

*United States Federal Trade
Commission*

*National Center for Dispute Settlement
Automobile Warranty Arbitration Program*

Audit

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Introduction

This 2009 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 2009. 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,¹ Mitsubishi, Porsche², and Suzuki. There are a few exceptions, wherein our review is manufacturer-specific, such as the requirement for manufacturers to inform consumers of the availability of the dispute resolution program whenever a warranty dispute arises.

Hearings held in Kentucky, Florida, and Pennsylvania were included in the on-site field inspections. Visits to these locations were arranged to coordinate with scheduled arbitration hearings. In addition, we audited arbitrator training conducted in Grapevine, Texas, June 11 - 13, 2010. 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 (2009). 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 2009 as required.

¹ DaimlerChrysler offers arbitration in only four states (Arkansas, Idaho, Kentucky, and Minnesota.)

² Porsche's participation was interrupted during this audit year and therefore the volume cases will vary considerably from previous audit reports.

SECTION I

Compliance Summary

This is the seventh Claverhouse Associates independent annual audit of the National Center for Dispute Settlement's (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, Kentucky, Florida, and Pennsylvania, all functioned during 2009 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.³ Our original survey sample consisted of 600 closed cases⁴, of which we completed surveys for 298 customers. As we have found in other audits, surveyed customers tended to report favorably on the program when the results of their cases were, in their view, positive. Conversely, those who received no award, or received less than they expected, were more likely to report dissatisfaction with the AWAP. As has been true in most audits we have conducted for various programs, the few statistically significant differences between the figures reported by the AWAP and the survey findings were deemed to be easily understandable and do not suggest unreliable reporting by the program. For a detailed discussion, see the survey section of this report.

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

³ There were, of course, discrepancies in some areas, as we have come to expect, but those identified are either of no significant consequence or are understandable and without significant regulatory implications. Discrepancies are detailed in the survey section of the report.

⁴ The sample was drawn from a universe of 2,455 cases.

SECTION II

Detailed Findings

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

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

This audit covers the full calendar year 2009. An important component of the audit is the survey of a randomly selected sample of 600 NCDS' Dispute Settlement Program applicants whose cases were closed in 2009 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 suburban Detroit office of the National Center for Dispute Settlement.

We performed field audits of the AWAP as it operates in Kentucky, Florida, and Pennsylvania. We also examined a random sample of current (i.e., 2009) case files for accuracy and completeness. A random sample of case files was drawn from all case files for the years 2006-2009 and inspected to ensure that these records are maintained for the required four-year period. In the areas covered by each region, we surveyed several dealerships to see how effectively they carry out the information dissemination strategy developed by manufacturers to assist them in making customers aware of the AWAP.

In addition, we monitored arbitration hearings in Crittenden, Kentucky; Lake Park, Florida; Philadelphia, Pennsylvania, 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 June of 2010. In addition to monitoring the training itself, we interviewed the trainees (both before and after the training), the training staff, and reviewed the training materials.

REQUIREMENT: § 703.7 (a) [Audits]

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

FINDINGS:

This is the seventh (2009) 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 (Recordkeeping) 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 Detroit [Clinton Township.] office of the program's independent administrators. Our review of randomly selected cases drawn from the four-year period (2006-2009) demonstrated that the case files were maintained in 2009, 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. For example, a particular case file may not contain a hard copy of the arbitrator's decision even though the decision was in fact sent out and can be found in the electronic file. This year we found a few decision statements which auditors found to be poorly worded or lacking in sufficient specificity. Nevertheless, the files were complete and maintained as required.

REQUIREMENT: § 703.6 (a) (5)

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

FINDINGS:

Some case files contained, in addition to the various standard file entries, other communications submitted by the parties. Nothing in our findings suggests that any material submitted by a party was not included in the file, and every indication is that the files were complete. We made no attempt, however, to validate the existence of "summaries of relevant and material telephone calls" and other such information since

we had no way of knowing whether such telephone calls took place. This is also true for documents such as follow-up letters. A review of this type may be theoretically possible, but it is not practical without having some objective measure against which to compare the contents of the file. Even in the theoretical sense, such a review assumes customers keep exact files of all correspondence, notes, and phone calls pertaining to their AWAP cases. To validate this dimension, the audit would entail retrieving all such files as a first step. The obvious impracticality of that places such a review beyond the scope of the audit.

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

DISCREPANCIES:

None

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

REQUIREMENT: § 703.6 (a) (9-12)

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

FINDINGS:

The information set forth in items 9 and 10 is maintained as required.⁵ As such, the information was readily accessible for audit.

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

DISCREPANCIES:

None

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

REQUIREMENT: § 703.6 (b)

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

FINDINGS:

These indices are currently [2009] maintained by the NCDS staff at the NCDS headquarters in Detroit [Clinton Township], Michigan.

The audit includes a review and assessment of a data printout for the calendar year 2009.

The *AWAP Statistics* identifies 2,455 AWAP disputes filed for 2009. Of these, 1,847 were eligible for AWAP review, and 608 were determined by the AWAP to be out-of-jurisdiction. Of the in-jurisdiction closed cases, NCDS reports that 1,449 were arbitrated⁶ and 204 were mediated.⁷ There were 1,208 arbitrated decisions which were reported as "adverse to the consumer" per § 703.6 (E) representing 83.3% 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

⁶ This number is not aggregated in the statistical reports provided for the audit. We arrived at this number by summing the "decided" items (4-7) listed on the AWAP mandated statistical report. [Note: the number we report here does not include those cases listed as "Pending Decision."]

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

failed to comply; and (2) All disputes in which the warrantor has refused to abide by a mechanism decision.

FINDINGS:

AWAP reports that there were no such cases in 2009. 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 2009, a total of 21 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 2009 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. [Note: The statistical report does include 116 cases categorized as "PENDING DECISION." The "PENDING DECISIONS" cases, we do not review to determine how many days they remained open and unresolved.]

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 Detroit, Michigan [Clinton Township] and inspected and evaluated a random selection of case files from the four-year period for completeness.⁸ The files were appropriately maintained and readily available for audit.

(b) NCDS provided us with the various 2009 indices and statistical reports required by Rule 703. The corresponding reports for the previous four years are, of course, not available from any NCDS participating manufacturers which were not participating in the program for the entire four applicable years.

(c) [The two potential “non-compliance” categories] The information required by subsection (1) is, when applicable, maintained by NCDS. Subsection (2) is not

⁸ This year, 2010 for 2009 audit, the sample of four years of cases [i.e., 2006-2009] were not reviewed on-site at the NCDS office but the complete sample was sent to Claverhouse for review.

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 in their computer system at the NCDS Detroit [Clinton Township], office. Any required report can be obtained from Debbie Lech, Manager, Case Administration, 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 participating manufacturers'⁹ programs for meeting this requirement. Readers will note that regulatory language is repeated along with some pertinent comments in each division for the various manufacturers so as not to focus strictly on a given manufacturer as well as to make the reading easier. Again, we repeat the applicable regulatory language to avoid cross-referencing and searching for such language in some other section of the report.]

For the 2009 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

⁹ The six manufacturers are: Chrysler, Lexus, Mitsubishi, Porsche, Suzuki, and Toyota

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 about providing NCDS information to customers who make warranty-related inquiries or, assert warranty related disputes. [This section's findings are based on the status quo in our 2008 report insofar as nothing we reviewed this year suggests any material change as pertains to this requirement]
- Toyota publishes a 56-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 1/09). 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*.¹⁰ 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.

[This information is based on the findings of last year's audit as we are not in receipt of information from Toyota indicating any material change from last year's audit findings excepting the re-printing with additions of the *Warranty Rights Notification* booklet in 2009.]

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

¹⁰ 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*.

For the 2009 report, we visited several Toyota dealerships.¹¹

Royal Palm Toyota
9205 Southern Blvd.
Royal Palm Beach, Florida 33411
(Note: The Florida Dealership audit was conducted as part of a State audit and yet the state review findings as regards this particular aspect, are also applicable to this federal audit.)

Palm Beach Scion
601 South Military Trail
West Palm Beach, Florida 33415

Kerry Toyota
6050 Hopeful Church Road
Florence, Kentucky 41042

Ardmore Toyota
219 East Lancaster Avenue
Ardmore, Pennsylvania 19003

Ganley [Toyota & Scion] Akron
1395 Market St.
Akron, Ohio 44305

The result of our review of dealership personnel interviewed during our Toyota dealership visits this year was mostly poor, as regards providing useful information about the Toyota warranty dispute mechanism in response to our inquiries concerning customer options when the customer is experiencing warranty disputes. There was one of the five Toyota dealers in our national review who provided useful and accurate information about arbitration and NCDS. Most Toyota dealerships gave us inaccurate information in response to our inquiries about a customer's warranty dispute options generally and about the NCDS dispute settlement program.

At a Kentucky Toyota dealership, the service department representative told us that arbitration has to be set up by the dealer and merely gave me the Toyota toll-free number for customer assistance.

We have 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 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

¹¹ As is the case with several dimensions to the audit we carried out this aspect in the year 2009.

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 may offer 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 2008 (2,240) and 2009 (2,455) 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, complete 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, *Lexus Warranty and Services Guide* which has been updated from the information reviewed in our most recent past audit. In addition, Lexus distributes to its new car buyers a pamphlet [52 pages of text] entitled, *Lemon Law Guide* with a page dedicated to Florida consumers which a cross reference to useful NCDS arbitration information including their toll-free telephone number.

The Manual includes four pages of accurate and useful information about the NCDS arbitration program including a mailing address and toll-free telephone number for contacting NCDS. The NCDS arbitration information begins on page eleven. [Unfortunately, the information is organized as part of a multi-step process and is relegated as "Step 3." Such a multi-step process is one obviously preferred by the manufacturer. A customer with a warranty dispute is not required to go through steps one and steps two in order to access arbitration as regulated by the Magnuson-Moss Warranty Act and its accompanying Administrative Rule 703. By organizing the information in this manner, some readers may incorrectly interpret the information to mean they must follow these sequential steps. This seemingly minor matter could easily have consequences that are unintended and inconsistent with the regulations intent to provide "expeditious resolution of disputes.] For example, if a customer's one week old "new" vehicle seems to be operating inconsistent with their auto engineering experience while the dealer is perceived by the customer to be rude and unwilling to address their concern because they believe it is operating normally and within design specifications, the customer may clearly want to proceed directly to arbitration. Such a decision by the customer is within their right to do so notwithstanding any value judgements to the contrary. The manual's language suggests otherwise. Without a doubt, the three step process alluded to is usually the best way for customers to proceed but it is certainly not required. The problem herein alluded to is further exacerbated by initiating the entire section with the word "if" which may serve to reinforce the notion that a customer is obligated to go through steps one and two when such is not the case. It is important to point out this matter. It is equally important that we do not believe this matter, by itself, rises to the level of a regulatory non-conformity. It may help however, to explain the seeming reluctance of some service department employees to provide arbitration information during our dealer visits.

- In 2006, we were provided a copy of the NCDS tri-fold, *Rules & Procedures for the Informal Resolution of Automobile Warranty Disputes* pamphlet, but this document is distributed to Lexus customers after the customer has filed an application. We have again been told by NCDS that there have been no material changes to this item.

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."

This limited information may have been provisionally acceptable in that period of adjustment that existed in the early days of Lexus' association with the NCDS program but, in our view, even then it fell 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 only having information about NCDS in a owner's manual or Lemon Law Guide in a glove box packet, is likely to find many customers with a warranty dispute unaware of the availability of arbitration. A fact demonstrated again and again over many years experience. That was clearly not the intent of the Federal Trade Commission when Rule 703 was promulgated as evidenced by the rule's lengthy discussion in the *Statement of Basis and Purpose*, published and promulgated as part of the rule (see Federal Register, 60215, Dec. 31, 1973). The FTC afforded great flexibility to manufacturers, at their request, as an alternative to far more draconian measures being proposed at the time, including the requirement that manufacturers engage in a national media campaign each year to announce the program's availability. The FTC opted instead to afford manufacturers the opportunity to use their own creative methods to achieve the objective and provided for an annual audit to ensure that manufacturers were carrying out effective strategies for ensuring that their customers were likely to be informed about the programs *at the time a warranty dispute arises* [FTC's emphasis.]

Importantly, Lexus now publishes a manual entitled, *2007 Lexus Warranty and Services Guide* which has been updated from the information reviewed in our most recent past audit. In addition, Lexus distributes to its new car buyers a pamphlet [52 pages of text] entitled, *Lemon Law Guide*.

The 2007 Manual includes four pages of accurate and useful information about the NCDS arbitration program including a mailing address and toll-free telephone number for contacting NCDS. The NCDS arbitration information begins on page eleven. [Unfortunately, the information is organized as part of a multi-step process and is relegated as "Step 3". Such a multi-step process is one obviously preferred by the manufacturer. A customer with a warranty dispute is not required to go through steps one and steps two in order to access arbitration as regulated by the Magnuson-Moss Warranty Act and its accompanying Administrative Rule 703. By organizing the information in this manner, some readers may incorrectly interpret the information to mean they must follow these sequential steps. This seemingly minor matter could easily have consequences that are unintended and inconsistent with the regulations intent to provide "expeditious resolution of disputes.] For example, if a customer's one week old "new" vehicle seems to be operating inconsistent with their auto engineering experience while the dealer is perceived by the customer to be rude and unwilling to address their concern because the dealer believes it is operating normally and within design specifications, the customer may clearly want to proceed directly to arbitration. Such a decision by the customer is within their right to do so notwithstanding any value judgements to the contrary. The manual's language suggests otherwise. Without a doubt, the three step process alluded to is usually the best way for customers to proceed but it is certainly not required. The problem herein alluded to is further exacerbated by initiating the entire section with the word "if" which may serve to reinforce the notion that a customer is obligated to go through steps one and two when such is not the case. It is important to point out this matter. It is equally important that we do not believe this matter, by itself, rises to the level of a regulatory non-conformity. It may help however, to explain the seeming reluctance of some service department employees to provide arbitration information during some of our dealer visits.

For the 2009 report, we visited the following Lexus dealerships.¹²

Lexus of Palm Beach
5700 Okeechobee Blvd.
West Palm Beach, Florida 33417
(Note: The Florida Dealership audit was conducted as part of a State audit and yet the state review findings as regards this particular aspect, are also applicable to this federal audit.)

Lexus River Center
633 West 3rd St.
Covington, Kentucky 41011

Wilke Lexus
568 W. Lancaster Avenue
Haverford, Pennsylvania 19041

Performance Lexus
4328 Kings Water Dr.
Cincinnati, Ohio 45249

The dealership visits results were very poor. A service advisor in Florida told us arbitration is handled by the State of Florida. Responses such as this, are at odds with federal regulations.

In Pennsylvania a Lexus dealership representative informed us that once the matter is beyond dealership assistance, they have no further involvement. In sum, all Lexus dealers were unable to provide any useful information about warranty dispute options that involved arbitration generally or via the NCDS program specifically.

