

*United States Federal Trade
Commission*

*DaimlerChrysler
Customer Arbitration Process/Board
Audit*

January - December 2002

**Prepared by:
Claverhouse Associates
937 Roxburgh Ave.
East Lansing, Michigan 48823**

Table of Contents

	PAGE
INTRODUCTION	3
I. COMPLIANCE SUMMARY	4
II. DETAILED FINDINGS	5
III. INTERVIEW WITH DAIMLERCHRYSLER REGULATORY AFFAIRS MANAGER	28
IV. FIELD AUDIT OF THREE AREAS' RECORDS/ARBITRATION PROCESS	3 A T O H 1 5 8 5

Introduction

This 2002 audit of DaimlerChrysler Corporation's Customer Arbitration Process (CAP) is performed pursuant to the 1975 federal warranty law, the Magnuson-Moss Warranty Federal Trade Commission Improvement Act and Rule on Informal Dispute Settlement Procedures, 16 C.F.R. Part 703 (hereafter referred to as Rule 703).

Claverhouse Associates, a firm specializing in arbitration, mediation, and program auditing, performed the audit, which was conducted under the supervision of Kent S. Wilcox, President and Senior Auditor. The statistical survey was conducted by the Center for Survey Research, a division of the Institute for Public Policy and Social Research at Michigan State University.

Arrangements to conduct the audit were initiated by an invoice submitted in early 2003. Claverhouse Associates coordinated field audits, statistical survey planning, and arbitration training with the independent administrator¹ for all applicable states and with DaimlerChrysler's National Administrator, Third-Party Arbitration.

Hearings held in DaimlerChrysler's zones² covering Arkansas, Kentucky, and Minnesota were included in the on-site field inspections. Visits to these locations were arranged to coordinate with scheduled arbitration hearings. In addition, we audited arbitrator training conducted in Dallas/Ft. Worth, Texas, June 6-8, 2003. Thus, field audits of the arbitration hearings and arbitrator training are sometimes conducted in the current calendar year rather than in the audit year but are assumed to reflect operations as they existed in the audit year (2002). Performing the field audits during the actual audit year would require initiating the audit much earlier and using a two-phased format: one commencing during the actual audit period and the other in the following year, after all annual statistics had been compiled. All case files inspected were generated during 2002 as required.

¹ The independent administrator for all states except California is the National Center for Dispute Settlement (NCDS). The national headquarters for NCDS is located in Dallas, Texas. DeMars & Associates administers the DaimlerChrysler-sponsored program in California. Their headquarters is in Waukesha, Wisconsin.

² We have adopted a convention for this year's audit that involves references to zones, and Zone Offices, even though there has been a major geographical and administrative restructuring that renders the terms "zone," or, "Zone Office" as inapplicable in 2003. Next year's audit will need to revise these references as is appropriate.

SECTION I

³ There were, of course, discrepancies in some areas, as we have come to expect, but those we identified are either of no real consequence or are very understandable and without significant regulatory implications. Discrepancies are detailed in the survey section of the report.

SECTION II

Detailed Findings

This section addresses the requirements set forth in 16 C.F.R. Para 703.7, of Public Law 93-637 (The Magnuson-Moss Warranty Act, 15 U.S. C. 2301. et seq.).

After each regulatory requirement is set forth, the audit's findings are recorded, discrepancies are noted, and recommendations are made where appropriate.

This audit covers the full calendar year 2002. An important component of the audit is the survey of a randomly selected sample of 685⁴ DaimlerChrysler Customer Arbitration Process (CAP) applicants whose cases were supposed to be closed in 2002 and found to be within the CAP's jurisdiction.

We analyzed several DaimlerChrysler-generated statistical reports covering the CAP/CAB operations in the United States. The reports were provided to us by Mr. Edward Janke, National Administrator, Third Party Arbitration, DaimlerChrysler Customer Center, Rochester Hills, Michigan, and his successor, Ms Tava Sowers, Regulatory Affairs Manager.

We performed field audits of the NCDS program as it operates in DaimlerChrysler zones for Arkansas, Kentucky, and Minnesota. We also examined a random sample of current (i.e., 2002) case files for accuracy and completeness. A random sample of case files was drawn from all case files for the years 1999-2002 and inspected to ensure that these records are maintained for the required four-year period. In the areas covered by each zone office, we surveyed several dealerships to see how effectively they carry out the information dissemination strategy developed by the manufacturer to assist them in making customers aware of the CAP/CAB
This audit covers in m nassurv.158:eacehehFt2,s

⁴ Surveyed customers returned 275 completed questionnaires, a return rate of 40.1%.

(a) The mechanism shall have an audit conducted at least annually to determine whether the mechanism and its implementation are in compliance with this part. All records of the mechanism required to be kept under 703.6 shall be available for audit.

FINDINGS:

This is the sixth (2002) annual audit of DaimlerChrysler Corporation's informal dispute settlement procedure program (CAP) as it is administered by NCDS. In 1997, we conducted the first audit that assessed the entire NCDS administration of the CAP program. In addition, 1997 was the first year that the audit reviewed the DeMars & Associates' operation as it administers the CAB in California.⁵ The DeMars & Associates review was conducted pursuant to the federal requirements only and draws no conclusions as pertains to California regulations.⁶

Records pertaining to the CAP that are required to be maintained by 703. 6 (Record-

⁵ We had conducted audits of DeMars & Associates CAB program in California prior to 1997, but those reports were prepared pursuant to earlier mandated state-specific regulations that no longer exist.

⁶ This year, we reviewed the DeMars & Associates component strictly in Waukesha, Wisconsin.

DISCREPANCIES:

The CAP program meets this regulatory requirement and any inconsistencies we found were of the minor and inconsequential variety likely to be found in any large administrative program. The minor inconsistencies are highlighted in the appropriate sections of the report, but they do not undermine the CAP's substantial compliance status.

REQUIREMENT: § 703.6 (a) (5)

- (5) All letters or other written documents submitted by either party;**
- (6) All other evidence collected by the mechanism relating to the dispute including summaries of relevant and material portions of telephone calls and meetings between the mechanism and any other person (including consultants described in 703.4 (b) ;**
- (7) A summary of any relevant and material information presented by either party at an oral presentation;**
- (8) The decision of the members including information as to date, time and place of meeting, and the identity of members voting; or information on any other resolution;**

FINDINGS:

Some case files contained, in addition to the various standard file entries, other communications submitted by the parties. Nothing in our findings suggests that any material submitted by a party was not included in the file, and every indication is that the files were complete. We made no attempt, however, to validate the existence of "summaries of relevant and material telephone calls" and other such information since we had no way of knowing whether such telephone calls took place. This is also true for documents such as follow-up letters. A review of this type may be theoretically possible, but it is not practical without having some objective measure against which to compare the contents of the file. Even in the theoretical sense, such a review assumes customers keep exact files of all correspondence, notes, and phone calls pertaining to their CAP cases. To validate this dimension, the audit would entail retrieving all such files as a first step. The obvious impracticality of that places such a review beyond the scope of the audit.

Information required in subsection 8 can be found for California cases on the *Agendas and Minutes of Arbitration Hearings* forms. The individual case file folder does not contain a copy of the *Agendas and Minutes of Arbitration Hearings* form. The CAB California program administered by DeMars & Associates, however, includes in all CAB case file folders a form that notes the existence of the separate file for the minutes of the board meeting and announces that access to that file is available upon request. At the time this report was being compiled, DeMars & Associates had developed a policy for including in the case files the pertinent information contained in the *Agendas and Minutes of Arbitration*

Hearings forms. The *Arbitration Data Entry* form used by NCDS also contains the essence of the decision along with most other information pertinent to the case. The case file folder for the California program also contains the decision in the form of a letter to the customer. Presumably, this is because each *Agendas and Minutes of Arbitration Hearings* form used for the California Program contains the decisions for all the cases arbitrated at a given meeting. The names of the arbitrators in attendance at hearings in California are also found on the *Agendas and Minutes of Arbitration Hearings* form. While the two programs use different forms, they both accomplish the same goal of meeting the record-keeping requirements envisioned by Rule 703.

