

**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, 2007 through December 31, 2007**

**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, 2007, and ending December 31, 2007. 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 certified procedures with the Division, implemented through National Center for Dispute Settlement ("NCDS"). The listing below reflects the manufacturers and their initial date of certification.

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

On December 21, 2007, the Division recertified all procedures listed until March 31, 2008. The expiration date for each of the certified procedures listed was previously December 31, 2007.

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

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

NCDS also maintains an office at 22500 Metropolitan Parkway, Suite 200, Clinton Township, Michigan. Ms. Deborah L. Lech is the Dispute Resolution Operations Manager for NCDS and manages the programs from this office.

No offices are maintained in Florida.

### **III. NCDS EVALUATION**

#### **A. Recordkeeping**

All files for the programs implemented by NCDS were moved from the office in Dallas during the audit period and are now maintained in the Clinton Township, Michigan, office. An on-sight inspection and review of the files was conducted by Division staff on October 8-9, 2007, at the Clinton Township, Michigan, office.

The Florida records were found to be maintained in this office by manufacturer in a manner separate from other governmental jurisdictions in accordance with § 5J-11.009, F.A.C.

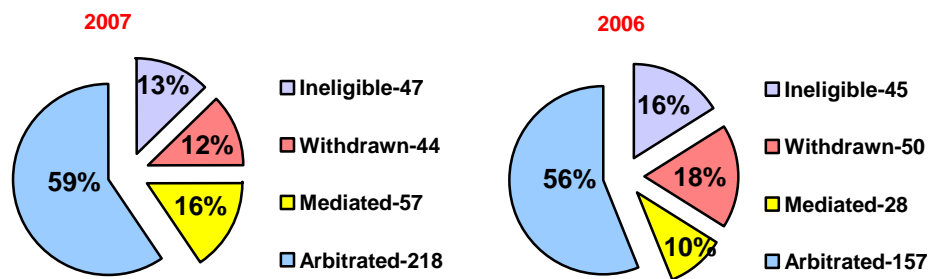
Pursuant to § 681.108(3), F.S., and § 5J-11.007, F.A.C., claim dispositions should be submitted to Division within 30 days of rendition. NCDS provides the Division daily closed claim files that are submitted via electronic transfer to the Division. The file is the complete NCDS file providing the pertinent information regarding the disposition of each claim processed by NCDS.

#### **B. Disputes/Claims**

A consumer seeking to file a claim with a certified program administered by NCDS may contact NCDS by the use of a toll-free telephone number. Florida calls are answered promptly by NCDS staff within the Michigan office. Florida calls were handled by appointed NCDS staff specific to a manufacturer. Observing staff it was

noted that they were professional and knowledgeable. Upon receiving a Florida call, NCDS staff input the consumer's name, address, and vehicle type. A claim form is immediately sent to the consumer for completion. A claim is not initiated until the consumer returned the completed claim form.

NCDS submitted details to the Division for 366 claims processed for 2007. This was an increase of 86 claims, or 24%, from the previous year. 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 2007 audit year and a comparative chart for 2006.



**Chart 1**

Approximately 75% of the claims filed with NCDS resulted in a settlement through mediation or arbitration during year 2007 compared to 66% in 2006. Claims that were mediated and withdrawn prior to arbitration showed the largest increases in claim settlements. Also, the percentage of ineligible claims was noted as having decreased the most.

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.

<b>Manufacturer</b>	<b>Ineligible</b>	<b>Withdrawn</b>	<b>Mediated</b>	<b>Arbitrated</b>	<b>Total</b>
<b>Lexus</b>	2	13	9	20	44
<b>Porsche</b>	0	3	0	3	6
<b>Toyota</b>	45	28	28	195	316
<b>TOTAL</b>	47	44	44	218	366

**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”, 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 366 claims filed with NCDS, there were 47 cases categorized as ineligible. Division staff reviewed these files to ensure that adequate documentation supporting NCDS' determination of non-jurisdiction was evident.

## **2. Withdrawn**

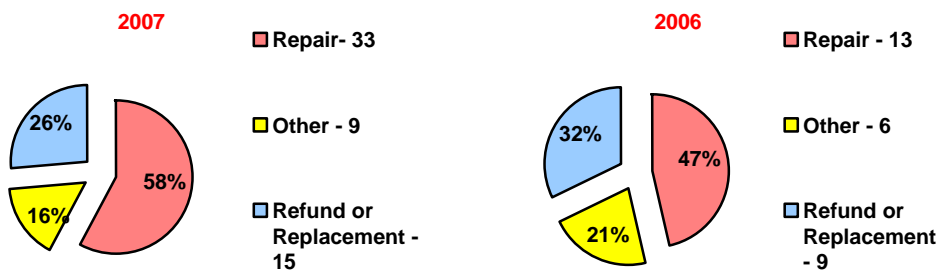
These are claims that were withdrawn by the consumer. Since the claim was withdrawn by the consumer, no determination was made by the program. The disputes were withdrawn by the consumer for various reasons, including the consumer decided to trade the vehicle, the consumer decided not to pursue the dispute for personal reasons, or the consumer determined the problem had been corrected. 44 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 57 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 15 cases. 33 consumers accepted an additional repair attempt. In 9 cases, the disputes were settled through other types of offers such as trade assistance, trade allowances, reimbursement for repairs (2), or extended warranties (7).

