OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

QUARTERLY CASE SUMMARIES

January 2008 - March 2008 (1st Quarter)

JURISDICTION:

Consumer §681.102(4), F.S.

Rayser v. Ford Motor Company, 2007-0538/JAX (Fla. NMVAB March 18, 2008)
The Consumers purchased a new 2006 Ford F-350 pickup truck in Florida. Prior to the arbitration hearing, the vehicle was repossessed by the lienholder. At the hearing, the Consumers acknowledged that in fact the vehicle was repossessed and that they did not have current possession of the vehicle. The statute defines a "Consumer" as 'The purchaser, other than for purposes of resale, or the lessee, of a motor vehicle primarily used for personal, family, or household purposes; any person to whom such vehicle is transferred for the same purposes during the duration of the Lemon Law rights period; and any other person entitled by the terms of the warranty to enforce the obligations of the warranty." Since the Consumers no longer possessed the motor vehicle which was the subject of the claim, they were not, for purposes of this proceeding, a "consumer" as defined by the statute. Therefore, the case was dismissed.

Motor Vehicle §681.102(15), F.S.

Clark and Kerrigan v. Volkswagen/Audi of America, Inc., 2007-0777/TPA (Fla. NMVAB March 3, 2008)
The Consumers purchased a 2005 Volkswagen Beetle in Florida on September 9, 2005. The Manufacturer contended that the case should be dismissed because the Consumers purchased a used vehicle, not a demonstrator. The Manufacturer introduced into evidence the former owner's Retail Purchase Agreement and a copy of the CarFax History Report on the vehicle. The Purchase Agreement listed the vehicle as a "trade-in" vehicle with 14,098 miles on the odometer and the CarFax report listed the vehicle as being sold "new" on August 21, 2004. The Consumers testified that they understood the owner of the dealership or his wife used the vehicle for their personal use prior to their purchase of the vehicle. The Board concluded the greater weight of the evidence established that, at the time of purchase by the Consumers, the Beetle was a used vehicle and therefore was not a "motor vehicle" as defined by the statute. The case was dismissed.

NONCONFORMITY 681.102(16), F.S.

Holobaugh v. Ford Motor Company, 2007-0648/FTL (Fla. NMVAB January 17, 2008)
The Consumers complained that intermittently the air conditioner blew hot air rather than cool air in their 2006 Ford F-150 pickup truck. The Consumers added that most of the time the air conditioner did not cool. The Manufacturer contended that the air conditioner in the vehicle was working properly, and argued that whether or not a vehicle's air conditioning system cools sufficiently is a "subjective standard" which is affected by the ambient temperature and amount of humidity in the air. The Manufacturer's witness testified that, at the final repair attempt, no leaks were found in the air conditioning system, and that when the temperature inside the vehicle was tested, the thermometer registered 42 degrees. The Board found the problem to be a defect or condition that substantially impaired the use, value and safety of the vehicle. Accordingly, the Consumer was awarded a refund.

Dennis Bellehumeur Trust v. Toyota Motor Sales USA, Lexus Division, 2007-0723/FTL (Fla. NMVAB February 5, 2008)
The Consumers complained of excessive wind noise coming into their 2007 Lexus LS 460 when it was driven at higher speeds. The Consumers testified that the wind noise was "abhorrent," and depending on the direction of the wind, the noise could be loud when the vehicle was driven at 40 miles per hour. The Manufacturer contended that the alleged defect or condition did not substantially impair the use, value or safety of the vehicle. The Manufacturer's witness testified that a "completely quiet car" did not exist, but this was an "extremely quiet car." The Board found the problem to be a defect or condition that substantially impaired the use and value of the vehicle. Accordingly, the Consumers were awarded a refund.

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

What Constitutes a Reasonable Number of Attempts §681.104, F.S.; §681.1095(8), F.S.

Jiminez v. Nissan Motor Corporation USA, 2007-0771/MIA (Fla. NMVAB March 19, 2008)
The Consumer complained of the radiator losing water/coolant, causing the engine to overheat in her 2006 Nissan Altima. The Board found that the defect substantially impaired the use, value and safety of the vehicle, and as such, constituted a nonconformity. The vehicle was presented to the Manufacturer's authorized service agent for repair of the nonconformity on two occasions prior to the Consumer sending the Manufacturer written notification of the defect. After the Manufacturer received written notification, the vehicle was subject to repair an additional three times. The Board concluded that, under the circumstances, the Manufacturer was provided a reasonable number of attempts to repair the nonconformity and failed to do so. Accordingly, the Consumer was awarded a refund.

Ortiz v. Nissan Motor Corporation USA, 2007-0582/FTL (Fla. NMVAB January 2, 2008)
The Consumer complained that, intermittently, the passenger side sliding door "popped" open when she was driving her 2006 Nissan Quest. The Board found this to be a defect or condition

that substantially impaired the use, value and safety of the vehicle, and as such, constituted a nonconformity. The vehicle was presented to the Manufacturer's authorized service agent for repair of the sliding door on two occasions in October 2006. In November 2006, the Consumer sent written notification to the Manufacturer to provide a final repair opportunity. The final repair attempt took place in December 2006, but no work was performed and the defect continued to exist. The Board concluded that, under the circumstances in this case, three repair attempts were sufficient to afford the Manufacturer a reasonable number of attempts to conform the vehicle to the warranty. The Consumer was awarded a refund.

What Constitutes Written Notification Under §681.104(1)(a), F.S.; §681.104(1)(b), F.S.

Seda v. Chrysler LLC, 2007-0783/FTM (Fla. NMVAB February 15, 2008)
The Consumer complained of a shimmy in the steering wheel of his 2006 Dodge 1500 pickup truck. The Board found that the shimmy substantially impaired the use of the vehicle, and as such, constituted a nonconformity. After three unsuccessful attempts by the Manufacturer's authorized service agent to repair the defect, the Consumer sent the Manufacturer a package, which included written notification of the defect to allow for a final repair attempt. The Manufacturer contended that it was not given proper written notification as required by the statute. The Manufacturer's representative testified that the envelope received from the Consumer contained only a repair order and no written notification. The Manufacturer still attempted to contact the Consumer within 10 days and received no response. Once a vehicle has been subjected to at least three repair attempts for the same nonconformity, a consumer is required by statute to give written notification to the Manufacturer. The Board concluded that the Consumer did not provide proper notice as required by the statute. Accordingly, the Consumer's case was dismissed.

