

***United States Federal Trade Commission***

***National Center for Dispute Settlement***

***Automobile Warranty Arbitration Program***

***2019 Audit***

**(January - December 2019)**

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## *Introduction*

This 2019 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 2019. 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, FCA US LLC,<sup>1</sup> 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.

Claverhouse traveled to Florida to attend and assess a hearing scheduled in Florida. That hearing was cancelled at the last moment because the parties reached a dispute settlement. A hearing in South Carolina was held as scheduled on January 17, 2020 at 9:30 a.m. and was attended by Claverhouse. A Texas documents-only hearing was reviewed by the auditor in 2020 for this 2019 audit report. The assessments made of these hearings are described in the on-site field inspections sections of this report. Normally, visits to these locations are arranged to coordinate with the scheduled arbitration hearings, but several conventions were adopted this year due to the Covid 19 restrictions. These conventions are described in the on-site sections of th report. In addition, we audited an arbitrator training conducted in Dallas, Texas, from March 15 - 17, 2019 in Irving (Dallas), Texas, at the Westin Dallas/Ft. Worth Airport. 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 (2019). 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 2019 as required.

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1. The company has changed its legal name from Chrysler Corporation to FCA US LLC. In the recent past, FCA US LLC only offered arbitration in four states: Arkansas, Idaho, Kentucky, and Minnesota, but they began gradually expanding into the other states and are now operating nationwide under the NCDS program.

## SECTION I

### *Compliance Summary*

This is the seventeenth 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 are no longer at serious risk in that regard.<sup>2</sup>

The three regions of the NCDS program audited are: Florida, South Carolina, and Texas. All functioned during 2019 in compliance with FTC Rule 703.<sup>3</sup> 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.<sup>4</sup> Our original survey sample consisted of 3,861 cases<sup>5</sup>, of which we completed surveys for 350 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

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2. Program alterations have adequately addressed the issues raised by the auditor and are explained in detail in other sections of this report.

3. As was related in recent audits: "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. Most of 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 should not 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 many manufacturers." At the same time, this year's experience in this regard, was similar to recent past findings. Only one manufacturer in one state met this requirement during our inspections. Individual manufacturers are addressed in Section Two of this report. Which manufacturers are included in this section is determined somewhat randomly based on several factors including the proximity of other dealers to the hearing's location. This factor may not be dispositive with respect to manufacturers if it has been a long time since one of the participating manufacturers has been selected for review. A purely random selection is balanced against distance, frequencies and costs associated with distance to a particular dealership.

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

5. The universe of available cases amounted to 3,861 but the operating universe from which the sample was drawn only included the 3,162 closed arbitrated, or mediated cases. For details see Survey Section.

the AWAP. As has been true in most audits we have conducted for various programs, the few statistically significant differences between the figures reported by the AWAP and the survey findings were deemed to be easily understandable and do not suggest unreliable reporting by the program. For a detailed discussion, see the Survey Section of this report.

Arbitrators, AWAP personnel, and regulators we interviewed at both the state and federal jurisdictions view 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. For more details concerning our assessment of this years arbitrator training see the Arbitrator Training Section of this report.

## 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 2019. An important component of the audit is the survey of a randomly selected sample of 3,861 NCDS' Dispute Settlement Program applicants whose cases were closed in 2019 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 Dallas, Texas headquarters office of the National Center for Dispute Settlement.

We performed field audits of the AWAP as it operates in Florida, South Carolina, and Texas. We also examined a sample of current (i.e., 2019) case files for accuracy and completeness. A sample of case files was drawn from all case files for the years 2016-2019 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 Miami Beach, Florida<sup>6</sup>; Anderson, South Carolina and San Antonio, Texas,<sup>7</sup> to audit the scheduled hearings. We also interviewed participants, where applicable, including in some cases arbitrators and AWAP/NCDS administrative personnel.

To assess arbitrator training, we monitored the NCDS-sponsored training session held in Irving (Dallas/Ft. Worth), Texas, March 15-17, of 2019. Dallas, Texas, 2019. In addition to monitoring the training itself, we again interviewed trainees (both before and after training), the training staff, and reviewed the training materials.<sup>8</sup>

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6. The scheduled Florida hearing was cancelled at the last moment and the Claverhouse field representative was notified in the room where the scheduled hearing had been scheduled. In the field Audit Section for Florida the reader will find our detailed description of the 2019 hearing that we reviewed and assessed for this report.

7. Due to travel restrictions related to the Covid-19 pandemic the Texas hearing we reviewed and assessed for this report was conducted remotely via teleconference. The details are outlined in the Field Audit Section of the report.

8. Typically, our review of the training of arbitrators is carried out in either the year in which we create the report (this year 2020) or alternatively in the year of the focus of the report (this year 2019). Due to the Covid-19 pandemic training sessions were cancelled given that trainees are usually flown in from the various parts of the nation. For that reason, we opted to rely this year on the latter of the two methods (the 2019 training session we monitored and assessed.)

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 seventeenth annual audit (2019) conducted by Claverhouse Associates of the 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 have typically taken place at the Dallas, Texas office of the program's independent administrator, but that offices' location has been changed to Dallas, Texas.<sup>9</sup> Our review of randomly selected cases drawn from the four-year period (2016-2019) demonstrated that the case files were maintained in 2019, 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 2019 cases validated these findings. Our review of selected cases drawn from the four-year period (2016-2019) demonstrated that the case files were being maintained in 2019, as required.

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9. This year we had the sample of case files copied and shipped to our East Lansing office for our review. This convention was adopted because of the Covid-19 travel restrictions in place at the time of our case file review.

DISCREPANCIES:

Consistent with most past years, 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. The files, as copied, 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.<sup>10</sup> 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 [2020] maintained by the NCDS staff at the NCDS headquarters in Dallas, Texas.

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10. 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.

The audit includes a review and assessment of a data printout for the calendar year 2019.

The *AWAP Statistics* identifies 4,810 AWAP disputes filed in 2019. Of these, 3,861 cases were eligible for AWAP review, and 1,001 cases were determined by the AWAP to be out-of-jurisdiction. Of the in-jurisdiction closed cases, NCDS reports that 2,998 were arbitrated<sup>11</sup> and 289 were mediated.<sup>12</sup> There were 2,534 arbitrated decisions which were reported as “adverse to the consumer” per § 703.6 (E) representing 52.88% of all arbitrated cases.<sup>13</sup>

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

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

#### DISCREPANCIES:

None

#### REQUIREMENT: § 703.6 (c)

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

#### FINDINGS:

AWAP reports that there were no such cases in 2019. 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

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11. 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”.

12. 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.

13. What this high percentage reflects is the reality that, in many ways, the Magnuson-Moss Warranty Act is working as the U.S. Congress intended because manufacturers are building vehicles with fewer mechanical problems and their warranty promises to resolve warranty disputes to customer’s satisfaction within reasonable time constraints are being kept far better than in the period before the statute was enacted. These mandated audits were not intended, however, to discover the degree to which some customers may have had concerns but were not aware of their possible remedies under these dispute resolution programs. Adverse decisions equal 2,534. The total number of decisions rendered by the NCDS Mechanism in 2019 was 2,998.

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 August 2019, 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 on the date the report was generated. Our analyses indicate 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 and these reports are available for review by appropriate regulating authorities.

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 Dallas, Texas, 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 2019 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 Dallas, Texas office. Any required report can be obtained

from Deborah Lech, Regulatory & Training 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, FCA US LLC, Honda, Lexus, Mitsubishi, Suzuki, Tesla, and Toyota.]*

**Examination of individual manufacturers' duty to make customers and others aware of their independent dispute resolution Mechanisms and how to contact them toll-free if they elect to file a dispute and request a hearing for an independent arbitrator to render a dispute resolution decision.**

For the 2019 report, we interviewed NCDS staff and inquired as to any changes from the previous year in each manufacturers' efforts to ensure their customers were being made aware of the availability of the 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 sample.

In 2020 we visited the Delray Acura dealership in Delray, Florida at 655 N. E. 6<sup>th</sup> Ave., Delray Beach, Florida. Our inquiries concerning customer options when they experienced warranty disputes revealed no useful information from this dealer's service department. Moreover, they did not mention at any time during our interview the NCDS Informal Dispute Mechanism.

#### **FCA US LLC<sup>14</sup>: (Formerly, Chrysler)**

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

"FCA US LLC uses several means by which to meet this important requirement. They are as follows:

The (2015 audit year report submitted in 2016) states:

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14. This designation replaces the name Chrysler.

“Note: The FCA US LLC 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.

We have received no information from NCDS or from the manufacturer suggesting that this situation has changed.

In 2020, we visited the Mac Halik Chrysler, Dodge, Jeep and Ram dealership in Houston, Texas at 12111 Katy Freeway where we interviewed a service department’s service advisor seeking information about methods for resolving on-going warranty disputes. Our field investigator was informed by the service department that FCA US LLC has no third-party independent Mechanism and that customers with unresolved warranty disputes should simply contact the manufacturer’s customer assistance line (i.e. 1-800-992-1997).

#### 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 manufacturers were selected in our selected sample. Dealer 'secret shopper' interview results are located at the conclusion of this section of the report.

In 2020 we visited and interviewed a service department employee in the Piedmont Honda located at 4011 Clemson Blvd., in Anderson, South Carolina. We received no useful information about resolving on-going warranty disputes nor any information referencing the NCDS Informal Dispute Resolution Mechanism.

#### 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

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

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.]

Claverhouse visited two Lexus dealers in February of 2020 for this year's report (2019), to wit:

Lexus of Dayton  
8111 Yankee St.  
Centerville, Ohio 45458

Westside Lexus  
12000 Katy Freeway  
Houston, Texas 77079

At one dealership the Service Consultant said, "You need to call Lexus Consumer Affairs & if that doesn't work, you need to go legal." The other dealer representative indicated that there is no third-party resolution process & advised to call the main Lexus number.

These kinds of responses conflict with the informal understanding established between federal regulators at the Federal Trade Commission and participating manufacturers that was an approach suggested by the manufacturers in response to the initial draft of Rule 703 implementing the Magnuson Moss Warranty Act. The initial proposed rule called for a mandated national advertising program informing the public about the availability of Informal Warranty Dispute Mechanisms. This aspect of the initial proposal was withdrawn at the request of manufacturers who asserted that in exchange for the withdrawal, the manufacturers would implement voluntary information programs at dealerships in the service departments where customers typically voiced their warranty concerns. These programs were supposed to make clear how customers with warranty disputes could initiate a no-cost claim for dispute settlement review by an independent third-party who were empowered to award refunds, replacements, reimbursements or repairs. The final rule, as promulgated, requires that customers with a dispute may file their claims for a hearing and a decision directly with the independent dispute resolution program without having to go through a dealer or manufacturer.

If Lexus, or any other manufacturer, implements a policy that requires a customer to contact the manufacturer in order to obtain information about the federally mandated Warranty Dispute Mechanisms, this policy is contrary to the informal agreement that was reached as a means by which manufacturers could avoid having to implement a national mass-media advertising program on this subject. Again, if this service advisor's response to our inquiry is accurate, then the FTC staff should be advised that Lexus may have decided to withdraw its earlier agreement. It is doubtful, however, that this is the true case, and it may be little more than a communication breakdown between Lexus and one of its dealerships.

We have said in several 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.*

In 2020 we visited the following Lexus dealerships.

Lexus of N. Miami  
14100 Biscayne Bay  
North Miami, FL 33181

Westside Lexus  
12000 Katy Freeway  
Houston, Texas 77079

In 2016, we visited the following Lexus dealerships<sup>15</sup>:

Lexus of Orland  
8300 W. 159<sup>th</sup>  
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.

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15. We included this older experience because we have not visited many Lexus dealers in recent years because our selected hearings visits were not located nearby any Lexus dealers or they had already been visited in earlier years.

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*

*“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.”*

#### DISCREPANCIES (2019 audit):

The findings related to Lexus this year are similar to those of the recent past years. Lexus’ compliance status is open to question due to its consistently poor results in regards to making customers aware of the

Note: Lexus aggressively attempts to resolve disputes directly but its successes notwithstanding, they still need to meet the requirement to advise inquiring individuals about the NCDS program for dispute resolution and how to easily access the program.

## **MITSUBISHI:**

Mitsubishi uses the following means by which to meet this important requirement:<sup>16</sup>

- 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.

In many of our random audits of dealerships in the areas surrounding the field audit sites, we 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*

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<sup>16</sup> . 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.

1/14/04 please ensure DPSMs are training their dealer personnel on our Dispute Resolution Process.

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

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

We also said at the time,

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

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

We include here, for reference purposes, our findings from two 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 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.*

*“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 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 this year's 2019 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. Presumably, there has been no change in the status reported to us last year (2019).

**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*.<sup>17</sup> 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.

In 2020 [for 2019 audit], we visited five Toyota dealerships:

Don McGill Toyota  
11800 Katy Freeway  
Houston, Texas 77079

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17. 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*.

Ralph Hayes Toyota  
3525 Clemson Blvd.  
Anderson, South Carolina 29621

Toyota of Greenville,  
2686 Lauren Road  
Greenville, South Carolina 29607

Joseph Airport Toyota  
1180 W. National Road  
Vandalia, Ohio 45377

Walker Auto Group (Toyota)  
8457 Springboro Pike  
Miamisburg, Ohio 45342

At one dealership in South Carolina, a service advisor said:

“Anything dealing with arbitration you have to contact Toyota,” which is incorrect because any customer with a warranty dispute may contact a participating manufacturer’s regulated Mechanism by contacting the Mechanism directly. In the case of Toyota, that would be NCDS and the service department should provide the customer with the NCDS toll-free telephone number or refer them to their Owner’s Manual for contact information.

Several responses alluded to above do not 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 directly with the Mechanism. This provision also mandates that in meeting this requirement only factual information be provided.

This requirement provision in the Rule, was voluntarily offered by manufacturers during the Rule promulgation process, as an alternative to what was originally proposed by the Federal Trade Commission staff. The manufacturers’ proposal was thereafter substituted for the far more onerous original requirement. Hence, the importance of the manufacturers complying with this aspect of Rule 703 since its existence was promulgated at the industry’s own request.

“Nothing contained in paragraphs (b), (c), or (d) [703.2 (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 previous three audited years: 3,615 in 2016, 3,395 in 2017, 3,602 in 2018 and nearly 5,000 in 2019 amounting to more than 15,000 claims filed in the course of the last four years, a large share of which were filed

by Toyota customers. This demonstrates that many Toyota customers were somehow 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 point out that the Federal Trade Commission staff in the section of Federal Register that contains "the Proceedings" reported 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.<sup>18</sup> 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**

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18. The Proceedings is the first part of the section wherein the promulgated Rule 703 appears and at the proceedings' conclusion it is pointed out that the Proceedings is promulgated as part of Rule 703. See pg. 60215 of Federal Register, Vol. 40, No. 251, December 31, 1975.

