

DIVISION OF CONSUMER SERVICES’
ANNUAL LEMON LAW REVIEW OF
CERTIFIED INDEPENDENT DISPUTE SETTLEMENT PROCEDURES
IMPLEMENTED THROUGH IMPLEMENTED THROUGH
DEMARS & ASSOCIATES d/b/a CAP-MOTORS
January 1, 2009 through December 31, 2009

I. BACKGROUND

A. Legislative Authority

Chapter 681, Florida Statutes, effective January 1, 1989, provides the authority for the Division of Consumer Services of the Department of Agriculture and Consumer Services (“Division”) to certify a manufacturer’s procedure for dispute settlement that substantially complies with Title 16 C.F.R. Part 703.1 et seq. (“Magnuson-Moss Act”), effective October 1, 1983; Chapter 681, Florida Statutes (“F.S.”); and Chapter 5J-11, Florida Administrative Code (“F.A.C.”).

B. Audit

Section 681.108(5), F.S., requires the Division to review each manufacturer’s certified procedure at least annually and prepare an annual report evaluating the operations of each certified procedure for compliance with the provisions of Title 16 C.F.R. Part 703, Chapter 681, F.S., (“Lemon Law”), and rules adopted thereunder. The staff of the Division’s Lemon Law Section conducts the review and prepares the annual evaluation report. This report is compiled for the calendar year beginning January 1, 2009, and ending December 31, 2009. The data gathering process includes an evaluation

of hearings, an office audit of the procedures' records, a review of data that is electronically submitted to the Division on a weekly basis by the procedures, a review of the procedures' arbitrator training processes, and a review of surveys sent to consumers who have participated in the procedures.

II. CERTIFIED PROCEDURES ADMINISTERED BY NATIONAL CENTER FOR DISPUTE SETTLEMENT

A. Manufacturers

Several manufacturers have established dispute settlement procedures since the enactment of the Magnuson-Moss Act. Below are the manufacturers that have established a certified procedure with the Division, implemented through DeMars & Associates, d/b/a CAP Motors ("CAP Motors"). From January 1, 2009, through May 31, 2009, Porsche Cars North America's ("Porsche") procedure was administered by National Center for Dispute Settlement ("NCDS"). Porsche initially established its certified procedure utilizing NCDS on July 1, 2003. On April 15, 2009, Porsche and NCDS notified the Division that NCDS would not be serving as the administrator for Porsche's procedure after May 31, 2009. Porsche and CAP Motors applied with the Division on April 10, 2009, to allow CAP Motors to serve as the administrator for Porsche's procedure. The Division reviewed the initial documents and the subsequent additional submittals required by the Division from Porsche and CAP Motors and determined the procedure to be administered by CAP Motors was substantially compliant with all governing laws and statutes for certification of the procedure. The Division notified Porsche on May 19, 2009, that its procedure would be certified effective June 1, 2009, through March 31, 2010, to be administered by CAP Motors.

B. CAP Motors

CAP Motors is a program of Demars & Associates. CAP Motors maintains an office at DeMars & Associates, 507 North Grand Avenue, Waukesha, Wisconsin. Ms. Jo Demars is President of Demars & Associates. Mr. David Dupree, Process & Compliance Manager, maintains oversight of the CAP Motors program.

No offices are maintained in Florida.

III. CAP MOTORS EVALUATION

A. Recordkeeping

All files for the program implemented by CAP Motors are maintained in the Waukesha, Wisconsin, office. CAP Motors has stated that it maintains in this office the records by manufacturer in a manner separate from other governmental jurisdictions in accordance with § 5J-11.009, F.A.C. A site review was not made during the current audit period.

Pursuant to § 681.108(3), F.S., and § 5J-11.007, F.A.C., claim dispositions should be submitted to Division within 30 days of rendition. CAP Motors has provided the Division its closed claim files via electronic transfer to the Division in a timely manner. The file provides the pertinent information regarding the disposition of each claim processed by CAP Motors.

