

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

Lexus	April 17, 2004
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Toyota	July 1, 2003
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On April 16, 2009, NCDS notified the Division that effective June 1, 2009, that NCDS would not be serving as the administrator for Porsche Cars North America ("Porsche"). DeMars & Associates, dba/CAP Motors, and Porsche applied to the Division for the continued certification of Porsche's procedure with CAP Motors as its administrator. After a careful review of the procedures to be initiated by CAP Motors this request was granted and Porsche's certification continued. NCDS had administered 5 claims for Porsche from January 1, 2009, through May 31, 2009. The results of these claims will be addressed in the annual review for Porsche's procedure as administered by CAP Motors and are not a part of this report.

The current certification of the procedures is effective until March 31, 2010.

## **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 previously maintained an office at 22500 Metropolitan Parkway, Suite 200, Clinton Township, Michigan. NCDS notified the Division that effective July 1, 2009, its new address would be 43230 Garfield Road, Suite 130, 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**

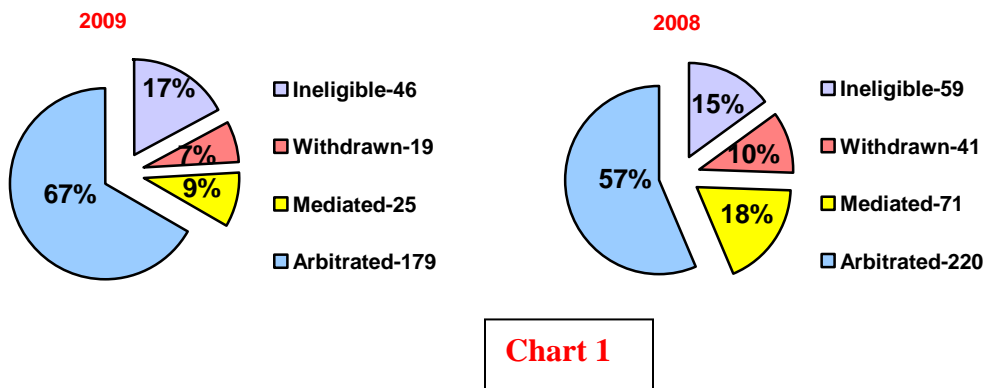
All files for the programs implemented by NCDS are maintained in the Clinton Township, Michigan, office. The Florida records have been found during previous staff site visits to be maintained in this office by manufacturer in a manner separate from other governmental jurisdictions in accordance with § 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 269 claims processed for 2009. 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 2009 audit year and a comparative graphic for 2008.



Approximately 76% of the claims filed with NCDS resulted in a settlement through mediation or arbitration during year 2009. Claims that were mediated decreased 9% over the prior year prompting the need for arbitration. This is reversal from the trend of the previous year.

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>	9	4	4	24	41
<b>Toyota</b>	37	15	21	155	228
<b>TOTAL</b>	46	19	25	179	269

**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 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 269 claims filed with NCDS, there were 46 cases categorized as ineligible. Division staff reviewed these files to ensure that adequate documentation supporting NCDS' determination of non-jurisdiction was evident.

## **2. Withdrawn**

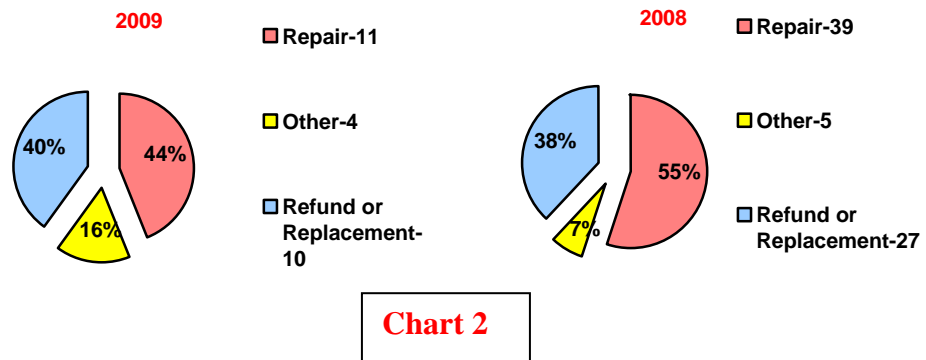
These are claims that were withdrawn by the consumer. Since the claim was withdrawn by the consumer, no determination was made by the program. The disputes were withdrawn by the consumer for various reasons, including the consumer decided to trade the vehicle, the consumer decided not to pursue the dispute for personal reasons, or the consumer determined the problem had been corrected. 19 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 25 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 2009 decreased substantially compared to the previous year. Toyota's mediated cases increased from 28 in year 2007 to 60 in year 2008 and decreased to 21 in 2009. Although the percentage, as reflected in Chart 2 below, reflects a greater number of consumers received refunds or replacements, it also should be noted that the decrease in mediated cases resulted in more arbitrations where the results were not as favorable for the consumer as the previous year.

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 2009 compared to year 2008:



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 prior to arbitration.

