

*United States Federal Trade
Commission
National Center for Dispute
Settlement
Automobile Warranty Arbitration
Program*

Audit

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Introduction

This 2004 audit of NCDS' Arbitration Process is performed pursuant to the 1975 federal warranty law, the Magnuson-Moss Warranty Federal Trade Commission Improvement Act and Rule on Informal Dispute Settlement Procedures, 16 C.F.R. Part 703 (hereafter referred to as Rule 703).

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

Arrangements to conduct the audit were initiated by an invoice submitted in early 2005. Claverhouse Associates coordinated field audits, statistical survey planning, and arbitration training with the program's independent administrator, The National Center for Dispute Settlement (NCDS). This year's report was performed as a review of the National Center for Dispute Settlement as an independent administrator for multiple automobile manufacturers. The manufacturers participating in the NCDS automobile warranty arbitration program included in this national audit are: Toyota, Lexus, DaimlerChrysler, Mitsubishi, and Porsche. There are a few exceptions, wherein our review is manufacturer-specific, such as the requirement for manufacturers to inform consumers of the availability of the dispute resolution program whenever a warranty dispute arises.

Hearings held in Minnesota, North Carolina, and Ohio 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, April 29 - May 1, 2005. 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 (2004). 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 2004 as required.

SECTION I

Compliance Summary

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

Overall NCDS Dispute Settlement Program Evaluation

The NCDS third-party dispute mechanism, Automobile Warranty Arbitration Program (AWAP), is, in our view, in substantial compliance with the requirements of the Magnuson-Moss Warranty Federal Trade Commission Improvement Act and Rule on Informal Dispute Settlement Procedures, 16 C.F.R. Part 703.

The three regions audited, Minnesota, North Carolina, and Ohio, all function in compliance with FTC Rule 703. Details of the field audits and any minor irregularities found are discussed in Section III of this report.

Our random sample survey confirmed the overall validity of the statistical indexes created by the National Center for Dispute Settlement.¹ Our original survey sample consisted of 750 closed cases², of which we completed surveys for 400 customers. As we have found in other audits, surveyed customers tended to report favorably on the program when the results of their cases were, in their view, positive. Conversely, those who received no award, or received less than they expected, were more likely to report dissatisfaction with the AWAP. As has been true in most audits we have conducted for various programs, the few statistically significant differences between the figures reported by the AWAP and the survey findings were deemed to be easily understandable and do not suggest unreliable reporting by the program. For a detailed discussion, see the survey section of this report.

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

¹ There were, of course, discrepancies in some areas, as we have come to expect, but those we identified are either of no real consequence or are very understandable and without significant regulatory implications. Discrepancies are detailed in the survey section of the report.

² The sample was drawn from a universe of 2,246 cases.

SECTION II

Detailed Findings

This section addresses the requirements set forth in 16 C.F.R. Para 703.7, of Public Law 93-637 (The Magnuson-Moss Warranty Act, 15 U.S. C. 2301. et seq.).

After each regulatory requirement is set forth, the audit's findings are recorded, discrepancies are noted, and recommendations are made where appropriate.

This audit covers the full calendar year 2004. An important component of the audit is the survey of a randomly selected sample of 750³ NCDS' Dispute Settlement Program applicants whose cases were closed in 2004 and found to be within the AWAP's jurisdiction.

We analyzed several NCDS generated statistical reports covering the AWAP operations in the United States. The reports were provided to us by Mr. Brian Dunn, Director of Dispute Settlement Services, National Center for Dispute Settlement, Dallas, Texas.

We performed field audits of the AWAP as it operates in Minnesota, North Carolina, and Ohio. We also examined a random sample of current (i.e., 2004) case files for accuracy and completeness. A random sample of case files was drawn from all case files for the years 2001-2004 and inspected them to ensure that these records are maintained for the required four-year period.⁴ In the areas covered by each region, we surveyed several dealerships to see how effectively they carry out the information dissemination strategy developed by manufacturers to assist them in making customers aware of the AWAP.

In addition, we monitored arbitration hearings in Buffalo, Minnesota; Fayetteville, North Carolina; and , Beaver creek, Ohio, and interviewed arbitrators and AWAP/NCDS administrative personnel.

To assess arbitrator training, we monitored the NCDS-sponsored training session held in Dallas/Ft. Worth, Texas, in April of 2005. In addition to monitoring the training itself, we interviewed the trainees (both before and after the training), the training staff, and reviewed the training materials.

REQUIREMENT: § 703.7 (a) [Audits]

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

FINDINGS:

This is the second (2004) Claverhouse Associates annual audit of NCDS AWAP informal dispute settlement program.

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

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

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

REQUIREMENT: § 703.6 (a) [Recordkeeping]

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

FINDINGS:

The information referenced in subsections 1 through 4 is available from the staff of the National Center for Dispute Settlement, who provided us with access to all pertinent information, which is maintained as required. Our inspection of randomly selected case files for each of the three regions validated these findings. The inspections of case files took place at the headquarters of the program's independent administrators. Our review of randomly selected cases drawn from the four-year period (2001-2004) demonstrated that the case files were maintained in 2004, as required.

DISCREPANCIES:

The few administrative irregularities found, while appropriately noted, are relatively inconsequential and do not pose any serious undermining of the program's *substantial compliance* status. The AWAP meets this regulatory requirement and any inconsistencies we found were of the minor and inconsequential variety likely to be found in any large administrative program. The minor inconsistencies are highlighted in the appropriate sections of the report.

REQUIREMENT: § 703.6 (a) (5)

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

FINDINGS:

Some case files contained, in addition to the various standard file entries, other communications submitted by the parties. Nothing in our findings suggests that any material submitted by a party was not included in the file, and every indication is that the files were complete. We made no attempt, however, to validate the existence of "summaries of relevant and material telephone calls" and other such information since we had no way of knowing whether such telephone calls took place. This is also true for documents such as follow-up letters. A review of this type may be theoretically possible,

but it is not practical without having some objective measure against which to compare the contents of the file. Even in the theoretical sense, such a review assumes customers keep exact files of all correspondence, notes, and phone calls pertaining to their AWAP cases. To validate this dimension, the audit would entail retrieving all such files as a first step. The obvious impracticality of that places such a review beyond the scope of the audit.

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

DISCREPANCIES:

None

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

REQUIREMENT: § 703.6 (a) (9-12)

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

FINDINGS:

The information set forth in items 9 and 10 is maintained as required.⁵ 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)

⁵ The warrantor's intended actions are a basic part of the program and are generally applicable to all cases. All decisions rendered by arbitrator(s) will be honored by all NCDS' AWAP participating manufacturers, thereby negating any necessity for providing a document in each individual file.

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

FINDINGS:

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

The audit includes a review and assessment of a data printout for the calendar year 2004.

The *AWAP Statistics* identifies 3,932 AWAP disputes filed for 2004. Of these, 2,448 were eligible for AWAP review, and 1,484 were determined by the AWAP to be out-of-jurisdiction. Of the in-jurisdiction closed cases, NCDS reports that 1,609 were arbitrated⁶ and 437 were mediated.⁷ There were 1,526 arbitrated decisions which were reported as “adverse to the consumer” per § 703.6 (E) representing 94.8% of all arbitrated cases.

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

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

DISCREPANCIES:

None

REQUIREMENT: § 703.6 (c)

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

FINDINGS:

AWAP reports that there were no such cases in 2004. Concerning subsection 2, the auditors are advised by NCDS that there is no reported incidence in which an NCDS AWAP participating manufacturer failed or refused to abide by a panel or arbitrator decision. As a matter of general corporate policy, all AWAP participating manufacturers agree to comply with all AWAP decisions. This information is supplied as part of NCDS' Annual FTC -703.6 (c) (1) and (2) Report.

⁶ This number is not aggregated in the statistical reports provided for the audit. We arrived at this number by summing the “decided” items (4-7) listed on the AWAP mandated statistical report.

⁷ The term “mediation” in the AWAP context does not necessarily imply that a neutral third-party assisted the parties in resolving a warranty dispute, but rather that the dispute was settled prior to an arbitrator rendering a decision. The number provided above is not aggregated in the statistical reports provided for the audit. We arrived at this number by summing the “Resolved” items (1-3) listed on the AWAP mandated statistical report.

DISCREPANCIES:

None

REQUIREMENT: § 703.6 (d)

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

FINDINGS:

According to AWAP statistical index reports, as of December 2004, a total of 63 AWAP cases were delayed beyond 40 days. The Director of Dispute Settlement Services provided a comprehensive report of all individual cases delayed beyond 40 days during the 2004 period of the audit. This report includes the customer's name, case file number, and the number of days the case has been in process as of the date of the generation of the report. Our analysis indicates that this report meets the above requirement. Our review, however, is not designed to test the accuracy of the report. We merely determine that the mandated report is being generated. At the same time, we found nothing during our assessment review that calls into question the accuracy of any of the required statistical indexes.