Overall, the Lexus findings were negative and suggest that Lexus review their training of service advisors as concerns warranty dispute mechanisms. Together with previous report findings, including the gross failure of one dealer, demonstrates the need for continuing oversight by regulators. While this finding is problematical, it does not, by itself, rise to the level of a risk to Lexus' compliance status but it does constitute a significant regulatory problem.

DISCREPANCIES:

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

¹² As is the case with several dimensions to the audit we carried out this aspect in the year 2009.

III. PORSCHE

[NOTE: Porsche was part of the NCDS program only during the first five months of 2009.]

- Porsche publishes a *Warranty and Customer Information* booklet with references to arbitration on various pages. There is information identifying the National Center for Dispute Settlement (NCDS) as the arbitration provider to be used by Porsche customers (pages 6 and 7). Included is a toll-free telephone number for contacting NCDS. There is also information on page 48 that is Florida specific for Florida customers. This information is accurate and helpful for customers with a warranty dispute.

What we originally said in our 2005 audit bears repeating here because there have been significant changes from our Porsche-specific findings of the last few years. Our prior comments were as follows:

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

The changes we point out in the paragraph immediately preceding the above language from prior audit reports, constitute a very positive remedial effort by Porsche.

We note below the improvement of last year’s findings as regards our visit to a Porsche dealer in Florida. As with most programs, however, our visits to dealerships typically find that customers who seek assistance from their salespersons are unlikely to receive any useful information about the NCDS. This was again true as regards our 2009 Florida visits.

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."

In 2010, [for the 2009 audit report] there were no Porsche Dealerships visited.

DISCREPANCIES:

None

IV. MITSUBISHI:

Mitsubishi uses the following means by which to meet this important requirement:¹³

- 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

¹³ NCDS headquarters informs us that the manufacturer-specific review of this individual program for ensuring that consumers are made aware of the arbitration program's existence "at the time consumers experience warranty disputes" has not changed from 2006.

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 to comply with the applicable rule, for which Mitsubishi should be given credit.

In 2010, we visited the following Mitsubishi dealerships for the 2009 audit:

Kerry Mitsubishi
8053 Burlington Pike
Florence, Kentucky 41042

Our Mitsubishi dealership experience this year was a disappointment from our prior experience in 2009 for the 2008 report. The dealership personnel we interviewed for this report were exceedingly pleasant but, nonetheless, did not provide useful information about the NCDS program or Warranty dispute options for customers beyond working with the dealership. The dealership responses were at odds with this important requirement 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 disappointment from our last review.

DISCREPANCIES:

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

V. SUZUKI

- Suzuki provides all new car customers with a New Vehicle Warranty Information booklet. This booklet contains information pertaining to customers ability to use the dispute settlement program administered by NCDS. On page 4, they provide a very brief description of NCDS along with a toll-free telephone number. As such, they have provided useful, complete and accurate information as envisioned by the federal regulations. It should be pointed out however that this is a passive strategy and is helpful only if the customer discovers the information. Importantly, the manufacturer should instruct dealerships that inquiring customers should, at a minimum, be referred to this section of the booklet when expressing that they are experiencing a warrant dispute, or words to that effect.

We visited the following Suzuki Dealership.

Suzuki of Philadelphia
6615 Essington
Philadelphia, Pennsylvania 19153

The above Suzuki dealership which we audited in 2010 for the 2009 audit, provided no useful information about warranty dispute settlement options. The dealership personnel said "get a lawyer & go on line."

It is somewhat understandable that this dealership was ignorant about the NCDS program insofar as Suzuki was a recent addition to the manufacturers whose vehicles are sold by this multi-manufacturer dealership.

DISCREPANCIES:

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

VI. DAIMLERCHRYSLER [Now Chrysler]

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 (Arkansas, Idaho, Kentucky, and Minnesota)].

- The 2006 *Warranty Information* booklet,¹⁴ 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 for contacting an organization called the Chrysler customer assistance center to obtain an application for arbitration as administered by NCDS. It also includes a 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.)

¹⁴ NCDS headquarters informs us that the manufacturer-specific review of this individual program for ensuring that consumers are made aware of the arbitration program's existence "at the time consumers experience warranty disputes" has not changed from last year's report (2008 report done in 2009.)

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.¹⁵

DISCREPANCIES:

NONE

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

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

2) Investigations

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

¹⁵ 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." Although each manufacturer uses their own *Customer Claim Form* seeking different information from their customers, NCDS requires only that information required by the Magnuson-Moss federal statute and the related Rule 703.

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.

NCDS to address the needs related to the concerns referred to above, have developed a regular newsletter entitled "NCDS Arbitrator Bulletin." This newsletter is supplemented, on an as needed basis, by such special editions as the one directed to the NCDS California arbitrators and which addresses California's unique regulatory requirements.

The general newsletter addresses specific issues that arise from staff's regular observations of arbitrator's needs or program innovations like their coaching and mentoring opportunities for newly added arbitrators. We reviewed several of these newsletters and found them both accurate and of great potential utility.

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) Mediation¹⁶

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

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

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

FINDINGS:

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

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

4) Follow-up

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

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

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

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

¹⁶ 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.

The recording of performance and maintenance of the AWAP records were reviewed by our on-site inspection of case files in Detroit, [Clinton Township] Michigan. 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.¹⁷

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 have said in all our recent reports:

It should be noted however, that we HAVE audited a Lexus hearing in Houston, Texas as part of the national Rule 703 audit report and discovered that Lexus has elected to have their cases heard by a three-member panel which takes testimony/evidence from each of the parties and then dismisses the parties while they deliberate and decide the case. We believe this approach is inconsistent with the requirements of Federal Trade Commission Rule 703.8 (d) which provides that meetings of the members to hear and decide disputes shall be open to observers on reasonable and nondiscriminatory terms. Further, the Rule's, *Statement of*

¹⁷ 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.

***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 referencing 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.¹⁸ 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

¹⁸ Currently, NCDS arbitrators are provided a per diem allowance of \$100.00 a hearing plus reimbursement for any mileage expenses incurred.

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 the "Lemon Law" thresholds for establishing presumptions do not serve as a threshold for their awarding "buy back" relief. At our review of arbitrator training in June of 2010, we confirmed that these efforts continue and are having some noteworthy effects.

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

DISCREPANCIES:

None

SECTION III

Field Audit of Three Geographical Areas

I. Kentucky

A. Case Load and Basic Statistics

In Kentucky, NCDS handled 49 AWAP cases in 2009 of which 2 (4 %) were "no-jurisdiction" cases. There were 24 cases arbitrated (51% of the 47 in-jurisdiction cases), and 21 (44.6% of in-jurisdiction cases) were mediated. The average number of days for handling a 2008 case in Kentucky was 36 days. This compares with an average of 33 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.

We analyzed several NCDS-generated statistical reports covering 2009 NCDS' arbitration program operations in Kentucky. Those reports are available from Ms Debbie Lech, Manager of Dispute Resolution Operations, National Center for Dispute Settlement, 43230 Garfield, Suite 130, Clinton Township, Michigan 48038.

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

§ 703.6 (a) (1-12)

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

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

FINDINGS:

The auditor examined the case file folders extracted from all 2009 "in-jurisdiction" case files. 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 portions of telephone calls and meetings between the Mechanism and any other person (including consultants described in section 703.4(b) of this part);

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

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

FINDINGS:

All files for cases that were arbitrated contained the information required by sections six and eight. Oral presentations are a basic component of the NCDS program in this jurisdiction, and section seven requires summaries of the oral presentations to be placed in the case file. In the case files we reviewed for this region, the record-keeping requirements were met.

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

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

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

FINDINGS:

The warrantor's intended action(s) and performance are inextricably linked. Thus, we validate this item in terms of performance verification. Performance verification is a function carried out by NCDS. This office sends a survey to the customer following receipt of the customer's acceptance of those decisions mandating some action on the part of the manufacturer to ask, among other things, whether any required performance has taken place. Customers are asked to return the survey to the office of NCDS. As

noted elsewhere, we found few returned survey forms in the case files. In the past, we have stated that the absence of performance verification forms in the case file does not constitute a regulatory inconsistency since performance verification information may not be available from the customer. By mailing a performance verification survey NCDS goes as far as can be expected in determining whether arbitration decisions are, in fact, being performed. It seems entirely appropriate for the program to assume performance of the decision has taken place when the customer performance survey is not returned. For those who may be skeptical about such important assumptions, it should be remembered that even if a manufacturer engaged in a programmatic attempt to avoid performing arbitration decisions, that fact would, of course, emerge in the context of our national random survey of customers who have used the program. Performance verification status should and does appear in the case file as is indicated by sections 11 and 12 below.

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

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

FINDINGS:

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

CONCLUSIONS:

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

C. Case File Records (4 yrs. 2006-2009)¹⁹

A random sample of case numbers from the years 2006 through 2009 was drawn from NCDS' data base program, and in our field inspection, we checked the sample case files at the NCDS office in Detroit, Michigan, to verify that they were being maintained per requirement § 703.6(f).

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, Mitsubishi Porsche, and Lexus will be seen to also be true for the Suzuki aspects of the national AWAP.

The closed files are stored at an off-site record storage facility in the NCDS Detroit, Michigan, office. We did not inspect the off-site facility for this year's audit. The files we viewed appeared intact and were readily available for inspection. The random sample inspection of 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 Detroit, Michigan.

ii. Arbitrator Biographies

The arbitrator biographies for the national program are available for review from Debbie Lech, Manager, Case Administration for NCDS at their headquarters in Detroit, Michigan [Clinton Township]. The biographies are thorough and current. The list of arbitrators for each district includes the dates of their appointments.

E. Hearing Process

The hearing was conducted on February 18, 2010 at the Chrysler Dodge Jeep dealership, on Spears Lane in Crittenden, Kentucky. The hearing involved one arbitrator who briefly interviewed the parties, provided a summary explanation of the hearing process, and then took testimony. The hearing began at 10:00 a.m. as scheduled.

i. Physical Description of Hearing [i.e., Meeting]

The hearing was conducted in a room of adequate size and configuration. Attendees included the customer [husband and wife], a dealership representative, an auditor, and the arbitrator.

The hearing was efficiently conducted consistent with the regulatory requirements for a fair hearing. The customer and the dealership representative were provided an equal opportunity to present their case. The arbitrator appropriately confirmed what the customer was seeking in the form of relief, and then took closing statements of the parties prior to concluding the hearing. The arbitrator referenced the state lemon law but made no reference to the overriding federal law.

ii. Openness of Hearing/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. In addition he emphasized that the mileage off-set issue was something that may or may not be applied depending on the nature of the decision and he sought input from the parties on that subject.

iii. Efficiency of Meeting

The hearing was efficiently conducted. The arbitrator is clearly a well trained and professional arbitrator. All matters were reviewed thoroughly and yet in an expeditious manner.

iv. Hearing

This arbitrator appeared to be committed to the fair and expeditious resolution of warranty disputes during the hearing process. He treated the parties in an even-handed manner. The hearing covered everything the program envisions.

The hearing was professionally conducted affording all parties an opportunity to present their respective cases to the arbitrator.

v. Board/Arbitrator Decisions

We reviewed numerous decisions for this region while conducting our on-site visit to the Detroit 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 this case and found it to be thorough, well reasoned, and complete.

CONCLUSION:

The AWAP, as it operates in Kentucky 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. Florida

A. Case Load and Basic Statistics²⁰

In Florida, NCDS handled 303 AWAP cases in 2009 pursuant to the Magnuson-Moss Warranty Act and the associated Rule 703, of which 59 (19.4%) were "no-jurisdiction" cases. There were 208 cases arbitrated (80 % of the 244 in-jurisdiction cases), and 29 (11.8% of in-jurisdiction cases) were mediated. [The program supplied us with stats indicating there were 13 cases "pending" and 2 cases "delayed beyond 40 days."] The average number of days for handling a 2009 case in Florida was 32 days. This compares with an average of 33 days handling nationwide.

We analyzed several NCDS-generated statistical reports covering 2009 NCDS' arbitration program operations in Florida. Those reports are available from Ms Debbie Lech, Manager, Case Administration, National Center For Dispute Settlement, 43230 Garfield, Suite 130, Clinton Township, Michigan 48038.

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;**
- 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.

²⁰ The statistics reported in this section are for this Federal Trade Commission national audit and will not be the same statistics used in the Florida-specific audit report for 2009. The participating manufacturers are also not the same in these two different reports and this accounts for the difference in numbers appearing in the two reports.

- 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 Detroit, but we did not 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. 2006-2009)

§ 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 closed files are stored at an off-site record storage facility in the NCDS Detroit, Michigan, office. We did not inspect the off-site facility

for this year's audit. 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 Detroit, Michigan.

ii. Arbitrator Biographies

The arbitrator biographies for the national program are available for review from Debbie Lech, Manager, Case Administration, NCDS at their headquarters in Detroit, Michigan. The biographies are thorough and current, and the list of arbitrators for each district includes the dates of their appointments.

E. Hearing Process

The AWAP hearing was held at the Earl Stewart Toyota of North Palm dealership in Lake Park, Florida, January 19, 2010, at approximately 11:00 a.m.

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

The hearing room was of adequate size for accommodating the hearing. The parties included the customer together with, a Toyota manufacturer representative, a Toyota dealer representative, the arbitrator, and the auditor.

ii. Openness of 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. The hearing room would accommodate any likely visitors.

iii. Efficiency of Meeting

The arbitrator's case file was complete. He solicited whatever information the parties wanted him to see. He then proceeded to allow each party to present their case. Both the customer and the manufacturer's representative made oral presentations. Following the presentations the arbitrator accompanied the Toyota representative and the customer to the vehicle at issue and then took a brief test drive. The arbitrator demonstrated throughout the hearing that he generally knew how to properly conduct a hearing. Upon completion of the test drive all the parties returned to the hearing room.

iv. Hearing

The hearing was 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 conducted an inspection of the customer's vehicle toward the conclusion of the hearing. After the inspection was concluded, all those participating returned to the hearing room. At that time the hearing was ended.

v. Board/Arbitrator Decisions

We reviewed this case's decision and a sample of Florida NCDS decisions rendered in 2009 while conducting our on-site visit to the suburban Detroit headquarters of NCDS. Overall, 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 our view, in substantial compliance with Rule 703. The NCDS administrative staff and the NCDS program demonstrated a clear commitment to ensure fair and expeditious resolution of warranty disputes. The administrative staff is clearly dedicated to the program's mission and demonstrates a high degree of professionalism.

