OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

QUARTERLY CASE SUMMARIES

January 2000 - March 2000 (1st Quarter)

REASONABLE NUMBER OF ATTEMPTS: §681.104, Fla. Stat. (1997)

Repair Attempts:

Swain v. Ford Motor Company, 1999-1266/PEN (Fla. NMVAB February 17, 2000).
The Consumer presented the vehicle for repair of a squeaking noise in the rear end of the vehicle on two occasions. The Manufacturer had a final repair attempt and contended at the hearing that the Manufacturer was not provided a "reasonable number of repair attempts" because the Consumer had not presented the vehicle for repairs a total of three times. The Board held that the Consumer is not required to establish the statutory presumption to qualify for relief. The Manufacturer's assertions that the noise was "normal" supported the Consumer's contention that there were a reasonable number of repair attempts.

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

Alcala v. Toyota Motor Sales, U.S.A., 1999-1156/MIA (Fla. NMVAB January 7, 2000).

The Consumer complained of an intermittent engine noise "like two pieces of metal hitting." The vehicle was presented for repairs three times and for the final repair attempt on September 15, 1999. The repair (replacement of a cracked piston ring) was not completed until September 30, 1999. Under Section 681.104(1)(a), the Manufacturer must conform the motor vehicle to the warranty within 10 days of delivery of the vehicle to the designated repair facility. Failing that, the requirement for a final repair attempt does not apply. The Board held for the Consumer determining that the nonconformity continued to exist after the third repair attempt.

Written Notification to the Manufacturer

Peralta v. Ford Motor Company 1999-1310/MIA, (Fla. NMVAB March 24, 2000)

The Consumer complained of brake problems. The brakes made a grinding noise, pulsated and locked up when applied. On October 22, 1999, the Consumer sent written notification to the Manufacturer to provide a final repair attempt. The notification did not describe the brake problem. The Manufacturer received the notification and on November 5, 1999, the vehicle was presented to the Manufacturer's designated repair facility for the final repair attempt. At that attempt, the brake problem

was not addressed. At the arbitration hearing, the Manufacturer moved to dismiss the Consumer's Request for Arbitration because the Manufacturer was not afforded an opportunity for a final repair on the brakes. In support, the Manufacturer asserted that the Consumer failed to provide written notification of the brake problem. The Board held in favor of the Manufacturer on the basis of the failure to provide the Manufacturer with the requisite written notification as to the brake problem.

MANUFACTURER DEFENSES:

Defect Not Covered by Warranty

O'Connor v. Ford Motor Company, 2000-0085/TPA (Fla. NMVAB March 6, 2000)

Consumer complained of a vibration which shook the entire vehicle when driven at speeds of 60 miles per hour and above. In the course of repairs, the tires were balanced and the wheels replaced. The vibration continued. In addition to repairs performed by the authorized service agent, the Consumer took the vehicle to a tire service agent. After replacing the tires, the tire service agent advised the Consumer that the vehicle's tires were not the cause of the vibration. The Manufacturer contended that the Consumer's problems were tire problems, and as such, were not covered by the Manufacturer's warranty. In support of this, the Manufacturer's witness testified that at the prehearing inspection he determined that three of the tires had insufficient air pressure, one tire had a metal bolt lodged in the thread and a heavy truck balancing weight was attached to one wheel. The Board rejected the Manufacturer's contention as being based entirely upon one inspection of the vehicle conducted six months after the Manufacturer's final repair attempt.. During the course of repairs, which was the relevant time period , the evidence reflected that replacement of tires did not correct the nonconformity.

REFUND §681.104(2)(a)(b), F.S.:

Sabel v. Ford Motor Company, 2000-0030/TPA (Fla. NMVAB March 1, 2000).

The Consumer received the vehicle which was the subject of this case in settlement of a dispute with the Manufacturer concerning certain alleged defects in a prior 1999 vehicle. In connection with the purchase of the prior vehicle, the Consumer contributed a cash down payment of $3,000.00 and received a net trade-in allowance and financed the balance. The retail installment contract executed by the Consumer at the time of the exchange of the prior vehicle for the vehicle in this case was prepared so that the transaction constituted an "even swap" of the two vehicles. In this case, the Consumer contended that the Board should look to the purchase of the prior vehicle and refund to her the amount of her down payment and trade-in allowance from that purchase, because that vehicle was defective. Counsel for the Manufacturer argued that the Board should not look behind the transaction in which the Consumer acquired the vehicle which is the subject of this case. The Board rejected the Consumer's argument and only awarded the Consumer sums paid in conjunction with the purchase of the vehicle

which was the subject of this case.

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

Ammirata v. Toyota Motor Sales, U.S.A., 1999-0784/MIA (Fla. NMVAB February 11, 2000)

The Consumer objected to the zero net trade-in allowance evidenced on the lease documents and submitted a copy of the NADA Official Used Car Guide (Southeastern Edition) in effect at the time of the purchase, which reflected a base retail price for the Consumer's trade-in vehicle of $24,750.00. In addition the NADA guide provided an additional $500.00 should be added to Consumer's trade-in vehicle based upon optional equipment. The Consumer prevailed on the merits and the Board awarded her the NADA retail value for her trade-in vehicle.

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

Daniels v. American Honda Motor Company, 2000-0019/TPA (Fla. NMVAB February 23, 2000)

The Consumers filed a claim with BBB/AUTOLINE, the state-certified informal dispute settlement program sponsored by American Honda. The Consumers were not satisfied with that decision and filed a Request for Arbitration with this Board subsequently. Mileage was estimated at the time to the BBB/AUTOLINE hearing to be 36,757 miles. The Manufacturer raised as a defense that the Board cannot utilize the mileage on Consumers' vehicle as of the BBB/AUTOLINE hearing because it is described in Chapter 681 as a "procedure" and not an arbitration hearing and because a consumer is not required to be eligible for a Lemon Law arbitration hearing in order to be eligible for a BBB/AUTOLINE hearing. The Board rejected this contention by the Manufacturer and used the mileage on the vehicle as of the BBB/AUTOLINE hearing on the basis that the Consumers were required to resort to that hearing in order to be eligible for arbitration before this Board.

Elliott v. Ford Motor Company, 2000-0168/TPA (Fla. NMVAB March 31, 2000).

The amount the lessor paid to purchase the vehicle was not produced at the hearing. The Manufacturer produced a copy of the dealer invoice, and a copy of the window sticker which indicated a Manufacturer's suggested retail price of $31,990.00. The lease signed by the Consumer indicated an "agreed upon value" of $30,490.00. The Board determined that the purchase price for the purpose of calculating the statutory offset for use was $30,490.00.

Incidental Charges 681.102(8), F.S. (1997):

Goodman v. BMW of North America, Inc., 2000-0185/STP (Fla. NMVAB April 7, 2000).

