

*United States Federal Trade Commission*

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

*2011 Audit*

*(January – December 2011)*

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## *Introduction*

This 2011 audit of NCDS' arbitration process is performed pursuant to the 1975 federal warranty law, the Magnuson-Moss Warranty Federal Trade Commission Improvement Act and Rule on Informal Dispute Settlement Procedures, 16 C.F.R. Part 703 (hereafter referred to as Rule 703).

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

Arrangements to conduct the audit were initiated by an invoice submitted in late 2010. 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: Toyota, Lexus, Chrysler,<sup>1</sup> Mitsubishi, and Suzuki. There are a few exceptions, wherein our review is manufacturer-specific, such as the requirement for manufacturers to inform consumers of the availability of the dispute resolution program whenever a warranty dispute arises.

Hearings that were held in Florida, Mississippi, and South Carolina were included in the on-site field inspections. Visits to these locations were arranged to coordinate with scheduled arbitration hearings. In addition, we audited arbitrator training conducted in Grapevine, Texas, June 10 - 12, 2012. 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 (2011). Performing the field audits during the actual audit year would require initiating the audit much earlier and using a two-phased format: one commencing during the actual audit period and the other in the following year, after all annual statistics had been compiled. All case files inspected were generated during 2011 as required.

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<sup>1</sup> Chrysler offers arbitration in only four states (Arkansas, Idaho, Kentucky, and Minnesota.)

## SECTION I

### *Compliance Summary*

This is the ninth 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.

The three regions audited: Florida, Mississippi, and South Carolina, all functioned during 2011 in compliance with FTC Rule 703. Details of the field audits and any minor irregularities found are discussed in Section III of this report.

Our random sample survey confirmed the overall validity of the statistical indexes created by the National Center for Dispute Settlement.<sup>2</sup> Our original survey sample consisted of 600 closed cases<sup>3</sup>, of which we completed surveys for 299 customers. As we have found in other audits, surveyed customers tended to report favorably on the program when the results of their cases were, in their view, positive. Conversely, those who received no award, or received less than they expected, were more likely to report dissatisfaction with the AWAP. As has been true in most audits we have conducted for various programs, the few statistically significant differences between the figures reported by the AWAP and the survey findings were deemed to be easily understandable and do not suggest unreliable reporting by the program. For a detailed discussion, see the survey section of this report.

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

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<sup>2</sup> There are discrepancies in some areas but those identified are either of no significant consequence or are understandable and without significant regulatory implications. Discrepancies are detailed in the Survey Section of the report.

<sup>3</sup> The sample was drawn from a universe of 1,787 cases but only the 1,012 closed arbitrated or mediated cases were used to establish the universe from which the sample was drawn.

## 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 2011. An important component of the audit is the survey of a randomly selected sample of 600 NCDS' Dispute Settlement Program applicants whose cases were closed in 2011 and found to be within the AWAP's jurisdiction.

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

We performed field audits of the AWAP as it operates in Florida, Mississippi, and South Carolina. We also examined a random sample of current (i.e., 2011) case files for accuracy and completeness. A random sample of case files was drawn from all case files for the years 2008-2011 and inspected to ensure that these records are maintained for the required four-year period. In the areas covered by each region, we surveyed several dealerships to see how effectively they carry out the information dissemination strategy developed by manufacturers to assist them in making customers aware of the AWAP.

In addition, we monitored arbitration hearings in Hollywood, Florida; Gulf Port, Mississippi; and Blufton, South Carolina. We also interviewed participants including arbitrators and AWAP/NCDS administrative personnel.

To assess arbitrator training, we monitored the NCDS-sponsored training session held in Dallas/Ft. Worth, Texas, in June of 2012. In addition to monitoring the training itself, we interviewed the trainees (both before and after the training), the training staff, and reviewed the training materials.

REQUIREMENT: § 703.7 (a) [ Audits]

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

FINDINGS:

This is the ninth (2011) Claverhouse Associates annual audit of NCDS AWAP informal dispute settlement program.

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

REQUIREMENT: § 703.6 (a) [Recordkeeping]

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

FINDINGS:

The information referenced in subsections 1 through 4 is available from the staff of the National Center for Dispute Settlement, who provided us with access to all pertinent information, which is maintained as required. Our inspection of randomly selected case files for each of the three regions validated these findings. The inspections of case files took place at the Detroit [Clinton Township] office of the program's independent administrators. Our review of randomly selected cases drawn from the four-year period (2008-2011) demonstrated that the case files were maintained in 2011, as required.

DISCREPANCIES:

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

REQUIREMENT: § 703.6 (a) (5)

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

#### FINDINGS:

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

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

#### DISCREPANCIES:

None

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

#### REQUIREMENT: § 703.6 (a) (9-12)

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

FINDINGS:

The information set forth in items 9 and 10 is maintained as required.<sup>4</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 [2011] maintained by the NCDS staff at the NCDS headquarters in Detroit [Clinton Township], Michigan.

The audit includes a review and assessment of a data printout for the calendar year 2011.

The *AWAP Statistics* identifies 1,359 AWAP disputes filed for 2011. Of these, 953 were eligible for AWAP review, and 406 were determined by the AWAP to be out-of-jurisdiction. Of the in-jurisdiction closed cases, NCDS reports that 737 were arbitrated<sup>5</sup> and 115 were mediated.<sup>6</sup> There were 668 arbitrated decisions which were reported as "adverse to the consumer" per § 703.6 (E) representing 90.6% of all arbitrated cases.

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<sup>4</sup> 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.

<sup>5</sup> 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"].

<sup>6</sup> 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.



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 2011. Concerning subsection 2, the auditors are advised by NCDS that there is no reported incidence in which a NCDS AWAP participating manufacturer failed or refused to abide by a panel or arbitrator decision. As a matter of general corporate policy, all AWAP participating manufacturers agree to comply with all AWAP decisions. This information is supplied as part of NCDS' Annual FTC -703.6 (c) (1) and (2) Report.

DISCREPANCIES:

None

REQUIREMENT: § 703.6 (d)

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

FINDINGS:

According to AWAP statistical index reports, as of December 2011, no cases were delayed beyond 40 days. The National Center for Dispute Settlement typically provides a comprehensive report of all individual cases delayed beyond 40 days during the period of the audit. Such reports include the customer's name, case file number, and the number of days the case has been in process as of the date of the generation of the report. Our analysis indicates that these reports have always met the above requirement although with no cases to report, the necessity for a report

was obviated. 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. At the same time, we found nothing during our assessment review that calls into question the accuracy of any of the required statistical indexes. [Note: The statistical report does include 65 cases categorized as "PENDING DECISION." We do not review the "Pending Decision" cases to determine how many days they remained open and unresolved.

DISCREPANCIES:

None

REQUIREMENT: § 703.6 (e)

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

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

FINDINGS:

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

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

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

DISCREPANCIES:

None

REQUIREMENT: § 703.6 (f)

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

FINDINGS:

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

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

(b) NCDS provided us with the various 2011 indices and statistical reports required by Rule 703. The corresponding reports for the previous four years are, of course, not available from any NCDS participating manufacturers which were not participating in the program for the entire four applicable years.

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

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

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

DISCREPANCIES:

None

REQUIREMENT: § 703.7 (b)

**Each audit provided 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'<sup>7</sup> 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].*

For the 2011 report, we interviewed NCDS staff and inquired as to any changes from previous year in each manufacturers' efforts to ensure their customers were being made aware of the availability of the NCDS arbitration program for resolving any of their customers' warranty disputes. Where we have new information supplied, we review and assess that information.

#### **I. TOYOTA:**

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

- Toyota publishes a 32-page booklet, entitled *Owner's Warranty Information*, that briefly explains, among many other things, the NCDS process and how and where to file an application. The pamphlet is distributed in a variety of ways, but the principal method is by way of the dealer. Dealers are to provide the brochure as part of the initial information packet given to new customers as well as making them

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<sup>7</sup> The five manufacturers are: Chrysler, Lexus, Mitsubishi, Suzuki, and Toyota

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>8</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.]

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

In 2012 [for 2011 report], we visited several Toyota dealerships.

Metro Toyota  
13775 Brook Park Rd.  
Cleveland, Ohio 44142

Montrose Toyota  
1501 Vernon Odom Blvd.  
Akron, Ohio 44320

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<sup>8</sup> 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*.

Arlington Toyota  
10939 Atlantic Blvd.  
Jacksonville, Florida 32225

Eastern Shore Toyota  
29732 Frederick Blvd.  
Daphne, Alabama 36526 [Mississippi Region]

Springhill Toyota  
3062 Government Blvd.  
Mobile, Alabama 36606 [Mississippi Region]

Estabrook Toyota  
2203 Market St.  
Pascagoula, Mississippi 39567

Toyota of Charleston  
2100 Savannah Hwy.  
Charleston, South Carolina 29414

The result of our review of dealership personnel interviewed during the Toyota dealership visits was mostly poor, as regards providing useful information about the Toyota warranty dispute mechanism in response to our inquiries concerning customer options when the customer is experiencing warranty disputes. Once again most Toyota dealerships gave us inaccurate information in response to our inquiries about a customer's warranty dispute options generally and about the NCDS dispute settlement program. Two of the Toyota dealers in the Mississippi region provided no useful information about arbitration and NCDS. Another Mississippi region dealer incorrectly asserted that "arbitration is available for warranty disputes but only at an arbitration dealer."

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

We have said in prior reports that:

*Clearly, one of the principal reasons that the annual independent audit requirement was included in Rule 703 was to ensure that adequate consumer awareness was provided for by sponsoring manufacturers. That the original draft of Rule 703 was modified so as to require this audit was an outcome fostered by manufacturers who complained that the proposed alternatives were too onerous and in fact, "draconian." The Federal Trade Commission declined to mandate the national media campaigns and dealer incentives requirements, opting instead for voluntary efforts by the manufacturers, or their agent dealers, which would then be audited annually to ensure compliance with the stated objective of ensuring consumer awareness of the availability of the*

*program. In any event, it is abundantly clear that no audit findings are complete without an evaluation of this aspect of the arbitration program since it is specifically set forth in the administrative Rule requirements in that section identified as the "Proceedings." This extensive Federal Trade Commission commentary was promulgated as a fundamental part of the Rule, as is the case with all promulgated FTC Rules.*

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

There is a toll-free phone number to the Toyota Customer Assistance Center that may offer assistance to customers in terms of the "making customers aware" requirement. This office is designed to facilitate an open line of communication between the servicing dealer, Toyota, and the customer. The toll-free line facilitates the NCDS by providing NCDS information to those who specifically request information about arbitration. We contacted the number and were referred to the glove box packet and the specific manual which contains a NCDS application form. The primary objective of the Toyota Customer Assistance Center is to keep the customer and Toyota working together to resolve warranty-related problems. This facet of the program operates consistent with § 703.2(d) which allows:

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

The information dissemination methods employed by Toyota together with the number of applications filed nationally in the last two audited years (2010: 2,581 claims filed) and (2011: 1,359 claims filed) demonstrate many Toyota customers were made aware of the program, and for these customers access is obvious.

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

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

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

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

#### DISCREPANCIES:

None, with the same qualifier given immediately above.

#### II. LEXUS:

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

The manual includes four pages of accurate and useful information about the NCDS arbitration program including a mailing address and toll-free telephone number for contacting NCDS. The NCDS arbitration information begins on page eleven. Unfortunately, the information is organized as part of a multi-step process and is relegated to the position of "Step 3". Such a multi-step process is one obviously preferred by the manufacturer. A customer with a warranty dispute, however, is not required to go through steps one and steps two in order to access arbitration as regulated by the Magnuson-Moss Warranty Act and its accompanying Administrative Rule 703. By organizing the information in this manner, some readers may incorrectly interpret the information to mean they must follow these sequential steps. This seemingly minor matter could easily have consequences that are unintended and inconsistent with the regulations intent to provide "expeditious resolution of disputes. For example, if a customer's one week old "new" vehicle seems to be operating inconsistent with their auto engineering experience, and the dealer is perceived by the customer to be rude and unwilling to address their concern because they assert that the vehicle is operating normally, the customer may clearly want to proceed directly to arbitration. Such a decision by the customer is within their right to do so, notwithstanding any value judgements to the contrary. The manual's language suggests otherwise. Without a doubt, the three step process alluded to is usually the best way for customers to proceed but it is certainly not required. The problem herein alluded to is further exacerbated by initiating the entire section with the word "if" which may



serve to reinforce the notion that a customer is obligated to go through steps one and two when such is not the case. It is important to point out this matter. It is equally important that we do not believe this matter, by itself, rises to the level of a regulatory non-conformity. It may, however, help to explain the seeming reluctance of some service department employees to provide arbitration information during our dealer visits.

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

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

This limited information may have been provisionally acceptable in that period of adjustment that existed in the early days of Lexus' association with the NCDS program but, in our view, even then it fell short of what Rule 703 intends as regards informing customers of the availability of the arbitration program at the time a warranty dispute arises. There are, of course, many different strategies for accomplishing this mandated information dissemination program, but only having information about NCDS in a owner's manual or Lemon Law Guide in a glove box packet, is likely to find many customers with a warranty dispute unaware of the availability of arbitration. A fact demonstrated again and again over many years experience. That was clearly not the intent of the Federal Trade Commission when Rule 703 was promulgated as evidenced by the rule's lengthy discussion in the *Statement of Basis and Purpose*, published and promulgated as part of the rule (see Federal Register, 60215, Dec. 31, 1973). The FTC afforded great flexibility to manufacturers, at their request, as an alternative to far more draconian measures being proposed at the time, including the requirement that manufacturers engage in a national media campaign each year to announce the program's availability. The FTC opted instead to afford manufacturers the opportunity to use their own creative methods to achieve the objective and provided for an annual audit to ensure that manufacturers were carrying out effective strategies for ensuring that their customers were likely to be informed about the programs *at the time a warranty dispute arises* [FTC's emphasis.]

In 2012, we visited the following Lexus dealerships.<sup>9</sup>

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

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

Lexus of Jacksonville  
10259 Atlantic Blvd.  
Jacksonville, Florida 32225

Metro Lexus  
13600 Brookpark Road  
Brookpark, Ohio 44135

The dealership visit results were poor. In this 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.

