OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

QUARTERLY CASE SUMMARIES

January 2002 - March 2002 (1st Quarter)

JURISDICTION:

Motor Vehicle §681.102(15), F.S.

USA Recovery, Inc. v. Nissan Diesel America, Inc., 2001-1179/ORL (Fla. NMVAB February 18, 2002).
The Consumer claimed that the tow truck's weight alone should be used to determine whether it was a "motor vehicle" under section 681.102(15), Florida Statutes (2001), which excludes from coverage trucks with a gross vehicle weight of more than 10,000 pounds. The Board found that gross vehicle weight for the tow truck included the weight of the tow truck itself plus the weight of the towed vehicles. When the towed vehicle weight was added to the tow truck's weight, the tow truck did not meet the definition of a "motor vehicle." Accordingly, the case was dismissed.

REASONABLE NUMBER OF ATTEMPTS §681.104, F.S.

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

Fox v. DaimlerChrysler Motors Corporation, 2001-1077/ORL (Fla. NMVAB January 29, 2002).
The Board held that the Consumer's telephone calls, electronic mail communications, and letter to the National Center for Dispute Settlement did not satisfy the statutory requirements that the Manufacturer be notified by registered or express mail. Accordingly, the Consumer's case was dismissed.

What Constitutes a Repair Attempt

Brunet v. Mazda Motor of America, Inc., 2001-1120/TPA (Fla. NMVAB January 28, 2002).
For statutory presumption of reasonable opportunity to conform, two repair attempts in one day equaled two separate attempts. The Consumer presented the vehicle to the Manufacturer's authorized service agent for repair of an intermittent transmission failure to shift out of park. The Consumer was advised that the problem could not be duplicated. However, upon attempting to leave the Manufacturer's authorized service agent, the transmission would not shift out of park. The Consumer reported the problem to the service agent and left the vehicle for repair. The Board found that the two attempts in a single day amounted to two separate attempts for purposes of applying the statutory

presumption. Accordingly, the Consumers were awarded a refund.

What Constitutes an "Out-of-Service Day," Rule 2-30.001(2)(c), F.A.C.

Fox v. DaimlerChrysler Motors Corporation, 2001-1077/ORL (Fla. NMVAB January 29, 2002). The Consumer's phone calls to arrange an appointment with the authorized service agent did not count as days out of service. The Consumer argued that the days he telephoned the Manufacturer's authorized service agent to make an appointment for repair should count in the days out-of-service calculation. The Board rejected the Consumer's assertion and dismissed the case.

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

Valiente v. BMW of North America, LLC, 2001-1210/FTL (Fla. NMVAB March 8, 2002).
The Board held that the Manufacturer failed to conform the vehicle within a reasonable number of attempts, where the Consumer presented the vehicle for repair two times, and on the second attempt the service agent performed no repairs and could not cure the nonconformity. After the second attempt, the Consumer notified the Manufacturer, and the Manufacturer exercised its option for a final repair attempt. The Manufacturer was unable to cure the nonconformity on the final repair attempt. The Manufacturer's defense was that the Consumer had not proven the Manufacturer had been provided a reasonable number of attempts to conform the vehicle. The Board disagreed, pointing out that the Manufacturer's service agent witnessed the defect and was unable to cure it. The Board noted that under the circumstances, no useful purpose would have been served in requiring the Consumer to drive out of the repair shop and then drive right back in, simply to document a third repair attempt before sending the written notification to the Manufacturer. The Board found that, under the facts, the Manufacturer was not deprived of a reasonable opportunity to correct the nonconformity. Accordingly, the Consumer was awarded a refund.

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

Jennison v. General Motors Corporation, Chevrolet Motor Division, 2001-1145/TPA (Fla. NMVAB).
The Manufacturer completed its final repair attempt in 11 days, rather than the statutorily required 10 days. The Board found that the requirement that the Manufacturer be given a final attempt to cure the nonconformity did not apply, because the Manufacturer failed to perform the repairs within the time period prescribed by the statute. Consequently, the Board held that the Manufacturer failed to conform the vehicle to the warranty within a reasonable number of attempts and awarded the Consumers a refund.

Deschamplain v. Mitsubishi Motor Sales of America, Inc., 2002-0149/PEN (Fla. NMVAB March 20, 2002).
The Manufacturer claimed that it attempted to respond to the Consumers' written notification of defect by telephoning the Consumer. According to the Manufacturer, each time the Manufacturer phoned the Consumers, either the phone rang without an answering machine or the phone was busy. The Consumers argued that the answering machine was always on and that a grandmother was present at the home all day. The Board held that the greater weight of the evidence established that the Manufacturer did not respond to the Consumer's written notification within the 10 days required by the Statute. Accordingly, the requirement that the Manufacturer be given a final attempt to cure the nonconformity did not apply. The Consumers were awarded a refund.

DEFINITION OF NONCONFORMITY §681.102(16), F.S.

Rule 2-30.001(2)(a), F.A.C., Definition of "Condition"

Goff v. Mercedes-Benz USA, Inc., 2001-1020/FTM (Fla. NMVAB January 30, 2002).
The Manufacturer argued that the vehicle's intermittent problems with the keyless entry, remote memory for the seats, and memory for the programmable mirror positions were an "inconvenience," and not a defect that substantially impaired the use, value or safety of the vehicle. Consumers contended that the keyless entry, remote memory for the seats, and memory for the mirrors were the motivation for purchasing the vehicle, as the two consumers were different heights. The Board found that the problems were a "condition" as defined by the applicable administrative rule, that substantially impaired use and value. Accordingly, the consumers were awarded a refund.

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

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

Maxwell v. DaimlerChrysler Motors Corporation, 2001-1117/TLH (Fla. NMVAB January 29, 2002).
The Consumer claimed there was a hesitation or surge in the transmission and too much play in the steering wheel. The Manufacturer contended that neither was a nonconformity because the transmission surge was a "normal characteristic" of a torque convertor locking up, and the loosening of the steering was the "normal result of use." The Manufacturer claimed that its trucks come from the factory with very tight steering boxes in anticipation of the loosening over time. The Board test drove the vehicle and found the steering and transmission shifting to be normal. Accordingly, the Board concluded there was no nonconformity and dismissed the case.

Brandon v. Toyota Motor Sales U.S.A., Inc., 2001-1052/TLH (Fla. NMVAB February 6, 2002).

The Consumer complained of a ping and knock in the engine and other abnormal sounds. The Manufacturer claimed the other sounds were "normal" and that the ping in the engine was the result of the Consumer's use of a lower octane fuel than the vehicle's owner's manual recommended. The Consumer admitted using a low octane fuel. Upon consideration of the evidence and a test drive taken during the hearing, the Board found no substantial impairment. Accordingly, the case was dismissed.

Davis v. DaimlerChrysler Motors Corporation, 2001-1157/JAX (Fla. NMVAB February 13, 2002).
The Consumer complained that the speedometer did not show the actual speed that the vehicle was traveling and the odometer did not accurately reflect the mileage. The Manufacturer contended that the discrepancy was within the error tolerance of both the manufacturer's specifications and the specifications recommended by the Society of Automotive Engineers. After the final repair attempt, the speedometer was found to reflect only .5 miles per hour over actual speed when the vehicle was driven at a speed of 45 miles per hour. The Board held that the inaccuracies in the speedometer and odometer were not significant enough to substantially impair the use, value or safety of the vehicle. Accordingly, the case was dismissed.