Drake v. Chrysler LLC, 2008-0059/STP (Fla. NMVAB March 24, 2008)
The Consumer complained of a recurring illumination of the "check engine" warning light in his 2007 Dodge Ram 3500. The Consumer sent a Motor Vehicle Defect Notification form to "DaimlerChrysler Corp., PO Box 2700, Troy, MI 48007-2700." The Consumer testified the address was obtained from a Chrysler Service Contract on the vehicle. The Manufacturer contended that it did not receive proper written notification as required by the statute. The Manufacturer's representative testified that the pages of the Owner's Manual and Warranty for the Consumer's truck clearly specify where written notification regarding Florida's Lemon should be sent, and it was not the address to which the Consumer had sent his notification. The Board found that the Consumer did not provide proper notice as required by the statute. Accordingly, the Consumer's 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.

Shanefield v. Toyota Motor Sales USA, 2007-0736/WPB (Fla. NMVAB February 29, 2008) The Consumer complained that the doors automatically unlocked when his 2007 Toyota Camry was put in park gear. The Manufacturer contended that the alleged defect or condition did not substantially impair the use, value or safety of the vehicle. The Manufacturer's witness testified that the door lock complaint was not a defect at all; rather, it was simply the operation of the automatic setting, and that once the setting was changed, the door locks did not automatically unlock. The Board concluded that the door lock complaint was not a defect; rather, it was a setting on the vehicle that, once changed, eliminated the situation. Consequently, the Consumer's case was dismissed.

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

Roberts v. American Honda Motor Company, 2007-0696/ORL (Fla. NMVAB January 9, 2008) The Consumer complained of a faulty alternator causing electronic problems with his 2007 Honda Element. The Consumer was told that a "power surge" caused a short in multiple control units of the vehicle. The Manufacturer contended that the alleged nonconformity was the result of modifications or alterations of the vehicle by persons other than the Manufacturer or its authorized service agent. The Manufacturer's witness testified that, when a power source for trailer lights was installed by U-Haul, the actual battery terminals had to be taken off the vehicle causing a power surge, which caused a short in the alternator. The Board concluded that the complaint by the Consumer did not constitute a nonconformity, because the electrical problems were the result of modifications or alterations of the vehicle by persons other than the Manufacturer or its authorized service agent. Accordingly, the Consumer's case was dismissed.

Perez-Paret v. Mercedes-Benz USA, Inc., 2007-0649/FTL (Fla. NMVAB January 22, 2008) The Consumer complained that the engine seized in her 2007 Mercedes Benz S550V. The Consumer testified that during a rain storm, his wife drove the vehicle through a puddle of water, after which the vehicle stalled and would not restart. After that incident, the engine was replaced by the Manufacturer's authorized service agent. The Consumer added that the vehicle drove differently since the engine was replaced and expressed concern that the engine might seize up again if driven through another puddle. The Manufacturer contended that the alleged nonconformity was the result of an accident by persons other than the Manufacturer or its authorized service agent. The Manufacturer's witness testified that the engine had substantial damage, caused by water intrusion, when it was brought in for repair after it seized up. The Board concluded that the complaint by the Consumer did not constitute a nonconformity as the engine problems were the result of an accident by persons other than the Manufacturer or its authorized service agent. Accordingly, the Consumer's case was dismissed.

REFUND §681.104(2)(a)(b), F.S.:

Incidental Charges §681.102(8), F.S.

Zas v. Toyota Motor Sales USA, Lexus Division, 2007-0514/MIA (Fla. NMVAB January 7, 2008)
The Board found the Consumer's Lexus ES33 to be a "lemon," as a result of an intermittent hesitation and erratic shift on acceleration. The Consumer requested reimbursement of 26 hours of lost wages at $25.38 per hour as an incidental charge. The Board denied the request by the Consumer as being unreasonable.

Rocks v. General Motors Corporation, Chevrolet Motor Division, 2007-0719/WPB (Fla. NMVAB March 31, 2008)
Prior to the hearing, the Consumer filed a claim with the BBB/Autoline program and that program rendered a decision awarding the Consumer a refund pursuant to the Manufacturer's voluntary settlement offer. However, because the offer did not include attorney's fees, the Consumer was not satisfied with that offer and requested arbitration by the Board. The Consumer purchased a 2006 Chevrolet Corvette which the Board found to be a "lemon." The Consumer requested reimbursement of the amount incurred to keep the vehicle insured after the time of the BBB hearing up to the time of settlement as an incidental charge to which the Manufacturer objected. The Board denied the Consumer's request, because that charge was not directly caused by the nonconformities. The Board did not have the statutory authority to award attorney fees to the Consumer.

MISCELLANEOUS PROCEDURAL ISSUES

Munnings v. American Honda Motor Company, 2007-0749/MIA (Fla. NMVAB January 28, 2008)
At the arbitration hearing, the Manufacturer sought to have the Board consider a copy of the prehearing vehicle inspection report which was conducted on January 8, 2008, the day before the hearing. The report was given to the Consumer at the conclusion of the inspection, and faxed to the Board Administrator the same day. The Consumer objected. Paragraph (16), *Hearings before the Florida New Motor Vehicle Arbitration Board*, states, in pertinent part, "all information gathered as a result of the prehearing inspection will be provided to the consumer in writing as soon as it is available, but no later than 7 business days before the date of the hearing. If the manufacturer fails to provide the information to the consumer as required, evidence or testimony related to the vehicle inspection may not be considered by the board at the hearing." The Manufacturer argued the inspection could not be conducted earlier because of the Christmas holidays, and because the Consumer requested that the inspection be conducted at 8:00 AM at a dealership closer to her home. The Manufacturer stated January 8th was the date its District Service Manager could be available to perform the inspection at the time the Consumer requested. The Consumer argued she requested the location because it was on her way to work, but it was the Manufacturer's choice <u>when</u> to conduct the inspection, which was at the Service Manager's convenience, not hers. The inspection report was not considered by the Board.

OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

QUARTERLY CASE SUMMARIES

April 2008 - June 2008 (2nd Quarter)

JURISDICTION:

Warranty §681.102(23)F.S.