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:

None, with the important qualifier above as a caveat.

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<sup>9</sup> As is the case with several dimensions to the 2011 audit we carried out this aspect in the year 2012.

### III. MITSUBISHI:

Mitsubishi uses the following means by which to meet this important requirement:<sup>10</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.

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

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

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

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

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

It is a requirement of the FTC, that if a manufacturer participates in an informal dispute resolution process, the

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<sup>10</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 2006.

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

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

We also said at the time,

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

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

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

Hoover Mitsubishi  
2250 Savannah Hwy.  
Charleston, South Carolina 29414

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

We said in our last two 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.

#### DISCREPANCIES:

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

#### IV. SUZUKI

- Suzuki provides all new car customers with a New 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 the 2011 audit report.

#### DISCREPANCIES:

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

## V. CHRYSLER

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

- The *2006 Warranty Information* booklet,<sup>11</sup> 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 an organization called the Chrysler customer assistance center to obtain an application for arbitration as administered by NCDS. It also includes a mailing address for contacting NCDS.
- The booklet *Owner's Rights Under State Lemon Laws, Supplement to Owner's & Warranty Manual* is provided with each new vehicle. This booklet does not give the CAP address, but at page four it refers customers with unresolved disputes to the CAP brochure that accompanies the *Owner's Manual* and *Warranty Manual*, which are shipped as part of the Glove Box Kit in the applicable states. It also refers customers to the Chrysler toll-free customer relations (Customer Center) number where the customer can request the address of the CAP.

We did not visit a Chrysler Dealership for the 2011 report.

### DISCREPANCIES:

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

REQUIREMENT: § 703.7 (b) (3)(I)

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

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<sup>11</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 our 2008 report.

## FINDINGS:

The FINDINGS for this section are arranged as follows:

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

## FINDINGS:

### 1) Forms

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

The many forms used by AWAP comprise an important aspect of the arbitration program. The forms we reviewed are "user friendly," well balanced, and provide sufficient information to properly inform the parties without overwhelming them with non-essential paperwork. Overall, the AWAP forms promote efficiency and assist the program in meeting the stated objective of facilitating fair and expeditious resolution of disputes. We found the forms used by NCDS' AWAP program that we reviewed well within the regulatory expectations.<sup>12</sup>

## 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.

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<sup>12</sup> We note that the *Customer Claim Form* solicits some information that raises questions, in our minds, about the purpose and applicability to the arbitration process. For example, "Are your loan payments current? Yes - No." We are hard-pressed to see what this question might have to do with the arbitrator's ability to render a decision or on NCDS' ability to process the matter. Moreover, § 703.5 (c) says: "The Mechanism shall not require any information not reasonably necessary to decide the dispute." Although each manufacturer uses their own *Customer Claim Form* seeking different information from their customers, NCDS requires only that information required by the Magnuson-Moss federal statute and the related Rule 703.

## 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 extra cost.

#### 3) **Mediation**<sup>13</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

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<sup>13</sup> Mediation does not necessarily imply the use of a neutral third-party mediator, but rather means the case has been settled prior to the arbitrator rendering a decision.

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

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

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

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

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

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

The recording of performance and maintenance of the AWAP records were reviewed by our on-site inspection of case files in Detroit, [Clinton Township] Michigan. We reviewed a random sample of case files for each region selected for the audit. The sample is drawn from the computer system maintained by NCDS.

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

#### DISCREPANCIES:

None

#### 5) **Dispute Resolution**

The AWAP uses three arbitration formats. The three formats are: a) a board consisting of three arbitrators; b) individual arbitrators or, c) a panel of three arbitrators for Lexus cases. Customers, other than Lexus may opt to use either a) or b) formats. Importantly, the board process is one wherein the decisions are made after considering only documentary evidence and excludes oral presentation. Of course, customers may opt for a one-member (arbitrator) hearing, wherein oral presentations may be made by the parties. When using a board, the "Members" (i.e., arbitrators) are each provided with a case file that contains pertinent facts gathered by the program. The three arbitrators include: a consumer advocate, a technical member, and a member of the general public. Two members constitute

a quorum and the board relies on documents provided by the parties. The arbitrators meet to discuss the facts presented to them and then render a decision. Most board decisions are arrived at by consensus, but sometimes the members resort to a vote to close the matter. The board may request additional information, usually in the form of an independent inspection conducted by a specialist in auto mechanics. Occasionally, the board asks for Technical Service Bulletin information, although technical questions can often be answered by the board's technical member.<sup>14</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 Lexus panel process is not open to observers. We have said in all our recent reports:

**It should be noted however, that we HAVE audited a Lexus hearing in Houston, Texas as part of the national Rule 703 audit report and discovered that Lexus has elected to have their cases heard by a three-member panel which takes testimony/evidence from each of the parties and then dismisses the parties while they deliberate and decide the case. We believe this approach is inconsistent with the requirements of Federal Trade Commission Rule 703.8 (d) which provides that meetings of the members to hear and decide disputes shall be open to observers on reasonable and nondiscriminatory terms. Further, the Rule's, *Statement of Basis and Purpose* (pp. 60215, Federal Register Vol. 40, no. 251) explains that the one case where they allow for the exclusion of persons to the meeting is limited to non-party observers. The FTC further emphasizes the importance of the parties being present to provide the scrutiny function intended. Lexus and NCDS will need to re-visit this aspect of their program to ensure compliance. [NOTE: NCDS has interpreted the regulatory language differently and administers the program so that actual deliberation is conducted by the arbitrators without the presence of the parties.]**

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

The parties are sent copies of the case files before the board meets and are informed that they may submit additional information if they choose to clarify or

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<sup>14</sup> 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.

contradict information in the file. Any additional information is then provided to the board prior to its deliberations.

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

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

#### FINDINGS:

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

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

Arbitrators are volunteers whose only compensation is a nominal per diem and mileage expense allowance.<sup>15</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 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

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<sup>15</sup> Currently, NCDS arbitrators are provided a per diem allowance of \$100.00 a hearing plus reimbursement for any mileage expenses incurred.

the program to a possible compliance review. On-going training would greatly alleviate these concerns for arbitrators.

The NCDS program has also informed us that they continue their efforts to address the “boilerplate” problem, alluded to in previous reports, including explanations provided at arbitrator training to ensure that arbitrators understand that the “Lemon Law” thresholds for establishing presumptions do not serve as a threshold for their awarding “buy back” relief. At our review of arbitrator training in June of 2012, we confirmed that these efforts continue and are having some noteworthy effects.

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

**DISCREPANCIES:**

None

### SECTION III

## *Field Audit of Three Geographical Areas*

### I. Florida

#### A. Case Load and Basic Statistics

In Florida, NCDS handled 195 AWAP cases in 2011. Note: there were only 52 AWAP cases filed last year. We cannot account for the disparity from one year to the other except possibly for the effects of the earthquake in Japan and the related suppression of car sales for all Japanese manufactured automobiles.

Of the total number of 2011 cases [195] 60 (30.7%) were "no-jurisdiction" cases. There were 101 cases arbitrated (74.8%) of the 135 in-jurisdiction cases, and 23 cases were mediated. Of the 101 cases arbitrated, 94 (69.6% ) were decided "adverse to the consumer." The average number of days for handling a 2011 case in Florida was 31 days. This compares with an average of 31 days handling nationwide. [Note: The statistics reported here will vary somewhat from those included in the Florida specific report because of conflicts in the federal and state regulation requirements regarding reporting numbers and, more importantly, the difference in the manufacturers included in each report.]

#### B. Recordkeeping, Accuracy and Completeness

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

We analyzed several NCDS-generated statistical reports covering 2011 NCDS' arbitration program operations in Michigan. Those reports are available from Ms Debbie Lech, Manager of Dispute Resolution Operations, National Center for Dispute Settlement, 43230 Garfield, Suite 130, Clinton Township, Michigan 48038.

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

§ 703.6 (a) (1-12)

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

- 1) Name, address and telephone number of the consumer.**
- 2) Name, address and telephone number of the contact person of the Warrantor.**
- 3) Brand name and model number of the product involved.**

- 4) The date of receipt of the dispute and date of disclosure to the consumer of the decision.**
- 5) All letters and other written documents submitted by either party.**

FINDINGS:

The auditor examined the case file folders extracted from all 2011 "in-jurisdiction" case files. We examined each sample file with respect to the items enumerated in subsections 1 through 5 with the following results:

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

§ 703.6 (a) (1-12) [Continued]

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



FINDINGS:

All files for cases that were arbitrated contained the information required by sections six and eight. Oral presentations are a basic component of the NCDS program in this jurisdiction, and section seven requires summaries of the oral presentations to be placed in the case file. In the case files we reviewed for this region, the record-keeping requirements were met.

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

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

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

FINDINGS:

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

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

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

FINDINGS:

Section 11 above is not applicable for purposes of the audit because there is no practical means by which to verify the completeness and accuracy of such possible additions to the files. Section 12, however, appears to mandate that a summary

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

#### CONCLUSIONS:

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

#### C. Case File Records (4 yrs. 2008-2011)<sup>16</sup>

##### § 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 2008 through 2011 was drawn from NCDS' data base program, and in our field inspection, we checked the sample case files at the NCDS office in Detroit, Michigan, to verify that they were being maintained per requirement § 703.6(f).

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

#### D. Arbitration/Hearing Records

##### i. Case file folders

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

##### ii. Arbitrator Biographies

The arbitrator biographies for the national program are available for review from Debbie Lech, Manager, Case Administration for NCDS at

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<sup>16</sup> Since some of the participating manufacturers have not been administered by NCDS for four years, we could not render any judgment in that regard to that manufacturer. Still, we have seen how the files were maintained in other audits we have conducted, and as a result, we have confidence the files are being stored as required. Moreover, we saw no substantive inconsistency in how NCDS maintains files between manufacturers so we feel comfortable in assuming that what is true in this regard for Toyota, Chrysler, Mitsubishi and Lexus will be seen to also be true for the Suzuki aspects of the national AWAP.

their headquarters in Detroit, Michigan [Clinton Township]. The biographies are thorough and current. The list of arbitrators for each district includes the dates of their appointments.

#### E. Hearing Process

The hearing was conducted on January 20, 2012 at the Toyota of Hollywood dealership in Hollywood, Florida. The hearing involved one arbitrator who briefly interviewed the parties, and provided a detailed explanation of the hearing process. The hearing began at 10:00 a.m. as scheduled.

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

The AWAP hearing was held at the Toyota of Hollywood in Hollywood, Florida, January 20, 2012, at 10:00 a.m. The hearing room was of adequate size for accommodating the hearing. The parties included the customer [husband and wife] together with, a Toyota manufacturer representative, the arbitrator, and the auditor.

##### ii. Openness of Hearing/Meeting

The room was small but minimally adequate to accommodate the parties in attendance but not for any observers that might have been interested in attending the hearing. The arbitrator communicated to the auditor his understanding that the hearings are open and can be attended by observers who agree to abide by the program's rules.

##### iii. Efficiency of Meeting

The arbitrator's case file was complete with all required documents. The arbitrator demonstrated throughout the hearing that he generally knew how to properly conduct a hearing. He then proceeded to allow each party to present their case.

The meeting began at approximately 10:00 a.m. as scheduled

##### iv. Hearing

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

The arbitrator conducted an inspection of the customer's vehicle toward the conclusion of the hearing. After the inspection was complete, all those participating returned to the hearing room. At that time the hearing was ended. The hearing was professionally conducted.

v. Board/Arbitrator Decisions

We reviewed this case's decision and a sample of Florida NCDS decisions rendered in 2011 while conducting our on-site visit to the Michigan headquarters of NCDS in 2012. Overall, the decisions we reviewed were reasonable and consistent with the facts of the case, at least insofar as the case file is concerned. The decision in this particular case was consistent with the facts as presented in the case file and during 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 demonstrated a clear commitment to ensure fair and expeditious resolution of warranty disputes. The administrative staff is clearly dedicated to the program's mission and demonstrates a high degree of professionalism.

## II. Mississippi

### A. Case Load and Basic Statistics

The Mississippi statistical compilations identifies 15 total disputes closed for 2011. Of these 8 (53.3 % of all disputes) were beyond jurisdiction for NCDS' arbitration program review. Of the remaining 7 cases, one (14.2% of all in-jurisdiction disputes<sup>17</sup>) was mediated and 5 (71.4% of all in-jurisdiction disputes) were arbitrated<sup>18</sup>. One case was reported as "pending" as of the date the report was originally generated. The regulations do not require reporting the number of cases that are voluntarily withdrawn by the customer. These cases typically account for why the numbers reported pursuant to the regulatory requirement may not sum to the total number of cases filed. The average number of days for handling a 2011 case in Mississippi was 30. This is compared to case handling nationwide of 31.

We have said when reviewing states that have been audited in the recent past the following:

"We cannot account for the volume disparity from one year to the another except possibly for the effects of the recent earthquake in Japan and the related suppression of car sales for all Japanese manufactured automobiles."

In Mississippi, this is the first review of the state's program and their related statistics so it follows that the numbers reported from 2011 are probably lower than we would expect to typically encounter.

We requested a random sample of cases drawn from all 2011 Mississippi 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. Given the small volume of cases in Mississippi, all files were reviewed.]

### B. Recordkeeping Accuracy and Completeness

The Mississippi regional field audit includes a review of a hearing held at the Bert Allen dealership in Gulf Port, Mississippi, on February 7, 2012. This review included interviews with the principal parties involved in the hearing. In addition, we reviewed a sample of case files for Mississippi, which are stored at national

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<sup>17</sup> Our calculation here is based only on the 7 cases within the program's jurisdiction.

<sup>18</sup> Only 6 cases were fully "decided" at the time the statistics report was created but one case was categorized as a "pending decision" which implies that this case was eventually arbitrated [i.e., "decided by Members"/arbitrators] or, may have been delayed during the compliance stage of the case's final disposition. This can happen for many reasons. For example, a decision may have ordered a replacement of the customer's vehicle but the parties may have agreed to an upgrade requiring a search for a vehicle that meets the specifications mutually agreed upon by them.

headquarters of the National Center for Dispute Settlement (NCDS), in Detroit, Michigan.