White v. Ford Motor Company, 2001-1214/ORL (Fla. NMVAB March 7, 2002).
The Consumer complained of a rattle emanating from the dash, which began when the vehicle decelerated and continued until the vehicle came to a stop. The rattle occurred almost every time the vehicle stopped. The Manufacturer claimed the rattle did not substantially impair the use, value, or safety of the vehicle. The Board disagreed and awarded the Consumer a refund.

Allen v. DaimlerChrysler Motors Corporation, 2002-0110 (Fla. NMVAB March 21, 2002).
The Consumer claimed that one side of the truck's cab was higher than the other side and the bed of the truck slanted downward from the cab to the tailgate. The manufacturer argued that no parts and components were "perfect" and that the issue was a cosmetic issue, instead of a nonconformity. The Board observed the vehicle, and finding no visible substantial slant or lean, held that the problems complained of by the Consumer did not constitute a nonconformity within the meaning of the law. Accordingly, the case was dismissed.

Teusink v. General Motors Corporation, Pontiac-GMC Division, 2002-0033/PEN (Fla. NMVAB March 20, 2002)
The Consumer complained of intermittent harsh shifting. The Board found the problem to be a nonconformity because, though it was intermittent, the evidence established that the Consumer and his wife limited their use of the vehicle because they believed it was unreliable. Accordingly, the Consumer was awarded a refund.

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

Warr v. Mitsubishi Motor Sales of America, Inc., 2001-1106/TPA (Fla. NMVAB January 14, 2002).
The Manufacturer argued that the vehicle's excessive undercarriage corrosion was the result of abuse or neglect by persons other than the Manufacturer. The Manufacturer submitted testimony of a Mitsubishi mediation manager who testified that the corrosion could not be a result of a defect in manufacturing because (1) there was no opportunity for the vehicle to come into contact with salt or other corrosive agents prior to the Consumers taking possession, and (2) he had not seen other vehicles with similar corrosion. The Board found that the Manufacturer's evidence was not sufficient to meet the Manufacturer's burden of proving its affirmative defense of abuse and neglect, and the Board further noted that its own inspection of the vehicle revealed a pattern of corrosion that was not indicative of salt water splash. Accordingly, the Consumers were awarded a refund.

Tuten v. Ford Motor Company, 2001-1199/TLH (Fla. NMVAB February 15, 2002).
The Board found that the Consumer caused the engine tap and subsequent lock-up. The Manufacturer argued that the Consumer had not changed the oil in 70,000 miles and, consequently, the Consumer's neglect caused the engine lock-up. The Board agreed with the Manufacturer, because evidence supported that the vehicle was driven 70,000 miles without an oil change. Accordingly, the case was dismissed.

REFUND §681.104(2)(a)(b), F.S.:

Moore v. Ford Motor Company, 2002-0080/JAX (Fla. NMVAB March 29, 2002).
The vehicle at issue was a replacement vehicle for a previous lemon. The Consumer requested a refund of the "offset" that she paid on the first lemon. The Board denied the Consumer's request and awarded a refund for the value of the Consumer's down-payment on the first lemon, payments on both vehicles which secured the same loan, costs of improvements on the replacement vehicle, reduced by an offset for mileage on the replacement vehicle.

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

Pena v. Toyota Motor Sales, U.S.A., 2002-0028/TPA (Fla. NMVAB February 28, 2002).
The Manufacturer claimed that the calculation for the total monthly payments that the Consumer had made should be reduced by a percentage attributable to repayment of the lien on the Consumer's trade-in. The Board denied the Manufacturer's request. Accordingly the Consumer was awarded a refund.

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

Hill v. Mazda Motor of America, Inc., 2001-0986/JAX (Fla. NMVAB January 30, 2002).
In calculating the offset for consumer use, the Board excluded the mileage attributable to the Consumer's trips to the dealership for repair of the nonconformity.

Platt v. Ford Motor Company, 2001-1139/ORL (Fla. NMVAB January 23, 2002).
Because there was an available authorized service agent 22 miles closer to the Consumer's home than the one that the Consumer actually used, the Board excluded from the statutory offset only the mileage that would have accrued for repairs had the Consumer used the closest authorized service agent.

PROCEDURAL ISSUES

Consumer's Failure to Appear at the Hearing ¶¶(33) and (34), *Hearings Before the Florida New Motor Vehicle Arbitration Board.*

Redmond v. Volkswagen United States, Inc., 2002-0082/PEN (Fla. NMVAB March 18, 2002).
Both the Consumer and the Manufacturer failed to appear at the hearing. Following the hearing, the Consumer did not contact the Board Administrator within one business day of the hearing to request that the decision be set aside. The case was dismissed with prejudice.

Untimely Notice of Witness or Document ¶ (19) *Hearings Before the Florida New Motor Vehicle Arbitration Board.*

Culpepper v. DaimlerChrysler Motors Corporation, 2002-0026/PEN (Fla. NMVAB March 6, 2002).
The Consumer asked the Board to consider a witness's sworn affidavit, which was dated the day of the hearing. The Consumer claimed that the affidavit was necessary because the witness was a second opinion intended to challenge the Manufacturer's assertion that the transmission performed as designed. The Manufacturer objected on the grounds that the witness's name was not submitted at least five days prior to the hearing and the witness was not present for cross-examination. The Board concluded that the testimony was relevant and would not unduly prejudice the Manufacturer. The evidence was admitted.

Socci v. Ford Motor Company, 2002-0088/TPA (Fla. NMVAB March 14, 2002).
On the day of the hearing, the Manufacturer substituted a new witness for a witness who had been previously listed but who was out of town. The Consumer objected, and the Board agreed. The Board found that the untimely notice for the witness was without good cause and, as such, the witness may not testify.

MISCELLANEOUS ISSUES

Santanna v. Volkswagen United States, Inc., 2001-1059/MIA (Fla. NMVAB February 21, 2002). The same vehicle at issue was previously the subject of a case before the Board, but the Board dismissed the case, because the Manufacturer had not had a final repair opportunity. In the second arbitration, the Manufacturer claimed the days-out-of-service should not include days for service of defects that were not covered by the warranty. Because the Board had decided that the defects were in fact covered by the warranty during the previous arbitration, it reaffirmed its finding and refused to allow the Manufacturer to reargue the issue during the second arbitration.

OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

QUARTERLY CASE SUMMARIES

April 2002 - June 2002 (2nd Quarter)

JURISDICTION:

Consumer §681.102(4), F.S.

A&W Marketing, Inc. v. Ford Motor Company, 2002-0332/FTM (Fla. NMVAB June 21, 2002). Because the Consumer used the vehicle exclusively as a commercial vehicle, the Manufacturer contended that the Consumer was not a "consumer" under the Statute. Focusing on the last clause of section 681.102(4), Fla. Stat., the Board noted that the definition of "consumer" includes "any other person entitled by the terms of the warranty to enforce the obligations of the warranty." The Manufacturer failed to present a copy of the warranty or other evidence to establish that the consumer was not entitled to enforce the terms of the warranty. Thus, the Board found that the Manufacturer failed to meet its burden of proof and consequently rejected the Manufacturer's defense. However, because the Board found that the defect was the result of the Consumer's driving habits, the case was dismissed.

