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REPORT

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November 13, 1985

Mr. R. T. Brambilla
 National Coordinator
 Customer Arbitration Boards
 Services and Parts Operation
 Chrysler Corporation
 P.O. Box 1718
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40,428
 A
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 1007276

Case name -
 Re: Chrysler Corporation's Customer
 Arbitration Board, *De re*
 Our file: 166-181-85 (381)

Dear Mr. Brambilla:

Alaska Dispute Resolution Letter 2-11/13/85
 Attor Gen'l is - Decision

I. Introduction

You have requested the Attorney General's approval of Chrysler Corporation's Customer Arbitration Board (CCAB) informal dispute resolution Mechanism pursuant to Alaska's Motor Vehicles Warranties Act ("Lemon Law"), AS 45.45.300 -- 45.45.360. We have reviewed the following materials submitted by Chrysler: Customer Satisfaction Board Operating Guide; 1984 Audit of Chrysler Corporation's Customer Arbitration Board; letter dated February 19, 1984, from you to Linda M. O'Bannon in response to questions she posed to Chrysler; 1985 Warranty Information Booklet for New Domestic Passenger Car and Truck Models; 1985 New Yorker Warranty Information; 1985 Fifth Avenue Warranty Information; 1985 Dodge 600 Sedan Operating Instructions and Product Information; and Customer Arbitration Board Consumer Pamphlet (REV 9-84). To

assess the program, we used the standards set forth in 16 C.F.R. § 703 on informal dispute settlement procedures.

II. Short Conclusion

We conclude that the Chrysler Customer Arbitration Board does not substantially comply with 16 C.F.R. § 703. 1/ The major area of noncompliance is § 703.3(b), which requires the board members be sufficiently insulated from the warrantor (Chrysler Corporation) so that decisions are not influenced by the warrantor. Because the CCAB allows a Chrysler representative and a dealer representative to sit on the board and participate in case discussions, the board is not sufficiently insulated from Chrysler Corporation (the warrantor) to insure uninfluenced and independent decisions.

III. Discussion

The duties of the warrantor are set forth in 16 C.F.R. § 703.2. Each subsection will be taken up individually.

1/Although the Alaska Attorney General does not ordinarily review federal laws or regulations, in this instance it is necessary because the U.S. Federal Trade Commission has not determined whether Chrysler Corporation and the CCAB are in compliance with 16 C.F.R. 703. Further, it is our opinion that AS 45.45.355 would allow the Alaska Attorney General to review an informal dispute settlement procedure and determine whether to approve or disapprove the procedure regardless of an FTC determination of compliance with § 703.

A. 16 C.F.R. § 703.2(a)

This section provides:

(a) The warrantor shall not incorporate into the terms of a written warranty a Mechanism that fails to comply with the requirements contained in §§ 703.3 through 703.8 of this part. This paragraph shall not prohibit a warrantor from incorporating into the terms of a written warranty the step-by-step procedure which the consumer should take in order to obtain performance of any obligation under the warranty as described in section 102(a)(7) of the Act and required by Part 701 of this subchapter.

We find that Chrysler Corporation is not in substantial compliance with this section because the CCAB does not comply with certain provisions of § 703. Moreover, Chrysler should not be representing that the CCAB "complies completely with FTC regulations." Customer Satisfaction Operating Board Guide at 6R-1 and 6T-3 (hereafter "Operating Guide").

B. 16 C.F.P. § 703.2(b)(1)-(4)

This section provides:

(b) The warrantor shall disclose clearly and conspicuously at least the following information on the face of the written warranty:

(1) A statement of the availability of the informal dispute settlement Mechanism;

(2) The name and address of the Mechanism, or the name and a telephone number of the Mechanism which consumer may use without charge;

(3) A statement of any requirement that the consumer resort to the Mechanism before exercising rights or seeking remedies created by Title I of the Act; together with the disclosure that if a consumer chooses to seek redress by pursuing rights and remedies not created by Title I of the Act,

resort to the Mechanism would not be required by any provision of the Act; and

(4) A statement, if applicable, indicating where further information on the Mechanism can be found in materials accompanying the product, as provided in §703.2(c) of the section.

1. § 703.2(b)(1) - Statement of availability of Mechanism

We find that Chrysler Corporation substantially complies with §703.2(b)(1). Page 1 of the 1985 warranty information booklet has a reference to the consumer satisfaction procedure found on page 17 of the booklet. 2/ In addition, on pages 4-5 there is a reference to the customer arbitration board. Pages 4-5 are the pages we believe a consumer would consider the "warranty text," and therefore, mention of the arbitration board on these pages satisfies the "on the face of the written warranty" provision.

2. § 703.2(b)(2) - Name, address, telephone number

Similarly, we find substantial compliance with §703.2(b)(2) despite Chrysler Corporation's technical failure to comply with this provision. The name of the Mechanism is contained on page 5 of the 1985 warranty booklet. Also page 1 refers the consumer to the customer satisfaction procedure on page

2/Page references are to the 1985 Warranty Information Booklet. The Fifth Avenue and New Yorker booklets contain the same information in the same sequence, but the pages sometimes vary.

17, which contains the Mechanism's name. Because the CCAB has many arbitration boards throughout the country, we do not believe it absolutely necessary for the standard warranty "on its face" to include an address for each board. We are satisfied that the separate pamphlet called "Customer Arbitration Board" which contains the geographic listings for the various boards substantially complies with the spirit, if not the letter, of § 703.2(b)(2). This separate customer arbitration board pamphlet is entirely devoted to the arbitration board procedures, and consumers may be more apt to turn to it than to search the general warranty booklet if a problem arises.