III. Pennsylvania

A. Case Load and Basic Statistics

The 2009 Pennsylvania Statistical compilations identifies 105 total disputes closed for 2009. Of these, 25 (23.8 % of all disputes) were beyond jurisdiction for NCDS' arbitration program review. Of the 80 remaining cases, 11 cases (13.7% of in-jurisdiction cases) were mediated and 46 (57.5% of in-jurisdiction cases) were arbitrated. The average number of days for handling a 2009 case in Pennsylvania was inadvertently missing from the auditors files and we deemed this minor issue unworthy of holding up publication of the report. This unknown number would compare with an average of 33 days handling nationwide.

B. Recordkeeping Accuracy and Completeness

We analyzed several NCDS-generated statistical reports covering 2009 NCDS' arbitration program operations in Minnesota. Those reports are available from Ms Debbie Lech, Manager, Case Administration, National Center For Dispute Settlement, 43230 Garfield, Suite 130, Clinton Township, Michigan 48038.

§ 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.**

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.²¹

- 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

²¹ 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.

not returned. For those who may be skeptical about such important assumptions, it should be remembered that even if a manufacturer engaged in a programmatic attempt to avoid performing arbitration decisions, that fact would, of course, emerge in the context of our national random survey of customers who have used the program. Performance verification status should and does appear in the case file as is indicated by sections 11 and 12 below.

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

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

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

CONCLUSIONS:

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

C. Case File Records (4 yrs. 2006-2009)²²

A random sample of 25 case numbers from the years 2006 through 2009 was drawn from NCDS' data base program, and in our field inspection, we checked the sample case files at the NCDS office in Detroit [Clinton Township], Michigan, to verify that they were being maintained per requirement § 703.6(f).

The closed files are stored at an off-site record storage facility in the NCDS Detroit, Michigan, office. We did not inspect the off-site facility for this year's audit having not anticipated that eventuality. That aspect will be on the audit agenda for any future reviews. 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.

²² 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, Chrysler, Lexus, and Mitsubishi will be seen to also be true for the Suzuki aspects of the national AWAP.

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 Detroit, Michigan.

ii. Arbitrator Biographies

The arbitrator biographies for the national program are available for review from Debbie Lech, the Manager, Case Administration, NCDS at their headquarters in Detroit, Michigan [Clinton Township]. The biographies are thorough and current. The list of arbitrators for each district includes the dates of their appointments.

E. Hearing Process

The AWAP hearing was held at Champion Toyota, 1546 Cottman Avenue, Philadelphia, Pennsylvania, on February 2, 2010 at 10:00 a.m.

i. Physical Description of Hearing [i.e., Meeting]

The hearing was conducted in room of adequate size and was reasonably arranged for the purposes of the hearing. Attending were the customer(s), a Toyota representative, a toyota dealership service department representative, the customer, the customer's daughter, a witness for the customer, customer's attorney, the auditor, and the arbitrator.

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

ii. Openness of Meeting

The room at the dealership was adequate to accommodate all attendees. 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 beginning of the hearing and gave a brief overview of the hearing process. He then proceeded to allow each party to present their case. The meeting began at the scheduled time.

iv. Hearing

The hearing was properly conducted. The parties were afforded an uninterrupted opportunity to present their case. The customer on advice of their attorney did not make an oral presentation. The arbitrator did not conduct a test drive because the nature of the case did not call for a test drive but did verify the vehicle's mileage and Vehicle Identification number.

[Note: There was some confusion during the hearing about one listed issue concerning the accelerator. NCDS had supplied a letter to the arbitrator and the parties which said that the accelerator issue could not be arbitrated insofar as an accident was alleged to have occurred which rendered the case, as it relates to the accelerator issue, beyond the program's jurisdiction.]

The arbitrator appropriately completed the hearing taking note of the customer's concerns as voiced by the customer's attorney. In addition, the customer's attorney directed some questions to the Toyota representative which could be described as more fitting a process which provides for discovery via deposition or through cross examination. Fortunately, this aspect was very brief and involved no material substantive issues. Arbitrator training, understandably, does not address such an unusual occurrence and the arbitrator, being confronted by such a unique set of circumstances was well advised to allow things to evolve as they did.

v. Board/Arbitrator Decisions

We inspected a sample of Pennsylvania decisions rendered in 2009 while conducting our on-site visit to the Detroit, Michigan, headquarters of NCDS. In addition, we reviewed the decision rendered in the case referred to above. By and large, 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 in the case file as well as those that were presented during the hearing.

CONCLUSION:

The AWAP, as it operates in the state of Pennsylvania, 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 most regulators as fundamental to ensuring that a program is fair to all sides. Consequently, all current arbitration 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 NCDS program, it is incorporated into this report as part of the program's efforts to provide for fair and expeditious resolution of disputes.

FINDINGS:

The arbitration training session we monitored was conducted at the DFW Lakes Hilton in Grapevine, Texas, June 11-13, 2010. 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 training was conducted by NCDS staff as well as Ms Mary Bedikian, an arbitration expert with the Michigan State University College of Law. One presenter dealt primarily with legal matters, another with hearing process issues, and an NCDS staff person addressed the program's procedural issues. These presentations were augmented by the trainees being given several opportunities to engage in role playing exercises.

[Note: Trainees were asked to ensure that their cell-phones, if they had one, was turned off during training.]

In the matter of scheduling hearings, 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.

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.

Important clarification was provided concerning test drives of vehicles about which the parties are in dispute. It was also explained that arbitrators in most states are not indemnified by NCDS if they elect to drive the customers vehicle.

Moreover, arbitrator trainees were told that they need not go for a test drive in cases wherein the parties are in agreement about issues which would be addressed by the test drive.

The presentation of the legal issues was professional and accurate. Particular emphasis was given to this critical subject area again this year, and the result was 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 gives trainees an opportunity to develop a good grasp of their responsibilities as arbitrators. As was true at last year's training, trainees were presented with clear information that customers who purchase a new vehicle with a substantial non-conformity and one in which the manufacturer fails to cure the non-conformity in a reasonable number of attempts should normally receive the relief they appear to be entitled to under the terms of the Magnuson-Moss Warranty Act or the appropriate state automobile warranty statute. Caveats and exceptions were also discussed in detail.

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

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

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

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

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

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

CONCLUSION:

The NCDS national arbitrator training program for participating manufacturers is a good one that operates in substantial compliance with Magnuson-Moss and

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

Rule 703. We have observed many important additions to the national training program since 2002 and the substance has, as was last year, been carried over into this year's program. The entire program clearly demonstrates a commitment to quality arbitrator training.

ARBITRATION TRAINING RATING SYSTEM

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

SECTION V

National (FTC) 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 calendar year 2009.

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 cash reimbursement, or to terminate the lease. On the other hand, the consumer may receive an adverse decision in which there is no award of any kind.

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

FTC Rule 703.6(e) requires warrantors to report statistics (also referred to as indices) in 13 areas. These include: 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 2009.

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 proportions 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 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 298 of the 1,568 users²⁴ of the AWAP program nationally in 2009 whose cases were "in jurisdiction" and "closed." To achieve the research goal of obtaining 300 completed surveys nationally, surveys were sent to 600 randomly sampled users of the program.²⁵ Closed cases are defined as those where a decision has been made and the time for compliance has occurred.

²⁴ The AWAP reports a total of 2,455 cases. When adding the outcomes, 2,277 cases are represented. The cases break down as follows: 204 mediated cases (6 which the time for compliance had not passed), 1,449 arbitrated cases (79 which the time for compliance had not passed) 16 pending cases, and 608 "no jurisdiction" cases. The data in this report is based on the closed mediated and arbitrated cases – 204 mediated and 1,449 arbitrated cases. This AWAP totals include a figure of 21 cases that were delayed beyond 40 days. This number should not be included in the total as an additional number of cases, but as a subset of the cases that were mediated or arbitrated and closed. There is still a discrepancy when the 21 delayed cases are removed from the totals by 157 cases. For this report, only closed in-jurisdiction cases are used to calculate the statistics – 198 mediated cases and 1,370 arbitrated cases for a total of 1,568 cases.

²⁵ Using a projected completion rate of 50%, a proportional random sample of 600 users of the program was selected from the database of close and in-jurisdiction cases supplied by the AWAP. A proportional sample should yield completed surveys from a population similar to the universe. The following table shows the breakdown of the universe of cases provided by the AWAP in which to draw the sample and the breakdown of completed cases in the Claverhouse sample. The Claverhouse sample is representative of the universe of cases filed in 2009 with the AWAP.

	Toyota	Lexus	Mitsubishi	Chrysler	Suzuki	Total
Claverhouse Sample	237 (79.5)	31 (10.4)	11 (3.7)	13 (4.4)	6 (2.0)	298 (100.0%)
AWAP	1,219 (77.7)	117 (7.5%)	102 (6.5%)	55 (3.5%)	75 (4.8%)	1,568 (100.0%)

The data were collected using both a web-based questionnaire and a mailed self-administered questionnaire. Slight changes were made to the survey used this year to conduct the audit. No changes were made in any questions used to verify the statistics. Changes were only made in questions used to evaluate the program and were done so to increase validity of the statistics.

A web-based version of the questionnaire was programmed using Vovici Professional Edition web-based data collection software. Vovici allows for all types of question formats (i.e. single and multiple response, single response and multiple response matrix, and limited and unlimited text) to be programmed. It also has a powerful survey notification tool and several security features.

The web-based survey notification system allows for individualized, confidential links to be emailed to each randomly selected respondent. It also keeps track of who responds electronically and who does not so that email reminders are only sent to those who have not yet completed the questionnaire. The security system has custom settings that allow only one response per unique identification number, email address, or IP address which virtually reduces the risk of respondents answering the survey several times thus skewing the results. Vovici also can be published through an SSL certificate and uses 128-bit data encryption to ensure that downloaded data and all information remains confidential.

Out of the 600 randomly selected users of the program, 150 had an email address. These users were sent a pre-notification letter informing them of the study, the date in which they would receive an email, and to what address the email would be sent. Approximately one week after this pre-notification letter was sent, each user was sent an individualized link asking them to complete the on-line survey. The first email invitation was sent out on March 10, 2010. Reminder emails were sent out on March 28, 2010, and April 14, 2010. Eighty-four users of the program who were sent emails completed the survey on-line.

A hard copy questionnaire that matched the electronic version exactly was mailed to all randomly selected users without electronic contact information.

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 of a cover letter, questionnaire, and postage paid envelope. One week later, this mailing is followed by a postcard thank-you/reminder. Three weeks after the initial mailing, a second full mailing is sent to non-responders.

On March 10, 2010, a packet containing the questionnaire, a cover letter, and a postage-paid return envelope was sent to the other 450 randomly selected users of the AWAP program nationally in 2009. The cover letter explained the purpose of the research, why and how the customer was selected to participate, and how the results would be used. It also explained his or her rights in the research process and provided contact information for OSR staff in case they had questions about the survey or the survey process itself. The letter also contained information about the year, make and model of the automobile selected for the audit. This information was provided to ensure that the consumer referred to the correct vehicle in the event they had filed more than one case with the AWAP program.

This letter also contained the URL to the web-based survey giving the respondent the opportunity to complete the survey on-line if he or she chose to do so. Twenty-two respondents chose to complete their survey on-line rather than on paper.

One week after the initial mailing (March 17, 2010), the combination thank-you/reminder postcard was sent to everyone who had received the initial mailing. Each person in the study was assigned a unique identification number for tracking purposes. This tracking number was used so that the second mailing could be sent to those who had not completed and returned their questionnaire by a specific date.

On April 1, 2010, OSR mailed to those who had not yet returned their questionnaire another packet. This packet contained a different cover letter which explained that OSR had not yet received their initial questionnaire and that their participation was important to ensure a complete and thorough audit. Another questionnaire and a postage-paid envelope were also included. OSR allowed three weeks after the last mailing for respondents to return their questionnaires. Data collection was ended on April 30, 2010. OSR received 192 completed self-administered questionnaires. These were then entered using the web-based software. The data was then output, proofed, and coded for data analysis.

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. The margin of error for this study is +/- 5.1 percent²⁶.

Of the 450 self-administered questionnaires that were initially mailed, 192 were returned completed, 22 chose to do the survey electronically²⁷, seven were returned by the post office as undeliverable, and eight were returned with the respondent answering no or just a couple of questions. Those falling into the latter category were not included in the dataset. The status of the remaining 221 cases is unknown. The completion rate for the self-administered study is 45.6 percent. The completion rate for the on-line portion of the study is 61.6 percent. Overall, the completion rate is 50.3 percent.

Method of Resolution

Table 1 compares the method of resolution of disputes in the Claverhouse sample with the figures reported to the FTC. Since the Claverhouse survey contained only in-jurisdiction cases, out-of-jurisdiction cells in the Claverhouse section of the table are blank, and the subtotal (representing in-jurisdiction cases) is equal to total disputes. In this case, only AWAP in-jurisdiction cases are compared with the Claverhouse sample. Also excluded are the AWAP cases in which time for compliance has not yet occurred since the Claverhouse sample only includes closed cases.

The difference between the 15.8 percent of cases mediated in the Claverhouse sample and the 12.6 percent of cases mediated in the AWAP figures is not statistically significant. Likewise, the difference between the 84.2 percent of arbitrated cases in the Claverhouse sample and the 87.4 percent of arbitrated cases in the AWAP figures is also not statistically significant. Therefore, the statistics are in agreement.

²⁶ This is the sampling error when the responses divide roughly 50-50 on a given question and when there are 298 cases, given a 95 percent confidence interval (i.e., there is a 1-in-20 chance that the actual proportion in the population falls outside the range of 50 ± 5.1 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 +/- 4.4 percent.

²⁷ The 22 cases in which the respondent received a self-administered questionnaire but completed it on-line are removed from the denominator of the self-administered survey sample and added to the denominator of the web-based sample for the purposes of computing the completion rate.

Table 1
Method of Resolution of Warranty Disputes
Comparison between Claverhouse Survey and AWAP Indices 2009

Resolution	Claverhouse		AWAP		
	Number	Percent	Number	Percent of in-jurisdiction closed cases	Percent of all cases
Mediation	47	15.8%	198	12.6%	9.1%
Arbitration	251	84.2%	1,370	87.4%	63.0%
Subtotal (in-jurisdiction)	298	100.0 %	1,568	100.0%	72.1%
Out-of jurisdiction	-	-	608	-	27.9%
Total disputes	298	100.0%	2,176	-	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.

Table 2
Outcomes of Mediated Settlements
Comparison between Claverhouse Survey and AWAP Indices 2009

Mediated Settlements	Claverhouse	AWAP
	Percent (Number)	Percent (Number)
Resolved by staff of the mechanism and warrantor has complied	95.5% (42)	97.5% (193)
Resolved by staff of the mechanism and time for compliance has occurred and warrantor has not yet complied	4.5% (2)	2.5% (5)
Total Mediated Cases	100.0% (44)	100.0% (198)

All the users in the Claverhouse sample who had their cases settled through mediation and who reached a settlement with the dealer or manufacturer reported receiving the agreed upon settlement. The survey data shows that the manufacturer complied with 95.5 percent of these mediated cases within the time frame specified in the agreement. AWAP indices show that the AWAP complied with 97.5 percent of mediated cases within the time frame specified in the agreement. 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” fall within the margin of error (5.1 percent) and are in agreement.