§ 703.6 (a)(1-12)

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

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

#### FINDINGS:

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

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

§ 703.6(a)

- 6) All other evidence collected by the Mechanism relating to the dispute, including summaries of relevant and material portions of telephone calls and meetings**

**between the Mechanism and any other person (including consultants described in section 703.4(b) of this part;**

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

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

**FINDINGS:**

All files for cases that were arbitrated contained the information required by sections six and eight. Oral presentations are a basic component of the NCDS program in this jurisdiction, and section seven requires summaries of the oral presentations to be placed in the case file. It is NCDS policy that the arbitrator conducting the hearing must summarize all significant information presented orally by either party during any facet of the hearing. We noted such language in the case files we reviewed in Detroit, 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.

#### C. Case File Records (4 yrs. 2008-2011)

##### § 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 Detroit, Michigan, office. We did not inspect the off-site facility for this year's audit. The files we viewed appeared intact and were readily available for inspection. We inspected a random sample inspection of 25 case files drawn from all cases in the four-year universe of cases from Mississippi all the applicable case files. Our review validated the program's maintenance of these records as required.



#### D. Arbitration/Hearing Records

##### i. Case file folders

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

##### ii. Arbitrator Biographies

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

#### E. Hearing Process

The AWAP hearing was held at the Bert Allen Toyota dealership in Gulf Port, Mississippi. The hearing was scheduled for February 7, 2012. The hearing began as scheduled at 2:00 pm.

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

The hearing room was of adequate size for accommodating the hearing. The parties included the customer, two Toyota manufacturer representatives, the arbitrator, and the auditors [2]. In this case the customer's wife represented their case.

##### ii. Openness of Hearing

The arbitrator communicated to the auditor his understanding that the hearings are open and can be attended by observers who agree to abide by the program's rules. The hearing room would accommodate any likely visitors.

##### iii. Efficiency of Meeting

The arbitrator's case file was complete. He invited the parties to present whatever information they wanted him to consider. He then proceeded to allow each party to present their case. Both the customer and the manufacturer's representative made oral presentations. Following the presentations, the arbitrator accompanied the Toyota representative and the customer to the vehicle at issue and then took a brief test drive. The arbitrator demonstrated throughout the hearing that he knew how to properly conduct a hearing. After determining that no one had anything further to add, the arbitrator declared the hearing closed.

iv. Hearing

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

v. Board/Arbitrator Decisions

We reviewed this case's decision and a sample of Mississippi NCDS decisions rendered in 2011 while conducting our on-site visit to the metropolitan Detroit headquarters of NCDS. Overall, the decisions we reviewed were reasonable and consistent with the facts of the case, at least insofar as the case file is concerned. The decision in this particular case was also reasonably consistent with the facts as presented in the case file and those presented during the hearing.

CONCLUSION:

The AWAP, as it operates in the state of Mississippi, is in substantial compliance with 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.

### III. South Carolina

#### A. Case Load and Basic Statistics

The 2011 South Carolina statistical compilations identifies 19 total disputes closed for 2011. Of these, 10 (52.6 % of all disputes) were beyond jurisdiction for NCDS' arbitration program review. Of the 9 remaining cases, one case was mediated and eight (88.8% of in-jurisdiction cases) were arbitrated. All eight of the eight cases decided by arbitrators resulted in decisions, "adverse to the consumer." The average number of days for handling a 2011 case in South Carolina was 29. This is the same as case handling nationwide of 31.

#### B. Recordkeeping Accuracy and Completeness

We analyzed several NCDS-generated statistical reports covering 2011 NCDS' arbitration program operations in South Carolina. Those reports are available from Ms Debbie Lech, Manager, Case Administration, National Center For Dispute Settlement, 43230 Garfield, Suite 130, Clinton Township, Michigan 48038.

§ 703.6 (a)(1-12)

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

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

#### FINDINGS:

We typically examined a sample of 25 case files extracted from all "in-jurisdiction" case files closed during the audit period. Given the low volume of cases in South Carolina, all cases were reviewed. 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 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 six, seven, 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.**

FINDINGS:

All applicable case files contain a letter from the arbitrator announcing his/her decision.<sup>19</sup>

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<sup>19</sup> 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.

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

FINDINGS:

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

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

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

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

CONCLUSIONS:

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

C. Case File Records (4 yrs. 2008-2011)

§ 703.6 (f)

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

We reviewed a random sample of 25 case numbers from the years 2008 through 2011 drawn from NCDS' complete data base program, and in our field inspection, we checked the sample case files at the NCDS office in Detroit [Clinton Township], Michigan, to verify that they were being maintained per requirement § 703.6(f).

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

D. Arbitration/Hearing Records

i. Case file folders

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

ii. Arbitrator Biographies

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

E. Hearing Process

The AWAP hearing was held on March 21, 2012 at the Stokes-Brown Toyota of Hilton Head dealership, 100 Fording Island Road, Bluffton, South Carolina, at 10:00 a.m.

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

The hearing was conducted in a room of adequate size and was reasonably arranged for the purposes of the hearing. Attendees included the customer, a Toyota representative, a Toyota dealership service department representative, the auditors, and the arbitrator.

The audit included a presentation by the Toyota representative.

ii. Openness of Meeting

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

iii. Efficiency of Meeting

The arbitrator's case file was complete with all requisite documents. The arbitrator demonstrated throughout the hearing that he generally knew how to properly conduct a hearing. The meeting began at the scheduled time.

iv. Hearing

The hearing was properly conducted. The parties were afforded an uninterrupted opportunity to present their case which was followed by a test drive of the vehicle with the arbitrator attending.

v. Board/Arbitrator Decisions

We inspected a sample of South Carolina decisions rendered in 2011 while conducting our on-site visit to the Detroit, Michigan, headquarters of NCDS. In addition, we reviewed the decision rendered in the case referred to above. By and large, the decisions we reviewed were reasonable and consistent with the facts of the case, at least insofar as the case file is concerned. The decision in this particular case was also reasonably consistent with the facts in the case file as well as those that were presented during the hearing.

CONCLUSION:

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

## *SECTION IV*

### *Arbitration Training*

There is no specific language in Rule 703 requiring training of arbitrators. However, there are several general requirements for ensuring that the program does 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.

The NCDS programs offers several training programs each year (new arbitration seminars, refresher seminars, state-specific seminars and on-line training assistance).

#### FINDINGS:

The NCDS provided a new arbitration seminar in 2012 at the DFW Lakes Hilton in Grapevine, Texas on June 8 through June 10, 2012. Prospective arbitrators and a few manufacturer representatives attended the program. Auditors from Claverhouse Associates monitored this particular training program. As noted in the introduction, certain facets of the audit are conducted in the year following the audit period for the purpose of review. The 2011 Audit includes a training review conducted in 2012.

Training was conducted by NCDS staff with legal augmentation provided by Ms. Mary Bedikian on regulatory matters. Ms. Bedikian is on the faculty at Michigan State University's Law School and has a long association with various arbitration associations. As is typical, the regulatory aspects of training are conducted by an attorney having familiarity with the historical development of and the intricate interrelationships of the applicable federal and state statutes. 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.

The "New Arbitrator" weekend seminar opened with an introduction of trainers, followed by an overview of the training agenda. The first day's agenda included the role of arbitrators (discussion of potential conflicts of interest, arbitrator disqualification issues), and a review of arbitration's history as regards automobile warranty. The concept of due process was introduced and its scope of authority as well as a cursory discussion of administrative case review.

The second day of training was very comprehensive and opened with a detailed review of due process, the code of ethics placing special significance on arbitrator impartiality. An arbitrator's duty to disclose possible conflicts of interest where



applicable was stressed. Trainees also covered the sources of arbitrators' authority and provided a detailed review of regulatory laws (federal and state). NCDS's arbitration administrative process was carefully reviewed followed by procedural steps in preparing for a hearing. A review of automotive terminology and its significance to the auto arbitration process was covered. The actual steps of conducting a hearing were covered and then practices in mock arbitration hearings in group format followed.

The final day of training focused on drafting decisions. A thorough review for drafting decisions and all its associated elements were addressed followed by decision drafting exercises. Trainees applied their training principles and acquired necessary tools to draft decisions. Trainers also demonstrated NCDS's on-line portal system.

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

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

An important and thorough presentation centered around the Federal Magnuson-Moss Warranty Act<sup>20</sup> and its relationship to the Uniform Commercial Code. Our field experience suggests that some periodic updates on the arbitrators' scope of authority and the related available remedies under federal law would also be beneficial.

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

The invaluable role-playing demonstrations have become a standard feature of

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<sup>20</sup> Also addressed was the Act's related administrative rules commonly known as Rule 703.

NCDS training. Some exercises involve trainees simply observing role-playing by staff, but a major component of training involves trainees themselves in role play exercises.

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

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

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

We said in last year's report the following:

“On several occasions, trainees interrupted the trainer and posed very broad and theoretical questions that resulted 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 subject under consideration and reduces the likelihood of essential retention of the subjects set forth in the training agenda.”

Trainers discussed this issue earlier in the seminar and, for the most part, were able to curtail prolonged tangential questions on matters not relevant to the process or unlikely scenarios arbitrators usually confront. Nevertheless, several trainees managed to disrupt training on non-germane queries thus using valuable training time and potentially confusing other trainees in the session.

#### CONCLUSION:

We recommend that training personnel continue to advise participants at the onset of training that 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 helpful to most of the trainees.

The NCDS arbitrator training program is a good one that operates in substantial compliance with the Magnuson-Moss warranty Act and its corresponding Rule 703. We have observed many important additions to

the national training program over the past several years and those have been carried over into this year's program. The entire program clearly demonstrates a commitment to quality arbitrator training.

### **ARBITRATION TRAINING RATING SYSTEM**

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

## *SECTION V*

### *National (FTC) Survey and Statistical Index Comparative Analyses*

#### ***NATIONAL CENTER FOR DISPUTE SETTLEMENT AUTOMOTIVE WARRANTY PROGRAM PROGRAM INDICES***

The Federal Trade Commission (FTC) regulates informal dispute resolution programs, such as those operated by the National Center for Dispute Settlement under FTC Rule 703.6(e). The rule mandates disclosure of statistics about the outcomes of warranty disputes and warrantor compliance with settlements and awards. The purpose of this section of the audit is to verify the statistics provided by the company for the calendar year 2011.

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

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

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

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

To determine the accuracy of the AWAP’s warranty dispute statistics and to gather evaluation information about the program, Claverhouse Associates contracted with the Office for Survey (OSR) of the Institute for Public Policy and Social Research (IPPSR) at Michigan State

University to conduct a survey of consumers nationwide who filed disputes with the AWAP during the calendar year 2011.

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

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

### About the Study

The Claverhouse study is based on data collected from 299 of the 1,012 users<sup>1</sup> of the AWAP program nationally in 2011 whose cases were "in jurisdiction" and "closed." To achieve the research goal of obtaining 300 completed surveys nationally, surveys were sent to 600 randomly sampled users of the program<sup>2</sup>. Closed cases are defined as those where a decision has been made and the time for compliance has occurred.

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<sup>1</sup> The AWAP provided a report which showed a total of 1,787 cases. When adding the outcomes, across all manufacturers, the actual number of cases is 1,699. The discrepancy is a mathematical error on the part of the AWAP. The cases in the AWAP indices break down as follows: 133 mediated cases (12 which the time for compliance had not passed), 910 arbitrated cases (19 which the time for compliance had not passed) 65 pending cases, and 591 "no jurisdiction" cases for a total of 1,699. **The data in this report is based on the closed mediated and arbitrated cases – 121 mediated and 891 arbitrated cases for a total of 1,012.** The user lists supplied by the AWAP to conduct the survey contained 1,082 cases (see footnote below).

<sup>2</sup> Using a projected completion rate of 50%, a proportional random sample of 600 users of the program was selected from the database of close and in-jurisdiction cases supplied by the AWAP. The file sent by the AWAP contained 1,082 cases that met study criteria. A proportional sample should yield completed surveys from a population similar to the universe. The following table shows the breakdown of the universe of cases provided by the AWAP in which to draw the sample and the breakdown of completed cases in the Claverhouse sample. The Claverhouse sample is representative of the universe of cases filed in 2011 with the AWAP.

	Toyota	Lexus	Mitsubishi	Chrysler	Suzuki	Total
<b>Claverhouse Sample</b>	238 (79.6%)	33 (11.0%)	12 (4.0%)	6 3.3%	10 (2.0%)	299 (100.0%)

The data were collected using both a web-based questionnaire and a mailed self-administered questionnaire. A web-based version of the questionnaire was programmed using Vovici Professional Edition web-based data collection software. Vovici 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 for individualized, confidential links to be emailed to each randomly selected respondent. It also keeps track of who responds electronically and who does not so that email reminders are only sent 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. Vovici also can be published through an SSL certificate and uses 128-bit data encryption to ensure that downloaded data and all information remains confidential.

For this study, 302 users selected to participate had a valid email address. All of these users were sent a pre-notification letter informing them of the study, the date in which they would receive an email, and to what address the email would be sent. Approximately one week after the pre-notification letter was sent, each user was sent an individualized link asking them to complete the on-line survey. The first email invitation was sent out on February 29, 2012. Reminder emails were sent out on March 10, 2012, March 25, 2012, and the final reminder was sent on April 9, 2012. Of the 302 users with email address, 129 completed the survey on-line for an on-line completion rate of 42.7 percent.

To ensure that everyone selected had an equal opportunity to participate and to increase the overall response rate, OSR used a methodology designed by Professor Donald Dilman of the University of Washington, a nationally known expert in the field of survey research. His method involves an initial mailing of a cover letter, questionnaire, and postage paid envelope. Approximately one week after the initial mailing a postcard thank-you/reminder is sent to everyone. Three weeks after the initial mailing, a second full mailing is sent to non-responders.

A paper copy of the questionnaire that matched the electronic version exactly was mailed to the remaining 298 randomly selected users of the program without electronic contact information on March 5, 2012.

