OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

QUARTERLY CASE SUMMARIES

July 2000 - September 2000 (3rd Quarter)

JURISDICTION:

Consumer §681.102(4), F.S.

Stauffer v. Ford Motor Company, 1999-1130/TPA (Fla. NMVAB July 11, 2000)

A father transferred the title to the subject motor vehicle to his son in exchange for $1.00. During the hearing, the son testified that he had been in possession of the vehicle since the time of purchase by his father, but that his father was the legal owner of the vehicle prior to the transfer of title. At the outset of the hearing, the Manufacturer's attorney moved to dismiss the case on the grounds that the son was not a "Consumer" as defined in Chapter 681, because the vehicle was not transferred to him during the Lemon Law rights period. The Board held that the son was not a Consumer as defined, because the vehicle was transferred to him, and primarily used for personal, family, or household purposes, after the expiration of the Lemon Law rights period. The case was dismissed.

Motor Vehicle §681.102(14), F.S. (1995); §681.102(15), F.S. (1997)

Delatorre v. Ford Motor Company, 2000-0507/MIA (Fla. NMVAB July 20, 2000)

The Consumer had filed a Request for Arbitration indicating that her truck weighed less than 10,000 pounds gross vehicle weight. Prior to the hearing, the Manufacturer provided the Board with a copy of the Florida Vehicle/Vessel Registration Certificate, which evidenced the Consumer's declaration that the gross vehicle weight was 11,200 pounds. In reliance on the registration certificate, the definition of "gross vehicle weight" as set forth in Section 320.01(12)(a), Florida Statutes (1999), and a previous Board decision, the Manufacturer contended the Consumer's vehicle was not a "motor vehicle" as defined under the Lemon Law. The Consumer's attorney presented a "Florida Department of Transportation Motor Carrier Compliance Office, Islamorada Weigh Station Violation Ticket" indicating that the weight of the truck was 7,040 pounds; accordingly, the Consumer requested that the Manufacturer's Motion to Dismiss should be "struck," and also moved to continue the hearing so the Consumer could file a corrected Florida Registration Certificate. The Board concluded that the Consumer's truck weighed more than 10,000 pounds gross vehicle weight; therefore, it did not constitute a "motor vehicle" under the Lemon Law. The Consumer's Motion to Continue was denied and the case was dismissed.

Nix v. Mazda Motor of America, Inc., 2000-0811/TLH (Fla. NMVAB September 22, 2000)

The Manufacturer contended that the Consumer's truck was not a "new" vehicle as required by the Lemon Law, because its authorized service agent, Buzz Leonard Motors, Inc., "sold" the vehicle to Billy Carr Auto Sales; thereafter, it was transferred to the Consumer as a "used" vehicle. The Consumer submitted into evidence, Mazda Motor of America, Inc.'s written express, limited warranty, and the Billy Car Auto Sales, Inc., sales agreement indicating the vehicle was sold to the Consumer as "new." The Manufacturer provided the Board with a Certificate of Title issued for the truck showing the Consumer was the first and only registered owner of the vehicle. The Consumer testified during the hearing that he purchased a "new" truck from his friend, Billy Carr, a used car dealer, who agreed to order him any new vehicle that he wanted. Because the lemon law does not define the term "new vehicle," the Board relied on the definition contained in Chapter 320, Florida Statutes, and determined that the truck was new because equitable or legal title had never been transferred by a manufacturer, distributor, importer, or dealer to an ultimate purchaser. Based on the evidence presented, the Board found the Consumer to be the "ultimate purchaser" and the truck was "new" when title passed to the Consumer; therefore, the vehicle constituted a "motor vehicle" within the meaning of the statute. The Board then concluded that a transmission slip and noise was a defect or condition that substantially impaired the use and value of the vehicle; as such, the Consumer was awarded a refund.

