

*United States Federal Trade
Commission*

*Toyota Dispute Settlement Program
Audit*

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Introduction

This 2002 audit of Toyota's Customer 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 2002. Claverhouse Associates coordinated field audits, statistical survey planning, and arbitration training with the program's independent administrator, The National Center for Dispute Settlement (NCDS).

Hearings held in Toyota's Regions for Pennsylvania, Oklahoma, and New York were included in the on-site field inspections. Visits to these locations were arranged to coordinate with scheduled arbitration hearings. In addition, we audited arbitrator training conducted in Grapevine, Texas, June 20 - 22, 2002. 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 (2002). 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 2002 as required.

SECTION I

Compliance Summary

This is the second Claverhouse Associates independent annual audit of Toyota's sponsored national third-party informal dispute resolution mechanism, called the Dispute Settlement Program (DSP), as it is administered by the National Center for Dispute Settlement.

Overall Toyota's Dispute Settlement Program Evaluation

Toyota's third-party dispute mechanism (Dispute Settlement Program), as administered by the National Center for Dispute Settlement (NCDS), 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 (Pennsylvania, Oklahoma, and New York) all administer the arbitration program(s) in compliance with 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.¹ Our original survey sample consisted of 750 closed cases, of which we completed surveys for 303 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 DSP. As has been true in most audits we have conducted for various programs, the few statistically significant differences between the figures reported by the DSP 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, DSP 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 DSP arbitrators advances many of the DSP 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.

¹ 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.

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 2002. An important component of the audit is the survey of a randomly selected sample of 303² Toyota Dispute Settlement Program applicants whose cases were supposed to be closed in 2002 and found to be within the DSP's jurisdiction.

We analyzed several NCDS generated statistical reports covering the DSP 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 Toyota DSP as it operates in Toyota regions for Pennsylvania, Oklahoma, and New York. We also examined a random sample of current (i.e., 2002) case files for accuracy and completeness. A random sample of case files was drawn from all case files for the years 1999-2002 and inspected them to ensure that these records are maintained for the required four-year period. In the areas covered by each region, we surveyed several dealerships to see how effectively they carry out the information dissemination strategy developed by the manufacturer to assist them in making customers aware of the DSP.

In addition, we monitored arbitration hearings in Trevese, Pennsylvania; Tulsa, Oklahoma; and New Windsor, New York, and interviewed arbitrators and DSP/NCDS administrative personnel.

To assess arbitrator training, we monitored the NCDS-sponsored training session held in Dallas/Ft. Worth, Texas, in June of 2003. In addition to monitoring the training itself, we interviewed the trainees (both before and after the training) and 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 second (2002) Claverhouse Associates annual audit of Toyota's informal dispute settlement procedure program as it is administered by NCDS.

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

² 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.

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 1999-2002 demonstrated that the case files were maintained in 2002 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 DSP 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 DSP 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.³ As such, the information was readily accessible for audit.

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

DISCREPANCIES:

None

REQUIREMENT: § 703.6 (b)

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

FINDINGS:

³ 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 Toyota, thereby negating any necessity for providing a document in each individual file.

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 2002.

The *Toyota DSP Statistics* identifies 3,069 DSP disputes filed for 2002. Of these, 2,353 were eligible for DSP review, and 716 were determined by the DSP to be out-of-jurisdiction. Of the in-jurisdiction closed cases, NCDS reports that 1,900 were arbitrated⁴ and 453 were mediated.⁵ There were 1,515 arbitrated decisions which were reported as “adverse to the consumer” per § 703.6 (E) representing 79.7% of all arbitrated cases.

The *2002 Toyota Master Model Report* lists 23 brand categories. This report breaks down the DSP cases associated with each brand category.

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:

Toyota 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 Toyota failed or refused to abide by a board or arbitrator decision. As a matter of general corporate policy, Toyota agrees to comply with all DSP decisions. This information is supplied as part of Toyota’s Annual FTC -703.6 (c) (1) and (2) Report.

DISCREPANCIES:

None

REQUIREMENT: § 703.6 (d)

⁴ 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 DSP mandated statistical report.

⁵ The term “mediation” in the DSP 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.

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

FINDINGS:

According to Toyota DSP statistical index reports, as of December 2002, a total of 17 DSP 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 2002 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 DSP 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 provided us with the various 2002 indices and statistical reports required by Rule 703. The corresponding reports for the previous four years are not available from NCDS because they did not administer the program during that period. The records are probably available from Toyota directly. [Because our audit is related solely to the NCDS administration of the Toyota sponsored program, we made no effort to review any aspect of the program prior to their involvement.] All records pertaining to the NCDS Toyota program are being stored as required.

(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 Toyota, as a matter of corporate policy, always complies with DSP 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 DSP at all times, as well as examining the manufacturer's strategies to alert customers to the availability of the DSP 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.

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 DSP 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. Our random audits of dealerships in the areas surrounding the field audit sites found no consistent and significant commitment by dealers to educate their employees to provide DSP 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 DSP. The booklet provides useful and accurate information.
- There is a DSP pamphlet (one-page tri-fold) published by Toyota that is reasonably informative about the DSP 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*.⁶ *The Toyota Dispute Settlement Program pamphlet* is not included in the information packet which is given to all new customers because the information is redundant as relates to that which is included in the *Owner's Warranty Rights Notification* booklet. Those interested in knowing about the program are referred to a toll-free

⁶ 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*.

telephone number where they can request a DSP pamphlet. This one-page document is distributed primarily by the Toyota Customer Assistance Center.

