

*United States Federal Trade
Commission*

*Dispute Settlement Board
Audit*

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

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Introduction

This annual audit of Ford Motor Company's Dispute Settlement Board (DSB) is performed pursuant to the 1975 federal warranty law, the Magnuson-Moss Act, and Part 703, Informal Dispute Settlement Mechanisms (Rule 703).

The audit was performed by Claverhouse Associates, a firm specializing in arbitration, mediation, and program auditing. Kent S. Wilcox, President and Senior Auditor, supervised the audit. The Center for Survey Research, a division of the Institute for Public Policy and Social Research, Michigan State University, conducted the survey of DSB customers used in the survey and statistical index comparative analysis section of the report.

Claverhouse Associates was asked to perform this audit of the Dispute Settlement Board (DSB) in January of 2003. Discussions took place thereafter, and the project preliminaries were initiated with submission by Ford Motor Company of a Purchase Notification in the winter of 2003. Field audits and surveys were carried out during the winter and spring of 2003.

On-site field inspections of the program as it operates relative to three Boards in three regions selected for this year's audit (Denver, Colorado; Orlando, Florida; and, San Francisco, California) were all performed by Claverhouse Associates in 2003. The national board member training we audited was conducted in New Orleans, Louisiana, December 8-10, 2002. The findings of the field audit, the regional specific case files, and board meetings do not, technically speaking, always reflect operations as they existed in the audit year. 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 period to be audited and the other in the following year, after all annual statistics had been compiled. For purposes of the audit, it is

¹ This convention has been in operation for several years and is used to avoid the unduly high costs that would be associated with an audit that was on-going during a good part of two calendar years.

SECTION I

Compliance Summary

This audit report (2002 report completed in 2003) constitutes the twentieth independent annual audit of the Ford Motor Company sponsored third-party informal dispute resolution mechanism, the Dispute Settlement Board (DSB)².

OVERALL DISPUTE SETTLEMENT BOARD EVALUATION

Ford Motor Company's third-party dispute mechanism, Dispute Settlement Board (DSB), is in substantial compliance with the requirements of the Magnuson-Moss Warranty, Federal Trade Commission Improvement Act, and Rule on Informal Dispute Settlement Procedures, 16 C.F.R. Part 703.

In our field audit of the independent administrator, DeMars & Associates, including a review of a sample of regional office files for Denver, Colorado; Orlando, Florida; and, San Francisco, California, we found that DeMars & Associates administers the DSB in compliance with Rule

² The initial audit was conducted for the calendar year 1983.

³ Minacs is made up primarily of the same staff as Phoenix Group Division-of-Moore.

⁴ The national survey we conduct is designed and supervised using the appropriate professional standards to ensure the scientific integrity and reliability envisioned by Federally mandated rules and regulations. For details, see the survey section of the report.

⁵ This percentage determined by dividing the number of in-jurisdiction cases (i.e., 5,295) into the number reported s being closed beyond the requisite 40 day period (i.e., 1242).

SECTION II

Detailed Findings

This section addresses the requirements set forth in 16 C.F.R. Para 703, Public Law 93-637 (The Magnuson-Moss Warranty Act, 15 U.S.C. 2301. et seq.). For each regulatory requirement set forth, the audit's findings are recorded and appropriate discrepancies and/or recommendations are made.

This audit covers the calendar year 2002. An important component of the audit is the survey of a randomly selected sample of Dispute Settlement Board (DSB) applicants whose cases were closed in 2002 and found to be within the DSB's jurisdiction. The sample is comprised of 302 applicants and was drawn from the national universe of DSB applicants whose cases were closed in 2002.⁷

We also analyzed several Ford-generated statistical reports covering each DSB operation in the United States. Those reports are available from Mr. Mark Loftus, DSB Process Manager, Ford Motor Company, 16800 Executive Plaza Drive, Room 3NE-234, Dearborn, MI 48126.

Claverhouse Associates performed field audits of the case files for these areas: Denver, Colorado; Orlando, Florida; and San Francisco, California. In addition we monitored board meetings and interviewed arbitrators (board members) and DeMars & Associates' board administrators. We examined DSB operations and reviewed a random sample of 150 current 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. During our on-site visits in various regions, we surveyed a few selected dealerships⁸ to determine the degree to which they carry out the information dissemination strategy developed by the manufacturer to assist them in making customers aware of the DSB program.

We reviewed the centralized processing program maintained by the independent contractor, Minacs. The statistical indices used for analyzing the DSB program were produced by Minacs, which develops these indices from the Customer Data Link system, CUDL.

In addition, we monitored board member training held at the Omni Royal Orleans Hotel, December 8-10, 2002, in New Orleans, Louisiana. The information we relied on for this portion of the audit is from: the actual training itself; before and after interviews with trainees; conversations with the training staff; and educational materials that were used during the training session.

REQUIREMENT: § 703.7 (a) [Audits]

(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.

⁷ Ford does not offer an DSB program for New York residents; thus, there are no cases in the sample from New York.

⁸ Our dealership reviews only encompass three or four dealerships out of perhaps hundreds of dealers in any given state. In no way is this a representative sample, but it can give a useful impression when viewed over time.

FINDINGS:

Records pertaining to the DSB that are required to be maintained by 703.6 (Record-keeping) are being kept and were made available for our review. All case files of our random sample of 50 for each region were located and provided for our review.

meetings between the mechanism and any other person (including consultants described in 703.4 (b));

⁹ Arbitration decisions come in vastly different forms depending, in part, on the arbitration format. In an arbitration panel format, an audio tape of the meeting would reveal a result similar to U.S. Supreme Court decisions wherein members indicate their, sometimes widely divergent, views. The final result in this context, however, is a single decision. In the DSB process, the essence of the decision is reflected on the *Agenda/Decision Summary* form. The administrator's notes on the decision are then crafted into a draft decision. The draft, upon approval and signature of the board chair, is sent to the parties (i.e., the customer and the manufacturer).

¹⁰ We are informed by a manufacturer's representative that since 1999, the language contained on this form has been entered into the MORS III [now CUDL] computer system by Minacs, which is an important record-keeping procedure, but, notwithstanding Minacs's honorable intent, one that is not easily verifiable for accuracy by someone who doesn't know that an original, handwritten set of notes exists.[As of 2002 this no longer relevant, but included here because it is the 2001 audit]

a copy of the case file pursuant to Rule 703, § 703.8 (e) [access to records], would be unlikely to know that the original decision notes were kept in a separate file. Thus, the customer would not have access to a potentially important document for ascertaining the degree to which the reported decision is identical to what the board members intended. Despite good intentions, the possibility of such an event is too great to ignore.

As of November 1999, DeMars & Associates places a copy of the portion of the *Agenda/Decision Summary* form that pertains to a particular case in the case file. This innovation adequately addresses the above outlined concern. In our opinion, it also constitutes a significant improvement and an important step in maintaining the program's long-standing substantial compliance status.

DISCREPANCIES:

None

REQUIREMENT: § 703.6 (a) [continued]

- (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 item 9 is maintained in each individual case file folder. As such, the information was readily accessible for audit. There were no material exceptions. Because the DSB program policies provide that Ford Motor Company will abide by all DSB arbitration decisions, there is no need to have the information included in item 10 in each case file folder.

The information set forth in items 11 and 12 was not audited for accuracy and completeness because of the impracticality of such a review.¹¹ 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. Any minor exceptions were merely of a perfunctory or clerical nature.

