OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

CASE SUMMARIES
January 1997-March 1998

JURISDICTION:

Ramirez & Gendler v. Nissan Motor Corporation, 1996-1143/FTL (Fla. NMVAB Dec. 12, 1996)

The Manufacturer asserted that the Board lacked jurisdiction to consider the Consumer's claim because the defect complained of stemmed directly from an accident. The defect complained of was an electric short with an air bag sensor. The Board concluded that the dispute between the parties to this case involved issues of product liability or negligence connected with the accident. The matters raised in this case were found to be outside the scope of the board's authority. The claim was dismissed.

Darling v. Ford Motor Co., 1997-0758/FTM (Fla. NMVAB Oct. 7, 1997)

Prior to the arbitration hearing, the Consumer voluntarily surrendered his vehicle to the Lessor and made no arrangements with the Lessor to regain possession or custody of the vehicle. The Board concluded that Section 681.104(2)(a), Florida Statutes (1995) contemplated that the Consumer would be in possession of the vehicle or otherwise capable of delivering the vehicle to the Manufacturer if the Consumer prevailed in arbitration. Since the Consumer no longer had possession or title to the vehicle, he was not eligible for arbitration by the Board and the case was dismissed.

Ramos v. American Isuzu Motors, Inc., 1998-0048/JAX (Fla. NMVAB March 11, 1998)

The Consumer purchased her vehicle in Florida but subsequently moved to Connecticut. All of the repairs were performed in Connecticut. The Consumer requested arbitration by the Better Business Bureau in Connecticut and informed the BBB the vehicle had been purchased in Florida. The BBB assured her that the program met the Florida requirements and that she could go through the BBB arbitration program in Connecticut. The Manufacturer participated in the BBB hearing with the Consumer. The Consumer was not satisfied with the decision of the BBB and subsequently filed her Request for Arbitration by the Florida New Motor Vehicle Board. The Manufacturer sought to have the case dismissed on grounds that the Consumer had not participated in the Florida Better Business Bureau Program as required by law. The Board found that the Manufacturer failed to show that the Connecticut BBB program did not meet the requirements of Title 16 Code of Federal Regulations and Florida law requirements. The case was dismissed on other grounds.

Manufacturer §681.102(13), F.S. (1995)

DeMarco v. Ford Motor Company & Saleen Performance, Inc., 1997-0584/JAX (Fla. NMVAB July 22, 1997)

The Board granted Ford's motion to dismiss on the basis that modifications performed by Saleen to the "Ford Saleen Mustang GT" were specifically excluded from coverage under Ford's warranty. Saleen contended that the primary warranty was provided by Ford, not Saleen, and that Saleen was not a manufacturer as defined in Section 310.60(9). Specifically Saleen contended that it did not manufacture or assemble motor vehicles nor did it install special parts on previously assembled truck chassis. The Board rejected Saleen's defense and awarded a refund to the Consumer for an engine nonconformity. The Board found that Saleen Performance, Inc., held itself out to be a manufacturer, that Saleen disassembled the subject vehicle and assembled a vehicle of a different configuration, and that Saleen affixed a label to the engine compartment of the vehicle indicating that Saleen had handcrafted and manufactured the vehicle in February 1995.

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

Stephens v. Chrysler Corporation, 1997-0134/TPA (Fla. NMVAB Mar. 24, 1997)

The Manufacturer moved to dismiss the Consumer's claim, contending that the subject vehicle was not a "motor vehicle" as defined by Section 681.102(14), Florida Statutes (1995), because the gross vehicle weight (GVW) exceeded 10,000 pounds. The Board relied on the Consumer's application for vehicle registration which gave the GVW as 11,000 pounds and granted the Manufacturer's Motion to Dismiss.

Ginnis v. Chrysler Corporation, 1997-0741/TPA (Fla. NMVAB Sept. 15, 1997)

The Manufacturer filed a motion to dismiss this case, contending that the vehicle was not a "motor vehicle," because it was not sold in Florida. The Manufacturer's invoice and certificate of origin showed that the vehicle was sold by the Manufacturer to Archer Dodge, Houston, Texas. The vehicle was ordered through the Consumer's brother, an employee of Archer Dodge. A new car invoice was prepared by Archer Dodge, indicating that the vehicle was being sold by Archer Dodge to Malcolm Ginnis, the Consumer's father. The vehicle was "courtesy delivered" to Bob Wilson Dodge, Tampa, Florida, where the Consumer took possession. The vehicle was registered and titled to the Consumer in Florida. The Board concluded that the sale of the vehicle took place in Texas; consequently, the vehicle was not a motor vehicle under the Lemon Law and the case was dismissed.

Hackney v. Ford Motor Company, 1997-0861/TPA (Fla. NMVAB Oct. 27, 1997)

The Consumer's Request for Arbitration alleged that her pick-up truck weighed less than 10,000 pounds gross vehicle weight. The actual weight of the vehicle was 8,130 pounds, and she purchased it to haul 6,000 pounds in connection with her business. The certificate of registration indicated a net weight of 5,708 and gross vehicle weight of 14,999 pounds. The Manufacturer moved to dismiss because the subject vehicle was not a "motor vehicle" under the Lemon Law. The Board

looked to Chapter 320, Florida Statutes, for a definition of gross vehicle weight. The Board concluded that the truck was not a motor vehicle, because it weighed more than 10,000 pounds gross vehicle weight. The case was dismissed.

Consumer §681.102(4), F.S. (1995)

Driscoll v. General Motors Corporation, Chevrolet Motor Division, 1997-0790/FTM (Fla. NMVAB, Sept. 11, 1997)

The vehicle was titled in the name of the individual consumer and his corporation, of which he was the sole shareholder, and was used for business and personal use. The Manufacturer agreed that the vehicle was covered under its warranty, but sought dismissal because the Consumer was a business entity. The Manufacturer's assertion was rejected by the Board based upon *Results Real Estate v. Lazy Days R.V. Center*, 505 So.2d 587 (Fla. 2d DCA 1987). The Board concluded that whether or not the consumer was a corporation or any other business entity was irrelevant. The Consumer was awarded a refund.

Friscia v. American Suzuki Motor Corp., 1997-1320/FTL (Fla. NMVAB Jan. 30, 1998).

The Manufacturer's contention that the Consumer did not qualify for relief due to business use of the vehicle was rejected on the basis that the Manufacturer presented no evidence which would demonstrate that the Consumer was not entitled by the terms of the warranty to enforce the obligations of the warranty.

Murphy v. Airstream, Inc. & General Motors Corp., Chevrolet Motor Division, 1997-1363/TPA (Fla. NMVAB Feb. 2, 1998)

The Board found that the purchaser of the subject vehicle was not a "consumer" as defined or contemplated by Section 681.102(4), Florida Statutes, because the vehicle was purchased for purposes of resale. In this case the vehicle was purchased by Murphy on December 9, 1995, via a Manufacturer's Certificate of Origin. The vehicle was held under the Certificate of Origin until the Certificate of Title was issued on September 25, 1997. State sales tax was not paid until application was made for the Certificate of Title. A Certificate of Origin is available only to dealers and allows the vehicle to remain available for sale. The case was dismissed.

Hudson Utilities, Inc. v. Ford Motor Company, 1997-1281/TPA (Fla. NMVAB Jan. 27, 1998)

The Consumer complained of an intermittent popping noise during acceleration between first and second gears, occurring as infrequently as once per month. The Manufacturer argued that Hudson Utilities was not a "consumer" under Section 681.102(4) because the vehicle was not used for personal, family or household purposes, arguing that a corporate-owned vehicle must be used for such purposes for the corporation to qualify as a consumer. The Manufacturer also argued that, due to the difficulty in duplicating the noise and because the Consumer changed dealerships, the Manufacturer should be given more than the presumptively reasonable three repair attempts plus a final attempt. The Board rejected both arguments, finding a reasonable number of repair attempts, and that the amount of

business use was irrelevant because the third clause of the statutory definition included any person entitled to enforce the terms of the warranty. The Consumer was awarded a refund.

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

Basurto v. Kia Motors of America, Inc., 1996-1221/MIA (Fla. NMVAB Jan. 31, 1997)

The Consumer complained of wind noise that could be heard coming through both of the vehicle's doors when driving the vehicle at speeds of more than 40 miles per hour. The noise became louder as the speed was increased. The Manufacturer contended that the wind noise did not substantially impair the use, value or safety of the vehicle and that the noise was a "design characteristic" of this model vehicle. After listening to the evidence and test driving the vehicle, the Board concluded the wind noise was a nonconformity. The Board rejected the Manufacturer's defense that the wind noise was not a nonconformity because it was a normal design characteristic.

Eckelberger v. Ford Motor Co., 1997-0073/TPA (Fla. NMVAB Apr. 17, 1997)

The Consumer complained of a problem with the suspension that caused the rear of the vehicle to bounce, shimmy or vibrate when the vehicle was driven at speeds of 35-40 mph or upon brake application when driving over bumps. The tires were rotated and balanced on at least one occasion and tires were replaced on two occasions, without any improvement or change to the problem. The Manufacturer contended that the alleged defect did not substantially impair the use, value or safety of the vehicle and that the problem was caused by the vehicle's tires, which were not covered under its warranty. Specifically, the Manufacturer asserted that one rear tire needed to be replaced and that one was "approaching" replacement. The Manufacturer asserted that, except for the tires, there was no other cause for the problem. The Board rejected the Manufacturer's defense as unsupported by the evidence, because the tires were replaced on two occasions without any change or improvement of the suspension problem. The Consumer was awarded a refund.

*Conner v. Toyota Motor Sales, U.S.A.,*1997-0158/TPA (Fla. NMVAB Mar. 24, 1997)

The Consumer complained of a problem which the Board found was the result of accidental water contamination in the fuel tank, and as such was excluded from the definition of "nonconformity."

Gonzalez v. BMW of North America, Inc., 1996-1174/MIA (Fla. NMVAB Jan. 16, 1997)

The Consumer complained that the air conditioner did not cool properly and made a moaning sound when the vehicle was driven at highway speeds on Interstate 95. The Manufacturer contended that the moaning sound was not substantial because it only occurred once a week on I-95 and that the Consumer only brought the vehicle in on two occasions for repairs and did not advise the service agent at those times that the air conditioning was not working properly. The Manufacturer also asserted that the Consumer refused to leave his vehicle for repair to the air conditioner on October 21, 1996, because he wanted a loaner vehicle instead of the rental the dealership was willing to provide to him. The Manufacturer argued that this was further evidence that the defect was not substantial, since the

Consumer was not concerned enough to leave his vehicle for repair. The Board concluded that the intermittent air conditioner problem was not so significant as to substantially impair the use, value or safety of the vehicle. The case was dismissed.

Bleakley v. Mitsubishi Motor Sales of America, 1997-0059/ORL (Fla. NMVAB Feb. 24, 1997)

The Consumer complained of a film on the vehicle's windows that appeared every three to four days after cleaning and could not be removed with ordinary window cleaner. The Manufacturer contended that the film was the result of abuse (chemicals used by the Consumer to clean the vehicle). The Board rejected this defense because it was not raised in the Manufacturer's Answer or Amended Answer. The Board found that the problem substantially impaired the use, value and safety of the vehicle and awarded a refund to the Consumer.

Watson v Porsche Cars North America, Inc., 1997-0810/JAX (Fla. NMVAB Nov. 14, 1997)

The Consumer complained that spots in the paint of the vehicle were caused by a defect in the paint and impaired the vehicle's value. The Manufacturer contended that the spots were a result of acid rain, not a defect, and therefore the problems with the paint were not covered under its warranty. The Board inspected the vehicle and determined that the spots did not appear to be caused by a defect. The case was dismissed.

Blank v. General Motors Corp., Buick Motor Division, 1997-0812/WPB (Fla. NMVAB Aug. 29, 1997)

The Consumers complained of paint defects. The Manufacturer had repainted the vehicle during its repair attempts. An inspection of the vehicle revealed that the repainting of the vehicle had been done very well and that it looked better than many vehicles with a factory finish. The Board determined that the paint defects substantially impaired the value of the vehicle and constituted a nonconformity; however, the nonconformity was cured at the final repair attempt. Since the nonconformity was corrected within a reasonable number of attempts, the Consumers were not qualified for relief under the Lemon Law and the case was dismissed.

Amuzzini v. Toyota Motor Sales, U.S.A., 1997-1138/ORL (Fla. NMVAB Dec. 22, 1997)

The Consumer purchased the subject vehicle, a 1997 Toyota Tacoma 4 x 4 pickup truck, because of the way it looked with the all-terrain tires. The Consumer complained of a front end shimmy which occurred when the vehicle was driven at 55 m.p.h. The Manufacturer advanced the defense that the shimmy was due to the all-terrain tires, which it did not warrant. The Manufacturer further asserted that the all-terrain tires were switched with Michelin tires which provided an "acceptable" ride to the Consumer, but because the Consumer did not like the way the Michelins looked on the vehicle, he declined to allow them to remain on the vehicle. The Board found that the shimmy complained of by the Consumer did not constitute a nonconformity and dismissed the Consumer's claim.

Elmore v. Chrysler Corporation, 1997-0789/STP (Fla. NMVAB Sept. 30, 1997)

The Consumer complained that her vehicle consumed a quart of oil every 500-1,000 miles, but she had no records, logs or receipts to substantiate her claim. The Board found that the Consumer had failed to prove that there was a nonconformity, and the case was dismissed.

Britt v. Ford Motor Company, 1997-0565/ORL (Fla. NMVAB Aug. 14, 1997)

The Consumer complained of an intermittent surge which had occurred seven or eight times during his one-year ownership of the vehicle, always after extended driving, and which could only be felt by the driver of the vehicle. The Board concluded that, due to the few times the surge had occurred and the lack of intensity when it did occur, the intermittent surge was not a nonconformity. The case was dismissed.

REASONABLE NUMBER OF ATTEMPTS §681.104, F.S.

What Constitutes a Repair Attempt §681.104(1)(a), (3)(a)1.:

Peters v. Ford Motor Company, 1997-0211/ORL (Fla. NMVAB Apr. 1, 1997)

The Consumer complained of a vibration when driving and upon brake application. The vehicle was presented for repair of a vibration concern on August 1, 1996. The repair could not be completed on that date due to malfunction of the service agent's equipment. The vehicle was again presented on August 14, 1996, at which time the repairs were completed. A third repair occurred on January 22, 1997. The Board rejected the Manufacturer's argument that the August 1st and August 14th repairs constituted only one repair attempt. The Manufacturer also argued that the complaint was two separate problems; however, the Board found that the vibration was a nonconformity, and a refund was awarded. (The Consumer's award was reduced by a negative trade-in allowance.)

Greer v. General MotorsCorp., Pontiac-GMC Division, 1997-0558/JAX (Fla. NMVAB July 7, 1997)

The Manufacturer contested one of the repair attempts the Consumer was claiming for various problems. The Manufacturer presented evidence that a repair order dated May 2, 1997, upon which the Consumer was relying, was not a repair attempt because the Consumer failed to present the vehicle for repair. Instead, the Consumer came to the authorized service agent's location to complain of the problem, and the repair facility generated a work order per his request to show that he had been in that day. The Board found this evidence to be uncontroverted and rejected the Consumer's assertion that it was a repair attempt. The Consumer prevailed on other problems that the Board found to be a nonconformities and was awarded a refund.

What Constitutes a Reasonable Number of Attempts §681.104:

Ramos v. Mitsubishi Motor Sales of America, Inc., 1997-0464/ORL (Fla. NMVAB June 11, 1997)

The Consumer complained of two separate problems: a brake vibration with repair attempts on April 25, 1996, and August 12, 1996; and a miss on acceleration with repair attempts on December 19, 1995, and January 6, 1997. The Consumer sent written notification to the Manufacturer on January 7, 1997, providing a final opportunity to repair the vehicle. The notification listed only the miss on acceleration as a continuing problem. The Manufacturer received the notification January 13, 1997. On February 5, 1997, the vehicle was presented for a final repair attempt. The Consumer did not advise the Manufacturer about the brake vibration problem. The Manufacturer contended at the hearing that it had not been afforded a reasonable opportunity to repair the alleged defects. The Consumer sent the required written notification to the Manufacturer after only two repair attempts to each problem. The board ruled that this did not constitute a reasonable number of attempts. The case was dismissed.

Patterson v. Chrysler Corporation, 1997-0676/MIA (Fla. NMVAB July 24, 1997)

The Consumer presented evidence of repairs and days out of service which occurred prior to his purchase of the vehicle. The Board held that the pre-purchase repairs could not be considered for purposes of determining a reasonable number of attempts. The Consumer also presented evidence of two post-purchase repair attempts prior to notice. The Board dismissed the Consumer's claim concluding that the two repair attempts were insufficient to afford the Manufacturer a reasonable opportunity to conform the vehicle to the warranty as contemplated by §681.104, F.S.

Pupard v. Kia Motors America, Inc., 1997-0531/FTL (Fla. NMVAB July 9, 1997)

Concluding that it would have been fruitless for the Consumer to seek further repairs, the Board found two repair attempts were sufficient to afford the Manufacturer a reasonable number of attempts to conform the vehicle to the warranty as contemplated by the Lemon Law. The Consumer had presented the vehicle for repair of a rear door that stuck out because it was not aligned properly. After the second repair, the Manufacturer's service agent advised the Consumer that nothing further could be done to repair the door. The Board awarded the Consumer a refund.

Terry v. Nissan Motor Corporation U.S.A., 1997-0542/WPB (Fla. NMVAB Aug. 4, 1997)

This case involved multiple complaints, most of which were determined not to be nonconformities. The remaining complaint was found to have only been presented for one repair attempt prior to written notification. The Board determined that this was not sufficient and that the Consumer had therefore failed to comply with Section 681.104(1)(a), Florida Statutes, (1995). The case was dismissed.

Hartman v. Mitsubishi Motor Sales of America, Inc., 1997-0956/STP (Fla. NMVAB Nov. 5, 1997)

After finding that the intermittent failure of the vehicle's power door locks and windows constituted a nonconformity, the Board concluded that two repair attempts followed by a final repair attempt were sufficient to afford the Manufacturer a reasonable opportunity to conform the vehicle to the warranty as contemplated by the Lemon Law. The Consumer was awarded a refund.

Russo v. General Motors Corporation, Pontiac-GMC Division, 1997-1118/STP (Fla. NMVAB Dec. 1, 1997)

The Board found that the Consumers' complaint of intermittent loss of power steering when driving in the rain and related serpentine belt squeal was a "condition" that constituted a nonconformity. The Board then dismissed the Consumers' claim after concluding that the Consumers did not comply with Section 681.104(1)(a) because they presented the vehicle for only two repairs for the nonconformity prior to sending the written notification to the Manufacturer, thereby denying the Manufacturer a reasonable opportunity to repair the nonconformity.

Nguyen v. Nissan Motor Corporation U.S.A., 1997-1182/ORL (Fla. NMVAB Dec. 18, 1997)

The Consumer's complaint of a cold engine tapping noise was submitted for two repair attempts, both of which resulted in engine replacements. After the second repair he sent written notice to the Manufacturer and a final repair was attempted. The Board found that, under the circumstances, two repairs plus a final repair were a reasonable number of attempts. The Consumer was awarded a refund.

Thebeau v. Ford Motor Company, 1997-1272/TPA (Fla. NMVAB Jan. 28, 1998)

The Consumer complained that the brakes "pulsated, crunched, and squealed." She allowed two repairs prior to sending written notice to the Manufacturer. The Board concluded that two repairs prior to notice, followed by a third repair after notice, did not provide the Manufacturer with a reasonable number of attempts to repair the alleged defective brakes. The case was dismissed.