Motor Vehicle §681.102(15), F.S.

Steed v. Ford Motor Company, 2002-0369/TPA (Fla. NMVAB June 17, 2002).
The Manufacturer argued that the Consumer was not qualified for Lemon Law relief, on the ground that the subject vehicle was not originally sold as a new vehicle in Florida. The Consumer purchased the vehicle in Florida from a person who had won the vehicle in a contest, The contest was held in Georgia, and prior to the contest, a leasing company purchased the vehicle in Ohio from Ford Motor Company. The Board held that the original purchase did not occur in Florida and that the Consumer did not purchase the vehicle new in Florida. Accordingly, the case was dismissed.

Warranty §681.102(23), F.S. vs. Nonconformity §681.102(16), F.S.

Colon v. DaimlerChrysler Motors Corporation, 2002-0486/ORL (Fla. NMVAB July 25, 2002). The Consumer complained of a side-to-side wobble in the steering wheel and a vibration in the floorboard that was present when the vehicle was driven at speeds between 50 and 60 miles per hour. The Manufacturer argued that the defect was attributable to the vehicle's Goodyear tires and that tires were excluded from the coverage of the Manufacturer's written limited warranty. The Board held that the defect was a nonconformity on the basis that the manufacturer equipped the vehicle with a specific

brand and type of tire as part of a package in order to sell the vehicle with an enhanced appearance. Since the vehicle was modified by the Manufacturer, the resulting defect was covered by the statute, because it fell within the definition of "nonconformity." Accordingly, the consumer was awarded a refund.

REASONABLE NUMBER OF ATTEMPTS §681.104, F.S.

What Constitutes a Repair Attempt

Clarke Advertising & Public Relations, Inc. v. General Motors Corporation, Oldsmobile Division, 2002-0264/STP (Fla. NMVAB May 13, 2002).
Although the Consumer testified that the vehicle was presented to the Manufacturer's service agent for repair of the same defect three times, only two of the repair orders listed the defect in question. On the basis of the repair orders, the Manufacturer claimed that it had not been given reasonable opportunity to repair the defect. The Board held that the greater weight of the evidence showed that the Consumer took the vehicle for repair of the same nonconformity three times before sending the written notification to the Manufacturer. Accordingly, the Consumer was awarded a refund.

What Constitutes an "Out-of-Service Day," Rule 2-30.001(2)(c), F.A.C.

Burger v. BMW of North America, LLC, 2002-0251/STP (Fla. NMVAB May 8, 2002).
The Consumer claimed that the vehicle had been out of service for repair for 30 or more days. The Manufacturer's witness testified that the repair orders did not accurately reflect the date that repairs were completed. The witness, who did not prepare the repair orders himself, testified that some of the repair orders were "held open" by the service agent after repairs were completed, because they were waiting for invoices for the rental vehicles provided to the Consumer. The Board rejected the Manufacturer's argument, noting that it was the duty of the Manufacturer, through its authorized service agent, to provide accurate and detailed written repair orders, and also noting that the repair orders were the best evidence of the dates of the repair attempts. Accordingly, the Consumer was awarded a refund.

Written notification of a final repair opportunity–When sent; §681.104(1)(a), FS

Currey v. Mitsubishi Motor Sales of America, Inc., 2002-0246/PEN (Fla. NMVAB May 6, 2002).
After presenting the vehicle to the Manufacturer's authorized service agent for repair of the same nonconformity seven times, the Consumers sent written notification to the Manufacturer to provide the Manufacturer with a final opportunity to repair the vehicle. The Manufacturer contended that the case should be dismissed, because the written notification was not "filed" within the Lemon Law rights Period. The Board rejected the Manufacturer's argument, noting that the Consumer does not need to send the written notification to the Manufacturer during the Lemon Law rights period in order to be

entitled to relief under the Lemon Law. Accordingly, the Consumers were awarded a refund.

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

Wuelfing v. General Motors Corporation, Oldsmobile Division, 2002-0290/STP (Fla. NMVAB May 13, 2002).
The Manufacturer claimed that it left three messages for the Consumers in an attempt to respond to the Consumers' written notification. Mrs. Wuelfing testified that she returned the Manufacturer's calls and left three messages herself, which were never returned. Mrs. Wuelfing also testified that she followed up with a message indicating that she planned to present the vehicle for a final repair attempt on a specific date. The Manufacturer did not return that message either, and the Consumer left the vehicle with the Manufacturer's designated repair facility for the final repair attempt. The Board found that the Consumers met all the requirements for the presumption of reasonable attempts to repair, and accordingly, awarded the Consumers a refund.

DEFINITION OF NONCONFORMITY §681.102(16), F.S.

Haramboure-Moreno v. BMW of North America, LLC, 2002-0297/ORL (Fla. NMVAB May 22, 2002).
The Consumer complained of excessive oil consumption. The vehicle required the addition of a quart of oil about every 1,500 miles. The Manufacturer claimed that the oil consumption was not a nonconformity because the level of consumption was within the Manufacturer's specifications of normal oil consumption. The Manufacturer's witness testified that a Manufacturer's bulletin stated that oil consumption is excessive only if it exceeds one quart per 750 miles of driving. The Board noted that the Manufacturer's bulletin was not provided to consumers and that the bulletin was in conflict with the owner's manual, which directed that the vehicle's oil be changed after every 15,000 miles of driving. The Board found that the Consumer was forced to add approximately 10 quarts of oil between regular oil changes, thus there was a defect that substantially impaired the use and value of the vehicle. Accordingly, the Consumer was awarded a refund.

Rule 2-30.001(2)(a), F.A.C., Definition of "Condition"

Tharpe v. General Motors Corporation, Chevrolet Motor Division, 2002-0465/TLH (Fla. NMVAB June 19, 2002).
The Consumers complained of a transmission problem. In an attempt to repair the problem the original factory transmission was replaced by a transmission from a "Driver's Ed." car. However, the replacement transmission also failed, so the Manufacturer's service agent replaced the "Driver's Ed." transmission with a "re-manufactured" transmission. The Manufacturer claimed that the "re-manufactured" transmission had cured the problem, but the Consumer testified that on the trip home from the dealership the "re-manufactured" transmission "hesitated" and the "check engine" warning light

came on. The "check engine" light had remained illuminated since that time. The Manufacturer defended, claiming that the original factory transmission did not have a defect and that the dealership replaced it out of "courtesy" for the Consumer. The Manufacturer also claimed that the problem was cured by the "re-manufactured" transmission. The Board found the greater weight of the evidence established that the continual failures and malfunctions of the transmission were a condition that substantially impaired use, value or safety and awarded the Consumers a refund.

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

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

Lindsey v. Ford Motor Company, 2001-1083/PEN (Fla. NMVAB April 12, 2002). The Consumers complained of a moon-roof leak and a noise coming from the roof area. The Manufacturer argued that the defects did not substantially impair the use, value, or safety of the vehicle, on the grounds that the roof leak was insignificant little drops of H_2O and the noise was a rattle from a luggage rack that could be cured with paper shims. The board found that the defects substantially impaired the use and value of the vehicle**.** Accordingly, the Consumers were awarded a refund.

