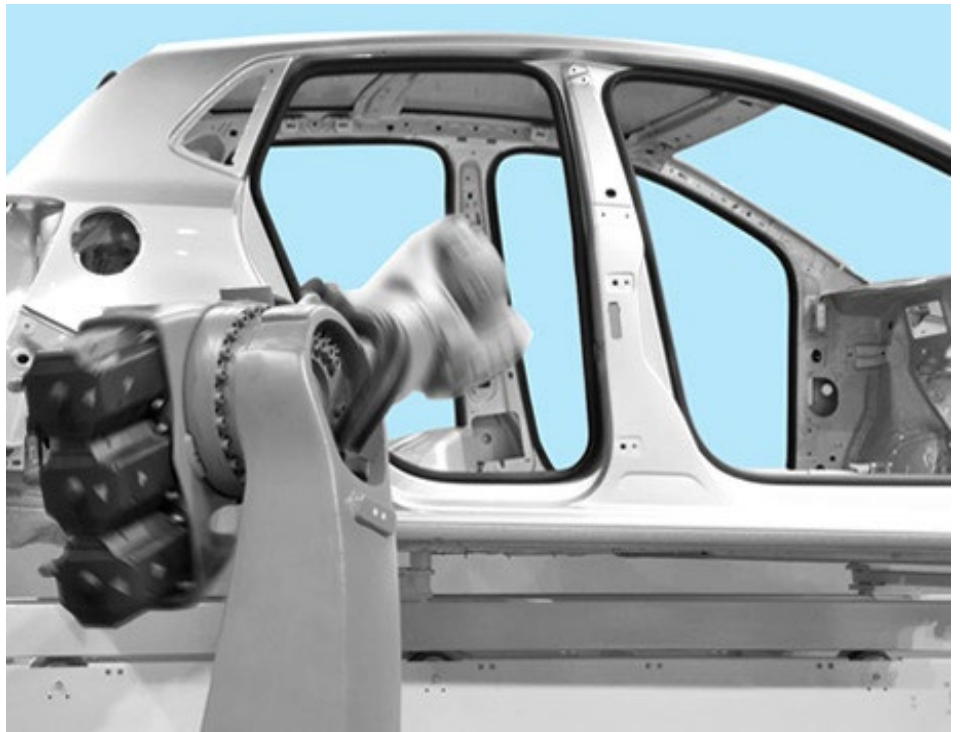




National  
Center for  
Dispute  
Settlement  
(NCDS)

Non-Binding  
Automobile  
Warranty  
Arbitration  
Program

**2023 Annual Audit Report**  
**NATIONAL**  
**(January – December 2023)**



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## Section I

### Introduction of Audit Performed Under Magnuson-Moss Warranty–Federal Trade Commission Improvement Act of 1975

The National Center for Dispute Settlement (“NCDS”), incorporated in the 1990s, is a firm that specializes in offering binding and non-binding ADR processes to the public. Its primary focus is the non-binding resolution of auto warranty disputes governed by the Magnuson-Moss Warranty–Federal Trade Commission Improvement Act of 1975 (“Magnuson-Moss”)<sup>1</sup> and the companion Rule on Informal Dispute Settlement Procedures, 16 C.F.R. § 703 (“Rule 703”).<sup>2</sup>

Magnuson-Moss (“Mag-Moss”) imposes minimum requirements for informal dispute resolution to achieve statutory legitimacy. One requirement is an annual audit “to determine whether the Mechanism<sup>3</sup> and its implementation comply” with standards of consumer awareness, fairness, and time efficiency.<sup>4</sup> The audit must include a consumer survey that assesses satisfaction levels with the program.<sup>5</sup>

The 2023 audit of NCDS was performed by Mary A. Bedikian, an attorney and arbitration expert. It covers seven substantive areas: Compliance Summary (Section II), Participating Manufacturers’ Consumer-Facing Materials and Compliance Levels (Section III), Mechanism Operations and Compliance Levels (Section IV), Field Audits of Select Geographic Areas (Section V), Audit of Arbitrator Training and Materials (Section VI), Federal Trade Commission Survey and Statistical Index: Comparative Analysis of Consumer Responses (Section VII), and Audit Regulatory Requirements (Section VIII). Overall consumer survey results for National and all field audit states appear in the Appendix in a separate PDF document.

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<sup>1</sup> P.L. No. 93-637, 88 Stat. 2183 (1975) (codified at 15 U.S.C. §§ 2301–2312 (2012)). Magnuson-Moss was passed by Congress in 1975. Title 1 of the Act, which governs consumer product warranties, requires manufacturers and sellers of consumer products to provide consumers with clear, conspicuous, and specific information about warranty coverage. To resolve breach of warranty claims more efficiently, the Act also encourages the use of informal dispute settlement procedures.

<sup>2</sup> Section 110(a)(2) of the Magnuson-Moss Warranty–Federal Trade Commission Improvement Act, directs the Federal Trade Commission to prescribe rules that set forth minimum standards for an informal dispute settlement mechanism that is incorporated into a manufacturer’s written warranty. Rule 703 derives from this mandate. *See* Disclosure of Written Consumer Product Warranty Terms and Conditions, Pre-Sale Availability of Written Warranty Terms, and Informal Dispute Settlement Mechanisms (Rules, Regulations, Statements and Interpretations Under Magnuson-Moss Warranty Act), 40 FED. REG. 60168, 60190) (Dec. 31, 1975).

<sup>3</sup> Under Mag-Moss, the Mechanism is NCDS.

<sup>4</sup> Rule 703.7(a).

<sup>5</sup> Rule 703.7(b)(3) requires an analysis of a random sample of disputes to measure the adequacy of the Mechanism’s complaint process, investigation efforts, mediation and follow-up, and the accuracy of the Mechanism’s statistical compilations.

Manufacturers participating in the NCDS automobile warranty arbitration program in 2023 include Acura, FCA US LLC, Honda, Lexus, Mitsubishi, Tesla, Fisker, and Toyota.

The audit assesses both the warrantors' ("manufacturers") obligations and the Mechanism's ("NCDS") obligations under Magnuson-Moss. With respect to the manufacturers' obligations, the audit focuses on the requirement of informing consumers of the availability of NCDS's dispute resolution mechanism when a warranty dispute arises.

The statistical survey and comparative analysis are based on a defined universe of cases drawn from data provided to the auditor by NCDS. The purpose of this aspect of the audit is to validate the accuracy of the Mechanism's statistical compilations through "oral or written contact with the consumers involved in each of the disputes in the random sample."<sup>6</sup> Further details, including specific statutory requirements for assessments, appear in Section VII.

To complete the 2023 audit, the auditor:

- Reviewed 80 case files and arbitration decisions (not including Board hearing decisions).
- Reviewed participating manufacturers' warranty and glove box materials.
- Participated as "observer" in 10 arbitration hearings.
- Conducted field audits of three geographic areas – California, Florida, and Ohio.
- Attended the September 2023 three-day in-person training for warranty arbitrators.

For purposes of this year's audit, the majority of hearings continued to be conducted by teleconference. The auditor participated in hearings between March and August 2024. The findings and conclusions of the hearings are reflected in this year's report. Audits of arbitration hearings and field audits, which may include dealership visits and conference calls, are typically conducted in the current calendar year rather than in the audit year. To ensure continuity between this audit and all prior audits, the practice was continued.

All case files randomly selected for review were initiated in 2023 as required.

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<sup>6</sup> FTC Rule 703.7(b)(3).

## Section II

### Compliance Summary

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This audit is conducted by Mary A. Bedikian,<sup>7</sup> an arbitration expert. The audit assesses the performance of the National Center for Dispute Settlement (“NCDS”) in the administration of warranty disputes filed under the Magnuson-Moss Warranty–Federal Trade Commission Improvement Act of 1975 (“Magnuson-Moss”). To ensure consistency between audits, the prior auditor’s terminology is maintained.

#### *Overall NCDS Dispute Settlement Program Evaluation*

The NCDS third-party dispute settlement mechanism, Automobile Warranty Arbitration Program is, in the auditor’s opinion, in substantial compliance with the statutory requirements of Magnuson-Moss, pursuant to 16 C.F.R. § 703, Informal Dispute Settlement Procedures. Operational details are discussed more fully in Section IV.

Participating manufacturers – Acura, FCA US LLC, Honda, Lexus, Mitsubishi, Tesla, Fisker and Toyota – are also in substantial compliance with 16 C.F.R. § 703. Findings of substantial compliance, however, are tempered by auditor reservations. Prior NCDS audits, notably the 2019 – 2022 audits, opined that audit reviews have reached the point, where cumulatively, manufacturers have failed to carry out the mandate circumscribed in Rule 703, *i.e.*, informing consumers of the availability of the NCDS program and how to access it. Rule 703.2(d), in part, states: “The warrantor shall take steps reasonably calculated to make consumers aware of the Mechanism’s existence at the time consumers experience warranty disputes.” This provision reflects the concern that dispute resolution mechanisms can be useful only if their existence is known.<sup>8</sup> Thus, manufacturers must provide this information to their dealership agents. They do not. This represents a crucial omission. Recognizing that some warrantors can exercise control over product distribution and marketing while others cannot, the FTC chose not to impose specific mandates on dealerships and service centers, leaving the question of compliance to the auditor.<sup>9</sup> Manufacturers’ compliance efforts and respective deficiencies, captured as reservations, are explained in greater detail in Section III.

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<sup>7</sup> Ms. Bedikian is an attorney with over 30 years of experience in arbitration. She is the former Vice-President of the American Arbitration Association (1975-2003), a private 501(c)(3) educational entity dedicated to dispute resolution. Since 2003, Ms. Bedikian is Professor of Law in Residence at Michigan State University Law School, where she teaches commercial arbitration, labor and employment law, and dispute resolution. In addition to her teaching and neutral work, Ms. Bedikian has trained hundreds of judges and advocates in ADR. Prior to assuming the auditor role for NCDS/CDSP, she served as their outside counsel.

<sup>8</sup> Disclosure of Written Consumer Product Warranty Terms and Conditions, Pre-Sale Availability of Written Warranty Terms, and Informal Dispute Settlement Mechanisms (Rules, Regulations, Statements and Interpretations Under Magnuson-Moss Warranty Act), 40 FED. REG. 60168, 60197 (Dec. 31, 1975).

<sup>9</sup> Accountability is achieved through the audit. “Audit reports indicating a lack of reasonable efforts by the warrantor would provide the Commission with a means to enforce compliance with the Rule.” *Id.* at 60199.

For this year’s audit, the auditor focused on three regions of the NCDS program – California, Florida, and Ohio. Section V of the audit provides an assessment of each state’s compliance levels. All regions functioned in accordance with the requirements of Rule 703, with the caveats and discrepancies noted above.

Arbitrators, program personnel, and regulators that were interviewed for purposes of this audit consider training an essential component of the informal dispute settlement program, even though such training is not required under Magnuson-Moss. The training advances the program’s objectives by ensuring that arbitrators are familiar with their role, understand the differences between Magnuson-Moss proceedings and lemon law proceedings,<sup>10</sup> appreciate the need for objectivity and fairness in all aspects of evidence gathering and decision-making, and commit to a timely decision within the 40-day time limit specified by Magnuson-Moss. By incorporating arbitrator training into their administrative practices, NCDS enhances the opportunity for fair and expeditious resolution of warranty disputes, a central function of their statutory mandate. NCDS training is addressed in Section VI.

The consumer survey confirms the overall validity of the statistical indices created by the National Center for Dispute Settlement.<sup>11</sup> The original survey sample, which includes National, California, Florida and Ohio, consisted of 2,113 “in jurisdiction” cases,<sup>12</sup> with 277 responses. The surveys were structured to coincide with case outcomes, *i.e.*, mediated cases, awarded cases, and awarded cases with no action. Consistent with past audits, consumers who settled through mediation reported positive experiences.<sup>13</sup> Arbitration outcomes were predictably split. Consumers who received a remedial award reported more favorable experiences over those whose claims were denied. An amplified breakdown of consumer responses and their significance is found in Section VII.

The drafters of Magnuson-Moss envisioned the availability of an informal dispute resolution mechanism that would provide consumers with an efficient remedy to redress warranty rights without curtailing recourse to litigation. The NCDS arbitration program, as currently administered, meets this purpose.

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<sup>10</sup> Although Magnuson-Moss governs the informal dispute settlement program, arbitrators are encouraged to apply the presumptions of the applicable state lemon law in making their decisions.

<sup>11</sup> As noted in prior audit reports, any discrepancies are either of no meaningful consequence or are understandable and without significant regulatory implications.

<sup>12</sup> The universe of available cases, which represents the number of cases filed, was 4,410. One thousand six hundred and seven (1,607) cases were deemed ineligible. Four hundred and three (403) cases were withdrawn.

<sup>13</sup> Mediation varies from arbitration in that the parties are able to explore settlement on their terms, without a directive by an arbitrator. Controlling the outcome in mediation is one reason there is increased satisfaction associated with the process.

## Section III

### Participating Manufacturers' Consumer-Facing Materials and Compliance Levels – FTC Rule 703.2

#### Introduction

This section of the audit focuses on the requirements vehicle manufacturers must meet if they participate in the NCDS arbitration program. The auditor evaluated how each of the manufacturers fulfilled their statutory obligation to provide information to consumers at the point of sale or when a warranty dispute arises.<sup>14</sup> The eight participating manufacturers in the NCDS arbitration program are Acura, FCA US LLC, Honda, Lexus, Mitsubishi, Tesla, Fisker<sup>15</sup> and Toyota.

Under Magnuson-Moss, manufacturers are not required to include an informal dispute settlement mechanism (“IDSM”) in their warranty materials. If they do, their program must be Mag-Moss compliant.<sup>16</sup> Assuming compliance, as part of their protocols, manufacturers may insist on “prior resort,” which requires consumers to use the informal dispute resolution program before seeking other remedies under the Act.<sup>17</sup> A number of states incorporate prior resort into their respective states’ lemon laws as a

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<sup>14</sup> Auditor consensus, based on a reasonable construction of the Federal Trade Commission’s commentary to FTC Rule 703 titled, “Proceedings,” is that manufacturers’ warranty manuals alone are not enough to communicate the information that Mag-Moss requires. Additional procedures must be in place, which extends to dealerships and service centers, to make sure that consumers receive clear and accurate information about informal dispute settlement options at the time a warranty dispute arises. *See* Disclosure of Written Consumer Product Warranty Terms and Conditions, Pre-Sale Availability of Written Warranty Terms, and Informal Dispute Settlement Mechanisms (Rules, Regulations, Statements and Interpretations Under Magnuson-Moss Warranty Act), 40 FED. REG. 60168, 60197 (Dec. 31, 1975) (stating that “placing more detailed information regarding the Mechanism at a location where consumers would be likely to turn in case of a product malfunction or defect would serve as a valuable guide to consumers on procedures to follow for remedying such complaints.”).

<sup>15</sup> Fisker filed Chapter 11 bankruptcy on June 18, 2024. However, for purposes of the 2023 audit, the auditor has included a compliance summary of their warranty materials.

<sup>16</sup> Rule 703.2(a) states:

The warrantor shall not incorporate into the terms of a written warranty a Mechanism that fails to comply with the requirements contained in §§ 703.3 through 703.8 of this part. This paragraph shall not prohibit a warrantor from incorporating into the terms of a written warranty the step-by-step procedure which the consumer should take to obtain performance of any obligations under the warranty as described in section 102(a)(7) of the Act as required by part 701 of this subchapter.

<sup>17</sup> Rule 703.2(b)(3) states:

A statement of any requirement that the consumer resort to the Mechanism before exercising rights or seeking remedies created by Title I of the Act; together with the



prerequisite to filing in court or invoking a state-based arbitration program. Florida<sup>18</sup> and Ohio<sup>19</sup> are such examples.

### Obligations Under Federal Law and Promulgated Rules

Under § 703.7(b)(1),<sup>20</sup> the auditor must assess manufacturers' compliance levels with the provisions of § 703.2(d).<sup>21</sup> This section of Magnuson-Moss imposes on participating manufacturers the obligation to "take steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes." A dispute does not arise until the consumer has attempted, and failed, to get warranty performance.<sup>22</sup>

The warrantors' obligations under § 703.2 extends to dealerships and service centers.<sup>23</sup> Although not explicit in Mag-Moss, it is clear from the accompanying Federal Trade Commission interpretations of

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disclosure that if a consumer chooses to seek redress by pursuing rights and remedies not created by Title I of the Act, resort to the Mechanism would not be required by any provision of the Act.

<sup>18</sup> FLA. STAT. § 681.108(1), F.S.

<sup>19</sup> OHIO REV. CODE ANN. §§ 1345.77(B).

<sup>20</sup> Rule 703.7(b)(1) states:

Each audit provided for in paragraph (a) of this section shall include at a minimum the following:

- (1) Evaluation of warrantors' efforts to make consumers aware of the Mechanism existence as required in § 703.2(d) of this part.

<sup>21</sup> Rule 703.2(d) states:

The warrantor shall take steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes. Nothing contained in paragraphs (b), (c), or (d) of this section shall limit the warrantor's option to encourage consumers to seek redress directly from the warrantor if 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 to the warrantor.

<sup>22</sup> Disclosure of Written Consumer Product Warranty Terms and Conditions, Pre-Sale Availability of Written Warranty Terms, and Informal Dispute Settlement Mechanisms (Rules, Regulations, Statements and Interpretations Under Magnuson-Moss Warranty Act), 40 FED. REG. 60168, 60193 (Dec. 31, 1975).

<sup>23</sup> The FTC declined to mandate dealer incentive requirements, recognizing that such a mandate may impose unreasonable financial burdens on manufacturers, discouraging them from including an informal dispute settlement mechanism in their warranty materials. Instead, the Commission opted to encourage



Mag-Moss that the regulators intended for warrantors to include dealerships and service centers as part of the consumer information process. Engaging dealerships and service centers is usually accomplished by consumer relations programs and education initiatives to ensure that consumers with warranty disputes receive accurate information about options they may have should their dispute remain unresolved.

The auditor’s assessment in this section focuses on the following two provisions of Magnuson-Moss, specifically §§ 703.2(b) and 703.2(c):

**§ 703.2 Duties of Warrantor**

(b) The warrantor shall disclose clearly and conspicuously at least the following information on the face of the written warranty:

- (1) A statement of the availability of the informal dispute settlement mechanism;
- (2) The name and address of the Mechanism, or the name and a telephone number of the Mechanism which consumers may use without charge;
- (3) A statement of any requirement that the consumer resort to the Mechanism before exercising rights or seeking remedies created by Title 1 of the Act; together with the disclosure that if a consumer chooses to seek redress by pursuing rights and remedies not created by Title I of the Act, resort to the Mechanism would not be required by any provision of the Act; and
- (4) A statement, if applicable, indicating where further information on the Mechanism can be found in materials accompanying the product, as provided in § 703.2(c).

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(c) The warrantor shall include in the written warranty or in a separate section of materials accompanying the product, the following information:

- (1) Either (i) a form addressed to the Mechanism containing spaces requesting the information which the Mechanism may require for prompt resolution of warranty disputes; or (ii) a telephone number of the Mechanism which consumers may use without charge;
- (2) The name and address of the Mechanism;
- (3) A brief description of Mechanism procedures;

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voluntary efforts and to make explicit that such efforts would be evaluated by the auditor during the annual audit process. *Id.* at 60197.

(4) The time limits adhered to by the Mechanism; and

(5) The types of information which the Mechanism may require for prompt resolution of warranty disputes.

Dealership visits and contacts are assessed under a separate section of Mag-Moss, **Duties of Warrantor**, notably § 703.2(d) which states, “The warrantor shall take steps reasonably calculated to make consumers aware of the Mechanism’s existence at the time consumers experience warranty disputes.”

### **Individual Participating Manufacturers’ Efforts and Compliance Assessment**

For the 2023 report, the auditor interviewed NCDS staff and inquired as to any changes from the previous year in each manufacturers' efforts to ensure their customers are being made aware of the availability of the arbitration program for resolving warranty disputes. In completing this section, the auditor examined the substantive content of the information provided, including placement in the warranty booklet or supplemental materials, and assessed clarity, accuracy, and inclusiveness. The following explains the auditor’s approach.

- **Notice/Conspicuous Placement** – Rule 703.2(b) of Mag Moss requires a clear and conspicuous notice of the availability of an informal dispute settlement mechanism “on the face of the written warranty.” To meet this requirement, the auditor considered whether the information required was highlighted or in different, larger font, to draw in consumers. Clarity requires that the information provided not be ambiguous and capable of being understood by the average consumer. Pursuant to the FTC, such notice may be featured in an electronic medium.<sup>24</sup>
- **Required Disclosures** – For this requirement, the auditor evaluated the content of the disclosures to make certain that the consumer was informed of the existence of the Mechanism, its operating procedures, eligibility parameters, time limits for processing a claim under the arbitration program, and any statement requiring that the consumer resort to the Mechanism before they exercised other rights or remedies created by Title 1 of Mag-Moss. Failure to provide all required disclosures resulted in an auditor’s reservation.
- **Steps Reasonably Calculated to Make Consumers Aware** – This requirement of Mag-Moss directs the auditor to assess whether the information in the warranty manuals is sufficient to satisfy the requisite steps of making consumers aware of the existence of the informal dispute settlement mechanism “at the time consumers experience warranty disputes.” The determination requires the auditor to assess the quality and quantity of information while also considering the extent to which, if at all, manufacturers have implemented media campaigns that would integrate the dealerships and service centers into the information funnel.
- **Prohibition Requiring Direct Redress** – While Mag-Moss permits direct redress, § 703.2(d) of

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<sup>24</sup> In the absence of explicit language in the Warranty Disclosure Rule, the FTC opined that a written warranty communicated through visual text on Web sites is no different than paper versions and would qualify as being “provided with” or as “accompanying” the product.” Federal Trade Commission Opinion Letter 0901 (February 17, 2009).

Mag-Moss prohibits manufacturers from requiring consumers to seek direct redress before they can exercise their right to file a claim with the Mechanism. This provision was modified in the comments period to preserve the right of a warrantor to *encourage consumers* to seek redress. The rationale for this provision appears in the Staff Report.<sup>25</sup>

**A. FCA US LLC**

The following table captures, in abbreviated form, FCA US LLC’s compliance levels with §§ 703.2(b) and 703.2(c).

**FCA US LLC - Summary of Compliance**

Statutory Citation	Compliance Findings
§ 703.2(b)(1)	Yes
§ 703.2(b)(2)	Yes
§ 703.2(b)(3)	Yes
§ 703.2(b)(4)	Yes
§ 703.2(c)(1)	Yes
§ 703.2(c)(2)	Yes
§ 703.2(c)(3)	Yes
§ 703.2(c)(4)	Yes
§ 703.2(c)(5)	Yes

**FINDINGS**

***Notice Requirement and Mandatory Disclosures***

FCA US LLC uses several means to communicate dispute resolution program information. The “Warranty Information” booklet, available electronically on the FCA website, references the “FCA US LLC Dispute Resolution Program,” beginning on page 4, and states:

FCA US LLC offers a dispute settlement program under two option for customers. First, you may submit your claim to the National Center for Dispute Settlement (NCDS). For more information on the NCDS program, please see “section 7.1 C.” Second, if you prefer

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<sup>25</sup> The underlying concern was that warrantors would want to minimize Mechanism costs by handling the disputes internally. To prevent consumers “from electing in good faith to undergo a warranty dispute settlement process which delays and frustrates rather than expedites dispute settlement, the proposed rule included a general requirement that warrantor complaint handling mechanisms operate fairly and expeditiously.” Disclosure of Written Consumer Product Warranty Terms and Conditions, Pre-Sale Availability of Written Warranty Terms, and Informal Dispute Settlement Mechanisms (Rules, Regulations, Statements and Interpretations Under Magnuson-Moss Warranty Act), 40 FED. REG. 60168, 60197 (Dec. 31, 1975).

not to submit your claim to NCDS, or you are not satisfied with the result from NCDS, then you agree to resolve your dispute with FCA US LLC through binding arbitration as defined in “section 1.3.”

Section 1.3, which appears immediately below the above paragraph, makes clear that the binding process is voluntary. If the consumer elects this process, the American Arbitration Association (AAA) will administer the arbitration under its Consumer Arbitration Rules. The scope of the clause is broad and covers not only warranty claims but claims “related to statements about our products.”<sup>26</sup> FCA US LLC will bear all arbitration fees.

The binding arbitration program permits the consumer to opt out of the arbitration agreement within 30 days of taking delivery of the vehicle and signing the Arbitration Acknowledgement Form. The notice to the consumer states that failure to opt out within 30 days will result in binding arbitration.