Bosque v. General Motors-Pontiac Division, 2008-0196/MIA (Fla. NMVAB June 26, 2008)
The Consumer complained of a power steering failure in his 2006 Pontiac G6 GT**.** The Consumer testified that he was coming off of a ramp on the Golden Glades Interchange, trying to go straight, when the power steering suddenly locked/failed, causing him to crash into a pole on the ramp. He was able to very slowly drive home, and later that morning the vehicle was towed to the Manufacturer's authorized service agent. The Manufacturer contended that the accident "voided" the vehicle's warranty and that the power steering failure was the result of the accident. The Board found the power steering failure to be a nonconformity. The Board further concluded that there was no evidence to support the Manufacturer's contention that the power steering failure was caused by the accident, and the mere fact that the Manufacturer "voided" its warranty does not take the vehicle outside the coverage of the Lemon Law, since it is the definition of "nonconformity " that establishes coverage under the statute. Accordingly, the Consumer was awarded a refund.

NONCONFORMITY §681.102(16), F.S.

Mendez v. Toyota Motor Sales USA, 2007-0825/MIA (Fla. NMVAB April 4, 2008)
The Consumer complained of a pulling to both the left and right in his 2006 Toyota Tundra. The Consumer testified the pull to the right started after the tires were rotated, and the pull to the left started after two of the tires were replaced. Sometimes the pull was so "severe" he had to "fight" the steering wheel in order for the vehicle to track straight. The Manufacturer contended that the vehicle was merely following the "crown of the road," and that it did not have a defect that substantially impaired its use, value or safety. The Board found the problem to be a defect or condition that substantially impaired the use, value and safety of the vehicle. Accordingly, the Consumer was awarded a refund.

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

What Constitutes a Reasonable Number of Attempts §681.104, F.S.; §681.1095(8), F.S.

Diamond v. Toyota Motor Sales USA, 2008-0022/FTL (Fla. NMVAB April 22, 2008)
The Consumer complained of a hesitation upon acceleration and a "jump or surge" forward in her 2007 Toyota Camry whenever the driver's foot was taken off the accelerator. The Board found that the defect substantially impaired the use, value and safety of the vehicle, and as such, constituted a nonconformity. The vehicle was presented to the Manufacturer's authorized service agent for repair of the radiator on two occasions prior to the Consumer sending the Manufacturer written notification of the defect. After the Manufacturer received written notification, the vehicle was subject to repair two more times. The Board concluded that under the circumstances, the Manufacturer was provided a reasonable number of attempts to repair the nonconformity and failed to do so. Accordingly, the Consumer was awarded a refund.

Davidson v. Nissan Motor Corporation USA, 2008-0173/ORL (Fla. NMVAB May 28, 2008)
The Consumers complained of a loud brake noise in their 2007 Nissan Murano. The Board found that the defect substantially impaired the use, value and safety of the vehicle, and as such, constituted a nonconformity. The Consumers brought the vehicle to the Manufacturer's authorized service agent for repair of the squealing brakes on September 28, 2007. Thereafter, when the noise returned and the Consumers attempted to schedule another repair, they were told there was nothing that could be done to fix the noise. The evidence established that the nonconformity was presented for repair twice, the first time on September 28, 2007, and the second time after written notification was received by the Manufacturer. The Manufacturer acknowledged that further repair attempts would not correct the problem. Based on the foregoing, as well as the Manufacturer's stipulation to such, the Board concluded that a reasonable number of attempts were undertaken to repair the nonconformity. Accordingly, the Consumers were awarded a refund.

Murray v. General Motors-Chevrolet Division, 2008-0103/MIA (Fla. NMVAB June 5, 2008)
The Consumer's 2006 Chevrolet HHR jerked and moved backward and forward at start-up, a defect the Board concluded was a nonconformity. The vehicle was presented to the Manufacturer's authorized service agent for repair of the jerking on two occasions prior to the Consumer sending the Manufacturer written notification of the defect. At the Manufacturer's final repair attempt, the Consumer was given an explanation of the problem by the service agent and given a bulletin describing the jerking and instructing the Consumer to apply the parking brake to prevent the motion. During that attempt, no repairs were performed. The Board concluded that the Manufacturer gave the Consumer what was, effectively, a work-around, which did not correct the nonconformity. Under the circumstances, the Manufacturer had a reasonable number of attempts to correct the nonconformity, but failed to do so; therefore, the Consumer was awarded a refund.

What Constitutes Written Notification Under §681.104(1)(a), F.S.

Mosser v. Chrysler LLC, 2008-0146/WPB (Fla. NMVAB May 26, 2008)
The 2006 Jeep Liberty had an electrical/mechanical nonconformity that caused the power windows to intermittently drop and become inoperable. After more than three repair attempts for this defect, the Consumers' attorney mailed a Motor Vehicle Defect Notification form to the following address: "Chrysler LLC, ATTN: Legal Department, 485-13-32, 1000 Chrysler Dr., Auburn Hills, MI 48326-2766." The Manufacturer did not respond to the notification and did not contact the Consumers to schedule a final repair attempt. At the hearing, the Manufacturer asserted that they were not provided with written notice and a final repair attempt. The Manufacturer's 2006 Owner's Manual for the vehicle specified "DaimlerChrysler Motors Company LLC, Customer Center, P.O. Box 21-8004, Auburn Hills, MI 48321-8004," as the address to which the written notification required by Florida's Lemon Law should be sent. This information was provided to the Consumers at the time they purchased their vehicle, as required by Florida's Lemon Law. The Board concluded that the Consumers did not provide written notification as required by the statute. Accordingly, the Consumers' case was dismissed.

