

United States Federal Trade Commission

***National Center for Dispute Settlement
(Automobile Warranty Arbitration Program)***

2015 Audit

(January – December 2015)

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Introduction

This 2015 audit of NCDS' arbitration process is performed pursuant to the 1975 federal warranty law, the Magnuson-Moss Warranty Federal Trade Commission Improvement Act and Rule on Informal Dispute Settlement Procedures, 16 C.F.R. Part 703 (hereafter referred to as Rule 703).

Claverhouse Associates, a firm specializing in arbitration, mediation, and program auditing, performed the audit which was conducted under the supervision of Kent S. Wilcox, President and Senior Auditor. The statistical survey and analysis section of the report is based on a random sample drawn from data supplied by the manufacturers in cooperation with the staff of NCDS. For details see the Survey Section of the audit report.

Arrangements to conduct the audit were initiated by an invoice submitted in late 2015. Claverhouse Associates coordinated field audits, statistical survey planning, and arbitration training with the program's independent administrator, the National Center for Dispute Settlement (NCDS). This year's report performed a review of the National Center for Dispute Settlement, an independent administrator for multiple automobile manufacturers. The manufacturers participating in the NCDS automobile warranty arbitration program included in this national audit are: Acura, Chrysler,¹ Honda, Lexus, Mitsubishi, Suzuki, Tesla, and Toyota. The audit primarily assesses the dispute resolution Mechanism itself, but there are a few exceptions, wherein our review is manufacturer-specific, such as the requirement for manufacturers to inform consumers of the availability of the dispute resolution program whenever a warranty dispute arises.

The hearing that was scheduled in Benton, Arkansas (Oklahoma region), was held on August 2, 2016. The hearing scheduled in Leesburg, Florida, took place on February 26, 2016, and the hearing we assessed in Illinois was held on July 28, 2016. All of these hearings are described in the on-site field inspections sections of this report. Visits to these locations were typically arranged to coordinate with scheduled arbitration hearings. In addition, we audited an arbitrator training conducted in Dallas, Texas, on March 18-20 of 2016. Audits of the arbitration hearings and arbitrator training are sometimes conducted in the current calendar year rather than in the audit year but are assumed to reflect operations as they existed in the audit year (2015). Performing the field audits during the actual audit year would require initiating an audit much earlier and using a two-phased format: one commencing during the actual audit period and the other in the following year, after all annual statistics had been compiled. All case files inspected were generated during 2015 as required.

1. In the recent past, Chrysler only offered arbitration in four states: Arkansas, Idaho, Kentucky, and Minnesota, and they are gradually expanding into the other states. This change did not affect our conducting of the audit.

SECTION I

Compliance Summary

This is the thirteenth Claverhouse Associates independent annual audit of the National Center for Dispute Settlement's (NCDS) national third-party informal dispute resolution mechanism, the Automobile Warranty Arbitration Program (AWAP). We have conducted several prior audits of the NCDS administered warranty arbitration program, some of which were manufacturer centered and manufacturer-specific. This review and several prior reviews, is more general in that the program itself is evaluated for compliance with the various applicable regulations, both federal and state. While some sections are devoted to specific participating manufacturers, our overall conclusions are applicable to the entire NCDS program.

Overall NCDS Dispute Settlement Program Evaluation

The NCDS third-party dispute mechanism, Automobile Warranty Arbitration Program (AWAP) is, in our view, in substantial compliance with the requirements of the Magnuson-Moss Warranty Federal Trade Commission Improvement Act and Rule on Informal Dispute Settlement Procedures, 16 C.F.R. Part 703. Individual manufacturers however, are at serious risk in that regard.

The three regions of the NCDS program audited: Arkansas (Oklahoma Region), Florida, and Illinois, all functioned during 2015 in compliance with FTC Rule 703.² Details of the field audits and any minor irregularities found are discussed in Section III of this report.

Our random sample survey confirmed the overall validity of the statistical indexes created by the National Center for Dispute Settlement.³ Our original survey sample consisted of 1,719 closed cases⁴, of which we completed surveys for 410 customers. As we have found in other audits, surveyed customers tended to report favorably on the program when the results of their cases were, in their view, positive. Conversely, those who received no award, or received less than they expected, were more likely to report dissatisfaction with the AWAP. As has been true in most audits we have conducted for various programs, the few statistically significant differences between the figures reported by the AWAP and the survey findings were deemed to be easily understandable and do not suggest unreliable reporting by the program. For a detailed discussion, see the Survey Section of this report.

2. One aspect of the audit review has reached the stage where cumulatively manufacturers have so frequently failed to carry out their responsibility to inform inquiring individuals of the availability of the company's alternative dispute resolution process (in this case NCDS) and how to access it, that the various manufacturers are subjecting themselves to the very real possibility of being found to be "out of compliance" with this provision of Rule 703 of the Magnuson-Moss Warranty Act with its attendant serious potential ramifications, especially as regards class-action law suits. Regulators are hereby advised of this situation. Rule 703 mandates that manufacturers must provide this information in the service departments of their dealership agents. Inquirers are not supposed to have to call a manufacturer to receive this information, but many service advisors now simply refer those seeking assistance and information, to someone else at the manufacturer's offices. This practice is inconsistent with Rule 703, and is increasingly problematic for all manufacturers.

3. There are discrepancies in some areas but those identified are either of no significant consequence or are understandable and without significant regulatory implications. Discrepancies are detailed in the Survey Section of the report.

4. The universe of available cases amounted to 2,555, but the operating universe from which the sample was drawn only included the 1,719 closed arbitrated, or mediated, cases. For details see Survey Section.

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

SECTION II

Detailed Findings

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

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

This audit covers the full calendar year 2015. An important component of the audit is the survey of a randomly selected sample of 1,748 NCDS' Dispute Settlement Program applicants whose cases were closed in 2015 and found to be within the AWAP's jurisdiction.

We analyzed several NCDS generated statistical reports covering the AWAP operations in the United States. The reports were provided to us by the Detroit (Sterling Heights) office of the National Center for Dispute Settlement.

We performed field audits of the AWAP as it operates in Arkansas, Florida, and Illinois. We also examined a sample of current (i.e., 2015) case files for accuracy and completeness. A sample of case files was drawn from all case files for the years 2012-2015 and inspected to ensure that these records are maintained for the required four-year period. In the areas covered by each region, we surveyed several dealerships to see how effectively they carry out the information dissemination strategy developed by manufacturers to assist them in making customers aware of the AWAP.

In addition, we visited arbitration hearing sites in Benton, Arkansas; Leesburg, Florida; and Shorewood, Illinois, to audit the scheduled hearings. We also interviewed participants including arbitrators and AWAP/NCDS administrative personnel.

To assess arbitrator training, we monitored the NCDS-sponsored training session held in Dallas, Texas, on March 18 -20 of 2016. In addition to monitoring the training itself, we interviewed the trainees (both before and after the training), the training staff, and reviewed the training materials.

REQUIREMENT: § 703.7 (a) [Audits]

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

FINDINGS:

This is the thirteenth (2015) Claverhouse Associates annual audit of NCDS AWAP informal dispute settlement program. Records pertaining to the NCDS' AWAP that are required to be maintained by 703. 6 (Record-keeping) are being kept and were made available for our review.

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

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

FINDINGS:

The information referenced in subsections 1 through 4 is available from the staff of the National Center for Dispute Settlement, who provided us with access to all pertinent information, which is maintained as required. Our inspection of randomly selected case files for each of the three regions validated these findings. The inspections of case files typically take place at the Detroit (Sterling Heights) office of the program's independent administrator. Our review of randomly selected cases drawn from the four-year period (2012-2015) demonstrated that the case files were maintained in 2015, as required.

The pertinent data/records are maintained in the individual case file folders housed at the NCDS' arbitration program's offices in suburban Detroit, Michigan. Most of the required information can be found in these files or in the computer system.

The program provided us with access to all pertinent information, which is maintained as required. The individual case file inspection of randomly selected 2015 cases validated these findings. The review of selected cases drawn from the four-year period 2012-2015 was done this year as in most previous years. Our review of selected cases drawn from the four-year period (2012-2015) demonstrated that the case files were maintained in 2015, as required.

DISCREPANCIES:

The few administrative irregularities found, while appropriately noted, are relatively inconsequential and do not pose any serious undermining of the program's *substantial compliance* status. The AWAP meets this regulatory requirement and any inconsistencies we found were of the minor and inconsequential variety likely to be found in any large administrative program. The minor inconsistencies are highlighted in the appropriate sections of the report. For example, a particular case file may not contain a hard copy of the arbitrator's decision even though the decision was in fact sent out and can be found in the electronic file. We found some arbitrator decision statements which were poorly worded or lacking in sufficient specificity. Nevertheless, the files were complete and maintained as required.

REQUIREMENT: § 703.6 (a) (5)

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

FINDINGS:

Some case files contained, in addition to the various standard file entries, other communications submitted by the parties. Nothing in our findings suggests that any material submitted by a party was not included in the file, and every indication is that the files were complete. We made no attempt, however, to validate the existence of "summaries of relevant and material telephone calls" and other such information since we had no way of knowing whether such telephone calls took place. This is also true for documents such as follow-up letters. A review of this type may be theoretically possible, but it is not practical without having some objective measure against which to compare the contents of the file. Even in the theoretical sense, such a review assumes customers keep exact files of all correspondence, notes, and phone calls pertaining to their AWAP-cases. To validate this dimension, the audit would entail retrieving all such files as a first step. The obvious impracticality of that places such a review beyond the scope of the audit.

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

DISCREPANCIES:

None

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

REQUIREMENT: § 703.6 (a) (9-12)

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

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

FINDINGS:

The information set forth in items 9 and 10 is maintained as required.⁵ As such, the information was readily accessible for audit.

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

DISCREPANCIES:

None

REQUIREMENT: § 703.6 (b)

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

FINDINGS:

These indices are currently [2015] maintained by the NCDS staff at the NCDS headquarters in Detroit (Sterling Heights), Michigan.

The audit includes a review and assessment of a data printout for the calendar year 2015.

The *AWAP Statistics* identifies 2,555 AWAP disputes filed for 2015. Of these, 2,296 cases were eligible for AWAP review, and 548 cases were determined by the AWAP to be out-of-jurisdiction. Of the in-jurisdiction closed cases, NCDS reports that 1,633 were arbitrated⁶ and 86 were mediated.⁷ There were 1,488 arbitrated decisions which were reported as "adverse to the consumer" per § 703.6 (E) representing 91% of all arbitrated cases.

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

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

6. This number is not aggregated in the statistical reports provided for the audit. We arrived at this number by summing the "decided" items (4-7) listed on the AWAP mandated statistical report. [Note: the number we report here does not include those cases listed as "Pending Decision".

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

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

DISCREPANCIES:

None

REQUIREMENT: § 703.6 (c)

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

FINDINGS:

AWAP reports that there were no such cases in 2015. Concerning subsection 2, the auditors are advised by NCDS that there is no reported incidence in which a NCDS AWAP participating manufacturer failed or refused to abide by a panel or arbitrator decision. As a matter of general corporate policy, all AWAP participating manufacturers agree to comply with all AWAP decisions. This information is supplied as part of NCDS' Annual FTC -703.6 (c) (1) and (2) Report.

DISCREPANCIES:

None

REQUIREMENT: § 703.6 (d)

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

FINDINGS:

According to AWAP statistical index reports, as of December 2015, no cases were delayed beyond 40 days. The National Center for Dispute Settlement 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 as of the date of the generation of the report. Our analysis indicates that these reports have always met the above requirement. Our review of reports, however, is not designed to test the accuracy of a report. We merely determine that the mandated report is being generated.

DISCREPANCIES:

None

REQUIREMENT: § 703.6 (e)

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

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

FINDINGS:

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

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

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

DISCREPANCIES:

None

REQUIREMENT: § 703.6 (f)

THE MECHANISM SHALL RETAIN ALL RECORDS SPECIFIED IN PARAGRAPHS (a) - (e) of

this section for at least 4 years after final disposition of the dispute.

FINDINGS:

(a) All of the information listed in the 12 subsections detailed in the previous section [§ 703.6 (e)] is maintained for the required four years. Any inconsistencies found would be addressed in the Survey Section of this report.

We inspected the collection of all case files for each region provided to us by the NCDS headquarters in Sterling Heights (Detroit), Michigan, and inspected and evaluated a random selection of case files from the four-year period for completeness. The files were appropriately maintained and readily available for audit.

(b) NCDS provided us with the various 2015 indices and statistical reports required by Rule 703. The corresponding reports for the previous four years are, of course, not available from any NCDS participating manufacturers which were not participating in the program for the entire four applicable years.

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

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

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

DISCREPANCIES:

None

REQUIREMENT: § 703.7 (b)

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

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

FINDINGS:

The essential feature of both regulatory requirements cited above is timing. In our review, therefore, we give emphasis to efforts that would inform customers and ensure that they know about the existence of the AWAP at all times, as well as examining the 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."

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

Individual Participating Manufacturer's Efforts and Assessment

[Note: In this section of the audit report, we review each of the participating manufacturers' programs for meeting this requirement. Readers will note that regulatory language is repeated along with some pertinent comments in each division for the various manufacturers so as not to focus strictly on a given manufacturer as well as to make the reading easier. Again, we repeat the applicable regulatory language to avoid cross-referencing and searching for such language in another section of the report. The eight current manufacturers are: Acura, Chrysler, Honda, Lexus, Mitsubishi, Suzuki, Tesla, and Toyota.]

For the 2015 report, we interviewed NCDS staff and inquired as to any changes from previous year in each manufacturers' efforts to ensure their customers were being made aware of the availability of the NCDS arbitration program for resolving any of their customers' warranty disputes. Where we have new information supplied, we review and assess that information.

ACURA:

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

- The Acura responsibility to make customers aware of the dispute resolution Mechanism is well met in one sense by providing information that is easily located in the Owner's Manual in the Introduction to the Table of Contents where it is prominently located as the very first entry of the Table of Contents. On the following page of the Owner's Manual appears three steps for customers with warranty repair concerns. Step 3 includes contact information for filing a claim with The National Center for Dispute Settlement including their toll free telephone number. On the next page of the Owner's Manual, customers will find a more detailed explanation of the regulated NCDS dispute resolution program. We rate this aspect as excellent in complying with the federal requirement.

In addition to this aspect of our review, we visited dealer service departments to ascertain whether service department employees provide helpful and reasonably accurate information about the NCDS dispute resolution program and how a customer can contact NCDS. The dealer reviews are random and may not be included each year, if other manufactures were selected in our selected sample.

CHRYSLER:

In the recent past we have said this in our reports:

“Chrysler uses several means by which to meet this important requirement. They are as follows: [Note: This information only applies in the four states wherein the program is offered (Arkansas, Idaho, Kentucky, and Minnesota)].” **(In 2016, the limitation of the program noted in the parenthetical above , is no longer applicable. The program is now available to all Chrysler, Dodge, Fiat, and Jeeps everywhere in the country.)**

Last year (2014 audit year report submitted in 2015) we said this:

“Note: The Chrysler program has expanded into all states and is now fully operational nationwide as part of the NCDS dispute resolution program.

- The 2015 Supplement to FCA’s Owner’s & Warranty Manuals supplied with each new vehicle references the “Customer Arbitration Process” (CAP) now administered by the National Center for Dispute Settlement (NCDS). The *booklet* provides a toll-free phone number for contacting the National Center for Dispute Settlement to obtain an application for arbitration as administered by NCDS. It also includes a mailing address for contacting NCDS.
- The booklet *Customer Care, Arbitration and Lemon Law Rights* is provided with each new vehicle.

Note: The actual Owner’s Manual makes no reference to NCDS or to the existence of a free program available to any customer with a warranty dispute. Since the federal act governing these programs requires that such a reference be included on the face of the warranty, it seems more appropriate that the Warranty manual include in its “Table of Contents” a cross-reference to a no-cost arbitration program for customers with a warranty dispute that is explained in a supplement to the Owner’s Manual. In addition, the auditor has discussed with NCDS staff some concerns about the wording of the Supplement Manual regarding remedies that are available to arbitrators, which are tediously legalistic and which will necessitate further discussions.

DISCREPANCIES:

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

HONDA:

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

- The Honda responsibility to make customers aware of the dispute resolution Mechanism is well met in one sense by providing information that is easily located in the Owner's Manual in the Introduction to the Table of Contents where it is prominently located as the very first entry of the Table of Contents. On the following page of the Owner's Manual appears three steps for customers with warranty repair concerns. Step 3 includes contact information for filing a claim with The National Center for Dispute Settlement including their toll free telephone number. On the next page of the Owner's Manual, customers will find a more detailed explanation of the regulated NCDS dispute resolution program. We rate this aspect of the Honda information program as excellent in complying with the federal requirement.

In addition to this aspect of our review, we visited dealer service departments to ascertain whether service department employees provide helpful and reasonably accurate information about the NCDS dispute resolution program and how a customer can contact NCDS. The dealer reviews are random and may not be included each year, if other manufactures were selected in our selected sample. Dealer 'secret shopper' interview results are located at the conclusion of this section of the report.

DISCREPANCIES:

None

LEXUS:

- Lexus publishes a manual entitled *Lexus Warranty and Services Guide* which has been updated from the information reviewed in our most recent audit. In addition, Lexus distributes to its new car buyers a pamphlet [52 pages of text] entitled *Lemon Law Guide* with a page which cross references useful NCDS arbitration information including their toll-free telephone number.

The manual includes four pages of accurate and useful information about the NCDS arbitration program including a mailing address and toll-free telephone number for contacting NCDS. The NCDS arbitration information begins on page eleven. Unfortunately, the information is organized as part of a multi-step process and is relegated to the position of "Step 3". Such a multi-step process is one obviously preferred by the

manufacturer. A customer with a warranty dispute, however, is not required to go through steps one and steps two in order to access arbitration as regulated by the Magnuson-Moss Warranty Act and its accompanying Administrative Rule 703. By organizing the information in this manner, some readers may incorrectly interpret the information to mean they must follow these sequential steps. This seemingly minor matter could easily have consequences that are unintended and inconsistent with the regulations intent to provide "expeditious resolution of disputes. For example, if a customer's one week old "new" vehicle seems to be operating inconsistent with their auto engineering experience, and the dealer is perceived by the customer to be rude and unwilling to address their concern because they assert that the vehicle is operating normally, the customer may clearly want to proceed directly to arbitration. Such a decision by the customer is within their right to do so, notwithstanding any value judgements to the contrary. The manual's language suggests otherwise. Without a doubt, the three step process alluded to is usually the best way for customers to proceed but it is certainly not required. The problem herein alluded to is further exacerbated by initiating the entire section with the word "if" which may serve to reinforce the notion that a customer is obligated to go through steps one and two when such is not the case. It is important to point out this matter. It is equally important that we do not believe this matter, by itself, rises to the level of a regulatory non-conformity. It may, however, help to explain the seeming reluctance of some service department employees to provide arbitration information during our dealer visits.

- In 2006, we were provided a copy of the NCDS tri-fold, *Rules & Procedures for the Informal Resolution of Automobile Warranty Disputes* pamphlet, but this document is distributed to Lexus customers after the customer has filed an application. We have again been told by NCDS that there have been no material changes to this item.