Warranty §681.102(20), F.S. (1995); §681.102(23), F.S. (1997)

Galluzzo v. Ford Motor Company, 2000-0327/FTL (Fla. NMVAB August 7, 2000)

The Consumer complained of undercarriage rust. The Manufacturer contended that the rust was surface oxidation, probably caused by salt residue due to the Consumer's residence in a beachfront area. The Manufacturer asserted that rust caused by surface oxidation was excluded from the limited warranty, which covered body sheet metal panels against corrosion due to a defect in factory-supplied materials or workmanship. The Board concluded that the surface rust or salt residue was not the type of corrosion covered by the Manufacturer's written warranty, nor was it the subject of any affirmation or promise made by the Manufacturer relating to material or workmanship as defined under the Lemon Law. The case was dismissed.

REASONABLE NUMBER OF ATTEMPTS §681.104, F.S.

What Constitutes a Reasonable Number of Attempts §681.104, F.S.

Takasy v. Jaguar Cars, 2000-0446/STP (Fla. NMVAB July 6, 2000)

The Consumer complained of a whistling noise emanating from the climate control system. After two attempts at repair, the Consumer was told the noise was "normal" and nothing further could be done to

fix it. The Consumer sent written notification to the Manufacturer and upon receipt of such notification, the Consumer was directed to a repair facility for a "final" repair attempt. Following an inspection of the vehicle by the Manufacturer's representative, the Consumer was advised the Consumer that any noise associated with the climate control was considered "normal" and no repairs would be performed. The Consumer was told the same thing by the Manufacturer's representative during the Manufacturer's pre-arbitration inspection of the vehicle. During the hearing, the Board test drove the motor vehicle and heard the complained of noise. The Board concluded the whistling noise constituted a nonconformity. The Board further held that, although the Lemon Law statute does not specifically define how many repair attempts are considered reasonable, there is a presumption of a reasonable number of attempts under the statute if the terms of the presumption are met. The Board recognized, however, that a Consumer is not required to establish the statutory presumption in order to qualify for relief. Under the circumstances, additional opportunities to repair would not have changed the Manufacturer's contention that the noise was normal; therefore, the Board concluded that the Manufacturer was afforded a reasonable opportunity to conform the vehicle to the warranty as contemplated by the Lemon Law. The vehicle was deemed a "lemon" and the Consumer was awarded a refund.

Written Notification to the Manufacturer: §681.104(1), F.S.

Juelle v. General Motors Corporation, Chevrolet Motor Division, 2000-0410/MIA (Fla. NMVAB July 6, 2000)

The Consumer complained of an intermittent air conditioner problem, which the Board found substantially impaired the use, value and safety of the motor vehicle. Following four repair attempts for this problem, the Consumer sent written notification to the Manufacturer allowing for a final repair attempt. The Manufacturer did not respond to the notification within the required 10 days, nor was a final repair attempt performed. However, the Consumer did take the vehicle in for a fifth repair attempt approximately three weeks after sending the written notification. The Manufacturer contended that the fifth repair attempt corrected the problem. The Board held that the requirement that the Manufacturer be given a final repair attempt did not apply because the Manufactured failed to respond to the notification. The Board further held that the correction of the nonconformity outside the reasonable number of attempts permitted by the Lemon Law was irrelevant. Since the Manufacturer failed to correct the problem within a reasonable number of repair attempts, the Consumer was entitled to a refund.

Taha v. Toyota Motor Sales, U.S.A., 2000-0325/ORL (Fla. NMVAB July 3, 2000)

The Consumer mailed written notification to the Manufacturer at an address provided to his wife by the Manufacturer's customer hotline, because the Consumer was unable to locate an address in his owner's manual or warranty booklet. In response to the notice, the Consumer received a voice mail message on his telephone answering machine more than 10 days after the Manufacturer's receipt of the notification; however, at the Manufacturer's request, the Consumer presented the vehicle for repair. At

the hearing, the Manufacturer argued that because the Consumer mailed the written notification to the wrong address, the Manufacturer's response to the notification should have been considered timely, and the repairs conducted on a date following the response should constitute the final repair attempt. The Manufacturer also argued that the complained of defects were cured at this final repair attempt. The Board concluded that the Manufacturer received the notification, but failed to respond within the statutorily required 10 days of receipt. The Consumer did present the vehicle for a subsequent repair; however, since the Manufacturer failed to timely respond, the requirement that the Manufacturer be given a final attempt to cure the vibration nonconformities did not apply. The Manufacturer having failed to correct the nonconformities after a reasonable number of attempts, the Consumer was entitled to a refund.

