

**DIVISION OF CONSUMER SERVICES’  
ANNUAL LEMON LAW REVIEW OF  
CERTIFIED INDEPENDENT DISPUTE SETTLEMENT PROCEDURES  
IMPLEMENTED THROUGH IMPLEMENTED THROUGH  
NATIONAL CENTER FOR DISPUTE SETTLEMENT**

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**January 1, 2010 through December 31, 2010**

**I. BACKGROUND**

**A. Legislative Authority**

Chapter 681, Florida Statutes, effective January 1, 1989, provides the authority for the Division of Consumer Services of the Department of Agriculture and Consumer Services (“Division”) to certify a manufacturer’s procedure for dispute settlement that substantially complies with Title 16 C.F.R. Part 703.1 et seq. (“Magnuson-Moss Act”), effective October 1, 1983; Chapter 681, Florida Statutes (“F.S.”); and Chapter 5J-11, Florida Administrative Code (“F.A.C.”).

**B. Audit**

Section 681.108(5), F.S., requires the Division to review each manufacturer’s certified procedure at least annually and prepare an annual report evaluating the operations of each certified procedure for compliance with the provisions of Title 16 C.F.R. Part 703, Chapter 681, F.S., (“Lemon Law”), and rules adopted there under. The staff of the Division’s Lemon Law Section conducts the review and prepares the annual evaluation report. This report is compiled for the calendar year beginning January 1, 2010, and ending December 31, 2010. The data gathering process includes an evaluation

of hearings, an office audit of the procedures' records, a review of data that is electronically submitted to the Division on a weekly basis by the procedures, a review of the procedures' arbitrator training processes, and a review of surveys sent to consumers who have participated in the procedures.

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## **II. CERTIFIED PROCEDURES ADMINISTERED BY NATIONAL CENTER FOR DISPUTE SETTLEMENT**

### **A. Manufacturers**

Several manufacturers have established dispute settlement procedures since the enactment of the Magnuson-Moss Act. Below are the manufacturers that have established a certified procedure with the Division, implemented through National Center for Dispute Settlement ("NCDS"). The listing below reflects the manufacturer and their initial date of certification.

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

The current certification of the procedures is effective until March 31, 2011.

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

NCDS maintains an office at 105 Decker Court, Suite 350, Irving, Texas, where Mr. Craig Olson is Senior Vice President of Dispute Settlement Services.

NCDS also maintains office at 43230 Garfield Road, Suite 130, Clinton Township, Michigan. Ms. Deborah Lech Shubnell is the Dispute Resolution Operations Manager for NCDS and manages the programs through the Michigan office.

No offices are maintained in Florida.

### **III. NCDS EVALUATION**

#### **A. Recordkeeping**

All files for the programs implemented by NCDS are maintained in the Clinton Township, Michigan, office. The Florida records have been found during previous staff site visits to be maintained in this office by manufacturer in a manner separate from other governmental jurisdictions in accordance with § 5J-11.009, F.A.C. Due to travel & budget restrictions a site review was not conducted during the current audit period.

