OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

QUARTERLY CASE SUMMARIES

October 2016 - December 2016 (4th Quarter)

JURISDICTION:

Warford v. Ford Motor Company, 2016-0360/WPB (Fla. NMVAB December 21, 2016)

The Request for Arbitration filed by the Consumer alleged that the Consumer took delivery of his 2014 Ford Fiesta on April 25, 2014. At the hearing, the Consumer testified that he took physical possession of the vehicle on January 31, 2014, but did not sign the lease agreement until April 25, 2014. The Consumer explained that he previously worked at the dealership from which the subject vehicle was leased, and at the time he took physical possession of the vehicle, he was still under a lease for a different vehicle, was unable to terminate that lease early, and was therefore unable to execute a new lease. He testified that he was allowed to use the subject vehicle as a "loaner" during the period between January 31-April 25, 2014, until his prior lease ended and he could enter into a new lease. On May 26, 2016, the Consumer filed a claim with the Better Business Bureau Autoline (BBB), the state-certified informal dispute settlement program sponsored by Ford Motor Company. The program rendered a decision denying the claim. The Consumer was not satisfied with that decision and on August 4, 2016, requested arbitration by the Board.

The Manufacturer asserted that the Consumer's claim with the Manufacturer's certified procedure was not timely filed because it was not filed within the time frame provided by the statute, which was no later than 60 days after the expiration of the Lemon Law rights period. The Manufacturer asserted that the original date of delivery of the vehicle to the Consumer was January 31, 2014, and that the expiration of the Consumer's Lemon Law rights period would therefore be 24 months after that date. However, because the Consumer did not file his claim with the BBB until May 26, 2016, more than 60 days after the Lemon Law rights period had expired, the claim cannot be considered timely filed with the Board and must be dismissed. In support of its argument that the date of the original delivery of the motor vehicle to the Consumer was January 31, 2014, the Manufacturer pointed out that the Consumer's actions clearly evidenced an intent to take possession of the vehicle as of January 31, 2014. The Consumer registered the vehicle with the State of Florida on February 2, 2014; obtained an insurance policy on the vehicle, effective February 3, 2014; and transferred the license plates from his previous vehicle to the vehicle soon after he left the dealership on January 31, 2014. The Manufacturer argued that those actions were inconsistent with an intent to simply use the vehicle as a loaner between January 31-April 25, 2014.

The Board found that the evidence established that the original date of delivery of the motor vehicle was February 2, 2014, when the Consumer registered the vehicle with the State of Florida. The Lemon Law rights period expired twenty-four months later. The Consumer was

required to file a claim with the BBB no later 60 days after the lemon law rights period expired. The Consumer did not file a claim with the BBB until May 26, 2016, well past the sixty-day deadline. Accordingly, the claim with the BBB was not filed within the time period required by the statute, and the Consumer's case was dismissed.

Consumer §681.102(4)F.S.

Mauri v. Mitsubishi Motors North America, Inc., 2016-0305/MIA (Fla. NMVAB October 31, 2016)

The Consumer purchased a 2016 Mitsubishi Outlander SE. She testified that she was a student and made a living as an Uber/Lyft driver. The Manufacturer asserted that the Consumer was not properly before the Board as her vehicle was a commercial vehicle.

Section 681.102(4), Florida Statutes, 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 motor 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.

There was no dispute that, at the time of purchase of the vehicle and during the course of repairs, the Consumer was entitled by the terms of the Manufacturer's warranty to enforce the obligations of that warranty. The plain language of the third clause in the above-quoted definition does not repeat the use restriction set out in the first two clauses, and thereby makes available the protections of Chapter 681, Florida Statutes, to anyone "entitled … to enforce the obligations of the [manufacturer's] warranty." *See, Results Real Estate, Inc. v. Lazy Days R.V. Center, Inc.*, 505 So. 2d 587, 589 (Fla. 2d DCA 1987). The Board found that the Consumer was qualified for relief under the law and rejected the Manufacturer's assertion.

Motor Vehicle §681.102(14), F.S.

