OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

QUARTERLY CASE SUMMARIES

January 2007 - March 2007 (1st Quarter)

JURISDICTION:

Motor Vehicle §681.102(15), F.S.

Gagnier v. General Motors Corporation and Home & Park Motorhomes, 2006-0709/JAX (Fla. NMVAB January 17, 2007)
The Consumer purchased a new 2006 Roadtrek 190-Popular/Chevrolet 3500 Express conversion van from Dick Gore's RV World. Conversion of the van was carried out by Home & Park Motorhomes. General Motors, through counsel, argued that the case should be dismissed because the Consumer's vehicle is a recreational vehicle and not a van conversion. The Manufacturer argued that, because the vehicle was equipped with amenities needed to provide temporary living quarters, and the fact that the recreational vehicle industry categorized the vehicle as a motor home, the case should be dismissed for lack of jurisdiction. After considering all the evidence, the Board rejected the Manufacturer's argument and found that the Consumer's vehicle was a conversion van. Accordingly, the Board had jurisdiction.

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

Schuh v. Mercedes-Benz USA Inc., 2006-0802/FTL (Fla. NMVAB January 24, 2007)
The Consumer complained of a defective air conditioner that emitted a strong musty odor when first started. The Consumer testified that when driving the vehicle, he experienced flu-like symptoms, and was diagnosed with sinusitis and conjunctivitis in his eyes. 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 they performed a "Wynn's ultra sonic A/C system treatment" pursuant to a technical service bulletin addressing the Consumer's complaint. The Board found that the odor did substantially impair the use and value of the vehicle. Accordingly, the Consumer was awarded 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.

Harrell v. Ford Motor Company, 2006-0811/TLH (Fla. NMVAB February 27, 2007)
The vehicle had a defective throttle control system that substantially impaired its use, value and safety. The Consumer testified that, although the problem with the system had not manifested recently, he was concerned that it would again in the future. The vehicle was out of service for a total of 25 days during 5 different repair attempts. The Manufacturer argued that the nonconformity was corrected within a reasonable number of attempts. Considering the seriousness of the nonconformity, the number of repairs undertaken and the days out of service, along with the Consumer's credible and reasonable concerns regarding the possibility of the recurrence of the nonconformity, the Board rejected the Manufacturer's contention that the nonconformity was corrected within a reasonable number of attempts. Accordingly, the Consumer was awarded a refund.

Diez v. Volkswagen/Audi of America, Inc., 2007-0022/MIA (Fla. NMVAB February 28, 2007)
The vehicle had an engine noise and vibration, along with intermittent stiffness and pulling when steering or turning, all of which substantially impaired its use, value or safety. The evidence established that the vehicle was out of service by reason of repair of the nonconformities for a total of 29 cumulative calendar days. After 15 or more days out of service, the Consumer notified the Manufacturer in writing as required by statute, and after receipt of the notification, the Manufacturer or its service agent had at least one opportunity to inspect or repair the vehicle. While 30 out-of-service days, inclusive of the statutory notice, raises a presumption of a reasonable number of attempts, the Consumer is not required to establish the presumption in order to obtain relief. The Board found that 29 days out of service was a reasonable number of attempts undertaken to conform the vehicle to the warranty. Accordingly, the Consumer was awarded a refund.

Foreman v. Toyota Motor Sales, USA, 2006-0780/FTL (Fla. NMVAB February 27, 2007)
The intermittent illumination of the “check engine” light warning light and accompanying intermittent engine stall substantially impaired the use, value and safety of the vehicle. The Consumer presented evidence that the vehicle was out of service by reason of repair of the nonconformity for a total of 29 days, and that, after 15 or more days out of service, the Consumer so notified the Manufacturer in writing as required by the statute. After receipt of the notification, the Manufacturer or its authorized service agent had the opportunity to inspect or repair the vehicle. The Board concluded that a reasonable number of attempts were undertaken by the Manufacturer. Accordingly, the Consumer was awarded a refund.

Days Out of Service & Post-Notice Opportunity to Inspect or Repair§681.104(1)(b), F.S.; §681.104(3)(b)1., F.S.

