

**United States Federal Trade Commission**  
**National Center for Dispute Settlement (NCDS)**  
**Non-Binding Automobile Warranty Arbitration Program**  
**2020 Audit National Report**  
**(January – December 2020)**

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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 late 1990s, is a firm that specializes in offering binding and non-binding ADR processes to the general public. Its primary focus is the non-binding resolution of auto warranty disputes, specifically disputes that are 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 imposes a panoply of minimum requirements for informal dispute resolution to achieve statutory legitimacy. Among its principal requirement is an annual audit “to determine whether the Mechanism (“NCDS”) and its implementation are in compliance” with standards of consumer awareness, fairness, and time efficiency.<sup>3</sup> The audit also must include a consumer survey that assesses satisfaction levels with the program.<sup>4</sup>

The 2020 audit of NCDS was performed by Mary A. Bedikian, an attorney and arbitration specialist. The audit 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), Arbitrator Training for Members (Section VI), Federal Trade Commission Survey and Statistical Index: Comparative Analysis of Consumer Responses (Section VII), and Regulatory Audit Requirements (Section VIII).

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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 but does not mandate 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> Rule 703.7(a).

<sup>4</sup> Rule 703.7(b)(3) requires an analysis of a random sample of disputes in order 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 2020 include Acura, FCA US LLC,<sup>5</sup> Honda, Lexus, Mitsubishi, Tesla, 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' dispute resolution mechanism when a warranty dispute arises.

The statistical survey and comparative analysis is based on a defined universe of cases drawn from data provided to the auditor by NCDS. The intent behind 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 2020 audit, the auditor:

- Reviewed 80 case files and arbitration decisions;
- Reviewed participating manufacturers' warranty and glovebox materials;
- Participated as "observer" in 10 arbitration hearings (to preserve confidentiality, recordings of hearings are not permitted under NCDS rules);
- Conducted field audits of four geographic areas – Michigan, Texas, Florida, and Ohio; and
- Observed 10 national arbitrator training programs, conducted via zoom.

For purposes of this year's audit, the auditor was not able to travel to assess the quality of hearings scheduled by NCDS. First, the pandemic precluded in person hearings. Second, the auditor was not retained to perform the audit until March 2021. However, the auditor participated in telephonic hearings in the months of June, July, and August 2021, and those findings and conclusions are reflected in this year's report. Audits of arbitration hearings, field audits, and arbitrator training programs are typically conducted in the current calendar year rather than in the audit year. To avoid a two-phased format, and to ensure continuity between this audit and prior audits by Claverhouse & Associates, this practice was continued.

All case files randomly selected for review were initiated in 2020 as required.

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<sup>5</sup> As noted in the 2019 audit prepared by Claverhouse & Associates, the Company changed its legal name from Chrysler Corporation to FCA US LLC, effective 2014.

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

## Section II

### Compliance Summary

This audit is conducted by Mary A. Bedikian,<sup>7</sup> an arbitration specialist. 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”). For this audit, most of the prior auditor’s terminology will be maintained to ensure consistency in the transition.

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

The NCDS third-party dispute settlement mechanism, Auto Warranty Arbitration Program (“AWAP”) 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, 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 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 inquiring individuals 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. Recognizing that some warrantors can exercise control over product distribution and marketing while others cannot, the Federal Trade Commission (“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.

For this year’s audit, the auditor focused on four regions of the NCDS program – Michigan, Ohio, Florida, and Texas. Section V of the audit provides an assessment of each state’s compliance levels. All

<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) entity dedicated to the peaceful resolution of conflict. 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 alternative dispute resolution. In 1996, she received the State Bar of Michigan’s “*Distinguished Service Award for Contributions to the Field of ADR.*”

<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.

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 as an essential component of the informal disputes 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 difference 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 frame specified by the Magnuson-Moss. By incorporating arbitrator training into their administrative practices, NCDS enhances the opportunity for fair and expeditious resolution of warranty disputes, a function which falls squarely within 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 consisted of 1836 “in jurisdiction” cases,<sup>12</sup> with 215 responses.<sup>13</sup> The surveys were structured to coincide with case outcomes, *i.e.*, mediated cases, awarded cases, and awarded cases with no action. In general, consumers who settled through mediation reported positive experiences. 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 survey instrument used to elicit consumer responses is included in the Appendix.

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 actually filed was 2,864. Eight hundred and eighteen cases (818) were deemed ineligible. Two hundred and ten cases (210) were withdrawn.

<sup>13</sup> The lower case numbers for the 2020 audit, compared to the preceding three years, is partly pandemic related. National lockdowns and a shift to working from home resulted in less vehicle usage. Also, manufacturers are employing more consistent efforts pre-filing, including the use of mediation, to resolve consumer complaints.

## Section III

### Participating Manufacturers' Consumer-Facing Materials and Compliance Levels – § 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 seven current participating manufacturers in the NCDS arbitration program are Acura, FCA US LLC, Honda, Lexus, Mitsubishi, Tesla, and Toyota.

Under Magnuson-Moss, manufacturers are not required to include an informal dispute resolution mechanism (“IDSMS”) in their warranty materials. If they do, their program must be Mag-Moss compliant.<sup>15</sup> Rule 703.2(a) contains specific language that allows manufacturers to encourage consumers to seek redress from the manufacturer before accessing the IDSMS forum. This requirement is commonly referred to as “prior resort.” A number of states incorporate prior resort under Magnuson-Moss or their respective states’ lemon laws as a prerequisite to filing in court.

#### Obligations Under Federal Law and Promulgated Rules

<sup>14</sup> In assessing this statutory obligation, a question which often arises, for which there is no clear-cut answer, is when consumers actually experience a warranty dispute? Is it before or after they notify the manufacturer? What if the consumer does not refer to the issue as a dispute? Warranty manuals are available to consumers either electronically or in glove-box format, assuming they access such materials at the time the dispute manifests. Auditor consensus, based on a reasonable construction of the Federal Trade Commission’s commentary to 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> 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 in order 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.

Under § 703.7(b)(1),<sup>16</sup> the auditor must assess manufacturers’ compliance levels with the provisions of § 703.2(d).<sup>17</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>18</sup>

The warrantors’ obligations under § 703.2 extends to dealerships and service centers.<sup>19</sup> Although not explicit in Mag-Moss, it is clear from the accompanying Federal Trade Commission interpretations of 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 is dictated by the following two provisions of Magnuson-Moss, specifically §§ 703.2(b) and 703.2(c):

**§ 703.2 Duties of Warrantor**

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<sup>16</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>17</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 as long as the warrantor does not expressly require consumers to seek redress directly from the warrantor. The warrantor shall proceed fairly and expeditiously to attempt to resolve all disputes submitted to the warrantor.

<sup>18</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>19</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 voluntary efforts and to make explicit that such efforts would be evaluated by the auditor during the annual audit process. *Id.* at 60197.



(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;
- (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.

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

For the 2020 report, the auditor interviewed NCDS staff and inquired as to any changes from the previous year in each manufacturers' efforts to ensure their customers were being made aware of the availability of the arbitration program for resolving their customers' warranty disputes. Any new information provided is distinguished and assessed.

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. Pursuant to the FTC, such notice may be featured in an electronic medium.<sup>20</sup> Clarity requires that the information provided not be ambiguous and capable of being understood by the average consumer.
- **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 with Respect to Direct Redress** – While Mag-Moss permits prior resort (provided all features of the dispute resolution program are compliant with the provisions of the federal statute), § 703.2(d) of 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>21</sup>

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<sup>20</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).

<sup>21</sup> The expressed 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).

A. FCA US LLC

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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, subject to the noted reservations
§ 703.2(b)(2)	Yes, subject to the noted reservations
§ 703.2(b)(3)	Yes
§ 703.2(b)(4)	Yes, subject to the noted reservations
§ 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 Disclosures*

FCA US LLC uses several means to communicate information with respect to the program. The “Warranty Information Booklet,” available electronically on the FCA website, references the “Customer Arbitration Process” administered by NCDS, which appears on page 4. The warranty provides a toll-free number and a mailing address to contact NCDS. In this section is a description of the NCDS program and eligibility requirements. On page 6, the warranty explains the hearing process and includes a reference to the appropriate legal standards arbitrators use to base their decisions. A subsequent section identifies the remedies which arbitrators can award and those which are proscribed under the program’s parameters, along with an explanation that the award is not binding unless the consumer accepts it.

Board hearings is discussed on page 6. The “Warranty Information Booklet” states that a three-person panel will consist of a local consumer advocate, an independent technical representative (A.S.E. certified by the National Institute of Automotive Service Excellence) and a representative from the general public. NCDS’ current appointment composition for three-person panels is typically one A.S.E. technical expert and two non-technical experts, one of whom may be an attorney.

A separate and distinct document, independent of the electronically accessed warranty, is found in the glovebox materials. 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 parallels what is found in the “Warranty Information Booklet” and satisfies the requirements of § 703.2(b). Notably, 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. Further, if they accept it, the manufacturer is bound to accept it and to perform the terms of the decision within the time frame prescribed. An additional caveat states that the decision is admissible in any subsequent legal proceeding concerning the dispute. The placement of this form raises a concern with respect to whether or not it is sufficiently conspicuous. Between pages 6 and 19, the booklet explains owner’s rights under state lemon laws. A consumer would have to filter through multiple pages of non-applicable disclosures relative to states’ lemon laws before they would locate the claim form and accompanying disclaimers.

***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 the information dissemination process. This perpetuates the problem observed by the prior auditor, Claverhouse & Associates, when they concluded, in the 2019 audit, “Our field investigator was informed by the service department that FCA US LLC has no third-party independent Mechanism and that customers with unresolved warranty disputes should simply contact the manufacturer’s customer assistance line (*i.e.*, 1-800-992-1997).”<sup>22</sup>

**RESERVATIONS**

Irrespective of the disclosures which meet the requirements of Mag-Moss, one significant concern is that the “*Warranty Information Booklet*” does not mention the national NCDS program, in place since 2015. On page 23 of the “*Warranty Information Booklet*,” it states that if a warranty problem is not resolved for customers residing in Arkansas, Idaho, Kentucky, Minnesota, and Montana ONLY, the customer can contact FCA US LLC Customer Arbitration program, not NCDS. This deficiency was pointed out in the 2019 audits by Claverhouse & Associates. The placement and substance of the disclosures raise legitimate concerns with respect to whether the disclosures required by Mag-Moss are clear, conspicuous, and accurate.

The above disclosure also contradicts disclosures made in the “*Customer Care, Arbitration, and Lemon Laws*” booklet. The booklet singles out four of the five mandatory states (excluding Montana) and discusses both lemon law provisions and the NCDS program as to those states only. This necessitates a significant reservation.

FCA US LLC has expanded into all states and it is now fully operational nationwide as part of the NCDS informal dispute settlement program. Given its national presence, meeting the notice and disclosure requirements of Magnuson-Moss assumes greater saliency.

As of the date of this audit, neither NCDS nor FCA has indicated that the warranty materials of the information in the separate customer care document have been corrected.

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<sup>22</sup> Claverhouse & Associates, NCDS National Audit, pg. 15 (2019). The 2018 and 2017 audits found the same statutory discrepancies.

**CONCLUSION**

FCA US LLC’s contradictory consumer-facing materials is a serious compliance issue. Their failure to include dealerships and service centers in providing information to consumers indicates they are not taking necessary reasonable steps to promote the arbitration program. If the warranty notice deficiencies are not rectified within the next year, FCA US LLC is very likely to be deemed out of compliance.

**For purposes of this audit, the auditor finds FCA US LLC to be in substantial compliance with the warrantor requirements of Mag-Moss, 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
<b>§ 703.2(c)</b>	
§ 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 Disclosures*

Acura makes customers aware of the dispute resolution mechanism by providing information that is 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 following page identifies the three steps customers must follow if they have warranty repair issues. Step 3 is clear, and includes, as required, the contact information for filing a claim with the NCDS. On the next 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.

Acura’s written materials communicating the availability of the NCDS dispute resolution program is excellent and complies with the federal disclosure requirement.

*Dealership and Service Engagement*

The auditor visited Suburban Honda at 25100 Haggerty Rd, Farmington Hills, Michigan 48335 to determine whether service department employees could provide helpful or accurate information about the NCDS dispute resolution program. The auditor interviewed the service manager of Honda, who previously had some responsibility for Acura complaints.<sup>23</sup> The person could not provide any useful information about the *availability* of a dispute resolution program (*i.e.*, Mechanism). Further, the auditor searched for visible materials, both in the service department and in the dealership showroom. Such materials were non-existent, although the repair shop including a notice of how repairs would be handled and the billing protocols for repairs not covered under warranty. To the manager’s credit, he did not provide false information. But he did not have any knowledge of NCDS, or the warranty dispute resolution process sponsored by Acura. While he was consumer-focused, meaning that he explained how Honda (and also Acura) provide consumers with multiple opportunities to demonstrate vehicle non-conformities, he could not discuss the NCDS program on any level, pedestrian or otherwise. This is clearly problematic and runs contrary to the federal regulator’s intent.

**CONCLUSION**

**Acura is in substantial compliance with the warrantor requirements of Magnuson-Moss.**

**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**

<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
<b>§ 703.2(c)</b>	
§ 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 Disclosures*

NCDS information is located in the “Owner’s Manual” (revised in 2020) in the Introduction to the Table of Contents, where it is prominently located on 2. On the pages that follow, Honda informs customers of the three required steps. Step 3 specifically references NCDS:

<sup>23</sup> The Acura dealership recently moved out of the space now occupied by Toyota. Previously, the Honda and Acura dealerships and service centers were conjoined.

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).

On the next page of the “*Owner’s Manual*,” customers will find a more detailed explanation of the program – how it operates, and what consumers might expect should they file a claim. All information with respect to the operational mechanics of the NCDS arbitration program is accurate and clear.

Honda’s written materials communicating the availability of the NCDS dispute resolution program is excellent and complies with the federal disclosure requirement.

***Dealer and Service Center Engagement***

In 2021, for purposes of completing the 2020 audit, the auditor visited Williams Honda located at 2600 U.S. 31 South, Traverse City, Michigan 49685. After meeting with several service employees, including the service director, the auditor obtained no useful information. This suggests that service department personnel are not up to speed on the availability of a dispute resolution mechanism that goes beyond the manufacturer and the dealer.

**CONCLUSION**

**Honda is in substantial compliance with the warrantor requirements of Magnuson-Moss.**

**D. LEXUS**

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

**LEXUS - Summary of Compliance**

<b>Statutory Citation</b>	<b>Compliance Findings</b>
§ 703.2(b)(1)	<b>Yes, subject to the noted reservations</b>
§ 703.2(b)(2)	<b>Yes</b>
§ 703.2(b)(3)	<b>Yes</b>
§ 703.2(b)(4)	<b>Yes</b>
<b>§ 703.2(c)</b>	
§ 703.2(c)(1)	<b>Yes</b>
§ 703.2(c)(2)	<b>Yes</b>
§ 703.2(c)(3)	<b>Yes</b>
§ 703.2(c)(4)	<b>Yes</b>
§ 703.2(c)(5)	<b>Yes</b>

**FINDINGS**

***Notice Requirement and 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. The *“Lexus Warranty and Services Guide”* includes four pages of accurate information about the NCDS arbitration program, highlighting the following aspects of the arbitration program mandated by Mag-Moss:

- What types of dispute are eligible?
- How long does arbitration take?
- Procedures for requesting arbitration
- How does the process work?
- What types of decision are rendered?
- Compliance requirement of Lexus
- Limits to the scope of NCDS decisions
- Other recourse, including the availability of small claims court

There is a detachable Customer Claim Form included in the *“Lemon Law Guide.”*

The only cautionary note is that the information described above is organized as part of a multi-step process. A customer with a warranty dispute, however, is not required to go through steps 1 and 2; they may go directly to step 3 and activate arbitration. By organizing the information in this manner, consumers may incorrectly conclude that they must follow the sequential steps before they can obtain an appropriate remedy.

### *Dealership and Service Center Engagement*

For this aspect of the requirement, the auditor visited a Lexus dealership, Lexus of Toledo, located at 7505 W. Central Ave., Toledo, Ohio 43617 to assess the scope of dealership involvement and knowledge of the arbitration program. The auditor could obtain no information about whether an arbitration program exists and how consumers are notified about NCDS should their warranty dispute require escalation to the next step. The service manager implied that all claims are handled internally.

The above commentary ties directly into a concern expressed by the prior auditor, Claverhouse & Associates, expressed as follows:

“Clearly, one of the principal reasons that the annual independent audit requirement was included in Rule 703 was to ensure that adequate consumer awareness was provided for by sponsoring manufacturers. That the original draft of Rule 703 was modified so as to require this audit was an outcome fostered by manufacturers who complained that the proposed alternatives were too onerous and in fact, “draconian.” The Federal Trade Commission declined to mandate the national media campaigns and dealer incentives requirements, opting instead for voluntary efforts by the manufacturers, or their agent dealers, which would then be audited annually to ensure compliance with the stated objective of ensuring consumer awareness of the availability of the program. In any event, it is abundantly clear that no audit findings are complete



without an evaluation of this aspect of the arbitration program since it is specifically set forth in the administrative Rule requirements that that section identified as the “Proceedings.” This extensive Federal Trade Commission commentary was promulgated as a fundamental part of the Rule, as is the case with all promulgated FTC Rules.”<sup>24</sup>

The primary issue with respect to Lexus’ and its relationship with dealers is that incorrect information is being funneled to consumers. During the auditor’s telephonic inquiry, the service director again advised that arbitration is only available through Lexus, meaning that the customer must first file a formal claim with Lexus. These responses are at odds with what the regulators intended with the strictures of Magnuson-Moss. The prior auditor’s summary on this point is re-captured here, given the continuance of the problem.

“Overall, the Lexus findings were negative and suggest that Lexus review their training of service advisors as concerns warranty dispute mechanisms. Together with previous report findings, including the misrepresentation of one dealer, demonstrates the need for continuing oversight by regulators. While this finding is problematic, it does not, by itself, rise to the level of a risk to Lexus’ compliance status but it does constitute a significant regulatory problem.”<sup>25</sup>

## RESERVATIONS

Lexus compliance levels are unchanged from prior years. While Lexus in all other material respects meets the statutory obligations of Magnuson-Moss, its consistently poor results in making customers aware of the NCDS dispute resolution program at the time a warranty dispute arises remains a large hole that Lexus must address. 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 Magnuson-Moss, 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>24</sup> Claverhouse & Associates, NCDS National Audit, pg. 19 (2019).

<sup>25</sup> *Id.* at pg. 20.

MITSUBISHI - Summary of Compliance

Statutory Citation	Compliance Findings
§ 703.2(b)(1)	Yes, subject to the noted reservations
§ 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 Disclosures*

Mitsubishi notifies its consumers of the existence of auto warranty program through its “*Warranty Information Manual*” 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 board hearing, documents only. 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.

*Dealership and Service Center Engagement*

Prior Claverhouse & Associates audits 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 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, the majority of dealerships visited by the auditor could not accurately describe the Dispute Resolution Process.”

Irrespective of this initiative and associated admonition, the auditor’s experience in this audit year was similar to previous audit experiences. The auditor contacted Mitsubishi Motors located at 5900 Highland Road, Waterford Michigan 48327 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 terms “mediation” or “arbitration.” This exchange represents a serious information vacuum that needs to be addressed holistically.

**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 glovebox materials. More consistent effort should be made by Mitsubishi to fulfill this statutory requirement.

**CONCLUSION**

**Mitsubishi is in substantial compliance with the warrantor requirements of Magnuson-Moss, 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**

<b>Statutory Citation</b>	<b>Compliance Findings</b>
§ 703.2(b)(1)	Yes, subject to the noted reservations
§ 703.2(b)(2)	Yes
§ 703.2(b)(3)	Yes
§ 703.2(b)(4)	Yes
<b>§ 703.2(c)</b>	
§ 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 Disclosures*

To meet the notice requirement, Toyota publishes a 32-page booklet entitled, “*Owner’s Warranty Information*,” that explains in general the NCDS process, and how and where to file an application. The dissemination method is through the dealer as part of the initial information packet given to new customers at the point of sale. The brochure also is available to customers when they visit the dealership.

Toyota also publishes an 89-page booklet, entitled, “*Owner’s Warranty Rights Notification*” booklet. 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).

The booklet was last revised in 2017. As with the “*Owner’s Warranty Information*” booklet, it is primarily distributed by the dealership sales personnel at the point of sale.

### *Dealership and Service Center Engagement*

In 2021, the auditor visited two Toyota dealerships, Suburban Toyota of Farmington Hills, 25000 Haggerty Rd, Farmington Hills, Michigan 48335, and Serra Toyota of Traverse City, 1302 S. Garfield, Traverse City, Michigan 49686. In both dealerships, the service manager was not aware of the existence of the NCDS arbitration program. In Traverse City, the dealership representative merely re-affirmed Toyota’s focus on customer service. At the Farmington Hills dealership, the manager had been in the position for only 8 months. The morning of the interview, he had taken a class on warranties, however, there was no mention of NCDS or the availability of a dispute resolution mechanism to address warranty disputes. The service manager explained Toyota’s protocol, which is to attempt to duplicate the problem three times, after which the problem gets bumped up to corporate.

As was pointed out by the previous auditor, in multiple audit reports, the responses noted challenge the requirements of Magnuson-Moss Warranty Act’s Rule 703 mandate that manufacturers make customers with a warranty dispute aware of any sponsored Mechanism, and how to file a claim directly with the Mechanism. This requirement mandates that factual information about the program be provided, not any assessments about the viability or desirability of seeking dispute resolution under the program.

Also, the prior audit made clear that the requirement provision in the Rule was offered by the manufacturers specifically during the time Rule 703 was promulgated. Since this proposal was accepted by the Federal Trade Commission, as part of the industry-initiated request, it behooves manufacturers to make a more ardent effort to comply.

Despite the above concern, Toyota’s dissemination methods<sup>26</sup> along with the number of cases filed nationally with NCDS in the previous four audited years: 3,395 in 2017, 3,602 in 2018, 3,861 in 2019, and 2,864 in 2020, suggest that information is getting into the hands of consumers. And, in reviewing the responses to the consumer satisfaction survey, it is equally apparent that access to information is not an issue. Consumers are receiving the required information to file their claims.

**RESERVATIONS**

Toyota remains deficient in including dealerships and service centers in the information dissemination process. Dealer inspections, both in person and telephonic, demonstrate a general lack of knowledge on the part of all interviewed service department employees about NCDS or, more importantly, awareness that an informal dispute settlement program exists for their customers.

**CONCLUSION**

**Toyota is in substantial compliance with the warrantor requirements of Magnuson-Moss, subject to the reservations 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)	<b>Yes, subject to the noted reservations</b>
§ 703.2(b)(2)	<b>Yes</b>
§ 703.2(b)(3)	<b>Yes</b>
§ 703.2(b)(4)	<b>Yes</b>
<b>§ 703.2(c)</b>	
§ 703.2(c)(1)	<b>Yes</b>
§ 703.2(c)(2)	<b>Yes</b>
§ 703.2(c)(3)	<b>Yes</b>
§ 703.2(c)(4)	<b>Yes</b>
§ 703.2(c)(5)	<b>Yes</b>

**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.*” On page 12, for disputes originating in the United States, Tesla states:

<sup>26</sup> Toyota’s caseload figures for this same time frame are 406 (2017), 417 (2018), 580 (2019, and 650 (2020).

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.

Tesla then describes its dispute resolution program as one that proceeds in two steps. The first is an optional step through NCDS. The second is binding arbitration or small claims court, whichever the consumer elects.

The dispute resolution process through NCDS is described in detail and is highlighted for ease of reference. Eligibility requirements are highlighted, as is a specific time frame 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.

Class action arbitrations are explicitly prohibited.

This combination of a two-step non-binding and binding arbitration process, while unique to Tesla, is confusing. First, the initial reference to arbitration is to a binding arbitration program. The clause suggests that the consumer has already agreed to binding arbitration. If this is what Tesla intends, the language conflicts with Magnuson-Moss.<sup>27</sup> It is difficult to discern whether the language in the agreement to arbitrate, which will result in a binding decision, is purely consensual. The binding arbitration clause does not explain that once invoked, legal remedies cannot be pursued. Doctrines of claim preclusion and *res judicata* can eclipse the consumer's right to pursue relief unless a different claim is asserted.

### *Dealership and Service Center Engagement*

Due to fiscal restraints and the continuation of the pandemic, the auditor did not visit or contact a Tesla dealership during this audit year.

## RECOMMENDATION

The auditor recommends that Tesla revisit the language concerning binding arbitration to make sure the consumer understands it is an election that can be made after resorting to the NCDS non-binding arbitration process.

## CONCLUSION

**Tesla is in substantial compliance with the warrantor requirements of Magnuson-Moss.**

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<sup>27</sup> Rule 703.5(j), in relevant part, states:

Decisions of the Mechanism shall not be legally binding on any person.

## Section IV

### Mechanism Operations and Compliance Levels

This chapter deals specifically with the statutory obligations imposed on the National Center for Dispute Settlement. The primary federal regulations and interpretations<sup>28</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, Arbitrator Bulletins, 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 from California, one from Texas, two from Florida and one from Ohio.

#### A. STATUTORY REQUIREMENTS FOR THE MECHANISM ORGANIZATION – § 703.3

Rule 703.3 establishes the funding and staffing protocols “to ensure fair and expeditious resolution of all disputes.”<sup>29</sup> Access to the Mechanism is without charge, an attempt to motivate manufacturers to incorporate an informal dispute settlement option in their warranties,<sup>30</sup> and to encourage consumers to avail themselves of the option, if available. As written, the Rule requires the warrantors to initially fund

<sup>28</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>29</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>30</sup> The rationale behind this provision is explained in the Senate Report 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 Mechanisms (Rules, Regulations, Statements and Interpretations Under Magnuson-Moss Warranty Act), 40 FED. REG. 60168, 60176 (Dec. 31, 1975).

the Mechanism at a level sufficient to permit the Mechanism to execute its statutory obligations. This Rule recognizes the malleability of funding. For example, if a Mechanism were to incorporate a mediation procedure in its informal dispute resolution process, the inclusion of this step is likely to increase its budget. The language is intended to be flexible enough to permit the Mechanism to carry out its prescribed functions, per Magnuson-Moss.

Rule 703.3<sup>31</sup> also requires that the warrantor and the Mechanism remain sufficiently insulated from each other. NCDS meets this statutory obligation in several different 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 Ms. Debi Lech, 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 do not have any input into this process.

Finally, Rule 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>32</sup> This mandate is carried out by NCDS, in part, through its Arbitrator's Manual, which sets forth the fairness standards by which arbitrators are expected to 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 of the requirements of the process as set forth in the Magnuson-Moss Warranty Act. Accordingly, NCDS relies on its Arbitrators to remain unbiased and impartial at all times 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.

Both arbitrators and NCDS staff are also committed to ensuring that all disputes are resolved within the 40-day time frame established by Magnuson-Moss. (See pg. 28 of the audit, which confirms that the average number of days from case initiation to case closure is 35). Staff must initiate a case within 48

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<sup>31</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>32</sup> Rule 703.3(c).



hours of the claim being filed, provided it meets eligibility requirements. Arbitrators are appointed 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 commingle with arbitrators, except at arbitrator training programs. Required insulation exists.

## FINDINGS

Within the parameters of a Magnuson-Moss audit, the auditor finds that NCDS personnel is dedicated to ensuring a proper relationship between NCDS, the warrantor, and its members, thus ensuring a fair process – both in perception and in reality.

## CONCLUSIONS

**The Mechanism is in substantial compliance with § 703.3 of Magnuson-Moss.**

### B. STATUTORY REQUIREMENTS FOR MEMBERS' QUALIFICATIONS – § 703.4

Rule 703.4 focuses on “members” as defined by Rule 703.1(f),<sup>33</sup> nomenclature unique to the informal dispute resolution program. Rule 703.4<sup>34</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 all training programs observed by the auditor during 2020, 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 particular manufacturer’s representative. The disclosures are intended to enhance the confidence level that participants have in the arbitrator and, ultimately, 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, generally at the time the appointment is confirmed. A random review of files indicates that to the extent this issue surfaces, arbitrators are in full compliance.

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<sup>33</sup> Rule 703.1(f) states:

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

<sup>34</sup> This rule specifies the level of insulation required for members (*i.e.*, arbitrators to serve) and essentially 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. Of course, 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.

The requirement of early and specific disclosure of disqualifying circumstances is further circumscribed in Rule 4 of the “*Rules and Procedures for the Informal (Non-Binding) Resolution of Automobile Warranty Disputes.*” This Rule states:

**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 are required to 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>35</sup> and Rule 12 (Communication with the Arbitrator).<sup>36</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. In order 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 avoid the possibility of an extemporaneous exchange, however innocuous. With respect to test drives (suspended during 2020 due to the pandemic), if a car has two seats, and the consumer and representative are both in attendance, the arbitrator will go on

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<sup>35</sup> Rule 9 permits *ex-parte* hearings only after assurance of proper notice to all parties.

<sup>36</sup> Rule 12 prohibits communication with the arbitrator except at the oral hearing.

the test drive after the consumer takes the manufacturer’s representative on the initial drive. This is to eclipse the possibility that a consumer may refuse to take the car on a second test drive, erroneously concluding that the arbitrator would already have been privy to the evidence obtained from the drive. Under NCDS protocols, an arbitrator cannot drive the vehicle as doing so would create evidence, an obligation imposed on the consumer and the manufacturer’s representative.

Finally, § 703.4(c) requires that members “be persons interested in the fair and expeditious settlement of consumer disputes.” To this end, it is relevant that virtually all disputes processed in 2020 were concluded well within the 40-day time frame 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 of Magnuson-Moss.**

**C. STATUTORY REQUIREMENTS FOR THE OPERATIONS OF THE MECHANISM – § 703.5**

Rule 703.5 includes a number of operational dimensions, aimed at protecting the 40-day time frame 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>37</sup> All of this information is available to consumers through booklets on the NCDS website. They also are sent to consumers 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>38</sup> A dedicated point person at NCDS handles all eligibility issues.

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<sup>37</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>38</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 Magnuson-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.” 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-

### *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>39</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.

The claim is then assigned to an arbitrator, who is chosen from the National Panel. This selection is random, based on a rotation and also 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 handled 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>40</sup> the case administrator collects all evidence that is received, including the Manufacturer's Response Form and any other documents. This evidence is subsequently forwarded to the arbitrator before the scheduled hearing.

### *Case Processing – Settlements Through "Mediation" and Hearings*

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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, 42715 (July 15, 2015).

<sup>39</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 glovebox of their vehicles.

<sup>40</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.

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, without disturbing the arbitration hearing date.

After hearings commence, the arbitrator is foreclosed from serving as a mediator. If a party makes a settlement overture during the hearing, the arbitrator will suspend the proceedings for a short period of time to facilitate dialogue between the parties. This protocol is in place to ensure 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 matter on the merits.

### *Investigations*

NCDS rules permit the arbitrator, before making a decision to both inspect the car and also to obtain the use of technical experts.<sup>41</sup> While inspections and test drives are fairly common (suspended during the pandemic), the use of technical experts is not. In the 80 case files reviewed, not a single arbitrator or board decision identified the use of a technical expert. This finding is consistent with prior audit reports, where the auditor determined that only a limited number of requests occur by arbitrators for technical information.

Independent inspections are conducted generally 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. As noted in the 2019 audit, "many arbitrators do not understand the real purpose of these inspections, inappropriately viewing them as a means by which to diagnose the vehicle's alleged mechanical problem rather than as a means to resolve conflicts of fact between the parties. This orientation suggests that arbitrators may inappropriately become involved in efforts to achieve customer satisfaction rather than seeing themselves as arbiters of disputes."<sup>42</sup>

### *Case Determinations*

In the absence of case settlement, § 703.5(d) requires arbitrators to render a fair decision, which takes into account 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,

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<sup>41</sup> See Rule 11, "Rules and Procedures for the Non-Binding Resolution of Automobile Warranty Disputes" and Rule 13, "California Dispute Settlement Program" ("CDSP"). Also, see § 703.5(c), **Mechanism's Duty to Aid in Investigation.**

<sup>42</sup> Claverhouse & Associates, NCDS National Audit, pg. 29 (2019).

reimbursement for expenses, and compensation for damage. A time frame for performance also must be included. Based on random case reviews, arbitrators fully complied.

Rule 703.5(d) also imposes on the Mechanism the obligation, unless cause is established,<sup>43</sup> to process cases as expeditiously as possible but within 40 days of notification of the dispute. All disputes in 2020 were handled and processed to closure well within the 40-day time frame. Listed below is a breakdown by manufacturer.

**Average Days to Close – by Participating Manufacturer  
January 1, 2020 – December 31, 2020**

Manufacturer	Days to Close
Lexus	34
Toyota Motor Sales, USA, Inc.	35
Mitsubishi Motors North American	36
FCA US LLC	34
Honda	35
Acura	31
Tesla	36
<b>Average Days to Close/NCDS Totals</b>	<b>35</b>

*Compliance with Arbitral Determinations*

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 frame. Often, the letter is not returned. Only a handful of case files the auditor reviewed had signed forms in the file. This approach suggests that compliance with respect to performance is being assumed without proper notification to the consumer.

**RECOMMENDATION**

The letter from NCDS should be clear to indicate that barring a response from the consumer, NCDS will assume that performance has been completed both timely and to the satisfaction of the consumer.

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<sup>43</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 made an attempt to seek redress directly from the warrantor, assuming prior resort.

**FINDINGS**

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

**CONCLUSION**

**The Mechanism is in substantial compliance with § 703.5 of Magnuson-Moss.**

**D. STATUTORY REQUIREMENTS FOR VARIOUS ASPECTS OF RECORDKEEPING – § 703.6**

Rule 703.6 requires the Mechanism to maintain certain records<sup>44</sup> and, upon request, to turn the records over to the auditor during the audit period.

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<sup>44</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

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 Rule 703.6,<sup>45</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 2,864 disputes filed in 2020. Of these, 1,836 cases were eligible for AWAP review, 210 were withdrawn after filing, and 818 cases were determined by the AWAP to be out-of-jurisdiction.<sup>46</sup> Of the in-jurisdiction closed cases, NCDS reports that 1740 were arbitrated and 96 were mediated. There were 1,402 arbitrated decisions which were reported as “adverse to the consumer” per § 703.6(e), which represents 81% of all arbitrated cases. While on its face this may appear to be a high percentage, the reader is advised to note that under Magnuson-Moss, the threshold for recovery is a *substantial* non-conformity with use, value, or safety. Two other points bear mentioning. 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, it is clear that the use of internal mediation, which may obviate 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 Rule 703.6,<sup>47</sup> NCDS also must document disputes in which the warrantor has refused

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

<sup>45</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>46</sup> Typically, a case which is deemed ineligible is due to the consumer exceeding the terms of the warranty.

