

“Motor vehicle” means a passenger automobile, authorized emergency vehicle or motorcycle as defined in N.J.S.A. 39:1-1, that is registered, sold or leased in the State of New Jersey, whether purchased, leased or repaired in the State or outside the State, except the living facilities of motor homes.

“Nonconformity” means a defect or condition which substantially impairs the use, value or safety of a motor vehicle.

“OAL” means the Office of Administrative Law.

“Out of service” means the number of days the defective motor vehicle is on the premises of a repair facility for the purpose of repairing one or more nonconformities; delays caused by the consumer, such as a delay in picking up the motor vehicle from the facility after notification that it is ready, shall not be counted as days out of service.

“Post-manufacturing modifier” means, solely with respect to an authorized emergency vehicle as defined in N.J.S.A. 39:1-1, any person who modifies the configuration of an existing standard model of a motor vehicle purchased from a manufacturer to adapt the vehicle for use as an authorized emergency vehicle prior to an initial retail sale or lease of the vehicle.

“Term of protection” means within the first 24,000 miles of operation or the two years following the original date of delivery of the motor vehicle to the consumer, whichever is the earlier date.

“Title” means the certificate of ownership of a motor vehicle.

Amended by R.1992 d.236, effective June 1, 1992.
See: 24 N.J.R. 53(a), 24 N.J.R. 2063(a).

Revised definition “motor vehicle”.

Amended by R.1994 d.176, effective April 4, 1994.

See: 25 N.J.R. 3939(a), 26 N.J.R. 1535(a).

Amended by R.2010 d.166, effective August 2, 2010.

See: 41 N.J.R. 4187(a), 42 N.J.R. 1740(a).

Added definition “Examination”; in definition “Motor vehicle”, deleted a comma following the second occurrence of “leased”, and inserted “, except the living facilities of motor homes”; and in definition “Terms of protection”, substituted “24,000” for “18,000”.

Amended by R.2012 d.016, effective January 17, 2012.

See: 43 N.J.R. 1130(a), 44 N.J.R. 166(b).

Added definitions “Co-manufacturer”, “Dealer”, “Distributor”, “Manufacturer” and “Post-manufacturing modifier”; and in definition “Motor vehicle”, inserted “, authorized emergency vehicle”.

Case Notes

Noise defect qualified as a nonconformity for purposes of the Lemon Law where the consumer’s safety fears caused him to avoid hauling materials, making it so that the consumer was unable to use the vehicle in the manner intended; it was reasonable to conclude that a noise emanating from a vehicle was indicative of some underlying problem and would have shaken the confidence of any reasonable consumer, substantially impairing the value of the vehicle (adopting as modified 2009 N.J. AGEN LEXIS 106). *Rufrano v. Nissan North America, Inc.*, OAL Dkt. No. CMA 11891-08, 2009 N.J. AGEN LEXIS 616, Final Decision (March 10, 2009).

Initial Decision (2008 N.J. AGEN LEXIS 791) adopted, which concluded that consumer seeking Lemon Law relief failed to establish the existence of an abnormal vibration in the gas pedal through objective

factual evidence or expert testimony; he and his mother made regular use of the vehicle, the manufacturer was not able to duplicate the alleged defect, nor was the alleged defect duplicated on the test-drive conducted by the ALJ. *Ragusano v. Ford Motor Co.*, OAL Dkt. No. CMA 8077-08, 2008 N.J. AGEN LEXIS 1050, Final Decision (October 10, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 664) adopted, which concluded that noisy brakes were not a nonconformity that substantially impaired the safety, value, or use of the motor vehicle; although the sound may have been an annoyance to the consumer, there was no showing that the noise was the result of some defect found in the braking system impairing the ability to stop. *Pospisil v. Kia Motors America*, OAL Dkt. No. CMA 09952-07, 2007 N.J. AGEN LEXIS 997, Final Decision (November 9, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 768) adopted, which found that noise from the power steering and leak of power steering fluid on leased vehicle did not rise to the level of a nonconformity under the Lemon Law; the defect had been reduced to a slow leak and the problem with the steering could be solved by adding power steering fluid. *Jones v. Ford Motor Co.*, OAL Dkt. No. CMA 9433-07, 2007 N.J. AGEN LEXIS 957, Final Decision (October 29, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 462) adopted, which concluded that the consumer failed to prove a remediable steering vibration under the Lemon Law. *Moore v. Hyundai Motor America*, OAL Dkt. No. CMA 03904-07, 2007 N.J. AGEN LEXIS 852, Final Decision (July 13, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 398) adopted, which concluded that difficulties with a leased vehicle’s telephone system and radio did not rise to the level of substantial impairments under the Lemon Law; vehicle performance was not affected and the telephone was an optional feature, which the consumer was urged to avoid. *Samuels v. Mercedes-Benz USA, Inc.*, OAL Dkt. No. CMA 03179-06, 2006 N.J. AGEN LEXIS 526, Final Decision (May 26, 2006).