The Consumer sent written notification to the Manufacturer to provide the Manufacturer with a final opportunity to repair the vehicle. The vehicle was presented to the designated repair facility for the final repair attempt and 15 days later the Consumer called the authorized service agent to advise that the Consumer would no longer allow work to be performed on the vehicle because the final repair attempt was not completed within 10 days. The authorized service agent required the Consumer to

return a loaner vehicle he was driving. At the time, the Consumer's vehicle could not be driven and the Consumer rented a vehicle. The Consumer sought reimbursement for incidental charges of $718.87 for car rental from February 15, 2000 through March 7, 2000. The Manufacturer objected to these charges , contending that the Manufacturer should not be required to pay for a rental vehicle for a period of time the Consumer refused to allow repairs to vehicle. The Board awarded the charges to Consumer.

MISCELLANEOUS:

Gacusana v. General Motors Corporation, Chevrolet Division, & Mark III Industries, 1999-1252/MIA (Fla. NMVAB February 3, 2000)

The Consumer filed a Request for Arbitration claiming his 1999 Chevrolet Astro Conversion Van was out of service by reason of repairs for a total of 34 cumulative days. Manufacturer Mark III contended that, because the Consumer gave permission for service for more than 30 days, he had waived his Lemon Law remedy. The Board held that pursuant to Section 681.115, Florida Statutes, any agreement entered into by a consumer that waives, limits or disclaims the rights set forth in the Lemon Law statutes is void as contrary to public policy. The Consumer therefore, did not waive his rights.

Renshaw v. General Motors Corporation, Pontiac-GMC Division, 2000-0121/ORL (Fla. NMVAB April 14, 2000)

The case was initially noticed for hearing for March 21, 2000. On March 15, 2000, the Manufacturer requested a continuance because of difficulty in scheduling the prehearing inspection of the vehicle. On March 17, 2000, the Manufacturer's request for a continuance was granted. On March 27, 2000 a telephone conference was held in order to set a time and location for the pre-arbitration inspection of the Consumer's vehicle. The Consumer participated in that conference. At that conference, the April 11, 2000, hearing date for the arbitration was set. On April 10, 2000, the Consumer requested a continuance of the April 11, 2000 hearing. The Consumer was referred to paragraph (26), *Hearings Before the Florida New Motor Vehicle Arbitration Board* which provides that a request to reschedule a hearing "made later than 3 business days before the hearing must be made at the hearing." The Manufacturer objected to the untimely request for a continuance and the Chairperson declined to consider the request. The Board Administrator notified the Consumer of the Chairperson's ruling and advised her to appear at the April 11, 2000, hearing and be prepared to argue the merits of the case. The Consumer was advised that her failure to appear at the hearing would result in the hearing being canceled and the case dismissed. On April 11, 2000, the Consumer did not appear at the hearing. After waiting 30 minutes from the scheduled time of the hearing, the Consumer was declared in default and the case was dismissed. The Consumer did not contact the Board Administrator within one business day of the hearing to request that the decision be set aside.

OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

QUARTERLY CASE SUMMARIES

April 2000 - June 2000 (2nd Quarter)

JURISDICTION:

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

Angee v. BMW of North America, Inc., 2000-0234/MIA (Fla. NMVAB May 1, 2000).

The parties stipulated that the Consumer leased a 1997 BMW 318i automobile on February 29, 1998. Mileage at the time of delivery was 14,700 miles. The Manufacturer contended that the vehicle was a commercial "loaner" and therefore was leased to the Consumer as a "used" vehicle, and not new, as required by the statute. The Board found in favor of the Manufacturer and concluded that the vehicle was not a "motor vehicle" as defined by the statute. The case was dismissed.

Eisenberg v. Ford Motor Company, 2000-0277/TPA (Fla. NMVAB May 9, 2000).

The financing document produced by the Consumer identified the vehicle as "used." Mileage at the time of delivery was 1,170 miles. Prior to the Consumer's purchase of the vehicle, it had been leased to the Chief of Police. The Consumer argued that the purchase price he paid was reflective of a new vehicle. After the problems began with the vehicle he was advised by the dealer's representative that the vehicle had been "loaned" to the Chief of Police. The Manufacturer argued that the claim should be dismissed because the vehicle was not "new" as defined by the statute. The Board held in favor of the Manufacturer and dismissed.

Whether Problem First Reported During Lemon Law Rights Period §§681.102(9) & 681.103, F.S.

Montgomery v. DaimlerChrysler Motors Corp., 2000-0245/ORL (Fla. NMVAB May 10, 2000)**.**

The Consumer complained that the vehicle caught fire on December 27, 1999. Twenty-four months after delivery of the vehicle was December 25, 1999. The Board held that the Consumer's Lemon Law rights period expired on December 25, 1999. The fire was reported after that date; consequently, the Consumer was not qualified for relief under the Lemon Law. The case was dismissed.

REASONABLE NUMBER OF ATTEMPTS 681.104, F.S.:

Days Out of Service §681.104(1)(b), 681.104(3)(b), F.S.

McGrath v. Mitsubishi Motor Sales of America, Inc., 2000-0260/WPB (Fla. NMVAB May 5, 2000).

The Consumer filed a Request for Arbitration alleging that the vehicle was out of service for 30 days for repair of defects that substantially impaired the use, value or safety of the vehicle. The Consumer was directed by the Manufacturer's service agent to have the vehicle towed to the service agent when the vehicle's engine failed to operate properly. The towing company did not deliver the vehicle to the service agent until the following day. At the hearing, the Manufacturer contended that the Consumer was not qualified for relief because the vehicle was out of service at the repair facility for only 29 days. The Board found the defects complained of by the Consumer were nonconformities. The Board held that, because the Manufacturer's authorized service agent specifically directed that the vehicle be towed to the repair facility, the towing company's delay in delivering the vehicle would not be held against the Consumer. The Board held in favor of the Consumer and awarded a refund.

Written Notification to the Manufacturer §681.104(1)(a), F.S.

Martin v. Mitsubishi Motor Sales of America, Inc., 2000-0400/PEN (Fla. NMVAB June 9, 2000).

The Consumer sent written notification to the Manufacturer to provide a final repair attempt. The Consumer did not receive a response from the Manufacturer within 10 days after the Manufacturer's receipt of the notification. He did receive telephone calls from the dealership, but did not bring the vehicle in, because he was not directed to a repair facility by the Manufacturer. At the hearing, the Manufacturer argued that the dealership was it's authorized agent in responding to Consumer's defect notification and because the Consumer refused to allow the Manufacturer a final attempt to cure the nonconformity, the claim should be dismissed. The Board held in favor of the Consumer, concluding that the statute requires the Manufacturer to respond directly to the Consumer after notice.

MANUFACTURER AFFIRMATIVE DEFENSES §681.104 F.S.

Defect does not substantially impair use, value or safety §681.104(a), F.S.

Alweiss v. Ford Motor Company, 2000-0194/MIA (Fla. NMVAB May 1, 2000).

