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

Audit

January - December 2005

[post report un re-edited PDF file]

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Introduction

This 2005 audit of NCDS' Arbitration Process is performed pursuant to the 1975 federal warranty law, the Magnuson-Moss Warranty Federal Trade Commission Improvement Act and Rule on Informal Dispute Settlement Procedures, 16 C.F.R. Part 703 (hereafter referred to as Rule 703).

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

Arrangements to conduct the audit were initiated by an invoice submitted in late 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 Arizona, Iowa, and Florida 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, May 19 - 21, 2006. 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 (2005). 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 2005 as required.

SECTION I

Compliance Summary

This is the third 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 prior audits of the NCDS administered warranty arbitration program, but these reviews were manufacturer centered and 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, Arizona, Iowa, and Florida, 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 700 closed cases², of which we completed surveys for 341 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

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 2,154 cases.

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.

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 2005. An important component of the audit is the survey of a randomly selected sample of 700 NCDS' Dispute Settlement Program applicants whose cases were closed in 2005 and found to be within the AWAP's jurisdiction.

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

We performed field audits of the AWAP as it operates in Arizona, Iowa, and Florida. We also examined a random sample of current (i.e., 2005) case files for accuracy and completeness. A random sample of case files was drawn from all case files for the years 2002-2005 and inspected them to ensure that these records are maintained for the required four-year period.³ 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 Flagstaff, Arizona; West Burlington, Iowa; and Pinellas Park, Florida, 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 May 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.

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

FINDINGS:

This is the third (2005) Claverhouse Associates annual audit of NCDS AWAP informal dispute settlement program.

Records pertaining to the NCDS' AWAP that are required to be maintained by 703. 6 (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 (2002-2005) demonstrated that the case files were maintained in 2005, 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.⁴ As such, the information was readily accessible for audit.

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

DISCREPANCIES:

None

REQUIREMENT: § 703.6 (b)

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

FINDINGS:

These indices are maintained by the NCDS staff at the NCDS headquarters in Dallas, Texas.

The audit includes a review and assessment of a data printout for the calendar year 2005.

⁴ 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.

The *AWAP Statistics* identifies 3,317 AWAP disputes filed for 2005. Of these, 2,446 were eligible for AWAP review, and 871 were determined by the AWAP to be out-of-jurisdiction. Of the in-jurisdiction closed cases, NCDS reports that 1,888 were arbitrated⁵ and 415 were mediated.⁶ There were 1,525 arbitrated decisions which were reported as “adverse to the consumer” per § 703.6 (E) representing 80.7% 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.

⁵ 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.

⁶ 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.

FINDINGS:

AWAP reports that there were no such cases in 2005. Concerning subsection 2, the auditors are advised by NCDS that there is no reported incidence in which a NCDS AWAP participating manufacturer failed or refused to abide by a panel or arbitrator decision. As a matter of general corporate policy, all AWAP participating-manufacturers agree to comply with all AWAP decisions. This information is supplied as part of NCDS' Annual FTC -703.6 (c) (1) and (2) Report.

DISCREPANCIES:

None

REQUIREMENT: § 703.6 (d)

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

FINDINGS:

According to AWAP statistical index reports, as of December 2005, a total of 123 AWAP cases were delayed beyond 40 days. The National Center for Dispute Settlement provided a comprehensive report of all individual cases delayed beyond 40 days during the 2005 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 NCDS.

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

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

DISCREPANCIES:

None

REQUIREMENT: § 703.6 (f)

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

FINDINGS:

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

We inspected the collection of all case files for each region during our on-site visit to the NCDS headquarters in 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) NCDS provided us with the various 2005 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. Any required report can be obtained from David Carpenter at the NCDS headquarters. The information is maintained as required.

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

DISCREPANCIES:

None

REQUIREMENT: § 703.7 (b)

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

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

FINDINGS:

The essential feature of both regulatory requirements cited above is timing. In our review, therefore, we give emphasis to efforts that would inform customers and ensure that they know about the existence of the AWAP at all times, as well as examining the 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 2005 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*.⁷ 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 2005 report, we visited several Toyota dealerships.⁸

Clearwater Toyota
21799 US Highway 19 N
Clearwater, Florida 33765

Clemons Toyota
No Address listed on business card
Fairfield, Iowa

Planet Shottenkirk
5333 Broadway,
Quincy, Illinois 62305

⁷ 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*.

⁸ As is the case with several dimensions to the audit we carried out this aspect in the year 2006.

American Toyota
5995 Alameda NE
Albuquerque, New Mexico 87113

Thayer Toyota
1225 N. Main St.
Bowling Green, Ohio 43402

La Riche Toyota
920 Plaza St.
Findlay, Ohio 45840

Rouen Toyota of Maumee
1377 Conant St.
Maumee, Ohio 43537

The results of our review of dealership personnel we interviewed during our Toyota dealership visits sometimes provided useful information about the Toyota warranty dispute mechanism in response to our inquiry concerning customer options when the customer is experiencing warranty disputes. As was true last year, one Toyota dealership in Ohio had a framed poster about NCDS arbitration that included a contact toll-free telephone number 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.” At yet another dealer [Ohio] they were very helpful in providing useful information about the program but they did not have the poster required by the Ohio Lemon Law. In New Mexico, the Toyota dealer provided very useful information about the program. The dealers’ performance in the Iowa area⁹ is mixed. One dealer provided no useful information while another attempted to be helpful showing us a lemon pamphlet but it provided no information relative to NCDS and how to file a case with them. Nevertheless, it is more consistent this year with the underlying intent of federal requirements of Rule 703.

We said in prior reports that:

Clearly, one of the principal reasons that the annual independent audit requirement was included in Rule 703 was to ensure that adequate consumer awareness was provided for by sponsoring manufacturers. That the original draft of Rule 703 was modified so as to require this audit was an outcome fostered by manufacturers who complained that the proposed alternatives

⁹ The dealer who attempted to be helpful but still gave no useful information about the NCDS program was on the border between Iowa and Illinois [Quincy] but clearly serviced customers from both states.

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 2005 (3,317) 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, *2005 Lexus Owner's Manual Supplement*.¹⁰ The manual references NCDS on pages 10 - 13. 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. This document is distributed to Lexus customers after the customer has filed an application.
- Lexus publishes a booklet entitled *Lemon Law Guide* which includes the word "arbitration" in the *Table of Contents* which appears as page one.

Notwithstanding the commentary below, Lexus has vastly improved their information program which is designed to make customers aware of the availability of the 703 Mechanism's program for resolving warranty disputes.

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.**"

We did not visit a Lexus dealership for the 2005 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

¹⁰ We actually used a Lexus 2006 manual for this review.

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 primarily 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. Nevertheless, the program's innovations noted above represent a significant improvement from the past.

