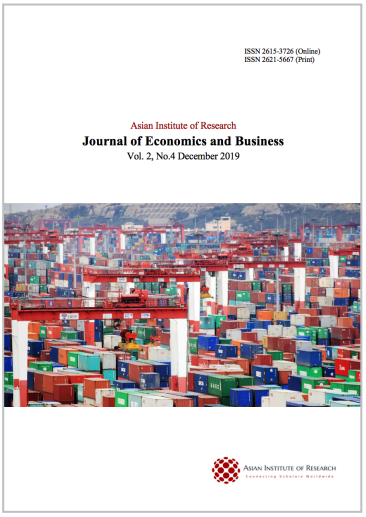

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The Case of the Florida Lemon: Options for the Buyer or Trap for the Consumer: The Florida Motor Vehicle Warranty Enforcement Act

Richard J. Hunter Jr.[1], John H. Shannon[2], Henry J. Amoroso[3]

[1] Professor of Legal Studies, Stillman School of Business, Seton Hall University, South Orange, New Jersey
[2] Professor of Legal Studies, Stillman School of Business, Seton Hall University, South Orange, New Jersey
[3] Associate Professor of Legal Studies, Stillman School of Business, Seton Hall University, South Orange, New Jersey

Abstract
The State of Florida is just one of the fifty states and the District of Columbia which have enacted a state Lemon Law. This paper outlines the provisions of the Florida statutory scheme that covers both the sale and lease of vehicles that are found to be "lemons." The Florida Lemon Law is also known as "The Motor Vehicle Warranty Enforcement Act," as it must be viewed in light of legal provisions relating to warranties. The Florida Lemon Law determines what defects or conditions will trigger the operation of a warranty and whether and under what circumstances the warrantor (generally, the manufacturer) may attempt to remedy or "cure" any defective condition. The paper also outlines the procedures for resolving a dispute between a dealer or automobile manufacturer and an unsatisfied customer when the customer is seeking either a refund or a replacement vehicle for a "lemon."

Keywords: Lemon Law, Defect, Warranties, Arbitration

1. Introduction

Nolo.com (2019) reports that "An estimated 150,000 cars each year (or 1% of new cars) are lemons—cars that have repeated, unfixable problems. Every state has enacted some type of "lemon law" to help consumers who get stuck with these defective cars." Consider this scenario: Walter has recently moved from New Jersey to Florida. No longer needing a second family SUV, Walter contacts the local VW dealer in order to purchase the "dream car of his youth"— a VW Beetle Convertible. However, the dream quickly turns into a nightmare! Within a week of the purchase, Walter notices that the back seat floor gets soaked every time there is a rain event— quite common in Florida! Over the next few months, Walter brings the VW back to the dealership five times, but the problem persists. The VW is out of service for a total of 33 days during a nine-week period when it is supposedly being repaired. Exasperated, Walter now just wants his money back. The dealer, however, refuses and insists that Walter bring the VW back for "one more try." Walter objects and tells the dealer he is going to drive back to New Jersey where he has a good friend who is a VW dealer. Walter tells the Florida dealer he expects to get a full refund of his purchase price and also to be reimbursed for the cost of gas, motels, meals, etc. while he returns to and from

New Jersey to purchase the VW from a dealer whom he trusts. The Florida dealer informs Walter that "there is no way I'm going to agree to that" and tells Walter that they will simply have to go to arbitration to settle their dispute. Walter counters by immediately filing a law suit in the court in the Florida County where he is now living, seeking rescission of his contract with the dealer and unspecified damages.