DISCREPANCIES:

None

The required records were all available, appropriately maintained, and properly kept. Any exceptions were merely incidental and have no significant bearing on the program's compliance with the regulations.

REQUIREMENT: § 703.6 (A) (9-12)

- (9) A copy of the disclosure to the parties of the decision;**
- (10) A statement of the warrantor's intended action(s);**
- (11) Copies of follow - up letters (or summaries of relevant and material portions of follow - up telephone calls) to the consumer, and responses thereto; and**
- (12) Any other documents and communications (or summaries of relevant and material portions of oral communications) relating to the dispute.**

FINDINGS:

The information set forth in items 9 and 10 is maintained as required.⁷ As such, the information was readily accessible for audit.

The information set forth in items 11 and 12 was not audited for accuracy and completeness because of the impracticality of such a review. The examination of the case file contents revealed few instances of this type of information included in the file, and yet nothing indicated that information was missing.

DISCREPANCIES:

None

⁷ The warrantor's intended actions are a basic part of the program and are generally applicable to all cases. All decisions rendered by arbitrator(s) will be honored by DaimlerChrysler, thereby negating any necessity for providing a document in each individual file.

REQUIREMENT: § 703.6 (B)

(b) The mechanism shall maintain an index of each warrantor's disputes grouped under brand name and subgrouped under product model.

FINDINGS:

These indices were maintained by Mr. Edward J. Janke, Administrator of Third Party Arbitration, DaimlerChrysler Customer Center, and housed at the DaimlerChrysler office in Rochester Hills, Michigan. This responsibility has been transferred in 2003 to Ms Tava Sowers, the new Regulatory Affairs Manager located at the same address as her predecessor.

The audit includes a review and assessment of a data printout for the calendar year 2002.

The *Arbitration Board Statistics* identifies 3,345 CAP disputes filed for 2002.⁸ Of these, 2,054 were eligible for CAP review, and 1,291 were determined by the CAP to be out-of-jurisdiction. Of the 2,054 in-jurisdicti

⁸ The total number of cases filed is determined by summing the number of cases closed with the number determined to be out-of-jurisdiction and then adding the number of cases which were still open but without a final decision at the time the statistics were compiled.

⁹ These figures may vary slightly from those used in the survey section because the data used for the survey and these figures are sometimes compiled at different times.

(c) The mechanism shall maintain an index for each warrantor as will show: (1) All disputes in which the warrantor has promised some performance (either by settlement or in response to a mechanism decision) and has failed to comply; and (2) All disputes in which the warrantor has refused to abide by a mechanism decision.

FINDINGS:

DaimlerChrysler Corporation provides weekly updates on all CAP cases awaiting performance to the zone offices via the CRT computer system.¹⁰ Zone offices can access the information at any time. Thus, performance time lines are constantly monitored. These reports were made available for audit and were in compliance.

Concerning subsection 2, the auditors are advised that there is no reported incidence in which DaimlerChrysler failed or refused to abide by a board or arbitrator decision. As a matter of general corporate policy, DaimlerChrysler agrees to comply with all CAP decisions. This information is supplied as part of the Annual FTC -703.6 (c) (1) and (2) Compliance Report.

DISCREPANCIES:

None

REQUIREMENT: § 703.6 (d)

(d) The Mechanism shall maintain an index as will show all disputes delayed beyond 40 days.

FINDINGS:

¹⁰ This acronym (CRT) stands for Computer Remote Terminal.

According to DaimlerChrysler's national statistical index reports, as of December 2002, a total of 69 CAP cases were delayed beyond 40 days.¹¹ The CAP Administrator of Third Party Arbitration provided a comprehensive report of all individual cases delayed beyond 40 days during the 2002 period of the audit. This report includes the customer's name, case file number, and the number of days the case has been in process as of the date of the generation of the report. Our analysis indicates that this report meets the above requirement.

DISCREPANCIES:

None

REQUIREMENT: § 703.6 (e)

(e) The mechanism shall compile semi-annually and maintain statistics which show the number and percent of disputes in each of the following categories:

- (1) Resolved by staff of the Mechanism and warrantor has complied;**
- (2) Resolved by staff of the Mechanism and time for compliance has occurred, and warrantor has not complied;**
- (3) Resolved by staff of the Mechanism and time for compliance has not yet occurred;**
- (4) Decided by members and warrantor has complied;**
- (5) Decided by members, time for compliance has occurred, and warrantor has not complied;**
- (6) Decided by members and time for compliance has not yet occurred;**
- (7) Decided by members adverse to the consumer;**
- (8) No jurisdiction;**
- (9) Decision delayed beyond 40 days under 703.5 (e) (1) ;**
- (10) Decision delayed beyond 40 days under 703.5 (2);**
- (11) Decision delayed beyond 40 days for any other reason;**
- and**
- (12) Pending decision.**

FINDINGS:

DaimlerChrysler collects and maintains the information required by § 703.6 (e) in the Arbitration Board Statistics Report supplied to us by Mr. Edward J. Janke, National Administrator, Third Party Arbitration, DaimlerChrysler Customer Center, Rochester Hills, Michigan.

¹¹ There were 31 cases still pending at the time the 2002 statistical report. The beyond-40-day category does not include cases pending.

The comments of the National Administrator, Third-Party Arbitration, in Section III,¹² provide detailed information about operations of the CAP program in relation to the maintenance of these required statistics. The comments include information about recent modifications and innovations to the program.

The figures reported in this index are analyzed in further detail in the Survey Section of this report.

DISCREPANCIES:

None

REQUIREMENT: § 703.6 (f)

THE MECHANISM SHALL RETAIN ALL RECORDS SPECIFIED IN PARAGRAPHS (a) - (e) of this section for at least 4 years after final disposition of the dispute.

FINDINGS:

(a) All of the information listed in the 12 subsections detailed in the previous section is maintained for the required four years. The few relatively minor inconsistencies we found are addressed in the Survey Section of this report.

We inspected the collection of all case files for each zone/state during our on-site visit to the NCDS headquarters in Dallas, Texas, and inspected and evaluated a random selection of case files from the four-year period (1999-2002) for completeness. The files were appropriately maintained and readily available for audit.

(b) DaimlerChrysler's National Administrator, Third-Party Arbitration, provided us with the *Arbitration Cases Received in 2002* index. The indexes for the previous four years are contained in the audit reports for those years and are available from a variety of sources, including DaimlerChrysler's office in Rochester Hills, Michigan.

(c) [Two non-compliance categories] The information required by subsection (1) is maintained in DaimlerChrysler's Rochester Hills, Michigan, office and is available from the DaimlerChrysler Regulatory Affairs Manager. Subsection (2) is not applicable since DaimlerChrysler, as a matter of corporate policy, always complies with CAP/CAB decisions.

(d) [Complaints beyond 40 days] This information is stored on computer in the Rochester Hills, Michigan, office and is housed with the Regulatory Affairs Manager,

¹² The National Administrator, Third-Party Arbitration (DaimlerChrysler), E. J. Janke retired in 2003 while this report was being prepared. When his successor, Ms Tava Sowers, was named, the position and the title was modified. Nevertheless, Mr. Janke was interacting with the auditors during the first half of the year so, we use the titles interchangeably for this year only.

MS Tava Sowers. Any required report can be obtained from Ms Sowers. The information is maintained as required.

(e) [Includes 12 categories of statistics] The information referenced in this section, as well as any data pertaining to this requirement, is available from DaimlerChrysler's Regulatory Affairs Manager. The 12 categories of statistics to be maintained are being kept as required.

DISCREPANCIES:

None

REQUIREMENT: § 703.7 (b)

Each audit provided for in paragraph (a) of this section shall include at minimum the following (1) evaluation of warrantor's efforts to make consumers aware of the Mechanism's existence as required in 703.2 (d);

(d) The warrantor shall take steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes.

FINDINGS:

NOTE: Because DaimlerChrysler is no longer offering the program to its new car buyers, except in Arkansas, Idaho, Kentucky, and, Minnesota, their information program has understandably undergone some significant changes. The CAP pamphlet is no longer placed in the vehicle's glove box at the point of sale. In the four states where the program will still be offered, the owner's manual and lemon law rights booklet will still be included in the glove box kit and both will reference the program. Those interested in knowing about the program are referred to a toll-free telephone number where they can request a CAP pamphlet.