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

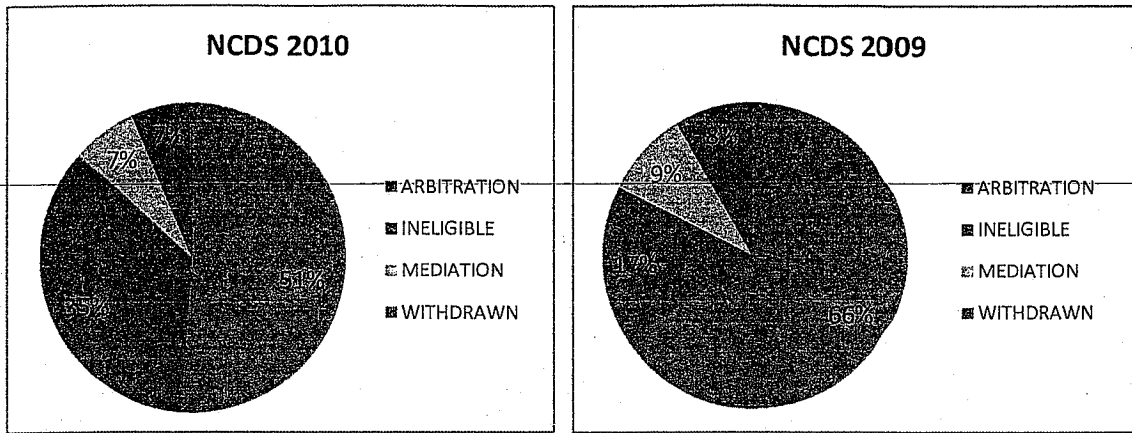
#### **B. Disputes/Claims**

A consumer seeking to file a claim with a certified program administered by NCDS may contact NCDS by the use of a toll-free telephone number. Florida calls are answered promptly by NCDS staff in the Michigan office. Upon receiving a Florida call, NCDS staff input the consumer's name, address, and vehicle type. A claim form is immediately sent to the consumer for completion. A claim is not initiated until the consumer returned the completed claim form.

NCDS submitted details to the Division for 351 claims processed for 2010. The claims are categorized as ineligible, withdrawn, mediated, or arbitrated. The graphic below (Chart 1) depicts the percentage breakdown in the four categories of the total

claims that were closed for the 2010 audit year and a comparative graphic for 2009.

**Chart 1**



In 2009 approximately 66% of claims filed resulted in a settlement through arbitration and 9% through mediation. Consumers withdrew 8% of cases and 17% were determined to be ineligible.

In 2010 the number of claims entered into the arbitration process dropped by 15% (to 51%) from the previous year. The number of mediated and withdrawn cases dropped slightly to 7% respectively. The biggest change was in cases determined to be ineligible which grew (by 18%) to 35% in 2010. This increase may be attributed to national media attention highlighting consumer complaints of sudden unintended vehicle acceleration. These claims could not be recreated or verified by automobile safety interests including the US Department of Transportation. Most were instead attributed to driver error. As a result 'Lemon Law' applications submitted for this reason were deemed ineligible.

The following table (Table 1) provides the claim dispositions by type that were processed for each certified program implemented by NCDS during the current audit year.

**Table 1**

<b>MANUFACTUROR</b>	<b>ARBITRATION</b>	<b>INELIGIBLE</b>	<b>MEDIATION</b>	<b>WITHDRAWN</b>	<b>TOTAL</b>
<b>LEXUS</b>	13	7	6	7	33
<b>TOYOTA</b>	167	117	18	16	318
<b>TOTAL</b>	180	124	24	23	351

The disposition of claims are categorized as those that were declared ineligible to participate in the program, withdrawn by the consumer from the program, settled through mediation by the program, or arbitrated by the program. Following is a description of each claim disposition category and the awards provided in that disposition category:

**1. Ineligible**

These are disputes in which NCDS lacked contractual jurisdiction to process the case. There is no award available when a dispute is declared ineligible as the program is not required to process the claim, and the file is closed immediately. Examples of cases that are deemed ineligible include claims that are filed in an untimely manner or beyond the warranty or Lemon Law rights period, claims where the vehicle was purchased or leased by the consumer as “used”, truck claims in which the gross vehicle weight of the vehicle exceeded 10,000 pounds, claims where the vehicle was purchased or leased by the consumer outside the state of Florida, or claims where the alleged defect was the result of an accident or abuse.

Of the total 351 claims filed with NCDS, there were 124 cases categorized as ineligible. As discussed in section B, above, there were a larger number of these types of cases this year due to media reports of alleged problems in Toyota engine management systems. However, experts were unable to find any fault