Missi and Begley v. FCA US LLC, 2016-0357/ORL (Fla. NMVAB December23, 2016) (*See also "What Constitutes a Reasonable Number of Attempts" below)*

On July 22, 2015, the Consumers, Ms. Missi and Mr. Begley, purchased a 2015 Dodge Hellcat. Ms. Missi testified that the vehicle was purchased as a birthday present for her. Mr. Begley testified that he called a local Dodge dealer and asked if they had a black Hellcat with the options Ms. Missi wanted, and was told that they did not have one at that dealership. He was also advised that those vehicles were highly sought after, with dealerships charging $25,000.00 to $30,000.00 over the sticker price, so no other dealership was just going to send one to the local dealership. According to Mr. Begley, Dodge built only 13 of those vehicles with the exact options he was looking for. The local Dodge dealership checked inventory and found there was only one Hellcat available in the whole country with those options, which was at Gulfgate Dodge ("Gulfgate") in Houston, Texas. Mr. Begley subsequently called Gulfgate and began

negotiations for the subject vehicle, which he conducted from Florida via telephone, email, and texts. According to Mr. Begley, the deal was set up for Ms. Missi to buy the vehicle, and Gulfgate sent the purchase and financing documents to Florida. Ms. Missi never left the State of Florida. She signed the purchasing and finance documents in Florida, had them notarized in Florida, and then sent them back to Gulfgate. Ms. Missi paid $4,000.00 for a deposit to hold the vehicle either via wire transfer or credit card from Florida; however, Gulfgate subsequently required an additional $3,000.00 to hold the vehicle for them. Mr. Begley testified that he signed all the paperwork for the trade-in vehicle in Florida, and was going to send it back to Gulfgate; however, Gulfgate told him that he had to bring his trade-in vehicle to Houston, so he drove the trade-in vehicle to Houston in July 2015, and delivered it to the dealership along with his signed paperwork. The only document Mr. Begley signed in Texas was an odometer disclosure statement for the trade-in vehicle. While in Texas, Mr. Begley also delivered $3,000.00 in cash for the additional deposit requested by the dealership. After he delivered the trade-in vehicle to Texas, Mr. Begley said it took so long for them to get the Hellcat that he called Gulfgate to see what was going on, and he was told that it had taken Gulfgate a while to find out what taxes, fees, etc., needed to be paid to the State of Florida. Mr. Begley relied on the document from the Florida tag and title office as proof that they paid Florida taxes, title and registration fees, as well as the Florida Lemon Law fee. Mr. Begley stated that the Hellcat was delivered to them in Florida in August 2015, and that he and Ms. Missi paid the delivery fee in cash to the delivery company at the time the vehicle was delivered. The Consumers did not appear to recall whether the vehicle was delivered with a temporary tag from Texas, or Florida, or with a dealer tag; however, they subsequently received a new Florida tag in the mail, along with a Florida Lemon Law Booklet.

The Manufacturer asserted the subject vehicle was not a "motor vehicle" as defined in the Lemon Law because it was "purchased out of state." In support of that assertion, the Manufacturer's representative argued that the vehicle was sold in Texas because: (1) the selling dealership, Gulfgate Dodge, was located in Texas, and "the deal was not complete" until the Consumers returned the signed buyer's order to Texas; (2) "the deal was not complete" until Mr. Begley delivered the trade-in vehicle to the dealer in Texas; (3) while in Texas, Mr. Begley paid the balance of the down payment in cash; (4) the Consumers paid the delivery fee to have the vehicle delivered to them in Florida; and (5) the vehicle was delivered with a temporary tag from Texas. He discounted the fact that the Consumers paid Florida taxes, title and registration fees, asserting that "anyone who brings a vehicle with them when they move here must pay those things to get their car legally on the road." He also stated there was no Lemon Law fee in the State of Texas; rather, a consumer simply pays $34.00 to file there.

Based on the totality of the circumstances, a majority of the Board found the Consumers' vehicle was "sold in this state" and was therefore a "motor vehicle" as defined in Section 681.102(14), Florida Statutes. The majority found particularly compelling that the subject vehicle was found via the internet from Florida; the initial deposit was sent from Florida; the purchase documents were all signed and notarized in Florida; the Consumers paid Florida sales tax and the Florida Lemon Law fee; Ms. Missi, as the owner of the vehicle, never left the State of Florida; and the Texas dealer took the responsibility to register and title the vehicle in Florida, resulting in the Consumers receiving a Florida license plate.

