OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

QUARTERLY CASE SUMMARIES

January 1999 - March 1999 (1st Quarter)

JURISDICTION:

Yeargin v. Chrysler Corporation, 1998-1112/ORL (Fla. NMVAB January 20, 1999)

The Consumer requested a second arbitration. During the initial hearing, the Board found the differential clunk noise to be a nonconformity but dismissed the Consumer's claim for failure to allow the Manufacturer a reasonable opportunity to conform the vehicle to the warranty. After the first hearing, the Consumer presented the vehicle for an additional repair for the same nonconformity. The Board concluded that the Consumer had demonstrated a significant change of circumstances since his last hearing and approved the second arbitration. The Consumer was awarded a refund.

Consumer 681.102(4), F.S.

Yarde v. Vector Aeromotive Corporation, 1998-1149/TPA (Fla. NMVAB February 19, 1999)

The Manufacturer contended, among other things, that the case should be dismissed because the vehicle was leased to a corporation and used for commercial, business or professional use, not for personal, family, or household use. The Board rejected this contention on the basis of *Results Real Estate v. Lazy Days R..V. Center*, 505 So.2d 587 (Fla. 2d DCA 1987). The *Results* Court looked to the statutory definition of "Consumer," which included a third clause that defined a Consumer as "any other person entitled by the terms of the warranty to enforce the obligations of the warranty." This Board, as well as the *Results* Court, found that this clause does not contain a "personal, family or household use" restriction as does the first two clauses of the definition, and concluded that business use of the vehicle was irrelevant. The Board found that the Manufacturer did not present any evidence to prove that the Consumers were not entitled by the terms of the warranty to enforce the obligations of the Manufacturer's warranty; therefore, the Consumers were qualified "Consumers" under the Lemon Law. The Board granted a refund on a successful days-out-of service case.

Motor Vehicle 681.102(14), F.S. (1995)

Shaw v. Chrysler Corporation, 1999-0058/TPA (Fla. NMVAB March 17, 1999)

The buyer's order and financing agreement indicated that the vehicle was a used vehicle, as did the application for registration and title. The Consumer failed to provide evidence to refute the Manufacturer's evidence that the vehicle was purchased as a "used vehicle." The Consumer's case was dismissed.

Vickers v. Ford Motor Company, 1999-0108/TLH (Fla. NMVAB March 29, 1999)

The Board dismissed the case holding that the Consumer's vehicle did not meet the definition of "Motor vehicle," because it exceeded 10,000 pounds gross vehicle weight. The vehicle registration certificate stated the actual weight as 6,040 pounds, and the gross vehicle weight at 7,999 pounds. The Consumer testified that he occasionally pulled a horse trailer that weighed 4,700 pounds. Using the definition of gross vehicle weight under Chapter 320, Florida Statutes, the Board added the net weight of the truck and the trailer, which totaled more than 10,000 pounds gross weight. Notwithstanding the fact that the vehicle registration certificate listed the gross vehicle weight at 7,999 pounds, the Board held that the truck was not a motor vehicle as defined and dismissed the case.

Motor Vehicle 681.102(15), F.S. (1997)

Nunez v. Ford Motor Company, 1998-0861/FTL (Fla. NMVAB March 16, 1999)

The Consumer purchased a utility vehicle with 7,088 miles on the odometer at the time of delivery. In addition to other defenses raised, the Manufacturer contended that Consumer was not qualified for Lemon Law relief because the vehicle was "used" and did not constitute a "Motor vehicle" as defined under the statute. The Manufacturer's attorney did not produce a clear copy of the document, but asserted that the Buyer's Order indicated the vehicle was used. The copies which were before the Board did not clearly indicate that the vehicle was "used." Since the term "new vehicle" was not defined in Chapter 681, the Board looked at the definitions of "Motor vehicle" and "Used motor vehicle" in Chapter 320, Florida Statutes. The Board concluded that the Manufacturer failed to present any evidence to substantiate its assertion that the vehicle was sold to the Consumer as a "used" vehicle; as such, the Board held that the vehicle was a "demonstrator" vehicle and granted relief on a "driveability" nonconformity.

Warranty 681.102(20), F.S. (1995)

Bryant v. Caterpillar, Inc., Damon Corporation, and Freightliner Custom Chassis Corporation, 1998-1176/TPA (Fla. NMVAB March 15, 1999)

The Consumers complained of an intermittent vibration that occurred when the recreational vehicle was driven at steady speeds. The vibration was covered under Freightliner's (chassis Manufacturer) warranty and excluded from coverage under Damon's (coach Manufacturer) and Caterpillar's (engine Manufacturer) warranties. The Board dismissed the case as against Damon and Caterpillar holding the alleged problem was not covered by their respective warranties. The Board dismissed the case as against Freightliner, holding that the Consumers were not entitled to relief at the time of the hearing because Freightliner was not afforded a final repair attempt.

Warranty 681.102(23), F.S. (1997)

Fraser v. American Honda Motor Company, 1998-1076/JAX (Fla. NMVAB January 24, 1999)

The Consumer complained of scratches in the paint and rust in various places of the vehicle that he did not discover until two days after the purchase of the vehicle. The Manufacturer contended that the problems complained of where not covered under the Manufacturer's warranty, nor did the problems constitute nonconformities. The Manufacturer presented the owner of its authorized paint and body shop as a witness who testified that the damage appeared to be the result of something falling on the paint as opposed to a manufacturing defect, which would cause a "bubbling in paint." Other Manufacturer witnesses testified that there were no claims filed under the warranty because the dealership paid for the work performed at the repair attempts. The Board found that Honda's "New Car Limited Warranty" did not cover "Any item concerning your vehicle's general appearance that is not due to a defect in material or workmanship" and the "Rust Perforation Limited Warranty" did not cover "rust caused by immersion of the body panel in water, mud, or sand; or resulting from exposure to corrosive gas or industrial fallout." The Board concluded that the rust and paint problems were not covered by the Manufacturer's warranty and dismissed the case.

Licker v. Ford Motor Company, 1998-0978/FTL (Fla. NMVAB February 10, 1999)

The Board concluded that an engine replacement repair after the final repair attempt for a coolant problem was not related to the coolant system nonconformity, and was not covered under the Manufacturer's warranty. The Consumer drove through a rain puddle, causing water to be ingested into the engine, resulting in serious damage to the engine, and necessitating its replacement. The Manufacturer's authorized agent refused to repair the vehicle under the vehicle's warranty; as a result, the Consumer's insurance company paid for the engine replacement repair.

Whether Problem First Reported During Lemon Law Rights Period 681.103, F.S.

West v. Mazda Motor of America, Inc., 1998-0918/STP (Fla. NMVAB March 1, 1999)

The Consumers first reported a rough-running engine problem to the Manufacturer's authorized service agent approximately three and one-half months after the expiration of the Lemon Law rights period,

which occurred eighteen months after the date of original delivery of the vehicle, prior to the Consumers attaining 24, 000 miles of operation. The Board dismissed the case, holding that the Consumers failed to qualify for relief because they did not first report the problem during the Lemon Law rights period.

Berg v. Toyota Motor Sales, U.S.A., 1999-0088/TPA (March 29, 1999)

The Consumer complained of brake noise, brake light problem, low pedal problem and looseness/shaking in the vehicle's front end. The vehicle was subjected to one repair during the first 24,000 miles of operation. The repair facility noted the Consumer's problems as a pull to the right, vibration, and illumination of the brake light; the service agent performed a tire rotation, tire balance, front-end alignment, topped off the brake fluid and adjusted the emergency brake. On four subsequent repair attempts, the Consumer complained of squeaky brakes and paid for the replacement of front brake pads, the steering column was replaced to address steering problems, the master cylinder was replaced because the Consumer reported that the brake pedal traveled to the floor, and the brakes were bled; thereafter, the Consumer sent written notification to the Manufacturer. The Manufacturer argued that the steering and brake defects were not first reported during the Lemon Law rights period, and that the one repair performed during this period was routine maintenance. The Board concluded that the first repair attempt was the only repair attempt during the rights period. Based on the nature of the problems reported and repairs performed on the first attempt, the passage of time and the miles driven between the first repair and the subsequent repair attempts, and the nature of the problems reported and repairs performed subsequent to the first repair attempt, the Board concluded that the problems which formed the basis of the Consumer's claim were not first reported during the rights period. The case was dismissed.

Whether Notice sent after 3 attempts or 15 days out of service 681.104(1)(a), F.S.

Swearingen v. Chrysler Corporation, 1998-1180/TLH (Fla. NMVAB February 12, 1999)

The Board concluded that the Consumers' complaint of ABS failure constituted a nonconformity; however, the nonconformity was cured at the first repair attempt. Since the Manufacturer corrected the nonconformity within a reasonable number of attempts, the Consumers were not entitled to relief. The Board took issue with the Manufacturer's argument that the case should not have been considered under the "repair attempts" provision of the law, because the Consumers failed to give the requisite notice to the Manufacturer. The Board concluded that the statute contains no requirements as to the form of the notice, except that it be in writing. In this case, the Consumers utilized a "Motor Vehicle Defect Notification" form and checked the "days out" box, but listed a description of continuing defects or conditions, most of which had been subjected to at least three repair attempts prior to the notice being sent. Based on the evidence, which established that, after receipt of the notice, the vehicle was delivered to the repair facility and repairs were conducted at the authorization of the Manufacturer; the Board concluded that the provisions of §681.104(1)(a) had been met.

NONCONFORMITY 681.102(15), F.S. (1995):

Adams v. Chrysler Corporation, 1998-1082/MIA (Fla. NMVAB January 6, 1999)

The Consumer complained that the clutch made a loud noise every time the clutch pedal was released. The Manufacturer's witness testified that the noise was the result of fast shifting, which caused the shift fork to snap against the pressure plate; however, this would cause no other problems. The Board inspected the vehicle and found that a noise could be heard when the clutch pedal was released quickly, but that no noise was heard upon releasing the clutch pedal slowly; therefore, the Board concluded there was no nonconformity and dismissed the case.