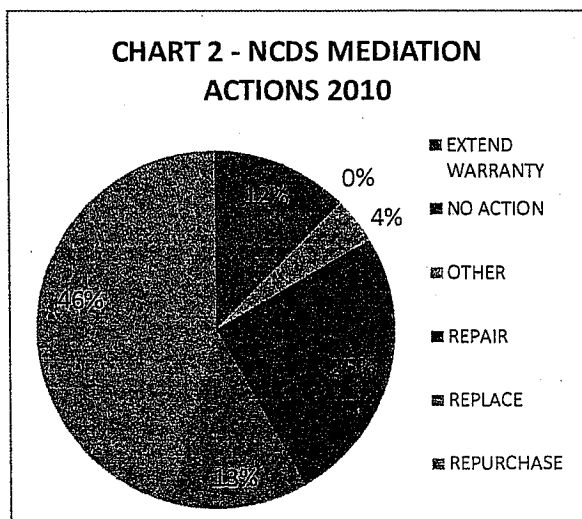
with the systems. Still, Division staff reviewed these files to ensure that adequate documentation supporting NCDS' determination of non-jurisdiction was evident.

## 2. Withdrawn

These are claims that were withdrawn by the consumer. Since the claim was withdrawn by the consumer, no determination was made by the program. The disputes were withdrawn by the consumer for various reasons, including the consumer decided to trade the vehicle, the consumer decided not to pursue the dispute for personal reasons, or the consumer determined the problem had been corrected. 23 claims were withdrawn by the consumer during the audit period.

## 3. Mediated

These are disputes in which the consumer filed a claim with NCDS, and then the manufacturer and consumer subsequently entered into an agreement resolving the dispute prior to NCDS conducting an arbitration hearing. There were 24 NCDS case files closed through mediation. This process is typically completed within 7-10 days of the consumer filing a claim. Toyota's mediated cases decreased slightly from 25 in year 2009 to 24 in year 2010.



In 2010 manufacturers agreed to repurchase 11 vehicles and to replace 3 vehicles. Additional repair attempts were accepted by 6 consumers and extended warranty periods were accepted in 3. In 1 case, the dispute was settled through an offer outside of the standard

tracked categories. Chart 2 (left) illustrates mediation resolution actions taken on cases in 2010 by percentage.

Table 2 (below) provides a breakdown by manufacturer of the resolution actions taken during the mediation process. These awards are directly attributed to the manufacturer, as the settlement is an agreement reached between the manufacturer and consumer prior to arbitration.

**Table 2**

**MEDIATED**

<b>MANUFACTUROR</b>	<b>EXTEND</b>	<b>OTHER</b>	<b>REPAIR</b>	<b>REPLACE</b>	<b>REPURCHASE</b>	<b>TOTAL</b>
<b>LEXUS</b>	0	0	1	1	4	6
<b>TOYOTA</b>	3	1	5	2	7	18
<b>TOTAL</b>	3	1	6	3	11	24

A Division staff review of settlement letters issued by NCDS found that they did not contain the required disclosure language. This issue was brought to the attention of NCDS and language in the letters was immediately corrected.

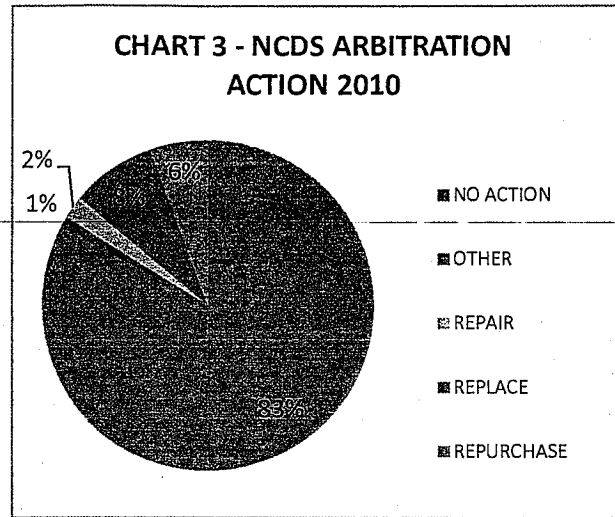
**4. Arbitration**

These are disputes in which the consumer filed a claim with NCDS and it conducted an arbitration hearing wherein a decision was rendered. There were 180 cases closed through arbitration during the audit period. In 2010, 51% of the claims filed with NCDS were resolved through arbitration compared to 66% the previous year.

NCDS arbitrators awarded a replacement vehicle or a refund to 25 consumers. 4 consumers were awarded additional repair attempts and 2 agreed to other types of settlements. No relief was given to 149 consumers.

