OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

QUARTERLY CASE SUMMARIES

July 2012 - September 2012 (3rd Quarter)

JURISDICTION:

Motor Vehicle §681.102(14), F.S.

Harder v. Chrysler Group LLC, 2012-0161/TPA (Fla. NMVAB August 30, 2012)
The Consumer purchased a 2010 Ram 3500 motor vehicle on July 1, 2010. The Consumer, in his Request for Arbitration, indicated that the vehicle was not purchased in Florida, and listed Astorg Dodge Jeep Chrysler, in Parkersburg, West Virginia, as the selling dealer. At the hearing, the Consumer, who was a Florida resident, stated that he was on vacation and visiting family in West Virginia when he decided to buy a truck. He went to the Astorg dealership in Parkersburg, West Virginia, picked out the subject vehicle, signed the purchase documents and took delivery of the vehicle while in West Virginia. About a month later, he drove the vehicle to Florida. At the time he purchased the vehicle, his Florida tag was transferred to the subject vehicle, and he received the registration in the mail after he returned home. The Consumer paid Florida sales tax. The Manufacturer asserted the vehicle is not a "motor vehicle" as defined in Florida's Lemon Law. The Manufacturer, through its representative, argued that the Consumer left the State of Florida, purchased the vehicle through a West Virginia dealer, took delivery of the vehicle in West Virginia, and then drove it here. He pointed out that no Florida Lemon Law fee was paid and asserted that it is customary for a dealer to collect taxes from a purchaser based on the purchaser's state of residence; therefore, that should not be the determining factor as to whether the Consumer's vehicle was "sold in this state." He also pointed to the Consumer's own assertion in his Request for Arbitration that the vehicle was not purchased in Florida. Thus, the Manufacturer requested that the Consumer's case be dismissed because, under the totality of the circumstances, the vehicle was not sold in Florida, as is required by Section 681.102 (14), Florida Statutes. Based on the totality of the circumstances presented, the Board concluded that the vehicle was not sold in Florida; therefore, it did not constitute a "motor vehicle" under the Lemon Law. Accordingly, the Consumer's case was dismissed.

NONCONFORMITY 681.102(15), F.S.. (2012)

Colton v. Ford Motor Company, 2012-0159/WPB (Fla. NMVAB August 29, 2012)
The Consumer complained of a defective SYNC system in his 2011 Ford Explorer. The Consumer testified that intermittently, the back-up camera, navigation system and radio did not work properly. The first few times the back-up camera did not function he took the vehicle to the Manufacturer's authorized service agent, but was not given a repair order for those dates. The Consumer explained the back-up camera was of critical use to him because the vehicle had zero

visibility at ground level. There was no way to predict when the back-up camera would fail to function; it just happened several times a month. The Consumer could not say if failure of the back-up camera led to the failure of the navigation system and radio, or if they failed separately. Sometimes he was able to turn the vehicle's engine off and the systems reset themselves and worked; other times they would not work.

The General Manager of the Manufacturer's authorized service agent confirmed there were "inherent problems" with the SYNC system. The Manufacturer had SD card updates, but there was a "limit" to what could be corrected. The Manufacturer asserted the alleged nonconformity did not substantially impair the use, value or safety of the motor vehicle; and the Manufacturer was not afforded a reasonable number of attempts to repair the vehicle. The Field Service Engineer for the Manufacturer testified he conducted the Manufacturer's prehearing inspection, and at that time the vehicle performed "as designed." He explained the back-up camera was an "optional" feature; the standard safety feature was back-up sensors. He testified there were multiple sensors on the rear bumper that could detect objects five to eight feet directly behind the vehicle and activate warning chimes. According to the witness, the sensors were on a separate system from the back-up camera so it was unlikely the back-up camera and sensors would fail at the same time; in addition, the driver could also use the outside mirrors to look for objects that might be in the way before backing up. He agreed, however, that the "angle of incidence" with the camera was much broader than with the sensors. The Board found the evidence established that the intermittent failure of the SYNC system, that is, the intermittent failure of the back-up camera, navigation system, and radio substantially impaired the use, value and safety of the vehicle, thereby constituting one or more nonconformities as defined by the statute. Accordingly, the Consumer was awarded a refund.

