OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

QUARTERLY CASE SUMMARIES

January 2010 - March 2010 (1st Quarter)

JURISDICTION:

Motor Vehicle §681.102(15), F.S.

Notaro v. General Motors Company – Chevrolet Motor Division, 2009-0432/PEN (Fla. NMVAB February 23, 2010)
The Consumers purchased a new 2008 Chevrolet Corvette Z06, after an internet search conducted from their home in Pensacola, Florida. The Consumers initiated, negotiated and consummated the transaction, in the words of Ms. Notaro, while "sitting at [their] kitchen table," by means of telephone, internet, facsimile and FedEx. The vehicle was purchased from Kerbeck Chevrolet, located in Atlantic City, New Jersey. As part of their purchase, the Consumers paid Florida sales tax, Florida title and registration fees, and a separate $50.00 Florida county tax. The vehicle was registered and titled in Florida. The Consumers paid no taxes to the State of New Jersey. The contract for purchase of the automobile included both an $850.00 destination charge that would have covered delivery of the vehicle to the Consumers in Florida, and a $490.00 charge for "museum delivery" of the vehicle, which was a special program package available to new Corvette owners, giving them the opportunity to pick up their newly-acquired vehicle at the National Corvette Museum in Bowling Green, Kentucky. The Consumers indicated that their vehicle arrived at the museum for the "museum delivery" directly from the Corvette plant, and was never delivered to the New Jersey dealership. Neither the Consumers, nor the vehicle they purchased, have ever been to New Jersey. The Consumers picked up the vehicle at the Museum and drove it to Florida. The Manufacturer filed an Amended Answer asserting that the Consumers' claim was not filed in good faith because "the purchase transaction took place in the State of New Jersey and the vehicle was delivered in the State of Kentucky." At hearing, counsel for the Manufacturer urged the Board to find that the Consumers' vehicle was not "sold in this state" and was therefore not a "motor vehicle" for purposes of the Lemon Law. The uncontroverted evidence established that the Consumers purchased the vehicle without ever leaving their home in Florida. If not for the Consumers choosing the "museum delivery" package, the vehicle would have been delivered to the Consumers in Florida. While the Manufacturer urged the Board to find that the vehicle was not sold in this state, it presented no evidence that would more closely tie the transaction to another state. Looking at the totality of the circumstances presented in this case, the Board concluded that the Consumers' vehicle was "sold in this state" and therefore was a "motor vehicle" as contemplated under the Lemon Law.

Cecil v. Volkswagen/Audi of America Inc., 2009-0336/FTL (Fla. NMVAB January 22, 2010)
The Consumer, a resident of North Carolina, wanted to purchase a lazer blue, manual transmission Volkswagen Jetta. Through an internet search, he located the vehicle he wanted at

Gunther Motor Company in Fort Lauderdale, Florida. Gunther faxed the necessary paperwork to the Consumer; he signed it and faxed it back to Gunther. The Consumer took delivery of the vehicle in Fort Lauderdale, Florida, and paid the $2.00 Florida Motor Vehicle Warranty Act fee and was given the accompanying pamphlet. He also paid Florida license and title fees. The Manufacturer, through counsel at the hearing, requested that the case be dismissed, asserting that the vehicle was not sold in this state, and therefore was not a "motor vehicle" as defined under the Lemon Law. The Board found that the facts of this case, considered in their totality, supported a conclusion that the Consumer's vehicle was "sold" in Florida as is contemplated by the statute. Therefore, the vehicle was a "motor vehicle" as defined by Lemon Law and the Manufacturer's request for dismissal on those grounds was denied.

NONCONFORMITY 681.102(16), F.S.. (2005)

Olson v. Chrysler Group LLC , 2009-0420/FTM (Fla. NMVAB February 4, 2010)
The Consumer complained of a brake pedal fade in his 2008 Dodge Ram 1500 pickup truck. He testified that the brake pedal dropped when the vehicle was stopped at a traffic light or stop sign. According to the Consumer, the pedal dropped approximately two inches and on occasion, dropped all the way to the floor. He used the vehicle primarily to carry goods to and from the airport and was concerned that the brake pedal fade increased the travel/stopping distance of the vehicle. He had not been using the vehicle for the purposes he originally intended. The Manufacturer contended that the alleged defect did not substantially impair the use, value or safety of the vehicle. The Manufacturer's witness testified that the master brake cylinder was replaced "to eliminate doubt" regarding any safety concerns. Additionally a replacement brake booster was ordered to "rule out" any customer concerns. On November 3, 2009, the brake booster was damaged in shipment and a replacement brake booster was ordered which arrived on November 10, 2009, similarly damaged. A third replacement was ordered on that date. According to the Manufacturer's witness, if the Consumer was towing a heavier load, he could experience more brake fade, but not an "abnormal" amount of fade. The Board concluded that the brake pedal fade was a defect or condition that substantially impaired the use and safety of the vehicle, and as such, it constituted a nonconformity within the meaning of the statute. Accordingly, the Consumer was awarded a refund.