Rosi v. General Motors Corporation, Chevrolet Division, 2002-0121 (Fla. NMVAB May 1, 2002).
The Consumers complained of a vibration and a misaligned cargo door. The Manufacturer argued that there were no nonconformities because the Manufacturer's agent could not duplicate the Consumers' concerns. At the arbitration hearing, the Board inspected the vehicle and observed that the cargo door was misaligned. The Board found that the defects complained of substantially impaired the use, value and safety of the vehicle. Accordingly, the Consumers were awarded a refund.

Factor v. Ford Motor Company, 2002-0172/TPA (Fla. NMVAB May 17, 2002).
Consumer complained of an intermittent vibration that is felt in the vehicle's seat. The Manufacturer argued that the vibration did not substantially impair the use, value, or safety of the vehicle. The Board test drove the vehicle and found the vibration to be slight. However, the Board found that the short test drive did not adequately compare to the consumer's daily driving, which involved significantly longer distances. The Board concluded that given the substantial distance that the Consumer drives each day, the vibration did in fact substantially impair the use of the vehicle. Accordingly, the Consumer was awarded a refund.

McCrary v. DaimlerChrysler Motors Corporation, 2002-0274/ORL (Fla. NMVAB May 28, 2002).
The Consumer complained of a foul odor emanating from the air conditioner, that caused the Consumer to suffer flu-like symptoms. The Manufacturer argued that the odor did not substantially impair the use, value or safety of the vehicle. The Manufacturer offered testimony that the odor was caused by a mold

and was "normal" in many vehicles in Florida, due to the humid climate. The Board found that the odor did not substantially impair the use, value or safety of the vehicle when viewed from the standpoint of a reasonable person in the Consumer's circumstances. Accordingly, the case was dismissed.

Hilliard v. Ford Motor Company, 2002-0345/JAX (Fla. NMVAB June 14, 2002).
The Consumers complained that the brakes on the vehicle wore out approximately every four months, requiring replacement of brake components. The Consumers used the vehicle to transport children to and from day care centers, and the Manufacturer claimed that the excessive wear was a normal result of the Consumer's stop-and-go use. The Board agreed with the Manufacturer and dismissed the case.

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

Big Woody's, Inc. v. Ford Motor Company, 2002-0387/ORL (Fla. NMVAB June 14, 2002).
The Consumer complained of a fuse intermittently blowing out. The fuse in question controlled the power control module. When the fuse would blow, the vehicle would not start. The Manufacturer alleged that the defect was the result of unauthorized modifications or alterations by unauthorized service agents. The Manufacturer's witness testified that the vehicle's power control module had a stored trouble code which indicated that a high performance chip, which was installed at the direction of the Consumer, had been installed in the power control module. The witness testified that placement of the chip in the power control module voided the warranty on the module. Although the Manufacturer's witness never observed the chip in the power control module, he testified that a section of the power control module's plastic cover had been cut away, which would allow for easy removal and reinsertion of the high performance chip. The Consumer claimed that the problem occurred even after the chip was removed from the vehicle completely. The Board found that the Manufacturer's witness's testimony was more credible than the Consumer's. Accordingly, the Board held that the defect resulted from unauthorized alteration and dismissed the case.

REFUND §681.104(2)(a)(b), F.S.:

Shope v. DaimlerChrysler Motors Corporation, 2002-0111/ORL (Fla. NMVAB May 3, 2002).
Because the Consumer financed numerous items within the motor vehicle loan, such as a lawnmower, the Board included only 62 percent of the amount paid on the loan as attributable to the vehicle in the refund calculation. The Board found that 62 percent of the original loan was attributable to the motor vehicle purchase and therefore only 62 percent of the Consumer's payments on the loan should be included in the refund or replacement calculation.

Walker v. Ford Motor Company, 2002-0016/WPB (Fla. NMVAB May 30, 2002).
The Consumer acquired the vehicle, at issue in this case, as a result of an agreement between the consumer and manufacturer to replace a previous vehicle. The replacement agreement amounted to an even swap of the two vehicles. The Consumer sought recovery of all expenses associated with the

acquisition of both vehicles, claiming that the leases were part of a single transaction. The Board denied the Consumer's request and refunded only the Consumer's costs associated with the vehicle that was then before the Board.

Incidental Charges §681.102(8), F.S.

Reed v. Kia Motors America, 2002-0421/ORL (Fla. NMVAB June 24, 2002).
The Board denied the Consumer's request that the refund include compensation for the "missed opportunity" to qualify for a cash bonus from her employer. The Consumer contended that because of the days that she missed from work when she presented the vehicle to the Manufacturer for the Final Repair attempt and to attend the BBB hearing, she lost an opportunity for a cash bonus from her employer. The Board also denied the Consumer's request for a deduction in the mileage offset for the miles driven to the Manufacturer's authorized service agent and to the BBB.

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

Blady v. American Isuzu Motors, Inc., 2002-0158/ORL (Fla. April 22, 2002).
The Manufacturer's representative testified that the trade-in allowance reflected in the purchase contract and retail installment contract included a $3,000.00 rebate, which was disguised as a down payment in order to entice the lender. The Manufacturer argued that the trade-in allowance should be reduced by the $3,000.00 rebate. The Board rejected the Manufacturer's argument and used the number written on the purchase contract to calculate the Consumer's trade-in allowance.

MISCELLANEOUS ISSUES

Mejia v. Toyota Motor Sales, U.S.A., 2001-1222/FTM (Fla. NMVAB April 19, 2002).
A hearing was continued after it was begun due to the inability of the interpreter. The Consumer was instructed to obtain an interpreter who could accurately interpret during a hearing. The hearing was reconvened on another day.

Griffin v. BMW of North America, LLC, 2002-0136/TPA (Fla. NMVAB May 22, 2002).
After the Board ruled that the motor vehicle was a lemon, the Manufacturer's counsel moved for disqualification of all the Board members on the basis of bias, prejudice, or interest. The Manufacturer's counsel argued that because the Manufacturer presented the only evidence that established the cause of the vehicle's problems, the Board would have to be biased to rule against the Manufacturer. The Board denied the motion, finding that the Manufacturer's grounds were legally insufficient.

OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

QUARTERLY CASE SUMMARIES

July 2002 - September 2002 (3rd Quarter)

REASONABLE NUMBER OF ATTEMPTS §681.104, F.S.

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

Riquelme v. Ford Motor Company, 2002-0538/STP (Fla. NMVAB August 28, 2002).
The Manufacturer contended that the Consumer did not send written notification to give a final opportunity to repair the vehicle. The Consumer claimed that he had notified the manufacturer of the defects in a letter which he sent to "Mr. Ford." In the letter, the Consumer congratulated Mr. Ford on his new job and also complained about his vehicle's defects. The Consumer did not present a copy of the letter and only had a mail receipt as evidence. The Board found that the Consumer failed to notify the manufacturer. Accordingly, the case was dismissed.