Remanded by the Director for further findings of fact with respect to the frequency of occurrence of the defective condition, i.e., the thumping and jerking; if the defect occurs with sufficient frequency that the consumer could not reasonably be expected to sell the vehicle without either substantially lowering the price from the prevailing price of such a vehicle, or would have to misrepresent the condition of the vehicle to a prospective buyer in order to obtain the prevailing price, then the defect constitutes a nonconformity, and the consumer is entitled to Lemon Law relief. *Bernal v. Ford Motor Co.*, OAL Dkt. No. CMA 12680-05, 2006 N.J. AGEN LEXIS 95 (January 31, 2006).

Where rotten egg smell was present frequently but not constantly and there was no evidence that the odor was linked to a health or safety problem, the smell was not so intense as to constitute a substantial impairment under the Lemon Law. *Gellis v. Mitsubishi Motor Sales*, OAL Dkt. No. CMA 08005-05, 2005 N.J. AGEN LEXIS 647, Initial Decision (November 9, 2005).

Intermittent failure of the consumer’s vehicle to start occurred with sufficient frequency to constitute a nonconformity under the Lemon Law. *Toney v. Nissan North America, Inc.*, OAL Dkt. No. CMA 1971-05; CMA 11690-04, 2005 N.J. AGEN LEXIS 1165, Final Decision (October 14, 2005).

Initial Decision (2005 N.J. AGEN LEXIS 424) adopted, which found that thumping sound in the rear of the consumer’s vehicle when it accelerated quickly from a full stop if the gasoline tank was full or three-quarters full did not substantially impair the use, value, or safety of the vehicle under the Lemon Law. *LaPelusa v. Lexus Division, Toyota Motor Sales, U.S.A., Inc.*, OAL Dkt. No. CMA 7866-05, 2005 N.J. AGEN LEXIS 1069, Final Decision (September 1, 2005).

No Lemon Law remedy for new car consumer failing to prove alleged defects impair use, safety and value. *Sera v. General Motors Corporation*, 97 N.J.A.R.2d (CMA) 149.

Failure to demonstrate nonconformity leads to dismissal of Lemon Law claim. *Pizzute v. American Suzuki Motor Corporation*, 97 N.J.A.R.2d (CMA) 147.

Lemon Law claim dismissed when burden of proof not met. *Petonak v. Ford Motor Company*, 97 N.J.A.R.2d (CMA) 143.

Irreparable defects substantially impairing use and safety of car entitles lessee to Lemon Law remedies. *Hall v. Chrysler Motor Corporation*, 97 N.J.A.R.2d (CMA) 142.

Vibration impaired the use, value and safety of vehicle. *Randall v. Chevrolet, Division of General Motors Corporation*, 97 N.J.A.R.2d (CMA) 135.

Dismissal of Lemon Law complaint due to failure to demonstrate substantial impairment of vehicle affirmed. *Leonard v. Ford Motor Company*, 97 N.J.A.R.2d (CMA) 132.

Vehicle's use, value or safety not impaired by vibration. *King v. Ford Motor Company*, 97 N.J.A.R.2d (CMA) 129.

Vehicle's use, value or safety not impaired by alleged defects in transmission and brake fluid. *Galanty v. Chrysler Motor Corporation*, 97 N.J.A.R.2d (CMA) 127.

Vehicle's use, value or safety not impaired by noise from power steering system. *Haralambidis v. Chevrolet Motor Division-G.M.*, 97 N.J.A.R.2d (CMA) 125.

Vehicle's use, value or safety not effected by alleged hesitation in transmission. *Wilks v. Mazda Motor of America*, 97 N.J.A.R.2d (CMA) 117.

Repeated stalling constitutes substantial impairment of vehicle's use, value and safety. *Franco v. Chrysler Motor Corporation*, 97 N.J.A.R.2d (CMA) 113.

Alignment defect constitutes substantial impairment of vehicle's use, value and safety. *Albrecht v. Ford Motor Company*, 97 N.J.A.R.2d (CMA) 107.

