

**DIVISION OF CONSUMER SERVICES’
ANNUAL LEMON LAW REVIEW OF
CERTIFIED INDEPENDENT DISPUTE SETTLEMENT PROCEDURES
IMPLEMENTED THROUGH IMPLEMENTED THROUGH
NATIONAL CENTER FOR DISPUTE SETTLEMENT
January 1, 2006 through December 31, 2006**

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 (Motor Vehicle Warranty Enforcement Act, a.k.a. Lemon Law); and Chapter 5J-11, Florida Administrative Code.

B. Audit

Section 681.108(5), F.S., requires 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., and rules adopted thereunder. The staff of 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, 2006, and ending December 31, 2006. The data gathering process includes an evaluation of hearings, a review of

office records, including data that is electronically submitted to Division on a weekly basis, a review of the procedure's arbitrator training process, and a review of surveys sent to consumers who have participated in the process.

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 certified procedures with Division, implemented through National Center for Dispute Settlement (NCDS). The listing below reflect the manufacturers and their initial date of certification.

- Lexus April 17, 2004
- Porsche July 1, 2003
- Toyota July 1, 2003

The expiration date for each of the certified procedures listed above is December 31, 2006.

B. National Center for Dispute Settlement

NCDS maintains an office at 2777 Stemmons Freeway, Dallas, Texas, where Mr. Craig Olson, Senior Vice President of Dispute Settlement Services directs the programs.

NCDS also maintains an office at 22500 Metropolitan Parkway, Suite 200, Clinton Township, Michigan. This office is directed by Ms. Deborah L. Leach, Manager of Case Administration and Arbitration for NCDS.

No offices are maintained in Florida.

III. NCDS EVALUATION

A. Recordkeeping

All files for the programs implemented by NCDS are maintained in the Dallas office. The Florida records are maintained in the Dallas office by manufacturer in a manner separate from other governmental jurisdictions in accordance with Rule 5J-11.009, F.A.C.

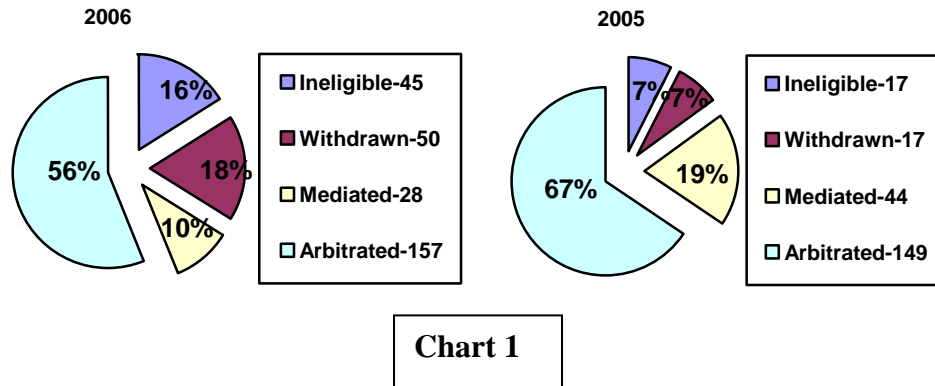
Ms. Leach of the Michigan office informed Division in late 2006 that the Porsche program would be administered through that office. At the request of Division a copy of the Porsche files were to also be maintained in the Dallas office.

NCDS agreed to provide Division a weekly claims report to be submitted via electronic transfer to Division. The report provides the pertinent information regarding the disposition of each claim processed by NCDS for that week. This report in the beginning of the calendar year was submitted sporadically by NCDS. 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. The issue of timeliness of the claims reports was raised with NCDS and it immediately complied with the statutory requirements.

B. Disputes/Claims

A consumer seeking to file a claim with NCDS may contact it by the use of a toll-free telephone number. Division initiated several test calls at the beginning of the year. Most often the staff caller was sent to a voicemail and a return call was not received promptly from NCDS. NCDS was given notice of its failure to have personnel available to receive consumer calls, thereby creating potential timeliness issues for consumers. NCDS immediately addressed this issue and corrected it.

NCDS submitted details to the Division for 280 claims processed for 2006. The claims are categorized as ineligible, withdrawn, mediated, or arbitrated. The chart below (Chart 1) depicts the percentage breakdown in the four categories of the total claims that were closed for the 2006 audit year and a comparative chart for 2005.



Approximately 66% of the claims filed with NCDS resulted in a settlement through mediation or arbitration during year 2006 compared to 86% in 2005.

The following table (Table 1) provides the claim dispositions by type that were processed for each certified program implemented by NCDS during the current audit year.

Manufacturer	Ineligible	Withdrawn	Mediated	Arbitrated	Total
Lexus	3	19	2	25	49
Porsche	0	2	1	1	4
Toyota	42	29	25	131	227
TOTAL	45	50	28	157	280

Table 1

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 period, claims where the vehicle was purchased or leased by the consumer as “used”, claims in which the gross vehicle weight of the vehicle exceeded 10,000 pounds, or claims where the vehicle was purchased or leased by the consumer outside the state of Florida.

