OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

QUARTERLY CASE SUMMARIES

July 2006 - September 2006 (3rd Quarter)

JURISDICTION:

Consumer §681.102(4)FS

Hitchcox v. DaimlerChrysler Motors Company LLC, 2006-0467/WPB (Fla. NMVAB September 21, 2006)
In February 2005, the Consumers leased a new 2005 Dodge Dakota pick up truck in Vero Beach, Florida. On or about April 24, 2006, the vehicle was towed to Dependable Dodge, the Manufacturer's authorized service agent. The Consumer testified at the hearing that he left the vehicle at Dependable Dodge and notified the Lessor, DaimlerChrysler Financial Services, that he was not making any further payments on the lease. Subsequently, on or about June 27, 2006, the vehicle was sold by Dependable Dodge to CarMax, where it was sold as a used vehicle at retail on July 26, 2006, to a buyer who was not either of the Consumers. The Manufacturer contended that the Consumers were not qualified for relief under the Lemon Law, because, as a result of the voluntary repossession of the vehicle, they were not "consumers" as defined by the statute. In addition, if the vehicle were to be declared a "lemon,"the Consumers could not deliver possession or clear title of the vehicle to the Manufacturer as would be required by the statute. The Board found that the vehicle which was the subject of the Request for Arbitration filed by the Consumers was repossessed when the Consumers delivered possession of it to the dealership and ceased making payments on the lease. As a result, the Consumers were no longer lessees, nor were they entitled to enforce the obligations of the warranty. Consequently, the case was dismissed.

Motor Vehicle §681.102(15), FS

Allen v. Ford Motor Company, 2006-0341/JAX (Fla. NMVAB July 28, 2006)
The Manufacturer contended that the Consumers were not qualified for relief under the Lemon Law, because the gross vehicle weight of the truck exceeded 10,000 pounds. According to the Manufacturer's witness, during the prehearing inspection, the truck was weighed using a scale at a local timber company. At that time, the flat bed was not on the truck and the gas tank was three-eighths full. The vehicle weight was 7,720 pounds. The Manufacturer's witness, who was the service manager for the dealership, had no firsthand knowledge as to the weight of the flat bed or of the tools she alleged the Consumer carried in the truck, but testified that the weight of both would cause the truck's gross vehicle weight to exceed 10,000 pounds. The Consumer testified that he had previously transferred the flat bed to another truck, because of the problems

he was having with the Ford truck. He had the Ford truck weighed on a Certified Automated Truck Scale, without the flat bed, with a full gas tank and with three occupants who normally rode in the truck, and the gross vehicle weight was 9,980 pounds. The Board found that the Manufacturer's evidence regarding the weight over the 7,720 pounds registered on the timber company scale was of doubtful origin and was not sufficient to overcome the Consumer's testimony and more credible Certified Automated Truck Scale certificate that the gross vehicle weight was 9,980 pounds. The gross vehicle weight of the truck was less than 10,000 pounds; therefore, the truck was declared a "motor vehicle" within the meaning of the law and the Manufacturer's request for dismissal was denied.

Murphy v. Ford Motor Company, 2006-0436/TPA (Fla. NMVAB August 11, 2006)
The Consumer testified that the truck's gross vehicle weight was 13,000 or 13,500 pounds and he believed that it was registered at 10,500 pounds. The Manufacturer urged dismissal on the grounds that the subject truck was not a "motor vehicle" as defined by Section 681.102(15), Florida Statutes (2005), because its gross vehicle weight was more than 10,000 pounds. The Board found that the gross vehicle weight of the truck exceeded the limit set forth in the statute and dismissed the case.

NONCONFORMITY 681.102(16), FS. (2005)

Eiroa v. Mercedes-Benz USA Inc, 2006-0386/MIA (Fla. NMVAB August 11, 2006)
The Consumer complained of a stain on the front passenger seat. The Consumer testified he noticed the stain when he took delivery of the vehicle. The Manufacturer's authorized service agent dyed the seat to cover the stain, but within three or four days the stain started to bleed through the dye. The Manufacturer contended that the stain on the passenger seat was a "cosmetic" issue and therefore "insubstantial," and that the Consumer did not qualify for relief under the Lemon Law. According to the Manufacturer's witness, the stain, which was the size of his palm, was not covered under warranty and the seat was recovered as a "goodwill" gesture only. The Board found the problem with the seat to be a nonconformity and the Consumer was awarded a refund.