DISCREPANCIES:

None

REQUIREMENT: § 703.6 (e)

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

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

FINDINGS:

NCDS collects and maintains the information required by § 703.6 (e) in the AWAP Statistics Report supplied to us by Mr. Brian Dunn, Director of Dispute Settlement Services.

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

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

DISCREPANCIES:

None

REQUIREMENT: § 703.6 (f)

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

FINDINGS:

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

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

(b) The NCDS Director of Dispute Settlement Services provided us with the various 2004 indices and statistical reports required by Rule 703. The corresponding reports for the previous four years are not available from some NCDS participating manufacturers because they did not administer the manufacturer's program during that period. The records are probably available from each of those manufacturers directly.

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

(d) [Complaints beyond 40 days] This information is stored on computer in the NCDS Dallas, Texas, office and is housed with Mr. Brian Dunn, the Director of Dispute Settlement Services. Any required report can be obtained from Mr. Dunn. The information is maintained as required.

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

DISCREPANCIES:

None

REQUIREMENT: § 703.7 (b)

Each audit provided for in paragraph (a) of this section shall include at minimum the following (1) evaluation of warrantor's efforts to make consumers aware of the Mechanism's existence as required in 703.2 (d);

(d) The warrantor shall take steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes.

FINDINGS:

The essential feature of both regulatory requirements cited above is timing. In our review, therefore, we give emphasis to efforts that would inform customers and ensure that they know about the existence of the AWAP at all times, as well as examining the manufacturer's strategies to alert customers to the availability of the AWAP when the customer's disagreement rises to the level that the regulations consider a "dispute."

Regardless of the excellence of a program, it is only effective if the customer knows of its existence and can access it. The "notice" requirement seeks to ensure that the program is actually usable by customers by informing them of its existence and making it readily accessible when they need it.

Individual Participating Manufacturer's Efforts and Assessment

[Note: In this section of the audit report, we review each of the five participating manufacturer's programs for meeting this requirement. Readers will note that we repeat regulatory language and some pertinent comments in each division for the various manufacturers because some readers will be focused strictly on a given manufacturer and to make their reading easier, we repeat the applicable regulatory language rather than requiring such readers to engage in cross-referencing and searching for such language in some other section of the report.]

For the 2004 report, we interviewed NCDS staff and inquired as to any changes from last year in each manufacturer's efforts to ensure their customers were being made aware of the availability of the NCDS arbitration program for resolving any of their customers' warranty disputes that might exist. Where we have new information supplied, we review and assess that information.

I. TOYOTA :

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

- Toyota publishes a 32-page booklet, entitled *Owner's Warranty Information*, that briefly explains, among many other things, the NCDS process and how and where to file an application. The pamphlet is distributed in a variety of ways, but the principal method is by way of the dealer. Dealers are to provide the brochure as part of the initial information packet given to new customers as well as making them available in the dealership. Note: Our random audits of dealerships conducted for the national audit found no consistent and significant commitment by dealers to educate their employees to provide NCDS information to customers making general inquiries about warranty-related dissatisfactions or disputes.
- Toyota publishes a 51-page booklet, entitled *Owner's Warranty Rights Notification* booklet, that contains state-specific, warranty-related regulatory information (lemon law provisions) and an application form for accessing the NCDS. The booklet provides useful and accurate information. (DATED 5/04).

Like the *Owner's Warranty Information* booklet, it is distributed, in the main, by dealership sales personnel at the point of sale/delivery as part of the glove box kit.

- There is a NCDS pamphlet (one-page tri-fold) published by Toyota that is reasonably informative about the NCDS and how to access it. The pamphlet cross-references the *Owner's Warranty Rights Notification* booklet as one of two sources for obtaining a *Customer Claim Form*.⁸ Those interested in knowing about the program are referred to a toll-free telephone number where they can request a NCDS pamphlet. This one-page document is distributed primarily by the Toyota Customer Assistance Center.

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

For the 2004 report, we visited three Toyota dealerships.⁹

Voss Toyota
2110 Heller Drive
Beavercreek, Ohio 45434

Airport Toyota
1180 West National Rd.
Vandalia, Ohio 45377

Kerry Toyota of Durham
4513 Chapel Hill Blvd.
Durham, North Carolina 27707

None of the dealership personnel we interviewed during our Toyota dealership visits provided any useful information about the Toyota warranty dispute mechanism in response to our inquiry concerning customer options when the customer is experiencing warranty disputes. One Toyota dealership in Ohio had a framed poster about NCDS arbitration with a contact toll-free telephone number included which is as good a performance as can be expected. At another Toyota dealership, the service department representative said, "we can't provide any information about arbitration if you've already talked to Toyota." The dealers' performance in these two states is mixed. Nevertheless, it is more consistent this year with the underlying intent of federal requirements of Rule 703.

We said in last year's report that:

⁸ The Toyota *Dispute Settlement Program* pamphlet actually refers here to the Toyota *Owner's Manual Supplement*, but it appears they mean the *Owner's Warranty Rights Notification* booklet. It's a mere administrative oversight, but customers could easily be confused. Fortunately the theoretical problem is mitigated by virtue of the second reference to a toll-free telephone number to Toyota's Customer Assistance Center where customers may obtain a *Customer Claim Form*.

⁹ As is the case with several dimensions to the audit we carried out this aspect in the year 2005.

Clearly, one of the principal reasons that the annual independent audit requirement was included in Rule 703 was to ensure that adequate consumer awareness was provided for by sponsoring manufacturers. That the original draft of Rule 703 was modified so as to require this audit was an outcome fostered by manufacturers who complained that the proposed alternatives were too onerous and in fact, "draconian." The Federal Trade Commission declined to mandate the national media campaigns and dealer incentives requirements, opting instead for voluntary efforts by the manufacturers, or their agent dealers, which would then be audited annually to ensure compliance with the stated objective of ensuring consumer awareness of the availability of the program. In any event, it is abundantly clear that no audit findings are complete without an evaluation of this aspect of the arbitration program since it is specifically set forth in the administrative Rule requirements in that section identified as the "Proceedings." This extensive Federal Trade Commission commentary was promulgated as a fundamental part of the Rule, as is the case with all promulgated FTC Rules.

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

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

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

The information dissemination methods employed by Toyota together with the number of applications filed nationally in 2004 (2766) demonstrate that, unquestionably, many Toyota customers were made aware of the program, and for these customers, at least, access is obvious.

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

As with most programs, our visits to dealerships suggested that customers who seek assistance from their salespersons are also unlikely to receive any useful information about the NCDS. Few of the salespeople we interviewed appeared to have any knowledge of the NCDS or arbitration options in general.

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

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

DISCREPANCIES:

None, with the same qualifier given immediately above.

II. LEXUS:

- Lexus publishes a manual entitled, *2004 Lexus Owner's Manual Supplement*. The manual itself is outdated and lists on page 10 an arbitration program no longer in use by Lexus. To address this, an errata slip is inserted into each manual given to customers at the point of sale and delivery which identifies The National Center for Dispute Settlement (NCDS) as the current organization for Lexus customers to contact regarding arbitration. Included is a toll-free telephone number for NCDS.
- We were provided a copy of the NCDS tri-fold, *Rules & Procedures for the Informal Resolution of Automobile Warranty Disputes* pamphlet, but this document is distributed to Lexus customers after the customer has filed an application.

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

In 2005 we did not visit a Lexus dealership for the 2004 audit:

In our 2003 report issued in 2004 we included the following comments as regards Lexus:

For a newly created program this limited information may be provisionally acceptable, but in our view it falls short of what Rule 703 intends as regards informing customers of the availability of the arbitration program at the time a warranty dispute arises. There are, of course, many different strategies for accomplishing this mandated information dissemination program, but a mere passive casual reference to NCDS in an owner's manual is likely to find many customers with a warranty dispute unaware of the availability of arbitration. That was clearly not the intent of the Federal Trade Commission when Rule 703 was promulgated as evidenced by the rule's lengthy discussion in the *Statement of Basis and Purpose*, published and promulgated as part of the rule (see Federal Register, 60215, Dec. 31, 1973). The FTC afforded great flexibility to manufacturers, at their request, as an alternative to far more draconian measures being proposed at the time including the requirement that manufacturers engage in a national media

campaign each year to announce the program's availability. The FTC opted instead to afford manufacturers the opportunity to use their own creative methods to achieve the objective and provided for an annual audit to ensure that manufacturers were carrying out effective strategies for ensuring that their customers were likely to be informed about the programs *at the time a warranty disputes arises* [FTC's emphasis.]

The above commentary is included for historical reference purposes. We met our dealership visit goals again this year without having visited a Lexus dealer.

