

**OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD**

QUARTERLY CASE SUMMARIES

July 2011 - September 2011 (3rd Quarter)

NONCONFORMITY 681.102(16), F.S.. (2010)

Fried v. Nissan Motor Corporation USA, 2011-0121/FTM (Fla. NMVAB August 16, 2011)

The Consumers leased a 2010 Infiniti G37 and complained of a navigation system failure causing the navigation screen to display only lines and not “street names” in gated communities. The Consumers were both realtors who relied on the navigation screen to find homes within the numerous gated communities where they worked. The reason they purchased this particular vehicle was largely based on the features of this particular navigation system. According to both Consumers, it was very important that the system work while they were in one of the 476 gated communities in Collier County looking for a particular address. Prior to purchasing the vehicle, they took a test drive with the salesman to the gated community where they lived and drove past several others. At that time, the navigation system was working and clearly displayed the names of all the streets within the communities. Approximately six months after purchase however, when the navigation software was reprogrammed pursuant to an Infiniti “Voluntary Service Campaign,” the screen displayed only solid lines with no names in the gated communities. The Manufacturer asserted that the way the navigation system operated did not substantially impair the use, value or safety of the vehicle. The Manufacturer’s witness testified that the system was “operating as designed.” The navigation system software had not changed since 1998 and the “off the beaten path” streets never appeared on the navigation screen. The Board rejected as not credible the contention that the subject navigation screen never displayed the street names in gated communities and concluded that the malfunction was nonconformity. Accordingly, the Consumers were awarded a refund.

Glassman v. American Honda Motor Company, 2011-0047/FTL (Fla. NMVAB July 22, 2011)

The Consumers complained that intermittently, the air conditioner froze up and blew hot air in their 2008 Honda Odyssey. The first time the air conditioner started blowing hot air was about a month after they purchased the vehicle. Every time the air conditioner started blowing hot air, Mr. Glassman opened the hood and saw that a line was frozen. The day after the Manufacturer’s final repair attempt, the air conditioner again started blowing hot air, so he went back to the authorized service agent. Although the service department was closed, the Assistant Service Manager looked at the vehicle and documented the problem. The air conditioner freezing up and blowing hot air happened seven or eight times after the final repair attempt, with the most recent occurrence on the Monday before the hearing. The Manufacturer asserted the alleged nonconformity did not substantially impair the use, value or safety of the vehicle. The Manufacturer’s representative testified that the compressor clutch was replaced at the final repair attempt, not because it had failed, but “to try to keep the Customer happy by replacing

something.” He stated that he attended the BBB/Autoline hearing, and he recalled the Consumer testified at the BBB hearing that he drove the vehicle with the windows down, and the air conditioner on full cold. In his view, this would cause the air conditioner to labor and it could freeze up. In addition, he testified that the Assistant Service Manager was also at the BBB hearing and contradicted what he had written on the November 3, 2010, repair order. He stated at the BBB hearing that he had not observed the frozen air conditioner line; rather, he simply wrote down “just exactly what the Customer asked him to write.” The Board found that the evidence established that the air conditioner freezing up and blowing hot air substantially impaired the use and value of the vehicle, thereby constituting a nonconformity. The Manufacturer’s assertion to the contrary was rejected and a refund was awarded to the Consumers.

Joffe v. Ford Motor Company, 2011-0096/FTL (Fla. NMVAB August 4, 2011)

The Consumer had a 2010 Ford Taurus and complained that it pulled to the right; that there was a clicking noise in the left front hub assembly; and that the trunk lid was misaligned, resulting in damage to the rear bumper. In addition, there was body damage caused by the authorized service agent while the vehicle was in for repair of the trunk. The Manufacturer argued that the alleged nonconformities were the result of an accident by persons other than the Manufacturer or its authorized service agent. The Sawgrass Ford Shop Foreman acknowledged that the Consumer’s vehicle was damaged when a Sawgrass Ford employee ran into it with a golf cart while it was out of service for repair in December 2010. The Board concluded that the pull to the right, clicking noise in the left front hub assembly, the misaligned trunk lid and the body damage caused by the authorized service agent substantially impaired the use and safety of the vehicle, thereby constituting one or more nonconformities. The Manufacturer’s assertion to the contrary was rejected and the Consumer was awarded a refund.

