

**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, 2008 through December 31, 2008**

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, 2008, and ending December 31, 2008. 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 National Center for Dispute Settlement ("NCDS"). The listing below reflects the manufacturer and their initial date of certification.

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

The current certification of the procedures listed is effective until March 31, 2009.

B. National Center for Dispute Settlement

NCDS maintains an office at 105 Decker Court, Suite 350, Irving, 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 Lech Shubnell is the Dispute Resolution Operations Manager for NCDS and manages the programs through the Michigan office.

No offices are maintained in Florida.

III. NCDS EVALUATION

A. Recordkeeping

All files for the programs implemented by NCDS are maintained in the Clinton Township, Michigan, office. The Florida records have been found during previous staff site visits 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. 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. NCDS daily provides the Division its 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 in the Michigan office. 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 391 claims processed for 2008. This was an increase of 25 claims, or 6%, from the previous year. The claims are categorized as ineligible, withdrawn, mediated, or arbitrated. The graphic below (Chart 1) depicts the percentage breakdown in the four categories of the total claims that were closed for the

2008 audit year and a comparative graphic for 2007.

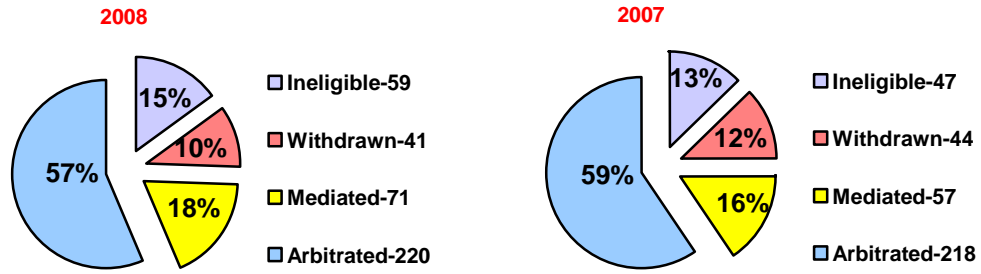


Chart 1

Approximately 75% of the claims filed with NCDS resulted in a settlement through mediation or arbitration during year 2008, the same percentage as the previous year. Claims that were mediated increased 2% over the prior year eliminating the need for arbitration.

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	7	15	11	23	56
Porsche	3	4	0	3	10
Toyota	49	22	60	194	325
TOTAL	59	41	71	220	391

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 391 claims filed with NCDS, there were 59 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. 41 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 71 NCDS case files closed through mediation. This process is typically completed within 7-10 days of the consumer filing a claim. The cases mediated by the Toyota program for the year 2008 increased substantially compared to the previous year. Toyota mediated cases increased from 28 in year 2007 to 60 in year 2008.

The manufacturer agreed to repurchase or replace the vehicle in 27 cases. 39 consumers accepted an additional repair attempt. In 5 cases, the disputes were settled through other types of offers such as reimbursement for repairs (2) or extended warranties (3).

The graphics below (Chart 2) shows the mediated cases for year 2008 compared to year 2007:

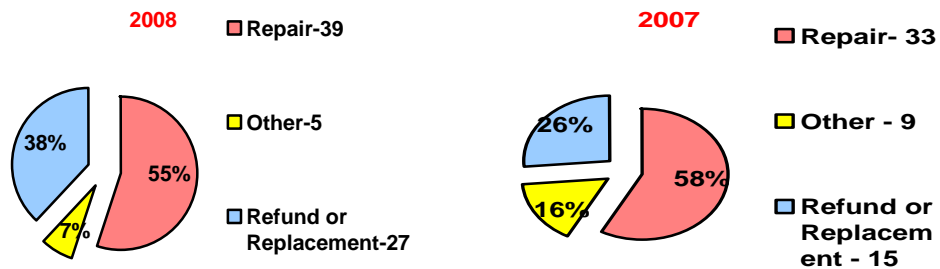


Chart 2

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	0	11	0	11
Porsche	0	0	0	0
Toyota	39	16	5	60
TOTAL	39	27	5	71

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 220 cases closed through arbitration during the audit period. 57% of the claims filed with NCDS were resolved through arbitration.

NCDS arbitrators awarded a replacement vehicle or a refund to 49 consumers. No relief was provided for 163 consumers. 6 consumers were awarded an additional repair attempt and 2 were awarded other awards including reimbursement for repairs.