It is important to note, that AWAP indices include cases for which the time for compliance has not occurred. The indices show that 6 cases fall into this category for a total of 204 mediated cases. Since only closed cases are used in the Claverhouse study, this statistic cannot be compared. With these cases included, the AWAP statistics are as follows: 94.6 percent resolved by staff of the mechanism and warrantor has complied; 2.5 percent (2) resolved by staff of the mechanism and time for compliance has occurred and warrantor has not yet complied, and 2.9 percent resolved by staff of the mechanism and time for compliance has not yet occurred.

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

Table 3
Specific Outcomes of Mediated Settlements
Claverhouse Survey 2009

Outcome	Number	Percent
Cash settlement	17	36.2%
New vehicle	12	25.5%
Extended warranty	7	14.9%
Paid for repairs	6	12.8%
Trade-in allowance	1	2.1%
Other: Not Specified	1	2.1%
Nothing, did not reach settlement	3	6.4%
Total	47	100.0%

When asked if they pursued their cases any further, only 13.0 percent of the respondents indicated that they had done so. Because respondents could indicate more than one source of follow-up, the number of responses (7) is greater than the number of respondents (6). Of those who chose to pursue their cases further, the methods used were to re-contacted the AWAP (57.1 percent) and/or contacted the dealer or manufacturer (42.9 percent) in the hopes of reaching a solution.

Respondents were then asked if they recalled talking to an AWAP staff member or returning a postcard to the AWAP about their settlement and how their cases were handled. Of those answering the question, 53.5 percent recalled talking to a staff member, 16.3 percent returned the postcard, 16.3 percent said that they did both, and 14.1 percent didn't bother doing either.

- Of the respondents who received a new vehicle 100.0 percent said they either talked to the staff directly (66.7 percent) or talked directly to the staff and returned the postcard (33.3 percent). This was also true for those who did not reach a settlement, with 66.7 indicating they spoke directly to the staff and 33.3 indicating that they did both (spoke to the staff and returned the postcard).
- The largest group to only return the postcard and not speak with the staff regarding their settlement were respondents who received a cash settlement.
- 66.7 percent who received additional repairs as their settlement were the group mostly likely not to follow up at all.

Arbitrated Cases

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

Respondents were first asked whether they remembered receiving the forms in which their claims were stated. Of the respondents who reported arbitration as the means for resolving their case, 91.9 percent said that they recalled receiving the forms. Respondents were also asked a question about how accurately they felt the forms stated their **claim** – 40.3 percent said very accurately; 43.7 percent said somewhat accurately; and 16.0 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 respondents received an award in the arbitration process. Those who said their case was stated very accurately or somewhat accurately were more likely to receive an award. (see **Figure 1**)

Respondents were then asked whether they had been notified of the time, place, and date of the arbitration hearing. Of those who answered this question, 94.4 percent said they had been notified, and of those who had been notified, 80.5 percent attended their hearing in person, 1.6 percent said that they participated in the hearing by phone, and 17.9 percent said that they did not attend the hearing in person or participate by phone.

Those who did not attend their hearing were asked for the reason(s) why they did not attend their hearing. Respondents reported the following:

- 43.2 percent said they chose the “document only hearing” option.
- 24.3 percent indicated that they had a scheduling conflict.
- The same percentage (16.2 percent) indicated that they were told their presence was not necessary or they indicated they were not given the information or given incorrect information about the time, date, and location of the hearing.

Does the choice of the type of hearing or does attending the hearing have any effect on the outcome of a case?

- There is no statistical difference between whether or not an award was granted based on whether or not the complainant attended the hearing.
- There is also no statistical difference between the type of hearing chosen (i.e. in person, phone, or document only) and whether or not the complainant receive an award

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

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

FIGURE 1. ACCURACY OF CLAIM FORMS CORRELATED WITH WHETHER AN AWARD WAS GRANTED

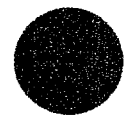
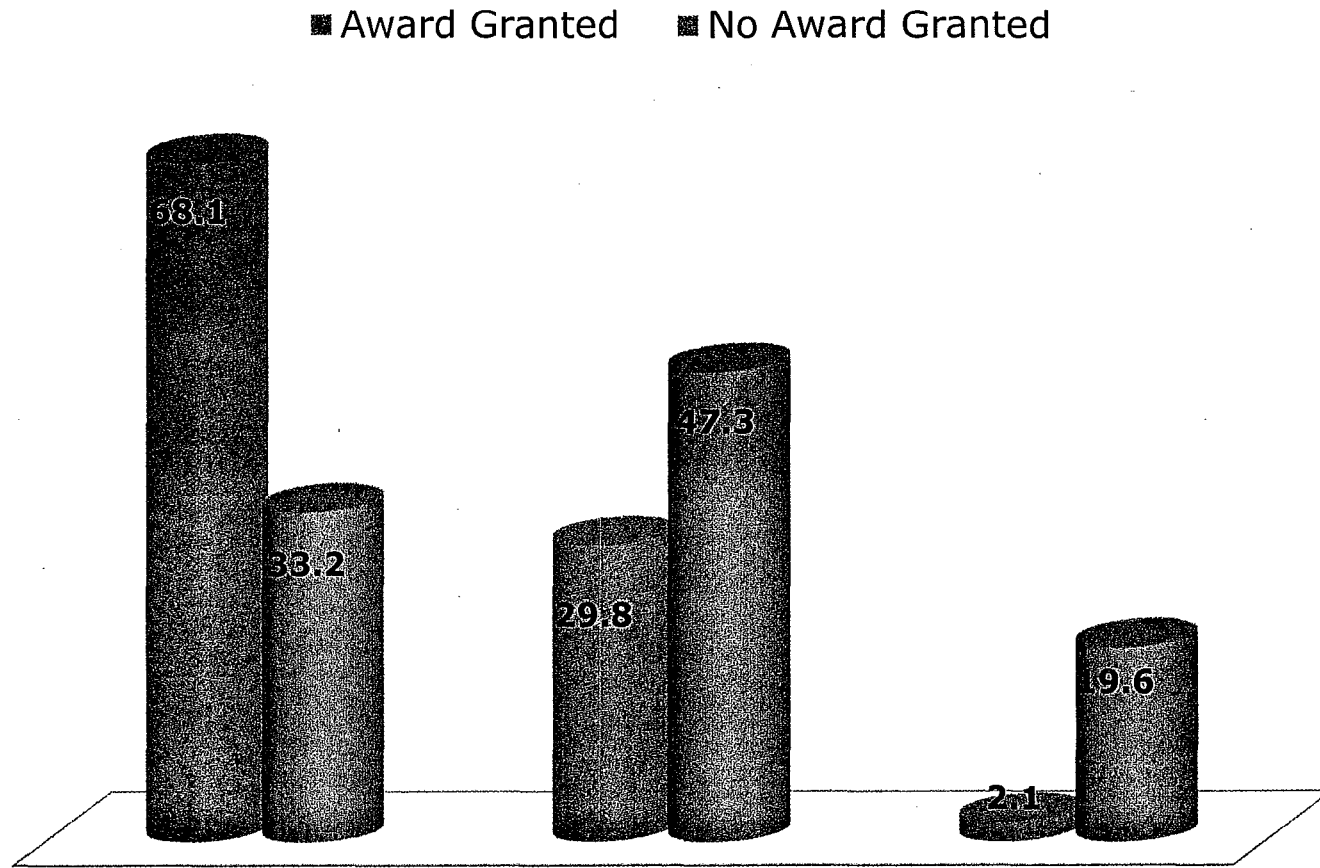


Table 4
Outcomes of Arbitrated Cases
Comparison between Claverhouse Survey and AWAP Indices 2009

Outcome	Claverhouse	AWAP (1)	AWAP (2)
	Percentage (Number)	Percentage (Number)	Percentage (Number)
Arbitration - Award Granted and Accepted			
Case decided by board and warrantor has complied	18.4% 46	11.6% (159)	11.0% (159)
Case decided by board and warrantor has not complied	0.4% 1	0.2% (3)	0.2% (3)
Case decided by board and time for compliance not passed	-	-	5.5% (79)
Total award granted and accepted	(18.8) 47	11.8% (162)	16.7% (241)
Arbitration Decision adverse to consumer	81.2% (203)	88.2% (1,208)	83.4% (1,208)
Total arbitrated decisions	100.0% 250	100.0% (1,370)	100.0% (1,449)

The results for the outcomes of arbitrated cases are reported two ways. The statistics include in the column AWAP (1) **do not** include cases where a decision has been made, but time for compliance has not yet occurred. These are the statistics that the Claverhouse data should be compared as the Claverhouse data does not include these numbers as all cases in the Claverhouse sample are closed. The statistics in AWAP (2) show the outcomes for all cases reported in the statistics provided by the AWAP and include cases for which the board has made a decision but time for compliance has not yet occurred.

Survey results differ statistically from the AWAP indices for two statistics; “case decided by board and warrantor has complied” and “decided by members, decision adverse to consumer.” **These differences should not be of great concern since the difference favors the consumer and not the AWAP** -- a slightly higher percentage of respondents in the Claverhouse sample (18.4 percent) reported compliance (compared to 11.6 percent in the AWAP indices) and a slightly lower percentage of respondents in the Claverhouse sample (81.2 percent) reported adverse decisions than reported by the AWAP (88.2 percent). The statistic “case decided by the board and warrantor has **not** complied” is in agreement.

These differences, in part, may 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, 97.9 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.

Table 5 details the awards respondent's reported receiving from their arbitration hearings.

Table 5
Specific Outcomes of Arbitrated Cases
Claverhouse Survey 2009

Outcome	All Cases	Award Granted	Award Granted and Accepted
Repairs	7.2% (18)	37.5% (18)	35.6% (16)
Cash Settlement (Buy back vehicle)	6.4% (16)	33.3% (16)	35.6% (16)
New vehicle (replacement)	3.7% (11)	22.9% (11)	24.4% (11)
Extend warranty	1.2% (3)	6.3% (3)	4.4% (2)
Nothing, No Award	80.9% (203)	----	
Total	100.0% (251)	100.0% (48)	100.0% (45)

The survey also asked whether or not the respondent accepted or rejected the decision and the reason why they chose to reject the decision if applicable. Overall, 95.7 percent accepted the award that was granted.

- Users who were granted repairs rejected the decision made by the AWAP.
- Everyone who did reject the decision granted indicated the reason for not accepting the award was they believed what was awarded to them would not likely solve the problems with the vehicle.

All respondents whose cases were arbitrated were asked whether they had pursued their cases further after the arbitration decision. Slightly more than one quarter (26.6 percent) of respondents indicated that they had pursued their cases in some manner. Table 6 shows by what means they pursued their cases. Respondents could select multiple answers therefore the number of responses (80) is greater than the number of respondents (65).

Table 6
Methods of Pursuing Arbitrated Cases
Claverhouse Survey

Method	Number	Percent
Contacted an attorney/legal means	27	33.8%
State government agency	23	28.8%
Re-contacted AWAP	16	20.0%
Re-contacted dealer or manufacturer	10	12.5%
Other methods	4	5.0%
Total	80	100.0%

When looking at which users pursued their cases, the data show:

- Overall, only 9.2 percent of respondents who were granted an award chose to pursue their cases further.
- A small percentage of respondents (7.7 percent) who were awarded additional repairs chose to pursue their case and most of those, 80.0 percent, did so by re-contacting the AWAP.
- No one who was awarded a replacement vehicle or an extended warranty pursued their case.
- The largest group who did pursue their cases further were those who were not given an award – 90.8 percent with 35.1 percent contacting an attorney and/or a state government agency, 31.1 percent.

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. Overall, 58.9 percent said they had some type of contact with the AWAP after their case was closed. Among all answering the question, 24.7 percent said that they had spoken to someone, 25.1 percent said that they returned the postcard, 9.1 percent said they did both, and 41.1 percent said that they did not bother doing either.

- 45.9 percent who did not pursue their case further also did not follow-up with the AWAP.
- 53.3 percent who did not receive an award and did not pursue their cases further also did not follow-up with the AWAP.

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 1.3 percent of the closed, in-jurisdiction cases, 21 out of 1,568, were settled beyond 40 days, whereas 7.2 percent of survey respondents, 20 out of the 279 answering the question, reported their cases were settled beyond 40. (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. Slightly over 40 percent of respondents were unable to provide a complete date as to when their cases were opened or closed.

When asked for the date in which their case was opened, 29.9 percent could not provide any date at all and 10.4 percent could give only a partial date.

Survey respondents' recollections on when their cases were closed were similar – 31.2 percent could not provide any date at all and 11.1 percent could give only a partial date.