II. PORSCHE:

- Porsche publishes a *Warranty and Customer Information* booklet with references to NCDS on pages 6 & 7. The reference includes useful information on NCDS and the program's purpose as concerns warranty disputes and arbitration options. Included is a toll-free telephone number for contacting NCDS. The information is thorough, accurate, and complete.

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 2006, we visited the following Porsche dealerships for the 2005 audit:

Bert Smith Euro Collection
3800 34th St. North
St. Petersburg, Florida 33714

Porsche of Albuquerque
8900 Pan American Freeway N.E.
Albuquerque, New Mexico 87113

The Florida Porsche dealership we visited in 2005 provided extremely limited assistance. When we asked about the possibility of going to some kind of arbitration program, the service department employee gave us a pamphlet entitled, *Florida Guide to the Florida Lemon Law* which provides no information that would help a customer file a warranty dispute with NCDS the manufacturer's dispute resolution mechanism.

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 addressed many of the concerns we raised in our last two audits. Below, in italics, are some of the comments from our prior audits.

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

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

Good Morning Gentlemen, We are pleased to announce the rollout of our Dispute Resolution Process posters. Three 11x17 posters and a cover letter will be shipped to the attention of each Dealer Service Manager in today's weekly drop. I've attached a copy of the cover letter for your review. In addition, we will be shipping 75 posters to

each of the Regions so that your AWAPMs have some on hand for dealer visits. There is also a small supply of posters at Standard Register that can be ordered (Form # DR00204).

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

You may be aware that the FTC conducts a yearly audit of our Dispute Resolution Process through NCDS. The audit will be commencing in the next few weeks - and part of the audit includes "mystery shop" visits to retailers.

Unfortunately, last year, the majority of dealerships visited by the auditor could not accurately describe the Dispute Resolution Process. Per Joan Smith's email to you dated 1/14/04 please ensure DPSMs are training their dealer personnel on our Dispute Resolution Process.

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

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

We also said at the time,

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

We continue to view these innovations as clear evidence of intent for which Mitsubishi should be given credit.

In 2005 & 2006, we visited the following Mitsubishi dealerships for the 2005 audit:

Santa Fe Mitsubishi

1955 Saint Michaels Drive
Santa Fe, New Mexico 87505

Crown Mitsubishi
5326 34th Street North
St. Petersburg, Florida 33714

Our Mitsubishi dealership experience in this regard was in both cases, were grossly inadequate. In St. Petersburg we were told they cannot advise me and gave me Mitsubishi's toll-free telephone number for customer assistance. In Santa Fe, New Mexico, 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. In addition, the service department employee we interviewed gave us inaccurate and misleading information including a statement that "...you need to have three or four repair attempts in 8 months to go to arbitration," and then said we have to file with the Better Business Bureau." 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.

Overall, the Mitsubishi information program represents a major improvement from the past. Still, these positive efforts can easily be undermined if dealership employees misrepresent important information about the arbitration program. Mitsubishi will need to regularly monitor this aspect of the program.

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.]**

- The *2006 Warranty Information* booklet, supplied with each new vehicle references the "Customer Arbitration Process" (CAP) now administered by the National Center for Dispute Settlement (NCDS). The *booklet* provides a toll-free phone number and mailing address for contacting NCDS.
- The booklet *Owner's Rights Under State Lemon Laws, Supplement to Owner's & Warranty Manual* is provided with each new vehicle. This booklet does not give the CAP address, but at page four it refers customers with unresolved disputes to the CAP brochure that accompanies the *Owner's Manual* and *Warranty Manual*, which are shipped as part of the Glove Box Kit in the applicable states. It also refers customers to the DaimlerChrysler toll-free customer relations (Customer Center) number where the customer can request the address of the CAP.

DISCREPANCIES:

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

REQUIREMENT: § 703.7 (b) (3)(I)

Analysis of a random sample of disputes handled by the Mechanism to determine the following: (I) Adequacy of the Mechanism's complaint and other forms, investigation, mediation and follow-up efforts, and other aspects of complaint handling; and (ii)

Accuracy of the Mechanism's statistical compilations under 703.6 (e). (For purposes of this subparagraph "analysis" shall include oral or written-contact with the consumers involved in each of the disputes in the random sample.)

FINDINGS:

The FINDINGS for this section are arranged as follows:

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

FINDINGS:

1) Forms

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

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

DISCREPANCIES:

NONE

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."

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.

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.

FINDINGS:

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

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

4) Follow-up

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

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

- a) the promised performance has taken place, and
- 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

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

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.

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 May of 2006, 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:

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

None

SECTION III

Field Audit of Three Geographical Areas

I. Arizona

A. Case Load and Basic Statistics

In Arizona, NCDS handled 66 AWAP cases¹⁵ in 2005 of which 17 (25.7%) were "no-jurisdiction" cases. There were 36 cases arbitrated¹⁶ (73.4% of the 49 in-jurisdiction cases), and 8 (16.3% of in-jurisdiction cases) were mediated¹⁷. The average number of days for handling a 2004 case in Minnesota was 31 days. This compares with an average of 42 days handling nationwide.

B. Recordkeeping, Accuracy and Completeness

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

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.**

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 2005 statistical report for Arizona 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 2005 statistical report for Arizona provided to Claverhouse Associates by NCDS.

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

FINDINGS:

The auditor examined the case file folders extracted from all 2005 "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 various regional office contact addresses and phone number is included in each Owner's Manual that accompanies all new vehicles when they are delivered. The contact person is so generally known as to not require it to be placed in each individual case file.
- 3) All case files inspected contain the make and vehicle identification number (VIN) of the vehicle. It is usually found in the customer application form, the richest source of information within most files, but the vehicle make and VIN is often located in documents throughout the file. As a result, cases are seldom, if ever, delayed because the customer has failed to provide the VIN when filing their application.
- 4) All case files inspected contain this information.
- 5) Many files contained letters and additional documents, but since there is no standard by which to measure this item, we determined this subsection to be "not applicable."

§ 703.6 (a) (1-12) [Continued]

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

¹⁸ Due to low volumes in some states we had NCDS draw a sample of case files for our review from a larger region which region includes Arizona.

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.

FINDINGS:

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

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

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

FINDINGS:

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

programmatically 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. 2002-2005)¹⁹

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.

A random sample of 25 case numbers from the years 2002 through 2005 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 25 case files drawn from all cases in the four-year universe of cases validated the program's maintenance of these records as required.

D. Arbitration/Hearing Records

I. Case file folders

Most information that is required to be maintained is found on a series of forms found in the case files maintained at the NCDS headquarters in 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 hearing was scheduled at the principal dealership in question after a consultation 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 Bob Sellers Toyota, 3773 E. Kaspar Drive, Flagstaff, Arizona, and began at the scheduled 10:00 am time.

I. Physical Description of Hearing

The hearing was conducted in a room of small but adequate size. Attending was the customer, the Toyota representative, the auditor, and the arbitrator.