2. What is a "Lemon Law"?

Essmeier (2005, p. 1) noted: "Every now and then, some unlikely buyer will end up with a vehicle that has a problem that simply cannot be repaired. These problem vehicles are universally known as 'lemons.'" The State of Florida has provided a strong policy justification and perspective supporting the underpinnings of "*The Motor Vehicle Warranty Enforcement Act*" (State of Florida, 2019), commonly known as the *Florida Lemon Law,* to deal with such circumstances:

> "The Legislature recognizes that a motor vehicle is a major consumer purchase and that a defective motor vehicle undoubtedly creates a hardship for the consumer. The Legislature further recognizes that a duly franchised motor vehicle dealer is an authorized service agent of the manufacturer. It is the intent of the Legislature that a good faith motor vehicle warranty complaint by a consumer be resolved by the manufacturer within a specified period of time; however, it is not the intent of the Legislature that a consumer establish the presumption of a reasonable number of attempts as to each manufacturer that provides a warranty directly to the consumer. It is further the intent of the Legislature to provide the statutory procedures whereby a consumer may receive a replacement motor vehicle, or a full refund, for a motor vehicle which cannot be brought into conformity with the warranty provided for in this chapter. However, nothing in this chapter shall in any way limit or expand the rights or remedies which are otherwise available to a consumer under any other law" (State of Florida (Legislative Intent), 2019).

A *Lemon Law* is a statute enacted by the legislature of an individual state that provides a remedy for a purchaser or lessee of an automobile (and other consumer goods) in order to compensate the purchaser or lessee for a product that repeatedly fails to meet standards of *quality, safety, and performance.* Although not strictly limited to automobiles, the term "lemon" is most often associated with defective motor vehicles, including automobiles, recreational vehicles (RVs), trucks, SUVs, and motorcycles (see *Yvon v. Baja Marine Corp.*, 2007).

The State of Florida is just one of the fifty states and the District of Columbia who have enacted a state Lemon Law (Hunter, 2016; Lemon Law America, 2019). This paper outlines the provisions of the Florida statutory scheme that covers both the sale and lease of vehicles relating to potential "lemons" (Smith, 2011). The Florida Lemon Law is also known as "*The Motor Vehicle Warranty Enforcement Act*," as it must be viewed in light of statutory provisions relating to warranties (see State of Florida (Florida Statutes), Chapter 681, 2019). The Lemon Law, originally enacted in 1988 (Smith, 2011), determines what defects or conditions will trigger the operation of a warranty and whether and under what conditions the warrantor (generally, the automobile manufacturer) may attempt to remedy or "cure" any defect or condition (Schwartz, 1975; see also UCC Section 712).

It is instructive to determine what the Lemon Law does not cover. The Florida Lemon Law does *not generally* cover used motor vehicles (Hunter, 2016); non-motorized and off-road vehicles; vehicles designed to run only on tracks; motorcycles and mopeds that weigh more than 10,000 pounds (gross weight); or the "living facilities" of recreation vehicles (see *Allen v. Holiday Kamper*, Co., 2019).

In addition, the Florida Lemon Law does not cover a defect resulting from an "accident, abuse, neglect or modification or alteration of the vehicle by persons other than a manufacturer or the authorized representative of the manufacturer." An *authorized service agent* may be any person, including the franchised new automobile dealer (the dealer), who is authorized by the manufacturer to service motor vehicles. It does not necessarily have to be the dealer from whom the buyer had purchased the automobile or vehicle. In the case of an RV, where there are two or more manufacturers, an authorized service representative may be any person, including the dealer,

authorized to service the items warranted by that manufacturer. (It should be recognized that under the Florida Lemon Law, some of the provisions relating to coverage, repeat repairs, days out of service and arbitration (State of Florida, 2019, pp. 8-11) may differ for recreational vehicles. These differences may reflect the high volume of recreational vehicles purchased and used in the State of Florida.)

3. What is a defect?

A *defect* is defined as a *condition* that "substantially impairs the use, value, or safety" of a motor vehicle. The use of the adverb "*substantially*" indicates that "minor or trivial defects or deviations in appearance, structure or performance are not covered under the Lemon Law (see Lawrence, 1994; Dressler, 2009). As such, the Florida definition of a defect tracks the generic definition of a product defect under the law of products liability:

US Legal (2019) offers the following definition of a defective product:

> "A defective product is an imperfection in a product that has a manufacturing or design defect, or is faulty because of inadequate instructions or warnings. A product is in a defective condition if it is unreasonably dangerous to the user or to consumer who purchases the product and causes physical harm."