Also, respondents are consistent in their ability (or inability) to recall the information:

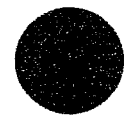
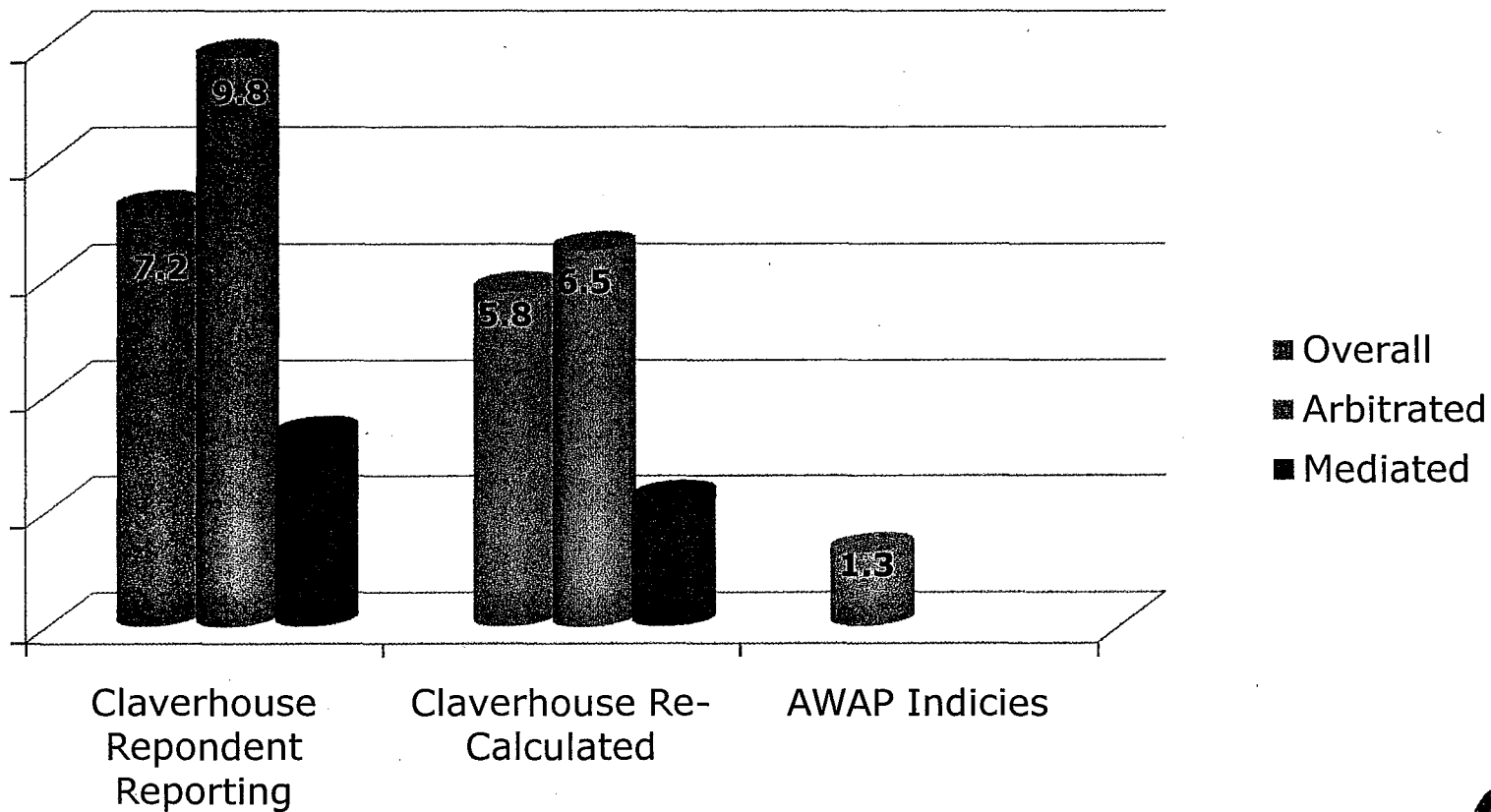
- 98.2 percent who gave a full date for when their case was opened also gave a full date for when their case was closed.
- 91.4 percent who gave no date for when their case was opened also were unable to give a date when their case was closed.
- 82.4 percent who gave a partial date for when their case was opened also gave a partial date for when their case was closed.

For those respondents that gave both a full open and closed date **and** who indicated that their case took more than 40 days, OSR staff calculated a variable based on those dates to determine whether the case was actually open more than 40 days or not. It was found that 44.4 percent of those who gave open and closed dates that did fall within 40 days **and** when asked whether or not their case did take more than 40 days answered this question in the affirmative. Taking this information, and when recalculated, the percentage of cases respondents reported taking more than 40 days drops to 5.7 percent which falls within the margin of error.

This analysis supports the theory of error in recall and reporting on the part of the respondent for the difference in the statistics.

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.

FIGURE 2. PERCENTAGE OF CASES DELAYED BEYOND 40 DAYS OVERALL AND BY CASE TYPE



Given this information, the difference between the AWAP indices and the Claverhouse data for should not be a cause for concern.

There is a statistical difference between the Claverhouse data and the AWAP indices for the reasons for the case delays. Again, when using the self reported data this difference does occur, but when using the recalculated data, the statistics are in agreement. This difference should not be cause for concern and can be attributed to consumer's interpretation of the categories, respondent reporting and recall error. Table 7 shows the comparison between the Claverhouse survey data, the Claverhouse re-calculated data, and the AWAP indices.

Table 7
Reasons for Delays in Decisions
Comparison between Claverhouse Survey and AWAP Indices 2009

Reasons for Delays	Claverhouse	Claverhouse Re-Calculated	AWAP
	Percentage (Number)	Percentage (Number)	Percentage (Number)
Decision delayed beyond 40 days because of customer failure to submit information in a timely manner.	4.0% (2)	4.0% (1)	0.0% (0)
Decision delayed beyond 40 days because customer had made no attempt to seek redress directly from warrantor.	12.0% (6)	0.0% (0)	0.0% (0)
Decision delayed beyond 40 days for any other reason.	84.0% (42)	96.0% (24)	100.0% (21)
Total cases delayed beyond 40 days.	100.0% (50)	100.0% (25)	100.0% (21)

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. Because respondents could indicate more than one source, the percentages are based on number of responses (363) not the number of respondents answering the question (297).

Table 8
How Consumers Learned about AWAP Availability
Claverhouse Survey 2009

Sources of Information	Number	Percent
Owner's manual/warranty information	122	33.6%
Automaker Customer Complaints/Toll-free number	92	25.3%
Dealership	90	24.8%
Internet	16	4.4%
Brochures/other literature	15	4.1%
Friends and family	10	2.8%
Previous knowledge of the program	8	2.2%
Media - TV, radio, newspapers	5	1.4%
Total	363	100.0%

As the table shows, overall, the owner's manual was the leading source of information about the program, followed by the automaker's customer complaint line, and the dealership.

- The leading sources of information about the program for those with mediated cases was the owner's manual, 47.8 percent, the dealership, 39.1 percent, and the customer complaint toll-free number, 28.3 percent.
- For those with arbitrated cases the leading sources of information were the owner's manual, 39.6 percent, the customer complaint toll-free number, 31.6 percent, and the dealership, 28.8 percent.
- Those with mediated cases were far more likely to learn about the program from the Internet than those with arbitrated cases – 17.4 percent compared to 3.2 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. Close to one-third of the respondents indicated that they saw or were shown a poster (31.6 percent), 21.8 percent said they were given something to read about the program, and 17.6 percent said they were talked to about the program by someone at the dealership or manufacturer, and 29.0 percent said they were informed in other ways.

Survey respondents were also asked about the program informational materials and complaint forms they received from the AWAP. Close to all, 94.2 percent recalled receiving the materials. A slightly higher percentage of respondents with mediated cases recalled receiving the materials than arbitrated cases --- 95.7 percent compared to 93.9 percent.

Of those who said they recalled receiving the materials 66.8 percent reported the informational materials were very clear and easy to understand, 28.0 percent said the materials were a little difficult, but still fairly easy to understand; and 5.2 percent said that the materials were difficult or very difficult to understand.

When asked about the complaint forms, 68.4 percent said they were very clear and easy to understand; 27.5 percent said a little difficult but still fairly easy to understand; and 4.0 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 an outcome of the case. Those with mediated cases were far more likely to find the information materials and the complaint forms easier to understand than those with arbitrated cases as did those who were granted awards in the arbitration process. (see **Figure 3**)

Respondents were then asked to rate their satisfaction with the AWAP staff in three areas: objectivity and fairness, promptness, and effort. The respondents were asked to rate each item using a six point scale. Using a scale with an equal number of data points eliminates an exact midpoint so respondents are not drawn to the "middle" or neutral category. This type of scale is better for computing means (or averages) as a way to gauge satisfaction or dissatisfaction with the program. For these items, the closer the mean is to 1.00 the higher the level of satisfaction. The closer the mean is to 6.00 the higher level of dissatisfaction. Table 9 reports the results in percentages.

FIGURE 3. EASE OF UNDERSTANDING INFORMATIONAL FORMS WITH CASE OUTCOME

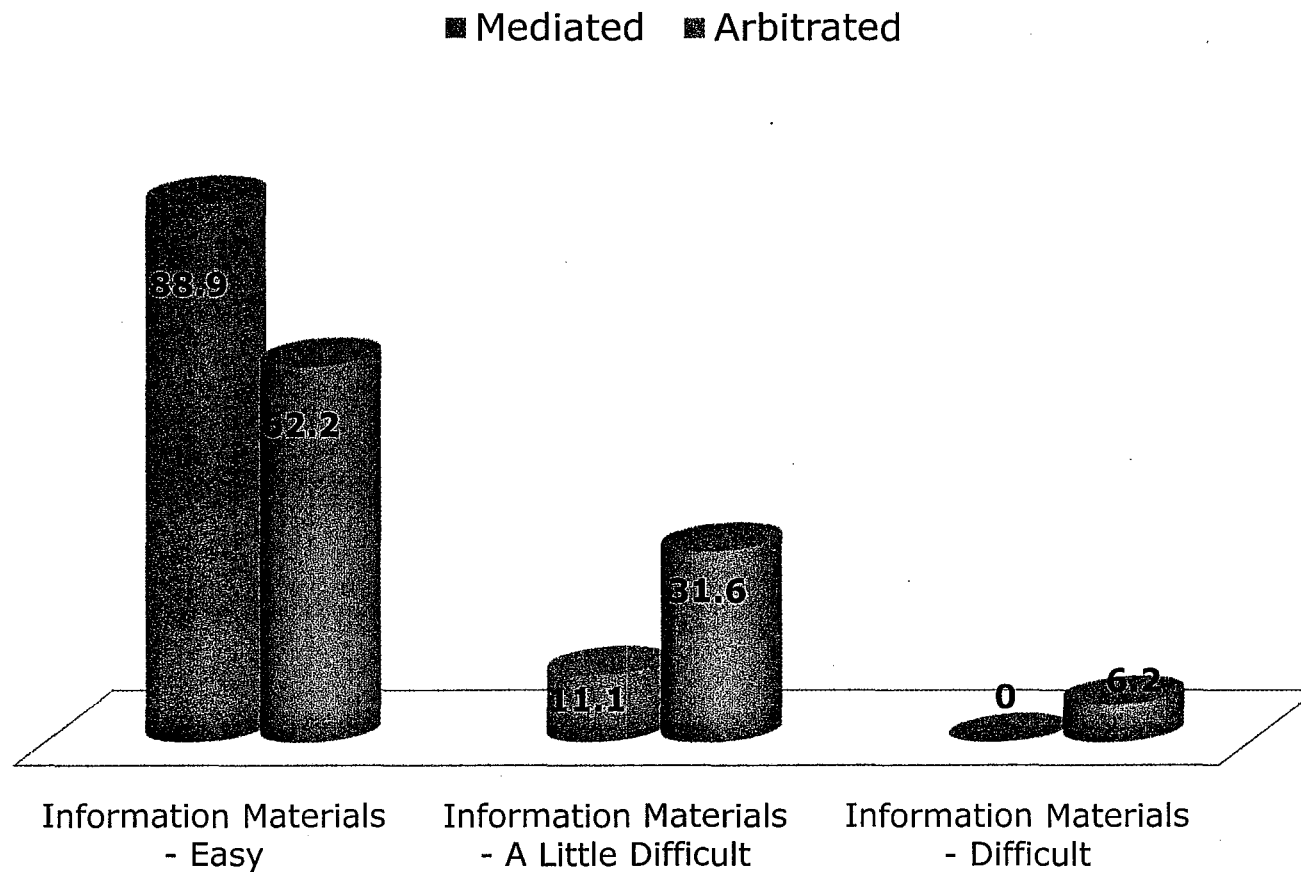


Table 9
Survey Respondents' Ratings of AWAP Staff by Percentage
Claverhouse Survey 2009

Performance Item	Level of Satisfaction					
	Satisfied			Dissatisfied		
	Very (1)	(2)	(3)	(4)	(5)	Very (6)
Objectivity and fairness	29.8%	6.2%	10.0%	7.3%	5.2%	41.5%
Promptness in handling your complaint during the process	37.3%	11.6%	12.7%	6.5%	3.4%	28.4%
Efforts to assist you in resolving your complaint	32.7%	8.2%	10.2%	6.5%	5.8%	36.7%
Overall rating of the program	28.7%	5.8%	7.5%	4.8%	23.2%	30.0%

Of the three areas, users of the program gave the **highest** satisfaction rating in the area of promptness, with 61.6 percent saying that they were more satisfied than dissatisfied in this area (over one-third of the respondents (37.3 percent) indicated they were very satisfied). Only 28.4 percent said they were very dissatisfied in this area.

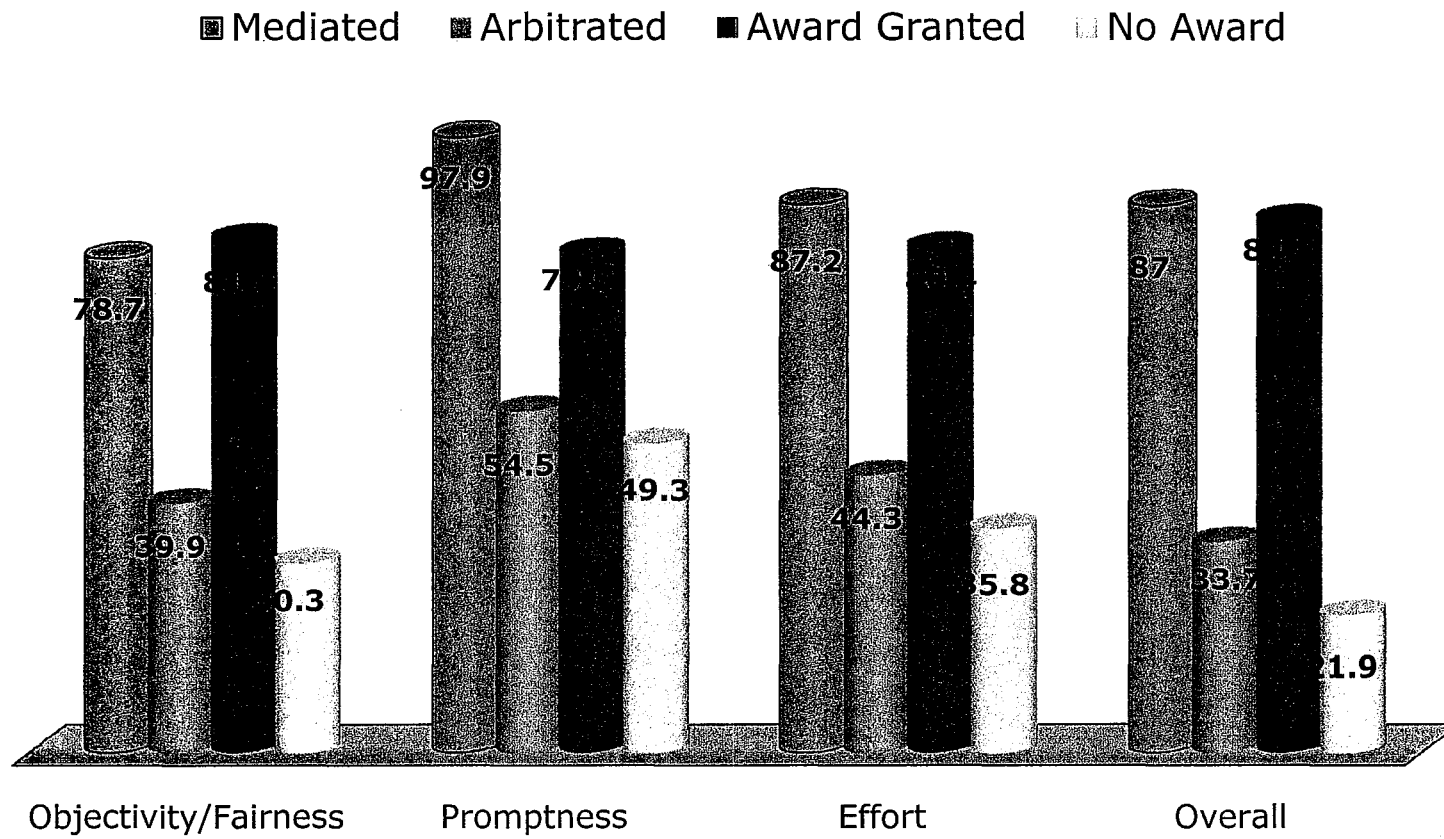
The **lowest** level of satisfaction was in the area of objectivity and fairness with only 46.0 percent of respondents giving a satisfaction rating between 1 and 3, and only 29.8 percent indicated that they were very satisfied (a rating of 1). On the reverse end of this scale, 41.5% percent indicated that they were very dissatisfied (a rating of 6) with the program in the area of objectivity and fairness and this was the highest level of dissatisfaction among the three areas rated. Overall, slightly more than half, 54.0 percent, said they were dissatisfied to some degree with the AWAP in this area.