No lemon law recovery when consumer's gas choice causes new car stalling. *Hamilton v. Mitsubishi Motor Sales of America*, 97 N.J.A.R.2d (CMA) 103.

New car lessor receives lemon law refund when transmission defect substantially affects value and safety. *Archibald v. Ford Motor Company*, 97 N.J.A.R.2d (CMA) 97.

Dashboard reflection on front window not substantial defect. *Doyle v. General Motors*, 97 N.J.A.R.2d (CMA) 95.

Subjective dislike of new car's alleged rotten egg smell insufficient basis for lemon law claim. *Dworkis v. General Motors Corporation*, 97 N.J.A.R.2d (CMA) 93.

Four-wheel drive pulling condition not nonconformity for lemon law purposes. *Hynes v. Chrysler Motor Corporation*, 97 N.J.A.R.2d (CMA) 88.

Nonconforming vehicle defects caused by road accident not remedial under lemon law. *Jones v. Chrysler Motor Company*, 97 N.J.A.R.2d (CMA) 77.

Subjective noise complaint insufficient for lemon law claim. *Choudhury v. Ford Motor Company*, 97 N.J.A.R.2d (CMA) 75.

Car owner's unhappiness with transmission insufficient for lemon law recovery. *Weiss v. Ford Motor Corporation*, 97 N.J.A.R.2d (CMA) 52.

Automobile owner who experienced engine knocking noise, followed by loss of power, was entitled to relief under Lemon Law. *Capps v. Nissan Motor Corporation*, 97 N.J.A.R.2d (CMA) 19.

Automobile's slipping clutch substantially impaired its safety, use, and value, entitling owners to Lemon Law relief. *Totin v. Hyundai Motor Company*, 97 N.J.A.R.2d (CMA) 16.

Grinding noise in automobile's brakes did not impair its safety, use, or value, and thus owner was not entitled to relief under Lemon Law. *Davis v. Toyota Motor Sales*, 97 N.J.A.R.2d (CMA) 14.

Rotten egg smell emanating from automobile's exhaust pipe did not substantially impair its safety, use, or value, and thus owner was not entitled to Lemon Law relief. *Monninger v. Hyundai Motor Company*, 97 N.J.A.R.2d (CMA) 12.

Poor gas mileage is not covered under Lemon Law. *Hassmiller v. Ford Motor Company*, 97 N.J.A.R.2d (CMA) 10.

Owner's unverifiable allegation that automobile's engine raced at idle was insufficient to support Lemon Law relief. *Glombiak v. Nissan Motor Corporation*, 97 N.J.A.R.2d (CMA) 7.

Strong odor of rotten eggs which emanated from automobile, particularly during stops and starts, constituted nonconformity entitling owner to Lemon Law relief. *Conte v. Mitsubishi Motor Sales of America, Inc.*, 97 N.J.A.R.2d (CMA) 4.

Owner failed to show that value of automobile was substantially impacted by transmission whine, wind noise, and rattles and vibrations in passenger door and dashboard. *Martins v. Ford Motor Corporation*, 97 N.J.A.R.2d (CMA) 1.

Squeaking noise in van's wheels was significant enough to constitute substantial defect and to impair van's use, safety and value. *Lloyd v. Chrysler Corporation*, 96 N.J.A.R.2d (CMA) 282.

Steering problem was substantial nonconformity which impaired use, value and safety of automobile. *Toth v. Ford Motor Company*, 96 N.J.A.R.2d (CMA) 281.

Fact that lessor had driven automobile 16,000 miles in 17 months controverted his claim that engine noise, backfiring, loss of power and excessive gasoline consumption had impaired his use of automobile. *Mohamadi v. Mercedes-Benz of N.A.*, 96 N.J.A.R.2d (CMA) 279.

Lessor of new van failed to show that loud creaking noise in front end of vehicle indicated steering or suspension problem. *Shtutman v. Chrysler Motor Corporation*, 96 N.J.A.R.2d (CMA) 277.

Automobile lessor failed to show that automobile's propensity for stalling in damp or rainy weather constituted continuing nonconformity. *Christelles v. Nissan Motor Corporation*, 96 N.J.A.R.2d (CMA) 274.

Brake noise was nonconformity which substantially impaired safety and value of leased automobile. *Orefice v. Chrysler Corporation*, 96 N.J.A.R.2d (CMA) 271.