3. § 703.2(b)(3) - Requirement to First resort to Mechanism

We find substantial compliance with § 703.2(b)(3) by the statement on pages 4-5 of the 1985 Warranty Information Booklet. This statement informs a consumer that a case must be submitted to the CCAB before action may be taken under the Magnuson-Moss Warranty Act: 3/ at the same time, it correctly represents that

3/Query: Should this requirement be included in the regulations for the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301 through 2312, if the Federal Trade Commission does not "pre-approve" the mechanism before a manufacturer includes a statement that it is a requirement that a consumer resort to the mechanism before exercising any rights under the Act? Without any approval procedure prior to a manufacturer including that statement in the warranty, the statement may well be false or deceptive if in fact
(Footnote Continued)

resort to arbitration is not necessary prior to a consumer pursuing state-created rights. We note that, if Chrysler had an Alaska-approved program, consumers pursuing their rights under Alaska's "Lemon Law" would have to first participate in the customer arbitration procedure (AS 45.45.355).

4. § 703.2(b)(4) - Further information on the Mechanism

We also find substantial compliance with § 703.2(b)(4). On page 1 of the 1985 Warranty Information Booklet is a reference to page 17 setting forth the customer arbitration procedure. In addition, page 5 also references the procedure set forth on pages 17 and 18, and references the separate customer arbitration booklet.

C. 16 C.F.P. § 703.2(c)(1)-(5)

This section provides:

(c) The warrantor shall include in the written warranty or in a separate section of materials accompanying the product, the following information:

(1) Either (i) a form addressed to the Mechanism containing spaces requesting the information which the Mechanism may require for prompt resolution of warranty disputes; or (ii) a

(Footnote Continued)

the mechanism does not comply with § 703. Thus, even though this program in our opinion does not comply with § 703, consumers who read through their warranty may be misled into believing that any consumer complaint or dispute must first go before the Customer Arbitration Board before the consumer can seek to enforce the warranty in court.

telephone number of the Mechanism which consumers may use without charge;

(2) The name and address of the Mechanism;

(3) A brief description of Mechanism procedures;

(4) The time limits adhered to by the Mechanism; and

(5) The types of information which the Mechanism may require for prompt resolution of warranty disputes.

1. § 703.2(c)(1) - Form addressed to the Mechanism or toll-free number

Chrysler does not include a toll-free number in its Consumer Arbitration Board Booklet but, rather, includes a tear-off preprinted form that is printed with the Customer Arbitration Board name but not any address. In order to complete the form a consumer is required to look through a two-page listing by states of the mailing address for the consumer's particular state and fill that address in on the form. This appears to be a minor, technical issue as to whether having a preprinted form with the name of the Customer Arbitration Board but not the address comports with the requirement to have a "form addressed to the Mechanism." Although the CCAB is not in technical compliance with § 703.2(c)(1), were this the only incidence of noncompliance, the Attorney General would find the program in substantial compliance.

2. § 703.2(c)(2) - Name and address

Chrysler Corporation is in compliance with § 703.2(c)(2). The Customer Arbitration Board pamphlet lists the names and addresses for all state CCAB's. 4/

3. § 703.2(c)(3) - Mechanism procedures, and
§ 703.2(c)(4) - Time limits

While the Customer Arbitration Board pamphlet contains a good description of some of the CCAB procedures, it does not explain the mediation process which was the basis of the FTC's grant of an exemption to the CCAB of the time periods set forth in 16 C.F.R. § 703.5(e) at 49 Fed. Reg. 28397-98 (July 12, 1984). The FTC imposed three conditions on the exemption that extended the Rule's 40-day time limit for arbitration to 60 days:

1. Consumers are not required to participate in mediation. Consumers may terminate mediation before the process begins or at any time during the process and still obtain a decision from the mechanism.
2. Upon notification from the consumer that he or she elects to cease mediation and start the arbitration process, the mechanism shall render a decision within 40 days of such notification or within 60 days of the date the mechanism first

4/We note that in the 1985 Dodge 600 Sedan Operating Instructions and Product Information on page 110, there is a box at the bottom of the page including information on the "Customer Satisfaction Board." As in 1985 the name of the Customer Satisfaction Board was changed to Customer Arbitration Board, this fact should be reflected not only in the warranty booklets but also in any other information a purchaser of a new Chrysler vehicle is given, to avoid confusion.

received notification of the dispute, whichever is less.

3. The procedures required by conditions 1 and 2 shall be disclosed clearly and conspicuously to the consumer after the mechanism has received notice of the dispute and prior to beginning the mediation process.

As the CCAB pamphlet does not adequately explain the differences between mediation and arbitration and how the mediation process impacts a pending arbitration claim with respect to the 40-day versus 60-day time limit, Chrysler is not currently in compliance with § 703.2(c)(4).

4. § 703.2(c)(5) - Information requested

Chrysler is in substantial compliance with § 703.2(c)(5). The Customer Arbitration Board pamphlet informs the consumer that repair orders and correspondence will be requested.