The *non-binding arbitration program* information begins on page 25, under the section titled, “HOW TO DEAL WITH WARRANTY PROBLEMS.” Sub-section C cures prior deficiencies by noting that the non-binding voluntary dispute resolution process is available in all 50 states, it is strictly voluntary, and it involves no cost to the consumer to file. NCDS’s contact information is prominently displayed. A summary description of NCDS’s procedures, consistent with mandatory disclosure requirements, includes:

- Initiation requirements
- Settlement opportunities
- Oral hearing (dealership or teleconference)
- Documents only hearing – reviewed by a panel
- Decision formalities
- Timelines for case processing, *i.e.*, 40 days
- Notice that the dispute resolution process does not replace any other state or federal legal remedies available to the consumer.

Two other crucial notices appear in this section of the Warranty Manual. The first is Section D – **NOTICE UNDER STATE LEMON LAWS**. This section specifies that some states allow the consumer to receive a replacement vehicle or a refund of the vehicle’s purchase price under certain circumstances. If the state law allows such a remedy, FCA requires that the consumer initially notify them to provide an opportunity to make any necessary repairs. The second section, E, is notice specific to California residents and informs the consumer that the Arbitration Certification Program (ACP) in California has certified the NCDS program.<sup>27</sup>

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<sup>26</sup> Leased vehicle claims are not subject to binding arbitration. These claims, however, are eligible for resolution under the non-binding arbitration program.

<sup>27</sup> The Arbitration Certification Program (“ACP”) is the entity responsible for certifying and monitoring third-party arbitration programs of participating automobile manufacturers to ensure compliance with California laws and regulations involving new vehicle warranties and manufacturer sponsored arbitration programs. The California Dispute Settlement Program (“CDSP”), which operates under NCDS, is the neutral third-party arbitration provider that administers the cases. A program certified by

The glove box materials, independent of the electronically accessed warranty, contain a separate and distinct document. This booklet, titled, “*Customer Care, Arbitration, & Lemon Law Rights*,” describes the NCDS customer arbitration process under Step 3, beginning on page 2. The information which follows satisfies the requirements of § 703.2(b). This information explains the requirements for filing a claim, length of process (*i.e.*, 40 days), hearing protocols, decision parameters, and a statement that if the consumer is not satisfied with the arbitrator’s decision, they may reject it, and pursue any legal remedies available under state or federal law.

On page 19 of the “*Customer Care, Arbitration, & Lemon Law Rights*” booklet is the NCDS claim form and arbitration agreement. The arbitration agreement at the end of the form is clear that by signing the agreement, the consumer is not bound by the decision of the arbitrator unless they accept it. If the consumer accepts it, the manufacturer is bound to accept it and to perform the terms of the decision within the time limit prescribed. An additional caveat states that the decision is admissible in any subsequent legal proceeding concerning the dispute.

### ***Dealership and Service Center Engagement***

At present, FCA US LLC does not have a cohesive and intentional program in place to involve its dealerships in disseminating information relating to the auto warranty arbitration program. However, FCA *is* focused on building customer loyalty. To achieve that end, they prefer to handle all disputes with their consumers in-house. Their protocol when a consumer presents a potential dispute is to run through a diagnostic check. If they determine that the cause of the issue is a manufacturing defect, they will attempt to repair the vehicle. At this point in the process, there is no mention of a dispute resolution program. Their aim is to rectify the non-conformity. If they are not successful, the service manager will escalate the issue to the district level. Whatever information exists within the FCA hierarchy regarding dispute resolution options after repair requests are exhausted does not typically funnel down to the dealership level.

### **RESERVATIONS**

Mag-Moss does not specify how dealerships should get the word out about the warranty dispute resolution program. This “deliberate” vacuum has provided warrantors with a *carte blanche* to rely on service engagement centers or their websites to disseminate this information. These sources are inadequate. Warrantors must orchestrate a media campaign from the top down that will assure signage in the service center and informational brochures on service desks. As noted elsewhere in this audit, consumers can only take advantage of the NCDS program if they are aware of its existence.

Second, while FCA’s goal of providing multiple options to consumers is commendable, including a binding and non-binding process in the same warranty manual may be potentially violative of § 703.5(j).<sup>28</sup> Although Rule 703.5(j) speaks to “decisions of the Mechanism,” the 1975 Federal Register that accompanied the rule explained:

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the ACP must meet rigid compliance standards and must be willing to undergo an annual review to maintain certification status.

<sup>28</sup> 40 FED. REG. at 60211 (1975).

. . . there is nothing in the Rule which precludes the use of any other remedies by the parties following a Mechanism decision. The warrantor, the Mechanism, or any other group can offer a binding arbitration option to consumers who are dissatisfied with mechanism decisions or warrantor intentions. However, reference within the written warranty to any binding, non-judicial remedy is prohibited by the Rule and the Act.<sup>29</sup>

Thus, if FCA wants to make binding arbitration available to its consumers, it should do so in a separate standalone document. This standalone document should provide the consumer with an Agreement to Arbitrate, an explanation of how binding arbitration works and its limitations with respect to judicial review, and a copy of the current Consumer Arbitration Rules of the American Arbitration Association.

**CONCLUSION**

**FCA US LLC is in substantial compliance with the warrantor requirements of § 703.2, subject to the reservations noted above.**

**B. ACURA**

The following table captures, in abbreviated form, Acura’s compliance levels with §§ 703.2(b) and 703.2(c).

**ACURA - Summary of Compliance**

<b>Statutory Citation</b>	<b>Compliance Findings</b>
§ 703.2(b)(1)	Yes
§ 703.2(b)(2)	Yes
§ 703.2(b)(3)	Yes
§ 703.2(b)(4)	Yes
§ 703.2(c)(1)	Yes
§ 703.2(c)(2)	Yes
§ 703.2(c)(3)	Yes
§ 703.2(c)(4)	Yes
§ 703.2(c)(5)	Yes

**FINDINGS**

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<sup>29</sup> The legislative history sheds light on what Congress intended when it passed Mag-Moss, mainly that all informal dispute settlement mechanisms would be non-binding. *See* Report to Accompany H.R. 7917, H.R. Rep. No 93-1107, at 41 (1974) (report of the House Committee on Interstate and Foreign Commerce); *see also* S. Rep.. No. 93-151, at 3 (1973) (report of the Senate Committee on Commerce) (stating that “[I]f the consumer is not satisfied with the results obtained in any informal dispute settlement proceeding, the consumer can pursue his legal remedies in a court of competent jurisdiction . . .”).

### *Notice Requirement and Mandatory Disclosures*

Acura makes customers aware of the dispute resolution mechanism by providing information located in the *“Owner’s Manual”* in the Introduction of the Table of Contents. It is prominently located as the first entry of the Table of Contents. The next page identifies the three steps customers must follow if they have warranty repair issues. Step 1 includes discussing the concern with the Service Manager or General Manager. Step 2 involves contacting Acura Client Relations. Assuming resolution is not reached at either of the prior levels, the consumer is then directed to step 3, the NCDS “independent forum,” which can be accessed “at any time.” The inclusion of the language “at any time” suggests that steps 1 and 2 are not exhaustive.

The disclosures in Step 3 are clear, and includes, as required, the contact information for filing a claim with the NCDS. On the subsequent page of the *“Owner’s Manual,”* customers view a detailed explanation of the NCDS dispute resolution program, including the non-binding nature of the decision, eligibility requirements, ease of consumer access (free of charge), and a clear statement that rejection of a decision will not preclude judicial access.

Additional disclosures specify that mediation is available as an option should the consumer disagree with a decision reached by the staff of Acura Client Relations. Binding arbitration is also available. However, placement of this reference is after the disclaimer, “If you do not accept the decision of NCDS, you can still proceed with formal litigation.” An Agreement to Arbitrate, under the American Arbitration Association’s Consumer Arbitration Rules, is included in the warranty manual. Although Acura’s intent here is to offer consumers multiple dispute resolution options besides litigation, the auditor questions Acura’s decision to offer binding arbitration in the same warranty materials, especially given the breadth of the arbitration clause.<sup>30</sup> A better approach would be to offer binding arbitration in a separate standalone document that accompanies but is not integrated into the warranty manuals.

Acura’s written materials communicating the availability of the NCDS dispute resolution program are clear, accurate, and transparent, and otherwise comply with all federal disclosure requirements.

### *Dealership and Service Engagement*

The auditor did not conduct any in-person visits with Acura dealerships in 2024. However,

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<sup>30</sup> See rationale for auditor’s concern on page 11. The binding arbitration clause reads, in relevant part, “This Agreement to Arbitrate includes all claims, whether based in contract tort, statute, fraud, misrepresentation or any other legal theory; claims arising out of your warranty; claims arising before or after this Agreement, such as claims related to statements about our products; claims about the performance, design of our products, or manufacturing of our products; and claims that are currently the subject of purported class action litigation in which you are not a member of a certified class.” For consumers electing to proceed with binding arbitration (presumably after rejecting an arbitrator’s decision under the informal dispute settlement procedures), a 30-day opt out period is provided, “after the date of delivery of the vehicle.” If the consumer does not opt out, the agreement to arbitrate becomes binding.



telephonic conferences with several Acura dealerships,<sup>31</sup> along with prior audit findings (Bedikian audits 2020-2022), suggest that the same protocols other certified manufacturers assume with respect to auto warranty disputes is also being followed by Acura as part of its national approach to handling warranty disputes.

**RESERVATION**

As with other certified manufacturers, Acura continues to be deficient in engaging dealerships. Complete compliance with Mag-Moss requires more than placing accurate and conspicuous information in warranty materials. One aspect of the independent audit included in § 703 was to ensure that adequate consumer awareness by sponsor manufacturers occurs. While the Federal Trade Commission does not mandate any form of national media campaign, this does not exonerate manufacturers from complying with the spirit of the legislation. In this respect, Acura must communicate with its dealerships about ALL warranty options, including the existence of the NCDS arbitration program if the consumer is not satisfied with the proposed resolution offered by the dealership.

**CONCLUSION**

**Acura is in substantial compliance with the warrantor requirements of § 703.2, subject to the reservation noted above.**

**C. HONDA**

The following table captures, in abbreviated form, Honda’s compliance levels with §§ 703.2(b) and 703.2(c).

**HONDA - Summary of Compliance**

Statutory Citation	Compliance Findings
§ 703.2(b)(1)	Yes
§ 703.2(b)(2)	Yes
§ 703.2(b)(3)	Yes
§ 703.2(b)(4)	Yes
§ 703.2(c)(1)	Yes
§ 703.2(c)(2)	Yes
§ 703.2(c)(3)	Yes
§ 703.2(c)(4)	Yes
§ 703.2(c)(5)	Yes

**FINDINGS**

*Notice Requirement and Mandatory Disclosures*

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<sup>31</sup> Fox Acura (Grand Rapids, Michigan 49512) and Fox Ann Arbor Acura (Ann Arbor, Michigan 48103).

NCDS information is in the “*Owner’s Manual*” in the Introduction to the Table of Contents, where it is prominently located on 2. On the pages that follow, Honda informs customers of its three-step process. Steps 1 and 2 are internal, and track the steps noted in the Acura discussion. Step 3 specifically references NCDS:

If you disagree with the decision reached by the staff of Honda Automotive Customer Service, you may request to have your case reviewed in an independent forum run by the National Center for Dispute Settlement (NCDS).

In the next paragraph, the manual describes the purpose of NCDS, which “is to resolve disputes between vehicle manufacturers and their customers” and affirms the independence of NCDS’s decision-makers.

A detailed explanation of the program follows on page 3. Of note are the following mandatory disclosures:

- Non-binding nature of decision
- 40-day resolution period (47 days if the consumer has not first contacted Honda)
- Availability of mediation before arbitration
- Information required to process a claim
- Non-mandatory prior resort

As with Acura, additional disclosures specify that mediation is available as an option should the consumer not be satisfied with any of the earlier intervention steps. Binding arbitration is also available, with the same disclaimer noted in the Acura discussion. The arbitration clause is broad and covers many issues otherwise not part of the informal dispute resolution program under Mag-Moss. Offering this option to consumers at this point in the process is to get consumers to better evaluate the feasibility of litigation by instead opting into a more consumer-centric dispute resolution forum. Intent aside, for reasons noted previously, offering binding arbitration, even with an opt-out provision, is problematic given the legislative history of Mag-Moss. The auditor recommends a separate standalone document offering binding arbitration that accompanies but is not integrated into the warranty materials.

Other than the above cautionary note, Honda’s written materials communicating the availability of the NCDS dispute resolution program are clear, accurate, and transparent and comply with all federal disclosure requirements.

### *Dealer and Service Center Engagement*

In-person visits were not conducted in 2024. However, telephonic conferences with several dealerships confirm that Honda’s protocol for handling consumer repair issues has not changed from prior years.<sup>32</sup> Service managers are not aware of NCDS’s informal dispute settlement program. This information vacuum leaves consumers in a precarious position – accept the recourse the dealership offers or seek remedies within the traditional litigation framework. While this may not be representative of all

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<sup>32</sup> Delray Honda (Delray Beach, Florida), Rick Case Honda (Davie, Florida), Tamaroff Honda (Southfield, Michigan), and Honda of Fort Worth (Fort Worth, Texas).

Honda dealerships, it demonstrates that Honda does not disseminate information uniformly across the board, leaving dealerships to rely on practices not consistent with the requirements of Magnuson-Moss.

**RESERVATIONS**

Honda’s compliance level with respect to dealership engagement and knowledge of the informal dispute resolution program remains unchanged from prior years. While Honda meets its disclosure obligations under Mag-Moss, its consistently inadequate results in making customers aware of the NCDS dispute resolution program at the time a warranty dispute arises is problematic. Resources must be dedicated to achieving better compliance levels *at the dealership level*.

**CONCLUSION**

**Honda is in substantial compliance with the warrantor requirements of § 703.2, subject to the reservation noted above.**

**D. LEXUS**

The following table captures, in abbreviated form, Lexus’ compliance levels with §§ 703.2(b) and 703.2(c).

**LEXUS - Summary of Compliance**

Statutory Citation	Compliance Findings
§ 703.2(b)(1)	Yes
§ 703.2(b)(2)	Yes
§ 703.2(b)(3)	Yes
§ 703.2(b)(4)	Yes
§ 703.2(c)(1)	Yes
§ 703.2(c)(2)	Yes
§ 703.2(c)(3)	Yes
§ 703.2(c)(4)	Yes
§ 703.2(c)(5)	Yes

**FINDINGS**

*Notice Requirement and Mandatory Disclosures*

Lexus informs customers of the availability of the NCDS arbitration program through a manual titled, “Lexus Warranty and Services Guide.” In addition, Lexus distributes to new car buyers a pamphlet titled, “Lemon Law Guide” which cross-references the required NCDS arbitration information including their toll-free number. Lexus requires consumers to use NCDS prior to exercising rights under Mag-Moss or if required to do so under applicable state lemon laws. NCDS’s informal dispute resolution mechanism may be by-passed only if state law does not require prior resort or if the consumer seeks remedies outside of Mag-Moss.

In addition to the above disclosure, the “*Lexus Warranty and Services Guide*” includes four pages of accurate information about the NCDS arbitration program, including the following:

- Free access to consumers
- Eligible disputes
- Warranty exclusions
- Timing of arbitration
- Procedures for requesting arbitration
- Procedural protocols
- Types of decision
- Compliance requirements
- Availability of settlement
- Limits to the scope of NCDS decisions
- Other recourse, including the availability of small claims court

With respect to “other recourse” specifically, the disclosure states:

You should be aware that the decision of the arbitrator(s) may be admissible as evidence in any legal proceedings concerning your vehicle.

In reviewing the warranty disclosures, the auditor found one qualification. The information above is organized as part of a multi-step process. A customer with a warranty dispute is not required to go through steps 1 and 2; they may go directly to step 3 and activate arbitration. To limit customer confusion, and to ensure the fullest compliance with Mag-Moss, the auditor makes the following recommendation:

#### RECOMMENDATION

The Lexus Warranty and Services Guide should be revised to include a clear statement to the consumer that they may access arbitration without exhausting Step 1 (contact with the dealership manager), or Step 2 (contacting the Lexus Brand Engagement Center).

#### *Dealership and Service Center Engagement*

Particular attention is given to efforts that inform customers about the existence of the dispute resolution program and how to access it in the event they are not satisfied with the dealerships efforts to rectify their warranty issue. The "notice" requirement of Mag-Moss seeks to ensure that the program, which is designed to provide appropriate and early redress to consumers, is usable by them. To make effective use of it, the consumer must first know of its existence.

In August and September 2024, the auditor teleconferenced with several dealerships in Florida,

Ohio, and Michigan.<sup>33</sup> The service managers and staff were uninformed of the NCDS Automobile Warranty Arbitration Program. Lexus’s current protocols is to resolve all warranty issues internally. After running a series of diagnostic checks, if Lexus determines that the problem stems from a manufacturing defect, they may propose to buy back the vehicle. Lexus’ decision to propose this remedy is contingent upon the warranty cycle (the earlier in the warranty the better) and the relationship with the customer. If the problem cannot be duplicated, the issue is elevated to the Lexus Customer Relations Department. Depending on what transpires at this stage, the customer may be directed to the NCDS 800 number.

As noted in prior audits, “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 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 that that section identified as the “Proceedings.”

## RESERVATIONS

With the notable exception above, Lexus’ compliance level is unchanged from prior years. While Lexus in all other material respects meets its statutory obligations under Mag-Moss, its consistently inadequate results in making customers aware of the NCDS dispute resolution program at the time a warranty dispute arises is problematic. Moreover, its written materials suggest that consumers must exhaust prior steps before they can activate arbitration. Including a statement that the consumer may file for arbitration without completing the first set of steps would rectify this deficiency.

## CONCLUSION

**Lexus is in substantial compliance with the warrantor requirements of § 703.2, subject to the reservations noted above.**

### E. MITSUBISHI

The following table captures, in abbreviated form, Mitsubishi’s compliance levels with §§ 703.2(b) and 703.2(c).

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<sup>33</sup> Lexus of Kendall (Miami, Florida), Lexus of North Miami (Miami, Florida), Lexus of Tampa Bay (Tampa, Florida), Metro Lexus (Cleveland, Ohio) and Germain Lexus (Ann Arbor, Michigan).

MITSUBISHI - Summary of Compliance

Statutory Citation	Compliance Findings
§ 703.2(b)(1)	Yes
§ 703.2(b)(2)	Yes
§ 703.2(b)(3)	Yes
§ 703.2(b)(4)	Yes
§ 703.2(c)(1)	Yes
§ 703.2(c)(2)	Yes
§ 703.2(c)(3)	Yes
§ 703.2(c)(4)	Yes
§ 703.2(c)(5)	Yes

FINDINGS

*Notice Requirement and Mandatory Disclosures*

Mitsubishi notifies its consumers of the existence of auto warranty program through its “Warranty and Maintenance Manual”<sup>34</sup> on its website. The information is placed on page 5, with a bold reference: **NOTICE TO CONSUMERS – MMNA is committed to assuring your satisfaction with your Vehicle.** A three-step process is outlined, beginning with dealership contact and concluding with the informal dispute settlement program under NCDS. Step 3 is clear to point out that resort to the NCDS program is encouraged, not mandated. Contact information for NCDS is provided. The section which follows accurately describes the arbitration process and notes that consumers have the option of a single arbitrator or a “documents only” hearing. A separate notice informs consumers that they must use NCDS prior to seeking remedies through court. This notice also states that consumers must resort to the NCDS process if seeking remedies under state law which mandates prior resort.

An additional disclosure states that an implied warranty applicable to the purchased vehicle is limited in duration to the length of the written warranty. Mitsubishi disclaims any responsibility for incidental, consequential, special, or exemplary damages arising out of a breach of the express or implied warranty. The disclosure goes on to note that some states do not permit the exclusion or limitation of damages, thus those restrictions may not apply.

*Dealership and Service Center Engagement*

Prior audits within the last five years have focused on Mitsubishi’s deficiency in establishing a commitment by dealers to educate their employees in providing dispute resolution program information to customers making general inquiries about warranty-related disputes. In addressing the concern noted above, Mitsubishi initiated a program by which they announced to all dealerships the rollout of the Dispute Resolution Program. Included in this communication were three 11 x 7 posters and a cover letter. The cover letter explained the Dispute Resolution Process rollout and included a cautionary note that

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<sup>34</sup> The auditor reviewed the Eclipse Cross, Outlander Sport, Mirage, and Mirage G4 “Warranty & Maintenance Manual.”

service managers display the posters in areas that are clearly visible to customers who bring in their vehicles for warranty repairs. This letter also included the following stringent message:

You may be aware that the FTC conducts a yearly audit of our Dispute Resolution Process through NCDS. The audit will be commencing in the next few weeks – and part of the audit includes “mystery shop” visits to retailers. Unfortunately, last year, most dealerships visited by the auditor could not accurately describe the Dispute Resolution Process.”

Irrespective of this initiative and admonition, the auditor’s experience in this audit year was identical to previous audit experiences. The auditor contacted Grand Blanc Mitsubishi, Grand Blanc Township, Michigan 48439 and spoke with the service manager. He was not aware of the existence of the dispute resolution program, nor did he have any knowledge of NCDS. When asked what he would do if a consumer complained about a warranty dispute, he said complaints or problems would be referred to Customer Relations. Although this dealership posts Mitsubishi posters and Carfax posters within the service center, there are no posters informing consumers of the availability of an informal dispute resolution mechanism. Also, the service manager had no familiarity with the term’s “mediation” or “arbitration.”

**RESERVATIONS**

Mitsubishi’s efforts while laudable also fall short of communicating with dealerships about the availability of the NCDS arbitration program and the required disclosures that should be made should a customer arrive at the dealership with a warranty issue. The FTC mandates that if a manufacturer participates in an informal dispute resolution process, the customer must be given information about the existence of alternative dispute remedies. It is not enough to include information in the owner’s manual or in glove box materials. Mitsubishi should make more consistent effort to fulfill this statutory responsibility.

**CONCLUSION**

**Mitsubishi is in substantial compliance with the warrantor requirements of § 703.2, subject to the reservation noted above.**

**F. TOYOTA**

The following table captures, in abbreviated form, Toyota’s compliance levels with §§ 703.2(b) and 703.2(c).

**TOYOTA - Summary of Compliance**

Statutory Citation	Compliance Findings
§ 703.2(b)(1)	Yes
§ 703.2(b)(2)	Yes
§ 703.2(b)(3)	Yes
§ 703.2(b)(4)	Yes



§ 703.2(c)(1)	Yes
§ 703.2(c)(2)	Yes
§ 703.2(c)(3)	Yes
§ 703.2(c)(4)	Yes
§ 703.2(c)(5)	Yes

**FINDINGS**

*Notice Requirement and Mandatory Disclosures*

To meet the notice requirement, Toyota publishes a 64-page booklet entitled, “*Warranty and Maintenance Guide*.” This booklet explains the three step process for consumers to exhaust should they experience a problem with their vehicle. Step 3 is clear in stating that if a concern is not resolved to the consumer’s satisfaction, additional assistance is offered through the Dispute Settlement Program administered by the National Center for Dispute Settlement. The dispute settlement program is briefly but accurately explained, and the booklet informs the consumer that access to this program is free of charge. The consumer is then referred to the “*Owner’s Warranty Rights Notification*” booklet described more fully below, however, this reference is preceded by noting the requirements for filing a claim. All program information is prominently positioned in the booklet, starting with page 5 – Introduction. Although eligibility standards are not set forth in this booklet, Toyota requires consumers when initiating arbitration to include the current mileage of the vehicle. (Eligibility determinations are routinely handled internally, by NCDS, after a claim has been filed).

The 89-page “*Owner’s Warranty Rights Notification*” booklet is located in the glove box. This booklet is comprehensive and contains state-specific warranty-related regulatory information for all 50 states. On page 2, the booklet outlines the three steps to customer satisfaction, which includes a prominent Step 3 reference to **ARBITRATION**. California residents are directed to page 86. The notice is bolded and appears under the reference to **ARBITRATION**. Subsequent pages describe the NCDS informal dispute settlement program in detail, *i.e.*, types of eligible disputes, length of the arbitration process, and costs associated with initiating arbitration (free to the consumer).

As with the “*Warranty and Maintenance Guide*” booklet, this booklet is primarily distributed by the dealership sales personnel at the point of sale.

Similar to Lexus, the information in the various warranty booklets for Toyota are organized as a 3-step process, with internal steps constituting steps 1 and 2. Structured in this way, a consumer is led to conclude they must exhaust steps 1 and 2 before filing for arbitration. Thus, similar to Lexus, Toyota should consider revising its warranty manuals to make this clearer.

**RECOMMENDATION**

The Toyota Warranty and Maintenance Guide should be revised to include a clear statement to the consumer that they may access arbitration without exhausting Step 1 (contact with the dealership manager), or Step 2 (contacting the Toyota Brand Engagement Center).

*Dealership and Service Center Engagement*

In 2023 and 2024, the auditor visited several Toyota dealerships or conducted conference calls.<sup>35</sup> As noted in prior audits, the information dissemination methods employed by Toyota nationally establish that many Toyota customers are being made aware of the program. This is bolstered by Toyota’s case statistics for 2023. On the other hand, the auditor dealer assessments continue to confirm a general lack of knowledge on the part of many dealer service department employees about the NCDS and, in some cases, ignorance of its very existence. This includes both service managers and sales employees.