Noxious smoke venting from engine into passenger compartment of automobile was nonconformity which substantially impaired its use, safety and value. *Noonan v. Ford Motor Company*, 96 N.J.A.R.2d (CMA) 269.

Lemon Law relief was denied where automobile noise did not impair its use, value or safety. *Primiano v. Ford Motor Company*, 96 N.J.A.R.2d (CMA) 265.

Slight transmission noise was found not to constitute substantial defect warranting Lemon Law relief. *Cicccone v. Chrysler Motor Corporation*, 96 N.J.A.R.2d (CMA) 263.

Lemon Law claim was denied where truck's drifting to left and right was easily corrected by driver's steering. *Sreenen v. Ford Motor Company*, 96 N.J.A.R.2d (CMA) 259.

matters shall be directed to the attention of the Lemon Law Unit, as follows:

Division of Consumer Affairs
Lemon Law Unit
Post Office Box 45026
Newark, New Jersey 07101
Telephone (973) 504-6226

Amended by R.1992 d.236, effective June 1, 1992.
See: 24 N.J.R. 53(a), 24 N.J.R. 2063(a).

Revised (c).
Administrative change.
See: 25 N.J.R. 1516(b).
Amended by R.1994 d.176, effective April 4, 1994.
See: 25 N.J.R. 3939(a), 26 N.J.R. 1535(a).
Administrative Change.
See: 32 N.J.R. 1037(a).

13:45A-26.5 Preliminary steps to initiate a Lemon Law action within the Division of Consumer Affairs Lemon Law Unit

(a) To initiate a claim within the Division of Consumer Affairs Lemon Law Unit under the Lemon Law:

1. Written notification of the potential claim shall be sent certified mail, return receipt requested, by or on behalf of a consumer, to the manufacturer of a nonconforming motor vehicle if and only after one of the following occurs during the first 24,000 miles of operation or within 24 months after the date of original delivery, whichever is earlier:

i. Except as set forth in (a)1iii below, substantially the same nonconformity has been subject to examination or repair two or more times by the manufacturer or its dealer and the nonconformity continues to exist;

ii. The motor vehicle has been out of service by reason of repair for one or more nonconformities for a minimum of 20 days, or in the case of a motor home, for a minimum of 45 days, since the original delivery of the motor vehicle, and a nonconformity continues to exist; or

iii. In the case of nonconformity that is likely to cause death or serious bodily injury if the vehicle is driven, the nonconformity has been subject to examination or repair at least once by the manufacturer or its dealer and the nonconformity continues to exist; and

2. The manufacturer has one more opportunity to examine, repair or correct the nonconformity within 10 days following receipt of the written notification from the consumer of a potential claim provided for in (a)1 above. If the nonconformity continues to exist after expiration of the 10-day time period and the manufacturer refuses to replace or refund the price of the vehicle, the consumer may pursue a Lemon Law claim with the Lemon Law Unit.

(b) Nothing contained in this section shall preclude a consumer from alternatively filing an action in Superior Court.

(c) When a motor home or authorized emergency vehicle has been constructed by more than one manufacturer, an examination or repair attempt will not count towards the examination or repair attempts referred to in (a)1 above, if the repair facility is not authorized to provide services by the manufacturer, co-manufacturer or post-manufacturing modifier who constructed the nonconforming portion of the vehicle.

(d) If a nonconformity in a motor home is addressed more than once due to a consumer's decision to continue travelling and to seek examination or repair of the same nonconformity at another authorized repair facility rather than waiting for the examination or repair to be completed at the initial repair facility, it shall constitute one examination or repair for the purpose of the examination or repair attempts referred to in (a)1 above.

Amended by R.2006 d.141, effective April 17, 2006.
See: 37 N.J.R. 4369(a), 38 N.J.R. 1760(a).

Section heading was "Preliminary steps"; in introductory paragraph (a), added "within the Division of Consumer Affairs Lemon Law Unit" and substituted "shall" for "must"; in (a)2, substituted "a minimum of 20 days" for "a cumulative total of 20 or more days"; rewrote (b); added (c).

Amended by R.2010 d.166, effective August 2, 2010.
See: 41 N.J.R. 4187(a), 42 N.J.R. 1740(a).