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

In the Pennsylvania area we visited three dealerships.

Bobby Rahal Toyota
6305 Carlisle Pike
Mechanicsburg, Pennsylvania 17050

Team Toyota
Bus. T. 1 & 195
Langhorn, Pennsylvania 19047

Faulkner Toyota
2425 Lincoln Highway
Trevose, Pennsylvania 19053

None of the dealership personnel we interviewed during our three Pennsylvania dealership visits provided any useful information about the Toyota warranty dispute mechanism when we asked about customer options when they are experiencing warranty disputes. At one dealership, we talked to two service department personnel. The only positive note in our attempt to elicit DSP information from dealership personnel is that at least we weren't provided with incorrect information. The dealers' performance in Pennsylvania 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 DSP will be less likely to be informed of the availability of DSP, a situation "at variance" with the regulation's intent.

Our dealership experiences in the Oklahoma area were mixed. One of the three dealerships we visited gave us accurate information about the DSP, showing us a DSP brochure and pointing out the pages which included information about the program. Two dealerships, however, were of no help whatever and said they had no information to provide to a customer with a current warranty dispute about options for getting a refund or replacement. These two dealers were willing to provide repair assistance, but volunteered nothing about the DSP. In one instance, we went so far as to ask if arbitration was an option. The response was that arbitration can be used only by going through the dealer, an inaccurate statement.

In Oklahoma we visited the following dealerships:

Jim Norton Toyota
9809 S. Memorial
Tulsa, Oklahoma 74133

Riverside Toyota
10338 East 11th Street
Tulsa, Oklahoma 74128

Doenges Toyota
1901 SE Washington Blvd.
Bartlesville, Oklahoma 74006

Our dealer visits in New York were uniformly discouraging in terms of the program for DSP information dissemination. At none of the four New York dealerships we visited did employees appear to know about arbitration or the DSP program. Indeed, at one dealership we were told "There is no way, a customer with a warranty dispute, can get a refund."

In New York, we visited the following dealerships:

Johnston's Toyota
5015 Rt. 17M Street
New Hampton, New York 10958

Toyota of Newburgh
2934 Route 9W
New Windsor, New York 12553

Geis Auto Mall (Toyota)
Rt. 6 & Westbrook Drive
Peekskill, New York 10566

Wappingers Falls Toyota
1349 Route 9
Wappingers Falls, New York 12590

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 DSP by providing DSP 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 DSP 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.

This part of the DSP received a rather varied assessment. The information dissemination methods employed by Toyota together with the number of applications filed in 2002 (3,069) 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 DSP, 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 DSP. Few of the salespeople we interviewed appeared to have any knowledge of the DSP 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 many demonstrated 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 qualifier given immediately above as a caveat.

REQUIREMENT: § 703.7 (b) (3)(I)

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

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 Toyota Dispute Settlement Program administered by the National Center for Dispute Settlement.

The many forms used by DSP 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 DSP 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' DSP (Toyota) program that we reviewed well within the regulatory expectations.⁷

DISCREPANCIES:

NONE

NCDS general policies for the Toyota DSP 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 DSP 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).

⁷ 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."

Field audits, monitoring of arbitration hearings, and interviews with arbitrators and DSP staff found only a limited number of requests by arbitrators for technical information, but such information is provided by Toyota 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 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 Technical Service Bulletins (TSB) included in the case file whenever the company knows that there is a Technical Service Bulletin that addresses the central concerns of the customer's application to the DSP.

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 DSP 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 that 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 DSP application and Toyota provides it on the NCDS form entitled, *Manufacturer's Response Form*. The forms, however, do not solicit the same information from all parties.

The customer application form does not, for example, 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 DSP 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 DSP 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**⁸

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

⁸ Mediation does not necessarily imply the use of a neutral third-part mediator, but rather means the case has been settled prior to the arbitrator rendering a decision.

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 Toyota has been rendered and NCDS has received notice that the customer has accepted the decision, a performance survey is mailed to the customer to determine that:

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

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

The recording of performance and maintenance of the DSP records were reviewed by our on-site inspection of case files in Dallas, Texas. For each region selected for the audit, we reviewed a random sample of case files. 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 DSP uses two arbitration formats. The two formats are: a) a board consisting of three arbitrators; or b) individual arbitrators. Customers may opt to use either format. 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, in which event oral presentations maybe made by the parties. When using boards, 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.⁹

In both the DSP formats, hearings are open, as required by Rule 703, to observers, including the disputing parties.

⁹ Each facet of the DSP 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.

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 Toyota dealership.

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

FINDINGS:

The DSP'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.

We have noted continued improvement in awareness of important legal principles and various warranty doctrines among established board members who have been provided arbitrator training. Board members' increase in 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.¹⁰ 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 DSP hearings/meetings are rarely attended by people other than the parties and a Toyota 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 DSP 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.

In prior reports (i.e., non-Toyota NCDS) 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

¹⁰ Currently, NCDS arbitrators are provided a per diem allowance of \$100.00 a hearing plus reimbursement for any mileage expenses incurred.