DISCREPANCIES:

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

II. PORSCHE:

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

We said in our previous report (2003 report prepared in 2004):

For a newly created program this limited information may be provisionally acceptable but, in our view, it falls short of what Rule 703 intends as regards informing customers of the availability of the arbitration program at the time a warranty dispute arises. There are, of course, many different strategies for accomplishing this mandated information dissemination program, but a mere passive casual reference to NCDS in an owner's manual is likely to find many customers with a warranty dispute unaware of the availability of arbitration. That was clearly not the intent of the Federal Trade Commission when Rule 703 was promulgated as evidenced by the rule's lengthy discussion in the Statement of Basis and Purpose, published, and promulgated as part of the rule (see Federal Register, 60215, Dec. 31, 1973). Great flexibility was afforded manufacturers, at their request, as an alternative to far more draconian measures being proposed at the time, including the requirement that manufacturers engage in a national media campaign each year to announce the program's availability. The FTC opted, instead, to afford manufacturers the opportunity to use their own creative methods to achieve the objective and provided for an annual audit to ensure that manufacturers were carrying out effective strategies for ensuring that their customers were likely to be informed about the programs at the time a warranty disputes arises [FTC's emphasis.]

As with most programs, our visits to dealerships typically finds that customers who seek assistance from their salespersons are also unlikely to receive any useful information about the NCDS. Similarly, we received no useful information from the people we interviewed in the service area of these dealerships.

In 2005 we visited the following Porsche dealership for the 2004 audit:

Performance Auto Mall
1810 Durham-Chapel Hill Blvd.
Chapel Hill, North Carolina 27514

This particular Porsche dealership we visited in 2005 provided limited assistance. When we asked about the possibility of going to some kind of arbitration program, the service department employee said, "that's something I'm not at liberty to discuss." He did, however, make a vague reference to the Owner's Manual.

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

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

DISCREPANCIES:

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

III. MITSUBISHI:

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

- Mitsubishi, has begun a process to address some of the concerns we raised in our last two audits. We said in our prior two reports:

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

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

Our 2003 [conducted] random audits of dealerships in the areas surrounding the field audit sites again found no consistent and significant commitment by most dealers to

educate their employees to provide DRP information to customers making general inquiries about warranty-related dissatisfactions or disputes.

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

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

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

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

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

Claverhouse Associates has not reviewed the actual cover letter sent to each Dealer Service Manager. This e-mail copy, supplied to us by NCDS, strongly suggests that important steps are being taken to bring Mitsubishi into compliance with this aspect of Rule 703. We did not expect to see any significant results during our dealer visits for the 2004 audit, given the normal time delays associated with intra-company communications involving a nation-wide network of dealerships. Nevertheless, we view this innovation as clear evidence of intent for which Mitsubishi should be given credit. We did find, however, one Mitsubishi dealership in Naples, Florida that had an arbitration (NCDS) poster prominently displayed in the service department indicating that the program may be having some positive regulatory impact.

In 2004 and 2005, we visited the following Mitsubishi dealerships for the 2004 audit:

Elkins Mitsubishi
905 Jackie Robinson Drive

Durham, North Carolina 27701

Mitsubishi O'Brien
2625 Davis Blvd.
Naples, Florida

Lokey Team (Mitsubishi)
2339 Gulf-to-Bay Blvd.
Clearwater, Florida, 33765

Our Mitsubishi dealership experience in this regard was mixed. In Naples, Florida, we found a NCDS pamphlet prominently displayed at the cashier window which was an excellent finding. In Clearwater, Florida, there was a poster announcing arbitration availability, but the poster was not prominently displayed. At the North Carolina dealership we visited, however, the personnel we interviewed provided no useful information about the NCDS warranty dispute mechanism in response to our inquiry concerning customer options when the customer is experiencing warranty disputes. Indeed, the service department employee we interviewed said, "Any arbitration is handled by the courts and it takes months." Information that is patently untrue and of no use. This dealer's performance is contrary to the underlying intent of federal requirements of Rule 703.

We said in last year's report that:

Clearly, one of the principal reasons that the annual independent audit requirement was included in Rule 703 was to ensure that adequate consumer awareness was provided for by sponsoring manufacturers. That the original draft of Rule 703 was modified so as to require this audit was an outcome fostered by manufacturers who complained that the proposed alternatives were too onerous and in fact, "draconian." The Federal Trade Commission declined to mandate the national media campaigns and dealer incentives requirements, opting instead for voluntary efforts by the manufacturers, or their agent dealers, which would then be audited annually to ensure compliance with the stated objective of ensuring consumer awareness of the availability of the program. In any event, it is abundantly clear that no audit findings are complete without an evaluation of this aspect of the arbitration program since it is specifically set forth in the administrative Rule requirements in that section identified as the "Proceedings." This extensive Federal Trade Commission commentary was promulgated as a fundamental part of the Rule, as is the case with all promulgated FTC Rules.

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

DISCREPANCIES:

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

IV. DAIMLERCHRYSLER:

DaimlerChrysler uses several means by which to meet this important requirement; they are as follows: **[Note: This information only applies in the four states wherein the program is offered.]**

- DaimlerChrysler publishes an 10-page booklet, entitled *Customer Arbitration Process*,¹⁰ that explains the CAP process and how and where to file an application. This pamphlet contains an application form for accessing the CAP program. The pamphlet is distributed in a variety of ways, but the principal method is by way of the dealer. Dealers may provide the brochure as part of the initial information packet given to new customers as well as making them available in the dealership. Dealerships normally have the pamphlet available only upon request. Our random audits of dealerships in the four applicable state areas surrounding the field audit sites found, as in recent prior audits, no consistent and significant commitment by dealers to educate their employees to provide booklets to customers making general inquiries about warranty-related dissatisfactions or disputes. In fact, this year's review suggests that some serious attention needs to be given to this aspect of the program because dealers were unlikely to provide information about the existence of the program and how to contact it even when we specifically asked for information about their arbitration program.
- The *Owner's Manual*, supplied with each new vehicle incorrectly refers to the program as the Customer Arbitration Board. This name only applies to the California-specific program administered by DeMars & Associates. The national program is called the "Customer Arbitration Process" (CAP). The *Owner's Manual* itself does not include a phone number or mailing address of either the CAP or the CAB, but the supplementary manual referenced below provides various addresses and phone numbers as required by state laws. The *Owner's Manual* does inform the reader that an arbitration brochure is included as part of the Glove Box Kit. Unfortunately, this reference repeats the same error alluded to earlier and misstates the national program's name.
- The booklet *Owner's Rights Under State Lemon Laws, Supplement to Owner's & Warranty Manual* is provided with each new vehicle. This booklet does not give the CAP address, but at page four it refers customers with unresolved disputes to the CAP brochure that accompanies the *Owner's Manual* and *Warranty Manual*, which are shipped as part of the Glove Box Kit in the applicable states. It also refers customers to the DaimlerChrysler toll-free customer relations (Customer Center) number where the customer can request the address of the CAP.
- In the applicable states, DaimlerChrysler provides with each new vehicle a *Warranty Information* booklet. It is a 33-page booklet that makes a cross-reference on page 27 to the CAP arbitration program offered by DaimlerChrysler and refers the reader to the Customer Arbitration Process brochure that came with the vehicle.

DISCREPANCIES:

¹⁰ DaimlerChrysler is a member of the NCDS multi-manufacturer program which in most important ways is identical to the CAP program but no longer operates under the name CAP. The information booklets referenced in this section were still operative in the four applicable states in 2003 but we have received no further information suggesting the policy has been modified.

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

REQUIREMENT: § 703.7 (b) (3)(I)

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

FINDINGS:

The FINDINGS for this section are arranged as follows:

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

FINDINGS:

1) Forms

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

The many forms used by AWAP comprise an important aspect of the arbitration program. The forms we reviewed are "user friendly," well balanced, and providing sufficient information to properly inform the parties without overwhelming them with non-essential paperwork. Overall, the AWAP forms promote efficiency and assist the program in meeting the stated objective of facilitating fair and expeditious resolution of disputes. We found the forms used by NCDS' AWAP program that we reviewed well within the regulatory expectations.¹¹

DISCREPANCIES:

¹¹ We note that the *Customer Claim Form* solicits some information that raises questions, in our minds, about the purpose and applicability to the arbitration process. For example, "Are your loan payments current? Yes - No." We are hard-pressed to see what this question might have to do with the arbitrator's ability to render a decision or on NCDS' ability to process the matter. Moreover, § 703.5 (c) says: "The Mechanism shall not require any information not reasonably necessary to decide the dispute."

NONE

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

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

2) Investigations

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

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

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

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

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

Arbitrators would be greatly aided by continued emphasis at arbitrator training on the appropriate use of independent inspections and technical assistance. The AWAP has developed and implemented a national training program that, of necessity, addresses so many issues in a short period of time that it is understandable why arbitrators often lose sight of some of the trainers' admonitions. *This underscores the importance of an efficient, on-going feedback loop that provides regular reminders from program staff to arbitrators.*

Other areas to be investigated include:

number of repair attempts;

length of repair periods; and

possibility of unreasonable use of the product.