Pena v. DaimlerChrysler Motors Corporation, 2000-0478/MIA (Fla. NMVAB July 19, 2000)

The Consumer sent a letter to the Director of Office of Consumer Affairs and Business Regulation in Boston, Massachusetts, regarding the problems with the vehicle, and requesting a replacement vehicle or a refund. Copies of this letter were sent to Bob Eaton, CEO, Chrysler Corporation, and to the Florida Department of Agriculture and Consumer Services, Division of Consumer Services. Upon receipt of this letter, a Chrysler representative responded by telephone and requested that the Consumer take the vehicle to an authorized service agent for examination, which the Consumer did not do. The Board held that the letter to the Director of Office of Consumer Affairs and Business Regulation in Boston, Massachusetts, and to the CEO of Chrysler Corporation was not sufficient to constitute the written notification required under Section 681.104(1)(a), Florida Statutes; accordingly, because of the bad notification and the refusal to take the vehicle in for examination following the telephone call from a Chrysler representative, the Manufacturer was not provided a reasonable number of attempts to conform the vehicle to the warranty. The case was dismissed.

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

Lester v. American Isuzu Motors, Inc., 2000-0495/PEN (Fla. NMVAB July 19, 2000)

The Consumers complained of an intermittent brake pulsation followed by a failure of the brakes to stop the vehicle in a normal amount of time and distance. The Consumers testified that some of the Manufacturer's repair attempts improved the braking, but did not correct the problem. In addition, the Consumers asserted that the brake defect caused an accident that occurred more than five months after the Manufacturer's final repair attempt. The Manufacturer contended that the brake problem was related to the "normal characteristics" of the Anti-lock Brake System; therefore, it did not constitute a nonconformity. Alternatively, the Manufacturer contended the brake problem was corrected following the replacement of the speed sensor at the final repair attempt. The Board held that the brake problem did substantially impair the safety of the vehicle. With regard to whether the nonconformity continued to exist after the final repair attempt, the Board was not persuaded by the Consumers' testimony that the brake nonconformity was the direct cause of the accident and concluded that the nonconformity

was corrected at the final repair attempt. The Manufacturer having conformed the vehicle to the warranty by correcting the nonconformity within a reasonable number of attempts, the Consumers were not entitled to relief, and the case was dismissed.

Maiorano v. Ford Motor Company, 2000-0550/MIA (Fla. NMVAB August 4, 2000)

Following the Manufacturer's receipt of the Consumer's Motor Vehicle Defect Notification form, the Consumer delivered the vehicle to the Manufacturer's authorized service agent pursuant to an agreed upon final repair attempt; however, the Consumer was unable to leave the vehicle. A new date was mutually agreed upon; however, the Manufacturer' authorized service agent was unable to complete the repairs, but advised the Consumer not to leave the vehicle, as the Manufacturer was attempting to find a replacement vehicle for the Consumer. Since the Manufacturer did not complete the final repair within 10 days of the date the vehicle was delivered to the designated facility, the requirement that the Manufacturer be given a final repair attempt to cure the nonconformity did not apply. Because the Manufacturer failed to correct the nonconformity after a reasonable number of attempts, the Consumer was awarded a refund.

Watson v. DaimlerChrysler Motors Corporation, 2000-0733/PEN
(Fla. NMVAB September 13, 2000)

The Consumer complained of intermittent inoperable electric power windows, which the Board concluded substantially impaired the use and value of the motor vehicle. The Manufacturer contended that it was not afforded the statutory required final repair attempt; therefore, the case should be dismissed. The Consumer sent written notification to which the Manufacturer timely responded; however, the Consumer advised the Manufacturer's representative that the windows were working properly at that time, and no final repair attempt was needed. During the hearing, the Consumer testified that the windows worked properly for about seven months, then the problem recurred. At this point, the Consumer contacted someone she believed to work with the Manufacturer who advised her that someone would get back to her regarding her window problem; however, she could not confirm the identity of this person. She further testified that if someone would have reached out to her, she would have allowed the Manufacturer the opportunity to fix the windows. The Board held that the Manufacturer was provided with the required written notification, and thereafter timely responded to the notice; however, the Manufacturer was not afforded a final opportunity to correct the nonconformity. The case was dismissed.