NONCONFORMITY 681.102(15), F.S.

White v. Ford Motor Company, 2016-0433/JAX (Fla. NMVAB December 16, 2016)

The Consumer complained of an exhaust odor in the interior cabin of her 2015 Ford Explorer. The Consumer testified that the exhaust odor occurred during a heavy acceleration or while driving on an incline. In addition, the smell was noticed while the air conditioning was on and in recirculation mode. She added that the odor smelled like sulfur and would stay in the vehicle until the windows were opened. As a result of the odor, she had reduced the amount of driving she did in the vehicle. The Consumer produced three witnesses at the hearing who all testified that they have driven in the vehicle and smelled the exhaust odor. Two of the witnesses opined that the odor smelled like it was from a burnt petroleum-based product and one witness added that he was able to smell the odor during moderate acceleration.

The Manufacturer asserted the alleged nonconformity did not substantially impair the use, value or safety of the vehicle. The Manufacturer's representative testified that he test drove the Consumer's vehicle during the three times it was presented for repair and that he did not smell any "abnormal" smells during any of those drives. He acknowledged that a technician did detect an odor during one of the test drives. He added that a technical service bulletin (TSB) relating to exhaust odors in the vehicle was performed on the Consumer's vehicle. The TSB involved reprogramming the HVAC module, replacing the air extractors, and sealing the body of the vehicle. The Manufacturer's witness testified that he inspected and test drove the Consumer's vehicle at the final repair attempt and noted that there were no diagnostic trouble codes found at that time. He testified that during his approximate 20 mile test drive, he only smelled a mild odor during the last mile of the drive. He added that, while the vehicle was at wide open throttle, the AC recirculation mode would automatically change temporarily to fresh air mode, which could lead to outside smells coming into the cabin of the vehicle.

During the hearing, the Board test drove a total of 16 miles on the Interstate at highway speeds, performing numerous hard accelerations and driving up an incline with the air conditioning on. A majority of the Board smelled a mild odor that was described as "fumy." A majority of the Board found that the evidence established that the exhaust odor in the interior cabin substantially impaired the use of the vehicle, thereby constituting one or more nonconformities as defined by the statute and the applicable rule. The Manufacturer's assertion to the contrary was rejected. Accordingly, the Consumer was awarded a refund.

Castillo v. Ford Motor Company, 2016-0423/FTL (Fla. NMVAB December 14, 2016)

The Consumer complained of an exhaust smell entering the cabin of his 2016 Ford Explorer. The Consumer testified that exhaust fumes entered the cabin the minute the vehicle was accelerated over 3000 revolutions per minute (RPMs). The Consumer stated the smell lasted approximately two to three minutes before it dissipated when he opened the windows. The Consumer added that the smell was nauseating. The Consumer's witness testified that he was a technician at Firestone and that he inspected the vehicle at the request of the Consumer. He testified that he test drove the vehicle for two and a half miles and that once the vehicle reached 2800 to 3000 RPMs there was a smell of rotten eggs in the vehicle.

The Manufacturer asserted the alleged nonconformity did not substantially impair the use, value or safety of the motor vehicle, and the vehicle was repaired within a reasonable time. The Manufacturer's representative testified that he reviewed the repair orders for the vehicle and test drove the vehicle on two occasions. He explained that during the April 28, 2016 repair, a TSB was performed that addressed smells entering the cabin. He stated that during his first test drive, he was not able to duplicate the Consumer's concern; it was not until he test drove the vehicle with the Shop Foreman that the concern was duplicated. He stated that it is possible that during heavy acceleration with a wide-open throttle, a sulfur-like smell could enter the cabin of a vehicle as a result of the catalytic converter.