McVea v. American Motor Honda Company, 2006-0793/JAX (Fla. NMVAB March 1, 2007)
The Consumer complained of a pull to the right, vibration, a rattle in the vehicle chassis, and a dent in the vehicle fender, all of which were found by the Board to constitute nonconformities under the statute. The vehicle was out of service for repair of the nonconformities for a total of 31 days. The Manufacturer contended that some of those days should not be "attributable to the Manufacturer," because they were for work that was done solely for the Consumer's satisfaction and not for repair of a nonconformity. The Manufacturer also contended the Consumer was not entitled to relief because some of the defects were repaired. The Board rejected both of the Manufacturer's contentions, concluding that the days out of service were for repair of the nonconformities and that, whether the nonconformities were corrected was irrelevant. Accordingly, the Consumer was awarded a refund**.**

Gagnier v. General Motors Corporation and Home & Park Motorhomes, 2006-0709/JAX (Fla. NMVAB January 17, 2007)
The Consumer presented his vehicle to the Manufacturer's authorized service agent on May 23, 2006, for repair of a gas leak. That afternoon, the service agent informed the Consumer to bring the vehicle to Dick Gore's RV World because it was not covered by General Motors' warranty. The next day, the Consumer received a call from Dick Gore's RV World telling them that the gas leak was covered by General Motors' warranty and that Dick Gore's would deliver the vehicle to General Motor's authorized service agent. On June 27, 2006, the Consumer was notified by General Motors' authorized service agent that the vehicle repair was complete and the vehicle was ready to be picked up. General Motors stipulated to the dismissal of Home & Park Motorhomes, and stipulated that the gas leak was the result of a defect covered by the General Motors limited warranty, but argued that the vehicle was not out of service by reason of repair for 30 or more days that were "attributable to General Motors," because there was no evidence that the vehicle was in possession of General Motors or their authorized service agent from May 24 through May 31, 2006. General Motors further asserted that some of the out-of-service days should not "count against it," because they were due to their authorized service agent ordering the wrong part, thereby delaying repair of the vehicle. The Board rejected both arguments. The Board found that the time out of service contested by General Motors represented out-of-service days by reason of repair of the nonconformity. Accordingly, the Consumer was awarded a refund.

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

Sayset v. DaimlerChrysler Motors Company, LLC, 2006-0752/ORL (Fla. NMVAB February 2, 2007)
The Consumer's counsel sent a letter to the Manufacturer's legal department requesting a final repair attempt. Three days before the request was received, the Manufacturer's legal department

had received a demand letter from the Consumer's counsel threatening a lawsuit. The Manufacturer's representative argued that the demand letter did not constitute proper written notice pursuant to the statute. The Board found that two letters that were sent by the Consumer's counsel were insufficient to put the Manufacturer on notice of the need to perform a final repair attempt. Therefore, the Consumer's case was dismissed.

Gagnier v. General Motors Corporation and Home & Park Motorhomes, 2006-0709/JAX (Fla. NMVAB January 17, 2007)
The Consumer sent written notification to both Manufacturers. At the time General Motors received the notice, the vehicle was still undergoing repair by General Motors' authorized service agent. General Motors contended that the notification was received after the vehicle was out of service for 14 days, rather that 15 days or more, and that the notification was "defective" for this reason. The evidence established that the notice was received on the 15th day out of service. Since the vehicle was in possession of the Manufacturer's authorized service agent when notice was received, and the Manufacturer or the service agent had the statutory opportunity to inspect or repair the vehicle after receipt of notice, the Board rejected the Manufacturer's argument and held the notice was proper under the statute.

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.

Jean v. American Suzuki Motor Corporation, 2007-0079/FTL (Fla. NMVAB March 28, 2007)
The Consumer complained of a "massive" vibration under the driver's seat. The Consumer testified that she experienced the vibration under the seat of the vehicle since its purchase and it had become increasingly worse. The Manufacturer contended that the vibration was only slight when the vehicle was traveling over 80 miles per hour. The Board concluded that the vibration did not substantially impair the use, value or safety of the vehicle. Accordingly, the Consumer's case was dismissed.