B. Disputes/Claims

A consumer seeking to file a claim with a certified program administered by CAP Motors may contact CAP Motors by the use of a toll-free telephone number. A claim form is immediately sent to the consumer for completion. Claim forms are also provided

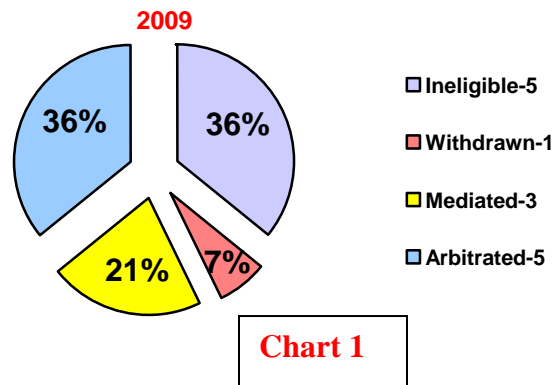
in Porsche's warranty materials. The forms are also available from the CAP Motors website. A claim is not initiated until the consumer returns the completed claim form.

Closed claims are categorized as ineligible, withdrawn, mediated, or arbitrated.

In order to accurately review the Porsche procedure, cases administered by NCDS from January 1, 2009, through May 31, 2009, are incorporated in this report with the claims administered by CAP Motors from June 1, 2009, through December 31, 2009.

NCDS submitted details for five (5) claims during 2009 in which 2 were declared ineligible, 1 was withdrawn by the consumer, 1 was resolved through mediation, and 1 was heard through arbitration. These will be reflected in claims shown below.

Details were submitted to the Division by NCDS and CAP Motors for 14 claims processed for 2009. The graphic below (Chart 1) depicts the percentage breakdown of the four categories of the total claims that were closed for the 2009 audit year.



Approximately 57% of the claims filed resulted in a decision through mediation or arbitration during year 2009.

The disposition of claims are categorized as those that were declared ineligible to participate in the program, withdrawn by the consumer from the program, settled through mediation by the program, or arbitrated by the program. Following is a description of

each claim disposition category and the awards provided in that disposition category:

1. Ineligible

These are disputes in which NCDS lacked contractual jurisdiction to process the case. There is no award available when a dispute is declared ineligible as the program is not required to process the claim, and the file is closed immediately. Examples of cases that are deemed ineligible include claims that are filed in an untimely manner or beyond the warranty or lemon law rights period, claims where the vehicle was purchased or leased by the consumer as “used”, truck claims in which the gross vehicle weight of the vehicle exceeded 10,000 pounds, claims where the vehicle was purchased or leased by the consumer outside the state of Florida, or claims where the alleged defect was the result of an accident or abuse.

Of the total 14 claims filed with the procedure, there were 5 cases categorized as ineligible. Division staff reviewed these files to ensure that adequate documentation supporting the determination of non-jurisdiction was evident.

2. Withdrawn

These are claims that were withdrawn by the consumer. Since the claim was withdrawn by the consumer, no determination was made by the program. The disputes were withdrawn by the consumer for various reasons, including the consumer decided to trade the vehicle, the consumer decided not to pursue the dispute for personal reasons, or the consumer determined the problem had been corrected. 1 claim was withdrawn by the consumer during the audit period.

3. Mediated

These are disputes in which the consumer filed a claim with the procedure, then the manufacturer and consumer subsequently entered into an agreement resolving the dispute prior to an arbitration hearing. There were 3 case files closed through mediation. This process is typically completed within 7-10 days of the consumer filing a claim.

The manufacturer agreed to repurchase or replace the vehicle in 2 cases. One (1) consumer accepted an additional repair attempt.

4. Arbitration

These are disputes in which the consumer filed a claim with the procedure and it conducted an arbitration hearing wherein a decision was rendered. There were e cases closed through arbitration during the audit period.

No relief was provided for 4 consumers. 1 consumer was awarded an additional repair attempt.

The chart below (Chart 2) combines all arbitrated and mediated claims. The chart reflects the awards given to consumers by percentage and numeric count. 25% of the claims mediated or arbitrated resulted in a repurchase or replacement of the vehicle. 25% of those received an award of an additional repair attempt. 50% of the claims were dismissed with no award.