Under modern products liability law, there are three types of defects: a *manufacturing* defect; a *design defect*; and a *marketing* defect, resulting from inadequate warning and labels related to a product. Hunter, Shannon, and Amoroso (2018, p.1) note that a defect can arise from three common sources under the Restatement (Third) Torts: Product Liability §§ 1-2 (1998):

- A manufacturing or production defect—that occurs from a random and atypical breakdown in the manufacturing process (Owen, 2002). A production or manufacturing defect exists 'if the product differs from a manufacturer's intended use or if the product differs from apparently identical products from the same manufacturer'" (Hunter, Shannon, & Amoroso, 2018, p. 7; see also *Hunt v. Ferguson-Paulus Enterprises*, 1966);
- A design defect (Twerski & Henderson, Jr., 2009; Stewart, 2009; see also *Talavera v. Ford Motor Company*, 2013)—that is characteristic of a whole product line, such as the infamous Ford Pinto automobile (Lee, 1998; Hester & Adams, 2017). "Whether a product was defectively designed must be judged against the technological context existing at the time of its manufacture"—utilizing so-called "state of the art evidence: (see *Boatland of Houston v. Bailey*, 1945); or
- A marketing defect—involving inadequate warnings concerning risks or dangers, or inadequate instructions relating to how to properly or safely use a product. Many cases in the area of a marketing defect involve food, drugs, or more recently, children's toys or car seats (Hunter & Montuori, 2013; generally, Hunter, Amoroso, & Shannon, 2012, p. 35). In order for a warning to be adequate, the manufacturer must make the product "safe for both its intended and foreseeable uses."

Hunter, Shannon, and Amoroso (2018, p. 19) note that there are three criteria that are used to determine the adequacy of product warnings:

> … "A warning must be displayed in such a way as to reasonably catch the attention of the person expected to use the product. This element deals with such factual questions as size, position, and even the color of the warnings";
> … "A warning must fairly apprise a reasonable user of the nature and extent of the danger and not minimize any danger associated with the use of a product"; and
> … "A warning must instruct the user how to use the product in such a way as to avoid the danger—essentially how to safely use the product. Courts emphasize that the manufacturer must anticipate reasonable risks and warn of these risks. Manufacturers must also appreciate the 'environment of use' of a product" (see *Spruill v. Boyle-Midway, Inc.*, 1962)

4. Defects and Warranty Law

Under Florida law, the defect or condition, referred to as a "nonconformity" (see *Gilvin v. FCA USA, LLC,* 2019), must meet three criteria:

1. The defect or condition must be covered under the warranty (see, e.g., *Bieda v. Case New Holland Industries, Inc.*, 2019);
2. It must have been reported to the manufacturer or authorized service agent during the "Lemon Law Rights Period," which is defined as the "first 24 month period after the date of the original delivery of a motor vehicle to a consumer"; and
3. As noted above, the defect or condition must "substantially impair the use, value or safety of a vehicle."

The Lemon Law is related to warranty protections for a product. Investopedia (2019) defines a warranty as "… a type of guarantee that a manufacturer or similar party makes regarding the condition of its product. It also refers to the terms and situations in which repairs or exchanges will be made in the event that the product does not function as originally described or intended. A warranty is a guarantee of the condition of a product." At its essence, the Lemon Law is the method by which it can be determined whether or not a warranty protection can be triggered (Lane, 2019) and under what circumstances the manufacturer or dealer may be given the right to *cure* any defect or issue that "substantially impairs the use, value or safety of the vehicle" (see UCC Section 2-508) or where the buyer or lessee is seeking a replacement vehicle or a refund of the purchase price.

4.1 Express Warranties

Under the Uniform Commercial Code Section 2-313, which governs the sale or lease of a "good" (something movable and tangible), an express warranty is an "affirmation of fact or promise" made by a seller to the buyer or lessee under certain circumstances, which relates to the goods, and which becomes part of the basis of the bargain. The UCC provides that specific words such as "warrant" or "guarantee" are not required to create an express warranty. In addition, an express warranty can be created even when the seller did not have the specific intention to create a warranty. A warranty may also be created by and through the use of a "sample, description, or model." An express warranty may be oral as well as written. However, in most if not all cases involving automobiles, the express warranty will be found in a written document provided by the manufacturer and delivered by the dealer to the buyer or lessee at the time of the purchase or lease of the vehicle (Davis, 2010; e.g., Radogna, 2016).