Dealerships remain in the best position to communicate with customers. Unfortunately, dealers who wish to ignore or minimize their role in facilitating "fair and expeditious" warranty dispute resolution may do so with regulatory impunity, notwithstanding the corporate efforts of Lexus and Toyota.

**RESERVATIONS**

Toyota remains deficient in including dealerships and service centers in the information dissemination process. Dealer inspections during this audit period establish that dealerships, including front line personnel, do not know of the existence of an informal dispute resolution process. Failure to be informed undermines the regulatory intent behind Mag-Moss and prevents consumers, for whom the legislation was targeted, from availing themselves of remedies that could promptly cure alleged vehicle non-conformities.

**CONCLUSION**

**Toyota is in substantial compliance with the warrantor requirements of § 703.2, subject to the reservation noted above.**

**G. TESLA**

The following table captures, in abbreviated form, Tesla’s compliance levels with §§ 703.2(b) and 703.2(c).

**TESLA - Summary of Compliance**

<b>Statutory Citation</b>	<b>Compliance Findings</b>
§ 703.2(b)(1)	Yes
§ 703.2(b)(2)	Yes
§ 703.2(b)(3)	Yes
§ 703.2(b)(4)	Yes
§ 703.2(c)(1)	Yes
§ 703.2(c)(2)	Yes

<sup>35</sup> Page Toyota (Southfield, Michigan), Suburban Toyota of Farmington Hills (Farmington Hills, Michigan, and Germain Toyota of Columbus (Columbus, Ohio).

§ 703.2(c)(3)	Yes
§ 703.2(c)(4)	Yes
§ 703.2(c)(5)	Yes

**FINDINGS**

*Notice Requirement and Disclosures*

Tesla, which joined the NCDS network of manufacturers in 2013, provides information to their customers through their “*Owner’s Warranty Manual, New Vehicle Limited Warranty for Model S, Model X, Model 3, and Model Y.*”<sup>36</sup>

On page 11, for disputes originating in the United States, Tesla states:

Any dispute, claim, or controversy between you and Tesla arising out of, or related, this new Vehicle Limited Warranty is subject to binding arbitration on an individual basis in accordance with the terms of the Agreement to Arbitrate in your Vehicle Order Agreement and reproduced in the section Warranty Enforcement Laws and Dispute Resolution in this New Vehicle Limited Warranty.

On page 12, Tesla qualifies direct redress by stating, “[t]o the fullest extent allowed by the law of your jurisdiction . . . .” This statement is accurate as stated. Federal law does not require consumers to present their concerns to the manufacturer before arbitration. However, a “final repair attempt” may be mandated by state lemon laws, in which case FTC Rule 703.2(e) may be triggered.<sup>37</sup>

In the next paragraph, Tesla describes its dispute resolution program in two steps. The first is an optional step through NCDS. The second is binding arbitration or small claims court, whichever the consumer elects. Tesla describes the non-binding dispute resolution process through NCDS and highlights it for ease of reference. Eligibility requirements are also highlighted, as is a specific time limit for filing for arbitration, (*i.e.*, within 60 days (or 6 months in certain jurisdictions)) of the expiration of the applicable warranty period, provided written notice has been furnished to Tesla of the alleged defect *during* the warranty period. Tesla’s program explicitly prohibits class arbitrations.

Tesla makes the following mandatory disclosures:

- Availability of oral hearing
- Admissibility of evidence
- Settlement option throughout the course of the entire process
- Non-binding nature of decision

<sup>36</sup> An identical New Vehicle Limited Warranty Manual exists for Cybertruck purchasers.

<sup>37</sup> Rule 703.2(e) permits an extension the 40-day time limit “where the consumer has made no attempt to seek redress directly from the warrantor.” For purposes of Mag-Moss relief however, Rule 703.2(d) explicitly precludes requiring consumers to seek redress from the warrantor first before initiating arbitration.

- Compliance requirement of 30 days after notice of acceptance of decision
- Available remedies
- Excluded remedies

The following language appears at the end of the section dealing with non-binding arbitration:

If you are not satisfied with the arbitrator’s decision or Tesla’s compliance, you may pursue your claim in binding arbitration on an individual basis in accordance with the Agreement to Binding Arbitration provided below.

The Agreement to Binding Arbitration follows on page 16. The preamble to the Agreement states, “Under that Agreement [referring to the Agreement to Arbitrate in the Vehicle Order Agreement], you agreed to resolve disputes with Tesla by arbitration rather than by litigation in court.” Tesla goes on to indicate that the consumer may circumvent NCDS entirely and proceed to binding arbitration or small claims court. Finally, the Arbitration Agreement gives the consumer an opportunity to “opt-out” of arbitration within 30 days after signing the Agreement. This opt-out must be sent to Tesla in writing.

#### *Dealership and Service Center Engagement*

Tesla’s business model does not currently include physical dealerships. However, there is a cohesive system in place to inform consumers of all options once the consumer contacts the Tesla service center. The problem is initially addressed with the service technician. Failing satisfaction, or if the problem persists, the consumer is then directed to the arbitration options in the warranty. These options include both the NCDS non-binding dispute resolution program and the binding arbitration program (or small claims court).

Tesla’s warranty is available on their website, and any consumer interested in reviewing the warranty, even before point of sale, may do so by downloading the document. Once a consumer purchases a Tesla, they are given an on-line account number for ease of access to a service center should they require it.

#### **RESERVATIONS**

As with Acura and Honda, referencing both a non-binding and a binding arbitration process in the warranty manual is confusing to consumers who are contemplating next steps after repair attempts have failed. And, as previously explained, it may be violative of FTC Rule 703.5(j).<sup>38</sup> Tesla’s motivation in creating multiple resolution options is designed to promote customer loyalty and satisfaction. To avoid issues in the future, Tesla should consider providing binding arbitration in a separate standalone document.

#### **CONCLUSION**

**Tesla is in substantial compliance with the warrantor requirements of § 703.2, subject to the reservation noted above.**

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<sup>38</sup> 40 FED. REG. at 60211 (1975).

H. FISKER

PLEASE NOTE: Fisker filed for Bankruptcy protection under Chapter 11 of the United States Bankruptcy Code on June 18, 2024. NCDS has suspended all administration of cases. However, the following summary appears in the audit for 2023 as Fisker was doing business in 2023 and had designated NCDS as the dispute resolution mechanism for their warranty disputes.

The following table captures, in abbreviated form, Fisker’s compliance levels with §§ 703.2(b) and 703.2(c).

FISKER - Summary of Compliance

Statutory Citation	Compliance Findings
§ 703.2(b)(1)	Yes
§ 703.2(b)(2)	Yes
§ 703.2(b)(3)	Yes
§ 703.2(b)(4)	Yes
§ 703.2(c)(1)	Yes
§ 703.2(c)(2)	Yes
§ 703.2(c)(3)	Yes
§ 703.2(c)(4)	Yes
§ 703.2(c)(5)	Yes

FINDINGS

*Notice Requirement and Mandatory Disclosures*

Fisker, which joined the NCDS network of manufacturers in 2023, provides information to their customers through their “New Vehicle Limited Warranty Coverage” manual.<sup>39</sup> The “Dispute Resolution and Lemon Law” explanations appear at the end of the manual. Prior to explaining the NCDS dispute resolution process, Fisker states “To the extent permitted by applicable law, written notice of an unresolved vehicle issue shall be provided to Fisker at the contact provided in the Warranty section above, to provide Fisker an opportunity to address the vehicle issue and have final attempt of repair or enter into another mutual agreed resolution before you pursue any remedies under applicable jurisdictional law.” If the issue continues to be unresolved at this juncture, Fisker directs the customer to NCDS.

In explaining the NCDS informal dispute resolution process, Fisker makes the following mandatory disclosures:

- Dispute resolution at no charge to the customer
- Availability of oral hearing
- Trained, professional arbitrators (and mediators)
- Settlement option throughout the course of the entire process

- Non-binding nature of decision
- Time frame for resolution, *i.e.*, within 40 days
- Availability of independent inspection of the vehicle
- Evidence protocols, including rebuttal
- Remedies
- Prior resort

The dispute resolution section of the warranty concludes as follows:

All issues not resolved by the NCDS process, or if you choose not to participate in the NCDS process, must be resolved under the procedure of binding arbitration that you agreed to in your vehicle purchase documents.

### *Dealership and Service Center Engagement*

Fisker’s business model does not currently include physical dealerships. Scheduling of a service or repair appointment is performed using the Fisker app or the Fisker website. Once the scheduling process is complete, a mobile service unit is dispatched to transport the vehicle to a Fisker Authorized Service Center, based on information that is provided to Fisker by the customer.

### RESERVATIONS

While Fisker’s explanation of the informal dispute resolution process is accurate, the auditor has three reservations. First, information concerning NCDS is placed at the end of the manual, after a discussion of items covered under warranty. A better approach is to place this information at the front of the manual, making consumers aware of the NCDS option should a repair issue exist, particularly since a mobile service unit handles all repairs. Second, while including the qualification, “To the extent permitted by applicable law,” Fisker requires that customers provide Fisker with an opportunity to address the vehicle issue and have final attempt at repair. This language is inconsistent with Magnuson-Moss, which states:

(d) . . . Nothing contained in paragraphs (b), (c), or of this section 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.** . . .

Finally, As noted previously with Acura, Honda, and Tesla, including both a non-binding and a binding arbitration process in the warranty manual is confusing to consumers who are contemplating next steps after repair attempts have failed. Apart from customer confusion, including information concerning binding arbitration in the SAME warranty manual may be violative of FTC Rule 703.5(j).<sup>40</sup> While Fisker’s motivation in creating multiple resolution options is laudable, Fisker should consider

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<sup>40</sup> 40 FED. REG. at 60211 (1975).

providing binding arbitration in a separate standalone document<sup>41</sup>, and not refer to binding arbitration in the warranty manual. Rather, Fisker can direct the consumer to other materials, accessed either electronically or through the glove box, which explain binding arbitration and its limitations of judicial review.

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<sup>41</sup> Currently, the binding arbitration process is included in the vehicle purchase agreements. However, it is referenced multiple times in the section pertaining to the Magnuson-Moss informal dispute resolution process. Moreover, the language clearly suggests that binding arbitration is imposed on the consumer as a condition of acquiring the vehicle.



## Section IV

### Mechanism Operations and Compliance Levels – FTC Rules 703.3 – 703.8

This chapter deals specifically with the statutory obligations imposed on the National Center for Dispute Settlement. The primary federal regulations and interpretations<sup>42</sup>, which parallel state frameworks under lemon laws and are explicitly set forth in 16 C.F.R. § 703, require that all administrative processes be fair, thorough, and efficient. Moreover, the rules mandate certain recordkeeping functions and an annual audit that includes consumer assessments. Thus, this section focuses primarily on § 703.3 (“Mechanism Organization”), § 703.4 (“Qualification of Members,” the arbitrators), § 703.5 (“Operation of the Mechanism), § 703.6 (“Recordkeeping”), § 703.7 (“Audits”), and § 703.8 (“Openness of Records and Proceedings”).

Based on information in this section, the auditor finds that NCDS is in substantial compliance of its statutory mandate. The auditor’s conclusions are drawn from a review of its published rules (national and California-certified), the Arbitrator Training Manual (updated in 2023), Arbitrator Bulletins, Frequently Asked Questions (“FAQs”), and other materials on the NCDS website, discussions with staff, a randomly selected review of 80 cases, and participation as observer in 10 hearings, including two board hearings.

#### A. MECHANISM ORGANIZATION – § 703.3

Rule 703.3 establishes the funding and staffing protocols “to ensure fair and expeditious resolution of all disputes.”<sup>43</sup> Access to the Mechanism is without charge, an attempt to motivate manufacturers to incorporate an informal dispute settlement option in their warranties,<sup>44</sup> and to

<sup>42</sup> See <https://www.govinfo.gov/content/pkg/FR-2015-07-20/pdf/2015-14065.pdf>.

Final Action Concerning Review of Interpretations of Magnuson-Moss Warranty Act; Rule Governing Disclosure of Written Consumer Product Warranty Terms and Conditions; Rule Governing Pre-Sale Availability of Written Warranty Terms; Rule Governing Informal Dispute Settlement Procedures; and Guides for the Advertising of Warranties and Guarantees. 80 FED. REG. 42710 (July 15, 2015).

<sup>43</sup> Rule 703.3(a) states:

The Mechanism shall be funded and competently staffed at a level sufficient to ensure fair and expeditious resolution of all disputes and shall not charge consumers any fee for use of the Mechanism.

<sup>44</sup> The Senate Report explains the rationale behind this provision as follows: . . . [T]he consumer should be notified of his ability to seek redress through . . . any informal dispute settlement mechanism that the warrantor may offer. Furthermore, if the warrantor is required to inform the consumer of his rights in the event the warrantor fails to perform, the Committee believes that the warrantor will have greater incentive to perform as promised.” Disclosure of Written Consumer Product Warranty Terms and Conditions, Pre-Sale Availability of Written Warranty Terms, and Informal Dispute Settlement

encourage consumers to avail themselves of the option, if available. As written, the Rule requires the warrantors to initially fund the Mechanism at a level sufficient to permit the Mechanism to execute its statutory obligations. As of the date of this audit, all manufacturers were in compliance with the funding requirement.

Rule 703.3<sup>45</sup> also requires that the warrantor and the Mechanism remain sufficiently insulated from each other. NCDS meets this statutory obligation in several ways. Manufacturers do not have direct access to case administrators since they confer regularly with manufacturers' representatives during the administrative process. Regulatory and compliance issues are handled separately by the Regulatory and Compliance Manager, who is segregated from the administrative process.

The auditor is without sufficient knowledge to be able to comment on whether personnel decisions are based on merit. From observation, however, personnel at NCDS are hired by the CEO of the organization, using objective hiring and promotion criteria NCDS has established over the years. Manufacturers neither influence nor have any input into this process.

Finally, § 703.3 imposes on the Mechanism the obligation to establish "any other reasonable requirements necessary to ensure that the members and staff act fairly and expeditiously in each dispute."<sup>46</sup> This mandate is carried out by NCDS, in part, through its Arbitrator's Manual, which sets forth the fairness standards by which arbitrators must comply. Page 1 of the Manual states:

Manufacturers have selected NCDS to administer their warranty dispute settlement programs because of our experience and reputation for quality and service in administering an informal dispute resolution program. NCDS is obligated to maintain substantial compliance with all the requirements of the process as set forth in the Magnuson-Moss Warranty Act. Accordingly, NCDS relies on its Arbitrators to always remain unbiased and impartial before, during and after the process. In line with this duty, you must contact your Case Administrator IMMEDIATELY when circumstances impair your ability to operate as an impartial third-party.

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Mechanisms (Rules, Regulations, Statements and Interpretations Under Magnuson-Moss Warranty Act), 40 FED. REG. 60168, 60176 (Dec. 31, 1975).

<sup>45</sup> Rule 703.3(b) states:

The warrantor and the sponsor of the Mechanism (if other than the warrantor) shall take all steps necessary to ensure that the Mechanism, and its members and staff, are sufficiently insulated from the warrantor and the sponsor, so that the decisions of the members and the performance of the staff are not influenced by either the warrantor or the sponsor. Necessary steps shall include, at a minimum, committing funds in advance, basing personnel decisions solely on merit, and not assigning conflicting warrantor or sponsor duties to Mechanism staff persons.

<sup>46</sup> Rule 703.3(c).

Both arbitrators and NCDS staff are also committed to ensuring that all disputes are resolved within the 40-day time limit established by Magnuson-Moss. (See pg. 35 of the audit, which confirms that the average number of days from case initiation to case closure is 33). Staff must initiate a case within 48 hours of filing, provided it meets eligibility requirements. NCDS appoints arbitrators within a day or so, or on the same date as initiation if the consumer has expressed preference for an oral hearing or a board hearing, which is documents only.

Staff do not interface with arbitrators, except at arbitrator training programs. Required insulation exists.

## FINDINGS

The auditor finds that NCDS personnel is dedicated to protecting relationship boundaries between NCDS, the warrantor, and its members, thus preserving a fair and accessible informal dispute resolution mechanism.

## CONCLUSION

**The Mechanism is in substantial compliance with § 703.3.**

### B. MEMBERS' QUALIFICATIONS – § 703.4

Rule 703.4 focuses on “members” as defined by Rule 703.1(f),<sup>47</sup> nomenclature unique to the informal dispute resolution program. Rule 703.4<sup>48</sup> is clear to establish that arbitrators cannot have “direct involvement in the manufacture, distribution or sale or service of any product.” This insulation is critical in preserving arbitrator impartiality. To this end, during the 2023 training program, the arbitrators were cautioned to disclose ANY connection to the manufacturer, included cars driven by them or someone in their immediate family and whether they have arbitrated before with that manufacturer’s representative. The disclosures enhance the confidence level that participants have in the arbitrator and in the decision-making process.

Hearings conducted by a board, typically a three-person panel, also have rigid and similarly structured requirements for service and disclosure. As with a single arbitrator, NCDS arbitrators are duty bound to make disclosures at the earliest possible point in the arbitration process, usually when the

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<sup>47</sup> Rule 703.1(f) states:

Members mean the person or persons within a Mechanism deciding disputes.

<sup>48</sup> This rule specifies the level of insulation required for members (*i.e.*, arbitrators to serve) and precludes a member from serving if they are a party to the dispute, an employee or agent of a party, “a person who is or may become a party in any legal action, including class actions.” However, a member is not disqualified simply because they own an investment interest in the party. All arbitrators are admonished to disclose this information to the parties at the hearing, if not before, to ensure full transparency. If a party objects to the service of the arbitrator, the arbitrator is removed by NCDS and a new arbitrator is appointed within 48 hours.

arbitrator confirms the appointment. A random review of files indicates that to the extent this issue surfaces, arbitrators are in full compliance.

Rule 4 of the “*Rules & Procedures for the Informal Non-Binding Resolution of Automobile Warranty Disputes*” explains the early disclosure requirement:

**QUALIFICATIONS AND IMPARTIALITY OF ARBITRATOR(S)**

All persons on the NCDS National Panel are deemed competent to hear and decide automobile warranty disputes. An arbitrator selected to serve under these Rules must, at the time of appointment or as soon afterwards as it becomes known, disclose to NCDS any information likely to affect impartiality, or create an appearance of partiality or bias. Such information includes past and present financial, business, personal or professional relationships with any of the parties, their representatives or witnesses, or employees of NCDS or the vehicle manufacturer. Upon receipt of such information from the arbitrator or any other source, NCDS shall decide whether the arbitrator should be disqualified. If the disclosure of information occurs at the oral hearing, and either party objects, the arbitrator shall be disqualified and a new arbitrator shall be appointed promptly by NCDS. Any determination on arbitrator disqualification shall be conclusive.

Thus, arbitrators must conduct a preliminary investigation into whether conflicts – business, professional, financial, personal – exist. Arbitrators must disclose whether they have previously arbitrated cases involving the manufacturer or its representative. If a disclosure is made, and it is waived by all parties, the arbitrator may proceed to conduct the hearing.

If the disclosure is not waived, NCDS must determine whether the arbitrator should be disqualified. In making recusal determinations, NCDS staff assess whether there is a direct and substantial relationship which to a reasonable person might give rise to an impression of partiality. Any doubts concerning an arbitrator’s ability to remain neutral is resolved in favor of removal. This outcome assures the integrity of the process and the ability of NCDS to comply with federal and state regulations.

Other rules which reflect NCDS’ compliance with notions of fairness and impartiality include Rule 9 (Arbitration in the Absence of a Party)<sup>49</sup> and Rule 12 (Communication with the Arbitrator).<sup>50</sup>

The Arbitrator’s Training Manual includes an entire section dedicated to explaining the interface between NCDS and the auto warranty arbitrator, and the continued commitment to neutrality. On page 1, the Manual states, “The relationship between the Manufacturer and NCDS is an “arms-length” contractual relationship. To provide truly neutral dispute settlement services, it is important that NCDS, and you, the third-party neutral, have no interest in the outcome of any case.”

Additional caveats are found in the Arbitrator’s Manual. For example, the Manual states that arbitrators should avoid being in a room with one party to prevent an extemporaneous exchange,

<sup>49</sup> Rule 9 permits *ex-parte* hearings only after assurance of proper notice to all parties.

<sup>50</sup> Rule 12 prohibits communication with the arbitrator except at the oral hearing.

however innocuous. Test drives include their own set of protocols, requiring two separate test drives if the vehicle has limited capacity. At all times, the consumer is responsible for conducting the test drive, and notifying the arbitrator when the non-conformity manifests.

Finally, Rule 703.4(c) requires that members “be persons interested in the fair and expeditious settlement of consumer disputes.” To this point, it is relevant that all disputes processed in 2023 were concluded within the 40-day time limit required by Magnuson-Moss.

## FINDINGS

Arbitrators operate at the highest levels of fairness and impartiality. Rules are in place (reinforced by information in the Arbitrator’s Training Manual) that assures no arbitrator will serve without making an investigation of disqualifying events or circumstances and disclosing such information when found. Adequate protocols also exist to insulate arbitrators from warrantors and staff.

## CONCLUSION

**The Mechanism is in substantial compliance with § 703.4.**

### C. MECHANISM’S OPERATIONS – § 703.5

Rule 703.5 includes several operational dimensions, aimed at protecting the 40-day time limit while not jeopardizing the quality of the case administration process. Under this Rule, the Mechanism must establish written protocols for the submission and processing of disputes, which includes items specified in paragraphs (b) through (j) of the section.<sup>51</sup> All of this information is available to consumers through booklets on the NCDS website. Consumers also receive this information if requested directly by contact with an NCDS representative.

Rule 703.5(b) requires the Mechanism, once notified of a dispute, to immediately inform both the warrantor and the consumer that it has received the dispute. Before NCDS initiates the claim, it will check for eligibility.<sup>52</sup> A dedicated point person at NCDS oversees all eligibility issues.

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<sup>51</sup> Items include the “investigative role” of NCDS, notice of the 40-day timeline for case processing and disclosure of the decision, oral presentation protocols and logistics, including *ex-parte* hearings, settlement obligations, prior resort, and the non-binding nature of the arbitral determination unless accepted by the consumer.

<sup>52</sup> Related to the question of eligibility is whether a leased vehicle is covered under the terms of Magnuson-Moss. In 2015, the Federal Trade Commission declined to issue an interpretation of the application of Mag-Moss to leases specifically, stating that the issue was sufficiently clear. It opined: “The majority of courts have found that a lessee meets the definition of “consumers” in the MMWA because warranty rights are transferred to lessees, or the lessees are permitted to enforce the contract under state law, among other reasons.” *See e.g., Am. Honda Motor Co. v. Cerasani*, 955 So.2d 543 (Fla. 2007)(holding that a long-term lessee who is entitled to enforce a warranty under Florida’s Lemon Law also has a claim under the Magnuson-Moss Warranty Act). Final Action Concerning Review of Interpretations of Magnuson-Moss Warranty Act; Rule Governing Disclosure of Written Consumer Product Warranty Terms and Conditions; Rule Governing Pre-Sale Availability of Written Warranty Terms; Rule Governing

### *Filing of the Claim*

Cases are initiated in the NCDS process by the filing of a claim form. The claim form is accessed electronically, or it is found in the Owner's Manual of the participating manufacturer.<sup>53</sup>

Step one of the initiation process occurs when a consumer submits a claim form to NCDS under the terms of the Manufacturer's New Vehicle Warranty. NCDS uses an E-file system that is easily accessed by the consumer, if they prefer to file a claim electronically. Consumers can also mail, fax, or email their claim. At the time of filing, the dispute must be under warranty. Once eligibility is determined, the case is initiated within 24 to 48 hours.

The claim is then assigned to an arbitrator, who is chosen from the National Panel. This selection is random, based on a rotation and consideration of geographic limitations. Every effort is made to appoint an arbitrator within 25 miles or less of the consumer's location. The appointment process is managed entirely by NCDS. The parties, unlike traditional arbitration, do not have input into this process. An Assignment Notification is sent out to the parties, and the parties are informed which case administrator has been assigned to manage the case. Arbitrators may be able to withdraw from a case for good cause and the decision for recusal, if any, is to be made by NCDS solely, after consulting with the parties and seeking written submissions.

As part of the Mechanism's investigatory function,<sup>54</sup> the case administrator collects all evidence that is received, including the Manufacturer's Response Form and any other documents. This evidence is forwarded to the arbitrator before the scheduled hearing.

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Informal Dispute Settlement Procedures; and Guides for the Advertising of Warranties and Guarantees. 80 FED. REG. 42710, 42715 (July 15, 2015).

<sup>53</sup> For example, FCA US LLC includes this form in the middle of their "Customer Care, Arbitration & Lemon Law Rights" booklet which is found in the glove box of their vehicles.