In the introductory paragraph of (a), substituted a colon for ", written" at the end; inserted new designation (a)1; redesignated former (a)1 and (a)2 as (a)1i and (a)1ii; in the introductory paragraph of (a)1, inserted "Written", and substituted "and only after one" for "either" and "24,000" for "18,000"; in (a)1i, substituted "Except as set forth in (a)1iii below, substantially" for "Substantially", inserted "examination or", and deleted "or" at the end; in (a)1ii, inserted ", or in the case of a motor home, for a minimum of 45 days," and substituted "; or" for a period at the end; added (a)1iii; redesignated former (b) as (a)2 and former (c) as (b); in (b)2, inserted "examine," inserted "the" preceding "written", and inserted "provided for in (a)1 above"; and added new (c) and (d).

Amended by R.2012 d.016, effective January 17, 2012.
See: 43 N.J.R. 1130(a), 44 N.J.R. 166(b).

In (c), inserted "or authorized emergency vehicle" and ", co-manufacturer or post-manufacturing modifier", and substituted "vehicle" for "motor home".

Case Notes

Intermittent failure of petitioner's vehicle to start, so that it has to be jump-started, was a defect which substantially impaired the use and safety of the vehicle; petitioner worked at night in an urban area and was responsible for regularly driving around two children. *Michels v. Chrysler Group*, OAL Dkt. No. CMA 09842-09, 2009 N.J. AGEN LEXIS 884, Final Decision (October 19, 2009).

Because petitioner failed to show that the stalling defect continued to exist, and failed to provide notification to respondent of the racing defect, he did not meet the requirements of the presumption of N.J.S.A. 56:12-33, and consequently was not eligible for relief in the administrative forum. *Caruso v. Ducati North America Inc.*, OAL Dkt. No. CMA 12681-08, 2009 N.J. AGEN LEXIS 885, Final Decision (February 19, 2009).

Consumer's "last chance" letter gave sufficient notice to the manufacturer that he intended to file a Lemon Law claim, but the letter was sent at a time when his car was actually being repaired, and contained inaccurate information such that the notice was defective; the lack of specifics of the "last chance" letter, the timing of the letter, and the failure to stress the fact that the vehicle was currently under repair and that the consumer was distressed about the length of time the repair was taking, all combined to deprive the manufacturer of meaningful notice and opportunity to repair the vehicle. *Chazkel v. Daimler Chrysler*

Motors Co., OAL Dkt. No. CMA 8880-07, 2008 N.J. AGEN LEXIS 248, Final Decision (January 31, 2008).

Once a consumer had knowledge of the existence of the override button, a window's pinch protection mechanism that malfunctioned on the average of once a week did not substantially impair the use of the vehicle; however, the defect substantially impaired the value of the vehicle and posed a substantial safety risk where it would cause a driver to be distracted. *Vigilante v. Saab Cars USA, Inc.*, OAL Dkt. No. CMA 3765-07, 2007 N.J. AGEN LEXIS 996, Final Decision (September 10, 2007).

Consumer is not required, in order to obtain Lemon Law relief, to present the vehicle for repair following the last chance repair; under N.J.S.A. 56:12-33, there is a presumption of an inability to repair in a reasonable time where substantially the same nonconformity has been subject to repair three or more times and it continues to exist. *Vigilante v. Saab Cars USA, Inc.*, OAL Dkt. No. CMA 3765-07, 2007 N.J. AGEN LEXIS 996, Final Decision (September 10, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 1027) adopted, which concluded that consumer's loss of confidence in the vehicle was not a sufficient basis for granting Lemon Law relief where the stalling problem with consumer's vehicle had not continued to exist following the third repair. *Moesch v. Volkswagen of America*, OAL Dkt. No. CMA 11648-06, 2007 N.J. AGEN LEXIS 89, Final Decision (January 2, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 479) adopted, which denied Lemon Law relief because the alleged braking noise had not continued to exist and the evidence failed to show a nonconformity; the vehicle had never failed to stop properly, the consumer admitted to pumping the brakes in emergency situations, and the evidence weighed heavily in favor of the finding that the braking system was operating as designed. *Roger v. General Motors Corp.*, OAL Dkt. No. CMA 5899-06, 2006 N.J. AGEN LEXIS 763, Final Decision (August 23, 2006).

Lemon Law claim was dismissed with prejudice because consumers' "last chance" letter, required pursuant to N.J.A.C. 13:45A-26.5, failed to identify the specific continuing nonconformity alleged. *Velez v. Winnebago Industries*, OAL Dkt. No. CMA 05445-06, 2006 N.J. AGEN LEXIS 358, Initial Decision (May 24, 2006).