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.¹¹ 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.

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 June of 2002, we confirmed that these efforts continue and are having some noteworthy effects.

¹¹ 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.

Overall, the DSP 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. Pennsylvania

A. Case Load and Basic Statistics

In Pennsylvania, NCDS handled 107 DSP cases in 2002 of which 23 (21.4%) were "no-jurisdiction" cases. There were 77 cases arbitrated (91.6% of in-jurisdiction cases), and 7 (8.3% of in-jurisdiction cases) were mediated. The average number of days for handling a 2002 case in the Pennsylvania region was 32 days, the same as the number of days for the nation.

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 2002 "in-jurisdiction" case files.¹² We examined each sample file with respect to the items enumerated in subsections 1 through 5, with the following results:

- 1) All case files contained the customer's name, address, and telephone number.
- 2) The requirement is met. The name and address of the warrantor's contact person is included with the initial correspondence that the customer receives from the program. In addition, the Regional office contact address and phone number is included in each Owner's Manual that accompanies all new vehicles

¹² Where there were at least 50 or more case files, we reviewed them. Otherwise, we simply examined all case files for the state.

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 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.

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. 1999-2002)

A random sample of 50 case numbers from the years 1999 through 2002 was drawn from NCDS' data base program, and in our field inspection, we checked the sample 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 and then took testimony. The hearing was held at the Faulkner Toyota dealership of Trevoise, Pennsylvania, 2425 Lincoln Highway and began at 4:00 pm. The arbitrator was late due to being caught in heavy, slow traffic.

i. Physical Description of Hearing

The hearing was conducted in a room of insufficient size. Observers could not have been squeezed into these quarters since it barely accommodated the parties. Attending was the customer, a Toyota servicing dealer's representative, the auditor, and the arbitrator. A Toyota manufacturer's representative attended via telephone. The customer, the Toyota dealer, and a Toyota manufacturer's representative all made oral presentations.

The hearing was generally efficiently conducted although the parties were allowed to talk over one another on occasion. The customer was provided with an unfettered opportunity to present his case. The arbitrator appropriately inquired about what the customer was seeking in the form of relief since the application was not clear in that regard.

The audit included brief interviews with the customer and the Toyota dealer representative following the hearing. The auditor did not discuss the hearing procedures with the arbitrator following the hearing because of the delay in the hearing process and the lateness of the hour.

The arbitrator was unclear as to whether he needed to conduct a road test since he witnessed several non-verbal cues from the dealer that indicated that there was no disagreement between him and the customer as to the vehicle's operation and the existence of some brake noise.

ii. Openness of Meeting

The room was inadequate to accommodate any additional observers who may have wished to attend the hearing, but the arbitrator recognized that the meeting was open to anyone wishing to attend.

iii. Efficiency of Meeting

The hearing was efficiently conducted even though 40 minutes late.

iv. Hearing

This arbitrator appeared to be committed to the fair and expeditious resolution of warranty disputes in the hearing process. It should be noted, however, that the arbitrator referred to the Toyota representative on the telephone by her first name while all others were referred to by “mister” and their respective last names, suggesting more familiarity than was appropriate.

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 repeat here the important issue of boilerplate language. Otherwise, the decisions we reviewed were generally quite sound in both form and substance.

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

CONCLUSION:

The DSP, as it operates in the Pennsylvania 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. Tulsa, Oklahoma

A. Case Load and Basic Statistics

In Oklahoma, NCDS handled 19 DSP cases in 2002 of which 6 (31.5%) were "no-jurisdiction" cases. There were 11 cases arbitrated (84.6% of in-jurisdiction cases), and 1 case was mediated.¹³ The average number of days for handling a 2002 case in the Oklahoma Region was 31 days as compared to 32 days for all regions combined

The Oklahoma field audit includes a review of a hearing held in Tulsa, Oklahoma, 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 DSP case files for the required four-year period.¹⁴ 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 provided¹⁵ 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.**

¹³ 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.

¹⁴ See 16 C.F.R., § 703.6 (f)

¹⁵ Since there were only 19 Oklahoma cases reported for 2002, we simply examined them all.

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. 1999-2002¹⁶)

§ 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 1999-2002 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 (2002) and for the four-year period (1999 through 2002) 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 DSP hearing was held at the Jim Norton Toyota dealership, 9809 S. Memorial, Tulsa, Oklahoma, on May 19, at 9:00 a.m. The meeting room was not of adequate size for accommodating anyone who wished to attend as an observer. The parties included the customers, a Toyota manufacturer's representative via telephone, a Toyota dealer customer relations employee,¹⁷ the arbitrator, and the auditor.

ii. Openness of Hearing

¹⁶ The four-year requirement includes the year 2002, but 2002 files are examined separately as part of a more thorough inspection of each file's contents.

¹⁷ The dealership employee assisted at the onset of the hearing by setting up the telephone connection to the Toyota manufacturer's representative and then left the hearing.

This arbitrator said that she allows all observers at DSP meetings (hearings) although the room used for the hearing was too small to allow observers.

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.¹⁸ 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 9:00 am as scheduled.

iv. Hearing

The hearing was, with only one exception, 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.