What Constitutes an "Out-of-Service Day," Rule 2-30.001(2)(c), F.A.C.

Horowitz v. Mercedes-Benz USA, Inc., 2002-0386/WPB (Fla. NMVAB July 25, 2002).
The Consumer complained of more than 20 defects. Some of the defects were not nonconformities as defined by the statute. The Manufacturer contended that the days-out-of service should be apportioned so as to not count the time spent on repairing defects which were not nonconformities. The Board held that apportionment of parts of days would be contrary to Florida Administrative Code Rule 2-30.001(2)(c), which defines what constitutes an out-of-service day. The Board concluded that the vehicle had been out of service for repair of nonconformities for 46 days. Accordingly the Consumer was awarded a refund.

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

Dicarlo-Vetter v. Nissan Motor Corporation, USA, 2002-0619/TPA (Fla. NMVAB August 29, 2002).
The Manufacturer argued that it had not been provided a final attempt to repair. The Manufacturer left a message at the Consumer's work. However, the Consumer was on maternity leave so she did not get the message. The written notification contained Mrs. Dicarlo-Vetter's work number and an alternative number, but the Manufacturer failed to use the alternative number. The Board found that the Manufacturer had not responded within 10 days of receipt of the written notification, noting that it was the Manufacturer's burden to contact the consumer and arrange a final repair attempt and that a single

call to one of the two numbers listed on the written notification was not sufficient.

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

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

Ouellette v. DaimlerChrysler Motors Corporation, 2002-0733/TLH (Fla. NMVAB September 17, 2002).
The Consumers complained of "rust spots" on their white vehicle. The vehicle was dirty when the Consumers purchased the vehicle, so they did not notice the spots until after they first washed the vehicle. Although some of the spots resurfaced after the manufacturer's removal attempt, there had been no new (additional) spots. The Manufacturer argued that the spots were not caused by a defect in paint or holes in sheet metal from rust or corrosion; rather, the spots on the motor vehicle were surface rust, metal specs, or pieces of industrial fallout. In an effort to cure the defect, the Manufacturer sublet the motor vehicle to a detail shop where buffing and claying removed the majority of the spots/specks. The Board observed the vehicle and found that the spots/specks that remained did not substantially impair use, value or safety of the vehicle. Accordingly, the Board dismissed the case.

Rambin v. Nissan Motor Corporation, USA, 2002-0618/ORL (Fla. NMVAB August 30, 2002).
The Consumer complained of a vibration that was felt in the seat of the truck when it was driven at speeds above 25 miles per hour. The Manufacturer argued that the vibration was "normal" and not a defect. The Manufacturer's witness testified that the vehicle "rides like a truck." The Board found that the vibration substantially impaired the use and safety of the vehicle. Accordingly, the Consumer was awarded a refund.

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

Lee v. Ford Motor Company, 2002-0725/JAX (Fla. NMVAB September 23, 2002).
The Consumer and a friend installed a CD changer in the trunk of a Ford Escort by drilling holes through the lefthand side of the trunk floor and screwing the changer into the trunk. Shortly thereafter, the problems with the vehicle's emissions control system developed. The "service engine soon" warning light would come on and stay on, and the engine would run rough, stalling on one occasion. None of the problems were experienced prior to the installation of the CD changer. Each time the vehicle was taken-in for repair, the Manufacturer's service agent discovered evidence of a leak in the emissions system and attempted to repair it; however, the warning light would come on again within several days to a couple of weeks later. During the final repair attempt, the service agent attempted to remove the rear vacuum cannister and discovered that the screws from the CD changer had gone through the trunk and into the cannister, creating a vacuum leak. The service agent repaired the puncture and charged the Consumer for the repair because the defect was outside of the warranty. The problem did not recur after the last repair. The Board found that the defect was the result of unauthorized modification by the Consumer. Accordingly, the case was dismissed.

Butler v. Ford Motor Company, 2002-0682/ORL (Fla. NMVAB September 16, 2002).
The Consumer complained that the transmission intermittently failed to shift properly, the vehicle stalled intermittently, and the "overdrive" indicator light flashed. The Consumer testified that the problem first occurred after an oil leak required the replacement of the rear main transmission seal. The Consumer admitted that he modified the vehicle as follows: the air intake was opened to allow an increased air flow to enhance performance; the exhaust was modified with straight pipes to improve the engine sound; and new tires and wheels were installed for a smoother ride. The Consumer denied causing a "superchip" performance enhancing modification to be added to the vehicle. However, the Manufacturer's witness testified that a seal on the vehicle's Power Control Module had been broken and there were screwdriver marks on the seal. The witness further testified that the purpose of the seal was to prevent tampering. He speculated that the only reason to modify the vehicle's air intake was to increase air flow to allow the "superchip" in the Power Control Module to enhance the vehicle's power. Thus, the Manufacturer's contention was that the modifications caused the problems experienced by the Consumer. The Board agreed, finding that the defects were the result of modifications by persons other than the Manufacturer. Accordingly, the case was dismissed.

Turner v. DaimlerChrysler Motors Corporation, 2002-0679/STP (Fla. NMVAB September 13, 2002).
The Consumer complained of an engine knock and the eventual engine failure. The Board found that the defect was the result of the Consumer's failure to change the oil until after the accrual of 21,000 miles on the vehicle's odometer. Accordingly, the case was dismissed.

Marin v. American Honda Motor Company, 2002-0478/MIA (Fla. NMVAB August 12, 2002).
The Consumers complained of electronic problems. The "check engine" and "traction control" warning lights illuminated. On the third attempt to repair, the Manufacturer's authorized service agent determined that the vehicle's onboard computer was damaged by flood water and advised the Consumers to file a claim with their insurance carrier for the necessary repairs. The Consumers subsequently filed a claim with their insurance carrier and paid for the replacement of the vehicle's computer, carpeting and jute with the proceeds. However, the Consumer testified that to his knowledge the vehicle had never suffered any flood damage. The Manufacturer contended that the alleged electronic defect was the result of accident, abuse or neglect by person other than the Manufacturer or its authorized service agent and not covered under the Manufacturer's warranty. The Manufacturer's witness testified that driving through flooded streets could cause the damage without the driver's knowledge. The witness further testified that Hurricane Floyd hit the Consumer's locale around the time of the damage to the vehicle and also caused flood damage to many other vehicles in the area. The Board found that the weight of the evidence established that the damage was caused by accidental flood water intrusion, and consequently, the electronic problems were not a nonconformity under the Lemon Law. Accordingly, the case was dismissed.

