

***National Center for Dispute Settlement***

***Automobile Warranty Arbitration  
Program***

***United States Federal Trade Commission  
Audit***

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## *Introduction*

This 2003 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 early 2004. 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 was performed as a review of the National Center for Dispute Settlement as 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, DaimlerChrysler, Mitsubishi, and Porsche. 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 held in Kentucky, Michigan, and Texas 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, August, 27-29, 2004. Thus, field 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 (2003). 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 2003 as required.

## SECTION I

### *Compliance Summary*

This is the initial Claverhouse Associates independent annual audit of the National Center for Dispute Settlement (NCDS) national third-party informal dispute resolution mechanism, called the Automobile Warranty Arbitration Program (AWAP), as it is administered by the National Center for Dispute Settlement. We have conducted several audits of the NCDS administered warranty arbitration program, but these reviews were of manufacturer centered and were manufacturer-specific.

#### **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, Kentucky, Michigan, and Texas, all function 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>1</sup> Our original survey sample consisted of 700 closed cases<sup>2</sup>, of which we completed surveys for 316 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>1</sup> There were, of course, discrepancies in some areas, as we have come to expect, but those we identified are either of no real consequence or are very understandable and without significant regulatory implications. Discrepancies are detailed in the survey section of the report.

<sup>2</sup> The sample was drawn from a universe of 3,722 closed cases.

## SECTION II

### *Detailed Findings*

This section addresses the requirements set forth in 16 C.F.R. Para 703.7, of Public Law 93-637 (The 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 2003. An important component of the audit is the survey of a randomly selected sample of 316<sup>3</sup> NCDS' Dispute Settlement Program applicants whose cases were closed in 2003 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 Mr. Brian Dunn, Director of Dispute Settlement Services, National Center for Dispute Settlement, Dallas, Texas.

We performed field audits of the AWAP as it operates in Kentucky, Michigan, and Texas. We also examined a random sample of current (i.e., 2003) case files for accuracy and completeness. A random sample of case files was drawn from all case files for the years 2000-2003 and inspected them to ensure that these records are maintained for the required four-year period.<sup>4</sup> 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 Georgetown, Kentucky; Grand Blanc, Michigan; and Houston, Texas, and interviewed arbitrators and AWAP/NCDS administrative personnel.

To assess arbitrator training, we monitored the NCDS-sponsored training session held in Dallas/Ft. Worth, Texas, in August of 2004. 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 initial (2003) Claverhouse Associates annual audit of NCDS AWAP informal dispute settlement program.

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<sup>3</sup> Our objective was to complete 300 interviews from our original sample of approximately 750. Experience demonstrates that completing exactly 300 is not likely. The precise sample size is discussed in detail in the Survey Section of this report.

<sup>4</sup> Some participating manufacturers are new to the NCDS program and therefore do not have case files covering the entire 4-year period.

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

**REQUIREMENT:** § 703.6 (a) [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 headquarters of the program's independent administrators. Our review of randomly selected cases drawn from the four-year period (2000-2003) demonstrated that the case files were maintained in 2003, 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.

**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>5</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

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<sup>5</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.

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 maintained by Mr. Brian Dunn, Director of Dispute Settlement Services, housed at the NCDS headquarters in Dallas, Texas.

The audit includes a review and assessment of a data printout for the calendar year 2003.

The *AWAP Statistics* identifies 3,722 AWAP disputes filed for 2003. Of these, 2,626 were eligible for AWAP review, and 1,096 were determined by the AWAP to be out-of-jurisdiction. Of the in-jurisdiction closed cases, NCDS reports that 2,110 were arbitrated<sup>6</sup> and 472 were mediated.<sup>7</sup> There were 1,705 arbitrated decisions which were reported as "adverse to the consumer" per § 703.6 (E) representing 64.9% of all arbitrated cases.

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

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 2002. Concerning subsection 2, the auditors are advised by NCDS that there is no reported incidence in which an 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

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<sup>6</sup> This number is not aggregated in the statistical reports provided for the audit. We arrived at this number by summing items (1- 4) listed on the AWAP mandated statistical report.

<sup>7</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.



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 2003, a total of 22 AWAP cases were delayed beyond 40 days. The Director of Dispute Settlement Services provided a comprehensive report of all individual cases delayed beyond 40 days during the 2003 period of the audit. This report includes 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 this report meets the above requirement. Our review, however, is not designed to test the accuracy of the 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.

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 Mr. Brian Dunn, Director of Dispute Settlement Services.

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 Dallas, Texas, and inspected and evaluated a random selection of case files from the four-year period for completeness. The files were appropriately maintained and readily available for audit.

(b) The NCDS Director of Dispute Settlement Services provided us with the various 2003 indices and statistical reports required by Rule 703. The corresponding reports for the previous four years are not available from some NCDS participating manufacturers because they did not administer the manufacturer's program during that period. The records are probably available from each of those manufacturers directly.

(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 on computer in the NCDS Dallas, Texas, office and is housed with Mr. Brian Dunn, the Director of Dispute Settlement Services. Any required report can be obtained from Mr. Dunn. 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 the NCDS Director of Dispute Settlement Services. 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 manufacturer's 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 five participating manufacturer's programs for meeting this requirement. Readers will note that we repeat regulatory language and some pertinent comments in each division for the various manufacturers because some readers will be focused strictly on a given manufacturer and to make their reading easier, we repeat the applicable regulatory language rather than requiring such readers to engage in cross-referencing and searching for such language in some other section of the report.]*

**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 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 to provide NCDS information to customers making general inquiries about warranty-related dissatisfactions or disputes.
- Toyota publishes a 51-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 5/04). 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.

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

In 2003 we visited three Toyota dealerships.

Sterling McCall Toyota  
9400 Southwest Freeway  
Houston, Texas 77074

Walker Toyota  
8457 Springboro Pike  
Miamisburg, Ohio 45342

Kerry Toyota  
6050 Hopeful Road Lincoln Highway  
Florence, Kentucky 41042

None of the dealership personnel we interviewed during our Toyota dealership visits provided any useful information about the Toyota warranty dispute mechanism in response to our inquiry concerning customer options when the customer is experiencing warranty disputes. At one dealership, the service department representative gave incorrect information detailed in the state-specific audit for the state of Ohio. The dealers' performance in these three states is contrary to the underlying intent of federal requirements of Rule 703.

We said in last year's report 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*

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<sup>8</sup> The Toyota *Dispute Settlement Program* pamphlet actually refers here to 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*.

*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 that offers 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 2003 (2,942) demonstrate that, unquestionably, many Toyota customers were made aware of the program, and for these customers, at least, 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 the dealer service department employees about the NCDS, and in some cases, ignorance of its very existence.

As with most programs, our visits to dealerships suggested that customers who seek assistance from their salespersons are also 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 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."

#### DISCREPANCIES:

None, with the same qualifier given immediately above, and also in our last report, as an important caveat.

#### II. LEXUS:

- Lexus publishes a manual entitled, *2004 Lexus Owner's Manual Supplement*. The manual itself is outdated and lists on page 10 an arbitration program no longer in use by Lexus. To address this, an errata slip is inserted into each manual given to customers at the point of sale and delivery which identifies The National Center for Dispute Settlement (NCDS) as the current organization for Lexus customers to contact regarding arbitration. Included is a toll-free telephone number for NCDS.
- 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 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."

In 2004 we visited the following Lexus dealerships for the 2003 audit:

Sterling McCall Lexus  
10422 Southwest Freeway  
Houston, Texas 77074

Lexus of Toledo  
6109 W. Central Avenue  
Toledo, Ohio 43615

Harvey Lexus of Grand Rapids  
2550 28<sup>th</sup> Street  
Grand Rapids, Michigan 49512

Our experience at the Lexus dealers was extremely disappointing in that there was no apparent accurate understanding of the NCDS arbitration program. In both instances, the dealers attempted to persuade us that while there is some kind of program it is really not consumer friendly and is designed to drag things out and wear customers down. Moreover, one of the dealerships informed us that customers may not use the program unless they have had three identical repair attempts. It is difficult for us to believe that people who work in an automobile dealership service area could be so uninformed about the manufacturer's sponsored third-party dispute resolution program, but at another Lexus dealer we were told that you need six repair attempts to be able to go to arbitration.

For a newly created program this limited information may be provisionally acceptable, but in our view it falls 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 a mere passive casual reference to NCDS in an owner's manual is likely to find many customers with a warranty dispute unaware of the availability of arbitration. 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 disputes arises* [FTC's emphasis.]

