United States Federal Trade Commission

Mitsubishi Dispute Resolution Process Audit

January - December 2002

Prepared by:
Claverhouse Associates
937 Roxburgh Avenue
East Lansing, Michigan 48823

Table of Contents

Introduction

This 2002 audit of Mitsubishi's Dispute Resolution Process (DRP) 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 2003. 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 Mitsubishi's regions for Georgia (Union City), Maryland (Silver Spring), and Ohio (Dublin), 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, 2003. 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 Mitsubishi's sponsored national third-party informal dispute resolution mechanism, called the Dispute Resolution Process (DRP) as it is administered by the National Center for Dispute Settlement.

Overall Mitsubishi's Dispute Resolution Process Evaluation

Mitsubishi's third-party dispute mechanism, known as the Dispute Resolution Process, as administered by the National Center for Dispute Settlement (NCDS), is 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 areas audited (Georgia, Maryland, and Ohio) 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 II 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 survey sample consisted of 147 closed cases, resulting in 47 completed surveys. The effect of this year's larger, but still relatively small, sample on statistical comparisons is discussed in the survey section of this report. 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 DRP. As has been true in the past, the few statistically significant differences between the figures reported by the DRP 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, DRP personnel, and regulators we interview at both the state and federal jurisdictions view training for arbitrators as an important component of the program. The training provided for the DRP arbitrators advances many of the DRP's 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 this year were found to be 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[2] of Mitsubishi Dispute Resolution Process applicants whose cases were supposed to be closed in 2002 and found to be within the DRP's jurisdiction.

We analyzed several NCDS generated statistical reports covering the DRP 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 Mitsubishi DRP as it operates in Mitsubishi Regions for Georgia, Maryland, and Ohio. We also examined a random sample of current (i.e., 2002) case files for accuracy and completeness. Normally, we would review a random sample of case files drawn from all case files for the previous four years (1999-2002) and inspect them to ensure that these records were maintained for the required four-year period. As this is only the second year of the Mitsubishi NCDS-administered operation, as well as our second audit, we cannot actually review files of the previous four years. We did, however, review NCDS's program for maintaining such files for other manufacturers, as well as their plan for handling the Mitsubishi files, and conclude there is no reason to doubt that the files will be maintained as required. 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 DRP.

In addition, we monitored arbitration hearings in Union City, Georgia; Silver Spring, Maryland; and Dublin, Ohio, and interviewed arbitrators and DRP/NCDS administrative personnel.

To assess arbitrator training, we monitored the NCDS-sponsored training session held in Grapevine, Texas, in June of 2002. 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]

[2] This survey was once again this year somewhat different from most we have conducted in that the total number of cases nationally, and thus the number of cases supplied from which to select a sample, was relatively small. The effects of the small numbers on our survey and analysis are discussed in the Survey Section of this report.

(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 Mitsubishi's informal dispute settlement procedure, known as the Dispute Resolution Process, as it is administered by NCDS.

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

REQUIREMENT: § 703.6 (a) [Recordkeeping]

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

FINDINGS:

The information referenced in subsections 1 through 4 is available from the staff of the National Center for Dispute Settlement, who provided us with access to all pertinent information, which is maintained as required. Our inspection of randomly selected case files for each of the three regions validated these findings. The inspections of case files took place at the headquarters of the program's independent administrator. Review of randomly selected cases to be drawn from the four-year period 1999-2002 was not conducted, as we have already explained, but the program has 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 DRP 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 DRP 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 arbitrator's written decision used by NCDS. This document 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:

These indices are maintained by Mr. Brian Dunn, Director of Dispute Settlement Services, and 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 *Mitsubishi DRP Statistics* identifies 212 DRP disputes filed for 2002. Of these, 154 were eligible for DRP review, and 58 were determined by the DRP to be out-of-jurisdiction. Of the in-jurisdiction closed cases, NCDS reports there were 101 cases arbitrated and 38 cases mediated. There were 86 decisions reported as "adverse to the

[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 Mitsubishi, thereby negating any necessity for providing a document in each individual file.

consumer" per § 703.6 (E), representing 40.6 % of the in-jurisdiction cases and 85.1%[4] of all arbitrated cases.

The *2002 Mitsubishi Makes and Models Report* lists nine models, all of which fall under the general "Make" category of Mitsubishi. Mitsubishi/NCDS also provided us with a report that breaks down the DRP cases associated with each brand category.

Indices are complete and provided as required. 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:

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

DISCREPANCIES:

None

REQUIREMENT: § 703.6 (d)

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

FINDINGS:

[4] This percentage does not include 15 cases which are represented in the statistical index as "pending."

According to Mitsubishi/NCDS DRP statistical index reports, as of December 2002, no 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 which reiterated that there were none. This report includes, where appropriate, the customer's name, case file number, the VIN, 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 DRP 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 is maintained as required. Any inconsistencies found would be addressed in the Survey Section of this report.

(b) 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. [Note: We only viewed cases for two years for this manufacturer because the program is only in its second year. We did review files for other manufacturers however and they are all extant.]

The NCDS Director of Dispute Settlement Services 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 have not administered the program during that period. The records are probably available from Mitsubishi directly.[5] All records pertaining to the NCDS Mitsubishi 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 Mitsubishi, as a matter of corporate policy, always complies with DRP 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.

[5] Because our audit is related solely to the NCDS administration of the Mitsubishi sponsored program, we made no effort to review any aspect of the program prior to their involvement.

(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 DRP at all times, as well as examining the manufacturer's strategies to alert customers to the availability of the DRP 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.

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

- Mitsubishi publishes an *Owner's Manual* that briefly explains, among many other things, the DRP process and how and where to file an application. The manual is distributed by Mitsubishi dealers who provide the brochure as part of the initial information packet given to new customers. The 2002 manual refers to the DRP on page 21. Not unlike other such manuals used by longer established arbitration mechanisms, the initial Mitsubishi Owner's Manual treatment of the DRP needs some fine tuning. For example, the mailing address of NCDS is provided, but not the toll-free telephone number. In addition, the reader is informed that,

  "If you wish to pursue the matter further,
  submit an application describing your concern
  to: National Center for Dispute Settlement,

Dispute Resolution Process, P.O. Box 561109,
Dallas, Texas 75356-1109

A copy of the Dispute Resolution Process brochure can be found in the glove box of the vehicle."

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

Another somewhat problematical issue with this important section of the Owner's Manual[6] is that the manual refers only to remedies provided for under state lemon laws, incorrectly implying that a warranty dispute is governed first and foremost by state law; in fact the opposite is true. The federal Magnuson-Moss Warranty Act and the related Rule 703 have the broader applicability. Unfortunately, the wording found on page 21 might mislead, albeit unintentionally, a reader into believing that only state lemon-laws are applicable to the DRP.

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

- Mitsubishi publishes a 10-page booklet entitled ***Mitsubishi, Dispute Resolution Process*** that contains warranty dispute information and an application form for accessing the DRP. The booklet provides useful and accurate information, including a toll-free telephone number to the NCDS Mitsubishi program.[7]

- Mitsubishi distributed an internal memorandum in December of 2002, which stresses the importance of communicating, to consumers, the availability of the arbitration program (DRP).

- Mitsubishi publishes and distributes a Dealer Guide, and a District Managers Guide. [Note: This publication we found problematic and is discussed below at the conclusion of the review of dealerships section of this report.]

In the Georgia (Union City) area, we visited the following dealerships.

---

[6] We said in last year's audit, "This manual is a 2002 manual and technically is not relevant to the 2001 audit." The material being discussed above is found on page 21 of the manual. It is, of course, relevant for this 2002 audit.

[7] A minor, but useful, improvement would be to add the word "toll-free" to the telephone number because some consumers might not recognize the "866" prefix as indicating a toll-free number.