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

Tanner v. Chrysler LLC, 2008-0160/TPA (Fla. NMVAB May 19, 2008)
The Consumer's 2008 Chrysler 300 had an inoperable satellite radio which the Board found to be a nonconformity. The Consumer had provided written notification to the Manufacturer to give the Manufacturer a final repair opportunity. The Manufacturer received the notification on January 11, 2008. On January 18, 2008, the Manufacturer contacted the Consumer by leaving a message at his work number, and additionally followed up with a certified letter to the Consumer's address, both listed on the Motor Vehicle Defect Notification form. The message left by the Manufacturer verified receipt of the defect notification form and instructed the Consumer to contact the Manufacturer to set a "firm date and time to complete any repairs that are necessary." On January 28, 2008, the Consumer called the Manufacturer and was instructed to bring the vehicle to a designated repair facility for a final attempt on February 26, 2008. The Manufacturer mailed a follow up letter to the Consumer's home address with the same information. The Consumer was unable to make that appointment and the Manufacturer mailed another certified letter to the Consumer's home address to reschedule the repair attempt to March 28, 2008. The Consumer did not take the vehicle to the Manufacturer's authorized service agent. At the hearing, the Manufacturer argued that it was not given a final repair attempt. The Board concluded that the Manufacturer responded to the Consumer's written notification in a timely manner and attempted to schedule a final repair attempt. Thereafter, the Consumer refused to present the vehicle to the designated repair facility; consequently, the Manufacturer was not given a final attempt to correct the nonconformity and the case was dismissed.

Days Out of Service & Post-Notice Opportunity to Inspect or Repair §§681.104(1)(b), 681.104(3)(b)1., F.S.

Crowe v. General Motors Corporation-Chevrolet Motor Division, 2008-0130/WPB (Fla. NMVAB May 29, 2008)
The malfunctioning convertible top in the Consumer's 2006 Chevrolet Corvette was found to be a nonconformity. The issue at hearing was whether the vehicle was out of service by reason of repair of the nonconformity for 30 or more days. In contention was a repair visit that started on September 15, 2007. The Consumer testified that she received a call on September 20, 2007, indicating that the repairs were completed and she could pick up the vehicle. However, when she went to pick up the vehicle, either on or within three or four days of September 20, 2007, the convertible top immediately got stuck again so she left the vehicle for further repairs and ended up picking the vehicle up on October 18, 2007. The Manufacturer contended that the dates of September 21, 2007 through October 10, 2007, should not be considered days out of service. The Manufacturer's representative testified that the repairs were completed on September 20, 2007, but when the Consumer was called she did not pick up the vehicle that day, and that a "separate" repair attempt was undertaken from October 11-18, 2007. The Board rejected the Manufacturer's argument and counted each day from September 15, 2007 through October 18, 2007, as days out of service. Accordingly, the vehicle was out of service by reason of repair of the nonconformity for more than 30 days and the Consumer was awarded a refund.

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.

Paschal v. General Motors Corporation-Cadillac Division, 2008-0194/MIA (Fla. NMVAB June 24, 2008)
The Consumer complained that the fuel gauge did not correctly register the amount of fuel in the gas tank of his 2006 Cadillac CTS. The Consumer testified that no matter how much he spent on fuel, which was usually $5.00 or $10.00 at a time, the fuel gauge always registered half a tank full. He further acknowledged that he never focused on how many gallons of gas he was putting into the vehicle. The Manufacturer contended that the vehicle did not have a defect that substantially impaired its use, value or safety. The Manufacturer's representative testified that, based on the testing they performed, the fuel gauge was working correctly. He explained the vehicle is equipped with a single gas tank that has two reservoirs. Each side holds fuel and a module/float level sensor indicates when a pump needs to transfer fuel from one side to the other. The fuel gauge references one reading for both reservoirs. The Board concluded that the Consumer's complaint regarding the gas tank was not a defect or condition that substantially impaired the use, value or safety of the vehicle. Accordingly, the Consumer's case was dismissed.

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

Tallent v. Mazda Motor of America Inc., 2008-0207/WPB (Fla. NMVAB June 26, 2008)
The Consumer complained of numerous engine replacements in his 2006 Mazda 6. The Consumer acknowledged that he put neon lights on the underside of the vehicle, made alterations to the interior, and also acknowledged that the air box was removed from the vehicle. The Manufacturer contended that any vehicle defects were the result of "abuse and unauthorized modifications or alterations by persons other than the manufacturer or its authorized service agent." More specifically, the Manufacturer asserted that the vehicle had been used for racing, and had been altered to enhance performance. The Manufacturer's representative testified that racing can cause a vehicle to lose oil or overheat, thus damaging the engine. The Manufacturer submitted photographs evidencing the changes that had been made to the vehicle. Photographs also showed "smoking" and "chopping" of the front tires, which, according to the Manufacturer, was the result of the vehicle being driven at significant high speeds. The Board concluded that the engine replacements were the result of abuse and modification of the vehicle by persons other than the Manufacturer or its authorized service agent. Accordingly, the Consumer's case was dismissed.

REFUND §681.104(2)(a)(b), F.S.:

Collateral Charges §681.102(3), F.S.

Savelli v. Ford Motor Company, 2008-0100/TPA (Fla. NMVAB April 4, 2008)
The Board found the Consumer's Ford F250 pickup truck to be a "lemon," as a result of a blown powertrain control module. The Consumer testified that he purchased a number of truck accessories for the vehicle from S&M Truck World, Inc., for which he requested reimbursement in the total amount of $10,295.54 as collateral charges. In addition, he requested reimbursement of $2,130.00, which he asserted he paid to Velva Darnell Electronics, also for the purchase of truck accessories. He presented invoices for these charges and testified that he paid cash. The Manufacturer objected to reimbursement of these amounts and asserted that the Consumer's invoices were falsified. The Manufacturer presented an affidavit from Frank Letteri, owner of S&M Truck World, Inc. stating that the invoices from S&M Truck World, Inc., provided by the Consumer, were not actual invoices representing a sale between S&M Truck World; rather, the invoices were merely estimates of the cost for those components, which were provided at the Consumer's request. Based on the Manufacturer's evidence, the Board denied the $12,425.54 requested by the Consumer as collateral charges.

Castrillo v. Ford Motor Company, 2008-0214/FTL (Fla. NMVAB June 24, 2008)
The Consumers' 2006 Ford Expedition was found to be a "lemon." The Consumers sought reimbursement of $172.00 for dash wood tone as a collateral charge. The Manufacturer objected to reimbursement for the wood tone for the dash, arguing that the Consumers did not provide an actual receipt for same. The Consumers produced a bank statement showing payment. The Board awarded $172.00 to the Consumers as a collateral charge.

Incidental Charges §681.102(8), F.S.