Ruozzo v. Chrysler Group LLC , 2009-0414/WPB (Fla. NMVAB March 5, 2010)
The Consumer complained of a foul odor that seemed to emanate from either the air conditioning vents when the air conditioner was operating, or possibly from the dashboard in her 2009 Dodge Journey SX. The Consumer testified that the dashboard by the steering column was "breaking down" and it felt "oily or tacky." She believed that the odor possibly was coming from whatever chemical was being released from the area of the dashboard that was breaking down. The odor irritated the mucous membranes in her eyes, nose, mouth and throat. The odor got worse as the ambient temperature got warmer, and when the temperature was over 78 degrees, the irritation returned. The odor also irritated other passengers in the vehicle, and the Consumer's daughter would sneeze uncontrollably whenever she was in the vehicle. The Consumer said she was tested by an allergist and the results were that she had no allergies. Her symptoms improved when she did not enter the vehicle for several days. The Manufacturer contended that the vehicle did not

have a defect that substantially impaired its use, value or safety. The Manufacturer's witness, testified that the technician who verified the odor noted that it was a "non-mildew odor." According to the witness, the substance that was used to clean the evaporator coil/core, was meant to coat and deodorize the air conditioning system, but not to kill mildew. A different Manufacturer's witness conducted the Manufacturer's prehearing inspection. He felt where the dashboard was sticky but he did not detect an odor. It was the Manufacturer's position that it builds vehicles for the general public, not individuals. A majority of the Board concluded that the foul odor emanating from inside the vehicle was a defect or condition that substantially impaired the use, value and safety of the vehicle, and as such, it constituted a nonconformity within the meaning of the statute. Accordingly, the Consumer was awarded a refund.

Domatov v. Toyota Motor Sales, USA – Lexus Division , 2009-0403/FTL (Fla. NMVAB February 5, 2010)
The Consumers complained of engine noises and an oil leak that culminated with the engine seizing in their 2007 Lexus IS350. Ms. Domotov testified that she was driving the vehicle when it started to lose power and would not accelerate. The vehicle was towed to J.M Lexus, the dealership from which she purchased the vehicle, and the Manufacturer's authorized service agent. She was told that the engine had "seized," and that she would have to pay for the repair, which would be about $15,000.00, but she was never given a written estimate. The vehicle remained at the dealership until someone from Lexus told her to pick up her vehicle. The Consumers provided proof that the engine oil was changed on numerous occasions at independent facilities. Oil changes were performed at 5,017 miles, 9,100 miles, 12,575 miles, 15,344 miles and 19,000 miles. The Manufacturer asserted that the Consumers neglected to properly maintain the vehicle, thereby causing the engine to seize. The Manufacturer's witness testified the Manufacturer offered free oil service at 1,000 miles and 5,000 miles, but the Consumers never brought the vehicle to the Manufacturer's authorized service agent for those services, or any other engine oil changes. He claimed the engine failure was the result of lack of maintenance coupled with the wrong oil filter being used in the vehicle. The Board concluded that the engine noises, engine oil leak, and engine seizing was a defect that substantially impaired the use, value and safety of the vehicle, and as such, it constituted a nonconformity that required the vehicle to be out of service by reason of repair for more than 30 cumulative days. The Manufacturer's allegation that the Consumers neglected to change the engine oil was not supported by the evidence. Accordingly, the Consumers were awarded a refund.

Recreation Vehicle: 681.1096(4), F.S.:

Borew v. Ford Motor Company and Pleasure-Way Industries, LTD , 2010-0010/WPB (Fla. NMVAB March 29, 2010)
This claim involving a recreation vehicle was heard by the Board because the RV Mediation/Arbitration Program was not qualified by the Department of Legal Affairs for Pleasure-Way Industries. The vehicle, a Class B motorhome built by Pleasure-Way on a Ford E-350 Cargo Van chassis, had a severe wandering/failure to track straight on the road when driven at highway speeds, and there was white dust emitting from the dash air conditioner vents. Neither Manufacturer disputed the existence of the defect. The affirmative defense of " no substantial impairment" was not asserted by Pleasure-Way, and was withdrawn by Ford at the hearing. The

primary contention of each Manufacturer was that the nonconformity was the result of a defect in one or more components manufactured and warranted by the other Manufacturer. The Board found both defects to be nonconformities, concluding that the white dust from the dash air conditioner was a defect in the Ford manufactured component, and the wandering/failure to track straight at highway speeds was the result of improper weight distribution between the front and rear axles, which was attributable to the modifications made by Pleasure-Way. Because the white dust nonconformity was presented for only one repair attempt, Ford was dismissed from the case on the reasoning that there had not been a reasonable number of attempts undertaken to repair that nonconformity. The remaining nonconformity was subjected to a reasonable number of attempts, but was not corrected by Pleasure-Way; therefore, Pleasure-Way was held liable for payment of the refund to the Consumers.

REFUND §681.104(2)(a)(b), F.S.:

Collateral Charges §681.102(3), F.S.

