OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

QUARTERLY CASE SUMMARIES

January 2008 - March 2008 (1st Quarter)

JURISDICTION:

Consumer §681.102(4), F.S.

Rayser v. Ford Motor Company, 2007-0538/JAX (Fla. NMVAB March 18, 2008)
The Consumers purchased a new 2006 Ford F-350 pickup truck in Florida. Prior to the arbitration hearing, the vehicle was repossessed by the lienholder. At the hearing, the Consumers acknowledged that in fact the vehicle was repossessed and that they did not have current possession of the vehicle. 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; any person to whom such vehicle is transferred for the same purposes during the duration of the Lemon Law rights period; and any other person entitled by the terms of the warranty to enforce the obligations of the warranty." Since the Consumers no longer possessed the motor vehicle which was the subject of the claim, they were not, for purposes of this proceeding, a "consumer" as defined by the statute. Therefore, the case was dismissed.

Motor Vehicle §681.102(15), F.S.

Clark and Kerrigan v. Volkswagen/Audi of America, Inc., 2007-0777/TPA (Fla. NMVAB March 3, 2008)
The Consumers purchased a 2005 Volkswagen Beetle in Florida on September 9, 2005. The Manufacturer contended that the case should be dismissed because the Consumers purchased a used vehicle, not a demonstrator. The Manufacturer introduced into evidence the former owner's Retail Purchase Agreement and a copy of the CarFax History Report on the vehicle. The Purchase Agreement listed the vehicle as a "trade-in" vehicle with 14,098 miles on the odometer and the CarFax report listed the vehicle as being sold "new" on August 21, 2004. The Consumers testified that they understood the owner of the dealership or his wife used the vehicle for their personal use prior to their purchase of the vehicle. The Board concluded the greater weight of the evidence established that, at the time of purchase by the Consumers, the Beetle was a used vehicle and therefore was not a "motor vehicle" as defined by the statute. The case was dismissed.

NONCONFORMITY 681.102(16), F.S.

Holobaugh v. Ford Motor Company, 2007-0648/FTL (Fla. NMVAB January 17, 2008)
The Consumers complained that intermittently the air conditioner blew hot air rather than cool air in their 2006 Ford F-150 pickup truck. The Consumers added that most of the time the air conditioner did not cool. The Manufacturer contended that the air conditioner in the vehicle was working properly, and argued that whether or not a vehicle's air conditioning system cools sufficiently is a "subjective standard" which is affected by the ambient temperature and amount of humidity in the air. The Manufacturer's witness testified that, at the final repair attempt, no leaks were found in the air conditioning system, and that when the temperature inside the vehicle was tested, the thermometer registered 42 degrees. The Board found the problem to be a defect or condition that substantially impaired the use, value and safety of the vehicle. Accordingly, the Consumer was awarded a refund.

Dennis Bellehumeur Trust v. Toyota Motor Sales USA, Lexus Division, 2007-0723/FTL (Fla. NMVAB February 5, 2008)
The Consumers complained of excessive wind noise coming into their 2007 Lexus LS 460 when it was driven at higher speeds. The Consumers testified that the wind noise was "abhorrent," and depending on the direction of the wind, the noise could be loud when the vehicle was driven at 40 miles per hour. The Manufacturer contended that the alleged defect or condition did not substantially impair the use, value or safety of the vehicle. The Manufacturer's witness testified that a "completely quiet car" did not exist, but this was an "extremely quiet car." The Board found the problem to be a defect or condition that substantially impaired the use and value of the vehicle. Accordingly, the Consumers were 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.

Jiminez v. Nissan Motor Corporation USA, 2007-0771/MIA (Fla. NMVAB March 19, 2008)
The Consumer complained of the radiator losing water/coolant, causing the engine to overheat in her 2006 Nissan Altima. The Board found that the defect substantially impaired the use, value and safety of the vehicle, and as such, constituted a nonconformity. The vehicle was presented to the Manufacturer's authorized service agent for repair of the nonconformity on two occasions prior to the Consumer sending the Manufacturer written notification of the defect. After the Manufacturer received written notification, the vehicle was subject to repair an additional three times. The Board concluded that, under the circumstances, the Manufacturer was provided a reasonable number of attempts to repair the nonconformity and failed to do so. Accordingly, the Consumer was awarded a refund.