The Manufacturer contended that the complaint of engine hesitation and stalling did not substantially impair the use, value or safety of the Consumer's vehicle. One of the Manufacturer's witnesses stated that the vehicle was test driven on several occasions, although these test drives were not shown on the Consumer's copy of the service orders because of "office procedure." The witness testified that no problem existed with the vehicle as demonstrated during the test drives. The Board

held that because the Manufacturer failed to document the test drives on the service orders, or to perform adequate test drives in the face of Consumer's complaints, the Manufacturer had failed to adequately carry out its statutory and warranty obligations of diagnosis and repair. Consequently, the Manufacturer's assertion of no substantial impairment was rejected by the Board and the Consumer was awarded a refund.

Bell v. DaimlerChrysler Motors Corp., 2000-0093/PEN (Fla. NMVAB April 4, 2000).

The Consumer complained of uncomfortable seats and rumbling noises. The Board held in favor of the Manufacturer, stating that the problems complained of by the Consumer did not substantially impair the use, value or safety of the vehicle. The case was dismissed.

REFUND §681.104(2)(a)(b), F.S.:

Stanchina v. Mazda Motors of America, Inc., 2000-0223/JAX (Fla. NMVAB May 23, 2000).

In determining the total refund to the Consumer, the Board held that a $2,000.00 dealer trade incentive received by the Consumer and applied to the purchase of the vehicle, was refundable to the Consumer as if it were a down payment of cash.

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

Forbes v. Ford Motor Company, 2000-0211/FTM (Fla. NMVAB April 28, 2000).

The Board used the mileage attributable to the Consumers as of the date of the arbitration hearing before the Ford Dispute Settlement Board, over the objection by Ford's counsel, who argued that the proceeding conducted by the Dispute Settlement Board was not an arbitration hearing as contemplated by the statute, and the program was not state-certified. The Consumers testified that they were directed to Dispute Settlement Board by the Manufacturer's authorized service agent and by the information contained in the Manufacturer's written warranty.

MISCELLANEOUS PROCEDURAL ISSUES:

Dillion v. Toyota Motor Sales U.S.A., 2000-0312/FTL (Fla. NMVAB).

The Manufacturer filed its Manufacturer's Answer on May 3, 2000, but it was not on the form as prescribed by Florida Administrative Code Rule 2-30. The Manufacturer received its Notice of Arbitration by certified mail on April 4, 2000. The Manufacturer's Answer was required to be filed within 15 days of receipt of the Notice of Arbitration, or no later than April 20, 2000. The Board determined that the failure to use the required form and failure to produce evidence of a postmark date that rebutted the May 3, 2000 receipt, resulted in the untimely filing of the Manufacturer's Answer. The Manufacturer was not permitted to present any affirmative defenses at the arbitration hearing.

OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

QUARTERLY CASE SUMMARIES

July 2000 - September 2000 (3rd Quarter)

JURISDICTION:

Consumer §681.102(4), F.S.

Stauffer v. Ford Motor Company, 1999-1130/TPA (Fla. NMVAB July 11, 2000)

A father transferred the title to the subject motor vehicle to his son in exchange for $1.00. During the hearing, the son testified that he had been in possession of the vehicle since the time of purchase by his father, but that his father was the legal owner of the vehicle prior to the transfer of title. At the outset of the hearing, the Manufacturer's attorney moved to dismiss the case on the grounds that the son was not a "Consumer" as defined in Chapter 681, because the vehicle was not transferred to him during the Lemon Law rights period. The Board held that the son was not a Consumer as defined, because the vehicle was transferred to him, and primarily used for personal, family, or household purposes, after the expiration of the Lemon Law rights period. The case was dismissed.

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

Delatorre v. Ford Motor Company, 2000-0507/MIA (Fla. NMVAB July 20, 2000)

The Consumer had filed a Request for Arbitration indicating that her truck weighed less than 10,000 pounds gross vehicle weight. Prior to the hearing, the Manufacturer provided the Board with a copy of the Florida Vehicle/Vessel Registration Certificate, which evidenced the Consumer's declaration that the gross vehicle weight was 11,200 pounds. In reliance on the registration certificate, the definition of "gross vehicle weight" as set forth in Section 320.01(12)(a), Florida Statutes (1999), and a previous Board decision, the Manufacturer contended the Consumer's vehicle was not a "motor vehicle" as defined under the Lemon Law. The Consumer's attorney presented a "Florida Department of Transportation Motor Carrier Compliance Office, Islamorada Weigh Station Violation Ticket" indicating that the weight of the truck was 7,040 pounds; accordingly, the Consumer requested that the Manufacturer's Motion to Dismiss should be "struck," and also moved to continue the hearing so the Consumer could file a corrected Florida Registration Certificate. The Board concluded that the Consumer's truck weighed more than 10,000 pounds gross vehicle weight; therefore, it did not constitute a "motor vehicle" under the Lemon Law. The Consumer's Motion to Continue was denied and the case was dismissed.

Nix v. Mazda Motor of America, Inc., 2000-0811/TLH (Fla. NMVAB September 22, 2000)

The Manufacturer contended that the Consumer's truck was not a "new" vehicle as required by the Lemon Law, because its authorized service agent, Buzz Leonard Motors, Inc., "sold" the vehicle to Billy Carr Auto Sales; thereafter, it was transferred to the Consumer as a "used" vehicle. The Consumer submitted into evidence, Mazda Motor of America, Inc.'s written express, limited warranty, and the Billy Car Auto Sales, Inc., sales agreement indicating the vehicle was sold to the Consumer as "new." The Manufacturer provided the Board with a Certificate of Title issued for the truck showing the Consumer was the first and only registered owner of the vehicle. The Consumer testified during the hearing that he purchased a "new" truck from his friend, Billy Carr, a used car dealer, who agreed to order him any new vehicle that he wanted. Because the lemon law does not define the term "new vehicle," the Board relied on the definition contained in Chapter 320, Florida Statutes, and determined that the truck was new because equitable or legal title had never been transferred by a manufacturer, distributor, importer, or dealer to an ultimate purchaser. Based on the evidence presented, the Board found the Consumer to be the "ultimate purchaser" and the truck was "new" when title passed to the Consumer; therefore, the vehicle constituted a "motor vehicle" within the meaning of the statute. The Board then concluded that a transmission slip and noise was a defect or condition that substantially impaired the use and value of the vehicle; as such, the Consumer was awarded a refund.

Warranty §681.102(20), F.S. (1995); §681.102(23), F.S. (1997)

Galluzzo v. Ford Motor Company, 2000-0327/FTL (Fla. NMVAB August 7, 2000)

The Consumer complained of undercarriage rust. The Manufacturer contended that the rust was surface oxidation, probably caused by salt residue due to the Consumer's residence in a beachfront area. The Manufacturer asserted that rust caused by surface oxidation was excluded from the limited warranty, which covered body sheet metal panels against corrosion due to a defect in factory-supplied materials or workmanship. The Board concluded that the surface rust or salt residue was not the type of corrosion covered by the Manufacturer's written warranty, nor was it the subject of any affirmation or promise made by the Manufacturer relating to material or workmanship as defined under the Lemon Law. The case was dismissed.

