OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

QUARTERLY CASE SUMMARIES

October 2007 - December 2007 (4th Quarter)

JURISDICTION:

Consumer §681.102(4) F.S.; Lessee §681.102(11) F.S.

Duffield v. Mercedes-Benz USA Inc., 2007-0666/ORL (Fla. NMVAB December 17, 2007)
The arbitration hearing took place on December 5, 2007. On November 3, 2007, the Consumer's lease ended and the Consumer testified that she turned in the 2006 Mercedes-Benz CLK 350 on November 1, 2007. The Manufacturer argued that the case should be dismissed, because the Consumer no longer possessed the vehicle and did not have the ability to provide the Manufacturer with clear title to and possession of the vehicle should she prevail on the merits of the case. The statute defines a "Consumer" as 'The purchaser, other than for purposes of resale, or the lessee, of a motor vehicle primarily used for personal, family, or household purposes...," and defines a lessee as "any consumer who leases a motor vehicle for 1 year or more pursuant to a written lease agreement which provides that the lessee is responsible for repairs to such motor vehicle or any consumer who leases a motor vehicle pursuant to a lease-purchase agreement." Since the Consumer no longer possessed the motor vehicle which was the subject of the claim, she was not, for purposes of these proceedings, a lessee as defined by the statute. Therefore, the case was dismissed

Motor Vehicle §681.102(15), F.S.

Dagge v. Ford Motor Company, 2007-0601/FTM (Fla. NMVAB November 9, 2007)
The Consumer purchased a new 2008 Ford F250 Super Duty pickup truck in Florida. The Manufacturer contended that the truck was not a "motor vehicle" under the lemon law, because its gross vehicle weight exceeded 10,000 pounds. The truck was weighed by the Manufacturer at a certified scale with a half tank of fuel and two occupants. The steer axle weight was 5,100 pounds and the drive axle weight was 6,580 pounds for a total of 11,680 pounds. The Board found the gross vehicle weight to be 11,680 pounds, exceeding the limit set forth in the statute. Accordingly, the truck was not a "motor vehicle" and the Consumer's case was dismissed

Bick v. Western Golf Cart, 2007-0384/FTM (Fla. NMVAB October 3, 2007)
The Consumer purchased a new 2005 Western Elegante golf cart in Florida. The vehicle was electric-powered with a 48-volt system and a high-speed motor. The Consumer testified that she used it exclusively for playing golf, driving it only on golf courses and not on roads. The statutory definition of "motor vehicle" specifically excludes "off-road vehicles." The Board

concluded that the Consumer's vehicle was an "off-road vehicle" and therefore not a motor vehicle under the statute. Accordingly, the Consumer's case was dismissed.

NONCONFORMITY 681.102(16), F.S.

Hernandez v. American Honda Motor Company, 2007-0625/FTL (Fla. NMVAB November 28, 2007)
The Consumer complained of paint peeling off the rear bumper of his 2005 Acura TL. Several repaints and even replacement of the bumper failed to correct this problem. The Consumer asserted that the defect substantially impaired the value of the vehicle. The Manufacturer contended that the alleged defect did not substantially impair the use, value, or safety of the vehicle. The Manufacturer presented the testimony of the Pre-owned Vehicle Service Manager of Acura of South Florida. The witness testified that, if the vehicle was traded in to his dealership for resale, it would not cost the dealership very much to fix the bumper; therefore, the value would not be substantially impaired. The Board gave no weight to this testimony and found the paint peeling to substantially impair the value of the vehicle. Accordingly, the Consumer was awarded a refund.

Mueller v. Ford Motor Company, 2007-0535/FTL (Fla. NMVAB October 4, 2007)
The Consumer complained of intermittent, loud noises from the 2006 F150 pickup truck's suspension/steering/transmission. The Consumer testified that sometimes when the 4x4 engaged, the noise sounded like "loud screaming/grinding" coming from the front of the vehicle. The grinding noise occurred two or three times a week, and the loud "screaming" noise occurred once every other week. The Manufacturer contended that the problem with the vehicle was the front hubs and after they were replaced, the problem was corrected. The Board found the problem to be a nonconformity which still existed; therefore, 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.

Sarasohn v. Toyota Motor Sales, USA, 2007-0579/WPB (Fla. NMVAB December 14, 2007)
The Consumer complained of poor gas mileage in this Highlander Hybrid utility vehicle. The Board found that the poor gas mileage substantially impaired the value of the vehicle, and as such, constituted a nonconformity. The vehicle was presented to the Manufacturer's authorized service agent for repair of the poor gas mileage on June 5, 2007, when no repairs were performed; thereafter, the Manufacturer's authorized service agent would not accept the vehicle for repair. The Consumer sent written notification of the defect to the Manufacturer and the vehicle was brought in a second time thereafter, when it was only test driven by the

Manufacturer. The evidence did not reflect that any testing was performed to determine a cause for the low gas mileage the Consumer was recording. Considering the Manufacturer's unwillingness to attempt repair, the Board concluded that a reasonable number of attempts was undertaken; accordingly, the Consumer was awarded a refund.

Isbell v. Chrysler LLC, 2007-0428/PEN (Fla. NMVAB November 9, 2007)
The Consumers complained of defective door latches, a leaking top and an engine/electrical system stalling problem in their '07 Jeep Wrangler. The Board found all three defects to be nonconformities. The stalling nonconformity was corrected within a reasonable number of repair attempts; however, the leaking top remained uncorrected after five attempts, and the door latches after three. The Board concluded that under the circumstances, the Manufacturer was provided a reasonable number of attempts to repair the remaining nonconformities and failed to do so. Accordingly, the Consumers were 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.

