OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

QUARTERLY CASE SUMMARIES

January 2006 - March 2006 (1st Quarter)

JURISDICTION:

Consumer §681.102(4)F.S.

Molinaro v. General Motors Corporation, Chevrolet Division, 2006-0063/TPA (Fla. NMVAB March 22, 2006)

The Consumer testified that he purchased the vehicle for the purposes of resale. Title to the vehicle was held as "Louis Molinaro and Auto Marine Wholesale." Section 681.102(4), Florida Statutes (2005) defines a "Consumer" as: The purchaser, other than for purposes of resale, or the lessee, of a motor vehicle primarily used for personal, family, or household purposes; any person to whom such motor vehicle is transferred for the same purposes during the duration of the Lemon Law rights period; and any other person entitled by the terms of the warranty to enforce the obligations of the warranty." The Board found that Mr. Molinaro was not a "consumer" as defined by the statute; therefore, the case was dismissed.

Motor Vehicle §681.102(15), F.S.

Forehand v. Ford Motor Company, 2005-1065/JAX (Fla. NMVAB February 28, 2006)

The Consumer purchased a Ford F-550 pick-up truck for the purpose of transporting cars. The truck had a cab and a short, flat bed with a fifth-wheel hitch for the purpose of hitching the transport trailer. According to the Consumer, the truck and trailer together were a "tool" of his occupation. During the Manufacturer's prehearing inspection, the truck was weighed with an empty fuel tank, no occupants and without the transport trailer, to ascertain its actual weight. According to the Manufacturer's witness, who was present at the time, the weight was 8,520 pounds. The Consumer presented a document entitled, "2004 F-350 Super Duty Chassis Cab Base Curb Weights," on which was indicated a "Super Duty F-550, 4x4 Chassis Cab" with a wheel base of "140.8 DRW," and a total of the front and rear weight in pounds as "6,623." The Consumer testified that the transport trailer he used weighed approximately 7,000 pounds without cars on it. The Manufacturer contended that the truck was not a motor vehicle as defined in 681.102(15), because its gross vehicle weight exceeded 10,000 pounds. The Board concluded that the evidence and Consumer's consideration of the truck and trailer together as a single tool, required the truck and the unloaded transport trailer be considered together to determine the gross vehicle weight, resulting in a gross vehicle weight that exceeded the statutory limit of 10,000

pounds. Accordingly, the Consumer's truck was not a "motor vehicle" as defined by the statute, and the claim was dismissed.

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

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

Rhone v. DaimlerChrysler Motors Company LLC, 2005-1031/TPA (Fla. NMVAB February 2, 2006)

The Consumers complained that, intermittently when making a left turn, the engine stalled. The Manufacturer contended that the defect was cured within a reasonable number of repair attempts, based upon the history of occurrences early in the ownership of the vehicle, followed by only one occurrence in the last 11 months and 15,000 miles of driving. The Manufacturer's witness testified that he believed the problem was a "software problem" which was fixed by software updates; however, he admitted that there was "no way to know 100 percent if the vehicle was fixed," because the cause of the problem was never determined. Based upon the evidence that the defect last occurred after all software updates were performed, which refuted the Manufacturer's assertion that the defect was cured by the software updates, and the fact that neither the Manufacturer nor its authorized service agent was ever able to identify the cause of the nonconformity, the Board concluded that the nonconformity was not corrected within a reasonable number of attempts, and awarded a the Consumers a replacement vehicle.

Ross v. Ford Motor Company, 2005-0990/JAX, (Fla. NMVAB February 22, 2006)

The Consumers complained of an intermittent grinding noise and steering wheel vibration, hood latch released while driving, tailgate released while driving, cigarette lighter and tailgate release were inoperative and that the vehicle would not start, all of which were found to be nonconformities. The evidence established that the vehicle was out of service by reason of repair of the nonconformities for a total of 29 days. Under the circumstances, the Board found that 29 days out of service by reason of repair of the nonconformities constituted a reasonable number of attempts. Accordingly, the Consumers were awarded a refund.

Ebbo v. American Suzuki Motor Corporation, 2005-0890/FTL (Fla. NMVAB January 6, 2006)

The Board found the vehicle had an electrical condition which intermittently caused the engine to stall or not start, and that this defect was a nonconformity. The evidence established that the vehicle was out of service by reason of repair of the nonconformity for a total of 28 cumulative days. Under the circumstances, the Board found that the Manufacturer had a reasonable number of attempts to conform the subject vehicle to the warranty as contemplated by the Lemon Law. Accordingly, the Consumer was rewarded a refund.

