OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

QUARTERLY CASE SUMMARIES

April 2008 - June 2008 (2nd Quarter)

JURISDICTION:

Warranty §681.102(23)F.S.

Bosque v. General Motors-Pontiac Division, 2008-0196/MIA (Fla. NMVAB June 26, 2008)
The Consumer complained of a power steering failure in his 2006 Pontiac G6 GT**.** The Consumer testified that he was coming off of a ramp on the Golden Glades Interchange, trying to go straight, when the power steering suddenly locked/failed, causing him to crash into a pole on the ramp. He was able to very slowly drive home, and later that morning the vehicle was towed to the Manufacturer's authorized service agent. The Manufacturer contended that the accident "voided" the vehicle's warranty and that the power steering failure was the result of the accident. The Board found the power steering failure to be a nonconformity. The Board further concluded that there was no evidence to support the Manufacturer's contention that the power steering failure was caused by the accident, and the mere fact that the Manufacturer "voided" its warranty does not take the vehicle outside the coverage of the Lemon Law, since it is the definition of "nonconformity " that establishes coverage under the statute. Accordingly, the Consumer was awarded a refund.

NONCONFORMITY §681.102(16), F.S.

Mendez v. Toyota Motor Sales USA, 2007-0825/MIA (Fla. NMVAB April 4, 2008)
The Consumer complained of a pulling to both the left and right in his 2006 Toyota Tundra. The Consumer testified the pull to the right started after the tires were rotated, and the pull to the left started after two of the tires were replaced. Sometimes the pull was so "severe" he had to "fight" the steering wheel in order for the vehicle to track straight. The Manufacturer contended that the vehicle was merely following the "crown of the road," and that it did not have a defect that substantially impaired its use, value or safety. The Board found the problem to be a defect or condition that substantially impaired the use, value and safety of the vehicle. Accordingly, the Consumer was awarded a refund.

REASONABLE NUMBER OF ATTEMPTS §681.104, F.S.:

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

Diamond v. Toyota Motor Sales USA, 2008-0022/FTL (Fla. NMVAB April 22, 2008)
The Consumer complained of a hesitation upon acceleration and a "jump or surge" forward in her 2007 Toyota Camry whenever the driver's foot was taken off the accelerator. The Board found that the defect substantially impaired the use, value and safety of the vehicle, and as such, constituted a nonconformity. The vehicle was presented to the Manufacturer's authorized service agent for repair of the radiator on two occasions prior to the Consumer sending the Manufacturer written notification of the defect. After the Manufacturer received written notification, the vehicle was subject to repair two more times. The Board concluded that under the circumstances, the Manufacturer was provided a reasonable number of attempts to repair the nonconformity and failed to do so. Accordingly, the Consumer was awarded a refund.

Davidson v. Nissan Motor Corporation USA, 2008-0173/ORL (Fla. NMVAB May 28, 2008)
The Consumers complained of a loud brake noise in their 2007 Nissan Murano. The Board found that the defect substantially impaired the use, value and safety of the vehicle, and as such, constituted a nonconformity. The Consumers brought the vehicle to the Manufacturer's authorized service agent for repair of the squealing brakes on September 28, 2007. Thereafter, when the noise returned and the Consumers attempted to schedule another repair, they were told there was nothing that could be done to fix the noise. The evidence established that the nonconformity was presented for repair twice, the first time on September 28, 2007, and the second time after written notification was received by the Manufacturer. The Manufacturer acknowledged that further repair attempts would not correct the problem. Based on the foregoing, as well as the Manufacturer's stipulation to such, the Board concluded that a reasonable number of attempts were undertaken to repair the nonconformity. Accordingly, the Consumers were awarded a refund.

Murray v. General Motors-Chevrolet Division, 2008-0103/MIA (Fla. NMVAB June 5, 2008)
The Consumer's 2006 Chevrolet HHR jerked and moved backward and forward at start-up, a defect the Board concluded was a nonconformity. The vehicle was presented to the Manufacturer's authorized service agent for repair of the jerking on two occasions prior to the Consumer sending the Manufacturer written notification of the defect. At the Manufacturer's final repair attempt, the Consumer was given an explanation of the problem by the service agent and given a bulletin describing the jerking and instructing the Consumer to apply the parking brake to prevent the motion. During that attempt, no repairs were performed. The Board concluded that the Manufacturer gave the Consumer what was, effectively, a work-around, which did not correct the nonconformity. Under the circumstances, the Manufacturer had a reasonable number of attempts to correct the nonconformity, but failed to do so; therefore, the Consumer was awarded a refund.