Chart 3 shows arbitrated cases for the current audit year of 2010. The outcomes of the arbitration process remained unfavorable to the consumer during the 2010 audit period compared to 2009.

The following table (Table 3) provides a breakdown by manufacturer of the awards received as the result of an arbitration hearing in 2010:

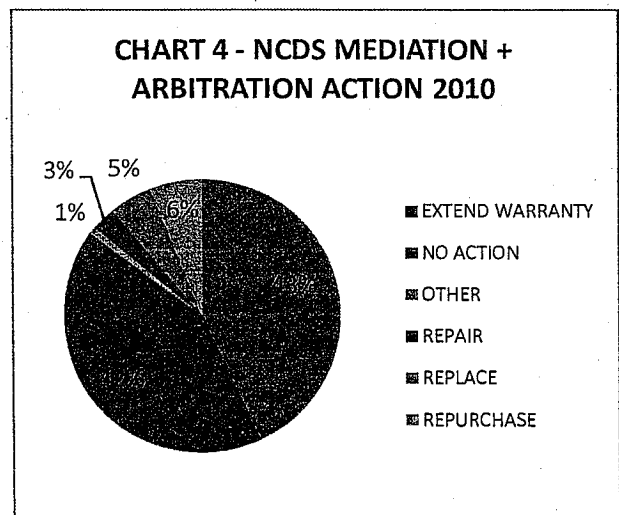


**Table 3**

ARBITRATION MANUFACTURER	NCDS NO ACTION	OTHER	REPAIR	REPLACE	REPURCHASE	TOTAL
LEXUS	12	0	0	0	1	13
TOYOTA	137	2	4	15	9	167
<b>TOTAL</b>	<b>149</b>	<b>2</b>	<b>4</b>	<b>15</b>	<b>10</b>	<b>180</b>

Chart 4 (right) combines all arbitrated and mediated claims for 2010.

The chart reflects the awards given to consumers by percentage and numeric count. 43% of the claims mediated or arbitrated resulted in a replacement of the vehicle. 6% resulted in manufacturer repurchase of the vehicle. In 9% of the



claims, consumers received an award other than a repurchase or replacement, including additional repairs. 42% of the claims were dismissed with no award.



**C. Arbitrators/Arbitrator Training**

On April 14 and 15, 2010, NCDS conducted a Florida specific arbitrator training in Orlando, Florida. Division staff attended this training which covered all aspects of the Florida Lemon Law and the federal Magnuson-Moss Act. The training sessions provided coverage of the governing laws and were Florida specific. The training is designed for new arbitrators and as a refresher for arbitrators currently being utilized by NCDS.

NCDS also conducted arbitrator training in Grapevine, Texas, but this training was a general training in Magnuson-Moss and Lemon Law, not specific to Florida Lemon Law.

**D. Hearings/Hearing Locations**

NCDS provides two options for consumers to choose from with respect to their arbitration hearing. Consumers may select (1) submission of documents only for an arbitrator panel to review; or (2) to personally attend a hearing at a site in close proximity to their residence, typically at a dealership, to be heard by an arbitrator or arbitrator panel.

When a consumer chooses option 1, all documentation and a statement of fact are prepared by the consumer and sent to the Michigan office. This is forwarded to the manufacturer, who prepares a written response. The consumer is provided a copy of that statement and allowed to respond. The documents are then reviewed by a 3-member arbitrator panel and a decision rendered. There is no opportunity for rebuttal or to present additional evidence. These hearings were previously held at the Dallas office. During the audit period NCDS implemented document only panel hearings from a public site in Lakeland, FL. These hearings are conducted by Florida arbitrators.

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If the consumer chooses option 2, arbitration hearings are performed at a site near the residence of the consumer. Lexus hearings are conducted by a three arbitrator panel at a site other than a dealership. Porsche hearings are conducted by a single arbitrator at a site other than a dealership. Toyota hearings are typically conducted by a single arbitrator at a Toyota dealership.