Team Mitsubishi
1968 Thornton Road
Lithia Springs, Georgia 30122

Mitsubishi South
7310 Jonesboro Road
Morrow, Georgia 30260

Peachtree Mitsubishi
5925 Peachtree Ind. Boulevard
Chamblee, Georgia 30341

In two of three Georgia visits, the dealership personnel we interviewed did provide us with useful information about the DRP when we inquired about customers' options if they have warranty disputes. Two dealerships mentioned arbitration as one customer option and referenced the owner's manual as a source of information about arbitration. In addition, these two dealers also provided a toll-free telephone number for Mitsubishi customer relations. The third dealer we visited in Georgia offered no information or assistance. This is, of course, contrary to the underlying intent of the requirements of the Magnuson-Moss Warranty Act and Rule 703 and requires that Mitsubishi take steps to correct this problem. This single problem does not render the program out-of-compliance or call into question the program's compliance status. However, a widespread failure to provide customers with information about the availability of the DRP at the time a warranty dispute arises would actually threaten the program's compliance status and, therefore, is an issue that should not go unattended. The 2003 Georgia experience, viewed in a vacuum, represents a significant improvement over last year's experience in other parts of the country.

NOTE: Clearly, one of the principal reasons that the annual independent audit requirement was included in Rule 703 was to ensure that sponsoring manufacturers provided for adequate consumer awareness. In fact, the original draft of Rule 703 was modified so as to require this audit, an outcome promoted by manufacturers who suggested that the proposed alternatives were too onerous and, in fact, "draconian." The Federal Trade Commission then declined to mandate the national media campaigns and dealer incentives requirements, opting instead for manufacturer voluntary efforts, 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 (Rule 703) in that section of the rule 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 DRP will be less likely to be informed of the availability of DRP, a situation "at variance" with the regulation's intent.

Our dealership experience in the Maryland (Silver Springs) area was disappointing. We visited only two dealerships here, but neither gave us any accurate information about the DRP. We include in this review a dealership we visited in the Little Rock, Arkansas, area which we visited while conducting another audit review. This dealer visit was most unfortunate because in addition to not providing any useful information about the DRP, we were given grossly inaccurate warranty dispute information. We include this review only because we were unable to review a third Maryland dealership due to traffic congestion that resulted in the third dealer selected being closed by the time we arrived.

In the Maryland (Silver Spring) and Little Rock, Arkansas, areas, we visited the following dealerships:

Mitsubishi Motors
12511 Prosperity Drive
Silver Spring, Maryland 20904

Younger Mitsubishi
1945 Dual Highway
Hagerstown, Maryland 21740

Little Rock Mitsubishi
5720 South University
Little Rock, Arkansas 72209

As concerns the program for DRP information dissemination, our dealer visits in the Ohio area[8] were uniformly disappointing. At none of the Ohio area dealerships we visited did we receive accurate DRP information. Only in one case did an employees appear to know about arbitration generally, but here the information given was mostly inaccurate.

In the Ohio area, we visited the following dealerships:

Spitzer Autoworld (Mitsubishi)
10901 Brookpark Road
Parma, Ohio 44130

Walker Mitsubishi
8457 Miamisburg, Springboro, Pike
Miamisburg, Ohio 45342

O'Daniel Mitsubishi
631 Lincoln Highway
New Haven, Indiana 46774

[8] We sometimes visit dealers in adjacent states, especially where the dealerships are spread out over large geographical areas.

In 2002 Mitsubishi customers who sought assistance from their salespersons were unlikely to receive useful information about the DRP. Few of the salespeople we interviewed could provide any information at all about the DRP.

The toll-free phone number to the Mitsubishi Motors Customer Relations (MMCR) is not specifically designed to facilitate the DRP because its customer relations focus is on maintaining an open line of communication between the servicing dealer or the manufacturer and the customer. The staff person we interviewed at the MMCR was unable to tell us about the DRP, or about the National Center for Dispute Settlement as the administrator of the program. The MMCR was also unable or unwilling to mail us information about the DRP. The clear and stated objective of the MMCR, however, is to keep the customer and the manufacturer or dealer working together to resolve their warranty-related problems. This 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.**

FINDINGS:

This aspect of the DRP received a somewhat poor assessment. Unlike many other manufacturer's arbitration programs, the DRP does not yet generate sufficient numbers of DRP applicants to demonstrate that somehow many customers have managed to access the program.

As with most programs, our visits to dealerships suggested that customers who seek assistance from their salesperson are unlikely to receive any useful information about the DRP. Like other dealership personnel, few of the salespeople we interviewed appeared to have any knowledge of the DRP.

Mitsubishi's strategies for "making customers aware" again this year appear to have less impact than that envisioned by the rules adopted to implement the federal law. There were steps taken, however, to improve this part of audit review. NCDS informed us in June of 2003 that Mitsubishi distributed an internal memorandum in December of 2002, which stresses the importance of communicating, to consumers, the availability of the arbitration program (DRP). In addition, Mitsubishi publishes and distributes a Dealer Guide, and a District Managers' Guide. Page 21 of the Dealer Guide includes directions that may contribute to consumers not necessarily receiving timely information about the arbitration program (DRP). It states in part,

> "...If we have responded to our customer's concern and have been unable to satisfy them, we must notify them of the existence of the 3rd Party Process. This should be done by the DPSM, RPSM, or Mediation Manager when they realize they can find no way to satisfy our customer. **This should never be done by a service advisor or service manager**." (Page 21)

The clear intent of the Federal Trade Commission in promulgating Rule 703 was to ***"...ensure,..."*** among other things, that customers with a warranty dispute know about the availability of the arbitration/settlement Mechanism, "**at the time a warranty dispute arises.**" While that terminology is precise, the intent of the FTC is quite clear that timeliness for the consumer is of paramount importance. The notion of "fairness" embodied in, and throughout, the Rule rules out any program procedure that serves to delay the customer's knowledge of, and accessibility to, the Mechanism (i.e., the DRP "3rd Party Process".) To require that a consumer must be referred by one employee to yet another employee to be given accurate simple information about the DRP amounts to an "unnecessary hurdle" that was not envisioned by the Federal Trade Commission. Of course, such procedures are completely legitimate within the confines of a manufacturer's own customer relations program, but the DRP is not such a program. The DRP is a highly regulated process designed to avoid the necessity of litigation and afford disputants a "fair and expeditious resolution of warranty disputes." When the manufacturer, or their dealer agent, must advise the consumer of the availability of the program is a matter that is dictated by the customer's state of mind (i.e., when the customer is unsatisfied with how the manufacturer, or their dealer agent, has dealt with a warranty problem that was brought to their attention with an associated request for assistance.) This principle has been universally accepted by regulators throughout the country. Otherwise, customers could simply be required to leap one hurdle after another with predictable consequences. Any program operating in such a manner would be clearly unfair, and consequently not in compliance with Rule 703.

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 a more clear operational definition of the phrase, **" ... at the time consumers experience warranty disputes."** Still, the FTC makes it clear that a warranty dispute does arise when a "..consumer has attempted, and failed, to get warranty performance."(see "Proceedings, [Rule 703], Federal Register, Vol. 40, no. 251, December 31, 1975, page 60193.) Consider then the common experience of a customer returning to the dealership with an intermittent problem that the dealer cannot immediately duplicate. A typical scenario, common to most manufacturers is that the customer leaves the dealership with his/her vehicle and the matter is, thus, concluded. With the instructions provided in the above referenced Dealer Guide, there is no procedure whereby the customer is informed of the availability of the DRP for resolution of their clear warranty dispute. The customer in this common automobile scenario has experienced a problem with their under-warranty vehicle; has attempted to get warranty performance; and, has failed to receive performance. Thus, this hypothetical consumer has a warranty dispute and the likelihood of their being timely informed of the availability of the DRP is nil. If the dealer's service advisor follows the Dealer Guide policy, they would not advise the

consumer. How then, does the Dealer Guide referenced, DPSM or the RPSM come to know about this warranty dispute in order for them to abide by their responsibility to inform the customer as outlined in the Dealer Guide? The answer is, they do not, and therefore it is reasonable to conclude that such consumers are not being notified per the regulatory requirement.