Respondents were split in their assessment in the area of the AWAP's effort to assist in resolving the complaint. Slightly more than half, 51.0 percent, indicated they were satisfied to some degree in this area.

When asked to give an overall satisfaction rating, only 42.0 percent gave a rating falling within the satisfaction range (1-3) with only 28.7 percent indicating that they were very satisfied (1). A little more than half of the respondents, 58.0 percent, indicated they were dissatisfied with the program with 30.0 percent giving a rating of 6. (see **Figure 4**)

Another approach to gauging satisfaction among these items is to compare means across the items and across different groups. The closer the mean value is to 1.00 the greater the level of

FIGURE 4. RESPONDENTS SATISFACTION WITH PROGRAM ASPECTS BY CASE TYPE AND CASE OUTCOME*



*Data has been recoded: Percentages Represent Satisfied (1-3)

table below shows the overall mean for each item as well as a comparison of the means by type of case. As the table shows, the type of case is an important part in consumer's satisfaction with the program. More detailed comparisons are shown in **Figure 5**.

Table 10
Survey Respondents' Ratings of AWAP Staff Means Comparison
Claverhouse Survey 2009

Performance Item	Overall	Mediated	Arbitrated
Objectivity and fairness	3.76	1.98	4.10
Promptness in handling your complaint during the process	3.13	1.47	3.45
Efforts to assist you in resolving your complaint	3.54	1.77	3.88
Overall rating of the program	3.77	1.67	4.17

Another measure of consumers' satisfaction or dissatisfaction with the AWAP program is whether or not they would recommend the program to others. Overall, 34.6 percent said that they would recommend the program to others, 41.0 percent said they would not, and 24.4 percent said that it would depend on the circumstances. Table 11 shows these results.

Table 11
Would Consumer Recommend the AWAP Program to Others?
Claverhouse Survey 2009

Method of Resolution and Outcome	Yes	No	Depends on Circumstances
Mediated	35.3%	1.7%	11.1%
Arbitrated	64.7%	98.3%	88.9%
Award Granted	54.4%	2.5%	14.1%
No Award Granted	45.5%	97.5%	85.9%

Finally, survey respondents were given an opportunity to make comments and suggestions about AWAP program changes or improvements. These comments are summarized in Table 12. Because this was an open-ended question, up to three responses were coded for each respondent; therefore, the statistics are based on number of responses (274), not number of respondents (218).

FIGURE 5. MEAN COMPARISONS OF SATISFACTION INDEX BY CASE TYPE AND OUTCOMES

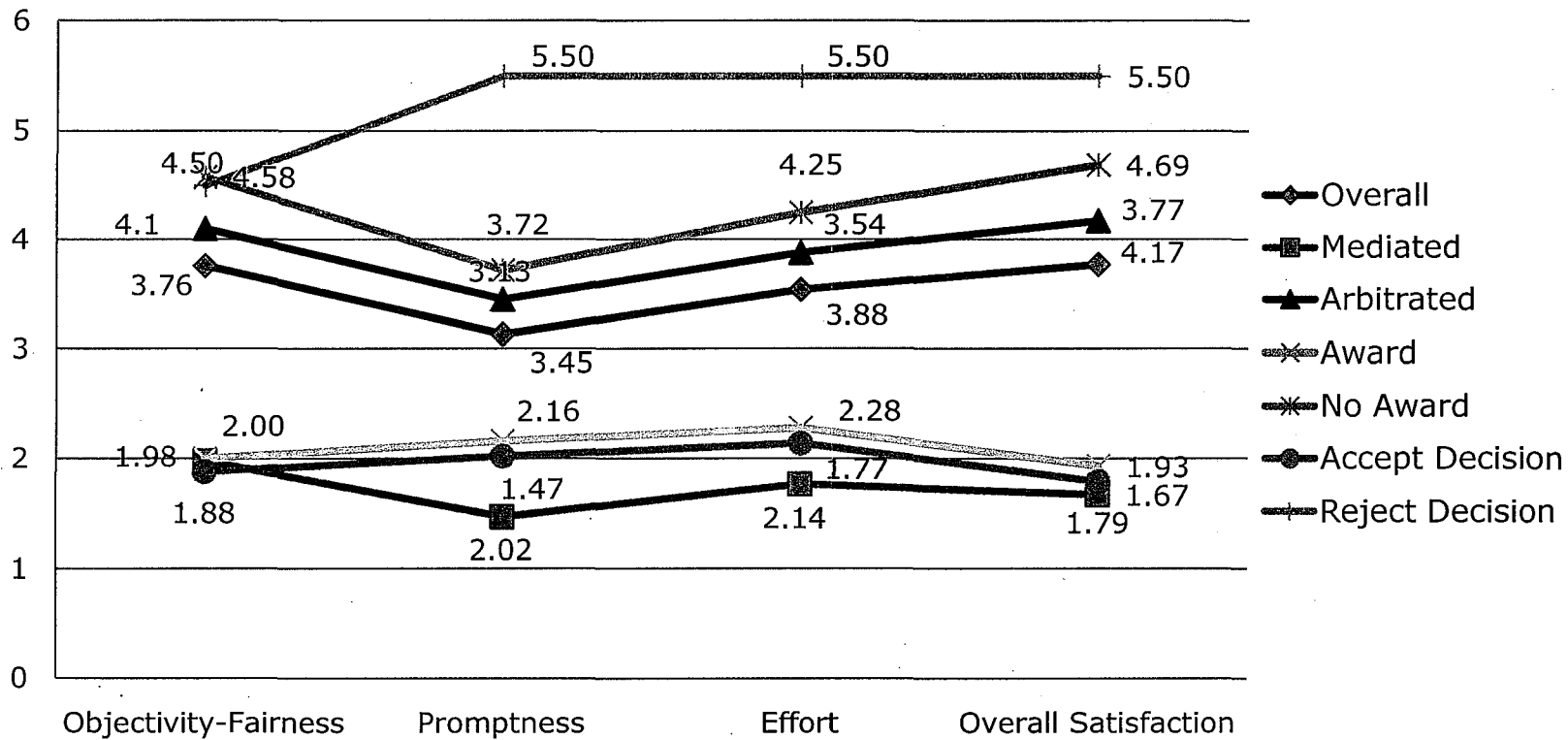


Table 12
Consumer Suggestions for Program Improvement
Claverhouse Survey 2009

Suggestion	Number	Percent
Arbitrators should be more consumer oriented	107	39.1%
Did a good job, no complaints	41	15.0%
Allow for more information about history/problems of car	37	13.5%
Make dealers/manufacturers more responsive to consumer	25	9.1%
Have better qualified mechanics for inspections/repairs	19	6.9%
Make program more well known/ more program locations	12	4.4%
Awards/settlements and dollar amounts need to be fairer	10	3.6%
Speed up the process for quicker decisions	8	2.9%
Need better initial review of cases by staff and arbitrators	7	2.6%
Need better follow-up enforcing awards/settlements	3	1.1%
Need more program locations/advertise program more	2	0.7%
Less paperwork, less forms, make forms easier to understand	2	0.7%
Better/more representation at hearings	1	0.4%
Total	274	100.0%

The top two suggestions or comments represent both ends of the spectrum – “arbitrators should be more customer orientated” (39.1 percent) and “did a good job, no complaints” (15.0 percent).

- The top response among those with arbitrated cases was “arbitrators should be more customer orientated” with 55.0 percent.
- Among those with mediated cases, the top comment was “did a good job, no complaints” – 75.0 percent. Only 10.1 percent with arbitrated cases gave this response.
- 24.1 percent who were granted an award indicated that the AWAP should “make the program more well known/more program locations” compared to only 3.1 percent with arbitrated cases.
- Respondents who did not receive an award focused much of their suggestions and comments around the process and personnel involved in the program:
 - 62.1 percent “arbitrators should be more customer orientated”
 - 20.5 percent “allow for more information about history/problems of car”
 - 12.4 percent “make dealers/manufacturers more responsive to consumer”

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 four areas, none of which should raise concerns about the program or how the program is administered. The differences are: "case decided by board and warrantor has complied" "arbitration decision adverse with consumer," "case delayed beyond 40 days," and "reasons for delays beyond 40 days."

For the statistics dealing with arbitration decisions, the differences should not be cause for concern since both of the differences favor the consumer and not the program. The difference may also be attributed to non-response bias in that those who were granted awards and accepted them are probably more likely to participate than those who were not granted anything by the AWAP.

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 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 is not be a cause for concern because the differences do not indicate that the program is improperly collecting or reporting program statistics.

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

CODEBOOK

Audit of the NCDS/AWAP National 2009
298 Cases

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CASEID CASE IDENTIFICATION NUMBER

298 cases (Range of valid codes: 1-298)

Min	=	1	Mean	=	149.500000
Max	=	298	Std Dev	=	86.169407
Median	=	150	Variance	=	7,425.166667

(Based on 298 valid cases)

Data type: numeric

Created: Jul 20, 2010 (Tue 12:28 PM)
 Audit of the NCDA/AWAP National 2009
 Record/columns: 1/75-77

WSB1 Consent

%	N	VALUE	LABEL
100.0	298	0	Yes
0.0	0	1	No
-----	---		
100.0	298	cases	

Min	=	0	Mean	=	.000000
Max	=	0	Std Dev	=	.000000
Median	=	0	Variance	=	.000000

(Based on 298 valid cases)

Data type: numeric
 Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
 Audit of the NCDA/AWAP National 2009
 Record/column: 1/1

WSB3_0 Learn About NCDS : Automaker Customer Complaint Toll-Free Number

%	N	VALUE	LABEL
69.1	206	0	No
30.9	92	1	Yes
-----	---		
100.0	298	cases	

Min	= 0	Mean	= .308725
Max	= 1	Std Dev	= .462744
Median	= 0	Variance	= .214132

(Based on 298 valid cases)

Data type: numeric
 Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
 Audit of the NCDA/AWAP National 2009
 Record/column: 1/2

WSB3_1 Learn About NCDS : A Dealership

%	N	VALUE	LABEL
69.8	208	0	No
30.2	90	1	Yes
-----	---		
100.0	298	cases	

Min	= 0	Mean	= .302013
Max	= 1	Std Dev	= .459903
Median	= 0	Variance	= .211511

(Based on 298 valid cases)

Data type: numeric
 Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
 Audit of the NCDA/AWAP National 2009
 Record/column: 1/3

WSB3_2 Learn About NCDS : Owner's Manual/Warranty Information

%	N	VALUE	LABEL
59.1	176	0	No
40.9	122	1	Yes
-----	---		
100.0	298	cases	

Min	= 0	Mean	= .409396
Max	= 1	Std Dev	= .492550
Median	= 0	Variance	= .242605

(Based on 298 valid cases)

Data type: numeric
Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
Audit of the NCDA/AWAP National 2009
Record/column: 1/4

WSB3_3 Learn About NCDS : Attorney or Lawyer

%	N	VALUE	LABEL
98.3	293	0	No
1.7	5	1	Yes
-----	---		
100.0	298	cases	

Min	= 0	Mean	= .016779
Max	= 1	Std Dev	= .128657
Median	= 0	Variance	= .016553

(Based on 298 valid cases)

Data type: numeric
Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
Audit of the NCDA/AWAP National 2009
Record/column: 1/5

July 20, 2010

WSB3_4 Learn About NCDS : Brochures, Literature, Pamphlets

%	N	VALUE	LABEL
95.0	283	0	No
5.0	15	1	Yes

 100.0 298 cases

Min	= 0	Mean	= .050336
Max	= 1	Std Dev	= .219004
Median	= 0	Variance	= .047963

(Based on 298 valid cases)

Data type: numeric
 Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
 Audit of the NCDA/AWAP National 2009
 Record/column: 1/6

WSB3_5 Learn About NCDS : Television, Radio, Newspapers

%	N	VALUE	LABEL
98.3	293	0	No
1.7	5	1	Yes

 100.0 298 cases

Min	= 0	Mean	= .016779
Max	= 1	Std Dev	= .128657
Median	= 0	Variance	= .016553

(Based on 298 valid cases)

Data type: numeric
 Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
 Audit of the NCDA/AWAP National 2009
 Record/column: 1/7

July 20, 2010

WSB3_6 Learn About NCDS : Friends, Family, Co-Workers

%	N	VALUE	LABEL
96.6	288	0	No
3.4	10	1	Yes
-----	----		
100.0	298	cases	
Min	= 0	Mean	= .033557
Max	= 1	Std Dev	= .180389
Median	= 0	Variance	= .032540

(Based on 298 valid cases)

Data type: numeric
 Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
 Audit of the NCDA/AWAP National 2009
 Record/column: 1/8

WSB3_7 Learn About NCDS : Previous Knowledge of the Program

%	N	VALUE	LABEL
97.3	290	0	No
2.7	8	1	Yes
-----	----		
100.0	298	cases	
Min	= 0	Mean	= .026846
Max	= 1	Std Dev	= .161904
Median	= 0	Variance	= .026213

(Based on 298 valid cases)

Data type: numeric
 Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
 Audit of the NCDA/AWAP National 2009
 Record/column: 1/9

WSB3_8 Learn About NCDS : Internet

%	N	VALUE	LABEL		
94.6	282	0	No		
5.4	16	1	Yes		
-----	---				
100.0	298	cases			
Min	=	0		Mean	= .053691
Max	=	1		Std Dev	= .225787
Median	=	0		Variance	= .050980

(Based on 298 valid cases)

Data type: numeric
Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
Audit of the NCDA/AWAP National 2009
Record/column: 1/10

WSB4_0 Talk Program

%	N	VALUE	LABEL
73.7	129	0	Yes
26.3	46	1	No
	123	.	(NA/Not Answered)
-----	---		
100.0	298		cases