The Division staff monitored numerous NCDS hearings during the report period in Tallahassee in which the consumer participated. It was stated in staff reports that the arbitrators maintained control of the hearing and allowed each party ample time to present their case. It was observed that the arbitrators provided a nonbiased atmosphere.

§ 5J -11.011, F.A.C., requires that all hearings be held no more than 75 miles from the consumer's residence. During the audit period, surveys were sent to all consumers who utilized NCDS's process. The surveys returned indicated that no consumers were required to travel more than 75 miles to participate in an arbitration hearing, substantially complying with § 5J-11.011(3), F.A.C.

Title 16 C.F.R. Part 703.5(d)(1) requires consumer disputes to be processed as expeditiously as possible and that a decision be rendered within 40 days of the commencement of the action by the consumer. Data for the audit period indicated NCDS' average time for handling all cases (ineligible, withdrawn, mediated, and arbitrated) was 18.51 days.

Division staff identified 2 cases that exceeded 40 days. These claims were closed within 3 days of the 40 day time period.

Data received from NCDS reflected that 29 arbitrators were utilized in its arbitration hearing processes. Three arbitrators were utilized in 50 or more cases

arbitrated by NCDS. One was involved in 84 hearings, one in 63, and one in 58. They served either as an arbitrator on a 3 member panel or as a single arbitrator. In the cases these individuals heard 85% of the consumers were given no award (slightly above the overall rate of 83%) and 6% were provided a replacement or a refund (slightly below the overall rate of 10%).

It was observed that NCDS used many of the same Board Members for the majority of the hearings. The Division raised concerns that this may increase their familiarity with the manufacturers & their arbitrators and thus detract from their ability to remain impartial to consumers over time. The Division recommended rotating Board Members so that no one develops or is perceived to develop such a bias.

#### **E. Independent Audit**

Title 16 C.F.R. Part 703.7(a) requires each manufacturer participating in a certified program to have an audit prepared at least annually by an independent auditor to ensure compliance with the provisions of federal law. § 681.108(4), F.S., and § 5J-11.010, F.A.C., require that each manufacturer file with Division a copy of the independent audit report by July 1<sup>st</sup> of the following year. The 2009 audit of all certified manufacturers' programs administered by NCDS was submitted in a timely fashion. The audit was detailed and well prepared. The audit submitted by the auditor addressed Florida specific data required by § 681.108(4), F.S., and § 5J-11.010(2), F.A.C.

#### **IV. REPORT SUMMARY**

NCDS arbitrators are knowledgeable in the applicable federal law and Florida Lemon Law. The instruction and training materials utilized were sufficient, substantially

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complying with 16 C.F.R. Part 703.3(a) and covering Chapter 681, F.S. Detailed Florida-specific training was provided to the arbitrators. NCDS provides its arbitrators information bulletins that are useful in implementing the provisions of Chapter 681, F.S. and Chapter 5J-11, F.A.C. The arbitrator pool, training, and arbitrator performance is substantially compliant with the provisions of the governing statutes.

Title 16 C.F.R. Part 705(d) provides for the timely processing of claims within 40 days. NCDS substantially complies with these requirements.

Records are submitted daily to Division, in compliance with § 5J-11.007, F.A.C. In addition, NCDS provides a weekly summary of all arbitration hearings that were held. The materials include the claim initiation date, the time and place of the hearing, the name and address of the claimant, the name of the arbitrator, dates to resolve, the vehicle VIN, the decision sought, and decision rendered. The records are submitted timely by NCDS and substantially comply with § 5J-11.007, F.A.C., and § 681.108(3), F.S.

NCDS maintains adequate hearing sites in Florida complying with the 75-mile requirement of Rule 5J-11.011(3), F.A.C.

**V. RECCOMENDATION**

The dispute settlement procedures administered by NCDS substantially comply with Chapter 681, F.S., 5J-11, F.A.C., and Title 16 C.F.R. Part 703.

Considering the documentation and information included in this report, the Division staff recommends the re-certification of the informal dispute settlement procedures implemented by NCDS for Lexus and Toyota through March 31, 2012, in accordance with Chapter 681, F.S.