The Board found that the evidence established that the exhaust smell entering the cabin substantially impaired the use, value and safety of the vehicle, thereby constituting one or more nonconformities as defined by the statute and the applicable rule and that the nonconformity continued to exist after the final repair attempt. The Manufacturer's assertions to the contrary were rejected. 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.

Missi and Begley v. FCA US LLC, 2016-0357/ORL (Fla. NMVAB December 23, 2016) (*See also "Motor Vehicle" above)*

The Board found the evidence established that the harmonic balancer malfunctioning by falling off the front of the engine substantially impaired the use, value and safety of the Consumers' 2015 Dodge Hellcat, thereby constituting one or more nonconformities as defined by the statute and the applicable rule. At the outset of the problem, the vehicle was towed to the Manufacturer's authorized service agent. Subsequently, the Consumers were told that the engine would have to be replaced. Ms. Missi stated that the sticker price of the vehicle was around $65,000.00, and the cost of a new crate engine was $30,000.00. She asserted that replacing the engine would dramatically reduce the value of the "muscle" car because it will not have "matching numbers," meaning the identifying numbers on the engine would not be original to the vehicle. Because replacement of the engine would substantially impair the value of the vehicle, they declined to have the engine replaced, and paid to have the vehicle towed back to their home. Mr. Begley testified that he had 13 years of experience in the towing business, during which time he had learned a lot about vehicles and valuation of vehicles. He stated that, while it was true that the price of this vehicle, which was "only made in certain numbers," may go up in value in the future, in his view, replacement of the engine devalues the vehicle right now. He testified that the foreman at the Fields dealership agreed with him that if they put a new engine in the vehicle, he wouldn't have "a matching numbers car," which would devalue the vehicle, but he also told him that repair was the only thing the engineers at Chrysler would authorize. He asked the authorized service agent if they could do a less drastic repair, such as fixing the harmonic balancer; however, he was told the engine must be replaced. According to the Consumer, there were two different aftermarket fixes available that could go on the harmonic balancer, which

would not require replacement of the engine, but he was told that using either of those would have voided his warranty. He acknowledged that, even if the Manufacturer had timely responded to the Consumers' written notification, he would not have allowed the engine to be replaced.

The Manufacturer asserted the Consumer did not meet the presumption of the Lemon Law regarding repair attempts or the days out of service. The Manufacturer's representative said that the engineers in the SRT division were the ones who made the call to put a new engine in the Consumers' vehicle. He noted that the authorized service agent had stopped all repairs when the Consumers refused to allow the engine to be replaced, so it was the Manufacturer's position that "there have been no repair attempts on this vehicle." In his view, the Consumers chose not to go to the final repair attempt because they did not want to have the engine replaced. He countered the Consumers' assertion that the Manufacturer's response to the defect notification form was not timely by asserting that the statute only requires the Manufacturer to respond within ten days, "whether it is [by] a phone call or [by] mailing out an appointment letter." He did acknowledge that, even if the Manufacturer had been afforded the opportunity for a final repair, the only repair option it would have offered to the Consumers would be to replace the engine.

The evidence established that the nonconformity was presented for repair by the Manufacturer's service agent on one occasion, at which time the Manufacturer directed the authorized service agent to replace the engine, which the Consumers declined to have done because of the affect that repair would have on the value of the vehicle. Under the unique circumstances of the case, a majority of the Board found that the value of the vehicle would have remained substantially impaired if the engine had been replaced because this highly sought after, performance vehicle would no longer have its original equipment, with matching identifying numbers. It was undisputed that replacement of the engine was the only fix being offered by the Manufacturer, and a majority of the Board concluded that the Lemon Law did not require the Consumers to return multiple times to the authorized service agent to be told the same thing. And while not necessary based on the Board's specific findings, the Board also rejected the Manufacturer's argument and concluded that the greater weight of the evidence established that the Manufacturer failed to timely respond to the Consumers' statutory written notification. "When a manufacturer responds to the written notification of a final repair opportunity set forth in Section 681.014(1)(a), F.S., the consumer must receive such response within 10 days from the date the manufacturer received the written notification from the consumer." Rule 2-30.001(3), F.A.C. Since the Manufacturer failed to respond to the notification within the required ten days, the requirement that the Manufacturer be given a final attempt to cure the nonconformity did not apply. Under the narrow circumstances presented in the case, a majority of the Board concluded that the Manufacturer had a reasonable number of attempts to conform the vehicle to the warranty as contemplated by the statute. Accordingly, the Consumers were awarded a refund.