The hearing was efficiently conducted consistent with the regulatory requirements for a fair hearing. The customer was provided with a reasonable opportunity to present his case which he did. The arbitrator

appropriately confirmed what the customer was seeking in the form of relief, and then took a test drive prior to concluding the hearing.

ii. Openness of Meeting

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

iii. Efficiency of Meeting

The hearing was efficiently conducted.

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. An interesting feature that seldom arise in cases we review, was that the case involving the same customer and vehicle and had a prior arbitrator's review. This second hearing then was scheduled to review the additional facts which had emerged subsequent to the initial hearing. The arbitrator wisely consulted with NCDS to assist him in determining whether the case was to be reviewed De Novo or simply attempt to pick up where the prior matter left off. He heard the case De Novo in order to ensure he had before him all pertinent facts the parties wished him to consider.

We noted one concern with the arbitrator's conducting of the hearing which was probably not of any serious consequence in this particular case but, which could be more problematic in other cases. The arbitrator had recognized the customer for the purpose of presenting their case. The customer had just begun to describe their case but was then interrupted by the arbitrator. The arbitrator then gave a detailed description of the materials he had received and reviewed prior to the hearing. He then turned the matter back over to the customer. Arbitrators should assume that most customers are exceedingly nervous when they come to make a presentation and any unnecessary interruptions can easily cause them to lose their composure and forget to include important aspects of their case. Fortunately, in this case, the customer did not appear troubled by the interruption.

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 Arizona 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. Iowa

A. Case Load and Basic Statistics

In Iowa, NCDS handled 8 AWAP cases in 2005 of which 1 (14.2%) were "no-jurisdiction" cases. There were 5 cases arbitrated (71.4% of 7 in-jurisdiction cases), and 1 cases (14.2% of 7 in-jurisdiction cases) were mediated. The average number of days for handling a 2004 case in Iowa was 35 days. This compares with 42 days handling nationwide.

The Iowa field audit includes a review of a hearing held in West Burlington, Iowa, 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 25 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;**

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.

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

FINDINGS:

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

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

§ 703.6(a)

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

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

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

FINDINGS:

All files for cases that were arbitrated contained the information required by sections six and eight. Oral presentations are a basic component of the NCDS program in this jurisdiction, and section seven requires summaries of the oral presentations to be placed in the case file. It is NCDS policy that the arbitrator conducting the hearing must summarize all significant information presented orally by either party during any facet of the hearing. We noted such language in the case files we reviewed in 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. 2002-2005)

§ 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 2002-2005 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 (2005) and for the four-year period (2002 through 2005) 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 Deery Toyota Dealership, 200 S. Gear Avenue, West Burlington, Iowa, March 27, 2006, at 2:00 pm. The meeting room was of adequate size for accommodating anyone who wished to attend as an observer. The parties included the customer, a Toyota manufacturer's representative, a Toyota service department representative, the arbitrator, and the auditor.

ii. Openness of Hearing

This arbitrator said that he 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 he generally knows how to properly conduct a hearing. He began by announcing that he was a bit nervous as a result of the presence of the auditor, he then gave a brief overview of the

process and explained the oath of neutrality. The meeting began at 2:00 pm as scheduled.

iv. Hearing

The hearing was, by and large, properly conducted. Both parties were afforded an uninterrupted opportunity to present their versions of the case. The customer emphasized during his presentation that he had been troubled from the on-set because the vehicle already had 600 miles on the odometer, had only one key and had no owner's warranty manual. Following each party's presentation, the opposing 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 in this case was thorough and complete, setting forth sufficient rationale for his findings.

Conclusion:

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

III. Florida

A. Case Load and Basic Statistics

The 2005 Florida Statistical compilations identifies 293 total disputes closed for 2005. Of these, 28 (11.9 % of all disputes²¹) were beyond jurisdiction for NCDS' arbitration program review. Of the remaining cases, 57 (24.5%²²) were mediated and 144 (99.3%) were arbitrated with 143 (50.4%) of those arbitrated categorized as adverse to the consumer. This percentage is somewhat misleading, however, because there were decisions granting some relief to the consumer which the consumer nevertheless, rejected. The NCDS report submitted to Florida regulators indicates, for example, that the program's arbitrators in 2005 awarded 16 refunds, 3 repairs, 4 replacement vehicles, and one additional award which did not fall within the legally established categories.

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 NCDS reports the percentage as "9.56%." Our calculation here is based only on the 235 cases within the program's jurisdiction, and not including the 30 cases reported as "pending."

²² Our calculation here is based only on the 235 cases within the program's jurisdiction, and not including the 30 cases reported as "pending."

FINDINGS:

We examined a sample of 25 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.²³

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

²³ 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.

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

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

CONCLUSIONS:

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

C. Case File Records (4 yrs. 2002-2005)

§ 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 now stored at a remote location with a commercial storage facility, 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 Autoway Toyota dealership in Pinellas Park Florida, December 6, 2005, at 11:00 am.

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

ii. Openness of Meeting

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

iii. Efficiency of Meeting

The arbitrator's case file was complete with all requisite documents. The arbitrator demonstrated throughout the hearing that he generally knew how to properly conduct a hearing. The arbitrator addressed the parties at the very onset of the hearing giving a brief overview of the hearing process. He then proceeded to allow each party to present their case.

The meeting began at 11:00 am as scheduled.

iv. Hearing

The hearing was, for the most part, properly conducted. All parties were afforded an opportunity to present their versions of the case. Following each party's presentation, the other party was given an opportunity to clarify or challenge, as was appropriate. The arbitrator did conduct a test drive toward the conclusion of the hearing. After the test drive was concluded, all those participating in the test drive returned to the hearing room.

We did not note in the Florida-specific state report which we submitted on behalf of NCDS, an issue we felt was more relevant in the national audit conducted pursuant to the Magnuson-Moss Warranty Act and its related

administrative Rule 703. The issue arose during the closing segment of the hearing when the arbitrator informed the parties that he would be applying the standards of the Florida statute [implying the so called, "Lemon Law."] What this comment implies is a failure to grasp the primary position of the Federal Law [Magnuson-Moss] vis-a-vis the related but secondarily positioned state law. The auditor recognizes that what is being said here is based on the auditor's interpretation which could be wrong. For that reason, we do not place too much emphasis on this one comment. Still, based on our broad experience, we suspect that this issue may warrant reviewing in light of arbitrator training where greater emphasis on the evolution of these various laws and how they are positioned in terms of hierarchy and predominance might be valuable.

v. Board/Arbitrator Decisions

We reviewed this case's decision and a sample of Florida NCDS decisions rendered in 2005 while conducting our on-site visit to the Dallas, Texas, headquarters of NCDS. In the main, the decisions we reviewed were reasonable and consistent with the facts of the case, at least insofar as the case file is concerned. The decision in this particular case was also reasonably consistent with the facts as presented in the case file and during the hearing.