Of the total 280 claims filed with NCDS, there were 45 cases categorized as ineligible. Division staff reviewed these files to ensure that adequate documentation supporting NCDS’ determination of non-jurisdiction was evident.

2. Withdrawn

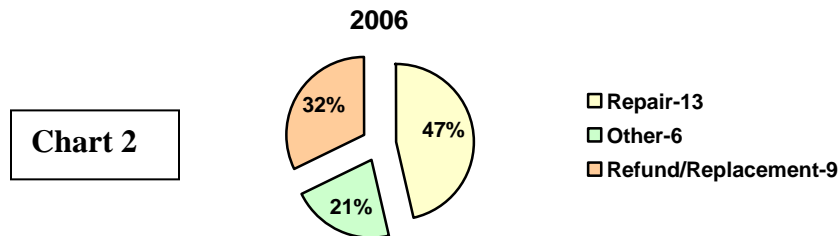
These are claims that were withdrawn by the consumer. Since the claim was withdrawn by the consumer, no determination was made by the program. The disputes were withdrawn by the consumer for various reasons, including the consumer decided to trade the vehicle, the consumer decided not to pursue the dispute for personal reasons, or the consumer determined the problem had been corrected. 50 claims were withdrawn by the consumer during the audit period.

3. Mediated

These are disputes in which the consumer filed a claim with NCDS, and then the manufacturer and consumer subsequently entered into an agreement resolving the dispute prior to NCDS conducting an arbitration hearing. There were 28 NCDS 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 9 cases. 13 consumers accepted an additional repair attempt. In 6 cases, the disputes were settled through other types of offers such as trade assistance, trade allowances, reimbursement for repairs, or extended warranties.

The chart below (Chart 2) shows the breakdown of the mediated cases:



The following table (Table 2) provides a breakdown by manufacturer of the awards received through mediation. These awards are directly attributed to the manufacturer, as the settlement is an agreement reached between the manufacturer and consumer without any outside intervention through arbitration.

Manufacturer	Repair	Replace/Refund	Other	Total
Lexus	0	2	0	2
Porsche	0	0	1	1
Toyota	13	7	5	25
TOTAL	13	9	6	28

Table 2

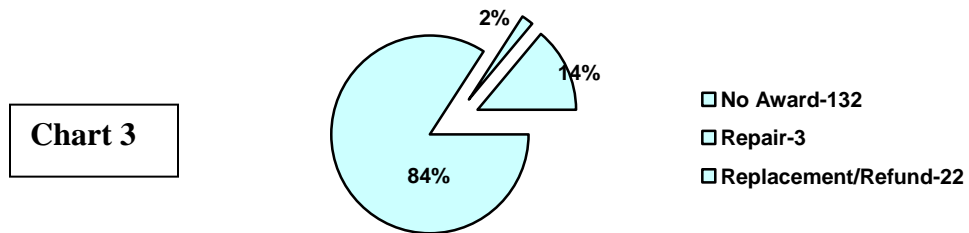
4. Arbitration

These are disputes in which the consumer filed a claim with NCDS and it conducted an arbitration hearing wherein a decision was rendered.

There were 157 cases closed through arbitration during the audit period. This constituted 56% of the claims filed with NCDS.

NCDS arbitrators awarded a replacement vehicle or a refund to 22 consumers. 132 consumers were granted no relief. 3 consumers were awarded an additional repair attempt.

The chart below (Chart 3) shows the breakdown of the arbitrated cases:



The following table (Table 3) provides a breakdown by manufacturer of the awards received as the result of an arbitration hearing:

Manufacturer	No Award	Repair	Refund/Replace	Total
Lexus	20	0	5	25
Porsche	1	0	0	1
Toyota	111	3	17	130
TOTAL	132	3	22	157

Table 3

The chart below (Chart 4) combines all arbitrated and mediated claims. The chart reflects the awards given to consumers by percentage. 16% of the claims mediated or arbitrated resulted in a repurchase or replacement of the vehicle. In 18% of the claims, consumers received an award other than a repurchase or replacement. 66% of the claims were dismissed with no award.

2006 Awards for 185 Arbitrated & Mediated Claims

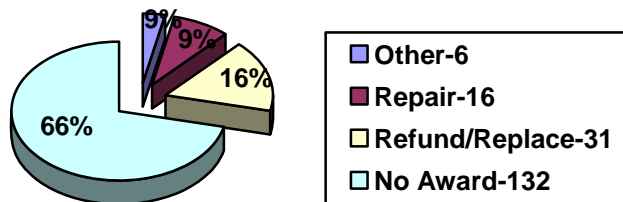


Chart 4

C. Arbitrators/Arbitrator Training

On February 17, 2006, Division staff attended NCDS Florida specific training for Florida arbitrators in Plantation, Florida. Twenty three potential arbitrators were in attendance. Craig Olsen, Senior VP of NCDS and Mary Bedikian, legal counsel for NCDS, conducted the training.