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

Rebmann v. Ford Motor Company, 1997-0152/STP (Fla. NMVAB Mar. 26, 1997)

The Consumer sent written notification on December 6, 1996, to provide the Manufacturer with a final repair opportunity. The Manufacturer received the notification on December 11, 1996, and responded by postcard directing the Consumer to contact the service manager at the local dealership. The postcard was signed by Scott Jackson, "Customer Service Manager." The Consumer tried to contact Scott Jackson but was told he no longer worked for the Manufacturer. The Consumer was instructed to leave a message for Sage Hoffman, Ford Customer Service Manager. The Consumer did so but heard nothing further from the Manufacturer. The Manufacturer contended that it was denied a final repair attempt. The Board concluded that the Manufacturer's postcard response to the defect notice was not sufficient to effectuate a final repair attempt, and that the Consumer acted reasonably in

attempting to contact the "Customer Service Manager" to arrange the final repair attempt. The Board found in the Consumer's favor and awarded a refund.

Candela v. Ford Motor Company, 1997-0606/ORL (Fla. NMVAB July 28, 1997)

The vehicle was delivered to the authorized service agent's facility on March 10, 1997, for the final repair. Settlement negotiations immediately ensued, during which no repairs were performed. The negotiations were unsuccessfully concluded on March 27, 1997. The Board concluded that the final repair attempt commenced after settlement negotiations were unsuccessfully concluded. The final repair commenced on March 28, 1997, and was concluded on April 2, 1997. The Manufacturer successfully conformed the vehicle to the warranty within 10 days of the commencement of the final repair attempt. Accordingly, the Board found that the Consumers were not entitled to relief under the Lemon Law and dismissed their claim.

Salvato v. Chrysler Corporation, 1997-0058/ORL (Fla. NMVAB Feb. 26, 1997)

The Consumer sent written notification on October 7, 1996, providing the Manufacturer with a final opportunity to repair the vehicle. The Manufacturer received the notification on October 9, 1996. On October 15, 1996, the Manufacturer telephoned the Consumer and directed him to present the vehicle to Bob Dance Jeep Eagle for the Manufacturer's final repair attempt. By letter to the Consumer dated October 15, 1996, the Manufacturer confirmed the telephone conversation, specifying that the final repair attempt would take place on November 8, 1996. The letter further indicated that the Manufacturer's technical service advisor would be at the authorized service agent on that date to meet with the Consumer. The Consumer presented his vehicle for the final repair attempt on November 4, 1996. The Consumer was advised by personnel at the authorized service agent to return on November 8, 1996, as specified. The Consumer did not return on November 8, 1996, and the Manufacturer sent a second letter on November 26, 1996, asking the Consumer to contact the Manufacturer to reschedule the final repair attempt. The final repair attempt was never rescheduled. The Board concluded that the Manufacturer was denied its final repair opportunity and dismissed the case.

Grumbley v. Ford Motor Company, 1997-0064/ORL (Fla. NMVAB Mar. 21, 1997)

The Consumers complained of a brake pulsation. The Manufacturer contended that it was denied a final repair attempt. Following written notice, the Consumer contacted McCotter Ford to schedule the final repair attempt and requested a loaner vehicle. McCotter Ford was unable to supply a loaner vehicle, so the Consumer declined to keep the appointment for the final repair. The Board found that the brake pulsation was a nonconformity, but dismissed the case because the Manufacturer had not been afforded a final repair attempt.

Mayhew v. American Honda Motor Co., 1997-0310/STP (Fla. NMVAB May 2, 1997)

The Consumer sent written notification to the Manufacturer on October 31, 1996, providing the Manufacturer with a final opportunity to repair the vehicle. Shortly thereafter, the Consumer moved. The Manufacturer received the notification on November 4, 1996, and responded by overnight letter dated November 8, 1996, addressed to the Consumer at the address provided in the written

notification. The Consumer never received the letter and no final repair attempt was ever conducted. The Board concluded that the Consumer frustrated the Manufacturer's attempt to respond to the notification and direct the Consumer to a repair facility by moving and not informing the Manufacturer of her new address. The case was dismissed.

Zander v. American Isuzu Motors, Inc., 1996-1233/MIA (Fla. NMVAB Mar. 18, 1997)

Upon receipt of the defect notification, the Manufacturer notified the Consumer in writing to present his vehicle for repair or inspection to the Manufacturer's service agent on January 30, 1996. Prior to the letter, the Consumer advised the Manufacturer's representative by telephone that he would present the vehicle for repair on January 22, 1996. The Manufacturer's representative informed the Consumer that he was unable to be present on that date and to present the vehicle on January 30, 1996. The vehicle was presented to the service agent on January 22, 1996 and repairs were attempted. The Manufacturer's representative was present at the agent's facility on January 30, 1996; however, the Consumer was not. The Manufacturer contended that it was denied a final repair attempt. The Board found that the repair attempt on January 22, 1996, was the final repair attempt and awarded a refund.

Benitez v. Ford Motor Company & Winnebago Industries, Inc., 1997-1150/MIA (Fla. NMVAB Jan. 12, 1998)

The Consumer sent written notification to provide the Manufacturers a final opportunity to repair the vehicle. Winnebago received the notification and responded by requesting additional information from the Consumer. The response from Winnebago did not establish a reasonable time and place for the final repair attempt. Winnebago did not contact the Consumer subsequent to this letter. Winnebago did not perform a final repair attempt, and at the hearing contended that it was not provided with an opportunity for such repair attempt because the Consumer did not respond to its letter requesting additional information. The Board concluded that Winnebago did not give the Consumer the opportunity to have the motor vehicle repaired at a reasonably accessible repair facility within a reasonable time after the Consumer's receipt of the response, as required by the statute; thus, the final repair requirement did not apply. The Consumer was awarded a refund.

Global Medical Management, Inc., v. Jaguar Cars, 1997-0926/FTL (Fla. NMVAB Oct. 31, 1997)

The Consumer sent the Manufacturer written notification to provide it with a final repair attempt. The Manufacturer received the notice and responded within 10 days, directing the Consumer to take the vehicle to a named authorized service agent for the final repair attempt "as soon as possible." No date or time was provided by the Manufacturer. The Manufacturer subsequently telephoned the Consumer to schedule a time certain, but the Consumer was out of the country and could not be reached. Subsequently, the Consumer presented his vehicle to the designated repair facility for the final repair attempt and so advised the service agent. No repairs were made as the problem could not be duplicated. At the hearing, the Manufacturer contended it was denied a final repair attempt, as its representative was not available at the dealership when the vehicle was presented, nor was it aware of the repair attempt. The Board held that the Manufacturer was afforded a final

repair opportunity as required by the statute. The Consumer was awarded a refund.

Ramos v. American Isuzu Motors, Inc., 1998-0048/JAX (Fla. NMVAB March 11, 1998)

The Consumer purchased her vehicle in Florida but subsequently moved to Connecticut. All of the repairs were performed in Connecticut. The Consumer sent written notification to the Manufacturer, but was directed to return the vehicle to a repair facility in West Palm Beach, Florida, for the final repair attempt. The Consumer advised the Manufacturer that she could not return the vehicle to that repair facility as she lived in Connecticut, and that this repair facility was not reasonably accessible to her. The Manufacturer failed to respond and direct her to another repair facility. The Manufacturer sought to have the case dismissed on the grounds that none of the repairs had been performed in Florida, and the Consumer had denied the Manufacturer a final repair opportunity by not returning the vehicle to Florida. The Board found that the final repair requirement did not apply because the Manufacturer failed to direct the Consumer to a reasonably accessible repair facility as set forth in 681.104(1)(a). The Board also rejected the argument that the Manufacturer had been prejudiced because no repairs were performed in Florida. The case was dismissed on other grounds.

Simon v. General Motors Corp., Pontiac-GMC Division, 1997-1129/FTL (Fla. NMVAB Dec. 9, 1997)

The Consumer submitted his written notification, but the Manufacturer failed to arrange a final repair attempt. The Board concluded that the requirement that the Manufacturer be given a final attempt to cure the nonconformity did not apply and that the Manufacturer failed to correct the nonconformity after a reasonable number of repairs. The Board also determined that a nonconformity was presented for repair during the Lemon Law rights period and was not cured. The Board therefore applied the six month extension and determined that the Consumer had timely filed his Request for Arbitration.

Sperrick v. General Motors Corporation, Buick Motor Division, 1997-0732/ORL (Fla. NMVAB Oct. 6, 1997)

Upon receipt of the Motor Vehicle Defect Notification on November 20, 1996, the Manufacturer sent the Consumer a letter on December 6, 1997, advising that the Consumer's "vehicle has been determined to be operating up to Buick factory specifications," and if the Manufacturer could "be of further assistance" to contact them at a toll free number. The Board concluded that the final attempt requirement did not apply because the Manufacturer failed to direct the Consumer to a repair facility within 10 days. The Consumer was awarded a refund.

Muncy v. Ford Motor Company, 1997-0780/STP (Fla. NMVAB Sept. 23, 1997)

The final repair attempt was scheduled for June 18, 1997. The Consumers received a telephone call on June 18, 1997, advising that the Manufacturer's Field Service Engineer would be unable to keep the appointment on that date**.** The Consumers subsequently received another call on June 18, 1997, requesting that they immediately deliver the vehicle to the dealership because the Field Service Engineer was there after all. The Consumers could not comply, having already rearranged their

schedules. The Consumers attempted to reschedule the final repair for June 19, 1997, but that offer was declined, since the Field Service Engineer would not be there on that date. The Consumers made another unsuccessful attempt to schedule the final repair**.** At the hearing, the Manufacturer argued that it had been denied a final repair attempt. The Board rejected this argument and the Consumers were awarded a refund for a transmission vibration nonconformity.

Sever v. Ford Motor Company, 1997-0821/ORL (Fla. NMVAB Oct. 15, 1997)

The Board determined the complained of defect to be a nonconformity, but dismissed the Consumers' claim because they did not afford the Manufacturer a final opportunity to cure the nonconformity. The Manufacturer had timely responded to the written notification and directed the Consumers to the repair facility that had performed all prior repairs. The Consumers scheduled an appointment at a different repair facility, refusing to deliver the vehicle to the repair facility designated by the Manufacturer.

Taylor v. Volkswagen United States, Inc., 1997-0980/ORL (Fla. NMVAB Nov. 6, 1997)

The Consumer complained of a brake shimmy or vibration. Following receipt of the Consumer's written notification on May 27, 1997, the Manufacturer responded without directing the Consumer to a repair facility. The Consumer then initiated contact with the author of the Manufacturer's letter and requested a final repair, but was advised that she would be required to pay for further repairs. No final repair attempt was scheduled; however, several months later, in August 1997, the Consumer was successful in obtaining additional brake repairs, which cured the brake problem. At the hearing, the Manufacturer contended that the Consumer was not qualified for relief because the brake shimmy was cured during the repairs performed in August 1997. The Board found the brake shimmy to be a nonconformity that was not corrected within a reasonable number of attempts. The Manufacturer waived its opportunity for a final repair. The Consumer was awarded a refund.

Brooks v. Mitsubishi Motor Sales of America, Inc., 1997-1024/PEN (Fla. NMVAB Nov. 7, 1997)

The Consumer complained of a brake pulsation problem**.** Following three repairs, he sent written notice to the Manufacturer. Two days after receipt of the notice, the Manufacturer left a telephone message for the Consumer. The Consumer testified he returned the phone call and left a message with his new telephone number. The Manufacturer's witness testified he had no record of the return phone call. The Manufacturer asserted it was denied a final repair attempt. The Board concluded that the statute places the burden on the Manufacturer to respond to the written notice, and the one telephone call to the Consumer did not shift the burden to the Consumer to contact the Manufacturer to schedule the final repair. The Board concluded that the Manufacturer waived its final repair attempt, and the Consumer was awarded a refund.

Brown v. Ford Motor Company, No. 1997-0848/STP (Fla. NMVAB Oct. 7, 1997)

The Consumers complained that the headlights and interior lights intermittently illuminated while the vehicle was unoccupied, draining the battery and causing a no-start problem. Following three

repairs, written notice was sent to Ford, and a final repair was scheduled for July 10. The Consumers presented the vehicle for repair on July 7 because the problem had recurred. The vehicle was returned to the Consumers by the service agent on July 9. Neither the authorized service agent nor the Manufacturer requested that the vehicle be returned for more repairs on July 10. At the hearing, the Manufacturer argued that it had been denied its final repair attempt, because the Consumers removed the vehicle prior to July 10. The Board ruled that the July 7 repair was the final repair attempt; that the Manufacturer could have kept the vehicle for the 10 days allowed by statute, but it was returned to the Consumers by the authorized service agent after only two days. The Consumers were awarded a refund.

Cummings v. Chrysler Corporation, 1997-0847/WPB (Fla. NMVAB Sept. 15, 1997).

Upon receipt of the Consumer's written notification, the Manufacturer contacted the office of the Consumer's attorney and left a message to arrange a final repair attempt. After attempting to contact the Consumer's attorney by telephone a second time, the Manufacturer sent a letter via certified mail to the Consumer's attorney requesting that the attorney contact the Manufacturer to arrange for the final repair attempt. The Consumer's attorney did not return the phone calls or respond to the letter. More than 20 days after initial receipt of the written notification, the Manufacturer again contacted the office of the Consumer's attorney and was finally able to speak with the attorney. However, the Consumer's attorney refused to permit a final repair attempt at that time. The Board found that the steering problem complained of by the Consumer was a nonconformity; however, the Consumer, through his attorney, had failed and refused to make the vehicle available to the Manufacturer for a final repair opportunity. Therefore, the case was dismissed.

Days out of Service §681.104(1)(b), (3)(a)2.:

Conner v. Toyota Motor Sales, U.S.A.,1997-0158/TPA (Fla. NMVAB Mar. 24, 1997)

The Consumer's vehicle was out of service for repair for wind noise and turn signal nonconformities for a total of 16 cumulative calender days. The evidence presented by the Consumer was not sufficient to establish additional days out of service for repair of these nonconformities or any other nonconformity. The case was dismissed.

Cowart v Ford Motor Company, 1998-0103/JAX (Fla. NMVAB Mar. 18, 1998)

The Board found that the Consumer's complaints of a burning odor in the cab of the truck and window leaking problems were defects that substantially impaired the use and safety of the vehicle. But, relying on the definition of an out-of-service day set forth in Florida Administrative Code Rule 2-30.001, the Board determined that the Consumer only had 28 days out of service. The case was dismissed.

Levin v Monaco Coach Corporation, 1997-1268/JAX (Fla. NMVAB Feb. 25, 1998)

The Consumer cited numerous complaints with his recreational vehicle. The Board determined that, of the complaints listed by the Consumer, the back-up camera being inoperable, broken entry

door, batteries going dead, dipstick problem, sight gauge problems, and a water leak in the outside storage compartments were nonconformities. However, the Board determined that the vehicle had only been out of service by reason of repair of the nonconformities for 10 days, so the case was dismissed.

Moore v. Ford Motor Company, 1997-1325/ORL (Fla. NMVAB Feb. 9, 1998)

The Board found that the Consumer's vehicle was out of service 29 days for repair of several nonconformities. After 29 days out, the Consumer mailed written notice to the Manufacturer. The Manufacturer responded by post card directing the Consumer to present her vehicle to her dealer for repair. The Consumer did not take the vehicle in because nothing was wrong at that time. The Board found that the Consumer had not given the Manufacturer the statutorily required post-notice inspection or repair. The case was dismissed because the Manufacturer had not been afforded a reasonable opportunity to conform the vehicle to the warranty.

Written Notification to the Manufacturer §681.104(1)(a)&(b) F.S. (1995)

Warman v. Fleetwood Motor Homes & General Motors Corp., Chevrolet Motor Division, 1997-0451/WPB (Fla. NMVAB Aug. 13, 1997)

The Consumers sent the written notification to the Manufacturer after only 10 days out of service. Since the Manufacturer was not provided with the written notification required by Section 681.104(1)(b), the case was dismissed.

Jones v. Ford Motor Company, 1997-0581/ORL (Fla. NMVAB Sept. 16, 1997)

The Consumer alleged problems with her vehicle's brakes and transmission. She sent written notice to the Dispute Settlement Board (DSB), an informal dispute settlement procedure sponsored by Ford. Ford never received the written notification. At the hearing, the Manufacturer argued that the DSB is not a division or subsidiary of Ford. The Board concluded that the notice was not sent to or received by the Manufacturer. The case was dismissed.

Tubel v. Nissan Motor Corporation of America, 1997-0943/JAX (Oct. 8, 1997)

The Consumer sent his motor vehicle defect notice to the local dealership and not to Nissan Motor Corporation of America. The case was dismissed because the Consumer failed to comply with the notice requirements of Section 681.104(1)(a).

Canuto v Mitsubishi Motor Sales of America, Inc., 1997-1412/JAX (Fla. NMVAB Feb. 9, 1998)

The Consumer sent her notice to the credit division of Mitsubishi in Orlando and not to the Manufacturer's address in Cypress, CA as listed in the warranty manual. The case was dismissed because the Consumer failed to comply with the notice requirements of Section 681.104(1)(a).

Leo v. Toyota Motor Sales, U.S.A., 1997-1041/ORL (Fla. NMVAB Dec. 10, 1997)

The Consumer complained of brake problems. After three repair attempts, the Consumer sent written notice to the Manufacturer in the form of a letter, listing the Consumer's name, address,

telephone number, date of delivery of the vehicle, the vehicle make and model, and the name and address of the selling dealer. The Manufacturer contended that the notice was defective because it lacked the Vehicle Identification Number (VIN) and a description of the defect. The Board concluded that the notice provided was sufficient to put the Manufacturer on notice as required by law. The notice gave the Manufacturer the opportunity to inquire as to the VIN and the problem. However, the case was dismissed on other grounds.

Jooste v. Chrysler Corporation, 1997-1071/ORL (Fla. NMVAB Dec. 16, 1997)

The Consumer sent written notification to "Chrysler Corporation, Post Office Box 958412, Lake Mary, Florida 32795." The Consumer received this address after placing a call to the toll free number provided in his warranty book. The Consumer was given a Michigan address to which to send the notice, but refused that address specifically requesting a Florida address. The Manufacturer asserted that the Lake Mary address was the address for Chrysler Credit Corporation, which had no responsibility to forward the notification to Chrysler Corporation. The Board concluded that the Consumer did not provide written notification to the Manufacturer and dismissed the claim.

Shelnutt v. Fleetwood Motor Homes, Freightliner Custom Chassis Corporation, Allison Transmission, & Onan Corporation, 1997-0832/TPA (Fla. NMVAB Dec. 18, 1997)

The Board found that the Consumer provided the Manufacturers with written notification after the recreational vehicle had been out of service for repair for a total of 13 cumulative calendar days for nonconformities. The Board dismissed the case because Section 681.104(1)(b), Florida Statutes required that the Manufacturers be provided the written notification after the vehicle was out of service for repair for 15 or more days, and the Consumer failed to satisfy this requirement.

MANUFACTURER AFFIRMATIVE DEFENSES:

Bergman v. Volkswagen United States, Inc., 1997-0911/MIA (Fla. NMVAB Oct. 8, 1997)

At the hearing, the Manufacturer sought to raise the affirmative defense that the alleged nonconformity did not substantially impair the use, value or safety of the vehicle, although this defense was not raised in the Manufacturer's Answer or Amended Answer. The Manufacturer did state in its Answer that the "allegation that vehicle shuts off has not been duplicated. Allegation that vehicle pulls to right is due to accident and tires." The Board allowed the Manufacturer to assert the affirmative defense that the alleged nonconformity did not substantially impair the use, value or safety of the vehicle, but only to the extent it was asserted in its Answer. The Consumer prevailed and the Board held that the Manufacturer did not substantiate its affirmative defenses.

Hayes v. General Motors Corp., Chevrolet Motor Division, 1997-1174/TPA (Fla. NMVAB Dec. 29, 1997)

The Consumer complained of an ABS light problem. The Manufacturer was represented at the hearing; however, the representative presented no testimony or argument in support of the affirmative defenses raised in the Manufacturer's Answer. The Board found that the affirmative defenses were

waived. The Consumer was awarded a refund.

