	41.67%	N/A
No		0.00%	58.33%	N/A
<b>During the hearing, did you or the manufacturer request a third party, independent technical inspection of your vehicle?</b>				
<b>Answer Choices</b>				
Yes		0.00%	16.67%	N/A
No		100.00%	83.33%	N/A
<b>Post-award Experience</b>				
<b>How was the arbitrator's decision communicated to you?</b>				
<b>Answer Choices</b>				
By Email		90.00%	68.18%	N/A
By Mail		10.00%	27.27%	N/A
Other Method (please specify)		0.00%	4.55%	N/A

California - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
Post-award Experience				
Survey Questions		Responses		
<b>Which of the following <u>best</u> describes the decision made by the arbitrator?</b>				
<b>Answer Choices</b>				
A refund, where the manufacturer would give you money for your car		30.00%	0.00%	NO RESPONSES
A replacement, where the manufacturer would replace your existing car with a new car		40.00%	0.00%	NO RESPONSES
Reimbursement, where the manufacturer would reimburse you for incidental costs associated with the repair of your car		10.00%	0.00%	NO RESPONSES
A Repair		20.00%	13.64%	NO RESPONSES
No Relief Granted		0.00%	86.36%	NO RESPONSES
<b>Did the arbitrator accurately identify the nature of the non-conformity you alleged in your claim?</b>				
<b>Answer Choices</b>				
Yes		100.00%	13.64%	N/A
No		0.00%	86.36%	N/A
<b>Did the arbitrator include a summary of the testimony at the hearing?</b>				
<b>Answer Choices</b>				
Yes		100.00%	68.18%	N/A
No		0.00%	31.82%	N/A

California - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
<b>Post-award Experience</b>				
<b>Survey Questions</b>		<b>Responses</b>		
<b>Was the arbitrator's decision clear?</b>				
<b>Answer Choices</b>				
Yes		100.00%	63.64%	N/A
No		0.00%	36.36%	N/A
<b>Did the arbitrator render a reasoned decision? Please Note: This means whether or not you agreed with the decision, the arbitrator provided rationale for why the decision was reached.</b>				
<b>Answer Choices</b>				
Yes		100.00%	22.73%	N/A
No		0.00%	77.27%	N/A
<b>Did you return to NCDS the Decision Acceptance / Rejection Form?</b>				
<b>Answer Choices</b>				
Yes		100.00%	68.18%	N/A
No		0.00%	31.82%	N/A

California - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
Arbitrator Satisfaction				
Survey Questions		Responses		
<b>How would you rate the arbitrator in terms of understanding the facts of your case?</b>				
<b>Answer Choices</b>				
Excellent		100.00%	9.09%	N/A
Good		0.00%	0.00%	N/A
Average		0.00%	18.18%	N/A
Poor		0.00%	72.73%	N/A
<b>How would you rate the arbitrator's objectivity and fairness?</b>				
<b>Answer Choices</b>				
Excellent		100.00%	4.55%	N/A
Good		0.00%	4.55%	N/A
Average		0.00%	18.18%	N/A
Poor		0.00%	72.73%	N/A
<b>How would you rate the arbitrator's impartiality during the hearing?</b>				
<b>Answer Choices</b>				
Excellent		100.00%	0.00%	N/A
Good		0.00%	13.64%	N/A
Average		0.00%	22.73%	N/A
Poor		0.00%	63.64%	N/A

California - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
Arbitrator Satisfaction				
Survey Questions		Responses		
<b>How would you rate the arbitrator's impartiality with respect to the decision?</b>				
<b>Answer Choices</b>				
Excellent		100.00%	0.00%	N/A
Good		0.00%	9.09%	N/A
Average		0.00%	18.18%	N/A
Poor		0.00%	72.73%	N/A
Satisfaction with NCDS Processing Claim				
<b>How would you rate the timeliness of the communications between you and the NCDS administrator?</b>				
<b>Answer Choices</b>				
Excellent		70.00%	27.27%	NO RESPONSES
Good		30.00%	22.73%	NO RESPONSES
Fair		0.00%	27.27%	NO RESPONSES
Poor		0.00%	22.73%	NO RESPONSES
<b>How would you rate the helpfulness of the NCDS staff?</b>				
<b>Answer Choices</b>				
Excellent		90.00%	27.27%	NO RESPONSES
Good		10.00%	18.18%	NO RESPONSES
Fair		0.00%	31.82%	NO RESPONSES
Poor		0.00%	22.73%	NO RESPONSES

California - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
Satisfaction with NCDS Processing Claim				
Survey Questions		Responses		
<b>How would you rate your overall experience under the NCDS Arbitration Program?</b>				
<b>Answer Choices</b>				
Excellent		80.00%	9.09%	NO RESPONSES
Good		20.00%	9.09%	NO RESPONSES
Fair		0.00%	18.18%	NO RESPONSES
Poor		0.00%	63.64%	NO RESPONSES
<b>Would you recommend the NCDS Arbitration Program to friends and family?</b>				
<b>Answer Choices</b>				
Yes		100.00%	9.09%	NO RESPONSES
No		0.00%	90.91%	NO RESPONSES

California - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
Settlement of Claim *Mediation Only*				
Survey Questions		Responses		
<b>Before the case proceeded to arbitration, did you agree to settle your case with the manufacturer?</b>				
Yes		N/A	N/A	NO RESPONSES
No		N/A	N/A	NO RESPONSES
<b>After you reached a settlement, did you receive a letter from NCDS explaining the terms of the settlement?</b>				
Yes		N/A	N/A	NO RESPONSES
No		N/A	N/A	NO RESPONSES
<b>After you received your settlement confirmation, did you pursue your case further?</b>				
Yes		N/A	N/A	NO RESPONSES
No		N/A	N/A	NO RESPONSES
<b>If so, please let us know the method you used.</b>				
Re-initiated contact with NCDS		N/A	N/A	NO RESPONSES
Contacted an attorney		N/A	N/A	NO RESPONSES
Contacted a state agency		N/A	N/A	NO RESPONSES
Contacted dealer or manufacturer		N/A	N/A	NO RESPONSES
Other (please specify)		N/A	N/A	NO RESPONSES

## Ohio

### A. CASE LOAD AND BASIC STATISTICS, AND CONSUMER SURVEY RESPONSES

The survey for Ohio consisted of 57 closed NCDS cases.<sup>66</sup> From this universe, we surveyed 13 customers. Consistent with prior audits conducted by Claverhouse & Associates, surveyed customers’ level of program satisfaction, including arbitrator performance, is often tied inextricably to whether or not they achieved the desired outcome in arbitration. This phenomenon is explained more fully in the Ohio state-specific audit, but we include it here for edification purposes.

The average number of days for handling a case in Ohio in 2021 was 33.5 days, which is similar to the number of days cases resolved, specifically, 33.5.

The following table breaks down the sample size and response rate based on case outcome, followed by a breakdown of consumer responses.

Survey	Population	Sample Size	Response Rate %
Ohio - Arbitrated Awarded	8	1	13%
Ohio - Arbitrated Awarded No Action	46	12	26%
Ohio - Mediated	3	0	0%
<b>Total</b>	<b>57</b>	<b>13</b>	<b>23%</b>

### OHIO ARBITRATED CASES AWARDED SURVEY RESULTS<sup>67</sup>

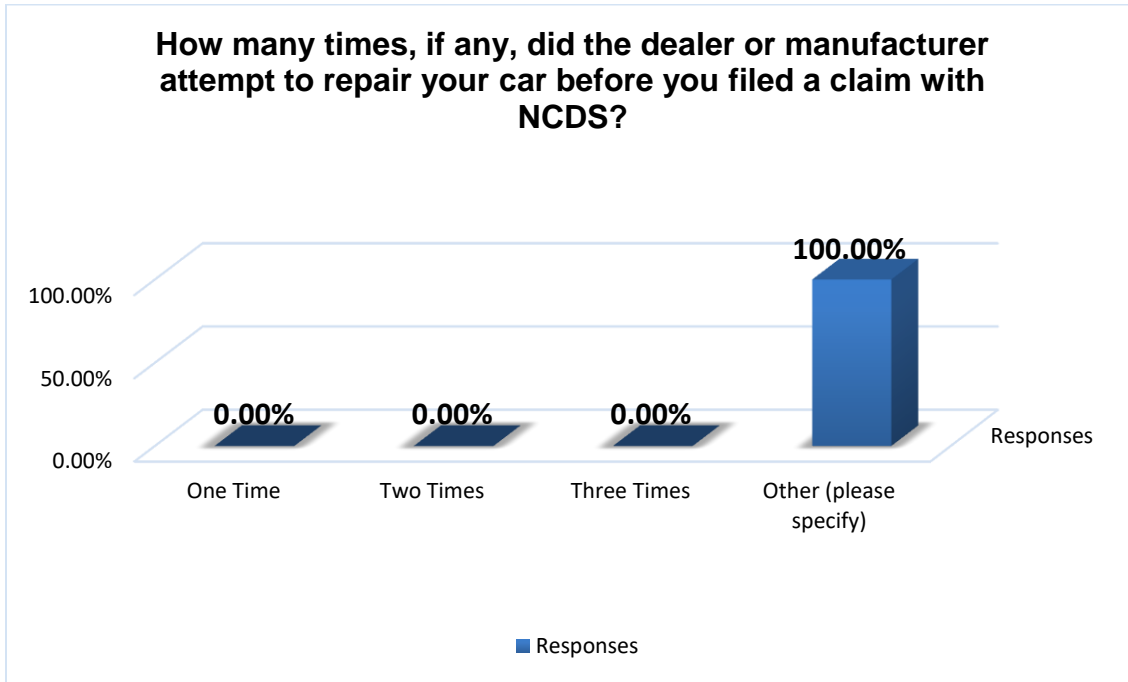
**Pre-filing experience with dealer or manufacturer.** To understand the consumers’ pre-filing experience, respondents were asked general questions related to their pre-filing contacts with either the dealer or the manufacturer. The results show before filing a claim with NCDS, the respondent attempted to discuss his/her concerns with the manufacturer directly. When asked how many times the dealer or manufacturer attempted to repair their vehicle, the participant stated more than three times. **(Graph 13)** This participant reported s/he learned of the NCDS Non-Binding Automobile Warranty Arbitration Program through the Manufacturer Customer Service Representative. **(Graph 14)** When asked how s/he was informed of the NCDS Arbitration Program by the manufacturer or dealer, the participant stated, *“talked over the phone.”*

<sup>66</sup> Statistics being referenced may appear to be at odds with one another. This is largely due to data being collected and reported based on different regulatory mandates using different terminology for similar concepts. Important distinctions are noted.

<sup>67</sup> Ohio Audit Survey Results are found on pages 83-96.

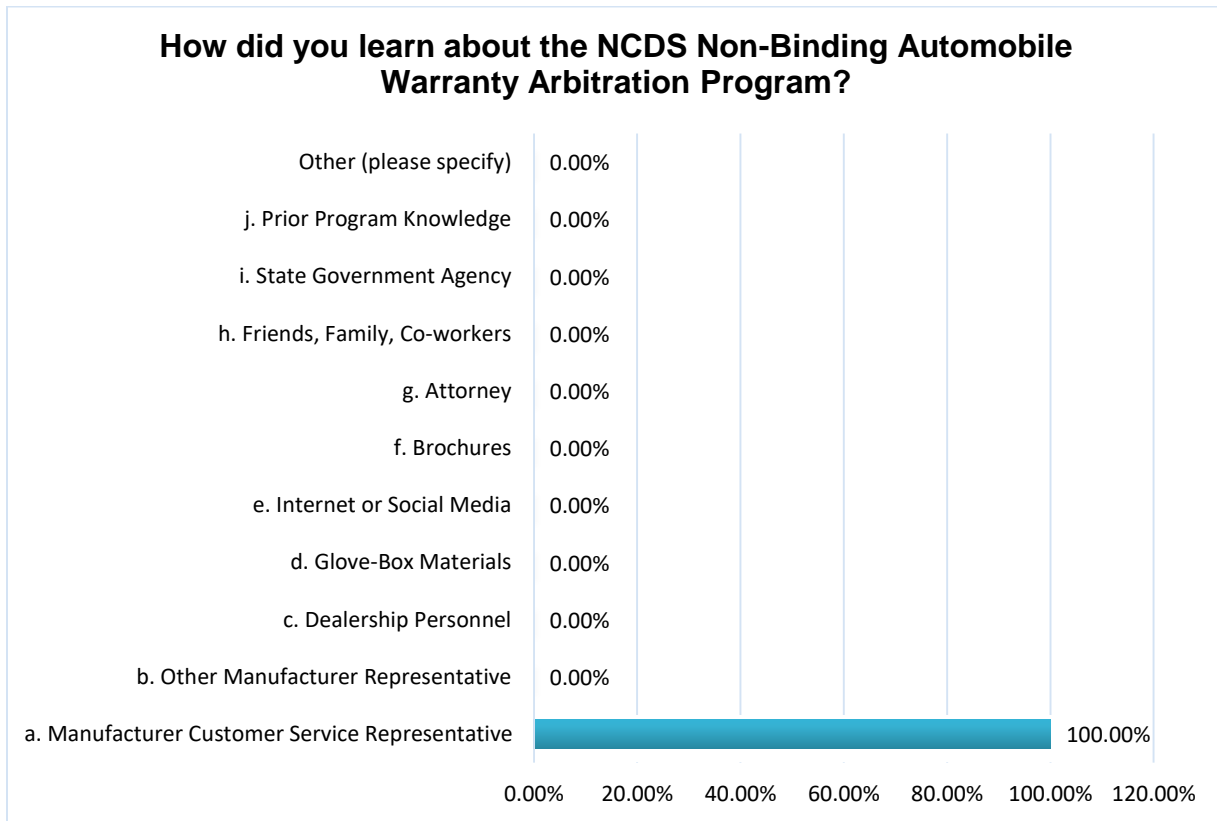


GRAPH 13 – ARBITRATED CASES AWARDED SURVEY RESULTS



The results in **Graph 13** confirm that consumers attempt multiple repairs (3+) on their vehicle, either for the same or different non-conformity, before they file their case in arbitration.

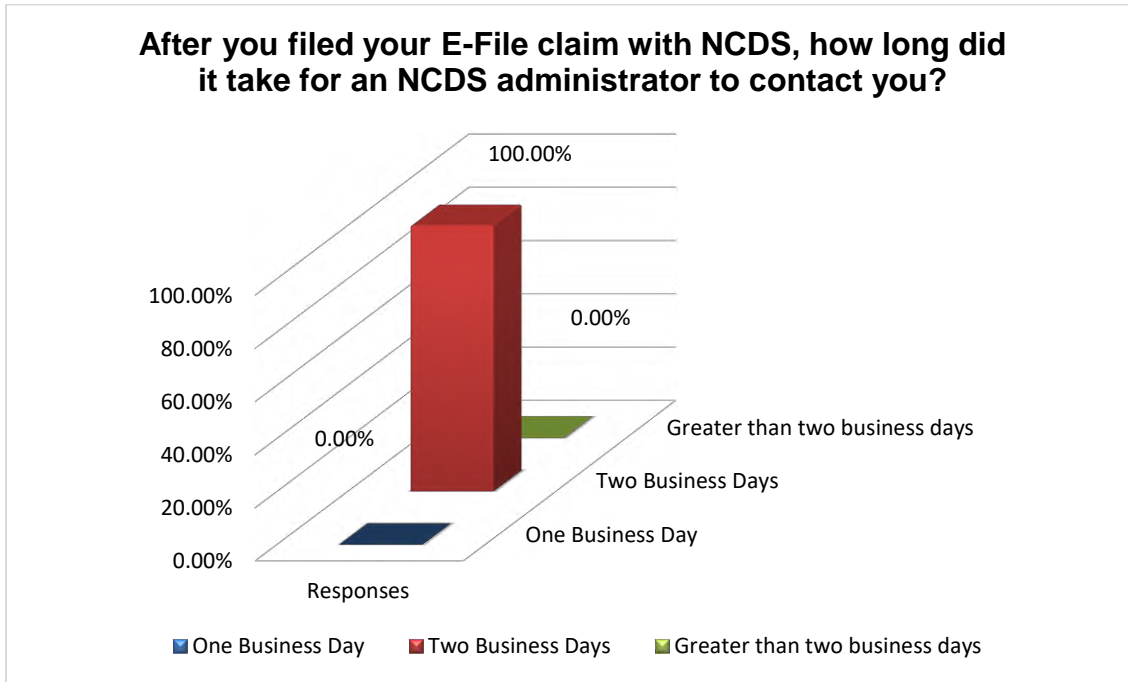
GRAPH 14 – ARBITRATED CASES AWARDED SURVEY RESULTS:



**PLEASE NOTE:** Participants were allowed to select multiple choices.

**Filing of the claim with NCDS.** To identify consumers’ experience related to the actual filing of their claim with NCDS, participants were asked questions associated with the filing method, clarity of instructions, and style of hearing. The respondent reported that s/he used an E-file method to file the claim. Consumers were then asked how clear the instructions were for filing their claim. The respondent stated that the instructions on the claim form were “*somewhat clear.*” The participant stated after E-filing his/her claim, it took two business days for NCDS to acknowledge the claim and initiate the administrative process. **(Graph 15)**

GRAPH 15 – ARBITRATED CASES AWARDED SURVEY RESULTS



**Experience after filing a claim with NCDS.** To capture the pre-hearing process, respondents were asked to rate their experience after they filed their claim with NCDS. Based on the results, it was found that the participant received and reviewed the Frequently Asked Questions (“FAQ”) packet at [www.ncdsusa.org](http://www.ncdsusa.org). The information presented in the FAQ was “*somewhat clear*” and “*moderately helpful*.”

When asked if participants received or reviewed the Non-Binding Program Rules at [www.ncdsusa.org](http://www.ncdsusa.org), the respondent reported “*yes*.” The Program Rules were “*somewhat clear*” and “*moderately helpful*.” The respondent stated s/he received a hearing notice from NCDS and also reported before or after they received their hearing notice, they did not hire an attorney to represent them or to be present at the hearing. The respondent opted for a teleconference hearing, in which oral testimony would be received.

**The evidentiary hearing process.** To assess the actual evidentiary process, participants were asked to convey their experience with different phases of the hearing process. The respondent indicated that the arbitrator started the hearing on time, explained the process, and re-affirmed his/her impartiality. The respondent indicated that the arbitrator did not provide the parties with a full and fair opportunity to present their proofs. When asked whether they requested an independent inspection of the vehicle, the respondent stated “*yes*.”

**Post-award experience.** Next, it was important to evaluate the consumers’ experience after they received their award. When it was time to communicate the award to the consumer, the participant indicated that the arbitrator’s decision was communicated by e-mail, in which the arbitrator awarded a reimbursement for incidental costs associated with the repair of the car.

The results show the participant did not feel the arbitrator accurately identified the nature of the non-conformity alleged in the claim. The participant stated that the arbitrator included a summary of the testimony at the hearing, and the arbitrator's decision was clear. Finally, participants were asked to assess whether the arbitrator rendered a reasoned decision. This meant whether or not the participant agreed with the award, the arbitrator explained the rationale for why the decision was reached. The participant responded "yes" to this question. The respondent did not return to NCDS the Decision Acceptance/Rejection Form.

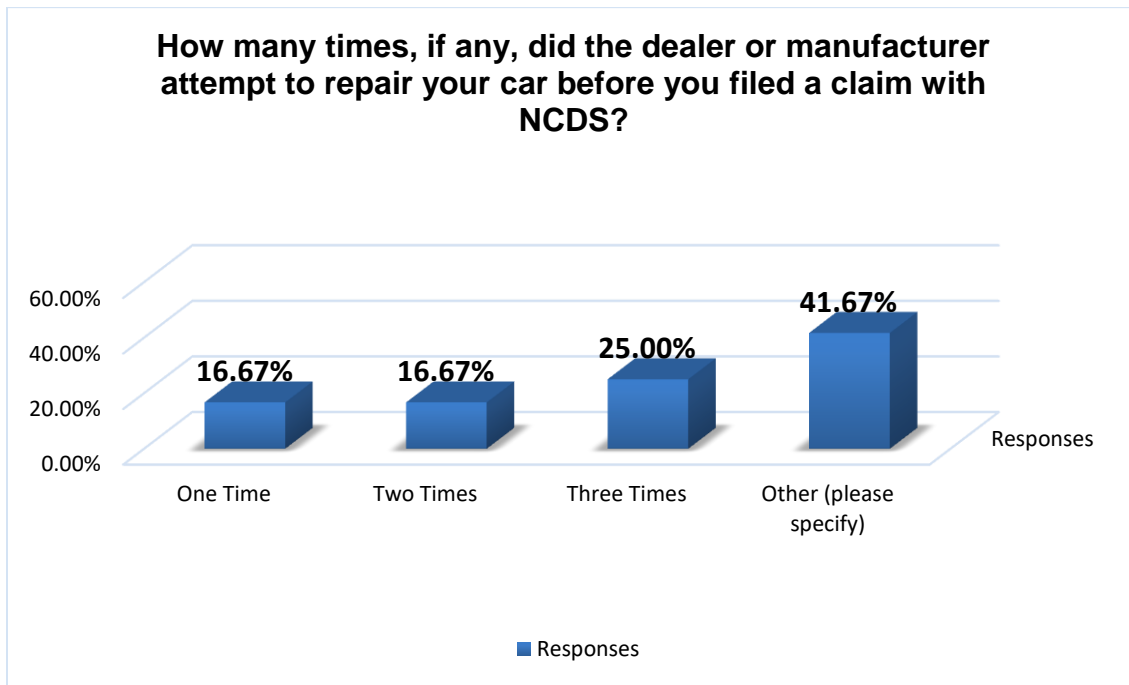
**Arbitrator satisfaction.** To understand arbitrator satisfaction among the consumers, the participants were asked how well the arbitrator understood their case. The respondent rated the arbitrator "average" and also rated the arbitrator's objectivity and fairness as "average." The respondent rated the arbitrator's impartiality during the hearing as "poor" and the arbitrator's impartiality with respect to the decision as "average."

**Satisfaction with NCDS processing claim.** To measure consumers' satisfaction with NCDS processing their claims, respondents were asked to rate NCDS in four different areas. Respondents were asked to rate the timeliness of the communications between them and NCDS staff of which the participant rated the timeliness of communications as "fair." Next, participants were asked to rate the helpfulness of the NCDS staff; the respondent rated the helpfulness of the staff as "fair." To help gauge consumers' experience with the arbitration program, participants were asked to rate their overall participation in the NCDS Arbitration Program. The respondent rated the NCDS experience as "poor." In extrapolating the extraneous comment made on the survey form, this consumer was upset that s/he had to go through an arbitration process to achieve the desired outcome when a dealership visit should have rectified the problem.

**ARBITRATED CASES NO ACTION SURVEY RESULTS**

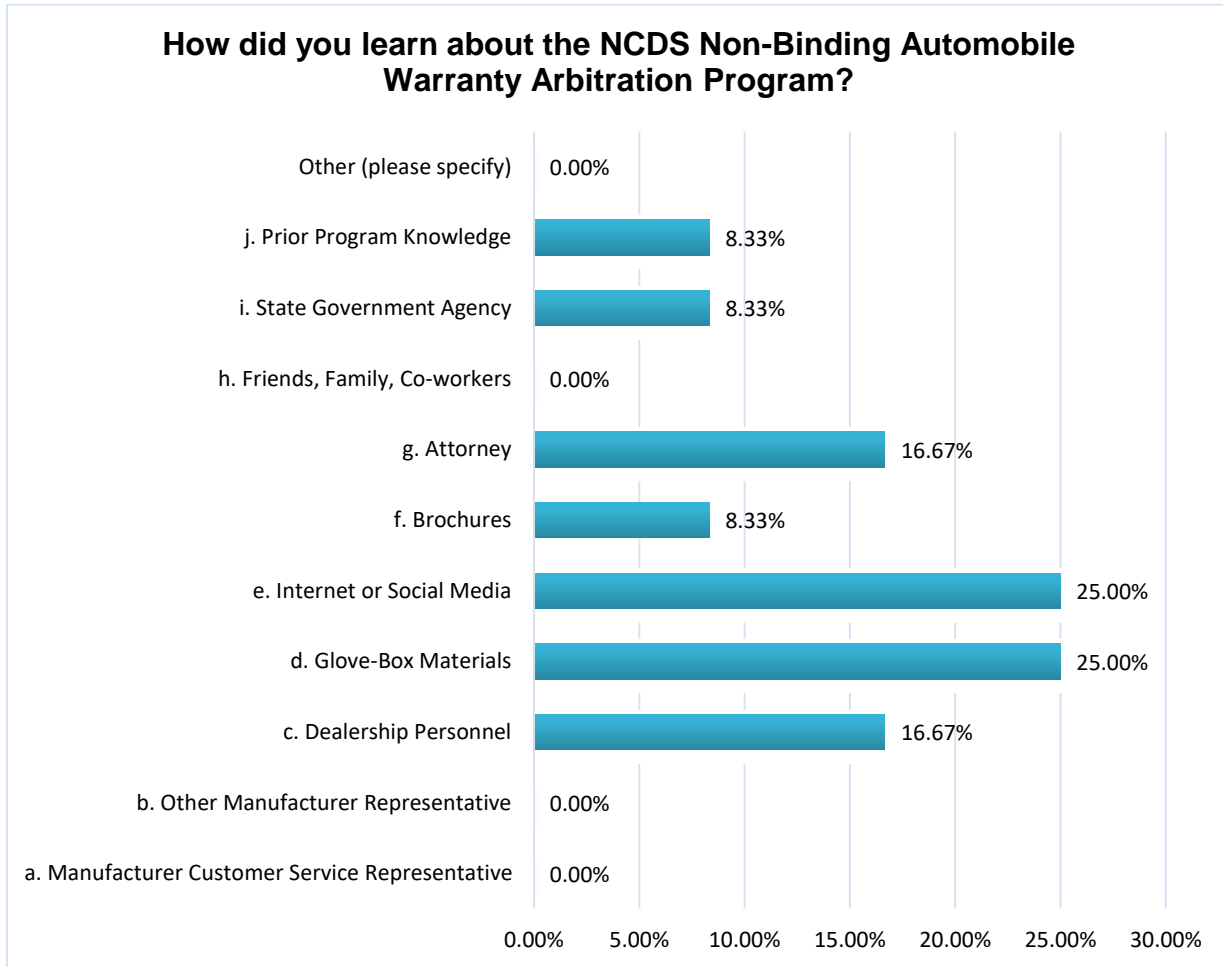
**Pre-filing experience with dealer or manufacturer.** To understand the consumers’ pre-filing experience, respondents were asked general questions related to their pre-filing experience with either the dealer or the manufacturer. The results show before filing a claim with NCDS, 100% of participants reported that they attempted to contact the manufacturer directly. (**Ohio – Audit Survey Results, page. 78**) When asked how many times the dealer or manufacturer attempted to repair their vehicle, 42% of respondents stated more than three times and 58% reported between one-to-three times (**Graph 16**). The majority of participants reported they learned about the NCDS Non-Binding Automobile Warranty Arbitration Program through Glove-Box materials (25%) and Internet or Social Media (25%). There were other resources participants noted as outlined in **Graph 17** but were not as prevalent. Only 50% of the participants stated they were informed of the Arbitration Program from the manufacturer or dealer over the phone while 50% reported “Other.” The sources were not specified.

**GRAPH 16 – ARBITRATED AWARD NO ACTION SURVEY RESULTS**



The results in **Graph 16** confirm that consumers attempt multiple repairs (3+) on their vehicle, either for the same or different non-conformity, before they file their case in arbitration.

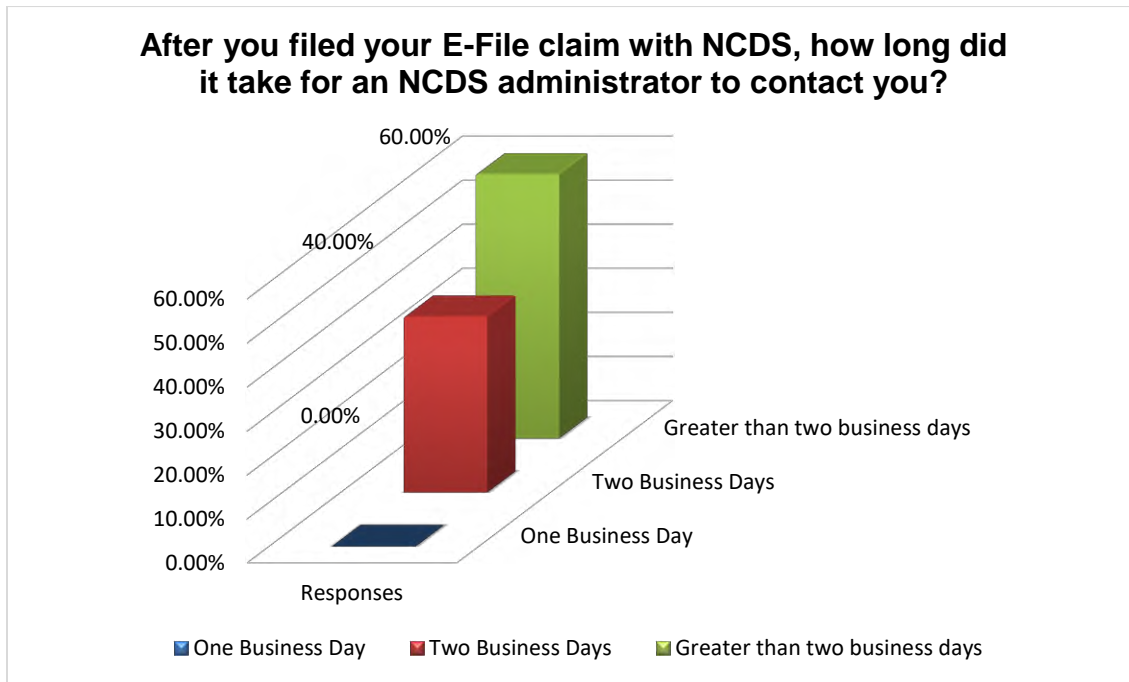
GRAPH 17 – ARBITRATED CASES NO ACTION SURVEY RESULTS



**PLEASE NOTE:** Participants were allowed to select multiple choices.

**Filing of the claim with NCDS.** To identify consumers’ experience related to the actual filing of their claim with NCDS participants were asked questions related to the filing method, clarity of instructions, and style of hearing. Eighty-three percent (83%) reported they used an E-File method to file their claim. The respondents were then asked how clear the instructions were for filing their claim. Fifty percent (50%) of the survey population indicated the instructions on the claim form were “*somewhat clear*” and 25% stated the instructions were “*very clear.*” The remaining 25% stated that the instructions for filing the claim were “*not clear.*” Once the participants E-filed their claim with NCDS, approximately 60% reported it took greater than two business days for NCDS to acknowledge their claim and initiate the administrative process. The remaining 40% stated it took between one-to-two business days (**Graph 18**).

GRAPH 18 – ARBITRATED CASES NO ACTION SURVEY RESULTS



**Experience after filing a claim with NCDS.** To capture the pre-hearing process, respondents were asked to rate their experience after they filed their claim with NCDS. Based on the results, it was found that 58% of participants received or reviewed the Frequently Asked Questions (“FAQs”) [www.ncdsusa.org](http://www.ncdsusa.org) and 42% of the surveyed population reported they did not receive the packet. The information presented in the FAQs was “*very clear*” as reported by 17% of the respondents and “*somewhat clear*” by 42% of respondents. Eight percent (8%) of participants stated the information presented in the FAQs was “*very helpful*” while 50% reported it was “*moderately helpful*.”

When asked if participants received or reviewed the Non-Binding Program Rules at [www.ncdsusa.org](http://www.ncdsusa.org), 58% reported “*yes*” while 42% reported “*no*.” The Program Rules were “*very clear*” to 17% of participants and “*somewhat clear*” to 33% of participants. The respondents were then asked if the Program Rules were helpful in explaining the arbitration process of which 25% stated they were “*very helpful*” and 33% acknowledged they were “*moderately helpful*” in explaining the arbitration process. All respondents (100%) stated they received a hearing notice from NCDS, but 92% reported before or after they received their hearing notice, they did not hire an attorney to represent them or to be present at the hearing. Only one respondent (8%) reported they hired an attorney after receiving their hearing notice. Based on the results, 75% requested a “documents only” hearing after filing their claim and 25% did not request a “documents only” hearing. Fifty-percent (50%) of the participants who selected a documents only hearing did so on the basis that it was more convenient to have an arbitration panel review the evidence/documents.

**The evidentiary hearing process.** To assess the actual evidentiary process, participants were asked to convey their experience with different phases of the hearing process. Of those respondents who participated in the evidentiary hearing, 67% reported that the arbitrator started the hearing on time. It was also reported by 67% of respondents that the arbitrator explained the hearing process to both parties.

When asked if the arbitrator allowed both parties a full and fair opportunity to present their proofs, 50% responded “yes.” Sixty-seven percent of the respondents indicated that during the hearing, they requested a third-party independent technical inspection of the vehicle.

**Post-award experience.** Next, it was important to evaluate the consumers’ experience after they received their award. When it was time to communicate the award to the consumer, 75% of the total sample population stated the arbitrator communicated their award by email, and 25% reported it was by written submission. Most of the consumers (75%) reported they received no award while 17% reported the relief awarded to them by the arbitrator was a refund, where the manufacturer would give them money for their vehicle. Eight percent (8%) of “no action” respondents received a repair.

The results showed the participants did not feel the arbitrator accurately identified the nature of the non-conformity in the consumer’s alleged claims as reported by 83% of respondents. After identifying the non-conformity, 33% stated the arbitrator included a summary of the testimony at the hearing while 67% reported the arbitrator did not include a summary. Fifty percent (50%) of the participants stated the arbitrator’s award was clear while 50% said the award was not clear. The majority of participants (83%) did not think the arbitrator rendered a reasoned award.

**Arbitrator satisfaction.** To understand arbitrator satisfaction among the consumers, the participants were asked how well the arbitrator understood their case of which 67% reported “poor,” 17% “average,” and 17% “excellent or good.” The arbitrator’s objectivity and fairness were rated as “poor” by 92% of respondents and “excellent” by 8%. The participants were then asked to rate the arbitrator’s impartiality during the hearing of which 92% rated their arbitrator as “poor” and 8% rated their arbitrator as “excellent.” Finally, the participants were asked to rate the arbitrator’s impartiality with respect to the award. Seventy-five percent (75%) of respondents rated this as “poor,” 17% “average,” and 8% as “excellent.”

**Satisfaction with NCDS processing claim.** To measure consumers’ satisfaction with NCDS processing their claims, respondents were asked to rate NCDS in four different areas. Respondents were asked to rate the timeliness of the communications between them and NCDS staff. Forty-two percent (42%) rated timeliness as “good,” 42% “fair,” and 17% “poor.” Next, participants were asked to rate the helpfulness of the NCDS staff. Forty-two percent (42%) rated helpfulness as “fair,” 33% “good,” 17% “poor,” and 8% “excellent.” To help gauge consumers’ experience with the arbitration program, participants were asked to rate their overall participation in the NCDS Arbitration Program of which 67% of participants rated it as “poor,” 25% “fair,” and 8% “excellent.” Finally, respondents were asked if they would recommend the Arbitration Program to friends and family and 83% responded “no” while 17% stated “yes.”

## B. RECORDKEEPING, ACCURACY AND COMPLETENESS

Rule 703.6. mandates various recordkeeping functions, all of which were previously discussed in the context of the national audit in Section IV. For the Ohio field audit, the auditor requested a random sample of 20 case files drawn from all cases closed during the audit period and examined them to determine whether they were complete and available for audit.



