OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

QUARTERLY CASE SUMMARIES

July 2014 - September 2014 (3rd Quarter)

JURISDICTION

Loffredo v. General Motors LLC, 2014-0165/ORL (Fla. NMVAB September 3, 2014)
The Manufacturer asserted that the request for arbitration was not filed within the time required by Section 681.109(4), Florida Statutes (60 days after the expiration of the Lemon Law rights period, or 30 days after the final action of a certified procedure, whichever date occurred later). The Manufacturer maintained that since the Consumers purchased the vehicle on January 31, 2012, 60 days after the expiration of the Lemon Law rights period was April 3, 2014. The Manufacturer further maintained that the certified program's March 24, 2014, letter should be considered the date of the program's final action for purposes of calculating the timeliness of the Consumer's request for arbitration, and that 30 days after the date of final action was April 24, 2014. The Manufacturer thus asserted that the Consumer's Request for Arbitration, which was filed on April 28, 2014, was untimely, and asked that the matter be dismissed.
The evidence established the Consumer took delivery of the vehicle on January 31, 2012. The Lemon Law rights period expired 24 months after that date on February 1, 2014. Sixty days after the expiration of the rights period was April 3, 2014. Accordingly, in order for the Request for Arbitration to be timely filed, it must have been filed no later than 30 days after the final action of the state-certified Manufacturer sponsored procedure. In this case, the final action of the certified procedure was April 2, 2014, the date of the March 24, 2014, letter plus 14 days within which the Consumer could accept or reject the arbitration Decision, and if nothing was indicated to the procedure by the Consumer after 14 days, it would take final action by closing the file. Thirty days after April 2, 2014, was May 2, 2014. Accordingly, the Consumers' Request for Arbitration, filed on April 28, 2014, was timely. The Manufacturer's request to dismiss was denied.

NONCONFORMITY 681.102(15), F.S.

Gruen v. Mercedes-Benz USA, LLC, 2014-0184/TPA (Fla. NMVAB July 14, 2014)
The Consumers complained that the front power windows would not stay up in their 2013 Mercedes-Benz E350. After closing a window, it would drop back down an inch or two; especially when a door was opened or closed. The Consumer's use of the vehicle was drastically diminished because he did not want to leave the window down when the car was parked, due to safety and weather concerns. He purchased the vehicle for his wife as a birthday gift and she was reluctant to drive long distances for the same reasons. He emphasized that when they purchased the vehicle, they sat through a three-hour demonstration which did not include any specific instructions on how to close the windows properly. The Manufacturer argued that the alleged nonconformity did not substantially impair the use, value or safety of the motor vehicle, and that

the alleged nonconformity was the result of neglect by the Consumers. The Manufacturer contended that the Consumers had not used the “trickle charger” that was provided by the Manufacturer's authorized service agent after the final repair attempt; that the Consumers did not drive the vehicle "enough" to keep the battery charged and that the Consumers never read the owner's manual directing them how to "manually re-set" the windows, by holding down the power button for an extra minute. The Manufacturer’s witness testified that his only personal involvement with the vehicle was after the Manufacturer's final repair attempt on April 30, 2014, when he had the trickle charger installed because a battery failure code was found. The battery was not looked at during the previous four repair attempts. The Board concluded that the failure of the front power windows to stay up substantially impaired the use and value of the vehicle, thereby constituting one or more nonconformities as defined by the statute and the applicable rule. The Manufacturer failed to establish that the nonconformity was the result of neglect of the vehicle by persons other than the Manufacturer or its authorized service agent. 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.

Souza v. Chrysler Group LLC, 2014-0118/WPB (Fla. NMVAB September 11, 2014)
The Consumer’s 2013 Dodge Dart SXT was found by the Board to have two nonconformities: a defective transmission and an engine “no start” condition. The vehicle was presented to the Manufacturer’s authorized service agent for repair of the nonconformities on August 28, 2013 through September 11, 2013, when the transmission control module (TCM) and powertrain control module (PCM), were replaced; and December 11, 2013, when the TCM was reset. The Manufacturer stipulated that it was afforded a final opportunity to repair the vehicle on April 14, 2014. At that time, the vehicle was towed to the authorized service agent. The TCM was replaced for the second time, and the PCM was updated; however, the nonconformities continued to exist. The Board concluded the Manufacturer had a reasonable number of attempts to conform the subject vehicle to the warranty, but failed to do so. The Consumer was awarded a refund.

Final Repair Attempt §§681.104(1)(a), 681.104(3)(a)1., F.S.