REQUIREMENT: § 703.6 (b)

¹¹ For an explanation, see the first paragraph in the "Findings" section of Requirement 703.6 (a)(5).

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

FINDINGS:

¹² This number represents 592 more cases than last year's reported total of DSB cases.

¹³ The numbers reported in this section are quite similar to those reported in the 2001 report.

¹⁴ We said last year, “The percentage of cases beyond 40 days [in 2001] is an admirable 8% reduction

- (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:

Ford's computer system for compiling and maintaining the information necessary to meet the above requirement is designated CUDL. Maintenance of these data is the responsibility of their independent contractor, Minacs. The index is available for inspection and is complete in all important respects.

Ford compiles the required statistics on the required semi-annual basis, but our report refers exclusively to the annual *Index of Statistics*.

DSB Process Manager provides detailed information regarding data maintained by the DSB program in Section III. These comments provide useful insight into the DSB database set-up for maintaining the required statistical information.

The figures reported in this index are analyzed and discussed in further detail in the Survey Section. The survey addresses most of the issues dealt with in the section above.

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 administrative irregularities are discussed in the field audit of regional offices section of this report.

An inspection was made of all case files at DeMars & Associates office, and a random selection of case files from the recent four-year period was inspected and evaluated for completeness. Each case file bearing the randomly selected case number was pulled from storage and inspected. The files were all appropriately maintained and readily available for audit.

(b) [Complaints by brand name/model] The DSB Process Manager provided for audit the warrantor's "Disputes under Brand Name and Product Model" index for 2002. The indexes for the previous four years are maintained in the audit reports for those years and are available from a variety of sources, including the DSB Coordinator in the Ford Consumer Affairs Office in Dearborn, Michigan.

(c) [Two non-compliance categories] The information required by subsection (1) is maintained in the Ford Consumer Affairs Office in Dearborn, Michigan, and is available from the DSB Process Manager. Subsection (2) is not applicable since Ford, as a matter of corporate policy, always complies with DSB decisions.

(d) [Complaints beyond 40 days] This information is stored on computer in the CUDL system and is housed with the independent contractor, Minacs. Any required report can be obtained from this system via the DSB Process Manager. The information is maintained as required.

(e) [Includes 12 categories of statistics] The information referenced in this section is available from the DSB Process Manager. All data pertaining to this requirement are also available from the DSB Process Manager. The 12 categories of statistics required to be maintained have been incorporated into the CUDL system and 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:

It is helpful to review the two regulatory requirements cited above as one because the essential feature of both is timing. Particular attention is given to efforts that would inform customers and ensure that they know about the existence of the DSB at all times. The audit also examines the manufacturer's strategies to alert customers to the availability of the DSB when the customer's disagreement rises to the level that the regulations consider a "dispute."

The "notice" requirement seeks to ensure that the program, which is designed to provide a measure of relief to stalemated consumers, is actually usable by them. To make effective use of it, the customer must first know of its existence and then be able to access it at the opportune time.

Ford uses several means by which to meet this important requirement. They are as follows:

- The *Dispute Settlement Board* brochure is a fairly detailed reference document that explains the DSB process and how to file an application and contains an application form for accessing the DSB program. The brochure is distributed in a variety of ways, but the principal methods are by way of the Customer Relationship C08 are I(CRC

¹⁶ Dealerships access the DSB pamphlets and pamphlet display holders via Qcdealer.com an electronic e-store, maintained by a non-DSB related Ford vendor.

requirement concerning manufacturer responsibility to make customers aware of the availability of the DSB at the time a warranty dispute arises, Ford initiated a campaign to address the problem. In addition to sending communications directly to the dealerships setting forth their responsibilities, the company reminds dealers of the availability of pertinent materials and the procurement process.” This year’s findings indicate their efforts have had some efficacy. Ford continues to require its field staff to visit dealerships to reinforce this information. As has been the case for some years, notwithstanding the dealerships’ performance, many Ford customers have learned about the DSB and managed to make use of it, as is discussed in greater detail elsewhere in this report.

FINDINGS:

Our 2002 assessment of this aspect of the DSB program is, like those in other recent reports, mixed, albeit better. On one hand, the several strategies employed by Ford,

It continues to be the case in 2003 (2002 report) that customers who seek assistance from their salespersons are unlikely to receive useful information about the DSB program. Few of the salespeople we interviewed could provide any information at all about the DSB. This continuing problem of salespeople having little or no knowledge of the DSB is clearly at odds with the manufacturer's objectives and efforts as well as the regulation's intent.

The toll-free phone number to the Customer Relationship Center (CRC) is not specifically designed to facilitate the DSB program, and as has been true in the past, the program was not helpful in obtaining information about the DSB. They insisted on being allowed to work on the problem and insisted on obtaining a vehicle identification number as a precursor to providing any information about the DSB. Although its customer relations focus is on maintaining an open line of communication between the servicing dealer or the manufacturer and the customer, the CRC nonetheless distributed 11,788 DSB brochures to customers in 2002. The clear and stated objective of the CRC, however, is to keep the customer and the manufacturer or dealer working together to resolve their warranty-related problems. This program operates consistent with § 703.2(d) which allows:

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 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.

We believe that dealers' failing to provide information about the DSB when a customer requests information about warranty dispute options appears to be inconsistent with the program's policies, which say, among other things, "The Dispute Settlement Board Brochure/Application is to be provided to anyone upon request for information or application to the program."

Despite these limited reservations, Ford Motor Company's multi-faceted strategy for "making customers aware" appears to be having a measurable impact. Consider for example, the nearly 60,000 customers who made application to the program in the last five years (i.e., 1999-2002). Our audit cannot determine what specific strategy or combination of strategies should receive the credit, but the fact remains that many Ford customers have been **made aware of the DSB program** and have made use of it in considerable numbers to assist them in resolving warranty disputes.

In some respects, the manufacturer's difficulty in carrying out this requirement relates directly to the issue of uncertainty as to the regulation's intent about when the customer is to be informed. A better information dissemination strategy could be developed if regulators provided manufacturers with a clear operational definition of the phrase, **"... at the time consumers experience warranty disputes."** As it stands, the Ford Motor Company program meets the basic requirement insofar as their new efforts have the anticipated results.

It is noted that the party who is in the best position to communicate with customers at most junctures in the warranty repair context is the servicing dealer. In the main, dealers who wish to ignore their role in facilitating "fair and expeditious" warranty dispute resolution may do so with regulatory impunity, notwithstanding the many demonstrated efforts of Ford Motor Company.

Ford Motor Company representatives have informed us that they continue to work on improving their information dissemination program as we have discussed elsewhere in this report. Moreover, we have discussed the current activities carried out by Ford to ensure that more dealers have readily available DSB pamphlets and display holders. Our review did reveal a modest increase in the use of the display pamphlet holders by dealers.

DISCREPANCIES:

The four categories of warranty information required by Rule 703 to be on the face of the warranty are provided elsewhere, but not on the warranty's face. This appears to be technically inconsistent with the regulation despite the regulation's unusual definition of the term, "on the face of the warranty," which is discussed elsewhere in this report.

REQUIREMENT: § 703.7 (b) (3)(I)

Analysis of a random sample of disputes handled by the Mechanism to determine the following: (I) Adequacy of the Mechanism's complaint and other forms, investigation, mediation and follow-up efforts, and other aspects of complaint handling; and (ii) Accuracy of the Mechanism's statistical compilations under 703.6 (e). (For purposes of this subparagraph "analysis" shall include oral or written contact with the consumers involved in each of the disputes in the random sample.)