Rule 703 at § 703.2 (c) and (d) both address the manufacturer requirements concerning this issue. Importantly, the FTC speaks to this very issue:

> Both paragraphs (b and c) reflect concern expressed in the Senate Report which stressed that Mechanisms (e.g., DRP) will be useful ***only if their existence is known.*** [Emphasis added]

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 important role in facilitating "fair and expeditious" warranty dispute resolution may do so with regulatory impunity. It is not likely that consumers will be advised according to the requirements set forth in Rule 703, if the manufacturer communicates to the dealership,as Mitsubishi has done, that,

> "...If we (Mitsubishi) have responded to our customer's concern (via dealer) and have been unable to satisfy them, we must notify them of the existence of the 3rd Party Process. This should be done by the DPSM, RPSM, or Mediation Manager when they realize they can find no way to satisfy our customer. **This should never be done by a service advisor or service manager**."

Such a directive as this, is inconsistent with Rule 703 and will need to be addressed by Mitsubishi.

One final point on this difficult subject. The FTC considered, at the time Rule 703 was adopted, the difficulties envisioned by some during the comment phase of the rule-making process, and said:

> *The Commission is aware of general testimony on the public record regarding differing warrantor distribution and marketing methods. Some warrantors retain direct control over dealers or service centers by means of franchise agreements. This arrangement lends itself easily to provision of Mechanism information to retailers* ***since the warrantor may require retailers to provide this information by including the requirement as part of a dealer/warrantor agreement.*** [Emphasis added] (See "Proceedings, [Rule 703], Federal Register, Vol. 40, no. 251, December 31, 1975, page 60198, column 3, para. 2.)

DISCREPANCIES:

None, with the qualifier given immediately above as a critical 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 Mitsubishi Dispute Resolution Process administered by the National Center for Dispute Settlement.

The many forms used by DRP comprise an important aspect of the arbitration program. The forms we reviewed are "user friendly," well balanced, and provide sufficient information to properly inform the parties without overwhelming them with non-essential paperwork. Overall, the DRP 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' DRP (Mitsubishi) program that we reviewed well within the regulatory expectations.[9]

DISCREPANCIES:

NONE

NCDS general policies for the Mitsubishi DRP 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 DRP are in substantial compliance with the federal regulatory requirements.

2) Investigations

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

Field audits, monitoring of arbitration hearings, reviews of case files, and interviews with (i.e., Arbitrators) found no requests by arbitrators for technical information, but NCDS assures us that such information would be provided upon request.

We included arbitrator requests for Technical Assessment under this investigative category. In the past, arbitrators, in most 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 all too commonly 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

[9] In reference to the *Customer Arbitration Application,* we note that there is some information solicited that raises questions, in our minds, about its purpose and applicability to the arbitration process. For example, "Are your loan/lease payments current? Yes - No." We are not aware of any implication this question might have on an arbitrator's ability to render a decision or on NCDS' ability to process the case as envisioned by Rule 703. Moreover, § 703.5 (c) suggests that: **"The Mechanism shall not require any information not reasonably necessary to decide the dispute."**

inspections. 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 DRP.

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 on the appropriate use of independent inspections and TA assistance in arbitrator training. The DRP 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.*

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.

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 DRP application and Mitsubishi provides it on the NCDS form entitled, *Manufacturer's Response Form*.

The *Customer Arbitration Application* does not, however, 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 DRP 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 DRP 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**

This facet of the arbitration program was historically carried out exclusively by the manufacturer or its dealers. The NCDS/Mitsubishi process attempts to mediate the case prior to arbitration by having a trained staff person contact the customer and Mitsubishi 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 is in no way intended to impede or delay a customer's access to arbitration. The degree to which performance of mediated resolutions conforms with time limit requirements is reviewed in the survey section of this report.

4) **Follow-up**

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

When the customer accepts a settlement offer or an arbitration decision, NCDS monitors the promised performance. NCDS logs the performance information into the file. Once a decision mandating some action on the part of Mitsubishi 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 at NCDS.

The recording of performance and maintenance of the DRP records was 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 DRP uses two arbitration formats: a) a board consisting of three arbitrators; or b) individual arbitrators. Customers may opt to use either format. Importantly, in the board process, the decisions are arrived at after considering only documentary evidence; it excludes oral presentations. Of course, customers may opt for a one-

member hearing, in which event oral presentations may be 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.[10]

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

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

In most cases, the NCDS process involves a single arbitrator. In this format, additional information may be presented in writing or in an oral presentation. Moreover, the hearing is typically held outside 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 Mitsubishi dealership.

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

FINDINGS:

The DRP'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 principals 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.

---

[10] Each facet of the DRP 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.

Arbitrators are volunteers whose only compensation is a nominal per diem and mileage expense allowance.[11] 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 DRP hearings/meetings are rarely attended by parties other than the parties and a Mitsubishi 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 DRP 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-Mitsubishi 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 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:*** [Again, while this past example does not apply directly to Mitsubishi, who doesn't even sell trucks, we feel it is nevertheless instructive because it highlights a problem that, in our experience, emerges periodically in most automobile warranty arbitration programs.]
>
> > ***The Customer's*** [make and model identification removed as unimportant to this Mitsubishi report] ***Truck does not qualify for coverage under the State***

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

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.[12] 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.

NCDS has informed us that they continue their efforts to address the alluded to "boilerplate" problem including explanations provided at arbitrator training to ensure that arbitrators understand that "Lemon Law" thresholds for establishing presumptions do not, as a general proposition, serve as a threshold for their awarding "buy back" relief. What could be true in a state statute is that a threshold could be established as a precondition for accruing some benefit established by that statute, but this would not affect the arbitrator's scope of authority existing under the broader federal law. In other words, meeting some "number of repair attempt threshold under a state statute may serve to put a given arbitrator, in a given case, in a position of wanting to explain why they have elected to avoid applying their state's presumption when it would have resulted in likely repurchase or replacement, but a customer's failure to meet that presumptive threshold (e.g., three or more unsuccessful repair attempt) may be irrelevant under the broader federal standard (i.e., has the manufacturer been given a reasonable opportunity to cure the non-conformity). At our review of arbitrator training in June of 2002, we confirmed that the NCDS efforts continue and are having some noteworthy effects. Importantly, the above discussion pertaining to "boiler plate" language does not suggest any problem with the Mitsubishi program in this regard.

---

[12] 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 vehicles 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 one would still be able to argue that they should be granted relief.

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

DISCREPANCIES**:**

None

SECTION III

On-Site Audit of Regional Areas

I. Georgia [Union City] (Mitsubishi, Southeastern Region)

A. Case Load and Basic Statistics

In the Southeastern Region, which includes Georgia, NCDS handled 51 DRP cases in 2002, of which 16 were "no-jurisdiction" cases. There were 23 cases arbitrated (65.7% of in-jurisdiction cases[13]), and 6 (17.1% of in-jurisdiction cases) were mediated. The average number of days for handling a 2002 case in the Southeastern Region was 35 days, the same as the national figure.

B. Recordkeeping, Accuracy and Completeness

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

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:

[13] This percentage does not take into the calculation the 5 cases included in the "pending decision" category.