D. 16 C.F.R. § 703.2(d)

This section provides:

(d) The warrantor shall take steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes. Nothing contained in paragraphs (b), (c), or (d) of this section 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 find that Chrysler is in substantial compliance with this section. The 1985 Warranty Information Booklet and the separate Consumer Arbitration Board pamphlet are in each new car's glove compartment at the time of sale. In addition, the "Customer Satisfaction Board" Operating Guide indicates that Chrysler Corporation has available posters for their dealers, and requires that the dealers clearly and conspicuously display information on the Customer Satisfaction Board program. Operating Guide at 6K-1. According to the 1984 Audit, the information in the glove compartment was the primary source of consumer knowledge about the program, followed by information supplied by a person at the Chrysler dealership. Sixty-seven percent of those responding knew of the program because of the information in the glove compartment and fourteen percent learned about the Customer Arbitration Board from a person at the dealership. 1984 Audit at V-4. Other information sources account for only one to four percent. A continued program of glove compartment pamphlet and dealership awareness of the CCAB should assure threshold familiarity for the consumer.

The Consumer Protection Section also conducted a telephone survey of the five Chrysler dealerships in Alaska. A staff attorney, posing as a consumer, telephoned the dealerships in Juneau, Anchorage, Fairbanks, Kenai, and Kodiak. The attorney

called the service department 5/, explained that she was having warranty problems with her 1985 New Yorker, had heard that Chrysler had some kind of arbitration board, and wanted the address. When the service department referred her to the packet of materials in the glove compartment, she explained that her husband had removed the booklets and she was unable to find them.

Four out of five dealerships gave the correct address. The fifth, Kenai, gave the address of the zone office and explained the arbitration board was at the same address. In Anchorage, the service department said that the "consumer" (staff attorney) should come in and pick up a booklet because it explained steps to be taken before arbitration. The staff attorney asked whether such steps were mandatory, and was told that if she wrote directly to the arbitration board the board would write back asking if the steps had been followed.

These responses overall demonstrated an acceptable level of familiarity and willingness to give consumers information about the program in Alaska. Chrysler is therefore in substantial compliance with §703.2(d). NOTE: The Customer Arbitration Board

5/The procedure was to ask for the service manager first, then the assistant service manager if the manager was out. The responses for the five dealerships came from three service managers, one assistant, and one owner when the service manager and assistant were both out.

booklet informs consumers that they do not have to use Chrysler's in-house consumer complaint procedures but may go directly to the board. The warranty booklet implies that the consumer must first attempt to resolve disputes with Chrysler's in-house procedures before being able to present disputes to the CCAB, 1985 Warranty Information Booklet at 17, and the booklet should be changed.

E. 16 C.F.R. § 703.2(e)

This section provides:

(e) Wherever a dispute is submitted directly to the warrantor, the warrantor shall, within a reasonable time, decide whether, and to what extent, it will satisfy the consumer, and inform the consumer of its decision. In its notification to the consumer of its decision, the warrantor shall include the information required in § 703.2(b) and (c) of this section.

We have no information regarding disputes submitted directly to the warrantor and, therefore, can make no assessment of substantial compliance with this section.

F. 16 C.F.R. § 703.2(f)(1)-(3)

This section provides:

(f) The warrantor shall: (1) Respond fully and promptly to reasonable requests by the Mechanism for information relating to disputes;

(2) Upon notification of any decision of the Mechanism that would require action on the part of the warrantor, immediately notify the Mechanism whether, and to what extent, warrantor will abide by the decision; and

(3) Perform any obligation it has agreed to.

We have no information to evaluate compliance with (1), and the only information we have to evaluate compliance with (2) and (3) is the two statistical sheets for January to June 1984 and July to December 1984 contained in the audit. According to those figures, in the period January to June 1984, ninety-one cases were decided by the board, time for compliance had passed, and the warrantor (Chrysler Corporation) had not complied. During the period July through December 1984 the number was 122. The regulations merely provide that the warrantor must notify the Mechanism whether, and to what extent, the warrantor will abide by the decision. The decision of the board is not binding on the warrantor, according to the regulations.

Chrysler Corporation, however, has made a determination that a decision of the CCAB is binding on Chrysler (the warrantor). Consequently, there should be no situations in which the time for compliance has passed and warrantor has not complied. Because Chrysler has agreed that the CCAB decisions are binding upon it as the warrantor and Chrysler has not timely complied with each CCAB decision, Chrysler is not in compliance with § 703.2(f).

G. 16 C.F.R. § 703.2(g) and (h)

These sections provide:

(g) The warrantor shall act in good faith in determining whether, and to what extent, it will abide by a Mechanism decision.

(h) The warrantor shall comply with any reasonable requirements imposed by the Mechanism to fairly and expeditiously resolve warranty disputes.

Again, because Chrysler Corporation (the warrantor) has agreed that CCAB decisions are binding on it (the warrantor), Chrysler may not make a decision whether, and to what extent, it will abide by a Mechanism decision. Chrysler as warrantor must abide. Therefore, because there were 213 cases during 1984 in which the warrantor (Chrysler Corporation) has not complied, we conclude that Chrysler Corporation is not operating in good faith with its own Mechanism. Therefore, Chrysler Corporation (the warrantor) is not in substantial compliance with the good faith requirement of subparagraph (g).

Similarly, minimal compliance with reasonable requirements imposed by the Mechanism would be abiding by the Mechanism's decision. That this did not happen in 213 cases impacts the fairness and speed with which the Mechanism is capable of resolving warranty disputes. Chrysler Corporation is not in compliance with the "shall comply" (emphasis added) requirement of subparagraph (h).

H. 16 C.F.R. § 703.3(a)-(c)

These sections provide:

(a) The Mechanism shall be funded and competently staffed at a level sufficient to ensure fair and expeditious resolution of all disputes, and shall not charge consumers any fee for use of the Mechanism.