We note here that manufacturer's difficulties in complying with this requirement are related in some respects to uncertainty as to the regulation's intent about when the customer is to be informed. A better information dissemination strategy could be developed if regulators provided manufacturers with an operational definition of the phrase, " ... **at the time consumers experience warranty disputes.**"

This limited information may have been provisionally acceptable in that period of adjustment that existed in the early days of Lexus' association with the NCDS program but, in our view, even then it fell short of what Rule 703 intends as regards informing customers of the availability of the arbitration program at the time a warranty dispute arises. There are, of course, many different strategies for accomplishing this mandated information dissemination program, but only having information about NCDS in a owner's manual or Lemon Law Guide in a glove box packet, is likely to find many customers with a warranty dispute unaware of the availability of arbitration. A fact demonstrated again and again over many years experience. That was clearly not the intent of the Federal Trade Commission when Rule 703 was promulgated as evidenced by the rule's lengthy discussion in the *Statement of Basis and Purpose*, published and promulgated as part of the rule (see Federal Register, 60215, Dec. 31, 1973). The FTC afforded great flexibility to manufacturers, at their request, as an alternative to far more

draconian measures being proposed at the time, including the requirement that manufacturers engage in a national media campaign each year to announce the program's availability. The FTC opted instead to afford manufacturers the opportunity to use their own creative methods to achieve the objective and provided for an annual audit to ensure that manufacturers were carrying out effective strategies for ensuring that their customers were likely to be informed about the programs *at the time a warranty dispute arises* [FTC's emphasis.]

In 2016 we visited the following Lexus dealership:

Lexus of Orland
8300 W. 159th
Orland Park, Illinois 60462

Similar to most of our findings at Lexus dealerships, the service department advisor provided no useful information concerning the National Center for Dispute Settlement or the Lexus sponsored Mechanism regulated by the Federal Trade Commission. The advisor at this location went so far as to advise that, "arbitration should be avoided at all costs."

The year before (2015), we visited, assessed, and reported about (for last year's report) the following Lexus dealership.

Lexus of Mishawaka
4325 Grape Rd.
Mishawaka, Indiana 46545

Below are the comments we made last year: (To distinguish them, the auditor has highlighted the prior years' comments and printed them in bold italics and a smaller font.)

"The result of this Lexus dealer visit was nearly as poor as what we found the year before. For last year's report, we interviewed a service advisor who informed us that a customer had to have seven repairs for the same warranty problem to go to arbitration. The advisor did not appear to be aware that the company sponsors a third-party dispute resolution program [arbitration]."

"In 2013 for the 2012 audit, we interviewed two advisors at once and both gave incorrect information about the customer's option to have warranty disputes handled by arbitration through the National Center for Dispute Settlement (NCDS)."

"In 2012, we visited the following Lexus dealerships"

***Lexus of Charleston
2424 Savannah Hwy.
Charleston, South Carolina 29414***

***Lexus of Jacksonville
10259 Atlantic Blvd.
Jacksonville, Florida 32225***

***Metro Lexus
13600 Brookpark Road
Brookpark, Ohio 44135***

(Note: The Ohio Dealership audits were conducted as part of a State audit and yet the state review findings as regards this particular aspect, are also applicable to this federal audit.)

“The dealership visit results were also poor at that time. In that year’s review of Lexus dealers, service advisors typically failed to be forthcoming with any useful information about how arbitration is handled and how to contact NCDS. Responses such as this, are at odds with federal regulations.

“At one Lexus dealership, the service advisor told us that arbitration is available but the customer has to file through Lexus. In every review, Lexus’ service agents provided inaccurate information. In all, Lexus dealers were unable or unwilling to provide us useful information about warranty dispute options that involved arbitration generally or the NCDS program specifically.

“Our findings on this regulatory requirement replicate last years finding, which bears repeating:

“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 problematical, it does not, by itself, rise to the level of a risk to Lexus’ compliance status but it does constitute a significant regulatory problem.” (2012 report conducted in 2013)

“DISCREPANCIES:

The Lexus program for making customers aware of the availability of this no cost option for dispute resolution, poses a compliance concern regarding the federal Magnuson-Moss Warranty Act and the administrative law, Rule 703. If results such as these continue, Lexus’ “in compliance” status remains at great risk. As concerns this year’s report, however, we can only report that Claverhouse Associates is not aware of any material change in the status of Lexus from what we reported in the 2013, and 2014 audit reports.

DISCREPANCIES (2015):

The findings related to Lexus this year are similar to those of the recent past years. There is no material difference this year (2016) for the 2015 year audit report. Lexus’ compliance status is open to question due to its consistently poor results in regards to making customers aware of the existence of their dispute settlement program and how to access it via a toll-free telephone number as mandated by Rule 703, which supplements the federal Magnuson Moss Warranty Act.

MITSUBISHI:

Mitsubishi uses the following means by which to meet this important requirement:⁸

⁸ . NCDS headquarters informs us that the manufacturer-specific review of this individual program for ensuring that consumers are made aware of the arbitration program’s existence “at the time consumers experience warranty disputes” has not changed from last year’s report.

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

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

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

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

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

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

It is a requirement of the FTC, that if a manufacturer participates in an informal dispute resolution process, the customer must be made aware of how they can go about pursuing arbitration. In addition, to the Dispute Resolution Process booklets in each new owner's glove box - the posters should increase the awareness of the Dispute Resolution Process that is available at the time a customer is not satisfied with repairs completed under warranty.

In addition, Mitsubishi has replaced and updated the manual to address several prior concerns. The new Warranty and Maintenance Manual [2006] now specifically references the National Center for Dispute

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

We also said at the time,

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

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

We include here, for reference purposes, our findings from three prior years:

In multi-manufacturer Rule 703 Dispute Resolution Mechanisms, the fiscal restraints of audits do not necessarily allow for visiting all manufacturers' dealer's service departments each year. We visited a Mitsubishi dealer in 2015 for this report, during our on-site visit to Saint Paul, Minnesota, the results of which are reported below.

I interviewed a service advisor who failed to provide me with any useful information about the availability of a dispute resolution program (i.e., "Mechanism") for resolving warranty disputes. No reference was made to the Owner's Manual, nor to the National Center for Dispute Settlement (NCDS).

In 2013, we visited the following Mitsubishi dealership for the 2012 audit:

Albany Mitsubishi
1000 East Oglethorpe Ave.
Albany, Georgia 31701

"I spoke to a service advisor who appeared to be the service manager. He focused his remarks to the "Lemon Law" and gave inaccurate information even on that. He appeared to have no knowledge of NCDS or the warranty dispute resolution process operated by them and sponsored by Mitsubishi. He provided no useful information on what the NCDS program entails or how to access the process."

In 2012, we visited the following Mitsubishi dealership for the 2011 audit:

Hoover Mitsubishi
2250 Savannah Hwy.
Charleston, South Carolina 29414

"Our Mitsubishi dealership experience in 2012 (for 2011 audit) was again this year a disappointment consistent with our experiences in 2010 for the 2009 report. The dealership personnel we interviewed for this report were very pleasant but did not provide us with any useful information about the NCDS program or warranty dispute options for customers beyond working with the dealership. This result falls short of the federal regulation's intent."

"We said in our last several reports that:

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

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

Overall, efforts of the Mitsubishi's information program had no effect on this dealership.

Claverhouse Associates did not visit a Mitsubishi dealership in 2016 for this 2015 report.

What we said in regards to last year's report, holds true with respect to this year's findings. In this the Mitsubishi program is failing despite the manufacturer's efforts."

DISCREPANCIES:

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

SUZUKI:

- Suzuki provided customers with a Vehicle Warranty Information booklet. This booklet contains information pertaining to customers ability to use the dispute settlement program administered by NCDS. On page 4, they provide a

program administered by NCDS. On page 4, they provide a very brief description of NCDS along with a toll-free telephone number. As such, they have provided useful, complete and accurate information as envisioned by the federal regulations. It should be pointed out however that this is a passive strategy and is helpful only if the customer discovers the information. Importantly, the manufacturer should instruct dealerships that inquiring customers should, at a minimum, be referred to this section of the booklet when expressing that they are experiencing a warrant dispute, or words to that effect.

We did not visit a Suzuki Dealership for the 2015 audit report.

DISCREPANCIES:

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

TESLA:

We said in our last year's audit the following regarding Tesla:

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

- *Tesla, a recent addition to the NCDS program, uses their Owner's Warranty Manual to provide information to their customers with a warranty dispute. The "Table of Contents" of the manual references, "Warranty Enforcement Laws and Dispute Resolution" as being on page six. In sum, the information provided by Tesla on pages six and seven is comprehensive, but confusing, and may be misleading to customers. To say for example, "NCDS will schedule a technical evaluation, if applicable", fails to reveal that such an evaluation is only "applicable" if the customer agrees to such an inspection. It may be confusing because it fails to reveal a material fact in light of a positive representation.*

"This issue has been brought to Tesla's attention and we anticipate appropriate modifications in Tesla's information awareness program."

In 2016 we received information from NCDS that Tesla has informed them that Tesla has decided to modify their procedures concerning the Magnuson-Moss Warranty Act compliance requirements contained in this sub-section and will adopt language into their Owner's Manual that will mirror that used by manufacturers that have been determined by the auditors to be in substantial compliance in this regard.

DISCREPANCIES:

None

TOYOTA:

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

- Toyota publishes a 32-page booklet, entitled *Owner's Warranty Information*, that briefly explains, among many other things, the NCDS process and how and where to file an application. The pamphlet is distributed in a variety of ways, but the principal method is by way of the dealer. Dealers are to provide the brochure as part of the initial information packet given to new customers as well as making them available in the dealership. Note: Our random audits of dealerships conducted for the national audit found no consistent and significant commitment by dealers to educate their employees about providing NCDS information to customers who make warranty-related inquiries or, assert warranty related disputes. [This section's findings are based on the status quo in our 2010 report insofar as nothing we reviewed this year suggests any material change as pertains to this requirement.]
- Toyota publishes a 56-page booklet, entitled *Owner's Warranty Rights Notification* booklet, that contains state-specific, warranty-related regulatory information (lemon law provisions) and an application form for accessing the NCDS. The booklet provides useful and accurate information. (DATED 1/09). Like the *Owner's Warranty Information* booklet, it is distributed, in the main, by dealership sales personnel at the point of sale/delivery as part of the glove box kit.
- There is a NCDS pamphlet (one-page tri-fold) published by Toyota that is reasonably informative about the NCDS and how to access it. The pamphlet cross-references the *Owner's Warranty Rights Notification* booklet as one of two sources for obtaining a *Customer Claim Form*.⁹ Those interested in knowing about the program are referred to a toll-free telephone number where they can request a NCDS pamphlet. This one-page document is distributed primarily by the Toyota Customer Assistance Center.

[This information is based on the findings of last year's audit as we are not in receipt of information from Toyota indicating any material change from last year's audit findings excepting the re-printing with additions of the *Warranty Rights Notification* booklet in 2009.]

Despite the manufacturer's efforts, there remains a concern about NCDS information dissemination at the dealership level where most warranty disputes arise. For that reason, we have included for reference purposes our experiences last year.

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

Last year (2015) [for 2014 report], we visited several Toyota dealerships.

Deerfield Beach Toyota
1599 Columbus Pike
Deerfield Beach, Florida 33441

LaRiche Toyota
920 Plaza St.
Findlay, Ohio 45840

Toyota of Wooster
1363 West Old Lincoln Way
Wooster, Ohio 44691

Cain Motors (Toyota)
6527 Whipple Avenue N. W.
North Canton, Ohio 44720

Dick Dyer Toyota
240 Killian Parkway
Columbia, South Carolina 29203

The result of our review of dealership personnel interviewed during the Toyota dealership visits was mostly poor, as regards providing useful information about the Toyota warranty dispute mechanism in response to our inquiries concerning customer options when the customer is experiencing warranty disputes. Some Toyota dealerships' personnel gave us inaccurate information in response to our inquiries about a customer's warranty dispute options generally, and also specifically about the NCDS dispute settlement program. No Toyota dealers in Ohio provided any useful and accurate information about arbitration and NCDS. One, service advisor in Ohio was unaware that dispute settlement program sponsored by Toyota even existed. Another Ohio advisor made two seriously inaccurate representations. He said the following:

"You have to have had three failed repair attempts to go Lemon Law," and 2) "It (dispute resolution or arbitration) has to go through the selling dealer."

Obviously, both of the above representations are false.

A South Carolina service advisor made the following false representation:

"To go Lemon Law you got to be in the first 4000 miles."

Another South Carolina service advisor, mistakenly said,

"For arbitration, you have to go through Toyota Corporate."

Representations of dealer's service advisors were consistently poor this year, as contrasted with last year's report, wherein we reported the following:

"At one Florida dealership we were given useful information concerning auto-lemon laws, but nothing about the manufacturer sponsored dispute resolution program administered by NCDS."

Also in last year's report we included this:

"One dealer representative incorrectly said the customer problem would need to have three unsuccessful repairs for exactly the same problem to be able to go to arbitration. Another employee in the service department incorrectly said "the vehicle in question had to be less than two years old" to qualify for arbitration. At another dealer, the service representative we interviewed, told us to look in the glove box and then look for a booklet with a lemon on it for information on

arbitration. Of course, this doesn't meet the requirements of the Magnuson-Moss Warranty Act's Rule 703 requirement that manufacturer's make customers with a warranty dispute aware of their sponsored Mechanism and how to file a claim with the Mechanism."

"In a prior audit we referenced one Michigan dealership's response to our inquiry which was excellent. The employee showed us an Owner's Manual and pointed out the section referencing the NCDS Dispute Settlement program [arbitration] and how a customer with a warranty dispute can initiate a review of their complaint. Other Toyota dealers should consider adopting the Michigan dealer's response to our inquiries."

We have said in prior reports that:

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

This year (2016 for the 2015 report) we visited the following Toyota dealerships:

Village Toyota
2431 S. Suncoast Blvd.
Homosassa, Florida 34448

Steve Landers Toyota
10005 Colonel Glenn Rd.
Little Rock, Arkansas 72204

The results of our visit to these dealership service departments seeking information about arbitration or dispute settlement programs were uniformly disappointing. Neither of these two dealerships provided any useful information about the NCDS dispute settlement Mechanism.

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

There is a toll-free phone number to the Toyota Customer Assistance Center that may offer assistance to customers in terms of the "making customers aware" requirement. This office is designed to facilitate an open line of communication between the servicing dealer, Toyota, and the customer. The toll-free line facilitates the NCDS by providing NCDS information to those who specifically

request information about arbitration. We contacted the number and were referred to the glove box packet and the specific manual which contains a NCDS application form. The primary objective of the Toyota Customer Assistance Center is to keep the customer and Toyota working together to resolve warranty-related problems. This facet of the program operates consistent with § 703.2(d) which allows:

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

The information dissemination methods employed by Toyota together with the number of applications filed nationally with NCDS in the last three audited years: 1,505 claims filed in 2012, 1,719 claims filed in 2013, 1,854 claims filed in 2014, and 2,820 in 2015 amounting to approximately 8,000 claims filed in the course of the last four years, the majority of which were filed by Toyota customers. This demonstrates that many Toyota customers were made aware of the program, and for these customers access is obvious.

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

Our visits to dealerships suggests that customers who seek assistance from their salespersons are unlikely to receive any useful information about the NCDS. Few of the salespeople we interviewed appeared to have any knowledge of the NCDS or arbitration options in general.

We feel obligated to reiterate that the party who is in the best position to communicate with customers, at most junctures in the warranty repair context, is the servicing dealer. Unfortunately, dealers who wish to ignore their role in facilitating "fair and expeditious" warranty dispute resolution may do so with regulatory impunity, notwithstanding the efforts of Toyota.

We note here that manufacturers' difficulties in complying with this requirement are related in some respects to uncertainty as to the regulation's intent about when the customer is to be informed. A better information dissemination strategy could be developed if regulators provided manufacturers with an operational definition of the phrase, " ... **at the time consumers experience warranty disputes.**

DISCREPANCIES:

None, with the same qualifier given immediately above.

REQUIREMENT: § 703.7 (b) (3)(I)

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

FINDINGS:

The FINDINGS for this section are arranged as follows:

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

FINDINGS:

1) Forms

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

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

We said in our last few reports the following:

10. We note that the *Customer Claim Form* solicits some information that raises questions about the purpose and appropriateness of some questions in this regulated arbitration process. For example, "Are your loan payments current? Yes - No." We are hard-pressed to see what this question might have to do with the arbitrator's ability to render a decision, or on NCDS' ability to process the matter. Moreover, Rule § 703.5 (c) says: "The Mechanism shall not require any information not reasonably necessary to decide the dispute." Although each manufacturer uses their own *Customer Claim Form* seeking different information from their customers, NCDS requires only that information required by the Magnuson-Moss federal statute and the related Rule 703. Superfluous inquiries then should not be included on the *Customer Claim* forms.

“We note that the *Customer Claim Form* solicits some information that raises questions about the purpose and appropriateness of some questions in this regulated arbitration process. For example, “Are your loan payments current? Yes - No.” We are hard-pressed to see what this question might have to do with the arbitrator’s ability to render a decision, or on NCDS’ ability to process the matter. Moreover, Rule § 703.5 (c) says: “The Mechanism shall not require any information not reasonably necessary to decide the dispute.” Although each manufacturer uses their own *Customer Claim Form* seeking different information from their customers, NCDS requires only that information required by the Magnuson-Moss federal statute and the related Rule 703. Superfluous inquiries then should not be included on the Customer Claim forms.”

NCDS has informed us that the claim forms that included these superfluous questions have been revised and the inappropriate inquiries are no longer a part of the form.

DISCREPANCIES:

NONE

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

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

2) Investigations

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

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

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

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

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

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

NCDS has addressed the needs related to the concerns referred to above and developed a regular newsletter entitled "NCDS Arbitrator Bulletin." This newsletter is supplemented, on an as needed basis, by such special editions as the one directed to the NCDS California arbitrators which addresses California's unique regulatory requirements.

The general newsletter addresses specific issues that arise from staff's regular observations of arbitrators' needs or program innovations like their coaching and mentoring opportunities for newly added arbitrators. We reviewed several of these newsletters and found them both accurate and of great potential utility.

Other areas to be investigated include:

number of repair attempts;

length of repair periods; and

possibility of unreasonable use of the product.

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

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

In the event that misuse is asserted or suggested as a possibility in the *Manufacturer's Response Form*, the customer is able to submit supplemental information challenging or explaining his/her perspective on the issue. Rather than delay the process or put the customer in the position of having to present a response on short notice, customers could be advised at the onset of the process that the issue might come up in the arbitrator(s)/board's deliberations. The fact that customers receive copies of the statements from the company in advance of the hearings, allowing them the opportunity to challenge any such suggestion, is not, in itself, sufficient to address our concern. Unfortunately, not all questions of possible misuse arise in response to the *Manufacturer's Response Form*. The subject of abuse or misuse of the product may only emerge during the arbitrator(s)/board's deliberations. Based on our interviews with arbitrators, an arbitrator may suspect the possibility of abuse or misuse without having been asserted in the paperwork. In such cases, "misuse" may not be the primary or deciding factor, but can still be a significant factor. Because of its secondary importance, however, it may not be detailed in the decision nor reflected in the fairly brief communications announcing the arbitrator(s) decision. Thus, a customer who may have important rebuttal information on the subject of suspected abuse, might not be aware that abuse of the vehicle had become an issue.

FINDINGS:

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

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

3) **Mediation**¹¹

This facet of the arbitration program was historically carried out exclusively by the manufacturer or its dealers. The NCDS process attempts to mediate the case prior to arbitration by having a trained staff person contact the customer and the

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

applicable manufacturer where the facts as they receive them appear to warrant. When mediation fails to result in a settlement, the matter is arbitrated and a decision rendered.