<sup>47</sup> Rule 703.6(c) states:

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



to 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' Annual FTC § 703.6(c)(1) and (2) Report.

Magnuson-Moss imposes a tight time frame for case processing. As such, NCDS is mandated to ensure that all complaints are processed and concluded within 40-days.<sup>48</sup> According to the statistical index reports, as of December 2020, all cases were processed within the 40-day time frame 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 test 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 frame. 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>49</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 also 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

**NCDS is in substantial compliance with § 703.6 of Magnuson-Moss.**

### E. STATUTORY REQUIREMENT TO CONDUCT 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>48</sup> Rule 703.6(d) states:

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

<sup>49</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>50</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>51</sup> This analysis includes oral or written contact with consumers who filed disputes.

## FINDINGS

This is the first audit conducted by Bedikian but follows 17 prior annual audits conducted by Claverhouse & Associates in which the AWAP informal dispute settlement program was evaluated for compliance with Magnuson-Moss requirements. The auditor reviewed the last several prior audits to assure for completeness and comprehensiveness. Records pertaining to the NCDS' AWAP that are required to be maintained by § 703.6 (record-keeping) are being kept and were made available for review.

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<sup>50</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>51</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**

**NCDS is in substantial compliance with § 703.7 of Magnuson-Moss.**

**F. STATUTORY REQUIREMENT FOR OPEN RECORDS AND PROCEEDINGS – § 703.8**

Rule 703.8 speaks to the nature of the proceedings,<sup>52</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>53</sup>

**FINDINGS**

The above statutory requirement is memorialized in the “*Rules and Procedures for the 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 general 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 virtually no cross-over, assures compliance and ethics oversight.

Moreover, in terms of files retention, NCDS does not retain files in excess of four years. Physical files are either shredded or, if electronically stored, they have an automatic destruction date.

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<sup>52</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>53</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**

**NCDS is in substantial compliance with § 703.8 of Magnuson-Moss.**

## Section V

### Field Audit of Four Geographic Areas

For this year’s audit, four geographic areas were reviewed – Michigan, Ohio, Florida, and Texas.<sup>54</sup> Michigan was selected because it formerly housed the NCDS operation,<sup>55</sup> Ohio and Florida administer state-certified programs, and Texas is NCDS’ headquarters.

#### Michigan

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

The survey for Michigan consisted of 35 closed NCDS cases.<sup>56</sup> From this universe, we surveyed 1 customer.<sup>57</sup> Consistent with prior audits conducted by Claverhouse & Associates, surveyed customers’ level of program satisfaction, including arbitrator performance, is often tied inextricably to whether or not they achieved the desired outcome in arbitration.

The average number of days for handling a case in Michigan in 2020 was 34 days, which is similar to the number of days cases resolved, specifically, 34.

The following table breaks down the sample size and response rate based on case outcome, followed by a breakdown of consumer responses.<sup>58</sup>

Survey	Population	Sample Size	Response Rate %
Michigan - Arbitrated Awarded	6	1	17%
Michigan - Arbitrated Awarded No Action	28	0	0%
Michigan - Mediated	0	0	0%
<b>Total</b>	<b>35</b>	<b>1</b>	<b>3%</b>

*Please note:* There was only one respondent who responded to the **ARBITRATED CASES AWARDED** survey for Michigan and the results are captured below. There was one other respondent and they quit the survey by question 7.

<sup>54</sup> The field audits were conducted in June, July and August 2021 but are included in the 2020 audit.

<sup>55</sup> NCDS operations were consolidated in June 2020. All case administration, marketing, and training are handled out of the Dallas, Texas headquarters.

<sup>56</sup> Statistics being referenced may appear to be at odds with one another. This is largely due to data being collected and reported based on different regulatory mandates using different terminology for similar concepts. Important distinctions are noted.

<sup>57</sup> Again, the response rate on the overall universe of cases is lower than prior years, due to the pandemic and also greater use of mediation by manufacturers, pre-filing.

<sup>58</sup> The methodology used in the consumer survey appears in Section VII and it is explained in greater detail.

**Pre-filing experience with the dealer or manufacturer.** To understand the consumers' pre-filing experience, respondents were asked general questions related to their pre-filing experience with either the dealer or the manufacturer. The results show before filing a claim with NCDS, the participant indicated 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, the respondent stated more than three times. The participant reported they learned about the NCDS Non-Binding Automobile Warranty Arbitration Program through the dealership and no other resources were reported. The participant stated they were not informed of the Arbitration Program through any sources from the manufacturer or dealer.

**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. The participant 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 the respondent indicated the instructions on the claim form were "*somewhat clear*." Once the participant filed their claim with NCDS, the participant reported it took two days for NCDS to acknowledge their claim and initiate the administrative process.

**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, the respondent reported they did receive or review the Frequently Asked Questions (FAQ) packet at [www.ncdsusa.org](http://www.ncdsusa.org). The information presented in the FAQ was "*somewhat clear*" to the respondent. The participant stated the information presented in the FAQ was "*moderately helpful*."

When asked if participants received or reviewed the Non-Binding Program Rules at [www.ncdsusa.org](http://www.ncdsusa.org), the respondent reported "*yes*." The Program Rules were "*somewhat clear*" to the participant. The respondents were then asked if the Program Rules were helpful in explaining the arbitration process of which the participant stated they were "*moderately helpful*." The respondent stated they received a hearing notice from NCDS and also reported 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, the participant requested a "documents only" hearing after filing their claim so they did not participate in the actual evidentiary hearing process.

**The evidentiary hearing process.** No participants participated in the evidentiary hearing process.

**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 the arbitrator communicated this award by email. The relief awarded to the respondent by the arbitrator was a refund, where the manufacturer would give money for their car. The results show that the arbitrator did accurately identify the nature of the non-conformity in the consumers alleged claims as reported by the respondent. After identifying the non-conformity, the participant stated the arbitrator included a summary of the testimony at the hearing. The participant stated the arbitrator's award was clear, the arbitrator rendered a reasoned award, and they accepted the arbitrator's award.

**Arbitrator satisfaction.** To understand arbitrator satisfaction among the consumers, the participants were asked how well the arbitrator understood their case of which the respondent reported "*reasonably well*." The arbitrator's objectivity and fairness were rated as "*excellent*" by the respondent. The participants were then asked to rate the arbitrator's impartiality during the hearing of which the participant

rated their arbitrator as “*excellent.*” Finally, the participants were asked to rate the arbitrator’s impartiality with respect to the award which the respondent rated this 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 asked to rate the timeliness of the communications between them and NCDS staff of which the respondent rated the timeliness of communications as “*good.*” Next, participants were asked to rate the helpfulness of the NCDS staff, and the participant rated the helpfulness of the staff as “*good.*” To help gauge consumers’ experience with the arbitration program, participants were asked to rate their overall experience under the Arbitration Program of which the participant rated it as “*good.*” Finally, respondents were asked if they would recommend the Arbitration Program to friends and family and the participant responded “*yes.*”

**B. RECORDKEEPING, ACCURACY AND COMPLETENESS**

Rule 703.6. mandates various recordkeeping functions,<sup>59</sup> all of which were previously discussed in the context of the national audit in Section IV. For the Michigan field audit, the auditor requested a random

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<sup>59</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);



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

## 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 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

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(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.

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 possible 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, with appropriate modifications involving enhanced use of technology having been previously made, are in substantial compliance with Federal Rule 703 requirements.**

**C. CASE FILE RECORDS (4 yrs. 2017-2020)<sup>60</sup>**

**FINDINGS**

A random sample of case numbers from the years 2017 through 2020 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.

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<sup>60</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.

## E. HEARING PROCESS

The AWAP Michigan hearing was held on August 10, 2021, per the hearing confirmation notice submitted to the parties on July 13, 2021.

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

The hearing was conducted via teleconference. The attendees included the arbitrator, the customer, the FCA US LLC manufacturer representative, and the auditor.

### *Openness of Hearing*

The meeting began a few minutes after the scheduled hearing time of 10:00 AM due to technical difficulties encountered by the arbitrator. The arbitrator explained that an auditor was present on the phone, but he did not explain the role of the auditor. Under the “*Rules and Procedures for Non-Binding Resolution of Automobile Warranty Disputes*,” and consistent with § 703.8, the hearings are open and can be attended by any observers who agree to abide by the program’s rules.

### *Efficiency of Hearing*

The arbitrator’s case file appeared to be complete with all required documents. The arbitrator informed the parties of the process protocols, and how each party would have uninterrupted time to present their respective cases. The arbitrator also explained that to his knowledge, he did not have any conflicts that would preclude him from serving impartially on the case. The arbitrator then allowed the parties to present their evidence, starting first with the consumer.

### *Hearing*

The hearing was properly conducted from beginning to end. All parties were afforded an opportunity to present their case. Following each party’s presentation, the opposing party was given an opportunity to ask clarification questions. After all evidence was presented, the parties made closing statements, starting initially with the manufacturer’s representative, followed by the consumer. Once closing statements were completed, the arbitrator asked if either party had further proofs to offer. Each party responded negatively. The arbitrator declared the hearing closed and exited the teleconference.

During the hearing, the arbitrator asked various clarifying questions but did not exceed the scope of his authority. The arbitrator demonstrated that he knew how to conduct and manage a hearing.

### *Board/Arbitrator Decisions*

The auditor reviewed the arbitrator’s decision in this case, and a sample of Michigan NCDS decisions rendered in 2020. The decisions were well-reasoned and consistent with the facts of the case, based on information in the case file. This particular case’s outcome also was consistent with the facts in the case file based on the evidence presented by the parties during the oral hearing.

## CONCLUSION

The auditor concludes that the AWAP, as it operates in Michigan, is in substantial compliance with the Magnuson-Moss Warranty Act and Rule 703. The administrative staff is unequivocally dedicated to the program's mission, while maintaining a clear commitment to the fair and expeditious resolution of warranty disputes.

## Ohio

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

The survey for Ohio consisted of 74 closed NCDS cases.<sup>61</sup> From this universe, we surveyed 13 customers. Consistent with prior audits conducted by Claverhouse & Associates, surveyed customers' level of program satisfaction, including arbitrator performance, is often tied inextricably to whether or not they achieved the desired outcome in arbitration. This phenomenon is explained more fully in the Ohio state-specific audit, but we include it here for edification purposes.

The average number of days for handling a case in Ohio in 2020 was 35 days, which is similar to the number of days cases resolved, specifically, 35.

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	7	4	57%
Ohio - Arbitrated Awarded No Action	61	9	15%
Ohio - Mediated	6	0	0%
<b>Total</b>	<b>74</b>	<b>13</b>	<b>18%</b>

### ARBITRATED CASES AWARDED SURVEY RESULTS

**Pre-filing experience with the dealer or manufacturer.** To understand the consumers' pre-filing experience, respondents were asked general 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, 75% of respondents stated more than three times and 25% reported at least three times. The majority of participants reported they learned about the NCDS Non-Binding Automobile Warranty Arbitration Program through Internet (75%), Manufacturer Customer Service (50%), and Glove-Box materials (25%). There were no other resources participants noted about how they learned about the program. When participants were asked how they

<sup>61</sup> Statistics being referenced may appear to be at odds with one another. This is largely due to data being collected and reported based on different regulatory mandates using different terminology for similar concepts. Important distinctions are noted.

were informed of the Arbitration Program from the manufacturer or dealer, 50% of participants stated over the phone.

**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. All participants (100%) 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 the instructions were "*somewhat clear*." Once the participants filed their claim with NCDS, a total of 75% reported it took two days and 25% stated it took one day for NCDS to acknowledge their claim and initiate the administrative process.

**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 or reviewed the Frequently Asked Questions (FAQ) packet at [www.ncdsusa.org](http://www.ncdsusa.org) and 25% reported they did not receive the packet. The information presented in the FAQ was "*very clear*" as reported by 50% of the respondents, "*somewhat clear*" by 25%, and "*do not know*" by 25% of respondents. Half of participants (50%) stated the information presented in the FAQ was "*moderately helpful*" while 25% reported it was "*very helpful*" and 25% "*did not know*."

When asked if participants received or reviewed the Non-Binding Program Rules at [www.ncdsusa.org](http://www.ncdsusa.org), 100% respondents reported "*yes*." The Program Rules were "*very clear*" to 50% of the participants and "*somewhat clear*" to 50% participants. The respondents were then asked if the Program Rules were helpful in explaining the arbitration process of which 50% stated they were "*very helpful*" and 50% acknowledged they were "*moderately helpful*" in explaining the arbitration process. All of the respondents (100%) stated they received a hearing notice from NCDS and also 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, 50% of participants requested a "documents only" hearing after filing their claim and 50% 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 different phases of the hearing process. The 50% of participants that did not request a "documents only" hearing, reported they did participate in the evidentiary hearing process and the arbitrator started the hearing on time as stated by 100% of those participants. It was also reported by 100% of those participants 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, 100% of those participants responded "*yes*." None of those same respondents conducted a test drive with the arbitrator 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, 50% of the total sample population stated the arbitrator communicated this award by email and the other 50% reported it was through written submission. Most of the consumers (75%) reported "*other*" as the relief awarded to them which was a combination of no award, manufacturer purchasing the vehicle back, or a replacement of a vehicle component. The remaining 25% stated they received a replacement, where the manufacturer would replace the existing car with a new car.

The results show the participants felt the arbitrator did accurately identify the nature of the non-conformity in the consumers' alleged claims as reported by 75% of respondents. After identifying the non-conformity, 75% of participants stated the arbitrator included a summary of the testimony at the hearing. All of the participants (100%) stated the arbitrator's award was clear and 50% reported they felt the arbitrator rendered a reasoned award while the other 50% felt the arbitrator did not render a reasoned award. Finally, 75% of the respondents stated they accepted the arbitrator's award.

**Arbitrator satisfaction.** To understand arbitrator satisfaction among the consumers, the participants were asked how well the arbitrator understood their case of which 50% reported "*very well*," 25% "*reasonably well*," and 25% stated "*not well at all*." The arbitrator's objectivity and fairness were rated as "*good*" by 50% of respondents, "*excellent*" by 25%, and "*poor*" by 25% of respondents. The participants were then asked to rate the arbitrator's impartiality during the hearing of which 50% rated their arbitrator as "*good*," 25% "*excellent*," 25% rated it as "*poor*." Finally, the participants were asked to rate the arbitrator's impartiality with respect to the award which 50% of respondents rated this as "*good*," 25% "*excellent*," 25% evaluated it as "*poor*."

**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 25% rated the timeliness of communications as "*excellent*," 25% "*good*," 25% "*fair*," and 25% rated it as "*poor*." Next, participants were asked to rate the helpfulness of the NCDS staff and 25% of participants rated the helpfulness of the staff as "*excellent*," 25% "*good*," 25% "*fair*," and 25% 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 50% of participants rated it as "*fair*," 25% as "*excellent*," and 25% "*poor*." Finally, respondents were asked if they would recommend the Arbitration Program to friends and family and 75% responded "*yes*" while 25% stated "*no*."

#### ARBITRATED CASES AWARDED NO ACTION SURVEY RESULTS

**Pre-filing experience with the dealer or manufacturer.** To understand the consumers' pre-filing experience, respondents were asked general questions related to their pre-filing experience with either the dealer or the manufacturer. The results show before filing a claim with NCDS, 89% 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, 56% of respondents stated more than three times and 44% reported between one-to-three times (Table 1). The majority of participants reported they learned about the NCDS Non-Binding Automobile Warranty Arbitration Program through Glove-Box materials (33%) and Internet (33%). There were other resources participants noted as outlined in Table 2, but were not as prevalent. Only one participant stated they were informed of the Arbitration Program from the manufacturer or dealer over the phone.

TABLE 1 – Survey Results: How Many Repair Attempts Before Filing a Claim with NCDS?

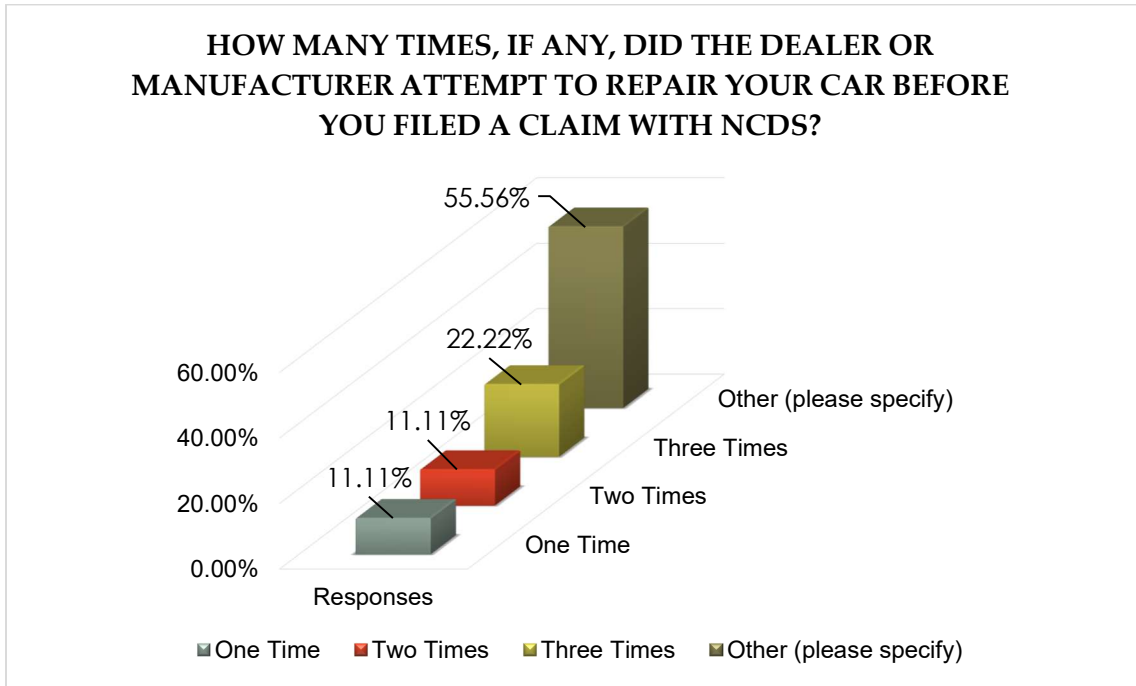
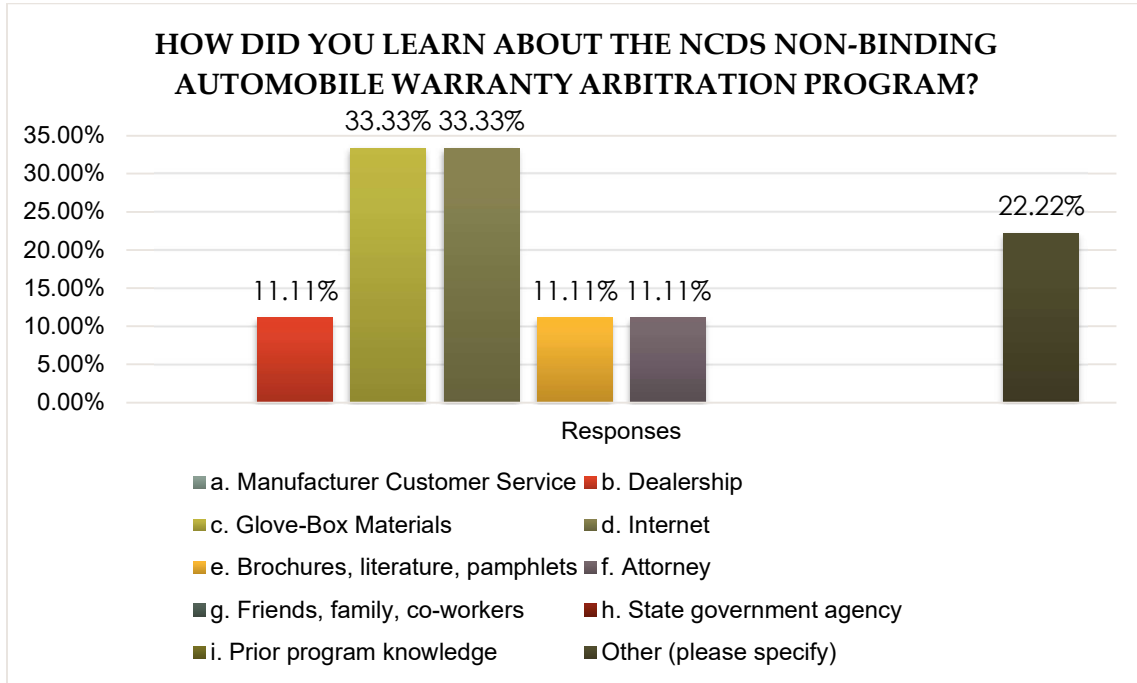


TABLE 2 – Survey Results: How Did You Learn About the NCDS Non-Binding AWAP?

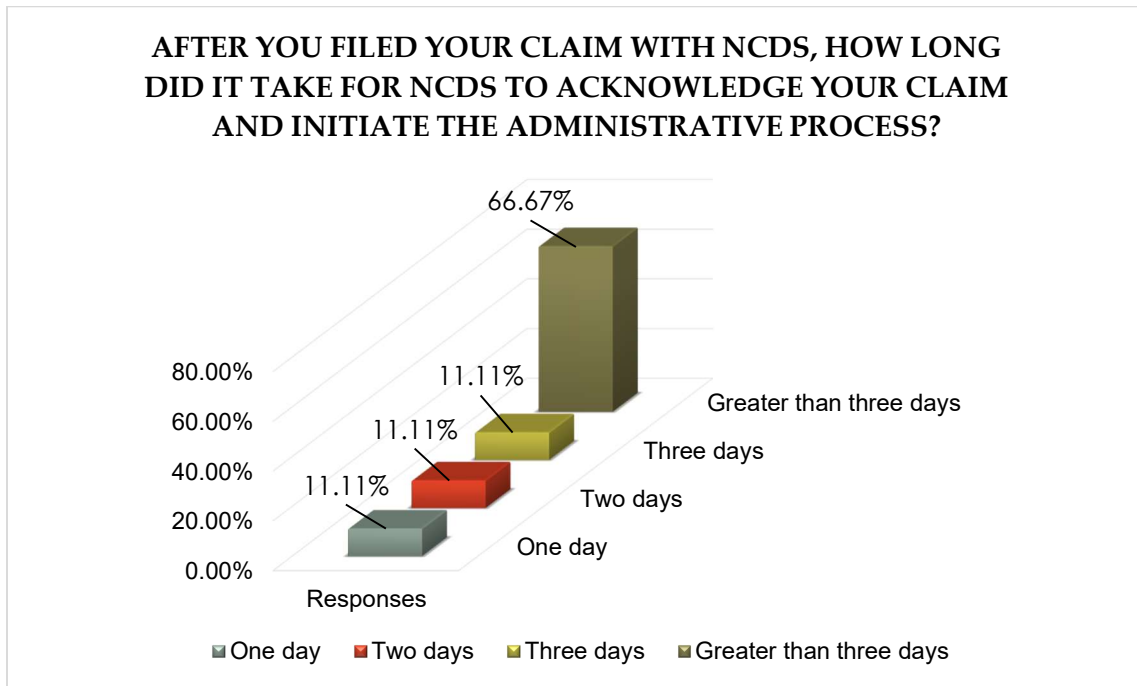


**Note:** Participants were allowed to select multiple choices.

**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 (78%) reported they used an E-File method to file their claim while only 22% used a written submission claim form. The respondents were then asked how clear the instructions were for filing their claim of which 67% indicated the instructions on the claim form were “*somewhat clear*” and 33% stated the instructions were “*very clear*.” Once the participants filed their claim with NCDS, approximately 67% reported it took greater than three days for NCDS to acknowledge their claim and initiate the administrative process. The remaining 33% stated it took between one-to-three days (Table 3).



TABLE 3 – Survey Results: How Long Did it Take for NCDS to Acknowledge Your Claim?



**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 67% of participants received or reviewed the Frequently Asked Questions (FAQ) packet at [www.ncdsusa.org](http://www.ncdsusa.org) and 33% reported they did not receive the packet. The information presented in the FAQ was “*very clear*” as reported by 22%, “*somewhat clear*” by 44%, and 33% of respondents reported “*not clear*” or “*did not know*.” At least 22% of participants stated the information presented in the FAQ was “*very helpful*,” 44% “*moderately helpful*,” and 33% of participants stated, “*not at all helpful*” or “*did not know*.”

When asked if participants received or reviewed the Non-Binding Program Rules at [www.ncdsusa.org](http://www.ncdsusa.org), 78% respondents reported “*yes*” while 22% stated “*no*.” The Program Rules were “*very clear*” to 11%, “*somewhat clear*” to 67%, and “*not clear*” and “*did not know*” by 22% of participants. The respondents were then asked if the Program Rules were helpful in explaining the arbitration process of which 78% reported they were “*moderately helpful*,” 11% reported “*very helpful*,” and 10% stated “*not at all helpful*” in explaining the arbitration process. All respondents (100%) stated they received a hearing notice from NCDS, but 89% 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 one respondent (11%) reported they hired an attorney after receiving their hearing notice. Based on the results, 44% of participants requested a “*documents only*” hearing after filing their claim and 56% 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 different phases of the hearing process. The 56% of participants that did not request a “*documents only*” hearing all reported they did participate in the evidentiary hearing process and the arbitrator started the hearing on time as stated by 80% of those participants. It was also reported by 80% of those participants 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, 80% of those participants responded “yes.”

Only 20% of the same group who participated in the evidentiary process which was made up of one respondent reported they conducted a test drive with the arbitrator during the hearing whereas 80% stated they did not conduct a test drive. The participant (20%) who did conduct a test drive confirmed the arbitrator did ask to see their identifying information such as their insurance, registration, and driver’s license in addition to checking the Vehicle Identification Number (VIN) and mileage. The same consumer who conducted a test drive reported the arbitrator did explain the protocols for conducting the test drive and that it was the responsibility of the consumer to raise the concern with the arbitrator when the issue was experienced during the test drive. Finally, the respondent noted that the arbitrator did explain after the test drive that each party would be able to offer final comments about what was experienced during the test drive.

**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, 67% stated the arbitrator communicated this award by email, 22% reported it was by written submission, and 11% stated they did not receive a communication. All consumers (100%) reported “other” and they received no award.

The majority of participants (78%) felt the arbitrator did not accurately identify the nature of the non-conformity in the consumers’ alleged claims and 22% felt the arbitrator did accurately identify the nature of the non-conformity. After identifying the non-conformity, 78% of participants stated the arbitrator did not include a summary of the testimony at the hearing. More than half of the participants (56%) stated the arbitrator’s award was clear and 44% reported that the award was not clear. All of the participants (100%) felt the arbitrator did not render a reasoned award. Finally, 89% of the respondents stated they did not accept the arbitrator’s award because no award was given and one respondent (11%) stated they did accept the award.

**Arbitrator satisfaction.** To understand arbitrator satisfaction among the consumers, the participants were asked how well the arbitrator understood their case of which 78% reported “not well at all” and 22% stated “reasonably well.” The arbitrator’s objectivity and fairness was rated as “poor” by 78% of respondents and “average” by 22% of respondents. The participants were then asked to rate the arbitrator’s impartiality during the hearing of which 67% rated their arbitrator as “poor” and 33% rated their arbitrator as “average.” Finally, the participants were asked to rate the arbitrator’s impartiality with respect to the award which 100% of respondents rated this as “poor.”

**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 “fair,” 33% “good,” and 11% rated it as “excellent.” Next, participants were asked to rate the helpfulness of the NCDS staff, and the majority of participants (56%) rated the helpfulness of the staff as “fair,” 22% “excellent,” 11% reported it as “good,” and 11% 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 of which 100% of participants rated it as “poor.” Finally, respondents were asked if they would recommend the Arbitration Program to friends and family and 89% responded “no” while 11% stated “yes.”

## B. RECORDKEEPING, ACCURACY AND COMPLETENESS

Rule 703.6. mandates various recordkeeping functions,<sup>62</sup> all of which were previously discussed in the context of the national audit in Section IV. For the Ohio field audit, the auditor requested a random sample of case files drawn from all cases closed during the audit period and examined them to determine whether they were complete and available for audit.

### 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 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

<sup>62</sup> Refer to FN 59 for statutory text.

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 possible 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, with appropriate modifications involving the enhanced use of technology having been previously made, are in substantial compliance with Federal Rule 703 requirements.**

**C. CASE FILE RECORDS (4 yrs. 2017-2020)<sup>63</sup>**

A random sample of case numbers from the years 2017 through 2020 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 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**

*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.

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<sup>63</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.

## E. HEARING PROCESS

The Ohio hearing proceeded as scheduled on August 17, 2021.

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

The hearing, comprised of a board of three arbitrators, was conducted via teleconference in the presence of the auditor.

### *Openness of Hearing*

The meeting began precisely on time. The chair explained that an auditor was present. As with the Michigan hearing, the chair did not elaborate on the role of the auditor – only that the auditor would be “observing” the hearing.

### *Efficiency of Hearing*

The chair opened the hearing and explained the protocols for conducting the hearing. Of the twenty disputes before the panel, two were withdrawn. The panel then proceeded to review all remaining 18 disputes. Each member of the panel took turns summarizing the customer’s claim and the evidence presented. Independently, each board member articulated an outcome, based on the evidence submitted.

### *Hearing*

The hearing was properly conducted from beginning to end. The arbitrators were thorough in summarizing the customer’s claims and the type of evidence presented. At various intervals, clarifying questions were posed. Although not a panel requirement, all 18 disputes were disposed of unanimously. At the end of the hearing, the panel chair went through each of the disputes and verified the outcome.

### *Board/Arbitrator Decisions*

The auditor reviewed the arbitrators’ board decisions for this particular hearing, and a sample of Ohio NCDS decisions rendered in 2020. The decisions were well-reasoned and consistent with the facts of the case, based on evidence in the case file. With respect to the board decision specifically, all determinations were consistent with the notes maintained by the arbitrator. There were no deviations.

Of the 18 cases that were heard by the panel, three cases or roughly 20% were awarded, and 15 cases resulted in no award.

## CONCLUSION

**The auditor concludes that the AWAP, as it operates in Ohio, is in substantial compliance with the Magnuson-Moss Warranty Act and Rule 703. (More amplified discussion appears in the Ohio-Specific Audit). The administrative staff is unequivocally dedicated to the program’s mission, while maintaining a clear commitment to the fair and expeditious resolution of warranty disputes.**

## Florida

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

The survey for Florida consisted of 230 closed NCDS cases.<sup>64</sup> From this universe, we surveyed 14 customers. Consistent with prior audits conducted by Claverhouse & Associates, surveyed customers’ level of program satisfaction, including arbitrator performance, is often tied inextricably to whether or not they achieved the desired outcome in arbitration.

The average number of days for handling a case in Florida in 2020 was 35 days, which is similar to the number of days cases resolved, specifically, 35.

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	31	3	10%
Florida - Arbitrated Awarded No Action	189	10	5%
Florida - Mediated	10	1	10%
<b>Total</b>	<b>230</b>	<b>14</b>	<b>6%</b>

#### ARBITRATED CASES AWARDED SURVEY RESULTS

**Pre-filing experience with the dealer or manufacturer.** To understand the consumers’ pre-filing experience, respondents were asked general 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, 67% of respondents stated more than three times and 33% reported at least three times. The participants reported they learned about the NCDS Non-Binding Automobile Warranty Arbitration Program through Manufacturer Customer Service (33%), Glove-Box materials (33%), and Internet (33%), and no other resources were reported on how respondents learned about the program. Only 33% of participants stated they were informed of the Arbitration Program from the manufacturer through “*sent information*” and reported no other forms of resources or communication.

**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 (67%) reported they used written submission of form claim while 33% used an E-File method to file their claim. The respondents were then asked how clear the

<sup>64</sup> Statistics being referenced may appear to be at odds with one another. This is largely due to data being collected and reported based on different regulatory mandates using different terminology for similar concepts. Important distinctions are noted.

instructions were for filing their claim of which 100% indicated the instructions on the claim form were “*very clear*.” Once the participants filed their claim with NCDS, 67% reported it took only one day and 33% reported it took three days for NCDS to acknowledge their claim and initiate the administrative process.

**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 or reviewed the Frequently Asked Questions (FAQ) packet at [www.ncdsusa.org](http://www.ncdsusa.org). The information presented in the FAQ was “*very clear*” as reported by 100% of the respondents. All of the participants (100%) stated the information presented in the FAQ was “*very helpful*.”

When asked if participants received or reviewed the Non-Binding Program Rules at [www.ncdsusa.org](http://www.ncdsusa.org), 100% respondents reported “*yes*.” The Program Rules were “*very clear*” to 100% of the participants. The respondents were then asked if the Program Rules were helpful in explaining the arbitration process of which 100% stated they were “*very helpful*.” All of the respondents (100%) 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, 100% of participants requested a “documents only” hearing after filing their claim so they did not participate in the actual evidentiary hearing process.

**The evidentiary hearing process.** No participants participated in the evidentiary hearing process.

**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 participants stated the arbitrator communicated this award by email. Most of the consumers (67%) reported that the relief awarded to them by the arbitrator was a replacement, where the manufacturer would replace their existing car with a new car, and 33% stated they received a reimbursement, where the manufacturer would reimburse them for the incidental costs associated with the repair of their car.

The results show the participants did not feel the arbitrator accurately identified the nature of the non-conformity in the consumers alleged claims as reported by 100% of respondents. After identifying the non-conformity, 100% of participants stated the arbitrator included a summary of the testimony at the hearing. All of the participants (100%) stated the arbitrator’s award was clear, the arbitrator rendered a reasoned award, and they accepted the arbitrator’s award.

**Arbitrator satisfaction.** To understand arbitrator satisfaction among the consumers, the participants were asked how well the arbitrator understood their case of which 100% reported “*very well*.” The arbitrator’s objectivity and fairness was rated as “*excellent*” by 100% of respondents. The participants were then asked to rate the arbitrator’s impartiality during the hearing of which 100% rated their arbitrator as “*excellent*.” Finally, the participants were asked to rate the arbitrator’s impartiality with respect to the award which 100% of respondents rated this as “*excellent*.”