Customers provide some information on these subjects on the AWAP application and the applicable manufacturer provides it on their own forms entitled, *Manufacturer's Response Form*.

The customer application form, unfortunately, does not ask for information about the issue of possible misuse or abuse of the vehicle. Customers should know that the possibility of abuse or misuse of the vehicle may become a significant issue in the arbitrator's decision process so that they can present information accordingly. The company reports may include information on this topic whenever they think it is appropriate, but the customer has no way of knowing that this is a subject they would be well advised to address in the information they present to the board or an individual arbitrator.

In the event that misuse is asserted or suggested as a possibility in the *Manufacturer Response Form*, the customer is able to submit supplemental information challenging or explaining his/her perspective on the issue. Rather than delay the process or put the customer in the position of having to present a response on short notice, customers could be advised at the onset of the process that the issue might come up in the arbitrator(s)/board's deliberations. The fact that customers receive copies of the statements from the company in advance of the hearings, allowing them the opportunity to challenge any such suggestion is not in itself sufficient to address our concern. Unfortunately, not all questions of possible misuse arise in response to the *Manufacturer Response Form*. The subject of abuse or misuse of the product may only emerge during the arbitrator(s)/board's deliberations. Based on our interviews with arbitrators, an arbitrator may suspect the possibility of abuse or misuse without its having been asserted in the paperwork. In such cases, "misuse" may not be the primary or deciding factor but can still be a significant factor. Because of its secondary importance, however, it may not be detailed in the decision and not necessarily reflected in the fairly brief communications announcing the board's or arbitrator's decision. Thus, a customer who may have important rebuttal information on the subject of suspected abuse, would be unlikely to be aware that it had become an issue.

FINDINGS:

The investigation methods used by the AWAP are well known to regulators and appear to be acceptable to them. Moreover, the processes envisioned when Magnuson-Moss was enacted were understood to be substantially abbreviated in comparison to litigation. Ultimately, the question comes down to, "How much investigation is enough?" In our view, more inquiries in the initial phase of the arbitration process would enhance the process, but we are unwilling to assert that this concern threatens compliance.

The methods currently employed by the AWAP clearly result in a useful collection of pertinent information, but it is also clear that there is opportunity to gather significantly more valuable information at virtually no extra cost.

3) **Mediation**¹²

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

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

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

FINDINGS:

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

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

4) **Follow-up**

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

When the customer accepts a settlement offer or an arbitration decision, NCDS monitors the promised performance. NCDS logs the performance information into the file. Once a

¹² Mediation does not necessarily imply the use of a neutral third-party mediator, but rather means the case has been settled prior to the arbitrator rendering a decision.

decision mandating some action on the part of the applicable manufacturer has been rendered and NCDS has received notice that the customer has accepted the decision, a performance survey is mailed to the customer to determine that:

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

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

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

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

DISCREPANCIES:

None

5) **Dispute Resolution**

The AWAP uses three arbitration formats. The three formats are: a) a board consisting of three arbitrators; b) individual arbitrators or, c) a panel of three arbitrators for Lexus cases. Customers, other than Lexus and Porsche, may opt to use either a) or b) formats. Importantly, the board process is one wherein the decisions are made after considering only documentary evidence and excludes oral presentation. Of course, customers may opt for a one-member (arbitrator) hearing, wherein oral presentations may be made by the parties. When using a board, the “Members” (i.e., arbitrators) are each provided with a case file that contains pertinent facts gathered by the program. The three arbitrators include: a consumer advocate, a technical member, and a member of the general public. Two members constitute a quorum and the board relies on documents provided by the parties. The arbitrators meet to discuss the facts presented to them and then render a decision. Most board decisions are arrived at by consensus, but sometimes the members resort to a vote to close the matter. The board may request additional information, usually in the form of an independent inspection conducted by a specialist in auto mechanics. Occasionally, the board asks for Technical Service Bulletin information, although technical questions can often be answered by the board's technical member.¹³

¹³ Each facet of the AWAP has Automotive Service Excellence (ASE) certified mechanics available to provide independent inspections to resolve conflicts of facts as presented by the parties. ASE is a private association that tests applicants to ascertain whether they possess a specified degree of expertise in automotive mechanics.

In the AWAP formats using a documents only board and single arbitrators, hearings are open, as required by Rule 703, to observers, including the disputing parties. The Lexus panel process is not open to observers. We said in last year's report:

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

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

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

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

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

FINDINGS:

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

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

Arbitrators are volunteers whose only compensation is a nominal per diem and mileage expense allowance.¹⁴ Arbitrators are not required by the program to have any established expertise in the complexities of automobile warranty law at the time of their appointment. Fairness, as envisioned by state policy makers, however, requires that arbitrators have some level of knowledge of the state and federal regulations that set forth the basic rights and responsibilities of the parties to a warranty dispute.

Our monitoring of arbitration hearings and interviewing of arbitrators in virtually all such programs has continually underscored the importance of on-going arbitrator training. Without regular input and feedback mechanisms, arbitrators are occasionally uncertain about their rights and responsibilities. Since the AWAP hearings/meetings are rarely attended by people other than the parties and a manufacturer representative, the arbitrators operate in a kind of self-imposed vacuum, without direct access to a feedback mechanism other than an occasional independent vehicle inspection report. In addition, because arbitrators are volunteers who usually participate in the AWAP process infrequently, a mistake made at one hearing can easily become an institutionalized error that could subject the program to a possible compliance review. On-going training would greatly alleviate these concerns for arbitrators.

The NCDS program has also informed us that they continue their efforts to address the "boilerplate" problem, alluded to in previous reports, including explanations provided at arbitrator training to ensure that arbitrators understand that "Lemon Law" thresholds for establishing presumptions do not serve as a threshold for their awarding "buy back" relief. At our review of arbitrator training in April of 2005, we confirmed that these efforts continue and are having some noteworthy effects.

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

DISCREPANCIES:

None

¹⁴ Currently, NCDS arbitrators are provided a per diem allowance of \$100.00 a hearing plus reimbursement for any mileage expenses incurred.

SECTION III

Field Audit of Three Geographical Areas

I. Minnesota

A. Case Load and Basic Statistics

In Minnesota, NCDS handled 78 AWAP cases¹⁵ in 2004 of which 24 (30.7%) were "no-jurisdiction" cases. There were 30 cases arbitrated¹⁶ (55.5% of the 54 in-jurisdiction cases), and 16 (29.6% of in-jurisdiction cases) were mediated¹⁷. The average number of days for handling a 2004 case in Minnesota was 35 days. This compares with an average of 38 days handling nationwide.

B. Recordkeeping, Accuracy and Completeness

We requested a random sample of 50 case files drawn from all cases closed during the audit period and examined them to determine whether they were complete and available for audit. Generally, the records were complete and available for audit.

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

§ 703.6 (a) (1-12)

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

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

FINDINGS:

¹⁵ These statistics include cases for Toyota, Lexus, Mitsubishi, DaimlerChrysler, and Porsche.

¹⁶ The number of arbitrated cases is determined here by our summing the four categories of statistics that reference the word "Decided" (items 4-7) included in the 2004 statistical report for Minnesota provided to Claverhouse Associates by NCDS.

¹⁷ The number of mediated cases is determined here by our summing the three categories of statistics that reference the term "resolved by staff" (items 1-3) included in the 2004 statistical report for Minnesota provided to Claverhouse Associates by NCDS.

The auditor examined the case file folders extracted from all 2004 "in-jurisdiction" case files.¹⁸ We examined each sample file with respect to the items enumerated in subsections 1 through 5, with the following results:

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

¹⁸ Where there were at least 50 or more case files, we reviewed them. Otherwise, we simply examined all case files for the state.

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

FINDINGS:

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

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

FINDINGS:

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

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

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

FINDINGS:

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

CONCLUSIONS:

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

C. Case File Records (4 yrs. 2001-2004)¹⁹

A random sample of 50 case numbers from the years 2001 through 2004 was drawn from NCDS' data base program, and in our field inspection, we checked the sample case files at the NCDS national office in Dallas to verify that they were being maintained per requirement § 703.6(f). In addition, a visual inspection was made of the entire four-year accumulation of case files as required by the same section.

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

D. Arbitration/Hearing Records

i. Case file folders

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

ii. Arbitrator Biographies

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

E. Hearing Process

The arbitrator scheduled the hearing at the principal dealership in question after consulting separately with each of the parties. The hearing involved one arbitrator who briefly interviewed the parties, provided a summary explanation of the hearing process, and then took testimony. The hearing was held at Morrie's Buffalo Chrysler dealership 705 Hwy 55 East, Buffalo, Minnesota, and began at the scheduled 11:00 am time.

i. Physical Description of Hearing

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

¹⁹ Since some of the participating manufacturers have not been administered by NCDS for four years, we could not render any judgment in that regard. Still, we have seen how the files were maintained in other audits we have conducted, and as a result, we have confidence the files are being stored as required. Moreover, we saw no substantive inconsistency in how NCDS maintains files between manufacturers so we feel comfortable in assuming that what is true in this regard for Toyota, DaimlerChrysler, and Mitsubishi will be seen to also be true for the Porsche and Lexus aspects of the national AWAP.