4.2 Implied Warranties

The UCC also recognizes certain implied warranties. Implied warranties automatically exist *as a matter of law* when goods are being sold or in certain circumstances where the goods are subject to a lease. (In Florida, the provisions of the Lemon Law are applicable to a lease of an automobile where the lease is for *one year or more* and the lessee is responsible for having the vehicle repaired.) There are two implied warranties: *the warranty of merchantability* (UCC Section 2-314) and *the warranty of fitness for a particular purpose* (UCC Section 2-315).

The implied warranty of merchantability, at its essence, promises that the goods "are fit for the ordinary purposes" for goods of that type are used. In addition, in order to be considered merchantable, the goods must "pass without objection" under the standards of the trade and the goods are sufficiently "contained, packaged, and labeled" as required by the sales contract (see *Easterling v. Ford Motor Co.*, 2019). The warranty of merchantability applies only if the seller is a merchant with regards to the goods of that kind (UCC Section 2-1-4(1))—i.e., someone who "deals regularly" in goods of that kind or who holds him/herself out as having special knowledge regarding the goods.

There is a second, more specific implied warranty, the implied warranty of fitness for a particular purpose, which is created if the seller has reason to know that: (1) the buyer intends to use the goods being sold for a particular purpose; and (2) the buyer is relying on the seller's skill or judgment in selecting which goods to buy for that purpose. When these two conditions are met, the seller will be bound by this additional warranty (Kwestel, 2010).

Under UCC Section 2-316, it is possible for a seller to exclude (disclaim) (see *Kaiser Martin Group, Inc. v. Haas Door Co.*, 2019) or modify implied warranties (e.g., Ganz, 1964; Tansey, 2019). However, it is practically impossible to disclaim an express warranty once an express warranty is given (see Saunders, 2016). Although not strictly required in all states, in order to disclaim the implied warranties, the seller or lessor must provide the exclusion or modification in a "writing" or in a printed document, such as the sales contract—and in a manner that makes the exclusion or modification *conspicuous*. [Under UCC Section 2-201(1), the word "conspicuous" means a term "so written, displayed, or presented that a reasonable person against which it is to operate out to have noticed it.] The UCC provides specific language that may be used for such disclaimers:

- For the warranty of merchantability: *"The seller undertakes no responsibility for the quality of the goods except as otherwise provided in this contract";*
- For the warranty of fitness for a particular purpose involving a sale to a consumer: *"The seller assumes no responsibility that the goods will be fit for any particular purpose for which you may be buying these goods, except as otherwise provided in the contract";*
- In addition, it may be possible to disclaim the implied warranties by included phrases such as "*with all faults*" or "*as is*."

However, warranty disclaimers will not provide protection for a manufacturer if a buyer is injured by a product and the plaintiff is relying on the theory of strict liability in tort (see, e.g., Hunter, Shannon, & Amoroso, 2018, pp. 155-162; *Greenman v. Yuba Power Products, Inc.*, 1963), and not a warranty theory, as a basis of recovery. With the exception of contract fraud, where a state law mandates a warranty, or where a dealer voluntarily offers the buyer a warranty, sales of *used vehicles* are not accompanied by a statutory warranty and are generally sold "as is" (Hunter, 2016; Tansey, 2019).

5. The Essence of the Lemon Law: Repeat Repairs

At the outset, it is important for the owner or lessee of a vehicle to promptly report any problems encountered with a vehicle to the manufacturer, an authorized service agent, or dealer so that the vehicle might be repaired in a timely manner (Office of Attorney General, 2019). The key at this point is in determining what is termed as a "repair attempt" (see *General Motors Corporation v. Dohmann*, 1998; Hanin, Greenbaum, & Aron-Dine, 2017).