Niffenegger v. Ford Motor Company, 2016-0379/JAX (Fla. NMVAB December 19, 2016) (*See also "What Constitutes Written Notification Under §681.104(1)(a), F.S." below)*

The Board found that the Consumer's vehicle had a clutch shudder which substantially impaired the use, value and safety of the vehicle, thereby constituting one or more nonconformities as defined by the statute and the applicable rule. With regard to the repair

attempts on the vehicle, the Consumer testified that he was told on February 27, 2015, that the vehicle would need a new clutch, and that he would receive a call from Santa Fe Ford when a loaner vehicle would be available for him to use while the repair was being performed. After not receiving a call, he brought his vehicle back for repair to Santa Fe Ford on March 30, 2015, and May 13, 2015, without an appointment. Santa Fe Ford declined to perform any repair work or otherwise inspect the vehicle at either visit. At the May 13, 2015 repair visit, the Consumer was told by Santa Fe Ford that they did not have a trained transmission technician on staff, and that he would need to take his vehicle to a different Ford authorized service agent, recommending he go to either Gainesville or Lake City. However, on August 7, 2015, the Consumer received a letter from Ford stating that Santa Fe Ford "now [has] a service technician that is trained in transmissions and [they] would be happy to look" at his vehicle. In response, he took the vehicle to Santa Fe Ford for the clutch shudder on August 17, 2015, at which time the transmission control module was reprogrammed. The Consumer added that, to date, he has never received a call from Santa Fe Ford to bring his vehicle back for repairs to replace the clutch.

The Manufacturer asserted they were not given a reasonable number of attempts to correct the nonconformity. The Manufacturer argued that the March 30, 2015, and May 13, 2015, repair dates should not be considered repair attempts since the vehicle was not inspected on either occasion.

The Board found that the evidence established that the vehicle was brought in to the Manufacturer's authorized service agent for repair of the clutch shudder on February 27, 2015, and August 17, 2015. A majority of the Board also concluded that the Consumer's attempts to get his vehicle repaired on March 30, 2015, and May 13, 2015, after being told the vehicle needed a new clutch and not receiving a call back from Santa Fe Ford, also constituted repair attempts. Therefore, per a majority of the Board, there were four repair attempts for the clutch shudder prior to sending written notification to the Manufacturer.

Crawford v. Ford Motor Company, 2016-0368/MIA (Fla. NMVAB December 6, 2016)

The Consumer complained of a paint defect in his 2015 Ford F-150. The Consumer testified that shortly after the vehicle was delivered to him, he discovered that dirt was embedded in the paint on the roof of the vehicle. The Consumer also stated that the rocker panels on both sides of the truck were missing paint. Additionally, he testified that he had noticed some aluminum corrosion underneath the paint of the vehicle. Although the Manufacturer offered to repaint the vehicle, the Consumer argued that the Manufacturer would never be able to repair the vehicle, even if the vehicle was repainted three different times, because a repaired paint system did not meet the quality of a factory applied paint system. He also asserted that the value of his truck would significantly decline if the truck was repainted within one year of purchase.

The Manufacturer asserted they were not afforded any repair attempts to conform the subject vehicle to the warranty. The Manufacturer's representative testified that he inspected the vehicle and acknowledged that the vehicle had some minor imperfections in the paint on the roof of the vehicle as well as some orange peel in the rocker panels, which he argued was a common occurrence in that area of the vehicle. He explained that the Manufacturer was never provided the opportunity to repair the vehicle because the Consumer would not allow the Manufacturer to repaint the vehicle.