The cover letter explained the purpose of the survey, why and how he or she was selected to participate, and how the results would be used. It also explained his or her rights in the research process and provided contact information for OSR staff in case they had questions

<b>AWAP</b>	891 (82.3%)	81 (7.5%)	30 (2.8%)	32 (3.0%)	48 (4.4%)	1,082 (100.0%)
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about the survey or the survey process itself. The letter also contained information about the year, make and model of the automobile selected for the audit. This information was provided to ensure that the consumer referred to the correct vehicle in the event they had filed more than one case with the AWAP program.

This letter also contained the URL to the web-based questionnaire giving the respondent the opportunity to complete the survey on-line. Nine (9) respondents chose to access the URL and complete the survey on-line instead of the paper copy.

A week after the initial mailing (March 12, 2012), the combination thank-you/reminder postcard was sent to everyone who had received the initial mailing. This postcard also contained the electronic link.

Each person in the study was assigned a unique identification number for tracking purposes. This tracking number was used so that the second mailing could be sent to those who had not completed and returned their questionnaire by a specific date.

On April 4, 2012, OSR mailed to those who had not yet returned their completed questionnaire another packet. This packet contained a different cover letter which explained that OSR had not yet received their initial questionnaire and that their participation was important to ensure a complete and thorough audit, as well as another questionnaire and a postage-paid envelope. Respondents were asked to return their completed questionnaire within one week of receiving it.

Respondents with electronic contact information who had not yet completed the survey on-line were also sent a packet that contained a letter explaining that several efforts had been made to reach them via email. The letter also asked them to either look for the email reminder and complete the survey electronically or complete the enclosed paper copy of the survey. The final email reminder was timed to be delivered around the same time the paper copy arrived in the mail.

Data collection was ended on April 20, 2012. In total, OSR received 138 surveys electronically (129 through email invitations and nine (9) through the mailing process) and 161 completed self-administered questionnaires for a total of 299 completed surveys. The surveys returned by mail were data-entered using the web-based software. The data was then output, proofed, and coded for data analysis.

A threat to the validity of study is non-response bias. That is, if there is any systematic reason that certain consumers are unavailable or choose not to participate, the results can be biased. For example, if those who did not receive awards were more likely to refuse participation than those who did receive awards, the study would underestimate the percentage of decisions adverse to consumers. The practices of sending multiple email requests, postcard reminders, and second mailings to non-responders are attempts to increase overall completion rates and to reduce non-response bias. Of the 298 questionnaires that were mailed, nine (9) respondents completed the survey on-line, 161 were returned completed and 5 were returned undeliverable. The statuses of

the remaining 123 questionnaires are unknown. The completion rate for the mailed portion of the survey is 54.9%.

The overall completion rate for this study is 50.2 percent and the margin of error is  $\pm 4.83$  percent<sup>3</sup>.

### **Method of Resolution**

Table 1 compares the method of resolution of disputes in the Claverhouse sample with the figures reported to the FTC. Since the Claverhouse survey contained only in-jurisdiction cases, out-of-jurisdiction cells in the Claverhouse section of the table are blank, and the subtotal (representing in-jurisdiction cases) is equal to total disputes. In this case, only AWAP in-jurisdiction cases are compared with the Claverhouse sample. Also excluded are the AWAP cases in which time for compliance has not yet occurred since the Claverhouse sample only includes closed cases.

The difference between the 13.7 percent of cases mediated in the Claverhouse sample and the 12.0 percent of cases mediated in the AWAP figures is not statistically significant. Likewise, the difference between the 86.3 percent of arbitrated cases in the Claverhouse sample and the 88.0 percent of arbitrated cases in the AWAP figures is also not statistically significant. Therefore, the statistics are in agreement.

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<sup>3</sup> This is the sampling error when the responses divide roughly 50-50 on a given question and when there are 298 cases, given a 95 percent confidence interval (i.e., there is a 1-in-20 chance that the actual proportion in the population falls outside the range of  $50 \pm 4.83$  percent). The magnitude of the sampling error is determined primarily by sample size (a larger sample size yields a smaller sampling error) and also, to some extent, on how evenly responses are divided among alternative answers. For example, if the responses were divided 75-25 on a given question, the margin of error would be  $\pm 3.77\%$ .



**Table 1**  
**Method of Resolution of Warranty Disputes**  
**Comparison between Claverhouse Survey and AWAP Indices 2011<sup>4</sup>**

<b>Resolution</b>	<b>Claverhouse</b>		<b>AWAP</b>		
	Number	Percent	Number	Percent of in-jurisdiction closed cases	Percent of all cases
Mediation	41	13.7%	121	12.0%	7.5%
Arbitration	258	86.3%	891	88.0%	55.9%
Subtotal (in-jurisdiction)	<b>299</b>	<b>100.0 %</b>	<b>1,012</b>	<b>100.0%</b>	<b>63.4%</b>
Out-of jurisdiction	-	-	591	-	36.6%
<b>Total disputes</b>	<b>299</b>	<b>100.0%</b>	<b>1,603</b>	-	<b>100.0%<sup>5</sup></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 surveys only includes closed cases, cases in which the compliance period has not yet passed are not included in the research.

Table 2 compares the outcomes of mediated disputes.

<sup>4</sup> This table does not include the 12 mediated and 19 arbitrated cases for which time for compliance has not occurred nor the 65 pending cases.

<sup>5</sup> Due to rounding, actual percentages in this table may add to 100.1% or 99.9%. For ease of reading, all percentages in tables are totaled at 100.0%

**Table 2**  
**Outcomes of Mediated Settlements**  
**Comparison between Claverhouse Survey and AWAP Indices 2011**

<b>Mediated Settlements</b>	<b>Claverhouse</b>	<b>AWAP</b>
	Percent (Number)	Percent (Number)
Resolved by staff of the mechanism and warrantor has complied	97.5% (39)	99.2% (120)
Resolved by staff of the mechanism and time for compliance has occurred and warrantor has not yet complied	2.5% (1)	0.8% (1)
<b>Total Mediated Cases</b>	<b>100.0%</b> <b>(40)</b>	<b>100.0%</b> <b>(121)</b>

The survey data shows that the manufacturer complied with 97.5 percent of mediated cases within the time frame specified in the agreement. AWAP indices show that the AWAP complied with 99.2 percent of mediated cases within the time frame specified in the agreement. The statistics “**resolved by the staff of the mechanism and warrantor has complied**” and “**resolved by the staff of the mechanism and time for compliance has occurred, and warrantor has not complied**” fall within the margin of error and are in agreement.

It is important to note, that AWAP indices include cases for which the time for compliance has not occurred. The indices show 12 mediated cases. Since only closed cases are used in the Claverhouse study, this statistic cannot be compared. With these cases included, the AWAP statistics are as follows: 90.2 percent resolved by staff of the mechanism and warrantor has complied, 0.8 percent resolved by staff and time for compliance has occurred and warrantor has not complied, and 9.0 percent resolved by staff of the mechanism and time for compliance has not yet occurred.

Respondents were also asked about the specific outcome of their cases. Table 3 shows their responses.

**Table 3**  
**Specific Outcomes of Mediated Settlements**  
**Claverhouse Survey 2011**

<b>Outcome</b>	<b>Number</b>	<b>Percent</b>
Repairs	12	29.3%
Extended the Warranty	10	24.4%
Cash Settlement	9	22.0%
New Vehicle	7	17.1%
Nothing-No Settlement	2	4.9%
Other	1	2.4%
<b>Total</b>	<b>41</b>	<b>100.0<sup>6</sup></b>

When asked if they pursued their cases any further, only 4.9 percent of the respondents indicated that they had done so. The respondents that indicated that they had pursued their cases further either re-contacted the dealer or manufacturer to work out a different solution or contacted a state agency. Those who reported pursuing their cases initially received some type of settlement.

Respondents were then asked if they recalled talking to an AWAP staff member or returning a postcard to the AWAP about their settlement and how their cases were handled. Of those answering the question, 45.0 percent recalled talking to a staff member, 10.0 percent returned the postcard, 17.5 percent said that they did both, and 27.5 percent did not bother doing either.

Respondents who received an extended warranty were the least likely to follow-up in any way with the AWAP with 45.5 percent reporting they did nothing. Those who received a new vehicle were the most likely among those receiving a settlement with 90.9 percent following up with the AWAP in some manner. Respondents who received additional repairs as their settlement were the most likely group to speak directly to the staff with 38.9 percent indicating they had done so.

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<sup>6</sup> Due to rounding, actual percentages in this table may add to 100.1% or 99.9%. For ease of reading, all percentages in tables are totaled at 100.0%.

## Arbitrated Cases

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

Respondents were first asked whether they remembered receiving the forms in which their claims were stated. Of the respondents who reported arbitration as the means for resolving their case, 92.3 percent said that they recalled receiving the forms. Respondents were also asked a question about how accurately they felt the forms stated their **claim** – 42.7 percent said very accurately; 46.2 percent said somewhat accurately; and 11.1 percent said not very accurately or not at all accurately.

How accurately the respondent felt their case was stated is closely related to whether or not the respondents received an award in the arbitration process. Those who said their case was stated very accurately or somewhat accurately were more likely to receive an award. (see **Figure 1**)

Respondents were then asked whether they had been notified of the time, place, and date of the arbitration hearing. Of those who answered this question, 93.3 percent said they had been notified, and of those who had been notified, 74.9 percent attended their hearing in person, 3.6 percent said that they participated in the hearing by phone, and 21.5 percent said that they did not attend the hearing in person or participate by phone.

Those who did not attend their hearing were asked for the reason(s) why they did not attend their hearing. Among this group, 38.8 percent reported that they had other commitments such as work or school, 20.4 percent said they chose or were directed by AWAP to select the document only process, 16.3 percent said the distance was too great, 16.3 percent said information about the exact time or location of hearing was missing or unclear, and 8.2 percent reported an illness, theirs or a family members, prevented them from attending.

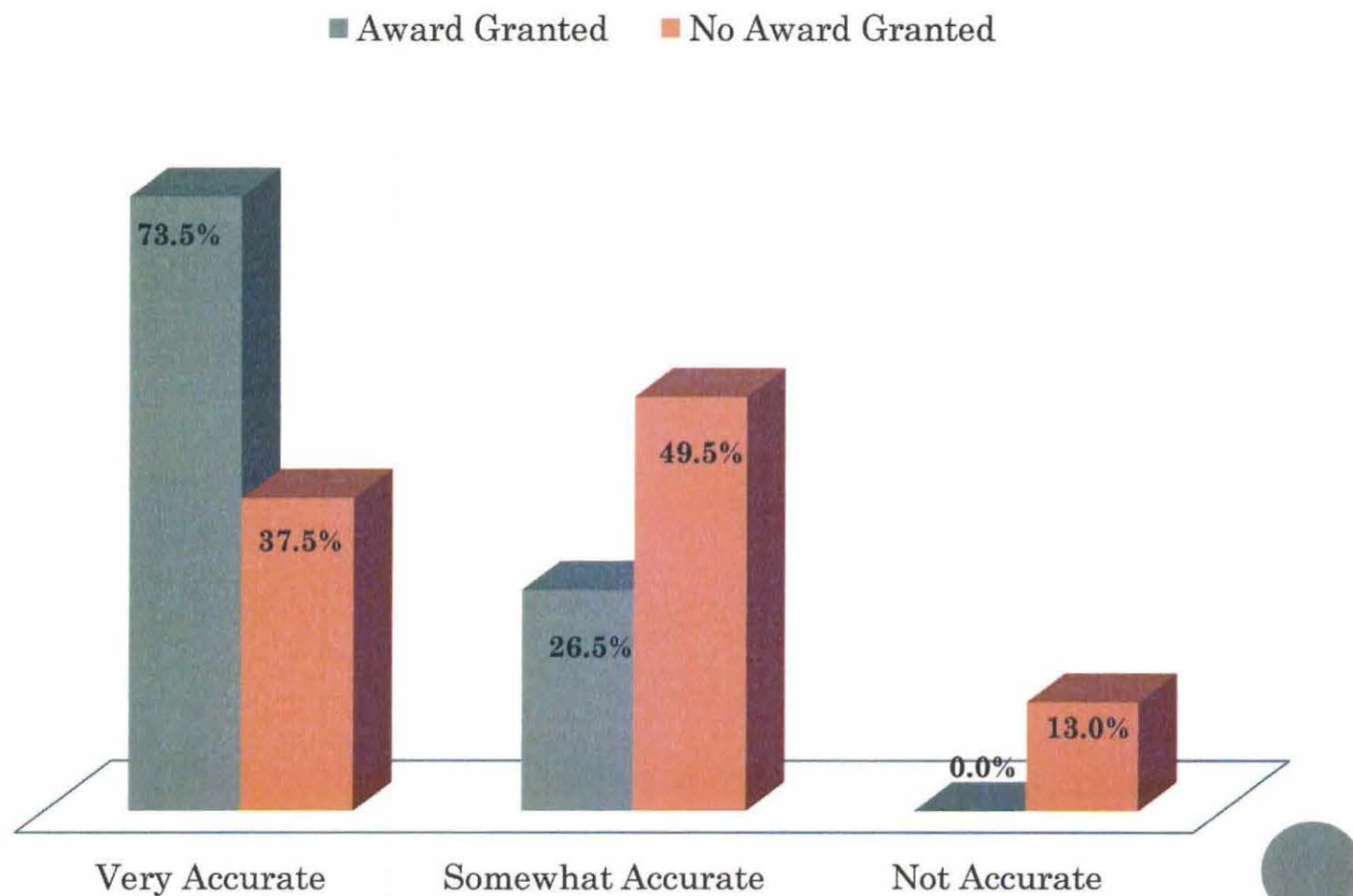
Does the choice of the type of hearing or does attending the hearing have any effect on the outcome of a case? These results are shown in Table 4.