Fambro v. American Suzuki Motor Corporation, 2002-0493/TLH (Fla. NMVAB July 3, 2002).
The Consumer complained of a brake vibration and a complete failure of the vehicle's engine. The

Manufacturer's service manager informed the Consumer that the vehicle could not be repaired under the Manufacturer's warranty. At the hearing, the Manufacturer argued that the engine failure was not covered under the warranty, because it was not caused by a Manufacturer defect. Rather, the Manufacturer argued, the engine failure was caused by water ingestion through the air intake system by some sudden catastrophic event. The Manufacturer's witness testified that the condition of the engine and air filter indicated that some sort of sudden and significant intake of water, through the air intake system and into the cylinders, caused the engine to fail. She further testified that she felt rust powder on the cylinder walls and noted two dislodged and bent valves which, according to her, were displaced by the sudden ingestion of water. The witness also showed the Board an air filter, which apparently was removed from the Consumer's vehicle, and a photograph, depicting the air filter resting unattached in the area of the engine compartment where the filter would be attached to the intake system. According to the witness, some of the fabric-like strips on the filter were bent or curved, indicating that they had been wet. She testified that normal rain puddles and a car wash would not cause damage such as that seen in the Consumer's vehicle. The witness's photograph, however, did not depict any water, mud, or debris in the area of the air intake or around the air filter that would indicate the vehicle had been immersed in a large puddle of water or subjected to a catastrophic event that would result in water being sucked into the air intake. However, the Board was not convinced by the Manufacturer's testimony and found that the evidence failed to support the Manufacturer's defense. The Board noted that the exact cause of the problem may never be known, but it could just as likely be the result of a defect in design which allowed water intrusion into the engine. The Board held that the defects substantially impaired the use and value of the vehicle and awarded a refund.

REFUND §681.104(2)(a)(b), F.S.:

Incidental Charges §681.102(8), F.S.

Adelman v. Mercedes-Benz USA, Inc., 2002-0051/FTL (Fla. NMVAB August 12, 2002).
The Consumer requested that he be reimbursed for lost wages due to the nonconformity. Although the Board found the defect to be a nonconformity and awarded a refund accordingly, the Consumer's request for reimbursement for lost wages was denied. The Board found that the Consumer's lost wages were not a direct result of the nonconformity.

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

Hall v. Ford Motor Company, 2002-0569/TLH (Fla. NMVAB August 1, 2002).
The Board determined that a loud tapping noise in the engine substantially impaired the value of the motor vehicle and accordingly awarded a refund. In calculating the offset for the consumer's use, the Board deducted the mileage attributable to the Consumer's trips to the closest dealer for repairs and for test drives by the manufacturer's service agent. The Board found that the non-consumer mileage was 666 miles.

PROCEDURAL ISSUES

Consumer's Failure to Appear at the Hearing ¶¶(33) and (34), *Hearings Before the Florida New Motor Vehicle Arbitration Board.*

Klonis v. Toyota Motor Sales, USA., 2001-1113/FTL (Fla. NMVAB July 23, 2002).
The Consumer could not get a visa to leave Columbia. The hearing was continued until the consumer could appoint her fiancé as her attorney-in-fact to appear on her behalf. Then the hearing was continued again so that the Consumer could present a "proper Power of Attorney" appointing her fiancé as her attorney-in-fact. Although a hearing notice was subsequently mailed to the Consumer's last known address, neither the Consumer nor her attorney-in-fact attended the hearing. Consequently, the Board dismissed the case.

Scarpa v. Jaguar Cars, 2002-0489/TPA (Fla. NMVAB September 19, 2002).
The Consumer failed to attend the first hearing and the case was dismissed. However, the Consumer represented that he did not receive the notice of the initial hearing, so the dismissal was set aside. A second notice of hearing was mailed out, but the Consumer had a conflict and requested a continuance. The Manufacturer stipulated to the continuance, and a third notice of hearing was mailed to the Consumer. The Consumer again represented that he had a conflict and requested another continuance. The Manufacturer objected to another continuance. The Board Chairperson asked that the Consumer provide written confirmation of the mandatory nature of the Consumer's conflict. The Consumer refused to present the written confirmation. Therefore, the hearing was held. When the Consumer failed to attend, the Board dismissed the case.

MISCELLANEOUS ISSUES

Orr v. Toyota Motor Sales, USA, 2002-0570/ORL (Fla. NMVAB September 13, 2002).
The Consumer brought a non-lawyer as an advocate to the hearing. The Manufacturer objected, claiming that it would amount to the un-licensed practice of law. The Board held that the advocate could not represent the consumer. Further, the Board refused to hear the advocate's testimony on the ground that the Consumer had not timely notified the Board of the witness prior to the hearing.

OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

QUARTERLY CASE SUMMARIES

October 2002 - December 2002 (4th Quarter)

JURISDICTION

Motor Vehicle §681.102(15), F.S.

Reeves v. Ford Motor Company, 2002-0912/ORL (Fla. NMVAB December 3, 2002).
The Manufacturer contended that the subject vehicle was not a "motor vehicle" as defined by the lemon law statute because the original purchase occurred in Ohio. The Manufacturer originally delivered the vehicle to a Ford franchised dealer located in Ohio. The Ohio dealer then sold the vehicle to a Florida independent (non-franchised) dealer, which subsequently sold the vehicle to the Consumer in Florida. The Consumer's purchase contract identified the vehicle as "new"; however, the certificate of title identified the vehicle as "used." (Florida's titling statute requires that vehicles be titled as used when they are sold at retail by non-franchised motor vehicle dealers.) The Manufacturer contended that the original sale occurred in Ohio, when the franchised dealer sold the vehicle to the non-franchised Florida dealer. The Manufacturer argued that the subject vehicle was not a "motor vehicle" because it was not originally sold in Florida and when it was subsequently sold to the Consumer, it was sold as "used." The Board found that the Florida non-franchised dealer was not an "ultimate purchaser" because it purchased the vehicle for purposes of resale. Therefore, the vehicle was a new vehicle when the Florida dealer sold it to the Consumer. The Consumer was ultimately awarded a refund.

REASONABLE NUMBER OF ATTEMPTS §681.104, F.S.

What Constitutes a Reasonable Number of Attempts §681.104(2)(a), F.S.

Chancey v. Mitsubishi Motor Sales of America, Inc., 2002-0997/JAX (Fla. NMVAB December 27, 2002).
The Consumers complained of the following problems: "SRS" warning light illuminating, "TCL" and "ABS" warning lights illuminating, and water leaking from the air conditioner onto the interior floor of the vehicle. The "SRS" illumination problem was corrected after four repair attempts, and the problems with the other two warning lights were corrected after two repair attempts. The air conditioner leak was corrected after three repair attempts. The Board found that the warning lights could all have been indicative of failure in major safety-related components of the vehicle and that it was not unreasonable for the Consumers to be concerned about the potential for such failure. Consequently, the Board ruled

that the recurring illumination of the warning lights was a defect or condition that substantially impaired the vehicle's safety. Similarly, the Board ruled that the air conditioner leak substantially impaired the vehicle's value. However, the Board ultimately ruled against the Consumers, on the ground that the Manufacturer corrected the nonconformities within a reasonable number of attempts. Accordingly, the Consumer's case was dismissed.

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

Furr v. General Motors Corporation, Pontiac-GMC Division, 2002-0909/JAX (Fla. NMVAB November 6, 2002).
The Manufacturer argued that the Consumer failed to send a sufficient written notification of a final repair opportunity. When the Consumer leased the vehicle, she did not receive a written statement explaining her rights under the Florida Lemon Law; consequently, she followed the instructions in her warranty book to notify the Manufacturer of her continuing problem. The Manufacturer received the letter, and a representative telephoned the Consumer. The Manufacturer's representative also mailed a letter to the Consumer confirming the telephone call and designating the repair facility to address the problem. The vehicle was already at the designated repair facility undergoing repair on the day the Manufacturer telephoned the Consumer. The Board held that the Consumer's letter was sufficient written notification under the statute, because it contained the necessary information to prompt the Manufacturer to schedule and arrange a final repair attempt. The Board ultimately awarded the Consumer a refund.