A repair attempt involves the *replacement* of a component (commonly referred to as a *part*) or some *adjustment* made to a component or part in order to correct a nonconformity. Generally, if an owner or lessee has taken a vehicle for repair of the same defect *at least three times* and the defect has not been repaired or fixed, the owner or lessee must send written notice to the *manufacturer* (return receipt requested), *not the dealer*, by registered or express mail in order to give the manufacturer *one last chance* to remedy the defect. The manufacturer must respond within 10 days. The failure of the manufacturer to respond within the 10-day statutory period means that the buyer or lessee does not have to afford the manufacturer with the 'one last chance' to remedy the defect. The response of the manufacturer, which is *not* required to be in writing, must be specific: the manufacturer must direct the buyer or lessee to a reasonably accessible repair shop or dealer for the final repair. The appointment itself must be scheduled within a reasonable time after the manufacturer received the notification. A written notice, however, is generally preferable.

Once the buyer or lessee has delivered the vehicle to the repair shop, the manufacturer has ten days to fix any defect. If the manufacturer fails to fix the defect within the ten days, the buyer or lessee does not have to permit any further repairs. At that point, the manufacturer must refund the full purchase price or provide for a replacement vehicle. If the "first defect" is successfully corrected at the final repair attempt, but a new defect has occurred during the "Lemon Law Rights" period, the same procedures as outlined above concerning the rights and responsibilities of the parties apply.

4.1 "Days Out of Service"

If a vehicle has been "out of service" for repair of one or more defects for a *cumulative total of 15 or more calendar days*, the buyer or lessee must send a written notice of this fact to the manufacturer, again not the dealer, by registered mail (return receipt requested) or express mail. An "out of service day" is *any day* (including any weekends and holidays) that a vehicle is left at an authorized service agent or a manufacturer's designated repair facility for examination or repair of one or more vehicle nonconformities. After the manufacturer receives the notification, the manufacturer or its authorized service agent must be afforded at least one opportunity to inspect or repair the vehicle. The Florida Lemon Law presumes that the manufacturer or authorized service agent has had a "reasonable number of attempts" if the vehicle is "out of service" for repair of one or more nonconformities for a *cumulative total of 30 or more days and the buyer has given the required written notification and inspection/repair option.* In such a case, the manufacturer must offer a refund or a replacement vehicle to the buyer or lessee (Office of Attorney General, 2019).

5. Remedies

It is the buyer or lessee's option to choose either a *refund* (see *Sheinfeld v. BMW Financial Services, NA, LLC*, 2019) or *replacement vehicle* if the vehicle qualifies as a "lemon." The buyer or lessee, however, is not required to accept a replacement vehicle: the buyer or lessee has an unconditional right to a refund once a vehicle is determined to be a "lemon."

The remedies provided are closely associated with that of "cover" under the Uniform Commercial Code Section 2-712 in which an aggrieved buyer may seek a "reasonable substitute good" (e.g., Anderson, 2018). If the buyer or lessee agrees to accept a replacement vehicle, the replacement vehicle must be either *identical to or reasonably equivalent to the "lemon."* The Florida Consumer Guide (Office of the Attorney General, 2019) defines a "reasonable equivalent replacement vehicle" as one with a manufacturer's suggested retail price (MSRP) of not more than 105 percent of the manufacturer's suggested retail price of the "lemon." Again tracking UCC 2-712, the buyer or lessee is also entitled to recover certain "collateral" and incidental charges that have been previously paid.

5.1 Collateral and Incidental Charges

Collateral charges are defined as "reasonable additional charges to a consumer wholly incurred as a result of the acquisition of the motor vehicle." Collateral charges may include any manufacturer or dealer-installed items, service charges, certain finance charges, sales taxes, and title and document charges. Incidental charges, analogous to "incidental damages" under the Code (Section 2-715), include any reasonable costs to the buyer or lessee which are "directly caused by the nonconformity of the motor vehicle." Incidental charges may include postage, car rental expenses, towing, repair costs, lodging, etc. (Office of Attorney General, 2019).

