OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

QUARTERLY CASE SUMMARIES

July 2007 - September 2007 (3rd Quarter)

JURISDICTION:

Warranty §681.102(23)F.S.

Legow v. American Honda Motor Company, 2007-0419/FTL (Fla. NMVAB September 5, 2007)
Prior to the Consumer's purchase of the vehicle, the Manufacturer installed a tire system manufactured by Michelin Tires called the "PAX" system. This was a specialized tire system that could only be repaired by authorized PAX system service facilities. The Consumer experienced pulling to the right when driving on flat road surfaces, along with several tire punctures and premature tire wear. The Manufacturer contended that the alleged tire defect was not covered by American Honda's limited warranty. A Manufacturer witness testified that the PAX tire system installed on the vehicle by Honda was warranted by Michelin and not Honda. Applying the statutory definition of "nonconformity" (§681.102(16), Fla. Stat.), the Board found the problem to be a nonconformity covered by the statute. The PAX system was installed by the Manufacturer with the Consumer having no choice as to the type of the tire system. Modifications authorized and/or installed by the Manufacturer that cause the nonconformity are covered by the statute. Accordingly, the Consumer was awarded a refund.

NONCONFORMITY §681.102(16), F.S.

Schaffer v. Nissan North America, Inc., Infiniti Division, 2007-0381/WPB (Fla. NMVAB August 13, 2007)
The Consumer complained of a defect in the electrical system which intermittently caused the low tire pressure warning light to illuminate. The Consumer testified that the low tire pressure warning light would blink for 30 seconds to one minute, then become a steady light. Not knowing if he had a flat tire, the Consumer had pulled off the highway to check his tires on several occasions. The Consumer did not feel safe driving the vehicle when this happened. The Manufacturer contended that any problem with the system was not substantial. The Board found the defect in the electrical system to be a substantial impairment of the use, value or safety of the vehicle; therefore, a nonconformity. Accordingly, the Consumer was awarded a refund.

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

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

Aboul-Ezz v. Volkswagen/Audi of America, Inc., 2007-0464/ORL (Fla. NMVAB August 29, 2007)
The Consumer complained of an intermittent illumination of a warning light indicating that either a headlight, a taillight or a brake light had gone out, which the Board found to be a nonconformity. The Consumer sent written notification to Volkswagen/Audi of America on February 20, 2007, to provide a final opportunity to repair the vehicle. At the hearing, the Consumer testified that, upon advice of counsel, he did not take the vehicle back to the Manufacturer 's authorized service agent at any time after December 29, 2006. The Manufacturer's witness testified that the Consumer declined to bring the vehicle in for the final repair attempt after the Manufacturer contacted him. The Manufacturer contended 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 case was dismissed.

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

Braunstein v. Hyundai Motor America, 2007-0489/STP (Fla. NMVAB September 25, 2007)
The Consumer complained of intermittent engine problems, an air conditioner malfunction and a malfunction with the sliding doors which the Board found to be nonconformities. The Manufacturer contended that any time the vehicle was in the repair facility, but no work was performed, because a nonconformity could not be duplicated, should not be considered a day out of service. The Board rejected the Manufacturer's argument and found the Consumer's vehicle to be out of service a total of 31 days. Accordingly, the Consumer was awarded a refund.

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.

Miller v. Mazda Motor of America Inc., 2007-0368/ORL (Fla. NMVAB July 2, 2007)
The Consumer complained of a paint chip on the top right edge of the driver's door. The paint chip was approximately one inch in length and rectangular in shape. The Manufacturer asserted that the paint chip did not substantially impair the use, value, or safety of the vehicle. At the hearing, the Manufacturer's witness testified that the paint chip was approximately the size of a "pinky fingernail" and was not visible when the door was closed. The Board found that the paint chip was not a nonconformity and the case was dismissed.

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

Kimbrough v. General Motors Corporation-Chevrolet Motor Division, 2007-0273/STP (Fla. NMVAB August 6, 2007)
The Consumer complained that the vehicle's engine exhibited intermittent hesitation to start and occasional failure to start. Three months after the Consumer purchased the vehicle, Mad Mark's Stereo Warehouse installed an aftermarket alarm system. The alarm system was removed one year later. The Manufacturer contended that the alleged defect was the result of an alteration or modification by persons other than the Manufacturer or its authorized service agents; specifically, the installation and removal of the aftermarket alarm. At the hearing, the Manufacturer presented evidence showing that the problem complained of by the Consumer first happened after the alarm was installed. After the alarm was removed, the wiring into the ignition system showed signs of having been cut and sliced many times, interrupting the electrical connection to the engine. The Board found that the problem complained of by the Consumer did not constitute a nonconformity as it was the result of an alteration or modification by a person other than the Manufacturer or its authorized service agents. Accordingly, the Consumer's case was dismissed.