The essential feature of both regulatory requirements cited above is timing. In our review, therefore, we give emphasis to efforts that would inform customers and ensure that they know about the existence of the CAP at all times, as well as examining the manufacturer's strategies to alert customers to the availability of the CAP when the customer's disagreement rises to the level that the regulations consider a "dispute."

Regardless of the excellence of a program, it is ineffective if the customer does not know of or cannot access it. The "notice" requirement seeks to ensure that the program is actually usable by customers by informing them of its existence and making it readily accessible when they need it.

DaimlerChrysler uses several means by which to meet this important requirement; they are as follows:

- DaimlerChrysler publishes an 10-page booklet, entitled *Customer Arbitration Process*, that explains the CAP process and how and where to file an application. This pamphlet contains an application form for accessing the CAP program. The pamphlet is distributed in a variety of ways, but the principal method is by way of the dealer. Dealers may provide the brochure as part of the initial information packet given to new customers as well as making them available in the dealership. Dealerships normally have the pamphlet available only upon request. Our random audits of dealerships in the areas surrounding the field audit sites found, as in recent prior audits, no consistent and significant commitment by dealers to educate their employees to provide booklets to customers making general inquiries about warranty-related dissatisfactions or disputes. In fact, this year’s review suggests that some serious attention needs to be given to this aspect of the program because dealers were unlikely to provide information about the existence of the program and how to contact it even when we specifically asked for information about their arbitration program.
- The *Owner's Manual*,¹³ supplied with each new vehicle incorrectly refers to the program as the Customer Arbitration Board. This name only applies to the California-specific program administered by DeMars & Associates. The national program is called the “Customer Arbitration Process” (CAP). The *Owner's Manual* itself does not include a phone number or mailing address of either the CAP or the CAB, but the supplementary manual referenced below provides various addresses and phone numbers as required by state laws. The *Owner's Manual* does inform the reader that an arbitration brochure is included as part of the Glove Box Kit. Unfortunately, this reference repeats the same error alluded to earlier and misstates the national program’s name.
- The booklet *Owner's Rights Under State Lemon Laws, Supplement to Owner's & Warranty Manual* is provided with each new vehicle. This booklet does not give the CAP address, but at page four it refers customers with unresolved disputes to the CAP brochure that accompanies the *Owner's Manual* and *Warranty Manual*, which are shipped as part of the Glove Box Kit in the applicable states. It also refers customers to the DaimlerChrysler toll-free customer relations (Customer Center) number where the customer can request the address of the CAP.
- In the applicable states, DaimlerChrysler provides with each new vehicle a *Warranty Information* booklet. It is a 33-page booklet that makes a cross-reference on page 27 to the CAP arbitration program offered by DaimlerChrysler and refers the reader to the Customer Arbitration Process brochure that came with the vehicle.

In Arkansas we audited three dealerships:

¹³ We review an Owner’s Manual for one model and operationally assume that what holds for one manual is true for all others. This year we reviewed the 2002 Chrysler Town & Country manual which was supplied to us by DaimlerChrysler for our inspection.

Iron Trail Chrysler
1301 17th Street South
Virginia, Minnesota 55792

FINDINGS:

This aspect of the CAP program again this year received a somewhat varied assessment. Certainly, the information dissemination methods used by DaimlerChrysler, together with the number of CAP applications filed in 2002 (3,345¹⁴), demonstrate that, without question, many DaimlerChrysler customers were made aware of the arbitration program's existence in 2002. For these customers, access is obvious and their numbers, while far less than in the past, are significant.

On the other hand, our dealer inspections in several parts of the country showed a general lack of knowledge on the part of dealer employees about the CAP program and, in some cases, ignorance of its existence. The situation is striking when we note that there are a few employees at some dealerships we have visited in the past several years who demonstrate excellent knowledge of the CAP program. This suggests that the information dissemination strategy, as envisioned and administered by the manufacturer, is only effective when the dealership elects to implement it. In Arkansas, no dealership we visited provided us with any useful information about the CAP or NCDS. In Kentucky, two of the four dealerships we visited acknowledged the CAP by name and referred to booklet/pamphlet in the glove box kit provided at the point-of-sale. The other two dealerships indicated a complete lack of knowledge of the program, with one dealer employee providing us with bogus information. Similarly, in Minnesota, two dealerships provided useful information upon request. Two other dealers appeared to be completely ignorant about the program. One dealer providing useful information also had a poster prominently displayed that announced the availability of brochures upon request.

As in years past, our visits to dealerships suggest that customers who seek assistance from their salesperson are unlikely to receive any useful information about the CAP program. Few of the salespeople we interviewed appeared to have any knowledge of the CAP. This situation is clearly at odds with the manufacturer's objectives and the regulation's intent.

There is a toll-free phone number to the DaimlerChrysler Customer Center in Rochester Hills, Michigan, which offers assistance to customers in terms of the "making customers aware" requirement. This office is designed to facilitate an open line of communication between the servicing dealer, DaimlerChrysler Corporation, and the customer. The toll-free line facilitates the CAP program by providing CAP information to those who specifically request information about arbitration. We contacted the number on several occasions and in each instance were given the post office box address for filing an application with the CAP. The clear and stated objective of the Customer Center is to keep the customer and the manufacturer or dealer working together to resolve warranty-related problems. This program operates consistent with § 703.2(d) which allows:

¹⁴ For the more than 30,000 DaimlerChrysler customers who filed for arbitration in the last few years the program's existence is, quite clearly, well-known.

703.2 (d)... Nothing contained in paragraphs (b), (c), or (d) of this section [notice requirements] shall limit the warrantor's option to encourage consumers to seek redress directly from the warrantor as long as th

- (2) **Investigations**
- (3) **Mediation**
- (4) **Follow-up**
- (5) **Dispute Resolution**

FINDINGS:

1) Forms

The auditors reviewed most of the forms used by each component of both the CAP (NCDS) and the California-specific CAB (DeMars & Associates).

The many forms used by CAP/CAB comprise an integral part of the program. Having been refined over several years, they are exceptionally "user friendly" and well balanced, providing enough information to properly advise the parties without overwhelming them with unnecessary paperwork. Overall, the CAP forms promote efficiency and assist the program in meeting the stated objective of facilitating fair and expeditious resolution of disputes. We found the forms used by NCDS and DeMars & Associates generally appropriate and "user friendly."

The CAB *Agendas and Minutes of Arbitration Hearings* form used in California is a valuable tool for record-keeping and facilitating thorough decision letters. While these forms are housed in a separate file, a form is placed in each case file folder that states that the minutes are available for review upon request.

DISCREPANCIES:

NONE

A comprehensive manual, *Customer Arbitration Process Operating Guide*, serves as the program's procedures manual. It is the initial source to which arbitrators, DaimlerChrysler, and the independent administrators' (NCDS and DeMars & Associates) staffs can turn for direction when questions arise. As such, it is a critical component for ensuring that the program continues to operate in substantial compliance with the requirements of Magnuson-Moss and Rule 703. There were significant modifications made in 1999 in the manual that had been in service since 1993.¹⁵ This policy manual was developed by DaimlerChrysler as the sponsoring manufacturer and is provided to NCDS for their use in administering the program.

NCDS general policies are currently found in the pamphlet provided to each applicant for arbitration. Some additional policies are printed in the arbitrator training manual and appropriately arranged in sections that are indexed by subject matter.

¹⁵ With the introduction of the NCDS process, the manual understandably required a significant restructuring.

¹⁶ Automotive Service Excellence certified mechanic

Occasionally, independent inspections are conducted to confirm or deny one party's representations or to resolve conflicts between the representations of the parties. Our monitoring of arbitration hearings in the past suggests that many arbitrators do not understand the real purpose of these inspections, inappropriately viewing them as a means by which to diagnose the vehicle's alleged mechanical problem rather than as a means to resolve conflicts of fact between the parties. This orientation suggests that arbitrators may inappropriately become involved in efforts to achieve customer satisfaction rather than seeing themselves as arbiters of disputes.