FINDINGS:

The FINDINGS for this section are arranged as follows:

- (1) **Forms**
- (2) **Investigation**
- (3) **Mediation**
- (4) **Follow-up**
- (5) **Dispute Resolution**

1) Forms

The auditors reviewed most of the forms used by each component of the DSB, including those used by Minacs, DeMars & Associates,¹⁸ Professor James Brown,¹⁹ Director for

¹⁸ DeMars & Associates is an independent contractor that serves as the independent national administrator of the DSB.

¹⁹ Professor James Brown provides national and California-specific training for arbitrators.

the Center for Consumer Affairs, University of Wisconsin-Milwaukee, and Ford Motor Company.

The forms used by the DSB have been modified several times in attempts to refine their utility and consistency with regulatory requirements. As such, they are exceptionally "user friendly." They are also well balanced in providing enough information to properly advise the parties without overwhelming them with unnecessary paperwork. Overall, the DSB forms promote efficiency and assist the program in meeting the stated objective of facilitating fair and expeditious resolution of disputes.

The *DSB Agenda/Decision Summary* form is a valuable tool for record keeping and facilitating more thorough decision letters. Its layout was modified recently to improve the recording of board decisions by providing more space for the details necessary to craft a complete decision with an appropriate accompanying rationale.

DSB forms designed to be used only in certain states because of unique regulatory requirements in those states²⁰ were audited for the limited purpose of ensuring that they do not conflict with the requirements of the Magnuson Moss-Warranty Act or Rule 703. In summary, no irregularities or inconsistencies were identified with respect to these state-specific forms.

DISCREPANCIES:

NONE

DeMars & Associates has established a comprehensive manual, *Dispute Settlement Board Procedure Manual*, that serves as a procedures guide. Professor James Brown provides to arbitrator (Member) trainees a loose-leaf notebook entitled *DSB Manual*, which is a useful source for board members to turn to for direction when questions arise. These manuals are critical components for ensuring that the program continues to operate in substantial compliance with the requirements of Magnuson-Moss and Rule 703.

In summary, we found the manuals to be in substantial compliance with regulatory requirements.

2) Investigation

This facet of the arbitration program is governed by section 703.5(c) (Mechanism's Duty to Aid in Investigation).

The audit discovered only a small number of requests by arbitration boards for technical information, and such information appears to have been provided where requested. This was confirmed by field audits, monitoring of board meetings, and interviews with board members and administrators.

It is common for boards to request independent inspections of vehicles. Independent inspections can appropriately be done to confirm or deny one party's representations; however, monitoring of board meetings suggests that some board members still do not understand the appropriate purpose of an independent inspection, which is to attempt to gain clarification in cases where the parties have presented conflicts of fact. For example, one party may represent that a certain mechanical problem exists and the other

²⁰ States for which Ford or DSB provides unique forms are Arkansas, California, Georgia, Montana, Ohio, Wisconsin, and West Virginia.

party deny that representation. In such a case, the view of an independent certified

final disposition, it can still be a significant factor in the board's decision as to what remedy may be appropriate. The remedy question may, of course, have significant financial implications for the disputing parties. Moreover, because misuse or abuse of the vehicle may be of secondary importance, it may not be referenced in the decision letter. Therefore, a customer who may have at his/her disposal important rebuttal information on the subject of suspected misuse or abuse of the vehicle would be unlikely to be aware that it had become an issue in the board's decision. If the program, or the board, solicited the same information from both parties, it would be far less open to criticism in this regard. In those cases in which an oral presentation is being made, the board has a unique opportunity to ask each applicant whether he/she would like to address this issue before the board begins its deliberations.

FINDINGS:

The investigatory methods employed by the DSB are generally well known to regulators and have been deemed acceptable. Moreover, the processes envisioned when Magnuson-Moss was enacted were understood to be abbreviated in comparison to litigation. Ultimately, the question comes down to "How much investigation is enough?"

It is clear that the DSB methods currently employed result in a valuable collection of pertinent information, and it is equally clear that there is often a potential for gathering significantly more useful information.

RECOMMENDATION:

The program provides a checklist of issues, modeled after the regulatory requirement, to be considered in each case. This checklist

²¹ We operationally define the term *mediation*, (in the context of this audit) so as to include any actions by the parties to the dispute that are designed to resolve the dispute prior to the arbitrators' rendering a decision. Successfully mediated disputes in the DSB context are referred to as "Prior Resolved" dispositions. The DSB process does not use third-party neutrals as facilitators. Attempts to mediate disputes during the DSB process involve voluntary discussions between the parties.

expeditiously to attempt to resolve all disputes submitted directly to the warrantor.

FINDINGS:

After Minacs opens a case, the manufacturer's Consumer Affairs office personnel (in many cases, Dispute Resolution Specialists who are contractors) generally intercede in an attempt to resolve the dispute to the customer's satisfaction prior to any board action. Detailed records are kept as required by § 703.6. This information is contained in the case files maintained by the DSB program's principal administrator.

This audit is concerned with the mediation function only in terms of its impact on the requirement to facilitate fair and expeditious resolution of disputes. All indications are that the mediation function meets, in the main, the minimum requirements for fair and expeditious resolution of disputes. Mediation is voluntary and in no way delays a customer's access to arbitration. The degree to which performance of mediated resolutions conforms with time limit requirements is reviewed in the survey section of this report.

4) Follow-up

There are several sections of Rule 703 that relate to follow-up and manufacturer compliance with DSB awards. In addition, follow-up is one of the very specific factors that is to be reviewed in the annual audit. In the main, follow-up in this context refers to efforts to assure that DSB awards have actua

²² In cases in which the DSB board awards a repair, a refund, or a replacement vehicle, the Dispute Resolution Specialist is responsible for ensuring that the awards are completed.

²³ This function is performed exclusively by DeMars & Associates (the independent national DSB administrator). Once performance of a settlement or award has been verified and the facts related to the performance have been logged by the independent administrator, the case is closed and the performance date is logged for inclusion in the CUDL system.

2000 for our 1999 report, few completed questionnaires were located in the case files either because questionnaires were not returned by customers, or because the fairly new MORS III system had interrupted the mailing of questionnaires. This suggests that, despite the reinstatement of the questionnaire program, the performance verification process has not been getting the desired results. The program may need to consider alternative methods, including the use of a

The four arbitrators on each board consist of: two consumer members; a technical member (who is also considered by the program a consumer member); and a Ford dealer member. Three members constitute a quorum.²⁴ The program's operating procedures provide that in cases involving a board evenly divided on a proposed decision, the customer's interest is to prevail. Generally, disagreements are resolved by discussion, which is driven by an objective of reaching consensus.

The parties are sent copies of the case file contents before the board meets and are informed that they may submit additional information if they choose to clarify or contradict information in the file. In addition, customers are informed that they may make an oral presentation to the board. Information received subsequent to the initial

²⁴ The program requires that this quorum consist of a majority of consumer (i.e., non-manufacturer or dealer-related) members.

court systems make similar mistakes every day. Most judicial systems today, however, provide for continuing education in the form of regular judicial training seminars and periodic publications that highlight areas in which the courts are operating in error.