#### DISCREPANCIES:

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

#### II. PORSCHE:

- Porsche publishes a *Warranty and Customer Information* booklet with references to it on various pages. Customers have a brief notice about warranty dispute potential rights on page 48 which is outdated and refers to a program no longer available to Porsche customers. There is, however, an errata slip inserted identifying the National Center for Dispute Settlement (NCDS) as the arbitration provider to be used by Porsche customer. Included is a toll-free telephone number for contacting NCDS.

For a newly created program this limited information may be provisionally acceptable but, in our view, it falls 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 a mere passive casual reference to NCDS in an owner's manual is likely to find many customers with a warranty dispute unaware of the availability of arbitration. 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). Great flexibility was afforded 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 disputes arises* [FTC's emphasis.]

As with most programs, our visits to dealerships typically finds that customers who seek assistance from their salespersons are also unlikely to receive any useful

information about the NCDS. Similarly, we received no useful information from the people we interviewed in the service area of these dealerships.

In 2004 we visited the following Porsche dealerships for the 2003 audit:

Momentum Porsche  
10150 Southwest Freeway  
Houston, Texas 77074

Yark Porsche  
6019 West Central Avenue  
Toledo, Ohio 43615

East Imports  
(No street address was given on their business card)  
E-mail address ndieleman@eastimports.com  
Grand Rapids, Michigan 49512

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 any demonstrated efforts of the manufacturer.

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."

#### DISCREPANCIES:

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

### III. MITSUBISHI:

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

- Mitsubishi, has begun a process to address some of the concerns we raised in our last audit related expressly to Mitsubishi.<sup>9</sup> We said last year:

*What is not included [in the Owner's Manual] is information that an application form is in the Dispute Resolution Process brochure. It is not difficult to imagine a customer reading through this section and asking themselves the question, "Okay, I want to pursue the matter, so where do I get an application to submit?"*

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<sup>9</sup> The audit referred to is the Mitsubishi stand-alone FTC audit for 2002.



***Another somewhat problematical issue with this important section of the Owner's Manual is that the manual refers only to remedies provided for under state lemon laws, incorrectly implying that a warranty dispute is governed first and foremost by state law; in fact the opposite is true. The federal Magnuson-Moss Warranty Act and the related Rule 703 have the broader applicability. Unfortunately, the wording found on page 21 might mislead, albeit unintentionally, a reader into believing that only state lemon-laws are applicable to the DRP.***

***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 concerns we raised in the last paragraph above, Mitsubishi has initiated a program described in the communication below which was sent to various Mitsubishi executive employees:

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

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

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

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

As of 8/24/04 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 under way to bring Mitsubishi into compliance with

this aspect of Rule 703. We did not expect to see any tangible results during our dealer visits for the 2003 audit, given the normal time delays associated with intra-company communications involving a nation-wide network of dealerships. Nevertheless, we view this innovation as clear evidence of intent for which Mitsubishi should be given credit.

In 2004 we visited the following Mitsubishi dealerships for the 2003 audit:

Yark Automotive Group (Mitsubishi)  
6019 W. Central Avenue  
Toledo, Ohio 43615

Jeff Wyler Mitsubishi  
1020 Burlington Pike  
Florence, Kentucky 41042

Our Mitsubishi experience in this regard was mixed. At one of the dealerships we visited, the personnel we interviewed provided very useful information about the NCDS warranty dispute mechanism in response to our inquiry concerning customer options when the customer is experiencing warranty disputes. They pointed to a poster which included all the basic and important information about the NCDS program and how to contact the NCDS program directly by providing a toll-free telephone number. They even provided me with a pen and paper. At the other dealership we visited, we weren't provided with any correct information about the NCDS program. The second dealer's performance is contrary to the underlying intent of federal requirements of Rule 703.

We said in last year's report 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.

## DISCREPANCIES:

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

## IV. DAIMLERCHRYSLER:

DaimlerChrysler uses several means by which to meet this important requirement; they are as follows:

- DaimlerChrysler publishes an 10-page booklet, entitled *Customer Arbitration Process*,<sup>10</sup> that explains the CAP process and how and where to file an application. This pamphlet contains an application form for accessing the CAP program. The pamphlet is distributed in a variety of ways, but the principal method is by way of the dealer. Dealers may provide the brochure as part of the initial information packet given to new customers as well as making them available in the dealership. Dealerships normally have the pamphlet available only upon request. Our random audits of dealerships in the areas surrounding the field audit sites found, as in recent prior audits, no consistent and significant commitment by dealers to educate their employees to provide booklets to customers making general inquiries about warranty-related dissatisfactions or disputes. In fact, this year's review suggests that some serious attention needs to be given to this aspect of the program because dealers were unlikely to provide information about the existence of the program and how to contact it even when we specifically asked for information about their arbitration program.
- The *Owner's Manual*,<sup>11</sup> supplied with each new vehicle incorrectly refers to the program as the Customer Arbitration Board. This name only applies to the California-specific program administered by DeMars & Associates. The national program is called the "Customer Arbitration Process" (CAP). The *Owner's Manual* itself does not include a phone number or mailing address of either the CAP or the CAB, but the supplementary manual referenced below provides various addresses and phone numbers as required by state laws. The *Owner's Manual* does inform the reader that an arbitration brochure is included as part of the Glove Box Kit. Unfortunately, this reference repeats the same error alluded to earlier and misstates the national program's name.
- 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 DaimlerChrysler toll-free customer relations (Customer Center) number where the customer can request the address of the CAP.

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<sup>10</sup> DaimlerChrysler recently became a member of the NCDS multi-manufacturer program which in most important ways is identical to the CAP program but no longer operates under the name CAP. The information booklets referenced in this section were still operative in 2003 and is therefore continued in this section. This will change in the next audit and reference will then be made to the NCDS program's name, Automotive Warranty Arbitration Program (AWAP).

<sup>11</sup> We review an Owner's Manual for one model and operationally assume that what holds true for one manual is true for all their other manuals. This year we examined the 2002 Chrysler Town & Country manual which was supplied to us by DaimlerChrysler for our inspection.

- In the applicable states, DaimlerChrysler provides with each new vehicle a *Warranty Information* booklet. It is a 33-page booklet that makes a cross-reference on page 27 to the CAP arbitration program offered by DaimlerChrysler and refers the reader to the Customer Arbitration Process brochure that came with the vehicle.

In 2004 we visited the following DaimlerChrysler dealership for the 2003 audit<sup>12</sup>:

Frank Shoop Jeep/Dodge  
1470 Cherry Blossom Way  
Georgetown, Kentucky 40324

None of the dealership personnel we interviewed during our Kentucky dealership visit provided any useful information about the NCDS warranty dispute mechanism when we asked about customer options when the customer is experiencing a warranty dispute. The only positive note in our attempt to elicit AWAP information from dealership personnel is that at least we weren't provided with incorrect information. The DaimlerChrysler dealer's performance in Kentucky is contrary to the underlying intent of federal requirements of Rule 703.

We said in last year's report 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.

#### DISCREPANCIES:

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

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<sup>12</sup> The DaimlerChrysler program has been significantly scaled back nationally and now only functions in four states.

REQUIREMENT: § 703.7 (b) (3)(I)

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

FINDINGS:

The FINDINGS for this section are arranged as follows:

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

FINDINGS:

**1) Forms**

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

The many forms used by AWAP comprise an important aspect of the arbitration program. The forms we reviewed are "user friendly," well balanced, and providing 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>13</sup>

DISCREPANCIES:

NONE

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<sup>13</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."

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

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

## 2) Investigations

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

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

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

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

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

Arbitrators would be greatly aided by continued emphasis at arbitrator training on the appropriate use of independent inspections and technical assistance. The AWAP has developed and implemented a national training program that, of necessity, addresses so many issues in a short period of time that it is understandable why arbitrators often

lose sight of some of the trainers' admonitions. *This underscores the importance of an efficient, on-going feedback loop that provides regular reminders from program staff to arbitrators.*

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 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 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 its 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 and not necessarily reflected in the fairly brief communications announcing the board's or arbitrator's decision. Thus, a customer who may have important rebuttal information on the subject of suspected abuse, would be unlikely to be aware that it 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>14</sup>

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

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

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

### FINDINGS:

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

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

### 4) Follow-up

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

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

- a) the promised performance has taken place, and

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<sup>14</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.



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 Dallas, Texas. 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>15</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.<sup>16</sup>

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<sup>15</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.

<sup>16</sup> It should be noted however, that we 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

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

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

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

#### FINDINGS:

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

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

Arbitrators are volunteers whose only compensation is a nominal per diem and mileage expense allowance.<sup>17</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 the program to a possible compliance review. On-going training would greatly alleviate these concerns for arbitrators.

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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.]

<sup>17</sup> Currently, NCDS arbitrators are provided a per diem allowance of \$100.00 a hearing plus reimbursement for any mileage expenses incurred.