**Table 4**  
**Outcome Based on Hearing Attendance**  
**Claverhouse Survey 2011**

	<b>Attend Hearing/Meeting Person</b>	<b>Attend Hearing/Meeting Phone</b>	<b>Did Not Attend Meeting/Hearing</b>	
Award Granted	13.5% (25)	11.1% (1)	15.1% (8)	13.8% (34) <sup>7</sup>
No Award Granted	86.5% (160)	88.9% (8)	84.9% (45)	86.2% (213)
<b>Total</b>	<b>100.0%</b> <b>(185)</b>	<b>100.0%</b> <b>(9)</b>	<b>100.0%</b> <b>(53)</b>	<b>100.0%</b> <b>(247)</b>

<sup>7</sup> Cases where the respondent did not indicate whether or not they attended the hearing are not included in these statistics.

**FIGURE 1. ACCURACY OF CLAIM FORMS CORRELATED WITH WHETHER AN AWARD WAS GRANTED**



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

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

**Table 5**  
**Outcomes of Arbitrated Cases**  
**Comparison between Claverhouse Survey and AWAP Indices 2011**

Outcome	Claverhouse	AWAP
	Percentage (Number)	Percentage (Number)
<b>Arbitration – Award Granted and Accepted</b>		
Case decided by board and warrantor has complied	14.0% (36)	9.8% (87)
Case decided by board and warrantor has not complied	0.4% (1)	0.0% (0)
Case decided by board and time for compliance not passed	NA	NA
<b>Total award granted and accepted</b>	<b>14.4%</b> <b>(37)</b>	<b>9.8%</b> <b>(87)</b>
Arbitration Decision adverse to consumer	85.7% (221)	90.2% (804)
<b>Total arbitrated decisions</b>	<b>100.0%</b> <b>(258)<sup>8</sup></b>	<b>100.0%</b> <b>(891)</b>

The statistics “**case decided by board and warrantor has complied**” and “**decision adverse to consumer**” are in agreement because the difference for both falls within the margin of error of  $\pm 4.83$  percent.

<sup>8</sup> Due to rounding, actual percentages in this table may add to 100.1% or 99.9%. For ease of reading, all percentages in tables are totaled at 100.0%.

All respondents reported accepting what was awarded to them in the arbitration process. Table 6 details the awards respondents reported receiving from their arbitration hearings.

**Table 6**  
**Specific Outcomes of Arbitrated Cases**  
**Claverhouse Survey 2011**

<b>Award</b>	<b>Number</b>	<b>Percentage</b>
Buy Back Vehicle - Cash Refund	15	40.5%
Replace Vehicle	14	37.8%
Repair Vehicle	5	13.5%
Extend Warranty	3	8.1%
<b>Total</b>	<b>37</b>	<b>100.0%<sup>9</sup></b>

All respondents whose cases were arbitrated were asked whether they had pursued their cases further after the arbitration decision. Slightly more than one quarter (26.8 percent) of respondents indicated that they had pursued their cases in some manner. Table 7 shows by what means they pursued their cases. Respondents could select multiple answers therefore the number of responses (102) is greater than the number of respondents (69).

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<sup>9</sup> Due to rounding, actual percentages in this table may add to 100.1% or 99.9%. For ease of reading, all percentages in tables are totaled at 100.0%.

**Table 7**  
**Methods of Pursuing Arbitrated Cases**  
**Claverhouse Survey**

Method	Number	Percent
Contacted State/Government Agency	30	29.4%
Contacted Attorney	24	23.5%
Re-contacted NCDS	19	18.6%
Other Method	17	16.7%
Worked Out Solution Dealer/Man	12	11.8%
<b>Total</b>	<b>102</b>	<b>100.0%</b>

When looking at which users pursued their cases, the data show that overall, only 8.1 percent of respondents who were granted an award chose to pursue their cases further. Within this group, most (50.0 percent) contacted an attorney. Of those who were not granted an award, the most common methods were contacting a state government agency (30.2 percent) and contacting an attorney (21.9 percent).

When asked if they talked to the staff of the AWAP or returned a postcard indicating how they felt about their arbitration case and the decision. Most, however, chose not to follow-up with 42.3 percent saying they did neither, 26.1 percent said they only returned the postcard, 20.1 percent said they spoke with someone at the AWAP, and 11.5 percent said they did both.

Most respondents who received an award (75.8 percent) followed up with the AWAP in some manner with most, 51.5 percent having some direct form of contact. Those who did not receive an award were less communicative with the AWAP with 45.3 percent reporting no follow up in any manner.

**Delays to Arbitration Decisions**

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

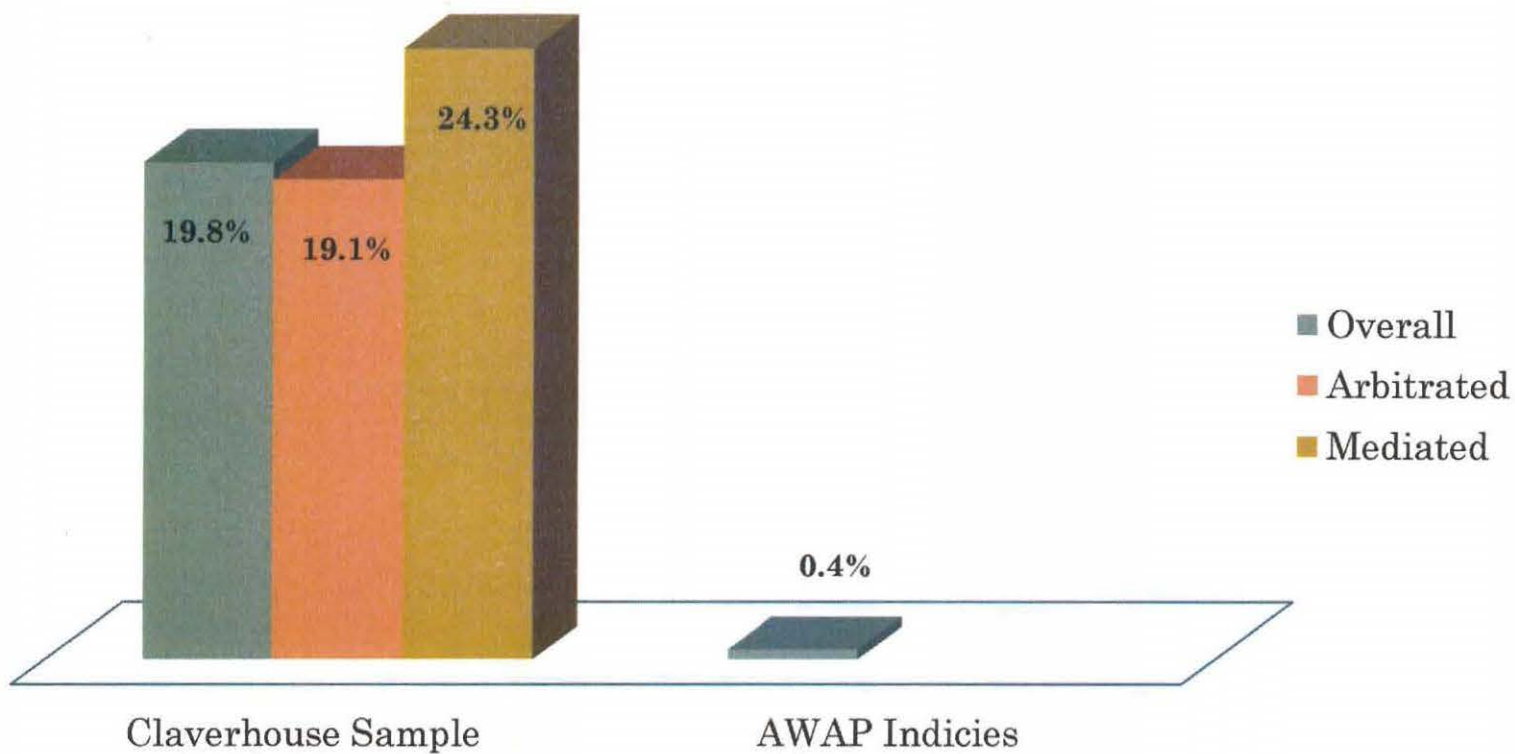
AWAP indices report that less than one percent (0.4 percent) of the closed, in-jurisdiction cases, and 4 out of 1,012 was settled beyond 40 days, whereas 19.8 percent of survey respondents, reported their cases were settled beyond 40 days. **(see Figure 2)**

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

Respondents are asked to recall very specific information about an event that may have occurred a year or more ago. When asked for the date in which their case was opened, about half, 51.2 percent of respondents, were able to provide a full open date (i.e. month, day, year). Eleven percent were able to give a partial date, and 37.8 percent were unable to provide any date.



**FIGURE 2. PERCENTAGE OF CASES DELAYED BEYOND 40 DAYS OVERALL AND BY CASE TYPE**



Survey respondents' recollections on when their cases were closed were similar – 55.5 percent were able to give a full date, 7.0 percent a partial date, and 37.5 percent gave no date at all. Whether or not the full dates given are the correct dates is unknown.

Only 49.2 percent of the respondents could give actual dates as to when their case was opened and closed. Of those who gave a full date, 13.6 percent indicated that their case was delayed and of those who did not give a full date, 26.2 percent said their case was delayed.

For those respondents that gave both a full open and closed date, OSR staff calculated a variable based on those dates to determine whether the case was actually open more than 40 days or not. It is important to note that whether or not these dates are correct is not known. When recalculated, the percentage of cases respondents reported taking more than 40 days drops to 10.2 percent which still falls outside of the margin of error.

The difference in these statistics can be attributed to two factors. The above analysis indicates that respondents are not using documentation to determine whether their cases were indeed delayed and are relying on memory or guesswork. The second factor is that the consumer may not be using the same criteria for when a case is considered “opened” and “closed” as does the AWAP. The AWAP considers a case opened when the forms are received in the office and processed. Consumers, on the other hand, may see their cases as having been opened when they first contacted the AWAP, when they mailed the forms, or even when they first began to experience problems with the vehicle. Similar considerations apply to when a case was closed, especially if the case had a negative outcome or there was a delay in delivering the award.

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

There is a not a statistical difference between the Claverhouse data and the AWAP indices for the reasons for the case delays. AWAP reported the reason for all (100.0 percent) the delayed cases as “decision delayed beyond 40 days for any other reason”. Respondents reported the reasons for their delays being “decision delayed beyond 40 days because of consumer failure to submit information in a timely manner” - 1.9 percent and “decision delayed beyond 40 days for any other reason” - 98.1 percent.

### Consumer Attitudes Toward the AWAP's Informal Dispute Settlement Procedures.

At the beginning of the questionnaire, respondents were asked how they had learned about the Automobile Warranty Arbitration Program. The responses are summarized in Table 9.

**Table 9**  
**How Consumers Learned about AWAP Availability**  
**Claverhouse Survey 2011**

Sources of Information	Number	Percent
Owner's Manual/Warranty Information	118	32.9%
Automaker Customer Complaint Toll-Free Number	97	27.0%
A Dealership	79	22.0%
Attorney/Lawyer/Government Agency	23	6.4%
Internet, Website	18	5.0%
Friends, Family, Co-Workers	9	2.5%
Previous Knowledge of the Program	9	2.5%
Brochures, Literature, Pamphlets	6	1.7%
<b>Total</b>	<b>359<sup>10</sup></b>	<b>100.0%</b>

The leading sources of information about the program for those with mediated cases were the owner's manual and the dealership both with 28.0 percent of respondents mentioning those as a source. For those with arbitrated cases the leading sources of information were the owner's manual, 33.7 percent, the customer complaint toll-free number, 27.8 percent, and the dealership, 21.0 percent.

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

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<sup>10</sup> Because respondents could indicate more than one source, the percentages are based on number of responses (359), not the number of respondents answering the question (296).

**Table 10**  
**Method Learned About Program from Dealer or Manufacturer**  
**Claverhouse Survey 2011**

<b>Method</b>	<b>Number</b>	<b>Percent</b>
Talked about the program	103	46.2%
Given information to read about the program	76	34.1%
Other methods	32	14.3%
Shown or saw a poster	12	5.4%
<b>Total</b>	<b>223<sup>11</sup></b>	<b>100.0%</b>

Survey respondents were also asked about the program informational materials and complaint forms they received from the AWAP. Close to all, 94.6 percent recalled receiving the materials. A slightly higher percentage of respondents with arbitrated cases recalled receiving the materials than mediated cases --- 95.3 percent compared to 90.2 percent.

Of those who said they recalled receiving the materials, 61.4 percent reported the **informational materials** were very clear and easy to understand; 33.2 percent said the materials were a little difficult, but still fairly easy to understand, and 5.4 percent said that the materials were difficult or very difficult to understand.

When asked about the **complaint forms**, 59.5 percent said they were very clear and easy to understand; 34.2 percent said a little difficult but still fairly easy to understand; and 6.2 percent said they were difficult or very difficult to understand.

Ease of understanding the materials, both the informational materials and the complaint forms, is correlated with the type of case an outcome of the case. Those with mediated cases were far more likely to find the information materials and the complaint forms easier to understand than those with arbitrated cases as did those who were granted awards in the arbitration process. (see **Figure 3**)

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

- Objectivity and fairness
- Promptness
- Effort

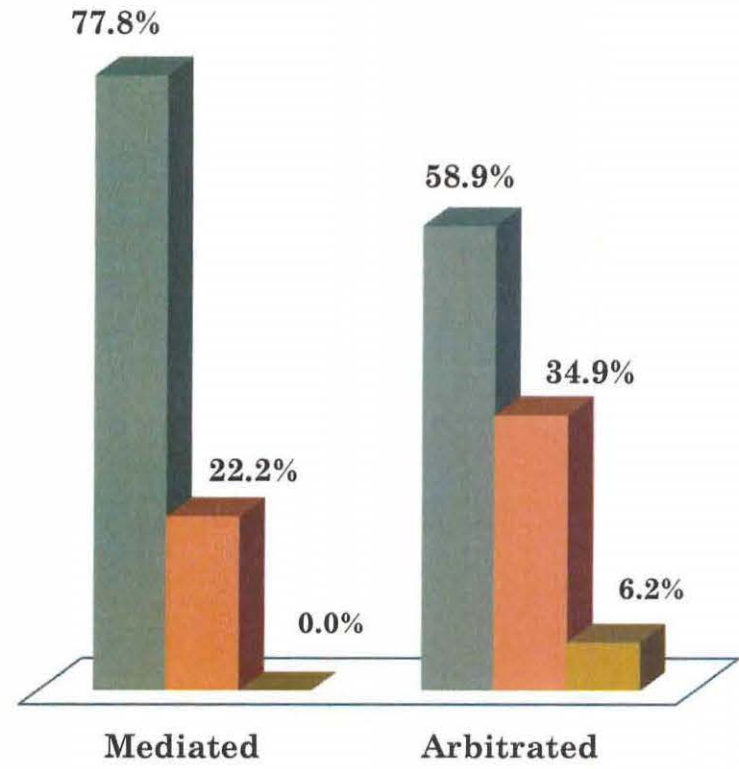
The respondents were asked to rate each item using a six point scale. Using a scale with an equal number of data points eliminates an exact midpoint so respondents are not drawn to the “middle” or neutral category. This type of scale is better for computing means (or averages) as a way to

<sup>11</sup> Because respondents could indicate more than one method, the percentages are based on number of responses (222), not the number of respondents (149) answering the question.