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

Bauer v. Kia Motors America, 2002-0905/ORL (Fla. NMVAB October 30, 2002).
Although the Manufacturer's representative stipulated that the Manufacturer was provided a final repair attempt, he nonetheless requested that the Board issue an "interim repair decision" to permit an additional repair. According to the Manufacturer, the authorized service agent failed to follow the Manufacturer's instructions for repair of the defect. In addition to requesting an additional repair attempt, the Manufacturer's representative contended that the alleged defect did not substantially impair the use, value or safety of the vehicle, because the expense of repairing the defect would only be $90 and the Consumer simply needed to apply tape to secure the panel when she needed to use the rear cargo area. The Board ruled that the rear door interior access panel defect was a nonconformity that substantially impaired the use, value and safety of the vehicle. The Board further found that the consumer had adhered to the statutory requirements for written notice and final opportunity to repair. The Manufacturer's request for an "interim repair decision" was rejected as outside the scope of the Board's statutory authority. The Board ultimately awarded the Consumer a refund.

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

Pearson v. Nissan Motor Corporation, U.S.A., 2002-1029/STP (Fla. NMVAB December 17, 2002).
In a days-out-of-service case, the Manufacturer's representative requested that the Consumer's claim be dismissed because the nonconformities had been repaired. The Manufacturer's representative contended that the Lemon Law requires a current problem to exist with the vehicle. The Board rejected the Manufacturer's contention, noting that there is no requirement in the statute that the nonconformities continue to exist on the date of the hearing or that any nonconformities continue to exist after 30 or more days out of service. Ultimately, the Consumer was awarded a refund.

Madore v. Mercedes-Benz USA, Inc., 2002-0784/JAX (Fla. NMVAB November 27, 2002).
The Manufacturer argued that the in-and-out dates reflected on its service agent's written repair order were incorrect. The repair order gave the "date in" as November 8, 2001 and the "date ready" as November 27, 2001. A service technician testified that the consumer actually picked up the vehicle on November 10, 2001, and the repair order was "left open" until the end of November. It was the normal procedure for that dealership to leave repair orders "open" if ordered parts were delayed and "close" the repair orders at the end of the month. The Consumer testified that his personal calendar and memory of the events surrounding that repair were that he brought the vehicle into the service agent on November 8, 2001 and left the vehicle. Thereafter, he telephoned several times to check on the status of the repair and was told that parts had been ordered, but there was a delay in delivery. The Consumer, a member of the armed forces, was required to report for duty in Georgia by November 29, 2001, so he contacted the service agent and arranged to pick up his vehicle on November 27, 2001, in order to drive to Georgia. He later returned the vehicle to the dealership, and the delayed part (a replacement transmission) was installed. The Board resolved the conflicting testimony in favor of the Consumer and found the vehicle was out of service for repair from November 8-27, 2001. The Board noted that the Manufacturer, through its authorized service agent, has a statutory duty to provide a written repair order that reflects the date the vehicle is brought into the repair facility and the date the work is completed. The Board ultimately awarded the Consumer a refund.

DEFINITION OF NONCONFORMITY §681.102(16), F.S.

Middleton v. Ford Motor Company, 2002-0856/JAX (Fla. NMVAB November 27, 2002).
The Consumer complained that rear-seat passengers had been unable to exit the vehicle just by pressing the button next to the door handle and lifting the door handle. The problem occurred when the power locks were engaged and the child safety lock feature was off. However, the doors could be unlocked with the remote control. Each time the Consumer took the vehicle to the Manufacturer's authorized service agent for repair she informed the service personnel that her rear door locks did not work. She did not explain the situation in any greater detail, and the service agent did not further inquire. Throughout the course of repairs, the service personnel checked the operation of the locks

from outside the vehicle by using the remote and found the locks to be functioning normally. The Manufacturer's witness testified that he was not aware that the Consumer was complaining of an inability to exit from the back seat of the vehicle when the locks were on. The Board inspected the vehicle and found that the rear door locks operated properly when utilized in accordance with the instructions in the Owner's Manual. The Board found that the problem complained of was not a defect, noting that the Consumer's problem was more indicative of a lack of communication. Accordingly, the Board dismissed the Consumer's claim.

Hood v. Ford Motor Company, 2002-0848/ORL (Fla. NMVAB November 20, 2002).
The Manufacturer's representative argued that the alleged gear selector problem was cured and that the remaining problems complained of by the Consumer were not the subject of a reasonable number of repair attempts. The Consumer complained of assorted electrical problems. The electrical problems intermittently caused the following malfunctions: (1) the gear would not shift into gear from park, (2) the power windows and power locks failed, and (3) the brake lights illuminated and would not go off, draining the battery. The Board found the assorted electrical problems to be an overall electrical condition that substantially impaired the use, value and safety of the vehicle. The Board also found that the electrical condition continued to exist after the final repair attempt. Accordingly, the Board awarded the Consumer a refund.

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

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

Metzler v. Toyota Motor Sales, U.S.A., 2002-0907/TPA (Fla. NMVAB December 13, 2002).
The Consumer complained of engine problems that caused the vehicle to be out of service for repair for 30 or more days. The Manufacturer's representative argued that the engine problems were the result of an accident or abuse by persons other than the Manufacturer or its authorized service agent. Prior to the engine problems, the vehicle was in the Manufacturer's authorized service agent's repair facility for exterior body damage repairs to the side of the vehicle. Approximately one week after the Consumer picked-up the vehicle, it had to be towed back to the Manufacturer's authorized service agent, because the vehicle's engine overheated and was making a knocking sound. Subsequently, the vehicle had to again be towed to the Manufacturer's authorized service agent's facility. The service agent told the Consumer that the vehicle's block drain was found to be in the "open" position which caused the coolant to leak from the vehicle, but they declined responsibility for causing the block drain to be "open." Consequently, the service agent required the Consumer to pay $1,000 toward the cost of the repairs. A witness for the Manufacturer speculated that the vehicle's engine could have been starved of oil as a result of the accident that caused the side body damage. Concerning the open block drain, the witness expressed the opinion that the Consumer could not have driven the vehicle 177 miles if the block drain had been open when he picked-up the vehicle. The Board rejected the Manufacturer's defense, holding that the engine problems evinced a defect or condition that substantially impaired the

use and value of the vehicle. Accordingly, the Board awarded the Consumer a refund.

Cyr v. Ford Motor Company, 2002-0893/ORL (Fla. NMVAB December 2, 2002). The Manufacturer's representative argued that the alleged defect was the result of improper maintenance of the vehicle by the Consumer. The Consumer complained of an alignment problem which caused the vehicle to pull when driven. The Manufacturer's witness testified that, at the pre-hearing inspection, he saw no evidence to indicate that the vehicle's tires had been rotated. He also testified that the tires appeared to be "chopped" which could cause the vehicle to pull and to vibrate. The maintenance guide for the vehicle recommended that tires be rotated every 5,000 to 6,000 miles. The Consumer testified that the vehicle's tires were rotated when the vehicle attained 21,121 miles of operation and again when the vehicle attained 28,080. The Consumer additionally testified that the front tires were moved to the rear of the vehicle after the pre-hearing inspection was conducted. An inspection of the vehicle was performed by the Board, and tire tread was observed to be evenly worn, indicating that the tires had been rotated. The Board found that the evidence presented by the Consumer and the inspection performed during the hearing overcame the Manufacturer's defense that the defect was the result of improper maintenance. The Board ultimately awarded the Consumer a refund.