REASONABLE NUMBER OF ATTEMPTS §681.104, F.S.

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

Takasy v. Jaguar Cars, 2000-0446/STP (Fla. NMVAB July 6, 2000)

The Consumer complained of a whistling noise emanating from the climate control system. After two attempts at repair, the Consumer was told the noise was "normal" and nothing further could be done to

fix it. The Consumer sent written notification to the Manufacturer and upon receipt of such notification, the Consumer was directed to a repair facility for a "final" repair attempt. Following an inspection of the vehicle by the Manufacturer's representative, the Consumer was advised the Consumer that any noise associated with the climate control was considered "normal" and no repairs would be performed. The Consumer was told the same thing by the Manufacturer's representative during the Manufacturer's pre-arbitration inspection of the vehicle. During the hearing, the Board test drove the motor vehicle and heard the complained of noise. The Board concluded the whistling noise constituted a nonconformity. The Board further held that, although the Lemon Law statute does not specifically define how many repair 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. Under the circumstances, additional opportunities to repair would not have changed the Manufacturer's contention that the noise was normal; therefore, the Board concluded that the Manufacturer was afforded a reasonable opportunity to conform the vehicle to the warranty as contemplated by the Lemon Law. The vehicle was deemed a "lemon" and the Consumer was awarded a refund.

Written Notification to the Manufacturer: §681.104(1), F.S.

Juelle v. General Motors Corporation, Chevrolet Motor Division, 2000-0410/MIA (Fla. NMVAB July 6, 2000)

The Consumer complained of an intermittent air conditioner problem, which the Board found substantially impaired the use, value and safety of the motor vehicle. Following four repair attempts for this problem, the Consumer sent written notification to the Manufacturer allowing for a final repair attempt. The Manufacturer did not respond to the notification within the required 10 days, nor was a final repair attempt performed. However, the Consumer did take the vehicle in for a fifth repair attempt approximately three weeks after sending the written notification. The Manufacturer contended that the fifth repair attempt corrected the problem. The Board held that the requirement that the Manufacturer be given a final repair attempt did not apply because the Manufactured failed to respond to the notification. The Board further held that the correction of the nonconformity outside the reasonable number of attempts permitted by the Lemon Law was irrelevant. Since the Manufacturer failed to correct the problem within a reasonable number of repair attempts, the Consumer was entitled to a refund.

Taha v. Toyota Motor Sales, U.S.A., 2000-0325/ORL (Fla. NMVAB July 3, 2000)

The Consumer mailed written notification to the Manufacturer at an address provided to his wife by the Manufacturer's customer hotline, because the Consumer was unable to locate an address in his owner's manual or warranty booklet. In response to the notice, the Consumer received a voice mail message on his telephone answering machine more than 10 days after the Manufacturer's receipt of the notification; however, at the Manufacturer's request, the Consumer presented the vehicle for repair. At

the hearing, the Manufacturer argued that because the Consumer mailed the written notification to the wrong address, the Manufacturer's response to the notification should have been considered timely, and the repairs conducted on a date following the response should constitute the final repair attempt. The Manufacturer also argued that the complained of defects were cured at this final repair attempt. The Board concluded that the Manufacturer received the notification, but failed to respond within the statutorily required 10 days of receipt. The Consumer did present the vehicle for a subsequent repair; however, since the Manufacturer failed to timely respond, the requirement that the Manufacturer be given a final attempt to cure the vibration nonconformities did not apply. The Manufacturer having failed to correct the nonconformities after a reasonable number of attempts, the Consumer was entitled to a refund.

Pena v. DaimlerChrysler Motors Corporation, 2000-0478/MIA (Fla. NMVAB July 19, 2000)

The Consumer sent a letter to the Director of Office of Consumer Affairs and Business Regulation in Boston, Massachusetts, regarding the problems with the vehicle, and requesting a replacement vehicle or a refund. Copies of this letter were sent to Bob Eaton, CEO, Chrysler Corporation, and to the Florida Department of Agriculture and Consumer Services, Division of Consumer Services. Upon receipt of this letter, a Chrysler representative responded by telephone and requested that the Consumer take the vehicle to an authorized service agent for examination, which the Consumer did not do. The Board held that the letter to the Director of Office of Consumer Affairs and Business Regulation in Boston, Massachusetts, and to the CEO of Chrysler Corporation was not sufficient to constitute the written notification required under Section 681.104(1)(a), Florida Statutes; accordingly, because of the bad notification and the refusal to take the vehicle in for examination following the telephone call from a Chrysler representative, the Manufacturer was not provided a reasonable number of attempts to conform the vehicle to the warranty. The case was dismissed.

Final Repair Attempt §681.104(1)(a), F.S.; §681.104(3)(a)1., F.S.

Lester v. American Isuzu Motors, Inc., 2000-0495/PEN (Fla. NMVAB July 19, 2000)

The Consumers complained of an intermittent brake pulsation followed by a failure of the brakes to stop the vehicle in a normal amount of time and distance. The Consumers testified that some of the Manufacturer's repair attempts improved the braking, but did not correct the problem. In addition, the Consumers asserted that the brake defect caused an accident that occurred more than five months after the Manufacturer's final repair attempt. The Manufacturer contended that the brake problem was related to the "normal characteristics" of the Anti-lock Brake System; therefore, it did not constitute a nonconformity. Alternatively, the Manufacturer contended the brake problem was corrected following the replacement of the speed sensor at the final repair attempt. The Board held that the brake problem did substantially impair the safety of the vehicle. With regard to whether the nonconformity continued to exist after the final repair attempt, the Board was not persuaded by the Consumers' testimony that the brake nonconformity was the direct cause of the accident and concluded that the nonconformity

was corrected at the final repair attempt. The Manufacturer having conformed the vehicle to the warranty by correcting the nonconformity within a reasonable number of attempts, the Consumers were not entitled to relief, and the case was dismissed.

Maiorano v. Ford Motor Company, 2000-0550/MIA (Fla. NMVAB August 4, 2000)

Following the Manufacturer's receipt of the Consumer's Motor Vehicle Defect Notification form, the Consumer delivered the vehicle to the Manufacturer's authorized service agent pursuant to an agreed upon final repair attempt; however, the Consumer was unable to leave the vehicle. A new date was mutually agreed upon; however, the Manufacturer' authorized service agent was unable to complete the repairs, but advised the Consumer not to leave the vehicle, as the Manufacturer was attempting to find a replacement vehicle for the Consumer. Since the Manufacturer did not complete the final repair within 10 days of the date the vehicle was delivered to the designated facility, the requirement that the Manufacturer be given a final repair attempt to cure the nonconformity did not apply. Because the Manufacturer failed to correct the nonconformity after a reasonable number of attempts, the Consumer was awarded a refund.