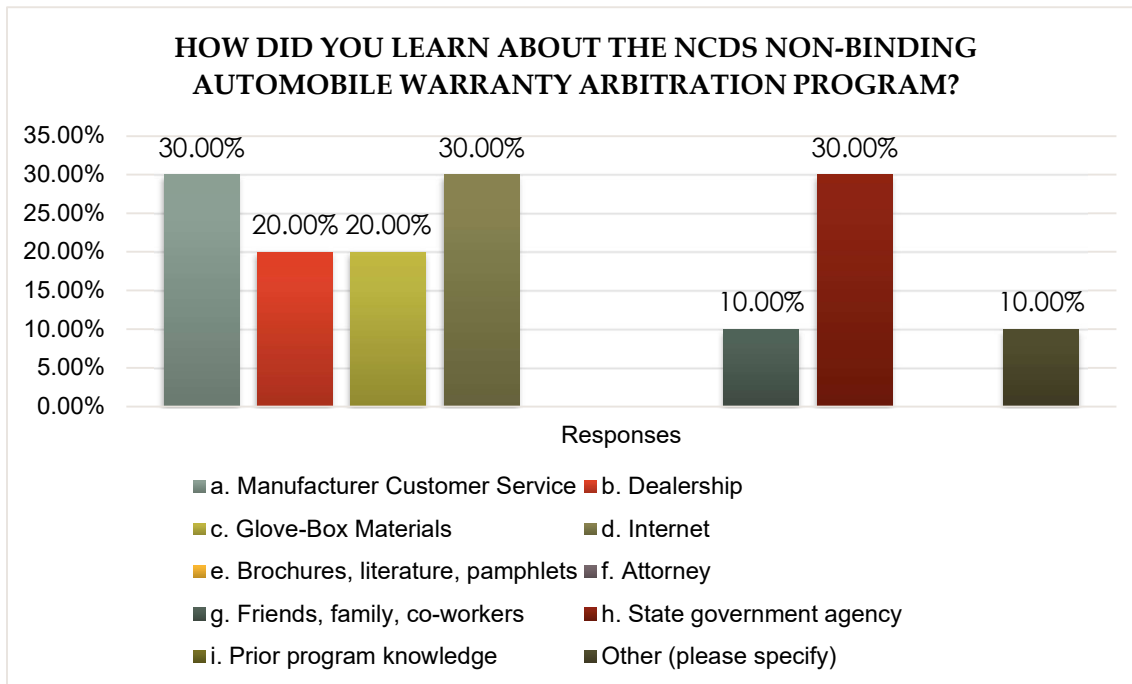
**Satisfaction with NCDS processing claim.** To measure consumers’ satisfaction with NCDS processing their claims, respondents were asked to rate NCDS in four different areas. Respondents were asked to rate the timeliness of the communications between them and NCDS staff of which 100% rated the timeliness of communications as “*excellent*.” Next, participants were asked to rate the helpfulness of the NCDS staff and all of participants (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 experience under the Arbitration Program of which 100% of participants rated it as “*excellent*.” Finally,

respondents were asked if they would recommend the Arbitration Program to friends and family and 100% responded “yes.”

**ARBITRATED CASES AWARDED NO ACTION SURVEY RESULTS**

**Pre-filing experience with the dealer or manufacturer.** To understand the consumers’ pre-filing experience, respondents were asked general questions related to their pre-filing experience with either the dealer or the manufacturer. The results show before filing a claim with NCDS, 90% 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, 60% of respondents stated more than three times, 30% reported three times, and 10% reported two times. The majority of participants reported they learned about the NCDS Non-Binding Automobile Warranty Arbitration Program through Manufacturer Customer Service (30%), State Government Agency (30%), Internet (30%), Glove-Box materials (20%), and Dealership (20%). There were other resources participants noted as outlined in Table 1 but were not as prevalent. Only 20% of participants stated they were informed of the Arbitration Program from the manufacturer or dealer over the phone while 10% reported they were sent information, and 10% reported “Other” which consisted of email.

**TABLE 1 – Survey Results: How Did You Learn About the NCDS Non-Binding AWAP?**



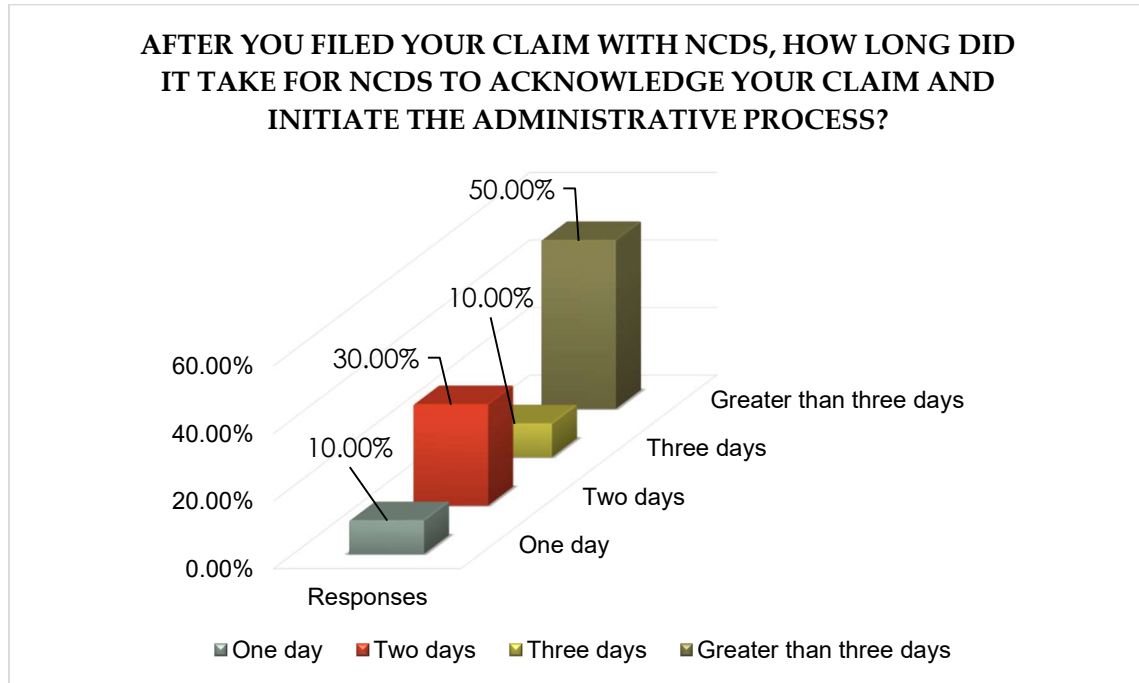
**Note:** Participants were allowed to select multiple choices.

**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 (90%) reported they used an E-File method to file their claim while only 10% used a written submission claim form. The respondents were then asked how clear the instructions were for filing their claim of which 30% indicated the instructions on the claim form were



“very clear” and 70% stated the instructions were “somewhat clear.” Once the participants filed their claim with NCDS, 50% reported it took anywhere between one-to-three days for NCDS to acknowledge their claim and initiate the administrative process (Table 2). The remaining 50% stated it took greater than three days.

**TABLE 2 – Survey Results: How Long Did it Take for NCDS to Acknowledge Your Claim?**



**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 70% of participants received or reviewed the Frequently Asked Questions (FAQ) packet at [www.ncdsusa.org](http://www.ncdsusa.org) and 30% reported they did not receive the packet. The information presented in the FAQ was “very clear” as reported by 20% of the respondents, “somewhat clear” by 50%, and “not clear” or “did not know” by 30% of respondents. The majority of participants (60%) stated the information presented in the FAQ was “moderately helpful” while the remaining 40% of participants stated the information in the FAQ was “not at all helpful” or “did not know.”

When asked if participants received or reviewed the Non-Binding Program Rules at [www.ncdsusa.org](http://www.ncdsusa.org), 60% respondents reported “yes” while 40% stated “no.” The Program Rules were “very clear” to 10% of the participants, “somewhat clear” to 50%, and “not clear” or “did not know” by 40% of participants. The respondents were then asked if the Program Rules were helpful in explaining the arbitration process of which 60% acknowledged they were “moderately helpful” in explaining the arbitration process. The remaining 40% stated the Program Rules were “not at all helpful” or “did not know.” The majority of respondents (90%) stated they received a hearing notice from NCDS, but 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, 40% of participants requested a “documents only” hearing after filing their claim and 60% 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 different phases of the hearing process. The 60% of participants who did not request a “documents only” hearing, 83% of that sample reported they did participate in the evidentiary hearing process and the arbitrator started the hearing on time as stated by 100% of those participants who did partake in the evidentiary hearing process. It was also reported by 100% of those participants 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, 60% of participants responded “yes” and 40% stated “no.” No respondents reported they conducted a test drive with the arbitrator 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, 70% of the total sample population stated the arbitrator communicated this award by email and 30% reported it was by written submission. Most of the consumers (80%) reported that they received no award and 20% indicated they were awarded a refund, where the manufacturer would give them money for their vehicle.

According to the results, 80% of respondents felt the arbitrator did not accurately identify the nature of the non-conformity in the consumer’s alleged claims. After identifying the non-conformity, 70% of participants stated the arbitrator did not include a summary of the testimony at the hearing. Half of the participants (50%) stated the arbitrator’s award was clear and the other half (50%) reported the award was not clear. The majority of participants (80%) did not feel the arbitrator rendered a reasoned award and 20% of respondents felt the arbitrator did render a reasoned award. However, 100% of participants stated they did not accept the arbitrator’s award.

**Arbitrator satisfaction.** To understand arbitrator satisfaction among the consumers, the participants were asked how well the arbitrator understood their case of which 70% reported “not well at all” and 30% stated “reasonably well.” The arbitrator’s objectivity and fairness was rated as “poor” by 80% of respondents and “good” by 20% of respondents. The participants were then asked to rate the arbitrator’s impartiality during the hearing of which 70% rated their arbitrator as “poor,” 20% “average,” and 10% “good.” Finally, the participants were asked to rate the arbitrator’s impartiality with respect to the award which 80% of respondents rated this as “poor,” 10% “good,” and 10% “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 of which 50% rated the timeliness of communications as “good,” 20% “fair,” 20% “poor,” and 10% rated it as “excellent.” Next, participants were asked to rate the helpfulness of the NCDS staff, and the majority of participants (50%) rated the helpfulness of the staff as “good,” 30% “fair,” and 20% rated “poor.” To help gauge consumers’ experience with the arbitration program, participants were asked to rate their overall experience under the Arbitration Program of which 80% of participants rated it as “poor” and 20% as “fair.” Finally, respondents were asked if they would recommend the Arbitration Program to friends and family and 90% responded “no” while 10% stated “yes.”

## MEDIATED CASES SURVEY RESULTS

*Please note:* There was only one respondent who responded to the mediated cases survey for Florida and the results are captured below.

**Pre-filing experience with the dealer or manufacturer.** To understand the consumers' pre-filing experience, respondents were asked general questions related to their pre-filing experience with the manufacturer. The results show before filing a claim with NCDS, the participant reported 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, the respondent stated "*other*" which was at least five times. The participant reported they learned about the NCDS Non-Binding Automobile Warranty Arbitration Program through Glove-Box materials.

**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. The participant 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 the participant indicated the instructions on the claim form were "*very clear*." To assess the actual evidentiary process, participants were asked to convey their experience with different phases of the hearing process. The participant stated they requested a "*documents only*."

**Experience after filing a claim with NCDS.** Once the participants filed their claim with NCDS, the participant reported it took two days for NCDS to acknowledge their claim and initiate the administrative process. 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 the participant received or reviewed the Frequently Asked Questions (FAQ) packet at [www.ncdsusa.org](http://www.ncdsusa.org). The information presented in the FAQ was "*very clear*" as reported by the respondent. The participant stated the information presented in the FAQ was "*very helpful*."

When asked if participants received or reviewed the Non-Binding Program Rules at [www.ncdsusa.org](http://www.ncdsusa.org), the respondent reported "*yes*." The Program Rules were "*very clear*" to the participant. The respondents were then asked if the Program Rules were helpful in explaining the arbitration process of which the respondent stated they were "*very helpful*."

**The settlement of claim.** To assess the settlement of the consumers' claim, participants were asked if they agreed to settle their case with the manufacturer before the case proceeded to arbitration and the respondent stated "*yes*." For the respondents who responded *yes* to agree to settle their case with the manufacturer were then asked what best described the relief provided in their settlement of claim of which the participant reported "*other*" and the relief awarded to them by the arbitrator was a purchase of a new (different) vehicle. It was found the respondent who agreed to settle their case with the manufacturer reported they accepted the settlement offer made by the manufacturer voluntarily. After the consumer reached a settlement, the respondent reported they received a letter from NCDS explaining the terms of the settlement. After the consumer received their settlement confirmation, the respondent did pursue their case further and contacted the dealer or manufacturer directly.

**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 and the respondent rated the timeliness of communications as “*excellent*.” Next, participants were asked to rate the helpfulness of the NCDS staff and the participant rated the helpfulness of the staff as “*excellent*.” To help gauge consumers experience with the arbitration program, participants were asked to rate their overall experience under the Arbitration Program and the participant rated it as “*excellent*.” Finally, respondents were asked if they would recommend the Arbitration Program to friends and family and the participant responded “*yes*.”

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

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 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.

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 possible 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, with appropriate modifications involving enhanced use of technology having been previously made, are in substantial compliance with Federal Rule 703 requirements.**

**C. CASE FILE RECORDS (4 yrs. 2017-2020)<sup>65</sup>**

A random sample of case numbers from the years 2017 through 2020 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**

*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**

The AWAP Florida hearing was held on July 6, 2021, per the hearing confirmation notice submitted to the parties on June 9, 2021.

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<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.

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

The hearing was conducted via teleconference. The attendees included the arbitrator, the customer, an FCA US LLC manufacturer representative, and the auditor.

### *Openness of Hearing*

The meeting began at 12 NOON EST, the scheduled time. Although the arbitrator verified the presence of the auditor, he did not explain why the auditor was participating as “observer” in the hearing.

### *Efficiency of Hearing*

The arbitrator’s case file appeared to be complete with all required documents. The arbitrator informed the parties of the process protocols, and how each party would have uninterrupted time to present their respective cases. The arbitrator also explained that to his knowledge, he did not have any conflicts that would preclude him from serving impartially on the case. The arbitrator then proceeded to allow the parties to present their evidence, starting first with the consumer.

### *Hearing*

The hearing was properly conducted from beginning to end. All parties were afforded an opportunity to present their case. Following each party’s presentation, the opposing party was given an opportunity to ask clarification questions and then present arguments in rebuttal, as was appropriate. The order of presenting closing arguments, or summation, was also correct. Once each party offered its summation, the arbitrator asked if either party had further proofs to offer. Each party responded negatively, and the arbitrator declared the hearing closed and exited the teleconference.

During the hearing, the arbitrator asked various clarifying questions but did not exceed the scope of his authority. The arbitrator demonstrated that he knew how to conduct and manage a hearing.

### *Board/Arbitrator Decisions*

The auditor reviewed the arbitrator’s decision in this case, and a sample of Florida NCDS decisions rendered in 2020. All decisions were well-reasoned and consistent with the facts presented.

## CONCLUSION

**The auditor concludes that the AWAP, as it operates in Florida, is in substantial compliance with the Magnuson-Moss Warranty Act and Rule 703. The administrative staff is unequivocally dedicated to the program's mission, while maintaining a clear commitment to the fair and expeditious resolution of warranty disputes.**

## Texas

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

The survey for Texas consisted of 76 closed NCDS cases.<sup>66</sup> From this universe, we surveyed 12 customers. Consistent with prior audits conducted by Claverhouse & Associates, surveyed customers’ level of program satisfaction, including arbitrator performance, is often tied inextricably to whether or not they achieved the desired outcome in arbitration.

The average number of days for handling a case in Texas in 2020 was 35 days, which is similar to the number of days cases resolved, specifically, 35.

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 %
Texas - Arbitrated Awarded	12	2	17%
Texas - Arbitrated Awarded No Action	62	9	15%
Texas - Mediated	2	1	50%
<b>Total</b>	<b>76</b>	<b>12</b>	<b>16%</b>

#### ARBITRATED CASES AWARDED SURVEY RESULTS

**Pre-filing experience with the dealer or manufacturer.** To understand the consumers’ pre-filing experience, respondents were asked general 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, 50% of respondents stated more than three times and 50% reported three times. The participants reported they learned about the NCDS Non-Binding Automobile Warranty Arbitration Program through Brochures, literature, pamphlets (50%) and friends, family, co-workers (50%). Since none of the participants reported they learned about NCDS through the manufacturer or dealer, there were no reports of how the manufacturer or dealer informed the consumer of the Arbitration Program.

**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. The respondents were then asked how clear the instructions were for filing their claim of which 50% indicated the instructions on the claim form were “*very clear*” and 50% stated the instructions were

<sup>66</sup> Statistics being referenced may not always align with one another. This is often due to the collection and reporting of data based on different regulatory mandates which rely on different terminology for similar or identical concepts. Also, on occasion, cases may be removed by NCDS as inapplicable to the federally mandated reports required by Mag-Moss. While Florida reporting requirements are similar to the federal requirements, there are miniscule distinctions.

*“somewhat clear.”* Once the participants filed their claim with NCDS, 100% reported it took two days for NCDS to acknowledge their claim and initiate the administrative process.

**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 or reviewed the Frequently Asked Questions (FAQ) packet at [www.ncdsusa.org](http://www.ncdsusa.org). The information presented in the FAQ was *“very clear”* as reported by 100% of the respondents. All of the participants (100%) stated the information presented in the FAQ was *“very helpful.”*

When asked if participants received or reviewed the Non-Binding Program Rules at [www.ncdsusa.org](http://www.ncdsusa.org), 100% respondents reported *“yes.”* The Program Rules were *“very clear”* to 50% of the participants and *“somewhat clear”* to 50% participants. The respondents were then asked if the Program Rules were helpful in explaining the arbitration process of which 50% stated they were *“very helpful”* and 50% acknowledged they were *“moderately helpful”* in explaining the arbitration process. All respondents (100%) stated they received a hearing notice from NCDS and also 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, 50% of participants requested a *“documents only”* hearing after filing their claim and 50% 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 different phases of the hearing process. The participant (50%) that did not request a *“documents only”* hearing reported they did participate in the evidentiary hearing process and the arbitrator started the hearing on time. It was also reported by the participant 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, the participant responded *“yes.”* The respondent did not conduct a test drive during the hearing.

**Post-award experience.** Next, it was important to evaluate the consumer experience after they received their award. When it was time to communicate the award to the consumer, 50% of the participants stated the arbitrator communicated this award by email and 50% reported it was by written submission. Half of the participants (50%) reported that the relief awarded to them by the arbitrator was a refund, where the manufacturer would give them money for their vehicle and the other half reported they received a replacement, where the manufacturer would replace their existing car with a new car. The results show the participants felt the arbitrator did accurately identify the nature of the non-conformity in the consumers alleged claims as reported by 100% of respondents. After identifying the non-conformity, 100% of participants stated the arbitrator included a summary of the testimony at the hearing. All participants (100%) stated the arbitrator’s award was clear and they felt the arbitrator rendered a reasoned award. Finally, all participants (100%) stated they accepted the arbitrator’s award.

**Arbitrator satisfaction.** To understand arbitrator satisfaction among the consumers, the participants were asked how well the arbitrator understood their case of which 100% reported *“very well.”* The arbitrator’s objectivity and fairness was rated as *“excellent”* by 100% of respondents. The participants were then asked to rate the arbitrator’s impartiality during the hearing of which 100% rated their arbitrator as *“excellent.”* Finally, the participants were asked to rate the arbitrator’s impartiality with respect to the award which 100% of respondents rated this 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 asked to rate the timeliness of the communications between them and NCDS staff of which 100% rated the timeliness of communications as “*excellent.*” Next, participants were asked to rate the helpfulness of the NCDS staff and all participants (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 experience under the Arbitration Program of which 50% of participants rated it as “*excellent*” and 50% as “*good.*” Finally, respondents were asked if they would recommend the Arbitration Program to friends and family and 100% responded “*yes.*”

**ARBITRATED CASES AWARDED NO ACTION SURVEY RESULTS**

**Pre-filing experience with the dealer or manufacturer.** To understand the consumers’ pre-filing experience, respondents were asked general 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, 56% of respondents stated between one-to-three times and 44% reported more than three times (Table 1). The majority of participants reported they learned about the NCDS Non-Binding Automobile Warranty Arbitration Program through Manufacturer Customer Service (67%) and Glove-Box materials (33%). There were other resources participants noted as outlined in Table 2, but were not as prevalent. Most of the participants (50%) stated they were informed of the Arbitration Program from the manufacturer or dealer over the phone while 33% reported they were sent information. The remaining 16% stated “*Other*” which consisted of the warranty book.

**TABLE 1– How Many Repair Attempts Before Filing a Claim with NCDS?**

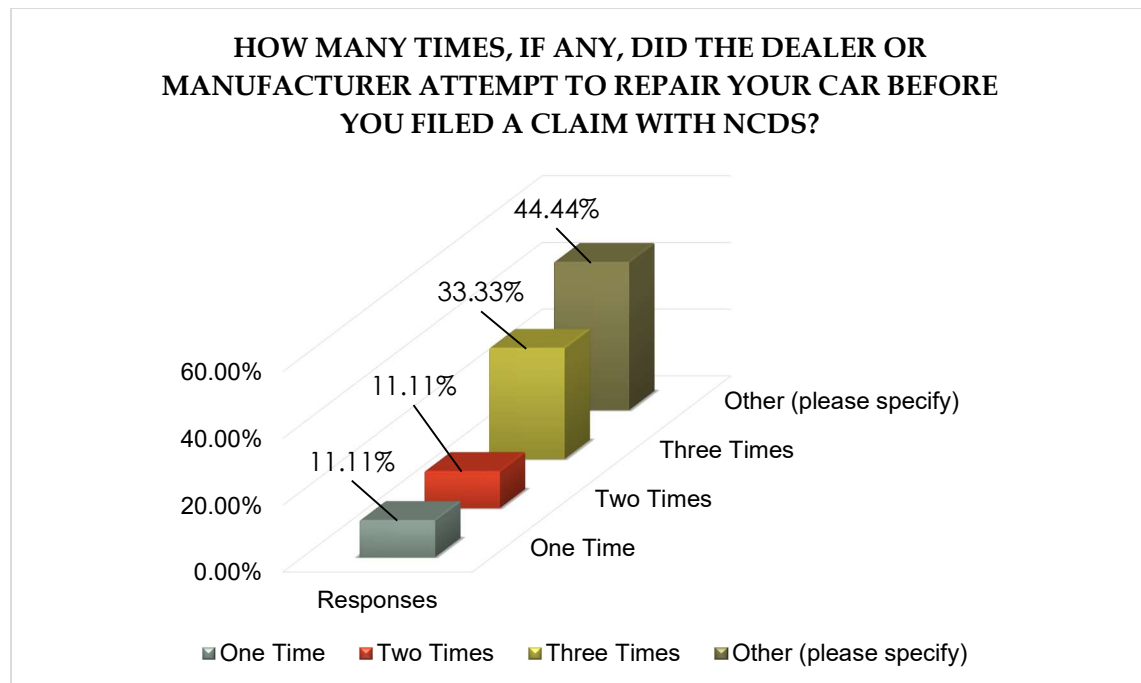
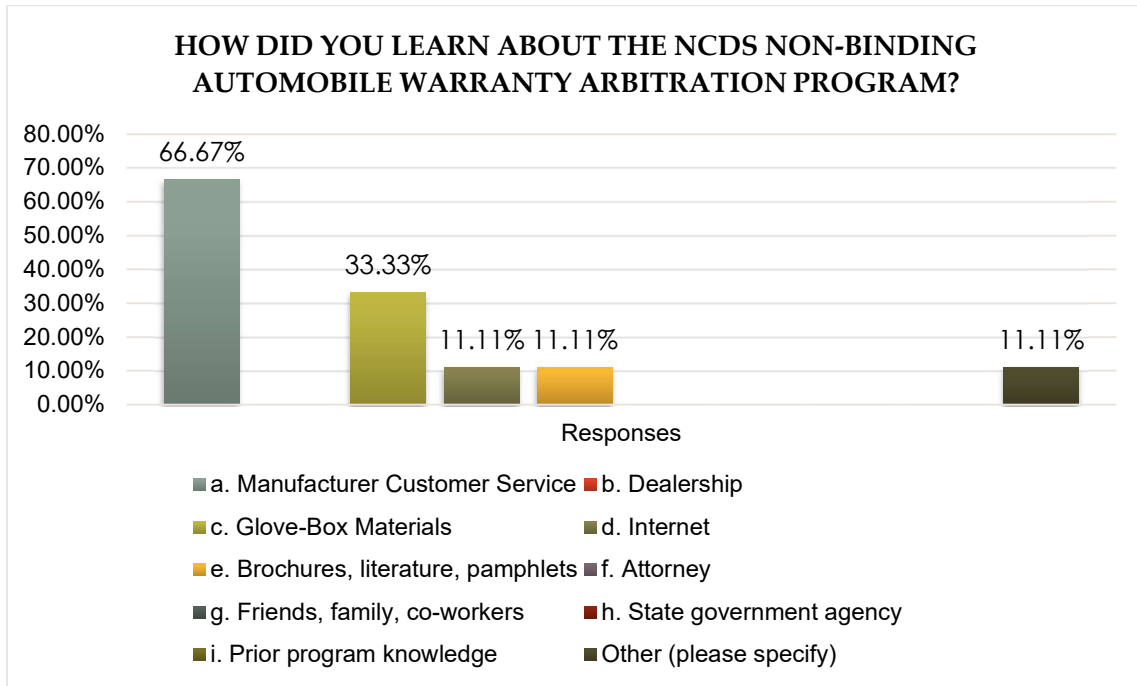


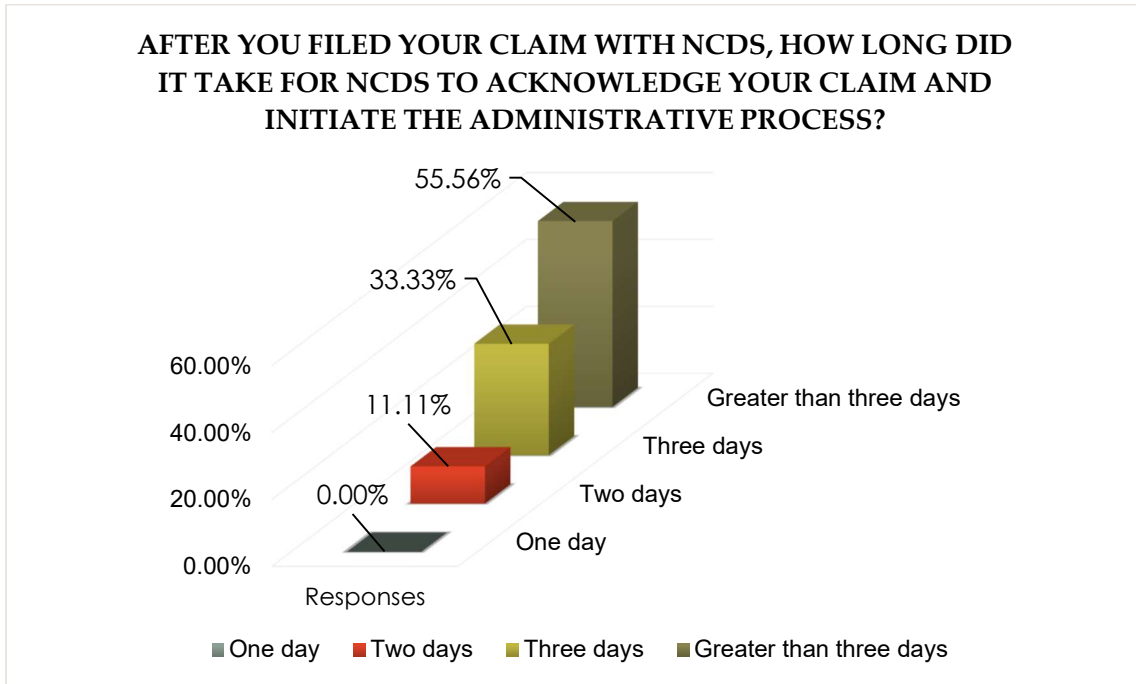
TABLE 2 – Survey Results: How Did You Learn About the NCDS Non-Binding AWAP?



*Note:* Participants were allowed to select multiple choices.

**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 (67%) reported they used an E-File method to file their claim while only 33% used a written submission claim form. The respondents were then asked how clear the instructions were for filing their claim of which 67% indicated the instructions on the claim form were “*somewhat clear*” and 33% stated the instructions were “*not clear*” or “*did not know.*” Once the participants filed their claim with NCDS, approximately 56% reported it took more than three days for NCDS to acknowledge their claim and initiate the administrative process. The remaining 44% stated it took two or three days (Table 3).

TABLE 3 – Survey Results: How Long Did it Take for NCDS to Acknowledge Your Claim?



**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 78% of participants did not receive or review the Frequently Asked Questions (FAQ) packet at [www.ncdsusa.org](http://www.ncdsusa.org) and 22% reported they did receive or review the FAQ packet. The information presented in the FAQ was “*somewhat clear*” as reported by 26% of respondents, “*somewhat clear*” by 22%, and 55% of participants “*did not know*.” The majority of participants (67%) stated they “*did not know*” if the information presented in the FAQ was helpful and 22% reported the information in the FAQ was “*not at all helpful*” while 11% reported it was “*moderately helpful*.”

When asked if participants received or reviewed the Non-Binding Program Rules at [www.ncdsusa.org](http://www.ncdsusa.org), 67% respondents reported “*yes*” while 33% stated “*no*.” The Program Rules were “*somewhat clear*” to 67% of the participants, “*very clear*” to 11%, “*not clear*” to 11%, and “*did not know*” by 11% of participants. The respondents were then asked if the Program Rules were helpful in explaining the arbitration process of which 44% stated they were “*moderately helpful*,” 33% acknowledged they were “*not at all helpful*,” 11% stated “*very helpful*,” and 11% stated “*did not know*” in explaining the arbitration process. The majority of respondents (89%) stated they received a hearing notice from NCDS, but 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, 44% of participants requested a “*documents only*” hearing after filing their claim and 56% 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 different phases of the hearing process. The 56% of participants that did not request a “*documents only*” hearing, reported they did participate in the evidentiary hearing process and the arbitrator started the hearing on time as stated by 100% of those participants. It was also reported by 100% of those participants 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, 40% of those participants responded “yes” and 60% stated “no.” None of the respondents conducted a test drive 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, 78% of the total sample population stated the arbitrator communicated this award by email and 22% reported “other” and stated there was no award. Most of the consumers (88%) reported “other” and mentioned there was nothing awarded to them by the arbitrator and 12% stated they received a reimbursement, where the manufacturer would reimburse them for the incidental costs associated with the repair of their car. The participants reported and felt the arbitrator did not accurately identify the nature of the non-conformity in the consumers alleged claims as reported by 67% of respondents and 33% did feel the arbitrator did accurately identify the nature of the non-conformity. After identifying the non-conformity, 78% of participants stated the arbitrator included a summary of the testimony at the hearing. The majority of the participants (78%) stated the arbitrator’s award was not clear and 89% reported or felt the arbitrator did not render a reasoned award. The majority of respondents (89%) stated they did not accept the arbitrator’s award.

**Arbitrator satisfaction.** To understand arbitrator satisfaction among the consumers, the participants were asked how well the arbitrator understood their case of which 56% reported “not well at all,” 33% stated “reasonably well,” and 11% reported “very well.” The arbitrator’s objectivity and fairness were rated as “poor” by 56% of respondents, “average” by 33%, and “excellent” by 11% of respondents. The participants were then asked to rate the arbitrator’s impartiality during the hearing of which 56% rated their arbitrator as “poor,” 8% rated “average,” and 11% rated “excellent.” Finally, the participants were asked to rate the arbitrator’s impartiality with respect to the award which 78% of respondents rated this as “poor,” 11% rated it as “excellent,” and 11% reported “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 of which 44% rated the timeliness of communications as “good,” 44% “fair,” and 11% reported it as “poor.” Next, participants were asked to rate the helpfulness of the NCDS staff and the majority of participants (56%) rated the helpfulness of the staff as “fair,” 22% rated it as “good,” and 22% 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 of which 67% of participants rated it as “poor,” 22% as “poor,” and 11% as “fair.” 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

**Please note:** There was only one respondent who responded to the MEDIATED CASES AWARDED SURVEY for Texas and the results are captured below.

**Pre-filing experience with the dealer or manufacturer.** To understand the consumers’ pre-filing experience, respondents were asked general questions related to their pre-filing experience with the manufacturer. The results show before filing a claim with NCDS, the participant reported 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, the respondent stated, “three times.” The participant

reported they learned about the NCDS Non-Binding Automobile Warranty Arbitration Program through a state government agency.

**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. The participant 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 the participant indicated the instructions on the claim form were "*somewhat clear*." To assess the actual evidentiary process, participants were asked to convey their experience with different phases of the hearing process. The participant stated they requested a "documents only."

**Experience after filing a claim with NCDS.** Once the participants filed their claim with NCDS, the participant reported it took two days for NCDS to acknowledge their claim and initiate the administrative process. 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 the participant received or reviewed the Frequently Asked Questions (FAQ) packet at [www.ncdsusa.org](http://www.ncdsusa.org). The information presented in the FAQ was "*somewhat clear*" as reported by the respondent. The participant stated the information presented in the FAQ was "*moderately helpful*." When asked if participants received or reviewed the Non-Binding Program Rules at [www.ncdsusa.org](http://www.ncdsusa.org), the respondent reported "*yes*." The Program Rules were "*somewhat clear*" to the participant. The respondents were then asked if the Program Rules were helpful in explaining the arbitration process of which the respondent stated they were "*moderately helpful*."

**The settlement of claim.** To assess the settlement of the consumers' claim, participants were asked if they agreed to settle their case with the manufacturer before the case proceeded to arbitration and the respondent stated "*yes*." 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 of which the participant reported a repair, where the manufacturer would try to fix the car, or examine it to determine the source of the problem. It was found the respondent who agreed to settle their case with the manufacturer reported they did not accept the settlement offer made by the manufacturer voluntarily. After the consumer reached a settlement, the respondent reported they did not receive a letter from NCDS explaining the terms of the settlement. After the consumer received their settlement confirmation, the respondent did pursue their case further and contacted a state agency.