To expect complete comprehension of the abundant and complex training information under the circumstances of a two-day session is unrealistic. It is equally unrealistic to expect long-term retention of all this information without some form of regular reinforcement. The training materials given to the board members provide a significant measure of reinforcement and, together with the DSB newsletter,²⁵ should result in a marked improvement. The continuing education effort is now an integral part of the

²⁵ This valuable continuing education tool is a newsletter/bulletin aimed specifically at current DSB arbitrators. Introduced in November 1992 as the Dispute Settlement Board *Bulletin*, it was re-named *The Dispute Dispatch* in 1993.

SECTION III

Interview with the DSB Process Manager

Mr. Mark P. Loftus, the current Dispute Settlement Board (DSB) Process Manager (appointed 3/1/00), in Ford's Customer Service Division, is the Ford Motor Company manager most directly involved with the ongoing administrative requirements of the DSB. This interview format was developed for use in the 1993 national (FTC) audit we conducted of the DSB program as it operates nationally.

Ford Motor Company's third-party arbitration mechanism became national in 1983 and there are currently 37 Dispute Settlement Boards nationally. During the 2002 audit period, 419 Board hearings were conducted with 4,214 cases arbitrated. The mechanism reviewed 7,930 cases for eligibility of which 5,742 individual consumer appeals were processed under the guidelines of the program.

Consumers who have elected to make an oral presentation attend during their portion of the review. Occasionally, prospective Board members may attend (observe) a meeting for orientation. State regulatory personnel periodically observe the meetings and some Boards have honored requests from members of the media.

otherwise required by State Certification rules) indicating whether he/she accepts or rejects the Board's decision. If the customer accepts the decision, a Dispute Resolution Specialist (DRS) contacts the customer and works with them to complete the award performance.

We also send a DSB customer survey to any customer who received an award from the DSB process. The purpose of the survey is twofold: 1) to ensure the

Question 7: *What mediation/conciliation procedures, if any, are used after a complaint has been filed with the Board, before actual board review? How are these recorded?*

Answer: Ford has a centralized Dispute Resolution Specialist (DRS) position on location in Dearborn, MI. The DRS reviews each case for a possible resolution prior to Board involvement. We believe that the DRS involvement helps to optimize customer satisfaction and reduce caseload burden on the Board. These cases are recorded as successfully mediated, and appear under the "prior resolve"

²⁶ Some states withhold voting rights from the dealer member.

Question 11:

presentation or attempt to rebut any additional information provided by the customer.

In practice, when there is a disagreement, the board often calls for an independent inspection of the vehicle before rendering a decision.

Question 14: *What procedures are followed for Board inspections? How often are they requested?*

Answer: The Board will occasionally want to inspect a customer's vehicle and will do so if it is available when the customer makes an oral presentation. More frequently, the Board will ask the administrator to make arrangements with Engineering Analysis Associates (EAA), an independent inspection firm, to have the vehicle inspected. EAA submits their findings to the Board. In 2002, the Board requested approximately 310 independent inspections, or 7% of the cases reviewed.

Question 15: *How far in advance of a Board meeting are cases made available to Board members?*

Answer: Board members receive them at least five (5) days in advance.

c) *Do dealers vote on warranty cases?*

Answer: Yes. The dealer is one of the four voting members, except in Ohio Lemon Law eligible cases and Arkansas (see question #10, dealer members are excluded from participating in cases involving their own dealerships).

d) *Are copies of arbitration procedures made available by Ford? In what form?*

Answer: Yes. A DSB Guide is provided, which describes the operations of the program. This is distributed with the DSB training materials in a special three-ring reference binder at the formal training sessions. The material is updated annually to reflect lemon law changes and other procedural changes in the various states.

Question 17: *Does the Board operate in a fair and expeditious manner at all times?*

Answer: Yes. All cases must be processed within 40 days and according to the guidelines established by FTC 703.

The Board member training conducted by Jim Brown and the Dispute Dispatch stress the importance of making a “fair and equitable” decision.

We limit attendance of Ford employees at Board meetings to the rare occasions when Ford makes an oral presentation. This is done in an effort to avoid any perception of Ford attempting to influence the Board decisions.

Question 18: *What obstacles, if any, do you see to the performance of the DSB?*

Answer: Board members occasionally have a scheduling conflict preventing them from participating in the meeting. If this results in a lack of quorum, it can cause the case to go over 40 days. Additionally, meeting the 40 day deadline can be challenging for Ford due to the fact that DSB case handling time is, in reality, 22 business days. In 2001, DeMars began to arrange interim teleconference board meetings to review any information that may have been requested by the board from a previous meeting. This expedited the case review and final decision by the board and prevented the case from being delayed for another month.

Question 19: *What enhancements to the program occurred during 2002?*

Answer: In 2002 we continued to review the DSB process to identify ways to improve the process. We have come to value the help of Professor Brown, DeMars & Associates and others whose insights and experience have helped over the years. Among highlights for 2002 are:

C Renewed certification in Georgia, Ohio and Arkansas (informational only)

materials. CSMs also were required to encourage dealers to order a subscription for required DSB materials via the e-store.

- C Through the institution of the online dealer e-Store, Ford is now able to track the number of DSB brochures and DSB materials (ie. posters, brochure holders) ordered and supplied in 2003. The order quantity is tracked by the supplier, Budco and provided to Ford on a quarterly basis. The totals for 1st quarter 2003 exceed 35,000 DSB brochures and 17,000 DSB materials ordered and supplied.
- C In 2003 Ford is sending a follow-up EFC to remind dealer's of the DSB process and the dealer's responsibility to provide this information to their customers.
- C Funded compliance audits for FTC 703, which included National, Ohio, and California specific audits.
- C Met accurate and timely compliance with required statistical filings, questionnaires and related special requests.
- C Conduct ongoing training of DRSs to improve their understanding of FTC 703
- C Ford converted to an on-line database computer system called Customer Data Link (CuDL), which replaced the previous MORS database system.
- C The DSB eligibility determination responsibility switched from Minacs to DeMars & Associates in August, 2002. The DSB process is now handled at one central office in Wisconsin by one specific vendor.

Renewed contracts with supporting entities and/or vendors including

- Claverhouse Associates
- DeMars & Associates, Ltd.
- SPX - Engineering Analysis Associates, Inc.
- Minacs
- Spike Lawrence, Inc.
- University of Wisconsin-Milwaukee
- Research Data Analysis
- Budco

SECTION IV

On-Site Audit of Case Opening/Closing Facilities

The case opening and closing process is administered by an independent contractor, Minacs, located in Farmington Hills, Michigan. The contractor receives all applications to DSB and

SECTION V

On-Site Audit of DSB Operations for Three Regions

The calendar year 2002 (January - December) audit involved a field inspection of the DSB component of the Ford Customer Service Division in the Denver, Colorado; Orlando, Florida; and San Francisco, California Regions.

The Denver Region has responsibility for Colorado, Wyoming, Utah, Idaho, New Mexico, Nevada, Oregon, Montana, South Dakota, and Nebraska. The Orlando Region has responsibility for Florida, Alabama, and Georgia. The San Francisco Region covers California, Nevada, Hawaii, and Oregon. In many cases, regions have jurisdictions which do not necessarily follow state boundaries, and in California there are two regions within the state.

- I. Denver Region**, Ford Customer Service Division, 6312 Fiddler's Green Circle, Englewood, Colorado.