The auditor examined the case file folders extracted from all 2002 "in-jurisdiction" case files. We examined each sample file with respect to the items enumerated in subsections 1 through 5, with the following results:

l) 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 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 Mitsubishi 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's 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. According to NCDS staff, this issue is currently being addressed by a policy requiring that a summary of all parties' verbal communications to the arbitrator that could affect his/her decision be placed into the case file. In all cases, this summary is now included in the case decision.

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 case numbers for the three years prior to the audit year 2002 is typically drawn from NCDS' universe of all a given manufacturer's files. In our field inspection, we, of course could not check old files for the Mitsubishi program since the NCDS program is so new. We did check sample case files at the NCDS national office in Dallas for the other manufacturers to verify that they were being maintained per requirement § 703.6(f). In addition, a visual inspection was made of the entire accumulation of case files to determine if they are being maintained as required by the same section.

The closed files for the other NCDS programs for the years 1999 through 2002 are stored in a separate file room 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. The Mitsubishi files are to be maintained consistent with the manner in which the other files are maintained.

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 consulted with the parties and took testimony. The hearing was held at the Don Jackson Mitsubishi Dealership, 3950 Jonesboro Road, Union City, Georgia, on June 2, 2003, and began at 12:00 pm, an hour later than the time scheduled due to an illness in the arbitrator's family.

i. Physical Description of Hearing

The hearing was conducted in a large conference room that was reasonably arranged for the purposes of the hearing. Attending were the customers, two Mitsubishi representatives, two Mitsubishi dealer service representatives, the auditor, and the arbitrator. A customer, a Mitsubishi dealer representative, and a Mitsubishi manufacturer's representative all made oral presentations.

The audit included interviews with arbitrator and parties attending the hearing. The auditor discussed hearing procedures with the arbitrator following the hearing.

ii. Openness of Meeting

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

iii. Efficiency of Meeting

The hearing was efficiently conducted, with the arbitrator giving a useful and accurate description of the process. Questions, he announced, would be afforded each side after oral presentations. The arbitrator then inaccurately said that he was required to apply the state lemon-law mileage off-set formula.

iv. Hearing

During his opening statement, the arbitrator suggested that he would make a decision if there was no mediated settlement during the hearing and then described the two forms available.

This arbitrator appeared to be committed to fair and expeditious resolution of warranty disputes. He performed his responsibilities in a reasonably proficient manner affording the participants an adequate opportunity to be heard. He allowed questions from each of the parties and then and took two test drives.

v. Board/Arbitrator Decisions

We reviewed a randomly selected sample of decisions [14] 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. There were a few decisions that contained inappropriate language that suggested the arbitrators in those cases incorrectly viewed a state lemon law statute's "presumption" language as a threshold that customers need to reach in order to obtain a refund or replacement decision. It appears to us that this problem is being addressed by NCDS and is clearly an exception to the rule.

We also reviewed the decision in this case and found it well reasoned, thorough and complete.

CONCLUSION:

The DRP, as it operates in Georgia (Southeastern Region,) is in substantial compliance with Rule 703. The NCDS administrative staff and the assigned arbitrator 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.

[14] While we normally would review cases specific to this region, the newness of the program and the limited number of Mitsubishi cases for 2002 suggested it would be better to draw our sample from the entire universe of Mitsubishi cases.

II. Maryland [Silver Spring] (Northeastern Region)

A. Case Load and Basic Statistics

In Maryland (Northeastern Region), NCDS handled 49 DRP cases in 2002, of which 11 (22.4%) were "no-jurisdiction" cases. There were 24 cases arbitrated (63.1% of in-jurisdiction cases), and 13 were mediated (34.2% of in-jurisdiction cases). The average number of days for handling a 2002 case in the Northeastern Region was 36 days as compared to 35 days for all Regions combined.

The Northeastern Region field audit includes a review of a hearing held in Silver Spring, Maryland, and interviews with the principal people involved in the hearing. In addition, we reviewed case 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 would typically inspect the warehousing of all DRP case files for the required four-year period.[15] The four-year accumulation of case files was not available for inspection per all regulatory requirements because the program is still quite new. The current case files, however, are maintained as required.

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

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

B. Recordkeeping Accuracy and Completeness

§ 703.6 (a)(1-12)

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

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

FINDINGS:

[15] See 16 C.F.R., § 703.6 (f)

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:

l) 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 because 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 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. In regard to summaries of oral presentations, 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 Mitsubishi 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. Some files we reviewed contained no such documentation. This defect is currently being addressed by a policy requiring that a summary of all parties' verbal communications to the arbitrator that could affect his/her decision be placed into the case file. In all cases, this summary is now included in the case decision.

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. 1999-2002[16])

§ 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 for the three years prior to the audit year 2002 is typically drawn from NCDS' universe of all a given manufacturer's files. In our field inspection, we could not, of course, check old files for the Mitsubishi program since the NCDS program is so new. We did check sample case files at the NCDS national office in Dallas for the other manufacturers 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 where that is possible to determine if they are being maintained as required by the same section.

The closed files for the other NCDS programs for the years 1999 through 2002 are stored in a separate file room 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. The Mitsubishi files are to be maintained consistent with the manner in which the other files are maintained.

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.

[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.

ii. Arbitrator Biographies

The arbitrator biographies 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 includes the dates of their appointments.

E. Hearing Process

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

The DRP hearing was held at the Darcars Mitsubishi dealership, 12511 Prosperity Drive, Silver Spring, Maryland. The meeting room was adequate size for accommodating anyone who wished to attend as an observer. The parties included two customers, one Mitsubishi manufacturer representative and one dealer representative, the arbitrator, and the auditor.

ii. Openness of Hearing

This arbitrator appropriately allowed all observers at DRP meetings (hearings).

iii. Efficiency of Meeting

The arbitrator's case file was complete with all requisite documents. The arbitrator demonstrated that he knows how to properly conduct a hearing. He addressed the parties, giving a thorough overview of the process, and provided an adequate case opening statement setting forth the particulars of the dispute. Importantly, he stressed to the customer that at some point during the presentation the arbitrator should be clearly told what is being requested in the form of relief.

The meeting began at the scheduled time of 10:00 am.

Both parties were given an ample opportunity to present their cases without interruption and then the hearing was concluded.

iv. Hearing

The hearing was a model of the best form we have witnessed.

v. Board/Arbitrator Decisions

We reviewed this case's decision and a sample of other 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 thorough and basically consistent with the regulatory requirements, but it did raise one important question: should a visit to the dealership by a customer seeking warranty repair assistance constitute a "repair attempt" as envisioned by the applicable state and federal law. This arbitrator found that, "the number of repair attempts... are not unreasonable" and therefore denied the customer's requested relief. We do not question the arbitrator's right to come to this conclusion, but we do believe that it is incumbent on the arbitrator to explain why he concluded that a customer's visit to a dealership seeking warranty repair to a leak that the dealer failed to accurately diagnose, does not constitute a repair attempt. By the arbitrator's own account there were five trips (November of 2002; January of 2003; February of 2003; March of 2003; and April of 2003) to the dealership by the customer seeking repair of a leak that was eventually found to exist. With the five accounted for visits tallied in the arbitrator's decision, he nevertheless found that: "...there were several, probably three (3) repair attempts...,this [he goes on to say,] cannot be considered unreasonable."

What is "a reasonable number of repair attempts," and what is "an unreasonable number of repair attempts" is clearly for the individual arbitrator to determine. In this case, however, the arbitrator details in his decision five visits seeking repair of a problem and yet concludes that the number of repair attempts is "...probably three..without informing his reader why he apparently rejected two visits as constituting bona fide repair attempts. We find that unreasonable. We hope he did not reject a customer's visit to the dealership for a warranty repair as a "repair attempt" simply because the dealership failed to accurately diagnose what was later discovered to be, in fact, a water leak, as initially represented by the customer. If that were the case, the arbitrator's logic would have to be seriously questioned because following that logic, a customer who experienced a multitude of failures would similarly have to be denied, provided the dealership who repeatedly fails to properly diagnose and repair, finally does so. Indeed, it was just such illogical reasoning being played out over many years that resulted in state statutes being adopted in all 50 states, creating, in one form or another, presumptions as to what constitutes, "a reasonable number of repair attempts," as envisioned by the federal law.