Vega v. Ford Motor Company, 1998-1172/WPB (Fla. NMVAB February 3, 1999)

The Consumers complained of a grinding noise when accelerating the vehicle with the air conditioner on. This condition was not evident until the vehicle's odometer reached 12,675 miles. The noise progressed over time and eventually exhibited itself with the air conditioner turned off. The acceleration capacity of the vehicle deteriorated to a point where it did not feel like it was going into gear, making it difficult to pass other vehicles. The Manufacturer argued that the problems were not related and therefore each problem was not presented for a sufficient number of repairs. The Manufacturer also argued that there was no problem with the vehicle; rather, the Consumers experienced normal noises and acceleration capacity of the vehicle. The Board concluded that the noise and lack of acceleration was one problem that was a defect or condition that substantially impaired the use and value of the vehicle. The Board rejected the assertion that this condition was "normal," relying on the evidence that the problem did not become evident until the Consumers had owned the vehicle for approximately one year. The Consumers were awarded a refund.

NONCONFORMITY 681.102(16), F.S. (1997):

Cox v. Ford Motor Company, 1998-1072/TLH (Fla. NMVAB January 26, 1999)

Mrs. Cox, the primary driver of the vehicle, complained that the vehicle pulled to the right, which caused her to utilize both hands to keep the vehicle straight, and this caused pain to the one arm of which she had limited use because of health reasons. Mrs. Cox testified that the Board would experience the pulling and that the vehicle would jerk to the left or right when the brakes were applied, if the Board test drove the vehicle during the hearing. The Board took three test drives and experienced a slight vibration upon application of the brakes, however, no pulling was experienced. The Board concluded that the pulling problem did not constitute a nonconformity and dismissed the case.

Smith v. Ford Motor Company, 1998-1127/TLH (Fla. NMVAB January 26, 1999)

The Consumer complained of an intermittent "popping" noise. The Manufacturer's witnesses acknowledged that a noise will occur intermittently under circumstances when the frame or body of the pick-up truck twists or is "in a bind." The witnesses testified that the noise was not significant, nor was it attributable to any defect in the vehicle. Counsel for the Manufacturer argued that the complained of problem did not constitute a nonconformity. The Board test drove the vehicle and did find that the vehicle made intermittent popping noises; it concluded that, although the noise existed and would constitute an annoyance, it clearly did not substantially impair the use or safety of the vehicle, nor would it significantly reduce the trade-in or resale value of the vehicle so as to constitute a substantial impairment of value. The case was dismissed.

Oktayer v. Ford Motor Company, 1998-1138/ORL (Fla. NMVAB January 26, 1999)

The Consumers complained of an intermittent engine hesitation or surge when the vehicle was driven under normal circumstances. The Manufacturer contended that the problem complained of did not constitute a nonconformity. Counsel for the Manufacturer argued that the record showed there were no complaints of the vehicle stalling or illumination of the check engine light. He further argued that the problem complained of was the air conditioner compressor cycling on and off. The Board concluded that, although the engine hesitation or surge existed to a slight degree, it did not constitute a nonconformity. The case was dismissed.

C.A.H. Services, Inc. v. Mercedes-Benz of North America, Inc., 1999-0066/WPB (Fla. NMVAB March 19, 1999)

The Consumer complained of a transmission shifting problem that manifested itself as a clunking noise from the left rear when the steering wheel was turned while accelerating the vehicle from a stop in either "reverse" or "drive" gears. The clunking noise was intermittent. The engine "blew up," causing the transmission to be replaced; thereafter, the coolant light started to illuminate, which the Board found to be related to the transmission shifting problem. The Manufacturer argued that the clunking noise was intermittent and a "normal operating condition." The Board rejected this, and concluded that the transmission shifting problem constituted a nonconformity that required the vehicle to be out of service by reason of repair for more than 30 cumulative days. The Consumer was awarded a refund.

REASONABLE NUMBER OF ATTEMPTS 681.104, F.S.:

What Constitutes a Reasonable Number of Attempts

Mclay v. Mercedes-Benz of North America, Inc., 1998-1027/WPB (Fla. NMVAB January 8, 1999)

The Manufacturer's attorney argued that the case should be dismissed because the Consumer did not meet the statutory presumption of three repair attempts within the Lemon Law rights period. The Board found that the surging problem was presented for repair on at least three occasions and that the Manufacturer waived its right to a final repair opportunity. The Board rejected the Manufacturer's argument as unsupported by the law; it held that while a Consumer who proves all the elements of the statutory presumption will prevail, if none of the elements are overcome by proof to the contrary by the Manufacturer, the presumption is just that--a presumption--it is not a requirement. The Board concluded that the Consumer met the requirement in Section 681.104(1)(a), F.S., (1995), and the Manufacturer, admittedly, waived its final repair opportunity; thus, the Consumer was entitled to a refund because the surging problem substantially impaired the use and value of the vehicle.

Bales v. American Honda Motor Company, 1998-1222/STP (Fla. NMVAB February 15, 1999)

The Board concluded that the Consumers' complaints of vibration, brake pulsation and windshield wiper chatter and hop were nonconformities. The windshield wiper problem was only subjected to two repair attempts prior to written notification; therefore, the Board ruled that the Consumers were not entitled to relief for this nonconformity. However, the other problems were each subjected to at least three repair attempts before notice, and since the Manufacturer failed to conform the vehicle to its warranty after a reasonable number of attempts, the Consumers were entitled to relief.

Jordan v. Ford Motor Company, 1998-1231/ORL (Fla. NMVAB February 23, 1999)

The Board concluded that the Consumer's complaint of intermittent engine stall constituted a nonconformity; however, this problem was only subjected to two repair attempts prior to written notification; therefore, the Board ruled that the Consumer was not entitled to relief for the nonconformity at the time of the hearing. The case was dismissed.

Palazzo v. Mitsubishi Motor Sales of America, Inc., 1998-1245/FTL (Fla. NMVAB February 26, 1999)

The Consumer took his vehicle in for repairs on four occasions prior to sending written notice for a "check engine" warning light that intermittently illuminated. In addition to arguing the problem did not constitute a nonconformity, the Manufacturer argued that, during each repair visit, the computer's code indicated a different cause for the "check engine" light illumination; therefore, the same problem was not subjected to at least three repair attempts prior to the Consumer sending written notice to the

Manufacturer. The Board concluded that the "check engine" light intermittently illuminating was a defect or condition that substantially impaired the use and value of the vehicle, and as such, it constituted a nonconformity. The Board further concluded that the nonconformity was subjected to repair on at least three occasions, notice sent and a final repair attempt conducted by the Manufacturer which did not cure the defect. The Board granted relief.

Final Repair Attempt

Deane v. Mazda Motor of America, Inc., 1998-0987/FTM (Fla. NMVAB January 13, 1999)

The Board concluded that the Consumer's intermittent engine stalling substantially impaired the use and safety of the vehicle. The Manufacturer's witness testified that an "aftermarket" anti-theft system may have been the cause of the engine stall. The Manufacturer offered to replace this system during the final repair attempt, but had to order parts. The service agent was unable to provide the Consumer with alternate transportation because of her age; therefore, she requested the use of her vehicle pending receipt of the parts, and was told that this was not possible because the final repair would be "nullified." The Consumer declined replacement of the anti-theft system under those circumstances. The Board held that the Manufacturer's unreasonable refusal to allow the Consumer use of her vehicle pending receipt of the special order parts during the final repair attempt should not have been construed against the Consumer; a refund was granted.

Caster v. Ford Motor Company, 1998-1248/TLH (Fla. NMVAB February 11, 1999)

The Consumers complained that their air conditioner would intermittently cycle on and off rapidly while the vehicle was stopped and in gear. The Board found that this substantially impaired the use and value of the vehicle. The Board concluded that the post card sent to the Consumers in response to their written notification, which stated, "In order that we may exercise our statutory right to a final repair attempt, we ask that you return your vehicle to 520712158. Prior to doing so, we ask that you contact the service manager or an appointment," was undecipherable, and did not direct the Consumers to a reasonably accessible repair facility within a reasonable time; therefore, the requirement that the Manufacturer be given a final repair attempt did not apply. Since the Manufacturer failed to correct the nonconformity within a reasonable number of attempts, the Consumers were granted a refund.

Poole v. Ford Motor Company, 1999-0040-/FTM (Fla. NMVAB March 30, 1999)

The Board concluded that the Consumer's complaint of an intermittent hesitation or loss of power problem was a condition that substantially impaired the safety of the vehicle, and therefore, constituted a nonconformity. The Manufacturer timely responded to the Consumer's notification by sending a postcard which stated, "We ask that you return your vehicle to 1321773108"; however, this response failed to direct the Consumer to a repair facility. Therefore, the requirement that the Manufacturer be given a final repair attempt did not apply. Since the Manufacturer failed to correct the nonconformity

within a reasonable number of attempts, the Consumer was granted a refund.

Hilton v. General Motors Corporation, Cadillac Motor Division, 1998-1052/FTL (Fla. NMVAB March 1, 1999)

The Consumers complained of a transmission shifting problem which the Board found to substantially impair the use and value of the vehicle, therefore, constituting a nonconformity. The Manufacturer stipulated that it received written notification, but advised the Consumers that the transmission condition was "normal". The Board concluded that the Manufacturer failed to respond to the notice as required by law; therefore, the requirement that the Manufacturer be given a final opportunity to cure the nonconformity did not apply. Consequently, since the Manufacturer had a reasonable number of attempts to correct the nonconformity, and failed to do so, the Consumers were entitled to relief.