**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 and the respondent rated the timeliness of communications as "*fair*." Next, participants were asked to rate the helpfulness of the NCDS staff and the participant rated the helpfulness of the staff as "*fair*." To help gauge consumers' experience with the arbitration program, participants were asked to rate their overall experience under the Arbitration Program and the participant rated it as "*fair*." Finally, respondents were asked if they would recommend the Arbitration Program to friends and family and the participant responded "*no*."

## B. RECORD-KEEPING, ACCURACY AND COMPLETENESS

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 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 possible 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.

## CONCLUSIONS

**The NCDS program's record keeping policies and procedures, with appropriate modifications having been previously made, are in substantial compliance with Federal Rule 703 requirements.**

### C. CASE FILE RECORDS (4 yrs. 2017-2020)<sup>67</sup>

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<sup>67</sup> Rule 703.6(f) states:

A random sample of case numbers from the years 2017 through 2020 was drawn from the NCDS data base. Our 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**

*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**

The Texas hearing was conducted, *ex-parte*, on October 12, 2021.

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

The hearing was conducted via teleconference. The attendees included the arbitrator, two Toyota representatives, and the auditor. The customer did not participate, despite proper notice of hearing and confirmation. The arbitrator contacted the case administrator to determine whether the customer would appear. Messages were left and unreturned. After a reasonable period of time, and after receiving assurances that proper notice had been given to all the parties, the arbitrator proceeded to receive proofs *ex-parte*.

*Openness of Hearing*

The meeting began fifteen minutes after the start time of 11 a.m., CT. The auditor explained that she was participating as a passive observer. Under the “*Rules and Procedures for the Non-Binding Resolution of Automobile Warranty Disputes*,” and pursuant to § 703.8 of Magnuson Moss, the hearings are open and can be attended by any observers who agree to abide by the program’s rules.

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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.

### *Efficiency of Hearing*

The arbitrator's case file appeared to be complete with all required documents. The arbitrator then proceeded to allow the manufacturer's representatives to present their case, after explaining that should the consumer engage the teleconference, they also would be given sufficient time to present their side of the case.

### *Hearing*

The hearing was properly conducted from beginning to end. The arbitrator began the hearing by explaining the following certain protocols, namely that the hearing was not a lemon law proceeding. The arbitrator also covered conflicts of interest, explaining that he had no conflict to disclose. He then proceeded, in the absence of the customer, to allow for presentations by the two manufacturer's representatives. Each took turns to explain first the series of repairs and then the primary defense – that the customer had purchased the car used, and after-market parts had been installed which impeded the performance of the engine.

At the conclusion of the primary proofs, the arbitrator asked each representative if they had any further evidence to offer. After hearing negative replies, the arbitrator declared the hearing closed and exited the teleconference.

The arbitrator demonstrated throughout the hearing that he knew how to properly conduct a hearing.

### *Board/Arbitrator Decisions*

The auditor reviewed the arbitrator's decision in this case, and a sample of Texas NCDS decisions rendered in 2020. The decisions reviewed were well-reasoned and consistent with the facts of the case, based on evidence presented. This particular case's outcome was also consistent with the facts in the case file as presented by the parties at the hearing.

## CONCLUSION

**The auditor concludes that the AWAP, as it operates in Texas, is in substantial compliance with the Magnuson-Moss Warranty Act and Rule 703. The administrative staff is unequivocally dedicated to the program's mission, while maintaining a clear commitment to the fair and expeditious resolution of warranty disputes.**



## Section VI

### Arbitrator Training and Training Materials

FTC Rule 703 does not contain explicit language requiring the training of arbitrators. Whether mandated by Mag-Moss, as part of its overall obligations to the program, NCDS must ensure that consumers have an opportunity to achieve fair and expeditious resolution of warranty disputes. Arbitrator training furthers these dual purposes.

NCDS has offered training to its arbitrators from the outset of its operations, beginning as early as 1990s. Over the years, the substantive content has evolved from one predicated on information-sharing to a more interactive format, engaging the arbitrators directly in the education process. Currently, veteran and new arbitrators are trained simultaneously, with a view towards developing a mentorship relationship for those newly admitted to the National Panel.

Due to the COVID 19 pandemic, NCDS did not conduct any in-person trainings in 2020.<sup>68</sup> All trainings were done on zoom. Trainings occurred on the following dates,<sup>69</sup> with levels of participation noted.

- ❖ September 9 – 17 attendees
- ❖ September 11 – 21 attendees
- ❖ September 16 – 20 attendees
- ❖ September 18 – 14 attendees
- ❖ September 23 – 16 attendees
- ❖ September 25 – 18 attendees
- ❖ September 30 – 13 attendees
- ❖ October 2 – CA session – 17 attendees
- ❖ October 13 – FL session – 13 attendees
- ❖ October 30 – CA session – 5 attendees
- ❖ November 11 – 6 attendees

Several training programs included manufacturer representatives. To ensure sponsor insulation, the manufacturers' representatives were identified as observers only and were not permitted to interface with the arbitrators.

## FINDINGS

### *Training Program*

The trainers for all sessions included Mary Bedikian, an attorney and former vice-president of the American Arbitration Association,<sup>70</sup> Debi Lech, Regulatory and Compliance Manager for NCDS, Ray

<sup>68</sup> In 2020, all in-person training programs were cancelled due to the pandemic. Since 2006, the annual training pattern includes three trainings for members of the National Panel, and two state specific trainings, California and Florida.

<sup>69</sup> NCDS requires that arbitrators go through a refresher training every two years, otherwise they will be removed from the National Panel.

Sanders, a certified technician, auto mechanics expert, and experienced arbitrator and, in later sessions, Michael Smith, a former Nissan executive. The zoom training program opened with an introduction of the trainers and the participants. This was followed by a program overview by John Holloran, President and CEO of NCDS. A major focus of Mr. Holloran’s comments addressed NCDS differentials in structuring and delivering education platforms.

The first substantive portion of the training program, presented by Ms. Bedikian, was dedicated to an explanation of the federal and state regulatory matrix, specifically Mag-Moss and its interface with state lemon laws, and the implied warranties of the Uniform Commercial Code. This presentation was followed by a discussion of rules revisions and ethics. Ms. Bedikian emphasized the necessity of arbitral disclosure – the investigative and the disclosure phase – which is crucial to any fair arbitral proceeding.

Ms. Lech reviewed the rules revisions that went into effect May 2019. The overarching goal of these revisions was to increase the transparency of the program for all constituencies. The following rules revisions were emphasized:

- Rule 3 – **Initiation of Administrative Process** (explaining the ability of consumers to file disputes online)
- Rule 5 – **Qualifications and Impartiality of Arbitrators** (noting the requirements of investigation and disclosure and including the test for disclosable connections)
- Rule 6 – **Time and Place of Hearing** (explaining the logistics of establishing the hearing venue)<sup>71</sup>
- Rule 9 – **Arbitration in the Absence of a Party** (emphasizing that a hearing with one party may occur after assurance of proper notice to all parties)
- Rule 12 – **Communication with the Arbitrator** (explaining the necessity of preserving due process decorum by joint communications only)
- Rule 13 – **Evidence/Test Drive** (explaining the limitations of the test drive to the customer, the complainant)
- Rule 15 – **Closing of the Hearing** (requiring affirmative action on the part of the arbitrator to confirm hearing closure)
- Rule 20 – **Remedies, Post-Decision** (explaining when a customer may re-submit a dispute to arbitration, after an initial determination on the claim has been made)

Ms. Lech also spent considerable time explaining the operation of the Mechanism, in particular the

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<sup>70</sup> Bedikian officially assumed the position of auditor in March 2021. All training programs for 2020 were done while Bedikian was still “of counsel” to the organization.

<sup>71</sup> Under the NCDS template, if the Consumer selects a location other than a dealership, NCDS is obligated to assist in arranging the neutral location. Arbitrators also are admonished from using their own professional office as it may not be viewed as neutral.

role of investigation and evidence-gathering. The arbitrators were appropriately cautioned not to be overzealous in seeking out evidence, as this is properly within the province of the parties.

A substantive presentation was also given by Ray Sanders. Mr. Sanders explained the unique terminology associated with motor vehicles and also emphasized the appropriate use of technical inspections and their limitations. A major concern that surfaces during this segment of the program is the role of the arbitrator in requesting an independent inspection and the weight to be assigned to the report. By the end of this session, the participants were able to discern their decision-making responsibilities and how an independent inspection is another piece of evidence to consider in the broader scheme of a customer’s ability to meet their burden of proof. The appropriate cautionary note was also provided, i.e. that undue reliance on an independent inspection displaces arbitral decision-making and should rarely be relied upon to the exclusion of the arbitrator’s deliberations and conclusions.

A critical part of the training, undertaken by Mr. Sanders and Ms. Lech, was devoted to an explanation of the decision tree and the importance of following it step-by-step. The trainers explained the need to provide clear rationale for decision-making and to track the decision-tree queries which mandate customer relief in cases where a substantial non-conformity is established, and the manufacturer has failed to cure through the required number of attempts.

A new feature of the 2020 zoom training program was a segment by Michael Smith on electronic vehicles, a comprehensive education piece intended to supplement the arbitrator’s knowledge of auto technology. The presentation explained the growth of EVs and how such vehicles are likely to change the landscape of dispute resolution going forward.

### *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 includes the following:

- Code of Federal Regulation (“CFR”), Rule 703;
- Arbitrator’s Manual – covering all aspects of Mag-Moss, lemon laws, the UCC, impartiality, hearing protocols, evidence gathering, decision-making, drafting of the decision, and post-decision procedures;
- Automotive vocabulary designed to familiarize arbitrators with the kind of commentary they are likely to hear from consumers;
- Disclosure decisions from courts of appeal; and
- Sample decisions for arbitrators to review.

In addition to formal training, NCDS uses an arbitrator portal to disseminate critical monthly information.

### *Training Assessment*

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

*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.

There are, however, a few things that will improve the quality of the programs, and they are set forth below.

**RECOMMENDATION**

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 and continues to be an area where more coverage can and ought to be given). 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 clearly falls on the manufacturer to cure. Also, as noted in previous audits, “In cases where the consumer has made the vehicle available to the manufacturer in order to allow them to “cure” the non-conformity, but the manufacturer, or its representative (*i.e.*, dealer) has not cured the non-conformity in a reasonable number of attempts, the consumer has a right, under the applicable law (*i.e.*, the Uniform Commercial Code, the Magnuson Moss Warranty Act (including Rule 703), and by convention consideration of the relevant state Lemon-Law “presumption” standards as well as their related mileage off-set provisions, to receive an award for a refund, or where requested by the customer, a suitable replacement vehicle provided such a replacement vehicle exists.”<sup>72</sup>

**RECOMMENDATION**

Assuming the pandemic will continue well into 2021, zoom trainings should interactive sessions using zoom breakout rooms should be reactivated. This will permit arbitrators to share positive and negative experiences in a way that replicates in-person training.

<sup>72</sup> Claverhouse & Associates, NCDS National Audit, pg. 55 (2019).

These minor recommendations aside, arbitrator participants in the trainings observed by the auditor had ample time to ask questions. This year, unlike in prior years, the participants' questions were focused and did not derail the learning atmosphere of the training. While this was a criticism of prior audits, this problem was not evident during the 2020 training programs. Whether a function of zoom training or the fact that arbitrator participants were asked to be more relevant in asking questions, it is clear that the program goals set by NCDS were actualized. Arbitrators concluded their training with a far better understanding of their primary role – to resolve warranty disputes fairly and efficiently.

## CONCLUSION

**The NCDS arbitrator training program is, in all material respects, excellent. It operates in substantial compliance with Magnuson-Moss and Rule 703. The entire program clearly demonstrates a commitment to quality arbitrator training, for which the NCDS staff should be commended.**

## Section VII

### National Federal Trade Commission Survey and Statistical Comparative Analysis of Consumer Satisfaction Surveys

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 2020.

A consumer who wants to have a dispute settled through AWAP 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 AWAP office receives the application. Manufacturers must comply with both mediated and arbitrated decisions within 30 days of the decision.

FTC Rule 703.6(e) requires warrantors to report statistics 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>73</sup>

To determine the accuracy of the AWAP’s warranty dispute statistics and to gather consumer feedback regarding the program, the auditor conducted a survey with customers nationally who filed disputes with AWAP 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 AWAP’s records, but rather whether the aggregate proportions of consumers’ recollections agree with the outcomes reported to the FTC.”<sup>74</sup>

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.

<sup>73</sup> In 2020, no cases exceeded the 40-day timeline. Based on statistics provided to the auditor by NCDS the average number of days from case initiation to resolution, for all participating manufacturers was 35. See pg. 28 for breakdown by manufacturer.

<sup>74</sup> Claverhouse & Associates, NCDS National Audit, pg. 60 (2019).

OVERALL DISPUTE CASES OVERVIEW

Figure 1 captures the total cases (overall) and total cases by jurisdiction in relationship to the method of resolution of warranty disputes for 2020. 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 cases made up 61% of all cases while ineligible and withdrawn cases made up 36% which accounted for 97% of total cases.

Figure 1. Overall Dispute Cases and by Jurisdiction (2020)

Total Cases (Overall)			
Resolution	Number	Percent	Percent of All Cases
Mediation	96	5.5%	3%
Arbitration	1740	94.5%	61%
<b>Subtotal - (In Jurisdiction &amp; Closed)</b>	<b>1836</b>	<b>100%</b>	<b>64%</b>
Ineligible	818	—	29%
Withdrawn	210	—	7%
<b>Total Cases</b>	<b>2864</b>	<b>—</b>	<b>100%</b>

Total Cases by Jurisdiction		
National	Number	Percent
Mediation	77	3.4%
Arbitration	1344	60.0%
Ineligible	659	29.4%
Withdrawn	159	7.1%
<b>Total National</b>	<b>2239</b>	<b>100%</b>

Florida	Number	Percent
Mediation	10	3.0%
Arbitration	220	67.1%
Ineligible	74	22.6%
Withdrawn	24	7.3%
<b>Total Florida</b>	<b>328</b>	<b>100%</b>

Ohio	Number	Percent
Mediation	6	5.9%
Arbitration	68	66.7%
Ineligible	24	23.5%
Withdrawn	4	3.9%
<b>Total Ohio</b>	<b>102</b>	<b>100%</b>

Michigan	Number	Percent
Mediation	1	1.5%
Arbitration	34	51.5%
Ineligible	24	36.4%
Withdrawn	7	10.6%
<b>Total Michigan</b>	<b>66</b>	<b>100%</b>

Texas	Number	Percent
Mediation	2	1.6%
Arbitration	74	57.4%
Ineligible	37	28.7%
Withdrawn	16	12.4%
<b>Total Texas</b>	<b>129</b>	<b>100%</b>

<b>Total Cases</b>	<b>2864</b>
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Figure 2 captures the total of outcomes of arbitrated cases and decisions in which warrantors have complied, not complied, and the occurrence or date of compliance. The numbers of cases is a total of all cases provided by NCDS which does not remove any duplicate or multiple filings by the same person.

**Figure 2. Outcomes of Arbitrated Cases**

Outcomes of Arbitrated Cases	Total Disputes	% of Total
(1) RESOLVED BY STAFF OF THE MECHANISM AND WARRANTOR HAS COMPLIED.	112	3.3%
(2) RESOLVED BY STAFF OF THE MECHANISM AND TIME FOR COMPLIANCE HAS OCCURRED, AND WARRANTOR HAS NOT COMPLIED.	11	0.3%
(3) RESOLVED BY STAFF OF THE MECHANISM AND TIME FOR COMPLIANCE HAS NOT YET OCCURRED.	4	0.1%
(4) DECIDED BY MEMBERS AND WARRANTOR HAS COMPLIED.	180	5.3%
(5) DECIDED BY MEMBERS, TIME FOR COMPLIANCE HAS OCCURRED, AND WARRANTOR HAS NOT COMPLIED	64	1.9%
(6) DECIDED BY MEMBERS AND TIME FOR COMPLIANCE HAS NOT YET OCCURRED.	88	2.6%
(7) DECIDED BY MEMBERS ADVERSE TO THE CONSUMER.	1574	46.8%
(8) NO JURISDICTION.	970	28.8%
(9) WITHDAWN	210	6.2%
(10) DECISION DELAYED BEYOND 40 DAYS BECAUSE OF CONSUMER FAILURE TO SUBMIT INFORMATION IN A TIMELY MANNER.	0	0%
(11) DECISION DELAYED BEYOND 40 DAYS FOR ANY OTHER REASON.	0	0%
(12) DECISION DELAYED BEYOND 40 DAYS BECAUSE CONSUMER HAD MADE NO ATTEMPT TO SEEK REDRESS DIRECTLY FROM WARRANTOR.	0	0%
(13) PENDING DECISION.	152	4.5%
<b>(14) TOTAL ARBITRATED CASES</b>	<b>3365</b>	<b>100%</b>



## *The Methodology Used in Collecting the Data*

### *Methodology*

To determine the accuracy of the Non-Binding Automobile Warranty Arbitration Program (AWAP) 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 AWAP during the 2020 calendar year. Florida, Michigan, Ohio, and Texas 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 National Center for Dispute Settlement (NCDS). The intent is to understand whether the total proportions of consumers' recollections agree with the outcomes reported by the Federal Trade Commission (FTC).

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 AWAP 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 who filed eligible claims and rated their experience and satisfaction of the Automobile Warranty Arbitration Program (AWAP) as reported by NCDS in the year 2020 located in the United States.

**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 sample for the National audit was 186 participants,

Florida audit sample was 14 participants, Michigan audit sample was 1 participant, Ohio audit sample was 13 participants, and Texas 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 resolve cases for National, Florida, Michigan, Ohio, and Texas in an email under the guidance of the auditor.

**Table 1. Breakdown of total sample sizes for the National, Florida, Michigan, Ohio, and Texas audits.**

Survey	Population	Sample Size	Response Rate %
National - Arbitrated Awarded	282	47	17%
National - Arbitrated Awarded No Action	1062	131	12%
National - Mediated	77	8	10%
<b>Total</b>	<b>1421</b>	<b>186</b>	<b>13%</b>

Survey	Population	Sample Size	Response Rate %
Florida - Arbitrated Awarded	31	3	10%
Florida - Arbitrated Awarded No Action	189	10	5%
Florida - Mediated	10	1	10%
<b>Total</b>	<b>230</b>	<b>14</b>	<b>6%</b>

Survey	Population	Sample Size	Response Rate %
Michigan - Arbitrated Awarded	6	1	17%
Michigan - Arbitrated Awarded No Action	28	0	0%
Michigan - Mediated	1	0	0%
<b>Total</b>	<b>35</b>	<b>1</b>	<b>3%</b>

Survey	Population	Sample Size	Response Rate %
Ohio - Arbitrated Awarded	7	4	57%
Ohio - Arbitrated Awarded No Action	61	9	15%
Ohio - Mediated	6	0	0%
<b>Total</b>	<b>74</b>	<b>13</b>	<b>18%</b>

Survey	Population	Sample Size	Response Rate %
Texas - Arbitrated Awarded	12	2	17%
Texas - Arbitrated Awarded No Action	62	9	15%
Texas - Mediated	2	1	50%
<b>Total</b>	<b>76</b>	<b>12</b>	<b>16%</b>

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 the National Center for Dispute Settlement (NCDS) in the year 2020 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 AWAP.

The Consumer Satisfaction Survey Arbitrated Cases Awarded No Action and Consumer Satisfaction Survey Arbitrated Cases Awarded are 41-question survey utilizing multiple choice questions. Items 1-4 measure the pre-filing experience with the dealer or manufacturer. Items 5-6 measure the filing of the claim with NCDS. Items 7-16 measure the experience after filing a claim or pre-hearing process with NCDS. Items 17-25 measure the evidentiary hearing process. Items 26-32 measure post-award experience.

Items 33-36 measure arbitrator satisfaction and items 37-41 measure satisfaction with NCDS processing claim. The Consumer Satisfaction Survey Mediated Cases is a 24-question survey using multiple choice questions. Items 1-4 measure the pre-filing experience with the dealer or manufacturer. Items 5-7 measure the filing of the claim with NCDS. Items 8-14 measure the experience after filing a claim with NCDS. Items 15-20 measure the mediation process and settlement of claim. Items 21-24 measure satisfaction with NCDS processing claim.

### *Data Analysis*

Consumers' overall levels of satisfaction and experience regarding the AWAP 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 distributing

the surveys to participants in several different states in the United States. The invitations were sent on June 26<sup>th</sup>, 2021, and surveys were closed on September 13<sup>th</sup>, 2021, 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 2020 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, Florida, Michigan, Ohio, and Texas 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, Florida, Michigan, Ohio, and Texas 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

#### ARBITRATED CASES AWARDED SURVEY RESULTS

**Pre-filing experience with the dealer or manufacturer.** To understand the consumers' pre-filing experience, respondents were asked general questions related to their pre-filing experience with either the dealer or the manufacturer. The results show before filing a claim with NCDS, 94% 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, 70% of respondents stated more than three times and 30% reported between one-to-three times (Table 1). The majority of participants reported they learned about the NCDS Non-Binding Automobile Warranty Arbitration Program through Manufacturer Customer Service (26%), Glove-Box materials (26%), Internet (21%), and the Dealership (19%). There were other resources participants noted as outlined in Table 2 but were not as prevalent. Only 36% of the

participants stated they were informed of the Arbitration Program from the manufacturer or dealer over the phone while 36% reported "Other" which consisted of in-person conversations or email.

**TABLE 1 – Survey Results: How Many Repair Attempts Before Filing a Claim with NCDS?**

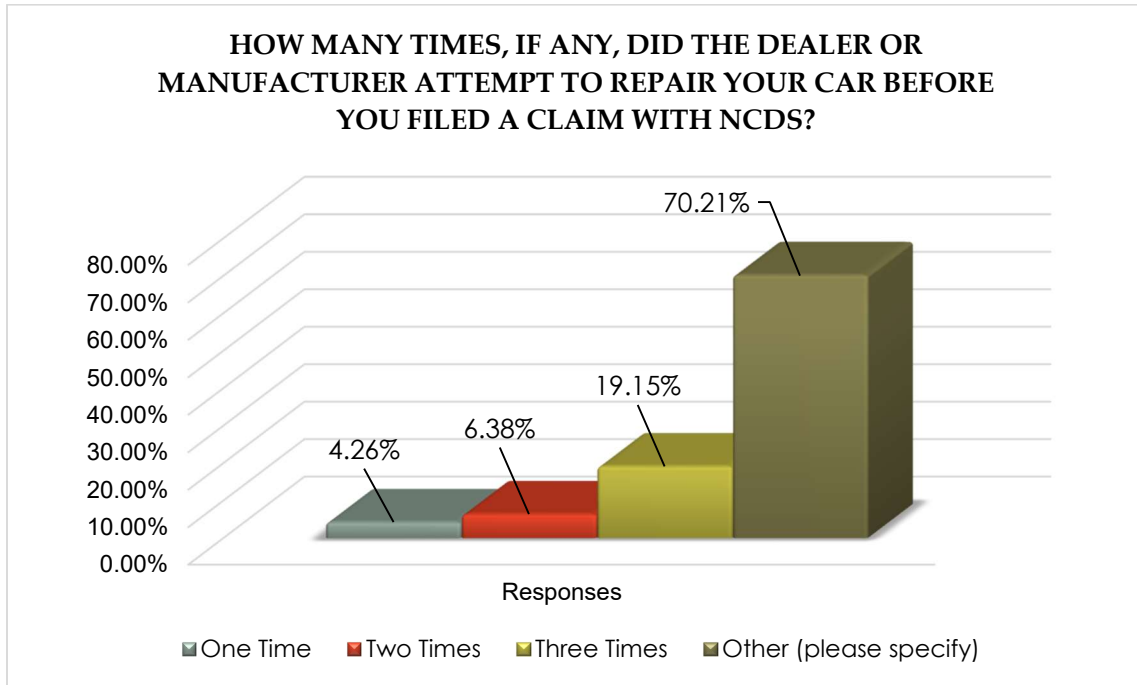
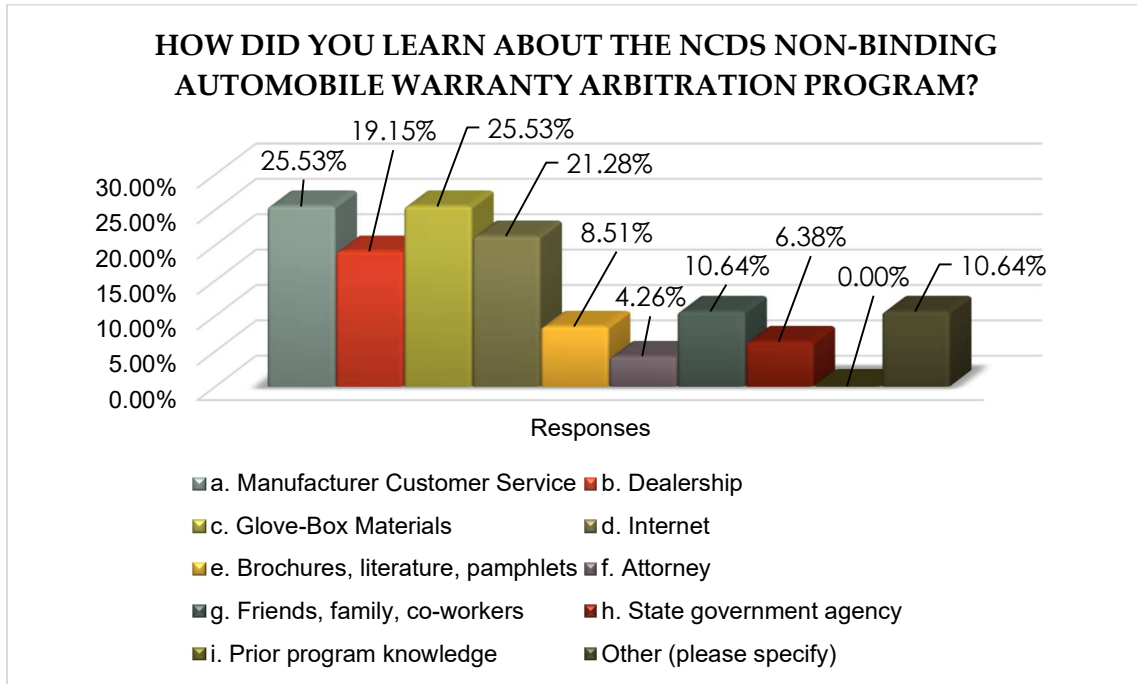


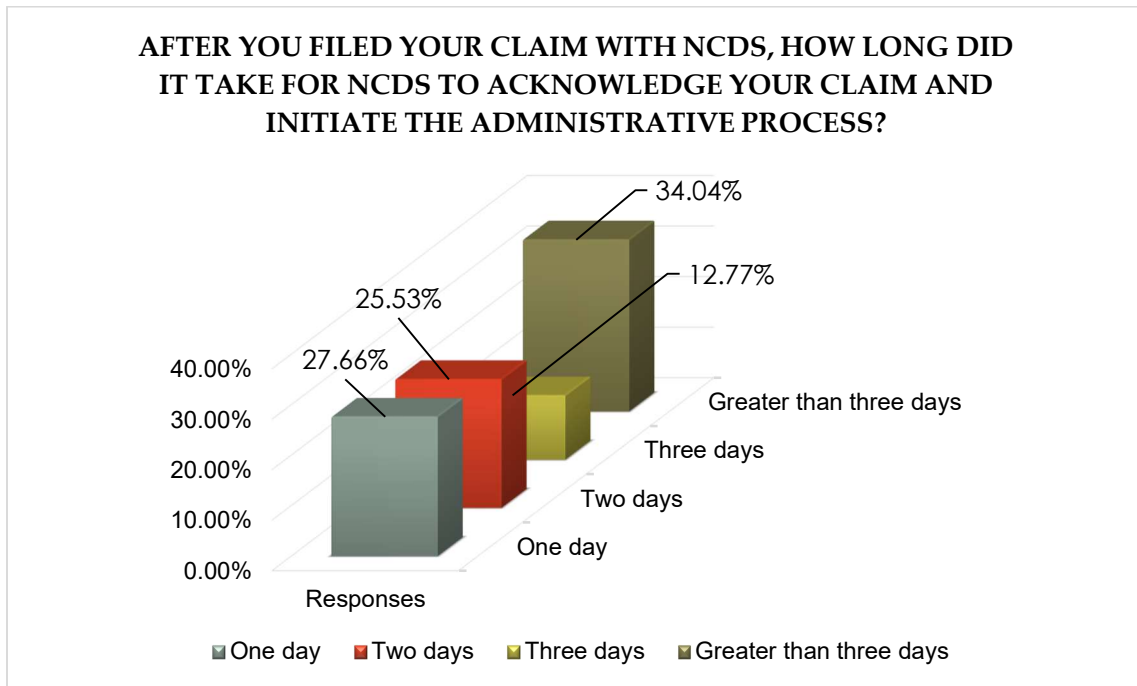
TABLE 2 – Survey Results: How Did You Learn About the NCDS Non-Binding AWAP?



*Note:* Participants were allowed to select multiple choices.

**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 (89%) reported they used an E-File method to file their claim while only 11% used a written submission claim form. The respondents were then asked how clear the instructions were for filing their claim of which 72% indicated the instructions on the claim form were “*very clear*” and 26% stated the instructions were “*somewhat clear.*” Once the participants filed their claim with NCDS, approximately 66% reported it took anywhere between one-to-three days (Table 3) for NCDS to acknowledge their claim and initiate the administrative process. The remaining 34% stated it took greater than three days.

TABLE 3 – Survey Results: How Long Did it Take for NCDS to Acknowledge Your Claim?



**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 85% of participants received or reviewed the Frequently Asked Questions (FAQ) packet at [www.ncdsusa.org](http://www.ncdsusa.org) and 15% reported they did not receive the packet. The information presented in the FAQ was “*very clear*” as reported by 57% of the respondents and “*somewhat clear*” by 28% of respondents. Less than half (48%) of participants stated the information presented in the FAQ was “*very helpful*” while 34% reported it was “*moderately helpful*.”

When asked if participants received or reviewed the Non-Binding Program Rules at [www.ncdsusa.org](http://www.ncdsusa.org), 89% respondents reported “*yes*” while 11% stated “*no*.” The Program Rules were “*very clear*” to 62% of the participants and “*somewhat clear*” to 28% participants. The respondents were then asked if the Program Rules were helpful in explaining the arbitration process of which 57% stated they were “*very helpful*” and 28% acknowledged they were “*moderately helpful*” in explaining the arbitration process. The majority of respondents (96%) stated they received a hearing notice from NCDS, but 91% 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 9% of respondents reported they hired an attorney after receiving their hearing notice. Based on the results, 72% of participants did not request a “documents only” hearing after filing their claim and 28% did request a “documents only” hearing.

**The evidentiary hearing process.** To assess the actual evidentiary process, participants were asked to convey their experience with different phases of the hearing process. The 72% of participants that did not request a “documents only” hearing, 97% of them reported they did participate in the evidentiary hearing process and the arbitrator started the hearing on time as stated by 97% of those participants. It was also reported by 97% of those participants 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, 97% of those participants responded “yes.”

Only 15% of those same respondents reported they conducted a test drive with the arbitrator during the hearing whereas 85% stated they did not conduct a test drive. Out of that 15% of consumers who did conduct a test drive, it was confirmed by 80% of that group that the arbitrator did ask to see their identifying information such as their insurance, registration, and driver’s license in addition to checking the Vehicle Identification Number (VIN) and mileage. The same consumers who conducted a test drive all reported (100%) that the arbitrator did explain the protocols for conducting the test drive and that it was the responsibility of the consumer to raise the concern with the arbitrator when the issue was experienced during the test drive. Finally, 100% of the same respondents noted that the arbitrator did explain after the test drive that each party would be able to offer final comments about what was experienced during the test drive.

**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, 81% of the total sample population stated the arbitrator communicated this award by email, 15% reported it was by written submission, and 4% stated they did not receive a communication. Most of the consumers (53%) reported that the relief awarded to them by the arbitrator was a refund, where the manufacturer would give them money for their vehicle, 13% reported they received a replacement, where the manufacturer would replace their existing car with a new car, and 4% stated they received a reimbursement, where the manufacturer would reimburse them for the incidental costs associated with the repair of their car. The remaining 30% of respondents reported “Other” which included no relief or other forms of repairs.

The results show the participants did not feel the arbitrator accurately identified the nature of the non-conformity in the consumers alleged claims as reported by 85% of respondents. After identifying the non-conformity, 81% of participants stated the arbitrator included a summary of the testimony at the hearing. The majority of the participants (89%) stated the arbitrator’s award was clear and 77% reported that the arbitrator rendered a reasoned award while 89% stated they accepted the arbitrator’s award.

**Arbitrator satisfaction.** To understand arbitrator satisfaction among the consumers, the participants were asked how well the arbitrator understood their case of which 72% reported “very well” and 21% stated “reasonably well.” The arbitrator’s objectivity and fairness was rated as “excellent” by 70% of respondents, “good” by 13%, “average” by 6%, and “poor” by 11% of respondents. The participants were then asked to rate the arbitrator’s impartiality during the hearing of which 74% rated their arbitrator as “excellent,” 9% “good,” 6% “average,” and 11% rated it as “poor.” Finally, the participants were asked to rate the arbitrator’s impartiality with respect to the award which 68% of respondents rated this as “excellent,” 13% “good,” 4% “average,” and 15% evaluated it as “poor.”