The mediation function envisioned by rule 703 is governed, at least in part, by section 703.2(d) which allows:

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

FINDINGS:

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

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

4) Follow-up

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

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

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

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

The recording of performance and maintenance of the AWAP records were reviewed by our inspection of case files provided by NCDS. We reviewed a random sample of case files for each region selected for the audit. The sample is drawn from the computer system maintained by NCDS.

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

DISCREPANCIES:

None

5) Dispute Resolution

The AWAP uses three arbitration formats. The three formats are: a) a board consisting of three arbitrators; b) individual arbitrators or, c) a panel of three arbitrators for Lexus cases. Customers, other than Lexus may opt to use either a) or b) formats. Importantly, the board process is one wherein the decisions are made after considering only documentary evidence and excludes oral presentation. Of course, customers may opt for a one-member (arbitrator) hearing, wherein oral presentations may be made by the parties. When using a board, the "Members" (i.e., arbitrators) are each provided with a case file that contains pertinent facts gathered by the program. The three arbitrators include: a consumer advocate, a technical member, and a member of the general public. Two members constitute a quorum and the board relies on documents provided by the parties. The arbitrators meet to discuss the facts presented to them and then render a decision. Most board decisions are arrived at by consensus, but sometimes the members resort to a vote to close the matter. The board may request additional information, usually in the form of an independent inspection conducted by a specialist in auto mechanics. Occasionally, the board asks for Technical Service Bulletin information, although technical questions can often be answered by the board's technical member.¹²

In the AWAP formats using a documents only board and single arbitrators, hearings are open, as required by Rule 703, to observers, including the disputing parties. The Lexus panel process is not open to observers. We have said in all our recent reports:

It should be noted however, that we HAVE audited a Lexus hearing in Houston, Texas as part of the national Rule 703 audit report and discovered that Lexus has elected to have their cases heard by a three-member panel which takes testimony/evidence from each of the parties and then dismisses the parties while they deliberate and decide the case. We believe this approach is inconsistent with the requirements of Federal Trade Commission Rule 703.8 (d) which provides that meetings of the members to hear and decide disputes shall be open to observers on reasonable and nondiscriminatory terms. Further, the Rule's, *Statement of Basis and Purpose* (pp. 60215, Federal

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

Register Vol. 40, no. 251) explains that the one case where they allow for the exclusion of persons to the meeting is limited to non-party observers. The FTC further emphasizes the importance of the parties being present to provide the scrutiny function intended. Lexus and NCDS will need to re-visit this aspect of their program to ensure compliance. [NOTE: NCDS has interpreted the regulatory language differently and administers the program so that actual deliberation is conducted by the arbitrators without the presence of the parties.]

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

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

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

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

FINDINGS:

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

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

Arbitrators are volunteers whose only compensation is a nominal per diem and mileage expense allowance.¹³ Arbitrators are not required by the program to have any established expertise in the complexities of automobile warranty law at the time of their appointment. Fairness, as envisioned by state policy makers,

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

however, requires that arbitrators have some level of knowledge of the state and federal regulations that set forth the basic rights and responsibilities of the parties to a warranty dispute.

Our monitoring of arbitration hearings and interviewing of arbitrators in virtually all such programs has continually underscored the importance of on-going arbitrator training. Without regular input and feedback mechanisms, arbitrators are occasionally uncertain about their rights and responsibilities. Since the AWAP hearings/meetings are rarely attended by people other than the parties and a manufacturer representative, the arbitrators operate in a kind of self-imposed vacuum, without direct access to a feedback mechanism other than an occasional independent vehicle inspection report. In addition, because arbitrators are volunteers who usually participate in the AWAP process infrequently, a mistake made at one hearing can easily become an institutionalized error that could subject the program to a possible compliance review. On-going training would greatly alleviate these concerns for arbitrators.

The NCDS program has also informed us that they continue their efforts to address the "boilerplate" problem, alluded to in previous reports, including explanations provided at arbitrator training to ensure that arbitrators understand that the "Lemon Law" thresholds for establishing presumptions do not serve as a threshold for their awarding "buy back" relief. At our review of training some time ago, we confirmed that these efforts had some noteworthy effects. Our findings set forth in our last few years' reports are, in many respects, consistent with our experience with this year's Texas arbitration training. We have had discussions, however, with NCDS staff concerning the balance in focus between the federal Magnuson-Moss Warranty Act and its related Administrative Rules versus the state Automobile "Lemon-Laws." [For details see the training section of this report.]

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

DISCREPANCIES:

None, with the caveats noted in the above section.

SECTION III

Field Audit of Three Geographical Areas

I. Arkansas (Oklahoma region)

A. Case Load and Basic Statistics

In Arkansas, NCDS handled 34 AWAP cases in 2015.

Of the total number of 2015 Arkansas cases, 2 (5.8%) were "no-jurisdiction" cases. There were 26 cases arbitrated (81%) of the 32 in-jurisdiction cases, and 2 cases were mediated. Of the 26 cases arbitrated, 24 of them (75%) were decided "adverse to the consumer." The average number of days for handling a 2015 case in Arkansas was 33 days. This compares with an average of 37 days handling nationwide.

B. Record-keeping, Accuracy and Completeness

We requested a 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. Generally, the records were complete and available for audit.

We analyzed several NCDS-generated statistical reports covering the 2015 NCDS' Operations. Those reports are available from Ms Debbie Lech, Operations Manager, National Center for Dispute Settlement, 12900 Hall Road, Suite 401, Sterling Heights, MI 48313.

The results of the random sample inspection of case file folders are detailed below:

§ 703.6 (a) (1-12)

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

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

FINDINGS:

The auditor examined the case file folders extracted from all 2015 "in-jurisdiction" case files. We examined each sample file with respect to the items enumerated in subsections 1 through 5 with the following results:

- 1) All case files contained the customer's name, address, and telephone number.
- 2) The requirement is met. The name and address of the warrantor's contact person is included with the initial correspondence that the customer receives from the program. In addition, the various regional office contact addresses and phone number is included in each Owner's Manual that accompanies all new vehicles when they are delivered. The contact person is so generally known as to not require it to be placed in each individual case file.
- 3) All case files inspected contain the make and vehicle identification number (VIN) of the vehicle. It is usually found in the customer application form, the richest source of information within most files, but the vehicle make and VIN is often located in documents throughout the file. As a result, cases are seldom, if ever, delayed because the customer has failed to provide the VIN when filing their application.
- 4) All case files inspected contain this information.
- 5) Many files contained letters and additional documents, but since there is no standard by which to measure this item, we determined this subsection to be "not applicable."

§ 703.6 (a) (1-12) [Continued]

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

FINDINGS:

All files for cases that were arbitrated contained the information required by sections six and eight. Oral presentations are a basic component of the NCDS program in this jurisdiction, and section seven requires summaries of the oral

presentations to be placed in the case file. In the case files we reviewed for this region, the record-keeping requirements were met.

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

Each applicable case file contained a copy of the decision letter sent to the customer. This letter serves as both the decision and the disclosure of the decision.

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

FINDINGS:

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

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

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

FINDINGS:

Section 11 above is not applicable for purposes of the audit because there is no practical means by which to verify the completeness and accuracy of such possible additions to the files. Section 12, however, appears to mandate that a summary form be created whenever the arbitrator receives an oral communication that may have any bearing on the matter in dispute from either party. Of course, most such communications come in the form of oral presentations by the parties at the hearing, in which case the communications are summarized in the arbitrator's decision. All summaries are now included in the case file.

CONCLUSIONS:

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

C. Case File Records (4 yrs. 2012-2015)¹⁴

§ 703.6 (f)

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

A random sample of case numbers from the years 2012 through 2015 was drawn from the NCDS data base program. Our inspection of this sample verified that they were being maintained per requirement § 703.6(f).

These particular closed files are stored at an off-site record storage facility of the NCDS suburban Detroit, Michigan, office. We did not inspect the off-site facility for this year's audit. The files we viewed, however, were intact and readily available for inspection. The random sample inspection of case files drawn from all cases in the four-year universe of cases validated the program's maintenance of these records as required.

D. Arbitration/Hearing Records

i. Case file folders

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

ii. Arbitrator Biographies

The arbitrator biographies for the national program are available for review from Debbie Lech, Operations Manager, National Center For Dispute Settlement, 12900 Hall Road, Suite 401, Sterling Heights, MI 48313. The biographies are thorough and current. The list of arbitrators for each district includes the dates of their appointments.

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

E. Hearing Process

The AWAP hearing was held at the Landers Chrysler Dodge Jeep dealership in Benton, Arkansas. The hearing was scheduled for August 2, 2016 and the hearing began as scheduled at 9:30 a.m.

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

Although the hearing room was too small for accommodating the hearing comfortably, the hearing was able to be held nonetheless. Attending were the arbitrator, the auditor, a dealership service department representative, and the two customers.

ii. Openness of 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. The hearing room would accommodate any likely visitors.

iii. Efficiency of Meeting

The arbitrator's case file appeared complete. He informed the parties about the basic rules of the program and also explained that both parties would be able to ask any questions following the opposing party's presentation.

The arbitrator then proceeded to allow each party to present their case. Both the customer and the manufacturer's representative made oral presentations. Following the presentations, the arbitrator accompanied the Dealer's Service Manager and the customers on a test drive.

The arbitrator, for the most part, demonstrated he knew how to properly conduct a hearing. After determining that no one had anything further to add, the arbitrator declared the hearing closed.

iv. Hearing

The hearing was properly conducted in all but one aspect which was that he incorrectly informed the parties that if he was to award a repurchase (i.e. refund) that there would be a mileage discount applied in calculating the refund amount. Mileage discounts, by convention, are only applied at the arbitrator's discretion based on the facts of the case.

All parties were afforded an opportunity to present their versions of the case. Following each party's presentation, the

other party was given an opportunity to clarify or challenge, as was appropriate.

v. Board/Arbitrator Decisions

We reviewed this case's decision and a sample of NCDS decisions from this region rendered in 2015 while conducting our on-site visit to the suburban Detroit headquarters of NCDS. Overall, the decisions we reviewed were reasonable and consistent with the facts of the case, at least insofar as the case file is concerned. The decision in this particular case was also reasonably consistent with the facts as presented in the case file and those presented during the hearing.

CONCLUSION:

The AWAP, as it operates in the state of Arkansas is in substantial compliance with the Magnuson-Moss Warranty Act, and its related Administrative Rule 703. The NCDS administrative staff and the NCDS program demonstrated a clear commitment to ensure fair and expeditious resolution of warranty disputes. The administrative staff is clearly dedicated to the program's mission and demonstrates a high degree of professionalism.

II. Florida

A. Case Load and Basic Statistics

In Florida, NCDS handled 104 AWAP cases in 2015.

Of the total number of 2015 Florida cases, No cases filed were determined to be "no-jurisdiction" cases. There were 70 cases arbitrated (67.3%) of the 32 in-jurisdiction cases, and 5 cases were mediated. Of the 68 cases arbitrated,¹⁵ 64 of them (94%) were decided "adverse to the consumer." The average number of days for handling a 2015 case in Florida was 33 days. This compares with an average of 37 days handling nationwide.

B. Record-keeping Accuracy and Completeness

We had a random sample of 25 Florida case files drawn from all cases closed during the audit period [2015] and examined them to determine whether they were complete and available for audit. Generally, the records were complete and available for audit.

We analyzed several NCDS statistical reports covering 2015 NCDS' arbitration program operations, including some that are Florida-specific. The material required to be maintained and reported by § 5J - 11.010(2) (b) and (c) above was submitted to us in a document cross-referencing the Florida regulatory requirement, Chapter 5J 11.010. As such, the requirement is met.¹⁶

The above referenced reports are available upon request from Ms Debbie Lech, Manager of Dispute Resolution Operations, National Center For Dispute Settlement, 12900 Hall Road, Suite 401, Sterling Heights, MI 48313.

15. Two of the cases scheduled for arbitration were withdrawn by the consumer.

16. As pointed out in numerous earlier reports, the numbers reported herein will sometimes appear to be at variance with numbers appearing elsewhere. Most likely this is due to numbers reported according to subtle differing requirements of federal and state regulatory reporting mandates. In some cases, a variance may be the result of double-counting of survey responses.

The Florida audit includes a review of an individual arbitration hearing wherein personal presentations are made and the applicable evidence submitted by the parties in light of the applicable Federal, and in some cases State Law. The hearing was held at Phillips Toyota Dealership, 8629 US Hwy 441, Leesburg, Florida, 34788, February 26, 2016, at 10:00 a.m.

In addition, we reviewed a sample of case files for Florida which are stored at national headquarters of the National Center for Dispute Settlement (NCDS), in Sterling Heights, [Detroit area] Michigan.

§ 703.6 (a)(1-12)

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

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

FINDINGS:

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

- 1) All case files contained the customer's name, address, and telephone number.
- 2) The requirement is met. The name and address of the warrantor's contact person is included with the initial correspondence that the customer receives from the program. In addition, the various manufacturer's contact address and phone number is included in each Owner's Manual that accompanies all new vehicles when they are delivered. The contact person is so generally known as to not require it to be placed in each individual case file.
- 3) All case files inspected contain the make and vehicle identification number (VIN) of the vehicle. This information is generally found in the customer application and in a number of other documents in the file. As a result, cases are rarely delayed simply because the customer fails to include the VIN in the application.
- 4) All case files inspected contain this information. Not all cases necessitate a decision letter, but where a decision was rendered, the appropriate notification letter was present.

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

§ 703.6(a)

6) All other evidence collected by the Mechanism relating to the dispute, including summaries of relevant and material portions of telephone calls and meetings between the Mechanism and any other person (including consultants described in section 703.4(b) of this part;

7) A summary of any relevant and material information presented by either party at an oral presentation;

8) The decision of the members including information as to date, time and place of meeting and the identity of members voting; or information on any other resolution.

FINDINGS:

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

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

FINDINGS:

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

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

FINDINGS:

The warrantor's intended action(s) and performance are inextricably linked. Thus, we validate this item in terms of performance verification. Performance verification is a function carried out by NCDS. This office sends a survey to the customer following receipt of the customer's acceptance of those decisions mandating some action on the part of the manufacturer to ask, among other things, whether any required performance has taken place. Customers are asked to return the survey to the office of NCDS. As noted elsewhere, we found few returned

survey forms in the case files. In the past, we have stated that the absence of performance verification forms in the case file does not constitute a regulatory inconsistency since performance verification information may not be available from the customer. By mailing a performance verification survey, NCDS goes as far as can be expected in determining whether arbitration decisions are, in fact, being performed. It seems entirely appropriate for the program to assume performance of the decision has taken place when the customer performance survey is not returned. For those who may be skeptical about such important assumptions, it should be remembered that even if a manufacturer engaged in a programmatic attempt to avoid performing arbitration decisions, that fact would, of course, emerge in the context of our national random survey of customers who have used the program. Performance verification status should and does appear in the case file as is indicated by sections 11 and 12 below.

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

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

Section 11 above is not applicable for purposes of the audit because there is no practical means by which to verify the completeness and accuracy of such possible additions to the files. Section 12, however, appears to mandate that a summary form be created whenever the arbitrator receives an oral communication that may have any bearing on the matter in dispute from either party. Of course, most such communications come in the form of oral presentations by the parties at the hearing, in which case the communications are summarized in the arbitrator's decision. All summaries are now included in the case file.

CONCLUSIONS:

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

Note: Over the course of several years, the review of case files reveal anomalies that, when discussed with staff of the program, demonstrate significant problems that then have resulted in modifications to the program. These modifications in the program assist in maintaining the program's compliance status relative to the various federal and state regulations.

C. Case File Records (4 yrs. 2012-2015)

§ 703.6 (f)

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

The closed files are stored at an off-site record storage facility of the NCDS Sterling Heights [Suburban Detroit], Michigan, office. We

did not inspect the off-site facility for this year's audit. The files we viewed were intact and readily available for inspection. We inspected a random sample inspection of case files drawn from all cases in the four-year universe of cases from Florida. Our review validated the program's maintenance of these records as required.

D. Arbitration/Hearing Records

i. Case file folders

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

ii. Arbitrator Biographies

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

E. Hearing Process

The AWAP hearing was held at Phillips Toyota Dealership, 8629 US Hwy 441, Leesburg, Florida, 34788, February 26, 2016, at 10:00 a.m.

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

The hearing room selected was of adequate size for accommodating the hearing including any reasonable number of visitors. The attendees included the arbitrator, the customer, two Toyota manufacturer representatives, and the auditor.

ii. Openness of Hearing

The meeting began at 10 a.m. as scheduled. Upon inquiry, the arbitrator explained to the auditor his understanding that the hearings are open and can be attended by observers who agree to abide by the program's rules.

iii. Efficiency of Meeting

The arbitrator's case file was complete with all required documents. The arbitrator demonstrated that he generally knew how to properly conduct a hearing, but he also said that as part of the hearing that there could be a test drive, if neither party requests a test drive. The arbitrator proceeded to allow each party to present their case, after having explained that each party's presentation should not be interrupted by the opposing party.

The manufacturer's presentation was not conducted properly. One of the two manufacturer representatives was obviously using the hearing as a training exercise for the other manufacturer's representative, and the more experienced representative asked the other representative questions which left the impression of soliciting a predetermined response. No real harm resulted from this odd process. The arbitrator could easily have dispensed with this unnecessary time consuming process had he explained that each party may make a presentation, and then identifying the individual who would be presenting their case.

A hearing of this sort should not be used by one of the parties as a training exercise. In cases where a couple appear, it is best to ask one of the couple to join the participants at the table and have the other person sit apart from the main participants. Witnesses can of course be invited to come to the table for purposes of giving testimony, but should depart after both parties are afforded an opportunity to examine, or question, the witness.

In cases involving a couple, only one individual should present their case. Following that persons presentation, the Arbitrator should turn to the other person comprising the couple, and ask if there is anything they would like to add or correct in their presentation? This method ensures that all pertinent information is presented.

iv. Hearing

The hearing was, in the main, properly conducted. All parties were afforded an opportunity to present their versions of the case. Following each party's presentation, the other party was given an opportunity to ask clarification questions and then present arguments in rebuttal, as was appropriate.

The arbitrator inspected the customer's vehicle near the conclusion of the hearing and then participated in a test drive of the customer's vehicle along with the manufacturer's representatives. After the inspection was complete, all those participating returned to the hearing room.

The auditor does not second guess arbitration decisions, however, the auditor does assess the decision making process. In this case, the decision statement fails to provide a reasonable justification for the decision rendered. The arbitrator's decision to deny the customer's request for replacement vehicle, says:

"I have reached this decision because the Customer failed to provide sufficient proofs that a defect exists."

“I have reached this decision because the Customer failed to provide sufficient proofs that a defect exists.”

This statement is inappropriate because the manufacturer admitted that a non-conformity existed when, in response to the customer’s repeated requests for a warranty repair, the manufacturer called in a Technical advisor and, consequently, as the arbitrator pointed out in his decision, the manufacturer said:

“Upon further investigation by a Toyota Field Technical Specialist, the Service department was advised that the problem emanated from the computer (ECU) in the transmission. This was replaced under the warranty...”
(Emphasis added)

Now, this repair attempt was after at least four other failed attempts by the dealer to properly diagnose and repair the later admitted “problem” (i.e., non-conformity). By the time this repair attempt took place, the customer’s case was already subject to the state’s lemon law threshold for constituting a *presumptive* Lemon.