## FINDINGS

The results of the random sample inspection of case file folders, confined to § 703.6(a)(1-5), confirm compliance. All case files contained the customer's name, address, and telephone number. The name and address of the warrantor's contact person were included with the initial correspondence that the customer receives from the program. In addition, the various regional office contact addresses and phone number were included in each Owner's Manual that accompanies all new vehicles when they are delivered to the consumer.

All case files inspected contained the make and vehicle identification number (VIN) of the vehicle, along with the date of the dispute and the date of the disclosure of the decision. Some files contained letters and additional documents, primarily filed by the consumer. However, there is no way to measure this item, thus the auditor has determined this section to be inapplicable.

The requirements for subsections 6-7 were also met. Oral presentations are a basic component of the NCDS program and § 703.6(a)(7) of Magnuson-Moss requires summaries of the oral presentations to be placed in the case file. In the case files reviewed for this region, NCDS was in full compliance.

A critical part of the NCDS program and Magnuson-Moss specifically is the disclosure of the arbitrator's decision (subsections 8-9). The statute mandates that a copy of the decision be inserted into the file and available for review during the annual audit. Unless a case was withdrawn or settled prior to hearing, all files the auditor reviewed contained this information.

Under subsection 10, the warrantor's intended action(s) and performance are linked together. The auditor validates this item in terms of performance verification, which is the responsibility of NCDS. NCDS' protocol is to send a survey to the customer following receipt of the customer's acceptance of an arbitral award which grants a remedy. The survey asks whether the required performance has taken place. As noted elsewhere in this audit and in prior audits, few returned forms exist in the file. The absence of performance verification forms in the case file does not constitute a regulatory inconsistency since performance verification information may not be available from the customer. By mailing a performance verification survey, NCDS goes as far as can be expected in determining whether arbitration decisions are, in fact, being implemented per the award. It is appropriate to assume, in the absence of conflicting data, that performance has taken place. If a manufacturer were to attempt to avoid its statutory obligations, this fact would surface in the context of the national random survey of customers who have used the program, and it does not. Performance verification status should and does appear in the case file as is indicated by sections 11 and 12 below.

Section 11 above is not applicable for purposes of this audit because there is no practical means by which to verify the completeness and accuracy of possible additions to the files. Section 12, however, suggests that a summary form be created whenever the arbitrator receives an oral communication from either party involving the issue in dispute. This is most likely to occur at the oral hearing, in which case the communications are summarized in the arbitrator's decision. All summaries are included in the case file.

CONCLUSION

The NCDS program’s record keeping policies and procedures, with appropriate modifications involving the enhanced use of technology having been previously made, are in substantial compliance with FTC Rule 703 requirements.

C. CASE FILE RECORDS (4 yrs. 2018-2021)<sup>68</sup>

A random sample of case numbers from the years 2018 through 2021 was drawn from the NCDS data base. Inspection of this sample verified that they were being maintained per requirement § 703.6(f).

Closed files are stored at an off-site record storage facility of the NCDS Dallas, Texas office. The auditor did not inspect the off-site facility for this year’s audit. The files the auditor reviewed, however, were intact and readily available for inspection. Cases drawn from the four-year universe were maintained in accordance with this statutory requirement.

D. ARBITRATION/HEARING RECORDS

*Case file folders*

This information, which is maintained in NCDS headquarters, is found on a series of forms in NCDS case files.

*Arbitrator Biographies*

The arbitrator biographies for the national program are available for review in National Center for Dispute Settlement headquarters in Dallas, Texas. A random review of such biographies indicate that arbitrator biographies are thorough and current. The list of arbitrators for each district includes the dates of their appointments.

E. HEARING PROCESS

*Physical Description of Arbitration Hearing*

The AWAP hearing was a “documents only” hearing which was agreed upon by the customer and the various manufacturers, which included both certified and non-certified participating manufacturers. It was conducted on September 13, 2022. Since this was a telephonic hearing, it was not necessary for the auditor to conduct a room check to determine whether the hearing could be held

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<sup>68</sup> Rule 703.6(f) states:

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

without obstruction. The hearing commenced on time, with the auditor participating telephonically as “observer.”

The board hearing involved 10 FCA claims, 3 Honda claims, 3 Toyota claims, 2 Mitsubishi claims, and 1 Lexus claim.

### *Openness of Arbitration Hearing*

The arbitrator communicated to the auditor his understanding that the hearings are open and can be attended by observers who agree to abide by the program’s rules.

### *Hearing Formalities*

The arbitrator provided a general overview of the protocols the board would follow, including a discussion of each case file, the board member’s findings, and the recommended decision. Each board member attested to their qualifications to serve.

### *Efficiency of Arbitration Hearing*

The chair opened the hearing and explained the protocols for conducting the hearing. The panel proceeded to review each of the 19 cases submitted for determination on documents only. Each member of the panel took turns summarizing the customer’s claim and the evidence. Independently, each board member recommended an outcome, based on the evidence submitted.

### *Hearing Process*

The hearing was properly conducted. Arbitrators posed questions and were thoughtful and deliberate in their discussion of the evidence. The format, established by the chair in advance, permitted each member of the panel to assume an equal role in the decision-making process. There was ample opportunity for the arbitrators to discuss whether a particular claim met the statutory threshold and, if so, the appropriate remedy under Mag-Moss. The hearing, which spanned over 90 minutes, met the hallmarks of efficiency without compromising thoroughness.

### *Arbitration Decisions*

The auditor reviewed the arbitrator panel’s decisions along with several other decisions rendered by the NCDS arbitrators in Ohio during the audited year 2021. Those reviewed were all written consistent with applicable regulations and the NCDS program rules.

The decisions made during the board hearing were consistent with the facts presented, offering some rationale to support each decision. It is beyond the purview of the auditor to comment on the correctness of the awards.

## **FINDINGS WITH RESPECT TO THE DECISION-MAKING PROCESS**

The auditor found that the decision-making process was well-structured and allowed for maximum engagement of each board member. Board members were tasked with reviewing each case file before the board convened. This lessened the amount of time the board would confer. Consensus was readily reached once a board member explained their recommendation and justification. Despite the

fluidity of this process, one improvement would be to provide a more detailed explanation of why a particular defect, if found, did not qualify for a remedy. *See* Recommendation below.

#### RECOMMENDATION

The board should enhance its explanation of the arguments of the parties, gleaned from the documents filed as evidence, and the actual award. Currently, board decisions identify only the documents that the consumer and the manufacturer filed. A preferred approach would be for the board to include a summary of the parties' positions and a more detailed explanation as to why a particular non-conformity, if found, does not merit remedial action under Mag-Moss.

#### CONCLUSION

**The auditor concludes that the AWAP, as it operates in Ohio, is in substantial compliance with the Magnuson-Moss Warranty Act and FTC Rule 703. (More amplified discussion appears in the Ohio-Specific Audit). The administrative staff is unequivocally dedicated to the program's mission, while maintaining a strong commitment to the fair and expeditious resolution of warranty disputes.**

OVERALL SURVEY RESULTS: KEY FINDINGS

This section captures the overall survey results (raw) from the sample size of participants who partook in the audit surveys and compares the results found between the different outcomes of cases. The eight areas compared were the pre-filing experience with the dealer or manufacturer, filing of claim, experience after filing of claim, the evidentiary hearing process, post-award experience, arbitrator satisfaction, satisfaction with NCDS processing their claim, and settlement of claim (mediation only). The highest percentages were highlighted based on the responses for each question for ease of comparison.

Ohio Overall Survey Results and Comparison Between Outcomes

Ohio - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
<b>Pre-filing Experience with Dealer or Manufacturer</b>				
<b>Survey Questions</b>		<b>Responses</b>		
<b>Before filing a claim with NCDS, did you attempt to contact the manufacturer directly to discuss your concerns?</b>				
<b>Answer Choices</b>				
Yes		100.00%	100.00%	NO RESPONSES
No		0.00%	0.00%	NO RESPONSES
<b>How many times, if any, did the dealer or manufacturer attempt to repair your car before you filed a claim with NCDS?</b>				
<b>Answer Choices</b>				
One Time		0.00%	16.67%	NO RESPONSES
Two Times		0.00%	16.67%	NO RESPONSES
Three Times		0.00%	25.00%	NO RESPONSES
Other (please specify) - More than Three Times		100.00%	41.67%	NO RESPONSES

Ohio - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
Pre-filing Experience with Dealer or Manufacturer				
Survey Questions		Responses		
<b>How did you learn about the NCDS Non-Binding Automobile Warranty Arbitration Program?</b>				
<b>Answer Choices</b>				
a. Manufacturer Customer Service Representative		100.00%	0.00%	NO RESPONSES
b. Other Manufacturer Representative		0.00%	0.00%	NO RESPONSES
c. Dealership Personnel		0.00%	16.67%	NO RESPONSES
d. Glove-Box Materials		0.00%	25.00%	NO RESPONSES
e. Internet or Social Media		0.00%	25.00%	NO RESPONSES
f. Brochures		0.00%	8.33%	NO RESPONSES
g. Attorney		0.00%	16.67%	NO RESPONSES
h. Friends, Family, Co-workers		0.00%	0.00%	NO RESPONSES
i. State Government Agency		0.00%	8.33%	NO RESPONSES
j. Prior Program Knowledge		0.00%	8.33%	NO RESPONSES
Other (please specify)		0.00%	0.00%	NO RESPONSES
<b>How did the manufacturer or dealer inform you of the NCDS Arbitration Program?</b>				
<b>Answer Choices</b>				
Talked over the phone		100.00%	50.00%	NO RESPONSES
Mailed or E-mailed Information		0.00%	0.00%	NO RESPONSES
Website		0.00%	0.00%	NO RESPONSES
Showroom Poster		0.00%	0.00%	NO RESPONSES
Other (please specify)		0.00%	50.00%	NO RESPONSES

Ohio - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
<b>Filing of Claim</b>				
<b>Survey Questions</b>		<b>Responses</b>		
<b>What method did you use to file your claim with NCDS?</b>				
<b>Answer Choices</b>				
E-File		100.00%	83.33%	NO RESPONSES
Mail		0.00%	16.67%	NO RESPONSES
<b>After you filed your E-File claim with NCDS, how long did it take for an NCDS administrator to contact you?</b>				
One Business Day		0.00%	0.00%	NO RESPONSES
Two Business Days		100.00%	40.00%	NO RESPONSES
Greater than two business days		0.00%	60.00%	NO RESPONSES
<b>After you mailed and received an acknowledgement from NCDS that your claim had been received, how long did it take for an NCDS administrator to contact you?</b>				
One Business Day		N/A	0.00%	NO RESPONSES
Two Business Days		N/A	0.00%	NO RESPONSES
Greater than two business days		N/A	100.00%	NO RESPONSES
<b>How clear were the instructions for filing the claim?</b>				
<b>Answer Choices</b>				
Very Clear		0.00%	25.00%	NO RESPONSES
Somewhat Clear		100.00%	50.00%	NO RESPONSES
Not Clear		0.00%	25.00%	NO RESPONSES
Do Not Know		0.00%	0.00%	NO RESPONSES

Ohio - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
Experience After Filing a Claim				
Survey Questions		Responses		
<b>Whether you E-Filed or filed your claim by mail, did you <u>receive</u> the Frequently Asked Questions (FAQ) Packet at <a href="http://www.ncdsusa.org">www.ncdsusa.org</a>?</b>				
<b>Answer Choices</b>				
Yes		100.00%	58.33%	NO RESPONSES
No		0.00%	41.67%	NO RESPONSES
<b>Whether you E-Filed or filed your claim by mail, did you <u>review</u> the Frequently Asked Questions (FAQ) Packet at <a href="http://www.ncdsusa.org">www.ncdsusa.org</a>?</b>				
<b>Answer Choices</b>				
Yes		100.00%	58.33%	NO RESPONSES
No		0.00%	41.67%	NO RESPONSES
<b>How clear was the information presented in the FAQ?</b>				
<b>Answer Choices</b>				
Very Clear		0.00%	16.67%	NO RESPONSES
Somewhat Clear		100.00%	41.67%	NO RESPONSES
Not Clear		0.00%	8.33%	NO RESPONSES
Do Not Know		0.00%	33.33%	NO RESPONSES



Ohio - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
		Experience After Filing a Claim		
Survey Questions		Responses		
<b>How helpful was the information presented in the FAQ?</b>				
<b>Answer Choices</b>				
Very Helpful		0.00%	8.33%	NO RESPONSES
Moderately Helpful		100.00%	50.00%	NO RESPONSES
Not At All Helpful		0.00%	8.33%	NO RESPONSES
Do Not Know		0.00%	33.33%	NO RESPONSES
<b>Did you <u>receive</u> the Non-Binding Program Rules at <a href="http://www.ncdsusa.org">www.ncdsusa.org</a>?</b>				
<b>Answer Choices</b>				
Yes		100.00%	58.33%	NO RESPONSES
No		0.00%	41.67%	NO RESPONSES
<b>Did you <u>review</u> the Non-Binding Program Rules at <a href="http://www.ncdsusa.org">www.ncdsusa.org</a>?</b>				
<b>Answer Choices</b>				
Yes		100.00%	58.33%	NO RESPONSES
No		0.00%	41.67%	NO RESPONSES
<b>How clear were the Program Rules?</b>				
<b>Answer Choices</b>				
Very Clear		0.00%	16.67%	NO RESPONSES
Somewhat Clear		100.00%	33.33%	NO RESPONSES
Not Clear		0.00%	16.67%	NO RESPONSES
Do Not Know		0.00%	33.33%	NO RESPONSES

Ohio - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
Experience After Filing a Claim				
Survey Questions		Responses		
<b>How helpful were the Program Rules in explaining the arbitration process?</b>				
<b>Answer Choices</b>				
Very Helpful		0.00%	25.00%	NO RESPONSES
Moderately Helpful		100.00%	33.33%	NO RESPONSES
Not At All Helpful		0.00%	8.33%	NO RESPONSES
Do Not Know		0.00%	33.33%	NO RESPONSES
<b>Did you receive a hearing notice from NCDS?</b>				
<b>Answer Choices</b>				
Yes		100.00%	100.00%	N/A
No		0.00%	0.00%	N/A
<b>Either before or after you received your hearing notice, did you hire an attorney to represent you or to be present at the hearing?</b>				
<b>Answer Choices</b>				
Yes		0.00%	8.33%	N/A
No		100.00%	91.67%	N/A

Ohio - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
<b>Experience After Filing a Claim</b>				
<b>Survey Questions</b>		<b>Responses</b>		
<p>If you filed a documents only hearing, which of the following <u>best</u> describes why you chose a documents only hearing? Otherwise, select "No, I did not file a documents only hearing" below.</p> <p style="text-align: center;"><b>Answer Choices</b></p> <p>a. More convenient to have an arbitration panel review documents</p> <p>b. Unable to get time off work</p> <p>c. Family or health conflicts</p> <p>Other (please specify)</p> <p>No, I did not file a documents only hearing</p>		0.00%	50.00%	N/A
		0.00%	16.67%	N/A
		0.00%	8.33%	N/A
		0.00%	0.00%	N/A
		100.00%	25.00%	N/A
<b>The Evidentiary Hearing Process</b>				
<b>Did the arbitrator start the hearing on time?</b>				
<b>Answer Choices</b>				
Yes		100.00%	66.67%	N/A
No		0.00%	33.33%	N/A
<b>Did the arbitrator explain the arbitration hearing process to both parties? In other words, did the arbitrator explain that each party would be allowed to present and rebut evidence, and that the arbitrator did not have any conflicts of interest to disclose?</b>				
<b>Answer Choices</b>				
Yes		100.00%	66.67%	N/A
No		0.00%	33.33%	N/A

Ohio - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
<b>The Evidentiary Hearing Process</b>				
<b>Survey Questions</b>		<b>Responses</b>		
<b>Did the arbitrator allow both parties a full and fair opportunity to present their proofs?</b>				
<b>Answer Choices</b>				
Yes		0.00%	50.00%	N/A
No		100.00%	50.00%	N/A
<b>During the hearing, did you or the manufacturer request a third party, independent technical inspection of your vehicle?</b>				
<b>Answer Choices</b>				
Yes		100.00%	33.33%	N/A
No		0.00%	66.67%	N/A
<b>Post-award Experience</b>				
<b>How was the arbitrator's decision communicated to you?</b>				
<b>Answer Choices</b>				
By Email		100.00%	75.00%	N/A
By Mail		0.00%	25.00%	N/A
Other Method (please specify)		0.00%	0.00%	N/A

Ohio - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
Post-award Experience				
Survey Questions		Responses		
<b>Which of the following <u>best</u> describes the decision made by the arbitrator?</b>				
<b>Answer Choices</b>				
A refund, where the manufacturer would give you money for your car		0.00%	16.67%	NO RESPONSES
A replacement, where the manufacturer would replace your existing car with a new car		0.00%	0.00%	NO RESPONSES
Reimbursement, where the manufacturer would reimburse you for incidental costs associated with the repair of your car		100.00%	0.00%	NO RESPONSES
A Repair		0.00%	8.33%	NO RESPONSES
No Relief Granted		0.00%	75.00%	NO RESPONSES
<b>Did the arbitrator accurately identify the nature of the non-conformity you alleged in your claim?</b>				
<b>Answer Choices</b>				
Yes		0.00%	16.67%	N/A
No		100.00%	83.33%	N/A
<b>Did the arbitrator include a summary of the testimony at the hearing?</b>				
<b>Answer Choices</b>				
Yes		100.00%	33.33%	N/A
No		0.00%	66.67%	N/A
<b>Was the arbitrator's decision clear?</b>				
<b>Answer Choices</b>				
Yes		100.00%	50.00%	N/A
No		0.00%	50.00%	N/A

Ohio - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
<b>Post-award Experience</b>				
<b>Survey Questions</b>		<b>Responses</b>		
<b>Did the arbitrator render a reasoned decision? Please Note: This means whether or not you agreed with the decision, the arbitrator provided rationale for why the decision was reached.</b>				
<b>Answer Choices</b>				
Yes		100.00%	16.67%	N/A
No		0.00%	83.33%	N/A
<b>Did you return to NCDS the Decision Acceptance / Rejection Form?</b>				
<b>Answer Choices</b>				
Yes		0.00%	66.67%	N/A
No		100.00%	33.33%	N/A
<b>Arbitrator Satisfaction</b>				
<b>How would you rate the arbitrator in terms of understanding the facts of your case?</b>				
<b>Answer Choices</b>				
Excellent		0.00%	8.33%	N/A
Good		0.00%	8.33%	N/A
Average		100.00%	16.67%	N/A
Poor		0.00%	66.67%	N/A

Ohio - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
<b>Arbitrator Satisfaction</b>				
<b>Survey Questions</b>		<b>Responses</b>		
<b>How would you rate the arbitrator's objectivity and fairness?</b>				
<b>Answer Choices</b>				
Excellent		0.00%	8.33%	N/A
Good		0.00%	0.00%	N/A
Average		100.00%	0.00%	N/A
Poor		0.00%	91.67%	N/A
<b>How would you rate the arbitrator's impartiality during the hearing?</b>				
<b>Answer Choices</b>				
Excellent		0.00%	8.33%	N/A
Good		0.00%	0.00%	N/A
Average		0.00%	0.00%	N/A
Poor		100.00%	91.67%	N/A
<b>How would you rate the arbitrator's impartiality with respect to the decision?</b>				
<b>Answer Choices</b>				
Excellent		0.00%	8.33%	N/A
Good		0.00%	0.00%	N/A
Average		100.00%	16.67%	N/A
Poor		0.00%	75.00%	N/A

Ohio - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
<b>Satisfaction with NCDS Processing Claim</b>				
<b>Survey Questions</b>		<b>Responses</b>		
<b>How would you rate the timeliness of the communications between you and the NCDS administrator?</b>				
<b>Answer Choices</b>				
Excellent		0.00%	0.00%	NO RESPONSES
Good		0.00%	41.67%	NO RESPONSES
Fair		100.00%	41.67%	NO RESPONSES
Poor		0.00%	16.67%	NO RESPONSES
<b>How would you rate the helpfulness of the NCDS staff?</b>				
<b>Answer Choices</b>				
Excellent		0.00%	8.33%	NO RESPONSES
Good		0.00%	33.33%	NO RESPONSES
Fair		100.00%	41.67%	NO RESPONSES
Poor		0.00%	16.67%	NO RESPONSES
<b>How would you rate your overall experience under the NCDS Arbitration Program?</b>				
<b>Answer Choices</b>				
Excellent		0.00%	8.33%	NO RESPONSES
Good		0.00%	0.00%	NO RESPONSES
Fair		0.00%	25.00%	NO RESPONSES
Poor		100.00%	66.67%	NO RESPONSES



Ohio - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
		Satisfaction with NCDS Processing Claim		
Survey Questions		Responses		
<b>Would you recommend the NCDS Arbitration Program to friends and family?</b>				
<b>Answer Choices</b>				
Yes		0.00%	16.67%	NO RESPONSES
No		100.00%	83.33%	NO RESPONSES
Settlement of Claim *Mediation Only*				
<b>Before the case proceeded to arbitration, did you agree to settle your case with the manufacturer?</b>				
Yes		N/A	N/A	NO RESPONSES
No		N/A	N/A	NO RESPONSES
<b>After you reached a settlement, did you receive a letter from NCDS explaining the terms of the settlement?</b>				
Yes		N/A	N/A	NO RESPONSES
No		N/A	N/A	NO RESPONSES

Ohio - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
Settlement of Claim *Mediation Only*				
Survey Questions		Responses		
<b>After you received your settlement confirmation, did you pursue your case further?</b>				
Yes	N/A	N/A	NO RESPONSES	
No	N/A	N/A	NO RESPONSES	
<b>If so, please let us know the method you used.</b>				
Re-initiated contact with NCDS	N/A	N/A	NO RESPONSES	
Contacted an attorney	N/A	N/A	NO RESPONSES	
Contacted a state agency	N/A	N/A	NO RESPONSES	
Contacted dealer or manufacturer	N/A	N/A	NO RESPONSES	
Other (please specify)	N/A	N/A	NO RESPONSES	

**Florida**

**A. CASE LOAD AND BASIC STATISTICS, AND CONSUMER SURVEY RESPONSES**

The survey for Florida consisted of 191 closed NCDS cases.<sup>69</sup> From this universe, we surveyed 16 customers. Consistent with the Bedikian NCDS FTC Audit (2020) and prior audits conducted by Claverhouse & Associates, surveyed customers’ level of program satisfaction, including arbitrator performance, is often tied inextricably to whether or not they achieved the desired outcome in arbitration.

The average number of days for handling a case in Florida in 2021 was 29 days, which is similar to the number of days cases resolved, specifically, 29.

The following table breaks down the sample size and response rate based on case outcome, followed by a breakdown of consumer responses.

Survey	Population	Sample Size	Response Rate %
Florida - Arbitrated Awarded	30	3	10%
Florida - Arbitrated Awarded No Action	150	13	9%
Florida - Mediated	11	0	0%
<b>Total</b>	<b>191</b>	<b>16</b>	<b>8%</b>

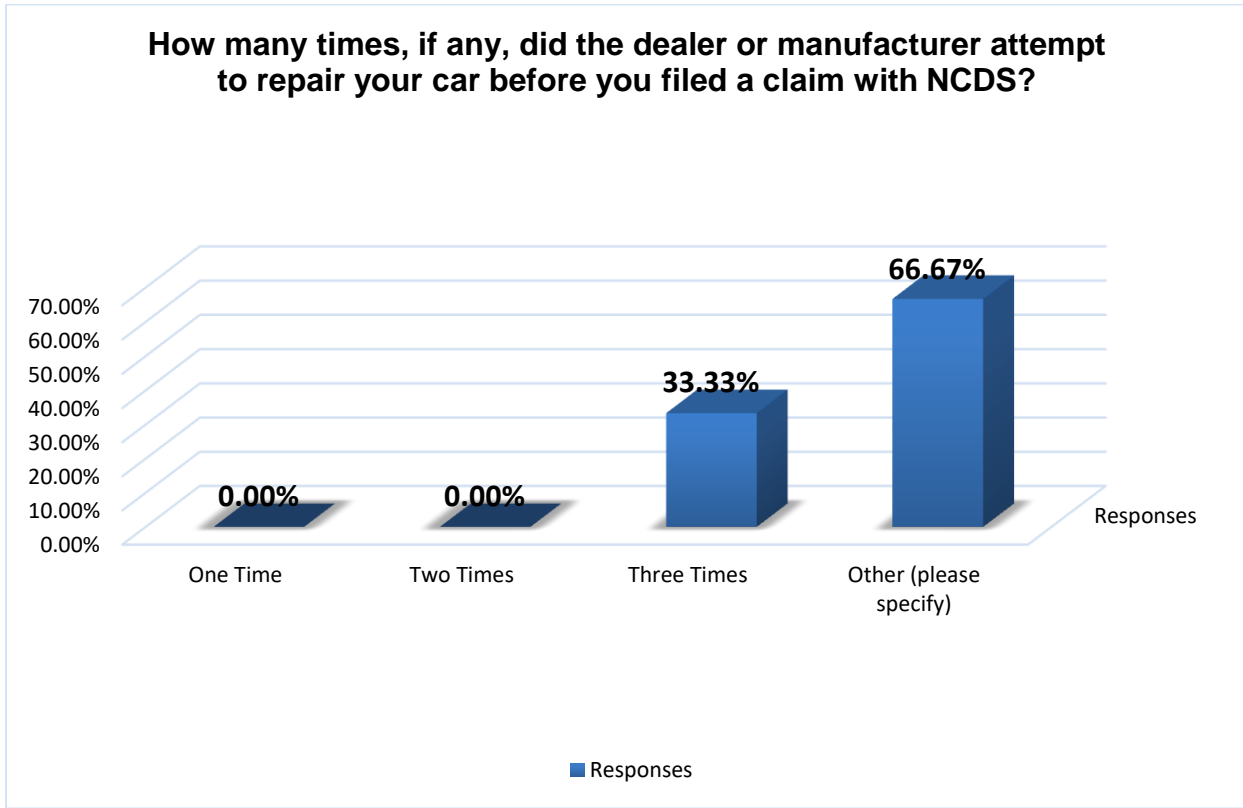
**ARBITRATED CASES AWARDED SURVEY RESULTS<sup>70</sup>**

**Pre-filing experience with dealer or manufacturer.** To understand the consumers’ pre-filing experience, respondents were asked general questions related to their pre-filing experience with either the dealer or the manufacturer. The results show that before filing a claim with NCDS, 100% of participants reported that they attempted to contact the manufacturer directly to address their concerns. When asked how many times the dealer or manufacturer attempted to repair their vehicle, 67% of respondents stated “other” and 33% reported “three times.” (Graph 19) In The majority of participants reported they learned about the NCDS Non-Binding Automobile Warranty Arbitration Program through Manufacturer Customer Service (33%), Glove-Box materials (33%), and Attorney (33%). (Graph 20) All (100%) participants stated they were informed of the Arbitration Program from the manufacturer or dealer over the phone.

<sup>69</sup> Statistics being referenced may appear to be at odds with one another. This is largely due to data being collected and reported based on different regulatory mandates using different terminology for similar concepts. Important distinctions are noted.

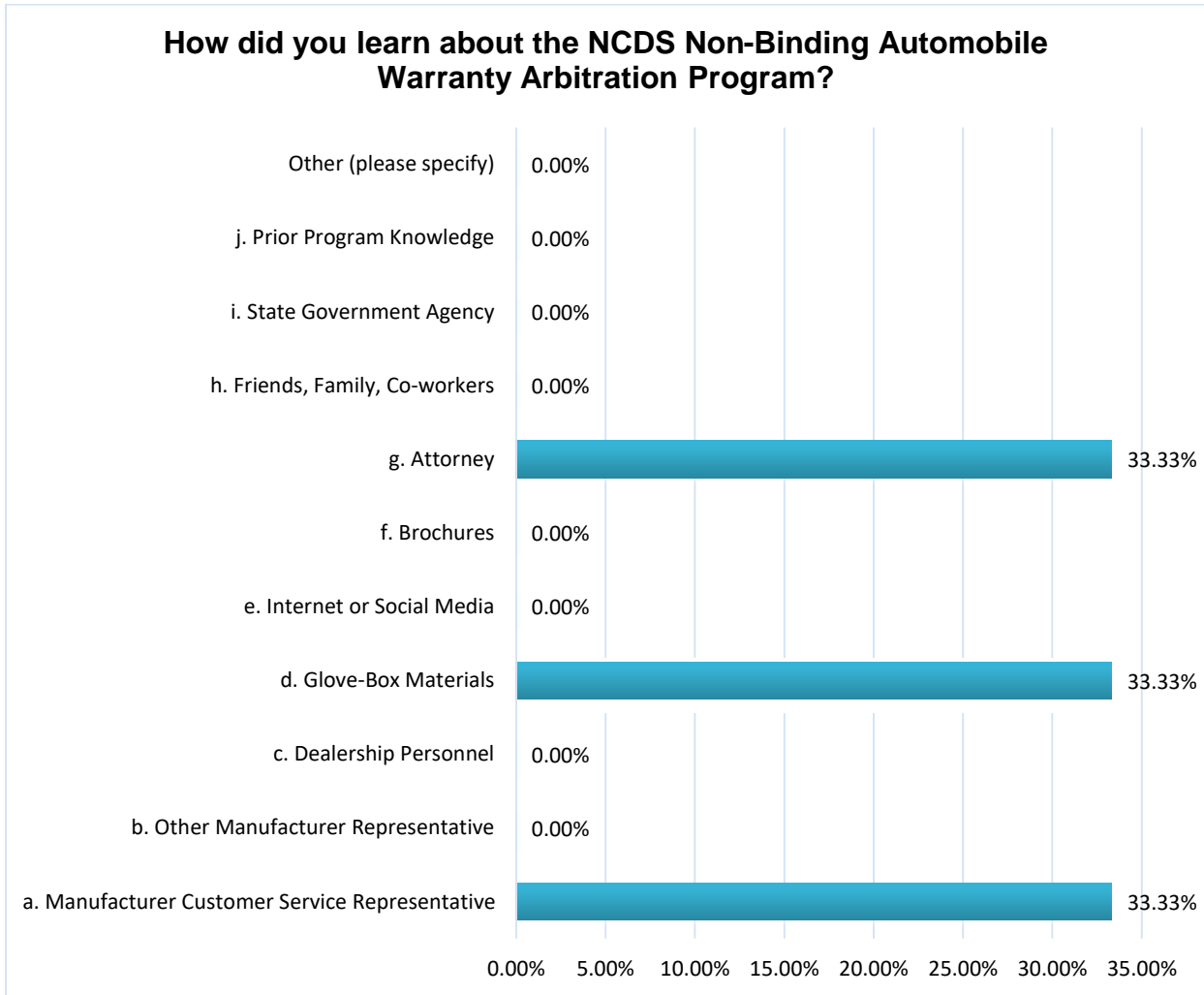
<sup>70</sup> Florida Audit Survey Results are found on pages 115-128.

GRAPH 19 – ARBITRATED CASES AWARDED SURVEY RESULTS



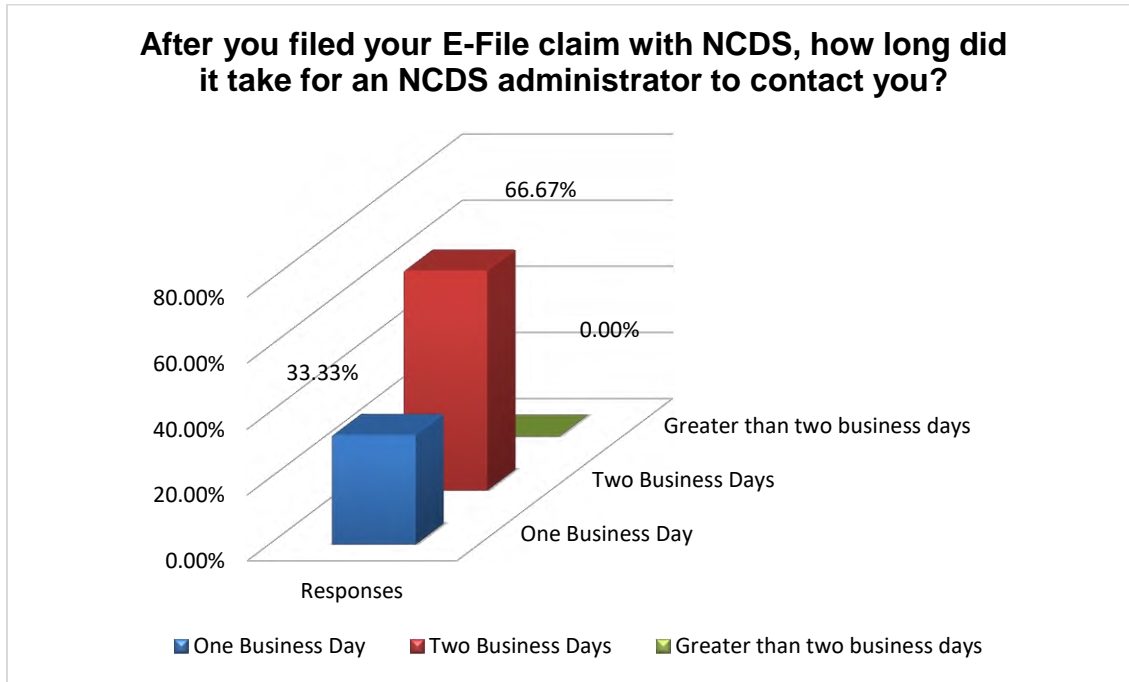
The results in **Graph 19** confirm that consumers attempt multiple repairs (3+) on their vehicle, either for the same or different non-conformity, before they file their case in arbitration.

GRAPH 20 – ARBITRATED CASES AWARDED SURVEY RESULTS



**PLEASE NOTE:** Participants were allowed to designate multiple choices.

GRAPH 21 – ARBITRATED CASES AWARDED SURVEY RESULTS



**Filing of the claim with NCDS.** To identify consumers’ experience related to the actual filing of their claim with NCDS participants were asked questions related to the filing method, clarity of instructions, and style of hearing. All respondents (100%) reported they used an E-File method to file the claim. The respondents were then asked how clear the instructions were for filing their claim. Sixty-seven percent (67%) indicated that the instructions on the claim form were “*very clear*” and 33% stated the instructions were “*somewhat clear.*” Once the participants E-filed their claim with NCDS, 33% reported it took one business day to acknowledge and initiate the administrative process and 67% acknowledged it took two business days. **(Graph 21)** These responses are consistent with the protocols NCDS has established for determining eligibility and opening the case file.