We cannot conclude that this arbitrator, in this case, made that mistake given the language of his decision, but the decision and its underlying rationale suggest he may have done so. In any event, it suggests to us that arbitrator training may need to address this question, since the arbitrator suggested that one of the parties contended that the manufacturer does not reimburse dealers for warranty repairs if the problem is not verified. Further, the arbitrator says that "the dealer found a problem only during the April visit, so only a single repair attempt was made..." This suggests that the arbitrator may have inappropriately adopted the manufacturer's policy regarding warranty repair reimbursement as a proper means by which to evaluate whether there were an unreasonable number of repair attempts.

Conclusion:

The DRP, as it operates in the Northeastern Region, is in "substantial compliance" with Rule 703. The NCDS administrative staff demonstrates 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 we audited at the Silver Spring, Maryland, is also committed to fair and expeditious resolution of warranty disputes although there should be some clarification made with regards to the decision rationale.

III. Ohio, [Dublin] (Mitsubishi, North Central Region)

A. Case Load and Basic Statistics

The North Central Region generated 35 cases in 2002 of which 6 (17.1%) were determined to be "not-in-jurisdiction" cases. The program also reports 6 mediated cases (20.6% of in-jurisdiction cases) and 20 arbitrated cases (68.9% of in-jurisdiction cases). The average days for handling a 2002 case for this Region is 35, the same number of days reported for the nation.

The North Central Regional field audit includes a review of a hearing held in Dublin, Ohio, and interviews with the principal people involved in the hearing. In addition, we reviewed case 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 DRP case files for the required four-year period.[17] The four-year accumulation of case files was available for inspection per all regulatory requirements.

We requested a random sample of 50 cases drawn from all cases closed during the audit period[18] and examined the sample provided to determine whether they were complete and available for audit. These files were reviewed for accuracy and completeness. The findings of that review are set forth below. The staff at NCDS were efficiently housed and provided with up-to-date equipment.

B. Recordkeeping Accuracy and Completeness

§ 703.6 (a)(1-12)

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

---

[17] See 16 C.F.R., § 703.6 (f)

[18] We made this request prior to receiving the statistics which showed that there were not 50 cases available. Since there were only 29 closed cases for 2002, we examined them all.

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:

l) All case files contained the customer's name, address, and telephone number.

2) The requirement is met. The name and address of the warrantor's contact person is included with the initial correspondence that the customer receives from the program. In addition, the manufacturer's contact address and phone number is included in each Owner's Manual that accompanies all new vehicles when they are delivered. The contact person is so generally known as to not require it to be placed in each individual case file.

3) All case files inspected contain the make and vehicle identification number (VIN) of the vehicle. This information is generally found in the customer application and in a number of other documents in the file. As a result, cases are rarely delayed simply because the customer fails to include the VIN in the application.

4) All case files inspected contain this information. Not all cases necessitate a decision letter, but where a decision was rendered, the appropriate notification letter was present.

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

§ 703.6 (a) [continued]

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

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

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

FINDINGS:

All files for cases that were arbitrated contained the information required by sections six, seven, and eight.

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

FINDINGS:

All applicable case files contain a letter from the arbitrator(s) announcing the decision.[19]

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 Mitsubishi 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

[19] 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 DRP but prior to the hearing to decide the matter.

additions to the files. Section 12 however appears to mandate that a summary form be created whenever the arbitrator receives an oral communication from a party which may have any bearing on the matter in dispute. The files we reviewed contained the appropriate summaries.

CONCLUSIONS:

The Mitsubishi DRP 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.

A random sample of case numbers for the three years prior to the audit year 2002 is typically drawn from NCDS' universe of all a given manufacturer's files. In our field inspection, we, of course could not check files for 1999 and 2000 for the Mitsubishi program since the NCDS program is so new. We did check sample case files at the NCDS national office in Dallas, for the other manufacturer's 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 where that is possible to determine if they are being maintained as required by the same section.

The closed files for the other NCDS programs for the years 1999 through 2002 are stored in a separate file room in the NCDS office. The files we viewed appeared intact and were readily available for inspection. The random sample inspection of case files drawn from all cases available in the four-year universe of cases validated the program's maintenance of these records as required. The Mitsubishi files are to be maintained consistent with the manner in which the other files are maintained.

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

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)

i. Physical Description of Hearing

We monitored a hearing held at a Roby Mitsubishi dealer in Dublin, Ohio. The hearing was held on April 4, 2003 at 10:00 am. The hearing room very spacious and able to accommodate the number of people present and could easily accommodate observers as well.

ii. Openness of Meeting

We interviewed the arbitrator to determine if all observers are allowed to attend the hearing. He assured us that observers are allowed pursuant to NCDS policies and procedures.

iii. Efficiency of Hearing

The arbitrator contacted both of the parties to schedule the meeting without discussing any of the case particulars. The arbitrator is deemed professional and conducted the hearing consistent with his responsibilities. He apparently did not discuss with the dealer the need to have a room for the hearing free of interruptions by public address speakers. The PA system was activated several times during the hearing and was noticeably irritating to parties during their oral presentations.

iv. Hearing Process

Attending the hearing in person were the customer, a Mitsubishi representative, a dealer service representative, the arbitrator, and the auditor.

The hearing was not professionally conducted. The arbitrator, in explaining the two possible resolution forms including a settlement agreement, and decision form, inappropriately communicated his preference for resolving the matter by mediation. Later, during the hearing, he allowed the parties to raise any questions they had, but the customer was allowed to use this opportunity to virtually attack the manufacturer representative by asking inappropriate cross-examination type questions that cast aspersions on his character. Her behavior was allowed to continue and created an atmosphere of gross hostility that was as unnecessary as it was inappropriate.

The arbitrator, at the inception of the hearing, gave a thorough and accurate explanation of the arbitration process, and provided all parties a relatively unfettered opportunity to present their cases. One additional exception was when one of the parties cell phone began ringing during the hearing because the arbitrator neglected to ask all parties to turn off their cell phones/beepers etc. as part of his opening remarks.

We conclude that the hearing, while within regulatory minimum requirements, was, at times, unprofessionally managed.

v. Board/Arbitrator Decisions

We reviewed this case's decision and a sample of other 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 thorough, albeit brief, and consistent with the regulatory requirements.

CONCLUSION:

The DRP, as it operates in this region, is efficient, thorough, and within all applicable federal guidelines. The administrative facet of the program affords its customers an opportunity for fair and expeditious resolution of warranty disputes. They also have responsibility for selecting and training arbitrators. It is abundantly clear to us that the DRP arbitrators generally, are well motivated, well meaning individuals committed to a fair process.

In summary, the DRP as it operates in the North Central Region, is, in our view, in substantial compliance with the requirements of Rule 703.

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 Act[20] 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 Mitsubishi'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.

---

[20] Also addressed was the Act's related administrative rules commonly known as Rule 703.

CONCLUSION:

The NCDS arbitrator training program for the Mitsubishi DRP 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.

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

MITSUBISHI MOTOR SALES
DISPUTE RESOLUTION PROGRAM INDICES

The Federal Trade Commission (FTC) regulates informal dispute resolution programs such as those operated by the Mitsubishi Motor Sales under FTC Rule 703.6(e). FTC Rule 703.6(e) mandates disclosure of statistics concerning the outcomes of warranty disputes and warrantor compliance with settlements and awards. The major purpose of this section of this audit is to verify the statistics provided by the company for the year 2002.