In prior NCDS reports we made the following observation:

*One final comment as regards dispute resolution concerns our review of case files including the written decisions. As in all programs a certain amount of "boilerplate" eventually creeps into formal decisions. Designed to save time and energy, such a procedure is entirely reasonable provided that the boilerplate itself is appropriate to the circumstances. We found some apparent boilerplate in decisions concerning denials of a customer's request for a refund or replacement to be troublesome. In one case, for example, we found the following:*

**Example 1**

*After reviewing the complaint(s) and hearing the proofs and arguments of the parties and taking into consideration the applicable warranty law of the State of Ohio, commonly referred to as the "Lemon Law," and after due deliberations, I find and award as follows: ...*

**Example 2:**

*The Customer's [make and model struck as unimportant to this Toyota report] Truck does not qualify for coverage under the State of Ohio Lemon Law, because it does not meet any of the presumptive standards..*

*The two examples cited above are problematic in at least two ways:*

*First, the initial example seems to suggest that it is reasonable for arbitrators to only consider the state lemon law; however, it is very important for arbitrators to keep in mind their additional authority to award refunds and replacements under the more general terms of the federal law.*

*Second, the other example suggests a misunderstanding of the nature of a statutory presumption. Here, the language implies that the statutory presumption serves as a minimum threshold for awarding refunds or replacements, which is, of course, absolutely incorrect. Meeting presumptive standards is not a prerequisite for qualifying for "lemon law" relief or for qualifying for relief under federal warranty law.<sup>18</sup> For this reason, the above cited language is exceedingly problematic and needs to be revised, at least where it is being applied as "boilerplate." Note: Subsequent to the drafting of the above comment, NCDS provided us with a copy of a document that they have sent out to their arbitrators addressing our concerns. The document is helpful, in our view, and serves as an important first step in ameliorating our concerns.*

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<sup>18</sup> While state automobile warranty statutes vary in the manner in which they treat presumptive language, it is nonetheless a general principle that statutory presumptions give guidance under a specific set of circumstances, while other circumstances are addressed by more ambiguous provisions. For example, most arbitrators, in this context, are concerned with whether a customer has experienced an "unreasonable" number of repair attempts or whether the manufacturer has had a "reasonable" opportunity to cure the vehicle's problem. The operative question will likely be one of what constitutes "reasonable" in either situation. A statutory presumption can provide a bit more clarity under some circumstances by establishing that given certain specific scenarios, reasonable will be "presumed" to mean just this or that. Other scenarios that lack such specific circumstances would not be afforded "presumed" status but it would still be reasonable to argue that the customer should be granted relief.

The NCDS program has informed us that they continue their efforts to address the "boilerplate" problem, including explanations provided at arbitrator training to ensure that arbitrators understand that "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 August of 2004, 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 Regional Areas***

**I. Kentucky**

**A. Case Load and Basic Statistics**

In Kentucky, NCDS handled 43 AWAP cases<sup>19</sup> in 2003 of which 4 (9.3%) were "no-jurisdiction" cases. There were 24 cases arbitrated (61.5% of the 39 in-jurisdiction cases), and 8 (20.5% of in-jurisdiction cases) were mediated. The average number of days for handling a 2003 case in Kentucky was 34 days. This compares with an average of 36 days handling nationwide.

**B. Recordkeeping, Accuracy and Completeness**

We requested a random sample of 50 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.

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 2003 "in-jurisdiction" case files.<sup>20</sup> 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

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<sup>19</sup> These statistics include cases for Toyota, Lexus, Mitsubishi, DaimlerChrysler, and Porsche.

<sup>20</sup> Where there were at least 50 or more case files, we reviewed them. Otherwise, we simply examined all case files for the state.

from the program. In addition, the Regional office 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. 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.**

FINDINGS:

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, are in substantial compliance with the federal Rule 703 requirements.

#### C. Case File Records (4 yrs. 2000-2003)<sup>21</sup>

A random sample of 50 case numbers from the years 2000 through 2003 was drawn from NCDS' data base program, and in our field inspection, we checked the sample

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<sup>21</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. 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, DaimlerChrysler, and Mitsubishi will be seen to also be true for the Porsche and Lexus aspects of the national AWAP.

case files at the NCDS national office in Dallas to verify that they were being maintained per requirement § 703.6(f). In addition, a visual inspection was made of the entire four-year accumulation of case files as required by the same section.

The closed files are stored in a discrete area within in the NCDS office. The files we viewed appeared intact and were readily available for inspection. The random sample inspection of 50 case files drawn from all cases in the four-year universe of cases validated the program's maintenance of these records as required.

#### D. Arbitration/Hearing Records

##### i. Case file folders

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

##### ii. Arbitrator Biographies

The arbitrator biographies for the national program are available for review from the Senior Vice President of NCDS at their headquarters in Dallas, Texas. The biographies are thorough and current, and the list of arbitrators for each district includes the dates of their appointments.

#### E. Hearing Process

The arbitrator scheduled the hearing at the principal dealership in question after consulting separately with each of the parties. The hearing involved one arbitrator who briefly interviewed the parties, provided a summary explanation of the hearing process, and then took testimony. The hearing was held at the Frank Shoop Chrysler/Jeep/Dodge dealership of Georgetown, Kentucky, 1470 Cherry Blossom Way and began at the scheduled 11:00 am time.

##### i. Physical Description of Hearing

The hearing was conducted in a room of sufficient size. Attending was the customer, a DaimlerChrysler servicing dealer's representative, the auditor, and the arbitrator.

The hearing was efficiently conducted. The customer was provided with a reasonable opportunity to present his case. The arbitrator appropriately confirmed what the customer was seeking in the form of relief, and then took a test drive prior to concluding the hearing.

##### ii. Openness of Meeting

The room was adequate to accommodate observers 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 hearing was efficiently conducted in spite of the meeting room's location near the service department and the excessive noise level.

iv. Hearing

This arbitrator appeared to be committed to the fair and expeditious resolution of warranty disputes in the hearing process. He treated the parties equally in every regard. The hearing covered everything the program envisions including a test drive to observe the alleged vibration.

v. Board/Arbitrator Decisions

We reviewed numerous decisions for this region while conducting our on-site visit to the Dallas, Texas, headquarters of NCDS. In the Compliance Summary (Section I of this report), we discuss and will not reiterate the important issue of boilerplate language. Otherwise, the decisions we reviewed were generally quite sound in both form and substance.

In addition, we subsequently reviewed the decision rendered in the case we monitored and found it to be thorough, well reasoned, and complete.

**CONCLUSION:**

The AWAP, as it operates in the Kentucky region is, in our view, in substantial compliance with Rule 703. The NCDS administrative staff and the NCDS program demonstrated a clear commitment to ensuring 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. Michigan

### A. Case Load and Basic Statistics

In Michigan, NCDS handled 65 AWAP cases in 2003 of which 28 (43%) were "no-jurisdiction" cases. There were 27 cases arbitrated (72.9% of 37 in-jurisdiction cases), and 3 cases were mediated.<sup>22</sup> The average number of days for handling a 2003 case in Michigan was 33 days. This compares with 36 days handling nationwide.

The Michigan field audit includes a review of a hearing held in Grand Blanc, Michigan, and interviews with the principal people involved in the hearing. In addition, we reviewed cases files for the region, which are stored at national headquarters of the National Center for Dispute Settlement (NCDS), in Dallas, Texas.

During our on-site review at the Dallas, Texas, headquarters, we visually inspected the warehousing of all AWAP case files for the required four-year period.<sup>23</sup> The four-year accumulation of case files was available for inspection, where applicable, per all regulatory requirements.

We requested a random sample of 50 cases drawn from all cases closed during the audit period and examined all the cases provided to determine whether they were complete and available for audit. These files were reviewed for accuracy and completeness. The findings of that review are set forth below.

The staff at NCDS were efficiently housed and provided with up-to-date equipment.

### B. Recordkeeping Accuracy and Completeness

#### § 703.6 (a)(1-12)

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

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

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<sup>22</sup> There was one case reported as "pending," which accounts for the apparent missing case when the other categories are summed and compared with the total number of cases reported.

<sup>23</sup> See 16 C.F.R., § 703.6 (f). Since some of the participating manufacturers have not been administered by NCDS for four years, we could not render any judgement in that regard. Still, we have seen how those 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, DaimlerChrysler, and Mitsubishi will be seen to also be true for the Porsche and Lexus aspects of the national AWAP.