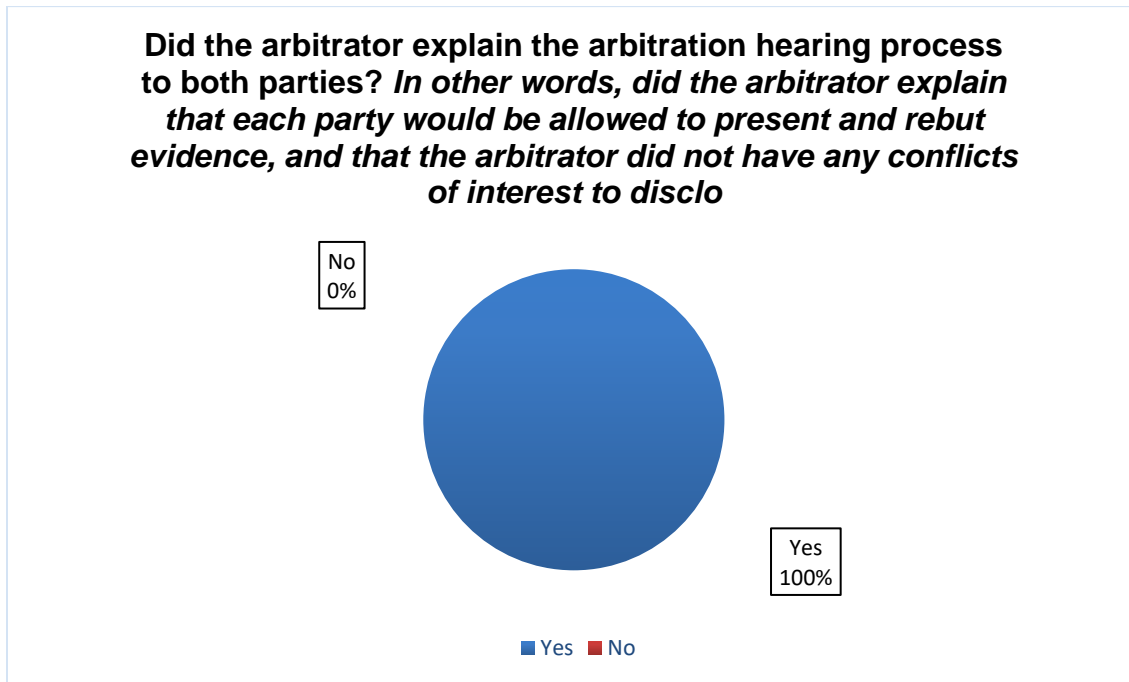
**Experience after filing a claim with NCDS.** To capture the pre-hearing process, respondents were asked to rate their experience after they filed their claim with NCDS. Based on the results, it was found that 100% of participants received or reviewed the Frequently Asked Questions (“FAQs”) packet at [www.ncdsusa.org](http://www.ncdsusa.org). The information presented in the FAQs was “*very clear*” as reported by 67% and “*somewhat clear*” by 33%. One-hundred percent (100%) of respondents stated that the information presented in the FAQs was “*very helpful.*”

When asked if participants received or reviewed the Non-Binding Program Rules at [www.ncdsusa.org](http://www.ncdsusa.org), 100% of the respondents reported “*yes.*” The Program Rules were “*very clear*” to 67% of the participants, and “*somewhat clear*” to the remaining 33%. The respondents were then asked if the Program Rules were helpful in explaining the arbitration process. One-hundred percent (100%) of participants reported they were “*very helpful.*” All respondents (100%) stated they received a hearing notice from NCDS, and 100% reported before or after they received their hearing notice, they did not hire an attorney to represent them or to be present at the hearing. Based on the results, 67% of participants did not request a “documents only” hearing after filing their claim and 33% did request a “documents only”

hearing. For those participants who elected a “documents only” hearing, the most common rationale provided was that it was more convenient for the arbitration panel to review documents.

**The evidentiary hearing process.** To assess the actual evidentiary process, participants were asked to convey their experience with different phases of the hearing process. Of the 67% that participated in an evidentiary hearing, 50% reported the arbitrator started the hearing on time. It was also reported by 100% of those participants that the arbitrator explained the hearing process to both parties. **(Graph 22)** When asked if the arbitrator allowed both parties a full and fair opportunity to present their proofs, 100% responded “yes.”

GRAPH 22 – ARBITRATED CASES AWARDED SURVEY RESULTS

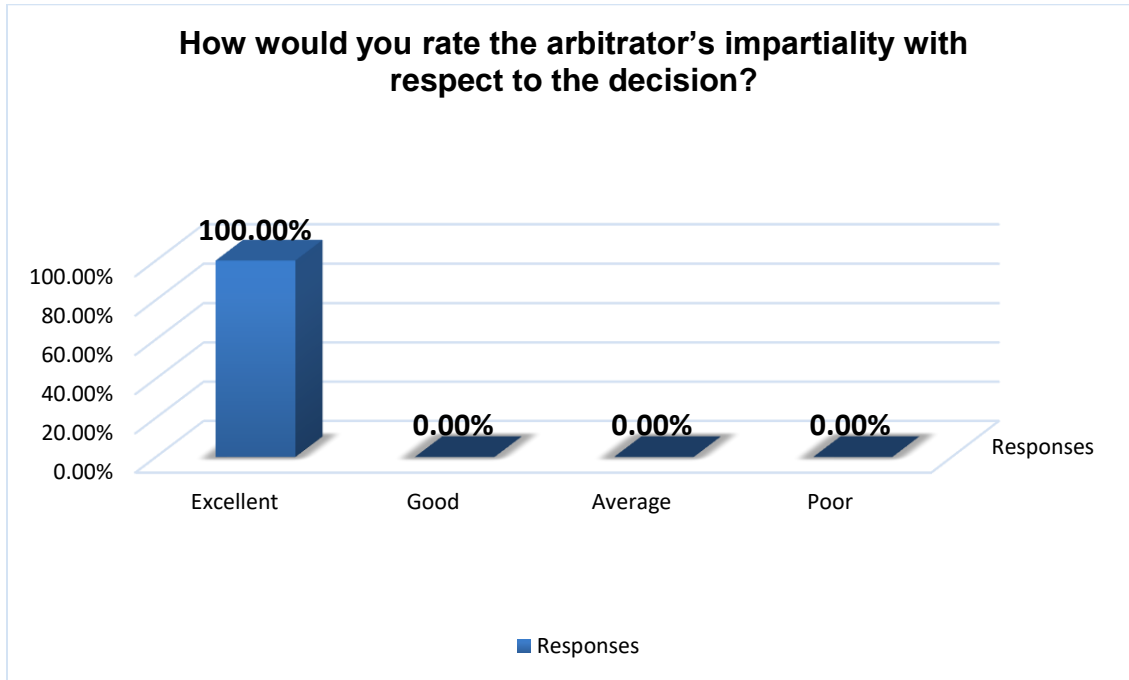


**Post-award experience.** Next, it was important to evaluate the consumers’ experience after they received their award. When it was time to communicate the award to the consumer, 100% of the sample population stated the arbitrator communicated their award by email. Most of the consumers (67%) reported that the relief awarded to them by the arbitrator was a refund, where the manufacturer would replace their existing car with a new car, and 33% stated they received a reimbursement, where the manufacturer would reimburse them for the incidental costs associated with the repair of their car.

The results show that 100% of the participants felt the arbitrator accurately identified the nature of the non-conformity in the consumer’s alleged claims and included a summary of the testimony at the hearing. One hundred percent (100%) stated the arbitrator’s award was “clear,” and 100% reported that the arbitrator rendered a reasoned award. One-hundred percent (100%) of the participants returned the Decision Acceptance/Rejection Form to NCDS.

**Arbitrator satisfaction.** To understand arbitrator satisfaction among the consumers, the participants were asked to rate the arbitrator’s understanding of the facts of their case. One-hundred percent (100%) of respondents stated that the arbitrator’s comprehension of the facts was “*excellent*.” The arbitrator’s objectivity and fairness were also rated as “*excellent*” by 100% of respondents. The participants were then asked to rate the arbitrator’s impartiality during the hearing and with respect to the award. One-hundred percent (100%) of participants rated their arbitrator as “*excellent*” in both categories. (Graph 23 – Impartiality in Decision-Making)

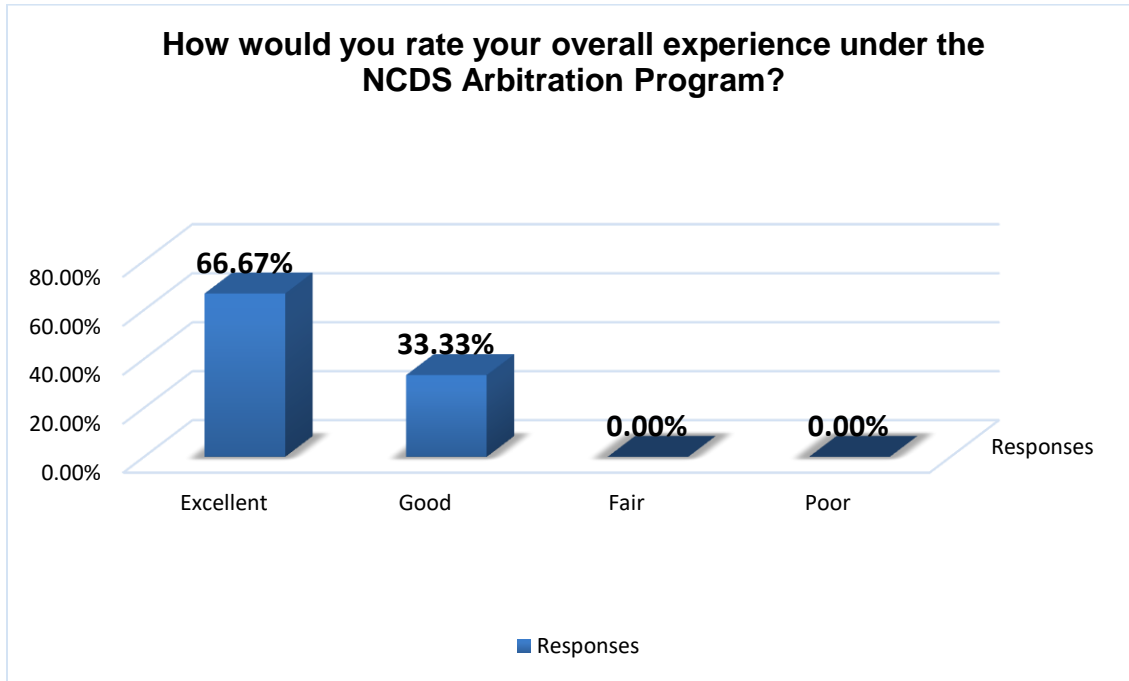
GRAPH 23 – ARBITRATED CASES AWARDED SURVEY RESULTS



**Satisfaction with NCDS processing claim.** To measure consumer’s satisfaction with NCDS in processing their claims, respondents were asked to rate NCDS in four different areas. Respondents were asked to rate the timeliness of the communications between them and NCDS staff. Sixty-seven percent (67%) of the respondents rated timeliness of communications as “*excellent*” and 33% as “*good*.” Next, participants were asked to rate the helpfulness of the NCDS staff. The majority of participants (67%) rated the helpfulness of the staff as “*excellent*,” and 33% as “*good*.” To help gauge consumers’ experience with the arbitration program, participants were asked to rate their overall experience under the Arbitration Program of which 67% of respondents rated it as “*excellent*” and 33% as “*good*.” (Graph 24) Finally, respondents were asked if they would recommend the Arbitration Program to friends and family and 100% responded “*yes*.”



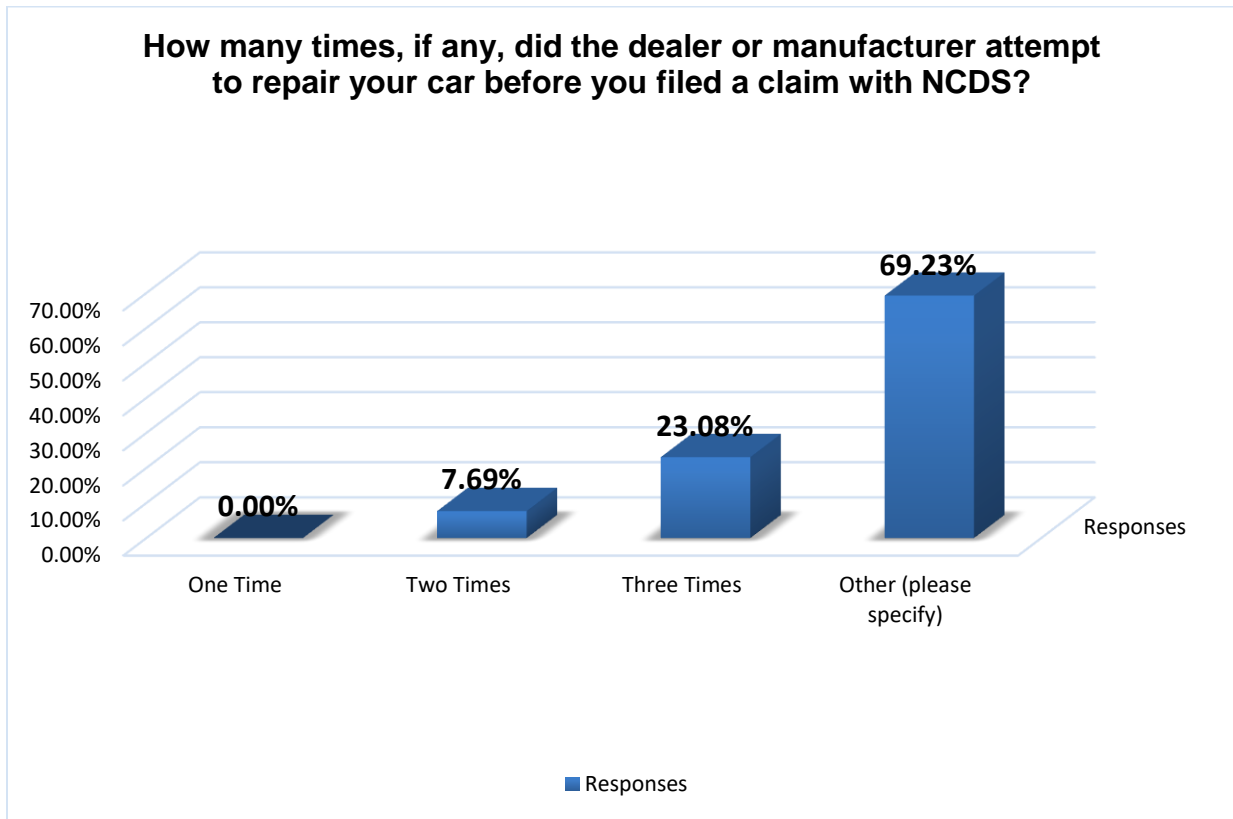
GRAPH 24 – ARBITRATED CASES AWARDED SURVEY RESULTS



ARBITRATED CASES AWARDED NO ACTION SURVEY RESULTS

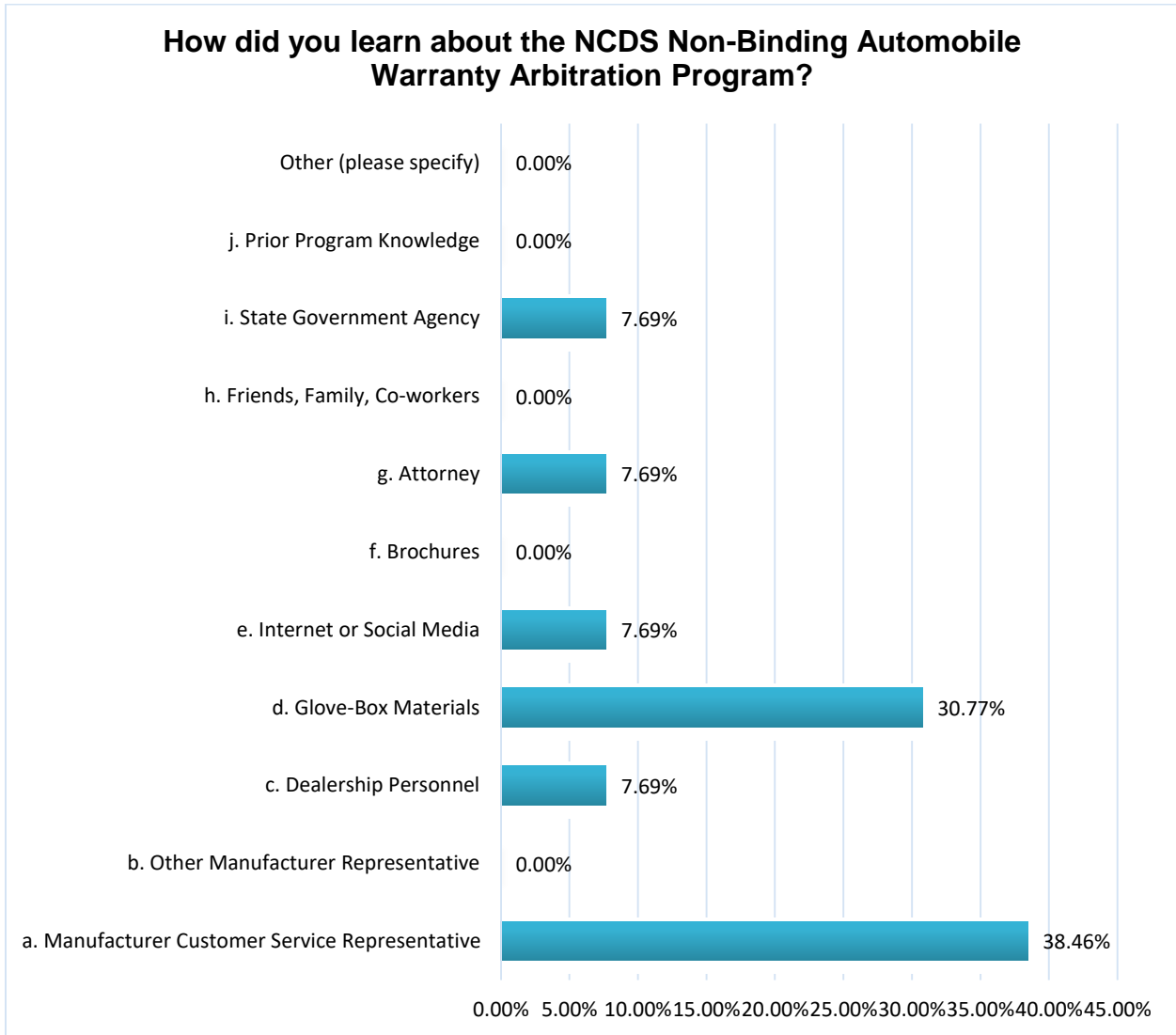
**Pre-filing experience with dealer or manufacturer.** To understand the consumers’ pre-filing experience, respondents were asked general questions related to their pre-filing experience with either the dealer or the manufacturer. The results show before filing a claim with NCDS, 100% of participants reported that they attempted to seek recourse or help from the manufacturer directly. When asked how many times the dealer or manufacturer attempted to repair their vehicle, 69% of respondents stated “other,” 23% reported “three times,” and 8% reported “two times.” (Graph 25) When participants were asked how they learned about the NCDS Non-Binding Automobile Warranty Arbitration program, two primary methods were identified: Manufacturer Customer Service (38%) and Glove-Box Materials (31%). (Graph 26) Fifty-percent (50%) of the participants stated they were informed of the Arbitration Program from the manufacturer or dealer through conversations over the phone while 50% reported “Mailed or E-mailed Information.”

GRAPH 25 – ARBITRATED CASES NO ACTION SURVEY RESULTS



The results in **Graph 25** confirm that consumers attempt multiple repairs (3+) on their vehicle, either for the same or different non-conformity, before they file their case in arbitration.

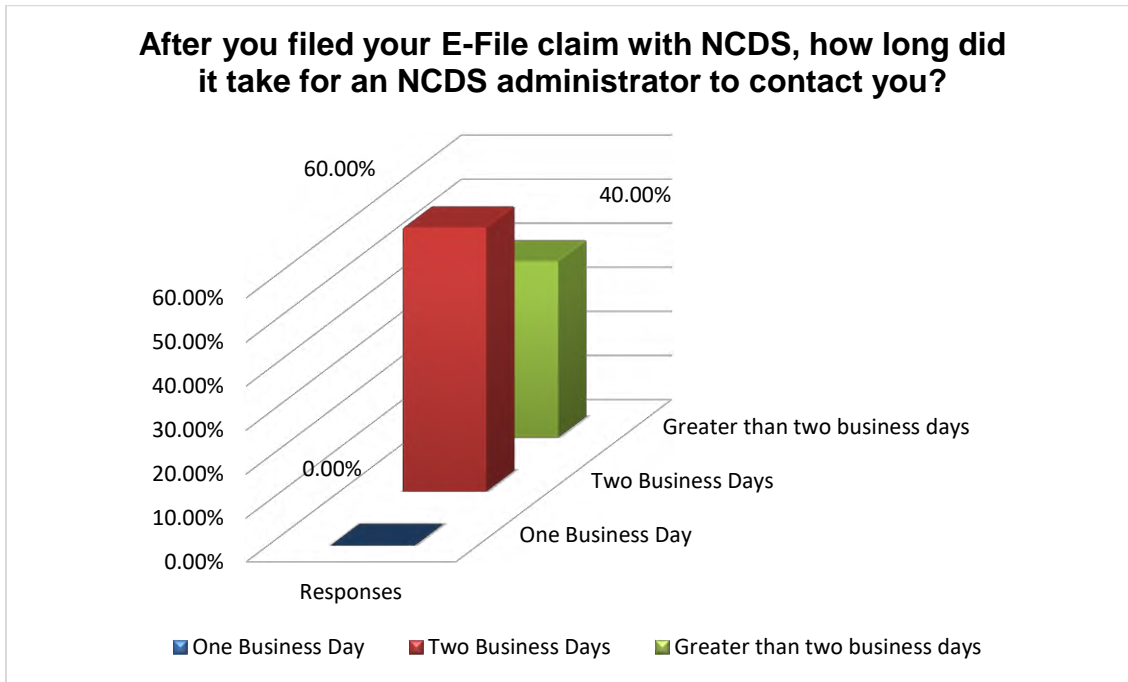
GRAPH 26 – ARBITRATED CASES NO ACTION SURVEY RESULTS



**PLEASE NOTE:** Participants were allowed to select multiple choices.

**Filing of the claim with NCDS.** To identify consumers’ experience related to the actual filing of their claim with NCDS participants were asked questions related to the filing method, clarity of instructions, and style of hearing. Seventy-seven percent (77%) reported they used an E-file method to file their claim while only 23% used a written submission claim form. The respondents were then asked how clear the instructions were for filing their claim. Thirty-eight percent (39%) of the respondents indicated that the instructions were “*very clear*,” while 46% indicated they were “*somewhat clear*.” Once the participants filed their claim with NCDS, 60% indicated that it took NCDS two business days to acknowledge their claim and initiate the administrative process. The remaining 40% stated it took greater than two business days. (Graph 27)

GRAPH 27 – ARBITRATED AWARD NO ACTION SURVEY RESULTS



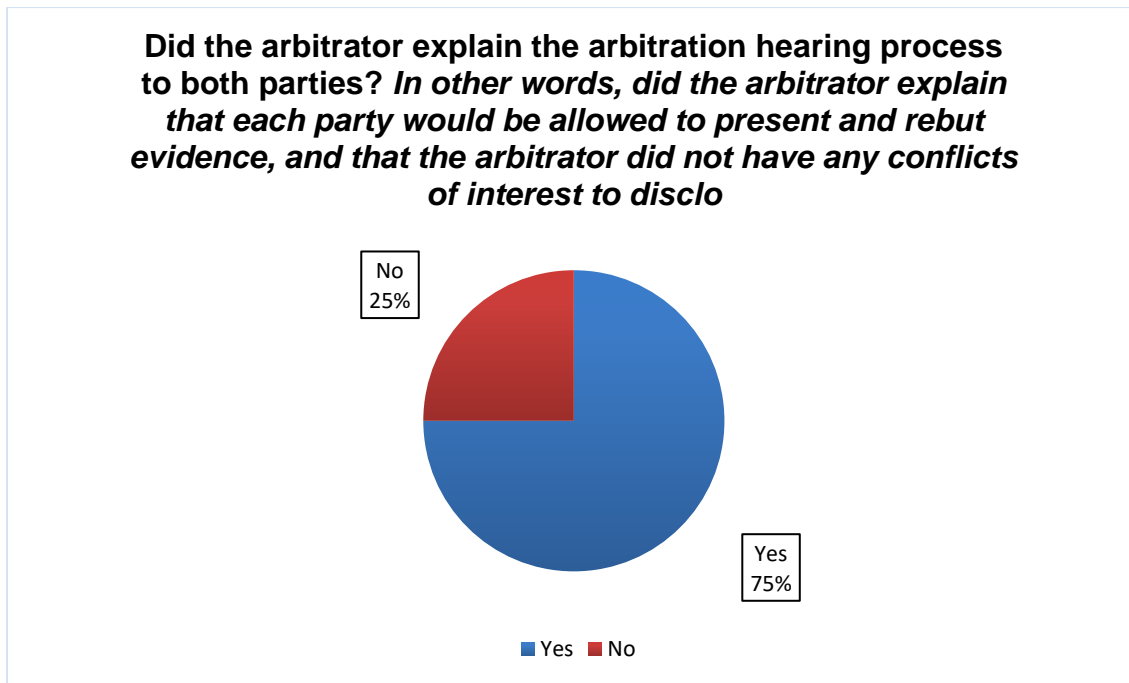
**Experience after filing a claim with NCDS.** To capture the pre-hearing process, respondents were asked to rate their experience after they filed their claim with NCDS. Based on the results, it was found that 62% of participants received or reviewed the Frequently Asked Questions (“FAQs”) packet at [www.ncdsusa.org](http://www.ncdsusa.org) and 38% reported they did not receive the packet. The information presented in the FAQs was “*very clear*” as reported by 31% and “*somewhat clear*” by 54%. Thirty-one percent (31%) of respondents stated that the information presented in the FAQs was “*very helpful*,” while 23% reported “*moderately helpful*.” The remaining 46% of participants did not think the FAQs were helpful or did not know.

When asked if participants received or reviewed the Non-Binding Program Rules at [www.ncdsusa.org](http://www.ncdsusa.org), 54% of respondents reported “*yes*” while 46% stated “*no*.” The Program Rules were “*very clear*” to 23% of the participants, “*somewhat clear*” to 38%, and “*not clear*” or did not know by 38%. The respondents were then asked if the Program Rules were helpful in explaining the arbitration process of which 23% stated they were “*very helpful*” and 31% acknowledged they were “*moderately helpful*” in

explaining the arbitration process. The remaining 46% of respondents reported they did not think the Program Rules were helpful or did not know. All respondents (100%) stated they received a hearing notice from NCDS, and 100% reported before or after they received their hearing notice, they did not hire an attorney to represent them or to be present at the hearing. Based on the results, 69% of participants did not request a “documents only” hearing after filing their claim and 31% did request a “documents only” hearing. For those participants who elected a “documents only” hearing, the most common rationale provided was that it was more convenient for the arbitration panel to review documents.

**The evidentiary hearing process.** To assess the actual evidentiary process, participants were asked to convey their experience with different phases of the hearing process. Of the 69% that participated in an evidentiary hearing, 75% reported the arbitrator started the hearing on time. It was also reported by 75% of those participants that the arbitrator explained the hearing process to both parties. **(Graph 28)** When asked if the arbitrator allowed both parties a full and fair opportunity to present their proofs, 75% responded “yes” and 25% responded “no.”

GRAPH 28 – ARBITRATED CASES NO ACTION SURVEY RESULTS



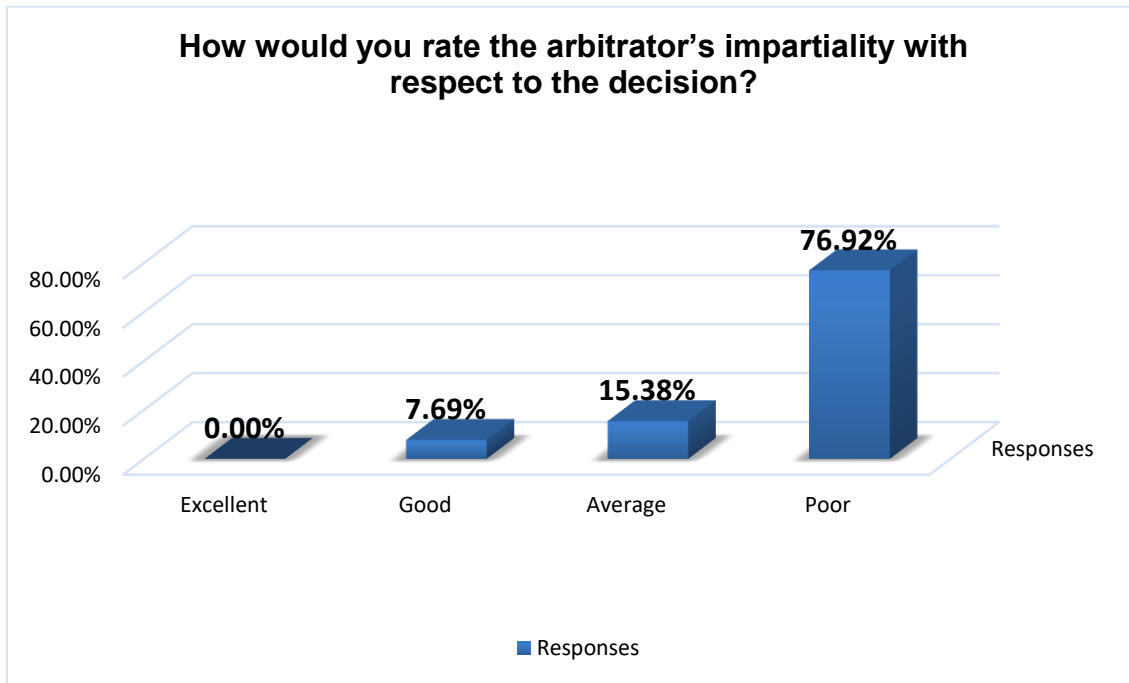
**Post-award experience.** Next, it was important to evaluate the consumers' experience after they received their award. When it was time to communicate the award to the consumer, 77% of the sample population stated the arbitrator communicated their award by email. Most of the consumers (92%) reported that they received no relief. Eight percent (8%) stated that the arbitrator provided them with a refund, where the manufacturer would give money for the car.

The results showed the participants did not feel the arbitrator accurately identified the nature of the non-conformity in the consumer's alleged claims as reported by 77% of respondents. After identifying the non-conformity, 46% reported the arbitrator included a summary of the testimony at the hearing while 54% reported the arbitrator did not include a summary. Sixty-two percent (62%) stated the arbitrator's award was clear while 38% said the award was not clear. The majority of participants (76%) did not think the arbitrator rendered a reasoned award. The same percentage of participants (76%) did not return the Decision Acceptance/Rejection Form to NCDS.

**Arbitrator satisfaction.** To understand arbitrator satisfaction among the consumers, the participants were asked how to rate the arbitrator's understanding of the facts of their case. Sixty-nine percent (69%) rated the arbitrator's comprehension of the facts as "poor," 15% *average*, and 15% "good." The arbitrator's objectivity and fairness were rated as "poor" by 85% of respondents and "good" by 15% of respondents.

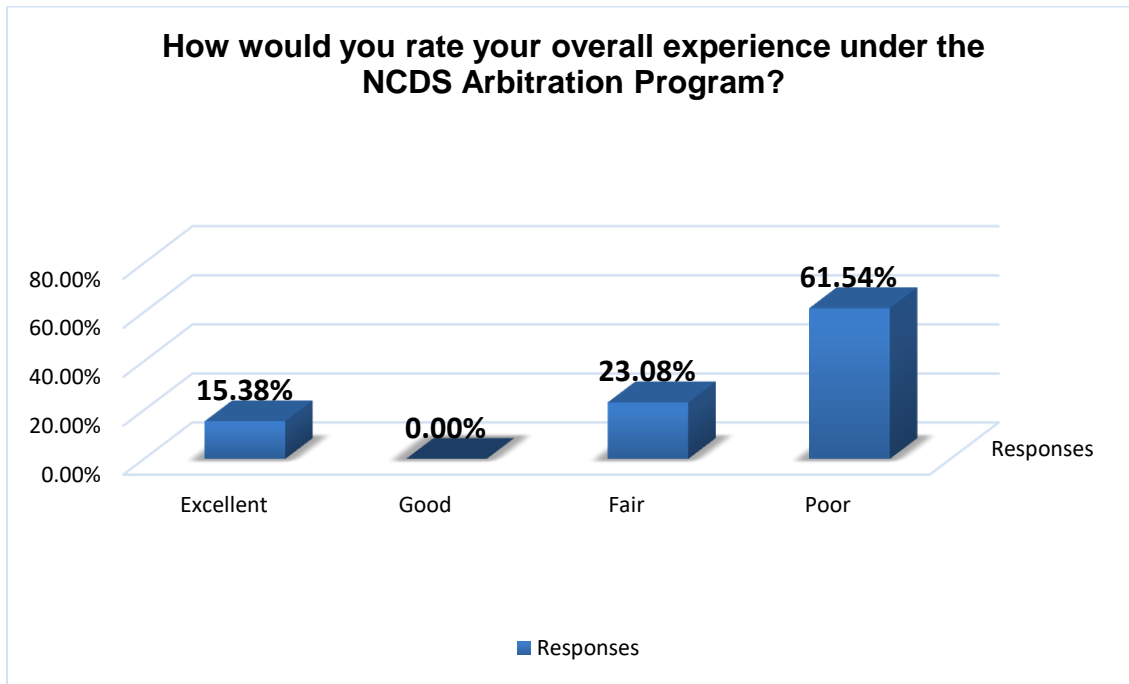
The participants were then asked to rate the arbitrator's impartiality during the hearing of which 69% rated their arbitrator as "poor" and 23% rated "average." The remaining 8% rated the arbitrator's impartiality during the hearing as "good." Finally, participants were asked to rate the arbitrator's impartiality with respect to the award which 77% of respondents rated this as "poor," 15% "average," and 8% "good." **(Graph 29)** As noted previously in this audit, adverse decisions tend to influence how a participant views the arbitration program overall, including performance of the arbitrator and the administration of their claim by NCDS.

GRAPH 29 – ARBITRATED CASES NO ACTION SURVEY RESULTS



**Satisfaction with NCDS processing claim.** To measure consumer's satisfaction with NCDS in processing their claims, respondents were asked to rate NCDS in four different areas. Respondents were asked to rate the timeliness of the communications between them and NCDS staff. Twenty-three percent (23%) of the respondents rated timeliness of communications as "excellent," 31% "good," 15% "fair," and 31% "poor." Next, participants were asked to rate the helpfulness of the NCDS staff. Twenty-three percent (23%) rated the helpfulness of the staff as "excellent," 31% "good," 8% "fair," and 38% "poor." To help gauge consumers' experience with the arbitration program, participants were asked to rate their overall experience under the Arbitration Program of which 15% of respondents rated it as "excellent," 23% "fair," and 62% "poor." (Graph 30) Finally, respondents were asked if they would recommend the Arbitration Program to friends and family and 85% responded "no" and 15% responded "yes."

GRAPH 30 – ARBITRATED CASES NO ACTION SURVEY RESULTS





## MEDIATED CASES SURVEY RESULTS

**PLEASE NOTE:** There were no respondents who responded to the mediated cases survey for Florida. As in years past, this tends to be a very small population of the actual survey sample.

### B. RECORD-KEEPING, ACCURACY AND COMPLETENESS

The results of the random sample inspection of case file folders, confined to § 703.6 (a)(1-5), confirm compliance. All case files contained the customer's name, address, and telephone number. The name and address of the warrantor's contact person were included with the initial correspondence that the customer receives from the program. In addition, the various regional office contact addresses and phone number were included in each Owner's Manual that accompanies all new vehicles when they are delivered to the consumer.

All case files inspected contained the make and vehicle identification number (VIN) of the vehicle, along with the date of the dispute and the date of the disclosure of the decision. Some files contained letters and additional documents, primarily filed by the consumer. However, there is no way to measure this item, thus the auditor has determined this section to be inapplicable.