Scheller v. Ford Motor Company, 1999-0056/TLH (Fla. NMVAB March 1, 1999)

The Consumers complained of a whining noise in the power steering system and intermittent fluid leak, which the Board held to be a nonconformity. There was a conflict in the testimony regarding whether the nonconformity continued to exist after the final repair attempt. The Consumers testified that the various repair attempts diminished the noise, but that it still existed and that there was evidence of a fluid leak the day before the hearing. The Manufacturer's witness testified that the problem could not be duplicated at the final repair attempt and that no abnormal noise could be heard during the Manufacturer's prehearing inspection test drive of the vehicle. The Board held that the evidence more persuasively supported a conclusion that the nonconformity was corrected at or before the final repair attempt, and that any problem which continued to exist thereafter did not constitute a nonconformity. The case was dismissed because the Manufacturer corrected the nonconformity within a reasonable number of attempts.

Mulvaney v. Ford Motor Company, 1999-0011/WPB (Fla. NMVAB March 9, 1999)

The Consumer complained of a loud squealing noise which intermittently occurred when releasing the clutch into first gear. The Manufacturer contended that the noise was repaired at the final repair attempt, or that any remaining noise was minor and therefore did not substantially impair the use, value or safety of the vehicle. The Board concluded that the intermittent squealing noise was a defect or condition that substantially impaired the use and value of the vehicle, thus constituting a nonconformity. The Board further concluded that the nonconformity continued to exist after the final repair; accordingly, since the Manufacturer was afforded a reasonable number of attempts to conform the vehicle to its warranty, but failed to do so, the Consumer was entitled to relief.

Ford v. BMW of North America, Inc., 1998-1229/TLH (Fla. NMVAB March 17, 1999)

The Consumer complained of an air conditioner noise, problems with the convertible top, and an

illuminating ABS Brake warning light, which the Board found to be nonconformities. The evidence established that the convertible top and ABS problems were corrected prior to the final repair attempt. There was a conflict in the testimony regarding whether the air conditioner nonconformity continued to exist after the final repair attempt. The Manufacturer pointed to the absence of air conditioner noise complaints in repair orders documenting presentation of the vehicle to the authorized agent after the final repair attempt. The Board did not find this persuasive since the Consumer is not obligated under the Lemon Law to continue to seek repair of a nonconformity that has not been corrected after a reasonable number of attempts. The Board resolved the conflict in favor of the credible testimony given by the Consumer, the primary driver of the vehicle and the only witness present with firsthand knowledge of the condition of the vehicle after the final repair attempt. The Manufacturer's witness acknowledged that he had not driven the vehicle since the final repair attempt. The Board having found that the Manufacturer failed to conform the vehicle to its warranty after a reasonable number of attempts, the Consumer was granted relief.

Days Out of Service

Martin v. Toyota Motor Sales, U.S.A., 1998-1185/MIA (Fla. NMVAB February 11, 1999)

The Consumer's vehicle was out of service by reason of repair for an engine failure nonconformity for a total of 32 cumulative days; thereafter, the Consumer sent written notification and the Manufacturer was afforded an opportunity to inspect or repair the vehicle after receipt of notice. The Manufacturer contended that engine failure problem was repaired prior to the "final repair attempt." The Board concluded that the Manufacturer had a reasonable number of attempts to conform the vehicle to its warranty; since the vehicle was out of service for repair of the nonconformity for 32 days, and the Consumer was granted a refund. The Board rejected the Manufacturer's contention that the nonconformity did not continue to exist, because the statute does not require this in a days-out-of-service case.

Shanahan v. Ford Motor Company & Sherrod Vans, 1999-0031/TPA (Fla. NMVAB March 5, 1999)

The Consumer complained of heat intrusion into the interior of the vehicle emanating from around the "dog house"/center console, and an alignment problem described as a pull to the right and vibration or shimmy felt in the steering wheel, which the Board concluded constituted nonconformities that caused the vehicle to be of out of service by reason of repair for a total of three cumulative days. The Consumer also complained of various other problems with her conversion van that the Board held were not nonconformities. Since the Consumer failed to carry her burden of proving the vehicle was out of service for a cumulative total of 30 or more days for repair of nonconformities, the Consumer was not entitled to relief at the time of the hearing.

Patrick v. Blue Bird Body Company and Spartan Motors, Inc. 1998-1152/FTM (Fla. NMVAB

March 10, 1999)

The Consumer complained of ride height and air bag suspension problems; electrical problems involving the headlights, battery, dash lights, and alternator; dash air conditioner problems; antifreeze leak and water intrusion, which the Board concluded were nonconformities that caused the RV to be out of service by reason of repair for 69 cumulative days. The Manufacturers argued, among other things, that the Board should only count the number of hours related to repair of non-living facility items, because repairs were also made to living facility items during the 69 days out of service. The Board rejected this argument as contrary to the definition of out-of-service day provided in Rule 2-30.001(3)(c), Florida Administrative Code. The Board held that Blue Bird had a reasonable number of attempts to conform the vehicle to its warranty, and since the vehicle was out of service for repair of nonconformities for 69 days, the Consumer was entitled to relief. The Board dismissed the case against Spartan because the nonconformities were not part of the chassis warranted by Spartan.

Winston v. Nissan Motor Corporation U.S.A., 1999-0074/FTL (Fla. NMVAB March 25, 1999)

The Consumer complained of intermittent engine failure and sent the Manufacturer written notice affording the Manufacturer a final opportunity to repair the alleged problem. The Board concluded that the engine problem was a nonconformity, but that it was cured at the final repair attempt. The Consumer also complained of vehicle vibration through the steering wheel and brakes, and problems with air bag deployment without impact, causing the vehicle to be out of service for repair of these problems for 12 cumulative days. The Consumer argued at the hearing that, adding the 12 days out of service for the vibration and air bag problems to the 16 days out of service for repair of the engine nonconformity, should result in a reasonable number of attempts under the statute. §681.1095(8), Florida Statutes (1995) mandates that "the Board shall grant relief, if a reasonable number of attempts have been undertaken to correct a nonconformity or nonconformities." (Emphasis added). The Board found that the nonconformity was corrected by the Manufacturer within a reasonable number of attempts, and held that, the remaining problems complained of by the Consumer, even if considered nonconformities, were not subjected to a reasonable number of repair attempts. The case was dismissed.

Written Notification to the Manufacturer

Sheehan v. Volvo Cars of North America, 1998-1108/ORL (Fla. NMVAB January 6, 1999)

The Board concluded that the intermittent electrical condition, and the intermittent steering or suspension clicking or rubbing noises constituted nonconformities that kept the vehicle out of service for repair for 32 cumulative days. The Manufacturer contended that the written notice of defect was not provided to it within a timely manner, because the Consumer should have provided the written notification after exactly 15 days out of service. The Board rejected this contention because the plain wording of the statue requires the Consumer to send notification after "15 or more days" out of service.

The Consumer was granted a refund.

MANUFACTURER AFFIRMATIVE DEFENSES:

Accident, Abuse, Neglect, Unauthorized Modification 681.102(15), F.S. (1995)

Reyes v. Toyota Motor Sales, U.S.A., 1998-1049/MIA (Fla. NMVAB January 22, 1999)

The Consumer complained of a water leak caused by defective weather stripping. The Manufacturer argued that it was not a nonconformity or that, alternatively, it was the result of abuse or neglect by persons other than the Manufacturer or its authorized service agent. The Manufacturer's witness testified that the weather stripping had been replaced three times for "customer goodwill." This witness opined that the weather stripping was being tampered with and torn off; and that the Consumer was not properly lowering the convertible top. The Board rejected the Manufacturer's arguments as being unsupported by the evidence and awarded the Consumer a refund.

Blanco v. Ford Motor Company, 1998-0868/MIA (Fla. NMVAB February 11, 1999)

The Consumer complained that it was hard to engage the transmission into second gear at higher RPM's and downshift into first gear. Subsequently, there was a noise underneath the transmission when the clutch was engaged. The Manufacturer contended, among other things, that the alleged nonconformity was the result of abuse and neglect by the Consumer. The Manufacturer's witness testified that vehicle was "run hard," and that the transmission had been speed shifted (shifting without engaging the clutch), causing excessive transmission wear. The Board rejected the Manufacturer's defenses as unsupported by the evidence and awarded the Consumer a refund, including incidental charges for towing and transmission repairs.

Iskowitz v. BMW of North America, Inc., 1999-0007/FTL (Fla. NMVAB February 15, 1999)

The Consumers complained that the leather upholstery on the seats, installed by an independent shop at the direction of the Manufacturer's authorized service agent, was prematurely worn and pealing. The Manufacturer contended that the leather upholstery on the seats nonconformity was the result of an unauthorized modification or alteration of the vehicle by persons other than the Manufacturer or its authorized service agent; the leather interior was not warranted by the Manufacturer; the vehicle was not subjected to the requisite number of repairs because one the of the repair attempts was conducted by the independent shop at the direction of the authorized service agent, and should not be counted as a repair attempt; and the defect did not constitute a nonconformity. The Board concluded that the leather interior defect substantially impaired the value of the vehicle, and that the evidence established that the "aftermarket" leather interior was installed on the vehicle prior to purchase at the direction of the Manufacturer's authorized service agent. The Manufacturer sought to separate itself from liability

because the leather interior was not factory equipment. The Board rejected this contention since only those alterations or modifications by persons other than the Manufacturer or authorized service agent are excluded from the statutory definition of nonconformity.

Untimely Filing of the Request for Arbitration 681.109(4), F.S.