Arbitrators would be greatly aided by emphasis on the appropriate use of independent inspections and TA assistance in arbitrator training. The CAP has developed and implemented a national training program that, of necessity, addresses so many issues in a short period of time that it is understandable that arbitrators often lose sight of some of the trainers' admonitions. *This underscores the importance of an efficient, on-going feedback loop that provides regular reminders from program staff to arbitrators.*

It appears to be rare for arbitrators to request that the manufacturer provide a copy of a TSB and then delay action on the case pending receipt of the bulletin. Whether a TSB *exists* is apparently more likely to be central to an arbitrator(s) determinations than any information contained therein. The existence of a TSB may increase, in the minds of some arbitrators, the likelihood that a customer's otherwise unverified concern is real.

Other areas to be investigated include:

number of repair attempts;

length of repair periods; and

possibility of unreasonable use of the product.

Customers provide some information on these subjects on the CAP application; the dealer provides it on the CAP form, "Dealer's Response to Request for Arbitration," and DaimlerChrysler

provides it on the "Zone Office Statement."
These forms, however, do not solicit the same
information from all parties.

The customer application form does not, for
example, ask for information about the issue of
possible misuse or abuse of the vehicle. By
soliciting information from one party but not the
other, the program could create an appearance of

been asserted in the paperwork. In such cases, "misuse" may not be the primary or deciding factor but can still be a significant factor. Because of its secondary importance, however, it may not be detailed in the decision and not necessarily reflected in the fairly brief communications announcing the board's or arbitrator's decision. Thus, a customer who may have important rebuttal information on the subject of suspected abuse would be unlikely to be aware that it had become an issue.

FINDINGS:

The investigation methods used by the CAP program are well known to regulators and appear to be acceptable to them. Moreover, the processes envisioned when Magnuson-Moss was enacted were understood to be substantially abbreviated in comparison to litigation. Ultimately, the question comes down to, "How much investigation is enough?" In our view, more inquiries in the initial phase of the arbitration process would enhance the process, but we are unwilling to assert that this concern threatens compliance.

The methods currently employed by the CAP clearly result in a useful collection of pertinent information, but it is also clear that there is opportunity to gather significantly more valuable information at virtually no extra cost.

RECOMMENDATION:

Using a checklist of important issues to be considered in each case, modeled after the regulatory requirements concerning issues to be investigated, would be very helpful for arbitrators.

3) **Mediation**

This facet of the arbitration program was historically carried out exclusively by the manufacturer or its dealers. The NCDS process attempts to mediate the case prior to arbitration by having a trained staff person contact the customer and DaimlerChrysler where the facts as

they receive them appear to warrant. When mediation fails to result in a settlement, the matter is arbitrated and a decision rendered.

The mediation function envisioned by rule 703 is governed, at least in part, by section 703.2(d) which allows:

... Nothing contained in this subchapter shall limit the warrantor's option to encourage consumers to seek redress directly from the warrantor as long as the warrantor does not expressly require consumers to seek redress directly from the warrantor. The warrantor shall proceed fairly and expeditiously to attempt to resolve all disputes submitted directly to the warrantor.

FINDINGS:

After a case is opened, the manufacturer's Zone Office personnel generally intercede in an attempt to resolve the dispute to the customer's satisfaction prior to arbitration. Detailed records are kept as required by § 703.6. This information is contained in the

customer has accepted the decision, a performance survey is mailed to the customer to determine that:

- a) the promised performance has taken place, and
- b) the performance that has taken place is satisfactory.

If the survey is returned, it is placed in the case file folder at either NCDS or DeMars & Associates, where it is maintained for the required four years.

The recording of performance and maintenance of the records was reviewed by our on-site inspection of case files in either Dallas for the CAP (NCDS) program or Waukesha, Wisconsin, for the CAB (DeMars & Associates) program. For each zone office, we reviewed a random sample of case files. The sample is drawn from the computer system maintained by DaimlerChrysler in the Rochester Hills, Michigan, office.

DaimlerChrysler has developed a policy to ensure that NCDS keeps the performance verification information in an electronic case file which may be reviewed by anyone reviewing the case file and importantly, a note to that effect will appear in the hard copy case file folder. In our view, this new procedure adequately addresses our prior concern.

DISCREPANCIES:

None

5) Dispute Resolution

The CAP uses two formats and the CAB uses one. The two NCDS formats are: a) a board consisting of three arbitrators; or b) individual arbitrators. Customers may opt to use either format. Importantly, the board process (outside California) is one wherein the decisions are arrived after consider

answered by the board's technical member.¹⁷ The CAB, California process, uses a board member process that includes the assistance of a board administrator who assists the board on administrative matters, but has no decision-making role. The CAB process involves the parties and includes an oral presentation option.

In California, the CAB program, as administered by DeMars & Associates, provides that each party is allowed to make an uninterrupted oral presentation followed by an opportunity for each party to ask questions of the other party. The arbitrators (board members) proceed to make whatever further inquiries are deemed necessary and then render a decision. The decision is then made (to the parties) (In California the board members)

¹⁷ Each facet of the CAP has Automotive Service Excellence (ASE) certified mechanics available to provide independent inspections to resolve conflicts of facts as presented by the parties. ASE is a private association that tests applicants to ascertain whether they possess a specified degree of expertise in automotive mechanics.

State of Ohio, commonly referred to as the “Lemon Law,” and after due deliberations, I find and award as follows: ...

Example 2:

The Customer’s 1997 Dodge Ram Truck does not qualify for coverage under the State of Ohio Lemon Law, because it does not meet any of the presumptive standards..

The two examples cited above are problematic in at least two ways:

First, the initial example seems to suggest that it is reasonable for arbitrators to only consider the state lemon law; however, it is very important for arbitrators to keep in mind their additional authority to award refunds and replacements under the more general terms of the federal law.

Second, the other example suggests a misunderstanding of the nature of a statutory presumption. Here, the language implies that the statutory presumption serves as a minimum threshold for awarding refunds or replacements which is, of course, absolutely incorrect. Meeting presumptive standards is not a prerequisite for qualifying for “lemon law” relief or for qualifying for relief under federal warranty law.¹⁹ For this reason, the above cited language is exceedingly problematic and needs to be revised, at least where it is being applied as “boilerplate.” Note: Subsequent to the drafting of the above comment, NCDS provided us with a copy of a document that they have sent out to their arbitrators addressing our concerns. The document is helpful, in our view, and serves as an important first step in ameliorating our concerns.

The NCDS program has informed us that they continue their efforts to address the alluded to “boilerplate” problem, including explanations provided at arbitrator training to ensure that arbitrators understand surety law thresholds for establishing presumptions do not serve as a threshold for their awarding “buy back” relief. At our review of arbitrator training in June of 2003, we confirmed that these efforts continue and are having some noteworthy effects.

Overall, the CAP members demonstrate a clear commitment to providing fair and expeditious resolution of warranty disputes.

DISCREPANCIES:

¹⁹ While state automobile warranty statutes vary in the manner in which they treat presumptive language, it is nonetheless a general principle that statutory presumptions give guidance under a specific set of circumstances, while other circumstances are addressed by more ambiguous provisions. For example, most arbitrators, in this context, are concerned with whether a customer has experienced an “unreasonable” number of repair attempts or whether the manufacturer has had a “reasonable” opportunity to cure the vehicle’s problem. The operative question will likely be one of what constitutes “reasonable” in either situation. A statutory presumption can provide a bit more clarity under some circumstances by establishing that given certain specific scenarios, reasonable will be “presumed” to mean just this or that. Other scenarios that lack such specific circumstances would not be afforded “presumed” status but it can still be reasonable to argue that the customer should be granted relief.

None

INSERT INTERVIEW SECTION

IMPORTANT !!!!!

Note: be sure to paginate based on the main document.

NOTE: This section was stricken from the main report because it was created by DaimlerChrysler in Word 7.0 and appears to create formatting problems when converted to Word Perfect and placed in the main document. Therefore I am printing it in separate file] in hopes of correcting the problem.