The hearing was not efficiently conducted but, the inefficiencies did not interfere with the regulatory requirements for a fair hearing. The customer was provided with a reasonable opportunity to present her case which she did, repeatedly. The arbitrator appropriately confirmed what the customer was seeking in the form of relief, and then took a test drive prior to concluding the hearing. The test drive, however, was not necessary since the two attending parties (i.e., the dealer and the customer) were in agreement as regards the condition and performance of the vehicle.

ii. Openness of Meeting

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

iii. Efficiency of Meeting

The hearing was not efficiently conducted. Rather, the customer was allowed to play an exceedingly lengthy tape recording that provided no useful information. In addition, the customer was allowed to provide redundant and irrelevant testimony repeatedly.

iv. Hearing

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

v. Board/Arbitrator Decisions

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

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

CONCLUSION:

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

II. North Carolina

A. Case Load and Basic Statistics

In North Carolina, NCDS handled 99 AWAP cases in 2004 of which 30 (30.3%) were "no-jurisdiction" cases. There were 57 cases arbitrated (82.6% of 69 in-jurisdiction cases), and 9 cases (13% of 69 in-jurisdiction cases) were mediated. The average number of days for handling a 2004 case in North Carolina was 36 days. This compares with 38 days handling nationwide.

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

During our on-site review at the Dallas, Texas, headquarters, we visually inspected the warehousing of all AWAP case files for the required four-year period.²⁰ The four-year accumulation of case files was available for inspection, where applicable, per all regulatory requirements.

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

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

B. Recordkeeping Accuracy and Completeness

§ 703.6 (a)(1-12)

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

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

²⁰ See 16 C.F.R., § 703.6 (f). Since some of the participating manufacturers have not been administered by NCDS for four years, we could not render any judgement in that regard. Still, we have seen how those files were maintained in other audits we have conducted, and as a result, we have confidence the files are being stored as required. Moreover, we saw no substantive inconsistency in how NCDS maintains files between manufacturers so we feel comfortable in assuming that what is true in this regard for Toyota, DaimlerChrysler, and Mitsubishi will be seen to also be true for the Porsche and Lexus aspects of the national AWAP.

FINDINGS:

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

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

§ 703.6(a)

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

FINDINGS:

All files for cases that were arbitrated contained the information required by sections six and eight. Oral presentations are a basic component of the NCDS program in this jurisdiction, and section seven requires summaries of the oral presentations to be placed in the case file. It is NCDS policy that the arbitrator conducting the hearing must summarize all significant information presented orally by either party during any facet of the hearing. We noted such language in the case files we reviewed in Dallas, but we did not allocate sufficient time to conduct a qualitative review of that portion of each case's decision. We offer no judgement then on whether these summaries are consistently detailed and/or accurate depictions. At the same time, we saw no particular reason to question the sufficiency of this method.

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

FINDINGS:

All files for cases that were arbitrated contained the required information.

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

FINDINGS:

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

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

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

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

CONCLUSIONS:

The NCDS program's record keeping policies and procedures are in substantial compliance with the federal Rule 703 requirements.

C. Case File Records (4 yrs. 2001-2004)

§ 703.6 (f)

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

A random sample of case numbers from the years 2001-2004 was drawn from NCDS' data base program, and in our field inspection, we checked the sample case files in the NCDS headquarters office to verify that they were being maintained (i.e., stored) per requirement § 703.6(f). In addition, a visual inspection was made of the entire four-year accumulation of case files required by the same section. The closed files are stored in a discrete area within the NCDS office. All records for the audit period (2004) and for the four-year period (2001 through 2004) were complete and readily available for audit. The random sample inspection validated the apparent completeness suggested by the visual inspection.

D. Program Records

i. Case file folders

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

ii. Arbitrator Biographies

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

E. Hearing Process

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

The AWAP hearing was held at the Rick Hendrick Toyota dealership, 534 N. McPherson Church Road, Fayetteville, North Carolina, March 14, 2005, at 11:00 am. The meeting room was of reasonably adequate size for accommodating anyone who wished to attend as an observer. The parties included the customer, a Toyota manufacturer's representative, the arbitrator, and the auditor.

ii. Openness of Hearing

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

iii. Efficiency of Meeting

The arbitrator's case file was complete with all requisite documents. The arbitrator demonstrated that she generally knows how to properly conduct a hearing. She addressed the parties, giving a brief overview of the process, but failed to provide a case opening statement setting forth the particulars of the dispute and the customer's requested relief.

The meeting began at 4:00 pm as scheduled.

iv. Hearing

The hearing was, in the main, improperly conducted. The arbitrator actually encouraged the customer to engage in mediation prior to taking testimony for arbitrating. In addition, the arbitrator's explanation of the process failed to make clear just what was transpiring after the arbitrator left the room to allow the parties an opportunity to mediate. As a result, the customer appeared to believe they were to give their testimony for arbitration. The mediation understandably failed, necessitating the customer repeating their testimony. After presenting several repair orders, the customer referenced the state lemon law and the arbitrator said, in effect, that she didn't really know what the lemon law provided. The arbitrator then assured the customer that she takes the lemon law into account. A curious statement in light of the fact that she just asserted that she did not know what the lemon law provides. Both parties, however, were afforded an uninterrupted opportunity to present their versions of the case. Following each party's presentation, the other party was given an opportunity to clarify or challenge, as was appropriate.

v. Board/Arbitrator Decisions

We reviewed this case's decision and a sample of decisions for the region while conducting our on-site visit to the Dallas, Texas, headquarters of NCDS. The decision in this case was consistent with the regulatory requirements with the qualifier discussed above. Further, the decision was thorough and complete, setting forth sufficient rationale for her findings.

Conclusion:

The AWAP, as it operates in the North Carolina region, is in "substantial compliance" with Rule 703. The NCDS administrative staff demonstrated a clear commitment to ensuring fair and expeditious resolution of warranty disputes. The administrative staff is clearly dedicated to the program's mission and generally demonstrates a high degree of professionalism. The arbitrator demonstrated a commitment to fair and expeditious resolution of warranty disputes, and the problems with the inartful way in which the arbitrator conducted the hearing was more a concern about form than one of substance.

III. Ohio

A. Case Load and Basic Statistics

Ohio generated 176 cases in 2004 of which 81 (46%) were determined to be "not-in-jurisdiction" cases. The program also reports 14 mediated cases (14.7% of the 95 in-jurisdiction cases) and 72 arbitrated cases (75.7% of the 95 in-jurisdiction cases). The average days for handling a 2004 Ohio case is 35. This compares with an average of 38 days handling nationwide.

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

During our on-site review at the Dallas, Texas, headquarters, we visually inspected the warehousing of all AWAP case files for the required four-year period.²¹ The four-year accumulation of case files was available for inspection per all regulatory requirements. In addition, the staff at NCDS were efficiently housed and provided with up-to-date equipment.

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

B. Recordkeeping Accuracy and Completeness

§ 703.6 (a)(1-12)

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

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

²¹ See 16 C.F.R., § 703.6 (f). Since some of the participating manufacturer's have not been administered by NCDS for four years, we could not render any judgment in that regard. Still, we have seen how those files were maintained in other audits we have conducted, and as a result, we have confidence the files are being stored as required. Moreover, we saw no substantive inconsistency in how NCDS maintains files between manufacturers so we feel comfortable in assuming that what is true in this regard for Toyota, DaimlerChrysler, and Mitsubishi will be seen to also be true for the Porsche and Lexus aspects of the national AWAP.

FINDINGS:

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

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

§ 703.6 (a) [continued]

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

FINDINGS:

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

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

FINDINGS:

All applicable case files contain a letter from the arbitrator announcing his/her decision.²²

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

FINDINGS:

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

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

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

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

²² Some cases do not result in a decision. The case may end in a mediated settlement that came about after the case had been received by the AWAP but prior to the hearing to decide the matter.

CONCLUSIONS:

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

C. Case File Records (4 yrs. 2001-2004)

§ 703.6 (f)

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

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

D. Program Records

i. Agendas and Minutes of Arbitration Hearings

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

ii. Arbitrator Biographies

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

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

The AWAP hearing was held at the Voss Toyota dealership, 2110 Heller Drive, Beavercreek, Ohio, January 28, 2005, at 12:00 am. The meeting room was of reasonably adequate size for accommodating anyone who wished to attend as an observer. The parties included the customer, a Toyota manufacturer's representative, the arbitrator, and the auditor.

i. Physical Description of Hearing

The hearing was conducted in room of adequate size and was reasonably arranged for the purposes of the hearing. Attending were the customer, a customer witness, a Toyota representative, a Toyota dealer representative, the auditor, and the arbitrator.