Sterman v. Mitsubishi Motor Sales of America, Inc., 1998-1205/ORL (Fla. NMVAB February 1, 1999)

The Board found that a power steering belt problem substantially impaired the use and value of the vehicle. The Manufacturer contended that the Consumer's Request for Arbitration was untimely filed. The Board extended the Lemon Law rights period pursuant to Section 681.104(3)(b), Florida Statutes (1995), and concluded that the Consumer's request was filed within six months after expiration of the Lemon Law rights period. The Board awarded a refund to the Consumer, holding that the Manufacturer failed to conform the vehicle to its warranty within a reasonable number of repair attempts.

Sweat v. Ford Motor Company, 1999-0099/ORL (Fla. NMVAB March 26, 1999)

The Board found that the various intermittent transmission problems complained of by the Consumer constituted a nonconformity. However, the Board dismissed the Consumer's claim because her Request for Arbitration was untimely filed. The Board concluded that considering the facts of the case in the light most favorable to the Consumer, and if the extension of the Lemon Law rights period were applied pursuant to Section 681.104(3)(b), Florida Statutes (1995), the Consumer's Request for Arbitration was filed more than six months after expiration of the Lemon Law rights period.

REFUND 681.104(2)(a)&(b), F.S.:

Collateral Charges 681.102(3), F.S.

Richter v. General Motors Corporation, Pontiac-GMC Division, 1998-1092/TLH (Fla. NMVAB February 9, 1999)

In addition to a net trade-in allowance, the Consumer utilized funds from an unsecured line of credit at his bank, and a credit or rebate from use of his GM credit card to purchase his vehicle. The Consumer sought reimbursement of the interest paid on the portion of the line of credit principal used to purchase the vehicle. The Manufacturer objected to the payment of interest, arguing that it was not associated with the purchase of the vehicle, but with the personal line of credit for which the vehicle was not used as security, and that, as such, it was not a collateral charge as defined by the Lemon Law. The Board rejected this argument. The Consumer and Manufacturer stipulated to a purchase price, the mileage at

the time of the BBB/AUTOLINE hearing, for purposes of calculating the statutory offset, and further stipulated that the offset would be reduced by incidental charges incurred by the Consumer as a result of the nonconformity. In addition, the Manufacturer stipulated, and the Board Ordered, that the GM credit card credit should reinstated to the Consumer's card.

Knots v. Ford Motor Company & Newmar Corporation, 1998-0807/ORL (Fla. NMVAB March 8, 1999)

The Board found that the Consumers' recreational vehicle was out of service for repair of an overweight "box" portion of the vehicle nonconformity for 104 cumulative days. The Consumer sought reimbursement of $210.00 for "AAA Plus," and $1,331.35 for vehicle insurance premiums paid from the time of purchase of the vehicle, or alternatively, $1,011.75 for premiums paid for the time that the vehicle was unusable and in storage. Ford was dismissed from the case because the nonconformity did not relate to the chassis that it warranted. Newmar stipulated to reimbursement for "AAA Plus" and to the insurance premiums while the vehicle was unusable and in storage. Notwithstanding Newmar's agreement to pay, the Board concluded that the Consumers were not entitled to reimbursement for these items as they did not meet the definition of "Collateral charges" under the statute. The Consumers were granted a refund.

Incidental Charges 681.102(7), F.S. (1995):

Blumin v. General Motors Corporation, Pontiac-GMC Division, 1998-1065/MIA (Fla. NMVAB January 1, 1999)

The Board concluded that the electrical problems with the vehicle constituted nonconformities. The Consumers sought reimbursement, as incidental charges, of $60.00 for an Amtrack change fee because they were required to change an Amtrack Car Train reservation because of the nonconformity; $6.00 for parking at the hearing; and $5,065.00 for rental car expenses because it was necessary to enter into a lease agreement for a minimum of three months for replacement transportation**.** The Board granted incidental charges for the Amtrack change fee, the parking expense, and $1,757.25 for the rental car, which the Board determined to be reasonable and directly related to the nonconformities. The balance of the rental car amount requested was denied as being unreasonable.

Trade-in Allowance 681.102(17), F.S. (1995):

Barrett v. Ford Motor Company, 1999-0085/TLH (Fla. NMVAB March 29, 1999)

The Consumers' trade-in resulted in a negative equity of $8,651.11. The Consumers made car payments totaling $10,728.00, and were entitled to incidental charges of $3.46, for a refund in the amount of $2,076.89; however, this was reduced by the statutory offset in the amount of $4,042.63, leaving the Consumers responsible for paying the Manufacturer $1,962.28, unless the parties agreed

otherwise.

Reasonable Offset for Use 681.102(18), F.S. (1995):

Sergent v. Toyota Motor Sales, U.S.A., 1998-1110/ORL (Fla. NMVAB January 7, 1999)

The Board granted the Consumers a second arbitration on an intermittent air conditioner blowing hot air problem. The first case was dismissed because the Consumers failed to allow the Manufacturer an opportunity to perform a final repair attempt. The Board held that the Consumers demonstrated a significant change of circumstances, because the final repair attempt was given to the Manufacturer since the first hearing. Counsel for the Manufacturer argued that the calculation of the Consumers' offset for use should take into consideration the mileage accrued on the vehicle due to the Consumers' failure to initially provide the Manufacturer with a final repair attempt. The Board rejected this argument holding that it had no authority to deviate from the formula provided in the statute; consequently, the Manufacturer's request that the offset be increased was rejected. The Consumers were granted a refund.

Reasonable Offset for Use 681.102(20), F.S. (1997):

Muszynski v. Ford Motor Company, 1998-1191/TPA (Fla. NMVAB February 10, 1999)

In a days-out-of-service case, the Consumer contended that the vehicle was driven by the Manufacturer's authorized service agent for 423 miles during the course of repairs. The Consumer further contended that a representative of the agent conceded that the vehicle was driven for 225 miles. The Manufacturer argued that the mileage driven by the authorized service agent was encompassed in the "reasonable opportunity to repair" and should not be deducted in determining the offset for use. The Board rejected this argument; and, based on the repair orders in the file, found that the vehicle was test driven 221 miles by the authorized service agent and deducted that mileage as not attributable to the Consumer in calculating the statutory offset.

MISCELLANEOUS PROCEDURAL ISSUES:

Grosskoph v. Land Rover of North America, Inc., 1998-1194/FTM (Fla. NMVAB January 25, 1999)

The Consumer complained of a vibration when driving the vehicle at highway speeds. The Manufacturer's Answer was untimely filed and the Board did not permit the Manufacturer's representative to present any affirmative defenses; however, three Manufacturer witnesses were allowed to testify about the repairs performed on the vehicle. The Board concluded that the vibration substantially impaired the use and safety of the vehicle and granted the Consumer a refund.

Nagurney v. General Motors Corporation, Pontiac-GMC Division, 1998-1147/JAX (Fla. NMVAB February 5, 1999)

Neither the Consumer nor the Manufacturer appeared at the previously noticed hearing. After waiting 30 minutes from the scheduled time of the hearing, the Consumer was declared in default. Following the hearing, the Consumer did not contact the Board Administrator within one business day of the hearing to request that the default be set aside. The case was dismissed with prejudice.

Galiano v. Kia Motors America, Inc., 1998-1154/FTL (Fla. NMVAB February 12, 1999)

The Board rejected the Manufacturer's attempt to raise the affirmative defense that the Consumer's claim was untimely filed since the Manufacturer failed to raise this defense in its answer filed prior to the hearing, and the representative's request to amend its answer was not timely presented. The Board held that the engine light coming on, vehicle running rough, and stalling problems formed a condition that substantially impaired the use, value and safety of the vehicle and granted relief to the Consumer.

Farinez v. Kia Motors America, Inc., 1998-1048/MIA (Fla. NMVAB February 24, 1999)

At the commencement of the arbitration hearing, the Manufacturer requested that the Board continue the hearing to allow it time to amend its Answer to assert the affirmative defense that the alleged nonconformity was the result of abuse or neglect of the automobile by persons other than the Manufacturer or its authorized service agent, or in the alternative, to allow the Manufacturer to amend the Answer at the hearing. The Board denied these requests and evidence or testimony regarding the affirmative defense of abuse or neglect was disallowed. The Board granted relief on a defective braking system nonconformity.

Johnson v. Kia Motors America, Inc., 1998-1241/TPA (Fla. NMVAB March 4, 1999)

Although a Manufacturer representative was present at the hearing, the Manufacturer was not permitted to assert any affirmative defenses at the hearing, because its Answer was untimely filed. The Board granted relief on an intermittent brake malfunction nonconformity.

Communications Supply Corporation v. *General Motors Corporation, Pontiac-GMC Division*, 1999-0030/ORL (Fla. NMVAB March 4, 1999)

Although a Manufacturer representative was present at the hearing, the Manufacturer was not permitted to assert any affirmative defenses, because its Answer was untimely filed. The Board granted relief on a vibration at high speeds nonconformity.

OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

QUARTERLY CASE SUMMARIES

April 1999 - June 1999 (2nd Quarter)

JURISDICTION:

Consumer §681.102(4), F.S.

Boucher v. Ford Motor Company, 1999-0100/ORL (Fla. NMVAB April 5, 1999)

The Manufacturer contended, among other things, that the Consumer was not eligible for relief under the Lemon Law because she purchased the vehicle as a "used motor vehicle." The Board rejected this contention. The Consumer purchased the vehicle from the original owner during the duration of the Lemon Law rights period, and used it primarily for personal, family or household purposes just as the original owner did. As such, the Consumer was a subsequent transferee and met the definition of "Consumer" under the statute. Since the vehicle was sold to the original owner as a new vehicle, the Board concluded that the Consumer's vehicle was a "motor vehicle" as defined by statute, and that the subsequent transferee stands in the shoes of the original purchaser for purposes of the Lemon Law. However, the Board dismissed the case because the vibration problem, although it may have existed, did not substantially impair the use, value or safety of the vehicle.