REFUND §681.104(2)(a)(b), F.S.

Collateral Charges §681.102(3), F.S.

Wassberg v. Toyota Motor Sales, U.S.A., 2002-0970/FTM (Fla. NMVAB December 23, 2002). The Consumers requested reimbursement for a cargo net, a sound system, a radio mounting kit, spectre mica touch-up paint, oil filters, an aero kit that had not been installed on the vehicle, paint purchased to paint the aero kit, tires, and tire service fees. The Consumers purchased the sound system through their business and submitted an invoice for reimbursement which reflected the retail price for the sound system. The Board ordered a refund which included reimbursement for the cargo net, the sound system, and the radio mounting kit. The Board denied the consumers' request for reimbursement for spectre mica paint, oil filters, the aero kit that had not been installed, paint purchased to paint the aero kit, tires, and tire service fees.

Rodriguez v. Ford Motor Company, 2002-1005/TPA (Fla. NMVAB December 10, 2002). The Manufacturer argued that the interest paid by the Consumers should not be reimbursed, because it was interest paid on the Consumers' home loan. Prior to making any payments on the loan for the subject vehicle, the Consumers satisfied the lien against the vehicle with funds secured by a home loan. The Consumers requested reimbursement for interest on the home loan that was attributable to the vehicle loan payoff amount. The Manufacturer's representative argued that section 681.104(2)(b), Florida Statutes (2001), directed that "refunds shall be made to the consumer and lien holder of record, if any, as their interests may appear." Because there was no existing lien against the vehicle, the

Manufacturer's representative contended that the Consumers should not be reimbursed for the interest paid. The Board rejected the Manufacturer's argument. Accordingly, the refund included reimbursement to the Consumers for interest paid on the home loan that was attributable to the vehicle loan payoff.

Incidental Charges §681.102(8), F.S.

Robertson v. General Motors Corporation, Chevrolet Motor Division, 2002-0829/TPA (Fla. NMVAB October 3, 2002).
The Consumers requested reimbursement for incidental charges as follows: $65.40 for postage expenses, $17.37 for copy expenses, payment of insurance premiums covering the subject vehicle, $10.00 for a copy of the BBB/Autoline hearing tape, and $5.00 for each time they were provided a rental vehicle when the subject vehicle was in the repair facility. The Consumers were required to pay the $5.00 fee because they did not have a credit card to secure the rental contract. The Manufacturer objected to these incidental costs. The Board granted reimbursement for the postage and copy expenses, but denied reimbursement for the insurance premiums and the costs to obtain the BBB tape and rental vehicles.

Chester v. Ford Motor Company, 2002-0748/JAX (Fla. NMVAB November 27, 2002).
The Consumer sought reimbursement for a document scanner and a used car that was allegedly purchased as alternative transportation to the "lemon" vehicle. The Manufacturer objected to the charges as being unreasonable. The Consumer was ultimately awarded a refund, but the Board agreed that the document scanner and used car were not reasonable incidental charges.

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

Lambert v. Ford Motor Company, 2002-1006/TPA (Fla. NMVAB December 9, 2002).
In connection with the purchase of the "lemon" vehicle, the Consumer contributed a trade-in vehicle for which she received $9,550 as a net trade-in allowance. The net trade-in allowance was not acceptable to the Manufacturer, so the Manufacturer provided a copy of the NADA Official Used Car Guide (Southeastern Edition) in effect on the date of the purchase. The NADA Guide indicated a retail price for the consumer's trade-in vehicle of $8,775 ($7,775 plus $500 for a moon roof, $100 for aluminum alloy wheels, $50 for a compact disc player, $250 for leather seats, and $100 for a "mach" stereo system). The Manufacturer objected to enhancing the base retail price of the trade-in vehicle without requiring the Consumer to produce documentary proof of the enhancements. The Board accepted the consumer's sworn testimony regarding the equipment on the trade-in, and awarded her the NADA retail price as the net trade-in allowance.

Brookshire v. Ford Motor Company, 2002-0805/ORL (Fla. NMVAB December 6, 2002).
The consumer provided two vehicles as trade-in vehicles at the time he acquired the subject vehicle. The net trade-in allowance reflected on the installment contract was not acceptable to the consumer, so

the Board used the NADA Official Used Car Guide to calculate the retail value of the vehicles. One of the trade-in vehicles was not included in the NADA Official Used Car Guide; however, it was included in the NADA Official Older Used Car Guide. The Manufacturer objected to the use of the Official Older Used Car Guide on the ground that the lemon law statute required that the NADA Official Used Car Guide be used, not the Official Older Used Car Guide. The Manufacturer also objected to the use of the NADA Guides on the ground that the Board should not separately calculate the value of the two trade-in vehicles where the purchase order and installment contract reflected the "gross trade-in allowance" and did not separately allocate an amount for each vehicle. The Board found that the facts presented were not contemplated by the legislature. The Board noted that the statute is a remedial statute and should be liberally construed to effectuate its remedial purpose. Consequently, the Board held that under the circumstances it was appropriate to use the NADA Older Used Car Guide.

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

Howard v. General Motors Corporation, Chevrolet Motor Division, 2002-1069/STP (Fla. NMVAB December 20, 2002).
The Consumer argued that the Board should utilize the mileage attributable to the Consumer at the time he requested a BBB/AUTOLINE hearing to calculate the offset. The Consumer filed a claim with BBB/AUTOLINE, but the program rendered a decision declining jurisdiction without holding an arbitration hearing. Thereafter, the Consumer filed a request for arbitration before the Board. The Board rejected the Consumer's argument. Relying on section 681.102(20), Florida Statutes (2001), which provides that the "number of miles attributable to the consumer" is the mileage "up to the date of a settlement or arbitration hearing." The Board ruled that the mileage as of the date of the hearing before the New Motor Vehicle Arbitration Board was the mileage to be used in the offset calculation, because the Consumer did not have a BBB/AUTOLINE arbitration hearing.

MISCELLANEOUS ISSUES

Bowers v. Ford Motor Company, 2002-0413/ORL (Fla. NMVAB October 4, 2002).
The Manufacturer's representative argued that the Board lacked jurisdiction to consider the Consumers' claim because the parties had entered into a settlement agreement. Pursuant to the settlement agreement, the Manufacturer paid off the outstanding lien against the vehicle, and the Consumers turned in the vehicle to the dealer. Although the Consumers had agreed to sign a release, they refused to do so when they turned in the vehicle. Counsel for the Manufacturer stated that he was in possession of the Consumers' refund check and would tender it if the Consumers would sign the required documents, including the release. The Board held that it was not empowered to enforce settlement agreements between the parties.