Morse v. Mazda Motor of America, Inc., 2008-0016/FTL (Fla. NMVAB April 24, 2008)
The Board found the Consumer's Mazda MX5 Miata to be a "lemon," as a result of a defective convertible top. The Consumer incurred an expense of $55.00 to provide an interpreter for a witness the Consumer subpoenaed to be at the hearing. The witness was employed by the Manufacturer's authorized service agent, but failed to appear at the hearing. The Consumer requested reimbursement of the $55.00 charge. The Board awarded the $55.00 to the Consumer as an incidental charge.

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

Savelli v. Ford Motor Company, 2008-0100/TPA (Fla. NMVAB April 4, 2008)
The Consumer argued that the mileage on the vehicle as of the date the Manufacturer made a settlement offer to the Consumer would be the more appropriate figure to use in calculating the reasonable offset for use. The Manufacturer objected to using a date earlier than the arbitration hearing. The Board rejected the Consumer's argument because there was no settlement as contemplated by the statutory definition.

Hernandez v. Mercedes-Benz USA, Inc., 2008-0039/FTL (Fla. NMVAB May 6, 2008)
The Consumer's Mercedes-Benz SLK 280 automobile was declared a "lemon." The Consumer had two residences, one in Weston, Florida, and one in Punta Gorda, Florida. In determining which miles should not be attributable to the Consumer, she calculated the round-trip miles for each repair attempt based on the residence from which she was leaving when going for repair, and to which she was returning after the repair was made. The Manufacturer objected to the round-trip miles for repair and argued that only the Weston residence should be used for calculating the round-trip miles for service of the defects. The Board rejected the Manufacturer's argument and subtracted the round trip miles for each repair attempt as calculated by the Consumer.

OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

QUARTERLY CASE SUMMARIES

July 2008 - September 2008 (3rd Quarter)

JURISDICTION:

Consumer §681.102(4) F.S.

Cottman and Grant v. Ford Motor Company, 2008-0243/JAX (Fla. NMVAB July 2, 2008)
The Consumers purchased a new 2006 Ford Expedition in Florida. At the hearing, the Consumers acknowledged that they did not have current possession of the vehicle and that it was repossessed by Ford Motor Credit Company. The Manufacturer argued that the case should be dismissed, because the Consumers did not have possession of the vehicle and were no longer entitled to enforce the terms of the warranty. The Consumers argued that, since Ford Motor Credit Company was a division of Ford Motor Company, the Manufacturer already had clear title to the vehicle in the event the Consumers were awarded a refund. The Board found that since the Consumers no longer had possession of the vehicle, they no longer met any of the three elements of the statutory definition of "consumer." The issue of who repossessed the vehicle was immaterial. Accordingly, the case was dismissed.

Motor Vehicle §681.102(15), F.S.

Torres v. Chrysler LLC, 2008-0331/MIA (Fla. NMVAB August 21, 2008)
The Consumer purchased a new 2007 Dodge 3500 pickup truck in Florida. The Manufacturer argued that the Board did not have jurisdiction to hear the case, because the vehicle's gross weight exceeded 10,000 pounds and therefore it was not a "motor vehicle" as defined by the statute. The Manufacturer presented the vehicle's registration which showed the gross weight to be 10,500 pounds. In addition, the Manufacturer acknowledged that the window sticker on the vehicle showed the weight as 7,655 pounds. However, the Manufacturer argued that the Board should consider the vehicle's 35 gallon diesel tank, five-person seating capacity and the fact that the Consumer had a concrete business. The Consumer testified that the vehicle was for personal use and that he normally only transported his wife and child. The Board found that the gross vehicle weight of the Consumer's truck did not exceed 10,000 pounds; therefore, it was a "motor vehicle" as defined by the statute.

NONCONFORMITY 681.102(16), F.S.

Grossman v. Volkswagen/Audi of America, Inc., 2008-0283/FTL (Fla. NMVAB August 4, 2008)
The Consumers complained of a foul odor coming from the air conditioner vents in their 2006 Audi A6. The foul odor did not dissipate and remained in the vehicle, making the Consumer and

his wife feel nauseated. The Consumer bought a mold testing kit from Home Depot and performed a mold test. He sent the result of the mold test to Advanced Scientific Laboratories which processed the test and issued a report. The report found the presence of fungal spores and hyphae at the location sampled by the Consumer. The report also indicated that the presence of fungal spores and hyphae suggested that the organism identified as *Penicillium* was viable and possessed the capacity for active growth. The Consumer further presented evidence that *Penicillium* had been associated with infections and produced a mycotoxin, ochratoxin A, which was nephrotoxic and carcinogenic. The Manufacturer contended that the alleged defect did not substantially impair the use, value or safety of the vehicle. The Manufacturer's witness testified that she did not experience any foul odor coming from the air conditioner vents during her inspection of the vehicle. She did notice several large red stains on the floor carpet of the vehicle which she speculated might have attributed to the musty smell the Consumers complained of. She further testified that Audi did not perform any scientific test in the air conditioner vents to determine whether there was any mold or fungi. The Board found the problem to be a defect or condition that substantially impaired the use, value and safety of the vehicle. Accordingly, the Consumer was awarded a refund.

Dominguez v. Nissan North America, Inc., 2008-0287/MIA (Fla. NMVAB July 25, 2008)
The Consumer complained of receiving poor gas mileage in his 2006 Nissan Sentra. The Consumer testified that the documents affixed to the vehicle at the time of purchase represented that the average gas mileage would be 28 miles per gallon for city driving and 34 miles per gallon for highway driving. The Consumer was informed as to how to calculate gas mileage and determined that his vehicle was receiving 14 miles per gallon in the city and 16 miles per gallon on the highway. The Consumer produced gas receipts to corroborate his testimony. The Manufacturer contended that the one time the gas mileage was measured by the Manufacturer, which was at the time of the final repair attempt, it showed an average of 24 miles per gallon; therefore, there was no nonconformity. The Board found the problem to be a defect or condition that substantially impaired the use and value of the vehicle and awarded the Consumer a refund.