Palm Coast Management, Inc. v. Ford Motor Company and Mark III Industries, 1999-0233/ORL (Fla. NMVAB April 26, 1999)

Mark III Industries contended, among other things, that the case should be dismissed because the vehicle was purchased by a corporation and used for commercial, business or professional use, not for personal, family, or household use. The Board rejected this contention on the basis of *Results Real Estate v. Lazy Days R.V. Center*, 505 So.2d 587 (Fla. 2d DCA 1987). The *Results* Court looked to the statutory definition of "Consumer," which included a third clause that defined a Consumer as "any other person entitled by the terms of the warranty to enforce the obligations of the warranty." This Board, as well as the *Results* Court, found that this clause does not contain the "personal, family or household use" restriction found in the first two clauses of the definition, and concluded that business use of the vehicle was irrelevant. The Board found that Mark III Industries did not present any evidence to prove that the Consumers were not entitled by the terms of the warranty to enforce the obligations of Mark III Industries' warranty; therefore, the Consumers were qualified "Consumers" under the Lemon Law. The Board granted a refund on a successful days-out-of-service case against Mark III Industries, holding that the electrical problem caused by water intrusion constituted a nonconformity. The case as against Ford was dismissed.

Motor Vehicle §681.102(14), F.S. (1995); §681.102(15), F.S. (1997)

Maddox v. Ford Motor Company, 1999-0165/ORL (Fla. NMVAB April 13, 1999)

The Manufacturer contended that the case should be dismissed because the Consumer's pickup truck exceeded 10,000 pounds gross vehicle weight according to the definition of "motor vehicle." The Consumer's registration certificate indicated the actual weight as 6,095 pounds, and the gross vehicle weight as 9,900 pounds. The Consumer testified that on occasion he pulled a trailer weighing 700 pounds and transported a pickup truck weighing 4,000 pounds. The Manufacturer argued that by adding the weight of the trailer and the load carried by it, to the actual weight of the vehicle, the gross weight exceeded 10,000 pounds, even if the Consumer only towed the trailer and pickup truck on one occasion. Since the Lemon Law statute does not define "gross vehicle weight," the Board relied on Section 320.01(12)(a), Florida Statutes, which for heavy trucks, with a net weight of more than 5,000 pounds, but less than 8,000 pounds, the gross vehicle weight is calculated by adding to the net weight of the heavy truck the weight of the load carried by it, which is the maximum gross weight as declared by the owner or person applying for registration. Based on the net and gross vehicle weights as recorded on the registration certificate, the Board found that the gross vehicle weight did not exceed 10,000 pounds; accordingly, it rejected the Manufacturer's argument. The Board declared the truck a lemon because the intermittent engine stalling when the vehicle approached a stop, accompanied by blue smoke and the odor of burned oil constituted a nonconformity.

Courtot v. Ford Motor Company, 1999-0224/TPA (Fla. NMVAB April 26, 1999)

The Manufacturer contended that the case should be dismissed because the Consumer's pickup truck did not meet the definition of "motor vehicle" because the dealer's invoice listed the pickup truck's gross vehicle weight rating as 11,200, which exceeded the statutory limit of 10,000 pounds gross vehicle weight. The Consumer's registration certificate indicated the net weight as 5,823 pounds, and the gross vehicle weight as 9,999 pounds. Since the Lemon Law statute does not define "gross vehicle weight," the Board relied on the definition in Section 320.01(12)(a), Florida Statutes, which for heavy trucks with a net weight of more than 5,000 pounds, but less than 8,000 pounds, the gross vehicle weight is calculated by adding to the net weight of the heavy truck the weight of the load carried by it, which is the maximum gross weight as declared by the owner or person applying for registration. Based on the net and gross vehicle weights as recorded on the registration certificate, the Board found that the gross vehicle weight did not exceed 10,000 pounds; accordingly, it rejected the Manufacturer's argument. The Board declared the truck a lemon because the vibration in the vehicle's rear substantially impaired the use of the vehicle, thus constituting a nonconformity.

Marsh v. Fleetwood Motor Homes, and Ford Motor Company, 1999-0174/TPA (Fla. NMVAB April 23, 1999)

Prior to the hearing on the merits, and pursuant to a Prehearing Order of the Board, Ford Motor Company was dismissed from the case. The Consumers complained of a leak in the seal around their recreation vehicle's slide-out room. The Manufacturer contended that the Board had no jurisdiction to hear the case because the slide-out is designed to enhance the vehicle's living facilities and as such, the leak problem related solely to the vehicle's living facilities, which is excluded from Lemon Law coverage. The Board found that the leak occurred when the slide-out was retracted and the vehicle was driven in the rain, as well as when the vehicle was stationary and the slide-out was extended. When the slide-out was retracted, and the vehicle was driven, the slide-out served as the exterior wall of the vehicle. The Board held that the specific intent of the Lemon Law was to cover those mechanical or structural nonconformities in recreational vehicles which were analogous to those that might occur in other motor vehicles, and not those defects which are solely related to the vehicle's living facilities. The Boarded concluded that the leak in the vehicle's exterior wall or structure, which occurred when the vehicle was being operated as a motor vehicle, did not solely relate to the vehicle's living facilities, and as such, the complaint was properly before the Board. The Board concluded that the leak substantially impaired the use of the vehicle and awarded the Consumers a refund.

NONCONFORMITY §681.102(15), F.S. (1995); §681.102(16), F.S. (1997)

Rutsky v. Kia Motors America, Inc., 1999-0094/FTL (Fla. NMVAB April 7, 1999)

The Consumers complained that the vehicle's brakes were mushy and soft which made it hard to stop the vehicle. The Manufacturer did not file a Manufacturer's Answer with the Board and was therefore precluded from raising any affirmative defenses at the hearing. The Board concluded that the brake problem was a defect that substantially impaired the use, value and safety of vehicle; thus, awarding the Consumers a refund of their purchase price.

Matuschak v. American Suzuki Motor Corporation, 1999-0127/TLH (Fla. NMVAB April 7, 1999)

The Consumer complained that when pressing the brake pedal to stop on uneven surfaces, such as dirt and clay roads, the pedal felt like it went to the floor, and it shuddered, and the vehicle took a longer distance to come to a full stop. The Manufacturer contended that this was the normal operation and sensation of the anti-lock brake system (ABS) when the vehicle was operated over an uneven surface. The Board found that the greater weight of the evidence supported the Manufacturer's affirmative defense; accordingly, the Board concluded that the performance of the brakes was not the result of a defect or condition that substantially impaired the use, value or safety of the vehicle. The case was dismissed.

Grasso v. General Motors Corporation, Pontiac-GMC Division, 1998-1228/WPB (Fla. NMVAB April 8, 1999)

The Consumer complained of the following problems: paint "blurring" on the hood; a rattle from the right front dash area; a "broken" convertible top bracket; and brakes that squealed and shook on an average of 60 percent of the time when applied, with the squeal as "about a four" on a scale of one to 10, with 10 being the loudest. The Manufacturer contended that only the paint blemish and rattle were brought to the Manufacturer's attention for a final repair attempt, and were minor defects that did not substantially impair the use, value or safety of the vehicle. The Board determined it necessary to inspect and test drive the vehicle during the hearing. The Consumer, who did not bring the vehicle to the hearing, refused to make the vehicle available for the Board's inspection at a continued hearing date. Based upon the testimony and evidence presented, the Board concluded that the defects did not constitute nonconformities; accordingly, the case was dismissed.

Weaver and Kidder v. General Motors Corporation, Pontiac-GMC Division, 1999-0177/WPB (Fla. NMVAB May 3, 1999)

The Board concluded that a fuel gauge that fluctuated when the vehicle was stopped, in neutral and with the brake pedal "depressed slowly," did not constitute a nonconformity. The Board also concluded that the Manufacturer brought the vehicle into conformity for an engine problem within a reasonable number of attempts, following the replacement of a new engine on the second repair attempt. Additionally, the Board found that a "loose" steering condition had only been subjected to one repair attempt. Under the circumstances presented to the Board, one repair attempt for the steering condition was not sufficient to afford the Manufacturer a reasonable number of attempts to conform the vehicle to the warranty as contemplated by the Lemon Law. Accordingly, the case was dismissed.

Almoradie v. Ford Motor Company, 1999-0245/ORL (Fla. NMVAB May 5, 1999)

The Consumers complained of an intermittent hesitation upon acceleration. The vehicle had to be towed to the hearing because it could not be driven in reverse gear. The Manufacturer stipulated that the hesitation upon acceleration problem was presented for at least three repair attempts, plus a final repair attempt after written notice. However, the Manufacturer contended that the hesitation problem did not constitute a nonconformity because it was cured within a reasonable number of attempts. The Manufacturer also contended that the inability to drive the vehicle in reverse was a separate and distinct problem from the hesitation upon acceleration, and the Manufacturer had not been afforded a reasonable opportunity to repair this problem. The Manufacturer's attorney argued that the inability to drive in reverse related to the transmission and the hesitation problem related to the engine. A Manufacturer witness testified that the vehicle had never been presented for repair of a transmission concern. The Board relied on the statutory definition of "nonconformity," which is a defect or condition that substantially impairs the use, value or safety of the vehicle. The Board further relied on Florida Administrative Code Rule 2-30.001(3)(1), which defines "condition" as a "general problem (e.g.,

vehicle fails to start, vehicle runs hot, etc.) that may be attributable to a defect in more than one part." Upon review of the evidence, the Board concluded that the hesitation upon acceleration and the inability to drive the vehicle in reverse was a condition that substantially impaired the use, value or safety of the vehicle, and as such, it constituted a nonconformity which was not corrected after a reasonable number or repair attempts; accordingly, the vehicle was declared a lemon and the Consumers were awarded a refund.