- (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.

#### 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**<sup>19</sup>

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

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

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

### FINDINGS:

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

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

### 4) **Follow-up**

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

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

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19. 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.

- 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 two arbitration formats. The two formats are: a) a board consisting of three arbitrators; and, b) one individual arbitrator. 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.<sup>20</sup>

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 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.

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20. 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.

In most cases, the NCDS process involves a single arbitrator. In such instances, the hearing is conducted solely by the arbitrator with only rare 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.

On rare occasions, something unusual occurs that requires the arbitrator to take a brief recess so the arbitrator can consult by telephone with the staff in the Dallas, Texas main office. For example, a customer has had an independent inspection and brings to the hearing a signed affidavit by an independent certified automobile mechanic who is standing by to receive a call in order to answer clarification questions while on a speaker-phone. Such an occasion is so rare the arbitrator may want to be certain that such testimony is allowable under the NCDS program rules.

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

## FINDINGS:

We said in several earlier reports the following:

*The AWAP's meeting process is in substantial compliance with the federal regulation and provides for fair and expeditious resolution of warranty disputes.*

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.<sup>21</sup> Arbitrators are not required by the program to have any established expertise in the complexities of automobile warranty law at the time of their appointment. Fairness, as envisioned by state policy makers, however, requires that arbitrators have some level of knowledge of the state and federal regulations that set forth the basic rights and responsibilities of the parties to a warranty dispute.

Our monitoring of arbitration hearings and interviewing of arbitrators in virtually all such programs has continually underscored the importance of on-going arbitrator training. Without regular input and feedback mechanisms, arbitrators

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

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.”

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*

Three Geographical Areas that were reviewed for this year's annual Federal Trade Commission audit are: Florida, South Carolina, and Texas.

### **I. Florida**

#### A. Case Load and Basic Statistics

Our original survey sample consisted of 188 closed NCDS cases,<sup>22</sup> of which we interviewed 57 customers. Consistent with most automobile warranty arbitration audits we have conducted, surveyed customers tend to report that they were pleased with 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 NCDS' arbitration program. Because the number of the arbitrated cases decided in 2019 which resulted in a decision adverse to the customer, was 88.7 percent of the cases decided, it is understandable that a large number expressed dissatisfaction with the program in the survey on this question. While significant, this survey finding is basically a reflection of the outcome of the arbitration. A result which we have come to understand is predictable, having more to do with outcome than any dissatisfaction with a specific aspect of the program. This unfortunate pattern has been consistent with every extant arbitration program we have audited over the past 25 years. Simply put, customers who use the arbitration programs rarely give the program positive marks if they don't receive what they requested. Conversely, those who receive awards similar to what they sought, tend to find the program eminently fair.

The average number of days for handling a case in Florida in 2019 was 32 days which is similar to the number (34) for resolving cases nationally.

#### 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 2019 NCDS' Operations. Those reports are available from Deborah Lech, Regulatory & Training Manager, National Center for Dispute Settlement, 12400 Coit Road, Suite 1230, Dallas, Texas 75251.

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

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22. The statistics being referenced may occasionally appear to be inexplicably at odds with one another in small ways. Most often this is due to data being collected and reported pursuant to different regulatory mandates using different terminology for very similar concepts. We pointed out in prior reports, that some cases are typically removed by NCDS as inapplicable to the federally mandated reports embodied in the Magnuson-Moss Warranty Act. While the Florida reporting requirements are similar to the federal requirements in many ways, they are, nevertheless, different in small but often important ways.

§ 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 2019 "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."

**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. 2016-2019)**

**§ 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 2016 through 2019 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 Dallas, Texas, 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 Dallas, Texas.

## ii. Arbitrator Biographies

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

## E. Hearing Process

The state-specific as well as the FTC national audit Florida hearing was scheduled at the Holiday Inn, 433 Collins Avenue, Miami Beach, FL on February 13, 2020 for a Lexus hearing, Case 342001, Ms Mimi Turin presiding as Arbitrator. Auditor traveled to the hearing and had accommodations at the hotel. Auditor was notified in the conference room when hearing was to begin that the hearing was cancelled.

Unexpectedly, an informal settlement conference took place between Lexus and the customer that resulted in a last-minute pre-hearing settlement of the dispute. To date, no other hearings have taken place.

Due to the audit costs associated with these on-site hearing assessments, together with the on-set of the Covid 19 pandemic, it was deemed advisable for purposes of this report to rely upon our earlier review of a Lexus Florida Hearing conducted and assessed during the year covered by this audit (i.e. 2019)<sup>23</sup>. This hearing was held at the Marriott Courtyard Hotel in Coral Springs on February 7, 2019 at 11:00 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, a Lexus manufacturer representative, and the auditor.

### ii. Openness of Hearing

The meeting began ten minutes earlier than the 11 a.m. scheduled time. Upon inquiry, 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.

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23. The following narrative review included here was also included in last year's audit report. This convention allows us to maintain continuity in the formatting of these reports. Moreover, it is entirely consistent with the requirements of the Florida regulations governing these informal dispute Mechanisms regulated by both federal and state regulations.

### iii. Efficiency of Meeting

The experienced arbitrator's case file appeared to be complete with all required documents. The arbitrator demonstrated throughout the hearing that she generally knew how to properly conduct a hearing. The customer was informed that there would be a test drive because the warranty dispute centered on a driveability and performance issue. She also informed the customer that in the NCDS program, the customer drives the vehicle while the arbitrator and any others present simply observe.

The arbitrator then proceeded to allow each party to present their case, after explaining that the parties should not be interrupted by the opposing party.

The arbitrator made a mistake at this juncture by informing the customer that in the event she were to grant her requested relief (A refund) that "a mileage/usage fee" would be applied pursuant to the state's 'lemon law.' This is an error of no small magnitude because the NCDS Warranty Dispute Mechanism is not technically subject to the Florida Lemon Law but is rather governed by the Federal Magnuson-Moss Warranty Act, and its administrative Rule 703. While the Program and most all state and federal regulators take cognizance of the provisions of state lemon laws, they are not binding on those dispute Mechanisms like NCDS. A mileage assessment, therefore "may" be applied by NCDS arbitrators but in no case is such an assessment mandatory. This topic is governed by the discretion of the arbitrator based upon the unique facts of each case and the applicable federal rules and regulations.

This issue was addressed with the arbitrator as a follow-up after the hearing and the arbitrator indicated that she would address that issue as discussed in this and future cases.<sup>24</sup>

### iv. Hearing

The hearing was properly conducted. All parties were afforded an opportunity to present their versions of the dispute. Following each party's presentation, the other party

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24. In addition, NCDS circulates written memoranda on occasion to its arbitrators (i.e. "Members") and they have also published a memorandum on the subject of the applicability of mileage offsets in certain cases, emphasizing that such an assessment is a purely discretionary one made exclusively by the applicable arbitrator in each case based upon the unique facts of the case. This is because the Federal regulations did not provide any specific direction in that regard. The state Lemon law statutes, however, do provide for mileage/usage offsets to the price paid in refund cases and regulators, to date, appear to be willing to accept arbitrators taking cognizance of the various state statutes offsetting benefits of the applicability of Lemon Law Presumptions that certain facts trigger a presumptive shifting of the burden from the customer/claimant to the manufacturer (e.g. four or more repairs for the same "nonconformity" with the manufacturer's Warranty). These various presumptions, in some cases constitute a benefit to customers while the mileage offset can usually be a benefit to manufacturers. Hence, the existence of this regulatory convention.

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 representative. After the inspection was complete, all those participating returned to the hearing room.

The parties made brief concluding remarks and the arbitrator thereafter announced that the hearing was concluded.

v. Board/Arbitrator Decisions

We reviewed the arbitrator's decision in this case, and a sample of Florida NCDS decisions rendered in 2019. The decisions we reviewed were reasonable and consistent with the facts of the case, at least insofar as the case file is concerned. This particular case's outcome was also consistent with the facts in the case file as presented by the parties at the hearing.

**CONCLUSION:**

We conclude that the AWAP, as it operates in Florida, is in substantial compliance with Rule 703. The NCDS administrative staff and the NCDS program demonstrates 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.<sup>25</sup>

**II. South Carolina**

A. Case Load and Basic Statistics

The 2019 South Carolina Statistical compilations identifies 91 total disputes for 2019. In addition, 14 were beyond jurisdiction for NCDS' arbitration program review. Of the remaining 77 cases, five were mediated, and 65 were arbitrated. Four decided case decisions were still pending at the time these statistics were compiled, and three were recorded as withdrawn, presumably, after the case was scheduled for its hearing. The average number of days for handling a case in South Carolina in 2019 was 35 days which nearly mirrors the number for resolving cases nationally (34 days).

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25. Any comments we have made in recent past audits concerning Lexus' preference to use a panel of arbitrators are no longer applicable insofar as Lexus no longer opts for the panel of arbitrators and like all of the other participating manufacturers relies on the single arbitrator model.

The South Carolina regional field audit includes a review of a hearing held at the Piedmont Chrysler-Dodge-Jeep dealership Dealership in Anderson, South Carolina, January 17, 2020. The hearing began at 9:30 a.m. This assessment includes interviews with the principal parties involved in the hearing. In addition, we reviewed a sample of NCDS case files for South Carolina, which are stored at the national headquarters of the National Center for Dispute Settlement (NCDS), in Dallas, Texas.

We requested a random sample of cases drawn from all South Carolina cases closed during the audit period and examined them 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.

#### B. Record-keeping Accuracy and Completeness

We requested a random sample of South Carolina case files drawn from all cases closed during the audit period and examined them to determine whether they were complete and available for audit.<sup>26</sup> The records were complete and available for audit.

The above referenced reports are available from Deborah Lech, Regulatory & Training Manager, National Center for Dispute Settlement, 12400 Coit Road, Suite 1230, Dallas, Texas 75251.

The results of the random sample inspection of the 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 the contact person of the Warrantor;**
- 3) Brand name and model number of the product involved;**
- 4) The date of receipt of the dispute and date of disclosure to the consumer of the decision;**
- 5) All letters or other written documents submitted by either party.**

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26. Due to the Covid-19 2020 travel restrictions we had a random sample of case files photocopied and mailed to the Claverhouse headquarters in East Lansing, Michigan, where we conducted our review. These files were subsequently shredded and disposed of.

## 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. 2016-2019)

#### § 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 Dallas, Texas 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 of closed case files drawn from all cases in the four-year universe of cases. 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 Dallas, Texas.

#### ii. Arbitrator Biographies

The arbitrator biographies for the national program are available for review from Deborah Lech, Regulatory & Training Manager, National Center for Dispute Settlement, 12400 Coit Road, Suite 1230, Dallas, Texas 75251. The biographies are thorough and current, and the list of arbitrators for each district includes the dates of their appointments.

## E. Hearing Process

### NCDS Automotive Warranty Arbitration Program Arbitration Process

#### 1. Physical Description of Arbitration Hearing

The AWAP hearing was scheduled to be held at the Piedmont Chrysler-Dodge-Jeep Dealership in Anderson, South Carolina, January 17, 2020<sup>27</sup> at 9:30 a.m. The hearing room was of adequate size for accommodating the hearing. The hearing commenced at 9:30 a.m. as scheduled. The parties included the customer, a manufacturer representative (via telespeakerphone), the arbitrator and the auditor from Claverhouse Associates.

#### 2. Openness of Arbitration Hearing

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

#### 3. Efficiency of Arbitration Hearing

The arbitrator's case file was complete. She solicited all the necessary information from the claimant and the manufacturer. She gave a brief summary of the case as filed, including a brief description of the alleged non-conformity together with the relief the complainant sought. This arbitrator demonstrated her expertise and properly conducted the hearing. (See Sub-Section 5 below re "Arbitration Decisions" as well as the footnote.)

#### 4. Hearing Process

The hearing was properly conducted. Both parties made presentations and all questions posed were addressed by the applicable parties.

#### 5. Arbitration Decisions

Claverhouse Associates reviewed the arbitrator's decision along with the several other decisions rendered by the NCDS arbitrators in South Carolina during the audited year (here, 2019). Those reviewed were all written consistent with applicable regulations as well as the NCDS program rules.

The decision in this case was somewhat consistent with the facts of the case and was thorough and reasonably complete with one exception (see footnote:)<sup>28</sup>. As always, Claverhouse Associates does not opine on the

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27. The hearings are typically reviewed in the calendar year following the year being audited.

28. The arbitrator in her decision acknowledges that a defect existed with respect to the customer's vehicle and further that this defect "impaired the safety, use and value" of the vehicle. In addition she acknowledges therein that a

actual determination, provided it is consistent with the facts presented and the applicable law.

*Note: This decision and its problematical nature was discussed with staff of NCDS and will undoubtedly serve as a valuable learning tool for arbitrator training sessions in the future.*

## **CONCLUSION:**

The AWAP, as it operates in the state of South Carolina in 2019, is in substantial compliance with Rule 703. The NCDS administrative staff and the NCDS program demonstrates a clear commitment to ensure fair and expeditious resolution of warranty disputes. The administrative staff is clearly dedicated to the program's mission and, for the most part, demonstrates a high degree of professionalism.

### **III. Texas**

#### **A. Case Load and Basic Statistics**

The Texas compilations identifies 247 total disputes closed for 2019. Of these 74 cases (29.9% of all disputes) were beyond jurisdiction for NCDS arbitration program review. Of the remaining 128 cases, twelve were mediated, and as in the recent past the vast majority of cases were arbitrated. Eight cases were 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 in large measure 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 2019 case in Texas was (like in South Carolina, 35) as compared to 34 days nationally.

We analyzed a random sample of cases drawn from all 2019 Texas 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 Deborah Lech, Regulatory & Training Manager, National Center for Dispute Settlement, 12400 Coit Road, Suite 1230, Dallas, Texas 75251.

#### **B. Record-keeping Accuracy and Completeness**

We had a random sample of Texas case files drawn from all cases closed during the audit period [2019] and examined them to determine whether they were

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"substantial number of repair attempts had been made that were "still on-going." These acknowledged facts provide a solid basis for granting the customer their requested relief. Instead, the arbitrator denied the customer her requested relief and yet, in so doing, failed to also provide any reasonable justification for reaching her conclusion. The decision rendered in this case, the auditor deems inexplicable and therefore problematic.

