OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

QUARTERLY CASE SUMMARIES

April 2006 - June 2006 (2nd Quarter)

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

Quinn v. BMW of North America, LLC, 2006-0132/WPB (Fla. NMVAB April 6, 2006)
The Consumer complained that the vehicle was pulling to the right. According to the Consumer, if he looked down for a moment while driving, the vehicle pulled to the right and immediately crossed lanes. The movement of the vehicle across lanes raised safety concerns for the Consumer, because he was required to hold tightly onto the steering wheel to remain in his lane. The Consumer asserted that the pulling to the right occurred each time the vehicle was driven and that, over the course of repair attempts, the pulling problem became worse. The Manufacturer contended that the pulling did not substantially impair the use, value or safety of the vehicle. The Manufacturer's witness testified that the vehicle operated "as designed" during a series of test drives, that no abnormal pulling was detected, that the vehicle followed the normal crown of the road and indicated that any slight drifting problem felt by the Consumer may have been caused by tire wear which was a maintenance responsibility of the Consumer. The Board found the pulling to be 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.

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

What Constitutes a Reasonable Number of Attempts §§681.104(2), 681.1095(8), F.S.

Davis v. Mazda Motor of America, 2006-0160/ORL (Fla. NMVAB May 11, 2006)
The evidence established that the nonconformity was subjected to repair by the Manufacturer's service agent a total of three times, including one attempt after written notification was received by the Manufacturer from the Consumer. The Board conclude that, under the circumstances, these repairs were sufficient to afford the Manufacturer a reasonable number of attempts to conform the subject vehicle to the warranty as contemplated by the Lemon Law. Accordingly, the Consumers were rewarded a refund.

Hixson v. DaimlerChrysler Motors Company LLC, 2006-0284/JAX (Fla. NMVAB June 14, 2006)
The Consumers complained of a "helicoptering" wind noise and pressure from the moon roof and rear windows, which was found to be a nonconformity. The Manufacturer and its authorized

service agent took the position, both during the repair attempts and at the hearing, that there was no repair for the nonconformity. After two unsuccessful attempts to have the vehicle repaired, the Consumers sent written notification to the Manufacturer to give a final repair opportunity. The Manufacturer's position did not change. In light of the Manufacturer's position that there was no fix for the nonconformity, the Board found there were a reasonable number of attempts. Accordingly, the Consumers were awarded a refund.

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

Taylor v. DaimlerChrysler Motors Company LLC, 2006-0207/ORL (Fla. NMVAB May 25, 2006)
The Consumer sent written notification to the Manufacturer addressed to "Chrysler Financial, Post Office Box 860, Roanoke, Texas 76262, Att: Customer Service" to provide the Manufacturer with a final opportunity to repair the vehicle. The postal return receipt indicated that the written notification was received. The Manufacturer requested the dismissal of the Consumer's claim on the grounds that the Manufacturer was not afforded written notification and a final repair attempt, because the Consumer mailed the written notification to the incorrect address. The Manufacturer's witness testified that the address to which the Consumer sent the written notification was not the address for correspondence regarding warranty problems set forth in the materials provided to consumers by the Manufacturer at the time of vehicle acquisition and that Chrysler Financial is a separate entity. The Board concluded that the Consumers failed to send the required written notification to the Manufacturer. Accordingly, the case was dismissed.

Aguirre v. Nissan Motor Corporation USA, 2006-0219/TPA (Fla. NMVAB June 8, 2006)
The Consumer's attorney sent a letter to the Manufacturer which purported to provide the Manufacturer with a final opportunity to repair the vehicle. The letter referred to "the above listed defects and non-conformities"; however, there were none listed. The letter was also addressed to the Manufacturer's legal department and essentially was a demand for damages and attorney fees, espousing several different legal theories of recovery. The Manufacturer received the letter but did not interpret it to be notification of a final repair opportunity under the Lemon Law and did not respond. The Board concluded that the Consumer failed to provide the required written notification to the Manufacturer. The letter sent by the Consumer's attorney was not sufficient to provide the Manufacturer with the final repair opportunity required by the statute. The Consumer was not qualified for repurchase relief and the case was dismissed.