**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 62% rated the timeliness of communications as “excellent,” 23% “good,” 2% “fair,” and 13% rated it as “poor.” Next, participants were asked to rate the helpfulness of the NCDS staff and the majority of participants (66%) rated the helpfulness of the staff as “excellent,” 19% “good,” 2% “fair,” and 13% 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 60% of participants rated it as “excellent,” 15% as “good,”

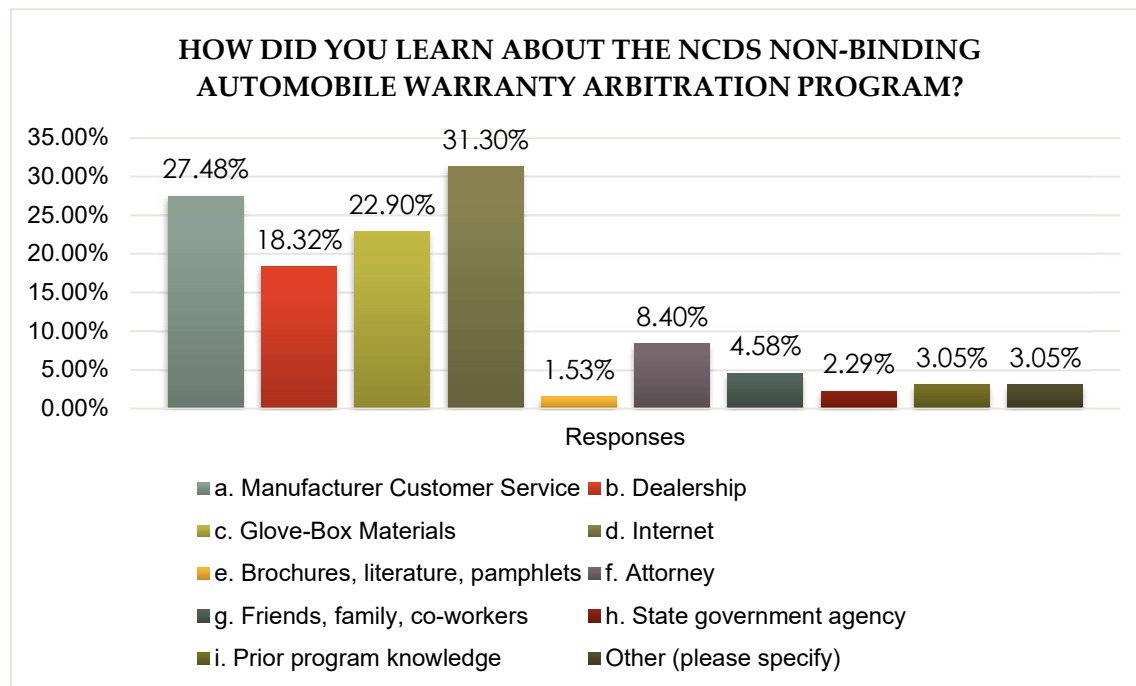


6% as “fair,” and 19% “poor.” Finally, respondents were asked if they would recommend the Arbitration Program to friends and family and 74% responded “yes” while 26% stated “no.”

**ARBITRATED CASES AWARDED NO ACTION SURVEY RESULTS**

**Pre-filing experience with the dealer or manufacturer.** To understand the consumers’ pre-filing experience, respondents were asked general 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 seek recourse or help from the manufacturer directly. When asked how many times the dealer or manufacturer attempted to repair their vehicle, 58% of respondents stated more than three times, 32% reported at least three times, 7% stated at least one time, and 3% reported two times. When participants were asked how they learned about the NCDS Non-Binding Automobile Warranty Arbitration Program, 31% stated Internet, 27% Manufacturer Customer Service, 23% Glove-Box materials, and 18% stated the Dealership. There were other resources participants noted as outlined in Table 4, but were not as prevalent. At least 23% of participants stated they were informed of the Arbitration Program from the manufacturer or dealer over the phone while 8% reported they were “sent information,” and 7% stated “other” which consisted of in-person conversations or the owner’s manual.

**TABLE 4 – Survey Results: How Did You Learn About the NCDS Non-Binding AWAP?**

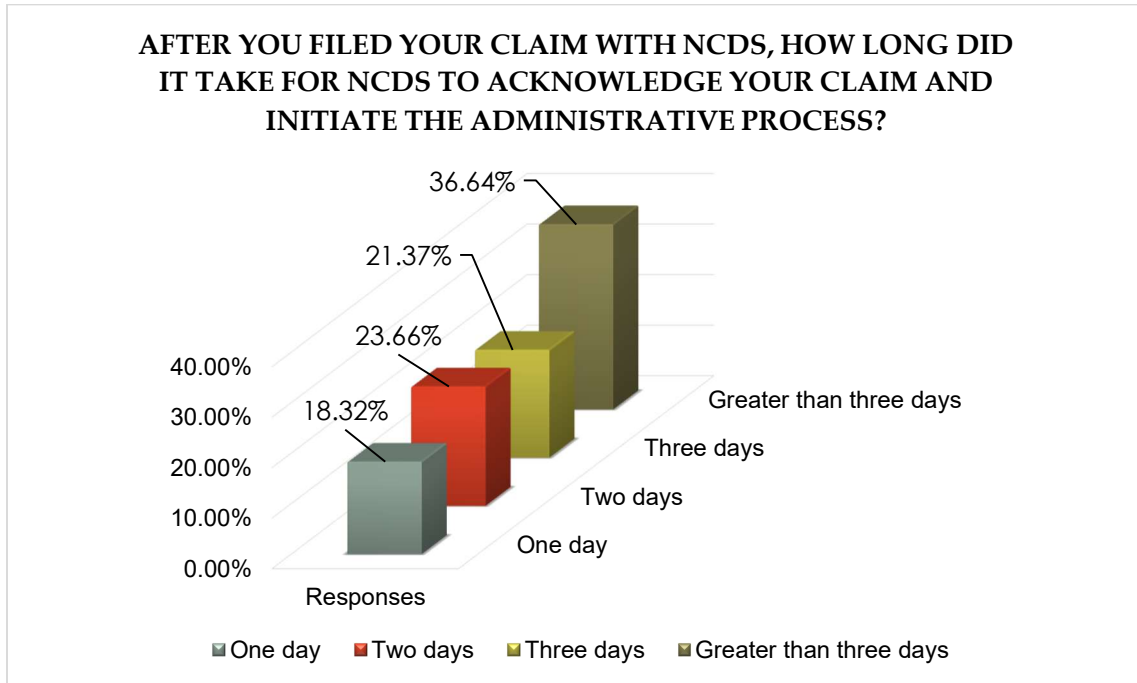


**Note:** Participants were allowed to select multiple choices.

**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 (89%) reported they used an E-File method to file their claim while only 11% used a written submission claim form. The respondents were then asked how clear the instructions were for filing their claim of which 37% indicated the instructions on the claim form were

“very clear” and 54% stated the instructions were “somewhat clear.” Once the participants filed their claim with NCDS, approximately 63% reported it took anywhere between one-to-three days for NCDS to acknowledge their claim and initiate the administrative process (Table 5). The remaining 37% stated it took greater than three days.

**Table 5 – Survey Results: How Long Did it Take for NCDS to Acknowledge Your Claim?**



**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 72% of participants received or reviewed the Frequently Asked Questions (FAQ) packet at [www.ncdsusa.org](http://www.ncdsusa.org) and 28% reported they did not receive the packet. The information presented in the FAQ was “very clear” as reported by 20% of the respondents, “somewhat clear” by 53%, and “not clear” or did not know by 27% of respondents. Only 15% of participants stated the information presented in the FAQ was “very helpful” while 50% reported it was “moderately helpful.” The remaining 35% of participants did not think the FAQ was helpful or did not know.

When asked if participants received or reviewed the Non-Binding Program Rules at [www.ncdsusa.org](http://www.ncdsusa.org), 79% respondents reported “yes” while 21% stated “no.” The Program Rules were “very clear” to 21% of the participants, “somewhat clear” to 50%, and “not clear” or did not know by 29% of participants. The respondents were then asked if the Program Rules were helpful in explaining the arbitration process of which 20% stated they were “very helpful” and 51% acknowledged they were “moderately helpful” in explaining the arbitration process. The remaining 29% of respondents reported they did not think Program Rules were helpful or did not know.

The majority of respondents (93%) stated they received a hearing notice from NCDS, but 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. Only 8% of respondents reported they hired an attorney after receiving their

hearing notice. Based on the results, 41% of participants requested a “documents only” hearing after filing their claim and 59% 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 different phases of the hearing process. Of the 59% of participants that did not request a “documents only” hearing, 87% of that sample reported they did participate in the evidentiary hearing process and the arbitrator started the hearing on time. It also was reported by 96% of those participants 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, 67% of those participants responded “yes” while 33% reported “no.”

Only 4% of those same respondents reported they conducted a test drive with the arbitrator during the hearing whereas 96% stated they did not conduct a test drive. Out of that 4% of consumers who did conduct a test drive, it was confirmed by 75% of that group that the arbitrator did ask to see their identifying information such as their insurance, registration, and driver’s license and 100% of that same group reported the arbitrator checked the Vehicle Identification Number (VIN) and mileage. The same participants who conducted a test drive, 75% stated that the arbitrator did explain the protocols for conducting the test drive and that it was the responsibility of the consumer to raise the concern with the arbitrator when the issue was experienced during the test drive. Finally, 75% of the same respondents noted that the arbitrator did explain after the test drive that each part would be able to offer final comments about what was experienced during the test drive.

**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, 67% of the total sample population stated the arbitrator communicated this award by email, 25% reported it was by written submission, and 8% stated they did not receive a communication. Most of the consumers (98%) reported they received no award while less than 1% reported the relief awarded to them by the arbitrator was a refund, where the manufacturer would give them money for their vehicle and less than 1% received a reimbursement, where the manufacturer would reimburse them for the incidental costs associated with the repair of their car.

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 83% of respondents. After identifying the non-conformity, 52% of participants stated the arbitrator included a summary of the testimony at the hearing while 48% reported the arbitrator did not include a summary. Almost half of the participants (46%) stated the arbitrator’s award was clear while 54% said the award was not clear. The majority of participants (91%) did not think the arbitrator rendered a reasoned award while 92% stated they did not accept the arbitrator’s award.

**Arbitrator satisfaction.** To understand arbitrator satisfaction among the consumers, the participants were asked how well the arbitrator understood their case of which 74% reported “not well at all,” 20% “reasonably well,” and only 6% participants stated, “very well.” The arbitrator’s objectivity and fairness was rated as “poor” by 79% of respondents, “average” by 14%, and “good” by 7% of respondents.

The participants were then asked to rate the arbitrator’s impartiality during the hearing of which 68% rated their arbitrator as “poor,” 22% “average,” 8% “good,” and 2% of participants rated “excellent.”

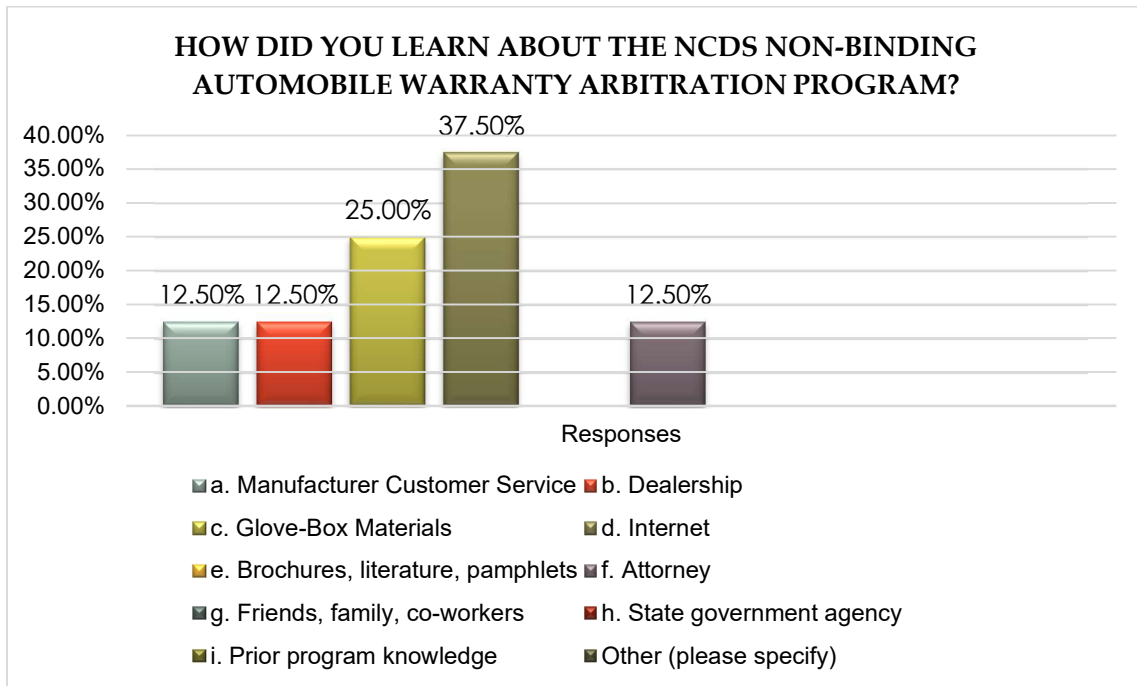
Finally, the participants were asked to rate the arbitrator's impartiality with respect to the award which 83% of respondents rated this as "poor," 11% "average," and 6% evaluated it as "good."

**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 20% rated the timeliness of communications as "excellent," 37% "good," 26% "fair," and 17% rated it as "poor." Next, participants were asked to rate the helpfulness of the NCDS staff, 12% of participants rated the helpfulness of the staff as "excellent," 32% "good," 27% "fair," and 29% 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 73% of participants rated it as "poor," 19% as "fair," 5% as "good," and only 2% reported their overall experience as "excellent." Finally, respondents were asked if they would recommend the Arbitration Program to friends and family and 92% responded "no" while only 8% stated "yes."

## MEDIATED CASES SURVEY RESULTS

**Pre-filing experience with the dealer or manufacturer.** To understand the consumers' pre-filing experience, respondents were asked general questions related to their pre-filing experience with 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, 63% of respondents stated "other" which was more than three times or manufacturer could not fix and 37% reported one time. The majority of participants reported they learned about the NCDS Non-Binding Automobile Warranty Arbitration Program through Internet (37%) and Glove-Box materials (25%). There were other resources participants noted as outlined in Table 6, but were not as prevalent. The 25% of participants who learned about the NCDS Non-Binding Automobile Warranty Arbitration Program through the dealership or manufacturer stated they were solely informed of the Arbitration Program from the manufacturer or dealer over the phone and no other communication or resources.

TABLE 6 – Survey Results: How Did You Learn About the NCDS Non-Binding AWAP?



*Note:* Participants were allowed to select multiple choices, but none did here.

**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 (88%) reported they used an E-File method to file their claim while only 12% used a written submission claim form. The respondents were then asked how clear the instructions were for filing their claim of which 100% indicated the instructions on the claim form were “*very clear.*” To assess the actual evidentiary process, participants were asked to convey their experience with different phases of the hearing process. Half of the participants (50%) stated they did request a “documents only” hearing and the other 50% reported they did not request a “documents only” hearing.

**Experience after filing a claim with NCDS.** Once the participants filed their claim with NCDS, 50% reported it took two days for NCDS to acknowledge their claim and initiate the administrative process. There were 38% of participants who stated it took three days and 12% reported it took one day. 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 or reviewed the Frequently Asked Questions (FAQ) packet at [www.ncdsusa.org](http://www.ncdsusa.org). The information presented in the FAQ was “*very clear*” as reported by 100% of the respondents. The majority of participants (88%) stated the information presented in the FAQ was “*very helpful*” while 12% reported it was “*moderately helpful.*”

When asked if participants received or reviewed the Non-Binding Program Rules at [www.ncdsusa.org](http://www.ncdsusa.org), 88% respondents reported “*yes*” while 12% stated “*no.*” The Program Rules were “*very clear*” to 75% of the participants, “*somewhat clear*” to 13%, and 12% of participants stated, “*did not know.*” The respondents were then asked if the Program Rules were helpful in explaining the arbitration process

of which 75% stated they were “*very helpful*” and 25% acknowledged they were “*moderately helpful*” in explaining the arbitration process.

**The settlement of claim.** To assess the settlement of the consumers claim, participants were asked if they agreed to settle their case with the manufacturer before the case proceeded to arbitration of which 88% of respondents stated “*yes*” and 12% reported “*no*.” The respondents who responded “*yes*” to agree to settle their case with the manufacturer were then asked what best described the relief provided in their settlement of claim of which 29% of respondents reported the relief awarded to them by the arbitrator was a refund or replacement, where the manufacturer would take back their car, 29% reported a repair, where the manufacturer would try to fix the car, or examine it to determine the source of the problem, and 28% reported a reimbursement of expenses. The remaining 14% stated “*other*” where they received an extended warranty up to 100,000 miles.

All of those same participants (88%) who agreed to settle their case with the manufacturer reported they accepted the settlement offer made by the manufacturer voluntarily. After the consumer reached a settlement, 86% of the respondents reported they received a letter from NCDS explaining the terms of the settlement and 14% did not receive a letter. After the consumer received their settlement confirmation the results show that 86% of respondents did pursue their case further and 14% did not pursue their case further. The one participant (14%) who decided to pursue their case further contacted the dealer or manufacturer directly. 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 75% rated the timeliness of communications as “*excellent*” and 25% rated it as “*good*.” Next, participants were asked to rate the helpfulness of the NCDS staff and the majority of participants (88%) rated the helpfulness of the staff as “*excellent*” and 12% rated it as “*good*.” To help gauge consumers’ experience with the arbitration program, participants were asked to rate their overall experience under the Arbitration Program of which 100% of participants rated it as “*excellent*.” Finally, respondents were asked if they would recommend the Arbitration Program to friends and family and 100% responded “*yes*.”

OVERALL SURVEY RESULTS: KEY FINDINGS

This section captures the overall survey results (raw) from the sample size of participants who partook in the audit surveys and compares the results found between the different outcomes of cases. The eight areas compared were the pre-filing experience with the dealer or manufacturer, filing of claim, experience after filing of claim, the evidentiary hearing process, post-award experience, arbitrator satisfaction, satisfaction with NCDS processing their claim, and settlement of claim (mediation only). The highest percentages were highlighted based on the responses for each question for ease of comparison.

Figure 3. – National Overall Survey Results and Comparison Between Outcomes

National - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
		Pre-filing Experience with Dealer or Manufacturer		
Survey Questions		Responses		
<b>Before filing a claim with NCDS, did you attempt to seek recourse or help from the manufacturer directly?</b>				
<b>Answer Choices</b>				
Yes		93.62%	96.18%	100.00%
No		6.38%	3.82%	0.00%
If no, please explain				
<b>How many times, if any, did the dealer or manufacturer attempt to repair your car before you filed a claim with NCDS?</b>				
<b>Answer Choices</b>				
One Time		4.26%	6.87%	37.50%
Two Times		6.38%	3.05%	0.00%
Three Times		19.15%	32.06%	0.00%
Other (please specify) - More than Three Times		70.21%	58.02%	62.50%
<b>How did you learn about the NCDS Non-Binding Automobile Warranty Arbitration Program?</b>				

<b>Answer Choices</b>			
a. Manufacturer Customer Service	25.53%	27.48%	12.50%
b. Dealership	19.15%	18.32%	12.50%
c. Glove-Box Materials	25.53%	22.90%	25.00%
d. Internet	21.28%	31.30%	37.50%
e. Brochures, literature, pamphlets	8.51%	1.53%	0.00%
f. Attorney	4.26%	8.40%	12.50%
g. Friends, family, co-workers	10.64%	4.58%	0.00%
h. State government agency	6.38%	2.29%	0.00%
i. Prior program knowledge	0.00%	3.05%	0.00%
Other (please specify)	10.64%	3.05%	0.00%
<b>Answer Choices</b>			
Talked over the phone	47.06%	56.60%	100.00%
Sent information	5.88%	20.75%	0.00%
Showroom poster	0.00%	3.77%	0.00%
Other (please specify)	47.06%	18.87%	0.00%
<b>Filing of Claim</b>			
<b>What method did you use to file your claim with NCDS?</b>			
<b>Answer Choices</b>			
E-File	89.36%	88.55%	87.50%
Written Submission of Claim Form	10.64%	11.45%	12.50%
<b>How clear were the instructions for filing the Claim Form?</b>			
<b>Answer Choices</b>			
Very clear	72.34%	37.40%	100.00%
Somewhat clear	25.53%	54.20%	0.00%
Not clear	2.13%	6.87%	0.00%
Do not know	0.00%	1.53%	0.00%



<b>Experience After Filing a Claim</b>			
<b>After you filed your claim with NCDS, how long did it take for NCDS to acknowledge your claim and initiate the administrative process?</b>			
<b>Answer Choices</b>			
One day	27.66%	18.32%	12.50%
Two days	25.53%	23.66%	50.00%
Three days	12.77%	21.37%	37.50%
Greater than three days	34.04%	36.64%	0.00%
<b>Did you receive or review the Frequently Asked Questions (FAQ) Packet at <a href="http://www.ncdsusa.org">www.ncdsusa.org</a>?</b>			
<b>Answer Choices</b>			
Yes	85.11%	71.76%	100.00%
No	14.89%	28.24%	0.00%
<b>How clear was the information presented in the FAQ?</b>			
<b>Answer Choices</b>			
Very clear	57.45%	19.85%	100.00%
Somewhat clear	27.66%	52.67%	0.00%
Not clear	6.38%	10.69%	0.00%
Do not know	8.51%	16.79%	0.00%
<b>How helpful was the information presented in the FAQ?</b>			
<b>Answer Choices</b>			
Very helpful	48.94%	14.50%	87.50%
Moderately helpful	34.04%	49.62%	12.50%
Not at all helpful	6.38%	16.03%	0.00%
Do not know	10.64%	19.85%	0.00%
<b>Did you receive or review the Non-Binding Program Rules at <a href="http://www.ncdsusa.org">www.ncdsusa.org</a>?</b>			

<b>Answer Choices</b>				
Yes		89.36%	78.63%	87.50%
No		10.64%	21.37%	12.50%
<b>How clear were the Program Rules?</b>				
<b>Answer Choices</b>				
Very clear		61.70%	20.61%	75.00%
Somewhat clear		27.66%	50.38%	12.50%
Not clear		8.51%	12.98%	0.00%
Do not know		2.13%	16.03%	12.50%
<b>How helpful were the Program Rules in explaining the arbitration process?</b>				
<b>Answer Choices</b>				
Very helpful		57.45%	19.85%	75.00%
Moderately helpful		27.66%	51.15%	25.00%
Not at all helpful		12.77%	18.32%	0.00%
Do not know		2.13%	10.69%	0.00%
<b>Did you receive a hearing notice from NCDS?</b>				
<b>Answer Choices</b>				
Yes		95.74%	93.13%	N/A
No		4.26%	6.87%	N/A
<b>Either before or after you received your hearing notice, did you hire an attorney to represent you or to be present at the hearing?</b>				
<b>Answer Choices</b>				
Yes		8.51%	7.63%	N/A
No		91.49%	92.37%	N/A
<b>When you filed your claim with NCDS, did you request a "documents only" hearing?</b>				

<b>Answer Choices</b>				
Yes		27.66%	41.22%	50.00%
No		72.34%	58.78%	50.00%
<b>The Evidentiary Hearing Process</b>				
<b>Did you participate in the hearing?</b>				
<b>Answer Choices</b>				
Yes		97.06%	87.01%	N/A
No		2.94%	12.99%	N/A
<b>Did the arbitrator start the hearing on time?</b>				
<b>Answer Choices</b>				
Yes		96.97%	86.57%	N/A
No		3.03%	13.43%	N/A
If no, explain				
<b>Did the arbitrator explain the arbitration process to both parties?</b>				
<b>Answer Choices</b>				
Yes		96.97%	95.52%	N/A
No		3.03%	4.48%	N/A
<b>Did the arbitrator allow both parties a full and fair opportunity to present their proofs?</b>				
<b>Answer Choices</b>				
Yes		96.97%	67.16%	N/A
No		3.03%	32.84%	N/A
<b>Did the arbitrator conduct a test drive during the hearing?</b>				
<b>Answer Choices</b>				
Yes		14.71%	3.90%	N/A
No		85.29%	96.10%	N/A

<b>Before conducting a test drive, did the arbitrator ask to see your identifying information – insurance, registration, and drivers’ license?</b>			
<b>Answer Choices</b>			
Yes			N/A
No	20.00%	25.00%	N/A
<b>Before conducting a test drive, did the arbitrator check the VIN number of the vehicle and also the mileage?</b>			
<b>Answer Choices</b>			
Yes			N/A
No	20.00%	0.00%	N/A
<b>Did the arbitrator explain the protocols for conducting the test drive, specifically that it is your responsibility to raise the concern with the arbitrator when it is experienced during the test drive.</b>			
<b>Answer Choices</b>			
Yes			N/A
No	0.00%	25.00%	N/A
<b>Did the arbitrator explain that after the test drive, each party would be able to offer final comments about what was experienced during the test drive?</b>			
<b>Answer Choices</b>			
Yes			N/A
No	0.00%	25.00%	N/A
<b>Post-award Experience</b>			
<b>How was the arbitrator’s award communicated to you?</b>			
<b>Answer Choices</b>			
By email	80.85%	67.18%	N/A

Written submission	14.89%	25.19%	N/A
Other (please specify)	4.26%	7.63%	N/A
<b>Which of the following best describes the relief awarded to you by the arbitrator?</b>			
<b>Answer Choices</b>			
A refund, where the manufacturer would give you money for your car	53.19%	0.76%	28.57%
A replacement, where the manufacturer would replace your existing car with a new car	12.77%	0.00%	28.57%
Reimbursement, where the manufacturer would reimburse you for incidental costs associated with the repair of your car	4.26%	0.76%	28.57%
Other (please specify)	29.79%	98.47%	14.29%
<b>Did the arbitrator accurately identify the nature of the non-conformity you alleged in your claim?</b>			
<b>Answer Choices</b>			
Yes	85.11%	16.79%	N/A
No	14.89%	83.21%	N/A
<b>Did the arbitrator include a summary of the testimony at the hearing?</b>			
<b>Answer Choices</b>			
Yes	80.85%	51.91%	N/A
No	19.15%	48.09%	N/A
<b>Was the arbitrator's award clear?</b>			
<b>Answer Choices</b>			
Yes	89.36%	45.80%	N/A
No	10.64%	54.20%	N/A
<b>Did the arbitrator render a reasoned award?</b>			
<b>Answer Choices</b>			
Yes	76.60%	9.16%	N/A
No	23.40%	90.84%	N/A

Answer Choices			
Yes	89.36%	8.40%	N/A
No	10.64%	91.60%	N/A
If no, why not?			
Arbitrator Satisfaction			
How well did the arbitrator understand your case?			
Answer Choices			
Very well	72.34%	6.11%	N/A
Reasonably well	21.28%	19.85%	N/A
Not well at all.	6.38%	74.05%	N/A
How would you rate the arbitrator's objectivity and fairness?			
Answer Choices			
Excellent	70.21%	0.00%	N/A
Good	12.77%	6.87%	N/A
Average	6.38%	13.74%	N/A
Poor	10.64%	79.39%	N/A
How would you rate the arbitrator's impartiality during the hearing?			
Answer Choices			
Excellent	74.47%	2.29%	N/A
Good	8.51%	7.63%	N/A
Average	6.38%	22.14%	N/A
Poor	10.64%	67.94%	N/A
How would you rate the arbitrator's impartiality with respect to the award?			
Answer Choices			
Excellent	68.09%	0.00%	N/A

Good		12.77%	6.11%	N/A
Average		4.26%	10.69%	N/A
Poor		14.89%	83.21%	N/A
<b>Satisfaction with NCDS Processing Claim</b>				
<b>How would you rate the timeliness of the communications between you and NCDS staff?</b>				
<b>Answer Choices</b>				
Excellent		61.70%	19.85%	75.00%
Good		23.40%	37.40%	25.00%
Fair		2.13%	25.95%	0.00%
Poor		12.77%	16.79%	0.00%
<b>How would you rate the helpfulness of the NCDS staff?</b>				
<b>Answer Choices</b>				
Excellent		65.96%	12.21%	87.50%
Good		19.15%	32.06%	12.50%
Fair		2.13%	26.72%	0.00%
Poor		12.77%	29.01%	0.00%
<b>How would you rate your overall experience under the Arbitration Program?</b>				
<b>Answer Choices</b>				
Excellent		59.57%	2.29%	100.00%
Good		14.89%	5.34%	0.00%
Fair		6.38%	19.08%	0.00%
Poor		19.15%	73.28%	0.00%
<b>Would you recommend the Arbitration Program to friends and family?</b>				
<b>Answer Choices</b>				
Yes		74.47%	7.63%	100.00%
No		25.53%	92.37%	0.00%

If no, please explain			
<b>Settlement of Claim *Mediation Only*</b>			
<b>Before the case proceeded to arbitration, did you agree to settle your case with the manufacturer?</b>			
Yes	N/A	N/A	87.50%
No	N/A	N/A	12.50%
<b>Did you accept the settlement offer made by the manufacturer voluntarily?</b>			
Yes	N/A	N/A	100.00%
No	N/A	N/A	0.00%
<b>After you reached a settlement, did you receive a letter from NCDS explaining the terms of the settlement?</b>			
Yes	N/A	N/A	85.71%
No	N/A	N/A	14.29%
<b>After you received your settlement confirmation, did you pursue your case further?</b>			
Yes	N/A	N/A	14.29%
No	N/A	N/A	85.71%
<b>If so, please let us know the method you used.</b>			
Re-initiated contact with NCDS	N/A	N/A	0.00%
Contacted an attorney	N/A	N/A	0.00%
Contacted a state agency	N/A	N/A	0.00%
Contacted dealer or manufacturer	N/A	N/A	100.00%
Other (please specify)	N/A	N/A	0.00%



Figure 4. – Florida Overall Survey Results and Comparison Between Outcomes

Florida - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
<b>Pre-filing Experience with Dealer or Manufacturer</b>				
<b>Survey Questions</b>		<b>Responses</b>		
<b>Before filing a claim with NCDS, did you attempt to seek recourse or help from the manufacturer directly?</b>				
<b>Answer Choices</b>				
Yes		100.00%	90.00%	100.00%
No		0.00%	10.00%	0.00%
If no, please explain				
<b>How many times, if any, did the dealer or manufacturer attempt to repair your car before you filed a claim with NCDS?</b>				
<b>Answer Choices</b>				
One Time		0.00%	0.00%	0.00%
Two Times		0.00%	10.00%	0.00%
Three Times		33.33%	30.00%	0.00%
Other (please specify) - More than Three Times		66.67%	60.00%	100.00%
<b>How did you learn about the NCDS Non-Binding Automobile Warranty Arbitration Program?</b>				
<b>Answer Choices</b>				
a. Manufacturer Customer Service		33.33%	30.00%	0.00%
b. Dealership		0.00%	20.00%	0.00%
c. Glove-Box Materials		33.33%	20.00%	100.00%
d. Internet		33.33%	30.00%	0.00%
e. Brochures, literature, pamphlets		0.00%	0.00%	0.00%

f. Attorney	0.00%	0.00%	0.00%
g. Friends, family, co-workers	0.00%	10.00%	0.00%
h. State government agency	0.00%	30.00%	0.00%
i. Prior program knowledge	0.00%	0.00%	0.00%
Other (please specify)	0.00%	10.00%	0.00%
<b>Answer Choices</b>			
Talked over the phone	0.00%	50.00%	0.00%
Sent information	100.00%	25.00%	0.00%
Showroom poster	0.00%	0.00%	0.00%
Other (please specify)	0.00%	25.00%	0.00%
<b>Filing of Claim</b>			
<b>What method did you use to file your claim with NCDS?</b>			
<b>Answer Choices</b>			
E-File	33.33%	90.00%	100.00%
Written Submission of Claim Form	66.67%	10.00%	0.00%
<b>How clear were the instructions for filing the Claim Form?</b>			
<b>Answer Choices</b>			
Very clear	100.00%	30.00%	100.00%
Somewhat clear	0.00%	70.00%	0.00%
Not clear	0.00%	0.00%	0.00%
Do not know	0.00%	0.00%	0.00%
<b>Experience After Filing a Claim</b>			
<b>After you filed your claim with NCDS, how long did it take for NCDS to acknowledge your claim and initiate the administrative process?</b>			
<b>Answer Choices</b>			
One day	66.67%	10.00%	0.00%

Two days		0.00%	30.00%	100.00%
Three days		33.33%	10.00%	0.00%
Greater than three days		0.00%	50.00%	0.00%
<b>Did you receive or review the Frequently Asked Questions (FAQ) Packet at <a href="http://www.ncdsusa.org">www.ncdsusa.org</a>?</b>				
<b>Answer Choices</b>				
Yes		100.00%	70.00%	100.00%
No		0.00%	30.00%	0.00%
<b>How clear was the information presented in the FAQ?</b>				
<b>Answer Choices</b>				
Very clear		100.00%	20.00%	100.00%
Somewhat clear		0.00%	50.00%	0.00%
Not clear		0.00%	10.00%	0.00%
Do not know		0.00%	20.00%	0.00%
<b>How helpful was the information presented in the FAQ?</b>				
<b>Answer Choices</b>				
Very helpful		100.00%	0.00%	100.00%
Moderately helpful		0.00%	60.00%	0.00%
Not at all helpful		0.00%	20.00%	0.00%
Do not know		0.00%	20.00%	0.00%
<b>Did you receive or review the Non-Binding Program Rules at <a href="http://www.ncdsusa.org">www.ncdsusa.org</a>?</b>				
<b>Answer Choices</b>				
Yes		100.00%	60.00%	100.00%
No		0.00%	40.00%	0.00%
<b>How clear were the Program Rules?</b>				
<b>Answer Choices</b>				

Very clear		100.00%	10.00%	100.00%
Somewhat clear		0.00%	50.00%	0.00%
Not clear		0.00%	20.00%	0.00%
Do not know		0.00%	20.00%	0.00%
<b>Answer Choices</b>				
Very helpful		100.00%	0.00%	100.00%
Moderately helpful		0.00%	60.00%	0.00%
Not at all helpful		0.00%	30.00%	0.00%
Do not know		0.00%	10.00%	0.00%
<b>Answer Choices</b>				
Yes		100.00%	90.00%	N/A
No		0.00%	10.00%	N/A
<b>Either before or after you received your hearing notice, did you hire an attorney to represent you or to be present at the hearing?</b>				
<b>Answer Choices</b>				
Yes		0.00%	0.00%	N/A
No		100.00%	100.00%	N/A
<b>Answer Choices</b>				
Yes		100.00%	40.00%	100.00%
No		0.00%	60.00%	0.00%
<b>The Evidentiary Hearing Process</b>				
<b>Did you participate in the hearing?</b>				

<b>Answer Choices</b>				
Yes		0.00%	83.33%	N/A
No		0.00%	16.67%	N/A
<b>Did the arbitrator start the hearing on time?</b>				
<b>Answer Choices</b>				
Yes		0.00%	100.00%	N/A
No		0.00%	0.00%	N/A
If no, explain				
<b>Did the arbitrator explain the arbitration process to both parties?</b>				
<b>Answer Choices</b>				
Yes		0.00%	100.00%	N/A
No		0.00%	0.00%	N/A
<b>Did the arbitrator allow both parties a full and fair opportunity to present their proofs?</b>				
<b>Answer Choices</b>				
Yes		0.00%	60.00%	N/A
No		0.00%	40.00%	N/A
<b>Did the arbitrator conduct a test drive during the hearing?</b>				
<b>Answer Choices</b>				
Yes		0.00%	0.00%	N/A
No		0.00%	100.00%	N/A
<b>Before conducting a test drive, did the arbitrator ask to see your identifying information – insurance, registration, and drivers’ license?</b>				
<b>Answer Choices</b>				
Yes		0.00%	0.00%	N/A
No		0.00%	0.00%	N/A

<b>Before conducting a test drive, did the arbitrator check the VIN number of the vehicle and also the mileage?</b>			
<b>Answer Choices</b>			
Yes	0.00%	0.00%	N/A
No	0.00%	0.00%	N/A
<b>Did the arbitrator explain the protocols for conducting the test drive, specifically that it is your responsibility to raise the concern with the arbitrator when it is experienced during the test drive.</b>			
<b>Answer Choices</b>			
Yes	0.00%	0.00%	N/A
No	0.00%	0.00%	N/A
<b>Did the arbitrator explain that after the test drive, each party would be able to offer final comments about what was experienced during the test drive?</b>			
<b>Answer Choices</b>			
Yes	0.00%	0.00%	N/A
No	0.00%	0.00%	N/A
<b>Post-award Experience</b>			
<b>How was the arbitrator's award communicated to you?</b>			
<b>Answer Choices</b>			
By email	100.00%	70.00%	N/A
Written submission	0.00%	30.00%	N/A
Other (please specify)	0.00%	0.00%	N/A
<b>Which of the following best describes the relief awarded to you by the arbitrator?</b>			
<b>Answer Choices</b>			
A refund, where the manufacturer would give you money for your car	0.00%	20.00%	0.00%

A replacement, where the manufacturer would replace your existing car with a new car	66.67%	0.00%	0.00%
Reimbursement, where the manufacturer would reimburse you for incidental costs associated with the repair of your car	33.33%	0.00%	0.00%
Other (please specify)	0.00%	80.00%	100.00%
<b>Did the arbitrator accurately identify the nature of the non-conformity you alleged in your claim?</b>			
<b>Answer Choices</b>			
Yes	100.00%	20.00%	N/A
No	0.00%	80.00%	N/A
<b>Did the arbitrator include a summary of the testimony at the hearing?</b>			
<b>Answer Choices</b>			
Yes	100.00%	30.00%	N/A
No	0.00%	70.00%	N/A
<b>Was the arbitrator's award clear?</b>			
<b>Answer Choices</b>			
Yes	100.00%	50.00%	N/A
No	0.00%	50.00%	N/A
<b>Did the arbitrator render a reasoned award?</b>			
<b>Answer Choices</b>			
Yes	100.00%	20.00%	N/A
No	0.00%	80.00%	N/A
<b>Did you accept the arbitrator's award?</b>			
<b>Answer Choices</b>			
Yes	100.00%	0.00%	N/A
No	0.00%	100.00%	N/A
If no, why not?			