The hearing was efficiently conducted as far as it went but, the parties agreed during the hearing to attempt to mediate the dispute interrupting, as it were, the arbitration process. The arbitrator excused himself from the room during the mediation/negotiation process. The matter concluded with the parties agreeing to

a settlement the substance of which we evaluated both in-person and in the final written form.

The audit included interviews with the customer and the Toyota representatives either before or after the hearing.

ii. Openness of Meeting

The hearing was open to observers pursuant to the federal and state regulations and program rules.

iii. Efficiency of Meeting

The hearing was efficiently administered as far it went.

iv. Hearing

This arbitrator appeared to be committed to the fair and expeditious resolution of warranty disputes in the hearing process.

v. Board/Arbitrator Decisions

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

We have reviewed the mediated agreement reached in the case we monitored and, it is well stated, and complete.

CONCLUSION:

The AWAP, as it operates in Ohio, is in substantial compliance with Rule 703. while recognizing the important caveat discussed elsewhere regarding the need to clarify and modify the panel hearing policy concerning the open meetings requirement of rule 703. The NCDS administrative staff and the NCDS program demonstrated a clear commitment to ensure fair and expeditious resolution of warranty disputes. The administrative staff is clearly dedicated to the program's mission and demonstrates a high degree of professionalism.

SECTION IV

Arbitration Training

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

Arbitration training is currently seen by many as a fundamental to ensuring that a program is fair to all sides, and some recent state regulations require arbitrator training. Consequently, programs have initiated the training process even in states that do not specifically require it. Because such training has become a basic part of the AWAP, it is incorporated into this report as part of the program's efforts to provide for fair and expeditious resolution of disputes.

FINDINGS:

The arbitration training session we monitored was conducted at the DFW Lakes Hilton in Grapevine, Texas, April 29 - May 1, 2005. As noted in the introduction, certain facets of the audit are conducted in the year following the audit period; otherwise, there would sometimes be no means available for review.

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

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

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

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

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

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

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

Overall, the training appears to have left trainees with an opportunity to develop a good grasp of their responsibilities as arbitrators. As was true at last year's training, trainees were presented with information that makes it clear that customers who purchase a vehicle with a substantial non-conformity that the manufacturer fails to cure in a reasonable number of attempts should probably receive the relief they are entitled to under the terms of the Magnuson-Moss Warranty act or the appropriate state automobile warranty statute.

The invaluable role-playing demonstrations have become a standard feature of NCDS training. Some exercises involve trainees simply observing role-playing by staff, but a major component of training involves trainees themselves in role play exercises.

An important and thorough presentation centered around the Federal Magnuson-Moss Warranty Act²³ and its relationship to the Uniform Commercial Code. Our field experience suggests that some greater emphasis on the arbitrators' scope of authority and the related available remedies under federal law would also be beneficial.

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

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

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

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

CONCLUSION:

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

²³ Also addressed was the Act's related administrative rules commonly known as Rule 703.

ARBITRATION TRAINING RATING SYSTEM

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

SECTION V

Survey and Statistical Index Comparative Analyses

NATIONAL CENTER FOR DISPUTE SETTLEMENT AUTOMOTIVE WARRANTY PROGRAM PROGRAM INDICES

The Federal Trade Commission (FTC) regulates informal dispute resolution programs, such as those operated by the National Center for Dispute Settlement under FTC Rule 703.6(e). The rule mandates disclosure of statistics about the outcomes of warranty disputes and warrantor compliance with settlements and awards. The purpose of this section of this audit is to verify the statistics provided by the company for the year 2004.

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

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

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

FTC Rule 703.6(e) requires warrantors to report statistics (also referred to as indices) in 13 areas. These include such things as: the number of mediated and arbitrated warranty disputes in which the warrantor has complied with a settlement or award; the number of cases in which the warrantor did not comply; the number of decisions adverse to the consumer; the number of “out-of-jurisdiction” disputes; and the number of cases delayed beyond 40 days. In addition to questions designed to assess the validity of AWAP statistics, the Claverhouse survey includes questions that allow consumers to evaluate various aspects of the program.

To determine the accuracy of the AWAP’s warranty dispute statistics and to gather evaluation information about the program, Claverhouse Associates contracted with the Office for Survey (OSR) of the Institute for Public Policy and Social Research (IPPSR) to conduct a survey of a randomly selected national sample of consumers who filed disputes with the AWAP during 2004. The primary focus of this survey is to determine whether customers’ recollections or records of what happened in their cases match the data compiled by the AWAP. The question is not whether an individual’s recollections match the data in the AWAP’s records, but rather whether the aggregate proportion of consumers’ recollections agree with the outcomes reported to the FTC.

ABOUT THE STUDY

The Claverhouse study is based on data collected from 400 of the 2,246 users²⁴ of the program nationally in 2004 whose cases were “in jurisdiction” and “closed.” A customer who had filed more than one case was asked to refer to the most recent case when answering the survey. The data was collected using a mailed self-administered questionnaire. To ensure that everyone sampled had an equal opportunity to participate and to increase overall completion rates, OSR used a methodology designed by Professor Donald Dilman of the University of Washington, a nationally known expert in the field of survey research. His method involves an initial mailing, a postcard thank-you/reminder, and a second full mailing to non-responders.

On March 8, 2005, packets containing the survey, a cover letter, and a postage-paid return envelope was sent to a random sample of 750 users of the AWAP program nationwide. The cover letter explained the purpose of the survey, why the customer was selected to participate, and how the results would be used. It also explained their rights in the research process and gave them contact numbers of OSR staff in case they had questions about the survey itself.

One week after the initial mailing (March 15, 2005), a combination thank-you/reminder postcard was sent to everyone who had received the initial mailing. Each person in the study was assigned a unique id number for tracking purposes. This tracking number was used so that a second mailing could be sent to those who had not yet responded. On April 5, 2005, OSR mailed another cover letter (which explained that their initial questionnaire had not been received and again asked for their participation), another copy of the questionnaire, and another postage-paid envelope to non-respondents.

A threat to the validity of study is non-response bias. That is, if there is any systematic reason that certain consumers are unavailable or choose not to participate, the results can be biased. For example, if those who did not receive awards were more likely to refuse participation than those who did receive awards, the study would underestimate the percentage of decisions adverse to consumers. The practices of sending postcard reminders and second full mailings to non-responders are attempts to increase completion rates and reduce non-response bias.

The margin of error for this study is ± 4.4 percent²⁵ and the completion rate is 53.5 percent.

Method of Resolution

Table 1 compares the method of resolution of disputes in the Claverhouse sample with the figures reported to the FTC. Since the Claverhouse survey contained only in-jurisdiction cases, out-of-jurisdiction cells in the Claverhouse section of the table are blank, and the subtotal (representing in-jurisdiction cases) is equal to total disputes. In this case, only AWAP in-jurisdiction cases are compared with the Claverhouse sample. The difference between the 20.0 percent of cases mediated in the Claverhouse sample and the percent of cases mediated in the AWAP figures is

²⁴ A total of cases were included in the statistics sent by the AWAP, these included cases that were “out of jurisdiction”, cases that were not yet considered “closed” (“resolved by the staff/members and time for compliance has not yet occurred”), and 3 whose decision was pending. The cases are used in the calculation of some statistics and not in the calculation of others.

²⁵ This is the sampling error when the responses divide roughly 50-50 on a given question and when there are 400 cases, given a 95 percent confidence interval (i.e., there is a 1-in-20 chance that the actual proportion in the population falls outside the range of 50 ± 4.4 percent). The magnitude of the sampling error is determined primarily by sample size (a larger sample size yields a smaller sampling error) and also, to some extent, on how evenly responses are divided among alternative answers. For example, if the responses were divided 75-25 on a given question, the margin of error would be $\pm 4.0\%$.

not statistically significant. Likewise, the difference between the 80.0 percent of arbitrated cases in the Claverhouse sample and the percent of arbitrated cases in the AWAP figures is also not statistically significant. Therefore, the statistics are in agreement.

Table 1
Method of Resolution of Warranty Disputes
Comparison between Claverhouse Survey and AWAP Indices 2004

Resolution	Claverhouse		AWAP		
	Number	Percent	Number	Percent of in-jurisdiction cases	Percent of all cases
Mediation	80	20.0%	437	19.5%	11.6%
Arbitration	320	80.0%	1,809	80.5%	47.9%
Subtotal (in-jurisdiction)	320	100.0%	2,246		
Out-of jurisdiction	-	-	1,526	-	40.5%
Total disputes	400	100.0%	3,772 ²⁶	100.0%	100.0%

Mediated Cases

FTC Rule 703.6(e) requires the reporting of the proportion of mediated settlements with which warrantors have complied, the proportion with which warrantors have not complied, and the proportion in which the period for compliance has not yet passed. Since the universe of cases for the Claverhouse surveys only includes closed cases, cases in which the compliance period has not yet passed are not included.