## 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 1-5 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)

- 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 Dallas, but we did not allocate sufficient time to 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 Toyota 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. 2000-2003)

§ 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 2000-2003 was drawn from NCDS' data base program, and in our field inspection, we checked the sample case files in the NCDS headquarters office to verify that they were being maintained (i.e., stored) per requirement § 703.6(f). In addition, a visual inspection was made of the entire four-year accumulation of case files required by the same section. The closed files are stored in a discrete area within the NCDS office. All records for the audit period (2003) and for the four-year period (2000 through 2003) were complete and readily available for audit. The random sample inspection validated the apparent completeness suggested by the visual inspection.

D. Program Records

i. Case file folders

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

ii. Arbitrator Biographies

The arbitrator biographies for the national program are available for review from the Senior Vice President of NCDS at their headquarters in Dallas, Texas. The biographies are thorough and current, and the list of arbitrators for each district includes the dates of their appointments.

E. Hearing Process

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

The AWAP hearing was held at the Grand Blanc Motorcars Ltd. (Toyota case) dealership, 9099 Holly Road, Grand Blanc, Michigan April 6, 2004, at 4:00 pm. The meeting room was of reasonably adequate size for accommodating anyone who wished to attend as an observer. The parties included the customer, a Toyota manufacturer's representative via telephone, a Toyota dealer customer relations employee, the arbitrator, and the auditor.

ii. Openness of Hearing

This arbitrator said that she allows all observers at AWAP meetings (hearings).

iii. Efficiency of Meeting

The arbitrator's case file was complete with all requisite documents. The arbitrator demonstrated that she generally knows how to properly conduct a

hearing.<sup>24</sup> She addressed the parties, giving a brief overview of the process, but failed to provide a case opening statement setting forth the particulars of the dispute and the customer's requested relief.

The meeting began at 4:00 pm as scheduled.

#### iv. Hearing

The hearing was, in the main, properly conducted. Both parties were afforded an uninterrupted 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 a test drive at the conclusion of the hearing and informed the parties that the hearing was concluded without necessitating a reconvening of the parties after the test drive.

It was somewhat problematic that the customer's inquiry about whether he can have an independent inspection of the vehicle's condition engendered a rather odd response from the arbitrator which was, in effect, "is the Toyota representative independent enough?" Such a response, could easily leave a poor impression about the arbitrator's independence. We saw nothing to indicate that such was the case nevertheless, found it a bit troublesome. Ultimately, the arbitrator agreed to do a road test which she indicated should provide an independent inspection.

#### v. Board/Arbitrator Decisions

We reviewed this case's decision and a sample of decisions for the region while conducting our on-site visit to the Dallas, Texas, headquarters of NCDS. In the Compliance Summary (Section I of this report), we discussed problems with some boilerplate language which, while important, need not be repeated here. The decision in this case was consistent with the regulatory requirements with the qualifier discussed above.

### Conclusion:

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

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<sup>24</sup> At the same time, the arbitrator took care of most of the preliminaries including the executing the oath of neutrality prior to contacting the manufacturer's representative. The problem was substantively harmless to the ultimate disposition of the case, but there was a definite "appearance" problem. In addition, such an approach might well lead to arbitrators not taking seriously the important requirement that both parties have a right to be in attendance at all times during the hearing. As a result of discussions with the arbitrator, it appears that the issue was a one-time incident with no regulatory implications.

### III. Texas

#### A. Case Load and Basic Statistics

Texas generated 214 cases in 2003 of which 47 (21.9%) were determined to be "not-in-jurisdiction" cases. The program also reports 22 mediated cases (13.1% of the 167 in-jurisdiction cases) and 129 arbitrated cases (77.2% of the 167 in-jurisdiction cases). The average days for handling a 2002 case for Texas is 33. This compares with an average of 36 days handling nationwide.

The Texas regional field audit includes a review of a hearing held in Houston, Texas, and interviews with the principal people involved in the hearing. In addition, we reviewed a sample of case files for Texas, which are stored at national headquarters of the National Center for Dispute Settlement (NCDS), in Dallas, Texas.

During our on-site review at the Dallas, Texas, headquarters, we visually inspected the warehousing of all AWAP case files for the required four-year period.<sup>25</sup> The four-year accumulation of case files was available for inspection per all regulatory requirements. In addition, the staff at NCDS were efficiently housed and provided with up-to-date equipment.

We requested a random sample of 50 cases drawn from all 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.

#### B. Recordkeeping Accuracy and Completeness

##### § 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.**

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<sup>25</sup> See 16 C.F.R., § 703.6 (f). Since some of the participating manufacturer's have not been administered by NCDS for four years, we could not render any judgment in that regard. Still, we have seen how those 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, DaimlerChrysler, and Mitsubishi will be seen to also be true for the Porsche and Lexus aspects of the national AWAP.

## FINDINGS:

We examined a sample of case files extracted from all "in-jurisdiction" case files closed during the audit period. We reviewed these files for the items enumerated in subsections 1-5 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.

- 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>26</sup>

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

## FINDINGS:

The warrantor's intended action(s) and performance are inextricably linked. Thus, we validate this item in terms of performance verification. Performance verification is a function carried out by NCDS. This office sends a survey to the customer following receipt of the customer's acceptance of those decisions mandating some action on the part of the respective manufacturer to ask, among other things, whether any required performance has taken place. Customers are asked to return the survey to the office of NCDS. As noted elsewhere, we found few returned survey forms in the case files. In the past, we have stated that the absence of performance verification forms in the case file does not constitute a regulatory inconsistency since performance verification information may not be available from the customer. By mailing a performance verification survey NCDS goes as far as can be expected in determining whether arbitration decisions are, in fact, being performed. It seems entirely appropriate for the program to assume performance of the decision has taken place when the customer performance 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.

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<sup>26</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.

C. Case File Records (4 yrs. 2000-2003)

§ 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 older case files are stored at the NCDS headquarters office in Dallas, Texas. The closed files are stored in a discrete area within the NCDS office and are available for review.

D. Program Records

i. Agendas and Minutes of Arbitration Hearings

The four-year accumulation of case files is kept in one location and was complete and readily available for audit. The AWAP arbitrator completes a separate form for each hearing and a copy of this form is maintained at the NCDS headquarters office. Information included in each case file includes: a) meeting place, date, and time; b) arbitrators' names; c) customer name and case number; and, d) the decisions and reasons.

ii. Arbitrator Biographies

Arbitrator resumes are maintained at the headquarters office of NCDS in Dallas, Texas. The resumes are complete and current. The list of arbitrators also indicates the dates of their appointments.

E. Hearing Process (i.e., Meeting)

The three-member panel hearing was scheduled at the Hilton Houston Southwest Hotel at 6780 Southwest Freeway, Houston, Texas. The hearing involved three NCDS arbitrators who met initially in private and subsequently took testimony. The hearing began at 10:00 am as scheduled.

i. Physical Description of Hearing

The hearing was conducted in room of adequate size and was reasonably arranged for the purposes of the hearing. Attending were the customer, a Lexus manufacturer's representative, the auditor, and the arbitrators. The customer, and the Lexus manufacturer's representative both made oral presentations.

The hearing was efficiently conducted and the parties were not allowed to talk over one another. In addition, the customer was provided with an unfettered opportunity to present their case.

The audit included interviews with the customer and the Lexus representatives either before or after the hearing. The auditor discussed the hearing procedures with the arbitrators following the hearing because there appeared to be something seriously amiss as regards the "open Meetings" regulation found in § 703.8 (d) of The Federal Trade Commission administrative rule implementing the Magnuson-Moss Warranty Act. (See comments below)

ii. Openness of Meeting

The room was adequate to accommodate any additional observers interested in attending but the panel of arbitrators conducted the hearing by taking testimony from the parties and then dismissing them prior to their deliberating to 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 in the one case where the rule [i.e., 703.8 (d)] allows for the exclusion of persons to the meeting is limited to non-party observers and emphasizes the importance of the *parties* being present to provide the scrutiny function intended by the rule.<sup>27</sup> [For NCDS' countervailing perspective see footnote below.] In our view, Lexus and NCDS will need to re-visit this aspect of their program, and make the appropriate modifications in order to ensure compliance. Note: the panel met privately prior to initiating the hearing wherein some particulars of the case were discussed. In our view, this aspect of the hearing was also at variance with the same open meeting provision or rule 703 discussed above, and for the same reasons.

iii. Efficiency of Meeting

The hearing was very efficient notwithstanding the open meeting issue discussed above. The chair did an admirable job of managing the hearing while ensuring both parties were afforded an unfettered opportunity to present their case to the pane.

iv. Hearing

This arbitrators all appeared to be committed to the fair and expeditious resolution of warranty disputes in the hearing process. The open meeting issue was a policy matter rather than a misinterpretation of policy problem.

v. Board/Arbitrator Decisions

We reviewed numerous decisions for this region while conducting our on-site visit to the Dallas, Texas, headquarters of NCDS. In the Compliance Summary (Section I of this report), we discuss and will not reiterate here the important issue of boilerplate language. Otherwise, the decisions we reviewed were generally quite sound in both form and substance.