The requirements for subsections 6-7 were also met. Oral presentations are a basic component of the NCDS program and § 703.6(a)(7) of Magnuson-Moss requires summaries of the oral presentations to be placed in the case file. In the case files reviewed for this region, NCDS was in full compliance.

A critical part of the NCDS program and Magnuson-Moss specifically is the disclosure of the arbitrator's decision (subsections 8-9). The statute mandates that a copy of the decision be inserted into the file and available for review during the annual audit. Unless a case was withdrawn or settled prior to hearing, all files the auditor reviewed contained this information.

Under subsection 10, the warrantor's intended action(s) and performance are linked together. The auditor validates this item in terms of performance verification, which is the responsibility of NCDS. NCDS' protocol is to send a survey to the customer following receipt of the customer's acceptance of an arbitral award which grants a remedy. The survey asks whether the required performance has taken place. As noted elsewhere in this audit and in prior audits, few returned forms exist in the file. The absence of performance verification forms in the case file does not constitute a regulatory inconsistency since performance verification information may not be available from the customer. By mailing a performance verification survey, NCDS goes as far as can be expected in determining whether arbitration decisions are, in fact, being implemented per the award. It is appropriate to assume, in the absence of conflicting data, that performance has taken place. If a manufacturer were to attempt to avoid its statutory obligations, this fact would surface in the context of the national random survey of customers who have used the program, and it does not. Performance verification status should and does appear in the case file as is indicated by sections 11 and 12 below.

As stated elsewhere in this audit, Section 11 above is not applicable for purposes of this audit because there is no practical means by which to verify the completeness and accuracy of possible additions to the files. Section 12, however, suggests that a summary form be created whenever the arbitrator receives an oral communication from either party involving the issue in dispute. This is most likely to occur at the oral hearing, in which case the communications are summarized in the arbitrator's decision. All summaries are included in the case file.

CONCLUSION

The NCDS program’s record keeping policies and procedures, with appropriate modifications involving enhanced use of technology having been previously made, are in substantial compliance with Administrative Rule 703 requirements.

C. CASE FILE RECORDS (4 yrs. 2018-2021)<sup>71</sup>

A random sample of case numbers from the years 2018 through 2021 was drawn from the NCDS data base. The auditor’s inspection of this sample verified that they were being maintained per requirement § 703.6(f).

Closed files are stored at an off-site record storage facility of the NCDS Dallas, Texas office. The auditor did not inspect the off-site facility for this year’s audit. The files, however, were intact and readily available for inspection. Cases drawn from the four-year universe were maintained in accordance with this statutory requirement.

D. ARBITRATION/HEARING RECORDS

*Case file folders*

This information, which is maintained in NCDS headquarters, is found on a series of forms in NCDS case files.

*Arbitrator Biographies*

The arbitrator biographies for the national program are available for review in National Center for Dispute Settlement headquarters in Dallas, Texas. A random review of such biographies indicate that arbitrator biographies are thorough and current. The list of arbitrators for each district includes the dates of their appointments.

E. HEARING PROCESS

**PLEASE NOTE:** Each year, an audit is conducted of a randomly selected hearing to determine whether the program meets the requirement of fair and expeditious resolution of warranty disputes, mandated by Magnuson-Moss and all Florida regulations applicable to certified dispute resolution programs. The hearing process actualizes the statutory objectives. While an on-site review is essential in making a thorough evaluation of the hearing process (hearing nuances and subtleties can be best assessed with the human eye), pandemic-related restrictions continued into 2021. The following summarizes a randomly

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<sup>71</sup> Rule 703.6(f) states:

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

selected Florida hearing, conducted by teleconference.

### *Physical Description of Arbitration Hearing*

The AWAP Florida hearing was held on October 28, 2022, per the hearing confirmation notice submitted to the parties on October 11, 2022. The auditor typically assesses the physical space, but this was not necessary, given that the hearing was not in-person.

### *Openness of Hearing*

The meeting began at 11:15 EST, 15 minutes after the scheduled start time. The arbitrator apologized and explained that his lateness was due to telephonic difficulties. He did not acknowledge the presence of the auditor.

### *Efficiency of Hearing*

The arbitrator's case file appeared to be complete with all required documents. The arbitrator informed the representatives, which included a translator for the claimant, of the process protocols. He confirmed that he had been trained by NCDS to hear and decide auto warranty cases. He also confirmed that this was not a lemon law hearing, though the lemon law might be considered in rendering the final decision. The arbitrator also explained that to his knowledge, he did not have any conflicts that would preclude him from serving impartially on the case. The arbitrator proceeded to allow the parties to present their evidence, uninterrupted, starting first with the consumer.

### *Hearing*

The hearing was properly conducted from beginning to end. All parties were afforded an opportunity to present their case. Following each party's presentation, the opposing party was given an opportunity to ask clarification questions and then present arguments in rebuttal. The order of presenting closing arguments, or summation, was also correct. Once each party offered its summation, the arbitrator asked if either party had further proofs to offer. Each party responded negatively, and the arbitrator declared the hearing closed and exited the teleconference.

Multiple times during the hearing, the arbitrator asked various clarifying questions but did not exceed the scope of his authority. The arbitrator demonstrated that he knew how to conduct and manage a hearing.

For obvious reasons, a test drive did not occur.

### *Board/Arbitrator Decisions*

The auditor reviewed the arbitrator's decision, rendered within 48 hours of the dispute. The arbitrator's award passed the test for accuracy, completeness, consistency, and rationale. The arbitrator's decision began by noting all participants, which included the claimant's translator and the auditor. Next, the decision delineated the various forms of evidence that were presented at the hearing, of which the repair orders formed a significant part. This was followed by a detailed explanation of the parties' positions, and what each party was seeking by way of relief. The decision concluded with an explanation of the Mag-Moss threshold (*i.e.*, substantial impairment of the use, value, OR safety of the vehicle) and

the evidentiary standard for prevailing in arbitration. In this case, the arbitrator denied the claim because the claimant did not establish, through a preponderance standard, that the manufacturer breached the warranty.

## CONCLUSION

**The auditor concludes that the AWAP, as it operates in Florida, is in substantial compliance with the Magnuson-Moss Warranty Act and FTC Rule 703. The administrative staff is unequivocally dedicated to the program's mission, while maintaining a strong commitment to the fair and expeditious resolution of warranty disputes.**

**OVERALL SURVEY RESULTS: KEY FINDINGS**

This section captures the overall survey results (raw) from the sample size of participants who partook in the audit surveys and compares the results found between the different outcomes of cases. The eight areas compared were the pre-filing experience with the dealer or manufacturer, filing of claim, experience after filing of claim, the evidentiary hearing process, post-award experience, arbitrator satisfaction, satisfaction with NCDS processing their claim, and settlement of claim (mediation only). The highest percentages were highlighted based on the responses for each question for ease of comparison.

**Florida Overall Survey Results and Comparison Between Outcomes**

Florida - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
		Pre-filing Experience with Dealer or Manufacturer		
Survey Questions		Responses		
<b>Before filing a claim with NCDS, did you attempt to contact the manufacturer directly to discuss your concerns?</b>				
<b>Answer Choices</b>				
Yes		100.00%	100.00%	NO RESPONSES
No		0.00%	0.00%	NO RESPONSES
<b>How many times, if any, did the dealer or manufacturer attempt to repair your car before you filed a claim with NCDS?</b>				
<b>Answer Choices</b>				
One Time		0.00%	0.00%	NO RESPONSES
Two Times		0.00%	7.69%	NO RESPONSES
Three Times		33.33%	23.08%	NO RESPONSES
Other (please specify) - More than Three Times		66.67%	69.23%	NO RESPONSES

Florida - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
<b>Pre-filing Experience with Dealer or Manufacturer</b>				
<b>Survey Questions</b>		<b>Responses</b>		
<b>How did you learn about the NCDS Non-Binding Automobile Warranty Arbitration Program?</b>				
<b>Answer Choices</b>				
a. Manufacturer Customer Service Representative		33.33%	38.46%	NO RESPONSES
b. Other Manufacturer Representative		0.00%	0.00%	NO RESPONSES
c. Dealership Personnel		0.00%	7.69%	NO RESPONSES
d. Glove-Box Materials		33.33%	30.77%	NO RESPONSES
e. Internet or Social Media		0.00%	7.69%	NO RESPONSES
f. Brochures		0.00%	0.00%	NO RESPONSES
g. Attorney		33.33%	7.69%	NO RESPONSES
h. Friends, Family, Co-workers		0.00%	0.00%	NO RESPONSES
i. State Government Agency		0.00%	7.69%	NO RESPONSES
j. Prior Program Knowledge		0.00%	0.00%	NO RESPONSES
Other (please specify)		0.00%	0.00%	NO RESPONSES
<b>How did the manufacturer or dealer inform you of the NCDS Arbitration Program?</b>				
<b>Answer Choices</b>				
Talked over the phone		100.00%	50.00%	NO RESPONSES
Mailed or E-mailed Information		0.00%	50.00%	NO RESPONSES
Website		0.00%	0.00%	NO RESPONSES
Showroom Poster		0.00%	0.00%	NO RESPONSES
Other (please specify)		0.00%	0.00%	NO RESPONSES

Florida - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
Filing of Claim				
Survey Questions		Responses		
<b>What method did you use to file your claim with NCDS?</b>				
<b>Answer Choices</b>				
E-File		100.00%	76.92%	NO RESPONSES
Mail		0.00%	23.08%	NO RESPONSES
<b>After you filed your E-File claim with NCDS, how long did it take for an NCDS administrator to contact you?</b>				
One Business Day		33.33%	0.00%	NO RESPONSES
Two Business Days		66.67%	60.00%	NO RESPONSES
Greater than two business days		0.00%	40.00%	NO RESPONSES
<b>After you mailed and received an acknowledgement from NCDS that your claim had been received, how long did it take for an NCDS administrator to contact you?</b>				
One Business Day		N/A	0.00%	NO RESPONSES
Two Business Days		N/A	33.33%	NO RESPONSES
Greater than two business days		N/A	66.67%	NO RESPONSES
<b>How clear were the instructions for filing the claim?</b>				
<b>Answer Choices</b>				
Very Clear		66.67%	38.46%	NO RESPONSES
Somewhat Clear		33.33%	46.15%	NO RESPONSES
Not Clear		0.00%	15.38%	NO RESPONSES
Do Not Know		0.00%	0.00%	NO RESPONSES

Florida - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
Experience After Filing a Claim				
Survey Questions		Responses		
<b>Whether you E-Filed or filed your claim by mail, did you <u>receive</u> the Frequently Asked Questions (FAQ) Packet at <a href="http://www.ncdsusa.org">www.ncdsusa.org</a>?</b>				
<b>Answer Choices</b>				
Yes		100.00%	61.54%	NO RESPONSES
No		0.00%	38.46%	NO RESPONSES
<b>Whether you E-Filed or filed your claim by mail, did you <u>review</u> the Frequently Asked Questions (FAQ) Packet at <a href="http://www.ncdsusa.org">www.ncdsusa.org</a>?</b>				
<b>Answer Choices</b>				
Yes		100.00%	61.54%	NO RESPONSES
No		0.00%	38.46%	NO RESPONSES
<b>How clear was the information presented in the FAQ?</b>				
<b>Answer Choices</b>				
Very Clear		66.67%	30.77%	NO RESPONSES
Somewhat Clear		33.33%	53.85%	NO RESPONSES
Not Clear		0.00%	7.69%	NO RESPONSES
Do Not Know		0.00%	7.69%	NO RESPONSES



Florida - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
		Experience After Filing a Claim		
Survey Questions		Responses		
<b>How helpful was the information presented in the FAQ?</b>				
Answer Choices				
Very Helpful		100.00%	30.77%	NO RESPONSES
Moderately Helpful		0.00%	23.08%	NO RESPONSES
Not At All Helpful		0.00%	38.46%	NO RESPONSES
Do Not Know		0.00%	7.69%	NO RESPONSES
<b>Did you <u>receive</u> the Non-Binding Program Rules at <a href="http://www.ncdsusa.org">www.ncdsusa.org</a>?</b>				
Answer Choices				
Yes		100.00%	53.85%	NO RESPONSES
No		0.00%	46.15%	NO RESPONSES
<b>Did you <u>review</u> the Non-Binding Program Rules at <a href="http://www.ncdsusa.org">www.ncdsusa.org</a>?</b>				
Answer Choices				
Yes		100.00%	53.85%	NO RESPONSES
No		0.00%	46.15%	NO RESPONSES
<b>How clear were the Program Rules?</b>				
Answer Choices				
Very Clear		66.67%	23.08%	NO RESPONSES
Somewhat Clear		33.33%	38.46%	NO RESPONSES
Not Clear		0.00%	15.38%	NO RESPONSES
Do Not Know		0.00%	23.08%	NO RESPONSES

Florida - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
Experience After Filing a Claim				
Survey Questions		Responses		
<b>How helpful were the Program Rules in explaining the arbitration process?</b>				
<b>Answer Choices</b>				
Very Helpful		100.00%	23.08%	NO RESPONSES
Moderately Helpful		0.00%	30.77%	NO RESPONSES
Not At All Helpful		0.00%	23.08%	NO RESPONSES
Do Not Know		0.00%	23.08%	NO RESPONSES
<b>Did you receive a hearing notice from NCDS?</b>				
<b>Answer Choices</b>				
Yes		100.00%	100.00%	N/A
No		0.00%	0.00%	N/A
<b>Either before or after you received your hearing notice, did you hire an attorney to represent you or to be present at the hearing?</b>				
<b>Answer Choices</b>				
Yes		0.00%	0.00%	N/A
No		100.00%	100.00%	N/A

Florida - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
<b>Experience After Filing a Claim</b>				
<b>Survey Questions</b>		<b>Responses</b>		
<p>If you filed a documents only hearing, which of the following <u>best</u> describes why you chose a documents only hearing? Otherwise, select "No, I did not file a documents only hearing" below.</p> <p style="text-align: center;"><b>Answer Choices</b></p> <p>a. More convenient to have an arbitration panel review documents</p> <p>b. Unable to get time off work</p> <p>c. Family or health conflicts</p> <p>Other (please specify)</p> <p>No, I did not file a documents only hearing</p>				
		33.33%	30.77%	N/A
		0.00%	15.38%	N/A
		0.00%	0.00%	N/A
		0.00%	23.08%	N/A
		66.67%	30.77%	N/A
<b>The Evidentiary Hearing Process</b>				
<b>Did the arbitrator start the hearing on time?</b>				
<b>Answer Choices</b>				
Yes		50.00%	75.00%	N/A
No		50.00%	25.00%	N/A
<b>Did the arbitrator explain the arbitration hearing process to both parties? In other words, did the arbitrator explain that each party would be allowed to present and rebut evidence, and that the arbitrator did not have any conflicts of interest to disclose?</b>				
<b>Answer Choices</b>				
Yes		100.00%	75.00%	N/A
No		0.00%	25.00%	N/A

Florida - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
<b>The Evidentiary Hearing Process</b>				
<b>Survey Questions</b>		<b>Responses</b>		
<b>Did the arbitrator allow both parties a full and fair opportunity to present their proofs?</b>				
<b>Answer Choices</b>				
Yes		100.00%	75.00%	N/A
No		0.00%	25.00%	N/A
<b>During the hearing, did you or the manufacturer request a third party, independent technical inspection of your vehicle?</b>				
<b>Answer Choices</b>				
Yes		0.00%	0.00%	N/A
No		100.00%	100.00%	N/A
<b>Post-award Experience</b>				
<b>How was the arbitrator's decision communicated to you?</b>				
<b>Answer Choices</b>				
By Email		100.00%	76.92%	N/A
By Mail		0.00%	23.08%	N/A
Other Method (please specify)		0.00%	0.00%	N/A

Florida - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
Post-award Experience				
Survey Questions		Responses		
<b>Which of the following <u>best</u> describes the decision made by the arbitrator?</b>				
<b>Answer Choices</b>				
A refund, where the manufacturer would give you money for your car		66.67%	7.69%	NO RESPONSES
A replacement, where the manufacturer would replace your existing car with a new car		33.33%	0.00%	NO RESPONSES
Reimbursement, where the manufacturer would reimburse you for incidental costs associated with the repair of your car		0.00%	0.00%	NO RESPONSES
A Repair		0.00%	0.00%	NO RESPONSES
No Relief Granted		0.00%	92.31%	NO RESPONSES
<b>Did the arbitrator accurately identify the nature of the non-conformity you alleged in your claim?</b>				
<b>Answer Choices</b>				
Yes		100.00%	23.08%	N/A
No		0.00%	76.92%	N/A
<b>Did the arbitrator include a summary of the testimony at the hearing?</b>				
<b>Answer Choices</b>				
Yes		100.00%	46.15%	N/A
No		0.00%	53.85%	N/A
<b>Was the arbitrator's decision clear?</b>				
<b>Answer Choices</b>				
Yes		100.00%	61.54%	N/A
No		0.00%	38.46%	N/A

Florida - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
<b>Post-award Experience</b>				
<b>Survey Questions</b>		<b>Responses</b>		
<b>Did the arbitrator render a reasoned decision? <i>Please Note: This means whether or not you agreed with the decision, the arbitrator provided rationale for why the decision was reached.</i></b>				
<b>Answer Choices</b>				
Yes		100.00%	23.08%	N/A
No		0.00%	76.92%	N/A
<b>Did you return to NCDS the Decision Acceptance / Rejection Form?</b>				
<b>Answer Choices</b>				
Yes		100.00%	76.92%	N/A
No		0.00%	23.08%	N/A
<b>Arbitrator Satisfaction</b>				
<b>How would you rate the arbitrator in terms of understanding the facts of your case?</b>				
<b>Answer Choices</b>				
Excellent		100.00%	0.00%	N/A
Good		0.00%	15.38%	N/A
Average		0.00%	15.38%	N/A
Poor		0.00%	69.23%	N/A

Florida - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
		Arbitrator Satisfaction		
Survey Questions		Responses		
<b>How would you rate the arbitrator's objectivity and fairness?</b>				
Answer Choices				
Excellent		100.00%	0.00%	N/A
Good		0.00%	15.38%	N/A
Average		0.00%	0.00%	N/A
Poor		0.00%	84.62%	N/A
<b>How would you rate the arbitrator's impartiality during the hearing?</b>				
Answer Choices				
Excellent		100.00%	0.00%	N/A
Good		0.00%	7.69%	N/A
Average		0.00%	23.08%	N/A
Poor		0.00%	69.23%	N/A
<b>How would you rate the arbitrator's impartiality with respect to the decision?</b>				
Answer Choices				
Excellent		100.00%	0.00%	N/A
Good		0.00%	7.69%	N/A
Average		0.00%	15.38%	N/A
Poor		0.00%	76.92%	N/A

Florida - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
Satisfaction with NCDS Processing Claim				
Survey Questions		Responses		
<b>How would you rate the timeliness of the communications between you and the NCDS administrator?</b>				
<b>Answer Choices</b>				
Excellent		66.67%	23.08%	NO RESPONSES
Good		33.33%	30.77%	NO RESPONSES
Fair		0.00%	15.38%	NO RESPONSES
Poor		0.00%	30.77%	NO RESPONSES
<b>How would you rate the helpfulness of the NCDS staff?</b>				
<b>Answer Choices</b>				
Excellent		66.67%	23.08%	NO RESPONSES
Good		33.33%	30.77%	NO RESPONSES
Fair		0.00%	7.69%	NO RESPONSES
Poor		0.00%	38.46%	NO RESPONSES
<b>How would you rate your overall experience under the NCDS Arbitration Program?</b>				
<b>Answer Choices</b>				
Excellent		66.67%	15.38%	NO RESPONSES
Good		33.33%	0.00%	NO RESPONSES
Fair		0.00%	23.08%	NO RESPONSES
Poor		0.00%	61.54%	NO RESPONSES



Florida - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
		Satisfaction with NCDS Processing Claim		
Survey Questions		Responses		
<b>Would you recommend the NCDS Arbitration Program to friends and family?</b>				
<b>Answer Choices</b>				
Yes		100.00%	15.38%	NO RESPONSES
No		0.00%	84.62%	NO RESPONSES
Settlement of Claim *Mediation Only*				
<b>Before the case proceeded to arbitration, did you agree to settle your case with the manufacturer?</b>				
Yes		N/A	N/A	NO RESPONSES
No		N/A	N/A	NO RESPONSES
<b>After you reached a settlement, did you receive a letter from NCDS explaining the terms of the settlement?</b>				
Yes		N/A	N/A	NO RESPONSES
No		N/A	N/A	NO RESPONSES

Florida - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
Settlement of Claim *Mediation Only*				
Survey Questions		Responses		
<b>After you received your settlement confirmation, did you pursue your case further?</b>				
Yes	N/A	N/A	NO RESPONSES	
No	N/A	N/A	NO RESPONSES	
<b>If so, please let us know the method you used.</b>				
Re-initiated contact with NCDS	N/A	N/A	NO RESPONSES	
Contacted an attorney	N/A	N/A	NO RESPONSES	
Contacted a state agency	N/A	N/A	NO RESPONSES	
Contacted dealer or manufacturer	N/A	N/A	NO RESPONSES	
Other (please specify)	N/A	N/A	NO RESPONSES	

## Section VI

### Arbitrator Training and Training Materials

Federal Trade Commission Rule 703 does not contain explicit language requiring the training of arbitrators. However, arbitrator training is viewed by most regulators as fundamental to ensuring that consumers who participate in the dispute resolution program receive a fair and expeditious process.

NCDS has offered training to its arbitrators from the outset of its operations, beginning as early as 1990s. Over the years, the substantive content has evolved from one based on information-sharing to a more interactive format, which culminates in a more engaging educational program for arbitrators. Currently, veteran and new arbitrators are trained simultaneously, with a view towards developing a mentorship relationship for those newly admitted to the National Panel.

NCDS did not conduct any in-person trainings in 2021.<sup>72</sup> All trainings were done on zoom. Trainings occurred on the following dates,<sup>73</sup> with levels of participation noted.

#### *2021 Arbitrator Training Programs*

- ❖ February 24 – 10 attendees
- ❖ March 24 – 9 attendees
- ❖ April 28 – 12 attendees
- ❖ June 9 – 14 attendees
- ❖ September 17 – 10 attendees
- ❖ October 15 – 20 attendees – CA specific
- ❖ October 20 – 13 attendees
- ❖ November 5 – 16 attendees
- ❖ November 19 – 13 attendees – FL specific

Several training programs included manufacturer representatives. To ensure sponsor insulation, the manufacturers' representatives were identified as observers only and were not permitted to engage with the arbitrators.

## FINDINGS

### *2021 Training Program*

The trainers for the 2021 sessions included Deborah Lech, regulatory and compliance manager for NCDS, Ray Sanders, a certified technician, auto mechanics expert, and experienced arbitrator and, in later sessions, Michael Smith, retired auto consultant and EV expert. The zoom training program opened with an introduction of the trainers and the participants. This was followed by a program overview by John Holloran, President and CEO of NCDS. A major focus of Mr. Holloran's comments addressed NCDS differentials in structuring and delivering education platforms.

<sup>72</sup> Since 2006, the annual training pattern includes three trainings for members of the National Panel, and two state specific trainings, California and Florida.

<sup>73</sup> NCDS requires that arbitrators go through a refresher training every two years, otherwise they will be removed from the National Panel.

The first substantive portion of the training program, presented by Ms. Lech, was focused on the federal and state regulatory matrix, specifically Mag-Moss and its interface with state lemon laws, and the implied warranties of the Uniform Commercial Code. This presentation was followed by a discussion of rules revisions (noted in detail in the 2020 audit) and ethics.

Ms. Lech also spent considerable time explaining the operation of the Mechanism, in particular the role of investigation and evidence-gathering. The arbitrators were appropriately cautioned not to be over-zealous in seeking out evidence, as this obligation resides with the parties.

A major concern that surfaces during this segment of the program is the role of the arbitrator in requesting an independent inspection and the weight to be assigned to the report. By the end of this session, the participants were able to discern their decision-making responsibilities and how an independent inspection is another piece of evidence to consider in the broader scheme of a customer's ability to meet their burden of proof. The appropriate cautionary note was also provided, *i.e.*, that undue reliance on an independent inspection displaces arbitral decision-making and should rarely be relied upon to the exclusion of the arbitrator's deliberations and conclusions.

A critical part of the training was devoted to an explanation of the decision tree and the importance of following it step-by-step. The trainers explained the need to provide clear rationale for decision-making and to track the decision-tree queries which mandate customer relief in cases where a substantial non-conformity is established, and the manufacturer has failed to cure through the required number of attempts.

A new feature of the 2021 zoom training program was a segment by Michael Smith on electronic vehicles, a comprehensive education piece intended to supplement the arbitrator's knowledge of auto technology. The presentation explained the growth of EVs and how such vehicles would change the landscape of dispute resolution going forward.

### *Training Materials*

An integral part of the in-person NCDS training program is the use of training materials, provided in advance to the arbitrators, to augment the training function. Information in the packet includes the following:

- Code of Federal Regulation ("CFR"), Rule 703;
- Arbitrator's Manual – covering all aspects of Mag-Moss, lemon laws, the UCC, impartiality, hearing protocols, evidence gathering, decision-making, drafting of the decision, and post-decision procedures;
- Automotive vocabulary designed to familiarize arbitrators with the kind of evidence they are likely to hear from consumers, given the increase in the purchase of electric vehicles;
- Disclosure decisions from courts of appeal; and

- Sample decisions for arbitrators to review.

In addition to formal training, NCDS uses an arbitrator portal to disseminate critical monthly information.

*Training Assessment*

CATEGORY	RATING
Materials	Excellent
Presentations	Excellent
Format of Program (in the absence of live programming)	Excellent
Opportunity for Participants to Ask Questions/Engage Panelists	Excellent
Quality of Responses Provided by the Panelists	Excellent
Opportunity for Later Engagement	Excellent
Coverage of Relevant Topics	Very Good

*Overall Assessment of NCDS Training*

The training program provided an excellent overview of the statutory requirements, the rules revisions, the unique nomenclature associated with motor vehicles, arbitral ethics, due process protocols, and the decision-tree, a carefully prepared template by the NCDS staff that guides arbitrators through the decision-making process.

There are, however, a few things that will improve the quality of the programs. The third recommendation appeared in the 2020 audit.<sup>74</sup>

**RECOMMENDATION # 1**

Mock Hearings – Mock hearings should focus more on the Arbitrator’s Opening Statement and how a thorough explanation of hearing protocols at the beginning of the hearing will foster greater confidence in the hearing process. While seasoned arbitrators follow the protocols embodied in the Opening Statement, newer arbitrators often omit critical pieces of information. For example, in several observed hearings, arbitrators did not review the documents received from NCDS, nor did they verify the remedy the consumer was seeking.

**RECOMMENDATION # 2**

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<sup>74</sup> Claverhouse & Associates, NCDS National Audit, pg. 55 (2019). *See also*, Bedikian NCDS FTC Audit (2020).

Decision-Making and Decision-Tree Template – Participants should be tasked with turning in a formal decision and receiving dedicated time for critique. While this is being done now in a less formal way, the auditor observed that numerous arbitrators were not certain of the language they should employ and how to avoid making judgmental statements in their awards. Ms. Lech is best positioned, given her training and vast experience, to counsel and coach the arbitrators.

**RECOMMENDATION # 3**

Role of Service Departments – There should be more emphasis on the role of service departments and how they function as agents of the manufacturers for purposes of carrying out the warranty (this was the focus of prior audits and continues to be an area where more coverage can and ought to be given). It is not a valid defense for a manufacturer to claim that a dealer failed to properly repair or cure an alleged non-conformity. Under Mag-Moss, the responsibility clearly falls on the manufacturer to cure. If the manufacturer has not cured the non-conformity in a reasonable number of attempts, the consumer has a right, under applicable law to receive an award for a refund or a suitable replacement.

These minor recommendations aside, arbitrator participants in the trainings observed by the auditor had sufficient time to receive guidance and, where in doubt, ask questions. Program goals were actualized. Through a combination of substantive training and quality educational materials, arbitrators left with a better understanding of the arbitral process and their decision-making obligations under Mag-Moss.

**CONCLUSION**

**The NCDS arbitrator training program is excellent. It operates in substantial compliance with the applicable Ohio Administrative Code, Magnuson-Moss, and FTC Rule 703. The entire program demonstrates a commitment to quality arbitrator training, for which the NCDS staff should be commended.**

## Section VII

### Survey and Statistical Index: Comparative Analysis of Consumer Responses

The Federal Trade Commission regulates the informal dispute settlement programs operated under Magnuson-Moss, including the program which operates under the auspices of the National Center for Dispute Settlement pursuant to FTC Rule 703.6(e). The rule mandates disclosure of statistics about the outcomes of warranty disputes and warrantor compliance with settlements and awards. The purpose of this section of the audit is to verify the statistics provided by NCDS for the calendar year 2020.

A consumer who wants to have a dispute settled through AWAP must meet certain criteria: (1) be the owner of a vehicle that meets certain specific age and mileage requirements; and (2) agree to forego any legal action while the case is pending with NCDS. If a customer files a claim form that does not meet these requirements, it is considered, “out-of-jurisdiction.” In other words, it is ineligible for processing. These cases are counted as “closed.” A consumer who is not satisfied with the jurisdiction decision of the program can request that the case be reviewed by a three-member arbitrator board. This step is rarely undertaken.

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

FTC Rule 703.6(e) requires warrantors to report statistics in 13 areas. These include: the number of mediated and arbitrated warranty disputes in which the warrantor has complied with a settlement or award; the number of cases in which the warrantor did not comply, the number of decisions adverse to the consumer; the number of “out-of-jurisdiction” disputes, and the number of cases delayed beyond 40 days and the reasons for those delays.<sup>75</sup>

To determine the accuracy of the AWAP’s warranty dispute statistics and to gather consumer feedback regarding the program, the auditor conducted a survey with customers nationally who filed disputes with AWAP during the calendar year.

The primary focus of the survey is to gather data to verify the statistics by comparing data collected from a non-random sampling of consumers regarding the actual process and outcomes of their cases to the statistics and outcomes reported by NCDS. As noted by the previous auditor, “The question is not whether an individual’s recollections match the data in the AWAP’s records, but rather whether the aggregate proportions of consumers’ recollections agree with the outcomes reported to the FTC.”<sup>76</sup>

In addition to containing questions to gather the information needed to verify the statistics, the questionnaire also asks consumers to evaluate various aspects of the program, all of which are designed to determine the levels of customer satisfaction.

<sup>75</sup> In 2021, no cases exceeded the 40-day timeline. Based on statistics provided to the auditor by NCDS the average number of days from case initiation to resolution, for all participating manufacturers was 35. See pg. 31 for breakdown by manufacturer.

<sup>76</sup> Claverhouse & Associates, NCDS National Audit, pg. 60 (2019).

OVERALL DISPUTE CASES OVERVIEW

Figure 1 captures the total cases (overall) and total cases by jurisdiction in relationship to the method of resolution of warranty disputes for 2021. Four resolution areas were captured which were mediation, arbitration, ineligible, and withdrawn. Duplicate or multiple filings by the same person were removed from the total case number counts. Arbitrated and mediated cases made up 69% of all cases while ineligible and withdrawn cases made up 31% which accounted for 100% of total cases.

Figure 1. Overall Dispute Cases and by Jurisdiction (2021)

Total NCDS Cases (Overall)			
Resolution	Number	Percent	Percent of All Cases
Mediation	175	10.4%	7%
Arbitration	1513	89.6%	62%
<b>Subtotal - (In Jurisdiction &amp; Closed)</b>	<b>1688</b>	<b>100%</b>	<b>69%</b>
Ineligible	574	76%	24%
Withdrawn	177	24%	7%
<b>Subtotal</b>	<b>751</b>	<b>100%</b>	<b>31%</b>
<b>Total Cases</b>	<b>2439</b>	<b>—</b>	<b>100%</b>

Total NCDS Cases by Jurisdiction		
National	Number	Percent
Mediation	115	7.6%
Arbitration	910	59.8%
Ineligible	365	24.0%
Withdrawn	132	8.7%
<b>Total National</b>	<b>1522</b>	<b>100%</b>

California	Number	Percent
Mediation	35	7.3%
Arbitration	276	57.5%
Ineligible	152	31.7%
Withdrawn	17	3.5%
<b>Total California</b>	<b>480</b>	<b>100%</b>

Florida	Number	Percent
Mediation	19	5.5%
Arbitration	262	75.3%
Ineligible	45	12.9%
Withdrawn	22	6.3%
<b>Total Florida</b>	<b>348</b>	<b>100%</b>

Ohio	Number	Percent
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Mediation	6	6.7%
Arbitration	65	73.0%
Ineligible	12	13.5%
Withdrawn	6	6.7%
<b>Total Ohio</b>	<b>89</b>	<b>100%</b>

<b>Total Cases</b>	<b>2439</b>
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<b>Total Cases for Survey</b>	<b>1,377</b>	<i>Excludes ineligible cases, withdrawn cases, and multiple case filings from the same consumer. The consumer is only required to fill out one survey and is not based on the quantity of cases they filed.</i>
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## *Methodology*

To determine the accuracy of the Non-Binding Automobile Warranty Arbitration Program (AWAP) dispute statistics and assess consumers' levels of satisfaction and experience regarding the program, the auditor conducted a quantitative survey with national consumers in the United States who filed disputes with AWAP during the 2021 calendar year. California, Florida, and Ohio results were not included in the national results because their results were captured separately throughout this audit.

The primary focus of the survey was to gather data (average scores) to verify the statistics by comparing data collected from a non-random sample of national consumers regarding the process and outcomes of their cases to the statistics and outcomes reported by National Center for Dispute Settlement (NCDS). The intent is to understand whether the total proportions of consumers' recollections agree with the outcomes reported by the Federal Trade Commission ("FTC").

This section includes a detailed discussion of the research methodology and the appropriateness of the design chosen for the audit. The section contains details about the population, sampling, data collection procedures, and the rationale for the selected technique.

### *Research Method Appropriateness*

Choosing the appropriate method is a necessary and a critical step in the research process to ensure the objectives are clear in relation to the research topic and questions. The suitable research method for this audit was a quantitative methodology because with a quantitative research method it captures objective measurements and the statistical, mathematical, or numerical analysis of data collected through questionnaires, surveys, or polls.

The auditor identified consumers' overall levels of satisfaction and experience regarding the AWAP as measured by three surveys based on their outcome status: Consumer Satisfaction Survey Arbitrated Cases Awarded No Action, Consumer Satisfaction Survey Arbitrated Cases Awarded, and Consumer Satisfaction Survey Mediated Cases with the goal of identifying consumer satisfaction and whether the total proportions of consumers' recollections agreed with the outcomes reported by the Federal Trade Commission ("FTC"). With a quantitative methodology, the auditor can gather significant amounts of data from a larger sample and simplify the results. A quantitative method was appropriate for this audit because it fulfilled the goal of identifying consumers' levels of satisfaction and addressing the purpose of the audit.

### *Population, Sampling, and Data Collection Procedures*

**Population.** The target population for this audit included consumers who filed eligible claims and rated their experience and satisfaction of the Automobile Warranty Arbitration Program ("AWAP") as reported by NCDS in the year 2021 located in the United States.

**Sampling.** The sample size is determined by the number of completed responses received from the surveys and only represents part of the group of people or target population whose experience, behavior, or opinions were captured in the survey. The total sample for the National audit was 128 participants. The sample was selected non-randomly and the invitations were given to participants who met the selection criteria and not by random chance. Access and permission were granted to the target

population of consumers by NCDS management. NCDS management helped facilitate the email distribution lists of consumers to the auditor by sending an excel file of audit reports of resolved cases for National.in an email under the guidance of the auditor.