Following the test drive, the hearing resumed and the parties made their concluding remarks.

The arbitrator thereafter announced that the hearing was concluded.

v. Board/Arbitrator Decisions

We reviewed the arbitrator’s decision, and a sample of Florida NCDS decisions rendered in 2015. The decisions we reviewed were reasonable and consistent with the facts of the case. The rationale for the decision in this particular case is irrational on its face for the reason discussed above.

This hearing is a study worthy of use in arbitrator training as an example of an inappropriate hearing process and, in this case, decision-writing. The other decisions we reviewed were generally consistent with the facts as presented in the case files.

Conclusion:

The AWAP in Florida, is in substantial compliance with Rule 703 notwithstanding the poorly written decision we audited this year. The NCDS administrative staff and the NCDS program demonstrated a clear commitment to ensure fair and expeditious resolution of warranty disputes. The administrative staff is clearly dedicated to the program’s mission and demonstrates a high degree of professionalism.

III. Illinois

A. Case Load and Basic Statistics

The Illinois compilations identifies 99 total disputes closed for 2015. Of these 17 cases (17% of all disputes) were beyond jurisdiction for NCDS' arbitration program review. Of the remaining 82 cases, only one was mediated, and (85.3% of all in-jurisdiction disputes) were arbitrated. No case was reported as "pending" as of the date the report was originally generated. The regulations do not require reporting the number of cases that are voluntarily withdrawn by the customer. These cases typically account for why the numbers reported pursuant to the regulatory requirement may not sum to the total number of cases filed. The average number of days for handling a 2015 case in Illinois was 30.

We analyzed a random sample of cases drawn from all 2015 Illinois cases closed during the audit period and examined the cases provided to determine whether they were complete and available for audit. Files were reviewed for accuracy and completeness. The findings of that review are set forth below.

The above referenced reports are available upon request from Ms Debbie Lech, Manager of Dispute Resolution Operations, National Center For Dispute Settlement, 12900 Hall Road, Suite 401, Sterling Heights, MI 48313.

B. Record-keeping Accuracy and Completeness

We had a random sample of Illinois case files drawn from all cases closed during the audit period [2015] and examined them to determine whether they were complete and available for audit. Generally, the records were complete and available for audit.

§ 703.6 (a)(1-12)

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

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

FINDINGS:

The auditor examined a sample of case file folders randomly extracted from all 2015 "in-jurisdiction" case files. We examined each sample file with respect to the items enumerated in subsections 1 through 5, with the following results:

- 1) All case files contained the customer's name, address, and telephone number.
- 2) The requirement is met. The name and address of the warrantor's contact person is included with the initial correspondence that the customer receives from the program. In addition, the manufacturer's contact address and phone number is included in each Owner's Manual that accompanies all new vehicles when they are delivered. The contact person is so generally known as to not require it to be placed in each individual case file.
- 3) All case files inspected contain the make and vehicle identification number (VIN) of the vehicle. This information is generally found in the customer application and in a number of other documents in the file. As a result, cases are rarely delayed simply because the customer fails to include the VIN in the application.
- 4) All case files inspected contain this information. Not all cases necessitate a decision letter, but where a decision was rendered, the appropriate notification letter was present.
- 5) Many files contained letters and additional documents, but since there is no standard by which to measure this item, we determined this subsection to be "not applicable."

§ 703.6 (a) [continued]

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

FINDINGS:

All files for cases that were arbitrated contained the information required by sections (6) through (8). Oral presentations are a basic component of the NCDS program in this jurisdiction, and section (7) requires summaries of the oral presentations to be placed in the case file as part of the arbitrator's decision. In the case files we reviewed for this region, the record-keeping requirements embodied in subsections 6-8 were met.

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

FINDINGS:

All applicable case files contain a letter from the arbitrator announcing his/her decision.¹⁷

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

FINDINGS:

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

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

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

Section 11 above is not applicable for purposes of the audit because there is no practical means by which to verify the completeness and accuracy of such possible additions to the files. Section 12, however, appears to mandate that a summary form be created whenever the arbitrator receives an oral communication that may have any bearing on the matter in dispute from either party. Of course, most such communications come in the form of oral presentations by the parties at the hearing, in which case the communications are summarized in the arbitrator's decision. All summaries are now included in the case file.

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

CONCLUSIONS:

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

C. Case File Records (4 yrs. 2012-2015)

§ 703.6 (f)

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

We reviewed a random sample of 25 case numbers from the years 2012 through 2015 drawn from NCDS' complete data base program. We checked the sample case files to verify that they were being maintained per requirement § 703.6(f).

The closed files are stored at an off-site record storage facility of the NCDS Sterling Heights, Michigan, office. We did not inspect the off-site facility for this year's audit. The files we reviewed appeared intact and were readily available for inspection. The random sample inspection of case files drawn from all cases in the four-year universe of cases validated the program's maintenance of these records as required.

D. Arbitration/Hearing Records

i. Case file folders

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

ii. Arbitrator Biographies

The arbitrator biographies for the national program are available for review from Debbie Lech, Operations Manager, National Center For Dispute Settlement at their headquarters in Sterling Heights (Detroit), Michigan. The biographies are thorough and current. The list of arbitrators for each district includes the dates of their appointments.

E. Hearing Process

The hearing was held at the Tyson Chrysler-Jeep-Dodge Dealership on July 28, 2016 at 10:00 a.m. in Shorewood, Illinois.

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

The hearing room selected was barely adequate to accommodate three guest manufacturer representatives. The attendees also included the arbitrator, the customers, and the auditor.

ii. Openness of Meeting

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

iii. Efficiency of Meeting

The arbitrator's case file appeared complete. He informed the parties about the rules of the program that govern hearings and explained the procedures that he would follow. In addition, he explained that the parties would be able to ask appropriate questions of the opposing party prior to concluding the hearing. The arbitrator, appropriately described what he believed was the customer's requested relief.

Each party was allowed to present their case without interruption. Both the customer and a manufacturer's representative made oral presentations. The customer requested a repurchase of the vehicle.

The arbitrator demonstrated throughout the hearing that he knew how to properly conduct a hearing. After determining that the parties had nothing further to add, he declared the hearing closed.

iv. Hearing Process

The hearing was properly conducted throughout. All parties were afforded an opportunity to present their versions of the case. Following each party's presentation, the opposing party was given an opportunity to ask clarification questions and then present any rebuttal they chose, as was appropriate. There was no inspection of the vehicle because it was not present at the dealership. The Manufacturer claimed that the vehicle had been re-possessed by the finance company, but offered no evidence to support that claim. The customers said they had no idea where the vehicle was stored, but that they had directed that it be towed to the dealership some time ago.

v. Board/Arbitrator Decisions

We reviewed this case's decision and a sample of Illinois hearing decisions for the calendar year 2015. The sample of

v. Board/Arbitrator Decisions

We reviewed this case's decision and a sample of Illinois hearing decisions for the calendar year 2015. The sample of case decisions we reviewed were generally reasonable and consistent with the facts of the cases involved.

The actual outcome of the decision in regards to this hearing was justified and consistent with the evidence presented despite the fact that case was riddled with legal complexities. The arbitrator exercised good judgment by proceeding with the scheduled hearing despite claims being expressed even before the hearing began that the case was out-of-jurisdiction. By not judging the jurisdiction question prior to holding the hearing, the issue of jurisdiction was allowed to become evidence. Moreover, once the claim was made that the customers no longer had possession of the vehicle, the customers did not contest this assertion.

CONCLUSION:

We conclude that the AWAP, as it operates in the state of Illinois, is in substantial compliance with Magnuson-Moss Warranty Act and administrative Rule 703.

The NCDS administrative staff and the NCDS program demonstrated a clear commitment to ensure fair and expeditious resolution of warranty disputes. The administrative staff is clearly dedicated to the program's mission and demonstrates a high degree of professionalism.

SECTION IV

Arbitration Training

There is no specific language in Rule 703 requiring the training of arbitrators, but there is in the Ohio governing statute and its related administrative rule. In addition, there are several general requirements for ensuring that the program do whatever is necessary to provide customers with an opportunity for fair and expeditious resolution of warranty disputes.

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

FINDINGS:

The NCDS national arbitrator training program was conducted from March 18 -20, 2016 in Irving (Dallas), Texas, at the Westin Dallas/Ft. Worth Airport.

The training was conducted by NCDS staff with legal augmentation provided by Mary Bedikian on regulatory matters. The training program attendees included the NCDS management staff, NCDS trainers, current arbitrators, and a Claverhouse Associates senior auditor. Ms. Bedikian is on the faculty at Michigan State University's Law School and has a long association with various arbitration associations. The staff's day-to-day familiarity with the applicable federal and state statutes and related administrative Rules allowed them to provide useful training that was accurate and complete. As is typical, the regulatory aspects of training is conducted by an attorney having familiarity with the historical development of and the intricate interrelationships of the applicable federal and state statutes.

The weekend training program opened with an introduction of trainers, followed by an overview of the training agenda. The online portal system was demonstrated along with a review of automotive terminology significant to the auto arbitration process.

Overall, the training once again appears to have left trainees with an opportunity to develop a good grasp of their responsibilities as arbitrators. As was true at last year's training, trainees were presented with information that makes it clear for those customers who purchase a vehicle with a substantial non-conformity that the manufacturer fails to cure in a reasonable number of attempts should probably receive the relief they are entitled to under the terms of the Magnuson-Moss Warranty Act or the appropriate state automobile warranty statute.

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

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

The second day of training was very comprehensive starting with the basics of arbitration including, but not limited to, regulatory references and related laws. NCDS's arbitration administrative process was carefully detailed followed by procedural steps in preparing for a hearing. The actual steps of conducting a hearing were covered and then practiced in mock arbitration hearings in group format.

NCDS staff presented a session devoted, in the main, to the arbitrator's duty to disclose possible conflicts of interest where applicable. In addition, arbitrators learned about the process for addressing potential disqualification of an arbitrator, as well as ethical issues pertaining to arbitrators.

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

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

We have pointed out in previous audits the following:

“On several occasions, trainees interrupt the trainers and pose very broad and theoretical questions that result in substantial time being taken to address numerous fact situations that are rarely, if ever, experienced. It is natural for such questions to arise, but relegating them to another time seems more appropriate. Allowing these kind of diversions, can take trainees attention away from the main subjects under consideration and reduce the likelihood of important retention of the subjects set forth in the training agenda.”

Trainers, once again brought the concern to the attention of the trainees, which had a noticeably helpful effect. This year's experience was better than what had transpired in the recent past, but clearly participants will predictably raise distracting hypothetical scenarios if not admonished by the trainers in the

introductory comments. Any failure to monitor this rather predictable inclination of trainees, can negatively affect the over-all quality of the training by encroaching on other subjects of paramount importance. Our comments in this regard, are merely advisory.

On the last day of training, the trainers allowed for drafting decisions and all its associated elements. Trainees applied their training principles and acquired tools for writing better decisions.

Lastly, the program ended with an exam, an evaluation of the training program and trainees were given a take home exam which they return to the staff. The exams are then reviewed to determine if the arbitrator appeared to grasp the essentials covered at training. This is supplemented with periodic refresher training that takes place every other year. Trainees had earlier been advised that NCDS offers on-line course supplemental instruction to all its arbitrators.

The 2016 training session was a national refresher program. It was designed to address issues that had arisen during the recent past that demonstrated a need for greater clarification for arbitrators. Issues addressed include: affirmative defenses, jurisdictional determination, due-process requirements, collateral charges, mileage off-set determination issues (where applicable) and defining the limits of arbitration in the hearing process.

Below we have included an important point made in recent past audit reports that NCDS trainers need to keep in mind:

"On one particular issue, we disagree with a trainer's representations that seemed to suggest that improper repairs, or incompetent repairs by a dealer's service department, is a valid defense for manufacturers in this venue. We disagree, in general, with this representation. Dealers, generally, serve as the manufacturers agents, for purposes of carrying out warranty repairs. If this were a generally valid defense to claims brought under the Magnuson-Moss Warranty Act, then, for all intents and purposes, the entire intent of the act would be obviated. Manufacturer's opportunity to cure a defect, or non-conformity, would only be triggered when the manufacturers' assigned personnel had failed to keep the promise to cure defects under the warranty. In effect, customers could no longer claim that they had been subjected to an unreasonable number of repair attempts until after they had gone through numerous repairs by the dealer's repair facility and then experienced the same or similar failed repairs by the manufacturer's employees. This outcome would, of course, be ridiculous. In this venue, the statute and the administrative Rule 703, both assume the dealer service department and the manufacturer are, operationally, one and the same. Of course, they are not technically, or legally, the same for other purposes, but they are considered the same, in this limited context [i.e., dispute resolution of Warranty repair disputes]."

CONCLUSION:

We again recommend that training personnel continue to advise participants at the onset of training sessions that all theoretical questions be written down and discussed with staff sometime after the essential regulatory and hearing mechanics have been addressed. The training

material is highly technical in many respects and difficult enough for participants to fully absorb in one weekend without adding distractions that are not likely to be practically helpful to any of the trainees. In refresher training, of course, questions that arise from actual situations were sometimes addressed and these discussions appeared to be useful.

We also recommend that arbitrator training include a discussion wherein trainers explain that dealer service departments are, in effect, agents of the manufacturers for purposes of the manufacturer carrying out their warranty obligations to cure non-conformities, and it is not a valid defense, in the NCDS proceedings for a manufacturer to claim that a dealer failed to properly repair, or cure, a non-conformity. Even if it is true that a dealer's service department performed an improper repair, or mis-diagnosed a problem, the responsibility under the Magnuson-Moss Warranty Act, is the manufacturers because the dealer's service department was selected by the manufacturer to carry out these responsibilities on their behalf. Moreover, the fact that a dealership's failure to properly diagnose a repairable non-conformity, is understandable, it is not a valid defense to a claim for a refund or for a replacement, made by a consumer against the manufacturer because a non-conformity exists which substantially impairs the vehicle's safety, value, or use. In cases where the consumer has made the vehicle available to the manufacture in order to allow them to "cure" the non-conformity, but the manufacturer, or its representative (i.e., dealer) has not cured the non-conformity in a reasonable number of attempts, the consumer has a right, under the applicable law (i.e., The Uniform Commercial Code, the Magnuson-Moss Warranty Act (including Rule 703), and by convention, consideration of the relevant state Lemon law "presumption" standards and their related mileage off-set provisions, to receive an award for a refund, or where requested by the customer, a suitable replacement vehicle provided such a replacement vehicle exists.

The auditor met with staff following last year's audit review (2015 for the 2014 audit) concerning the auditor's perceived drift in training emphasis, in one regard, which concerns the relative importance of the federal Magnuson-Moss Act and applicable state lemon-law statutes, specifically as they relate to regulated "Dispute Resolution Mechanisms" (i.e., Arbitration programs like NCDS). In our view this drift was moving toward a greater emphasis on state lemon-law statutes which technically do not govern federally regulated Dispute Resolution Mechanisms, and for that reason, ought not become a focus of training for arbitrators (i.e., "Members") involved in programs governed principally by federal law. As a follow-up to this training session, the auditor met with NCDS staff at their Michigan administrative office and expanded on the similar discussion held the previous year. Under discussion this year was current emphasis on the relative subjects of defects and non-conformities as they affect the arbitrator's decision-making.

ARBITRATION TRAINING RATING SYSTEM

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

SECTION V

National (FTC) Survey and Statistical Index Comparative Analyses

NATIONAL CENTER FOR DISPUTE SETTLEMENT AUTOMOTIVE WARRANTY PROGRAM INDICES

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

A consumer who wants to have a dispute settled by the Automobile Warranty Arbitration Program (AWAP) conducted by the National Center for Dispute Settlement (NCDS) must: (1) be the owner of a vehicle that meets certain specific age and mileage requirements; and, (2) agree to forego any legal action while the case is open with the AWAP. If a customer applies to the program, but does not meet these requirements, the case is considered "out-of-jurisdiction." Cases that are "out-of-jurisdiction" are counted as "closed." A consumer who is not satisfied with the jurisdiction decision of the program can request that the case be reviewed by a three-member arbitrator board.

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

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

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

To determine the accuracy of the AWAP's warranty dispute statistics and to gather evaluation information about the program, Claverhouse Associates contracts to conduct a

survey with customers nationally who filed disputes with the AWAP during the calendar year.

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

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

ABOUT THE STUDY

The Claverhouse study is based on data collected from 410 of the 1,719¹ users of the AWAP program nationally in 2015 whose cases were "in jurisdiction" and "closed." This number of completed surveys surpassed the initial goal of 300 completed surveys from randomly selected users of the program nationwide². Closed cases are defined as those where a decision has been made and the time for compliance has occurred.

¹ The database sent by the AWAP for conducting the survey contained 1,702 eligible cases after cases coded as "no jurisdiction" and "withdrawn" were removed. The AWAP provided a report with 2,555 cases. The cases in the AWAP indices break down as follows: 95 mediated cases (9 which the time for compliance had not occurred), 1,748 arbitrated cases (115 which the time for compliance had not occurred), 164 pending cases, and 548 "no jurisdiction" cases. **The data in this report is based only on the closed mediated and arbitrated cases – 86 mediated and 1,633 arbitrated cases for a total of 1,719.** There is a discrepancy between the number of eligible cases sent for conducting the survey (1,702) and the number of eligible cases in the statistics (1,719). The status of the 17 cases is unknown.

² Using a projected completion rate of 40 percent, a proportional random sample of 750 users of the program with email addresses (1,600 of the 1,702 users, which are 94.0 percent of all users) was selected from the database of closed and in-jurisdiction cases supplied by the AWAP. A proportional random sample should yield completed surveys from a population similar to the universe. The following table shows the breakdown of the universe of cases provided by the AWAP in which to draw the sample and the breakdown of completed cases in the Claverhouse sample. The Claverhouse sample slightly over represents owners of Chrysler vehicles and underrepresents owners of Honda vehicles. The fact that a larger number of respondents completed the survey is not problematic in that a greater number of completed surveys reduces non-response bias and decreases the statistical margin of error.

	Toyota	Lexus	Mitsubishi	Chrysler	Accura	Honda	Tesla	Suzuki	Total
Claverhouse Sample	90 (22.0%)	15 (3.7%)	0 (0.0%)	295 (71.9%)	0 (0.0%)	7 (1.7%)	0 (0.0%)	3 (0.7%)	410 (100.0%)
AWAP	422 (24.8%)	55 (3.2%)	19 (1.1%)	1,057 (62.1%)	24 (1.4%)	111 (6.5%)	4 (0.2%)	10 (0.6%)	1,702 (100.0%)

In prior years, data was gathered using a mixed-mode data collection approach -- both a web-based and a self-administered survey instrument. With national Internet use steadily increasing³ and with diminishing returns from the self-administered mode, data collection was transitioned to a web-based only format in 2015. Of the 1,702 users of the AWAP nationwide in 2015, 1,600 had electronic contact information, which represents 94.0 percent of all users.

The web-based questionnaire was programmed using Qualtrics Professional Academic web-based data collection software and was compatible on all mobile devices (smartphones) and tablets to facilitate ease of responding to the survey. Qualtrics allows for all types of question formats (i.e. single and multiple response, matrix, and limited and unlimited text) to be programmed. It also has a powerful survey notification tool and several security features.

