OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

QUARTERLY CASE SUMMARIES

October 2006 - December 2006 (4th Quarter)

JURISDICTION:

Motor Vehicle §681.102(15), FS

Lundergan v. DaimlerChrysler Motors Company LLC, 2006-0617/TPA (Fla. NMVAB November 2, 2006)
The Manufacturer contended that the Consumer's truck was not a "motor vehicle" as defined by the statute, because its gross vehicle weight exceeded 10,000 pounds. As proof, the Manufacturer presented a "Certificate of Registration," an "Application for Vehicle/Vessel Certificate of Title and or Registration" and an Orange County Florida "TagTalk System Motor Vehicle Information" form, all of which declared the truck's gross vehicle weight as 12,200 pounds. The Manufacturer's representative testified that the vehicle's net weight on all three documents was listed as 7,267 pounds. The representative asserted that the vehicle normally holds approximately 35 gallons of fuel or approximately 600 pounds in addition to the normal cargo and occupants for a total gross vehicle weight of more than 10,000 pounds. The Consumer testified that she normally carried two passengers in the truck, along with 2,000 pounds of feed and saddles as cargo in the truck bed. The Board concluded that, taking into consideration the net weight of the truck, the weight of the fuel, the 2,000 pounds of cargo the Consumer testified to normally carrying in the truck bed, and the weight of two normal occupants, the gross vehicle weight of the truck was more than 10,000 pounds. The case was dismissed.

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

Thatcher v. Ford Motor Company, 2006-0514/FTM (Fla. NMVAB October 9, 2006)
The Consumer complained that, intermittently, the air conditioner ducts emitted a very foul "sulphur and egg stink" odor. This odor was emitted whether the air conditioner was on or off. 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 drove the vehicle with the Consumer on at least three occasions and no unusual odors were detected. In addition, he also drove alone for approximately 126 miles and could not duplicate the intermittent odor. The Board concluded that the intermittent foul "sulfur and egg" odor was a defect or condition that substantially impaired the use and value of the vehicle, and as such, it constituted a nonconformity within the meaning of the statute. Accordingly, the Consumer was awarded a refund.

Kaplan v. Mazda Motor of America Inc., 2006-0662/FTL (Fla. NMVAB December 1, 2006)
The Consumer complained that the vehicle's rear wheels were unable to sustain an alignment, thus leading to excessive rear tire wear. The Manufacturer contended the rear tire wear was due to abusive driving of the vehicle by persons other than the Manufacturer or its authorized service agent. The Consumer's evidence showed that the vehicle was first presented to the Manufacturer's service agent for repair of this problem two months after purchase, during which the two rear tires were replaced and a four-wheel alignment was performed. A few months after that repair, the Consumer experienced a flat rear tire. She re-inflated the tire with "fix-a-flat" and drove the vehicle home and her father took the vehicle to the Manufacturer's authorized service agent to have it repaired. At that time, the service agent refused to repair the vehicle and told the Consumer's father to leave. The same thing happened when the father again attempted to seek repair a couple of days later. The Consumer sent written notification to the Manufacturer to give the Manufacturer its final repair attempt. At the final repair attempt, the Manufacturer refused to repair the vehicle. The Consumer had not driven the vehicle since having the flat tire. At the hearing, the Manufacturer's witness testified that an improper alignment could have caused the tire wear, but he believed that "wheel/tire spin" was the cause. The Board concluded that the inability of the rear wheels to hold an alignment, thus causing excessive rear tire wear, was a defect or condition that substantially impaired the use, value and safety of the vehicle, thereby constituting a nonconformity within the meaning of the statute. The Manufacturer's assertion that the defect was caused by abusive driving was rejected as unsupported by the evidence and the Consumer was awarded a refund.

Patrick v. DaimlerChrysler Motor Company LLC, 2006-0598/PEN (Fla. NMVAB November 6, 2006)
The Consumers complained of a vibration in the vehicle. The Manufacturer raised the affirmative defense that the alleged 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. Specifically, the Manufacturer alleged the vibration was caused by the aftermarket tires the Consumers put on the vehicle. The Consumers had replaced the tires on the recommendation of the Manufacturer's authorized service agent. The Manufacturer's witness testified that the vibration he duplicated during the prehearing inspection was caused by the left front aftermarket tire. The Board found the vibration to be a substantial impairment of the vehicle's use and value and rejected the Manufacturer's argument. The Consumers were awarded a refund.