Gardner v. General Motors Corporation, Pontiac-GMC Division, 1997-1368/FTL (Fla. NMVAB Feb. 5, 1998)

At the hearing, the Manufacturer requested that it be allowed to file its Answer late. The Manufacturer received the Notice of Arbitration on December 22, 1997 and filed its Answer on January 22, 1998; the Answer was due on January 7, 1998. The Manufacturer explained that its corporate offices were closed for the holidays for two weeks at the end of December 1997, and two weeks at the beginning of January, 1998. The Board denied the Manufacturer's request, concluding that the Manufacturer failed to demonstrate good cause for failing to file the Answer within the time required. Accordingly, the Manufacturer was not permitted to raise any affirmative defenses at the hearing; the Consumer prevailed on the merits and was awarded a refund.

Bethel v. Mazda Motor of America, 1997-1365/WPB (Fla. NMVAB Mar. 26, 1998).

The Manufacturer was precluded from raising any affirmative defenses set forth in its Answer which was filed five days after the required filing date. The Board found in favor of the Consumer.

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

Bush v. Ford Motor Company, 1997-0233/TPA (Fla. NMVAB Apr. 14, 1997)

The Consumer's complaint was that the transmission was difficult to shift. The Consumer used the vehicle for off-road driving through mud and water two to three feet deep. He did not always clean the vehicle after driving off-road. The Manufacturer contended that the alleged defect was the result of abuse. In support of this contention, the Manufacturer presented evidence that mud, sand, grass and weeds were found in the vehicle's bell housing, which is the location of the slave cylinder. The owner's manual advised that the vehicle should not be driven in mud or water higher than the wheel hubs. The Board inspected the vehicle and observed scratches in the paint and the presence of packed mud in the engine compartment. The Board dismissed the Consumer's claim after concluding the Manufacturer proved its affirmative defense.

Lash v. Crown Coaches & Ford Motor Company, 1997-0054/TPA (Fla. NMVAB Mar. 11, 1997)

The Consumer complained of problems with the brakes. Ford contended that the brake concern was not a malfunction or defect, but a result of the Consumer's lack of maintenance. In support of this contention, Ford showed that the subject vehicle had been operated for more than 53,000 miles and no rear brake maintenance had been performed. The Board found the evidence established that the brake problem was a result of neglect or lack of maintenance by the Consumer and dismissed the case.

Smith v. Ford Motor Company, 1997-0149/PEN (Fla. NMVAB Apr. 25, 1997)

The Consumer complained of an electrical circuitry problem that caused fuses to blow and rendered the vehicle inoperable. The Manufacturer and Consumer stipulated to the first three repair attempts and the final repair attempt. At the final repair attempt, the connector and canister purge solenoid were replaced and the wires were soldered and heat shrunk. The Consumer testified that the problem continued to exist. The Manufacturer contended that the defect was cured prior to or at the final repair attempt. The Manufacturer also contended that when the vehicle was presented for repair in August 1996, electrical tape was wrapped around the wires to prevent further chafing against the power steering bracket and that when the vehicle was brought back for the final repair attempt "somebody" had unwrapped the tape from the wires. The Manufacturer did acknowledge that the electrical tape could have become undone on its own. The Manufacturer further argued that had the August 1996 repair remained intact and the fuses continued to blow, the Manufacturer would have looked for additional causes. Consequently, according to the Manufacturer, while the original electrical problem was cured, a reasonable number of repairs had not been afforded for any additional causes of the electrical problem. The Board concluded there was no evidence to support the Manufacturer's argument. The Consumer received a refund.

Mayoral-Parracia v. General Motors Corporation, Oldsmobile Motor Division, 1997-0909/MIA (Fla. NMVAB Oct. 10, 1997)

At the hearing, the Manufacturer sought to raise the affirmative defense that the defects complained of by the Consumer did not substantially impair the use, value or safety of the vehicle, even though this defense was not raised in its Answer or Amended Answer. The only defense raised was that the defect was the result of an accident. The Board denied the Manufacturer's request to amend its Answer because it was not timely presented, concluding that it would be unfair to the Consumer to allow this defense without proper notice. Accordingly, the Manufacturer was limited to the "accident" defense. The Manufacturer presented the testimony of both the former and present service managers of the authorized service agent, both of whom testified that the defects were not caused by the accident and were covered as warranty repair items. The Board concluded that the Manufacturer failed to prove its affirmative defense, and declared the vehicle to be a "lemon."

Abu-Attaya v. Toyota Motor Sales U.S.A., 1997-1327/FTL (Fla. NMVAB Feb. 2, 1998)

The Consumer complained that his vehicle pulled to the right when accelerating or braking. He also stated that he never had the tires rotated as he was not aware that the Manufacturer's owner's manual recommended such rotation on a regular basis, and that he had never read the manual. The Manufacturer asserted the defense of abuse and neglect because the tires had not been rotated in 28,000 miles of operation. The Board denied the Consumer's claim for relief concluding the Consumer's failure to properly maintain the vehicle in accordance with the owner's manual constituted abuse and neglect which are expressly excluded from the statutory definition of "nonconformity."

Matthews v Ford Motor Company, 1997-1002/JAX (Fla. NMVAB Nov. 19, 1997)

The Consumers leased a 1997 Ford E-150 Cargo van. The Consumers complained that the vehicle would intermittently shut off while in operation and would not re-start. The Manufacturer claimed the Consumers had made unauthorized modifications to the vehicle by having an alarm package installed on the van that was not manufactured or warranted by Ford. The alarm the Consumers had placed on the vehicle was one that disabled the van in the event of theft and kept it from starting. The wrongful installation of the alarm had damaged the power control module (PCM) in the van and was sending the signal to disable the van at the wrong times. Ford contended that this unauthorized modification had voided the Consumers' warranty. The Consumers testified that the alarm package had been installed on the van as part of the negotiated lease at the direction and under the authorization of the dealership. The Consumers provided proof that the dealership paid for the installation of the alarm. The Consumers further pointed out that all of the repairs for the van shutting off had been paid for by Ford under the warranty. The Board found that the alarm package installation was authorized by Ford's authorized service agent. The Consumer prevailed and was awarded a refund.

Bean v. Mitsubishi Motor Sales of America, Inc., 1997-1162/STP (Fla. NMVAB Dec. 11, 1997).

The Consumer's electric door locks intermittently malfunctioned. The Manufacturer contended that the nonconformity was the result of the vehicle being vandalized. The contention was rejected on the basis that the vandalism damage occurred four months prior to the first occurrence of the problem, and the Manufacturer presented no evidence to prove that the vandalism caused the door locks to malfunction. The Manufacturer also argued that it was denied a final repair attempt because the defect notice failed to list the door locks. This argument was also rejected, because the evidence showed that the door locks were subjected to repair during the final repair attempt. The Consumer was awarded a refund.

Perez v. Toyota Motor Sales, U.S.A., 1997-0851/TPA (Fla. NMVAB Nov. 13, 1997)

The Consumer complained of a water leak in his pickup truck. At the conclusion of the evidentiary portion of the hearing, the Board decided that a water test of the vehicle was necessary. The hearing was continued, and the water test was scheduled at a local Toyota dealer for a future date. Following the water test, the Board returned to the hearing site and conducted deliberations. The Consumer had purchased and installed an aftermarket stereo system in the vehicle which included speakers in the doors. The Manufacturer presented testimony that seals inside the vehicle's doors had been cut by the stereo installer, causing water to leak onto the floor of the vehicle. The Board concluded that the Manufacturer had proved its defense of alteration by persons other than the Manufacturer or its authorized service agent. The case was dismissed.

Fassi v. General Motors Corp., Chevrolet Motor Division, 1997-0718/ORL (Fla. NMVAB Aug. 27, 1997)

The Consumers complained of brake problems and failure of the air conditioner to cool. The Manufacturer representative testified that the a/c was incorrectly installed without a secondary cooling fan, resulting in insufficient air flow. The Board found that the a/c was installed by or at the direction of

Don Mealey Chevrolet, the Manufacturer's authorized service agent. The Board found that only those alterations or modifications by persons other than the Manufacturer or its authorized service agent were excluded from the statutory definition of nonconformity. A refund was awarded on the basis that the a/c and brake problems were nonconformities.

MULTIPLE MANUFACTURERS:

Benitez v. Ford Motor Company and Winnebago Industries, Inc., 1997-1150/MIA (Fla. NMVAB Jan. 12, 1998)

The Consumer complained that the vehicle was overweight, causing a vibration. The maximum weight recommended by Ford, the chassis Manufacturer, was 11,500 pounds, fully loaded. After modifications performed by Winnebago, including the replacement of the Ford drive shaft with a non-Ford drive shaft, the vehicle was approximately 1,000 pounds overweight when loaded. The Board found that the vibration complained of by the Consumer was as a result of increased weight caused by Winnebago's modifications to the chassis and drive shaft, which was contrary to Ford's instructions regarding the gross vehicle weight and as such was excluded from Ford's warranty. Ford was dismissed as a party and the Consumer was granted a refund against Winnebago.

Brown v Fleetwood Motor Homes and Ford Motor Company, 1997-0921/JAX (Fla. NMVAB Dec. 15, 1997).

The Consumers complained of various problems with their vehicle. The Board found that none of the problems complained of were covered under the warranty given by Fleetwood and Fleetwood was dismissed as a party. Ford contended that it had not been afforded a reasonable number of repair attempts, because the Consumers had sent the Motor Vehicle Defect Notice after the vehicle had been out of service for repair for only 14 days and not 15 as set forth in the statute. The Board found this argument to be persuasive and the case was dismissed.

Hahnlein v. Monaco Coach Corporation, 1997-0887/ORL (Fla. NMVAB Oct. 16, 1997)

The Consumers complained that the slide-out room of their recreation vehicle "teeter tottered" when extracted to enlarge the living facility. The Board concluded that the Consumers' complaint related solely to the vehicle's living facilities and dismissed the Consumers' claim, finding that "the specific intent of the Lemon Law is to cover those mechanical or structural nonconformities in recreational vehicles which are similar to those that might occur in other motor vehicles, and not those defects which fall solely within the statute's express exclusion of living facilities."

Michalec v. Holiday Rambler Corporation and Ford Motor Company, 1997-0988/TPA (Fla. NMVAB Feb. 13, 1998)

The Board concluded that the Consumers were not entitled to relief for their complaint of misalignment of the slide-out room of their recreational vehicle, because it related to the vehicle's living facilities and was expressly excluded from the statutory definition of "motor vehicle." In addition, the Board, as a preliminary matter, excluded from consideration complaints with the 110 volt electrical

system; roof air conditioner(s); and numerous fresh water line leaks because they related to the vehicle's living facilities.

Martland v. Fleetwood Motor Homes & Ford Motor Co., 1997-1144/WPB (Fla. NMVAB Feb. 25, 1998).

This case involved multiple problems with a recreational vehicle. Roof fungus and electrical problems were found not to be substantial impairments. A "pull" or brake vibration condition was found to be a nonconformity, but one which was cured at the final repair attempt. A complaint of "sewage fumes" from the toilet was found to relate solely to the living facilities of the vehicle. The case was dismissed.

Smith v. Coachmen Industries, Inc., Spartan Motors, Inc., Allison Transmission & Cummins Engine Co.,1997-0098/ORL (Fla. NMVAB May 8, 1997)

The Consumers complained of water damage (submersion) to the chassis which occurred prior to the Consumers' purchase of the vehicle, resulting in problems with the ABS dash light and rear end components. By a prehearing order, Allison Transmission and Cummins Engine were dismissed. Both remaining Manufacturers, Coachmen and Spartan, contended that the defect was not covered under either of their warranties. The Board found the vehicle to be a "lemon" and held both Manufacturers responsible for the repurchase of the vehicle.

REFUND: §681.104(2), F.S. (1995)

Metzger v. Ford Motor Company, 1997-0663/TPA (Fla. NMVAB Aug. 12, 1997)

After declaring the Consumer's vehicle to be a "Lemon" the Board calculated the refund and determined that after the Consumer combined the loan on the subject vehicle with the lien that existed on the trade-in vehicle, 56.5 percent of the Consumer's total indebtedness was attributable to the new vehicle. Accordingly, the Consumer was responsible for paying off 43.5 percent of the balance of the loan in order for the Manufacturer to receive a clear title to the vehicle.

Gray v. General Motors Corporation, Oldsmobile Motor Division, 1997-0839/TPA (Fla. NMVAB Oct. 9, 1997)

The Consumers prevailed on the merits of the case and were awarded a refund which included earned credit from their General Motors credit card. The Manufacturer urged the Board not to award the earned credit because it was like a "rebate" had no cash value. The Board rejected this contention.

Wills v. Ford Motor Company, 1997-1309/ORL (Fla. NMVAB Feb. 9, 1998)

Ford did not present evidence to refute that the vehicle was a Lemon due to a vibration when braking. During the refund calculation, the Consumers presented evidence that they contributed as a down payment a $2,500 "Owner Appreciation Certificate." The Manufacturer argued that the certificate was like a rebate and was not money paid by the Consumers at the time the vehicle was

acquired; therefore, the Consumers should not be reimbursed for the certificate. The Board concluded that the owner appreciation certificate was distinguishable from a rebate, because the certificate was personal to the Consumers and not available to the general public as a rebate. The Consumers were awarded the amount of the certificate (which was reduced by a negative trade-in equity) as a portion of their refund.

Robinson v. Ford Motor Company, 1997-0860/ORL (Fla. NMVAB Oct. 8, 1997)

The Consumer prevailed on the merits and the Board awarded a refund which included a $5,000.00 Owner Appreciation Certificate. The Manufacturer argued that the Consumer was not entitled to be reimbursed for the Certificate**.** The purchase transaction also reflected a trade-in vehicle with a negative equity, the amount of which was deducted from the refund.

D & H Insurance Associates v. Audi of America, Inc., 1997-0955/ORL (Fla. NMVAB Dec. 10, 1997).

The Consumers' vehicle was declared a Lemon due to air conditioner failure. They had initially paid for the vehicle with several credit cards. A few weeks later, they "refinanced" with a bank loan. The Board determined that the Consumers were entitled to reimbursement for the monthly payments made to the bank.

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

Mehalick v. Mitsubishi Motor Sales of America, Inc., No. 1997-0977/ORL (Fla. NMVAB Jan. 22, 1998).

The Manufacturer stipulated that the Consumer was entitled to a refund for a pull to the right and vibration. The Manufacturer's sole contention was that the vehicle's paint was damaged, and the Consumer should be required to repair the damage prior to the Manufacturer's repurchase of the vehicle; alternatively, the Manufacturer asked the Board to reduce the Consumer's refund by the amount required to repair the paint. The Board concluded that it had no authority under Chapter 681 to grant either request with regard to the paint damage. The parties did agree that some outstanding late charges should be deducted from the amount of the refund.

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

Granja v. BMW of North America, Inc., 1997-0935/MIA (Fla. NMVAB Oct. 15, 1997)

The Consumers complained that, intermittently, the vehicle's engine would not start, and had to be towed to the dealer several times. This engine problem caused the Consumers to be stranded several times with their young children. Because of this, the Consumers did not drive the subject vehicle and utilized a rental vehicle. The Consumers prevailed on the merits and sought reimbursement of the rental car charges, including charges that would be incurred until compliance with the Board's decision by the Manufacturer, or in the alternative, that the Manufacturer provide them with a loaner vehicle until compliance. The Board awarded the Consumers the rental charges incurred as of the date

of the hearing and concluded they were entitled to continuing rental car charges through the date of repurchase or until the Manufacturer provided a suitable loaner vehicle. The Board established maximum daily and weekly rental car charges that the Manufacturer would have to pay.

Anmuth v. Nissan Motor Corporation U.S.A., 1997-1389/MIA (Fla. NMVAB Feb. 25, 1998)

The Board determined that the Consumer's Infiniti was a "Lemon" because a water leak from the sunroof caused a foul odor and created the growth of certain environmental molds. The Consumer, a psychotherapist, claimed that the leak and resulting growth caused her to contract chronic allergic conjunctivitis. The Consumer sought reimbursement for lost fees in the amount of $14,400.00, lost corporate consulting fees of $3,750.00, time lost due to visits to her doctor in the amount of $3,915.00; $584.00 for medical co-payments, and $271.23 for medicine. The Board denied these charges as not being within the definition of incidental charges.

Furet v. Land Rover of North America, Inc., 1997-0255/WPB, (Fla. NMVAB May 13, 1997)

The Manufacturer stipulated to the nonconformity and repair dates. The issues which were contested were the requests for incidental charges. The Board denied the Consumer's request for repairs from vandalism and related charges as not being directly caused by the nonconformity. The Board denied the Consumer's request for reimbursement for food and airline tickets resulting from an extended vacation as not being reasonable costs and also based upon the fact that the Consumer had already received reimbursement from the Manufacturer as a "trip interruption fee." This reimbursement more than sufficiently compensated the Consumer for any charges which might have been deemed to be reasonable by the Board.

MISCELLANEOUS PROCEDURAL ISSUES:

Burr v Chrysler Corporation, 1997-1025/JAX (Fla. NMVAB Mar. 9, 1998)

The Consumer failed to respond to repeated attempts by the Manufacturer and the Board Administrator to contact her regarding her case. The case was set for hearing and the Consumer failed to appear. The case was dismissed. Consumer did not contact the Board Administrator within one business day to request that the dismissal be set aside.

Nefzger v. Mazda Motor of America, 1997-0499/JAX (Fla. NMVAB July 9, 1997)

The Consumer filed her Request for Arbitration on April 15, 1997, one week prior to the final repair attempt being undertaken on her vehicle. The Manufacturer moved to dismiss her case on the grounds that the Consumer had failed to allow the Manufacturer a reasonable number of attempts to fix the vehicle before the Consumer requested arbitration. The Board found this argument to be persuasive and dismissed the case.

Benkovskiy v. Toyota Motor Sales U.S.A., 1997-0683/FTL (Fla. NMVAB July 24, 1997).

At the hearing, the Manufacturer requested a continuance to perform a prehearing inspection.

The Board denied the request because the Manufacturer did not contact the Consumer until Wednesday to perform a Friday inspection. The Consumer could not be available with only two days notice and the Manufacturer made no further effort at that time to set up an alternative date or time for the inspection. The Board found that this behavior was contrary to the intent of the provision permitting a prehearing inspection which requires that a good faith attempt be made to agree to a time and location for the inspection.

Riner v. Ford Motor Company, 1997-0572/TPA (Fla. NMVAB Aug. 25, 1997)

The Board did not permit Consumer witnesses to testify because they were not timely listed as witnesses on the Prehearing Information Sheet.

Kanagie v. Chrysler Corporation, 1997-0974/ORL (Fla. NMVAB Nov. 6, 1997)

A Board Member advised the Board Administrator just prior to the hearing that he was acquainted with the Manufacturer's witness. The parties were advised of the acquaintance and were advised of the Board's disqualification rule which states that at any time prior to the Board's issuance of a final decision, a "party may move to disqualify any member of the Board assigned to hear the case based on alleged bias, prejudice, or interest." The parties elected to proceed with the hearing and did not thereafter move to disqualify any member of the Board. The Consumer's claim was dismissed, the Board finding no nonconformity.

Heeke v. Ford Motor Company, 1997-1219/ORL (Fla. NMVAB Feb. 10, 1998)

The Consumer complained of several problems with the vehicle. Her husband, an attorney, filed a Notice of Appearance that he would represent her at the hearing. Just prior to the scheduled hearing, the Consumer notified the Board Administrator that her husband was no longer representing her and she requested a continuance. The continuance was granted and the case was rescheduled. The Consumer's (estranged) husband appeared at the hearing, advised that he was again representing the Consumer, and requested a continuance on the grounds that he needed time to prepare for the hearing. The Board concluded that, due to the husband's previous involvement in the case, lack of preparedness did not constitute good cause, and the continuance was denied. The husband also requested that he be allowed to testify as a witness. The Board concluded that Rule 4-3.7, Rules Regulating the Florida Bar, prohibited him from testifying while acting as the Consumer's attorney. The Board concluded that the Consumer failed to carry her burden of proving that any of the problems constituted nonconformities. The case was dismissed.