Yonkin v. BMW of North America, Inc., 2008-0275/ORL (Fla. NMVAB July 8, 2008)
The Consumers complained of a defective fuel system in their 2007 BMW 335i. The Manufacturer contended that any problem with the fuel system was the result of accident or neglect by persons other than the Manufacturer or its authorized service agent. More specifically, the Manufacturer's witness asserted that bad gas was inadvertently pumped into the Consumers' vehicle, resulting in damage to the fuel system. The Consumers were reimbursed by their insurance company for the damage. The Manufacturer's witness added that this diagnosis was made by the Manufacturer during the second repair attempt; however, the gas in the vehicle was never tested for water or other contaminants on any subsequent repair attempt. The Board concluded that the defective fuel system substantially impaired the use, value and safety of the vehicle and rejected the Manufacturer's argument that it was the result of accident or neglect. Accordingly, the Consumers were rewarded a refund.

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

What Constitutes a Reasonable Number of Attempts §681.104, F.S.; §681.1095(8), F.S.

Lambeth v. American Suzuki Motor Corporation, 2008-0304/PEN (Fla. NMVAB July 7, 2008)
The Consumers' 2007 Suzuki Forenza had a defective cigarette lighter and accessory plug that immediately blew a fuse when used. The Board found this to be a nonconformity. The vehicle was presented to the Manufacturer's authorized service agent for repair on a total of two occasions, one of which was after the Manufacturer received written notification. During one repair attempt, the Consumers were advised not to use the cigarette lighter and accessory outlet. Under the circumstances in this case, the Board found that two repair attempts were sufficient to afford the Manufacturer a reasonable number. Accordingly, the Consumers were awarded a refund.

Dominguez v. Nissan North America, Inc., 2008-0287/MIA (Fla. NMVAB July 25, 2008)
The Manufacturer took the position that the Consumer's complaint of poor gas mileage was not a defect. The Board found it to be a nonconformity. The evidence established that the Manufacturer was given a total of three opportunities to repair the nonconformity, with one such attempt occurring after written notification, yet the nonconformity was not repaired. The Board found that, upon consideration of the evidence and the Manufacturer's position that there was no defect, the Manufacturer had a reasonable number of attempts to correct the nonconformity, but failed to do so. Accordingly, the Consumer was awarded a refund.

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

Thornton v. Chrysler LLC, 2008-0317/TLH (Fla. NMVAB July 30. 2008)
The Consumer purchased a new 2007 Dodge Avenger in Florida. In May of 2008, the Consumer sent a Motor Vehicle Defect Notification form to the Manufacturer, to serve as written notification providing the Manufacturer with a final opportunity to repair the vehicle. The Manufacturer received the notification on May 19, 2008. On May 27, 2008, the Manufacturer called the telephone number the Consumer provided on her Motor Vehicle Defect Notification form to schedule a final repair attempt for June 11, 2008. The Manufacturer provided this information to the person who answered the telephone, who identified herself as the Consumer's daughter. The Manufacturer also mailed a letter to the Consumer's address on that same date, setting up the time, date and location for the final repair attempt. On June 5, 2008, the Manufacturer called the Consumer's telephone number again, and at that time left a message requesting the Consumer to call and confirm the scheduled final repair attempt. The Manufacturer made an additional call to the Consumer on June 10, 2008, but was not successful in contacting her. The Consumer did not appear at the final repair attempt on June 11, 2008. That same day, the Manufacturer sent another letter to the Consumer, via certified mail, requesting that she contact them to schedule the final repair attempt. That letter was received by the Consumer on or about June 20, 2008, after she had filed her Request for Arbitration. The Board concluded that the Manufacturer responded to the Consumer's written notification in a timely manner and attempted to schedule a final repair attempt; however, the Consumer failed to

make the vehicle available at the scheduled time and place. Consequently, the Manufacturer was not given a final attempt to correct any alleged nonconformities, and the Consumer's case was dismissed.

Days Out of Service & Post-Notice Opportunity to Inspect or Repair §681.104(1)(b), F.S.; §681.104(3)(b)1., F.S.

Baldwin v. BMW of North America, Inc., 2008-0284/TLH (Fla. NMVAB July 7, 2008)
An intermittent ticking noise in the engine of the Consumers' 2007 BMW X3 was found to be a nonconformity. The vehicle was out of service for repair of the nonconformity for a total of 26 cumulative calendar days. The issue at the hearing was whether the Manufacturer had a reasonable number of attempts to repair the nonconformity. The Board concluded that under the circumstances in this case, 26 days was not a sufficient amount of time to afford the Manufacturer a reasonable number of repair attempts. Accordingly, the Consumers' case was dismissed.

What Constitutes Written Notification Under §681.104(1)(a), F.S.; §681.104(1)(b), F.S.

Torres v. Chrysler LLC, 2008-0331/MIA (Fla. NMVAB August 21, 2008)
The Consumer's 2007 Dodge 3500 pickup truck had an engine nonconformity which caused the engine light to illuminate and affected the performance of the vehicle. After more than three repair attempts for this defect, the Consumer sent a letter expressing his dissatisfaction with his vehicle to Chrysler Financial and to Eddie Accardi Dodge, the selling dealer. The Consumer never sent notification to Chrysler, LLC. At the hearing, the Manufacturer asserted that it was not given notice and a final repair attempt. The Board concluded that the Consumer did not provide written notification as required by the statute. Accordingly, the Consumer's case was dismissed.

Barnwell v. Chrysler LLC, 2008-0353/FTL (Fla. NMVAB August 27, 2008, 2008)
The Consumer purchased a new 2006 Dodge Ram in Florida. The Consumer sent written notification to "Daimler-Chrysler Motors Company, LLC, Attn: Service Contracts, PO Box 2700, Troy, MI 48007-2700." Pursuant to the Manufacturer's warranty book, the notification should have been sent to "Daimler-Chrysler Motors Company, LLC, Customer Center, P.O. Box 21-8004, Auburn Hills, MI 48321-8004." At the hearing, the Manufacturer argued that it did not receive notice as required by statute and therefore, the case should be dismissed. The Board concluded that the notification sent by the Consumer was not sent to the Manufacturer at the address for Florida designated in the Manufacturer's written warranty or owner's manual and was not received by the Manufacturer. Consequently, the Consumer's case was dismissed

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

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

White v. Mazda Motor of America Inc., 2008-0315/STP (Fla. NMVAB August 4, 2008)
The Consumers complained that the transmission would intermittently pop out of gear in their 2006 Mazda 3. This condition caused the clutch to be replaced. The Manufacturer contended that that any vehicle defects were the result of abuse by persons other than the Manufacturer or its authorized service agent. Specifically, the Manufacturer asserted that the problem described by the Consumers was the result of driving habits. The Manufacturer's witness testified that excessive clutch wear comes from either riding the clutch or releasing it at high RPMs, and that forcefully shoving the gear shift into third gear can result in damage to third gear. The Board concluded that the transmission/clutch problem was the result of abuse of the vehicle by persons other than the Manufacturer or its authorized service agent. Accordingly, the case was dismissed.