Unfortunately, the arbitrator left unchallenged a facet of the hearing in which the Toyota manufacturer's representative asked the customer a question in a cross-examination manner about whether some facet of the case was included on the claim form and then proceeded to dictate to the arbitrator that any subject not detailed on the Claim Form could not be discussed during the hearing. This was problematical in two respects: first, the manner in which this interchange took place left a clear impression that the manufacturer's representative as one of the disputing parties is actually empowered to determine what evidence is allowable at the hearing and what is not; and, second, cross-examination is a style of communication that is inconsistent with the NCDS hearing model. The first aspect of this matter is the more significant of the two, because it undermines the appearance of fairness. Clearly, the arbitrator is the person who determines what evidence is to be allowed in any given hearing. Neither of the disputing parties is empowered to make such determinations at the hearing. Certainly, the manufacturer would not find it acceptable for the customer to make such determinations.

In this case, the arbitrator should have informed the parties that what is or is not to be discussed at the hearing is for her to determine, and the parties should simply present their own cases. As a matter of objective fact, hearings often include discussions of subjects that are not detailed in the case file. For example, if it were to surface during the hearing that the customer's use of the vehicle was primarily commercial, it would undoubtedly result in a claim by the manufacturer that the case, in their view, is out-of-jurisdiction, even though that defense had not been included in the case file paperwork. In addition, a non-dealer repair done in a remote location while the customer was on vacation may not be detailed in the case file, but whether the fact is relevant, is a matter for the arbitrator to decide.

¹⁸ At the same time, the arbitrator's demeanor suggested to the auditor that it was the Toyota representative who was really in charge of the hearing. The problem was substantively harmless to the ultimate disposition of the case, but there was a definite "appearance" problem. As a result of discussions with the arbitrator, it appears that the issue was a one-time incident with no regulatory implications.

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 DSP, as it operates in the Oklahoma 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.

III. New Windsor, New York

A. Case Load and Basic Statistics

The New York Region generated 189 cases in 2002 of which 57 were determined to be "not-in-jurisdiction" cases. The program also reports 24 mediated cases and 108 arbitrated cases. The average days for handling a 2002 case for this Region is 33. This compares with an average of 32 days handling nationwide.

The New York Regional field audit includes a review of a hearing held in New Windsor, New York, and interviews with the principal people involved in the hearing. In addition, we reviewed case files for New York, 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 DSP case files for the required four-year period.¹⁹ 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 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:

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.

¹⁹ See 16 C.F.R., § 703.6 (f)

- 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.²⁰

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

²⁰ 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 DSP but prior to the hearing to decide the matter.

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 Toyota DSP record keeping policies and procedures are in substantial compliance with the federal Rule 703.

C. Case File Records (4 yrs. 1999-2002)

§ 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 DSP 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 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 and then took testimony. The hearing was held at the Classic Toyota of Newburgh, 2934 Route 9W South, New Windsor, New York, on May 13, 11, 2003, and began at 10:00 am as scheduled.

i. Physical Description of Hearing

The hearing was conducted in room of inadequate size but was reasonably arranged for the purposes of the hearing. Attending were the customers, a Toyota manufacturer's representative, a Toyota servicing dealer's representative, the auditor, and the arbitrator. The customer, the Toyota dealer, and a Toyota manufacturer's representative all made oral presentations.

The hearing was inefficiently conducted insofar as the parties were talking over one another as the arbitrator made a series of inquiries lacking any logical sequence. In addition, the customer was not provided with an unfettered opportunity to present their case. The arbitrator also began to inquire during the hearing about what the customers needed from Toyota to resolve their concerns, which was followed by similar inquiries of Toyota. The similarity to classic mediation models was quite apparent. The arbitrator's ill advised attempt to mediate during the hearing was predictably unsuccessful. Finally, after reviewing her notes and allowing the parties to banter back and forth, the arbitrator turned to the customers and asked, "So, you're not willing to accept Toyota's offer?" The customers gestured in the negative. The arbitrator then made one final inquiry: "Is there anything else either of you can think of to resolve this, or do I make a decision?" This action suggests that the arbitrator has not received, or not understood, instructions from NCDS about current policy concerning the hearing process.

The audit included interviews with the customer and the two Toyota representatives following the hearing. The auditor did not discuss the hearing

procedures with the arbitrator following the hearing because the arbitrator appeared to be unusually troubled by the auditor's presence.

ii. Openness of Meeting

The room was inadequate to accommodate any additional observers who may have wished to attend the hearing, but the arbitrator recognized that the meeting was open to anyone wishing to attend.

iii. Efficiency of Meeting

The hearing was a veritable model of inefficiency.

iv. Hearing

This arbitrator appeared to be committed, but lacking critical information pertaining to the fair and expeditious resolution of warranty disputes in the hearing process.

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 repeat 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 thorough, well reasoned, and complete. It seemed, however, to lack an important discussion as to why the arbitrator did not believe the after-market electronic components that had been installed were not the likely cause of the dash-light signal dysfunction. Still, the facts before the arbitrator were sufficient to support the decision.

CONCLUSION:

The DSP, as it operates in the New York area, is in substantial compliance with Rule 703. The NCDS administrative staff and the NCDS program demonstrated a clear commitment to ensure fair and expeditious resolution of warranty disputes. The administrative staff is clearly dedicated to the program's mission and demonstrates a high degree of professionalism. The staff, however, will need to de-brief the arbitrator in order to rectify the aforementioned deficiencies. This type of oversight and correction is a common facet of program maintenance common to all programs and is not a threat to the program's compliance status.