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 2019 "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.<sup>29</sup>

**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

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29. 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.

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 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. 2016-2019)

§ 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 review a random sample of 25 case numbers from the years 2016 through 2019 drawn from NCDS' complete data base program, or in cases where there were less than 25 cases filed, we review all the case files that were generated. 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.<sup>30</sup> 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

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30. Future past records will be stored at an off-site facility near the NCDS Dallas, Texas headquarters.

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 Deborah Lech, Regulatory & Training Manager, National Center For Dispute Settlement at their headquarters in Dallas, Texas. 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 by teleconference on April 08, 2020 at 10:00 a.m. This hearing involved a dealership (Mission Mitsubishi in San Antonio, Texas) as well as the manufacturer and the customer.

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

This factor has no relevance in this particular case because it was a teleconference hearing conducted due to the 2020 Covid Pandemic.

##### 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. *(Note: It is unclear how this requirement would be met in a case wherein a prospective observer contacted NCDS and requested to attend via speakerphone.)*

##### iii. Efficiency of Meeting

The arbitrator demonstrated throughout the hearing that he knew how to properly conduct a hearing.

The arbitrator's case file appeared complete. He informed the customer and the other participants about the rules of the program that govern hearings and explained the procedures that he would follow.

program that govern hearings and explained the procedures that he would follow.

The customer, manufacturer and Dealer were all allowed to present their case without interruption. The customer requested a repurchase of the vehicle.

In addition, the parties were given an opportunity to ask appropriate clarifying questions prior to concluding the hearing.

After determining that the parties had nothing further to add, the arbitrator declared the hearing closed.

#### iv. Hearing Process

The hearing was properly conducted throughout. The arbitrator adapted his procedures appropriately in order to facilitate the hearing under the unusual teleconference conditions. *Note: Use of a teleconference methodology is technically inconsistent with some of the Rule 703 requirements but this method was adopted as an emergency exception necessitated by the unprecedented Covid-19 pandemic and its related limitations connected to both federal and state emergency restrictions.*

#### v. Board/Arbitrator Decisions

We reviewed this case's decision and a sample of Texas hearing decisions for the calendar year 2019. The sample of case decisions we reviewed were generally reasonable and consistent with the facts of the cases involved.

The outcome of the decision in regards to this hearing was justifiable and consistent with the evidence presented.

### CONCLUSION:

We conclude that the AWAP, as it operates in the state of Texas, 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.

## *Arbitration Training*

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

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 national training program was conducted from March 18 - 20, 2019 in Irving (Dallas), Texas, at the Westin Dallas/Ft. Worth Airport.<sup>31</sup>

The national training assessed in 2019, was conducted by NCDS staff with legal augmentation provided by Mary Bedikian on regulatory matters. The training program attendees included the NCDS President, Mr. John Holloran, the NCDS management and training staff, NCDS trainers, including Mary Bedikian, 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 and their associated administrative rules.

The weekend training program opened with an introduction of trainers and trainees. This was followed by program overview comments to the arbitrators/trainees given by Mr. John Holloran, President of The National Center for Dispute Settlement. Mr. Holloran's comments were followed by an overview of the training agenda.

A substantive presentation was then given by Mr. Ray Sanders, a certified technician and long-time instructor in auto-mechanics as well an experienced arbitrator. His comments were well received and are deemed helpful for both new and experienced arbitrators.

Overall, the training 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

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31. Due to the Covid 19 pandemic, several scheduled NCDS training sessions in 2020 were cancelled given the logistical impossibilities for bringing prospective trainees to Dallas, Texas from all over the nation. Fortunately, during the year 2019, which is the applicable audit year, Claverhouse attended and assessed the NCDS national training therefore, we were able, by convention, to legitimately rely upon the review conducted in 2019.

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.

A substantial portion of day two involved questions from currently serving arbitrators responded to by a long-time experienced NCDS arbitrator who is a licensed master mechanic. During his presentation, the subject of "black box computers" applicability to arbitration disputes was discussed. There were clearly more questions than answers. This aspect of the program will require further study and reflection by the program, the regulators and the arbitrators.

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, again this year brought this concern to the attention of the trainees which, again had a noticeable and positive effect. This year’s experience was like last years, better than what had transpired in the past, but it is clear that participants will invariably pose distracting hypothetical scenarios if not closely monitored by the trainers. 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 are offered only in the spirit of quality control.

The last day’s training program allowed for drafting decisions and all its associated elements. Trainees applied their training principles and acquired tools for drafting better decisions.

The program ended with an exam, an evaluation of the training program and trainees were given a take home exam which are returned 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. In addition, NCDS offers on-line course supplemental instruction to all its arbitrators.

The 2019 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 as well as 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 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.

The NCDS arbitrator training program as it affects the national participating manufacturers is a good one that operates in substantial compliance with the applicable federal regulations including the Magnuson-Moss Warranty Act and its associated Administrative Rule 703. We have observed many important additions to the national training program since 2002 and those have again been carried over into the 2019 program. The entire program clearly demonstrates a commitment to quality arbitrator training.

## ARBITRATION TRAINING RATING SYSTEM

- |   |           |
|---|-----------|
| 1) Adequacy of training materials                                     | VERY GOOD |
| 2) Accuracy of informational materials                                | VERY GOOD |
| 3) Thoroughness of material   | VERY GOOD |
| 4) Quality of presentation  | VERY GOOD |
| 5) Apparent understanding and likely comprehension of the information | VERY 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 (NCDS) 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 can 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 consumer feedback regarding 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 regarding the process and outcomes of their cases 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 contains 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 447 of the 3,861<sup>1</sup> users of the AWAP program nationally in 2019 whose cases were "in-jurisdiction" and "closed" based on information provided by the AWAP at the time of data collection. The number of surveys completed surpassed the initial goal of completing 350<sup>2</sup> surveys from 1,035 randomly selected users of the program nationwide<sup>3</sup>.

Closed cases are defined as those where a decision has been made and the time for compliance has occurred. Data for the Claverhouse survey is collected using a web-based data collection platform. With national internet use steadily increasing and with diminishing returns from self-administered and telephone surveys, the data collection process was transitioned to a web-based only format in 2014.

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<sup>1</sup> The database sent by the AWAP for conducting the survey contained 4,810 cases of which 3,861 were eligible to be included in the data collection after cases coded as "no jurisdiction" (949 cases) and were removed from the database. The eligible cases break down as follows: 3,211 coded as arbitrated, 63 as mediated, and 587 as withdrawn for a total of 3,861 cases. Cases coded as withdrawn were included in this year's data collection. After data collection concluded in 2019 (2018 users of the program), it was discovered that cases coded as withdrawn may have been settled prior to formal mediation or arbitration and could be included in the final statistics. The AWAP provided statistics based on 4,799 cases. The cases in the AWAP indices break down as follows: 289 mediated cases (four (4) of which time for compliance has not yet occurred), 2,998 arbitrated cases (121 which the time for compliance had not occurred), 1,001 "no jurisdiction" cases, 213 pending cases, and 298 withdrawn cases. **The statistics in this report are based only on the closed mediated and arbitrated cases – 285 mediated and 2,877 arbitrated cases for a total of 3,162 cases.** There is a discrepancy between the number of cases sent for conducting the survey, 3,861, and the number of eligible cases in the statistics, 3,162.

<sup>2</sup> A sample of 350 completed surveys from a population of 3,862 will yield a margin of error of +/- 5.0 percent at the 95% confidence level.

<sup>3</sup> Using a projected completion rate of 40 percent, an eligibility rate of 95 percent, and a sample viability rate of 90 percent, a proportional random sample of 1,035 users of the program with email addresses (3,705 of the 3,861 users, which is 96.0 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 like the universe.

Of the 3,862 users of the AWAP nationally in 2019, 3,706 provided an email address, which represents 96.0 percent of all users<sup>4</sup>.

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. An authentication feature can be enabled that requires respondents accessing the survey through a generic URL to enter a passcode which validates that they are part of the sampled population. This feature also allows embedded data to be recorded along with the respondent's answers and prevents non-sampled respondents from accessing the survey.

The notification system also tracks who responds and who does not respond to each email request 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. Qualtrics security protections meet FERPA and HIPAA<sup>5</sup> requirements for the collection and storage of data which are the highest security standards mandated by federal law.

The invitation email was sent on April 19, 2020<sup>6</sup>, to the users of the program nationally who provided an email address. The email explained the purpose of the survey, an overview of the questions included in the survey, and how the results would be used. It also encouraged the respondent to review their case information prior to completing the survey. The email also informed respondents about confidentiality and that participation was voluntary. Reminder emails were sent on April 26, 2020 and May 7, 2020.

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<sup>4</sup> According to the most recent report (April 2019) issued by Pew Research Center on Internet use among the American public, 90.0 percent of all adults use the Internet.

<sup>5</sup> The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) is a Federal law that protects the privacy of student education records. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) was created in part to stipulate how Personally Identifiable Information maintained by the healthcare and healthcare insurance industries should be protected from fraud and theft.

<sup>6</sup> Data collection was delayed in 2020 compared to prior years due to the COVID-19 pandemic and stay-at-home orders issued by the Michigan Governor on March 23, 2020. This delayed obtaining the databases necessary for collecting the data.

Data collection ended on May 15, 2020. In total, 447 surveys from users of the program nationally were submitted. The overall completion rate for this study is 43.2 percent and the margin of error is  $\pm 4.36$  percent.<sup>7</sup>

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. Nonresponse bias is the bias that results when respondents differ in meaningful ways from non-respondents.

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 11.6 percent of mediated cases in the Claverhouse sample and the 9.0 percent of mediated cases in the AWAP indices is not statistically significant nor is the difference between the 88.4 percent of arbitrated cases in the Claverhouse sample and the 91.0 percent of arbitrated cases in the AWAP indices. Therefore, the statistics are in agreement.

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<sup>7</sup> This is the sampling error when the responses divide roughly 50-50 on a given question and when there are 447 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  $\pm 4.36$  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  $\pm 3.78$  percent.

**Table 1: Method of Resolution of Warranty Disputes Comparison between Claverhouse Survey and AWAP Indices, National 2019**

Resolution	Claverhouse		AWAP		
	Number	Percent	Number	Percent of in-jurisdiction closed cases	Percent of all cases
Mediation	52	11.6%	285	9.0%	5.9%
Arbitration	395	88.4%	2,877	91.0%	59.9%
<b>Subtotal (in-jurisdiction and closed)</b>	<b>447</b>	<b>100.0%</b>	<b>3,162</b>	<b>100.0%</b>	<b>65.8%</b>
Out-of-jurisdiction	-	-	1,001		20.9%
Resolved, time for compliance has not occurred <sup>8</sup>	-	-	125		2.6%
Pending	-	-	213		4.4%
Withdrawn	-	-	298		6.2%
<b>Total Disputes</b>	<b>447</b>	<b>100.0%</b>	<b>4,799</b>		<b>100.0%</b>

### **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 database for conducting the Claverhouse survey.

<sup>8</sup> This total includes both mediated and arbitrated cases. AWAP indices show four (4) mediated and 121 arbitrated cases where a decision had been made, but time for compliance had not yet occurred.

Table 2 compares the outcomes of mediated disputes.

**Table 2: Outcomes of Mediated Settlements Comparison between Claverhouse Survey and AWAP Indices, National 2019**

	<b>Claverhouse</b>	<b>AWAP</b>
<b>Mediated Settlements</b>	<b>Percent of Closed cases</b>	<b>Percent of closed cases</b>
Resolved by staff of the mechanism and warrantor has complied within the timeframe specified in the agreement.	91.7% (48)	94.7% (270)
Resolved by staff of the mechanism and time for compliance has occurred and warrantor has not yet complied.	8.3% (4)	5.3% (15)
<b>Total Mediated Cases</b>	<b>100.0% (52)</b>	<b>100.0% (285)</b>

The survey data shows that the manufacturer complied with 91.7 percent of mediated cases within the timeframe specified in the agreement. AWAP indices show that the manufacturer complied with 94.7% percent of the mediated cases within the timeframe in the agreement.

The statistics “resolved by the staff of the mechanism and warrantor has complied within the time frame specified in the agreement” and “resolved by the staff of the mechanism and time for compliance has occurred, and warrantor has not complied” are in agreement as the difference falls within the margin of error of  $\pm 4.36$  percent.

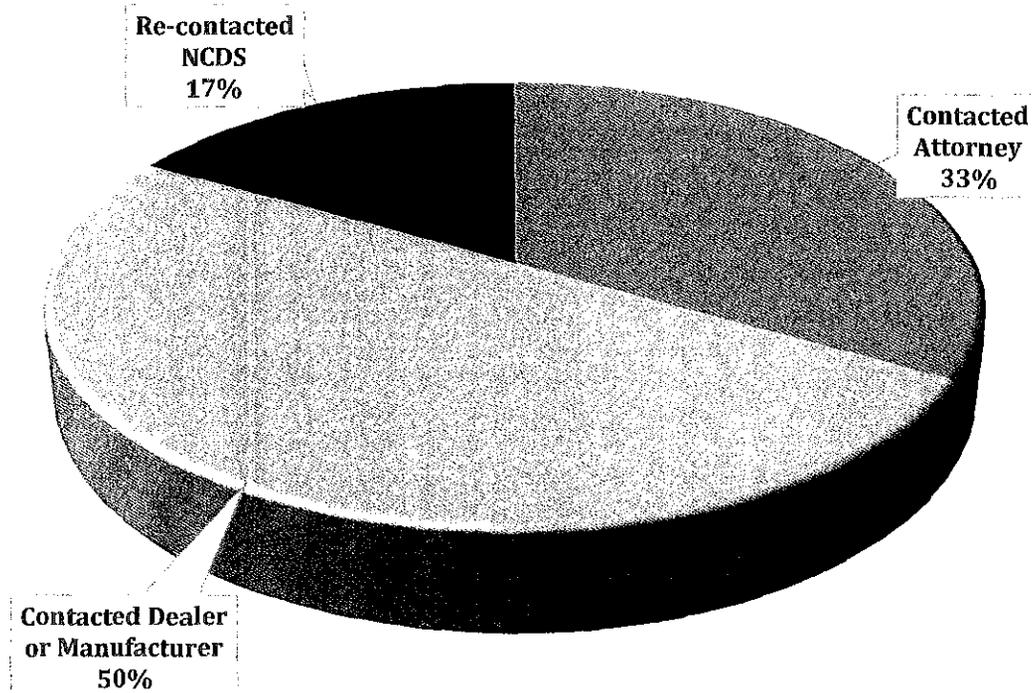
Respondents were also asked about the specific outcome of their cases. Table 3 shows the outcomes for all cases settled through mediation.