<b>Arbitrator Satisfaction</b>			
<b>How well did the arbitrator understand your case?</b>			
<b>Answer Choices</b>			
Very well	100.00%	0.00%	N/A
Reasonably well	0.00%	30.00%	N/A
Not well at all.	0.00%	70.00%	N/A
<b>How would you rate the arbitrator's objectivity and fairness?</b>			
<b>Answer Choices</b>			
Excellent	100.00%	0.00%	N/A
Good	0.00%	20.00%	N/A
Average	0.00%	0.00%	N/A
Poor	0.00%	80.00%	N/A
<b>How would you rate the arbitrator's impartiality during the hearing?</b>			
<b>Answer Choices</b>			
Excellent	100.00%	0.00%	N/A
Good	0.00%	10.00%	N/A
Average	0.00%	20.00%	N/A
Poor	0.00%	70.00%	N/A
<b>How would you rate the arbitrator's impartiality with respect to the award?</b>			
<b>Answer Choices</b>			
Excellent	100.00%	0.00%	N/A
Good	0.00%	10.00%	N/A
Average	0.00%	10.00%	N/A
Poor	0.00%	80.00%	N/A
<b>Satisfaction with NCDS Processing Claim</b>			



<b>How would you rate the timeliness of the communications between you and NCDS staff?</b>			
<b>Answer Choices</b>			
Excellent	100.00%	10.00%	100.00%
Good	0.00%	50.00%	0.00%
Fair	0.00%	20.00%	0.00%
Poor	0.00%	20.00%	0.00%
<b>Answer Choices</b>			
Excellent	100.00%	0.00%	100.00%
Good	0.00%	50.00%	0.00%
Fair	0.00%	30.00%	0.00%
Poor	0.00%	20.00%	0.00%
<b>Answer Choices</b>			
Excellent	100.00%	0.00%	100.00%
Good	0.00%	0.00%	0.00%
Fair	0.00%	20.00%	0.00%
Poor	0.00%	80.00%	0.00%
<b>Answer Choices</b>			
Yes	100.00%	10.00%	100.00%
No	0.00%	90.00%	0.00%
If no, please explain			
<b>Settlement of Claim *Mediation Only*</b>			
<b>Before the case proceeded to arbitration, did you agree to settle your case with the manufacturer?</b>			

Yes	N/A	N/A	100.00%
No	N/A	N/A	0.00%
<b>Did you accept the settlement offer made by the manufacturer voluntarily?</b>			
Yes	N/A	N/A	100.00%
No	N/A	N/A	0.00%
<b>After you reached a settlement, did you receive a letter from NCDS explaining the terms of the settlement?</b>			
Yes	N/A	N/A	100.00%
No	N/A	N/A	0.00%
<b>After you received your settlement confirmation, did you pursue your case further?</b>			
Yes	N/A	N/A	100.00%
No	N/A	N/A	0.00%
<b>If so, please let us know the method you used.</b>			
Re-initiated contact with NCDS	N/A	N/A	0.00%
Contacted an attorney	N/A	N/A	0.00%
Contacted a state agency	N/A	N/A	0.00%
Contacted dealer or manufacturer	N/A	N/A	100.00%
Other (please specify)	N/A	N/A	0.00%

Figure 5. Michigan Overall Survey Results and Comparison Between Outcomes

Michigan - Audit Survey Results (Overall)	Arbitrated Award	Arbitrated No Action / No Award	Mediation
	Pre-filing Experience with Dealer or Manufacturer		
Survey Questions	Responses		
<b>Before filing a claim with NCDS, did you attempt to seek recourse or help from the manufacturer directly?</b>			
<b>Answer Choices</b>			
Yes	100.00%	NO RESPONSES	NO RESPONSES
No	0.00%	NO RESPONSES	NO RESPONSES
If no, please explain			
<b>How many times, if any, did the dealer or manufacturer attempt to repair your car before you filed a claim with NCDS?</b>			
<b>Answer Choices</b>			
One Time	0.00%	NO RESPONSES	NO RESPONSES
Two Times	0.00%	NO RESPONSES	NO RESPONSES
Three Times	0.00%	NO RESPONSES	NO RESPONSES
Other (please specify) - More than Three Times	100.00%	NO RESPONSES	NO RESPONSES
<b>How did you learn about the NCDS Non-Binding Automobile Warranty Arbitration Program?</b>			
<b>Answer Choices</b>			
a. Manufacturer Customer Service	0.00%	NO RESPONSES	NO RESPONSES
b. Dealership	100.00%	NO RESPONSES	NO RESPONSES
c. Glove-Box Materials	0.00%	NO RESPONSES	NO RESPONSES
d. Internet	0.00%	NO RESPONSES	NO RESPONSES
e. Brochures, literature, pamphlets	0.00%	NO RESPONSES	NO RESPONSES

f. Attorney	0.00%	NO RESPONSES	NO RESPONSES
g. Friends, family, co-workers	0.00%	NO RESPONSES	NO RESPONSES
h. State government agency	0.00%	NO RESPONSES	NO RESPONSES
i. Prior program knowledge	0.00%	NO RESPONSES	NO RESPONSES
Other (please specify)	0.00%	NO RESPONSES	NO RESPONSES
<b>Answer Choices</b>			
Talked over the phone	0.00%	NO RESPONSES	NO RESPONSES
Sent information	0.00%	NO RESPONSES	NO RESPONSES
Showroom poster	0.00%	NO RESPONSES	NO RESPONSES
Other (please specify)		NO RESPONSES	NO RESPONSES
<b>Filing of Claim</b>			
<b>What method did you use to file your claim with NCDS?</b>			
<b>Answer Choices</b>			
E-File		NO RESPONSES	NO RESPONSES
Written Submission of Claim Form	0.00%	NO RESPONSES	NO RESPONSES
<b>Answer Choices</b>			
Very clear	0.00%	NO RESPONSES	NO RESPONSES
Somewhat clear		NO RESPONSES	NO RESPONSES
Not clear	0.00%	NO RESPONSES	NO RESPONSES
Do not know	0.00%	NO RESPONSES	NO RESPONSES
<b>Answer Choices</b>			
One day	0.00%	NO RESPONSES	NO RESPONSES

Two days	100.00%	NO RESPONSES	NO RESPONSES
Three days	0.00%	NO RESPONSES	NO RESPONSES
Greater than three days	0.00%	NO RESPONSES	NO RESPONSES
<b>Did you receive or review the Frequently Asked Questions (FAQ) Packet at <a href="http://www.ncdsusa.org">www.ncdsusa.org</a>?</b>			
<b>Answer Choices</b>			
Yes	100.00%	NO RESPONSES	NO RESPONSES
No	0.00%	NO RESPONSES	NO RESPONSES
<b>How clear was the information presented in the FAQ?</b>			
<b>Answer Choices</b>			
Very clear	0.00%	NO RESPONSES	NO RESPONSES
Somewhat clear	100.00%	NO RESPONSES	NO RESPONSES
Not clear	0.00%	NO RESPONSES	NO RESPONSES
Do not know	0.00%	NO RESPONSES	NO RESPONSES
<b>How helpful was the information presented in the FAQ?</b>			
<b>Answer Choices</b>			
Very helpful	0.00%	NO RESPONSES	NO RESPONSES
Moderately helpful	100.00%	NO RESPONSES	NO RESPONSES
Not at all helpful	0.00%	NO RESPONSES	NO RESPONSES
Do not know	0.00%	NO RESPONSES	NO RESPONSES
<b>Did you receive or review the Non-Binding Program Rules at <a href="http://www.ncdsusa.org">www.ncdsusa.org</a>?</b>			
<b>Answer Choices</b>			
Yes	100.00%	NO RESPONSES	NO RESPONSES
No	0.00%	NO RESPONSES	NO RESPONSES
<b>How clear were the Program Rules?</b>			
<b>Answer Choices</b>			

Very clear	0.00%	NO RESPONSES	NO RESPONSES
Somewhat clear		NO RESPONSES	NO RESPONSES
Not clear	0.00%	NO RESPONSES	NO RESPONSES
Do not know	0.00%	NO RESPONSES	NO RESPONSES
<b>Answer Choices</b>			
Very helpful	0.00%	NO RESPONSES	NO RESPONSES
Moderately helpful		NO RESPONSES	NO RESPONSES
Not at all helpful	0.00%	NO RESPONSES	NO RESPONSES
Do not know	0.00%	NO RESPONSES	NO RESPONSES
<b>Answer Choices</b>			
Yes		NO RESPONSES	N/A
No	0.00%	NO RESPONSES	N/A
<b>Either before or after you received your hearing notice, did you hire an attorney to represent you or to be present at the hearing?</b>			
<b>Answer Choices</b>			
Yes	0.00%	NO RESPONSES	N/A
No		NO RESPONSES	N/A
<b>Answer Choices</b>			
Yes		NO RESPONSES	NO RESPONSES
No	0.00%	NO RESPONSES	NO RESPONSES
<b>The Evidentiary Hearing Process</b>			
<b>Did you participate in the hearing?</b>			

<b>Answer Choices</b>				
Yes		0.00%	NO RESPONSES	N/A
No		0.00%	NO RESPONSES	N/A
<b>Did the arbitrator start the hearing on time?</b>				
<b>Answer Choices</b>				
Yes		0.00%	NO RESPONSES	N/A
No		0.00%	NO RESPONSES	N/A
If no, explain				
<b>Did the arbitrator explain the arbitration process to both parties?</b>				
<b>Answer Choices</b>				
Yes		0.00%	NO RESPONSES	N/A
No		0.00%	NO RESPONSES	N/A
<b>Did the arbitrator allow both parties a full and fair opportunity to present their proofs?</b>				
<b>Answer Choices</b>				
Yes		0.00%	NO RESPONSES	N/A
No		0.00%	NO RESPONSES	N/A
<b>Did the arbitrator conduct a test drive during the hearing?</b>				
<b>Answer Choices</b>				
Yes		0.00%	NO RESPONSES	N/A
No		0.00%	NO RESPONSES	N/A
<b>Before conducting a test drive, did the arbitrator ask to see your identifying information – insurance, registration, and drivers’ license?</b>				
<b>Answer Choices</b>				
Yes		0.00%	NO RESPONSES	N/A
No		0.00%	NO RESPONSES	N/A

<b>Before conducting a test drive, did the arbitrator check the VIN number of the vehicle and also the mileage?</b>			
<b>Answer Choices</b>			
Yes	0.00%	NO RESPONSES	N/A
No	0.00%	NO RESPONSES	N/A
<b>Did the arbitrator explain the protocols for conducting the test drive, specifically that it is your responsibility to raise the concern with the arbitrator when it is experienced during the test drive.</b>			
<b>Answer Choices</b>			
Yes	0.00%	NO RESPONSES	N/A
No	0.00%	NO RESPONSES	N/A
<b>Did the arbitrator explain that after the test drive, each party would be able to offer final comments about what was experienced during the test drive?</b>			
<b>Answer Choices</b>			
Yes	0.00%	NO RESPONSES	N/A
No	0.00%	NO RESPONSES	N/A
<b>Post-award Experience</b>			
<b>How was the arbitrator's award communicated to you?</b>			
<b>Answer Choices</b>			
By email	100.00%	NO RESPONSES	N/A
Written submission	0.00%	NO RESPONSES	N/A
Other (please specify)	0.00%	NO RESPONSES	N/A
<b>Which of the following best describes the relief awarded to you by the arbitrator?</b>			
<b>Answer Choices</b>			
A refund, where the manufacturer would give you money for your car	100.00%	NO RESPONSES	NO RESPONSES



A replacement, where the manufacturer would replace your existing car with a new car	0.00%	NO RESPONSES	NO RESPONSES
Reimbursement, where the manufacturer would reimburse you for incidental costs associated with the repair of your car	0.00%	NO RESPONSES	NO RESPONSES
Other (please specify)	0.00%	NO RESPONSES	NO RESPONSES
<b>Did the arbitrator accurately identify the nature of the non-conformity you alleged in your claim?</b>			
<b>Answer Choices</b>			
Yes	100.00%	NO RESPONSES	N/A
No	0.00%	NO RESPONSES	N/A
<b>Did the arbitrator include a summary of the testimony at the hearing?</b>			
<b>Answer Choices</b>			
Yes	100.00%	NO RESPONSES	N/A
No	0.00%	NO RESPONSES	N/A
<b>Was the arbitrator's award clear?</b>			
<b>Answer Choices</b>			
Yes	100.00%	NO RESPONSES	N/A
No	0.00%	NO RESPONSES	N/A
<b>Did the arbitrator render a reasoned award?</b>			
<b>Answer Choices</b>			
Yes	100.00%	NO RESPONSES	N/A
No	0.00%	NO RESPONSES	N/A
<b>Did you accept the arbitrator's award?</b>			
<b>Answer Choices</b>			
Yes	100.00%	NO RESPONSES	N/A
No	0.00%	NO RESPONSES	N/A
If no, why not?			

<b>Arbitrator Satisfaction</b>			
<b>How well did the arbitrator understand your case?</b>			
<b>Answer Choices</b>			
Very well	0.00%	NO RESPONSES	N/A
Reasonably well	100.00%	NO RESPONSES	N/A
Not well at all.	0.00%	NO RESPONSES	N/A
<b>How would you rate the arbitrator's objectivity and fairness?</b>			
<b>Answer Choices</b>			
Excellent	100.00%	NO RESPONSES	N/A
Good	0.00%	NO RESPONSES	N/A
Average	0.00%	NO RESPONSES	N/A
Poor	0.00%	NO RESPONSES	N/A
<b>How would you rate the arbitrator's impartiality during the hearing?</b>			
<b>Answer Choices</b>			
Excellent	100.00%	NO RESPONSES	N/A
Good	0.00%	NO RESPONSES	N/A
Average	0.00%	NO RESPONSES	N/A
Poor	0.00%	NO RESPONSES	N/A
<b>How would you rate the arbitrator's impartiality with respect to the award?</b>			
<b>Answer Choices</b>			
Excellent	100.00%	NO RESPONSES	N/A
Good	0.00%	NO RESPONSES	N/A
Average	0.00%	NO RESPONSES	N/A
Poor	0.00%	NO RESPONSES	N/A
<b>Satisfaction with NCDS Processing Claim</b>			

<b>How would you rate the timeliness of the communications between you and NCDS staff?</b>			
<b>Answer Choices</b>			
Excellent	0.00%	NO RESPONSES	NO RESPONSES
Good	100.00%	NO RESPONSES	NO RESPONSES
Fair	0.00%	NO RESPONSES	NO RESPONSES
Poor	0.00%	NO RESPONSES	NO RESPONSES
<b>How would you rate the helpfulness of the NCDS staff?</b>			
<b>Answer Choices</b>			
Excellent	0.00%	NO RESPONSES	NO RESPONSES
Good	100.00%	NO RESPONSES	NO RESPONSES
Fair	0.00%	NO RESPONSES	NO RESPONSES
Poor	0.00%	NO RESPONSES	NO RESPONSES
<b>How would you rate your overall experience under the Arbitration Program?</b>			
<b>Answer Choices</b>			
Excellent	0.00%	NO RESPONSES	NO RESPONSES
Good	100.00%	NO RESPONSES	NO RESPONSES
Fair	0.00%	NO RESPONSES	NO RESPONSES
Poor	0.00%	NO RESPONSES	NO RESPONSES
<b>Would you recommend the Arbitration Program to friends and family?</b>			
<b>Answer Choices</b>			
Yes	100.00%	NO RESPONSES	NO RESPONSES
No	0.00%	NO RESPONSES	NO RESPONSES
If no, please explain			

Settlement of Claim \*Mediation Only\*

<b>Before the case proceeded to arbitration, did you agree to settle your case with the manufacturer?</b>			
Yes	N/A	N/A	NO RESPONSES
No	N/A	N/A	NO RESPONSES
<b>Did you accept the settlement offer made by the manufacturer voluntarily?</b>			
Yes	N/A	N/A	NO RESPONSES
No	N/A	N/A	NO RESPONSES
<b>After you reached a settlement, did you receive a letter from NCDS explaining the terms of the settlement?</b>			
Yes	N/A	N/A	NO RESPONSES
No	N/A	N/A	NO RESPONSES
<b>After you received your settlement confirmation, did you pursue your case further?</b>			
Yes	N/A	N/A	NO RESPONSES
No	N/A	N/A	NO RESPONSES
<b>If so, please let us know the method you used.</b>			
Re-initiated contact with NCDS	N/A	N/A	NO RESPONSES
Contacted an attorney	N/A	N/A	NO RESPONSES
Contacted a state agency	N/A	N/A	NO RESPONSES
Contacted dealer or manufacturer	N/A	N/A	NO RESPONSES
Other (please specify)	N/A	N/A	NO RESPONSES

Figure 6. Ohio Overall Survey Results and Comparison Between Outcomes

Ohio - Audit Survey Results (Overall)	Arbitrated Award	Arbitrated No Action / No Award	Mediation
<b>Pre-filing Experience with Dealer or Manufacturer</b>			
<b>Survey Questions</b>	<b>Responses</b>		
<b>Before filing a claim with NCDS, did you attempt to seek recourse or help from the manufacturer directly?</b>			
<b>Answer Choices</b>			
Yes	100.00%	88.89%	NO RESPONSES
No	0.00%	11.11%	NO RESPONSES
If no, please explain			
<b>How many times, if any, did the dealer or manufacturer attempt to repair your car before you filed a claim with NCDS?</b>			
<b>Answer Choices</b>			
One Time	0.00%	11.11%	NO RESPONSES
Two Times	0.00%	11.11%	NO RESPONSES
Three Times	25.00%	22.22%	NO RESPONSES
Other (please specify) - More than Three Times	75.00%	55.56%	NO RESPONSES
<b>How did you learn about the NCDS Non-Binding Automobile Warranty Arbitration Program?</b>			
<b>Answer Choices</b>			
a. Manufacturer Customer Service	50.00%	0.00%	NO RESPONSES
b. Dealership	0.00%	11.11%	NO RESPONSES
c. Glove-Box Materials	25.00%	33.33%	NO RESPONSES
d. Internet	75.00%	33.33%	NO RESPONSES
e. Brochures, literature, pamphlets	0.00%	11.11%	NO RESPONSES

f. Attorney	0.00%	11.11%	NO RESPONSES
g. Friends, family, co-workers	0.00%	0.00%	NO RESPONSES
h. State government agency	0.00%	0.00%	NO RESPONSES
i. Prior program knowledge	0.00%	0.00%	NO RESPONSES
Other (please specify)	0.00%	22.22%	NO RESPONSES
<b>Answer Choices</b>			
Talked over the phone	100.00%	100.00%	NO RESPONSES
Sent information	0.00%	0.00%	NO RESPONSES
Showroom poster	0.00%	0.00%	NO RESPONSES
Other (please specify)	0.00%	0.00%	NO RESPONSES
<b>Filing of Claim</b>			
<b>What method did you use to file your claim with NCDS?</b>			
<b>Answer Choices</b>			
E-File	100.00%	77.78%	NO RESPONSES
Written Submission of Claim Form	0.00%	22.22%	NO RESPONSES
<b>How clear were the instructions for filing the Claim Form?</b>			
<b>Answer Choices</b>			
Very clear	75.00%	33.33%	NO RESPONSES
Somewhat clear	25.00%	66.67%	NO RESPONSES
Not clear	0.00%	0.00%	NO RESPONSES
Do not know	0.00%	0.00%	NO RESPONSES
<b>Experience After Filing a Claim</b>			
<b>After you filed your claim with NCDS, how long did it take for NCDS to acknowledge your claim and initiate the administrative process?</b>			
<b>Answer Choices</b>			
One day	25.00%	11.11%	NO RESPONSES

Two days		75.00%	11.11%	NO RESPONSES
Three days		0.00%	11.11%	NO RESPONSES
Greater than three days		0.00%	66.67%	NO RESPONSES
<b>Did you receive or review the Frequently Asked Questions (FAQ) Packet at <a href="http://www.ncdsusa.org">www.ncdsusa.org</a>?</b>				
<b>Answer Choices</b>				
Yes		75.00%	66.67%	NO RESPONSES
No		25.00%	33.33%	NO RESPONSES
<b>How clear was the information presented in the FAQ?</b>				
<b>Answer Choices</b>				
Very clear		50.00%	22.22%	NO RESPONSES
Somewhat clear		25.00%	44.44%	NO RESPONSES
Not clear		0.00%	11.11%	NO RESPONSES
Do not know		25.00%	22.22%	NO RESPONSES
<b>How helpful was the information presented in the FAQ?</b>				
<b>Answer Choices</b>				
Very helpful		25.00%	22.22%	NO RESPONSES
Moderately helpful		50.00%	44.44%	NO RESPONSES
Not at all helpful		0.00%	11.11%	NO RESPONSES
Do not know		25.00%	22.22%	NO RESPONSES
<b>Did you receive or review the Non-Binding Program Rules at <a href="http://www.ncdsusa.org">www.ncdsusa.org</a>?</b>				
<b>Answer Choices</b>				
Yes		100.00%	77.78%	NO RESPONSES
No		0.00%	22.22%	NO RESPONSES
<b>How clear were the Program Rules?</b>				
<b>Answer Choices</b>				

Very clear		50.00%	11.11%	NO RESPONSES
Somewhat clear		50.00%	66.67%	NO RESPONSES
Not clear		0.00%	11.11%	NO RESPONSES
Do not know		0.00%	11.11%	NO RESPONSES
<b>Answer Choices</b>				
Very helpful		50.00%	11.11%	NO RESPONSES
Moderately helpful		50.00%	77.78%	NO RESPONSES
Not at all helpful		0.00%	11.11%	NO RESPONSES
Do not know		0.00%	0.00%	NO RESPONSES
<b>Answer Choices</b>				
Yes		100.00%	100.00%	N/A
No		0.00%	0.00%	N/A
<b>Either before or after you received your hearing notice, did you hire an attorney to represent you or to be present at the hearing?</b>				
<b>Answer Choices</b>				
Yes		0.00%	11.11%	N/A
No		100.00%	88.89%	N/A
<b>Answer Choices</b>				
Yes		50.00%	44.44%	NO RESPONSES
No		50.00%	55.56%	NO RESPONSES
<b>The Evidentiary Hearing Process</b>				
<b>Did you participate in the hearing?</b>				



<b>Answer Choices</b>				
Yes		100.00%	100.00%	N/A
No		0.00%	0.00%	N/A
<b>Did the arbitrator start the hearing on time?</b>				
<b>Answer Choices</b>				
Yes		100.00%	80.00%	N/A
No		0.00%	20.00%	N/A
If no, explain				
<b>Did the arbitrator explain the arbitration process to both parties?</b>				
<b>Answer Choices</b>				
Yes		100.00%	80.00%	N/A
No		0.00%	20.00%	N/A
<b>Did the arbitrator allow both parties a full and fair opportunity to present their proofs?</b>				
<b>Answer Choices</b>				
Yes		100.00%	80.00%	N/A
No		0.00%	20.00%	N/A
<b>Did the arbitrator conduct a test drive during the hearing?</b>				
<b>Answer Choices</b>				
Yes		0.00%	20.00%	N/A
No		100.00%	80.00%	N/A
<b>Before conducting a test drive, did the arbitrator ask to see your identifying information – insurance, registration, and drivers’ license?</b>				
<b>Answer Choices</b>				
Yes		0.00%	100.00%	N/A
No		0.00%	0.00%	N/A

<b>Before conducting a test drive, did the arbitrator check the VIN number of the vehicle and also the mileage?</b>			
<b>Answer Choices</b>			
Yes	0.00%	100.00%	N/A
No	0.00%	0.00%	N/A
<b>Did the arbitrator explain the protocols for conducting the test drive, specifically that it is your responsibility to raise the concern with the arbitrator when it is experienced during the test drive.</b>			
<b>Answer Choices</b>			
Yes	0.00%	100.00%	N/A
No	0.00%	0.00%	N/A
<b>Did the arbitrator explain that after the test drive, each party would be able to offer final comments about what was experienced during the test drive?</b>			
<b>Answer Choices</b>			
Yes	0.00%	100.00%	N/A
No	0.00%	0.00%	N/A
<b>Post-award Experience</b>			
<b>How was the arbitrator's award communicated to you?</b>			
<b>Answer Choices</b>			
By email	50.00%	66.67%	N/A
Written submission	50.00%	22.22%	N/A
Other (please specify)	0.00%	11.11%	N/A
<b>Which of the following best describes the relief awarded to you by the arbitrator?</b>			
<b>Answer Choices</b>			
A refund, where the manufacturer would give you money for your car	0.00%	0.00%	NO RESPONSES

A replacement, where the manufacturer would replace your existing car with a new car	25.00%	0.00%	NO RESPONSES
Reimbursement, where the manufacturer would reimburse you for incidental costs associated with the repair of your car	0.00%	0.00%	NO RESPONSES
Other (please specify)	75.00%	100.00%	NO RESPONSES
<b>Did the arbitrator accurately identify the nature of the non-conformity you alleged in your claim?</b>			
<b>Answer Choices</b>			
Yes	75.00%	22.22%	N/A
No	25.00%	77.78%	N/A
<b>Did the arbitrator include a summary of the testimony at the hearing?</b>			
<b>Answer Choices</b>			
Yes	75.00%	22.22%	N/A
No	25.00%	77.78%	N/A
<b>Was the arbitrator's award clear?</b>			
<b>Answer Choices</b>			
Yes	100.00%	55.56%	N/A
No	0.00%	44.44%	N/A
<b>Did the arbitrator render a reasoned award?</b>			
<b>Answer Choices</b>			
Yes	50.00%	0.00%	N/A
No	50.00%	100.00%	N/A
<b>Did you accept the arbitrator's award?</b>			
<b>Answer Choices</b>			
Yes	75.00%	11.11%	N/A
No	25.00%	88.89%	N/A
If no, why not?			

<b>Arbitrator Satisfaction</b>			
<b>How well did the arbitrator understand your case?</b>			
<b>Answer Choices</b>			
Very well	50.00%	0.00%	N/A
Reasonably well	25.00%	22.22%	N/A
Not well at all.	25.00%	77.78%	N/A
<b>How would you rate the arbitrator's objectivity and fairness?</b>			
<b>Answer Choices</b>			
Excellent	25.00%	0.00%	N/A
Good	50.00%	0.00%	N/A
Average	0.00%	22.22%	N/A
Poor	25.00%	77.78%	N/A
<b>How would you rate the arbitrator's impartiality during the hearing?</b>			
<b>Answer Choices</b>			
Excellent	25.00%	0.00%	N/A
Good	50.00%	0.00%	N/A
Average	0.00%	33.33%	N/A
Poor	25.00%	66.67%	N/A
<b>How would you rate the arbitrator's impartiality with respect to the award?</b>			
<b>Answer Choices</b>			
Excellent	25.00%	0.00%	N/A
Good	50.00%	0.00%	N/A
Average	0.00%	0.00%	N/A
Poor	25.00%	100.00%	N/A
<b>Satisfaction with NCDS Processing Claim</b>			

<b>How would you rate the timeliness of the communications between you and NCDS staff?</b>			
<b>Answer Choices</b>			
Excellent	25.00%	11.11%	NO RESPONSES
Good	25.00%	33.33%	NO RESPONSES
Fair	25.00%	55.56%	NO RESPONSES
Poor	25.00%	0.00%	NO RESPONSES
<b>Answer Choices</b>			
Excellent	25.00%	22.22%	NO RESPONSES
Good	25.00%	11.11%	NO RESPONSES
Fair	25.00%	55.56%	NO RESPONSES
Poor	25.00%	11.11%	NO RESPONSES
<b>Answer Choices</b>			
Excellent	25.00%	0.00%	NO RESPONSES
Good	0.00%	0.00%	NO RESPONSES
Fair	50.00%	0.00%	NO RESPONSES
Poor	25.00%	100.00%	NO RESPONSES
<b>Answer Choices</b>			
Yes	75.00%	11.11%	NO RESPONSES
No	25.00%	88.89%	NO RESPONSES
If no, please explain			
<b>Settlement of Claim *Mediation Only*</b>			
<b>Before the case proceeded to arbitration, did you agree to settle your case with the manufacturer?</b>			

Yes	N/A	N/A	NO RESPONSES
No	N/A	N/A	NO RESPONSES
<b>Did you accept the settlement offer made by the manufacturer voluntarily?</b>			
Yes	N/A	N/A	NO RESPONSES
No	N/A	N/A	NO RESPONSES
<b>After you reached a settlement, did you receive a letter from NCDS explaining the terms of the settlement?</b>			
Yes	N/A	N/A	NO RESPONSES
No	N/A	N/A	NO RESPONSES
<b>After you received your settlement confirmation, did you pursue your case further?</b>			
Yes	N/A	N/A	NO RESPONSES
No	N/A	N/A	NO RESPONSES
<b>If so, please let us know the method you used.</b>			
Re-initiated contact with NCDS	N/A	N/A	NO RESPONSES
Contacted an attorney	N/A	N/A	NO RESPONSES
Contacted a state agency	N/A	N/A	NO RESPONSES
Contacted dealer or manufacturer	N/A	N/A	NO RESPONSES
Other (please specify)	N/A	N/A	NO RESPONSES

Figure 7. Texas Overall Survey Results and Comparison Between Outcomes

Texas - Audit Survey Results (Overall)		Arbitrated Award	Arbitrated No Action / No Award	Mediation
Pre-filing Experience with Dealer or Manufacturer				
Survey Questions		Responses		
<b>Before filing a claim with NCDS, did you attempt to seek recourse or help from the manufacturer directly?</b>				
<b>Answer Choices</b>				
Yes		100.00%	100.00%	100.00%
No		0.00%	0.00%	0.00%
If no, please explain				
<b>How many times, if any, did the dealer or manufacturer attempt to repair your car before you filed a claim with NCDS?</b>				
<b>Answer Choices</b>				
One Time		0.00%	11.11%	0.00%
Two Times		0.00%	11.11%	0.00%
Three Times		50.00%	33.33%	100.00%
Other (please specify) - More than Three Times		50.00%	44.44%	0.00%
<b>How did you learn about the NCDS Non-Binding Automobile Warranty Arbitration Program?</b>				
<b>Answer Choices</b>				
a. Manufacturer Customer Service		0.00%	66.67%	0.00%
b. Dealership		0.00%	0.00%	0.00%
c. Glove-Box Materials		0.00%	33.33%	0.00%
d. Internet		0.00%	11.11%	0.00%

e. Brochures, literature, pamphlets	50.00%	11.11%	0.00%
f. Attorney	0.00%	0.00%	0.00%
g. Friends, family, co-workers		0.00%	0.00%
h. State government agency	0.00%	0.00%	
i. Prior program knowledge	0.00%	0.00%	0.00%
Other (please specify)	0.00%	11.11%	0.00%
<b>Answer Choices</b>			
Talked over the phone	0.00%		0.00%
Sent information	0.00%	33.33%	0.00%
Showroom poster	0.00%	0.00%	0.00%
Other (please specify)	0.00%	16.67%	0.00%
<b>Filing of Claim</b>			
<b>Answer Choices</b>			
E-File			
Written Submission of Claim Form	0.00%	33.33%	0.00%
<b>Answer Choices</b>			
Very clear		0.00%	0.00%
Somewhat clear			
Not clear	0.00%	22.22%	0.00%
Do not know	0.00%	11.11%	0.00%
<b>Answer Choices</b>			