Kabeche v. Volkswagen/Audi of America Inc., 2006-0500/FTL (Fla. NMVAB October 3, 2006)
The Consumer complained of many electrical problems with the vehicle. The Manufacturer contended that many of the problems were caused by an outside influence, more specifically a rodent chewing through the wiring harness and some of the wires; however, that was not confirmed. The Manufacturer's witness acknowledged that he did not know whether a rodent chewed through the harness or whether the vehicle was at the authorized service agent's facility when the harness was damaged. The Board concluded that the Manufacturer's assertion was not supported by the evidence, that the electrical problems constituted nonconformities and that,

therefore, the Consumer was entitled to 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.

Rollinger v. DaimlerChrysler Motor Company LLC, 2006-0631/ORL (Fla. NMVAB November 13, 2006)
The Consumer complained of the paint chipping off the vehicle. The Consumer presented the vehicle for repair of the poor quality paint job on three separate occasions, including the final repair attempt. The Consumer testified that on all those occasions, the Manufacturer was "ready and willing" to provide a new paint job. The Consumer refused to allow the Manufacturer to repaint the vehicle, however, and insisted instead on either a "factory paint job" or a new vehicle. The Manufacturer admitted that the paint job on the vehicle did not conform to the warranty. The Manufacturer contended, however, that it was not afforded a reasonable number of attempts to cure the nonconformity, because the Consumer refused to allow the Manufacturer's authorized service agent to repaint the vehicle. The Board concluded that the Manufacturer had not been afforded a reasonable number of attempts to correct the nonconformity. The Consumer's consistent refusals to permit repairs denied the Manufacturer even the opportunity to determine whether a repaint would conform the vehicle to the warranty as contemplated by the Lemon Law. Accordingly, the case was dismissed.

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

Melamed v. Ford Motor Company, 2006-0650/FTL (Fla. NMVAB December 15, 2006)
The Consumers complained of a condition with the transmission which caused the "check transmission" warning light to illuminate, the vehicle to hesitate before going into gear, to intermittently bang when changing gears, and a transmission fluid leak. The Consumers also complained of a leak in the sunroof. In April 2006, the Consumers sent written notification to the Manufacturer to provide the Manufacturer with a final opportunity to repair the vehicle. The Manufacturer received the notification and responded to the Consumers by letter which stated, in part, the following: "We ask that you contact Phil Smith Ford of Pompano in Pompano Beach, Florida, to schedule a convenient final repair attempt appointment." The Consumers contacted Phil Smith Ford, and on June 2, 2006, the vehicle was presented to that repair facility for the final repair attempt. At that time, no repairs were made. At the hearing, the Manufacturer asserted that the case should be dismissed, because it was not accorded a final repair attempt. In support of this assertion, the Manufacturer argued that the Consumers did not notify the Manufacturer that they were bringing the vehicle in for the final repair. The Board rejected this argument as inconsistent with the law. The Board concluded that the law did not require the Consumers to contact the repair facility to set up the Manufacturer's final repair attempt, but they did, and they delivered the vehicle on the date designated, not by the Manufacturer, but by its

authorized service agent. If the Manufacturer did not know the date established by its service agent, it was not the Consumers' duty to convey that information. The Consumers were awarded a refund.

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

Whatley v. Ford Motor Company, 2006-0653/ORL (Fla. NMVAB November 15, 2006)
The Consumers sent written notification to the Manufacturer that listed a vibration as a continuing defect. Thereafter, the Consumers submitted a Request for Arbitration to the Board also alleging a vibration defect. After the Request for Arbitration was approved, the Consumers experienced problems with the vehicle's transmission and sought to present evidence of this defect at the arbitration hearing. The Manufacturer did not receive written notification giving a final opportunity to repair the transmission. At the hearing, the Manufacturer, through counsel, argued that the written notification concerning the vibration was not sufficient to put the Manufacturer on notice that the Consumers were attempting to assert their Lemon Law rights with respect to a transmission problem. The Manufacturer further asserted that the unrelated vibration problem was corrected at the third repair attempt. The Board found the vibration defect was a nonconformity; however, it was corrected within a reasonable number of attempts. The alleged transmission defect was found to be unrelated to the vibration; therefore, the Consumers' notification concerning the vibration was not sufficient to provide the Manufacturer with a final opportunity to repair that alleged defect and the issue was not yet properly before the Board. The case was dismissed.

MANUFACTURER AFFIRMATIVE DEFENSES §681.104(4), F.S.