<sup>54</sup> Rule 703.5(c) states:

The Mechanism shall investigate, gather and organize all information necessary for a fair and expeditious decision in each dispute. When any evidence gathered by or submitted to the Mechanism raises issues relating to the number of repair attempts, the length of repair periods, the possibility of unreasonable use of the product, or any other issues relevant in light of Title I of the Act (or rules thereunder), including issues relating to consequential damages, or any other remedy under the Act (or rules thereunder), the Mechanism shall investigate these issues. When information which will or may be used in the decision, submitted by one party, or a consultant under § 703.4(b) of this part, or any other source tends to contradict facts submitted by the other party, the Mechanism shall clearly, accurately, and completely disclose to both parties the contradictory information (and its source) and shall provide both parties an opportunity to explain or rebut the information and to submit additional materials. The Mechanism shall not require any information not reasonably necessary to decide the dispute.

### *Case Processing – Settlements Through “Mediation” and Hearings*

Once the case is initiated, which means that the warrantor has received notice pursuant to § 703.5(c), the parties receive a notice of hearing within ten days of the hearing date. If a party does not receive such a notice, the hearing date is rescheduled. During the pendency of the hearing, the manufacturer can contact the consumer directly and attempt to resolve the dispute. If a formal offer of settlement is made, the NCDS administrator will discuss the offer. Should either party prefer a more traditional form of mediation, with an outside neutral, NCDS will accommodate the request but preserve the arbitration hearing date.

After hearings commence, the arbitrator cannot serve as mediator. If a party makes a settlement offer or overture during the hearing, the arbitrator will suspend the proceedings for a brief period to facilitate dialogue between the parties. This protocol ensures that arbitrators are not influenced by settlement offers which might be rejected. If the case settles, the manufacturer will deal directly with the consumer and NCDS will be immediately contacted and notified of the settlement. If the case does not settle, the arbitrator will move forward with the case, hear the evidence, and decide the case on the merits.

### *Investigations and Inspections*

NCDS rules permit the arbitrator, before deciding the case to both inspect the car and to obtain the use of technical experts.<sup>55</sup> While inspections and test drives are common, the use of technical experts is not. In the 80 case files reviewed for the 2023 audit, not a single arbitrator or board decision identified the use of a technical expert.

Independent inspections are conducted to confirm or deny one of the party’s’ representations or to resolve conflicts in testimony between the parties. The issue with independent inspections, while permitted under Mag-Moss, is that arbitrators may rely on them as a basis for making their decisions. The dispute resolution process is not intended to diagnose the vehicle’s alleged mechanical problem but rather to resolve the question of whether the manufacturer has breached the warranty by failing to repair a defect (not design flaw) that substantially impairs the use, value, or safety of the vehicle.

### *Case Determinations*

In the absence of case settlement, § 703.5(d) requires arbitrators to render a fair decision, which includes all evidence submitted at the oral hearing. This provision applies even if a consumer waives oral hearing and elects instead a board determination. A decision rendered by the arbitrator or board must include any remedies available under the statute – specifically, repair, replacement, refund, reimbursement for expenses, and compensation for damage. A time limit for performance also must be included. Based on random case reviews, arbitrators fully complied.

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<sup>55</sup> See Rule 11, “Rules & Procedures for the Informal Non-Binding Resolution of Automobile Warranty Disputes” and Rule 13, “California Dispute Settlement Program Hearing Process Rules.” Also, see § 703.5(c), **Mechanism’s Duty to Aid in Investigation.**



Rule 703.5(d) also imposes on the Mechanism the obligation, unless cause is established,<sup>56</sup> to process cases as expeditiously as possible but within 40 days of notification of the dispute. All disputes in 2023 were managed and processed to closure well within the 40-day time limit.

Listed below is a breakdown by manufacturer.

**Average Days to Close – by Participating Manufacturer<sup>57</sup>**  
**January 1, 2023 – December 31, 2023**

Manufacturer	Days to Close
Lexus	31
Toyota Motor Sales, USA, Inc.	33
FCA US LLC	35
Honda	33
Acura	34
Tesla	33
<b>Average Days to Close/NCDS Totals</b>	<b>33</b>

*Compliance with Arbitral Determinations*

FTC Rule 703.6(h) requires that the Mechanism ascertain from the consumer within ten working days of the date for performance whether in fact performance has occurred. The Mechanism has a protocol in place for making this assessment. If an award includes a remedy, the consumer is asked to fill out a form that confirms performance within the prescribed time limit. Often, the consumer does not return the letter. Only a handful of case files the auditor reviewed had signed forms in the file. This approach suggests that NCDS assumes compliance with respect to performance without proper notification to the consumer.

**RECOMMENDATION**

The letter from NCDS should indicate that if the consumer does not respond, NCDS will assume completion of performance to the satisfaction of the consumer.

**FINDINGS**

NCDS administration overall is excellent. Case diary notes track the development of each case. Form letters are used to process most cases, which ensures predictability and consistency in the case administration process.

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<sup>56</sup> Under § 703.5 of Magnuson-Moss, the Mechanism may delay performance if the delay is due solely to the failure of a consumer to provide the required information during the intake process, or if the consumer has not attempted to seek redress directly from the warrantor, assuming prior resort.

<sup>57</sup> There were no decisions for Fisker or Mitsubishi in the 2023 audit year.



## CONCLUSION

**The Mechanism is in substantial compliance with § 703.5.**

### D. RECORDKEEPING – § 703.6

Rule 703.6 requires the Mechanism to maintain certain records<sup>58</sup> and, upon request, to turn the records over to the auditor during the audit period.

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<sup>58</sup> Rule 703.6 (a)(1)-(12) states:

(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.
- (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) 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;
- (9) A copy of the disclosure to the parties of the decision;
- (10) A statement of the warrantor's intended actions(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 required in subsections 1 through 4 is maintained as mandated by Magnuson-Moss. Subsections 5 and 6 are more problematic. Some files contain other forms of communications submitted by the parties. The case diary form only tracks information in the file. Thus, validation of all information necessitated by subsections 5 and 6 of the Rule 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, exhibits, and phone calls pertaining to their cases. To validate this dimension, the audit would entail retrieving all such files as a first step, a function beyond the scope of this audit.

Information set forth in subsections 7 through 10 is also appropriately maintained. However, the information in subsections 11 and 12 were not audited for accuracy and completeness because of the impracticability of such a review. The examination of the case file contents revealed few instances of this type of information in the file, yet nothing indicated that such information was missing.

Under § 703.6,<sup>59</sup> each of the participating manufacturers must submit a semi-annual index of their disputes grouped under brand name and grouped under product model as required. Indices are complete and consistent with all requirements. Collectively, the arbitration program's statistics identify 4,410 disputes filed in 2023. Of these, 2,400 cases were eligible for Automobile Warranty Arbitration Program review, 403 were withdrawn after filing, and 1,607 cases were determined by the Automobile Warranty Arbitration Program to be out-of-jurisdiction.<sup>60</sup> Of the in-jurisdiction closed cases, NCDS reports that 2,159 were arbitrated and 241 were mediated.<sup>61</sup> There were 1,562 arbitrated decisions which were reported as "adverse to the consumer" per § 703.6(e), which represents 82% of all arbitrated cases.<sup>62</sup> While this may appear to be a high percentage, it is important to note that under Magnuson-Moss, the threshold for recovery is a *substantial* non-conformity with use, value, or safety. Two points are noteworthy. First, consumers may and often do employ mediation, which favors a win-win resolution for the parties. In meetings with regulators and service center directors, the use of internal mediation, which obviates the need to file a formal claim with NCDS, is on the rise. Second, the informal dispute settlement mechanism is intended to be part of a panoply of options, not exclusive. Consumers dissatisfied with the arbitral outcome may pursue other state and federal remedies outside of Magnuson-Moss.

Pursuant to § 703.6,<sup>63</sup> NCDS also must document disputes in which the warrantor has refused to

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<sup>59</sup> Rule 703.6(b) states:

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

<sup>60</sup> Typically, a case which is deemed ineligible is due to the consumer exceeding the terms of the warranty. If a case is deemed ineligible for the program, the consumer is informed immediately, along with a justification for why jurisdiction was denied.

<sup>62</sup> This percentage is based on the survey population total of 2,213.

<sup>63</sup> Rule 703.6(c) states:

The mechanism shall maintain an index for each warrantor as will show:

abide by a decision. As a matter of general corporate policy, all participating manufacturers agree to comply with arbitration decisions at the time they agree to offer the informal dispute settlement program. This information is supplied as part of NCDS's Annual FTC § 703.6(c)(1) and (2) Report.

Magnuson-Moss imposes a tight time limit for case processing. NCDS is mandated to ensure that all complaints are processed and concluded within 40-days.<sup>64</sup> According to the statistical index reports, as of December 2023, all cases were processed within the 40-day time limit required by statute. NCDS typically provides a comprehensive report of all individual cases delayed beyond 40 days during the period of the audit. Such reports include the customer's name, case file number, and the number of days the case has been in process on the date the report was generated.

Although a review of the report indicates compliance with this statutory requirement, the auditor did not assess its accuracy. The requirement is for NCDS to maintain an index, which it does, to show whether any cases filed during the calendar year exceed the 40-day processing time limit. All reports under this section are available for review by the regulatory agencies.

Finally, Magnuson-Moss requires that records be maintained for a period of four years, and that such records be reviewed as an annual feature of the audit.<sup>65</sup> All information listed in the 12 subsections detailed in the previous section is maintained for the required four years. The auditor inspected a collection of case files for each region, and inspected and evaluated a random selection of case files from the four-year period for completeness. All files were appropriately maintained and readily available for audit.

## CONCLUSION

**The Mechanism is in substantial compliance with § 703.6.**

E.

F. CONDUCTING AN ANNUAL AUDIT – § 703.7

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(1) All disputes in which the warrantor has promised some performance (either by settlement or in response to a mechanism decision) and has failed to comply; and of each warrantor's disputes grouped under brand name and subgrouped under product model.

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

<sup>64</sup> Rule 703.6(d) states:

The mechanism shall maintain an index as will show all disputes delayed beyond 40 days.

<sup>65</sup> Rule 703.6(f) states:

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.

Rule 703.7 mandates a yearly audit.<sup>66</sup> The nature of the audit is explained in detail in the rule. It includes an evaluation of the warrantors' efforts to make consumers aware of the mechanism's existence, a review of the indices maintained pursuant to § 703.6(b), (c), and (d), and an analysis of a random sample of disputes administered by the Mechanism to determine the adequacy of their investigation efforts, mediation usage, and follow-up. In terms of prescribed methodology, "paragraph (b)(3)(i) permits primary emphasis to be placed on analysis by the auditor of the experiences of a sample of consumers who have utilized the Mechanism."<sup>67</sup> This analysis includes oral or written contact with consumers who filed disputes.

## FINDINGS

This is the fourth audit conducted by Bedikian in which the Automobile Warranty Arbitration Program was evaluated for compliance with Magnuson-Moss requirements. The auditor reviewed the last several prior audits to assure for completeness and comprehensiveness. Records subject to § 703.6 (record-keeping) are being kept and were made available for review.

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<sup>66</sup> Rule 703.7 states:

- (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."
- (b) Each audit provided for in paragraph (a) of this section shall include at a minimum the following:
  - (1) Evaluation of warrantors' efforts to make consumers aware of the Mechanism's existence as required in § 703.2(d) of this part;
  - (2) Review of the indexes maintained pursuant to § 703.6(b), (c), and (d) of this part; and,
  - (3) Analysis of a random sample 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.)

<sup>67</sup> Disclosure of Written Consumer Product Warranty Terms and Conditions, Pre-Sale Availability of Written Warranty Terms, and Informal Dispute Settlement Mechanisms (Rules, Regulations, Statements and Interpretations Under Magnuson-Moss Warranty Act), 40 FED. REG. 60168, 60213 (Dec. 31, 1975).

## CONCLUSION

**The Mechanism is in substantial compliance with § 703.7.**

### G. STATUTORY REQUIREMENT OF OPEN RECORDS AND PROCEEDINGS – § 703.8

Rule 703.8 speaks to the nature of the proceedings,<sup>68</sup> and “it is intended to strike a balance between the warrantor and Mechanism’s need for confidentiality and the competing need for public access and scrutiny of Mechanism operations that is implicit in Section 110(a)(4) of the Act.”<sup>69</sup>

## FINDINGS

The above statutory requirement is memorialized in the “*Rules & Procedures for the Informal Non-Binding Resolution of Automobile Warranty Claims*,” placing all parties on sufficient notice that hearings may involve non-parties to the dispute. Rule 11 states:

### ATTENDANCE AT HEARINGS – OPEN PROCEEDINGS

All parties to the dispute, and their representatives if any, are entitled to attend the hearing. Unless excused by the arbitrator, the registered owner of the vehicle shall be present. Witnesses may attend the hearing subject to the arbitrator’s authority to limit attendance or sequester witnesses during all or part of the hearing. The arbitrator shall determine whether any other person may attend the hearing, and such determination is conclusive. Under federal law, arbitrations conducted under these rules are open proceedings. This means that a member of the public, or a state or federal regulator, may attend and observe the hearing.

While the limits of privacy and confidentiality are subject to the requirements of § 703.8, NCDS data security is an essential part of confidentiality. The NCDS internal processes are set up to provide multiple layers of protection. In addition, the segregation of task, with dedicated point persons assigned to discrete administrative tasks with no cross-over, assures ethical compliance.

NCDS does not retain files more than four years. Physical files are shredded. Electronically stored files include an automatic destruction date.

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<sup>68</sup> The relevant language is § 703.8(b), which states:

Except as provided under paragraphs (a) and (e) of this section, and paragraph (c) of § 703.7 of this part, all records of the Mechanism may be kept confidential, or made available only on such terms and conditions, or in such form, as the Mechanism shall permit.

<sup>69</sup> Disclosure of Written Consumer Product Warranty Terms and Conditions, Pre-Sale Availability of Written Warranty Terms, and Informal Dispute Settlement Mechanisms (Rules, Regulations, Statements and Interpretations Under Magnuson-Moss Warranty Act), 40 FED. REG. 60168, 60214 (Dec. 31, 1975).

**CONCLUSION**

**The Mechanism is in substantial compliance with § 703.8.**

## Section V

### Field Audit of Three Geographic Areas

For this year’s audit, the auditor reviewed three geographic areas – California,<sup>70</sup> Ohio, and Florida.

#### California

##### A. CASE LOAD AND BASIC STATISTICS, AND CONSUMER SURVEY RESPONSES

The survey for California consisted of 442 closed NCDS and CDSP cases, which included 67 mediated cases.<sup>71</sup> From this universe, we surveyed 52 customers. Consistent with prior audits, surveyed customers’ level of program satisfaction, including arbitrator performance, directly correlates to whether they achieved the desired outcome in arbitration. The percentage of adverse arbitration decisions in California accounted for 77% of the total cases. See table below.

Survey	Cases
California - Arbitrated Awarded	85
California - Arbitrated Awarded No Action	290
<b>Total Cases</b>	<b>375</b>
<b>Percentage of Adverse Decisions</b>	<b>77.33%</b>

The following table breaks down the sample size and response rate based on case outcome, followed by a breakdown of consumer responses.<sup>72</sup>

<sup>70</sup> California’s regulatory scheme for informal dispute resolution includes the Tanner Consumer Protection Act (part of the Song-Beverly Consumer Warranty Act), CAL. CIV. CODE § 1793.22 *et seq.* and Title 16, Professional and Vocational Regulations, CAL. CIV. CODE § 3396.1 *et seq.* Title 16 specifies minimum standards for manufacturers, minimum standards for arbitration programs, and certification procedures should a manufacturer choose to have a certified program. As of this audit, only Toyota, FCA US LLC, and Tesla are certified.

<sup>71</sup> Statistics may appear to be at odds with one another. This is due to data being collected and reported based on different regulatory mandates using different terminology for similar concepts. Important distinctions are noted.

<sup>72</sup> The methodology used in all consumer surveys appears in Section VII and it is explained in greater detail.

Survey	Population	Sample Size	Response Rate %
California - Arbitrated Awarded	85	12	14%
California - Arbitrated Awarded No Action	290	31	11%
California - Mediated	67	9	13%
<b>Total</b>	442	52	12%

**CALIFORNIA ARBITRATED CASES AWARDED SURVEY RESULTS<sup>73</sup>**

**Pre-filing experience with dealer or manufacturer.** To understand the consumers’ pre-filing experience, respondents were asked broad questions related to their pre-filing contacts with either the dealer or the manufacturer. The results show before filing a claim with NCDS, 92% of the participants indicated they attempted to discuss their concerns with the manufacturer directly. When asked how many times the dealer or manufacturer attempted to repair their vehicle, 67% of respondents stated “other,” while 17% stated “two times,” and 17% stated “three times.” The majority of participants reported they learned about the NCDS Arbitration Program through Internet or Social Media (25%), Manufacturer Customer Service Representative (25%) Glove-Box Materials (17%), Dealership Personnel (17%) and Attorney (17%). Participants also reported 17% for “other” resources. Twenty-five percent (25%) of the participants stated they were informed of the Arbitration Program from the manufacturer by “mailed or e-mailed information.” The other 75% indicated “other” sources. Participants did not identify these sources.

**Filing of the claim with NCDS.** To identify consumers’ experience related to the actual filing of their claim with NCDS, participants were asked questions concerning the filing method, clarity of instructions, and style of hearing. One hundred percent (100%) of the participants reported they used an E-file method to file their claim. The respondents were then asked how clear the instructions were for filing their claim of which 75% indicated the instructions on the claim form were “very clear,” and 25% stated that the instructions were “somewhat clear.” Once the participants E-filed their claim with NCDS, 92% reported it took between one to two business days for NCDS to acknowledge their claim and initiate the administrative process and 8% reported “greater than two business days.”

**Experience after filing a claim with NCDS.** To capture the pre-hearing process, respondents were asked to rate their experience after they filed their claim with NCDS. Based on the results, it was found that 92% of participants received and of those that received it 92% reviewed the Frequently Asked Questions (“FAQs”) packet at [www.ncdsusa.org](http://www.ncdsusa.org). The information presented in the FAQs was “very clear” as reported by 67% of the respondents and “somewhat clear” by 25% of respondents; eight percent (8%) reported “do not know.” Fifty percent (50%) of the participants stated the information presented in the FAQs was “very helpful” while 42% reported it was “moderately helpful” and 8% reported “do not know.”

When asked if participants received or reviewed the Non-Binding Arbitration Program Rules at [www.ncdsusa.org](http://www.ncdsusa.org), 83% respondents reported “yes” and 83% of those that received them reviewed the information. The Program Rules were “very clear” to 50% of participants, “somewhat clear” to 33% and 17% of participants reported “do not know.” The respondents were then asked if the Program Rules were

<sup>73</sup> California Overall Survey Results are part of the Appendix which appear in a separate PDF document filed with the audit.



helpful in explaining the arbitration process of which 67% stated they were “*very helpful*” and 33% stated they were “*moderately helpful*.” All (100%) of the respondents indicated they received a hearing notice from NCDS, and 92% reported before or after they received their hearing notice, they did not hire an attorney to represent them or to be present at the hearing. Based on the results, 25% did not request a “documents only” hearing after filing their claim. Of the 75% who requested a documents only hearing, all cited “*more convenient to have an arbitration panel review documents*” as the reason for selecting this feature.

**The evidentiary hearing process.** To assess the actual evidentiary process, participants were asked to convey their experience with distinct phases of the hearing process. Sixty-seven (67%) of the participants indicated that the arbitrator started the hearing on time and 33% reported it was not started on time. All (100%) reported that the arbitrator explained the evidentiary hearing process, re-affirmed his/her impartiality, and allowed both parties a full and fair opportunity to present their proofs during the actual hearing. One hundred percent (100%) of the participants stated that the arbitrator allowed both parties a full and fair opportunity to present their proofs. One hundred percent (100%) did not request a third party, independent inspection of their vehicle.

**Post-award experience.** Next, it was important to evaluate the consumers’ experience after they received their award. When it was time to communicate the award to the consumer, 100% of the sample population stated the arbitrator communicated this award by email. Sixty-seven percent (67%) of the consumers stated that the relief awarded to them was a refund, where the manufacturer would give money for their vehicle, 25% stated that their relief was a replacement remedy, where the manufacturer would replace the existing car with a new car, and 8% stated that their remedy was a repair.

One hundred percent (100%) of the participants stated the arbitrator accurately identified the nature of the non-conformity alleged in their claim. After identifying the non-conformity, 100% of participants stated that the arbitrator included a summary of the testimony at the hearing. Ninety-two percent (92%) of the participants stated that the arbitrator’s award was clear and 100% reported the arbitrator “*rendered a reasoned decision.*” All 100% of the participants returned to NCDS the Decision Acceptance/Rejection Form, whether they accepted the decision or not.

**Arbitrator satisfaction.** To understand arbitrator satisfaction among the consumers, the participants were asked how well the arbitrator understood their case. Eighty-three percent (83%) of the participants rated the arbitrator’s understanding of the case as “*excellent*” and 17% reported it as “*good.*” Seventy-five percent (75%) reported the arbitrator’s objectivity and fairness as “*excellent*” while 25% reported it as “*good.*” With respect to the arbitrator’s impartiality, 75% of the participants responded that the arbitrator’s demeanor was “*excellent,*” 17% responded that it was “*good,*” and 8% responded that it was “*average.*”

**Satisfaction with NCDS processing claim.** To measure consumers’ satisfaction with NCDS processing their claims, respondents were asked to rate NCDS in four different areas. First, respondents were asked to rate the timeliness of the communications between them and NCDS staff. Eighty-three percent (83%) rated the timeliness aspect of the communications as “*excellent,*” 17% rated the timeliness as “*good.*” Next, participants were asked to rate the helpfulness of the NCDS staff. Seventy-five percent (75%) of the participants rated the helpfulness of the staff as “*excellent,*” 17% rated the staff as “*good*” and 8% reported it as “*fair.*” To help gauge consumers’ experience with the arbitration program, participants were asked to rate their overall participation in the NCDS Arbitration Program. For this question, 67% of

the participants rated NCDS as “*excellent*,” 17% rated NCDS as “*good*,” and 17% rated NCDS as “*poor*.” Finally, respondents were asked if they would recommend the Arbitration Program to friends and family. Ninety-two percent (92%) of the participants responded “*yes*.”

## CALIFORNIA ARBITRATED CASES NO ACTION SURVEY RESULTS

**Pre-filing experience with dealer or manufacturer.** To understand the consumers’ pre-filing experience, respondents were asked broad questions related to their pre-filing contacts with either the dealer or the manufacturer. The results show before filing a claim with NCDS, 97% of the participants indicated they attempted to discuss their concerns with the manufacturer directly. When asked how many times the dealer or manufacturer attempted to repair their vehicle, 10% stated “*one time*,” 42% stated “*three times*,” and 48% stated “*more than three times*.” The majority of the participants reported they learned about the NCDS Arbitration Program through the Internet or Social Media (29%), Manufacturer Customer Service Representative (23%), Glove-Box Materials (13%), Dealership Personnel (9%) and 16% reported “*other*.” When asked how the manufacturer or dealer informed the consumer of the NCDS Arbitration Program (distinct from the above query), 27% of the participants stated they were informed of the Arbitration Program over the phone, 18% reported by mail or e-mail, 27% reported via the website and 27% reported other sources, however, these sources were not delineated in consumer responses.

**Filing of the claim with NCDS.** To identify consumer’s experience related to the actual filing of their claim with NCDS, participants were asked questions concerning the filing method and the clarity of the instructions. Ninety-seven percent (97%) of the participants reported they used an E-file method to file their claim. The respondents were then asked how clear the instructions were for filing their claim of which 26% of the participants indicated the instructions on the claim form were “*very clear*,” 61% stated that the instructions were “*somewhat clear*,” 10% reported them as “*not clear*,” and 3% reported they did not know. Once the participants filed their claim with NCDS, 57% reported it took one or two business days for NCDS to acknowledge their claim and initiate the administrative process. Forty-three percent (43%) stated it took “*greater than two business days*.”

**Experience after filing a claim with NCDS.** To capture the pre-hearing process, respondents were asked to rate their experience after they filed their claim with NCDS. Based on the results, it was found that 68% of participants received the Frequently Asked Questions (FAQs) at [www.ncdsusa.org](http://www.ncdsusa.org), of which 81% indicated they reviewed this information.<sup>74</sup> The information presented in the FAQs was “*very clear*” as reported by 26% of the respondents, “*somewhat clear*” by 48%, “*not clear*” by 13% and 22% reported they did not know. Thirteen percent (13%) of the participants stated the information presented in the FAQs was “*very helpful*” while 58% reported it was “*moderately helpful*,” 13% as “*not helpful at all*,” and 13% reported “*do not know*.”