(b) The warrantor and the sponsor of the Mechanism (if other than the warrantor) shall take all steps necessary to ensure that the Mechanism, and its members and staff, are sufficiently insulated from the warrantor and the sponsor, so that the decision of the members and the performance of the staff are not influenced by either the warrantor or the sponsor. Necessary steps shall include, at a minimum, committing funds in advance, basing personnel decision solely on merit, and not assigning conflicting warrantor or sponsor duties to Mechanism staff persons.

(c) The Mechanism shall impose any other reasonable requirements necessary to ensure that the members and staff act fairly and expeditiously in each dispute.

1. § 703.3(a) Competent staffing and adequate funding.

We are concerned that the CCAB may not be competently staffed "at a level sufficient to ensure fair and expeditious resolution of all disputes." We have reviewed the resumes of the Washington (and Alaska) Board. While we are impressed with the qualifications of those individual board members, we are concerned about the adequacy of training of the "staff." The primary administrative and staff duties of the CCAB appear to be carried out by the CCAB Zone Coordinator and the Board's Executive Secretary. While the Executive Secretary (elected by the three voting members of the Board) is technically not "staff," the duties of the Executive Secretary are similar to staff functions. Some of the duties are: (1) to coordinate formal communications to and from the Board; (2) to determine if there is sufficient information to arbitrate; (3) to request further information for

contradictory evidence; (4) to disclose contradictory evidence; (5) to determine if a customer is capable of adequately expressing his or her case due to, for instance, a language barrier; (6) to send questionnaires to consumers; (7) to prepare statistics; and (8) to determine if the CCAB "has jurisdiction" over the case. Operating Guide at 4B-1, 4B-2, and 5K-1. Adequate training is necessary to carry out these "staff" functions. The CCAB apparently uses written materials as its main form of training. Audit IV-6, Answer to Question #3. Audit II-7, Answer to Question #3.

The Executive Secretary receives a copy of the Operating Guide but, according to the 1984 audit report, "The Zone Coordinator's Operating Guide is seldom used and needs updating." Audit I-2. The Operating Guide does not include any information on state "lemon laws" or the FTC exemption allowing 20 days for mediation. Adequate board and staff training is encouraged.

2. § 703.3(b) - Insulated from warrantor

Our most fundamental criticism of the CCAB concerns the lack of substantial compliance with § 703.3(b). The most glaring deficiency we find is with the structure of the board, which allows a Chrysler Corporation (the warrantor) representative and a dealer representative to sit on the board, albeit in a nonvoting capacity. This we find to be incompatible with § 703.3's directive that the members and staff be sufficiently insulated so

that their decisions are not influenced by the warrantor (Chrysler).

Our concerns are shared by the auditors also. Zone coordinators sometimes take charge of board meetings, 6/ and dealers sometimes sit in when their own cases are being discussed. 1984 Audit at I-1. "While theoretically the Dealer Representative and the Chrysler Representative are to take passive roles as advisors, this doesn't always happen in practice. In Los Angeles and Boston, the zone coordinators actually chaired the meetings. In Memphis and Chicago the zone coordinator exercised a strong influence on the board, as well." 1984 Audit at IV-13.

The decisionmakers must be insulated from this type of active or subtle pressure. The legitimacy of and confidence in the decisionmaking powers are severely undermined when Chrysler Corporation representatives participate in meetings.

We see no practical reason for participation by these two representatives. Their presence can only serve to add on-the-spot oral information in a process that is supposed to allow only for written submissions by the parties. The deliberations of the voting board members in discussing the

6/Indeed, the Operating Guide states: "The Zone Coordinator should moderate all . . . Board meetings, in accordance with the prepared agenda"

written submissions should not be tainted by the presence and participation of either a Chrysler representative or a dealer representative. Their presence provides an imbalance, because the consumer is not there to also provide additional oral information.

In sum, this is the most disturbing departure from the requirements in Rule 703. It precludes our approval of the CCAB even if the Mechanism were in compliance with all other provisions of the Rule. The CCAB pamphlet does not even inform consumers about the two nonvoting members of the Board.

I. 16 C.F.R. § 703.4(a)-(c)

These sections provide:

(a) No member deciding a dispute shall be: (1) A party to the dispute, or an employee or agent of a party other than for purposes of deciding disputes; or

(2) A person who is or may become a party in any legal action, including but not limited to class actions, relating to the product or complaint in dispute, or an employee or agent of such person other than for purposes of deciding disputes. For purposes of this paragraph (a) a person shall not be considered a "party" solely because he or she acquires or owns an interest in a party solely for investment, and the acquisition or ownership of an interest which is offered to the general public shall be prima facie evidence of its acquisition or ownership solely for investment.

(b) When one or two members are deciding a dispute, all shall be persons having no direct involvement in the manufacture, distribution, sale or service of any product. When three or more members are deciding a dispute, at least two-thirds shall be persons having no direct involvement in the manufacture, distribution, sale or service of any product. "Direct involvement" shall not include acquiring or owning an interest solely for

investment, and the acquisition or ownership of an interest which is offered to the general public shall be prima facie evidence of its acquisition or ownership solely for investment. Nothing contained in this section shall prevent the members from consulting with any persons knowledgeable in the technical, commercial or other areas relating to the product which is the subject of the dispute.

(c) Members shall be interested in the fair and expeditious settlement of consumer disputes.

The CCAB consists of three voting members (a local consumer advocate, a general public member and a National Institute of Automotive Service Excellence technician), and two nonvoting members (a Chrysler Corporation representative and a Chrysler-Plymouth or Dodge dealer representative). Operating Guide at 4A-1. 16 C.F.R. § 703.4 concerns the affiliations of the voting board members.