Contreras v. BMW of North America LLC, 2012-0124/MIA (Fla. NMVAB September 5, 2012) The Consumer complained of an intermittent belt squealing condition in his 2010 BMW 3-series. Each time the vehicle was repaired it seemed that the noise was corrected, but after driving another 1,000 miles the noise always came back. The squealing noise happened within 30 seconds of the engine being started, and lasted for five to 20 seconds. The noise could be heard when the windows were up, or the radio was on. According to the Consumer, the noise was so loud his neighbors knew when he was leaving for work in the morning. The last time he heard the noise was on his way to the hearing that morning. The Manufacturer asserted the alleged nonconformity did not substantially impair the use, value or safety of the motor vehicle. The Technical Support Engineer for BMW of North America, who had never seen the Consumer's vehicle, speculated that "something" could be getting on the air conditioner belt, causing it to slip, which, in turn, could damage the air conditioner pulley. According to the witness, it was not normal for an air conditioner pulley to be replaced, but if the air conditioner pulley was replaced, the compressor had to be replaced as well. The Shop Foreman at Braman BMW, conducted the Manufacturer's prehearing inspection and testified that moisture or dirt getting on belts in the vehicle can cause a squeaking noise. The Board found the evidence established that the intermittent belt squealing condition substantially impaired the use and value of the vehicle, thereby constituting one or more nonconformities as defined by the statute and the applicable rule. Accordingly, 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.

Cohen v. General Motors Company- Chevrolet Division, 2012-0148/WPB (Fla. NMVAB August 10, 2012)

The Consumer complained of discoloration in the paint on both sides of the vehicle under the hood in his 2011 Chevrolet Camaro. About 10 months after taking delivery of the vehicle, the Consumer opened the hood and saw brown spots on the white cover of the wheel wells/strut towers. One month later, the spots had become large areas that appeared to be scorched or burned. The discoloration could not be removed with solvents. When he purchased the white vehicle, no one informed him there would be any discoloration and nothing in the owner's manual warned of any discoloration, according to the Consumer. He was eventually told doing anything would be "senseless," because while all covers discolor, it is only evident on those that are painted white. The Consumer testified he was told the discoloration may be attributable to yellowing of the clear coat, or because the struts were giving off nitrogen gas, which causes burning of the covers. The Consumer called two major manufacturers of struts and was told by both that the nitrogen gas used in all struts is self-contained and does not leak, and the heat from the engine of the car would not cause discoloration. According to the Consumer, the Manufacturer's authorized service agent would not replace the struts or repaint the covers, and he was never given a repair order.

The Manufacturer asserted the alleged nonconformity did not substantially impair the use, value or safety of the motor vehicle. The Service Manager at Suburban Chevrolet, explained that the strut towers on Camaros are painted the same color as the vehicle. He believed an oil leak from the strut, and not a nitrogen leak, caused the discoloration of the inner fenders of the firewall/strut towers and did not know how high the heat from the engine would have to be to burn thru the metal plate and discolor the paint on the inside of the fenders. The Field Service Engineer for GM admitted the Manufacturer did not know what was causing the discoloration of the clear coat. He guessed the temperature of the engine would have to be between 120 and 150 degrees to cause the discoloration. The Board found the evidence established that the discoloration of the wheel wells/shock towers substantially impaired the value of the vehicle, thereby constituting one or more nonconformities as defined by the statute and the applicable rule. The evidence established that the nonconformity was subjected to repair by the Manufacturer's service agent a total of one time, and the Manufacturer's authorized service agent thereafter declined to repair the vehicle. Further, the Manufacturer admitted that it did not know what was causing the discoloration and the only repair the Manufacturer offered was to paint the white wheel wells/strut towers black so the discoloration could not be seen. This would have been contrary to all other vehicles of the same model whose wheel wells/strut towers, according to the Manufacturer, are painted the same color as the vehicle. Under the circumstances, the Board found that the Manufacturer had a reasonable number of attempts to conform the subject vehicle to the warranty as contemplated by the Lemon Law. 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.