When asked if participants received or reviewed the Non-Binding Arbitration Program Rules at [www.ncdsusa.org](http://www.ncdsusa.org), 77% reported “*yes*,” however, 81% stated they had **reviewed** the Rules.<sup>75</sup> The Program

<sup>74</sup> This result is inconsistent with the percentage of participants who claimed they did not receive a copy of the FAQs from NCDS. However, consumers may receive the FAQs through other sources, which would explain the discrepancy.

<sup>75</sup> The explanation in FN 74 applies. Consumers can download information directly from the NCDS website.

Rules were “*very clear*” to 16% of participants, “*somewhat clear*” to 52% of participants, “*not clear*” to 26% and 6% reported they did not know. The respondents were then asked if the Program Rules were helpful in explaining the arbitration process of which 16% stated they were “*very helpful*,” 55% acknowledged they were “*moderately helpful*” while 26% felt they were “*not at all helpful*.” Ninety-seven percent (97%) of the respondents stated they received a hearing notice from NCDS, and 100% reported before or after they received their hearing notice, they did not hire an attorney to represent them or to be present at the hearing. Based on the results, 58% of participants did not request a “documents only” hearing after filing their claim and 42% did request a “documents only” hearing. The most common reason provided for why a consumer elected a “documents only” hearing was it was more convenient to have an arbitration panel review the documents, with a response rate of 29%.

**The evidentiary hearing process.** To assess the actual evidentiary process, participants were asked to convey their experience with distinct phases of the hearing process. Ninety-four percent (94%) indicated that the arbitrator started the hearing on time, 78% reported that the arbitrator explained the evidentiary hearing process including re-affirmation of impartiality, and 56% indicated that the arbitrator allowed both parties a full and fair opportunity to present their proofs. Six percent (6%) of the respondents indicated that they requested a third-party independent technical inspection of their vehicle.

**Post-award experience.** Next, it was important to evaluate the consumers’ experience after they received their award. When it was time to communicate the award to the consumer, 87% of the participants indicated that the arbitrator’s decision was communicated by E-mail. Three percent (3%) of the participants indicated that the arbitrator’s decision was communicated by mail. The remaining 10% stated “*other method*.” These participants did not identify the nature of the methodology by which they were informed of the arbitrator’s decision. The NCDS Rules do not allow for telephonic communication of the award.

Nineteen percent (26%) of the participants stated that the arbitrator accurately identified the nature of the non-conformity alleged in their claim and 74% reported that the arbitrator did not accurately identify the non-conformity. After identifying the non-conformity, 55% stated that the arbitrator included a summary of the testimony at the hearing. Forty-five percent (45%) stated that the arbitrator’s decision was clear. Finally, participants were asked to assess whether the arbitrator rendered a reasoned decision. This meant whether the participant agreed with the award, the arbitrator explained the rationale for why the decision was reached. Thirty-five percent (35%) of the participants responded “*yes*” to this question and 65% of the participants responded “*no*.”

**Arbitrator satisfaction.** To understand arbitrator satisfaction among the consumers, the participants were asked how well the arbitrator understood the facts of their case. Seventy-seven percent (77%) rated the arbitrator’s understanding of the facts as “*poor*,” 6% as “*average*,” 13% as “*good*,” and 3% as “*excellent*.” Seventy-four (74%) rated the arbitrator’s objectivity and fairness as “*poor*,” 13% as “*average*,” 10% as “*good*,” and 3% as “*excellent*.” As to the arbitrator’s impartiality during the hearing, 3% rated the arbitrator as “*excellent*,” 10% rated the arbitrator as “*good*,” 10% rated the arbitrator as “*average*,” and 77% rated the arbitrator as “*poor*.” When participants were asked how they perceived the arbitrator’s impartiality with respect to the actual decision, 84% stated that the arbitrator’s impartiality was “*poor*.” Sixteen percent (16%) of the survey participants rated the arbitrator’s impartiality with respect to the decision (in contrast to his/her demeanor at the hearing) as either “*excellent*,” “*good*,” or “*average*.”

**Satisfaction with NCDS processing claim.** To measure consumers' satisfaction with NCDS processing their claims, respondents were asked to rate NCDS in four different areas. Respondents were asked to rate the timeliness of the communications between them and NCDS staff. Twenty-three percent (23%) rated the timeliness aspect of the communications as *"excellent,"* 26% rated timeliness as *"good,"* 26% rated timeliness as *"fair,"* and 26% rated timeliness as *"poor."* Next, participants were asked to rate the helpfulness of the NCDS staff. Nineteen percent (19%) rated the helpfulness of the NCDS staff as *"excellent,"* 26% rated helpfulness as *"good,"* 26% rated helpfulness as *"fair,"* 29% rated helpfulness as *"poor."* In terms of the consumers' overall experience under the NCDS Arbitration Program, 6% rated their experience as *"excellent,"* 19% rated their experience as *"good,"* 3% rated their experience as *"fair,"* and 71% rated their experience as *"poor."* Finally, respondents were asked if they would recommend the Arbitration Program to friends and family. Six percent (6%) of the participants responded *"yes"* and 94% responded *"no."*

## CALIFORNIA MEDIATED CASES

**Pre-filing experience with dealer or manufacturer.** To understand the consumers' pre-filing experience, respondents were asked broad questions related to their pre-filing contacts with either the dealer or the manufacturer. The results show before filing a claim with NCDS, 100% of the participants indicated they attempted to discuss their concerns with the manufacturer directly. When asked how many times the dealer or manufacturer attempted to repair their vehicle, 11% stated, *"one time,"* 11% stated, *"two times,"* 11% stated, *"three times,"* and 67% stated *"other."* The majority of the participants reported they learned about the NCDS Arbitration Program through Internet or Social Media (56%), Glove-Box Materials (22%), while the Manufacturer Customer Service Representative, Dealership Personnel, Attorney, Friends, Family, Co-workers and Prior Program Knowledge were all reported at 11% each. Fifty percent (50%) of the participants with mediated outcomes stated they were informed of the Arbitration Program by talking over the phone. The other 50% reported *"other"* as their means of communication about the program.

**Filing of the claim with NCDS.** To identify consumer's experience related to the actual filing of their claim with NCDS, participants were asked questions associated with the filing method and the clarity of the instructions. One hundred percent (100%) of the participants reported they used an E-file method to file their claim. The respondents were then asked how clear the instructions were for filing their claim of which 89% of the participants indicated the instructions on the claim form were *"very clear"* and 11% stated that the instructions were *"somewhat clear."* Once the participants filed their claim with NCDS, 67% reported it took one or two business days for NCDS to acknowledge their claim and initiate the administrative process. The remaining 33% stated it took *"greater than two business days."*

**Experience after filing a claim with NCDS.** To capture the pre-hearing process, respondents were asked to rate their experience after they filed their claim with NCDS. Based on the results, it was found that 100% of participants received the Frequently Asked Questions (FAQs) at [www.ncdsusa.org](http://www.ncdsusa.org), of which 89% indicated they reviewed this information. The information presented in the FAQs was *"very clear"* as reported by 56% of the respondents, *"somewhat clear"* by 22%, and 22% reported they did not know. Forty-four percent (44%) of the participants stated the information presented in the FAQs was *"very helpful"* while 22% reported it was *"moderately helpful"* and 33% did not know.

When asked if participants received or reviewed the Non-Binding Arbitration Program Rules at [www.ncdsusa.org](http://www.ncdsusa.org), 89% reported “yes,” however, 78% stated they had **reviewed** the Rules. The Program Rules were “*very clear*” to 67% of participants and “*somewhat clear*” to 22% of participants, while 11% reported they did not know. The respondents were then asked if the Program Rules were helpful in explaining the arbitration process of which 78% stated they were “*very helpful*” and 22% responded they were “*moderately helpful*.”

**Post-award experience.** In this section of the survey, respondents reported their resolution outcomes. Sixty-three percent (63%) stated that they had agreed to a refund, 13% stated that they agreed to receive a replacement vehicle, 13% stated that the manufacturer reimbursed them for incidental costs associated with the repair of their car, and 13% reported that no relief was granted.

**The settlement of claim.** To assess the settlement of the consumer’s claim, participants were asked if they agreed to settle their case with the manufacturer before the case proceeded to arbitration of which 89% of respondents stated “yes” and 11% reported “no.” The respondents who stated “yes” to agree to settle their case with the manufacturer were then asked what best described the relief provided in their settlement of claim. (See above).

After the consumer reached a settlement, 50% of the respondents reported they received a letter from NCDS explaining the terms of the settlement and 50% did not receive a letter. After the consumer received their settlement confirmation the results show that 13% of respondents did pursue their case further and 88% did not pursue their case further. Of the participants who decided to pursue their case further, 100% reported they “*re-initiated contact with NCDS.*” This line of questioning was to understand if the consumer pursued any course of action or follow-up for any reason after accepting their settlement.

**Satisfaction with NCDS processing claim.** To measure consumers’ satisfaction with NCDS processing their “mediated” claims, respondents were asked to rate NCDS in four different areas. In the rating the timeliness of the communication with NCDS administration, 100% rated it as “*excellent.*” When participants were asked to rate the helpfulness of the NCDS staff, 89% rated it as “*excellent*” and 11% rated it as “*good.*” Responders rated their overall experience with the program as: 89% rated “*excellent*” and 11% rated it as “*good.*” When respondents were asked whether they would recommend the Arbitration Program to friends and family, 100% responded “*yes.*”

## B. RECORDKEEPING, ACCURACY AND COMPLETENESS

Rule 703.6. mandates various recordkeeping functions,<sup>76</sup> all of which have been previously discussed in Section IV. For the California field audit, the auditor requested a random sample of 20 case

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<sup>76</sup> Rule 703.6 (a)(1)-(12) states:

- (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;

files drawn from all cases closed during the audit period and examined them to determine whether they were complete and available for audit.

## FINDINGS

The results of the random sample inspection of case file folders, confined to § 703.6(a)(1-5), confirm compliance. All case files contained the customer's name, address, and telephone number. The name and address of the warrantor's contact person were included with the initial correspondence that the customer receives from the program. In addition, the various regional office contact addresses and phone numbers were included in each Owner's Manual that accompanies all new vehicles when they are delivered to the consumer.

All case files inspected contained the make and vehicle identification number (VIN) of the vehicle, along with the date of the dispute and the date of the disclosure of the decision. Some files contained letters and additional documents, primarily filed by the consumer. However, there is no way to

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- (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.
  - (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) 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;
  - (9) A copy of the disclosure to the parties of the decision;
  - (10) A statement of the warrantor's intended actions(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.



measure this item, thus the auditor has determined this section to be inapplicable.

The requirements for subsections 6-7 were also met. Oral presentations are a basic component of the NCDS program and § 703.6(a)(7) of Magnuson-Moss requires summaries of the oral presentations to be placed in the case file. In the case files reviewed for this region, NCDS was in full compliance.

A critical part of the NCDS program and Magnuson-Moss specifically is the disclosure of the arbitrator's decision (subsections 8-9). The statute mandates that a copy of the decision be inserted into the file and available for review during the annual audit. Unless a case was withdrawn or settled prior to hearing, all files the auditor reviewed contained this information.

Under subsection 10, the warrantor's intended action(s) and performance are linked together. The auditor validates this item in terms of performance verification, which is the responsibility of NCDS. NCDS' protocol is to send a survey to the customer following receipt of the customer's acceptance of an arbitral award which grants a remedy. The survey asks whether the required performance has taken place. As noted elsewhere in this audit and in prior audits, few returned forms exist in the file. 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 implemented per the award. It is appropriate to assume, in the absence of conflicting data, that performance has taken place. If a manufacturer were to attempt to avoid its statutory obligations, this fact would surface in the context of the national random survey of customers who have used the program, and it does not. Performance verification status should and does appear in the case file as is indicated by sections 11 and 12 below.

Section 11 above is not applicable for purposes of this audit because there is no practical means by which to verify the completeness and accuracy of additions to the files. Section 12, however, suggests that a summary form be created whenever the arbitrator receives an oral communication from either party involving the issue in dispute. This is most likely to occur at the oral hearing, in which case the communications are summarized in the arbitrator's decision. All summaries are included in the case file.

## CONCLUSION

**The NCDS program's record keeping policies and procedures in California cases are in substantial compliance with Rule 703.**

### C. CASE FILE RECORDS (4 yrs. 2020-2023)<sup>77</sup>

## FINDINGS

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<sup>77</sup> Rule 703.6(f) states:

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

A random sample of case numbers from the years 2020 through 2023 was drawn from the NCDS data base. Inspection of this sample verified that they were being maintained per requirement § 703.6(f).

Closed files are stored at an off-site record storage facility of the NCDS Dallas, Texas office. The auditor did not inspect the off-site facility for this year's audit. The files, however, were intact and readily available for inspection electronically. Cases drawn from the four-year universe were maintained in accordance with this statutory requirement.

#### D. ARBITRATION/HEARING RECORDS

##### FINDINGS

###### *Case file folders*

This information, which is maintained in NCDS headquarters, is found on a series of forms in NCDS case files.

###### *Arbitrator Biographies*

The arbitrator biographies for the national program are available for review in National Center for Dispute Settlement headquarters in Dallas, Texas. A random review of such biographies indicate that arbitrator biographies are thorough and current. The list of arbitrators for each district includes the dates of their appointments.

#### E. HEARING PROCESS

**PLEASE NOTE:** Each year, the auditor observes a randomly selected hearings to determine whether the program meets the requirements of Magnuson-Moss and the applicable state regulations governing the arbitration program. While an on-site review is essential in making a thorough evaluation of the hearing process (hearing nuances and subtleties are best assessed with the human eye), post-pandemic, most hearings continued to be conducted via teleconference.

##### FINDINGS

The California hearing occurred on September 16, 2024, per the hearing confirmation notice of August 22, 2024.

###### *Physical Description of Hearing*

The arbitrator conducted a teleconference hearing. Those in attendance included the arbitrator, the manufacturer representative, a representative from the Arbitration Certification Program ("ACP") in California, and the auditor. The customer did not appear for the hearing. Prior to the commencement of the hearing, the arbitrator waited 15 minutes. During this time, the arbitrator contacted the NCDS administrator twice to determine the status of the customer. Under the California Dispute Settlement Rules, the arbitrator may proceed with the hearing without the participation of the customer, once it is



established that proper notice to all parties has been given.<sup>78</sup>

***Openness of Hearing***

The hearing began at 9:15 PT. The arbitrator explained to the parties that the auditor would be observing the hearing. Under the “California Dispute Settlement Hearing Process Rules,” and consistent with § 703.8, the hearings are open to observers who agree to abide by the program’s rules.

***Efficiency of Hearing***

The arbitrator’s case file was complete with all required documents. Given that this was a truncated proceeding, without the active participation of the customer, the arbitrator dispensed with the hearing protocols. The arbitrator allowed the manufacturer’s representative to make their opening statement, which consisted of a denial of the customer’s position and request for a replacement vehicle. According to the manufacturer’s representative, the customer did not present any repair orders, thus the customer failed to prove the existence of a manufacturing defect.

The ACP representative was also given an opportunity to ask questions. The arbitrator verified that he had received the meeting packet timely, and that he had received a completed manufacturer’s response form.

The arbitrator then concluded the hearing.

***Board/Arbitrator Decisions (Awards)***

The auditor reviewed the arbitrator’s award.<sup>79</sup> The arbitrator’s award passed the test for accuracy, completeness, consistency, and rationale. The arbitrator’s award began by noting all

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<sup>78</sup> See Rule 9, **ARBITRATION IN THE ABSENCE OF A PARTY**, which states:

The arbitration may proceed in the absence of a party or representative who has received notice and fails to be present or fails to obtain a postponement. A decision shall not be made solely on the default of a party. CDSP can allow an oral presentation by one party, if the other party fails to appear at the agreed upon time and place, as long as all of the requirements under Title 16, California Code of Regulations CCR 3398.8(a) and (b) to allow an oral presentation by the parties have been satisfied.

<sup>79</sup> THE CALIFORNIA CODE OF REGULATIONS, CCR 3398.5 **Investigation of Facts** requires the following in all awards, including those conducted *ex-parte*.

(c) When the consumer's complaint, or the manufacturer's response, or any evidence gathered by or submitted to the arbitration program, raises any of the following issues, the program shall investigate those issues:

- (1) Whether the program has jurisdiction to decide the dispute.
- (2) Whether there is a nonconformity (Section 3396.1(l)).
- (3) Whether the nonconformity is a substantial nonconformity (Section 3396.1(m))
- (4) The cause or causes of a nonconformity.

participants, which included the auditor. Next, the arbitrator delineated the various forms of evidence that the parties presented at the hearing. The arbitrator's award included a detailed explanation of the parties' positions, and what each party was seeking by way of relief. The award concluded with an explanation of the Mag-Moss threshold (*i.e.*, substantial impairment of the use, value, or safety of the vehicle) and the evidentiary standard for prevailing in arbitration. In this case, the arbitrator's award established that the customer did NOT prove, by a preponderance of credible evidence, the existence of a non-conformity that "substantially impaired the use, value or safety of the vehicle."

The arbitrator's award included all 18 findings required by California law, CCR 3398.5(c).

## CONCLUSION

**The auditor concludes that the Auto Warranty Arbitration Program, as it operates in California, is in substantial compliance with the Magnuson-Moss Warranty Act and Rule 703.**

- 
- (5) Whether the causes of a nonconformity include unreasonable use of the vehicle.
  - (6) The number of repair attempts.
  - (7) The time out of service for repair.
  - (8) Whether the manufacturer has had a reasonable opportunity to repair the vehicle.
  - (9) Factors that may affect the reasonableness of the number of repair attempts.
  - (10) Other factors that may affect the consumer's right to a replacement of the vehicle or restitution under Civil Code Section 1793.2(d)(2).
  - (11) Facts that may give rise to a presumption under Civil Code Section 1793.2(d)(2).
  - (12) Factors that may rebut any presumption under Civil Code Section 1793.22(b).
  - (13) Whether a further repair attempt is likely to remedy the nonconformity.
  - (14) The existence and amount of any incidental damages, including but not limited to sales taxes, license fees, registration fees, other official fees, prepayment penalties, early termination charges, earned finance charges, and repair, towing and rental costs, actually paid, incurred or to be incurred by the consumer.
  - (15) Factors that may affect the manufacturer's right to an offset for mileage under Civil Code Section 1793.2(d).
  - (16) Facts for determining the amount of any offset for mileage under Civil Code Section 1793.2(d) if an offset is appropriate.
  - (17) Factors that may affect any other remedy under the applicable law.
  - (18) Any other issue that is relevant to the particular dispute.

## Ohio

### A. CASE LOAD AND BASIC STATISTICS, AND CONSUMER SURVEY RESPONSES

The survey for Ohio consisted of 92 closed NCDS cases, which included 4 mediated cases.<sup>80</sup> From this universe, we surveyed 13 customers. Consistent with prior audits, surveyed customers' level of program satisfaction, including arbitrator performance, directly correlates to whether they achieved the desired outcome in arbitration. The percentage of adverse arbitration decisions in Ohio accounted for 83% of the total cases. See table below.

Survey	Cases
Ohio - Arbitrated Awarded	15
Ohio - Arbitrated Awarded No Action	73
<b>Total Cases</b>	<b>88</b>
<b>Percentage of Adverse Decisions</b>	<b>82.95%</b>

The following table breaks down the sample size and response rate based on case outcome, followed by a breakdown of consumer responses.

Survey	Population	Sample Size	Response Rate %
Ohio - Arbitrated Awarded	15	2	13%
Ohio - Arbitrated Awarded No Action	73	10	14%
Ohio - Mediated	4	0	0%
<b>Total</b>	<b>92</b>	<b>13</b>	<b>13%</b>

### OHIO ARBITRATED CASES AWARDED SURVEY RESULTS<sup>81</sup>

**Pre-filing experience with dealer or manufacturer.** To understand the consumers' pre-filing experience, respondents were asked broad questions related to their pre-filing contacts with either the dealer or the manufacturer. The results show before filing a claim with NCDS, 100% of the participants attempted to discuss their concerns with the manufacturer directly. When asked how many times the dealer or manufacturer attempted to repair their vehicle, 100% stated, "more than three times." All participants (100%) learned of the NCDS Arbitration Program through Glove-Box Materials.

<sup>80</sup> Statistics may appear to be at odds with one another. This is due to data being collected and reported based on different regulatory mandates using different terminology for similar concepts. Important distinctions are noted.

<sup>81</sup> **Ohio Overall Audit Survey Results Key Findings** are part of the Appendix which appear in a separate PDF document filed with the audit.

**Filing of the claim with NCDS.** To identify consumers' experience related to the actual filing of their claim with NCDS, participants were asked questions associated with the filing method, clarity of instructions, and style of hearing. One hundred percent (100%) reported that they used an E-file method to file the claim, and that it took NCDS "two business days" to contact them. Consumers were then asked how clear the instructions were for filing their claim. All participants (100%) stated that the instructions on the claim form were "very clear."

**Experience after filing a claim with NCDS.** To capture the pre-hearing process, respondents were asked to rate their experience after they filed their claim with NCDS. Based on the results, 100% of the participants stated that they received and reviewed the Frequently Asked Questions ("FAQ") packet at [www.ncdsusa.org](http://www.ncdsusa.org) and found the information presented in the FAQ to be "very clear" and "very helpful."

When asked if participants received and reviewed the Non-Binding Program Rules at [www.ncdsusa.org](http://www.ncdsusa.org), 100% of the participants reported "yes." All participants found the Program Rules "clear" and "very helpful" in explaining the arbitration process. While all participants (100%) indicated that they received a hearing notice from NCDS, they did not retain an attorney to represent them in the hearing.

**The evidentiary hearing process.** To assess the evidentiary hearing process, participants were asked to convey their experience with its distinct phases. All participants (100%) responded that the arbitrator started the hearing on time, explained the process to both parties and provided the parties with a "full and fair" opportunity to present their proofs. No participant requested a third-party independent technical inspection of the vehicle.

**Post-award experience.** Next, it was important to evaluate the consumers' experience after they received their award. When it was time to communicate the award to the consumer, all participants (100%) responded that the decision, which granted a refund, was e-mailed. One hundred percent (100%) of all participants also reported that the arbitrator accurately identified the nature of the non-conformity and included a summary of what transpired at the hearing in the actual decision. While all participants (100%) stated that the arbitrator's decision was "clear," 50% reported that the arbitrator rendered a reasoned decision. Fifty percent (50%) reported that the arbitrator did not provide a rationale for why the decision was reached. Even though all participants in this category of the survey received an award, 50% accepted the decision of the arbitrator and 50% rejected the decision. This discordance may be explained by the fact that the participants while receiving an award did not receive the remedy they sought.

**Arbitrator satisfaction.** To understand arbitrator satisfaction among the consumers, the participants were asked how well the arbitrator understood their case. Fifty percent (50%) of the participants rated the arbitrator's understanding of the case as "excellent," the arbitrator's objectivity and fairness as "excellent," and the arbitrator's impartiality during the hearing and in the decision-making process as "excellent." Fifty percent (50%) of the participants rated the arbitrator's understanding of the case as "average," the arbitrator's objectivity and fairness as "average," and the arbitrator's impartiality during the hearing and in the decision-making process as "average."

**Satisfaction with NCDS processing claim.** To measure consumers' satisfaction with NCDS processing their claims, respondents were asked to rate NCDS in four different areas. First, respondents

were asked to rate the **timeliness** of the communications between them and NCDS staff. One hundred percent (100%) rated the timeliness aspect of the communications as “*excellent.*” Next, participants were asked to rate the **helpfulness** of the NCDS staff. One hundred percent (100%) rated the helpfulness of the staff as “*excellent.*” To help gauge consumers’ experience with the arbitration program, participants were asked to rate their **overall participation** in the NCDS Arbitration Program. For this question, 100% rated NCDS as “*excellent.*” Finally, respondents were asked if they would recommend the Arbitration Program to friends and family. One hundred percent (100%) responded “*yes.*”

## ARBITRATED CASES NO ACTION SURVEY RESULTS

**Pre-filing experience with dealer or manufacturer.** To understand the consumers’ pre-filing experience, respondents were asked broad questions related to their pre-filing experience with either the dealer or the manufacturer. The results show before filing a claim with NCDS, 100% of the participants reported that they attempted to contact the manufacturer directly. When asked how many times the dealer or manufacturer attempted to repair their vehicle, 40% stated “*two times,*” 30% stated “*three times,*” and 30% stated “*more than three times.*” Those who stated more than “*three times*” did not specify how many repair attempts were made on their vehicle before they filed their claim with NCDS. Most participants reported they learned about the NCDS Non-Binding Automobile Warranty Arbitration Program through Dealership Personnel (30%) and Internet or Social Media (30%). There were other resources participants noted but were not as prevalent. Twenty-five percent (25%) of the participants stated they were informed of the Arbitration Program from the manufacturer or dealer over the phone, 25% stated “*website*” and 50% stated “*other.*” Participants in the latter group did not identify their sources.