We have little information to assess substantial compliance with §§ 703.4(a) and (b). The Audit does not reveal how many times a voting member had to be disqualified because he or she was a party to the dispute under consideration, or to a potential suit or class action. § 703.4(a)(1) and (2). 7/

7/The 1984 Audit revealed that dealers sometimes sat in when their own cases were being discussed. 1984 Audit at I-1. If this means the dealer was actually participating as the dealer representative, this would violate the Operating Guide even though the dealer representative does not vote. Operating Guide at 4A-1. ("If one of the Dealer members is involved in an arbitration case dispute before the Board, the Dealer Alternate shall sit in on the Board's consideration of that dispute").

We have reviewed the resumes of the voting board members who decide Alaska cases and conclude that the CCAB is in compliance with the requirements of §§ 703.4(b) and (c). The voting board members appear not to have direct involvement in the manufacture, distribution, sale or service of the product, and appear to be persons interested in the fair and expeditious settlement of consumer disputes. 8/

J. 16 C.F.R. § 703.5(a)

This section provides:

(a) The Mechanism shall establish written operating procedures which shall include at least those items specified in paragraphs (b) through (j) of this section. Copies of the written procedures shall be made available to any person upon request.

We do not know whether copies of the Operating Guide are available to any person upon request as required by § 703.5(a). According to the Guide, it is not to be given out by a Chrysler team in a lobbying effort, although the "Customer Satisfaction Board" Operating Procedures pamphlet may be. Operating Guide at 6R-1.

8/The practice of providing board members with Chrysler vehicles as "loaners" for product familiarity (Operating Guide 5F-1, paragraph 2) is discouraged to avoid any appearance of conflict.

K. 16 C.F.R. § 703.5(b)-(c)

These sections provide:

(b) Upon notification of a dispute, the Mechanism shall immediately inform both the warrantor and the consumer of receipt of the dispute.

(c) The Mechanism shall investigate, gather and organize all information necessary for a fair and expeditious decision in each dispute. When any evidence gathered by or submitted to the Mechanism raises issues relating to the number of repair attempts, the length of repair periods, the possibility of unreasonable use of the product, or any other issues relevant in light of Title I of the Act (or rules thereunder), including issues relating to consequential damages, or any other remedy under the Act (or rules thereunder), the Mechanism shall investigate these issues. When information which will or may be used in the decision, submitted by one party, or a consultant under § 703.4(b) of this part, or any other source tends to contradict facts submitted by the other party, the Mechanism shall clearly, accurately, and completely disclose to both parties the contradictory information (and its source) and shall provide both parties an opportunity to explain or rebut the information and to submit additional materials. The Mechanism shall not require any information not reasonably necessary to decide the dispute.

We have little information available to us to determine whether the CCAB is in substantial compliance with § 703.5(b). According to the sample taken in the 1984 Audit, the average number of days that elapsed before the board acknowledged a consumer complaint was eighteen. This is almost double the ten days stated in the Chrysler Arbitration Board booklet. This eighteen-day lapse is not in substantial compliance with § 703.5(b).

From the information available to us, it appears that the CCAB is in substantial compliance with § 703.5(c). The 1984 Audit included in-person audits of six boards. Questions concerning contradictory information were asked. According to the audit, the actual occurrence of contradictory viewpoints is only between five percent and ten percent of all cases. 1984 Audit at IV-15. The audit noted that, when contradictory information was involved, invariably the technical representative was called upon. Until the contradictions are worked out, the audit explains, the board does not make a decision.

L. 16 C.F.R. § 703.5(d)

This section provides:

(d) If the dispute has not been settled, the Mechanism shall, as expeditiously as possible but at least within 40 days of notification of the dispute, except as provided in paragraph (e) of this section:

(1) Render a fair decision based on the information gathered as described in paragraph (c) of this section, and of any information submitted at an oral presentation which conforms to the requirements of paragraph (f) of this section (A decision shall include any remedies appropriate under the circumstance, including repair, replacement, refund, reimbursement for expenses, compensation for damages, and any other remedies available under the written warranty or the Act (or rules thereunder); and a decision shall state a specified reasonable time for performance);

(2) Disclose to the warrantor its decision and the reasons therefor;

(3) If the decision would require action on the part of the warrantor, determine whether, and to what extent, warrantor will abide by its decision; and

(4) Disclose to the consumer its decision, the reasons therefor, warrantor's intended action (if the decision would require action on the part of the warrantor), and the information described in paragraph (g) of this section. For purposes of this paragraph (d) a dispute shall be deemed settled when the Mechanism has ascertained from the consumer that:

(i) The dispute has been settled to the consumer's satisfaction; and (ii) the settlement contains a specified reasonable time for performance.

We note as a threshold matter that the CCAB rejects certain cases because it has no "jurisdiction." The Customer Arbitration Board pamphlet states:

Cases not qualifying for review are those already in litigation, those dealing with accident, sales delivery, or allegations relating to design of the vehicle or part, or alleged obligations under an implied warranty.

The 1984 audit indicates that there were 2,510 "no jurisdiction" cases from January 1984 to June 1984 and 3,096 such cases from July 1984 to December 1984. We are unclear what Chrysler regards as a disqualifying design defect allegation, as many such allegations could include parts covered under warranty that should be arbitrated by the CCAB pursuant to § 703. Because we did not review actual decisions, an independent assessment of fairness of the decisions is not possible. Similarly, the telephone survey in the 1984 Audit is not a good measure of fairness or satisfaction because the respondents are, by definition, biased.