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



**Chart 2**

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 arbitration.

Manufacturer	Repair	Replace/Refund	Other	Total
Lexus	1	8	0	9
Porsche	0	0	0	0
Toyota	33	7	9	48
<b>TOTAL</b>	33	15	9	57

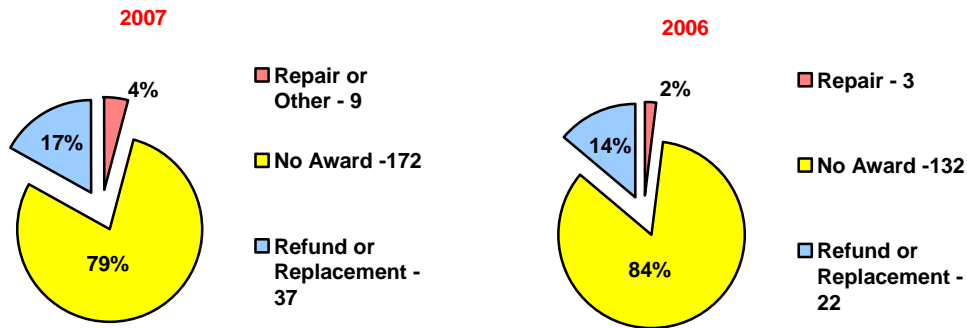
**Table 2**

#### 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 218 cases closed through arbitration during the audit period. This constituted 59% of the claims filed with NCDS.

NCDS arbitrators awarded a replacement vehicle or a refund to 37 consumers. 172 consumers were granted no relief. 9 consumers were awarded an additional repair attempt or reimbursement for repairs.

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



**Chart 3**

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	Other	Refund/Replace	Total
Lexus	17	0	0	3	20
Porsche	3	0	0	0	3
Toyota	152	7	2	34	195
<b>TOTAL</b>	172	7	2	37	218

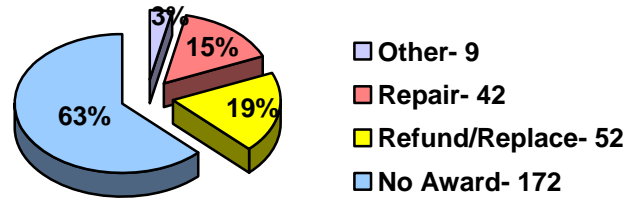
**Table 3**

The chart below (Chart 4) combines all arbitrated and mediated claims.

The chart reflects the awards given to consumers by percentage and numeric count. 19% 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. 63% of the claims were dismissed with no award.

**2007 Awards for 275 Arbitrated & Mediated Claims**



**Chart 4**

### **C. Arbitrators/Arbitrator Training**

In February NCDS conducted a Florida specific arbitrator training in Fort Lauderdale. This training covered all aspects of the Florida Lemon Law and the federal Magnuson-Moss Act. The training sessions provided coverage of the governing laws and were Florida. The training is designed for new arbitrators and as a refresher for arbitrators currently being utilized by NCDS.

Following the formal training, NCDS indicated that a program to specifically monitor new arbitrators was to be implemented in Florida. This program is to be implemented by having an arbitrator observe hearings being conducted by new arbitrators or having NCDS staff in Michigan monitor the hearing via telephone conference call.

### **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.

The Division staff monitored numerous NCDS hearings during the report period via telephone conference call. Staff reported that the hearings were conducted in a professional manner by the arbitrators. It was stated in staff reports that the arbitrators maintained control of the hearing and allowed each party ample time to present their case. It was observed that the arbitrators provided a nonbiased atmosphere.

It was observed by Division staff that the written submission only hearings were seldom discussed by the panel and a decision was rendered without argument of the issues. However, the written decisions submitted to the Division did address the issues as required by the governing statute. The Division staff has frequently in the past expressed concerns regarding document only hearings. NCDS informed the Division staff in October that document only hearings would be moved from Dallas to a Florida location accessible to Division staff in early 2008.

§ 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 27 days.

Division staff identified 24 cases compared to 78 cases the previous year. Claims that exceeded 40 days took an average of 47 days to close. This was a reduction of 8 days from the prior year. 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 33 arbitrators were utilized in its arbitration hearing processes. The average number of arbitrations heard by any arbitrator during the audit period was approximately thirteen. The distribution of cases was again equitable with few exceptions.

#### **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 1<sup>st</sup> of the following year. The 2006 audit of NCDS' programs for all certified manufacturers was submitted June 15, 2007, in a timely fashion. The audit was detailed and well prepared. The audit submitted by NCDS' auditor addressed Florida specific data required by § 681.108(4), F.S., and § 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 and concerns noted in the previous audit and during the review period. The Division staff commends NCDS for addressing the issues of documents only hearings and the monitoring of arbitrators.

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 implemented 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 implemented by NCDS is to be commended.

Title 16 C.F.R. Part 705(d) provides for the timely processing of claims within 40 days. NCDS 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 NCDS initiate the claim upon receipt of a 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 daily to 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, and the vehicle used to conduct the hearing. The records are submitted timely by NCDS substantially comply with § 5J-11.007, F.A.C., and § 681.108(3), F.S.

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, the Division staff recommends the re-certification of the informal dispute settlement procedures implemented by NCDS for Lexus, Porsche, and Toyota through March 31, 2009, in accordance with Chapter 681, F.S.