Min	= 0	Mean	= .262857
Max	= 1	Std Dev	= .441449
Median	= 0	Variance	= .194877

(Based on 175 valid cases)

Data type: numeric
Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
Audit of the NCDA/AWAP National 2009
Record/column: 1/11

WSB4_1 Give/Send Info About Program

%	N	VALUE	LABEL	
60.4	87	0	Yes	
39.6	57	1	No	
	154	.	(NA/Not Answered)	
-----	---			
100.0	298	cases		
Min	= 0		Mean	= .395833
Max	= 1		Std Dev	= .490736
Median	= 0		Variance	= .240822

(Based on 144 valid cases)

Data type: numeric
Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
Audit of the NCDA/AWAP National 2009
Record/column: 1/12

WSB4_2 Show Poster Program

%	N	VALUE	LABEL
10.8	10	0	Yes
89.2	83	1	No
	205	.	(NA/Not Answered)
-----	---		
100.0	298		cases

Min	= 0	Mean	= .892473
Max	= 1	Std Dev	= .311461
Median	= 1	Variance	= .097008

(Based on 93 valid cases)

Data type: numeric
Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
Audit of the NCDA/AWAP National 2009
Record/column: 1/13

July 20, 2010

WSB4_4 Inform Other Ways

%	N	VALUE	LABEL
36.1	43	0	Yes
63.9	76	1	No
	179	.	(NA/Not Answered)
-----	----		
100.0	298	cases	

Min	=	0	Mean	=	.638655
Max	=	1	Std Dev	=	.482421
Median	=	1	Variance	=	.232730

(Based on 119 valid cases)

Data type: numeric
Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
Audit of the NCDA/AWAP National 2009
Record/column: 1/14

WSB6 Received Information Program

%	N	VALUE	LABEL
94.2	275	0	Yes
5.8	17	1	No
	6	.	(NA/Not Answered)
-----	---		
100.0	298	cases	
Min	= 0	Mean	= .058219
Max	= 1	Std Dev	= .234559
Median	= 0	Variance	= .055018

(Based on 292 valid cases)

Data type: numeric
 Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
 Audit of the NCDA/AWAP National 2009
 Record/column: 1/15

WSB7

Ease Information

%	N	VALUE	LABEL
66.8	181	0	Very Clear and Easy
28.0	76	1	Little Difficult - Still Easy
5.2	14	2	Pretty Difficult
	27	.	(NA/Not Answered)
-----	---		
100.0	298	cases	

Min	=	0	Mean	=	.383764
Max	=	2	Std Dev	=	.584011
Median	=	0	Variance	=	.341069

(Based on 271 valid cases)

Data type: numeric

Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)

Audit of the NCDA/AWAP National 2009

Record/column: 1/16

July 20, 2010

WSB9

Complaint Forms

%	N	VALUE	LABEL
68.4	169	0	Very Clear and Easy
27.5	68	1	Little Difficult - Still Easy
4.0	10	2	Pretty Difficult
	51	.	(NA/Not Answered)
-----	----		
100.0	298	cases	

Min	=	0	Mean	=	.356275
Max	=	2	Std Dev	=	.558190
Median	=	0	Variance	=	.311576

(Based on 247 valid cases)

Data type: numeric
Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
Audit of the NCDA/AWAP National 2009
Record/column: 1/17

July 20, 2010

WSB10

Method Resolution

%	N	VALUE	LABEL
15.8	47	0	Mediated
84.2	250	1	Arbitrated
	1	.	(NA/Not Answered)
-----	---		
100.0	298	cases	

Min	= 0	Mean	= .841751
Max	= 1	Std Dev	= .365590
Median	= 1	Variance	= .133656

(Based on 297 valid cases)

Data type: numeric
Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
Audit of the NCDA/AWAP National 2009
Record/column: 1/18

July 20, 2010

WSB12 Mediated - Outcome

%	N	VALUE	LABEL
14.9	7	0	Extended the Warranty
25.5	12	1	New Vehicle
2.1	1	2	Trade in Allowance
12.8	6	3	Repairs
36.2	17	4	Cash Settlement
0.0	0	5	Voucher Another Vehicle
6.4	3	6	Nothing-No Settlement
2.1	1	7	Other
	251	.	(NA/Not Answered)
-----	---		
100.0	298	cases	

Min	=	0	Mean	=	2.659574
Max	=	7	Std Dev	=	1.902819
Median	=	3	Variance	=	3.620722

(Based on 47 valid cases)

Data type: numeric
 Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
 Audit of the NCDA/AWAP National 2009.
 Record/column: 1/19

WSB13 Mediated - Receive Settlement

%	N	VALUE	LABEL
100.0	44	0	Yes
0.0	0	1	No
	254	.	(NA/Not Answered)
-----	---		
100.0	298	cases	
Min	= 0	Mean	= .000000
Max	= 0	Std Dev	= .000000
Median	= 0	Variance	= .000000

(Based on 44 valid cases)

Data type: numeric
Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
Audit of the NCDA/AWAP National 2009
Record/column: 1/20

WSB14 Mediated - Receive Settlement Time Frame

%	N	VALUE	LABEL
95.5	42	0	Yes
4.5	2	1	No
	254	.	(NA/Not Answered)
-----	---		
100.0	298	cases	
Min	= 0		Mean = .045455
Max	= 1		Std Dev = .210707
Median	= 0		Variance = .044397

(Based on 44 valid cases)

Data type: numeric
Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
Audit of the NCDA/AWAP National 2009
Record/column: 1/21

WSB15 Mediated - Not Received Settlement

%	N	VALUE	LABEL
100.0	2	0	Yes
0.0	0	1	No
	296	.	(NA/Not Answered)
-----	---		
100.0	298	cases	

Min	= 0	Mean	= .000000
Max	= 0	Std Dev	= .000000
Median	= 0	Variance	= .000000

(Based on 2 valid cases)

Data type: numeric
Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
Audit of the NCDA/AWAP National 2009
Record/column: 1/22

WSB17 Mediated - Pursue Case Further

%	N	VALUE	LABEL
12.8	6	0	Yes
87.2	41	1	No
	251	.	(NA/Not Answered)
-----	---		
100.0	298	cases	
Min	= 0	Mean	= .872340
Max	= 1	Std Dev	= .337318
Median	= 1	Variance	= .113784

(Based on 47 valid cases)

Data type: numeric
Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
Audit of the NCDA/AWAP National 2009
Record/column: 1/23

WSB18_0 Mediated - Method Pursue : Contacted Attorney

%	N	VALUE	LABEL
100.0	7	0	No
0.0	0	1	Yes
	291	.	(NA/Not Answered)
-----	----		
100.0	298		cases

Min	= 0	Mean	= .000000
Max	= 0	Std Dev	= .000000
Median	= 0	Variance	= .000000

(Based on 7 valid cases)

Data type: numeric
Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
Audit of the NCDA/AWAP National 2009
Record/column: 1/24

July 20, 2010

WSB18_1 Mediated - Method Pursue : Worked Out Solution Dealer/Man

%	N	VALUE	LABEL
57.1	4	0	No
42.9	3	1	Yes
	291	.	(NA/Not Answered)
-----	---		
100.0	298	cases	

Min	= 0	Mean	= .428571
Max	= 1	Std Dev	= .534522
Median	= 0	Variance	= .285714

(Based on 7 valid cases)

Data type: numeric
 Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
 Audit of the NCDA/AWAP National 2009
 Record/column: 1/25

WSB18_2 Mediated - Method Pursue : Contacted State/Gov't Agency

%	N	VALUE	LABEL
100.0	7	0	No
0.0	0	1	Yes
	291	.	(NA/Not Answered)
-----	---		
100.0	298	cases	

Min	= 0	Mean	= .000000
Max	= 0	Std Dev	= .000000
Median	= 0	Variance	= .000000

(Based on 7 valid cases)

Data type: numeric
 Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
 Audit of the NCDA/AWAP National 2009
 Record/column: 1/26

WSB18_3 Mediated - Method Pursue : Re-contacted NCDS

%	N	VALUE	LABEL
42.9	3	0	No
57.1	4	1	Yes
	291	.	(NA/Not Answered)
-----	----		
100.0	298	cases	

Min	=	0	Mean	=	.571429
Max	=	1	Std Dev	=	.534522
Median	=	1	Variance	=	.285714

(Based on 7 valid cases)

Data type: numeric
Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
Audit of the NCDA/AWAP National 2009
Record/column: 1/27

July 20, 2010

WSB18_4

Mediated - Method Pursue : Other Method

%	N	VALUE	LABEL
100.0	7	0	No
0.0	0	1	Yes
-----	291	.	(NA/Not Answered)
-----	---		
100.0	298	cases	

Min	= 0	Mean	= .000000
Max	= 0	Std Dev	= .000000
Median	= 0	Variance	= .000000

(Based on 7 valid cases)

Data type: numeric
Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
Audit of the NCDA/AWAP National 2009
Record/column: 1/28

WSB19 Mediated - Follow-Up Settlement

%	N	VALUE	LABEL
53.5	23	0	Yes, Talked Staff
16.3	7	1	Yes, Returned Postcard
16.3	7	2	Both, Talked, Returned Postcard
14.0	6	3	No Follow-Up
	255	.	(NA/Not Answered)
-----	---		
100.0	298	cases	

Min = 0 Mean = .906977
 Max = 3 Std Dev = 1.129980
 Median = 0 Variance = 1.276855

(Based on 43 valid cases)

Data type: numeric
 Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
 Audit of the NCDA/AWAP National 2009
 Record/column: 1/29

WSB76

Arb - Recall Receiving Claim Paperwork

%	N	VALUE	LABEL
91.9	227	0	Yes
8.1	20	1	No
	51	.	(NA/Not Answered)
-----	----		
100.0	298	cases	

Min	=	0	Mean	=	.080972
Max	=	1	Std Dev	=	.273345
Median	=	0	Variance	=	.074718

(Based on 247 valid cases)

Data type: numeric
Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
Audit of the NCDA/AWAP National 2009
Record/column: 1/30

July 20, 2010

WSB79

Arb - Accuracy of Claim

%	N	VALUE	LABEL
40.3	93	0	Very Accurately
43.7	101	1	Somewhat Accurately
16.0	37	2	Not Too/ Not at all Accurately
	67	.	(NA/Not Answered)

 100.0 298 cases

Min	= 0	Mean	= .757576
Max	= 2	Std Dev	= .711472
Median	= 1	Variance	= .506192

(Based on 231 valid cases)

Data type: numeric
 Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
 Audit of the NCDA/AWAP National 2009
 Record/column: 1/31

WSB81 Arb - Notice of Hearing

%	N	VALUE	LABEL		
94.4	234	0	Yes		
5.6	14	1	No		
	50	.	(NA/Not Answered)		
-----	---				
100.0	298	cases			
Min	=	0	Mean	=	.056452
Max	=	1	Std Dev	=	.231258
Median	=	0	Variance	=	.053480

(Based on 248 valid cases)

Data type: numeric
Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
Audit of the NCDA/AWAP National 2009
Record/column: 1/32

July 20, 2010

WSB82

Arb - Attend Hearing

%	N	VALUE	LABEL
80.5	202	0	Attend Hearing/Meeting Person
1.6	4	1	Attend Hearing/Meeting Phone
17.9	45	2	Did Not Attend Meeting/Hearing
	47	.	(NA/Not Answered)
-----	---		
100.0	298	cases	

Min	=	0	Mean	=	.374502
Max	=	2	Std Dev	=	.771484
Median	=	0	Variance	=	.595187

(Based on 251 valid cases)

Data type: numeric

Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)

Audit of the NCDA/AWAP National 2009

Record/column: 1/33

July 20, 2010

WSB83

Arb - Reason Not Attend Hearing

%	N	VALUE	LABEL
43.2	16	1	Chose Document Only Hearing
24.3	9	2	Work/Other Scheduling Conflict
16.2	6	3	Told Presence Not Necessary
16.2	6	4	Not Given Information/Given Incorrect Info
	261	.	(NA/Not Answered)
-----	----		
100.0	298	cases	

Min	=	1	Mean	=	2.054054
Max	=	4	Std Dev	=	1.129059
Median	=	2	Variance	=	1.274775

(Based on 37 valid cases)

Data type: numeric

Missing-data code: F1

Created: Jul 20, 2010 (Tue 12:28 PM)

Audit of the NCDA/AWAP National 2009

Record/column: 1/34

July 20, 2010

WSB84

Arb - Outcome

%	N	VALUE	LABEL
4.4	11	0	Replace Vehicle
6.4	16	1	Buy Back Vehicle - Cash Refund
7.2	18	2	Repair Vehicle
1.2	3	3	Extend Warranty
0.0	0	4	Terminated Lease
80.9	203	5	NCDS Ruled Against Claim
0.0	0	6	Other Outcome
	47	.	(NA/Not Answered)
-----	----		
100.0	298		cases

Min	=	0	Mean	=	4.286853
Max	=	5	Std Dev	=	1.519667
Median	=	5	Variance	=	2.309386

(Based on 251 valid cases)

Data type: numeric
Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
Audit of the NCDA/AWAP National 2009
Record/column: 1/35

July 20, 2010

WSB85 Arb - Accept/Reject Decision

%	N	VALUE	LABEL
95.7	45	0	Accept Decision
4.3	2	1	Reject Decision
	251	.	(NA/Not Answered)
-----	---		
100.0	298	cases	
Min	= 0	Mean	= .042553
Max	= 1	Std Dev	= .204030
Median	= 0	Variance	= .041628

(Based on 47 valid cases)

Data type: numeric
Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
Audit of the NCDA/AWAP National 2009
Record/column: 1/36

July 20, 2010

WSB87 Arb - Reason Decision

%	N	VALUE	LABEL
100.0	2	0	Decision Not Solve Problems
0.0	0	1	Decision Cost Too Much Money
0.0	0	2	Did Not Like/Want Offer
0.0	0	3	Other Reason
	296	.	(NA/Not Answered)
-----	----		
100.0	298	cases	

Min	=	0	Mean	=	.000000
Max	=	0	Std Dev	=	.000000
Median	=	0	Variance	=	.000000

(Based on 2 valid cases)

Data type: numeric
Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
Audit of the NCDA/AWAP National 2009
Record/column: 1/37

WSB89

Arb - Received Award

%	N	VALUE	LABEL
97.9	46	2	Awarded Within Time Frame
0.0	0	3	Awarded NOT Within Time Frame
2.1	1	4	Have Not Received
	251	.	(NA/Not Answered)

100.0	298	cases	
Min	=	2	Mean = 2.042553
Max	=	4	Std Dev = .291730
Median	=	2	Variance = .085106

(Based on 47 valid cases)

Data type: numeric
 Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
 Audit of the NCDA/AWAP National 2009
 Record/column: 1/38

WSB112 Arb - Follow-Up Settlement

%	N	VALUE	LABEL
25.0	55	0	Yes, Talked Staff
25.0	55	1	Yes, Returned Postcard
9.1	20	2	Both, Talked, Returned Postcard
40.9	90	3	No Follow-Up
	78	.	(NA/Not Answered)