CONCLUSION:

The AWAP, as it operates in Florida, 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, May 19 - 21, 2006. 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 an outside independent contractor augmented by various 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 supplemented 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 has sometimes been 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 Act²⁴ 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

²⁴ Also addressed was the Act's related administrative rules commonly known as Rule 703.

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.

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

***Survey and Statistical Index Comparative
Analyses***

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 the audit is to verify the statistics provided by the company for the year 2005.

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

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

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

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

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

Michigan State University to conduct a survey of consumers nationwide who filed disputes with the AWAP during the calendar year 2005.

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

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

ABOUT THE STUDY

The Claverhouse study is based on data collected from 341 of the 2,154 users²⁵ of the program nationally in 2005 whose cases were "in jurisdiction" and "closed." Closed cases are defined as those where a decision has been made and the time for compliance has occurred. A customer who had filed more than one case was asked to refer to the most recent case when answering the questionnaire.

The data was collected using a mailed self-administered questionnaire. To ensure that everyone selected had an equal opportunity to participate and to increase the overall response rate, OSR used a methodology designed by Professor Donald Dilman of the University of Washington, a nationally known expert in the field of survey research. His method involves an initial mailing, a postcard thank-you/reminder, and a second full mailing to non-responders.

On March 17, 2006, a packet containing the questionnaire, a cover letter, and a postage-paid return envelope was sent to 700 randomly selected users of the AWAP program nationwide who were eligible to participate in the research. The cover letter explained the purpose of the study, why the customer was selected, 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 questionnaire itself or how the results would be used. The letter also explained that OSR was hired for its expertise in survey research and data analysis and was not affiliated with the AWAP or the auto manufacturers in any way.

One week after the initial mailing, (March 24, 2006), a combination thank-you/reminder postcard was sent to everyone who had received the initial mailing. Often, receiving the postcard adds legitimacy to the research and will prompt

²⁵ A total of 3,275 cases were included in the statistics sent by the AWAP, which included 871 cases that were "out of jurisdiction," 49 cases that were not yet considered "closed" ("resolved by the staff/members and time for compliance has not yet occurred"), and 201 pending cases.

those who may have initially decided not to participate to reconsider their decision.

Each respondent was assigned a unique identification number for tracking purposes. This tracking number, which appeared on the front cover of the questionnaire, was used to determine who had returned a completed questionnaire and who did not so that a second mailing could be sent to non-responders. On April 24, 2006, another cover letter (which explained that their initial questionnaire had not been received and again asked for their participation), a questionnaire, and postage-paid envelope was sent to those who had not yet participated. In order to give everyone ample time to complete and return the questionnaire, OSR continued to accept completed questionnaires through June 1, 2006.

A threat to the validity of any study is non-response bias. That is, if there is any systematic reason why 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 reduce non-response bias.

Of the 700 questionnaires that were initially mailed, 341 were returned completed and 20 were returned by the post office as undeliverable. The status of the remaining 339 questionnaires is unknown. The completion rate for this study is 50.1 percent and the margin of error for this study is ± 4.9 percent²⁶.

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 20.8 percent of cases mediated

²⁶ This is the sampling error when the responses divide roughly 50-50 on a given question and when there are 341 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 ± 4.9 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 $\pm 4.2\%$.

in the Claverhouse sample and the 18.2 percent of cases mediated in the AWAP figures is not statistically significant. Likewise, the difference between the 79.2 percent of arbitrated cases in the Claverhouse sample and the 81.8 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 2005

Resolution	Claverhouse		AWAP		
	Number	Percent	Number	Percent of in-jurisdiction cases	Percent of all cases
Mediation	71	20.8%	393	18.2%	13.0%
Arbitration	270	79.2%	1,761	81.8%	58.2%
Subtotal (in-jurisdiction)	341	100.0%	2,154	100.0%	71.2%
Out-of jurisdiction	-	-	871	-	28.8%
Total disputes	341	100.0%	3,025 ²⁷	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 in the research.

²⁷ Table does not include the 49 cases where time for compliance has not yet occurred or the 201 pending cases.

Table 2
Outcomes of Mediated Settlements
Comparison between Claverhouse Survey and AWAP Indices 2005

Mediated Settlements	Claverhouse	AWAP
	Percent (Number)	Percent ²⁸ (Number)
Warrantor has complied within the compliance period	61 (93.8%)	383 (97.4%)
Warrantor has not complied	4 (6.2%)	10 (2.6%)
Warrantor complied but not within the compliance period	0 (0.0%)	NA
Total Mediated Cases	65 (100.0%)	393 (100.0%)

The survey data shows that the manufacturer complied with 93.8 percent of the mediated cases within the time frame specified in the agreement. AWAP indices show that the AWAP complied with 97.4 percent of mediated cases within the time frame specified in the agreement. Therefore, the statistics “resolved by the staff of the mechanism and warrantor has complied” and “resolved by the staff of the mechanism and time for compliance has occurred, and warrantor has not complied” are in agreement. Respondents were also asked about the specific outcome of their cases. Table 3 shows their responses.

²⁸This percentage is a percentage of mediated cases only and does not include the 22 cases that fall into the category “resolved by staff of the mechanism and time for compliance has not yet occurred.”

Table 3
Specific Outcomes of Mediated Settlements
Claverhouse Survey 2005

Outcome	Number	Percent
Cash settlement	16	22.9%
Extended warranty	16	22.9%
Repairs	14	20.0%
New vehicle	14	20.0%
Other	5	7.1%
Nothing	4	5.7%
Trade-in allowance	1	1.4%
Total	70	100.0%

When asked if they pursued their cases any further, only 6.9 percent of the respondents indicated that they had done so. Of those who did pursue their cases, 66.7 percent said they re-contacted the dealer or manufacturer and 33.3 percent said they re-contacted the AWAP²⁹. Half of those who choose to pursue their cases further had initially received a new vehicle, 25.0 percent had received a cash settlement, and the other 25.0 percent did not specify their settlement.

Respondents were then asked if they recalled talking to an AWAP staff member or returning a postcard to the AWAP about their settlement and their case in general. Of those answering the question, 54.1 percent recalled talking to a staff member, 14.8 percent returned the postcard, 18.0 percent said that they did both, and 13.1 percent didn't bother doing either.