The chart below (Chart 3) shows a comparison of the arbitrated cases for the current audit year of 2008 and the previous year:

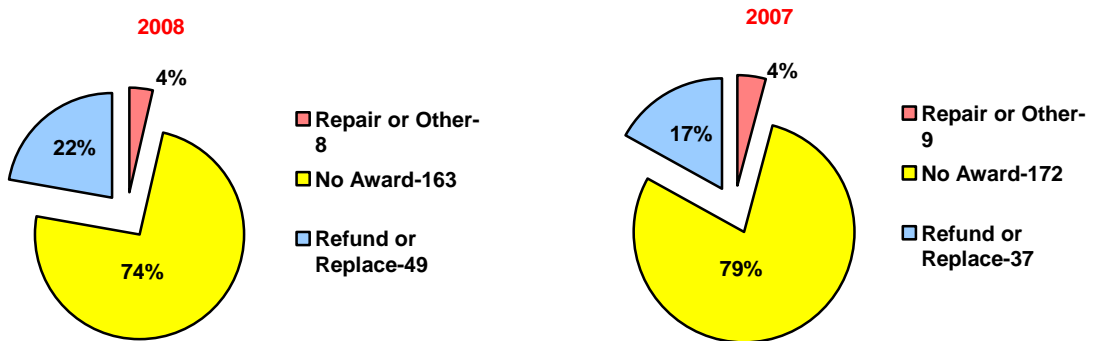


Chart 3

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	6	23
Porsche	2	0	0	1	3
Toyota	144	6	2	41	194
TOTAL	163	6	2	49	220

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. 25% of the claims mediated or arbitrated resulted in a repurchase or replacement of the vehicle, an increase of 6% from the previous year. In 18% of the claims, consumers received an award other than a repurchase or replacement. 16% of those received an award of an additional repair attempt. 57% of the claims were dismissed with no award, a reduction of 6% from the previous year.

2008 Awards for 291 Mediated and Arbitrated Cases

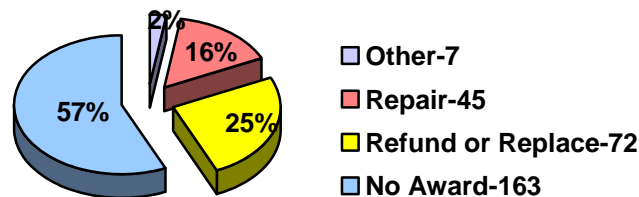


Chart 4

C. Arbitrators/Arbitrator Training

On March 12, 2008, NCDS conducted a Florida specific arbitrator training in Fort Lauderdale that staff attended. 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 specific. The training is designed for new arbitrators and as a refresher for arbitrators currently being utilized by NCDS. NCDS also conducts arbitrator training in Dallas, Texas, but this training is specific to Florida Lemon Law.

During the previous year audit period, NCDS indicated that a program to specifically monitor new arbitrators was to be implemented in Florida. This program was implemented by having an arbitrator observe hearings being conducted by new arbitrators and 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 Michigan 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. These hearings were previously held at the Dallas office. During the audit period NCDS implemented document only panel hearings from a public site in Lakeland, FL. These hearings are conducted by Florida arbitrators.

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. Staff attended documents only hearing in Lakeland on different occasions. Staff reported that the hearings were conducted in a professional manner by the arbitrators. Staff attended hearings in Sanford, Jacksonville, Clearwater, and Tallahassee in which the consumer participated. Staff also monitored hearings in various other cities in which the consumer participated via telephone conference call. 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.

§ 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 § 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 26 days.

Division staff identified 11 cases that exceeded 40 days, compared to 24 cases the previous year. All 11 of those claims were closed in 41 days.

Data received from NCDS reflected that 30 arbitrators were utilized in its arbitration hearing processes. The average number of arbitrations heard by any arbitrator during the audit period was approximately eight.

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 2007 audit of all certified manufacturers' programs administered by NCDS was submitted June 16, 2008, which was in a timely fashion. The audit was detailed and well prepared. The audit submitted by the 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. The Division staff lauds NCDS for addressing the issues of documents only hearings by a Florida board 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 implemented a procedure to monitor its arbitrators' performance more closely. NCDS provides its arbitrators information bulletins that are useful in implementing the provisions of Chapter 681, F.S. and Chapter 5J-11, F.A.C. In addition, its on-site critiqued monitoring of cases is commendable.

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. 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. In addition, NCDS provides a weekly summary of all arbitration hearings that were held. 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 and 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.

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, 2010, in accordance with Chapter 681, F.S.