**Filing of the claim with NCDS.** To identify consumers’ experience related to the actual filing of their claim with NCDS participants were asked questions related to the filing method, clarity of instructions, and style of hearing. All participants (100%) reported they used an E-File method to file their claim. Once their claim was filed with NCDS, 30% stated that it took “*one business day*” for NCDS personnel to contact and verify their filing, 40% stated it took “*two business days,*” and 30% stated that the confirmation “*exceeded two business days.*” The respondents were then asked how clear the instructions were for filing their claim. Forty percent (40%) of the survey population indicated the instructions on the claim form were “*very clear,*” 50% stated the instructions were “*somewhat clear,*” and 10% stated that the instructions were “*not clear.*”

**Experience after filing a claim with NCDS.** To capture the pre-hearing process, respondents were asked to rate their experience after they filed their claim with NCDS. Based on the results, it was found that 80% of participants received **and reviewed** the Frequently Asked Questions (“FAQs”) [www.ncdsusa.org](http://www.ncdsusa.org) and 20% of the surveyed population reported they did not receive the packet. The information presented in the FAQs was “*very clear*” as reported by 40% of the respondents, “*somewhat clear*” by 40% of respondents, with another 10% percent respectively reporting that the information was “*not clear*” or “*do not know.*” Thirty percent (30%) of participants reported the information presented in the FAQs was “*very helpful,*” 50% reported it was “*moderately helpful,*” 10% reported “*not at all helpful,*” and 10% reported “*do not know.*”

When asked if participants received **and reviewed** the Non-Binding Program Rules at [www.ncdsusa.org](http://www.ncdsusa.org), 90% reported “*yes*” while 10% reported “*no.*” The Program Rules were “*very clear*” to 40% of participants and “*somewhat clear*” to another 40%. Twenty percent (20%) of the participants stated

that the Program Rules were “*not clear.*” The respondents were then asked if the Program Rules were helpful in explaining the arbitration process of which 40% stated they were “*very helpful*” and 40% stated they were “*moderately helpful.*” Ninety percent (90%) of the participants stated they received a hearing notice from NCDS. Ten percent (10%) of the participants retained an attorney to represent them at the hearing; 90% did not retain counsel for this purpose. Seventy percent (70%) of the participants chose a “documents only” hearing as their hearing format. In explaining their decision, 30% of the participants indicated that it was more convenient to have an arbitration panel review their documents and render a decision, while another 20% stated they could not take time off from work. Twenty percent (20%) stated “*other*” but they did not specify any reasons.

**The evidentiary hearing process.** To assess the actual evidentiary process, participants were asked to convey their experience with distinct phases of the hearing process. Of those respondents who participated in the evidentiary hearing, 100% reported that the arbitrator started the hearing on time. It was also reported by 100% of respondents that the arbitrator explained the hearing process to both parties. When asked if the arbitrator allowed both parties a full and fair opportunity to present their proofs, 100% responded “*yes.*” Not a single participant requested a third-party independent technical inspection of the vehicle.

**Post-award experience.** Next, it was important to evaluate the consumers’ experience after they received their award. When it was time to communicate the award to the consumer, 80% of the total sample population stated the arbitrator communicated their award by “*E-mail,*” 10% reported it was by written submission, and 10% stated “*other method.*”<sup>82</sup> Ninety percent (90%) of the participants reported they received no award, while 10% stated that the arbitrator awarded a refund.<sup>83</sup>

The results showed the participants did not feel the arbitrator accurately identified the nature of the non-conformity in the consumer’s alleged claims as reported by 80% of respondents. After identifying the non-conformity, 60% stated the arbitrator included a summary of the testimony at the hearing while 40% reported the arbitrator did not include a summary. Fifty percent (50%) of the participants stated the arbitrator’s award was clear while 50% said the award was not clear. Many participants (60%) stated that the arbitrator rendered a reasoned award, which meant that even though this group of participants did not prevail on their claim, they found the arbitrator’s explanation of the decision to be well-rationalized. The remaining 40% stated that the arbitrator did not render a reasoned award. This last set of responses is at variance with the auditor’s review of case files and arbitral awards. All awards reviewed by the auditor contained an explanation of how the arbitrator reached his/her decision, using the decision-tree as the appropriate template. Thirty percent (30%) of the survey population returned to NCDS the Decision Acceptance/Rejection Form.

**Arbitrator satisfaction.** To understand arbitrator satisfaction among the consumers, the participants were asked how well the arbitrator understood their case of which 60% reported “*poor,*” 30% reported “*average,*” and 10% reported “*excellent.*” The arbitrator’s objectivity and fairness were rated as

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<sup>82</sup> This is a respondent error. There are only two ways in which awards are submitted to the consumer – either e-mailed or mailed to the consumer’s last known address.

<sup>83</sup> This is a respondent error. Had the participant received an actual award, including a repair, the case would have been classified under “Awarded Cases.”



“poor” by 60% of respondents, “average” by 30%, and “excellent” by 10%. The participants were then asked to rate the arbitrator’s impartiality during the hearing and with respect to the decision of which 60% rated their arbitrator as “poor,” 30% rated their arbitrator as “average,” and 10% rated their arbitrator as “excellent.”

**Satisfaction with NCDS processing claim.** To measure consumers’ satisfaction with NCDS processing their claims, respondents were asked to rate NCDS in four different areas. Respondents were first asked to rate the timeliness of the communications between them and NCDS staff. Twenty percent (20%) rated timeliness as “excellent,” 50% rated it as “good,” 20% rated it as “fair,” and 10% rated it as “poor.” Next, participants were asked to rate the helpfulness of the NCDS staff. Twenty percent (20%) rated helpfulness as “excellent,” 40% rated it as “good,” 30% rated it as “fair,” and 10% rated it as “poor.” To help gauge consumers’ experience with the arbitration program, participants were asked to rate their overall participation in the NCDS Arbitration Program. Seventy percent (70%) of survey participants rated their overall experience as “poor,” 20% rated it as “fair,” and 10% rated it as “excellent.” Finally, respondents were asked if they would recommend the Arbitration Program to friends and family. Ninety percent (90%) responded “no” while 10% responded “yes.”

**There were no Mediated Outcome Responses in the 2023 Survey.**

## B. RECORDKEEPING, ACCURACY AND COMPLETENESS

Rule 703.6. mandates various recordkeeping functions, all of which have been previously discussed in Section IV. For the Ohio field audit, the auditor requested a random sample of 20 case files drawn from all cases closed during the audit period and examined them to determine whether they were complete and available for audit.

### FINDINGS

The results of the random sample inspection of case file folders, confined to § 703.6(a)(1-5), confirm compliance. All case files contained the customer’s name, address, and telephone number. The name and address of the warrantor’s contact person were included with the initial correspondence that the customer receives from the program. In addition, the various regional office contact addresses and phone number were included in each Owner’s Manual that accompanies all new vehicles when they are delivered to the consumer.

All case files inspected contained the make and vehicle identification number (VIN) of the vehicle, along with the date of the dispute and the date of the disclosure of the decision. Some files contained letters and additional documents, primarily filed by the consumer. However, there is no way to measure this item, thus the auditor has determined this section to be inapplicable.

The requirements for subsections 6-7 were also met. Oral presentations are a basic component of the NCDS program and § 703.6(a)(7) of Magnuson-Moss requires summaries of the oral presentations to be placed in the case file. In the case files reviewed for this region, NCDS was in full compliance.

A critical part of the NCDS program and Magnuson-Moss specifically is the disclosure of the arbitrator’s decision (subsections 8-9). The statute mandates that a copy of the decision be inserted into

the file and available for review during the annual audit. Unless a case was withdrawn or settled prior to hearing, all files the auditor reviewed contained this information.

Under subsection ten, the warrantor's intended action(s) and performance are linked together. The auditor validates this item in terms of performance verification, which is the responsibility of NCDS. NCDS' protocol is to send a survey to the customer following receipt of the customer's acceptance of an arbitral award which grants a remedy. The survey asks whether the required performance has taken place. As noted elsewhere in this audit and in prior audits, few returned forms exist in the file. 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 implemented per the award. It is appropriate to assume, in the absence of conflicting data, that performance has taken place. If a manufacturer were to attempt to avoid its statutory obligations, this fact would surface in the context of the national random survey of customers who have used the program, and it does not. Performance verification status should and does appear in the case file as is indicated by sections 11 and 12 below.

Section 11 above is not applicable for purposes of this audit because there is no practical means by which to verify the completeness and accuracy of additions to the files. Section 12, however, suggests that a summary form be created whenever the arbitrator receives an oral communication from either party involving the issue in dispute. This is most likely to occur at the oral hearing, in which case the communications are summarized in the arbitrator's decision. All summaries are included in the case file.

## CONCLUSION

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

### C. CASE FILE RECORDS (4 yrs. 2020-2023)<sup>84</sup>

## FINDINGS

A random sample of case numbers from the years 2020 through 2023 was drawn from the NCDS data base. Inspection of this sample verified that they were being maintained per requirement § 703.6(f).

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<sup>84</sup> Rule 703.6(f) states:

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.



Closed files are stored at an off-site record storage facility of the NCDS Dallas, Texas office. The auditor did not inspect the off-site facility for this year’s audit. The files the auditor reviewed, however, were intact and readily available for inspection. Cases drawn from the four-year universe were maintained in accordance with this statutory requirement.

**D. ARBITRATION/HEARING RECORDS**

**FINDINGS**

*Case file folders*

This information, which is maintained in NCDS headquarters, is found on a series of forms in NCDS case files.

*Arbitrator Biographies*

The arbitrator biographies for the national program are available for review in National Center for Dispute Settlement headquarters in Dallas, Texas. A random review of such biographies indicate that arbitrator biographies are thorough and current. The list of arbitrators for each district includes the dates of their appointments.

**E. HEARING PROCESS**

**FINDINGS**

For this audit year, the auditor observed two Ohio hearings, a three-person board hearing and a teleconference hearing. Listed below is a summary of each hearing.

*Physical Description of Hearing Conducted on July 23, 2024*

The hearing, which began at 1:00 PM, was “documents only” and consisted of 26 cases involving certified and non-certified participating manufacturers.<sup>85</sup> Since this was a telephonic hearing, the auditor did not conduct a room check to determine whether the hearing could be held without obstruction.

*Openness of Arbitration Hearing*

The chair confirmed that the “documents only” hearing was open to the auditor to observe.

*Hearing Formalities*

The chair provided a general overview of the protocols the board would follow, including a discussion of each case file, findings, and the recommended decision. Each board member attested to their qualifications to serve.

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<sup>85</sup> There were 16 FCA claims, 4 Tesla claims, and 6 Toyota claims.

*Efficiency of Arbitration Hearing*

Once the hearing opened, the panel proceeded to review each of the 26 cases submitted for determination on documents only. Panel members took turns summarizing the customer’s claim and the evidence. Independently, each board member recommended an outcome, based on the evidence submitted.

*Hearing Process*

The hearing was properly conducted. Panel members were thoughtful and deliberate in their discussion of the evidence. The format permitted each member to assume an equal role in the decision-making process. There was ample opportunity for the panel members to discuss whether a particular claim met the statutory threshold and, if so, the appropriate remedy under Mag-Moss. The hearing, which spanned over 90 minutes, met the hallmarks of efficiency without compromising thoroughness.

*Arbitration Decisions*

All decisions reviewed by the auditor were consistent with applicable regulations and the NCDS program rules. The decisions cited the written evidence presented, and concluded with an award which briefly explained the rationale. It is beyond the purview of the auditor to comment on the correctness of the awards.

**FINDINGS WITH RESPECT TO THE DECISION-MAKING PROCESS**

The auditor found that the decision-making process was well-structured and allowed for maximum engagement of each arbitrator. Panel members were tasked with reviewing each case file before the hearing convened, thus maximizing the actual hearing time. Consensus was readily reached once a panel member explained their recommendation and justification. Despite the fluidity of this process, one improvement would be to provide a more detailed explanation of why a particular defect, if found, did not qualify for a remedy. *See Recommendation below.*

**RECOMMENDATION**

The panel should enhance its explanation of the arguments of the parties, which can be gleaned from documents filed as evidence. Currently, three-person panel decisions identify only the documents that the consumer and the manufacturer filed. A preferred approach would be for the panel members to include a summary of the parties’ positions and a more detailed explanation as to why a particular non-conformity, if found, does not merit remedial action under Mag-Moss.

*Physical Description of Hearing Conducted on August 7, 2024*

The arbitrator conducted a teleconference hearing.

### *Openness of Hearing*

The hearing began at 2:00 PM. The arbitrator reviewed the participants present, including the auditor. The arbitrator did not explain the auditor's role in the hearing.

### *Efficiency of Hearing*

The arbitrator's case file was complete with all required documents, including the claim form and the manufacturer's response form. The arbitrator confirmed that he was a neutral arbitrator of over 20 years, trained by NCDS to decide warranty disputes. He also confirmed that this was not a lemon law hearing, though he might consider the applicable lemon law in his award. The arbitrator explicitly disclaimed any conflicts of interest. After explaining how evidence would be received, the arbitrator verified that the customer was seeking a "repurchase" remedy.

### *Hearing Process*

The arbitrator conducted a proper hearing. The arbitrator afforded all parties an opportunity to present their case. Following each party's presentation, the arbitrator allowed each party to ask clarifying questions and then present arguments in rebuttal. The arbitrator followed the order of presentation, which required the manufacturer's representative to make their summation before the consumer's summation. At the conclusion of the consumer's summation, the arbitrator asked if either party had further proofs to offer. Each party responded negatively, and the arbitrator declared the hearing closed. He then exited the teleconference. The arbitrator demonstrated his knowledge of the process, and how to conduct and manage the hearing.

### *Board/Arbitrator Decisions (Awards)*

The auditor reviewed the arbitrator's award. The award passed the test for accuracy, completeness, consistency, and rationale. The arbitrator began the award by noting all participants, which included the auditor. Next, the decision delineated the various forms of evidence the parties presented at the hearing, including repair orders. The award clearly laid out the parties' respective positions, and the relief they requested. Finally, in denying the claim, the arbitrator explained that the manufacturing "defect" did not meet the statutory threshold of "substantial impairment of use, value, or safety."

## **CONCLUSION**

**The auditor concludes that the Automobile Warranty Arbitration Program, as it operates in Ohio, is in substantial compliance with the Ohio Administrative Code, Magnuson-Moss Warranty Act and FTC Rule 703.**

**Florida**

**A. CASE LOAD AND BASIC STATISTICS, AND CONSUMER SURVEY RESPONSES**

The survey for Florida consisted of 216 closed NCDS cases, of which 30 cases were mediated.<sup>86</sup> From this universe, we surveyed 27 customers. Consistent with the prior audits, surveyed customers’ level of program satisfaction, including arbitrator performance, directly correlates to whether they achieved the desired outcome in arbitration. The percentage of adverse arbitration decisions in Florida accounted for 87% of the total cases. See table below.

Survey	Cases
Florida - Arbitrated Awarded	25
Florida - Arbitrated Awarded No Action	161
<b>Total Cases</b>	186
<b>Percentage of Adverse Decisions</b>	<b>86.56%</b>

The following table breaks down the sample size and response rate based on case outcome, followed by a breakdown of consumer responses.

Survey	Population	Sample Size	Response Rate %
Florida - Arbitrated Awarded	25	1	4%
Florida - Arbitrated Awarded No Action	161	22	14%
Florida - Mediated	30	4	13%
<b>Total</b>	216	27	13%

**ARBITRATED CASES AWARDED SURVEY RESULTS**

**NOTE:** Of the 25 cases awarded, only one participant responded to this survey. The participant’s responses are reflected in the summary below.

**Pre-filing experience with dealer or manufacturer.** To understand the consumers’ pre-filing experience, respondents were asked broad questions related to their pre-filing experience with either the dealer or the manufacturer. The results show that before filing a claim with NCDS, 100% of participants reported that they attempted to contact the manufacturer directly to address their concerns. When asked how many times the dealer or manufacturer attempted to repair their vehicle, 100% of respondents stated, “three times.” This participant reported they learned about the NCDS Non-Binding Automobile Warranty Arbitration Program through the Internet or Social Media.

<sup>86</sup> Statistics may appear to be at odds with one another. This is due to data being collected and reported based on different regulatory mandates using different terminology for similar concepts. Important distinctions are noted.

**Filing of the claim with NCDS.** To identify consumers' experience related to the actual filing of their claim with NCDS participants were asked questions related to the filing method, clarity of instructions, and style of hearing. This participant reported they used an E-File method to file the claim. The respondents were then asked how clear the instructions were for filing their claim. After E-filing the claim, this participant stated that it took "*greater than two business days*" for NCDS to contact them. This participant found the instructions for filing the claim "*somewhat clear.*"

**Experience after filing a claim with NCDS.** To capture the pre-hearing process, respondents were asked to rate their experience after they filed their claim with NCDS. Based on the results, it was found that this participant did not receive the Frequently Asked Questions ("FAQs") packet at [www.ncdsusa.org](http://www.ncdsusa.org). However, this participant stated they reviewed the FAQ. Although these responses may appear to be at odds with each other, it is possible that the participant reviewed the FAQs on the website without receiving the packet from NCDS. This possibility is remote, given the established protocols of NCDS, and the formalities associated with logging in cases and disseminating required information, such as the FAQs, early in the administration process. According to this participant, the information presented in the FAQs was "*somewhat clear*" and "*moderately helpful.*"

When asked if participants **received and reviewed** the Non-Binding Program Rules at [www.ncdsusa.org](http://www.ncdsusa.org), the participant reported "*yes.*" This participant reported that the Program Rules were "*somewhat clear*" and "*moderately helpful*" in explaining the arbitration process. This participant also reported that s/he received a hearing notice from NCDS, and after doing so, elected not to retain an attorney to be present at the hearing.

**The evidentiary hearing process.** To assess the actual evidentiary process, participants were asked to convey their experience with distinct phases of the hearing process. This participant reported that the arbitrator started the hearing on time and explained the arbitration process to both parties. However, this participant stated that despite the explanation given by the arbitrator, the arbitrator did not allow both parties a full and fair opportunity to present their proofs. An independent technical inspection was not requested.

**Post-award experience.** Next, it was important to evaluate the consumers' experience after they received their award. When it was time to communicate the award to the consumer, the participant stated that the arbitrator communicated their award by "Email." This participant also stated that the arbitrator awarded a refund, an optimal remedy under the Automobile Warranty Arbitration Program.

The results show that this participant did not believe that the arbitrator accurately identified the nature of the non-conformity, nor did the arbitrator provide a summary of the testimony at the hearing.<sup>87</sup> However, this participant reported that the arbitrator's award was "*clear,*" and that the arbitrator provided a "*reasoned*" decision.

**Arbitrator satisfaction.** To understand arbitrator satisfaction among the consumers, the participants were asked to rate the arbitrator's understanding of the facts of their case. This participant

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<sup>87</sup> This response is respondent error. In teleconference cases, such as this case, oral testimony is summarized in detail in the awards. All awards are reviewed by the Operations Manager prior to release to ensure compliance with protocols. Not a single award reviewed by the auditor deviated from NCDS requirements.

reported that the arbitrator's understanding was "poor," The arbitrator's objectivity and fairness was "poor" and the arbitrator's impartiality during the hearing was also "poor." The arbitrator's impartiality with respect to the decision was considered "average."

**Satisfaction with NCDS processing claim.** To measure consumer's satisfaction with NCDS in processing their claims, respondents were asked to rate NCDS in four different areas. First, respondents were asked to rate the timeliness of the communications between them and NCDS staff. This participant rated NCDS's timeliness of communications as "poor." Next, participants were asked to rate the helpfulness of the NCDS staff. This participant rated the helpfulness of the staff as "poor." To help gauge consumers' experience with the arbitration program, participants were asked to rate their overall experience under the Arbitration Program. This participant rated the overall experience as "poor" and stated that s/he would not recommend the NCDS Arbitration Program to friends or family.

### ARBITRATED CASES AWARDED NO ACTION SURVEY RESULTS

**Pre-filing experience with dealer or manufacturer.** To understand the consumers' pre-filing experience, respondents were asked broad questions related to their pre-filing experience with either the dealer or the manufacturer. The results show before filing a claim with NCDS, 100% of participants reported that they attempted to seek recourse or help from the manufacturer directly. When asked how many times the dealer or manufacturer attempted to repair their vehicle, 4.5% of respondents stated, "two times," 41% reported "three times," and 54.5% reported "other – more than three times." When participants were asked how they learned about the NCDS Non-Binding Automobile Warranty Arbitration program, three primary methods were identified: Internet or Social Media (41%), Glove-Box Materials, (23%), and Manufacturer Customer Service Representative (23%). Fourteen percent (14%) learned of the Arbitration Program through Dealership Personnel and another 14% learned of the Arbitration Program through a State Government Agency. Forty-three percent (43%) of the participants stated they were informed of the Arbitration Program from the manufacturer or dealer through conversations over the phone while 29% reported "website." Fourteen percent (14%) reported "mailed or e-mailed Information" and another 14% reported "other."

**Filing of the claim with NCDS.** To identify consumers' experience related to the actual filing of their claim with NCDS participants were asked questions related to the filing method, clarity of instructions, and style of hearing. Ninety-two percent (86%) reported they used an E-file method to file their claim while only 14% used a written submission claim form. The respondents were then asked how clear the instructions were for filing their claim. Eight percent (59%) of the respondents indicated that the instructions were "very clear," while 36% indicated they were "somewhat clear." The remaining 5% of the participants noted that the instructions for filing the claim were "not clear." Once the participants filed their claim with NCDS, 53% indicated that it took NCDS "two business days" to acknowledge their claim and initiate the administrative process. Forty-two percent (42%) stated it took "greater than two business days." Five percent (5%) reported that it took NCDS personnel "one business day" to contact the consumer.

**Experience after filing a claim with NCDS.** To capture the pre-hearing process, respondents were asked to rate their experience after they filed their claim with NCDS. Based on the results, it was found that 77% of participants received the Frequently Asked Questions ("FAQs") packet at [www.ncdsusa.org](http://www.ncdsusa.org) and 23% reported they did not receive the packet. Of the group that received the FAQ

packet, 91% **reviewed** it<sup>88</sup> and 9% did not review the FAQs. The information presented in the FAQs was “very clear” as reported by 27%, “somewhat clear” to 64%, “not clear” to 5%, and for the remaining 5%, the participants reported that they “did not know” whether the information in the FAQ was clear. Eighteen percent (18%) of the respondents stated that the information presented in the FAQs was “very helpful”, 55% reported that it was “moderately helpful,” while 23% reported that the information was “not at all helpful.” The remaining 5% of participants stated, “they did not know.”

When asked if participants **received** the Non-Binding Program Rules at [www.ncdsusa.org](http://www.ncdsusa.org), 77% of respondents reported “yes” while 23% stated “no.” Of the group that received the Non-Binding Program Rules, 82% reported that they **reviewed** them.<sup>89</sup> The Program Rules were “very clear” to 27% of the participants, “somewhat clear” to 50% of the participants, “not clear” to 9%, and “did not know” by 14%. The respondents were then asked if the Program Rules were helpful in explaining the arbitration process of which 41% acknowledged they were “moderately helpful” in explaining the arbitration process. Twenty-seven percent (27%) reported that they believed the Program Rules were “very helpful” in explaining the arbitration process, whereas 18% believed the Program Rules were “not at all helpful” and 14% “did not know.” Eighty-seven percent (87%) of the respondents stated they received a hearing notice from NCDS, while 14% stated they did not receive a hearing notice for their case. One hundred percent (100%) of the participants did not retain an attorney to represent them or to be present at the hearing. Prior to receiving their hearing notice, participants were asked to declare their choice of hearing format. Only 5% of the participants opted for a teleconference hearing. The other 95% elected a “documents only” hearing. Thirty-six percent (36%) of the participants electing a documents only hearing stated that they decided on this format because it was “more convenient to have an arbitration panel review documents,” 50% stated they “could not get time off work,” and 9% cited “family or health conflicts.”

**The evidentiary hearing process.** To assess the actual evidentiary process, participants were asked to convey their experience with distinct phases of the hearing process. Of the 5% that participated in an evidentiary hearing, 62.5% reported the arbitrator started the hearing on time, and 37.5% reported that the arbitrator did not start the hearing on time. It was also reported by 75% of participants that the arbitrator explained the hearing process to both parties while 25% reported that the arbitrator did not explain hearing protocols to them during the hearing. When asked if the arbitrator allowed both parties a full and fair opportunity to present their proofs, 62.5% responded “yes” and 37.5% responded, “no.” One hundred percent (100%) of the participants did not request a third party, independent technical inspection of the vehicle.

**Post-award experience.** Next, it was important to evaluate the consumers’ experience after they received their award. When it was time to communicate the award to the consumer, 82% of the sample population stated the arbitrator communicated their award by E-mail. Most of the consumers (91%) reported that they received no relief.<sup>90</sup> Five percent (5%) stated that the arbitrator provided them with a “repair” and 5% stated that the arbitrator awarded them a “refund.”