NOTE: Remember to re-paginate the section following the interview. Obviously the pagination will need to pick up where the interview section leaves off.

8 ppges in 2003 for 2002 report

SECTION IV

Field Audit of Three Areas' Records /Arbitration Process

I. **Arkansas, (Benton)**

A. Case Load and Basic Statistics

Arkansas (Benton), generated 65 cases in 2002 of which 16 were determined to be "not-in-jurisdiction" cases. The program also reports 15 mediated cases and 33 arbitrated cases. In addition, the program reported 1 case as "pending" at the time these statistics were generated. The average days for handling a 2002 case for Kentucky is 34.8. This compares with 35 days handling for the national program.

The National Center for Dispute Settlement (NCDS) prepares case files for the Customer Arbitration Program hearings. Once prepared, the file is mailed to arbitrator. These activities are insulated from the manufacturer principally by the independent administrator, NCDS, who handles all direct contact with the arbitrators.

NCDS stores all non-California files,²⁰ in their Dallas headquarters office.

The independent administrator NCDS is the main repository of the required CAP records. All biographies of current CAP arbitrators were found to be in compliance and available for inspection.

During our on-site review at NCDS's Dallas, Texas, headquarters, we visually inspected the warehousing of all CAP case files for the required four-year period.²¹ The four-year accumulation of case files was available for inspection per all regulatory requirements.

We requested a random sample of 50 cases drawn from all cases closed during the audit period and examined all the cases provided to determine whether they were complete and available for audit.²² These files were reviewed for accuracy and completeness. The findings of that review are set forth below.

The staff at NCDS were efficiently housed and provided with up-to-date equipment.

B. Recordkeeping Accuracy and Completeness

²⁰ DeMars & Associates administers California cases and stores those files at its headquarters in Waukesha, Wisconsin.

²¹ See 16 C.F.R., § 703.6 (f)

²² Sometimes the case load is less than the fifty we request, in which case we examine all case files.

§ 703.6 (a)(1-12)

(a) The Mechanism shall maintain records on each dispute referred to it which shall include:

- 1) Name, address and telephone number of the consumer;**
- 2) Name, address and telephone number the contact person of the Warrantor;**
- 3) Brand name and model number of the product involved;**
- 4) The date of receipt of the dispute and date of disclosure to the consumer of the decision;**

portions of telephone calls and meetings between the Mechanism and any other person (including consultants described in section 703.4(b) of this part;

7) A summary of any relevant and material information presented by either party at an oral presentation;

²³ The exception to this rule is California where the program is independently administered by DeMars & Associates who verifies performance and maintains the appropriate records.

being maintained (i.e., stored) per requirement § 703.6(f). In addition, a visual inspection was made of the entire four-year accumulation of case files required by the same section. All records for the audit period (2002) and for the four-year period (1999 through 2002) were complete and readily available for audit. All case files were intact and readily available for inspection. The random sample inspection validated the apparent completeness suggested by the visual inspection.

D. Arbitration/Hearing Records

i. Case file folders

Most information that is required to be maintained is found on a series of forms found in the case files maintained at the NCDS headquarters in Dallas, Texas. In addition, much of the required information is included in the arbitrator's decision statement, a copy of which is also found in each case file folder.

ii. Arbitrator Biographies

The arbitrator biographies for the national program are available for review from the Senior Vice President of NCDS at their headquarters in Dallas, Texas. The biographies are thorough and current, and the list of arbitrators for each district includes the dates of their appointments. The biographies of arbitrators are also available from DaimlerChrysler's Regulatory Affairs Manager.

E. Hearing Process

i. Physical Description of Hearing (i.e., Meeting) Site

The CAP hearing was scheduled to be held at Lawders Jeep-Eagle, 7800 Alcoa Road, Benton, Arkansas. The meeting room was easily accessible and of adequate size for accommodating anyone who wished to attend as an observer. In this case, the parties to the dispute arrived at a settlement before the scheduled hearing and after the auditor had initiated his trip to Arkansas. Consequently, there was no hearing to observe and evaluate.

ii. Openness of Hearing

This NCDS Chrysler program allows all observers at CAP meetings (hearings).

iii. Efficiency of Meeting

Not applicable given the pre-hearing settlement.

II. Kentucky (Paducah)

A. Case Load and Basic Statistics

In Kentucky, NCDS handled 69 CAP cases in 2002 of which 27 (39.1%) were "no-jurisdiction" cases. There were 33 cases arbitrated, and 8 were mediated. There was one cases(i.e., arbitrated plus mediated cases [165], less the "in-jurisdiction cases [170]) categorized as "pending" at the time the statistics were gathered for their report. The average number of days for handling a 2002 case in Kentucky was 37.1 days as compared to 35 days for all zones combined.

The National Center for Dispute Settlement (NCDS) prepares case files for the Customer Arbitration Program hearings. Once prepared, the file is mailed to arbitrator. These activities are insulated from the manufacturer principally by the independent administrator, NCDS, who handles all direct contact with the arbitrators.

NCDS stores all non-California files,²⁵ in their Dallas headquarters office.

The independent administrator NCDS is the main repository of the required CAP records. All biographies of current CAP arbitrators were found to be in compliance and available for inspection.

During our on-site review at NCDS's Dallas, Texas, headquarters, we visually inspected the warehousing of all CAP case files for the required four-year period.²⁶ The four-year accumulation of case files was available for inspection per all regulatory requirements.

We requested a random sample of 50 cases drawn from all cases closed during the audit period and examined all the cases provided to determine whether they were complete and available for audit.²⁷ These files were reviewed for accuracy and completeness. The findings of that review are set forth below.

The staff at NCDS were efficiently housed and provided with up-to-date equipment.

B. Recordkeeping, Accuracy and Completeness

²⁵ DeMars & Associates administers California cases and stores those files at its headquarters in Waukesha, Wisconsin.

²⁶ See 16 C.F.R., § 703.6 (f)

²⁷ Sometimes the case load is less than the fifty we request, in which case we examine all case files.

We had a random sample of 50 case files drawn from all cases closed during the audit period²⁸ and examined them to determine whether they were complete and available for audit. Generally, the records were complete and available for audit.

The results of the inspection of the random sample of case file folders are detailed below:

§ 703.6 (a) (1-12)

(a) The Mechanism shall maintain records on each dispute referred to it which shall include:

- 1) Name, address and telephone number of the consumer.**
- 2) Name, address and telephone number of the contact person of the Warrantor.**
- 3) Brand name and model number of the product involved.**
- 4) The date of receipt of the dispute and date of disclosure to the consumer of the decision.**
- 5) All letters and other written documents submitted by either party.**

FINDINGS:

The auditor examined all case file folders extracted from all 2002 "in-jurisdiction" case files. We examined each sample file with respect to the items enumerated in subsections 1 through 5, with the following results:

- 1) All case files contained the customer's name, address, and telephone number.
- 2) The requirement is met. The name and address of the warrantor's contact person is included with the initial correspondence that the customer receives from the program. In addition, the zone office contact address and phone number is included in each Owner's Manual that accompanies all new vehicles when they are delivered. The contact person is so generally known as to not require it to be placed in each individual case file.
- 3) All case files inspected contain the make and vehicle identification number

²⁸ While the goal has consistently been to examine 50 case files, sometimes less than fifty were generated for a given state, in which case we examine all that are available.

4) All case files inspected contain this information.

5) Many files contained letters and additional documents, but since there is no standard by which to measure this item, we determined this subsection to be "not applicable."

§ 703.6 (a) (1-12) [Continued]

6) All other evidence collected by the Mechanism relating to the dispute, including summaries of relevant and material portions of telephone calls and meetings between the Mechanism and any other person (including consultants described in section 703.4(b) of this part);

7) A summary of any relevant and material information presented by either party at an oral presentation.

8) The decision of the members including information as to date, time and place of meeting, the identity of the members voting; or information on any other resolution;

FINDINGS:

All files for cases that were arbitrated contained the information required by sections six and eight. Oral presentations are a basic component of the NCDS program in this jurisdiction, and section seven requires summaries of the oral presentations to be placed in the case file. In the case files we reviewed for this area, the record-keeping requirements were met.