Manufacturer	Repair	Replace/Refund	Other	Total
Lexus	0	4	0	4
Toyota	11	6	4	21
<b>TOTAL</b>	11	10	4	25

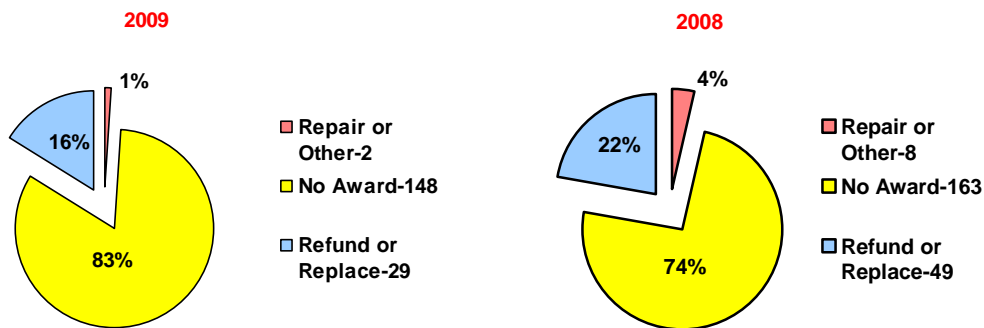
**Table 2**

#### 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 179 cases closed through arbitration during the audit period. 67% of the claims filed with NCDS were resolved through arbitration compared to 57% the previous year.

NCDS arbitrators awarded a replacement vehicle or a refund to 29 consumers. No relief was given to 148 consumers. 1 consumer was awarded an additional repair attempt and 1 was awarded partial reimbursement.

The chart below (Chart 3) shows a comparison of the arbitrated cases for the current audit year of 2009 and the previous year:



**Chart 3**

Chart 3 demonstrates the arbitration process was less favorable to the consumer during the current audit period. There were 6% less refund or replacement awards and 3% less other awards such as repair or partial reimbursement and a 9% increase in no actions.

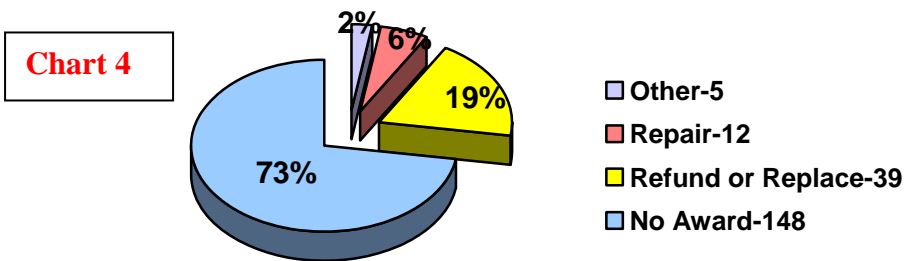
The following table (Table 3) provides a breakdown by manufacturer of the awards received as the result of an arbitration hearing:

Manufacturer	No Award	Repair	Other	Refund/Replace	Total
Lexus	23	0	0	1	24
Toyota	125	1	1	28	155
<b>TOTAL</b>	148	1	1	29	179

**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, a decline of 6% from the previous year. In 8% of the claims, consumers received an award other than a repurchase or replacement, including additional repairs. 73% of the claims were dismissed with no award, an increase of 16% from the previous year.

**2009 Awards for 204 Mediated and Arbitrated Cases**



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

On March 12, 2009, NCDS conducted a Florida specific arbitrator training in Fort Lauderdale that Division 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 a general training in Magnuson-Moss and lemon law, not specific to Florida Lemon Law.

### **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 in Tallahassee in which the consumer participated. 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 only one consumer, although this may have been by the consumer's choice, was required to travel more than 75 miles to participate in an arbitration hearing, substantially 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 27 days.

Division staff identified 15 cases that exceeded 40 days. All of these claims were closed within 2 days of the 40 day time period.

Data received from NCDS reflected that 29 arbitrators were utilized in its arbitration hearing processes. Three arbitrators were utilized in 50 or more cases arbitrated by NCDS. One was involved in 52 hearings, one in 58, and one in 72. They

served either as an arbitrator on a 3 member panel or as a single arbitrator. In the cases these individuals heard 86% of the consumers were given no award, above the percentage in Chart 3, and 11% were provided a replacement or a refund, below the percentage found in Chart 3. As a whole the other arbitrators provided awards exceeding the percentages found in Chart 3 and had fewer no actions than is reflected in Chart 3.

#### **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 1<sup>st</sup> of the following year. The 2008 audit of all certified manufacturers' programs administered by NCDS was submitted 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 has implemented in response to Division concerns.

The arbitrator pool maintained by NCDS is sufficient for the Florida case load, complying with Title 16 C.F. R. Part 703.4. However, NCDS should review its distribution of arbitration cases. It appears an inequitable assignment of cases to a limited number of arbitrators has potentially created decisions that are not consistent with the decisions of other arbitrators in the pool. NCDS should recruit additional arbitrators

or more evenly distribute cases to the arbitrator pool. 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 provides its arbitrators information bulletins that are useful in implementing the provisions of Chapter 681, F.S. and Chapter 5J-11, F.A.C. The arbitrator pool, training, and arbitrator performance is substantially compliant with the provisions of the governing statutes. However, NCDS should distribute its cases in a more equitable manner.

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, dates to resolve, the vehicle VIN, the decision sought, and decision rendered. 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 and Toyota through March 31, 2011, in accordance with Chapter 681, F.S.