The Board found the evidence established that the paint defect substantially impaired the value of the vehicle, thereby constituting one or more nonconformities as defined by the statute and the applicable rule. The issue remaining was whether a reasonable number of attempts were undertaken. The vehicle in this case was presented for repair on two occasions. On both occasions an offer was made to repaint the vehicle. On both occasions that offer was refused. Under the circumstances of this case, the Board found that the Manufacturer has not been provided a reasonable number of attempts to repair the vehicle. Since the Manufacturer was not provided a reasonable number of attempts to repair the nonconformity, the Consumer was not yet qualified for refund/replacement relief under the Lemon Law and the case was dismissed.

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

Niffenegger v. Ford Motor Company, 2016-0379/JAX (Fla. NMVAB December 19, 2016) (*See also "What Constitutes A Reasonable Number of Attempts §681.104, F.S." above)*

The Board found that the clutch shudder in the Consumer's vehicle was a nonconformity, and a majority of the Board found there had been four repair attempts for the clutch shudder prior to sending written notification to the Manufacturer. On October 8, 2015, the Consumer sent written notification to the Manufacturer to provide the Manufacturer with a final opportunity to repair the vehicle. Included with the written notification was a separate letter from the Consumer's attorney which, among other things, included a demand for the Manufacturer to repurchase the vehicle. The Manufacturer received the notification on October 13, 2015. On October 27, 2015, the Manufacturer sent a letter to the Consumer's attorney requesting a final repair attempt. No final repair attempt was scheduled.

The Manufacturer asserted that that the Consumer's written notification was improper because it was accompanied by a separate letter which, among other things, demanded that the Manufacturer repurchase the vehicle.

The Board found that the Manufacturer received the statutory written notification from the Consumer, but failed to respond within the statutory 10-day time frame. Therefore, the requirement that the Manufacturer be given a final attempt to cure the nonconformity did not apply. The Manufacturer's assertion that the notice was improper because it was accompanied by a separate letter demanding that the vehicle be repurchased was rejected.

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.

Miot-Cesar v. Nissan Motor Corporation, USA, 2016-0304/WPB (Fla. NMVAB October 14, 2016)

The Consumer complained of a paint defect in her 2014 Nissan Sentra. The Customer testified that orange spots appeared on the exterior of the vehicle, approximately 2-3 weeks after she purchased her vehicle. She testified that the spots could be seen on the roof of the vehicle, the hood of the vehicle, the trunk of the vehicle and the interior of the trunk. She stated that clay bar treatment applied to the exterior of the vehicle on two occasions would initially remove the orange spots; however, the spots reappeared after each treatment.

The Manufacturer asserted the alleged nonconformity was caused by environmental fallout which was not covered by the Manufacturer's warranty. The Manufacturer's representative personally inspected the vehicle and testified that he determined that the spots could be classified as debris from an external source that settled onto the surface of the vehicle. He stated that both the dealer's certified body shop and the district service manager also concluded that the spots were the result of an external source. He further explained that the dealer performed clay bar treatment to the vehicle at two of the repairs, as a courtesy to the Consumer. He asserted that the spots could not be the result of a paint defect since the clay bar treatment had successfully removed the spots.

During the hearing, the Board inspected the vehicle and found that the vehicle was well maintained. All three Board members observed some orange spots on the exterior of the vehicle, but noted that the spots would disappear when rubbed. No defects with the paint were observed. The Board found that the evidence failed to establish that the paint defect 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 Consumer's case was dismissed.

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

DeVinney v. Hyundai Motor America, 2016-0356/WPB (Fla. NMVAB December 21, 2016)

The Consumer complained of a thermal event in the center dash console of her 2016 Hyundai Sonata. The Consumer testified that she drove her vehicle to a medical appointment on May 31, 2016, and when she returned to her vehicle, she observed that the center dash console had been severely damaged from a recent fire and the interior of the vehicle was filled with black smoke. The Consumer stated that she always unplugged her cell phone from the charging jack when she exited her vehicle and never left any objects in her vehicle. The Consumer explained that she did not know the origin of the fire and believed that the vehicle had a Manufacturer's defect.

The Manufacturer asserted the alleged nonconformity was the result of an accident or abuse of the motor vehicle by persons other than the manufacturer or its authorized service agent.