A. Personnel and Case Load

Ford reports that the Denver Region received 205 DSB applications in 2002. Of this total, 69 are reported as "not-in-jurisdiction" cases. Ford reported 25 mediated (i.e., "Prior Resolved") cases for this region, and 111 arbitrated cases. The average time for handling a case in the Denver Region was 39 days. This is six more days than the national average of 33 days for resolving cases.

B. Record Keeping, Accuracy and Completeness

We drew a random sample of 50 cases that were closed during 2002 and examined them to determine whether they were complete and available for audit.

The results of the inspection of the random sample of 50 cases from 2002 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 50 case files extracted from the Prior Resolved file for Florida. All files were

We examined each of the 50 sample files located with respect to the items enumerated in subsections 1 through 5, with the following results:

- 1) All case files we reviewed contained the customer's name, address, and telephone number. There was one case that was a duplicate that had been opened the second time with a different case number, but otherwise all was in order.
- 2) The requirement is met. The name and address of the independent administrator who receives the application, DeMars & Associates, is provided in the DSB brochure and is so generally known as to not require it to be placed in each individual case file.
- 3) All case files inspected contained the make and vehicle identification number (VIN) of the vehicle. It is generally found in the customer application as well as in any number of other documents in the file. The independent contractor Minacs receives the initial filing and then opens cases as is appropriate. They routinely send applications back to customers who have failed to include the VIN and explain that they cannot open the case until the VIN is supplied.
- 4) All case files inspected contained this information where appropriate. Not all cases necessitated a decision letter, but where a decision was rendered, the appropriate notification letter was present.
- 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) [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 case files we reviewed and that involved arbitrated cases contained the information required by sections 6-8.

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

FINDINGS:

All applicable (i.e., arbitrated) case files contained copies of decision letters 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. As such, we validate this item in terms of performance verification.²⁷ Of the case files examined, most files with decisions that contained an award contained the appropriate performance verification information. Performance verification record-k

²⁷ The “warrantor’s intended actions” also relates to how they intend to respond to an arbitrator’s decision/award. Since Ford’s policy is to abide by all board decisions as part of the program they sponsor (i.e., The Dispute Settlement Board) there is no need to have any information about the policy in each case file folder.

intact and were readily available for inspection. The random sample inspection validated the apparent completeness suggested by the visual inspection.

D. Board Records

i. Agenda/Decision Summaries

All information required to be kept is maintained and available for inspection. The board's administrator completes a separate *Agenda/Decision Summary* form for each board meeting. The administrator provides a copy of this form to DeMars & Associates, which maintains the copies at their headquarters. Information on each form includes: a) meeting place, date, and time; b) arbitrator's name; c) agenda by customer name and case number; and d) the decisions and reasons for the decisions.

Since all records of the program that relate to a case are available to the parties upon request, it is important to point out that this particular record is a very important one because it contains the administrator's interpretation of the board's decision at the meeting in question. Since both parties are to be treated equally, it is imperative that this record be available to the parties only after the letters to the parties announcing the board's decisions have been mailed. Because Minacs logs the contents of the *Agenda/Decision Summary* form that relates to the decision into the CUDL system, it is important that Minacs receive this form only after the decision has been mailed to the parties. Thus, the information from the form does not appear in the CUDL system before the decision letters have been mailed, and Ford staff who have access to CUDL do not receive information about the decision before customers receive it.

period. We note, however, that customers have informed us in the past that they are nervous to start with and interruptions during their presentations often cause them to lose track of their thought process resulting in their not presenting important information. Once interrupted, they are often unable to recall what they had already said and, to avoid repetition, may leave out points they had intended to present. We disagree with the chair's approach in this regard but do not believe it necessarily raises questions of fairness as it relates to decisions.

i. Physical Description of Board Meeting

The DSB board meeting was held at the Renaissance Denver Hotel, Denver, Colorado. The meeting began at 9:00 a.m. The meeting room was large enough to accommodate any reasonably anticipated number of attendees. Time and location of the meeting were not prominently displayed in the hotel lobby, but the oversight was a direct result of recent discussions between DeMars & Associates and the hotel, which resulted in a breakdown in their mutual understandings. The problem was not indicative of the normal operating procedures and is of no regulatory concern.. The meeting room was equipped with a speaker phone to accommodate oral presentations by telephone.

In one case, there was substantial discussion of the case prior to phoning the customer who was going to be making an oral presentation. This raises serious questions about the board's sensitivity to the open meetings regulatory requirements. In a follow-up interview with the board's administrator, she assured the auditor that this was a unique circumstance and that she would discuss the matter with the board. We recommend that DeMars & Associates communicate with all their administrators to ensure that this practice is not repeated.

ii. Openness of Meeting

The administrator stated that observers are allowed at all DSB meetings.

iii. Efficiency of Meeting

All administrative functions at the board meeting were performed by the administrator, who is an agent of the independent administrator, DeMars & Associates.²⁸ The arrangements for the meeting and the general administration of the meeting were very efficient. The administrator did a professional job in assisting the board in carrying out its duties and she did so without crossing the fine line that separates the administrative from substantive participation in the hearing process.

iv. Board Process

This board, like all others we audited in 2003 for the 2002 audit report, is clearly committed to fair and expeditious resolution of warranty disputes. The deliberations indicated a general awareness of many of the federal and state regulations.

Generally, most pertinent issues identified on the customer's application were addressed by the board. In some cases, the board's discussion failed to appropriately focus on the main issues in dispute, which we attributed to the chair's failure to provide an adequate overview of the central issues at the onset of their review of the case. While this does not, in and of itself,

²⁸ At this hearing, Jo DeMars, the President of DeMars & Associates, substituted for the regular administrator.

²⁹ In the past, boards would frequently grant repairs and give supervising authority to Ford field service engineers. This, in effect, transferred the board's authority to a Ford employee who was free to repair or not repair as he or she deemed appropriate. The program discontinued this practice for a host of obvious reasons. To obviate specific repairs in favor of general directions to repair is the same thing since the decision-making authority would again fall to a Ford employee.

II. Orlando, Florida, Region, Ford Customer Service Division, 101 Southhall Lane, Maitland, Florida.

- 3) All case files contain the make and vehicle identification number (VIN) of the vehicle. This information is generally found in the customer application and in a number of other documents in the file. As a result, cases are rarely delayed simply because the customer fails to include the VIN in the application.
- 4) All case files inspected contain this information. Not all cases necessitate a decision letter, but where a decision was rendered, the appropriate notification letter was present.
- 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."

- 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 and the identity of members voting; or information on any other resolution;**

FINDINGS:

All case files that were arbitrated contained the information required by subsections 6 and 8. The oral summaries required by section 7 are created by the DeMars administrator and later placed in the computer file by Minacs in an electronic file format. The source used to create the summary is the *Agenda/Decision Summary* form filled out by the board administrator at the time of the board meeting.

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

FINDINGS:

All applicable case files (i.e., arbitrated cases) contained decision letters.

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

FINDINGS:

The warrantor's intended action(s) and performance are inextricably linked. As such, we validate this item in terms of performance verification.³⁰ Of the case files examined, most files with decisions that contained an award contained the appropriate performance verification information. Performance verification record-keeping is a function that used to be carried out by DeMars & Associates. That changed recently with responsibility being transferred to the Dispute Resolution Specialist at Ford Motor Company who sends out performance questionnaires with Ford's return address. Performance is assumed if the questionnaire is not returned.