Even if, *arguendo*, certain alleged defects in consumer's Lemon Law application constituted a substantial impairment of vehicle use or value, the failure to allege them in the "last chance" letter precluded them procedurally from consideration. *Ciraulo v. Daimler Chrysler Motor Co.*, OAL Dkt. No. CMA 110-06, 2006 N.J. AGEN LEXIS 146, Final Decision (February 22, 2006).

Lack of qualifying nonconformity defeats Lemon Law claim. *O'Connell v. Chrysler Motor Corporation*, 97 N.J.A.R.2d (CMA) 139.

Lemon Law claim dismissed due to failure to present vehicle for three repair attempts for the same nonconformity. *Doryk v. General Motors Corporation* (Chevrolet Motor Division) (CMA) 122.

Consumer's failure to give statutorily prescribed notice before filing lemon law complaint defeats claim. *Goldberg v. Chrysler Motor Corporation*, 97 N.J.A.R.2d (CMA) 36.

Purchaser was entitled to Lemon Law presumption that manufacturer was unable to repair nonconformity where automobile was out-of-service for 34 days during first repair attempt. *Ramnanan v. Chrysler Motor Corporation*, 96 N.J.A.R.2d (CMA) 229.

Lemon Law complaint was dismissed where automobile's problems were repaired by dealer. *Hampton v. Chrysler Motor Corporation*, 96 N.J.A.R.2d (CMA) 192.

Lemon Law relief granted where automobile dealer failed to avail itself of last chance repair opportunity. *Sigman v. Nissan Motor Corporation, U.S.A.*, 96 N.J.A.R.2d (CMA) 168.

Consumer's failure to comply with Lemon Law's statutory filing requirements precludes claim. *Rivera v. Ford Motor Company*, 96 N.J.A.R.2d (CMA) 63.

Consumer denied Lemon Law relief for failure to inform manufacturer of problems and offer opportunity for repair before filing Lemon Law complaint. *Vitale v. Buick Motor Division-GM*, 96 N.J.A.R.2d (CMA) 61.

Lemon Law claim that pickup truck pulled to right while braking was dismissed when defect was corrected by manufacturer at last-chance opportunity. *Boothroyd v. Ford Motor Company*, 96 N.J.A.R.2d (CMA) 47.

Lemon Law complainant failed to allow dealer sufficient opportunity to repair automobile problems. *Conrad-Kessariss v. Mitsubishi Motor Sales of America, Inc.*, 96 N.J.A.R.2d (CMA) 19.

Consumer failed to meet procedural requirements by submitting allegedly defective vehicle to repair three or more times and affording manufacturer a last chance opportunity. *Shepps v. Mitsubishi Motor*, 95 N.J.A.R.2d (CMA) 78.

Failure to give manufacturer a final opportunity to repair alleged defect in vehicle was fatal to consumer's claim. *Viccaro v. Mitsubishi Motor*, 95 N.J.A.R.2d (CMA) 56.

Presumption of inability to correct nonconformity was not available when manufacturer commenced repair but was thereafter prevented by consumer from completing repair. *Stassi v. Hyundai Motor*, 95 N.J.A.R.2d (CMA) 49.

Remedies under Lemon Law were not available to consumer without affording dealer last chance opportunity to correct alleged defects in vehicle. *Benenati v. Mitsubishi Motor Sales*, 95 N.J.A.R.2d (CMA) 9.

Failure to tell repairer that malfunction occurred only when the headlights were turned on required the manufacturer be given last chance to repair the nonconformity. *Measley v. Volkswagen of America, Inc.*, 93 N.J.A.R.2d (CMA) 1.

Failure to send correct last chance notice required the complaint under the Lemon Law be dismissed without prejudice. *Millar, Patrick J., v. Chrysler Corporation*, 92 N.J.A.R.2d (CMA) 180.

Settlement agreement was in full force and effect after the manufacturer honestly and in good faith performed its duties under the agreement. *Guarino v. Ford Motor Company*, 92 N.J.A.R.2d (CMA) 99.

13:45A-26.6 Eligibility

(a) To be eligible for the Dispute Resolution System, a consumer must provide the following items to the LLU:

1. A photocopy of the consumer's notification to the manufacturer of a potential claim; and
2. A completed Application for Dispute Resolution; the form will be supplied upon request by the LLU.

(b) During any periods when forms are not available, any written request for dispute resolution shall be accepted by the LLU provided all information, items and statements listed in N.J.A.C. 13:45A-26.7 are included.

(c) A consumer is eligible for dispute resolution by the Division as to a specific motor vehicle only once; no further applications from that consumer relating to the same motor vehicle will be accepted if a final decision has been rendered pursuant to N.J.A.C. 13:45A-26.12(b).