REFUND §681.104(2)(a)(b), F.S.:

Incidental Charges §681.102(8), F.S.

Alonso v. General Motors Corporation-Chevrolet Motor Division, 2007-0366/JAX (Fla. NMVAB July 18, 2007)
The Consumers sought reimbursement of $500.00 for damage to a rental car they were using while their vehicle was in the shop for repair of the nonconformity. The Manufacturer objected, citing that the damage was caused by the Consumers; therefore, the Manufacturer should not be held responsible for the damage. The Board denied the reimbursement to the Consumers, because they were personally responsible for causing the damage to the rental car and the damage was not a direct result of the nonconformity.

Garrett v. BMW of North America, LLC, 2007-0432/FTL (Fla. NMVAB September 6, 2007)
The Consumer sought reimbursement of $1,287.37 for a rental car. The Manufacturer objected, arguing that the Consumer's vehicle was available to drive and the Consumer elected to rent a vehicle when she did not have to. The Board denied the Manufacturer's objection and awarded the Consumer $1,287.37 for a rental car as an incidental charge.

Ferran v. Kia Motors America, 2007-0426/MIA (Fla. NMVAB August 16, 2007)
The Consumer sought reimbursement of $30.00 for a rental car and $213.85 for new tires and an alignment performed to address a nonconformity as incidental charges. The Manufacturer objected to the rental car charge because the representative did not know if Kia had already reimbursed the Consumer for that charge. The Manufacturer also objected to the tires and alignment because they were a "maintenance item" and not covered under the Manufacturer

warranty. The Board found that both charges were directly caused by the vehicle nonconformities; therefore, they were awarded to the Consumer.

Collateral Charges §681.102(3), FS

Langevin v. Chrysler LLC, 2007-0353/ORL (Fla. NMVAB September 12, 2007)
The Consumer sought reimbursement of $15.00 for a bed liner and $50.00 for window visors as collateral charges. The Consumer could not produce receipts for either item and the Manufacturer objected for that reason. The Board denied the Manufacturer's objection and awarded the Consumer $15.00 for a bed liner and $50.00 for window visors as collateral charges.

Oliver v. Ford Motor Company, 2007-0267/JAX (Fla. NMVAB August 13, 2007)
The Consumer requested reimbursement of $956.24 for a roll and lock bed cover as a collateral charge. The Manufacturer objected, because the Consumer only produced an estimate of the cost and not a paid receipt. According to the Consumer, the store that sold him the bed cover was no longer in business; therefore, he could not get a receipt from them. The Board denied the Manufacturer's objection and awarded the Consumer $956.24 for the bed cover.

Reasonable Offset for Use §681.102(20), FS

Davis Diversified Inc., v. Land Rover of North America, 2007-0474/ORL (Fla. NMVAB September 13, 2007)
The Consumer was awarded a refund. Total purchase price of the vehicle for the purpose of calculating the statutory reasonable offset for use was $57,921.58 ($62,305.58 reduced by the debt from another transaction of $4,384.00 as reflected in the purchase contract). The Manufacturer asserted that the purchase price should not be reduced by the debt, because it was debt on the trade-in vehicle and to do so would be to treat consumers with debt on a trade-in vehicle differently from consumers without such debt. Upon consideration by the Board, the Manufacturer's objection was denied.

MISCELLANEOUS PROCEDURAL ISSUES:

Alonso v. General Motors Corporation-Chevrolet Motor Division, 2007-0366/JAX (Fla. NMVAB July 18, 2007)
At the start of the hearing, the Manufacturer moved to dismiss the case, based on the Consumers' settlement of their prior County Court claim against the Manufacturer. Counsel for the Manufacturer argued that as part of that settlement, the Consumers had signed a written release of any further claims against General Motors regarding their 2005 Chevrolet Trailblazer. The Manufacturer's attorney asserted that the release language barred the lemon law claim. Section 681.115, Florida Statutes (2006), provides, "any agreement entered into by a consumer that waives, limits, or disclaims the rights set forth in this chapter, or that requires a consumer not to disclose the terms of such agreement as a condition thereof, is void as contrary to public policy." Based upon the foregoing, the motion to dismiss was denied.