Carey v. Ford Motor Company, 1997-0620/FTM (Fla. NMVAB Nov. 10, 1997)

The Consumers' complaint was a humming or whining noise when the vehicle was driven at speeds less than 40 miles per hour. At the outset of the hearing, an attorney admitted to practice only in the State of New York requested permission to represent the Consumers before the Board. The Board denied the request because the attorney was not a member of the Florida Bar and had not filed the appropriate motion to appear. The Consumers lost the case on the merits.

Melchiorre v. Toyota Motor Sales U.S.A., 1997-0781/FTM (Fla. NMVAB Sept. 9, 1997)

The Manufacturer failed to file an Answer or Prehearing Information Sheet, nor were such pleadings proffered at the hearing. The Board concluded that the Manufacturer would not be permitted to present any affirmative defenses or the testimony of any witnesses at the hearing because of their failure to file such pleadings within the time required by the applicable rules. The Board cited the rule language on the Answer and Prehearing Information Sheet forms. The Consumer prevailed on a "wheel wobble" complaint.

Patterson v. Chrysler Corporation, 1997-0676/MIA (Fla. NMVAB July 24, 1997)

The Consumer requested a continuance at the hearing to enable him to receive a copy of the Manufacturer's prehearing inspection report, citing paragraphs 13 and 14 of "Hearings Before the Florida New Motor Vehicle Arbitration Board," which provides in part, that "[t]he information gathered as a result of the prehearing inspection will be provided to the Consumer as soon as it is available, but no later than *7 business days* before the hearing." The Manufacturer did not object to the continuance and stated that such information would be provided to the Consumer when it became available; however, the Board denied the request for continuance. The Board dismissed the Consumer's claim, concluding that he was not qualified for Lemon Law relief for a transmission complaint, because the Manufacturer had not been afforded a reasonable opportunity to conform the vehicle to the warranty.

Brown v. Ford Motor Company, 1997-1136/FTL (Fla. NMVAB Dec. 12, 1997)

The Consumer did not appear at the hearing and was declared in default. The Consumer filed a request to set aside the default within one business day of the hearing. A telephone hearing was held on the Consumer's request, at which time the Consumer stated that he failed to appear at the hearing because he misplaced the Notice of Hearing, and he had a traffic violation appearance scheduled for another date and time, which he confused with this hearing. The request to set aside the dismissal was denied because the Consumer failed to demonstrate an "unforeseen circumstance" as required in paragraph (34), "Hearing Before the Florida New Motor Vehicle Arbitration Board."

OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

QUARTERLY CASE SUMMARIES

April 1998 - June 1998 (2nd Quarter)

JURISDICTION

Tosti v. Ford Motor Company, 1998-0212/ORL (Fla. NMVAB June 8, 1998)

The Board held a hearing to determine if the Consumer's second Request for Arbitration should be granted. The Board dismissed the first case, dealing with complaints of intermittent illumination of the overdrive light and a transmission leak, because the problems were cured. The Consumer complained that the overdrive light had illuminated on one occasion since the first hearing, and that the transmission was currently making a ringing or hissing noise, which she acknowledged to be a new problem. The Manufacturer requested a dismissal because the transmission complaint was *res judicata*, and that the Consumer had failed to show a significant change in circumstances. The Board denied the Consumer's Request for Arbitration, concluding that she failed to demonstrate a significant change in circumstances since the last hearing, pursuant to Paragraph 71, "Hearings Before the Florida New Motor Vehicle Arbitration Board."

Hargarten v. Mitsubishi Motor Sales of America, Inc., 1998-0371/WPB (Fla. NMVAB June 16, 1998)

Prior to the hearing, the Consumer voluntarily surrendered possession and control of the vehicle to the lessor, and discontinued making monthly payments because of its alleged defective condition. The Board looked to Chapter 681.104(2)(a), F.S. (1995), and determined that a Consumer must be able to deliver possession of the vehicle upon compliance by the Manufacturer with the Board's decision. The Board also determined that there is no provision in the Lemon Law that directs or permits a Consumer to cease making payments due to an alleged defective condition. The case was dismissed.

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

Schoneman v. Ford Motor Company, 1998-0069/WPB (Fla. NMVAB April 22, 1998)

The Consumers complained of transmission problems. The Manufacturer argued that the vehicle was not a "motor vehicle" under the statute because its gross vehicle weight exceeded 10,000 pounds. The

evidence and testimony revealed that the registration certificate listed the GVW as 7,600 pounds. The door sticker listed the weight as 9,200 pounds. The Consumers acknowledged having hauled a boat on one occasion; the boat and trailer weighed approximately 1,000 pounds. The Board concluded that the GVW did not exceed 10,000 pounds; therefore, the vehicle was a "motor vehicle" as defined by statute. The Board acknowledged that a transmission noise did exist, but concluded that it was not a nonconformity and dismissed the case.

Miceli v. Ford Motor Company & American Commercial Truck, 1998-0335/FTM (Fla. NMVAB June 1, 1998)

The Consumer's Request for Arbitration indicated the truck's gross vehicle weight was more than 10,000 pounds. The vehicle registration indicated a net weight of 5,083 pounds, and a gross vehicle weight of 10,700 pounds. The basis of the Manufacturer's motion to dismiss was that the subject vehicle was not a "motor vehicle" as defined in the statute, referring to gross vehicle weight. Since GVW is not defined in the Lemon Law Statute, the Board looked to Section 320.01(12(a), Florida Statutes (1995) for the definition; based on this definition, and the vehicle registration, the Board found that the Consumer's vehicle did not constitute a "motor vehicle" within the meaning of the statute. The Case was dismissed.

Ingalls v. Newmar Corporation & Spartan Motors, Inc., 1998-0107/ORL (Fla. NMVAB May 13, 1998)

The Consumers complained that the slide-out room on their recreational vehicle leaked when retracted or extended. The Newmar contended that the case should be dismissed because the claim related to the living facilities of the vehicle, and was precluded from coverage under the Lemon Law. The Board concluded that the complained of problem related solely to the vehicle's living facilities; therefore, the vehicle was not a "motor vehicle." The case was dismissed.

Grantham v. Ford Motor Company, 1998-0354/TPA (Fla. NMVAB June 5, 1998)

The Manufacturer contended the Consumers' pickup truck was not a "motor vehicle" as defined, because it was an "off-road vehicle." During the hearing, the Board observed that the vehicle was equipped with large off-road tires and a skid plate. Relying on the definition of "motor vehicle," the Board concluded that the Consumers' vehicle was not an "off-road vehicle" as contemplated in the definition because the vehicle was designed and licensed for use on normal streets and highways as well as for agricultural purposes. However, the Board concluded that the rattle and bump problem did not constitute a nonconformity and denied relief to the Consumers.

Consumer 681.102(4), F.S.

Curtsinger v. Chrysler Corporation, 1998-0264/ORL (Fla. NMVAB June 8, 1999)

At the outset of the hearing, the Manufacturer requested a continuance because the Consumer's vehicle had been repossessed, it was unable to conduct a prehearing inspection, and needed additional time to contact the lessor to determine vehicle ownership. The Board continued the hearing for good cause; thereafter, reconvened a telephone hearing and made the following findings: the lessor took possession of the vehicle because the Consumer's account was delinquent; the vehicle was located at an auto auction under the direction and control of the lessor; the vehicle was no longer registered to the Consumer; and the Consumer no longer insured the vehicle. The Manufacturer moved for dismissal because the Consumer was no longer a "consumer" as defined under the Lemon Law. The Board concluded that the Consumer did not meet the statutory definition because he relinquished possession and control of the vehicle and was no longer the lessee. The case was dismissed.

Maguhn Construction, Inc. v. Ford Motor Company, 1998-0424/FTM (Fla. NMVAB June 18, 1998)

Counsel for the Manufacturer argued the case should be dismissed because the Consumer was not a "consumer" as defined in the statute, since the purchaser of the vehicle was a corporation and the corporation made the monthly payments. The Board rejected the Manufacturer's request for dismissal on the basis of the statutory definition of "consumer" and Results Real Estate v. Lazy Days R.V. Center, 505 So.2d 587 (Fla.2d DCA 1987); thereafter, the Board found that the wind noise at speeds of 40 miles per hour or greater did substantially impair the use of the vehicle, and that the Manufacturer, after being afforded a reasonable number of attempts to conform the vehicle to its warranty, failed to cure the defect. The Consumer was awarded a refund.

Whether Problem First Reported During the Lemon Law Rights Period 681.103(1), F.S. (1995)

Bryant v. Chrysler Corporation, 1998-0062/TPA (Fla. NMVAB June 2, 1998)

The Consumer complained of transmission failure, air bag warning system, check engine warning light illumination and rear differential problems. The Manufacturer argued that the problems complained of by the Consumer were first reported after the expiration of the Lemon Law rights period. The Board found that Consumer reached 24,000 miles first, and that each problem was reported well over 24,000 miles. A transmission repair was performed at 13, 219 miles, but this was unrelated to the transmission failure about which the Consumer complained. The Board concluded that the problems complained of were first reported after the expiration of the Lemon Law rights period, and therefore, the Consumer

was not entitled to relief.

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

Crouch v. Ford Motor Company, 1997-1337/WPB (Fla. NMVAB April 22, 1998)

The Consumers complained of intermittent brake vibration. On one occasion the brakes "locked" up causing the vehicle to skid. To feel the vibration, the driver had to use heavy pressure on the brake pedal. The vibration occurred most often after the brakes had warmed up. The Manufacturer argued that the brakes were not defective; the Consumers were feeling the Anti-lock Brake System. The Board test drove the vehicle and experienced a slight brake pulsation on hard braking, after the brakes had been sufficiently warmed up. The Board dismissed the case concluding that the problem was so slight as to not rise to a substantial impairment.

Weinstein v. Mercedes-Benz of North America, Inc., 1997-1388/WPB (Fla. NMVAB April 23, 1998)

The Consumer complained that the vehicle intermittently failed to start; the display lights and radio came on, but the vehicle would not "crank." After three repair attempts, the Consumer sent written notification on December 3, 1997, which was received by the Manufacturer on December 4, 1997. The vehicle was presented for final repair on December 1-5, 1997, and a loose connection was repaired. The failure to start problem continued to exist after the final repair attempt. In response to the defect notice, the Manufacturer sent a letter to the Consumer on December 9, 1997, indicating that the vehicle was repaired. The Manufacturer contended that the final repair attempt occurred on December 10, 1997, at which time the vehicle was repaired; the alleged problem was not a nonconformity. The Board concluded that the problem was a nonconformity and that after a final repair attempt on December 1-5, 1997, the nonconformity continued to exist; therefore, the Consumer was entitled to relief.

Gray v. General Motors Corporation, Oldsmobile Motor Division, 1998-0325/PEN (Fla. NMVAB May 4, 1998)

There was no appearance by the Manufacturer. The Consumer complained that his brake pads continually wore out, causing squealing and intermittent brake failure. The Board found that the vehicle was subjected to three repair attempts, plus a final attempt, during which time newly designed brake pads were installed. The brake problem continued to exist after the final repair attempt. The Board concluded that the vehicle was a lemon, and that the Consumer was entitled to a refund, including incidental charges for brake pad replacement.

Destin Supply Company v. General Motors Corporation, Chevrolet Motor Division, 1998-0228/PEN (Fla. NMVAB May 4, 1998)

The Consumer complained of fuel system malfunctions that caused repeated breakdowns of the vehicle. The Manufacturer contended that the alleged nonconformity was a result of abuse of the vehicle by persons other than the Manufacturer or its authorized service agent. It was argued that the vehicle was made for diesel fuel, and during the last repair, gasoline was found in the fuel tank. The Board found that the vehicle was out of service for 35 days; after 15 days out, the Manufacturer was sent the defect notice and conducted an inspection of the vehicle. The Board concluded that the vehicle was a lemon, rejecting the abuse defense, and that the Consumer was entitled to a refund.

McCoy v. Ford Motor Company, 1998-0270/PEN (Fla. NMVAB May 4, 1998)

The Consumers complained of front end vibration at various speeds. The Manufacturer contended that the alleged vibration was repaired, and that if any vibration continued to exist, it was not a nonconformity. The Board inspected and test drove the vehicle and concluded that, although a vibration existed, it did not amount to a nonconformity. The request for relief was denied and the case was dismissed.

REASONABLE NUMBER OF ATTEMPTS 681.104, F.S.

Final Repair Attempt 681.104(1)(a), F.S. (1995); 681.104(3)(a)1., F.S. (1995)

Torres v. American Isuzu Motors, Inc., 1998-0204/MIA (Fla. NMVAB April 10, 1998)

The Consumer complained of the air conditioner intermittently blowing hot air. The Board concluded the problem was a nonconformity and that the requirement that the Manufacturer be giving a final opportunity to repair did not apply because the Manufacturer did not elect to attempt a final repair after receiving notice from the Consumer. A refund was awarded.

Gonzalez v. Mitsubishi Motor Sales of America, Inc., 1998-0085/MIA (Fla. NMVAB April 24, 1998)

The Consumers complained of intermittent transmission problems. The Manufacturer argued that there was no nonconformity; the transmission had been repaired and was operating within Manufacturer specifications. The Board found that the problem complained of was a nonconformity; the vehicle was presented for final repair, and the Manufacturer failed to perform the repairs within 10 days; therefore,

the requirement that the Manufacturer be given a final repair attempt did not apply. The Consumers were entitled to relief.

Thies v. Ford Motor Company, 1998-0230/WPB (Fla. NMVAB April 29, 1998)

The Consumers complained of a water leak, transmission slipping, and rear windshield wiper not functioning. The Manufacturer contended that the windshield wiper and transmission problems were not submitted for a sufficient number of repair attempts and that any remaining water leak was not a substantial impairment. The Board found that the water leak was subject to at least three repair attempts, plus the final repair attempt, and that the leak was cured on or before the final repair attempt. The Board also found that the other two problems complained of were subjected to only two repair attempts; therefore, the Manufacturer did not have a reasonable number of attempts to conform the vehicle to its warranty. The Consumers were not entitled to relief.

Romero v. General Motors Corporation, Pontiac Motor Division, 1998-0163/MIA (Fla. NMVAB May 20, 1998)

The Consumer complained of the power windows making a loud noise while being raised or lowered. The Manufacturer contended that the Request for Arbitration was untimely because the Manufacturer was not afforded a final repair opportunity since the Consumer refused or failed to claim the Manufacturer's letter sent in response to the defect notice; and that the request was filed in bad faith because the information regarding three repair attempts on the defect notice was false, because the Consumer did not meet the presumption. The Board found that the problem was a nonconformity and was subjected to three repair attempts; the Consumer sent a defect notice with the address of his mother (he was caring for her during an illness), which was different than his address; that both the Consumer and Manufacturer participated in an informal dispute procedure, and pursuant to an Interim Repair Decision, both parties participated in a repair attempt; this repair attempt was the final repair attempt, because the Manufacturer had adequate notice and an opportunity to cure; and the complained of problem continued to exist after the final repair attempt. The Board rejected the Manufacturer's bad faith defense because the evidence was clear that the Consumer's vehicle had been subjected to three repair attempts at the time of notification. The Consumer was entitled to relief.

Aybar v. Kia Motors America, Inc., 1998-0254/MIA (Fla. NMVAB June 1, 1998)

The Consumer complained of intermittent engine stalling. The Manufacturer contended there was no nonconformity. The Board found that the stalling problem was a nonconformity. After at least three repair attempts, a defect notice was sent to the Manufacturer, and the Manufacturer set up a final repair date at a particular authorized service agent. On the final repair date, the vehicle stalled and was towed

to another authorized agent pursuant to an arrangement between the towing company and the Manufacturer. The Manufacturer had actual knowledge that the vehicle was at an authorized agent other than the one to which the Consumer was directed; therefore, the Manufacturer was provided with a final repair opportunity, and did not utilize the opportunity. The nonconformity continued to exist and the Consumer was granted relief.

Conners v. Toyota Motor Sales, U.S.A., 1998-0401/FTL (Fla. NMVAB June 5, 1998)

After receiving the defect notice, the Manufacturer contacted the Consumer on two separate occasions, each time being told that the Consumer was out of the country, and would be back in a week. A letter was sent to the Manufacturer, with a copy of the defect notice, advising that upon the return of the Consumer, she would take the vehicle to a certain dealership for the final repair, as requested by the Manufacturer. Upon the Consumer's return, she did not contact the Manufacturer; rather, she took the vehicle to another dealership for the final repair attempt, unbeknownst to the Manufacturer. Subsequent thereto, the Manufacturer contacted the Consumer in an attempt to set up the final repair attempt. The Consumer refused, saying she had already submitted the vehicle for a final repair attempt. The final repair attempt was never rescheduled. The Manufacturer contended that it was never afforded a final repair opportunity. The Board determined that, under these circumstances, the Manufacturer was denied its final repair opportunity; therefore, the case was dismissed.

Written Notification to the Manufacturer 681.104(1)(a)&(b), F.S. (1995)

Hasler v. General Motors Corporation, Oldsmobile Division, 1998-0359/ORL (Fla. NMVAB June 5, 1998)

The Consumers complained of wind noise around the driver's door; a crunching noise in the right side sliding door; and a failure to replace a wiring harness soaked with oil. The Manufacturer stipulated to three repair attempts, but contended that the case should be dismissed, because the Consumers failed to provide them with notice for a final repair opportunity. The Board found that the Consumers returned customer satisfaction surveys indicating their dissatisfaction with the vehicle, and that the authorized service agents had contacted the Manufacturer on their behalf during several repair visits; however, no written notice was provided to the Manufacturer. The Board concluded that the customer satisfaction surveys and telephone calls did not put the Manufacturer on notice; therefore, the Manufacturer was not afforded a reasonable opportunity to conform the vehicle to the warranty. The case was dismissed.

Pollicina v. BMW of North America, Inc., 1998-0338/STP (Fla. NMVAB June 23, 1998)

The Consumers complained that their vehicle's engine ran rough and was noisy, and the steering wheel made a noise when turned. The Board found that the vehicle was out of service for a total of 34 cumulative days. After 15 days out, the Consumers sent notice to the Manufacturer in the form of a letter, which advised the Manufacturer that the vehicle was a "lemon," and contained repair orders documenting repairs performed and the time the vehicle was at the authorized repair facility. The vehicle was subjected to repair following this notice. The Manufacturer contended, among other issues, that the letter from the Consumers was not proper notice because it was mailed to the regional office rather than to the New Jersey address which appears in the Consumers' owner's manual. The Board concluded that the defects or conditions were nonconformities; that the Consumers' letter to the Manufacturer met the notice requirements after 15 days out, and awarded a refund to the Consumers.

MANUFACTURER AFFIRMATIVE DEFENSES

Untimely Filing of the Request for Arbitration 681.109(4), F.S. (1995)

Harvey v. Nissan Motor Corporation U.S.A., 1998-0004/TLH (Fla. NMVAB April 3, 1998)

The Consumer complained that her vehicle was out of service for 32 days for a multitude of problems. The Consumer sent a defect notice to the Manufacturer after 15 days out of service; thereafter, the authorized agent inspected and attempted to repair the vehicle. The Manufacturer contended that the Request for Arbitration was untimely filed. The Board found that the multiple defects and conditions constituted nonconformities; and that after a reasonable number of attempts to repair, the nonconformities were not cured. The Board concluded that the nonconformities, which were first reported but not cured by the expiration of the Lemon Law Rights Period, continued to be subjected to repair after the expiration of the Lemon Law rights period, and after applying an extension, concluded that the consumer's request was timely filed within six months of the expiration of the Lemon Law rights period. Relief was granted.

Johnson v. Mercedes-Benz of North America, Inc., 1998-0412/WPB (Fla. NMVAB June 19, 1998)

The Consumer complained of multiple electrical problems. The Manufacturer asserted that the Request for Arbitration was untimely, and there was no substantial impairment. The Board concluded that the electrical problems substantially impaired the value and safety of the vehicle; that the electrical problems were first reported during the Lemon Law Rights Period, but were not cured. An extension of the rights period was granted; the Board held that the request was timely filed within six months after the expiration of this period, and awarded a refund to the Consumer.