Mallen v. BMW of North America LLC, 2014-0183/MIA (Fla. NMVAB August 15, 2014)
On February 11, 2014, the Manufacturer received written notification from the Consumer, through counsel, giving the Manufacturer a final opportunity to repair the Consumer’s 2013 BMW 325i-CV. The Manufacturer’s response to the notification directed the Consumer to take the vehicle to Vista BMW of Pompano on March 4, 2014, and to “ask for Mr. Nicholas Gambardella.” The Consumer did as instructed on March 4, 2014, and was told by personnel at Vista Motors of Pompano to take the vehicle to Vista Motors of Coconut Creek, where Nicholas Gambardella was the Service Manager. The Consumer took the vehicle to Vista Motors of Coconut Creek; however, that authorized service agent did not know why he was bringing the

vehicle, so he left the car there until March 7, 2014, when he was called and told to pick up the car and make another appointment. The repair order for that date indicates, “BMW representative was unable to look at vehicle cust [sic] to reschedule.” The Manufacturer asserted it was “denied” its “right” to a statutory final repair attempt. No evidence was presented by the Manufacturer to support its contention that it was denied the opportunity for a final repair attempt. The evidence established that, pursuant to instruction by the Manufacturer, the Consumer delivered the motor vehicle to the Manufacturer’s designated repair facility, and to a second facility, for the final repair attempt on March 4, 2014. The Manufacturer failed to avail itself of the opportunity to complete the repairs within the 10 days required by statute; therefore, the requirement that the Manufacturer be given a final attempt to cure the nonconformity did not apply.

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.

Laudon v. Mercedes-Benz USA, LLC, 2014-0217/STP (Fla. NMVAB August 4, 2014)
The Consumer complained of an "uncomfortable" driver's seat in his 2014 Mercedes-Benz E350. The Consumer testified that a few months after he purchased the vehicle, he started having back pain from the "sagging" seat bottom and from the seat back support. He further stated that he sat in three other like vehicles and the seats were the same as the seat in his vehicle. The Manufacturer asserted the alleged nonconformity did not substantially impair the use, value or safety of the motor vehicle. In support of that assertion, the Manufacturer’s witness testified that he offered the Consumer a seat replacement from another E class vehicle; however, after the Consumer sat in the seats of three like vehicles, he was not comfortable in those seats and did not want a replacement seat from an E class vehicle. He emphasized that he could not offer the Consumer a seat from a different model because Mercedes-Benz has determined it would impair the safety of the vehicle. He further adjusted the lumbar portion on the back of the seat and the Consumer acknowledged that it was improved. The Manufacturer did not dispute that the seat was "uncomfortable" to the Consumer. The question of whether a defect or condition was a nonconformity was not purely subjective based solely on the viewpoint of a consumer; rather, it must also be viewed objectively from the standpoint of a reasonable person in a consumer's circumstances. When viewed in that light, the Board concluded that the "uncomfortable" driver's seat complained of by the Consumer did not substantially impair the use, value or safety of the vehicle so as to 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(7), F.S.

Perez v. Ford Motor Company, 2014-0143/FTL (Fla. NMVAB July 8, 2014)
The Board concluded that the poor body fit and finish as evidenced by the misaligned rear door and tailgate, the gaps, cracks, or holes in the body or seam areas where the tailgate met the body of the vehicle, the paint overspray and areas of mismatched paint color were a condition that substantially impaired the value of the Consumer's 2014 Ford Explorer and declared the vehicle a "lemon." Prior to the hearing, the Consumer took the Explorer to Wreck Check, where the vehicle was inspected by a certified auto body damage assessment and repair expert, to determine whether there had been prior damage to the vehicle. At the hearing, the expert testified to his various certifications and stated that he inspected the vehicle twice. The Consumer requested reimbursement of the following as incidental charges: $100.00 for the two inspections of the vehicle by the expert, and $750.00 for the expert's appearance and testimony at the hearing; $62.97 for car rental insurance associated with a rental car provided during the Manufacturer's final repair attempt; $180.87 for rental car charges, when the Consumer's wife was not able to use her husband's car, $74.80 for copying, and $20.55 for photographs all in connection with the claim filed with the Manufacturer's certified procedure (BBB Autoline); $36.22 for express mail and copying related to the filing of the Request for Arbitration with this Board. The Manufacturer objected to reimbursement of all requested charges on the grounds that they were "indirect expenses" not caused by the nonconformity. The request for reimbursement of $62.97 for car rental insurance associated with a rental car provided during the Manufacturer's final repair attempt was denied by the Board as unreasonable. <u>All</u> the other requests were awarded by the Board.