<sup>88</sup> A respondent may have reviewed the FAQ on the NCDS website as opposed to receiving this information from NCDS directly at the time their claim was acknowledged.

<sup>89</sup> See above FN.

<sup>90</sup> These responses represent errors in recollection. A repair or a refund is considered an award, and such cases would be classified by NCDS as “awarded cases.”



The results showed that 68% of the participants did not feel the arbitrator accurately identified the nature of the non-conformity in the consumer's alleged claims, while 32% stated that the arbitrator did correctly identify the non-conformity. After identifying the non-conformity, 59% reported the arbitrator included a summary of the testimony at the hearing, while 41% reported the arbitrator did not include a summary. Forty-five percent (45%) stated the arbitrator's award was "clear" while 55% said the award was "not clear." Forty-five percent (45%) stated that the arbitrator rendered a reasoned award while 55% stated that the arbitrator did not render a reasoned award. Fifty-five percent (55%) of the participants returned the Decision Acceptance/Rejection Form to NCDS.

**Arbitrator satisfaction.** To understand arbitrator satisfaction among the consumers, the participants were asked to rate the arbitrator's understanding of the facts of their case. Eighty-two percent (82%) rated the arbitrator's comprehension of the facts as "poor," 9% as "average," and 9% as "good." The arbitrator's objectivity and fairness were rated as "poor" by 95% of respondents and "average" by 5% of respondents.

The participants were then asked to rate the arbitrator's impartiality during the hearing of which 77% rated their arbitrator as "poor" and 23% rated "average." Finally, participants were asked to rate the arbitrator's impartiality with respect to the award which 91% of respondents rated this as "poor" and 9% as "average." As noted elsewhere in this audit, adverse arbitral decisions tend to influence how a participant views the arbitration program overall, including performance of the arbitrator and the administration of their claim by NCDS (see below).

**Satisfaction with NCDS processing claim.** To measure consumer's satisfaction with NCDS in processing their claims, respondents were asked to rate NCDS in four different areas. Respondents were asked to rate the timeliness of the communications between them and NCDS staff. Fourteen percent (14%) of the respondents rated timeliness of communications as "excellent," 45% rated it as "good," 9% rated it as "fair," and 32% rated it as "poor." Next, participants were asked to rate the helpfulness of the NCDS staff. Nin percent (9%) rated the helpfulness of the staff as "excellent," 50% rated it as "good," 5% rated it as "fair," and 36% rated it as "poor." To help gauge consumers' experience with the arbitration program, participants were asked to rate their overall experience under the NCDS Arbitration Program of which 73% of the respondents rated it as "poor," 13.6% rated it as "fair," and 13.6% rated it as "good." Finally, respondents were asked if they would recommend the Arbitration Program to friends and family and 91% responded "no" and 9% responded "yes."

## MEDIATED CASES SURVEY RESULTS

THERE WERE NO MEDIATED CASES IN WHICH SURVEY PARTICIPANTS RESPONDEND.

### B. RECORD-KEEPING, ACCURACY AND COMPLETENESS

Rule 703.6. mandates various recordkeeping functions, all of which have been previously discussed in Section IV. For the Florida field audit, the auditor requested a random sample of 20 case files



drawn from all cases closed during the audit period and examined them to determine whether they were complete and available for audit.

## FINDINGS

The results of the random sample inspection of case file folders, confined to § 703.6 (a) (1-5), confirm compliance. All case files contained the customer's name, address, and telephone number. The name and address of the warrantor's contact person were included with the initial correspondence that the customer receives from the program. In addition, the various regional office contact addresses and phone number were included in each Owner's Manual that accompanies all new vehicles when they are delivered to the consumer.

All case files inspected contained the make and vehicle identification number (VIN) of the vehicle, along with the date of the dispute and the date of the disclosure of the decision. Some files contained letters and additional documents, primarily filed by the consumer. However, there is no way to measure this item, thus the auditor has determined this section to be inapplicable.

The requirements for subsections 6-7 were also met. Oral presentations are a basic component of the NCDS program and § 703.6(a)(7) of Magnuson-Moss requires summaries of the oral presentations to be placed in the case file. In the case files reviewed for this region, NCDS was in full compliance.

A critical part of the NCDS program and Magnuson-Moss specifically is the disclosure of the arbitrator's decision (subsections 8-9). The statute mandates that a copy of the decision be inserted into the file and available for review during the annual audit. Unless a case was withdrawn or settled prior to hearing, all files the auditor reviewed contained this information.

Under subsection ten, the warrantor's intended action(s) and performance are linked together. The auditor validates this item in terms of performance verification, which is the responsibility of NCDS. NCDS' protocol is to send a survey to the customer following receipt of the customer's acceptance of an arbitral award which grants a remedy. The survey asks whether the required performance has taken place. As noted elsewhere in this audit and in prior audits, few returned forms exist in the file. 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 implemented per the award. It is appropriate to assume, in the absence of conflicting data, that performance has taken place. If a manufacturer were to attempt to avoid its statutory obligations, this fact would surface in the context of the national random survey of customers who have used the program, and it does not. Performance verification status should and does appear in the case file as is indicated by sections 11 and 12 below.

As stated elsewhere in this audit, Section 11 above is not applicable for purposes of this audit because there is no practical means by which to verify the completeness and accuracy of additions to the files. Section 12, however, suggests that a summary form be created whenever the arbitrator receives an oral communication from either party involving the issue in dispute. This is most likely to occur at the oral hearing, in which case the communications are summarized in the arbitrator's decision. All summaries are included in the case file.

## CONCLUSION

The NCDS program’s record keeping policies and procedures in Florida are in substantial compliance with Rule 703 requirements.

### C. CASE FILE RECORDS (4 yrs. 2020-2023)<sup>91</sup>

## FINDINGS

A random sample of case numbers from the years 2020 through 2023 was drawn from the NCDS data base. The auditor’s inspection of this sample verified that they were being maintained per requirement § 703.6(f).

Closed files are stored at an off-site record storage facility of the NCDS Dallas, Texas office. The auditor did not inspect the off-site facility for this year’s audit. The files, however, were intact and readily available for inspection. Cases drawn from the four-year universe were maintained in accordance with this statutory requirement.

### D. ARBITRATION/HEARING RECORDS

## FINDINGS

### *Case file folders*

This information, which is maintained in NCDS headquarters, is found on a series of forms in NCDS case files.

### *Arbitrator Biographies*

The arbitrator biographies for the national program are available for review in National Center for Dispute Settlement headquarters in Dallas, Texas. A random review of such biographies indicate that arbitrator biographies are thorough and current. The list of arbitrators for each district includes the dates of their appointments.

### E. HEARING PROCESS

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<sup>91</sup> Rule 703.6(f) states:

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.

## FINDINGS

The Florida hearing occurred on July 10, 2024, per the hearing confirmation notice of June 14, 2024.

### *Physical Description of Hearing*

The arbitrator conducted a teleconference hearing. Those in attendance included the arbitrator, the customer, the customer's wife (primary spokesperson), the manufacturer's representative, and the auditor.

### *Openness of Hearing*

The hearing began at 10:00 AM. The arbitrator communicated to the parties his understanding that the hearings are open and observers who agree to abide by the program's rules may attend.

### *Efficiency of Hearing*

The arbitrator's case file was complete with all required documents, including the claim form and the manufacturer's response form. The arbitrator confirmed that he was a neutral arbitrator, trained by NCDS to decide warranty disputes. He also confirmed that this was not a lemon law hearing, though he may consider the applicable lemon law in his award. The arbitrator explicitly disclaimed any conflicts of interest, although he disclosed that he had arbitration cases with this particular manufacturer. After explaining how evidence would be received, the arbitrator verified that the customer was seeking a "repurchase" remedy.

### *Hearing Process*

The arbitrator conducted a proper hearing. The arbitrator afforded all parties an opportunity to present their case. Following each party's presentation, the arbitrator allowed each party to ask clarification questions and then present arguments in rebuttal. The arbitrator followed the order of presentation, permitting the manufacturer's representative to make their summation first, with the consumer presenting last. Once the parties completed their summations, the arbitrator concluded the proceedings. The arbitrator did not inquire, after the summations, whether either party had any further proofs to offer. At the conclusion of the hearing, the arbitrator re-emphasized his role, which was to determine whether the warranty was breached by the manufacturer. He also stated (correctly) that in the event of a buyback, the final price would be determined by NCDS.

The arbitrator demonstrated his knowledge of the process, and how to conduct and manage the hearing.

### *Board/Arbitrator Decisions (Awards)*

The auditor reviewed the arbitrator's award. The award passed the test for accuracy, completeness, consistency, and rationale. The arbitrator began the award by noting all participants, which included the auditor. Next, the decision delineated the various forms of evidence the parties presented at the hearing, including repair orders and two videos. The award also clearly laid out the parties' respective positions, and what each party was seeking by way of relief. The award concluded by denying

the customer's request for repurchase. The arbitrator found that the customer had not established, by a preponderance of "credible evidence," that the Manufacturer had breached its warranty.

#### CONCLUSION

**The auditor concludes that the Automobile Warranty Arbitration Program, as it operates in Florida, is in substantial compliance with all Florida regulations, Magnuson-Moss, and FTC Rule 703.**

## Section VI

### Arbitrator Training and Training Materials

Federal Trade Commission Rule 703 does not contain explicit language requiring the training of arbitrators. However, regulators view arbitrator training to be fundamental to ensuring that consumers who participate in the dispute resolution program receive a fair and expeditious process.

NCDS has offered training to its arbitrators from the outset of its operations, beginning as early as the 1990s. Over the years, the substantive content has evolved from training based on information-sharing to a more interactive format, which culminates in a more engaging educational program for arbitrators. Currently, NCDS trains veteran and new arbitrators with a view towards developing a mentorship relationship for those newly admitted to the National Panel.

Arbitrator training programs in 2023 eliminated the zoom option and focused only on in-person training. Trainings occurred on the following dates, with levels of participation noted.

#### *2023 Arbitrator Training Programs*

- March 24-26, 2023 – California (CDSP) Specific and National NCDS Training – 6 California arbitrators and 26 NCDS arbitrators
- May 19-21, 2023 – 25 arbitrators
- September 8-10, 2023 – 35 arbitrators

All in-person training program included manufacturer representatives. To ensure sponsor insulation, manufacturers' representatives were identified as observers only and were not permitted to interact with the arbitrators.

#### **REVIEW OF TRAINING AND FINDINGS** *March 24-26, 2023 In-Person Training Program*

The trainers for the 2023 training sessions included NCDS's regulatory and compliance manager, an NCDS case administrator, and a certified technician and experienced arbitrator. The Friday morning session, restricted to California arbitrators, provided a detailed review of California specific regulations, primarily the Song-Beverly Consumer Warranty Act, and the Tanner Consumer Protection Act. The afternoon session focused on a demonstration of the e-filing process, and an explanation of the log-in process and the eligibility review process.

On Saturday morning, the regulatory and compliance manager reviewed applicable federal and state regulations. Of notable focus were the requirements of Mag-Moss, the qualifications of members, and the operation of the mechanism (NCDS). This presentation was followed by a discussion of the primary ethical requirements of arbitrators and the impact of social media. The final morning segment addressed rules revisions.

On Saturday afternoon, arbitrators participated in a hearing demonstration. Excellent commentary and critique followed.

The final Saturday segment focused on reviewing evidence, including "evidence" likely to be presented by consumers, such as Carfax, photos, and videos. Part of this discussion included recalls and

how recall notices should be treated as part of the consumer’s evidence. The final portion of the afternoon segment dealt with test drives, and best practices in ensuring safety while preserving fairness.

Sunday morning’s session was devoted to the decision-tree and how arbitrators should prepare their awards.

***Training Materials***

An integral part of the in-person NCDS training program is the use of training materials, provided in advance to the arbitrators, to augment the training function. Information in the packet included all relevant statutes, the Arbitrator’s Manual, disclosure decisions from federal courts of appeal, and sample decisions.

In addition to formal training, NCDS uses an arbitrator portal to disseminate critical monthly information. During the 2023 audit period, bulletins addressed how to determine substantial impairment of safety (January 2023), presenting new evidence (March 2023), and handling settlement conferences while preserving the integrity of the arbitration process (June 2023).

***Training Assessment***

CATEGORY	RATING
Materials	Excellent
Presentations	Excellent
Format of Program (in the absence of live programming)	Excellent
Opportunity for Participants to Ask Questions/Engage Panelists	Excellent
Quality of Responses Provided by the Panelists	Excellent
Opportunity for Later Engagement	Excellent
Coverage of Relevant Topics	Excellent

***Overall Assessment of NCDS Training***

The training program provided an excellent overview of the statutory requirements, the rules revisions, the unique nomenclature associated with motor vehicles, arbitral ethics, due process protocols, and the decision-tree, a carefully prepared template by the NCDS staff that guides arbitrators through the decision-making process.

However, a few things will improve the quality of the programs. Recommendation 3 appeared in the Bedikian FTC 2022 audit.

**RECOMMENDATION # 1**

**Summary of Magnuson-Moss Requirements** – To better inform arbitrators of the scope of their authority, participants should be informed that their decision may be used as evidence in subsequent court ..

**RECOMMENDATION # 2**

**Mileage Offsets/Lemon Law** – Clearer discussion of when mileage offsets apply and who is responsible for their calculations.

**RECOMMENDATION # 3**

**Role of Service Departments** – There should be more emphasis on the role of service departments and how they function as agents of the manufacturers for purposes of carrying out the warranty (this was the focus of prior audits). It is not a valid defense for a manufacturer to claim that a dealer failed to properly repair or cure an alleged non-conformity. Under Mag-Moss, the responsibility falls on the manufacturer to cure. If the manufacturer has not cured the non-conformity in a reasonable number of attempts, the consumer has a right, under applicable law, to receive an award for a refund or a suitable replacement.

Despite auditor recommendations, NCDS training provided participants with ample time to receive quality guidance on their role. Through a combination of substantive training and high-level educational materials, arbitrators left with a better understanding of the arbitral process and their decision-making obligations under Mag-Moss.

**CONCLUSION**

**The NCDS arbitrator training program is excellent. It operates in substantial compliance with Magnuson-Moss and FTC Rule 703.**



## Section VII

### Survey and Statistical Index: Comparative Analysis of Consumer Responses

The Federal Trade Commission regulates the informal dispute settlement programs operated under Magnuson-Moss, including the program which operates under the auspices of the National Center for Dispute Settlement pursuant to 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 NCDS for the calendar year 2023.

A consumer who wants to have a dispute settled through Automobile Warranty Arbitration Program must meet certain criteria: (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 pending with NCDS. If a customer files a claim form that does not meet these requirements, it is considered, "out-of-jurisdiction." In other words, it is ineligible for processing. These cases 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. This step is rarely undertaken.

FTC regulations require that arbitration decisions be rendered within 40 days of the date that Automobile Warranty Arbitration Program 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 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.<sup>92</sup>

To determine the accuracy of the Automobile Warranty Arbitration Program's warranty dispute statistics and to gather consumer feedback regarding the program, the auditor conducted a survey with customers nationally who filed disputes with Automobile Warranty Arbitration Program during the calendar year.

The primary focus of the survey is to gather data to verify the statistics by comparing data collected from a non-random sampling of consumers regarding the actual process and outcomes of their cases to the statistics and outcomes reported by NCDS. As noted by the previous auditor, "The question is not whether an individual's recollections match the data in the Automobile Warranty Arbitration Program's records, but rather whether the aggregate proportions of consumers' recollections agree with the outcomes reported to the FTC."<sup>93</sup>

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<sup>92</sup> In 2023, no cases exceeded the 40-day time limit. Based on statistics provided to the auditor by NCDS the average number of days from case initiation to resolution, for all participating manufacturers was 33. See pg. 35 of the audit for breakdown by manufacturer.

<sup>93</sup> Claverhouse & Associates, NCDS National Audit, pg. 60 (2019).

In addition to containing questions to gather the information needed to verify the statistics, the questionnaire also asks consumers to evaluate various aspects of the program, all of which are designed to determine the levels of customer satisfaction.

**OVERALL DISPUTE CASES OVERVIEW**

The figure below captures the total cases (overall) and total cases by jurisdiction in relationship to the method of resolution of warranty disputes for 2023. Four resolution areas were captured which were mediation, arbitration, ineligible, and withdrawn. Duplicate or multiple filings by the same person were removed from the total case number counts. Arbitrated and mediated cases made up 54% of all cases while ineligible and withdrawn cases made up 46% which accounted for 100% of total cases.

**Overall Dispute Cases and by Jurisdiction (2023)**  
 Note that National excludes California, Florida, and Ohio

Total NCDS Cases (Overall)			
Resolution	Number	Percent	Percent of All Cases
Mediation	241	10.0%	5%
Arbitration	2159	90.0%	49%
<b>Subtotal - (In Jurisdiction &amp; Closed)</b>	<b>2400</b>	<b>100%</b>	<b>54%</b>
Ineligible	1607	80%	36%
Withdrawn	403	20%	9%
<b>Subtotal</b>	<b>2010</b>	<b>100%</b>	<b>46%</b>
<b>Total Cases</b>	<b>4410</b>	<b>—</b>	<b>100%</b>

Total NCDS Cases by Jurisdiction		
National	Number	Percent
Mediation	125	4.3%
Arbitration	1435	49.1%
Ineligible	1088	37.2%
Withdrawn	274	9.4%
<b>Total National</b>	<b>2922</b>	<b>100%</b>

California	Number	Percent
Mediation	71	8.0%
Arbitration	401	45.1%
Ineligible	351	39.4%
Withdrawn	67	7.5%
<b>Total California</b>	<b>890</b>	<b>100%</b>

Florida	Number	Percent
Mediation	41	9.2%
Arbitration	233	52.5%

Ineligible	117	26.4%
Withdrawn	53	11.9%
<b>Total Florida</b>	<b>444</b>	<b>100%</b>

<b>Ohio</b>	<b>Number</b>	<b>Percent</b>
Mediation	4	2.6%
Arbitration	90	58.4%
Ineligible	51	33.1%
Withdrawn	9	5.8%
<b>Total Ohio</b>	<b>154</b>	<b>100%</b>

<b>Total Cases</b>	<b>4410</b>
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<b>Total Cases for Survey</b>	<b>2,113</b>	<i>Excludes ineligible cases, withdrawn cases, and multiple case filings from the same consumer. The consumer is only required to fill out one survey and is not based on the quantity of cases they filed.</i>
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**Methodology**

To determine the accuracy of the Non-Binding Automobile Warranty Arbitration Program dispute statistics and assess consumers’ levels of satisfaction and experience regarding the program, the auditor conducted a quantitative survey with national consumers in the United States who filed disputes with the Automobile Warranty Arbitration Program during the 2023 calendar year. California, Florida, Ohio results were not included in the National results because their results were captured separately.

The primary focus of the survey was to gather data (average scores) to verify the statistics by comparing data collected from a non-random sample of national consumers regarding the process and outcomes of their cases to the statistics and outcomes reported by NCDS. The intent is to understand whether the total proportions of consumers’ recollections agree with the outcomes reported by the Federal Trade Commission.

This section includes a detailed discussion of the research methodology and the appropriateness of the design chosen for the audit. The section contains details about the population, sampling, data collection procedures, and the rationale for the selected technique.

**Research Method Appropriateness**

Choosing the appropriate method is a necessary and a critical step in the research process to ensure the objectives are clear in relation to the research topic and questions. The suitable research method for this audit was a quantitative methodology because with a quantitative research method it

captures objective measurements and the statistical, mathematical, or numerical analysis of data collected through questionnaires, surveys, or polls.

The auditor identified consumers’ overall levels of satisfaction and experience regarding the Automobile Warranty Arbitration Program as measured by three surveys based on their outcome status: Consumer Satisfaction Survey Arbitrated Cases Awarded No Action, Consumer Satisfaction Survey Arbitrated Cases Awarded, and Consumer Satisfaction Survey Mediated Cases with the goal of identifying consumer satisfaction and whether the total proportions of consumers’ recollections agreed with the outcomes reported by the Federal Trade Commission (“FTC”). With a quantitative methodology, the auditor can gather significant amounts of data from a larger sample and simplify the results. A quantitative method was appropriate for this audit because it fulfilled the goal of identifying consumers’ levels of satisfaction and addressing the purpose of the audit.

*Population, Sampling, and Data Collection Procedures*

**Population.** The target population for this audit included consumers in the United States who filed eligible claims with the Automobile Warranty Arbitration Program during the 2023 calendar year.

**Sampling.** The sample size is determined by the number of completed responses received from the surveys and only represents part of the group of people or target population whose experience, behavior, or opinions were captured in the survey. The total sample for the National audit was 186 participants, California’s total audit sample was 52 participants, Florida’s total audit sample was 27 participants, and Ohio’s total audit sample was 12 participants. The sample was selected non-randomly and the invitations were given to participants who met the selection criteria and not by random chance. Access and permission were granted to the target population of consumers by NCDS management. NCDS management helped facilitate the email distribution lists of consumers to the auditor by sending an excel file of audit reports of resolved cases for National, California, Florida, and Ohio, in an email under the guidance of the auditor.

**Breakdown of total sample sizes for the National, California, Florida, and Ohio audits.  
Note that National excludes California, Florida, and Ohio**

Survey	Population	Sample Size	Response Rate %
National - Arbitrated Awarded	214	39	18%
National - Arbitrated Awarded No Action	1038	131	13%
National - Mediated	111	16	14%
<b>Total</b>	<b>1363</b>	<b>186</b>	<b>14%</b>

Survey	Population	Sample Size	Response Rate %
California - Arbitrated Awarded	85	12	14%
California - Arbitrated Awarded No Action	290	31	11%
California - Mediated	67	9	13%
<b>Total</b>	<b>442</b>	<b>52</b>	<b>12%</b>

Survey	Population	Sample Size	Response Rate %
Florida - Arbitrated Awarded	25	1	4%
Florida - Arbitrated Awarded No Action	161	22	14%
Florida - Mediated	30	4	13%
<b>Total</b>	216	27	13%

Survey	Population	Sample Size	Response Rate %
Ohio - Arbitrated Awarded	15	2	13%
Ohio - Arbitrated Awarded No Action	73	10	14%
Ohio - Mediated	4	0	0%
<b>Total</b>	92	12	13%

Generally, the larger the sample size, the more statistically significant the results are and less of a chance the results happened by coincidence but may not be applicable in every situation. Survey sampling can provide valuable answers and insights without having a sample size that represents the general population. Customer satisfaction or feedback surveys such as the ones used in this audit are one of the survey types that provide valuable answers and do not necessarily rely on a statistically significant sample size. Listening and documenting customer thoughts provides important perspectives and information on how well something is performing or areas for improvement. The sample sizes and results gathered were appropriate and accomplished the purpose of the audit.

**Informed Consent.** Accurately and honestly communicating the purpose and intent of the audit to participants was critical to the ethical considerations of the study. All participants for this audit were volunteers and were informed through the survey of the purpose of the study, voluntary participation, usage of the data collected, and benefits of the audit. Participants were able to choose to participate or not participate in the audit voluntarily and no personal identifiers were collected minimizing and eliminating any potential risks to the participants.

**Data Collection.** Initial contact with a company representative in NCDS was made to discuss the requirements and participation needed for the audit. Once the requirements were established, a follow-up email was sent to the company representative with detailed information about the consumer information needed for the audit. The data collection targeted consumers who had recently participated in the Non-Binding Automobile Warranty Arbitration Program administered by NCDS in the year 2023 in the United States. These consumers were eligible to participate in the audit if interested and had to complete and electronically acknowledge their agreement to participate in the audit through the survey. The participants were not required to participate and could opt out of taking the surveys at any time. Participation in the surveys was voluntary. The auditor provided consumers who were eligible to participate in the audit with a secure link and access to the web-based surveys.

**Survey Instrument Selection.** The survey instruments for the audit were the Consumer Satisfaction Survey Arbitrated Cases Awarded No Action, Consumer Satisfaction Survey Arbitrated Cases Awarded, and Consumer Satisfaction Survey Mediated Cases. The surveys were created by the auditor based on the Magnuson Moss Warranty–Federal Trade Commission Improvements Act and were

administered to participants in accordance with their case filing outcome to measure overall levels of satisfaction and experience regarding the Automobile Warranty Arbitration Program.

The Consumer Satisfaction Survey Arbitrated Cases Awarded No Action and Consumer Satisfaction Survey Arbitrated Cases Awarded are a 39-question survey utilizing multiple choice questions. Items 1-4 measure the pre-filing experience with the dealer or manufacturer. Items 5-8 measure the filing of the claim with NCDS. Items 9-19 measure the experience after filing a claim or pre-hearing process with NCDS. Items 20-23 measure the evidentiary hearing process. Items 24-30 measure post-award experience. Items 31-34 measure arbitrator satisfaction and items 35-39 measure satisfaction with NCDS processing claim. The Consumer Satisfaction Survey Mediated Cases is a 25-question survey using multiple choice questions. Items 1-4 measure the pre-filing experience with the dealer or manufacturer. Items 5-8 measure the filing of the claim with NCDS. Items 9-16 measure the experience after filing a claim with NCDS. Items 17-21 measure the mediation process and settlement of claim. Items 22-25 measure the satisfaction with NCDS processing claim.