The web-based survey notification system allows individualized, confidential links to be sent to each respondent. It also allows information to be embedded in individual links that is unique to the respondent. Upon submitting the survey, this data is recorded along with the respondent's answers to the questions. It also tracks who responds and who does not respond so that email reminders are sent only to those who have not yet completed the questionnaire. The security system has custom settings that allow only one response per unique identification number, email address, or IP address which virtually reduces the risk of respondents answering the survey several times thus skewing the results. Qualtrics uses SSL certificates and a 128-bit data encryption system to ensure that downloaded data and all information remains confidential.

The invitation email was sent on March 12, 2016, to all users of the program nationally who had a valid email address. The email explained the purpose of the audit, an overview of the questions that were included in the survey, and how the results would be used. The email also informed respondents about confidentiality and that participation was voluntary. Reminder emails were sent on March 19, 2016, March 24, 2016, and March 30, 2016.

Data collection ended on April 9, 2016. In total, 410 surveys were completed. The overall completion rate for this study is 54.6 percent and the margin of error is ± 4.22 percent⁴.

³ According to the most recent report (April 2016) issued by Pew Research Center on Internet use among the American public, 84.0 percent of all households owned a computer and 67.0 percent had access to an internet connection. Two-thirds of Americans own a smartphone and 13.0 percent of those without an Internet connection in their household use their smartphone to access the Internet. It is estimated that 80 percent of all American's have readily available access to the Internet.

⁴ This is the sampling error when the responses divide roughly 50-50 on a given question and when there are 410 cases, given a 95 percent confidence interval (i.e., there is a 1-in-20 chance that the actual proportion in the population falls outside the range of ± 4.22 percent). The magnitude of the sampling error is determined primarily by sample size (a larger sample size yields a smaller sampling error) and to some extent, on how evenly responses are divided among alternative answers. For example, if the responses were divided 75-25 on a given question, the margin of error would be ± 3.24 percent.

A threat to the validity of any study is non-response bias. Sometimes individuals chosen to participate in a survey are unwilling or unable to participate in the survey. Nonresponse bias is the bias that results when non-respondents differ in meaningful ways from responders.

For example, if those who did not receive awards were more likely to refuse participation than those who did receive awards, the study would underestimate the percentage of decisions adverse to consumers.

The practices of sending multiple email requests are attempts to increase overall completion rates and to reduce non-response bias.

METHOD OF RESOLUTION

Table 1 compares the method of resolution of disputes in the Claverhouse sample with the figures reported to the FTC. Since the Claverhouse survey contained only closed and in-jurisdiction cases, out-of jurisdiction cells in the Claverhouse section of the table are blank as are the cells representing pending cases and cases falling under the category "resolved by the staff and time for compliance has not yet occurred." The subtotal (representing in-jurisdiction cases) is equal to total disputes.

The difference between the 4.4 percent of cases mediated in the Claverhouse sample and the 5.0 percent of cases mediated in the AWAP figures is not statistically significant. Likewise, the difference between the 95.6 percent of arbitrated cases in the Claverhouse sample and the 95.0 percent of arbitrated cases in the AWAP figures is also not statistically significant. Therefore, the statistics agree.

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

Resolution	Claverhouse		AWAP		
	<i>Number</i>	<i>Percent</i>	<i>Number</i>	<i>Percent of in-jurisdiction closed cases</i>	<i>Percent of all cases</i>
Mediation	18	4.4%	86	5.0%	3.4%
Arbitration	392	95.6%	1,633	95.0%	63.9%
Subtotal (in-jurisdiction)	410	100.0%	1,719	100.0%	67.3%
Out-of jurisdiction	-	-	548	-	21.4%
Resolved, time for compliance has not occurred ⁵	-	-	124		4.9%
Pending	-	-	164		6.4%
Total Disputes	410	100.0%	2,555⁶	100.0%	100.0%

MEDIATED CASES

FTC Rule 703.6(e) requires the reporting of the proportion of mediated settlements with which warrantors have complied, the proportion with which warrantors have not complied, and the proportion in which the period for compliance has not yet passed. Since the universe of cases for the Claverhouse survey only includes closed cases, cases in which the compliance period has not yet passed are not included in the research.

Table 2 compares the outcomes of mediated disputes.

⁵ Both mediated and arbitrated pending cases in the total.

⁶ See footnote 2 for an explanation of the number of cases being used in the report.

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

Mediated Settlements	Claverhouse	AWAP	
	<i>Percent of in-jurisdiction</i>	<i>Percent of in-jurisdiction</i>	<i>Percent of all cases</i>
Resolved by staff of the mechanism and warrantor has complied within the timeframe specified in the agreement.	100.0% (18)	100.0% (86)	90.5% (86)
Resolved by staff of the mechanism and time for compliance has occurred and warrantor has not yet complied.	0.0% (0)	0.0% (0)	0.0% (0)
Resolved by staff of the mechanism and time for compliance has not yet occurred	NA	NA	9.5% (9)
Total Mediated Cases	100.0% (18)	100.0% (86)	100.0% (95)

The survey data shows that the manufacturer complied with 100.0 percent of mediated cases within the timeframe specified in the agreement. AWAP indices show the same percentage (100.0 percent).

The statistics “resolved by the staff of the mechanism and warrantor has complied” and “resolved by the staff of the mechanism and time for compliance has occurred, and warrantor has not complied” are in agreement.

It is important to note, that AWAP indices include cases for which the time for compliance has not occurred. The indices show nine (9) mediated cases in this category. Since only closed cases are used in the Claverhouse study, this statistic cannot be compared.

Respondents were also asked about the specific outcome of their cases. Table 3 shows the outcomes for all cases settled through mediation.

Table 3: Specific Outcomes of Mediated Settlements Claverhouse Survey

Outcome	Number	Percent
Ordered a partial refund	8	44.4%
Ordered additional repair attempts	5	27.8%
Ordered a replacement vehicle	3	16.7%
Ordered or recognized a trade assist	1	5.6%
Other	1	5.6%
Total	18	100.0%

When asked if they pursued their cases any further, only 5.6 percent of the respondents indicated that they had done so. Of the respondents who indicated, that they had pursued their cases further did so by re-contacting the AWAP to re-open their case.

Respondents were then asked if they recalled talking to an AWAP staff member or returned a postcard to the AWAP about their settlement and how their case was handled.

Overall, 61.1 percent of respondents indicated that they had followed up with the AWAP in some manner. The majority (63.6 percent), who did follow up with the AWAP did so by talking to the staff. The remaining 36.4 percent were evenly split between only returning the postcard and doing both (returning the postcard and talking to staff).

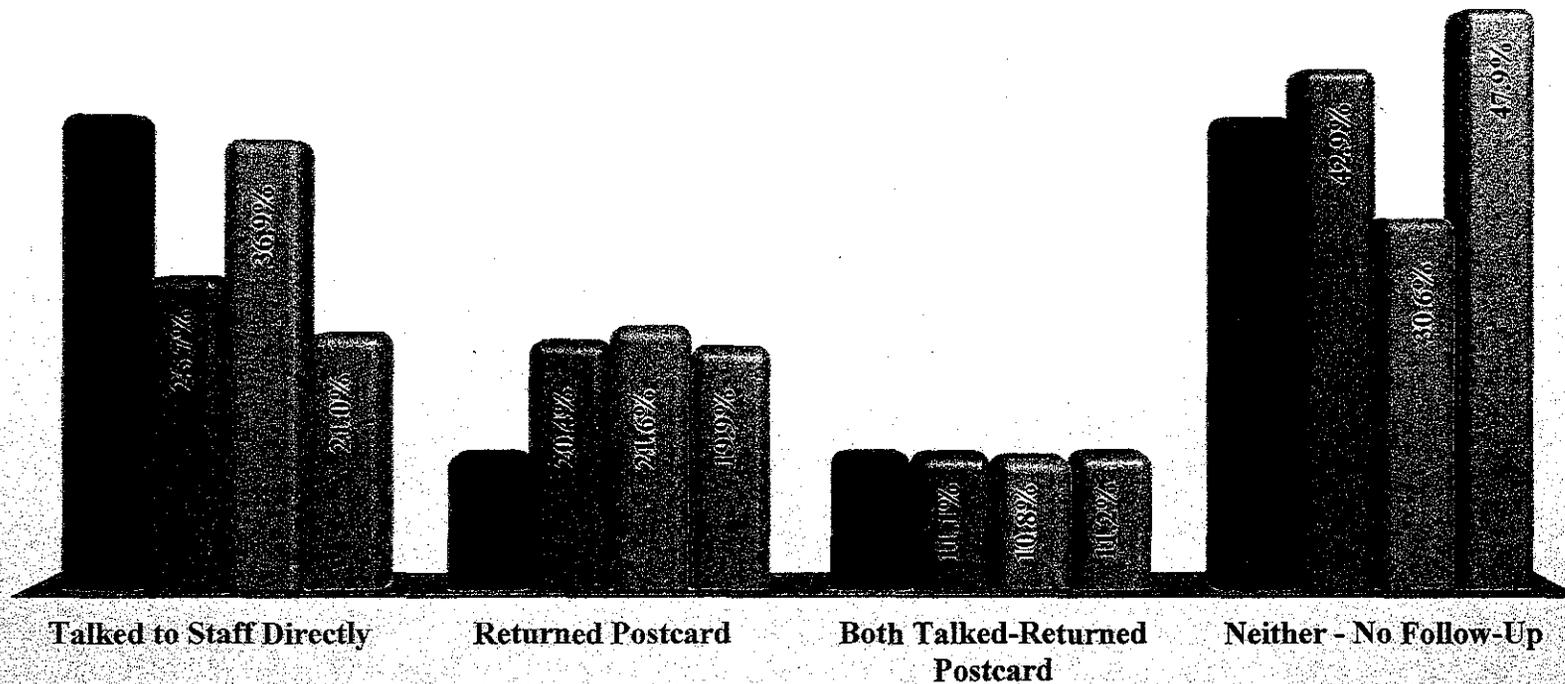
When looking closer at users who do and do not follow-up with the AWAP, the data shows:

- 57.1 percent of the consumers who **did not** follow up after their case was closed received a partial refund, 28.6 percent received a replacement vehicle, and 14.3 percent received additional repair attempts.
- In contrast, among those who **did** follow up in some manner, 36.4 percent received additional repair attempts, the same percentage (36.4 percent) received a partial refund, 18.2 percent received a replacement vehicle, and 9.1 percent received a trade assist.

There are statistically significant differences in whether respondents followed-up by case type and whether they received a settlement or award. These differences are shown in **Figure 1**.

FIGURE 1. FOLLOW-UP WITH AWAP POST DECISION BY CASE TYPE AND OUTCOME

■ Mediated ■ Arbitrated ■ Award ■ No Award



ARBITRATED CASES

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

Respondents were first asked whether they remembered receiving the forms in which their claims were stated. Of the respondents who reported arbitration as the means for resolving their case, 92.8 percent said that they recalled receiving the forms.

Respondents were also asked a question about how accurately they felt the forms stated their **claim** –33.5 percent said very accurately; 40.4 percent said somewhat accurately; and 26.0 percent said not very accurately or not at all accurately.

How accurately the respondent felt their case was stated is closely related to whether or not the respondent received an award in the arbitration process. (See Figure 2)

Respondents were then asked whether they had been notified of the time, place, and date of the arbitration hearing. A majority, 68.3 percent, indicated they had been notified, 24.0 percent said they chose the document only option, and 7.7 percent said they were not notified.

Those who **did not** attend their hearing were asked for the reason(s) why. Those results are summarized in Table 4.

Table 4: Reasons Given for Not Attending Hearing Claverhouse Survey⁷

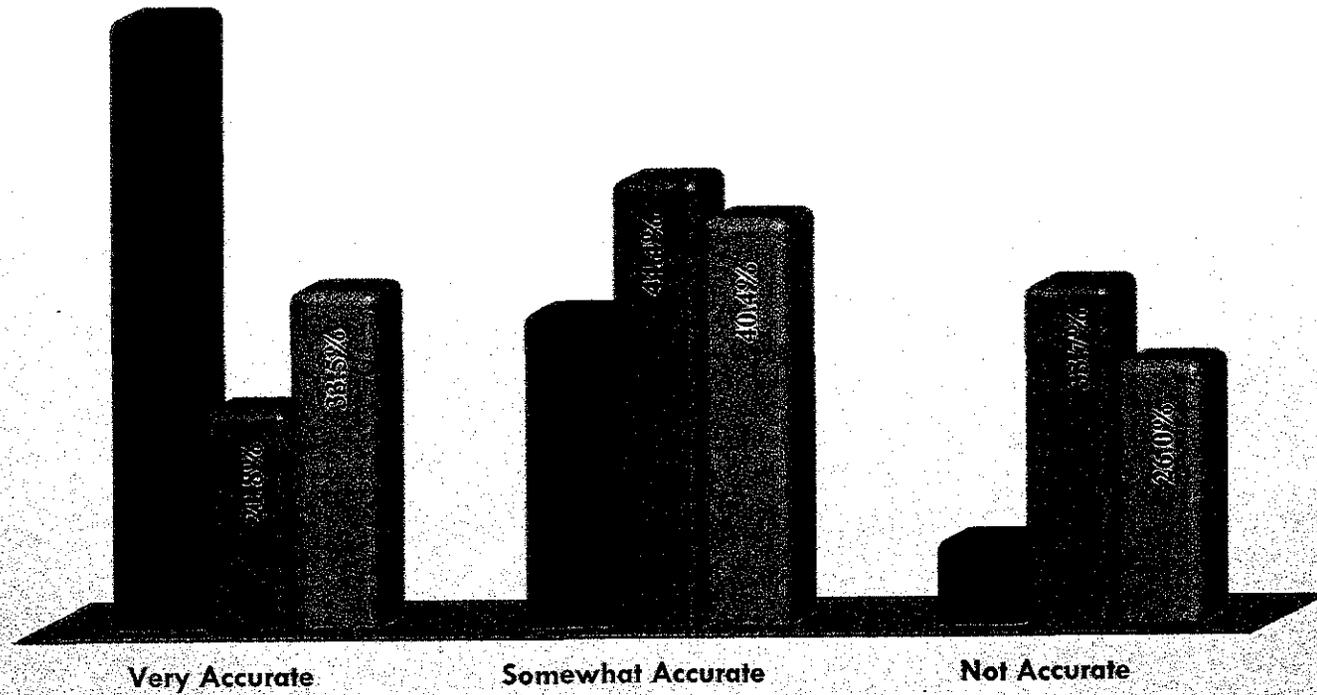
Reason	Number	Percent
Was told presence not necessary at hearing or meeting	40	38.5%
Distance of meeting or hearing, unable to travel to the location	31	29.8%
Work, school, other professional commitments conflicted with the time of hearing or meeting	18	17.3%
Other reasons (not specified)	13	12.5%
Personal commitments (family, medical) conflicted with time of the hearing or meeting	2	1.9%
Total	104	100.0%

- Users who participated in the hearing either in person or by phone were more likely to receive an award than those who did not participate, 35.8 percent versus 21.8 percent.

⁷ Respondents could give more than one reason for not attending the hearing or meeting. The percentages are based on number of responses (104) not the number of respondents answering the question (77).

FIGURE 2. ACCURACY OF CLAIM FORMS CORRELATED WITH WHETHER AN AWARD WAS GRANTED

■ Award Granted ■ No Award Granted ■ Overall



- Among the users who chose the document only hearing, 24.7 percent received an award, and 20.0 percent of users who were not notified of the hearing received an award.

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

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

**Table 5: Outcomes of Arbitrated Cases Comparison
Claverhouse Survey and AWAP Indices**

Arbitration Outcomes	Claverhouse	AWAP
	<i>Percentage (Number)</i>	<i>Percentage (Number)</i>
Case decided by board and warrantor has complied	24.1% (93)	8.4% (137)
Case decided by board and warrantor has not complied	3.9% (15)	0.5% (8)
Case decided by board and time for compliance has not occurred	NA	NA ⁸
Total Award Granted And Accepted	28.0% (108)	8.9% (145)
Decision adverse to consumer	72.0% (278)	91.1% (1,488)
Total Arbitrated Decisions For Purpose of Verifying Statistics	386	1,633
Case decided by board and consumer rejected the decision/award	6 ⁹	NA
Total Arbitrated Decisions	392	1,633

The statistics “case decided by board and warrantor has complied” and “decision adverse to consumer” are **not** in agreement, because the difference falls outside of the margin of

⁸ The outcome statistics provided by the AWAP show 115 cases for which a decision had been made but time for compliance had not yet occurred. Since all the cases used in the Claverhouse are closed, this statistic cannot be compared.

⁹ Six (6) consumers reported rejected the decision; therefore, these cases are not used in the statistical comparison.

error, ± 4.22 percent. These differences should not be of great concern since the **difference favors** the consumer and not the AWAP. Respondents in the Claverhouse sample reported a higher level of compliance, 28.0 percent compared to 8.9 percent, than the AWAP indices show.

The statistic “case decided by the board and warrantor has **not** complied” is in agreement.

The Claverhouse data also shows a lower percentage of adverse decisions, 72.0 percent compared to 91.1 percent, than the AWAP.

The difference in these statistics, in part, can be attributed to non-response bias (as explained earlier in this report) in that those with unfavorable outcomes may be less likely to participate than those with favorable case outcomes.

As shown in Table 5, a small percentage of respondents (1.5 percent) rejected their awards. When asked the reasons for doing so consumers were even split between they felt the decision would not solve the problems they had experienced with the vehicle and they would lose too much money due to the mileage deduction.

Among consumers who accepted their awards, 49.1 percent received the award within the time period specified in their agreement, 37.0 received the award but not within the time frame specified in the agreement and 13.9 percent indicated that they had not yet received their award at the time of data collection. Overall, 86.1 percent of consumers reported receiving their award from the AWAP.

Table 6 details the awards respondents reported receiving and accepting from their arbitration hearings.

Table 6: Specific Outcomes of Arbitrated Cases Claverhouse Survey

Award	Number	Percentage
Ordered a partial refund (buyback)	63	58.3%
Ordered a replacement vehicle	25	23.1%
Ordered additional repairs	15	13.9%
Ordered or recognized a trade assist	5	4.6%
Total	108	100.0%

- Of those who received their award **within** the period specified in the agreement, 60.4 percent were granted a partial refund, 22.6 percent a replacement vehicle, 15.1 percent additional repair attempts, and 1.9 percent a trade assist.

- Consumers who had indicated that they had **not** received the award within the time period specified in their decision were more likely to have been awarded a partial refund (65.0 percent) or a replacement vehicle (27.5 percent).
- Of those who had **not yet** received their award, 40.0 percent were granted additional repair attempts, 13.3 percent a trade assist, 33.3 percent a partial refund, and 13.3 percent a replacement vehicle.

All respondents whose cases were arbitrated were asked whether they had pursued their cases further after the arbitration decision, and 31.2 percent indicated that they had done so. Table 7 shows by what means they pursued their cases.

Table 7: Methods of Pursuing Arbitrated Cases Claverhouse Survey

Method	Number	Percent
Contacted Attorney	58	33.9%
Re-contacted AWAP (NCDS)	42	24.6%
Worked Out Solution Dealer/Manufacturer	36	21.1%
Contacted state/government agency	28	16.4%
Other method	7	4.1%
Total	171	100.0%

Respondents could indicate multiple means of pursuing their cases, therefore the data presented in Table 7 is based on the number of responses (171) not the number of respondents answering the question (121). Overall, 66.9 percent who pursued their cases did so using a single method, 25.6 percent used two methods, 6.6 percent three methods, and less than one percent (0.8 percent) used four different methods.