----- ---
100.0 298 cases

Min	= 0	Mean	= 1.659091
Max	= 3	Std Dev	= 1.244957
Median	= 1.5	Variance	= 1.549917

(Based on 220 valid cases)

Data type: numeric
Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
Audit of the NCDA/AWAP National 2009
Record/column: 1/39

July 20, 2010

WSB96

Arb - Pursue Case Further

%	N	VALUE	LABEL
26.6	65	0	Yes
73.4	179	1	No
	54	.	(NA/Not Answered)
-----	----		
100.0	298	cases	

Min	=	0	Mean	=	.733607
Max	=	1	Std Dev	=	.442981
Median	=	1	Variance	=	.196232

(Based on 244 valid cases)

Data type: numeric
Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
Audit of the NCDA/AWAP National 2009
Record/column: 1/40

July 20, 2010

WSB114_0 Arb - Method Pursue : Contacted Attorney

%	N	VALUE	LABEL
90.9	271	0	No
9.1	27	1	Yes
-----	----		
100.0	298	cases	

Min	=	0	Mean	=	.090604
Max	=	1	Std Dev	=	.287528
Median	=	0	Variance	=	.082672

(Based on 298 valid cases)

Data type: numeric
Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
Audit of the NCDA/AWAP National 2009
Record/column: 1/41

WSB114_1 Arb - Method Pursue : Worked Out Solution Dealer/Man

%	N	VALUE	LABEL
96.6	288	0	No
3.4	10	1	Yes
-----	----		
100.0	298	cases	

Min	=	0	Mean	=	.033557
Max	=	1	Std Dev	=	.180389
Median	=	0	Variance	=	.032540

(Based on 298 valid cases)

Data type: numeric
Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
Audit of the NCDA/AWAP National 2009
Record/column: 1/42

WSB114_2 Arb - Method Pursue : Contacted State/Gov't Agency

%	N	VALUE	LABEL
92.3	275	0	No
7.7	23	1	Yes
-----	---		
100.0	298	cases	

Min	= 0	Mean	= .077181
Max	= 1	Std Dev	= .267328
Median	= 0	Variance	= .071464

(Based on 298 valid cases)

Data type: numeric
Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
Audit of the NCDA/AWAP National 2009
Record/column: 1/43

WSB114_3 Arb - Method Pursue : Re-contacted NCDS

%	N	VALUE	LABEL
94.6	282	0	No
5.4	16	1	Yes
-----	---		
100.0	298	cases	

Min	= 0	Mean	= .053691
Max	= 1	Std Dev	= .225787
Median	= 0	Variance	= .050980

(Based on 298 valid cases)

Data type: numeric
Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
Audit of the NCDA/AWAP National 2009
Record/column: 1/44

July 20, 2010

WSB114_4 Arb - Method Pursue : Other Method

%	N	VALUE	LABEL
98.7	294	0	No
1.3	4	1	Yes

100.0 298 cases

Min	=	0	Mean	=	.013423
Max	=	1	Std Dev	=	.115270
Median	=	0	Variance	=	.013287

(Based on 298 valid cases)

Data type: numeric
Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
Audit of the NCDA/AWAP National 2009
Record/column: 1/45

July 20, 2010

WSB38_3 Month Filed Claim

%	N	VALUE	LABEL
8.6	18	1	
10.0	21	2	
9.1	19	3	
5.7	12	4	
9.1	19	5	
10.0	21	6	
5.3	11	7	
11.5	24	8	
10.0	21	9	
11.5	24	10	
3.3	7	11	
5.7	12	12	
	89	.	(NA/Not Answered)
-----	----		
100.0	298	cases	

Min	=	1	Mean	=	6.244019
Max	=	12	Std Dev	=	3.324266
Median	=	6	Variance	=	11.050745

(Based on 209 valid cases)

Data type: numeric
 Missing-data code: F2.2

Created: Jul 20, 2010 (Tue 12:28 PM)
 Audit of the NCDA/AWAP National 2009
 Record/columns: 1/46-47

WSB38_1 Day Filed Claim

%	N	VALUE	LABEL
3.4	6	1	
2.2	4	2	
3.4	6	3	
5.1	9	4	
2.2	4	5	
5.6	10	6	
2.8	5	7	
3.4	6	8	
5.6	10	9	
3.4	6	10	
0.6	1	11	
3.9	7	12	
3.9	7	13	
7.3	13	14	
3.4	6	15	
3.4	6	16	
4.5	8	17	
4.5	8	18	
1.7	3	19	
5.6	10	20	
1.1	2	21	
2.8	5	22	
9.0	16	23	
2.8	5	24	
1.1	2	25	
1.7	3	26	
1.1	2	27	
0.6	1	28	
1.1	2	29	
2.2	4	30	
0.6	1	31	
	120	.	(NA/Not Answered)

 100.0 298 cases

Min	=	1	Mean	=	14.219101
Max	=	31	Std Dev	=	7.837493
Median	=	14	Variance	=	61.426300

(Based on 178 valid cases)

Data type: numeric
 Missing-data code: F2.2

Created: Jul 20, 2010 (Tue 12:28 PM)

July 20, 2010

Audit of the NCDA/AWAP National 2009
 Record/columns: 1/48-49

WSB38_2 Year Filed Claim

%	N	VALUE	LABEL
0.5	1	9	
6.4	14	2008	
93.2	205	2009	
	78		(NA/Not Answered)
-----	----		
100.0	298	cases	

Min	=	9	Mean	=	1,999.845455
Max	=	2,009	Std Dev	=	134.835884
Median	=	2,009	Variance	=	18,180.715733

(Based on 220 valid cases)

Data type: numeric
 Missing-data code: F4.2

Created: Jul 20, 2010 (Tue 12:28 PM)
 Audit of the NCDA/AWAP National 2009
 Record/columns: 1/50-53

WSB116_3 Month Case Closed

%	N	VALUE	LABEL
4.4	9	1	
8.8	18	2	
11.2	23	3	
5.4	11	4	
7.8	16	5	
6.8	14	6	
9.3	19	7	
6.3	13	8	
11.7	24	9	
9.3	19	10	
14.6	30	11	
4.4	9	12	
	93	.	(NA/Not Answered)
-----	-----		
100.0	298	cases	

Min	=	1	Mean	=	6.843902
Max	=	12	Std Dev	=	3.357027
Median	=	7	Variance	=	11.269632

(Based on 205 valid cases)

Data type: numeric
 Missing-data code: F2.2

Created: Jul 20, 2010 (Tue 12:28 PM)
 Audit of the NCDA/AWAP National 2009
 Record/columns: 1/54-55

WSB116_1 Day Case Closed

%	N	VALUE	LABEL
1.8	3	1	
1.8	3	2	
1.2	2	3	
2.9	5	4	
2.3	4	5	
1.8	3	6	
4.1	7	7	
4.1	7	8	
4.1	7	9	
7.0	12	10	
5.8	10	11	
4.1	7	12	
1.8	3	13	
3.5	6	14	
7.6	13	15	
1.8	3	16	
0.6	1	17	
2.3	4	18	
1.8	3	19	
8.2	14	20	
1.8	3	21	
1.2	2	22	
4.1	7	23	
2.3	4	24	
1.8	3	25	
2.3	4	26	
3.5	6	27	
1.8	3	28	
2.3	4	29	
8.8	15	30	
1.8	3	31	
	127	.	(NA/Not Answered)
-----	----		
100.0	298	cases	
Min	= 1	Mean	= 16.345029
Max	= 31	Std Dev	= 8.542848
Median	= 15	Variance	= 72.980255

(Based on 171 valid cases)

Data type: numeric
Missing-data code: F2.2

Created: Jul 20, 2010 (Tue 12:28 PM)

July 20, 2010

Audit of the NCDA/AWAP National 2009
Record/columns: 1/56-57.

WSB116_2 Year Case Closed

%	N	VALUE	LABEL
0.5	1	9	
0.5	1	2008	
96.1	197	2009	
2.9	6	2010	
	93	.	(NA/Not Answered)
-----	----		
100.0	298	cases	

Min	=	9	Mean	=	1,999.268293
Max	=	2,010	Std. Dev	=	139.687892
Median	=	2,009	Variance	=	19,512.707078

(Based on 205 valid cases)

Data type: numeric
Missing-data code: F4.2

Created: Jul 20, 2010 (Tue 12:28 PM)
Audit of the NCDA/AWAP National 2009
Record/columns: 1/58-61

July 20, 2010

WSB73

Case 40 Days More

%	N	VALUE	LABEL
5.7	16	0	Yes
94.3	263	1	No
	19	.	(NA/Not Answered)

100.0	298	cases	

Min	=	0	Mean	=	.942652
Max	=	1	Std Dev	=	.232924
Median	=	1	Variance	=	.054253

(Based on 279 valid cases)

Data type: numeric
 Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
 Audit of the NCDA/AWAP National 2009
 Record/column: 1/62

July 20, 2010

WSB53

Reason Delay in Case

%	N	VALUE	LABEL
4.0	2	0	Delay User Failed Provide Information
12.0	6	1	Delay Arbitrators Requested Info
84.0	42	2	Delay Other Reasons
-----	248	.	(NA/Not Answered)
100.0	298	cases	

Min	=	0	Mean	=	1.800000
Max	=	2	Std Dev	=	.494872
Median	=	2	Variance	=	.244898

(Based on 50 valid cases)

Data type: numeric
Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
Audit of the NCDA/AWAP National 2009
Record/column: 1/63

WSB54_0 Objectivity and Fairness

%	N	VALUE	LABEL
29.8	86	1	Very Satisfied
6.2	18	2	
10.0	29	3	
7.3	21	4	
5.2	15	5	
41.5	120	6	Very Dissatisfied
	9	.	(NA/Not Answered)
-----	----		
100.0	298	cases	
Min	=	1	Mean = 3.764706
Max	=	6	Std Dev = 2.168269
Median	=	4	Variance = 4.701389

(Based on 289 valid cases)

Data type: numeric
 Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
 Audit of the NCDA/AWAP National 2009
 Record/column: 1/64

WSB54_1 Promptness

%	N	VALUE	LABEL
37.3	109	1	Very Satisfied
11.6	34	2	
12.7	37	3	
6.5	19	4	
3.4	10	5	
28.4	83	6	Very Dissatisfied
	6	.	(NA/Not Answered)

100.0 298 cases

Min	=	1	Mean	=	3.123288
Max	=	6	Std Dev	=	2.090365
Median	=	3	Variance	=	4.369628

(Based on 292 valid cases)

Data type: numeric
Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
Audit of the NCDA/AWAP National 2009
Record/column: 1/65

WSB54_2 Effort Assist Complaint

%	N	VALUE	LABEL
32.7	96	1	Very Satisfied
8.2	24	2	
10.2	30	3	
6.5	19	4	
5.8	17	5	
36.7	108	6	Very Dissatisfied
	4	.	(NA/Not Answered)
-----	----		
100.0	298	cases	

Min	=	1	Mean	=	3.547619
Max	=	6	Std Dev	=	2.169312
Median	=	3	Variance	=	4.705916

(Based on 294 valid cases)

Data type: numeric
Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
Audit of the NCDA/AWAP National 2009
Record/column: 1/66

July 20, 2010

WSB118 Overall Program Evaluation

%	N	VALUE	LABEL
28.7	84	1	Very Satisfied
5.8	17	2	
7.5	22	3	
4.8	14	4	
23.2	68	5	
30.0	88	6	Very Dissatisfied
	5	.	(NA/Not Answered)
-----	----		
100.0	298	cases	
Min	=	1	Mean = 3.781570
Max	=	6	Std Dev = 2.070686
Median	=	5	Variance = 4.287741

(Based on 293 valid cases)

Data type: numeric
Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
Audit of the NCDA/AWAP National 2009
Record/column: 1/67

July 20, 2010

WSB55

Recommend Program

%	N	VALUE	LABEL
34.6	102	0	Yes Recommend
41.0	121	1	Not Recommend
24.4	72	2	Depends
	3	.	(NA/Not Answered)
-----	----		
100.0	298	cases	
Min	= 0	Mean	= .898305
Max	= 2	Std Dev	= .762535
Median	= 1	Variance	= .581460

(Based on 295 valid cases)

Data type: numeric
Missing-data code: F1.2

Created: Jul 20, 2010 (Tue 12:28 PM)
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Record/column: 1/68

July 20, 2010

OPEN1

Suggestion 1

%	N	VALUE	LABEL
0.8	2	2	Less Paper Work, Forms Easier/On-line
5.0	12	3	Advertise Program More/Make Program More Known
4.6	11	5	Quicken Process/Speedier Decisions
0.8	2	6	Better/More Representation at Hearing
43.7	104	7	Less Bias Towards Manufacturers/Dealers
3.4	8	9	More Knowledgeable Mechanics
0.8	2	10	Better Review of Paperwork by Program Staff
9.2	22	11	Allow More Information About Car/History/Problems
1.7	4	12	Better Follow-up Enforcement Decisions
2.9	7	13	Fair Awards/Settlements
10.1	24	14	Dealers and Manufacturers More Responsive to Customers
16.8	40	16	Nothing, Did a Good Job
	60	.	(NA/Not Answered)
-----	----		
100.0	298	cases	

Min	=	2	Mean	=	9.596639
Max	=	16	Std Dev	=	4.032190
Median	=	7	Variance	=	16.258554

(Based on 238 valid cases)

Data type: numeric
Missing-data code: F2

Created: Jul 20, 2010 (Tue 12:28 PM)
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Record/columns: 1/69-70

July 20, 2010

OPEN2 Suggestion 2

%	N	VALUE	LABEL
4.5	3	2	Less Paper Work, Forms Easier/On-line
3.0	2	3	Advertise Program More/Make Program More Known
4.5	3	4	More Locations/Easier Access
14.9	10	7	Less Bias Toward Dealer/Man/Less Bias Arbitrators
16.4	11	9	More Knowledgeable /Mechanics/Case Reviewers
10.4	7	10	Better Review Paperwork By Program/Staff
23.9	16	11	Allow More Info History/Problems with Car
3.0	2	12	Better Followup/Enforcement Decisions
3.0	2	13	Fair Awards/Settlements
13.4	9	14	Dealers/Man/Arb More Responsive to Customers/Claimant
3.0	2	16	No Complaints/Did Good Job/Pleas with Program
	231	.	(NA/Not Answered)
-----	---		
100.0	298	cases	

Min	=	2	Mean	=	9.656716
Max	=	16	Std Dev	=	3.368986
Median	=	10	Variance	=	11.350068

(Based on 67 valid cases)

Data type: numeric
 Missing-data code: F2

Created: Jul 20, 2010 (Tue 12:28 PM)
 Audit of the NCDA/AWAP National 2009
 Record/columns: 1/71-72