9) A copy of the disclosure to the parties of the decision.

FINDINGS:

Each applicable case file contained a copy of the decision letter sent to the customer. This letter serves as both the decision and the disclosure of the decision.

10) A statement of the warrantor's intended action(s);

FINDINGS:

The warrantor's intended action(s) and performance are inextricably linked. Thus, we validate this item in terms of performance verification. Performance verification is a function carried out at the office of the Administrator of Third Party Arbitration in Rochester Hills, Michigan.²⁹ This office sends a survey to the customer following receipt of the customer's acceptance of those decisions mandating some action on the

²⁹ The exception to this rule is California where the program is independently administered by DeMars & Associates.

part of DaimlerChrysler to ask, among other things, whether any required performance has taken place. Customers are asked to return the survey to the office of the National Administrator, Third-Party Arbitration. As noted elsewhere, we found few returned survey forms in the case files. In the past, we have stated that the absence of performance verification forms in the case file does not constitute a regulatory inconsistency since performance verification information is also available from several other sources, including the electronic case file and the *Weekly Case Status Reports*. Performance verification status, of course, should appear in the case file as is indicated by sections 11 and 12 below, and the program currently provides that such information appear in each case file where performance is required.

11) Copies of follow-up letters (or summaries of relevant and material portions of follow-up telephone calls) to the consumer and responses thereto; and

12) Any other documents and communications (or summaries of relevant and material portions of oral communications) relating to the dispute.

FINDINGS:

Sections 11 above is not applicable for purposes of the audit because there is no practical means by which to verify the completeness and accuracy of such possible additions to the files. Section 12, however, appears to mandate that a summary form be created whenever the arbitrator receives an oral communication that may have any bearing on the matter in dispute from either party. According to NCDS staff, this issue is currently being addressed by a policy requiring that a summary of all parties' verbal communications to the arbitrator that could affect his/her decision be placed into the case file. In most cases, this summary is now included in the case decision.

CONCLUSION:

The NCDS program's record keeping policies and procedures, with the alluded to necessary modifications, are in substantial compliance with the federal Rule 703 requirements.

C. Case File Records (4 yrs. 1999-2002)

§ 703.6 (f)

(f) The Mechanism shall retain all records specified in paragraphs (a) through (e) of this section for at least 4 years after final disposition of the dispute.

A random sample of 50 case numbers from the years 1999 through 2002 was drawn from DaimlerChrysler's CRT data storage program, and in our field inspection, we checked the sample case files at the NCDS national office in Dallas to verify that they

were being maintained per requirement § 703.6(f). In addition, a visual inspection was made of the entire four-year accumulation of case files as required by the same section.

The closed files for the years 1999 through 2002 are now stored in a corner of the NCDS office.³⁰ The files we viewed appeared intact and were readily available for inspection. The random sample inspection of 50 case files drawn from all cases in the four-year universe of cases validated the program's maintenance of these records as required.

D. Arbitration/Hearing Records

i. Case file folders

Most information that is required to be maintained is found on a series of forms found in the case files maintained at the NCDS headquarters in Dallas, Texas. In addition, much of the required information is included in the arbitrator's decision statement, a copy of which is also found in each case file folder.

ii. Arbitrator Biographies

The arbitrator biographies for the national program are available for review from the Senior Vice President of NCDS at their headquarters in Dallas, Texas. The biographies are thorough and current, and the list of arbitrators for each district includes the dates of their appointments. The biographies of arbitrators are also available from Mr. E. J. Janke, DaimlerChrysler's Regulatory Affairs Manager. His successor in 2003 is Ms Tava Sowers.

E. Hearing Process

The arbitrator scheduled the hearing at a building adjacent to the principal dealership in question after consulting sep

³⁰ In the past, these files were stored in a room on a separate floor of the building in which NCDS headquarters are located.

The audit included interviews with arbitrators and parties attending the hearings. The auditor discussed hearing procedures with the arbitrator following the hearing.

ii. Openness of Meeting

The room's size was adequate to accommodate any additional observers who may have wished to attend the hearing, and the arbitrator recognized that the meeting was open to anyone wishing to attend

iii. Efficiency of Meeting

The hearing was efficiently conducted in every respect.

iv. Hearing

This arbitrator appeared to be committed to fair and expeditious resolution of warranty disputes. He performed his responsibilities in a reasonably proficient manner, affording the parties an adequate opportunity to be heard, but was confused as regards the question of mileage offset allowances and their applicability.

v. Arbitration Decisions

We reviewed approximately 50 decisions for this area while conducting our on-site visit to the Dallas, Texas, headquarters of NCDS. In the compliance summary (Section I of this report), we discussed and will not repeat here the important issue of boilerplate language. In addition, we noted again this year some decisions that provide for a repair that leaves complete discretion to one of the parties (i.e., the manufacturer) to diagnose and make appropriate repairs. These kinds of repair decisions did not, however, appear to be as common as we found them in the recent past. Customers who receive such decisions are among the most dissatisfied of our survey respondents. If such customers have asked for a refund or replacement, a decision denying their requested relief because the manufacturer was not given a reasonable opportunity to repair, accomplishes much the same thing without having the problem of "discretion" being given to one of the parties. Repair decisions, in our view, often raise more questions than they answer except in cases in which the customer seeks a repair that the dealer has declined to perform under warranty. Even in such cases, the repair decision should be specific and the arbitrator should avoid the temptation to solve a customer's problem as opposed to rendering a fair decision based on the facts presented. Providing customer service is, after all, the responsibility of the manufacturer and/or the dealer to whatever degree they elect to engage in it.

Impartial Services Group, Inc.[ISG](a DaimlerChrysler Vendor) processes the board's/arbitrator's decision. For instance, when a repurchase or replacement has been awarded, ISG processes the award.

We have reviewed the decision rendered in the case we monitored in Paducah, Kentucky, and it is thorough, well reasoned, and complete.

CONCLUSION:

The CAP program, as it operates in Paducah, Kentucky, is in substantial compliance with Rule 703. The NCDS administrative staff and the assigned arbitrator demonstrated a clear commitment to ensure fair and expeditious resolution of warranty disputes. The administrative staff is clearly dedicated to the program's mission and demonstrates a high degree of professionalism.

III. Minnesota, (Virginia, City of)

A. Case Load and Basic Statistics

The Minnesota audit includes a review of a hearing held in Virginia(City of), Minnesota and interviews with the principal people involved in the hearing. In addition, we reviewed cases files for Minnesota, which are stored at the national headquarters of NCDS in Dallas, Texas

Of the 81 cases received during 2002,29 (35.8%) were determined to be beyond the program's jurisdiction. Jurisdiction determinations are provisionally made by NCDS with the arbitrator having authority for final determinations. Of the remaining, in-jurisdiction cases, 36 (69.2%) were arbitrated and 13 (25%) were mediated. That the sum of "mediated" and "arbitrated" cases does not equal the total "in-jurisdiction" cases, is due to the 3 "pending" cases reported at the time the statistics were generated.

The average time for handling the 2002 cases in Minnesota was 37.5 days. This compares with 35 days nationally.

The independent administrator NCDS is the main repository of the required CAP records. All biographies of current CAP arbitrators were found to be in compliance and available for inspection.

NCDS stores all non-California files,³¹ in their Dallas headquarters office.

During our on-site review at NCDS's Dallas, Texas, headquarters, we visually inspected the warehousing of all CAP case files for the required four-year period.³² The four-year accumulation of case files was available for inspection per all regulatory requirements.

We requested a random sample of 50 cases drawn from all cases closed during the audit period and examined all the cases provided to determine whether they were complete and available for audit.³³ These files were reviewed for accuracy and completeness. The findings of that review are set forth below.

There do not appear to have been any material changes in the program as administered by NCDS since our last (2001) audit report.

B. Recordkeeping Accuracy and Completeness

³¹ DeMars & Associates administers California cases and stores those files at its headquarters in Waukesha, Wisconsin.

³² See 16 C.F.R., § 703.6 (f)

³³ Sometimes the case load is less than the fifty we request, in which case we examine all case files.