To have a dispute arbitrated by Mitsubishi's Dispute Resolution Process (DRP),a consumer must meet program specific criteria. He or she must be the owner of a vehicle that does not exceed mileage and age requirements, and he or she must agree to forego legal action while the case is open. If these requirements are not met, the dispute is said to be "out of jurisdiction," and therefore ineligible for the program.

Complaints regarding warranty coverage can be resolved at two levels. If a consumer who has filed a complaint comes to an agreement with Mitsubishi without an arbitration hearing, the dispute is said to have been "mediated." If the consumer and Mitsubishi Motor Sales cannot agree, the consumer's case is heard before an arbitrator or panel of arbitrators who then issue a decision to which both parties agree to abide. Arbitrated cases can result in a decision requiring Mitsubishi to repair or replace a vehicle, provide a cash reimbursement, or the consumer may receive no relief.

The FTC stipulates that arbitration decisions be rendered within 40 days. Warrantors are required to comply with both mediated settlements and arbitrated decisions within 30 days. Consumers dissatisfied with a jurisdiction decision of the program have the right to request reconsideration by the board, although the board is not obligated to hear the request.

FTC 703.6 (e) precisely defines statistics (also called indices) in 13 areas that are to be reported by warrantors. These indices include: the proportion of mediated and arbitrated warranty disputes in which a warrantor complied with a settlement or an award; the proportion in which the warrantor did not comply; the proportion of decisions adverse to the consumer; the proportion of out-of-jurisdiction disputes; and the proportion of cases delayed beyond 40 days. The audit also serves to evaluate the overall program and process.

To verify the DRP's warranty dispute statistics, the Survey Research Division of the Institute for Public Policy and Social Research (IPPSR) of Michigan State University, in cooperation with Claverhouse Associates, surveyed customers of Mitsubishi Motor Sales who filed disputes with the DRP. The main purpose of this survey is to determine whether the consumers' recollections of what occurred during the warranty disputes were similar to what was contained in the DRP's records. The intent is not to determine whether individual consumers' recollections were the same as Mitsubishi's records of their cases but to determine whether the

aggregate proportion of disputes reported by Claverhouse survey respondents is equivalent to the proportion of disputes with the same outcomes according to the DRP's records.

ABOUT THE STUDY

This study was based on 47 surveys completed from the total of 147 cases provided by the DRP. Because the number of cases supplied by Mitsubishi was so small, we included all cases in our survey. If a customer had more than one warranty case, only the most recent case was used.

Data collection for this study was by a self-administered questionnaire. IPPSR used the methodology designed by Professor Donald Dilman of the University of Washington, a nationally renowned expert in the field of self-administered questionnaires. An initial mailing of the survey, cover letter, and postage paid envelope was made to the 147 potential respondents on March 12, 2002. One week later (March 19, 2002) a "thank-you/reminder" postcard was sent to the entire sample. Because each respondent was assigned a unique number for tracking purposes, the status of each person's survey could be determined. Through this process, the staff at IPPSR was able to record which respondents returned their completed questionnaires and eliminate from the sample those sent back due to invalid addresses. Approximately three weeks after the initial mailing (April 9, 2002), a second mailing was sent to those who had not yet returned their questionnaires. Two weeks after that date, a phone call was placed to those who had still not responded asking them to return their completed questionnaires. Of the 147 questionnaires initially sent, 47 were returned completed. The questionnaire responses were then entered, proofed and coded by IPPSR staff. The completion rate for this study is 32.0 percent.

One threat to the validity of any study is non-response bias. This refers to any systematic reason certain consumers selected for participation were unavailable or refused to participate, which could bias the results in one direction or another. For example, if those who did not receive arbitration awards were much more likely to refuse to participate than those who received awards, the survey would systematically underestimate the proportion of decisions averse to consumers. The practice of sending follow-up postcards, second mailings, and reminder postcards is designed to ensure high cooperation among survey participants.

Because the sample of 47 cases is a simple random sample, the sampling error is ±11.8%.[21] This relatively large margin of error is a result of the small sample size. To get a margin of error of, for example, ±6.0 percent would have required that 97 of the 147 mailed survey questionnaires (66.0 percent) be returned.

RESULTS

Method of Resolution

[21] This is the sampling error when the responses divide roughly 50-50 on a given question and when there are 47 cases, and given a 95% confidence interval (i.e., in which there is only a 1-in-20 chance that the actual proportion in the population falls outside the range of 50±11.8 percent). The magnitude of the sampling error in a simple random sample is determined primarily by the sample size but also to some extent by how evenly divided the responses are between alternative answers. The more extreme the distribution of responses, then the smaller the sampling error.

Disputes can be resolved by mediation ("prior resolved"), in which the consumer and the company come to a mutually acceptable agreement, or by an arbitration hearing in which the dispute is resolved by a third party ("arbitrator"). As shown in Table 1, the survey respondents report 31.9 percent of disputes resolved by mediation and 68.1 percent by arbitration. Since survey data includes only in-jurisdiction cases, we compare survey percentages with percentages of in-jurisdiction cases in the DRP indices, although the DRP indices also report mediations and arbitrations as percentages of all cases. The DRP indices report 27.3 percent of closed disputes resolved by mediation and 72.7 percent resolved by arbitration. The differences between the survey results and the DRP indices are not statistically significant at the 95 percent confidence interval.

Table 1[22]
Method of Resolution of Warranty Disputes
Comparison Between Claverhouse Survey and DRP Indices

Method of Resolution	**Claverhouse Survey**		**DRP Indices**		
	Number	Percent	Number	Percent	
				of cases in jurisdiction	of all cases
Mediation	15	31.9%	38	27.3%	19.3%
Arbitration	32	68.1%	101	72.7%	51.3%
Out of jurisdiction	-	-	58		29.4%
Total	47	100.0%	197	100.0%	100.0%

Mediated Cases

FTC 703.6(e) parts 1 through 3 requires the disclosure of the proportion of mediated settlements with which warrantors have complied according to their records, the proportion of mediated settlements with which the warrantor has not complied, and the proportion in which the time for compliance has not yet occurred. According to the DRP indices, Mitsubishi was in compliance with 89.5 percent of the mediated settlements (see Table 2). Survey respondents reported compliance with 86.7 percent of mediated cases. The difference is not statistically significant.

In the survey, respondents were asked about manufacturer performance of mediated settlements. Table 2 shows that the vast majority (88.1 percent) of survey respondents whose

[22] Because not all respondents answer all survey questions, totals may vary from table to table.

cases were mediated reported receiving the settlement. The differences between the survey results and the DRP indices are not statistically significant.

Table 2
Outcome of Mediated Settlements
Comparison Between Claverhouse Estimates and DRP Indices

Mediation Settlements	**Claverhouse Survey**	**DRP Indices**
	Percent (Number)	Percent (Number)
Resolved, manufacturer has complied	86.7% (13)	89.5% (34)
Resolved, manufacturer has not complied	13.3% (2)	0.0% (0)
Time for compliance not yet occurred	0.0% (0)	10.5% (4)
Total	100.0% (15)	100.0% (38)

Table 3 shows the specific settlement the consumer reached with the dealer or manufacturer.

Table 3
Specific Outcomes of Mediated Settlements
Claverhouse Survey

Outcome	Percent (Number)
Cash settlement	37.5% (5)
New vehicle	28.6% (4)
Paid for repairs	14.3% (2)
Voucher	7.1% (1)
Other	14.3% (2)
Total	100.0% (14)

Other evidence in the survey also suggests that compliance with mediated settlements is not a problem. Of those whose disputes were mediated, all of the respondents reported they were ultimately pleased with their settlements, and only one reported pursuing the case further.