**FIGURE 3: EASE OF UNDERSTANDING INFORMATION MATERIALS AND COMPLAINT FORMS BY CASE TYPE**

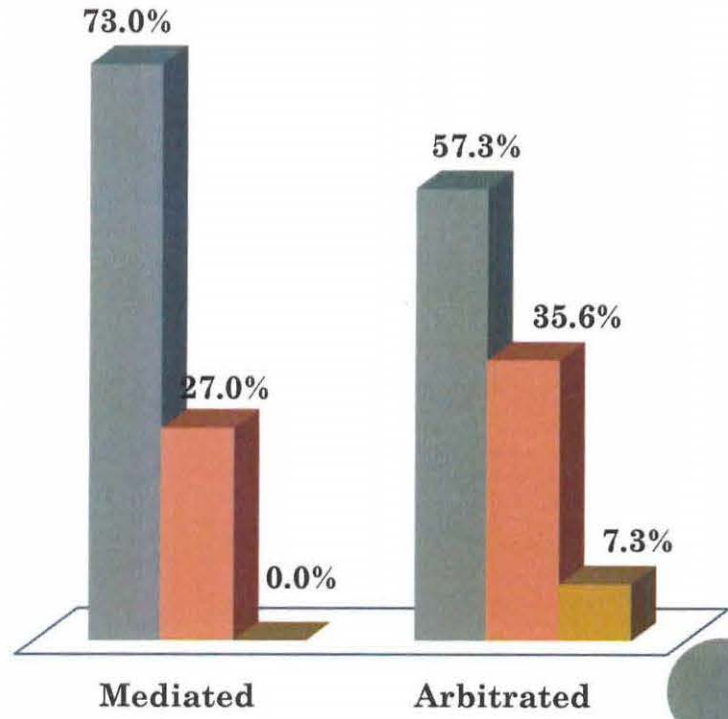
**INFORMATIONAL MATERIALS**

- Very Clear and Easy
- A Little Difficult, Still Easy
- Difficult or Very Difficult



**COMPLAINT FORMS**

- Very Clear and Easy
- A Little Difficult, Still Easy
- Difficult or Very Difficult



gauge satisfaction or dissatisfaction with the program. For these items, the closer the mean is to 1.00, the higher the level of satisfaction. The closer the mean is to 6.00, the higher level of dissatisfaction. Table 11 reports the results in percentages.

**Table 11**  
**Survey Respondents' Ratings of AWAP Staff by Percentage**  
**Claverhouse Survey 2011**

Performance Item	Level of Satisfaction						
	Satisfied			Dissatisfied			Total
	Very (1)	(2)	(3)	(4)	(5)	Very (6)	
Objectivity and fairness	20.9% (60)	10.5% (30)	9.4% (27)	4.5% (13)	10.1% (29)	44.6% (128)	100.0% (287)
Promptness in handling your complaint during the process	28.3% (81)	17.1% (49)	14.0% (40)	6.4% (19)	7.0% (20)	26.9% (77)	100.0% (286)
Efforts to assist you in resolving your complaint	21.3% (62)	13.7% (40)	6.5% (19)	8.2% (24)	9.6% (28)	40.5% (118)	100.0% (291)
Overall rating of the program	20.4% (59)	5.9% (17)	9.0% (26)	6.2% (18)	9.3% (27)	49.1% (142)	100.0% (289)

Of the three areas, users of the program gave the **highest** satisfaction rating in the area of **promptness**, with 45.5 percent, saying that they were more satisfied than dissatisfied in this area, with 28.3 percent indicating they were very satisfied. On the opposite end of the scale, 26.9 percent said they were very dissatisfied in this area.

The **lowest** level of satisfaction was in the area of **objectivity and fairness** with only 31.4 percent of respondents giving a satisfaction rating between 1 and 3, and 20.9 percent indicated that they were very satisfied (a rating of 1). On the reverse end of this scale, 68.6 percent indicated that they were dissatisfied in this area with 44.6 percent being very dissatisfied (a rating of 6) with the program in the area of objectivity and fairness. This area was the highest level of dissatisfaction among the three areas rated.

Respondents did not give favorable ratings to the AWAP in the area of **effort** to assist in resolving the complaint. Only 35.1 percent indicated they were satisfied to some degree in this area.

When asked to give an overall satisfaction rating, only 26.3 percent gave a rating falling within the satisfaction range (1-3) with only 20.4 percent indicating that they were very satisfied (1).

Almost three-quarters of the respondents, 73.7 percent, indicated they were dissatisfied with the program with nearly half, 49.1 percent, saying they were very dissatisfied.

The level of satisfaction and dissatisfaction differs greatly among case type and outcome. These results are shown in **Figure 4**.

Another approach to gauging satisfaction among these items is to compare means across the items and across different groups. The closer the mean value is to 1.00, the greater the level of satisfaction and the closer the mean value is to 6.00, the greater the level of dissatisfaction. The table below (Table 12) shows the overall mean for each item as well as a comparison of the means by type of case. As the table shows, the type of case is an important part in consumers' satisfaction with the program. More detailed comparisons are shown in **Figure 5**.

**Table 12**  
**Survey Respondents' Ratings of AWAP Staff Means Comparison**  
**Claverhouse Survey 2011**

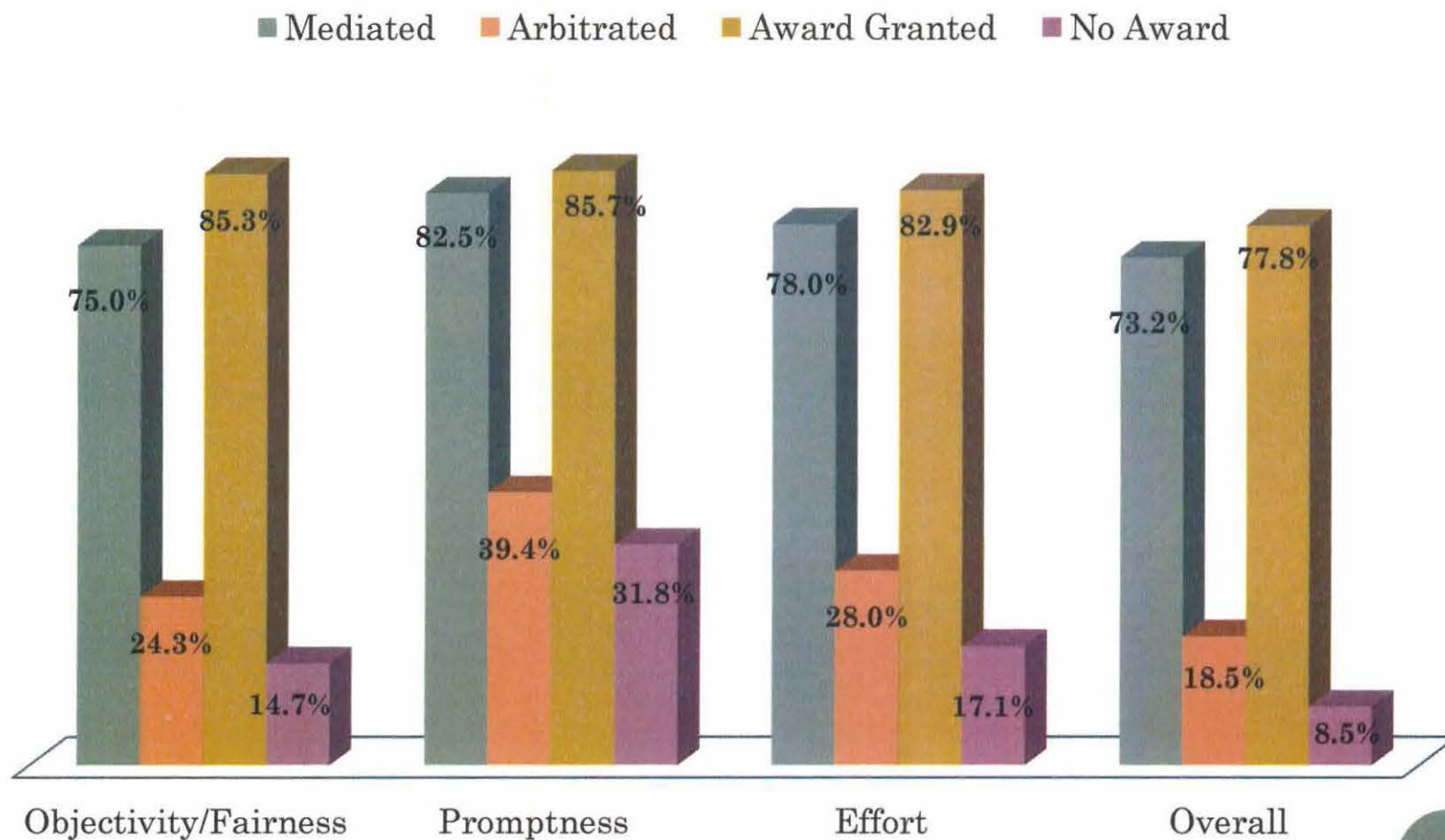
<b>Performance Item</b>	<b>Mean</b>	<b>Median</b>	<b>Mode</b>	<b>Std. Deviation</b>
Objectivity and fairness	4.62	6.00	6	1.67
Promptness in handling your complaint during the process	4.01	4.00	6	1.65
Efforts to assist you in resolving your complaint	4.52	6.00	6	1.68
Overall rating of the program	4.76	6.00	6	1.64 <sup>12</sup>

Another measure of consumers' satisfaction or dissatisfaction with the AWAP program is whether or not they would recommend the program to others. Overall, 26.4 percent said that they would recommend the program to others, 49.2 percent said they would not, and 23.7 percent said that it would depend on the circumstances. Table 13 shows these results.

---

<sup>12</sup> The **mean** is the average and is computed as the sum of all the observed outcomes from the sample divided by the total number of events. The **median** is the middle score. The **mode** of a set of data is the number with the highest frequency. The **standard deviation** describes how spread out the data is. If the data all lies close to the mean, then the standard deviation will be small, while if the data is spread out over a large range of values, the standard deviation will be larger.

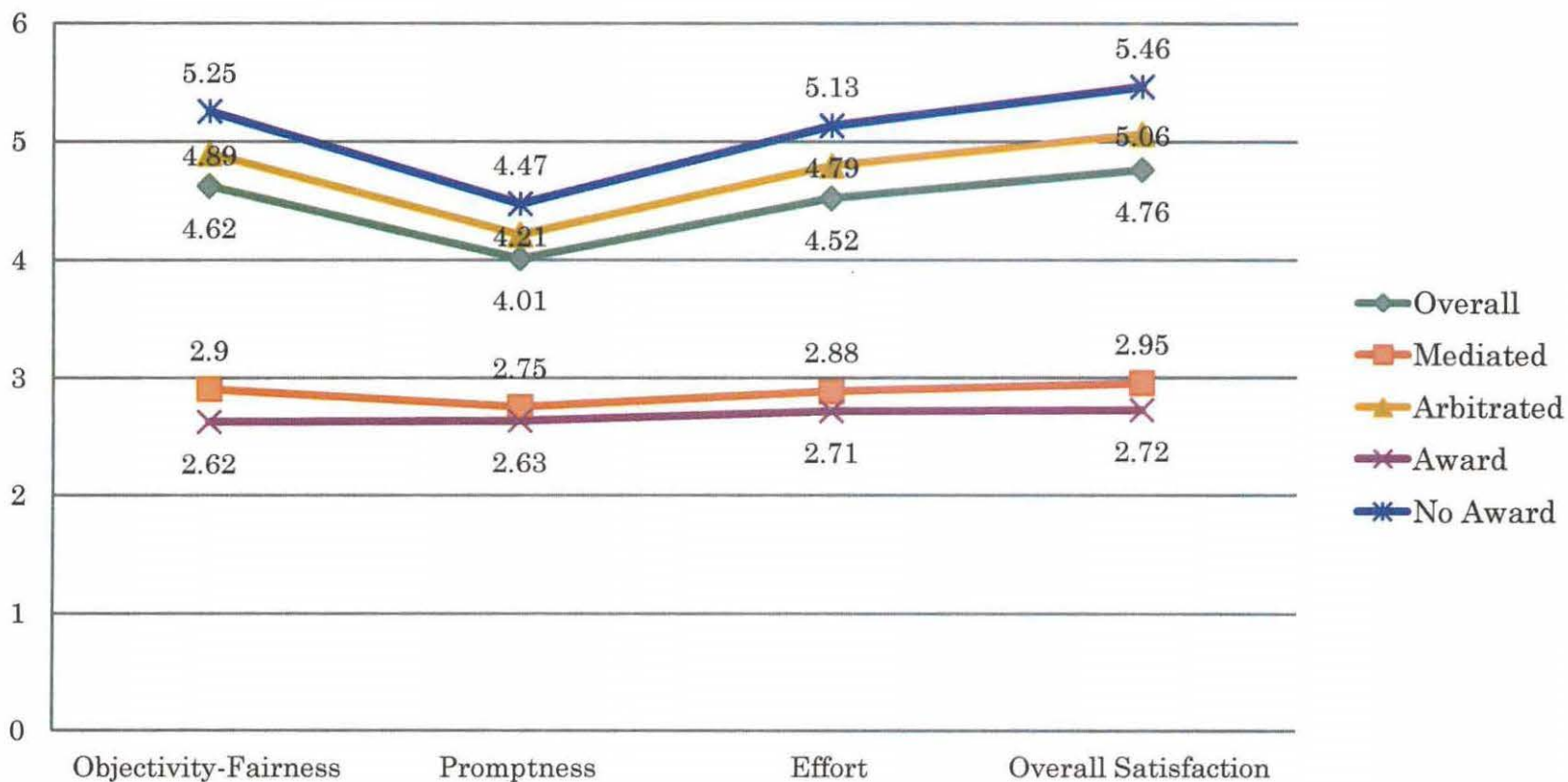
**FIGURE 4. RESPONDENTS SATISFACTION WITH PROGRAM ASPECTS BY CASE TYPE AND CASE OUTCOME\***