The Operating Guide states that the repurchase or replacement of a vehicle is rarely done. Operating Guide at 5J-1. In fact, repair or replacement is the remedy under Alaska's Motor Vehicle Warranties Act ("Lemon Law"), AS 45.45.300 -- 45.45.360. This should be made clear to the CCAB when it is sitting on a "Lemon Law," rather than a "Magnuson-Moss" (15 U.S.C. §§ 2301-2312), case.

Finally, we note a discrepancy in the manner in which the board is instructed to compute depreciation. The Operating Guide indicates deduction for depreciation at a specified rate: for example, 15 percent or a mileage charge such as 17c per mile. Operating Guide 5J-1. The Alaska "Lemon Law" requires that depreciation be calculated by a straight-line depreciation method over seven years. AS 45.45.360(9). This should be explained to the board when it is deciding a "Lemon Law" case. Until the above-noted changes are made, the CCAB is not in substantial compliance with § 703.5(d)(1).

With regard to 16 C.F.R. § 703.5(d)(2)-(4), we find that the CCAB is not in substantial compliance with the regulations that apply.

Regarding § 703.5(d)(2) and (4), the CCAB apparently is not in substantial compliance with the requirement that the reasons for the decision be given to the consumer and the warrantor. The 1984 Audit shows that only fifty-six percent of the decisions

included an explanation of the basis for the decision. 1984 Audit at V-28. Because the basis for the decision is very important to the consumer's acceptance of a decision, fifty-six percent cannot be regarded as substantial compliance. Although some of the other forty-four percent may be cases in which no explanation is given because the consumer is awarded all of what he or she wants, lack of an explanation may be the basis for many cases in which the time for compliance has passed but the warrantor has not complied. There were ninety-one such cases between January and June 1984 and 122 between July and December 1984, despite the fact that CCAB decisions are binding on the warrantor according to the Operating Guide.

Because the CCAB makes the board's decision binding on the warrantor, § 703.5(d)(3) is inapplicable.

M. 16 C.F.R. § 703.5(e)

This section provides:

(d) The Mechanism may delay the performance of its duties under paragraph (d) of this section beyond the 40 day time limit:

(1) Where the period of delay is due solely to failure of a consumer to provide promptly his or her name and address, brand name and model number of the product involved, and a statement as to the nature of the defect or other complaint; or

(2) For a 7 day period in those cases where the consumer has made no attempt to seek redress directly from the warrantor.

The forty-day time period in this section has been extended to sixty days for the CCAB, presumably for a twenty-day

preliminary attempt at mediation before arbitration. According to the 1984 Audit, 692 cases were delayed beyond the forty (sixty) days for some reason other than the consumer's failure to submit information during the period January to June 1984, and 821 cases were so delayed during the period July through December 1984. Because the regulation only allows delay based on consumer problems, the CCAB appears not to be in substantial compliance with § 703.5(c).

N. 16 C.F.R. § 703.5(f)

This section provides:

(f) The Mechanism may allow an oral presentation by a party to a dispute (or a party's representative) only if : (1) both warrantor and consumer expressly agree to the presentation;

(2) Prior to agreement the Mechanism fully discloses to the consumer the following information:

(i) That the presentation by either party will take place only if both parties so agree, but that if they agree, and one party fails to appear at the agreed upon time and place, the presentation by the other party may still be allowed;

(ii) That the members will decide the dispute whether or not an oral presentation is made;

(iii) The proposed date, time and place for the presentation; and

(iv) A brief description of what will occur at the presentation including, if applicable, parties; right to bring witnesses and/or counsel; and

(3) Each party has the right to be present during the other party's oral presentation. Nothing contained in this paragraph (b) of this section shall preclude the Mechanism from allowing an oral presentation by one party, if the other party fails to appear at the agreed upon time and

place, as long as all of the requirements of this paragraph have been satisfied.

The CCAB procedures do not allow for oral presentations. Oral presentations are not required by § 703.5(f).

Nevertheless, because of the participation of the Chrysler and dealer representatives as nonvoting members, the CCAB, in effect, grants the warrantor (Chrysler Corporation) an oral presentation or hearing even though the CCAB does not grant the Chrysler customer an oral hearing. In fact, the Chrysler customer is not even made aware of the participation of these two nonvoting members. As long as the CCAB allows any oral presentation by the two nonvoting members or any other representatives of the warrantor or dealer, the CCAB must comply with § 703.5(f). The CCAB, in our opinion, is not currently in compliance with § 703.5(f). It could be debated extensively whether oral presentations would be helpful for consumers and, therefore, should be allowed by the CCAB. On the one hand, consumers may be better able to express themselves orally than in writing. On the other hand, perhaps an equal number of consumers are less orally articulate and more articulate in writing. In general, if consumers wish an oral presentation our preference would be that it be allowed, but we recognize that the Rule does not require it.

O. 16 C.F.R. § 703.5(g)

This section provides:

(g) The Mechanism shall inform the consumer, at the time of disclosure required in paragraph (d) of this section that:

(1) If he or she is dissatisfied with its decision or warrantor's intended actions, or eventual performance, legal remedies, including use of small claims court, may be pursued;

(2) The Mechanism's decision is admissible in evidence as provided in section 110(a)(3) of the Act; and

(3) The consumer may obtain, at reasonable cost, copies of all Mechanism records relating to the consumer's dispute.