We asked survey respondents whether they talked to the DRP staff or returned a postcard to the staff about how they felt about the handling of their cases. Three respondents had talked with the staff; six had returned a postcard; four did neither; and, two did not answer the question.

Overall, the survey results confirm the DRP statistics in the area of mediated cases. Furthermore, those with mediated cases seem generally pleased with the program.

Arbitrated Cases

Before being asked about the outcomes of their cases, respondents who said that their cases went to arbitration were asked a series of questions about the procedures leading up to the hearing of their cases. They were first asked if they recalled receiving the forms in which their claims were set forth. Of the respondents whose cases were arbitrated, 81.8 percent said that they remembered receiving the forms. Of those, 44.4 percent said that the forms stated their claims very accurately, and 55.6 percent said somewhat accurately; none said not at all accurately. For those who said that their claim was very accurately stated, 75.0 percent reported they had received some type of award as did 60.0 percent of those who said their claims were stated somewhat accurately (see Figure 1).

Respondents were also asked whether they were notified of the time, place, and date of the hearing and whether they had attended the hearing. Most of the respondents (90.9 percent)

said that they received notification of the hearing; 46.9 percent said that they had attended the hearings at which their cases were decided.

Under FTC 703.6 (e) (4-7), warrantors must report the proportion of arbitration decisions with which they believe they have complied, the proportion of arbitration decisions with which they have not complied, the proportion of arbitration decisions in which the time for compliance has not occurred, and the proportion of arbitration decisions adverse to consumers.

Table 4 presents information about the outcomes of arbitrated cases. In the survey, 35.5 percent of those respondents who answered the relevant questions had been granted an award (25.8 percent had been granted and accepted an award and 9.7 percent had been granted but rejected an award), as compared with the 14.9 percent reported in the DRP indices. DRP indices do not, however, report the number of awards rejected by consumers. The difference is statistically significant, but again we must remember that we are working with *very* small numbers.

A second statistically significant difference, as shown in Table 4, is that the proportion of respondents in the sample with arbitrated cases who said their decisions were adverse (i.e., no award) to them (64.5 percent) is smaller than the proportion of cases reported to be adverse in the DRP indices (85.2 percent). Both this difference and the one noted in the previous paragraph could be due to non-response bias if those with adverse decisions were more likely to chose not to participate in the survey. The difference in proportion of adverse decisions could also be the result of the two sources (i.e., customers and Mitsubishi) not sharing the same operational definition of the term, “adverse,” or,

INSERT FIGURE 1

alternatively, the customer received some favorable outcome after DRP involvement that affected the his/her perception of the process and his/her response to the question about dispute outcome. In any case, the differences are not ones that would cast Mitsubishi in a more favorable light so the DRP would have no incentive to inflate these numbers. The differences, although they are statistically significant, are not a matter of concern since they are both in the consumer's favor.

Table 4
Outcomes of Arbitrated Warranty Disputes
Comparison between Claverhouse Survey and DRP Indices

	Claverhouse	**DRP**
Award Granted and Accepted FTC 703.6(e)	Percent of Arbitrations (Number)	Percent of Arbitrations (Number)
(4) Decided by board and warrantor has complied	22.6% (7)	14.9% (15)
(5) Decided by board and warrantor has not complied	3.2% (1)	0.0% (0)
(6) Time for compliance not yet reached	0.0% (0)	0.0% (0)[a]
Total decided and award granted and accepted	25.8% (8)	14.9% (15)
Award granted & *not* accepted by consumer	9.7% (3)	0.0% (0)[b]
(7) Arbitrated adverse to consumer	64.5% (20)	85.2% (86)
Total number of arbitrated decisions	100.0% (31)	100% (101)

a. This number is not included in calculations because the survey includes only closed cases, and there is, thus, no comparable category in the survey responses.
b. DRP indices do not provide this information.

Of the survey respondents who were granted and accepted awards, only one respondent (12.5 percent) reported that Mitsubishi had not complied with the arbitration decision; DRP indices also reported that Mitsubishi had complied with all decisions.

Survey respondents whose cases were arbitrated were asked whether or not they had pursued their cases further after the arbitration decision. Nine respondents (32.1 percent) said that they had done so. Of these, five contacted an attorney; one worked out a solution with the dealer or manufacturer; five contacted a state government agency; and, two re-contacted the DRP. The total is greater than nine because some respondents pursued their cases by more than one means.

Delays to Decisions

Under FTC 703, warrantors must report the proportion of cases in which decisions were delayed over the 40 days allotted. Warrantors must provide the reasons for delays, based on the following categories: consumer making no attempt at redress; consumer failing to submit required information in a timely manner; and, for any other reason.

The survey results do not support the DRP indices with respect to the proportion of delayed arbitration decisions. Overall, 14.3 percent of the survey respondents reported that their cases took more than 40 days. DRP indices report no cases delayed beyond 40 days (see Figure 2). This difference is statistically significant but can be partially attributed to two factors. First, the DRP considers a case to be opened when the forms are received in the office and processed. Consumers often think of their cases as being opened either when they first had problems with the car or when they mailed the forms. In addition, consumers who received no award at all and those who are still experiencing problems with their vehicles may not consider their cases "closed" although the DRP does. Second, there is the issue of recall. In the data collection process, survey respondents are asked to recall the dates of events that happened, in many cases, over a year ago. This factor alone can result in error on the part of consumers since many have not kept complete records of these events.

To examine the recall issue, we examined the dates supplied by the survey respondents. Only 21.3 percent of respondents attempted to give complete dates for the openings of their cases, and, of course, we do not know whether these dates matched those recorded in the program's records. Another 25.5 percent supplied no date at all, and 46.8 percent gave a month and year only. Likewise, only 31.9 percent attempted to provide a complete date on which their cases were settled or decided. Another 31.9 percent supplied no date at all, 27.7 percent gave only a month and year, and another 8.5 percent gave a year only. Thus, given the issue of possible lack of correspondence between consumers' definitions of when cases are "opened" and "closed" and the issue of recall of dates, it is no surprise that our survey results do not support the DRP indices.

INSERT FIGURE 2

Table 5 reports the reasons for delays given in the DRP indices and by survey respondents.[23] According to DRP indices, no cases were delayed. Of the six survey respondents who said their cases were delayed, three reported their cases delayed because "arbitrators requested information such as independent inspections" and three used the "all other reasons" category. Because the manufacturer does not use the former category for reporting reasons for delays, we have subsumed these responses into the "all other reasons" category.

Table 5
Reasons for Delays to Decisions
Comparison Between Claverhouse Survey and DRP Indices

	Claverhouse	**DRP**
Reasons for Delays to Decisions FTC 703.6(e)	Percent of Delayed Decisions (Number)	Percent of Delayed Decisions (Number)
Consumer failed to submit required information in a timely manner	0.0% (0)	0.0% (0)
Consumer made no attempt to seek redress from the manufacturer	0.0% (0)	100.0% (0)
All other reasons	100.0% (6)	0.0% (0)
Total arbitrated cases reported delayed	100.0% (6)	100% (0)

The differences between the Claverhouse survey results and the DRP indices shown in Table 5 are technically significant, but the numbers are so small that the issue of significance is essentially meaningless.

Consumer Attitudes Toward the DRP's Informal Dispute Settlement Procedures

[23] Under FTC 703.6(e)(13), warrantors must report cases still pending. The DRP indices report no cases pending at the end of 2002, but we cannot make a comparison with survey results since the survey should not have included any open cases.