Watson v. DaimlerChrysler Motors Corporation, 2000-0733/PEN
(Fla. NMVAB September 13, 2000)

The Consumer complained of intermittent inoperable electric power windows, which the Board concluded substantially impaired the use and value of the motor vehicle. The Manufacturer contended that it was not afforded the statutory required final repair attempt; therefore, the case should be dismissed. The Consumer sent written notification to which the Manufacturer timely responded; however, the Consumer advised the Manufacturer's representative that the windows were working properly at that time, and no final repair attempt was needed. During the hearing, the Consumer testified that the windows worked properly for about seven months, then the problem recurred. At this point, the Consumer contacted someone she believed to work with the Manufacturer who advised her that someone would get back to her regarding her window problem; however, she could not confirm the identity of this person. She further testified that if someone would have reached out to her, she would have allowed the Manufacturer the opportunity to fix the windows. The Board held that the Manufacturer was provided with the required written notification, and thereafter timely responded to the notice; however, the Manufacturer was not afforded a final opportunity to correct the nonconformity. The case was dismissed.

Days Out of Service: §681.104(1)(b); 681.104(3)(b), F.S.

McCloud v. Mercedes-Benz USA, Inc., 2000-0198/JAX (Fla. NMVAB August 7, 2000)

A tow truck was involved in an accident while towing the Consumer's vehicle to the authorized service agent for repair, resulting in damage to the Consumer's vehicle. The Manufacturer contended that the

additional days required to repair the towing damage did not constitute "days out of service" under the Lemon Law, because tow truck operator was not an authorized service agent of Mercedes-Benz; however, the towing bill was paid for under its warranty. The problem which required the vehicle to be towed was later determined to be a problem with the key, though the battery in the vehicle was replaced as well. The Manufacturer contended that the number of repair days for accident damage should not count, because the accident damage did not meet the definition of "nonconformity" under the Lemon Law, and the underlying key and/or battery repair would not have taken more than one day; however, the Manufacturer did not provide proof to support this contention. The Board rejected the Manufacturer's contentions, and held that the vehicle was out of service for repair of nonconformities for 42 days; therefore, the Consumer was entitled to a refund.

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

Defect Does Not Substantially Impair Use, Value or Safety of Vehicle §681.104(a):

Henderson v. Ford Motor Company, 2000-0743/TLH (Fla. NMVAB September 5, 2000)

The Consumer complained of a "bad vibration" throughout the pickup truck, which was described as annoying, uncomfortable and a threat to the safety of her family. During the course of repairs, the front brakes were adjusted, the tires balanced six times, and eight rims and one idler arm were replaced on the vehicle. In addition, eight Firestone and ten Michelin tires were put on the vehicle during the course of repairs and related test drives in an attempt to diagnose and alleviate the problem. The Consumer testified that the Michelin tires that replaced the Firestone tires improved the vibration, but did not eliminate the vibration. The Manufacturer contended that the problem complained of was normal tire and road vibration that the Consumer was experiencing, which was not warranted by the Manufacturer, and not a defect or condition that substantially impaired the use, value or safety of the vehicle. During the hearing, the Board conducted a nine-mile test drive of the Consumer's vehicle and experienced a slight vibration. The Board concluded that, although a slight vibration existed, it did not constitute a nonconformity; accordingly, the case was dismissed.

MULTIPLE MANUFACTURERS

Craig v. General Motors Corporation, Chevrolet Motor Division, and Premier Motor Coach, 2000-0671/PEN (Fla. NMVAB August 25, 2000)

The Consumer complained of cracks in the conversion interior wood and cracks in the conversion interior wood finish, which he described as "craze marks." During his testimony at the hearing, the Consumer acknowledged that, although he took the conversion van to his selling dealer, Pete Moore Chevrolet, an authorized service agent for both General Motors and Premier, all the repair work was

done by the converter at its headquarters, and not by GM or Pete Moore Chevrolet. At the close of the Consumer's testimony, the representative for GM requested that the case be dismissed as against GM, because the Consumer's testimony and evidence submitted into the record confirmed that none of the alleged defects were covered under GM's warranty, nor were any repairs performed by any of its authorized service agents. Neither the Consumer, nor Premier objected to this request; therefore, the case was dismissed as against GM, and Premier proceeded to present its case. Premier argued that the defects complained of by the Consumer did not constitute nonconformities because they were simply "wear and tear" items that deteriorated over time due to the elements to which they were exposed, especially the hot Florida sun. The Board agreed with Premier's position and concluded that the wood cracks did not substantially impair the use, value or safety of the motor vehicle; accordingly, the Consumer was not entitled to Lemon Law relief, and the case was dismissed.

REFUND §681.104(2)(a)(b), F.S.:

Collateral Charges §681.102(3), F.S.

Gonzalez v. Ford Motor Company, 2000-0511/PEN (Fla. NMVAB August 10, 2000)

The Consumers' vehicle was declared a lemon because of a noisy transmission. The remedy phase of the hearing was continued to enable the Consumers to submit verification of payment for a vehicle alarm system, for which they sought reimbursement as a collateral charge. The Consumers submitted an undated document, which indicated a cost of $300.95 for an alarm system. The Manufacturer's attorney objected to reimbursement of this collateral charge because the document did not appear to be authentic and it did not evidence actual payment from the Consumers. A telephone hearing was conducted to address the collateral charge issue and complete the calculation of the refund. The Consumers did not participate in the telephone hearing, nor did they present substantiation of payment of the disputed collateral charge. The Board denied reimbursement of the cost for the alarm system, and awarded a refund without this amount.

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

Taha v. Toyota Motor Sales, U.S.A., 2000-0325/ORL (Fla. NMVAB July 3, 2000)

The Consumer was awarded a refund. The Consumer also sought reimbursement of expert witness fees in the amount of $1,400.00 as incidental charges. The witness was an ASE certified master technician who sought $400.00 for an examination and test drive of the vehicle that took 1.5 hours, and $1,000.00 for 5.5 hours attending the arbitration hearing. The Board found that the average of the two charges was approximately $65.00 per hour, and awarded reimbursement in the amount of $450.00 as reasonable incidental charges for the technician's time of seven hours at $65.00 per hour.

West v. Ford Motor Company, 2000-0776/ORL (Fla. NMVAB September 20, 2000)

The Consumer was awarded a refund. The Consumer sought reimbursement of the following incidental charges as a result of the nonconformities: $350.70 for tires and balancing; $118.66 for front-end alignments; and $299.55 for inspections and repairs performed at independent auto repair shops. The Consumer also sought reimbursement for vehicle rental costs for which he provided an unverified receipt from Ahoy Marine in the amount of $900.00. The Consumer testified that the vehicle rental costs were for truck rental fees for three weekends so that he could participate in fishing tournaments. The Manufacturer objected to the reimbursement of all of these expenses. The Board granted all of the incidental charges except the vehicle rental costs.