Administrative correction to (b). Effective July 3, 1989.

See: 21 N.J.R. 1831(a).

Phrase "following the term of protection" deleted.

Amended by R.2012 d.016, effective January 17, 2012.

See: 43 N.J.R. 1130(a), 44 N.J.R. 166(b).

In the introductory paragraph of (a), deleted "by certified mail, return receipt requested" following "LLU".

13:45A-26.7 Application

(a) Application for dispute resolution shall require submission of the following:

1. Information as follows:
 - i. The name and address of the consumer and lienholder, if any;
 - ii. The date of original delivery of the motor vehicle to the consumer;
 - iii. The mileage on the date the nonconformity was first reported to the manufacturer or its dealer; and
 - iv. The mileage on the date the application is mailed back to LLU.
2. A written account of the events resulting in the dispute, including description of the claimed nonconformity(s) and a chronology of the repair attempts.
3. A photocopy of the notification of a potential claim sent by or on behalf of the consumer to the manufacturer after two or more attempts to repair or 20 calendar days out of service, and a photocopy of the return receipt signed by the manufacturer's agent.
4. Photocopies of the statements of repair required by section 6(b) of the Lemon Law, to be given to the consumer by the manufacturer through its dealer, each time a motor vehicle is returned from being examined or repaired.
5. Photocopies of the agreement of sale or lease, including any stated credit or allowance for the consumer's used motor vehicle, the receipt for payment of any options or other modifications arranged, installed or made by the manufacturer or its dealer within 30 days after the date of original delivery, receipts for any other charges or fees including but not limited to:
 - i. Sales tax;
 - ii. License and registration fees;
 - iii. Finance charges;
 - iv. Towing;
 - v. Rental of a motor vehicle equivalent to the consumer's motor vehicle for the period when the consumer's motor vehicle was out of service due to a nonconformity; and
 - vi. Any other documents related to the dispute.

(b) The application must contain a statement as to the following:

1. That the consumer believes the motor vehicle's use, market value, or safety is substantially impaired by the nonconformity(s) complained of or that the nonconformity is a defect, which is likely to cause death or serious bodily injury if the vehicle is driven;
2. That the nonconformity(s) complained of is not the result of abuse, neglect, or unauthorized modifications of the motor vehicle by anyone other than the manufacturer or its dealer;
3. That within the term of protection the manufacturer, its agent or authorized dealer failed in at least two attempts, or in the case of a defect that is likely to cause death or serious bodily injury if the vehicle is driven, one attempt, to correct the same substantial defect, or the vehicle was out of service by reason of repair for at least 20 days;
4. That within the term of protection the consumer gave the manufacturer written notification by certified mail, return receipt requested, of a potential claim pursuant to the Lemon Law, section 5(b); and
5. That within the term of protection:
 - i. The consumer gave the manufacturer or its dealer at least three attempts, or in the case of a defect that is likely to cause death or serious bodily injury if the vehicle is driven, two attempts (including the post-notification attempt) to repair substantially the same nonconformity and the nonconformity continues to exist; or
 - ii. The vehicle was out of service by reason of repair for one or more nonconformities for a cumulative total of 20 or more days since the original delivery of the motor vehicle, the manufacturer has been given the post-notification opportunity to repair, and a nonconformity continues to exist.

Amended by R.1995 d.618, effective December 4, 1995.

See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

Amended by R.1999 d.269, effective August 16, 1999.

See: 31 N.J.R. 925(a), 31 N.J.R. 2365(a).

In (b), deleted a former 6.

Amended by R.2012 d.016, effective January 17, 2012.

See: 43 N.J.R. 1130(a), 44 N.J.R. 166(b).

In (b)1, inserted a comma following "value", and "or that the nonconformity is a defect, which is likely to cause death or serious bodily injury if the vehicle is driven"; in (b)3, inserted "; or in the case of a defect that is likely to cause death or serious bodily injury if the vehicle is driven, one attempt,"; and in (b)5i, inserted "; or in the case of a defect that is likely to cause death or serious bodily injury if the vehicle is driven, two attempts".

Case Notes

Manufacturer may not insulate itself from Lemon Law responsibilities by having subcontractors undertake separate warranties. *McCarthy v. Hyundai Motor America*, 92 N.J.A.R.2d (CMA) 132.