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

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

George v. American Suzuki Motor Corporation, 2011-0136/PEN (Fla. NMVAB September 7, 2011)

The Manufacturer stipulated that the Consumers’ 2009 Suzuki Grand Vitara had an engine overheating problem that substantially impaired the use, value or safety of the vehicle. The Manufacturer further stipulated that the vehicle was out of service by reason of repair of the engine overheating for a total of 34 cumulative days. In this case, all of the elements of the statutory days-out-of-service presumption were proven or stipulated to by the Manufacturer; however, the Manufacturer argued that it was reasonable for the repairs to take that long and that the nonconformity was corrected within a reasonable number of attempts. The Manufacturer’s witness testified that the problem initially was thought to be the cylinder head and that was replaced; however, after the replacement, the Manufacturer discovered that there was a crack in the engine block, so the engine was rebuilt and the engine block was replaced. This repair alone took 24 of the 34 days, which, according to the Manufacturer, was reasonable. A majority of the

Board concluded that the Manufacturer did not produce sufficient evidence to overcome the statutory presumption. In fact, the repairs could have been completed faster if the Manufacturer had discovered the crack in the engine block before replacing the cylinder head. Accordingly, the Consumers were 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.

Elyakim v. BMW of North America LLC., 2011-0104/FTL (Fla. NMVAB August 25, 2011)
The Consumer complained of intermittent creaking noises from the doors of his 2011 BMW X6 when the vehicle was being driven. The Consumer testified that, when he went on a test drive with the Manufacturer's authorized service agent, the service agent did not hear any noise from the doors, but he heard the noise. The Manufacturer asserted that the alleged nonconformity did not substantially impair the use, value or safety of the motor vehicle. The Manufacturer's representative testified that he read all the repair orders and spoke with both individuals who inspected the vehicle at the Manufacturer's prehearing inspection. According to him, both individuals said when they moved position while sitting on the leather seats in the vehicle, they heard some noise from the seats, but they never heard any noise from any of the doors, even when the vehicle was driven over bumpy roads. The Board concluded that the intermittent creaking noise complained of by the Consumer did not substantially impair the use, value or safety of the vehicle; therefore, it did not constitute a nonconformity. Accordingly, the Consumer's case was dismissed.

REFUND §681.104(2)(a)(b), F.S.:

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

Meana v. Ford Motor Company, 2011-0093/MIA (Fla. NMVAB August 24, 2011)
To purchase the vehicle, the Consumer contributed a down payment of \$2,250.00, and traded in a used 2005 Ford F-350 encumbered by debt in the amount of \$21,000.00, for which a gross allowance of \$20,000.00 was assigned, resulting in a net trade-in allowance of (\$1,000.00), according to the purchase contract. The net trade-in allowance reflected in the purchase contract was not acceptable to the Consumer. Pursuant to Section 681.102(19), Florida Statutes, the Manufacturer produced the NADA Official Used Car Guide (Southeastern Edition) (NADA Guide) in effect at the time of the trade-in. According to the NADA Guide, the trade-in vehicle had a base retail price of \$23,425.00. Adjustment for mileage and accessories as testified to by the Consumer and/or reflected in the file documents, resulted in a total retail price of \$30,550.00 (\$23,425.00 plus \$5,400.00 for a diesel engine, \$575.00 for dual rear wheels, \$300.00 for aluminum alloy wheels, \$475.00 for leather seats, \$250.00 for power seats, and \$125.00 for a theft recovery system). Deduction of the debt resulted in a net trade-in allowance of \$9,550.00. The Manufacturer specifically objected to the amounts included for aluminum alloy wheels,

leather seats, power seats, and the theft recovery system, arguing that those items were included in the “King Ranch” package. The vehicle invoice the Manufacturer submitted had an entry for “King Ranch” and underneath that entry were eight enumerated items, none of which were the four items to which the Manufacturer was objecting, so the objection was denied.

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

McDermott v. Ford Motor Company, 2011-0132/WPB (Fla. NMVAB September 6, 2011)

The Consumer’s 2010 Ford Escape was declared a “lemon” by the Board. The purchase price of the vehicle, for the purpose of calculating the statutory reasonable offset for use, was \$25,300.00 (\$27,300.00 reduced by a manufacturer rebate of \$2,000.00). Mileage attributable to the Consumer up to the date of the Better Business Autoline hearing was 9,108 miles (9,450 odometer miles reduced by 190 miles at delivery, and 152 other miles not attributable to the Consumer). The Manufacturer objected to the Board subtracting 10 test drive miles for a September 2010, repair attempt, arguing the Consumer failed to submit a repair order for that date and therefore any miles for that date should not be subtracted. No repair order was submitted by the Manufacturer. The 10 miles was based on similar test drive miles reflected on other repair orders for the same defect. The Manufacturer’s argument was rejected and application of the statutory formula resulted in a reasonable offset for use of \$1,920.27.