We have reviewed the decision rendered in the case we monitored and, notwithstanding the hearing process, it is well reasoned, and complete.

CONCLUSION:

The AWAP, as it operates in Texas, is in substantial compliance with Rule 703 while recognizing the important caveat discussed above regarding the need to clarify and modify the panel hearing policy concerning the open meetings requirement of 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.

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<sup>27</sup> 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.

## SECTION IV

### *Arbitration Training*

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

Arbitration training is currently seen by many as a fundamental to ensuring that a program is fair to all sides, and some recent state regulations require arbitrator training. Consequently, 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 AWAP, it is incorporated into this report as part of the program's efforts to provide for fair and expeditious resolution of disputes.

#### FINDINGS:

The arbitration training session we monitored was conducted at the DFW Lakes Hilton in Grapevine, Texas, August 27-29, 2004. As noted in the introduction, certain facets of the audit are conducted in the year following the audit period; otherwise, there would sometimes be no means available for review.

This national training was conducted by NCDS staff. One presenter dealt primarily with legal matters, another with hearing process issues, and an NCDS staff person addressed program procedural issues. These presentations were augmented by the trainees' being given several opportunities to engage in role playing exercises.

Training has begun to stress that in scheduling hearing sites the program typically takes advantage of applicable dealerships for holding hearings with the important caveat that using the dealership is not required if either of the parties objects. Moreover, it is emphasized that, where necessary, the program will pay for alternate space.

The importance of reviewing the basic facts of the case at the beginning of deliberations was discussed, including each dimension of the customer's complaint as well as the degree to which the parties are in disagreement on central facts. Presenters also discussed the importance of addressing each dimension of the customer's concerns when writing the decision.

Trainees engaged, at various intervals, in practical problem solving centering around scenarios that are likely to arise within the NCDS arbitration program. Role-playing material was appropriately interspersed among lecture material with emphasis on conducting the arbitration hearing. Indeed, there was more time allotted for practical application than was true in the past.

There was a detailed discussion concerning common problems associated with repurchases (i.e., refunds) and replacements of automobiles, including the issue of whether to apply mileage offsets and how to handle demonstration vehicles with more than a few miles registered on the odometer at time of purchase.

The presentation of the legal issues was professional and accurate. Particular emphasis was given to this critical subject area this year, and the result appeared to be very positive as regards trainees' understanding of their role. Again this year there was emphasis placed on the importance of arbitrators' neutrality and the related issue of

making appropriate disclosures when applicable. Emphasis was given to disclosures that may be important but are not necessarily disqualifying.

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 that 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 invaluable role-playing demonstrations have become a standard feature of 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.

An important and thorough presentation centered around the Federal Magnuson-Moss Warranty Act<sup>27</sup> and its relationship to the Uniform Commercial Code. Our field experience suggests that some greater emphasis 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.

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.

#### CONCLUSION:

The NCDS arbitrator training program for their various participating manufacturers continues to be a good one that operates in substantial compliance with Magnuson-Moss and Rule 703. We have observed several important additions to the training program in both 2002, and 2003, and these were carried over into this year's program. The entire program clearly demonstrates a commitment to high quality training.

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<sup>27</sup> Also addressed was the Act's related administrative rules commonly known as Rule 703.

### **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

### *Survey and Statistical Index Comparative Analyses*

#### **NATIONAL CENTER FOR DISPUTE SETTLEMENT AUTOMOTIVE WARRANTY ARBITRATION 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 this audit is to verify the statistics provided by NCDS for the year 2003.

A consumer who wants to have a dispute settled by the Automotive Warranty Arbitration Program (AWAP) must: (1) be the owner of a vehicle that meets certain specified age and mileage requirements; and, (2) agree to forego any legal action while the case is open with the 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 the board, but the board is not obligated to hear the request.

If a consumer who files with the AWAP is able to reach an agreement with the manufacturer prior to an arbitration hearing, the dispute is said to have been "mediated" or "prior resolved" by the staff. If the consumer and the manufacturer cannot reach an agreement, the case is arbitrated by the AWAP. Arbitration cases can result in the granting of an award requiring the manufacturer to repair or replace the vehicle or to issue a cash reimbursement. 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 such things as: the number of mediated and arbitrated warranty disputes in which the warrantor has complied with a settlement or award; the number of cases in which the warrantor did not comply; the number of decisions adverse to the consumer; the number of "out-of-jurisdiction" disputes; and the number of cases delayed beyond 40 days. In addition to questions designed to assess the validity of AWAP statistics, the Claverhouse survey includes questions that allow consumers to evaluate various aspects of the program.

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) to conduct a survey of a randomly selected national sample of consumers who filed disputes with the AWAP during 2003. The primary focus of this survey is to determine whether consumers' recollections or records of what happened in their cases match the data compiled 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 proportion of consumers' recollections agrees with the outcomes reported to the FTC.

## ABOUT THE STUDY

The Claverhouse study is based on 316 respondents from a random sample of 700 cases drawn from the universe of 3,722 cases closed nationally in 2003. A customer who had filed more than one case was asked to refer to the most recent case when answering the survey.

The data was collected using two methods. The primary method was a mailed, self-administered questionnaire. OSR used methodology for the mail survey designed by Professor Donald Dilman of the University of Washington, a nationally known expert in the field of self-administered questionnaires. It involves an initial mailing, a postcard reminder, and a second full mailing to non-responders. Since its inception, OSR has used this methodology for all of its self-administered survey projects. The secondary method of data collection was a web-based survey.

The initial mailing, on March 30, 2004, contained the survey, a cover letter, and a postage-paid return envelope. The cover letter explained the purpose of the survey, how the respondent was selected to participate, and how the results would be used. It also explained that participation was completely voluntary. Because the AWAP does not collect electronic email address from its customers, nor is there a national database containing email information, the cover letter also contained information on how the respondents could participate on-line. Respondents were given an URL address where they could access the survey. For the on-line data collection, OSR used Websurveyor, a program designed specifically for secure data collection via the web.

One week after the initial mailing, a combination thank-you and reminder postcard was sent to the entire sample. Each respondent was assigned a unique number to allow the project staff to monitor the status of each survey. This unique number was also used to gain access to the on-line questionnaire. Thus, OSR staff was able to determine who had completed questionnaires and which questionnaires were returned by the post office because of invalid addresses.

On April 27, 2004, OSR staff mailed another cover letter, questionnaire, and postage paid envelope to those who had not returned a completed questionnaire. Of the 700 questionnaires that were originally sent, 290 were completed self-administered questionnaires, 26 were web-based, and 12 were returned by the post office as undeliverable. The status of the remaining questionnaires are unknown. The completion rate for the study is 45.9 percent. The self-administered questionnaire data were entered, proofed, and coded by OSR staff.

A threat to the validity of any sample study is non-response bias. That is, if there is any systematic reason that certain consumers selected for the study are unavailable or choose not to participate, the results can be biased. For example, if those who did not receive awards were more likely to refuse participation than those who did receive awards, the study would underestimate the percentage of decisions adverse to consumers. The practices of sending follow-up postcards and second mailings are designed to ensure high cooperation among those selected to participate. Because the sample of 316 cases is a simple random sample, the sampling error is  $\pm 5.3$  percent.<sup>27</sup> The number of responses varies from question to question because some questions refer to mediated settlements and others to arbitrated cases, but also because not all respondents answered all appropriate questions.

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<sup>27</sup> This is the sampling error when the responses divide roughly 50-50 on a given question and when there are 316 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  $50 \pm 5.3$  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.



## 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, we compare only FTC in-jurisdiction cases with the Claverhouse sample. The difference between the 18.0 percent of cases mediated in the Claverhouse sample and the 18.3 percent of cases mediated in the AWAP figures is not statistically significant at the 95 percent confidence interval. Likewise, the difference between the 82.0 percent of cases arbitrated in the Claverhouse sample and the 81.7 percent of cases mediated in the AWAP figures is also not statistically significant at the 95 percent confidence interval. Therefore, the statistics are in agreement.

**Table 1**  
**Method of Resolution of Warranty Disputes**  
**Comparison between Claverhouse Survey and AWAP Indices 2003**

Resolution	Claverhouse		AWAP		
	Number	Percent	Number	Percent of in-jurisdiction cases	Percent of all cases
Mediation	57	18.0%	472	18.3%	12.8%
Arbitration	259	82.0%	2,110	81.7%	57.4%
Subtotal (in-jurisdiction)	316	100.0%	2,582	100.0%	70.2%
Out-of jurisdiction	-	-	1,096	-	29.8%
Total disputes	316	100.0%	3,678		100.0%

## Mediated Cases

FTC Rule 703.6(e) requires the reporting of the proportion of mediated settlements with which warrantors have complied, the proportion with which warrantors have not complied, and the proportion in which the period for compliance has not yet passed. Since our universe of cases from which the sample was drawn includes only closed cases, we do not include cases in which the period has not yet passed. Table 2 show these specific results.