Of the 50 case files examined, several did not contain performance verification information in the file, but all mediated and arbitrated cases had performance verification information registered on the *DSB Action Status* reports. Of course, in some situations the board's decision is for "no further action" and, in such cases, performance verification is not applicable.

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.

The two sections above are 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. However, based on our extensive experience with this and other arbitration programs, we have no reason to believe that any required information is not contained in case file folders

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

§ 703.6(f)

The Mechanism shall retain all records specified in paragraph (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 1999-02 was drawn by Minacs, and the field audit checked the sample case files 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 required by the same section.

The closed files for the years 1999-2002 are stored at the DeMars & Associates headquarters in a room on the third floor set aside for that purpose. All current (i.e., 2002) files appeared intact and were readily available for inspection. The random sample inspection validated the apparent completeness suggested by the visual inspection.

D. Board Records

³⁰ The "warrantor's intended actions" also relates to how they intend to respond to an arbitrator's decision/award. Since Ford's policy is to abide by all board decisions as part of the program they sponsor (i.e., The Dispute Settlement Board) there is no need to have any information about the policy in each case file folder.

i. Agenda/Decision Summaries

The four-year accumulation of *Agenda/Decision Summary* forms was kept in one location and was complete and readily available for audit. The board administrator completes a separate form for each board meeting and provides a copy of this form to DeMars & Associates at which point it becomes a permanent record. Information included on each form includes: a) meeting place, date, and time; b) arbitrators' names; c) agenda by customer name and case number; and, d) the decisions and reasons. That portion of this form pertaining to a given case is copied and placed in the customer's case file. This is important because as a part of the file a customer may review it and compare the decision letter they received with the notes taken at the time of the hearing to ensure that they are consistent.

ii. Arbitrator Biographies

The arbitrator biographies are available for review and can be provided by either DeMars & Associates, Professor James Brown, or the DSB Process Manager at the Consumer Affairs Office in Dearborn, Michigan. The biographies are thorough and current. The list of arbitrators/board members for each region includes the dates of each arbitrator's appointment and DSB training.³¹

E. Board Operations

i. Physical Description of Board Meeting

The DSB board meeting on March 20, 2002, began at 9:00 a.m. at the Embassy Suites, Orlando North, 225 East Altamonte Drive, Altamonte Springs, Florida. The meeting room was adequate for those in attendance and for any likely number of visitors. Notice of the meeting was appropriately posted in the hotel lobby.

ii. Openness of Meeting

The meeting was open to observers in compliance with FTC rule 703.8 (d) concerning open meetings in that the board recognized that the parties may stay and observe the entire meeting if they choose to do so.

iii. Efficiency of Meeting

The case files were well prepared and arranged in an orderly fashion. The DSB administrator took detailed notes on each decision, thereby reducing the likelihood of decision letter error.

iv. Board Process

Overall, the board's performance was very good. It was clear that the process was fair and impartial, but that this board, like most others, would benefit from refresher arbitration training. This is especially true concerning the degree to which modification of a vehicle may

³¹ The document codes the subject of training on the third entry line as follows: the Arabic numeral represents the year of training (i.e., 2=1992); the letter C = California-specific training; and the letters CR = California Refresher training.

or may not void the warranty,³² as well as the state statutory presumption issue and its place in the DSB process. They could also benefit from advanced training about the arbitrators' scope of authority, the replacement vs. refund decisions, and the appropriate use of a refund/replacement customer option.

In the first case, the customer made an oral presentation by telephone. The chair provided a good case opening statement which was consistent with each case. It is noteworthy that following the customer's presentation, the chair informed the customer that she was welcome to remain on the line during the board's deliberations. She accepted the offer and the board deliberated without incident.

It appeared that the board members were generally well prepared and had reviewed the case files prior to oral presentations or final deliberations.

v. Board Decisions

We found the decisions made during the board meeting rendered in a manner reasonably consistent with the requirements of Rule 703. As is true of the other regions audited, more in-depth explanations and reasons for the decision should be reflected in the decision statement.

CONCLUSION:

The DSB program, as it operates in this region, is administered in compliance with Rule 703. The board's commitment to ensure fair and expeditious resolution of warranty disputes is evident throughout the program. The staff is clearly dedicated to the program's mission and demonstrates an appropriate degree of professionalism. Such a policy should, in our view, be applicable to all observers, parties, and board members. Overall, however, the program as it operates in this region is rated as "Very Good."

³² This issue is somewhat problematic where the modifications are fairly substantial and made by the dealer prior to the sale of the vehicle. In such cases, it is difficult for a customer who is unfamiliar with the product line to sort out what is, or is not, a post-manufacture modification and whether it voids the vehicle's warranty in whole, or in part, or not at all.

III. **San Francisco, California, Region (Pleasanton Board)**, Ford Customer Service Division, 12677 Alcosta Blvd., San Ramon, California.

A. Personnel and Case Load

We interviewed the DSB board members and the DeMars & Associates administrator.

The San Francisco Region received 594 DSB applications in 2002. Of the cases filed, 126

³³ Of course, this proviso is a conditional one based on the assumption that all board decisions are rendered consistent with the DSB program policies.

FINDINGS:

We reviewed these files for the items enumerated in subsections 1-5 with the following results:

- 1) All case files reviewed contained the customer's name, address, and telephone number.
- 2) The requirement is met in that the name and address of the independent contractor who receives the application, Minacs, is provided in the DSB brochure. It is so generally known as to not require it to be placed in each individual case file.
- 3) All case files reviewed contain the make and vehicle identification number (VIN) of the vehicle. This information is generally found in the customer application and in a number of other documents in the file. As a result, cases are rarely delayed simply because the customer fails to include the VIN in the application.
- 4) All case files inspected contain this information. Not all cases necessitate a decision letter, but where a decision was rendered, the appropriate notification letter was present.
- 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) [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 and the identity of members voting; or information on any other resolution;**

FINDINGS:

All case files that were arbitrated contained the information required by subsections 6 and 8.

All applicable case files (i.e., arbitrated cases) contained decision letters.

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

FINDINGS:

The warrantor's intended action(s) and performance are inextricably linked. As such, we validate this item in terms of performance verification.³⁴ Of the case files examined, most files with decisions that contained an award contained the appropriate performance verification information. Performance verification record-keeping is a function that used to be carried out by DeMars & Associates. That changed recently with responsibility being transferred to the Dispute Resolution Specialist at Ford Motor Company who sends out performance questionnaires with Ford's return address. Performance is assumed if the questionnaire is not returned.

Of the 50 case files examined, several did not contain performance verification information in the file, but all mediated and arbitrated cases had performance verification information registered on the *DSB Action Status* reports. Of course, in some situations the board's decision is for "no further action" and, in such cases, performance verification is not applicable.

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.

The two sections above are 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. However, based on our extensive experience with this and other arbitration programs, we have no reason to believe that any required information is not contained in case file folders.

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

§ 703.6(f)

³⁴ The "warrantor's intended actions" also relates to how they intend to respond to an arbitrator's decision/award. Since Ford's policy is to abide by all board decisions as part of the program they sponsor (i.e., The Dispute Settlement Board) there is no need to have any information about the policy in each case file folder.

The Mechanism shall retain all records specified in paragraph (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 by Minacs and the field audit checked the sample case files 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 required by the same section.

The closed files for the years 1999-2002 are stored at the DeMars & Associates headquarters in a room on the third floor set aside for that purpose. All current (i.e., 2002) files appeared intact and were readily available for inspection. The random sample inspection validated the apparent completeness suggested by the visual inspection.