2009 Awards for 8 Mediated and Arbitrated Cases

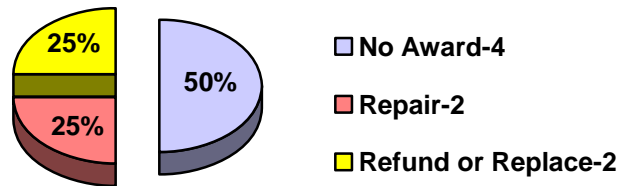


Chart 2

C. Arbitrators/Arbitrator Training

Arbitrators for the procedure are located in Florida. Arbitrators are provided a training manual that is Florida specific including applicable law, program summary, forms and letters, and sample cases. They are also provided with an online PowerPoint training which explains the manual and practices for conducting an arbitration hearing. They are given a test and asked to write a decision letter based on a sample case. Upon review of the applicant's responses, CAP Motors may or may not appoint the individual as a CAP Motors arbitrator.

D. Hearings/Hearing Locations

§ 5J -11.011, F.A.C., requires that all hearings be held no more than 75 miles from the consumer's residence. During the audit period, surveys were sent to all consumers who utilized the procedure. The surveys returned indicated that no consumers were required to travel more than 75 miles to participate in an arbitration hearing, complying with § 5J-11.011(3), F.A.C.

Title 16 C.F.R. Part 703.5(d)(1) requires consumer disputes to be processed as expeditiously as possible and that a decision be rendered within 40 days of the commencement of the action by the consumer. Data for the audit period indicated the

procedure's average time for handling all cases (ineligible, withdrawn, mediated, and arbitrated) was 24 days. There was no resolution to a claim that exceeded 40 days.

E. Independent Audit

Title 16 C.F.R. Part 703.7(a) requires each manufacturer participating in a certified program to have an audit prepared at least annually by an independent auditor to ensure compliance with the provisions of federal law. § 681.108(4), F.S., and § 5J-11.010, F.A.C., require that each manufacturer file with Division a copy of the independent audit report by July 1st of the following year. The 2008 audit submitted by NCDS was received in a timely fashion and addressed Florida specific data required by § 681.108(4), F.S., and § 5J-11.010(2), F.A.C. The audit for 2009 reporting on the procedure as administered by NCDS and CAP Motors is due to be received by the Division on or before June 30, 2010.

IV. REPORT SUMMARY

The arbitrator pool maintained by the procedure is sufficient for the Florida case load, complying with Title 16 C.F. R. Part 703.4. The arbitrators are knowledgeable in the applicable federal law and Florida Lemon Law. The instruction and training materials utilized were sufficient, substantially complying with 16 C.F.R. Part 703.3(a) and covering Chapter 681, F.S. Detailed Florida-specific training was provided to the arbitrators. The procedure should continue to provide Florida specific training to its arbitrators. The arbitrator pool, training, and arbitrator performance is substantially compliant with the provisions of the governing statutes.

Title 16 C.F.R. Part 705(d) provides for the timely processing of claims within 40 days. The procedure substantially complies with these requirements. However, in order to expedite the claims and ensure timely filing issues that may face the consumer, the Division staff recommends that CAP Motors initiate the claim upon receipt of a consumer's call by collecting the data required by § 5J-11.005, F.A.C., rather than create delays in the filing of a claim by awaiting the return of the claim form.

Records are submitted within 30 days to the Division, in compliance with § 5J-11.007, F.A.C. The materials include the claim initiation date, the time and place of the hearing, the name and address of the claimant, the name of the arbitrator, days to resolve, the vehicle VIN, decision sought, and the decision. The records are submitted timely, substantially complying with § 5J-11.007, F.A.C., and § 681.108(3), F.S.

The procedure's hearing sites in Florida comply with the 75-mile requirement of Rule 5J-11.011(3), F.A.C.

V. RECCOMENDATION

The dispute settlement procedure administered by CAP Motors substantially complies with Chapter 681, F.S., 5J-11, F.A.C., and Title 16 C.F.R. Part 703.

Considering the documentation and information included in this report, the Division staff recommends the re-certification of the informal dispute settlement procedure implemented by CAP Motors for Porsche through March 31, 2011, in accordance with Chapter 681, F.S.