§ 703.6 (a)(1-12)

(a) The Mechanism shall maintain records on each dispute referred to it shall include:

- 1) Name, address and telephone number of the consumer;**
- 2) Name, address and telephone number the contact person of the warrantor;**
- 3) Brand name and model number of the product involved.**
- 4) The date of receipt of the dispute and date of disclosure to the consumer of the decision;**
- 5) All letters and other written documents submitted by either party.**

FINDINGS:

We examined a sample of case files extracted from all "in-jurisdiction" case files closed during the audit period. We reviewed these files for the items enumerated in subsections 1-5 with the following results:

- 1) All case files contained the customer's name, address, and telephone number.

Mechanism and any other person (including consultants described in section 703.4(b) of this part;

7) A summary of any relevant and material information presented by either party at an oral presentation;

8) The decision of the members with information as to date, time and place of meeting, the identity of members voting; or information on any other resolution;

FINDINGS:

All files for cases that were arbitrated contained the information required by sections six, seven, and eight.

9) A copy of the disclosure to the parties of the decision.

FINDINGS:

All applicable case files contain a letter from the Executive Secretary or an arbitrator announcing the arbitrator(s) decision.³⁴

10) A statement of the warrantor's intended action(s);

FINDINGS:

The warrantor's intended action(s) and performance are inextricably linked. Thus, we validate this item in terms of performance verification. Performance verification is a function carried out at the office of the Administrator of the Regulatory Affairs Manager in Rochester Hills, Michigan.³⁵ This office sends a survey to the customer following receipt of the customer's acceptance of those decisions mandating some

³⁴ Some cases do not result in a decision. The case may end in a mediated settlement that came about after the case had been received by the CAB but prior to the hearing to decide the matter.

³⁵ The exception to this rule is California where the program is independently administered by DeMars & Associates.

11) Copies of follow-up letters (or summaries of relevant and material portions of follow-up telephone calls) to the consumer and responses thereto; and

12) Any other documents and communications (or summaries of relevant and material portions of oral communications) relating to the dispute.

Sections 11 above is not applicable for purposes of the audit because there is no practical means by which to verify the completeness and accuracy of such possible additions to the files. Section 12 however appears to mandate that a summary form be created whenever the arbitrator receives an oral communication from a party which may have any bearing on the matter in dispute. The files we reviewed contained the appropriate summaries.

CONCLUSION:

The CAP's program record keeping policies and procedures are in substantial compliance with the federal Rule 703

C. Case File Records (4 yrs. 1999-2002)

§ 703.6 (f)

(f) The Mechanism shall retain all records specified in paragraphs (a) through (e) of this section for at least 4 years after final disposition of the dispute.

A random sample of 50 case numbers from the years 1999-2002 was drawn from DaimlerChrysler's CRT data storage program, and in our field inspection, we checked the sample case files at the NCDS national office [Dallas] to verify that they were being maintained (i.e., stored) per requirement § 703.6(f). In addition, a visual inspection was made of the entire four-year accumulation of case files required by the same section. All records for the audit period (2002) and for the four-year period (1999 through 2002) were complete and readily available for audit. All case files were intact and readily available for inspection. The random sample inspection validated the apparent completeness suggested by the visual inspection.

D. Arbitration/Hearing Records

i. Case file folders

Most information that is required to be maintained is found on a series of forms found in the case files maintained at the NCDS headquarters in Dallas, Texas. In addition, much of the required information is included in the arbitrator's decision statement, a copy of which is also found in each case file folder.

ii. Arbitrator Biographies

The arbitrator biographies for the national program are available for review from the Senior Vice President of NCDS at their headquarters in Dallas, Texas. The biographies are thorough and current, and the list of arbitrators for each district includes the dates of their appointments. The biographies of arbitrators are also available from Mr. E. J. Janke, DaimlerChrysler's Regulatory Affairs Manager. His successor in 2003 is Ms Tava Sowers.

E. Hearing Process (i.e., Meeting)

i. Physical Description of Hearing

During the hearing the meeting was interrupted 18.36 [interrupted by loud speaker] (during messages. It) TJ(52-1.

SECTION V

The NCDS arbitrator training program continues to be a good one that operates in substantial compliance with Magnuson-Moss and Rule 703. There were several important additions to the training program in 2002, and these were carried over into this year's program. The entire program clearly demonstrates a commitment to high quality training.

SECTION VI

Survey and Statistical Index Comparative Analyses

DaimlerChrysler CUSTOMER ARBITRATION PROGRAM INDICES

The Federal Trade Commission (FTC) regulates informal dispute resolution programs such as those operated by the DaimlerChrysler Corporation under FTC Rule 703.6(e). FTC Rule 703.6(e) mandates disclosure of statistics concerning the outcomes of warranty disputes and warrantor compliance with settlements and awards. The major purpose of this section of this audit is to verify the statistics provided by the company for the year 2002.

To have a dispute arbitrated by the DaimlerChrysler's Customer Arbitration Process (CAP)³⁷, a consumer must meet program specific criteria. He or she must be the owner of a vehicle that does not exceed mileage and age requirements, and he or she must agree to forego legal action while the case is open. If these requirements are not met, the dispute is said to be "out of jurisdiction," and therefore ineligible for the program.

Complaints regarding warranty coverage can be resolved at two levels. If a consumer who has filed a complaint comes to an agreement with the DaimlerChrysler Corporation without an arbitration hearing, the dispute is said to have been "mediated" or "resolved by the staff." If the consumer and the DaimlerChrysler Corporation cannot agree, the consumer's case is heard before an arbitrator or panel of arbitrators who then will issue a decision to which both parties agree to abide. Arbitrated cases can result in a decision requiring DaimlerChrysler to repair or replace a vehicle, provide a cash reimbursement, or extend the warranty, or the consumer may receive no relief.

The FTC stipulates that arbitration decisions be rendered within 40 days. Warrantors are required to comply with both mediated settlements and arbitrated decisions within 30 days. Consumers dissatisfied with a jurisdiction decision of the CAP have the right to request reconsideration by the board, although the board

³⁷In California, the program is known as the Customer Arbitration Board (CAB). For the purposes of this report, when we use Customer Arbitration Process (CAP), we refer to DaimlerChrysler's program regardless of state.

filed disputes with the CAP. The main purpose of this survey is to determine whether the consumers' recollections of what occurred during the warranty disputes were similar to what was contained in the CAP's records. The intent is not to determine whether individual consumers' recollections were the same as DaimlerChrysler's records of their cases but to determine whether the aggregate proportion of disputes reported by Claverhouse survey respondents is equivalent to the proportion of disputes with the same outcomes according to the CAP's records.

³⁸ This is the sampling error when the responses divide roughly 50-50 on a given question and when there are 275 cases, and given a 95% confidence interval. The magnitude of the sampling error in a simple random sample is determined primarily by the sample size but also to some extent by how evenly divided the responses are between alternative answers. The more extreme the distribution of responses, the smaller the sampling error.

Disputes can be resolved by mediation (“resolved by staff”), in which the consumer and the company come to a mutually acceptable agreement, or by an arbitration hearing in which the dispute is resolved by a third party (“arbitrator”). The survey respondents report 20.7 percent of disputes resolved by mediation and 79.3 percent by arbitration. Since our survey contains only closed cases, for comparison purposes only closed cases from the CAP indices should be included for comparison. CAP indices report 23.2 percent of closed disputes resolved by mediation and 76.8 percent resolved by arbitration. The differences are not statistically significant at the 95 percent confidence interval.

Table 1³⁹
Method of Resolution of Warranty Disputes
Comparison Between Claverhouse Survey and CAP Indices

Method of Resolution	Claverhouse Survey		CAP Indices		
	Number	Percent	Number	Percent	
				closed cases in jurisdiction	all cases in jurisdiction
Mediation	57	20.7%	473	23.2%	22.8%
Arbitration	218	79.3%	1,569	76.8%	75.7%
Subtotal	275	100.0%	2,042	100.0%	98.5%
Cases pending	-	-	31	-	1.5%
Total	275	100.0%	2,073	-	100.0%

Mediated Cases

FTC 703.6(e) parts 1 through 3 requires the disclosure of the proportion of mediated settlements with which warrantors have complied according to their records, the proportion of mediated settlements with which the warrantor has not complied, and the proportion in which the time for compliance (40 days) has not yet occurred.

