

**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.

*Frischia 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 Motors Corp., 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 calendar 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.”