

**DIVISION OF CONSUMER SERVICES’  
ANNUAL LEMON LAW REVIEW OF  
CERTIFIED INDEPENDENT DISPUTE SETTLEMENT PROCEDURES  
IMPLEMENTED THROUGH NATIONAL CENTER FOR DISPUTE  
SETTLEMENT**

**January 1, 2004 through December 31, 2004**

**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 (Department) 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, (Motor Vehicle Warranty Enforcement Act); and Chapter 5J-11, Florida Administrative Code.

**B. Audit Process**

Section 681.108(5), F.S., requires the Department to review each 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 and Chapter 681, F.S., and rules adopted thereunder. The Staff of the Department of Agriculture and Consumer Services, Lemon Law Section, conducts the review and prepares the annual evaluation report. The report is compiled for the fiscal year beginning January 1<sup>st</sup> and ending December 31<sup>st</sup>. The data gathering process includes an

evaluation of hearings, a review of the office records, a review of the training process, and a review of surveys sent to consumers who participated in the process.

Title 16 C.F.R. Part 703.7(a) requires each manufacturer currently 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. Section 681.108(4), F.S., and Chapter 5J-11, F.A.C., require that each manufacturer file with the Division a copy of the independent audit report by July 1<sup>st</sup> of the following year.

## **II. CERTIFIED DISPUTE SETTLEMENT PROCEDURES**

### **A. Dispute Settlement Procedures**

Several manufacturers have established dispute settlement procedures since the enactment of the Magnuson-Moss Act. Below are the manufacturers that have established certified procedures with the Department, implemented through the National Center for Dispute Settlement (NCDS). The listing indicates the manufacturer, the initial date of the certification of their current procedure, and the termination date, if any, with the implementing program. All certifications expired December 31, 2003.

| <u>Manufacturer</u> | <u>Certification Date</u> | <u>Expiration Date</u> |
|---------------------|---------------------------|------------------------|
| • Lexus             | Pending                   | Pending                |
| • Porsche           | July 1, 2003              | December 31, 2003      |
| • Toyota            | July 1, 2003              | December 31, 2003      |

Porsche and Toyota established programs implemented by NCDS that were certified by the Department on July 1, 2003. Toyota did not have a certified procedure in place as of that date. Porsche had a program implemented by Better Business Bureau – Auto Line

(BBB) that was effective through December 31, 2003. The Department was notified by BBB that the contractual relationship between BBB and Porsche had been terminated. The BBB stated no Porsche case would be accepted by BBB after April 7, 2003; however, claims received prior to that date would be processed to completion.

Lexus also previously utilized the BBB program. The Department was notified by BBB that Lexus had terminated its contract with BBB and no claims from Lexus consumers would be accepted after November 7, 2003. Claims received prior to that date would be processed to completion. A request in a letter from NCDS, dated November 7, 2003, was received by the Department for the establishment of a certified procedure for Lexus through NCDS. At the end of the audit period, this request remained under consideration by the Department.

## **B. National Center for Dispute Settlement**

The NCDS maintains an office at 2777 Stemmons Freeway, Dallas, Texas. No offices are maintained in Florida. Arbitration hearings are conducted via telephone from the Dallas office or from miscellaneous Florida sites procured by NCDS.

The NCDS program is administered by Mr. Marshall E. Lippman, Esq.; Mr. Craig Olson, Vice President of Dispute Settlement Services; and Mr. Brian Dunn, Director of Dispute Settlement Services.

Staff visited the offices of NCDS on October 10, 2003, to review the recordkeeping processes of the program. A brief overview of the intake and record retention processes was provided by NCDS staff. The records at the time were limited and no audit was performed. It was noted at the time that the files for Florida consumers

were not maintained in a manner separate from other government jurisdictions in accordance with s. 5J-11.009, F.A.C., but rather were maintained by regions.

On October 11<sup>th</sup> and 12<sup>th</sup>, Division staff observed the arbitrator training process of NCDS. The coverage of Magnuson-Moss Act was sufficient. However, there was no specific coverage of the Florida Lemon Law. NCDS informed staff that the Florida law would be covered at a later time. No evidence of such coverage has been provided to the Department.

The Department has not been provided any additional information regarding records or hearings during the audit period. NCDS failed to submit proper documentation within 30 days after a decision is rendered as required by s. 681.108(3), F.S., and s. 5J-11.007, F.A.C., during the audit period. Although there have been some files received by the Department, the receipt of the files occurred after the audit period and are not reflected in this report.

### **III. RECOMMENDATIONS/CONCLUSIONS**

NCDS has not complied with the provisions of Chapter 681, F.S., and Rule 5J-11, F.A.C., concerning the submission of records during the audit period. Additionally, the records are not maintained in the Dallas office in the manner prescribed under s. 5J.11.009, F.A.C. The Department staff recommends that re-certification of the NCDS program for Toyota and Porsche be issued until August 31, 2004, pending a further review of records and reporting processes of NCDS, in accordance with Chapter 681, F.S. and Rule 5J.11, F.A.C.