When looking at which users pursued their cases, the data show that:

- Of those **granted** an award, 13.2 percent pursued their cases after the arbitration decision. Most did so by contacting an attorney (38.1 percent) or by contacting the AWAP to re-open their case.
- Among those who were **not** granted an award, 38.6 percent pursued their case further. Their choices for pursuing their cases were similar to those who were granted an award with 33.3 percent contacting an attorney and 23.3 percent contacting the AWAP to re-open their case.

Respondents were asked if they followed up with the AWAP by talking directly to the staff or by returning a postcard after their arbitration case was closed. Overall, 57.1 percent¹⁰ followed up with the AWAP in some manner.

Of those who did follow-up with the AWAP, 44.9 percent said they only talked with a staff member, 35.6 percent said they only returned the postcard, and 19.4 percent said they did both¹¹.

Among those who were **not granted** an award, 47.9 percent had no contact with the AWAP after the decision in their case.

DELAYS TO ARBITRATION DECISIONS

Under FTC Rule 703.6(e) 9-13, warrantors must report the proportion of cases in which arbitration cases were delayed beyond the 40 days allocated for arbitration decisions. The AWAP reports the reasons for such delays in three categories:

- (1) Consumer made no attempt to seek redress directly from the manufacturer
- (2) Consumer failed to submit required information in a timely manner
- (3) All other reasons

AWAP indices report that less than one percent (0.1 percent) of the closed, in-jurisdiction cases was settled beyond 40 days, whereas 45.8 percent, nearly half, of all survey respondents reported their cases were settled beyond 40 days.

The difference is statistically significant, but should not be of great concern. We can attribute this to error in recall and reporting on the part of the respondents and not referring to case documentation when completing the questionnaire.

Respondents are asked to recall very specific information about an event that may have occurred a year or more ago. When asked for the date in which their case was opened:

- 57.3 percent were able to give a full date when their case was opened, 18.5 percent a partial date (i.e., month or day), and 24.2 percent were unable to give any date.

Survey respondents' recollections on when their cases were closed were similar:

- 47.6 percent were able to give a full date as to when their case was closed, 19.9 percent a partial date, and 32.5 percent were unable to give a closed date

In the email notifications to respondents, respondents are asked to review case

¹⁰ See Figure 1 for additional information

¹¹ Due to rounding, the actual percentages for this item add to 99.9%.

documentation prior to completing the questionnaire.

Qualtrics software's ability to allow actual case data to be recorded as part of respondents' answers to the other questions in the survey, the opened and closed dates for individual cases that were provided by the AWAP were recorded as part of the dataset for those who completed the survey. With this information, two levels of analyses can be done. First, the dates the respondents gave can be verified for accuracy:

- Only 8.0 percent of respondents were able to provide an opened date that matched AWAP records. They were even less successful in providing a closed date that matched AWAP records, with only 3.4 percent being able to do so.
- Only 2.2 percent of all respondents were able to provide both a correct opened and a correct closed date. Within this small group of respondents, none of their cases were settled beyond 40 days.

Second, using the "date difference" command in SPSS, the actual number of days a case was opened can be calculated.

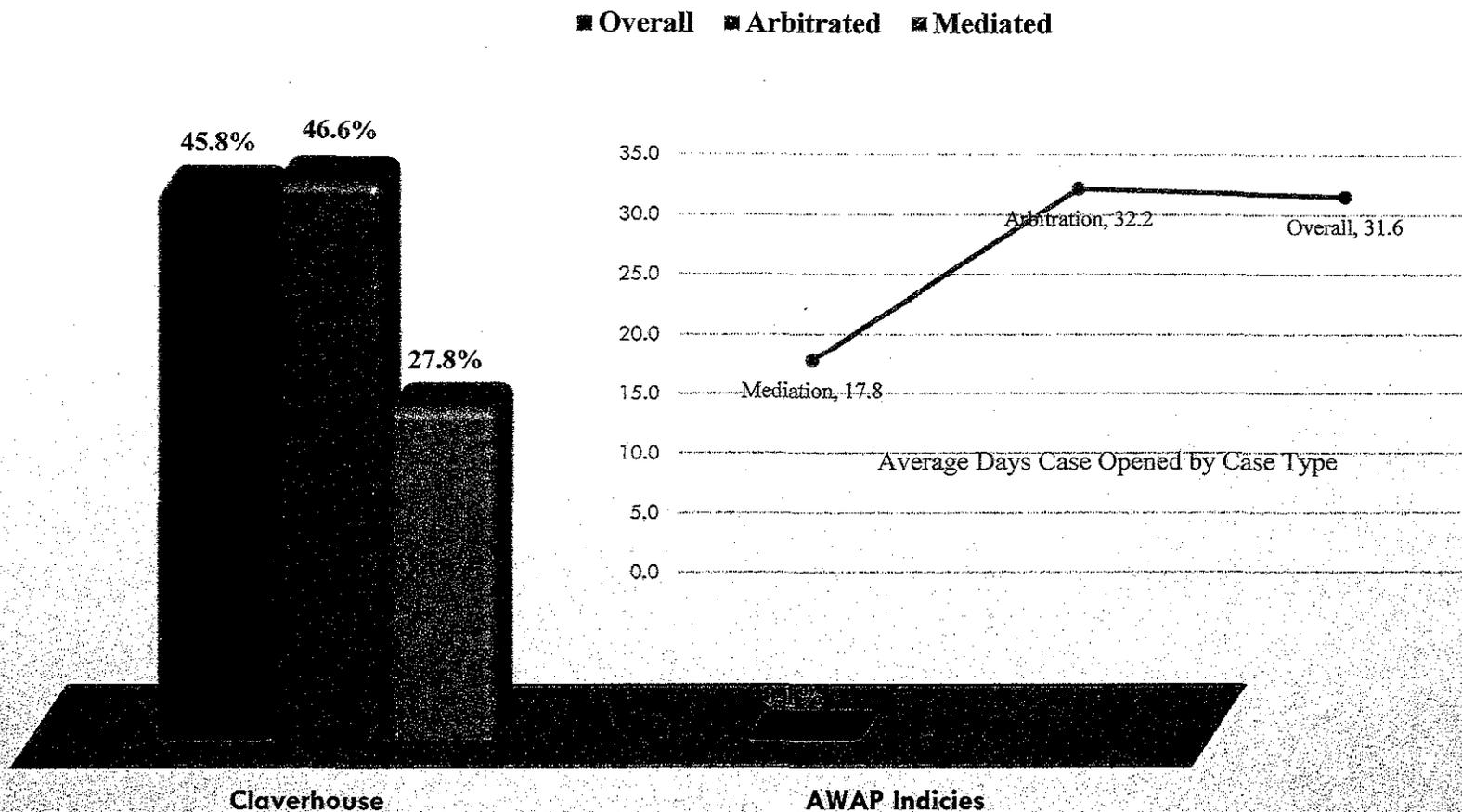
- The average number of days a case was opened was 31.6, with a minimum of two (2) days and a maximum of 40.
- Of those who claim their case **was delayed**, the average number of days the case was in fact opened was 31.9. For those who said no, the average number of days was 31.3.

The difference in this statistic can be attributed mainly to two factors: error in recall and reporting and interpretation of the terms "case opened" and "case closed."

- The above analysis indicates that respondents are not using documentation to determine if their cases were delayed and are relying on memory or guesswork to provide opened and closed dates.
- The user may not be using the same criteria for when a case is considered "opened" and "closed" as does the AWAP. The AWAP considers a case opened when the forms are received in the office and processed. Consumers, on the other hand, may see their cases as having been opened when they first contacted the AWAP, when they mailed the forms, or even when they first began to experience problems with the vehicle. Similar considerations apply to when a case was closed, especially if the case had a negative outcome or there was a perceived delay in delivering the award.

It is also interesting to note that 41.3 percent of all respondents who said their case was delayed indicated that they were satisfied to some degree with the AWAP in the area of promptness. There are also differences in delays by type of case. (See Figure 3)

FIGURE 3. PERCENTAGE OF CASES DELAYED BEYOND 40 DAYS OVERALL AND BY CASE TYPE



For these reasons, the statistical difference between the AWAP indices and the Claverhouse data should not be a cause for concern.

There is also a statistical difference between the Claverhouse data and the AWAP indices for the reasons for the delays. The results are shown in Table 8.

Table 8: Reason For Delays Beyond 40 Days Comparison between Claverhouse Survey and AWAP Indices

Reason for Delay	Claverhouse	AWAP
	<i>Percentage (Number)</i>	<i>Percentage (Number)</i>
Consumer failure to submit information in a timely manner	1.7% (3)	0.0% (0)
Consumer had made no attempt to seek redress directly from warrantor	6.6 % (12)	0.0% (0)
Decision delayed beyond 40 days for any other reason	91.7% (166)	100.0% (1)
Total arbitrated decisions	100.0% (181)	100.0% (1)

Again, due to reasons mentioned above regarding recall and reporting, this discrepancy should not be of concern.

CONSUMER ATTITUDES TOWARD THE AWAP'S INFORMAL DISPUTE SETTLEMENT PROCEDURES

At the beginning of the questionnaire, respondents indicated how they had learned about the Automobile Warranty Arbitration Program. A summary of their responses is shown in Table 9.

**Table 9: How Consumers Learned about AWAP Availability
Claverhouse Survey**

Sources of Information	Number	Percent
Automaker customer service telephone number	145	26.7%
Owner's manual/warranty information	135	24.9%
The dealership where you purchased the car or another dealership	82	15.1%
Internet, website	81	14.9%
Attorney or Lawyer	36	6.6%
Friends, family, co-workers	26	4.8%
Brochures, literature, pamphlets	16	2.9%
Previous knowledge of the program	13	2.4%
Government-State Agency	7	1.3%
Television, radio, newspapers	1	0.2%
Other	1	0.2%
Total	543¹²	100.0%

Two-thirds of the users of the AWAP in 2015 reported learning about the program through a source directly connected to the automaker – customer service, warranty information, or a dealership.

A majority of the users, 78.5 percent, relied on a single source to learn about the AWAP, 12.9 percent used two sources, 6.3 percent three sources, and 2.1 percent used four or more sources to gain information about the program.

There are some differences in how respondents learned about the program by the method of how their case was settled.

- The most frequently mentioned source of information among users whose cases were mediated was the owner's manual or warranty information, 27.6 percent. The Internet (24.1 percent), customer service representative (20.7 percent), and the dealership (10.3 percent) were the next most common sources of information.
- Users whose cases were arbitrated used all the above-mentioned sources to learn about the program with speaking to a customer service representative (27.0 percent) or the dealership (24.7 percent) as the most frequently used sources.

¹² Because respondents could indicate more than one source, the percentages are based on number of responses (543), not the number of respondents answering the question (408).

Those who reported that they had learned about the program through the dealership or the automaker were asked additional questions about the means in which they were informed of the program. Table 10 shows those results.

**Table 10: Method Learned About Program from Dealer or Manufacturer
Claverhouse Survey**

Method	Number	Percent
Talked to you over the phone or in writing about the program	129	60.6%
Talked to you in person about the program	50	23.5%
Gave or sent you information about the program	29	13.6%
Showed you a poster or you saw information posted in the showroom or repair area	4	1.9%
Other	1	0.5%
Total	213¹³	100.0%¹⁴

Survey respondents were also asked about the manner in which they received program information and how easy or difficult the program informational materials and complaint forms they received were to understand.

More users of the AWAP used the Internet to access program information and the complaint forms (57.4 percent) than postal mail (42.6 percent). Respondents whose cases mediated were more likely to use the Internet for program information than those with arbitrated cases (72.2 percent vs 56.7 percent).

When asked about the **informational materials**, 38.1 percent said they found the materials “very clear and easy to understand,” 45.0 percent “a little difficulty but still easy to understand,” and 16.8 percent¹⁵ said they were “pretty difficult to understand.”

When asked about the **complaint forms**, close to half, 44.6 percent said they were “very clear and easy to complete”; 44.9 percent said “a little difficult but still easy to understand and complete,” and 10.5 percent said they were “pretty difficult to understand and complete.”

Ease of understanding the materials, both the informational materials and the complaint forms, is also highly correlated with the type of case and outcome of the case. Those with

¹³ Because respondents could indicate more than one method, the percentages are based on number of responses (213), not the number of respondents (184) answering the question.

¹⁴ Due to rounding, percentages may add to 99.9 percent or 100.1 percent.

¹⁵ Due to rounding, percentages may add to 99.9 percent or 100.1 percent.

mediated cases were slightly more likely to find the information materials and the complaint forms easier to understand than those with arbitrated cases as did those who were granted awards in the arbitration process. (See Figure 4)

Respondents were then asked to rate their satisfaction with the AWAP staff in three areas as well as their overall satisfaction with the AWAP program:

- Objectivity and fairness
- Effort
- Promptness

The respondents were asked to rate each item using a six-point scale. Using a scale with an equal number of data points eliminates an exact midpoint so respondents are not drawn to the “middle” or neutral category. This type of scale is better for computing means (or averages) as a way to gauge satisfaction or dissatisfaction with the program. For these items, the closer the mean is to 6.00, the higher the level of satisfaction. The closer the mean is to 1.00, the higher level of dissatisfaction. Table 11 reports the results in percentages.

Table 11: Survey Respondents’ Ratings of AWAP Staff by Percentage

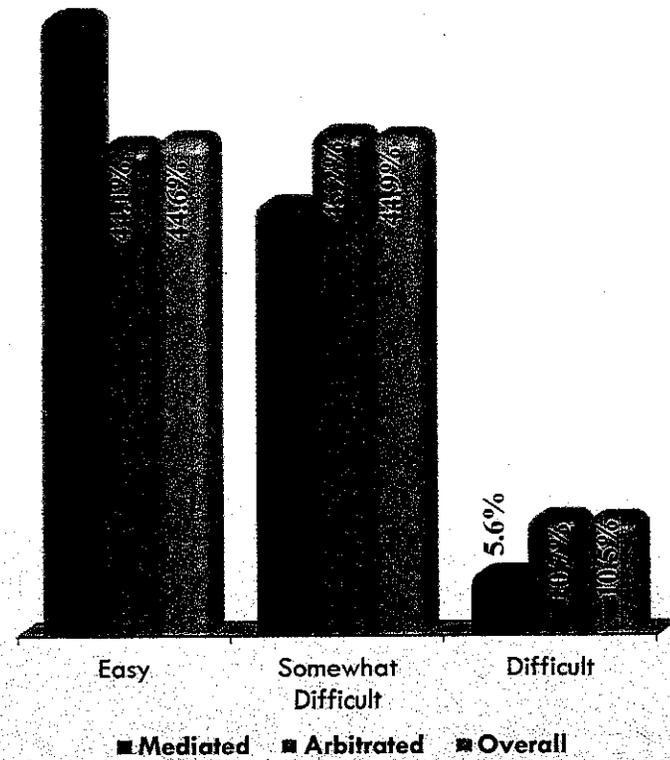
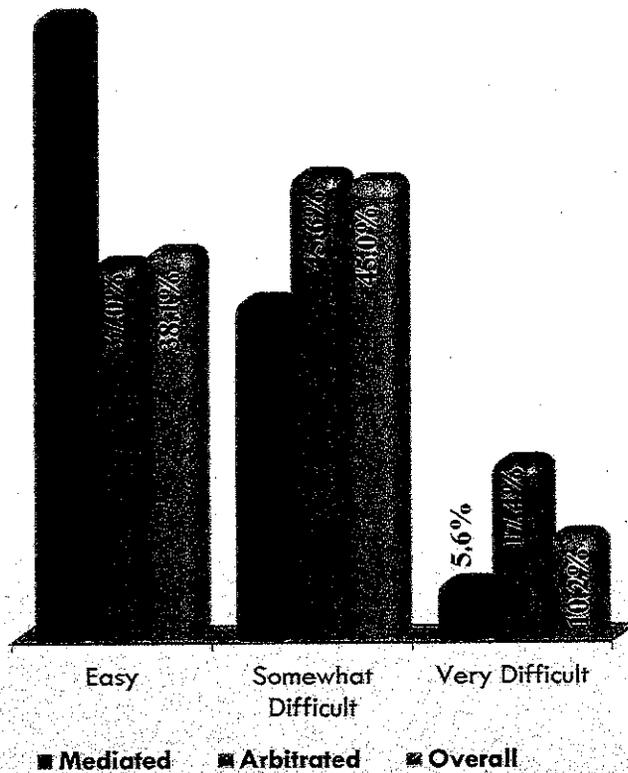
	Level of Satisfaction						Total
	<i>Very Dissatisfied</i> (1)	(2)	(3)	(4)	(5)	<i>Very Satisfied</i> (6)	
Objectivity and fairness	54.8% (215)	12.5% (49)	5.1% (20)	6.9% (27)	10.2% (40)	10.5% (41)	100.0% (392)
Promptness in handling your complaint during the process	29.6% (110)	8.1% (30)	8.9% (33)	19.4% (72)	21.3% (79)	12.7% (47)	100.0% (371)
Efforts to assist you in resolving your complaint	53.9% (207)	10.2% (39)	5.5% (21)	10.7% (41)	9.1% (35)	10.7% (41)	100.0% (384)
Overall rating of the program	54.1% (209)	11.4% (44)	6.5% (25)	7.8% (30)	9.6% (37)	10.6% (41)	100.0% (386)

Of the three areas, users of the program gave the **highest** satisfaction rating in the area of **promptness**, with 53.4 percent, saying that they were more satisfied than dissatisfied in this area, with 12.7 percent indicating they were very satisfied. On the opposite end of the scale, 29.6 percent reported being very dissatisfied in this area.

FIGURE 4. EASE OF UNDERSTANDING INFORMATIONAL AND COMPLAINT FORMS BY CASE TYPE

INFORMATIONAL MATERIALS

COMPLAINT FORMS



The **lowest** level of satisfaction was in the area of **objectivity and fairness** with only 27.6 percent of respondents giving a satisfaction rating between four (4) and six (6). Only 10.5 percent indicated that they were very satisfied (a rating of 6) – the lowest very satisfied rating across the three areas. On the reverse end of this scale, 72.4 percent indicated that they were dissatisfied to some degree in this area with more than half, 54.8 percent being very dissatisfied (a rating of one (1)). This area was the highest level of dissatisfaction among the three areas rated.

Respondents also did not give favorable ratings to the AWAP in the area of **effort** to assist in resolving the complaint. When asked to give a rating in this area, only 30.5 percent gave a rating falling within the satisfaction range (4-6) with only 10.7 percent indicating that they were very satisfied (6). Nearly seven out of ten respondents indicated they were dissatisfied with the program in the area of effort to assist in resolving the complaint.

Overall, only 28.0 percent indicated they were satisfied with the AWAP program with only 10.6 percent saying they were very satisfied. Of the 72.0 percent who indicated they were dissatisfied with the program to some degree, over half, 54.1 percent said they were very dissatisfied.

Another approach to gauging satisfaction among these items is to compare means across the items and across different groups. The closer the mean value is to 6.00, the greater the level of satisfaction and the closer the mean value is to 1.00, the greater the level of dissatisfaction. The table below (Table 12) shows the overall mean for each item as well as a comparison of the means by type of case.

As Table 12 shows, the type of case is an important part in consumers' satisfaction with the program. The level of satisfaction and dissatisfaction differs greatly between case type and outcome. Comparisons that are more detailed are shown in **Figure 5**.