Gonzalez v. DaimlerChrysler Motors Company LLC, 2006-0241/WPB (Fla. NMVAB June 14, 2006)
The Consumers sent written notification to "Chrysler Customer Service, 2050 Roanoke Rd, Westlake, TX 76262," in order to provide the Manufacturer with a final opportunity to repair the vehicle. The notice was received by the Customer Service Department. According to the Manufacturer, the Customer Service Department was not the proper recipient of the Motor Vehicle Defect Notice. Rather, pursuant to the Manufacturer's warranty book, the notice should

have been sent to "DaimlerChrysler Motors Company LLC, Customer Center, P.O. Box 21-8004, Auburn Hills, MI 48321-8004." The Manufacturer stated it never received the written notification. The evidence established the notification sent by the Consumers was not sent to or received by the Manufacturer at the address for Florida designated in the Manufacturer's written warranty or owner's manual. Consequently, the Board concluded that the Manufacturer was not given the statutory opportunity for a final repair and the case 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.

McGriff v. Toyota Motor Sales USA, 2006-0123/STP (Fla. NMVAB May 5, 2006)
The Consumer complained that the gas mileage range indicator was inaccurate and defective, based on his own testing of the vehicle and asserted that, according to his testing, the range system for gas mileage was off by 20 to 25 percent; consequently, the software programming logic was flawed. The Consumer testified that the problem was not in the gas mileage; rather, it was with the indicator and his inability to rely on this system negatively impacted the value of his vehicle. The Manufacturer representative testified that the system calculates only an estimation of fuel economy and vehicle range and can vary based on driving habits, driving conditions, ambient temperature and the quality of the fuel. The Manufacturer's witness testified that he took several test drives of the vehicle totaling 467 miles over several days on both highways and streets with different headwinds and monitored the speedometer, the odometer and the tire pressure at the end. In the end, he came within decimal points of how many miles the indicator told him he could go and how many miles he was physically able to calculate by direct mathematical calculation. The Board found that the condition did not constitute a nonconformity; consequently, the Consumer's case was dismissed.

Lopez v. DaimlerChrysler Motors Company LLC, 2006-0184/FTL (Fla. NMVAB May 1, 2006)
The Consumer testified that the vehicle pulled to the right all of the time, on all types of road surfaces and at any speed and that the pulling concern forced him to "fight the vehicle" all of the time to stay on the road. The Consumer asserted that the pulling to the right became worse over time and would likely be the cause of safety problems in the future. The Manufacturer's witness testified that the vehicle did not indicate any unusual tire wear or improper alignment, which would indicate a pulling problem and further that, during a series of test drives and diagnostic tests performed on the vehicle, no pulling problem was detected. A second Manufacturer's witness testified that he test drove the vehicle with the Consumer, who remarked about the vehicle pulling to the right during times when it was actually following the normal crown of the road. The Board found that the condition did not constitute a nonconformity; consequently, the Consumer's case was dismissed.

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

Perryman v. American Suzuki Motor Corporation, 2006-0215/PEN (Fla. NMVAB May 15, 2006)
The Consumers testified to problems they were experiencing with the vehicle's engine, specifically the "check engine" warning light was illuminating intermittently. There were 43,400 miles on the odometer when the problem was first reported to the Manufacturer's authorized service agent. Prior to the first report of an engine problem, the Consumers had the oil changed in the vehicle three or four times. The Manufacturer argued the alleged engine nonconformity was the result of abuse or neglect of the motor vehicle by persons other than the manufacturer or its authorized service agent. The Manufacturer's witness testified that during his inspection of the vehicle, he found sludge in the top of the engine. The dealership attributed the sludge to a lack of regular oil changes, due to the fact that the Consumers had not brought the vehicle in for maintenance to Bob Tyler Suzuki or any other Suzuki Authorized Service Agent, and could not produce any receipts of maintenance work performed anywhere else. The Board concluded that the engine problems the Consumers experienced were the result of a failure to perform regular engine maintenance on the vehicle, and as such they did not constitute a "nonconformity" as defined by the statute. The Board did find other defects to be nonconformities and awarded the Consumers a refund as a result of those defects.