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 do 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 DSP, 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, June 20 - 22, 2003. 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 DSP 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 and replacements of automobiles, including the issue of applying 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. An additional feature this year focused on the importance of arbitrators' neutrality and the related issue of making

appropriate disclosures. 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 of the trainees simply observe while a major component of training involves trainees themselves in role play exercises.

An important and thorough presentation centered around the Federal Magnuson-Moss Warranty Act²¹ 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 Toyota's 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 the Toyota DSP continues to be a good one that operates in substantial compliance with Magnuson-Moss and Rule 703. There were several important additions to the training program in 2002, and these were carried over into this year's program. The entire program clearly demonstrates a commitment to high quality training.

²¹ 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

TOYOTA DISPUTE SETTLEMENT PROGRAM PROGRAM INDICES

The Federal Trade Commission (FTC) regulates informal dispute resolution programs, such as that operated by Toyota, 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 Toyota for the year 2002.

A consumer who wants to have a warranty dispute settled by the Dispute Settlement Program (DSP) 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 DSP. 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 DSP is able to reach an agreement with Toyota prior to an arbitration hearing, the dispute is said to have been "mediated" or "prior resolved" by the staff. If the consumer and Toyota cannot reach an agreement, the case is arbitrated by the DSP. Arbitration cases can result in the granting of an award requiring Toyota 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 DSP 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 DSP statistics, our survey includes questions that allow consumers to evaluate various aspects of the program.

To determine the accuracy of the DSP's warranty dispute statistics and to gather evaluation information about the program, Claverhouse Associates contracted with the Survey Research Division of the Institute for Public Policy and Social Research (IPPSR) to conduct a survey of a randomly selected sample of consumers throughout the U.S. who filed disputes with the DSP during 2002. 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 DSP. The question is not whether an individual's recollections match the data in the DSP'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 303 respondents from a sample of 738 cases randomly drawn from the universe of 2,272 cases closed in 2002. A customer who had filed more than one case was asked to refer to the most recent case in answering the survey.

The data was collected through a mailed, self-administered questionnaire. IPPSR used methodology designed by Professor Donald Dilman of the University of Washington, a nationally known expert in the field of self-administered questionnaires. Since its inception, IPPSR has used this methodology for all of its self-administered survey projects.

The initial mailing on March 18, 2003, contained the survey, a cover letter, and a postage-paid return envelope. The cover letter explained the purpose of the survey and the random selection process. It also explained that participation was voluntary but encouraged the recipient to participate. On March 25, 2003, 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. Thus, IPPSR staff was able to determine who had returned completed questionnaires and which questionnaires were returned by the post office because of invalid addresses.

On April 22, 2003, IPPSR staff mailed another questionnaire to those who had not returned completed questionnaires. Of the 738 questionnaires, 303 were returned completed; the completion rate for the study was 41.1 percent. The questionnaire data were entered, proofed, and coded by IPPSR 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, second mailings, and reminder phone calls are designed to ensure high cooperation among those selected to participate. Because the sample of 303 cases is a simple random sample, the sampling error is ± 5.2 percent.²² The number of responses varies from question to question, not only because, for example, some questions refer to mediated settlements and others to arbitrated cases, but also because not all respondents answered all appropriate questions.

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 method of resolution reported by the Claverhouse sample conforms to the DSP numbers. The difference between the 12.2 percent of cases mediated in the Claverhouse sample and the 19.2 percent of cases mediated in the DSP figures is statistically significant at the 95 percent confidence interval. Likewise, the difference between the 87.8 percent of cases arbitrated in the Claverhouse sample and the 80.8 percent of cases mediated in the DSP figures is statistically significant at the 95 percent confidence

²² This is the sampling error when the responses divide roughly 50-50 on a given question and when there are 303 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 ± 5.5 percent). The magnitude of the sampling error is determined partly 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.

interval. This difference might occur if those customers whose cases were mediated were less likely to participate in the survey than those whose cases were arbitrated.

Table 1
Method of Resolution of Warranty Disputes
Comparison between Claverhouse Survey and DSP Indices 2002

Resolution	Claverhouse		DSP		
	Number	Percent	Number	Percent of in-jurisdiction cases	Percent of all cases
Mediation	37	12.2%	453	19.2%	14.8%
Arbitration	266	87.8%	1,900	80.8%	61.9%
Subtotal (in-jurisdiction)	303	100.0%	2,353	100.0%	76.7%
Out-of jurisdiction	-	-	716	-	23.3%
Total disputes	303	100.0%	3,069	-	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 time for compliance has not yet passed. Although 37 of the surveyed consumers stated that their cases had been mediated, only 34 reported on the timing of warrantor compliance.

Table 2
Outcomes of Mediated Settlements
Comparison between Claverhouse Survey and DSP Indices 2002

Mediated Settlements	Claverhouse	DSP
	Percent ^a (Number)	Percent ^b (Number)
Warrantor has complied within the compliance period	64.7% (22)	75.0% (339)
Warrantor has not complied	20.6% (7)	25.0% (113)
Warrantor complied but not within the compliance period	14.7% (5)	0.0% (0)
Total Mediations	100.0% (34)	100.0% (452)

a. Only 34 respondents answered this question. Percentages are percentages of those who replied.
b. This percentage is a percentage of mediated cases.