REASONABLE NUMBER OF ATTEMPTS §681.104, FS:

Final Repair Attempt §681.104(1)(a), FS; §§681.104(1)(a), 681.104(3)(a)1., FS

Cromer v. DaimlerChrysler Motors Company LLC, 2006-0329/FTL (Fla. NMVAB July 20, 2006)
The Consumer complained of a brake noise. In February 2006, the vehicle was presented to the Manufacturer's designated repair facility for the final repair attempt. At that time, the Consumer did not complain about the brake noise and no repairs were made to the brakes. The Manufacturer argued that the case should be dismissed, because it was not afforded a final repair

attempt to address the brake noise. The Board concluded that the Manufacturer had not yet had a final opportunity to correct the brake noise nonconformity; therefore, the Consumer was not entitled to refund relief under the Lemon Law and the case was dismissed.

Days Out of Service §681.104(3)(b), FS; Rule 2-30.001(2)(c), Fla. Admin. Code

Eiroa v. Mercedes-Benz USA Inc, 2006-0386/MIA (Fla. NMVAB August 11, 2006)
The Consumer complained of a stain on the front passenger seat. The Consumer brought his vehicle in on one occasion from April 17, 2006, to May 11, 2006, for repairs made to the seat. The Manufacturer asserted that, when it was realized the seat would have to be recovered and the leather had to be ordered, the Consumer was called to pick up his vehicle but he refused. The Consumer agreed that he had been called, but did not remember when. The Manufacturer argued that the days the vehicle remained at the shop after the Consumer was called should not count as "days out of service" under the statute. However, the Manufacturer's witness could not produce any documentation of a call to the Consumer, nor could he produce any documentation of when the leather was ordered, when it came in, or when the seat was recovered. The Consumer testified he picked up the vehicle the day the work was completed. A rental receipt showed the dealership paid for a rental through May 11, 2006, the day the repair order was closed. The Board rejected the Manufacturer's argument, and counted each day from April 17 through May 11, 2006, as an out-of-service day.

The Mercury Trust v. Porsche Cars North America, Inc, 2006-0168/FTL (Fla. NMVAB July 26, 2006)
The Consumer presented evidence that his vehicle was out of service for repair of one or more nonconformities for 117 days. The Manufacturer stipulated the vehicle was out of service repair of nonconformities for a total of 56 days, but argued the Board should consider that a reasonable number of attempts considering the quality of the vehicle, the cost of the vehicle, and the "outstanding" service given to the Consumer. The Manufacturer explained that most of the days out were due to the engine oil leak nonconformity and in order to provide the best service to the Consumer, the engine was sent to Germany for inspection by the Manufacturer's engineers. Upon inspection, it was determined the oil leak could not be fixed and a new engine should be installed in the Consumer's vehicle. The Board found that the mitigating circumstances relied upon by the Manufacturer did not fall within the circumstances enumerated in the statute that would act to extend the 30-day presumption period. Accordingly, the Manufacturer's argument regarding the "reasonableness" of the number of days the vehicle was out of service was rejected. The Manufacturer stipulated the vehicle was out of service by reason of repair of the nonconformities for 56 days, and the evidence established the total out-of-service time was 117 days. Accordingly, the Consumer was awarded a refund.

MANUFACTURER AFFIRMATIVE DEFENSES §681.104(4), FS

Defect does not substantially impair use, value or safety of vehicle §681.104(4)(a), FS

Pass v. Volkswagen of America Inc, 2006-0450/FTL (Fla. NMVAB September 21, 2006)
The Consumer complained that the windshield glass was distorted and testified that the distortion went laterally across the bottom three inches of the windshield. The Manufacturer contended the vehicle did not have a defect or condition that substantially impaired its use, value or safety. According to the Manufacturer, all windshields have some distortion at their curvature points, so the slight distortion in the windshield of the Consumer's vehicle was not a defect in material. The Manufacturer replaced the windshields in other vehicles when the distortion was in the "line of sight" of the driver. However, replacing the windshield in this case would not resolve anything, because the distortion in this windshield was not in the Consumer's "line of sight." 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), FS

Murphy v. Ford Motor Company, 2006-0436/TPA (Fla. NMVAB August 11, 2006)
The Consumer complained of engine problems approximately two months after he installed a "superchip" performance enhancing modification to the vehicle. The Consumer testified that when the Manufacturer's authorized service agent advised him that the chip might be causing the engine problems, he removed it immediately and never reinstalled it. The Manufacturer argued that the alleged engine problems were the result of unauthorized modifications or alterations of the motor vehicle by persons other than the Manufacturer or its authorized service agent. The Manufacturer's witness testified that the superchip could cause engine damage by increasing the truck's combustion power beyond the design limits. Diagnostic codes indicated that the superchip was still in use even after the Consumer stated he removed it. Even if the superchip had been removed as the Consumer testified, it could have caused permanent component damage resulting in the engine problems worsening over time. The Board concluded that the engine problems were the result of modifications or alterations of the subject vehicle by persons other than the Manufacturer or its authorized service agent; therefore, the case was dismissed.