Days Out of Service: §681.104(1)(b); 681.104(3)(b), F.S.

McCloud v. Mercedes-Benz USA, Inc., 2000-0198/JAX (Fla. NMVAB August 7, 2000)

A tow truck was involved in an accident while towing the Consumer's vehicle to the authorized service agent for repair, resulting in damage to the Consumer's vehicle. The Manufacturer contended that the

additional days required to repair the towing damage did not constitute "days out of service" under the Lemon Law, because tow truck operator was not an authorized service agent of Mercedes-Benz; however, the towing bill was paid for under its warranty. The problem which required the vehicle to be towed was later determined to be a problem with the key, though the battery in the vehicle was replaced as well. The Manufacturer contended that the number of repair days for accident damage should not count, because the accident damage did not meet the definition of "nonconformity" under the Lemon Law, and the underlying key and/or battery repair would not have taken more than one day; however, the Manufacturer did not provide proof to support this contention. The Board rejected the Manufacturer's contentions, and held that the vehicle was out of service for repair of nonconformities for 42 days; therefore, the Consumer was entitled to a refund.

MANUFACTURER AFFIRMATIVE DEFENSES: §681.104(4), F.S.

Defect Does Not Substantially Impair Use, Value or Safety of Vehicle §681.104(a):

Henderson v. Ford Motor Company, 2000-0743/TLH (Fla. NMVAB September 5, 2000)

The Consumer complained of a "bad vibration" throughout the pickup truck, which was described as annoying, uncomfortable and a threat to the safety of her family. During the course of repairs, the front brakes were adjusted, the tires balanced six times, and eight rims and one idler arm were replaced on the vehicle. In addition, eight Firestone and ten Michelin tires were put on the vehicle during the course of repairs and related test drives in an attempt to diagnose and alleviate the problem. The Consumer testified that the Michelin tires that replaced the Firestone tires improved the vibration, but did not eliminate the vibration. The Manufacturer contended that the problem complained of was normal tire and road vibration that the Consumer was experiencing, which was not warranted by the Manufacturer, and not a defect or condition that substantially impaired the use, value or safety of the vehicle. During the hearing, the Board conducted a nine-mile test drive of the Consumer's vehicle and experienced a slight vibration. The Board concluded that, although a slight vibration existed, it did not constitute a nonconformity; accordingly, the case was dismissed.

MULTIPLE MANUFACTURERS

Craig v. General Motors Corporation, Chevrolet Motor Division, and Premier Motor Coach, 2000-0671/PEN (Fla. NMVAB August 25, 2000)

The Consumer complained of cracks in the conversion interior wood and cracks in the conversion interior wood finish, which he described as "craze marks." During his testimony at the hearing, the Consumer acknowledged that, although he took the conversion van to his selling dealer, Pete Moore Chevrolet, an authorized service agent for both General Motors and Premier, all the repair work was

done by the converter at its headquarters, and not by GM or Pete Moore Chevrolet. At the close of the Consumer's testimony, the representative for GM requested that the case be dismissed as against GM, because the Consumer's testimony and evidence submitted into the record confirmed that none of the alleged defects were covered under GM's warranty, nor were any repairs performed by any of its authorized service agents. Neither the Consumer, nor Premier objected to this request; therefore, the case was dismissed as against GM, and Premier proceeded to present its case. Premier argued that the defects complained of by the Consumer did not constitute nonconformities because they were simply "wear and tear" items that deteriorated over time due to the elements to which they were exposed, especially the hot Florida sun. The Board agreed with Premier's position and concluded that the wood cracks did not substantially impair the use, value or safety of the motor vehicle; accordingly, the Consumer was not entitled to Lemon Law relief, and the case was dismissed.

REFUND §681.104(2)(a)(b), F.S.:

Collateral Charges §681.102(3), F.S.

