OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

QUARTERLY CASE SUMMARIES

October 2008 - December 2008 (4th Quarter)

JURISDICTION:

Motor Vehicle §681.102(15), F.S.

Isaac v. Mercedes-Benz USA, Inc, 2008-0439/ORL (Fla. NMVAB October 23, 2008)
The Consumer wanted to lease a Mercedes-Benz C230 Sport automobile. Through an internet search, he located a C230 at Carlton Motorcars, Inc., in Greenville, South Carolina. The lease transaction, dated February 9, 2007, was completed via telephone, Federal Express mail, and facsimile. The Consumer was a resident of the state of Florida at the time he negotiated the lease, and he continued to reside in Florida as of the hearing date. At no time during the negotiations or execution of the lease agreement did the Consumer leave the state. The vehicle, a new 2007 Mercedes-Benz C230 Sport automobile, was delivered to the Consumer at his home in Apopka, Florida, and the vehicle was subsequently registered in Florida. The Manufacturer, through counsel, requested that the case be dismissed, asserting that the subject vehicle was not sold in this state, and as such, was not a "motor vehicle" as defined in Section 681.102(15), Florida Statutes (2007). The Manufacturer argued that the lease agreement was a South Carolina lease agreement, the lessor was a South Carolina dealership, the lease agreement was not completed until the South Carolina dealer signed it in that state, and the South Carolina dealer reimbursed the Consumer for delivery of the vehicle. The Board found that, based on the totality of the evidence, the Consumer's vehicle was "sold" in Florida as contemplated by the statute. Therefore, the vehicle was a "motor vehicle" as defined by Section 681.102 (15), and the Manufacturer's request for dismissal was denied.

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

Fattah v. Mercedes-Benz USA, Inc, 2008-0441/MIA (Fla. NMVAB November 14, 2008)
The Consumer complained of a foul musty odor coming from the air conditioner vents in her 2007 Mercedes C230. The Consumer testified that the severity of the odor had reduced; however, the odor still existed. The Manufacturer contended that the alleged defect did not substantially impair the use, value or safety of the vehicle. While not denying the existence of the odor, the Manufacturer asserted that "outside elements and humid South Florida temperatures" contributed to the odor. The Board rejected the Manufacturer's argument and found that the odor substantially impaired the use, value and safety of the vehicle. Accordingly, the Consumer was awarded a refund.

Moccia v. Toyota Motor Sales, USA, 2008-0425/WPB (Fla. NMVAB October 28, 2008) The Consumer complained of a mold or mildew smell from the air conditioning system in her 2007 Toyota Camry. The Consumer testified that she is highly allergic and the odor that emanated from the air conditioner when it was running was "terrible, terrible, terrible, reminiscent of a wet diaper." A blast of stench that lasted for about five minutes occurred when the vehicle was first started for the day and the air conditioner was turned on. The odor was also evident after the vehicle had been sitting for three to four hours, especially if the vehicle had been sitting in the hot sun. In addition, the Consumer was a real estate agent and used her vehicle as a part-time office; her clients, too, found the odor unpleasant. The Manufacturer contended that because of the environment in South Florida, some musty odor is to be expected. The Manufacturer's witness asserted that, "we live in a wet, moldy, hot area of the country." The Manufacturer maintained that the odor from the air conditioner was not related to defects in parts or workmanship; rather, it was caused by the environment. The Board rejected the Manufacturer's argument and found that the odor substantially impaired the use, value and safety of the vehicle. Accordingly, the Consumer was awarded a refund.

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

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

Londono v. Nissan Motor Corporation USA, 2008-0265/MIA (Fla. NMVAB October 3, 2008) The Consumer's 2006 Nissan Armada had a water leak from the headliner and/or upper shield. After three or more repair attempts for the water leak, the Consumer sent written notification to the Manufacturer to provide the Manufacturer with a final opportunity to repair the vehicle. However, the notification was returned to the Consumer with the following notation on the envelope: "FORWARD TIME EXP[IRED] RETURN TO SENDER." The Manufacturer argued that it did not receive written notification from the Consumer and therefore was not accorded a final repair attempt. The Manufacturer's representative acknowledged the address to which the Consumer sent the written notification in California was the address provided in the Manufacturer's warranty book. However, the representative testified that Nissan's Consumer Affairs Department had since moved to Franklin, Tennessee. He believed that the Better Business Bureau either provided, or should have provided, the Consumer with the correct address in Tennessee, and he asserted that it was the Consumer's responsibility to make sure she had the correct address for mailing the written notification. The Board found that it was the Manufacturer's duty to provide the Consumer with the correct address to which the Consumer must send the statutory written notification of the final repair opportunity. If the Manufacturer relocates after the warranty or owner's manual is published, such relocation does not relieve the Manufacturer of its duty, nor does it impose upon the Consumer the additional burden of tracking down the Manufacturer. The Board found that the Consumer in this case complied with her responsibility under the statute when she sent the required written notification to the published address of the Manufacturer after at least three unsuccessful attempts by the authorized service agent to repair the nonconformity. The Manufacturer's failure to receive the notification was not the fault of the Consumer. Since the Manufacturer failed to respond to the notification, the requirement that the Manufacturer be given a final repair opportunity did not apply. 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.