**Table 1. Breakdown of total sample sizes for the National, California, Florida, and Ohio audits.**

Survey	Population	Sample Size	Response Rate %
National - Arbitrated Awarded	158	30	19%
National - Arbitrated Awarded No Action	617	91	15%
National - Mediated	67	7	10%
Total	842	128	15%

Survey	Population	Sample Size	Response Rate %
California - Arbitrated Awarded	86	10	12%
California - Arbitrated Awarded No Action	190	22	12%
California - Mediated	11	0	0%
Total	287	32	11%

Survey	Population	Sample Size	Response Rate %
Florida - Arbitrated Awarded	30	3	10%
Florida - Arbitrated Awarded No Action	150	13	9%
Florida - Mediated	11	0	0%
Total	191	16	8%

Survey	Population	Sample Size	Response Rate %
Ohio - Arbitrated Awarded	8	1	13%
Ohio - Arbitrated Awarded No Action	46	12	26%
Ohio - Mediated	3	0	0%
Total	57	13	23%

Generally, the larger the sample size, the more statistically significant the results are and less of a chance the results happened by coincidence but may not be applicable in every situation. Survey sampling can provide valuable answers and insights without having a sample size that represents the general population. Customer satisfaction or feedback surveys such as the ones used in this audit are one of the survey types that provide valuable answers and do not necessarily rely on a statistically significant sample size. Listening and documenting customer thoughts provides important perspectives and information on how well something is performing or areas for improvement. The sample sizes and results gathered were appropriate and accomplished the purpose of the audit.

**Informed Consent.** Accurately and honestly communicating the purpose and intent of the audit to participants was critical to the ethical considerations of the study. All participants for this audit were volunteers and were informed through the survey of the purpose of the study, voluntary participation, usage of the data collected, and benefits of the audit. Participants were able to choose to participate or not participate in the audit voluntarily and no personal identifiers were collected minimizing and eliminating any potential risks to the participants.

**Data Collection.** Initial contact with a company representative in NCDS was made to discuss the requirements and participation needed for the audit. Once the requirements were established, a follow-up email was sent to the company representative with detailed information about the consumer information needed for the audit. The data collection targeted consumers who had recently participated in the Non-Binding Automobile Warranty Arbitration Program administered by the National Center for Dispute Settlement (NCDS) in the year 2021 in the United States. These consumers were eligible to participate in the audit if interested and had to complete and electronically acknowledge their agreement to participate in the audit through the survey. The participants were not required to participate and could opt out of taking the surveys at any time. Participation in the surveys was voluntary. The auditor provided consumers who were eligible to participate in the audit with a secure link and access to the web-based surveys.

**Survey Instrument Selection.** The survey instruments for the audit were the Consumer Satisfaction Survey Arbitrated Cases Awarded No Action, Consumer Satisfaction Survey Arbitrated Cases Awarded, and Consumer Satisfaction Survey Mediated Cases. The surveys were created by the auditor based on the Magnuson Moss Warranty–Federal Trade Commission Improvements Act and were administered to participants in accordance with their case filing outcome to measure overall levels of satisfaction and experience regarding the AWAP.

The Consumer Satisfaction Survey Arbitrated Cases Awarded No Action and Consumer Satisfaction Survey Arbitrated Cases Awarded are a 39-question survey utilizing multiple choice questions. Items 1-4 measure the pre-filing experience with the dealer or manufacturer. Items 5-8 measure the filing of the claim with NCDS. Items 9-19 measure the experience after filing a claim or pre-hearing process with NCDS. Items 20-23 measure the evidentiary hearing process. Items 24-30 measure post-award experience. Items 31-34 measure arbitrator satisfaction and items 35-39 measure satisfaction with NCDS processing claim. The Consumer Satisfaction Survey Mediated Cases is a 25-question survey using multiple choice questions. Items 1-4 measure the pre-filing experience with the dealer or manufacturer. Items 5-8 measure the filing of the claim with NCDS. Items 9-16 measure the experience after filing a claim with NCDS. Items 17-21 measure the mediation process and settlement of claim. Items 22-25 measure the satisfaction with NCDS processing claim.

### *Data Analysis*

Consumers' overall levels of satisfaction and experience regarding the AWAP was collected using web-based questionnaires using SurveyMonkey's © online survey software. SurveyMonkey is a secure and trusted data collection tool that offers several features and customization to create surveys to gain insights. The use of electronic surveys was given and retrieved by participants due to the ease of timely distribution of the surveys to participants in several different states in the United States. The invitations were sent on July 19<sup>th</sup>, 2021, and surveys were closed on August 5<sup>th</sup>, 2021, to allow ample time for participants to respond and complete the survey.

A secure and confidential link was created for each survey and sent to each eligible participant who had recently participated in the Non-Binding Automobile Warranty Arbitration Program administered by the National Center for Dispute Settlement (NCDS) in the year 2021 in the United States. This feature ensured the survey could only be accessed by that consumer and prevents non-sampled participants from accessing the questionnaire. The survey email distribution lists were grouped separately by National, California, Florida, and Ohio, and the participants associated arbitration outcome

that matched with the respective survey. Once the participants responded to the survey link, the data and answers were recorded within SurveyMonkey.

The SurveyMonkey survey tool has a notification feature that allowed the auditor to track which participants responded and did not respond to the surveys. A reminder was set for each survey to remind participants who had not yet completed the survey to prevent nonresponse bias. Nonresponse bias occurs when there is a significant difference between those who responded to the survey and those who did not. For example, participants may forget to complete the survey, are unwilling to take the survey for various reasons or the email invites may have not reached the participant (E.g., spam folder). Each survey setting was configured to only allow participants to respond once per email and IP address to prevent respondents answering the survey multiple times and skewing the results. The auditor was the only individual who had access to the SurveyMonkey tool which requires a username and password to access to ensure all information remained secure and confidential. All results were analyzed in SurveyMonkey.

### *Findings & Results*

The survey questions and results were intended to enhance the understanding of consumers overall levels of satisfaction regarding the Non-Binding Automobile Warranty Arbitration Program administered by the National Center for Dispute Settlement (NCDS) under the Magnuson Moss Warranty-Federal Trade Commission Improvements Act. This section includes the National, California, Florida, and Ohio results of the data retrieved from participants who responded to the Consumer Satisfaction Survey Arbitrated Cases Awarded No Action, Consumer Satisfaction Survey Arbitrated Cases Awarded, and Consumer Satisfaction Survey Mediated Cases.

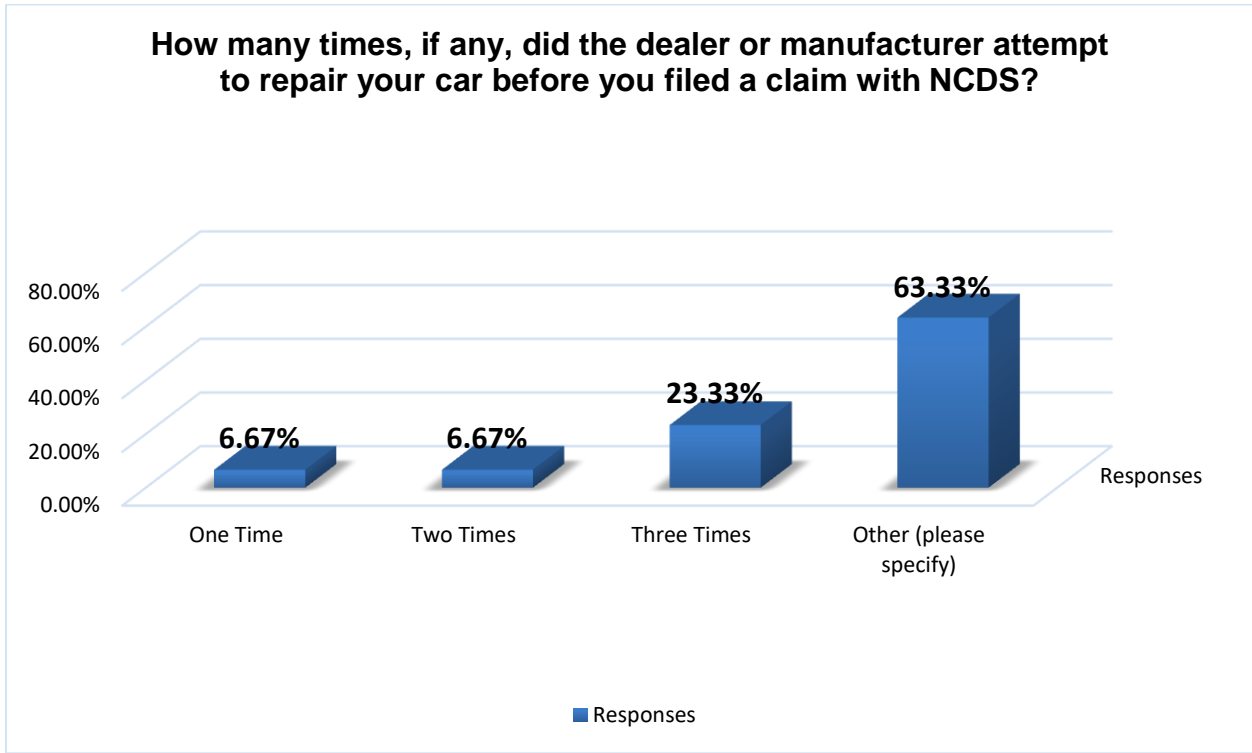
## NATIONAL AUDIT SURVEY RESULTS<sup>77</sup>

### ARBITRATED CASES AWARDED SURVEY RESULTS

**Pre-filing experience with dealer or manufacturer.** To understand the consumers' pre-filing experience, respondents were asked general questions related to their pre-filing experience with either the dealer or the manufacturer. The results show before filing a claim with NCDS, 100% of participants reported that they attempted to contact the manufacturer directly to address their concerns. When asked how many times the dealer or manufacturer attempted to repair their vehicle, 63% of respondents stated "other" and 23% reported three times. The remaining sample population of 13% stated between one-two times. **(Graph 31).** The majority of participants reported they learned about the NCDS Non-Binding Automobile Warranty Arbitration Program through three primary sources: Manufacturer Customer Service (23%), Glove-Box Materials (30%), and Internet or Social Media (23%). There were other resources participants noted as outlined in **Graph 32** but were not as prevalent. Forty-six percent (46%) of the participants stated they were informed of the Arbitration Program from the manufacturer or dealer over the phone while 30% reported they learned of the Arbitration Program through "Mailed or E-mailed Information."

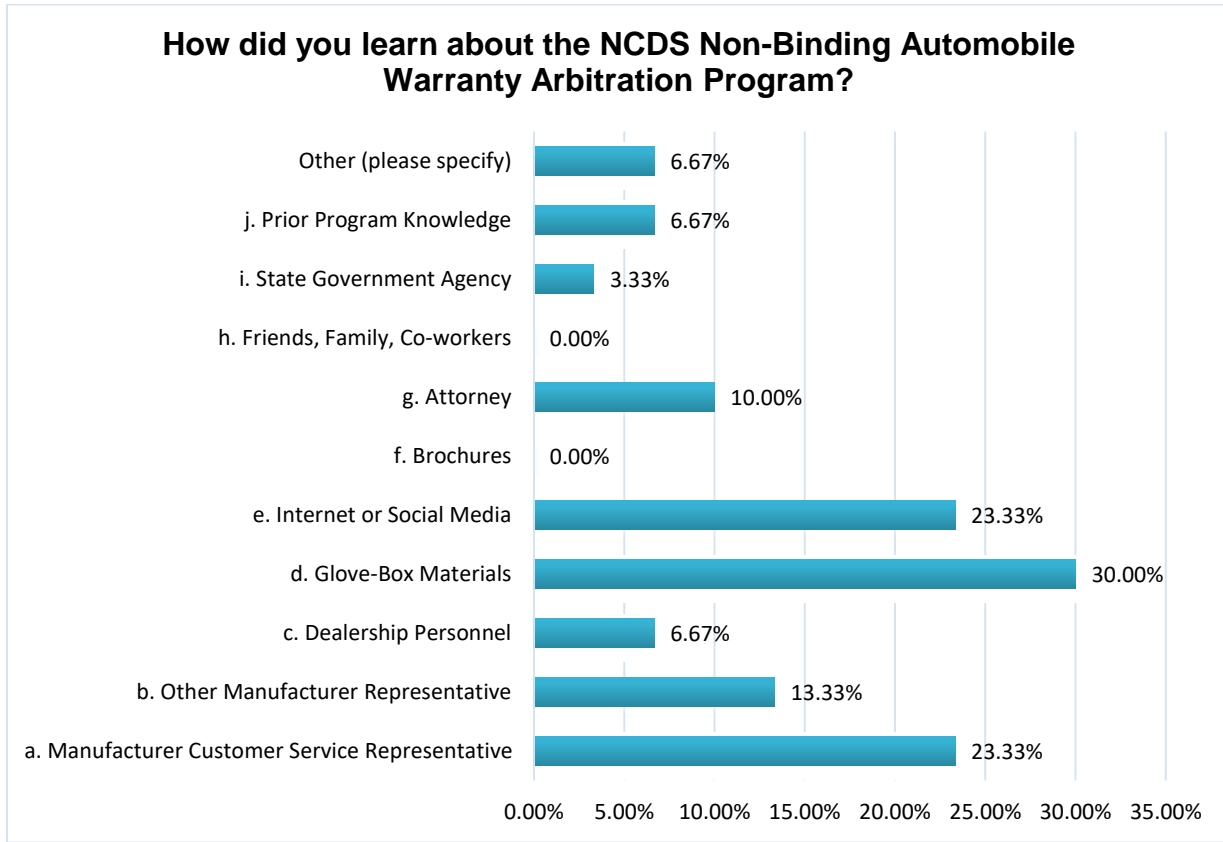
<sup>77</sup> National Audit Survey Results are found on pages 156-169.

GRAPH 31 – ARBITRATED CASES AWARDED SURVEY RESULTS



The results in **Graph 31** confirm that consumers attempt multiple repairs (3+) on their vehicle, either for the same or different non-conformity, before they file their case in arbitration.

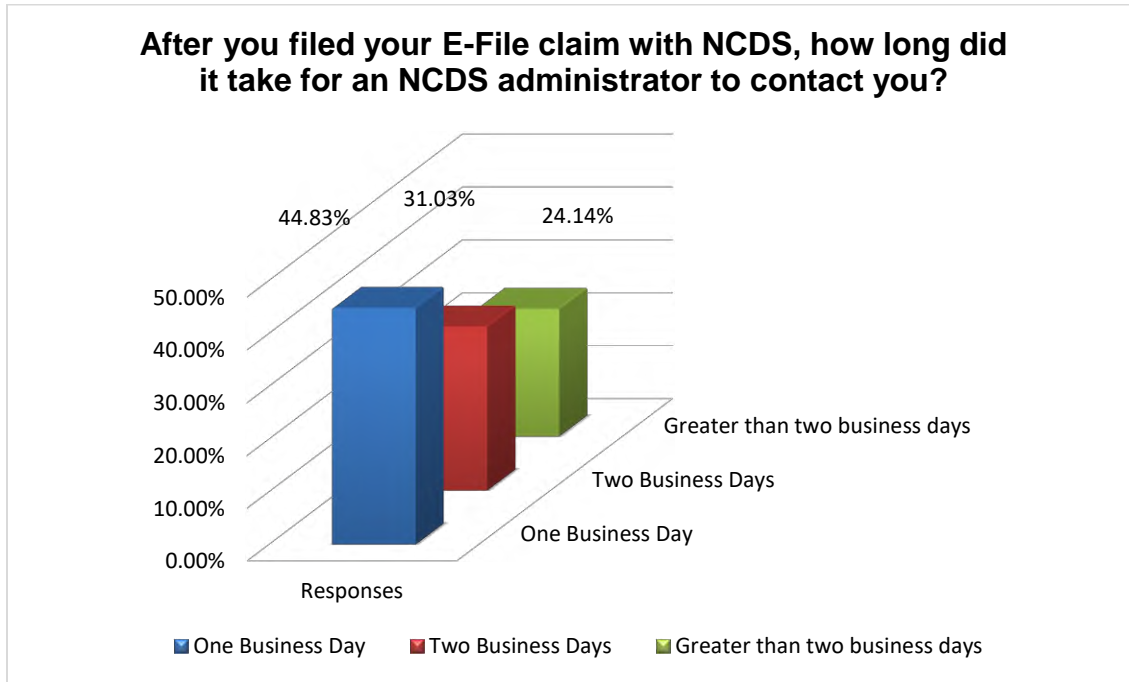
GRAPH 32 – ARBITRATED CASES AWARDED SURVEY RESULTS



**PLEASE NOTE:** Participants were allowed to select multiple choices.

**Filing of the claim with NCDS.** To identify consumers’ experience concerning the actual filing of their claim with NCDS, participants were asked questions related to the filing method, clarity of instructions, and style of hearing. Most participants (97%) reported they used an E-File method to file their claim while only 3% used a written submission claim form. The respondents were then asked how clear the instructions were for filing their claim of which 70% indicated the instructions on the claim form were “*very clear*” and 30% stated the instructions were “*somewhat clear.*” Once the participants filed their claim with NCDS, approximately 76% reported it took anywhere between one-to-two business days for NCDS to acknowledge their claim and initiate the administrative process. The remaining 24% stated it took greater than three days. (Graph 33)

GRAPH 33 – ARBITRATED CASES AWARDED SURVEY RESULTS



**Experience after filing a claim with NCDS.** To capture the pre-hearing process, respondents were asked to rate their experience after they filed their claim with NCDS. Based on the results, it was found that 90% of participants received or reviewed the Frequently Asked Questions (FAQs) packet at [www.ncdsusa.org](http://www.ncdsusa.org) and 10% reported they did not receive the packet. The information presented in the FAQs was “very clear” as reported by 67% of the respondents and “somewhat clear” by 23% of respondents. Seventy-seven percent (77%) of participants stated the information presented in the FAQs was “very helpful” while 13% reported it was “moderately helpful.” The remaining 10% of the participants reported they did not know the degree to which the FAQs were helpful, if at all.

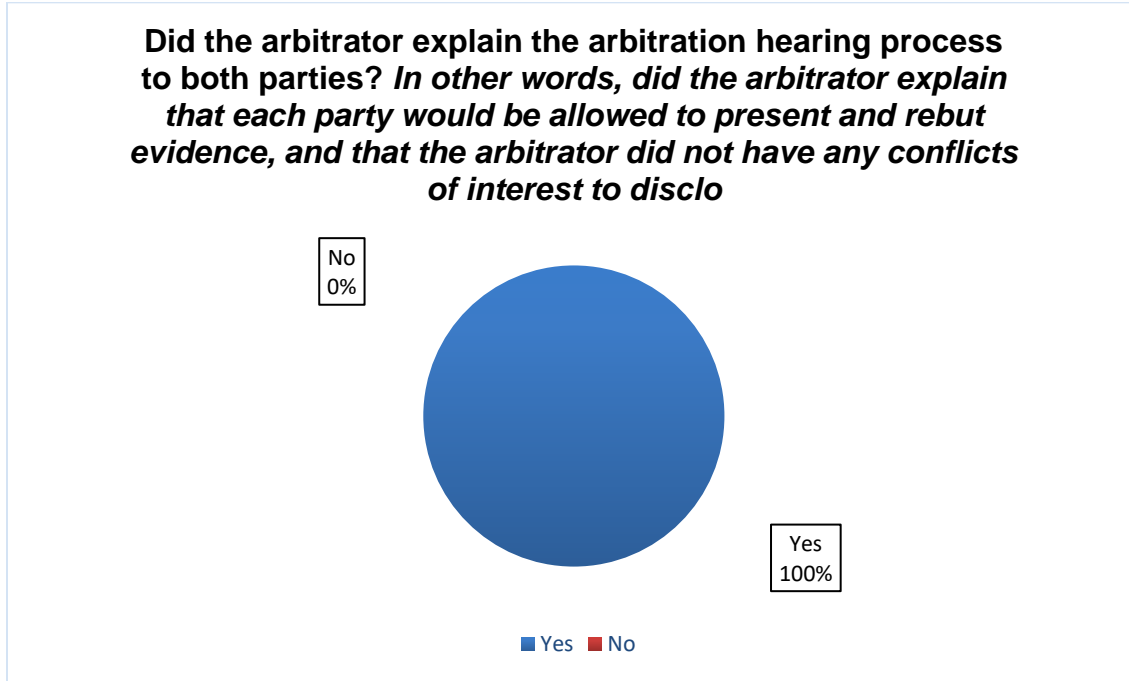
When asked if participants received or reviewed the Non-Binding Program Rules at [www.ncdsusa.org](http://www.ncdsusa.org), 93% respondents reported “yes” while 7% stated “no.” The Program Rules were “very clear” to 70% of the participants and “somewhat clear” to 27% participants. The respondents were then asked if the Program Rules were helpful in explaining the arbitration process of which 77% stated they were “very helpful” and 20% acknowledged they were “moderately helpful” in explaining the arbitration process. The majority of respondents (97%) stated they received a hearing notice from NCDS, and 97% reported before or after they received their hearing notice, they did not hire an attorney to represent them or to be present at the hearing. Only 3% of respondents reported they hired an attorney after receiving their hearing notice. Based on the results, 57% of participants did not request a “documents only” hearing after filing their claim and 43% did request a “documents only” hearing.

**The evidentiary hearing process.** To assess the actual evidentiary process, participants were asked to convey their experience with different phases of the hearing process. Of the 57% of participants that participated in an evidentiary hearing, 94% reported and 6% reported the arbitrator did not start the hearing on time. One-hundred percent (100%) of the hearing participants stated that the arbitrator explained the arbitration process to both parties. (Graph 34) When asked if the arbitrator allowed both



parties a full and fair opportunity to present their proofs, 100% of those participants responded “yes.” Only 6% of this sample population requested a third party independent technical inspection of the vehicle during the hearing.

GRAPH 34 – ARBITRATED CASES AWARDED SURVEY RESULTS



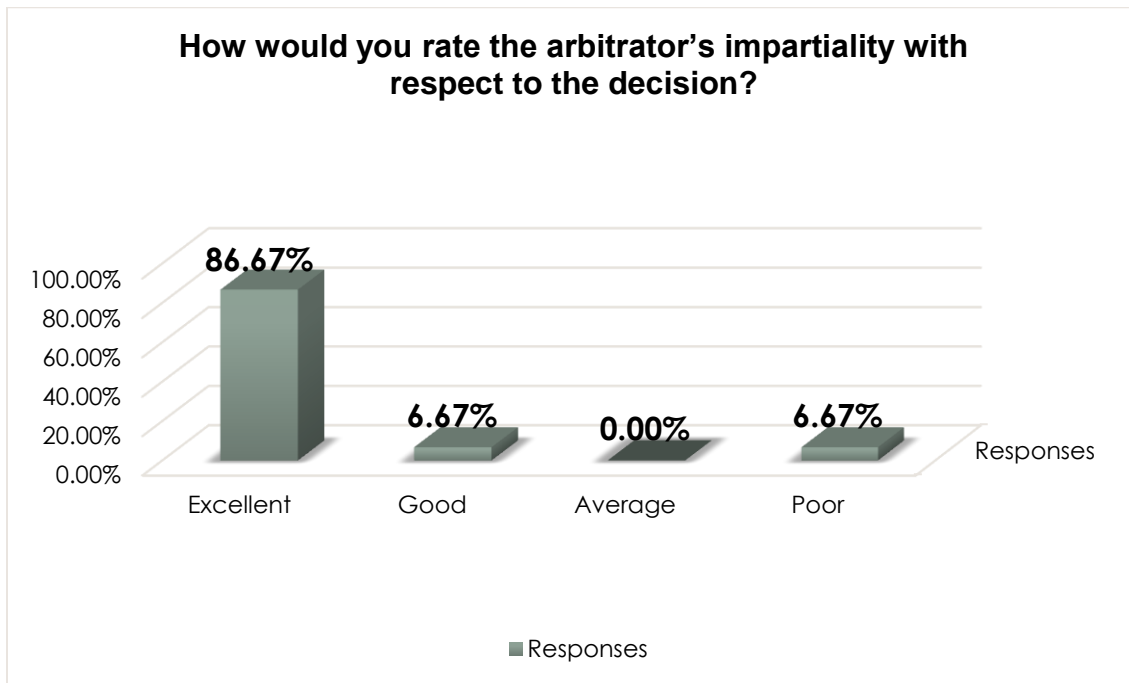
**Post-award experience.** Next, it was important to evaluate the consumers’ experience after they received their award. When it was time to communicate the award to the consumer, 90% of the total sample population stated the arbitrator communicated this award by email and 6% reported it was by written submission. Three percent (3%) stated “other method” but did not specify the method. Most of the consumers (73%) reported that the relief awarded to them by the arbitrator was a refund, where the manufacturer would give them money for their vehicle, 13% reported they received a replacement, where the manufacturer would replace their existing car with a new car, and 10% stated they received a reimbursement, where the manufacturer would reimburse them for the incidental costs associated with the repair of their car. The remaining 3% of respondents reported “*No Relief Granted,*” which meant the arbitrator denied the consumers’ claims entirely.

Ninety-three percent (93%) of participants felt the arbitrator accurately identified the nature of the non-conformity in their respective claims. After identifying the non-conformity, 93% of participants stated the arbitrator included a summary of the testimony at the hearing. The majority of the participants (97%) stated the arbitrator’s award was clear and 93% reported that the arbitrator rendered a reasoned award while 100% stated they accepted the arbitrator’s award.

**Arbitrator satisfaction.** To understand arbitrator satisfaction among the consumers, the participants were asked how to rate the arbitrator’s understanding of the facts of their case. Eighty percent (80%) rated the arbitrator’s comprehension of the facts as “*excellent,*” 10% “*good,*” and 6% between

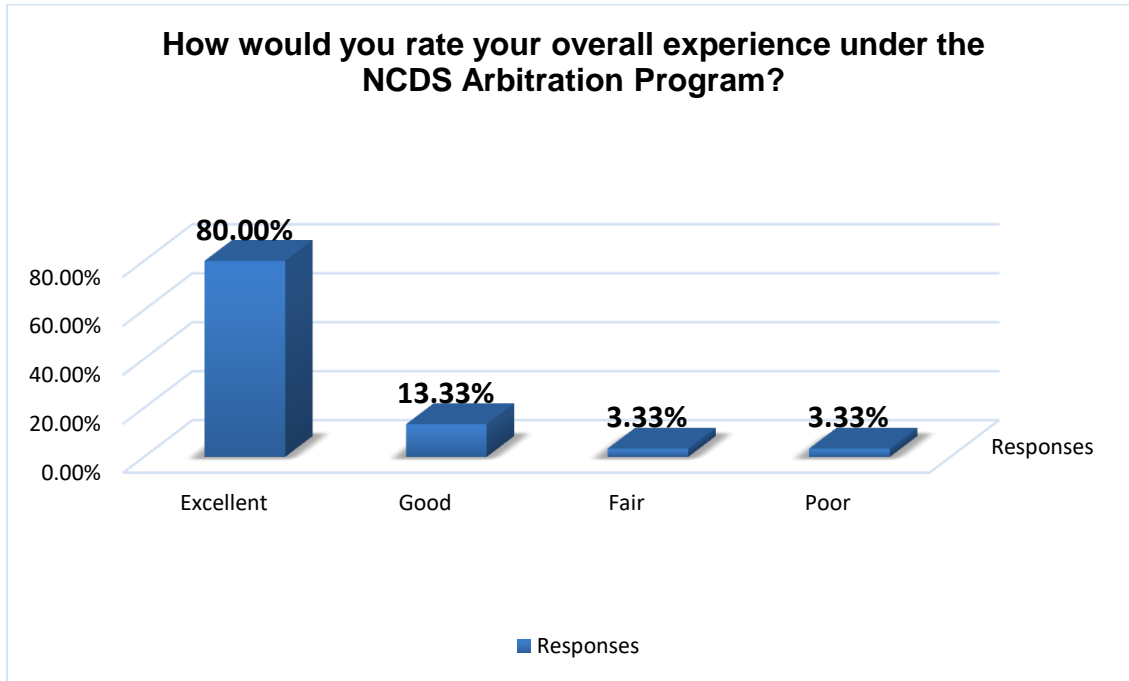
“average” and “poor.” The arbitrator’s objectivity and fairness were rated as “excellent” by 87% of respondents and “good” by 7% of respondents. The participants were then asked to rate the arbitrator’s impartiality during the hearing of which 87% rated their arbitrator as “excellent,” 6% “good,” 3% “average,” and 3% “poor.” Finally, the participants were asked to rate the arbitrator’s impartiality with respect to the award. (Graph 35) Eighty-seven percent (87%) of respondents rated this as “excellent,” 7% “good,” and 7% “poor.”

GRAPH 35 – ARBITRATED CASES AWARDED SURVEY RESULTS



**Satisfaction with NCDS processing claim.** To measure consumers’ satisfaction with NCDS processing their claims, respondents were asked to rate NCDS in four different areas. Respondents were asked to rate the timeliness of the communications between them and NCDS staff of which 70% rated the timeliness of communications as “excellent,” 27% “good,” and 3% “fair.” Next, participants were asked to rate the helpfulness of the NCDS staff, and the majority of participants (70%) rated the helpfulness of the staff as “excellent,” 20% “good,” and 10% “fair.” To help gauge consumers’ experience with the arbitration program, participants were asked to rate their overall experience under the Arbitration Program of which 80% of participants rated it as “excellent,” 13% as “good,” 3% as “fair,” and 3% “poor.” (Graph 36) Finally, respondents were asked if they would recommend the Arbitration Program to friends and family and 93% responded “yes” while 7% stated “no.”

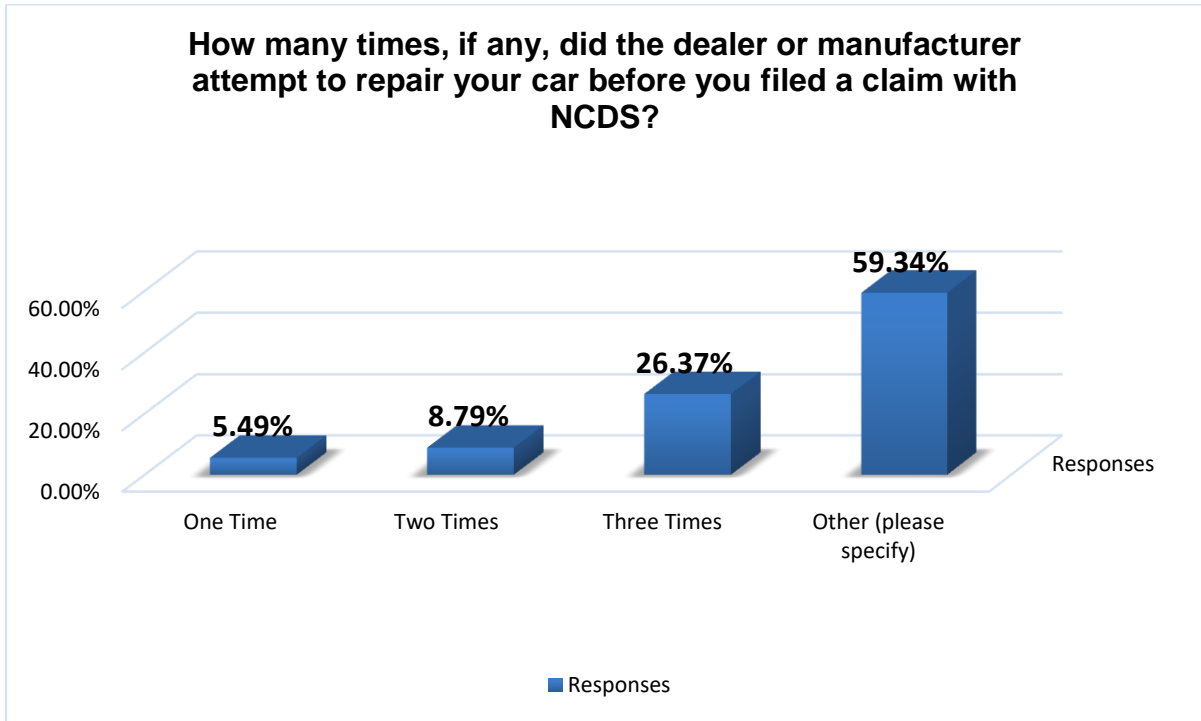
GRAPH 36 – ARBITRATED CASES AWARDED SURVEY RESULTS



ARBITRATED CASES AWARDED NO ACTION SURVEY RESULTS

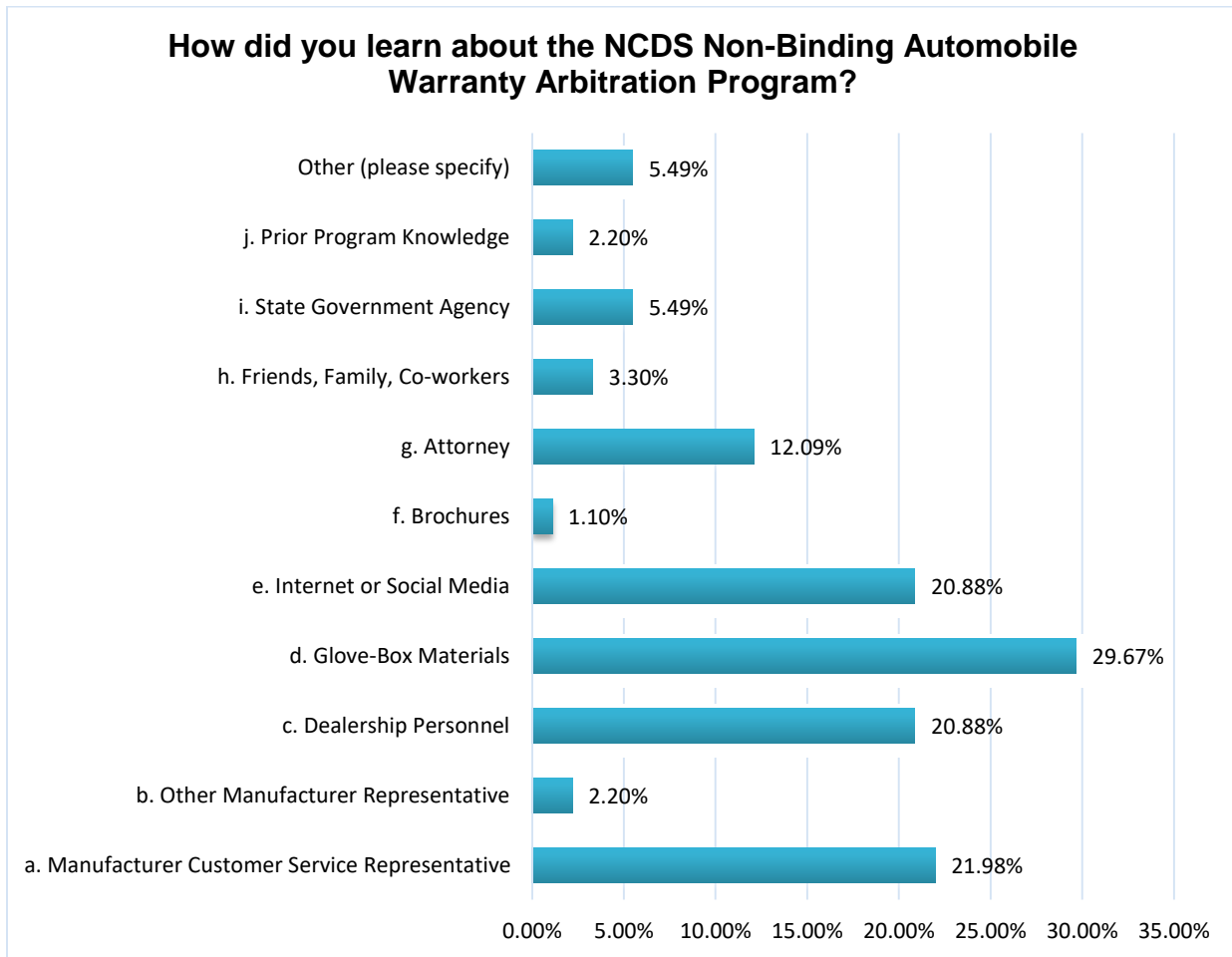
**Pre-filing experience with dealer or manufacturer.** To understand the consumers’ pre-filing experience, respondents were asked general questions related to their pre-filing experience with either the dealer or the manufacturer. The results show before filing a claim with NCDS, 93% of participants reported that they attempted to contact the manufacturer directly to discuss their concerns. When asked how many times the dealer or manufacturer attempted to repair their vehicle, 59% of respondents stated more than three times, 26% reported at least three times, 9% stated at least two times, and 5% reported one time. **(Graph 37)** When participants were asked how they learned about the NCDS Non-Binding Automobile Warranty Arbitration Program, four primary sources were identified: Manufacturer Customer Service (22%), Dealership Personnel (21%), Glove-Box Materials (30%) and Internet or Social Media (21%). **(Graph 38)** There were other resources participants noted but they were not as prevalent. At least 61% of participants stated they were informed of the Arbitration Program from the manufacturer or dealer over the phone while 16% reported they were informed through “Mailed or E-mailed Information.”