**Table 2**  
**Outcomes of Mediated Settlements**  
**Comparison between Claverhouse Survey and AWAP Indices 2003**

Mediated Settlements	Claverhouse	AWAP
	Percent <sup>30</sup> (Number)	Percent <sup>31</sup> (Number)
Warrantor has complied within the compliance period	90.2% (46)	84.9% (394)
Warrantor has not complied	9.8% (5)	15.1% (70)
Warrantor complied but not within the compliance period	0.0% (0)	0.0% (0)
Total Mediated Cases	100.0% (51)	100.0% (464)

AWAP indices show that the manufacturer complied with 84.9 percent of the mediation agreements within the mandated time frame. The difference between the survey results and the AWAP indices is within the margin of error, therefore, the Claverhouse data is in statistical agreement with the AWAP data.

Table 3 shows the specific mediation settlement outcomes reported by the survey respondents. When asked about their level of satisfaction with the way their settlement was carried out, 74.5 percent of the respondents indicated that they were satisfied with the way in which the dealer or manufacturer carried out their mediation decision. Of those, 23.6 percent said they initially were not satisfied, but eventually the dealer or manufacturer did perform to their satisfaction. The remaining 25.5 percent said they were dissatisfied with the way in which the dealer or manufacturer carried out the decision. A small percentage (7.3 percent) pursued their case further by re-contacting the AWAP and/or working out a solution with the dealer or manufacturer.

Respondents were asked if they recalled talking to AWAP staff or returning a postcard to NCDS about their settlement and their case in general. Nearly half, (44.9 percent) recalled talking to a staff member, 22.4 percent indicated that they had returned a postcard, 14.3 percent did both, and 18.4 percent said that they did not recall receiving a postcard to return.

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<sup>30</sup>51 of the 57 respondents with mediated cases answered the questions necessary to determine this statistic. Percentages are based on those who replied.

<sup>31</sup>This percentage is a percentage of mediated cases.

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

Outcome	Number	Percent
Cash Settlement	17	32.1%
Paid for Repairs	14	26.9%
New Vehicle	12	23.1%
Nothing	4	7.7%
Trade in Allowance	3	5.8%
Extended Warranty	2	3.8%
Total	52	100.0%

**Arbitrated Cases**

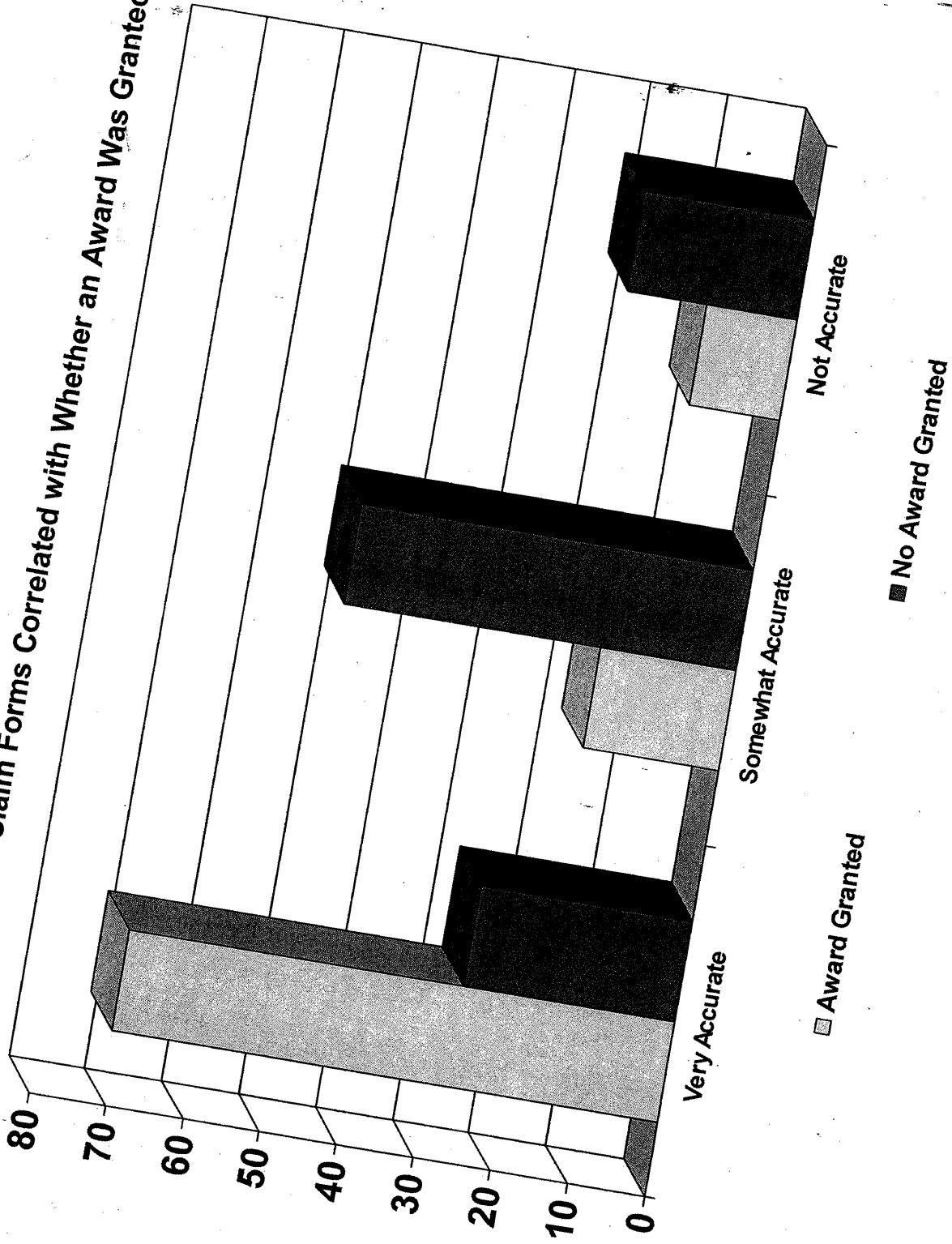
Before the questionnaire presented detailed questions about arbitrated cases, it asked respondents about the process leading to their hearings. Respondents were first asked whether they remembered receiving the forms on which their claims were stated. Of the respondents who reported having arbitration hearings, 88.9 percent said that they recalled receiving the forms. Respondents were also asked a question about how accurately they felt the forms stated their claims: 46.0 percent said “very accurately”; 36.5 percent said “somewhat accurately”; and, 17.5 percent said “not very accurately or not at all accurately”. The respondents’ evaluations of how accurately the forms stated their claims were strongly correlated with whether they received an award in the arbitration process. Of those who said their cases were stated very accurately, 70.9 percent received an award from the arbitration process, whereas only 27.3 percent of those who said their claims were stated not accurately at all received an award (see Figure 1).

Respondents were then asked whether they had been notified of the time, place, and date of the arbitration hearing. Ninety-three percent said they had been notified of the time, place and date of the hearing, and 79.5 percent said that they had attended their hearings. The reasons for the remaining 20.5 percent not attending are unknown. Of those who attended the hearing, 45.9 percent were granted an award. Of those who did not attend the hearing, 37.0 percent received an award.

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

Table 4 presents the data about the outcomes of arbitrated cases.

**Figure 1. Accuracy of Claim Forms Correlated with Whether an Award Was Granted**



**Table 4**  
**Outcomes of Arbitrated Cases**  
**Comparison between Claverhouse Survey and AWAP Indices 2003**

Outcome	Claverhouse	AWAP
	Percentage (Number)	Percentage (Number)
Arbitration		
Case decided by board and warrantor has complied	35.7% (80)	18.4% (388)
Case decided by board and warrantor has not complied	4.0% (9)	.7% (16)
Case decided by board and time for compliance not passed	-	(1)
Total - award granted	39.7% (89)	19.1% (47.0)
Arbitration		
Decision adverse to consumer	60.3% (135)	80.9% (1,705)
Total arbitrated decisions	100.0% (224) <sup>31</sup>	100.0% (2,110)

Survey results differ statistically from the AWAP indices in two areas: AWAP indices report a much higher percentage of decisions adverse to the consumer than the Claverhouse survey (80.9 percent compared to 60.3 percent) and a lower percentage of arbitration awards granted and warrantor has complied (18.4 percent compared to 35.7 percent). The difference can be explained in part by non-response bias. Those who had favorable decisions may have been more likely to participate than those with adverse decisions. However, because the statistics are in favor of the customer and not the AWAP, there should be no real cause for concern. It is important to note that 90.3 percent of respondents reported that their decisions were carried out in the time frame specified in their case.