Ortiz v. Nissan Motor Corporation USA, 2007-0582/FTL (Fla. NMVAB January 2, 2008)
The Consumer complained that, intermittently, the passenger side sliding door "popped" open when she was driving her 2006 Nissan Quest. The Board found this to be a defect or condition

that substantially impaired the use, value and safety of the vehicle, and as such, constituted a nonconformity. The vehicle was presented to the Manufacturer's authorized service agent for repair of the sliding door on two occasions in October 2006. In November 2006, the Consumer sent written notification to the Manufacturer to provide a final repair opportunity. The final repair attempt took place in December 2006, but no work was performed and the defect continued to exist. The Board concluded that, under the circumstances in this case, three repair attempts were sufficient to afford the Manufacturer a reasonable number of attempts to conform the vehicle to the warranty. The Consumer was awarded a refund.

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

Seda v. Chrysler LLC, 2007-0783/FTM (Fla. NMVAB February 15, 2008)
The Consumer complained of a shimmy in the steering wheel of his 2006 Dodge 1500 pickup truck. The Board found that the shimmy substantially impaired the use of the vehicle, and as such, constituted a nonconformity. After three unsuccessful attempts by the Manufacturer's authorized service agent to repair the defect, the Consumer sent the Manufacturer a package, which included written notification of the defect to allow for a final repair attempt. The Manufacturer contended that it was not given proper written notification as required by the statute. The Manufacturer's representative testified that the envelope received from the Consumer contained only a repair order and no written notification. The Manufacturer still attempted to contact the Consumer within 10 days and received no response. Once a vehicle has been subjected to at least three repair attempts for the same nonconformity, a consumer is required by statute to give written notification to the Manufacturer. The Board concluded that the Consumer did not provide proper notice as required by the statute. Accordingly, the Consumer's case was dismissed.

Drake v. Chrysler LLC, 2008-0059/STP (Fla. NMVAB March 24, 2008)
The Consumer complained of a recurring illumination of the "check engine" warning light in his 2007 Dodge Ram 3500. The Consumer sent a Motor Vehicle Defect Notification form to "DaimlerChrysler Corp., PO Box 2700, Troy, MI 48007-2700." The Consumer testified the address was obtained from a Chrysler Service Contract on the vehicle. The Manufacturer contended that it did not receive proper written notification as required by the statute. The Manufacturer's representative testified that the pages of the Owner's Manual and Warranty for the Consumer's truck clearly specify where written notification regarding Florida's Lemon should be sent, and it was not the address to which the Consumer had sent his notification. The Board found that the Consumer did not provide proper notice as required by the statute. Accordingly, the Consumer's 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.

Shanefield v. Toyota Motor Sales USA, 2007-0736/WPB (Fla. NMVAB February 29, 2008) The Consumer complained that the doors automatically unlocked when his 2007 Toyota Camry was put in park gear. The Manufacturer contended that the alleged defect or condition did not substantially impair the use, value or safety of the vehicle. The Manufacturer's witness testified that the door lock complaint was not a defect at all; rather, it was simply the operation of the automatic setting, and that once the setting was changed, the door locks did not automatically unlock. The Board concluded that the door lock complaint was not a defect; rather, it was a setting on the vehicle that, once changed, eliminated the situation. Consequently, the Consumer's case was dismissed.