### *Data Analysis*

Consumers' overall levels of satisfaction and experience regarding the Automobile Warranty Arbitration Program was collected using web-based questionnaires using SurveyMonkey's © online survey software. SurveyMonkey is a secure and trusted data collection tool that offers several features and customization to create surveys to gain insights. The use of electronic surveys was given and retrieved by participants due to the ease of timely distribution of the surveys to participants in several different states in the United States. The invitations were sent on April 29th, 2024, and surveys were closed on May 27<sup>th</sup>, 2024, to allow ample time for participants to respond and complete the survey.

A secure and confidential link was created for each survey and sent to each eligible participant who had recently participated in the Non-Binding Automobile Warranty Arbitration Program administered by the National Center for Dispute Settlement ("NCDS") in the year 2023 in the United States. This feature ensured the survey could only be accessed by that consumer and prevents non-sampled participants from accessing the questionnaire. The survey email distribution lists were grouped separately by National, California, Florida, Ohio and the participants associated arbitration outcome that matched with the respective survey. Once the participants responded to the survey link, the data and answers were recorded within SurveyMonkey.

The SurveyMonkey survey tool has a notification feature that allowed the auditor to track which participants responded and did not respond to the surveys. A reminder was set for each survey to remind participants who had not yet completed the survey to prevent nonresponse bias. Nonresponse bias occurs when there is a significant difference between those who responded to the survey and those who did not. For example, participants may forget to complete the survey, are unwilling to take the survey for various reasons or the email invites may have not reached the participant (*E.g.*, spam folder). Each survey setting was configured to only allow participants to respond once per email and IP address to prevent respondents answering the survey multiple times and skewing the results. The auditor was the only individual who had access to the SurveyMonkey tool which requires a username and password to access to ensure all information remained secure and confidential. All results were analyzed in SurveyMonkey.

## Findings & Results

The survey questions and results were intended to enhance the understanding of consumers overall levels of satisfaction regarding the Non-Binding Automobile Warranty Arbitration Program administered by the National Center for Dispute Settlement (“NCDS”) under the Magnuson Moss Warranty-Federal Trade Commission Improvements Act. This section includes the National, California, Florida, and Ohio results of the data retrieved from participants who responded to the Consumer Satisfaction Survey Arbitrated Cases Awarded No Action, Consumer Satisfaction Survey Arbitrated Cases Awarded, and Consumer Satisfaction Survey Mediated Cases.

### NATIONAL AUDIT SURVEY RESULTS<sup>94</sup>

#### ARBITRATED CASES AWARDED SURVEY RESULTS

**Pre-filing experience with dealer or manufacturer.** To understand the consumers’ pre-filing experience, respondents were asked broad questions related to their pre-filing experience with either the dealer or the manufacturer. The results show before filing a claim with NCDS, 97% of participants reported that they attempted to contact the manufacturer directly to address their concerns. When asked how many times the dealer or manufacturer attempted to repair their vehicle, 62% of respondents stated “*other*” and 23% reported “*three times*.” The remaining sample population of 15% stated between one-to-two times. Most participants reported they learned about the NCDS Non-Binding Automobile Warranty Arbitration Program through three primary sources: Manufacturer Customer Service Representative (28%), Internet or Social Media (28%) and Glove-Box Materials (23%). There were other resources participants noted, but they were not as prevalent. Sixty-seven percent (67%) of the participants stated they were informed of the Arbitration Program from the manufacturer or dealer over the phone, 8% by Mailed or E-mailed Information, 17% by Website, while 8% reported they learned of the Arbitration Program through “*other*.” Survey participants did not specify these sources.

**Filing of the claim with NCDS.** To identify consumers’ experience concerning the actual filing of their claim with NCDS, participants were asked questions related to the filing method, clarity of instructions, and style of hearing. Ninety-five percent (95%) of the participants reported they used an E-File method to file their claim and 5% mailed their claim. The respondents were then asked how clear the instructions were for filing their claim of which 69% indicated the instructions on the claim form were “*very clear*,” 26% stated the instructions were “*somewhat clear*,” and 5% reported they were “*Not clear*.” Once the participants filed their claim with NCDS by E-file, 41% reported it took “*one business day*” for NCDS to acknowledge their claim and initiate the administrative process and 46% reported that it took “*two business days*.” Fourteen percent (14%) stated it took “*greater than two business days*.” For those who filed their claim with NCDS by mail, 100% reported it took “*two business days*” for NCD to contact them after they received an acknowledgement from NCDS that their claim was received.

**Experience after filing a claim with NCDS.** To capture the pre-hearing process, respondents were asked to rate their experience after they filed their claim with NCDS. Based on the results, it was found that 95% of participants received the Frequently Asked Questions (FAQs) packet at [www.ncdsusa.org](http://www.ncdsusa.org) and 5% reported they did not receive the packet. Of this group, 90% reported that they **reviewed** the FAQ packet. The information presented in the FAQs was “*very clear*” as reported by 56% of

<sup>94</sup> National Overall Audit Survey Results appear in the Appendix in a separate PDF document.



the respondents and “*somewhat clear*” by 36% of respondents. Fifty percent (59%) of participants stated the information presented in the FAQs was “*very helpful*” while 28% reported it was “*moderately helpful*.” The remaining 13% of the participants reported they either did not know the degree to which the FAQs were helpful (5%), or they were not at all helpful (8%).

When asked if participants received the Non-Binding Program Rules at [www.ncdsusa.org](http://www.ncdsusa.org), 90% respondents reported “*yes*” while 10% stated “*no*.” Of the group that received the material, 92% reported that they **reviewed** the Non-Binding Program Rules. The Program Rules were “*very clear*” to 67% of the participants and “*somewhat clear*” to 23% participants. The respondents were then asked if the Program Rules were helpful in explaining the arbitration process of which 64% stated they were “*very helpful*” and 28% acknowledged they were “*moderately helpful*” in explaining the arbitration process. One hundred percent (100%) of the respondents stated they received a hearing notice from NCDS, and 97% reported before or after they received their hearing notice, they did not hire an attorney to represent them or to be present at the hearing. Based on the results, 56% of the participants responded that they did not request a “documents only” hearing. The next sequence of responses explains why the “documents only” hearing option was selected. Thirty-three percent (33%) stated they chose a documents only hearing because it was more convenient to have an arbitration panel review documents. Three percent (3%) stated they chose a documents only hearing because they were unable to get time off work. The remaining 8% stated “*other*.” Survey participants who stated “*other*” did not specify the reasons.

**The evidentiary hearing process.** To assess the actual evidentiary process, participants were asked to convey their experience with distinct phases of the hearing process. Of the participants that participated in an evidentiary hearing, 95% reported the arbitrator started the hearing on time and 5% reported the arbitrator did not start the hearing on time. One hundred percent (100%) stated that the arbitrator explained the arbitration process to both parties. When asked if the arbitrator allowed both parties a full and fair opportunity to present their proofs, 95% of those participants responded “*yes*.” Only 5% of this sample population requested a third party independent technical inspection of the vehicle during the hearing.

**Post-award experience.** Next, it was important to evaluate the consumers’ experience after they received their award. When it was time to communicate the award to the consumer, 97% of the total sample population stated the arbitrator communicated this award by Email and 3% by mail. Most of the consumers (67%) reported that the relief awarded to them by the arbitrator was a refund, where the manufacturer would give them money for their vehicle and 15% reported they received a replacement, where the manufacturer would replace their existing car with a new car. Three percent (3%) stated they received a reimbursement and 13% stated that their award was a “*repair*” to their existing vehicle. Three percent (3%) reported that they received no relief. NCDS classifies awards once rendered. Any award, including a repair, would be considered an award to the consumer. The best explanation for this set of responses is that the consumer treated the arbitrator’s award as a non-award if the arbitrator did not award the type of relief they were seeking.

Eighty-seven percent (87%) of participants stated that the arbitrator accurately identified the nature of the non-conformity in their respective claims. After identifying the non-conformity, 90% of participants stated the arbitrator included a summary of the testimony at the hearing. Most of the participants (95%) stated the arbitrator’s award was clear and 92% reported that the arbitrator rendered a reasoned award. Ninety-two percent (92%) of this surveyed population returned to NCDS the Decision Acceptance/Rejection Form.

**Arbitrator satisfaction.** To understand arbitrator satisfaction among the consumers, the participants were asked how to rate the arbitrator's understanding of the facts of their case. Seventy-nine percent (79%) rated the arbitrator's comprehension of the facts as "excellent," 10% rated it as "good," and 5% was rated for both "average" and "poor." The arbitrator's objectivity and fairness were rated as "excellent" by 79% of respondents and "good" by 8% of respondents. Eight percent (8%) of the respondents characterized the arbitrator's objectivity and fairness as "average," and the remaining 5% stated it was "poor." The participants were then asked to rate the arbitrator's impartiality during the hearing of which 74% rated their arbitrator as "excellent," 15% rated it as "good," and 5% rated it as "average" and "poor." Finally, the participants were asked to rate the arbitrator's impartiality with respect to the award. Seventy-seven percent (77%) of respondents rated the arbitrator's impartiality as "excellent," 13% rated it as "good," 5% rated it as "average," and 5% rated it as "poor."<sup>95</sup>

**Satisfaction with NCDS processing claim.** To measure consumers' satisfaction with NCDS processing their claims, respondents were asked to rate NCDS in four different areas. Respondents were asked to rate the timeliness of the communications between them and NCDS staff of which 64% rated the timeliness of communications as "excellent," 28% rated it as "good," 5% rated it as "fair," and 3% rated it as "poor." Next, participants were asked to rate the helpfulness of the NCDS staff. Most participants (67%) rated the helpfulness of the staff as "excellent," 23% rated helpfulness as "good," 5% rated helpfulness as "fair," and 5% rated helpfulness as "poor." To help gauge consumers' experience with the arbitration program, participants were asked to rate their overall experience under the Arbitration Program of which 64% of participants rated it as "excellent," 15% rated it as "good," 8% rated it as "fair" and 13% rated it as "poor."<sup>96</sup> Finally, respondents were asked if they would recommend the Arbitration Program to friends and family and 79% responded "yes" while 21% stated "no."

## ARBITRATED CASES AWARDED NO ACTION SURVEY RESULTS

**Pre-filing experience with dealer or manufacturer.** To understand the consumers' pre-filing experience, respondents were asked broad questions related to their pre-filing experience with either the dealer or the manufacturer. The results show before filing a claim with NCDS, 96% of participants reported that they attempted to contact the manufacturer directly to discuss their concerns. When asked how many times the dealer or manufacturer attempted to repair their vehicle, 56% of respondents stated "other," 33% stated "three times," 8% stated "two times," and 3% stated "one time." When participants were asked how they learned about the NCDS Non-Binding Automobile Warranty Arbitration Program, several primary sources were identified: Manufacturer Customer Service Representative (32%), Internet or Social Media (18%), Dealership Personnel (18%), Glove-Box Materials (8%), and Friends, Family, Co-workers (8%). Thirteen percent (13%) of the respondents also reported that they acquired their knowledge of the Non-Binding Automobile Warranty Arbitration Program via other sources. However, these sources were not specified. Fifty-seven percent (57%) of participants stated they were informed of the Arbitration Program from the manufacturer or dealer over the phone while 30% reported they were

<sup>95</sup> The high percentage of negative responses in this section of the audit is likely explained by the fact that a consumer is not satisfied with the outcome if they receive a remedy that they consider inferior to the remedy they requested. Thus, if a consumer received a repair rather than a replacement or a refund, their experiential perspective relative to arbitrator satisfaction would be influenced by this outcome.

<sup>96</sup> Consumer satisfaction levels are often linked to outcome.

informed through “Mailed or E-mailed Information,” “Website,” and “Showroom Poster.” The remaining 13% of the respondents stated “other,” but they did not reveal these sources.

**Filing of the claim with NCDS.** To identify consumers’ experience concerning the actual filing of their claim with NCDS, participants were asked questions related to the filing method, clarity of instructions, and style of hearing. Most participants (96%) reported they used an E-File method to file their claim while only 4% used a written submission claim form. The respondents were then asked how clear the instructions were for filing their claim of which 29% indicated the instructions on the claim form were “very clear,” 54% stated the instructions were “somewhat clear,” and 16% stated the instructions were “not clear.” Once the participants E-filed their claim with NCDS, 47% reported it took “greater than two business days” for NCDS to acknowledge their claim and initiate the administrative process. The remaining 53% stated it took one or two business days. After the participants mailed their claim and received an acknowledgement from NCDS that the claim had been received, 80% reported it took “greater than two business days” for NCDS to contact them, and 20% reported one or two business days.

**Experience after filing a claim with NCDS.** To capture the pre-hearing process, respondents were asked to rate their experience after they filed their claim with NCDS. Based on the results, it was found that 75% of participants received the Frequently Asked Questions (FAQs) packet at [www.ncdsusa.org](http://www.ncdsusa.org) and 25% reported they did not receive the packet. Seventy-six percent (76%) of the respondents stated they **reviewed** the FAQs.<sup>97</sup> Of those that reviewed the FAQ packet, 24% percent found the information “very clear,” 44% found the information “somewhat clear,” and 16% found the information “not clear.” Sixteen percent (16%) of those surveyed stated they did not know. Only 17% of participants stated the information presented in the FAQs was “very helpful” while 44% reported it was “moderately helpful.” The remaining 39% of participants did not think the FAQs were helpful (24%) or did not know (15%).

When asked if participants received the Non-Binding Program Rules at [www.ncdsusa.org](http://www.ncdsusa.org), 78% respondents stated “yes” while 22% stated “no.” Of the 78% of respondents who reviewed the Program Rules, 20% found the information to be “very clear,” 51% found the information to be “somewhat clear,” and the remaining 29% found the information either not clear (21%) or they did not know (8%). The respondents were then asked if the Program Rules were helpful in explaining the arbitration process of which 18% stated they were “very helpful” and 42% acknowledged they were “moderately helpful” in explaining the arbitration process. The remaining 40% of respondents reported they did not think Program Rules were at all helpful (33%) or they did not know (7%). Most respondents (95%) stated they received a hearing notice from NCDS, but 96% reported before or after they received their hearing notice, they did not hire an attorney to represent them or to be present at the hearing. Only 4% of respondents reported they hired an attorney after receiving their hearing notice. Based on the results, 60% of participants requested a “documents only” hearing after filing their claim and 40% did not request a “documents only” hearing.

**The evidentiary hearing process.** To assess the actual evidentiary process, participants were asked to convey their experience with distinct phases of the hearing process. Of the 40% of participants that did not request a “documents only” hearing, 77% of that surveyed population reported that the

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<sup>97</sup> As previously stated in the audit, some survey participants review the rules on the NCDS website. This would account for the difference between respondents who report that they did not receive the rules directly from NCDS but who also report that they reviewed the rules.

arbitrator started the hearing on time. It was reported by 85% of those participants that the arbitrator explained the arbitration process to both parties. Fifteen percent (15%) indicated that the arbitrator did not provide this explanation. When asked if the arbitrator allowed both parties a full and fair opportunity to present their proofs, 60% of those participants responded “yes” while 40% reported “no.” Eight percent (8%) of the participants requested a third party independent technical inspection of their vehicle during the hearing.

**Post-award experience.** Next, it was important to evaluate the consumers’ experience after they received their award. When it was time to communicate the award to the consumer, 89% of the total sample population stated the arbitrator communicated this award by Email, 8% reported it was by written submission, and 4% stated, “Other Method.” This method was not specified. Most consumers (95%) reported they received no award while 2% reported the relief awarded to them by the arbitrator was a repair. Two percent (2%) reported that the arbitrator awarded a refund, where the manufacturer would give money for the vehicle, 1% reported that the arbitrator awarded a replacement, where the manufacturer would replace the existing car with a new car, and 1% reported that they received a reimbursement, where the manufacturer would reimburse them for the incidental costs associated with the repair of their car.<sup>98</sup>

The results showed the participants did not feel the arbitrator accurately identified the nature of the non-conformity in the consumers’ alleged claims as reported by 82% of respondents. After identifying the non-conformity, 59% of participants stated the arbitrator included a summary of the testimony at the hearing while 41% reported the arbitrator did not include a summary. Half of the participants (50%) stated the arbitrator’s award was clear while 50% said the award was not clear. Most participants (60%) did not think the arbitrator rendered a reasoned award while 40% stated the arbitrator did render a reasoned decision.

**Arbitrator satisfaction.** To understand arbitrator satisfaction among the consumers, the participants were asked how well the arbitrator understood their case. Sixty-six (66%) rated the arbitrator’s comprehension of the facts as “poor,” 23% rated the comprehension as “average,” 7% rated comprehension as “good,” and 4% rated comprehension as “excellent.” The arbitrator’s objectivity and fairness were rated as “poor” by 74% of respondents, “average” by 18%, “good” by 5%, and “excellent” by 3%. Next, the participants rated the arbitrator’s impartiality during the hearing of which 67% rated their arbitrator as “poor,” 21% rated it as “average,” 8% rated it as “good,” and 5% rated it as “excellent.” Finally, the participants assessed the arbitrator’s impartiality with respect to the award. Seventy-eight percent (78%) reported that the arbitrator’s impartiality with respect to the decision-making process was “poor.” Fifteen percent (15%) reported the arbitrator’s impartiality as “average,” while 5% reported it as “good.” The remaining 2% reported it as “excellent.” As noted previously in this audit, adverse decisions tend to influence how a participant views the arbitration program overall, including performance of the arbitrator and the administration of their claim by NCDS.

**Satisfaction with NCDS processing claim.** To measure consumers’ satisfaction with NCDS processing their claims, respondents were asked to rate NCDS in four different areas. Respondents were asked to rate the timeliness of the communications between them and NCDS staff. Eighteen percent (18%)

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<sup>98</sup> This sequence of responses constitutes respondent error. Respondents in this category did not receive any remedy from the arbitrator. According to the NCDS data base, arbitrators denied these claims, finding that the manufacturer did not breach the warranty.

rated the timeliness of communications as “*excellent*,” 31% rated it as “*good*,” 31% rated it as “*fair*,” and 19% rated it as “*poor*.” Next, participants were asked to rate the helpfulness of the NCDS staff. Nineteen percent (19%) of participants rated the helpfulness of the staff as “*excellent*,” 25% rated it as “*good*,” 19% rated it as “*fair*,” and 37% rated it as “*poor*.” To help gauge consumers’ experience with the arbitration program, participants were asked to rate their overall experience under the Arbitration Program. Seventy-eight percent (78%) of participants rated their overall NCDS experience as “*poor*,” while 16% rated it as “*fair*,” 2% rated it as “*good*,” and 4% rated it as “*excellent*.” Finally, respondents were asked if they would recommend the Arbitration Program to friends and family and 89% responded “*no*” while 11% stated “*yes*.”

## MEDIATED CASES SURVEY RESULTS

**(Information below captures those cases where the parties agreed to settle their case at some point between filing of their claim and the evidentiary hearing)**

**Pre-filing experience with dealer or manufacturer.** To understand the consumers’ pre-filing experience, respondents were asked broad questions related to their pre-filing experience with the manufacturer. The results show before filing a claim with NCDS, 94% of participants reported that they attempted to contact the manufacturer directly to discuss their concerns. When asked how many times the dealer or manufacturer attempted to repair their vehicle, 38% of respondents stated “*other*” which was more than three times and 25% reported “*one time*.” Thirty-eight percent (38%) reported that “*three*” attempts were made to duplicate the concerns and repair the vehicle before they filed their claim with NCDS. The majority of participants reported they learned about the NCDS Non-Binding Automobile Warranty Arbitration Program through Internet or Social Media (38%), Manufacturer Customer Service Representative (31%), Glove-Box Materials (25%), and Attorney (13%). There were other resources participants noted, but they were not as prevalent. Sixty percent (60%) of the participants who learned about the NCDS Non-Binding Automobile Warranty Arbitration Program through the dealership or manufacturer stated they were informed of the Arbitration Program from the manufacturer or dealer over the phone. The remaining 40% of participants stated they were informed through “*Mailed or E-mailed Information*.”

**Filing of the claim with NCDS.** To identify consumers’ experience concerning the actual filing of their claim with NCDS participants were asked questions related to the filing method, clarity of instructions, and style of hearing. Most participants (94%) reported they used an E-File method to file their claim while only 6% used a written submission claim form. The respondents were then asked how clear the instructions were for filing their claim of which 63% indicated the instructions on the claim form were “*very clear*,” 25% stated the instructions were “*somewhat clear*,” and 13% stated they were “*not clear*.” Once the participants E-filed their claim with NCDS, 40% reported that it took “*two business days*” for NCDS to acknowledge their claim, while 47% reported that it took “*one business day*.” Thirteen percent (13%) reported that the contact time was “*greater than two business days*.” One hundred percent (100%) of participants who mailed in their claim, rather than E-file it, reported that it took NCDS “*greater than two business days*” to contact them after they received an acknowledgement that their claim had been received.

**Experience after filing a claim with NCDS.** To capture the pre-hearing process, respondents were asked to rate their experience after they filed their claim with NCDS. Based on the results, it was found that 88% of participants received the Frequently Asked Questions (FAQs) packet at [www.ncdsusa.org](http://www.ncdsusa.org), and 13% reported they did not receive the FAQ packet. Of the group which received



the packet, 81% **reviewed** the FAQ packet.<sup>99</sup> The information presented in the FAQs was “*very clear*” as reported by 56% of the respondents while 31% reported it was “*somewhat clear*.” Thirteen percent (13%) reported that they did not know. Most participants (56%) stated the information presented in the FAQs was “*very helpful*” and 13% stated the information presented was “*moderately helpful*.” The remaining 31% stated that it was not at all helpful (6%) or they did not know (25%).

When asked if participants received the Non-Binding Program Rules at [www.ncdsusa.org](http://www.ncdsusa.org), 88% respondents reported “*yes*” while 13% stated “*no*.” Ninety-four percent (94%) of respondents reported that they **reviewed** the Non-Binding Program Rules. The Program Rules were “*very clear*” to 44% of the participants, “*somewhat clear*” to 38%, “*not clear*” to 6% and 13% of the participants stated, “*do not know*.” The respondents were then asked if the Program Rules were helpful in explaining the arbitration process of which 44% stated they were “*very helpful*” and 38% acknowledged they were “*moderately helpful*” in explaining the arbitration process. Thirteen percent (13%) stated the instructions were “*not at all helpful*” and 6% stated that they did not know.

**The settlement of claim.** To assess the settlement of the consumer’s claim, participants were asked if they agreed to settle their case with the manufacturer before the case proceeded to arbitration of which 75% of respondents stated “*yes*” and 25% reported “*no*.” The respondents who stated “*yes*” to agree to settle their case with the manufacturer were then asked what best described the relief provided in their settlement of claim. Thirty-six percent (58%) reported the relief awarded to them by the arbitrator was a refund, where the manufacturer would give money for their car, and 42% reported a reimbursement of expenses remedy.

After the consumer reached a settlement, 50% of the respondents reported they received a letter from NCDS explaining the terms of the settlement and 50% did not receive a letter. After the consumer received their settlement confirmation the results show that 17% of respondents did pursue their case further and 83% did not pursue their case further. Of the participants who decided to pursue their case further, 50% reported they “*contacted dealer or manufacturer*” and 50% reported “*other*,” but they did not specify details. This line of questioning was to understand if the consumer pursued any course of action or follow-up for any reason after accepting their settlement.

**Satisfaction with NCDS processing claim.** To measure consumers’ satisfaction with NCDS processing their claims, respondents were asked to rate NCDS in four different areas. Respondents were asked to rate the timeliness of the communications between them and NCDS staff of which 56% rated the timeliness of communications as “*excellent*,” 38% rated it as “*good*,” and 6% reported it as “*poor*.” Next, participants were asked to rate the helpfulness of the NCDS staff. Sixty-three percent (63%) rated the helpfulness of NCDS staff as “*excellent*” and 25% rated it as “*good*.” The remaining 12% rated it as “*fair*” and “*poor*.” To help gauge consumers’ experience with the arbitration program, participants were asked to rate their overall experience under the Arbitration Program of which 56% rated it as “*excellent*” and 13% rated it as “*good*.” Thirteen percent (13%) rated it as “*fair*” and 19% rated it as “*poor*.” Finally, respondents were asked if they would recommend the Arbitration Program to friends and family and 81% responded “*yes*.”

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<sup>99</sup> The variance is explained by the fact that respondents may have obtained the FAQ packet from other sources, such as the NCDS website.

## Section VIII

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### **Audit Regulatory Requirements**

**REQUIREMENT: § 703.7(c)(3)(1)**

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 furnished to the Federal Trade Commission (FTC) 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 in accordance with this requirement.**