**Table 3: Specific Outcomes of Mediated Settlements Claverhouse Survey, National 2019**

<b>Outcome</b>	<b>Number</b>	<b>Percent</b>
Ordered a partial refund	24	46.2%
Ordered additional repair attempts	12	23.1%
Ordered a replacement vehicle	10	19.2%
Ordered or recognized a trade assist	3	5.8%
Other	3	5.8%
<b>Total</b>	<b>52</b>	<b>100.0%</b>

When asked if they pursued their cases after the decision in their case, only 9.6 percent of users whose cases were mediated pursued their cases after receiving the settlement. The methods chosen to pursue cases are shown in Figure 1<sup>9</sup>.

**Figure 1. Method of Pursuing Mediated Case**



## **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.

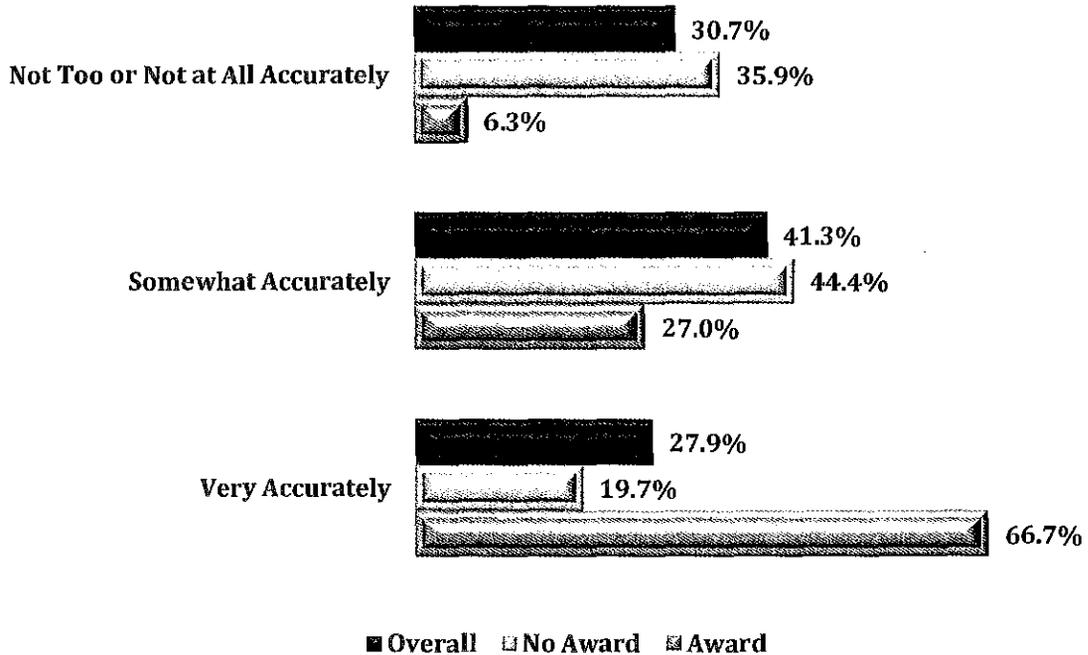
Respondents were first asked whether they remembered receiving the forms in which their claims were stated. Almost all respondents, 90.9 percent, indicated they recalled receiving the paperwork from the AWAP.

Respondents were also asked how accurately they felt the forms stated their claim. Figure 2 shows how respondents answered this question overall and the respondents' perceptions of the accuracy of their claim by whether they received an award in the arbitration process

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<sup>9</sup> Because respondents could indicate more than one method for pursuing their case, percentages are based on the number of responses (6), not the number of respondents answering the question (5).

**Figure 2: Perception of Accuracy of Claim Forms Overall and by Award Status**



As shown in Figure 2, overall, only 27.9 percent of respondents felt their claim was stated very accurately. Among those who received an award, this percentage more than doubles to 66.7 percent and among those that did not receive an award, the percentage drops by slightly over eight points from 27.9 percent to 19.7 percent.

Respondents were also asked if they were notified of the time, date, and location of the hearings. Only a small percentage, 5.9 percent, indicated that they had not been notified. Of the remaining users, 75.5 percent said they were notified, and 18.6 percent said that they had chosen a document only hearing.

Of the respondents who were notified of the hearing, slightly more than half, 52.2 percent, attended the hearing in person or by telephone, 30.5 percent relied on documents only, 15.6 percent did not attend the hearing, and 1.7 percent cancelled the hearing.

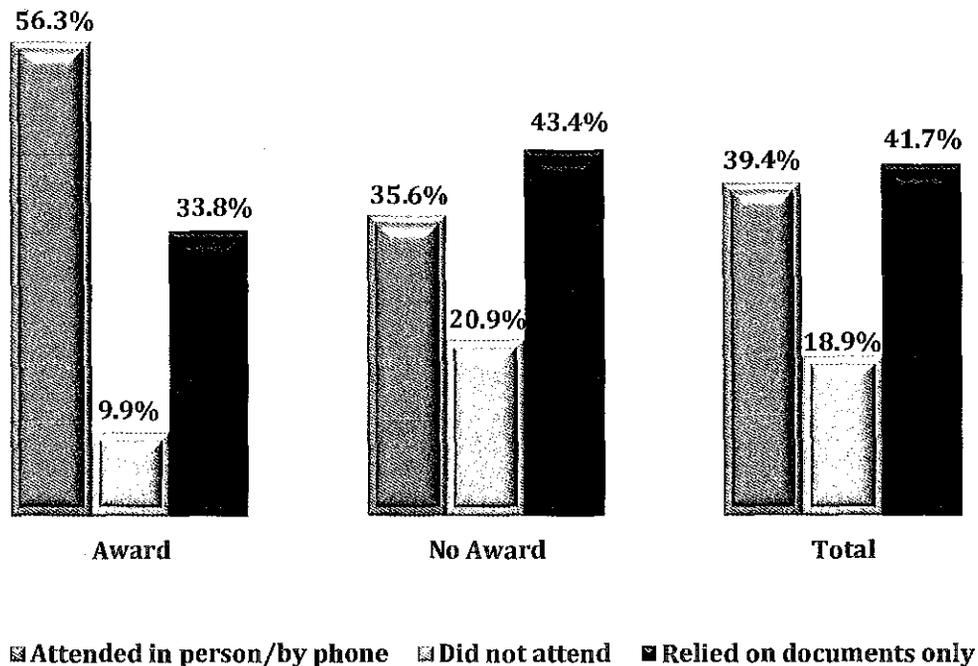
Those who did not attend their hearing were asked for the reason(s) why. Those results are summarized in Table 4.

**Table 4: Reasons Given for Not Attending Hearing  
Claverhouse Survey, National 2019**

Reason	Number	Percent
Was told presence not necessary at hearing or meeting	38	65.5%
Distance of meeting or hearing, unable to travel to the location	13	22.4%
Work, school, other professional commitments conflicted with the time of hearing or meeting	5	8.6%
Personal commitments (family, medical) conflicted with time of the hearing or meeting	2	3.4%
<b>Total</b>	<b>58<sup>10</sup></b>	<b>100.0%</b>

Does attending the hearing in person or by telephone make a difference in whether or not a respondent receives an award? Respondent's answers were recoded into a single variable and assigned to one of three categories: attended the hearing in person/by phone, did not attend, and relied on documents only. These results are shown in Figure 3.

**Figure 3. Participation in Hearing by Award Status**



<sup>10</sup> Respondents could give more than one reason for not attending the hearing or meeting. The percentages are based on number of responses (58) not the number of respondents answering the question (48). Due to rounding, percentages add to 99.9 percent.

As seen in Figure 3, more than half of the users, 56.3, who attended their hearings in person, received an award, compared to 9.9 percent who did not attend, and 33.8 percent who relied on documents only. Pearson’s chi-square, a statistical test that is used to determine whether there is a statistically significant difference between the expected frequencies and the observed frequencies in one or more categories of a contingency table, shows a statistically significant difference in the percentages<sup>11</sup>, that cannot be attributed to chance. Therefore, those that attended the hearing in person are statistically more likely to receive an award than those that do not attend or rely on documents only.

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 these results.

**Table 5: Outcomes of Arbitrated Cases Comparison  
Claverhouse Survey and AWAP Indices, National 2019**

<b>Arbitration Outcomes</b>	<b>Claverhouse</b>	<b>AWAP</b>
	<b>Percentage (Number)</b>	<b>Percentage (Number)</b>
Case decided by board and warrantor has complied	11.2% (43)	7.5% (216)
Case decided by board, time for compliance has occurred, and the warrantor has not complied	4.9% (19)	4.4% (127)
Case decided by board and time for compliance has not occurred	-	
<b>Total Award Granted and Accepted</b>	<b>16.1% (62)<sup>12</sup></b>	<b>11.9% (343)</b>
Decision adverse to consumer	83.9% (323)	88.1% (2,534)
<b>Total Arbitrated Decisions</b>	<b>100.0% (385)</b>	<b>100.0% (2,877)</b>

The statistics for FTC Rule 703.6(e) 4,5, and 7 are in agreement as the difference falls within the margin of error,  $\pm 4.36$ . FTC Rule 707.6(e) 6 cannot be verified as all the cases in the Claverhouse sample are closed.

<sup>11</sup> The chi-square value of 11.932 has a p-value of .003 which is significant at  $p > .005$ .

<sup>12</sup> Ten (10) respondents were granted an award but indicated rejecting that award. These respondents are not included in the Claverhouse totals.

When asked if they accepted or rejected their awards, 86.1 percent indicated that they had accepted the award. Although 91.9 percent of respondents who were granted an award reported that they had received their award at the time of data collection, only 69.4 percent said they received it within the time frame specified in the agreement.

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

**Table 6: Specific Outcomes of Arbitrated Cases  
Claverhouse Survey, National 2019**

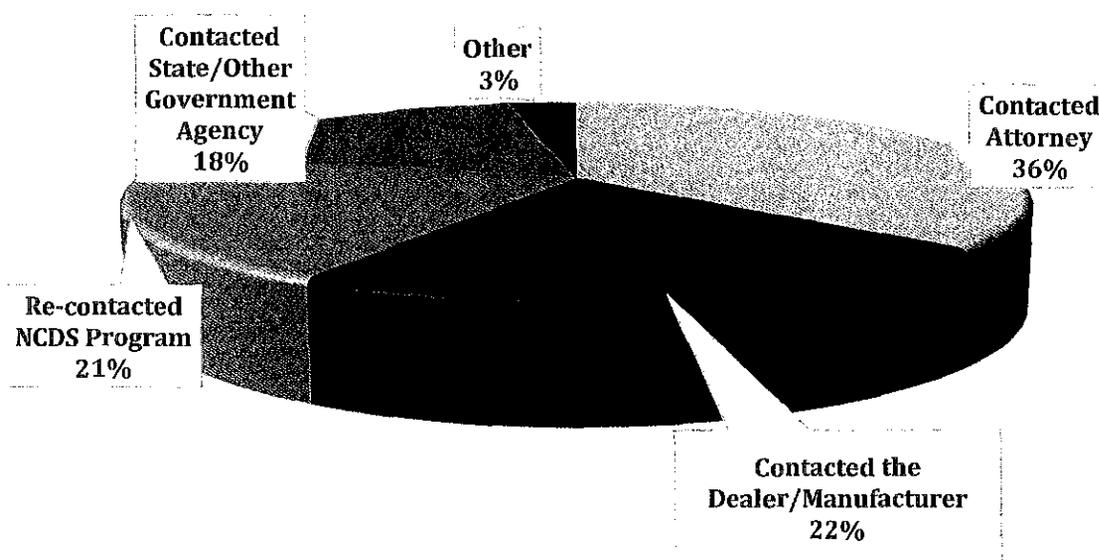
<b>Award</b>	<b>Accepted Decision</b>	<b>Rejected Decision</b>	<b>Total</b>
Ordered a partial refund (includes buyback or cash settlement less mileage and/or other expenses)	66.1% (41)	10.0% (1)	58.3% (42)
Ordered a replacement vehicle	21.0% (13)	20.0% (2)	20.8% (15)
Ordered additional repairs attempts	11.3% (7)	70.0% (7)	19.4% (14)
Ordered or recognized a trade assist (trade current vehicle towards a different vehicle)	1.6% (1)	0.0% (0)	1.4% (1)
<b>Total</b>	<b>100.0% (62)</b>	<b>100.0% (10)</b>	<b>100.0% (72)</b>

All respondents whose cases were arbitrated were asked whether they had pursued their case further after the arbitration decision. Slightly more than one-third, 34.9 percent, indicated that they had done so. Figure 4<sup>13</sup> shows by what means they pursued their cases.

Most users, 81.3 percent, only used a single method to pursue their cases after the arbitration decision. Those who were not granted an award, were more likely to contact an attorney, 38.6 percent, than those who were granted an award, 34.0 percent. Those receiving an award, were more likely to contact the dealer or manufacturer, 32.0 percent, than those who were not granted an award, 20.0 percent.

<sup>13</sup> Respondents could choose more than one method for pursuing their case; therefore, the percentages are based on the number of responses, 165, not the number of respondents answering the question, 134.

**Figure 4. Methods of Pursuing Cases After Arbitration Decision**



### **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 none of the closed, in-jurisdiction cases were settled beyond 40 days, whereas 35.4 percent of all survey respondents reported their cases were settled beyond 40 days.

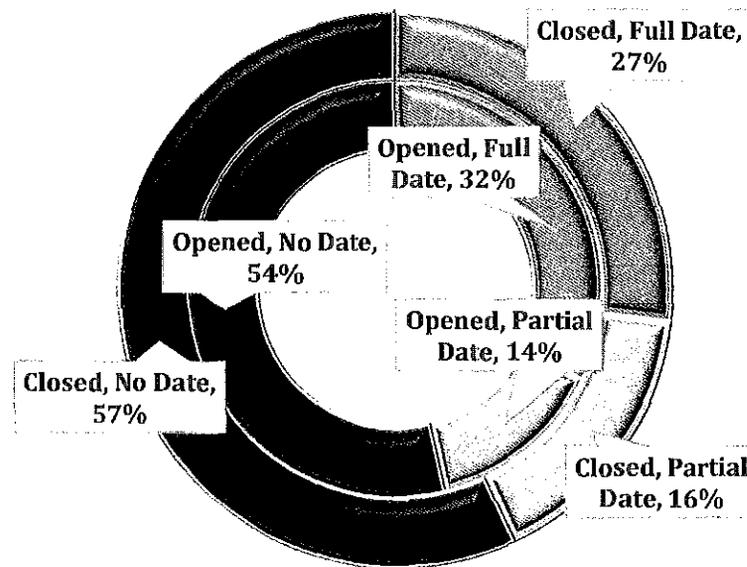
The difference in the statistics is statistically significant but should not be of great concern. We can attribute this to error in recall and reporting on the part of the respondents, in particular, a misunderstanding of the AWAP rules regarding when a case is opened and closed and to respondents not 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. They are asked to provide two pieces of information about their cases – the date their case was opened and the date their case was closed.