We find that the CCAB is in substantial compliance with this section. The statement of decision form, which is exhibit G to the Operating Guide, informs a consumer that he or she may pursue other legal remedies including small claims court, that the board's decision is admissible in a subsequent legal proceeding, and that the consumer may obtain at reasonable cost all copies of records relating to his or her dispute. In addition, the Customer Arbitration Board booklet states that a customer may pursue other legal remedies, but that a board decision is admissible in a subsequent court proceeding. Finally, Exhibit G tells the consumer that records of the dispute may be obtained at reasonable cost.

P. 16 C.F.R. § 703.5(h)

This section provides:

(h) If the warrantor has agreed to perform any obligations, either as part of a settlement agreed to after notification to the Mechanism of

the dispute or as a result of a decision under paragraph (d) of this section, the Mechanism shall ascertain from the consumer within 10 working days of the date for performance whether performance has occurred.

We cannot determine whether the CCAB is in substantial compliance with this regulation. Exhibit J-1 to the Operating Guide is a form letter to consumers following up on those cases awarding repairs. Although it is impossible to determine from the form letter whether it is sent within the ten-day limitation of the Rule, the Operating Guide directs the board to send the questionnaire within the ten days. Operating Guide at 6W-1. In addition, the Customer Arbitration Board booklet states that the board will contact a customer who has been awarded repairs within ten working days after the repairs are to be performed. The audit information reports that 91 days elapsed from the filing of the complaint before the follow-up contact was made. 1984 Audit at V-38. Whether the "10 days from day dealer must act" rule has been met cannot be determined from the materials submitted.

O. 16 C.F.R. § 703.5(i)

This section provides:

(i) A requirement that a consumer resort to the Mechanism prior to commencement of an action under section 110(d) of the Act shall be satisfied 40 days after notification to the Mechanism of the dispute or when the Mechanism completes all of its duties under paragraph (d) of this section, whichever occurs sooner. Except that, if the Mechanism delays performance of its paragraph (d) of this section duties as allowed by paragraph (e)

of this section, the requirement that the consumer initially resort to the Mechanism shall not be satisfied until the period of delay allowed by paragraph (e) of this section has ended.

This provision does not require any action of the Mechanism, and therefore, whether the CCAB is in substantial compliance is inapplicable. It is unclear from the materials submitted whether those cases that were delayed beyond the forty-day period (sixty days for Chrysler) actually resulted in consumers filing court actions prior to a board decision.

R. 16 C.F.R. § 703.5(i)

This section provides:

(j) Decisions of the Mechanism shall not be legally binding on any person. However, the warrantor shall act in good faith, as provided in § 703.2(g) of this part. In any civil action arising out of a warranty obligation and relating to a matter considered by the Mechanism, any decision of the Mechanism shall be admissible in evidence, as provided in section 110(a)(3) of the Act.

As noted above, the CCAB itself makes decisions of the board binding on the warrantor (Chrysler). We repeat that a question of the warrantor's good faith arises because, according to the 1984 Audit figures, there were many cases in which time for compliance had passed and the warrantor had not complied.

S. 16 C.F.R. § 703.6(a)

This section provides:

(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, telephone number and contact person of the warrantor;
- (3) Brand name and model number of the product involved;
- (4) The date of receipt of the dispute and the date of disclosure to the consumer of the decision;
- (5) All letters or other written documents submitted by either party;
- (6) All other evidence collected by the Mechanism relating to the dispute, including summaries of relevant and material portions of telephone calls and meetings between the Mechanism and any other person (including consultants described in § 703.4(b) 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;
- (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 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.

Although we have not reviewed any specific case files, we believe that the CCAB, at least in theory, is in substantial compliance with this section as to complaints that were not rejected on a jurisdictional basis. We are concerned about record keeping for persons rejected by the CCAB on the basis of jurisdiction, such as the allegation of a "design defect," and

for persons who participated in mediation and did not proceed to arbitration. The 1984 Audit indicates that, overall, records and case files were well maintained and complete. 1984 Audit at I-1. Section 703.6(a)(10) is inapplicable because the board's decision is binding on the warrantor (Chrysler).

T. 16 C.F.R. § 703.6(b)-(f)

This section provides:

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

(c) The Mechanism shall maintain an index for each warrantor as will show:

(1) All disputes in which the warrantor has promised some performance (either by settlement or in response to a Mechanism decision) and has failed to comply; and

(2) All disputes in which the warrantor has refused to abide by a Mechanism decision.

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

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

(1) Resolved by staff of the Mechanism and warrantor has complied;

(2) Resolved by staff of the Mechanism, time for compliance has occurred, and warrantor has not complied;

(3) Resolved by staff of the Mechanism and time for compliance has not yet occurred;

(4) Decided by members and warrantor has complied;

(5) Decided by members, time for compliance has occurred, and warrantor has not complied;

(6) Decided by members and time for compliance has not yet occurred;

(7) Decided by members adverse to the consumer;

(8) No jurisdiction;

- (9) Decision delayed beyond 40 days under § 703.5(e)(1) of this part;
 - (10) Decision delayed beyond 40 days under § 703.5(e)(2) of this part;
 - (11) Decision delayed beyond 40 days for any other reason; and
 - (12) Pending decision.
- (f) The Mechanism shall retain all records specified in paragraphs (a) through (e) of this section for a least 4 years after final disposition of the dispute.

We find that the CCAB in theory substantially complies with this section of the regulations except as to (e)(1), (2), and (3), although we did not independently review CCAB records. The Operating Guide sets forth the requirements of the annual FTC audit, which essentially reiterates the categories contained in § 703.6(b)-(e). Operating Guide at 6T-2 to 6T-3. Presumably § 703.6(c)(2) is inapplicable because Chrysler agreed that the CCAB decision be binding on it as the warrantor. Therefore, Chrysler could not legally refuse to abide by the decision.