At the beginning of the survey, respondents were asked how they had learned about the availability of the Customer Arbitration Process. The responses of the 41 respondents who answered this questions are summarized in Table 6. An unusual finding in this survey is that the largest number of respondents learned about the DRP from their owner's manuals and warranty materials. We are accustomed to finding the consumer toll-free assistance number cited by a large percentage of respondents, but in this case only 7.3 percent of respondents cited the toll-free number. Of the 5 respondents (12.2 percent) who reported that they had learned about the DRP through their dealerships, all said the dealer had talked with them about the program, and three said the dealership additionally gave them something to read. None reported having seen a poster about the DRP displayed at the dealership.

Table 6
How Consumers Learned of DRP Availability
Claverhouse Survey

Source of Information	Number	Percent
Owner's manual/warranty information	14	34.1%
Dealership	5	12.2%
Family and friends	5	12.2%
Brochures/other literature	4	9.8%
Previous knowledge of program	4	9.8%
Attorney	4	9.8%
Toll-free customer assistance phone number	3	7.3%
Media (Television, Radio, Newspapers)	1	2.4%
Other (Better Business Bureau, Web, Auto show, etc.)	1	2.4%
Total responses	41	100.0%

Survey respondents were also asked if they recalled receiving materials from the DRP explaining the process and procedures and application forms. The 97.6 % who said that they had received this material were also asked how easy it was to use the procedures, forms, and brochures provided. Fifty-six percent said that they were clear and easy to understand; 32.6 percent said that they were a little difficult but still fairly easy to understand; and 10.6 percent said they were hard or difficult to understand; one respondent did not answer the question.

The ease of understanding the information and forms plays an important role in the satisfaction of the consumer. We asked survey respondents to give the DRP an overall grade (A through E). Consumers were considered generally satisfied with the program if they gave it a grade of "A" or "B". General dissatisfaction was assumed of those who gave a grade of "D" or "E". Those who reported no difficulty with understanding the forms were generally

satisfied. Those who had great difficulty understanding the forms and materials were clearly not satisfied with the program (see Figure 3).

INSERT FIGURE 3

As a way to evaluate the DRP, respondents were asked to "grade" several aspects of the program, regardless of their individual outcomes, using the scale A to E. Table 7 shows the results of these questions.

Table 7
How Consumers Grade DRP Staff
Claverhouse Survey

	A	B	C	D	E
Objectivity and fairness	31.1%	4.5%	11.4%	11.4%	38.6%
Promptness in handling your complaint during the process	47.7%	20.5%	15.9%	6.8%	9.1%
Efforts to assist in resolving your complaint	31.8%	6.8%	15.9%	11.4%	34.14%

The aspect of the DRP to receive the highest grades was "promptness", in which the majority of respondents (68.2 percent) gave the program an A or B. This correlates with the response of respondents that only 14.5 percent of cases were delayed over 40 days.

Respondents were then asked to give the dispute resolution process an overall grade. Table 8 summarizes their responses.

Table 8
Consumers' Overall Rating of DRP
Claverhouse Survey

A	B	C	D	E
37.8%	4.4%	6.7%	11.1%	40.0%

Using our "generally satisfied" or "generally dissatisfied" categories, 42.4 percent were generally satisfied with the program, and 51.1 percent were generally dissatisfied. If we break the total numbers into outcome categories, however, the percentages are quite different (see Figure 4). For example, of those whose cases were mediated, 85.7 percent were generally satisfied, as were 54.4 percent of those whose cases were arbitrated and who received an award. On the other hand, of those whose cases were arbitrated and received no award, 84.2 percent were generally dissatisfied. These correlations indicate that consumers find it difficult to separate their evaluations of the program itself from their individual outcomes.

As another way to gauge satisfaction with the DRP, respondents were asked whether they would recommend the DRP to a family member or friend who had warranty problems.

Insert fig 4

Overall, 37.8 percent said that they would recommend the program; 35.6 percent said they would not recommend the program; and, 26.7 percent said it would depend on the circumstances. Once again, however, survey respondents' willingness to recommend the program correlates strongly with the outcomes of their cases (see Figure 5). Those most likely to say they would recommend the program were those whose cases were mediated; of those, 78.6 percent said they would recommend the program and another 14.3 percent said it would depend on the circumstances. Of those whose cases were arbitrated and who received awards, 50.0 percent said they would recommend the program and another 25.0 percent said it would depend on the circumstances. In contrast, there were no respondents who did not receive an award who said they would not recommend the program.

Insert fig 5

At the end of the survey questionnaire, respondents were given an opportunity to make comments and suggestions about the DRP program; 31 of the 47 respondents commented. The results are shown in Table 9.

Table 9
Comments and Suggestions on the DRP
Claverhouse Survey

Comment/Suggestion	Number	Percent
Arbitrators should be more consumer oriented, not biased towards the manufacturer	13	41.9%
Did a good job, no complaints	7	22.6%
Make DRP program better known, more advertising	3	9.7%
Need better initial review of cases by staff and arbitrators	3	9.7%
Need better/more representation at hearings	2	6.5%
Awards and settlements and their dollar amounts need to be more fair	2	6.5%
Dealers/manufacturer should be more responsive to consumers/more consumer oriented	1	3.2%
Total	31	100.0%

Among these comments and suggestions, it is noteworthy that half involved a perception on the part of consumers that arbitrators, dealers, and the manufacturer lacked a "consumer orientation." It should be noted that over 45.0 percent of the respondents to this question perceived bias against the consumer and in favor of the manufacturer. This may reflect, in part, the large proportion of consumers with arbitrated cases who received no relief (62.5 percent); as we have noted, consumer's evaluations of the DRP are strongly related to the outcomes of their cases.

CONCLUSIONS

The comparisons of the consumer survey responses and the Dispute Resolution Program national statistics provided to IPPSR indicate that the indices fairly represent several important components of the warranty dispute resolution program. There is agreement between the survey sample and the DRP indices on the comparison of the cases arbitrated and mediated. They also agree on the basic rates of compliance with mediated settlements and arbitration decisions. The percentage of cases that were granted arbitration awards was also in agreement. As noted previously, the disagreements that exist could be due to response bias. The percentages of arbitration cases that ended with adverse decisions reported by the survey

respondents does not agree with the DRP indices. The DRP reported more cases ending with an adverse decision that did the survey respondents. Consumers with adverse decisions may be less willing to participate in the study. Whatever the reason for this disparity, it does not raise concern about the reliability of figures submitted by Mitsubishi.

As is often the case, the percentages of cases that were delayed beyond 40 days also do not agree. A significantly higher percentage of survey respondents claimed that their cases were delayed than was reported by the DRP. We believe this difference is explained by two factors: 1) the inability of the majority of the respondents to recall the opening and closing dates of their cases; and 2) the likely lack of agreement between the consumer's definition of when a case is "opened" and "closed" and the DRP's definition.

Overall grades given the program by survey respondents concentrated at the extremes of the scale. Of the 45 who replied to this question, 37.8 percent gave the program As, 4.4 percent gave Bs, 6.7 percent gave Cs, 11.1 percent gave Ds, and 40.0 percent gave Es. Using our convention that those who gave the program As or Bs were generally satisfied and those who gave Ds or Es were generally dissatisfied with the program, 42.2 percent of the respondents were generally satisfied, and 51.1 percent were generally dissatisfied. As we have come to expect, the level of satisfaction appears to be strongly correlated with whether the case was handled through mediation or arbitration and whether or not an award was granted. Likewise, survey respondents' answers to the question of whether they would recommend to DRP to others correlates strongly with the outcomes of their particular cases.

We must keep in mind that the universe of cases was small (147) and, therefore, our survey sample was small. With that in mind, the differences that were found between the survey responses and the DRP indices are not of concern. None of the discrepancies could be construed to favor the interests of Mitsubishi, and they are very likely to be the result of response bias or recall error. Therefore, we conclude that the DRP indices are in overall agreement with the survey responses.

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