MULTIPLE MANUFACTURERS

Bastow v. Chrysler Corporation & Mark III Industries, Inc., 1998-0168/STP (Fla. NMVAB May 8, 1998)

The Consumers complained of an inoperable rear air conditioner in their conversion van. In addition to Chrysler's warranty, the Consumers received a warranty from Mark III which covered "all van conversion items." This warranty also provided that accessory warranties were provided with each new conversion installation, including "Rear Air Systems." The Consumers were not provided with a separate warranty for accessories installed by Mark III. Chrysler asked to be dismissed because the complained of defect was attributable to the conversion work performed and warranted by the converter. Mark III contended that the rear air conditioner unit was warranted by the accessory manufacturer, who supplied it to Mark III for installation in conversion vehicles. Additionally, Mark III argued that the dash air conditioner was sufficient to cool the vehicle; therefore, the defect complained of did not amount to a substantial impairment. The Board concluded that the problem complained of substantially impaired the use and value of the vehicle; the nonconformity was the result of defects in the workmanship performed by the converter in the installation process, and that the converter's warranty covered defects in workmanship related to the conversion. Since conversion related workmanship was not covered under Chrysler's warranty, the Board dismissed the case against Chrysler. The Board found that Mark III had a reasonable number of repair attempts and after receiving notice and attempting a final repair, the nonconformity still existed; therefore, the Consumers were entitled to relief.

Jagdeosingh v. General Motors Corporation, Pontiac-GMC Motor Division & Sherrod Vans, 1998-0311/FTL (Fla. NMVAB June 2, 1998)

The Consumers complained of water leaks, electrical and air conditioner problems in their conversion van which required the vehicle to be out of service for repair for more than 30 days. General Motors asserted that the problems complained of were defects in the conversion work performed by the converter. Sherrod argued that the water leaked in from the doors and was below the converted roof line; therefore, its warranty did not cover that problem. The Board found that the van was out of service for repair of nonconformities for 187 days; both Manufacturers received the requisite defect notice and had the opportunity to inspect or repair. The Board rejected the Manufacturers' assertions, that each was not the responsible party, on the basis that the water leaks were the result of defects in components covered by the warranties of both Manufacturers. The Board concluded the vehicle was a lemon and awarded a refund.

REFUND 681.104(2), F.S.

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

Kelley v. Ford Motor Company, 1998-0266/ORL (Fla. NMVAB May 5, 1998)

The net trade-in allowance as reflected on the lease agreement was not acceptable to the Manufacturer. In accordance with Section 681.102(19), Florida Statutes (1997), the Manufacturer provided a copy of the NADA Official Used Car Guide (Southeastern Edition) in effect at the time of the trade-in, which reflected a retail price on the Consumers' trade-in vehicle of $4,450.00. An outstanding lien in the amount of $3,766.11 existed on the trade-in vehicle, resulting in a net trade-in allowance of $683.89. The Board awarded the Consumers a refund, which included $683.89 for the net trade-in allowance.

Holzhauer-Mosher v. Ford Motor Company, 1998-0368/TPA (Corrected Decision Fla. NMVAB May 28, 1998) [On Appeal]

The Manufacturer filed an Amended Answer asserting no defenses and offering to provide the Consumer with a refund. The Manufacturer did not accept the net trade-in allowance as reflected on the purchase contract. The Manufacturer contended that the amount of trade-in allowance to be awarded the Consumer was a negative. According to the Manufacturer, the language in Chapter 681.102(19), which provided that "debt from any other transaction be excluded" related to situations involving balances owed on trade-in vehicles, especially those situations involving negative equity. Counsel for the Manufacturer argued that because the Consumer owed on the trade-in vehicle, and because debt from any other transaction was to be excluded, the trade resulted in a negative equity, and the Consumer, not the Manufacturer was responsible for the negative equity. The Board concluded that the Consumer was entitled to a trade-in allowance which was 100 percent of the retail price of the trade-in vehicle as reflected in the NADA Official Used Car Guide (Southeast Edition) that was in effect at the time of the trade-in. The Manufacturer's argument that the Consumer was not entitled to 100 percent of the retail price of the trade-in was rejected. This decision was overturned on appeal by the circuit court, and is now on appeal to the 2nd District Court of Appeal.

Manganello v. Chrysler Corporation, 1998-0356/TPA (Fla. NMVAB June 23, 1998)

The Board found that the engine knocking noise substantially impaired the value of the vehicle. The net trade-in allowance as reflected on the buyers' order was not acceptable to the Consumers. The parties stipulated that the trade-in vehicle was not listed in the NADA Official Used Car Guide (Southeastern Edition) because of its age (vehicle purchased on January 31, 1998). The Consumers contended that the Board should use the NADA Older Used Car Guide to determine the trade-in value. The Manufacturer asserted that the Board was not authorized to use the NADA Older Used Car Guide.

The Board concluded that it had no statutory authority to look to alternate NADA used car guides; in the absence of the trade-in vehicle being listed in the NADA Official Used Car Guide (Southeastern Edition), the Board must resort to the buyer's order to determine the trade-in allowance. The Board awarded a net trade-in allowance as reflected on the buyer's order.

MISCELLANEOUS PROCEDURAL ISSUES

Himschoot v. Mitsubishi Motor Sales of America, Inc., 1998-0129/FTL (Fla. NMVAB March 31, 1998)

As a preliminary matter, the Board denied the Manufacturer's request to amend its answer to assert the affirmative defense that the alleged nonconformity was the result of abuse or neglect of the automobile by persons other than the Manufacturer or its authorized service agent. Evidence or testimony regarding this defense was disallowed. The Consumer complained of "vibration while braking." The Manufacturer argued that the final repair attempt corrected the brake problem, and that there was no substantial defect because the Consumer did not file his Request for Arbitration until nine months after the final repair attempt. The Board concluded that the brake problem was a nonconformity that was not cured at the final repair attempt and awarded the Consumer a refund including multiple collateral charges.

Stewart v. General Motors Corporation, Pontiac Motor Division, 1998-0194/FTL (NMVAB April 20, 1998)

As a preliminary matter, the Board denied the Manufacturer's request to assert the affirmative defense that the alleged nonconformity was the result of unauthorized modifications or alterations to the automobile by persons other than the Manufacturer or its authorized service agent; this defense was not raised in the Manufacturer's Answer. The Consumer filed with GM's state certified program and was unhappy with the decision denying the claim. The Consumer complained of a T-top rattle. The Manufacturer argued that the problem was not a nonconformity and was corrected at the final repair attempt. The Board concluded the problem was a nonconformity, continued to exist after the final repair attempt, and awarded a refund, including collateral charges for window tinting, and incidental charges.

Blalock v. Ford Motor Company, 1998-0329/TPA (Fla. NMVAB June 4, 1998)

The Consumers failed to appear at the hearing and the case was dismissed. Approximately 30 minutes following the scheduled start time, the Consumers appeared and requested the Board's decision be set aside. The Chairperson conducted a hearing with the Consumers and counsel for the Manufacturer.

The Consumers claimed they were late because of heavy interstate traffic, and not being accustomed to the time required to drive to the hearing location. The traffic was not due to an accident, but to normal "rush hour" congestion and ongoing highway construction. The Manufacturer argued that the Consumers' explanation did not amount to "unforeseeable circumstances," and the dismissal should not be set aside. The Board agreed with the Manufacturer and dismissed the Request for Arbitration with prejudice.

Bryan v. Mazda Motor of America, Inc., 1998-0167/MIA (Fla. NMVAB June 5, 1998)

The Consumer failed to appear at a properly noticed hearing scheduled for 10:00 am. After waiting 30 minutes, the Board declared the Consumer in default. The Consumer contacted the Board Administrator by phone within one business day and claimed that her Notice of Hearing indicated 1:00 pm. The Board Administrator's copy of the notice sent to the Consumer indicated 10:00 am. The Consumer followed up with a letter that indicated she failed to appear because her son had to be taken to the hospital. The Board Chairperson held a telephone hearing to consider the Consumer's request to set aside the default. The Consumer did not appear; rather, she contacted the Board Administrator after the hearing to determine why she was not called for the hearing. The Consumer was advised that the hearing notice, which she acknowledged she received, instructed her to call a specific number to participate in the hearing. The Board found that the Consumer did not provide any evidence of an "unforeseeable circumstance"; denied her request to set aside the default, and dismissed her Request for Arbitration with prejudice.

OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

QUARTERLY CASE SUMMARIES

July 1998 - September 1998 (3rd Quarter)

JURISDICTION:

Wilhoite v. Ford Motor Company, 1999-0698/TPA (Fla. NMVAB September 15, 1998)

The Consumers' initial Request for Arbitration was denied and the case dismissed because they failed to allow the Manufacturer an opportunity to perform a final repair attempt. The Consumers filed a second request which was approved because they demonstrated a significant change in circumstances. The Consumers complained that the vehicle "bottomed out" and "clunked" when driving over bumps or uneven surfaces. The Manufacturer argued that the maximum cargo weight capacity was exceeded when the Consumers and their two children occupied the vehicle. The Board concluded that the "suspension problem" substantially impaired the value and safety of the vehicle. The Manufacturer stipulated that it was afforded a final repair attempt. A recommendation that the tires be replaced was made, but no repairs were performed. Thereafter, the Consumers replaced the tires. The problem continued to exist after the final repair attempt. The Board concluded that the Manufacturer failed to conform the vehicle to the warranty after a reasonable number of repair attempts and granted a refund to the Consumers.

Consumer §681.102(4), F.S. (1995)

Key Buick Company v. Bluebird Body Company, Cummins Engine Company, Inc., Spartan Motors, Inc., and Allison Transmission Company, 1998-0192/JAX (Fla. NMVAB August 23, 1998)

Cummins and Spartan argued that the Consumer was not a "Consumer" under the Lemon Law, notwithstanding the decision reached by the 2nd DCA in *Results Real Estate v. Lazy Days R.V. Center*, 505 So.2d 587 (Fla. 2d DCA 1987). Counsel argued that, even though the third "catch-all phrase" under the definition of "Consumer" applies to any person who can show that they are entitled to enforce the terms of the warranty, the vehicle must still be used primarily for household and personal use, not for commercial and business purposes as it was used by Key Buick. The Board rejected the Manufacturers' contention based on the *Results* decision, concluding that there was nothing in the language of that decision suggesting that the person entitled by the terms of the warranty to enforce the obligations of the warranty must restrict their use of the vehicle to personal, family or household

purposes. Additionally, the Board held there was no evidence to establish that Key Buick was not entitled to enforce the obligations of the Manufacturers' warranties. The Consumer won on the merits and was granted a refund.

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

Wieder v. Cummins Engine Company, Inc., Fleetwood Motor Homes & Spartan Motors, Inc. 1998-0112/WPB (Fla. NMVAB July 14, 1998)

The Manufacturers contended that the Consumers were not qualified for relief because the vehicle was not "sold" in the state of Florida. The Board relied on the definition of "motor vehicle" under Chapter 681, and the definition of "sale" under the Uniform Commercial Code in rendering its decision. The Board found that the Consumers agreed to accept the subject recreational vehicle from Beaudry RV in Tucson, Arizona, but actually took delivery of the vehicle at Fleetwood's main office in Indiana. The Retail Buyers Order was from Beaudry's in Tucson, Arizona, and the original title and tags, plus the odometer statement was from the state of Arizona. The Board concluded that the vehicle was not sold in Florida; therefore, it did not constitute a "motor vehicle" as defined, and the Consumers were not entitled to relief.

Bullock v. Ford Motor Company & Lazy Daze, Inc., 1998-0648/ORL (Fla. NMVAB September 14, 1998)

Upon receipt of Lazy Daze's motion to dismiss, the Board held a telephone hearing to address the Manufacturer's contention that the recreation vehicle was not a "motor vehicle" as defined in the statute, because the vehicle was not sold in Florida. The original owner purchased the recreation vehicle in California, and subsequently sold the vehicle to the Consumer in Florida. The Board looked to the statutory definitions of "consumer" and "motor vehicle," and concluded that, although a subsequent transferee of a motor vehicle stands in the shoes of the original purchaser for purposes of the Lemon Law, the Consumer did not qualify for relief because the original sale had to take place in Florida; therefore, the vehicle did not meet the statutory definition of "motor vehicle" and as such, the Consumer was not a "consumer" as defined in the Statute.

Bowling v. Ford Motor Company, 1998-0503/MIA (Fla. NMVAB July 17, 1998)

The Board rejected the Manufacturer's contention that the Consumer was not entitled to relief because his vehicle was a truck that exceeded 10,000 pounds gross vehicle weight, and was not a "motor vehicle" as defined in the Lemon Law. The Manufacturer argued that, at the final repair attempt, the vehicle weighed 10,220 pounds, including the driver, and that this weight caused the brake

nonconformity. The Consumer had the vehicle weighed at two different weighing facilities after the final repair and the weight with the driver was less than 10,000 pounds. The Board found that the Manufacturer only weighed the vehicle once, and during all previous repair attempts, never indicated that the vehicle exceeded the gross weight or contributed to the nonconformity. The Board rejected the Manufacturer's argument as unsupported by the greater weight of the evidence and granted relief to the Consumer.

Spires v. American Suzuki Motor Corporation, 1998-0579/FTM (Fla. NMVAB August 4, 1998)

The Manufacturer contended that the Board lacked jurisdiction to hear the case because the vehicle was not a "motor vehicle" under the statute, since the Consumer purchased it "used." The Board found that the Consumer's financing documentation indicated that the vehicle was "used," and the title history indicated that the dealer, who sold the vehicle to the Consumer, acquired the vehicle from an auction after it had been initially leased to a Lisa Johnson. The Lemon Law defines "motor vehicle" as a new vehicle. Since the term "new vehicle" was not defined under the Lemon Law, the Board looked to Section 320.60, Florida Statutes (1995), and concluded that Lisa Johnson was the ultimate purchaser under that definition of "motor vehicle," and that the Consumer was a second hand purchaser under the definition of "used motor vehicle" in §320.60; therefore, the vehicle was not a new vehicle, and the case was dismissed.

Tucker v. BMW of North America, Inc., 1998-0590/FTL (Fla. NMVAB August 25, 1998)

The Manufacturer asserted that the case should be dismissed because the Consumer purchased her vehicle as a "used" vehicle, and therefore it was not a "motor vehicle" within the meaning of the statute. Prior to the Consumer's purchase, the vehicle was purchased by the dealership for use as a "commercial loaner" vehicle. When the Consumer purchased it, she dealt with the Used Car manager in the Used Car portion of the dealership. The Consumer asserted that she was told it was a demonstrator vehicle not a used vehicle. However, her purchase document, which was received into evidence by the Board, indicated that the vehicle was being sold as a "used" vehicle. The Board dismissed the case because the vehicle was not a new vehicle; therefore, it did not constitute a "motor vehicle" as defined by the statute.

Warranty §681.102(20), F.S. (1995)

Campos v. Chrysler Corporation, 1998-0635/FTL (Fla. NMVAB August 25, 1998)

The Manufacturer contended that the Consumer's complaint of paint defects was not covered by its warranty because the defects were the result of "acts of God" or "environmental conditions" which

were expressly excluded from coverage. The Manufacturer presented testimony that, on one occasion when the vehicle was in for repairs, it was covered with bird droppings. When a specific area was examined under a magnifying glass, damage from bird droppings was visible in the paint. The Board inspected the vehicle during the hearing and was able to see the paint problems as described by the Consumer; thereafter, the Board concluded that the written warranty expressly excluded defects caused by "acts of God" or "environmental conditions," and that the evidence presented, in conjunction with the inspection, established that the defects were the result of outside forces such as bird droppings or rocks hitting the vehicle, and not by defects in the materials or workmanship of the vehicle. Since the defects complained of were not covered by the warranty, the case was dismissed.

Whether Problem First Reported During the Lemon Law Rights Period §681.103(1), F.S. (1995)

Acuna v. Ford Motor Company, 1998-0563/MIA (Fla. NMVAB August 12, 1998)

The Manufacturer contended that the alleged nonconformity was not first reported during the Lemon Law rights period. The Consumers leased the vehicle on July 11, 1996, and on September 30, 1997, they attained 24,000 miles of operation, before reaching 18 months following delivery. The vehicle was first presented to the Manufacturer's authorized agent for repair of the alleged nonconformity on December 12, 1997. Mr. Acuna testified that he had verbally reported the problem on July 9, 1997, but no written record was made of this complaint. The Board held that Mr. Acuna's claim that he verbally reported the defect within the Lemon Law rights period was not supported by the evidence; consequently, the defect was not first reported during the rights period. The case was dismissed.

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

Chrisan v. Ford Motor Company, 1998-0418/TLH (Fla. NMVAB July 6, 1998)

The Consumer complained that a noxious odor and intermittent smoke entered the cabin of her vehicle through the ventilation of the heating and air conditioning system. The Manufacturer contended that no nonconformity existed; the alleged nonconformity was corrected at the first repair attempt; no final attempt was afforded to the Manufacturer; and the alleged defects did not substantially impair the use, value or safety of the vehicle. The Board concluded that the noxious odor and intermittent smoke were defects or conditions that substantially impaired the use and safety of the vehicle; as such, they constituted nonconformities. The Board found that the vehicle was subjected to repair for the same nonconformities on at least three occasions; thereafter, a final repair was attempted. The Board held that the Consumer met the statutory presumption regarding a reasonable number of attempts and granted relief to the Consumer.

Locke v. Ford Motor Company, 1998-0344/TLH (Fla. NMVAB July 13, 1998)

The Consumer complained of intermittent failure of the electrical system as evidenced by various surges of the vehicle and multiple gauge and lighting problems. The Manufacturer contended that the alleged defect did not substantially impair the use, value or safety of the vehicle. The Board concluded that the problem complained of was a defect or condition that substantially impaired the use and safety of the vehicle and as such, constituted a nonconformity. The Board held that the Consumer met the statutory presumption regarding a reasonable number of attempts to conform the vehicle to the Manufacturer's warranty, and granted relief to the Consumer.

Cadenhead v. Toyota Motor Sales USA, Inc., 1998-0538/PEN (Fla. NMVAB July 17, 1998)

The Consumers complained of a roaring sound in the front end of the vehicle which was most prevalent when it was driven at highway speeds. The Manufacturer contended that this problem did not substantially impair the use, value or safety of the vehicle. The Board test drove the vehicle during the hearing and heard noise and felt a vibration in the front end. The Board concluded that this problem substantially impaired the value of the vehicle and, as such, it constituted a nonconformity for which the Consumers were entitled to relief.

Thomas v. Ford Motor Company, 1998-0507/PEN (Fla. NMVAB July 29, 1998)

The Consumer complained of excessive wind noise emanating from the front of the vehicle and most notable when the vehicle was driven at speeds greater than 68 miles per hour. The Manufacturer contended that this problem was not a nonconformity. During the hearing, the Board inspected and test drove the vehicle, and experienced noise at various speeds. The Board found that the excessive wind noise was a nonconformity and granted relief to the Consumer.

Sheppard v. Ford Motor Company, 1998-0657/TLH (Fla. NMVAB August 31, 1998)

The Consumer complained of severe static and distortion during radio operation causing the radio to be unusable. The Consumer testified that she frequently drove long distances and depended on the radio to operate reliably. The Board rejected the Manufacturer's contention that the problem was not a nonconformity, and awarded the Consumers a refund, because the inoperable radio substantially impaired the value of the vehicle.

Rains v. Toyota Motor Sales USA, Inc., 1998-0520/TLH (Fla. NMVAB July 10, 1998)

The Consumers complained of scratches and swirls in the paint over the entire body of the vehicle**.** The Manufacturer contended that the alleged defect did not amount to a nonconformity. The Board inspected the vehicle during the hearing and observed fine scratches on the vehicle upon extremely close inspection; thereafter, the Board concluded that the problem complained of by the Consumers did not substantially impair the use, value or safety of the vehicle so as to constitute a nonconformity. The case was dismissed.