DSP indices show that the manufacturer complied with 75.0 percent of the mediation agreements within the mandated time frame. The difference between this figure and the survey result of 64.7 percent is significant. The second two categories in the table require an explanation. The survey asks the respondent whether compliance occurred within the compliance period, but the DSP information reports only compliance or non-compliance. If we, therefore, combine the survey category “warrantor complied but not within the compliance period” with “warrantor has complied within the compliance period” to get a sum of cases in which the warrantor has complied, we find that 79.4 percent (27 of 34) of survey respondents report warrantor compliance with the settlement and 20.6 percent report non-compliance. The differences between these percentages and those reported by the DSP are not statistically significant.

Table 3 shows the mediation settlement outcomes reported by the survey respondents. Thirty-five respondents answered this question.

Table 3
Specific Outcomes of Mediated Settlements
Claverhouse Survey

Outcome	Number	Percent
Extended Warranty	9	25.8%
Cash Settlement	7	20.0%
Paid for Repairs	6	17.1%
New Vehicle	6	17.1%
Other	6	17.1%
Nothing	1	2.9%
Total	35	100.0%

When asked about their level of satisfaction with the mediation outcome, 34 of the 34 respondents whose cases were mediated answered the question. Of these, 76.5 percent were satisfied (26.5 percent were initially not satisfied, but the manufacturer or dealer eventually performed to their satisfaction). Four respondents (11.8 percent) were dissatisfied and pursued the case by contacting the DSP. Another four respondents (11.8 percent) said they were not satisfied and pursued their cases by other means.

Arbitrated Cases

Before the survey 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 answered this question, 91.5 percent said that they recalled receiving the forms. In response to a question about how accurately the forms stated their claims, 42.5 percent said the forms stated their claims “very accurately”; 43.0 percent said “somewhat accurately”; and, 14.5 percent said “not very accurately or not at all accurately.” Of those who said their cases were stated very accurately, 57.8 percent received an award from the arbitration process, whereas only 10.0 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. Of the respondents who answered the question, 97.6 percent said they had been notified, and 81.5 percent said that they had attended their hearings.

Insert fig 1

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
Outcomes of Arbitrated Cases
Comparison between Claverhouse Survey and DSP Indices 2002

Outcome	Claverhouse	DSP
	Percentage (Number)	Percentage (Number)
<i>Arbitration Award Granted and Accepted</i>		
Case decided by board and warrantor has complied	87.9% (58)	90.3% (348)
Case decided by board and warrantor has not complied	12.1% (8)	9.6% (37)
<i>Total – Award Granted and Accepted</i>	100.0% (66)	100.0% (385)
Arbitration Award Granted/Not Accepted	16.5% ^a (14)	0.0% ^a 0
Arbitration Decision Adverse to Consumer	64.9% ^b (148)	79.7% ^b (1,515)
<i>Total Arbitrated Decisions</i>	228 ^c	1,900

- a). Percentage of awards granted.
- b). Percentage of all arbitrations.
- c). Includes only cases for which there was no missing data.

In the comparisons involving awards granted and accepted, the differences between survey results and DSP indices are not statistically significant. The percentages of cases in which an award was granted and accepted and the warrantor has complied and those in which the warrantor has not complied are statistically the same. Of those consumers who reported receiving an award, however, 16.5% reported that they had rejected the award offered; the warrantor reports no such cases. The difference is statistically significant. In addition, in the proportion of cases in which the arbitration decision was adverse to the consumer (i.e., the consumer received no award), the difference between the survey results (64.9 percent of those with arbitrated cases report adverse decisions) and the DSP indices (79.7 percent of all arbitrated decisions adverse to the consumer) is significant. We do not consider this important, however, because the difference is in favor of the consumer. All respondents whose cases were arbitrated were asked whether they had pursued their cases further after the arbitration decision. Of those who replied, 26.4 percent (65) of survey respondents with arbitrated cases replied that they had pursued their cases further after the decision. Table 5 shows by what means they pursued their cases.

Table 5
Methods of Pursuing Cases
Claverhouse Survey

Method	Number	Percent
Contacted an attorney/legal means	25	34.2%
Contacted a government agency	17	23.3%
Recontacted the DSP	21	28.8%
Worked out a solution with the dealer/manufacture	10	13.7%
Total responses	73 ^a	100.0%

a. Respondents could state more than one method; therefore, the number of responses exceeds the number of respondents.

Delays to Decisions

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

DSP figures report only 17 cases (0.9 percent of in-jurisdiction cases) delayed beyond 40 days, whereas survey respondents reported 21.5 percent of cases delayed beyond 40 days (see Figure 2). This percentage difference is statistically significant. Such a finding is not unexpected, however, because the survey asks the recall of very specific information about an event that may have occurred a year or more ago. Only 33.0 percent of respondents attempted to give an exact date on which they had filed their cases; whether these dates were correct or not is unknown. Most respondents (66.3 percent) attempted to provide only a month and year in which their cases were filed.