Hamdan v. Mercedes-Benz of North America, Inc., 1999-0423/TLH (Fla. NMVAB June 24, 1999)

The Consumer complained that water leaked into the vehicle under the dashboard, saturating the carpet on the passenger side. The Consumer testified that the carpet of the vehicle under the all-weather floor mats stayed wet and, when the vehicle was left in the garage overnight, the windows were left open to minimize the mildew odor. The Manufacturer contended that this leak did not substantially impair the use, value or safety of the vehicle, because the leak only occurred after the Consumer washed the vehicle at a particular car wash that utilized a high pressure and volume of water. The Manufacturer's authorized service agent did duplicate the leak at the car wash, but could not duplicate it when it performed water tests at its facilities. The Consumer testified that the water continued to leak into the vehicle during heavy rain storms following the final repair attempt. Neither the Manufacturer nor its authorized service agent test drove the vehicle in a rain storm. During the Board's inspection of the vehicle during the hearing, the carpet under the floor mat on the front passenger side was damp and a faint mildew odor was detected. The Board found that this water leak substantially impaired the value of the vehicle and awarded the Consumer a refund.

REASONABLE NUMBER OF ATTEMPTS §681.104, F.S.

What Constitutes a Reasonable Number of Attempts §681.104, F.S.:

Ruff v. Ford Motor Company, 1998-1254/FTL (Fla. NMVAB May 7, 1999)

The Consumer complained that the vehicle's RPM's were excessively high causing the RPM gauge to register in the "redline" area. The Consumer characterized this as a transmission problem, which was subjected to two repair attempts prior to the Consumer sending the Manufacturer written notification of a final opportunity to repair the problem. The invoice evidencing the second repair attempt indicated that no repairs were performed, because the problem could not be duplicated. Likewise, for the same reason, no repairs were performed at the final repair attempt. The Manufacturer contended that the alleged defect did not constitute a nonconformity because it could not be duplicated and, furthermore, the defect was not subjected to a reasonable number of repair attempts. The Board held that the transmission problem constituted a nonconformity. The Board further held that, although the Lemon Law statute does not specifically define how many attempts are considered reasonable, there is a presumption of a reasonable number of attempts under the statute if the terms of the presumption are

met. The Board recognized, however, that a Consumer is not required to establish the statutory presumption in order to qualify for relief. Since the Consumer was told by the Manufacturer's authorized service agent that no further repairs would be performed, it would have been fruitless for the Consumer to have to bring the vehicle back a third time before mailing written notification. Moreover, since the Manufacturer contended that there was no defect in the vehicle, there would have been little benefit to either party in making the Consumer submit to one more repair attempt. Under those circumstances, the Board concluded that, the two repair attempts followed by written notification and a final repair opportunity, were sufficient to afford the Manufacturer a reasonable number of attempts to conform the vehicle to the warranty as contemplated by the Lemon Law. Accordingly, the vehicle was deemed a lemon and the Consumer was awarded a refund.

Final Repair Attempt §681.104(1)(a); §681.104(3)(a)1.:

Gaudino v. Mitsubishi Motor Sales of America, Inc., 1999-0220/TPA (Fla. NMVAB April 21, 1999)

Within 10 days following its receipt of the Consumer's written notification to provide the Manufacturer with a final repair attempt, the Manufacturer directed the Consumer to present his vehicle to a particular authorized service agent on a specific date. The Consumer presented the vehicle as directed, at which time, the Consumer and Manufacturer's representative performed a test drive of the vehicle. The Consumer then refused to allow repairs to be performed on the vehicle. The Board concluded that the Consumer refused to afford the Manufacturer a final repair attempt; consequently, the Board dismissed the case.

Courtot v. Ford Motor Company, 1999-0224/TPA (Fla. NMVAB April 26, 1999)

The Board concluded that the vibration in the vehicle's rear substantially impaired the use of the vehicle, thus it constituted a nonconformity. The Board found that the vehicle remained at the Manufacturer's authorized service agent for the final repair attempt for a total of 11 days. The Board concluded that the requirement that the Manufacturer be given a final repair attempt did not apply, since the statute only allows the Manufacturer 10 days to correct a nonconformity after the vehicle is delivered for the final repair attempt. Accordingly, the Board held that the Manufacturer failed to correct the vibration within a reasonable number of attempts and awarded the Consumers a refund.

Boles v. Ford Motor Company, 1999-0260/TPA (Fla. NMVAB May 5, 1999)

On the date the Consumers' vehicle was towed to the Manufacturer's authorized service agent, and repairs were performed to address a vibration when braking, the Consumers sent written notification to the Manufacturer to provide the Manufacturer with a final opportunity to repair the vehicle. The Manufacturer received the written notification five days after it was mailed and after the vehicle was towed to its authorized service agent. The Consumers had never retrieved, nor driven the vehicle, prior

to mailing the notification, and no repairs were conducted after the Manufacturer's receipt of the notification. On the date of the hearing, the vehicle remained at the authorized service agent's facility where it had been towed. The Manufacturer argued that the Consumers had not met their burden of proving that the problem continued to exist because the vehicle had not been driven since the repairs were performed on the date it was towed to the authorized service agent, and the Consumers had no way of knowing whether or not the repairs were successful. In addition, the Manufacturer contended that it was not afforded a final opportunity to repair the vehicle. The Board concluded that the Consumers mailed the written notification to the Manufacturer without determining whether repairs performed on the date of their mailing the notification corrected the alleged defect. The Board held that, under the circumstances, the Manufacturer had not been afforded a final opportunity to conform the vehicle to the warranty and, furthermore, the Consumers did not know whether the alleged defect continued to exist; consequently, the Board ruled that, at the time of the hearing, the Consumers were not qualified for relief and dismissed the case.

MANUFACTURER AFFIRMATIVE DEFENSES: §681.104(4), F.S.

Accident, Abuse, Neglect, Unauthorized Modification §681.104(4)(b), F.S.

Harris v. Ford Motor Company, 1999-0041/ORL (Fla. NMVAB April 1, 1999)

The Board dismissed the Consumer's claim concluding that the greater weight of the evidence supported the Manufacturer's affirmative defense that the intermittent braking problem complained of was caused by the Consumer's manner of driving, i.e., "riding" the brakes, and as such was the result of abuse or neglect of the vehicle by persons other than the Manufacturer or its authorized service agent.

REFUND §681.104(2)(a)&(b), F.S.:

Collateral Charges §681.102(3), F.S.

Kotch v. Ford Motor Company, 1999-0098/ORL (Fla. NMVAB April 9, 1999)

The Board declared the vehicle a lemon because the intermittent electrical malfunction, which included the malfunction of the automatic lamp sensor, was a defect or condition that substantially impaired the safety of the vehicle. The Board granted a reimbursement of $238.50 for an alarm system as a collateral charge. However, the Board denied payment for the purchase of a new cellular telephone to be installed in a future vehicle as not contemplated within the statutory definition of "collateral charges." The Consumer had a cellular telephone that she purchased in 1995 installed in the lemon vehicle, and claimed that wiring changes would prevent her from using that telephone in a future vehicle.

Incidental Charges §681.102(7), F.S. (1995); §68l.102(8), F.S. (1997):

Masden v. Mitsubishi Motor Sales of America, Inc., 1999-0083/JAX (Fla. NMVAB May 11, 1999)

The Board concluded that the leaking convertible top on the Consumer's vehicle constituted a nonconformity. The Consumer sought reimbursement of $66.76 as incidental charges for two rental cars. The Manufacturer objected because its policy was to only provide a Consumer a loaner car if the Consumer's vehicle was kept overnight for repair. The Manufacturer argued that, as this vehicle was not kept overnight for repairs, the expense was one incurred by the Consumer voluntarily, and not as a result of the alleged nonconformity. The Board agreed that these expenses were not incurred as a direct result of the nonconformity and denied this reimbursement.

Kotch v. Ford Motor Company, 1999-0098/ORL (Fla. NMVAB April 9, 1999)

The Board declared the vehicle a lemon because the intermittent electrical malfunction, which included the malfunction of the automatic lamp sensor, was a defect or condition that substantially impaired the safety of the vehicle. The Board granted reimbursement of incidental charges in the amount of $10.60 for inspection of the alarm system, and $35.35 for postage expenses. However, the Board denied reimbursement of lost wages as not contemplated within the statutory definition of "incidental charges."

Net Trade-in Allowance §681.102(19), F.S. (1997):

Saunders v. Ford Motor Company, 1999-0167/WPB (Fla. NMVAB April 21, 1999)

The Manufacturer disagreed with the net trade-in allowance reflected in the purchase documents and argued that the trade-in allowance should be the amount reflected in the NADA Official Used Car Appraisal Guide (Southeastern Edition), reduced by the debt that was owed on the trade-in vehicle at the time it was traded in. However, contrary to the statutory requirement, the Manufacturer did not provide the NADA Guide that was in effect at the time of the trade-in. Instead, the Manufacturer provided the Board with an illegible photocopy of two pages, purportedly from the NADA Official Use Car Guide. The Board concluded that Section 681.102(19), Florida Statutes (1997) did not permit the Board to make an adjustment unless the Manufacturer submitted the applicable NADA Official Use Car Guide. The photocopy submitted by the Manufacturer was illegible; therefore, the request for a reduction of the trade-in allowance was denied. The vehicle was declared a Lemon and the Consumer was awarded a refund.