As reported in Table 1, the CAP indices contain information on DaimlerChrysler’s 273 mediated settlements. According to the CAP indices, DaimlerChrysler was in compliance with 92.0 percent of the mediated settlements (see Table 2). For 2.3 percent, the time for compliance had not passed at the end of the report period, and for 5.7 percent DaimlerChrysler had not complied.

³⁹ Because not all respondents answer all survey questions, totals may vary from table to table.

In the survey, however, respondents were asked only whether the manufacturer had or had not complied with the mediated settlements Table 2 shows that the vast majority (88.7 percent) of survey respondents whose cases were mediated reported having received the settlement. The differences between the survey results and the CAP indices are not statistically significant.

Table 2
Outcomes of Mediated Settlements
Comparison Between Claverhouse Estimates and CAP Indices

Mediation Settlements	Claverhouse Survey	CAP Indices
	Percent (Number)	Percent (Number)
Resolved, complied	88.7% (47)	92.0% (435)
Resolved, not complied	11.3% (6)	5.7% (27)
Time for compliance has not occurred	0.0 (0)	2.3% (11)
Total Mediated Cases	100.0% (53)	100.0% (473)

Respondents were also asked what settlement they reached with the dealer or manufacturer. The results are shown below in Table 3. The most common settlement was a new vehicle (23.1 percent), second was a new vehicle (21.2 percent), with the same number reporting an extended warranty (21.2 percent). Five respondents did not answer this question; this category is not calculated in the percentages.

Table 3
Specific Outcome of Mediated Settlements
Claverhouse Survey

Outcome	Number	Percent
New vehicle	12	23.1%
Cash settlement	11	21.2%

Extended warranty	11	21.2%
Trade in allowance	2	3.8%
Paid for repairs	2	3.8%
Other	11	21.2%
Did nothing	2	3.8%
Voucher	1	1.9%
<u>No answer</u>		
Total	52	100.0%

Of those whose disputes were mediated, 84.3 percent of the respondents reported they were ultimately pleased with their settlements. Ten respondents (18.2 percent) reported that they had pursued their cases further after reaching a settlement. In response to a question about how they had pursued their cases, four contacted an attorney; four worked out a solution with the dealer or manufacturer; two contacted a state agency; and, five recontacted the CAP. The total is greater than the number of respondents who pursued their cases after the settlement because some used more than one method of pursuing their cases.

We asked survey respondents whether they talked to the staff or returned a postcard to the staff about how they felt about the handling of their cases; 61.3 percent said that they had done one or the other or both. Of the remainder, 12.2 percent said they did neither and 26.5

INSERT FIGURE 1

Table 4
Outcomes of Arbitrated Warranty Disputes
Comparison between Claverhouse Survey and CAP Indices

	Claverhouse	CAP
Award Granted and Accepted FTC 703.6(e)	.32sed g 1 6	(e)

INSERT FIGURE 2

Table 5
Reasons for Delays to Arbitration Decisions
Comparison Between Claverhouse Survey and CAP Indices

	Claverhouse	CAP
Reasons for Delays to Arbitrated Decisions FTC 703.6(e)	Percent of Delayed Arbitrations (Number)	Percent of Delayed Arbitrations (Number)
Consumer failed to submit required information in a timely manner	2.5% (2)	0.0%

001-0003-TwT-280-0996
 01-28-09-06

Table 6
How Consumers Learned of CAP Availability
Claverhouse Survey

Source of Information	Number	Percent of Responses
Owner's manual/warranty information	145	47.2%
Dealership	54	17.6%
Toll-free customer assistance phone number	29	9.4%
Family and friends	22	7.2%
Brochures/other literature	19	6.2%
Previous knowledge	14	4.6%
Attorney	12	3.9%
Media (TV, radio, newspapers, etc)	5	1.6%
Other (Better Business Bureau, Web, Auto show, etc.)	7	2.3%
	307	— ^a

a. We do not total the percentages because respondents could cite more than one source of information.

Additional questions were asked of those who indicated that they had learned about the program through the dealer or the manufacturer. Of the respondents who said that they had learned about the program in this way, 57.5 percent said the manufacturer or dealer talked with them about the program; 32.9 percent said that they were given something to read; and 2.7 percent said there was a poster or other written material in the showroom or repair area.

Survey respondents were also asked if they recalled receiving materials from the CAP explaining the process and procedures. The 92.5 % who said that they had received this material were also asked how easy it was to use the procedures, forms, and brochures provided. Of those who answered this question, 59.0 percent said that they were clear and easy to understand; 35.3 percent said that they were a little difficult but still fairly easy to understand; and only 5.6 percent said they were hard or difficult to understand.

The ability to understand the information and forms plays an important role in the satisfaction of the consumer. Consumers were considered generally satisfied with the program if they gave it a grade of "A" or "B". General dissatisfaction was assumed of those who gave a grade of "D" or "E". Those who reported no difficulty with understanding the forms generally were satisfied. Those who had great difficulty understanding the forms were clearly not satisfied with the program (see Figure 3).

INSERT FIGURE 3

As a way to assess the overall satisfaction with the CAP, respondents were asked to ‘grade’ several aspects of the program, regardless of their individual outcomes, using the scale A to E. Table 7 shows the results of these questions.

Table 7
How Consumers Grade CAP Staff
Claverhouse Survey

INSERT FIGURE 4

INSERT FIGURE 5

Finally, survey respondents were given an opportunity to make comments and suggestions about the CAP program; 176 respondents commented. Those results are shown in Table 8.

Table 8
Comments and Suggestions on the CAP
Claverhouse Survey

Comment/Suggestion	Number	Percent
Arbitrators should be more consumer oriented, not be biased towards the manufacturer	52	25.9%
Did a good job, no complaints	48	23.9%
Dealers/manufacturer should be more responsive to consumers	23	11.4%
Need better initial review of cases by program staff/arbitrators	15	7.5%
Quicken the process; have speedier decisions	11	5.5%
Need more personal contact with CAP staff and arbitrators	11	5.5%
Have more knowledgeable/better qualified mechanics for inspections and repairs	9	4.5%
Have better follow-up to enforce awards and settlements	8	4.0%
Awards and settlements should be more fair; dollar amounts should be more fair	8	4.0%
Make CAP program better known, more advertising	5	2.4%
Have less paperwork, forms easier to understand	4	1.9%
Allow for more information about history and problems of vehicle	3	1.5%
Have more/better representation at hearings	3	1.5%
Need more program locations	1	0.5%
Total	201	100.0%

Among these comments and suggestions, it is noteworthy that two of the three most frequent involved a perception on the part of consumers that arbitrators, dealers, and the manufacturer lacked a “consumer orientation.”

CONCLUSIONS

The comparisons of the consumer survey responses and the Customer Arbitration Process National Statistics provided to IPPSR by DaimlerChrysler indicate that the indices fairly represent several important components of the warranty dispute resolution program. There is agreement between the survey sample and the CAP indices on the comparison of the cases arbitrated and mediated. They also agree on the basic rates of compliance with mediated settlements and arbitration decisions. The percentage of cases that were granted arbitration awards was also in agreement. As noted previously, the disagreements that exist could be due to response bias. The percentages of arbitration cases that ended with adverse decisions reported by the survey respondents does not agree with the CAP indices. The CAP reported more cases ending with an adverse decision than did the survey respondents. Consumers with adverse decisions may be less willing to participate in the study. Whatever the reason for this disparity, it does not raise any concerns about the reliability of the CAP indices. This is the CAP index for adverse decisions. CAP index for adverse decisions is 18.6%.

SECTION VII

Audit Related Requirements

REQUIREMENT: § 703.7 (c)(3)(I)

A report of each audit under this section shall be submitted to the Federal Trade Commission, and shall be made available to any person at reasonable cost. The Mechanism may direct its auditor to delete names of parties to disputes, and identity of products involved, from the audit report.

A copy has been supplied to the Federa

SECTION VIII

Appendix/Codebook