Salameh v. Ford Motor Company, 2007-0553/JAX (Fla. NMVAB October 22, 2007)
The Consumer complained of a defective transmission, a distorted navigation system voice, a water leak, and inoperable power windows in their 2006 Ford Explorer demo. All were found to be nonconformities by the Board. The Manufacturer argued that the dates shown on their authorized service agent's repair orders should be used to calculate days out of service. The Consumer argued that the out-of-service dates should also include the days during which the vehicle was at the authorized service agent waiting for a replacement part and the days the authorized service agent claimed it did not know the vehicle was at its facility. The Board was more persuaded by the Consumer's argument. Therefore, all of the Consumer's calculated out-of-service days were counted to bring the total to 49 days out of service. The Consumer was awarded a refund.

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

Deweese v. General Motors Corporation, Hummer Division, 2007-0685/TLH (Fla. NMVAB December 17, 2007)
The Consumers complained of a faulty supercharger system in their 2006 Hummer H2. After three or more unsuccessful attempts by the Manufacturer's authorized service agent to repair the defect, the Consumers sent a Motor Vehicle Defect Notification form to "UAW/GM CHR, 200 Walker Street, Detroit, MI, 48207." At the hearing, the Consumer testified that this address was provided to her by her sister, who was employed by General Motors. This was not the regional or zone address for Florida, which was provided to consumers by the manufacturer in the vehicle owner's manual; rather, it was the address for the on-site United Auto Workers office. The Manufacturer did not receive the notification form and did not have the opportunity for a final repair attempt or a post-notice opportunity to inspect or repair the vehicle. Once the vehicle has

been subjected to at least three repair attempts for the same nonconformity, or has been out of service by reason of repair of one or more nonconformities for 15 or more days, a consumer is required by statute to give written notice directly to the Manufacturer. The Board found that the Consumers did not provide the Manufacturer the notice required by statute. Accordingly, the Consumers' 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.

Perle v. Mazda Motor of America Inc., 2007-0623/WPB (Fla. NMVAB December 13, 2007)
The Consumers complained that the seat heaters in their 2007 Mazda RX8 either did not heat the seats or did not get the seats hot enough. The Manufacturer contended that the seat heaters were working as designed. The Manufacturer's witness testified that the seat heaters would only come on when the ambient temperature was lower than about 82 degrees and were programmed to turn off when the internal temperature of the seat reached about 99 degrees. The Board concluded that, while the heaters did not work in the way the Consumers preferred, this was not a defect or condition that substantially impaired the use, value, or safety of the vehicle and the claim was dismissed.

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

Valdes v. Chrysler LLC, 2007-0526/ORL (Fla. NMVAB November 16, 2007)
The Consumer complained that the left front tire, wheel and wheel assembly separated from the frame of the 2006 Dodge Ram pickup truck and fell off. The Manufacturer contended that the alleged nonconformity was the result of an accident, abuse, neglect or unauthorized modifications of the vehicle by persons other than the Manufacturer or its authorized service agent. The Consumer's son testified he was driving between 30-40 miles per hour when this occurred and it caused approximately $8,600.00 in body repair damages which was paid for by the Consumer's insurance carrier. The Manufacturer pointed out that there were no complaints by the Consumer of a defect prior to this incident, there was no police report, and the authorized service agent refused to accept the vehicle for repair. The Board concluded that the complaint by the Consumer did not constitute a nonconformity as the wheel and tire separation was the result of an accident by persons other than the Manufacturer or its authorized service agent. Accordingly, the Consumer's case was dismissed.

REFUND §681.104(2)(a)(b), F.S.:

Incidental Charges §681.102(8), F.S.

Thornton v. Chrysler LLC, 2007-0570/TLH (Fla. NMVAB October 29, 2007)
The Board found the Consumer's 2007 Sebring to be a "lemon," as a result of an unrepaired hesitation/fluttering/shuddering nonconformity, and awarded the Consumer a refund. The Consumer requested reimbursement for excessive gas charges he claimed were the result of the nonconformity, because the vehicle was not getting the gas mileage reflected on the window sticker**.** The Manufacturer objected to the reimbursement for gas charges as being too speculative and added that the gas mileage projections on the window sticker were just estimates and not exact figures. The Board denied the request by the Consumer as being too speculative and not directly caused by the nonconformity.

Kivo v. Ford Motor Company, 2007-0599/JAX (Fla. NMVAB October 24, 2007)
The Consumers purchased a Ford Expedition which the Board found to be a "lemon." The Consumers requested reimbursement of $60.00 paid to upgrade a rental required during the course of repairs from a standard size car to a pickup truck as an incidental charge. The Manufacturer objected to the rental car upgrade, but stated no reason. The Board awarded the $60.00 to the Consumers as a reasonable incidental charge.

Barry v. Mercedes-Benz USA Inc., 2007-0556/WPB (Fla. NMVAB November 19, 2007)
The Consumers' 2006 E350 automobile had a foul, musty, mildew odor emanating from the air conditioner and the Board declared the vehicle a "lemon." The Consumers requested reimbursement of $115.00 for a mold test on the vehicle which was performed by Consolidated Environmental Engineering, LLC. The Manufacturer objected to the Consumers being reimbursed for the cost of the mold test. The Board awarded reimbursement to the Consumers as a reasonable incidental charge.