Arbitrated Cases

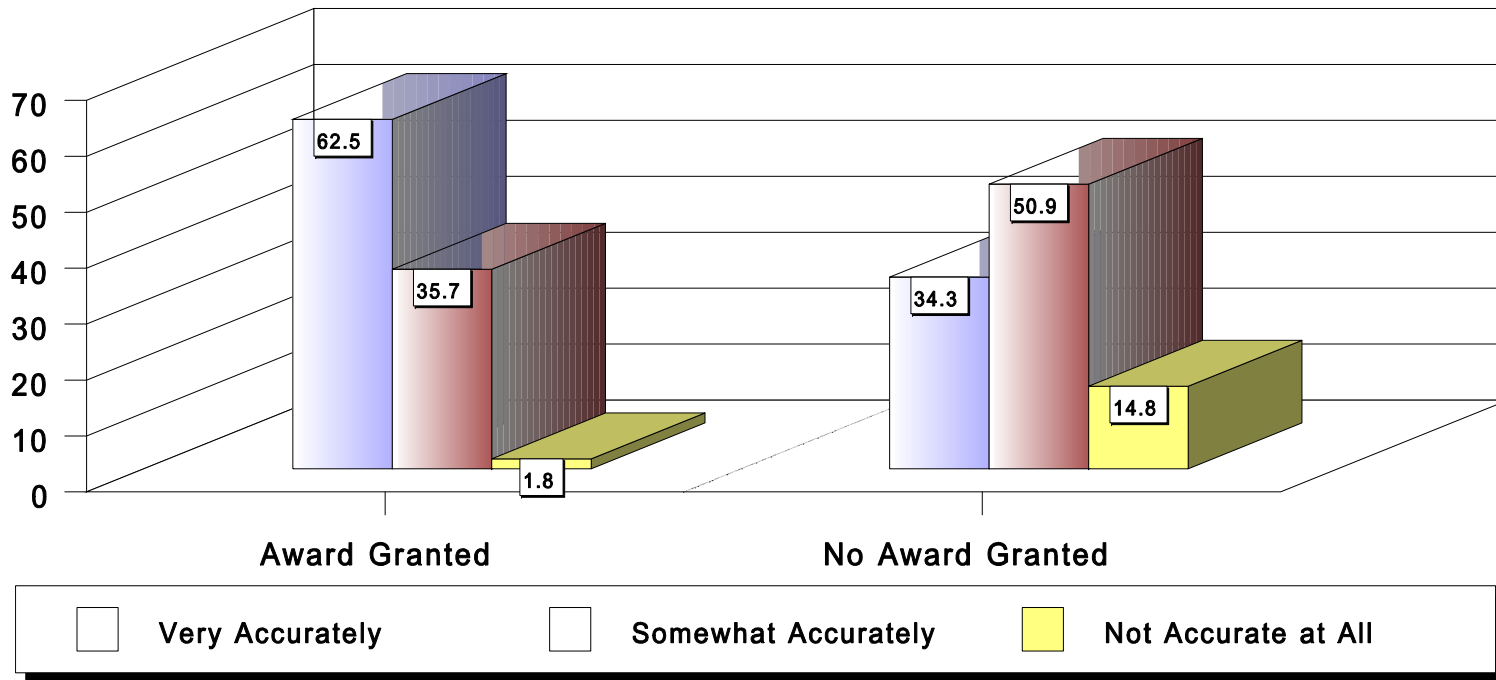
Before the questionnaire presented detailed questions about the outcomes of their arbitrated cases, respondents were asked several questions about the process leading to their hearings.

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

Respondents were first asked whether they remembered receiving the forms in which their claims were stated. Of the respondents who reported having arbitration hearings, 90.0 percent said that they recalled receiving the forms. Respondents were also asked a question about how accurately they felt the forms stated their claims: 41.9 percent said “very accurately ;” 46.6 percent said “somewhat accurately ;” and, 11.5 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, a combined 98.2 percent. The percentage was much lower for those who did not receive an award. Only 34.7 percent of those who said their claim was stated very accurately received an award. (see Figure 1)

Figure 1: Accuracy of Claim Forms by Award Granted



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, 91.9 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 20.9 percent said that they did not attend the hearing in person or participate by phone.

The reasons respondents gave for not attending their hearings are summarized in Table 4.

Table 4
Reasons for Not Attending or Participating in Arbitration Hearing
Claverhouse Survey 2005

Outcome	Number	Percent
Chose documents only hearing	14	28.6%
Chose not to attend/told presence was not needed or necessary	13	26.5%
Hearing location too far away/not in local area	9	18.4%
Already spent too much time on case/did not want to invest more time	5	10.2%
Was unaware of hearing location	3	6.1%
Family/personal illness	2	4.1%
Other	3 ³⁰	6.1%
Total	49	100.0%

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

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

³⁰ This category is comprised of 3 unique answers that did not fit any of the other categories.

Table 5
Outcomes of Arbitrated Cases
Comparison between Claverhouse Survey and AWAP Indices 2005

Outcome	Claverhous	AWAP
	Percentage (Number)	Percentage (Number)
Arbitration - Award Granted and Accepted		
Case decided by board and warrantor has complied	45 (17.9%)	234 (13.1%)
Case decided by board and warrantor has not complied	7 (2.8%)	2 (0.1%)
Case decided by board and time for compliance not	NA	27 (1.5%)
Total – award granted and accepted	52 (20.7%)	253 (14.7%)
Arbitration Decision adverse to consumer	199 (79.3%)	1,525 (85.3%)
Total arbitrated decisions	251 (100.0%)	1,788 (100.0%)

Survey results differ statistically from the AWAP indices for only one statistic, “decided by members, decision adverse to consumer.” This difference should not be of great concern since the difference favors the consumer and not the AWAP (a slightly lower percentage of respondents in the Claverhouse survey reported adverse decisions than reported by 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, 92.5 percent indicated that they received the award within the time frame mandated by the board, which is a positive outcome for both the program and the consumer. Of the small percentage of those who did not receive their award within the time frame, only one-third (33.3 percent) said they were given a reason by the AWAP. Table 6 details the awards respondent’s reported receiving from their arbitration hearings.

Table 6
Specific Outcomes of Arbitrated Cases
Claverhouse Survey 2005

Outcome	Number	Percent
Repairs	25	35.2%
Cash settlement	21	29.6%
New vehicle	12	16.9%
Other	9	12.7%
Extended warranty	3	4.2%
Terminate the lease	1	1.4%
Total	71	100.0%

The survey also asked whether or not the respondent accepted or rejected the decision. Of those who received an award, 78.9 percent indicated that they accepted what was awarded. Those who rejected the award (21.1 percent) gave the following reasons: 52.9 percent thought that the decision would not solve the vehicle's problems; 23.5 percent said they did not want what the AWAP offered; 11.8 percent said the decision would cost too much money or that they would lose money; and another 11.8 percent gave other reasons.

All respondents whose cases were arbitrated were asked whether they had pursued their cases further after the arbitration decision. Close to one-quarter (22.9 percent) replied in the affirmative. Table 7 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 (58).

Table 7
Methods of Pursuing Cases
Claverhouse Survey

Method	Number	Percent
Contacted an attorney/legal means	26	40.0%
Contacted a government agency	16	24.6%
Worked out a solution with the dealer	13	20.0%
Recontacted the AWAP	10	15.4%
Total responses	65	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, 19.8 percent said that they had spoken to someone, 38.0 percent said that they returned the postcard, 14.8 percent said they did both, and 27.4 percent said that they did not bother doing either.