Net Trade-in Allowance §681.102(17), F.S. (1995);§681.102(19), F.S. (1997)

Barefield v. Toyota Motor Sales, U.S.A., 2000-0859/TPA (Fla. NMVAB September 29, 2000)

During the remedy phase of the hearing, the Manufacturer argued that the Consumer's trade-in vehicle was worth less than the amount of the outstanding lien against it, and her refund should be reduced by that amount. In support of that argument, the Manufacturer relied on an affidavit of the finance manager at the selling dealer, which stated that the "appraised value" of the Consumer's trade-in vehicle was $10,500.00 and the pay-off on the lien was $14,316.33. The lease reflected a net trade-in allowance of "none." The Manufacturer did not produce the NADA Official Used Vehicle Appraisal Guide (Southeast Edition) in effect at the time of the trade-in. The argument that the Board utilize the "appraised value" of the Consumer's trade-in vehicle in calculating the refund due the Consumer was rejected as being irrelevant and beyond the scope of the Board's authority.

Reasonable Offset for Use §681.102(18), F.S. (1995);§681.102(20), F.S. (1997)

Goforth v. American Isuzu Motors, Inc., 2000-0276/TPA (Fla. NMVAB July 11, 2000)

Prior to the hearing, the Consumer requested an extended continuance of the first scheduled Board hearing due to a family illness. The Manufacturer stipulated to the continuance, provided the mileage attributable to the Consumer due to the delay be added to the mileage at the time of the BBB/AUTOLINE hearing. The Board granted the continuance and the Manufacturer's request regarding the mileage, and directed the Consumer to record the mileage on the date of the first scheduled Board hearing; however, the Consumer failed to do so. In calculating the statutory offset for use, the Board calculated the average miles driven per day since the date of the BBB/AUTOLINE hearing, and added those miles to the mileage attributable to the Consumer as of the date of the BBB/AUTOLINE hearing, in order to estimate the total mileage attributable to the Consumer for calculating the statutory offset.

Campopiano & Ocean State Protective Services, Inc. v. Ford Motor Company, 2000-0578/ORL (Fla. NMVAB August 23, 2000)

The Manufacturer agreed that the vehicle was a lemon. The sole purpose of the hearing was to calculate the amount of the refund due the Consumers. In calculating the reasonable offset for the Consumers' use of the vehicle, the Manufacturer's attorney argued that the miles driven to and from the Manufacturer's authorized service agent should be attributed to the Consumers, because the Lemon Law provides the Manufacturer with a reasonable opportunity to repair the nonconformity and because the Consumers did not take the vehicle to the authorized service agent in closest proximity to their home or business for repairs. The Board agreed and calculated the offset accordingly.

MISCELLANEOUS PROCEDURAL ISSUES

Nadu v. Ford Motor Company, 2000-0519/TPA (Fla. NMVAB August, 10, 2000)

The Consumer filed a Request for Arbitration seeking a replacement vehicle. At the hearing, the Consumer requested that the vehicle be repaired in lieu of a replacement vehicle or refund. In support of this request, the Consumer asserted that she could not afford to pay the offset for her use of the vehicle as required by the Lemon Law. The Consumer notified the Board that she desired to withdraw the Request for Arbitration; as a result, the Board ordered that the Request for Arbitration be withdrawn and the case was dismissed.

LeCompte v. Nissan Motor Corporation, USA, 2000-0674/TPA (Fla. NMVAB August 18, 2000)

At the commencement of the hearing, counsel for the Manufacturer requested the Board not consider the Request for Arbitration as "filed," because counsel for the Consumers completed the request, not the Consumers, and the law did not permit an attorney to sign a verification under oath on behalf of a client. At the hearing, Carla LeCompte testified that she reviewed the Request for Arbitration after her counsel completed the request, and she adopted the statements contained within the Request for Arbitration as her own statements. The hearing proceeded on the merits.

Hough v. Toyota Motor Sales, U.S.A., 2000-0553/FTM (Fla. NMVAB August 25, 2000)

Following the Board's test drive of the vehicle during the hearing, counsel for the Manufacturer requested a continuance to allow the Manufacturer to perform an inspection of the vehicle's brakes to determine whether excessive heat had been induced by the Consumer to warp the vehicle's rear brake drums. In support of this request, a Manufacturer's witness testified that he discussed the Manufacturer's prehearing inspection of the Consumer's vehicle with the individual who performed it, and was informed that there was no vibration when the brakes were applied during the prehearing inspection, and that the Consumer agreed with that finding. This witness testified that, during the

Board's test drive of the Consumer's vehicle during the hearing, he felt a definite vibration coming from the rear drums. Counsel for the Manufacturer asserted that the condition of the vehicle at the hearing was a "surprise" to the Manufacturer and that the Manufacturer would be deprived of a fair hearing if a continuance was not granted. The Board found that the existence of a vibration when braking was consistent with the Consumer's testimony and the repair history, and the Manufacturer's request for a continuance was denied. The Board concluded that the brake vibration substantially impaired the use and value of the vehicle, and awarded the Consumer a refund.

Cole v. American Honda Motor Company, 2000-0603/ORL (Fla. NMVAB August 31, 2000)

Following presentation of the Consumer's case, counsel for the Manufacturer renewed a previously filed motion for continuance, stating as grounds for the continuance that the Manufacturer's witness with the most knowledge of the vehicle was unavailable to attend the hearing, that the affidavit of the witness had been contradicted by the Consumer's testimony, and that the testimony was crucial to the Manufacturer's case. In further support of the motion, counsel argued that the Consumer testified that the problem with the vehicle did not often occur in damp or rainy weather and that it was currently raining. Counsel argued that the Board's inspection of the vehicle would best be conducted on a day without rain. The Board denied the Manufacturer's continuance request, and concluded that the intermittent misfire or bucking problem at speeds of 45 to 60 miles per hour when the engine was cold was a defect or condition that substantially impaired the use and value of the vehicle; as such, the Consumer was awarded a refund.

OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

QUARTERLY CASE SUMMARIES

October 2000 - December 2000 (4th Quarter)

JURISDICTION:

Consumer §681.102(4), F.S.

Carlin v. Ford Motor Company, 2000-0889/MIA (November 1, 2000).
Prior to the hearing, the Consumer's vehicle was repossessed. The Manufacturer argued that the Consumer's case should be dismissed, because he no longer owned the vehicle. The Board found that if a Consumer prevails at a Board hearing, the Lemon Law requires that the Consumer must deliver clear title to and possession of the motor vehicle upon receipt of a refund or replacement; moreover, the definition of "Consumer" includes a person who is entitled to enforce the obligations of the warranty. Because the vehicle was repossessed and sold prior to the Board hearing, the Board concluded that the Consumer would not be able to tender possession of the vehicle if he prevailed at the hearing, nor would he be able to enforce the terms of the warranty, and would not, therefore, qualify as a "Consumer." Accordingly, the case was dismissed.