In some cases, customers who were granted an award from the board did not accept the award. Of those who were granted an award, 20.7 percent rejected the award. The reasons for rejecting the award include: they did not think the decision would solve the vehicle's problems (41.7 percent); the decision would cost the respondent too much (12.5 percent); and not wanting what the AWAP awarded (37.5 percent).

Respondents were also asked about the outcomes of their arbitrated case. Table 5 shows the specific outcomes of arbitrated cases.

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<sup>31</sup> This includes only cases for which there was no missing data for the questions necessary to calculate these statistics

**Table 5**  
**Specific Outcomes of Arbitrated Decisions**  
**Claverhouse Survey**

<b>Outcome</b>	<b>Number</b>	<b>Percent</b>
Nothing	135	56.7%
Cash Settlement	36	15.1%
Paid for Repairs	34	14.3%
New Vehicle	26	10.9%
Extended Warranty	5	2.1%
Terminated Lease	2	0.8%
Total	238	100.0%

When asked if they were satisfied with the way in which their arbitration decision was carried out, only 25.6 percent, said that they were satisfied with the way their arbitration decision was carried out. Initially, 10.3 percent were dissatisfied, but reported that eventually the board did perform to their satisfaction. The remaining 65.4 percent reported being dissatisfied with the way their arbitration decision was carried out.

All respondents whose cases were arbitrated were asked whether they had pursued their cases further after the arbitration decision. Twenty-six percent indicated that they did pursue their case further. Table 6 shows by what means they pursued their cases. Note that many respondents pursued their cases by more than one means; thus, the number of responses is greater than the number of respondents.

**Table 6**  
**Methods of Pursuing Cases**  
**Claverhouse Survey**

<b>Method</b>	<b>Number</b>	<b>Percent</b>
Contacted an attorney/legal means	24	32.4%
Contacted a government agency	19	25.6%
Re-contacted the AWAP	16	21.6%
Worked out a solution with the dealer	15	20.3%
Total responses	74	100.0%

Ninety-six percent of respondents indicated that the decision was mailed to them after the hearing. When asked if they talked to the staff of the AWAP or returned a postcard indicating how they felt about the decision, 16.1 percent said that they had spoken to someone, 43.0 said that they returned the postcard, 17.5 percent said they had done both, and 23.3 percent said they did neither.

## Delays to Arbitration Decisions

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

AWAP figures report less than 1.0 percent of all in-jurisdiction cases were delayed beyond 40 days, whereas survey respondents reported 24.7 percent of cases delayed beyond 40 days (see Figure 2). This percentage difference is statistically significant, but should not be of great concern. We can attribute this to recall. The survey asks to recall very specific information about an event that may have occurred a year or more ago. This appears to be a difficult task for most respondents.

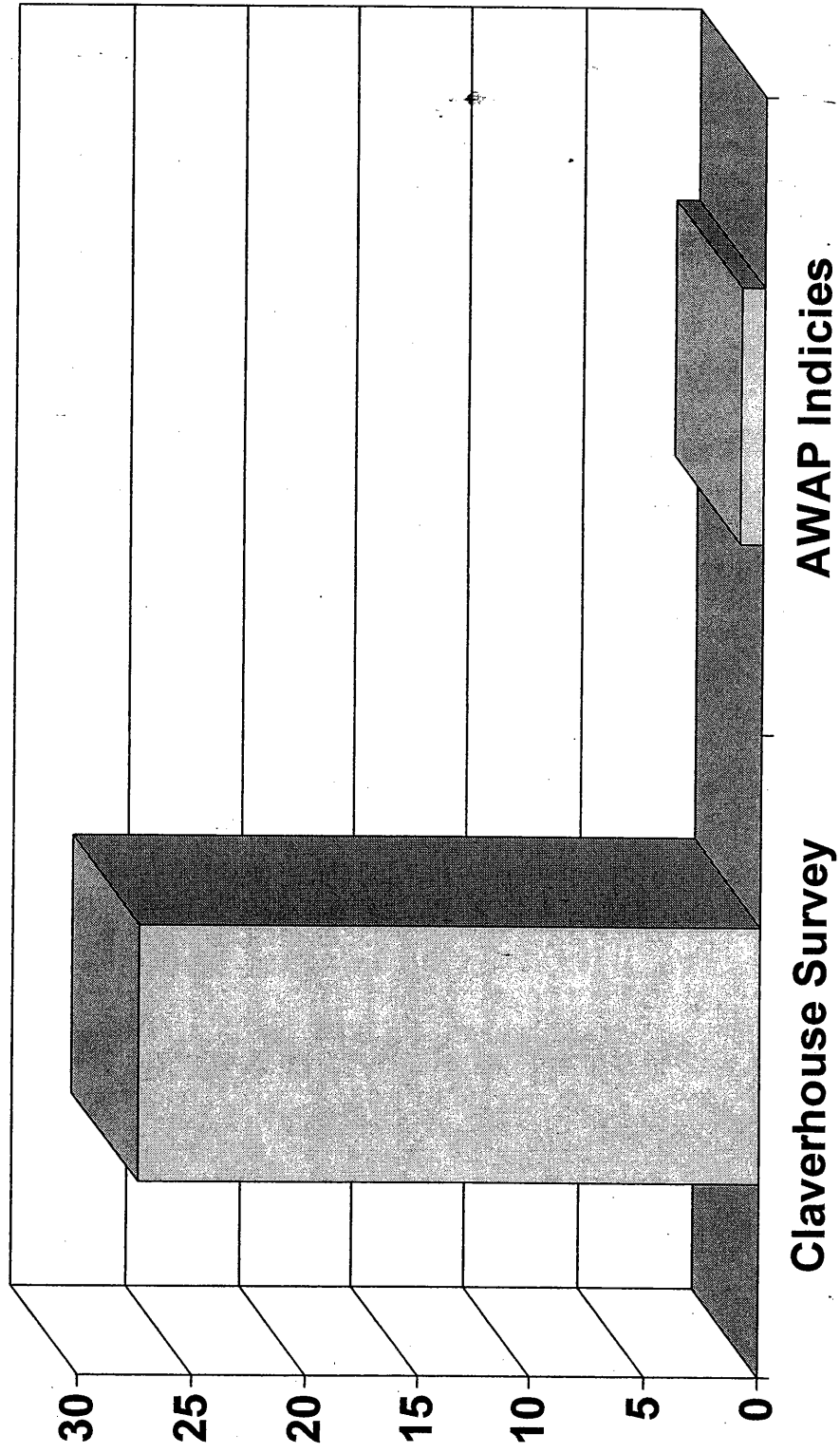
When asked for the date their case was opened, only 33.1 percent of respondents were able to give an exact date; 24.6 percent could only give a month and year, and 42.3 percent could give no date at all or just the year. It is not known whether or not the dates given are indeed the correct dates.

Survey respondents recollections on when their cases were closed were similar. For mediated cases, only 39.6 percent could give an exact date, 26.4 percent could only give a month or year, and 34.0 percent could not give a date or only a year. For arbitrated cases, only 38.7 percent could give an exact date, 16.4 percent could only give a month and year, and 44.8 percent could give no date at all or only a year.

This data indicates that consumer recollections on whether their cases were delayed beyond 40 days may, thus, be in error. In addition, the consumer may not be using the same specific information about when a case is "opened" 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 experienced problems with the vehicle. Similar considerations apply to when a case was "closed".

Therefore, we do not consider this difference in percentages to be a concern. Table 7 shows the reasons for delays as reported by the AWAP indices and by survey respondents.

**Figure 2. Percentage of Cases Delayed Beyond 40 Days**





**Table 7**  
**Reasons for Delays in Decisions**  
**Comparison between Claverhouse Survey and AWAP Indices 2003**

Reasons for Delays	Claverhouse	AWAP
	Percentage (Number)	Percentage (Number)
Customer failed to submit required information in a timely manner	6.1% (4)	4.5% (1)
Consumer failed to seek relief directly from the manufacturer	0.0% (0)	0.0% (0)
All other reasons	93.9% (62)	95.5% (21)
Total cases delayed beyond 40 days	100.0% (64)	100.0% (22)

The Claverhouse survey includes among the reasons for delays the option "arbitrator requested additional information or tests". This, however, is not a category reported by the AWAP. For the purposes of this report, these numbers are included with the category "all other reasons". There is no statistically significant difference between the Claverhouse statistics and the AWAP indices.