Figure 5 shows the results of these two questions. The responses to these questions were recoded into new variables with three response categories: (1) respondents provided a full date (i.e., month, day, year). (2) respondents gave a partial date (i.e., month and year), (3) no date was given by the respondent.

The data show that, only 32.1 percent were able to provide a full date for when their case was opened, and 26.9 percent were able to give a full date for when their cases were closed. Overall, more than half of the respondents were unable to provide any opened or closed date.

**Figure 5. Respondents Ability to Recall and Report Case Dates**

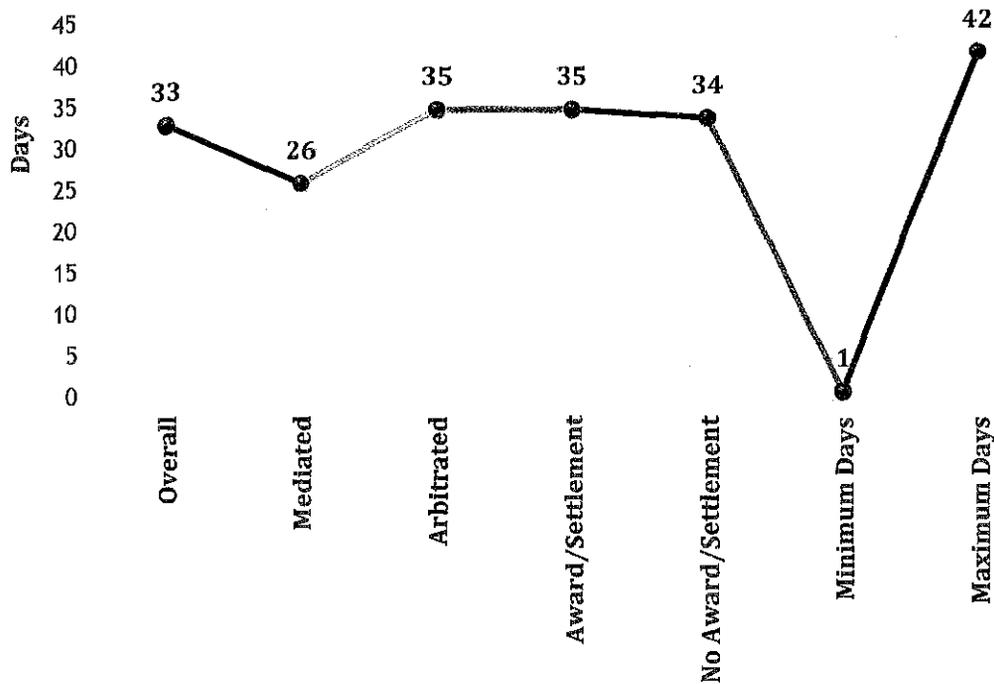


This data shows that most respondents are either answering these questions from memory or failing to refer to their case information when answering these questions.

Using 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 respondents’ data records. Using the “date difference” command in SPSS<sup>14</sup>, the actual number of days a case was opened can be calculated.

This analysis showed that only 0.2 percent of cases were open beyond 40 days and 99.8 percent closed within 40 days. Figure 6 shows the actual average number of days cases were opened overall, by type of case, and whether an award was granted.

**Figure 6. AWAP Records Days Opened, Overall, Case Type and Award Status**



Among respondents who said that their cases were delayed, the average number of days their cases were open was 34 days, with the minimum number of days at one (1) day and the maximum number of days at 40. Respondents who said that their cases were not delayed, the average number of days their cases were open was 33 with a range between eight (2) and 42 days.

<sup>14</sup> SPSS is a comprehensive system for analyzing data. SPSS can take data from almost any type of file and use them to generate tabulated reports, charts, and plots of distributions and trends, descriptive statistics, and complex statistical analysis. SPSS is the acronym of Statistical Package for the Social Science.

The statistical difference between data reported by the AWAP and the data in the Claverhouse survey regarding case delays should not be a cause for concern. The analysis above indicates that respondents are not using case documentation to answer the questions and are relying on memory or guesswork to provide opened and closed dates.

Also, 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.

Respondents were also asked a question about the reasons for delays in their cases. Respondents were asked to choose from one of three categories based on delays categorized by the AWAP. These results are shown in Table 7.

**Table 7: Reason for Delays Beyond 40 Days Comparison between Claverhouse Survey and AWAP Indices, National 2019**

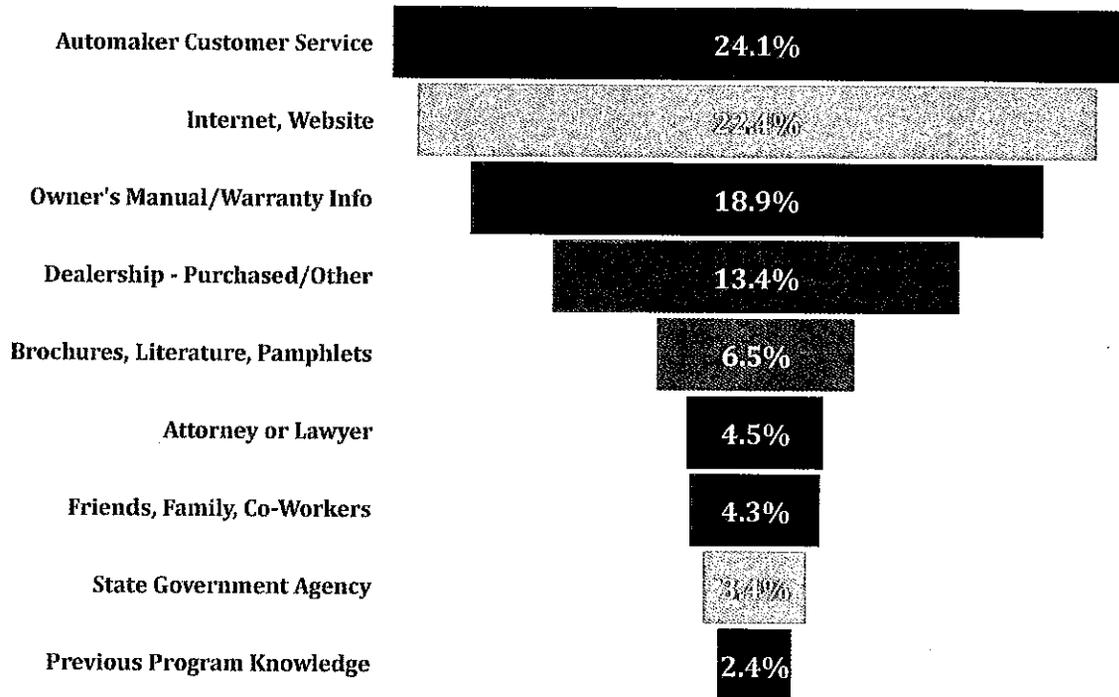
Reason for Delay	Claverhouse	AWAP
	Percentage (Number)	Percentage (Number)
Consumer failure to submit information in a timely manner	1.3% (2)	0.0% (0)
Consumer had made no attempt to seek redress directly from warrantor	8.0% (12)	0.0% (0)
Decision delayed beyond 40 days for any other reason	90.7% (136)	0.0% (0)
<b>Total</b>	<b>100.0% (150)</b>	<b>100.0% (0)</b>

Although the statistics for the reasons for the delays are not in agreement, this should not be cause for concern for the same reasons mentioned above.

## CONSUMER ATTITUDES TOWARD THE AWAP'S INFORMAL DISPUTE SETTLEMENT PROCEDURES

Part of the survey is designed to evaluate consumers' knowledge, use and satisfaction with the program itself. At the beginning of the questionnaire, respondents were asked how they learned about the Automobile Warranty Arbitration Program. The responses are summarized in Figure 7<sup>15</sup>.

**Figure 7. How Consumers Learned about Availability of the AWAP**



The leading source of information for all respondents was the automaker's customer service center. The leading source of information for users whose cases were mediated was the Internet, 28.8 percent, followed by the owner's manual or warranty information, 22.7 percent, and the automaker's customer service center, 16.7 percent).

The owner's manual or warranty information was the leading source of information for those with arbitrated cases, 25.0 percent. This was followed the Internet, 21.6 percent, and the owner's manual or warranty information, 18.4 percent.

<sup>15</sup> The percentages in Figure 7 are based on the number of responses (581) not the number of respondents (447) since respondents could provide more than one method for learning about the AWAP.

Those who reported that they had learned about the program through the dealer or the automobile manufacturer were asked additional questions about the means in which they were informed of the program. Table 8 shows these results. Again, respondents could indicate more than one method, therefore, the percentages are based on the number of responses (160) not the number of respondents answering the question (145).

**Table 8: Ways Dealer or Manufacturer Informed User  
Claverhouse Survey, National 2019**

<b>Method</b>	<b>N</b>	<b>%</b>
Talked Over Phone	112	70.0%
Gave-Sent Information	46	28.7%
Showroom Poster	1	0.6%
Other	1	0.6%
<b>Total</b>	<b>160</b>	<b>100.0%</b>

Respondents were also asked a series of questions about the informational materials and forms they received from the AWAP.

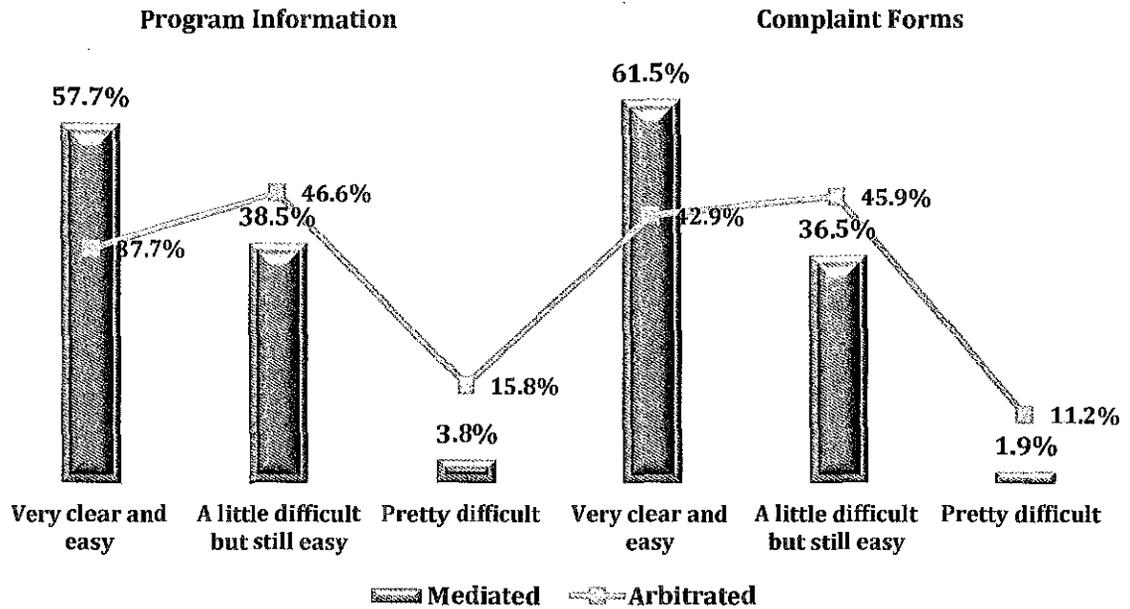
Respondents were asked if they received the program information by mail or accessed program information via the Internet. Most respondents, 71.9 percent used the Internet to access the program information and complaint forms.

When asked the level of difficulty in understanding the informational materials, 40.0 percent of respondents said the forms were very clear and easy to understand. Close to half, 45.6 percent, said the informational materials were a little difficult but still easy to understand, and 14.4 percent said they were pretty difficult to understand.

Respondents found complaint forms a little easier to understand with 45.0 percent indicating they were very clear and easy to understand. Only 10.1 percent found them pretty difficult to understand. The remaining 44.8 percent found the forms a little difficult but still easy to understand.

There were differences in easy of understanding by case type. Those with mediated cases were much more likely to find both the informational materials and the complaint forms easier to understand and complete than those with arbitrated cases. These results are shown in Figure 8.

**Figure 8. Ease of Understanding Program Information and Forms by Case Type**

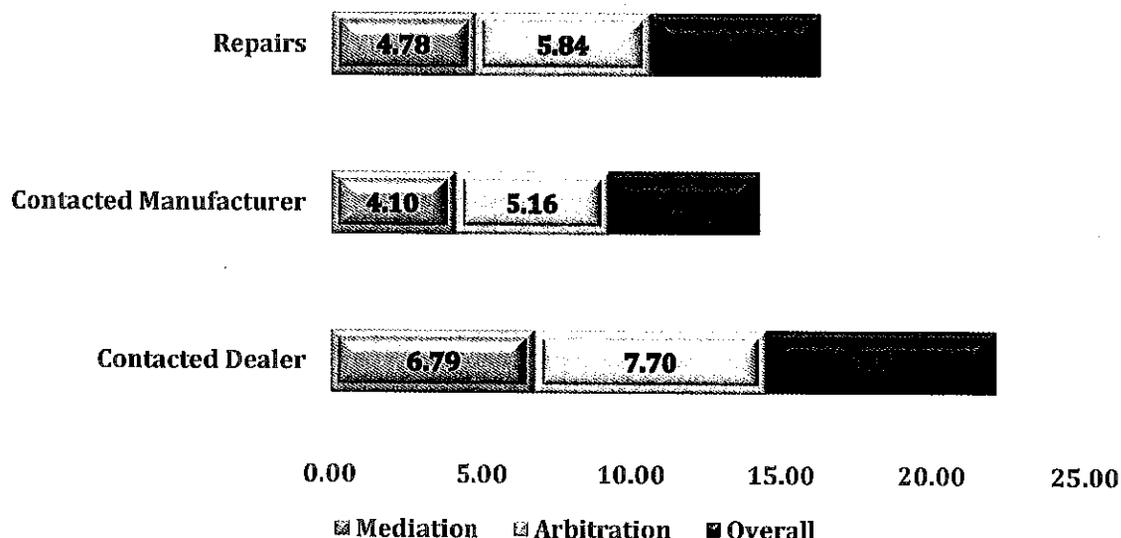


After answering questions about how they learned about the program, respondents were asked how many times they contacted the dealer about problems or issues with the car, how many times they contacted the manufacturer about problems or issues with the car, and how many times the car went in for service or repairs.