Rowledge v. Chrysler Group LLC, 2012-0186/TPA (Fla. NMVAB September 24, 2012)
The Consumer complained of an intermittent vibration that occurred when the vehicle was being driven at speeds of 79 to 82 miles per hour in his 2011 [Dodge] Ram 1500. According to the Consumer, the vibration was "an absolute annoyance," which came up through the seat and vibrated his body. The Manufacturer asserted the alleged nonconformity did not substantially impair the use, value or safety of the motor vehicle. The Manufacturer's representative argued that the Consumer's complaint of an "annoying" vibration that occurs within a three-mile-per-hour window from 79 to 82 miles per hour, above the legal speed limit, does not constitute a substantial impairment to use, value or safety. He explained that the Manufacturer denied the authorized service agent's request to replace the Consumer's tires with a "softer" Michelin tire, because it was the service agent's opinion that this was a "normal drive for that truck." Another Manufacturer's witness testified that they are only able to check items that might cause a vibration because they cannot drive the vehicle at 80 miles per hour, and they were not able to duplicate the problem driving the vehicle at lower speeds. He participated in the test-drive at the final repair attempt, during which the vehicle was driven approximately 45 miles at highway speeds, and no vibration was felt. Although they decided at that time to put Michelin tires on the vehicle to try to help the Consumer, there was no problem with the Consumer's vehicle. A majority of the Board concluded the evidence failed to establish that the vibration between 79 to 82 miles per hour complained of by the Consumer substantially impaired the use, value or safety of the vehicle so as to constitute one or more nonconformities as defined by the statute. Accordingly, the case was dismissed.

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

Menashe v. American Honda Motor Company, 2012-0105/WPB (Fla. NMVAB August 22, 2012)
The Consumer complained of defective brakes in his 2010 Honda Accord. The Consumer testified that, intermittently, the brakes vibrated when they were applied, and a grinding noise and burning smell came from the rear brakes. The Manufacturer asserted the alleged nonconformity was the result of abuse of the motor vehicle by persons other than the manufacturer or its authorized service agent. The Shop Foreman at Delray Honda, explained that excessive heat build-up will cause brake rotors to turn blue and warp. Excessive heat build-up results from excessive braking, aggressive braking, or by the driver leaving their foot on the brake pedal while they are driving. The brake rotors on the Consumer's vehicle were blue and warped. The rotors were "resurfaced," that is, they were cut to take off the high spots so they would be even again, but rotors can only be cut so many times, then they have to be replaced. According to the witness, if brakes are defective, usually just one brake will wear; however, since all the brakes on the Consumer's vehicle needed some repair work, it was a sign of aggressive braking. Also a sign of excessive heat build-up was the fact the brake pedal was worn and was replaced in May of 2011. A nonconformity is defined as a "defect or condition that substantially impairs the use, value or safety of a motor vehicle, but does not include a defect or condition that results from an accident,

abuse, neglect, modification, or alteration of the motor vehicle by persons other than the manufacturer or its authorized service agent." §681.102(15), Fla. Stat. The Board found the evidence presented by the Manufacturer and the repair history of the vehicle established that the defective brakes were the result of abusive driving by the Consumer. The complained of defect did not constitute a "nonconformity" as defined by the statute; therefore the Consumer's case was dismissed.

REFUND §681.104(2)(a)(b), F.S.:

Incidental Charges §681.102(8), F.S.

Mora v. BMW of North America LLC, 2012-0153/MIA (Fla. NMVAB September 14, 2012) The Consumer's 2012 BMW 6-series motor vehicle was deemed a "lemon" by the Board. The Consumer requested reimbursement of $89.18 for rental car fuel charges incurred while the vehicle was out of service for repair as an incidental charge. The Manufacturer objected, arguing the extra charge was between the Consumer and the rental company, not the Manufacturer. The Consumer's request that he be reimbursed for the fuel charges erroneously imposed by the leasing agent was denied by the Board as not reasonable.

MISCELLANEOUS PROCEDURAL ISSUES:

Kittleson v. American Honda Motor Company, 2012-0169/ORL (Fla. NMVAB August 28, 2012) The Manufacturer asserted that the Consumer's claim must be dismissed because, prior to filing the Request for Arbitration with this Board, the Consumer did not submit the claim to the Better Business Bureau/Autoline program, which the Manufacturer contended was the state-certified informal dispute resolution procedure previously sponsored by Honda. However, the Manufacturer's assertion was not accompanied by any evidence that its dispute settlement procedure was currently certified by the Department of Legal Affairs, or was certified at the time the Consumer filed his Request for Arbitration with this Board. The Board found that the Consumer was not required to resort to the Better Business Bureau/Autoline program, because it was not a state-certified informal dispute resolution procedure for American Honda Motor Company. Accordingly, the Consumer was properly before the Board and ultimately was awarded a refund on the merits of his claim.