Gonzalez v. Ford Motor Company, 2000-0511/PEN (Fla. NMVAB August 10, 2000)

The Consumers' vehicle was declared a lemon because of a noisy transmission. The remedy phase of the hearing was continued to enable the Consumers to submit verification of payment for a vehicle alarm system, for which they sought reimbursement as a collateral charge. The Consumers submitted an undated document, which indicated a cost of $300.95 for an alarm system. The Manufacturer's attorney objected to reimbursement of this collateral charge because the document did not appear to be authentic and it did not evidence actual payment from the Consumers. A telephone hearing was conducted to address the collateral charge issue and complete the calculation of the refund. The Consumers did not participate in the telephone hearing, nor did they present substantiation of payment of the disputed collateral charge. The Board denied reimbursement of the cost for the alarm system, and awarded a refund without this amount.

Incidental Charges §681.102(7), F.S. (1995); §681.102(8), F.S. (1997)

Taha v. Toyota Motor Sales, U.S.A., 2000-0325/ORL (Fla. NMVAB July 3, 2000)

The Consumer was awarded a refund. The Consumer also sought reimbursement of expert witness fees in the amount of $1,400.00 as incidental charges. The witness was an ASE certified master technician who sought $400.00 for an examination and test drive of the vehicle that took 1.5 hours, and $1,000.00 for 5.5 hours attending the arbitration hearing. The Board found that the average of the two charges was approximately $65.00 per hour, and awarded reimbursement in the amount of $450.00 as reasonable incidental charges for the technician's time of seven hours at $65.00 per hour.

West v. Ford Motor Company, 2000-0776/ORL (Fla. NMVAB September 20, 2000)

The Consumer was awarded a refund. The Consumer sought reimbursement of the following incidental charges as a result of the nonconformities: $350.70 for tires and balancing; $118.66 for front-end alignments; and $299.55 for inspections and repairs performed at independent auto repair shops. The Consumer also sought reimbursement for vehicle rental costs for which he provided an unverified receipt from Ahoy Marine in the amount of $900.00. The Consumer testified that the vehicle rental costs were for truck rental fees for three weekends so that he could participate in fishing tournaments. The Manufacturer objected to the reimbursement of all of these expenses. The Board granted all of the incidental charges except the vehicle rental costs.

Net Trade-in Allowance §681.102(17), F.S. (1995);§681.102(19), F.S. (1997)

Barefield v. Toyota Motor Sales, U.S.A., 2000-0859/TPA (Fla. NMVAB September 29, 2000)

During the remedy phase of the hearing, the Manufacturer argued that the Consumer's trade-in vehicle was worth less than the amount of the outstanding lien against it, and her refund should be reduced by that amount. In support of that argument, the Manufacturer relied on an affidavit of the finance manager at the selling dealer, which stated that the "appraised value" of the Consumer's trade-in vehicle was $10,500.00 and the pay-off on the lien was $14,316.33. The lease reflected a net trade-in allowance of "none." The Manufacturer did not produce the NADA Official Used Vehicle Appraisal Guide (Southeast Edition) in effect at the time of the trade-in. The argument that the Board utilize the "appraised value" of the Consumer's trade-in vehicle in calculating the refund due the Consumer was rejected as being irrelevant and beyond the scope of the Board's authority.

Reasonable Offset for Use §681.102(18), F.S. (1995);§681.102(20), F.S. (1997)

Goforth v. American Isuzu Motors, Inc., 2000-0276/TPA (Fla. NMVAB July 11, 2000)

Prior to the hearing, the Consumer requested an extended continuance of the first scheduled Board hearing due to a family illness. The Manufacturer stipulated to the continuance, provided the mileage attributable to the Consumer due to the delay be added to the mileage at the time of the BBB/AUTOLINE hearing. The Board granted the continuance and the Manufacturer's request regarding the mileage, and directed the Consumer to record the mileage on the date of the first scheduled Board hearing; however, the Consumer failed to do so. In calculating the statutory offset for use, the Board calculated the average miles driven per day since the date of the BBB/AUTOLINE hearing, and added those miles to the mileage attributable to the Consumer as of the date of the BBB/AUTOLINE hearing, in order to estimate the total mileage attributable to the Consumer for calculating the statutory offset.