The average number of times respondents reported each of the above occurrences is shown in Figure 9. The outlying values for each measure were eliminated prior to calculating each statistic.<sup>16</sup> It is also important to note that 3.6 percent of respondents reported zero repair attempts, 3.8 percent reported no contacts with the dealer, and 16.4 percent reported no contacts with the manufacturer prior to filing their cases with the AWAP.

<sup>16</sup> For number of times repaired, values over 40 were eliminated; for number of times contacted the dealer, values over 40 were eliminated, and for number of times contacted the manufacturer, values over 45 were eliminated. The average with these values included are as follows: number of repairs, 5.81, times contacted dealer, 8.50, and times contacted manufacturer, 5.32.

**Figure 9. Dealer and Manufacturer Contacts and Service Repairs Prior to Contacting AWAP**



### SATISFACTION WITH THE AWAP PROGRAM AND PROCESS

Respondents also rated their satisfaction with the AWAP program and staff overall and in four areas:

- Objectivity and fairness
- Promptness in handling the complaint during the process
- Effort to assist in resolving the complaint
- Quality of in-person or telephone interactions

Respondents rated each area using a ten-point scale, where **1** represented **very dissatisfied** and **10** represented **very satisfied**. A respondent could only choose one number between 1 and 10. This type of scale is better for computing means (or averages) to gauge satisfaction or dissatisfaction with the program. For these items, the closer the mean is to **10**, the higher the level of **satisfaction**. The closer the mean is to **1**, the higher level of **dissatisfaction**.

Of the three areas, users of the program gave the **highest** satisfaction rating in the area of **promptness**, with 21.8 percent providing a rating of 10. The mean rating for this area was 5.69, which indicates slightly more people were satisfied with the AWAP in the area of promptness than dissatisfied. Only 23.0 percent of all respondents gave the AWAP a rating of 1 in this area (very dissatisfied).

The area with the second highest level of satisfaction, was in the area of **interactions** with AWAP in person or by telephone. Respondents gave the AWAP an overall rating of 4.69 with 16.6 percent indicating they were very satisfied, giving the AWAP at 10 in this area.

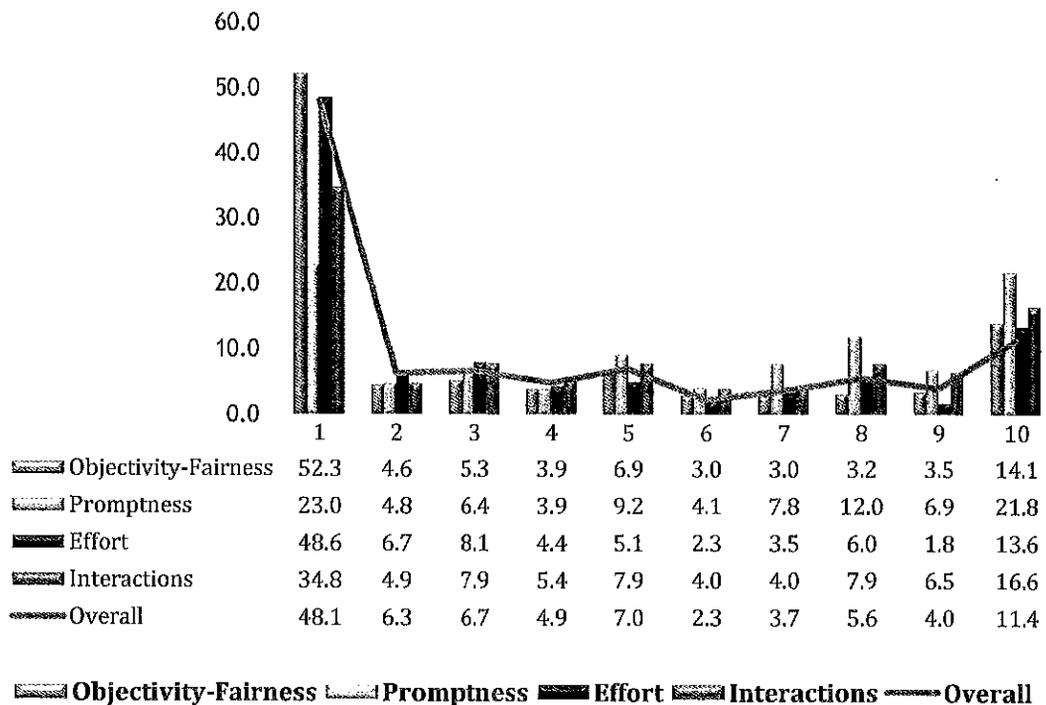
The area in which respondents were **most dissatisfied** was **objectivity and fairness**. More than half, 52.3 percent, gave the AWAP a rating of 1 in this area, which indicates a high level of dissatisfaction. Only 14.1 percent gave the AWAP a rating of 10 in this area. The mean response among all respondents was 3.67.

Respondents also showed high levels of dissatisfaction with the AWAP in the area of **effort**, with 48.6 percent providing a rating of 1. Only 13.6 percent gave the AWAP a rating of 10 in this area. The overall rating in the area of effort among all respondents was 3.83.

When asked to give an **overall** satisfaction rating, only 11.4 percent gave a rating of 10, which indicates that about one in ten users of the program were very satisfied. On the opposite end of the scale, nearly half, 48.1 percent, gave a rating of 1 which indicates a high level of dissatisfaction. The overall rating for the program was 3.69.

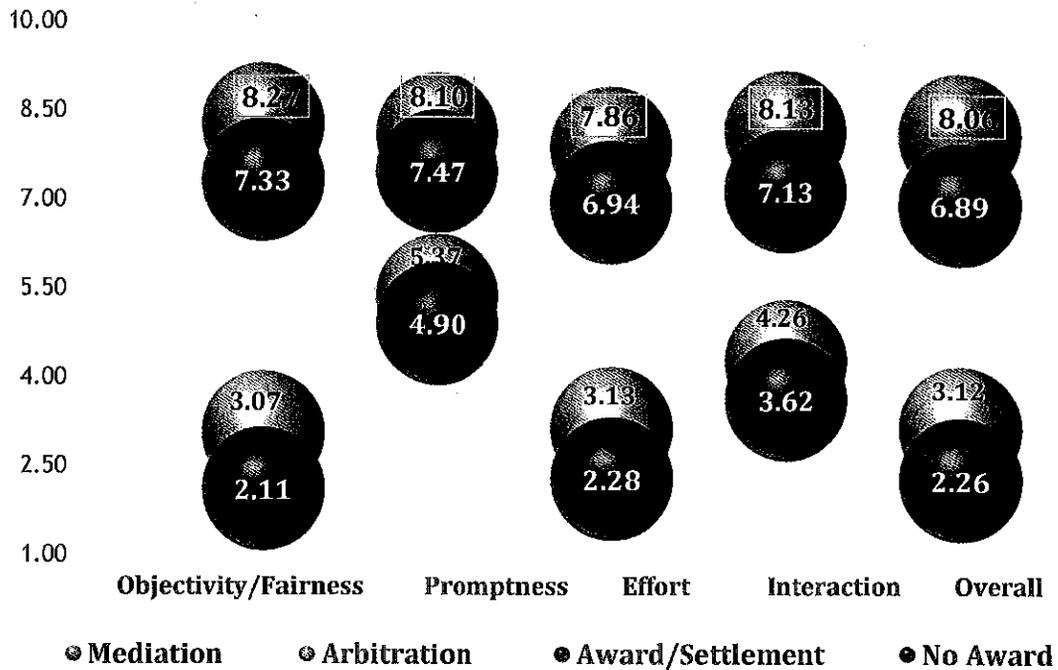
Figure 10 shows frequency distributions for all the four performance areas and overall.

**Figure 10. Satisfaction Ratings of AWAP in Performance Areas and Overall**



The mean for each performance item and for overall satisfaction with the AWAP by case type and award status is shown in Figure 11.

**Figure 11. Satisfaction Rating by Case Type and Award Outcome**



Whether or not respondents followed up with the AWAP can also in part measure satisfaction with the program. Respondents were asked, if after their case was closed, did they talk with a representative at the AWAP or return a postcard to the program about their settlement or award and how their case was handled.

Overall, 51.1 percent indicated they had some form of contact with the AWAP after their case was closed. Of those that had contact, 28.3 percent spoke directly to the staff, 12.7 percent returned the postcard, and 10.0 percent spoke to the staff and returned the postcard. Nearly half, 49.0 percent, reported not following up with the AWAP.

Most users whose cases were mediated followed up with the AWAP. Over half, 51.9 percent spoke directly to someone, 7.7 percent returned the postcard, and 3.8 percent did both. Those with arbitrated cases were less likely to follow up with slightly more than half, 50.6 percent, reporting they did not bother.

Another measure of consumers' satisfaction or dissatisfaction with the AWAP program is whether they would recommend the program to others. Table 9 shows these results.

**Table 9: Would Consumer Recommend the AWAP Program to Others?  
Claverhouse Survey, National 2019**

<b>Method of Resolution and Outcome</b>	<b>Yes</b>	<b>No</b>	<b>Depends on Circumstances</b>
Mediated	69.2%	9.6%	21.2%
Arbitrated	12.5%	62.3%	25.2%
Award/Settlement Granted	58.3%	18.1%	23.6%
No Award/Settlement Granted	2.2%	72.3%	25.5%
<b>Overall</b>	<b>19.1%</b>	<b>56.2%</b>	<b>24.7%</b>

Finally, survey respondents were given an opportunity to comment on their experiences with the AWAP and offer suggestion for program changes or improvements.

Respondents could freely type their own responses to this question, on any topic that they considered important enough to mention. All comments have been categorized according to the most common topics raised and are presented in Table 10.

**Table 10: Consumer Suggestions for Program Improvements  
Claverhouse Survey, National 2019**

<b>Suggestion for Improvement</b>	<b>N</b>	<b>Percent</b>
Biased Arbitrators/Arbitrators Favor Manufacturers	114	23.3%
Better Review Complaint/Problems by Staff/Arbitrators	65	13.3%
Program/Process Waste of Time	41	8.4%
More Communication/Contact/Interaction Arbitrators Staff	34	7.0%
Expand Eligible Criteria/Consider Broader Issues Related to Car	29	5.9%
Better Explanation/Documentation of Process/Program/Easier Understand	27	5.5%
Dealers/Manufacturers More Responsive to Consumers/Complainant	24	4.9%
Better/ More Knowledgeable Mechanics/Review Staff	22	4.5%
More/ Better Representation at Hearings	20	4.1%
Fair/Equitable Settlements/Awards	20	4.1%
No Complaints/Did Good Job	19	3.9%
Allow More Information/History of Problems in Complaint	18	3.7%
Quicken Process/ Speedier Decisions	13	2.7%
Rude/Dismissive/Unprofessional Staff	9	1.8%
Need Ability to Dispute/Challenge Decision	7	1.4%
More Transparency Regarding Program Funding/Affiliation Automakers	7	1.4%
Better Follow -up/Enforcement of Awards/Settlements	7	1.4%
Other	6	1.2%
Better Promotion/Advertising of Program	4	0.8%
Need More Program Locations/Teleconferencing/Video Hearings	2	0.4%
Unsure	1	0.2%
<b>Total</b>	<b>489<sup>17</sup></b>	<b>100.0%</b>

<sup>17</sup> Up to three (3) comments were classified into categories for respondents. The percentages are based on the number of responses (489) not respondents answering the question (341).

The top suggestions for improvement/comments given by those whose cases were mediated were:

- More communication/contact/interaction with arbitrators/staff, 21.2 percent
- No complaints/did a good job, 18.2 percent
- Quicken process/speedier decisions, 15.2 percent

For those with arbitrated cases, the top suggestions for improvement were:

- Bias arbitrators/arbitrators favor manufacturers, 24.8 percent
- Better review complaint/problems by staff/arbitrators, 14.3 percent
- Program/process waste of time, 8.3 percent

## **CONCLUSIONS**

Based on the comparison of the Claverhouse survey results with the AWAP national indices, it is concluded that the AWAP indices differ in two areas.

The differences “case delayed beyond 40 days,” and “reasons for delays beyond 40 days.” These differences 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.

*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 2019  
447 Cases

## CONTENTS

item		page
CASEID	CASE IDENTIFICATION NUMBER	1
LOGIN_DATE	LOGIN DATE	1
CLOSE_DATE	CLOSE DATE	1
STATE	STATE	2
OPEN_MONTH	Dates - Month - Open Date	3
OPEN_DAY	Dates - Day - Open Date	4
OPEN_YEAR	Dates - Year - Open Date	5
CLOSED_MONTH	Dates - Month - Closed Date	5
CLOSED_DAY	Dates - Day - Closed Date	6
CLOSED_YEAR	Dates - Year - Closed Date	7
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CASEID                    CASE IDENTIFICATION NUMBER

447 cases (Range of valid codes: 1-447)

Data type: numeric

Record/columns: 1/1370-1372

---

LOGIN\_DATE                LOGIN DATE

447 cases

Data type: character

Record/columns: 1/1001-1011

---

CLOSE\_DATE                CLOSE DATE

447 cases

Data type: character

Record/columns: 1/1012-1022

STATE		STATE	
	%	N	VALUE LABEL
	0.7	3	AK
	1.3	6	AL
	1.3	6	AR
	1.3	6	AZ
	21.5	96	CA
	0.7	3	CO
	0.9	4	CT
	0.2	1	DC
	4.9	22	FL
	3.6	16	GA
	0.7	3	IA
	0.4	2	ID
	4.7	21	IL
	1.1	5	IN
	1.1	5	KY
	1.1	5	LA
	2.0	9	MA
	1.8	8	MD
	0.2	1	ME
	4.9	22	MI
	2.5	11	MN
	1.8	8	MO
	0.4	2	MS
	0.9	4	MT
	6.3	28	NC
	0.2	1	NE
	0.9	4	NH
	3.1	14	NJ
	0.9	4	NM
	2.0	9	NV
	3.1	14	NY
	2.5	11	OH
	1.3	6	OK
	1.1	5	OR
	2.5	11	PA
	0.2	1	RI
	1.6	7	SC
	0.2	1	SD
	2.5	11	TN
	4.0	18	TX
	0.7	3	UT
	1.8	8	VA
	0.4	2	VT
	1.1	5	WA
	2.5	11	WI

```

    0.4    2  WV
    0.4    2  WY
-----
100.0  447 cases