The Manufacturer testified that Hyundai hired an independent third party to determine the origin of the fire. After examining the vehicle, the investigator concluded that a flammable foreign object in the center console storage space in front of the cup holder had self-ignited; however, the unknown foreign object had been removed prior to the investigation. The Manufacturer also presented a photograph that showed the presence of a telephone charging jack in the USB port during the fire. The Manufacturer added that the Consumer's insurance company also conducted an investigation and concluded that the fire originated in the center dash console. Since the fire was caused by a foreign object, the Manufacturer asserted that the fire was not caused by a Manufacturer's defect.

The Board found that the greater weight of the evidence supported the Manufacturer's affirmative defense that the thermal event in the center dash console was the result of an accident, abuse, neglect, modification or alteration of the motor vehicle by persons other than the Manufacturer or its authorized service agent. Accordingly, the problem complained of by the Consumer did not constitute a "nonconformity" as defined by the statute, and the Consumer's case was dismissed.

REFUND §681.104(2)(a)(b), F.S.:

Incidental Charges §681.102(7), F.S.

Ackerman v. BMW of North America, LLC, 2016-0342/STP (Fla. NMVAB October 10, 2016)

The Consumer's 2015 BMW X5 was declared a "lemon" by the Board. The Consumer requested reimbursement of $33.87 for certified mail expenses to send written notification to the Manufacturer, as well as to mail various other documents related to the arbitration, as an incidental charge. The Manufacturer objected on the grounds that the statute requires only that the motor vehicle defect notice be sent by certified mail. The Board awarded the Consumer the $33.87 for certified mail expenses to send written notification to the Manufacturer, as well as to mail various other documents related to the arbitration, as an incidental charge. The Manufacturer's objection to reimbursement of the cost of certified mailing for documents other than the motor vehicle defect notification was denied.

Lisa's Construction, Inc. and Lisa Puffer v. FCA US LLC, 2016-0375/FTL (Fla. NMVAB December 6, 2016)

The Consumer's 2014 Dodge Ram 1500 was declared a "lemon" by the Board. The Consumers requested reimbursement of $150.00 for the deductible that the Consumers paid at the May 18, 2016 repair; $79.92 for the cost to drive a replacement truck to the dealership on two separate occasions when the vehicle was being repaired; and $2,098.63 for a rental vehicle from August 29, 2016 through September 13, 2016, as incidental charges, which were all awarded by the Board.

Collateral Charges §681.102(3), F.S.

Daigle v. Volkswagen/Audi of America Inc., 2016-0362/WPB (Fla. NMVAB October 3, 2016)

The Consumer's 2014 Volkswagen Beetle was declared a "lemon" by the Board. The Consumer requested reimbursement of $100.00 for window tinting as a collateral charge. The Manufacturer objected to the request because the Consumer could not produce a receipt for the charge. The Board awarded the Consumer the $100.00 for window tinting as a collateral charge. The Manufacturer's objection was denied.

MISCELLANEOUS PROCEDURAL ISSUES:

Olson v. Ford Motor Company, 2016-0353/JAX (Fla. NMVAB October 3, 2016)

At the outset of the hearing, the Manufacturer sought to have the Board prohibit the Consumer from testifying about carbon monoxide, arguing that any complaint regarding carbon monoxide was outside the scope of the Board's authority and was pre-empted by federal law. The Consumer objected to the Manufacturer's request. Upon consideration, the Board denied the Manufacturer's request as it had the authority to hear whether or not the vehicle had a defect or condition that substantially impaired the use, value or safety of the vehicle, including hearing applicable testimony about carbon monoxide.

Jureidini v. BMW of North America, LLC, 2016-0414/MIA (Fla. NMVAB November 10, 2016)

During the Board's deliberations on the merits of the Consumer's claim, and prior to the refund calculation phase of the hearing, the Manufacturer moved to disqualify the Board Members pursuant to Paragraphs (44) and (45), *Hearings Before the New Motor Vehicle Arbitration Board.* Counsel for the Manufacturer asserted that the Board members showed bias, prejudice or interest because they allegedly failed to follow the statute during deliberations. Upon consideration, the Manufacturer's Motion was found to be legally insufficient; accordingly, the hearing proceeded to its conclusion.