Diaz v. Ford Motor Company, 1998-0702/MIA (Fla. NMVAB September 9, 1998)

The Consumer complained of a noise in the front end of the vehicle when making turns, which was more noticeable upon first operating the vehicle in the morning. The Manufacturer contended that this alleged defect was not a nonconformity. The Manufacturer asserted that during the prehearing inspection test drive the noise could not be heard. Additionally, during an inspection of the vehicle, no defective parts were discovered, but it appeared that the brake pads and tires were worn and needed to be replaced. The Board concluded that, although the noise existed, it did not constitute a nonconformity. The fact that the Consumer did not file her Request for Arbitration until one year after the Manufacturer received the defect notification, and that no repair attempts were made after the final attempt, were factors that supported the Board's conclusion that the noise problem was not substantial.

REASONABLE NUMBER OF ATTEMPTS §681.104, F.S.

What Constitutes a Repair Attempt §681.104(1)(a), (3)(a)1.:

Wills v. Fleetwood Motor Homes and Spartan Motors, Inc., 1998-0308/FTM (Fla. NMVAB August 3, 1998)

Spartan Motors, Inc., contended that it was not afforded three repair attempts prior to receipt of written notification from the Consumers. The vehicle was presented for repair of rear axle noise on October 3, 1996, and January 20, 1997. The Consumers initially presented the vehicle for repair on March 18, 1996; however, although the problem was mentioned to the authorized service agent, there was no examination or repair**.** On February 26, 1997, the Consumers sent a letter to the Manufacturer advising that the problem was worse, and requesting action by the Manufacturer. By response letter dated March 13, 1997, the Manufacturer advised the Consumers that the noise was normal and within specifications and, therefore, no repair would be undertaken. The Consumers sent another letter and again received the same response. A majority of the Board concluded that the third repair attempt occurred on March 13, 1997, when the Manufacturer declined to conduct further repairs. The Board held that the rear axle noise substantially impaired the use of the vehicle, declared the vehicle a "Lemon" and awarded a refund to the Consumers.

What Constitutes a Reasonable Number of Attempts §681.104:

Toledo v. Chrysler Corporation, 1998-0607/MIA (Fla. NMVAB August 17, 1998)

The Consumer complained of multiple problems, including air noise in the back of the vehicle. The Manufacturer contended that they did not have a reasonable number of attempts to conform the vehicle to the warranty, and that the alleged defects did not constitute nonconformities. During the hearing, the Board agreed to inspect and test drive the vehicle; however, upon inspection, the Board decided it was unsafe to drive the vehicle because of worn tire tread and tire "cupping." The Board concluded that the statute does not define how many attempts are reasonable and that the statue creates a presumption of a reasonable number of attempts if the terms of the presumption are met; however, the Consumer is not required to present evidence to meet the statutory presumption. Based on the evidence presented, the Board held that the Consumer failed to prove the alleged nonconformities had been subjected to repair attempts or days out of service sufficient to establish the Manufacturer was given a reasonable opportunity to conform the vehicle to the warranty. The Board further concluded that the air noise problem did not constitute a nonconformity, but was likely caused by the condition of the vehicle's tires. The Board made no ruling as to whether the other problems complained of constituted nonconformities. The case was dismissed.

Baustert v. Beaver Coaches, Inc., 1998-0409/STP (Fla. NMVAB August 28, 1998)

The Consumers complained of soot and fumes intrusion into their recreation vehicle; broken welds at the rear of the vehicle; and defects in the electrical system. The Board found that the vehicle was presented for repair of the soot and fumes intrusion and electrical problems on two occasions prior to sending notification to the Manufacturer. The broken weld problem was not subjected to repair by the Manufacturer's authorized agent. The Board also found that during the Consumers' "walk-through" of the recreation vehicle after paying for it on July 24, 1997, they noticed dirt on the carpet around the bed/engine cover and requested that it be cleaned as part of the delivery preparation conducted by the selling dealer. The Consumers contended that was the first repair attempt to the soot and fumes intrusion and electrical problems. The Manufacturer contended that they were not afforded a reasonable opportunity to conform the vehicle to the warranty since the pre-delivery inspection did not put the Manufacturer's agent on notice; consequently, the Consumers failed to show three repair attempts prior to sending notification. The Board concluded that the greater weight of the evidence established that the predelivery carpet cleaning did not constitute a repair attempt; therefore, under those circumstances, the Manufacturer was not given a reasonable opportunity to conform the vehicle to the warranty.

Morrow v. General Motors Corporation, Chevrolet Motor Division, 1998-0619/WPB (Fla. NMVAB August 31, 1998)

The Consumers presented their vehicle for repair of an intermittent air conditioner malfunction to the Manufacturer's authorized agent on two occasions prior to sending written notification to the Manufacturer. Thereafter, the vehicle was presented for the final repair attempt, during which the vehicle was inspected, the problem could not be verified and no repairs were performed. The problem continued to exist after the final repair attempt, and the vehicle was again submitted for repair of this problem. The Board concluded that, under those circumstances, the two repair attempts prior to sending notification were sufficient to afford the Manufacturer a reasonable number of attempts to conform the vehicle to the warranty. The Consumers were awarded a refund.

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

Douglas v. Toyota Motor Sales U.S.A., Inc., 1998-0378/TPA (Fla. NMVAB July 2, 1998)

The Consumer complained of intermittent grinding and vibration when she applied the brakes. During the Manufacturer's final repair attempt, the front brake rotors were cut, the front pads were replaced and the rear brakes were cleaned and adjusted. The intermittent grinding and vibration did not occur after the final repair attempt; however, the Consumer complained that she experienced stopping problems for the first time since the final repair attempt. The Board found that the intermittent grinding and vibration problem was cured at the final repair attempt, and since the new problem had not been subjected to repair, it was not properly before the Board. The Manufacturer having conformed the vehicle to warranty after a reasonable number of attempts, the Consumer was not qualified for relief.

Saenz v. Kia Motors America, Inc., 1998-0527/MIA (Fla. NMVAB July 21, 1998)

The Consumer sent a defect notice to the Manufacturer which was received by the Manufacturer on September 2, 1997. By letter dated September 4, 1997, the Manufacturer directed the Consumer to present his vehicle to a specific repair agent at 9:00 a.m. on October 1, 1997. The Consumer took the vehicle to the service agent on September 4, 1997, advising the agent that he was presenting the vehicle for the fourth and final repair attempt under the Lemon Law. The Manufacturer was unaware of this repair attempt, and did not have an opportunity to participate in the repair attempt. The Consumer did not present his vehicle on October 1, 1997, because he felt that the Manufacturer's response was untimely and that the defect was repaired on September 4, 1997. The Manufacturer contended that it was not afforded its statutory final repair attempt. The Board concluded that Manufacturer timely responded to the defect notice and directed the Consumer to a reasonably accessible repair facility and scheduled the appointment within a reasonable time after the Consumer's receipt of the Manufacturer's response. The Consumer's untimely response assumption was not substantiated by the evidence, since

the Consumer was unable to dispute the date the Manufacturer received the notice, although this information would have been readily available. The case was dismissed.

Sergent v. Toyota Motor Sale, U.S.A., Inc., 1998-0640/ORL (Fla. NMVAB September 8, 1998)

The Consumers complained of the air conditioner intermittently blowing hot air. The Manufacturer stipulated that the vehicle was brought in for repair of this problem on four dates. While the vehicle was in for repair on the fourth date, the Consumers sent notice for final repair. The vehicle was returned to the Consumers and, shortly thereafter, the Manufacturer received the defect notice and contacted the Consumers by telephone. The Consumers advised the Manufacturer that the air conditioning was working properly and no repairs were necessary. No final repair attempt was scheduled. Approximately eight months later, the Consumers again experienced the same problem, and filed their Request for Arbitration. The Manufacturer contended that it was not afforded a final repair attempt, because at the time of receipt of the defect notice, the problem had been repaired, and there was no reason to conduct a final repair attempt. The Board concluded that the Manufacturer was not afforded a final opportunity to conform the vehicle to the warranty, denied the request for relief and dismissed the case.

Ortiz & Torres v. Chrysler Corporation, 1998-0681/ORL (Fla. NMVAB September 11, 1998)

The Consumers complained of intermittent brake pulsation and brake noise. The vehicle was presented to the Manufacturer's authorized agent for a final repair attempt. The Board concluded that the nonconformity was cured at the final repair attempt after the brake rotors, pads, rear brake shoes and drums were replaced, and the calipers were cleaned, and "brake quiet" was applied to the brake shoes and pads. The Board denied the Consumers' request for relief and dismissed the case.

Medlock v. Ford Motor Company, 1998-0336/MIA (Fla. NMVAB September 22, 1998)

The Consumers sent written notification to the Ford Dispute Settlement Board, but did not send written notification to Ford Motor Company. The Board agreed with the Manufacturer's contention that it was not provided with the statutorily required written notification and therefore it was denied a final repair opportunity. The Board concluded that the Consumers were not entitled to relief at that time and dismissed the case.

Johnson v. Beaver Coaches, Inc. 1998-0448/WPB (Fla. NMVAB July 14, 1998)

The Consumers took their recreational vehicle to the Manufacturer's authorized service agent for repair of water leaks in the cab on at least three occasions prior to sending written notice to the Manufacturer. The Manufacturer received the notice but failed to respond within 10 days; therefore, the requirement that the Manufacturer be given a final repair attempt did not apply. The Board presumed that a reasonable number of attempts had been undertaken to conform the vehicle to its warranty; the Manufacturer having failed to correct the nonconformity within a reasonable number of attempts, the Consumers were entitled to relief. The Manufacturer did not appear at the hearing and did not timely request that the decision be set aside. The Manufacturer subsequently filed an appeal of the Board's decision, and the parties have since settled.

Goode v. General Motors Corporation, Buick Motor Division, 1998-0462/MIA (July 29, 1998)

The Manufacturer received written notification of a final opportunity to repair the vehicle; thereafter, a letter acknowledging receipt of the notification was timely sent to the Consumer, however, the Consumer was not directed to deliver her vehicle to a repair facility for a final repair attempt. The Board concluded that the requirement that the Manufacturer be given a final attempt to cure the nonconformity did not apply. The Board granted relief on the Consumer's engine nonconformity.

Felsinger v. General Motors Corporation, Pontiac-GMC Division, 1998-0748 (Fla. NMVAB September 18, 1998)

The Consumer complained of excessive oil consumption which resulted in the vehicle's engine being replaced. The Board did not permit the Manufacturer's representative to present any defenses because the Manufacturer's Answer was untimely. The Board found that the Manufacturer timely responded to the defect notification, that the vehicle was presented to the Manufacturer's designated repair facility for the final repair attempt, and the valve seals and engine were replaced. However, the final repair attempt was not completed within the statutorily required 10 days. The Board concluded that the Manufacturer failed to complete the final attempt within 10 days of delivery of the vehicle to the repair facility as required by the statute; therefore, the requirement that the Manufacturer be given a final attempt to cure did not apply. Since the Manufacturer failed to correct the nonconformity within a reasonable number of attempts, the Consumer was awarded relief.

Hayes v. Mitsubishi Motor Sales of America, Inc., 1998-0713/TLH (Fla. NMVAB September 24, 1998)

The Consumers complained of a right rear door malfunction and transmission problem. The Manufacturer contended that the final repair attempt was not concluded for either problem. The Board found that the vehicle was presented to the Manufacturer's designated repair facility for the final repair attempt. No repairs were performed to address the transmission problem, and the Consumers refused to allow the Manufacturer to keep the vehicle overnight so that the appropriate parts to repair the door could be received and installed the next day; moreover, the Consumers did not return the vehicle the next day for the needed repairs. The Board concluded that both problems were nonconformities, because they substantially impaired the value of the vehicle, that the Consumers failed to give the Manufacturer a final opportunity to correct the door nonconformity; however, the Consumers gave the Manufacturer a final opportunity to repair the transmission, the Manufacturer did not do so, and having failed to correct this nonconformity after a reasonable number of attempts, the Consumers were entitled to relief.

Opportunity to Inspect or Repair After Notice §681.104(1)(b); §681.104(3)(a)2.:

Liikala v. Acme Radiator & Air Conditioning, Inc. and Beaver Coaches, Inc. 1998-0262/ORL (Fla. NMVAB July 14, 1998)

One of Beaver Coaches, Inc.'s contentions was that it was denied the opportunity to conduct repairs of the water leak in the slide-out of the recreation vehicle following receipt of written notice from the Consumers. At the time the Manufacturer received the notice, a pending offer to repair the vehicle, either in Oregon or in Florida when the slide-out rack became available, was already on the table due to previous communications between the Manufacturer and the Consumers. The Manufacturer argued that the Consumers were obligated to allow the repairs. The Board concluded that the water leak in the slide-out did not solely relate to the living facilities of the recreation vehicle and that this problem was a nonconformity; moreover, the vehicle was out of service for repair of nonconformities for 35 days, and the Consumers mailed the required notice to the Manufacturer after 15 or more days. The Board also concluded that the Manufacturer's offer to perform repairs in Oregon or at an undeterminable date in the future in Florida was unreasonable and not contemplated by the statute; furthermore, the offer to repair was not renewed following receipt of the written notice. The Board presumed that a reasonable number of attempts had been undertaken to conform the vehicle to warranty, and since the vehicle was out of service for repair of nonconformities for 35 days, the Consumers were entitled to relief.

Days Out of Service §681.104(1)(b), (3)(a)2.:

Dawes v. Toyota Motor Sale, U.S.A., Inc., 1998-0420/TPA (Fla. NMVAB July 2, 1998)

The Manufacturer contended that the Consumers' vehicle was not out of service by reason of repair of nonconformities for 30 or more cumulative calendar days. The Manufacturer argued that the Consumers had alleged 30 days out of service in their Request for Arbitration, and that a portion of those days were attributable to a United Parcel Service strike which impeded the ability of the authorized service agent to procure necessary parts for the Consumers' vehicle. The vehicle was at the Manufacturer's authorized service agent for eight days during this period. The Manufacturer's witnesses testified that the repairs would normally take two days. Based on the evidence, the Board found that the days out on this repair period were three days for a total of 29 cumulative out-of-service days. The Board concluded that the statute does not define how many attempts are required before it can be concluded that the Manufacturer has had a reasonable number; however, the statue presumes a reasonable number of attempts if the vehicle is out of service for a cumulative total of 30 or more days. The Board held that the Consumers were not required to prove the statutory presumption in order to qualify for relief; that the vehicle was out of service for 29 days, and after 15 days, the Consumers sent the required notification. Since the Manufacturer had a reasonable opportunity to conform the vehicle to the warranty, but failed to do so after a reasonable number of attempts, the Consumers were granted relief.

MANUFACTURER AFFIRMATIVE DEFENSES: §681.104(4)

Baker v. General Motors Corporation, Pontiac-GMC Division, 1998-0611/TLH (Fla. NMVAB August 21, 1998)

The Manufacturer raised three affirmative defenses: the Request for Arbitration was untimely filed; the Request for Arbitration was not filed in good faith; and the alleged defects did not substantially impair the use, value or safety of the vehicle. The Manufacturer's representative presented argument at the hearing, but introduced no evidence to support the defenses raised. The Consumers prevailed on a severe brake vibration nonconformity.

Untimely Filing of the Request for Arbitration §681.109(4)

Barlow v. Holiday Rambler Corporation, 1997-1315/WPB (Fla. NMVAB July 10, 1998)

The Board concluded that the recreation vehicle water leaks constituted a nonconformity under the statute. The Manufacturer contended that the Consumer was not qualified for relief because his Request for Arbitration was not filed within six months after the expiration of his Lemon Law rights

period. Counsel for the Manufacturer argued that the Consumer purchased his vehicle on May 19, 1995, that 18 months from the date of delivery expired on November 18, 1996, that any six-month extension of the rights period expired on May 17, 1997; therefore, the six-month filing period expired on November 16, 1997 and, as a result, the Consumer's Request for Arbitration which was filed on November 17, 1997 was filed one day late. The Board rejected the Manufacturer's determination of the dates, and found that the rights period should be extended six months from November 19, 1996 to May 19, 1997, at which time the period was deemed expired. The Board concluded that the filing date of November 17, 1997, was within six months after the expiration of the rights period; therefore, the Consumer's request was timely filed. The Board granted relief to the Consumer, including multiple collateral and incidental charges.

Felder v. Ford Motor Company, 1998-0516/MIA (Fla. NMVAB August 17, 1998)

The Board rejected the Manufacturer's contention that the Consumer's Request for Arbitration was untimely filed, and that there were three repair attempts during the Lemon Law rights period; therefore, the rights period should not be extended. The Board also rejected the Manufacturer's contentions, as unsupported by the greater weight of evidence, that the problem was not a nonconformity and that it was the result of abuse by the Consumer. The Board concluded that the inoperable audio system substantially impaired the use and value of the vehicle and that a reasonable number of attempts had been undertaken to conform the vehicle to the warranty. The Board held that the Lemon Law rights period initially expired in September 1997, when the vehicle reached 24, 000 miles of operation. The defect was first reported on September 12, 1996, within the rights period; however, the nonconformity was not cured by the expiration of the rights period. Accordingly, the Board applied the statutory extension and extended the rights period to March 1998. Therefore, the request filed by the Consumer on May 11, 1998, was timely filed and relief was granted.

Wolff v. Ford Motor Company, 1998-0392/ORL (Fla. NMVAB July 1, 1998)

The Consumer filed pages one and nine of his Request for Arbitration with the Division of Consumer Services, without any attachments. The Consumer was deemed ineligible for arbitration because the form was incomplete; thereafter, the Consumer submitted a completed form and was deemed potentially eligible. The Manufacturer contended that the case should be dismissed because when the incomplete form was filed, the final repair attempt had not been performed; consequently, the Consumer had not satisfied all preconditions for filing. The Manufacturer also argued that, when the Consumer submitted the completed form, the time for filing had expired. A majority of the Board concluded that, with the statutory extension of the Lemon Law Rights Period, the Consumer's first filing was timely; however, the Consumer was ineligible for arbitration because the final repair attempt had not occurred prior to the date of filing, and the Division could not determine eligibility because the form was incomplete. The Board found that the second filing of the completed form, after the third repair

attempt was performed, was untimely because the time for filing had expired. The case was dismissed.

Wishengrad v. Toyota Motor Sales U.S.A., Inc., 1998-0729/FTL (Fla. NMVAB September 1, 1998)

The Manufacturer contended that the Request for Arbitration was untimely because it was filed more than six months after the expiration of the Lemon Law rights period. In support of its contention, the Manufacturer argued that an extension of the rights period should be granted only when necessary to assist a consumer in acquiring the three repairs required, and since this Consumer had three repair attempts within the rights period, an extension should not be granted because the Consumer was "sitting on her rights." Further, the Manufacturer argued that the Consumer was not entitled to the extension of the rights period because she did not meet the repair attempts presumption within the extended rights period. The Board concluded that the statutory extension is applied only when necessary to allow the Consumer to meet the statutory presumption. If the rights period was extended, the evidence established that the Consumer did not send notification until after the expiration of the extended rights period; consequently, she did not meet all of the elements to raise the statutory presumption prior to the expiration of the extended rights period, and the extension did not apply. Therefore, the Board held that the request was filed more than six months after the expiration of the rights period, and dismissed the case.

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

Russ v. American Suzuki Motor Corporation, 1998-0458/WPB (Fla. NMVAB August 10, 1998)

The Consumers complained of a check engine light that intermittently illuminated. There was no pattern as to what conditions caused the light to illuminate. The Consumers did acknowledge that they installed some after-market items, including fog lights, trailer wiring, and a radio. The Manufacturer contended that the problem complained of was the result of after-market wiring modifications made by the Consumers which caused the check engine light to illuminate. The Manufacturer also contended that the problem was not a nonconformity because it did not substantially impair the use, value or safety of the vehicle; additionally, there was never a need for repairs or replacement of parts as a result of the intermittent illumination of the check engine light. The Board concluded that the check engine light problem was caused by the Consumers' after-market modifications or alterations therefore excluding it from the definition of nonconformity in the statute. The Board also found that even if the problem was not caused by the Consumers' modifications or alterations, it did not substantially impair the use, value or safety of the vehicle. The case was dismissed.