```

Data type: character  
Record/columns: 1/1023-1027

OPEN\_MONTH                    Dates - Month - Open Date

```

    %      N  VALUE LABEL
    3.4   15     1  January
    3.4   15     2  February
    3.4   15     3  March
    4.0   18     4  April
    0.9    4     5  May
    2.5   11     6  June
    6.9   31     7  July
    4.3   19     8  August
    5.1   23     9  September
    5.6   25    10  October
    3.8   17    11  November
    2.9   13    12  December
    53.9  241    99  Do Not Recall
-----
100.0  447 cases

```

Data type: numeric  
Record/columns: 1/1028-1032

## OPEN\_DAY                    Dates - Day - Open Date

%	N	VALUE	LABEL
3.4	15	1	1
0.9	4	2	2
0.4	2	3	3
1.6	7	4	4
1.1	5	5	5
0.7	3	6	6
1.6	7	7	7
1.3	6	8	8
0.4	2	9	9
1.6	7	10	10
0.7	3	11	11
1.1	5	12	12
0.9	4	13	13
0.9	4	14	14
1.8	8	15	15
1.1	5	16	16
0.9	4	17	17
1.8	8	18	18
0.4	2	19	19
0.4	2	20	20
1.1	5	21	21
1.1	5	22	22
2.5	11	23	23
1.3	6	24	24
0.2	1	25	25
0.2	1	26	26
0.4	2	27	27
0.7	3	28	28
0.4	2	29	29
0.7	3	30	30
0.4	2	31	31
67.8	303	99	Do Not Recall
-----	----		
100.0	447	cases	

Data type: numeric

Record/columns: 1/1033-1037

## OPEN\_YEAR            Dates - Year - Open Date

%	N	VALUE	LABEL
6.5	29	2018	2018
93.5	418	2019	2020
-----	----		
100.0	447	cases	

Data type: numeric  
Record/columns: 1/1038-1042

---

## CLOSED\_MONTH        Dates - Month - Closed Date

%	N	VALUE	LABEL
4.0	18	1	January
2.5	11	2	February
2.0	9	3	March
2.2	10	4	April
2.7	12	5	May
3.4	15	6	June
2.5	11	7	July
4.7	21	8	August
4.9	22	9	September
4.3	19	10	October
4.0	18	11	November
5.8	26	12	December
57.0	255	99	Do Not Recall
-----	----		
100.0	447	cases	

Data type: numeric  
Record/columns: 1/1043-1047

## CLOSED\_DAY            Dates - Day - Closed Date

%	N	VALUE	LABEL
1.3	6	1	1
0.4	2	2	2
0.9	4	3	3
1.3	6	4	4
0.2	1	5	5
1.3	6	6	6
1.6	7	7	7
0.7	3	8	8
0.9	4	9	9
0.7	3	10	10
0.9	4	11	11
0.7	3	12	12
0.9	4	13	13
1.1	5	14	14
1.1	5	15	15
1.1	5	16	16
0.7	3	17	17
1.1	5	18	18
1.3	6	19	19
1.8	8	20	20
0.4	2	21	21
0.9	4	22	22
1.1	5	23	23
0.4	2	24	24
0.4	2	25	25
0.0	0	26	26
1.1	5	27	27
1.1	5	28	28
0.4	2	29	29
0.4	2	30	30
0.4	2	31	31
72.9	326	99	Do Not Recall
-----	----		
100.0	447	cases	

Data type: numeric  
Record/columns: 1/1048-1052

## CLOSED\_YEAR            Dates - Year - Closed Date

%	N	VALUE	LABEL
1.6	7	2018	2018
98.4	440	2019	2020
-----	----		
100.0	447	cases	

Data type: numeric  
Record/columns: 1/1053-1057

---

## Q5\_2                    Learn Program - Attorney or Lawyer

%	N	VALUE	LABEL
100.0	26	1	Attorney or Lawyer
	421	.	Not Applicable/Not Answered
-----	----		
100.0	447	cases	

Data type: numeric  
Record/columns: 1/1058-1062

---

## Q5\_8                    Learn Program - Automaker Customer Service

%	N	VALUE	LABEL
100.0	140	1	Automaker Customer Service
	307	.	Not Applicable/Not Answered
-----	----		
100.0	447	cases	

Data type: numeric  
Record/columns: 1/1063-1067

---

## Q5\_3                    Learn Program - Brochures, Literature, Pamphlets

%	N	VALUE	LABEL
100.0	38	1	Brochures, Literature, Pamphlets
	409	.	Not Applicable/Not Answered
-----	----		
100.0	447	cases	

Data type: numeric  
Record/columns: 1/1068-1072

## Q5\_9                    Learn Program - Dealership - Where Purchased/Other

%	N	VALUE	LABEL
100.0	78	1	Dealership - Where Purchased/Other
	369	.	Not Applicable/Not Answered

-----  
 100.0 447 cases

Data type: numeric  
 Record/columns: 1/1073-1077

---

## Q5\_5                    Learn Program - Friends, Family, Co-Workers

%	N	VALUE	LABEL
100.0	25	1	Friends, Family, Co-Workers
	422	.	Not Applicable/Not Answered

-----  
 100.0 447 cases

Data type: numeric  
 Record/columns: 1/1078-1082

---

## Q5\_7                    Learn Program - Internet, Website

%	N	VALUE	LABEL
100.0	130	1	Internet, Website
	317	.	Not Applicable/Not Answered

-----  
 100.0 447 cases

Data type: numeric  
 Record/columns: 1/1083-1087

---

## Q5\_1                    Learn Program - Owner's Manual/Warranty Info

%	N	VALUE	LABEL
100.0	110	1	Owner's Manual/Warranty Info
	337	.	Not Applicable/Not Answered

-----  
 100.0 447 cases

Data type: numeric  
 Record/columns: 1/1088-1092

## Q5\_6 Learn Program - Previous Program Knowledge

%	N	VALUE	LABEL
100.0	14	1	Previous Program Knowledge
	433	.	Not Applicable/Not Answered

-----  
 100.0 447 cases

Data type: numeric  
 Record/columns: 1/1093-1097

---

## Q5\_11 Learn Program - State Government Agency

%	N	VALUE	LABEL
100.0	20	1	State Government Agency
	427	.	Not Applicable/Not Answered

-----  
 100.0 447 cases

Data type: numeric  
 Record/columns: 1/1098-1102

---

## Q5\_4 Learn Program - Television, Radio, Newspaper

%	N	VALUE	LABEL
0.0	0	1	Television, Radio, Newspaper
	447	.	Not Applicable/Not Answered

-----  
 100.0 447 cases

Data type: numeric  
 Record/columns: 1/1103-1107

---

## Q5\_10 Learn Program - Other

%	N	VALUE	LABEL
0.0	0	1	Other
	447	.	Not Applicable/Not Answered

-----  
 100.0 447 cases

Data type: numeric  
 Record/columns: 1/1108-1112

## Q6\_1 Dealer-Manufacturer Inform - Talked In Person

%	N	VALUE	LABEL
100.0	51	1	Talked In Person
	396	.	Not Applicable/Not Answered
-----	----		
100.0	447		cases

Data type: numeric  
Record/columns: 1/1113-1117

---

## Q6\_2 Dealer-Manufacturer Inform - Talked Over Phone

%	N	VALUE	LABEL
100.0	112	1	Talked Over Phone
	335	.	Not Applicable/Not Answered
-----	----		
100.0	447		cases

Data type: numeric  
Record/columns: 1/1118-1122

---

## Q6\_3 Dealer-Manufacturer Inform - Gave-Sent Information

%	N	VALUE	LABEL
100.0	46	1	Gave-Sent Information
	401	.	Not Applicable/Not Answered
-----	----		
100.0	447		cases

Data type: numeric  
Record/columns: 1/1123-1127

---

## Q6\_4 Dealer-Manufacturer Inform - Showroom Poster

%	N	VALUE	LABEL
100.0	1	1	Showed/Saw Poster in Showroom
	446	.	Not Applicable/Not Answered
-----	----		
100.0	447		cases

Data type: numeric  
Record/columns: 1/1128-1132

Q6\_5

Dealer-Manufacturer Inform - Other

%	N	VALUE	LABEL
100.0	1	1	Other
	446	.	Not Applicable/Not Answered
-----	----		
100.0	447		cases

Data type: numeric

Record/columns: 1/1133-1137

Q7\_1

Times - Contacted Dealer

%	N	VALUE	LABEL
3.8	17	0.00	
4.3	19	1.00	
3.1	14	2.00	
9.7	43	3.00	
8.8	39	4.00	
16.2	72	5.00	
8.3	37	6.00	
5.8	26	7.00	
4.9	22	8.00	
1.3	6	9.00	
14.2	63	10.00	
0.4	2	11.00	
4.0	18	12.00	
0.7	3	13.00	
0.4	2	14.00	
4.3	19	15.00	
0.2	1	17.00	
0.4	2	18.00	
3.6	16	20.00	
0.4	2	21.00	
0.4	2	24.00	
1.3	6	25.00	
1.1	5	30.00	
0.7	3	40.00	
0.9	4	50.00	
0.2	1	55.00	
0.2	1	100.00	
	2		. Not Applicable/Not Answered
-----	----		
100.0	447	cases	

Data type: numeric  
 Decimals: 2  
 Record/columns: 1/1138-1142

Q7\_2

Times - Contacted Manufacturer

%	N	VALUE	LABEL
16.4	73	0.00	
7.6	34	1.00	
12.6	56	2.00	
13.9	62	3.00	
10.5	47	4.00	
10.5	47	5.00	
5.2	23	6.00	
2.2	10	7.00	
2.7	12	8.00	
0.2	1	9.00	
7.6	34	10.00	
0.2	1	11.00	
1.1	5	12.00	
0.2	1	14.00	
2.5	11	15.00	
0.4	2	17.00	
0.2	1	18.00	
3.6	16	20.00	
0.2	1	22.00	
1.3	6	30.00	
0.2	1	45.00	
0.4	2	50.00	
	1	.	Not Applicable/Not Answered
-----	----		
100.0	447	cases	

Data type: numeric  
 Decimals: 2  
 Record/columns: 1/1143-1147

Q8

Repairs

%	N	VALUE	LABEL
3.6	15	0	
7.9	33	1	
9.6	40	2	
11.0	46	3	
15.6	65	4	
15.1	63	5	
8.4	35	6	
5.3	22	7	
5.3	22	8	
2.4	10	9	
5.7	24	10	
0.7	3	11	
1.9	8	12	
1.0	4	13	
0.5	2	14	
3.1	13	15	
0.5	2	18	
1.0	4	20	
0.7	3	25	
0.7	3	30	
0.2	1	47	
	29	.	Not Applicable/Not Answered
-----	----		
100.0	447		cases

Data type: numeric  
 Record/columns: 1/1148-1152

Q9

Access Information Mail-Internet

%	N	VALUE	LABEL
28.1	124	1	Received program information and claims forms by mail
71.9	318	2	Accessed program information and claim forms from website
	5	.	Not Applicable/Not Answered
-----	----		
100.0	447		cases

Data type: numeric  
 Record/columns: 1/1153-1157

Q10 Program Info

%	N	VALUE	LABEL
40.0	178	1	Very clear and easy to understand
45.6	203	2	A little difficult but still easy to understand
14.4	64	3	Pretty difficult to understand
	2	.	Not Applicable/Not Answered
-----	---		
100.0	447	cases	

Data type: numeric  
 Record/columns: 1/1158-1162

Q11 Complaint Forms

%	N	VALUE	LABEL
45.0	200	1	Very clear and easy to understand and complete
44.8	199	2	A little difficult but still easy to understand and complete
10.1	45	3	Pretty difficult to understand and complete
	3	.	Not Applicable/Not Answered
-----	---		
100.0	447	cases	

Data type: numeric  
 Record/columns: 1/1163-1167

Q12 Outcome

%	N	VALUE	LABEL
11.6	52	1	Mediation - Settlement with Dealer or Manufacturer
88.4	395	2	Arbitration - Decision by Arbitrator, Panel or Board
0.0	0	3	Withdrew your case prior to reaching either a settlement or pursuing formal arbitration
-----	---		
100.0	447	cases	

Data type: numeric  
 Record/columns: 1/1168-1172

Q31

Mediated Outcome

%	N	VALUE	LABEL
23.1	12	1	Ordered additional repair attempts
5.8	3	2	Ordered or recognized a trade assist (trade current vehicle towards a different vehicle)
46.2	24	3	Ordered a partial refund (includes buyback or cash settlement less mileage and/or other expenses)
19.2	10	4	Ordered a replacement vehicle
5.8	3	5	Other (please specify)
0.0	0	6	Dismissed your claim/no settlement was offered
	395	.	Not Applicable/Not Answered
-----	----		
100.0	447		cases

Data type: numeric  
 Record/columns: 1/1173-1177

Q32

Mediated-Received

%	N	VALUE	LABEL
90.4	47	1	Yes
9.6	5	2	No
	395	.	Not Applicable/Not Answered
-----	----		
100.0	447		cases

Data type: numeric  
 Record/columns: 1/1178-1182

Q33

Mediated-Receive Time Frame

%	N	VALUE	LABEL
100.0	47	1	Yes
0.0	0	2	No
	400	.	Not Applicable/Not Answered
-----	----		
100.0	447		cases

Data type: numeric  
 Record/columns: 1/1183-1187

Q34 Mediated-Not Receive

%	N	VALUE	LABEL
20.0	1	1	Yes
80.0	4	2	No
	442	.	Not Applicable/Not Answered
-----	----		
100.0	447		cases

Data type: numeric  
 Record/columns: 1/1188-1192

Q36 Mediated-Purse Case

%	N	VALUE	LABEL
9.6	5	1	Yes
90.4	47	2	No
	395	.	Not Applicable/Not Answered
-----	----		
100.0	447		cases

Data type: numeric  
 Record/columns: 1/1193-1197

Q37\_1 Mediated-Pursue - Attorney

%	N	VALUE	LABEL
100.0	2	1	Attorney
	445	.	Not Applicable/Not Answered
-----	----		
100.0	447		cases

Data type: numeric  
 Record/columns: 1/1198-1202

Q37\_2 Mediated-Pursue - Solution-Dealer/Manufacturer

%	N	VALUE	LABEL
100.0	3	1	Alternative Solution-Dealer/Manufacturer
	444	.	Not Applicable/Not Answered
-----	----		
100.0	447		cases