INSERT FIGURE 2

In addition, only 39.5% of respondents attempted to provide a complete date for reaching a mediated settlement or receiving an arbitration decision. Consumer recollections on whether their cases were delayed beyond 40 days may, thus, be in error. Secondly, the consumer may not be using the same specific information about when a case is “opened” as does the DSP. The DSP 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 mailed the forms or even when they first experienced problems with the vehicle. Furthermore, they may not see the case as closed if they are not satisfied with the decision. Therefore, we do not consider this difference in percentages to be a concern. Table 6 shows the reasons for delays as reported by the DSP indices and by survey respondents. Forty-three respondents answered the question about reasons for delayed decisions.

**Table 6
Reasons for Delays in Decisions
Comparison between Claverhouse Survey and DSP Indices 2002**

Reasons for Delays in Decisions	Claverhouse	DSP
	Percentage (Number)	Percentage (Number)
Customer failed to submit required information in a timely manner	7.0% (3)	18.2% (2)
Arbitrator requested additional information or tests	20.9% (9)	0.0% (0)
All other reasons	72.1% (31)	81.8% (9)
Total arbitrated cases delayed beyond 40 days	100.0% (43)	100.0% (11)

The differences between survey results and DSP indices on the topic of reasons for delays are not significant in all instances. This is largely because the numbers are too small to derive meaningful comparisons. In addition, one category on the survey questionnaire (“arbitrator requested additional information or tests”) does not appear on the DSP indices. This category may be subsumed under “all other reasons.”

Consumer Attitudes Toward the DSP’s Informal Dispute Settlement Procedures

At the beginning of the questionnaire, respondents were asked how they had learned about the availability of the Dispute Settlement Program. The responses are summarized in Table 7. They were given a number of possibilities and asked to circle all those that were applicable. A total of 212 respondents provided 293 answers.

Table 7
How Consumers Learned about DSP Availability
Claverhouse Survey

Source of Information	Number	Percent
Toyota Customer Complaints/Toll-free number	94	44.3%
Owner's manual/warranty information	93	43.9%
Toyota dealership	54	25.5%
Friends and family	15	7.1%
Brochures/other literature	11	5.2%
Attorney or other legal source	10	4.7%
Previous knowledge of the program	8	3.8%
Media (TV, Newspapers, etc.)	4	1.9%
Other (Internet, Better Business Bureau, etc.)	4	1.9%
Total	293 ^a	-- ^b

a. These figures represent responses, not respondents, because respondents were allowed to supply more than one answer.

b. Percentages represent the percentage of respondents giving each answer; because respondents could give more than one answer, a total would be meaningless.

The Toyota Company and the dealership were the most likely sources of information about the DSP program. Of those giving this response, 67.7 percent said that the dealer or manufacturer talked with them about the program; 26.4 percent said they were given reading material; only 2.0 percent said they were shown a poster or other material posted in the showroom or repair area.

Survey respondents were also asked about the materials and forms they received from the DSP. Of those who said they recalled receiving the materials, 66.4 percent reported the materials were very clear and easy to understand; 28.5 percent said they had had some problems, but the forms were still fairly easy to understand; 5.1 percent said they were difficult to understand or gave other answers.

In our experience, ease of understanding the forms correlates with the consumers' overall level of satisfaction with the DSP program as expressed when they are asked to rate the overall program on a scale from A to E. Those who find the forms easy to understand generally give the program higher overall grades than those who find the form somewhat difficult or very difficult to understand. We were somewhat surprised to find that not to be the case in this survey. The differences in grades awarded did not vary significant among the three groups.

Respondents were asked to rate the DSP staff on several aspects of performance by assigning a grade of A, B, C, D, or E. Table 8 shows the respondents' ratings.

Table 8
Survey Respondents' Ratings of DSP Staff
Claverhouse Survey

Performance Item	Graded Awarded by Respondents				
	A	B	C	D	E
Objectivity and fairness	30.4%	11.3%	8.6%	21.0%	28.8%
Promptness in handling your complaint during the process	45.6%	23.4%	16.5%	5.0%	9.6%
Efforts to assist you in resolving your complaint	28.2%	12.7%	12.0%	16.2%	30.9%

Respondents were then asked to give the DSP program an overall rating using the same grading scale. They responded as shown in Table 9.

Table 9
Survey Respondents' Overall Rating of Program
Claverhouse Survey

A	B	C	D	E
26.5	10.0	8.8	17.3	37.3

We then analyzed these overall grades to see whether those whose cases were mediated graded the program differently from those whose cases were arbitrated and whether those who received awards graded the program differently from those who did not receive awards. We considered those who gave the program an A or a B to be generally satisfied with the program and those who gave the program a C or a D to be generally dissatisfied/

Of the respondents who said their cases were mediated, 57.9 percent were generally satisfied and 26.3 percent were generally dissatisfied. Of the respondents who said their cases were arbitrated, 32.8 percent were generally satisfied and 59.7 percent were generally dissatisfied. In part, however, this reflects the large proportion of those whose arbitration decisions offer them no relief because consumers find it difficult to separate their evaluations of the program from the outcomes of their cases.