**Consumer Awareness of the Informal Dispute Settlement Procedure (AWAP)**

At the beginning of the questionnaire, respondents were asked how they had learned about the Manufacturer Warranty Arbitration Program. The responses are summarized in Table 8.

**Table 8**  
**How Consumers Learned about AWAP Availability**  
**Claverhouse Survey**

Source of Information	Number	Percent
Owner's manual/warranty information	158	42.4%
Dealership	89	23.9%
Customer Complaints/Toll-free number	78	20.9%
Friends and family	21	5.6%
Brochures/other literature	14	3.8%
Attorney or other legal source	10	2.7%
Previous knowledge of the program	2	0.5%
Media (TV, Newspapers, etc.)	1	0.3%
Total	373 <sup>33</sup>	100.0%

The owners manual and/or warranty information were the most likely sources of information about the AWAP. This was followed by the dealership and customer complaints. Those who cited either the dealership or customer complaints were asked follow-up questions about the ways in which they were informed of the program. Nearly half indicated that a dealer talked to them about the program (47.1 percent), 34.0 percent were given something to read, 4.2 percent were shown a poster, and 14.7 percent said they were informed by other means<sup>5</sup>.

Survey respondents were also asked about the materials and forms they received from the AWAP. Most (91.6 percent) recalled receiving the materials. Of those who said they recalled receiving the materials, 65.3 percent reported the materials were very clear and easy to understand; 29.5 percent said they had some problems, but the forms were still fairly easy to understand; 3.5 percent said they were difficult to understand, and 1.8 percent made other comments.

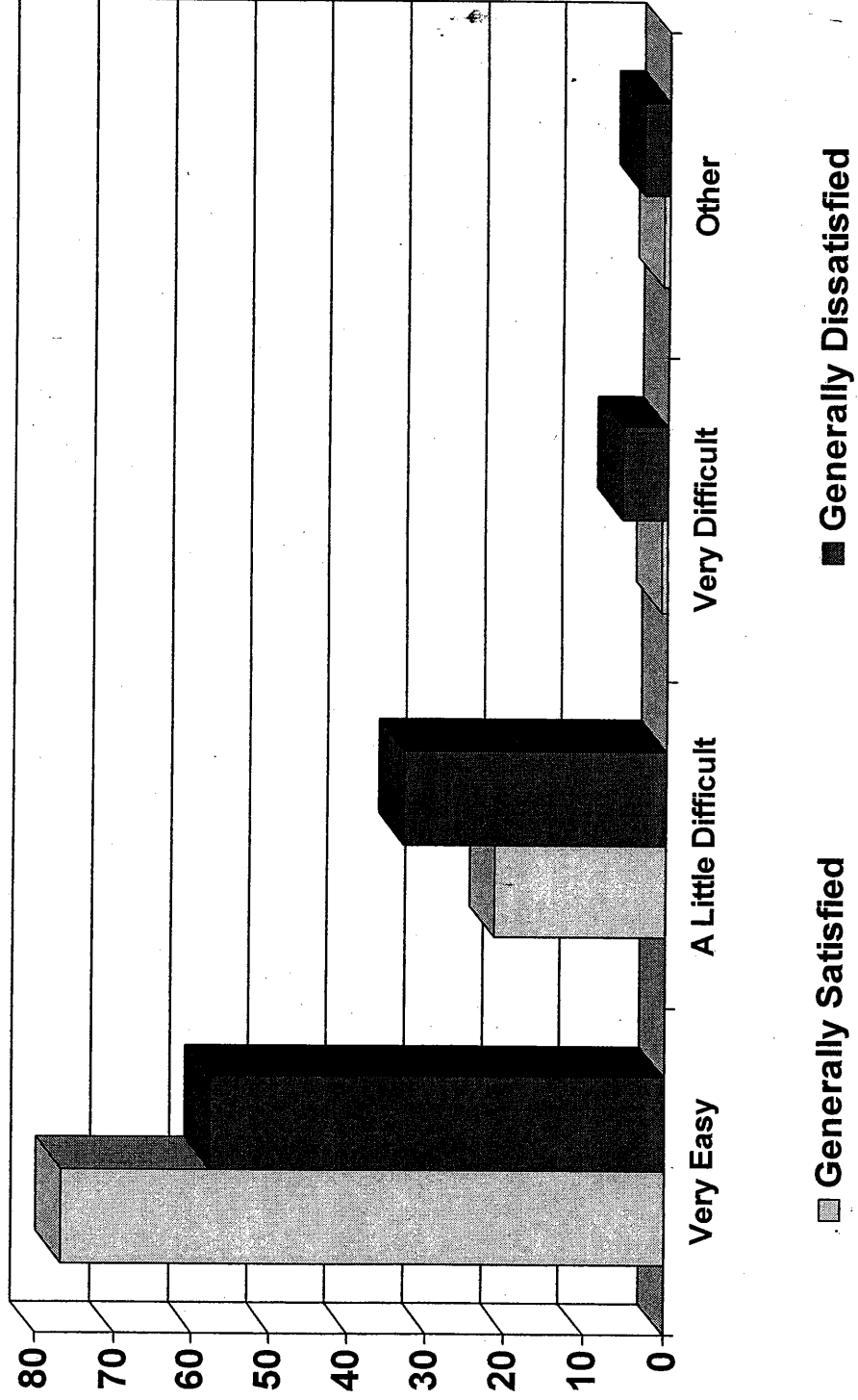
Ease of understanding the forms correlates with the consumers' overall level of satisfaction with the AWAP program as expressed when they were asked to rate the overall program on a scale from A to E. Those who found the forms easy to understand generally gave the program higher overall grades than did those who found the form somewhat difficult or very difficult to understand, as shown in Figure 3. In examining this figure, however, one must keep in mind that the vast majority of respondents found them "very clear and easy" or "pretty easy" to understand.

Respondents were asked to rate the AWAP staff on several aspects of performance by assigning a grade of A, B, C, D, or E. Table 9 shows the respondents' ratings.

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<sup>33</sup>These figures represent responses, not respondents, because respondents were able to supply more than one answer.

Figure 3. Ease of Understanding Forms Correlated with Program Satisfaction



**Table 9**  
**Survey Respondents' Ratings of AWAP Staff**  
**Claverhouse Survey**

Performance Item	Graded Awarded by Respondents				
	A	B	C	D	E
Objectivity and fairness	34.9%	8.5%	12.4%	9.1%	35.2%
Promptness in handling your complaint during the process	48.4%	27.1%	11.0%	5.5%	8.1%
Efforts to assist you in resolving your complaint	30.5%	12.2%	12.2%	8.7%	36.3%
Overall rating of the program	32.3%	10.0%	10.6%	9.7%	37.4%

In rating the program, only 42.3 percent gave an overall grade of A or B, and 37.4 percent gave the program a failing grade. The highest grade was given in the area of promptness, with 75.5 percent giving the grade of A or B. The lowest grade was given in the area of effort, with only 42.7 giving the grade of A or B. As expected, those with mediated cases graded the program higher in each of the areas compared to those with arbitrated cases (see Figure 4).

To gauge satisfaction with the program, a dichotomous variable was created using the overall rating of the program variable. Grades of A or B were re-coded to represent "generally satisfied" and grades of D or E were re-coded to represent "generally dissatisfied. Those giving a "neutral grade" of C or those with missing data were dropped from the variable computation. Using this method, 47.3 percent of those using the program are considered "generally satisfied" with the program and 52.7 percent are considered "generally dissatisfied" with the program

Those with mediated cases were far more satisfied with the program than those with arbitrated cases. Of the respondents who said their cases were mediated, 77.4 percent were satisfied with the program compared to 40.2 percent whose cases went through arbitration. As we might expect, satisfaction is closely correlated with case outcome. Those respondents who received an award through the arbitration program were more likely to be satisfied with the program (78.9 percent) than those who did not receive an award (7.0 percent). Also, those who accepted their arbitration decisions were far more likely to be satisfied (87.6 percent) than those who rejected their awards (8.3 percent) (see Figure 5).

Another measure of consumers' satisfaction with the AWAP program is whether or not they would recommend it to others. Close to half, 45.8 percent, of survey respondents said that they would recommend the program to others experiencing warranty problems with their vehicles. Of the remainder, 31.4 percent said it would depend on the circumstances, and another 21.9 percent said they would not recommend the program.

If broken down by case type, however, a slightly different picture emerges. Consumers with mediated cases generally said they would recommend the program (76.8 percent), and of those consumers whose cases were arbitrated and who received and accepted an award, 78.0 percent said they would recommend the program to others. Of those who received an award but rejected it, 26.3 percent said they would recommend the program, and only 9.4 percent of those who received no award ("adverse decision") said they would recommend the AWAP program to others. Table 10 summarizes this data.