Borew v. Ford Motor Company and Pleasure-Way Industries, LTD , 2010-0010/WPB (Fla. NMVAB March 29, 2010) (*See, "Nonconformity" above)*
The Consumers requested reimbursement of $604.00 as the cost of insurance they alleged they had purchased for the recreation vehicle. In addition, they sought reimbursement of $250.00 for renovations to the RV's bathroom and $157.87 for LED lights. The Board denied the request for insurance reimbursement as not having been wholly incurred as a result of the acquisition of the vehicle. The other reimbursements were granted.

Notaro v. General Motors Company – Chevrolet Motor Division , 2009-0432/PEN (Fla. NMVAB February 23, 2010) *(See "Jurisdiction" above)*
In order to acquire the vehicle, the Consumers paid $77,058.28 in cash. The amount paid included a $490.00 "museum delivery" charge, reimbursement of which was objected to by the Manufacturer. The Consumers also sought reimbursement of $182.75 for a lift pad; $1,736.47 for tires; and $80.51 for an alignment. The Manufacturer also objected to payment for the lift pad, tires and alignment. The Manufacturer's objections to reimbursing the Consumers for the "museum delivery" charge, the tires and the alignment were granted; its objection to reimbursing the Consumers for the lift pad was denied

Incidental Charges §681.102(8), F.S.

Notaro v. General Motors Company – Chevrolet Motor Division , 2009-0432/PEN (Fla. NMVAB February 23, 2010) *(See "Jurisdiction" above).*
The Consumers sought reimbursement of $170.29 for monthly charges paid for OnStar's "Safe and Sound" package, to which the Consumers subscribed because of their concerns with the vehicle's safety. The Manufacturer objected to reimbursement for the OnStar package. The Manufacturer's objection was denied and the Consumers were awarded the $170.29.

Borew v. Ford Motor Company and Pleasure-Way Industries, LTD , 2010-0010/WPB (Fla. NMVAB March 29, 2010)
The Consumers sought reimbursement of the following as an incidental charge: $1,101.30 for an expert witness fee, which was granted. The Consumers submitted an additional invoice of $350.00 from the expert witness for additional preparation, hearing and travel time, because the hearing lasted longer than was originally estimated, to which Pleasure-Way objected. The initial invoice contemplated a four-hour hearing; however, the initial hearing was seven hours long. The additional expert witness fees of $350.00 were reduced by the Board to $200.00, representing reimbursement of four additional hours of hearing time at $50.00 per hour. In addition, the Consumers requested, and were awarded $663.00 for fuel charges incurred to take the vehicle in for repair of the nonconformity.

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

Borew v. Ford Motor Company and Pleasure-Way Industries, LTD , 2010-0010/WPB (Fla. NMVAB March 29, 2010)
The Consumers asserted that no offset should be charged, because none of the mileage on the vehicle was attributable to them. All of the miles driven were either pre-delivery miles or were driven to and from repair facilities, weight scales and test drives, all attributable to the wandering/failure to track straight nonconformity. Upon review of the evidence, the Board agreed with the Consumers, concluding, "Inasmuch as virtually all of miles accrued on the vehicle represented mileage attributable to the wandering/failure to track straight down the road at highway speeds nonconformity, there are zero miles attributable to the Consumers and no offset for use is payable to Pleasure-Way Industries."

MISCELLANEOUS PROCEDURAL ISSUES:

Domatov v. Toyota Motor Sales, USA – Lexus Division , 2009-0403/FTL (Fla. NMVAB February 5, 2010) *(See "Nonconformity" above).*
During the testimony of the Manufacturer's witness, the Manufacturer sought to have the Board consider certain items that he brought with him to the hearing, specifically: a container he maintained had engine oil that was taken from the engine of the Consumer's vehicle, a clear plastic bottle with a black substance in it he claimed was a sample of the engine oil, photographs of the engine which he said showed an "incorrect" engine oil filter was installed in the vehicle, and an oil filter he said was the "correct" one. The items, or notice of an intent to seek consideration of them, were not provided to the Board or to the opposing party prior to the hearing. The reason given for the late introduction of the evidence was that the hearing was "informal." The Consumer objected to the Board considering the late-submitted items. Paragraph (9), *Hearings Before the Florida New Motor Vehicle Arbitration Board* requires that "[a]ll documents supporting defenses raised shall be attached to the Manufacturer's Answer form or submitted with the Manufacturer's Prehearing Information Sheet." Paragraph (10) provides that "[t]he original Manufacturer's Prehearing Information Sheet, with any attachments, must be *received* by the Board Administrator no later than 5 days before the hearing, and a copy with all attachments must be *received* by the consumer or their attorney no later than 5 days before the hearing." Paragraph (10) further provides that if the manufacturer fails to provide any documents

to the Board Administrator and the opposing party or attorney within the time specified in the rule, the Board may decline to consider any such documents unless good cause is shown for the failure to comply. There having been no good cause shown, the items were not considered by the Board.