5.2 Refund Issues

If the buyer or the lessee chooses the option of a refund, the buyer or lessee is entitled to reimbursement of the *full purchase price of the vehicle,* including the return of any cash payments made by the buyer or lessee and any allowance for a trade-in. Interestingly, because of a wide range of trade-in allowances, if the parties cannot agree on the actual amount of the trade-in allowance contained in the sale or lease documents, the trade-in reimbursement will be equal to "retail price stated in the National Automobile Dealers Association (NADA) Official Used Car Guide (2019) (Southeastern Edition), generally known as the "Blue Book," reflecting unique conditions relating to Florida, at the time the "lemon" was acquired. If the buyer or lessee owed money on the trade-in at the time of the trade-in, then the retail price will be reduced by the amount of any debt. Interestingly, it is the responsibility of the dealer to provide the NADA book to the consumer. As in the case of a replacement vehicle, the consumer may be entitled to reimbursement for certain "collateral" and "incidental" charges (Office of Attorney General, 2019).

If the vehicle is financed, any refund will be divided between the consumer and the lessor or lien-holder (bank, credit union, finance company) based on their "respective financial interests." If the vehicle is leased, the Lemon Law provides that the lease agreement will terminate when the vehicle is turned-in to the dealer. No penalties may be assessed against a lessee for any early lease termination.

Interestingly, if the consumer receives a replacement vehicle or a refund, the manufacturer is entitled to receive compensation for the use of the vehicle by the buyer or lessee up to the time the consumer and the manufacturer settle the claim or the arbitration hearing is held, whichever occurs first. This "offset for use" equals the number of miles attributable to the consumer (less any mileage on the odometer at the time of the purchase or lease, mileage accrued by the manufacturer or service agent, and any mileage driven to any arbitration hearing) multiplied by the base sales price of the vehicle as reflected on the purchase invoice, exclusive of taxes, government fees, and dealer fees, or in the case of a lease, the agreed upon value as reflected in the lease agreement, divided by 120,000 (or 60,000, in the case of a recreational vehicle (Office of Attorney General, 2019). [See the example in Appendix I.]

6. What Happens if the Parties Do Not Agree? Arbitration

Arbitration, "third-party dispute resolution," or "alternate dispute resolution" (Murray, 2019) is a process that allows the manufacturer's agent or representative and the owner or lessee of a vehicle to appear before an unbiased third party, called an "arbitrator," in an attempt to resolve the consumer's Lemon Law claim for a repurchase or replacement of the "lemon." (AutoLemonLawUSA.com, 2019; Reporter, 2019). Repa (2019) notes that "proponents of arbitration commonly point to a number of advantages it offers over standard litigation." including: avoiding hostility and providing more cost effective, faster, more flexible, and more simplified rules of evidence and procedures than does litigation. Each state has established specific requirements that the consumer must adhere to in seeking restitution under their state's Lemon Law.

As a general rule, a statutory or voluntary obligation or requirement that the parties arbitrate a dispute of arbitration must first be established. Several states have established a statutory requirement requiring consumers to enter into non-binding arbitration in a variety of circumstances.

Some states do not require arbitration at all, relieving the consumer of this responsibility and permitting a consumer to go directly to a court of competent jurisdiction for redress of a claim. Some states, most notably California, have provided for a system of "voluntary" arbitration that is offered by the automobile manufacturer and which is binding on the manufacturer, but not on the consumer.

Prior to entering into arbitration, an automobile manufacturer may attempt to "settle" a consumer's complaint by offering an alternative, such as a service contract, an extended warranty, or the return of monthly car payments to cover the period during which the consumer had been deprived of the use of a vehicle. DiMatteo and Wrbka (2019), however, argue that that some of these alternatives may not put the consumer in as good a position as does the arbitration process.

6.1 Florida Arbitration

Under applicable Florida law, the procedure for arbitration essentially involves two steps. If the buyer or lessee believes that they are entitled either to a refund or a replacement vehicle, and the manufacturer is unwilling to do so, the claim must now be submitted to arbitration. In many cases, a manufacturer will sponsor a procedure for *dispute settlement* which has been certified by the Florida Department of Legal Affairs. If a manufacturer has initiated such a procedure, the consumer must be notified in writing in a clear and conspicuous manner *at the time of the acquisition of the vehicle.* The claim must be filed within *60 days* from the date the Lemon Law rights period expires.