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

Mosser v. Chrysler LLC, 2008-0146/WPB (Fla. NMVAB May 26, 2008)
The 2006 Jeep Liberty had an electrical/mechanical nonconformity that caused the power windows to intermittently drop and become inoperable. After more than three repair attempts for this defect, the Consumers' attorney mailed a Motor Vehicle Defect Notification form to the following address: "Chrysler LLC, ATTN: Legal Department, 485-13-32, 1000 Chrysler Dr., Auburn Hills, MI 48326-2766." The Manufacturer did not respond to the notification and did not contact the Consumers to schedule a final repair attempt. At the hearing, the Manufacturer asserted that they were not provided with written notice and a final repair attempt. The Manufacturer's 2006 Owner's Manual for the vehicle specified "DaimlerChrysler Motors Company LLC, Customer Center, P.O. Box 21-8004, Auburn Hills, MI 48321-8004," as the address to which the written notification required by Florida's Lemon Law should be sent. This information was provided to the Consumers at the time they purchased their vehicle, as required by Florida's Lemon Law. The Board concluded that the Consumers did not provide written notification as required by the statute. Accordingly, the Consumers' case was dismissed.

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

Tanner v. Chrysler LLC, 2008-0160/TPA (Fla. NMVAB May 19, 2008)
The Consumer's 2008 Chrysler 300 had an inoperable satellite radio which the Board found to be a nonconformity. The Consumer had provided written notification to the Manufacturer to give the Manufacturer a final repair opportunity. The Manufacturer received the notification on January 11, 2008. On January 18, 2008, the Manufacturer contacted the Consumer by leaving a message at his work number, and additionally followed up with a certified letter to the Consumer's address, both listed on the Motor Vehicle Defect Notification form. The message left by the Manufacturer verified receipt of the defect notification form and instructed the Consumer to contact the Manufacturer to set a "firm date and time to complete any repairs that are necessary." On January 28, 2008, the Consumer called the Manufacturer and was instructed to bring the vehicle to a designated repair facility for a final attempt on February 26, 2008. The Manufacturer mailed a follow up letter to the Consumer's home address with the same information. The Consumer was unable to make that appointment and the Manufacturer mailed another certified letter to the Consumer's home address to reschedule the repair attempt to March 28, 2008. The Consumer did not take the vehicle to the Manufacturer's authorized service agent. At the hearing, the Manufacturer argued that it was not given a final repair attempt. The Board concluded that the Manufacturer responded to the Consumer's written notification in a timely manner and attempted to schedule a final repair attempt. Thereafter, the Consumer refused to present the vehicle to the designated repair facility; consequently, the Manufacturer was not given a final attempt to correct the nonconformity and the case was dismissed.

Days Out of Service & Post-Notice Opportunity to Inspect or Repair §§681.104(1)(b), 681.104(3)(b)1., F.S.

Crowe v. General Motors Corporation-Chevrolet Motor Division, 2008-0130/WPB (Fla. NMVAB May 29, 2008)
The malfunctioning convertible top in the Consumer's 2006 Chevrolet Corvette was found to be a nonconformity. The issue at hearing was whether the vehicle was out of service by reason of repair of the nonconformity for 30 or more days. In contention was a repair visit that started on September 15, 2007. The Consumer testified that she received a call on September 20, 2007, indicating that the repairs were completed and she could pick up the vehicle. However, when she went to pick up the vehicle, either on or within three or four days of September 20, 2007, the convertible top immediately got stuck again so she left the vehicle for further repairs and ended up picking the vehicle up on October 18, 2007. The Manufacturer contended that the dates of September 21, 2007 through October 10, 2007, should not be considered days out of service. The Manufacturer's representative testified that the repairs were completed on September 20, 2007, but when the Consumer was called she did not pick up the vehicle that day, and that a "separate" repair attempt was undertaken from October 11-18, 2007. The Board rejected the Manufacturer's argument and counted each day from September 15, 2007 through October 18, 2007, as days out of service. Accordingly, the vehicle was out of service by reason of repair of the nonconformity for more than 30 days and the Consumer was 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.

Paschal v. General Motors Corporation-Cadillac Division, 2008-0194/MIA (Fla. NMVAB June 24, 2008)
The Consumer complained that the fuel gauge did not correctly register the amount of fuel in the gas tank of his 2006 Cadillac CTS. The Consumer testified that no matter how much he spent on fuel, which was usually $5.00 or $10.00 at a time, the fuel gauge always registered half a tank full. He further acknowledged that he never focused on how many gallons of gas he was putting into the vehicle. The Manufacturer contended that the vehicle did not have a defect that substantially impaired its use, value or safety. The Manufacturer's representative testified that, based on the testing they performed, the fuel gauge was working correctly. He explained the vehicle is equipped with a single gas tank that has two reservoirs. Each side holds fuel and a module/float level sensor indicates when a pump needs to transfer fuel from one side to the other. The fuel gauge references one reading for both reservoirs. The Board concluded that the Consumer's complaint regarding the gas tank was not a defect or condition that substantially impaired the use, value or safety of the vehicle. Accordingly, the Consumer's case was dismissed.