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 4.0 percent of the “in-jurisdiction” cases (123 out of 3,054) were settled beyond 40 days, whereas 31.3 percent of survey respondents reported their cases were settled beyond 40 days (27.7 percent for those with mediated cases and 32.2 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, 32.8 percent could not provide any date at all; 29.6 percent could give only a month; and 37.5 percent were able to give a complete date. For those who did provide a complete date, these dates were compared to records supplied by the AWAP. Only 22.7 percent were able to give the date that matched AWAP records (either exactly or within two weeks).

Survey respondents’ recollections on when their cases were closed were similar – 32.6 percent could not provide any date at all; 27.3 could give only a month; and 40.2 percent were able to give a complete date. For those that did provide a complete date, only 21.1 percent matched AWAP records.

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 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 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 case delays, but again, the difference should not be cause for concern and can be attributed to consumers interpretation of the categories. Table 7 shows the comparison between the Claverhouse survey and the AWAP indices.

Figure 2: Case Delayed by 40 Days by Case Type

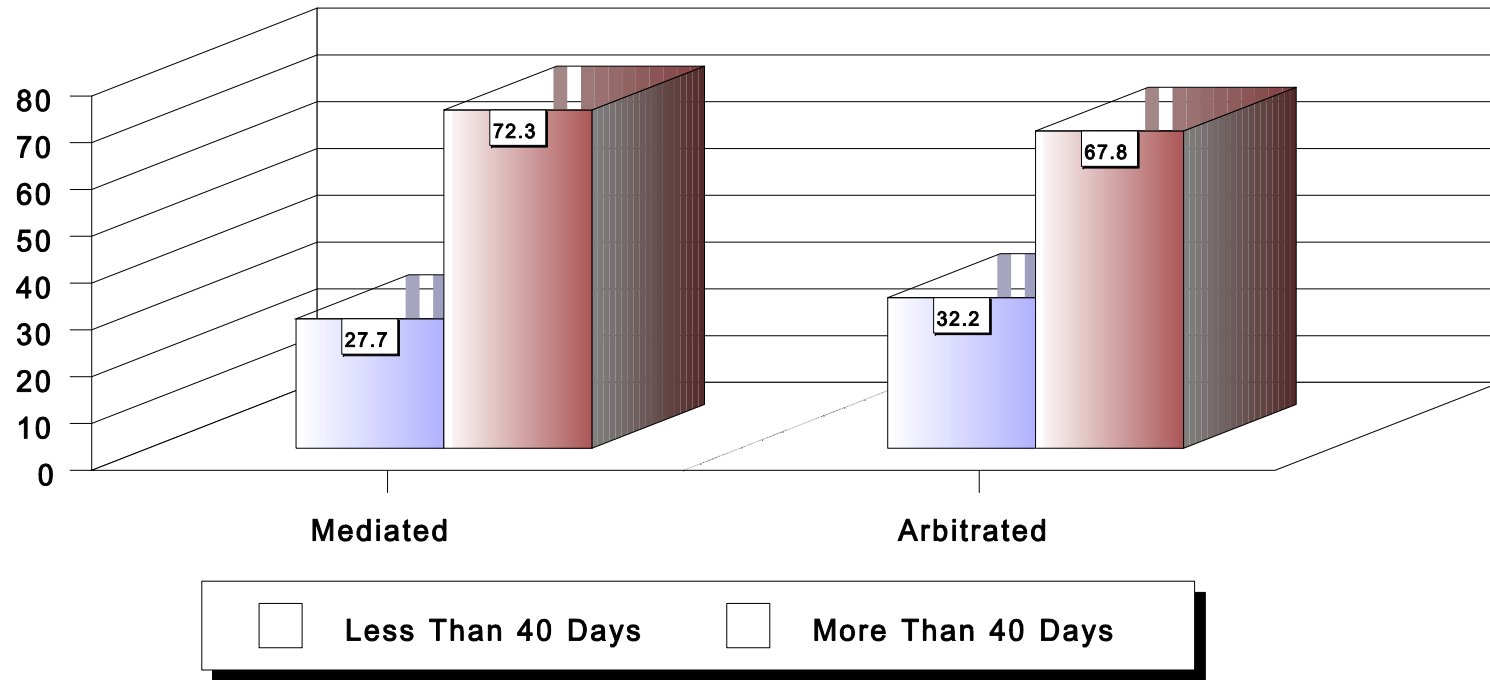


Table 7
Reasons for Delays in Decisions
Comparison between Claverhouse Survey and AWAP Indices 2005

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.	4.4% (4)	0.0% (0)
Decision delayed beyond 40 days because customer had made no attempt to seek redress directly from warrantor.	5.5% (5)	0.0% (0)
Decision delayed beyond 40 days for any other reason.	90.1% (82)	100.0% (123)
Total cases delayed beyond 40 days.	100.0% (91)	100.0% (123)

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 8.

Table 8
How Consumers Learned about AWAP Availability
Claverhouse Survey

Source of Information	Number	Percent
Warrantor’s manual/warranty information	135	35.9%
Friendship	102	27.1%
Warrantor Customer Complaints/Toll-free number	79	21.0%
Friends and family	24	6.4%
Previous knowledge of the program	12	3.2%
Brochures/other literature	11	2.9%
Attorney or other legal source	10	2.7%
Radio - TV, radio, newspapers	3	0.8%
Total	376	100.0%³¹

³¹ Respondents could indicate more than one source. The percentages are based on number of responses (376) not the number of respondents (341).

The owner’s manual was the leading source of information about the program (35.9 percent), followed by the dealership (27.1 percent), and customer complaints/toll-free number (21.0 percent).

Those who reported that they had learned about the program through the dealership or the automaker were asked additional questions about the means in which they were informed of the program. Most said that the dealer or manufacturer talked with them about the program (48.0 percent), followed by 33.3 percent who reported receiving something to read about the program. A small percentage reported that they saw a poster or other display at the dealer (3.0 percent) and 15.7 percent said they learned about the program from the dealer or manufacturer in other ways.

Survey respondents were also asked about the materials and forms they received from the AWAP. Close to all, 94.4 percent, recalled receiving the materials. Of those who said they recalled receiving the materials, 66.5 percent reported the informational materials were “very clear and easy to understand,” 30.7 percent said the materials were “a little difficult, but still fairly easy to understand;” 2.9 percent said that the materials were “difficult or very difficult to understand.” When asked about the complaint forms, 66.3 percent said they were very clear and easy to understand; 31.0 percent said a little difficult but still fairly easy to understand; and 2.7 percent said they were difficult or very difficult to understand.

Ease of understanding the materials, both the informational materials and the complaint forms, is correlated with the type of case. For those with mediated cases, 73.1 percent said that the complaint forms were “very clear and easy to understand” compared to 64.5 percent of those whose case was arbitrated. Those with mediated cases also found the informational materials easier to understand with 71.9 percent indicating that they found the informational materials “very clear and easy to understand” compared to 65.1 percent of those whose cases were arbitrated. (see Figure 3)

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 9 shows these results.

