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.