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

Roberts v. American Honda Motor Company, 2007-0696/ORL (Fla. NMVAB January 9, 2008) The Consumer complained of a faulty alternator causing electronic problems with his 2007 Honda Element. The Consumer was told that a "power surge" caused a short in multiple control units of the vehicle. The Manufacturer contended that the alleged nonconformity was the result of modifications or alterations of the vehicle by persons other than the Manufacturer or its authorized service agent. The Manufacturer's witness testified that, when a power source for trailer lights was installed by U-Haul, the actual battery terminals had to be taken off the vehicle causing a power surge, which caused a short in the alternator. The Board concluded that the complaint by the Consumer did not constitute a nonconformity, because the electrical problems were the result of modifications or alterations of the vehicle by persons other than the Manufacturer or its authorized service agent. Accordingly, the Consumer's case was dismissed.

Perez-Paret v. Mercedes-Benz USA, Inc., 2007-0649/FTL (Fla. NMVAB January 22, 2008) The Consumer complained that the engine seized in her 2007 Mercedes Benz S550V. The Consumer testified that during a rain storm, his wife drove the vehicle through a puddle of water, after which the vehicle stalled and would not restart. After that incident, the engine was replaced by the Manufacturer's authorized service agent. The Consumer added that the vehicle drove differently since the engine was replaced and expressed concern that the engine might seize up again if driven through another puddle. The Manufacturer contended that the alleged nonconformity was the result of an accident by persons other than the Manufacturer or its authorized service agent. The Manufacturer's witness testified that the engine had substantial damage, caused by water intrusion, when it was brought in for repair after it seized up. The Board concluded that the complaint by the Consumer did not constitute a nonconformity as the engine problems were 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.

Zas v. Toyota Motor Sales USA, Lexus Division, 2007-0514/MIA (Fla. NMVAB January 7, 2008)
The Board found the Consumer's Lexus ES33 to be a "lemon," as a result of an intermittent hesitation and erratic shift on acceleration. The Consumer requested reimbursement of 26 hours of lost wages at $25.38 per hour as an incidental charge. The Board denied the request by the Consumer as being unreasonable.

Rocks v. General Motors Corporation, Chevrolet Motor Division, 2007-0719/WPB (Fla. NMVAB March 31, 2008)
Prior to the hearing, the Consumer filed a claim with the BBB/Autoline program and that program rendered a decision awarding the Consumer a refund pursuant to the Manufacturer's voluntary settlement offer. However, because the offer did not include attorney's fees, the Consumer was not satisfied with that offer and requested arbitration by the Board. The Consumer purchased a 2006 Chevrolet Corvette which the Board found to be a "lemon." The Consumer requested reimbursement of the amount incurred to keep the vehicle insured after the time of the BBB hearing up to the time of settlement as an incidental charge to which the Manufacturer objected. The Board denied the Consumer's request, because that charge was not directly caused by the nonconformities. The Board did not have the statutory authority to award attorney fees to the Consumer.

MISCELLANEOUS PROCEDURAL ISSUES

Munnings v. American Honda Motor Company, 2007-0749/MIA (Fla. NMVAB January 28, 2008)
At the arbitration hearing, the Manufacturer sought to have the Board consider a copy of the prehearing vehicle inspection report which was conducted on January 8, 2008, the day before the hearing. The report was given to the Consumer at the conclusion of the inspection, and faxed to the Board Administrator the same day. The Consumer objected. Paragraph (16), *Hearings before the Florida New Motor Vehicle Arbitration Board*, states, in pertinent part, "all information gathered as a result of the prehearing inspection will be provided to the consumer in writing as soon as it is available, but no later than 7 business days before the date of the hearing. If the manufacturer fails to provide the information to the consumer as required, evidence or testimony related to the vehicle inspection may not be considered by the board at the hearing." The Manufacturer argued the inspection could not be conducted earlier because of the Christmas holidays, and because the Consumer requested that the inspection be conducted at 8:00 AM at a dealership closer to her home. The Manufacturer stated January 8th was the date its District Service Manager could be available to perform the inspection at the time the Consumer requested. The Consumer argued she requested the location because it was on her way to work, but it was the Manufacturer's choice <u>when</u> to conduct the inspection, which was at the Service Manager's convenience, not hers. The inspection report was not considered by the Board.