Table 12: Survey Respondents' Ratings of AWAP Staff Means Comparison Claverhouse Survey

Performance Item	Mean	Median	Mode	Std. Deviation
Objectivity and fairness	2.36	1.00	1	1.828
Promptness in handling your complaint during the process	3.33	4.00	1	1.832
Efforts to assist you in resolving your complaint	2.43	1.00	1	1.837
Overall rating of the program	2.39	1.00	1	1.826 ¹⁶
Average Across All Areas	2.62			

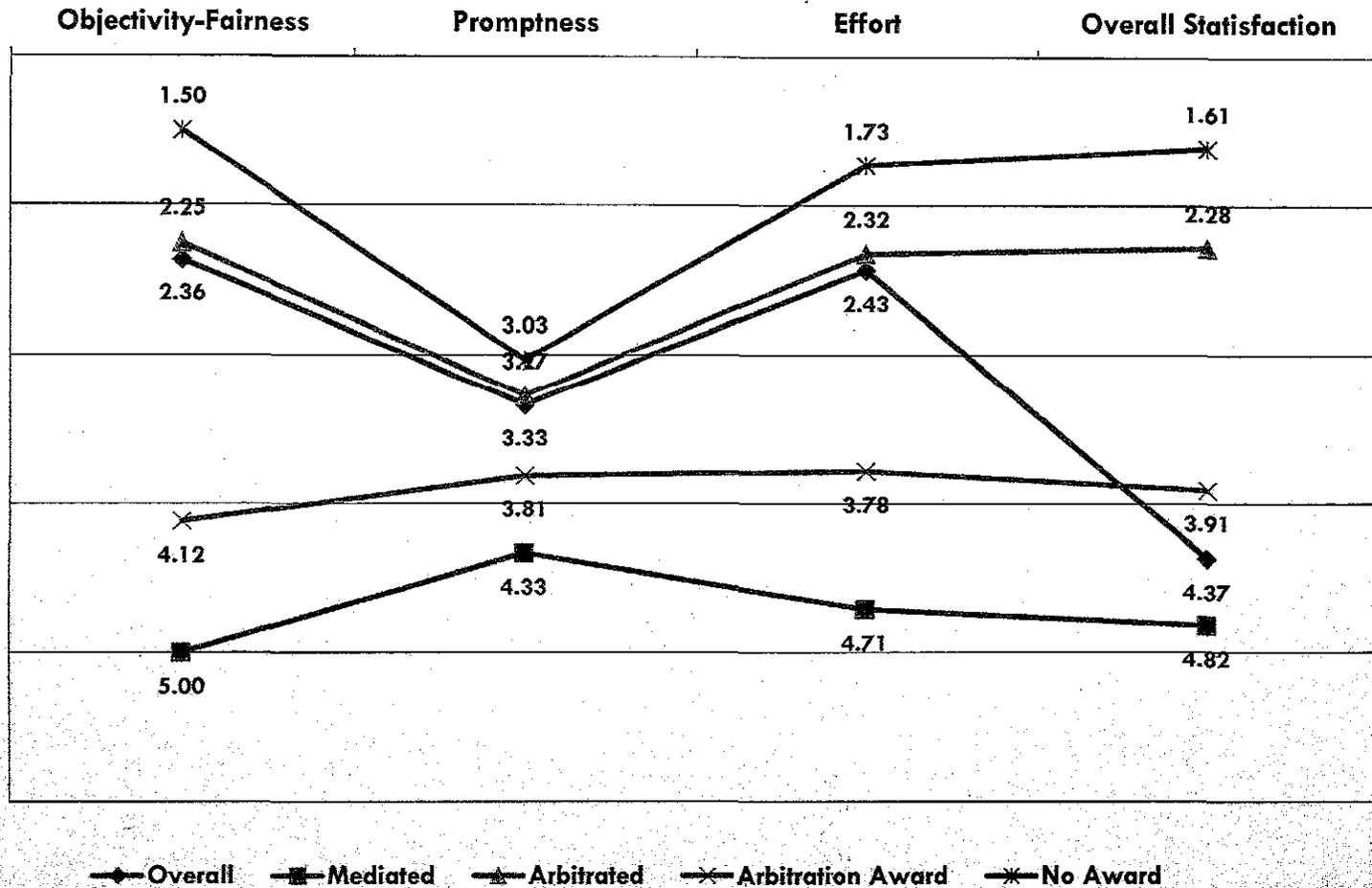
Another measure of consumers' satisfaction or dissatisfaction with the AWAP program is whether they would recommend the program to others. Overall, 23.4 percent said that they would recommend the program to others, 50.0 percent said they would not, and 26.6 percent said that it would depend on the circumstances. Table 13 shows these results.

Table 13: Would Consumer Recommend the AWAP Program to Others? Claverhouse Survey

Method of Resolution and Outcome	Yes	No	Depends on Circumstances
Mediated	55.6% (10)	11.1% (2)	33.3% (6)
Arbitrated	21.9% (86)	51.8% (203)	26.3% (103)
Award Granted	54.4% (62)	19.3% (22)	26.3% (30)
No Award Granted	8.6% (24)	65.1% (181)	26.3% (73)
Overall	23.4% (96)	50.0% (205)	26.6% (109)

¹⁶ The **mean** is the average and is computed as the sum of all the observed outcomes from the sample divided by the total number of events. The **median** is the middle score. The **mode** of a set of data is the number with the highest frequency. The **standard deviation** describes how spread out the data is. If the data all lies close to the mean then the standard deviation will be small. If the data is spread out over a large range of values, the standard deviation will be larger.

FIGURE 5. MEAN COMPARISONS OF SATISFACTION INDEX BY CASE TYPE AND OUTCOMES



Finally, survey respondents were given an opportunity to make comments and suggestions about AWAP program changes or improvements. These comments are summarized in Table 14.

Table 14: Consumers Comments and Suggestions for Program Improvement

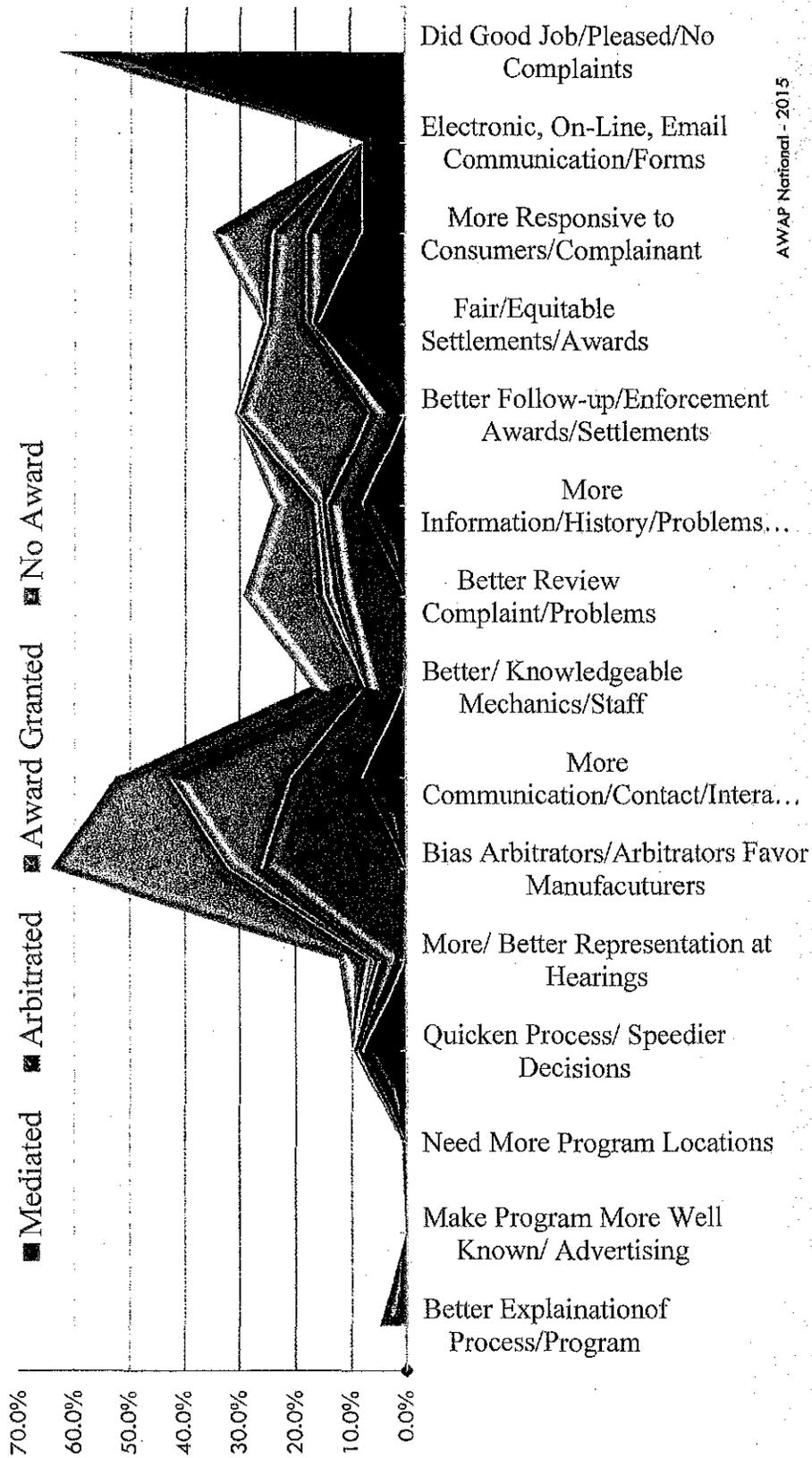
Comments and Suggestions	Number	Percentage
Bias Arbitrators/Arbitrators Favor Manufacturers	106	25.1%
More Communication/Contact/Interaction Arbitrators Staff	54	12.8%
Better Review Complaint/Problems by Staff/Arbitrators	48	11.4%
Dealers/Manufacturers More Responsive to Consumers/Complainant	42	10.0%
Better/ More Knowledgeable Mechanics/Review Staff	30	7.1%
Allow More Information/History of Problems in Complaint	27	6.4%
Better Follow-up/Enforcement of Awards/Settlements	26	6.2%
Did Good Job/Pleased/No Complaints	22	5.2%
Better Explanation/Documentation of Process/Program/Easier Understand	21	5.0%
More/ Better Representation at Hearings	19	4.5%
Fair/Equitable Settlements/Awards	12	2.8%
Quicken Process/ Speedier Decisions	9	2.1%
Need More Program Locations	4	0.9%
Make Program More Well Known/ Advertising	1	0.2%
Electronic, On-Line, Email Communication/Forms	1	0.2%
Total	422 ¹⁷	100.0%

There are differences in how respondents felt about the program by the method of how their case was settled. (See **Figure 6** for more detail by case type and outcome)

- The most common response for those with mediated cases was “did a good job/no complaints” (46.2 percent) followed by “fair/equitable settlements/awards” (15.4 percent).
- The most common suggestion for improvement or comment about the program for those whose cases were arbitrated was “bias arbitrators/arbitrators favor the AWAP” with 25.9 percent making this comment. This was followed by “more communication/contact/interaction with arbitrators/staff,” (13.0 percent), and “better review of complaint/problems by staff/arbitrators,” (11.7 percent).
- Only 3.9 percent of all respondents with arbitrated cases mentioned “did a good “job/no complaints.”

¹⁷ Responses to this question were collected as open-ended comments and then coded into response categories. The table is based on responses (422) not respondents (327) answering the question.

FIGURE 6. PROGRAM SUGGESTIONS AND COMMENTS BY CASE TYPE AND OUTCOME



- The most frequently mentioned comment among users who were granted an award during the arbitration process was “better follow-up/enforcements of awards/settlements.” Forty-three percent, who were not granted an award gave the comment “bias arbitrators/arbitration favors the AWAP.”

CONCLUSIONS

Based on the comparison of the Claverhouse survey results with the AWAP national indices, it is concluded that the AWAP indices are in agreement in all but four areas, none of which should raise concerns about the program or how the program is administered.

The differences are “case decided by board and warrantor has complied,” “arbitration decision adverse with consumer,” “case delayed beyond 40 days,” and “reasons for delays beyond 40 days.”

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

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

It is concluded that the AWAP indices are in agreement with the Claverhouse survey for the majority of the indices, and for those that are not, it is not to be a cause for concern because the differences do not indicate that the program is improperly collecting or reporting program statistics.

SECTION VI

Audit Related Regulatory Requirements

REQUIREMENT: § 703.7 (c)(3)(I)

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

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

REQUIREMENT: § 703.7 (d)

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

The audit was conducted consistent with this requirement.

SECTION VII
Appendix/Codebook

CODEBOOK

AWAP National
410 Cases

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OPENDAY	Dates : Day-Open Date:	7
OPENYEAR	Dates : Year-Open Date:	8
CLOSEDMONTH	Dates : Month-Closed Date:	8
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CASEID CASE IDENTIFICATION NUMBER

410 cases (Range of valid codes: 1-410)

Data type: numeric
 Record/columns: 1/566-568

V10 Finished

%	N	VALUE	LABEL
100.0	410	1	
-----	----		
100.0	410	cases	

Data type: numeric
 Record/column: 1/1

VEHICLE_YEAR VEHICLE YEAR

%	N	VALUE	LABEL
0.2	1	2008	
0.5	2	2010	
1.5	6	2011	
5.9	24	2012	
18.5	76	2013	
48.5	199	2014	
24.9	102	2015	
-----	----		
100.0	410	cases	

Data type: character
 Record/columns: 1/2-11

MODEL	MODEL	MODEL	LABEL
%	N	VALUE	
0.5	2	4Runner	
1.7	7	Avalon	
1.5	6	Avenger	
4.1	17	Camry	
0.2	1	Caravan	
2.0	8	Challenger	
2.2	9	Charger	
13.9	57	Cherokee	
1.2	5	Cherokee Ltd	
1.5	6	Chrysler 300	
5.9	24	Chrysler 200	
4.1	17	Chrysler 500	
0.5	2	Compass	
2.0	8	Corolla	
3.9	16	Dart	
1.0	4	Durango	
0.2	1	ES 300	
0.7	3	ES 350	
0.2	1	Equator	
0.7	3	GS 350	
0.2	1	Grand Caravan	
9.8	40	Grand Cherokee	
0.2	1	Grand Vitara	
3.7	15	Highlander	
0.2	1	IS 250	
0.2	1	IS 350	
0.7	3	Journey	
0.7	3	LS 460	
0.2	1	LS 600h L	
2.4	10	Patriot	
1.7	7	Prius	
2.2	9	RAV4	
0.2	1	RX 350	
0.2	1	RX 450h	
0.7	3	Ram	
5.4	22	Ram 1500	
5.1	21	Ram 2500	
0.2	1	Ram 2500 4Wd	
0.2	1	Ram 2500 Quad Cab	
2.9	12	Ram 3500	
0.2	1	Ram 4500	
0.2	1	Ram 5500	
1.5	6	Renegade	
1.0	4	Scion FR-S	
0.2	1	Scion iQ	

0.2	1	Scion tC
2.4	10	Sienna
2.0	8	Tacoma
1.5	6	Town & Country
1.0	4	Tundra
0.5	2	Venza
0.2	1	Viper
3.2	13	Wrangler
0.2	1	Wrangler Rubicon
-----	-----	
100.0	410	cases

Data type: character
Record/columns: 1/12-31

Q4

State

%	N	VALUE	LABEL
2.2	9	1	Alabama
4.2	17	2	Arizona
4.2	17	3	Arkansas
14.1	57	4	California
2.5	10	5	Colorado
1.2	5	6	Connecticut
0.5	2	7	Delaware
0.2	1	8	District of Columbia
0.0	0	9	Florida
2.5	10	10	Georgia
1.5	6	11	Idaho
2.7	11	12	Illinois
0.7	3	13	Indiana
0.5	2	14	Iowa
0.7	3	15	Kansas
1.2	5	16	Kentucky
1.2	5	17	Louisiana
0.0	0	18	Maine
2.7	11	19	Maryland
3.5	14	20	Massachusetts
3.7	15	21	Michigan
1.5	6	22	Minnesota
0.2	1	23	Mississippi
1.7	7	24	Missouri
0.0	0	25	Montana
0.0	0	26	Nebraska
0.7	3	27	Nevada
0.2	1	28	New Hampshire
4.0	16	29	New Jersey
1.0	4	30	New Mexico
6.2	25	31	New York
3.0	12	32	North Carolina
0.0	0	33	North Dakota
0.2	1	34	Ohio
2.5	10	35	Oklahoma
2.2	9	36	Oregon
4.7	19	37	Pennsylvania
0.7	3	38	Rhode Island
2.0	8	39	South Carolina
0.0	0	40	South Dakota
1.7	7	41	Tennessee
8.4	34	42	Texas
0.2	1	43	Utah
0.2	1	44	Vermont
3.7	15	45	Virginia

2.0	8	46	Washington
0.7	3	47	West Virginia
1.7	7	48	Wisconsin
0.0	0	49	Wyoming
0.0	0	50	Puerto Rico
0.0	0	51	Alaska
0.2	1	52	Hawaii
0.0	0	53	I do not reside in the United States
	5	.	(Not Applicable)

100.0	410	cases	

Data type: numeric
Record/columns: 1/32-39

LOGINDATE LOGIN DATE

410 cases

Data type: character
Record/columns: 1/40-50

CLOSEDATE CLOSE DATE

410 cases

Data type: character
Record/columns: 1/51-61

OPENMONTH Dates : Month-Open Date:

%	N	VALUE	LABEL
1.9	7	1	January
2.8	10	2	February
3.3	12	3	March
3.6	13	4	April
3.9	14	5	May
5.0	18	6	June
5.3	19	7	July
4.7	17	8	August
7.8	28	9	September
7.8	28	10	October
5.0	18	11	November
1.4	5	12	December
47.4	170	99	Do Not Recall
	51	.	(Not Applicable)
-----	----		
100.0	410	cases	

Data type: numeric

Record/columns: 1/62-69

OPENDAY

Dates : Day-Open Date:

%	N	VALUE	LABEL
5.2	11	1	1
1.9	4	2	2
1.4	3	3	3
1.9	4	4	4
2.4	5	5	5
0.9	2	6	6
0.9	2	7	7
1.9	4	8	8
1.9	4	9	9
1.9	4	10	10
1.9	4	11	11
2.4	5	12	12
0.9	2	13	13
1.9	4	14	14
5.7	12	15	15
0.9	2	16	16
2.8	6	17	17
0.5	1	18	18
1.9	4	19	19
3.3	7	20	20
1.9	4	21	21
0.9	2	22	22
2.4	5	23	23
1.9	4	24	24
0.0	0	25	25
2.4	5	26	26
0.9	2	27	27
1.9	4	28	28
1.4	3	29	29
0.9	2	30	30
0.0	0	31	31
42.7	90	99	Do Not Recall
	199	.	(Not Applicable)
-----	----		
100.0	410	cases	

Data type: numeric

Record/columns: 1/70-77

OPENYEAR Dates : Year-Open Date:

%	N	VALUE	LABEL
0.2	1	2013	2013
5.9	24	2014	2014
93.9	385	2015	2015

100.0	410	cases	

Data type: numeric
 Record/columns: 1/78-85

CLOSEDMONTH Dates : Month-Closed Date:

%	N	VALUE	LABEL
1.5	5	1	January
2.1	7	2	February
2.3	8	3	March
1.2	4	4	April
4.1	14	5	May
2.9	10	6	June
2.1	7	7	July
5.6	19	8	August
2.9	10	9	September
4.4	15	10	October
7.0	24	11	November
9.1	31	12	December
54.8	187	99	Do Not Recall
	69	.	(Not Applicable)

100.0	410	cases	

Data type: numeric
 Record/columns: 1/86-93

CLOSEDDAY Dates : Day-Closed Date:

%	N	VALUE	LABEL
2.6	5	1	1
1.6	3	2	2
3.7	7	3	3
1.0	2	4	4
3.1	6	5	5
0.5	1	6	6
0.5	1	7	7
1.0	2	8	8
1.0	2	9	9
0.0	0	10	10
2.6	5	11	11
0.5	1	12	12
0.5	1	13	13
0.5	1	14	14
3.7	7	15	15
0.0	0	16	16
1.6	3	17	17
2.1	4	18	18
2.1	4	19	19
0.5	1	20	20
1.0	2	21	21
3.7	7	22	22
2.6	5	23	23
2.1	4	24	24
1.6	3	25	25
2.1	4	26	26
0.5	1	27	27
3.1	6	28	28
0.5	1	29	29
1.0	2	30	30
0.5	1	31	31
51.8	99	99	Do Not Recall
	219	.	(Not Applicable)
-----	----		
100.0	410	cases	

Data type: numeric
 Record/columns: 1/94-101

CLOSEDYEAR Dates : Year-Closed Date:

%	N	VALUE	LABEL
0.2	1	2013	2013
1.2	5	2014	2014
98.3	403	2015	2015
0.2	1	2016	
-----	----		
100.0	410	cases	

Data type: numeric
Record/columns: 1/102-109

Q7_1 Learn - Program-Owner's Manual/Warranty Info

%	N	VALUE	LABEL
100.0	135	1	
	275	.	(Not Applicable)
-----	----		
100.0	410	cases	

Data type: numeric
Record/columns: 1/110-117

Q7_2 Learn - Program-Attorney or Lawyer

%	N	VALUE	LABEL
100.0	36	1	
	374	.	(Not Applicable)
-----	----		
100.0	410	cases	

Data type: numeric
Record/columns: 1/118-125

Q7_3 Learn - Program-Brochures, Literature, Pamphlets

%	N	VALUE	LABEL
100.0	16	1	
	394	.	(Not Applicable)
-----	----		
100.0	410	cases	

Data type: numeric
Record/columns: 1/126-133

Q7_4 Learn - Program-Television, Radio, Newspapers

%	N	VALUE	LABEL
100.0	1	1	
	409	.	(Not Applicable)
-----	----		
100.0	410	cases	

Data type: numeric
Record/columns: 1/134-141

Q7_5 Learn - Program-Friends, Family, Co-Workers

%	N	VALUE	LABEL
100.0	26	1	
	384	.	(Not Applicable)
-----	----		
100.0	410	cases	

Data type: numeric
Record/columns: 1/142-149

Q7_6 Learn - Program-Previous Knowledge Program

%	N	VALUE	LABEL
100.0	13	1	
	397	.	(Not Applicable)
-----	----		
100.0	410	cases	

Data type: numeric
Record/columns: 1/150-157

Q7_7 Learn - Program-Internet, Website

%	N	VALUE	LABEL
100.0	81	1	
	329	.	(Not Applicable)
-----	----		
100.0	410	cases	

Data type: numeric
Record/columns: 1/158-165

Q7_8 Learn - Program-Automaker Customer Service

%	N	VALUE	LABEL
100.0	145	1	
	265	.	(Not Applicable)
-----	----		
100.0	410	cases	

Data type: numeric
Record/columns: 1/166-173

Q7_9 Learn - Program-Dealership Purchased

%	N	VALUE	LABEL
100.0	82	1	
	328	.	(Not Applicable)
-----	----		
100.0	410	cases	

Data type: numeric
Record/columns: 1/174-181

Q7_10 Learn - Program-Other

%	N	VALUE	LABEL
100.0	1	1	
	409	.	(Not Applicable)
-----	----		
100.0	410	cases	

Data type: numeric
Record/columns: 1/182-189

Q7_11 Learn - Program-Government-State Agency

%	N	VALUE	LABEL
100.0	7	1	
	403	.	(Not Applicable)
-----	----		
100.0	410	cases	

Data type: numeric
Record/columns: 1/190-197

Q8_1 Dealer-Manufacturer Inform-Talked in Person About Program

%	N	VALUE	LABEL
100.0	50	1	
	360	.	(Not Applicable)
-----	----		
100.0	410		cases

Data type: numeric
Record/columns: 1/198-205

Q8_2 Dealer-Manufacturer Inform-Talked Over the Phone

%	N	VALUE	LABEL
100.0	129	1	
	281	.	(Not Applicable)
-----	----		
100.0	410		cases

Data type: numeric
Record/columns: 1/206-213

Q8_3 Dealer-Manufacturer Inform-Gave or Sent Program Info

%	N	VALUE	LABEL
100.0	29	1	
	381	.	(Not Applicable)
-----	----		
100.0	410		cases

Data type: numeric
Record/columns: 1/214-221

Q8_4 Dealer-Manufacturer Inform-Showed Poster Other Materials

%	N	VALUE	LABEL
100.0	4	1	
	406	.	(Not Applicable)
-----	----		
100.0	410		cases

Data type: numeric
Record/columns: 1/222-229

Q8_5 Dealer-Manufacturer Inform-Other

%	N	VALUE	LABEL
100.0	1	1	
	409	.	(Not Applicable)

100.0	410	cases	

Data type: numeric
Record/columns: 1/230-237

Q9 Mail-Internet

%	N	VALUE	LABEL
42.6	173	1	Received program information and claims forms by mail
57.4	233	2	Accessed program information and claim forms from website
	4	.	(Not Applicable)

100.0	410	cases	

Data type: numeric
Record/columns: 1/238-245

Q10 Program Info

%	N	VALUE	LABEL
38.1	154	1	Very clear and easy to understand
45.0	182	2	A little difficult but still easy to understand
16.8	68	3	Pretty difficult to understand
	6	.	(Not Applicable)

100.0	410	cases	

Data type: numeric
Record/columns: 1/246-253

Q11 Complaint Forms

%	N	VALUE	LABEL
44.6	179	1	Very clear and easy to understand and complete
44.9	180	2	A little difficult but still easy to understand and complete
10.5	42	3	Pretty difficult to understand and complete
	9	.	(Not Applicable)

100.0	410	cases	

Data type: numeric
 Record/columns: 1/254-261

Q12 Outcome

%	N	VALUE	LABEL
4.4	18	1	Mediation - Settlement with Dealer or Manufacturer
95.6	392	2	Arbitration - Decision by Arbitrator, Panel or Board

100.0	410	cases	

Data type: numeric
 Record/columns: 1/262-269

Q13 Mediated Outcome

%	N	VALUE	LABEL
27.8	5	1	Ordered additional repair attempts
5.6	1	2	Ordered or recognized a trade assist (trade current vehicle towards a different vehicle)
44.4	8	3	Ordered a partial refund (includes buyback or cash settlement less mileage expenses)
16.7	3	4	Ordered a replacement vehicle
0.0	0	5	Other (please specify)
5.6	1	6	Dismissed your claim/no settlement was offered
	392	.	(Not Applicable)

100.0	410	cases	

Data type: numeric
 Record/columns: 1/270-277

Q14 Mediated-Received

%	N	VALUE	LABEL
100.0	18	1	Yes
0.0	0	2	No
	392	.	(Not Applicable)
-----	----		
100.0	410	cases	

Data type: numeric
Record/columns: 1/278-285

Q15 Mediated-Receive Time Frame

%	N	VALUE	LABEL
100.0	18	1	Yes
0.0	0	2	No
	392	.	(Not Applicable)
-----	----		
100.0	410	cases	

Data type: numeric
Record/columns: 1/286-293

Q16 Mediated-Not Receive

%	N	VALUE	LABEL
0.0	0	1	Yes
0.0	0	2	No
	410	.	(Not Applicable)
-----	----		
100.0	410	cases	

Data type: numeric
Record/columns: 1/294-301

Q18 Mediated-Purse Case

%	N	VALUE	LABEL
5.6	1	1	Yes
94.4	17	2	No
	392	.	(Not Applicable)
-----	----		
100.0	410	cases	

Data type: numeric
Record/columns: 1/302-309

Q19_1 Mediated-Method Pursue-Contacted Attorney

%	N	VALUE	LABEL
	410	.	(Not Applicable)
-----	----		
100.0	410	cases	

Data type: numeric
Record/columns: 1/310-317

Q19_2 Mediated-Method Pursue-Worked Different Solution
Dealer/Manufacturer

%	N	VALUE	LABEL
	410	.	(Not Applicable)
-----	----		
100.0	410	cases	

Data type: numeric
Record/columns: 1/318-325

Q19_3 Mediated-Method Pursue-Contacted State/Government Agency

%	N	VALUE	LABEL
	410	.	(Not Applicable)
-----	----		
100.0	410	cases	

Data type: numeric
Record/columns: 1/326-333

Q19_4 Mediated-Method Pursue-Re-contacted the NCDS

%	N	VALUE	LABEL
100.0	1	1	
	409	.	(Not Applicable)
-----	----		
100.0	410		cases

Data type: numeric
Record/columns: 1/334-341

Q19_5 Mediated-Method Pursue-Other

%	N	VALUE	LABEL
	410	.	(Not Applicable)
-----	----		
100.0	410		cases

Data type: numeric
Record/columns: 1/342-349

Q21 Arb - Paperwork

%	N	VALUE	LABEL
92.8	363	1	Yes
7.2	28	2	No
	19	.	(Not Applicable)
-----	----		
100.0	410		cases

Data type: numeric
Record/columns: 1/350-357

Q22 Arb - Accuracy Claim

%	N	VALUE	LABEL
33.5	121	1	Very accurately
40.4	146	2	Somewhat accurately
26.0	94	3	Not too or not at all accurately
	49	.	(Not Applicable)
-----	----		
100.0	410		cases

Data type: numeric
Record/columns: 1/358-365

Q23 Arb - Notified Hearing

%	N	VALUE	LABEL
68.3	265	1	Yes, notified
7.7	30	2	No, was not notified
24.0	93	3	Chose document only hearing
	22	.	(Not Applicable)
-----	----		
100.0	410		cases

Data type: numeric
Record/columns: 1/366-373

Q25 Arb - Attend Hearing

%	N	VALUE	LABEL
68.3	181	1	In person
2.3	6	2	By telephone
29.4	78	3	Did not attend hearing
	145	.	(Not Applicable)
-----	----		
100.0	410		cases

Data type: numeric
Record/columns: 1/374-381

Q26_1 Arb - Unattended Hearing-Work, School, Other Professional Commitment

%	N	VALUE	LABEL
100.0	18	1	
	392	.	(Not Applicable)
-----	----		
100.0	410		cases

Data type: numeric
Record/columns: 1/382-389



Q26_2 Arb - Unattended Hearing-Personal Commitment

%	N	VALUE	LABEL
100.0	2	1	
	408	.	(Not Applicable)
-----	---		
100.0	410	cases	

Data type: numeric
Record/columns: 1/390-397

Q26_3 Arb - Unattended Hearing-Distance Meeting Location

%	N	VALUE	LABEL
100.0	31	1	
	379	.	(Not Applicable)
-----	---		
100.0	410	cases	

Data type: numeric
Record/columns: 1/398-405

Q26_4 Arb - Unattended Hearing-Told Not Necessary

%	N	VALUE	LABEL
100.0	40	1	
	370	.	(Not Applicable)
-----	---		
100.0	410	cases	

Data type: numeric
Record/columns: 1/406-413

Q26_5 Arb - Unattended Hearing-Other

%	N	VALUE	LABEL
100.0	13	1	
	397	.	(Not Applicable)
-----	---		
100.0	410	cases	

Data type: numeric
Record/columns: 1/414-421

Q27

Arb - Outcome

%	N	VALUE	LABEL
4.6	18	1	Ordered additional repairs attempts
1.8	7	2	Ordered or recognized a trade assist (trade current vehicle towards a different vehicle)
16.3	64	3	Ordered a partial refund (includes buyback or cash settlement less mileage expenses)
6.4	25	4	Ordered a replacement vehicle
0.0	0	5	Ordered other (please specify)
70.9	278	6	The NCDS ruled against your claim and the manufacturer or dealer did not have to do anything further in your case.
	18	.	(Not Applicable)
-----	----		
100.0	410	cases	

Data type: numeric

Record/columns: 1/422-429

Q28

Arb - Accept-Reject

%	N	VALUE	LABEL
94.7	108	1	Accept the decision (award)
5.3	6	2	Reject the decision (award)
	296	.	(Not Applicable)
-----	----		
100.0	410	cases	

Data type: numeric

Record/columns: 1/430-437

Q31

Arb - Receive Time Frame

%	N	VALUE	LABEL
49.1	53	1	Receive your award within within the time frame specified in the decision?
37.0	40	2	Receive your award but not within the time frame specified in your decision?
13.9	15	3	Not receive your award?
	302	.	(Not Applicable)
-----	----		
100.0	410	cases	

Data type: numeric

Record/columns: 1/438-445

Q30 Arb - Pursue Case

%	N	VALUE	LABEL
31.2	122	1	Yes
68.8	269	2	No
	19	.	(Not Applicable)
-----	----		
100.0	410	cases	

Data type: numeric
Record/columns: 1/446-453

Q33_1 Arb-Method Pursue-Contacted Attorney

%	N	VALUE	LABEL
100.0	58	1	
	352	.	(Not Applicable)
-----	----		
100.0	410	cases	

Data type: numeric
Record/columns: 1/454-461

Q33_2 Arb-Method Pursue-Worked Different Solution Dealer/Manufacturer

%	N	VALUE	LABEL
100.0	36	1	
	374	.	(Not Applicable)
-----	----		
100.0	410	cases	

Data type: numeric
Record/columns: 1/462-469

Q33_3 Arb-Method Pursue-Contacted State/Government Agency

%	N	VALUE	LABEL
100.0	28	1	
	382	.	(Not Applicable)
-----	----		
100.0	410	cases	

Data type: numeric
Record/columns: 1/470-477

Q33_4 Arb-Method Pursue-Re-contacted the NCDS

%	N	VALUE	LABEL
100.0	42	1	
	368	.	(Not Applicable)
-----	---		
100.0	410		cases

Data type: numeric
Record/columns: 1/478-485

Q33_5 Arb-Method Pursue-Other

%	N	VALUE	LABEL
100.0	7	1	
	403	.	(Not Applicable)
-----	---		
100.0	410		cases

Data type: numeric
Record/columns: 1/486-493

Q39 Delay 40 Days

%	N	VALUE	LABEL
45.8	185	1	Yes
54.2	219	2	No
	6	.	(Not Applicable)
-----	---		
100.0	410		cases

Data type: numeric
Record/columns: 1/494-501

OBJECT Satisfaction-Their Objectivity - Fairness

%	N	VALUE	LABEL
54.8	215	1	
12.5	49	2	
5.1	20	3	
6.9	27	4	
10.2	40	5	
10.5	41	6	
	18	.	(Not Applicable)
-----	----		
100.0	410	cases	

Data type: numeric
Record/columns: 1/502-509

PROMPT Satisfaction-Their Promptness

%	N	VALUE	LABEL
29.6	110	1	
8.1	30	2	
8.9	33	3	
19.4	72	4	
21.3	79	5	
12.7	47	6	
	39	.	(Not Applicable)
-----	----		
100.0	410	cases	

Data type: numeric
Record/columns: 1/510-517

EFFORT Satisfaction-Their Effort

%	N	VALUE	LABEL
53.9	207	1	
10.2	39	2	
5.5	21	3	
10.7	41	4	
9.1	35	5	
10.7	41	6	
	26	.	(Not Applicable)
-----	----		
100.0	410	cases	

Data type: numeric
 Record/columns: 1/518-525

OVERALL Satisfaction-The NCDS Program Overall

%	N	VALUE	LABEL
54.1	209	1	
11.4	44	2	
6.5	25	3	
7.8	30	4	
9.6	37	5	
10.6	41	6	
	24	.	(Not Applicable)
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100.0	410	cases	

Data type: numeric
 Record/columns: 1/526-533

Q41 Reason Delay 40 Days

%	N	VALUE	LABEL
1.7	3	1	You failed to submit information in a timely manner
6.6	12	2	You did not first seek to solve issues directly with the automaker/manufacturer
91.7	166	3	The delay was due to other reasons (please specify)
	229	.	(Not Applicable)
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100.0	410	cases	

Data type: numeric
 Record/columns: 1/534-541

Q34 Return PostCard/Talk

%	N	VALUE	LABEL
26.3	104	1	Yes, talked to staff
19.9	79	2	Yes, returned postcard
11.1	44	3	Both, talked to staff and returned the postcard
42.7	169	4	No, didn't bother
	14	.	(Not Applicable)
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100.0	410		cases

Data type: numeric
 Record/columns: 1/542-549

IMPROVE1 Improvement - 1st Mention

%	N	VALUE	LABEL
4.9	16	2	Better Explanation/Documentation of Process/Program/Easier Understand
0.3	1	3	Make Program More Well Known/ Advertising
0.9	3	4	Need More Program Locations
1.2	4	5	Quicken Process/ Speedier Decisions
4.3	14	6	More/ Better Representation at Hearings
29.1	95	7	Bias Arbitrators/Arbitrators Favor Manufacturers
13.8	45	8	More Communication/Contact/Interaction Arbitrators Staff
7.0	23	9	Better/ More Knowledgeable Mechanics/Review Staff
9.8	32	10	Better Review Complaint/Problems by Staff/Arbitrators
6.7	22	11	Allow More Information/History of Problems in Complaint
6.4	21	12	Better Follow-up/Enforcement of Awards/Settlements
1.8	6	13	Fair/Equitable Settlements/Awards
7.0	23	14	Dealers/Manufacturers More Responsive to Consumers/Complainant
0.3	1	15	Electronic, On-Line, Email Communication/Forms
6.4	21	16	Did Good Job/Pleased/No Complaints
	83	.	(Not Applicable)
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100.0	410		cases

Data type: numeric
 Record/columns: 1/550-557

IMPROVE2

Improvement -2nd Mention

%	N	VALUE	LABEL
5.3	5	2	Better Explanation/Documentation of Process/Program/Easier Understand
0.0	0	3	Make Program More Well Known/ Advertising
1.1	1	4	Need More Program Locations
5.3	5	5	Quicken Process/ Speedier Decisions
5.3	5	6	More/ Better Representation at Hearings
11.6	11	7	Bias Arbitrators/Arbitrators Favor Manufacturers
9.5	9	8	More Communication/Contact/Interaction Arbitrators Staff
7.4	7	9	Better/ More Knowledgeable Mechanics/Review Staff
16.8	16	10	Better Review Complaint/Problems by Staff/Arbitrators
5.3	5	11	Allow More Information/History of Problems in Complaint
5.3	5	12	Better Follow-up/Enforcement of Awards/Settlements
6.3	6	13	Fair/Equitable Settlements/Awards
20.0	19	14	Dealers/Manufacturers More Responsive to Consumers/Complainant
0.0	0	15	Electronic, On-Line, Email Communication/Forms
1.1	1	16	Did Good Job/Pleased/No Complaints
	315	.	(Not Applicable)
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100.0	410	cases	

Data type: numeric
 Record/columns: 1/558-565