²⁶ Table does not include the 202 pending cases.

Table 2
Outcomes of Mediated Settlements
Comparison between Claverhouse Survey and AWAP Indices 2004

Mediated Settlements	Claverhouse	AWAP
	Percent (Number)	Percent ²⁷ (Number)
Warrantor has complied within the compliance period	88.0% (66)	96.5% (392)
Warrantor has not complied	6.6% (5)	3.5% (14)
Warrantor complied but not within the compliance period	5.3% (4)	0.0% (0)
Total Mediated Cases	100.0% (75)	100.0% (406) ²⁸

The survey data shows that the manufacturer complied with 93.3 percent of the mediated cases. Eighty percent of those cases were complied with during the mandated time frame. The statistic “resolved by the staff of the mechanism and warrantor has complied” is in agreement with the AWAP indices as is the statistic “resolved by the staff of the mechanism and time for compliance has occurred, and warrantor has not complied”.

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

Table 3
Specific Outcomes of Mediated Settlements
Claverhouse Survey 2004

Outcome	Number	Percent
Repairs	20	27.8%
New vehicle	19	26.4%
Cash settlement	17	23.6%
Extended warranty	14	19.4%
Trade-in allowance	1	1.4%
Nothing	1	1.4%
Total	72	100.0%

²⁷This percentage is a percentage of mediated cases only.

²⁸AWAP indices show 392 cases in which the warrantor has complied, 14 cases in which compliance has not occurred, and 31 cases where time for compliance had not occurred. Because these 31 cases are not considered “closed” they are not included in the comparison of the Claverhouse data.

When asked if they pursued their cases any further 14.7 percent of the respondents indicated that they had done so. Of those who pursued their cases, 43.8 percent recontacted the AWAP, 25.0 percent went back to the dealer or manufacturer, 18.8 percent contacted a government agency (attorney general, etc) and 12.5 percent contacted an attorney²⁹.

Respondents were asked if they recalled talking to the AWAP staff or returning a postcard to the AWAP about their settlement and their case in general. Of those answering the question, 42.2 percent recalled talking to a staff member, 28.1 percent returned the postcard, 12.5 percent said that they did both, and 17.2 percent didn't bother to do either or both.

Arbitrated Cases

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

Respondents were first asked whether they remembered receiving the forms in which their claims were stated. Of the respondents who reported having arbitration hearings, 93.5 percent said that they recalled receiving the forms. Respondents were also asked a question about how accurately they felt the forms stated their claims: 47.7 percent said "very accurately"; 40.1 percent said "somewhat accurately"; and, 12.2 percent said "not very accurately or not at all accurately."

How accurately the respondent felt their case was stated is closely related to whether or not the respondent received an award. Those who said that their case was stated "very accurately" or "somewhat accurately" were more likely to receive an award, 70.9 percent and 25.6 percent respectively. The number was much lower for those who did not receive an award. Only 35.8 percent of those who said their claim was stated accurately received an award (see Figure 1).

Respondents were then asked whether they had been notified of the time, place, and date of the arbitration hearing. Of those who answered this question, 95.1 percent said they had been notified, and of those who had been notified, 75.5 percent attended their hearing in person, 3.6 percent said that they participated in the hearing by phone, and 20.8 percent said that they did not attend the hearing in person or participate by phone. When asked why they did not attend or participate in the hearing, the top five reasons given were: 41.3 percent said that they chose a document only hearing, 23.8 percent said that the hearing was too far away, 9.5 percent said that they were told that their presence was not necessary, 8.0 percent said that they or someone in their household was ill preventing them from attending, and 4.8 percent felt that they had already spent too much time dealing with the issues and the car.

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

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

²⁹ This statistic is based on a total of 16 responses as respondents could indicate more than one source.

INSERT FIG 1

Table 4
Outcomes of Arbitrated Cases
Comparison between Claverhouse Survey and AWAP Indices 2004

Outcome	Claverhouse	AWAP
	Percentage (Number)	Percentage (Number)
Arbitration - Award Granted and Accepted		
Case decided by board and warrantor has complied	22.5% (63)	13.3 % (240)
Case decided by board and warrantor has not complied	3.2% (9)	.8% (14)
Case decided by board and time for compliance not passed		1.6% (29)
Total – award granted and accepted	25.7% (71)	15.6% (283)
Arbitration Decision adverse to consumer	74.1% (207)	84.3% (1,526)
Total arbitrated decisions	100.0% (279) ³⁰	100.0% (1,809)

Survey results differ statistically from the AWAP indices for two statistics. The one statistic that is in agreement is “case decided by board and warrantor has not complied”. The other differences in the statistics should not be of great concern since the difference favors the consumer and not the AWAP. This difference, in part, can be attributed to non-response bias in that those who did not receive an award might be less willing to participate in the research and conversely, those who did receive an award and the warrantor did comply might be more likely to participate in the research. Of those who did receive an award from the AWAP, 90.3 percent received the award within the time frame mandated by the board, which is a positive outcome for both the program and the consumer.

Of those who had not received their award, 43.5 percent said they were given a reason by the AWAP.

Of those who received an award from the AWAP, 38.0 percent said the dealer or manufacturer had to buy back their car, 31.5 percent said the dealer or manufacturer had to repair the vehicle, 23.9 percent said the dealer or manufacturer had to replace the vehicle, 4.3 percent said the dealer or manufacturer had to terminate the lease, and 2.2 percent said the dealer or manufacturer had to extend the warranty.

The survey also asked whether or not the respondent accepted or rejected the decision. Of those who received an award, 79.8 percent indicated that they accepted what was awarded. Those who rejected the award (20.2 percent) gave the following reasons: 50.0 percent thought that the decision would not solve the vehicle’s problems; 43.8 said they did not want what the AWAP offered; and 6.3 percent said the decision would cost too much money or that they would lose money.

³⁰This includes only cases for which there was no missing data, an award was granted and accepted.

All respondents whose cases were arbitrated were asked whether they had pursued their cases further after the arbitration decision. One quarter (25.0 percent) replied in the affirmative. Table 5 shows by what means they pursued their cases. Note that respondents could pursue their cases by more than one means; thus, the number of responses is greater than the number of respondents (76).

**Table 5
Methods of Pursuing Cases
Claverhouse Survey**

Method	Number	Percent
Contacted a government agency	30	32.6%
Contacted an attorney/legal means	28	30.4%
Worked out a solution with the dealer	18	19.6%
Recontacted the AWAP	16	17.4%
Total responses	92	100.0%

When asked if they talked to the staff of the AWAP or returned a postcard indicating how they felt about their arbitration case and the decision, 19.9 percent said that they had spoken to someone, 46.7 percent said that they returned the postcard, 15.8 percent said they did both, and 17.6 said that they did not bother to do either or both.

Delays to Arbitration Decisions

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

AWAP indices report that only 2.8 percent of the in-jurisdiction cases were settled beyond 40 days, whereas survey respondents reported 29.8 percent of cases were settled beyond 40 days (31.9 percent for those with mediated cases and 29.3 percent for those with arbitrated cases) (see Figure 2). This percentage difference is statistically significant, but should not be of great concern. We can attribute this to error in recall and reporting on the part of the respondents.

Respondents are asked to recall very specific information about an event that may have occurred a year or more ago. When asked for the date in which their case was opened, 40.9 percent could not provide any date at all. For those who did provide a date, these dates (both complete or partial) were compared to records supplied by the AWAP. Only 35.9 percent were able to give the date that matched AWAP records (either exactly or within two weeks), 44.3 percent gave an incorrect date, and the remaining 19.8 percent could only give the correct month in which their case was opened.

Survey respondents' recollections on when their cases were closed were similar – 40.6 percent could not provide any date at all. For those that did provide a complete or partial date, 51.9 percent were able to give the date that matched AWAP records (again, exactly or within two weeks), 29.5 percent gave an incorrect date, and the remaining 18.5 percent could give only the correct month.

This analysis supports the theory of error in recall and reporting. Another theory that can explain this difference is that the consumer may not be using the same criteria for when a case is considered “opened” and “closed” as does the AWAP. The AWAP considers a case opened

INSERT FIG 2

when the forms are received in the office and processed. Consumers, on the other hand, may see their cases as having been opened when they first contacted the AWAP, when they mailed the forms, or even when they first began to experience problems with the vehicle. Similar considerations apply to when a case was closed, especially if the case had a negative outcome. The high percentage of consumers giving incorrect dates (44.3 percent for when the case was opened and 29.5 percent for when the case was closed) supports this theory.

Given this information, the difference between the AWAP indices and the Claverhouse data should not be a cause for concern. There is a slight statistical difference between the Claverhouse data and the AWAP indices for the reasons for the decision delays, but again, the difference should not be cause for concern and can be attributed to consumers interpretation of the categories.