Poole v. Ford Motor Company, 1999-0040/FTM (Fla. NMVAB April 6, 1999)

The net trade-in allowance as reflected on the buyer's order was not acceptable to the Consumer. The

Consumer and Manufacturer provided conflicting documentation regarding the trade-in. The Manufacturer stipulated that the documentation provided by the Consumer was accurate. The Consumer was awarded a net trade-in allowance as reflected in the NADA Official Used Car Guide (Southeastern Edition) in effect at the time of the trade-in, less the amount of the outstanding lien on the trade-in.

MISCELLANEOUS PROCEDURAL ISSUES:

Harris v. Ford Motor Company, 1999-0041/ORL (Fla. NMVAB April 1, 1999)

The Consumer in his hearing via telephone conference call and requested that the Manufacturer present its case first, because the Manufacturer listed numerous affirmative defenses and because the Manufacturer had witnesses, and the Consumer had none. Counsel for the Manufacturer objected to the Consumer's request, and withdrew all affirmative defenses, except the defense that the alleged nonconformity did not substantially impair the use, value or safety of the motor vehicle. The Board denied the Consumer's request that the Manufacturer present its case first. The Board dismissed the Consumer's claim concluding that the greater weight of the evidence supported a conclusion that the intermittent braking problem complained of was caused by the Consumer's manner of driving, and was not the result of a defect in the braking system.

Rutsky v. Kia Motors America, Inc., 1999-0094/FTL (Fla. NMVAB April 7, 1999)

The Manufacturer did not file a Manufacturer's Answer with the Board and was therefore precluded from raising any affirmative defenses at the hearing.

Jones v. General Motors Corporation, Buick Motor Division, 1999-0128/ORL (Fla. NMVAB April 12, 1999)

Because the Manufacturer's Answer was untimely filed, the Board did not permit the presentation of affirmative defenses by the Manufacturer's representative; however, the Board permitted limited testimony. The Board declared the vehicle a lemon because a vibration, which could be felt through the steering wheel, floor and seats, constituted a nonconformity.

OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

QUARTERLY CASE SUMMARIES

July 1999 - September 1999 (3rd Quarter)

JURISDICTION:

Consumer §681.102(4)

John R. Esposito, Jr. v. Mitsubishi Motor Sales, of America, Inc., 1999-0704/JAX (Fla. NMVAB August 25, 1999**)**
The Consumer complained of brake pulsation and transmission/hard shifting. The Manufacturer stipulated that the vehicle had been presented for three repair attempts. After the third repair attempt, but prior to a final repair attempt, the Consumer damaged the vehicle by riding into the center median. The Consumer presented the vehicle to the repair facility and told them he would not return to pick up the vehicle until the pulsation and (new) pulling problem were fixed. The Consumer never returned to pick up the vehicle and ceased making lease payments. The Lessor repossessed the vehicle from the repair facility, the vehicle was sold at auction and the Consumer owed a deficiency. The Consumer requested the Board reimburse him for the deficiency and refund the balance the Manufacturer. The Consumer argued that the Board had the authority to fashion a remedy for him (even though he no longer possessed the vehicle) pursuant to an order entered by an Administrative Law Judge, after an initial rejection of Consumer's Request for Arbitration by the Department of Agriculture and Consumer Services. The Board rejected Consumer's argument and granted the Manufacturer's motion to dismiss on the basis that the Consumer could not furnish clear title to the and possession of the vehicle to Manufacturer.

NONCONFORMITY §§681.102(15), F.S. (1995); 681.102(16), F.S. (1997):

Breslin v. American Honda Motor Company, 1999-0448/JAX (Fla. NMVAB July 14, 1999)
The Consumer alleged that a film was left on her windshield when the wipers were used during heavy rain storms. The film impaired the Consumer's vision when driving at night or in inclement weather. The Manufacturer contended that the film was “normal” and was only the water left on the windshield after the wiper swept across it, and that the film evaporated in a millisecond. The Board performed an inspection of the vehicle during the hearing. The Board noted that, although it was a hot day, when the wipers and windshield fluid were used, a film remained on the windshield. It remained present and visible for a prolonged length of time. The Board found that the film substantially impaired the safety of the vehicle. The Consumer was awarded all sums paid in by her, but her down payment was reduced

as a result of negative equity on the trade-in vehicle.

Pinkney v Ford Motor Company, 1999-0446/JAX (Fla. NMVAB August 24, 1999)
The Consumer filed the Request for Arbitration alleging that her odometer was inaccurate. She noticed that the odometer was registering more mileage than she actually had driven. The Manufacturer was unable to duplicate the problem during the first and third repair attempts and told the Consumer there was no problem. During the second repair attempt, the vehicle was sublet to a speedometer and glass repair shop that indicated the odometer was off by 4 to 6 percent. The Consumer testified that the document from the repair shop originally indicated that the odometer was off by 16 percent, and she saw a technician alter the document to make it appear as "4-6" instead of "16." The Board found in favor of the Consumer.

REASONABLE NUMBER OF ATTEMPTS §681.104, F.S.:

What Constitutes a Reasonable Number of Attempts

Bryant/Thornton v. DaimlerChrysler Motors Corporation, 1999-0557/TLH (Fla. NMVAB July 14, 1999
The Consumer testified that on the day after she accepted delivery of a new 1998 Chrysler Breeze automobile she discovered oil leaking on her driveway and the brakes made a loud noise when she applied pressure. The Consumer took the vehicle to the dealer and was told by a salesperson that these things were normal for a new vehicle, that nothing could be done. Shortly thereafter the Consumer took the vehicle to a Super Lube and was told that the oil leak was as a result of a loose bolt, which was tightened. The Consumer took the vehicle in May 1998, to the dealer for the same problems. She was told again by sales personnel that nothing could be done, and was not permitted to talk to service personnel. As a result, the Consumer returned to Super Lube and was told that the vehicle had a leaking head gasket, and in September, Super Lube advised the Consumer that there was a potential problem with the oil sending unit rear seal. Returning to Super Lube in February 1999, the Consumer was told that the cylinder head gasket was blown and that Chrysler should be contacted. The Manufacturer's headquarters were contacted with the diagnosis and the vehicle was returned to the dealer. At that time (March 1999) the Manufacturer's service agent advised the Consumer that the head gasket had blown, but that the warranty had expired. No repair work was ever performed by the Manufacturer's authorized service agent. At the hearing, the Manufacturer asserted that there were not a reasonable number of repair attempts, because there were never any repairs performed under the warranty, and that the defect did not substantially impair the use, value or safety of the vehicle, because the vehicle had more than 48,000 miles on the odometer at the time of the pre-hearing inspection, and was no longer under warranty.

The Board concluded that the oil leak was a substantial impairment as to the use, value and safety, and that the Consumer reported the problem within the lemon law rights period. The Board also held that, while the Consumer was unable to establish a presumption of reasonable number of attempts

under the statute, she did establish through the evidence and the totality of the circumstances that the Manufacturer had the opportunity to repair a reasonable number of times.

Final Repair Attempt §681.104(1)(a), F.S.:

Delancey v. Ford Motor Company, 1999-0560/ORL, (Fla. NMVAB July 20, 1999)
The board found that the problem with the driver's window not closing properly and making a loud noise when raised was a nonconformity, but dismissed the Consumer's case after a majority of the Board concluded that the Consumer failed to make the vehicle available for the final repair attempt.

Thomas v. American Suzuki Motor Corporation, 1999-0791/STP (Fla. NMVAB September 14, 1999)
The Board found the Manufacturer was denied a final repair opportunity, because the Consumer failed to leave the vehicle with the designated repair facility for 10 days from the date the vehicle was delivered to the facility.

MANUFACTURER AFFIRMATIVE DEFENSES §681.104(4), F.S.:

Defect does not substantially impair vehicle's use, value or safety §681.104(4)(a):

Champney v. BMW of North America, Inc. 1999-0170/TLH, (Fla. NMVAB July 1, 1999)
The Consumer alleged that the "check engine" and "SRS" warning lights came on constantly, and the vehicle pulled and veered to the left and right. The Manufacturer testified that each time the vehicle was brought in for repairs, the diagnostic tests showed a problem which the Manufacturer corrected. These lights were operating as they were intended to alert the Consumer to a technical problem requiring service from the Manufacturer's authorized service agents. The Manufacturer testified that at the pre-arbitration inspection the vehicle's tires were found with evidence of curb damage on the outer edge of one tire, and that the two front tires were inflated dangerously high, and that both these things would account for the swerving of the vehicle. The Manufacturer testified that low or excessive air pressure in the tires can cause a vehicle to pull to one side or another. The Board found for the Manufacturer stating that while it sympathized with the Consumer's frustration in taking the vehicle in repeatedly for service, the evidence showed that the warning lights were operating as designed and therefore neither they nor the pulling or swerving were a nonconformity.

Hutter v. DaimlerChrysler Motors Corporation, 1999-0687/FTL (Fla. NMVAB September 2, 1999)
The Consumer complained that his 1999 Chrysler Sebring convertible leaked by the driver's side window area whenever the vehicle went through a high pressure car wash. The owner's manual stated that the vehicle should not be subjected to high pressure washes as leaks may occur. The Manufacturer asserted that the water leak was excluded from the Manufacturer's warranty, because of the statements contained in the owner's manual. The Manufacturer also contended that the defect did

not substantially impair the use, value or safety of the vehicle, because the leak only occurred during the high pressure car wash, not during rain or during other types of car washes. The Board found that the defect complained of did not substantially impair the use, value or safety of the vehicle.

Accident, Abuse, Neglect, Unauthorized Modification §681.104(4)(b), F.S.:

Fisher v. General Motors Corporation, Saturn Corporation, 1999-0535/FTM, (Fla. NMVAB July 2, 1999)
The Consumer complained that the brake pedal intermittently traveled to the floor. An aftermarket supplemental braking system was installed on the vehicle by the Consumer. The Board concluded that the brake problem was the result of modification or alteration by persons other than the Manufacturer or its authorized service agent and the Consumer's case was dismissed.