GRAPH 37 – ARBITRATED CASES NO ACTION SURVEY RESULTS



The results in **Graph 37** confirm that consumers attempt multiple repairs (3+) on their vehicle, either for the same or different non-conformity, before they file their case in arbitration.

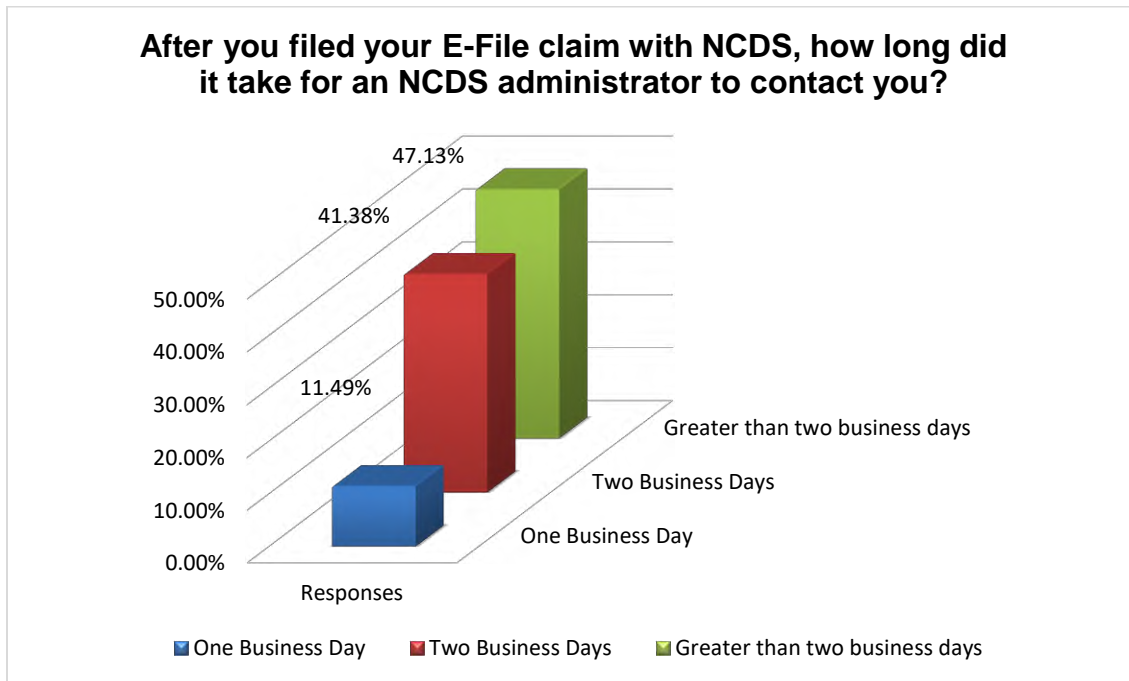
GRAPH 38 – ARBITRATED CASES NO ACTION SURVEY RESULTS



**PLEASE NOTE:** Participants were allowed to select multiple choices.

**Filing of the claim with NCDS.** To identify consumers’ experience concerning the actual filing of their claim with NCDS, participants were asked questions related to the filing method, clarity of instructions, and style of hearing. Most participants (96%) reported they used an E-File method to file their claim while only 4% used a written submission claim form. The respondents were then asked how clear the instructions were for filing their claim of which 38% indicated the instructions on the claim form were “*very clear*” and 50% stated the instructions were “*somewhat clear.*” Once the participants filed their claim with NCDS, approximately 53% reported it took anywhere between one-to-two business days for NCDS to acknowledge their claim and initiate the administrative process (**Graph 39**). The remaining 47% stated it took greater than three days.

GRAPH 39 – ARBITRATED CASES NO ACTION SURVEY RESULTS



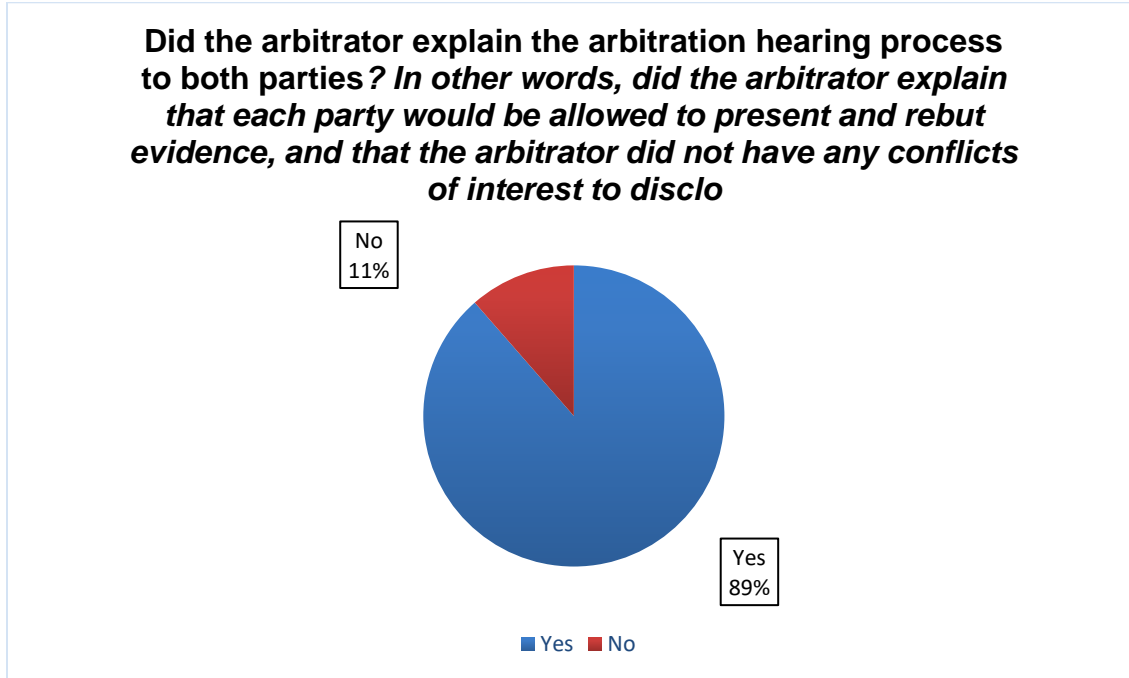
**Experience after filing a claim with NCDS.** To capture the pre-hearing process, respondents were asked to rate their experience after they filed their claim with NCDS. Based on the results, it was found that 71% of participants received or reviewed the Frequently Asked Questions (FAQs) packet at [www.ncdsusa.org](http://www.ncdsusa.org) and 29% reported they did not receive the packet. The information presented in the FAQs was “very clear” as reported by 27% of the respondents, “somewhat clear” by 45%, and “not clear” or did not know by 27% of respondents. Only 16% of participants stated the information presented in the FAQs was “very helpful” while 48% reported it was “moderately helpful.” The remaining 35% of participants did not think the FAQs were helpful or did not know.

When asked if participants received or reviewed the Non-Binding Program Rules at [www.ncdsusa.org](http://www.ncdsusa.org), 76% respondents stated “yes” while 24% stated “no.” The Program Rules were “very clear” to 25% of the participants, “somewhat clear” to 44%, and “not clear” or did not know by 31% of participants. The respondents were then asked if the Program Rules were helpful in explaining the arbitration process of which 22% stated they were “very helpful” and 51% acknowledged they were “moderately helpful” in explaining the arbitration process. The remaining 27% of respondents reported they did not think Program Rules were helpful or did not know. The majority of respondents (90%) stated they received a hearing notice from NCDS, but 98% reported before or after they received their hearing notice, they did not hire an attorney to represent them or to be present at the hearing. Only 2% of respondents reported they hired an attorney after receiving their hearing notice. Based on the results, 43% of participants requested a “documents only” hearing after filing their claim and 57% did not request a “documents only” hearing.

**The evidentiary hearing process.** To assess the actual evidentiary process, participants were asked to convey their experience with different phases of the hearing process. Of the 57% of participants that did not request a “documents only” hearing, 80% of that sample reported that the arbitrator started

the hearing on time. It was reported by 89% of those participants that the arbitrator explained the arbitration process to both parties. Eleven percent (11%) indicated that the arbitrator did not provide this explanation. **(Graph 40)** When asked if the arbitrator allowed both parties a full and fair opportunity to present their proofs, 51% of those participants responded “yes” while 49% reported “no.” Twenty percent (20%) of the participants requested a third party independent technical inspection of their vehicle during the hearing.

GRAPH 40 – ARBITRATED CASES NO ACTION SURVEY RESULTS



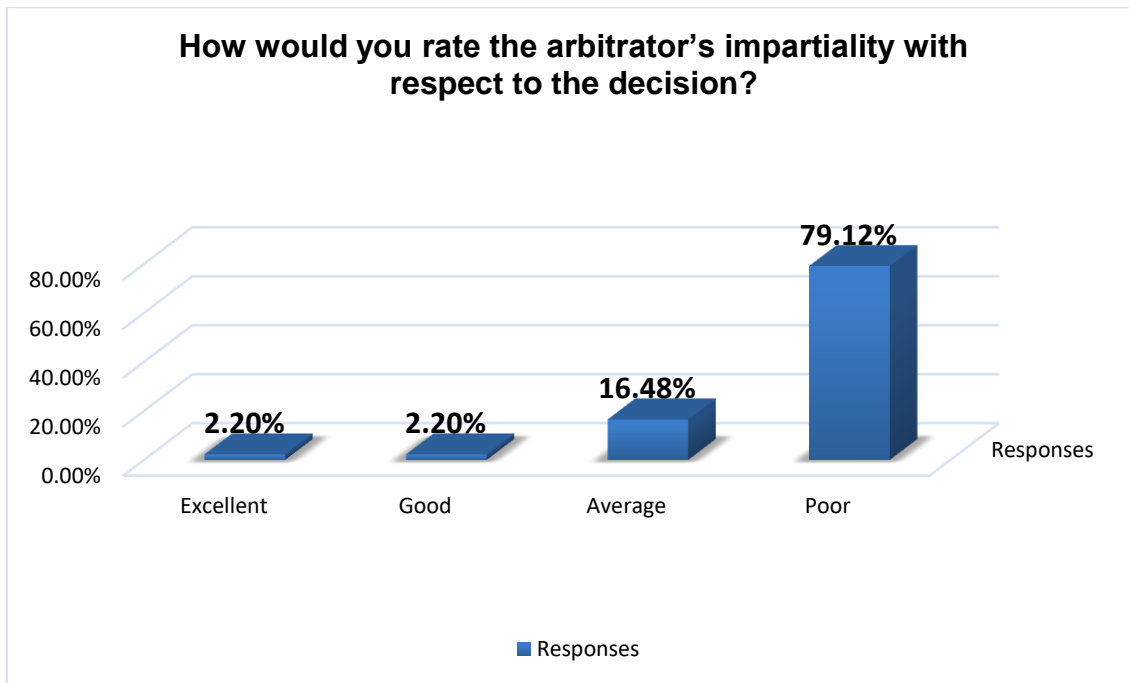
**Post-award experience.** Next, it was important to evaluate the consumers’ experience after they received their award. When it was time to communicate the award to the consumer, 85% of the total sample population stated the arbitrator communicated this award by email, 9% reported it was by written submission, and 7% stated, “Other Method.” This method was not specified. Most of the consumers (93%) reported they received no award while less than 3% reported the relief awarded to them by the arbitrator was a replacement, where the manufacturer would replace their existing car with a new car. Two percent (2%) reported that the arbitrator awarded a repair, and 1% reported that the arbitrator awarded reimbursement, where the manufacturer would reimburse them for the incidental costs associated with the repair of their car.

The results showed the participants did not feel the arbitrator accurately identified the nature of the non-conformity in the consumers’ alleged claims as reported by 79% of respondents. After identifying the non-conformity, 55% of participants stated the arbitrator included a summary of the testimony at the hearing while 45% reported the arbitrator did not include a summary. Almost half of the participants (47%) stated the arbitrator’s award was clear while 53% said the award was not clear. The majority of

participants (60%) did not think the arbitrator rendered a reasoned award while 40% stated the arbitrator did render a reasoned decision.

**Arbitrator satisfaction.** To understand arbitrator satisfaction among the consumers, the participants were asked how well the arbitrator understood their case of which 74% reported “not well at all,” 20% “reasonably well,” and only 6% participants stated, “very well.” The arbitrator’s objectivity and fairness were rated as “poor” by 79% of respondents, “average” by 13%, “good” by 6%, and “excellent” by 2%. The participants were then asked to rate the arbitrator’s impartiality during the hearing of which 67% rated their arbitrator as “poor,” 20% “average,” 10% “good,” and 3% of participants rated “excellent.” Finally, the participants were asked to rate the arbitrator’s impartiality with respect to the award which 79% of respondents rated this as “poor,” 17% “average,” 2% “good,” and 2% “excellent.” (Graph 41)

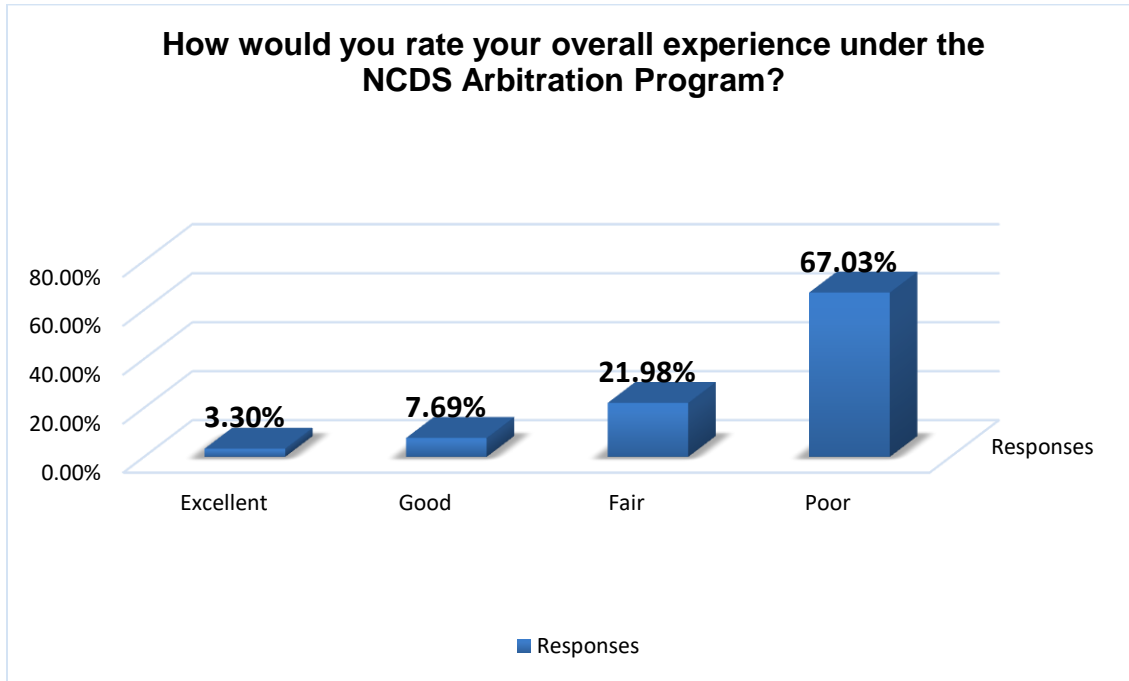
GRAPH 41 - ARBITRATED CASES NO ACTION SURVEY RESULTS



**Satisfaction with NCDS processing claim.** To measure consumers’ satisfaction with NCDS processing their claims, respondents were asked to rate NCDS in four different areas. Respondents were asked to rate the timeliness of the communications between them and NCDS staff of which 20% rated the timeliness of communications as “excellent,” 36% “good,” 29% “fair,” and 15% rated it as “poor.” Next, participants were asked to rate the helpfulness of the NCDS staff, 19% of participants rated the helpfulness of the staff as “excellent,” 24% “good,” 32% “fair,” and 25% as “poor.” To help gauge consumers’ experience with the arbitration program, participants were asked to rate their overall experience under the Arbitration Program of which 67% of participants rated it as “poor,” 22% as “fair,” 8% as “good,” and 3% as “excellent.” (Graph 42) Finally, respondents were asked if they would recommend the Arbitration Program to friends and family and 85% responded “no” while 15% stated “yes.”



GRAPH 42 – ARBITRATED CASES NO ACTION SURVEY RESULTS

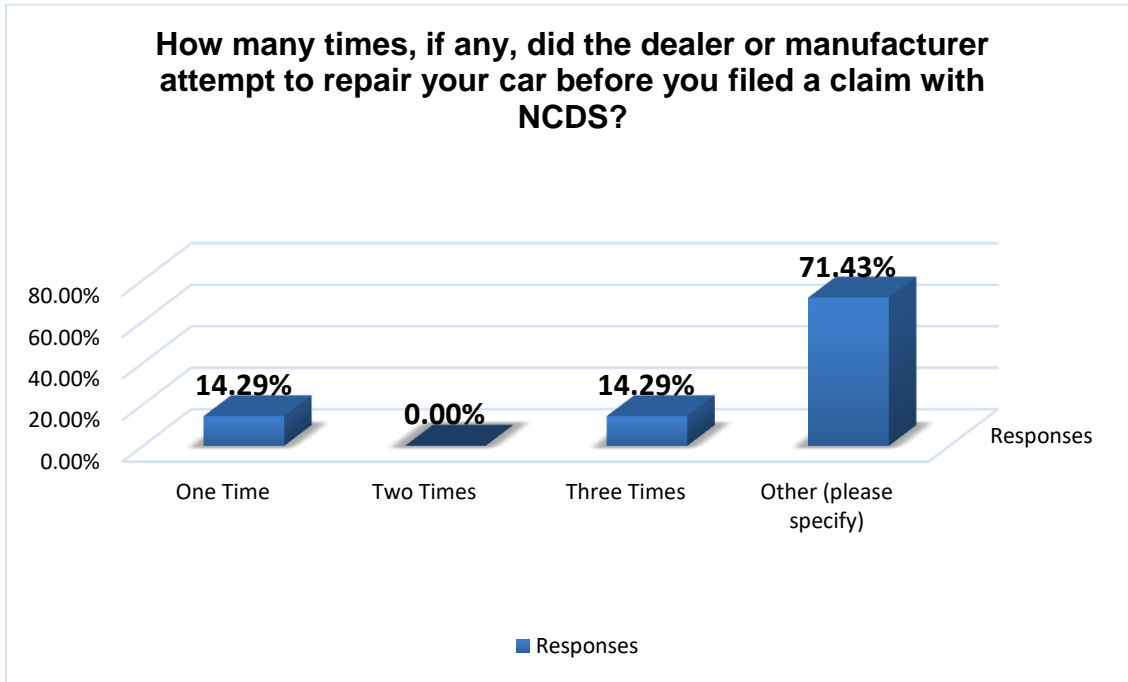


MEDIATED CASES SURVEY RESULTS

(Information below captures those cases where the parties agreed to settle their case at some point between filing of their claim and the evidentiary hearing)

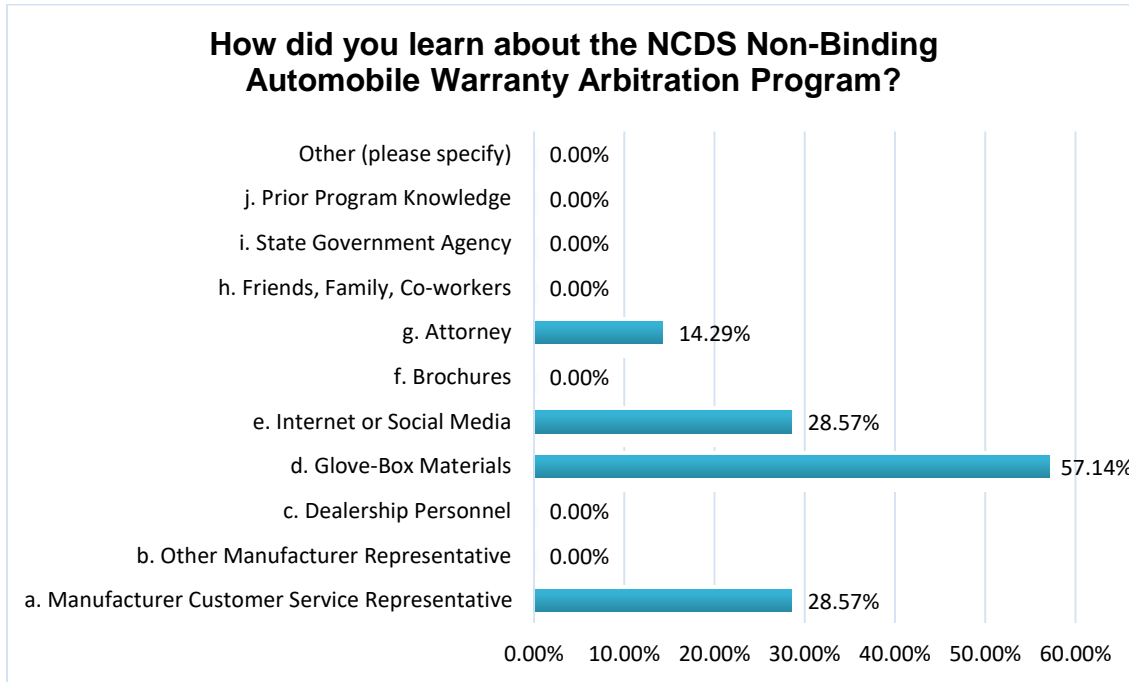
**Pre-filing experience with dealer or manufacturer.** To understand the consumers’ pre-filing experience, respondents were asked general questions related to their pre-filing experience with the manufacturer. The results show before filing a claim with NCDS, 86% of participants reported that they attempted to contact the manufacturer directly to discuss their concerns. When asked how many times the dealer or manufacturer attempted to repair their vehicle, 72% of respondents stated “other” which was more than three times or manufacturer could not fix and 28% reported one-to-two times. **(Graph 43)** The majority of participants reported they learned about the NCDS Non-Binding Automobile Warranty Arbitration Program through Manufacturer Customer Service Representative (29%), Internet or Social Media (21%) and Glove-Box Materials (30%). There were other resources participants noted as outlined in **Graph 44** but were not as prevalent. Fifty percent (50%) of participants who learned about the NCDS Non-Binding Automobile Warranty Arbitration Program through the dealership or manufacturer stated they were informed of the Arbitration Program from the manufacturer or dealer over the phone. The remaining 50% of participants stated they were informed through “Mailed or E-mailed Information.”

GRAPH 43 – MEDIATED CASES SURVEY RESULTS



The results in **Graph 43** confirm that consumers attempt multiple repairs (3+) on their vehicle, either for the same or different non-conformity, before they file their case in arbitration.

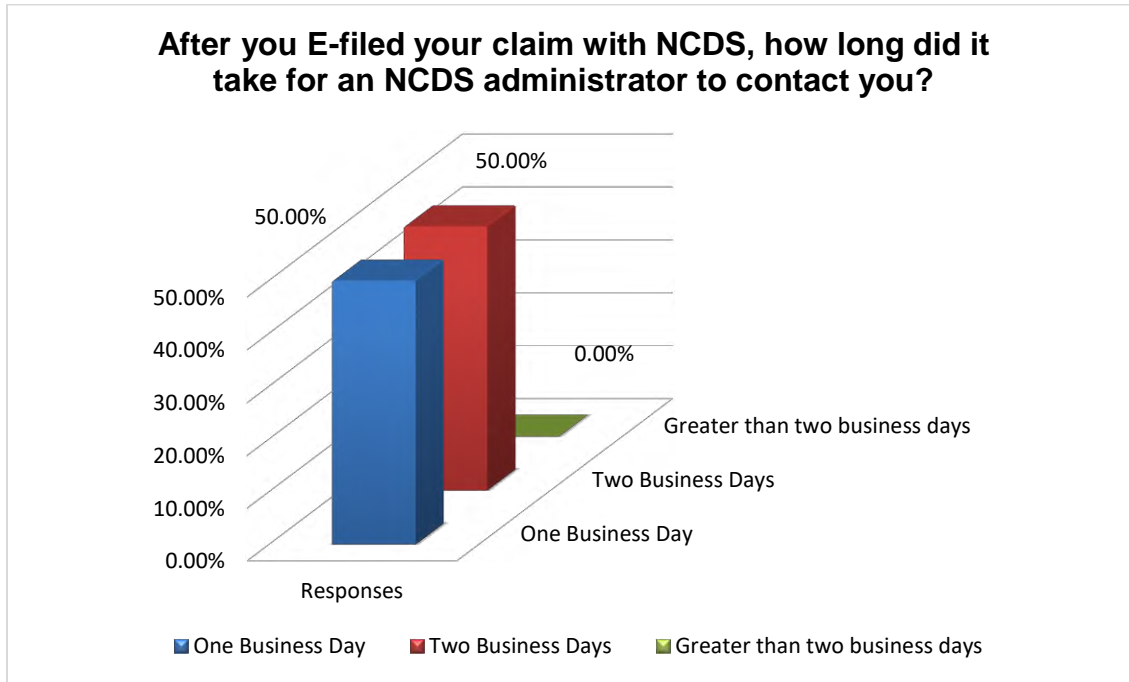
GRAPH 44 – MEDIATED CASES SURVEY RESULTS



**PLEASE NOTE:** Participants were allowed to select multiple choices.

**Filing of the claim with NCDS.** To identify consumers’ experience concerning the actual filing of their claim with NCDS participants were asked questions related to the filing method, clarity of instructions, and style of hearing. Most participants (86%) reported they used an E-File method to file their claim while only 14% used a written submission claim form. The respondents were then asked how clear the instructions were for filing their claim of which 100% indicated the instructions on the claim form were “*very clear.*” Once the participants filed their claim with NCDS, all 100% reported it took anywhere between one-to-two business days for NCDS to acknowledge their claim and initiate the administrative process. (Graph 45)

GRAPH 45 – MEDIATED CASES SURVEY RESULTS



**Experience after filing a claim with NCDS.** To capture the pre-hearing process, respondents were asked to rate their experience after they filed their claim with NCDS. Based on the results, it was found that 71% of participants received or reviewed the Frequently Asked Questions (FAQs) packet at [www.ncdsusa.org](http://www.ncdsusa.org). The information presented in the FAQs was “very clear” as reported by 57% of the respondents while 14% reported it was “somewhat clear.” The majority of participants (71%) stated the information presented in the FAQs was either “very helpful” or “moderately helpful.” The remaining 29% stated that they did not know.

When asked if participants received or reviewed the Non-Binding Program Rules at [www.ncdsusa.org](http://www.ncdsusa.org), 71% respondents reported “yes” while 29% stated “no.” The Program Rules were “very clear” to 72% of the participants, “somewhat clear” to 14%, and 14% of participants stated, “did not know.” The respondents were then asked if the Program Rules were helpful in explaining the arbitration process of which 86% stated they were “very helpful” and 14% acknowledged they were “moderately helpful” in explaining the arbitration process.

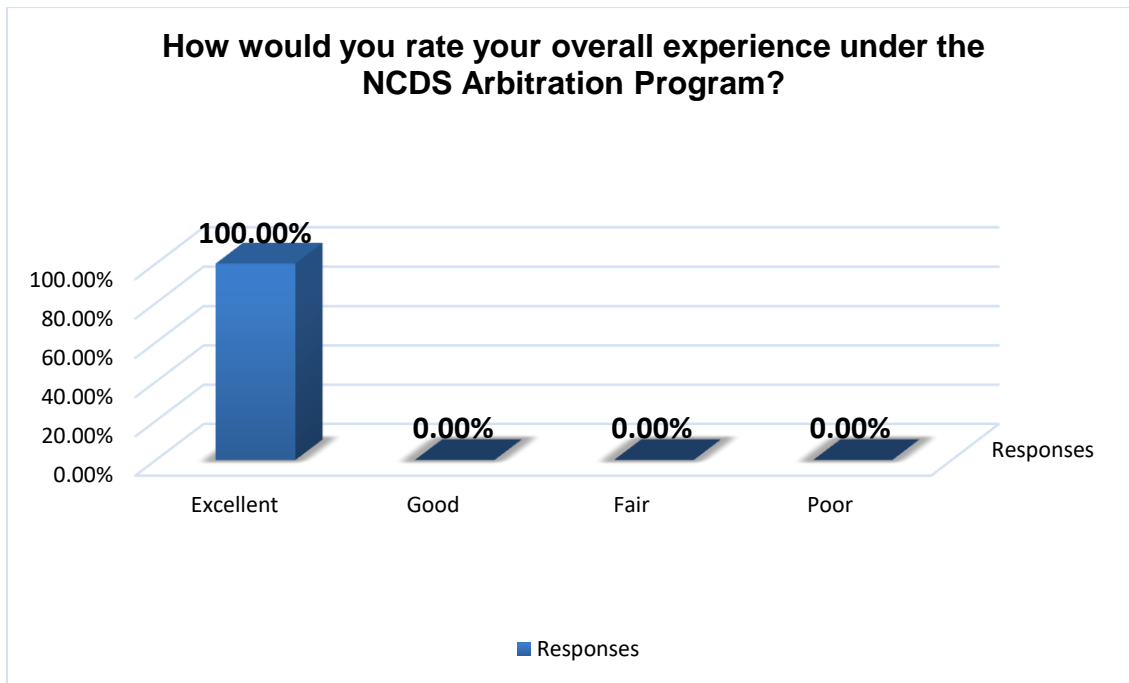
**The settlement of claim.** To assess the settlement of the consumer’s claim, participants were asked if they agreed to settle their case with the manufacturer before the case proceeded to arbitration of which 71% of respondents stated “yes” and 29% reported “no.” The respondents who stated “yes” to agree to settle their case with the manufacturer were then asked what best described the relief provided in their settlement of claim. Sixty percent (60%) reported the relief awarded to them by the arbitrator was a refund, where the manufacturer would give money for their car, (20%) reported a replacement remedy, and 20% reported a reimbursement of expenses remedy.

After the consumer reached a settlement, 80% of the respondents reported they received a letter from NCDS explaining the terms of the settlement and 20% did not receive a letter. After the consumer

received their settlement confirmation the results show that 20% of respondents did pursue their case further and 80% did not pursue their case further. The participants who decided to pursue their case further contacted the dealer or manufacturer directly. This line of questioning was to understand if the consumer pursued any course of action or follow-up for any reason after accepting their settlement.

**Satisfaction with NCDS processing claim.** To measure consumers’ satisfaction with NCDS processing their claims, respondents were asked to rate NCDS in four different areas. Respondents were asked to rate the timeliness of the communications between them and NCDS staff of which 86% rated the timeliness of communications as “*excellent*” and 14% rated it as “*good*.” Next, participants were asked to rate the helpfulness of the NCDS staff, and all participants (100%) rated the helpfulness of the staff as “*excellent*.” To help gauge consumers’ experience with the arbitration program, participants were asked to rate their overall experience under the Arbitration Program of which 100% of participants rated it as “*excellent*.” **(Graph 46)** Finally, respondents were asked if they would recommend the Arbitration Program to friends and family and 100% responded “*yes*.”

GRAPH 46 – MEDIATED CASES SURVEY RESULTS



**OVERALL SURVEY RESULTS: KEY FINDINGS**

This section captures the overall survey results (raw) from the sample size of participants who partook in the audit surveys and compares the results found between the different outcomes of cases. The eight areas compared were the pre-filing experience with the dealer or manufacturer, filing of claim, experience after filing a claim, the evidentiary hearing process, post-award experience, arbitrator satisfaction, satisfaction with NCDS processing their claim, and settlement of claim (mediation only). The highest percentages were highlighted based on the responses for each question for ease of comparison.