U. 16 C.F.R. § 703.7

This section, concerning audits, provides:

(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 of this part shall be available for audit.

(b) Each audit provided for in paragraph (a) of this section shall include at a minimum the following:

(1) Evaluation of warrantor's efforts to make consumers aware of the Mechanism's existence as required in § 703.2(d) of this part;

(2) Review of the indexes maintained pursuant to § 703.6(b),(c), and (d) of this part; and

(3) 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, investigations, mediation and follow-up efforts, and other aspects of complaint handling; and

(ii) Accuracy of the Mechanism's statistical compilations under § 703.6(e) of this part. (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.)

(c) 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.

(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.

Based solely on the content of the available written audit materials, we find that the CCAB is in substantial compliance with these audit requirements. We have reviewed the 1984 Audit but have made no independent attempt to verify the audit information. In several respects, however, as noted in this opinion, we disagree with the auditor's conclusion that the CCAB substantially complies with § 703. We may, in any future request for approval pursuant to AS 45.45.355, require information on the selection of auditors, the auditors themselves, and the auditing process.

V. 16 C.F.R. § 703.8(a)-(f)

This section, regarding openness of records and proceedings, provides:

(a) The statistical summaries specified in § 703.6(e) of this part shall be available to any person for inspection and copying.

(b) Except as provided under paragraphs (a) and (e) of this section, and paragraph (c) of § 703.7 of this part, all records of the Mechanism may be kept confidential, or made available only on such terms and conditions, or in such form, as the Mechanism shall permit.

(c) The policy of the Mechanism with respect to records made available at the Mechanism's option shall be set out in the procedures under § 703.5(a) of this part; the policy shall be applied uniformly to all requests for access to or copies of such records.

(d) Meetings of the members to hear and decide disputes shall be open to observers on reasonable and nondiscriminatory terms. The identity of the parties and products involved in disputes need not be disclosed at meetings.

(e) Upon request the Mechanism shall provide to either party to a dispute;

(1) Access to all records relating to the dispute; and

(2) Copies of any records relating to the dispute, at reasonable cost.

(f) The Mechanism shall make available to any person upon request, information relating to the qualifications of Mechanism staff and members.

The statistical summaries appear to be available for inspection and copying as provided in § 703.8(a). According to the 1984 audit, the meetings of members are open pursuant to § 703.8(d), although it seems few outsiders attend. 1984 Audit at IV-6. We believe, however, that the requirement that the meetings be open to observers on reasonable and nondiscriminatory terms is

violated by the CCAB's policy of not notifying consumers of the time, place, and date the CCAB will meet. To allow both a Chrysler dealer and a Chrysler corporate representative to be present and to take part in the CCAB discussion if the consumer is not allowed to attend (because the consumer is not notified of the meeting of the Board) is discriminatory.

Access to records is allowed, and copies of the consumer file may be made at reasonable cost, which Chrysler has determined to be \$5. Operating Guide at 6J-1.

Another deficiency with regard to compliance with this section of the Rule appears to be the absence of procedures in the operating guide for disclosure of nonstatistical information to nonparties. This absence may be because CCAB has decided to keep all such information confidential and therefore did not draft procedures regarding disclosure of these records.

IV. General Comments

The CCAB does not have an arbitration board in Alaska, and all arbitrations for Alaska consumers are held in Seattle, Washington. This presents the issue of whether the CCAB is in compliance with 16 C.F.R. § 703.8(d). Since Alaska consumers would have substantial expenses in attending (observing) a CCAB meeting in Seattle, holding a CCAB meeting in Seattle for Alaskans may be discriminatory.

The Operating Guide indicates that only Chrysler's Customer Satisfaction Board "complies completely with FTC regulations." Operating Guide at 6R-1 and 6T-3. We disagree with that statement because in our opinion the CCAB is not in substantial compliance with 16 C.F.R. § 703.

In the Operating Guide, there may be confusion in the method suggested to compute the third-party arbitration cost. The resolution expense as defined in the guide includes expenses to Chrysler added to expenses to the dealer, and then appears to add owner-declined reimbursements. Operating Guide at 6M-3. We believe that owner-declined reimbursements should not be added to the resolution expense, because the owner never receives those reimbursements. These declined expenses should be subtracted from the sum of Chrysler and dealer expenses.

V. Conclusion

There is no doubt that manufacturer-sponsored arbitration programs could be valuable in resolving consumer disputes and could offer an alternative to costly and protracted litigation. Because many consumers will never file lawsuits, an arbitration mechanism should afford an opportunity for an unbiased examination of warranty disputes. The 1984 CCAB audit figures indicate that sixty percent of consumers got all or some of what they asked for. 1984 Audit at V-32. This is evidence of a

quicker and certainly less expensive method of consumer redress than conventional litigation.

The Chrysler and the dealer representatives' participation on the CCAB as nonvoting members is the most apparent departure from 16 C.F.R. § 703. There is no justifiable reason for this presence, and such a procedure unduly influences the voting members. As the linchpin of the program, the voting board should be above biased pressures and the appearance of improper influence. Therefore, the CCAB request for approval pursuant to AS 45.45.355 is denied.

Sincerely,

A handwritten signature in black ink, appearing to read "Harold M. Brown", written over a horizontal line.

HAROLD M. BROWN
ATTORNEY GENERAL

HMB:SS:LNO:ssr