The training manual sufficiently covered all aspects of the Florida Lemon Law and the federal Magnuson-Moss Act. The training sessions provided excellent coverage of the governing laws and were Florida specific.

Following the formal training, there is minimal assistance for arbitrators or monitoring of arbitrators provided by NCDS staff, as has been previously discussed with NCDS by Division staff. NCDS indicated that a program to specifically monitor new arbitrators was to be implemented in Florida, but Division has not been aware of such a program.

The decisions of the arbitrators meet the standards set forth by s. 481.108(2)(f), F.S., and Rule 5J-11.011(2), F.A.C.

D. Hearings/Hearing Locations

NCDS provides two options for consumers to choose from with respect to their arbitration hearing. Consumers may select (1) submission of documents only for an arbitrator panel to review; or (2) to personally attend a hearing at a site in close proximity to their residence, typically at a dealership, to be heard by an arbitrator or arbitrator panel.

When a consumer chooses option 1, all documentation and a statement of fact are prepared by the consumer and sent to the Dallas office. This is forwarded to the manufacturer, who prepares a written response. The consumer is provided a copy of that statement and allowed to respond. The documents are then reviewed by a 3-member arbitrator panel and a decision rendered. There is no opportunity for rebuttal or to present additional evidence.

If the consumer chooses option 2, arbitration hearings are performed at a site near the residence of the consumer. Lexus hearings are conducted by a three arbitrator panel

at a site other than a dealership. Porsche hearings are conducted by a single arbitrator at a site other than a dealership. Toyota hearings are typically conducted by a single arbitrator at a Toyota dealership.

Rule 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 NCDS's process. The surveys returned indicated that no consumers were required to travel more than 75 miles to participate in an arbitration hearing, complying with Rule 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 NCDS' average time for handling all cases (ineligible, withdrawn, mediated, and arbitrated) was 32.19 days.

Division staff identified 78 cases, or approximately 28% of the cases arbitrated by NCDS, that were closed after 40 days. Claims that exceeded 40 days took an average of 54.91 days to close. These cases were extended due to the arbitrator's request for a technical report or at the consumer's request to keep the case open for various reasons.

Data received from NCDS reflected that 31 arbitrators were utilized in its arbitration hearing processes. NCDS utilized 12 more arbitrators than the previous audit period. The average number of arbitrations heard by any arbitrator during the audit period was approximately nine. This is approximately the same case load as the prior year. The distribution of cases was again equitable with few exceptions.

It was observed that the arbitrators appropriately controlled the hearings and provided a nonbiased atmosphere. Hearings observed by Division staff reflect that the arbitrators do maintain the appropriate insulation from the manufacturer and consumer.

The previous year's report noted that the replacement or refund decisions provided by the arbitrators included mileage offsets for usage, but did not set forth the specific terms of the decision as required by Rule 5J-11.006(2)(b), F.A.C. The cases reviewed by Division staff during the current review period reflected that the decisions of arbitrators did include specific terms as required. This is indicative of the more Florida specific training conducted by NCDS.

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. Section 681.108(4), F.S., and Chapter 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 2005 audit of NCDS' programs for all certified manufacturers was submitted June 2, 2006, in a timely fashion. The audit was detailed and well prepared. The audit submitted by NCDS' auditor addressed Florida specific data required by Chapter 681.108(4), F.S., and Rule 5J-11.010(2), F.A.C.

IV. REPORT SUMMARY

NCDS is commended for the improvements and corrective actions it implemented during the current audit year to correct deficiencies noted in the previous audit and during the review period.

The arbitrator pool maintained by NCDS 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. NCDS should continue to provide Florida specific training to its arbitrators. NCDS should continue to discuss with its arbitrators the process of conducting hearings and providing the required insulation from the manufacturer.

NCDS should implement a procedure to monitor its arbitrators' performance more closely. The initial and refresher training are sufficient and the information bulletins are helpful; however, on-site monitoring with a critique of case handling should be implemented.

Title 16 C.F.R. Part 705(d) provides for the timely processing of claims within 40 days. 28% of the claims submitted to NCDS exceeded the 40 day requirement to render a decision due to consumer requests or arbitrator requests. NCDS should continue its efforts to eliminate the number of claims exceeding 40 days.

Records are submitted each week to Division, in compliance with Rule 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, and the vehicle used to

conduct the hearing. The electronic records do not include the names of the manufacturers' representatives; however, this information is included in the hard-copy files submitted to Division. NCDS should ensure the timely submission of decisions to Division.

NCDS maintains adequate hearing sites in Florida complying with the 75-mile requirement of Rule 5J-11.011(3), F.A.C. Division will continue to monitor the issue of dealership hearing sites closely. NCDS is also urged to monitor the insulation concerns of these sites.

V. RECCOMENDATION

The dispute settlement procedures administered by NCDS substantially comply 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, Division staff recommends the re-certification of the informal dispute settlement procedures implemented by NCDS for Lexus, Porsche, and Toyota through December 31, 2007, in accordance with Chapter 681, F.S.