\*Data has been recoded: Percentages Represent Satisfied (1-3)



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



\* Scale: 1-Very Satisfied: 6-Very Dissatisfied

**Table 13**  
**Would Consumer Recommend the AWAP Program to Others?**  
**Claverhouse Survey 2011**

<b>Method of Resolution and Outcome</b>	<b>Yes</b>	<b>No</b>	<b>Depends on Circumstances</b>
Mediated	75.6% (31)	7.3% (3)	17.1% (7)
Arbitrated	18.8% (48)	56.3% (144)	25.0% (64)
Award Granted	73.0% (27)	8.1% (3)	18.9% (7)
No Award Granted	9.6% (21)	64.4% (141)	26.0% (57)

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

**Table 14**  
**Consumer Suggestions for Program Improvement**  
**Claverhouse Survey 2011**

Suggestion	Number	Percent
Bias Arbitrators/Arbitrators/Staff Favor AWAP	116	41.1%
Better Review Complaint/Problems by Staff/Arbitrators	31	11.0%
Better/ More Knowledgeable Mechanics/Review Staff	28	9.9%
Dealers/Manufacturers More Responsive to Consumers/Complainants	27	9.6%
Allow More Information/History of Problems in Complaint	18	6.4%
Did Good Job/Pleased/No Complaints	18	6.4%
Fair/Equitable Settlements/Awards	11	3.9%
More Communication/Contact/Interaction Arbitrators Staff	8	2.8%
More/ Better Representation at Hearings	6	2.1%
Less Paperwork/Make Forms Easier	5	1.8%
Better Follow-up/Enforcement of Awards/Settlements	5	1.8%
Quicken Process/ Speedier Decisions	4	1.4%
Electronic, On-Line, Email Communication/Forms	4	1.4%
Make Program More Well Known/ Advertising	1	.4%
<b>Total</b>	<b>282<sup>13</sup></b>	<b>100.0%</b>

The top response among those with arbitrated cases was “bias arbitrators/arbitrators/staff favor AWAP” with 42.5 percent. This was followed by “better review complaint/problems by staff/arbitrators”, 11.6 percent, and “better/ more knowledgeable mechanics/review staff”, 10.8 percent.

Among those with mediated cases, the top comment was “did a good job, no complaints”, 30.4 percent. Only 4.2 percent with arbitrated cases gave this response and only 0.9 percent who did not receive an award gave this response as well.

<sup>13</sup> This was asked of all respondents as an open-ended question, up to three responses were coded for each respondent; therefore, the statistics are based on number of responses (289) not number of respondents (229).

## **CONCLUSIONS**

On the basis of the comparison of the Claverhouse survey results with the AWAP national indices, it is concluded that the AWAP indices are in agreement in all but one area: "case decided by board and warrantor has complied."

This difference should not be cause for concern. The difference can be attributed to respondent error in recall and in reporting. This is substantiated by the facts detailed earlier in this report.

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

*SECTION VI*

*Audit Related Regulatory Requirements*

**REQUIREMENT: § 703.7 (c)(3)(I)**

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

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

**REQUIREMENT: § 703.7 (d)**

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

The audit was conducted consistent with this requirement.