D. Board Records

i. Agenda/Decision Summaries

The four-year accumulation of *Agenda/Decision Summary* forms was kept in one location and was complete and readily available for audit. The board administrator completes a separate form for each board meeting and provides a copy of this form to DeMars & Associates at which point it becomes a permanent record. Information included on each form includes: a) meeting place, date, and time; b) arbitrators' names; c) agenda by customer name and case number; and, d) the decisions and reasons. That portion of this form pertaining to a given case is copied and placed in the customer's case file. This is important because it allows the customer to review it and compare the decision letter they received with the notes taken at the time of the hearing to ensure that they are consistent.

ii. Arbitrator Biographies

The arbitrator biographies are available for review and can be provided by either DeMars & Associates, Professor James Brown, or the DSB Process Manager at the Consumer Affairs Office in Dearborn, Michigan. The biographies are thorough and current. The list of arbitrators/board members for each region includes the dates of each arbitrator's appointment and DSB training.³⁵

E. Board Operations

i. Physical Description of Board Meeting

The DSB board meeting on March 3, 2002, began at 9:00 a.m. at the Sheraton Four Points Hotel, 5115 Hopyard, Pleasanton, California. The meeting room size and accommodations were adequate for those in attendance and for any likely number of visitors.

ii. Openness of Meeting

³⁵ The document codes the subject of training on the third entry line as follows: the Arabic numeral represents the year of training (i.e., 2=1992); the letter C = California-specific training; and the letters CR = California Refresher training.

from the members' tacit agreement that certain issues need not be reviewed because of the unique facts of the case.

One case left us with an indelible impression insofar as it appeared to lack any precedent in our 20-year experience. The dealer, as a function of their warranty repair status, elected to “pass the ball,” as it were, and referred the customer to a non-Ford specialty shop to fix the manufacturer-installed radio. The outside repa

³⁶ Sometimes, between consideration of cases, there is an opportunity to query the board about issues that may have arisen from their discussion of the previous case.

preparation. The most common concerns are incomplete and/or illegible portions of files and nonexistent dealer or company statements. Customers also often fail to provide certain important information on the application. This can deprive the board of a clear view of the matter prior to their more deliberations, which can clearly affect the quality of the analysis. This concern may be alleviated by those customers opting to make oral presentations.

The board operated well within the regulatory requirements in respect to all but the one previously discussed area of concern.

v. Board Decisions

See comments in the Openness of Meeting section above.

CONCLUSION:

The DSB program as it operates in this region, is administered, by and large, in compliance with Rule 703. The board's commitment to ensure fair and expeditious resolution of warranty disputes is evident throughout most of the program. The staff is clearly dedicated to the program's mission and demonstrates an appropriate degree of professionalism. Overall, the program as it operates in this region is rated as "Fair."

SECTION VI

Arbitration Training

There is no specific language in Rule 703 requiring the training of arbitrators. There are, however, several general requirements for ensuring that the program do whatever is necessary

³⁷ In the recent past, receiving the DSB application and reviewing the case for initial jurisdiction determination was handled by the independent contractor, Minacs.

The auditor observed that the training incorporated sufficient emphasis on the practical skill development necessary to efficiently and appropriately conduct board meetings. A good balance of practical and regulatory information was provided to attendees. Regulatory concepts were well selected and professionally presented.

The lecture format was enhanced by printed reference materials which can be placed in a referenced loose-leaf binder that is mailed to each participant following the training. Reference materials stored in the loose-leaf binder are updated as new information is released. This reference book serves as the board members' essential reference tool. The reference materials are customized to the state requirements of each board member and constitute a well organized tool.

Trainers also employed group interaction and role playing exercises. The several training exercises included: case studies in arbitration problem solving; repeated discussions focusing on the arbitrator's scope of remedies; and, review of the different types of inspections and corresponding circumstances, as well as the related procedures available for arbitrators. The interactive training practice appears to be an effective training method and one that is appreciated by the attendees.

The board chair's responsibilities were emphasized in detail. In addition, trainers discussed the significance of the program's providing "fairness" consistently in all their practices and were reminded that, as arbitrators, their responsibilities do not include "finding and fixing repair problems." Field audits suggests that even greater attention be given to the importance of the chair, or someone, providing a brief, but thorough, thumbnail sketch of each case's particulars prior to taking direct evidence from the parties and before any board deliberations begin. It is sometimes apparent that one or more board members is operating on inaccurate assumptions about important particulars that would normally be addressed in a good opening statement provided by either the board's administrator or one of the board members.

Mr. Clay White provided a session about the forms that typically appear within the case file provided to each board member prior to the hearing at which the board renders a decision. The information gave trainees an enhanced understanding of the many documents included. In addition, Mr. White explained the numerous acronyms associated with these documents (e.g. OASIS reports & FSE reports).

Mr. Joseph Bichanich of DeMars & Associates explained the various DSB roles played by DeMars & Associates. He further explained how DeMars & Associates provides administrative support to the various boards and board members.

The auditor further observed that the discussion covering repurchases and replacements provided a good basis of understanding as it relates to calculating the economic considerations involved in these situations. This area is quite complex, and the efforts to provide ongoing training are essential for those involved in this process. It is clear that many of these practical procedures are well understood by the Dispute Resolution Specialist (DRS), but understanding by board members is not so evident. Continued training and practice exercises should enhance the arbitrators' level of confidence in these matters.

A period was set aside for Professor Brown to offer additional California-specific training to those attendees who would be serving in California, where there are requirements in addition to those set forth in the federal Rule 703.

The training seminar was comprehensive, well organized, professionally presented, and well received by its attendees.

ARBITRATION TRAINING RATING SYSTEM

1) Adequacy of training materials	EXCELLENT
2) Accuracy of informational materials	EXCELLENT
3) Thoroughness of material	EXCELLENT
4) Quality of presentation	EXCELLENT
5) Apparent understanding and likely comprehension of the information	VERY GOOD

SECTION VII

Survey and Statistical Index Comparative Analyses

FORD MOTOR COMPANY DISPUTE SETTLEMENT BOARD PROGRAM INDICES

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

A consumer who wants to have a dispute settled by the Dispute Settlement Board (DSB) must: (1) be the owner of a vehicle that meets certain specified age and mileage requirements; and, (2) agree to forego any legal action while the case is open with the DSB. If a customer applies to the program but does not meet these requirements, the case is considered to be “out-of-jurisdiction.” Cases that are “out-of-jurisdiction” are counted as “closed.” A consumer who is not satisfied with the jurisdiction decision of the program can request that the case be reviewed by the board, but the board is not obligated to hear the request.

If a consumer who files with the DSB is able to reach an agreement with Ford Motor Company prior to an arbitration hearing, the dispute is said to have been “mediated” or “prior resolved” by the staff. If the consumer and Ford Motor Company cannot reach an agreement, the case is arbitrated by the DSB. Arbitration cases can result in the granting of an award requiring Ford to repair or replace the vehicle, to issue a cash reimbursement, or to extend the warranty. On the other hand, the consumer may receive an adverse decision in which there is no award of any kind.

ABOUT THE STUDY

The Claverhouse study is based on 302 respondents from a sample of 692 cases randomly drawn from the universe of 3,303 cases closed nationally in 2002. A customer who had filed more than one case was asked to refer to the most recent case in answering the survey.