Data type: numeric  
 Record/columns: 1/1203-1207

Q37\_3 Mediated-Pursue - State/Other Government Agency

%	N	VALUE	LABEL
0.0	0	1	State/Other Government Agency
	447	.	Not Applicable/Not Answered
-----			
100.0	447	cases	

Data type: numeric  
Record/columns: 1/1208-1212

Q37\_4 Mediated-Pursue - Re-Contacted NCDS

%	N	VALUE	LABEL
100.0	1	1	Re-Contacted NCDS
	446	.	Not Applicable/Not Answered
-----			
100.0	447	cases	

Data type: numeric  
Record/columns: 1/1213-1217

Q37\_5 Mediated-Pursue - Other

%	N	VALUE	LABEL
0.0	0	1	Other
	447	.	Not Applicable/Not Answered
-----			
100.0	447	cases	

Data type: numeric  
Record/columns: 1/1218-1222

Q13 Arb - Paperwork

%	N	VALUE	LABEL
90.9	359	1	Yes
9.1	36	2	No
	52	.	Not Applicable/Not Answered
-----			
100.0	447	cases	

Data type: numeric  
Record/columns: 1/1223-1227

Q14 Arb - Accuracy Claim

%	N	VALUE	LABEL
27.9	100	1	Very accurately
41.3	148	2	Somewhat accurately
30.7	110	3	Not too or not at all accurately
	89	.	Not Applicable/Not Answered
-----	----		
100.0	447		cases

Data type: numeric  
 Record/columns: 1/1228-1232

Q15 Arb - Notified Hearing

%	N	VALUE	LABEL
75.5	296	1	Yes, notified
5.9	23	2	No, was not notified
18.6	73	3	Chose document only hearing
	55	.	Not Applicable/Not Answered
-----	----		
100.0	447		cases

Data type: numeric  
 Record/columns: 1/1233-1237

Q16 Arb - Attend Hearing

%	N	VALUE	LABEL
43.7	129	1	In person
8.5	25	2	By telephone
15.6	46	3	Did not attend hearing
30.5	90	4	Chose document only hearing
1.7	5	5	Hearing Cancelled/Withdrew
	152	.	Not Applicable/Not Answered
-----	----		
100.0	447		cases

Data type: numeric  
 Record/columns: 1/1238-1242

Q17\_1 Arb - No Hearing - Work/School/Prof. Commitments

%	N	VALUE	LABEL
100.0	5	1	Work/School/Professional Commitment
	442	.	Not Applicable/Not Answered
-----	----		
100.0	447		cases

Data type: numeric  
 Record/columns: 1/1243-1247

Q17\_2 Arb - No Hearing - Personal Commitments

%	N	VALUE	LABEL
100.0	2	1	Personal Commitment
	445	.	Not Applicable/Not Answered
-----	----		
100.0	447		cases

Data type: numeric  
 Record/columns: 1/1248-1252

Q17\_3 Arb - No Hearing - Distance to Hearing/Meeting

%	N	VALUE	LABEL
100.0	13	1	Distance to Hearing/Meeting
	434	.	Not Applicable/Not Answered
-----	----		
100.0	447		cases

Data type: numeric  
 Record/columns: 1/1253-1257

Q17\_4 Arb - No Hearing - Presence Not Required/Not Necessary

%	N	VALUE	LABEL
100.0	38	1	Presence Not Required/Not Necessary
	409	.	Not Applicable/Not Answered
-----	----		
100.0	447		cases

Data type: numeric  
 Record/columns: 1/1258-1262

Q17\_5 Arb - No Hearing - Other

%	N	VALUE	LABEL
0.0	0	1	Other
	447	.	Not Applicable/Not Answered
-----	---		
100.0	447		cases

Data type: numeric  
Record/columns: 1/1263-1267

Q18 Arb - Outcome --

%	N	VALUE	LABEL
19.4	14	1	Ordered additional repairs attempts
1.4	1	2	Ordered or recognized a trade assist (trade current vehicle towards a different vehicle)
58.3	42	3	Ordered a partial refund (includes buyback or cash settlement less mileage and/or other expenses)
20.8	15	4	Ordered a replacement vehicle
0.0	0	5	Ordered other (please specify)
	323	6	The NCDS ruled against your claim and the manufacturer or dealer did not have to do anything further in your case.
	52	.	Not Applicable/Not Answered
-----	---		
100.0	447		cases

Data type: numeric  
Missing-data code: 6  
Record/columns: 1/1268-1272

Q19 Arb - Accept-Reject

%	N	VALUE	LABEL
86.1	62	1	Accept the decision (award)
13.9	10	2	Reject the decision (award)
	375	.	Not Applicable/Not Answered
-----	---		
100.0	447		cases

Data type: numeric  
Record/columns: 1/1273-1277

## Q21 Arb - Receive Time Frame

%	N	VALUE	LABEL
69.4	43	1	Receive your award within time frame
22.6	14	2	
8.1	5	3	Not receive your award
	385	.	Not Applicable/Not Answered
-----	----		
100.0	447		cases

Data type: numeric  
Record/columns: 1/1278-1282

## Q23 Arb - Pursue Case

%	N	VALUE	LABEL
34.9	137	1	Yes
65.1	256	2	No
	54	.	Not Applicable/Not Answered
-----	----		
100.0	447		cases

Data type: numeric  
Record/columns: 1/1283-1287

## Q24\_1 Arb -Pursue - Attorney

%	N	VALUE	LABEL
100.0	60	1	Attorney
	387	.	Not Applicable/Not Answered
-----	----		
100.0	447		cases

Data type: numeric  
Record/columns: 1/1288-1292

Q24\_2 Arb -Pursue - Solution-Dealer/Manufacturer

%	N	VALUE	LABEL
100.0	36	1	Alternative Solution-Dealer/Manufacturer
	411	.	Not Applicable/Not Answered
-----	----		
100.0	447		cases

Data type: numeric  
Record/columns: 1/1293-1297

---

Q24\_3 Arb -Pursue - State/Other Government Agency

%	N	VALUE	LABEL
100.0	29	1	State/Other Government Agency
	418	.	Not Applicable/Not Answered
-----	----		
100.0	447		cases

Data type: numeric  
Record/columns: 1/1298-1302

---

Q24\_4 Arb -Pursue - Re-contacted NCDS Program

%	N	VALUE	LABEL
100.0	35	1	Re-contacted NCDS Program
	412	.	Not Applicable/Not Answered
-----	----		
100.0	447		cases

Data type: numeric  
Record/columns: 1/1303-1307

---

Q24\_5 Arb -Pursue - Other

%	N	VALUE	LABEL
100.0	5	1	Other
	442	.	Not Applicable/Not Answered
-----	----		
100.0	447		cases

Data type: numeric  
Record/columns: 1/1308-1312

## Q25 Delay 40 Days

%	N	VALUE	LABEL
35.4	156	1	Yes
64.6	285	2	No
	6	.	Not Applicable/Not Answered
-----	---		
100.0	447		cases

Data type: numeric  
Record/columns: 1/1313-1317

## Q26 Reason Delay 40 Days

%	N	VALUE	LABEL
1.3	2	1	You failed to submit information in a timely manner
8.0	12	2	You did not first seek to solve issues directly with the automaker/manufacturer
90.7	136	3	The delay was due to other reasons (please specify)
	297	.	Not Applicable/Not Answered
-----	---		
100.0	447		cases

Data type: numeric  
Record/columns: 1/1318-1322

## Q27 Return Postcard/Talk

%	N	VALUE	LABEL
28.3	125	1	Yes, talked to staff
12.7	56	2	Yes, returned postcard
10.0	44	3	Both, talked to staff and returned the postcard
49.0	216	4	No, didn't bother
	6	.	Not Applicable/Not Answered
-----	---		
100.0	447		cases

Data type: numeric  
Record/columns: 1/1323-1327

Q28\_1                      Satisfaction -Objectivity/Fairness

%	N	VALUE	LABEL
52.3	226	1.00	
4.6	20	2.00	
5.3	23	3.00	
3.9	17	4.00	
6.9	30	5.00	
3.0	13	6.00	
3.0	13	7.00	
3.2	14	8.00	
3.5	15	9.00	
14.1	61	10.00	
	15	.	Not Applicable/Not Answered
-----	----		
100.0	447	cases	

Data type: numeric  
 Decimals: 2  
 Record/columns: 1/1328-1332

Q28\_2                      Satisfaction - Promptness

%	N	VALUE	LABEL
23.0	100	1.00	
4.8	21	2.00	
6.4	28	3.00	
3.9	17	4.00	
9.2	40	5.00	
4.1	18	6.00	
7.8	34	7.00	
12.0	52	8.00	
6.9	30	9.00	
21.8	95	10.00	
	12	.	Not Applicable/Not Answered
-----	----		
100.0	447	cases	

Data type: numeric  
 Decimals: 2  
 Record/columns: 1/1333-1337

Q28\_3                      Satisfaction - Effort

%	N	VALUE	LABEL
48.6	211	1.00	
6.7	29	2.00	
8.1	35	3.00	
4.4	19	4.00	
5.1	22	5.00	
2.3	10	6.00	
3.5	15	7.00	
6.0	26	8.00	
1.8	8	9.00	
13.6	59	10.00	
	13	.	Not Applicable/Not Answered
-----	----		
100.0	447	cases	

Data type: numeric  
 Decimals: 2  
 Record/columns: 1/1338-1342

Q28\_5                      Satisfaction - Interactions

%	N	VALUE	LABEL
34.8	149	1.00	
4.9	21	2.00	
7.9	34	3.00	
5.4	23	4.00	
7.9	34	5.00	
4.0	17	6.00	
4.0	17	7.00	
7.9	34	8.00	
6.5	28	9.00	
16.6	71	10.00	
	19	.	Not Applicable/Not Answered
-----	----		
100.0	447	cases	

Data type: numeric  
 Decimals: 2  
 Record/columns: 1/1343-1347

Q28\_4

Satisfaction - The NCDS program overall.

%	N	VALUE	LABEL
48.1	207	1.00	
6.3	27	2.00	
6.7	29	3.00	
4.9	21	4.00	
7.0	30	5.00	
2.3	10	6.00	
3.7	16	7.00	
5.6	24	8.00	
4.0	17	9.00	
11.4	49	10.00	
	17	.	Not Applicable/Not Answered
-----	----		
100.0	447	cases	

Data type: numeric

Decimals: 2

Record/columns: 1/1348-1352

Q29

Recommend Program

%	N	VALUE	LABEL
19.1	85	1	Yes
56.2	250	2	No
24.7	110	3	Depends on the circumstances
	2	.	Not Applicable/Not Answered
-----	----		
100.0	447	cases	

Data type: numeric

Record/columns: 1/1353-1357

## IMPROVE1

## Program Improvement - 1st Mention

%	N	VALUE	LABEL
31.6	114	1	Biased Arbitrators/Arbitrators Favor Manufacturers
13.3	48	2	Better Review Complaint/Problems by Staff/Arbitrators
8.9	32	3	Program/Process Waste Time
0.8	3	4	Rude/Dismissive/Unprofessional Staff
5.3	19	5	Dealers/Manufacturers More Responsive to Consumers/Complainant
0.8	3	6	Need Ability to Dispute/Challenge Decision
1.9	7	7	Quicken Process/ Speedier Decisions
5.3	19	8	No Complaints/Did Good Job
4.4	16	9	Better Explanation/Documentation of Process/Program/Easier Understand
7.5	27	10	More Communication/Contact/Interaction Arbitrators Staff
2.8	10	11	Better/ More Knowledgeable Mechanics/Review Staff
1.7	6	12	More/ Better Representation at Hearings
0.0	0	13	More Transparency Regarding Program Funding/Affiliation Automakers
4.7	17	14	Expand Eligible Criteria/Consider Broader Issues Related Car
1.7	6	15	Better Follow -up/Enforcement of Awards/Settlements
3.9	14	16	Fair/Equitable Settlements/Awards
2.5	9	17	Allow More Information/History of Problems in Complaint
0.8	3	19	Better Promotion/Advertising of Program
0.3	1	20	Unsure
0.3	1	21	Need More Program Locations/Teleconferencing/Video Hearings
1.7	6	23	Other
	86	.	Not Applicable/Not Answered
-----	----		
100.0	447	cases	

Data type: numeric

Record/columns: 1/1358-1362

IMPROVE2

Program Improvement - 2nd Mention

%	N	VALUE	LABEL
0.0	0	1	Biased Arbitrators/Arbitrators Favor Manufacturers
14.4	17	2	Better Review Complaint/Problems by Staff/Arbitrators
7.6	9	3	Program/Process Waste Time
3.4	4	4	Rude/Dismissive/Unprofessional Staff
4.2	5	5	Dealers/Manufacturers More Responsive to Consumers/Complainant
2.5	3	6	Need Ability to Dispute/Challenge Decision
4.2	5	7	Quicken Process/ Speedier Decisions
0.0	0	8	No Complaints/Did Good Job
9.3	11	9	Better Explanation/Documentation of Process/Program/Easier Understand
5.9	7	10	More Communication/Contact/Interaction Arbitrators Staff
8.5	10	11	Better/ More Knowledgeable Mechanics/Review Staff
11.0	13	12	More/ Better Representation at Hearings
5.1	6	13	More Transparency Regarding Program Funding/Affiliation Automakers
9.3	11	14	Expand Eligible Criteria/Consider Broader Issues Related Car
0.8	1	15	Better Follow -up/Enforcement of Awards/Settlements
4.2	5	16	Fair/Equitable Settlements/Awards
7.6	9	17	Allow More Information/History of Problems in Complaint
0.8	1	19	Better Promotion/Advertising of Program
0.0	0	20	Unsure
0.8	1	21	Need More Program Locations/Teleconferencing/Video Hearings
0.0	0	23	Other
	329	.	Not Applicable/Not Answered
-----	---		
100.0	447		cases

Data type: numeric

Record/columns: 1/1363-1367

IMPROVE3

Program Improvement - 3rd Mention

%	N	VALUE	LABEL
20.0	2	4	Rude/Dismissive/Unprofessional Staff
10.0	1	6	Need Ability to Dispute/Challenge Decision
10.0	1	7	Quicken Process/ Speedier Decisions
20.0	2	11	Better/ More Knowledgeable Mechanics/Review Staff
10.0	1	12	More/ Better Representation at Hearings
10.0	1	13	More Transparency Regarding Program Funding/Affiliation Automakers
10.0	1	14	Expand Eligible Criteria/Consider Broader Issues Related Car
10.0	1	16	Fair/Equitable Settlements/Awards
	437	.	Not Applicable/Not Answered
-----	----		
100.0	447		cases

Data type: numeric

Record/columns: 1/1368-1369