One day	0.00%	0.00%	0.00%
Two days	100.00%	11.11%	100.00%
Three days	0.00%	33.33%	0.00%
Greater than three days	0.00%	55.56%	0.00%
<b>Did you receive or review the Frequently Asked Questions (FAQ) Packet at <a href="http://www.ncdsusa.org">www.ncdsusa.org</a>?</b>			
<b>Answer Choices</b>			
Yes	100.00%	22.22%	100.00%
No	0.00%	77.78%	0.00%
<b>How clear was the information presented in the FAQ?</b>			
<b>Answer Choices</b>			
Very clear	100.00%	0.00%	0.00%
Somewhat clear	0.00%	22.22%	100.00%
Not clear	0.00%	22.22%	0.00%
Do not know	0.00%	55.56%	0.00%
<b>How helpful was the information presented in the FAQ?</b>			
<b>Answer Choices</b>			
Very helpful	100.00%	0.00%	0.00%
Moderately helpful	0.00%	11.11%	100.00%
Not at all helpful	0.00%	22.22%	0.00%
Do not know	0.00%	66.67%	0.00%
<b>Did you receive or review the Non-Binding Program Rules at <a href="http://www.ncdsusa.org">www.ncdsusa.org</a>?</b>			
<b>Answer Choices</b>			
Yes	100.00%	66.67%	100.00%
No	0.00%	33.33%	0.00%
<b>How clear were the Program Rules?</b>			

<b>Answer Choices</b>			
Very clear		11.11%	0.00%
Somewhat clear			
Not clear	0.00%	11.11%	0.00%
Do not know	0.00%	11.11%	0.00%
<b>Answer Choices</b>			
Very helpful		11.11%	0.00%
Moderately helpful			
Not at all helpful	0.00%	33.33%	0.00%
Do not know	0.00%	11.11%	0.00%
<b>Answer Choices</b>			
Yes			N/A
No	0.00%	11.11%	N/A
<b>Either before or after you received your hearing notice, did you hire an attorney to represent you or to be present at the hearing?</b>			
<b>Answer Choices</b>			
Yes	0.00%	0.00%	N/A
No			N/A
<b>Answer Choices</b>			
Yes		44.44%	
No			0.00%
<b>The Evidentiary Hearing Process</b>			

<b>Did you participate in the hearing?</b>			
<b>Answer Choices</b>			
Yes	100.00%	100.00%	N/A
No	0.00%	0.00%	N/A
<b>Did the arbitrator start the hearing on time?</b>			
<b>Answer Choices</b>			
Yes	100.00%	100.00%	N/A
No	0.00%	0.00%	N/A
If no, explain			
<b>Did the arbitrator explain the arbitration process to both parties?</b>			
<b>Answer Choices</b>			
Yes	100.00%	100.00%	N/A
No	0.00%	0.00%	N/A
<b>Did the arbitrator allow both parties a full and fair opportunity to present their proofs?</b>			
<b>Answer Choices</b>			
Yes	100.00%	40.00%	N/A
No	0.00%	60.00%	N/A
<b>Did the arbitrator conduct a test drive during the hearing?</b>			
<b>Answer Choices</b>			
Yes	0.00%	0.00%	N/A
No	100.00%	100.00%	N/A
<b>Before conducting a test drive, did the arbitrator ask to see your identifying information – insurance, registration, and drivers’ license?</b>			
<b>Answer Choices</b>			

Yes	0.00%	0.00%	N/A
No	0.00%	0.00%	N/A
<b>Before conducting a test drive, did the arbitrator check the VIN number of the vehicle and also the mileage?</b>			
<b>Answer Choices</b>			
Yes	0.00%	0.00%	N/A
No	0.00%	0.00%	N/A
<b>Did the arbitrator explain the protocols for conducting the test drive, specifically that it is your responsibility to raise the concern with the arbitrator when it is experienced during the test drive.</b>			
<b>Answer Choices</b>			
Yes	0.00%	0.00%	N/A
No	0.00%	0.00%	N/A
<b>Did the arbitrator explain that after the test drive, each party would be able to offer final comments about what was experienced during the test drive?</b>			
<b>Answer Choices</b>			
Yes	0.00%	0.00%	N/A
No	0.00%	0.00%	N/A
<b>Post-award Experience</b>			
<b>How was the arbitrator's award communicated to you?</b>			
<b>Answer Choices</b>			
By email	50.00%	55.56%	N/A
Written submission	50.00%	0.00%	N/A
Other (please specify)	0.00%	44.44%	N/A
<b>Which of the following best describes the relief awarded to you by the arbitrator?</b>			

<b>Answer Choices</b>			
A refund, where the manufacturer would give you money for your car	50.00%	0.00%	0.00%
A replacement, where the manufacturer would replace your existing car with a new car	50.00%	0.00%	100.00%
Reimbursement, where the manufacturer would reimburse you for incidental costs associated with the repair of your car	0.00%	11.11%	0.00%
Other (please specify)	0.00%	88.89%	0.00%
<b>Did the arbitrator accurately identify the nature of the non-conformity you alleged in your claim?</b>			
<b>Answer Choices</b>			
Yes	100.00%	33.33%	N/A
No	0.00%	66.67%	N/A
<b>Did the arbitrator include a summary of the testimony at the hearing?</b>			
<b>Answer Choices</b>			
Yes	100.00%	77.78%	N/A
No	0.00%	22.22%	N/A
<b>Was the arbitrator's award clear?</b>			
<b>Answer Choices</b>			
Yes	100.00%	22.22%	N/A
No	0.00%	77.78%	N/A
<b>Did the arbitrator render a reasoned award?</b>			
<b>Answer Choices</b>			
Yes	100.00%	11.11%	N/A
No	0.00%	88.89%	N/A
<b>Did you accept the arbitrator's award?</b>			
<b>Answer Choices</b>			
Yes	100.00%	11.11%	N/A

No If no, why not?	0.00%	88.89%	N/A
<b>Arbitrator Satisfaction</b>			
<b>How well did the arbitrator understand your case?</b>			
<b>Answer Choices</b>			
Very well	100.00%	11.11%	N/A
Reasonably well	0.00%	33.33%	N/A
Not well at all.	0.00%	55.56%	N/A
<b>How would you rate the arbitrator's objectivity and fairness?</b>			
<b>Answer Choices</b>			
Excellent	100.00%	11.11%	N/A
Good	0.00%	0.00%	N/A
Average	0.00%	33.33%	N/A
Poor	0.00%	55.56%	N/A
<b>How would you rate the arbitrator's impartiality during the hearing?</b>			
<b>Answer Choices</b>			
Excellent	100.00%	11.11%	N/A
Good	0.00%	0.00%	N/A
Average	0.00%	33.33%	N/A
Poor	0.00%	55.56%	N/A
<b>How would you rate the arbitrator's impartiality with respect to the award?</b>			
<b>Answer Choices</b>			
Excellent	100.00%	11.11%	N/A
Good	0.00%	0.00%	N/A
Average	0.00%	11.11%	N/A
Poor	0.00%	77.78%	N/A

Satisfaction with NCDS Processing Claim			
<b>Answer Choices</b>			
Excellent		0.00%	0.00%
Good	0.00%		0.00%
Fair	0.00%		100.00%
Poor	0.00%	11.11%	0.00%
<b>Answer Choices</b>			
Excellent		0.00%	0.00%
Good	0.00%	22.22%	0.00%
Fair	0.00%		100.00%
Poor	0.00%	22.22%	0.00%
<b>Answer Choices</b>			
Excellent		0.00%	0.00%
Good		11.11%	0.00%
Fair	0.00%	22.22%	100.00%
Poor	0.00%		0.00%
<b>Answer Choices</b>			
Yes		11.11%	0.00%
No	0.00%		100.00%
If no, please explain			
<b>Settlement of Claim *Mediation Only*</b>			

<b>Before the case proceeded to arbitration, did you agree to settle your case with the manufacturer?</b>			
Yes	N/A	N/A	100.00%
No	N/A	N/A	0.00%
<b>Did you accept the settlement offer made by the manufacturer voluntarily?</b>			
Yes	N/A	N/A	100.00%
No	N/A	N/A	0.00%
<b>After you reached a settlement, did you receive a letter from NCDS explaining the terms of the settlement?</b>			
Yes	N/A	N/A	0.00%
No	N/A	N/A	100.00%
<b>After you received your settlement confirmation, did you pursue your case further?</b>			
Yes	N/A	N/A	100.00%
No	N/A	N/A	0.00%
<b>If so, please let us know the method you used.</b>			
Re-initiated contact with NCDS	N/A	N/A	0.00%
Contacted an attorney	N/A	N/A	0.00%
Contacted a state agency	N/A	N/A	100.00%
Contacted dealer or manufacturer	N/A	N/A	0.00%
Other (please specify)	N/A	N/A	0.00%



## Section VIII

### Audit Regulatory Requirements

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**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 accord with this requirement.**

## APPENDIX

The following documents comprise the Appendix.

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## Appendix A

### Magnuson-Moss Warranty–Federal Trade Commission Improvement Act of 1975

15 USC Ch. 50: CONSUMER PRODUCT

WARRANTIES From Title 15—COMMERCE

#### CHAPTER 50—CONSUMER PRODUCT WARRANTIES

Sec.	
2301.	Definitions.
2302.	Rules governing contents of warranties.
2303.	Designation of written warranties.
2304.	Federal minimum standards for warranties.
2305.	Full and limited warranting of a consumer product.
2306.	Service contracts; rules for full, clear and conspicuous disclosure of terms and conditions; addition to or in lieu of written warranty
2307.	Designation of representatives by warrantor to perform duties under written or implied warranty.
2308.	Implied warranties.
2309.	Procedures applicable to promulgation of rules by Commission.
2310.	Remedies in consumer disputes.
2311.	Applicability to other laws.
2312.	Effective dates.

#### §2301. Definitions

For the purposes of this chapter:

(1) The term "consumer product" means any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes (including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed).

(2) The term "Commission" means the Federal Trade Commission.

(3) The term "consumer" means a buyer (other than for purposes of resale) of any consumer product, any person to whom such product is transferred during the duration of an implied or written warranty (or service contract) applicable to the product, and any other person who is entitled by the terms of such warranty (or service contract) or under applicable State law to enforce against the warrantor (or service contractor) the obligations of the warranty (or service contract).

(4) The term "supplier" means any person engaged in the business of making a consumer product directly or indirectly available to consumers.

(5) The term "warrantor" means any supplier or other person who gives or offers to give a written warranty or who is or may be obligated under an implied warranty.

(6) The term "written warranty" means—

(A) any written affirmation of fact or written promise made in connection with the sale of a consumer product by a supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or

will meet a specified level of performance over a specified period of time, or

(B) any undertaking in writing in connection with the sale by a supplier of a consumer product to refund, repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking, which written affirmation, promise, or undertaking becomes part of the basis of the bargain between a supplier and a buyer for purposes other than resale of such product.

(7) The term "implied warranty" means an implied warranty arising under State law (as modified by sections 2308 and 2304(a) of this title) in connection with the sale by a supplier of a consumer product.

(8) The term "service contract" means a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance or repair (or both) of a consumer product.

(9) The term "reasonable and necessary maintenance" consists of those operations (A) which the consumer reasonably can be expected to perform or have performed and (B) which are necessary to keep any consumer product performing its intended function and operating at a reasonable level of performance.

(10) The term "remedy" means whichever of the following actions the warrantor elects:

- (A) repair,
- (B) replacement, or
- (C) refund;

except that the warrantor may not elect refund unless (i) the warrantor is unable to provide replacement and repair is not commercially practicable or cannot be timely made, or (ii) the consumer is willing to accept such refund.

(11) The term "replacement" means furnishing a new consumer product which is identical or reasonably equivalent to the warranted consumer product.

(12) The term "refund" means refunding the actual purchase price (less reasonable depreciation based on actual use where permitted by rules of the Commission).

(13) The term "distributed in commerce" means sold in commerce, introduced or delivered for introduction into commerce, or held for sale or distribution after introduction into commerce.

(14) The term "commerce" means trade, traffic, commerce, or transportation—

- (A) between a place in a State and any place outside thereof, or
- (B) which affects trade, traffic, commerce, or transportation described in subparagraph (A).

(15) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, or American Samoa. The term "State law" includes a law of the United States applicable only to the District of Columbia or only to a territory or possession of the United States; and the term "Federal law" excludes any State law.

(Pub. L. 93-637, title I, §101, Jan. 4, 1975, 88 Stat. 2183.)

### References In Text

For definition of Canal Zone, referred to in par. (15), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

### SHORT TITLE OF 2015 AMENDMENT

Pub. L. 114-51, §1, Sept. 24, 2015, 129 Stat. 494, provided that: "This Act [amending section 2302 of this

title and enacting provisions set out as notes under section 2302 of this title] may be cited as the 'E-Warranty Act of 2015'."

### SHORT TITLE

Pub. L. 93–637, §1, Jan. 4, 1975, 88 Stat. 2183, provided: "That this act [enacting this chapter and sections 57a to 57c of this title, amending sections 45, 46, 49, 50, 52, 56, and 58 of this title, and enacting provisions set out as notes under sections 45, 56, 57a, and 57b of this title] may be cited as the 'Magnuson-Moss Warranty—Federal Trade Commission Improvement Act'."

## §2302. Rules governing contents of warranties

### (a) Full and conspicuous disclosure of terms and conditions; additional requirements for contents

In order to improve the adequacy of information available to consumers, prevent deception, and improve competition in the marketing of consumer products, any warrantor warranting a consumer product to a consumer by means of a written warranty shall, to the extent required by rules of the Commission, fully and conspicuously disclose in simple and readily understood language the terms and conditions of such warranty. Such rules may require inclusion in the written warranty of any of the following items among others:

- (1) The clear identification of the names and addresses of the warrantors.
- (2) The identity of the party or parties to whom the warranty is extended.
- (3) The products or parts covered.
- (4) A statement of what the warrantor will do in the event of a defect, malfunction, or failure to conform with such written warranty—at whose expense—and for what period of time.
- (5) A statement of what the consumer must do and expenses he must bear.
- (6) Exceptions and exclusions from the terms of the warranty.
- (7) The step-by-step procedure which the consumer should take in order to obtain performance of any obligation under the warranty, including the identification of any person or class of persons authorized to perform the obligations set forth in the warranty.
- (8) Information respecting the availability of any informal dispute settlement procedure offered by the warrantor and a recital, where the warranty so provides, that the purchaser may be required to resort to such procedure before pursuing any legal remedies in the courts.
- (9) A brief, general description of the legal remedies available to the consumer.
- (10) The time at which the warrantor will perform any obligations under the warranty.
- (11) The period of time within which, after notice of a defect, malfunction, or failure to conform with the warranty, the warrantor will perform any obligations under the warranty.
- (12) The characteristics or properties of the products, or parts thereof, that are not covered by the warranty.
- (13) The elements of the warranty in words or phrases which would not mislead a reasonable, average consumer as to the nature or scope of the warranty.

### (b) Availability of terms to consumer; manner and form for presentation and display of information; duration; extension of period for written warranty or service contract; electronic display of terms of warranty

(1)(A) The Commission shall prescribe rules requiring that the terms of any written warranty on a consumer product be made available to the consumer (or prospective consumer) prior to the sale of the product to him.

(B) The Commission may prescribe rules for determining the manner and form in which information with respect to any written warranty of a consumer product shall be clearly and conspicuously presented or displayed so as not to mislead the reasonable, average consumer, when such information is contained in advertising, labeling, point-of-sale material, or other representations in writing.

(2) Nothing in this chapter (other than paragraph (3) of this subsection) shall be deemed to authorize the Commission to prescribe the duration of written warranties given or to require that a consumer product or any of its components be warranted.

(3) The Commission may prescribe rules for extending the period of time a written warranty or service contract is in effect to correspond with any period of time in excess of a reasonable period (not less than 10 days) during which the consumer is deprived of the use of such consumer product by reason of failure of the product to conform with the written warranty or by reason of the failure of the warrantor (or service contractor) to carry out such warranty (or service contract) within the period specified in the warranty (or service contract).

(4)(A) Except as provided in subparagraph (B), the rules prescribed under this subsection shall allow for the satisfaction of all requirements concerning the availability of terms of a written warranty on a consumer product under this subsection by —

(i) making available such terms in an accessible digital format on the Internet website of the manufacturer of the consumer product in a clear and conspicuous manner; and

(ii) providing to the consumer (or prospective consumer) information with respect to how to obtain and review such terms by indicating on the product or product packaging or in the product manual —

(I) the Internet website of the manufacturer where such terms can be obtained and reviewed; and

(II) the phone number of the manufacturer, the postal mailing address of the manufacturer, or another reasonable non-Internet based means of contacting the manufacturer to obtain and review such terms.

(B) With respect to any requirement that the terms of any written warranty for a consumer product be made available to the consumer (or prospective consumer) prior to sale of the product, in a case in which a consumer product is offered for sale in a retail location, by catalog, or through door-to-door sales, subparagraph (A) shall only apply if the seller makes available, through electronic or other means, at the location of the sale to the consumer purchasing the consumer product the terms of the warranty for the consumer product before the purchase.

**(c) Prohibition on conditions for written or implied warranty; waiver by Commission**

No warrantor of a consumer product may condition his written or implied warranty of such product on the consumer's using, in connection with such product, any article or service (other than article or service provided without charge under the terms of the warranty) which is identified by brand, trade, or corporate name; except that the prohibition of this subsection may be waived by the Commission if —

(1) the warrantor satisfies the Commission that the warranted product will function properly only if the article or service so identified is used in connection with the warranted product, and

(2) the Commission finds that such a waiver is in the public interest.

The Commission shall identify in the Federal Register, and permit public comment on, all applications for waiver of the prohibition of this subsection, and shall publish in the Federal Register its disposition of any such application, including the reasons therefor.

**(d) Incorporation by reference of detailed substantive warranty provisions**

The Commission may by rule devise detailed substantive warranty provisions which warrantors may incorporate by reference in their warranties.

**(e) Applicability to consumer products costing more than \$5**

The provisions of this section apply only to warranties which pertain to consumer products actually costing the consumer more than \$5.

(Pub. L. 93–637, title I, §102, Jan. 4, 1975, 88 Stat. 2185; Pub. L. 114–51, §3(a), Sept. 24, 2015, 129 Stat. 494.)

**AMENDMENTS**

2015—Subsec. (b)(4). Pub. L. 114–51 added par. (4).

**FINDINGS**

Pub. L. 114–51, §2, Sept. 24, 2015, 129 Stat. 494, provided that: "Congress makes the following findings:

"(1) Many manufacturers and consumers prefer to have the option to provide or receive warranty information online.

"(2) Modernizing warranty notification rules is necessary to allow the United States to continue to compete globally in manufacturing, trade, and the development of consumer products connected to the Internet.

"(3) Allowing an electronic warranty option would expand consumer access to relevant consumer information in an environmentally friendly way, and would provide additional flexibility to manufacturers to meet their labeling and warranty requirements."

**REVISION OF RULES**

[Pub. L. 114–51, §3\(b\), Sept. 24, 2015, 129 Stat. 495](#), provided that:

"(1) IN GENERAL - Not later than 1 year after the date of the enactment of this Act [Sept. 24, 2015], the Federal Trade Commission shall revise the rules prescribed under such section [meaning section 102(b) of Pub. L. 93–637, which is classified to subsec. (b) of this section] to comply with the requirements of paragraph (4) of such section, as added by subsection (a) of this section [amending this section].

"(2) AUTHORITY TO WAIVE REQUIREMENT FOR ORAL PRESENTATION. — In revising rules under paragraph (1), the Federal Trade Commission may waive the requirement of section 109(a) of such Act (15 U.S.C.

2309(a)) to give interested persons an opportunity for oral presentation if the Commission determines that giving interested persons such opportunity would interfere with the ability of the Commission to revise rules under paragraph (1) in a timely manner."

**§2303. Designation of written warranties**

**(a) Full (statement of duration) or limited warranty**

Any warrantor warranting a consumer product by means of a written warranty shall clearly and conspicuously designate such warranty in the following manner, unless exempted from doing so by the Commission pursuant to subsection (c) of this section:

(1) If the written warranty meets the Federal minimum standards for warranty set forth in section 2304 of this title, then it shall be conspicuously designated a "full (statement of duration) warranty".

(2) If the written warranty does not meet the Federal minimum standards for warranty set forth in section 2304 of this title, then it shall be conspicuously designated a "limited warranty".

**(b) Applicability of requirements, standards, etc., to representations or statements of customer satisfaction**

This section and sections 2302 and 2304 of this title shall not apply to statements or representations which are similar to expressions of general policy concerning customer satisfaction and which are not subject to any specific limitations.

**(c) Exemptions by Commission**

In addition to exercising the authority pertaining to disclosure granted in section 2302 of this title, the Commission may by rule determine when a written warranty does not have to be designated either "full (statement of duration)" or "limited" in accordance with this section.

**(d) Applicability to consumer products costing more than \$10 and not designated as full warranties**

The provisions of subsections (a) and (c) of this section apply only to warranties which pertain to consumer products actually costing the consumer more than \$10 and which are not designated "full (statement of duration) warranties".

(Pub. L. 93-637, title I, §103, Jan. 4, 1975, 88 Stat. 2187.)

**§2304. Federal minimum standards for warranties**

**(a) Remedies under written warranty; duration of implied warranty; exclusion or limitation on consequential damages for breach of written or implied warranty; election of refund or replacement**

In order for a warrantor warranting a consumer product by means of a written warranty to meet the Federal minimum standards for warranty—

(1) such warrantor must as a minimum remedy such consumer product within a reasonable time and without charge, in the case of a defect, malfunction, or failure to conform with such written warranty;

(2) notwithstanding section 2308(b) of this title, such warrantor may not impose any limitation on the duration of any implied warranty on the product;

(3) such warrantor may not exclude or limit consequential damages for breach of any written or implied warranty on such product, unless such exclusion or limitation conspicuously appears on the face of the warranty; and

(4) if the product (or a component part thereof) contains a defect or malfunction after a reasonable number of attempts by the warrantor to remedy defects or malfunctions in such product, such warrantor must permit the consumer to elect either a refund for, or replacement without charge of, such product or part (as the case may be). The Commission may by rule



specify for purposes of this paragraph, what constitutes a reasonable number of attempts to remedy particular kinds of defects or malfunctions under different circumstances. If the warrantor replaces a component part of a consumer product, such replacement shall include installing the part in the product without charge.

**(b) Duties and conditions imposed on consumer by warrantor**

(1) In fulfilling the duties under subsection (a) respecting a written warranty, the warrantor shall not impose any duty other than notification upon any consumer as a condition of securing remedy of any consumer product which malfunctions, is defective, or does not conform to the written warranty, unless the warrantor has demonstrated in a rulemaking proceeding, or can demonstrate in an administrative or judicial enforcement proceeding (including private enforcement), or in an informal dispute settlement proceeding, that such a duty is reasonable.

(2) Notwithstanding paragraph (1), a warrantor may require, as a condition to replacement of, or refund for, any consumer product under subsection (a), that such consumer product shall be made available to the warrantor free and clear of liens and other encumbrances, except as otherwise provided by rule or order of the Commission in cases in which such a requirement would not be practicable.

(3) The Commission may, by rule define in detail the duties set forth in subsection (a) of this section and the applicability of such duties to warrantors of different categories of consumer products with "full (statement of duration)" warranties.

(4) The duties under subsection (a) extend from the warrantor to each person who is a consumer with respect to the consumer product.

**(c) Waiver of standards**

The performance of the duties under subsection (a) shall not be required of the warrantor if he can show that the defect, malfunction, or failure of any warranted consumer product to conform with a written warranty, was caused by damage (not resulting from defect or malfunction) while in the possession of the consumer, or unreasonable use (including failure to provide reasonable and necessary maintenance).

**(d) Remedy without charge**

For purposes of this section and of section 2302(c) of this title, the term "without charge" means that the warrantor may not assess the consumer for any costs the warrantor or his representatives incur in connection with the required remedy of a warranted consumer product. An obligation under subsection (a)(1)(A) to remedy without charge does not necessarily require the warrantor to compensate the consumer for incidental expenses; however, if any incidental expenses are incurred because the remedy is not made within a reasonable time or because the warrantor imposed an unreasonable duty upon the consumer as a condition of securing remedy, then the consumer shall be entitled to recover reasonable incidental expenses which are so incurred in any action against the warrantor.

**(e) Incorporation of standards to products designated with full warranty for purposes of judicial actions**

If a supplier designates a warranty applicable to a consumer product as a "full (statement of duration)" warranty, then the warranty on such product shall, for purposes of any action under section 2310(d) of this title or under any State law, be deemed to incorporate at least the minimum requirements of this section and rules prescribed under this section.

(Pub. L. 93–637, title I, §104, Jan. 4, 1975, 88 Stat. 2187.)

### **§2305. Full and limited warranting of a consumer product**

Nothing in this chapter shall prohibit the selling of a consumer product which has both full and limited warranties if such warranties are clearly and conspicuously differentiated.

(Pub. L. 93–637, title I, §105, Jan. 4, 1975, 88 Stat. 2188.)

### **§2306. Service contracts; rules for full, clear and conspicuous disclosure of terms and conditions; addition to or in lieu of written warranty**

(a) The Commission may prescribe by rule the manner and form in which the terms and conditions of service contracts shall be fully, clearly, and conspicuously disclosed.

(b) Nothing in this chapter shall be construed to prevent a supplier or warrantor from entering into a service contract with the consumer in addition to or in lieu of a written warranty if such contract fully, clearly, and conspicuously discloses its terms and conditions in simple and readily understood language.

(Pub. L. 93–637, title I, §106, Jan. 4, 1975, 88 Stat. 2188.)

### **§2307. Designation of representatives by warrantor to perform duties under written or implied warranty**

Nothing in this chapter shall be construed to prevent any warrantor from designating representatives to perform duties under the written or implied warranty: *Provided*, That such warrantor shall make reasonable arrangements for compensation of such designated representatives, but no such designation shall relieve the warrantor of his direct responsibilities to the consumer or make the representative a cowarrantor.

(Pub. L. 93–637, title I, §107, Jan. 4, 1975, 88 Stat. 2189.)

### **§2308. Implied warranties**

#### **(a) Restrictions on disclaimers or modifications**

No supplier may disclaim or modify (except as provided in subsection (b)) any implied warranty to a consumer with respect to such consumer product if (1) such supplier makes any written warranty to the consumer with respect to such consumer Product, or (2) at the time of sale, or within 90 days thereafter, such supplier enters into a service contract with the consumer which applies to such consumer product.

#### **(b) Limitation on duration**

For purposes of this chapter (other than section 2304(a)(2) of this title), implied warranties may be limited in duration to the duration of a written warranty of reasonable duration, if such limitation is conscionable and is set forth in clear and unmistakable language and prominently displayed on the face of the warranty.

**(c) Effectiveness of disclaimers, modifications, or limitations**

A disclaimer, modification, or limitation made in violation of this section shall be ineffective for purposes of this chapter and State law.

(Pub. L. 93–637, title I, §108, Jan. 4, 1975, 88 Stat. 2189.)

**§2309. Procedures applicable to promulgation of rules by Commission****(a) Oral presentation**

Any rule prescribed under this chapter shall be prescribed in accordance with section 553 of title 5; except that the Commission shall give interested persons an opportunity for oral presentations of data, views, and arguments, in addition to written submissions. A transcript shall be kept of any oral presentation. Any such rule shall be subject to judicial review under section 57a(e) of this title in the same manner as rules prescribed under section 57a(a) (1)(B) of this title, except that section 57a(e)(3)(B) of this title shall not apply.

**(b) Warranties and warranty practices involved in sale of used motor vehicles**

The Commission shall initiate within one year after January 4, 1975, a rulemaking proceeding dealing with warranties and warranty practices in connection with the sale of used motor vehicles; and, to the extent necessary to supplement the protections offered the consumer by this chapter, shall prescribe rules dealing with such warranties and practices. In prescribing rules under this subsection, the Commission may exercise any authority it may have under this chapter, or other law, and in addition it may require disclosure that a used motor vehicle is sold without any warranty and specify the form and content of such disclosure.

(Pub. L. 93–637, title I, §109, Jan. 4, 1975, 88 Stat. 2189.)

**§2310. Remedies in consumer disputes****(a) Informal dispute settlement procedures; establishment; rules setting forth minimum requirements; effect of compliance by warrantor; review of informal procedures or implementation by Commission; application to existing informal procedures**

(1) Congress hereby declares it to be its policy to encourage warrantors to establish procedures whereby consumer disputes are fairly and expeditiously settled through informal dispute settlement mechanisms.

(2) The Commission shall prescribe rules setting forth minimum requirements for any informal dispute settlement procedure which is incorporated into the terms of a written warranty to which any provision of this chapter applies. Such rules shall provide for participation in such procedure by independent or governmental entities.

(3) One or more warrantors may establish an informal dispute settlement procedure which meets the requirements of the Commission's rules under paragraph (2). If—

(A) a warrantor establishes such a procedure,

(B) such procedure, and its implementation, meets the requirements of such rules, and

(C) he incorporates in a written warranty a requirement that the consumer resort to such procedure before pursuing any legal remedy under this section respecting such warranty,

then (i) the consumer may not commence a civil action (other than a class action) under subsection (d) of this section unless he initially resorts to such procedure; and (ii) a class of consumers may not proceed in a class action under subsection (d) except to the extent the court determines necessary to establish the representative capacity of the named plaintiffs, unless the named plaintiffs (upon notifying the defendant that they are named plaintiffs in a class action with respect to a warranty obligation) initially resort to such procedure. In the case of such a class action which is brought in a district court of the United States, the representative capacity of the named plaintiffs shall be established in the application of rule 23 of the Federal Rules of Civil Procedure. In any civil action arising out of a warranty obligation and relating to a matter considered in such a procedure, any decision in such procedure shall be admissible in evidence.

(4) The Commission on its own initiative may, or upon written complaint filed by any interested person shall, review the bona fide operation of any dispute settlement procedure resort to which is stated in a written warranty to be a prerequisite to pursuing a legal remedy under this section. If the Commission finds that such procedure or its implementation fails to comply with the requirements of the rules under paragraph (2), the Commission may take appropriate remedial action under any authority it may have under this chapter or any other provision of law.

(5) Until rules under paragraph (2) take effect, this subsection shall not affect the validity of any informal dispute settlement procedure respecting consumer warranties, but in any action under subsection (d), the court may invalidate any such procedure if it finds that such procedure is unfair.

**(b) Prohibited acts**

It shall be a violation of section 45(a)(1) of this title for any person to fail to comply with any requirement imposed on such person by this chapter (or a rule thereunder) or to violate any prohibition contained in this chapter (or a rule thereunder).

**(c) Injunction proceedings by Attorney General or Commission for deceptive warranty, noncompliance with requirements, or violating prohibitions; procedures; definitions**

(1) The district courts of the United States shall have jurisdiction of any action brought by the Attorney General (in his capacity as such), or by the Commission by any of its attorneys designated by it for such purpose, to restrain (A) any warrantor from making a deceptive warranty with respect to a consumer product, or (B) any person from failing to comply with any requirement imposed on such person by or pursuant to this chapter or from violating any prohibition contained in this chapter. Upon proper showing that, weighing the equities and considering the Commission's or Attorney General's likelihood of ultimate success, such action would be in the public interest and after notice to the defendant, a temporary restraining order or preliminary injunction may be granted without bond. In the case of an action brought by the Commission, if a complaint under section 45 of this title is not filed within such period (not exceeding 10 days) as may be specified by the court after the issuance of the temporary restraining order or preliminary injunction, the order or injunction shall be dissolved by the court and be of no further force and effect. Any suit shall be brought in the district in which such person resides or transacts business. Whenever it appears to the court that the ends of justice require that other persons should be parties in the action, the court may cause them to be summoned whether or not they reside in the district in which the court is held, and to that end process may be served in any district.

(2) For the purposes of this subsection, the term "deceptive warranty" means (A) a written warranty which (i) contains an affirmation, promise, description, or representation which is either

false or fraudulent, or which, in light of all of the circumstances, would mislead a reasonable individual exercising due care; or (ii) fails to contain information which is necessary in light of all of the circumstances, to make the warranty not misleading to a reasonable individual exercising due care; or (B) a written warranty created by the use of such terms as "guaranty" or "warranty", if the terms and conditions of such warranty so limit its scope and application as to deceive a reasonable individual.

**(d) Civil action by consumer for damages, etc.; jurisdiction; recovery of costs and expenses; cognizable claims**

(1) Subject to subsections (a)(3) and (e), a consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this chapter, or under a written warranty, implied warranty, or service contract, may bring suit for damages and other legal and equitable relief—

- (A) in any court of competent jurisdiction in any State or the District of Columbia; or
- (B) in an appropriate district court of the United States, subject to paragraph (3) of this subsection.

(2) If a consumer finally prevails in any action brought under paragraph (1) of this subsection, he may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of cost and expenses (including attorneys' fees based on actual time expended) determined by the court to have been reasonably incurred by the plaintiff for or in connection with the commencement and prosecution of such action, unless the court in its discretion shall determine that such an award of attorneys' fees would be inappropriate.

(3) No claim shall be cognizable in a suit brought under paragraph (1)(B) of this subsection—

- (A) if the amount in controversy of any individual claim is less than the sum or value of \$25;
- (B) if the amount in controversy is less than the sum or value of \$50,000 (exclusive of interests and costs) computed on the basis of all claims to be determined in this suit; or
- (C) if the action is brought as a class action, and the number of named plaintiffs is less than one hundred.

**(e) Class actions; conditions; procedures applicable**

No action (other than a class action or an action respecting a warranty to which subsection (a)(3) applies) may be brought under subsection (d) for failure to comply with any obligation under any written or implied warranty or service contract, and a class of consumers may not proceed in a class action under such subsection with respect to such a failure except to the extent the court determines necessary to establish the representative capacity of the named plaintiffs, unless the person obligated under the warranty or service contract is afforded a reasonable opportunity to cure such failure to comply. In the case of such a class action (other than a class action respecting a warranty to which subsection (a)(3) applies) brought under subsection (d) for breach of any written or implied warranty or service contract, such reasonable opportunity will be afforded by the named plaintiffs and they shall at that time notify the defendant that they are acting on behalf of the class. In the case of such a class action which is brought in a district court of the United States, the representative capacity of the named plaintiffs shall be established in the application of rule 23 of the Federal Rules of Civil Procedure.

**(f) Warrantors subject to enforcement of remedies**

For purposes of this section, only the warrantor actually making a written affirmation of fact, promise, or undertaking shall be deemed to have created a written warranty, and any rights arising thereunder may be enforced under this section only against such warrantor and no other person.

(Pub. L. 93-637, title I, §110, Jan. 4, 1975, 88 Stat. 2189.)