Table 6
Reasons for Delays in Decisions
Comparison between Claverhouse Survey and AWAP Indices 2004

Reasons for Delays	Claverhouse	AWAP
	Percentage (Number)	Percentage (Number)
Decision delayed beyond 40 days because of customer failure to submit information in a timely manner.	3.2% (3)	0.0% (0)
Decision delayed beyond 40 days because customer had made no attempt to seek redress directly from warrantor.	2.1% (2)	0.0% (0)
Decision delayed beyond 40 days for any other reason.	94.7% (90)	100.0% (63)
Total cases delayed beyond 40 days.	100.0% (95)	100.0% (63)

Consumer Attitudes Toward the AWAP’s Informal Dispute Settlement Procedures

At the beginning of the questionnaire, respondents were asked how they had learned about the Automobile Warranty Arbitration Program. The responses are summarized in Table 7.

Table 7
How Consumers Learned about AWAP Availability
Claverhouse Survey

Sources of Information	Number	Percent
Owner's manual/warranty information	169	37.5%
Automaker Customer Complaints/Toll-free number	106	23.4%
Dealership	96	21.2%
Friends and family	31	6.8%
Brochures/other literature	21	4.6%
Previous knowledge of the program	13	2.9%
Attorney or other legal source	13	2.9%
Media - TV, radio, newspapers	3	.7%
Total	452 ³¹	100.0%

The owner's manual was the leading source of information about the program (37.5 percent), followed by the automaker's customer complaint toll-free number (23.4 percent), and the dealership (21.2 percent).

Those who reported that they had learned about the program through the dealer or the automaker were asked additional questions about the means in which they were informed of the program. Most said that they the dealer or manufacturer either talked with them about the program (45.7 percent) and/or they were given something to read about the program (32.3 percent). A small percentage reported that they saw a poster or other displays at the dealer (4.3 percent) and 17.7 percent said they learned about the program from the dealer or manufacturer in other ways³².

Survey respondents were also asked about the materials and forms they received from the AWAP. Almost all, 95.1 percent, recalled receiving the materials. Of those who said they recalled receiving the materials, 66.8 percent reported the informational materials were very clear and easy to understand; 30.0 percent said somewhat difficult, but the materials were still fairly easy to understand; and 3.3 percent said that the materials were difficult to understand. When asked about the complaint form itself, 64.9 percent said it was very clear and easy to understand, 32.8 percent said somewhat difficult, and 2.3 percent said very difficult to understand.

Ease of understanding the materials, especially the complaint form, is correlated with the type of case (mediated or arbitrated) and whether or not they received some type of award. For those with mediated cases, 75.0 percent said that the complaint forms were very clear and easy to understand compared to 62.2 percent of those whose case was arbitrated (See Figure 3). Of the respondents who went through arbitration and received an award, 79.1 percent found the forms very clear and easy to understand compared to 57.4 percent who did not receive an award.

Respondents were then asked to rate their satisfaction with the AWAP staff in three areas – objectivity and fairness, promptness, and effort by using a five-point scale, ranging from very satisfied to very unsatisfied. They were also asked to give the program an overall satisfaction rating. Table 8 shows these results.

³¹These figures represent responses, not respondents, because respondents were able to supply more than one answer.

³²The percentages do not add to 100 percent since respondents were allowed to answer in the affirmative to all four choices.

INSERT FIG 3

Table 8
Survey Respondents' Ratings of AWAP Staff
Claverhouse Survey

Performance Item	Level of Satisfaction				
	Very Satisfied	Somewhat Satisfied	Neutral	Somewhat Dissatisfied	Very Dissatisfied
Objectivity and fairness	27.4%	9.2%	14.6%	8.7%	40.0%
Promptness in handling your complaint during the process	38.0%	20.8%	21.4%	7.3%	12.5%
Efforts to assist you in resolving your complaint	27.5%	8.3%	14.3%	12.5%	37.4%
Overall rating of the program	27.4%	10.8%	8.7%	11.3%	41.8%

Of the three areas, users of the program gave the highest satisfaction rating in the area of promptness, with 58.8% saying that they were either very satisfied or somewhat satisfied. The lowest satisfaction rating was in the area of effort, with only 35.8 percent reporting some level of satisfaction. Respondents felt the same when it came to rating objectivity and fairness with only 36.6 percent saying they were satisfied with this area of the program (See Figure 4).

When asked to give an overall satisfaction rating, only 38.2 percent gave a satisfied rating (with 27.4 percent saying they were very satisfied). Over half (53.1 percent) said that they were dissatisfied (with 41.8 percent saying they were very dissatisfied).

The type of case and whether or not the outcome was favorable to the consumer plays an important part in consumers satisfaction with the program. For the purpose of this analysis, the satisfaction scale is re-coded into a dichotomous variable. Those who reported being "neutral" were dropped from the variable computation.

Those with mediated cases were much more likely to be satisfied (87.7 percent) than those with arbitrated cases (14.3 percent). Those who received an award in the arbitration process were also much more likely (77.1 percent) to report being satisfied than those who did not receive an award (89.8 percent reported being dissatisfied). Again, those who were granted an award and accepted the award reported higher satisfaction levels (87.7 percent) compared to those who were granted an award and then rejected the award (18.8 percent)(See Figure 5).

Another measure of consumers' satisfaction or dissatisfaction with the AWAP program is whether or not they would recommend the program to others. Overall, 40.4 percent said that they would recommend the program, 42.3 said they would not, and 17.3 percent said that it would depend on the circumstances.

How individual groups responded to this question are summarized in Table 9.

INSERT FIG 4

insert fig 5

Table 9
Would Consumer Recommend the AWAP Program to Others?
Claverhouse Survey

Method of Resolution and Outcome	Yes	No	Depends on Circumstances
Mediated	83.6%	8.2%	8.2%
Arbitrated	30.2%	50.3%	19.5%
Award Granted and Accepted	77.2%	10.1%	12.7%
Award Granted and Rejected	20.0%	45.0%	35.0%
No Award	12.1%	67.2%	20.7%

Finally, survey respondents were given an opportunity to make comments and suggestions about AWAP program changes or improvements. These comments are summarized in Table 10.

Table 10
Consumer Suggestions for Program Improvement
Claverhouse Survey

Suggestion	Number	Percent
Arbitrators should be more-consumer oriented	98	27.6%
Did a good job, no complaints	57	16.1%
Need better initial review of cases by staff and arbitrators	38	10.7%
Make dealers/manufacturers more responsive to consumer	36	10.1
Have better qualified mechanics for inspections/repairs	22	6.2%
Allow for more information about history/problems of car	22	6.2%
Have more personal contact with program	19	5.4%
Make program better known/more advertising	16	4.5%
Awards/settlements and dollar amounts need to be fairer	11	3.1%
Need better follow-up enforcing awards/settlements	10	2.8%
Less paperwork/easier to understand forms	8	2.3%
Speed up the process for quicker decisions	7	2.0%
More professional staff	5	1.4%
Have better/more representation at hearings	4	1.1%
Need on-line forms applications	1	0.3%
Need more program locations	1	0.3%
Total	355 ³³	

³³ Respondents could give up to three comments, the responses are summarized into one table and based on the number of responses, not respondents

The most frequently mention response for those with mediated cases was “did a good job, have no complaints” (49.1 percent), followed by “make the program more well known” (11.3 percent) and “dealers and the manufacturer should be more responsive to their customers” (9.4 percent). For those with arbitrated cases, the top reason was “arbitrators need to be more customer oriented (unbiased)” (39.1 percent), followed by “need better initial review of car, problems, history of car” (14.7 percent), and “dealers and the manufacturer should be more responsive to their customers” and “did a good job, have no complaints” were tied for as the third most common response with 13.0 percent each.

CONCLUSIONS

On the basis of the comparison of the Claverhouse survey results with the AWAP national indices, it is concluded that the AWAP indices are accurate in all but three areas. Those areas are “case decided by board and warrantor has complied,” “arbitration decision adverse to consumer,” and “case delayed beyond 40 days”.

For the statistics dealing with arbitration decisions, the difference in the statistics should not be cause for concern since the difference favors the consumer and not the program. More consumers reported compliance than reported by the program and fewer consumers reported adverse decisions than reported by the program. The differences in the statistics are probably due to non-response bias, in that those who receive favorable outcomes are more likely to participate in the survey than those with unfavorable outcomes.

The other difference between the survey results and AWAP indices is the proportion of arbitrated cases delayed beyond 40 days. Again, this difference should not be cause for concern. The difference can be attributed to respondent error – error in recall and in reporting. This is substantiated by the facts detailed earlier in this report.

Some positive points of the program include the high number of consumers (almost two-thirds) who report that the information received from the AWAP and the forms required are “very clear and easy to understand”, and the high level of satisfaction among those with mediated cases and those granted awards.

Therefore, it is concluded that the AWAP indices are in agreement with the Claverhouse survey for the majority of the indices, and for those that are not, it should not be a great cause for concern.

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