The data was collected through a mailed, self-administered questionnaire. IPPSR used methodology designed by Professor Donald Dilman of the University of Washington, a nationally known expert in the field of self-administered questionnaires. Since its inception, IPPSR has used this methodology for all of its self-administered survey projects.

The initial mailing, on March 25, 2003, contained the survey, a cover letter, and a postage-paid return envelope. The cover letter explained the purpose of the survey and the random selection process. It also explained that participation was voluntary but encouraged the recipient to participate. One week later, a combination thank-you and reminder postcard was sent to the entire sample.

Each respondent was assigned a unique number to allow the project staff to monitor the status of each survey. Thus, IPPSR staff was able to determine who had returned completed questionnaires and which questionnaires were returned by the post office because of invalid addresses.

On April 22, 2003, IPPSR staff mailed another questionnaire to those who had not returned completed questionnaires. Of the 692 questionnaires, 302 were returned completed; the completion rate for the study was 43.5 percent. The questionnaire data were entered, proofed, and coded by IPPSR staff.

A threat to the validity of any sample study is non-response bias. That is, if there is any systematic reason that certain consumers selected for the study are unavailable or choose not to participate, the results can be biased. For example, if those who did not receive awards were more likely to refuse participation than those who did receive awards, the study would underestimate the percentage of decisions adverse to consumers. The practices of sending follow-up postcards, second mailings, and reminder phone calls are designed to ensure high cooperation among those selected to participate. Because the sample of 302 cases is a simple random sample, the sampling error is ± 5.4 percent.³⁸ The number of responses varies from question to question, not only because, for example, some questions refer to mediated settlements and others to arbitrated cases, but also because not all respondents answered all appropriate questions.

Method of Resolution

Table 1 compares the method of resolution of disputes in the Claverhouse sample with the figures reported to the FTC. Since the Claverhouse survey contained only in-jurisdiction cases, out-of-jurisdiction cells in the Claverhouse section of the table are blank, and the subtotal (representing in-jurisdiction cases) is equal to total disputes. In this case, we compare only FTC in-jurisdiction cases with the Claverhouse sample. The difference between the 29.8 percent of cases mediated in the Claverhouse sample and the 22.2 percent of cases mediated in the DSB figures is statistically significant at the 95 percent confidence interval. Likewise, the difference between the 70.2 percent of cases arbitrated in the Claverhouse sample and the 77.8 percent of cases mediated in the DSB figures is statistically significant at the 95 percent confidence interval. We have no explanation for this difference, but we should keep in mind that not all customers differentiate between “mediation” and “arbitration” even though the questionnaire

³⁸ This is the sampling error when the responses divide roughly 50-50 on a given question and when there are 302 cases, given a 95 percent confidence interval (i.e., there is a 1-in-20 chance that the actual proportion in the population falls outside the range of 50 ± 5.4 percent). The magnitude of the sampling error is determined primarily by sample size (a larger sample size yields a smaller sampling error) and also, to some extent, on how evenly responses are divided among alternative answers.

provides a brief explanation. Another explanation might be response bias; that is, those whose cases were mediated might have been more likely to return their survey questionnaires.

Table 1

INSERT FIG 1

INSERT FIG 2

Table 6
Reasons for Delays in Decisions
Comparison between Claverhouse Survey and DSB Indices 2002

Reasons for Delays	Claverhouse	DSB
	Percentage (Number)	Percentage (Number)
Customer failed to submit required information in a timely manner	7.1% (8)	0.4% (5)
Consumer failed to seek relief directly from the manufacturer	0.0% (0)	5.7% (71)
Arbitrator requested information or tests	17.9% (20)	0.0% (0)
All other reasons	75.0% (84)	93.9% (1,166)
Total cases delayed beyond 40 days	100.0% (112)	100.0% 1,242

Unfortunately, the survey question about reasons for delays include the option “arbitrator requested additional information or tests,” a category not reported by the DSB. We assume that the DSB indices include cases delayed for this reason in the category “all other reasons.” If this assumption is correct, we can add the two categories in the survey information to get 92.8 percent, which is statistically the same as the figure reported by the DSB.

Consumer Attitudes Toward the DSB’s Informal Dispute Settlement Procedures

At the beginning of the questionnaire, respondents were asked how they had learned about the Dispute Settlement Board. The responses are summarized in Table 7.

Table 7
How Consumers Learned about DSB Availability
Claverhouse Survey

Source of Information	Number	Percent
Ford Dealership	96	31.8%
Ford Customer Complaints/Toll-free number	71	23.5%
Owner’s manual/warranty information	89	29.5%
Friends and family	27	8.9%
Previous knowledge of the program	14	4.6%
Brochures/other literature	19	6.3%
Attorney or other legal source	28	9.3%
Media (TV, Newspapers, etc.)	4	1.3%
Other	10	3.3%
Total	358 ^a	-- ^b

a. These figures represent responses, not respondents, because respondents were allowed to supply more than one answer.

b. Percentages represent the percentage of respondents giving each answer; therefore a total would be meaningless.

93.8 percent gave it a D or E. As demonstrated in Figure 4, those whose cases were mediated were slightly more likely to be satisfied with the program than those whose cases were arbitrated and received an award. Of those arbitration cases in which the consumer received no award or received an award and rejected it, no survey respondent gave the program a grade of A or B.

Another measure of consumers' satisfaction with the DSB program is whether or not they would recommend it to others. A majority (54.8 percent) of survey respondents said that they would recommend the program to others experiencing warranty problems with their vehicles. Of the remainder, 22.4 percent said it would depend on the circumstances, and another 22.7 percent said they would not recommend the program. If we break the total down by case type, however, a slightly different picture emerges (see Figure 5). Consumers with mediated cases generally said they would recommend the program (78.7 percent), and of those consumers whose cases were arbitrated and who received and accepted an award, 72.1 percent said they would recommend the program to others. Of those who received an award but rejected it, however, only 13.6 percent said they would recommend the program, and only 10.9 percent of those who received no award ("adverse decision") said they would recommend the DSB program to others. Table 9 summarizes this data.

INSERT FIGURE 5

CONCLUSIONS

On the basis of the comparison of our survey results with the DSB indices, we conclude that the DSB indices are accurate for most of the important components of the warranty dispute resolution program. The major area in which there is a significant difference between the survey results and DSB indices is the proportion of arbitrated cases delayed beyond 40 days. This is a common finding in our research. We believe that the difference is adequately explained by the recall factor (i.e., consumers can rarely recall specific dates for the opening and closing of their cases) and by the fact that the DSB's definitions of a case's opening and closing dates and the consumer's definitions are not necessarily the same. Another area in which there is a slightly significant difference between survey figures and DSB indices is in the method of resolution of warranty disputes (i.e., proportion of cases mediated versus cases arbitrated). One possible explanation for this difference (approximately 2 percent greater than our margin of error) is response bias; that is, it is possible that those whose cases were mediated were slightly more likely to return their questionnaires.

Overall, consumers appear to be satisfied w

SECTION VIII

Audit Related Regulatory 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 Federal Trade Commission consistent with this requirement.

REQUIREMENT: § 703.7 (d)

Auditors shall be selected by the Mechanism. No auditor may be involved with the Mechanism as a warrantor, sponsor or member, or employee or agent thereof, other than for purposes of the audit.

The audit was conducted consistent with this requirement.

SECTION IX
Codebook