Campopiano & Ocean State Protective Services, Inc. v. Ford Motor Company, 2000-0578/ORL (Fla. NMVAB August 23, 2000)

The Manufacturer agreed that the vehicle was a lemon. The sole purpose of the hearing was to calculate the amount of the refund due the Consumers. In calculating the reasonable offset for the Consumers' use of the vehicle, the Manufacturer's attorney argued that the miles driven to and from the Manufacturer's authorized service agent should be attributed to the Consumers, because the Lemon Law provides the Manufacturer with a reasonable opportunity to repair the nonconformity and because the Consumers did not take the vehicle to the authorized service agent in closest proximity to their home or business for repairs. The Board agreed and calculated the offset accordingly.

MISCELLANEOUS PROCEDURAL ISSUES

Nadu v. Ford Motor Company, 2000-0519/TPA (Fla. NMVAB August, 10, 2000)

The Consumer filed a Request for Arbitration seeking a replacement vehicle. At the hearing, the Consumer requested that the vehicle be repaired in lieu of a replacement vehicle or refund. In support of this request, the Consumer asserted that she could not afford to pay the offset for her use of the vehicle as required by the Lemon Law. The Consumer notified the Board that she desired to withdraw the Request for Arbitration; as a result, the Board ordered that the Request for Arbitration be withdrawn and the case was dismissed.

LeCompte v. Nissan Motor Corporation, USA, 2000-0674/TPA (Fla. NMVAB August 18, 2000)

At the commencement of the hearing, counsel for the Manufacturer requested the Board not consider the Request for Arbitration as "filed," because counsel for the Consumers completed the request, not the Consumers, and the law did not permit an attorney to sign a verification under oath on behalf of a client. At the hearing, Carla LeCompte testified that she reviewed the Request for Arbitration after her counsel completed the request, and she adopted the statements contained within the Request for Arbitration as her own statements. The hearing proceeded on the merits.

Hough v. Toyota Motor Sales, U.S.A., 2000-0553/FTM (Fla. NMVAB August 25, 2000)

Following the Board's test drive of the vehicle during the hearing, counsel for the Manufacturer requested a continuance to allow the Manufacturer to perform an inspection of the vehicle's brakes to determine whether excessive heat had been induced by the Consumer to warp the vehicle's rear brake drums. In support of this request, a Manufacturer's witness testified that he discussed the Manufacturer's prehearing inspection of the Consumer's vehicle with the individual who performed it, and was informed that there was no vibration when the brakes were applied during the prehearing inspection, and that the Consumer agreed with that finding. This witness testified that, during the

Board's test drive of the Consumer's vehicle during the hearing, he felt a definite vibration coming from the rear drums. Counsel for the Manufacturer asserted that the condition of the vehicle at the hearing was a "surprise" to the Manufacturer and that the Manufacturer would be deprived of a fair hearing if a continuance was not granted. The Board found that the existence of a vibration when braking was consistent with the Consumer's testimony and the repair history, and the Manufacturer's request for a continuance was denied. The Board concluded that the brake vibration substantially impaired the use and value of the vehicle, and awarded the Consumer a refund.

Cole v. American Honda Motor Company, 2000-0603/ORL (Fla. NMVAB August 31, 2000)

Following presentation of the Consumer's case, counsel for the Manufacturer renewed a previously filed motion for continuance, stating as grounds for the continuance that the Manufacturer's witness with the most knowledge of the vehicle was unavailable to attend the hearing, that the affidavit of the witness had been contradicted by the Consumer's testimony, and that the testimony was crucial to the Manufacturer's case. In further support of the motion, counsel argued that the Consumer testified that the problem with the vehicle did not often occur in damp or rainy weather and that it was currently raining. Counsel argued that the Board's inspection of the vehicle would best be conducted on a day without rain. The Board denied the Manufacturer's continuance request, and concluded that the intermittent misfire or bucking problem at speeds of 45 to 60 miles per hour when the engine was cold was a defect or condition that substantially impaired the use and value of the vehicle; as such, the Consumer was awarded a refund.