Cox v. Ford Motor Company, 2000-0799/STP (Fla. NMVAB November 7, 2000).
The Manufacturer argued that the case should be dismissed, because the Consumer could not assume the original owner's status as a "consumer" as defined under the Lemon Law, since the vehicle was not "transferred" to the second owner during the Lemon Law rights period of the original owner. The vehicle was "sold" during the original Lemon Law rights period. The Manufacturer argued that the use of the word "transferred" in the second clause of the definition of "Consumer," rather than the word "sold," reflected a legislative intent to cover transfers between family members. To otherwise interpret the definition would provide Lemon Law coverage to individuals who purchase used vehicles from dealers during the rights periods of the original purchasers. In the subject case, the original owner sold the vehicle to the second owner during the rights period of the original owner, and both used the vehicle for personal, family or household purposes. Based on the remedial nature of the Lemon Law, the Board concluded that the second owner was an eligible "consumer" as defined under the statute; however, the case was dismissed, because the alleged defects or conditions did not constitute nonconformities.

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

Davis v. AM General, 2000-0717/ORL (Fla. NMVAB October 9, 2000).
The Manufacturer contended that the Consumer's Hummer was a military off-road vehicle adapted for civilian use and designed to de driven over rough terrain and carry a heavy load. The Manufacturer argued that the Consumer's claim should be dismissed, because the Hummer was a truck weighing more than 10,000 pounds gross vehicle weight and as such, did not constitute a "motor vehicle" as defined by the statute. The Manufacturer pointed to the federal vehicle identification number classification of the vehicle as a "heavy truck" and the gross vehicle weight rating as support. The Board agreed that the Hummer was a truck weighing more than 10,000 pounds gross vehicle weight and dismissed the case.

REASONABLE NUMBER OF ATTEMPTS §681.104, F.S.

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

O'Neal v. Mazda Motor of America, Inc., 2000-0771/JAX (Fla. NMVAB October 3, 2000).
The Board found that two repair attempts were sufficient to constitute a reasonable number of attempts under the statute for a very unusual nonconformity. The Board held that the statute did not specify the number of attempts necessary to constitute a "reasonable number of attempts." The Consumer took the vehicle in for a third repair attempt, but the Manufacturer, through its service agent, declined to perform a third repair attempt; moreover, the Manufacturer declined the opportunity to conduct a final repair attempt after receiving the Consumer's written notification. The Consumer complained that he and his passengers would intermittently receive electrical shocks upon entering and exiting the motor vehicle, which the Board concluded substantially impaired the use and safety of the vehicle. The Board rejected the Manufacturer's contention that the problem was the result of atmospheric conditions and static electricity. Although the Board found the vehicle to be a "Lemon," the Consumer was awarded a negative refund due to a high amount of mileage attributable to the Consumer's use of the vehicle.

Woodall and Hicks v. Ford Motor Company, 2000-0881/TPA (Fla. NMVAB October 11, 2000)
The Board concluded that a transmission fluid leak, water leak, and brakes that squealed and vibrated constituted nonconformities. The Manufacturer contended that the Consumers' case should be dismissed because the Manufacturer was not afforded an opportunity to repair the defects. The evidence established that the brakes and water leak nonconformities were subjected to repair on one occasion, and the transmission leak nonconformity was subjected to repair on two occasions, because parts were not available to effect further repairs, and some parts were still not available at the date of the hearing. Considering that the failure to provide the opportunity to repair was not due to any action by the Consumers, the Board held that the Manufacturer was afforded a reasonable number of attempts to correct the nonconformities as contemplated by the Lemon Law. A consumer was not required to prove the elements of the statutory presumption of a reasonable number of attempts to qualify for relief.

The Consumers were awarded a refund.

Final Repair Attempt §681.104(1)(a), F.S.; §681.104(3)(a)1., F.S.

Tisdale v. General Motors Corporation, Chevrolet Motor Division, 2000-1009/STP (Fla. NMVAB November 21, 2000).

The Consumer complained of a vibration at highway speeds. On an agreed upon date for the final repair attempt, the Consumer presented the vehicle at the Manufacturer's designated repair facility. At that time, four new tires and two rims were special ordered, and the vehicle was returned to the Consumer. Thereafter, approximately 19 days later, at the request of the Manufacturer's representative, the Consumer returned the vehicle to the authorized service agent for installation of the tires and rims. The Manufacturer contended at the hearing that the vibration was cured when the tires and rims were installed during the "continuation" of the Manufacturer's final repair attempt. The statutory provision governing final repair attempts required that Manufacturer had 10 days to conform the vehicle to the warranty, commencing on the date the vehicle was delivered to the Manufacturer's authorized service agent. Because the vehicle was returned to the Consumer on the same day it was delivered to the dealership, the Manufacturer failed to correct the nonconformity after a reasonable number of attempts. The Consumer was awarded a refund.

Days Out of Service §681.104(1)(b), 681.104(3)(b), F.S.

Vorasarn and Phongsackdy v. Ford Motor Company, 2000-0874/STP (Fla. NMVAB Oct. 9, 2000).

The Consumers complained that the air conditioner did not blow cold air and the dash had a rattle noise, and that the vehicle was out of service for more than 30 cumulative calendar days. The Consumers day-count began from the date the vehicle was dropped off at the Manufacturer's authorized service agent and ended the date the Consumers picked up the vehicle, at their convenience, following notification by the authorized service agent that repairs were completed. The Manufacturer contended that the dash rattle did not constitute a nonconformity and that the alleged defects were cured within a reasonable number of repair attempts. The Board relied on the definition of "out-of-service day" at Rule 2-30.001(3)(c), Florida Administrative Code, and determined that the dates reflected in the repair orders constituted the most credible evidence of the number of days out of service, which established that the vehicle was out of service for repair of the nonconformities for a total of 21 cumulative calendar days. The case was dismissed.

Esperas v. Mazda Motor of America, Inc., 2000-1032/ORL (December 1, 2000).

In this days-out-of-service case, the Manufacturer argued that the Consumer was not entitled to relief because all problems were cured as of the Manufacturer's "final repair attempt." The Manufacturer relied on *BMW of North America, Inc. v. Singh*, 664 So.2d 266 (Fla. 5th DCA 1995) in support of its argument. The Board looked to the statutory presumption language and its related notice provision and concluded that there exists no requirement that any problems continue to exist following the Manufacturer or service agent's post-notice opportunity to inspect or repair. The Board relied on the

Singh case cited by the Manufacturer, which held that, unlike the single nonconformity provision (recurring defect), the thirty days out of service provision does not depend on there being something wrong with the vehicle at the time notice is given or at the expiration of thirty days. The Board found that the Consumer's vehicle had been out of service for repair of nonconformities for 32 days, therefore, the Consumer was entitled to a refund.

Written Notification to the Manufacturer §681.104(1), F.S.