**National Overall Survey Results and Comparison Between Outcomes**

National - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
Pre-filing Experience with Dealer or Manufacturer				
Survey Questions		Responses		
<b>Before filing a claim with NCDS, did you attempt to contact the manufacturer directly to discuss your concerns?</b>				
<b>Answer Choices</b>				
Yes		100.00%	93.41%	85.71%
No		0.00%	6.59%	14.29%
<b>How many times, if any, did the dealer or manufacturer attempt to repair your car before you filed a claim with NCDS?</b>				
<b>Answer Choices</b>				
One Time		6.67%	5.49%	14.29%
Two Times		6.67%	8.79%	0.00%
Three Times		23.33%	26.37%	14.29%
Other (please specify) - More than Three Times		63.33%	59.34%	71.43%

National - Audit Survey Results (Overall)			
	Arbitrated Award	Arbitrated No Action / No Award	Mediation
<b>Pre-filing Experience with Dealer or Manufacturer</b>			
<b>Survey Questions</b>	<b>Responses</b>		
<b>How did you learn about the NCDS Non-Binding Automobile Warranty Arbitration Program?</b>			
<b>Answer Choices</b>			
a. Manufacturer Customer Service Representative	23.33%	21.98%	28.57%
b. Other Manufacturer Representative	13.33%	2.20%	0.00%
c. Dealership Personnel	6.67%	20.88%	0.00%
d. Glove-Box Materials	30.00%	29.67%	57.14%
e. Internet or Social Media	23.33%	20.88%	28.57%
f. Brochures	0.00%	1.10%	0.00%
g. Attorney	10.00%	12.09%	14.29%
h. Friends, Family, Co-workers	0.00%	3.30%	0.00%
i. State Government Agency	3.33%	5.49%	0.00%
j. Prior Program Knowledge	6.67%	2.20%	0.00%
Other (please specify)	6.67%	5.49%	0.00%
<b>How did the manufacturer or dealer inform you of the NCDS Arbitration Program?</b>			
<b>Answer Choices</b>			
Talked over the phone	46.15%	61.11%	50.00%
Mailed or E-mailed Information	30.77%	16.67%	50.00%
Website	0.00%	5.56%	0.00%
Showroom Poster	0.00%	2.78%	0.00%
Other (please specify)	23.08%	13.89%	0.00%

National - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
<b>Filing of Claim</b>				
<b>Survey Questions</b>		<b>Responses</b>		
<b>What method did you use to file your claim with NCDS?</b>				
<b>Answer Choices</b>				
E-File		96.67%	95.60%	85.71%
Mail		3.33%	4.40%	14.29%
<b>After you filed your E-File claim with NCDS, how long did it take for an NCDS administrator to contact you?</b>				
One Business Day		44.83%	11.49%	50.00%
Two Business Days		31.03%	41.38%	50.00%
Greater than two business days		24.14%	47.13%	0.00%
<b>After you mailed and received an acknowledgement from NCDS that your claim had been received, how long did it take for an NCDS administrator to contact you?</b>				
One Business Day		0.00%	25.00%	0.00%
Two Business Days		100.00%	0.00%	100.00%
Greater than two business days		0.00%	75.00%	0.00%



National - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
<b>Filing of Claim</b>				
<b>Survey Questions</b>		<b>Responses</b>		
<b>How clear were the instructions for filing the claim?</b>				
<b>Answer Choices</b>				
Very Clear		70.00%	38.46%	100.00%
Somewhat Clear		30.00%	49.45%	0.00%
Not Clear		0.00%	9.89%	0.00%
Do Not Know		0.00%	2.20%	0.00%
<b>Experience After Filing a Claim</b>				
<b>Whether you E-Filed or filed your claim by mail, did you <u>receive</u> the Frequently Asked Questions (FAQ) Packet at <a href="http://www.ncdsusa.org">www.ncdsusa.org</a>?</b>				
<b>Answer Choices</b>				
Yes		90.00%	71.43%	71.43%
No		10.00%	28.57%	28.57%
<b>Whether you E-Filed or filed your claim by mail, did you <u>review</u> the Frequently Asked Questions (FAQ) Packet at <a href="http://www.ncdsusa.org">www.ncdsusa.org</a>?</b>				
<b>Answer Choices</b>				
Yes		90.00%	78.02%	71.43%
No		10.00%	21.98%	28.57%

National - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
Experience After Filing a Claim				
Survey Questions		Responses		
<b>How clear was the information presented in the FAQ?</b>				
Answer Choices				
Very Clear		66.67%	27.47%	57.14%
Somewhat Clear		23.33%	45.05%	14.29%
Not Clear		0.00%	13.19%	0.00%
Do Not Know		10.00%	14.29%	28.57%
<b>How helpful was the information presented in the FAQ?</b>				
Answer Choices				
Very Helpful		76.67%	16.48%	42.86%
Moderately Helpful		13.33%	48.35%	28.57%
Not At All Helpful		0.00%	20.88%	0.00%
Do Not Know		10.00%	14.29%	28.57%
<b>Did you <u>receive</u> the Non-Binding Program Rules at <a href="http://www.ncdsusa.org">www.ncdsusa.org</a>?</b>				
Answer Choices				
Yes		93.33%	75.82%	85.71%
No		6.67%	24.18%	14.29%
<b>Did you <u>review</u> the Non-Binding Program Rules at <a href="http://www.ncdsusa.org">www.ncdsusa.org</a>?</b>				
Answer Choices				
Yes		96.67%	76.92%	71.43%
No		3.33%	23.08%	28.57%

National - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
Experience After Filing a Claim				
Survey Questions		Responses		
<b>How clear were the Program Rules?</b>				
Answer Choices				
Very Clear		70.00%	25.27%	71.43%
Somewhat Clear		26.67%	43.96%	14.29%
Not Clear		0.00%	15.38%	0.00%
Do Not Know		3.33%	15.38%	14.29%
<b>How helpful were the Program Rules in explaining the arbitration process?</b>				
Answer Choices				
Very Helpful		76.67%	21.98%	85.71%
Moderately Helpful		20.00%	50.55%	0.00%
Not At All Helpful		0.00%	17.58%	0.00%
Do Not Know		3.33%	9.89%	14.29%
<b>Did you receive a hearing notice from NCDS?</b>				
Answer Choices				
Yes		96.67%	90.11%	N/A
No		3.33%	9.89%	N/A
<b>Either before or after you received your hearing notice, did you hire an attorney to represent you or to be present at the hearing?</b>				
Answer Choices				
Yes		3.33%	2.20%	N/A
No		96.67%	97.80%	N/A

National - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
<b>Experience After Filing a Claim</b>				
<b>Survey Questions</b>		<b>Responses</b>		
<p>If you filed a documents only hearing, which of the following <u>best</u> describes why you chose a documents only hearing? Otherwise, select "No, I did not file a documents only hearing" below.</p> <p style="text-align: center;"><b>Answer Choices</b></p> <p>a. More convenient to have an arbitration panel review documents</p> <p>b. Unable to get time off work</p> <p>c. Family or health conflicts</p> <p>Other (please specify)</p> <p>No, I did not file a documents only hearing</p>				
		33.33%	35.16%	N/A
		3.33%	6.59%	N/A
		0.00%	4.40%	N/A
		6.67%	15.38%	N/A
		56.67%	38.46%	N/A
<b>The Evidentiary Hearing Process</b>				
<b>Did the arbitrator start the hearing on time?</b>				
<b>Answer Choices</b>				
Yes		94.12%	80.00%	N/A
No		5.88%	20.00%	N/A

National - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
The Evidentiary Hearing Process				
Survey Questions		Responses		
<p>Did the arbitrator explain the arbitration hearing process to both parties? In other words, did the arbitrator explain that each party would be allowed to present and rebut evidence, and that the arbitrator did not have any conflicts of interest to disclose?</p>				
<p style="text-align: center;">Answer Choices</p>				
Yes		100.00%	88.57%	N/A
No		0.00%	11.43%	N/A
<p>Did the arbitrator allow both parties a full and fair opportunity to present their proofs?</p>				
<p style="text-align: center;">Answer Choices</p>				
Yes		100.00%	51.43%	N/A
No		0.00%	48.57%	N/A
<p>During the hearing, did you or the manufacturer request a third party, independent technical inspection of your vehicle?</p>				
<p style="text-align: center;">Answer Choices</p>				
Yes		5.88%	20.00%	N/A
No		94.12%	80.00%	N/A

National - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
Post-award Experience				
Survey Questions		Responses		
<b>How was the arbitrator's decision communicated to you?</b>				
<b>Answer Choices</b>				
By Email		90.00%	84.62%	N/A
By Mail		6.67%	8.79%	N/A
Other Method (please specify)		3.33%	6.59%	N/A
<b>Which of the following <u>best</u> describes the decision made by the arbitrator?</b>				
<b>Answer Choices</b>				
A refund, where the manufacturer would give you money for your car		73.33%	0.00%	60.00%
A replacement, where the manufacturer would replace your existing car with a new car		13.33%	3.30%	20.00%
Reimbursement, where the manufacturer would reimburse you for incidental costs associated with the repair of your car		0.00%	1.10%	20.00%
A Repair		10.00%	2.20%	0.00%
No Relief Granted		3.33%	93.41%	0.00%
<b>Did the arbitrator accurately identify the nature of the non-conformity you alleged in your claim?</b>				
<b>Answer Choices</b>				
Yes		93.33%	20.88%	N/A
No		6.67%	79.12%	N/A

National - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
Post-award Experience				
Survey Questions		Responses		
<b>Did the arbitrator include a summary of the testimony at the hearing?</b>				
<b>Answer Choices</b>				
Yes		93.33%	54.95%	N/A
No		6.67%	45.05%	N/A
<b>Was the arbitrator's decision clear?</b>				
<b>Answer Choices</b>				
Yes		96.67%	47.25%	N/A
No		3.33%	52.75%	N/A
<b>Did the arbitrator render a reasoned decision? Please Note: This means whether or not you agreed with the decision, the arbitrator provided rationale for why the decision was reached.</b>				
<b>Answer Choices</b>				
Yes		93.33%	39.56%	N/A
No		6.67%	60.44%	N/A
<b>Did you return to NCDS the Decision Acceptance / Rejection Form?</b>				
<b>Answer Choices</b>				
Yes		100.00%	46.15%	N/A
No		0.00%	53.85%	N/A

National - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
Arbitrator Satisfaction				
Survey Questions		Responses		
<b>How would you rate the arbitrator in terms of understanding the facts of your case?</b>				
Answer Choices				
Excellent		80.00%	2.20%	N/A
Good		10.00%	9.89%	N/A
Average		3.33%	20.88%	N/A
Poor		6.67%	67.03%	N/A
<b>How would you rate the arbitrator's objectivity and fairness?</b>				
Answer Choices				
Excellent		86.67%	2.20%	N/A
Good		6.67%	5.49%	N/A
Average		3.33%	13.19%	N/A
Poor		3.33%	79.12%	N/A
<b>How would you rate the arbitrator's impartiality during the hearing?</b>				
Answer Choices				
Excellent		86.67%	3.30%	N/A
Good		6.67%	9.89%	N/A
Average		3.33%	19.78%	N/A
Poor		3.33%	67.03%	N/A



<b>National - Audit Survey Results (Overall)</b>			
	<b>Arbitrated Award</b>	<b>Arbitrated No Action / No Award</b>	<b>Mediation</b>
<b>Arbitrator Satisfaction</b>			
<b>Survey Questions</b>	<b>Responses</b>		
<b>How would you rate the arbitrator's impartiality with respect to the decision?</b>			
<b>Answer Choices</b>			
Excellent	86.67%	2.20%	N/A
Good	6.67%	2.20%	N/A
Average	0.00%	16.48%	N/A
Poor	6.67%	79.12%	N/A
<b>Satisfaction with NCDS Processing Claim</b>			
<b>How would you rate the timeliness of the communications between you and the NCDS administrator?</b>			
<b>Answer Choices</b>			
Excellent	70.00%	19.78%	85.71%
Good	26.67%	36.26%	14.29%
Fair	3.33%	28.57%	0.00%
Poor	0.00%	15.38%	0.00%
<b>How would you rate the helpfulness of the NCDS staff?</b>			
<b>Answer Choices</b>			
Excellent	70.00%	18.68%	100.00%
Good	20.00%	24.18%	0.00%
Fair	10.00%	31.87%	0.00%
Poor	0.00%	25.27%	0.00%

<b>National - Audit Survey Results (Overall)</b>			
	<b>Arbitrated Award</b>	<b>Arbitrated No Action / No Award</b>	<b>Mediation</b>
<b>Satisfaction with NCDS Processing Claim</b>			
<b>Survey Questions</b>	<b>Responses</b>		
<b>How would you rate your overall experience under the NCDS Arbitration Program?</b>			
<b>Answer Choices</b>			
Excellent	80.00%	3.30%	100.00%
Good	13.33%	7.69%	0.00%
Fair	3.33%	21.98%	0.00%
Poor	3.33%	67.03%	0.00%
<b>Would you recommend the NCDS Arbitration Program to friends and family?</b>			
<b>Answer Choices</b>			
Yes	93.33%	15.38%	100.00%
No	6.67%	84.62%	0.00%

National - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
Settlement of Claim *Mediation Only*				
Survey Questions		Responses		
<b>Before the case proceeded to arbitration, did you agree to settle your case with the manufacturer?</b>				
Yes		N/A	N/A	71.43%
No		N/A	N/A	28.57%
<b>After you reached a settlement, did you receive a letter from NCDS explaining the terms of the settlement?</b>				
Yes		N/A	N/A	80.00%
No		N/A	N/A	20.00%
<b>After you received your settlement confirmation, did you pursue your case further?</b>				
Yes		N/A	N/A	20.00%
No		N/A	N/A	80.00%
<b>If so, please let us know the method you used.</b>				
Re-initiated contact with NCDS		N/A	N/A	0.00%
Contacted an attorney		N/A	N/A	0.00%
Contacted a state agency		N/A	N/A	0.00%
Contacted dealer or manufacturer		N/A	N/A	100.00%
Other (please specify)		N/A	N/A	0.00%

## Section VIII

### Audit Regulatory Requirements

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**REQUIREMENT: § 703.7(c)(3)(1)**

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 furnished to the Federal Trade Commission (FTC) 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 in accord with this requirement.**

## APPENDIX

The following documents comprise the Appendix.

A. Magnuson-Moss Warranty – Federal Trade Commission Improvement Act of 1975 .....	172
B. 16 C.F.R. § 703.....	185
C. Consumer Surveys	
❖ Arbitrated Cases with Award .....	194
❖ Arbitrated Cases with Award/No Action.....	200
❖ Mediated Cases .....	205

## Appendix A

### Magnuson-Moss Warranty–Federal Trade Commission Improvement Act of 1975

15 USC Ch. 50: CONSUMER PRODUCT

WARRANTIES From Title 15—COMMERCE

#### CHAPTER 50—CONSUMER PRODUCT WARRANTIES

##### §2301. Definitions

For the purposes of this chapter:

- (1) The term “consumer product” means any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes (including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed).
- (2) The term “Commission” means the Federal Trade Commission.
- (3) The term “consumer” means a buyer (other than for purposes of resale) of any consumer product, any person to whom such product is transferred during the duration of an implied or written warranty (or service contract) applicable to the product, and any other person who is entitled by the terms of such warranty (or service contract) or under applicable State law to enforce against the warrantor (or service contractor) the obligations of the warranty (or service contract).
- (4) The term “supplier” means any person engaged in the business of making a consumer product directly or indirectly available to consumers.
- (5) The term “warrantor” means any supplier or other person who gives or offers to give a written warranty or who is or may be obligated under an implied warranty.
- (6) The term “written warranty” means--
  - (A) any written affirmation of fact or written promise made in connection with the sale of a consumer product by a supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time, or
  - (B) any undertaking in writing in connection with the sale by a supplier of a consumer product to refund, repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking, which written affirmation, promise, or undertaking becomes part of the basis of the bargain between a supplier and a buyer for purposes other than resale of such product.

(7) The term “implied warranty” means an implied warranty arising under State law (as modified by sections 2308 and 2304(a) of this title) in connection with the sale by a supplier of a consumer product.

(8) The term “service contract” means a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance or repair (or both) of a consumer product.

(9) The term “reasonable and necessary maintenance” consists of those operations (A) which the consumer reasonably can be expected to perform or have performed and (B) which are necessary to keep any consumer product performing its intended function and operating at a reasonable level of performance.

(10) The term “remedy” means whichever of the following actions the warrantor elects:

(A) repair,

(B) replacement, or

(C) refund; except that the warrantor may not elect refund unless (i) the warrantor is unable to provide replacement and repair is not commercially practicable or cannot be timely made, or (ii) the consumer is willing to accept such refund.

(11) The term “replacement” means furnishing a new consumer product which is identical or reasonably equivalent to the warranted consumer product.

(12) The term “refund” means refunding the actual purchase price (less reasonable depreciation based on actual use where permitted by rules of the Commission).

(13) The term “distributed in commerce” means sold in commerce, introduced or delivered for introduction into commerce, or held for sale or distribution after introduction into commerce.

(14) The term “commerce” means trade, traffic, commerce, or transportation--

(A) between a place in a State and any place outside thereof, or

(B) which affects trade, traffic, commerce, or transportation described in subparagraph (A).

(15) The term “State” means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, or American Samoa. The term “State law” includes a law of the United States applicable only to the District of Columbia or only to a territory or possession of the United States; and the term “Federal law” excludes any State law.

## § 2302. Rules governing contents of warranties

(a) Full and conspicuous disclosure of terms and conditions; additional requirements for contents

In order to improve the adequacy of information available to consumers, prevent deception, and improve competition in the marketing of consumer products, any warrantor warranting a consumer product to a consumer by means of a written warranty shall, to the extent required by rules of the Commission, fully and conspicuously disclose in simple and readily understood language the terms and conditions of such warranty. Such rules may require inclusion in the written warranty of any of the following items among others:

- (1) The clear identification of the names and addresses of the warrantors.
  - (2) The identity of the party or parties to whom the warranty is extended.
  - (3) The products or parts covered.
  - (4) A statement of what the warrantor will do in the event of a defect, malfunction, or failure to conform with such written warranty--at whose expense--and for what period of time.
  - (5) A statement of what the consumer must do and expenses he must bear.
  - (6) Exceptions and exclusions from the terms of the warranty.
  - (7) The step-by-step procedure which the consumer should take in order to obtain performance of any obligation under the warranty, including the identification of any person or class of persons authorized to perform the obligations set forth in the warranty.
  - (8) Information respecting the availability of any informal dispute settlement procedure offered by the warrantor and a recital, where the warranty so provides, that the purchaser may be required to resort to such procedure before pursuing any legal remedies in the courts.
  - (9) A brief, general description of the legal remedies available to the consumer.
  - (10) The time at which the warrantor will perform any obligations under the warranty.
  - (11) The period of time within which, after notice of a defect, malfunction, or failure to conform with the warranty, the warrantor will perform any obligations under the warranty.
  - (12) The characteristics or properties of the products, or parts thereof, that are not covered by the warranty.
  - (13) The elements of the warranty in words or phrases which would not mislead a reasonable, average consumer as to the nature or scope of the warranty.
- (b) Availability of terms to consumer; manner and form for presentation and display of information; duration; extension of period for written warranty or service contract; electronic display of terms of warranty**
- (1)(A)** The Commission shall prescribe rules requiring that the terms of any written warranty on a consumer product be made available to the consumer (or prospective consumer) prior to the sale of the product to him.



(B) The Commission may prescribe rules for determining the manner and form in which information with respect to any written warranty of a consumer product shall be clearly and conspicuously presented or displayed so as not to mislead the reasonable, average consumer, when such information is contained in advertising, labeling, point-of-sale material, or other representations in writing.

(2) Nothing in this chapter (other than paragraph (3) of this subsection) shall be deemed to authorize the Commission to prescribe the duration of written warranties given or to require that a consumer product or any of its components be warranted.

(3) The Commission may prescribe rules for extending the period of time a written warranty or service contract is in effect to correspond with any period of time in excess of a reasonable period (not less than 10 days) during which the consumer is deprived of the use of such consumer product by reason of failure of the product to conform with the written warranty or by reason of the failure of the warrantor (or service contractor) to carry out such warranty (or service contract) within the period specified in the warranty (or service contract).

(4)(A) Except as provided in subparagraph (B), the rules prescribed under this subsection shall allow for the satisfaction of all requirements concerning the availability of terms of a written warranty on a consumer product under this subsection by--

(i) making available such terms in an accessible digital format on the Internet website of the manufacturer of the consumer product in a clear and conspicuous manner; and

(ii) providing to the consumer (or prospective consumer) information with respect to how to obtain and review such terms by indicating on the product or product packaging or in the product manual--

(I) the Internet website of the manufacturer where such terms can be obtained and reviewed; and

(II) the phone number of the manufacturer, the postal mailing address of the manufacturer, or another reasonable non-Internet based means of contacting the manufacturer to obtain and review such terms.

(B) With respect to any requirement that the terms of any written warranty for a consumer product be made available to the consumer (or prospective consumer) prior to sale of the product, in a case in which a consumer product is offered for sale in a retail location, by catalog, or through door-to-door sales, subparagraph (A) shall only apply if the seller makes available, through electronic or other means, at the location of the sale to the consumer purchasing the consumer product the terms of the warranty for the consumer product before the purchase.

**(c) Prohibition on conditions for written or implied warranty; waiver by Commission**

No warrantor of a consumer product may condition his written or implied warranty of such product on the consumer's using, in connection with such product, any article or service (other than article or service provided without charge under the terms of the warranty) which is identified by brand, trade, or corporate name; except that the prohibition of this subsection may be waived by the Commission if--

(1) the warrantor satisfies the Commission that the warranted product will function properly only if the

article or service so identified is used in connection with the warranted product, and

(2) the Commission finds that such a waiver is in the public interest.

The Commission shall identify in the Federal Register, and permit public comment on, all applications for waiver of the prohibition of this subsection, and shall publish in the Federal Register its disposition of any such application, including the reasons therefor.

**(d) Incorporation by reference of detailed substantive warranty provisions**

The Commission may by rule devise detailed substantive warranty provisions which warrantors may incorporate by reference in their warranties.

**(e) Applicability to consumer products costing more than \$5**

The provisions of this section apply only to warranties which pertain to consumer products actually costing the consumer more than \$5.

**§ 2303. Designation of written warranties**

**(a) Full (statement of duration) or limited warranty**

Any warrantor warranting a consumer product by means of a written warranty shall clearly and conspicuously designate such warranty in the following manner, unless exempted from doing so by the Commission pursuant to subsection (c) of this section:

(1) If the written warranty meets the Federal minimum standards for warranty set forth in section 2304 of this title, then it shall be conspicuously designated a “full (statement of duration) warranty”.

(2) If the written warranty does not meet the Federal minimum standards for warranty set forth in section 2304 of this title, then it shall be conspicuously designated a “limited warranty”.

**(b) Applicability of requirements, standards, etc., to representations or statements of customer satisfaction**

This section and sections 2302 and 2304 of this title shall not apply to statements or representations which are similar to expressions of general policy concerning customer satisfaction and which are not subject to any specific limitations.

**(c) Exemptions by Commission**

In addition to exercising the authority pertaining to disclosure granted in section 2302 of this title, the Commission may by rule determine when a written warranty does not have to be designated either “full (statement of duration)” or “limited” in accordance with this section.

**(d) Applicability to consumer products costing more than \$10 and not designated as full warranties**

The provisions of subsections (a) and (c) of this section apply only to warranties which pertain to consumer products actually costing the consumer more than \$10 and which are not designated “full (statement of duration) warranties”.

### **§ 2304. Federal minimum standards for warranties**

#### **(a) Remedies under written warranty; duration of implied warranty; exclusion or limitation on consequential damages for breach of written or implied warranty; election of refund or replacement**

In order for a warrantor warranting a consumer product by means of a written warranty to meet the Federal minimum standards for warranty--

- (1) such warrantor must as a minimum remedy such consumer product within a reasonable time and without charge, in the case of a defect, malfunction, or failure to conform with such written warranty;
- (2) notwithstanding section 2308(b) of this title, such warrantor may not impose any limitation on the duration of any implied warranty on the product;
- (3) such warrantor may not exclude or limit consequential damages for breach of any written or implied warranty on such product, unless such exclusion or limitation conspicuously appears on the face of the warranty; and
- (4) if the product (or a component part thereof) contains a defect or malfunction after a reasonable number of attempts by the warrantor to remedy defects or malfunctions in such product, such warrantor must permit the consumer to elect either a refund for, or replacement without charge of, such product or part (as the case may be). The Commission may by rule specify for purposes of this paragraph, what constitutes a reasonable number of attempts to remedy particular kinds of defects or malfunctions under different circumstances. If the warrantor replaces a component part of a consumer product, such replacement shall include installing the part in the product without charge.

#### **(b) Duties and conditions imposed on consumer by warrantor**

- (1) In fulfilling the duties under subsection (a) respecting a written warranty, the warrantor shall not impose any duty other than notification upon any consumer as a condition of securing remedy of any consumer product which malfunctions, is defective, or does not conform to the written warranty, unless the warrantor has demonstrated in a rulemaking proceeding, or can demonstrate in an administrative or judicial enforcement proceeding (including private enforcement), or in an informal dispute settlement proceeding, that such a duty is reasonable.
- (2) Notwithstanding paragraph (1), a warrantor may require, as a condition to replacement of, or refund for, any consumer product under subsection (a), that such consumer product shall be made available to the warrantor free and clear of liens and other encumbrances, except as otherwise provided by rule or order of the Commission in cases in which such a requirement would not be practicable.
- (3) The Commission may, by rule define in detail the duties set forth in subsection (a) of this section and the applicability of such duties to warrantors of different categories of consumer products with “full (statement of duration)” warranties.

(4) The duties under subsection (a) extend from the warrantor to each person who is a consumer with respect to the consumer product.

**(c) Waiver of standards**

The performance of the duties under subsection (a) shall not be required of the warrantor if he can show that the defect, malfunction, or failure of any warranted consumer product to conform with a written warranty, was caused by damage (not resulting from defect or malfunction) while in the possession of the consumer, or unreasonable use (including failure to provide reasonable and necessary maintenance).

**(d) Remedy without charge**

For purposes of this section and of section 2302(c) of this title, the term “without charge” means that the warrantor may not assess the consumer for any costs the warrantor or his representatives incur in connection with the required remedy of a warranted consumer product. An obligation under subsection (a)(1)(A) to remedy without charge does not necessarily require the warrantor to compensate the consumer for incidental expenses; however, if any incidental expenses are incurred because the remedy is not made within a reasonable time or because the warrantor imposed an unreasonable duty upon the consumer as a condition of securing remedy, then the consumer shall be entitled to recover reasonable incidental expenses which are so incurred in any action against the warrantor.

**(e) Incorporation of standards to products designated with full warranty for purposes of judicial actions**

If a supplier designates a warranty applicable to a consumer product as a “full (statement of duration)” warranty, then the warranty on such product shall, for purposes of any action under section 2310(d) of this title or under any State law, be deemed to incorporate at least the minimum requirements of this section and rules prescribed under this section.

**§ 2305. Full and limited warranting of a consumer product**

Nothing in this chapter shall prohibit the selling of a consumer product which has both full and limited warranties if such warranties are clearly and conspicuously differentiated.

**§ 2306. Service contracts; rules for full, clear and conspicuous disclosure of terms and conditions; addition to or in lieu of written warranty**

(a) The Commission may prescribe by rule the manner and form in which the terms and conditions of service contracts shall be fully, clearly, and conspicuously disclosed.

(b) Nothing in this chapter shall be construed to prevent a supplier or warrantor from entering into a service contract with the consumer in addition to or in lieu of a written warranty if such contract fully, clearly, and conspicuously discloses its terms and conditions in simple and readily understood language.

**§ 2307. Designation of representatives by warrantor to perform duties under written or implied warranty**

Nothing in this chapter shall be construed to prevent any warrantor from designating representatives to perform duties under the written or implied warranty: *Provided*, That such warrantor shall make reasonable arrangements for compensation of such designated representatives, but no such designation shall relieve the warrantor of his direct responsibilities to the consumer or make the representative a cowarrantor.

## **§ 2308. Implied warranties**

### **(a) Restrictions on disclaimers or modifications**

No supplier may disclaim or modify (except as provided in subsection (b)) any implied warranty to a consumer with respect to such consumer product if (1) such supplier makes any written warranty to the consumer with respect to such consumer product, or (2) at the time of sale, or within 90 days thereafter, such supplier enters into a service contract with the consumer which applies to such consumer product.

### **(b) Limitation on duration**

For purposes of this chapter (other than section 2304(a)(2) of this title), implied warranties may be limited in duration to the duration of a written warranty of reasonable duration, if such limitation is conscionable and is set forth in clear and unmistakable language and prominently displayed on the face of the warranty.

### **(c) Effectiveness of disclaimers, modifications, or limitations**

A disclaimer, modification, or limitation made in violation of this section shall be ineffective for purposes of this chapter and State law.

## **§ 2309. Procedures applicable to promulgation of rules by Commission**

### **(a) Oral presentation**

Any rule prescribed under this chapter shall be prescribed in accordance with section 553 of Title 5; except that the Commission shall give interested persons an opportunity for oral presentations of data, views, and arguments, in addition to written submissions. A transcript shall be kept of any oral presentation. Any such rule shall be subject to judicial review under section 57a(e) of this title in the same manner as rules prescribed under section 57a(a)(1)(B) of this title, except that section 57a(e)(3)(B) of this title shall not apply.

### **(b) Warranties and warranty practices involved in sale of used motor vehicles**

The Commission shall initiate within one year after January 4, 1975, a rulemaking proceeding dealing with warranties and warranty practices in connection with the sale of used motor vehicles; and, to the extent necessary to supplement the protections offered the consumer by this chapter, shall prescribe rules dealing with such warranties and practices. In prescribing rules under this subsection, the Commission may exercise any authority it may have under this chapter, or other law, and in addition it may require disclosure that a used motor vehicle is sold without any warranty and specify the form and content of

such disclosure.

### § 2310. Remedies in consumer disputes

**(a) Informal dispute settlement procedures; establishment; rules setting forth minimum requirements; effect of compliance by warrantor; review of informal procedures or implementation by Commission; application to existing informal procedures**

(1) Congress hereby declares it to be its policy to encourage warrantors to establish procedures whereby consumer disputes are fairly and expeditiously settled through informal dispute settlement mechanisms.

(2) The Commission shall prescribe rules setting forth minimum requirements for any informal dispute settlement procedure which is incorporated into the terms of a written warranty to which any provision of this chapter applies. Such rules shall provide for participation in such procedure by independent or governmental entities.

(3) One or more warrantors may establish an informal dispute settlement procedure which meets the requirements of the Commission's rules under paragraph (2). If--

(A) a warrantor establishes such a procedure,

(B) such procedure, and its implementation, meets the requirements of such rules, and

(C) he incorporates in a written warranty a requirement that the consumer resort to such procedure before pursuing any legal remedy under this section respecting such warranty,

then (i) the consumer may not commence a civil action (other than a class action) under subsection (d) of this section unless he initially resorts to such procedure; and (ii) a class of consumers may not proceed in a class action under subsection (d) except to the extent the court determines necessary to establish the representative capacity of the named plaintiffs, unless the named plaintiffs (upon notifying the defendant that they are named plaintiffs in a class action with respect to a warranty obligation) initially resort to such procedure. In the case of such a class action which is brought in a district court of the United States, the representative capacity of the named plaintiffs shall be established in the application of rule 23 of the Federal Rules of Civil Procedure. In any civil action arising out of a warranty obligation and relating to a matter considered in such a procedure, any decision in such procedure shall be admissible in evidence.

(4) The Commission on its own initiative may, or upon written complaint filed by any interested person shall, review the bona fide operation of any dispute settlement procedure resort to which is stated in a written warranty to be a prerequisite to pursuing a legal remedy under this section. If the Commission finds that such procedure or its implementation fails to comply with the requirements of the rules under paragraph (2), the Commission may take appropriate remedial action under any authority it may have under this chapter or any other provision of law.

(5) Until rules under paragraph (2) take effect, this subsection shall not affect the validity of any informal dispute settlement procedure respecting consumer warranties, but in any action under subsection (d), the court may invalidate any such procedure if it finds that such procedure is unfair.

**(b) Prohibited acts**

It shall be a violation of section 45(a)(1) of this title for any person to fail to comply with any requirement imposed on such person by this chapter (or a rule thereunder) or to violate any prohibition contained in this chapter (or a rule thereunder).

**(c) Injunction proceedings by Attorney General or Commission for deceptive warranty, noncompliance with requirements, or violating prohibitions; procedures; definitions**

(1) The district courts of the United States shall have jurisdiction of any action brought by the Attorney General (in his capacity as such), or by the Commission by any of its attorneys designated by it for such purpose, to restrain (A) any warrantor from making a deceptive warranty with respect to a consumer product, or (B) any person from failing to comply with any requirement imposed on such person by or pursuant to this chapter or from violating any prohibition contained in this chapter. Upon proper showing that, weighing the equities and considering the Commission's or Attorney General's likelihood of ultimate success, such action would be in the public interest and after notice to the defendant, a temporary restraining order or preliminary injunction may be granted without bond. In the case of an action brought by the Commission, if a complaint under section 45 of this title is not filed within such period (not exceeding 10 days) as may be specified by the court after the issuance of the temporary restraining order or preliminary injunction, the order or injunction shall be dissolved by the court and be of no further force and effect. Any suit shall be brought in the district in which such person resides or transacts business. Whenever it appears to the court that the ends of justice require that other persons should be parties in the action, the court may cause them to be summoned whether or not they reside in the district in which the court is held, and to that end process may be served in any district.

(2) For the purposes of this subsection, the term "deceptive warranty" means (A) a written warranty which (i) contains an affirmation, promise, description, or representation which is either false or fraudulent, or which, in light of all of the circumstances, would mislead a reasonable individual exercising due care; or (ii) fails to contain information which is necessary in light of all of the circumstances, to make the warranty not misleading to a reasonable individual exercising due care; or (B) a written warranty created by the use of such terms as "guaranty" or "warranty", if the terms and conditions of such warranty so limit its scope and application as to deceive a reasonable individual.

**(d) Civil action by consumer for damages, etc.; jurisdiction; recovery of costs and expenses; cognizable claims**

(1) Subject to subsections (a)(3) and (e), a consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this chapter, or under a written warranty, implied warranty, or service contract, may bring suit for damages and other legal and equitable relief--

(A) in any court of competent jurisdiction in any State or the District of Columbia; or

(B) in an appropriate district court of the United States, subject to paragraph (3) of this subsection.

(2) If a consumer finally prevails in any action brought under paragraph (1) of this subsection, he may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of cost and expenses (including attorneys' fees based on actual time expended) determined by the court to have been

reasonably incurred by the plaintiff for or in connection with the commencement and prosecution of such action, unless the court in its discretion shall determine that such an award of attorneys' fees would be inappropriate.

**(3)** No claim shall be cognizable in a suit brought under paragraph (1)(B) of this subsection--

**(A)** if the amount in controversy of any individual claim is less than the sum or value of \$25;

**(B)** if the amount in controversy is less than the sum or value of \$50,000 (exclusive of interests and costs) computed on the basis of all claims to be determined in this suit; or

**(C)** if the action is brought as a class action, and the number of named plaintiffs is less than one hundred.

**(e) Class actions; conditions; procedures applicable**

No action (other than a class action or an action respecting a warranty to which subsection (a)(3) applies) may be brought under subsection (d) for failure to comply with any obligation under any written or implied warranty or service contract, and a class of consumers may not proceed in a class action under such subsection with respect to such a failure except to the extent the court determines necessary to establish the representative capacity of the named plaintiffs, unless the person obligated under the warranty or service contract is afforded a reasonable opportunity to cure such failure to comply. In the case of such a class action (other than a class action respecting a warranty to which subsection (a)(3) applies) brought under subsection (d) for breach of any written or implied warranty or service contract, such reasonable opportunity will be afforded by the named plaintiffs and they shall at that time notify the defendant that they are acting on behalf of the class. In the case of such a class action which is brought in a district court of the United States, the representative capacity of the named plaintiffs shall be established in the application of rule 23 of the Federal Rules of Civil Procedure.

**(f) Warrantors subject to enforcement of remedies**

For purposes of this section, only the warrantor actually making a written affirmation of fact, promise, or undertaking shall be deemed to have created a written warranty, and any rights arising thereunder may be enforced under this section only against such warrantor and no other person.

**§ 2311. Applicability to other laws**

**(a) Federal Trade Commission Act and Federal Seed Act**

**(1)** Nothing contained in this chapter shall be construed to repeal, invalidate, or supersede the Federal Trade Commission Act or any statute defined therein as an Antitrust Act.

**(2)** Nothing in this chapter shall be construed to repeal, invalidate, or supersede the Federal Seed Act and nothing in this chapter shall apply to seed for planting.

**(b) Rights, remedies, and liabilities**



(1) Nothing in this chapter shall invalidate or restrict any right or remedy of any consumer under State law or any other Federal law.

(2) Nothing in this chapter (other than sections 2308 and 2304(a)(2) and (4) of this title) shall (A) affect the liability of, or impose liability on, any person for personal injury, or (B) supersede any provision of State law regarding consequential damages for injury to the person or other injury.

**(c) State warranty laws**

(1) Except as provided in subsection (b) and in paragraph (2) of this subsection, a State requirement--

(A) which relates to labeling or disclosure with respect to written warranties or performance thereunder;

(B) which is within the scope of an applicable requirement of sections 2302, 2303, and 2304 of this title (and rules implementing such sections), and

(C) which is not identical to a requirement of section 2302, 2303, or 2304 of this title (or a rule thereunder), shall not be applicable to written warranties complying with such sections (or rules thereunder).