MISCELLANEOUS PROCEDURAL ISSUES:

Puente v. Ford Motor Company, 2008-0255/MIA (Fla. NMVAB July 24, 2008)
The Consumers purchased a new 2006 Ford Focus in Florida on January 8, 2006. At the hearing, the Consumers complained of four problems with their vehicle. However, the Consumers first reported these problems to the Manufacturer on February 21, 2008, which was more than 24 months after the delivery of the vehicle and therefore outside the Lemon Law Rights period as defined in Section 681.102(10), F.S. The Board found that the Consumers failed to first report any problem within the time required by the statute. Accordingly, the Consumers' case was dismissed.

OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

QUARTERLY CASE SUMMARIES

October 2008 - December 2008 (4th Quarter)

JURISDICTION:

Motor Vehicle §681.102(15), F.S.

Isaac v. Mercedes-Benz USA, Inc, 2008-0439/ORL (Fla. NMVAB October 23, 2008)
The Consumer wanted to lease a Mercedes-Benz C230 Sport automobile. Through an internet search, he located a C230 at Carlton Motorcars, Inc., in Greenville, South Carolina. The lease transaction, dated February 9, 2007, was completed via telephone, Federal Express mail, and facsimile. The Consumer was a resident of the state of Florida at the time he negotiated the lease, and he continued to reside in Florida as of the hearing date. At no time during the negotiations or execution of the lease agreement did the Consumer leave the state. The vehicle, a new 2007 Mercedes-Benz C230 Sport automobile, was delivered to the Consumer at his home in Apopka, Florida, and the vehicle was subsequently registered in Florida. The Manufacturer, through counsel, requested that the case be dismissed, asserting that the subject vehicle was not sold in this state, and as such, was not a "motor vehicle" as defined in Section 681.102(15), Florida Statutes (2007). The Manufacturer argued that the lease agreement was a South Carolina lease agreement, the lessor was a South Carolina dealership, the lease agreement was not completed until the South Carolina dealer signed it in that state, and the South Carolina dealer reimbursed the Consumer for delivery of the vehicle. The Board found that, based on the totality of the evidence, the Consumer's vehicle was "sold" in Florida as contemplated by the statute. Therefore, the vehicle was a "motor vehicle" as defined by Section 681.102 (15), and the Manufacturer's request for dismissal was denied.

NONCONFORMITY 681.102(16), F.S.. (2005)

Fattah v. Mercedes-Benz USA, Inc, 2008-0441/MIA (Fla. NMVAB November 14, 2008)
The Consumer complained of a foul musty odor coming from the air conditioner vents in her 2007 Mercedes C230. The Consumer testified that the severity of the odor had reduced; however, the odor still existed. The Manufacturer contended that the alleged defect did not substantially impair the use, value or safety of the vehicle. While not denying the existence of the odor, the Manufacturer asserted that "outside elements and humid South Florida temperatures" contributed to the odor. The Board rejected the Manufacturer's argument and found that the odor substantially impaired the use, value and safety of the vehicle. Accordingly, the Consumer was awarded a refund.

Moccia v. Toyota Motor Sales, USA, 2008-0425/WPB (Fla. NMVAB October 28, 2008) The Consumer complained of a mold or mildew smell from the air conditioning system in her 2007 Toyota Camry. The Consumer testified that she is highly allergic and the odor that emanated from the air conditioner when it was running was "terrible, terrible, terrible, reminiscent of a wet diaper." A blast of stench that lasted for about five minutes occurred when the vehicle was first started for the day and the air conditioner was turned on. The odor was also evident after the vehicle had been sitting for three to four hours, especially if the vehicle had been sitting in the hot sun. In addition, the Consumer was a real estate agent and used her vehicle as a part-time office; her clients, too, found the odor unpleasant. The Manufacturer contended that because of the environment in South Florida, some musty odor is to be expected. The Manufacturer's witness asserted that, "we live in a wet, moldy, hot area of the country." The Manufacturer maintained that the odor from the air conditioner was not related to defects in parts or workmanship; rather, it was caused by the environment. The Board rejected the Manufacturer's argument and found that the odor substantially impaired the use, value and safety of the vehicle. Accordingly, the Consumer was awarded a refund.

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

What Constitutes Written Notification Under §681.104(1)(a), F.S.; §681.104(1)(b), F.S.

Londono v. Nissan Motor Corporation USA, 2008-0265/MIA (Fla. NMVAB October 3, 2008) The Consumer's 2006 Nissan Armada had a water leak from the headliner and/or upper shield. After three or more repair attempts for the water leak, the Consumer sent written notification to the Manufacturer to provide the Manufacturer with a final opportunity to repair the vehicle. However, the notification was returned to the Consumer with the following notation on the envelope: "FORWARD TIME EXP[IRED] RETURN TO SENDER." The Manufacturer argued that it did not receive written notification from the Consumer and therefore was not accorded a final repair attempt. The Manufacturer's representative acknowledged the address to which the Consumer sent the written notification in California was the address provided in the Manufacturer's warranty book. However, the representative testified that Nissan's Consumer Affairs Department had since moved to Franklin, Tennessee. He believed that the Better Business Bureau either provided, or should have provided, the Consumer with the correct address in Tennessee, and he asserted that it was the Consumer's responsibility to make sure she had the correct address for mailing the written notification. The Board found that it was the Manufacturer's duty to provide the Consumer with the correct address to which the Consumer must send the statutory written notification of the final repair opportunity. If the Manufacturer relocates after the warranty or owner's manual is published, such relocation does not relieve the Manufacturer of its duty, nor does it impose upon the Consumer the additional burden of tracking down the Manufacturer. The Board found that the Consumer in this case complied with her responsibility under the statute when she sent the required written notification to the published address of the Manufacturer after at least three unsuccessful attempts by the authorized service agent to repair the nonconformity. The Manufacturer's failure to receive the notification was not the fault of the Consumer. Since the Manufacturer failed to respond to the notification, the requirement that the Manufacturer be given a final repair opportunity did not apply. Accordingly, the Consumer was awarded a refund.