Rosenberg v. Volkswagen/Audi of America Inc., 2008-0428/WPB (Fla. NMVAB October 14, 2008)
The Consumer complained of the vinyl peeling off the interior console, the driver's side door handle and the dashboard in his 2006 Audi A4. The Manufacturer contended that an outside influence was causing the vinyl to peel. The Manufacturer's witness testified that, what was peeling was not vinyl, but the paint on the molded plastic parts. The peeling was occurring on the driver's side of the vehicle only. According to the witness, suntan lotion or oil that on the Consumer's hands or legs was rubbing onto various areas of the driver's side of the console, door handle and dashboard, causing the paint to peel off the affected areas. The Board concluded that the Consumer's complaint regarding the peeling of the interior was not a defect or condition that substantially impaired 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.

Jackow v. Toyota Motor Sales, USA, 2008-0376/FTM (Fla. NMVAB October 6, 2008)
The Consumers complained of defective paint and clear coat in their 2006 Toyota Corolla. The Consumer testified that the paint on the vehicle was damaged by love bugs, despite the fact that she washed the love bugs off the vehicle on a daily basis during each love bug season. She asserted that the clear coat on the vehicle did not protect the paint because it was unusually soft and scratched easily, even though she never used anything other than Toyota products when washing the vehicle. The Manufacturer's representative contended that the damage was the result of neglect, and asserted that the damage to the paint was caused by the Consumers having allowed love bugs and bird droppings to remain on the hood and roof for an extended period of time before attempting to remove them. This was also the conclusion of an independent repair facility hired by the service agent to inspect the vehicle. A majority of the Board found that the damage to the vehicle's paint was a result of accident, abuse or neglect of the vehicle by someone other than the Manufacturer or its authorized service agent, and as such 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.

Smith v. Ford Motor Company, 2008-0474/WPB (Fla. NMVAB November 6, 2008)
The Board found the Consumer's Ford Expedition to be a "lemon." The Consumer requested that his wife, the primary driver of the vehicle, be reimbursed for lost wages on "lost employment opportunities" as an incidental charge. She ran a "home watch" business which entailed her checking on homes when the owners were away, and she took people to and from the airport. The Consumer's wife did not rent a car when the vehicle was not available for use, nor did she

submit any documentation in support of her claim for lost wages. The Board denied the Consumer's request as being speculative as to the amount.

Net Trade-in Allowance §681.102(19), F.S.

Shirley v. Toyota Motor Sales, USA, 2008-0469/FTL (Fla. NMVAB November 6, 2008)
The Consumer complained of an abnormal alignment that affected the driveability and caused uneven tire wear in her 2008 Toyota Tacoma. The Board found the problem to be a nonconformity and awarded the Consumer a refund. In order to purchase the vehicle, the Consumer traded in a 2002 Honda CRV for which she received a net trade-in allowance of $4,500.00, according to the purchase contract, which was not acceptable to the Consumer; consequently, the Manufacturer produced the NADA Official Used Car Appraisal Guide (Southeast Edition) in effect at the time of the trade-in. The NADA Guide reflected a retail price for the trade-in vehicle in the amount of $15,175.00. The Manufacturer did not submit the mileage information tables from the NADA Guide, arguing that the mileage on the trade-in vehicle could not be determined because the vehicle was traded-in with a defective odometer. The Consumer also submitted the NADA Guide online vehicle pricing and information for the trade-in vehicle, using an estimated 85,000 miles at the time of trade-in, which yielded a clean retail value of $12,400.00. The Board used the clean retail value of $12,400.00 to establish the net trade-in allowance.

MISCELLANEOUS PROCEDURAL ISSUES:

Mattox v. Ford Motor Company, 2008-0451/WPB (Fla. NMVAB October 23, 2008)
At the hearing, the Manufacturer sought to have the Board consider actual parts allegedly taken from the Consumer's vehicle. Neither the Board nor the Consumer was given written notification five days before the hearing that the Manufacturer was requesting consideration of such evidence. The Consumer objected to its consideration. The parts were not considered by the Board. In addition, the Consumer moved to have the Manufacturer's prehearing inspection report stricken as an exhibit, arguing that he did not receive said report seven business days before the hearing as is required by Paragraph (16) of *Hearings Before the Florida New Motor Vehicle Arbitration Board*. The Board agreed with the Consumer and the prehearing inspection report was excluded.

Medina v. Mercedes-Benz USA, Inc., 2008-0371/FTM (Fla. NMVAB October 1, 2008)
The parties stipulated that the Consumer purchased a new 2007 Mercedes-Benz S550 automobile in Florida. The Request for Arbitration filed by the Consumer on June 25, 2008, alleged that the Consumer took delivery of the vehicle on July 18, 2006. However, the Retail Purchase Agreement stated the date of delivery was April 7, 2006. At the hearing, the Consumer testified he took delivery of the vehicle on May 2, 2006. The Manufacturer asserted, through a "Motion to Dismiss," that the Consumer was not qualified for repurchase relief under the Lemon Law because the Request for Arbitration was not filed 60 days after the expiration of the Consumer's Lemon Law rights period. The Board found that the Consumer took delivery of the vehicle on April 7, 2006, and that the Lemon Law rights period expired 24 months later on April 7, 2008. The Request for Arbitration had to be filed no later than 60 days after the expiration of the Lemon Law rights period, or by June 6, 2008. The Request for Arbitration was

filed on June 25, 2008, which was more than 60 days after the expiration of the Lemon Law rights period. The Request for Arbitration was not filed within the time required by the statute; therefore, the Consumer was not qualified for repurchase relief under the Lemon Law and the case was dismissed.