(2) If, upon application of an appropriate State agency, the Commission determines (pursuant to rules issued in accordance with section 2309 of this title) that any requirement of such State covering any transaction to which this chapter applies (A) affords protection to consumers greater than the requirements of this chapter and (B) does not unduly burden interstate commerce, then such State requirement shall be applicable (notwithstanding the provisions of paragraph (1) of this subsection) to the extent specified in such determination for so long as the State administers and enforces effectively any such greater requirement.

**(d) Other Federal warranty laws**

This chapter (other than section 2302(c) of this title) shall be inapplicable to any written warranty the making or content of which is otherwise governed by Federal law. If only a portion of a written warranty is so governed by Federal law, the remaining portion shall be subject to this chapter.

**§ 2312. Effective dates**

**(a) Effective date of chapter**

Except as provided in subsection (b) of this section, this chapter shall take effect 6 months after January 4, 1975, but shall not apply to consumer products manufactured prior to such date.

**(b) Effective date of section 2302(a)**

Section 2302(a) of this title shall take effect 6 months after the final publication of rules respecting such section; except that the Commission, for good cause shown, may postpone the applicability of such sections until one year after such final publication in order to permit any designated classes of suppliers

to bring their written warranties into compliance with rules promulgated pursuant to this chapter.

**(c) Promulgation of rules**

The Commission shall promulgate rules for initial implementation of this chapter as soon as possible after January 4, 1975, but in no event later than one year after such date.

## Appendix B

### 16 C.F.R. § 703

#### PART 703 - INFORMAL DISPUTE SETTLEMENT PROCEDURES

**Authority:** [15 U.S.C. 2309](#) and [2310](#).

**Source:** [40 FR 60215](#), Dec. 31, 1975, unless otherwise noted.

#### § 703.1 Definitions.

(a) *The Act* means the Magnuson-Moss Warranty - Federal Trade Commission Improvement Act, [15 U.S.C. 2301](#), *et seq.*

(b) *Consumer product* means any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes (including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed).

(c) *Written warranty* means:

(1) Any written affirmation of fact or written promise made in connection with the sale of a consumer product by a supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time, or

(2) Any undertaking in writing in connection with the sale by a supplier of a consumer product to refund, repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking, which written affirmation, promise or undertaking becomes part of the basis of the bargain between a supplier and a buyer for purposes other than resale of such product.

(d) *Warrantor* means any person who gives or offers to give a written warranty which incorporates an informal dispute settlement mechanism.

(e) *Mechanism* means an informal dispute settlement procedure which is incorporated into the terms of a written warranty to which any provision of Title I of the Act applies, as provided in section 110 of the Act, [15 U.S.C. 2310](#).

(f) *Members* means the person or persons within a Mechanism actually deciding disputes.

(g) *Consumer* means a buyer (other than for purposes of resale) of any consumer product, any person to whom such product is transferred during the duration of a written warranty applicable to the product, and any other person who is entitled by the terms of such warranty or under applicable state law to enforce against the warrantor the obligations of the warranty.

(h) *On the face of the warranty* means:

- (1) If the warranty is a single sheet with printing on both sides of the sheet, or if the warranty is comprised of more than one sheet, the page on which the warranty text begins;
- (2) If the warranty is included as part of a longer document, such as a use and care manual, the page in such document on which the warranty text begins.

[[40 FR 60215](#), Dec. 31, 1975, as amended at [80 FR 42722](#), July 20, 2015]

### § 703.2 Duties of warrantor.

- (a) The warrantor shall not incorporate into the terms of a written warranty a Mechanism that fails to comply with the requirements contained in [§§ 703.3](#) through [703.8 of this part](#). This [paragraph \(a\)](#) shall not prohibit a warrantor from incorporating into the terms of a written warranty the step-by-step procedure which the consumer should take in order to obtain performance of any obligation under the warranty as described in section 102(a)(7) of the Act, [15 U.S.C. 2302\(a\)\(7\)](#), and required by [part 701 of this subchapter](#).
- (b) The warrantor shall disclose clearly and conspicuously at least the following information on the face of the written warranty:
  - (1) A statement of the availability of the informal dispute settlement mechanism;
  - (2) The name and address of the Mechanism, or the name and a telephone number of the Mechanism which consumers may use without charge;
  - (3) A statement of any requirement that the consumer resort to the Mechanism before exercising rights or seeking remedies created by Title I of the Act; together with the disclosure that if a consumer chooses to seek redress by pursuing rights and remedies not created by Title I of the Act, resort to the Mechanism would not be required by any provision of the Act; and
  - (4) A statement, if applicable, indicating where further information on the Mechanism can be found in materials accompanying the product, as provided in [§ 703.2\(c\)](#) of this section.
- (c) The warrantor shall include in the written warranty or in a separate section of materials accompanying the product, the following information:
  - (1) Either
    - (i) A form addressed to the Mechanism containing spaces requesting the information which the Mechanism may require for prompt resolution of warranty disputes; or
    - (ii) A telephone number of the Mechanism which consumers may use without charge;
  - (2) The name and address of the Mechanism;
  - (3) A brief description of Mechanism procedures;

(4) The time limits adhered to by the Mechanism; and

(5) The types of information which the Mechanism may require for prompt resolution of warranty disputes.

(d) The warrantor shall take steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes. Nothing contained in [paragraphs \(b\), \(c\), or \(d\)](#) of this section 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.

(e) Whenever a dispute is submitted directly to the warrantor, the warrantor shall, within a reasonable time, decide whether, and to what extent, it will satisfy the consumer, and inform the consumer of its decision. In its notification to the consumer of its decision, the warrantor shall include the information required in [§ 703.2 \(b\)](#) and [\(c\)](#) of this section.

(f) The warrantor shall:

(1) Respond fully and promptly to reasonable requests by the Mechanism for information relating to disputes;

(2) Upon notification of any decision of the Mechanism that would require action on the part of the warrantor, immediately notify the Mechanism whether, and to what extent, warrantor will abide by the decision; and

(3) Perform any obligations it has agreed to.

(g) The warrantor shall act in good faith in determining whether, and to what extent, it will abide by a Mechanism decision.

(h) The warrantor shall comply with any reasonable requirements imposed by the Mechanism to fairly and expeditiously resolve warranty disputes.

[[40 FR 60215](#), Dec. 31, 1975, as amended at [80 FR 42722](#), July 20, 2015]

Minimum Requirements of the Mechanism

### **§ 703.3 Mechanism organization.**

(a) The Mechanism shall be funded and competently staffed at a level sufficient to ensure fair and expeditious resolution of all disputes, and shall not charge consumers any fee for use of the Mechanism.

(b) The warrantor and the sponsor of the Mechanism (if other than the warrantor) shall take all steps necessary to ensure that the Mechanism, and its members and staff, are sufficiently insulated from the warrantor and the sponsor, so that the decisions of the members and the performance of the staff are

not influenced by either the warrantor or the sponsor. Necessary steps shall include, at a minimum, committing funds in advance, basing personnel decisions solely on merit, and not assigning conflicting warrantor or sponsor duties to Mechanism staff persons.

(c) The Mechanism shall impose any other reasonable requirements necessary to ensure that the members and staff act fairly and expeditiously in each dispute.

#### § 703.4 Qualification of members.

(a) No member deciding a dispute shall be:

(1) A party to the dispute, or an employee or agent of a party other than for purposes of deciding disputes; or

(2) A person who is or may become a party in any legal action, including but not limited to class actions, relating to the product or complaint in dispute, or an employee or agent of such person other than for purposes of deciding disputes. For purposes of this [paragraph \(a\)](#) a person shall not be considered a “party” solely because he or she acquires or owns an interest in a party solely for investment, and the acquisition or ownership of an interest which is offered to the general public shall be prima facie evidence of its acquisition or ownership solely for investment.

(b) When one or two members are deciding a dispute, all shall be persons having no direct involvement in the manufacture, distribution, sale or service of any product. When three or more members are deciding a dispute, at least two-thirds shall be persons having no direct involvement in the manufacture, distribution, sale or service of any product. “Direct involvement” shall not include acquiring or owning an interest solely for investment, and the acquisition or ownership of an interest which is offered to the general public shall be prima facie evidence of its acquisition or ownership solely for investment. Nothing contained in this section shall prevent the members from consulting with any persons knowledgeable in the technical, commercial or other areas relating to the product which is the subject of the dispute.

(c) Members shall be persons interested in the fair and expeditious settlement of consumer disputes.

#### § 703.5 Operation of the Mechanism.

(a) The Mechanism shall establish written operating procedures which shall include at least those items specified in [paragraphs \(b\)](#) through [\(j\)](#) of this section. Copies of the written procedures shall be made available to any person upon request.

(b) Upon notification of a dispute, the Mechanism shall immediately inform both the warrantor and the consumer of receipt of the dispute.

(c) The Mechanism shall investigate, gather and organize all information necessary for a fair and expeditious decision in each dispute. When any evidence gathered by or submitted to the Mechanism raises issues relating to the number of repair attempts, the length of repair periods, the possibility of unreasonable use of the product, or any other issues relevant in light of Title I of the Act (or rules thereunder), including issues relating to consequential damages, or any other remedy under the Act (or

rules thereunder), the Mechanism shall investigate these issues. When information which will or may be used in the decision, submitted by one party, or a consultant under [§ 703.4\(b\) of this part](#), or any other source tends to contradict facts submitted by the other party, the Mechanism shall clearly, accurately, and completely disclose to both parties the contradictory information (and its source) and shall provide both parties an opportunity to explain or rebut the information and to submit additional materials. The Mechanism shall not require any information not reasonably necessary to decide the dispute.

(d) If the dispute has not been settled, the Mechanism shall, as expeditiously as possible but at least within 40 days of notification of the dispute, except as provided in [paragraph \(e\)](#) of this section:

(1) Render a fair decision based on the information gathered as described in [paragraph \(c\)](#) of this section, and on any information submitted at an oral presentation which conforms to the requirements of [paragraph \(f\)](#) of this section (A decision shall include any remedies appropriate under the circumstances, including repair, replacement, refund, reimbursement for expenses, compensation for damages, and any other remedies available under the written warranty or the Act (or rules thereunder); and a decision shall state a specified reasonable time for performance);

(2) Disclose to the warrantor its decision and the reasons therefor;

(3) If the decision would require action on the part of the warrantor, determine whether, and to what extent, warrantor will abide by its decision; and

(4) Disclose to the consumer its decision, the reasons therefor, warrantor's intended actions (if the decision would require action on the part of the warrantor), and the information described in [paragraph \(g\)](#) of this section. For purposes of [paragraph \(d\)](#) of this section a dispute shall be deemed settled when the Mechanism has ascertained from the consumer that:

(i) The dispute has been settled to the consumer's satisfaction; and

(ii) The settlement contains a specified reasonable time for performance.

(e) The Mechanism may delay the performance of its duties under [paragraph \(d\)](#) of this section beyond the 40 day time limit:

(1) Where the period of delay is due solely to failure of a consumer to provide promptly his or her name and address, brand name and model number of the product involved, and a statement as to the nature of the defect or other complaint; or

(2) For a 7 day period in those cases where the consumer has made no attempt to seek redress directly from the warrantor.

(f) The Mechanism may allow an oral presentation by a party to a dispute (or a party's representative) only if:

(1) Both warrantor and consumer expressly agree to the presentation;

(2) Prior to agreement the Mechanism fully discloses to the consumer the following information:

(i) That the presentation by either party will take place only if both parties so agree, but that if they agree, and one party fails to appear at the agreed upon time and place, the presentation by the other party may still be allowed;

(ii) That the members will decide the dispute whether or not an oral presentation is made;

(iii) The proposed date, time and place for the presentation; and

(iv) A brief description of what will occur at the presentation including, if applicable, parties' rights to bring witnesses and/or counsel; and

(3) Each party has the right to be present during the other party's oral presentation. Nothing contained in this [paragraph \(b\)](#) of this section shall preclude the Mechanism from allowing an oral presentation by one party, if the other party fails to appear at the agreed upon time and place, as long as all of the requirements of this paragraph have been satisfied.

(g) The Mechanism shall inform the consumer, at the time of disclosure required in [paragraph \(d\)](#) of this section that:

(1) If he or she is dissatisfied with its decision or warrantor's intended actions, or eventual performance, legal remedies, including use of small claims court, may be pursued;

(2) The Mechanism's decision is admissible in evidence as provided in section 110(a)(3) of the Act, [15 U.S.C. 2310\(a\)\(3\)](#); and

(3) The consumer may obtain, at reasonable cost, copies of all Mechanism records relating to the consumer's dispute.

(h) If the warrantor has agreed to perform any obligations, either as part of a settlement agreed to after notification to the Mechanism of the dispute or as a result of a decision under [paragraph \(d\)](#) of this section, the Mechanism shall ascertain from the consumer within 10 working days of the date for performance whether performance has occurred.

(i) A requirement that a consumer resort to the Mechanism prior to commencement of an action under section 110(d) of the Act, [15 U.S.C. 2310\(d\)](#), shall be satisfied 40 days after notification to the Mechanism of the dispute or when the Mechanism completes all of its duties under [paragraph \(d\)](#) of this section, whichever occurs sooner. Except that, if the Mechanism delays performance of its [paragraph \(d\)](#) of this section duties as allowed by [paragraph \(e\)](#) of this section, the requirement that the consumer initially resort to the Mechanism shall not be satisfied until the period of delay allowed by [paragraph \(e\)](#) of this section has ended.

(j) Decisions of the Mechanism shall not be legally binding on any person. However, the warrantor shall act in good faith, as provided in [§ 703.2\(g\) of this part](#). In any civil action arising out of a warranty obligation and relating to a matter considered by the Mechanism, any decision of the Mechanism shall be admissible in evidence, as provided in section 110(a)(3) of the Act, [15 U.S.C. 2310\(a\)\(3\)](#).



[[40 FR 60215](#), Dec. 31, 1975, as amended at [80 FR 42722](#), July 20, 2015]

**§ 703.6 Recordkeeping.**

- (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, 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;
  - (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\(b\) 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;
  - (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.
- (b) The Mechanism shall maintain an index of each warrantor's disputes grouped under brand name and sub-grouped under product model.
- (c) The Mechanism shall maintain an index for each warrantor as will show:
  - (1) All disputes in which the warrantor has promised some performance (either by settlement or in response to a Mechanism decision) and has failed to comply; and
  - (2) All disputes in which the warrantor has refused to abide by a Mechanism decision.
- (d) The Mechanism shall maintain an index as will show all disputes delayed beyond 40 days.

(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, 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\(e\)\(1\) of this part](#);
- (10) Decision delayed beyond 40 days under [§ 703.5\(e\)\(2\) of this part](#);
- (11) Decision delayed beyond 40 days for any other reason; and
- (12) Pending decision.

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

### § 703.7 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 of this part](#) shall be available for audit.

(b) Each audit provided for in [paragraph \(a\)](#) of this section shall include at a minimum the following:

- (1) Evaluation of warrantors' efforts to make consumers aware of the Mechanism's existence as required in [§ 703.2\(d\) of this part](#);
- (2) Review of the indexes maintained pursuant to [§ 703.6 \(b\), \(c\), and \(d\) of this part](#); and
- (3) 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\(e\) of this part](#). (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.)

(c) 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.

(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.

### **§ 703.8 Openness of records and proceedings.**

(a) The statistical summaries specified in [§ 703.6\(e\) of this part](#) shall be available to any person for inspection and copying.

(b) Except as provided under [paragraphs \(a\) and \(e\)](#) of this section, and [paragraph \(c\) of § 703.7 of this part](#), all records of the Mechanism may be kept confidential, or made available only on such terms and conditions, or in such form, as the Mechanism shall permit.

(c) The policy of the Mechanism with respect to records made available at the Mechanism's option shall be set out in the procedures under [§ 703.5\(a\) of this part](#); the policy shall be applied uniformly to all requests for access to or copies of such records.

(d) Meetings of the members to hear and decide disputes shall be open to observers on reasonable and nondiscriminatory terms. The identity of the parties and products involved in disputes need not be disclosed at meetings.

(e) Upon request the Mechanism shall provide to either party to a dispute:

(1) Access to all records relating to the dispute; and

(2) Copies of any records relating to the dispute, at reasonable cost.

(f) The Mechanism shall make available to any person upon request, information relating to the qualifications of Mechanism staff and members.

## Appendix C

### Consumer Surveys Used in Conducting Audit

#### NCDS Consumer Satisfaction Survey – Arbitrated Cases with Award

##### Introduction to Survey

*Dear Consumer:* You recently participated in the Non-Binding Automobile Warranty Arbitration Program administered by the National Center for Dispute Settlement (“NCDS”). This program operates under the Magnuson Moss Warranty–Federal Trade Commission Improvements Act and it requires an annual audit to assess consumers’ overall levels of satisfaction. To accurately capture consumer experiences, we ask that you complete this brief 10-minute survey. No personal information or identifiers are being collected for this survey keeping your identity completely anonymous. Thank you.

*Note to Consumer:* If you filed multiple claims during 2020, your responses should focus only on the last claim you filed.

##### General Questions

The following questions relate to your pre-filing experience with either the dealer or the manufacturer.

1. Before filing a claim with NCDS, did you attempt to contact the manufacturer directly to discuss your concerns?
  - Yes
  - No
  
2. How many times, if any, did the dealer or manufacturer attempt to repair your car before you filed a claim with NCDS?
  - One time
  - Two times
  - Three times
  - Other (please specify)
  
3. How did you learn about the NCDS Non-Binding Automobile Warranty Arbitration Program?
  - Manufacturer Customer Service Representative
  - Other Manufacturer Representative
  - Dealership Personnel
  - Glove-Box Materials
  - Internet or Social Media
  - Brochures
  - Attorney
  - Friends, Family, Co-workers
  - State Government Agency
  - Prior Program Knowledge
  - Other (please specify)
  
4. How did the manufacturer or dealer inform you of the NCDS arbitration Program?
  - Talked over the phone
  - Mailed or E-mailed Information
  - Website

- Showroom Poster
- Other (please specify)

***Filing of Claim***

The following questions relate to the actual filing of your claim with NCDS.

5. What method did you use to file your claim with NCDS?
  - E-File
  - Mail
  
6. After you filed your E-File claim with NCDS, how long did it take for an NCDS administrator to contact you?
  - One Business Day
  - Two Business Days
  - Greater than two business days
  
7. After you mailed and received an acknowledgement from NCDS that your claim had been received, how long did it take for an NCDS administrator to contact you?
  - One Business Day
  - Two Business Days
  - Greater than two business days
  
8. How clear were the instructions for filing the Claim Form?
  - Very clear
  - Somewhat clear
  - Not clear
  - Do not know

***Pre-Hearing Process Questions***

The following questions relate to your experience after you filed your claim with NCDS. **Reminder:** If you filed more than one claim with NCDS concerning your vehicle, please focus on the last claim you filed in 2021.

9. Whether you E-Filed or filed your claim by mail, did you receive the Frequently Asked Questions (FAQ) Packet at [www.ncdsusa.org](http://www.ncdsusa.org)?
  - Yes
  - No
  
10. Whether you E-Filed or filed your claim by mail, did you review the Frequently Asked Questions (FAQ) Packet at [www.ncdsusa.org](http://www.ncdsusa.org)?
  - Yes
  - No
  
11. How clear was the information presented in the FAQ?
  - Very clear
  - Somewhat clear
  - Not clear
  - Do not know
  
12. How helpful was the information presented in the FAQ?
  - Very helpful
  - Moderately helpful
  - Not at all helpful

- Do not know
13. Did you receive the Non-Binding Program Rules at [www.ncdsusa.org](http://www.ncdsusa.org)?
- Yes
  - No
14. Did you review the Non-Binding Program Rules at [www.ncdsusa.org](http://www.ncdsusa.org)?
- Yes
  - No
15. How clear were the Program Rules?
- Very clear
  - Somewhat clear
  - Not clear
  - Do not know
16. How helpful were the Program Rules in explaining the arbitration process?
- Very helpful
  - Moderately helpful
  - Not at all helpful
  - Do not know
17. Did you receive a hearing notice from NCDS?
- Yes
  - No
18. Either before or after you received your hearing notice, did you hire an attorney to represent you or to be present at the hearing?
- Yes.
  - No  
If no, please explain why
19. If you filed a documents only hearing, which of the following best describes why you chose a documents only hearing? Otherwise, select "No, I did not file a documents only hearing" below.
- More convenient to have an arbitration panel review documents
  - Unable to get time off work
  - Family or health conflicts
  - Other (please specify)
  - No, I did not file a documents only hearing

***Hearing Process Questions***

The following questions pertain to the actual evidentiary hearing process.

20. Did the arbitrator start the hearing on time?
- Yes
  - No  
If no, explain
21. Did the arbitrator explain the arbitration process to both parties? In other words, did the arbitrator explain that each party would be allowed to present and rebut evidence, and that the

arbitrator did not have any conflicts of interest to disclose?

- Yes
- No

22. Did the arbitrator allow both parties a full and fair opportunity to present their proofs?

- Yes
- No

23. During the hearing, did you or the manufacturer request a third party, independent technical inspection of your vehicle?

- Yes
- No

### *Post-Award Questions*

The following questions pertain to your experience after you received your decision.

24. How was the arbitrator's decision communicated to you?

- By email
- By Mail
- Other Method (please specify)

25. Which of the following best describes the decision made by the arbitrator?

- A refund, where the manufacturer would give you money for your car
- A replacement, where the manufacturer would replace your existing car with a new car
- Reimbursement, where the manufacturer would reimburse you for incidental costs associated with the repair of your car
- A Repair
- No Relief Granted

26. Did the arbitrator accurately identify the nature of the non-conformity you alleged in your claim?

- Yes
- No

27. Did the arbitrator include a summary of the testimony at the hearing?

- Yes
- No

28. Was the arbitrator's decision clear?

- Yes
- No

29. Did the arbitrator render a reasoned decision? **Please Note:** *This means whether or not you agreed with the decision, the arbitrator provided rationale for why the decision was reached.*

- Yes
- No

30. Did you return to NCDS the Decision Acceptance / Rejection Form?

- Yes
  - No
- If no, please explain why

### *General Satisfaction Questions – Arbitrator Focused*

The following questions focus on your assessment of the arbitrator both during and after the hearing.

31. How would you rate the arbitrator in terms of understanding the facts of your case?
  - Excellent
  - Good
  - Average
  - Poor
  
32. How would you rate the arbitrator's objectivity and fairness?
  - Excellent
  - Good
  - Average
  - Poor
  
33. How would you rate the arbitrator's impartiality during the hearing?
  - Excellent
  - Good
  - Average
  - Poor
  
34. How would you rate the arbitrator's impartiality with respect to the decision?
  - Excellent
  - Good
  - Average
  - Poor

***General Satisfaction Questions – NCDS***

The following questions focus on your assessment of NCDS' staff in processing your claim.

35. How would you rate the timeliness of the communications between you and NCDS administrator?
  - Excellent
  - Good
  - Fair
  - Poor
  
36. How would you rate the helpfulness of the NCDS staff?
  - Excellent
  - Good
  - Fair
  - Poor
  
37. How would you rate your overall experience under the NCDS Arbitration Program?
  - Excellent
  - Good
  - Fair
  - Poor
  
38. Would you recommend the Arbitration Program to friends and family?
  - Yes
  - No

If no, please explain why



39. What suggestions, if any, do you have for improving the NCDS Arbitration Program?

## NCDS Consumer Satisfaction Survey – Arbitrated Cases with Award No Action

### Introduction to Survey

*Dear Consumer:* You recently participated in the Non-Binding Automobile Warranty Arbitration Program administered by the National Center for Dispute Settlement (“NCDS”). This program operates under the Magnuson Moss Warranty–Federal Trade Commission Improvements Act and it requires an annual audit to assess consumers’ overall levels of satisfaction. To accurately capture consumer experiences, we ask that you complete this brief 10-minute survey. No personal information or identifiers are being collected for this survey keeping your identity completely anonymous. Thank you.

*Note to Consumer:* If you filed multiple claims during 2020, your responses should focus only on the last claim you filed.

### General Questions

The following questions relate to your pre-filing experience with either the dealer or the manufacturer.

1. Before filing a claim with NCDS, did you attempt to contact the manufacturer directly to discuss your concerns?
  - Yes
  - No
  
2. How many times, if any, did the dealer or manufacturer attempt to repair your car before you filed a claim with NCDS?
  - One time
  - Two times
  - Three times
  - Other (please specify)
  
3. How did you learn about the NCDS Non-Binding Automobile Warranty Arbitration Program?
  - Manufacturer Customer Service Representative
  - Other Manufacturer Representative
  - Dealership Personnel
  - Glove-Box Materials
  - Internet or Social Media
  - Brochures
  - Attorney
  - Friends, Family, Co-workers
  - State Government Agency
  - Prior Program Knowledge
  - Other (please specify)
  
4. How did the manufacturer or dealer inform you of the NCDS arbitration Program?
  - Talked over the phone
  - Mailed or E-mailed Information
  - Website
  - Showroom Poster
  - Other (please specify)

### Filing of Claim

The following questions relate to the actual filing of your claim with NCDS.

5. What method did you use to file your claim with NCDS?
  - E-File
  - Mail
  
6. After you filed your E-File claim with NCDS, how long did it take for an NCDS administrator to contact you?
  - One Business Day
  - Two Business Days
  - Greater than two business days
  
7. After you mailed and received an acknowledgement from NCDS that your claim had been received, how long did it take for an NCDS administrator to contact you?
  - One Business Day
  - Two Business Days
  - Greater than two business days
  
8. How clear were the instructions for filing the Claim Form?
  - Very clear
  - Somewhat clear
  - Not clear
  - Do not know

***Pre-Hearing Process Questions***

The following questions relate to your experience after you filed your claim with NCDS. Reminder: If you filed more than one claim with NCDS concerning your vehicle, please focus on the last claim you filed in 2021.

9. Whether you E-Filed or filed your claim by mail, did you receive the Frequently Asked Questions (FAQ) Packet at [www.ncdsusa.org](http://www.ncdsusa.org)?
  - Yes
  - No
  
10. Whether you E-Filed or filed your claim by mail, did you review the Frequently Asked Questions (FAQ) Packet at [www.ncdsusa.org](http://www.ncdsusa.org)?
  - Yes
  - No
  
11. How clear was the information presented in the FAQ?
  - Very clear
  - Somewhat clear
  - Not clear
  - Do not know
  
12. How helpful was the information presented in the FAQ?
  - Very helpful
  - Moderately helpful
  - Not at all helpful
  - Do not know
  
13. Did you receive the Non-Binding Program Rules at [www.ncdsusa.org](http://www.ncdsusa.org)?
  - Yes
  - No

14. Did you review the Non-Binding Program Rules at [www.ncdsusa.org](http://www.ncdsusa.org)?
  - Yes
  - No
  
15. How clear were the Program Rules?
  - Very clear
  - Somewhat clear
  - Not clear
  - Do not know
  
16. How helpful were the Program Rules in explaining the arbitration process?
  - Very helpful
  - Moderately helpful
  - Not at all helpful
  - Do not know
  
17. Did you receive a hearing notice from NCDS?
  - Yes
  - No
  
18. Either before or after you received your hearing notice, did you hire an attorney to represent you or to be present at the hearing?
  - Yes.
  - No  
If no, please explain why
  
19. If you filed a documents only hearing, which of the following best describes why you chose a documents only hearing? Otherwise, select "No, I did not file a documents only hearing" below.
  - More convenient to have an arbitration panel review documents
  - Unable to get time off work
  - Family or health conflicts
  - Other (please specify)
  - No, I did not file a documents only hearing

***Hearing Process Questions***

The following questions pertain to the actual evidentiary hearing process.

20. Did the arbitrator start the hearing on time?
  - Yes
  - No  
If no, explain
  
21. Did the arbitrator explain the arbitration process to both parties? In other words, did the arbitrator explain that each party would be allowed to present and rebut evidence, and that the arbitrator did not have any conflicts of interest to disclose?
  - Yes
  - No
  
22. Did the arbitrator allow both parties a full and fair opportunity to present their proofs?
  - Yes

- No

23. During the hearing, did you or the manufacturer request a third party, independent technical inspection of your vehicle?

- Yes
- No

**Post-Award Questions**

The following questions pertain to your experience after you received your decision.

24. How was the arbitrator’s decision communicated to you?

- By email
- By Mail
- Other Method (please specify)

25. Which of the following best describes the decision made by the arbitrator?

- A refund, where the manufacturer would give you money for your car
- A replacement, where the manufacturer would replace your existing car with a new car
- Reimbursement, where the manufacturer would reimburse you for incidental costs associated with the repair of your car
- A Repair
- No Relief Granted

26. Did the arbitrator accurately identify the nature of the non-conformity you alleged in your claim?

- Yes
- No

27. Did the arbitrator include a summary of the testimony at the hearing?

- Yes
- No

28. Was the arbitrator’s decision clear?

- Yes
- No

29. Did the arbitrator render a reasoned decision? **Please Note:** *This means whether or not you agreed with the decision, the arbitrator provided rationale for why the decision was reached.*

- Yes
- No

30. Did you return to NCDS the Decision Acceptance / Rejection Form?

- Yes
- No

If no, please explain why

**General Satisfaction Questions – Arbitrator Focused**

The following questions focus on your assessment of the arbitrator both during and after the hearing.

31. How would you rate the arbitrator in terms of understanding the facts of your case?

- Excellent
- Good
- Average

- Poor

32. How would you rate the arbitrator's objectivity and fairness?

- Excellent
- Good
- Average
- Poor

33. How would you rate the arbitrator's impartiality during the hearing?

- Excellent
- Good
- Average
- Poor

34. How would you rate the arbitrator's impartiality with respect to the decision?

- Excellent
- Good
- Average
- Poor

***General Satisfaction Questions – NCDS***

The following questions focus on your assessment of NCDS' staff in processing your claim.

35. How would you rate the timeliness of the communications between you and NCDS administrator?

- Excellent
- Good
- Fair
- Poor

36. How would you rate the helpfulness of the NCDS staff?

- Excellent
- Good
- Fair
- Poor

37. How would you rate your overall experience under the NCDS Arbitration Program?

- Excellent
- Good
- Fair
- Poor

38. Would you recommend the Arbitration Program to friends and family?

- Yes
- No

If no, please explain why

39. What suggestions, if any, do you have for improving the NCDS Arbitration Program?

## NCDS Consumer Satisfaction Survey – Mediated Cases

### Introduction to Survey

*Dear Consumer:* You recently participated in the Non-Binding Automobile Warranty Arbitration Program administered by the National Center for Dispute Settlement (“NCDS”). This program operates under the Magnuson Moss Warranty–Federal Trade Commission Improvements Act and it requires an annual audit to assess consumers’ overall levels of satisfaction. To accurately capture consumer experiences, we ask that you complete this brief 10-minute survey. No personal information or identifiers are being collected for this survey keeping your identity completely anonymous. Thank you.

*Note to Consumer:* If you filed multiple claims during 2020, your responses should focus only on the last claim you filed.

### General Questions

The following questions relate to your pre-filing experience with either the dealer or the manufacturer.

1. Before filing a claim with NCDS, did you attempt to contact the manufacturer directly to discuss your concerns?
  - Yes
  - No
  
2. How many times, if any, did the dealer or manufacturer attempt to repair your car before you filed a claim with NCDS?
  - One time
  - Two times
  - Three times
  - Other (please specify)
  
3. How did you learn about the NCDS Non-Binding Automobile Warranty Arbitration Program?
  - Manufacturer Customer Service Representative
  - Other Manufacturer Representative
  - Dealership Personnel
  - Glove-Box Materials
  - Internet or Social Media
  - Brochures
  - Attorney
  - Friends, Family, Co-workers
  - State Government Agency
  - Prior Program Knowledge
  - Other (please specify)
  
4. How did the manufacturer or dealer inform you of the NCDS arbitration Program?
  - Talked over the phone
  - Mailed or E-mailed Information
  - Website
  - Showroom Poster
  - Other (please specify)

### Filing of Claim

The following questions relate to the actual filing of your claim with NCDS.

5. What method did you use to file your claim with NCDS?
  - E-File
  - Mail
  
6. After you filed your E-File claim with NCDS, how long did it take for an NCDS administrator to contact you?
  - One Business Day
  - Two Business Days
  - Greater than two business days
  
7. After you mailed and received an acknowledgement from NCDS that your claim had been received, how long did it take for an NCDS administrator to contact you?
  - One Business Day
  - Two Business Days
  - Greater than two business days
  
8. How clear were the instructions for filing the Claim Form?
  - Very clear
  - Somewhat clear
  - Not clear
  - Do not know

***Pre-Hearing Process Questions***

The following questions relate to your experience after you filed your claim with NCDS. Reminder: If you filed more than one claim with NCDS concerning your vehicle, please focus on the last claim you filed in 2021.

9. Whether you E-Filed or filed your claim by mail, did you receive the Frequently Asked Questions (FAQ) Packet at [www.ncdsusa.org](http://www.ncdsusa.org)?
  - Yes
  - No
  
10. Whether you E-Filed or filed your claim by mail, did you review the Frequently Asked Questions (FAQ) Packet at [www.ncdsusa.org](http://www.ncdsusa.org)?
  - Yes
  - No
  
11. How clear was the information presented in the FAQ?
  - Very clear
  - Somewhat clear
  - Not clear
  - Do not know
  
12. How helpful was the information presented in the FAQ?
  - Very helpful
  - Moderately helpful
  - Not at all helpful
  - Do not know
  
13. Did you receive the Non-Binding Program Rules at [www.ncdsusa.org](http://www.ncdsusa.org)?
  - Yes
  - No



14. Did you review the Non-Binding Program Rules at [www.ncdsusa.org](http://www.ncdsusa.org)?
  - Yes
  - No
  
15. How clear were the Program Rules?
  - Very clear
  - Somewhat clear
  - Not clear
  - Do not know
  
16. How helpful were the Program Rules in explaining the arbitration process?
  - Very helpful
  - Moderately helpful
  - Not at all helpful
  - Do not know

***Mediation Process Questions***

The following questions pertain to the settlement of your claim.

17. Before the case proceeded to arbitration, did you agree to settle your case with the manufacturer?
  - Yes
  - No
  
18. Which of the following best describes the relief provided in your settlement of the claim?
  - A refund, where the manufacturer would give you money for your car
  - A replacement, where the manufacturer would replace your existing car with a new car
  - Reimbursement, where the manufacturer would reimburse you for incidental costs associated with the repair of your car
  - A Repair
  - No Relief Granted
  
19. After you reached a settlement, did you receive a letter from NCDS explaining the terms of the settlement?
  - Yes
  - No
  
20. After you received your settlement confirmation, did you pursue your case further?
  - Yes
  - No
  
21. If so, please let us know the method used?
  - Re-initiated contact with NCDS
  - Contacted an attorney
  - Contacted a state agency
  - Contacted dealer or manufacturer
  - Other (please specify)

*General Satisfaction Questions – NCDS*

The following questions relate to your satisfaction levels with NCDS' staff.

22. How would you rate the timeliness of the communications between you and NCDS staff?
  - Excellent
  - Good
  - Fair
  - Poor
  
23. How would you rate the helpfulness of the NCDS staff?
  - Excellent
  - Good
  - Fair
  - Poor
  
24. How would you rate your overall experience under the NCDS Arbitration Program?
  - Excellent
  - Good
  - Fair
  - Poor
  
25. Would you recommend the Arbitration Program to friends and family?
  - Yes
  - No  
If no, please explain why