*SECTION VII*  
*Appendix/Codebook*

CODEBOOK

NCDS 2011 National Codebook  
299 Cases

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```
CASEID          CASE IDENTIFICATION NUMBER
      %      N  VALUE LABEL
      299      . MISSING (NOT APPLICABLE)
-----
100.0  299 cases
```

Data type: numeric  
Record/columns: 1/100-102

UNIQUEID	uniqueid		
	%	N	VALUE LABEL
	0.7	2	11100
	0.3	1	11102
	2.7	8	11110
	2.3	7	11111
	0.3	1	12
	4.0	12	12110
	0.3	1	13
	0.7	2	13110
	1.0	3	15100
	1.0	3	15110
	0.7	2	16110
	0.7	2	16111
	0.7	2	17101
	1.3	4	17110
	0.3	1	21100
	0.7	2	21101
	1.7	5	21110
	1.7	5	22110
	0.3	1	23110
	1.7	5	31100
	2.0	6	31110
	1.3	4	32100
	1.3	4	32110
	0.7	2	33100
	1.3	4	33110
	2.0	6	34100
	1.7	5	34110
	0.7	2	42115
	0.7	2	50102
	0.3	1	50104
	0.3	1	50105
	1.7	5	50110
	1.7	5	50111
	1.0	3	50112
	2.0	6	60110
	0.3	1	63115
	0.3	1	71115
	0.3	1	74115
	4.3	13	80111
	0.3	1	9
	0.3	1	B02-1
	0.3	1	B06-1
	51.8	155	
	-----	---	
	100.0	299	cases

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Data type: character  
 Record/columns: 1/1-5

WSB101                      Year of Car

%	N	VALUE	LABEL
0.4	1	2005	
1.8	5	2006	
9.6	27	2007	
17.1	48	2008	
15.7	44	2009	
35.6	100	2010	
19.9	56	2011	
	18	.	MISSING (NOT APPLICABLE)
-----	----		
100.0	299	cases	

Data type: numeric  
 Record/columns: 1/6-9

June 12, 2012

WSB102

Make

%	N	VALUE	LABEL
2.0	6	0	Chrysler
79.6	238	1	Toyota
4.0	12	2	Mitsubishi
11.0	33	3	Lexus
0.0	0	4	Porsche
3.3	10	5	Suzuki
-----	---		
100.0	299	cases	

Data type: numeric  
Record/column: 1/10

WSB103

Model:

299 cases

Data type: character  
Record/columns: 1/11-28

WSB3\_0

Learn About NCDS : Automaker Customer Complaint  
Toll-Free Number

%	N	VALUE	LABEL
67.6	202	0	No
32.4	97	1	Yes
-----	---		
100.0	299	cases	

Data type: numeric  
Record/column: 1/29

WSB3\_1

Learn About NCDS : A Dealership

%	N	VALUE	LABEL
73.6	220	0	No
26.4	79	1	Yes
-----	---		
100.0	299	cases	

Data type: numeric  
Record/column: 1/30

WSB3\_2                    Learn About NCDS : Owner's Manual/Warranty Information

%	N	VALUE	LABEL
60.5	181	0	No
39.5	118	1	Yes
-----	----		
100.0	299	cases	

Data type: numeric  
Record/column: 1/31

WSB3\_3                    Learn About NCDS : Attorney/Lawyer/Government Agency

%	N	VALUE	LABEL
92.3	276	0	No
7.7	23	1	Yes
-----	----		
100.0	299	cases	

Data type: numeric  
Record/column: 1/32

WSB3\_4                    Learn About NCDS : Brochures, Literature, Pamphlets

%	N	VALUE	LABEL
98.0	293	0	No
2.0	6	1	Yes
-----	----		
100.0	299	cases	

Data type: numeric  
Record/column: 1/33

WSB3\_5                    Learn About NCDS : Television, Radio, Newspapers

%	N	VALUE	LABEL
100.0	299	0	No
0.0	0	1	Yes
-----	----		
100.0	299	cases	

Data type: numeric  
Record/column: 1/34

## WSB3\_6                    Learn About NCDS : Friends, Family, Co-Workers

%	N	VALUE	LABEL
97.0	290	0	No
3.0	9	1	Yes
-----	---		
100.0	299	cases	

Data type: numeric  
Record/column: 1/35

---

## WSB3\_7                    Learn About NCDS : Previous Knowledge of the Program

%	N	VALUE	LABEL
97.0	290	0	No
3.0	9	1	Yes
-----	---		
100.0	299	cases	

Data type: numeric  
Record/column: 1/36

---

## WSB3\_9                    Learn About NCDS : Internet, Website

%	N	VALUE	LABEL
94.0	281	0	No
6.0	18	1	Yes
-----	---		
100.0	299	cases	

Data type: numeric  
Record/column: 1/37

---

## WSB4\_0                    Talk Program

%	N	VALUE	LABEL
76.3	103	0	Yes
23.7	32	1	No
	164	.	MISSING (NOT APPLICABLE)
-----	---		
100.0	299	cases	

Data type: numeric  
Record/column: 1/38

WSB4\_1 Give/Send Info About Program

%	N	VALUE	LABEL
55.9	76	0	Yes
44.1	60	1	No
	163	.	MISSING (NOT APPLICABLE)
-----	----		
100.0	299		cases

Data type: numeric  
Record/column: 1/39

WSB4\_2 Show Poster Program

%	N	VALUE	LABEL
8.9	11	0	Yes
91.1	112	1	No
	176	.	MISSING (NOT APPLICABLE)
-----	----		
100.0	299		cases

Data type: numeric  
Record/column: 1/40

WSB4\_4 Inform Other Ways

%	N	VALUE	LABEL
24.4	32	0	Yes
75.6	99	1	No
	168	.	MISSING (NOT APPLICABLE)
-----	----		
100.0	299		cases

Data type: numeric  
Record/column: 1/41



## WSB6 Received Information Program

%	N	VALUE	LABEL
94.6	282	0	Yes
5.4	16	1	No
	1	.	MISSING (NOT APPLICABLE)
-----	----		
100.0	299	cases	

Data type: numeric  
Record/column: 1/42

## WSB7 Ease Information

%	N	VALUE	LABEL
61.4	170	0	Very Clear and Easy
33.2	92	1	Little Difficult - Still Easy
5.4	15	2	Pretty Difficult
	22	.	MISSING (NOT APPLICABLE)
-----	----		
100.0	299	cases	

Data type: numeric  
Record/column: 1/43

## WSB9 Complaint Forms

%	N	VALUE	LABEL
59.5	153	0	Very Clear and Easy
34.2	88	1	Little Difficult - Still Easy
6.2	16	2	Pretty Difficult
	42	.	MISSING (NOT APPLICABLE)
-----	----		
100.0	299	cases	

Data type: numeric  
Record/column: 1/44

WSB10 Method Resolution

%	N	VALUE	LABEL
13.7	41	0	Mediated
86.3	258	1	Arbitrated
-----	---		
100.0	299		cases

Data type: numeric  
Record/column: 1/45

WSB12 Mediated - Outcome

%	N	VALUE	LABEL
24.4	10	0	Extended the Warranty
17.1	7	1	New Vehicle
0.0	0	2	Trade in Allowance
29.3	12	3	Repairs
22.0	9	4	Cash Settlement
0.0	0	5	Voucher Another Vehicle
4.9	2	6	Nothing-No Settlement
2.4	1	7	Other
	258	.	MISSING (NOT APPLICABLE)
-----	---		
100.0	299		cases

Data type: numeric  
Record/column: 1/46

WSB13 Mediated - Receive Settlement

%	N	VALUE	LABEL
97.5	39	0	Yes
2.5	1	1	No
	259	.	MISSING (NOT APPLICABLE)
-----	---		
100.0	299		cases

Data type: numeric  
Record/column: 1/47

## WSB14 Mediated - Receive Settlement Time Frame

%	N	VALUE	LABEL
100.0	39	0	Yes
0.0	0	1	No
	260	.	MISSING (NOT APPLICABLE)
-----	----		
100.0	299		cases

Data type: numeric  
Record/column: 1/48

---

## WSB15 Mediated - Not Received Settlement

%	N	VALUE	LABEL
0.0	0	0	Yes
0.0	0	1	No
	299	.	MISSING (NOT APPLICABLE)
-----	----		
100.0	299		cases

Data type: numeric  
Record/column: 1/49

---

## WSB17 Mediated - Pursue Case Further

%	N	VALUE	LABEL
4.9	2	0	Yes
95.1	39	1	No
	258	.	MISSING (NOT APPLICABLE)
-----	----		
100.0	299		cases

Data type: numeric  
Record/column: 1/50

WSB18\_0 Mediated - Method Pursue : Contacted Attorney

%	N	VALUE	LABEL
100.0	2	0	No
0.0	0	1	Yes
	297	.	MISSING (NOT APPLICABLE)
-----	----		
100.0	299		cases

Data type: numeric  
Record/column: 1/51

WSB18\_1 Mediated - Method Pursue : Worked Out Solution Dealer/Man

%	N	VALUE	LABEL
50.0	1	0	No
50.0	1	1	Yes
	297	.	MISSING (NOT APPLICABLE)
-----	----		
100.0	299		cases

Data type: numeric  
Record/column: 1/52

WSB18\_2 Mediated - Method Pursue : Contacted State/Gov't Agency

%	N	VALUE	LABEL
50.0	1	0	No
50.0	1	1	Yes
	297	.	MISSING (NOT APPLICABLE)
-----	----		
100.0	299		cases

Data type: numeric  
Record/column: 1/53

## WSB18\_3                    Mediated - Method Pursue : Re-contacted NCDS

%	N	VALUE	LABEL
100.0	2	0	No
0.0	0	1	Yes
	297	.	MISSING (NOT APPLICABLE)
-----	----		
100.0	299		cases

Data type: numeric  
Record/column: 1/54

---

## WSB18\_4                    Mediated - Method Pursue : Other Method

%	N	VALUE	LABEL
100.0	2	0	No
0.0	0	1	Yes
	297	.	MISSING (NOT APPLICABLE)
-----	----		
100.0	299		cases

Data type: numeric  
Record/column: 1/55

---

## WSB19                    Mediated - Follow-Up Settlement

%	N	VALUE	LABEL
45.0	18	0	Yes, Talked Staff
10.0	4	1	Yes, Returned Postcard
17.5	7	2	Both, Talked, Returned Postcard
27.5	11	3	No Follow-Up
	259	.	MISSING (NOT APPLICABLE)
-----	----		
100.0	299		cases

Data type: numeric  
Record/column: 1/56

WSB76 Arb - Recall Receiving Claim Paperwork

%	N	VALUE	LABEL
92.2	238	0	Yes
7.8	20	1	No
	41	.	MISSING (NOT APPLICABLE)
-----	----		
100.0	299		cases

Data type: numeric  
Record/column: 1/57

WSB79 Arb - Accuracy of Claim

%	N	VALUE	LABEL
42.7	100	0	Very Accurately
46.2	108	1	Somewhat Accurately
11.1	26	2	Not Too/ Not at all Accurately
	65	.	MISSING (NOT APPLICABLE)
-----	----		
100.0	299		cases

Data type: numeric  
Record/column: 1/58

WSB81 Arb - Notice of Hearing

%	N	VALUE	LABEL
93.3	238	0	Yes
6.7	17	1	No
	44	.	MISSING (NOT APPLICABLE)
-----	----		
100.0	299		cases

Data type: numeric  
Record/column: 1/59

## WSB82 Arb - Attend Hearing

%	N	VALUE	LABEL
74.9	185	0	Attend Hearing/Meeting Person
3.6	9	1	Attend Hearing/Meeting Phone
21.5	53	2	Did Not Attend Meeting/Hearing
	52	.	MISSING (NOT APPLICABLE)
-----	----		
100.0	299		cases

Data type: numeric  
Record/column: 1/60

## WSB83 Arb - Reason Did Not Attend Hearing

%	N	VALUE	LABEL
38.8	19	1	Work/School/Other Commitment
16.3	8	.2	Distance/Too Far
20.4	10	3	Chose Document Only
16.3	8	4	Not Informed
8.2	4	5	Illness
	250	.	MISSING (NOT APPLICABLE)
-----	----		
100.0	299		cases

Data type: numeric  
Record/column: 1/61

## WSB84 Arb - Outcome

%	N	VALUE	LABEL
5.4	14	0	Replace Vehicle
5.8	15	1	Buy Back Vehicle - Cash Refund
1.9	5	2	Repair Vehicle
1.2	3	3	Extend Warranty
0.0	0	4	Terminated Lease
85.7	221	5	NCDS Ruled Against Claim
	41	.	MISSING (NOT APPLICABLE)
-----	----		
100.0	299		cases

Data type: numeric  
Record/column: 1/62

WSB85 Arb - Accept/Reject Decision

%	N	VALUE	LABEL
100.0	37	0	Accept Decision
0.0	0	1	Reject Decision
	262	.	MISSING (NOT APPLICABLE)
-----	----		
100.0	299		cases

Data type: numeric  
Record/column: 1/63

WSB87 Arb - Reason Decision

%	N	VALUE	LABEL
0.0	0	0	Decision Not Solve Problems
0.0	0	1	Decision Cost Too Much Money
0.0	0	2	Did Not Like/Want Offer
	299	.	MISSING (NOT APPLICABLE)
-----	----		
100.0	299		cases

Data type: numeric  
Record/column: 1/64

WSB89 Arb - Received Award

%	N	VALUE	LABEL
91.9	34	2	Awarded Within Time Frame
5.4	2	3	Awarded NOT Within Time Frame
2.7	1	4	Have Not Received
	262	.	MISSING (NOT APPLICABLE)
-----	----		
100.0	299		cases

Data type: numeric  
Record/column: 1/65



## WSB112 Arb - Follow-Up Settlement

%	N	VALUE	LABEL
20.1	47	0	Yes, Talked Staff
26.1	61	1	Yes, Returned Postcard
11.5	27	2	Both, Talked, Returned Postcard
42.3	99	3	No Follow-Up
	65	.	MISSING (NOT APPLICABLE)
-----	----		
100.0	299	cases	

Data type: numeric  
Record/column: 1/66

---

## WSB96 Arb - Pursue Case Further

%	N	VALUE	LABEL
26.8	69	0	Yes
73.2	188	1	No
	42	.	MISSING (NOT APPLICABLE)
-----	----		
100.0	299	cases	

Data type: numeric  
Record/column: 1/67

---

## WSB114\_0 Arb - Method Pursue : Contacted Attorney

%	N	VALUE	LABEL
88.1	177	0	No
11.9	24	1	Yes
	98	.	MISSING (NOT APPLICABLE)
-----	----		
100.0	299	cases	

Data type: numeric  
Record/column: 1/68

WSB114\_1 Arb - Method Pursue : Worked Out Solution Dealer/Man

%	N	VALUE	LABEL
94.0	189	0	No
6.0	12	1	Yes
	98	.	MISSING (NOT APPLICABLE)
-----	----		
100.0	299		cases

Data type: numeric  
Record/column: 1/69

WSB114\_2 Arb - Method Pursue : Contacted State/Gov't Agency

%	N	VALUE	LABEL
85.1	171	0	No
14.9	30	1	Yes
	98	.	MISSING (NOT APPLICABLE)
-----	----		
100.0	299		cases

Data type: numeric  
Record/column: 1/70

WSB114\_3 Arb - Method Pursue : Re-contacted NCDS

%	N	VALUE	LABEL
90.5	182	0	No
9.5	19	1	Yes
	98	.	MISSING (NOT APPLICABLE)
-----	----		
100.0	299		cases

Data type: numeric  
Record/column: 1/71

WSB114\_4 Arb - Method Pursue : Other Method

%	N	VALUE	LABEL
91.5	184	0	No
8.5	17	1	Yes
	98	.	MISSING (NOT APPLICABLE)
-----	---		
100.0	299		cases

Data type: numeric  
 Record/column: 1/72

WSB38\_3 Month Filed Claim

%	N	VALUE	LABEL
7.5	14	1	
7.0	13	2	
6.5	12	3	
4.3	8	4	
7.5	14	5	
10.8	20	6	
8.1	15	7	
11.3	21	8	
12.4	23	9	
10.8	20	10	
8.6	16	11	
4.8	9	12	
0.5	1	99	
	113	.	MISSING (NOT APPLICABLE)
-----	---		
100.0	299		cases

Data type: numeric  
 Record/columns: 1/73-74

WSB38\_1 Day Filed Claim

%	N	VALUE	LABEL
8.5	13	1	
5.2	8	2	
5.2	8	3	
5.2	8	4	
1.3	2	5	
2.6	4	6	
2.0	3	7	
2.6	4	8	
0.7	1	9	
8.5	13	10	
2.0	3	11	
5.2	8	12	
2.0	3	13	
2.6	4	14	
5.2	8	15	
4.6	7	16	
3.9	6	18	
2.0	3	19	
4.6	7	20	
2.6	4	21	
5.9	9	22	
1.3	2	23	
2.0	3	24	
1.3	2	25	
0.7	1	26	
5.9	9	28	
2.0	3	29	
2.0	3	30	
2.0	3	31	
0.7	1	99	
	146	.	MISSING (NOT APPLICABLE)
-----	----		
100.0	299	cases	

Data type: numeric  
 Record/columns: 1/75-76

## WSB38\_2                      Year Filed Claim

%	N	VALUE	LABEL
1.0	3	2010	
99.0	296	2011	
-----	---		
100.0	299	cases	

Data type: numeric  
Record/columns: 1/77-80

## WSB116\_3                      Month Case Closed

%	N	VALUE	LABEL
2.7	5	1	
7.0	13	2	
5.9	11	3	
8.0	15	4	
5.9	11	5	
5.9	11	6	
10.7	20	7	
7.5	14	8	
10.7	20	9	
11.8	22	10	
13.4	25	11	
10.7	20	12	
	112	.	MISSING (NOT APPLICABLE)
-----	---		
100.0	299	cases	

Data type: numeric  
Record/columns: 1/81-82

WSB116\_1 Day Case Closed

%	N	VALUE	LABEL
8.4	14	1	
1.2	2	2	
2.4	4	3	
1.8	3	4	
3.0	5	5	
1.2	2	6	
1.2	2	7	
2.4	4	8	
4.8	8	9	
6.0	10	10	
2.4	4	11	
7.8	13	12	
0.6	1	13	
7.2	12	14	
6.6	11	15	
5.4	9	16	
2.4	4	17	
1.2	2	18	
6.6	11	19	
3.0	5	20	
2.4	4	21	
0.6	1	22	
2.4	4	23	
2.4	4	24	
2.4	4	25	
3.6	6	26	
1.2	2	27	
3.6	6	28	
3.0	5	29	
2.4	4	30	
	133	.	MISSING (NOT APPLICABLE)
-----	----		
100.0	299	cases	

Data type: numeric  
 Record/columns: 1/83-84

## WSB116\_2                    Year Case Closed

%	N	VALUE	LABEL
100.0	299	2011	
-----	---		
100.0	299	cases	

Data type: numeric  
Record/columns: 1/85-88

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## WSB73                      Case 40 Days More

%	N	VALUE	LABEL
19.8	57	0	Yes
80.2	231	1	No
	11	.	MISSING (NOT APPLICABLE)
-----	---		
100.0	299	cases	

Data type: numeric  
Record/column: 1/89

---

## WSB53                      Reason Delay in Case

%	N	VALUE	LABEL
1.9	1	0	Delay User Failed Provide Information
0.0	0	1	Delay Arbitrators Requested Info
98.1	51	2	Delay Other Reasons
	247	.	MISSING (NOT APPLICABLE)
-----	---		
100.0	299	cases	

Data type: numeric  
Record/column: 1/90

WSB54\_0                    Objectivity and Fairness

%	N	VALUE	LABEL
20.9	60	1	Very Satisfied
10.5	30	2	
9.4	27	3	
4.5	13	4	
10.1	29	5	
44.6	157	6	Very Dissatisfied
	12	.	MISSING (NOT APPLICABLE)
-----	----		
100.0	299	cases	

Data type: numeric  
Record/column: 1/91

WSB54\_1                    Promptness

%	N	VALUE	LABEL
28.3	81	1	Very Satisfied
17.1	49	2	
14.0	40	3	
6.4	19	4	
7.0	20	5	
26.9	77	6	Very Dissatisfied
	13	.	MISSING (NOT APPLICABLE)
-----	----		
100.0	299	cases	

Data type: numeric  
Record/column: 1/92



## WSB54\_2                    Effort Assist Complaint

%	N	VALUE	LABEL
21.3	62	1	Very Satisfied
13.7	40	2	
6.5	19	3	
8.2	24	4	
9.6	28	5	
40.5	118	6	Very Dissatisfied
	8	.	MISSING (NOT APPLICABLE)
-----	----		
100.0	299	cases	

Data type: numeric  
Record/column: 1/93

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## WSB134\_4                   Overall

%	N	VALUE	LABEL
20.4	59	1	Very Satisfied
5.9	17	2	
9.0	26	3	
6.2	18	4	
9.3	27	5	
49.1	142	6	Very Dissatisfied
	10	.	MISSING (NOT APPLICABLE)
-----	----		
100.0	299	cases	

Data type: numeric  
Record/column: 1/94

---

## WSB55                    Recommend Program

%	N	VALUE	LABEL
26.6	79	0	Yes Recommend
49.5	147	1	Not Recommend
23.9	71	2	Depends
	2	.	MISSING (NOT APPLICABLE)
-----	----		
100.0	299	cases	

Data type: numeric  
Record/column: 1/95

IMPROVE1

Improve 1st Mention

%	N	VALUE	LABEL
1.7	4	2	Less Paperwork/Make Forms Easier
0.4	1	3	Make Program More Well Known/ Advertising
0.0	0	4	Need More Program Locations
1.3	3	5	Quicken Process/ Speedier Decisions
2.2	5	6	More/ Better Representation at Hearings
47.2	108	7	Bias Arbitrators/Arbitrators Favor AWAP
2.6	6	8	More Communication/Contact/Interaction Arbitrators Staff
9.2	21	9	Better/ More Knowledgeable Mechanics/Review Staff
7.0	16	10	Better Review Complaint/Problems by Staff/Arbitrators
4.8	11	11	Allow More Information/History of Problems in Complaint
1.7	4	12	Better Follow-up/Enforcement of Awards/Settlements
4.4	10	13	Fair/Equitable Settlements/Awards
7.9	18	14	Dealers/Manufacturers More Responsive to Consumers/Complainants
1.7	4	15	Electronic, On-Line, Email Communication/Forms
7.9	18	16	Did Good Job/Pleased/No Complaints
	70	.	MISSING (NOT APPLICABLE)
-----	----		
100.0	299		cases

Data type: numeric  
 Record/columns: 1/96-97

IMPROVE2 Improve 2nd Mention

%	N	VALUE	LABEL
1.9	1	2	Less Paperwork/Make Forms Easier
0.0	0	3	Make Program More Well Known/ Advertising
0.0	0	4	Need More Program Locations
1.9	1	5	Quicken Process/ Speedier Decisions
1.9	1	6	More/ Better Representation at Hearings
15.1	8	7	Bias Arbitrators/Arbitrators Favor AWAP
3.8	2	8	More Communication/Contact/Interaction Arbitrators Staff
13.2	7	9	Better/ More Knowledgeable Mechanics/Review Staff
28.3	15	10	Better Review Complaint/Problems by Staff/Arbitrators
13.2	7	11	Allow More Information/History of Problems in Complaint
1.9	1	12	Better Follow-up/Enforcement of Awards/Settlements
1.9	1	13	Fair/Equitable Settlements/Awards
17.0	9	14	Dealers/Manufacturers More Responsive to Consumers/Complainants
0.0	0	15	Electronic, On-Line, Email Communication/Forms
0.0	0	16	Did Good Job/Pleased/No Complaints
	246	.	MISSING (NOT APPLICABLE)
-----	----		
100.0	299		cases

Data type: numeric  
 Record/columns: 1/98-99