13:45A-26.8 Filing fee

(a) A consumer whose application for dispute resolution is accepted by the Division shall pay a filing fee of \$50.00 by certified check or money order payable to the "New Jersey Division of Consumer Affairs". The filing fee shall be nonrefundable but is recoverable as a cost if the consumer prevails.

(b) The filing fee shall be requested by the LLU when it has determined that the consumer's application is complete and that it complies with this subchapter and the Lemon Law.

Case Notes

The Lemon Law filing fee is not part of purchase or lease price, but is recoverable as a cost. *Montesian v. Chrysler Motor Corporation*, 93 N.J.A.R.2d (CMA) 19.

13:45A-26.9 Processing of applications

(a) Submitted applications shall be reviewed by the LLU for completeness and compliance with the Lemon Law and this subchapter.

1. Incomplete applications shall be promptly returned for completion to the consumer.

2. Applications not in compliance with this subchapter and the Lemon Law (including but not limited to the required number of repair attempts or the number of days out of service) will be rejected. The reason for the rejection will be sent to the consumer. No judgment will be made by the LLU as to whether the claimed defect(s) are substantiated by the evidence or whether they substantially impair the use, market value or safety of a motor vehicle.

(b) Upon receipt of the filing fee of \$50.00, the application shall be date-stamped to indicate its acceptance for dispute resolution.

13:45A-26.10 Notification and scheduling of hearings

(a) Each manufacturer of motor vehicles sold or leased in New Jersey shall forward to the Division of Consumer Affairs, Lemon Law Unit (LLU), the name, address, and telephone number of the person designated by the manufacturer to receive notices under the Lemon Law dispute resolution process. The manufacturer shall update this information, as necessary.

(b) On the day that an application is accepted for resolution by the LLU, a notice shall be sent by hand delivery or certified mail, return receipt requested by the LLU to the consumer and manufacturer's designee. This notice shall indicate that the consumer's request for resolution has been accepted, and shall provide general information about the resolution process.

(c) The LLU shall immediately thereafter refer an accepted application for dispute resolution to the OAL and arrange a hearing date acceptable to all parties. The dispute resolution shall be conducted as a contested case by the OAL in

accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, and Special Rules, N.J.A.C. 1:13A.

(d) The date of the hearing shall be no later than 20 days from the date of the notice of acceptance unless a later date is agreed to by the consumer.

(e) Notice of the date, time, and location of the hearing shall be mailed by the OAL to both parties.

(f) A copy of the application materials shall be sent by the LLU simultaneously with the notice of acceptance of the application, to the manufacturer's designee. Within 10 days of receiving the transmittal sheet from the Office of Administrative Law indicating the judge assigned to the case, the manufacturer shall mail by certified mail, return receipt requested, to the consumer and to the Clerk of the Office of Administrative Law at the address stated on the transmittal sheet, a response to each of the statements set forth in the consumer application.

(g) Applications by the consumer or the manufacturer with consent of the consumer for adjournments or rescheduling of the hearing shall be made in accordance with N.J.A.C. 1:1-9.6.

Amended by R.1999 d.269, effective August 16, 1999.
See: 31 N.J.R. 925(a), 31 N.J.R. 2365(a).

In (f), deleted a former third sentence.

Amended by R.2006 d.141, effective April 17, 2006.

See: 37 N.J.R. 4369(a), 38 N.J.R. 1760(a).

In (a), deleted "Within 10 days after the effective date of this subchapter," from the beginning of the first sentence, added "(LLU)" and made grammatical changes; in (f), added "the receipt of" and corrected the address.

Amended by R.2012 d.016, effective January 17, 2012.

See: 43 N.J.R. 1130(a), 44 N.J.R. 166(b).

In (b), inserted "hand delivery or"; and rewrote (f).

13:45A-26.11 Computation of refund

(a) The refund claimed by a consumer pursuant to section 4(a) of the Lemon Law, whether through the Division of Consumer Affairs automotive dispute resolution system or a manufacturer's informal dispute resolution process, shall include:

1. The total purchase or lease price of the motor vehicle including finance charges, sales tax, license fees, registration fees, and any stated credit or allowance for the consumer's used motor vehicle, provided that:

i. The full refund of purchase price that may be claimed by a consumer under section 4(a) shall not include any portion of a stated credit or allowance for the consumer's used motor vehicle that grossly exceeds the true value of the consumer's used motor vehicle.

ii. During the Office of Administrative Law hearing, a manufacturer may challenge the stated credit or allowance for the consumer's used motor vehicle. The manufacturer shall bear the burden of proof, and shall