REFUND §681.104(2)(a)(b), F.S.:

Collateral Charges §681.102(3), F.S.

Hixson v. DaimlerChrysler Motors Company LLC, 2006-0284/JAX (Fla. NMVAB June 14, 2006)
The Consumers sought reimbursement of $121.90 for the purchase of wind deflectors as a collateral charge. The Manufacturer objected to reimbursement of the wind deflectors, because the Consumers could not produce a receipt for them. The Board rejected the Manufacturer's argument and awarded the Consumers $121.90 for the wind deflectors.

Harris v. DaimlerChrysler Motors Company LLC, 2006-0167/FTL (Fla. NMVAB June 9, 2006)
The Consumer sought reimbursement for the following collateral charges: $70.00 for window tinting and $265.50 for the installation of an alarm. The Manufacturer stipulated to reimbursement for the alarm system, but not to the window tinting, because the Consumer could not produce an invoice substantiating the amount paid. The Board denied the Consumer's request for reimbursement for the window tinting.

Incidental Charges §681.102(8), F.S.

Picrin v. Nissan Motor Corporation USA, Infiniti Division, 2006-0088/MIA (Fla. NMVAB April 5, 2006)
The Consumer experienced two instances of engine failure and the Board found the engine failure to be a nonconformity. The Consumer sought reimbursement of $120.00 he paid to have

the vehicle towed to his home after the second instance of engine failure. The Manufacturer objected to the Consumer being reimbursed for the towing charge, arguing there was no proof this was the vehicle that was towed. The Board rejected the Manufacturer's argument and awarded the incidental charge.

Net Trade-in Allowance §681.102(19), F.S.

Rodriguez v. DaimlerChrysler Motors Company LLC, 2006-0156/MIA (Fla. NMVAB May 11, 2006)
The Consumer was not satisfied with the net trade-in allowance reflected in the lease contract and at the time of the hearing requested that the retail price of the trade-in as reflected in the NADA Official Used Car Guide (Southeastern Edition) in effect at the time of the trade-in be used instead. The Manufacturer objected, arguing that the Consumer should have made such request prior to the time of the hearing. The Consumer's request that the NADA retail price of the trade-in be awarded, rather than the net trade-in allowance as reflected in the lease agreement, was denied by the Board.

MISCELLANEOUS PROCEDURAL ISSUES:

Clark v. Kia Motors America, 2006-0324/TLH (Fla. NMVAB June 22, 2006)
The Consumer's Prehearing Information Sheet, which listed two witnesses, was not received by the Board or the Manufacturer five days before the hearing. The Manufacturer objected to the witnesses being permitted to testify. The Consumer stated that he thought the Prehearing Information Sheet just had to be mailed five days before the hearing and that he did not know the rules required that it be received five days before the hearing. Paragraph (6) of the Board's rules at *Hearings Before the Florida New Motor Vehicle Arbitration Board,* states, with regard to the Consumer's Prehearing Information Sheet, "these forms must be completed, if applicable, with the originals to be received by the Board Administrator and a copy to be received by each involved manufacturer or manufacturer's attorney (if known) no later than 5 days before the scheduled hearing." Failure, without good cause, to submit the documents on time, may result in witnesses not being permitted to testify. The Board ruled that the Consumer's witnesses were not permitted to testify, because good cause was not shown for the failure to timely submit the prehearing sheet.

Fabric Mart, Inc. v. Mercedes-Benz USA Inc., 2006-0131/MIA (Fla. NMVAB May 5, 2006)
The Manufacturer requested that the Board consider a prehearing inspection report which was not received by the Board until one day before the hearing in violation of Paragraph (22), *Hearings Before The Florida New Motor Vehicle Arbitration Boar*d, which requires that all documents be **received** by the Board and the opposing party no later than **5 days** before the hearing. The Board denied the Manufacturer's request.