If the manufacturer does not sponsor such a certified dispute settlement procedure, *or* if the procedure fails to result in a decision within 40 days of the filing of a claim, *or* if the consumer is unsatisfied with the decision, the consumer is required to contact the Florida New Motor Vehicle Arbitration Board, administered by the Office of

the Florida Attorney General, to have the dispute arbitrated. Should the manufacture have adopted a dispute settlement procedure that has *not been certified,* the consumer is not required to avail themselves of that procedure.

Any request for arbitration by the Florida New Motor Vehicle Arbitration Board must be filed within 60 days of the expiration of the Lemon Law rights period or within 30 days from the final action of the manufacturer's certified procedure, *whichever occurs later.*

If a consumer has been awarded a refund or replacement vehicle through the arbitration process, the manufacturer must comply with the decision of the Board within 40 days from the date the manufacturer receives a written copy of the Board's decision, unless the manufacturer appeals the decision. If the manufacturer appeals the award in court and the award is upheld, the consumer is entitled to recover his or her reasonable attorney's fees, plus $25 per day for each day beyond the 40-day period following the manufacturer's receipt of the decision of the Board. Under Florida law, if the court determines that the manufacturer has brought the appeal in "bad faith," for example as defined by UCC Section 1-201-(20), or for the purpose of harassment of the consumer, the court may double or triple the amount of any award.

The consumer has the further reciprocal option of seeking redress in court. The consumer must file a complaint for relief within 30 days of receiving the Board's written decision (Office of Attorney General, 2019). Generally, courts called upon to review an administrative action will consider whether the agency's action was "arbitrary or capricious, an abuse of discretion, or contrary to law" (see, e.g., Ponomarenko, 2018), and not the substance of any complaint.

7. "Back to Walter"

This article has attempted to shed light on some of the issues raised in the opening scenario relating to Walter's purchase of the VW "lemon." These are some possible conclusions:

1. There is a good chance that the vehicle Water purchased has exhibited a defect or nonconformity that would qualify under the Florida Lemon Law. The situation seems to fall within the definition of a defect that is not "trivial," but one that impairs the "use, value, or safety" of the vehicle he purchased.
2. Walter has attempted to permit the dealership to "cure" the defect by returning to have the water problem remedied on five occasions.
3. The VW has been "out of service" for a total of 33 days which more than meets the Florida statutory threshold of 30 days.
4. Walter has the right to refuse delivery of a replacement vehicle and the right to receive a refund.
5. At this point, Walter can refuse to give the dealer "one more try."
6. Driving back to New Jersey to purchase a "new vehicle" may, however, be a "bridge
7. too far." Seeking collateral or incidental damages for such things as he cost of gas, motels, meals, etc., while Walter returns to and from New Jersey to purchase a second VW from a dealer in whom he has trust might be considered "too remote" or "unreasonable" under the circumstances.
8. If the dealer refuses to provide Walter with a refund, it would be important to determine if the manufacturer has sponsored a procedure for dispute settlement (arbitration) that has been certified by the Florida Department of Legal Affairs. The parties must then follow the procedures outlined for the arbitration of disputes in Florida which would preclude Walter from filing a lawsuit at that point.

The Florida Motor Vehicle Enforcement Act has attempted to answer questions relating to vehicles that exhibit persistent problems and which are thus truly identified as "lemons." Residents of states beyond Florida should carefully consult their own statutory schemes in order to ascertain whether they enjoy the same rights as privileges as did Walter in dealing with the *lemon* he purchased.

[By the way, one of the authors of this article has recently purchased a VW Beetle convertible—and it is "perfect"!]

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APPENDIX- DEALER COMPENSATION FOR USE OF THE VEHICLE

975 miles on the odometer, less 15 miles on the odometer at time of purchase, less 100 miles (round trip) for the arbitration hearing = **860 miles**
Vehicle Purchase Price = $**23,000**
Divided by: **120,000**
860 X $23,000 DIVIDED BY 120,000= **$164.83**