MULTIPLE MANUFACTURERS:

Allen v. Ford Motor Company & Holiday Rambler Corporation, 1998-0126/PEN (Fla. NMVAB July 6, 1998)

The Consumer complained of severe vibration while driving his recreation vehicle at highway speeds. Ford contended that the nonconformity was not warranted by Ford, or alternatively, the alleged defect did not substantially impair the use, value or safety of the vehicle. Holiday Rambler contended that a nonconformity did not exist; it was not allowed sufficient repair attempts, and not provided with a final repair attempt. The Board concluded that the vibration was a defect or condition that substantially impaired the use of the vehicle, thus it constituted a nonconformity. The Board also concluded that both Manufacturers were liable for the nonconformity because the vibration could not be attributable to a specific defect; rather, it was a condition caused by defects in components warranted by both Manufacturers (faulty running gear, including the tag axle). The Board found that a final repair was attempted by Ford; however, since Holiday Rambler did not direct the Consumer to a repair facility, the statutory requirement of a final repair attempt did not apply to Holiday Rambler. The nonconformity continued to exist after Ford's final repair attempt; therefore, it was presumed that a reasonable number of attempts had been undertaken to conform the vehicle to the Manufacturers' warranties. The Board granted relief against both Manufacturers.

Robertson v. Monaco Coach Corporation, Allison Transmission, and Cummins Engine Company, Inc., 1998-0358/JAX (Fla. NMVAB August 12, 1998)

During a prehearing telephone conference, the Board dismissed the case as against Allison Transmission and Cummins Engine Company, Inc., because the Consumers had not alleged any problems or defects pertaining to any components manufactured and warranted by the those Manufacturers. The Board also excluded from consideration complaints regarding the slide-out awning, patio awning, and the slide-out itself as being complaints relating to living facilities which were not covered under the Lemon Law. At the start of the arbitration hearing, the Consumers stipulated that the issues remaining for consideration by the Board were the Consumers' complaints of a windshield water leak, a storage compartment water leak and diesel fumes entering the vehicle. Monaco Coach, the remaining Manufacturer, stipulated to the two water leak complaints, but objected to the Board hearing testimony concerning the diesel fumes problem, because the engine and fuel components were warranted by Cummins Engine Company, Inc., which had been dismissed as a party at the prior prehearing telephone conference. The Board disallowed testimony regarding the diesel fume problem and accepted the parties' stipulations to limit the issues. During the Consumers' testimony, Mr. Robertson testified that the storage compartment leak was cured at the final repair attempt and was no longer a problem. The Board concluded that the windshield water leak was a nonconformity that had been subjected to a reasonable number of repair attempts by Monaco Coach, and since the Manufacturer could not conform the vehicle to its warranty, the Consumers were entitled

to relief.

REFUND §681.104(2), F.S. (1995):

Underwood v. Ford Motor Company, 1998-0363/WPB (Fla. NMVAB July 31, 1998)

The Board declared the vehicle to be a "Lemon" because of a hesitation problem when turning the vehicle as it would come to a stop. The Consumers sought reimbursement of $4,000.00 for Owner's Appreciation Certificates issued to them by the Manufacturer in settlement of a prior claim. The Board declined to award the Consumers the value of the certificates, because they were received by the Consumers as the result of a prior transaction with the Manufacturer.

Baker v. Toyota Motors Sales U.S.A., Inc., 1998-0532/STP (Fla. NMVAB August 19, 1998)

The Board declared the vehicle a "lemon" because of an intermittent vibration felt in the seat and floor when the vehicle was driven at speeds of 52 miles per hour and greater, but lacked sufficient evidence to calculate the refund. The hearing was continued, and following proper notice to the parties, the refund was calculated via telephone conference call. The Board found that the Consumers received an advance of $250.00 from the Manufacturer's authorized representative to allow them to place insurance on the vehicle. A lien of $4,365.26 existed on the trade-in vehicle; both the lien and advance were consolidated with the lease of the subject vehicle. The Manufacturer contended that the refund should be reduced by the amount of the lien and dealer advance, plus 5.18 percent interest on those monies, since that was the interest rate used to calculate the lease payments. The Board awarded a refund of the lease payments less the trade-in lien and dealer advance, and reduced by the statutory offset, but rejected the Manufacturer's request for the interest as not contemplated by the Lemon Law. The Consumers were also awarded collateral charges for an alarm system.

Collateral Charges §681.102(3), F.S.

Wenguer v. General Motors Corporation, Chevrolet Motor Division and Centurion Vehicles, Inc., 1998-0812/FTL (Fla. NMVAB September 22, 1998)

The Consumer sought reimbursement of the amount he paid for a bed liner and trailer hitch for a prior vehicle that he transferred to the subject vehicle. The Board concluded that the vehicle was a "Lemon" because of a vibration and awarded the Consumer a refund; however, the Board denied the request for reimbursement of the bed liner and trailer hitch, because the cost was not incurred as a result of the acquisition of the subject vehicle.

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

Altman v. Mercedes-Benz of North America, Inc.,1998-0604/FTM (Fla. NMVAB August 14, 1998)

The Board determined that the pull to the right problem was a nonconformity, and that the intermittent fuel odor problem substantially impaired the safety of the vehicle. At the final repair attempt, the Manufacturer's authorized agent checked the alignment and found it to be "within specifications." No problems were detected with the fuel system. According to the Consumers, the problems continued to exist after the final repair attempt, necessitating funds spent on an alignment at another Manufacturer's authorized agent. Thereafter, while the Consumers were traveling, the vehicle shut down and could not be restarted. The fuel injection control module was replaced, but the fuel odor was not completely eliminated. The Board awarded the Consumers, as incidental charges, their express mail expense for mailing the vehicle defect notice; cost of repairs for alignment; and hotel and food costs associated with the repair while traveling. The Consumers also requested reimbursement for clerical services in the amount of $181.06. The Manufacturer contended this was not an appropriate incidental charge. The Board awarded reimbursement for $124.46, which was attributable to correspondence and matters related to the arbitration process.

Williams v. D.M. Conversions of Florida, Inc. & Ford Motor Company, 1998-0670/STP (Fla. NMVAB September 2, 1998)

The Board dismissed D.M. Conversion as a party Manufacturer because the intermittent stalling problem was not covered under the conversion warranty. As to Ford, the Board found that the problem complained of was a nonconformity not corrected after a reasonable number of attempts. The Board concluded the vehicle was a "Lemon" and awarded the Consumers a refund, which included $177.00 for registration fees and $821.00 for a sealant and detail package as collateral charges; and $288.90 for a running board repair, necessitated by an accident because of the nonconformity, and $192.29 for a rental vehicle used during the repair, as incidental charges.

Ayan v. Ford Motor Company, 1998-0673/FTL (Fla. NMVAB August 24, 1998)

The Consumer sought, as an incidental charge under the statute, reimbursement of $75.00 for a rental car that he used while his vehicle was undergoing repairs for a problem other than the problem of which he complained. The Board denied this request on the basis that the rental charge was not incurred as a direct result of the nonconformity. The Consumer was granted a refund for an intermittent transmission nonconformity.

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

Reed v. Mitsubishi Motor Sales of America, Inc., 1998-0601/ORL (Fla. NMVAB August 5, 1998)

The Manufacturer stipulated that the "transmission slips and slams into gear" problem was a nonconformity. The sole issue in dispute was the amount of trade-in allowance which should be refunded to the Consumer. The Consumer executed a "customer order" that reflected a cash price of $34,321.00 and a net trade-in of $5,549.00; subsequent thereto, she signed a retail installment contract showing a cash price of $29, 007.65 and a net trade-in allowance of negative $451.00. Both documents reflected a cash down payment of $814.03. The Board agreed with the Manufacturer's contention that the retail installment contract is a more accurate reflection of the purchase transaction, and found that the Consumer contributed a down payment of $814.03 which was reduced by the negative net trade-in allowance of $451.00, resulting in a net down payment of $363.03. The refund was for the net down payment and monthly payments minus the offset.

MISCELLANEOUS PROCEDURAL ISSUES:

Mayes v. Ford Motor Company, 1998-0643/TLH (Fla. NMVAB August 11, 1998)

The Manufacturer did not appear at the hearing and was declared in default. The Board heard the Consumer's case and found the vehicle to be a "Lemon" because the significant water leaking at the driver and passenger doors onto the floor of the vehicle substantially impaired the value of the vehicle; consequently, a refund was awarded.

Young v. American Isuzu Motors, 1998-0581/WPB (Fla. NMVAB September 4, 1998)

The Manufacturer failed to timely file its Answer and was therefore precluded from raising any affirmative defenses. The Manufacturer also failed to timely notify the Board and the Consumer in writing of the witnesses that it intended to present at the hearing and therefore the two witnesses that attended the hearing were not permitted to testify. The Consumer prevailed on brake and clutch nonconformities.

OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

QUARTERLY CASE SUMMARIES

October 1998 - December 1998 (4th Quarter)

JURISDICTION:

Consumer 681.102(4), F.S. (1995)

Werner v. Chrysler Corporation, 1998-0717/TPA (Fla. NMVAB October 1, 1998)

The Board granted the Manufacturer's Motion to Dismiss because the Consumer no longer possessed the vehicle and, therefore, did not meet the statutory definition of "Consumer." The Consumer's leased vehicle was repossessed and sold at a dealer auction, due to her failure to make monthly payments.

Kenemuth v. General Motors Corporation, Cadillac Division, 1998-0888/ORL (Fla. NMVAB November 4, 1998)

The Board dismissed the case because the Consumer no longer possessed the vehicle and, therefore, did not meet the statutory definition of "Consumer." The Consumer voluntarily terminated the lease early and surrendered possession of the vehicle to the Lessor.

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

Bardo v. Chrysler Corporation, 1998-0808/ORL (Fla. NMVAB October 20, 1998)

The Board held a telephone hearing on the Manufacturer's Motion to Dismiss because the subject truck was not a "Motor vehicle" as defined in the statute. The Board found that the application for certificate of title and vehicle registration supplied by the Consumer indicated that the gross vehicle weight was 10,500 pounds. The Board held that the statute excluded trucks over 10, 000 pounds gross vehicle weight; therefore, it dismissed the case.

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

Benedetti v. Ford Motor Company, 1998-0953/STP (Fla. NMVAB November 9, 1998)

At the hearing, the Manufacturer moved to dismiss the case because the subject vehicle was a truck

that exceeded 10,000 pounds gross vehicle weight, and as such, was not a "Motor vehicle" as defined in the statute. In support of its motion, the Manufacturer relied on the definition of gross vehicle weight in Section 320.01(12), Florida Statutes (1997), and the dealer invoice which indicated a gross vehicle weight rating of 11,200 pounds. The Consumers' Request for Arbitration indicated that the truck weighed less then 10,000 pounds. The vehicle registration supplied by the Consumers indicated that the gross vehicle weight was 11,200 pounds. The "vehicle weight/length" indicated on the registration certificate was 9,700 pounds, which the Consumers contended was the weight they requested the selling dealer to register the vehicle. The Board found that the gross vehicle weight was 11,200 pounds, and concluded that, because the statute excluded trucks over 10,000 pounds gross vehicle weight, the case was dismissed.

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

Zeitlin v. Chrysler Corporation, 1998-0848/ORL (Fla. NMVAB October 30, 1998)

The Consumer complained of poor fuel economy. Specifically, he argued that the vehicle achieved approximately 17-19 miles per gallon during highway driving, which is less than the 24 miles per gallon shown on the EPA fuel economy label that was attached to the vehicle at the time of purchase. The Manufacturer contended that this complaint was not covered under its warranty. The Board relied on the definition of "Warranty" under the statute and concluded that the evidence did not reveal any promise or affirmation regarding fuel consumption that was made by the Manufacturer to the Consumer at the time the vehicle was purchased; therefore, the alleged poor fuel consumption was not a defect covered under the Lemon Law. The Consumer's other complaints of a pull to the right and a rattle in the passenger side sliding door did not constitute nonconformities; the case was dismissed.

Paddock v. Ford Motor Company, 1998-0961/TPA (Fla. NMVAB December 9, 1998)

The Board dismissed the Consumer's complaint of poor fuel economy in stop-and-go traffic; it concluded that the Manufacturer did not issue a written warranty or make a promise or affirmation regarding fuel consumption to the Consumer at the time the vehicle was purchased. The alleged poor fuel economy was not a defect covered under the Lemon Law.

Whether Problem First Reported During the Lemon Law Rights Period 681.103(1), F.S. (1995)

Doster v. Ford Motor Company, 1998-0980/ORL (Fla. NMVAB December 9, 1998)

The Consumer complained that the transmission made a grinding noise when shifting into third gear. The Consumer presented the vehicle for repair of the transmission on August 28, 1997, at which time

the vehicle had accrued 20,134 miles of operation. The transmission was overhauled. On June 24, 1998, the Consumer reported a problem with the transmission grinding when shifting into second gear. The vehicle's odometer registered 35, 956 miles on that date. The Board agreed with the Manufacturer's contention that the problem reported on June 24, 1998, was a clutch problem, and was not the same as the transmission problem reported on August 28, 1997; hence, the problem complained of on June 24, 1998, was not first reported within the Lemon Law rights period, and the case was dismissed.

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

Wiegand v. General Motors Corporation, Chevrolet Motor Division, 1998-0718/STP (Fla. NMVAB October 1, 1998)

The Consumer complained that his left headlamp housing was not flush, allowing for looseness and a considerable gap between the fender and the housing. The gap allowed for the intrusion of debris and water, and electrical tape from the wiring protruded from the gap. The headlamp loosened as the vehicle was driven, and shined into the lane of on-coming traffic during night-time driving. The Board found that this condition substantially impaired the safety and value of the vehicle and granted relief to the Consumer.

Carmona v. Ford Motor Company, 1998-0856/MIA (Fla. NMVAB October 15, 1998)

The Manufacturer failed to appear at the hearing. The Board found that the excessive vibration at speeds between 50 and 60 miles per hour and upon application of the brakes constituted a nonconformity. The Board also held that the requirement that the Manufacturer be given a final repair attempt did not apply because, although the Manufacturer did respond to notification within 10 days, it did not direct the Consumer to a repair facility for the final repair attempt. The Consumer was granted a refund.

Mouro v. General Motors Corporation, Oldsmobile Division, 1998-0811/JAX (Fla. NMVAB October 20, 1998)

The Consumer complained of a spark knock noise upon acceleration. The Manufacturer contended that the alleged defect did not substantially impair the use, value or safety of the vehicle. Specifically, the Manufacturer argued that there could be no substantial impairment of value because the vehicle was a leased vehicle, thereby causing no harm to the Consumer. The Board concluded that the problem complained of did substantially impair the use and value of the vehicle and awarded the Consumer a refund.

Ancheta v. Mitsubishi Motor Sales of America, Inc., 1998-0825/STP (Fla. NMVAB October 27,

1998)

The Consumer complained of an electrical malfunction described as the intermittent malfunction of the alarm system, keyless entry, interior lights, antenna, and radio/compact disc player, accompanied by blown fuses. The Manufacturer contended that the alleged defect did not constitute a nonconformity; the compact disc was an aftermarket accessory not covered by the Manufacturer's warranty, and was the cause of the electrical malfunction. The Manufacturer further claimed that two separate and unrelated problems caused the various malfunctions; therefore, the Manufacturer had not been afforded a reasonable opportunity to repair the vehicle. The Board reviewed Florida Administrative Code Rule 2-30.001(3)(a) which defines "Condition" as a "general problem (e.g., vehicle fails to start, vehicle runs hot, etc.) that may be attributable to a defect in more than one part." The Board held that the various electrical problems with the alarm system, keyless entry, interior lights, antenna, radio/compact disc player, and blown fuses constituted a condition that substantially impaired the use and value of the vehicle; a refund was awarded to the Consumer.

Vaughn v. Ford Motor Company, 1998-0887/FTM (Fla. NMVAB November 2, 1998)

The Consumer complained of wind noise that was more pronounced when the vehicle was driving at speeds of 55 miles per hour and greater. The Manufacturer contended that there was no nonconformity. The Manufacturer's witness testified that the wind noise was "typical" for Lincoln Town Cars and that there were no defective parts to be replaced under the warranty. Counsel for the Manufacturer argued that the wind noise was not substantial because the Consumer waited for 16 months after the third repair attempt, accruing more than 32,000 miles of operation of the vehicle, before filing under the Lemon Law. The Board test drove the vehicle and heard the wind noise, which was more pronounced at higher speeds, concluded that the wind noise problem was a nonconformity and granted the Consumer a refund.

Vogel v. Mazda Motor of America, Inc., 1998-0907/TLH (Fla. NMVAB November 5, 1998)

The Consumer complained of intermittent stalling and loss of total power. The Manufacturer contended that the alleged problem did not constitute a nonconformity. The Manufacturer relied upon the prior repair history, indicating the service agent was unable to duplicate the problem, and the testimony of a master technician, who drove the vehicle for a total of 494 miles during the final repair attempt and subjected the vehicle to a New Generation Star (NGS) tester, which could test for computer, electrical wiring and emission system problems, regarding his inability to duplicate the problem. The master technician acknowledged that the NGS tester could not register every possible cause of stalling. The Board concluded that the Manufacturer should have made efforts to find alternative causes when its tester could not duplicate the problem with the systems it could register. The Consumer's evidence was found to be more persuasive in establishing that the problem, although infrequent, did occur and still existed; therefore, the Board held that the intermittent stalling and loss of total power problem substantially impaired the use and safety of the vehicle and granted a refund to the Consumer.

Helm v. Subaru of America, Inc., 1998-1017/TLH (Fla. NMVAB December 3, 1998)

The Consumer complained of an intermittent electrical system malfunction, manifested by the dome light going on and off, the radio and clock going off and losing memory, the headlights not coming on, all of which happened unpredictably. The Consumer testified that the authorized service agents would not list her complaint on the repair orders that were provided to her. The Manufacturer argued that it could not duplicate the problem complained of; therefore, it did not constitute a nonconformity. The Board found that the repair orders introduced into evidence were not legible and failed to contain all of the information required by Section 681.103, Florida Statutes (1995); it concluded that the problem complained of substantially impaired the use and safety of the vehicle and granted the Consumer a refund.

Hudson v. General Motors Corporation, Pontiac-GMC Division, 1998-0940/ORL (Fla. NMVAB December 11, 1998)

The Consumer complained of an intermittent electrical problem that caused the vehicle's dash lights and other lights to intermittently fail to illuminate when the headlights were turned on, thereby causing a safety issue. The Board rejected the Manufacturer's contention that, although dash lights may be "nice to have," they are not a safety issue and the failure to illuminate does impair the use, value or safety of the vehicle; consequently, the Consumer was granted a refund.

Samalis v. Ford Motor Company and Gulf Stream Coach, Inc., 1998-0801/JAX (Fla. NMVAB December 17, 1998)

The Consumer complained of excessive surface rust on the undercarriage of the recreational vehicle. Witnesses for both Manufacturers testified that the most likely cause of the rust was that the vehicle was parked over dirt and grass and was not driven regularly; consequently, the accumulated moisture on the undercarriage could not dry out. They testified that the rust was not the result of any defect in materials and did not require repair. The Board viewed a video tape of the undercarriage that was taken by the Consumer when the vehicle was on a lift at a Ford dealership, and conducted a limited inspection of the vehicle. It concluded from the evidence that, although there was visible surface rust, the rust did not violate the integrity of the undercarriage and was not the result of any defect in the undercarriage materials; therefore, the surface rust did not constitute a nonconformity and the case was dismissed.

Romito v. Ford Motor Company, 1998-0996/JAX (Fla. NMVAB December 28, 1998)

The Consumers complained of an intermittent rattle noise emanating from the front left corner of the dash area. The noise could be detected by driving the vehicle, though at no particular speed or under any specific conditions. The Board agreed with the Manufacturer's contention that this problem did not constitute a nonconformity and dismissed the case.