Table 9
Survey Respondents’ Ratings of AWAP Staff
Claverhouse Survey

Performance Item	Level of Satisfaction				
	Very Satisfied	Some-what Satisfied	Neutral	Some-what Dissatisfied	Very Dissatisfied
Objectivity and fairness	21.1%	8.0%	12.8%	11.9%	46.2%
Promptness in handling your complaint during the process	30.8%	24.3%	20.0%	11.1%	13.8%

Efforts to assist you in resolving your complaint	22.7%	10.1%	13.2%	13.8%	40.2%
Overall rating of the program	20.1%	9.3%	13.5%	11.1%	46.1%

Of the three areas, users of the program gave the highest satisfaction rating in the area of promptness, with 55.1 percent saying that they were either very or somewhat satisfied. The lowest satisfaction rating was in the area of objectivity, with only 29.1 percent reporting some level of satisfaction. Respondents felt nearly the same when it came to rating effort with only 32.8 percent saying they were satisfied to some degree with this area of the program. (see Figure 4)

Figure 3: Ease of Complaint Forms by Case Type

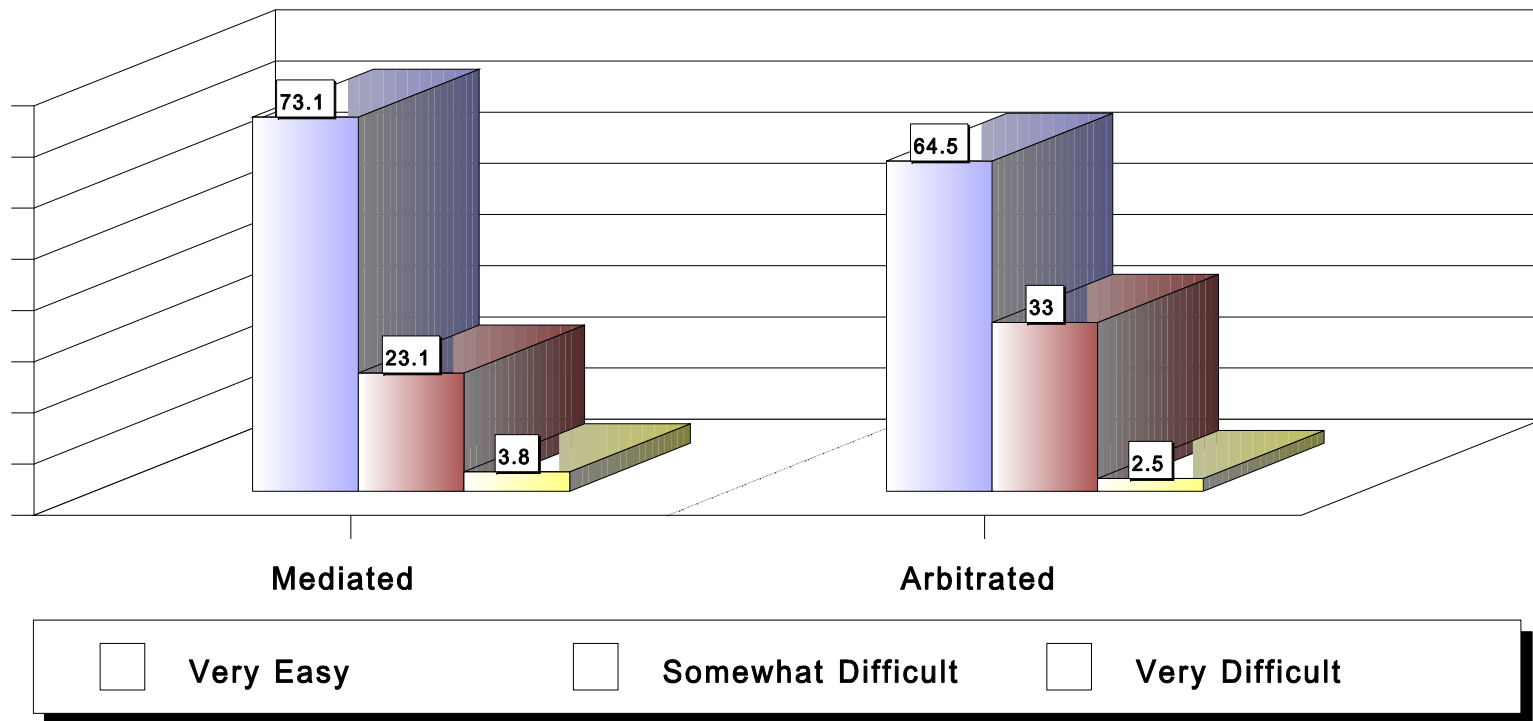
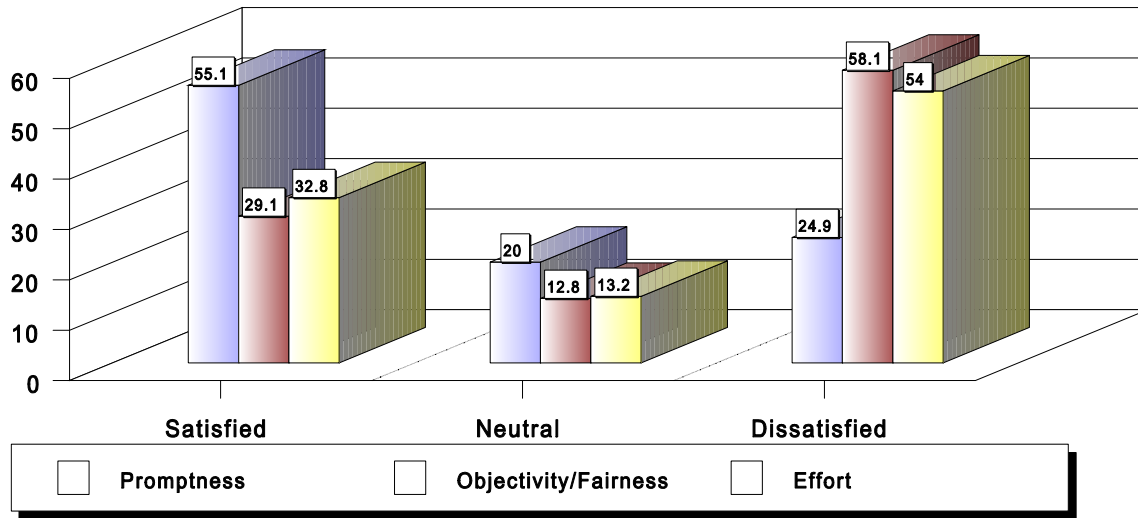