#### REFERENCES IN TEXT

Rule 23 of the Federal Rules of Civil Procedure, referred to in subsecs. (a)(3) and (e), is set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

### §2311. Applicability to other laws

#### (a) Federal Trade Commission Act and Federal Seed Act

(1) Nothing contained in this chapter shall be construed to repeal, invalidate, or supersede the Federal Trade Commission Act [15 U.S.C. 41 et seq.] or any statute defined therein as an Antitrust Act.

(2) Nothing in this chapter shall be construed to repeal, invalidate, or supersede the Federal Seed Act [7 U.S.C. 1551 et seq.] and nothing in this chapter shall apply to seed for planting.

#### (b) Rights, remedies, and liabilities

(1) Nothing in this chapter shall invalidate or restrict any right or remedy of any consumer under State law or any other Federal law.

(2) Nothing in this chapter (other than sections 2308 and 2304(a)(2) and (4) of this title) shall (A) affect the liability of, or impose liability on, any person for personal injury, or (B) supersede any provision of State law regarding consequential damages for injury to the person or other injury.

#### (c) State warranty laws

(A) Except as provided in subsection (b) and in paragraph (2) of this subsection, a State requirement — which relates to labeling or disclosure with respect to written warranties or performance thereunder;

(B) which is within the scope of an applicable requirement of sections 2302, 2303, and 2304 of this title (and rules implementing such sections), and

(C) which is not identical to a requirement of section 2302, 2303, or 2304 of this title (or a rule thereunder), shall not be applicable to written warranties complying with such sections (or rules thereunder).

(2) If, upon application of an appropriate State agency, the Commission determines (pursuant to rules issued in accordance with section 2309 of this title) that any requirement of such State covering any transaction to which this chapter applies (A) affords protection to consumers greater than the requirements of this chapter and (B) does not unduly burden interstate commerce, then such State requirement shall be applicable (notwithstanding the provisions of paragraph (1) of this subsection) to the extent specified in such determination for so long as the State administers and enforces effectively any such greater requirement.

#### (d) Other Federal warranty laws

This chapter (other than section 2302(c) of this title) shall be inapplicable to any written warranty the making or content of which is otherwise governed by Federal law. If only a portion

of a written warranty is so governed by Federal law, the remaining portion shall be subject to this chapter.

(Pub. L. 93-637, title I, §111, Jan. 4, 1975, 88 Stat. 2192.)

#### REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (a)(1), is act [Sept. 26, 1914, ch. 311](#), 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

The Antitrust Acts, referred to in subsec. (a)(1), are defined in section 44 of this title.

The Federal Seed Act, referred to in subsec. (a)(2), is act [Aug. 9, 1939, ch. 615](#), 53 Stat. 1275, as amended, which is classified generally to chapter 37 (§1551 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1551 of Title 7 and Tables.

### §2312. Effective dates

#### (a) Effective date of chapter

Except as provided in subsection (b) of this section, this chapter shall take effect 6 months after January 4, 1975, but shall not apply to consumer products manufactured prior to such date.

#### (b) Effective date of section 2302(a)

Section 2302(a) of this title shall take effect 6 months after the final publication of rules respecting such section; except that the Commission, for good cause shown, may postpone the applicability of such sections until one year after such final publication in order to permit any designated classes of suppliers to bring their written warranties into compliance with rules promulgated pursuant to this chapter.

#### (c) Promulgation of rules

The Commission shall promulgate rules for initial implementation of this chapter as soon as possible after January 4, 1975, but in no event later than one year after such date.

(Pub. L. 93-637, title I, §112, Jan. 4, 1975, 88 Stat. 2192.)

## Appendix B

### 16 C.F.R. § 703

#### PART 703 - INFORMAL DISPUTE SETTLEMENT PROCEDURES

**Authority:** [15 U.S.C. 2309](#) and [2310](#).

**Source:** [40 FR 60215](#), Dec. 31, 1975, unless otherwise noted.

#### § 703.1 Definitions.

- (a) *The Act* means the Magnuson-Moss Warranty - Federal Trade Commission Improvement Act, [15 U.S.C. 2301](#), *et seq.*
- (b) *Consumer product* means any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes (including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed).
- (c) *Written warranty* means:
- (1) Any written affirmation of fact or written promise made in connection with the sale of a consumer product by a supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time, or
  - (2) Any undertaking in writing in connection with the sale by a supplier of a consumer product to refund, repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking, which written affirmation, promise or undertaking becomes part of the basis of the bargain between a supplier and a buyer for purposes other than resale of such product.
- (d) *Warrantor* means any person who gives or offers to give a written warranty which incorporates an informal dispute settlement mechanism.
- (e) *Mechanism* means an informal dispute settlement procedure which is incorporated into the terms of a written warranty to which any provision of Title I of the Act applies, as provided in section 110 of the Act, [15 U.S.C. 2310](#).
- (f) *Members* means the person or persons within a Mechanism actually deciding disputes.
- (g) *Consumer* means a buyer (other than for purposes of resale) of any consumer product, any person to whom such product is transferred during the duration of a written warranty applicable to the product, and any other person who is entitled by the terms of such warranty or under applicable state law to enforce against the warrantor the obligations of the warranty.
- (h) *On the face of the warranty* means:



(1) If the warranty is a single sheet with printing on both sides of the sheet, or if the warranty is comprised of more than one sheet, the page on which the warranty text begins;

(2) If the warranty is included as part of a longer document, such as a use and care manual, the page in such document on which the warranty text begins.

[[40 FR 60215](#), Dec. 31, 1975, as amended at [80 FR 42722](#), July 20, 2015]

**§ 703.2 Duties of warrantor.**

(a) 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 \(a\)](#) shall not prohibit a warrantor from incorporating into the terms of a written warranty the step-by-step procedure which the consumer should take in order to obtain performance of any obligation under the warranty as described in section 102(a)(7) of the Act, [15 U.S.C. 2302\(a\)\(7\)](#), and required by [part 701 of this subchapter](#).

(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 I 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\(c\)](#) of this section.

(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;

(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.

(d) 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 as long as the warrantor does not expressly require consumers to seek redress directly from the warrantor. The warrantor shall proceed fairly and expeditiously to attempt to resolve all disputes submitted directly to the warrantor.

(e) Whenever a dispute is submitted directly to the warrantor, the warrantor shall, within a reasonable time, decide whether, and to what extent, it will satisfy the consumer, and inform the consumer of its decision. In its notification to the consumer of its decision, the warrantor shall include the information required in [§ 703.2 \(b\)](#) and [\(c\)](#) of this section.

(f) The warrantor shall:

(1) Respond fully and promptly to reasonable requests by the Mechanism for information relating to disputes;

(2) Upon notification of any decision of the Mechanism that would require action on the part of the warrantor, immediately notify the Mechanism whether, and to what extent, warrantor will abide by the decision; and

(3) Perform any obligations it has agreed to.

(g) The warrantor shall act in good faith in determining whether, and to what extent, it will abide by a Mechanism decision.

(h) The warrantor shall comply with any reasonable requirements imposed by the Mechanism to fairly and expeditiously resolve warranty disputes.

[[40 FR 60215](#), Dec. 31, 1975, as amended at [80 FR 42722](#), July 20, 2015]

Minimum Requirements of the Mechanism

**§ 703.3 Mechanism organization.**

(a) 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.

(b) 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.

(c) The Mechanism shall impose any other reasonable requirements necessary to ensure that the members and staff act fairly and expeditiously in each dispute.

#### § 703.4 Qualification of members.

(a) No member deciding a dispute shall be:

(1) A party to the dispute, or an employee or agent of a party other than for purposes of deciding disputes; or

(2) A person who is or may become a party in any legal action, including but not limited to class actions, relating to the product or complaint in dispute, or an employee or agent of such person other than for purposes of deciding disputes. For purposes of this [paragraph \(a\)](#) a person shall not be considered a “party” solely because he or she acquires or owns an interest in a party solely for investment, and the acquisition or ownership of an interest which is offered to the general public shall be prima facie evidence of its acquisition or ownership solely for investment.

(b) When one or two members are deciding a dispute, all shall be persons having no direct involvement in the manufacture, distribution, sale or service of any product. When three or more members are deciding a dispute, at least two-thirds shall be persons having no direct involvement in the manufacture, distribution, sale or service of any product. “Direct involvement” shall not include acquiring or owning an interest solely for investment, and the acquisition or ownership of an interest which is offered to the general public shall be prima facie evidence of its acquisition or ownership solely for investment. Nothing contained in this section shall prevent the members from consulting with any persons knowledgeable in the technical, commercial or other areas relating to the product which is the subject of the dispute.

(c) Members shall be persons interested in the fair and expeditious settlement of consumer disputes.

#### § 703.5 Operation of the Mechanism.

(a) The Mechanism shall establish written operating procedures which shall include at least those items specified in [paragraphs \(b\)](#) through [\(j\)](#) of this section. Copies of the written procedures shall be made available to any person upon request.

(b) Upon notification of a dispute, the Mechanism shall immediately inform both the warrantor and the consumer of receipt of the dispute.

(c) 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.

(d) If the dispute has not been settled, the Mechanism shall, as expeditiously as possible but at least within 40 days of notification of the dispute, except as provided in [paragraph \(e\)](#) of this section:

(1) Render a fair decision based on the information gathered as described in [paragraph \(c\)](#) of this section, and on any information submitted at an oral presentation which conforms to the requirements of [paragraph \(f\)](#) of this section (A decision shall include any remedies appropriate under the circumstances, including repair, replacement, refund, reimbursement for expenses, compensation for damages, and any other remedies available under the written warranty or the Act (or rules thereunder); and a decision shall state a specified reasonable time for performance);

(2) Disclose to the warrantor its decision and the reasons therefor;

(3) If the decision would require action on the part of the warrantor, determine whether, and to what extent, warrantor will abide by its decision; and

(4) Disclose to the consumer its decision, the reasons therefor, warrantor's intended actions (if the decision would require action on the part of the warrantor), and the information described in [paragraph \(g\)](#) of this section. For purposes of [paragraph \(d\)](#) of this section a dispute shall be deemed settled when the Mechanism has ascertained from the consumer that:

(i) The dispute has been settled to the consumer's satisfaction; and

(ii) The settlement contains a specified reasonable time for performance.

(e) The Mechanism may delay the performance of its duties under [paragraph \(d\)](#) of this section beyond the 40 day time limit:

(1) Where the period of delay is due solely to failure of a consumer to provide promptly his or her name and address, brand name and model number of the product involved, and a statement as to the nature of the defect or other complaint; or

(2) For a 7 day period in those cases where the consumer has made no attempt to seek redress directly from the warrantor.

(f) The Mechanism may allow an oral presentation by a party to a dispute (or a party's representative) only if:

(1) Both warrantor and consumer expressly agree to the presentation;

(2) Prior to agreement the Mechanism fully discloses to the consumer the following information:

- (i) That the presentation by either party will take place only if both parties so agree, but that if they agree, and one party fails to appear at the agreed upon time and place, the presentation by the other party may still be allowed;
- (ii) That the members will decide the dispute whether or not an oral presentation is made;
- (iii) The proposed date, time and place for the presentation; and
- (iv) A brief description of what will occur at the presentation including, if applicable, parties' rights to bring witnesses and/or counsel; and

(3) Each party has the right to be present during the other party's oral presentation. Nothing contained in this [paragraph \(b\)](#) of this section shall preclude the Mechanism from allowing 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 of this paragraph have been satisfied.

(g) The Mechanism shall inform the consumer, at the time of disclosure required in [paragraph \(d\)](#) of this section that:

- (1) If he or she is dissatisfied with its decision or warrantor's intended actions, or eventual performance, legal remedies, including use of small claims court, may be pursued;
- (2) The Mechanism's decision is admissible in evidence as provided in section 110(a)(3) of the Act, [15 U.S.C. 2310\(a\)\(3\)](#); and
- (3) The consumer may obtain, at reasonable cost, copies of all Mechanism records relating to the consumer's dispute.

(h) If the warrantor has agreed to perform any obligations, either as part of a settlement agreed to after notification to the Mechanism of the dispute or as a result of a decision under [paragraph \(d\)](#) of this section, the Mechanism shall ascertain from the consumer within 10 working days of the date for performance whether performance has occurred.

(i) A requirement that a consumer resort to the Mechanism prior to commencement of an action under section 110(d) of the Act, [15 U.S.C. 2310\(d\)](#), shall be satisfied 40 days after notification to the Mechanism of the dispute or when the Mechanism completes all of its duties under [paragraph \(d\)](#) of this section, whichever occurs sooner. Except that, if the Mechanism delays performance of its [paragraph \(d\)](#) of this section duties as allowed by [paragraph \(e\)](#) of this section, the requirement that the consumer initially resort to the Mechanism shall not be satisfied until the period of delay allowed by [paragraph \(e\)](#) of this section has ended.

(j) Decisions of the Mechanism shall not be legally binding on any person. However, the warrantor shall act in good faith, as provided in [§ 703.2\(g\) of this part](#). In any civil action arising out of a warranty obligation and relating to a matter considered by the Mechanism, any decision of the Mechanism shall be admissible in evidence, as provided in section 110(a)(3) of the Act, [15 U.S.C. 2310\(a\)\(3\)](#).

[[40 FR 60215](#), Dec. 31, 1975, as amended at [80 FR 42722](#), July 20, 2015]

**§ 703.6 Recordkeeping.**

- (a) The Mechanism shall maintain records on each dispute referred to it which shall include:
  - (1) Name, address and telephone number of the consumer;
  - (2) Name, address, 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 action(s);
  - (11) Copies of follow-up letters (or summaries of relevant and material portions of follow-up telephone calls) to the consumer, and responses thereto; and
  - (12) Any other documents and communications (or summaries of relevant and material portions of oral communications) relating to the dispute.
- (b) The Mechanism shall maintain an index of each warrantor's disputes grouped under brand name and sub-grouped under product model.
- (c) The Mechanism shall maintain an index for each warrantor as will show:
  - (1) All disputes in which the warrantor has promised some performance (either by settlement or in response to a Mechanism decision) and has failed to comply; and
  - (2) All disputes in which the warrantor has refused to abide by a Mechanism decision.
- (d) The Mechanism shall maintain an index as will show all disputes delayed beyond 40 days.

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

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

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

### § 703.7 Audits.

(a) The Mechanism shall have an audit conducted at least annually, to determine whether the Mechanism and its implementation are in compliance with this part. All records of the Mechanism required to be kept under [§ 703.6 of this part](#) 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 of disputes handled by the Mechanism to determine the following:

(i) Adequacy of the Mechanism's complaint and other forms, investigation, mediation and follow-up efforts, and other aspects of complaint handling; and

(ii) Accuracy of the Mechanism's statistical compilations under [§ 703.6\(e\) of this part](#). (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.)

(c) 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.

(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.

### **§ 703.8 Openness of records and proceedings.**

(a) The statistical summaries specified in [§ 703.6\(e\) of this part](#) shall be available to any person for inspection and copying.

(b) 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.

(c) The policy of the Mechanism with respect to records made available at the Mechanism's option shall be set out in the procedures under [§ 703.5\(a\) of this part](#); the policy shall be applied uniformly to all requests for access to or copies of such records.

(d) Meetings of the members to hear and decide disputes shall be open to observers on reasonable and nondiscriminatory terms. The identity of the parties and products involved in disputes need not be disclosed at meetings.

(e) Upon request the Mechanism shall provide to either party to a dispute:

(1) Access to all records relating to the dispute; and

(2) Copies of any records relating to the dispute, at reasonable cost.

(f) The Mechanism shall make available to any person upon request, information relating to the qualifications of Mechanism staff and members.



## Appendix C

### Consumer Surveys Used in Conducting Audit

#### NCDS Consumer Satisfaction Survey – Arbitrated Cases with Award

##### Introduction to Survey

*Dear Consumer:* You recently participated in the Non-Binding Automobile Warranty Arbitration Program administered by the National Center for Dispute Settlement (“NCDS”). This program operates under the Magnuson Moss Warranty–Federal Trade Commission Improvements Act and it requires an annual audit to assess consumers’ overall levels of satisfaction. To accurately capture consumer experiences, we ask that you complete this brief survey. No personal information or identifiers are being collected for this survey keeping your identity completely anonymous. Thank you.

*Note to Consumer:* If you filed multiple claims during 2020, your responses should focus only on the last claim you filed.

##### General Questions

The following questions relate to your pre-filing experience with either the dealer or the manufacturer.

1. Before filing a claim with NCDS, did you attempt to seek recourse from the manufacturer directly?
  - a. Yes
  - b. No
  - c. If no, please explain
  
2. How many times, if any, did the dealer or manufacturer attempt to repair your car before you filed a claim with NCDS?
  - a. One time
  - b. Two times
  - c. Three times
  - d. Other (please specify)
  
3. How did you learn about the NCDS Non-Binding Automobile Warranty Arbitration Program?
  - a. Manufacturer Customer Service
  - b. Dealership
  - c. Glove-Box Materials
  - d. Internet
  - e. Brochures, literature, pamphlets
  - f. Attorney
  - g. Friends, family, co-workers
  - h. State government agency
  - i. Prior program knowledge
  - j. Other (please specify)
  
4. How did the manufacturer or dealer inform you of the Arbitration Program?
  - a. Talked over the phone
  - b. Sent information
  - c. Showroom poster

- d. Other (please specify)

***Filing of Claim***

The following questions relate to the actual filing of your claim with NCDS.

- 5. What method did you use to file your claim with NCDS?
  - a. E-File
  - b. Written Submission of Claim Form
- 6. How clear were the instructions for filing the Claim Form?
  - a. Very clear
  - b. Somewhat clear
  - c. Not clear
  - d. Do not know

***Pre-Hearing Process Questions***

The following questions relate to your experience after you filed your claim with NCDS.

- 7. After you filed your claim with NCDS, how long did it take for NCDS to acknowledge your claim and initiate the administrative process?
  - a. One day
  - b. Two days
  - c. Three days
  - d. Greater than three days
- 8. Did you receive or review the Frequently Asked Questions (FAQ) Packet at [www.ncdsusa.org](http://www.ncdsusa.org)?
  - a. Yes
  - b. No
- 9. How clear was the information presented in the FAQ?
  - a. Very clear
  - b. Somewhat clear
  - c. Not clear
  - d. Do not know
- 10. How helpful was the information presented in the FAQ?
  - a. Very helpful
  - b. Moderately helpful
  - c. Not at all helpful
  - d. Do not know
- 11. Did you receive or review the Non-Binding Program Rules at [www.ncdsusa.org](http://www.ncdsusa.org)?
  - a. Yes
  - b. No
- 12. How clear were the Program Rules?
  - a. Very clear
  - b. Somewhat clear
  - c. Not clear
  - d. Do not know
- 13. How helpful were the Program Rules in explaining the arbitration process?
  - a. Very helpful

- b. Moderately helpful
  - c. Not at all helpful
  - d. Do not know
14. Did you receive a hearing notice from NCDS?
- a. Yes
  - b. No
15. Either before or after you received your hearing notice, did you hire an attorney to represent you or to be present at the hearing?
- a. Yes.
  - b. No
16. When you filed your claim with NCDS, did you request a “documents only” hearing?
- a. Yes.
  - b. No

***Hearing Process Questions***

The following questions pertain to the actual evidentiary hearing process.

17. Did you participate in the hearing?
- a. Yes
  - b. No
  - c. If you answered no, why not?
18. Did the arbitrator start the hearing on time?
- a. Yes
  - b. No
  - c. If no, explain
19. Did the arbitrator explain the arbitration process to both parties?
- a. Yes
  - b. No
20. Did the arbitrator allow both parties a full and fair opportunity to present their proofs?
- a. Yes
  - b. No
21. Did the arbitrator conduct a test drive during the hearing?
- c. Yes
  - d. No
22. Before conducting a test drive, did the arbitrator ask to see your identifying information – insurance, registration, and drivers’ license?
- a. Yes
  - b. No
23. Before conducting a test drive, did the arbitrator check the VIN number of the vehicle and also the mileage?
- a. Yes
  - b. No

24. Did the arbitrator explain the protocols for conducting the test drive, specifically that it is your responsibility to raise the concern with the arbitrator when it is experienced during the test drive.
  - a. Yes
  - b. No
  
25. Did the arbitrator explain that after the test drive, each party would be able to offer final comments about what was experienced during the test drive?
  - a. Yes
  - b. No

***Post-Award Questions***

The following questions pertain to your experience after you received your award.

26. How was the arbitrator's award communicated to you?
  - a. By email
  - b. Written submission
  - c. Other (please specify)
  
27. Which of the following best describes the relief awarded to you by the arbitrator?
  - a. A refund, where the manufacturer would give you money for your car
  - b. A replacement, where the manufacturer would replace your existing car with a new car
  - c. Reimbursement, where the manufacturer would reimburse you for incidental costs associated with the repair of your car
  - d. Other (please specify)
  
28. Did the arbitrator accurately identify the nature of the non-conformity you alleged in your claim?
  - a. Yes
  - b. No
  
29. Did the arbitrator include a summary of the testimony at the hearing?
  - a. Yes
  - b. No
  
30. Was the arbitrator's award clear?
  - a. Yes
  - b. No
  
31. Did the arbitrator render a reasoned award?
  - a. Yes
  - b. No
  
32. Did you accept the arbitrator's award?
  - a. Yes
  - b. No
  - c. If no, why not?

***General Satisfaction Questions – Arbitrator Focused***

The following questions focus on your assessment of the arbitrator both during and after the hearing.

33. How well did the arbitrator understand your case?
  - a. Very well
  - b. Reasonably well
  - c. Not well at all.

34. How would you rate the arbitrator's objectivity and fairness?
- Excellent
  - Good
  - Average
  - Poor
35. How would you rate the arbitrator's impartiality during the hearing?
- Excellent
  - Good
  - Average
  - Poor
36. How would you rate the arbitrator's impartiality with respect to the award?
- Excellent
  - Good
  - Average
  - Poor

***General Satisfaction Questions – NCDS***

The following questions focus on your assessment of NCDS' staff in processing your claim.

37. How would you rate the timeliness of the communications between you and NCDS staff?
- Excellent
  - Good
  - Fair
  - Poor
38. How would you rate the helpfulness of the NCDS staff?
- Excellent
  - Good
  - Fair
  - Poor
39. How would you rate your overall experience under the Arbitration Program?
- Excellent
  - Good
  - Fair
  - Poor
40. Would you recommend the Arbitration Program to friends and family?
- Yes
  - No
  - If no, please explain
41. What suggestions, if any, do you have for improving the Arbitration Program?

## NCDS Consumer Satisfaction Survey – Arbitrated Cases with Award/No Action

*Dear Consumer:* You recently participated in the Non-Binding Automobile Warranty Arbitration Program administered by the National Center for Dispute Settlement (“NCDS”). This program operates under the Magnuson Moss Warranty–Federal Trade Commission Improvements Act and it requires an annual audit to assess consumers’ overall levels of satisfaction. To accurately capture consumer experiences, we ask that you complete this brief survey. No personal information or identifiers are being collected for this survey keeping your identity completely anonymous. Thank you.

*Note to Consumer:* If you filed multiple claims during 2020, your responses should focus only on the last claim you filed.

### *General Questions*

The following questions relate to your pre-filing experience with either the dealer or the manufacturer.

1. Before filing a claim with NCDS, did you attempt to seek recourse from the manufacturer directly?
  - a. Yes
  - b. No
  - c. If no, please explain
  
2. How many times, if any, did the dealer or manufacturer attempt to repair your car before you filed a claim with NCDS?
  - a. One time
  - b. Two times
  - c. Three times
  - d. Other (please specify)
  
3. How did you learn about the NCDS Non-Binding Automobile Warranty Arbitration Program?
  - a. Manufacturer Customer Service
  - b. Dealership
  - c. Glove-Box Materials
  - d. Internet
  - e. Brochures, literature, pamphlets
  - f. Attorney
  - g. Friends, family, co-workers
  - h. State government agency
  - i. Prior program knowledge
  - j. Other (please specify)
  
4. How did the manufacturer or dealer inform you of the Arbitration Program?
  - a. Talked over the phone
  - b. Sent information
  - c. Showroom poster
  - d. Other (please specify)

### *Filing of Claim*

The following questions relate to the actual filing of your claim with NCDS.

5. What method did you use to file your claim with NCDS?
  - a. E-File

- b. Written Submission of Claim Form
6. How clear were the instructions for filing the Claim Form?
    - a. Very clear
    - b. Somewhat clear
    - c. Not clear
    - d. Do not know

***Pre-Hearing Process Questions***

The following questions relate to your experience after you filed your claim with NCDS.

7. After you filed your claim with NCDS, how long did it take for NCDS to acknowledge your claim and initiate the administrative process?
  - a. One day
  - b. Two days
  - c. Three days
  - d. Greater than three days
8. Did you receive or review the Frequently Asked Questions (FAQ) Packet at [www.ncdsusa.org](http://www.ncdsusa.org)?
  - a. Yes
  - b. No
9. How clear was the information presented in the FAQ?
  - e. Very clear
  - f. Somewhat clear
  - g. Not clear
  - h. Do not know
10. How helpful was the information presented in the FAQ?
  - a. Very helpful
  - b. Moderately helpful
  - c. Not at all helpful
  - d. Do not know
11. Did you receive or review the Non-Binding Program Rules at [www.ncdsusa.org](http://www.ncdsusa.org)?
  - a. Yes
  - b. No
12. How clear were the Program Rules?
  - a. Very clear
  - b. Somewhat clear
  - c. Not clear
  - d. Do not know
13. How helpful were the Program Rules in explaining the arbitration process?
  - a. Very helpful
  - b. Moderately helpful
  - c. Not at all helpful
  - d. Do not know
14. Did you receive a hearing notice from NCDS?
  - a. Yes
  - b. No

15. Either before or after you received your hearing notice, did you hire an attorney to represent you or to be present at the hearing?
  - a. Yes
  - b. No
  
16. When you filed your claim with NCDS, did you request a “documents only” hearing?
  - a. Yes
  - b. No

***Hearing Process Questions***

The following questions pertain to the actual evidentiary hearing process.

17. Did you participate in the hearing?
  - a. Yes
  - b. No
  - c. If you answered no, why not?
  
18. Did the arbitrator start the hearing on time?
  - a. Yes
  - b. No
  - c. If not – explain
  
19. Did the arbitrator explain the arbitration process to both parties?
  - a. Yes
  - b. No
  
20. Did the arbitrator allow both parties a full and fair opportunity to present their proofs?
  - a. Yes
  - b. No
  
21. Did the arbitrator conduct a test drive during the hearing?
  - c. Yes
  - d. No
  
22. Before conducting a test drive, did the arbitrator ask to see your identifying information – insurance, registration, and drivers’ license?
  - a. Yes
  - b. No
  
23. Before conducting a test drive, did the arbitrator check the VIN number of the vehicle and also the mileage?
  - a. Yes
  - b. No
  
24. Did the arbitrator explain the protocols for conducting the test drive, specifically that it is your responsibility to raise the concern with the arbitrator when it is experienced during the test drive?
  - a. Yes
  - b. No
  
25. Did the arbitrator explain that after the test drive, each party would be able to offer final comments about what was experienced during the test drive?



- a. Yes
- b. No

***Post-Award Questions***

The following questions pertain to your experience after you received your award.

- 26. How was the arbitrator’s award communicated to you?
  - a. By email
  - b. Written submission
  - c. Other (please specify)
  
- 27. Which of the following best describes the relief awarded to you by the arbitrator?
  - a. A refund, where the manufacturer would give you money for your car
  - b. A replacement, where the manufacturer would replace your existing car with a new car
  - c. Reimbursement, where the manufacturer would reimburse you for incidental costs associated with the repair of your car
  - d. Other (please specify)
  
- 28. Did the arbitrator accurately identify the nature of the non-conformity you alleged in your claim?
  - a. Yes
  - b. No
  
- 29. Did the arbitrator include a summary of the testimony at the hearing?
  - a. Yes
  - b. No
  
- 30. Was the arbitrator’s award clear?
  - a. Yes
  - b. No
  
- 31. Did the arbitrator render a reasoned award?
  - a. Yes
  - b. No
  
- 32. Did you accept the arbitrator’s award?
  - a. Yes
  - b. No
  - c. If no, why not?

***General Satisfaction Questions – Arbitrator Focused***

The following questions focus on your assessment of the arbitrator both during and after the hearing.

- 33. How well did the arbitrator understand your case?
  - a. Very well
  - b. Reasonably well
  - c. Not well at all.
  
- 34. How would you rate the arbitrator’s objectivity and fairness?
  - a. Excellent
  - b. Good
  - c. Average
  - d. Poor
  
- 35. How would you rate the arbitrator’s impartiality during the hearing?

- a. Excellent
- b. Good
- c. Average
- d. Poor

36. How would you rate the arbitrator's impartiality with respect to the award?

- a. Excellent
- b. Good
- c. Average
- d. Poor

***General Satisfaction Questions – NCDS***

The following questions focus on your assessment of NCDS' staff in processing your claim.

37. How would you rate the timeliness of the communications between you and NCDS staff?

- a. Excellent
- b. Good
- c. Fair
- d. Poor

38. How would you rate the helpfulness of the NCDS staff?

- a. Excellent
- b. Good
- c. Fair
- d. Poor

39. How would you rate your overall experience under the Arbitration Program?

- a. Excellent
- b. Good
- c. Fair
- d. Poor

40. Would you recommend the Arbitration Program to friends and family?

- a. Yes
- b. No
- c. If no, please explain

41. What suggestions, if any, do you have for improving the Arbitration Program?

## NCDS Consumer Satisfaction Survey – Mediated Cases

### Introduction to Survey

*Dear Consumer:* You recently participated in the Non-Binding Automobile Warranty Arbitration Program administered by the National Center for Dispute Settlement (“NCDS”). This program operates under the Magnuson Moss Warranty–Federal Trade Commission Improvements Act and it requires an annual audit to assess consumers’ overall levels of satisfaction. To accurately capture consumer experiences, we ask that you complete this brief survey. No personal information or identifiers are being collected for this survey keeping your identity completely anonymous. Thank you.

*Note to Consumer:* If you filed multiple claims during 2020, your responses should focus only on the last claim you filed.

### General Questions

The following questions pertain to your pre-filing experience with either the dealer or the manufacturer.

1. Before filing a claim with NCDS, did you attempt to seek recourse from the manufacturer directly?
  - a. Yes
  - b. No
  - c. If no, please explain
  
2. How many times, if any, did the dealer or manufacturer attempt to repair your car before you filed a claim with NCDS?
  - a. One time
  - b. Two times
  - c. Three times
  - d. Other (please specify)
  
3. How did you learn about the NCDS Non-Binding Automobile Warranty Arbitration Program?
  - a. Manufacturer Customer Service
  - b. Dealership
  - c. Glove-Box Materials
  - d. Internet
  - e. Brochures, literature, pamphlets
  - f. Attorney
  - g. Friends, family, co-workers
  - h. State government agency
  - i. Prior program knowledge
  - j. Other (please specify)
  
4. How did the manufacturer or dealer inform you of the Arbitration Program?
  - a. Talked over the phone
  - b. Sent information
  - c. Showroom poster
  - d. Other (please specify)

### Filing of Claim

The following questions relate to the actual filing of your claim with NCDS.

5. What method did you use to file your claim with NCDS?
  - a. E-File
  - b. Written Submission of Claim Form
6. How clear were the instructions for filing the Claim Form?
  - a. Very clear
  - b. Somewhat clear
  - c. Not clear
  - d. Do not know
7. When you filed your claim with NCDS, did you request a “documents-only” hearing?
  - a. Yes
  - b. No

***Pre-Hearing Process Questions***

The following questions pertain to your experience after you filed your claim with NCDS.

8. After you filed your claim with NCDS, how long did it take for NCDS to acknowledge your claim and initiate the administrative process?
  - a. One day
  - b. Two days
  - c. Three days
  - d. Greater than three days
9. Did you receive or review the Frequently Asked Questions (FAQ) Packet at [www.ncdsusa.org](http://www.ncdsusa.org)?
  - a. Yes
  - b. No
10. How clear was the information presented in the FAQ?
  - a. Very clear
  - b. Somewhat clear
  - c. Not clear
  - d. Do not know
11. How helpful was the information presented in the FAQ?
  - a. Very helpful
  - b. Moderately helpful
  - c. Not at all helpful
  - d. Do not know
12. Did you receive or review the Non-Binding Program Rules at [www.ncdsusa.org](http://www.ncdsusa.org)?
  - a. Yes
  - b. No
13. How clear were the Program Rules?
  - a. Very clear
  - b. Somewhat clear
  - c. Not clear
  - d. Do not know
14. How helpful was the Program Rules in explaining the arbitration process?
  - a. Very helpful

- b. Moderately helpful
- c. Not at all helpful
- d. Do not know

***Mediation Process Questions***

The following questions pertain to the settlement of your claim.

15. Before the case proceeded to arbitration, did you agree to settle your case with the manufacturer?
  - a. Yes
  - b. No
  
16. Which of the following best describes the relief provided in your settlement of the claim?
  - a. A refund or replacement, where the manufacturer would take back your car
  - b. A repair, where the manufacturer would try to fix the car, or examine it to determine the source of the problem
  - c. A reimbursement of expenses
  - d. Other (please specify)
  
17. Did you accept the settlement offer made by the manufacturer voluntarily?
  - a. Yes
  - b. No
  - c. If no, please explain
  
18. After you reached a settlement, did you receive a letter from NCDS explaining the terms of the settlement?
  - a. Yes
  - b. No
  
19. After you received your settlement confirmation, did you pursue your case further?
  - a. Yes
  - b. No
  
20. If so, please let us know the method you used.
  - a. Re-initiated contact with NCDS
  - b. Contacted an attorney
  - c. Contacted a state agency
  - d. Contacted dealer or manufacturer
  - e. Other (please specify)

***General Satisfaction Questions***

The following questions relate to your satisfaction levels with NCDS' staff.

21. How would you rate the timeliness of the communications between you and NCDS staff?
  - a. Excellent
  - b. Good
  - c. Fair
  - d. Poor
  
22. How would you rate the helpfulness of the NCDS staff?
  - a. Excellent
  - b. Good
  - c. Fair

- d. Poor
23. How would you rate your overall experience under the Arbitration Program?
- a. Excellent
  - b. Good
  - c. Fair
  - d. Poor
24. Would you recommend the Arbitration Program to friends and family?
- a. Yes
  - b. No
  - c. If no, please explain