

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

QUARTERLY CASE SUMMARIES

October 1999 - December 1999 (Fourth Quarter)

NONCONFORMITY §681.102(16), F.S. (1997):

Riley v. Toyota Motor Sales, U.S.A., 1999-0751/PEN, (Fla. NMVAB October 4, 1999)

The Consumer filed a Request for Arbitration alleging that the manual transmission gear shift would intermittently lock up. The Consumer testified that the driver could not shift immediately into reverse and that this created a substantial impairment of safety. The Manufacturer testified that this was a design of the vehicle. An inspection and test drive of the vehicle was performed and the Board was able to duplicate the reverse gear lock-up problem. The Board held that the problem was a substantial impairment of the safety of the vehicle and held in favor of the Consumer.

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

Days Out of Service §681.104(1)(b), (3)(b); Rule 2-30.001(2)(c), F.A.C.

Gonzalez, v. Mazda Motor of America, Inc., 1999-0992/TPA (Fla. NMVAB November 15, 1999)

The Manufacturer argued that the all of the days the vehicle was out of service (54 days) should not be held against it. The Manufacturer had difficulty in obtaining the proper repair components, and the Manufacturer had provided the Consumer with a rental vehicle. The Board rejected this argument and held in favor of the Consumer. The Board ruled that the Manufacturer's arguments were not supported by either the evidence or the statutory and rule provisions.

Whether Notice Sent After 15 Days Out Of Service 681.104(1)(b), F.S.

Hernandez v. Toyota Motor Sales, U.S.A., 1999-0970/TPA (Fla. NMVAB November 9, 1999)

The Consumer claimed that the motor vehicle had been out of service for a total of 39 cumulative days for repair of the intermittent illumination of the air bag light. Written notification was sent by the Consumer to the Manufacturer after 15 or more days out of service. At the hearing, the Manufacturer argued through counsel that the Manufacturer did not receive the written notification until 30 days had elapsed. The Board held that the unambiguous language of the statute requires the Consumer to mail notification to the Manufacturer after the vehicle has been out of service by reason of repair for 15 or more days; it does not require notice to be mailed prior to the expiration of 30 cumulative days out of service. The Board held in favor of the Consumer that a reasonable number of repair attempts had

been undertaken.

MANUFACTURER AFFIRMATIVE DEFENSES:

Defect does not substantially impair vehicle's use, value or safety §681.104(4)(a):

Harp v. American Honda Motor Company, 1999-0805/JAX (Fla. NMVAB November 1, 1999)

The Consumers complained that the vehicle had an intermittent hesitation and shudder/stumble when driven in overdrive between 45 and 70 miles per hour. The Manufacturer argued that neither problem amounted to a substantial impairment of the use, value or safety of the vehicle. The Manufacturer's witness testified that the shudder/stumble was actually a surge in the vehicle caused by the torque convertor and that there was no hesitation problem. The Board performed a test drive and experienced a slight shudder, but felt no hesitation. The Board held for the Manufacturer.

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

Dover v. DaimlerChrysler Motor Corp., 1999-0964/TPA (Fla. NMVAB November 8, 1999)

The Consumer complained of transmission hesitation, harsh shifting and, ultimately, transmission failure. The Manufacturer raised the affirmative defense that the defect was the result of abuse of the vehicle by persons other than the Manufacturer or its authorized service agent. The Manufacturer's witness testified that he performed a test drive following replacement of the transmission on September 2, 1999, and it operated without defect. The witness testified that the vehicle was towed to the authorized service agent on September 15, 1999, at which time the transmission cooler tube had melted to the radiator, the transmission fluid was burnt, and the rear tires showed extreme abnormal wear and blistering. The Board found in favor of the Consumer stating that the Manufacturer's assertion was not supported by the greater weight of the evidence.

Shaeffer v. General Motors Corporation, Chevrolet Division, 1999-1114/PEN (Fla. NMVAB December 17, 1999)

The Consumer complained that a fire occurred in the vehicle while it was parked at the Consumer's place of employment. The Consumer testified that, based upon the incident report filed by the fire department, it was his opinion that the fire was caused by an electrical failure. The Manufacturer refused responsibility for the repairs, which were paid for by the Consumer's insurance company. The Consumer presented a witness from the alarm company who testified that it was his opinion that the vehicle alarm system fuses had blown when an attempt was made to disarm the alarm, but that the alarm was operating as designed and did not cause the fire. The Manufacturer alleged that the fire was not caused by a Manufacturer's defect. The Board held in favor of the Manufacturer stating that the Consumer failed to meet the burden of proving that the fire was caused by a Manufacturer warranted defect.

REFUND 681.104(2)(a)(b), F.S.:

Trade-in Allowance 681.102(19), F.S. (1997):

Engleman v. General Motors Corporation, Chevrolet Motor Division, 1999-0965/TPA (Fla. NMVAB December 8, 1999)

The Consumer had traded in a 1996 Corvette and had received an allowance of \$27,533.88 as reflected on the new vehicle buyer's order. The Consumer did not accept that trade-in allowance and produced the NADA Official Used Car Guide (Southeastern Edition) in accordance with the statute. The NADA guide reflected that the retail value for Consumer's vehicle as equipped was \$32,575.00. Upon concluding that the vehicle which was the subject of the claim was a "lemon," the Board awarded as the net trade-in allowance the NADA retail value.

Wilson v. Ford Motor Company, 1999-1095/TPA (Fla. NMVAB December 16, 1999)

The Manufacturer disputed the trade-in allowance as reflected on the Consumers' purchase document (the amount owed was equal to the gross trade-in allowance). The Manufacturer produced the NADA Official Used Car Guide (Southeaster Edition) in effect at the time of the trade-in which listed a lower retail value for Consumers' trade-in vehicle than that which was set forth in the purchase document. In addition to certain options on Consumers' trade-in vehilce which enhanced the value, the Consumers testified that the vehicle was equipped with a conversion package which they believed added approximately \$3,500.00 in value to the vehicle. The Consumer's vehicle, as equipped with the conversion package, was not listed in the NADA guide. The Board found Consumer's vehicle was a lemon, and resorted to the purchase document to determine the amount of the net trade-in allowance, since Consumer's trade in vehicle was not listed in the NADA guide.

MISCELLANEOUS PROCEDURAL ISSUES:

Overstreet v. Ford Motor Company, 1999-0794/TLH (Fla. NMVAB November 5, 1999)

Prior to the hearing the Consumers requested that their friend be permitted to assist in presenting their case. The friend's name did not appear on the Consumers' Prehearing Information sheet and the friend was not an attorney. The Board determined that the Consumers were capable of presenting their own case, and since their friend was not an attorney, he could not assist in the presentation of the case. The Consumers also requested that the Board accept a notarized letter and four photos of the vehicle. The notarized letter was of a witness that had been previously identified, but whose health problems precluded her presence at the hearing. Counsel for the Manufacturer did not object and the Board accepted these items in as evidence.