REFUND §681.104(2)(a)(b), F.S.:

Incidental Charges §§681.102(7), F.S. (1995) & 681.102(8), F.S. (1997):

Catron v. General Motors Corporation, Chevrolet Motor Division, 1999-0649/FTL (Fla. NMVAB July 22, 1999)
The Consumer filed a Request for Arbitration alleging the vehicle's brakes made a squeaking noise and it was hard to stop. The Consumer prevailed on the merits and requested reimbursement for $100.00 for consultation fees paid to an attorney. The Board denied the request because attorney fees were not reimbursable as incidental charges under the statute, and the statute did not otherwise give the board the authority to award attorney fees.

Kautz v. Ford Motor Company, 1999-0796/WPB (Fla. NMVAB Sept. 10, 1999)
The Consumer complained the transmission in his 1998 Ford Ranger pickup truck would grind and shift improperly. The Consumer prevailed on the merits of his claim and argued the mileage for the purpose of calculating the statutory offset for use should be reduced by an unspecified amount, because the Manufacturer should have resolved this claim prior to the Request for Arbitration being filed. The Consumer also sought reimbursement of an unspecified amount of money for lost time for transporting his teenage son who was not eligible to drive the rental car, $19.90 for additional postage costs, and the registration fees for his truck. The Board found that the registration fees, $19.90 for additional postage and lost time for transporting his son were not reasonable charges and did not award these to the Consumer as incidental or collateral charges. The Board ruled that the additional mileage deduction sought by the Consumer was outside the scope of Section 681.102 (20), Florida Statutes, the definition of the reasonable offset for use, and did not make any additional deductions to the mileage.

Trade-in Allowance 681.102(19), F.S. (1997):

Allen v. Ford Motor Company, 1999-0758/PEN, (Fla. NMVAB September 22, 1999)
The Manufacturer filed an Amended Answer prior to the hearing asserting no affirmative defenses and offering to provide the Consumers a refund. The Manufacturer appeared at the hearing in order to dispute the trade-in allowance stated on the buyer's order. The Consumers traded a 1978 Chevrolet truck and the were given $5,000.00 net trade-in allowance. The Manufacturer produced a copy of the NADA Official Used Car Guide (Southeastern Edition) that included information on vehicles dating back to the year 1991. The Manufacturer argued that this book should be utilized to determine the trade-in allowance, because it was the book utilized by the selling dealer at the time of the trade-in. The Manufacturer's representative argued that the trade-in vehicle had more than 180,000 miles on the odometer, and adjusting the 1991 book value for age and mileage, Consumer's trade-in was worth $2,500.00. The Board held that, because the Manufacturer failed to provide the applicable NADA book as required by the statute, the trade-in allowance stated in the buyer's order would be awarded.

OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

QUARTERLY CASE SUMMARIES

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NONCONFORMITY §681.102(16), F.S. (1997):

Riley v. Toyota Motor Sales, U.S.A., 1999-0751/PEN, (Fla. NMVAB October 4, 1999)
The Consumer filed a Request for Arbitration alleging that the manual transmission gear shift would intermittently lock up. The Consumer testified that the driver could not shift immediately into reverse and that this created a substantial impairment of safety. The Manufacturer testified that this was a design of the vehicle. An inspection and test drive of the vehicle was performed and the Board was able to duplicate the reverse gear lock-up problem. The Board held that the problem was a substantial impairment of the safety of the vehicle and held in favor of the Consumer.

REASONABLE NUMBER OF ATTEMPTS §681.104, F.S.:

Days Out of Service §681.104(1)(b), (3)(b); Rule 2-30.001(2)(c), F.A.C.

Gonzalez, v. Mazda Motor of America, Inc., 1999-0992/TPA (Fla. NMVAB November 15, 1999)
The Manufacturer argued that the all of the days the vehicle was out of service (54 days) should not be held against it. The Manufacturer had difficulty in obtaining the proper repair components, and the Manufacturer had provided the Consumer with a rental vehicle. The Board rejected this argument and held in favor of the Consumer. The Board ruled that the Manufacturer's arguments were not supported by either the evidence or the statutory and rule provisions.

Whether Notice Sent After 15 Days Out Of Service 681.104(1)(b), F.S.

Hernandez v. Toyota Motor Sales, U.S.A., 1999-0970/TPA (Fla. NMVAB November 9, 1999)
The Consumer claimed that the motor vehicle had been out of service for a total of 39 cumulative days for repair of the intermittent illumination of the air bag light. Written notification was sent by the Consumer to the Manufacturer after 15 or more days out of service. At the hearing, the Manufacturer argued through counsel that the Manufacturer did not receive the written notification until 30 days had elapsed. The Board held that the unambiguous language of the statute requires the Consumer to mail notification to the Manufacturer after the vehicle has been out of service by reason of repair for 15 or more days; it does not require notice to be mailed prior to the expiration of 30 cumulative days out of service. The Board held in favor of the Consumer that a reasonable number of repair attempts had

been undertaken.

MANUFACTURER AFFIRMATIVE DEFENSES:

Defect does not substantially impair vehicle's use, value or safety §681.104(4)(a):

Harp v. American Honda Motor Company, 1999-0805/JAX (Fla. NMVAB November 1, 1999)
The Consumers complained that the vehicle had an intermittent hesitation and shudder/stumble when driven in overdrive between 45 and 70 miles per hour. The Manufacturer argued that neither problem amounted to a substantial impairment of the use, value or safety of the vehicle. The Manufacturer's witness testified that the shudder/stumble was actually a surge in the vehicle caused by the torque convertor and that there was no hesitation problem. The Board performed a test drive and experienced a slight shudder, but felt no hesitation. The Board held for the Manufacturer.

Accident, Abuse, Neglect, Unauthorized Modification §681.104(4)(b), F.S.:

Dover v. DaimlerChysler Motor Corp., 1999-0964/TPA (Fla. NMVAB November 8, 1999)
The Consumer complained of transmission hesitation, harsh shifting and, ultimately, transmission failure. The Manufacturer raised the affirmative defense that the defect was the result of abuse of the vehicle by persons other than the Manufacturer or its authorized service agent. The Manufacturer's witness testified that he performed a test drive following replacement of the transmission on September 2, 1999, and it operated without defect. The witness testified that the vehicle was towed to the authorized service agent on September 15, 1999, at which time the transmission cooler tube had melted to the radiator, the transmission fluid was burnt, and the rear tires showed extreme abnormal wear and blistering. The Board found in favor of the Consumer stating that the Manufacturer's assertion was not supported by the greater weight of the evidence.

Shaeffer v. General Motors Corporation, Chevrolet Division, 1999-1114/PEN (Fla. NMVAB December 17, 1999)
The Consumer complained that a fire occurred in the vehicle while it was parked at the Consumer's place of employment. The Consumer testified that, based upon the incident report filed by the fire department, it was his opinion that the fire was caused by an electrical failure. The Manufacturer refused responsibility for the repairs, which were paid for by the Consumer's insurance company. The Consumer presented a witness from the alarm company who testified that it was his opinion that the vehicle alarm system fuses had blown when an attempt was made to disarm the alarm, but that the alarm was operating as designed and did not cause the fire. The Manufacturer alleged that the fire was not caused by a Manufacturer's defect. The Board held in favor of the Manufacturer stating that the Consumer failed to meet the burden of proving that the fire was caused by a Manufacturer warranted defect.

REFUND 681.104(2)(a)(b), F.S.:

Trade-in Allowance 681.102(19), F.S. (1997):

Engleman v. General Motors Corporation, Chevrolet Motor Division, 1999-0965/TPA (Fla. NMVAB December 8, 1999)
The Consumer had traded in a 1996 Corvette and had received an allowance of $27,533.88 as reflected on the new vehicle buyer's order. The Consumer did not accept that trade-in allowance and produced the NADA Official Used Car Guide (Southeastern Edition) in accordance with the statute. The NADA guide reflected that the retail value for Consumer's vehicle as equipped was $32,575.00. Upon concluding that the vehicle which was the subject of the claim was a "lemon," the Board awarded as the net trade-in allowance the NADA retail value.

Wilson v. Ford Motor Company, 1999-1095/TPA (Fla. NMVAB December 16, 1999)
The Manufacturer disputed the trade-in allowance as reflected on the Consumers' purchase document (the amount owed was equal to the gross trade-in allowance). The Manufacturer produced the NADA Official Used Car Guide (Southeaster Edition) in effect at the time of the trade-in which listed a lower retail value for Consumers' trade-in vehicle than that which was set forth in the purchase document. In addition to certain options on Consumers' trade-in vehilce which enhanced the value, the Consumers testified that the vehicle was equipped with a conversion package which they believed added approximately $3,500.00 in value to the vehicle. The Consumer's vehicle, as equipped with the conversion package, was not listed in the NADA guide. The Board found Consumer's vehicle was a lemon, and resorted to the purchase document to determine the amount of the net trade-in allowance, since Consumer's trade in vehicle was not listed in the NADA guide.

MISCELLANEOUS PROCEDURAL ISSUES:

Overstreet v. Ford Motor Company, 1999-0794/TLH (Fla. NMVAB November 5, 1999)
Prior to the hearing the Consumers requested that their friend be permitted to assist in presenting their case. The friend's name did not appear on the Consumers' Prehearing Information sheet and the friend was not an attorney. The Board determined that the Consumers were capable of presenting their own case, and since their friend was not an attorney, he could not assist in the presentation of the case. The Consumers also requested that the Board accept a notarized letter and four photos of the vehicle. The notarized letter was of a witness that had been previously identified, but whose health problems precluded her presence at the hearing. Counsel for the Manufacturer did not object and the Board accepted these items in as evidence.