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

Ebbo v. American Suzuki Motor Corporation, 2005-0890/FTL (Fla. NMVAB January 6, 2006)

The Consumer sent written notification via a certified letter to the president of American Suzuki Motor Corporation, the Manufacturer, to advise the Manufacturer that the vehicle had been out of service by reason of repair for 15 or more cumulative days. The Manufacturer, through its attorney, asserted that the Consumer's claim should be dismissed, because the Consumer did not give "proper notice" to the Manufacturer. The Manufacturer contended that the " Motor Vehicle Defect Notification " form (found in the *"Consumer Guide to the Florida Lemon Law"*) was the "required" form of written notification and the Consumer failed to send the form to the Manufacturer. The Board found that the letter addressed to the Manufacturer and sent via certified mail was sufficient to comply with the statute and that contrary to the Manufacturer's assertion, the statute did not require a consumer to utilize the " Motor Vehicle Defect Notification " form**.**

Opportunity for a Final Repair Attempt Under §681.104(1)(a), F.S.

Londono v. Honda Motor Company, 2005-0977/ORL (Fla. NMVAB March 7, 2006)

The Consumer sent written notification to the Manufacturer on August 15, 2005, to provide a final opportunity to repair the vehicle. The Manufacturer received the notification on August 22, 2005. On September 1, 2005, a representative from the Manufacturer telephoned the Consumer to arrange the final repair attempt. The Consumer had a "call block" that would not accept the call. The representative finally reached the Consumer on September 5, 2005, at which time the Consumer refused to bring the vehicle in. The Manufacturer contended the case should be dismissed because it was not afforded the opportunity for a final repair attempt. The Board concluded that the Consumer failed to afford the Manufacturer a final opportunity to correct the nonconformity; consequently, the claim was dismissed.

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.

Thomas v. DaimlerChrysler Motors Company LLC, 2005-0974/WPB (Fla. NMVAB February 8, 2006)

The Consumer complained of an engine vibration and testified that the vibration was felt every time the vehicle was driven at speeds between 35 and 55 miles per hour. The Consumer acknowledged that the vibration caused the mirrors to shake a little, if at all and further testified that the vehicle started each time and that he had experienced no operational difficulties as a

result of the vibration. The Consumer indicated he was concerned that, over time, the vibration could lead to a more serious problem with his vehicle. 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 he did not detect any unusual vibration during a test drive and opined that the complaint involved the normal feel of the road. The witness further testified that the vehicle did not display any unusual tire wear, which would have been evident if the vehicle had a severe vibration. The Board found that the vibration did not constitute a nonconformity; consequently, the claim was dismissed.

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

Eaton v. Ford Motor Company, 2005-0928/FTM (Fla. NMVAB March 6, 2006)

The Consumer complained that the engine surged, bogged down and lost power while the vehicle was driven at all speeds. The Manufacturer pursued the statutory affirmative defense that the alleged nonconformity was the result of an accident, abuse, neglect or unauthorized modifications by persons other than the Manufacturer or its authorized service agent. The Manufacturer's witness testified that, during the Manufacturer's pre-hearing inspection, he noticed a modified hood, exhaust and rear gear ratio. The modified exhaust enhanced the sound of the exhaust and reduced the back pressure to enhance engine performance. The Manufacturer suggested that these were modifications typically added to vehicles to race them. The witness expressed the belief that wear on two rear used tires was the result of "abuse of some kind." The Board found the evidence presented by the Manufacturer did not support its implication that the nonconformity may have been caused by the Consumer racing the vehicle and awarded the Consumer a refund on the basis that the defect substantially impaired the use, value or safety of the vehicle.

REFUND §681.104(2)(a)(b), F.S.:

Collateral Charges §681.102(3), F.S.