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

Tallent v. Mazda Motor of America Inc., 2008-0207/WPB (Fla. NMVAB June 26, 2008)
The Consumer complained of numerous engine replacements in his 2006 Mazda 6. The Consumer acknowledged that he put neon lights on the underside of the vehicle, made alterations to the interior, and also acknowledged that the air box was removed from the vehicle. The Manufacturer contended that any vehicle defects were the result of "abuse and unauthorized modifications or alterations by persons other than the manufacturer or its authorized service agent." More specifically, the Manufacturer asserted that the vehicle had been used for racing, and had been altered to enhance performance. The Manufacturer's representative testified that racing can cause a vehicle to lose oil or overheat, thus damaging the engine. The Manufacturer submitted photographs evidencing the changes that had been made to the vehicle. Photographs also showed "smoking" and "chopping" of the front tires, which, according to the Manufacturer, was the result of the vehicle being driven at significant high speeds. The Board concluded that the engine replacements were the result of abuse and modification of the vehicle by persons other than the Manufacturer or its authorized service agent. Accordingly, the Consumer's case was dismissed.

REFUND §681.104(2)(a)(b), F.S.:

Collateral Charges §681.102(3), F.S.

Savelli v. Ford Motor Company, 2008-0100/TPA (Fla. NMVAB April 4, 2008)
The Board found the Consumer's Ford F250 pickup truck to be a "lemon," as a result of a blown powertrain control module. The Consumer testified that he purchased a number of truck accessories for the vehicle from S&M Truck World, Inc., for which he requested reimbursement in the total amount of $10,295.54 as collateral charges. In addition, he requested reimbursement of $2,130.00, which he asserted he paid to Velva Darnell Electronics, also for the purchase of truck accessories. He presented invoices for these charges and testified that he paid cash. The Manufacturer objected to reimbursement of these amounts and asserted that the Consumer's invoices were falsified. The Manufacturer presented an affidavit from Frank Letteri, owner of S&M Truck World, Inc. stating that the invoices from S&M Truck World, Inc., provided by the Consumer, were not actual invoices representing a sale between S&M Truck World; rather, the invoices were merely estimates of the cost for those components, which were provided at the Consumer's request. Based on the Manufacturer's evidence, the Board denied the $12,425.54 requested by the Consumer as collateral charges.

Castrillo v. Ford Motor Company, 2008-0214/FTL (Fla. NMVAB June 24, 2008)
The Consumers' 2006 Ford Expedition was found to be a "lemon." The Consumers sought reimbursement of $172.00 for dash wood tone as a collateral charge. The Manufacturer objected to reimbursement for the wood tone for the dash, arguing that the Consumers did not provide an actual receipt for same. The Consumers produced a bank statement showing payment. The Board awarded $172.00 to the Consumers as a collateral charge.

Incidental Charges §681.102(8), F.S.

Morse v. Mazda Motor of America, Inc., 2008-0016/FTL (Fla. NMVAB April 24, 2008)
The Board found the Consumer's Mazda MX5 Miata to be a "lemon," as a result of a defective convertible top. The Consumer incurred an expense of $55.00 to provide an interpreter for a witness the Consumer subpoenaed to be at the hearing. The witness was employed by the Manufacturer's authorized service agent, but failed to appear at the hearing. The Consumer requested reimbursement of the $55.00 charge. The Board awarded the $55.00 to the Consumer as an incidental charge.

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

Savelli v. Ford Motor Company, 2008-0100/TPA (Fla. NMVAB April 4, 2008)
The Consumer argued that the mileage on the vehicle as of the date the Manufacturer made a settlement offer to the Consumer would be the more appropriate figure to use in calculating the reasonable offset for use. The Manufacturer objected to using a date earlier than the arbitration hearing. The Board rejected the Consumer's argument because there was no settlement as contemplated by the statutory definition.

Hernandez v. Mercedes-Benz USA, Inc., 2008-0039/FTL (Fla. NMVAB May 6, 2008)
The Consumer's Mercedes-Benz SLK 280 automobile was declared a "lemon." The Consumer had two residences, one in Weston, Florida, and one in Punta Gorda, Florida. In determining which miles should not be attributable to the Consumer, she calculated the round-trip miles for each repair attempt based on the residence from which she was leaving when going for repair, and to which she was returning after the repair was made. The Manufacturer objected to the round-trip miles for repair and argued that only the Weston residence should be used for calculating the round-trip miles for service of the defects. The Board rejected the Manufacturer's argument and subtracted the round trip miles for each repair attempt as calculated by the Consumer.