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.

Rosenberg v. Volkswagen/Audi of America Inc., 2008-0428/WPB (Fla. NMVAB October 14, 2008)
The Consumer complained of the vinyl peeling off the interior console, the driver's side door handle and the dashboard in his 2006 Audi A4. The Manufacturer contended that an outside influence was causing the vinyl to peel. The Manufacturer's witness testified that, what was peeling was not vinyl, but the paint on the molded plastic parts. The peeling was occurring on the driver's side of the vehicle only. According to the witness, suntan lotion or oil that on the Consumer's hands or legs was rubbing onto various areas of the driver's side of the console, door handle and dashboard, causing the paint to peel off the affected areas. The Board concluded that the Consumer's complaint regarding the peeling of the interior was not a defect or condition that substantially impaired the use, value or safety of the vehicle. Accordingly, the Consumer's case was dismissed.

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

Jackow v. Toyota Motor Sales, USA, 2008-0376/FTM (Fla. NMVAB October 6, 2008)
The Consumers complained of defective paint and clear coat in their 2006 Toyota Corolla. The Consumer testified that the paint on the vehicle was damaged by love bugs, despite the fact that she washed the love bugs off the vehicle on a daily basis during each love bug season. She asserted that the clear coat on the vehicle did not protect the paint because it was unusually soft and scratched easily, even though she never used anything other than Toyota products when washing the vehicle. The Manufacturer's representative contended that the damage was the result of neglect, and asserted that the damage to the paint was caused by the Consumers having allowed love bugs and bird droppings to remain on the hood and roof for an extended period of time before attempting to remove them. This was also the conclusion of an independent repair facility hired by the service agent to inspect the vehicle. A majority of the Board found that the damage to the vehicle's paint was a result of accident, abuse or neglect of the vehicle by someone other than the Manufacturer or its authorized service agent, and as such it did not constitute a nonconformity within the meaning of the law. Accordingly, the Consumer's case was dismissed.

REFUND §681.104(2)(a)(b), F.S.:

Incidental Charges §681.102(8), F.S.

Smith v. Ford Motor Company, 2008-0474/WPB (Fla. NMVAB November 6, 2008)
The Board found the Consumer's Ford Expedition to be a "lemon." The Consumer requested that his wife, the primary driver of the vehicle, be reimbursed for lost wages on "lost employment opportunities" as an incidental charge. She ran a "home watch" business which entailed her checking on homes when the owners were away, and she took people to and from the airport. The Consumer's wife did not rent a car when the vehicle was not available for use, nor did she

submit any documentation in support of her claim for lost wages. The Board denied the Consumer's request as being speculative as to the amount.

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

Shirley v. Toyota Motor Sales, USA, 2008-0469/FTL (Fla. NMVAB November 6, 2008)
The Consumer complained of an abnormal alignment that affected the driveability and caused uneven tire wear in her 2008 Toyota Tacoma. The Board found the problem to be a nonconformity and awarded the Consumer a refund. In order to purchase the vehicle, the Consumer traded in a 2002 Honda CRV for which she received a net trade-in allowance of $4,500.00, according to the purchase contract, which was not acceptable to the Consumer; consequently, the Manufacturer produced the NADA Official Used Car Appraisal Guide (Southeast Edition) in effect at the time of the trade-in. The NADA Guide reflected a retail price for the trade-in vehicle in the amount of $15,175.00. The Manufacturer did not submit the mileage information tables from the NADA Guide, arguing that the mileage on the trade-in vehicle could not be determined because the vehicle was traded-in with a defective odometer. The Consumer also submitted the NADA Guide online vehicle pricing and information for the trade-in vehicle, using an estimated 85,000 miles at the time of trade-in, which yielded a clean retail value of $12,400.00. The Board used the clean retail value of $12,400.00 to establish the net trade-in allowance.

MISCELLANEOUS PROCEDURAL ISSUES:

Mattox v. Ford Motor Company, 2008-0451/WPB (Fla. NMVAB October 23, 2008)
At the hearing, the Manufacturer sought to have the Board consider actual parts allegedly taken from the Consumer's vehicle. Neither the Board nor the Consumer was given written notification five days before the hearing that the Manufacturer was requesting consideration of such evidence. The Consumer objected to its consideration. The parts were not considered by the Board. In addition, the Consumer moved to have the Manufacturer's prehearing inspection report stricken as an exhibit, arguing that he did not receive said report seven business days before the hearing as is required by Paragraph (16) of *Hearings Before the Florida New Motor Vehicle Arbitration Board*. The Board agreed with the Consumer and the prehearing inspection report was excluded.

Medina v. Mercedes-Benz USA, Inc., 2008-0371/FTM (Fla. NMVAB October 1, 2008)
The parties stipulated that the Consumer purchased a new 2007 Mercedes-Benz S550 automobile in Florida. The Request for Arbitration filed by the Consumer on June 25, 2008, alleged that the Consumer took delivery of the vehicle on July 18, 2006. However, the Retail Purchase Agreement stated the date of delivery was April 7, 2006. At the hearing, the Consumer testified he took delivery of the vehicle on May 2, 2006. The Manufacturer asserted, through a "Motion to Dismiss," that the Consumer was not qualified for repurchase relief under the Lemon Law because the Request for Arbitration was not filed 60 days after the expiration of the Consumer's Lemon Law rights period. The Board found that the Consumer took delivery of the vehicle on April 7, 2006, and that the Lemon Law rights period expired 24 months later on April 7, 2008. The Request for Arbitration had to be filed no later than 60 days after the expiration of the Lemon Law rights period, or by June 6, 2008. The Request for Arbitration was

filed on June 25, 2008, which was more than 60 days after the expiration of the Lemon Law rights period. The Request for Arbitration was not filed within the time required by the statute; therefore, the Consumer was not qualified for repurchase relief under the Lemon Law and the case was dismissed.