Figure 4: Satisfaction with AWAP Program Elements



AWAP - National 2005

When asked to give an overall satisfaction rating, only 29.4 percent gave a satisfied rating (with 20.1 percent saying they were very satisfied). Over half, 57.2 percent said that they were dissatisfied to some degree with the program with 46.1 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, 83.3 percent than those with arbitrated cases, 21.0 percent. Those who received an award in the arbitration process were also much more likely, 74.5 percent, to report being satisfied than those who did not receive an award, 5.7 percent reported being dissatisfied. Again, those who were granted an award and accepted the award reported higher satisfaction levels, 88.1 percent, compared to those who were granted an award and then rejected the award, 8.3 percent. (see Figure 5)

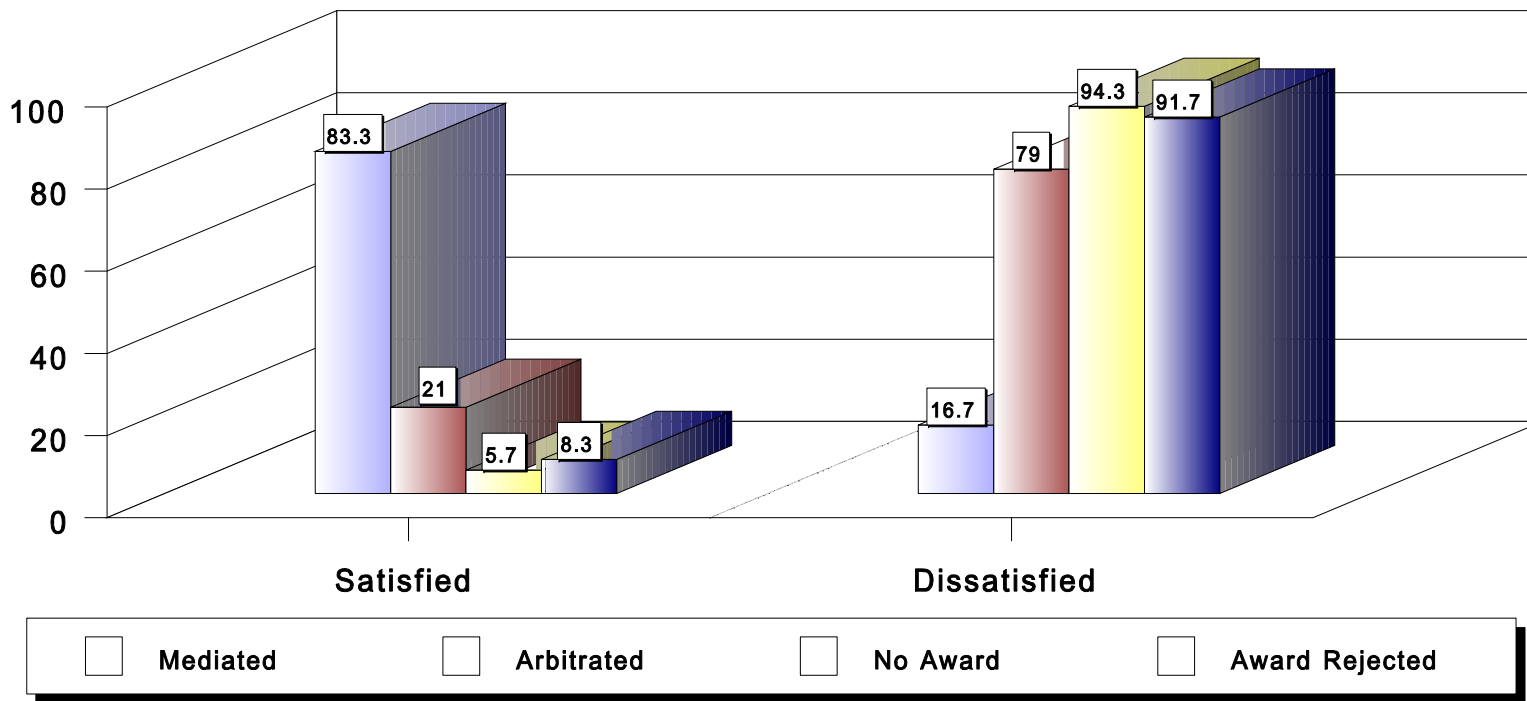
Another measure of consumers’ satisfaction or dissatisfaction with the AWAP program is whether or not they would recommend the program to others. Overall, 31.3 percent said that they would recommend the program, 44.1 percent said they would not, and 24.6 percent said that it would depend on the circumstances.

How individual groups responded to this question are summarized in Table 10.

Table 10
Would Consumer Recommend the AWAP Program to Others
Claverhouse Survey

Method of Resolution and Outcome	Yes	No	Depends on Circumstances
Mediated	70.1%	9.0%	20.9%
Arbitrated	21.4%	53.1%	25.6%
Award Granted and Accepted	75.0%	9.6%	15.4%
Award Granted and Rejected	6.7%	66.7%	26.7%
No Award	8.2%	63.6%	28.2%

Figure 5: Satisfaction by Case Type and Outcome



Finally, survey respondents were given an opportunity to make comments and suggestions about AWAP program changes or improvements. These comments are summarized in Table 11.

**Table 11
Consumer Suggestions for Program Improvement
Claverhouse Survey**

Suggestion	Number	Percent
Arbitrators should be more-consumer oriented	106	39.3%
Make dealers/manufacturers more responsive to	45	16.7%
Did a good job, no complaints	25	9.3%
Look for more information about history/problems of car	23	8.5%
Have better qualified mechanics for inspections/repairs	14	5.2%
Awards/settlements and dollar amounts need to be	13	4.8%
Have more personal contact with program	9	3.3%
Need better initial review of cases by staff and	8	3.0%
Need better follow-up enforcing awards/settlements	8	3.0%
Speed up the process for quicker decisions	7	2.6%
Make program better known/more advertising	6	2.2%
General positive comments	5	1.9%
Need on-line forms applications	1	0.4%
Total	270 ³²	100.0%

Among those whose cases were arbitrated, the top three suggestions or comments were: “arbitrators should be more customer orientated, less biased,” 50.0 percent; “dealers and manufacturers need to be more responsive to customers,” 20.3 percent; and “have more knowledgeable or better qualified mechanics reviewing problems,” 6.4 percent. The top three suggestions or comments for those with mediated cases were “did a good job, no complaints,” 41.0 percent; “arbitrators should be more customer orientated, less biased,” 12.8 percent; and “need better follow-up enforcing awards and settlements,” “the awards and settlements need to be fair,” and “dealers or manufacturers need to be more responsive to customers,” all 10.3 percent.

³² Respondents could give up to three comments, the responses are summarized into one table and based on the number of responses, not respondents

CONCLUSIONS

On the basis of the comparison of the Claverhouse survey results with the AWAP national indices, it is concluded that the AWAP indices are in agreement in all but three areas, none of which should raise concerns about the program or how the program is administered. The differences are: “arbitration decision adverse to consumer,” “case delayed beyond 40 days,” and “reasons for delays 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. Also, the statistics fall outside of the margin of error by only 1.1 percent.

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. There is also slight statistical difference in the reasons for the delays.

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