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

Stuhrmann v. DaimlerChrysler Motors Company, LLC, 2006-0784/FTL (Fla. NMVAB January 31, 2007)
The Consumer complained that the transmission popped out of third gear on deceleration and intermittently grinded into third gear on acceleration. In addition, the Consumer complained of a clicking noise. The Manufacturer argued that the alleged defect was the result of abuse by someone other that the Manufacturer, specifically, by racing the vehicle and/or pushing the vehicle beyond its normal means. The Manufacturer's witness testified that, on the first repair attempt, the vehicle exhibited a lot of debris powder around the bell housing, chunks of material lodged in the disintegrated disc and the bearing was melted. At subsequent repair attempts, the

gear selector was broken off from its assembly and found at the bottom of the transmission. According to the witness, it would take an extreme amount of force to break the half-inch thick metal block. In addition, slider rotors were added to the vehicle to upgrade the performance. The Board found the problem with the transmission and clicking noise was the result of abusive driving by persons other than the Manufacturer or authorized service agent. Therefore, the case was dismissed.

REFUND §681.104(2)(a)(b), F.S.:

Incidental Charges §681.102(8), F.S.

Harrell v. Ford Motor Company, 2006-0811/TLH (Fla. NMVAB February 27, 2007)
The Consumer sought reimbursement of $150.00 as an incidental charge for an expert witness who performed an inspection of the vehicle prior to the hearing and wrote a report that was submitted into evidence by the Consumer. The Manufacturer objected to reimbursement of the witness fee, because the report was not mentioned during the Consumer's testimony. The Board denied the request for the witness fee, because the report was not relied upon during the Consumer's testimony.

Parks v. Ford Motor Company, 2007-0003/JAX (Fla. NMVAB February 23, 2007)
The Consumer sought reimbursement of $628.59 as an incidental charge for fuel injector repairs. The Manufacturer objected, asserting that the repairs were vehicle maintenance issues and were not related to any nonconformity. The Board denied the Consumer's request because the costs were not directly caused by the nonconformity.

Gagnier v. General Motors Corporation and Home & Park Motorhomes, 2006-0709/JAX (Fla. NMVAB January 17, 2007)
The Consumer sought reimbursement of attorney's fees and "loss of use" damages. The Manufacturer objected to both requests. The Board denied the Consumer's request, because the award of those items is outside the scope of the Board's authority.

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

Miller v. Mercedes-Benz USA Inc., 2006-0731/FTL (Fla. NMVAB January 3, 2007)
The Manufacturer objected to the purchase price established by the Board for the purpose of calculating the reasonable offset for use, arguing that sales tax and other fees charged to the Consumer should be included. The Consumer objected to the Board using the miles on the vehicle as of the day of the hearing as the starting point for calculating the miles attributable to the Consumer to calculate the offset. The Consumer argued that the mileage on the vehicle as of the date the Manufacturer made a settlement offer to the Consumer would be a more appropriate figure to use. The Board rejected both parties' arguments.

Valdes-Recio v. Mazda Motor of America Inc., 2007-0045/MIA (Fla. NMVAB March 5, 2007) The Consumer, at the time of purchase, had a trade-in vehicle with a $9,502.00 debt owed on the vehicle. The Manufacturer objected to deducting the debt from the purchase price of the vehicle in determining the reasonable offset for use. The Board denied the Manufacturer's objection and excluded from the purchase price the $9,502.00 as debt from another transaction in order to calculate the reasonable offset for use. The debt was also deducted from the amount of the trade-in allowance awarded to the Consumer.

MISCELLANEOUS PROCEDURAL ISSUES:

Alexander v. General Motors Corporation, 2007-0008/ORL (Fla. NMVAB February 14, 2007) The Consumer testified that she did not receive any of the attachments that came with the Manufacturer's prehearing information sheet. The Board received neither the Manufacturer's prehearing sheet nor any of the attachments. The Consumer argued that she would be prejudiced by the introduction of any documents attached to the prehearing sheet that she had not received or reviewed. The Board did not allow into evidence any documents that the Consumer had not received prior to the hearing, pursuant to paragraph (10), *Hearings Before the Florida New Motor Vehicle Arbitration Board,* the Board's rules of procedure.