Sidran v. Chrysler Group LLC, 2014-0209/MIA (Fla. NMVAB September 17, 2014)
The Consumers' 2013 Chrysler Town & Country was deemed a "lemon" by the Board. The Consumers requested reimbursement of $40.00 to obtain the online NADA valuation information for their trade-in as an incidental charge. The Manufacturer objected to reimbursement of the cost to obtain the online valuation information. The Board included the $40.00 for the online valuation information for the Consumers' trade-in from the NADA as a reasonable incidental charge. The Manufacturer's objection was denied.

Mallen v. BMW of North America LLC., 2014-0183/MIA (Fla. NMVAB August 15, 2014)
The Consumer's 2013 BMW 325i-CV was deemed a "lemon" by the Board. The Consumer requested reimbursement of the cost of gas for the trips to the authorized service agent for repair and an unspecified amount for lost work time as incidental charges. The Manufacturer objected to reimbursement for the cost of gas and for the unspecified amount for lost work time as unsubstantiated and unreasonable. The Consumer's request was denied by the Board.

Aull v. BMW of North America LLC., 2014-0233/TLH (Fla. NMVAB August 13, 2014)
The Consumers request reimbursement of $60.98 to fill up the gas tank of the rental car before returning it, $66.38 for putting gas into their personal vehicle after returning a rental car, and $3,246.20 for lost wages in the form of a missed bonus as incidental charges. Mr. Aull testified

that, because this vehicle was out of service, he was limited in his ability to travel to Mobile, Alabama, for his job. Mr. Aull opined that, as a result, he missed out on a potential bonus of $3,246.20. The Manufacturer objected to the two different gas requests as being unreasonable. The Manufacturer objected to the lost bonus request as being too speculative in nature. The Consumers' request for reimbursement of $60.98 to fill up the gas tank of the rental car before returning it and $66.38 for putting gas into their personal vehicle after returning a rental car was denied as unreasonable by the Board. The request for reimbursement of a lost bonus was denied by the Board as too speculative and as such, unreasonable. §681.102(7), Fla. Stat.

Net Trade-in Allowance §681.102(18), F.S.

Sidran v. Chrysler Group LLC, 2014-0209/MIA (Fla. NMVAB September 17, 2014)
When the Consumers purchased the 2013 Chrysler Town & Country deemed a "lemon" by the Board, they traded in a used 2000 Chevrolet Astro Van for which a net trade-in allowance of $500.00 was received, according to the purchase contract. The net trade-in allowance reflected in the purchase contract was not acceptable to the Consumers and pursuant to Section 681.102(18), Florida Statutes, they requested that the Manufacturer produce the NADA Official Used Car Guide (Southeastern Edition) (NADA Guide) in effect at the time of the trade-in. The Manufacturer notified the Consumers that their trade-in was "not listed in the January 2014 NADA Official Used Car Guide (Southeastern Edition)." (The lemon vehicle was purchased on January 21, 2014). In response, the Consumers filed with the Board a document printed from the NADA website, which reflected an August 2014 valuation for a 2000 Chevrolet Astro Van. The Manufacturer objected to consideration of a valuation obtained from the NADA website, arguing that only the bound, paperback book titled "NADA Official Used Car Guide (Southeastern Edition)" could be considered by the Board for purposes of determining the net trade-in allowance, and the absence of the Consumers' trade-in from the January 2014 bound, printed volume of the NADA Guide meant that the trade-in allowance reflected in the purchase contract must be used to calculate the Consumers' refund.

The Manufacturer's objection to the use of the online NADA retail value, which was in effect at the time of the trade-in, to determine the net trade-in allowance, was denied by the Board. The Consumers were authorized to submit the NADA valuation of their trade-in which was in effect on the date of the trade-in as reflected on the NADA website. According to the NADA information provided by the Consumers, in January 2014, their trade-in vehicle had a base retail price of $3,725.00. Adjustments for high mileage and accessories as testified to by the Consumers resulted in a net trade-in allowance of $4,250.00.

MISCELLANEOUS PROCEDURAL ISSUES:

Mathews v. American Honda Motor Company/Acura, 2014-0222/WPB (Fla. NMVAB September 11, 2014)
During the hearing, the Consumer sought to have the Board view a video and two photos of the dashboard display, which he had taken with his cell phone on his way to the hearing, which purported to demonstrate an occurrence of the nonconformity. The Manufacturer objected that

those items had not been timely-provided before the hearing. Upon consideration, the Board agreed to view the photos and the video.