Lynch v. Ford Motor Company, 2000-0848/FTL (Fla. NMVAB November 7, 2000).
The written notification by the Consumer was not sent to or received by the Manufacturer. The Consumer sent the notification to the Dispute Settlement Board, an informal dispute settlement procedure sponsored by the Manufacturer. The Board held that notification to the Dispute Settlement Board did not constitute notification to the Manufacturer; therefore, the Manufacturer had not been given a reasonable number of attempts to conform the vehicle to the warranty. The case was dismissed.

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

Defect does not substantially impair use, value or safety of vehicle §681.104(4)(a), F.S.

Elmore v. Toyota Motor Sales, U.S.A., 2000-1048/TLH (Fla. NMVAB December 18, 2000)
The Consumers complained of a wet spot on the rear seat of the vehicle, where their young son generally sat, that usually appeared following a heavy rain. During the hearing, the Consumers testified that they never noticed water on the floor of the vehicle, or noticed the water coming in through the door, and were unsure how the wet spot occurred. The Manufacturer's authorized agent conducted various water tests during the course of repairs, including squirting water all over the vehicle with a heavy pressure hose, and never noticed any water intrusion, evidence of rust, wetness or other residue that would be indicative of a water leak into the vehicle. The Board conducted an inspection of the vehicle during the hearing and observed a slight stain on the right rear seat, overlapping another darker stain, which the Consumers acknowledged was caused by melted crayons. The Board inspected under the seats and did not observe any evidence of wetness, rust or water intrusion into the vehicle; additionally, there was no musty, moldy or mildew odor inside the vehicle. The Board concluded that there was no evidence of water intrusion into the vehicle and, therefore, the water leak complained of by the Consumers did not substantially impair the use, value or safety of the vehicle. The case was dismissed.

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

Sivic v. American Suzuki Motor Corporation, 2000-1040/ORL (Fla. NMVAB December 5, 2000)
The Consumer complained of total clutch failure. The Manufacturer asserted the defense that the premature clutch failure was caused by "driver input," specifically, that the Consumer was "riding the clutch," which caused it to wear out. The Manufacturer's witnesses testified, however, that he had no firsthand knowledge of the Consumer's driving habits. The Board rejected the Manufacturer's defense of "driver input" as not credible under the facts of the case, and awarded the Consumer a replacement vehicle.

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

*Ware v. Toyota Motor Sal*es, *U.S.A., Inc.*, 2000-0964/JAX (December 5, 2000)
The Consumers sent their Request for Arbitration to the Florida Department of Agriculture and Consumer Services, Division of Consumer Services, where it was date-stamped as filed within 60 days of the expiration of the Consumers' Lemon Law rights period. The Division deemed it "ineligible" upon its initial screening, because it lacked complete information. The Division thereafter requested and received the additional information from the Consumers and deemed the claim eligible, whereupon it was approved for arbitration before the Board. The Manufacturer contended that the claim should not have been considered "filed" until after the missing information was supplied, which was more than 60 days following the expiration of the Consumers' rights period. The Manufacturer further argued that, because the Consumers did not send the written notification to give the Manufacturer its final repair opportunity until after the expiration of the rights period, the Consumers could not show three repairs, notice given, and a final repair attempt undertaken during the rights period as required by §681.104(3), F.S. (1999). The Board rejected the Manufacturer's contention that the Consumers' claim was untimely, and concluded that the "filed" date, which was stamped on the Consumers' Request for Arbitration, was within 60 days after the expiration of the rights period as required by §681.109(4), F.S. (1999). The Board also concluded that the presumption in §681.104(3)(a), F.S. (1999), did not contain a filing requirement or otherwise relate to the time within which a request for arbitration must be filed under §681.109(4). The Consumers' case was dismissed because the Board concluded that the complained of noise in the suspension did not constitute a nonconformity.

REFUND §681.104(2)(a)(b), F.S.:

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

Clubb v. Ford Motor Company, 2000-0878/FTL (Fla. NMVAB October 26, 2000).
The Consumers were awarded a refund because of an engine nonconformity. The Consumers sought reimbursement of a prepaid wheel alignment service policy. The Board denied the reimbursement because the expense was not directly caused by the nonconformity of the vehicle.

Reasonable Offset for Use §681.102(18), F.S. (1995);§681.102(20), F.S. (1997)

Hamm v. Mercedes-Benz USA, Inc., 2000-0858/TPA (Fla. NMVAB October 11, 2000).
The Board concluded that water intrusion into the Consumer's vehicle around the retractable roof constituted a substantial impairment to the value of the vehicle and awarded the Consumer a refund. The Consumer's request that the miles attributable to her be reduced by miles driven to and from the Manufacturer's authorized service agent for repair, or that the Board utilize the mileage attributable to the Consumer as of the first repair attempt was denied by the Board.

Peterson v. Ford Motor Company, 2000-0844/TPA (Fla. NMVAB October 13, 2000).
Regarding the calculation of the offset for use, counsel for the Manufacturer argued that the Dispute Settlement Board procedure was not an "arbitration" as intended by Section 681.102(20), Florida Statutes (1999), because it is not a state-certified procedure, and because the Consumers had not provided the Manufacturer with a final repair attempt at the time of the Dispute Settlement Board procedure. Prior to filing for Arbitration before the Board, the Consumers participated in a hearing with the Manufacturer's sponsored non-certified dispute resolution program. The Board concluded that the Dispute Settlement Board hearing was not an "arbitration hearing" as contemplated under the Lemon Law, and utilized the mileage attributable to the Consumers as of the date of the Board hearing.

MISCELLANEOUS PROCEDURAL ISSUES

Manufacturer's Pre-arbitration Vehicle Inspection ¶¶(9)-(14), *Hearings Before the Florida New Motor Vehicle Arbitration Board.*

Lallave v. Mitsubishi Motor Sales of America, Inc., 2000-0939/FTM (Fla. NMVAB November 20, 2000)
At the outset of the hearing, the Consumer advised the Board that she presented her vehicle to the Manufacturer's authorized service agent for a prehearing inspection as requested by the Manufacturer; however, when she requested to be present during the inspection, her request was denied and she was told to wait in the waiting area of the dealership during the inspection of her vehicle. Additionally, the Consumer reported during the hearing, and the Manufacturer's representative acknowledged, that, during the prehearing inspection, repairs were made to a component of the vehicle that was unrelated to the air conditioner complaint that was the subject of the Consumer's hearing. Because the rule regarding prehearing inspections allows the Consumer to be present during the Manufacturer's vehicle inspection, unless the Consumer expressly waives this right in writing, and because no repair procedures are permitted during the inspection, the Board did not permit the Manufacturer to present any evidence or testimony at the hearing regarding the prehearing inspection. The case was dismissed because the Board found that the original air conditioner complaint had been cured within a reasonable number of repair attempts, and the existing condition relating to the air conditioner did not constitute a nonconformity.