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

Lam v. Hyundai Motor America, 2006-0544/FTL (Fla. NMVAB October 4, 2006)
The Consumers complained that the driver's side window was defective, causing wind noise and rain to get into the vehicle. In June 2005, the driver's side window was replaced by an independent repair facility which was not an authorized service agent of the Manufacturer. The window was replaced, because the vehicle was damaged as a result of a break-in. The problems with the window occurred after the window was replaced. The Manufacturer contended that the Consumer's complaint about the window was not a nonconformity under the statute, because it was the result of an abuse by persons other than the Manufacturer or its authorized service agent. The Board found the evidence established that the defect in the driver's side window was the result of either damage sustained when the vehicle was broken into or by the subsequent repair performed by the independent repair facility and that both events were the result of actions by persons other than the Manufacturer or its authorized service agent. The Board concluded therefore that the defect did not constitute a nonconformity under the statute and the case was dismissed.

Jordan v. Volkswagen/Audi of America Inc., 2006-0698/FTM (Fla. NMVAB December 18, 2006)
The Consumer complained that, following an automobile accident in which the driver's side of the vehicle was impacted, the right headlight, right tail light, and glove box light intermittently either came on by themselves when the car was not running, or failed to turn off after the engine was turned off. The Consumer testified that the problem resulted from the accident. The Manufacturer contended that the problem was the result of an accident by persons other than the Manufacturer or its authorized service agent. The Board concluded that the problem with the lights was the result of an accident by persons other than the Manufacturer or its authorized service agent; therefore, it did not constitute a nonconformity within the meaning of the law. Accordingly, the Consumer's case was dismissed.

REFUND §681.104(2)(a)(b), F.S.:

Incidental Charges §681.102(8), F.S.

Kennedy v. DaimlerChrysler Motors Company LLC, 2006-0516/TLH (Fla. NMVAB November 27, 2006)
The Consumer sought reimbursement of $43.34 for postage and $100.00 for the insurance deductible paid by the Consumer to repair the truck tailgate after the truck shifted from park to reverse and backed into a piece of farm equipment. The Consumer also sought reimbursement for mileage placed on a second vehicle used to pick him up from, and return him to, the Manufacturer's authorized repair facility when the subject vehicle was dropped off for repairs. The Manufacturer objected to reimbursement of any postage charge for the use of certified mail beyond that "required" by statute and objected to the reimbursement for mileage on the second vehicle. The Board awarded the Consumer $43.34 for postage, since the statute does not restrict the amount of postage which can be reimbursed, and $100.00 for the insurance deductible. However, Consumer's request for reimbursement for the mileage added to his second vehicle that was used to pick him up from, and return him to, each of the repair attempts was denied.

Patrick v. DaimlerChrysler Motors Company LLC, 2006-0598/PEN (Fla. NMVAB November 6, 2006)
The Consumers sought reimbursement of $504.68 for new tires which were replaced upon the recommendation of the Manufacturer's service agent to attempt to correct the vibration nonconformity, $239.25 for a week-long car rental in June 2006 and $90.96 for one day's use of a rental truck by the Consumers to make an out-of-town delivery in August 2006, while their truck was undergoing the final repair attempt for the nonconformity. The Manufacturer objected to reimbursement for the rental car charges, arguing that they were not incurred as a direct result of the alleged nonconformity, because the cars were not rented during times when the Consumers' vehicle was being repaired. The Consumers acknowledged that the week-long trip could have been taken in their second car. The Board awarded the Consumers $504.68 for the new tires and $90.96 for the one-day truck rental. The Consumers' request for reimbursement of $239.25 for

the week-long car rental was denied as unreasonable.

Kaplan v. Mazda Motor of America Inc., 2006-0662/FTL (Fla. NMVAB December 1, 2006) The Consumer sought reimbursement of $790.00 for an expert witness, plus whatever the expert would charge for being present at the hearing; and $13,313.12 in rental car expenses from October 14, 2005, to the date of the hearing. The Manufacturer objected to the Consumer being reimbursed for the expert witness fee, and for the rental car expense. The Board reduced the amount of the reimbursement for the expert witness to $290.00, which was the cost of the expert's towing charge. With regard to the amount the Consumer sought for rental car charges, that amount was reduced to $1,960.56, which represented the rental car charges incurred from September 21, 2006, the date on which the Consumer signed the Request for Arbitration, until the date of the hearing. In addition, the Manufacturer was directed to reimburse the any subsequent rental car charges, at the current daily rental rate, which the Consumer would incur up to the date of the Manufacturer's compliance with the Decision. The request for the reimbursement of rental car charges incurred prior to the date on which the Consumer signed the Request for Arbitration, was denied as unreasonable.