Hickman v. Ford Motor Company, 2005-0940/TPA (Fla. NMVAB January 25, 2006)

Approximately 10 days after purchasing the vehicle the Consumer purchased an "Easy Care" service contract for the vehicle through the selling dealer for which the Consumer sought reimbursement as a collateral charge. The Manufacturer asserted that the service contract expense did not meet the definition of a collateral charge, because the service contract was purchased 10 days after the vehicle was acquired and was a "non-Ford" service contract purchased from the dealer and not the Manufacturer. Section 681.102(3), Florida Statutes (2005), defines "collateral charges" as "those additional charges to a consumer wholly incurred as a result of the acquisition of the motor vehicle." The statute does not require that the collateral charges be incurred contemporaneously with the acquisition of the vehicle, or that they be products of the Manufacturer. The Board found that the service contract was a charge that was

wholly incurred as a result of the Consumer's acquisition of the vehicle; therefore, the Consumer was entitled to reimbursement for the contract as a collateral charge.

Ross v. Ford Motor Company, 2005-0990/JAX, (Fla. NMVAB February 22, 2006)

The Consumers sought reimbursement to replace a remote key they had lost as a collateral charge. The Board denied the Consumers' request.

Gale v. Ford Motor Company, 2005-0844/FTL (Fla. NMVAB February 14, 2006)

The Consumer sought reimbursement of $1,166.00 for a camper top as a collateral charge. The Manufacturer objected to reimbursement of the camper top, because it was purchased for a previous vehicle the Consumer owned, and merely transferred to the "lemon" vehicle. The Board denied the Consumer's request for reimbursement for the camper top as not constituting a collateral charge.

Incidental Charges §681.102(8), F.S.

Chisholm-David v. Ford Motor Company, 2005-0873/TPA (Fla. NMVAB January 6, 2006)

The Consumer sought reimbursement for the following postage expenses as incidental charges: $4.42 for postage for mailing her motor vehicle defect notice to the Manufacturer; $13.65 each for mailing her Prehearing Information Sheet to counsel for the Manufacturer and to the Board, and $8.80 for mailing her claim and supporting documents to the Department of Agriculture and Consumer Services. The Manufacturer stipulated to the cost of mailing the motor vehicle defect notice, but objected to all other postage amounts, arguing that Chapter 681 requires only the notice to the Manufacturer to be sent by certified mail; hence, the other postage was "not reasonable." The Board rejected the Manufacturer's contention that a portion of the postage expense was unreasonable because it was not required and awarded the expenses to the Consumer.

Melrose Supply and Sales Corporation v. General Motors Corporation, Cadillac Division, 2005-1070/FTL (Fla. NMVAB March 16, 2006)

The Consumer sought reimbursement for insurance paid on rental cars incurred when the vehicle was at the authorized service agent undergoing repair for the nonconformity. The Manufacturer objected to the Consumer being reimbursed for insurance on the rental cars, on the grounds that it was not a "required" expense. The Board agreed with the Manufacturer and denied the Consumer's request for reimbursement for the insurance charges paid on rental cars.

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

Montalvan v. BMW of North America LLC., 2006-0034/MIA (Fla. NMVAB March 23, 2006)

The Consumer asserted that mileage attributable to the Consumer should be calculated up to the date of the first repair attempt. The Manufacturer asserted that the mileage up to the date of the arbitration hearing should form the basis for the offset calculation, because that is what the statute requires. The Board calculated the mileage up to the date of the arbitration hearing.

Hunter v. American Suzuki Motor Corporation, 2005-0960/PEN (Fla. NMVAB March 10, 2006)

On January 18, 2006, the case was postponed by the Consumer, because the Manufacturer had offered a settlement; however, performance of the settlement was not completed and a hearing was necessary for the Board to calculate the refund. The hearing was held on March 9, 2006. For purposes of calculating the reasonable offset for use, the Board used, as the starting point, the mileage on the Consumer's vehicle up to January 18, 2006, considering that as the date of the settlement.

MISCELLANEOUS PROCEDURAL ISSUES:

Hughes v. Ford Motor Company and Saleen Performance, Inc., 2005-0932/FTM (Fla. NMVAB January 18, 2006)

Saleen Performance, Inc., filed its Manufacturer's Answer four days beyond the date required for timely filing. Saleen requested that the Answer be considered as timely filed, arguing that the process of forwarding information from its offices in California to its attorney in Florida, coupled with the impact of the Thanksgiving holiday and "other pressing matters" prevented the timely filing of the Answer. Additionally, Saleen asserted that there were meritorious defenses to the Consumer's claim. The Board ruled that Saleen was not permitted to raise any affirmative defenses at the hearing, because the Answer was not filed within the time required by the Board's rules of procedure.