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

Jenner v. General Motors Corporation, Chevrolet Motor Division, 1998-0826/FTM (Fla. NMVAB October 22, 1998)

The Consumers complained of an intermittent loud whistling noise which occurred when the vehicle was driven at highway speeds. The Manufacturer argued that the problem complained of was not a nonconformity because the vehicle was test driven 192 miles during the repair attempts and the problem could not be duplicated. In lieu of an inspection, the Board listened to a compact disc recording of the intermittent whistling noise made by the Consumers. A loud whistling noise was heard at reported speeds of 65 miles per hour and above. The noise was not present at speeds reported to be under 65 miles per hour. The Board concluded that the problem complained of substantially impaired the use and value of the vehicle, and granted a refund to the Consumers.

Altamura v. Mitsubishi Motor Sales of America, Inc., 1998-0849/TPA (Fla. NMVAB November 4, 1998)

The Consumers complained of a vibration and pull to the right problem when the vehicle was driven at highway speeds. The Manufacturer contended that this problem did not constitute a nonconformity; that the sports utility vehicle drove like a truck and operated as designed. The Manufacturer's witness asserted that any vibration experienced was caused by the tires. The Board test drove the vehicle and noticed vibration, sway and pull. The Board concluded that the problem complained of constituted a nonconformity and granted a refund to the Consumers.

Whitehead v. Ford Motor Company, 1998-0946/TPA (Fla. NMVAB November 23, 1998)

The Board rejected the Manufacturer's contention that the intermittent stalling and the doors locking and unlocking intermittently when the vehicle was driven were not nonconformities. Counsel for the Manufacturer argued that the three repair attempts and the final repair were insufficient to afford the Manufacturer with a reasonable opportunity to cure the intermittent stalling problem, because the problem could not be duplicated; also, the Manufacturer was deprived of a reasonable opportunity to cure the lock problem because the Consumer failed to report this problem to the authorized service agent at the final repair attempt. The Board rejected these arguments, and awarded the Consumer a refund.

Lee v. Toyota Motor Sales, U.S.A., 1998-0960/PEN (Fla. NMVAB November 23, 1998)

The Board rejected the Manufacturer's contention that the vibration at highway speeds and upon braking were separate defects; and that the vibration was caused by the tires that the Manufacturer did not warrant, because the tire replacement failed to cure the vibration. The Consumer was awarded a refund.

Bauer v. Chrysler Corporation, 1998-0828/FTL (Fla. NMVAB October 13, 1998)

The Consumer complained of a vibration while driving at 40-45 miles per hour, and difficulty closing the right front door. The Consumer described the vibration as "a shake" but "not a horrible shake." The Board experienced a slight bounce during the test drive and was able to close the door without using excessive force during an inspection of the vehicle. The Board concluded that the problems complained of were minor and did not constitute nonconformities; consequently, the case was dismissed.

REASONABLE NUMBER OF ATTEMPTS 681.104, F.S.:

What Constitutes a Reasonable Number of Attempts

Monte v. Chrysler Corporation, 1998-0813/ORL (Fla. NMVAB October 14, 1998)

The Consumers complained of a vibration when the vehicle was driven at highway speeds, and a whining noise in the rear of the vehicle which did not constitute nonconformities. The Board did find that the Consumers' complaint of vibration or shudder upon backing the vehicle up a steep incline did substantially impair the value of the vehicle. The Board agreed with the Manufacturer's contention that it was not afforded a reasonable number of repair attempts for the shudder problem, since the vehicle was only presented on two occasions prior to the Consumers sending written notification. The Board held that the Consumers were not now qualified for relief and dismissed the case.

Final Repair Attempt

Wilson v. Fleetwood Motor Homes & Ford Motor Company, 1998-0632/FTM (Fla. NMVAB October 9, 1998)

Fleetwood was dismissed from the case pursuant to a Prehearing Order. The Board found that the "steering wander" problem was not a nonconformity. The Consumers also complained of a "noise in the rear differential" that did substantially impair the value of the vehicle. The Board concluded that the vehicle was presented for repairs at least three times, and that on the final repair attempt, Ford's authorized agent performed a repair to the steering, but refused to address the noise problem. The Board concluded that Ford waived its right to a final attempt to cure the nonconformity and awarded a refund to the Consumer.

Downing v. Ford Motor Company and Winnebago Industries, Inc., 1998-0740/TPA (Fla. NMVAB October 15, 1998)

The Consumers complained that the body of their recreation vehicle leaned to the right after making sharp right turns, and would level itself after making a left turn; the exhaust system leaked; and the dash air conditioner intermittently blew hot air. They alleged that these problems were subjected to three or more repairs, and caused the vehicle to be out of service by reason of repair for 30 or more days. The Board held that the lean did not constitute a nonconformity; the exhaust system leak and the intermittent dash air conditioner problems were cured on or before the Manufacturers' final repair attempt; and the Consumers failed to carry their burden of proving the vehicle was out of service for a cumulative total of 30 days or more for repair of nonconformities. The case was dismissed.

GHO Development Corporation v. Chrysler Corporation, 1998-0898/WPB (Fla. NMVAB November 2, 1998)

The Board concluded that the Consumer's inaccurate fuel gauge problem was a nonconformity; however, the evidence established that the Manufacturer's authorized service agent installed a new sending unit at the final repair attempt which cured the nonconformity. Since the Manufacturer conformed the vehicle to its warranty within a reasonable number of repair attempts, the Consumer was not entitled to relief and the case was dismissed.

O'steen v. General Motors Corporation, Chevrolet Motor Division, 1998-0871/FTL (Fla. NMVAB October 15, 1998)

The Manufacturer failed to appear at the hearing. The Board found that the intermittent failure of the vehicle's transmission to go into gear constituted a nonconformity. The Board also held that the requirement that the Manufacturer be given a final repair attempt did not apply because, although the Manufacturer did respond to the notification within 10 days, it did not direct the Consumer to a repair facility for the final repair attempt. The Consumer was granted a refund.

Macbride v. General Motors Corporation, Pontiac-GMC Division, 1998-0899/FTL (Fla. NMVAB November 7, 1998)

The Manufacturer failed to appear at the hearing. The Board concluded that the problem with the vehicle's transmission would not shift into gear and making a clunking noise constituted a nonconformity. The Board found that the Manufacturer did not respond to the written notification until three and one-half weeks after it received the notification; therefore, the requirement that the Manufacturer be given a final attempt to cure the nonconformity did not apply. Since the Manufacturer failed to correct the nonconformity after a reasonable number of attempts, the Consumers were awarded a refund.

Lau v. General Motors Corporation, Pontiac-GMC Division, 1998-1032/JAX (Fla. NMVAB December 18, 1998)

The Consumers complained that their gauges would intermittently and without warning become inoperable. The Board found that the Manufacturer failed to respond to the written notification, but the Consumers took the vehicle in anyway and were advised that a final repair attempt would not be performed unless the problem could be duplicated. The Board concluded that the requirement that the Manufacturer be given a final attempt to cure the nonconformity did not apply. The Manufacturer contended that a defect or condition did not exist because it could not duplicate the alleged problem, and that the alleged defect or condition did not constitute a nonconformity. The Board rejected the Manufacturer's contentions and concluded that the intermittent gauge failure did constitute a nonconformity. Since the Manufacturer failed to correct the nonconformity after a reasonable number of attempts, the Consumers were awarded a refund.

Crews v. Ford Motor Company, 1998-0950/JAX (Fla. NMVAB November 25, 1998)

The Manufacturer contended that it was denied the opportunity for a final repair attempt, because the Consumer failed to return the vehicle for further testing and the installation of a "co-pilot" two days after the authorized service agent released the vehicle back to the Consumer following the final repair attempt. The Board rejected this contention and awarded a refund to the Consumer.

Days Out of Service

Clutts v. Ford Motor Company and Coachmen Industries, Inc., 1998-0474/PEN (Fla. NMVAB November 4, 1998)

The Consumer complained of a malfunctioning brake system. The Manufacturers' counsel argued that the Consumer must meet the statutory presumption of 30 days out of service in order to qualify for relief. The Board rejected this contention as being erroneous because Section 681.1095(8), Florida Statutes (1995) directs that "the Board shall grant relief, if a reasonable number of attempts have been undertaken to correct a nonconformity or nonconformities." The Consumer having satisfied the notice requirement of the statute, and the vehicle having been out of service by reason of repair for a cumulative total of 27 days, it was concluded that a reasonable number of attempts had been undertaken to conform the vehicle to its warranty. The Consumer was awarded a refund.

Aguilar v. Ford Motor Company, 1998-0867/JAX (Fla. NMVAB December 29, 1998)

The Consumer complained of the following problems that the Board found to be nonconformities: headliner falling down; washer fluid sprayer not working right; squeaking and thumping noises when driving over bumps; reverse lights not operating correctly; vibration at speeds over 55 miles per hour;

rear view mirror loose; pulling to the right; wind noise; temperature control not operating correctly; and power door locks inoperable. The Board found that the vehicle was out of service for repair of the nonconformities for a cumulative total of 20 days. It concluded that, although the statute doesn't define how many attempts is reasonable, under the circumstances of this case, 20 days out was not sufficient to give the Manufacturer a reasonable number of repair attempts. The case was dismissed.

Written Notification to the Manufacturer

Campbell v. American Honda Motor Company, 1998-0824/FTL (Fla. NMVAB October 20, 1998)

The Consumer complained that the transmission shifted hard and bucked when put into gear. The Manufacturer moved to dismiss the case because it was not provided with the opportunity for a final repair attempt. The Manufacturer asserted that, since the Consumer's vehicle was still being repaired on the third repair attempt when it received notification, the Consumer did not meet the statutory requirement of completing at least three repair attempts prior to providing notice to the Manufacturer. The Board agreed with the Manufacturer and dismissed the case.

Michaels v. General Motors Corporation, Buick Motor Division, 1998-0870/WPB (Fla. NMVAB November 12, 1998)

The Manufacturer contended that the Consumer was not qualified for relief under the Lemon Law, because his written notification of defect was sent to the Manufacturer after the expiration of his Lemon Law rights period. The Board rejected this contention and concluded that there was nothing in the Lemon Law statute that required written notification to be sent during the Lemon Law rights period; rather, it is required to be sent after three or more unsuccessful attempts to repair the same nonconformity. The Consumer was awarded a refund.

Tolchinsky v. Chrysler Corporation, 1998-1034/FTL (Fla. NMVAB December 17, 1998)

The Consumers complained that the vehicle twice disengaged from parking gear into drive gear when stopped with the engine running. After the second occasion, the Consumers sent written correspondence to Mr. A.L. Gilbert of Chrysler Special Investigations in Auburn Hills, Michigan, advising him of the second incident and requesting that "your company" take the vehicle and remove it from the roads. The Manufacturer contended that the Consumers were not qualified for relief, because they did not properly notify the Manufacturer of a final repair opportunity with written notification sufficient to put the Manufacturer on notice of the problem with the vehicle or of the need for a final repair. The Board agreed and concluded that the Consumers did not send the required notification after at least three repair attempts, and the correspondence was not written in such a manner as to properly put the Manufacturer on notice of its opportunity for a final repair; consequently, the case was dismissed.

MANUFACTURER AFFIRMATIVE DEFENSES:

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

Presby v. General Motors Corporation, Pontiac-GMC Division, 1998-0841/MIA (Fla. NMVAB October 8, 1998)

The Manufacturer argued that the vibration complained of by the Consumer was the result of after-market installed wheels and tires not covered by the Manufacturer's warranty. The wheels and tires were provided by California Custom Conversion as "standard equipment, Dealer-added Equipment and Services." The Board concluded that the modifications made to the vehicle were installed at the direction and by the authorization of the Manufacturer's authorized service agent; consequently, the modifications did not exclude the nonconformity from coverage under the Lemon Law. The Consumer was granted a refund.

Brown v. American Suzuki Motor Corporation, 1998-0982/FTM (Fla. NMVAB December 8, 1998)

The Manufacturer contended that the Consumers' transmission problem was not a nonconformity because it was the result of abuse by the Consumers. The Manufacturer's witness testified that the owner's manual instructed the operator to stop towing the vehicle every 200 miles to circulate oil in the transfer case, but the Consumers towed the vehicle more than 200 miles without following the proper procedure. The Consumers argued that they towed the vehicle with their recreational vehicle in accordance with their owner's manual. The Board concluded that the testimony presented by the Manufacturer in support of its affirmative defense of abuse was not sufficient to overcome the Consumers' evidence that they followed the appropriate procedures for towing. The Board also rejected the Manufacturer's argument that it wasn't afforded a final repair opportunity on the intermittent headlight problem; the Board granted relief on the transmission and headlight nonconformities.

McNabb v. American Suzuki Motor Corporation, 1998-0949/STP (Fla. NMVAB December 1, 1998)

The Consumers complained of transmission related problems, including gear grinding noises, transmission fluid leak, and clutch throwout bearing noises. The Consumers testified that the dealership salesperson advised them that they could tow up to 2,000 pounds with the vehicle, and that, in fact, they towed a 20-foot boat on one occasion. The Manufacturer argued that the complained of problem did not constitute a nonconformity because the maximum towing capacity of the vehicle was 1,500 pounds; further, the Manufacturer argued that the representation of the salesperson did not constitute a warranty from the Manufacturer. The Board relied on the definition of "Nonconformity" under the statute and concluded that the transmission problems did not constitute a nonconformity because the

condition was the result of the Consumers exceeding the Manufacturer's specified towing weight, and therefore, constituted abuse by persons other than the Manufacturer or authorized service agent. The Board also concluded that the definition of "Warranty" excluded statements made by the dealer; consequently, the case was dismissed.

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

Alvarez v. Mitsubishi Motor Sales of America, 1998-0809/MIA (Fla. NMVAB November 4, 1998)

The Consumer attained 24,000 miles of operation of her vehicle on July 15, 1997, at which time her Lemon Law rights period expired. She filed her Request for Arbitration on July 20, 1998. The Board concluded that her Request for Arbitration was untimely filed even if the rights period was extended pursuant to the statute. The case was dismissed.

Hill v. Volkswagen United States, Inc., 1998-0881/MIA (Fla. NMVAB November 10, 1998)

The Manufacturer contended that the Consumer's Request for Arbitration was untimely because it was filed more than six months after the expiration of the Lemon Law rights period. The Consumer's Lemon Law rights period initially expired on September 26, 1997, which was 18 months after the original delivery of the vehicle and prior to the Consumer attaining 24,000 miles of operation of the vehicle. The Consumer first reported the nonconformity within the rights period; however, the nonconformity was not cured. The Board applied the statutory extension, which extended the rights period to March 26, 1998. The Consumer filed her Request for Arbitration on July 2, 1998, within six months after the expiration of the extended rights period; consequently, the request was timely filed and the Consumer was entitled to relief.

Abad v. General Motors Corporation, Pontiac-GMC Motor Division, 1998-0921/MIA (Fla. NMVAB November 18, 1998)

The Manufacturer contended that the Consumers' Request for Arbitration was untimely because it was filed more than six months after the expiration of the Lemon Law rights period. The Consumers' Lemon Law rights period initially expired on November 1, 1997, which was 18 months after the original delivery of the vehicle, prior to the Consumers attaining 24,000 miles of operation of the vehicle. The Consumers first reported the nonconformity within the rights period; however, the nonconformity was not cured by the expiration of the rights period. The Board applied the statutory extension, which extended the rights period to May 1, 1998. The Consumers filed their Request for Arbitration on August 21, 1998, within six months after the expiration of the extended rights period, and also within 30 days of the final action of the Manufacturer's procedure ; consequently, the request was timely filed and the Consumers were entitled to relief on an excessive oil consumption complaint; the Board rejecting the Manufacturer's contention that it was not a nonconformity because the Consumers

abused or neglected the vehicle by changing the oil beyond the recommended time.

Maclaughlin v. General Motors Corporation, Pontiac-GMC Division, 1998-0678/MIA (Fla. NMVAB December 2, 1998

The Manufacturer contended that the electrical system problem was not a nonconformity and that the Consumers' Request for Arbitration was untimely filed because repair attempts number two and three were made after the expiration of the extended "Lemon Law rights period," which would have expired on January 16, 1998. The Board concluded that the problem complained of did constitute a nonconformity and was first reported within the rights period; however, the nonconformity was not cured by the expiration of the rights period. The Board applied the statutory extension, which extended the rights period to January 16, 1998. The Consumers filed their Request for Arbitration on July 1, 1998, within six months after the expiration of the extended rights period; consequently, the request was timely filed and the Consumers were entitled to relief.

Galto v. Ford Motor Company, 1998-0217/FTL (Fla. NMVAB December 15, 1998)

The Manufacturer contended that the intermittent brake problem was not a nonconformity and that the Consumer's Request for Arbitration was untimely filed because it was filed more than six months after the expiration of the Lemon Law rights period. The Manufacturer argued that the statutory extension should only be granted to assist a Consumer in acquiring the three repairs required to raise the statutory presumption, and since the Consumer had three attempts within the rights period, an extension should not be granted because the Consumer "sat on her rights." The Board concluded that the intermittent brake problem was a nonconformity and because it was first reported within the rights period, but not cured by the expiration of the rights period, the extension should apply; therefore, the Consumer's Request for Arbitration was timely filed and relief was granted.

MULTIPLE MANUFACTURERS:

Bolhuis v. Fleetwood Motor Homes and Spartan Motors, Inc., 19980663/FTL (Fla. NMVAB October 12, 1998)

The Board concluded that the steering malfunction complained of by the Consumers was a nonconformity. Fleetwood contended that the nonconformity was a result of defects in the chassis components which were not warranted by Fleetwood, that its warranty covered only the coach portion of the vehicle and specifically excluded from coverage the automotive system. The Board dismissed the claim against Fleetwood. The Board concluded that the nonconformity was the result of defects in components covered by Spartan's warranty, granted the Consumers an extension of the Lemon Law rights period, holding that they timely filed their Request for Arbitration; and held that Spartan failed to conform the vehicle to its warranty after a reasonable number of attempts; consequently, relief was

granted to the Consumers.

MISCELLANEOUS PROCEDURAL ISSUES:

David T. Jones v. General Motors Corporation, Chevrolet Division, 1998-0585/ORL (Fla. NMVAB October 16, 1998)

The Consumer failed to appear at the time designated in the Notice of Hearing, and after waiting approximately 25 minutes beyond the scheduled time for the hearing, the Board dismissed the case in accordance with paragraph 33, "Hearings Before the Florida New Motor Vehicle Arbitration Board," Rule 2-30, Florida Administrative Code. The Consumer contacted the Board Administrator within one business day of the hearing requesting that the dismissal be set aside. A telephone hearing was held to consider the request, and the Consumer testified that he was late due to his unfamiliarity with the Orlando area and because of road construction. The Manufacturer contended that this explanation did not amount to an "unforeseeable circumstance" and that the Manufacturer's representative had traveled to Orlando from Georgia without hardship. The Consumer's request to set aside was denied, because he did not meet the "unforeseeable circumstance" threshold; therefore, his Request for Arbitration was dismissed with prejudice.

Hiltbold v. Chrysler Corporation, 1998-0789/FTM (Fla. NMVAB October 7, 1998)

The Consumer contacted the Board Administrator within one business day of the hearing requesting that the dismissal for her failure to appear be set aside. A telephone hearing was held to consider the request, and the Consumer testified that she failed to show because she was working and was unable to ascertain the precise time of her hearing; she had difficulty in making cellular telephone calls because of operational difficulty with the SPRINT digital signal and satellite tower; and because of the anticipated arrival of Hurricane Georges and health problems. She further claimed that, on the date of the hearing, she called the Tampa Lemon Law Office to advise she would be late. The Board agreed with the Manufacturer's contention that these explanations did not amount to an "unforeseeable circumstance"; therefore, the Consumer's request to set aside was denied and the Request for Arbitration was dismissed with prejudice.