As we might expect, those respondents who received favorable arbitration decisions were more likely to give the DSP program high grades than were those who received adverse decisions. Of those who received awards and accepted them, 76.5 percent were gave the program a grade of A or B. Of those few (13) who received awards and rejected them, only 7.7 percent gave the program an A or B, while 84.6 percent gave the program a D or an E. Of those who received no award, 10.8 percent one gave the program an A or B, and 81.7 percent gave it a D or E. As demonstrated in Figure 3, those whose cases were mediated were slightly less likely to be satisfied with the program than those whose cases were arbitrated and received an award. Of those arbitration cases in which the consumer received no award or received an award and rejected it, very few gave the program a grade of A or B.

Another measure of consumers' satisfaction with the DSP program is whether or not they

INSERT FIGURE 3

would recommend it to others. Of the 265 respondents who answered this question, 41.1 percent said that they would recommend the program to others experiencing warranty problems with their vehicles. Of the remainder, 23.0 percent said it would depend on the circumstances, and another 35.8 percent said they would not recommend the program. If we break the total down by case type, however, a slightly different picture emerges (see Figure 4). A majority (64.9 percent) of consumers with mediated cases said they would recommend the program, whereas an even larger majority (78.9 percent) of those consumers whose cases were arbitrated and who received and accepted an award said they would recommend the program to others. A very small percentage (7.7 percent) of those whose cases were arbitrated but received no award said they would recommend the program, as did slightly more (17.1 percent) of those who received an award but rejected it. Table 10 summarizes this data.

Table 10
Would Consumer Recommend the DSP Program to Others?
Claverhouse Survey

Method of Resolution and Outcome	Yes	No	Depends on Circumstances
Mediated	64.9%	13.5%	21.6%
Arbitrated			
Award Granted and Accepted	78.9%	9.9%	11.3%
Award Granted and Rejected	7.7%	9.9%	11.3%
No Award Granted	17.1%	55.3%	27.6%

Finally, survey respondents were asked for comments and suggestions about DSP program changes or improvements; 216 of them did so. Their comments are summarized in Table 11.

Table 11
Consumer Suggestions for Program Improvement
Claverhouse Survey

Suggestion	Number	Percent
Arbitrators should be more consumer oriented	85	39.4%
Did a good job, no complaints	31	14.4%
Better initial review of cases by staff and arbitrators	21	9.7%
Better follow-up to enforce awards/settlements	16	7.4%
Dealers/manufacturers need to be more responsive to consumers, more consumer oriented	13	6.0%
Speed up the process for quicker decisions	12	5.6%
Make program better known/more advertising	7	3.2%
Better qualified mechanics for inspections/repairs	7	3.2%
Have better/more representation at hearings	6	2.8%
Awards/settlements should be more fair	5	2.3%
More personal contact with DSP staff/arbitrators	5	2.3%
Have more program locations	4	1.9%
Allow for more information about history/problems of car	3	1.4%
Less paperwork/easier to understand forms	1	0.5%
Total	216	100.0%

INSERT FIGURE 4

CONCLUSIONS

On the basis of the comparison of our survey results with the DSP indices, we conclude that the DSP indices are accurate for most of the important components of the warranty dispute resolution program. The major area in which there is a significant difference between the survey results and DSP indices is the proportion of arbitrated cases delayed beyond 40 days. This is a common finding in our research. We believe that the difference is adequately explained by the recall factor (i.e., consumers can rarely recall a specific date for the opening of their cases) and by the fact that the DSP's definition of a case's opening date and the consumer's definition are not the same. The other significant difference between survey results and DSP indices is in the category of consumers who received an award in the arbitration process but rejected the award. Of those survey respondents who reported receiving an arbitration award, 15.5 percent said they rejected the award; DSP indices report no such cases. It is interesting to note that 84.6 percent of the consumers who report rejecting their awards were offered repair of the vehicle as the award; all asserted on the initial page of the survey questionnaire that they had already experienced at least 9 repair attempts.

Overall, consumers appear to be moderately satisfied with the DSP program, with 36.5 percent giving the program a grade of A or B. As we have come to expect, those who received and accepted awards and those whose cases were mediated tended to give higher grades than those who received no award or those who rejected their awards. On a second measure of consumer satisfaction, whether the consumer would recommend the DSP program to others, overall 41.1 percent said they would, 35.8 percent said they would not, and 23.0 percent said it would depend on the circumstances. Again, consumers answers to this question tend to correlate with the outcomes of their cases. It is quite difficult for most consumers to separate their evaluations of the program itself from their personal outcomes. Thus, the survey results ultimately reflect the fact that a relatively small percentage of consumers whose cases were arbitrated received any award at all; DSP indices report that 80.5 percent of arbitration cases resulted in adverse decisions (i.e., consumer received no relief).

It is also noteworthy that when survey respondents were asked to make comments or suggestions about the program, 45.8 percent of the comments related to a "lack of customer orientation" among dealers, the manufacturer, and arbitrators.

In summary, we conclude that the Toyota National DSP indices are in substantial agreement with the survey findings. The discrepancy noted in the "delay of arbitration" area is of no regulatory concern for reasons already stated. The discrepancy noted in the area of rejected arbitration awards is one we cannot explain.

SECTION VI

Audit Related Regulatory Requirements

REQUIREMENT: § 703.7 (c)(3)(I)

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

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

REQUIREMENT: § 703.7 (d)

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

The audit was conducted consistent with this requirement.

SECTION VII
Appendix/Codebook