Devany v. DaimlerChrysler Motor Company LLC, 2006-0340/JAX (Fla. NMVAB August 21, 2006)
The Consumer complained of difficulties with the steering of her vehicle and the vehicle being out of alignment and pulling to the right. The Consumer was involved in a rollover accident, resulting in extensive damage to, and repair of, the vehicle. The Manufacturer contended that any alleged vehicle defects were the result of the Consumer's rollover accident and as such were not nonconformities as defined by the statute. The Manufacturer presented a detailed body repair invoice reflecting extensive damage to the Consumer's vehicle as a result of the accident. The Board found that the steering and alignment problems alleged by the Consumer did not constitute nonconformities within the meaning of the law, because they were the result of an

accident by a person other than the manufacturer or its authorized service agent. Accordingly, the Consumer was not entitled to repurchase relief and the case was dismissed.

Oporto v. Volkswagen/Audi of America Inc, 2006-0404/MIA (Fla. NMVAB September 1, 2006)
The Consumer complained of an engine vibration. He denied making any modifications to the engine, but admitted to having the exhaust system modified. The Manufacturer raised the affirmative defense that the alleged engine vibration was the result of an unauthorized modification or alteration of the motor vehicle by persons other than the Manufacturer or its authorized service agent. According to the Manufacturer's witness, the Consumer had a rear part of the exhaust system replaced and had aftermarket springs installed in the suspension. None of these parts were installed by the Manufacturer or any of their authorized service agents. The Manufacturer argued that, if a part in the exhaust system was not installed correctly, it would cause a vibration, and the installation of aftermarket springs without replacing the entire suspension would make the problem worse. The Board concluded that the engine vibration was the result of an unauthorized modification or alteration of the motor vehicle by persons other than the Manufacturer or its authorized service agent; accordingly, the case was dismissed.

REFUND §681.104(2)(a)(b), FS:

Collateral Charges §681.102(3), FS

Pinder v. Mercedes-Benz USA Inc, 2006-0370/FTL (Fla. NMVAB August 11, 2006)
The Consumer requested $281.00 for GAP coverage as a collateral charge. The Manufacturer objected to reimbursement of the charge for GAP, arguing it was an insurance. The Board rejected the Manufacturer's argument and awarded the GAP coverage as a collateral charge.

Incidental Charges §681.102(8), FS

Byron v. Land Rover of North America, 2006-0517/JAX (Fla. NMVAB September 20, 2006)
The Consumers sought reimbursement of an expert witness fee as an incidental charge. The Consumers presented the testimony of an expert witness, who operated a local vehicle repair facility, which was not a Manufacturer-authorized repair facility. The witness appeared at the hearing for a total of four hours at the rate of $77.00 per hour, for a total of $308.00. The Board concluded the fee was reasonable and fell within the statutory definition of "incidental charges" and awarded the Consumers their expert witness appearance fee of $308.00.

Baker v. DaimlerChrysler Motors Company LLC, 2006-0381/MIA (Fla. NMVAB August 22, 2006)
The Consumer sought reimbursement of $15.00 as an incidental charge for parking at the

arbitration hearing. The Manufacturer objected to the $15.00 for parking, arguing that a reasonable settlement was offered to the Consumer prior to the hearing, rendering the hearing unnecessary in the Manufacturer's opinion. The Board rejected the Manufacturer's argument and awarded the incidental charge.

MISCELLANEOUS PROCEDURAL ISSUES:

Matecki v. Saab Cars USA Inc., 2006-0395/FTM (Fla. NMVAB August 21, 2006)
The Manufacturer's Answer was filed more than 20 days after the date the Manufacturer received the Notice of Arbitration, and therefore was not timely filed. Consequently, the Board ruled that the Manufacturer was not permitted to raise any affirmative defenses at the hearing. The Manufacturer's witness was given the opportunity to present rebuttal testimony on behalf of the Manufacturer.